93CRS15291 DANIEL GREEN

MAR FILED JUNE 2023

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SOME SHEETS LABELED WITH LETTERS DID NOT HAVE ANY PAPERS BEHIND IT.

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4/18/23

Shelena Smith or Current Clerk of Robeson County Superior Court

500 N. Elm St. #101

Lumberton, N.C. 28358

FILED
2023 JUN 12 P 4:35
ROBESON CO., C.S.C.
BY

Re. State v. Green No. 93 CRS 15291-15293

Madame Clerk:

Enclosed please find a M.A.R Motion for Appropriate Relief. It is 486 pages long. There are 10 sections to it that are divided from one another by blue colored dividers.

Please send me conformed copies back that are date stamped so that I will have verification it is filed and stamped by your office. I Apologize for the length in advance and Also thankyou for your work and assistance in this matter and in general.

Judge C. Winston Gilchrist is assigned to this case, please notify him that this motion is filed. I informed him during our last Court hearing that I would be Amending the motion for Appropriate relief. Thankyou.

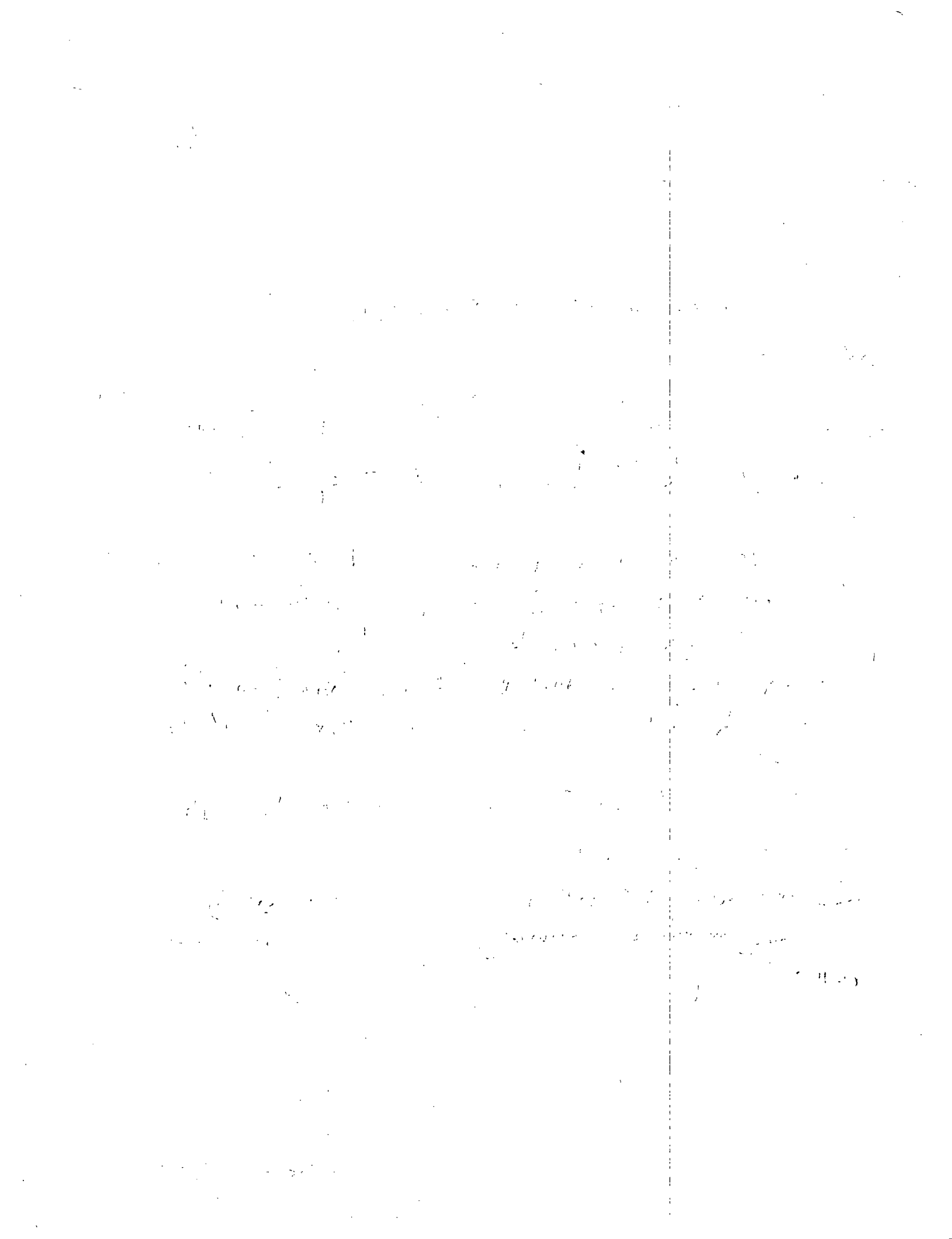
Sincerely,

Daniel A. Green #0154242

4600 Tabor C

4600 Swamp Fox Hwy. W

Tabor City, N.C 28463



State of North Carolina
v.
Daniel Andre Green

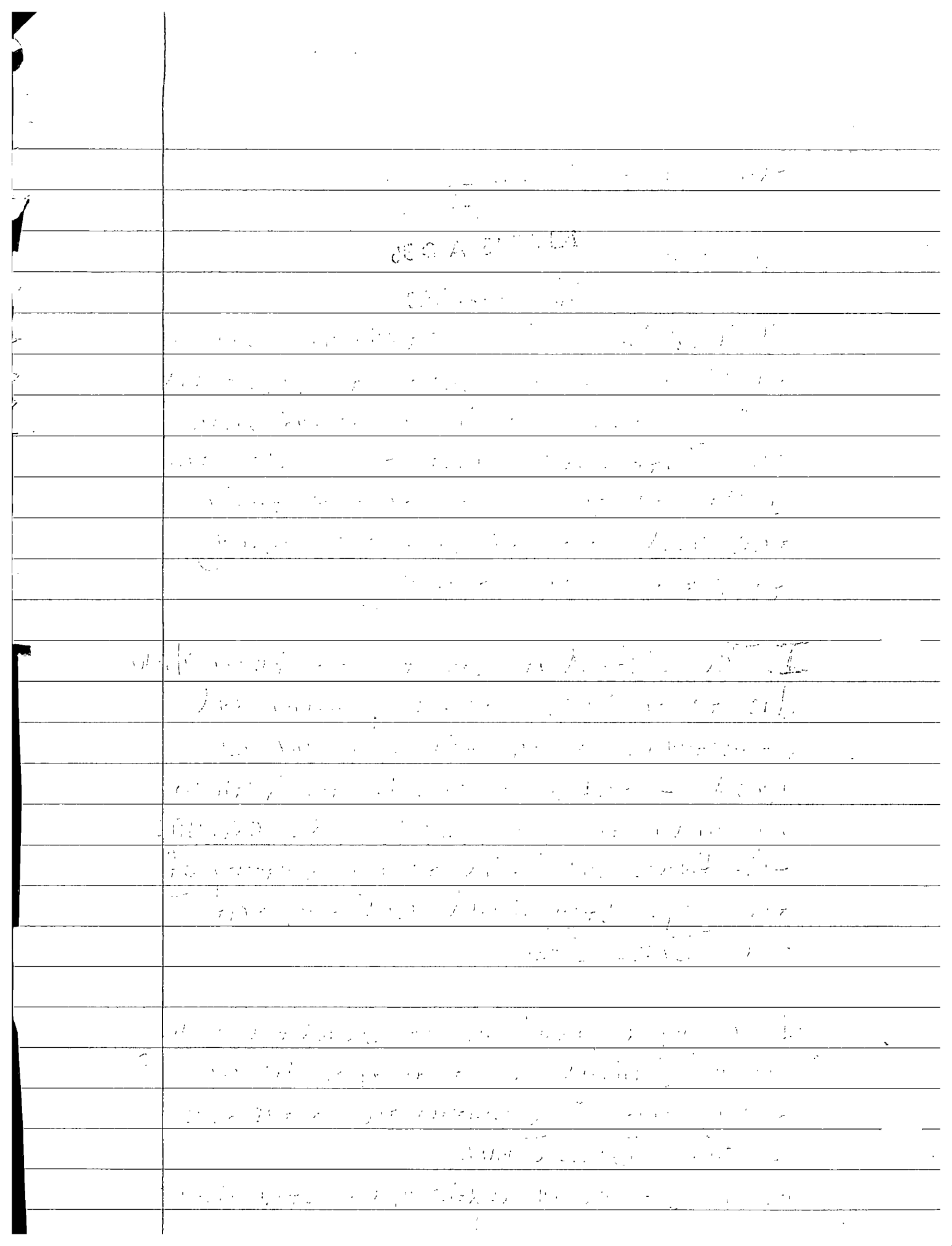
FILED
2023 JUN 15 A 8:36
ROBESON CO., C.S.C.
BY

Summary Brief of Claims, Motions and Briefs filed to Amend and Supplement Pending Motion For Appropriate Relief

NOW COMES ~~the Defendant~~, DANIEL ANDRE GREEN, on behalf of myself and the good people of North Carolina, with this Introductory brief to Orient the Court to the Facts that establish the need for an evidentiary hearing to establish the following:

I. The Defendant's Conviction for Felony Murder, due to the unique factual pattern and circumstances of the trial, can only be upheld if this Court exceeds it's authority by inviding the jury's province as exclusive fact finders, and find to the contrary of the jury's state invited verdictum, that I killed James Jordan.

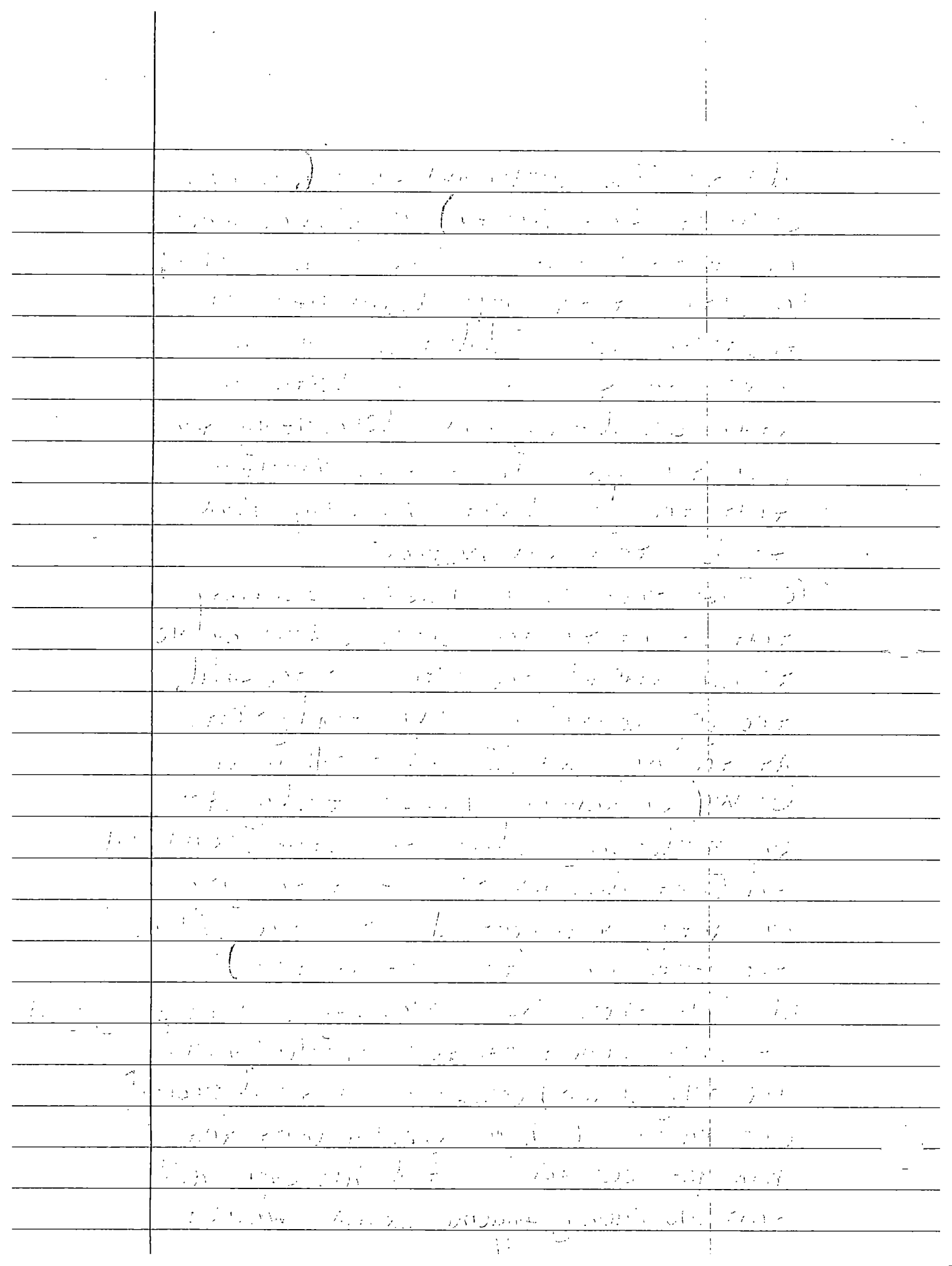
(1) The jury acquitted me of premeditated murder. The jury convicted me of felony murder by finding that I committed the actus reus by killing James Jordan.
(2) To put me on deathrow, the State decided



to put on a case that resulted in a sentencing stage being held in the same criminal action. This required the State to re-open the evidentiary hearing component of the trial.
(3) The State was not required to introduce new evidence that created issues regarding whether I killed James Jordan, but they did in the sentencing stage - inadvertently;
(4) The State waived the opportunity to object to the jury being given a document, created by the Court and Clerk, that required the jury to specify whether they found, inter alia, whether the victim was killed by me. The defense actually objected to this piercing of the veil that protects the jurys deliberations, their sanctum sanctorium, from being publicized;
(5) The jury's finding that they did not unanimously find that I killed the victim was documented in writing, published to the Court and the public and is the jurors verdictum that still stands and is binding upon this Court since neither the State nor the Defendant has challenged it. The trial jury were in a better position to find facts than this court
(6) Because there is no controversy between

the parties About the jurors verdictum, the Court has no jurisdictional Authority to usurp the jurors province And make A contrary finding, in Adjudicating the Motion For Appropriate Relief, that requires the Court to reject the jurys verdictum. This Court is bound by their uncontested findin
(7) The State, by Adopting And co-creating Demery's last version of events (a) decided to make this A capital punishment case, (b) decided to re-open the evidence for the jury to re-consider; (c) decided to present new evidence to the jury At the evidentiary hearing for the Court to use to pass judgement upon the defendant And to sentence Accordingly (d) decided to have the jury ventilate their finding on the ultimate question, "Did they unanimously find that I killed?" And (e) decided not to Appeal the jurors verdictum, As I have Appealed And contested their findings I dispute;
(8) The Materiality of the foregoing is that, if this Court finds that Constitutional error, in Any claim, occurred, this Court must vacate the conviction unless The Court, in good conscience, determines to reject the jurys final verdictum And conclude that:
(a) Contrary to the jurys final findings, I

did kill James Jordan and Demery (the only source of that narrative) was credible when he testified that I killed James Jordan;
(b) Contrary to the jury's determination of the truth, Demery didn't lie on me under oath to put me on deathrow after premeditating and deliberating for over two years about this narrative that the jury didn't unanimously find to be true and veritable;
(c) That there is no reasonable possibility that, if not for the errors claimed by me to have affected the outcome of the trial, the jury could've or would've found that, at the very least, I didn't kill James Jordan (an absolutely necessary finding for any murder charge where the State waived, and the Court declined to instruct the jury on acting in Concert due to the evidence the State chose to elicit at trial);
(d) That there was overwhelming evidence proving guilt of every element of felony murder (including the killing element), conspiracy, and armed Robbery even though no higher appellate Court, that I have yet been able to find, has ever held that overwhelming evidence existed where:



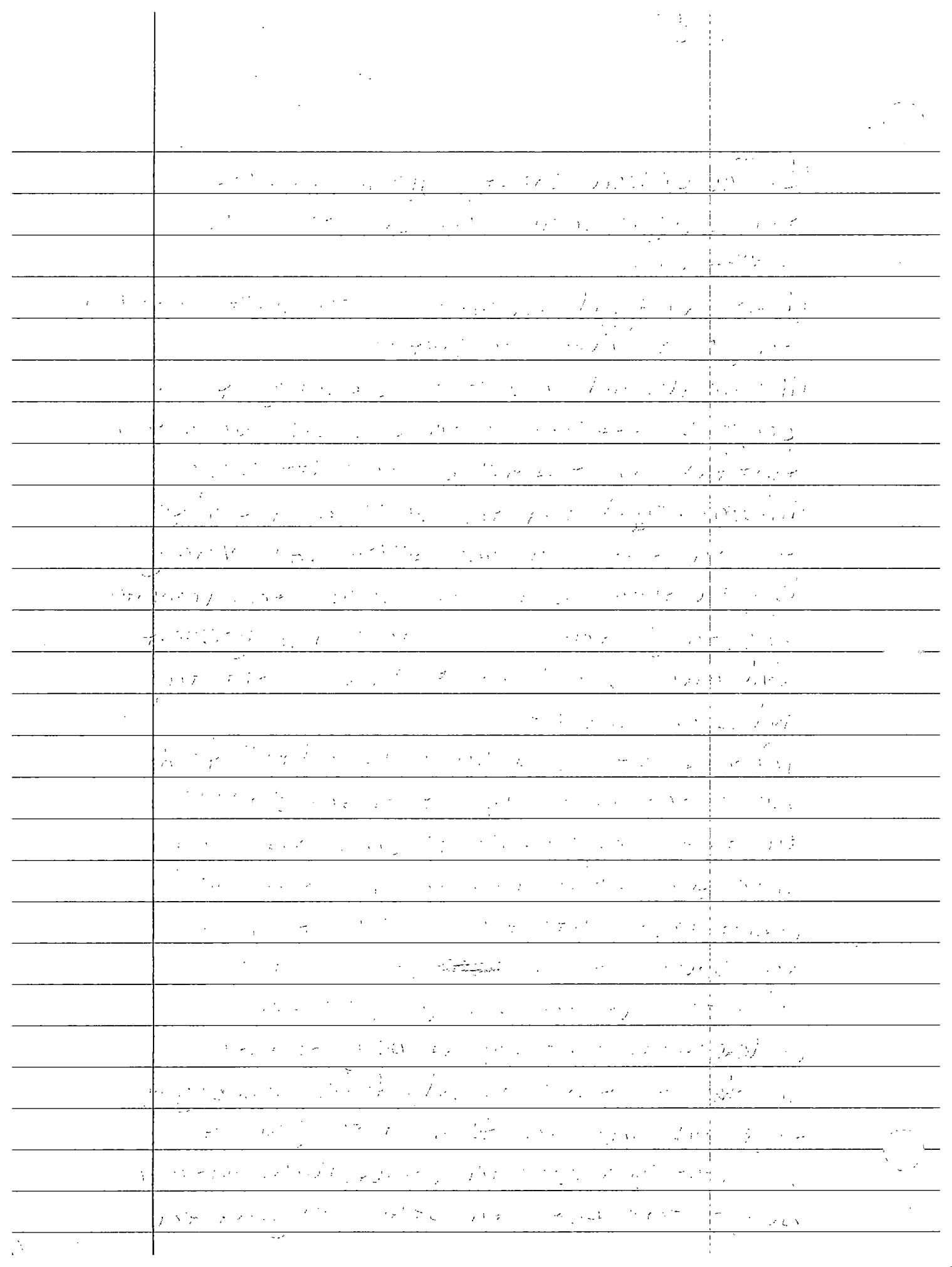
(1) The evidence satisfying all the elements of the charged crime only came from one witness who:

(i) was an alleged accomplice who the Court instructed the jury to view with caution;

(ii) who admitted in Court to subscribing to a perjurious affivadit in the same case which, they testified, was falsified by their attorneys;

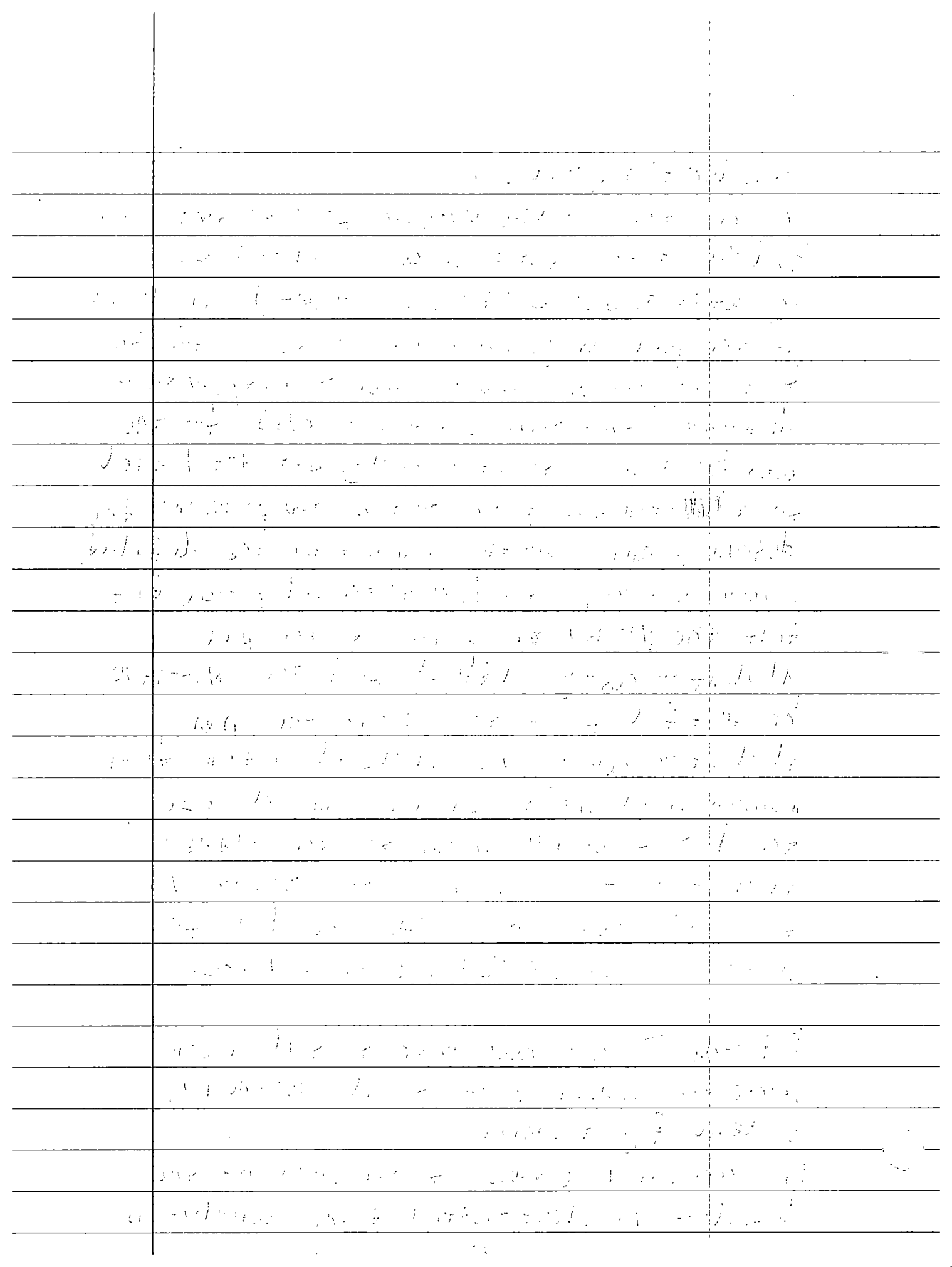
(iii) who bragged that they would be a "fool" to tell the truth, the whole truth, and nothing but the truth about other crimes they committed even though that is what their plea agreement and oath required of them, and in fact, they indisputably did not;

(iv) whose initial crime version was modified to a version that included alleged facts that satisfied the factual requirements to charge the jury with felony murder law where no acting in concert theory instruction was given to allow the defendant to be ~~[illegible]~~ convicted of killing the victim where the State co-signed the co-defendants testimony as being truthful in order to fulfill its end of the plea bargain, twice, and where the terms of the agreement was contingent upon the co-defendants testimony being truthful before the State could grant the



consideration agreed upon;
(v.) where the co-defendants, who provided the only evidence of the actus reus being committed by the defendant, plea bargain was unlawfully adjudicated at the plea hearing which requires, among other things, that the judge not accept a plea of guilty without determining that there is a factum basis for the plea based upon information including but not limited to a [redacted] statement of the facts by the prosecutor, the defense counsel, a written statement by the defendant, sworn testimony, etc. Due to the indisputable fact that the narrative of Demery at the plea adjudication hearing differed from the narrative he testified to at trial, either the plea adjudication hearing was adjudicated on false facts, which would nullify Demery's plea and open the door to criminal charges for the unlawful adjudication of a plea, or his trial version was false and likewise would open the door to criminal charges. (See 15A-1022(c) of N.C.G.S.)

(2) Further, I have been unable to find a case where the appellate courts found overwhelming evidence of guilt where:
(i) There was no confession to the crime by the defendant, no identification of the defendant as



the culprit by the victim or a neutral third party; (ii) and where the circumstantial evidence, without an interested-in-the-outcome co-defendants testimony to place it into an inculpatory context, was actually only circumstantial evidence of a much lesser offense (Accessory after the fact, Receiving stolen goods or vehicle, unauthorized disposal of a body, obstruction of justice for example which is arguably applicable here), not the crimes the defendant was convicted of.

Yet here, the State has advocated the expansion of the common law definition of overwhelming evidence of guilt which, like a worn band of elastic in a pair of drawers, once stretched out of shape will not ever Re-assume it's original shape and purpose which is to keep non-material and non-prejudicial errors from causing a case where evidence of guilt was overwhelming - mostly by the defendants own confession to the police - to be tried again where all the elements of guilt were provided by the defendant themselves, or the victim or neutral third party witnesses who had an interest in not convicting the wrong guy and convicting the right guy - their own safety and security. And even then, due

to the frailities, implicit biases, and prejudices of the human mind, the power of the State and the justified fear of authoritarians innocent people did confess, were mis-identified by victims and were exonerated decades later and compensated by money but there is no compensation for whole families and communities traumatized and destroyed by systemic injustice. Trial and Appellate Counsel were ineffective for their failure to raise this claim.

II. TRIAL COUNSEL WERE INEFFECTIVE FOR ASSERTING INCONSISTENT MUTUALLY EXCLUSIVE DEFENSE THEORIES TO THE JURY IN OPENING STATEMENTS AND ELICITING EVIDENCE TO SUPPORT THESE ASSERTIONS DURING THE TRIAL. APPELLATE COUNSEL WERE INEFFECTIVE FOR NOT RAISING THIS I.A.C. CLAIM ON DIRECT APPEAL.

During opening statement Angus Thompson contended evidence would show that:

(a) James Jordan spoke to his wife Deloris Jordan weeks after his murder occurred (and after the alibi)!

(b) Ivan Johnson, a Fayetteville, N.C. librarian met James Jordan on July 27, 1993!

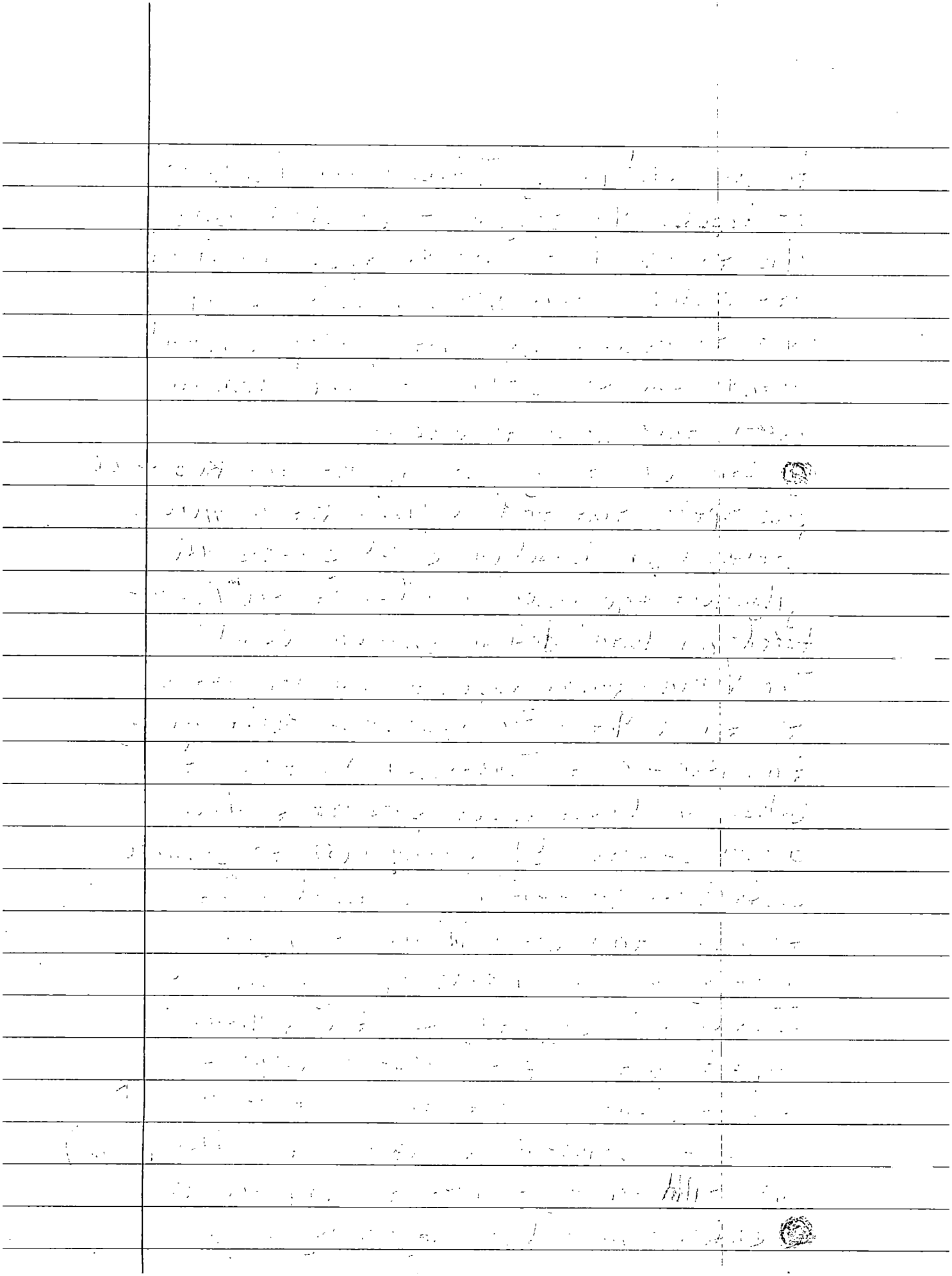
Both of these confident assertions by Angus Thompson to the death penalty qualified jury conflicted with Mr. Thompsons statement (a) that: the evidence would show that the Defendant was elsewhere during the time the victim was murdered, and that I was take

to the deceased victims body on July 23rd, 1993, [redacted] and Counsels creating issues to challenge [redacted] the identity of the deceased as being James Jordan which, likewise, conflicted with Defendants alibi that proved; if properly presented, without State criminal interference, that Defendant was not present and didn't kill James Jordan on July 23rd 1993 since, to change the date, time of the crimes charged and the identity of the victim would nullify the alibi. Further, Appellate Counsel, Irvine Fodor and the N.C. Appellate Defender office were ineffective for not raising trial counsels ineffectiveness for projecting and injecting inconsistent mutually exclusive theories into Defendants trial. Ms. Fodor should've raised trial counsels I.A.C. in Appellate Court. If the operative facts to raise I.A.C. was not apparent from the record, such as whether trial counsel had a strategical reason to claim James Jordans Wife and Ivan Johnson talked to James Jordan on July 27th, August 5th - 7th, 1993, Ms. Fodor may not have been required to raise the claim and under no legal theory could the Defendant be considered

to have waived raising I.A.C. in the N.C. Court of Appeals, Nor subjected to procedural bars, due to the North Carolina Appellate Defenders office decision - and non-case specific policy - Not to raise a claim Not squarely supported within the four corners of the appellate record they chose to compile.

Still, even taking into account the Rebuttable presumption that trial counsels actions were Strategical, or based on sound professional judgement, the sheer absurdity of the "victim-faked-his-death" defense should've caused The North Carolina Appellate Defenders office to file a Motion For Appropriate Relief raising this iteration of Ineffective Assistance of Counsel on direct appeal pursuant to N.C. General Statutes §15A-1419(a)(3) to preserve Defendants Constitutionally protected right to raise this claim instead of vaguely notifying me of Non-descript grounds of I.A.C. and suggesting I file a M.A.R. myself, get a post-conviction lawyer to file it (after I lost the Constitutional right to effective Assistance of counsel, possibly) and find the "right court" to apply the law.

Defendant was told in unambiguous language, years ago



that this claim was properly presented to this Court in the Motion for Appropriate Relief, and, that this Court was indeed granting the evidentiary hearing, in the strongest most Absolute terms. The certainty of Counsels statement could only be rooted in direct information from the only one who could make the decision - the Judge. Otherwise, Counsels statement would have to have been, at best, misleading since Counsels assurance was always given in response to my request and directive for counsel to fully present the operative facts and applicable law to the Court to make sure this and other claims are properly and fully heard by this Court. This misconduct and ineffectiveness of trial Counsel is not due to trial Counsels failure to call Deloris Jordan and Irvin Johnson to the witness stand to confirm what he told the jury the evidence would show (and by evidence, Counsel had to be referring to <u>admissable</u> evidence, not Don Chiafoles hearsay about what he claimed Ms. Jordan told him about the alleged

August 5th or August 6th conversation he claims Mrs. Jordan had with her husband.)
No, the ineffectiveness was in Mr. Thompson forecasting evidence that by it's nature would've helped the state demolish the alibi defense Mr. Thompson also forecasted.

If Mr. Ivan Johnson, a librarian was believable his testimony would've provided evidence that James Jordan was still alive after the July 23rd 1993 alibi and that James Jordan was being guarded by two men that roughly fit the description of Larry Demery and I.

If Mrs. Jordan had indeed been confirmed by trial counsel to have talked to her husband on August 5th or 6th, 1993 that likewise would've shifted the time of Mr. Jordans death outside of the timeframe of the alibi for July 23rd, 1993

I am not being flippant by stating the obvious. This would've been sound strategy only if the goal was to convict me.

Ivan Johnson was not believable. He was lying and tried to inject himself into this case as a witness for the State.

Mrs. Jordan never told Don Chisolo she

spoke to her husband at any time after July 22nd, 1993 Nor did trial counsel even investigate whether she did in a manner calculated to obtain Admissable evidence.

It will also be proved, based on Admissible evidence that Mr. Woodberry Bowen wrote at least part of the opening statement recited by Mr. Thompson And any time insisted on his theory being stated to the jury and Mr. Thompson could've cited his own theory, thus creating an opening statement that included an officer of the Court telling the jury that evidence would show and prove two mutually exclusive, and inconsistent scenarios. This may be why Mr. Bowen labored to elicit evidence from the States witness to prove that James Jordan was not deceased and that the body discovered in South Carolina wasn't James Jordans body, to reconcile their competing theories

As the State concedes, Appellate Counsel should've raised these claims in Appellate Court by filing a M.A.R. I agree and the Ineffectiveness of Appellate Counsel claim is being raised now as the law allows since the MAR is still pending.

Post-conviction counsel has counseled waiting

to Amend the claim but if this court again denies an evidentiary hearing, Appellate courts could hold that Ineffectiveness of Appellate Counsel for failing to raise these claims of I.A.C. of trial counsel was waived due to my removal agents unilateral decision not to fairly present the facts and law to this Court being Attributed to me.

There is a reason, extrajudicial to the merits of these claims of Ineffective Assistance of Counsel, why previous counsel did not file I.A.C. of Appellate Counsel... just like there is a reason that Appellate Counsel, Irvine Foder, placed the Courts instructions to the jury, requiring them to find that I killed James Jordan myself to convict me of First Degree Murder, in the Appellate Record (but not other portions of the trial transcript) and why she referenced the trials references to Ivan Johnson and Deloris Jordan supposed sightings but didn't raise these claims, but, instead, after helping co-author the UNC-Chapel Hill Institute of Government publication, The N.C. Public Defenders Manual which educates Public Defenders on how not to commit these type of errors, Ms. Foder left North Carolina and dropped her N.C. State Bar

Membership as did the trial judge in this case, Gregory Weeks.

It is as if Appellate Counsel created a record to show she, and my post-conviction counsel, was aware of this ineffectiveness of counsel but out of inadvertence, ignorance of fact or law, or for tactical reasons decided to withhold this claim to avoid the N.C.G.S. §15A-1419 (c) Good Cause exception which, if not for an ineffective assistance of ~~[redacted]~~ Appellate Counsel claim being raised would preclude, possibly, this pandoras box from being opened. A perfect example confirming former judge Gregory Weeks "10/90 Rule."

The merits and viability of other claims shouldn't have caused ~~[redacted]~~ counsel to ~~[redacted]~~ me, hurdle me, or otherwise manipulate me into waiving this claim by making false misrepresentations of fact and law to protect political peers, professional colleagues and others at the expense of justice under the laws of the land, my Constitutional rights and my loved ones well being.

The other claims amended and supplemented are:

The Jury misconduct claim, supplemented by

A fair presentation of facts and applicable law and arguments;

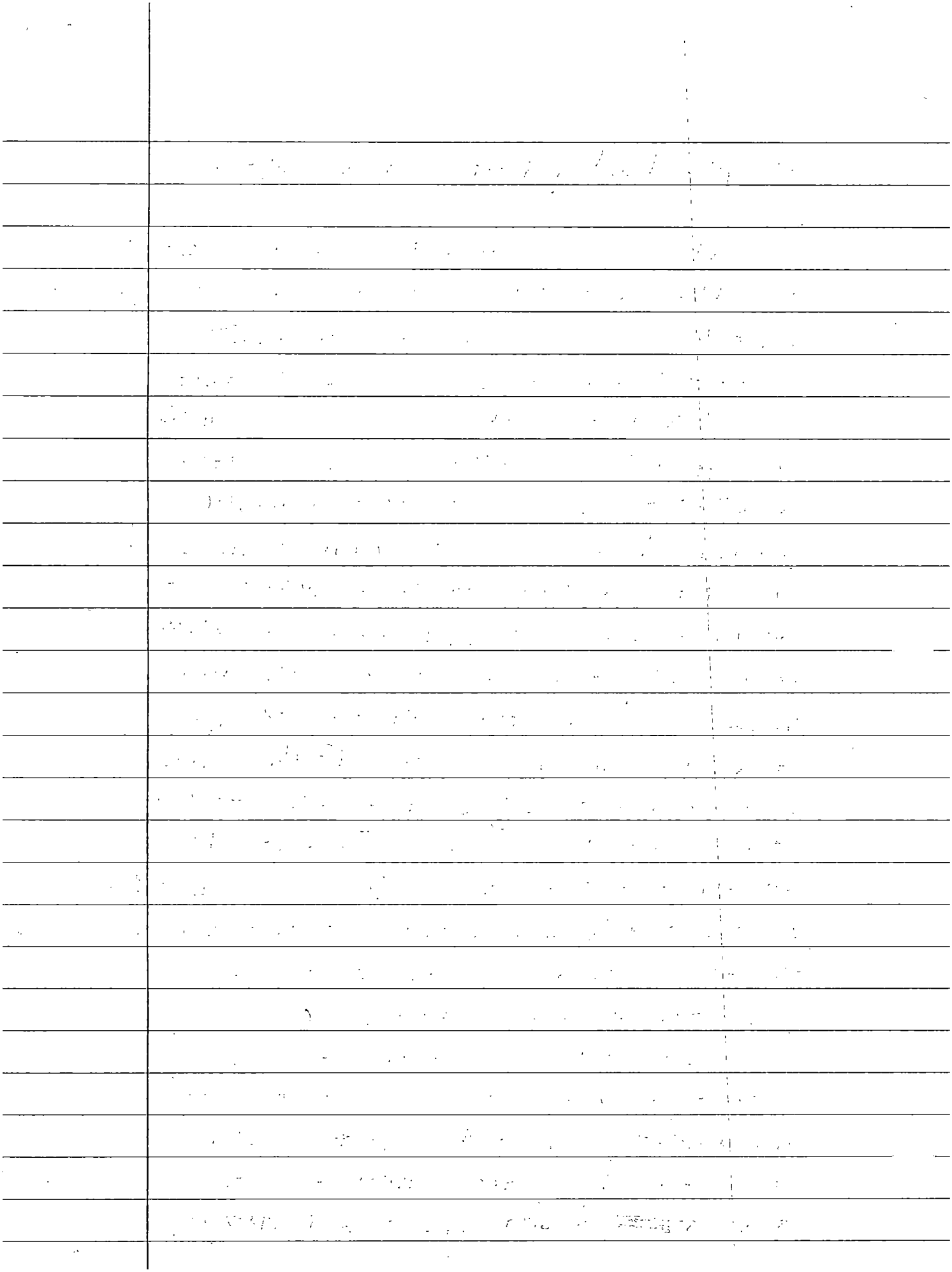
2) Brady claims based on the State suppression of Detective Arthur Binders press release regarding the Cumberland County initial serology examination and tests that were negative;

3) Ronald Fletchers threats to Knyetta Hernandez to intimidate her into not testifying

4) The misuse of State v. Green and James Jordans murder to pass the 1994 Violent Crime Control and Law Enforcement Act by Congress and the subsequent N.C. crime bills passed in 1994 at the special crime session. These 30 year crime bills are currently being revamped and to justify the new version government agents, gangs and anarchist elements within various organizations are colluding and conniving to create violent conditions. For example allowing guns to be purchased by addicts with no violent records so they can sell those guns to people with violent records and ill intent, and without violent records with ill intent to shoot up schools, social gathering spots and to kill people they

Are prejudiced against, or at war with.

In addition, the defendant is including briefs to address prejudice on the trial due to the violations of law and the State and federal constitutions and a brief to prove that the M.A.R. is still pending and can be amended and supplemented. Further, I have attached a brief to demonstrate that appellate counsels decision not to raise these claims were not reasonable efforts to winnow out frivolous claims nor claims that were weaker than the errors appealed. This was made necessary by the State confuting the Court of Appeals dissent on the Miranda issue, with a dissent being proof of the strength of error raised by counsel. In fact, due to the fact that appellate Courts are bound by the trial courts findings of fact (because the trial courts are in better position to assess the witnesses credibility) the Miranda error had virtually no chance of succeeding without a showing that Judge Weeks abused his discretion by finding that I was not in custody during the interrogation. Plus, the ~~dissent~~ dissent itself was denying



because it memorialized a clear misstatement of fact when it stated that both Demery AND I killed James Jordan. Any lawyer or student of law who read this misstatement of fact and who accepted it as fact would never realize that only I was convicted of killing James Jordan, that Demery was not AND, therefore, the absence of AN ACTING IN concert instruction forces the state to sustain the finding that I killed James Jordan myself to prevent the conviction from being vacated. Put another way, the defendant only has to prove by a preponderance of evidence that there is a reasonable possibility that a reasonable jury would've found that the defendant didn't kill JAMES Jordan — or that a reasonable jury wouldn't have UNANIMOUSLY found that I killed James Jordan if not for the errors that occurred at trial. The jury's final finding of fact already, indisputably, manifested, in writing, that they did not unanimously find that I killed James Jordan and as the exclusive finders of fact, this Court is asked to defer to their

uncontested finding in keeping with the etched in stone legal doctrine that reviewing Courts are bound by the facts finders who were in a better position to assess the credibility of witnesses and the evidence - especially when, as here, the fact finders finding that I didn't kill was never contested and was elicited by the State and the Court itself.

The foregoing is a summary of the claims being amended and supplemented by the defendant and which, conscience surely dictates, require an evidentiary hearing and for the Court of honor to vacate the Defendants convictions for murder, Conspiracy, and Armed robbery and/or whatever relief this Court grants.

This the 19th day of April, 2023

Respectfully Submitted by Daniel Andre Green

Any Questions please contact me at:

1) For immediate response: Getting Out.com (I'm at Tabor Correctional)
2) For quick delivery and snail mail response go to Text Behind.com
3) To send mail to Daniel Green: (personal) Daniel Green #0154242 P.O. Box 247 Phoenix, MD 21131 (Legal Mail: 4600 Swamp Fox Hwy N Tabor City, N.C. 28463)
4) To leave voice mail: Case Related: 910-335-8745; Media: 910-460-5597; Personal: 910-909-4446 (Pay For Message on CorrioSpC.com

Motion To Correct Transcript

State of North Carolina
County of Robeson

In The General Court of Justice
Superior Court Division
No. 93 CRS 15291-15293

FILED
2023 JUN 15 A 8:36
ROBESON CO., C.S.C.
BY

STATE OF NORTH CAROLINA)
v.)
DANIEL ANDRE GREEN,)
DEFENDANT)

Motion To Correct TRANSCRIPT, Volume 1 of 1 from September 29, 2022

NOW COMES the Defendant, DANIEL Andre Green, pro se, respectfully moves the Court use its inherent authority to correct the transcript of the September 29, 2022, Volume 1 of 1 from September 29, 2022, described as Defendants Motion To Dismiss Counsel, Defendant's pro se motion for appropriate relief, September 26, 2019 Criminal Session. To show cause for the Court to grant this motion the defendant shows the following:

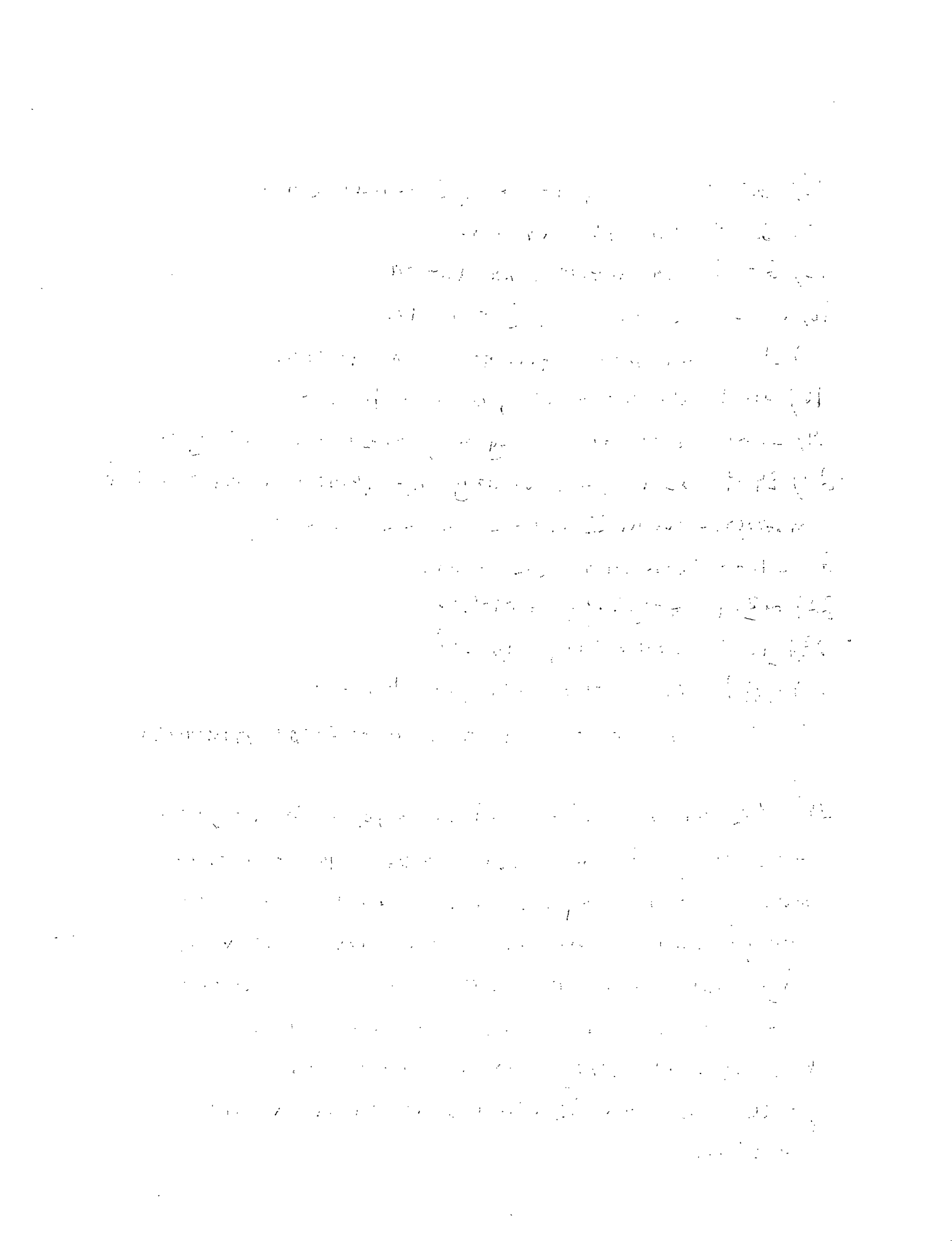
1) Defendant has a speech impediment;
2) Defendant was medicated at the hearing. The medications are Atorvastatin 20 MG Tab; AMLODIPINE BESYLATE 5MG Tab and Lasix. It is documented that Atorvastatin causes me Memory loss, confusion, mood swings and trouble talking; and Christine Mumma, Attorney has repeatedly stated she believes I am being deliberately given adverse medication and told me to

stop taking it but when I tried to stop I couldn't breathe, and experienced extreme edema in my arms, legs and feet.
3) Due to the above, apparently my words may have been hard to understand as well as because, I and almost all of my father kids talk fast. This has to be genetic because I didn't grow up with most of my siblings except for one, some, I recently met, but we all talk fast with the exception of one and so does my father.
4) The corrections are as follows:

5) ~~The~~ Dr. 6:1 ~~the~~ other ; that
6) 6:5 ~~to~~ her ; through her
7) 7:13 ~~would view~~ ; reviewed
8) 12:7 "~~ipsy dipsy~~" ; ipse dixit
9) 10:12 ~~through by~~ ; through my
10) 14:2 just ~~taking~~ ; taken
11) 20:12 Dr. ~~[Sperling]~~; Dr. Spearman (T. Anthony Spearman, former NAACP President who was murdered August 19th, 2022, a man who I considered my father and he considered me his son. The only "Sperling" I know of is Fredrick Sperling, a Chicago attorney who represents Michael Jordan. He is still living to my knowledge.
12) 21:23 and ~~ted~~ ; lie

13) 24:6 ~~if~~ it ; it-it (I stutter, Sorry).
14) 24:9 KNOW~~S~~ ; KNOW AS
15) 24:19 ~~IN~~ ACTION ; AN ACTION
16) 31:5 ~~JOHN~~ EVANS ; JON EVANS
17) 31:9 this MAN ; this MAN, DANIEL GREEN,
18) 31:19 doesn't ~~to~~ do ; doesn't have to do
19) 31:21 where their ~~co-agent~~ ; their-their co-agent
20) 34:19 up doing— ; up doing that. (Please double check, I could be mistaken. Sometimes I don't say words I am thinking
21) 34:22 CASE ~~THAN~~ ; CASE that's
22) 43:11 ~~tragedy~~ ; strategy
23) 45:3 ~~CAN'T~~ SAY ; CAN SAY
24) 46:9 he ~~couldn't~~ have ; could have-have
25) 48:14 ~~when~~ people~~humanize~~ ; them people humanized

26) PURSUANT to N.C.G.S. §15A-1241(a) which requires the trial judge to require that the Reporter MAKE A true, complete, AND ACCURATE record of the proceeding. Defendant ASSERTS that the trial judge may review the ACCURACY of the reporter's record of the proceedings AND AND may make the requested changes to ACCURATELY reflect the proceedings and defendants comments at the proceedings



27) Defendant and the Attorney General, as officers of the court, have an equal duty to see that reporting errors in the transcript are corrected. The Defendant hereby complies with that duty. State v. Fields, 279 N.C. 460, 463, 18 S.E. 2d 666, 668 (1971). Defendant has scrutinized the copy of the transcript received and has herein included corrections of errors, omissions After making a careful and painstaking examination of the file and transcript using personal knowledge of how I, the Defendant talks, thinks and expresses thoughts and by the use of memory. The Defendant has reproduced specific portions of Defendants oral argument which has been erroneously transcribed by the Court.

28) Not only are the requested corrections material to Defendants argument (such as, Replacing Defendants word, "strategy" with the word "tragedy" on transcript page 43:11) but also the materiality reaches to a constant justified concern, that others, in and out of the Court process have intentionally acted to instigate and engender conflict between the Defendant and the family of James Jordan, as well as the Jordans support system

by distorting, misrepresenting and misreporting words, images and opinions, in order to profit from the conflict: In laymen terms", playing both ends against the ~~middle~~ middle." So, when Defendant spoke about the murder of Dr. Spearman, a man who publicly spoke out on Defendants behalf(Transcript Page 20:12) but it is transcribed as Dr. [Sperling], Frederick Sperling being the name of Michael Jordans Attorney, who is still living, it could be used to create the perception that Defendant is threatening Mr. Sperling by saying "He is dead because of this case" when, in fact, Defendant was noting that Dr. Spearman may have been murdered because of what he knew about this case and his efforts to right this terrible wrong as a good man is obligated to do.

WHEREFORE the Defendant earnestly request this Court issue an order correcting the verbatim transcript and the Clerk of Courts notes. The Defendant also request the Court order the audio recording of the proceedings be preserved. The Defendant further request that any parties who may have ordered

A transcript be notified that the uncorrected transcript had errors and has been corrected or, in the alternative that the Defendant be informed of parties who have ordered and received the uncorrected transcript so that I can notify them of the changes and corrections to preclude any threatening, defamatory, or misquotes being attributed to me - A common occurrance in State v. Green. Too common not to be intentionally propogandistic. Therefore the Defendant respectfully requests this Court to use its inherent authority to protect the integrity of this process by taking all necessary actions to ensure accuracy, transparency and the protection of seeking truth.

Respectfully submitted this day, ~~JANUARY 30th~~ April 9th 2023

By:

Daniel Andre Green #0154242
4600 Swamp Fox Highway West
Tabor Correctional
Tabor City, N.C.
28463

Amended & Supplemental MJR Part I

State of North Carolina
County of Robeson

In The General Court of Justice
Superior Court Division
No 93 CRS 15291-15293

State of North Carolina) Sixth Supplement To First
v.) Amended Motion For Appropriate
Daniel Andre Green) Relief Pursuant to

FILED
AUG 37
BY

NOW COMES the Defendant, Daniel Andre Green, pro se, who files this Sixth Supplement to the First Amended Motion For Appropriate Relief pursuant to the United States Constitution Sixth Amendment and ~~Thirteenth~~ Fourteenth Amendment right to Due Process and Effective Assistance of Counsel, North Carolina Constitution Law of the Land, Article 1§§19,21 and N.C. General Statutes 15A-1418 (a) and (b) and N.C.G.S.

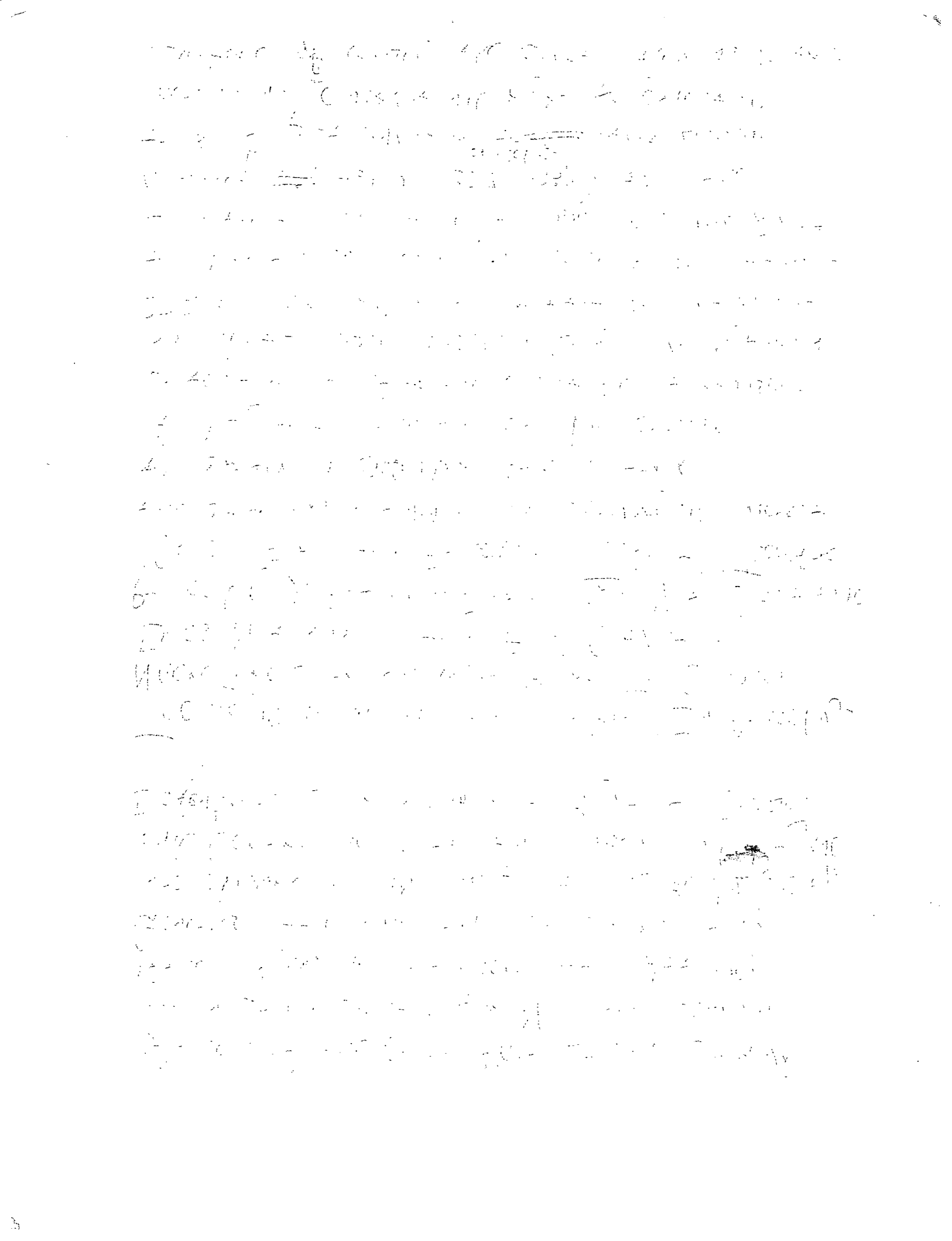
All legal claims, facts and arguments pled in all of Defendants prior post-conviction filings, and exhibits are hereby incorporated hereto as if fully pled if they preserved the right to raise this claim, Defendants personal plea, made pro se, not via counsel is also incorporated herein by reference. This plea of not guilty was spoken by Defendant at the First Appearance.

Summary Of Argument

The State of North Carolina's Courts, its

officers of the Court that practice Criminal law in private practice, for N.C. Public Defenders Offices, Appellate Defenders Office, Attorney General's office and the law schools they are educated in - UNC-Chapel Hill, Duke University, and Central University know, teach and litigate Defendants Sixth Amendment Right to Counsel.

The above people also know that "In Proceedings Where The Sixth Amendment Right To Counsel Does Not Apply (State Post-Conviction Proceedings), Attorney Error May Not Constitute "Cause" For State Procedural Default." Therefore, the State has a financial and chronological interest to switch a Defendant from a track of litigation protected by due process protection of effective assistance of counsel - as direct appeal does (See Douglas v. California, 372 U.S. 353 (1963) about constitutional entitlement to direct appeal lawyer, and constitutional entitlement to effective assistance of appellate counsel, Evitts v. Lucey, ~~469~~ 469 U.S. 387 (1985)) - to the track of post-conviction ~~counsel~~ proceedings that, because there is no constitutional right to effective assistance of counsel, the client often, as in this



case becomes a golden goose who an unscrupulous, or incompetent, scared, or smart-enough-not-to-bite-the-state-hand-that-feeds-him attorney, or movement lawye can hold hostage by dilatory tactics until the golden goose (a metaphor for State v. Green and the Jordans & my life) stops laying golden eggs or, as Santina Leuci, Good Morning America producer, calls it, "goes rogue" by venturing off into pro se representation to navigate the "intricate rules" of criminal and civil law - a "hopelessly forbidding" wilderness. See, Evitts 469 U.S. at 396.

Whether the incompetent post-conviction attorney intentionally or unintentionally fails to raise substantive claims or the ignorant Defendant fails to raise the substantive claim, the Defendant, who has been unknowingly and unintelligently deprived of their 6th Amendment protection - effective assistance of counsel - to conduct them through the darkness awaiting those uninitiated into the complexity, and finer points of law, must bear the burden for his own blindness or for her nominal agents hoodwinking them into waiving substantive claims.

My appellate attorney, Janine Crawley-Fodor, was appointed to represent me, on behalf of the North

Carolina Appellate Defenders office, on an Appeal. She identified "several grounds on which you might allege ineffective assistance of trial counsel". Ex. 1, February 8, 1999 letter from Janine Fodor to Lord Ullah (Daniel Green's former Attribute) (Underline added for emphasis).

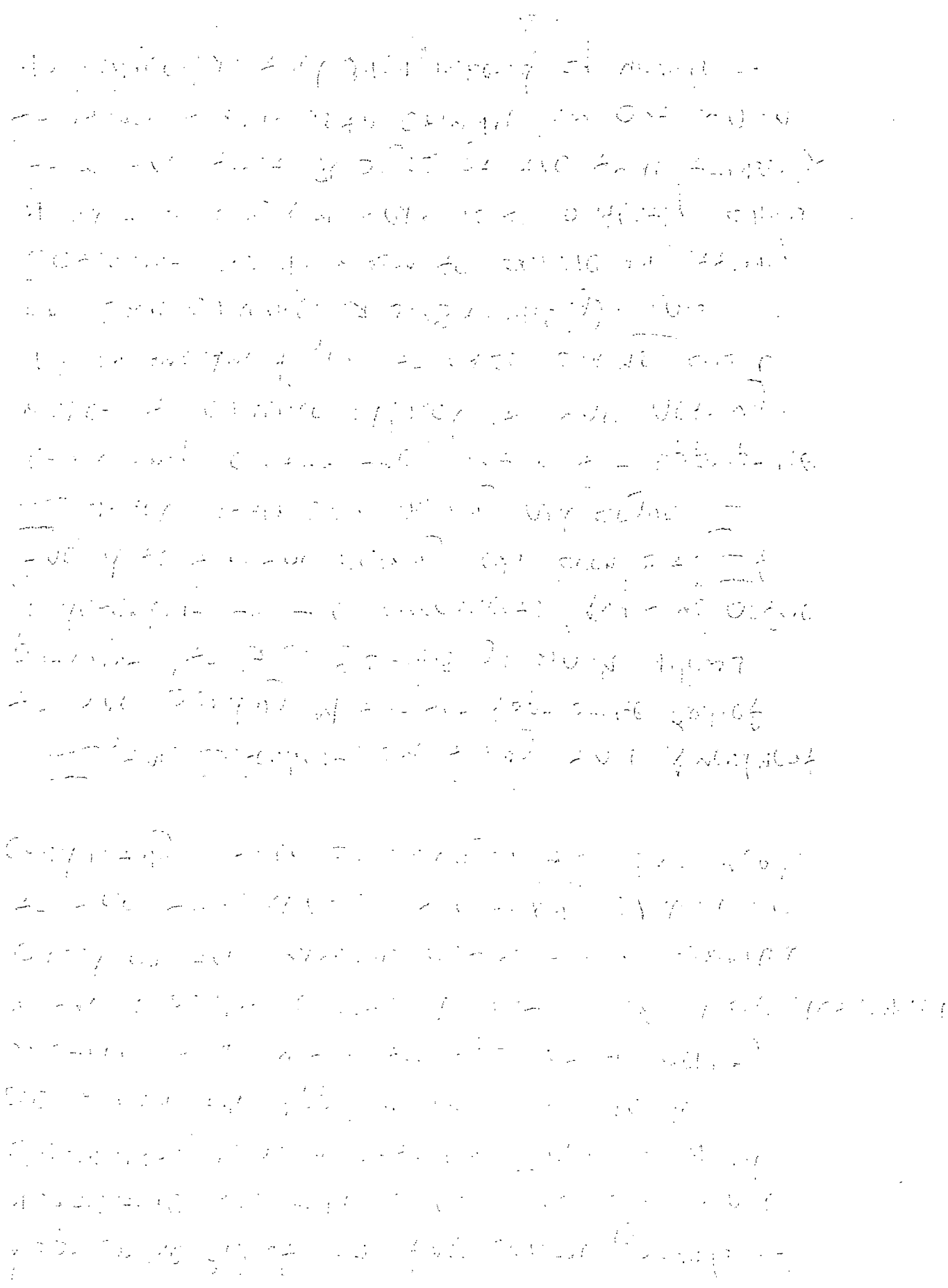
N.C.G.S. §15A-1418 (Section 1, Chapter 711, 1977 Session Laws) required a motion for appropriate relief to be made in the appellate division when the case is in the appellate division for review. The motion for appropriate relief must be based upon grounds set out in G.S 15A-1415 (§15A-1418(a)).

N.C.G.S. §15A-1415(b)(3) clearly states that one of "the only grounds which the defendant may assert by a motion for appropriate relief made more than 10 days after entry of judgement: [is] (3) The conviction was obtained in violation of the Constitution of the United States or the Constitution of North Carolina.

Since Ineffective Assistance of trial counsel is a violation of the Constitution of the United States and the Constitution of North Carolina Ms. Fodor was required by statutory authority and the United States and North Carolina respective Constitutions to file a motion for

Appropriate Relief on the "several grounds" of ineffective assistance counsel she saw while Defendants appellate Attorney. Then, it would be within the Appellate Court to decide whether the motion for Appropriate relief, in the Appellate courts discretion, should be determined based on the materials before it or remanded to the trial division for taking evidence or conducting other proceedings. G.S. 15A-1418(b).

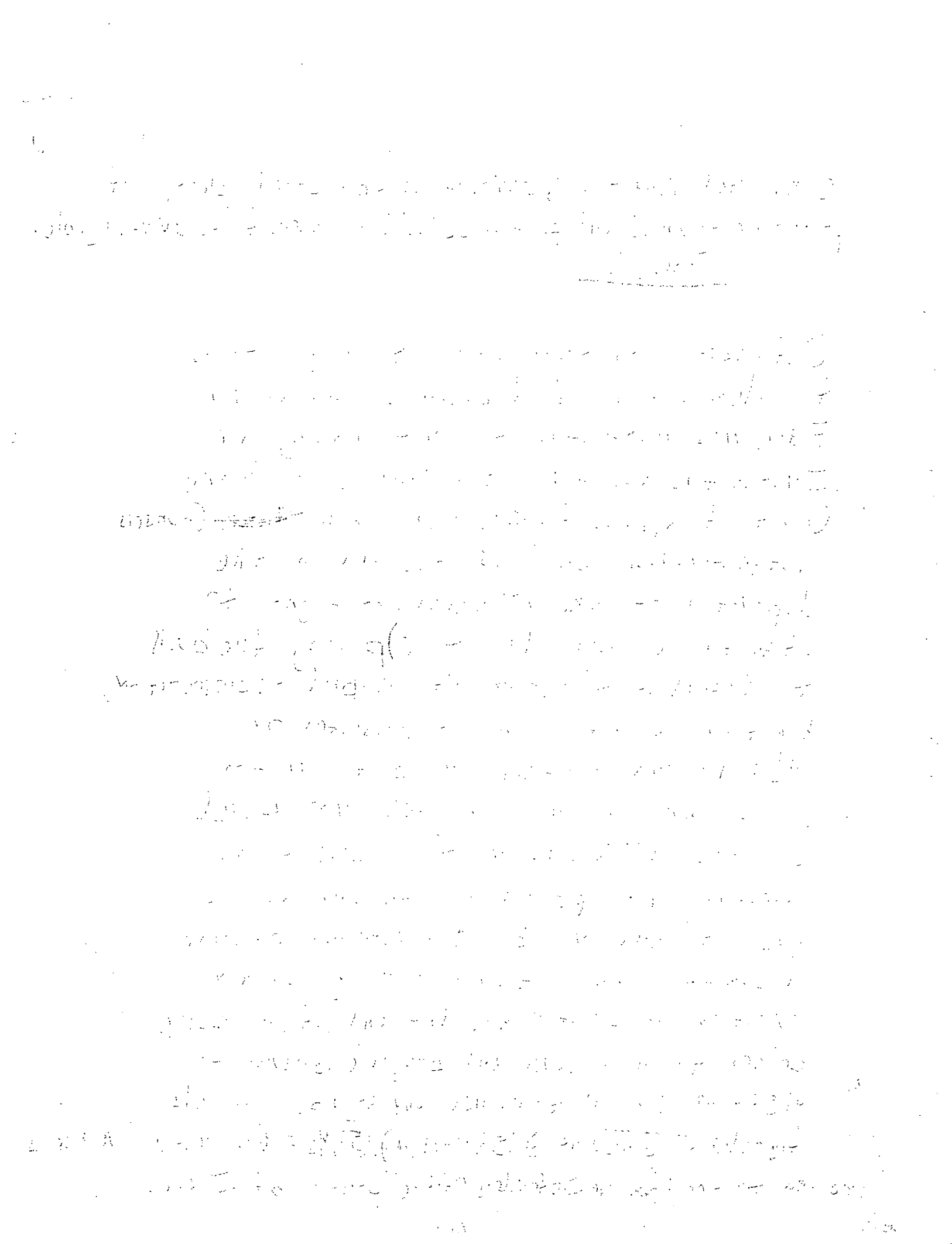
I, the Defendant, AM filing this Amendment to the pending Motion for Appropriate Relief pursuant to G.S. 15A-1415(g) which allows a defendant to file amendments "any time before the date for the hearing has been set." If I waited after such hearing had begun I could only conform the motion for Appropriate relief to evidence adduced at the hearing via an amendment, or to raise claims based on such evidence. G.S. 15A-1415(g). This Defendant has no reason to believe an Attorney would raise a claim that is so blatently obvious from the first 80 pages of the trial transcript to anyone familiar with criminal law but which no lawyer has filed unencumbered by mounds of



Convoluted haystacks, convolutions that provide plenty of profitable theories and political "spoils" but renders facts unintelligible.

FACTS

Defendant sets forth the following facts to demonstrate (1) Appellate Counsel, Janine Fodor, was ineffective for not raising an Ineffective Assistance of Counsel claim in the Court of Appeals (2) Based on Trial ~~Counsels~~ Counsels ineffectiveness, which (3) resulted in the deprivation of the 6th Amendment right to effective Counsel due to (4) passing the buck to Defendant to enter into hybrid representation by filing a motion while represented by Ms. Fodor and/or rely on post-conviction counsel who is not obligated nor bound by the 6th Amendment to represent me effectively nor, apparently, ethically, as is apparent and will be demonstrated by ample documents and affidavit detailing Carlton Mansfields malpractice, misconduct and, if necessary, crimes, to show cause and prejudice, pursuant to §15A-1419(b)(c)(d), to excuse any arguable grounds for denial pursuant §15A-1419(a).(5) Ms. Fodors ineffectiveness is imputed to the Appellate Defenders office practice of I.A.C.



A. Ineffective Assistance of Trial Counsel Grounded on Trial Counsels Presentation of Mutually Exclusive Defense Theories

At my trial, trial Counsel told the jury, as officers of the court, that evidence would show that (1) I had an alibi for July 23, 1993 the time James Jordan was murdered (2) That James Jordans wife spoke to him on August 5th, 1993 and elicited testimony that was perceived as an attempt to prove that (3) the victim was not James Jordan. These defense theories were mutually exclusive. If James Jordan spoke to his wife on August 5th, 1993; the July 23rd, 1993 alibi would, by definition not be an alibi. An alibi is only an alibi if the person who is accused or suspected of committing the crime is elsewhere during the time the crime occurred. These theories could not be logically reconciled. If one was true; the other could not be true. Trial Counsel never had a confirmed factual basis to tell the jury and the Court that the evidence would show James Jordan spoke to his wife on August 5th 1993, that James Jordan met and spoke with a Fayetteville, N.C. librarian on July 27th; nor that the victim was Alphonso Green.

Trial Counsels contractually binding agreement to present one defense.

On the first day of the trial trial counsel memorialized the defense they would jointly present as reflected in the opening statement. The alibi defense was to

present the following evidence:
1) Larry Demery called New York to tell his cousin Joey that he would be delivering a package of drugs. In my presence he spoke with Jwine Bieulick and told her to convey the message to Joey. The call was made at Larry's parents home.
2) We went to the home of Kaye Hernandez after the phone call to Jwine where we were earlier that night on July 22 1993
3) Larry Demery left me at the home of Kaye Hernandez an hour or so after midnight, July 23rd, 1993. (Demery testified using Kayes whole first name which ever I didn't know which indicates authorities told him her name since he only saw Kaye a few times.
4) Larry Demery left to conduct a drug deal, according to him and returned hours later around 4:30 AM.
5) Larry and I left together this time. Along the way, he told me he shot a man in self defense during an altercation and that he was possibly dead. I didn't believe him.
6. We arrived at an abandoned store beside the Quality Inn hotel. A Lexus was parked there. Larry took a cup of coffee out of the car and threw it out. Larry asked me to follow him in the Lexus (because I couldn't drive a stick shift car like Larry's car was). I followed him a short distance to the body. We put the body on a quilt Larry kept in his car trunk, put the body

into the Lexus, took the body to a bridge over water and threw it into the water below.

7.) I did not know Alphonso Green nor am I related to him. Woodberry Bowen never explained to me why he thought the victim was not James Jordan, why he thought the victim was Alphonso Green but he did convince me that I couldn't be absolutely certain that it was because the place his body was it when Larry took me there was dark, I was scared and I only expected to see a young guy, a stereotypical drug dealer; not an old man. So, No, I couldn't swear under oath that I I could recollect the victim being James Jordan but my position was and remains that it had to be the body of James Jordan.

8) Nor do I know why Mr. Bowen or/and Mr. Angus Thompson believed James Jordan was alive after July 23rd, 1993 except that they, actually, Mr. Bowen, said the officers investigating the case had, and had suppressed, the evidence of people talking to Mr. Jordan after July 23rd and of why he would fake his death.

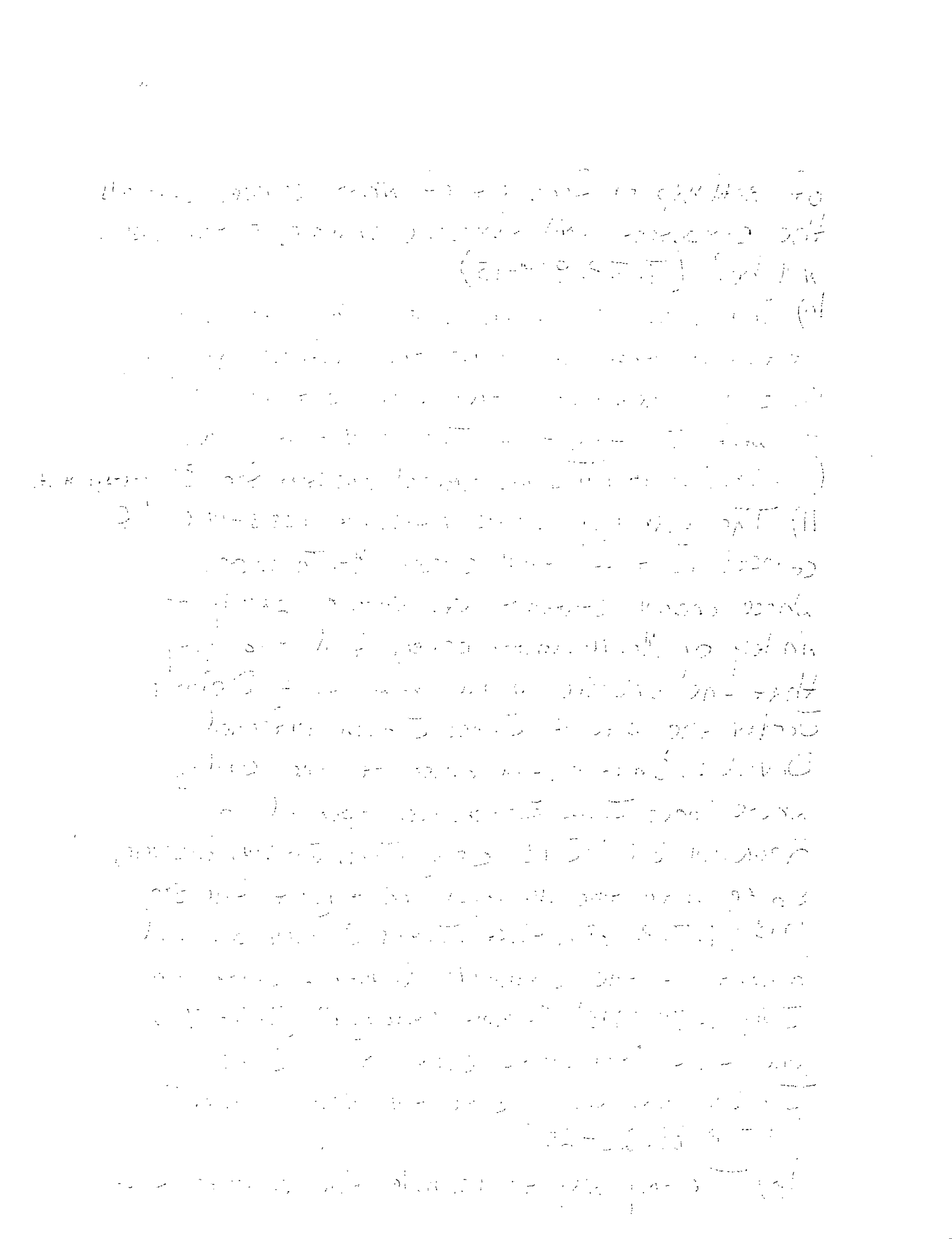
9) Trial transcript page 9 (T.T.P.) indicates and documents that the Court instructed the jury that "the purpose of opening statement gives counsel the opportunity to provide a kind

of roadmap or forecast of what counsel contends the competent and admissable evidence in the case will be." (T.T.P. 9:9-15)

10) Trial Counsel Angus Thompson makes an opening statement that did cover the defense he and Mr. Bowen memorialized they would put on based on what I told them. This is not at issue, (T.T.P. 58-64) This has remained consistent for 30 years, almost.

11) The glaringly obvious ineffective assistance of counsel is that trial counsel, Mr. Thompson, whose opening statement was written partly or wholely by Mr. Woodberry Bowen, told the jury that the evidence would show that Delores Jordan, the wife of James Jordan informed Donald A. Chiafolo, the owner of the building where "once J.V.L. Enterprises operated in Rockhill S.C." J.V.L. being James Jordans business, spoke with the deceased on August the 5th, 1993 (T.T.P. 68), that "...James Jordan presented himself at the Cumberland County Library on July 27th 1993" "almost amazingly" (T.T.P. 70) and that "the State claims that James Jordan was dead some two weeks earlier." (T.T.P. 68:23-25)

12) The only way to reconcile the contention that



James Jordan was alive on July 27th and August 5th with the contention that Larry and I threw a deceased body into a creek on July 23rd would be if the deceased was not James Jordan. There was no admissable competent evidence to support that the victim was not James Jordan nor that Mrs. Jordan told Mr. Chiafolo she spoke to her husband on August 5th.

13) There was no admissable, competent evidence that James Jordan told the Cumberland County Library county historical librarian that he needed to call his son at Fort Bragg, that he made bets and lost his car, on July 27th, 1993, (T.T.P. 70) presented nor, I am convinced, which ever existed.

14. Further, Mr. Bowen admitted, after making an issue out of the body being first suspected by police as belonging to an Alphonso Green, that he knew it was not Alphonso Green who, in fact was still alive

15. Mr. Bowen also highlighted and elicited testimony from witnesses who found and viewed the body that would allow an inference to be drawn that either Mr. Jordan was alive and climbed up a tree branch to be suspended above the water, that the body was placed on the branch sometime after the

week before it was first seen and reported by James Jordan or that, because, as the elicited testimony of Mr. Hal Lockhart falsely alleged, since the temperture remained over a hundred degrees and it never rained for a month before the day the body was discovered, it couldn't have floated to the position it was found in. (Ex. Judicial Notice of Adjudicative Facts Part 2)

16. The constellation of conspiracy theories raised by trial counsel through unfulfilled statements and promises to the jury about what the competent and admissible evidence would show is in violation of State v. Moorman 320 N.C. 387 (1987) holding that it is ineffective assistance of counsel when counsel fails to produce evidence promised in the opening statement. Certainly counsel was deficient and the prejudice to defendant is obvious, so obvious that the prosecutor commented on it in closing argument.

Prejudice

17. Not only was the defendant prejudiced by this failure to produce evidence they knew they couldn't in advance but merely raising issues about whether James Jordan was still alive after the window of time covered by the alibi "undoubtedly undermined [their] own credibility with the jury" and undermined the credibility of the

Alibi itself. If James Jordan was still alive after July 23rd, after Demery returned to pick me up after 4:30 or so in the morning, after I helped move his body, that would negate all value of the alibi. It wouldn't be an alibi, because an alibi is when the accused is (1) elsewhere (2) when the crime occurs.

18. As in State v. Moorman the question for the jury in State v. Green was always "which witness to believe"? Id at 400. Demery or objective witnesses? Hal Lechler or science itself. Demery, Elwell, Cannon or real science? District Attorney Britt or physical science? The trial lawyers about the alibi, or, about the victim not being James Jordan and still being alive?

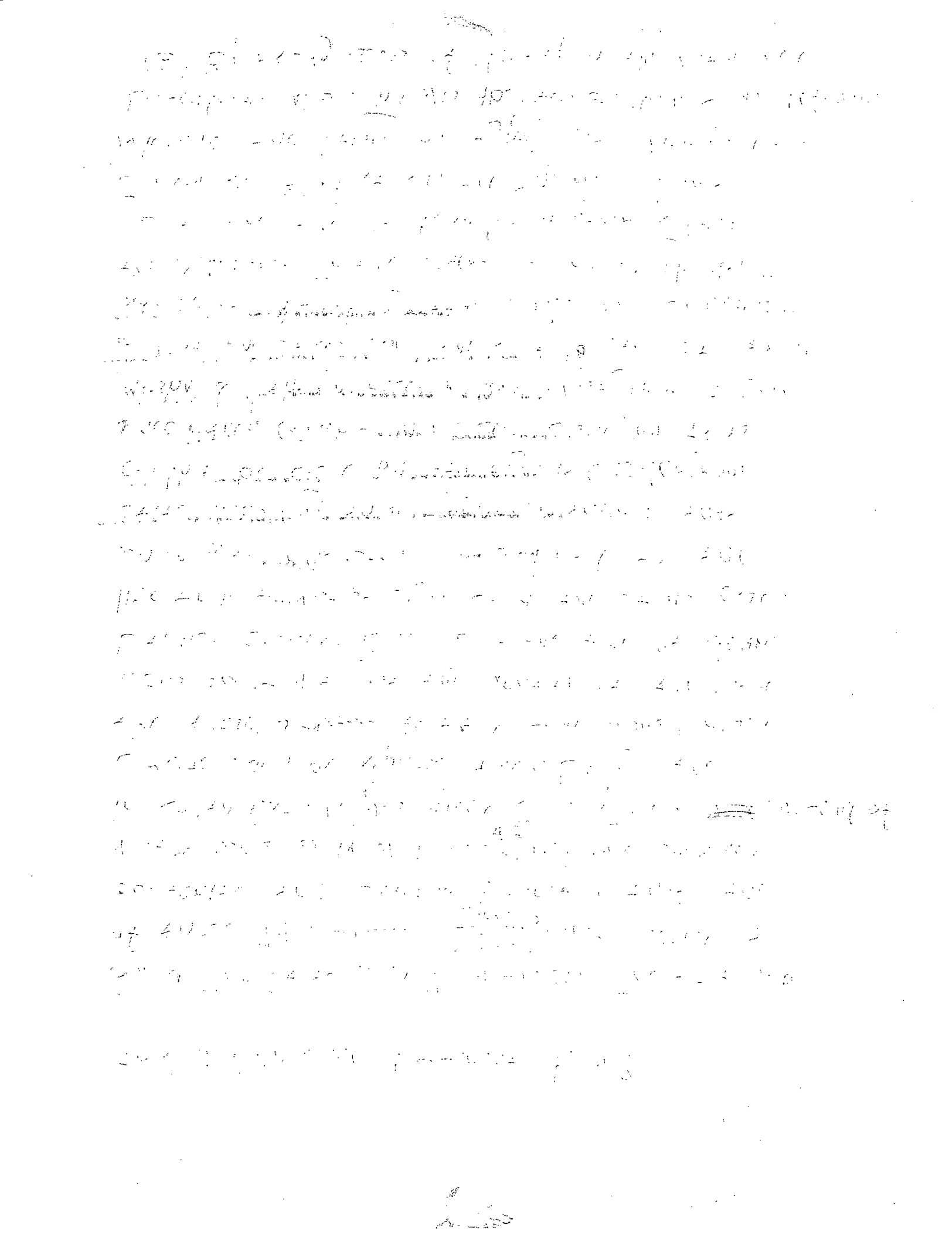
19. "A cardinal tenet of successful advocacy is that the advocate be unquestionably credible. If the fact finder loses confidence in the credibility of the advocate, it loses confidence in the credibility of the advocate's cause... it is particularly crucial that the defendant's advocate not only retain credibility for himself but also that he do nothing which undermines the credibility of his client." Id at 400 (underlines added for emphasis)

20. There is a reasonable probability that for Counsels ineffective performance, the result of the

trial would've been different. How?

21. (a) The State called 74 witnesses. The first 26 of those 74 witnesses, 33% (Lawyers), were called to obliterate the Defenses contention that the victim whose body was discovered and cremated in South Carolina was indeed Not James Jordan, ~~not~~ instead of someone else, like, Alphonso Green. During the time these witnesses testified trial counsel raised issues about not just the identity of the victim but, also, created issues about the time of death. 1146 trial transcript pages from the States case, which was 6172 pages long is devoted to the state debunking these strawman theories that couldn't be based on strategical considerations since they couldn't have been based on facts marshalled through research and investigation. Roughly 20% of the States case, the first 7 days of trial was spent discrediting trial counsel and, by extension, the Defendant. To the extent it raised doubts about the time of death or whether James Jordan was killed at all, the theories didn't undermine the States investigation, it undermined Defendants alibi. This was Absolutely prejudicial to my defense.

(b) By raising issues of identity of the victim and



time of death, the trial lawyers "read up", the opening statement, forced the state, or made it justifiable for the State, to introduce photographs of the body on a branch partly suspended above the waters surface, yet, the Defense never offered any logical way a dead body could end up there without the water level ever changing - according to testimony deliberately elicited by trial counsel. The fact that the jury requested these photographs during deliberations and that a juror, Ms. Locklear, specifically says some jurors convicted me because the pictures of the body on the limb convinced several jurors that Mr. Jordan had to have been alive and climbed up the branch out of the water. Further, the inflammatory nature of the pictures - which court personnel later provided to scam artist Craig Lewis of The Globe for a propegnda attack timed (Ex. 7) to coincide with the time my case was on appeal could only work Aginst the defense. It would justifiably and, rightly so, anger the jury; and, distort judgement and understanding about the material issues. (Ex. 2 Ms. Paula Locklears interview by Attorney Ian Mance); Motion for (3) (Exhibit 3) * Judicial Notice of Facts; (Trial Transcript Ex. 4)

(C) As described above, trial counsel ~~counsels~~ opening statement that "the evidence will absolutely show that -- this MAN WAS NOT ~~[redacted]~~ even killed where the State claims he was killed. The evidence will show Absolutely, we believe, that this MAN WAS Not even shot in the MANNER that the State claims he WAS shot." like the statements about the victim not being James Jordan, and James Jordan still being alive prejudiced me because Counsel never produced such evidence which severely undermined credibility. When authority figures, whether it's a father, teacher, lawyer, Respected journalist, officer makes promises, that creates greater expectation of fulfillment. When the promise goes unfulfilled we lose trust ~~IN~~ everything that authority figure said because we allowed the legitimization of their promise, based merely on their authority, to overpower the demand for proof, the suspension of judgement that life teaches us to carry AS A shield, IN A world full of people without honor. The remedy is that from the point we are forced to realize that the authority figures word is not their bond, we then demand A higher burden of proof be satisfied ~~&~~ before we believe anything they say to us. In State v. Green this

shifted the burden of proof from the State to the defense because, since trial counsel could be viewed as trying to mislead, deceive and confuse the jury about identity and time of death, which the jury would perceive as an attempt to insult their intelligence, the jury, naturally, would be forced to desire the Defense to affirmatively ~~proof~~ prove every material assertion thereafter with indisputible evidence, with the Alibi defense, & the claims about where and how James Jordan was not murdered. The proof of this prejudice caused by counsels loss of credibility is that after trial the jury found me guilty of ~~as~~ actually killing James Jordan, despite trial counsels efforts, despite Demery's lack of credibility - the only person who testified I killed James Jordan; but after the Rezendes and Tedeschis testified in the sentencing stage about Demery threatening to kill them, Demery being in control of the impromptu robbery, Demery exhibiting violent sociopathic tendencies, the jury reversed course and did not believe nor find, any longer, unanimously, that I killed James Jordan. Why? Because they accorded the Tedeschis and Rezendes credibility that trial counsel

Relinquished when, in reliance on anecdotal accounts from unverified police reports and hearsay, they, as officers of the Court bound by law, and ethical rules, not to make frivolous claims to fact finders did just that. by disclaiming what the whole world knew, that James Jordan was the victim, and which the trial lawyers themselves conceded, that he died on July 23rd between the times that Demery left me at Kaye Hernandez's home and returned mere hours later.- An essential element to the Alibi defense they promised both the jury and the Defendant, me, that they had, and would enter competent admissible evidence at trial to meet their burden of going forward with the evidence.

(d) By shifting the burden in the above described manner to the defendant the trial counsel prejudiced defendant, they deprived me of due process, they spotted the State, an entity with infinitely more resources than any one defendant could ever have, with at least 7 points - (33%) if a trial was a game of "21" - and allowed the State to have the worlds best player ever against them:- in cowboy boots and seersucker suits. Not only did they prejudice the Court and the

jury against them and me, but also, as always, ad hominem attacks on the victim or an opponent when it's not material to the issue cause people of reason to doubt the veracity of the legitimate strengths of their cause.

(e) Last, but not least of all, the Court, as a matter of equity, as a searcher of truth, can not ignore the status of the Jordans and, in particular, Michael Jordan. Michael Jordan is a native Tarheel who grew up less than two hours from Robeson County. A legend at the first public university in the country UNC-Chapel Hill, which is also the think tank for every goverment entity in North Carolina through it's Institute of Government, School of Government and various curriculum. An NBA champion who won every championship contest he played in when the game was more brutal than it is now. A man known and loved all over the world but no where as much as North Carolina. Hopefully the State won't try to argue that my attorneys had a sound factual basis to support a strategy that required them to allege that James Jordan had a justifiable reason to fake his death, that he talked to his wife on August 5th 1993, that he told Ivan Johnson that he lost his car gambling, that my trial lawyers obtained evidence, that was competent and admissable, of any of these

things or that tended to prove that the authorities confirmed that the body was the physical remains of Alphonso Greer or anyone else - especially since the State and the defense Attorneys agreed that Demery and I committed the crime, at 17 and 18 years old, of unlawfully disposing the body by placing it in the water right before sunrise on July 23rd, 1993. Surely the State won't try to convince any court that it was strategical to put on several inconsistent defenses that insulted the jurors intelligence, tested the Courts patience, resulted in the D.A. throwing ice cream parties and had to enrage the family and loved ones of the victim, James Jordan... all at my expense.

Undoubtably trial counsel was under intense personal and political pressure (Ex. 5 Motion For Judicial Notice of facts., Part 2), This is understandable. No Advocate acting in the capacity of an officer of the Court is required to martyr ~~them~~ themselves and their families best interest to save the freedom of a dumb kid who, though not guilty of the charges brought to trial did commit crimes against society and good people.

The fact that politicians misused this case to garner support across party lines to pass the Violent Crime Control Law Enforcement Act specifically because, they admitted, of Michael Jordans celebrity is material, if necessary, to analyze the political pressure trial counsel were under, and the effect of state agents misconduct

B. Ms. Faders failure to file a Motion for Appropriate Relief in the Court of Appeals, as required by N.C.G.S. 15A-1418(b) was not strategical. According to her, she had no discretion about whether to file the Motion for Appropriate Relief and do an investigation to Marshall the facts. According to her she lacked both the statutory authority and the resources as an appellate defender to do so. (Ex. 6, Faders Letter

Yet, Ms. Fader, as an appellate attorney was bound by the Fourteenth Amendment of the U.S. constitution to provide effective assistance of counsel to protect my right to due process. This begs the question: If the pattern and practice of the appellate defenders office is to deprive clients of their constitutional rights and protection by passing the buck to post-conviction counsel or to the client themselves,

is it possible for any Appellate Counsel appointed by the State to effectively represent defendants as required by Strickland v. Washington when their cabletow restricts them to the circumference of statutory boundries misconstrued to preclude Appellate Attorneys from performing the most basic duty of an Attorney - to research and investigate any red flags - any grounds that indicate prejudicial error occurred?

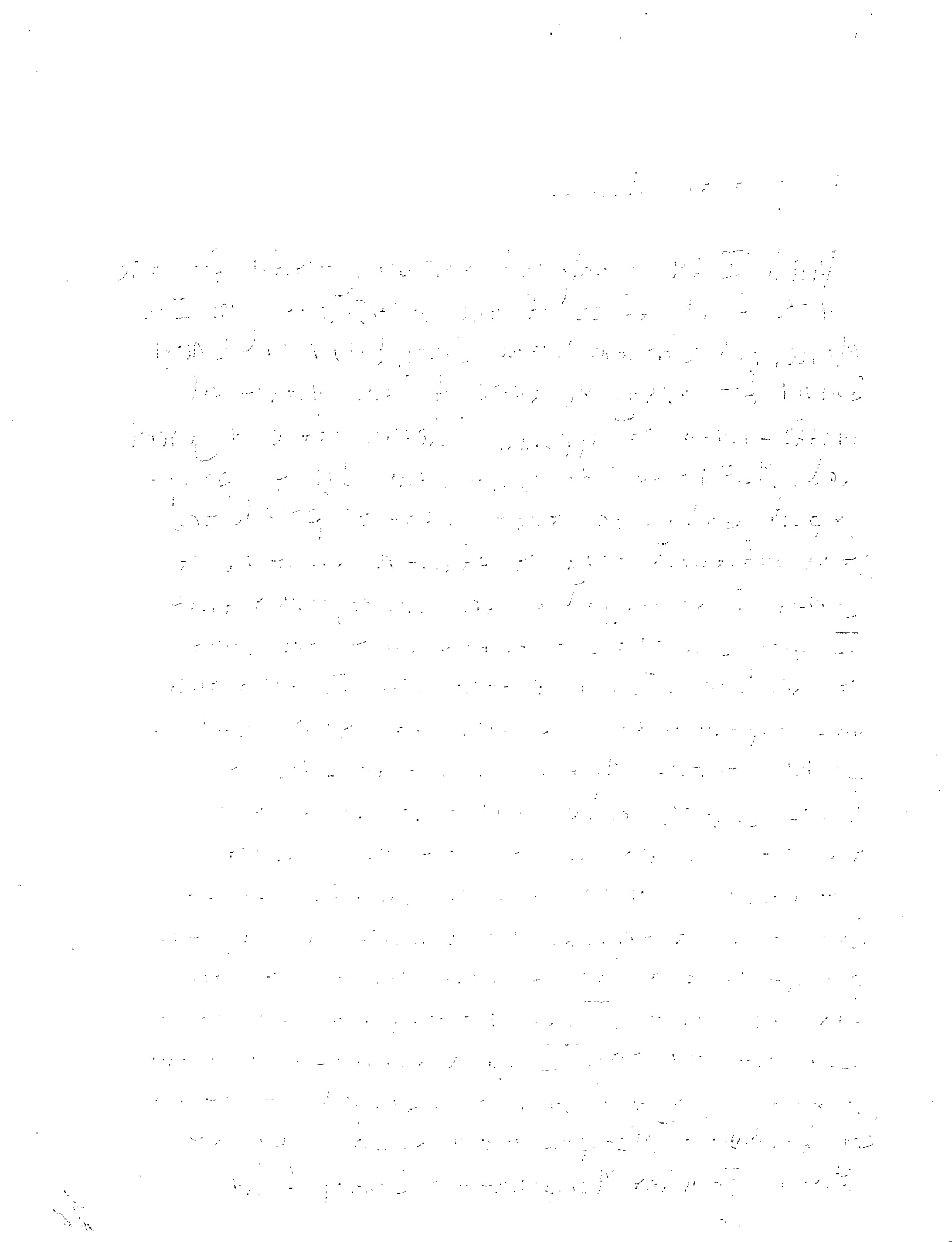
N.C.G.S.A. §15A-1418(a) has required, since 1977, that Motions for appropriate relief must be made in the appellate division when based upon grounds set out in G.S. 15A-1415 at the time the case is in the Appellate division for review. Subsection (b) of N.C.G.S.A. §15A-1418 Requires the appellate division Court to decide if the MAR may be determined on the basis of the materials before it or whether it is necessary to remand the case to the trial division for taking evidence or conducting other proceedings. (See, 1977, c. 711, § 1)

There is no law requiring a defendant to give up the Constitutional 6th and 14th Amendment protection of effective assistance of counsel in order to file

A MAR in trial court, have it remanded to trial court, or heard in trial court. The N.C. Appellate Defenders office preventing Attorneys from being fully effective is a clear Abuse of discretion that they don't lawfully have and is a clear pattern and practice of depriving it's clients of their United States Constitutional protections of due process and effective assistance of counsel, a violation of the Violent Crime Control Law Enforcement Act, 34 U.S.C. § 12601 and Civil Rights of Institutionalized Persons Act § 3, 42 U.S.C. 1997a(a). In State v. Green it is blatently obvious that trial counsels decision to put on ☆ mutually exclusive and antagonistic defense theories was deficient and prejudicial. If James Jordan was alive on July 27th or August 5th, there was no Alibi on July 23rd and every piece of evidence that proved I had ever been in the car owned by James Jordan, the phone records, the All Star ring, the Chicago Bulls watch, the witnesses who testified to these matters would have had to be fraudulent. Every piece of evidence that proved James Jordan disappeared on July 23rd would have had to have been a hoax. Not only is this illogical, it insults the intelligence of fact finders, the dignity of the Courts and the

family of the deceased.

While I AM Humbly AND immensly grateful for the work of all officers of the Court: C. Scott Holmes, Law MANCE, and Christine Mumma, Cheryl Sullivan and Cheryl SullivAN for making me AWARE of the INSTITUTIONAL INEffectiveness of appellate defenders office IN general AND, Ms. Foder and Mr. Malcom Hunter, due to policy-imposed bindings on their ability to provide the full unfettered range of effective ASSISTANCE of Counsel, I AM obligated by the laws Requirement that I fairly present the facts AND law to the Court to Adjudicate. I have No trust issues. I trust those whose reputations AND characters instill trust until proven otherwise. My family has lost thousands of dollars, health, hope, AND their own trust in the justice system due to officers of Court guaranteeing I would be home AND vindicated AT each stage of this case. Not because of subjective perceptions but due to what was told to them AND me, verbatim. I AM not responsible for others being untrustworthy. I uphold ANY verbal or written CONTRACTUAL obligation unless it is breached or obtained by fraudulent Misrepresentation AS defined by LAW. (Ex. 7 Fraudulent Misrepresentation, Summary of Law)



STATE V. ALLEN Requires Evidentiary Hearing

State v. Allen 378 N.C. 286, 301 (2021) clearly states the holding that "the question of whether ... counsel made a reasonable 'strategic judgement" is to be answered and resolved by the MAR court after first conducting an evidentiary hearing. The defendant is entitled to an evidentiary hearing to determine whether counsel had a strategic reason for:

1) Arguing, and eliciting evidence to support, inconsistent and mutually exclusive defense theories predicated on James Jordan sightings that were absolutely not credible, not based on investigation and which undercut the alibi defense trial counsel entered contractually binding agreement with the Defendant to present, and promised the jury they would present;

2) Whether trial counsel had a strategical reason to not challenge the conviction based on the fact that the jury's declaration, elicited by the Court with the States consent, verified they didn't unanimously convict Defendant of felony murder as defined by statutory, common and constitutional law. The U.S. Constitution limits the governments ability to convict and sentence a defendant

in N.C. to cases where the Defendant is unanimously convicted of every element of felony murder beyond a reasonable doubt, including, most obviously, the "killing element"

3. Whether the N.C. Appellate Defenders office had a strategic reason not to file a Motion for Appropriate Relief on the grounds of trial counsels ineffectiveness in asserting inconsistent mutually exclusive defenses and for trial counsel not making an oral or written motion to vacate the conviction due to the jury not unanimously convicting Defendant of felony murder beyond a reasonable doubt. This is an issue of fact that likewise requires a full hearing of evidence provided by Appellate Counsels, Jamie Foder, testimony under oath and also would require the trial counsels testimony, to determine if they had a strategical reason for not moving the court to vacate the conviction as was done in State v. Blake 275 N.C. App. 699 (2020)

Further State v. Allen confirms the State v. Fair, 354 N.C. 131, 166 (2001) and McCarver v. Lee, 221 F.3d 583, 589 (4th Cir. 2000) rejection of any interpretation of N.C.G.S. § 15A-1419(a)(1)-(4) which imposes "A general rule that any claim not brought on direct appeal is forfeited on state collateral review"

Appellate Counsel was ineffective for not filing a MAR based on trial counsels ineffectiveness for not raising the two claims under discussion yet the N.C. Appellate Defenders office failure to file the MAR on direct appeal does not mean it is a ground to deny the MAR and these amendments and supplements pursuant to N.C.G.S. 15A-1419. Why not?

§15A-1419(a)(1) isn't applicable here because there is no "previous motion" for appropriate relief. There is only the same MAR that has been pending since 2000, or 1999 if the Court liberally construed my first motion as falling in the §15A-1411 definition of MARs as incorporating any post-verdict motion made to correct errors occurring prior to, during, and after a criminal trial. See also State v. Hindy, 326 N.C. 532 (1990);
§15A-1419(a)(2) isn't applicable because Ineffective Assistance of Appellate Counsel has not been determined previously;
§15A-1419(a)(3) doesn't apply because the defendant couldn't file Ineffective Assistance of Appellate Counsel until after the direct appeal
§15A-1419(a)(4) isn't a ground for denial since this amendment is being filed within the "anytime after the verdict" time frame and the MAR is still pending.

Further, even if the Court, for the sake of argument did decide to deny the MAR pursuant to N.C.G.S. 15A-1419 (a)(1)-(4) the defendant can demonstrate good cause for excusing the grounds for denial and can demonstrate actual prejudice resulting from the defendant's claim pursuant to N.C.G.S. 15A-1419 (b)(1) and (c)(1):

Good Cause To Excuse Grounds For Denial

N.C.G.S. 15A-1419 (c)(1)

(1) Ineffective assistance of trial counsel and appellate counsel can be proven by a preponderance of the evidence as detailed in this amended MAR and the amended/supplemented MAR's filed concurrently with this motion, and which are hereby incorporated by reference. Counsel's respective ineffectiveness is state action in violation of the U.S. Constitution, the N.C. Constitution and the statutory provisions created by the powers of the N.C. Constitution including the N.C. Legislature power to make law, the N.C. Judiciary power to interpret law, specifically the N.C.G.S. provision mandating appointment of counsel for MAR. The right to an attorney is the right to an effective advocate.

(2) Trial Counsel was not ignorant of the grounds for these claims, nor were they ignorant of the constitutional idea that the state

should be limited w its power to lock a person up for life or decades, or even a day without a defendant being unanimously found guilty of every element of the crimes charged and that the Courts authority to impose sentences and enter judgement depends on its observance of due process with regard to this limitation. Therefore trial counsel decision was not ignorance of these claims and doesn't preclude the defendant from demonstrating good cause.

3) It can't be claimed that trial counsel were inadvertent or that they made a tactical decision to withhold claims related to the claims unless the hypothetical tactical decision was made to convict the Defendant. Why?

(A) The jurys failure to unanimously vote for capital punishment required the Court to impose a life sentence and at no point could the State re-try the defendant for the death penalty so if Counsel had asserted these claims within 10 days of the trial the defendant would have everything to gain and nothing to risk losing. At worst, the State could've re-tried the defendant without the benefit of a death-qualified jury since capital punishment wouldn't ~~have~~ have been an option and double jeopardy would've precluded the State from re-litigating premeditated and deliberation murder, would've prevented the State from re-litigating the evidence entered to prove premeditation, and

furthermore, on a new re-trial the State would've had to choose between trying a case with their star witness Larry Demery having to change his narrative yet again or testifying to the same narrative that the first jury had already impeached with their ~~a~~ verdict

It should be noted by the Court and it is asserted by the defendant that N.C.G.S. 15A-1419(c) emphasizes that good cause may not be constituted by ineffective assistance of prior post-conviction counsel nor by trial attorney's ignorance of a claim, inadvertence, or tactical decision to withhold a claim but this subsection does not mention or preclude the good cause exception being constituted by a claim of Ineffective Assistance of Appellate Counsel, the only esquire that carries the shield and sword of the U.S. Constitutional right to effective assistance of counsel after the trial court loses jurisdiction after entering judgement and the Court of Appeals or Supreme Court of N.C. is given jurisdiction.

N.C.G.S. 15A-1419(d)

Finally, the defendant shows and forest prejudice by a preponderance of the evidence that these errors, claimed herein, during the trial or sentencing raise a reasonable

probability, viewing the record as a whole, that different results would've occurred but for the errors because:

1) If the exclusive province of the jury to find facts would've been asserted by trial counsel's filing a MAR based on the Defendant's right to a jury trial being violated by judgment being imposed for felony murder where the jury didn't unanimously find Defendant killed the victim, the conviction would've been vacated - a different result;

2) There is a reasonable probability that if trial counsel hadn't promised ~~that~~ the evidence would show James Jordan was seen alive after the alibi time frame; elicited testimony that his wasn't the body found; failed to keep the promises to the jury, critical credibility wouldn't have been lost, which the State highlighted in closing argument, and the Defendants alibi wouldn't have been undercut. In short, the States most effective evidence was the trial counsel "colander defense" theories that were mutually exclusive and, with regard to Counsels claims that James Jordan was seen alive weeks after the alibi, were never supported by admissible evidence that, if true, would've been exculpatory.

WHEREFORE, Defendant Requests this Court:
Liberally construe this pro se motion
1) Grant this supplemental and amended Motion For Appropriate Relief after giving the State 30 days to respond;
2) Grant an evidentiary hearing on all material issues in dispute;
3) Grant leave to Amend this claim and/or supplement it if Counsel serves notice of appearance;
4) Order the Clerk to Copy all documentary exhibits and these Motions and briefs for the State and the Judge, C. Winston Gilchrist;
5) To Avoid the perception of the Defendant as difficult, appoint Counsel who will either litigate these claims ~~etc~~ or provide the Defendant with a research memo providing strategical justification not to litigate these claims beyond political and/or personal considerations; or, in the alternative, Appoint Counsel to be standby counsel to assist with logistical and administrative processes to make this more efficient where the State has unlawfully obstructed access to the Courts by preventing the Defendant from receiving copies of legal documents from private citizens;
6) Order all previous counsel not involved in this case going forward to deliver all correspondence, files, and evidence generated by this case to me and order the

State of North Carolina
County of Robeson

In the General Court of Justice
Superior Court Division
No 93 CRS 15291-15293

State of North Carolina)
v.)
Daniel Andre Green)

Sixth Supplement To First Amended Motion For Appropriate Relief

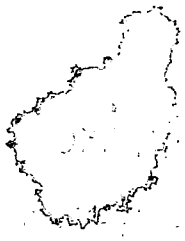
FILED
AM 8:37
Robeson Co. C.S.C.
BY _____

NOW COMES the Defendant, Daniel Andre Green, pro se, who files this Sixth Supplement to the First Amended Motion For Appropriate Relief pursuant to the United States Constitution Sixth Amendment and ~~Fourteenth~~ Fourteenth Amendment right to Due Process and Effective Assistance of Counsel, North Carolina Constitution Law of the Land, Article 1§§19,21 and N.C. General Statutes 15A-1418(a) and (b) and N.C.G.S.

All legal claims, facts and arguments pled in All of Defendants prior post-conviction filings, and exhibits are hereby incorporated hereto as if fully pled if they preserved the right to raise this claim. Defendants personal plea, made pro se, not via counsel is also incorporated herein by reference. This plea of not guilty was spoken by Defendant at the First Appearance.

Summary of Argument

The State of North Carolina's Courts, its



officers of the Court that practice Criminal law in private practice, for N.C. Public Defenders Offices, Appellate Defenders Office, Attorney General's office and the law schools they are educated in - UNC-Chapel Hill, Duke University, and Central University know, teach and litigate Defendants Sixth Amendment Right to Counsel.

The above people also know that "In Proceedings Where The Sixth Amendment Right To Counsel Does Not Apply (State Post-Conviction Proceedings), Attorney Error May Not Constitute "Cause" For State Procedural Default." Therefore, the State has a financial and chronological interest to switch a Defendant from a track of litigation protected by due process protection of effective assistance of counsel - As direct appeal does (See Douglas v. California, 372 U.S. 353 (1963) about constitutional entitlement to direct appeal lawyer, and constitutional entitlement to effective assistance of appellate counsel, Evitts v. Lucey, ~~469~~ 469 U.S. 387 (1985)) - to the track of post-conviction ~~counsel~~ proceedings that, because there is no constitutional right to effective assistance of counsel, the client often, as in this

case becomes a golden goose who an unscrupulous, or incompetent, scared, or smart-enough-not-to-bite-the-state-hand-that-feeds-him attorney, or movement lawyer can hold hostage by dilatory tactics until the golden goose (a metaphor for State v. Green and the Jordans & my life) stops laying golden eggs or, as Santina Leuci, Good Morning America producer, calls it, "goes rogue" by venturing off into pro se representation to navigate the "intricate rules" of criminal and civil law - a "hopelessly forbidding" wilderness. See, Evitts 469 U.S. at 396.

Whether the incompetent post-conviction attorney intentionally or unintentionally fails to raise substantive claims or the ignorant Defendant fails to raise the substantive claim, the Defendant, who has been unknowingly and unintelligently deprived of their 6th Amendment protection - effective assistance of counsel - to conduct them through the darkness awaiting those uninitiated into the complexity, and finer points of law, must bear the burden for his own blindness or for her nominal agents hoodwinking them into waiving substantive claims.

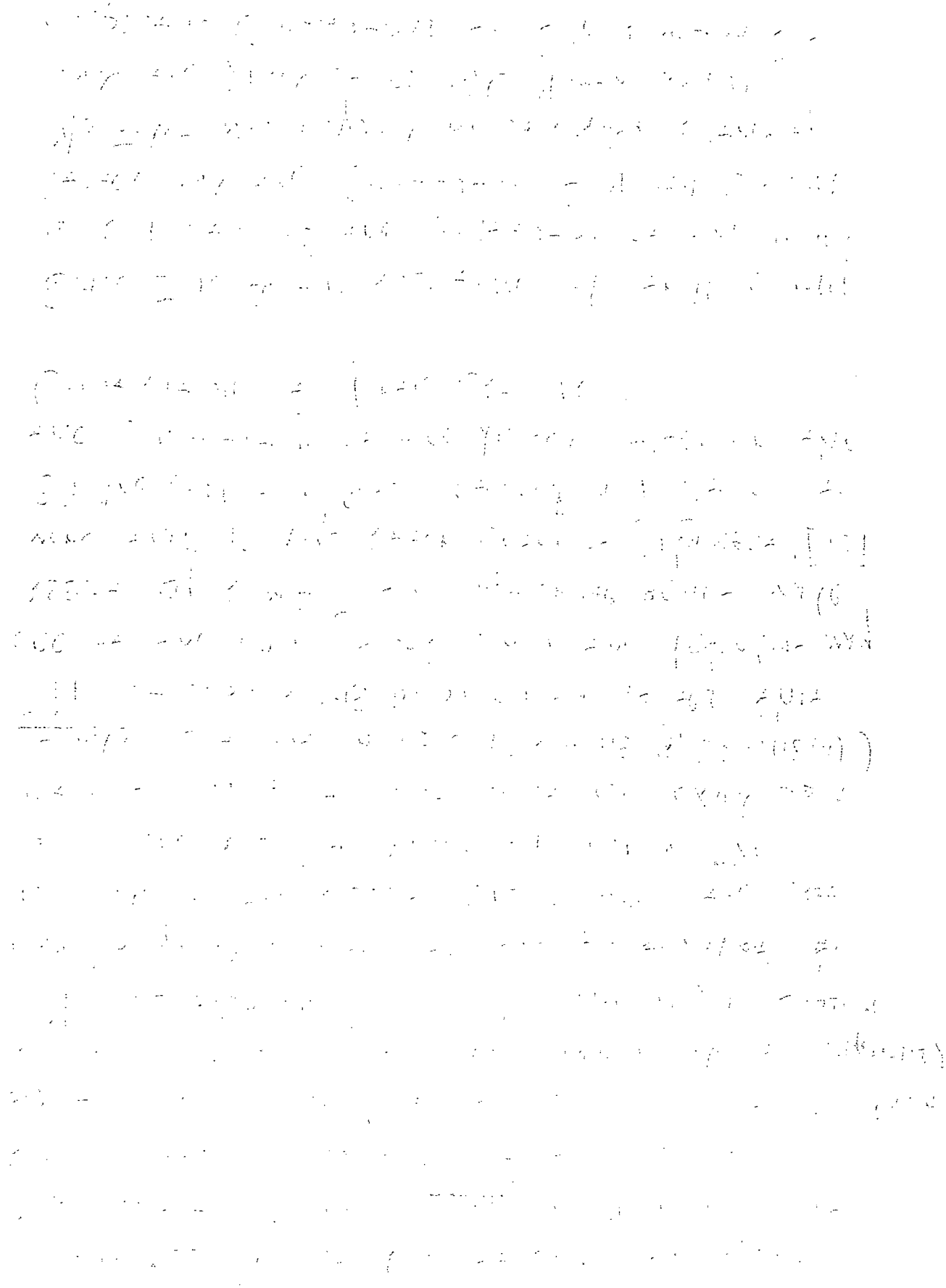
My appellate attorney, Janine Crawley-Fodor, was appointed to represent me, on behalf of the North

Carolina Appellate Defenders office, on an Appeal. She identified "several grounds on which you might allege ineffective assistance of trial counsel". Ex. 1, February 8, 1999 letter from Irvine Fodor to Lord W'Allah (Daniel Green's former Attribute) (Underline added for emphasis).

N.C.G.S. §15A-1418 (Section 1, Chapter 711, 1977 Session Laws) required a motion for appropriate relief to be made in the appellate division when the case is in the appellate division for review. The motion for appropriate relief must be based upon grounds set out in G.S 15A-1415 (§15A-1418(a)).

N.C.G.S. §15A-1415(b)(3) clearly states that one of "the only grounds which the defendant may assert by a motion for appropriate relief made more than 10 days after entry of judgement: [is] (3) The conviction was obtained in violation of the Constitution of the United States or the Constitution of North Carolina.

Since Ineffective Assistance of trial counsel is a violation of the Constitution of the United States and the Constitution of North Carolina Ms. Fodor was required by statutory authority and the United States and North Carolina respective Constitutions to file a motion for



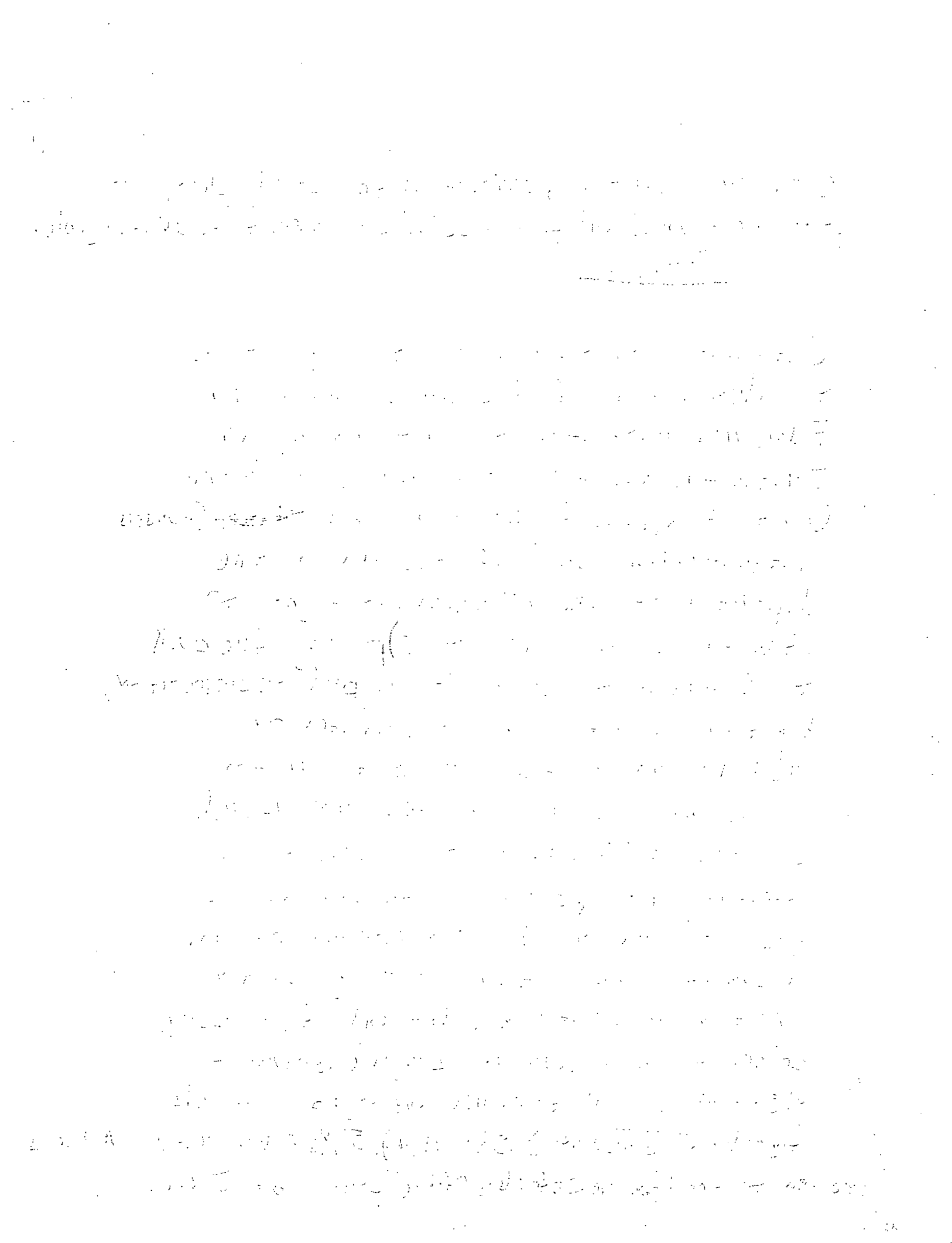
Appropriate Relief on the "several grounds" of ineffective assistance counsel she saw while Defendants appellate Attorney. Then, it would be within the appellate court to decide whether the motion for appropriate relief, in the appellate courts discretion, should be determined based on the materials before it or remanded to the trial division for taking evidence or conducting other proceedings. G.S. 15A-1418(b).

I, the Defendant, am filing this Amendment to the pending Motion for Appropriate Relief pursuant to G.S. 15A-1415(g) which allows a defendant to file amendments "any time before the date for the hearing has been set." If I waited after such hearing had begun I could only conform the motion for appropriate relief to evidence adduced at the hearing via an amendment, or to raise claims based on such evidence. G.S. 15A-1415(g). This Defendant has no reason to believe an Attorney would raise a claim that is so blatently obvious from the first 80 pages of the trial transcript to anyone familiar with criminal law but which no lawyer has filed unencumbered by mounds of

Convoluted haystacks, convolutions that provide plenty of profitable theories and political "spoils" but renders facts unintelligible.

FACTS

Defendant sets forth the following facts to demonstrate (1) Appellate Counsel, Janine Fodor, was ineffective for not raising an Ineffective Assistance of Counsel claim in the Court of Appeals (2) Based on Trial ~~Counsels~~ Counsels ineffectiveness, which (3) Resulted in the deprivation of the 6th Amendment right to effective Counsel due to (4) passing the buck to Defendant to enter into hybrid representation by filing a motion while represented by Ms. Fodor and/or Rely on post-convictive counsel who is not obligated nor bound by the 6th Amendment to represent me effectively nor, apparently, ethically, as is apparent and will be demonstrated by ample documents and affidavit detailing Cullen Mansfields malpractice, misconduct and, if neccessary, crimes, to show cause and prejudice, pursuant to §15A-1419(b)(c)(d), to excuse any arguable grounds for denial pursuant §15A-1419(a).(5) Ms. Fodors ineffectiveness is imputed to the Appellate Defenders office practice of I.A.C.

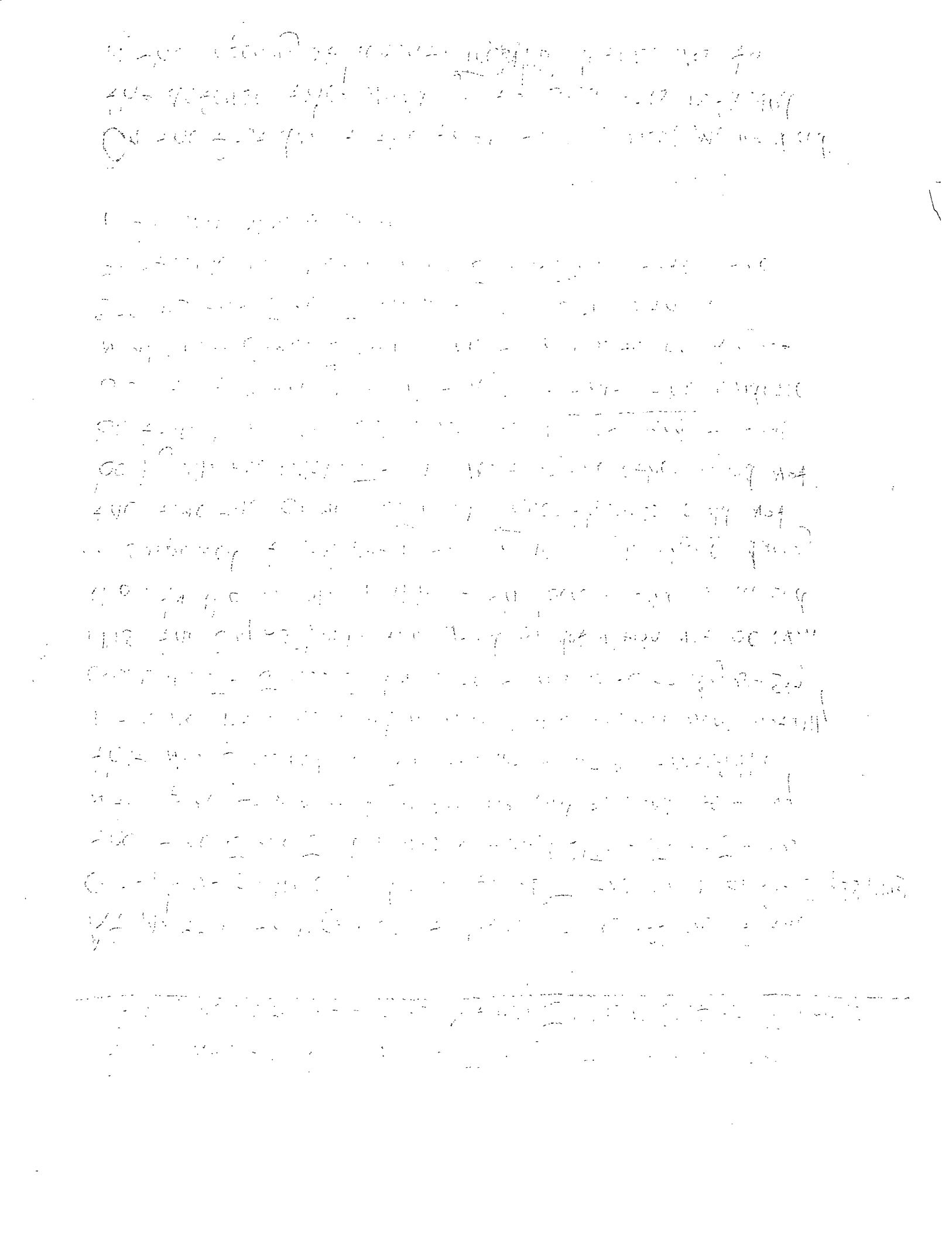


A. Ineffective Assistance of Trial Counsel Grounded on Trial Counsels Presentation of Mutually Exclusive Defense Theories

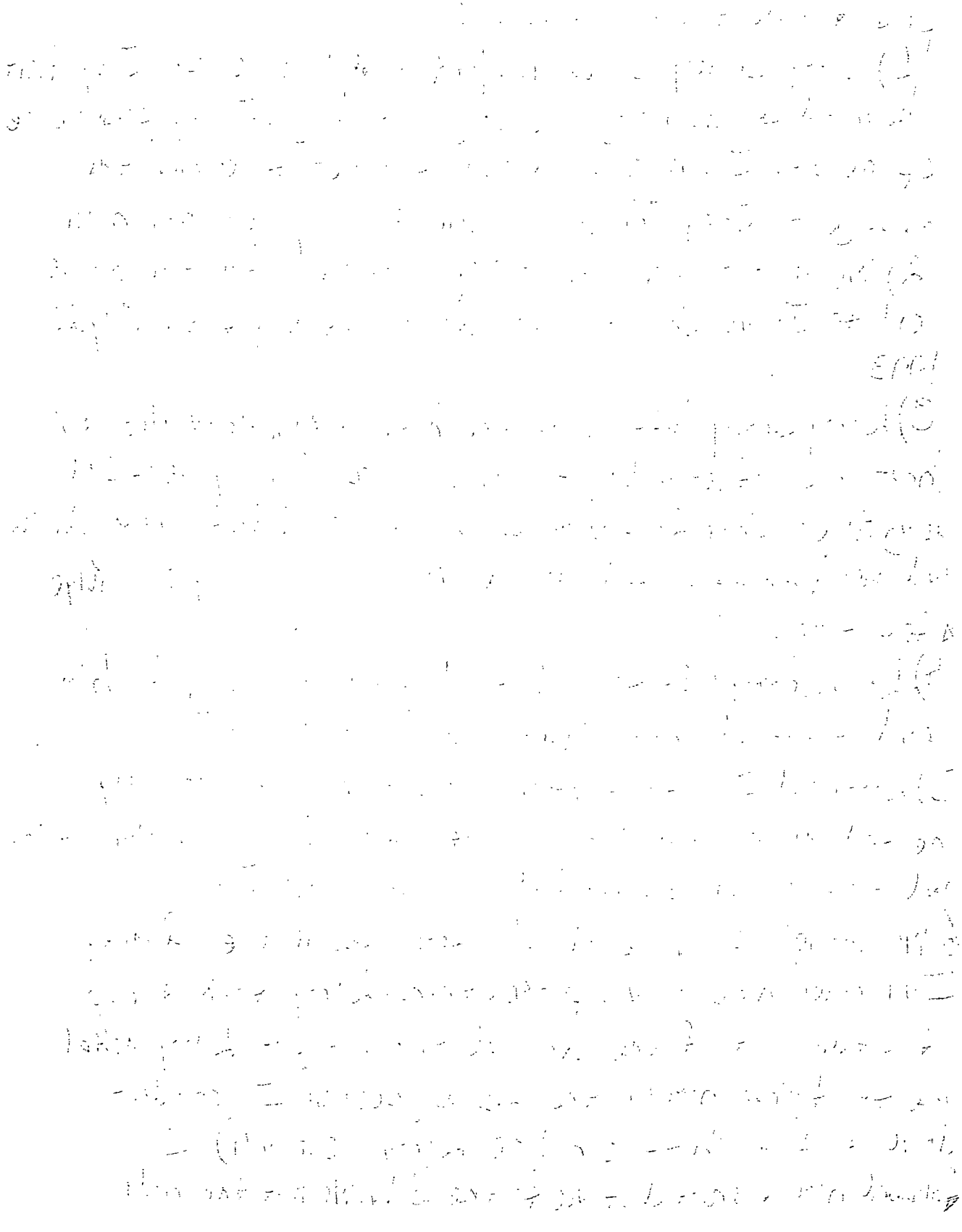
At my trial, trial Counsel told the jury, as officers of the court, that evidence would show that (1) I had an alibi for July 23, 1993 the time James Jordan was murdered (2) That James Jordans wife spoke to him on August 5th, 1993 and elicited testimony that was perceived as an attempt to prove that (3) the victim was not James Jordan. These defense theories were mutually exclusive. If James Jordan spoke to his wife on August 5th, 1993; the July 23rd, 1993 alibi would, by definition not be an alibi. An alibi is only an alibi if the person who is accused or suspected of committing the crime is elsewhere during the time the crime occurred. These theories could not be logically reconciled. If one was true; the other could not be true. Trial Counsel never had a confirmed factual basis to tell the jury and the Court that the evidence would show James Jordan spoke to his wife on August 5th 1993, that James Jordan met and spoke with a Fayetteville, N.C. librarian on July 27th; nor that the victim was Alphonso Green.

Trial Counsels contractually binding agreement to present one defense.

On the first day of the trial trial counsel memorialized the defense they would jointly present as reflected in the opening statement. The alibi defense was to



present the following evidence:
1) Larry Demery called New York to tell his cousin Joey that he would be delivering a package of drugs. In my presence he spoke with Jwine Bieulick and told her to convey the message to Joey. The call was made at Larry's parents home.
2) We went to the home of Kye Hernandez after the phone call to Irvine where we were earlier that night on July 22 1993
3) Larry Demery left me at the home of Kye Hernandez an hour or so after midnight, July 23rd, 1993. (Demery testified using Kyes whole first name which ever I didn't know which indicates authorities told him her name since he only saw Kye a few times.
4) Larry Demery left to conduct a drug deal, according to him and returned hours later around 4:30 AM.
5) Larry and I left together this time. Along the way, he told me he shot a man in self defense during an altercation and that he was possibly dead. I didn't believe him.
6. We arrived at an abandoned store beside the Quality Inn hotel. A Lexus was parked there. Larry took a cup of coffee out of the car and threw it out. Larry asked me to follow him in the Lexus (because I couldn't drive a stick shift car like Larry's car was). I followed him a short distance to the body. We put the body on a quilt Larry kept in his car trunk, put the body

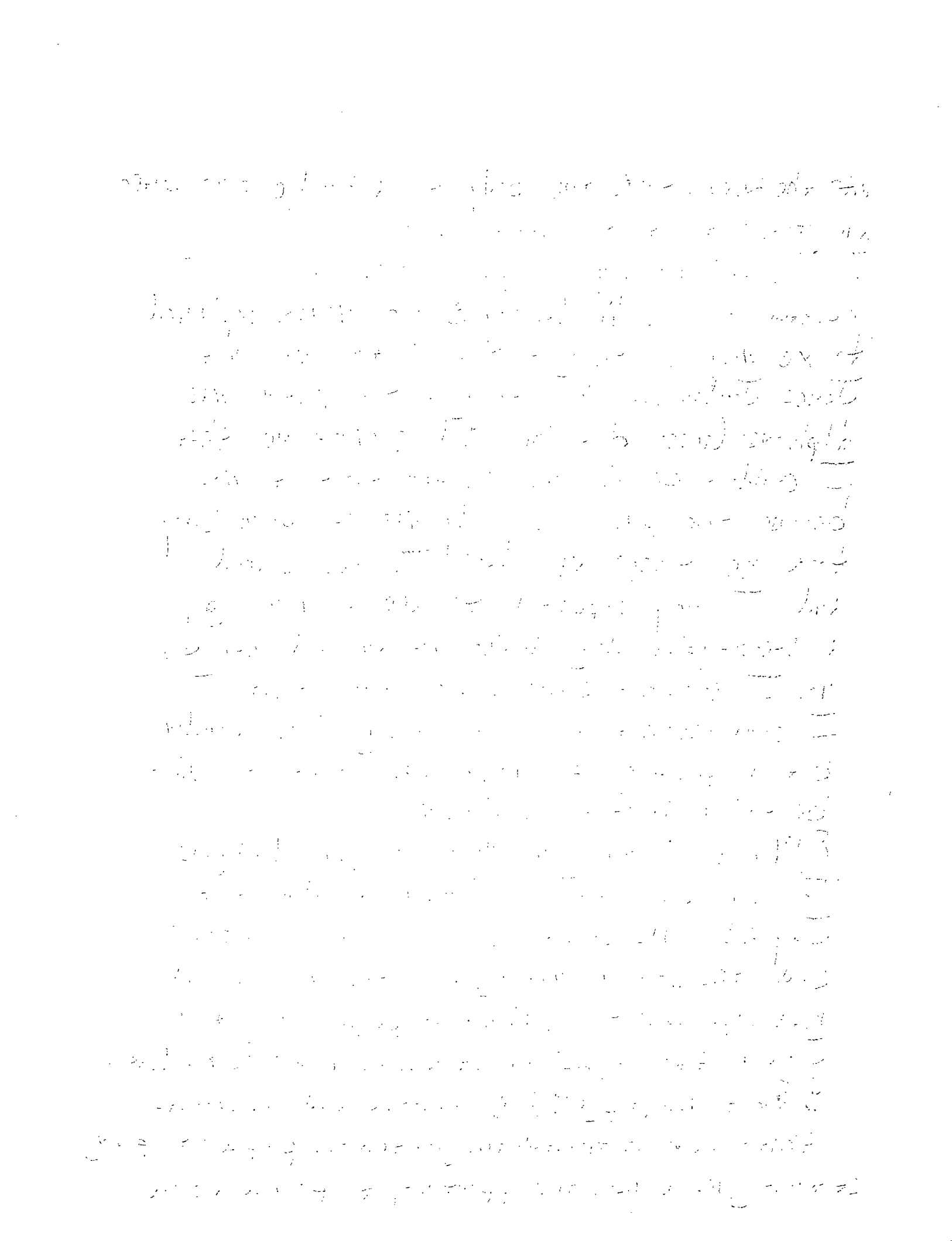


into the Lexus, took the body to a bridge over water and threw it into the water below.

7.) I did not know Alphonso Green nor am I related to him. Woodberry Bowen never explained to me why he thought the victim was not James Jordan, why he thought the victim was Alphonso Green but he did convince me that I couldn't be absolutely certain that it was because the place his body was at when Larry took me there was dark, I was scared and I only expected to see a young guy, a stereotypical drug dealer; not an old man. So, No, I couldn't swear under oath that I I could recollect the victim being James Jordan but my position was and remains that it had to be the body of James Jordan.

8) Nor do I know why Mr. Bowen or/and Mr. Angus Thompson believed James Jordan was alive after July 23rd, 1993 except that they, actually, Mr. Bowen, said the officers investigating the case had, and had suppressed, the evidence of people talking to Mr. Jordan after July 23rd and of why he would fake his death.

9) Trial transcript page 9 (T.T.P.) indicates and documents that the Court instructed the jury that "the purpose of opening statement gives counsel the opportunity to provide a kind



of roadmap or forecast of what counsel contends the competent and admissable evidence in the case will be." (T.T.P. 9:9-15)

10) Trial Counsel Angus Thompson makes an opening statement that did cover the defense he and Mr. Bowen memorialized they would put on based on what I told them. This is not at issue, (T.T.P. 58-64) This has remained consistent for 30 years, almost.

11) The glaringly obvious ineffective assistance of counsel is that trial counsel, Mr. Thompson, whose opening statement was written partly or wholely by Mr. Woodberry Bowen, told the jury that the evidence would show that Delores Jordan, the wife of James Jordan informed Donald A. Chiafolo, the owner of the building where "once J.V.L. Enterprises operated in Rock Hill S.C." J.V.L. being James Jordans business, spoke with the deceased on August the 5th, 1993 (T.T.P. 68), that "...James Jordan presented himself at the Cumberland County Library on July 27th 1993" "almost amazingly" (T.T.P. 70) and that "the State claims that James Jordan was dead some two weeks earlier." (T.T.P. 68:23-25)

12) The only way to reconcile the contention that

James Jordan was alive on July 27th and August 5th with the contention that Larry and I threw a deceased body into a creek on July 23rd would be if the deceased was not James Jordan. There was no admissable competent evidence to support that the victim was not James Jordan nor that Mrs. Jordan told Mr. Chiafolo she spoke to her husband on August 5th.

13) There was no admissable, competent evidence that James Jordan told the Cumberland County Library county historical librarian that he needed to call his son at Fort Bragg, that he made bets and lost his car, on July 27th, 1993, (T.T.P. 70) presented nor, I am convinced, which ever existed.

14. Further, Mr. Bowen admitted, after making an issue out of the body being first suspected by police as belonging to an Alphonso Green, that he knew it was not Alphonso Green who, in fact was still alive

15. Mr. Bowen also highlighted and elicited testimony from witnesses who found and viewed the body that would allow an inference to be drawn that either Mr. Jordan was alive and climbed up a tree branch to be suspended above the water, that the body was placed on the branch sometime after the

week before it was first seen and reported by James Jordan or that, because, as the elicited testimony of Mr. Hal Lockhear falsely alleged, since the temperture remained over a hundred degrees and it never rained for a month before the day the body was discovered, it couldn't have floated to the position it was found in. (Ex. Judicial Notice of Adjudicative Facts Part 2)

16. The constellation of conspiracy theories raised by trial counsel through unfulfilled statements and promises to the jury about what the competent and admissible evidence would show is in violation of State v. Moorman 320 N.C. 387 (1987) holding that it is ineffective assistance of counsel when counsel fails to produce evidence promised in the opening statement. Certainly counsel was deficient and the prejudice to defendant is obvious, so obvious that the prosecutor commented on it in closing argument.

Prejudice

17. Not only was the defendant prejudiced by this failure to produce evidence they knew they couldn't in advance but merely raising issues about whether James Jordan was still alive after the window of time covered by the alibi "undoubtedly undermined [their] own credibility with the jury" and undermined the credibility of the

Alibi itself. If James Jordan was still alive after July 23rd, after Demery returned to pick me up after 4:30 or so in the morning, after I helped move his body, that would negate all value of the alibi. It wouldn't be an alibi, because an alibi is when the accused is (1) elsewhere (2) when the crime occurs.

18. As in State v. Moorman the question for the jury in State v. Green was always "which witness to believe"? Id at 400. Demery or objective witnesses? Hal Lockhear or science itself. Demery, Elwell, Cannon or real science? District Attorney Britt or physical science? The trial lawyers about the alibi, or, about the victim Not being James Jordan and still being alive?

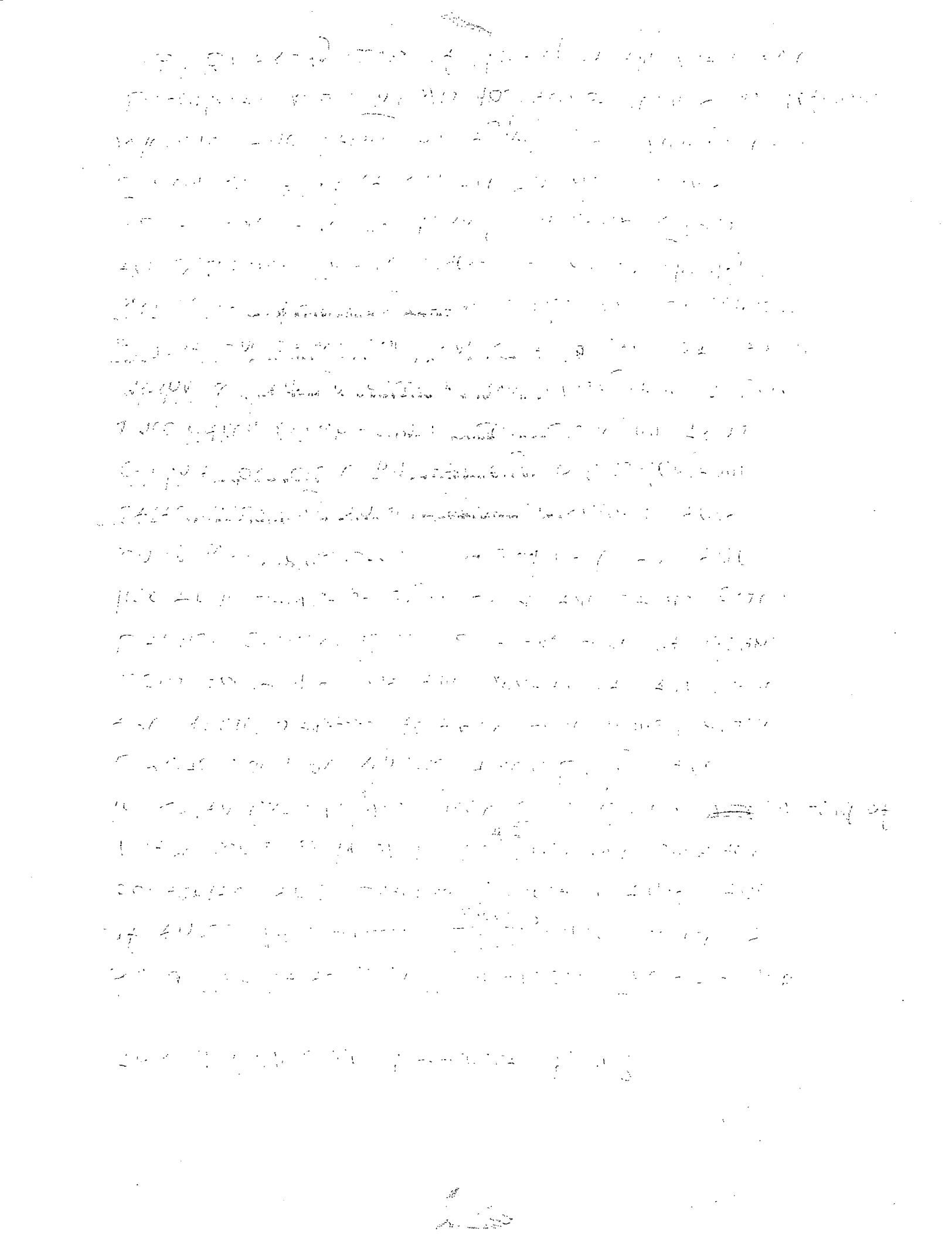
19. "A cardinal tenet of successful advocacy is that the advocate be unquestionably credible. If the fact finder loses confidence in the credibility of the advocate, it loses confidence in the credibility of the advocate's cause... it is particularly crucial that the defendant's advocate not only retain credibility for himself but also that he do nothing which undermines the credibility of his client." Id at 400 (underlines added for emphasis)

20. There is a reasonable probability that for Counsels ineffective performance, the result of the

trial would've been different. How?

21. (a) The State called 74 witnesses. The first 26 of those 74 witnesses, 33%, were called to obliterate the Defenses Lawyers contention that the victim whose body was discovered and cremated in South Carolina was indeed Not James Jordan, ~~not~~ instead of someone else, like, Alphonso Green. During the time these witnesses testified trial counsel raised issues about not just the identity of the victim but, also, created issues about the time of death. 1146 trial transcript pages from the States case, which was 6172 pages long is devoted to the State debunking these strawman theories that couldn't be based on strategical considerations since they couldn't have been based on facts marshalled through research and investigation. Roughly 20% of the States case, the first 7 days of trial was spent discrediting trial counsel and, by extension, the Defendant. To the extent it raised doubts about the time of death or whether James Jordan was killed at all, the theories didn't undermine the States investigation, it undermined Defendants alibi. This was absolutely prejudicial to my defense.

(b) By raising issues of identity of the victim and



time of death, the trial lawyers "read up", the opening statement, forced the state, or made it justifiable for the State, to introduce photographs of the body on a branch partly suspended above the waters surface, yet, the Defense never offered any logical way a dead body could end up there without the water level ever changing - according to testimony deliberately elicited by trial counsel. The fact that the jury requested these photographs during deliberations and that a juror, Ms. Locklear, specifically says some jurors convicted me because the pictures of the body on the limb convinced several jurors that Mr. Jordan had to have been alive and climbed up the branch out of the water. Further, the inflammitory nature of the pictures - which court personnel later provided to scam artist Craig Lewis of The Globe for a propegunda attack timed (Ex. 7) to coincide with the time my case was on appeal could only work Aginst the defense. It would justifiably and, rightly so, anger the jury; and, distort judgement and understanding about the material issues. (Ex. 2 Ms. Paula Locklears interview by Attorney Ian Mance); Motion for (3) (Exhibit 3) * Judicial Notice of Facts; (Trial Transcript Ex. 4)

(C) As described above, trial counsel opening statement that "the evidence will absolutely show that -- this MAN WAS NOT [redacted] even killed where the State claims he was killed. The evidence will show absolutely, we believe, that this MAN WAS NOT even shot in the MANNER that the State claims he was shot." like the statements about the victim not being JAMES JORDAN, AND JAMES JORDAN still being alive prejudiced me because counsel never produced such evidence which severely undermined credibility. When authority figures, whether it's a father, teacher, lawyer, respected journalist, officer makes promises, that creates greater expectation of fulfillment. When the promise goes unfulfilled we lose trust IN everything that authority figure said because we allowed the legitimization of their promise, based merely on their authority, to overpower the demand for proof, the suspension of judgement that life teaches us to carry AS A shield, IN A world full of people without honor. The remedy is that from the point we are forced to realize that the authority figures word is not their bond, we then demand a higher burden of proof be satisfied before we believe anything they say to us. In State v. Green this

shifted the burden of proof from the State to the defense because, since trial counsel could be viewed as trying to mislead, deceive and confuse the jury about identity and time of death, which the jury would perceive as an attempt to insult their intelligence, the jury, naturally, would be forced to desire the Defense to affirmatively ~~prove~~ prove every material assertion thereafter with indisputible evidence, with the alibi defense, & the claims about where and how James Jordan was not murdered. The proof of this prejudice caused by counsels loss of credibility is that after trial the jury found me guilty of ~~act~~ actually killing James Jordan, despite trial counsels efforts, despite Demery's lack of credibility - the only person who testified I killed James Jordan; but after the Rezendes and Tedeschis testified in the sentencing stage about Demery threatening to kill them, Demery being in control of the impromptu robbery, Demery exhibiting violent sociopathic tendencies, the jury reversed course and did not believe nor find, any longer, unanimously, that I killed James Jordan. Why? Because they accorded the Tedeschis and Rezendes credibility that trial counsel

Relinquished when, in reliance on anecdotal accounts from unverified police reports and hearsay, they, as officers of the Court bound by law, and ethical rules, not to make frivolous claims to fact finders did just that. by disclaiming what the whole world knew, that James Jordan was the victim, and which the trial lawyers themselves conceded, that he died on July 23rd between the times that Demery left me at Kye Hernandez's home and returned mere hours later.- An essential element to the Alibi defense they promised both the jury and the Defendant, me, that they had, and would enter competent admissible evidence at trial to meet their burden of going forward with the evidence.

(d) By shifting the burden in the above described manner to the defendant the trial counsel prejudiced defendant, they deprived me of due process, they spotted the State, an entity with infinitely more resources than any one defendant could ever have, with at least 7 points- (33%) if a trial was a game of "21"- and allowed the State to have the worlds best player ever against them:- in cowboy boots and seersucker suits. Not only did they prejudice the Court and the

jury against them and me, but also, as always, ad hominem attacks on the victim or an opponent when it's not material to the issue cause people of reason to doubt the veracity of the legitimate strengths of their cause.

(e) Last, but not least of all, the Court, as a matter of equity, as a searcher of truth, can not ignore the status of the Jordans and, in particular, Michael Jordan. Michael Jordan is a native Tarheel who grew up less than two hours from Robeson County. A legend at the first public university in the country UNC-Chapel Hill, which is also the think tank for every goverment entity in North Carolina through it's Institute of Government, School of Government and various curriculum, An NBA champion who won every championship contest he played in when the game was more brutal than it is now. A man known and loved all over the world but no where as much as North Carolina. Hopefully the State won't try to argue that my attorneys had a sound factual basis to support a strategy that required them to allege that James Jordan had a justifiable reason to fake his death, that he talked to his wife on August 5th 1993, that he told Ivan Johnson that he lost his car gambling, that my trial lawyers obtained evidence, that was competent and admissable, of any of these

things or that tended to prove that the authorities confirmed that the body was the physical remains of Alphonso Greer or anyone else - especially since the State and the defense Attorneys agreed that Demery and I committed the crime, at 17 and 18 years old, of unlawfully disposing the body by placing it in the water right before sunrise on July 23rd, 1993. Surely the State won't try to convince any court that it was strategical to put on several inconsistent defenses that insulted the jurors intelligence, tested the Courts patience, resulted in the D.A. throwing ice cream parties and had to enrage the family and loved ones of the victim, James Jordan... all at my expense.

Undoubtably trial counsel was under intense personal and political pressure (Ex. 5 Motion For Judicial Notice of facts., Part 2). This is understandable. No Advocate acting in the capacity of an officer of the Court is required to martyr ~~him~~ themselves and their families best interest to save the freedom of a dumb kid who, though not guilty of the charges brought to trial did commit crimes against society and good people.

The fact that politicians misused this case to garner support across party lines to pass the Violent Crime Control Law Enforcement Act specifically because, they admitted, of Michael Jordans celebrity is material, if necessary, to analyze the political pressure trial Counsel were under, and the effect of state agents misconduct

B. Ms. Faders failure to file a Motion for Appropriate Relief in the Court of Appeals, as required by N.C.G.S. 15A-1418(b) was not strategical. According to her, she had no discretion about whether to file the Motion for Appropriate Relief and do an investigation to Marshall the facts. According to her she lacked both the statutory authority and the resources as an appellate defender to do so. (Ex. 6, Faders Letter

Yet, Ms. Fader, as an appellate attorney was bound by the Fourteenth Amendment of the U.S. Constitution to provide effective assistance of counsel to protect my right to due process. This begs the question: If the pattern and practice of the appellate defenders office is to deprive clients of their constitutional rights and protection by passing the buck to post-conviction counsel or to the client themselves,

is it possible for any Appellate Counsel appointed by the State to effectively represent defendants as required by Strickland v. Washington when their caseload restricts them to the circumference of statutory boundries misconstrued to preclude Appellate Attorneys from performing the most basic duty of an Attorney - to research and investigate any red flags - any grounds that indicate prejudicial error occurred?

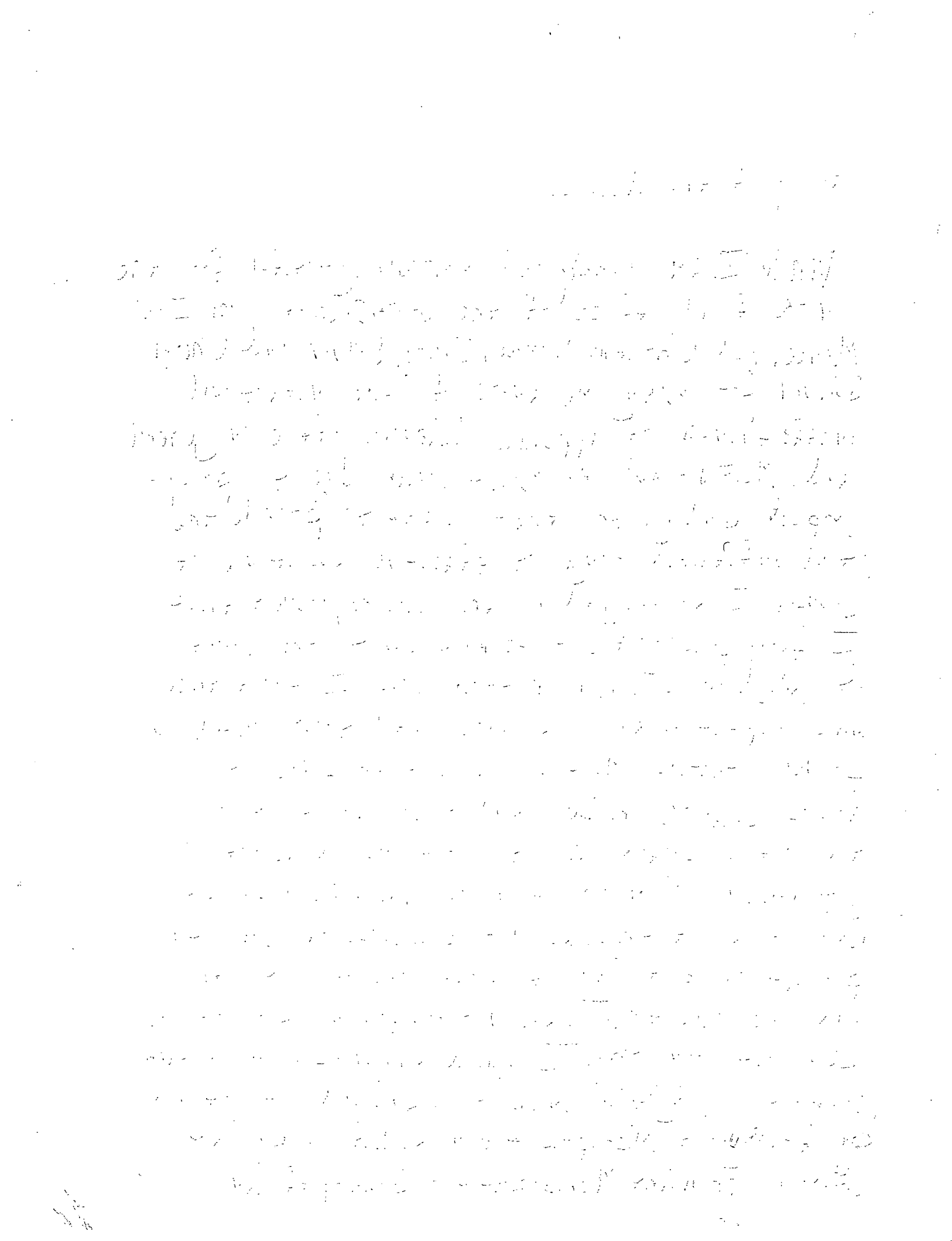
N.C.G.S.A. §15A-1418(a) has required, since 1977, that Motions for appropriate relief must be made in the Appellate division when based upon grounds set out in G.S. 15A-1415 at the time the case is in the Appellate division for review. Subsection (b) of N.C.G.S.A. §15A-1418 Requires the appellate division Court to decide if the MAR may be determined on the basis of the materials before it or whether it is necessary to remand the case to the trial division for taking evidence or conducting other proceedings. (See, 1977, c. 711, § 1)

There is no law requiring a defendant to give up the Constitutional 6th and 14th Amendment protection of effective assistance of counsel in order to file

A MAR in trial court, have it remanded to trial court, or heard in trial court. The N.C. Appellate Defenders office preventing Attorneys from being fully effective is a clear Abuse of discretion that they don't lawfully have and is a clear pattern and practice of depriving it's clients of their United States Constitutional protections of due process and effective assistance of counsel, a violation of the Violent Crime Control Law Enforcement Act, 34 U.S.C. §12601 and Civil Rights of Institutionalized Persons Act §3,42 U.S.C. 1997a(a) In State v. Green it is blatently obvious that trial counsels decision to put on 2 mutually exclusive and antagonistic defense theories was deficient and prejudicial. If James Jordan was alive on July 27th or August 5th, there was no Alibi on July 23rd and every piece of evidence that proved I had ever been in the car owned by James Jordan, the phone records, the MJ Star ring, the Chicago Bulls watch, the witnesses who testified to these matters would have had to be fraudulent. Every piece of evidence that proved James Jordan disappeared on July 23rd would have had to have been a hoax. Not only is this illogical, it insults the intelligence of fact finders, the dignity of the Courts and the

family of the deceased.

While I AM Humbly AND immensly grateful for the work of all officers of the Court, Scott Holmes, Law MANCE, and Christine Mumma, Cheryl Sullivin and Cheryl Sullivan for making me AWARE of the INSTITUTIONAL ineffectiveness of appellate defenders office IN general and, Ms. Foder and Mr. Malcom Hunter, due to policy-imposed bindings on their ability to provide the full unfettered range of effective ASSISTANCE of COUNSEL, I AM obligated by the laws Requirement that I fairly present the facts AND law to the Court to Adjudicate. I have No trust issues. I trust those whose reputations AND characters instill trust until proven otherwise. My family has lost thousands of dollars, health, hope, AND their own trust in the justice system due to officers of Court guaranteeing I would be home AND vindicated AT each stage of this case. Not because of subjective perceptions but due to what was told to them AND me, verbatim. I AM not responsible for others being untrustworthy. I uphold ANY verbal or written contractual obligation unless it is breached or obtained by fraudulent Misrepresentation AS defined by law. (Ex. 7 Fraudulent Misrepresentation, Summary of Law)



STATE V. ALLEN Requires Evidentiary Hearing

State v. Allen 378 N.C. 286, 301 (2021) clearly states the holding that "the question of whether ... counsel made a reasonable 'strategic judgement" is to be answered and resolved by the MAR court after first conducting an evidentiary hearing. The defendant is entitled to an evidentiary hearing to determine whether counsel had a strategic reason for:

1) Arguing, and eliciting evidence to support, inconsistent and mutually exclusive defense theories predicated on James Jordan sightings that were absolutely not credible, not based on investigation and which undercut the alibi defense trial counsel entered contractually binding agreement with the Defendant to present, and promised the jury they would present;

2) Whether trial counsel had a strategical reason to not challenge the conviction based on the fact that the jury's declaration, elicited by the Court with the States consent, verified they didn't unanimously convict Defendant of Felony murder as defined by statutory, common and constitutional law. The U.S. Constitution limits the governments ability to convict and sentence a defendant

in N.C. to cases where the Defendant is unanimously convicted of every element of felony murder beyond a reasonable doubt, including, most obviously, the "killing element"

3. Whether the N.C. Appellate Defenders office had a strategic reason not to file a Motion for Appropriate Relief on the grounds of trial counsels ineffectiveness in asserting inconsistent mutually exclusive defenses and for trial counsel not making an oral or written motion to vacate the conviction due to the jury not unanimously convicting Defendant of felony murder beyond a reasonable doubt. This is an issue of fact that likewise requires a full hearing of evidence provided by Appellate Counsels Irving Joyner, testimony under oath and also would require the trial counsels testimony, to determine if they had a strategical reason for not moving the court to vacate the conviction as was done in State v. Blake 275 N.C. App. 699 (2020)

Further State v. Allen confirms the State v. Fair, 354 N.C. 131, 166 (2001) and McCarver v. Lee, 221 F.3d 583, 589 (4th Cir. 2000) rejection of any interpretation of N.C.G.S. § 15A-1419(a)(1)-(4) which imposes "A general rule that any claim not brought on direct appeal is forfeited on state collateral review"

Appellate Counsel was ineffective for not filing a MAR based on trial counsels ineffectiveness for not raising the two claims under discussion yet the N.C. Appellate Defenders office failure to file the MAR on direct appeal does not mean it is a ground to deny the MAR and these amendments and supplements pursuant to N.C.G.S. 15A-1419. Why not?

§15A-1419(a)(1) isn't applicable here because there is no "previous motion" for appropriate relief. There is only the same MAR that has been pending since 2000, or 1999 if the Court liberally construed my first motion as falling in the §15A-1411 definition of MARs as incorporating any post-verdict motion made to correct errors occurring prior to, during, and after a criminal trial. See also State v. Hindy, 326 N.C. 532 (1990);
§15A-1419(a)(2) isn't applicable because Ineffective Assistance of Appellate Counsel has not been determined previously;
§15A-1419(a)(3) doesn't apply because the defendant couldn't file Ineffective Assistance of Appellate Counsel until after the direct appeal
§15A-1419(a)(4) isn't a ground for denial since this amendment is being filed within the "anytime after the verdict" time frame and the MAR is still pending.

Further, even if the Court, for the sake of argument did decide to deny the MAR pursuant to N.C.G.S. 15A-1419 (a)(1)-(4) the defendant can demonstrate good cause for excusing the grounds for denial and can demonstrate actual prejudice resulting from the defendant's claim pursuant to N.C.G.S. 15A-1419 (b)(1) and (c)(1):

Good Cause To Excuse Grounds For Denial

N.C.G.S. 15A-1419 (c)(1)

(1) Ineffective Assistance of trial counsel and appellate counsel can be proven by a preponderance of the evidence as detailed in this amended MAR and the amended/supplemented MAR's filed concurrently with this motion, and which are hereby incorporated by reference. Counsel's respective ineffectiveness is state action in violation of the U.S. Constitution, the N.C. Constitution and the statutory provisions created by the powers of the N.C. Constitution including the N.C. Legislature power to make law, the N.C. Judiciary power to interpret law, specifically the N.C.G.S. provision mandating appointment of counsel for MAR. The right to an attorney is the right to an effective advocate.

(2) Trial Counsel was not ignorant of the grounds for these claims, nor were they ignorant of the constitutional idea that the state

should be limited in its power to lock a person up for life or decades, or even a day without a defendant being unanimously found guilty of every element of the crimes charged and that the Courts authority to impose sentences and enter judgement depends on its observance of due process with regard to this limitation. Therefore trial counsel decision was not ignorance of these claims and doesn't preclude the defendant from demonstrating good cause.

3) It can't be claimed that trial counsel were inadvertent or that they made a tactical decision to withhold claims related to the claims unless the hypothetical tactical decision was made to convict the Defendant. Why?

(A) The jurys failure to unanimously vote for capital punishment required the Court to impose a life sentence and at no point could the State re-try the defendant for the death penalty so if Counsel had asserted these claims within 10 days of the trial the defendant would have everything to gain and nothing to risk losing. At worst, the State could've re-tried the defendant without the benefit of a death-qualified jury since capital punishment wouldn't have been an option and double jeopardy would've precluded the State from re-litigating premeditated and deliberation murder, would've prevented the State from re-litigating the evidence entered to prove premeditation, and

furthermore, on a new re-trial the State would've had to choose between trying a case with their star witness Larry Demery having to change his narrative yet again or testifying to the same narrative that the first jury had already impeached with their ~~a~~ verdict

It should be noted by the Court and it is asserted by the defendant that N.C.G.S. 15A-1419(c) emphasizes that good cause may not be constituted by ineffective assistance of prior post-conviction counsel nor by trial attorney's ignorance of a claim, inadvertence, or tactical decision to withhold a claim but this subsection does not mention or preclude the good cause exception being constituted by a claim of Ineffective Assistance of Appellate Counsel, the only esquire that carries the shield and sword of the U.S. Constitutional right to effective assistance of counsel after the trial court loses jurisdiction after entering judgement and the Court of Appeals or Supreme Court of N.C. is given jurisdiction.

N.C.G.S. 15A-1419(d)

Finally, the defendant shows and forecast prejudice by a preponderance of the evidence that these errors, claimed herein, during the trial or sentencing raise a reasonable

probability, viewing the record as a whole, that different results would've occurred but for the errors because:

1) If the exclusive province of the jury to find facts would've been asserted by trial counsel's filing a MAR based on the Defendants right to a jury trial being violated by judgement being imposed for felony murder where the jury didn't unanimously find Defendant killed the victim, the conviction would've been vacated - a different result;

2) There is a reasonable probability that if trial counsel hadn't promised ~~that~~ the evidence would show James Jordan was seen alive after the alibi time frame; elicited testimony that his wasn't the body found; failed to keep the promises to the jury, critical credibility wouldn't have been lost, which the State highlighted in closing argument, and the Defendants alibi wouldn't have been undercut. In short, the States most effective evidence was the trial counsel "colunder defense" theories that were mutually exclusive and, with regard to Counsels claims that James Jordan was seen alive weeks after the alibi, were never supported by admissible evidence that, if true, would've been exculpatory.

WHEREFORE, Defendant Requests this Court:
Liberally construe this pro se motion
1) Grant this supplemental and Amended Motion For Appropriate Relief after giving the State 30 days to respond;
2) Grant an evidentiary hearing on all material issues in dispute;
3) Grant leave to Amend this claim and/or supplement it if Counsel serves notice of appearance;
4) Order the Clerk to Copy all documentary exhibits and these Motions and briefs for the State and the Judge, C. Winston Gilchrist;
5) To Avoid the perception of the Defendant as difficult, appoint counsel who will either litigate these claims ~~etc~~ or provide the Defendant with a research memo providing strategical justification not to litigate these claims beyond political and/or personal considerations; or, in the alternative, appoint counsel to be standby counsel to assist with logistical and administrative processes to make this more efficient where the State has unlawfully obstructed access to the Courts by preventing the Defendant from receiving copies of legal documents from private citizens;
6) Order all previous counsel not involved in this case going forward to deliver all correspondence, files, and evidence generated by this case to me and order the

State to not inspect it and to keep it under lock and key ~~except~~ that only I have a key to and to provide the means to read the files to me.

This the 16th Day of May, 2023,

Daniel Green.

Daniel Green #0154242
4600 Swamp Fox Hwy W.
Tabor City, N.C.
28463

Certificate of Service

This motion is being filed and served on the Court this the 16th Day of May 2023 by giving it to staff here at Tabor Correctional Institution and is pre-post paid for 1st class mail, certified mail with return receipt requested it is being mailed to:

Robeson County Clerk of Superior Court
500 N. Elm St. #101,
Lumberton, N.C. 28358

A copy is mailed via courier mail to:

N.C. Attorney General Joshua Stein
N.C. Attorney General's office
P.O. Box 629
Raleigh, N.C. 27602

It is being placed in the hands of staff here at Tabor Correctional Institution

Further it is being filed with the following motions, and briefs, with supporting evidence:

1) Motion To Correct Transcript
2) Amended and Supplemental MAR (This Motion)

3) Amended and Supplemental MAR Part II
4) Amended and Supplemental MAR Part III
5) The Standard of Prejudice in State v. Green (Brief)
6) Motion/Memo of Law on MAR still pending and Assessing and Identifying Prejudice by Pinpointing Jurors Verdict
7) Appellate I.A.C. was not Based on Strategical consideration
8) Request For Judicial Notice of Adjudicative Facts Part 1 &
9) Request For Judicial Notice of Adjudicative Facts Part 2

All of the above are incorporated by reference into this motion except for the Motion to Correct the transcript.

Further, there are two more motions supplementing Defendants pending MAR regarding the Paula Lockler Jury claim and the State withholding Brady information/evidence of Cumberland Counties initial negative luminol test results which were suppressed even after the trial and post-conviction court ordered it to be disclosed.

This the 16th Day of April, 2023.

Daniel A. Green #0154242

Fraudulent Misrepresentation

Summary of Law

A misrepresentation is "material" if the party seeking rescission would have acted differently had he been aware of the fact or if it concerned the type of information upon which he would be expected to rely when making his decision to act. Miller v. William Chevrolet/GEO, Inc. 326 Ill. App. 3d 642, 649, 260 Ill. Dec. 735, 762 N.E. 2d 1, 7 (2001); See also Restatement (Second) of Contracts § 162(2) (1981) (materiality exists when the misrepresentation need not have been the "paramount or decisive inducement, so long as it was a substantial factor." R. Lord, Williston on Contracts § 69:12, at 550-51 (4th ed 2003); See Restatement of Contracts (Second) § 167, at 453 (1981) ("a misrepresentation induces a party's manifestation of assent if it substantially contributes to his decision to manifest his assent"). See Jordan v. Knafel 378 Ill. App. 3d 219, 880 N.E. 2d 1061

When a party claims to know a material fact with certainty, yet knows that she does not have that certainty, the assertion constitutes a fraudulent misrepresentation.

Restatement (Second) of Contracts § 162(1) (1981) is instructive and provides:

"(1) A misrepresentation is fraudlent if the maker intends his assertion to induce a party to manifest his assent and the maker
(a) knows or believes that the assertion is not in accord with the facts, or
(b) does not have the confidence that he states or implies in the truth of the assertion, or
(c) knows that he does not have the basis that he states or implies for the assertion."
Restatement (Second) of Contracts § 162(1) (1981)

Restatement (Second) of Contracts § 161(b) (1981), instructive here, providing that one makes a misrepresentation through nondisclosure:

"(b) where he knows that disclosure of the fact would correct a mistake of the other party as to a basic assumption on which that party is making the contract and if nondisclosure of the fact amounts to a

failure to act in good faith and in accordance with reasonable standards of fair dealing

Exhibits for the

Sixth Supplement to First Amended M.A.R. Part 1

Exhibit #		Page #
1)	2/8/199 Letter from Irvine Foden	4
2)	Paula Locklears interview by Attorney Ian Mance	15
3)	Judicial Notice of Facts	15
4)	Trial Transcript in it's entirety	15
5)	Motion for Judicial Notice of Adjudicative Facts	20
6)	Irvine Foden's Letter	21
7)	Fraudulent Misrepresentation Summary of Law.	24

Amended & Supplemental MAR PART II

State of North Carolina
County of Robeson

In the General Court of Justice
Superior Court Division
No. 93 CRS 15291 - 15293

STATE OF NORTH CAROLINA)
V.)
DANIEL ANDRE GREEN,)
Defendant)

FILED
2023 JUN 15
ROBESON CO. C.S.C.
BY

Motion For Appropriate Relief (Amending Claims Pursuant to N.C.G.S. ~~15A-1415(g)~~) And Supplementing M.A.R. Claims Part II

* * *

NOW COMES the defendant, pro se, seeking to Amend the pending MAR by fairly presenting the facts and applicable laws to claim Ineffective Assistance of the North Carolina Office Appellate Defender Malcom Ray Hunter, Jr. and Janine Crawley Fodor in their capacity as, and of, Attorneys representing the Defendant under sworn oath and obligation, or affirmation, to uphold the United States Constitution, including the Sixth and Eighth Amendment Right to effective Assistance of Counsel, applied to the State through the 14th Amendment. In support of this motion, I respectfully show the following:

PROCEDURAL BACKGROUND AND FACTS

The Procedural Background of the M.A.R. establishes it is still pending.

1. Procedural history documented in prior motions are hereby incorporated by reference as if fully pled.

2. On 3 August 2018 a motions hearing was held in Lee County Criminal Superior Court. Denying defendants request to address the Court, the Court cited North Carolinas prohibition against hybrid representation. Upon Defendants request, Attorney Curtis Scott Holmes withdrew after the Defendant waived Court Appointed Counsel. Through counsel, Christine Mumma, the Defendant Requested the record reflect that the reason I asked Attorneys Curtis Scott Holmes and Ian Mance to be removed from the case was because the operative facts hadn't been adequately reported in the record and included in prior filings. (This did not completely reflect what I asked Ms. Mumma to tell the Court.) Ms. Mumma informed the Court that she advised me, the defendant, that she believed the operative facts had been adequately addressed but that there was time to file something if it was something determined to be necessary. The Court stated "I don't have to instruct counsel on the rules concerning Absolute impasse. I will be happy to allow some time to amend the MAR, if that is what you are asking for." The Court suggested a schedule for closing the pleadings and Ms. Mumma offered that she would only need thirty days to file an amended MAR. The Court granted thirty days for the defendant to amend the MAR, and thirty days for the State to file a response. The Court ordered the pleadings

be closed no later than October 15, 2018. (Exhibit 1 3 August, 2018 Transcript)

3. On 5 September 2018 Defendant filed a Motion for Post-Conviction Discovery. (Ex. 2)

4. On 4 October 2018 Ms. Mumma filed a Fifth Supplement to Defendants MAR based on claims she discovered, and a "missing element claim" I asked to be filed. Still, my desire to file ineffective assistance of appellate counsel claims based on IAC of trial counsel was not complied with to my comfort and as fair presentation of facts and law require. I was told by Ms. Mumma that it was filed and adequately preserved. During this time period the State took me off of 3600 mgs of Neurontins (gabapentin) cold turkey after inexplicably elevating my prescription from 1200 to 3600 mgs. This could've killed me and was known to likely cause damage to mental health. In Robeson County Jail, Dr. Strawcutter inexplicably put me on Ativan and valium for ACNE. It is clear that I have been drugged during critical stages of my case to make me vulnerable to compliance techniques - including deception - to gain my compliance in matters I resisted consenting to. Ex. 3. Ex. 4 Respectively. Also see Ex. 5 For Note about my cellmate notifying counsel I was drugge

5. On 12 October 2018 Judge Gilchrist held a hearing on

on Defendants Motion for Post-Conviction Discovery. The Court granted the motion and Ms. Mumma inexplicably withdrew it under the pretense that if the Court allowed the State time to comply with the order, I would fire her. There was no basis for this assertion to be made and I was shocked, puzzled and upset that I would be blamed for Counsels unilateral choice, Ms. Mumma did not want to tell me what she told the Court she would only say that she "gave up something" for me. Ex. 6 Prison phone recording of Oct.-Nov. 2018 Ex. 6

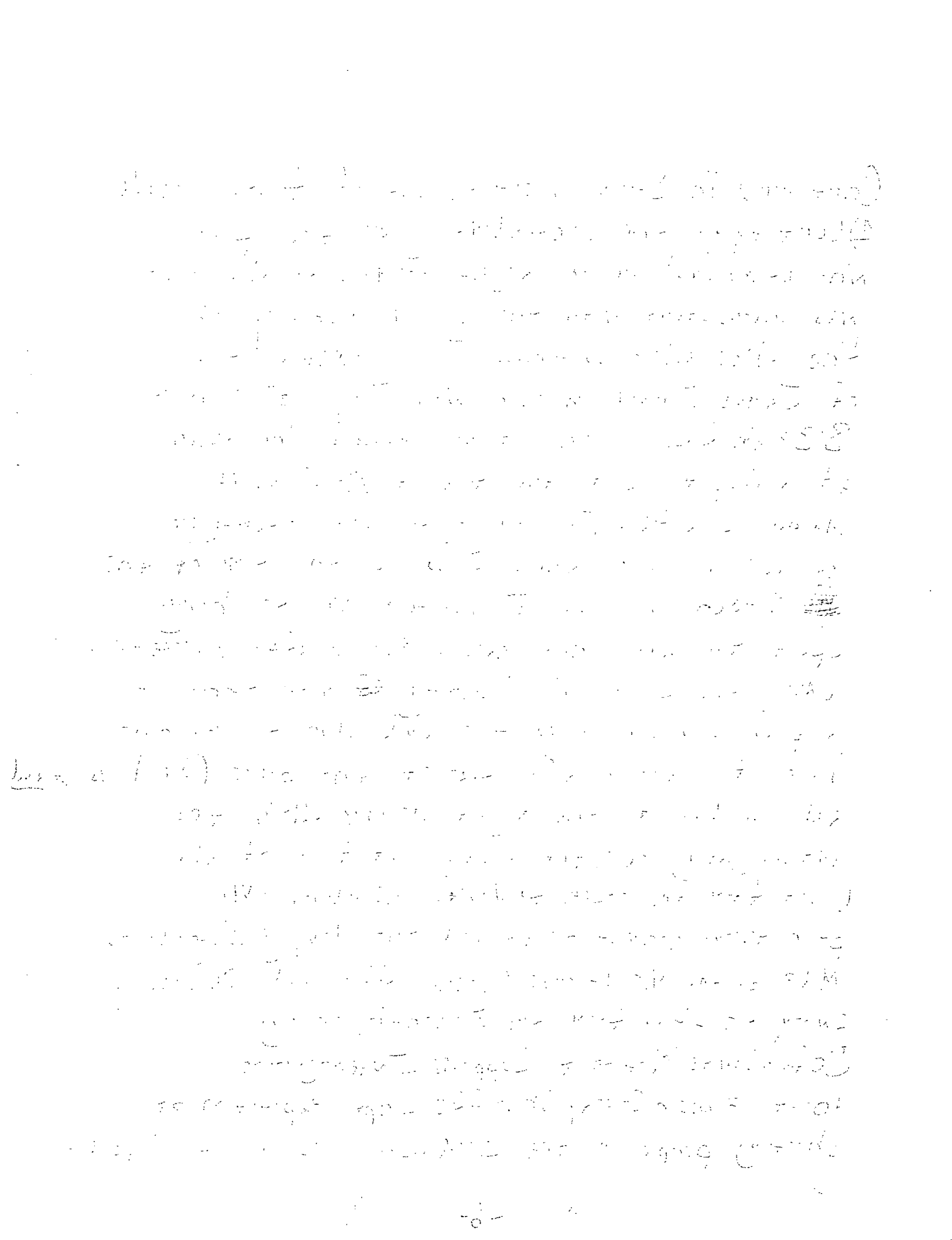
6. On 26 November 2018 the State filed its answer to the Fifth Supplement to First Amendment Motion for Appropriate Relief and the State renewed its Motion to Deny Motions for Appropriate Relief on the pleadings, and the State's Motion to Strike Inadmissible Evidence. Ex. 7.

7. On 5 December 2019 oral arguments for claims and the States motion to summarily deny Defendants MAR on the pleadings were heard by Judge Gilchrist. It should be noted that not only did the State file motions to deny on the pleadings, but, in it's response/answer to Defendants counsel-filed "First Amended" MAR the state (1) moved for summary dismissal and (2) Denied each and every fact pled by the Defendant except for those admitted by the State and supported by the record. Ex. 8.

This response of the State put at issue every fact asserted by the Defendant, whether it was supported by the record or not, which the State hasn't specifically admitted. An evidentiary hearing is required to resolve material issues in dispute.

8. On 6 March 2019, Judge Gilchrist, upon information and belief, informed the parties via e-mail that the pleadings were denied in their entirety and that a signed order would be forthcoming. Upon information and belief the Court also instructed the State to draft a proposed order. Upon information and belief, within a month or so the State sent the Court and the defense ~~a~~ pro a proposed order that violated N.C. General Statute §1A-1, Rule 11(a) in that it was not "well grounded in fact" and that the interposition of misstatements of facts-which the Court relied on due to the Courts officers, Ms. Ayana Danielle Elders and Jonathan Babb signing and certifying it- was indeed improper, led to the Defendant and victims family being harassed by propeganda architected by officers of the law and officers of the Court, and, further caused unneccessary delay and needless increase in the cost of litigation (four years almost and the cost of litigating a petition for a Writ of

Certiorari). The States misstatement of facts include: 1) Certifying the Defendant gave the police who interviewed me on August 14th, 1993 an alibi that was inconsistent with the sworn testimony of the alibi claim witnesses. The uncontested time of James Jordans murder was July 23rd, about 3:30 am based on the States witnesses. The absence of a dispute about the time of Mr. Jordans murder is a fact. The investigators who interrogated me did not ask where I was at the time of the ~~Murder~~ murder nor did I volunteer due to having spent two and a half years locked up, after voluntaringly calling the police and cooperating ~~with~~ with them on a previous vacated conviction and due to my own lack of maturity and fear of the police. (See, transcript and audio recording of the August 14th, 1993 Authorities interrogating me; the findings of fact of the Court from the order to vacate Defendants only prior felony conviction; proposed order denying Defendants MAR by the N.C. Attorney Generals office and Defendants sworn testimony from the Evidentiary Hearing on Defendants Motion to Suppress Interrogation About Robeson County Sheriffs Dept. Reputation of shooting people in the back. Ex. 9; Ex. 10; Ex 11; Ex 12. 13.)



9. On 6 March 2019 a person identifying herself as Christine Mumma, Executive Director of North Carolina Center of Actual Innocence notified me of the Courts Administrator, Ms. Natalie Munz, notification by e-mail, that the Court denied the MAR and granted the States motion to dismiss on the pleadings without an evidentiary hearing. This conversation was held by telephone while I was at Lumberton Correctional Institute in Robeson County. I was utterly shocked since Ms. Mumma stated to me as a fact that Judge Gilchrist absolutely was granting the evidentiary hearing and would most likely vacate the conviction without holding an evidentiary hearing. Not just her opinion but as an absolute 100% fact.

10. During the same phone call Ms. Mummas impersonator, according to her, stated that Judge Gilchrist denied our MAR for the following Reasons:
(1) She said "Michael Jordan got to him" (the judge). Later, the same apparent impersonator said she meant Michael Jordan's "influence" caused Judge Gilchrist (who operates under a Warrant of Authority and under oath) to deny the Motion for Appropriate Relief.
(2) Because of conversations she and I had about my

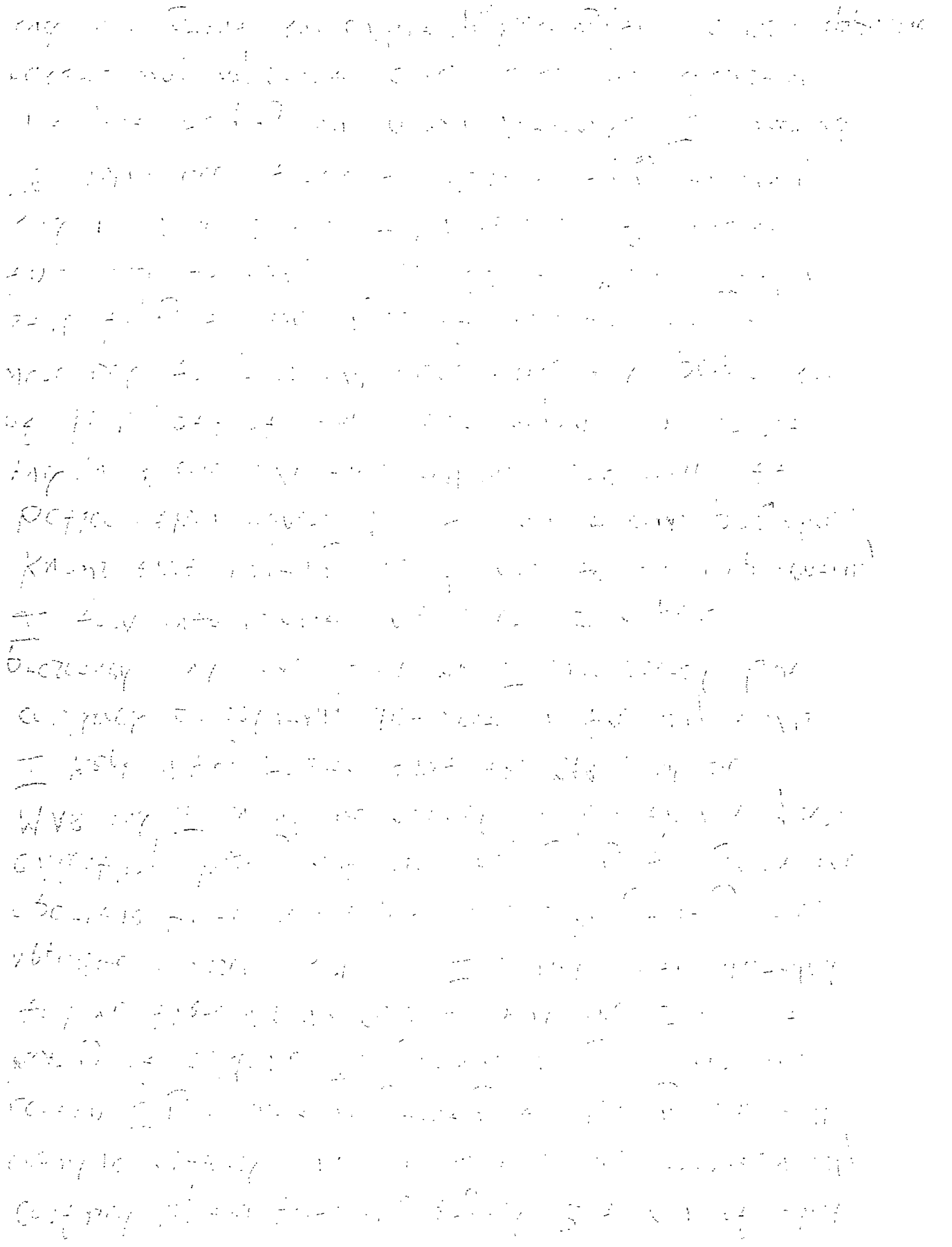
concerns about her discussing my case and strategizing about my case with Senator Danny Britt, a Robeson County Attorney; not because I attributed negative intentions to him but because supposedly he's related to Luther Johnson Britt who prosecuted me and who has (1a) broken the Courts order to not talk to the media about this case (2b) committed perjury in an affidavit he gave WBTV to defend their 2007 defamation of me (3c) colluded in Larry Demery's unlawful plea adjudication and misled the Court at my trial regarding Larry Demery and Richard Locklear. The voice apparently impersonating Ms. Mumma stated she was mistaken to deal with Senator Britt and described him as a "snake".
(3) She said another reason the judge denied the MAR was because of conversations I had with a lady who identified herself as an ABC or NBC reporter from Florida, Tammy Leitner who wanted to interview me about potential state witness Ronald Fletchers confession to me that he lied on me to the police, that he was ~~best~~ "best friends" with James Cassidy, a juror on my trial and that James Cassidy and Angus Thompson were members of a N.C.G.S. 14-12 fraternal organization that he was supposed to have been admitted into but wasn't. He stressed that he was sick, that I needed to send a lawyer to see him and he apologized for

lying on me again and for his role in my conviction.

(4) The person I spoke with, who identified herself as Chris Mumma sounded very upset, excited, and sounded like she was crying.

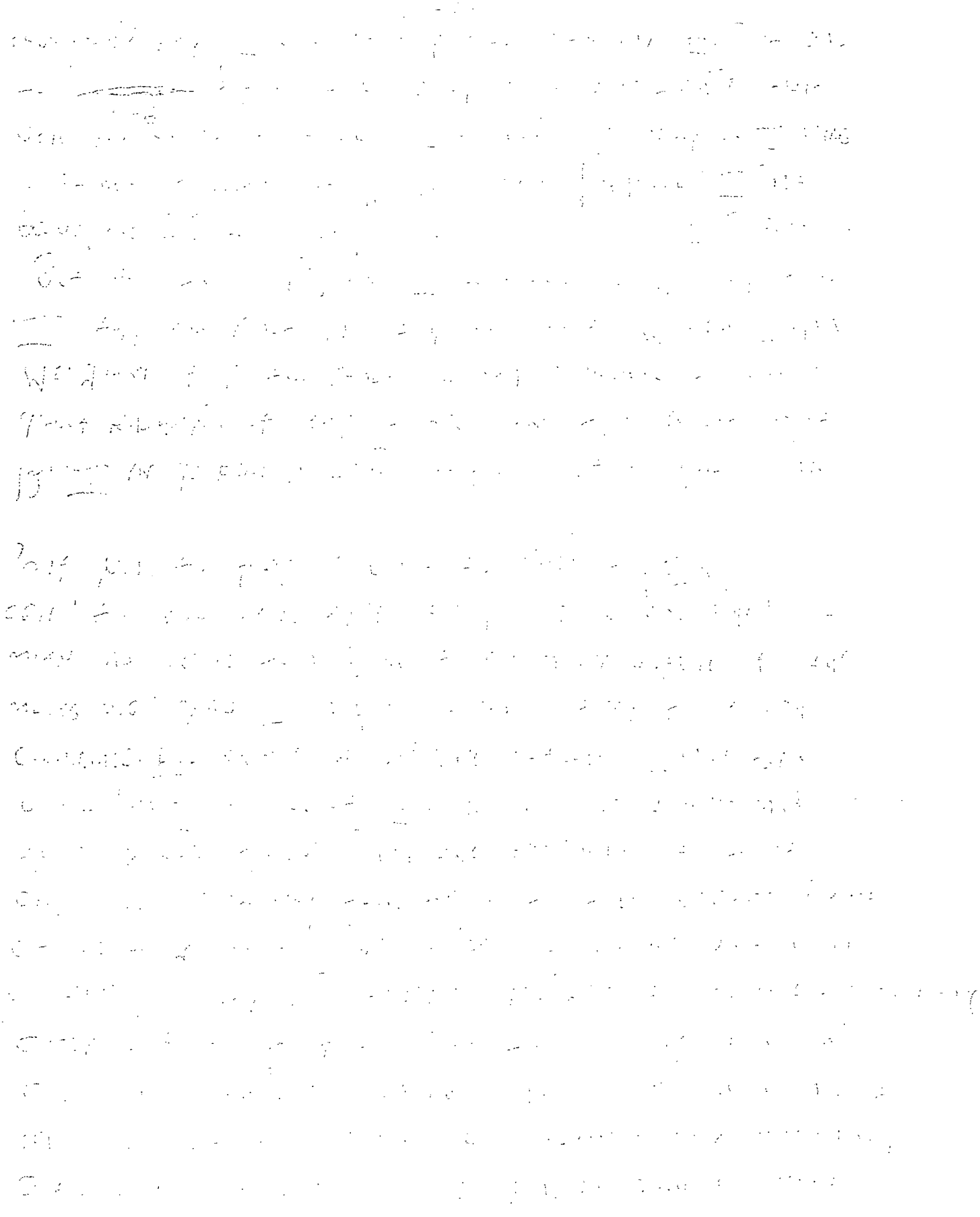
11. The person who apparently was impersonating Ms. Mumma always sounded convinced that the above referenced reasons were the only reasons Judge Gilchrist denied the M.A.R., and when I suggested he may have denied it because of misplaced chivalry based on her misstatement of fact that I would probably fire her if ~~she~~ he allowed the State time to comply with his order to the Attorney General's office to surrender their files on this case which to me was a forseeable risk, or that he may not have liked that she read her oral argument on December the 5th which I was confused by also, or that he didn't like that she and Cheryl Sullivan kept smirking and giggling at the Attorney General's lawyer, Ayana Danielle Marquis Elder as she argued (when I asked her in court why were they doing that Ms. Mumma responded "Because she's lying" and I asked her to stop behaving like that and to tell the Court she's lying and motion for sanctions and charges). I also suggested that perhaps he was

confused by the facts she argued. But none of that should've mattered since she told me she could absolutely certain Judge Gilchrist was granting the hearing, the full hearing of evidence. This guarantee was given when she told me there was no need to plead the I.A.C. of appellate counsel claim as I wanted, with detailed operative facts, because not only was he granting the evidentiary hearing but was likely going to grant the MAR and I would be released in less than a year. I kept listing reasons that the MAR could be considered procedurally deficient in the way it was presented and she told me I was scared but I took into account what every Black person knows, that anything we do has to be exponentially better than others due to implicit bias, prejudice, and in a case like this, billions were make off of laws, off of the meist myths, my arrest, were used to piss and perpetuate and people are still trying to use Angles of deception to use this case to make money off of Michael Jordan and his name. So out of an abundance of caution I have been forced to insist on tying my camel, not just relying on human nature. As I enumerated reasons why any court could abuse it's discretion and not grant an evidentiary hearing (trial counsel, appellate



Counsel and post-conviction counsel have all, without exception, advised me that this case has been affected and determined based on extrajudicial influences and reasons which weren't based in fact but at the same time instead of relying on the law and legal remedies designed to protect the Court and citizens from exactly these types of abuses and crimes each has benefitted from failing to take measures against these wrongs which gives the appearance of tacit encouragement or consent. To close one eyes in this way is connivance. For example, my Appellate Attorney Janine Fedor wrote me, when I was 21 or 22, confined to a cell with no access to a phone, to the world outside of the cell, to the laws, that "the law is on your side, you just have to find a Court to apply it." Ex. 14

12. I am deliberately being careful to state what I have direct knowledge of and, at the same time, accept what Ms. Mumm told the Court on 29 September 2023 when I told the Court she told me that "Michael Jordan get to the judge," when I told the Court she said that people" are going to kill [me]," the same people she said Judge Gilchrist is probably a member of. Ms. Mumm said "Your Honor, I just have to object to these - I'm sorry. The record - I have to ~~object~~ DO put on the record that the things that are being said, I completely disagree with, and I'll just leave



DE [redacted] it at that." (Transcript Page 19:9-12) (See T. page 16-19 Transcript 29 September 2022, held in Harnett County, Lillington, N.C., Ex. 15

13. So, evidently, the person I spoke to on the phone and who wrote me saying what I attributed to Ms. Mumma is an impersonator and since the State has exclusive control of the transmission of my mail once it comes to the prison and my phone calls to Ms. Mumma phone number, the State, evidently, violated the United States Constitution and the North Carolina Constitution by (a) Intercepting her typed letter to me and exchanging it with a forged letter that list the reasons the Court denied the MAR in 2019 and 2020 (Ex. 16) (b) Intercepting my phone calls to Ms. Mumma phone number before the fifth supplement to the MAR was filed and impersonating her voice to make me think I was talking to her and that Ms. Mumma did indeed adequately claim Ineffective Assistance of Appellate Counsel and other claims (subclaims) that Appellate counsel was ineffective for not raising on direct Appeal which I am pleading in this and attached motions while the MAR is still pending pursuant to N.C.G.S. 15A-1415(g); (C) Apparently impersonating me by having Ms. Mumma think I

was calling her when I didn't.

For example on a May 17, 2018 e-mail exchange between Ms. Mumma and Curtis Scott Holmes on his North Carolina Central University e-mail that Holmes gave me on 17 May 2018 Ms. Mumma is quoted as saying, in response to accusations by Holmes, that "I do not have meeting with Daniel on the phone. We've all had the many phone calls with Daniel and know how that works, so I won't waste time responding to that comment. I try to ignore a lot of his calls, but I missed many phone calls from other inmates because I make a decision not to answer a call from that number." Ms. Mumma denied saying these things to me. It is an indisputible fact that (a) every time I called Ms. Mumma during that time she instructed me to. On the documentary Moment of Truth Ms. Mumma is shown commenting on how often I call her when I called her as she and an expert examined the Lexus but it is obvious from the footage that she kept checking her phone. I called at that time because she instructed me to to and I didn't know she was shooting a documentary about my case at that time nor on the day we went to Court on 5 December 2018. If any prisoner calls anyone from N.C. prisons before a person accepts the call by pressing 5, the prisoner name is given. So, Ms. Mumma couldn't miss calls from other inmates on her caseload in an attempt to avoid my calls because I never used any other of her clients names, nor could I, and I called when she instructed me to. The high volume of calls were due to her request. (Ex. 18 E-mails between Scott Holmes and Christine Mumma on 17 May 2018)

14. I AM making a record of these facts to show cause, should it ever become necessary, to excuse claims of procedural default the State could raise for dilatory ~~per~~ purposes or from an honest good faith belief that I AM procedurally barred from raising ineffective assistance of counsel due to ineffective assistance of appellate counsel as the State drafted in the proposed order to deny the MAR in 2018. As a matter of law, the Court of Appeals decision to vacate the Courts denials of the MAR, the motion to reconsider, the motion to supplement the record placed the MAR back in the procedural stance it was in before the Court issued the orders appealed by the Defendant and therefore the MAR can be supplemented and amended since it is still pending but out of an abundence of caution - and to prevent the State from arguing and prevailing on a procedural bar because the State may not believe I know it is not applicable now (because a tree is not perceived to have fallen if no one sees or hears it fall) - I am making the State and the Court aware that the facts and law pleaded herein will ~~asserted~~ be asserted pursuant to N.C.G.S. 15A-1419(c)(1) if necessary to show cause to excuse any arguable

procedural fault due to appellate counsel not raising these claims on direct appeal.

15. On 6 March 2019 defense counsel filed a Motion For Reconsideration moving the Court to reconsider its denial of claims raised in the MAR, supplemental filings and, neccesarily, the Courts 3 August 2018 statement that pleadings in the case would be closed no later than 15 October 2018. The 5th Supplement was filed on 4 October 2018 which made 26 November 2018 the date the pleadings were closed. The defendant raised two new claims in the Motion for Reconsideration:

A) Newly Discovered Recantation Evidence of Larry Demery, and,

B) The State intentionally deceived the Court and the jury By presenting Evidence It Knew To Be False in violation of Defendants Constitutional Right to Due Process.

16. Upon information and belief on 8 March 2019 the State filed a Response in opposition to Defendants Motion for Reconsideration and a Motion to Deny new claims on the pleadings and a Motion to Strike Admissable evidence.

17). On 8 March 2019 the Defendant filed a response to the States Responses referenced in paragraph 16 herein.

18) Almost a year after the Court denied the MAR on 6 March 2019 the Court issued it's written order denying the MAR on 20 December, 2019. The Court, in the same order, also denied, summarily, defendant's Motion for Reconsideration on 20 December 2019. The Court summarily denied "defendant's Motion for Appropriate Relief, all amendments and supplements" as well as "Any and all claims by Defendant not specifically Addressed" within the Order denying Motion For Appropriate Relief, Including Amendments and Supplements. Ex. 12 Order Denying Motion For Appropriate Relief, Including Amendments and Supplements.

19). On 30 July 2021, the Defendant, through Counsel Guy Lorenger and Christin Mumma filed a petition for a Writ of Certiorari seeking review of the trial Court's order denying the motions for appropriate relief, including the supplements and amendments there of, the motion for reconsideration and the motion for an evidentiary hearing.

20. By order dated 30 November 2021 the Court of Appeals allowed the petition, vacated the orders and remanded for reconsideration in light of State v. Allen, 378 N.C. 286, 2021-NCSC-88. (See Docket in Case No. P21-284). The Court of Appeals order restored State v. Green to the procedural stance the Motion For Appropriate Relief was in prior to the orders the Court of Appeals vacated on 30 November 2021- including the 3 August 2018 oral order of the Court that pleadings would be closed no later than 15 October ~~and~~ 2018

21. N.C.G.S. 15A-1415(g) allows the defendant to file amendments to a motion for appropriate relief "at any time" before the hearing on the merits of the claims asserted in the motion for appropriate relief has been set. That time is now.

22. On 12 April 2022, upon information provided by the State and Ms. Mumma, the trial court held a status conference and allowed briefing on how State v. Allen applies to Defendants MAR claims, on or about 27 June 2022 Defendants counsel served the State with

their brief (See Ex. 19 State's Response To Defendant's Brief In Support OF Evidentiary Hearing Which is on file in the Clerks office) (See Ex. Defendants Brief Ex. 20)

23. The Right, indeed, the duty of courts operating under A warrant of authority and under oath to protect the procedures, including N.C.G.S. 15A Criminal Procedure and to take All reasonable means of ensuring A fair trial to every litigant is beyond question; And clearly the Courts have the inherent power to take Appropriate remedial measures" to protect their processes from prejudicial outside influences AND interferences. Sheppard v. Maxwell, 384 U.S. 333, 363 (1966) When officers of the Court AND/or Officers of the law engages in conduct which interferes with those processes, that lawyer is subject to censure. Id. As AN officer of the court, A lawyer has A higher duty than A lay person to protect the judicial process AND to ensure its fairness; certainly they Are subject to more disciplinary sanctions. Hirschkop v. Snead supra 594 F.2d At 366. Also see Manual for Complex Litigation § 42.3 IN general

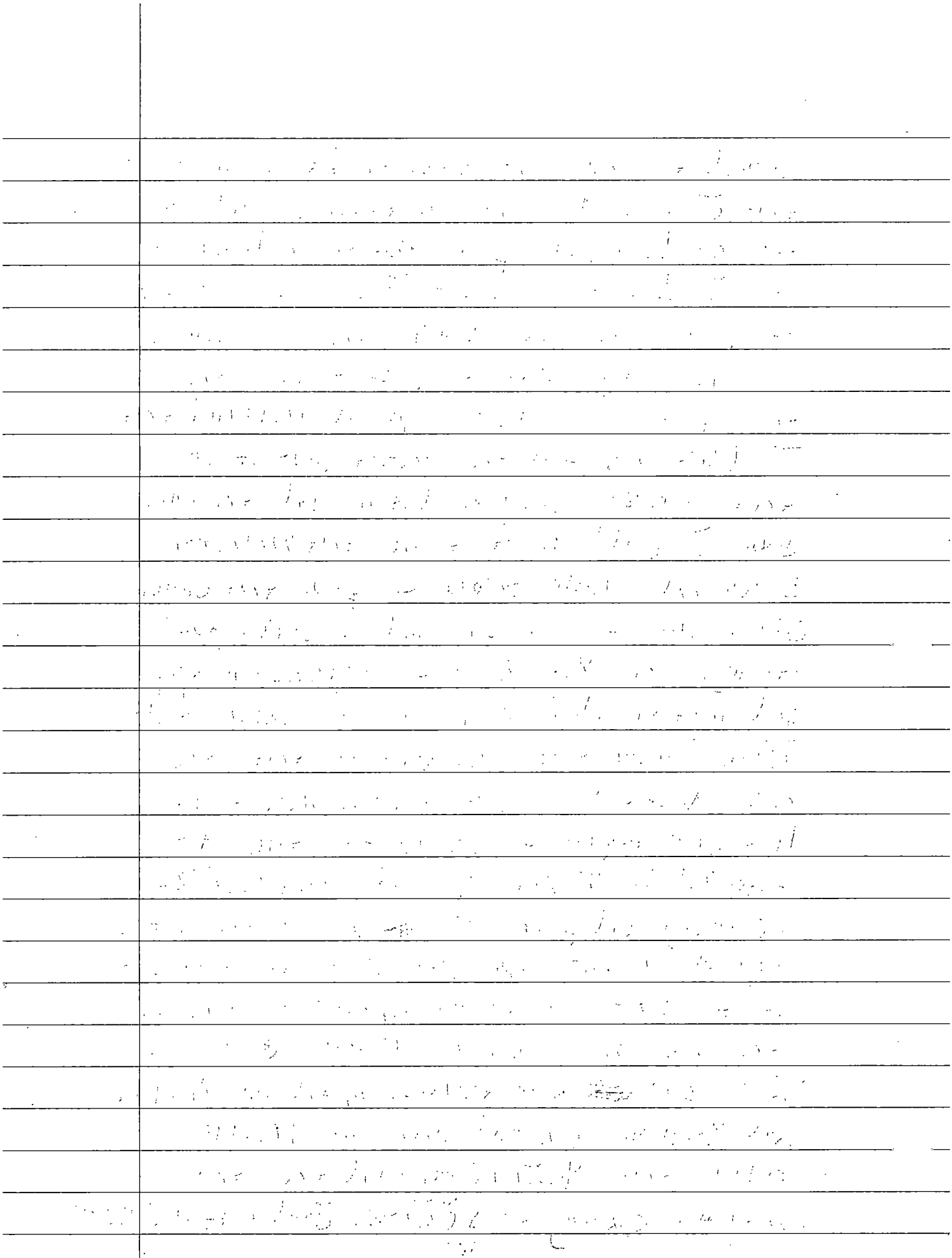
24. On 11 October 2012 former post-conviction counsel, Curtis Scott Holmes, while still employed by Brock, Payne and Meece, P.A. in Durham, N.C. wrote me a letter reminding me to send him a letter with my requests for information to UNC-Chapel Hill (Regarding their involvement in my case via the I.O.G. at the trial stage by providing Research, consultation, and strategical advice to my trial counsel as evidenced by Woodberry Bowens Fee Application Form and attached time sheets, and, also, to determine whether such involvement in my case was permissable considering Michael Jordans status at UNC-Chapel Hill, the Jordans funding a Jordan Family Center at UNC-Chapel Hill, Mr. Holmes former employment by the UNC-Chapel Hill Institute of Government, specifically after I put Indigent Defense Services Director Thomas Maher on notice on 6 February 2009, before Mr. Holmes was appointed that if Mr. Maher appointed an attorney affiliated with UNC-Chapel Hill or the Institute of Government there will likely be a conflict")(Ex. 21 Letter from Defendant to Thomas Maher, of I.D.S. dated 6 Feb. 2009). Mr. Holmes, who was familiar with evidence tampering and justice denied by dilatory tactics and rank obstruction of justice in State v.

Green unilaterally expressed his plan to (1) work on this case some each day, (2) Provide multiple reports per week regarding his progress, and, Mr. Holmes communicated his understanding of my frustration with this situation, with my perceived distrust of his work on this case and his hope to earn my trust with the work he intended to provide (Ex. 21) (11 October 2012 letter from Curtis Scott Holmes to defendant.)

25. At the time I neither trusted nor mistrusted Mr. Holmes. I neither trust nor mistrust people until their character and actions reveal their trustworthiness or lack thereof, and that is subject to change based on their actions.

26. I did have reservations due to his work history, his affiliations. And, the Memorandum prepared by his interns, Ian Mance and Aaron Johnson which described Ivan Johnson as "credible" (the librarian who chimed to see James Jordan in a Cumberland County library days after his murder) and their overall willingness to credit that theory disturbed me because that was a point of contention between my attorneys and I during the trial and to me,

seemed to create the necessity for me to prove that James Jordan and his family colluded to fake his death, and prove that the body Demery and I disposed of wasn't James Jordan on top of proving the Alibi defense- the only defense I expected my lawyers to present when the trial started. I was so naive and uneducated that I didn't understand the inherent conflict in these mutually exclusive defenses and the only sense I could make of it was that Woodberry Bower had concrete evidence to prove that James Jordan was still alive and had a smoking gun strategy like Matlock, a tv lawyer, because they said "Trust me!" Obviously, no one would believe that James Jordan faked his death or that the body identified by dental records weren't his. Not even taking into consideration the details Referenced in Mr. Mance's Memo of 9/11/12 (Ex. 22 (cover page and pages 44-51) ~~and~~ and/or the details covered in the memo authored by whomever sent it to Rick Persons (Alan Persons) and Bob Persons, the men who interviewed Woodberry Bowen in 2009-2010 ~~and~~ with Amanda Lamb, and who Mr. Mance and Mr. Holmes consulted with who likewise believe that Mr. Ivan Johnson and the other witnesses claiming to see James Jordan after July 23rd



are credible, contrary to my belief that they aren't credible and are either honest mistaken or deliberately lying to inject themselves into a high profile case or colluding with those who are or were involved in a nefarious scheme for money. Ex. 23 "State Misconduct In the Identification of John Doe."

Assuming for the sake of argument that the details in this memo are factual, the conclusion, to me, would suggest that South Carolina authorities prematurely cremated the body and then, once they realized that it was James Jordans body, they fabricated evidence to prove that it was James Jordans body with a paper trail to prevent questions from spreading about the identity. This isn't inconsistent with it being James Jordans body to begin with but would show that authorities were willing to fabricate evidence to win a conviction and, in doing so, created prejudicial evidence that prevented impartial factfinders from seeing just how obvious it was that Demery lied about how the shooting occurred to earn his plea bargain benefit. (Ex. 24 Defendants 5th Supplement to Motion For Appropriate Relief filed in 2018)

27. If necessary the Defendant can and will show, by indisputable evidence that the following is factual as I hereby aver under penalty of perjury:
a) Post Conviction Counsel fraudently misrepresented facts to the Court and Defendant to sabotage Defendants post-conviction relief efforts Ex. 25 (Regarding Mansfield)

b) Post Conviction counsel, recognized by law as Defendants "Agent" fraudently misrepresented facts to the Defendant regarding surrendering the file in his possession generated by State v. Green, to me who it rightly and lawfully belongs to, which precluded the possibility of Defendant, as the principal, from directing him to raise and fairly present Ineffective Assistance of trial and Appellate counsel and presented me from fairly presenting all claims myself, Ex. 25, including those claims raised herein;
c) Post Conviction counsel also suggested that the Court throw away the copy of his filing that would've put me on notice of his attempt to characterize Defendants M.A.R., as pled and as it could be pled, as frivolous. Ex. 25;
d) As early as 2012, if not earlier, post-conviction counsel identified the facts that are operative with regard to the I.A.C. based on trial

counsels inconsistent, mutually exclusive defense theories that trial counsel, as officers of the court, members of N.C. state BAR and as Defendants Attorneys, told the jury the evidence ~~the~~ would "Absolutely" show and contended it would show, and which they, in fact, elicited at trial. Ex. 21 and Ex. 22;

e) As early as 2016, before North Carolina Center for Actual Innocent entries into the case, I identified the facts and law (based on limited access to my transcript, memory, and law) of the claim denominated the "missing element claim" in the 5th Supplement to the MAR. filed by Ms. Munns and Ms. Sullivan of NCCAZ. Ex. ~~20~~ 26 (opinion ~~from~~ printout dated 1/1/16 state v Bonnes N.C. Appellate Courts) Ex. 27 (5th Supplement to M.A.R.) and I directed Counsel to fairly present the facts and law supporting this claim for the purpose of:

1) Demonstrating the jurors final verdictum invalidated their earlier guilty verdict, and,

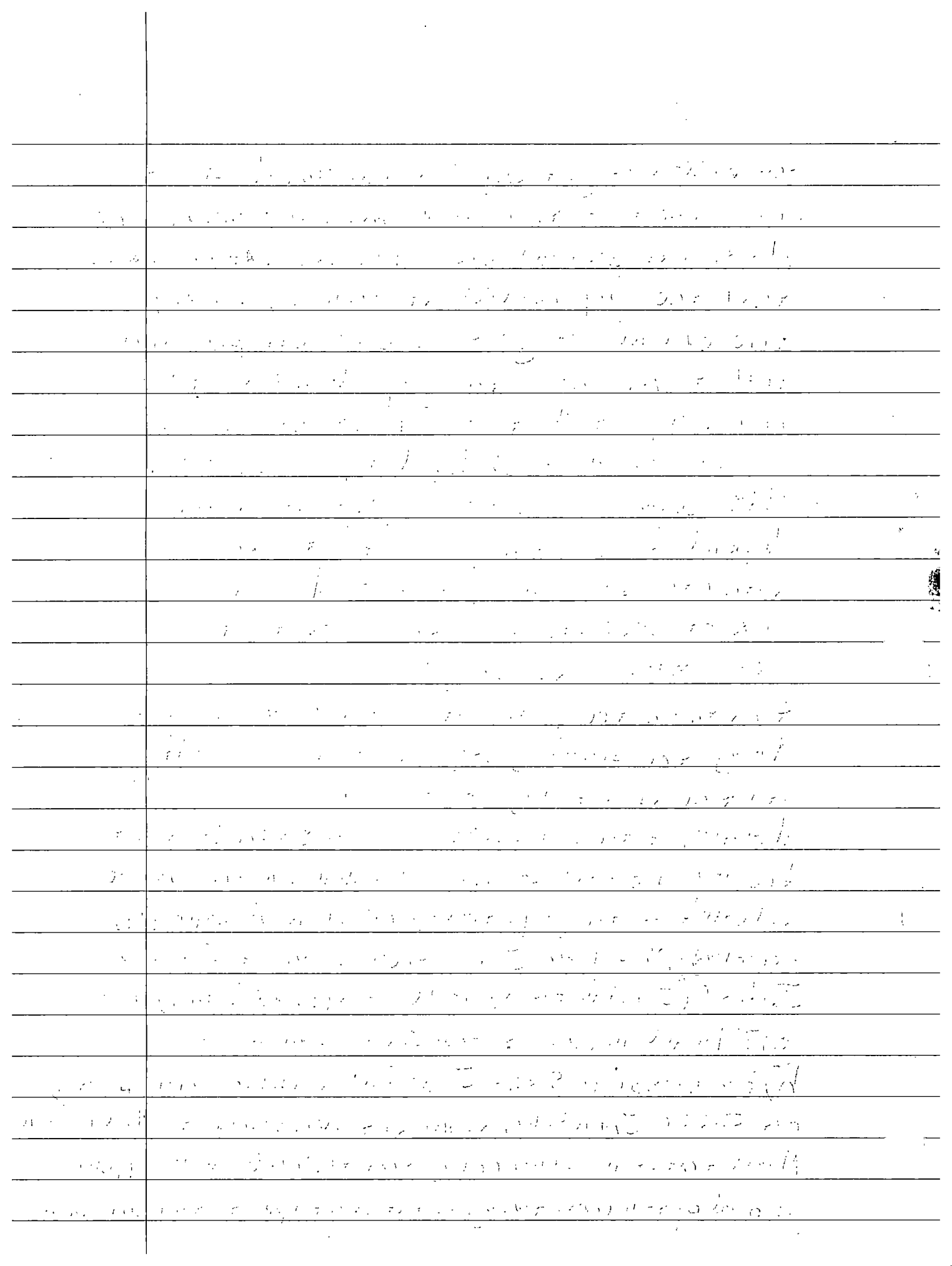
2) Precluding any contentions that there was overwhelming evidence of guilt of the felony murder the court instructed the jury on due to the fact that the exclusive fact finders at trial, the jury, revealed they didn't unanimously find I killed James Jordan which necessarily rejects the conclusion

that evidence of guilt beyond a reasonable doubt of every element of felony murder was overwhelming. The M.A.R. has presented even more exculpatory evidence than the jury revieved at trial so, obviously, the evidence of guilt is even less persuasive than it was when the jury declined to unanimously find that I killed James Jordan, which, if challenged by Counsel via a MAR before the entry of judgement, would've deprived the sentencing Court of the authority to enter judgement due to the lack of unanimity on the verdict of felony murder as charged.

f) Although the juries 1st verdictum was elicited during the sentencing stage that does not affect it's force as a finding of fact. The jury is the lie detector; not the State, Defendant or Court. But the Court, not the jury is entitled to Appraise and determine the nature and effect of the jurys findings and adjust and enter judgement accordingly. That is why I raise these claims of I.A.C. and I.A.A.C. (Ineffective Assistance of Appellate Counsel) now.

g) I directed all counsel to raise I.A.A.C. since 2000.

h) For example, on 5/27/21 I drafted a research memo pointing out I.A.A.C., Jannie Foder, as well as to demonstrate to Ms. Christine Mumma that State v. Stevens holding that the N.C. Court of Appeals is bound by trial courts findings of fact don't apply to this case cause



this Court, the trial Court, not holding an evidentiary hearing to find facts that would've bound the N.C. Court of Appeals to the trial courts findings of fact in its order denying an evidentiary hearing and denying the M.A.R. This memo was written and delivered to Ms. Mumm. We then had a phone consultation on the prison office telephone, Arranged by my case manager Ms. Tobler. Present on the phone was myself, Dr. Theodore Anthony Spearman, the former NAACP President and co-founder of BRIDGE (with myself), Ms. Mumm, Ms. Cheryl Sullivan, and other NCCAI staff Attorney Guy Lemmger. Dr. Spearman moderated the conversation. I had already asked Ms. Mumm was there a strategical reason she did not want to ~~had~~ have an evidentiary hearing in trial court she said "No", Establishing that, I couldn't see any reason for her to adopt State v. Stevens as authoritative in this case for the reasons set out in this case and for the reasons confirmed by earlier precedence and which State v. Allen confirmed a few months later. The memo I had sent to Ms. Mumm argued the positions that State v. S[redacted]06 Allen ultimately confirmed and, even argued ~~that~~ the N.C. Supreme Courts dissent with regard to nonmovants evidence being

considered true for the purposes of the Court determining whether an evidentiary hearing is warranted After the moving party (the State in this instance) filed a motion for summary judgement. Although the dissent used examples where the State was the nonmovant, such as when the Defense files a motion to suppress, for example, the rationale behind all the examples provided is that when there is a controversy, a material issue in dispute, the Courts, in civil and criminal cases, accept sworn and certified evidence as true for the purpose of bestowing jurisdiction upon the Court to hear the matter. If the law says that (taking for granted that the facts are proven) the moving party will, under law, prevail, the Court must only determine, then, whether the averred facts are indeed facts and not lies, not, merely allegations. Normally, an Attorneys certification of a MAR is adequate for the Court to grant an evidentiary hearing since they are officers of the Court whose word is supposed to be their bond and binding on them and the Court. It is a fetter that can't be broken without consequence to the Courts reputation, integrity and it's warrant of authority. Ms. Mumma acknowledged this

memo was received, disputed the position it asserted and later told me the petition for writ of certiorari would be amended to reflect the same position due to the N.C. Supreme Courts ruling in State v. Allen which has the same fact pattern, in general, as the version Larry Demery first told me about the killing when he enlisted my aid to help dispose of the body but does not have the same fact pattern as the facts of my defense because I had no involvement in James Jordans death and was not present when he was robbed and killed. But State v. Allen as earlier precedence and authority, fully validated that by law I am entitled by law to an evidentiary hearing. (Ex. 28 5/27/21 Memo by Defendant to Christine Mumma; Ex. 29 Appellate Opinions Ms. Mumma sent me highlighting holdings that the Court of Appeals are bound by trial Courts findings of fact in support of her advice to me based on the supposition that the Courts findings of fact on certain claims couldn't be challenged which I disagreed with. (Ms. Mumma did later send me an audio message saying she always said the same thing I said in the memo, after State v. Allen was decided).

Further, on 5/27/21, I memorized the facts and legal rationale to support I.A.C. of Appellate Counsel, (Ex. 28 5/27/21 Memo by Defendant to Christine Mumma) but let the record reflect that in court, when the jury's verdictum was published and I realized they did not unanimously find that I killed James Jordan, I asked trial counsel, "How can they convict me on a version that no one testified to and which the State didn't accuse me of?" Not because I was "smart" or knowledgible about the law but because it was a common sense question that has always nagged at me: How can I lose my life for something I didn't do and for something no one even accused me of? Why wouldn't any of these people with money, nice homes, nice communities, status, education, respect help me? Why not just make someone answer the question by filing it?

WHEREFORE, Defendant moves the Court to grant this Motion and order:

1) An investigation into whom impersonated Ms. Christine Mumma during phone calls with me, and by letter as described herein

which resulted in misrepresentation of fact being conveyed to me for me to base material decision on regarding what should be filed, when it should be filed, and if it should be filed, to create distrust in the relationship between Ms. Mumma and I and possibly Curtis Scott Holmes, Inn Mince and I.

2) Grant the claims herein and/or grant an evidentiary hearing where material facts are in dispute (such as whether appellate counsel or trial counsel had a tactical reason to not raise the missing element)

3) Order the State of North Carolina to respond to this motion and Motions filed concurrently with it and or motions filed by Defendant in 2023;

4) For the Court, sua sponte, to issue summons and arrest warrants on any individual who submits false information to the Court; who violates their oaths as officers of the Court; officers of the law or officers of any Constitutional powers and or to allow the Defendant to initiate criminal process where warranted by fact and law to protect due process and the integrity of the Courts; This the 16th Day of May 2023

Daniel Green

nccai North Carolina Center on Actual Innocence

Identify, Investigate, and Advance Toward Justice

P.O. Box 52446 Shannon Plaza Station, Durham, NC 27717-2446
admin@nccai.org (919) 489-3268 (Phone) (919) 489-3285 (Fax)

August 2, 2020

Dear Daniel,

I thought it might help to cover some things in writing so we can try to avoid some of the confusion/misunderstandings. We might try only communicating by mail for a while to see if that helps as well.

One of the things that gets brought up over and over when we talk is what I previously covered in an affidavit for you. I have always admitted that I said I was 100% confident that you would be granted an evidentiary hearing under the law. I still believe that, but I should never have said that to you and I'm very sorry I did. When Gilchrist denied the hearing, I was surprised, to say the least. I threw out all kinds of reasons why he denied it, including the phone calls with Tammy, that the high-profile nature of the case was too much and he just wants the COA to make him do it, to not liking you, to not liking me, to Jordan's influence, etc. I don't know why he denied your hearing, but I do know that there are questions of fact that could have changed the outcome of your trial and they are required to be heard in a hearing under the law. That is what we will show in your petition if you let us file one.

I never told you that you would be home by Christmas. That was Ian. I never made any predictions on the outcome of your hearing and would not have taken that leap before the judge ruled whether you got one, if then.

I've attached a few things to this letter that may help with some of the other issues we've discussed repeatedly:

1) Everything that has been filed on your behalf since oral arguments. You may have been confusing our request for appointment of counsel with notice of appeal. We did not file a notice of appeal.
2) The chart summarizing all the claims, which I previously gave you. The IAC claims, including the elements claim, are highlighted. The only other IAC claim you mentioned as not being raised was that Kaye and your mom were not called to testify. We previously discussed that not calling Bobbi Jo was much more important since she was with you the entire night and your mom and Kaye were not. We also discussed that if you were granted a hearing on IAC, we would be able to present evidence on anything associated with IAC. If you think we left an IAC claim out that would have changed Gilchrist's ruling, you should file an ineffective assistance claim against me.

Ex. 16

3) There are three pictures of the boxes in my office – 26 in total. I hope this remove any doubt that the boxes exist. Eleven of the brown ones came from AOC. They have been there since the Robeson County PD's office sent them there. Eleven of the white ones came from Scott. Ian never gave us any documents, but he said everything he had was included in the electronic link he sent. The plastic tub and two other boxes in the pictures are the Center's. The number of pages of documents in the boxes is about 130,000. That does not count the disks and videos.
   - The full online file is about 60GB. We estimate that if everything in your electronic file was printed, it would be several million documents. You will understand why after you read the next bullet.
   - If I bring you all the files in your case, they will be taken and you will never see them again.
4) I've printed a number of screen shots of the dropbox (cloud storage) electronic files in your case. I am providing these to you so you will have a better idea of how your materials are organized. Although you asked for "the box that contains the IAC materials" that is not how the files are set up.
   - The first page reflects the top level of all the electronic folders associated with your case. You'll see that one of those folders is labeled "SCSJ Shared File." That is the file we received from Ian. The "SCSJ Shared File Copy (for moving into Center file format)" is the copy of the SCSJ file that we use to distribute all of Ian's documents into the appropriate folders. We always keep files we receive from other people whole, so we know what we received, as well as organizing the documents from their files into folders by topic.
   - The second page reflects how we organized all the materials for each of your post-conviction filings – which is one of the folders listed on the previous page.
   - The third page reflects the next level down for the folders within the "2018 Filings" post-conviction folder from the previous page. Each of the 6 folders on that page include additional subfolders. The other lines reflect individual documents, such as, "Green, Daniel – 2018.12.5 Writ for Green at Hrg."
   - The fourth page reflects what is in the "Legal Documents" folder you see on page 1. Again, you will see that there are nine sub-folders in that link, as well as individual documents.
   - Pages 5-8 reflects what is in the "1996" folder under "Legal Documents." Many of these documents are duplicated in other folders. For example, a copy of the document "Melinda Moore Subpoena" is also in Melinda's personal "people" folder.
   - Pages 6 and 7 reflect all the "people" folders. Each person has a folder with a copy of every document that pertains to or mentions that person.
   - Pages 8-10 reflect the folders and documents within Larry Demery's people folder.
5) I've included the filings in the Mark Carver case so you can get a sense of Guy's writing in an IAC case. He's an excellent appellate attorney.

I did tell you that I think you've been very irrational lately. I can't imagine what the pressure of a case like this does to someone, but it is clear that every time there's a critical decision point in your case, your emotional response to the stress comes through. I am so sorry you are having to deal with so much. It is not fair, and I'm only trying to help you.

Several times, you have accused me of working "in cahoots" with the State and the judge. Nothing could be further from the truth, but if you really believe that, Daniel, you need to fire me or write down that you want me to withdraw.

Now for the most pressing thing that needs to come from this letter.....You need to make a decision regarding your representation for the Petition for Writ of Certiorari. I explained how we ended up where we are in my last letter. The judge's order came down in January and we have to file a PWC within a "reasonable" period of time. I wouldn't want to file any later than November and the clock is ticking. If you want Narendra to handle the petition, that is fine and I will withdraw so you can keep appointed counsel. I will always be available to Narendra for questions. If you want the Center to handle the appeal, with Narendra's input, Narendra will withdraw. Neither of us will have our feelings hurt by whatever decision you make, but you do need to make it soon.

Regardless of who represents you, the only documents that will be considered for the PWC are the filings, the exhibits, and the oral arguments. That is all the COA will consider. Any ineffective assistance of counsel claim you believe you have against any of your post-conviction attorneys, will have to be addressed by you or someone else who will do it for you.

To make your decision regarding your PWC representation clear, the next page includes the choices that are available to you. You are very lucky to have two good options. Most people don't have that opportunity.

Please check the box next to the representation choice you would like to have and we'll go from there. I will always be here for you, regardless of who represents you on your PWC.

Take good care, Daniel. I'm praying for you.

Chris Mumma

cc: Narendra Gosh

EXPLANATORY

THE FOLLOWING DOCUMENT(S) MAY HAVE POOR IMAGES DUE TO POOR PHOTOGRAPHIC QUALITY OF PAPER.

BROCK, PAYNE & MEECE, P.A.

ATTORNEYS AT LAW

3130 HOPE VALLEY ROAD

DURHAM, NORTH CAROLINA 27707

PAUL B. BROCK
BARRI HILTON PAYNE
DARIN P. MEECE
C. SCOTT HOLMES
P. RYAN LOCKAMY

TELEPHONE: (919) 401-5913
FACSIMILE: (919) 419-1018

October 11, 2012
(Via U.S. Mail)

Daniel Green #0154242
Lanesboro Correctional Institute
LEGAL CONFIDENTIAL
Post Office Box 280
Polkton, North Carolina 28135

Re: State of North Carolina v. Daniel Andre Green 96 CRS 15291-93
Our File No.: 1990-001

Dear Mr. Green:

Thank you for your phone call yesterday. Once again, I appreciate your patience. I just spoke with Rick Persons and found him to be a knowledgeable person about your case. His brother has written a book and I have requested a copy to read. He says he will provide it. He also sent material to me by mail which I have enclosed for your review. I plan to read In *My Family's Shadow* by Delores Jordan. I have sent a message to my outstanding investigator, Steve Hale, to make plans to do follow up interviews with each of the persons interviewed by my interns. I am awaiting your letter regarding information requests to the University of North Carolina. I plan to work on your case some each day, and to give you multiple reports per week regarding my progress. You are understandably frustrated with your situation, and do not trust my work on your case. I hope to earn your trust with the work I provide.

With warmest wishes I remain,

Sincerely Yours,

C. Scott Holmes
Attorney at Law

CSH/amc

Ex. 24

BROCK, PAYNE & MEECE, P.A.

ATTORNEYS AT LAW
3130 HOPE VALLEY ROAD
DURHAM, NORTH CAROLINA 27707

PAUL B. BROCK
BARRI HILTON PAYNE
DARIN P. MEECE
C. SCOTT HOLMES
P. RYAN LOCKAMY

TELEPHONE: (919) 401-5913
FACSIMILE: (919) 419-1018

Memorandum
(Via U.S. Mail)

Date: September 11, 2012

TO: Daniel Green #0154242
Lanesboro Correctional Institute
Post Office Box 280
Polkton, North Carolina 28135
LEGAL CONFIDENTIAL

RE: State v. Daniel Green, Robeson County 93CRS15291-93

Enclosed please find the Memoradum prepared by Ian Mance & Aaron Johnson, interns to Scott Holmes. Please feel free to contact Scott in writing if you have any questions.

Sincerely Yours,

Anne Crawford
Paralegal to C. Scott Holmes

/amc
enclosures

Ex. 22

1) Is interviews recorded w/o other persons admissable in court, is it legal

*2)&3) [illegible], was destroyed. Compare that to what [illegible] said her [illegible] said in book, about [illegible] not being able [illegible]

4) Is SBI issue a structural issue?

5) Do they have [illegible]

10) Missing evidence from evidence storage room in Robeson Co. is what Operation Tainted Ridge is about. Didn't introduce blood evidence b/c w/it on record lawsuit could've subpoenaed it

*) Are they aware that Rick Person has interview of Elwell that contradicts her testimony

21) within weeks of telling me sentence couldn't run concurrent [illegible] b/c it was against the law, weeks ran Demerys concurrent (Need my guilty plea transcript)

Research Article 58 G.S. 15A on Plea Agreement

§14-87(d) which mandates armed RBBRY convictions be served after sentences for other convictions served was repealed July 24, 1993. Repeal became effective January 1st, 1995

28) "no deal deals" probably unethical and bizarre. Woody said he'll provide list of Judges
29) who do this and says he testified to State Bar about it.

33) * What about [illegible] jail phone conversations w/ Melinda & Dee that impeached them

35) So, the hearing to decide whether or not Danny Madison would be allowed to testify was a charade, They had already decided in a back room.

*) Malinda Maynor Lowery, Willies wife, teaches at UNC

41) No, Music was produced and I can prove it.

42) Contract signed and executed in Court during Jury Voir Dire; not in courtyard

43) No mention of conflict between Woody's career and my case due to his unethical behavior.

43) I had no criminal record at the time of trial. Only felony was vacated by Weeks

green-daniel_murder-file_04-02-09_00001.pdf, pp. 2361-2367), this is still a potential source for conflict.

D. Next Steps

There are two key steps remaining regarding this issue. The first is to ask Willie French Lowery to sign an affidavit confirming the existence and nature of the business relationship between Bowen, Lowery and Green, and the steps that were taken toward producing Green's music.

The second remaining step is to follow up with Lt. Brenda Thomas and Capt. Jeff Martin at the Robeson County Sheriff's Department. They had previously told us that she would search the old records of inmates' visitors. [Thomas (recording), 8/5/2011, 9:22-13:06]. Once she finds these records, we will be able to corroborate Lowery's statements that Bowen brought him into the jail to meet with Green. (See Affidavit of Aaron Johnson, 1 August 2011).

A potential third step would be to ask Bowen to write an affidavit confirming their business relationship and reiterating what he remembers of it.

The Date of Death

One of the most striking facts we uncovered in reviewing old press accounts surrounding James Jordan's disappearance and murder was the apparent discrepancy between his purported date of death—July 23, 1993—and reports that his wife spoke with him three days later on July 26, 1993. One of the lead investigators in the case, Robeson County Sheriff's Captain Art Binder, was also quoted in the *Charlotte Observer* on August 15, 1993, the day after the body was identified, as saying, "Mr. Jordan was dead by the 26th." (Foon Rhee, "Leads Seen In Jordan Case," *Charlotte Observer*, section C, p. 3, 15 August 1993). Captain Binder's statement

appears to have been based in part on statements made by two brothers in Fayetteville who were apprehended as a result of their involvement in stripping the abandoned Lexus SC-400, which was recovered on August 5, 1993. The brothers, Gary Rodel Farrior, 16, and Kenneth Connell Farrior, 20, told investigators that the car first came to their attention on the 26th, leaving open the possibility that James Jordan did in fact call JVL Enterprises Inc., his Rock Hill-based company, on July 26th, and was then shot later in the day, his body dropped off a bridge in McColl, SC, and his car abandoned in the woods near Fayetteville, NC, a one hour drive up US-401.

The morning of August 13, 1993, the *New York Times* published an article entitled, "Jordan's Father Is Missing." The article went to press just a few hours *before* James Jordan's body was identified by a South Carolina coroner by way of dental records and included the following language:

> According to a report by The Associated Press, **Sheriff Frank McGuirt of Union County said James Jordan's wife, Deloris, told authorities she last talked to her husband on July 26.** She said her husband called her at the office of a T-Shirt plan they own in Rock Hill, S.C., but she did not know where her husband was calling from.
>
> **"That was the last time we can determine that anyone had contact with Mr. Jordan,"** McGuirt told The Associated Press.

(Robert McG. Thomas, Jr., "Jordan's Father Is Missing," *New York Times*, 13 August 1993).

Unfortunately, when we began digging into this issue, it became clear that the *New York Times* was getting its information from an Associate Press report penned by Bob Sakamoto and Michael Kates, Staff Writers with the *Chicago Tribune*. Their article, published the same morning as the *Times*', contained a longer-form version of Sheriff McGuirt's quote.

Union County Sheriff Frank McGuirt said James Jordan's wife, Deloris, told authorities her husband had called the office of a T-shirt plant they own in Rock Hill, S.C., on July 26.

"We don't know if he talked with her or just with someone at the office," McGuirt said. **"That was the last time we can determine that anyone had contact with Mr. Jordan."**

McGuirt said he did not know the details of the conversation or whether James Jordan had said where he was.

Deloris Jordan filed the missing-persons report. She and her husband have a home in Union County outside Charlotte.

The Jordan family told Union County Sheriff's Department officers who visited the home Thursday night that it wasn't until the car was found that they became concerned, because James Jordan travels often on business."

(Bob Sakamoto and Michael Kates, "Police Hunting for Jordan's Missing Father," *Chicago Tribune*, 13 August 1993).

Where Judge Beale is from.

We spoke to Sheriff McGuirt, now a Representative in the North Carolina General Assembly (D-Anson, Union). McGuirt told us, "I don't remember speaking with Mrs. Jordan, although I may have." McGuirt didn't remember giving the interview to the *Tribune*, but said, "I'm sure I must have if I'm quoted in the paper, because I would have been honest in anything I said. I don't have any independent recollection of it, but I certainly wouldn't have told the press something I didn't believe to be true." But he had no independent recollection of the conversation with Mrs. Jordan, saying only that he believed he may have spoken with Michael Jordan during a call to the family home in Union County around the time James Jordan's body was recovered. It sounds more likely that someone else in the Union County Sheriff's Office (UCSO) spoke to Deloris Jordan. "One of my deputies may have gotten that information and relayed it to me," said McGuirt. Asked whether anyone from either the defense or prosecution had contacted him to discuss his department's report that the Jordan family had heard from James Jordan, Sr. on July

But Robert Rollins did. They are helping to cover up that a Union County Deputy, Robert Rollins considered Deloris Jordan to be a suspect until the police got Larry to lie on me. They fried to set her up. why?

Of course, if they did a search of News Articles they would've came up with Robert Rollins interview give to Craig White. They are trying to mislead me

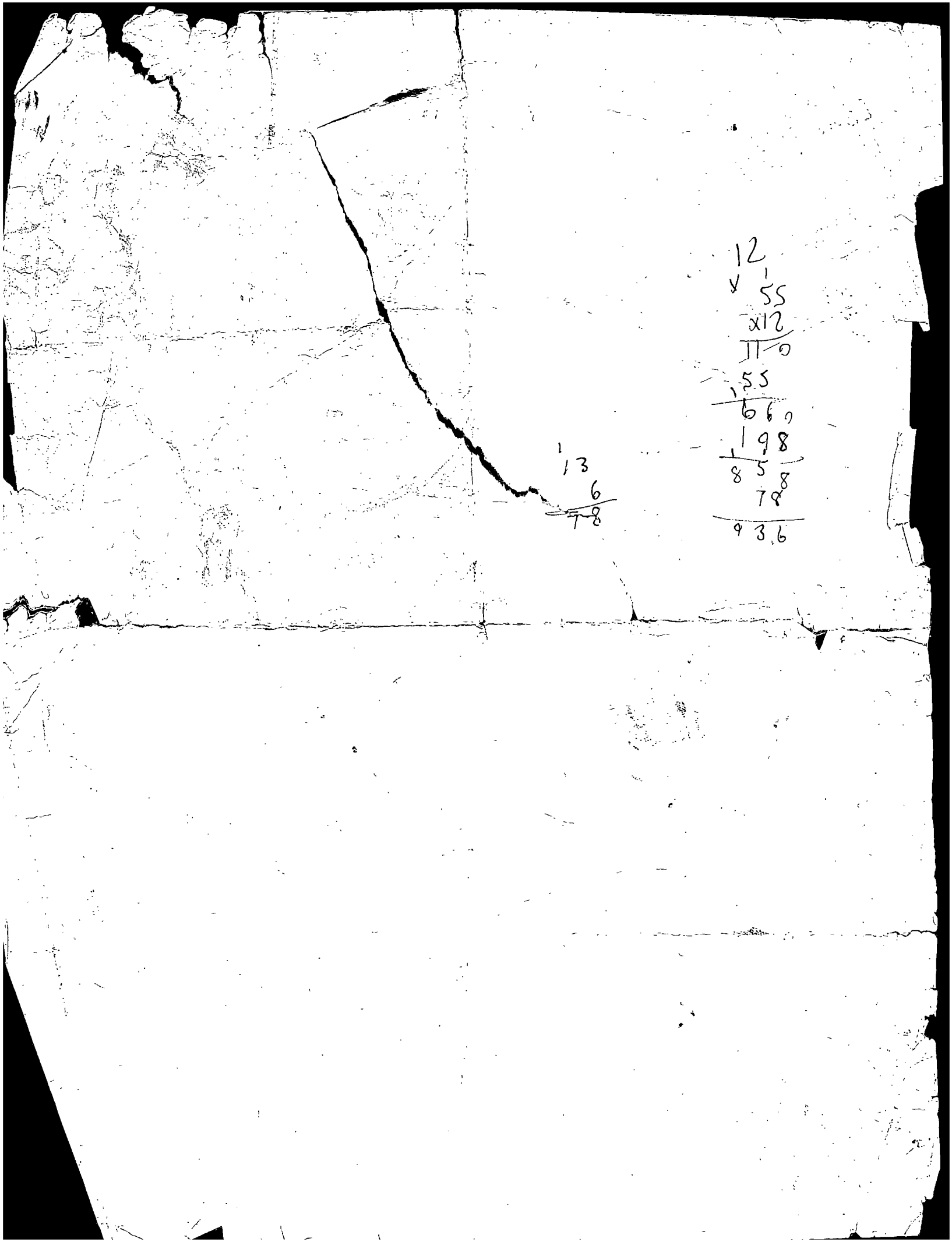
EXPLANATORY

THE FOLLOWING DOCUMENT(S) MAY HAVE POOR IMAGES DUE TO POOR PHOTOGRAPHIC QUALITY OF PAPER.

26th, McGuirt responded, "I don't recall anything like that whatsoever." [McGuirt (recording), 8/09/2011, entire recording].

This is consistent with what we learned when we pressed Green's original attorneys, and even the prosecuting District Attorney, about the date discrepancy and why they failed to explore it. Woodberry Bowen, one of the two lawyers during Green's trial, said flatly, "I don't recall that—her saying that," when asked about the news accounts of Deloris Jordan's statement. [Bowen (recording), 8/05/2011, 20:32]. Asked if anyone from his team had ever talked to Mrs. Jordan herself, Bowen replied, "Oh no, I would have certainly remembered that." [Bowen (recording), 8/05/2011, 21:37]. Angus Thompson, Green's other attorney, gave a decidedly more confusing answer following a long and awkward pause when the date discrepancy was brought to his attention. "I don't know why I didn't just pursue it," Thompson told us. [Thompson (recording), 8/02/2011, 12:45]. "If it came out during the evidence at trial and particularly through Demery that this occurred on the 23rd, prior to her saying that she spoke to him, that may have been why I did not chase that rabbit," Thompson said in a reply that seemed to show an alarming degree of deference to Demery, the man whose credibility he had spent three years of his life attempting to destroy. [Thompson (recording), 8/02/2011, 12:5[illegible]]. However, Thompson did offer this explanation as to why no one on the defense team explored the July 26th account offered by the Jordan family: "We knew the date that the incident happened, whether he took the stand or not. I mean, we consulted our client. And we knew the date that he said that Demery went and got him and asked him to help him dispose of the body." [Thompson (recording), 8/02/2011, 13:41].

Bowen and Thompson failed to mention in our conversations with them that they had actually floated the idea that James Jordan was alive after July 23, 1993 while cross-examining James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Jordan's son, James Jordan, Jr., on January 3, 1996. Bizarrely, however, in their sole reference to the possibility of him being alive after July 23rd, the defense actually suggested Jordan had been in contact with J.V.L. Enterprises on *August 5, 1993*, a date that we have not come across in any of the press accounts and did not raise the seemingly more credible July 26th account. Judge Weeks quickly shut the exchange down and the defense ceased pursuing that line of questioning. The only exchange to have occurred before the jury was as follows:

> WLB: Were you aware that a telephone call had come to your mother, Ms. Delores (sic) Jordan, from Mr. James Jordan on or about the 5th day of August, 1993?
>
> LJB: Objection.
>
> COURT: You may answer yes or no, if you know.
>
> JRJ: I don't live with my mother at first, first off, so the answer to that would be no.
>
> WLB: Do you recall having a meeting or being present at the meeting with Mr. [Don] Chiofolo [J.V.L.'s landlord] on or about the 5th of August, 1993?
>
> LJB: Objection to relevance.
>
> COURT: Sustained.
>
> WLB: We'll need to be heard, please.
>
> COURT: Ladies and gentlemen of the jury, I'm going to give you the afternoon recess at this time. . . .

(T. Vol. 1, 172:13-25; 173:1-9).

Once outside the presence of the jury, Bowen explained to the Judge:

> WLB: . . . I know from my research and from my investigation that there was a meeting on August the 5th, there was a call on August the 5th by this witness [James Jordan, Jr.] to Mr. Chiofolo setting up a meeting between Delor[i]s Jordan and Mr. Chiofolo.

. . .

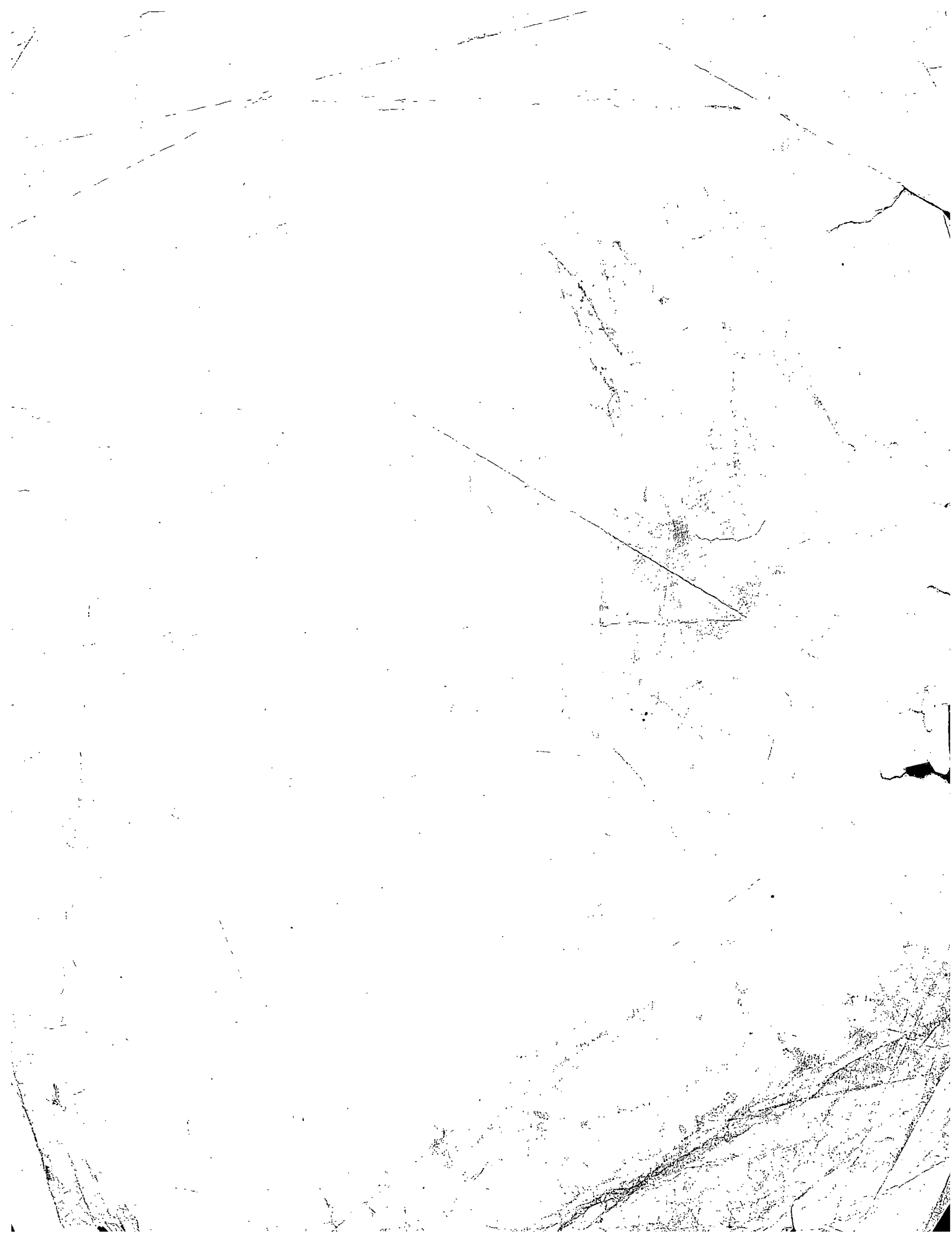
WLB: . . . on the next day when Ms. Jordan comes to have the meeting with Mr. Chiofolo, she says to Mr. Chiofolo that she talked to Mr. Jordan, that is, Mr. James Jordan, the night before.

COURT: Do you intend to offer that evidence?

WLB: Yes, sir, and **I have that in a written statement**. I was going to offer it in camera and I was going to tell you about it. That's the guy that's the plant manager—I'm sorry, the owner of the property. All I'm trying to do is show that which led up to this meeting.

(T. Vol. 1, 183:12-25, 184:1-9). We did not get an opportunity to ask Bowen about this exchange, as it did not come to our attention until after we had met with him. Obviously, this is worth pursuing, particularly to see if we might be able to locate the "written statement" he refers to. Because the transcripts are so voluminous, we have not been able to determine in the short period we had between discovering this and submitting this report whether Mr. Chiofolo testified or if this written statement was ever introduced. We certainly did not see it among the evidence we reviewed. However, it is likely that Mr. Chiofolo is the key to getting to the bottom of this. He is likely the "someone in the office" to whom Sheriff McGuirt referred in his statement to the *Chicago Tribune*. As to the discrepancy between the dates which provided the basis for the larger date discrepancy relating to the date of death, neither of us are sure what to make of that. It would require more time than we had available to us to truly get to the bottom of this mystery.

District Attorney Luther Johnson Britt, III, who prosecuted Green, never pursued or even bothered to investigate the conflicting reports of Jordan's last contact with his family. "To my knowledge, there are no—there were never any interviews done with Mrs. Jordan," he told us. [Britt (recording), 8/05/2011, 19:10]. He didn't think it necessary to talk to her and says he had no knowledge of the UCSO's reported contact with the Jordan family or their claim to have



spoken with him on July 26. "I'm not familiar with the accounts," he said. [Britt (recording), 8/05/2011, 21:23].

From best we can tell, the only law enforcement official to ever directly address the conflicting dates on the record was Robeson County Sheriff Hubert Stone, who had no qualms shooting down alternate theories in between his racist diatribes to *GQ* reporter Scott Raab in the months following Daniel Green's arrest:

> "Anytime you look down the street and you see a black and an Indian guy, you've got crime. . . . If they're running together, something's up. We always know when we spot a car and see 'em—an Indian and a black—there's gonna be some crime. We have to keep a firm hand on 'em."

Rabb pressed Stone on not just Deloris Jordan's statement but also the numerous other witnesses who reported seeing James Jordan alive after July 23, 1993 (failing to mention Ivan Johnson, the state archivist, whose account we regard as one of the more credible):

> I ask about the first news stories of Jordan's disappearance, which reported that his wife had spoken with him on July 26, three days after Stone says he was murdered. Deloris Jordan said she didn't know where her husband was calling from, but he seemed all right. Then, after Green and Demery had been arrested, a convenience-store clerk in Winnabow, eight miles south of Wilmington, North Carolina, and sixty-two miles east of where Stone says Jordan was killed, told police that on July 26 or 27, James Jordan, Larry Demery and Daniel Green had stopped in the store—she remembered the gold trim on the Lexus—and she and Jordan had a brief chat. A breadtruck driver, making a delivery to the store, also recalls the incident. Finally, I say I've heard that at least two people whose descriptions don't match those of Demery and Green were seen running from a red Lexus parked near the intersection of US 74 and I-95 early on the morning of July 23. . . .
>
> **Hubert Stone smiles. Mrs. Jordan, the clerk and the breadtruck driver are simply mistaken.** The sheriff has no other suspects, no doubt who killed James Jordan. Forty-one years and only one unsolved killing: Doubt is something outsiders bring with them. In Robeson County, every murder case seems to break and close like a well-oiled 12-gauge.

(Scott Raab, "Reasonable Doubt," *GQ: Gentleman's Quarterly*, March 1994).

With respect to a potential Ineffective Assistance of Counsel claim, it appears that an argument can be advanced under Strickland v. Washington that Daniel Green was denied effective counsel due to his trial attorneys' failure to conduct a "reasonable investigation" into reports that Deloris Jordan had spoken to her husband three days after their client supposedly murdered him. Both attorneys readily conceded to us that they had not talked to the Jordan family. Angus Thompson seemed downright confused and surprised when questions about a potential discrepancy with the dates were put to him. Even if Daniel Green privately told Bowen and Thompson that he got into a red Lexus with Larry Demery in the early morning hours of July 23, 1993, and that the deceased body of James Jordan was inside, Daniel Green never testified, and therefore doubt was on the table. One would imagine it is a rare case indeed where a murder victim's spouse offers up a statement that they spoke with the victim *after* the alleged date of death. Even if it wasn't true, one would expect that Bowen and Thompson would have at least followed up on it before deciding to concede in their opening statement that Jordan was killed on the 23rd, (T. Vol. 1, 60:5-25; 61:1-25; 62:1-12), a decision made all the more baffling by their subsequent decision to suggest he might have still been alive on August 5th. At the very least, when combined with the other witness sightings, it intuitively feels like a stronger argument than the credulity-straining theory they flirted with which suggested the body at issue wasn't even James Jordan.

Moreover, Woodberry Bowen readily offered up in our interview that he had never actually visited the crime scene, despite the fact that it was a short drive from his office. This is particularly perplexing in light of the fact that Bowen told us of his own theory of the crime. Demery "left the party. He went over there. Red Lexus pulls up. Man gets out. He's 20 to 30

Chris 6/8/21 Rich sent this 4:43 A.m. (last month- I just found it.

State's Misconduct in the Identification of John Doe

Conduct Senator Jim Clyburn about this

OVERVIEW

The identification of the John Doe body recovered from Gum Swamp was a material issue in Daniel Green's murder trial. If the body was not that of James Jordan, then Daniel Green cannot be guilty of killing James Jordan. The identity issue was contested by the Defense. District Attorney Johnson Britt, during his closing argument, acknowledged his burden to prove that the body was, in fact, that of James Jordan.

> *The defense contends that that was not James Jordan that was pulled from the Gum Swamp in Marlboro, South Carolina on August the 3rd, 1993. They can't, they would not, if you recall the evidence yesterday, would not even acknowledge that was James Jordan's body. (TT pp. 7414-7415)*

He cited Dr. Sexton, the autopsy pathologist's testimony that there are three ways to conclusively identify a body.

> *What did they do in that autopsy to try to identify this body? What was it Dr. Sexton said, three conclusive ways of identifying a body? Fingerprints, dental records and x-rays.* (TT pp. 7417-7419)

> *Two of the three means of conclusively identifying someone were utilized in this investigation to identify that body.* (TT p. 7421)

Mr. Britt didn't tell the jury that the State failed to utilize a fourth means of conclusively identifying someone – DNA analysis, the newest and most accurate form of identification. He also failed to present evidence of a full body x-ray, the third conclusive form of identifying someone, despite one being created during the autopsy. Instead, Mr. Britt based the State's identification on just the remaining two means of conclusively identifying someone – dental records and fingerprints.

With respect to the dental records and fingerprints, the State repeatedly withheld, mischaracterized and altered evidence in an attempt to mislead the jury about the true identity of John Doe. Specifically the State:

- Failed to disclose the identity of the identifying dentist to Defense despite its specific request.
- Failed to provide the dentist's identity on State's pre-trial potential witness list.
- Failed to denote the dentist as an expert witness.
- Suborned perjury by leading multiple witnesses through contradictory testimony.
- Presented knowingly false evidence in an attempt to mislead the jury.

The State's case failed to conclusively demonstrate James Jordan's identity in two of the three means of identification. Instead it was zero of four.

CASE SUMMARY:

1) James Jordan was allegedly murdered in his Lexus on July 23, 1993.

2) Mr. Jordan's body was allegedly dumped in Gum Swamp.

3) An unidentified body was recovered from Gum Swamp on August 3, 1993.

4) This body was autopsied on August 4, 1993.

5) Marlboro County Coroner Timothy Brown authorized the dissection of the hands and allegedly also the jaws for possible later identification.

6) Coroner Brown then authorized the remaining unidentified body to be cremated. The body was cremated on August 7, 1993.

7) On August 13, 1993, dental charts, allegedly taken from the dissected jaws, were compared to James Jordan's known dental records to confirm his identity.

8) On August 25, ***1994***, fingerprints, allegedly taken from the dissected hands, were compared to James Jordan's known fingerprints to confirm his identity.

DNA ANALYSIS SHOULD HAVE BEEN CONDUCTED TO SETTLE QUESTION OF IDENTITY

8) Special Agent Robin Whitmere, a serology expert at SLED, collected kidney and liver samples, as well as a bottle of blood from the John Doe autopsy. In her lab notes she stated that she "preserved these for possible DNA and subsequent analysis should additional evidence be submitted." (Appendix 1)

9) Agent Whitmere also put a drop of the victim's blood onto a sample of cloth. (Appendix 2) The tissue samples and bloodstain were then sent to the SBI crime lab in Raleigh, NC.

10) At Daniel's trial, Jennifer Elwell, the SBI crime lab serologist, testified she maintained this bloodstain.

> *The stain that I had stored in the ultra cold freezer was the known blood that had been indicated that it had been received from James Jordan. This was kept in our ultra cold freezer in the event that maybe further evidence would later on come in. As far as the blood sample goes, **if we keep that in an ultra cold freezer it will***

preserve that bloodstain for years and years and years. If any other evidence was ever to come up in the case, we would be able to pull that bloodstain out and it would be preserved and we could do any further analysis we needed to from that bloodstain. (TT p. 5615)

11) The State's refusal to conduct DNA testing to identify the victim was an attempt to mislead the jury about the true identity of the John Doe and violated the Defendant's constitutional right to a fair trial.

THE POST-TRIAL DESTRUCTION OF THE VICTIM'S REMAINING TISSUE SAMPLES PREVENTED THE DEFENDANT FROM DETERMINING THE VICTIM'S TRUE IDENTITY, VIOLATING NORTH CAROLINA LAW AND THE DEFENDANT'S POST-CONVICTION CONSTITUTIONAL RIGHTS

12) In July 1996, just five months after the conclusion of Daniel's trial, Elwell received a court order to destroy all remaining tissue samples. SBI Special Agent Heffney made the request, District Attorney Britt authorized it, and Judge Weeks signed the order. (Appendix 3)

13) Special Agent Elwell destroyed the bloodstain on September 4, 1996. (Appendix 4)

14) Destroying physical evidence just five months after the conclusion of a murder trial while Defendant was engaged in direct appeal is unprecedented. Jennifer Elwell stated that she has never before been asked to destroy evidence in a murder case. (Appendix 5)

15) Mr. Britt, by authorizing the destruction of the tissue samples without alerting defense counsel, violated prosecutorial ethics as well as G.S. 15A-268(a6)(2).

16) The destruction of all remaining tissue samples appears to be an effort to forever preclude the ability to use DNA to test the victim's identity.

17) The Defendant's Constitutional right to a fair trial was violated in several ways.

18) Law enforcement shouldn't have cremated the victim's body. South Carolina was one of the only remaining states to legally allow the cremation of an unidentified body. The law has since been changed based on this case.

19) Law enforcement should have used DNA analysis to settle the question of identity instead of taking the extremely unusual approach of dissecting body parts.

20) Law enforcement should not have authorized the cremation of any body parts after they had been logged into evidence in a murder case.

21) Law enforcement should have retained any and all removable dental work from the victim.

22) Defendant received ineffective assistance of counsel by his defense team failing to use DNA analysis to determine the identity of the victim.

23) Defendant's appeal and post-conviction relief efforts were permanently thwarted by the inappropriate, and illegal destruction of physical evidence.

24) It can be logically inferred that the State took the exceptionally rare and illegal action of destroying biological evidence in order to obscure the true identity of the John Doe.

DISTRICT ATTORNEY BRITT VIOLATED BRADY V. MARYLAND BY FAILING TO PROVIDE THE FULL BODY X-RAY TAKEN AT THE JOHN DOE AUTOPSY TO THE DEFENDANT

25) Mr. Britt, in his closing argument acknowledged three ways to identify a body.

> *What did they do in that autopsy to try to identify this body? What was it Dr. Sexton said, three conclusive ways of identifying a body. Fingerprints, dental records and x-rays.* (TT pp. 7417-7419)
>
> *Two of the three means of conclusively identifying someone were utilized in this investigation to identify that body.* (TT p. 7421)

26) Despite it's alleged existence, Mr. Britt didn't present to the jury the third means of conclusively identifying a body. Mr. Britt didn't enter into evidence, nor disclose to the defense, the full body x-ray taken at the John Doe autopsy.

> *Mr. Britt: What was the first thing you did in regard to -- with this body on August the 4th, 1993?*
> *Dr. Sexton: As mentioned, that was at the hospital, so* ***we x-rayed the body*** *to see if there is anything foreign there, and then we proceeded over to the storage area to do the autopsy.*
> *Q As a result of* ***the x-rays that were done on August the 4th, 1993****, did those x-rays reveal any type of foreign object in that body?*
> *A Yes, there was a round nosed bullet found in the chest on the left side and the posterior wall of the chest or in the back, essentially.* (TT pp. 613-614)

27) Mr. Britt violated Brady v. Maryland by not providing this x-ray to the Defendant. The lack of a full body x-ray obscured the true identity of the John Doe and violated the Defendant's constitutional right to a fair trial.

DISTRICT ATTORNEY JOHNSON BRITT FAILED TO DISCLOSE MATERIAL INFORMATION TO DEFENSE REGARDING DENTAL RECORDS

28) On July 29, 1994, Woody Bowen, the Defendant's trial attorney, filed a motion claiming a lack of disclosure of dental records by the State. (Appendix 6)

29) Mr. Bowen cited that "item 56A in the "Master evidence log" is described as an x-ray of James Jordan's teeth as taken by South Carolina Coroner Tim Brown."

30) Mr. Bowen also cited Exhibits 56-A, a Panorex composite x-ray allegedly made of the dissected jaws, as well as 56-B, a two paged document charting the mouth of the allegedly dissected jaws.

31) Mr. Bowen stated that "notably absent from Exhibits A&B are any references to the dentists who produced these records and therefore the defense has no way of ascertaining authenticity."

32) Mr. Bowen claimed that the State may be "unlawfully withholding exculpatory evidence to which the defendant is entitled under the constitution of the United States and the case of Brady v. Maryland."

33) During Defendant's trial the District Attorney Johnson Britt introduced State's Exhibit 35-B, a two-page document purporting to be dental charts from the dissected jaws. (Appendix 7)

34) State's Exhibit 35-B is the same document that Woody Bowen referenced as Exhibit 56-B in the 1994 discovery motion.

35) Newly discovered evidence is a third page that had originally accompanied the two pages of Exhibit 35-B. (Appendix 8)

36) The newly found third page was dated 8/8/93 and included the name, address and phone number of Dr. R. L. Brown, who the prosecution eventually claimed was the dentist who purportedly x-rayed and charted the dissected jaws and created Exhibits 35-A and 35-B.

37) This page was originally faxed by Dr. Garvin, one of the autopsy pathologists, to the Marlboro County Sheriff, together with the other two pages on August 9, 1993.

38) Sheriff Foley received the fax and subsequently refaxed the three pages two hours later. Fax time stamps can be seen in Appendix 9.

39) Dr. Barbaro, the first dentist to positively identify James Jordan, had a copy of this newly discovered page, together with the other two pages of Exhibit 35-B, for his comparison to known dental records of James Jordan. (Appendix 10)

40) This newly discovered third page with Dr. Brown's contact information was not provided to the defense despite Woody Bowen's explicit 1994 request for just such information.

41) The fact that this page was omitted from Exhibit 35-B is a clear Brady violation and violates N.C.G.S. 15A-903(d) and (e) insofar as Dr. Brown's identity was intentionally withheld from the Defendant.

42) Woody Bowen argued in his 1994 motion that "the state has failed and refused to follow the law in N.C.G.S. 903 regarding discovery and/or has violated the Defendant's constitutional rights and in particular the case of Brady v. Maryland, the Defendant Daniel Green moves the court to dismiss all charges against him pursuant to N.C.G.S. 15A-910(3B)."

DISTRICT ATTORNEY BRITT CONTINUED A PATTERN OF WITHHOLDING DR. BROWN'S IDENTITY FROM THE DEFENDANT

43) Mr. Britt did not include Dr. Brown on the State's list of potential witnesses prior to trial. (Appendix 11)

44) Despite not being on the pre-trial witness list, Dr. Brown testified at trial that he created Exhibit 35-A and 35-B.

45) After the trial, Dr. Brown was paid $1,522.40 as compensation for testifying as an expert witness at the trial. (Appendix 12)

46) Mr. Britt did not notify the Defense that Dr. Brown would testify as an expert witness as required by North Carolina law NCGS 15A-903 paragraph (2). (Appendix 13)

47) State's failure to disclose Dr. Brown's identity to the Defense was a violation of North Carolina law and violated Defendant's constitutional right to a fair trial.

DURING THE DEFENDANT'S TRIAL, DISTRICT ATTORNEY BRITT SUBORNED PERJURY BY PRESENTING WITNESSES WITH CONTRADICTORY TESTIMONY

48) Mr. Britt prompted Marlboro County Coroner Timothy Brown to testify that the composite dental x-ray (Exhibit 35-A) was taken during forensic pathologist Dr. Joel Sexton's August 4, 1993 autopsy of the John Doe.

> *Q After you requested or authorized the removal of the jaws of the body found in the Gum Swamp, did you later obtain* ***x-rays that were made from those teeth and those jaws by Dr. Sexton****?*
> *A Yes, sir.* (TT p. 475)

49) Later Mr. Britt again questioned Coroner Brown about the dental x-ray.

> *Q. At the time you received those dental records from Cumberland County Sheriff's Department, had you already received the* ***dental x-rays that Dr. Sexton had made during the autopsy on August the 4th of 1993****?* (TT p. 479)

50) This time the defense objected on lack of foundation. The judge overruled the objection.

> *Court: That question and answer came in without objection. So the Court deems the objection now being made is waived. Note the defendant's exception for the record. The objection is overruled.* (TT p. 481)

51) Mr. Britt then tried to have Exhibit 35-A admitted as evidence.

> *Q And you have removed certain items from the envelope marked as State's Exhibit Number 35. For the record, can you identify what you have removed from the envelope?*
> *A Yes, sir. The x-ray of -- marked FA-93-243 dated 8-8-93, depicting bitewing* ***x-rays from the autopsy that was performed by Dr. Sexton****.* (TT. p. 486)

52) Once again the defense objected on foundational grounds. But this time the Judge sustained the objection.

> *THE COURT: We're getting a little more specific now in terms of what x-rays were performed, and I'm not going to allow it at this point.* (TT p. 487)

53) Mr. Britt challenged the judge's ruling.

> *MR. BRITT: I just simply want the record to reflect I'm asking the Court to reconsider his ruling as it relates back to earlier questioning that came in without objection.* (TT p. 488)

54) Mr. Britt tried very hard to get Exhibit 35-A admitted into evidence through Coroner Brown. Britt asked Brown repeatedly whether the x-rays were created by Dr. Sexton during the August 4, 1993 autopsy.

55) At the time, Mr. Britt knew, or should have known, that he was eliciting false testimony since Exhibit 56-B's newly found page 3 states that the x-rays and charts were made by Dr. Brown.

56) Despite not being on the State's pre-trial witness list, Mr. Britt later called Dr. Brown to testify that he had created Exhibit 35-A and Exhibit 35-B.

Mr. Britt: Can you describe for us the procedure that you followed in making the x-rays?

Dr. Brown: I placed them on paper towels on a counter, adjacent to the x-ray machine. I tried to position films in a manner similar to what we would place in the mouth to as nearly as I can duplicate the same angulation of each film as though it was done from your mouth or mine.

Q And after taking the x-rays of the jaws, did you chart the teeth in any way?

A Yes, the charting was actually done, the charting of the gross appearance was done before I actually took the x-rays, before I developed them. (TT pp. 820-821)

57) Mr. Britt also tried to elicit false testimony from Mrs. Lu Lynn Sexton, the wife and assistant to forensic pathologist Joel Sexton.

Mr. Britt: *I'm going to hand you what had been marked as State's Exhibit 35-A and ask if you recognize it?*

Mrs. Sexton: Yes, I do.

Q How are you able to recognize State's Exhibit 35-A?

A Our -- again, our writing at the top of ***when we took the x-ray, 8-8-93****.*

Q I'm going to hand you what has been marked as State's Exhibit 35-B and ask if you can identify that document?

A This looks like a copy of some dental records. I did not make these dental records so I do not wish to -- we have copies but I'm not going to verify that.
(TT pp. 741-742)

58) Mrs. Sexton very clearly didn't want to verify the dental chart that she had no part in creating. She is making an important distinction that she will only verify documents that she, herself, created. It emphasized the point that she took responsibility for the Exhibit 35-A x-ray, but not for the Exhibit 35-B charts.

Mr. Britt: State's Exhibit 35-A, and State's Exhibit Number 35, are they in substantially the same condition they were in when you gave them to Coroner Tim Brown on August the 14th of 1993?

Mrs. Sexton: Yes, sir.

Q For the record, State's Exhibit 35, what is this exhibit?

A These are the little x-rays, dental x-rays that are made, and ***we just laid them all down, and had the x-ray department make a picture of this.***

Q Thank you.

MR. BRITT: I don't have any other questions. (TT p.742)

59) Mr. Britt was suborning perjury. He called Mrs. Sexton to the stand to falsely take credit for creating Exhibit 35-A the composite copy of the "little x-rays" allegedly made from the dissected jaw. Exhibit 35-A is seen in Appendix 14.

60) Mrs. Sexton's attempt to falsely take credit for making Exhibit 35-A, the composite x-ray copy, was discredited during cross examination:

BY MR. BOWEN:

Q Ms. Sexton, you say the x-ray department. You mean the x-ray department of your office?

A We do not have an x-ray department of our office.

Q Yes, ma'am. So when you say that you had the x-ray department make that large x-ray that Mr. Britt has just shown you, who did that x-ray?

A I do not know if it was made -- you know, usually we have them made at our Newberry hospital, but our dental work was done by a dentist in Newberry, Dr. Brown, and he did that for us. So I do not know.

Q So do I correctly understand that you caused that x-ray that Mr. Britt has just shown you to be made?

A No, I did not carry it down there.

Q Who did?

A It may have been carried down by Dr. Brown -- I don't know -- I'm not sure.

Q Somebody in your office, you think?

A It would either have been Dr. Garvin who was assisting Dr. Sexton at the time, but I did not carry it down there.

Q All right. So we don't know who actually took it and had it made?

A Correct, well, I don't know.

Q I understand. You don't know. And do know or you suppose that whoever took it had to take the small bitewings with them, is that correct?

A Correct.

Q Who furnished those bitewings?

A Those were sent to us. I do not know, I don't recall -- I don't have the notes on that.
Q Okay. You didn't have custody of those bitewings, did you?
A Correct. (TT pp. 742-744)

61) Mr. Britt was forced to call Dr. Brown to testify that he had created Exhibit 35-A, contradicting Mrs. Sexton's earlier direct testimony.

MR. BRITT: I'm going to remove what is contained inside of State's Exhibit 35, ask you to look at what's been marked as State's Exhibit 35-A. Do you recognize that?
DR. BROWN: Yes, I do.
Q How are you able to recognize State's Exhibit 35-A?
A These are duplicate copies of the x-rays that I took.
Q Do you know how these duplicates were made?
A Yes, I do.
Q How was it made?
A I took each of the individual x-rays – I was at Newberry County Memorial Hospital. I took them to the radiology department, and we have what is called duplicating film, which is what this is, and I used tape and taped each x-ray to a piece of film to mimic or simulate the -- not only the position in the mouth but the relative position they would be in a permanent mount, and then we duplicate this.
Q State's Exhibit 35-A was made from the original x-rays --
A The original x-rays.
Q -- that you had made on August the 8th?
A It was. (p.821-822)

62) Given the contradictory testimony, either Coroner Brown, Mrs. Sexton or Dr. Brown, and perhaps all three of them, were lying under oath.

63) By knowingly presenting false testimony, Mr. Britt violated his prosecutorial oath as well as Napue v. Illinois:

The United States Supreme Court has established the "'standard of materiality' under which the knowing use of perjured testimony requires a conviction to be set aside 'if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.'" Accordingly, "when a defendant shows that 'testimony was in fact false, material, and knowingly and intentionally used by the State to obtain his conviction,' he is entitled to a new trial."

64) Mr. Britt's knowingly false line of questioning was designed to circumvent Dr. Brown's testimony. It continued Mr. Britt's pattern of keeping Dr. Brown's identity hidden from the defense and denied the Defendant his Constitutional right to a fair trial.

THE COURT ERRED IN ALLOWING EXHIBIT 56-A TO BE ADMITTED INTO EVIDENCE WITHOUT THE UNDERLYING SOURCE X-RAYS

65) Mr. Britt referred to Exhibits 35-A, the composite copy of dental x-rays, and 35-B, dental charts, in his summation to justify the identity of the victim to the jury.

> *They removed the jaws from that body to preserve those dental records, to preserve those teeth, so that they could do what? Identify the body by the second conclusive means of identification. Dental records.*
>
> *And what do they do, **they save them**, they charted them. Dr. Brown, dentist in South Carolina, was asked to chart the teeth. State's Exhibit 35-B. Dental charting that Dr. Brown did after the jaws were removed from that body. Photographs were taken of those teeth. X-rays were made of those teeth. State's Exhibit 35 the x-rays that were made from the jaws that were removed from the body in South Carolina after the autopsy. **Held on to them**.* (TT pp. 7419)

66) Mr. Britt lied to the jury in his closing argument when he said that they saved the jaws and held on to the x-rays of the jaws.

67) The jaws were not saved. They were allegedly cremated.

68) The individual periapical x-rays were never admitted as evidence.

69) Mrs. Sexton testified that she never had custody of the underlying x-rays.

70) The current whereabouts of the individual x-rays is unknown assuming that they ever existed at all.

71) The composite copy of the x-rays, Exhibit 56-A, should never have been allowed into evidence without the foundation of the underlying x-rays. This was a violation of the Defendant's constitutional right to a fair trial.

THERE IS NO RELIABLE EVIDENCE TO SUGGEST THAT THE JAWS WERE EVER ACTUALLY DISSECTED

72) Mr. Britt initially contended that Dr. Sexton made the x-rays during the autopsy and not from a dissected jaw. He presented two witnesses, Coroner Brown and Mrs. Sexton to testify to that fact.

73) Dr. Sexton's report from the August 4, 1993 autopsy makes no mention of dissecting jaws. (Appendix 15)

74) The jaws were not entered in the evidence transfer form from Dr. Sexton to SLED. (Appendix 16)

75) The jaws were not entered in the SLED evidence inventory log. (Appendix 17)

76) There is no evidence transfer document of the jaws going from Dr. Sexton to Dr. Brown and there is no evidence transfer document of the jaws being returned by Dr. Brown to Dr. Sexton.

77) The evidence transfer documents of the jaws being given by Dr. Sexton to Coroner Tim Brown have three different versions with differing dates, either August 14 or August 16 and are therefore unreliable. (Appendix 18)

78) The evidence transfer log from SLED to Coroner Brown on August 14 lists the jaws as an addendum to the transfer of Item 7, the dissected hands. A phrase was added to the final sentence that reads, "as well as the maxilla and mandible (upper and lower jaw bones) of the same subject." (Appendix 19)

79) Adding addendums to existing items rather than logging in evidence with its own distinct item number is contrary to SLED policy. Appendix 19 is therefore unreliable.

80) Coroner Brown testified that he was instructed by Michael Jordan's security consultant to retrieve the hands and jaws from law enforcement so that they could be cremated and combined with the existing ashes.

81) Restorative dental work, including multiple bridges and dentures, were not retained by SLED nor logged into evidence.

82) Coroner Brown testified that he took the jaws from SLED on August 14, 1993 to the Caughman Harman funeral home to be cremated. This claim is suspect for several reasons.

83) Todd Caughman, co-manager of the funeral home, told the FBI that he doesn't recall who cremated the hands and jaws. He thought it might be his employee, Ken Prater. (Appendix 20)

84) In August 1993, Mr. Prater had only been working at the funeral home for less than six months. At that time he was only working entry-level jobs. Mr. Caughman knew, or should have known, that Mr. Prater was not authorized to work in the crematorium.

85) Mr. Prater, like Todd Caughman, has no recollection of the cremation of Mr. Jordan's hands and jaws. (Appendix 21)

86) It strains credibility to believe that a funeral home could receive the partial remains of Michal Jordan's father and not have a distinct recollection of the event.

87) Mr. Prater had a distinct recollection of the cremated John Doe when the body first arrived on August 4, 1993. He remembers that the John Doe cremation was coordinated by Harry Harman, the funeral home owner, together with Lynwood Lybrand and Todd Caughman. (Appendix 21)

88) Mr. Harman was also the county coroner at the time and Mr. Lybrand and Mr. Caughman were each deputy county coroners.

89) Mr. Prater said that it was unusual for the three senior most employees to take such an interest in an unidentified body. He said, "You need to talk to Lynwood Lybrand and that bunch." "They had their fingers in that." (Appendix 21)

90) The cremation authorization form for the hands and jaws on August 14, 1993 appears to be unreliable. The signature of the notary public, Lynwood Lybrand, on the August 14, 1993 authorization form is clearly different from his signature on the August 7, 1993 authorization form of the John Doe body. (Appendix 22)

91) The cremation authorization form for James Jordan's hands and jaws appears to be a forgery.

92) There exists not one reliable document from the time of the autopsy to the time of the cremation to suggest that the jaws were ever dissected.

93) The State's claim that the John Doe was positively identified via the dissected jaws is not supported by the evidence. Any positive identification based on alleged records taken from the alleged dissected jaws should not have been allowed.

94) The Defendant's constitutional right to a fair trial was violated by the State's use of falsified documents in an attempt obscure the true identity of the John Doe.

FINGERPRINT ANALYSIS WAS VERY UNCONVENTIONAL DUE TO THE EXTREME DECOMPOSITION OF THE JOHN DOE

95) The hands were dissected from the John Doe body at the August 4, 1993 autopsy.

96) Special Agent John Christy, a fingerprint expert at SLED, testified that nine of the fingers were too badly decomposed to offer any valuable fingerprint evidence. Only the print on the right thumb was evident.

97) On August 6, 1993, SA Christy surgically removed the skin tissue on the right thumb. He photographed the layer of skin tissue to capture the ridge detail and rolled the tissue in ink to capture post mortem prints. He then preserved the skin tissue in a solution of glycerin and water. (Appendix 23)

98) Special Agent Christy identified Exhibits 46-B and 46-C as the photograph and inked impressions from the removed skin tissue sample.

> *Mr. Britt: The strips that are contained inside of State's Exhibit 46-C, are those the postmortem strips that you prepared as a result of the inked impressions you made from the friction ridges of the skin tissue that was removed from the hand that Mr. Collins had delivered to you?*
> *A Yes, sir, they are.* (TT p. 1071)

98) SA Christy testified that the poor quality of the print did not allow it to be entered into the computerized Automatic Fingerprint Identification System (AFIS). At that time, no identification was possible.

THE DESTRUCTION OF JOHN DOE'S HANDS AND FINGERPRINT TISSUE WAS A GROSS BREACH OF SLED POLICY AND A VIOLATION OF DEFENDANT'S CONSTITUTIONAL RIGHT TO A FAIR TRIAL

99) On August 14, 1993, SA Christy received notification that dental records allegedly confirmed that the identity of the John Doe was that of James Jordan. (Appendix 24)

100) On August 14, 1993, SA Christy allegedly positively identified the John Doe as James Jordan by comparing the port mortem prints that he had created to the known fingerprints of James Jordan. (Appendix 25)

101) SA Christy testified that on August 14, 1993 he transferred the two hands, as well as the preserved skin tissue, to Marlboro County Coroner Tim Brown. (Appendix 19) Mr. Brown then destroyed the evidence by allegedly cremating these remains that same day.

102) SA Christy was the very same analyst that both created the inked impressions from the John Doe, and allowed the underlying evidence, the hands and skin tissue, to be destroyed.

THE FACT THAT THE JOHN DOE INKED IMPRESSIONS WERE SENT TO THE NC SBI CRIME LAB SUGGESTS THAT AGENT CHRISTY HAD NOT YET, IN FACT, MADE A POSITIVE IDENTIFICATION WHEN HE RELEASED THE HANDS AND SKIN TISSUE TO CORONER BROWN

103) On August 18, 1993, NC SBI Special Agent Jerry Richardson received the John Doe inked impressions created by John Christy and was asked to make a comparison to the known inked impressions on file of James Jordan.

104) SBI departmental policy was to not repeat analysis that had already been performed by another law enforcement entity, suggesting that SLED had not made a positive identification by August 18.

SLED RECORDS FURTHER REVEAL THAT SA CHRISTY DIDN'T HAVE JAMES JORDAN'S KNOWN FINGERPRINTS AT THE TIME HE CLAIMED TO HAVE MADE THE IDENTIFICATION

105) SA Christy received the FBI's fingerprint card with James Jordan's known fingerprint inked impressions on August 23, 1993. SA Christy signed and dated the evidence inventory sheet. A time stamp confirms the document was received on August 23, 1993 at 12:37pm. (Appendix 26)

106) SA Christy couldn't have made a positive identification of the John Doe on August 14, 1993 if he didn't receive James Jordan's known fingerprints until August 23, 1993.

107) SLED's inventory list also confirms that SA Christy didn't receive the FBI fingerprint card by August 14, 1993. SLED's inventory is logged chronologically. Items 1-8, received on August 4, were from the autopsy. Items 9-11 were rolls of film, logged into evidence on August 14. Item 12, the victim's clothing was logged in on August 15. Item 13, the FBI fingerprint card, would not have chronologically been logged into evidence until after item 12 on August 15. This is consistent with Item 13's August 23 time stamp and is not consistent with SA Christy's claim that he identified the body on August 14. (Appendix 27)

108) SA Christy altered the date on his examination worksheet. On the first page, the date is signed and initialed as 8-6-93. But the second page is dated 8-14-93 at the top of the page. At the bottom of the page, the date appears to have been changed from 8-23-93

to 8-14-93 to be consistent with the false narrative that he positively identified the body on 8-14-93. (Appendix 28)

THE INACCURACY OF AGENT CHRISTY'S NOTES, TOGETHER WITH THE DESTRUCTION OF THE HANDS AND SKIN TISSUE, CAST SIGNIFICANT DOUBT ON EXHIBIT 46-B , THE SKIN TISSUE PHOTOGRAPH, AND EXHIBIT 46-C, THE INKED IMPRESSIONS. THEY SHOULD NOT HAVE BEEN ADMITTED INTO EVIDENCE

OFFICAL IDENTIFICATION OF JAMES JORDAN'S FINGERPRINTS DID NOT OCCUR UNTIL MORE THAN ONE YEAR AFTER AGENT CHRISTY'S ANALYSIS

109) NC SBI Agent Jerry Richardson testified that he first received Exhibits 46-B and 46-C on August 18, 1993 but did not make a comparison at that time.

112) Kim Heffney, the lead SBI agent in the Jordan case, inexplicably requested that Agent Richardson immediately return the John Doe inked impressions without performing a comparison. Agent Richardson returned the John Doe impression on August 20, 1993.

113) Agent Richardson testified that Exhibits 46-B and 46-C were later resubmitted to him on August 24, ***1994***, more than a full year after the autopsy. (Appendix 29)

114) Agent Richardson testified that he relied upon Exhibit 46-B and Exhibit 46-C to positively identify James Jordan.

> *Mr. Britt: And based upon your examination, what if any identification did you make in regard to the photograph marked as State's Exhibit 46-B, the postmortem strips marked as 46-C and the fingerprint card of James Raymond Jordan marked as State's Exhibit 48?*
> *A In my comparison with the photograph, which is marked State's Exhibit 46-B, I compared it to the known ink impressions bearing the name of James Raymond Jordan, and it was identified as having been made by the right thumb of the same card that bears the name James Raymond Jordan. I also compared the postmortem inked fingerprint strips and there was one particular one which was of good quality and detailed. I was able to actually make a comparison to the known ink impressions and it was also identified as having been made by the right thumb of the same card that bears the name James Raymond Jordan.*
> (TT pp. 1174-1175)

115) Like John Christy in South Carolina, Agent Richardson never submitted the John Doe inked impressions into the North Carolina computerized fingerprint database for confirmation.

116) Agent Richardson's identification of James Jordan's fingerprints relied solely on Exhibits 46-B and 46-C. Given the unreliability of these exhibits, Agent Richardson's identification should never have been allowed.

SPECIAL AGENT JOHN CHRISTY NEVER TESTIFIED THAT HE MADE A POSITIVE IDENTIFICATION OF JAMES JORDAN

113) The official amended autopsy report, written by Dr. Sexton on January 5, 1996, cites John Christy as the person that positively identified the John Doe. (Appendix 30)

114) However, John Christy, despite being a witness at trial, never testified under oath that he positively identified the body as James Jordan.

CONCLUSION:

The State never satisfied its burden of proof to conclusively identify the body recovered from Gum Swamp as that of James Jordan. District Attorney Johnson Britt claimed that the State had proven two of the three forms of conclusively identifying a body. But on closer examination, the State was able to conclusively identify the body in zero of four methods.

1) DNA analysis was not utilized. All biological evidence was illegally destroyed post-trial.
2) A full body x-ray was not shared with the defense despite its alleged existence from the autopsy. This was a clear Brady violation.
3) Dental records were unreliable due to multiple Brady violations, contradictory testimony from State's witnesses, and inconsistent/falsified documents.
4) Fingerprint analysis was unreliable due to inconsistent/falsified documentation, destruction of evidence, and missing testimony.

The State was unable to prove the most material aspect of this case – the identity of the victim -- without deceit and multiple violations of law. The Defendant's constitutional right to a fair trial was repeatedly violated. He deserves a new trial to address these wrongs.

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Your Notes

(edit)

(none)

In order that one may be guilty of homicide, the act must be done by him actually or constructively, and that cannot be, unless the crime be committed by his own hand, or by the hands of someone acting in concert with him. The D may not be held responsible on this theory for a homicide committed by an adversary or victim

Cited By (6)

This opinion has been cited by these opinions:

- State v. Wilson, 556 S.E.2d 272 (N.C. 2001)
- United States v. Joseph Martinez, Paul Mahn, and Garth Cohen, ...
- Comer v. State, 977 A.2d 334 (Del. 2009)
- State v. Myers, 760 So. 2d 310 (La. 2000)
- State v. Williams, 648 S.E.2d 896 (N.C. Ct. App. 2007)

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State v. Bonner, 411 S.E.2d 598 (N.C. 1992)

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Supreme Court of North Carolina

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411 S.E.2d 598 (1992)
330 N.C. 536

STATE of North Carolina
v.
Calvin Antonio BONNER and Ronald Wayne Witherspoon.

Nos. 83A91, 85A91.

Supreme Court of North Carolina.

January 10, 1992.

Lacy H. Thornburg, Atty. Gen. by David F. Hoke, Asst. Atty. Gen., Raleigh, for the State.

Danny R. Ferguson, Winston-Salem, for defendant-appellant Bonner.

Richard D. Ramsey and Thomas G. Taylor, Winston-Salem, for defendant-appellant Witherspoon.

WHICHARD, Justice.

On 29 May 1990, defendants undertook, along with Gregory Gainey and El'Ricko Stewart, to rob the Steamboat Restaurant in Winston-Salem, North Carolina. In an attempt to thwart the robbery, Dallas Pruitt, an off-duty police officer acting as a security guard for the restaurant, shot and killed Gainey and Stewart. Following indictment, defendants pled guilty to, among other charges, two counts of first-degree murder for the deaths of their coconspirators.

Ex. 26

The issue is not whether these defendants may escape altogether criminal liability for their participation in the events of 29 May 1990; instead, the narrow issue is whether the common law theory of felony murder, as preserved in N.C.G.S. § 14-17, *599 will be extended to cover situations such as this, so that cofelons may be charged with first-degree murder as a result of the deaths of their accomplices at the hands of an adversary to the crimes. Based on longstanding precedent from this Court, and in accordance with the overwhelming majority of jurisdictions that have addressed this issue, we hold that there is no felony-murder liability on the facts of this case.

Defendants were indicted on two counts of first-degree murder for the deaths of two cofelons arising out of the armed robbery of the Steamboat Restaurant in Winston-Salem. Each defendant filed a motion to dismiss the murder charges, alleging that the felony murder rule is inapplicable to the facts underlying the deaths. Following denial of these motions, defendants each pled guilty to two counts of first-degree murder and the underlying felony of armed robbery, one count of conspiracy to commit armed robbery, one count of assault with a deadly weapon with intent to kill inflicting serious injury, and several additional counts of armed robbery unrelated to the felony murder charges.

As to both defendants, the trial court consolidated for judgment the two counts of first-degree murder, each defendant receiving a sentence of life imprisonment. The trial court arrested judgment on the underlying armed robbery charges, but sentenced each defendant to a forty-year term of imprisonment, to commence at the end of the life sentence for murder, for the remaining counts of armed robbery and conspiracy to commit armed robbery. In addition, the trial court ordered twenty-year sentences for each defendant, to commence at the end of the forty-year sentences, for the assault charges.

On 10 December 1990, each defendant filed a motion to withdraw his pleas of guilty to the two counts of first-degree murder. The trial court denied these motions, and each defendant appealed.

The facts underlying the pleas of guilty to first-degree felony murder are not in dispute. Around 9:00 p.m. on the evening of 29 May 1990, El'Ricko Stewart and Gregory Gainey, armed and dressed in black "Ninja" outfits, came in the front entrance on the east side of the Steamboat Restaurant. Sergeant Dallas Pruitt, an off-duty officer with the Winston-Salem Police Department who was working as the restaurant's security guard, was seated in the area near the main cash register. When Stewart entered the restaurant he saw Sergeant Pruitt and shot him in the chest. The force of the gunshot knocked Pruitt to the ground. Pruitt then tried to draw his revolver and Stewart fired a second shot, striking Pruitt in the right arm. Though seriously injured, Pruitt was able to fire a deadly shot into Stewart, his assailant.

Gregory Gainey, dressed and armed similarly to Stewart, then approached Sergeant Pruitt. Pruitt fired one shot which struck Gainey, but Gainey continued his approach. Pruitt then fired a second shot, and Gainey fell to the floor near his feet.

While Sergeant Pruitt defended the main entrance of the restaurant, in the process fatally wounding his assailants, defendants went to the west or "take-out" entrance on the other side of the restaurant. Though Pruitt never saw defendants, they were armed and dressed in similar fashion to their cofelons, Gainey and Stewart. Defendants forced their way to the "take-out" register, took $334.38, and fled.

Each defendant gave the police a written statement admitting his participation in the planned armed robbery and confirming the planned participation of Stewart and Gainey. Autopsy reports revealed that Stewart and Gainey died as a result of the gunshots fired by Sergeant Pruitt.

Defendants assign as error the trial court's denial of their motions to withdraw their pleas on the grounds that there was no factual basis to support the convictions for first-degree felony murder. We hold that this assignment of error has merit.

The resolution of this issue is controlled by the principles enunciated in *State v. Oxendine*, 187 N.C. 658, 122 S.E. 568 (1924). In *Oxendine*, three men Walter Oxendine, Clarence Oxendine, and Dock Wilkins feloniously instigated a violent altercation with Proctor Locklear. The altercation *600 escalated to gun play, and Robert Wilkins, an armed bystander, was killed as a result of a shot fired by Proctor Locklear. The trial court gave an instruction that permitted the jury to convict Walter Oxendine of manslaughter regardless of whether the fatal shot was fired by Oxendine or his accomplices, or by Proctor Locklear. In reversing the conviction of manslaughter, this Court said:

> It is unquestionably the law that where two or more persons conspire or confederate together or among themselves to commit a felony, each is criminally responsible for every crime committed by his coconspirators in furtherance of the original conspiracy, and which naturally or reasonably might have been anticipated as a result therefrom. And in the instant case, if the deceased had been killed by a shot from Walter Oxendine's pistol, each and every one of his confederates would have been equally responsible with him for the homicide. But Walter Oxendine and Proctor Locklear were not acting in concert; they were adversaries, and it is the general rule of law that a person may not be held criminally responsible for a killing unless the homicide were either actually or constructively committed by him, and in order to be his act, it must be committed by his own hand, or by some one acting in concert with him, or in furtherance of a common design or purpose.

Id. at 661, 122 S.E. at 570. Thus, the Court stated the general principle of accomplice liability and noted that had defendant Walter Oxendine, his accomplice, or his agent fired the fatal shot, there would be no question that all the participants would be responsible for the homicide. However, the general rule did not apply on the facts of *Oxendine* because Proctor Locklear, Oxendine's adversary, fired the deadly round. Therefore, the Court noted that a different general rule applied, *i.e.*, that criminal responsibility for a homicide is dependent on proof that the defendant or his agent did the killing. Because, as the Court said, "Walter Oxendine and Proctor Locklear were not acting in concert, they were adversaries," the instruction allowing defendant Walter Oxendine's conviction was fatally flawed and he was entitled to a new trial. *Id.*

As an example of the general rule applicable under the facts of *Oxendine*, the Court quoted the following from *Butler et al. v. The People*, 125 Ill. 641, 645, 18 N.E. 338, 339 (1888): "'Where the criminal liability arises from the act of another, it must appear that the act was done in furtherance of the common design or in prosecution of the common purpose for which the parties were assembled or conspired together.'" *Id.* In *Butler*, the court reversed a conviction for manslaughter where the defendant, along with several others, resisted arrest for disturbing the peace and in the process the village marshal drew his revolver and accidentally shot a bystander. The court in *Butler* also said:

> It would be a strange rule of law, indeed, to hold a man liable for a crime which he did not commit, which he did not advise, and which was committed without his knowledge or assent, express or implied; and yet, if the conviction in this case is to be sustained, it can only be done by the sanction of such a doctrine.

Butler et al. v. The People, 125 Ill. at 646, 18 N.E. at 340.

In further illustrating its rationale for reversing Walter Oxendine's manslaughter conviction, the Court in *Oxendine* described the following hypothetical:

> Suppose, instead of killing an innocent bystander, Proctor Locklear had killed Dock Wilkins, one of his assailants, would the law, under these circumstances, hold the surviving assailants or confederates ... criminally responsible for the homicide? We think not. Each took his own chance of being injured or killed by Proctor Locklear when the three made a common assault upon him. They would be responsible for what they did themselves, and such consequences as might naturally flow from their acts and conduct, but they never advised, encouraged or assented to the acts of Proctor Locklear, nor did they combine with him to do any unlawful act, nor did they, in any manner, assent to anything he did, *601 and hence they could not be responsible for his conduct towards the deceased.

State v. Oxendine, 187 N.C. at 662, 122 S.E. at 570. The Court's hypothetical is directly on point with the facts in the case at bar. As in the *Oxendine* hypothetical, the defendants here were aggressors who created a dangerous situation leading to a deadly response by Sergeant Pruitt. Though the hypothetical in *Oxendine* is technically dicta and does not bind the Court in this case, the reasoning apparent in the resolution of the hypothetical discloses the basis for the Court's holding on the actual facts of *Oxendine*.

Additionally, the Court cited two other cases in *Oxendine* that reveal the logic behind its decision. Immediately following the hypothetical discussed above, the Court cited *Commonwealth v. Moore*, 121 Ky. 97, 88 S.W. 1085 (1905). The defendant in *Moore* sought to rob John Young who, in self-defense and defense of his house, accidentally shot and killed Anderson Young, an innocent bystander. The court in *Moore* said:

> Here the homicide was not committed by the conspirators, either in the pursuance of the conspiracy or at all; but it was the result of action on the part of John Young, the proprietor of the house, in opposition to the conspiracy, and entirely contrary to the wishes and hopes of the conspirators. In order that one may be guilty of homicide, the act must be done by him actually or constructively; and that cannot be, unless the crime be committed by his own hand, or by the hands of some one acting in concert with him, or in furtherance of a common object or purpose. The defendants can in no sense be said to have aided or abetted John Young, for he was firing at them; and to hold them responsible criminally for the accidental death of a bystander, growing out of his bad aim, would be carrying the rule of criminal responsibility for the acts of others beyond all reason.

Id. at 99-100, 88 S.W. at 1086. With evident disdain, the court went on to say that such a rule would also mean that a defendant would be criminally responsible for the death of his cofelon at the hands of an opponent. "The illustration carried to this extreme," the court concluded, "exposes the unsoundness of the [State's] position." *Id.* at 101, 88 S.W. at 1086.

Similarly, the Court in *Oxendine* discussed with approval the treatment of a hypothetical by the court in *Commonwealth v. Campbell*, 89 Mass. (7 Allen) 544 (1863). In that hypothetical the Supreme Judicial Court of Massachusetts disavowed criminal liability for homicide on the part of a burglar when a homeowner acting in defense accidentally kills another occupant of the unlawfully entered house. *State v. Oxendine*, 187 N.C. at 662, 122 S.E. at 570.

In light of its language, the reasoning behind its hypothetical, and the citation of authority in *Oxendine*, there can be no doubt that the rule of *Oxendine* requires reversal of the convictions here. There, the Court reversed the conviction for manslaughter because the trial court's instructions permitted conviction where an adversary, not an accomplice, committed the deadly act. Here, though defendants engaged in reckless and dangerous conduct, neither they nor their accomplices committed the fatal act. Instead, Sergeant Pruitt, an adversary to defendants and their accomplices, was responsible for the deaths of Stewart and Gainey. Pruitt was not the agent of defendants, nor did he act in concert with them in a manner that furthered a common design or purpose. On the contrary, his every action was in direct opposition to the criminal scheme in which defendants and their accomplices were engaged. Thus, under the rule of *Oxendine* there can be no criminal liability for felony-murder in this case.

The rule established in *Oxendine* is consistent with the prevailing rule in the overwhelming majority of states in this country that "for a defendant to be held guilty of murder, it is necessary that the act of killing be that of the defendant, and for the act to be his, it is necessary that it be committed by him or by someone acting in concert with him." Erwin S. Barbre, Annotation, *Criminal Liability Where Act of Killing Is Done By One Resisting Felony or Other Unlawful Act Committed by Defendant*, *602 56 A.L.R.3d 239, § 2 at 242 (1974); *see also* Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law*, § 7.5, at 217 (1986) ("[I]t is now generally accepted that there is no felony-murder liability when one of the felons is shot and killed by the victim, a police officer, or a bystander."). *See, e.g., Wilson v. State*, 188 Ark. 846, 850-52, 68 S.W.2d 100, 101-02 (1934) (adopting agency theory, but holding it does not apply where felon uses victim as a "shield"); *People v. Antick*, 15 Cal.3d 79, 87, 539 P.2d 43, 48 (1975), *superseded by constitutional amendment on another point*, *People v. Castro*, 38 Cal.3d 301, 211 Cal.Rptr. 719, 696 P.2d 111 (1985); *People v. Washington*, 62 Cal.2d 777, 781-82, 44 Cal.Rptr. 442, 445-46, 402 P.2d 130, 133-34 (1965) (Traynor, C.J.) ("[t]o invoke the felony-murder doctrine when the killing is not committed by the defendant or by his accomplice could lead to absurd results," describing fact situation almost identical to that here); *Alvarez, Jr. v. Dist. Ct.*, 186 Colo. 37, 525 P.2d 1131 (1974) (no felony murder liability under statute where robbery victim is mistakenly killed by police officer); *Weick v. State*, 420 A.2d 159, 162-63 (Del.Supr.1980) (no felony murder liability under statute when accomplice is killed by robbery victim); *State v. Crane*, 247 Ga. 779, 780, 279 S.E.2d 695, 696 (1981) (no felony murder under statute when accomplice is killed by burglarized homeowner); *People v. Morris*, 1 Ill.App.3d 566, 570, 274 N.E.2d 898, 901 (1971), and *People v. Hudson*, 6 Ill.App.3d 1062, 1064-65, 287 N.E.2d 41, 43 (1972) (no felony murder liability when accomplice killed by felony victim); *Commonwealth v. Moore*, 121 Ky. 97, 100-02, 88 S.W. 1085, 1086-87 (1905) (no felony murder liability when robbery victim kills bystander while opposing robbery; contrary result "would be carrying the rule of criminal responsibility for the acts of others beyond all reason"); *State v. Garner*, 238 La. 563, 586-87, 115 So.2d 855, 864 (1959) (no felony murder liability when bar patron accidentally kills bystander while defending bartender against felonious assault); *Commonwealth v. Balliro*, 349 Mass. 505, 515, 209 N.E.2d 308, 314 (1965) (felon cannot be held liable for death of any person killed by someone resisting commission of the felony); *People v. Austin*, 370 Mich. 12, 32-33, 120 N.W.2d 766, 775 (1963) (no felony murder liability when accomplice killed by robbery victim); *Sheriff Clark County v. Hicks*, 89 Nev. 78, 82, 506 P.2d 766, 768 (1973) (no felony murder liability when victim of attempted murder kills accomplice; "[t]he killing in such an instance is done, not in the perpetration of, or an attempt to perpetrate, a crime, but rather in an attempt to thwart the felony."); *State v. Canola*, 73 N.J. 206, 226, 374 A.2d 20, 30 (1977) (no felony murder liability when robbery victim kills accomplice); *People v. Wood*, 8 N.Y.2d 48, 54, 201 N.Y.S.2d 328, 330-33, 167 N.E.2d 736, 737-39 (1960) (no felony murder liability when robbery victim shoots accomplice); *Commonwealth ex rel. Smith v. Myers*, 438 Pa. 218, 223-37, 261 A.2d 550, 555-560 (1970) (overruling prior case law, adopts agency theory to deny felony murder liability

when police officer kills another police officer during attempt to arrest robbers); *Commonwealth v. Redline,* 391 Pa. 486, 508-09, 137 A.2d 472, 482-83 (1958) (overruling prior case law, adopts agency theory to deny felony murder liability when victim kills accomplice); *State v. Severs,* 759 S.W.2d 935, 938 (Tenn. Crim.App.1988) (no felony murder liability when larceny victim kills accomplice); *State v. Hansen,* 734 P.2d 421, 427 (Utah 1986) (felony murder statute limited to death of a person "other than a party"; no felony murder when accomplice killed by opponent of felony); *Wooden v. Commonwealth,* 222 Va. 758, 761-65, 284 S.E.2d 811, 814-16 (1981) (no felony murder liability when robbery victim shoots accomplice).

In one of the cases cited above, *State v. Canola,* 73 N.J. 206, 374 A.2d 20, defendant was convicted of felony murder when the robbery victim shot and killed one of defendant's cofelons. The court noted:

> Conventional formulations of the felony murder rule would not seem to encompass liability in this case. As stated by Blackstone about the time of the American Revolution, the rule was: "[I]f one intends to do another felony, and undesignedly kills a man, this also is murder." ... A recent study of the early *603 formulations of the felony murder rule by such authorities as Lord Coke, Foster and Blackstone and of later ones by Judge Stephen and Justice Holmes concluded that they were concerned solely with situations where the felon or a confederate did the actual killing. ... [I]t has been observed that the English courts never applied the felony murder rule to hold a felon guilty of the death of his co-felon at the hands of the intended victim.

Id. at 208-09, 374 A.2d at 21 (citations omitted). The court further noted:

> It is clearly the majority view throughout the country that, at least in theory, the doctrine of felony murder does not extend to a killing, although growing out of the commission of the felony, if directly attributable to the act of one other than the defendant or those associated with him in the unlawful enterprise. ... This rule is sometimes rationalized on the "agency" theory of felony murder.
>
> A contrary view, which would attach liability under the felony-murder rule for *any* death proximately resulting from the unlawful activity even the death of a co-felon notwithstanding the killing was by one resisting the crime, does not seem to have the present allegiance of any court.

Id. at 211-12, 374 A.2d at 23 (emphasis in original, footnote and citations omitted).[1] In construing its felony murder statute, the court then concluded:

> [I]t appears to us regressive to extend the application of the felony murder rule beyond its classic common-law limitation to acts by the felon and his accomplices, to lethal acts of third persons not in furtherance of the felonious scheme.

Id. at 226, 374 A.2d at 30. *See also* Norval Morris, *The Felon's Responsibility for the Lethal Acts of Others,* 105 U.Pa.L.Rev. 50, 50 (1956) (expansion of the felony murder rule, as urged here, is "socially unwise and ... based on reasoning not free from substantial analytic and historical errors").

Several appellate courts have noted the "justifiability" of a victim's lethal response as a factor foreclosing the presence of an "unlawful act" required under felony murder statutes. *See People v. Antick,* 15 Cal.3d 79, 91, 123 Cal.Rptr. 475, 482, 539 P.2d 43, 50. As stated by the Supreme Court of Pennsylvania in a case with similar facts:

> In the present instance, the victim of the homicide was one of the robbers who, while resisting apprehension in his effort to escape, was shot and killed by a policeman in the performance of his duty. Thus, the homicide was justifiable and, obviously, could not be availed of, on any rational legal theory, to support a charge of murder. How can anyone, no matter how much of an outlaw he may be, have a criminal charge lodged against him for the consequences of the lawful conduct of another person? The mere statement of the question carries with it its own answer.

Commonwealth v. Redline, 391 Pa. at 509, 137 A.2d at 483. *See also People v. Austin,* 370 Mich. at 251, 120 N.W.2d at 771-72 (following *Redline*).

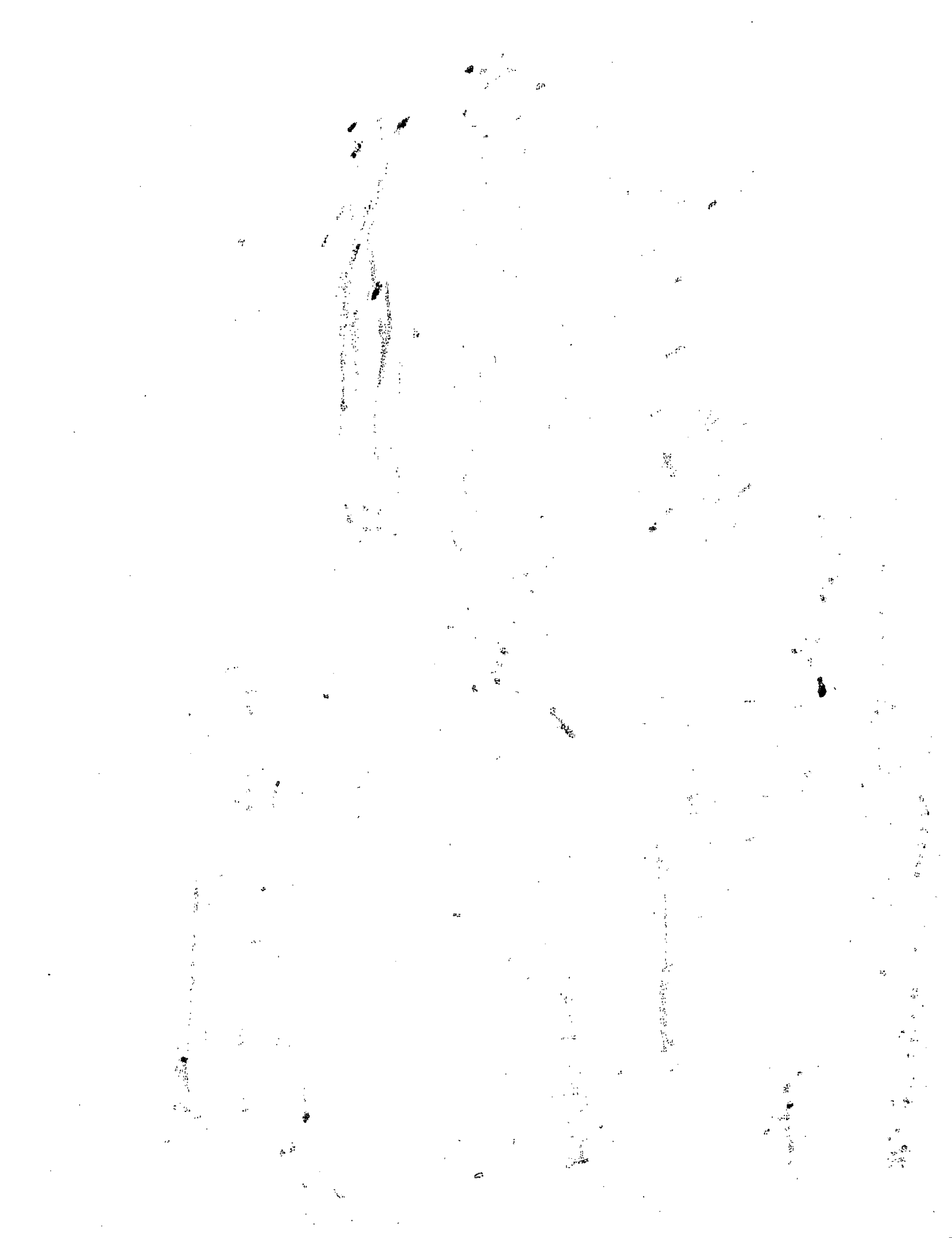
The State argues that for purposes of deterrence we should expand application of the felony murder rule to include cases such as these. Deterrence is a laudable objective of all aspects of the criminal law, but the proposition that criminal offenders not deterred by well-established and proper application of the felony murder rule will be deterred by the markedly broader version urged here is dubious at best.

> [W]here it is sought to increase the deterrent force of a punishment, it is usually accepted as wiser to strike at the harm intended by the criminal rather than at the greater harm possibly flowing from *604 his act which was neither intended nor desired by him; that is to say, for the situations before us, to increase penalties on felonies particularly armed felonies wherever retaliatory force can be foreseen, rather than on the relatively rarer occasions when the greater harm eventuates.

Norval Morris, *The Felon's Responsibility for the Lethal Acts of Others,* 105 U.Pa.L.Rev. 50, 67. Likewise, Justice Oliver Wendell Holmes, in *The Common Law,* argued that the wise policy is not to punish the fortuity, but rather to impose severe penalties on those types of criminal activity which experience has demonstrated carry a high degree of risk to human life." *Commonwealth ex rel. Smith v. Myers,* 438 Pa. at 227, 261 A.2d at 554 (citing Oliver W. Holmes, Jr., *The Common Law* 59 (1881)).

Finally, even if we overruled *Oxendine* and expanded the scope of our felony murder rule as the State suggests, we could not uphold these defendants' convictions. Such an expansion of the scope of criminal liability, applied retroactively, would appear to violate defendants' rights to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution. *See Marks v. United States,* 430 U.S. 188, 191-92, 97 S.Ct. 990, 992-93, 51 L.Ed.2d 260, 264-65 (1977); *Bouie v. City of Columbia,* 378 U.S. 347, 355, 84 S.Ct. 1697, 1703, 12 L.Ed.2d 894, 900 (1964); *see also State v. Vance,* 328 N.C. 613, 620, 403 S.E.2d 495, 500 (1991). While the General Assembly could effectively overrule *Oxendine* and impose criminal responsibility for murder under the facts presented, it could only do so prospectively, and the task is properly left to it. "[E]xtension of the felony-murder rule beyond its common law limitation to acts by the felon and his accomplice, to include the legal actions of those not acting in pursuance of the felonious scheme, is an appropriate action for the legislature[,] ... not the courts." *State v. Severs,* 759 S.W.2d 935, 938 (Tenn.Crim. App.1988).

For the foregoing reasons, we conclude that the trial court erred in denying defendants' motions to withdraw their pleas of guilty of first-degree felony murder. Therefore, we reverse, and remand the causes to the Superior Court, Forsyth County, with instructions to vacate the judgments entered upon defendants' pleas of guilty of first-degree felony murder. Nothing else appearing, our reversal of the felony murder convictions, which apparently prompted arrest of judgment on the underlying armed



robbery charges to which defendants pled guilty removes the legal impediment to entry of judgment and sentence on those charges. *State v. Pakulski*, 326 N.C. 434, 390 S.E.2d 129 (1990).

REVERSED AND REMANDED.

NOTES

[1] The court in *Canola* perhaps overstated the dearth of authority supporting the "proximate cause" theory. Two states, Missouri and Florida, appear to follow the minority "proximate cause" theory. *See Mikenas v. State*, 367 So.2d 606 (Fla.1978) (express language of state statute makes every participant in a felony guilty of second degree felony murder when someone is killed "by a person other than the person engaged in the ... felony"); *State v. Baker*, 607 S.W.2d 153 (Mo.1980) ("proximate cause" theory extended to case where accomplice is killed by opponent of the felony).

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"The State concede[s] that defendant herself did not commit the robbery at the Zingo Mart," and instead argues that she acted in concert with Lanier. At issue is whether the State presented substantial evidence showing that defendant was acting in concert with Lanier to rob the Zingo Mart. I would hold that the State failed to carry this burden.

Under the doctrine of acting in concert,

> [I]f two persons join in a purpose to commit a crime, each of them, if actually or constructively present, is not only guilty as a principal if the other commits that particular crime, but he is also guilty of any other crime committed by the other in pursuance of the common purpose or as a natural or probable consequence thereof.

State v. Herring, 176 N.C.App. 395, 399, 626 S.E.2d 742, 745 (2006) (quoting State v. Barnes, 345 N.C. 184, 233, 481 S.E.2d 44, 71 (1997)) (alteration in original) (internal citations omitted).

The State must show that defendant was present, that she had joined in purpose with Lanier to commit a crime, and that the crime for which she was being tried, robbery with a dangerous weapon, was either "in pursuance of [that] common purpose or [was] a natural or probable consequence thereof." Id.; see also State v. Sloan, 180 N.C.App. 527, 638 S.E.2d 36 (2006) (Elmore, J., concurring in part and dissenting in part). Defendant argues that the State did not present sufficient evidence to establish her presence. "For purposes of the doctrine, '[a] person is constructively present during the commission of a crime if he or she is close enough to be able to render assistance if needed and to encourage the actual perpetration of the crime.'" State v. Mann, 355 N.C. 294, 306, 560 S.E.2d 776, 784 (2002) (quoting State v. Willis, 332 N.C. 151, 175, 420 S.E.2d 158, 169 (1992)).

I do not think that the State presented sufficient evidence to establish defendant's constructive presence. The majority holds that defendant was constructively present during the Zingo Mart crime because she was actually present and participated in the crimes at K-Mart and the Perfect Nail Salon. In my opinion, such reasoning is inadequate to support a finding of constructive presence. Although by her own admission defendant was seated in the vehicle outside the Zingo Mart, it appears that she was sitting in the passenger seat, rather than positioned as a getaway driver. This inference is supported by both defendant's statement that "Hank pulled behind a store" and Detective Murphy's testimony that Lanier was driving the vehicle at the time defendant and Lanier were arrested. The store clerk testified that he did not see a vehicle at the time of the robbery, and defendant stated that they were parked behind the Zingo Mart. Again, both statements support the inference that defendant was not in a position to render assistance or encourage the actual perpetration of the crime. Although the use of circumstantial evidence is permissible to establish sufficient evidence, "that evidence must be real and substantial and not merely speculative. Substantial evidence is evidence from which a rational trier of fact could find the fact to be proved beyond a reasonable doubt." State v. Berry, 143 N.C.App. 187, 207, 546 S.E.2d 145, 159 (2001) (quotations and citations omitted). Here, the State's evidence does not rise to the level of sufficiency. Accordingly, I would find that the State did not present sufficient evidence to support defendant's constructive presence during the Zingo Mart robbery.[1]

Because I would find that it was error for the trial court to deny defendant's motion to dismiss, I respectfully dissent from the majority opinion.

FOOTNOTES

1. Although I need not address whether defendant shared a common purpose with Lanier in order to find error with the trial court's ruling, defendant's admission to the events at K-Mart and the Perfect Nail Salon, as well as her voluntary plea of guilty to the common law robbery of the nail salon, indicate that the Zingo Mart robbery occurred outside the scope of any common purpose that defendant had with Lanier.

TYSON, Judge.

Judge GEER concurs. Judge ELMORE dissents by separate opinion.

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Court of Appeals of North Carolina.

STATE of North Carolina v. Angelia Scates COMBS.

No. COA06-613.

Decided: April 3, 2007

Attorney General Roy Cooper, by Assistant Attorney General Amanda P. Little, for the State. James N. Freeman, Jr., Elkin, for defendant-appellant.

Angelia Scates Combs ("defendant") appeals from judgment entered after a jury found her to be guilty of robbery with a dangerous weapon. We find no prejudicial error.

I. Background

On 13 October 2004, defendant and Hank Lanier ("Lanier") drove to High Point, North Carolina to obtain money in order to travel to Florida. Defendant and Lanier entered a K-Mart Store at approximately 9:30 a.m. and attempted to purchase a drink with a stolen credit card. The card was declined and defendant and Lanier exited K-Mart.

At approximately 9:56 a.m., defendant and Lanier entered the Perfect Nail Salon (the "Salon") located adjacent to the K-Mart Store. Defendant entered under the pretense of applying for a job. Defendant and a Salon employee struggled, while Lanier grabbed the cash register. Both defendant and Lanier ran out of the Salon. Defendant and Lanier drove out of the parking lot in a gray Ford F-150 pickup truck. Lanier broke open the cash register with a screwdriver, discovered it to be empty, and threw the cash register out of the car.

Defendant and Lanier drove to Zingo Mart located three blocks from the Salon and parked behind the store. At approximately 10:04 a.m., Lanier entered the Zingo Mart while defendant remained in the truck. Richard Bailey ("Bailey") was the only Zingo Mart clerk working that day and testified he saw Lanier enter the Zingo Mart. Lanier jumped over the counter and pressed a pocket knife with a three to four inch blade against Bailey's chest. Lanier stated if Bailey did not open the cash register, Lanier would cut him. Bailey opened the cash register. Lanier removed approximately $350.00 and exited the Zingo Mart. Bailey testified he saw a "bluish" pick-up truck exit the parking lot moments later.

Bailey contacted law enforcement officers and gave a description of Lanier and defendant to Detective Mark McNeill ("Detective McNeill"). Detective McNeill spoke with Brian Peterson, the loss prevention manager at the K-Mart Store. Peterson recalled defendant and Lanier's attempted drink purchase and found a photograph of defendant and Lanier on the K-Mart's security camera. Bailey identified Lanier from that photograph.

At approximately 2:40 p.m., Detective Stephanie Murphy ("Detective Murphy") stopped defendant and Lanier's vehicle after she received a report of the crimes that morning. Detective Murphy arrested both defendant and Lanier. Defendant waived her Miranda rights and gave a voluntary statement and confessed to the Salon robbery. On 14 October 2004, defendant gave a second voluntary confession to Detective McNeill and again admitted participating in the Salon robbery.

On 3 January 2005, a grand jury indicted defendant on robbery with a dangerous weapon for the Zingo Mart robbery and common law robbery of the Salon. On 5 December 2005, defendant pled guilty to the common law robbery. The State proceeded to trial on defendant's robbery with a dangerous weapon charge. The jury returned a verdict of guilty of robbery with a dangerous weapon. The trial court sentenced defendant to an active minimum sentence of sixty-one months and eighty-three months maximum. Defendant appeals.

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II. Issues

Defendant argues the trial court erred when it: (1) denied her motion to dismiss; (2) provided a document not admitted into evidence to the jury during jury deliberations; (3) failed to charge the jury on common law robbery as a lesser included offense to robbery with a dangerous weapon; (4) allowed Exhibits 3 and 9 into evidence; and (5) failed to sustain her objection to the State's opening statement.

III. Motion to Dismiss

Defendant argues the trial court should have dismissed the charge of robbery with a dangerous weapon. We disagree.

A. Standard of Review

The standard for ruling on a motion to dismiss is whether there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense. Substantial evidence is relevant evidence which a reasonable mind might accept as adequate to support a conclusion. In ruling on a motion to dismiss, the trial court must consider all of the evidence in the light most favorable to the State, and the State is entitled to all reasonable inferences which may be drawn from the evidence. Any contradictions or discrepancies arising from the evidence are properly left for the jury to resolve and do not warrant dismissal.

State v. Wood, 174 N.C.App. 790, 795, 622 S.E.2d 120, 123 (2005) (internal quotations omitted).

This Court stated in State v. Hamilton, "in borderline or close cases, our courts have consistently expressed a preference for submitting issues to the jury, both in reliance on the common sense and fairness of the twelve and to avoid unnecessary appeals." 77 N.C.App. 506, 512, 335 S.E.2d 506, 510 (1985) (citations omitted), disc. rev. denied, 315 N.C. 593, 341 S.E.2d 33 (1986).

B. Analysis

N.C. Gen.Stat. § 14-87(a) (2005) states:

(a) Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony.

Robbery with a dangerous weapon is: (1) the unlawful taking or attempt to take personal property from the person or in the presence of another (2) by the use or threatened use of a firearm or other dangerous weapon (3) whereby the life of a person is endangered or threatened (4) where the taker knows he is not entitled to take the property and (5) intends to permanently deprive the owner of the property. State v. Richardson, 342 N.C. 772, 784, 467 S.E.2d 685, 692 (1996), cert. denied, 519 U.S. 890, 117 S.Ct. 229, 136 L.Ed.2d 160 (1996).

The principle of concerted action need not be overlaid with technicalities. It is based on the common meaning of the phrase 'concerted action' or 'acting in concert.' To act in concert means to act together, in harmony or in conjunction one with another, pursuant to a common plan or purpose.

State v. Joyner, 297 N.C. 349, 356, 255 S.E.2d 390, 395 (1979) (The trial court properly denied the defendant's motion to dismiss charges on acting in concert theory.). Our Supreme Court reasoned:

Where the state seeks to convict a defendant using the principle of concerted action, that this defendant did some act forming a part of the crime charged would be strong evidence that he was acting together with another who did other acts leading toward the crimes' commission. That which is essentially evidence of the existence of concerted action should not, however, be elevated to the status of an essential element of the principle. Evidence of the existence of concerted action may come from other facts. It is not, therefore, necessary for a defendant to do any particular act constituting at least part of a crime in order to be convicted of that crime under the concerted action principle so long as he is present at the scene of the crime and the evidence is sufficient to show he is acting together with another who does the acts necessary to constitute the crime pursuant to a common plan or purpose to commit the crime.

Id. at 356-57, 255 S.E.2d 390 (emphasis in original and supplied); see State v. Johnson, 164 N.C.App. 1, 13, 595 S.E.2d 176, 183 (2004) (Evidence sufficient to show the defendant acted in concert to commit robbery with a dangerous weapon when he and two co-defendants planned to rob someone by having the unarmed co-defendant frighten the victims, but the co-defendant instead menaced the victims with a shotgun, and the defendant took the victims' money.); see also State v. Erlewine, 328 N.C. 626, 637, 403 S.E.2d 280, 286 (1991) (Under the theory of acting in concert, upon which the jury was instructed, if two or more persons join in a purpose to commit a crime, each person is responsible for all unlawful acts committed by the other persons as long as those acts are committed in furtherance of the crime's common purpose.).

Constructive presence is not determined by the defendant's actual distance from the crime; the accused simply must be near enough to render assistance if need be and to encourage the actual perpetration of the crime. State v. Wiggins, 16 N.C.App. 527, 531, 192 S.E.2d 680, 682 (1972). Thus, the driver of a "get-away" car may be constructively present at the scene of a crime although stationed a convenient distance away. Id. at 530, 192 S.E.2d at 682-83; see State v. Lyles, 19 N.C.App. 632, 636, 199 S.E.2d 699, 702 (The defendant driver of "get-away" car was "present" at scene of crime even though he was waiting in trailer park located 100 feet behind store being robbed.), cert. denied, 284 N.C. 426, 200 S.E.2d 662 (1973); but cf. State v. Bitie, 26 N.C.App. 151, 154, 215 S.E.2d 401, 404 (1975) (The defendant not constructively present where he arranged for others to steal tools from a sawmill, and, in response to actual participants' telephone call to the defendant's nearby home, picked up and drove participants away from scene of crime.).

Defendant admitted to Detective McNeill that she and Lanier traveled to High Point on 13 October 2004 "to get getaway money to go to Florida." Evidence shows defendant and Lanier had a common plan or purpose to obtain money to go to Florida. Defendant and Lanier initially stopped at a K-Mart store and attempted to use a stolen credit card. Defendant and Lanier left K-Mart and entered the Perfect Nail Salon, located beside K-Mart. Defendant admitted that she and Lanier stole a cash register from the Salon, which they later discovered to be empty of cash. Defendant and Lanier drove out of the shopping center and stopped minutes later at the Zingo Mart. Lanier stole $350.00 from the Zingo Mart at knife point.

Defendant acted in concert with Lanier to commit crimes at: (1) K-Mart; (2) Perfect Nail Salon; and (3) Zingo Mart. See Joyner, 297 N.C. at 356, 255 S.E.2d 390 at 395 (To act in concert means to act together, in harmony or in conjunction one with another pursuant to a common plan or purpose.). Sufficient evidence supports defendant was constructively present to the Zingo Mart robbery because she was actually present and participated in the crimes at K-Mart and the Perfect Nail Salon. She remained in the vehicle in the Zingo Mart parking lot during the third crime. She drove away with Lanier after Lanier robbed the Zingo Mart. Viewing the evidence in the light most favorable to the State, the trial court did not err when it denied defendant's motion to dismiss. This assignment of error is overruled.

IV. Defendant's Statement

Defendant argues the trial court committed prejudicial error when it provided a document to the jury during jury deliberations that had not been admitted into evidence. We disagree.

Under N.C. Gen.Stat. § 15A-1233:

(a) If the jury after retiring for deliberation requests a review of certain testimony or other evidence, the jurors must be conducted to the courtroom. The judge in his discretion, after notice to the prosecutor and defendant, may direct that requested parts of the testimony be read to the jury and may permit the jury to reexamine in open court the requested materials admitted into evidence. In his discretion the judge may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

(b) Upon request by the jury and with consent of all parties, the judge may in his discretion permit the jury to take to the jury room exhibits and writings which have been received in evidence. If the judge permits the jury to take to the jury room requested exhibits and writings, he may have the jury take additional material or first review other evidence relating to the same issue so as not to give undue prominence to the exhibits or writings taken to the jury room. If the judge permits an exhibit to be taken to the jury room, he must, upon request, instruct the jury not to conduct any experiments with the exhibit.

The decision whether to grant or refuse a request by the jury for a restatement or review of the evidence after jury deliberations have begun lies within the discretion of the trial court. State v. Johnson, 346 N.C. 119, 123, 484 S.E.2d 372, 375 (1997).

During jury deliberations, the jury sent a note which stated, "Jury request: all statements by Ms. Combs, and any pictures taken." The following colloquy ensued:

The Court: They are wanting the statements by Ms. Combs and all the photographs. Any objection to giving them those?

[Prosecutor]: One statement of hers is not in document form, the one that Detective McNeill basically read into the record.

The Court: Okay. So that was not into evidence.

[Prosecutor]: No, sir. The statement itself was, but not as a document.

The Court: Right.

[Defense counsel]: What has been introduced as an exhibit, obviously no objection to that.

The Court: What are we going to do about the one that's not in document form but is in evidence? I know they're going to want it.

[Prosecutor]: I can type it and print it out. It's in quotations in his report, but we don't want to send the whole report back.

[Defense counsel]: Right. Does the question go to the exhibits, or does it just say statements?

The Court: It says: "Jury request: all statements by Ms. Combs, and any pictures taken."

[Defense counsel]: I guess the only concern-and I'm just thinking out loud, bear with me-is if there were some, I can't remember, and I'll defer to the Court and [the prosecutor] on this, whether there may have been some other statements that she gave to Davidson County officials, at least referred to. And then my concern is we don't have any way of getting that back to them as well. So I guess it's just a general judgment as to typing up something that has not been introduced as an exhibit, since-but I don't wish to be heard.

The Court: Well, to the extent that the specific words may, uh, were put into evidence by the testimony of Detective McNeill, the only way we could get them, uh, if they want that statement, the only way to get it otherwise would be to have, uh, put him back on the witness stand and have him re-read it. I'd rather not do that, if we can figure out some way to get it in some sort of written form to them.

[Prosecutor]: I think what I'll do, instead of typing it over again, is to chop up-

The Court: Redact it, yes.

[Prosecutor]: If you'll give me a minute, I can get that done.

The Court: Okay. I'm going to send State's Exhibit 9 to the jury, along with the photographs, Madam Clerk, if you will get those together for me. And in my discretion, I am going to give them a redacted statement that was read into evidence by Detective McNeill, rather than require him to get back on the witness stand and re-read his testimony. We have taken a redacted version and made a photocopy of it and it's my understanding that [defense counsel] wishes to make an objection for the record.

[Defense counsel]: That is correct, if your Honor please. We would object.

Nothing in N.C. Gen.Stat. § 15A-1233 authorizes the trial court to proceed as it did in this case. When the jury requested copies of all of defendant's statements, the prosecutor pointed out to the trial court that one of those statements was not in document form. Instead, Detective McNeill had testified to that statement, reading from his report. His report was never admitted into evidence. The trial court, nevertheless, sent a redacted version of that report back to the jury room.

The statute grants the trial court discretion to make available to the jury only "testimony or other evidence" and "exhibits and writings which have been received in evidence." N.C. Gen.Stat. § 15A-1233(a) and (b). Because the police report was not admitted into evidence, the trial court necessarily had no discretion to allow it to be reviewed by the jury. The State acknowledges this fact in its brief, "Defendant correctly asserts that N.C.G.S. § 15A-1233 does not give authority to permit the jury to take writings which have not been received in evidence to the jury room under any circumstances."

We conclude the trial court's error was not prejudicial to defendant. See N.C. Gen.Stat. § 15A-1443(a) (2005) ("A defendant is prejudiced by errors relating to rights arising other than under the Constitution of the United States when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises.").

The trial court could have instructed the court reporter to that portion of Detective McNeill's testimony in which he reported defendant's statement to the jury under N.C. Gen.Stat. § 15A-1233(a).

Since it is undisputed that the testimony would have been identical to the written document provided to the jury and since that document contained exculpatory information, we conclude there is no reasonable possibility that the jury would have reached a different verdict if Detective McNeill's redacted report had not been sent back to the jury room.

The trial court's error did not rise to the level of prejudice required by N.C. Gen.Stat. § 15A-1443(a) to award defendant a new trial.

V. Lesser-Included Offense

Defendant argues the trial court erred when it failed to charge the jury as to common law robbery as a lesser included offense of robbery with a dangerous weapon. We disagree.

As stated above, "[u]nder N.C.G.S. § 14-87(a), robbery with a dangerous weapon is: '(1) the unlawful taking or an attempt to take personal property from the person or in the presence of another (2) by use or threatened use of a firearm or other dangerous weapon (3) whereby the life of a person is endangered or threatened.'"

State v. Olson, 330 N.C. 557, 566, 411 S.E.2d 592, 597 (1992) (quoting State v. Beaty, 306 N.C. 491, 496, 293 S.E.2d 760, 764 (1982), overruled on other grounds by State v. White, 322 N.C. 506, 369 S.E.2d 813 (1988)); see N.C. Gen.Stat. § 14-87 (1993). " 'Force or intimidation occasioned by the use or threatened use of firearms, is the main element of the offense.' " Beaty, 306 N.C. at 496, 293 S.E.2d at 764 (quoting State v. Mull, 224 N.C. 574, 576, 31 S.E.2d 764, 765 (1944)).

"[W]here the uncontroverted evidence is positive and unequivocal as to each and every element of armed robbery, and there is no evidence supporting defendant's guilt of a lesser included offense, the trial court does not err by failing to instruct the jury on the lesser included offense of common law robbery." State v. Peacock, 313 N.C. 554, 562, 330 S.E.2d 190, 195 (1985). "The sole factor determining the judge's obligation to give such an instruction is the presence, or absence, of any evidence in the record which might convince a rational trier of fact to convict the defendant of a less grievous offense." State v. Wright, 304 N.C. 349, 351, 283 S.E.2d 502, 503 (1981). "The critical difference between armed robbery and common law robbery is that the former is accomplished by the use or threatened use of a dangerous weapon whereby the life of a person is endangered or threatened." Peacock, 313 N.C. at 562, 330 S.E.2d at 195; see State v. Thompson, 297 N.C. 285, 289, 254 S.E.2d 526, 528 (1979) (No instruction on common law robbery required in the absence of affirmative evidence of the nonexistence of an element of the offense charged.).

Bailey testified Lanier "jumped the counter and had the knife in [his] chest [,]" and ordered Bailey "to open the register or he'd cut me." Bailey testified Lanier held a pocketknife with an approximate three to four inch blade and pressed the knife against Bailey's chest. Bailey opened the register and Lanier removed about $350.00. Uncontradicted evidence tends to show Lanier robbed the Zingo Mart with a pocketknife. Under the theory of acting in concert, the trial court did not err when it denied defense counsel's request for an instruction on the lesser included offense of common law robbery. This assignment of error is overruled.

VI. Exhibits 3 and 9

Defendant argues the trial court erred when it allowed Exhibits 3 and 9 into evidence. We disagree.

A. Standard of Review

The standard of review for assessing evidentiary rulings is abuse of discretion. State v. Meekins, 326 N.C. 689, 696, 392 S.E.2d 346, 350 (1990). "A trial court may be reversed for an abuse of discretion only upon a showing that its ruling was so arbitrary that it could not have been the result of a reasoned decision." State v. Wilson, 313 N.C. 516, 538, 330 S.E.2d 450, 465 (1985).

B. Rule 404(b)

N.C. Gen.Stat. § 8C-1, Rule 404(b) (2005) states:

(b) Other crimes, wrongs, or acts.-Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident. Admissible evidence may include evidence of an offense committed by a juvenile if it would have been a Class A, B1, B2, C, D, or E felony if committed by an adult.

The admissibility of 404(b) evidence is subject to the weighing of probative value versus unfair prejudice mandated by Rule 403. State v. Agee, 326 N.C. 542, 549, 391 S.E.2d 171, 175 (1990) (citing United States v. Montes-Cardenas, 746 F.2d 771, 780 (11th Cir.1984)); N.C. Gen.Stat. § 8C-1, Rule 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of unfair delay, waste of time, or needless presentation of cumulative evidence."). Rule 404(b) is a rule of inclusion, not exclusion. Agee, 326 N.C. at 550, 391 S.E.2d at 175.

Rule 404(b) evidence is relevant and admissible so long as the incidents are sufficiently similar and not too remote in time. State v. Blackwell, 133 N.C.App. 31, 35, 514 S.E.2d 116, 119 (citing State v. Bagley, 321 N.C. 201, 207, 362 S.E.2d 244, 247-48 (1987)), disc. rev. denied, 350 N.C. 595, 537 S.E.2d 483 (1999); see also State v. Smith, 152 N.C.App. 514, 527, 568 S.E.2d 289, 297 ("The use of evidence permitted under Rule 404(b) is guided by two constraints: similarity and temporal proximity.") (citation omitted), disc. rev. denied, 356 N.C. 623, 575 S.E.2d 757 (2002).

Remoteness in time is most important where evidence of another crime is used to show that both crimes arose out of a common scheme or plan[; r]emoteness in time is less important when the other crime is admitted because its modus operandi is so strikingly similar to the modus operandi of the crime being tried as to permit a reasonable inference that the same person committed both crimes.

State v. Schultz, 88 N.C.App. 197, 203, 362 S.E.2d 853, 857 (1987), aff'd, 322 N.C. 467, 368 S.E.2d 386 (1988); see State v. Alvarez, 168 N.C.App. 487, 497, 608 S.E.2d 371, 377 (2005) (Evidence of prior robberies was admissible to show a common scheme or purpose because each of the prior robberies was sufficiently similar to the subject robbery and occurred within weeks of the subject robbery, and the State proffered testimony that the robberies were all part of a common scheme or plan towards a drug transaction with a Connecticut gang.).

The trial court admitted into evidence State's Exhibit 3, which is a receipt for an attempted credit card transaction at K-Mart on 13 October 2004 at 9:34 a.m. The trial court also admitted State's Exhibit 9, which is defendant's statement written by Detective Murphy. The statement says:

[Lanier] and I went to High Point to Wal-Mart (sic). It is beside a nail shop. I went into Wal-Mart (sic) to get some underwear. Came out and met [Lanier] in the parking lot. [Lanier] told me to go inside and distract the lady in the nail shop. I was talking to the Oriental lady, and [Lanier] took the cash register. [Lanier] ran out of the store with the cash register. The woman and I was wrestling around on the ground. I scraped my knee. The woman threw her shoe at me. I ran outside and got in the Blazer (sic) with [Lanier] and we left. [Lanier] threw the register out of the window just down the road from the nail salon. [Lanier] pried open the cash register with a screwdriver, but there was no money inside.

The trial court admitted this statement and stated that it was "admissible solely for the limited purpose of showing that [defendant] had a common plan or scheme with [Lanier], whom she was with at that time. And that is the only way you may consider this evidence."

On the morning of 13 October 2004, defendant and Lanier: (1) entered K-Mart and attempted to use a stolen credit card; (2) committed common law robbery at the Salon; and, (3) robbed Bailey an employee at the Zingo Mart at knife-point. All three stores are located within three blocks of each other. All acts were committed within approximately one hour. The trial court properly admitted Exhibit 3 and 9 with a limiting instruction for the jury to consider this evidence as tending to show a common scheme or plan. This assignment of error is overruled.

VII. State's Opening Statement

Defendant argues the trial court erred when it failed to sustain her objection to the State's opening statement. We disagree.

Under N.C. Gen.Stat. § 15A-1221(a)(4), each party must be given the opportunity to make a brief opening statement, but the defendant may reserve his opening statement. State v. Mash, 328 N.C. 61, 64-65, 399 S.E.2d 307, 310 (1991). The trial court is given broad discretion to control the extent and manner of questioning prospective jurors, and its decisions will not be overturned absent an abuse of discretion. Id. An opening statement is for the purpose of making a general forecast of the evidence, not for arguing the case, instructing on the law, or contradicting the other party's witnesses. Id. "N.C. Gen.Stat. § 15A-1221(a)(4) permits each party in a criminal jury trial to make an opening statement but does not define the scope of that statement. However, wide latitude is generally allowed with respect to its scope. Control of the parties' opening statements is within the discretion of the trial court." State v. Holmes, 120 N.C.App. 54, 62, 460 S.E.2d 915, 920, disc. rev. denied, 342 N.C. 416, 465 S.E.2d 545 (1995) (quotations and citations omitted).

During his opening statement, the prosecutor stated: "the first thing you will hear is that there was a robbery that occurred at Perfect Nails on South Main Street. This is a nail salon down here on South Main." The trial court overruled defense counsel's objection. The prosecutor is allowed latitude regarding the scope of his opening statement and forecasted admissible and relevant evidence tending to show a common scheme or plan. The trial court did not abuse its discretion when it overruled defendant's objection. This assignment of error is overruled.

VIII. Conclusion

The trial court did not err when it denied defendant's motion to dismiss the charge of robbery with a dangerous weapon. Sufficient evidence tended to show defendant and Lanier acted in concert to commit the crimes. The trial court did not commit prejudicial error when it allowed the jury to review a redacted officer's report that admitted portions of defendant's statement to the officer that were testified to at trial.

The trial court did not err by failing to charge the jury on common law robbery as a lesser included offense of robbery. All evidence tended to show Lanier committed the robbery of Bailey at the Zingo Mart with a deadly weapon.

The trial court did not err when it allowed Exhibits 3 and 9 into evidence as relevant to show common plan or scheme. The trial court did not err when it overruled defendant's objection to the State's opening statement referring to the Perfect Nail Salon robbery. Defendant received a fair trial, free from prejudicial errors she preserved, assigned, and argued.

No Prejudicial Error.

I respectfully dissent from the majority opinion holding that the State produced sufficient evidence to survive defendant's motion to dismiss. Because I believe that the evidence was insufficient to convince a rational trier of fact that defendant was guilty of robbery with a dangerous weapon, I would hold that the trial court erred by not allowing defendant's motion to dismiss the charge of robbery with a dangerous weapon, and would order a new trial for defendant.

Compounding a felony
commit

(Please Send Copy Back.)

RE: State Introduced interrogation tape on rebuttal. It contains my specific denial of killing, jacking, robbing, conspiracy, theft and selling drugs in this case

5/27/21

Dear Chris, Since you asked me to do this please read it objectively...

Allow me to begin by outlining what I believe is the only relevant issue to be addressed by the petition for cert. To wit:

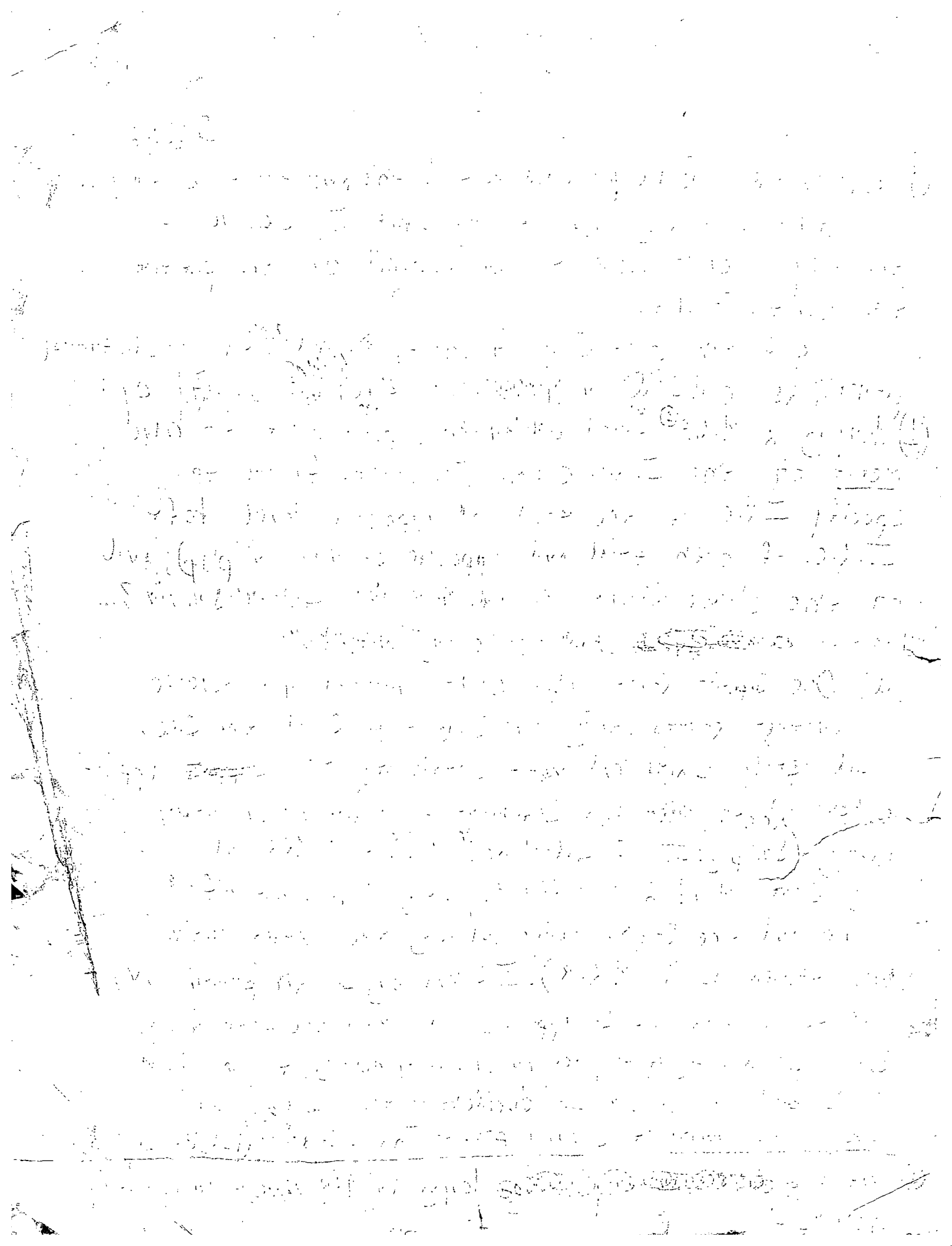
Did the Court, Judge Gilchrist, exceed it's jurisdictional power, as codified in N.C.G.S. 15A-1420(c)(1),(3), and (4) by:

(1) denying a M.A.R.[1] found by another superior court to have merit on the I.A.C. claims (The courts failure to specify I.A.C. at the trial, or appellate level left I.A.C. of both trial and appellate counsel in play); and on the claims involving Melinda Moore and Deloris Sullivan?... Without an ~~[illegible]~~ evidentiary hearing when...

(a) One Superior Court judge can't over rule nor reverse another courts ruling. Here, Judge Floyd found the I.A.C. and Brady claims had merit sufficient to ~~support~~ appoint counsel where, inter alia, Defendant requested an evidentiary hearing. (See page 58 of Defendants May 12, 2008 MAR and page 3 of May 1, 2000 Motion Requesting Appointment of Counsel and the Courts order indicating the latter motion was treated as a M.A.R.). It has long been the practice in N.C for a court not to appoint counsel unless the MAR filed by a pro se litigant required an evidentiary hearing to be held. M.A.R.s based on law can be decided on the pleadings by the court without counsel present. This is statutory (15A-1420(b1)(3).

[1] That is, ~~[illegible]~~, den[illegible] MAR without an evidentiary hearing

 Ex. 28

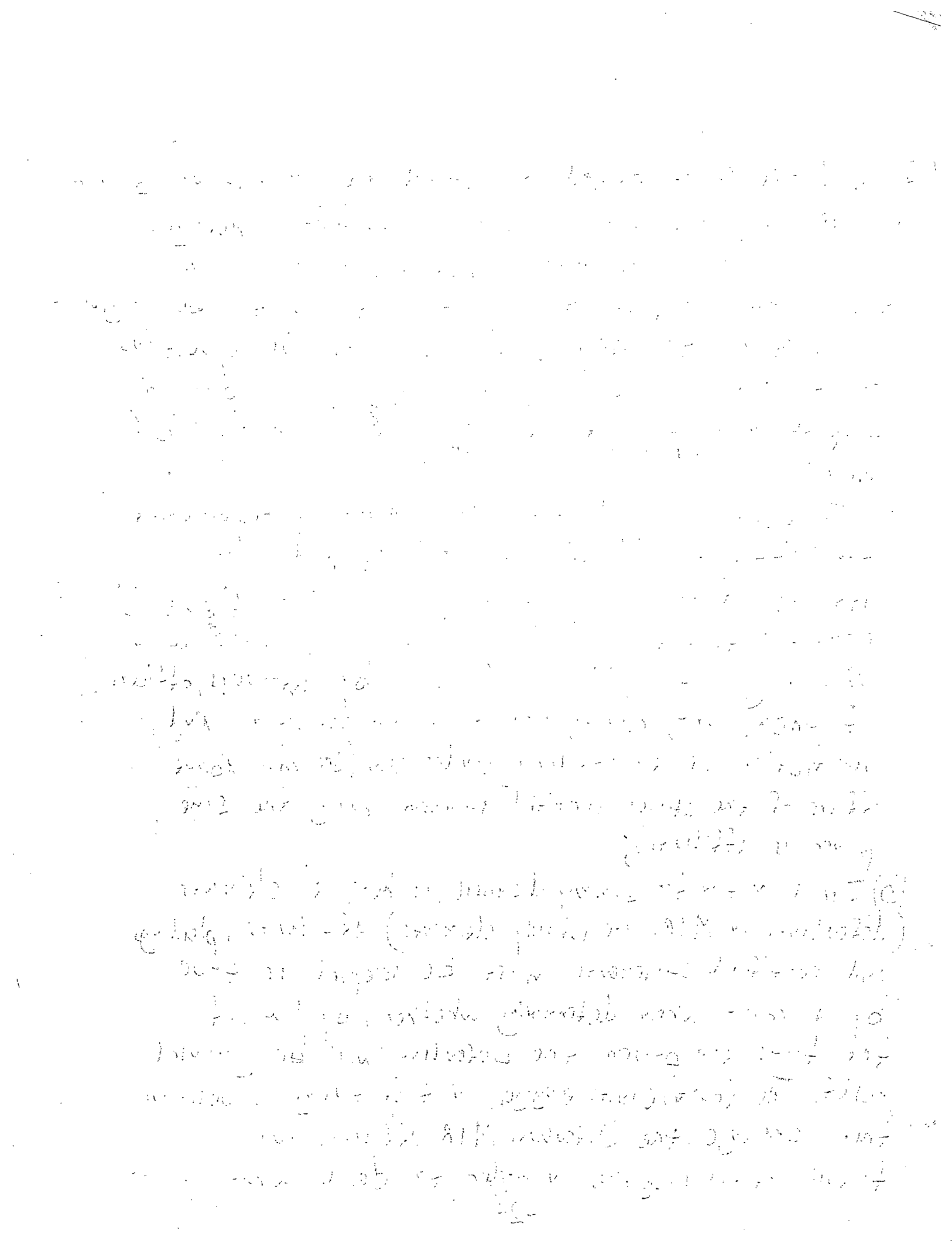


* To show certifications are as binding and strong as affidavits or officers of corporations - which all officers are, including officers of the court see False certifications... G.S. 143-54
‡ Chris, to see why Angus couldn't break masonic oath & tell on Cassidy see False oath required of fraternal benefit societies G.S. 58-24-180 (e)

(2) Did the Court exceed its statutory & jurisdictional power by determing the motion without an evidentiary hearing, and using a non-evidentiary hearing (which only has the statutory capacity for questions of law to be argued) - as a forum to hear evidence and resolve questions of fact where material issues of fact were put in dispute in violation of 15A-1420 (3) and 15A-1420 (4)? When:

(a) The defendant complied with the 15A-1420 (b) requirement for affidavits and documentary evidence, and the attorneys of record, in compliance with 15A-1420 (a)(1)(C1) certified that the M.A.R. had a sound legal basis, was made in good faith - such certification by attorneys, officers of the court, having the force, authentication and verification as an affidavit under law (see opinions about officers of the states certified* statements having the same power as affidavits);

(b) In a motion for summary dismissal, as here, a claimants (defendants in MARs are actually claimants) affidavits, pleadings and certified statements must be accepted as true by a court when determining whether, by law, if the facts are proven, the Defendant will be granted relief. The Court can't engage in fact finding expeditions that challenge the Defendants MAR affidavits and factual certified allegations in order to decide what is or



LAW

isn't a fact to apply Law to, and to use as a basis for conclusions of

(Contrary to the States arguments in pleadings, for example, page 3 of the States Motion To Strike Inadmissible Evidence, 12/2/15, the MAR was not filed pursuant to 15A-1414, which under, 15A-1420(c)(2) doesn't require an evidentiary hearing since it is made before 10 days after the verdict & judgement before the same judge based on facts within the Courts knowledge, while fresh in memory, and using only the trial record. This MAR was filed pursuant to 15A-1415(b) and (c)[based on evidence that was unknown and unavailable at the time of the trial with direct and material bearing on the defendants innocence or guilt] and (e) IAC.)

(C) The States denial of M facts by Defendant, except those supported by the record and those admitted by the State, in it's initial response to Defendants MAR, created a material dispute. To determine which facts were supported by the record the Court had to hold an evidentiary hearing where the Defendants asserted facts, via affidavit or the certified MAR, were contradicted by the States response. Once the States pleadings and Response, [redacted] and Arguments, At the non-evidentiary hearing, disputed Defendants

facts on record, the need for an evidentiary hearing was triggered since the presentation of contrary facts by the State to the Court for the Court to adopt or "find" constituted a request by the State for the Court to "hear evidence". A request the Court unlawfully accepted and responded to by ~~[illegible]~~ engaging in a fact finding expedition which resulted in the Courts 70 page order replete with dozens of findings of fact that resolved questions of fact. (See 15A-1420 (c)(4) "If the Court cannot rule upon the motion without the hearing of evidence, it must conduct a hearing for the taking of evidence, and must make findings of fact.") The States use of argumentive pleadings in response to the M.A.R. factual, sworn & certified pleadings required the court to find & hunt for facts

(d) The States reliance on State v. McHone, 348 N.C. 247 and the Courts using facts the Court found in ~~[illegible]~~ contradiction to Defendants asserted facts to base the Courts characterization of the Defendants claims as "meritless" on is premature with regard to all claims other than the IAC claims and Brady claim (Moore & Sullivan) and, with regard to these latter two claims, is simply null & void since the judge who did the (Judge Floyd) initial review found those claims to have merit and

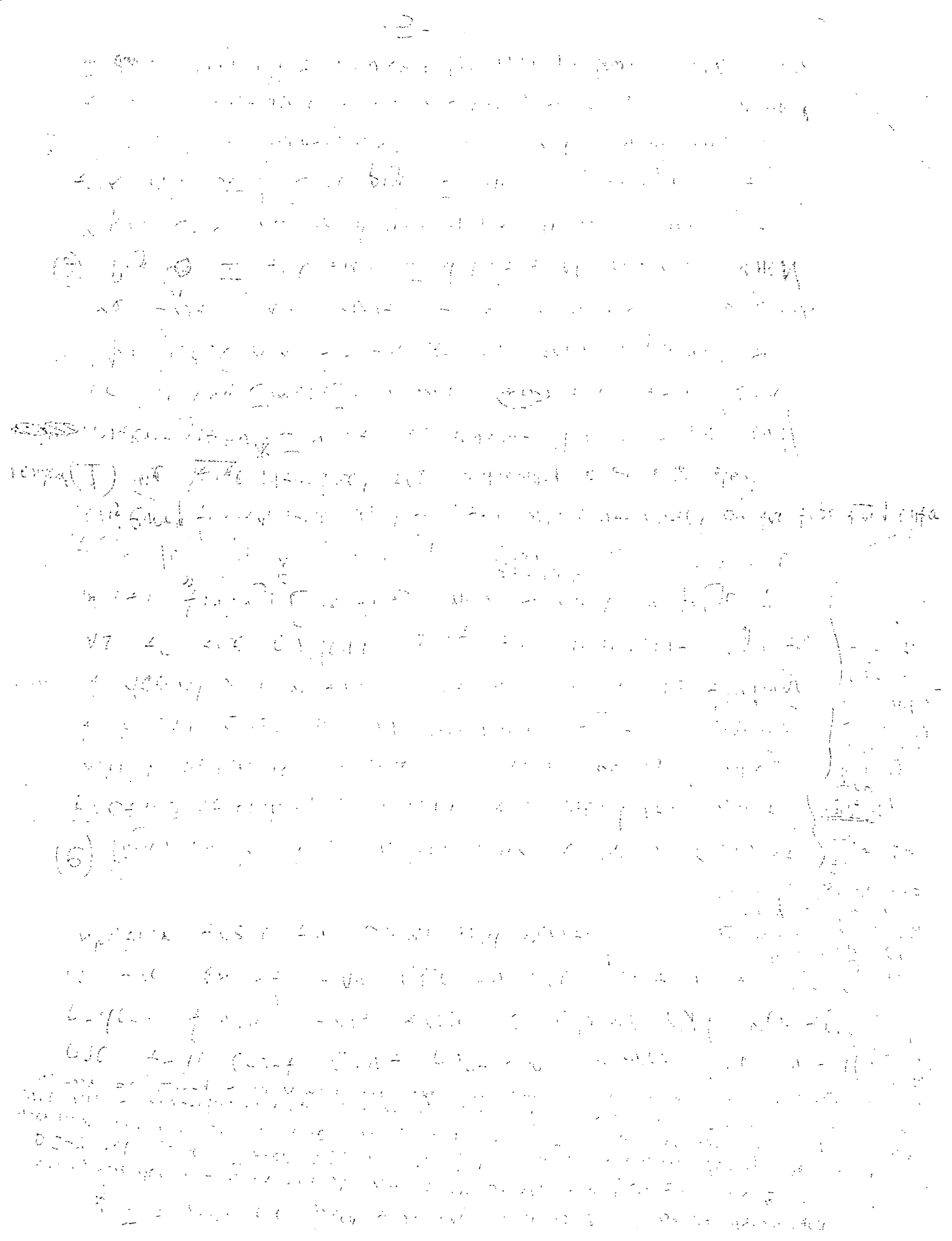
* It must be noted that "the State is bound by uncontradicted exculpatory declarations of the D introduced by the State" (See Brandis & Broun 2nd ed. p. 547 and State v. Jarrell, 233 N.C. 741, (1951), so my statements during the police interview, introduced by the State that Larry didn't kill Jordan, plus the fact that no evidence was used to contradict that statement are exculpatory of my theory that I'm guilty of felony murder b/c Larry killed him. All the States arguments saying this to kill the missing element claim are one trial court can't over rule another. The INITIAL orders finding that these 2 claims had merit is the law of the case on the question of whether those two claims had merit. To be stricken And used to show Gilchrist's findings are not supported by reason which rely on Larry being the trigger to satisfy the killing element to convict me under Agent theory.

(c) Pages 2-3 of Gilchrist's order contains "Relevant Facts Establishing Evidence of Defendant's Guilt" which Gilchrist, on page 3, describe as "Findings of Facts based on uncontroverted facts appearing of Record, which the Court incorporated as findings as to the evidence supporting defendant's guilt, in its findings [of fact] which followed on page 4 - page 78". This is irrational and erroneous by fact and law; every "fact" the State used from trial was controverted by the tape they entered in evidence

(1) The State introduced the Defendant's tape recorded interrogation*. In it Defendant denied killing and/or "jacking" James Jordan when the officer said "You jacked him for the car" and then explained to me that "jacking" meant taking or robbing. on page 131

(2) Page 131 I told them "I didn't take his car" when Myers said "How could you never see him, when you took his car?" Same page, I denied "putting him out"

(3) Page 124 of interrogation it is marked "Unintelligible due to simultaneous talking between parties ..." is where I denied killing and being with killer. Why no lawyer went over



so-called "unintelligble" parts of interrogation and video recording with me, especially portions where transcripts creates impression I said I killed him b/c portions are missing or unintelligble b/c of my stutter (see page 122)

(4) Page 123 "The truth is, I don't know how the man got killed" - A denial of every element of felony murder, robbery, and conspiracy, Page 122 too.

(5) Page 113 "I ain't never sold no dope, never stole nothing"

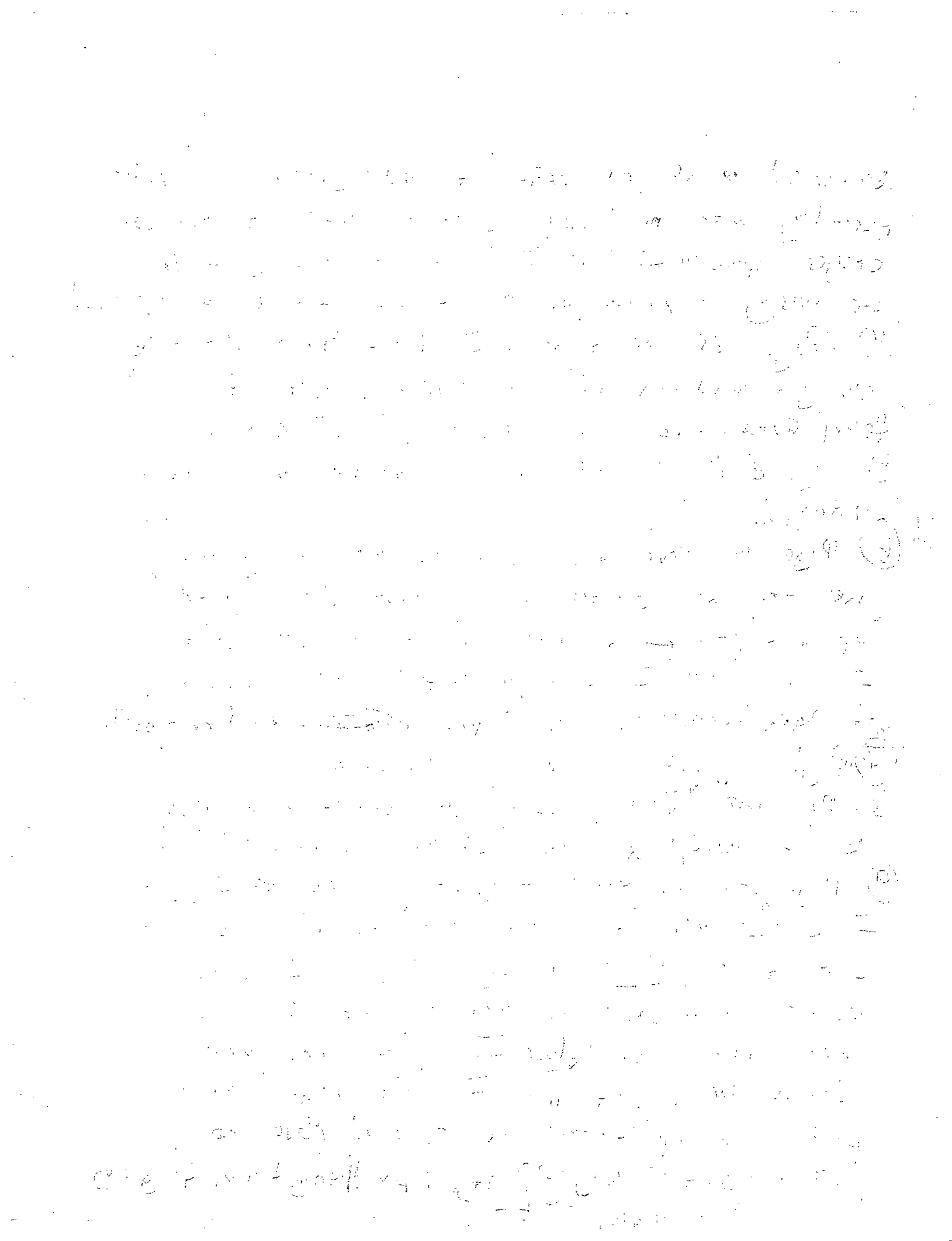
(6) Page 111 "Henley says he think we were gonna (Conspiracy Plan) steal the car, probably done it before, Jordan put up a fight, I didn't mean to kill him but I killed him. I said in response "No", a denial of felony murder as one who killed or robbed, or conspir

(7) Page 110 denial, incomplete transcription.

(8) Page 108 "Jacking/stealing" car accusation, my denials to stealing car and selling cocaine & killing.

(9) Page 109 is their strongest evidence to suggest I said "I was at Rowland Motel" as an alibi but it is qualified on page 107 when I say I don't know who the man was who killed him - who Henley acknowledges I meant the man dressed in a suit who I initially told them picked me up from the Rowland Motel 2½ weeks before Aug 15th at 9 pm. Nothing ties me to giving

continued at top space of next page, out of paper →



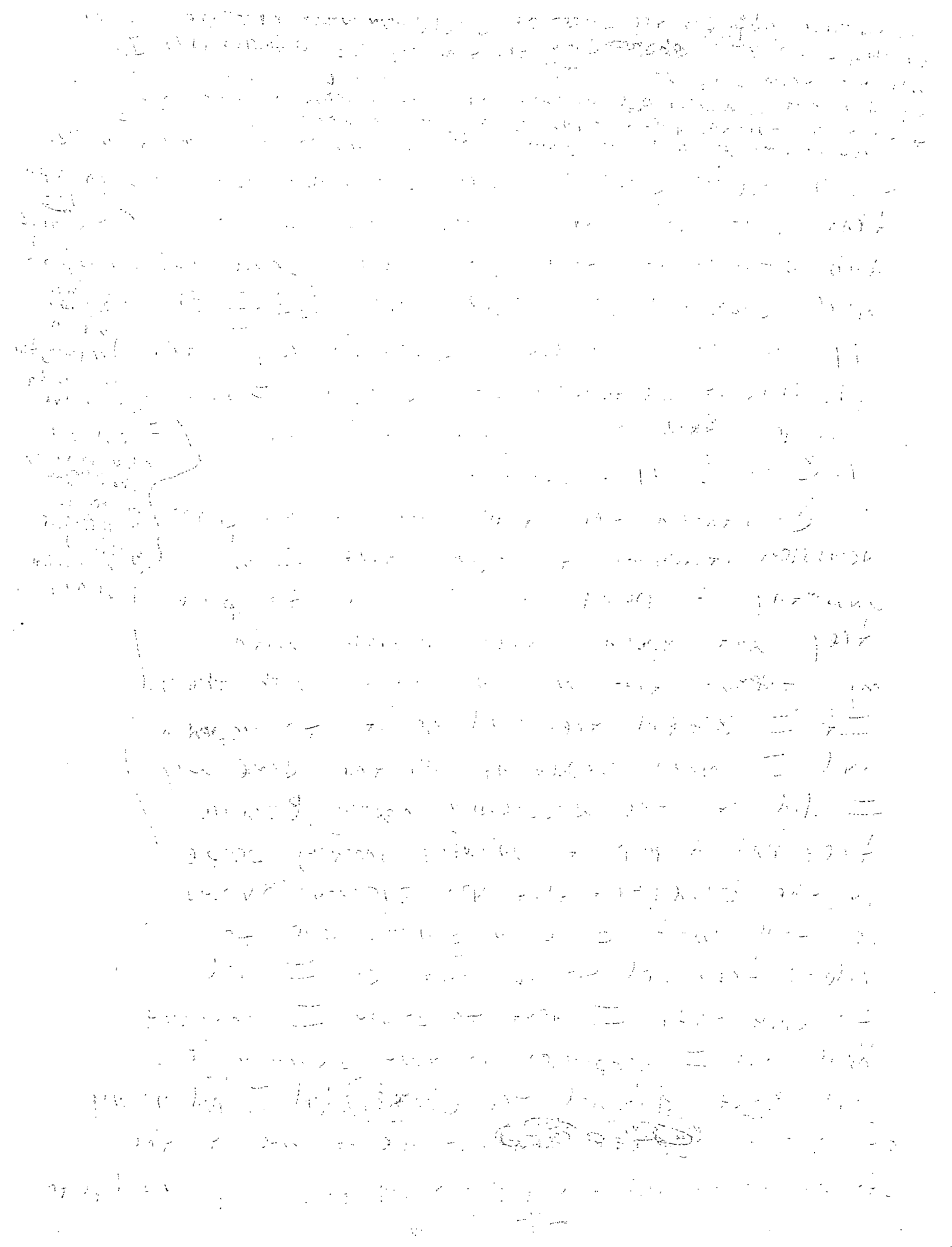
Another Alibi for the murder of James Jordan which even the States evidence says occurred during the time my alibi witnesses say I was with them, except for Larry. Those witnesses can't be impeached by my inconsistent statements but my statements aren't inconsistent with their testimony b/c even the notes of John Strong FBI agent (Bates stamp 003930, 003931, 003932) show that my earliest lie about getting car from Arab was "Friday about 2-3 week ago, possibly 7/23

So, No, know previous alibi provided by me that conflicted with or was inconsistent with alibi witnesses at trial nor those whose affidavits were submitted with MAR and BESIDES.

No witness can be impeached by the inconsistent statements of someone else. (State v. Ward, 338 N.C 64 (1994), State v. Byrd, 21 N.C. App. 734 (1974).

So although the State could use my prior inconsistent statements to argue that I'm unworthy of belief b/c I lied to police, they can't impeach other witness with my statement that was inconsistent with theirs. If I testified they could use it to impeach me and I would explain my lies the same way I did at the suppression hearing. Because they had a rep of unlawfully shooting people in the back (Fact that now everyone knows is true about police in general due to video), they lied to me and so I lied to them (Fact), I went to prison I shouldn't have and I cooperated in that situation (Fact, and Britt dismissed the charges). And I had no way of knowing if one or more of the officers were on the same payroll as the people Larry moved dope for.

8-9 pm Not 7/22 8-9 pm when Jordan was in Wilmington and both Larry and I and all alibi witnesses show we were at Kayes, his girlfriend house (Larry and his mome



* Binder admitted they never asked me at trial when he testified.

‡ Larrys conspiracy charge was dropped, possibly unlawfully by merger doctrine. Either way he testified to this. Not part of plea

Chris, when I asked you to initiate misconduct charges against the A.G.'s office for intentionally misrepresenting the evidence by calling my interrogation statements about where I first saw the car being an "Alibi", you defended them by saying it was an Alibi.

I reminded you that they never asked me where I was at at the time James Jordan was killed*, nor at the time they knew he disappeared*. I told you an Alibi means a person was elsewhere when the murder was committed (by murder I always mean felony murder which w/ conspiracy includes Armed robbery b/c that is what I was convicted ‡ of.) You said the State was allowed wide latitude in arguments. I agree yet I ask you to check State v. Hunt, 283 N.C. 617 (1973) and you'll see that N.C. Supreme Courts view on the definition of Alibi was the same as mine - one year before I was born.

I ask you to ask the Appellate Court to take judicial notice of State v. Hunt and of every portion of the transcript of the police interrogation to bind them into finding that I never gave an inconsistant Alibi. Further, I ask that you request they take judicial notice of the cases that say witnesses (my Alibi witnesses) couldn't be impeached or rebutted by my statements to police even if they statement did arguably convey an inconsistant Alibi.

(that's relevant including my denials of crimes I was convicted of.)

* False report to law Enforcement Agencies or officers § 14-225, or/And Resisting, Delaying, or obstructing an office § 14-223, possibly [Resisting ~~[illegible]~~ Authority is better than resenting authority so why y'all choose resenting in the Cert draft you sent me? "Resentment" implies ill will towards. I don't resent police nor anyone. I resent evil acts, not people.

Clerry, the State is using this false characterization of my words as an "inconsistent alibi" to do the exact same thing Britt ~~[illegible]~~ Alluded when he commented on my failure to testify. They are penalizing me for not being cooperative with the police and for lying to the police ~~[illegible]~~. Point out that they could've charged me with whatever crime* lying to the police is. The court could've instructed the jury to find me guilty of that crime based on the evidence on his own or at either counsels request if they requested it. So in Reality, the State is asking the court to solidify a policy of targeting defendants who don't comply with the police. They want to send the message that "If you, for whatever reason, justified or not, don't tell the police what they tell you to tell them (as they repeatedly told me and Larry what to say) we will take your life away literally, or by putting you in a different type of grave - prison."

Who is Keith A. Bishop? Why did the Moment of Truth show his name and your address?

Who is Jon Powell. Why did you send me an opinion State v. Stevens 305 N.C. 712 (1982) with his name on it and why did you highlight the part

* You sent several opinions by Jon Powell that dealt with MARs denied after evidentiary hearings. That is not where we appeals of Our petition should focus on law re: summary judgement dismissal of motions, are at. by analogy, civil claims. But also, it should simply concisely highlight the unreasonable facts found. by error clearly demonstrable from record

that, essentially, says that when reviewing findings of fact made by the trial court pursuant to hearings on MARs * the S.Ct. inquiry therefore, is to determine whether the findings of fact are supported by evidence, whether the findings of fact support the conclusions of law, etc..

My thoughts on this case is that it's not relevant to us. We had no evidentiary hearings; Stevens did. At his ev. hearing the State and he presented conflicting facts, thus creating an issue that could only be resolved by both sides putting on evidence for the judge to consider and decide which facts he found to be true. The S.Cts had to determine whether the findings of fact were supported by evidence b/c there was a hearing of evidence. We didn't get that. We only got the chance to have a hearing to determine whether the state could win summary judgement by proving that, if what we alleged, accepted as fact by law (b/c the law presumes our facts are true when deciding summary motions to dismiss a claim — whether civil or criminal claims -) is proven will we win on the law. Actually, the state can't even contradict our facts for this type of hearing b/c once they dispute facts they themselves entered into the record (that I didn't kill him nor rob him, nor steal his car, nor conspire) via the interrogation

the judge can't decide which facts are true to base conclusions of law on without hearing evidence and hunting for the facts which is why on a motion for summary judgement the Court must accept our facts as true, and so must the State which is why, I presume, y'All filed a motion requesting the state to concede certain facts. If they had, then, based on these facts they conceded, they could have a hearing and argue that, based on the law applied to these facts, we shouldn't win.

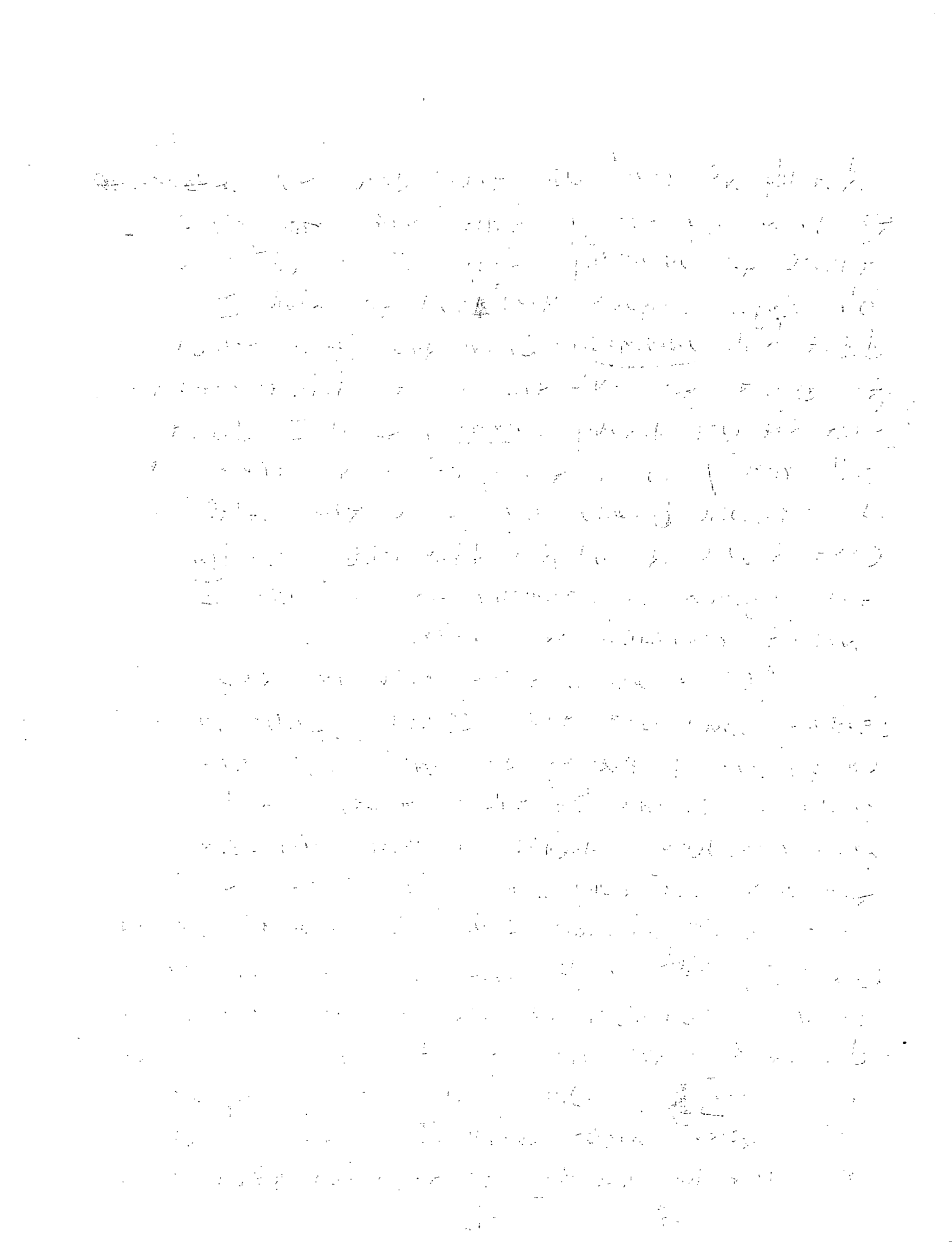
The above applies to the other case you sent State v. Cooper, 186 N.C. App. 100 (2007), which also has Jon Powells name on it, dated 1/21/21. But its distinguished procedurally.

On an appeal of a conviction, Cooper argued that the trial court erred in denying his motion to suppress.

Again, as above in State v. Stevens, there was an evidentiary hearing held for the court to consider facts so he could find which facts to apply on the way to concluding whether the evidence would be suppressed. The D didn't contest those facts found by the trial court in denying his motion to suppress. There was no issue of facts. The C.O.A. only task was to determine whether these facts supported the trial courts denial under law.

Actually, we could use these same two cases to show, by analogy, that the juries failure to unanimously find I killed (and [T.T.P. 83 04:11] b/c Angus argued that they had to find I didn't kill unanimously - which the state failed to object to and the court didn't correct - that the jury actually unanimously found I didn't kill him) is a finding of fact the court is likewise bound by since the state can't dispute it, and, for that reason, by law the judgement is contrary to law b/c I wasn't convicted of murder.

Yes, it was a finding made in the sentencing phase but the sentencing phase included an evidentiary hearing as well and the court is bound by those facts still when considering whether counsel was I.A.C for not specifically asking the court to not enter judgement since I actually hadn't been convicted under law of murder; only robbery (Remember, the states evidence that Larry didn't kill [the interrogation tape and the testimony of Larry] is binding b/c its exculpatory of felony murder where I didn't kill and he didn't kill according to them, and their evidence.



* To Be clear, my statements that Larry didn't kill is exculpatory regarding felony murder for me b/c unless he killed I can't be convicted as an actor in concert nor as a person who robbed while someone else killed. This gives us 3 ways of saying he didn't kill - states evidence (his testimony & plea agreement, and tapes) plus your affidavit Chris that he told you he didn't

Janine should've filed this claim. It was IAC for her not to and there were no stronger claims by law b/c every other claim challenged the courts findings of fact on direct appeal - knowing that the court was bound by the trial courts findings of fact. This was not a "weaker claim to winnow out" on appeal. It was an easy claim on appeal:

Was the defendants conviction lawful when

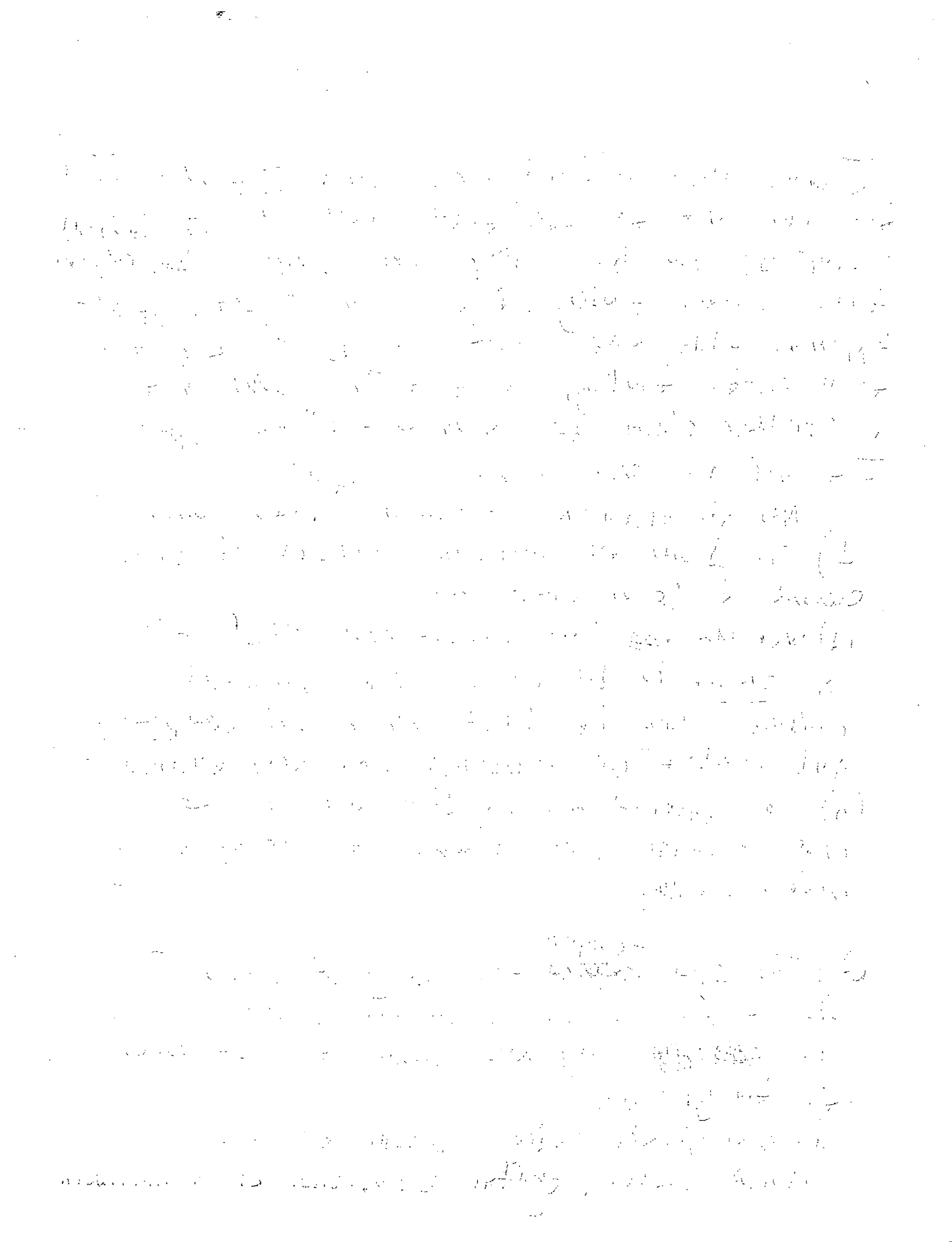
(1) The Δ was not unanimously convicted of every element of felony murder b/c:

(A) under law ~~the~~ Larry couldn't have killed b/c no evidence he did kill and state submitted evidence saying he didn't - which was exculpatory * and couldn't be impeached since they entered it

(b) The defendant was not found unanimously to have committed every element of felony murder, namely - killing

(2) The state ~~reopened~~ re-opened the hearing of evidence when it put on evidence in the sentencing phase. The ~~[illegible]~~ jury was allowed to re-consider its findings b/c:

(a) Although the defense objected to the individual issues, crafted by Weeks, being presented



* Since Weeks isn't involved in my case now, please send him this so he'll see how I've used my time, contrary to how all the write ups make it look; Get his thoughts on why he crafted the issues sheet referred to herein. I think Exum told him to do so, maybe as a way of attacking death penalty for felony murder convictions where the states witness is incentivized to lie for a plea bargain

to the jury (whether I killed, etc...) the State didn't, (T.T.p. 8300) thus waiving the right to ever challenge the findings: (T.T. p. 8051; see T.T. p. 8053 where Britt changes all my denials of every element of felony murder during the interrogation to just a denial of killing. Weeks knew he was lying which is why he simply responded "Uh-huh" which is not a positive affirmation.) *

In fact, Weeks says, when he overules Bowens objection (T.T.P. 8300) to Weeks specifying each question seperately (T.T.P. 8299):

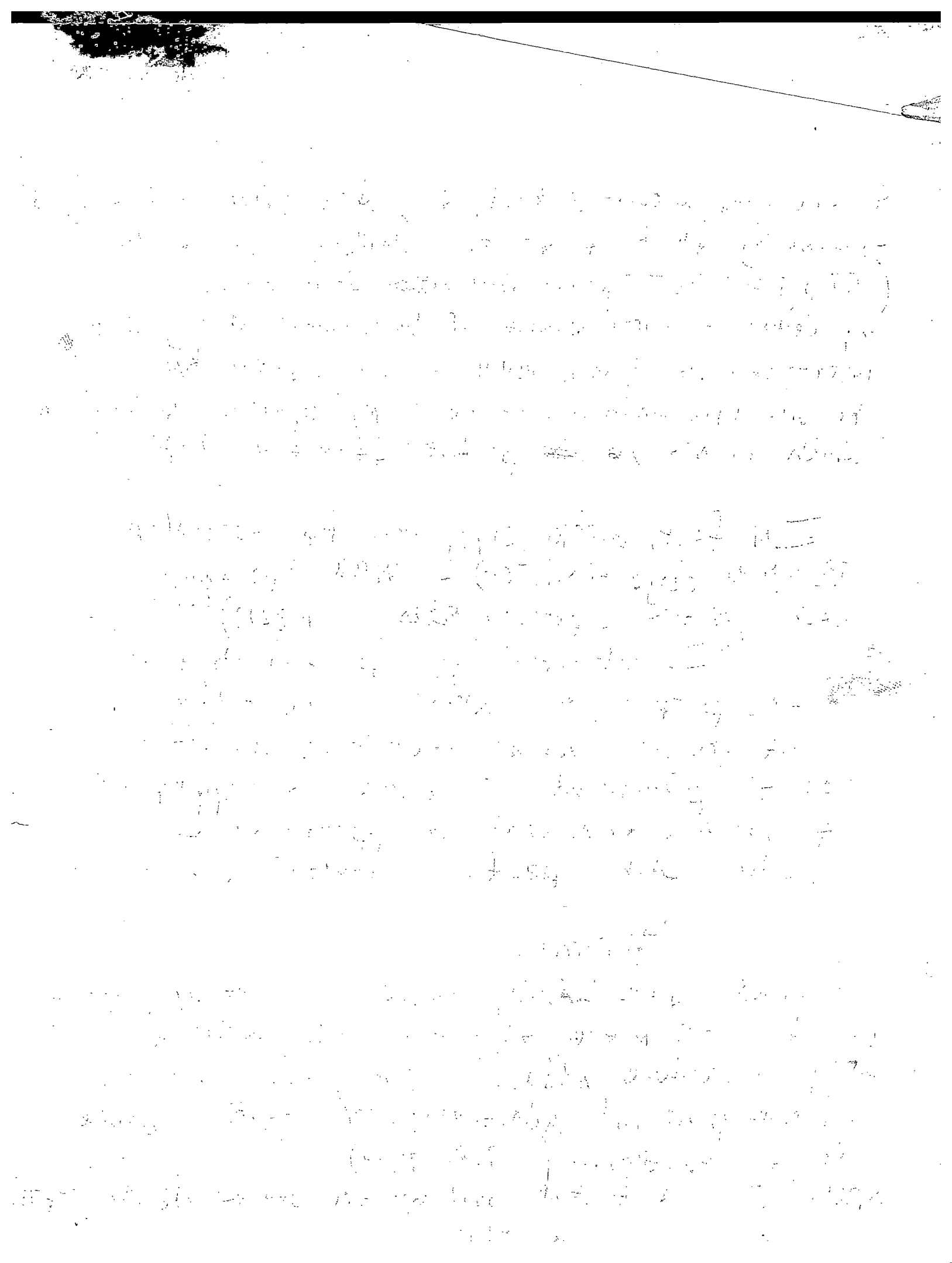
"I understand your position, but for the purpose of clarity in the findings of the jury as to their reccomendation as to punishment, I think it's appropriate to provide them with an opportunity to answer each specific alternative." (T.T. Page 8300

Request Judicial Notice of this statement.

Further...

Weeks said "Okay. State is essentially putting all of us on notice that the State intends to rely on evidence adduced during the guilt or innocence phase, and additionally will offer evidence as to matters... (T.T.P. 7564)

Weeks: "It's a factual issue for the jury to decide (T.T.p. 7585



* This is why Scott had Ian only put "during trial" in Paula Locklears affidavit for when she went to bridge and where she thinks body was, b/c by statutory construction, a trial takes place before verdict (See G.S. 15A-1221 for 90 parts of a "Trial" But see 15A-1227(A)(3) for why jurors sentencing fact findings can be used to challenge conviction

Weeks even told the jury "We'll start the evidentiary showing tomorrow" [sentencing hearing] 7586:3]

* Now, although N.C. General Statute 15A-~~2000~~ 2000 distinguishes the sentencing hearing from the trial, as does 15A-1221, both are evidentiary hearings. 15A-2000 cuts against our position b/c it limits the juries findings to sentencing - But, Judge Weeks took us outside of that limitation when he forced the jury to specify, in writing, its findings of fact on the killing element. We could've never penetrated the sanctity of the juries deliberation to answer these questions or to determine whether they thought I killed or was a participant in the underlying felony. Just like a juror, Chris, can't testify about conversations or thought processes they have during deliberations (So, unless you violated my attorney/client privilege and told the A.G. and/or the Court ex parte, that you think ~~the~~ Paula said something during deliberations to make you think it was after then, they could never think the same b/c no evidence saying that is admissable).

But, b/c Weeks did individualize each question,

* But see 15A-1227(A)(3). Motion of dismissal can be made after guilty verdict b/c sentencing stage allows hearing of evidence that may lead court or Defense or the State to invalidate verdict by M.A.R., sua sponte, etc.

We do know their exact findings, it's in writing and what's more, we can use the Moment of Truth footage of them saying they didn't know who killed, didn't believe Larry, b/c they voluntarily spoke to the press after the trial so their sanctity wasn't violated, they waived it publicly and, their words to the press doesn't challenge the verdict - it simply expresses exactly what the verdict was. But, you have to file a ~~new~~ MAR to supplement the current MAR. We're not amending it with new claims, we are simply "spreading the record" on claims. The same for the new ~~of~~ evidence of Binder on the phone reporting negative tests. And the new evidence of Britt telling JON EVANS Larry was in the jail which contradicts what he said in Court - that Richard Locklear had to be lying about his talk with Larry about his plea deal and Larry said "I trust Johnson Britt" b/c Larry was in prison and hadn't been to the jail during that time (T.T. p6598:13-17) Woody, in closing (T.T. p: 7215:11) argument said there was confusion but when Larry told Locklear this but Britt caused the confusion by lying. → OVER. out of paper.

Britt used absolute terms!

"ARe you [Richard Lockley] aware that at no time between April the 27th of '95 and September the 27th of '95 that Larry Demery was ever in custody at the Robeson County Jail?

T.Tp. 6598 14-17

Jon Evans ~~statement~~ podcast is newly discovered evidence; unless you AR knew about it, knew Britt told on himself and y'All set on it.

[redacted]

need his cooperation? need his actions properly pleaded and ventilated? Amanda told me about his help on the Brown/McCollum case the week Coffee was falsely attributed to me. The first time I saw you, you Beverly Lake was in Robeson County Courthouse at the hearing that resulted in these release years ago. Britt didn't fight it b/c he didn't put them in prison.

[redacted]

So, can we supplement the record to include the Jon Evans interview that is required to understand this? By filing a supplemental MAR? Looking at the 40 pages you sent me, I went to the trial transcript y'all sent me and saw that Larry says he was only interviewed 3 times after pled guilty and only the last time was at the courthouse which he referred to by saying in court that he was brought "over here" to ~~clear~~ address some "indiscrepencies". Britt says in the Evans interview that Larry was brought over from the jail to talk with him, even his lawyer get him to open up b/c by nature he's not talkative. This was, it appears, when Larry was still housed at the prison (D.O.C.) but he says Anthony Thompson did the transporting. Most likely, when he brought Larry back or before he took him to Britt, he would be allowed to go to the jail to get cigarettes and food from the canteen - which is where Lockler saw him. It is easy to determine. Simply summon the transfer log books from the day Larry left the jail after pleading guilty until he officially was moved back to the county jail ~~the~~, and until the trial started. Think about it. Please don't blow me off on this because the only way the ~~[redacted]~~ County (Sheriff's Dept)

could pick Larry up from the prison would be if the D.A. got a writ which would transfer custody from the ~~state prison to state~~ (the prison) to the County. Just because the safekeeping order to place Larry in the states custody was signed on a certain day does not mean it was immediately executed so its likely that Larry didn't actually leave the jail until weeks or a month or so after pleading. Very rarely is someone shipped out the day they get sentenced or finish up with Court Bizness as a party or a witness. In fact, back then it almost never happened. Also, Richard Lochlear lost his job as a cop in this county (Columbus) where I am now, where Britt was a D.A. on my birthday 11/17/74 before being hired by Robeson County so that whole situation could've been @ Gods gift.

This all may be moot if y'all decide to challenge the judges order denying the Evidentiary hearing and MAR on just the fact that he denied us even though material facts were in dispute and move to strike every fact he found that was not conceded by both sides or clearly uncontested and established by the record. As I mentioned earlier, the State

introduced my denial of killing, robbing, jacking, stealing anything from Jones Jordan; not us. So that denial create an issue ~~of~~ that was disputed throughout the trial and, yes, I was convicted but the MAR can challenge convictions. So please mention that as a lead to show that the "uncontroverted" facts ~~of~~ Gilchrist relied on to support his opening (that there was overwhelming evidence of guilt) were, in fact controverted by the State introducing the recorded interrogation on rebuttal to impeach our Alibi defense. They overreached to prove an "inconsistent Alibi" as a means of attacking my credibility b/c they couldn't do it by attacking me b/c I didn't ~~testified~~ testify which is why Britt said "who better to assert his Alibi and even though he didn't testify..." which is what led to the oral motion for ~~Mistrial~~ Retrial that Britt claims the judge would've granted. No he wouldn't have. The curative instruction Weeks gave was sufficient under law and he indicated as much. But, still, highlighting my denial of all crimes forever attention on the extremes Britt would go through to win and Gilchrist findings being unreasonable - Which Is To Be Expected Since He Didn't Hold An Evidentiary HEARING To PUT The FACTS ON THE SCALES!

WHICH IS WHY THE LAW REQUIRES AN EVIDENTIARY HEARING TO BEGIN WITH.

Thankyou for giving this your consideration and allowing me to bring it to your attention. I realize it sounds like I'm going in circles here but isn't that the recursive nature of Research? My method is primitive b/c I've never been trained so I'm in a different pitch but its the same song.

Love Universal

Powell, Jon 1/21/2021
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186 N.C.App. 100
Court of Appeals of North Carolina.

STATE of North Carolina
v.
Russell Antoine COOPER, Defendant.

No. COA06–1356.
|
Sept. 18, 2007.

Synopsis

Background: Defendant was convicted in the Superior Court, Wake County, Donald M. Jacobs, J., of robbery with firearm. Defendant appealed.

The Court of Appeals, Geer, J., held that report that black male had committed armed robbery, without more, did not provide police officer with reasonable suspicion of criminal activity to justify stop and frisk.

Reversed and remanded.

****665** Appeal by defendant from judgment entered 8 December 2005 by Judge Donald M. Jacobs in Wake County Superior Court. Heard in the Court of Appeals 9 May 2007.

Attorneys and Law Firms

Attorney General Roy Cooper, by Assistant Attorney General David L. Elliott, for the State.

Brannon Strickland, PLLC, by Anthony M. Brannon, for defendant-appellant.

Opinion

GEER, Judge.

***101** Defendant Russell Antoine Cooper appeals from his conviction of robbery with a firearm. His sole argument on appeal is that the trial court erred in denying his motion to suppress evidence seized from his person during a warrantless search. Defendant was stopped and frisked by a Raleigh police officer shortly after an armed robbery at a nearby convenience store. Defendant contends that the officer lacked reasonable articulable suspicion of criminal activity, and, therefore, the stop and frisk did not fall within *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

More specifically, defendant asserts: "A black man walking in the vicinity of a store robbery is not suspicious behavior, without something else." Because we agree that the totality of the circumstances known to the officer could, at best, only give rise to a generalized suspicion of criminal activity, the stop and frisk in this case was not justified by *Terry*. Accordingly, we hold that the trial court erred in denying the motion to suppress.

Standard of Review

In reviewing the denial of a motion to suppress, we determine whether the trial court's findings of fact are supported by competent evidence and whether those findings in turn support the trial court's conclusions of law. *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). "Findings of fact are 'conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.' " *State v. Eason*, 336 N.C. 730, 745, 445 S.E.2d 917, 926 (1994), *cert. denied*, 513 U.S. 1096, 115 S.Ct. 764, 130 L.Ed.2d 661 (1995). Defendant, in this case, does not challenge the findings of fact on appeal, and they are, therefore, binding. *State v. Carter*, 184 N.C.App. 706, ——, 646 S.E.2d 846, 850 (2007) ("Here, defendant has not assigned error to any of the findings of fact in the trial court's ruling, and, consequently, those findings are binding on appeal.").

Facts

The trial court made the following findings of fact following the suppression hearing. In the late afternoon on 17 April 2005, Officer A.B. Smith, a Raleigh police officer, was traveling south on Capital Boulevard when he heard a report over his radio that an armed robbery had taken place at a convenience store in Mini City. The robber was described as a black male. Officer Smith also heard ***102** over his radio that another officer had seen a black male walking on Lake Ridge Drive shortly after the robbery.

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Officer Smith turned onto Deanna Drive to begin a sweep of the area in hopes of locating an individual meeting the description of the robber. The robber had reportedly left the rear of the store, heading in the general direction of the area that Officer Smith was searching. The officer knew that there was a path running approximately from the store through woods to Lake Ridge Drive. Officer Smith approached the intersection of Deanna **666 Drive and Lake Ridge Drive approximately five minutes after the robbery.

At that time, Officer Smith saw a black male near where the path exited onto Lake Ridge Drive. From the time Officer Smith turned off Capital Boulevard until this point, the officer had seen no one else. He drove close to the black male—who was defendant—and motioned to him to approach the car. In response, defendant walked over to the car. For the purpose of obtaining information relating to the robbery, Officer Smith asked defendant to place his hands on the top of the patrol car. After defendant did so, Officer Smith began to frisk defendant and found a concealed handgun. He then arrested defendant for carrying a concealed weapon. The frisk took place five to 10 minutes after the robbery and a quarter of a mile away from the location of the robbery.

Although the trial court made no further findings of fact, the State's evidence tended to show the following. After arresting defendant, Officer Smith took defendant to the Mini City convenience store for a "show up." The cashier did not recognize defendant as the robber. Following the "show up," defendant was taken to the Raleigh Police Department's District 23 Substation for questioning. Defendant ultimately confessed that he had met Markell Baltimore in the woods and lent Baltimore his gun to commit the Mini City convenience store robbery. After Baltimore robbed the store, he again met defendant in the woods. Baltimore returned the gun to defendant and gave him some of the money he robbed from the store.

On 2 May 2005, defendant was indicted with aiding and abetting Baltimore's armed robbery. Defendant was tried on 5 December 2005 in Wake County Superior Court. During the trial, defendant moved to suppress evidence seized from his person during the stop and frisk at the intersection of Lake Ridge Drive and Deanna Drive. The trial court denied defendant's motion, concluding that Officer Smith stopped defendant "based on articulable, reasonable[] suspicion" and *103 that the frisk occurred for the officer's safety. The jury found defendant guilty, and the trial court sentenced him to a presumptive range term of 57 to 78 months imprisonment. Defendant timely appealed to this Court.

Discussion

Defendant's sole argument on appeal is that the trial court erred in denying his motion to suppress. Since defendant does not challenge the trial court's findings of fact, the question before this Court is whether those findings support the trial court's conclusion that Officer Smith had a reasonable articulable suspicion sufficient to justify an investigatory stop and frisk under *Terry*.

As this Court recently stated, *Terry* established that "[a] police officer may effect a brief investigatory seizure of an individual where the officer has reasonable, articulable suspicion that a crime may be underway." *State v. Barnard*, 184 N.C.App. 25, ——, 645 S.E.2d 780, 783 (2007). Whether an officer had sufficient reasonable suspicion to make an investigatory stop is determined based on the totality of the circumstances. *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994). In conducting this review, we must bear in mind that:

> [t]he stop must be based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training. The only requirement is a minimal level of objective justification, something more than an "unparticularized suspicion or hunch."

Id. at 441–42, 446 S.E.2d at 70 (internal citations omitted) (quoting *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1, 10 (1989)).

We note that neither defendant's brief nor the State's brief are particularly helpful since both cite only to cases involving

generalized discussions of the standards rather than to cases applying those standards to circumstances similar to those involved in this case. We start our discussion with *State v. Fleming,* 106 N.C.App. 165, 415 S.E.2d 782 (1992), frequently cited by defendants because this Court concluded, in that case, that the officer lacked reasonable articulable suspicion.

In *Fleming,* this Court addressed a stop and frisk that occurred at 12:10 a.m. in an ****667** area in which drugs were sold on a daily basis. ***104** During the frisk, the defendant was found to have crack cocaine on his person. This Court set out the following pertinent circumstances:

> In the case now before us, at the time Officer Williams first observed defendant and his companion, they were merely standing in an open area between two apartment buildings. At this point, they were just watching the group of officers standing on the street and talking. The officer observed no overt act by defendant at this time nor any contact between defendant and his companion. Next, the officer observed the two men *walk* between two buildings, out of the open area, toward Rugby Street and then begin *walking* down the public sidewalk in front of the apartments.

Id. at 170, 415 S.E.2d at 785. The Court concluded, based on these facts, that the officer who stopped and searched the defendant "had only a generalized suspicion that the defendant was engaged in criminal activity, based upon the time, place, and the officer's knowledge that defendant was unfamiliar to the area." *Id.* at 171, 415 S.E.2d at 785.

The Court further observed:

> Should these factors be found sufficient to justify the seizure of this defendant, such factors could obviously justify the seizure of innocent citizens unfamiliar to the observing officer, who, late at night, happen to be seen standing in an open area of a housing project or walking down a public sidewalk in a "high drug area." This would not be reasonable.

Id., 415 S.E.2d at 785–86. The Court, therefore, concluded:

> Considering the facts relied upon by the officer, together with the rational inferences which the officer was entitled to draw therefrom, we conclude they were inadequate to support the trial court's conclusion that Officer Williams had a reasonable articulable suspicion that defendant was engaged in criminal activity. *Were we to conclude otherwise, we would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches which the Fourth Amendment is specifically designed to protect against.*

Id., 415 S.E.2d at 786 (emphasis added).

This Court subsequently relied upon *Fleming* in *State v. Rhyne,* 124 N.C.App. 84, 478 S.E.2d 789 (1996), in which a *Terry* search had ***105** also revealed drugs in the defendant's possession. In *Rhyne,* however, officers had actually received "an anonymous tip that several men were dealing drugs in the breezeway in which the defendant was sitting." *Id.* at 90, 478 S.E.2d at 792. When officers arrived at the location, they found the defendant sitting on the steps of the breezeway, which officers knew was outside his apartment building; he did not leave, but rather cooperated generally with the officers. *Id.* The Court observed that "[o]ther than being nervous, [the defendant] exhibited no other behavior that would indicate that he was engaged in criminal activity." *Id.*

Although this Court acknowledged that the anonymous tip distinguished *Fleming,* this Court concluded:

> In light of the totality of circumstances, we conclude that this pat-down search was not justified. The anonymous tip referred simply to several black men located in the apartment complex breezeway; it was not specific to defendant. Furthermore, although defendant was in an area known for drug activity, this area was also his residence, a fact known to the officer prior to the search. When questioned, defendant was cooperative and did not flee the scene. He was wearing a jersey and shorts neither of which could easily conceal a weapon. In fact, when asked if he had a weapon, defendant lifted his shirt to show that he did not. Defendant also did not make any sudden or suspicious gestures which would suggest that he had a weapon.

Id. at 90–91, 478 S.E.2d 789, 478 S.E.2d at 793. The Court, therefore, concluded that "[t]his pat-down search was an unreasonable intrusion upon defendant's Fourth Amendment right to personal security and privacy," and "[t]he trial court erred in denying defendant's motion to suppress the evidence thereby obtained." *Id.* at 91, 478 S.E.2d at 793.

****668** Most recently, this Court found *Fleming* analogous in *In re J.L.B.M.,* 176 N.C.App. 613, 627 S.E.2d 239 (2006). In *J.L.B.M.,* a dispatch reported a "suspicious person described as a Hispanic male." *Id.* at 620, 627 S.E.2d at 244. The description included no information regarding age, height, weight, other physical characteristics, or clothing. *Id.* The officer, who stopped and frisked the juvenile, "did not observe the juvenile committing any criminal acts, nor had there been other reports of any criminal activity in the area that day." *Id.* at 621, 627 S.E.2d at 244. In addition, the juvenile was stopped at approximately 6:00 p.m. on a summer evening in front of an open business. *Id.*

***106** The Court reasoned: "Even viewed through the eyes of a reasonable, cautious officer, the facts relied on by Officer Henderson are inadequate to show more than an unparticularized suspicion or hunch that the juvenile was involved in criminal activity." *Id.* at 621–22, 627 S.E.2d at 245 (internal citation omitted). The Court stated further:

> We hold that in the present case, like in *Fleming,* the stop was unjustified. Officer Henderson relied solely on the dispatch that there was a suspicious person at the Exxon gas station, that the juvenile matched the "Hispanic male" description of the suspicious person, that the juvenile was wearing baggy clothes, and that the juvenile chose to walk away from the patrol car. Officer Henderson was not aware of any graffiti or property damage before he stopped the juvenile, and he testified that he noticed the bulge in the juvenile's pocket after he stopped the juvenile.

Id. at 622, 627 S.E.2d at 245. As a result, the Court held that the trial court erred in denying the juvenile's motion to suppress. *Id.*

As *J.L.B.M.* suggested, some cases have found reasonable articulable suspicion for a stop and frisk when there was a report that a crime occurred nearby and circumstances relating to the defendant matched the report. In *State v. Thompson,* 296 N.C. 703, 707, 252 S.E.2d 776, 779, *cert. denied,* 444 U.S. 907, 100 S.Ct. 220, 62 L.Ed.2d 143 (1979), our Supreme Court held that circumstances supporting reasonable suspicion for an investigatory stop of a van included the officers' knowledge of recent break-ins in the vicinity involving a van; the van's being parked at 12:30 a.m. in a public parking area in an isolated part of New Hanover County; and the occupants' engaging in considerable activity around the van. Similarly, in *State v. Williams,* 87 N.C.App. 261, 264, 360 S.E.2d 500, 502 (1987), this Court affirmed the denial of a motion to suppress when (1) officers received a report of a burglary involving four black males; (2) 20 minutes

after the burglary, they spotted a car containing four black males within 200 to 400 yards of the site of the burglary; and (3) some of the stolen property had been found in a field between the burglarized home and the car's location. *See also In re Whitley,* 122 N.C.App. 290, 292, 468 S.E.2d 610, 612 (reasonable suspicion existed when police received telephone call reporting that two black males were selling drugs on Merrick Street, police found defendant and another black male at that location, and defendant exhibited "nervous body reflexes"), *disc. review denied,* 344 N.C. 437, 476 S.E.2d 132 (1996).

***107** Although, in this case, Officer Smith had received a report of an armed robbery about a quarter of a mile away, we believe this case more closely resembles *Fleming, Rhyne,* and *J.B.L.M.* than *Thompson, Williams,* and *Whitley.* Indeed, this case is materially indistinguishable from *Rhyne.*

The report indicated only that a black male had committed the armed robbery—a description that fits a substantial percentage of our population. There was no further description as to age, physical characteristics, or clothing. In contrast, in *Williams,* the report specified four black males, while in *Whitley,* the call had referred to two black males at a particular location.

In this case, defendant was simply walking down a public street in April at 6:30 p.m. Officer Smith did not observe defendant engaging in any suspicious behavior or mannerisms, and defendant cooperated fully. Moreover, defendant did not appear nervous when approached by Officer Smith. In *Thompson, Williams,* and *Whitley,* the parties were stopped late at night. In *Thompson,* the van ****669** was in a suspicious location and the parties were engaged in suspicious behavior. In *Whitley,* the defendant was obviously nervous.

The State relies significantly on the fact that there was a path in defendant's vicinity that led to the area near the convenience store. Officer Smith, however, had no information suggesting that defendant had been on that path or any facts that could be construed as indicating defendant was coming from that path. Further, Officer Smith could not even say that the robber had fled the store in the general direction of the path. By way of contrast, in *Williams,* before stopping the four men, officers had found some of the stolen goods in a field that lay directly between the robbed house and where the men were found in their car.

In this case, we cannot conclude, under all the circumstances, that Officer Smith had more than a hunch or a generalized suspicion. If we were to uphold the decision below, then we would, in effect, be holding that police, in the time frame immediately following a robbery committed by a black male, could stop any black male found within a quarter of a mile of the robbery. As this Court stated in *Fleming,* "[t]his would not be reasonable." 106 N.C.App. at 171, 415 S.E.2d at 786.

We, therefore, hold that the trial court erred in denying defendant's motion to suppress the evidence obtained from his person during ***108** the *Terry* frisk. Although defendant recites the law regarding the fruit of the poisonous tree,*see State v. Pope,* 333 N.C. 106, 113–14, 423 S.E.2d 740, 744 (1992), he does not specifically apply that doctrine to this case, but instead asks the Court to "vacate the judgment against Mr. Cooper, reverse the trial court's order denying the motion to suppress, and remand to the trial court with instructions to grant the motion to suppress and for further proceedings." We, therefore, do not address whether the "fruit of the poisonous tree" doctrine requires dismissal of the charge against defendant. We reverse the judgment below and remand for further proceedings.

Reversed and remanded.

Judges HUNTER and ELMORE concur.

All Citations

186 N.C.App. 100, 649 S.E.2d 664

End of Document

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1. Woody Bowen
2. Angus Thompson
3. Expert Lawyer
4. Bobbie Jo Murillo
5. Bullet Trajectory Expert

XVIII. Mistrial IAC

1. Johnson Britt
2. Woody Bowen
3. Angus Thompson
4. Ken Ransom
5. Expert Lawyer

XIX. Business Conflict IAC – Recording contract, Failure to read witness list, conflict between alibi witness Nellie Montez and Kaye Hernandez and juror Cassidy, failure to retain firearms expert

1. Woody Bowen
2. Angus Thompson
3. Expert Lawyer

FIRST SUPPLEMENT

XX. Larry Demery Confessed

1. Connee Brayboy
2. Other inmates listed in original MAR

XXI. Unauthorized jury view – Paula Locklear

1. Paula Locklear
2. Whitley Carpenter
3. Hal Locklear

SECOND SUPPLEMENT

XXII. Hubert Deese – additional material not disclosed – Brady

1. Jerry Woods
2. Marion Dale Locklear
3. Other witnesses listed in SBI and FBI Material

THIRD SUPPLEMENT

XXIII. Gun shot hole in shirt – Due Process / IAC

1. Angus Thompson
2. Woodberry Bowen
3. Lawyer Expert
4. R.n. Marrs
5. Dr. Joel Sexton
6. Hal Locklear
7. Art Sprenger
8. Agent Michael Avery
9. Jay Todd Hardee

Mistrial Motion / • Chris took Confederate case
• real dispute on lawyers

MEMORANDUM

To: File
From: Scott Holmes
Re: Daniel Green
Date: May 3, 2018

23 Claims
50 witness

Witness List

120 exhibits
4168 pg court file
8416 pg trial transcript

DANIEL'S MAR

I. IAC – music contract – obtained property by false pretenses entering into business contract on court appointed time in jail – gave recorder to Daniel in jail to get people on tape, talked out of testifying and Daniel should have testified

* Robin Pender-ass
* Brad
Anthony Thompson

1. Angus Thompson
2. Woody Bowen
3. Expert Lawyer
4. Melinda Moore
5. Deloris Sullivan
6. Thomas Rowdy
7. Sheriff Kenneth Sealy

2049 defense ~~prosecutors~~ file

5724 p prosecutors file

II. BRADY – impeachment evidence – tape recordings of Moore and Sullivan, information at suppression hearing –

III. Taking of Law Books and appointment of Carlton Mansfield

IV. Patricia Locklear juror dismissed for talking to media host
   1. Patricial Locklear

V. James Cassidy's history of Nellie Montes and Kay Hernandez
   1. Nellie Montes
   2. Kaye Hernandez

VI. Demery's reference during trial to inadmissible evidence

VII. Introduction of the witness Dominique Hales right at trial

VIII. Conflict of interest in Public Defender's office – Freda Black handled previous court appointed lawyer, was ineffective, invalid waiver of conflict of interest
   1. Angus Thompson
   2. Freda Black
   3. Clerk of Court
   4. Lawyer Expert

IX. Trial Counsel's use of Garth Locklear as private investigator – larry demery's cousin,

X. IAC for failure to produce evidence forcasted in opening
   1. Angus Thompson
   2. Woodberry Bowen
   3. Lawyer Expert

XI. IAC for opening door to inadmissible evidence – cross examination of Demery opened door to other robberies
   1. Angus Thompson

Ex. 39

Ian Mance
Whitley Carpenter
Stephen Taegart
Rachel Smith / Brandon

- witnesses to Paula Lochlear's statements about investigating on her own.

Ex. 30

witnesses that they had failed to properly investigate or even interview. Counsel was unaware of relevant law and made numerous egregious strategic errors that significantly harmed Mr. Green's defense strategy.

- Mr. Green's lawyer Woodberry Bowen negotiated an unfair and unethical business contract with Mr. Green, to obtain the rights to music lyrics Mr. Green had written while awaiting trial, in exchange for 1,000 hours of studio time at Bowen's studio that Green could avail himself of only if he was acquitted. Mr. Bowen took famed Lumbee musician Willie French Lowery to the jail in the months before trial negotiate business deals with Mr. Green while defending him on first degree murder charges.

THE "NO DEAL" DEAL:

- New evidence indicates that District Attorney Johnson Britt made a secret plea arrangement with Larry Demery, allowing him to be eligible for parole in 2015, that was not disclosed to the defense, in violation of the law.

REPORTERS WHO KNOW SOMETHING ABOUT THIS STORY:

- Rich Oppel, Jr., *New York Times*
- John Tucker, *Independent Weekly* (Durham, NC)
- Amanda Lamb, *WRAL* (Raleigh, NC)

PEOPLE MOST LIKELY TO BE ANGERED AND VOCAL ABOUT THIS M.A.R.

- **District Attorney Luther Johnson Britt III:** Prosecuted Mr. Green in 1996. He failed to disclose information in his possession about the Sheriff's ties to drug traffickers and the connection between the state's chief witness, Larry Demery, and the Sheriff's son, convicted federal cocaine trafficker, Hubert Larry Deese..
- **Former Robeson Co. Chief of Detectives Mark Locklear:** He was lead detective on the case for RCSO and now admits to being longtime friends with Deese and having knowledge that he was the Sheriff's son. He has given contradictory and incoherent answers for why he did not pursue the Deese angle.
- **Former Cumberland Co. Detective Art Binder:** We do not have reason to believe he knew about the cover-up, but he remains highly invested in protecting this conviction. He feels betrayed by other law enforcement on the case.
- **Hubert Larry Deese:** Convicted cocaine trafficker, involved in a multi-million dollar drug operation at the time of the Jordan murder. He may well have had direct involvement in the murder of James Jordan, but he has never been interviewed by police.
- **Agent Jennifer Elwell:** She likely does not know what's coming, but her misconduct is at the heart of the claims relating to blood evidence.

Exhibiting List For MAR Amending and Supplementing M.A.R. CLAIMS, II

page

Ex.1 3 August, 2018 Transcript... 3

Ex.2. 5 Sept. 2018 Motion for Post Conviction discovery... 3

Ex.3. Medical records of Daniel Green for Gabapentin prescription, Doctors order that Gabapentin be stopped abruptly without any "weaning" period... 3

Ex.4. Robeson County jail medical records of Dr. Strawcutter prescribing valium and ativan for acne, pretrial, (Between 1993 and 1996 ... 3

Ex.5. Note by Woodberry Bowen or Angus Thompson indicating my cellmate, Darryl Locklear, informed them I was being drugged by psychotropic drugs and indicating he sent them the pill. This note is in the discovery file that prosecutor Johnson Britt surrendered to Curtis Scott Holmes... 3

Ex.6 Prison phone records of Oct/Nov. 2018 conversations between person or Artificial Intelligence identifying self as Christine Mumma and I... 4

Ex.7. 26 November 2018 States response to Defendants Fifth Supplement to First Amend. MAR and states renewed motion to Deny MAR on pleadings and States motion to strike Inadmissible Evidence Ex.7 ... 4

Ex.8 States First Amended MAR response including (1) Motion for summary dismissal, and states Denial of Defendants facts... 4

Ex.9 Transcript of August 14-15, 1993 interrogation of Defendant

Ex.10 Audio recording of August 14-15, 1993 interrogation of defendant

Ex.11 Judge Gregory Weeks findings of fact from order vacating Defendants former felony conviction; page 6 p.6

Ex.13 Proposed Order denying Defendants Motion for Appropriate Relief and Evidentiary Hearing from 2018 (paragraphs 7 and 8, page 21) and Courts Order denying Motion for Appropriate Relief from [redacted] 2020 (paragraphs 7 and 8, page 21.) page 6, 16

Ex.13 Transcript from Motion to Suppress Hearing, Transcript Pages 826: 22-24 and 832: 4-13 (about Robeson County Sheriffs Dept shooting people in the back, etc.) page 6

Ex.14 Janine Fodors letters page 11

Ex.15 Trial Transcript from 29 Sept. 2022 hearing page 12

Ex.16 Christine Mumms letter to me about Michael Jordans influence on Court. p. 12

Ex.18 17 May 2018 email between Scott Holmes and Christine Mumma p. 13

Ex.19 States 2022 Response To Defendants Brief In support of Evidentiary Hearing p. 18

Ex.20 Defendants 2022 Brief In Support of Evidentiary Hearing. 18

Ex.21 10/11/12 letter from C. Scott Holmes p. 19, 20, 2

Ex.22 9/11/12 Memo prepared by Ian Mance and Aaron Johnson (cover page and pages 44-51) p. 21, 24

Ex.23 Research Memorandum provided to me by Mar Rich Persons p. 22

Ex.24 Defendants 5th Supplement to Motion for Appropriate Relief filed in 2018 p. 22

Ex. 25. Motion to Correct Memorandum of Law / Supplement MAR by spreading pertinent evidence, records, documents and affidavits on to the record. ... 23

Ex. 26. State v. Benner print out dated 1/10/2016 ... 24 with my notes on it. & 1/10/16 print out of State v. Combs. ... 24

Ex. 27 Defendants 5th Supplement to M.A.R. On ... 24 file.

Ex. 28. 5/27/21 memo by Defendant to Christine ... 28 Mumma

Ex. 29 Appellate Opinions Ms. Mumma sent highlighting Court of Appeals bound by trial Courts findings of fact. ... 28

Ex. 30 Note Scott Holmes left with me, [redacted] DC, Copy says "Addressed MAR - directly - Appellate - IAC for Fyder

Standard/Supplemental MAR III

STATE OF NORTH CAROLINA)
V.) Sixth Supplement To FIRST
DANIEL ANDRE GREEN) AMENDED MOTION FOR APPROPRIATE
) Relief Part III

FILED
2023 JUN 15 A 8:39
ROBESON CO. C.S.C.
BY

* * * * * * * * *

Now Comes the Defendant, Daniel Andre Green, pro se, who files this Sixth Supplement to the First Amended Motion For Appropriate Relief. All the facts, legal claims, exhibits, And arguments pled in All of Defendants prior post conviction filings are hereby incorporated here to As if fully pled unless specifically corrected, or, Amended, or superceded herein.

CLAIM ONE

A) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

ISSUE

1. On November 30th, 2021, the North Carolina Court of Appeals vacated the Order Denying Motion for Appropriate Relief, Including Amendments and Supplements entered by Judge C. Winston on January 7th, 2020 And remanded for reconsideration in light of the North Carolina's Supreme Court's decision in State v. Allen, 378 N.C.

286, 2021-NCSC. 88.

2) The result of the Courts order being vacated and remanded is that Defendant can file supplements or Amendments to his Motion for Appropriate Relief in order to Fairly present all of the Claims he needs to file for the Courts consideration

3) Defendant must fairly present the claims, the operative facts, and the controlling legal principles to this Court to avoid waiving them.

4) Failure to do so would result in years of legal battles over whether the claims can be asserted, whether they were waived, or procedurally barred. Time Defendant clearly does not have due to Carlton Mansfields deliberate indifference and his refusal to follow the Courts orders as explained in the Attached Motion subsection (Motion to Vacate Order of Summary Dismissal of M.A.R. (20 Oct. 2008) And his misstatement of facts under oath and his violation of Rule 11 of N.C. General Statute. (See N.C.G.S. §1A-1, Rule 11, and 20 Oct. 2008 Motion to Vacate)

5) As the Court and the State can readily see, the Defendant went above and beyond the due diligence required of an indigent, uneducated client with no legal training to protect my rights and to get Mr. Mansfield to marshall the facts and research the law, not only on the issues defendant presented but, as required upon his appointment, to uncover any other meritable grounds for relief.

6) Defendants insistance that these facts be plead before the court to avoid procedural bars is not based on anger, bitterness, nor arrogance but is based on the fact that Defendant, not post-conviction counsel, will be held accountable for post-conviction counsels decision, or neglect, to not plead these claims, facts and law as required by applicable laws

7) The Grounds for this Motion for Appropriate Relief were evident to counsel with much more experience, expertise and knowledge of post-conviction law than Mr. Mansfield-Jamine C. Fodor, the Author of The first

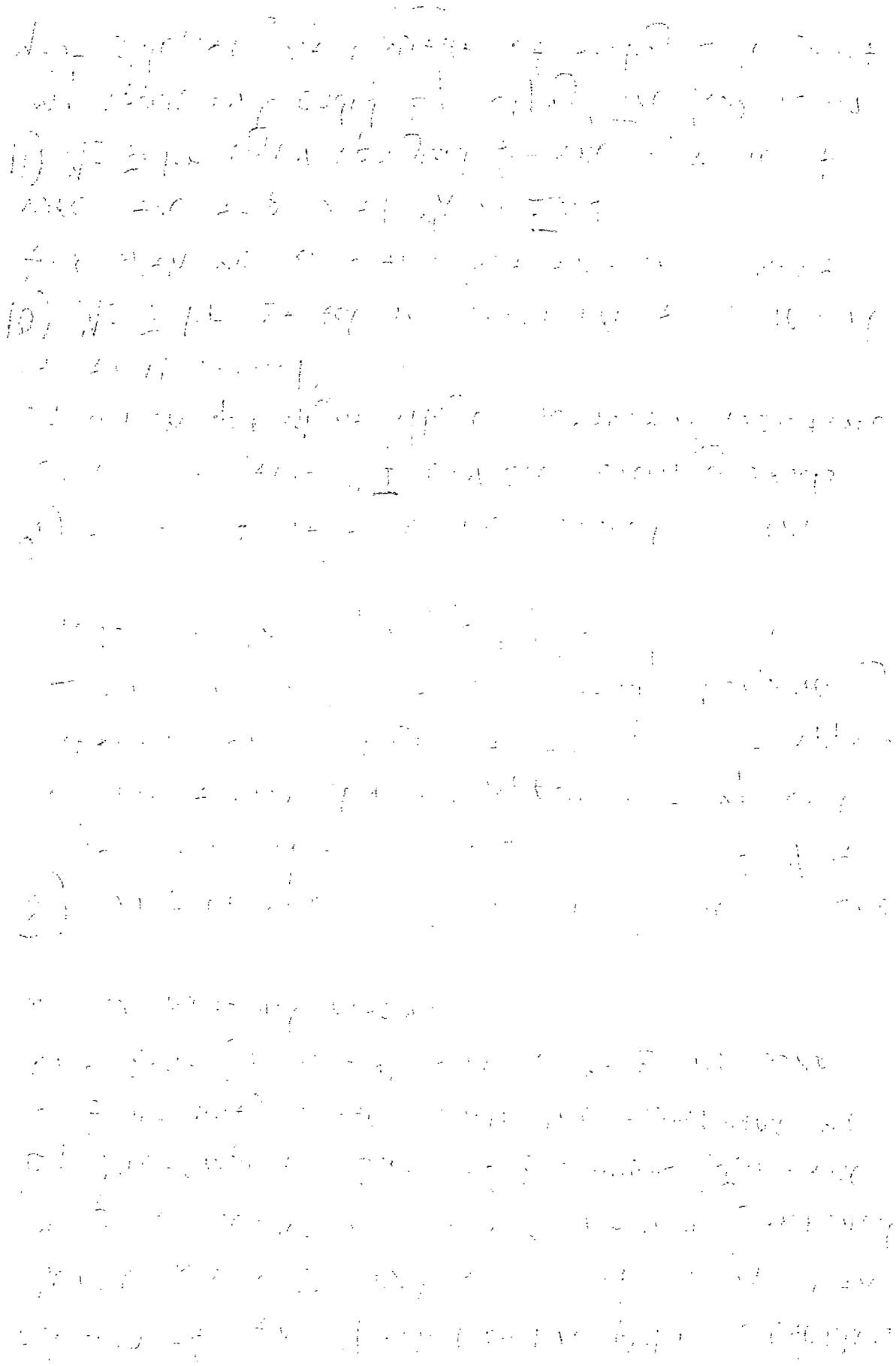
edition of the North Carolina Public Defenders Manual, which I had a copy of, along with, in part, Henderson Hill and John Rubin, published by UNC-Chapel Hill School of Government (Institute of Government) written while she represented me; Andre Green (No relation); and, a Mr. Barnes who will be mentioned herein.

8) On February 8, 1999 Jamie Fodor wrote me. She informed me that "the Supreme Court of North Carolina turned down our appeal on Friday and affirmed the holdings of the Court of Appeals... I know that this must be terribly disheartening news, and I'm very, very sorry." Ex. 1, Letter.

9) For the first time she revealed, in the same letter that, "I can see several grounds on which you might allege ineffective assistance of trial counsel." Ex. 1

10) Ms. Fodor stated she would like to come and talk with me about this but that she couldn't "make the trip until March." Ex. 1

11) Ms. Fodor again apologized for the outcome of my appeal and ended by saying "The law is on your side, it's just a matter of finding some court



that is willing to apply it." She also asked if I would be interested in an biography about U.S. Supreme Court Justice, Thurgood Marshall. When I received and read the book by NPR commentator Juan Brown, or Juan Williams, it confirmed who was responsible for the wrong outcome of my trial. Ex. 1

12) Ms. Foder also said in the same letter that I would have to file the motion pro se, that I could request appointment of counsel in the Motion and that, if I was interested in doing this", we might talk about some lawyers in the Fayetteville Area who might be willing to represent [me] if the Court would appoint them" But, we never had this conversation. Ex. 1

13) At the time, Ms. Foder was an Assistant Appellate Defender under Malcom Ray Hunter, the Appellate Defender who may have been appointed after Adam Stein, the founding Appellate Defender who also litigated, and won, State v. Harbison, 315 N.C. 175, 337 S.E. 2d 504 (1985) (North Carolinas authority on prejudice being presumed when defense counsel concedes the defendant's guilt on any element of an offense without the

defendant's consent such as when Attorney, Angus Thompson, told the jury "... the defense contends that while the evidence will show U'Allah in the possession of certain items, an NBA Allstar ring, a championship watch, and, yes, even in possession of the 1992 Lexus ...") (Trial Transcript page 54:6-10)

14) This admission was made by counsel less than hours after having Defendant sign a document that stated trial counsel may concede that Defendant was only guilty of accessory after the fact of the death of James Jordan and accessory after the fact of larceny of the Lexus and its contents - including the ring and watch that Defendant did not find until Demery and I went to Fayetteville, on July 26th. Directly contrary to what the State contends, the alibi defense counsel subscribed to putting on, hours before counsel admitted to defendant possessing the items described in paragraph 13, is exactly what it is now, 29 years later, and what was made public through jury voir dire by counsel when they asked potential jurors, including At least one Lumbee juror who was selected as an alternate juror, whether he had a problem with Lumbee females dating Black males because of Defendant being with Bobbi Jo Murillo that night.

15) At no point during the signing of this document did the Court, or counsel, advise that defense counsel would admit "possession" of items and that that admission could be used by the State, unlawfully, to argue that Defendant was guilty of felony murder based on guilt of Armed robbery as proven by the "recent possession doctrine." (Trial Transcript 6981), (7452:17 - 7453:15.) This violates State v. Hurbison.

16) Furthermore, in conjunction with the facts averred in paragraph 15, both the State and the Court, without resistance from trial counsel, both erroneously instructed and argued to the jury that defendants guilt of armed robbery could be established by the doctrine of recent possession if the state proved:- (1) That the property was stolen; (2) That the defendant had possession of this same property. The Court defined possession when "he is aware of its presence, and has either by himself or together with others, both the power and intent to control its disposition or use."; and (3) The State had to prove beyond a reasonable doubt that the defendant had possession of this property so soon after it was stolen and under such circumstances as to make it unlikely that he obtained possession honestly.

17) During the Charge conference District Attorney Johnson Britt requested that the Court instruct the jury on North Carolina Pattern Instruction 104.40 recent possession on the basis of "defendant was in possession of Mr. Jordan's car, made telephone calls from that car at a time very soon after we allege that the murder occurred, was in possession of items of personal property belonging to Mr. Jordan." (Trial Transcript 6981:14-19)

18) The Court qualified and restricted Mr. Britts ~~Di~~ requested instructed:

"So your specific contention is that the possession of the Lexus automobile, recent possession, is evidence tending to show guilt?"

Mr. Britt answered, "Yes Sir" (Trial Transcript 6981:21-25)

19) Mr. Britt also stated that Demery's testimony was, "an eyewitness account, direct evidence;" and that "the other evidence in the case is circumstantial, [he] "was in possession" of the car and personal property belonging to Mr. Jordan. (Trial Transcript 6981:13-15)

20) Trial Counsel didn't immediately object to the the State, and the Court's mischaracterization and

and conflation of recent possession, as a common law doctrine, with nonexclusive possession of stolen items. The Court had to ask defendants trial ~~Court~~ counsel if "Defendant want to be heard?" After a moment, Mr. Bowen objected "for the record", You know what I'm saying? But, Mr. Bowen nor Mr. Thompson stated specific grounds for the objection which was that the possession of the items were never exclusive to Defendant, nor ~~to~~ Defendant and Mr. Demery ("joint possession"). See N.C. Rules of Appellate Procedure 10(b)(1) requiring counsel to state specific grounds for the ruling they desire if specific grounds were not apparent from the context in order to preserve the question for Appellate review. Also See State v. Adcock, 310 N.C. 1, S.E.2d 587 (1984) ~~holding~~ that if counsel makes a general objection at trial, state no specific grounds for it, and the judge overrules it, an Appellate Court will not reverse unless there is no purpose for which the objected matter would have been Admissible. (Trial Transcript 6982: 1-10)

21) In fact, in closing arguments, Mr. Britt, claiming to read the Courts charge on "something called the doctrine of recent possession", defined the

third thing the State had to prove beyond a reasonable doubt as being:

"And third, that the defendant had possession of this property so soon after it was stolen and under such circumstances as to make it unlikely that he obtained it honestly. That's A presumption that arises in the law." (Emphasis added) 7424:21-22

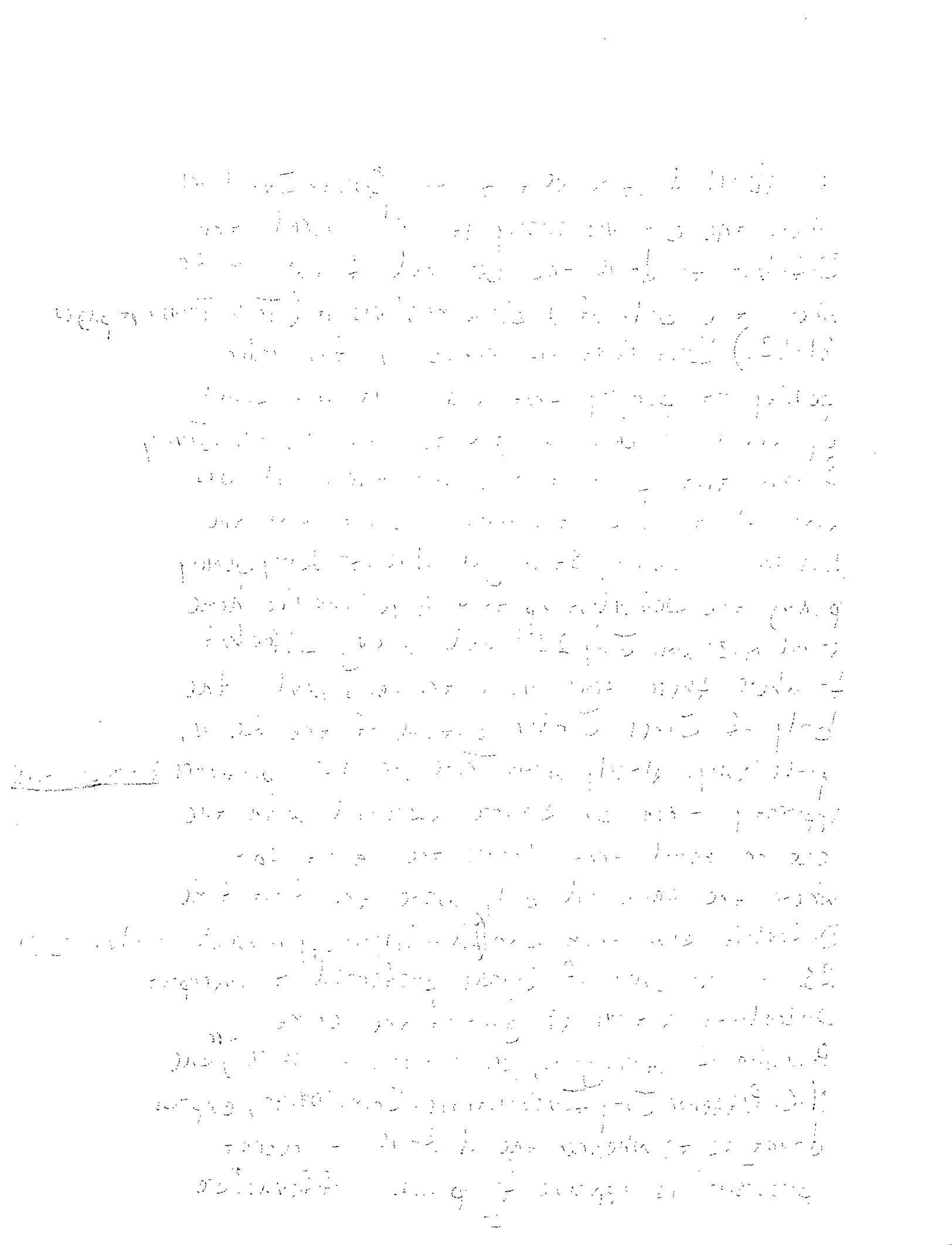
22) Cementing the damage trial counsel did by their unilateral decision to admit Defendants possession of items that were owned by James Jordan, Mr. Britt reminded the jury, all laymen at law, that, in defining the second element of Recent possession in a manner that was misleading, that "No question about it", the defendant had possession of that property. "They even concede it." Trial Transcript 7424:15-16

23) Again, as stated in paragraphs 15 and 16, above, the defendant was never advised that Counsel would concede [redacted] to the jury that he possessed the property of James Jordan in any way; Nor, did Counsel explain to the [redacted] Defendant that possession could be confused with exclusive possession which, once established, could be

used to find Defendant guilty of armed robbery which, in turn, could be used to find Defendant guilty of Felony Murder. The Court also didn't give the Defendant notice of these consequences before the trial started nor once trial counsel, in opening Argument or, rather, opening Statement, told the jury the Defendant possessed the items in question.

22) In fact, if one looks at the N.C. General Statutes one would readily see that the crime the Defendant was guilty of was, and is, in fact, Receiving of Stolen Goods (N.C. Gen. Stat. §14-72, §14-71) which the doctrine of recent possession does not apply to. See, State v. Best, 202 N.C. 9 (1931); State v. Yow, 227 N.C. 585 (1947); N.C. Pattern Jury Instructions - Criminal 104.40, and North Carolina Crimes A Guidebook to the Elements of Crime, 7th ed. 2012, Jessica Smith, UNC School of Government, page 342 - 343. This is because, as trial counsel stated in his opening statement, the Defendant is not guilty [redacted] of Felony Murder, Armed Robbery and Conspiracy. (Trial Transcript 51:1); Defendant had no personal knowledge of when, where, or why the victim was killed. (Trial Transcript 55:1); and Larry Demery took the Defendant to the Lexus, parked beside

an abandoned store next to the Quality Inn Hotel where the car was already at and asked the Defendant to drive the car and follow him to where the body of a "black male" was at (Trial Transcript pages 61-62.) Defendant also hereby verifies under penalty of perjury that a document was sealed by the Court, based on the trial record, on January 3, 1996, that proves that Counsel knew and was authorized to make statements consistent with the Defendant receiving stolen goods due to Larry Demery picking the Defendant up from Kaye Hernandez home around 4:30 a.m. July 23rd and taking Defendant to where these items, inside the Lexus, and the body of James Jordan, outside of the Lexus, yards away, already were. There are also pictures, taken pre-trial apparently taken by someone associated with the case, on record, that shows the exact spot where the Lexus and body were the first time Defendant saw them both (Ex 2. Only one copy available. Ms. Mumma has original 23. Further, even if Counsel preferred to interpret Defendants actions as guilt of the crime Possession of stolen goods, (See N.C. Gen. Stat. 14-72) the N.C. Pattern Jury Instructions - Crim. 104.40, express doubt as to whether the doctrine of recent possession is applicable to possession of fenses." See



NORTH CAROLINA CRIMES, 7th Ed. 2012. which would make Mr. Britts Argument to the jury misleading because he conflated counsels concession of defendant's possession of items with the recent possession doctrine which permits AN inference of guilt based on the evidence showing that (1) the property was stolen, (2) the stolen goods were found in the defendant's custody and subject to his or her control AND disposition to the exclusion of others, and (3) the defendant had possession of the property recently after it was stolen. Ex. 13

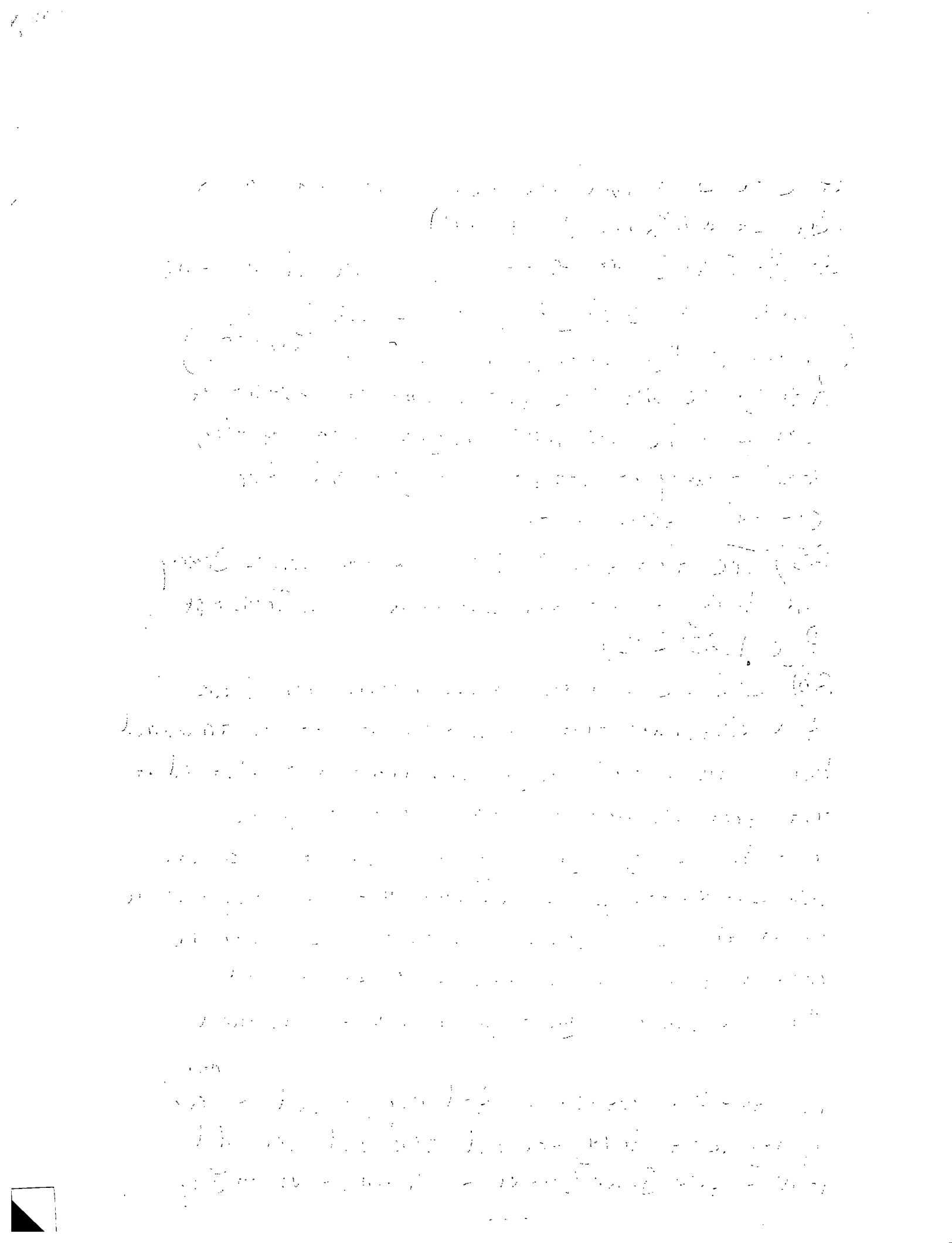
The State can't prove element (2) because by It's definition of possession, As what the defense conceded to, see paragraph (22) above, "possession" means what laymen mean when they use that word: "I had it", AND, others testified to having the Leads personally, to others having it, and even to pleading guilty to larceny, possession of stolen goods, etc... which makes Defendants "possession" NONexclusive because people Not Accused of being parties to the crimes Defendant was guilty of IN Truth (Accessory After The Fact, Receiving Stolen Goods, etc.), AND, crimes Defendant was tried and convicted of, IN

At some point had the Lexus and items in it. (See State v. Mines, 301 N.C. 669)

24) Mr. John Carter testified that he drove the Lexus and pled guilty to possessing it (Trial Transcript Page 1629:1-9; 1645:16-1646:25.) Although he was a suspect, possibly, of murder at some point, he was never charged with murder, armed robbery or conspiracy. He just had the car and items in it.

25) The first time Mr. Carter saw the Lexus, Demery was driving it; not the Defendant. (Trial Transcript Page 1625:2-5)

26) Delois Sullivan, the States witness who later told Defendant that law enforcement officers threatened her with criminal charges and admitted to Defendant that that was why she lied on him to police about him selling drugs, looking for people to rob, etc. (See Defendants pro se Amended Motion for Appropriate relief, the claim therein incorporated by reference here in, about tape recordings of Ms. Sullivan and Ms. Moore, which Judge Floyd allowed to be heard Ms. Debra Sullivan, the girl Larry slept with where 38 gun found, also testified that Demery told her, or said to her "anything about driving the red Lexus" and she did drive it from South Carolina to North Carolina on July



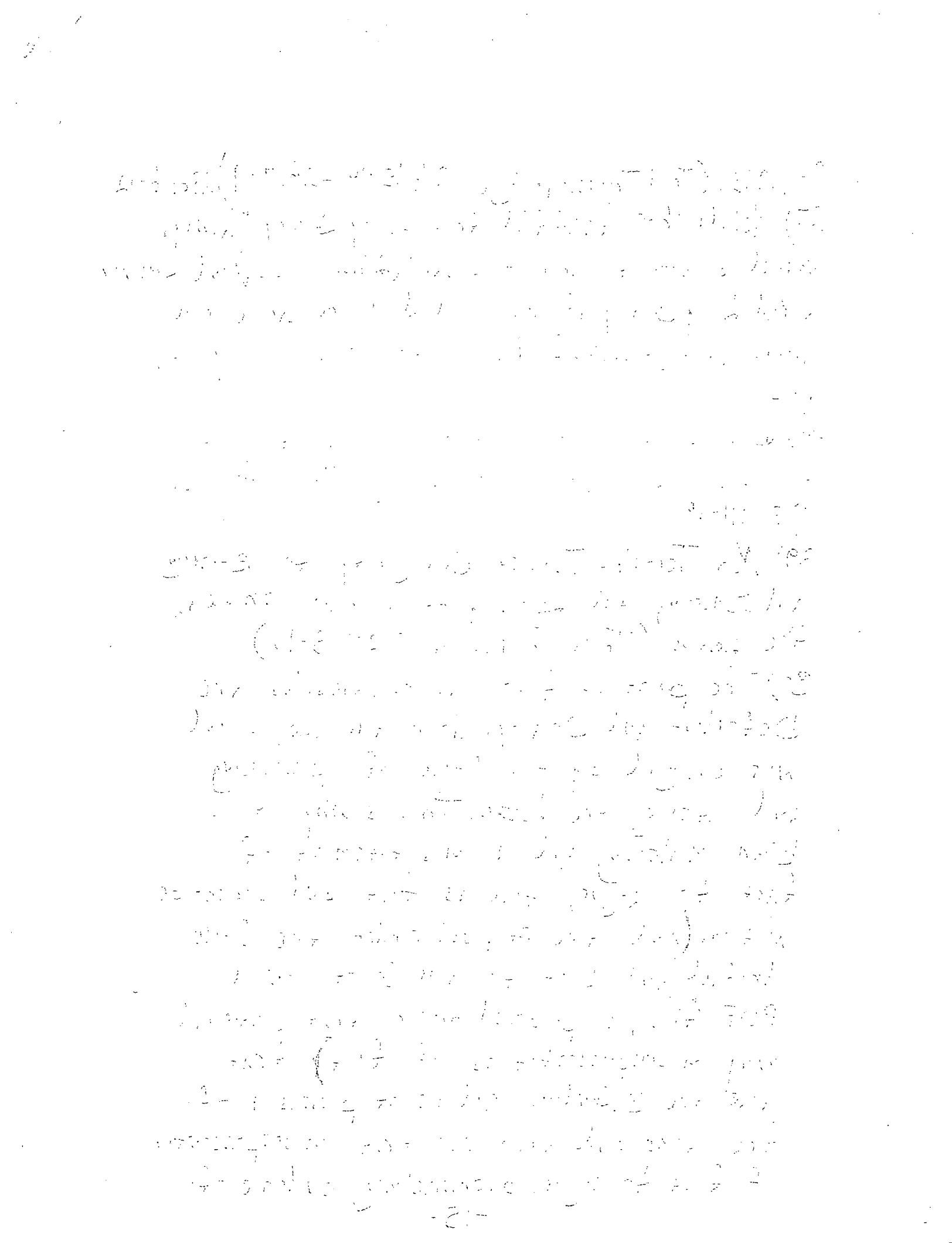
24, 1993. (Trial Transcript Page 2615:14 - 2617:9) 2864:6-12

27) Melinda Moore testified that Larry Demery "always wanted someone to drive the car" (2918:14-22,) and Sullivan asked Larry Demery if she could drive the car (Trial Transcript Page 2926:3-7). This took place on July 23rd, 1993.

28) Debis Sullivan testified that when she first saw the Lexus, Larry Demery was driving. (Trial Transcript 2806:11-16

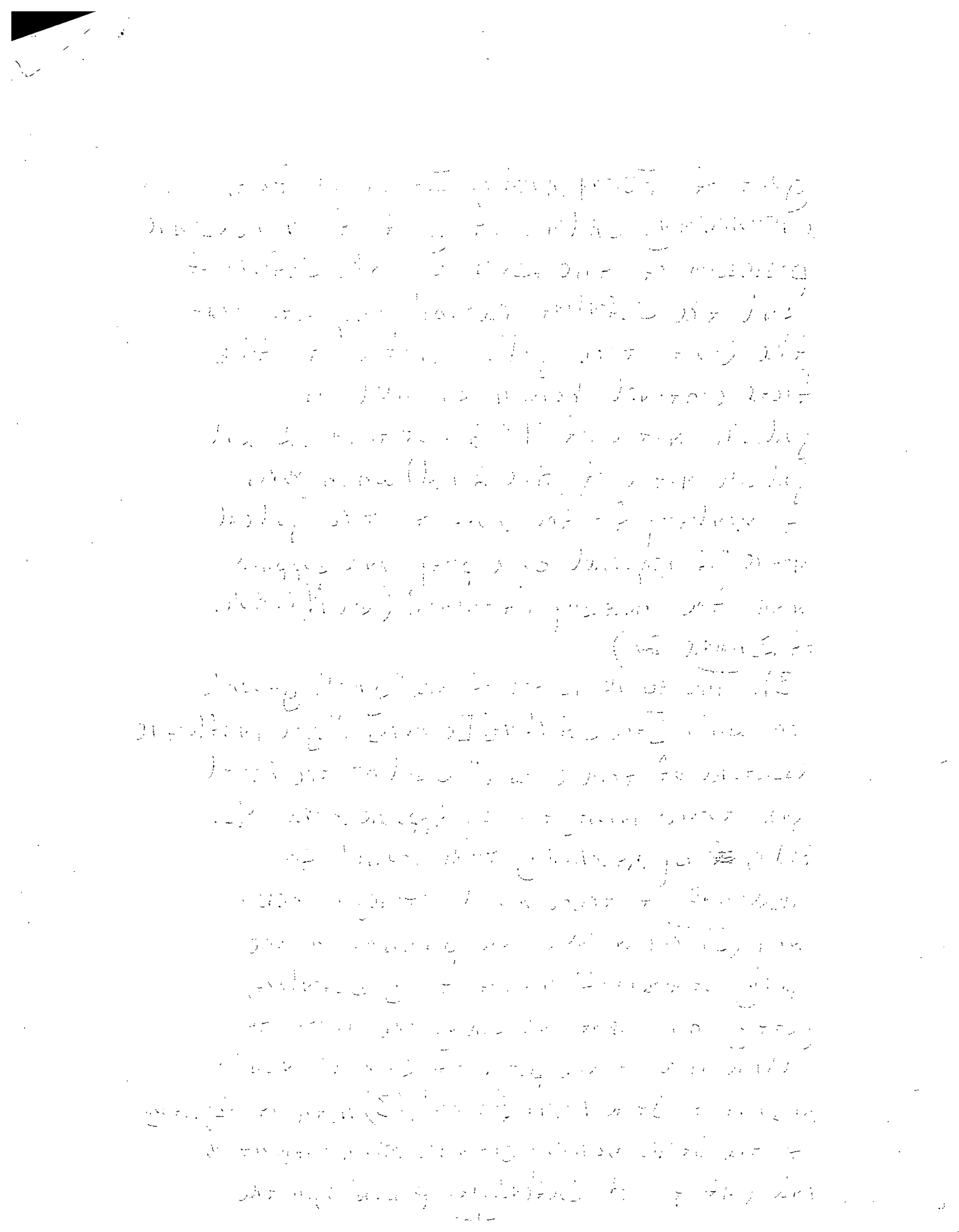
29) Mr. Terrellis Teasley pled guilty to Breaking and Entering and Larceny of a motor vehicle, the Lexus. (Trial Transcript 2120:13-16)

30) The point is that others, besides the Defendant and Demery, drove the Lexus and was charged by the State of possessing and sterling the Lexus. This is why it is both misleading and a mis-statement of fact to argue, state as fact, and subscribe motions (and the proposed order the State drafted and sent to the Court on a PDF file, a proposed order that contained many misrepresentations of fact) that state the Defendant had recent possession of the items and then use that misrepresentation of fact to argue overwhelming evidence of



guilt of Felony murder. It is in fact, overwhelming evidence of guilt of NONexclusive possession of the Leeus by the Defendant AND the Defendant hereby Requests that the Court take judicial Notice of the facts contained herein AS well AS judicial Notice of N.C. Gen. Stat. 14-72 and judicial Notice of Rule 201(d) which makes it MANDATory for the Court to take judicial Notice "if requested by A party and supplied with the necessary information." (See N.C. Rules of Evidence 201)

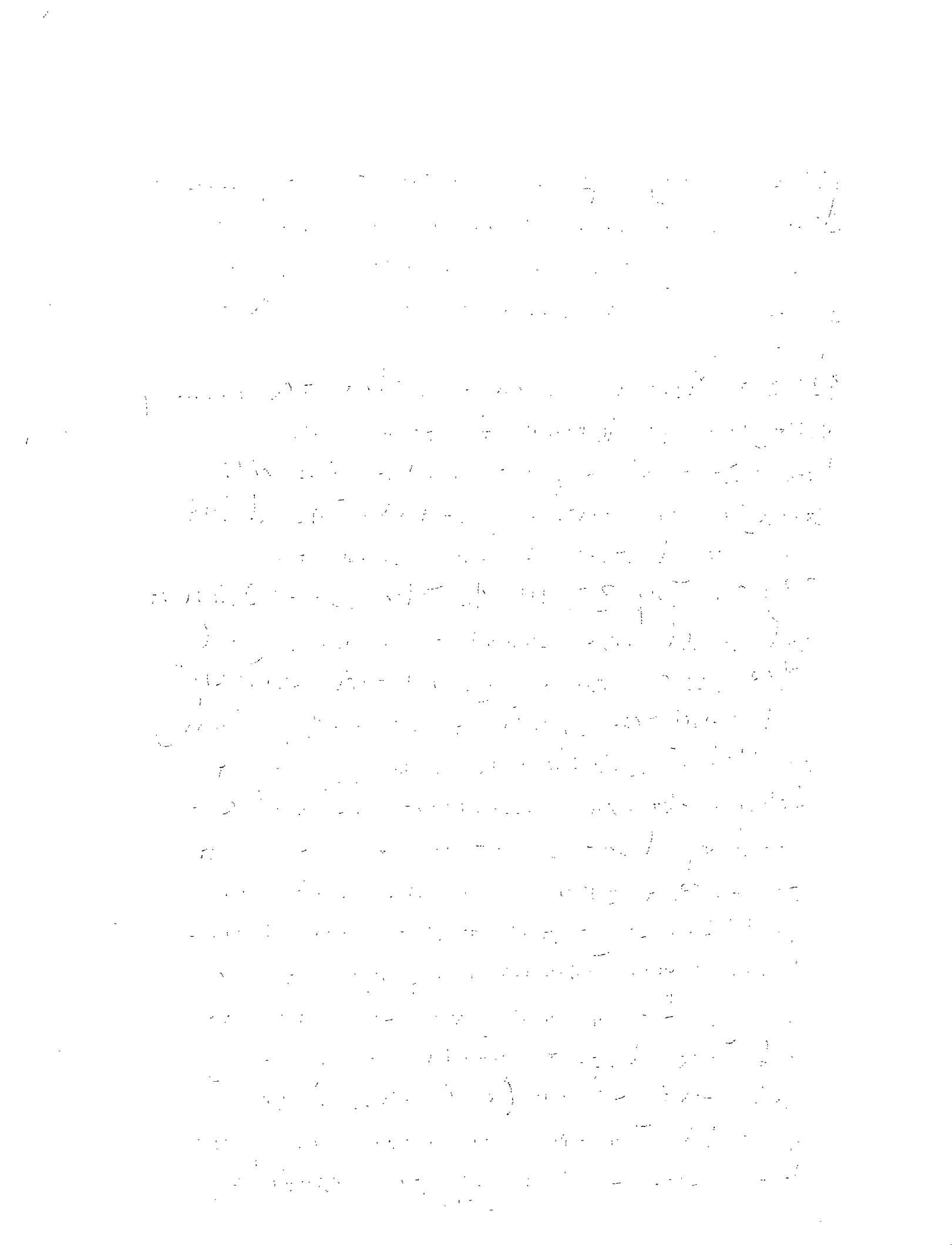
31. The above is one of the "several grounds on which [the Defendant] [could've] Alleged ineffective ASSISTANCE of trial counsel" based on the record and further investigation by Appellate counsel, Ms. Fodor, ~~if~~ by interviewing trial counsel to determine if there was A strategic reason why (1) They would concede possession in the opening statement, (2) Without telling Defendant, getting his consent and asking the Court to Advise him of the perils of such A concession pursuant to State V. Harbison, and, (3) without objecting to the States obviously erroneous Mischaracterization, and conflation of Defendants possession, in the



laymen meaning of possession, with Recent possession doctrine which necessarily includes an element of exclusive, or joint exclusive (Defendant and Demery) possession. As stated supra, the record of the trial never supported this.

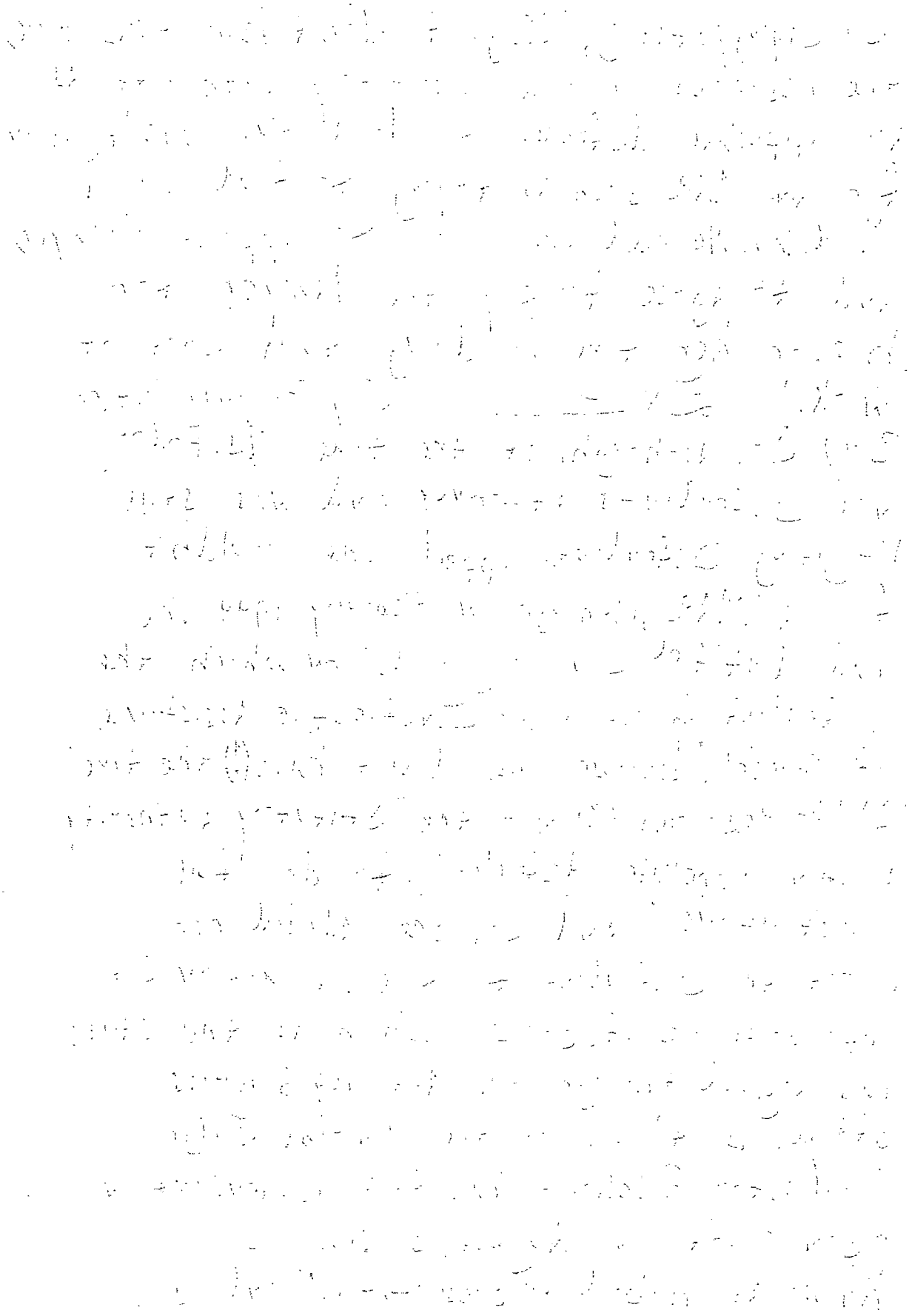
32) But, Ms. Fedor couldn't conduct the necessary investigation to determine if trial counsels Harbison Error and Apparent ineffectiveness was strategical or otherwise justified. She didn't have the discretion to even choose to.

33) On July 30, 1999 Ms. Fedor wrote Defendant and stated that Defendant needed "a good MAR issue that a judge will take seriously", and stated that evidence of Larry Demery admitting he lied on Defendant about being guilty of felony murder - which Defendant discovered but certainly didn't elicit -, she thought, might be it. But, even though she said she would "try to go And talk to" the witness Larry Demery confessed his perjury to or Arrange for an investigator from the Office of the Appellate Defender office to go and talk to him (A Mr. Lee Lane), she never did. In the same letter she qualified her intent to look into the matter by



by saying/stating, "I just don't have the time, the resources or the statutory authority as an appellate defender to do a full investigation for an MAR, such as trying to find Clyde McMillan. We need the court to appoint a lawyer, and to agree to pay the lawyer for his or her time in doing that sort of work." Ex. 3 July 30, 1999 Letter.

34) So, although, at the time, Ms. Fodor was Defendants Attorney and was still litigating Defendants appeal, she couldn't file a "MAR", although in February, 1999 she had identified "several grounds" on which the Defendant might allege Ineffective Assistance of Counsel, because she didn't have (1) "the time" (2) "the Resources", (3) Nor the "Statutory Authority as an appellate defender" to do full investigations AND so, she advised her client, the Defendant, to file a motion for appropriate relief, pro se which, as the State has argued through the Attorney Generals office, as this Court, the Honorible Judge C. Winston Gilchrist, has told Defendant in open court on August, 3, 2018 is known as "hybrid representation" and is

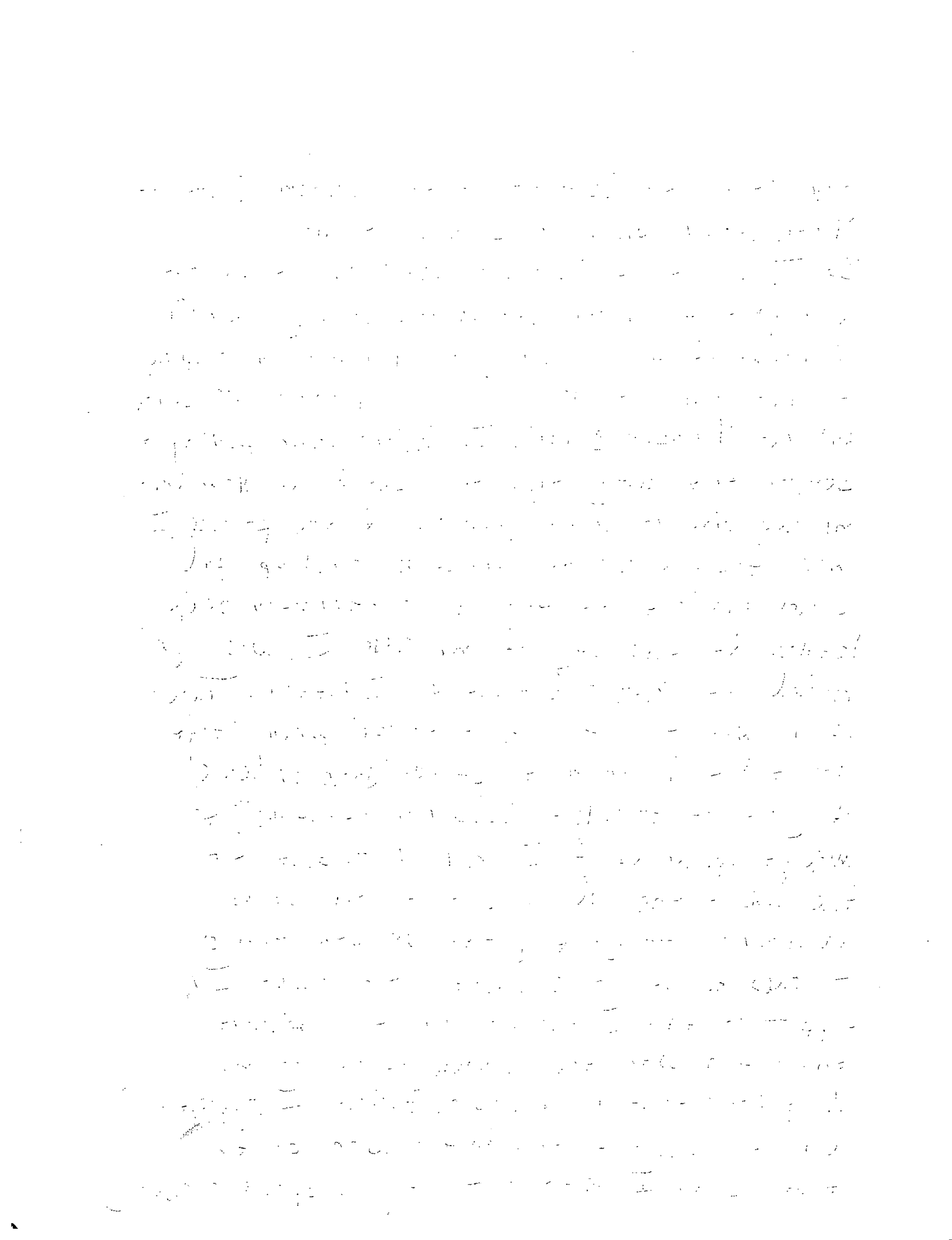


prohibited in North Carolina which Ms. Fodor, as an Appellate defender, as the author of UNC-Chapel Hills Public Defenders Manual, First Edition which she worked on at the same time she represented Defendant, shouldve known. Ex.6 North Carolina Public Defenders Manual, First Edition, UNC-School/Institute of Government; Ex.1, February 8, 1999 letter Ex.4 August 3rd, 2018 transcript.

35) On July 30, 1999, Ms. Fodor did promise to file a petition for certiorari in the N.C. Supreme Court raising issues which she didn't raise in the orriginal notice of Appeal. She stated she wouldn't "be able to do the petition until late September. As I have a couple of big briefs due in the next few months." Ex.5, But on November 12, 1999, after she left the Appellate Defenders office and started working at Until Lumsden and Smith PA, two months after the Defendant was led by her to expect the Petition for Writ of Certiorari to have been served in September, she (1) Apologized for being neglectful in responding to my letters, (2) Sent a copy of a letter she wrote to Prisoner's Rights Project at UNC encouraging them to accept my case (3) Notified the Defendant that she didn't file

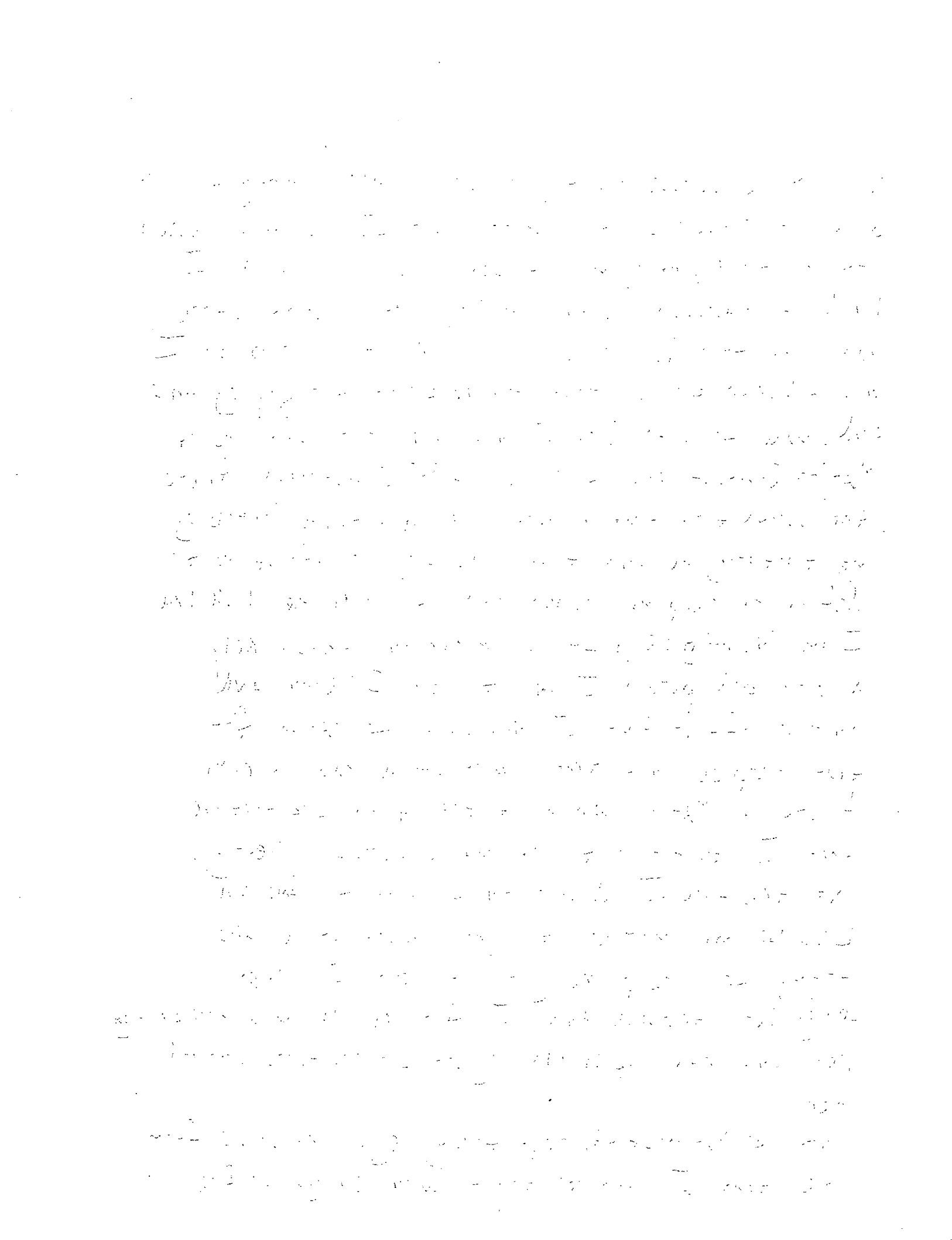
the Petition for Certiorari in the Supreme Court of North Carolina which she "promised to do." Ex. 5

36) I did follow Ms. Foders advice and filed out a request to North Carolina Prisoners Legal Service a number of times, including in November in response to her advice to do so in her November 12th letter, and her November 3, 1998. I declare under penalty of perjury that during this time period as now when my case was at critical junctures of the process I was falsely accused of infractions, locked up and isolated and cut off from all communication except letters. At this stage of my case I was housed at Marion Correctional Institute. There is no way to "stay out of trouble" when staff are told to lie on me to provide "some evidence" of guilt of fraudelent disciplinary infractions to make it appear as if I have no respect for the laws of the land as part of the states ad hominem strategy to justify unlawful tactics to keep me out of consideration for relief. In support of this I request leave to supplement this motion with the complete records of my disciplinary infractions in prison. Further, I request leave to supplement this motion with proof that (1) As I testified to at a suppression hearing



held to suppress my August 14-15th, 1993 interrogation by police at Robeson County Sheriffs Dept. I was told, when officers transporting me stopped where the road I lived at intersected with Hwy 74, that Sheriff Stone had come from his home in the Mountains or hills. I was ridiculed by District Attorney Britt for saying this and made to look like I was lying, but, officers at Marion Correctional told me, after I returned there the second time, that Hubert Stone had them harassing me, torturing me, and falsely accusing of infractions to defame me, keep me isolated and to make me look like I am incorrigible, a trouble maker and, thus, likely a very bad person. I was told by C.O. Corn and another officer that I was sent to Marion for that purpose and that Hubert Stone had a home there in Marion which if true would substantiate what I testified to at my suppression hearing. At the time I didn't know what to believe because my mother thought Hubert Stone was trying to help me get out but I kept telling her otherwise and I felt like he was manipulating her and had spies and agent provocateurs around her.

(2) Also Marion staff kept taking legal materials from me that I used to try to learn enough to file



A MAR even though by policy and the laws of the land, including the N.C. and U.S. Constitution, I am entitled to it. I have copiously documented the States pattern and practice of obstructing access to the courts and the states three decade campaign to block my attempts to access and apply the applicable laws and facts, to comply with the procedural requirements of the legal process. (See Ex.7, 3 November 1998 letter from Janine Crawley Fodor of the office of the Appellate Defender (only one copy available); Ex.8 27 May 1999 Letter from the N.C. Dept. of Justice, Assistant Attorney General Neil Dalton to Letitia Echols, N.C. Prisoner Legal Services, Inc. re: lawbooks taken by Marion Correctional Inst. staff cursing and yelling at me, fraudulent disciplinary charges, and staffs assaultive behavior ("getting in my face" making threats); Ex.9 Janine Fodors 8 March 1999 letter addressed to me, about prison authorities refusal to certify my indigency status so that Ms. Fodor couldn't file my petition for a writ of certiorari in the U.S. Supreme Court Ex.10 31 December 1999 letter from Ms. Fodor, then employed by Unti, Lumsden & Smith, PA about (1) I.A.C. for not developing Demery's unlawfully adjudicated plea bargain claim due to lack of due diligence, (2) "Harsh treatment" by guards" (3) Her plan to persuade Richard Rosen, founder of UNC-Chapel Hill Innocent Project (See Long v. Perry, 2016 WL 7235779 at 4) to send student to interview William Cruise (because she didn't I was forced to get the affidavit from him. See Ex. 11, William Cruises affidavit in Motion Requesting Appointment of Counsel, liberally construed as a MAR by the Court; and Eugene Morgans Affidavit and motion itself. Ex.12

37) The North Carolina Supreme Court has unequivocally held that as officers of the Court and as agents of their client attorneys are under dual obligation to both and can only withdraw from a pending action only by leave of the court and only after having given reasonable notice to their client. This could only be done by informing the client of their intention. The contractual relationship between attorney and client cannot be terminated without imparting such information. Perkins v. Sykes 233 N.C. 147, 152 (1951), Goswell v. Hilliard 205 N.C. 297, 171 S.E. 52, 54 (1933)

Ms. Foder never informed me that she was no longer operating as my attorney. In fact, just the opposite. She gave me the expectation and understanding that she was still working on my case. "An attorney who undertakes the conduct of an action impliedly stipulates to carry it to its termination and is not at liberty to abandon it without reasonable cause and reasonable notice". Perkins v. Sykes 233 N.C. 147, 152

38. On 12 November 1999 Ms. Foder did inform me that the Supreme Court of the United States declined to review my case. She also told me that (1) she had not filed the necessary Petition for Certiorari in the Supreme Court of North Carolina which she promised to file. She told me she would prepare the Petition

when she get a few free days, hopefully around the holidays. (Ex. 5 12 November, 1999 letter from Janine Fodor to me, the Defendant). She also apologized for being neglectful of older clients.

I.A.C. of trial counsel for putting on mutually exclusive defense theories and I.A.C. Appellate counsel

38) If I hadn't filed the prose motions I did file in 1999 and 2000 and waited on Ms. Fodor to do what she said, promised, she would do, I would most likely been procedurally barred from Federal review on the claims raised and those seemingly circumvented, those referenced herein and, most critically, Ineffective Assistance of Counsel due to trial counsel putting on mutually exclusive defense theories at trial - that James Jordan was still alive after the time of my Alibi and that the body I helped Larry Demery dispose of was not James Jordan but someone else, possibly Alphonso Green although trial counsel, to my knowledge, never had a verified reason or basis to tell the jury that the admissable competent evidence would prove these theories. As Ex. 2 clearly demonstrates, the place Mr. Jordans body was located when I first saw it was not lit so, no, I couldn't independently verify or identify James Jordan. I didn't know him, had only seen him

[illegible]

briefly in commercials or media and based on what Larry Demery told me, I expected the victim to be much younger. Further, in 8th grade I suffered a concussion at Pembroke Middle School after a guy hit me with brass knuckles from behind. After that I have not been able to hold an image in my memory. It would've been impossible for me to be able to swear that the victim was James Jordan after only seeing him, deceased, in the dark, in thick grass, trees, bushes in a scary situation, for a few minutes if that long. But my thinking was "who else could it have been?" and it didn't matter to my case because I wasn't involved in anyones murder but I did help dispose of a body, the car belonged to James or Michael Jordan, the Jordans had a funeral and that validated his identity so it didn't make sense to even contest identity but it became an issue and was an issue to the very end of the trial which is why the Court instructed the jury that if they found I killed "the victim"; not James Jordan, but "the victim", they could convict me. (See Trial Transcript Charge conference, and, jury instructions) What could be more prejudicial than trial counsel undercutting an Alibi, which could be proven, in favor

of an unsubstantiated, un-researched, un-investigated theory that, to be true, would require the jury to believe that a wealthy man from a loving circle of friends and family would have to fake his death? Obviously, my trial lawyers were shown evidence marshalled by police that they thought they could trust and when they realized they couldn't rely on it they couldn't ruin those relationships with the police, the D.A., and politicians who they would always need to save the freedom of someone like me who they viewed as one of "these people". You know what I'm saying? "These people" are difficult. "These people" ask too many questions. "These people don't know and haven't created, nor contributed, to an orderly society. "These people" haven't sacrificed to make this country, this world better. "These people" aren't appropriately grateful for the rights they didn't earn but feel entitled to. "These people" are too emotional and allow their emotions, rather than reason, to pull them into criminal acts. I can't say they were wrong if they felt that way about me but they weren't totally right and despite my flaws I didn't deserve to have my rights, guaranteed by the U.S. constitution, and N.C. laws circumvented. This society doesn't deserve that and, yes, I expect the Courts to uphold the laws impartially,

equally as they solemnly swear or affirm to do, to "administer justice without favoritism to anyone in the State"; that they "will not knowingly take, directly or indirectly, any fee, gift, gratuity, or reward whatsoever, for any matter or thing done by [them] or to be done by [them] by virtue of [their] office, except the salary and allowances by law provided; and that "they" will faithfully and impartially discharge all the duties of Judge" of the General Court of Justice of the State of North Carolina, to the best of their ability and understanding, and consistent with the Constitution and laws of the State and with the help of God, or Nature or whatever ones highest ideal is, and the conscience of the Court and its officers

This the 18th day of May, 2023

Daniel A. Green

OFFICE OF THE
APPELLATE DEFENDER
STATE OF NORTH CAROLINA

SUITE 600
123 WEST MAIN STREET
DURHAM, NC 27701

MALCOLM RAY HUNTER, JR.
APPELLATE DEFENDER

TELEPHONE:
(919) 560-3334
FACSIMILE:
(919) 560-3288

February 8, 1999

Lord D. As-Saddiq Al-Amin Salaam
U'Allah
Marion Correctional Institution
P.O. Box 2405
Marion, NC 28752

Dear Lord U'Allah:

As I suspect you probably know by now, the Supreme Court of North Carolina turned down our appeal on Friday and affirmed the holding of the Court of Appeals. The Supreme Court did not write an opinion - instead they summarily affirmed the Court of Appeals majority in a one page order. I have enclosed a copy of that Order. I know that this must be terribly disheartening news, and I'm very, very sorry.

I am happy to file a Petition for Writ of Certiorari asking the United States Supreme Court to review the decision in your case. Review in the U.S. Supreme Court is discretionary - the Court is not required to hear your case and it accepts very few cases for review. However, I think it's worth a shot. I have enclosed a new declaration of indigency, which the U.S. Supreme Court requires in order for us to file Petitions for Writs of Certiorari. If you would like me to file a Petition in the U.S. Supreme Court, please fill out the declaration and return it to me. The Petition will be due 110 days from the date of the North Carolina Supreme Court's Order, or in late May.

Other possibilities for continuing to litigate your case include filing a Motion for Appropriate Relief in the Superior Court of Robeson County, alleging ineffective assistance of trial counsel (and if you wish, appellate counsel - I will not be offended, it's just the way the game is played). I can see several grounds on which you might allege ineffective assistance of trial counsel. I would like to come and talk with you about this- but I don't think I can make the trip until March. You would have to file your Motion *pro se* , but you could request the appointment of counsel as part of your Motion. If you are interested in doing this, we might talk about some lawyers in the Fayetteville area who might be willing to represent you if the Court would appoint them. There is no time limit on filing a Motion for Appropriate Relief - and you would probably want to wait until the U.S. Supreme Court ruled on our Petition for Writ of Certiorari if we decide to file one.

EX-1

The other option is to file a Writ of Habeas Corpus in federal court - in the Eastern District of North Carolina. I could ask Prisoners Legal Services to assist you with this Writ, or again, you could file it *pro se* and request the appointment of counsel. I think you have a good Habeas issue. The federal courts require that you file a Writ of Habeas Corpus no more than one year after the final action in the direct appeal - which would be either the Order from the Supreme Court of North Carolina, or, if we file a Petition for Writ of Certiorari in the U.S. Supreme Court, the date on which the U.S. Supreme Court ruled on the Petition. We could talk more about this when I come to visit.

Again, I am very sorry about the outcome of the appeal. Please keep in touch and keep fighting the legal battle. The law is on your side, it's just a matter of finding some court that is willing to apply it.

Sincerely,

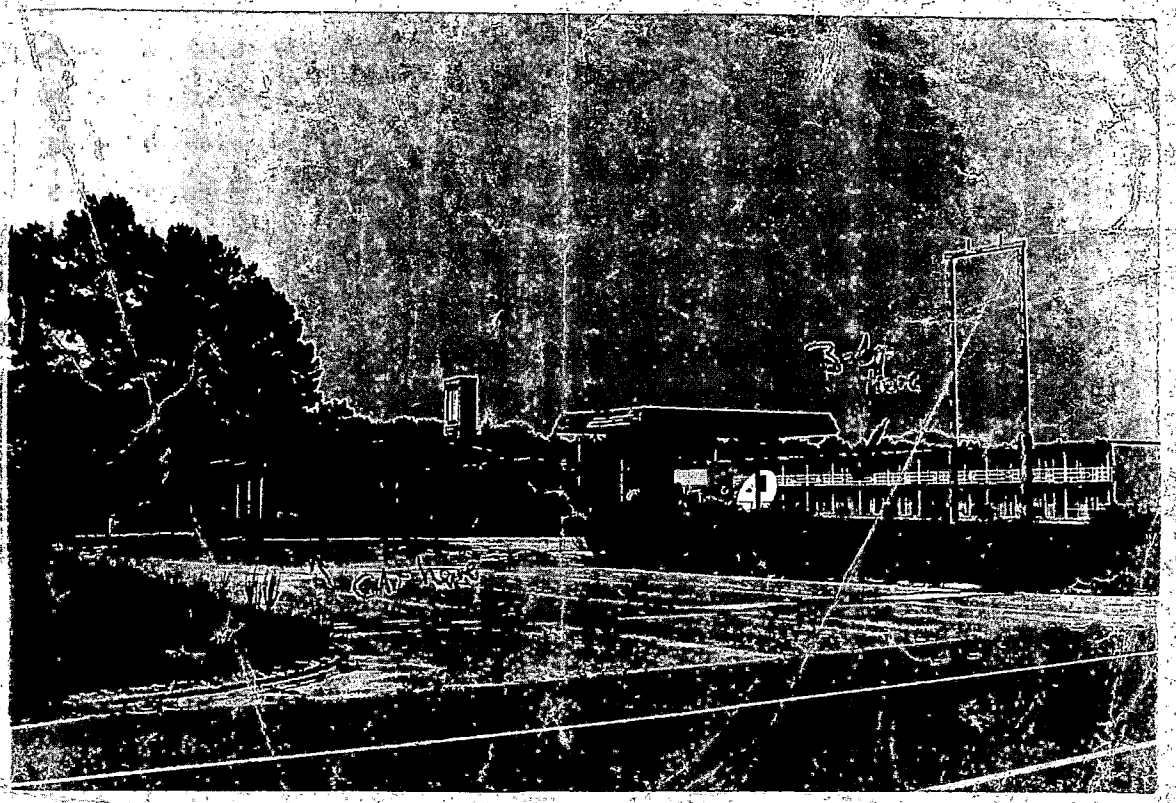
Janine Fodor

Janine Fodor
Assistant Appellate Defender

p.s. I'm glad you received the book and that you liked it. I saw recently that there have been a couple of biographical books written on the late Justice of the U.S. Supreme Court, Thurgood Marshall. Marshall helped to litigate some of the major desegregation cases in the 1950s, including Brown v. Bd. of Education, which desegregated the public schools. He was the first African-American to be appointed to the U.S. Supreme Court. Would you be interested in a biography of him?

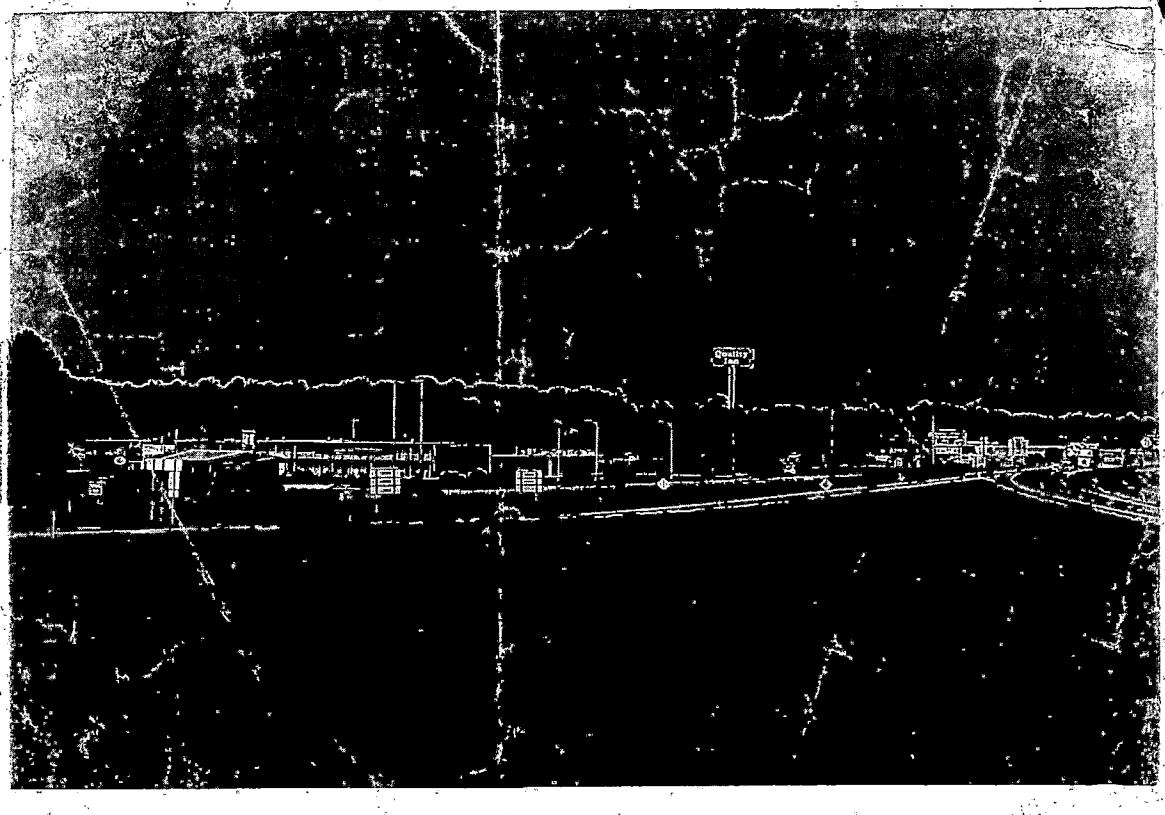
EXPLANATORY

THE FOLLOWING DOCUMENT(S) MAY HAVE POOR IMAGES DUE TO POOR PHOTOGRAPHIC QUALITY OF PAPER.



Ex. 2

ABB



ABS

OFFICE OF THE
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MALCOLM RAY HUNTER, JR.
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TELEPHONE:
(919) 560-3334
FACSIMILE:
(919) 560-3288

July 30, 1999

Lord D. As-Saddiq Al-Amin Salaam
U'Allah, a.k.a.
Daniel Green
Marion Correctional Institution
P.O. Box 2405
Marion, NC 28752

Dear Lord U'Allah:

I did receive an incorrectly addressed letter written by you, and I am returning it to you. Please don't feel embarrassed - it could have happened to anyone. I will file a Petition for Certiorari in the North Carolina Supreme Court raising the issues which I did not raise in the original notice of appeal. Because the issues are different, this won't affect the timing of the Petition for Certiorari in the United States Supreme Court, but hopefully it will allow you to raise all of the appellate issues in a Writ of Habeas Corpus in a federal district court, if it comes to that. I won't be able to do the Petition until late September, as I have a couple of big briefs due in the next few months.

The reason that the information from the people Larry has been talking to in prison is so important is that it is new evidence, that was not presented to your jury, and could not have been presented since it did not exist at the time you were tried. New evidence of innocence is one ground for filing a Motion for Appropriate Relief (MAR). What you need is a foot in the door - a good MAR issue that a judge will take seriously and may entitle you to counsel to investigate other potential claims. I think this might be it. If Lee Lane is willing to contact me, that would be great. If not, I will try to go and talk to him, or arrange for an investigator from our office to go and talk to him. I just don't have the time, the resources or the statutory authority as an appellate defender to do a full investigation for an MAR, such as trying to find Clyde McMillan. We need the court to appoint a lawyer, and to agree to pay the lawyer for his or her time in doing that sort of work.

The United States Supreme Court case that concerned co-defendant's confessions involved the admission of hearsay confessions - that is, the police officer read a written confession and the co-defendant did not testify and was not subject to cross-examination. The court found that the practice of admitting hearsay confessions violated the

EX. 3

The other option is to file a Writ of Habeas Corpus in federal court - in the Eastern District of North Carolina. I could ask Prisoners Legal Services to assist you with this Writ, or again, you could file it *pro se* and request the appointment of counsel. I think you have a good Habeas issue. The federal courts require that you file a Writ of Habeas Corpus no more than one year after the final action in the direct appeal - which would be either the Order from the Supreme Court of North Carolina, or, if we file a Petition for Writ of Certiorari in the U.S. Supreme Court, the date on which the U.S. Supreme Court ruled on the Petition. We could talk more about this when I come to visit.

Again, I am very sorry about the outcome of the appeal. Please keep in touch and keep fighting the legal battle. The law is on your side, it's just a matter of finding some court that is willing to apply it.

Sincerely,

Janine Fodor

Janine Fodor
Assistant Appellate Defender

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8/3/18

EXHIBIT
1

STATE OF NORTH CAROLINA

LEE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
93 CRS 15291-15293

STATE OF NORTH CAROLINA
Plaintiff,

v.

DANIEL GREEN,
Defendant.

TRANSCRIPT, Volume I OF I

[Pages 1-27]

Friday, August 3, 2018

* *

Lee County Criminal Superior Court

August 3, 2018 Session

The Honorable C. Winston Gilchrist, Judge Presiding

Motions hearing

Jackie L. Wells, RMR, CRR, CRC
Resident Official Court Reporter - District 11A
15 Glen Valley Court
Angier, North Carolina 27501
(919) 980-0489
jlwells@embarqmail.com

Ex. 4

THE COURT: Okay. And her full name, I'm sorry?

MS. SULLIVAN: Cheryl Sullivan, C-H-E-R-Y-L.

THE COURT: Ms. Sullivan, thank you. Madam clerk, Court notes Ms. Sullivan's general appearance also on behalf of the defendant with the defendant's consent. Anything else before we take up the scheduling issue?

MS. MUMMA: No, your Honor.

THE COURT: Very well. Parties wants to be heard about setting the hearing that I have referred to? State want to be heard about that?

MR. BABB: Yes, your Honor. Thank you. The State, as the Court's aware, filed a motion to deny the MAR on the pleadings in September of 2017, and then in March of 2018, filed a request pursuant to 1421 C1 for a hearing on that motion to deny on the pleadings. The State would like that hearing scheduled far enough out to properly prepare argument on why there should not be an evidentiary hearing on any claim in the MAR, but the State does desire -- filed those motions to be heard on the motion to deny the pleadings.

THE COURT: All right. Well, my idea would be to hear your motion for judgment on the pleadings as part of the larger issue of whether or not an evidentiary hearing should be granted. I mean, basically it's the same issue.

MR. BABB: Yes, sir.

THE COURT: So how much time do you need to get ready?

MR. BABB: With what I currently have scheduled, I would -- I don't know what the Court was thinking ahead of time, and I don't know what defense counsel's position will be, but I would be hesitant to commit to anything prior to the week of September 17 and would probably prefer the week of September 24, but as Ms. Mumma stated, the Court can set the date and I will be ready when the Court says so.

THE COURT: Well, I appreciate that. Perhaps it would be helpful to both sides for me to give some idea of what my availability is. I'm scheduled to start a capital trial September 4th. As you know, those are always subject to last-minute derailment, but assuming that case begins, it will require between one and two months to try. So I think, for scheduling purposes, it's prudent for us to assume that it will proceed, which means that essentially I have the next four weeks, and then we're on over into November, probably. I am perfectly happy to try to schedule the hearing before I start the capital trial, or to schedule it after its likely termination date, but those are the limitations I have right now. Obviously, if that case fell through, I would be perfectly willing to communicate with counsel, if we could move the date up. I'm willing to do that as well. But at this moment, it appears the case will be tried.

MR. BABB: Your Honor, may I please be heard on that?

THE COURT: Yes, sir.

MR. BABB: That does make it later than I intended, but I would prefer to schedule it after that capital trial, or during that time period of that capital trial if it falls through primarily because of the other duties that I have and due dates that are coming within the next 30 to 60 days, to be honest, your Honor.

THE COURT: Okay. Fine. Appreciate your position. Ms. Mumma?

MS. MUMMA: Yes, your Honor. We previously have filed a proposed stipulation to undisputed facts and filed a motion for the judge to order on that proposed stipulation of facts. [redacted] legal claims [redacted] those legal [redacted] So in order for us to be prepared with the hearing [redacted] be an evi[redacted]g, I [redacted] that we understand what [redacted] facts and disputed facts are, so I would ask that t[redacted]Court consider [redacted] requiring the State to respond to the proposed stipulation of facts so that we can narrow the issues we need to address going forward. The d[redacted]se is prepared to go forward as soon as possible with a hearing [redacted] evidentiary hearing. I understand the Court's limitations and respect those limitations. We could be prepared to go forward before the capital case starts, or if that case changes in its status, to be prepared to

move forward anytime you're available, but I do think that narrowing the issues by addressing the facts is an important step in the efficiency of this process. Thank you, your Honor.

MR. BABB: Your Honor, may I respond to that?

THE COURT: Yes, sir.

MR. BABB: As the Court's aware, the State filed a response in opposition to the defendant's motion on ordering a responsive proposed stipulation. I disagree with the understanding of how the MAR statute works. I don't think it would be beneficial to get into a debate about stipulated facts. The argument the State is going to have is why there shouldn't be an evidentiary hearing on any claims is that, even given the facts asserted by the defendant, there is no -- he is not entitled to relief. Any dispute of facts need to be -- if this Court ever needs to get to that point, which again, we don't think it does, will be handled at a hearing. We strongly object to this process of trying to do stipulated facts in this matter and we have filed a response in opposition to that motion.

MS. MUMMA: Your Honor?

THE COURT: Yes, ma'am.

MS. MUMMA: The State has made its position with regard to the stipulation clear. I don't see the harm in the State responding to say they deny or admit the facts. If they deny all the facts, they deny all the facts. If they admit to some, then that can save us some time. Thank you.

CHRIS I.A.C.

Didn't know they already denied facts in response to AMRA

THE COURT: All right. Thank you very much. Do you have any authority on that issue?

MS. MUMMA: Your Honor has the inherent authority for the proceedings, to run those proceedings in an efficient and effective way, so under your inherent authority, if the narrowing of the issues helps with the efficiency of the process, that falls within your jurisdiction.

THE COURT: All right. I appreciate that.

MR. BABB: Your Honor, may I respond?

THE COURT: Yes, sir, you certainly can, as soon as I give Mr. Mance and Ms. Sullivan -- anything that you want to say about the issue?

MR. MANCE: No, your Honor.

MS. SULLIVAN: No, your Honor.

THE COURT: Yes, sir.

MR. BABB: Your Honor, the question reveals the reason why the motion should be denied. In addition, the issues will be narrowed -- the State's position is the issues will be narrowed to zero at the motion to deny on the pleadings.

THE COURT: Anything else on that issue?

MS. MUMMA: Your Honor, my client has asked for a moment to confer.

THE COURT: Sure.

[conferring]

MS. MUMMA: Your Honor, my client would like the opportunity

to briefly address the Court.

THE COURT: That motion is denied. You can't have hybrid representation, so Ms. Mumma is your lawyer. I'll give you an opportunity to confer with her if you need it.

THE DEFENDANT: Okay. Yes.

THE COURT: Yes, sir.

[conferring]

MS. MUMMA: Your Honor, my client has requested that I add to the record that the reason he has asked for Mr. Holmes and Mr. Mance to be removed from his case is because he feels the operative facts have not been adequately [illegible] in the record and included in his prior filing. I have advised my client that I believe they have been adequately addressed, but [illegible] for us to file something if that is something we determine is necessary.

THE COURT: Okay. Well, obviously, I don't have to instruct counsel on th[illegible]e. I will be happy to [illegible] if that's what you are asking for. I'm not in any way being critical. I'm just pointing out that there have been numerous additions to the MAR. It's quite extensive. There are at least five versions of it, at least four or five supplements. So there is a lot of material there. But if the defense feels that there is something else that needs to be brought forward, I'll give you an opportunity to do that. If that potentiality exists, we probably should set up

CHRIS IA.C

Chris asked for 30 Days to file Amended MAR

some sort of schedule for closing the pleadings in the case. So why don't we talk about that a little bit. I mean, it sounds to me like the State doesn't feel it can be ready to argue before Labor Day. I'm likely to be out of commission in September and October, so we're probably realistically looking at a November hearing date, anyway, and certainly that would facilitate what you are asking for, Ms. Mumma. So how much time would you need if an amended MAR was going to be filed to do that?

MS. MUMMA: [redacted] Honor.

THE COURT: All right. State want to be heard about that? Obviously, if I allow that, I'll allow the State a similar amount of time to file any response.

MR. BABB: Thank you, your Honor.

THE COURT: You satisfied with that?

MR. BABB: As long as it's more than 30 days before any hearing and I have 30 days to respond before any hearing, State has no objection how your Honor proceeds.

THE COURT: Okay. All right. Very well. I will grant the defendant's motion to file an amendment to the MAR if it is deemed necessary to do so. That should be done within 30 days of today's date. State shall have 30 days from service of the amended motion upon which to file a response. All right. I would [redacted] Is there any objection to that from the State?

MR. BABB: No, sir.

THE COURT: From the defense?

MS. MUMMA: [redacted]

THE COURT: Okay. Very well. Pleadings will be closed once the State has filed its response to any amended MAR. In any event, the pleadings shall be closed [redacted] Now, I'm not talking about briefs, although the issues in the case have already been briefed pretty extensively, and I'm familiar with those briefs. I'm not foreclosing you from filing another brief, if you want to do that. I'm just talking about fa[redacted]s I've indicated. Okay. In terms of settin[redacted]then, what is counsel's [redacted] That's a Tuesday.

MR. BABB: Your Honor, is it okay if I --

THE COURT: Absolutely.

MR. BABB: Your Honor said the 27th?

THE COURT: Yes, sir.

MR. BABB: Available, your Honor.

MR. MANCE: Your Honor, I'm not available the 20th through the 29th of November.

THE COURT: All right. What about the week of December 3rd?

MR. MANCE: Yes, your Honor.

THE COURT: So counsel for both sides will know, what I would prefer to do, if it is possible, and I'm not requiring it.

Chris Agreed to Lee County Hearing to keep Camera out

I [redacted] I would prefer to do is set up the hearing for here in Lee County or in Harnett [redacted] me to schedule [redacted] space in my own district, and I can control the schedule a little bit better that way [redacted] 3rd is a crimi[redacted]in session for m[redacted]t a day to do this case that week, if you-all a[redacted]lable.

MS. MUMMA: I am available.

MR. MANCE: I'm available.

MS. SULLIVAN: Yes, your Honor.

MR. BABB: Yes, sir, your Honor.

THE COURT: Okay. What about Wednesday that week, the 5th? Mr. Sheriff, is that a practical date? I know that's a probable cause date and we typically don't have superior court that day. Do you think we can -- any reason we couldn't do it that day?

THE BAILIFF: No, sir.

THE COURT: So as I understand it, the State agrees to that?

MR. BABB: Yes, sir.

THE COURT: Ms. Mumma?

MS. MUMMA: Yes, your Honor.

THE COURT: All right. So we'll set December 5th as the hearing date on the State's motion for judgment on the pleadings and on the issue of whether an evidentiary hearing will be allowed. Y'all satisfied with 9:30?

MR. BABB: Yes, your Honor.

THE COURT: Any problem --

MS. MUMMA: Yes, your Honor.

THE COURT: Okay. So we'll start at 9:30. State stipulate to hearing those motions here in Lee County, outside Robeson County?

MR. BABB: Yes, sir, your Honor.

THE COURT: The defendant?

MS. MUMMA: Yes, your Honor.

THE COURT: All right. Very well. December 5th, 9:30. With respect to the defendant's motion concerning compelling responses to proposed stipulations, while I [redacted] defendant's efforts to narrow the issues, [redacted]

MR. BABB: [redacted] would you like us to submit a [redacted]?

THE COURT: I would [redacted]

MR. BABB: Yes, sir.

THE COURT: -- [redacted]. Now, let's talk just a moment about the procedure for arguments so everyone will know coming in, if you want to -- for ease of preparation a little bit. How much time does the defense anticipate you will need to argue?

MS. MUMMA: Your Honor, an hour and a half. We would likely reserve a half hour for the rebuttal.

THE COURT: So you're requesting an hour and a half total?

MS. MUMMA: Yes, your Honor.

THE COURT: Okay. State?

MR. BABB: We're happy to use the same amount of time the defendant does. An hour and a half is more than I think I'll talk, but it's sufficient.

THE COURT: Well, as the appellate rules say, counsel can feel free to use less, but I'll allow both sides an hour and a half. And the defendant may reserve whatever time he wishes for rebuttal, as counsel may. What I would propose is, the Movent will argue first, State will have an opportunity to respond, then I'll give Movent last argument.

MR. BABB: Can I be heard on that, your Honor?

THE COURT: Yes, sir.

MR. BABB: While [redacted]n of proving [redacted], and I'm not a hundred percent sure on this, I wanted to talk to the Court, the St[redacted]gs, so would you want the S[redacted]

THE COURT: Well, I think the basic issue is the issue that's contemplated by the statute, which is, [redacted] a sufficient showing [redacted]g. So in the larger sense, I think the burden is always on the defendant.

MR. BABB: That's fine, your Honor. Thank you.

THE COURT: So I would propose to allow the defendant to have the last argument. I assume there is no objection from the

defendant to that?

MS. MUMMA: No, your Honor.

THE COURT: All right. So that's what we'll do.

MR. BABB: Thank you.

THE COURT: Anything else that we need to talk about with respect to the pleadings or the upcoming hearing?

MR. BABB: Your Honor, may I add one thing?

THE COURT: Yes, sir. Absolutely.

MR. BABB: I would like to apologize for the difficulty in scheduling. I'm also counsel on the four RJA cases that briefs have just been filed by defendants to the North Carolina Supreme Court. That added to my hesitation to trying to do it quicker, but if your capital trial falls through, your Honor, and depending on the filing of any possible 6th Amendments to the MARs, I will move it up earlier, if defense counsel wants to do the same on that.

THE COURT: Well, if that happens and some space opens up, I'll notify counsel, and if it is possible for us to coordinate an earlier date, we'll definitely do that. I mean, if the parties agree.

MS. MUMMA: Yes, your Honor.

THE COURT: Okay. Anything else that we can address today?

MS. MUMMA: May I have a moment, your Honor?

THE COURT: Yes, ma'am.

[conferring]

MS. MUMMA: Your Honor?

THE COURT: Yes, ma'am.

MS. MUMMA: We would like to ensure that there is an order to writ my client in for the oral arguments.

THE COURT: All right. State want to be heard about that?

MR. BABB: Yes, your Honor.

THE COURT: All right.

MR. BABB: Your Honor, under the MAR statute, the defendant only has a right to be present when evidence is being presented. On legal motions, they don't have a right to be present. The State would ask that the defendant only be writted out and transported -- you put that burden on the Department of Corrections as well as local law enforcement for a hearing he has a right to appear at, your Honor.

THE COURT: Yes, sir. All right. Appreciate the State's position. Ms. Mumma?

MS. MUMMA: Yes, your Honor. My client has been waiting eighteen years. He has filed motions in 2000. We're now at 2018. He has been fighting to have these claims heard. There are many factual issues that are the basis for the legal claims that are being presented. I think it's essential that he is here to ensure that all of his claims are properly addressed in his interest.

MR. BABB: Your Honor, may I briefly?

THE COURT: Yes, sir.

MR. BABB: I believe the pro se motion is no longer before this Court, the ones in 2000. There has been representations, your Honor said earlier [redacted] think the 2015 first amended motion for appropriate relief that was filed by Mr. Mance and Mr. Holmes is sort of the start of this. I understand defense's position, but again, just respectfully refer to the statute and what the defendant has the right to appear at. Thank you.

PRO SE Motion

MS. MUMMA: Your Honor?

THE COURT: Yes, ma'am.

MS. MUMMA: I believe t[redacted]is still before the Cou[redacted]l be arguing at the hearing. Judge Floyd was very cr[redacted]hat were [redacted] pro se motion. So I would disagree with the State, and our position is that all issu[redacted]o [redacted]on. Those issues were incorporated in the MARs that were filed, and all of the issues are still open.

THE COURT: While the defendant does not have a right to be present at this hearing, I will allow the defendant's motion to be present. Anything else from the defense at this time?

MS. MUMMA: No, your Honor.

THE COURT: Anything else from the State?

MR. BABB: No, sir.

THE COURT: Very well. Thank you very much. Thank you, Mr. Holmes, for your service. Appreciate that. Appreciate counsel

being here today. That's the close of this matter.

[Hearing concluded at 10:22 a.m.]

UNTI LUMSDEN & SMITH PA
ATTORNEYS AT LAW

4020 WESTCHASE BOULEVARD, SUITE 465
RALEIGH, NORTH CAROLINA 27607
TELEPHONE: (919) 828-3966
FACSIMILE: (919) 828-3927

November 12, 1999

Lord D. As-Saddiq Al-Amin Salaam U'Allah
a.k.a. Daniel Andre Green
Marion Correctional Institute
Marion, NC 28752

Dear Lord U'Allah:

I'm very sorry that I have been so neglectful in responding to your letters. As you can see I have left the Appellate Defenders Office and am now in private practice. I have been inundated with new work and I'm afraid I have neglected my old clients.

The Supreme Court of the United States declined to review your case - they review very few cases. They issued their order on October 4, 1999. I have enclosed a copy of the opinion denying review. The date is important because you have one year from that date, or until October 4, 2000 to file a Petition for habeas corpus in the Eastern District of North Carolina. If you file a Motion for Appropriate Relief in State court prior to that date your federal time is "tolled," that is your year does not run as long as there are any proceedings pending in State court. I have enclosed a package prepared by Prisoners Legal Services telling you how to file a habeas petition. You may also write to Prisoners Legal Services and ask one of their lawyers to represent you.

I have also enclosed a letter I which I wrote to the Prisoners' Rights Project at UNC encouraging them to accept your case. I have sent back the material they addressed to you.

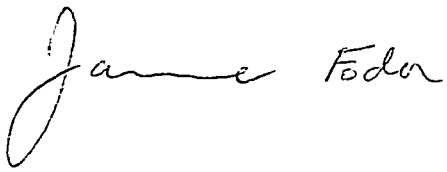
I have not filed the necessary Petition for Certiorari in the Supreme Court of North Carolina, which I promised to do. I believe that if I file that Petition at any time prior to October 1, 2000, you should still be able to raise every issue briefed in the Court of Appeals in federal court. I am swamped at the moment but when I get a few free days, hopefully around the holidays, I will prepare that for you.

Was This Filed

EX. 5

I hope this is helpful, and that you are able to obtain further assistance with your case. Take care.

Sincerely,
UNTI LUMSDEN & SMITH PA



OFFICE OF THE
APPELLATE DEFENDER
STATE OF NORTH CAROLINA
SUITE 600
123 WEST MAIN STREET
DURHAM, NC 27701

MALCOM RAY HUNTER, JR.
APPELLATE DEFENDER

TELEPHONE:
(919) 560-3334
FACSIMILE:
(919) 560-3288

November 3, 1998

Lord D. As-Saddiq Al-Amin
Salaam U'Allah
a.k.a. Daniel Andre Green
Marion Correctional Institute
P.O. Box 2405
Marion, NC 28752

Dear Lord U'Allah:

I am sorry to hear about all of your troubles at Marion. With respect to the write ups and disciplinary lock-up, it is my understanding that you are entitled to a hearing and to present witnesses and documentary evidence on your behalf. Did anyone see you fall? Do you have any medical documentation of your problems with your hip? You might be able to make out a case for yourself.

I am assuming from your second letter that you have been cleared of any suspicions of belonging to a "security threat group." I know that you know better than to invite trouble - enough of it comes along uninvited!

You were correct about that the officer who did so was not entitled to read your legal mail, but I think the most you can do is file a grievance.

I don't know whether you have been writing to Prisoners Legal Services and informing them of the problems that you are having, but I strongly suggest that you do so. They are the experts in prison regulations and would have the authority to bring a law suit if one were merited. I have mentioned your case to a lawyer, at Prisoners, named Marcus Jimison; I suggest you write to him, and keep writing every time something new happens. At least then, you will create a "paper trail." The address is:

Prisoners Legal Services
P.O. Box 25397
Raleigh, NC 27611.

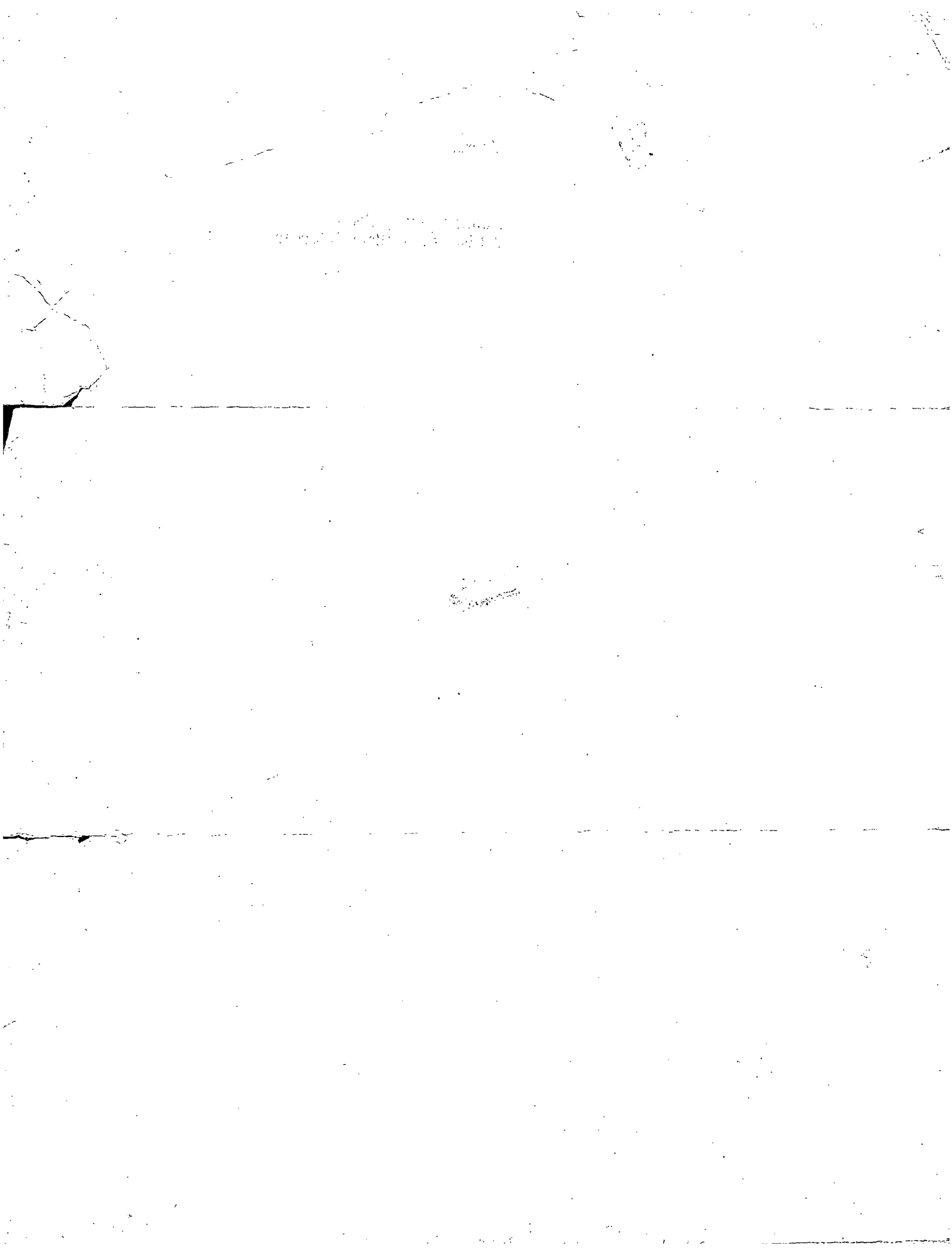
The State has filed an extension motion and plans to file its brief on December 9, 1998. I will send you a copy when I receive it. Argument probably will be scheduled in February or March. I'll keep you informed. Hang in there.

Yours,

Janine C. Fodor

Janine Crawley Fodor
Assistant Appellate Defender

EX 7



State of North Carolina
Department of Justice
P. O. BOX 629
RALEIGH
27602-0629

MICHAEL F. EASLEY
ATTORNEY GENERAL

REPLY TO:
Neil Dalton
Correction Section
Telephone: (919) 716-6544
Facsimile: (919) 716-6761

May 27, 1999 5 months later my mom had a brain aneurysm. She was dating a man Charles (LNU) who claimed to be an ex-CIA agent

Letitia C. Echols
North Carolina Prisoner Legal Services, Inc.
224 S. Dawson Street
P.O. Box 25397
Raleigh, North Carolina 27611

Re: Daniel A. Green

Dear Ms. Echols:

Per our telephone discussion, I am referring to you and Prisoner Legal Services, the matters of complaints made by Lord U'Allah (a.k.a Daniel A. Green).

Mr. Green called me from a county jail, and I spoke to both he and his mother. His complaint centered around allegations of staff misconduct at Marion Correctional Institute, specifically cursing and yelling at him, writing him up for nothing, and getting in his face. He also stated that his "law books" were taken.

Mr. Green also advised me that he had talked to you concerning these and other matters.

Sincerely,

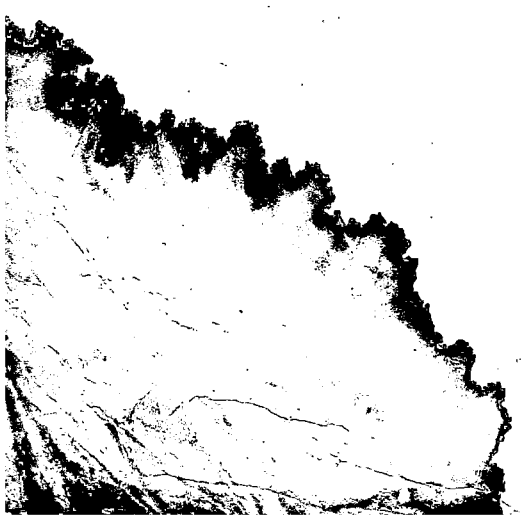
Neil Dalton

Neil Dalton
Assistant Attorney General

cc:
Elizabeth Green
Lord U'Allah (a.k.a David A. Green) Marion Correction Inst.
W. Dale Talbert, Special Deputy Attorney General

ND:wj

Ex. 8



OFFICE OF THE
APPELLATE DEFENDER
STATE OF NORTH CAROLINA

MALCOLM RAY HUNTER, JR.
APPELLATE DEFENDER

SUITE 600
123 WEST MAIN STREET
DURHAM, NC 27701

TELEPHONE:
(919) 560-3334
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(919) 560-3288

March 8, 1999

Lord D. As-Saddiq Al-Amin Salaam
U'Allah
Marion Correctional Institution
P.O. Box 2405
Marion, NC 28752

Dear Lord U'Allah:

Thank you for your letter, and for returning the declaration of indigency. I am concerned that the prison authorities were unwilling to certify the amount of money in your account, because I'm afraid the U.S. Supreme Court will not accept the declaration unless the certification portion is completed by the appropriate authority. I would like to come and visit you in late March, and I will try to work something out with the prison before I come, so that we can document your status as an indigent. Don't worry though, even if the prison authorities are recalcitrant, we have the original finding of indigency in your case from Superior Court in Robeson County, and obviously your financial status has not changed since then. If necessary, we will file the original finding of indigency and an explanatory letter with the U.S. Supreme Court.

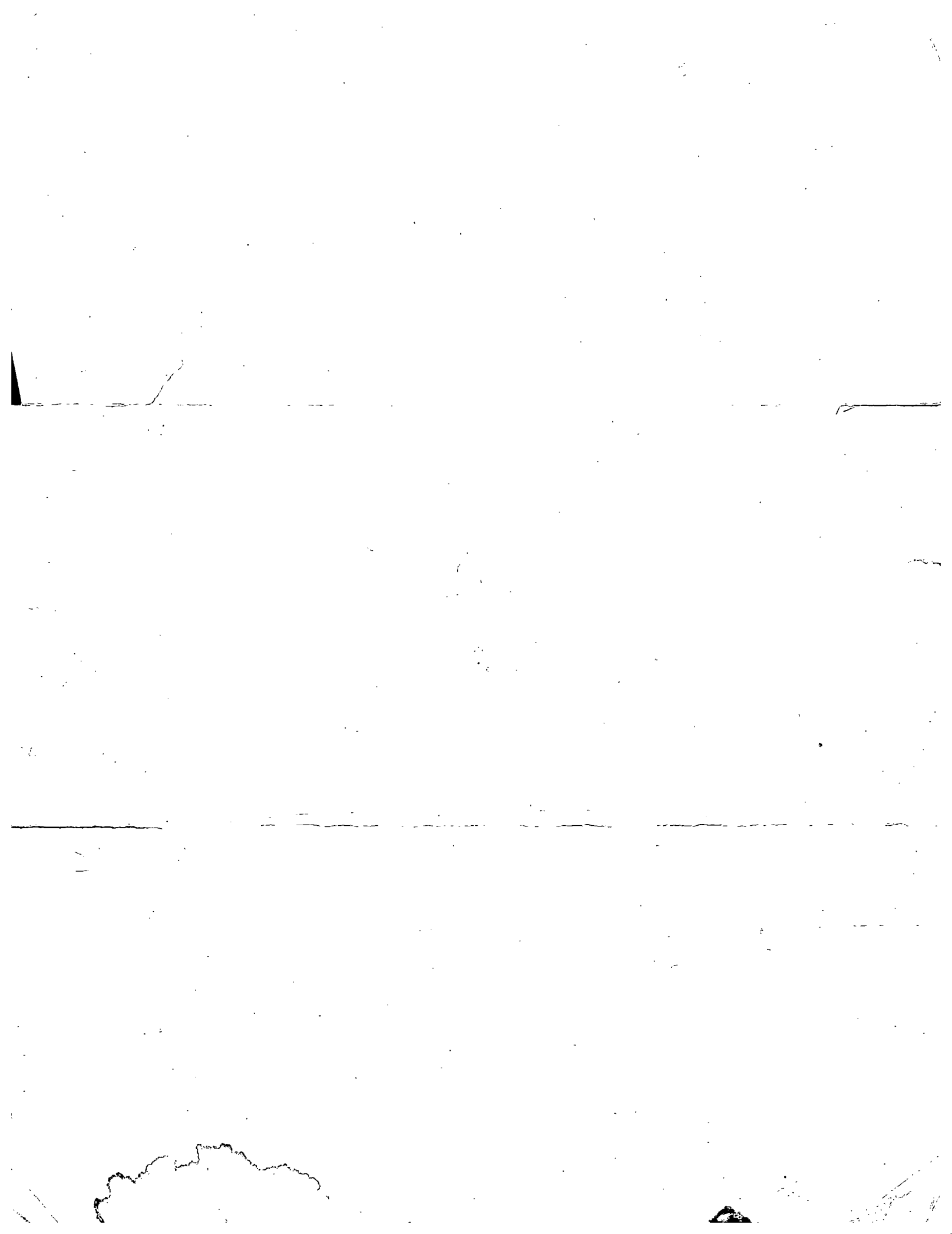
I will send you a copy of Juan Williams book on Thurgood Marshall. Also, I would like to come and see you on the week of March 22-26, and discuss post-conviction options further.

Sincerely,

Janine Fodor

Janine Fodor
Assistant Appellate Defender

EX. 9



UNTI LUMSDEN & SMITH PA
ATTORNEYS AT LAW

4020 WESTCHASE BOULEVARD, SUITE 465
RALEIGH, NORTH CAROLINA 27607
TELEPHONE: (919) 828-3966
FACSIMILE: (919) 828-3927

December 31, 1999

Lord D. As-Saddiq Al-Amin Salaam U'Allah
a.k.a. Daniel Andre Green
Marion Correctional Institute
P.O. Box 2405
Marion NC 28752

Dear Lord U'Allah:

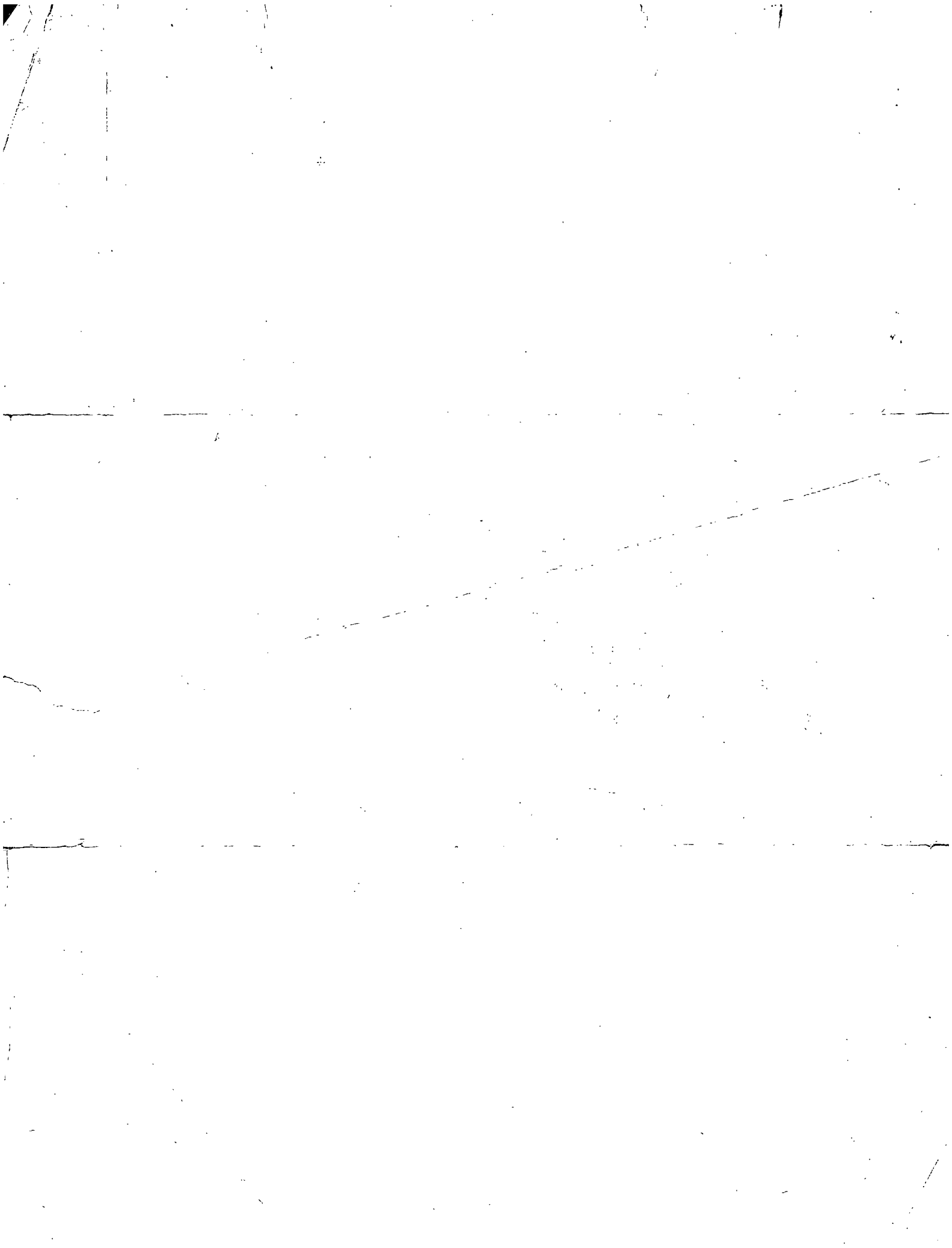
I am writing in response to your recent letters. I will see Rich Rosen at a meeting in January, and I will try to persuade him to send a student out to interview William Cruise. I am sending you back your copy of Larry's plea bargain. I'm not convinced that there are any claims around the improprieties in the plea bargain because your trial lawyers could have, with due diligence, developed these claims at trial. However, anything Larry said to William Cruise clearly would be new evidence.

Please let me know if you hear anything from the innocence project, or if you decide to file an MAR pro se. I know that this is much easier said than done, and I genuinely believe that you are singled out for harsh treatment by guards, but I think you would find self-representation a lot easier if you could work your way out of lock-up, and even into a medium security facility, where you would have more freedom and more ability to communicate with others. I wish you the best of luck with your case.

Yours,

Janine C. Fodor
Unti, Lumsden & Smith, PA

EX.10



FILED

State of North Carolina | In The General Court of Justice

Superior Court Division

County of Robeson | 93CR15291, 93CR15292, 93CR15293

State of North Carolina
Plaintiff,
Vs.
Daniel Green, AKA L. Savat U'allah
Defendant.

Motion Requesting Appointment of Counsel

Defendant respectfully moves this Court to appoint Counsel to assist Defendant in the preperation of a Motion for Appropiate Relief. In support of this motion, Defendant shows the following:

1. Defendant is being denied due process as a result of the Marions Correctional Institution capriciously restricting the total amount of property that defendant can possess to 2sqft, maximum. Defendant is only prisoner held to this restriction. This includes legal property. As a result, defendant has been forced to mail his case materials and legal text books out of prison, or dispose of them.* In addition, Defendant cannot receive his trial tra[illegible] because by itself, it exceeds 2 sq. ft.

2. Defendant's lawbook has been unlaw[illegible] EX. 11 ion by staff under the threat of violence.

* See Attached Affidavits

3. The primary and preferred method of inmate access to the courts is through the Attorney Assistance program as established by the Department. The Department of Corrections has contracted with N.C. Prisoner Legal Services (NCPLS) to provide legal services to prisoners. For over 6 months NCPLS refused to respond to defendant. NCPLS has blatantly lied to defendant. NCPLS has blatantly lied on Defendant and is untrustworthy. This will be supported by documents.

4. In support of this motion, defendant has newly discovered information that Larry Martin Demery, the states only witness directly tying defendant to the murder and robbery of Mr. James Jordan, in fact acted alone in the murder and robbery and perjured himself on the stand to avoid the death penalty. There are at least 3 witnesses # willing to testify to this and other people that Larry Martin Demery told the above to but defendant cannot procure affidavits from them because of his incarceration.

5. There are numerous other issues that exist that should be researched before defendant files the Motion for Appropriate Relief so that he will not waive them out of ignorance. Therefore, defendant is in desperate need for competent counsel to assist in the investigation as to other issues that will be raised in MAR and it's preperation.

6. Defendant is a layman in law and the aforementioned contains many complex issues.

See Attached Affidavits

7. On the day defendant was convicted, in either February or March 1996, defendant was informed that one of the jurors had sexually harassed one of defendants alibi witnesses. As a result of this incident, there was animosity between this juror and 4 of the alibi witnesses, who's home the defendant was at when Mr. James Jordan was murdered. Defense counsel was informed about this weeks before the trial ended, by the witnesses, and still neglected to tell defendant. Since the witnessed had been directed to not discuss the case with defendant they told Counsel to tell him so that he could get this juror off the panel;

8. When defendant found this out, he immediately got affadavits from these witnesses and, with counsel present, he brought this to the Courts attention in "chambers". The Court placed the affadavits in a sealed envelope, to be reviewed by post-conviction counsel". Defendant needs counsel to pursue this issue.

9. Defendant is indigent. The only thing that defendant has of value is 1000 hrs. of studio time in Sound Station Studio, which is owned by Woodberry Bowen, Esq. This was worth $50,000.00 when defendant signed a song publishing contract prior to his trial in 1995. Defendant will gladly liquidate this to pay for counsel with the assistance of Court.

Wherefore the defendant respectfully requests that this Court issue an order for the following:

1. Appointment of Counsel;
2. An evidentiary hearing to decide substantial factual issues;
3. For the Court to grant such other relief to which defendant may be entitled.

FILED

00 MAY -5 AM 11:00

ROBESON COUNTY, C.S.C.

State of North Carolina — In The General Court of Justice

Superior Court Division

County of Robeson — 93CR15291, 93CR15292, 93CR15293

State of North Carolina

Plaintiff,

Vs.

Affadavit

Daniel Green aka L. Shantu'allah

Defendant.

The undersigned, Daniel Green a/k/a L. Shantu'allah, being duly sworn does say and depose the following.

The Affiant swears that the facts stated in the Motion Requesting Appointment of Counsel are true based on his personal knowledge, and that the facts stated on information and belief are true to the best of his knowledge and belief.

Furthermore, the Affiant sayeth not.

Daniel Green

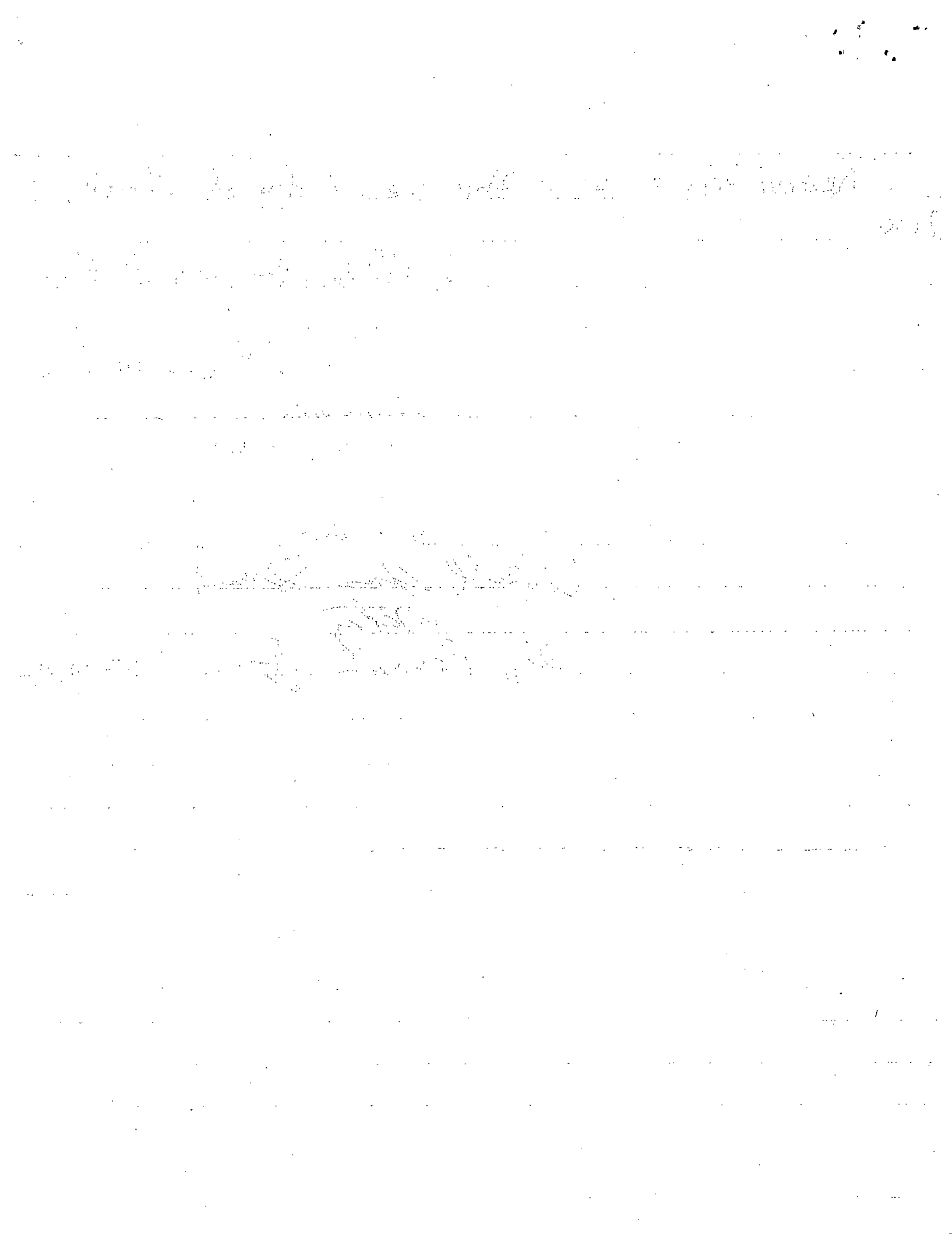
This is the 1 day of May, 2000

Sworn to and subscribed before me

This the 1 day of May, 2000

My commission expires: 7-12-04

Notary Public



Respectfully submitted this the 1 day of March, 2000.

[signature] Srvnt Ul'Allah/A/K/A Daniel Green

Lord Srvnt Ul'Allah 0154242
P.O. Box 2405
Marion, N.C. 28752

5-1-00
Rachel Ann Stroud
Notary
My Commission Expires: 7-12-04

CERTIFICATE OF SERVICE

This is to Certify that a copy of the foregoing Motion Requesting Appointment of Counsel was duly served upon the following by depositing same enclosed in a post paid, properly addressed envelope in a official depositary under the exclusive care and custody of the United States Postal Service

This the 1 day of ~~April~~ May, 2000

[signature] U'Allah/AKA Daniel Green
L.D. Sruat U'Allah 0154242
P.O. Box 2405
Marion, N.C.
28752

Served on:

Johnson Britt, III
Robeson County District Attorney
Robeson County Courthouse
Lumberton, N.C. 28358

FILED

00 MAY -5 AM 11:00

ROBESON COUNTY, C.S.C.

State of North Carolina
County of Robeson

In The General Court of Justice
Superior Court Division
93CR15291, 93CR15292, 93CR15293

State of North Carolina
vs
Daniel Gibson a/k/a L.S. [illegible]

1) On and about the date of February 18, 1998, I one Marcus Devaughn Carrington was involed in a physical confrontation with one Larry Emery at Foothills corr. inst. in which we were both housed as North Carolina inmates.

2) I myself can not recall the date, but some where round the end of 1997, a friends of mine informed my that arry Emery was the man that killed Michael Jordans ather. When I looked at larry it caught my eye that he was lso walking ~~around~~ around in a pair of Air Jordans. The III reason that did not seem right to me was because this is the man hat killed Michael Jordans father and was sporting the Mans hoes.

3) Later that year we were moved in to the same ~~4~~ block, and I member how he braged about killing James Jordan like it was nly a game.

4) One Day other yard Call I asked him how he brag about what

ne did. He stated "Why should every body make a big deal
bout it, He (James Jordan) was a man like every one else."
then asked why did he do it He said "The man had something
e wanted and he took it.
) Later on I asked him did he know it was Jordans father
nd why did he have to kill him. Larry told me It could have
een anybody and he would do it again if he had to.
) While we were talking I got so mad about what he
aid I jumped on him and a officer had to pull me off
f him. I was charged with assaut on another Inmate.
did six months in lockup. when I got out of seg Larry
ad been shiped out.
) While here at Marion I met Mr. Green and we were
alking and I told him what happend with me a Larry.
rom the way Larry Gemery made his statements to me,
e ment to kill James Jordan and never talked about
r. Green taking part in the murder of Mr. Jordan.

4-26-00 Malcus Carrington

Marion cor. Inst.

4/18/00

Rachel Ann Stroud
Notary
My Comm. Exp: 7-12-04

Jason M. Sams

2000
Rachel Ann Stroud
Notary
My Comm Exp. 7-12-04

FILED
ROBESON COUNTY, C.S.C.

State of North Carolina } Affidavit of Jason M. Sams
County of Robeson

I Jason Matthew Sams, being first duly sworn, deposes as follows:

1. I am a prisoner currently incarcerated at Marion Correctional Institution
2. In December of 1997, I was incarcerated at Foothills Correctional with Larry Martin Demery. He and I became acquainted and sort of became friends.
3. Throughout the months Larry told me things about his case. He told me that he killed James Jordan, and that he testified against Daniel in fear of receiving the death penalty.
4. He told me that Daniel had nothing to do with the murder except for helping to get rid of the ~~do~~ body.
5. Larry told me that he planned on selling the car and leaving town. He told me that Daniel

made phone calls from the Lexus.

6. I honestly believe that Daniel Green is innocent of murder and I will testify in a Court of Law.

Affiant Signature:

This affadavit was sworn to in front of a notary on the 20th day of January, 2000

Jason M. Bass

1-20-00

Rachel Ann Stroud
Notary
My Comm. Exp: 7-18-04

FILED
ROBESON COUNTY, C.S.C.

State of North Carolina } Affidavit of William Cruise
County of Robeson

I William Cruise, being first duly sworn, deposes as follows:

1. I am currently incarcerated at Marion Correctional Institution.
2. In April or May of 1998, W'Allah (Daniel Green), and I met while cleaning the inmate "dorm" area and showers on 3rd shift.
3. I mentioned to him that I met his crime partner, Larry Demery, on lock-up at Foothill Correctional in Morganton, N.C. while incarcerated there.
4. While on lock-up, he told me that he had an altercation with some Black inmates because he boasted about killing Michael Jordan's father.
5. He assumed that I was a "skinhead" because of my haircut and a spiderweb tatoo on my elbow - which led him to confide

IN ME THAT HE DID KILL MR. JORDAN AND WOULD BE OUT SOONER THAN PEOPLE THOUGHT BECAUSE OF A DEAL AND THAT HE PUT IT ON U'ANAH (GREEN) FOR THAT REASON AND TO AVOID THE TRIAL.

6. HE SAID THAT HE HAD A GOOD LAWYER THAT PUT A LOOPHOLE IN HIS PLEA AND THAT IS HOW HE WAS GETTING BACK IN COURT.

AFFIANT SIGNATURE: William Cause

~~SIGNATURE~~

THIS AFFADAVIT WAS SWORN TO IN FRONT OF A NOTARY ON THE 9 DAY OF ~~JANUARY~~ 2000.

Notary

2-5-00

Rachel Ann Stroud

Notary

My Commission Expires 7-12-04

** AFFIDAVIT of EUGENE MORGAN ** Pg. 1

FILED
00 MAY -5 AM 11:02

I, EUGENE MORGAN, BEING FIRST DULY SWORN, DOES SAY AND DEPOSE THE FOLLOWING.... On 12/21/99, myself, U'Allah (DANIEL GREEN), AND SEVERAL OTHER INMATES WERE RELEASED FROM THE INTENSIVE CONTROL UNIT (UPPER E-UNIT).

PRIOR TO LEAVING UPPER E-UNIT, U'ALLAH (DANIEL GREEN) NEEDED A "WHEEL-CART" TO ASSIST HIM IN MOVING HIS PERSONAL PROPERTY, DUE TO HIS PHYSICAL INJURY AND PRESENT CONDITION, ON 12/21/99.

IN RESPONSE TO U'ALLAH'S (DANIEL GREEN'S) REQUEST, HE WAS ALLOWED BY; Sgt. LONG, USE OF THE "WHEEL-CART." HOWEVER Sgt. LONG, "ASSURED" U'ALLAH (DANIEL GREEN) THAT "WHEN HE (U'ALLAH) GOT TO "F-UNIT". THAT HE (U'ALLAH) WILL BE RIGHT BACK TO UPPER E-UNIT; AND THAT HE (U'ALLAH) WILL NOT HAVE HIS PERSONAL PROPERTY, i.e. (BOOKS) WITH HIM UPON HIS RETURN TO UPPER E-UNIT. BECAUSE THAT THEY (STAFF), WILL MAKE SURE OF THAT"...

UPON OUR ARRIVAL TO F-UNIT, Sgt. YOUNG AND OFFICER COOK ALLOWED THE OTHER INMATES, TO GO DIRECTLY TO THEIR ASSIGNED WINGS (DORMS); WHILE MYSELF AND U'ALLAH WERE NOT ALLOWED TO DO SO. WHEN ASKING (WHY) WE WERE THE ONLY TWO INMATES BEING SEARCHED AND HAVING OUR PROPERTY (RE-INVENTORIED); AND (WHY) WEREN'T THE OTHER INMATES SUBJECT TO THE SAME TREATMENT, AS PROVIDED IN N.C.-DOC POLICY? Sgt. YOUNG STATED THAT, "IT'S HIS UNIT AND THAT'S HOW HE'S -

UNNING HIS UNIT"... DURING THE SEARCH AND INVENTORY OF
UR PROPERTY BY, OFFICER NICHOLS AND OFFICER COOK. ON TWO
EPARATE OCASSIONS, Sgt. YOUNG, CALLED OFFICER NICHOLS INTO
IS OFFICE. AND "EACH TIME" OFFICER NICHOLS RETURNED FROM
IS OFFICE. OFFICER NICHOLS, "RE-INVENTORIED" THE (SAME) -
ROPERTY THAT, SHE HAD ALREADY INVENTORIED PRIOR TO GOING
NTO THE OFFICE.

THEN, A THERD TIME, Sgt. YOUNG, CALLED OFFICER NICHOLS -
ND TOGETHER THEY WENT INTO THE, ASST. UNIT MANAGERS OFC
R. D. COTHRAN. THIS TIME, OFFICER NICHOLS, RETURNED WITH
N AGGRESSIVE DISPOSITION. AND BEGAN READING THROUGH HIS
U'ALLAH'S) "LEGAL MATERIALS", FOR THE THIRD TIME. AT WHICH
IME U'ALLAH INFORMED OFFICER NICHOLS THAT, HE ALREADY
AS A BOX OF PROPERTY THAT, HE HAS BEEN TRYING TO SEND
OME WHILE ON INTENSIVE CONTROL UNIT.

WHILE ON INTENSIVE CONTROL UNIT, I WITNESSED,
'ALLAH, MAKE SEVERAL REQUESTS, TO SEND PROPERTY -
OME. AND THE OFFICER'S RESPONSE WAS THAT, THEY WERE -
T OF BOXES AND COULD NOT FIND ANY.

HOWEVER, OFFICER NICHOLS, CONTINUED TO READ -
HROUGH U'ALLAH'S LEGAL PAPERS. WHEN HE STATED THAT HIS
EGAL PAPERS ARE "CONFIDENTIAL" AND ASKED THAT HIS -
EGAL PAPERS STOP BEING READ IN DETAIL. THEN, OFFICER
OOK, STATED THAT; "THEY COULD DO WHATEVER THEY WANTED
O... AND THAT, IF HE (U'ALLAH) HAD A PROBLEM WITH IT,

E(U'ALLAH) COULD GO BACK TO LOCK-UP(INTENSIVE CONTRO/ NIT)". THEN, U'ALLAH AND I BEGAN TO CONVERSE ABOUT HE STATEMENT THAT, Sgt. LONG, MADE TO HIM PRIOR TO UR LEAVING INTENSIVE CONTRO(UNIT. IN WHICH - Sgt. LONG ASSURED HIM THAT, "HE(U'ALLAH) WOULD BE - IGHT BACK(TO LOCK-UP)."

OFFICER NICHOLS, THEN BECAME HOSTILE WITH A UN- ECESSARY TONE OF VOICE TOWARDS, U'ALLAH; AS HE INFORME ER THAT HE HAS A "LEGAL RIGHT", TO KEEP HIS LEGAL - ASE PAPERS AND LAW BOOKS. SHE BEGAN YELLING, SAYING, ICK 25-PICTURES AND 10-BOOKS. SHE HAD A "PAPER BAG -N HER HAND, SAYING THAT, "MOST of HIS LEGAL PAPERS AD TO GO, AS WELL AS PICTURES AND BOOKS"... TRYING TO AKE HIM USE THE "PAPER BAG", TO MAIL HIS PROPERTY.

U'ALLAH STATED THAT, HE WOULD PUT THE PROPERTY IN HE BOX, WITH THE REST of HIS PROPERTY TO BE MAILED. UT THAT, HE WAS NOT GOING TO USE A BROWN PAPER - AG, TO MAIL HIS PICTURES HOME.

OFFICER COOK THEN ORDERED U'ALLAH TO PUT HIS HANDS EHIND HIS BACK. U'ALLAH WAS HANDCUFFED AND TAKEN INTO, . COTHRAN's Ofc. (ASST. UNIT MNGR.). WHEN THEY CAME OUT THE ICE, U'ALLAH ASKED ME AND ANOTHER INMATE TO WATCH HIS OPERTY. BECAUSE Ofc. COOK TOOK HIM RIGHT BACK TO LOCK- P(INTENSIVE CONTRO(UNIT); AS Sgt. LONG STATED THAT, "HE ILL BE RIGHT BACK(TO LOCK-UP) AND WITHOUT HIS PERSONA(

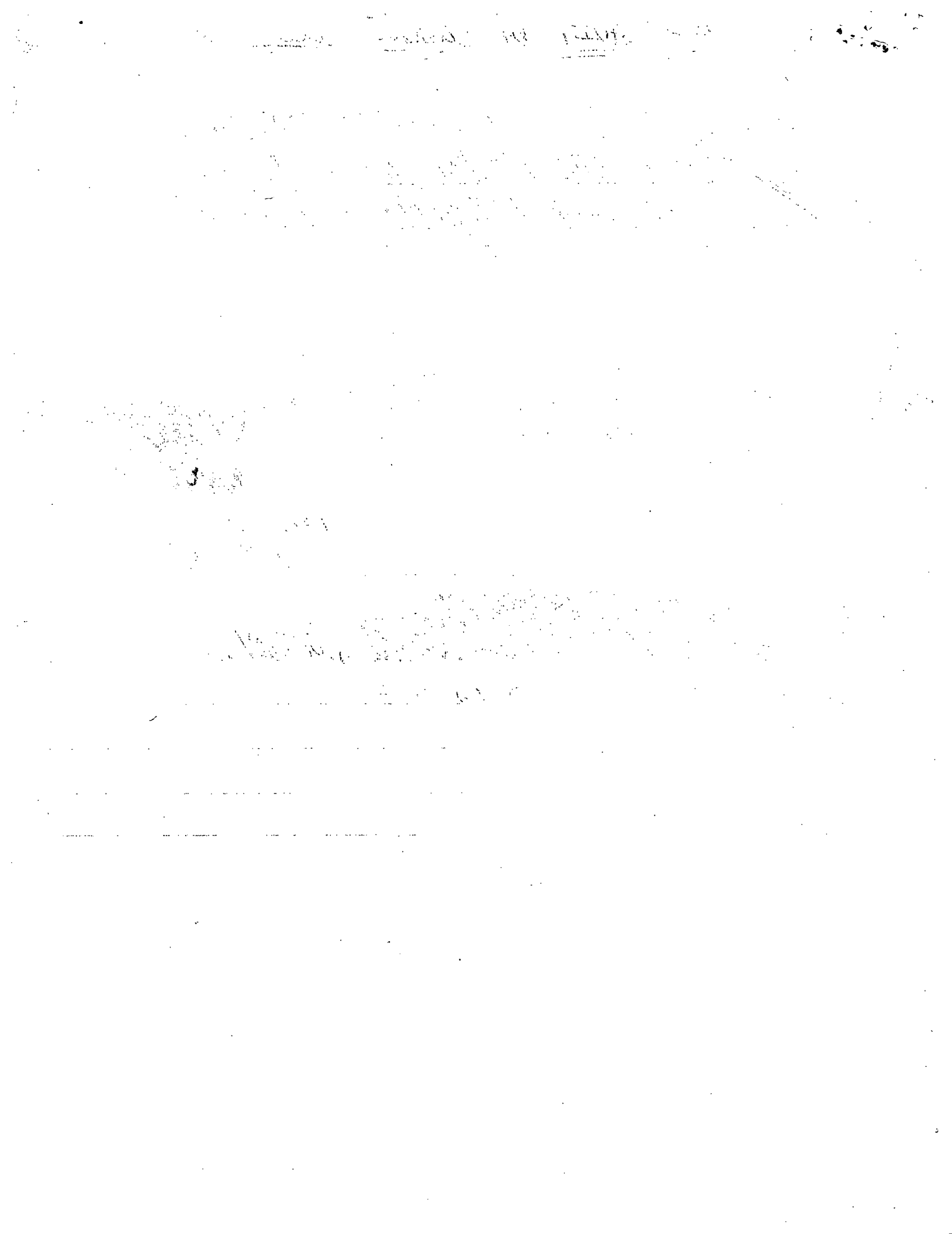


Exhibit List For 6th Supplement to First Amended MAR

1) Ex.1. February 8, 1999 letter from Janine Fodor p.4, 5, pe, 19
2) Ex.2, Two photographs p.12 p.24
3) Ex.3. July 30, 1999 letter from Janine Fodor p.18
4) Ex.4 August, 3, 2018 transcript from hearing before Judge C. Winston Gilchrist. p.18, 19
5) Ex.5. November 12, 1999, letter from Janine Fodor p.19, 20, 23, 24
6) Ex.6. Trial Transcript. p.6-12, 14, 15
7) Ex.7 Nov. 3, 1998 letter from Janine Fodor p.22.
8) Ex.8. May 27 1999 letter from N.C. Dept. of Justice Assistant Attorney General Neil Dalton to Letitia Echols N.C. Prisoner Legal Services, Inc. re: Prison staff crimes to obstruct access to the courts. p.22
p.22.
9) Ex.9. March 8, 1999 letter from Janine Fodor p.22
10) Ex.10. December 31, 1999 letter from Janine Fodor p.22
11) Ex.11 William Cruise Affidavit, on file in previous MAR. supplements p.22
12) Ex.12 Eugene Mergues Affidavit and motion it is in exhibit of "Motion Requesting Appointment of Counsel, liberally construed as a MAR by the Court. ... p.22
13) North Carolina Crimes 7th Ed. by Jessica Smith, Ex.13. p.13

The STANDARD OF PREJUDICE IN STATE V. Green

THE STANDARD OF PREJUDICE IN STATE V. GREEN

1) Under the second prong of the Strickland test, the "defendant must demonstrate that the deficient performance prejudiced [his] defense." ~~Todd~~ State v. Todd, 369 N.C. 707, 710-11.

2) To prove prejudice, "[the] defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. The ultimate question is whether there is a reasonable probability that at least one juror would've found I didn't kill Mr. Jordan

3) The holding in Strickland requires us to specify exactly what the result of the proceeding, what the outcome was, that we are challenging in State v. Green.

4) Having identified, with specificity, what the result of the proceedings in State v. Green was at the trial level, we can then assess how the cumulative errors of counsel's deficient performance effected and influenced the result of the proceeding - the jury's verdict, and/or how each error, affected the trial's outcome.

5) In paragraph 27, on page 7 of N.C.

Center for Actual Innocence's Brief, dated June 27th, 2022, for an Evidentiary Hearing, Christina Mumma and Guy Loranger erroneously stated that "... the jury did not unanimously find that Mr. Green ... killed ..." (App. P 416). If Mr. Green's counsel could have shown that the laws of science failed to support Demery's story, the record supports that the Affidavit evidence probably would have tipped the scales in this case." Ex. 1"

(6) Defendant hereby corrects what must be a typographical error due to the ommission of the material fact that (1) ... the jury did not unanimously find that defendant killed in the sentencing phase - which finding is still the jury's finding of fact, their verdictum, but (2)

(7) the jury did find in the guilt/innocence stage that the defendant did, in fact, kill the victim. Defendants Motion for Appropriate Relief seeks to vacate the jurys verdict of guilt in the trial stage and the jurys finding of fact in the sentencing stage that the defendant was a "major participant in the underlying felony" but the defendant accepts and concedes that the jury's finding that defendant didn't kill is the dictum of truth. Defendant asks the Court to judicially note that

the jury, in the sentencing stage, did not find, UNANIMOUSLY, that I killed James Jordan; they did convict me of felony murder after the court specifically instructed the jury that to find me guilty they had to find that I "killed the victim" (Trial Transcript 7466:18), (Ex. 2) AND upon reconsideration of the evidence one or more jurors found I did Not kill a victim

8) The Court also instructed the jury that, "if you do not so find or if you have a reasonable doubt as to ANY one or more of these things, then as to this charge it would be your duty to return a verdict of not guilty." (Trial Transcript 7466:23 - 7467:) (Ex. 3)

2). "Any one of these things" refers to the "killing element" in felony murder, as instructed by the Court, and other elements, individually.

9) The Courts instruction requiring the jury to have to specifically find that I killed the victim (James Jordan) and, if they had a reasonable doubt as to whether I killed the victim, was required by all applicable laws of the land: Statutory law; Common law; N.C. Constitutional law and U.S. constitutional law. (See, N.C.G.S. § 14-7, First Degree Murder, [See North Carolina Crimes, A Guidebook on the Elements of Crime, 7th Ed. 2012 by Jessica Smith, published by UNC School of Government, (Ex. 4) page 83 "A person guilty of this offense (First Degree Murder) (1) kills (2) another living human being (3)(C) while committing or attempting ... robbery ... or any felony in which a deadly weapon is

used]); In Re Winship, 397 U.S. 358, at 364, 90 S.Ct. at 1073 the U.S. Supreme Court held that the Due Process clause of the Fourteenth Amendment "protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged". This "bedrock", 'axiomatic and elementary' [constitutional] principle 'whose enforcement lies at the foundation of the administration of our criminal law', Coffin v. U.S., supra, 156 U.S. at 453, 15 S.Ct., at 403; Dawn v. U.S. 160 U.S., at 488, 165 S.Ct., at 358 stated that No man shall be deprived of his life under the forms of law unless the jurors who try him are able, upon their consciences, to say that the evidence before them, *** is sufficient to show beyond a reasonable doubt the existence of every fact necessary to constitute the crime charged. Id at 484, 493. 16 S.Ct., at 357, 360 (Cited in In Re Winship 397 U.S. 358, 363 90. S.Ct. 1968)

10) The State having the burden of proving a defendants guilt beyond a reasonable doubt of every element of a crime upon proof beyond a reasonable doubt, of every fact necessary to constitute the crime with which a defendant is charged means that the Court must instruct on all the elements of a

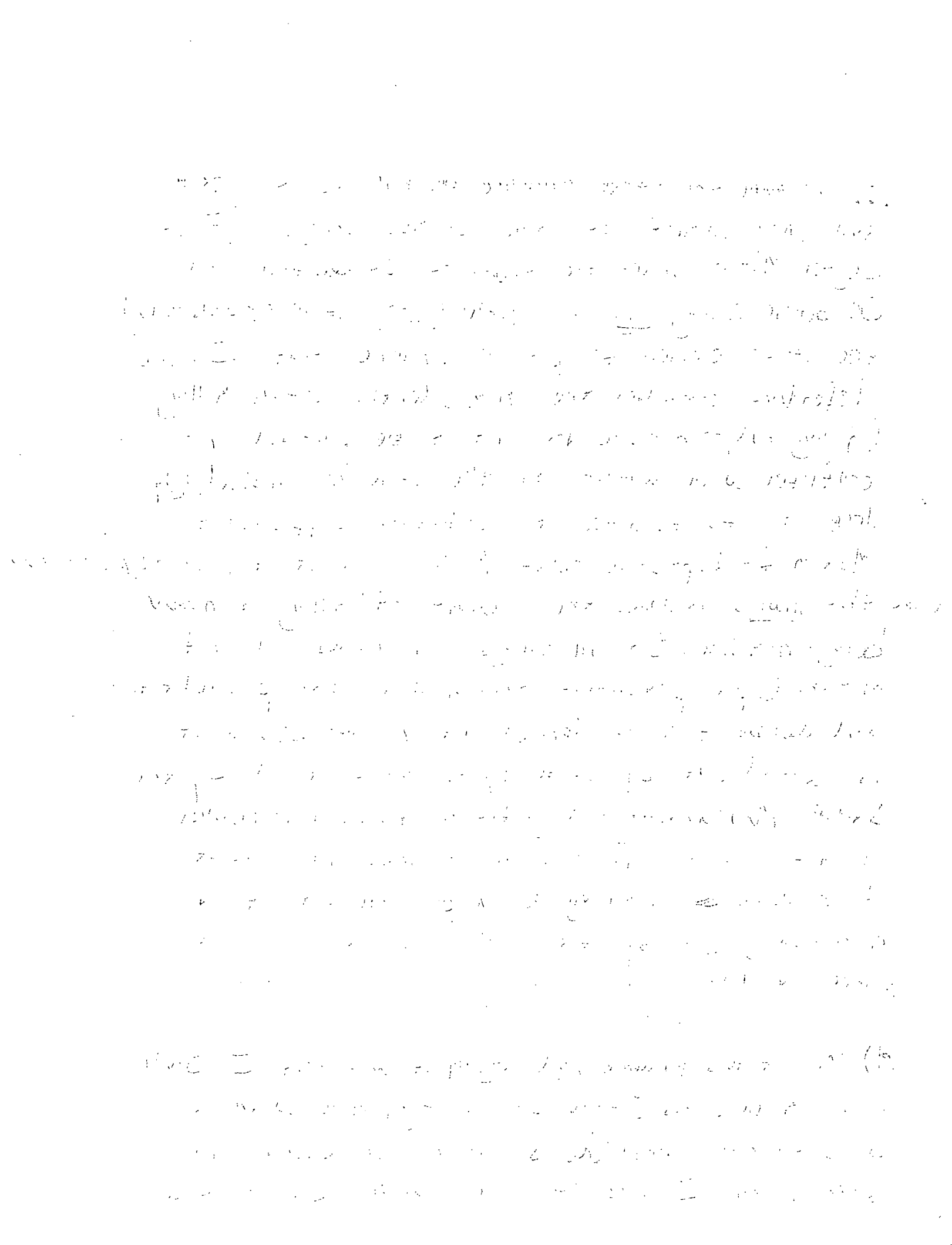
Criminal offense. State v. Ramos 363 N.C. 352, 355-356

11) Because the trial Court has the "obligation" to instruct the jury on every substantive feature of the case", State v. Smith 360 N.C. 341, 347 (2006) quoting State v. Mitchell, 48 N.C. App. 680 (1980). the Court Must state and explain the law on all substantive features of a case arising from the evidence, whether or not specifically requested by attorneys in the case. G.S. 15A-1221(a), -1231(c); - 1232, State v. Harris, 306 N.C. 724 (1982). State v. Smith was litigated for the defendant by Malcom Hunter and Adam Stein, Appellate Defender, and Josh Stein's dad

12) In State v. Green the fact that the Court instructed the jury that they had to find that I, the defendant, killed "the victim", instead of instructing the jury that I, the defendant, or another (Larry Demery) with whom I was acting in concert killed the victim with a deadly weapon, the second element of first-degree murder by the felony murder rule, or, that I or someone with whom I was acting in concert was the proximate cause of the victims death (Compare to State v. Bunch 196 N.C. App. 438, 444-445 in which such an instruction was given) was due to the substantive features of this case arising from the evidence the State chose to put on to kill me.

13) To make the state's evidence positive as to each and every element of the crimes charged (First Degree Murder under the theory of premeditated and Deliberate Killing and Felony Murder (Conjunctive emphasized)) the state elected to put on evidence that I, the defendant, committed the homicide, the actual killing. ("Killing" and/or "homicide" are not to be confused nor conflated with "murder" as the State has misleadingly done in it's response to Defendants supplemental (5th) Motion for Appropriate Relief. Murder is a statutory crime, a common law crime that always includes the element of killing a human being - homicide. But, all killings or homicides are not murder. Capital punishment, though done with premeditation and deliberation is deemed not murder because it is carried out by state agents and sanctioned by the State. Manslaughter and justifiable homicide, likewise, are not murder. These three examples all consist of homicide, a killing, by a proximate act of a human being but by statute and common law are not "murder" in N.C.) (Ex. S. States Response To The Defendants Fifth Supplement to Motion For Appropriate Relief)

14) The States evidence and argument was that I, Daniel Green, killed James Jordan by shooting him with a 38 pistol, once, while he sat in his car because he woke up and I was afraid he would see my face, as



I and Demery attempted to rob him, after giving one another high fives, encouragement and stating we were in this together. This testimony from Demery was different from his [redacted] interview version and the versions subsequently given to the press, and after his plea bargain was signed and adjudicated on the factual basis of his earlier [redacted] version to officers he changed his narrative after meeting with Johnson Britt, according to the transcript of an interview Britt gave WBCT reporter/podcaster, Jon Byrnes (Ex.6) (WBCT is heavily sponsored by Novant Health) and Demery meeting repeatedly with officers and his lawyers at the Robeson County Courthouse in the D.A.'s office, Demery changed his narrative to a version that fit every element of 1st degree murder under the theorys of felony Murder, Premeditation and Deliberation, and arguably, Lying in Wait, this earlier versions to police only fit circumstantial evidence of First Degree Murder with no direct evidence of me killing James Jordan. According to what his lawyer, Hugh Rogers, initially told the press weeks after his meeting with Demery, neither Demery or I killed or robbed James Jordan. Then, later, Demery admitted to a reporter that he killed James Jordan during a drug deal gone bad; then he claimed

he merely helped dispose of the body, to another reporter.

15) The State could have put on direct or circumstantial evidence that Demery killed James Jordan through the version Art Binder and other officers allege I gave them after they chimed to turn one of the tape recorders off but to do so the State would've opened the door to Art Binder trying to trick me, the defendant, into saying and agreeing with Binder's allegation that the victim, Mr. Jordan, had a penchant for children, a pedophile, which I refused to do, as I testified at the evidentiary hearing to suppress the interrogation. The State chose to work behind the scenes through officers, the press, and officers of the court to attribute these allegations to me instead of to Arthur Binder who had just spent the previous few days with Gerald Brant, a security officer employed by someone who was an agent of the Jordans. [redacted] (6892:2 of Trial Transcript), (See transcript of suppression evidentiary hearing.) (Ex. 7 and Ex. 8 respectively)

16) The State never put on any evidence that Demery killed James Jordan, for the state to do so would've been to call their self-described "key to the case". A liar who was willing to perjure himself under oath to help send his childhood friend

to death row. Instead, the State argued that Demery told the truth (T.T. 7432:18; 7437:3) that what Larry Demery said (Ex. 9) is what happened, (T.T. 7303:20). The State, based on (Ex. 10) what Larry told them initially give him a plea bargain contingent upon him being truthful and based on that version allowed him to plead to only Felony Murder under a fact pattern that made him a co-agent that didn't kill James Jordan nor was present during the killing or robbery but merely conspired to rob the victim and then left. Even though that narrative charged before trial, what didn't change was that no evidence was presented by the State that Demery killed James Jordan. (See Transcript from Demerys plea adjudication, and the verbatim recordings of his plea adjudication. Ex 11,12)

17) The State chose to waive the acting in concert instruction, to withdraw N.C. Pattern Instruction 302.10 for acting in concert because, "I'm going to withdraw it because As I understand the present law under acting in concert, it would be improper to charge the jury under theory of premeditation - deliberation and act acting in concert because requires a specific intent to kill, and you can't necessarily infer -" (Trial Transcript 6997:24 - 6998:6) (Ex. 13)

18) The States withdrawal of the N.C. Pattern Instruction for

Acting in concert and Mr. Britts commentary or his rationale for withdrawing it concedes that in order to maintain not just the States theory but also the positive State evidence ~~for the~~ on the elements of 1st Degree Murder, under Premeditated and Deliberate murder the State couldn't ask the Court to instruct on Acting in concert because Acting in concert describes a persons participation in a crime and is a common law concept which requires three elements to be proved: (1) A person is actually or constructively present at the scene when a crime is committed and (2) acts together with another who does acts necessary to constitute the crime (the actual killing in this case) (3) pursuant to a common plan or purpose. The States withdrawal of the Acting In Concert Instruction request barred the State from ever asserting it, (19) There was no evidence that Larry Demery shot and killed James Jordan presented. If there was the Court would have had to instruct the jury that I acted in concert with Demery who could've killed, ~~or, [illegible]~~ but if he had did the killing that would've negated the mens rea, the specific intent to kill, element of premeditated and deliberation murder the State wanted to prove to prove that I was the one who shot and killed James Jordan because he woke up and I was afraid he would see my face (which is actually

odd since, if the victim was sleeping in a dark area how could he see my face?)

20) Even under the theory of felony murder, the requirement that the State must prove all elements beyond a reasonable doubt still remains. "For felony murder to apply, the defendant, co-conspirators, aiders or others acting in concert with the defendant must have committed the homicide." State v. Bonner, 330 N.C. 536 (1992); State v. Williams, 185 N.C. App. 318 (2007), Jessica Smith North Carolina Crimes, 2012 ed. page 88 In this case the evidence only allowed the jury to find and believe that I killed James Jordan; not Larry Demery, because the State chose to put on that type of case, and the Court was obligated to instruct the jury accordingly, under law, based on evidence presented

21) While the jury can believe all, none, or only part of witness' testimony. State v. Miller 26 N.C App. at 443 (1971) (page number ommitted because I can't read my note but could be page 440, 441, or 442) the jury can't believe nor find a fact that was never presented and which the Courts instructions didn't allow them to find. A person can be given permission to drink all, some, or none of a cup of milk but that doesn't mean they were

permitted to drink coffee.

22) The Court fulfilled its obligation to instruct the jury that to convict me they had to find that I killed the victim; not just felony murder where someone else could have possibly done the killing. This was based on the evidence the State presented and the lack of evidence, the total absence of evidence, submitted to the jury - that Demery or anyone else but me killed and shot James Jordan - by the State.

23) In fact, Judge Gregory Weeks characterized defendants counsel, Woodberry Bowers's speculation that the jury could've believed Larry Demery killed James Jordan is just that - speculation, T.T.p. 7993:10-15 (Ex. 14)

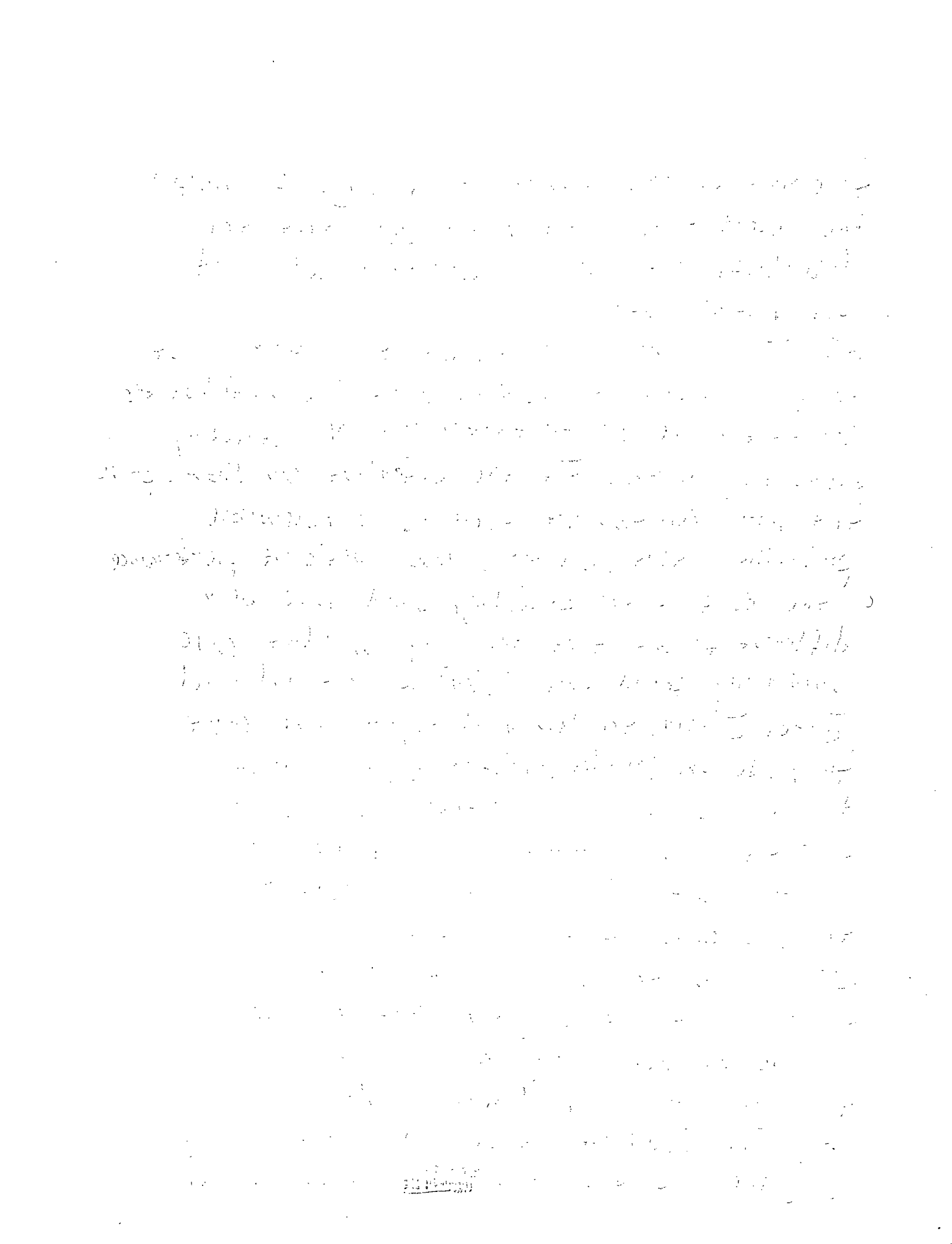
"Is there any evidence to support that anyone other than Mr. Green fired the shot? Evidence, not speculation. And I don't mean to characterize it in a negative way, but that's what it is." T.T.P. 7993:10-15 (Ex. 15)

24) Yes, defendants trial counsel did argue or imply that Demery killed James Jordan, maybe. "Allah asked Demery what happened. Demery says, the man reached for a gun and he shot it." (63:13) But (Ex. 16) counsel's statements and arguments are not evidence so the Court instructed the jury that they had to find that while committing or attempting

to commit an armed robbery with a dangerous weapon, the defendant killed the victim and that the defendants act was a proximate cause of the victims death.

25) In summary, every element of a crime must be proven beyond a reasonable doubt. The United States Constitution, the N.C. Constitution and N.C. Statutory Laws require this. If the defendant can show & prove that more likely than not there is a reasonable probability that, but for counsels deficient performance the result of the proceedings would have been different, to wit, that the jury wouldn't have initially unanimously found that defendant shot and killed James Jordan, the law would require the court to vacate the murder conviction because without the killing element being sustained there is no such thing, under common law or statutory law as felony murder. This would be the result of the State choosing to put its faith in Larry Denery, a man they clearly didn't trust and had to use a Prayer for Judgement Continued to hold over his head during the whole trial to make sure he upheld his plea deal.

26) The defendant can and will show the prejudice of the various errors on the outcome



of the case where required by law, pursuant to N.C. General Statute § 15A-1443(a) and (b) of Article 91.

27) 15A-1443(b) of Article 91 states that a violation of the defendant's rights under the Constitution of the United States is prejudicial unless the appellate court finds that it was harmless beyond a reasonable doubt. The burden is upon the State to demonstrate, beyond a reasonable doubt, that the error was harmless.

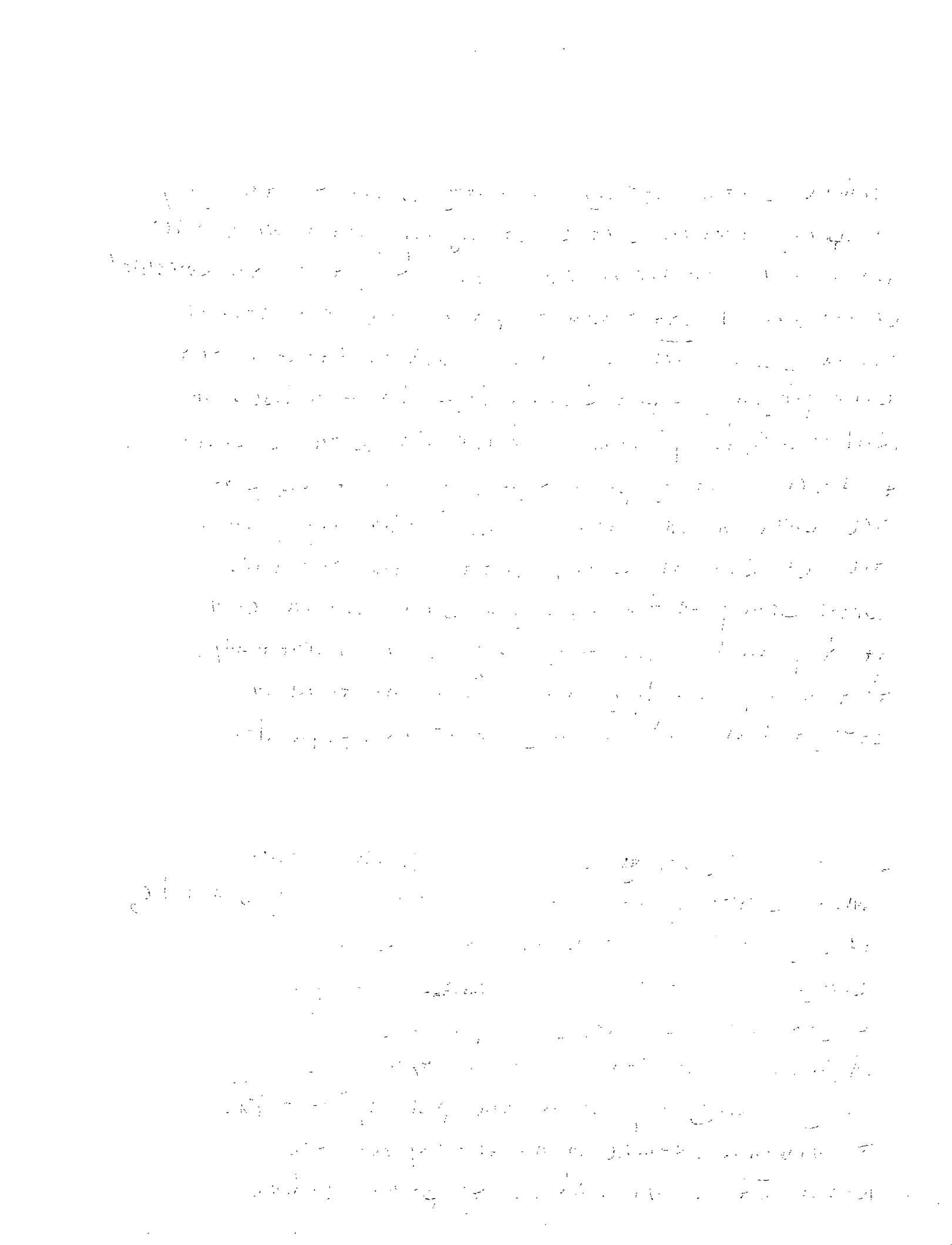
TRIAL Counsels Relinquishing Credibility By Breaking Promises

28. Angus Thompson, defendants trial counsel, forcasted to the jury that "the believable evidence in this case, we contend, will Absolutely show that the-- this man was not even killed where the State claims he was killed. The evidence will show Absolutely, we believe, that this man was not even shot in the manner that the State claims he was shot." (62:13) The State objected. The Court sustained the objection but never gave the jury a curative instruction. Mr. Thompson continued, "Now, the believable evidence in this case, we believe, will show that when the body was lying there on the canal bank, W'Allah (defendant's then Attribute) asked Demery what happened. Demery says, the man reached for a gun and he shot it." (Ex. 17) See State v. Moorman

29. Counsel failed to investigate or furnish any evidence to support his contentions to the jury. A failure to investigate

evidence can't be strategical. Forecasting evidence to the jury in opening statements can't be strategically justified when there has been no irretractable decision made to put on the forecasted evidence and no effort made to put on the most credible evidence possible. The same research and reconstruction that ballistic/trajectory expert Joshua A. Wright did with lasers in 2017 or 2018, Larry Fletcher could have done with carpenter tools - like a string pulled tight, one end at the point the bullet would've entered James Jordan laying in the car seat as Demery testified, the other end, where Demery testified the gun barrel would've been at. Any bend in the string would prove, scientifically, that Demery was lying because #1 Bullets travel in straight lines and #2 Things don't lie; people do.

30. The showing, by science and Geometry, that what Demery testified to about the shooting, was a lie, in conjunction with the fact that Demery changed his story not just <u>before</u> his plea bargain but also <u>after</u> his plea bargain was adjudicated, under oath with a factual showing of guilt being required at the plea adjudication has to undermine confidence in his testimony and the verdict. If a man would lie to provide evidence



calculated and ill-designed to send his former friend to death row and if that evidence could be shown indisputably that he did lie who but a biased person could extend any credibility to him?

31. The jury was specifically asked if they found, unanimously that the defendant killed the victim in the sentencing phase of the trial. They stated "No". A verdict is "the answer of the jury concerning ANY matter of fact submitted to [it] for trial" State v. Jernigan, 255 N.C. 736 (1961); State v. Harris, 233 N.C. 359, 363; Bartlett v. Hopkins, 235 N.C. 165. Our system of determining issues of fact at the trial level is ~~noted~~ rooted in the profound deference to the jurys findings since they are in the best position to observe the demeanor of the witnesses and as twelve individuals with different life experiences can be assumed to arrive at the truth if, and only if, they have accurate material facts to weigh.

32. The jury changed their minds on the "killing element" of felony murder because the sentencing stage evidence, presented by both the State and the defense gave them more light to judge by. Defendants Motion for appropriate relief

M of its amendments and supplements and briefs, documents, and motions filed by defendant through counsel and pro se, while voluminous present this court with even more light on the errors at trial and before trial and are therefore incorporated by reference herein, for the court to use in determining whether to grant defendants request for an evidentiary hearing, and defendants trust, an expeditious resolution that will free defendant and close this case once and for all.

In Summary, it is the defendants contention that, Although the defendant does not concede guilt of any crime that caused the murder of James Jordan, Nor of any form of murder at all, the defendants burden of proving prejudice is met when the Court:

(1) Acknowledges: that the defendant was convicted of directly killing James Jordan;

(2) That the State Moved the ~~case~~ evidence to be re-opened for reconsideration by the jury on the issue of whether the defendant personally killed James Jordan by holding a sentencing hearing that required that issue to be disputed to be litigated, evidence tried, and findings of fact made by the jury;

(3) The jury upon re-considering the evidence

heard at trial before the verdict and after the verdict declined to unanimously find that I killed the victim which left the States burden of unanimously proving every element of felony murder beyond a reasonable doubt, unmet and unsatisfied. One or more jurors necessarily found I didn't kill.

(4) Thus the jurors final verdictum nullified and vacated the preverdict finding of guilt.

(5) Trial and Appellate Counsels failure to raise this claim is ineffective assistance of counsel. Alternatively, or, jointly, when assessing prejudice the Court is respectfully moved and bound by law to determine whether, there is a reasonable probability that, but for counsels errors, the result of the proceeding would have been different in that the courts confidence in the outcome is undermined due to the Court not being confident that the jurors still would have found that the Defendant, myself, killed James Jordan, and found that fact unanimously.

(6) Respectfully, this court is bound by the jurors findings not in controversy. Neither the state nor the defendant can challenge that the jury did not unanimously find that I killed James Jordan and

that this finding, documented and specifically expressed in writing is the verdictum the jury relied on to decline capital punishment and which the Court ultimately entered judgement upon. (See Motion for the Court to take judicial notice of Adjudicative facts) (Ex. 18)

(7) There can be no controversy about whether the jury is the exclusive fact finders at all stages of a trial - which is an evidentiary hearing. They are.

(8) There can be no controversy about whether the Courts have jurisdiction to hear, or rule on an issue not in controversy. It does not.

(9) There can be no controversy about whether the jury found Demery to be credible on the issue that, if proved in the States favor, would've enhanced the justification for death penalty to be imposed - whether I killed James Jordan with premeditation and deliberation. They did not, as evidenced by them acquitting me of 1st degree murder with premeditation and deliberation in direct rejection of Larry Demerys graphic sworn testimony that I shot and killed James Jordan

in cold blood so that he couldn't identify me by seeing my face. If the jury couldn't extend credibility to Demerys narrative designed to send me to deathnow there can be no disputing that the jury's verdict of guilt wasn't based on Demerys ~~evidence~~ testimonial evidence being "overwhelming" which means the jury relied on circumstantial evidence that confirmed Demery's testimony and where the circumstantial evidence couldn't, didn't confirm his testimony his word was not convincing beyond a reasonable doubt.

(10.) There can be no controversy about whether if the jury found that I ~~M~~ didn't kill James Jordan but played a role in the underlying felony they couldn't have convicted me of felony murder because there was insufficient evidence that anyone but me killed James Jordan entered into evidence as conceded by:

(a) The State granting Larry Demery the benefits of his plea agreement contingent upon him, in the States view and legal position, testifying truthfully that I killed James Jordan, and, (Ex. 19, Ex. 20)

(b) The States decision to offer ~~M~~ no evidence that Demery killed James Jordan, direct or circumstantial;

(c) The Courts instruction that to convict me the jury had to find, specifically, that, inter alia, I killed James Jordan; not that I or Demery, or I and Demery, or I under a third party killed James Jordan

(d) The States decision to waive an acting in concert instruction because if the jury found that I was guilty as a second degree principle acting in concert with the first degree principle (the trigger man) they could not convict me of 1st Degree premeditated and deliberation under the facts of the case because No one testified that I rode them kill James Jordan, or with premeditation and deliberation cursed them or payed them, or forced them to kill him.

(11) The foregoing is not me beating a dead horse to death but demonstrating in a fair presentation that prejudice is proved by any claim that undermines confidence that I killed James Jordan - under the U.S. Constitution and N.C. Constitution and statutory law. The State chose this state of affairs by:

(a) Allowing Larry Demerys version be the official version they would champion and accept as The Truth.

Even though they knew he was lying and even admitted as much in various ways as detailed in the attached motions, 1 and 2, requesting the Court to judicially notice the record pertinent to this issue; and,

(b) The State choosing to rely on Larry Demerys narrative at the Rule 24 hearing to remove their own discretion to justify seeking the death penalty in this case which resulted in the jurys findings regarding what role they found I played - which is in controversy - in Jones Jordans murder. If the State, like trial counsel, had objected to the Courts suggestion to have the jury decide and document whether I killed; intended to kill; or showed reckless disregard for human life and being a major participant in the underlying felony, there would be no factual basis in evidence to argue that the jury, after the State re-opened the evidence for sentencing determinations re-considered the earlier finding that I killed and, at least one or more, determined I did not, since, the juror deliberations are shrouded by an impenetrable veil pursuant to Rule of Evidence 8C-606 in all cases not requiring special verdicts.

The ultimate question is whether there is a reasonable probability that at least one juror would have struck a different balance and found that I, at the very least, didn't kill James Jordan. See Wiggins, 539 U.S. at 537 and Scanlon v. Markleroad 740 F. Supp. 2d 706, 728 U.S. District Court M.D.N.C. (2010) That is the most the Defendant has to prove, by a preponderance of the evidence, for the Court to be obligated by statutory law, State and U.S. Constitutional law and common law, to vacate the conviction for felony murder.

The facts are binding and clear. The jury didn't unanimously find that I killed when the State re-opened the evidentiary phase of the trial to put me on deathrow on the word of a man who admitted under oath to committing perjury in the same case by subscribing to a false affidavit on a material issue. The State's own witnesses, the Rezendes and Tedeschis, impeached Demery's credibility. The jury's unchallenged finding remains binding by equity, commonsense and law.

STATE V. BLAKE 275 N.C.APP. 699 (2020)

The Defendant hereby cites State v. Blake 275 N.C. App 699 (2020) in support of this Motion to vacate the conviction for felony murder on the basis of the errors at trial that violated the Defendants U.S. Constitution, 5th and 6th Amendments, applied to the State of N.C. by the 14th Amendment. The foregoing facts specified herein and in the attached Motion for Judicial Notice of Adjudicative Facts demonstrate that the Defendants right to Due Process, Effective Assistance of Counsel, Proof beyond a reasonable doubt, and the 6th Amendment requirement that the jury render a verdict of guilty beyond a reasonable doubt were violated, and are structural errors. Id. at 704

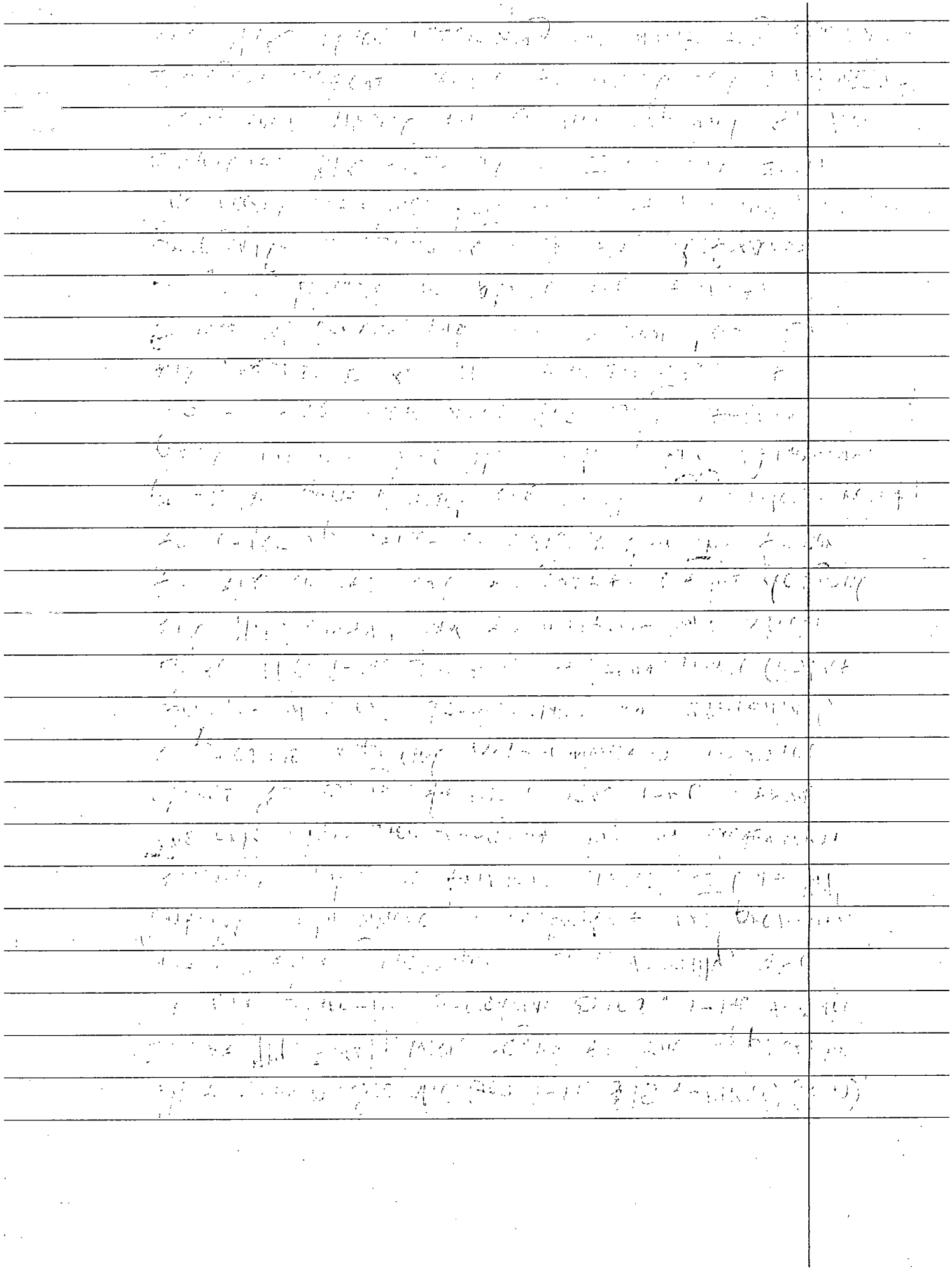
As applied to State v. Green, State v. Blake should be viewed as supporting Defendants subclaim of Ineffective Assistance of Counsel for not Motioning the trial court after the verdict but not more than 10 days after entry of judgement for appropriate relief because the defendant did not receive a fair and impartial trial, See §15A-1414 (b)(3); IAC of trial counsel and appellate counsel for not filing a motion for appropriate relief pursuant to §15A-1411(a)(b)(c);

and Ineffective Assistance of Appellate Counsel, N.C. Appellate Defenders office, for not filing ineffective assistance of trial counsel ineffectiveness via Motion for Appropriate relief or appeal during it's representation of me on direct appeal pursuant to §15A-1418(A) of N.C. General Statute.

Because Defendants original Motion for Appropriate Relief is still pending before this court, the Defendant can amend it and supplement it pursuant to §15A-1415(g) of N.C.G.S.) Therefore any "gatekeeper" orders are not applicable, binding, or arguable in State v. Green. There is no "previous motion" here (N.C.GS §15A-1415(a)(1)) Further, the Defendant can and will demonstrate ineffective assistance of trial or/ and Appellate counsel is State action that violated the U.S. and N.C. Constitution to establish by a preponderance of evidence that Appellate counsel failed to raise this claim earlier N.C.G.S. 15A-1419(c)(1) to establish and show good cause if deemed necessary.

Still, N.C.G.S. §15A-1419(a) "does not give a trial court authority to enter a gatekeeping order." "[T]he determination regarding the merits of any future MAR must be decided upon

that motion. See N.C. Gen. Stat. §15A-1420(c)(2019), Id at 714. Finally, with regard to the application of any potential procedural bars, State v. Blake noted that gatekeeper orders, normally, are "entered only where a defendant has previously asserted numerous frivolous claims'. Id at 714 The only characterization of any of defendants claims as being frivolous has come from a previous appointed post-conviction counsel who, it will be demonstrated and established, broke N.C. State Bar Rules of Professional Conduct and N.C. criminal law to obstruct my access to the Courts and to justify actions designed to cover up other criminal action. The former prosecutor, who violated the Courts gag order, repeatedly, placed on him has also made public statements about the defendants MAR being frivolous and likewise broke N.C. State Bar Rules of Professional Conduct and N.C. criminal law by perjuring himself to advance the frivolity propaganda campaign against the defendant. The record establishes that the Court reviewed and approved Defendants MAR to proceed on I.A.C. and Brady claims, then, allowed the Counsel appointed by N.C Indigent Defense services to amend and supplement the MAR after researching and investigating the claims



THIS CLAIM DOES NOT INVOLVE AN INQUIRY INTO THE VALIDITY OF THE VERDICT BASED ON THE JURORS AFFIDAVIT.

AT the outset the Defendant hereby motions the Court to take judicial notice of the fact that on page 820 of Volume 4 of the General Statutes of North Carolina Annoted, 2009 ed. published by Lexis Nexis, the Official Commentary States: "It is noteworthy that this section (8151-1240. Impeachment of the Verdict) is silent on impeaching verdicts by means other than the testimony of the juror himself." (Parenthesis added for clarification). Roy Cooper certified this edition.

This Court is moved to judicially notice that that in State v. Blake, 275 N.C. App. 699-701 (2020) the appellate court of N.C. concluded that there was structural error where a number of jurors told the presiding judge, after indicting that their verdict was unanimous but before judgement was entered that they were not sure that the defendant committed the crime, and, accordingly, the defendant was entitled to a new trial.

The N.C. Court of Appeals narrated the following facts:

1) The jury returned a unanimous verdict of guilt

2) The Court polled the jury AND All jurors INDIVIDUALLY confirmed their guilty verdict;
3) The Court held AN UNRECORDED bench conference with Counsel, commented, on record, on the jurors being "A little hesitANT, UNSURE" about their verdict but when the Court questioned one juror INDIVIDUALLY, she confirmed her agreement with the verdict AGAIN;
4) The Court discharged the jury
5) The Court met with the jury, then met with trial counsel id at 702. The Court stated the jury, in part, retracted verdict
6) the trial counsel renewed A motion to set ASide the verdict AT the close of All evidence, AND AFter the verdict WAS ANNOUNCED AND AFter the jury was discharged, id AT 703;
7) The Court denied the motion
8) The Court of Appeals VACATED the CONVICTION

In State v. Green

1) The jury UNANIMOUSLY found the defendANT of Felony Murder, INCLUDING the KILLING element, AS instructed by the Court,
2) The Court polled the jury AND All jurors INDIVIDUALLY confirmed their guilty verdict of Felony Murder,
3) The jury ACQUITTED me of first degree by premeditation AND deliberation.
4) The Court crAFted A special verdict sheet

with the States consent and against the defense Attorneys ill advised objections. This verdict sheet elicited the jurors response regarding whether they found that the Defendant killed James Jordan, an essential element of the felony murder charge that had to be proven to the jury beyond a reasonable doubt. The jury documented in writing that they did not UNANIMOUSLY find that the defendant killed James Jordan at the Courts request for their findings made during deliberations.

5) As in State v. Blake, the State v. Green jury was question by the Court whether their guilty verdict was still adhered to and they clearly expressed to the Court that their earlier finding of guilt beyond a reasonable doubt of every element, including killing, was not unanimously maintained. In fact, in State v. Green this is even clearer thanks to the documentary evidence the jury provided the Court, and that the State consented to.

6) The only essential difference between State v. Blake and State v. Green is that the defense Attorney in State v. Blake motioned the Court for a new trial based on the

jurors revelation that they did not All believe that the defendant was guilty of the crime the Court instructed them on. In State v. Green the Attorneys didn't do the same, they didn't file nor make the motion. Their failure to do so is ineffective Assistance of Counsel and Appellate Counsel was ineffective for not filing A motion for Appropriate relief on the grounds that trial Counsel was ineffective for not filing A motion for A new trial for the Defendant based on: violations of the Defendants Statutory right to be tried by A jury of 12 whose verdict must be unanimous (See N.C.G.S. 15A-1201 a); N.C. Constitutional right not to be convicted of any crime but by the unanimous verdict of A jury in open court (See Section 24 of Article 1 of the N.C. Constitution) and the 5th and 6th Amendments to the U.S. Constitution applied to the States through the 14th Amendment.

As noted on page 27, supra, the official commentary to N.C.G.S.A. §15A-1240, prepared under the supervision of The Dept. of Justice of the State of North Carolina and certified by Governor Roy Cooper when he was the Attorney General of North Carolina, notes that the section is silent on impeaching verdicts

by means other than the testimony of the jurors themselves. (See 2009 ed., id) To a layman of law such as me, this "noteworthy" fact was, and is, an acknowledgement that, as in State v. Blake and State v. Green, if the jurors findings impeaching their verdict is elicited in a manner that does not violate the sanctity of their deliberations, the evidence is admissable as long as it doesn't come from the jurys testimony. In both State v. Green and State v. Blake, the Court elicited the information from the jury. Do

State v. Green is distinguished from State v. Blake on this point in that:

1) In State v. Green the prosecutor consented to the Courts request from the jury for a verdictum on whether the defendant killed the victim;

2) In State v. Green the jury themselves, not the Court, unambiguously documented their lack of unanimity on the guilty verdict as charged by the Court;

3) In State v. Green, there is no need to rely on the word of anyone as a witness. The document itself is on record and I have submitted a motion for this Court to take judicial notice of

this document that clearly indicate the jury's expressing that they did not unanimously find that I killed James Jordan. N.C.G.S. §15A-1420 (b)(1) requires that a motion for appropriate relief be supported by documentary evidence if it is based on occurrence of facts outside the records, transcripts or knowledge of the Court. The jury's finding is on record, the Court has knowledge of it. It is beyond dispute - unlike the Courts account of the juror's unbelief in Jermil Blake's guilt in State v. Blake. The judge in State v. Blake personally witnessed the "majority" of the jury in State v. Blake saying that they didn't believe he did the killing but, (1), the Court, as a witness, is not accorded any more credibility than any other witness (in fact, the State has wasted time in State v. Green arguing that a judge couldn't testify as a witness in a case they presided over - a scary position to take) and (2) although the judges version in State v. Blake could've been put at issue by the State, in State v. Green the jury's documented verdictum that not all the juror's (if any) believed I killed James Jordan can't be challenged. It is what it is.

The only arguable issue is whether trial counsel had a strategical reason for not filing a motion for a new trial and whether appellant counsel had a strategical reason for not filing a M.A.R based on trial counsels ineffective assistance of counsel for not filing a motion for new trial based on the jurors Court elicited revelation that they did not unanimously find that I killed James Jordan - an element of Felony Murder that had to be proven beyond a reasonable doubt. There can be no strategical value in challenging the conviction where:

1) The Defendant couldn't be tried for capital punishment again;

2) Didn't have to limit jury selection to jurors who believe in the death penalty;

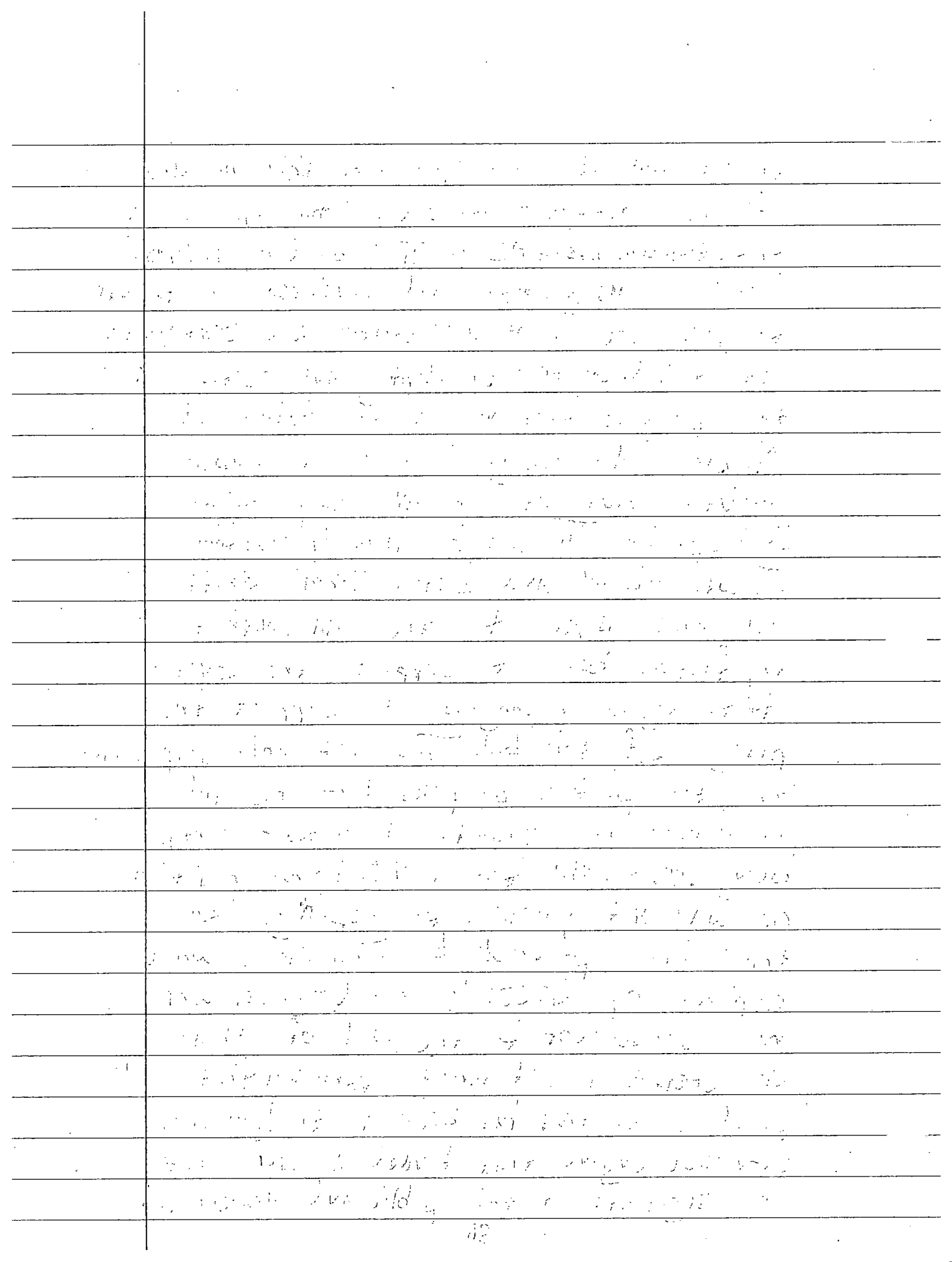
3) The State was locked in to a version of events that relied on a new jury unanimously finding that the Defendant killed James Jordan or challenging the veracity of Larry Demery who is the only source of evidence that the victim, James Jordan, was killed by me and who was the only witness who put the circumstantial evidence in an inculpatory context for felony murder

The only strategical benefit to not challenging this conviction based on this particular claim is to preclude a re-trial - a benefit for the State; Not me, and not for the citizenry of North Carolina who justifiably expect Attorneys to advocate for their clients and for the respective constitutions they take oaths to uphold. Any other extrajudicial extraneous consideration would transform counsel into Trojan Horses to invade the sacred and inviolate palladium of trial by jury with secret machinations. As the Supreme Court noted in Jones v. U.S. 526 U.S. 227, 245, quoted in U.S. v. Young 403 F. Supp. 3d 1131, 1135. Counsels courage in attempting to ventilate evidence of bias, corrupt individual officer and extrajudicial influence in this case suggests they did not adopt a strategy of sacrificing me on the alter of egotistical, political and Mammonistic worship.

In Duncan v. Louisiana 391 U.S. at 156 n. 23, 88 S. Ct. 1444) quoting P. Devin, Trial by Jury 164 (1956) it says:

"The first object of any tyrant [redacted] would be to make Parliament utterly subservient to his will; and the next to overthrow or diminish trial by jury, for no tyrant could afford to leave a subject's freedom in the hands of twelve of his countrymen. So that trial by jury is more than

An instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives." P. Devin, Trial by Jury 164 (1956) This case was politicized and monetized by tyrants to pass the Violent Crime Control Law Enforcement Act in U.S. Congress by adopting and resting on false premises that included the father of Michael Jordan being killed by a super predator that was granted early release from prison. This was done, publicly, before I was indicted and before Johnson Britt was even assigned to the case. Without any factual basis to support the senators "facts" argued in Congress to support the passage of this bill. This not only scapegoated me for political purposes but resulted in Hubert Stone, Sheriff of Robeson County, being recommended for a U.S. Marshal position he was not qualified for according to the memo produced by Ian Mance while employed by SCSJ. The U.S. Congress was made subservient to the will of those who created a self-serving narrative that passed a law that has been a trillion dollar economical engine that funded a war act on segments of the public and incarcerated



people worldwide. In turn, the prison/militarized police industrial complex led to abuses of power that has created a social environment so toxic and divided along racial and economical lines that those who represent us proudly and publicly advocate succession, civil war, and censorship, while the mentally vulnerable among us, possessed by the hopelessness and hatred these policies engender, celebrate death culture in art, music, social media, and even in schools, places of worship, and in their own neighborhoods by the use of handguns with 50 round drums modified to fire without cease. That is the consequence of cases like these that are deliberately used and misused to advance agendas before justice.

For 27 years the events giving rise to this claim which establish the way that trial by jury was overthrown and diminished by turning a blind eye to the jury declaring their lack of unanimity have been ignored, sidestepped and connived against despite my clumsy attempts to get my trial attorneys to do what Jermail Blakes trial attorney did, and to have appellate and post-conviction counsel litigate it as a subclaim to Ineffective

Assistance of Counsel (Appellate counsel). The response has been to spread propegunda against me and falsely characterize me as "difficult", "crazy", "ungrateful" and "Arrogant". I AM NONE of these but I AM unapologetic in my belief, sure certainty, and obligation to keep the lamp lit that shows that NO matter the circumstances or location, as long as we live by Esse Quam Videri, freedom, indeed, still lives.

This the 16th Day of May, 2023

Daniel Green

Exhibit List For The Standard of Prejudice

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1) N.C. Center for Actual Innocence Brief dated June 27, 2022 ... 1, 2
2) Trial Transcripts ... 3,
3) Trial Transcript 3.
4) N.C. Crimes, A Guidebook on the Elements of Crime, 7th Ed. 2012 by Jessica Smith, published by UNC School of Government p. 83 ... 3
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6) Transcript of Interview District Attorney Johnson Britt gave to WECT reporter Jon Evans, Part 1 and Part 2 ... 7
7) Trial Transcript ... 8
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19) Larry Demerys Plea Agreement 20
20) The States most recent plea agreement with Demery including the States consolidation of his charges ... 20

Motion Memo of Law on MJR STill Pending and Assessing and Identifying Prejudice By Pinpointing Jurors Verdict

STATE OF NORTH CAROLINA
COUNTY OF ROBESON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 93 CRS 15291 -15293

STATE OF NORTH CAROLINA
V.
DANIEL ANDRE GREEN

FILED
2023 JUN 15 A 8:41
ROBESON CO., C.S.C.
BY

Motion & Memorandum of Law on Marshall Pending & Assessing and Identifying Prejudice By pinpointing Jurors Verdict

NOW COMES the Defendant, Daniel Andre Green, on behalf of myself and the people of North Carolina, and presents the following Memorandum of Law to the Court, and the following Motion:

PROCEDURAL HISTORY

1. On 28 February 1996 Robeson County District Attorney, Luther Johnson Britt, III, argued to the jury that if they found from the evidence that the State has proven beyond a reasonable doubt that Daniel Andre Green, during the course of an armed robbery, did commit that Armed robbery, and as a result killed someone during the commission or the attempt to commit that crime, it's your duty to find him guilty of first degree murder. (Trial Transcript 7434:5)

2. On 28 February 1996 the Court instructed the jury about the law, its application, and the weighing of evidence. "And I charge that if you find from the evidence and beyond a reasonable doubt that

... while committing or attempting to commit robbery with a dangerous weapon the defendant killed the victim, and that the defendant's act was a proximate cause of the victim's death, it would be your duty to return a verdict of guilty of first degree murder under the felony murder rule." (Trial Transcript Page 7466:3-22)

3. The Courts 28 February 1996 instruction was required by law because, as the State conceded at trial "There is no evidence before the jury that this defendant had any role other than the fact — than the one that the State presented in its case in chief that he pulled the trigger." (Trial Transcript Page 8054:1-6)

4. On March 12, 1996 The Court informed counsel, the defendant, and the open court that:
(a) The Court instructed the clerk, Ms. Sue Gaines to modify the "recommendation of punishment form" (Trial Transcript Page 8299) "for the purpose of clarity in the findings of the jury as to their recommendation as to punishment, I think it's appropriate to provide them with an opportunity to answer each specific alternative. (T.T.P. 8300-8301)

5. One of the questions on the form was "Do you unanimously find from the evidence beyond a reasonable doubt that the defendant himself killed or attempted to kill the victim?" (Trial Transcript Page 8304) (See also Fifth Supplement To First Amendment Motion For Appropriate Relief Ex. 27 at 1) (See also, Robeson County Clerk of Courts file State v. Green.). Attempting to kill indicates premeditation and deliberation - an issue the jury had already resolved.

6. The jury indicated "No" in answer to the question on the form referenced in paragraph 5. above.

7. Yet, earlier, in the same trial, on 29 February 1996, the same jury necessarily answered "Yes" to the question of whether they unanimously found that I, the defendant killed the victim, and, "No" to the question of whether such killing was premeditated and with deliberation - the attempt to kill the victim - when they convicted me of felony murder, presumably following the Courts instructions, and when they acquitted me of First Degree murder by premeditation and deliberation, respectively. This conviction and acquittal occurred on 29 February 1996.

8. 12 March 1996. I was sentenced to: life imprisonment under the Fair Sentencing Act which required me to serve 20 years before becoming eligible for parole; Armed Robbery with judgement Arrested, and, sentenced to ten years for conspiracy

9. The conviction was Appealed. Irvine Crawley Fodor Assistant Appellate Defender was Appointed to represent me. On 2 June 1998 the N.C. Court of Appeals denied the appeal. On 5 February, 1999 the N.C. Supreme Court Affirmed the Court of Appeals opinion finding no prejudicial error. On 4 October 1999 the Supreme Court of the United States denied Defendants petition for writ of certiorari to the Supreme Court of North Carolina, 528 U.S. 846 (1999) Ms. Fodor worked for the N.C. Appellate Defenders office at the time.

10. On 29 December, 1999 I filed a motion to Compel my Constitutional Right to Access the Courts. The content of this misnomered motion required it to be liberally construed as a Motion for Appropriate Relief, for the purposes of calculating when the clock was tolled for the one year statute of limitations. See, §15A-1411 (a) and (c)

11. On or about 5 May 2000, I filed a pro se Motion for Appropriate relief and requested counsel.

12. On May 16th, 2000, Judge Gregory Weeks appointed counsel, Carlton Mansfield.

13. Between 2000 and 2008 I filed numerous complaints/letters to numerous judicial officials in Robeson County including Clerk of Courts, Senior Resident Judges, Judges, two State Bar complaints with N.C. State Bar, and, finally petition for Writ of Mandamus to get Mr. Mansfield off of my case. (See Motion To Correct Memorandum of Law/Supplemental and/or Motion For Appropriate Relief/Motion For Reconsideration Hereby Incorporated by reference)

14. On or around 7 September 2008 I filed a ~~motion~~ DG Petition for Writ of Mandamus to the N.C. Court of Appeals to compel the Robeson County Superior Court to rule on Defendants multiple pro se motions Requesting the Court remove Carlton Mansfield from my case, a request that was pending for over 4 years.

15. It appears that on 26 September 2008 Senior Resident Superior Court Judge ordered that Mr. Mansfield be allowed to withdraw from Defendants case. I do not concede that this actually occurred on that date. Further, the Court never did rule on motions to discharge Mr. Mansfield.

16) On 2 October or September 2008 (which date is unclear due to irregularities in the orders date) the Court (1) summarily dismissed Defendants Motion for Appropriate Relief; (2) Found that I had probable grounds for Relief on all issues raised in my M.A.R. (3) Found that there were/are probable grounds for relief as to my claims of ineffective assistance of trial Counsel and the State's failure to disclose the tape recordings of telephone conversations of Deloris Sullivan and Melinda Moore (4) Appointed Cumberland County Attorney, Carl Ivarsson to "assist the Defendant in his Motion for Appropriate Relief". (Not represent me) The prose Amended MAR was filed in 2008;

17. On 3 October 2008 the N.C. Court of Appeals Clerk, John M. Connell, "dismissed without prejudice to defendant" the Petition for Writ of Mandamus I filed on 7 September 2008 by mailing it and which, apparently, the North Carolina Court of Appeals filed on 16 September 2008, [redacted] (No. COA P08-742) "if the motion for removal of Appointed Counsel is not ruled upon by the Robeson County Superior Court within thirty days of this order";

18. On 6 April 2015 Appointed Counsel, C. Scott Holmes,

and Ian Mance, on behalf of Southern Coalition for Southern Justice, filed and signed and certified, pursuant to Rule 11 of N.C.G.S. Civil Procedure §A-1, the first attorney filed Motion for appropriate relief (MAR). On or about 30 March 2016, counsel filed a supplemental M.A.R. On or about 16 December 2016 counsel filed a second supplemental M.A.R. On 14 June 2017, counsel filed a third supplemental MAR. On or about 5 July 2017 counsel filed a fourth supplemental MAR. On 4 October 2019 new counsel, North Carolina Center for Actual Innocence attorneys, pursuant to Rule 11 NCGS CrimP and NCGS RCP §1A-1, Rule 11 filed a fifth supplemental MAR thru Christine Mumma and Cheryl Sullivan;

19. On 5 December 2018 the Court held a "nonevidentiary hearing" in response to the States Motions for Summary dismissal. The hearing consisted wholly of oral arguments, It was not a "full hearing" as defined by Blacks Law Dictionary 8th Ed.

20. On March 6, 2019 the Court communicated its decision to deny defendants MAR and request for evidentiary hearing and requested the State to file a proposed order which the State complied with as officers of the Court representing the State of North Carolina bound to uphold the United States and North Carolina Constitutions

21. On 7 January 2020, the trial court signed the order denying the defendants MAR, and the defendants motions for reconsideration, after making minor revisions to the Attorney Generals proposed order, including findings of fact and conclusions of law;

22. On 30 July 2021, Defendants attorneys, Christine Mumma and Guy Loranger of North Carolina Center for Actual Innocence, filed a petition for writ of certiorari in the N.C. Court of Appeals seeking review of Judge Charles Winston Gilchrists order denying my Motion for Appropriate Relief;

23. On 30 November 2021 the Court of Appeals Allowed the petition for writ of certiorari, vacated the lower Courts denials and orders, and remanded the case for reconsideration. in light of State v. Allen, 378 N.C. 286, 2021-NCSC-88. (See Docket in Case No. P21-284)

24. Upon information not verifiable, despite my request for proof, on 12 April 2022, the trial court held a status conference. The State represents that "Pursuant to that hearing, the trial Court Agreed

to allow briefing (25 pages per side) on how State v. Allen applies to Defendant's MAR claims, if at all. On or about 27 June 2022 Defendant served the State with his brief."

25. On 27 June 2022 Attorneys Christine Mumma and Guy Loranger filed a Brief In Support of Evidentiary Hearing which noted on page 3 that "Mr. Green does not abandon any claims not addressed in this Brief. During the April 12, 2022 status conference, this Court advised counsel that any claims not addressed in this brief would not be considered waived."

26. On 29 September 2022 the Court held, what Ms. Mumma informed me, an oral argument on the briefs referenced in paragraph 24. and 25 above- filed by the State and her. At this oral argument ~~hearing~~ hearing I made a motion for a conflict of interest hearing and argued for the Court to grant an evidentiary hearing and in support of the request for an evidentiary hearing on the various motions for appropriate relief. During the hearing, based on the Courts ruling that if there was a conflict of interest with my Attorney, Ms. Mumma

I should discharge her, I discharged her. The Court stated that the purpose of the hearing was for argument, as he understood it, on whether or not Court should hold an evidentiary hearing on the motion for Appropriate relief. I also expressed my intent. to mend/supplement the MAR on the grounds of Ineffective Assistance of Appellate Counsel (Twine Color) and Carlton Mansfields fraudulent misrepresentation. The Court did not address nor order me not to mend or supplement

27. As of the date of this filing the Court has not ruled on the Motions for Appropriate Relief since the Court denied the opportunity for a full hearing (evidentiary hearing), denied the MAR summarily and denied counsels post-MAR denial motions for reconsideration, inter alia.

28. The N.C. Supreme Court, in State v. Harvey Green, 350 N.C. 400, 406 held that to pass the test when determining whether a Motion for Appropriate Relief is still "pending" the denied MAR was appealed via a petition for Writ of Certiorari and the Writ for Certiorari was allowed. This is what happened in State v. Green. This MAR, which has been pending since, at least,

29 December 1999 is still pending and may be amended.

Argument

The jurys verdict at trial was not only that I was guilty of First Degree Murder ono the basis of Felony Murder but that the Defendant, I, shot and Killed James Jordan.

In 1984 Adam Stein, the father of Attorney General Joshua Stein, and Malcom Hunter, Jr. the N.C. Appellate Defender and Asst. Appellate Defender, respectively, argued successfully that where the trial court failed to instruct the jury on the law of acting in concert, and the jury was never told that they could convict the defendant if they found that he acted in concert with others in commission of elements (the elements of the offense) the State had to satisfy that the defendant personally Committed every element of each offense to obtain a conviction.. State v. Smith, 65 N.C. App. 770, 310 S.E. 2d 115 (1984)

n

In State v. Green, this case, the state specifically waived the Acting In Concert instruction at the charge conference to enhance its chances of obtaining the death penalty. In doing so, the state assumed a more onerous burden because it had to convince the jury that I personally killed and robbed the victim, but let it be noted that the evidence and theory that the state chose to put on dictated this choice since the state put on No evidence that Larry Demery or anyone else killed James Jordan and even validated Demery's testimony as "the truth" by granting him the benefit of a plea agreement that was contingent upon Demery testifying "truthfully". This state of affairs resulted in the state, which is required to prove every element of a crime beyond a reasonable doubt, having to prove that I killed to satisfy the killing element in Felony Murder in order to meet its burden of proof. "The states case [had to] succeed or fail on [the] theory" they tried me on. Id at 772.

State v. Smith was decided in 1984. Malcom J. Hunter, Jr. represented Smith, and me, with Janine Foder in 1996-1999 on direct appeal.

Jamie Fodor co-wrote the first edition of the N.C. Defenders Manual with Henderson Hill who worked on my case to vacate a prior conviction so that it couldn't be used to support the death penalty in this case. Mr. Hill's promise to represent me if I was convicted after following his advice not to testify was the deciding factor in me waiving the right to testify. Mr. Hill couldn't represent me as promised due to him joining Ferguson and Stein, a law office in Charlotte, N.C. that included Adam Stein who was the N.C. Appellate Defender who, with Malcom Hunter, won State v. Smith. I point this out because the very day I was told in court that, during sentencing, the jury ~~found~~ did not unanimously find that I killed James Jordan I asked "How can they convict me of something the State[DA] didn't try me for?" My attorney, Angus Thompson, told me, while rubbing my arm, "They can do that. It's called a compromised verdict." Ms. Fodor told me the same thing, verbatim, as did Scott Holmes, Carlton Mansfield, Ian Mance and, initially, Ms. Mumma.

"A compromised verdict is one in which the jury answers the issues without regard to the pleadings, evidence, contentions of the parties or instructions of the court" Smith, 213 N.C. App. at 195.

Yet, there was sufficient evidence to convict me based on the fact that Larry Demery, an interested witness who had his life to preserve by putting on the show he agreed to, testified under oath. Makes no difference how obvious it was, and is, that he lied, that he conformed his narrative to the evidence and law, that he admitted committing perjury (although his admission may itself have been perjury). His testimony under law, as all testimony, without regard for the demands of credibility is sufficient for the Court to base its instructions on.

No, this was not a "compromised verdict". The characterization of the guilty verdict - in contrast to the juror verdictum which clearly expressed their lack of unanimity during sentencing - as a compromised verdict is a red herring dragged through the muddy perception of my mind by people deliberately laying an artificial trail that could divert me or any attorney relying on them instead of on

their own due diligence and rigorous research. The compromised verdict characterization, if believed and pursued, would have led to a dead end, just like several other claims raised for the political and personal gain of those involved in raising them, knowing that they were dead end claims instead of the "slam dunks" they were promoted to be to me an uneducated, trusting fool until my desire to prove my innocence of the crimes I stand convicted of forced me to transcend my personal and environmental limitations and learn how to think with the wisdom of our laws purpose - A search for ultimate truth; not just the truth of narratives formed out of expediency and exhaustion of being tortured.

The jurors verdictum during the sentencing stage is as reasonable as the jurys verdict of guilt. The former expressed that 12 jurors, the exclusive finders of fact, didn't find that I killed James Jordan. The latter expressed that 12 jurors unanimously found that I did personally kill James Jordan. This apparent contradiction is easily reconcilable by reference to the evidence introduced during the sentencing

stage through the States witnesses, the Tedeschis and Rezendez, two couples Demery and I robbed who portrayed Demery as a gun wielding, violent person who threatened to kill them without any provocation on their part at all. This is the role Demery cast me in at trial during the trial stage where guilt was decided. It is no surprised that the jury reconsidered their initial findings of fact in response to the new evidence the State and Defense put on after the State re-opened the evidentiary hearing for the purpose of allowing the jurors to assess the evidence to determine what role they believed I played for the purpose of helping the Court sentence me, and the State's decision to re-open the evidentiary hearing - which is a synonym for "trial" - prevents the State from precluding this Court from ~~R~~ DS considering the jurors findings at the sentencing stage, nor does it follow that that the Courts respect for the jurors, whose exclusive province it is to find facts, raised by material issues, flies in the face of state policy due to the unique factual circumstances here. This is a "one off".

Janine Crawley, also known as Janine Crawley Fodor, was familiar with the North Carolina common law requirement that the failure of the Court ~~required~~ Do to give an acting in concert instruction due to the State waiving the acting in concert instruction imposed a burden on the State to prove that I personally committed all acts of First Degree Murder no matter what the "theory" was (whether Felony Murder or Premeditation). So was Malcom R. Hunter Jr. and Adam Stein, of Appellate Defenders Office Pursuant to §8C-1 Rule 201(d) the defendant, I, Request the Court to take judicial notice of the following facts:

(1) Malcolm Ray Hunter, Jr. and Janine M. Crawley Represented the ~~Defendants~~ in Appellate cases where the instruction "... the defendant or someone acting in concert with them..." were given to the jurors to permit the jurors to convict the defendant without finding that the defendant personally committed all of the actions necessary to constitute the crime being tried. These cases include:

a) State v. Evans 346 N.C. 22, 484 S.E.2d 271 (1997)

b) State v. Barnes 345 N.C. 184, 481 S.E.2d 44 (1997)

c) State v. Gay 334 N.C. 467, 483, 434 S.E.2d 840, 849 (1993)

(Although Judge Gregory Weeks didn't use the term "Acting in concert", he did instruct the jury "... that the defendant, Yvette Gay, acting either by herself or acting together with Renwick Gibbs..." which is the same in meaning as "acting in concert). No acting in concert or aiding and abetting instruction was given to the jury. The State knowingly waived it;

(2) It has been the explicit holding of the United States Supreme Court that "Lest there remains any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In re Winship, 397 U.S. 358 (1970). This has been the unambiguous law of the land for over 50 years;

(3) The North Carolina Supreme Court has held since at least 1973 that

"The prime purpose of a court's charge to a jury is the clarification of issues, the elimination of extraneous matters, and a declaration and an application of the law arising on the [redacted] evidence." State v.

Cameron, 284 N.C. 165, 171, 200 S.E. 2d 186, 191 (1973);

(4) The Requests for Judicial Notice of Facts filed concurrently with this filing.

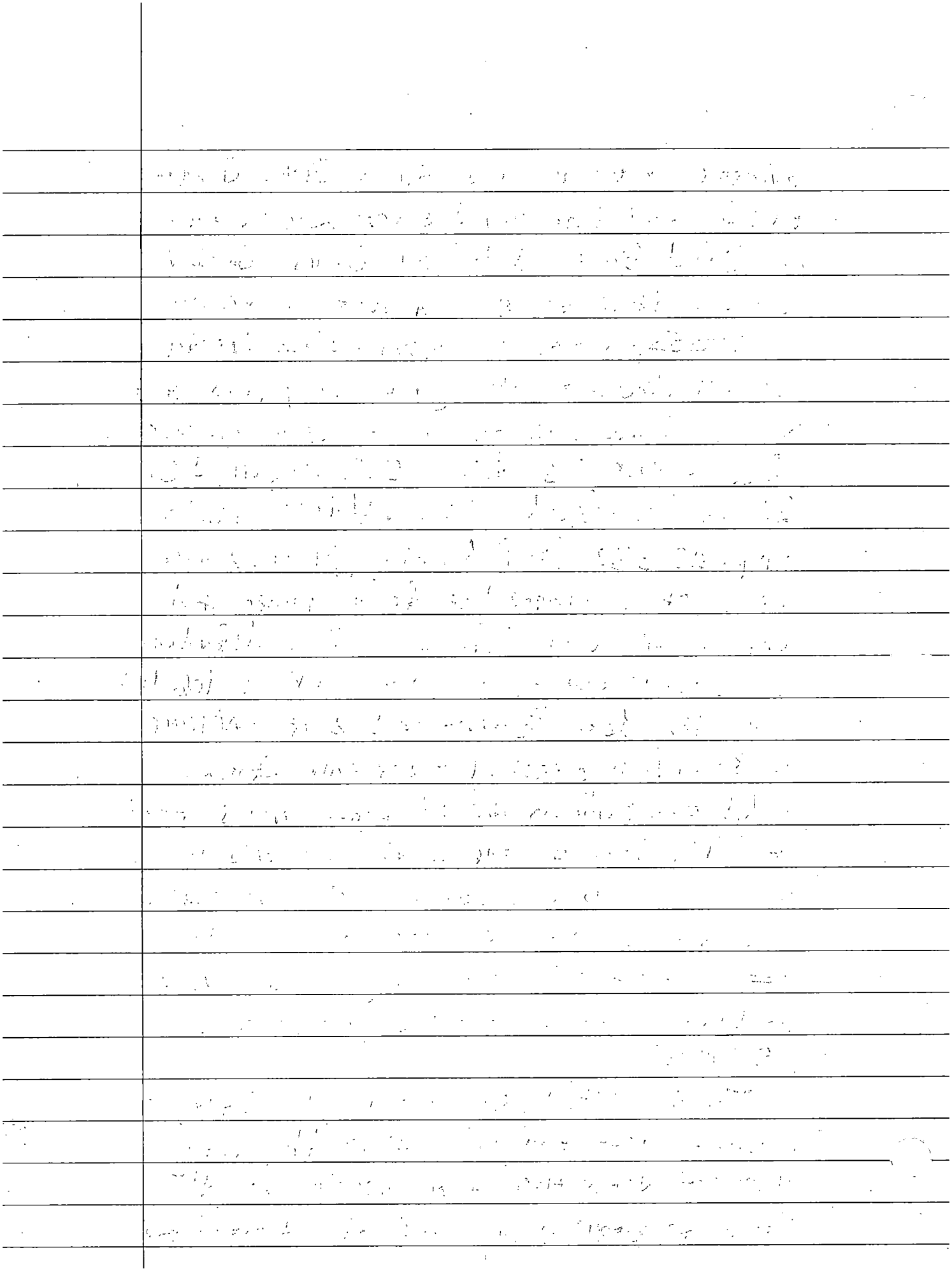
Conclusion

The Court, in assessing prejudice of the errors raised in the defendants M.A.R., must neccessarily consider exactly what I was convicted of to determine what affect or effect the errors had on the outcome of the trial.

The Outcome of the trial was that I was convicted of killing and robbing James Jordan- First Degree Murder, also denominated Felony Murder after the Court failed to give an acting in concert instruction due to District Attorney Johnson Britts knowing and intelligent decision to waive the acting in concert theory so that the State could convict me of premeditated murder and increase its odds of putting me on deathrow. I could not have been convicted on the acting in concert theory, as "he who runs with the pack is responsible for the kill" (an illustration used in State v. Goode 341 N.C. 513 (1995), since the State never presented any

evidence that anyone else killed James Jordan besides Daniel Green, and either Larry Demery or Daniel Green had to kill James Jordan for the State to even assert a theory of ~~Accessory~~ acting in concert since North Carolina adheres to the agency theory, and not the proximate cause theory of felony murder. See Bonner, 330 N.C. at 542-544, 411 S.E. 2d at 601-02 and State v. Williams 185 N.C. App. 318, 332 (2007). Accordingly, North Carolina is a state where the felony murder rule applies where the lethal act of a defendant, or someone acting in concert with a defendant caused the death. Bonner at 542, 43, Williams at 332. A hypothetical theory that Demery killed James Jordan was not argued nor supported at the trial by the State. It was argued by counsel but Defense counsel arguments are not evidence and the trial courts ~~evide~~ instructions can only be given on evidence produced at trial. State v. Cameron, 284 N.C. 165 (1973).

In the instant case there was no acting in concert instruction and absent the acting in concert instruction it was necessary for the State to prove each element of first-degree



murder on the theory of premeditation and deliberation, including the actus reus of firing the fatal shots. State v. Wilson 345 N.C. 119, 124, 345 N.C. 119, 124, 478 S.E.2d 507, 511

The trial judge's compliance with the States knowing and intelligent waiver of the acting in concert instruction heightened the States burden of proof. That waiver required the State to satisfy the jury that the defendant committed every element of felony murder or premeditated murder to obtain a conviction. State v. Cox 303 N.C. 75, 277 S.E.2d 376 (1981)

All of the above is material and essential to the Courts findings and facts and conclusions of law it will enter on the defendants MAR for the following reasons:

(1) The Courts review of State v. Green to determine ~~prejudice~~ Do whether errors from Constitutional violations are harmless must determine whether there is overwhelming evidence of guilt with respect to the theory of guilt upon which the jury was instructed and upon which the defendant was convicted. This means that the State, the beneficiary of the constitutional errors

must prove beyond a reasonable doubt that there is no reasonable possibility that the Constitutional errors contributed to the jury convicting me of killing James Jordan, robbing James Jordan, and of conspiring to rob James Jordan. See, Chapman v. California 386 U.S. 18, 23-24; N.C.G.S. 15A-1443.

(2) The State has argued that there was overwhelming evidence that I am guilty of Felony Murder and that I didn't have to kill to be guilty of felony murder. Both of these statements are an insult to common sense. It's a mockery of N.C.G.S. Rules of Civil Procedure, § 1A-1, Rule 11 which requires Attorneys to certify that to the best of their knowledge, information and belief formed after reasonable inquiry their responses were well grounded in fact and existing law; their oath to "support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as Attorney at Law, so help me God." N.C.G.S.A. Art. VI, § 7; and it flouts N.C. State Bar Rules, Ch. 2, Rule 3.3 (a)(1)(2)(3); Rule 3.4 (e); Rule 3.8 (g)(1)

Rule 4.1, It is a violation of the laws of the land and N.C. State Bar Rules of Professional Conduct and plain old ethics and fairness because (a) Demery admitted committing perjury in previous sworn testimony in his affidavits to suppress his interrogation statements; Although he blamed his attorney; (b) Demerys attorney, Hugh Rogers who notarized and, according to Demery, co-authored Demerys affidavit; in a manner that violated Rule 8.4 Misconduct and Rule 8.3 of the N.C. Revised Rules of Professional Conduct of the North Carolina State Bar; Rules that were likewise violated directly or by connivance by the prosecutors in Robeson County District Attorneys office that knew about this and which the Attorney Generals office has been deceived about by them and now must report pursuant to Rule 8.3(a); (c) Demery testified that [redacted] DG, in the form of a rhetorical question "what kind of fool would [he] be" to testify to other crimes he committed but didn't confess to - a direct violation of his oath to tell the truth, the whole truth and nothing but the truth under oath and a direct breach of his contractual plea agreement with the State to testify truthfully - a plea bargain he was rewarded for by the State;

(3) This Court is bound by the findings of fact made by the jury (whose exclusive province it is to find facts) which aren't challenged by the MAR and which the State hasn't challenged. These findings include, but aren't limited to;
(a) Their acquittal of me, the defendant, of First Degree Murder on the basis of premeditation and deliberation. The States only witness who testified that I killed James Jordan testified that the murder was premeditated and deliberate, the Court instructed the jury that there was evidence that tended to show guilt of this (Demerys testimony) and the jury, clearly rejecting Demerys credibility, acquitted me of his allegation which was unsupported and unconnected by any neutral unbiased evidence or testimony. This indicates that Demerys credibility wasn't a compelling factor in the jurors decision to convict me. In turn, this highlights the materiality of the tainted evidence, the Brady violations and other errors affect on the jurys guilty verdict.
(b) The jurors post-conviction, pre-judgment revelatory finding that they did not unanimously find that I killed, intended to kill or attempt to kill James Jordan directly refuted Demerys testimony on the ultimate issue of State v. Green. If the

States star witness is deemed credible enough by this reviewing court to essentially VACATE their finding, where neither party has requested the Court to do so, it would be akin to AN Appellate court overruling the trial courts findings of fact where there WAS NO Abuse of discretion even though the trial court presided over AN evidentiary hearing AND had the opportunity to directly observe the witnesses demeanor, AND body language, AND their AURA to determine if they were credible, The jurors finding that the Defendant did not kill may have not been DG UNANIMOUS, but it may have been, we have NO way of KNOWING. But, what is beyond dispute, what is A fact, is that the jurors last finding of fact, or, expression of fact, if you will is that the jury did not unanimously find that I killed, ATTempted to kill, or intended to kill. Yet, the State wants this Court to reject the jurors expression of their findings AND find overwhelming evidence of guilt which, by law, would require overwhelming evidence of Defendant killing James Jordan AND, IN the process, demean the jurors exalted STATION AS fact finders where this Court simply doesn't have the jurisdictional

authority to do since there is no issue in dispute about what the jury expressed in writing with regard to the jurors expressing their finding that the defendant didn't kill.

4. I dare say that, in North Carolina, there has never been a conviction ~~[redacted]~~ upheld due to there being (alleged) overwhelming evidence of guilt where:

(a) The jury did not unanimously find that the defendant committed every element of the crime beyond ~~[redacted]~~ Reasonable Doubt;

(b) The star witness (and only witness) claiming that Defendant committed the crime admitted committing perjury in the same case at an earlier time and openly flouted his sworn obligation to tell the truth, the whole truth, and nothing but the truth;

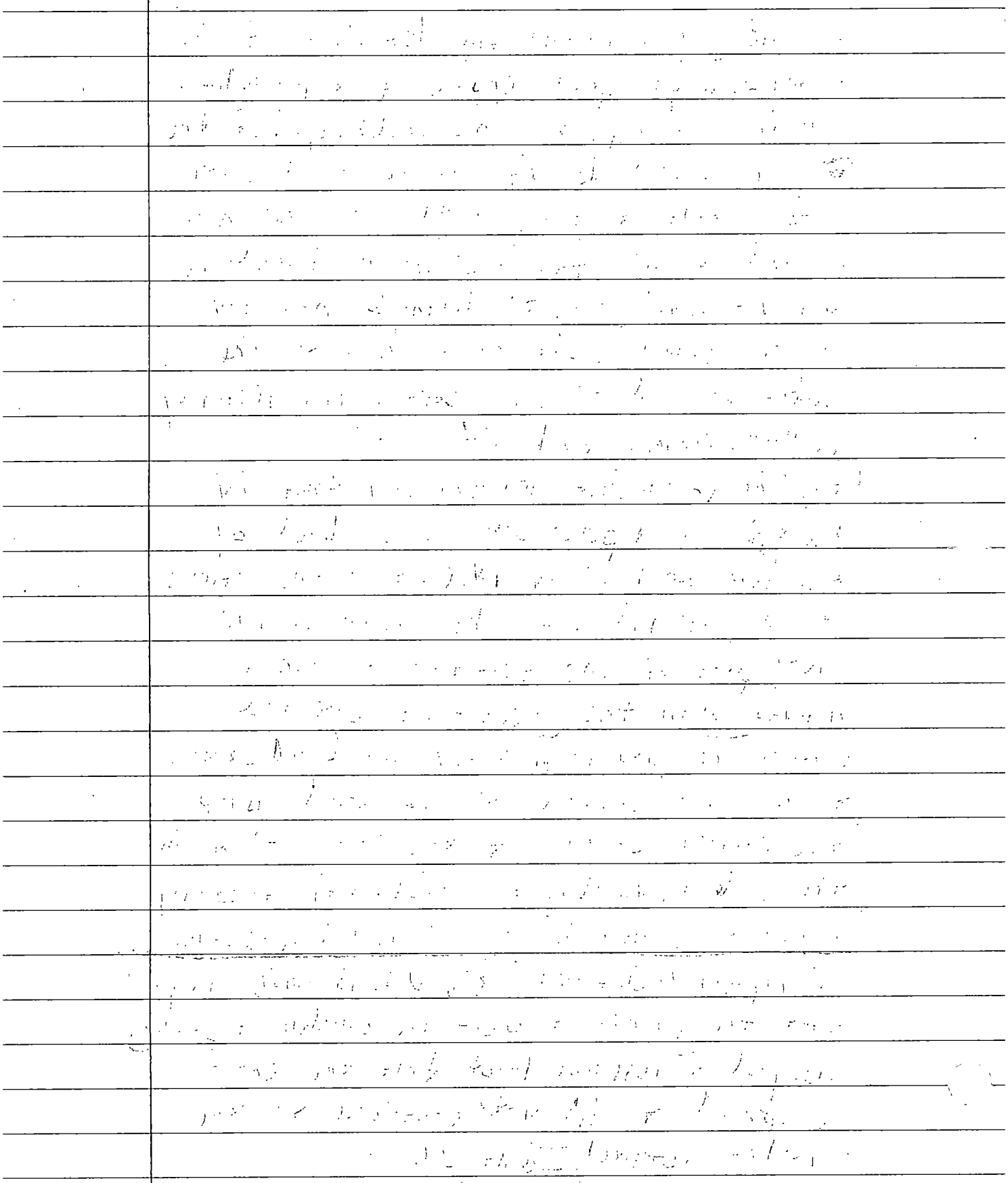
(c) The star witness (and only witness) claiming the Defendant committed the crimes breached his plea agreement from the stand by not testifying to the whole truth and boasting he would be a fool to do so;

(d) There was no confession, no neutral witness or victim testimony claiming that the defendant committed the crime;

(e) the jury acquitted the defendant of one Larry Demery's crime version of a premeditated murder, thus impeaching his credibility. If the jury believed Demery lied about a crime version that if true would more likely have resulted in his friend (I was his friend, he was not mine) going to death row, how can Anyone extend credibility to him to the extent required to characterize his testimony as "overwhelming evidence of guilt?"

(f.) The Court instructed the jury that an Accomplice is a person who is considered by the law to have an interest in the outcome of the case and that they should examine every part of the testimony of such a witness with the greatest of care and caution. The jury complied, obviously found Demery to be not credible, and it would usurp the exclusive province of the jury to weigh the evidence, including the credibility of Demery, in order to counter the jury's unchallenged verdictum.

Chapman v. California, 386 U.S. 18 (1967) requires that the government bear the burden of proving "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." Id at 24.



This Court, as all Courts in the United States of America, is qualified to respect and comply with the law in a manner that promotes public confidence in the integrity and impartiality of the judiciary, No matter what political and special positions held by those with extraneous private interest may conspire to do, or influence the Court actors to do. N.C. Code of Judicial Conduct, Canon 2,

The Defendants attitude, or high volume of disciplinary infractions dispensed in retribution for simply working on this case and refusing to put corrupt state officer egos before my family's well being and my right to access the Courts. is not on trial. Neither should Michael Jordans status be deferred to even though he has never asked it to be. The State and officers of the Court have used these ad hominem attacks to stigmate this case, to confuse the issues, to justify their capitulation to fear and personal interest. If the State wants to dispute these facts and make it an issue we can litigate it in court. We can introduce the disciplinary infraction files which will result in the creation of a record that proves criminal conduct by state officers and officials

many of whom have been fired for related criminal conduct and would love to testify about why, and who had them to, target me with write-ups and attempts on my life for simply accessing the courts.

We can introduce witnesses, such as the trial judge, Greggery Weeks, who will testify about the "10/90 Rule" that has been applied to my case from the beginning and the crimes committed in State v. Green and other cases by those working in tandem to fleece taxpayers.

We can introduce witnesses, recorded conversations, and documents to prove that police involved in this case, and politicians, and lawyers, and journalist made up allegations against James Jordan, manipulated me with these allegations and still are working to attribute these allegations to me to use Michael Jordans celebrity to advance their political and personal greedy agendas off my back while my family and I continue to suffer daily due to unrelenting torture for 30 years.

We can introduce evidence, documents and court records, as well as testimony to show how unscrupulous people did this case like they did cases sanctioned by In re Pitts 966 F.2d 1443,

In re Kunstler, 914 F.2d 505; Robeson Defense Committee v. Britt 132 F.R.D. 650; Nakell v. Attorney General of North Carolina, 15 F.3d. 319 (1994) and, most shockingly Matter of Nakell, 104 N.C. App. 638, 643. I have never cursed nor disrespected Anyone in a Court, not even when they lied on me and my family to get me killed on deathrow. Anyone truly innocent of a crime they were convicted of are going to be in perpetual state of dissatisfaction and seeing that it is not an isolated event but routine will make them even more dissatisfied. Lawyers shouldn't fear being sanctioned for advocating fearlessly.

Yes, there was sufficient evidence to find guilt in this case. One liar lying under oath allows any party to claim "sufficient evidence" to support a verdict in their favor.

But the United States Supreme Court has "repeatedly repudiated" an approach by lower Courts that base their reasoning solely on the sufficiency of the evidence." Anthony v. Louisiana, 143 S.Ct. 29, 35 (2022)

"As a species of harmless-error review generally, review of constitutional error in a criminal trial does not ask an appellate court to assess "whether, in a trial that occurred without the error, a

A guilty verdict would surely have been rendered." Sullivan v. Louisiana, 508 U.S. 275, 279 (1993); see also Kotteakos v. United States, 328 U.S. 750, 765 (1946) (holding, as a general matter, that the harmless-error inquiry "cannot be merely whether there was enough to support the result, apart from the phase affected by the error"). Instead, Chapman v. California, 386 U.S. 18, (1967) requires that the government bear the burden of proving "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained," id., at 24, 87 S.Ct. 842, with the appellate court focusing on "the guilty verdict actually rendered in this trial," Sullivan, 508 U.S. at 279. "That must be so because to hypothesize a guilty verdict that was never in fact rendered - no matter how inescapable the findings to support that verdict might be - would violate the jury-trial guarantee." Id. at 279-280.

The hypothetical guilty verdict the State is trying to trick us into reviewing this case in light of is, apparently, any felony murder, with or without an acting in concert theory or instruction. See, The States response to Defendants Fifth Supplement to the MAR, pages 49 through 50. This Sophistry

is unethical, a violation of N.C. Revised Rules of Professional Conduct and Rule 11 as quoted above. See States Response To Defendants Fifth Supplement, pages 49-50

The Attorney Generals office has more experience, expertise and practice litigating post-conviction cases than any other office in N.C. They are the best of the best and any Assistant Attorney generals lack of experience in any area is made up by the access they have to mentors within and outside of the office, brief banks, etc.. No, I am being too harsh. We're all human but what is a game of chess for them is my life, it is my families life and the future of the children in my family.

The State has conceded that "the trial Court's instructions to the jury on felony murder, which were correct, constitute the law of the case, And this court may not overrule the trial Courts decisions", and, "The trial courts instructions to the jury on felony murder were proper". Indeed.

Yet, not to beat a dead horse but, the State knowingly and intelligently waived the acting in concert instruction and thus the Courts election not to submit to the jury the charge of

Acting in concert must be treated as the equivalent of a verdict of not guilty of of felony murder by acting in concert with someone else who killed James Jordan. This is the law of this case.

Since at least 1935 the N.C. Supreme Court has held that it is a rule with the N.C. Supreme Court that a verdict may be given significance and correctly interpreted by reference to the pleadings, the facts in evidence, admissions of the parties, and the charge of the court. State v. Whitley 208 N.C. 661, 182 S.E. 338, 340 (1935) The trial court instructed the jury that to convict the Defendant they had to find, inter alia, that I, myself, killed the victim. By limiting the jury's consideration to the question of guilt of premeditated murder and felony murder by the defendant killing, himself, without giving an instruction on acting in concert, the Court, with the States consent withdrew acting in concert from the jury. State v. Mundy, 243 N.C. 149, 152; State v. Adams 266 N.C. 406, 407 (1966); State v. Smith 226 N.C. 738, 739-740 (1945)

The Defendant respectfully states that it is a fact that the North Carolina Supreme Court in

State v. Hovis 233 N.C. 359 (1951) that held that "neither the weight nor the reconsideration of the evidence nor the credibility of the witnesses is for the court. State v. Utley, 126 N.C. 997." and, that "the jury alone is authorized to find the facts or to say what they are, and to assess their value in the light of the attendant circumstances. A verdict is the jury's verdictum - the dictum of truth, or the pronouncement of the real truth of the matter." State v. Hovis 233 N.C. 359, 363 (1951) The Defendant requests the Court to take judicial notice of this holding by the North Carolina Supreme Court.

Trial and Appellate Counsel Ineffective

Finally, Pursuant to N.C.G.S. § 15A-1414 trial counsel was ineffective, in violation of the United States Constitution, 6th Amendment, applicable to N.C. by the 14th Amendment for not challenging the conviction based on the jurys post-verdict, pre-judgement verdictum that rescinded their unanimous verdict that the Defendant killed the victim. Id at (3) and (4). A life sentence was not supported by the post-verdict renunciation of the earlier verdict due to the jury pronouncement that the Defendant didn't kill since it invalidated

the felony murder conviction which inseperably included a finding that I killed James Jordan, Trial Counsel should've filed a MAR pursuant to §15A-1414 and should've argued that because the State re-opened the case by holding an evidentiary hearing, which included new evidence, the jury's consideration of this new evidence AND their findings and expression of fact thereon superceded the earlier verdict and the Court is obligated to respect the jury's exclusive province and pass judgement on their findings of fact. The State has argued that the purpose of the hearing - to determine sentencing - militates against this position. I respectfully disagree. The same way the jury's post-verdict findings could obligate the Court to pass judgement of death in mandatory deference to the jury's verdictum, the jury's findings could and did invalidate their conviction if Trial Counsel had raised it. Trial Counsel was ineffective for not doing so and Appellate Counsel was ineffective for not raising ineffective assistance of trial counsel during the appeal pursuant to N.C.G.S. 1443 due to

trial counsel not filing a post-verdict motion for appropriate relief based on the judgement when all of the elements of First Degree Murder, specifically "killing" was not proved. beyond a reasonable doubt as evidenced by the jury's lack of unanimity on the issue of whether the defendant killed. Please see State v. Handy, 326 N.C. 532, 160-161

It is imcumbent upon this Court at this point in this case to follow the laws of this State, and the United States Constitution and declare for the sake of efficiency, and to maintain integrity in this case, to preclude unscrupulous people from continuing to use State v. Green as a Golden Goose fed by lies, attempts to blackmail James Jordans family, to invade and take Michael Jordans empire, and the use of this case to push genocidal crimebills without regard for truth, facts and most definitely not The TRUTH-off of my family, my community, our common people suffering... this Court is moved to declare that prejudice is presumed based on Constitutional (U.S.) errors unless the state proves that the errors were harmless because there is no reasonable

possibility that these errors and violations of the U.S. Constitution contributed to the verdict obtained and the same for violations of N.C. Constitution

The Court is moved to declare that for statutory and evidentiary errors the burden is on the defendant to demonstrate that there is a reasonable possibility that, had the non-constitutional errors not been committed, a different result would have been reached at trial.

The Court is moved to declare that the jury's verdict WAS that the defendant was found guilty of personally killing James Jordan and robbing him and conspiracy to rob him and that the defendant was not convicted of acting in concert nor aiding and abetting, nor any other type of agency theory and therefore the burden is on the state to sustain the verdict as found by the jury in State v. Green, not as Felony murder is defined in general in cases with a different fact pattern and where the evidence allowed the Court to instruct the jury on a vicarious liability theory, such as acting in concert, aiding and abetting as a means of imputing to me the acts of another perpetrator. Yet, the jury last verdict invalidated the former and is still binding.

The defendant moves that the court declare that the burden is on the state to show the foregoing beyond a reasonable doubt where the United States places the burden on the state to prove harmless error.

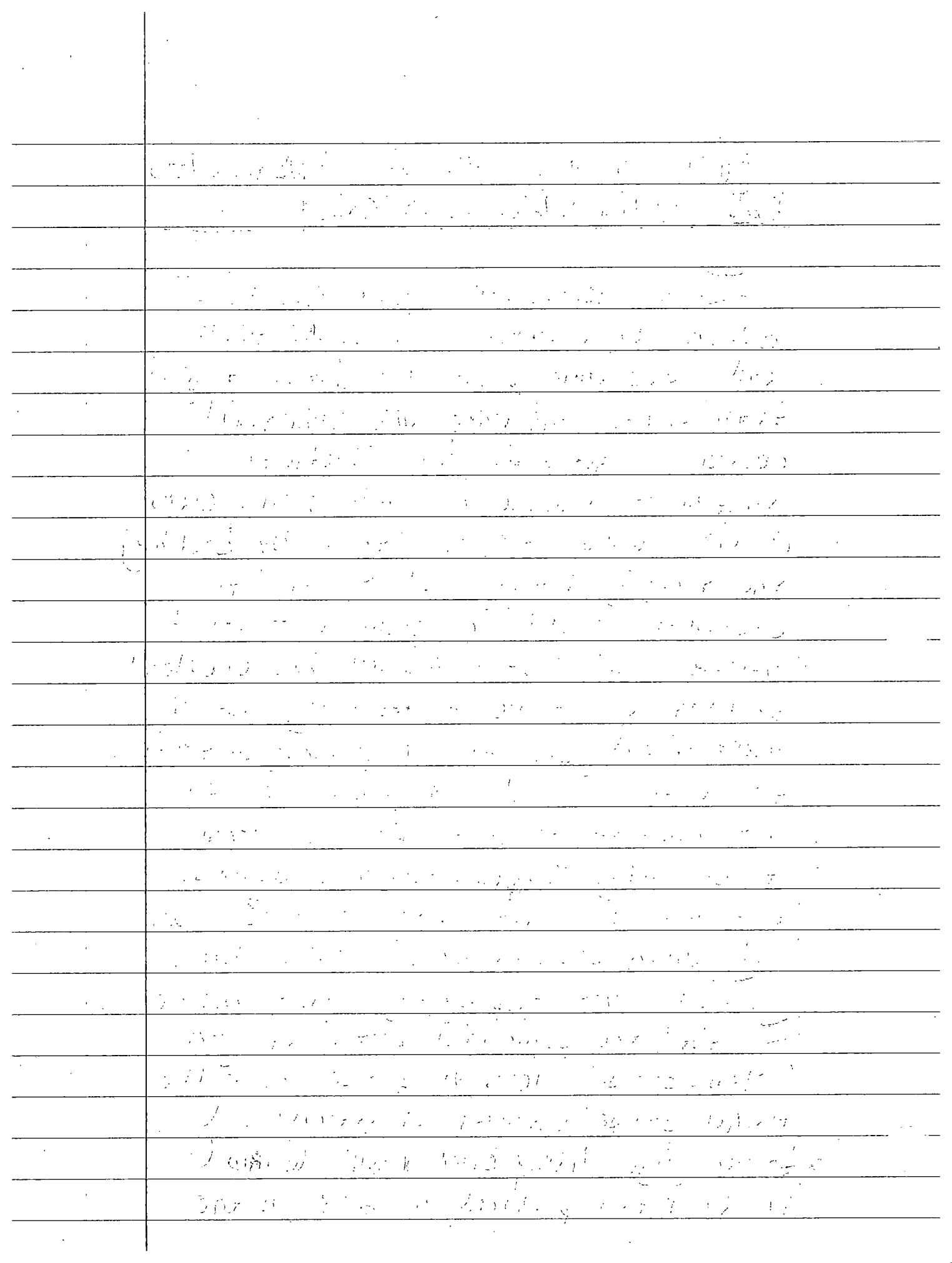
INCORPORATION IN FIRST AMENDED MOTION FOR APPROPRIATE RELIEF

This Motion, Memorandum of Law and Arguments contained herein is hereby incorporated by reference to Defendant's First Amended MAR. For the above reasons, as well as those presented in Defendants M.A.R, and all supplements, which are incorporated by reference herein, this Court should review this case in light of the jurys first verdict and their re-considered verdictum. Like the trial jury, in doing so, the Court must and will find that there is a reasonable ~~doubt~~ doubt that the defendant killed, intended to kill, planned to kill or attempted to kill James Jordan and reasonable doubt that the defendant robbed or conspired to rob James Jordan since the only witness, Larry Demery, publicly lied to this Court in this case under oath about matters material to his punishment. No other witness testified I committed these Crim

MOTION THAT PRO SE PLEADINGS BE CONSTRUED LIBERALLY

I AM Representing myself because I believe AN Attorney is A clients fiduciary AND owes their clients the duties of good faith, trust, confidence AND CANDOR, AND because I Refuse to WAIVE Ineffective Assistance of Appellate AND Trial counsel claims or allow counsel to WAIVE them by breaching the foregoing duties owed to me to circumvent my will. This creates conflicts of interest AND, IN State v. Green, his engendered ANIMOSITY AGAINST me by attributing actions, intentions AND character AND psychological traits to me that I do not possess AND AM not responsible for, mostly for the purpose of blackmailing Michael Jordan IN A bunco scam that has been active for over 30 years. AND which preceded James Jordans death.

I AM not Representing myself because I fit the psychological profile of the "classic pro se", "delusional pro se" or "Eddie Haskell pro se" claimants AS Attorney AND former judge, NANCY Black Norelli described IN AN Article, published in 2013, in the



North Carolina State Bar Journal titled "Working with a Pro Se Claimant - Never Easy, but completely Manageable", an article that was the subject of a defamation lawsuit by John Fletcher Church. Church v. Norelli 252 N.C. App. 92 (2017). I trust all of those who conduct themselves in a trustworthy manner. My ignorance and failure to apply this standard has cost me my life for the actions of another or others. I will not make the same mistake again as an adult that I made as a child due to friendship to Larry Martin Demery and blind reliance on people who demand trust without obligation and honor and accountability, I will not.

Until I Retain or Receive an Attorney who gladly and agreeably uphold their fiduciary duties without fear of retaliation from the State, wealthy people with power, or N.C. legal community I move the Court to liberally construe my pleadings, motions, "however inartfully pleaded" and hold them to "less stringent standards than formal pleadings drafted by lawyers". Haines v. Kerner, 404 U.S. 519 (1972) State v. Ramirez 2021-NCCOA-726, 2

I am hereby incorporating by reference this document

Finally the Court is hereby notified that As a pro se there is no possible way for me to type this document, Nor could I possibly get in outside party to type it on my behalf due to the fact that North Carolina prisoners are not allowed to receive mail from the United States Postal Service but must go through a middle man private company in Maryland called Text Behind. This company refuses to forward or send "legal mail" to us or from us. I have had copies of N.C. Prosecutors Manual and typed copies of my motions rejected by this company, resulting in lost of postage and time, because according to this company, these materials are "legal mail." The security rationale being used to justify this profitible venture is that drugs come though the mail on paper, yet, even after mail and all contact visits were stopped due in part to Covid19 and in part to drugs, drugs continued to come in through staff, the way the mass majority of drugs and weapons have always came in and inmates continue to die from fentynl overdoses as did staff killed by other racist organizations affiliated staff poisoning them

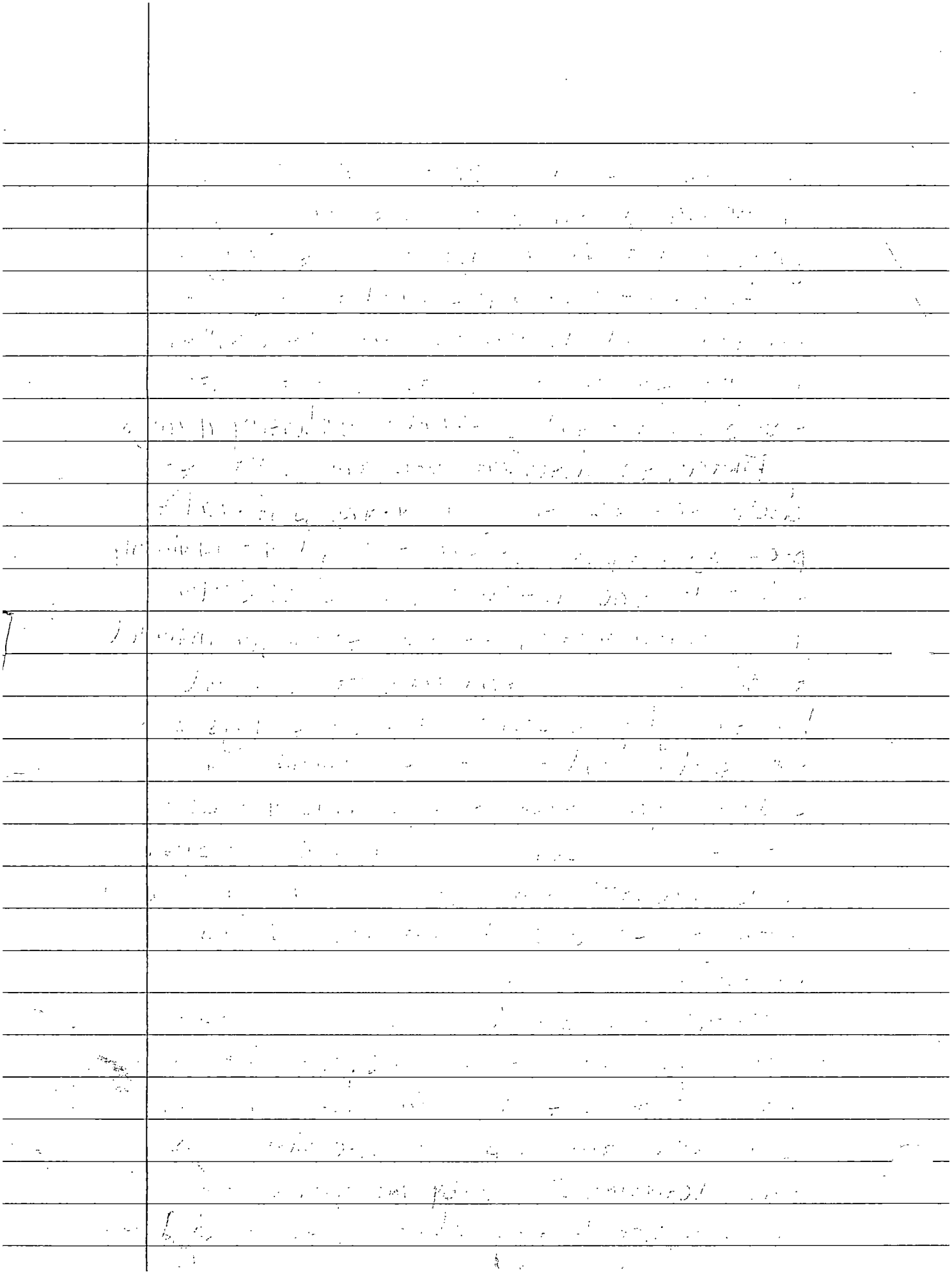
by drugs so their family think they were on drugs and are encouraged to sweep it under the rug to receive insurance money but actually to hide that N.C. prisons are being used by politicians, racist organizations and others to create threats to society that they then make money off of creating impotent solutions to address. If I was to wait until I am freed to ventilate these actual acts of war on society I would be complicit and responsible as those who are carrying these attacks out. So, No, I can't type these pleadings and, yes, I have to send pleadings that are unedited and have typos and markings because it is impossible to get enough carbon paper and writing paper to edit and copy these pleadings and file them before the Court rules on the MAR in court now which result in these claims not being addressed and possibly deemed waived by the Courts. These are facts. See Ex. 1 New offender Policy from 10/18/2021

WHEREFORE, defendant prays that the Court declares the burdens requested, declares the exact verdict found by the jury.

and declares each element of the First Degree Murder charge the Court gave to the jury, the jurys verdict was an answer to in following the Courts instruction at the pre-verdict stage of the trial, and declares that the law presumes the jury followed the Courts instruction at the pre-verdict and post-verdict evidentiary hearings

Further, the defendant moves the Court to declare that the trial jury, in the post-verdict, pre-judgement phase of the trial did not unanimously find that the defendant killed James Jordan nor any other victim, attempted to kill, or intended to kill anyone and that the Court is bound by the jury's expression of their findings and the findings and/or lack of unanimity in findings where these findings have not been put at issue before this court by no party and, therefore, this Court has no jurisdictional Authority to pass judgement where no issue exists; The Court may not substitute his judgement for that of the jury!

Further, the defendant moves the Court to take judicial notice of the Requests for judicial Notice of facts filed in this action by me, Daniel Andre Green, a pro se defendant, and the defendant, I, hereby incorporate the Requests/motions for judicial notice of adjudicative



Appellate I.A.C. was Not Based on Strategic Considerations

Appellate I.A.C. Was Not Based on Strategical Considerations.

The well-worn axiom that "[e]ffective appellate advocates winnow out weaker arguments and focus on those more likely to prevail on appeal", State v. Todd, ---N.C.App.---, ---, 790 S.E.2d 349, at 367 (2016)(Todd II)(citing Jones v. Barnes, 463 U.S. 745, 751 (1983)) doesn't apply here when applying the law to the facts of State v. Green.

Why Not?

(a) I was represented by Appellate Defender Malcom Ray Hunter, Jr. Appellate Defender by Assistant Appellate Defender Janine Crawley Fodor, Durham N.C. Ms. Fodor informed me that she did not have the discretion to file a Motion for Appropriate Relief nor investigate it DUE to her "statutory authority" not allowing her to. Thus, her decision to advise me to file a MAR based on grounds for ineffective Assistance of counsel, and her failure to file the MAR herself wasn't strategical; she had no choice or discretion, due to N.C. Appellate Defender practice and policy.

(b) Ms. Fodor also stated she didn't have the "time" nor "the resources" to do a "full investigation" for an MAR, such as trying to find Clyde McMillan, the Public Defender office paralegal. This also negates the position that she had a strategical reason

Not to file a motion based on the grounds for ineffective assistance of counsel she informed me she saw but which she wasn't allowed to explain and elucidate to me before she dropped her license and membership in the North Carolina State Bar and went to New York.

(C) None of the errors Ms. Fodor and Mr. Hunter chose to argue on appeal were stronger than (1) the "missing element" claim both trial and appellate counsel should've and should've raised but did not. Curiously, Ms. Fodor did include the instructions (in the appellate record) the Court gave the jury that would've put an attentive and effective attorney on notice that the defendant, due to the Court not instructing the jury on "acting in concert" and aiding and abetting, had to commit every act for the jury to find guilt beyond a reasonable doubt of every element of Felony Murder, including the killing itself. Obviously, Demery wasn't a credible witness and, in conjunction with the jury clearly expressing in writing that after the State reopened the evidentiary phase of the trial the jury re-considered it's earlier finding and declined to unanimously find that I killed James Jordan, thus, negating the

guilty verdict. It matters not what the trials different phases are labeled; the jury is always the sole judges of credibility and what weight to give the evidence. The jury is the exclusive fact finders and no court can ignore or override that Constitutional right to be judged by a jury of our peers without shaking the legal universe American criminal laws govern microcosmically and state laws govern microcosmically.

(2) No error Ms. Fodor and Mr. Hunter raised could be considered stronger and clearer than the Moorman error - trial counsel promising to put on evidence they knew they couldn't:

(a) That James Jordan was still alive after the body was discovered on August 3rd, ~~[illegible]~~ DC 1993;

(b) That James Jordan was alive on July 27th, ~~[illegible]~~ DC 1993

(c) That James Jordans wife and others, repectively talked to him on August 6th and July 27th,

And... if counsel indeed could've produced the evidence that James Jordan was alive after the time Larry returned to pick up me from the home of Kaye Hernandez around 4-ish A.M. July 23rd, 1993 the evidence would've obliterated the alibi they also promised, but, ultimately, didn't

put the evidence on to support as they contended they would, when providing their roadmap to the jury during the opening statement.

(3) No error Mr. Hunter and Ms. Fodor raised on appeal could be stronger than the Court depriving me of counsel by appointing an attorney, Mr. Ruisome, who knew nothing about the case except for what he knew from media accounts - which our laws rightly consider hearsay - when he was appointed to advise me on whether or not to waive the right to motion for a mistrial based on the States reference to me not testifying. Nor could it be stronger than the Court forcing hybrid representation on me by initiating a conversation about whether I agreed with counsels motion, clearly an error that mooted my waiver because I had no statutory right (See N.C.G.S. 1-11) nor Constitutional right to represent myself while represented by counsel - as the State has argued during the litigation of the pending MAR and which the Court, in the exercise of it's discretion and wisdom in applying the law, has agreed with when it struck my pro se MAR due to post-conviction Attorney being appointed after the pro se MAR was filed so, by analogy, if a client

represented by post-conviction counsel who is, according to common law, presumed to be a clients "Agent", can't file a prose motion due to the statutory and common law prohibition against hybrid representation, it is obviously error for a Court to unilaterally force hybrid representation on a client by initiating a colloquy about whether a client agreed with Counsels motion for a mistrial. At that point, the Court stripped me of counsel and forced me to represent myself in making that decision to answer its question. This is a structural error - deprivation of counsel. The Courts appointment of an attorney who happened to be chilling in the hall outside the courtroom, who was not familiar with the trial, trial counsels strategy, nor the previous days events relevant to Mr. Britts breaking the rules by mentioning me not testifying (when Mr. Britt, in the heat of anger excitedly uttered that he didn't care what the rules were which is circumstantial evidence that his breaking the rules, less than 24 hours later, was premeditated and deliberate.) It is no surprise that Mr. Britt has continued to break the rules and the law by: (1) Talking to the press, in violation of the Courts pre-trial order directing him not to, to spread defamatory ad hominem propoganda against me and

counsel, (2) Filing a defamatory false affidavit in my civil suit against WBTV filed in 2006-2008, which falsely averred that statements by me admitting participation in the robbery and murder of James Jordan were admitted into evidence at trial. The defamation lawsuit was filed because WBTV reporters Rob Tufino false reported that I said to them I was present when James Jordan died and that I made a video rapping about killing James Jordan. WBTV showed the video but muted the sound so that their lie wouldn't be exposed by the sound of what I actually said. This campign of false propoganda has been consistent since the first press conference after my arrest when Hubert Stone claimed I had just been released from prison for armed robbery. It has been executed as a strategy to mislead James Jordans wealthy and powerful family into adopting the States lies and acting in accordance therewith.

(3) Incentivizing Ronald Fletcher, who I don't know, to lie by claiming he knew my alibi was false because (A) he was, he claimed, at the same party as me that my alibi witnesses testified to and that I wasn't there and it was on a different night

(B) Incentivizing Ronald Fletcher, who was employed by the State at Robeson County Dept. of Social Services, to

(3)

falsely accuse my sister of child neglect so that, on the day Mr. Britt broke the rules, my sisters babies were taken by DSS which forced me to waive trial counsel motion for a mistrial to make sure my sister would get her babies back.

4) No error raised on appeal was stronger than the error the Court committed when the Court instructed the jury that they could convict me if they found I killed "the victim" when counsel created and litigated, for two whole weeks, their contested issue that the victim wasn't James Jordan. If the jury, if only one juror, believed the victim wasn't James Jordan, based on the Courts flawed instruction - which Counsel didn't object to, they could still convict me even though the indictment required I be convicted of killing James Jordan, not an imaginary anonymous victim. Thus, Appellate Counsel should've raised ineffective Assistance of trial counsel for not objecting to the Courts erroneous instructions. Yet, appellate counsel couldn't because it was the N.C. Appellate Defenders office practice, pattern and policy not to raise due process errors apparent from the

cold record - or Ms. Fodor, AN Attorney who actually co-wrote the N.C. Public Defenders Manual for UNC-ChapelHills Institute of Government, which classifies her AS AN expert WAS misled by her office, When the person who literally wrote the book for Public Defenders to use to effectively represent indigent clients say she saw grounds for ineffective assistance counsel IN this case AND even placed part of the transcript that revealed it in the ~~Appellate Appendix~~ record she should be believed AND the questions should be:

(1) Why didn't she tell me what the I.A.C. grounds were when she suggested I, or A Fayetteville lawyer file A MAR?

(2) Why didn't she tell Carlton Mansfield what these grounds were? So he couldn't, out of spite or fear, claim there were no meritable issues? Which cost eight years in this case and which now forces me to possibly prove cause for the Court to excuse any Arguable procedural default and prejudice, ~~cause~~ Which no lawyer wants to do because no lawyer wants to go against other lawyers, especially IN A high profile case.

N.C.G.S. 7A-452(e) Violated

It should be noted that the 7A-452(e)

Requirement that the clerk of superior court shall make a copy of the complete trial division file in the case, make a copy of documentary exhibits upon request, and furnish those files and any requested documentary exhibits to the appointed attorney was violated.

One of the exhibits in the "First Amended" MAR by C. Scott Holmes is a sealed envelope that was never unsealed until Curtis Scott Holmes and Ian Mance motioned the court to unseal it. When it was unsealed, it contained information that when sealed by the Court, Judge Weeks stated it would be sealed until appeal yet, when I told Ms. Fodor about this information and potential claim she kept saying she couldn't find it in the record, the exact same thing Mr. Mansfield told me and Mr. Holmes and Mr. Mance told me. If Ms. Fodor was automatically entitled to these sealed documents by law, she had no discretion to raise claims based on what was unlawfully held from her and therefore her inability to raise claims on these suppressed trial records can't be found to be strategical. Further, there is, upon information and belief, another sealed envelope containing a document that would prove trial counsel shouldn't have alleged and promised the evidence would show James Jordan was still alive after July 23rd, 1999 4:30ish A.M. Ms. Fodor may not

have seen this document if it was withheld from her which is what appears to be the case and my insistence that it existed, while Court officials withheld, it could've only served to [redacted] make her think I was crazy, imagining things, traumatized or lying which could be why she suggested I file a pro se MAR while she was still representing me, still working on the case, and while she gave no indication in the record that she had withdrawn from [redacted] representation of me. As in State v. Glenn 221 N.C. App. 143, 155. I couldn't file a pro se motion for appropriate relief while represented by counsel on appeal. (See Also, §1-11 (2007), State v. Freeman, 314 N.C. 432, 437-38, and while represented by counsel litigating my case at NM, as Ms. Foder was.

WERE THE APPELLATE ERRORS RAISED STRONGER?

The N.C. Appellate Defenders Office made numerous assignment of errors and abandoned many of them. This selective process has been described as "winnowing", an old farming term of art that means "to seperate the chaff from grain by means of a current of air" and which has acquired the meaning of seperating

the good from the bad after close examination; to sift. This begs the question, by what standard do we judge what is good?

The State often argues that the Attorneys decision on what are good errors is reasonable and sound when a defendant alleges and claims that the Attorney was ineffective and, when the same Attorney is still within the Adversarial process the State will claim that these same errors are bad, are legally deficient for the purpose of granting Relief. The focus seems to be more on winning than protecting the integrity and morality of the laws of the land as ministers of justice ideally should.

The strongest ~~claim~~ error appellate counsel raised was that the trial court committed error by statements, admitting in evidence, I made to law enforcement during an asserted custodial interrogation where No Miranda warnings were given. (State v. Green 129 N.C. App. 539, 547) Although this error won a dissenting opinion it was not stronger than the claims for ineffective assistance of counsel that N.C. Appellate Defenders office should've raised by MAR.

Although the Court of Appeals expressed its discomfort with the facts related to custody and

revealed that if they had been the trial court they "might have made somewhat different findings or additional findings and ultimately might have reached a different legal conclusion on the question of custody." Id at 458, the almost insurmountable bar this claim had to hurdle was the principle that Appellate courts are bound by the trial courts findings of fact absent an abuse of discretion, even if reasonable jurist would've found different facts from the same competent evidence, State v. Cooke 306 N.C. 132, 134 (1982)

Yes, it was an abuse of the Courts discretion to find as a fact that I told the police questioning me during interrogation that I first encountered the Lexus belonging to James Jordan while walking down Hwy 74. I never told the armed officers this Nor, upon information and belief, did any officer testify at the suppression hearing that I said this. It should be noted that every attorney I've had, with the exception, maybe, of Curtis Scott Holmes, has directly stated or indicated that the outcome of my trial and appeal, and MAR has been influenced by Michael Jordan somehow. If this theory were true, it would be highly suspicious for

officers of the Court for the State and defense not to correct such an obviously erroneous finding of fact that has no basis in the evidence and is so inculpatory. due to the fact that the states narrative was that I carjacked and killed James Jordan on highway 74. So, to anyone in a position to influence this case to my detriment, this erroneous prejudicial finding of fact would provide justification to do so, especially since this attributed to me by the Court citing the record. It would be a violation of the N.C. State Bar Rules of Professional Conduct and N.C. Civil Rule 11 (N.C. Rules Civ. Procedure, G.S. §1A-1, Rule 11) for any officer of the Court to repeat or perpetuate this erroneous finding as fact.

Finally, whether or not the errors raised on appeal were stronger than those winnowed away, or the M.A.R. claims based on Ineffective Assistance of Counsel is immaterial. It was Ms. Fodors duty to raise the I.A.C. claims in Appellate Court once she identified them. That was her constitutional duty.

Winnowing is an easy process. What it seperates is seperated easily by the wind which is why Ornan the Jebusite built his threshing floor in Mount Moriah, a windy place. This threshing floor was offered to King David for free but he insisted

on purchasing it, He built an Alter there and his son Solomon built the house of the Lord, known as King Solomons temple. It is commonly acknowledged that our Courts owe a great part of their Image to King Solomons Temple and to the Knights that took pilgrims to the City of Peace, our Attorneys can trace their code of Morality, ethos and role as Advocates. But, it is from the humble undervalued servants that were bound to the center post of the Circular threshing floors that Attorneys get their name and most productive technique of ~~bones~~ harvesting the Kernals of truth that are the most acceptable sacrifice on the Alter of justice. Attorneys, like compasses, like those on the threshing floor, turn and grind through evidence, through law. through conflict-laden relationship. With each circumambulation Attorneys often must thresh the wheat from the chaffe. The whole process is Neccesarily recursive and time consuming. For that reason perhaps the business of the Courts are best served by the winnowing process, by throwing the wheat into the air, for whatever wind that, perchance, may blow, to seperate the desirable from the undesirable but the interest of

justice itself, which relies on equality, consistency, and a level threshing floor needs attorneys to keep the floor level by the weight of their Revolution which turns the wheels of justice that grind too slowly but all the more finer. When it doesn't it is up to the villains, the most wretched of the earth to glean what others, by divine grace, have left behind so that we too can learn the privilege of labor for its own exalting sake.

Respectfully submitted, this ~~29th~~ 30th day of ~~April~~ May, 2023

Daniel A. Green

State of North Carolina) Motion Requesting Court
v. FILED) take Judicial Notice of
Daniel A. Green 2025 JUN 15 A 8:41) Public Records, Part 1

ROBESON CO., C.S.C.
BY

The Defendant, Daniel A. Green moves this Honorable Court to take judicial notice of the following public Records: In support of this Motion, the Defendant shows the following:

The Law

Judicial notice is governed by statute, indicating "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is... (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." N.C. Gen. Stat. § 8C-1, Rule 201 (b)(2011). "This Court may take judicial notice of the public records of other courts within the state judicial system." State v. Thompson, 349 N.C. 483, 497, 508 S.E.2d 277, 286 (1998). If a party requests that the court take judicial notice and provide the necessary information, it is mandatory that a court take

judicial notice. N.C. Gen. Stat. §8C-1, Rule 201(d) (2011). "Judicial notice may be taken at any stage of the proceeding[,]" including an appeal. N.C. Gen. Stat. §8C-1, Rule 201(f) (2011); State ex rel. Utilities Comm. v. Southern Bell Telephone Co., 289 N.C. 286, 288, 221 S.E.2d 322, 323 (1976) (Underline added)

The Defendant, I, Request and move the Court to take judicial notice of the following portions of the transcript of proceedings before the Honorable Gregory A. Weeks, Judge Presiding, in State of North Carolina vs. Daniel Green:

1) Hal Locklear testified under oath.
2) Mr. Locklear testified "I got probably a quarter of a mile down in the woods, one of the deep curves, I looked down there and saw like a man, or dummy or whatever, floating down there in the water, hung up on a limb. (Trial Transcript Page (T.T.P.) 193: 12-17)
3) Mr. Locklear also testified, when asked "... how far had you walked into the woods when you first saw what you had described as a dummy?" "Probably about an eighth of a

Mike. (T.T.P. 194: 3-6)

4) On T.T.P. 205: 19-20 Mr. Johnson Britt asked Mr. Locklear "...was the body that you had observed suspended above the water removed..." (underline added)

5) It is well known to Attorneys that one can "prime" a persons memory to reflect what the primer wants them to say by casually making reference, by words, to what they desire a person to express.

6) In contrast to his previous testimony, Mr. Locklear later testified that "Maybe two inches" of the body was touching the water when Woodberry Bowen cross-examined him (T.T.P. 209-210: 1-9)

7) Mr. Bowen ~~testified~~ DG asked Mr. Locklear, "...can you describe the water from the bridge down to where you saw this object in the ~~water~~? river" (T.T.P. 206: 23-25)

8) Mr. Locklear responded "Two turns in the creek before you get to where I found him at." (T.T.P. 207: 1-2)

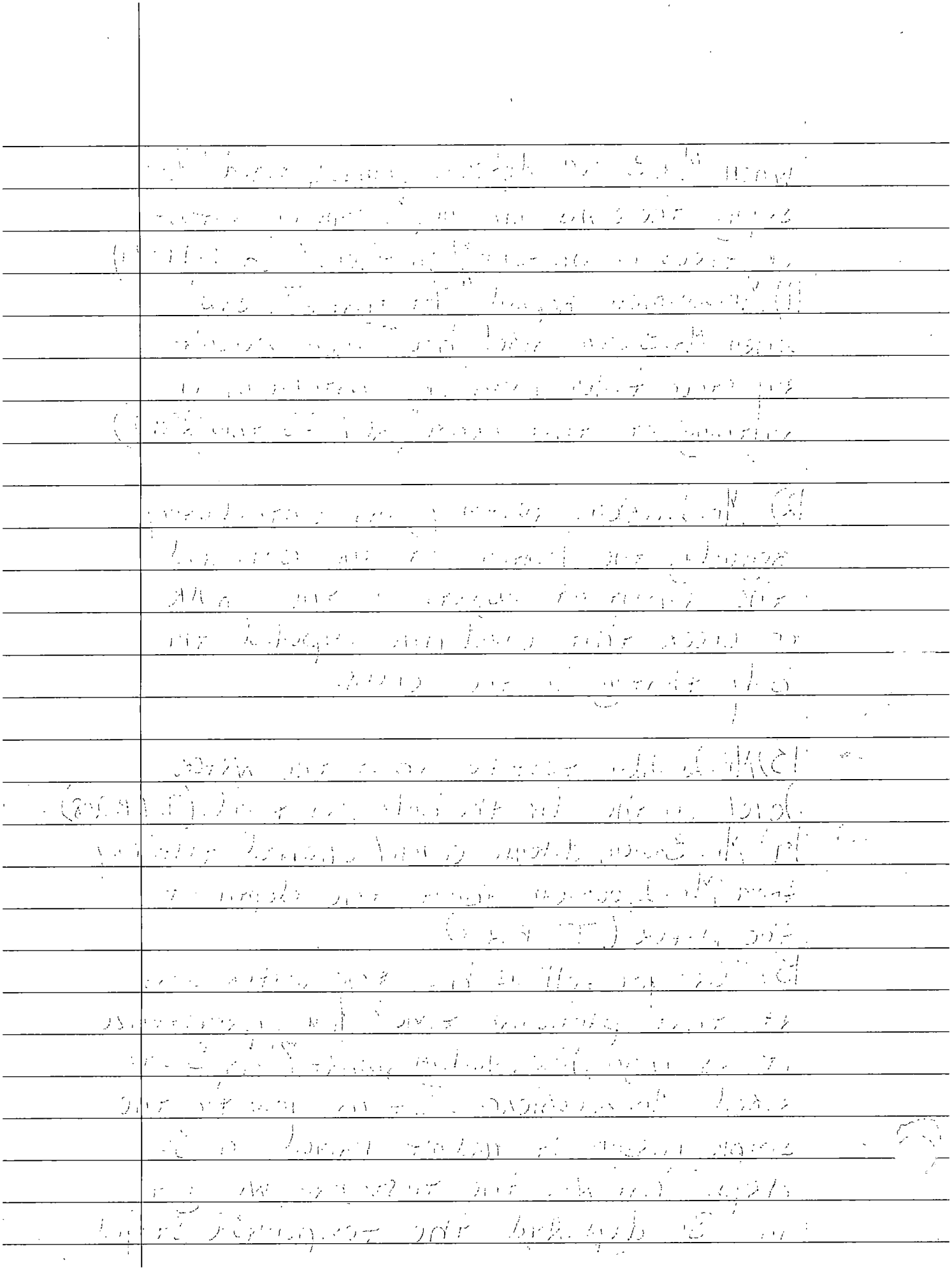
9) Mr. Locklear testified "Yes, there's plenty of trees and stuff in there" (T.T.P. 207: 6-7)

10) Mr. Locklear then testified "One big oak tree floating across the water, thin" (T.T.P. 207: 20-21)

when Mr. Bowen, defense counsel, asked "You're saying there was only one ("stumps, or obstructions or trees or whatever") in there?" (207: 14-21)
11) Mr. Locklear replied "Not that I saw" when Mr. Bowen asked him "There weren't any other fallen limbs or obstructions or anything of that nature" (207: 25 thru 208: 2)

12) Mr. Locklears testimony was contradictory regarding the location of the body and the amount of objects in the river or creek that could have impeded the body floating in the creek.

13) Mr. Locklear testified about the water level on the day the body was found. (T.T.P. 208)
14) Mr. Bowen, defense counsel elicited testimony from Mr. Locklear about the depth of the water (T.T.P. 208)
15) "Can you tell us how the water was at that particular time? You characterize it as high, low, medium, what?" Mr. Bowen asked Mr. Locklear. "It was low for the simple reason it hadn't rained in 30 days. That was the first rain we got in 30 days. And the temperature stayed



up above A hundred, same length of time." (T.T.P. 208: 3-9)

16) Mr. Bowen drove home the point that, according to Mr. Locklear, the water was "unusually low" for a month before August 3rd. (208: 10-13)

17) Mr. Bowen also elicited testimony from Mr. Locklear that only, "maybe two ~~AND A HALF~~ DP inches" of the body was "touching the water, thats all." (210: 4-9); that "those waters are not tidal", they don't go up and down", and "[t]he only thing that raises that water is typically the level of rainwater in there" and that "It's not spring fed" (210: 4-17)

18) Mr. Bowen also elicited testimony from Mr. Locklear that "somewhere along" July 26th or 25th, 1993, but not as early as July 23rd", the week before" August 3rd, 1993 he took his son fishing to "the same stretch" where the body was found and that although the tree or stump on which he saw the body a week later was there, the body wasn't there on it, and the water level was approximately the same" (T.T.P. 211: 16 thru 212: 10)

The Court orally instructed the jury, after Mr. Locklear testified "... don't conduct any independent inquiry or investigation or research of any kind. Have a good night." (T.T.P. 217:8-10)

19. Mr. Locklear testified on Jnuary 3rd, 1996 (T.T.P. 1 thru 217)

20. Mr. Locklear testified that he arrived "at the first ~~page~~ bridge" on Pea Bridge Rd. "[S]omewhere around 4:00 p.m." (T.T.P. 192:13)

21. Patricia Lathrop was an Assistant Administrator for Scotland County Emergency Service, her duties including "dispatching, keep all the records" (T.T.P. 225-226). She testified that a 911 call came in from Jerry Smiling (T.T.P. 230:11-13) and that she told Agent Lea that the call came in at 16:33 (4:33 p.m.) indicating that a body was lying in the road out on Pea Bridge Rd. (T.T.P. 228) Mr. Locklear testified that he left the scene where the body was, after having stayed about two hours, "got a six-pack of beer" and came right back, that the body had not been removed and brought back to the Roadway but that "they had just got it out when I got back" (T.T.P. 205:18-21)

22. ~~[illegible]~~) Mr. Locklears testimony is internally inconsistent on

the following points:
A) The distance of the body from where he went into the woods;
b) How much of the body was in the water;
c) Whether the body was floating in the water or suspended above the water;
d) Whether there were any obstacles in the water between the bridge and body; (Supra)
23. Mr. Locklears testimony was inconsistent with Patricia Lathrop about the time the 911 call was made and where the body was located at that time
24. Lt. James Monroe of the Scotland County Sheriffs Dept. testified under oath. (T.T.P. 231:2)
Mr. Monroe testified that Locklear took him 200 to 300 alongside the bridge to a wooded path where the body could be seen from the edge of the creek (T.T.P. 235:18)
25. Mr. Monroe described the body as dressed in "dark clothing, possibly black or blue jeans with possibly a black shirt (T.T.P. 236:1-4) "suspended in the area (Air?), possibly the feet were the only thing in the water" (T.T.P. 236: 1-4) (parenthesis added)
26. Tom Hutcher III, an EMT employed by Scotland County EMS testified under oath (T.T.P. 258:7-25)

27. Mr. Hatcher testified that from the bridge the body was "150 yards, 200 yards maybe from the bridge" (T.T.P. 266:3-5)

28. Jerry Starnes, a Captain over criminal investigations employed by the Marlboro County Sheriffs Dept. testified that he noticed a body over the trees, probably about a hundred yards down the creek bed (T.T.P. 287:23-25

29. Mr. Starnes testified that he took pictures of "the general area there of the creek, of the body in the creek" and of the body at the McColl Rescue Squad building. (T.T.P. 289:18-25)

30. Mr. Starnes testified that exhibits 16 and 17 appeared to be blow up of pictures he took when he got on the scene that shows the condition of the body as he found it on August 3rd, 1993 and of the body at the rescue squad building. (T.T.P. 291 and 292)

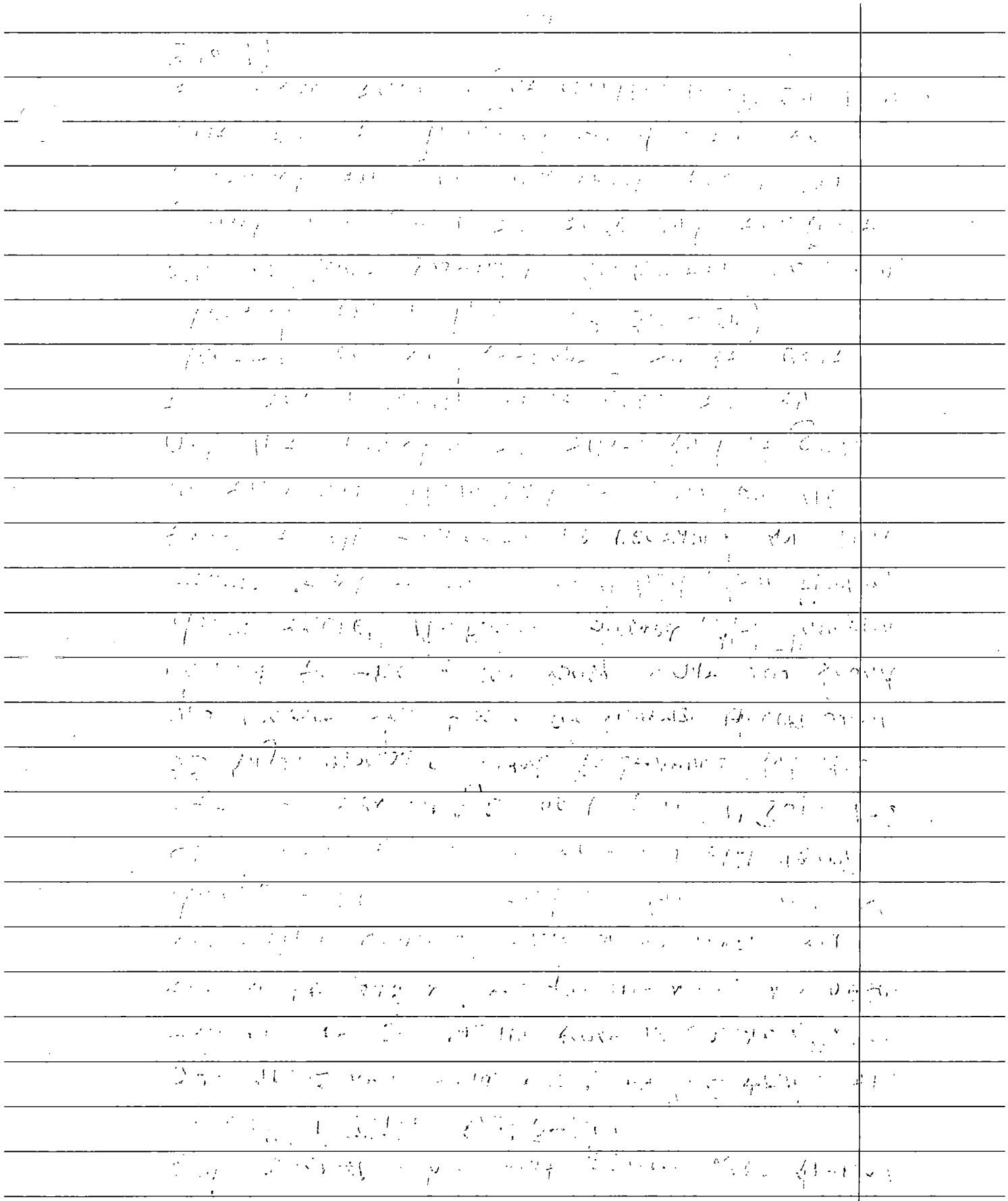
31. Angus Thompson, Court appointed Attorney for the defendant told the Court "That's the evidence. Yes." when the Court asked "Do you have any evidence that someone, Defense anywhere, made an identification of the body

And indicated that that person was Alphonso Green?" (T.T.P. 313: 3-14)

32. Mr. Bowen told the Court "I think the fairest we can answer that is possibly," when the Court asked "Are you intending to offer any other evidence that would link the disappearance of Alphonso Green or anyone else with the body that was discovered off of Pea Bridge Road? (T.T.P. 331: 17-24)

33. Angus Thompson asked Mr. Starnes "And did you contact the family of Alphonzo Green with respect to the missing body that you found down there?" Mr. Britt objected, Mr. Thompson ~~stated~~ stated to the Court "Well, your Honor, first of all, identity is certainly an issue in this case. We've said it early on we had not conceded to that. And it goes to — the relevancy is it goes to an identity or an attempt to at least identify the body (T.T.P. 310 - 311)

34. The Court sustained Mr. Britts objection, granted his motion to strike and the Court confirmed the jury understood the Courts instruction to disregard by directing them to raise their right hands. (T.T.P. 345:10 thru 346:7)



35. Mr. Starnes testified that the Sheriff, Foley, handed him a .38 shell casing that Mr. Foley indicated he found in an area by the creek, "maybe ten or twelve feet from the bridge", "to the right of the path" (T.T.P. 308)

36. Mr. Starnes testified that no one dusted the shell casing for fingerprints (T.T.P. 344: 3-6)

37. Sheriff Foley testified under oath (T.T.P. 347: 12-14)

38. Sheriff Foley testified that the body was "possibly a hundred yards" downstream from the bridge. (T.T.P. 386: 5)

39. Sheriff Foley testified that the path going in the direction of the body "wasn't something that you would just normally discover. You had to know it was there. And Hal Locklear showed it to me and took me in there to get to the body." (T.T.P. 388: 9-12) (Underline added)

40. Mr. Foley testified "Well, this path that you're referring to, we're referring to, rather, is not a path as anyone in this courtroom would just get in and walk on. You had to know it was there." (388: 1-4)

41. The Court asked "Folks, isn't a that Mr. Alphonzo Green was subsequently located?" Mr. Britt answered "Yes". Mr. Bowen said to the Court, "Judge, I don't mind stipulating right now, that Mr. Green was found, Alphonzo Green was not -- what you got here is a botched investigation" (T.T.P. 366:22-24, 367:22-25)

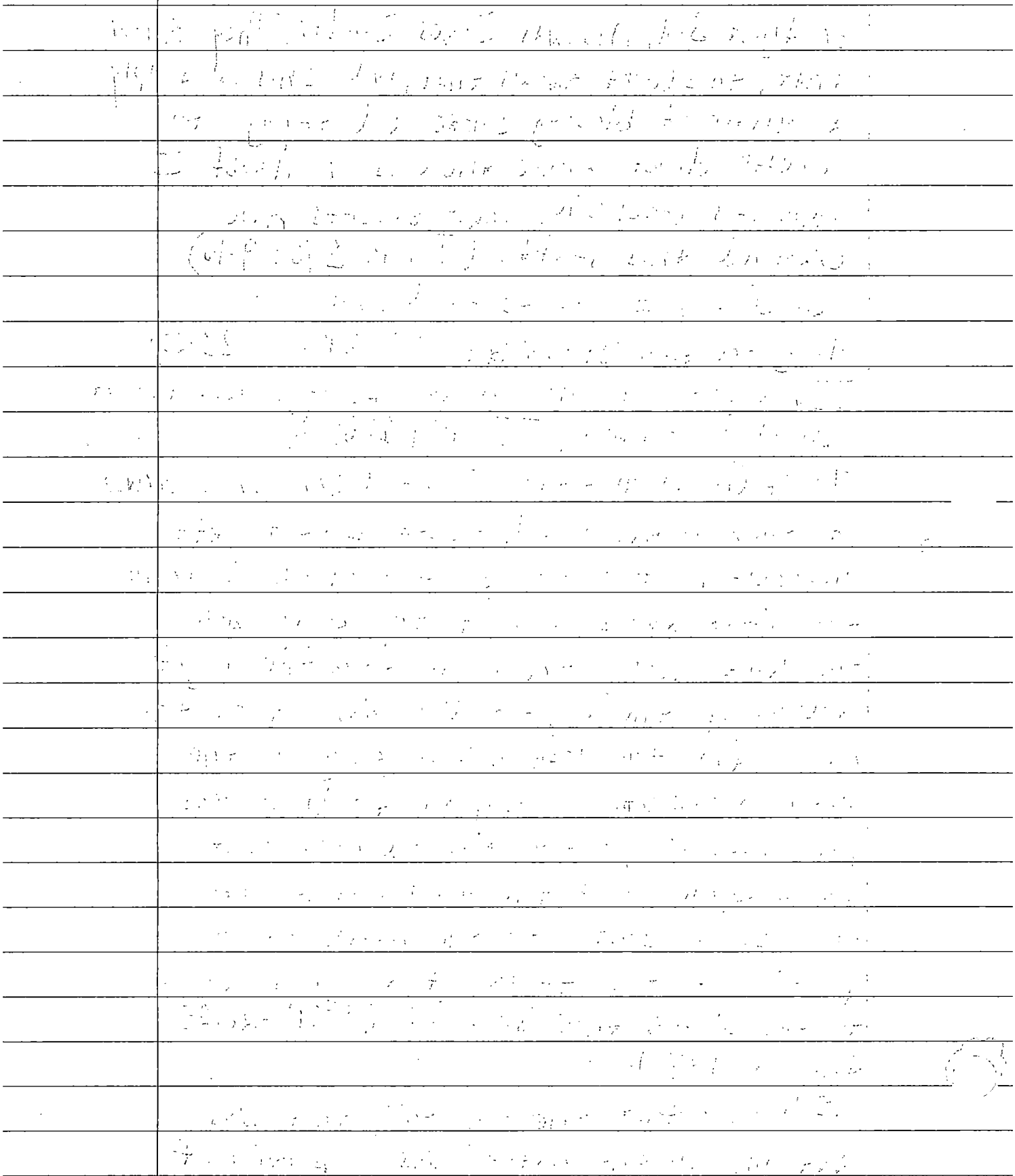
42. Mr. Britt stated in open Court, "Your Honor, they know what the evidence is, they have had this evidence in their possession for well over a year, they know how the body was identified, in terms of the fingerprints, the dental work, they know what their client had and what they didn't have, they already stipulated that their client had these items that belonged to Mr. Jordan, Now, they have got to lay some groundwork, and back up Alphonzo Green is alive and well. If necessary, we'll bring him in here and parade him around in front of jury if that's what it takes to satisfy them that this line of questioning is improper. (T.T.P. 369:10-25) Mr. Britt also asserted, "The only person, the only identification that was made as to the body that was recovered from the Gum Swamp

on August 3rd, 1993; was James Jordan. They know that, this Court knows that, and this is simply a matter of blowing smoke and trying to create doubt where there is no doubt. I mean, it's conclusive. Their experts have examined this stuff. (T.T.P. 370: 9-16)

43. Jennings Grooms testified under oath during the trial, State v. Green (T.T.P. 404: 23-25) In August 1993 he was an Operations Lieutenant, Second in Command (T.T.P. 406: 6-12)

44. Mr. Grooms testified "I would say my observance of the body was in a horizontal position, left incumbent position with portion of the body in the water and portion of the body above the water, meaning the right, from the right midline up, the Right midline was out of the water and the left midline being in the water somewhat" in Response to Mr. Bowers presumptuous question, "Was the body as it was suspended over the water, was it more or less horizontal to the water or one portion of the trunk of the body closer to the water than another?" (T.T.P. 426: 25 through 427: 1-10)

45. Now, in fact, the only thing that was actually in the water was a portion of



of one of the legs, is that not true?" Mr. Bowen persisted. Mr. Grooms stuck to his response, "Not on my observance, sir." (T.T.P. 427:4-13)

46. Mr. Britt didn't object to Mr. Bowen's leading question, in fact, he cooperated by volunteering the photograph, Exhibit 16.

47. "It's here", Mr. Britt offered. Mr. Bowen continued, "Now, I believe you have spoken to this photograph which has been introduced as State's Exhibit 16. And I'll ask you to look at that again, please, and I'll ask you, is not this ~~leg~~ left leg from the knee back to the foot the only thing that is actually in the water? (T.T.P. 11-14)

48. Mr. Bowen showed Mr. Grooms a photograph. Mr. Bowen again asked Mr. Grooms "based upon the photograph, or what you saw, how far would you say that the body was suspended above the water." Mr. Grooms responded "I would say 18 inches to 22, 18 to 22 inches, More.. Like I said earlier it was in the horizontal position, as you showed me on this photograph, this photograph depicts the left leg being in the water. Also this photograph, it doesn't show the torso area from the midline,

the left side, doesn't show it's in the water also. (T.T.P. 428 thru 429:)
49. Mr. Grooms also testified about the creek having two runs, one with "No or very little water running through it, more like sod or mud (T.T.P. 409-410) that a boat couldn't float in (433)".
50. Marlboro Coroner, Timothy Earl Brown, testified under oath (T.T.P. 434: 2-4) Mr. Brown testified about the condition of the body, the discoloration as a result of "when bodies have been in water for a period of time, the pigmentation changes, and it's light in some areas and then what was exposed to the light were very dark (T.T.P. 441: 10-13)
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for a good while or perhaps not to bleed externally at all" (T.T.P. 730:22-24)

53. The States witnesses on the issue of identity testified from page 187 to page 1220 of the trial transcript. 1033 pages of the trial transcript is litigation about the issue of the identity of the body, an issue that was nonmaterial and irrelevant to the charges I, the defendant was charged with, Murder, Armed robbery and Conspiracy to commit armed robbery except to the degree it created doubt about the time of James Jordans and death and the relevance of the alibi defense. The entire trial transcript, not counting jury selection, is 8411 pages according to the certification by Steve S. Huseby, CCR-B-1372 on page 8412 of the trial transcript.

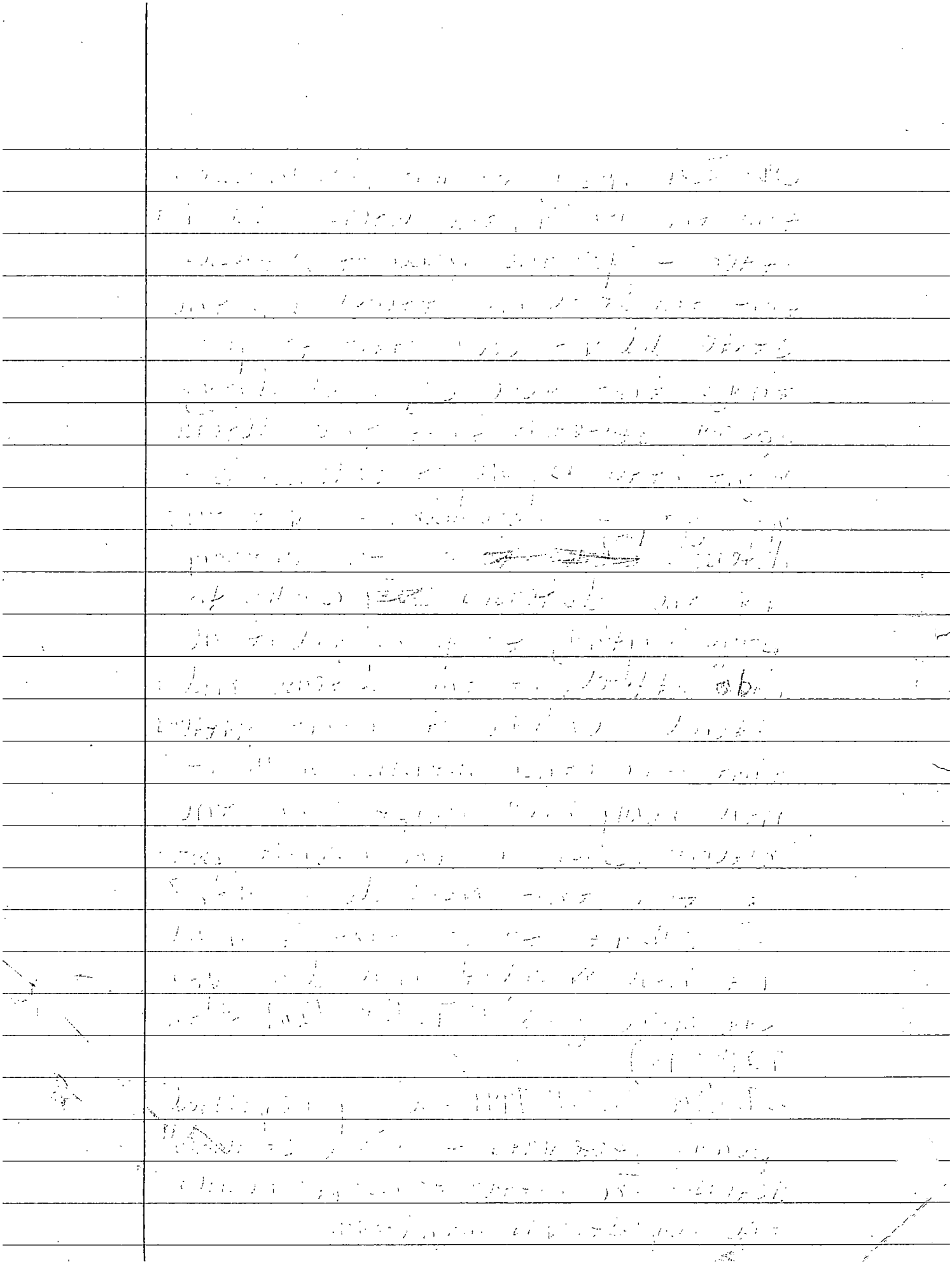
54. In the opening statement, trial counsel, Angus Thompson told the jury that "The evidence will show that... Donald Chiofolo, spoke with Delores Jordan, the wife of James Jordan, and the evidence will show that she informed Mr. Chiofolo that she had spoken with her husband

on August the 5th, this conversation having taken place on August the 6th of 1993. Now, ladies and gentlemen of the jury, besides the fact that Delores Jordan, James Jordan's wife, represented to Mr. Chiofolo that she had talked to her husband as late as August the 5th of 1993, when the State claims that James Jordan was dead some two weeks earlier, Mr. Jordan the evidence will show, was seen by numerous citizens who are disinterested and disconnected with this case." (T.T.P. 68 thru 69-3

55. Mr. Thompson told the jury that "The evidence will show that almost amazingly James Jordan presented himself at the Cumberland County Library on July 27th, 1993, and talked at length with the state and county historical librarian, Ivan Johnson, and that he told Mr. Johnson that he needed to call his son at Fort Bragg." Johnson reported that Jordan made reports about making bets, losing a car and asking to use the phone..."

56. In closing arguments, Mr. Thompson told the jury "No, the defense did not offer to you the number of witnesses that the State has offered. No, the State did not even offer to you things that were suggested during opening statement that the defense might offer by way of evidence. But you got to remember, it's not the defense's ~~duty to~~ or it's certainly not the defense's ~~duty~~ burden to prove anything to you.... And if we ~~have~~ offered, if the defense had offered evidence of other matters that -- or other witnesses, would it have really been helpful on the material issues or the relevant period of time that we're dealing with? I submit to you that it would not have. Wouldn't have done you any more good." (T.T.P. 7269:24 thru 7276:16)

57. On T.T.P. 7494, the jury requested opening statements from the State and defense. The written transcript indicates the request was withdrawn.

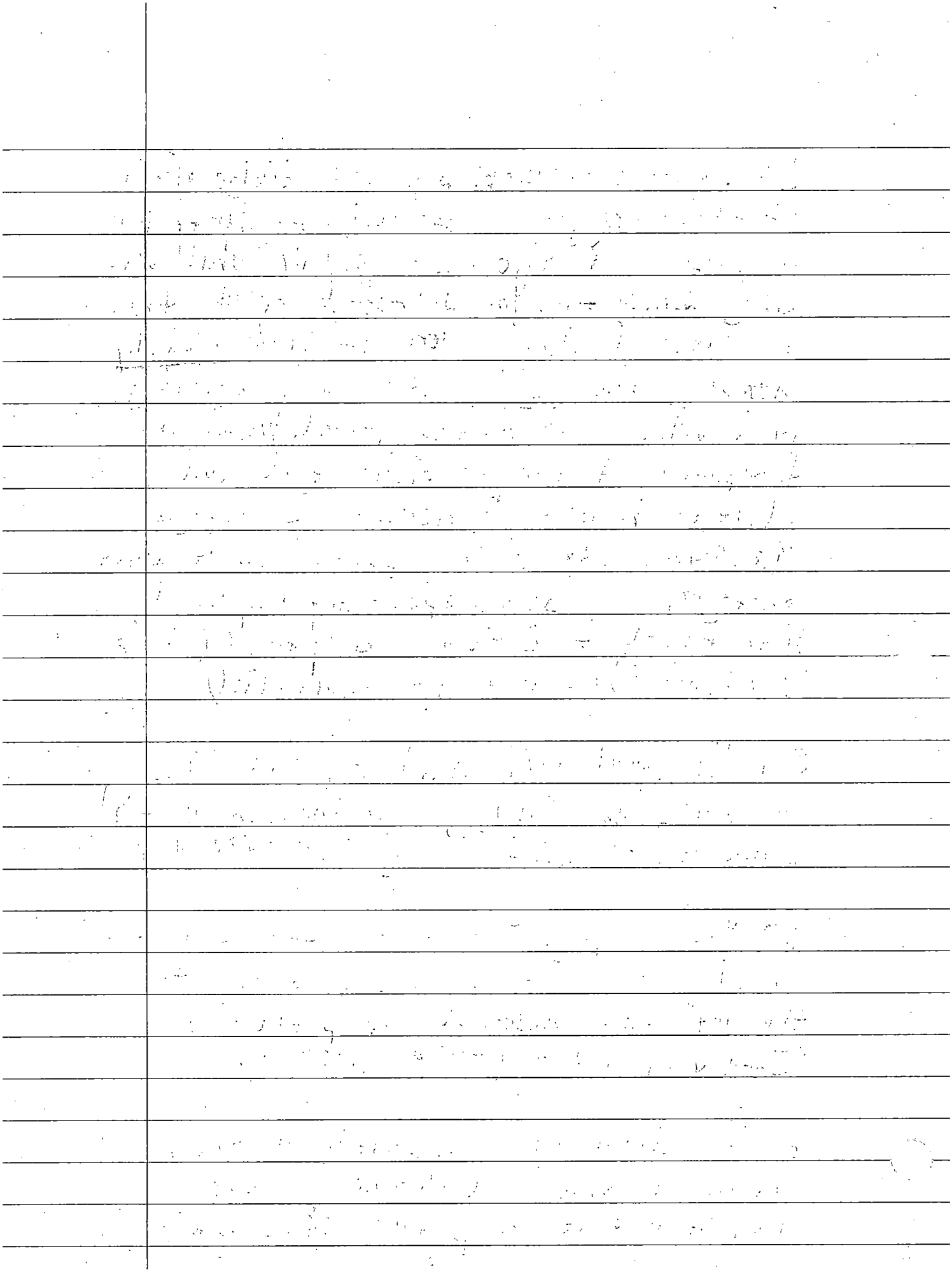


58. On trial transcript page 7483 Judge Weeks stated to the juror "... we needed to clarify for the purposes of the record exactly what was being asked for. You will ~~record~~ recall that a number of photos were introduced allegedly depicting the alleged victim in a body bag, in a vehicle and on the ground. Would the forepersen of the jury please stand and identify himself or herself? I Apologize, Ms. Manuel. Can you be specific about what photograph is being specifically requested with regard to Jordan in body bag? (T.T.P. 7483:6-18) (Underlined for emphasis added)

59. Ms. Manuel (Pink Locklear) responded, "The one where he is hanging over the limb in the river, that specific one" (T.T.P. 7483:19-21

60. Yet on page 7481 of the trial transcript, line 19 the Court read a "piper writing from the jury" that described the picture as "Jordan on a tree" (T.T.P. 7481:7-15)

61. This difference in description of the picture indicates a material difference in the jurors interpretation of the picture. It is material



to issues in the MIR before the Court because while a dead body can float down a creek and get snagged on a limb, a dead body can't float up and above the surface of water to hang on a tree. This would create an issue about whether James Jordan was alive at the time the defense conceded in opening statement that I accompanied Demery to South Carolina to dispose of a deceased body of a "victim" I had no way of knowing. Paula Locklears trial visit to where she thought the body was found was to resolve this issue.

62. Further, it must be noted that the Court, while the jury was deliberating, described the pictures as "Allegedly" depicting the victim ... on the ground (the plea trial counsel, in opening statement told the jury the evidence would show I first saw the body at.) And, the Court reminded and directed the jury that "you will recall that a number of photos were introduced ... depicting the "Alleged victim" ..

63. The word alleged is defined as "Representing as existing or as being as described but not so proved; supposed: an alleged conspiracy; an Alleged traitor; an alleged victim of a crime."

See The American Heritage, Fifth Edition.

64. "Allege" is from the Late Latin exlitigare, to clear at law, from the Latin ex-, out, and litigare, to sue; see Litigate. See, The American Heritage Dictionary, Fifth Edition.

65. Clearly, as the Court indicated by the word "Alleged", both the identity and location of the body were still matters of litigation while the jury deliberated and this fact is material to determining the outcome of the jury claims and the "Mootness Claim" (Trial Counsels decision and promise to put on evidence that James Jordan was alive after July 23rd, 1993; wasn't killed where the State claims he was killed; and their attempts to prove, and success at, raising issues about the identity of the victim), and to demonstrating prejudice therefrom.

66. "A genuine issue of material fact has been defined as one in which the facts Alleged are such as to constitute A legal defense or are such nature as to affect the result of the action..." Smith v. Smith, 65 N.C. App. 139, 142 (1983)

67. "Evidence properly considered on a Motion for summary judgement includes... material which would be admissible in evidence or of which judicial notice may properly be taken." Murray v. Nationwide Mut. Ins. Co., 123 N.C. App. 1, 8, (1996)

68. "Oral testimony at a hearing on a motion for summary judgement may [also] be offered, however, the trial court is only to rely on testimony in a supplementary capacity, to provide a small link of required evidence, but not as the main evidentiary body of the hearing. The trial court may also consider Arguments of counsel as long as the arguments of counsel are not considered as facts or evidence. Strickland v. Doe, 156 N.C. App. 292, 296-97 (2003)

69. Danielle Marquis Elders represented the State in State v. Carver.

WHEREFORE, the defendant, based on the foregoing, respectfully prays the court take judicial notice of the foregoing adjudicative facts to be used to find the facts used to apply the law to and to make conclusions of law for the defendants Motion for Appropriate

Relief currently pending before this Court since 1999.

It is requested that the defendant be granted a hearing on this motion before disposition should the State contest these facts and that the defendant be notified at least two weeks in advance of the hearing date, and that the hearing be open to the public and that the verbatim transcript and audio recording of the hearing be made public in accordance with North Carolina General Statutes 132, Public Records Law, also known as the Sunshine Law.

Respectfully submitted, this ~~14th~~ 16th day of ~~March~~ May, 2023
This the ~~14th~~ 16th day of May, 2023

Daniel Andre Green

Pro Se

Certificate of Service

I hereby certify that, via the United States Postal Service, I caused to be served a copy of the above [redacted] Motion Requesting Court take Judicial Notice of Public

Records upon the North Carolina Attorney Generals office:

N.C. Attorney General, Mr. Joshua Stein,
Mr. Jonathan P. Babb
Mr. Jonathan Hyde
Ms. Kristin Uicker
Ms. Alana Danielle Marquis Elder

North Carolina Attorney Generals office
P.O. Box 629
Raleigh, NC 27602

This the 16th day of May, 2023

Daniel A. Green
4600 Swamp Fox Hwy. West
Tabor City, N.C.
28463

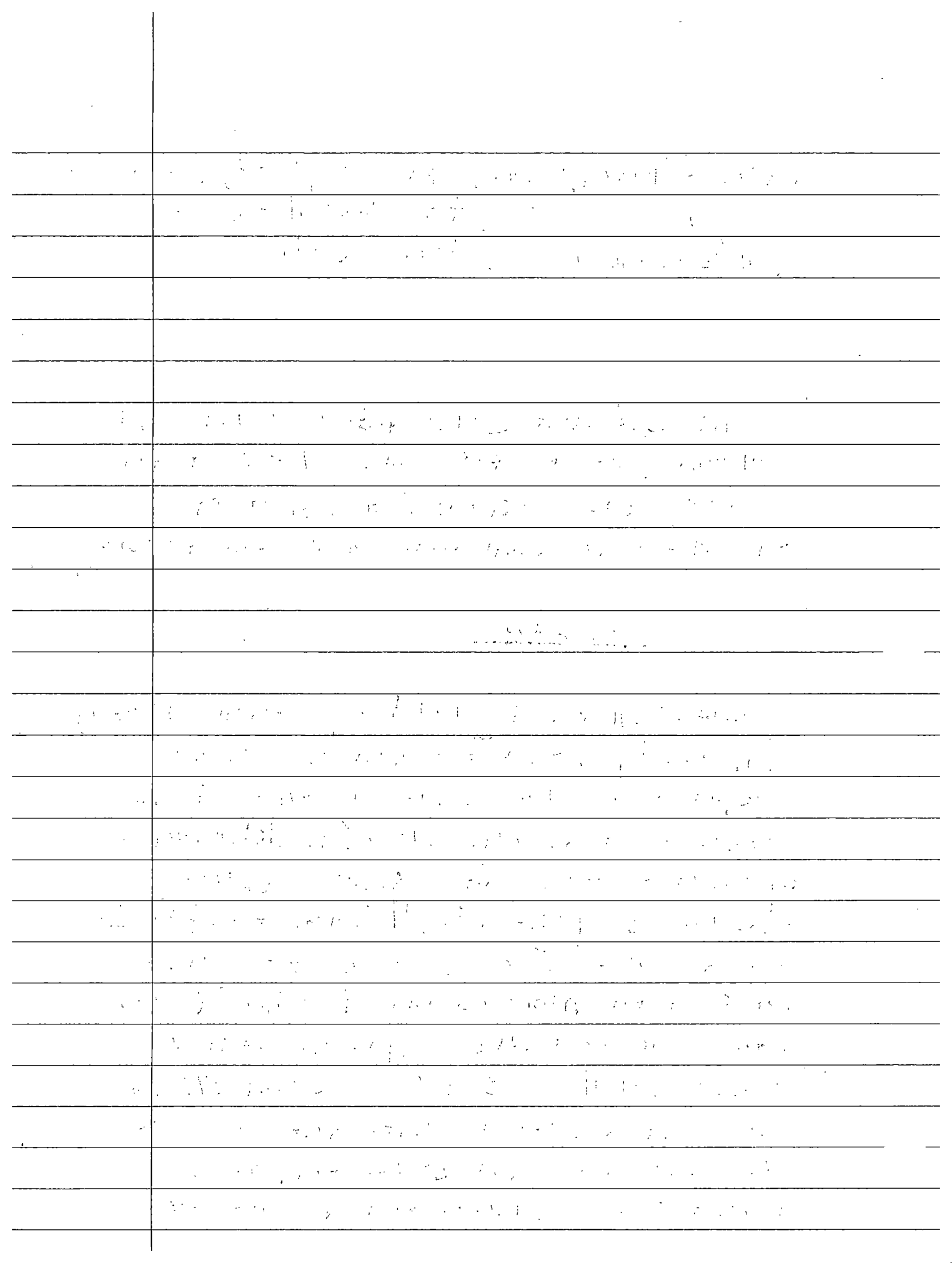
Getting Out.com
Text Behind.com

State of North Carolina) Motion Requesting Court
v.) take Judicial Notice of
Daniel A. Green) Public Records

The Defendant, Daniel A. Green moves this Honorable Court to take judicial notice of the following public Records. In support of this Motion, the Defendant shows the following:

The Law

Judicial notice is governed by statute, indicating "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is... (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." N.C. Gen. Stat. § 8C-1, Rule 201 (b)(2011). "This Court may take judicial notice of the public records of other courts within the State judicial system." State v. Thompson, 349 N.C. 483, 497, 508 S.E.2d 277, 286 (1998). If a party requests that the court take judicial notice and provide the necessary information, it is mandatory that a court take



judicial notice. N.C. Gen. Stat. §8C-1 Rule 201(d) (2011). "Judicial notice may be taken at any stage of the proceeding[,]" including an appeal. N.C. Gen. Stat. §8C-1 Rule 201(f)(2011); State ex rel. Utilities Comm. v. Southern Bell Telephone Co., 289 N.C. 286, 288, 221 S.E.2d 322, 323 (1976)

The Defendant, I, request and move the Court to take judicial notice of the following portions of the transcript of proceedings before the Honorable Gregory A. Weeks, Judge Presiding, in State of North Carolina vs. Daniel Green:

1) Hal Locklear testified under oath.
2) Mr. Locklear testified "I got probably a quarter of a mile down in the woods, one of the deep curves, I looked down there and saw like a man, or dummy or whatever, floating down there in the water, hung up on a limb. (Trial Transcript Page (T.T.P.) 193:12-17
3) Mr. Locklear also testified, when asked "... how far had you walked into the woods when you first saw what you had described as a dummy?" "Probably about an eighth of a

Mike. (T.T.P. 194: 3-6)
4) On T.T.P. 205: 19-20 Mr. Johnson Britt asked Mr. Locklear "...was the body that you had observed suspended above the water removed..." (underline added)
5) It is well known to Attorneys that one can "prime" a persons memory to reflect what the primer wants them to say by casually making reference, by words, to what they desire a person to express.
6) In contrast to his previous testimony, Mr. Locklear later testified that "Maybe two inches" of the body was touching the water when Woodberry Bowen cross-examined him (T.T.P. 209-210: 1-9)
7) Mr. Bowen ~~testified~~ DG asked Mr. Locklear, "...can you describe the water from the bridge down to where you saw this object in the ~~water~~ river" (T.T.P. 206: 23-25)
8) Mr. Locklear responded "Two turns in the creek before you get to where I found him at." (T.T.P. 207: 1-2)
9) Mr. Locklear testified "Yes, there's plenty of trees and stuff in there" (T.T.P. 207: 6-7)
10) Mr. Locklear then testified "One big oak tree floating across the water, thin" (T.T.P. 207: 20-21)

when Mr. Bowen, defense counsel, asked "You're saying there was only one ('stumps' or obstructions or trees or whatever') in there?" (207: 14-21)
11) Mr. Locklear replied "Not that I saw" when Mr. Bowen asked him "There weren't any other fallen limbs or obstructions or anything of that nature" (207: 25 thru 208: 2)

12) Mr. Locklears testimony was contradictory regarding the location of the body and the amount of objects in the river or creek that could have impeded the body floating in the creek.

13) Mr. Locklear testified about the water level on the day the body was found. (T.T.P. 208)
14) Mr. Bowen, defense counsel elicited testimony from Mr. Locklear, about the depth of the water (T.T.P. 208)
15) "Can you tell us how the water was at that particular time? You characterize it as high, low, medium, what?" Mr. Bowen asked Mr. Locklear. "It was low for the simple reason it hadn't rained in 30 days. That was the first rain we got in 30 days. And the temperature stayed

up above A hundred, same length of time." (T.T.P. 208: 3-9)

16) Mr. Bowen drove home the point that, according to Mr. Locklear, the water was "unusually low" for a month before August 3rd. (208: 10-13)

17) Mr. Bowen also elicited testimony from Mr. Locklear that only, "maybe two ~~and a~~ ~~half~~ 12 inches" of the body was "touching the water, thats all." (210: 4-9); that "those waters are not tidal", they don't go up and down", and "[t]he only thing that raises that water is typically the level of rainwater in there" and that "It's not spring fed" (210: 4-17)

18) Mr. Bowen also elicited testimony from Mr. Locklear that "somewhere along" July 26th or 25th, 1993, but not as early as July 23rd "the week before" August 3rd, 1993 he took his son fishing to "the same stretch" where the body was found and that although the tree or stump on which he saw the body a week later was there, the body wasn't there on it, and the water level was approximately the same" (T.T.P. 211: 16 thru 212: 10)

The Court orally instructed the jury, after Mr. Locklear testified "... don't conduct any independent inquiry or investigation or research of any kind. Have a good night." (T.T.P. 217:8-10)

19. Mr. Locklear testified on January 3rd, 1996 (T.T.P. 1 thru 217)

20. Mr. Locklear testified that he arrived "At the first ~~pig~~ bridge" on Pea Bridge Rd. "[S]omewhere around 4:00 p.m." (T.T.P. 192:13)

21. Patricia Lathrop was an Assistant Administrator for Scotland County Emergency Service, her duties including "dispatching, keep all the records" (T.T.P. 225-226). She testified that a 911 call came in from Jerry Smiling (T.T.P. 230:11-13) and that she told Agent Lea that the call came in at 16:33 (4:33 p.m.) indicating that a body was lying in the road out on Pea Bridge Rd. (T.T.P. 228) Mr. Locklear testified that he left the scene where the body was, after having stayed about two hours, "got a six-pack of beer" and came right back, that the body had not been removed and brought back to the roadway but that "they had just got it out when I got back" (T.T.P. 205:18-21)

22. [redacted]) Mr. Locklears testimony is internally inconsistent on

the following points:

A) The distance of the body from where he went into the woods;

b) How much of the body was in the water;

c) Whether the body was floating in the water or suspended above the water

d) Whether there were any obstacles in the water between the bridge and the body; (Supra)

23. Mr. Locklears testimony was inconsistent with Patricia Lathrop about the time the 911 call was made and where the body was located at that time

24. Lt. James Monroe of the Scotland County Sheriffs Dept. testified under oath. (T.T.P. 231:2)

Mr. Monroe testified that Locklear took him 200 to 300 alongside the bridge to a wooded path where the body could be seen from the edge of the creek (T.T.P. 235:18)

25. Mr. Monroe described the body as dressed in "dark clothing, possibly black or blue jeans with possibly a black shirt (T.T.P. 236:1-4) "suspended in the area (air?), possibly the feet were the only thing in the water" (T.T.P. 236: 1-4) (parenthesis added)

26. Tom Hatcher III, an EMT employed by Scotland County EMS testified under oath (T.T.P. 258:7-25)

27. ~~235~~ Mr. Hatcher testified that from the bridge the body was "150 yards, 200 yards maybe from the bridge" (T.T.P. 266:3-5)

28. ~~236~~. Jerry Starnes, a Captain over criminal investigations employed by the Marlboro County Sheriff's Dept. testified that he noticed a body over the trees, ~~probably~~ Dr probably about a hundred yards down the creek bed (T.T.P. 287:23-25

29. ~~37~~. Mr. Starnes testified that he took pictures of "the general area there of the creek, of the body in the creek" and of the body at the McColl Rescue Squad building. (T.T.P. 289:18-25)

30. ~~238~~. Mr. Starnes testified that exhibits 16 and 17 appeared to be blow up of pictures he took when he got on the scene that shows the condition of the body As he found it on August 3rd, 1993 and of the body at the rescue squad building. (T.T.P. 291 and 292)

31. Angus Thompson, Court appointed Attorney for the defendant told the Court "That's the evidence. Yes." when the Court asked "Do you have any evidence that someone, ~~[illegible]~~ Dr anywhere, made an identification of the body

And indicated that that person was Alphonso Green?" (T.T.P. 313: 3-14)

32. Mr. Bowen told the Court "I think the surest we can answer that is possibly," when the Court asked "Are you intending to offer any other evidence that would link the disappearance of Alphonso Green or anyone else with the body that was discovered off of Pea Bridge Road? (T.T.P. 331: 17-24)

33. Angus Thompson asked Mr. Starnes "And did you contact the family of Alphonzo Green with respect to the missing body that you found down there?" Mr. Britt objected, Mr. Thompson ~~stated~~ stated to the Court "Well, Your Honor, first of all, identity is certainly an issue in this case. We've said it early on we had not conceded to that. And it goes to -- the relevancy is it goes to an identity or an attempt to at least identify the body (T.T.P. 310 - 311)

34. The Court sustained Mr. Britts objection, granted his motion to strike and the Court confirmed the jury understood the Courts instruction to disregard by directing them to raise their right hands. (T.T.P. 345:10 thru 346:7)

35. Mr. Starnes testified that the Sheriff, Foley, handed him a .38 shell casing that Mr. Foley indicated he found in an area by the creek, "maybe ten or twelve feet from the bridge" "to the right of the path" (T.T.P. 308)

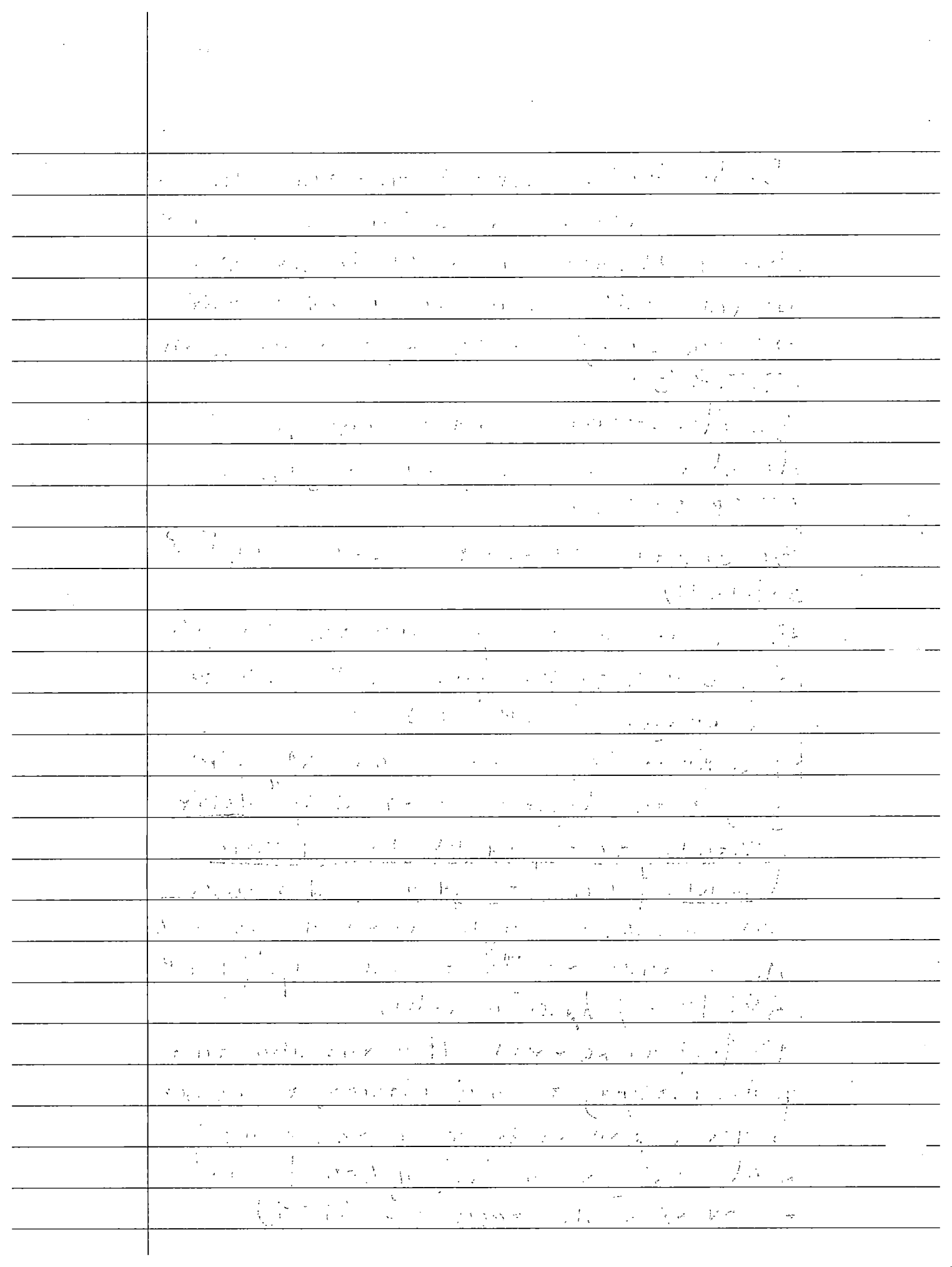
36. Mr. Starnes testified that no one dusted the shell casing for fingerprints (T.T.P. 344: 3-6)

37. Sheriff Foley testified under oath (T.T.P. 347: 12-14)

38. Sheriff Foley testified that the body was "possibly a hundred yards" downstream from the bridge. (T.T.P. 386: 5)

39. Sheriff Foley testified that the path going in the direction of the body "wasn't something that you would just normally discover. You had to know it was there. And Hal Locklear showed it to me and took me in there to get to the body." (T.T.P. 388: 9-12) (Underline added)

40. Mr. Foley testified "Well, this path that you're referring to, we're referring to, rather, is not a path as anyone in this courtroom would just get in and walk on. You had to know it was there." (388: 1-4)



41. The Court asked "Folks, isn't a that Mr. Alphonzo Green was subsequently located?" Mr. Britt answered "Yes". Mr. Bowen said to the Court "Judge, I don't mind stipulating right now, that Mr. Green was found, Alphonzo Green was not -- what you got here is a botched investigation" (T.T.P. 366:22-24, 367:22-25)

42. Mr. Britt stated in open Court, "Your Honor, they know what the evidence is, they have had this evidence in their possession for well over a year, they know how the body was identified, in terms of the fingerprints, the dental work, they know what their client had and what they didn't have, they already stipulated that their client had these items that belonged to Mr. Jordan, Now, they have got to do some groundwork, and back up Alphonzo Green is alive and well If necessary, will bring him in here and parade him around in front of you if that's what it takes to satisfy them that this line of questioning is improper. (T.T.P. 369:10-25) Mr. Britt also asserted, "the only person, the only identification that was made as to the body that was recovered from the Gum Swamp

on August 3rd, 1993 was James Jordan. They know that, this Court knows that, and this is simply a matter of blowing smoke and trying to create doubt where there is no doubt. I mean, it's conclusive. Their experts have examined this stuff. (T.T.P. 370: 9-16)

43. Jennings Grooms testified under oath during the trial, State v. Green (T.T.P. 404: 23-25) In August 1993 he was an Operations Lieutenant, Second in Command (T.T.P. 406 6-12)

44. Mr. Grooms testified "I would say my observance of the body was in a horizontal position, left incumbent position with portion of the body in the water and portion of the body above the water, meaning the right, from the right midline up, the Right midline was out of the water and the left midline being in the water somewhat," in Response to Mr. Bowens presumptuous question, "Was the body as it was suspended over the water, was it more or less horizontal to the water or one portion of the trunk of the body closer to the water than another?" (T.T.P. 426: 25 through 427: 1-10)

45. Now, in fact, the only thing that was Actually in the water was a portion of

of one of the legs, is that not true?" Mr. Bowen persisted. Mr. Grooms stuck to his response, "Not on my observance, sir." (T.T.P. 427: 4-13)

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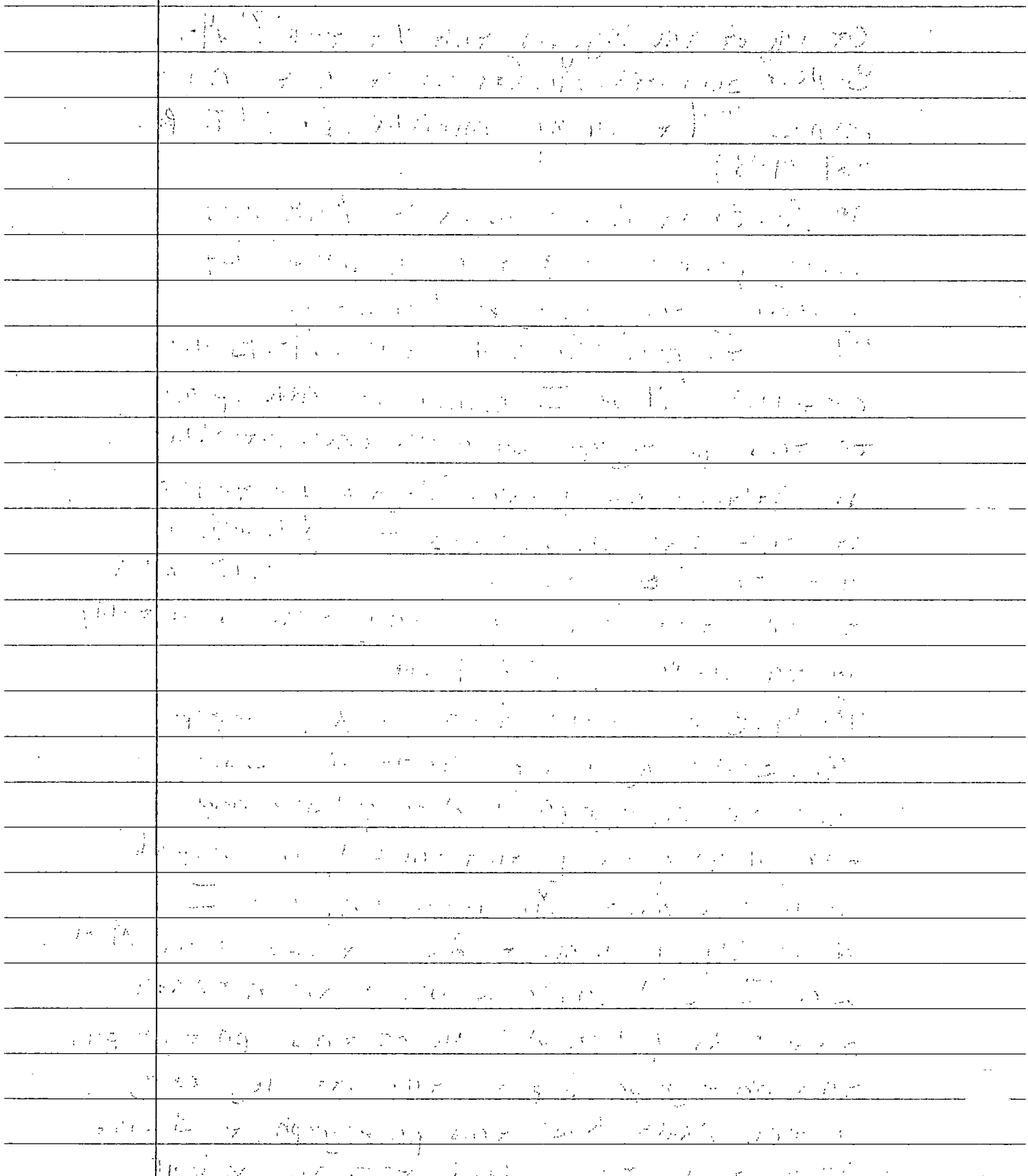

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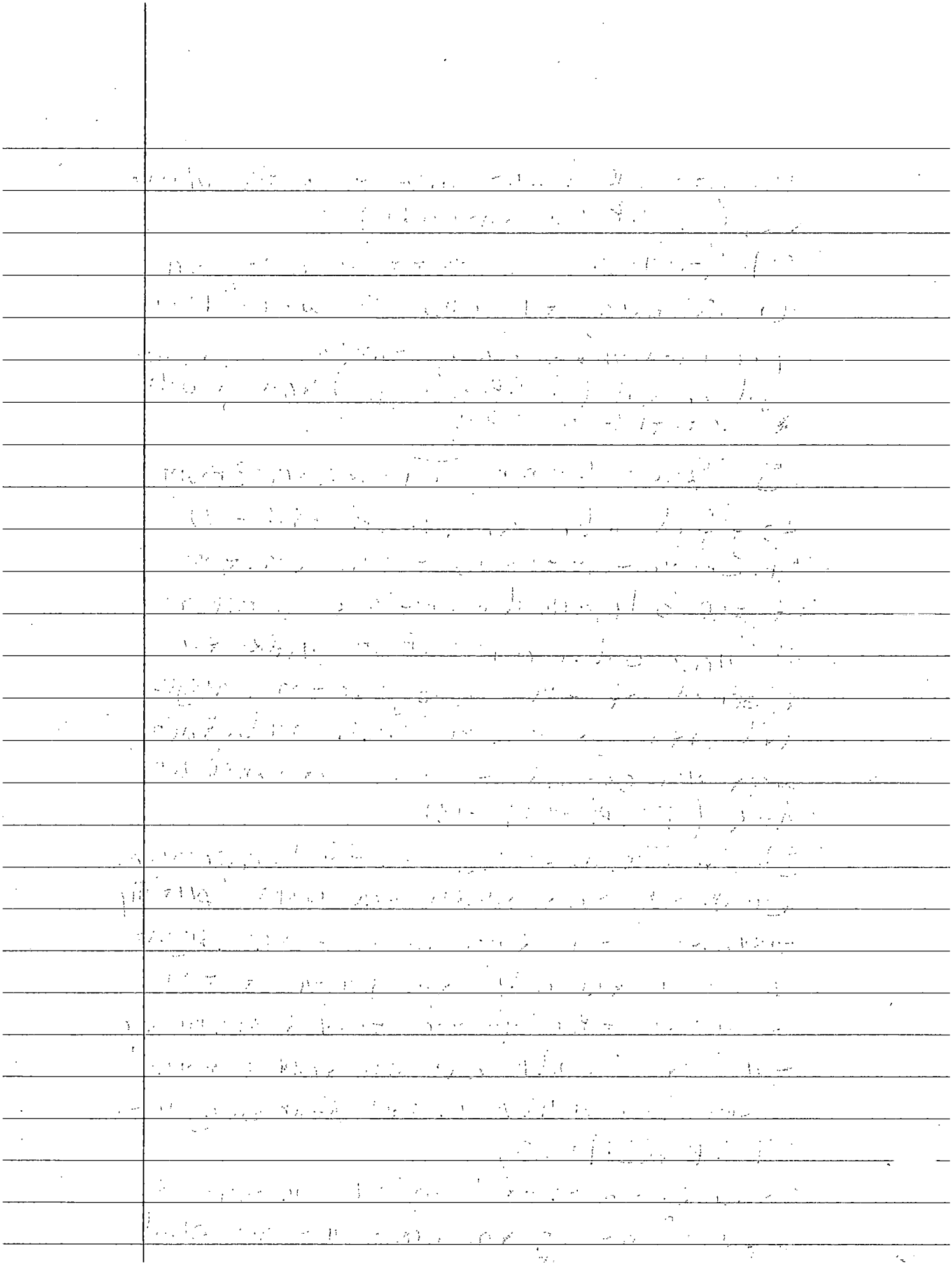

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56. In Closing Arguments, Mr. Thompson told the jury "No, the defense did not offer to you the number of witnesses that the State has offered. No, the State did not even offer to you things that were suggested during opening statement that the defense might offer by way of evidence. But you got to remember, it's not the defense's duty or it's certainly not the defense's burden to prove Anything to you... And if we had offered, if the defense had offered evidence of other matters that -- or other witnesses, would it have really been helpful on the material issues or the relevant period of time that we're dealing with? I submit to you that it would not have. Wouldn't have done you any more good." (T.T.P. 7269:24 thru T270:16)

57. On T.T.P. 7494, the jury requested opening statements from the State and defense. The written transcript indicates the request WAS withdrawn.

58. On trial transcript page 7483 Judge Weeks stated to the juror "...we needed to clarify for the purposes of the record exactly what was being asked for. You will recall that a number of photos were introduced allegedly depicting the alleged victim in a body bag, in a vehicle and on the ground. Would the foreperson of the jury please stand and identify himself or herself? I apologize, Ms. Manuel. Can you be specific about what photograph is being specifically requested with regard to Jordan in body bag? (T.T.p. 7483:6-18)(Underlined for emphasis added)

59. Ms. Manuel (Paula Lechler) responded, "The one where he is hanging over the limb in the river, that specific one" (T.T.P. 7483:19-21

60. Yet on page 7481 of the trial transcript, line 14 the Court read a "paper writing from the jury" that described the picture as "Jordan on a tree" (T.T.P. 7481:7-15)

61. This difference in description of the picture indicates a material difference in the jurors interpretation of the picture. It is material

to issues in the MAR before the Court because while a dead body can float down a creek and get snagged on a limb, a dead body can't float up and above the surface of water to hang on a tree. This would create an issue about whether James Jordan was alive at the time the defense conceded in opening statement that I accompanied Demery to South Carolina to dispose of a deceased body of a "victim" I had no way of knowing. Paula Locklear's trial visit to where she thought the body was found was to resolve this issue.

62. Further, it must be noted that the Court, while the jury was deliberating, described the pictures as "Allegedly" depicting the victim ... on the ground (the plea trial counsel, in opening statement told the jury the evidence would show I first saw the body at. And, the Court reminded and directed the jury that "you will recall that a number of photos were introduced ... depicting the "Alleged victim" ..

63. The word Alleged is defined as "Representing as existing or as being as described but not so proved; Supposed: an Alleged conspiracy; an Alleged traitor; an Alleged victim of a crime."

See The American Heritage, Fifth Edition.

64. "Allege" is from the Late Latin extitigare, to clear at law, from the Latin ex-, out, and litigare to sue: see litigate. See, The American Heritage Dictionary, Fifth Edition.

65. Clearly, as the Court indicated by the word "alleged", both the identity and location of the body were still matters of litigation while the jury deliberated and this fact is material to determining the outcome of the jury claims and the "Mormon claim" (Trial Counsels decision and promise to put on evidence that James Jordan was alive after July 23rd 1993; wasn't killed where the State claims he was killed; and their attempts to prove and success at, raising issues about the identity of the victim) and to demonstrating prejudice therefrom.

66. "A genuine issue of material fact has been defined as one in which the facts alleged are such as to constitute a legal defense or are such nature as to affect the result of the action..." Smith v. Smith, 65 N.C. App. 139, 142 (1983)

67. "Evidence properly considered on a motion for summary judgement includes... material which would be admissible in evidence or of which judicial notice may properly be taken." Murray v. Nationwide Mut. Ins. Co., 123 N.C. App. 1, 8, (1996)

68. "Oral testimony at a hearing on a motion for summary judgement may [also] be offered; however, the trial court is only to rely on testimony in a supplementary capacity, to provide a small link of required evidence, but not as the main evidentiary body of the hearing. The trial court may also consider arguments of counsel as long as the arguments of counsel are not considered as facts or evidence. Strickland v. Doe, 156 N.C. App. 292, 290-97 (2003)

69. Danielle Marquis Elders represented the state in State v. Carver.

WHEREFORE, the defendant, based on the foregoing, respectfully prays the court take judicial notice of the foregoing adjudicative facts to be used to find the facts used to apply the law to and to make conclusions of law for the defendants Motion for Appropriate

Relief currently pending before this Court since 1999.

It is requested that the defendant be granted a hearing on this motion before disposition should the State contest these facts and that the defendant be notified at least two weeks in advance of the hearing date, and that the hearing be open to the public and that the verbatim transcript and Audio recording of the hearing be made public in accordance with North Carolina General Statutes 132, Public Records Law, Also known as the Sunshine Law.

Respectfully submitted, this 19th day of March 2023
This the 19th day of March, 2023.

Daniel Andrew Green

Pro Se

Certificate of Service

I hereby certify that, via the United States Postal Service, I caused to be served a copy of the above Motion Requesting Court take Judicial Notice of Public

Records upon the North Carolina Attorney Generals office:

N.C. Attorney General, Mr. Joshua Stein,
Mr. Jonathan P Babb
Mr. Jonathan Hyde
Ms. Kristin Uncker
Ms. Alana Danielle Marquis Elder

North Carolina Attorney Generals Office
P.O. Box 629
Raleigh, NC 27602

This the 10th day of March, 2023

Daniel A. Green
4600 Swamp Fox Hwy. West
Tabor City, N.C.
28463

Getting Out.Com
TextBehind.Com

facts by reference in support of this motion and memorandum of law

This the 12th day of February, 2023

Respectfully Submitted April 19th, 2023

By, Daniel Andre Green #0154242

A/ Daniel Green

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Request For Judicial Notice of Adjudicative-Facts Part 2

9

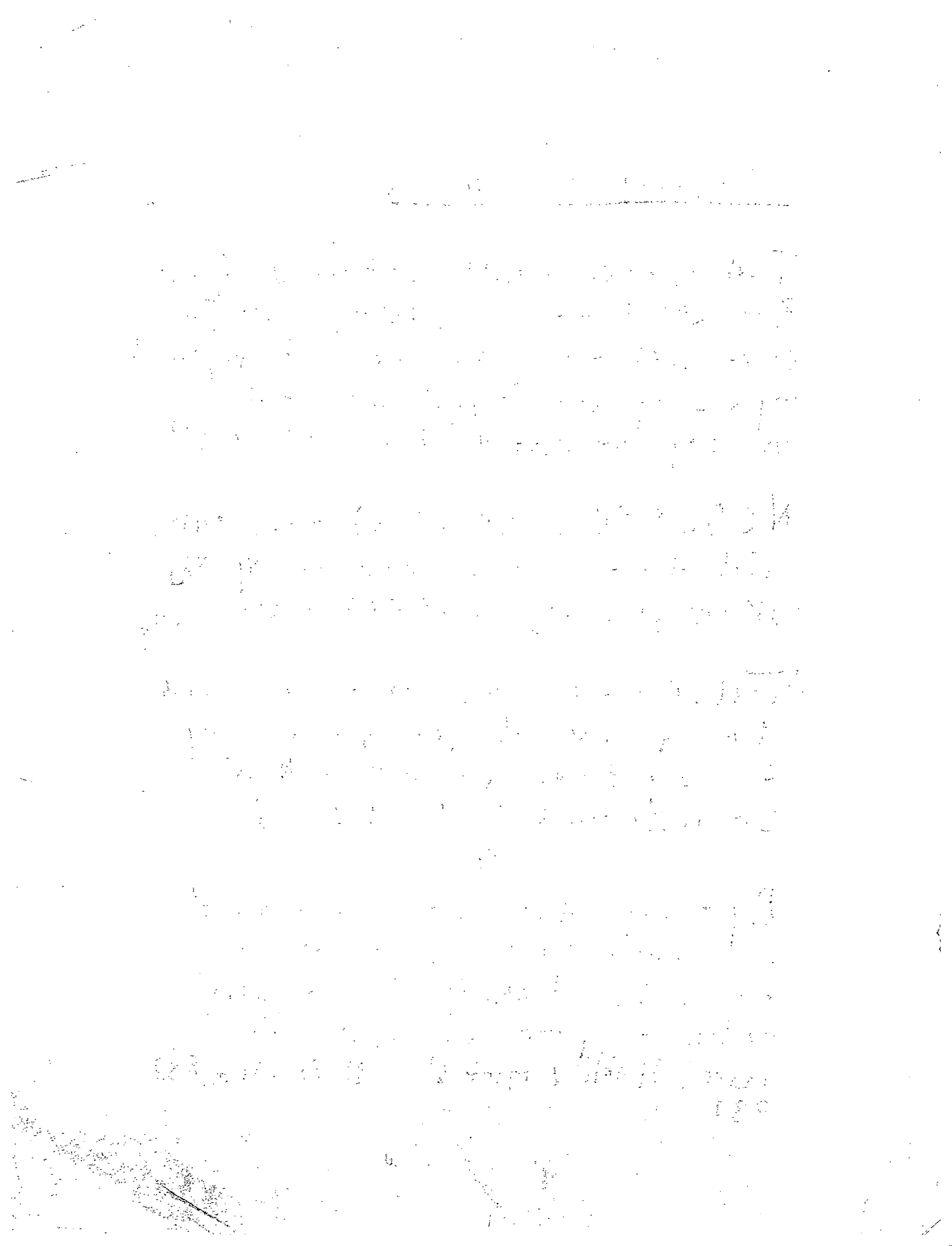
SUMMARY OF LAW

North Carolina General Statutes § 8C-1, Rule 201(d) makes it mandatory that "[a] court" shall take judicial notice if requested by a party and supplied with the necessary information." N.C. R. Evid. 201(d)

N.C.G.S. § 8C-1, Rule 201(f) states that, "Judicial notice may be taken at any stage of the proceeding." N.C. R. Evid. 201(f)

"Judicial notice in the strict sense is a device for the judge and not the jury to employ." Brandis and Broun on North Carolina Evidence § 28 (7th Ed. 2011)

By taking judicial notice of a fact so commonly known, the court avoids the needless formality of introducing evidence to prove an incontestable issue." Hinkle v. Hartsell 131 N.C. App. 833, 837



Defendant, pursuant to North Carolina Rules of Evidence §8C-1, Rule 201(d) and (f) moves and request this Honorable Court to take judicial Notice of the following Adjudicative facts. In support of this motion the Defendant hereby supplies this Honorable Court with the necessary information as follows.

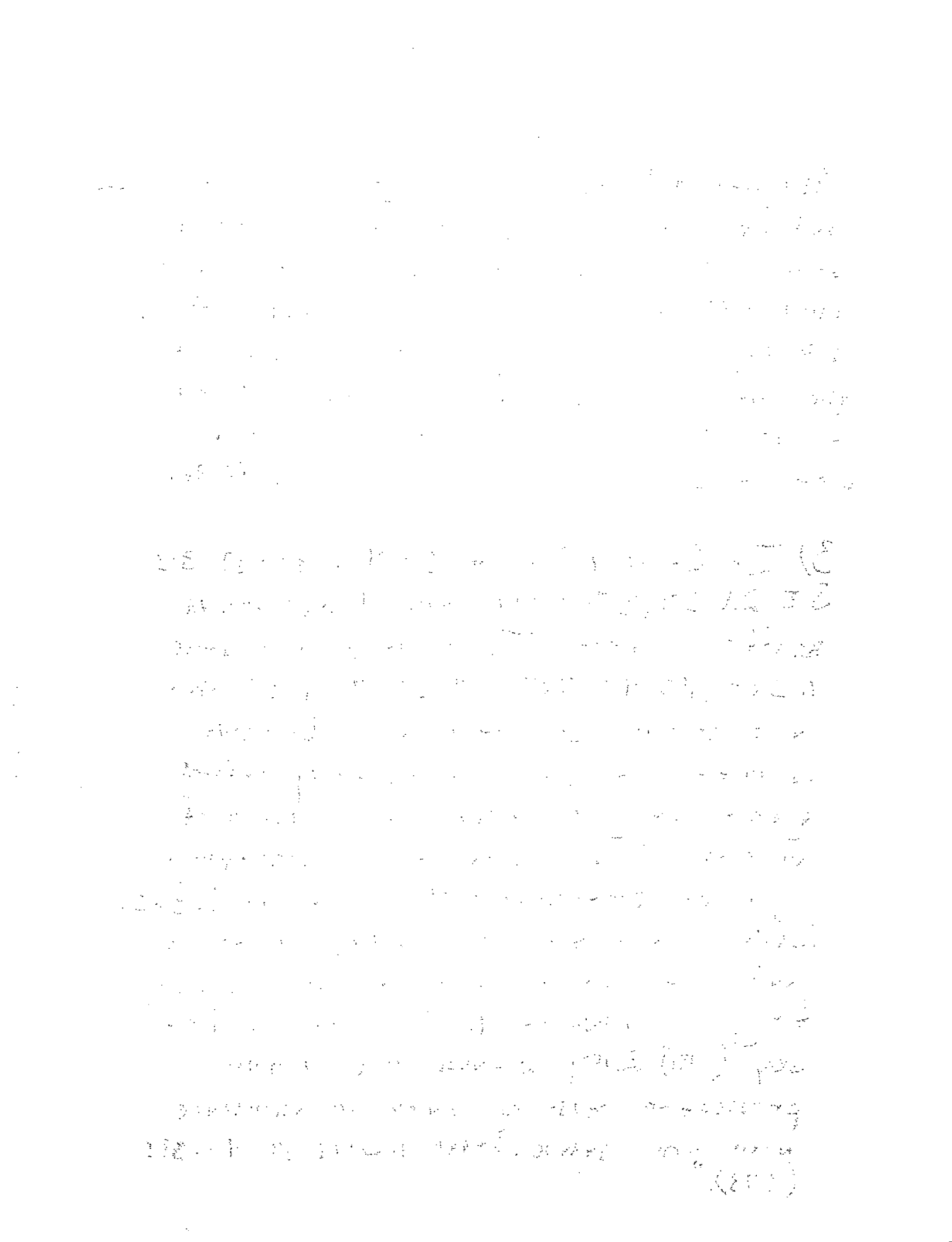
1). State v. Davis 69 N.C. 383, 385 (1873) is An opinion by the North Carolina Supreme Court, decided in 1873 that holds that "... every witness in North Carolina must be sworn. And a willful violation of such an oath in a material matter is perjury, and no other is. This is the general rule."

2) Pearce v. Folb 123 N.C 239, 31 S.E. 475 (1898) is an opinion by the North Carolina Supreme Court that quotes the preamble to chapter 4c, vol. 2 of the code regarding a "valid oath" as follows:

"Whereas, lawful oaths for the discovery of truth and establishing right are necessary and highly conducive to the important end of good government; and being most solemn Appeals to

Almighty God, as the omniscient witness of truth, and the just and omnipotent avenger of falsehood; such oaths, therefore, ought to be taken and administered with the utmost solemnity." This "solemnity" applies not only to the substance of the oath, but to the form and manner of taking it, and administering it" as was said by the court in the case of State v. Davis, 69 N.C 383.

3) In State v. Robinson 310 N.C. 530, 539, 313 S.E. 2d 571, 577 (1984) the North Carolina Reaffirmed that," This Court held in State v. Dixon, 185 N.C. 727, 117 S.E. 170 (1923), that in a criminal prosecution the defendant is entitled to have the testimony offered against him given under the sanction of an oath. This is part of his constitutional right of confrontation. N.C. Const. art. 1, §23. Lawful oaths for the discovery of truth and establishment of right are necessary for good government. N.C. Gen. Stat. § 11-1 et seq. (1981). Every witness in a criminal prosecution must be sworn in accordance with the statute. State v. Davis, 69 N.C. 383 (1873)."

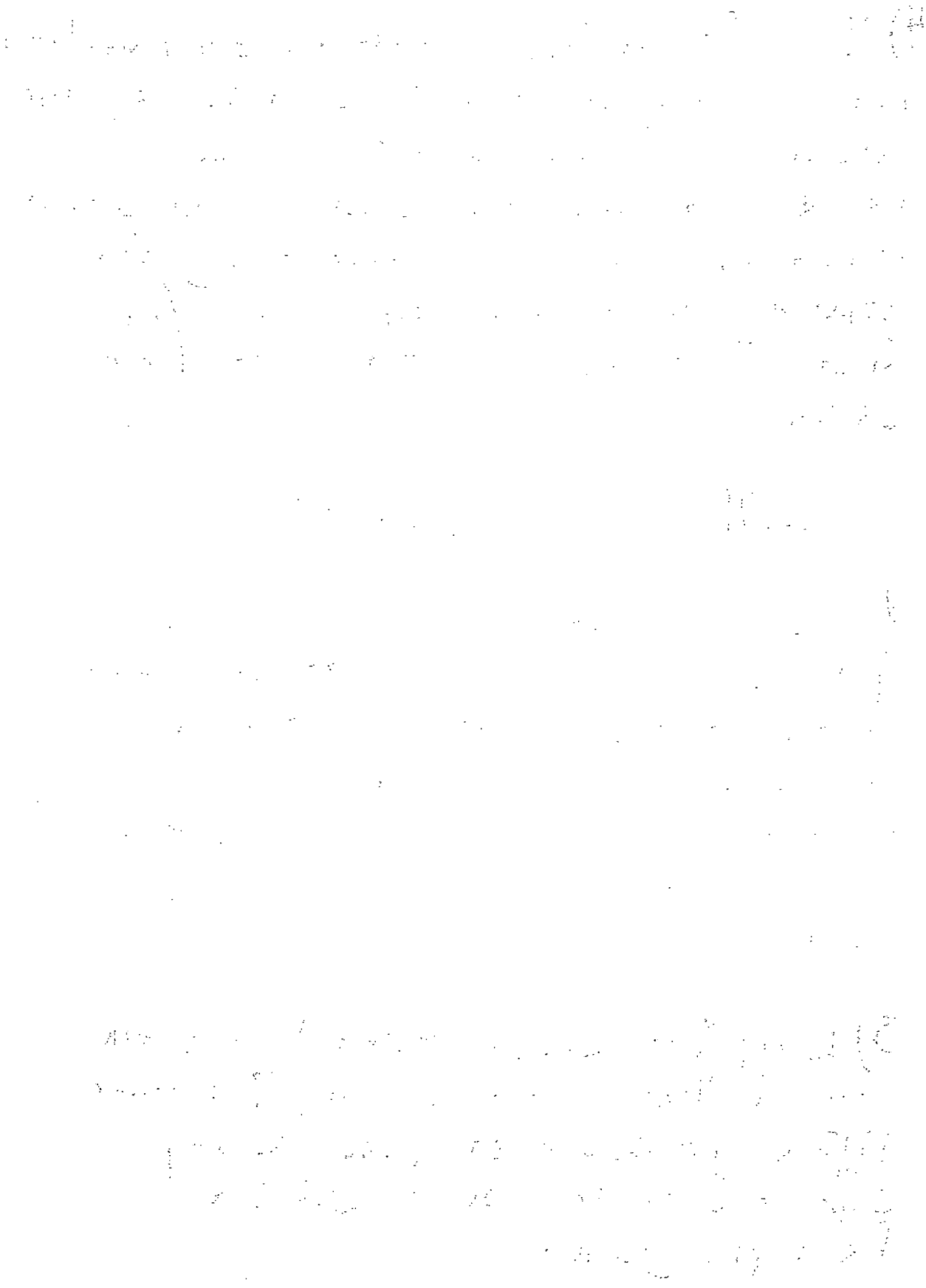


4) North Carolina General Statutes § 11-11 mandates that "The oaths of office to be taken by the persons listed in this section shall be in the words following the names of the persons respectively, in all cases after taking the seperate oath required by Article VI, Section 7 of the Constitution of North Carolina:

... Witness in a Capital Trial

You swear (or affirm) that the evidence you shall give to the Court and jury in this trial between the State and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth so help you God" N.C. G.S. §11-11"

5) Larry Martin Demery testified for the State of North Carolina at the 7 November 1995 Criminal Session of Robeson County Superior Court trial of the Defendant for a plea agreement



6) Prior to testifying Larry Demery took a corporal oath. The oath-ritte included Demery putting his left hand on the Bible, raising his right hand, with his right arm in the form of a 90 degree angle, and Demery swearing to (1) "Tell the truth" (2) "The whole Truth" and (3) "Nothing but the truth" (4) "So Help me God"

7) The necessary information to support the adjudicative facts contained in paragraph 6, supra, are facts of record in:

(a) Paragraph 4, supra, incorporated herein

(b) Trial Transcript Page (here and after "T.T.P.") 3859:8-15

(c) T.T.P. 3238:21 thru 3239:2

8) On trial transcript page 4769:14-25 the Honorable Trial Court stated to Angus Thompson, Defendants trial attorney, the characteristics of an affidavit:

"Mr. Thompson, I asked you earlier on if you want to establish for purposes of the record what an affidavit is, it's a statement under oath. Presumably before

one signs a statement under oath, one would have the opportunity to review it, make sure it's correct, make any corrections that are known, something that a person places his left hand on the Bible, raises his right, and swears to tell the truth, the whole truth, and nothing but the truth."

9) At the time the Court formerly licensed member of the North Carolina State Bar and former judge Mr. Gregory Weeks made the statement referenced in paragraph 8 supra, he was referring to an affidavit Larry Demery signed on 30 November 1994, that was "sworn to and subscribed before me, this 30th day of November, 1994", and that the "me" this affidavit was sworn to and subscribed before and presumably notarized by is Hubert N. Rogers, III, Larry Demery's trial attorney. (See T.T.P. 4740: 13-20;

10) The affidavit Demery signed was related to the 15 August 1993 interrogation of Demery (See, T.T.P. 4740: 13-20)

11) Larry Demery's testimony in the 15 August 1993 interview between Affidavit and his testimony at Defendants trial were both given under penalty of perjury, As is all sworn testimony in North Carolina Courts

12) Angus Thompson Examined Larry Demery about other crimes He asked:

"And you are also denying that you committed any other crimes other than these that you've just testified to and to which you pled guilty?" (T.T.P. 3461:24 thru 3462:1)

13) Demery responded "I'm not denying, but I'm not admitting either" (T.T.P. 3462:2)

14) Demery's response quoted in paragraph 13, supra, violates the corporal oath he took to tell "the whole truth" ~~[illegible]~~ (See paragraphs 6 and 7, supra)

15) Angus Thompson examined Larry Demery. He asked Demery, "So you're denying that there were other robberies and assaults that you had committed that you were not charged for?" (T.T.P. 3460:5-7)

16. Mr. Demery responded, "Yes, I am denying saying that to him. And even if I had, I mean, what kind of fool would I be to sit here and tell you that I had done other things like that?" (T.T.P. 3460: 8-11)

17. Demery testified that he pled guilty into breaking and entering into the Jones Grocery Store (T.T.P. 3453: 11-13; 3457: 3-4). Demery testified that he "did not do it" (T.T.P. 3456: 18-21) and that Detective Anthony Thompson served him with the warrant and told him that a Child Bullard told him, Mr. Thompson, that he, Bullard, and Demery broke into the store which Demery said "was not true. (T.P.P. 3454: 19 thru 3455: 5) and this charge, which Demery pled guilty to, but denied being guilty of under oath at Defendants trial is one of the crimes Demery pled guilty to as part of his plea bargain

18. Anthony Thompson was a Robeson County Sheriffs Department detective that also questioned Demery in the murder of James Jordan.

19. Former District Attorney, Johnson Britt an officer of the Court who took an oath to "have the criminal laws fairly and impartially administered, so far as in me lies.." told the jury in open court that Larry Demery, "He puts himself there, he said he was going to tell us the truth. (T.T.P. 7425: 21-23)

20. Every officer of the Court that has represented the State or the Defendant, is representing the State or the Defendant and who, in the future, will represent the State of North Carolina or the Defendant are subject to The North Carolina Administrative Code Title 27. The North Carolina State Bar Chapter 2. Section .0300. (27 NCAC Rule 3.3 Candor Toward The Tribunal) which, inter alia, states that:

"(a) A lawyer shall not knowingly: (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal."

21) "An affidavit serves to convey information from the signing party in a form that attests to the statement's credibility." (Quoted from Gyger v. Clement 375 N.C. 80, 85, 846 S.E. 2d 496, 500 (2020))

Perjury is a criminal offense defined by common law and by statute. The necessary information supplying supporting knowledge is:

(1) State v. Denny, 361 N.C. 662, 665 (2007)

(2) N.C.G.S. 15A-209

22) A person guilty of this offense (1) willfully and corruptly (2) while under oath or affirmation (3) gives testimony or makes a statement (4) which is false and (5) that is material. The necessary information supplying these facts are State v. Denny, 361 N.C. 662, 665 (2007) and N.C. Pattern Jury Instructions - Criminal 229.10 incorporated herein by reference

24) Perjury is a Class F felony, N.C.G.S. 14-209 is the necessary information supplied herein and incorporated by reference.

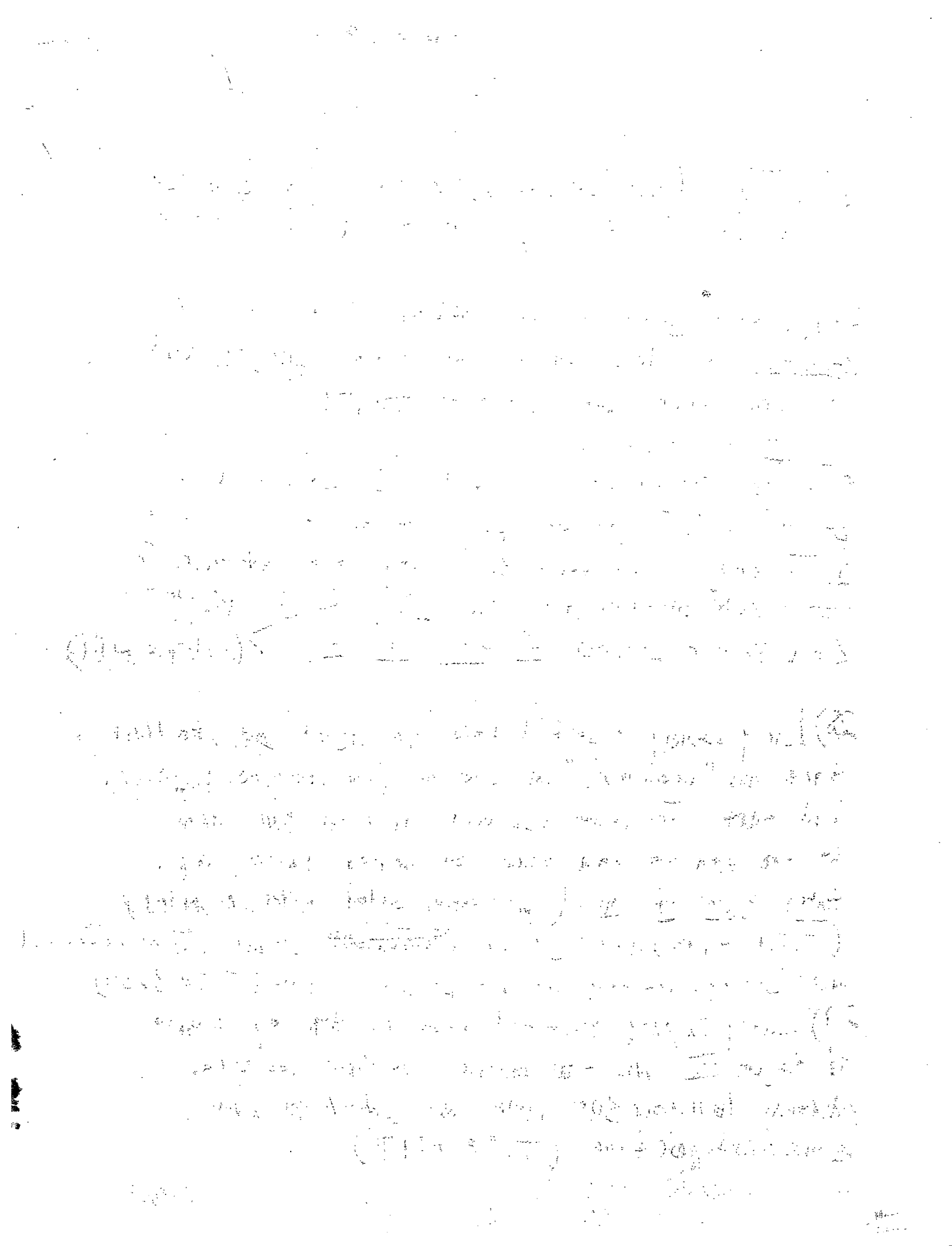
25) In North Carolina, Subornation of perjury is a Class I felony pursuant to N.C.G.S. 14-210.

26) A person guilty of this offense (1) willfully (2) procures or induces another to commit perjury, and (3) the other person commits perjury

27) The American Heritage Dictionary, 5th Edition defines procure as: 1. To get by special effort; obtain or acquire 2. To bring about; effect 3. To obtain for another. To obtain sexual partners for others. [Middle English procuren < Old French procurer, to take care of ... > (underline added)

28) Larry Demery testified that he signed an affidavit that his "attorney" "had put this (the affidavit) together, and that "The State appointed my these two men at the end of this table to worry about me, take care of me" (parentheses added; underline added) (T.T.P. 4748). Hugh Rogers and DAG Campbell, John, referenced were Demery's attorneys and were present in court (T.T.P. 3259)

29) Larry Demery testified that his Attorney, Hubert M. Rogers III was the person that his affidavit dated November 30th, 1994 was sworn to and subscribed before. (T.T.P. 4747)



30. Not only did Hugh N. Rogers III procure Larry Demery's affidavit, he notarized it as well

31. A notary's verification or proof certifies that that a signer has in the notary's presence, voluntarily signed a document and taken an oath or affirmation concerning the document pursuant to N.C.G.S. 10A-3(9)

32. N.C.G.S.A. §20-112 states that "Any person who shall knowingly make any false affidavit or shall knowingly swear or affirm falsely to any matter or thing required by the terms of this Article to be sworn or affirmed to shall be guilty of a Class I felony.

33 N.C.G.S.A §10A-12(c) states that "Any notary who takes an acknowledgement or performs a verification or proof knowing it is false or fraudulent, is guilty of a a Class I felony." See also N.C.G.S.A. § 10B-60(d)(1) and 18 NCAC 7B-903

34. N.C.G.S.A. §10A-12(e) states "For purposes of enforcing this Chapter, the law enforcement Agents of the Department of the Secretary of State have statewide jurisdiction and have all of the powers

And authority of law enforcement officers when executing Arrest warrants. The agents have statewide jurisdiction and have all of the powers and authority of law enforcement officers when executing Arrest warrants The agents have the authority to assist local law enforcement Agencies in their investigations and to carry out, on their own or in coordination with local law enforcement agencies, investigations of violations of this Chapter.

35. N.C. State Bar Rules, Ch. 2, Rule 3.3. Candor Toward the Tribunal states:

(a) A lawyer shall not Knowingly:
(1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and

the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take remedial measures, including, if necessary, disclosure to the tribunal.
(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6."

36. Larry Demery testified and affirmed, by responding "Yes," that the defendant here stuck his arm into the Lexus window and he fired .38 caliber gun while you were there near the rear of the vehicle, is that right?", a question asked by Angus Thompson at Defendants trial. (T.T.P. 4698)

37 Demery testified that the Defendant "stuck his hand in the window and shot the man lying in the car, and, that Defendant's hand "could have been half way, all the way, I do know" in the window" and could have had had his arm halfway through the window, meaning up to his elbow, or further in the car window (T. T. P. 4480)

38 Demery testified that he was "closer to the rear, not at the rear" when the Defendant pulled the trigger (T. T. P. 4481)

39. Demery testified that the interior lights inside of the Lexus were not on when he and Defendant approached the car and he saw a person laying back, that "No, I don't remember the interior lights being on" when he went to the Lexus while it was parked on 74. (T. T. P. 4418 : 18)

40. Yet Demery testified that, when the Defendant fired the 38. caliber revolver that he saw the man inside the car, and, "He had an expression of surprise, shock on his face. And then the next thing he started doing, he

kind of -- he fell back. He started, you know, wiggling around. He was making groaning sounds. And finally, right before -- seconds before he stopped moving completely, he groaned out, like I said he was groaning, and to me it sounded like he groaned out, "Oh, baby, I'm sorry." That's the way I heard it. That's what I thought he had said. And he stopped moving." (T.T.P. 3382: 5-18) ...

41. Demery testified that "I could see and tell that somebody was in there, but I didn't -- I couldn't tell whether it was a man -- I just saw the form of a person laid back." "They were in the drivers seat." (T.T.P. 3368) (T.T.P. 3368: 1-9)

42 District Attorney Luther Johnson Britt asked Demery "Could you tell if it was a white person, Black person, or Indian person?" Demery testified "No, I couldn't." (T.T.P. 3368: 10-12)

43. District Attorney Luther Johnson Britt asked Demery "How many figures of a person did

you see in the car?" Demery testified, in response, "At the time I only noticed one. Like I say, I couldn't -- I could see the form of a person, like I said, in the drivers side but I couldn't tell if there was anybody in the back or in the passenger seat." (T.T.P. 3369: 12-18)

44. After testifying to the above, Demery was in the office with his his attorneys named Hugh Rogers and John Campbell. The office referred to was Bridts office (T.T.P. 3372: 1-3)

45 Demery testified that the man in the car" was a Black man" upon his return from being in Bridts office with his trial attorneys and that the man "appeared to be in his late 40's, early 50's", that he said "he was dressed real casual like" that he said, "He was reclined back in the drivers seat, taking a nap", and that he and the Defendant (I) discussed "that the guy that was in this car may have been a hustler, meaning a drug dealer or something, you know."

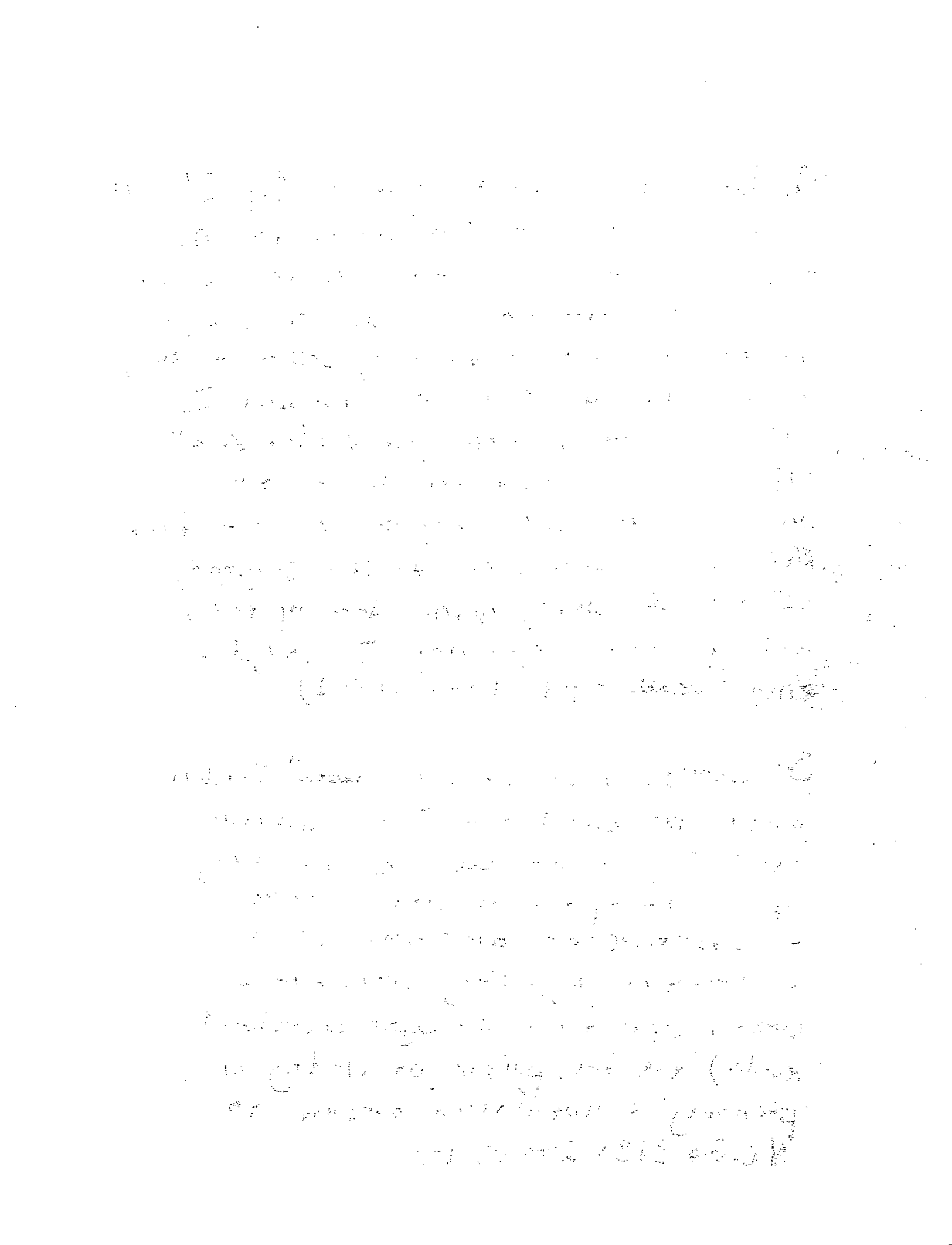
46. Demery testified that "this guy looked like a -- he might have been a drug dealer or something. A reason -- or my reason for thinking that was I could tell -- even though it was dark, there was some lighting around but I noticed the watch that he had on, it really stood out. A ring that he had on his finger, and then he -- like I say, he was reclined back. He had on a pair of glasses, but to me, they looked like they were kind of dark tinted, like shaded... I would think that this person was, you know, that's the way he came off to me" (T.T.P. 3377: 14 thru 3378: 1

47. Demery testified that "I couldn't" when Britt asked if he could tell if it was a White person, black person, or Indian person. (T.T.P. 3368: 10-12

48. Demery testified that after watching the man die, "I asked Daniel why did he do it... "Why the fuck did you shoot him?" He didn't respond to me with any kind of answer." (T.T.P. 3383: 12-15

49. Demery also testified that on May 2nd, 1995 he told S.B.I. agent Kim Heffney that he was 60 feet away at the time that the Defendant shot James Jordan, that the reason he changed his narrative from him not being present to being 60 feet away was because he "knew what I had told them at first just wouldn't wash" and that he "told them that at one time when I asked Daniel why he had shot this man, I said that Daniel had said something about he was waking up, he saw my face, and you know, that's why I changed it then" (DG 4903:13 thru 4904:2)

50. Demery's version of James DG Jordans murder that claimed that I, the Defendant stated I shot him because "he was waking up, he saw my face" is sufficient evidence to support capital punishment, it is a statutory aggravating circumstance to commit a capital felony (1st Degree premeditated murder) "for the purpose of avoiding or preventing a lawful arrest" pursuant to N.C.G.S. §15A-2000 (e), (4)



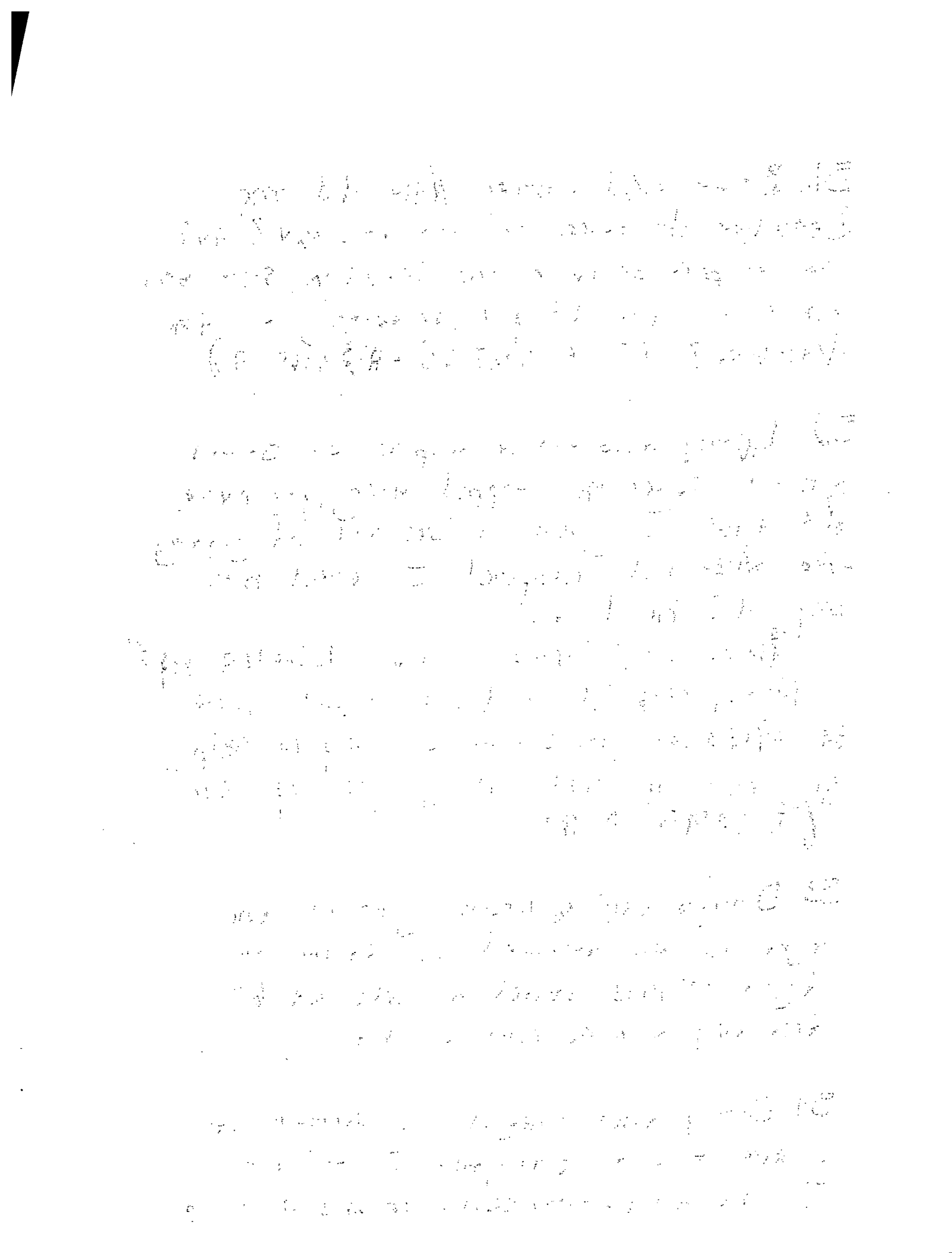
51. Britt asked Demery "What did the Defendant do after he shot this man?" And "At any point or after the defendant shot this man in the car, did you say anything to the defendant?" (T.T.P 3967:25 thru 3968:9)

52. Demery testified in response to Britt question, "After he stopped moving, you know, and then I guess it was kind of getting over what had happened, I asked him why did he do it."

Britt asked, "What can the defendant say?"
Demery responded "He didn't respond with an answer, he just told me to hurry up help get this guy moved and go get my car." (T.T.P 3968: 10-16)

53. Demery's earlier versions given on the night he was interviewed by officers on August 14th, 1993 stated he was over 60 feet away when he heard a shot.

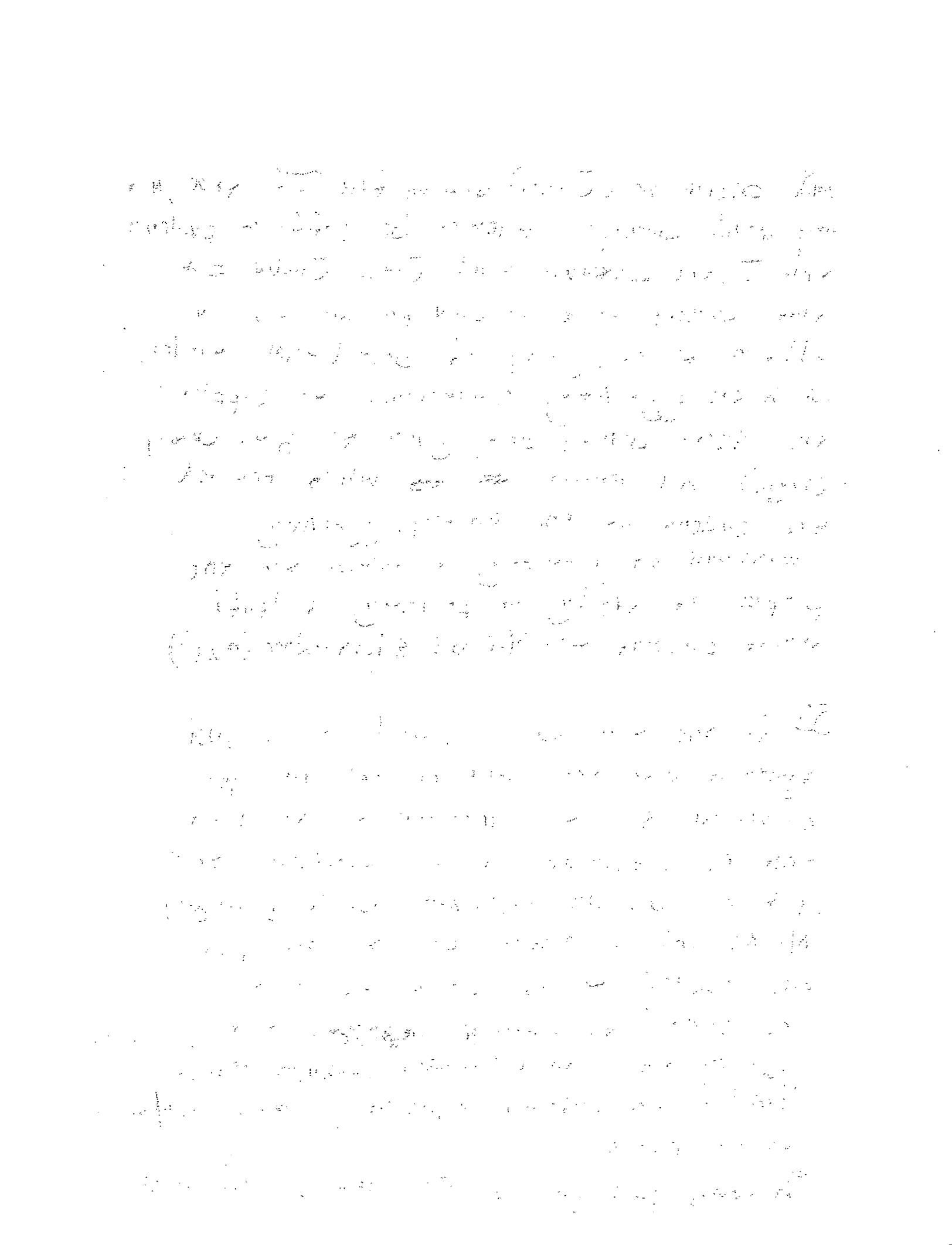
54. Demery then changed his narrative at a later time to convey that I told him I shot him (Jordan) because he was waking up.



and because he (Jordan) saw my face. If true, not only would Demery's statement be sufficient evidence that I the Defendant killed James Jordan but that Demery, As a co-principal was also, in addition to me, guilty of premeditated murder, which are Aggravating Circumstances to support the death penalty being given to h.m. Demery, changed his version ~~~~ which removed the evidence of the statutory aggravating Circumstance of committing a murder for the purpose of avoiding or preventing a lawful arrest pursuant to N.C.G.S. §15A-2000(e),(4).

55. At the time Demery entered into a plea Agreement with the State, he had not yet communicated the true narrative to the Court that he communicated at the Defendants trial yet his plea was adjudicated by Judge Gregory Weeks and a factual basis for the plea was required to be provided prior to the Court Adjudicating ~~~~ of the plea by the District Attorney, Johnson Britt, And/or the Attorneys representing Demery, and/or Demery himself.

56. Demery pled guilty to Felony Murder. The State



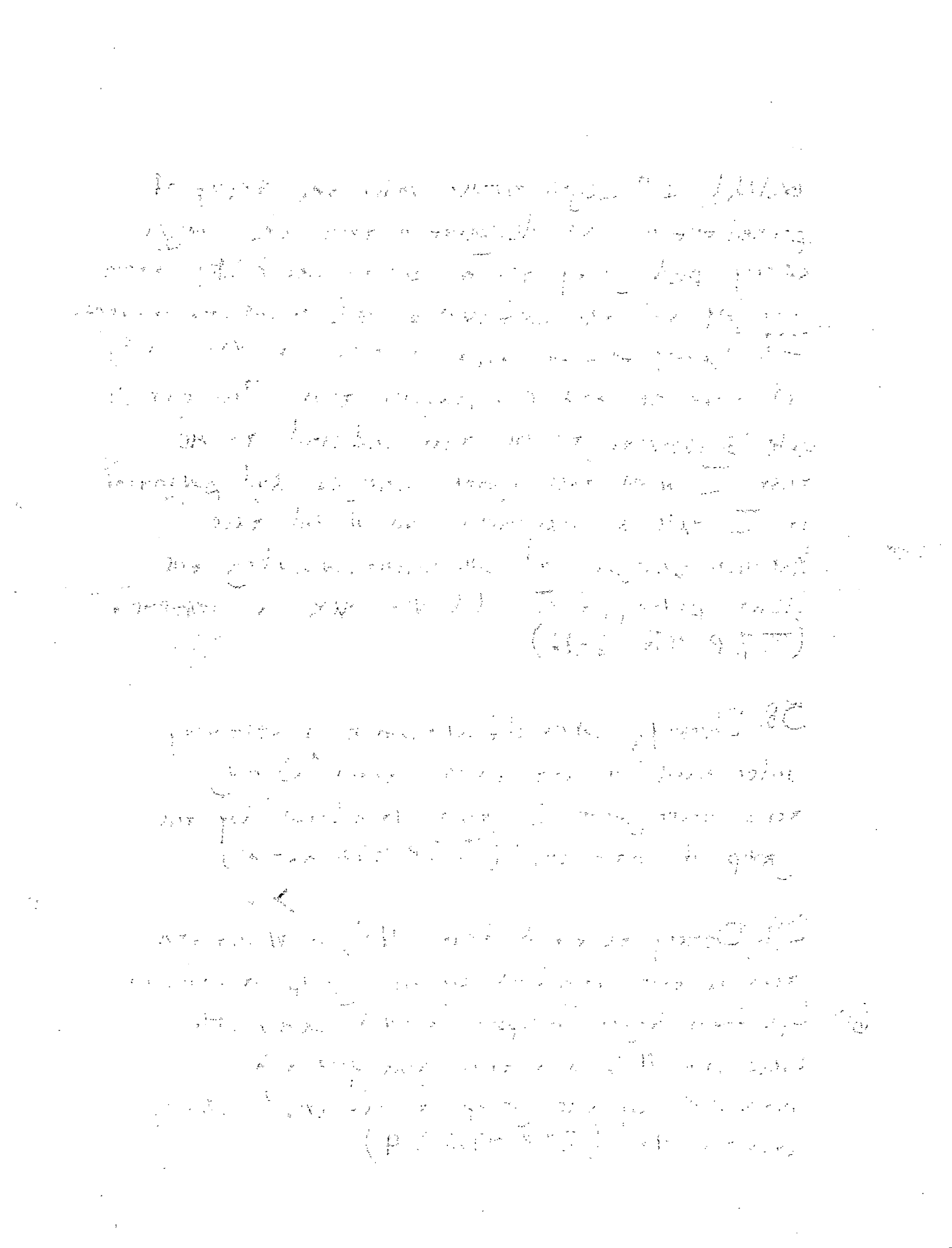
excluded 1st Degree murder under the theory of premeditation and deliberation from the charges Demery pled guilty to. This benefit was hidden from the jury and the Defendant by the Court and it's officers.

57. Demery testified that at times it was said, and that he told his lawyers that "The officers made statements to me that indicated to me that I would face lighter charges and punishment if I made a statement and would face harsher charges and punishment, including the death penalty, if I did not make a statement." (T.T. p. 4761: 6-22)

58. Demerys sworn affidavit, which is testimony under oath or affirmation, States "During this interrogation I felt intimidated by the group of officers," (T.T. p. 4761: 22-25)

59. Demery testified that "No", it wasn't true that he felt intimidated by the group of officers.

60 Specifically, Angus Thompson examined Demery. He Asked him "Well, is it true that you felt intimidated by the group of officers?" Demery Answered "No" (T.T. p. 4763: 3-9)



61. Comparing paragraphs 58 with 60, it is indisputable that Demery admitted committing the crime of perjury, which is a felony in North Carolina, and/or that his attorney Hugh Rogers, subornED perjury, which is also a felony in North Carolina.

62. Demery testified, "that I may have been put in there, I don't remember telling them that I told them I was scared, you know, but like I said before, they - my attorneys prepped this affidavit, they went on transcripts from the initial interrogation and from things that I had told them. But like I said, I haven't read it all the way through." (T.T.P. 4762: 14-22

63. Demery's November 30th, 1994 affidavit was entered into evidence at Defendant's trial DE 68 as Exhibit 29 (T.T.P. 4746: 22-24)

64. Demery testified that it was not true that "A portion of the interrogation was tape recorded and I did not mind the tape recorder running because I wanted the interrogation to be accurately recorded", even though his affidavit averred that statement. (DE 68/4766: 1-8)

(63) He also testified that he did not tell his lawyer that "A portion of the interrogation was taped recorded and I did not mind the tape recorder running because I wanted the interrogation to be accurately recorded." (T.T.P. 4765: 16-20) Demery also testified that he "didn't have a choice in the matter" (T.T.P. 4766: 8-9)

65. Paragraph 64 is evidence of perjury by Demery, subornation perjury by Demery's lawyers Hugh Rogers and John Campbell which are felonies in North Carolina.

66. Demery testified and affirmed under oath that:

(1) He signed the affidavit on November 30th, 1994;
(2) That he swore that the matters contained in the affidavit were true;
(3) That he did not swear on the Bible and/or he didn't remember;
(4) That his Attorney Hugh Rogers was present when he swore to it;
(5) That Hugh Rogers administered the oath to him;
(6) That "It's correct that I didn't care, I've

told my Attorneys that. And I've made that statement here, well, just a little while ago that night, well, that night while I was interrogated. like I said before, I didn't care, but if I did, what would it have mattered, you know, I couldn't have said anything about it anyway. If I said this to my Attorney, which I did, I told them I didn't care. If they went further into it than what I intended, that's not — you know, that's on them, that's not me".

(7) That he swore that it was correct;

(8) That he swore that the affidavit was true;

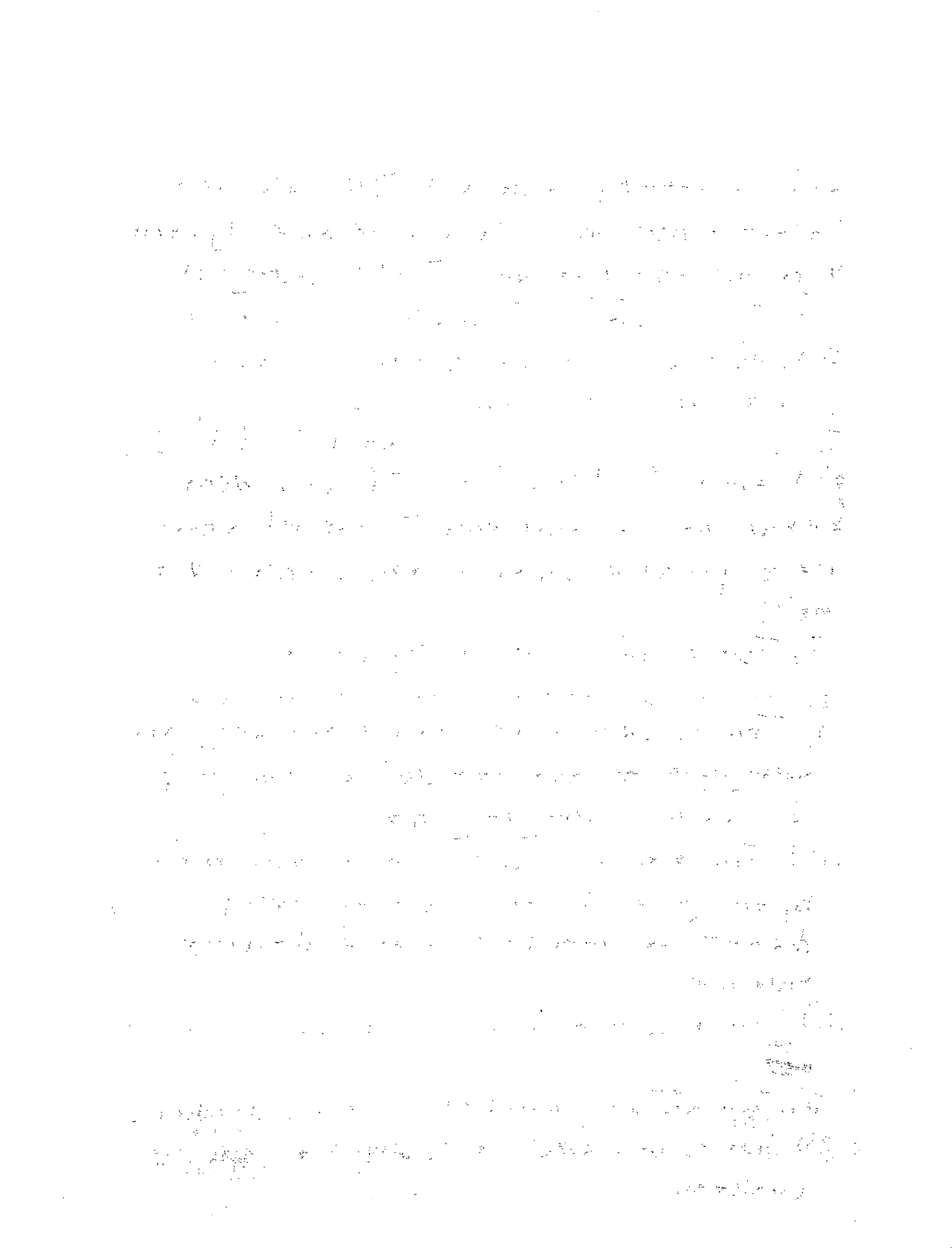
(9) That he swore in the affidavit that during the interrogation he felt intimidated by the group of officers interrogating him;

(10) That although he swore that he felt intimidated by the group of officers "but my Attorney's definition of intimidation might be different than mine";

(11) That he swore to it on the affidavit, didn't he?;

(12) That the word "intimidation" is in the affidavit;

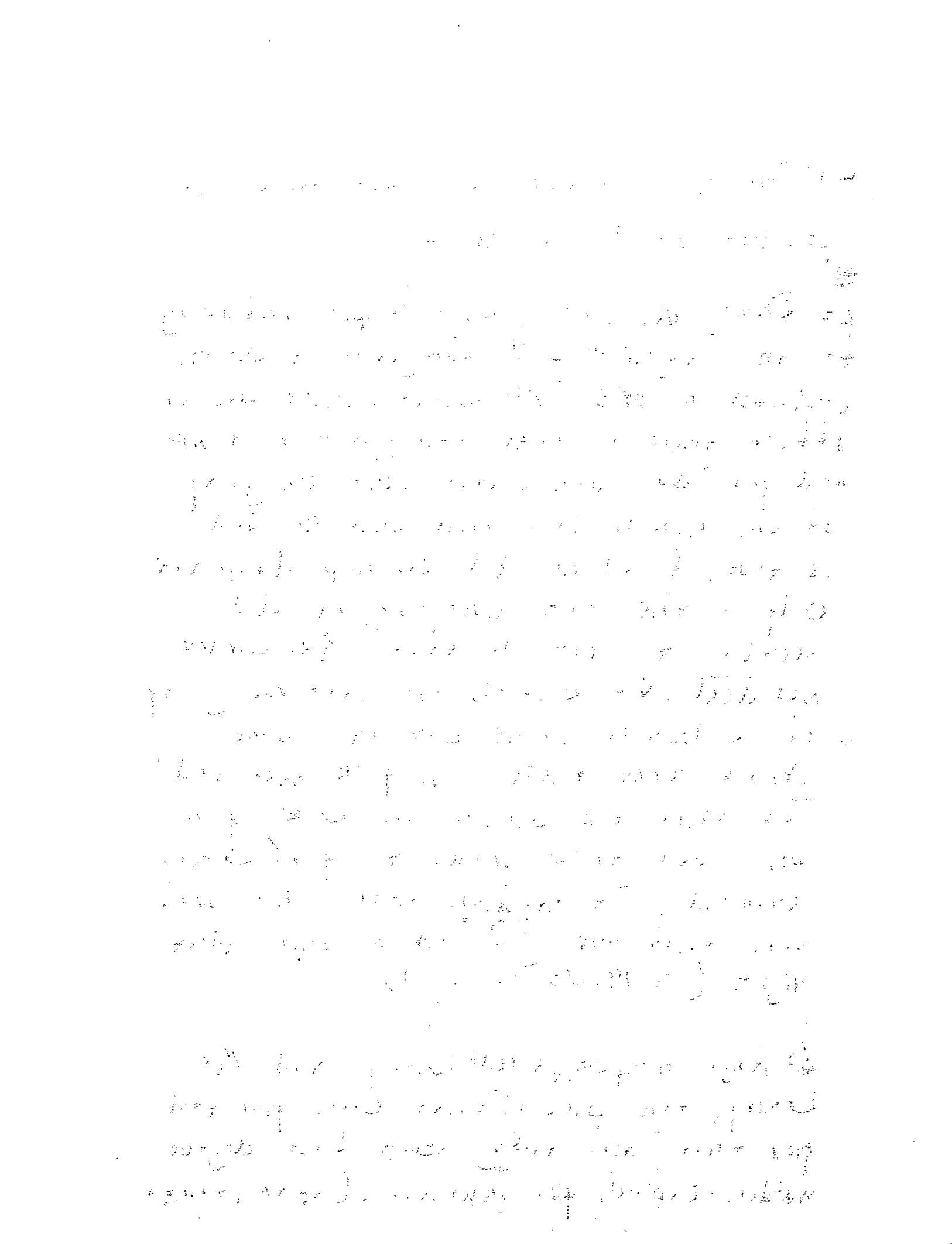
(13) That he was asked if he wanted to make any corrections;



(14) That he didn't make any corrections to the affidavit nor did he read it?

67. Demery was asked by Angus Thompson, referring to the August 14th–15th interrogation of Demery, conducted in 1993. "Mr. Demery, there was an officer there in that interrogation room who told you, "See Larry, Daniel can't be guilty of the heinous crime, that what he said is true, if all he did was help dump the body in the river, everything he did according to him was after Mr. Jordan was dead, not before, he can't be guilty of a heinous crime, but he sure shoved that needle up your rear end" Is that the person who broke you, who said those words to you? Demery answered "It may have been. There was more than one good guy in there that night." (4779: 23 thru 4780: 8)

68. Angus Thompson asked Demery, "And Mr. Demery, the person that broke you told you that "were talking about first degree murder, capital, you understand. Capital, that's



the needle up your ass, son, and you don't wake up from it. All right. Capital. You get a good prosecutor that wants to push it, son. I'm talking capital, all right. Let this man shove it up your ass." "Is that the person that broke you?"

Demery responded "No, the person who said that was a little -- I don't remember his name, but he was a little short bald-headed guy with a smart mouth, but that's not the same person." (4777: 3-14)

69. District Attorney Johnson Britt, who prosecuted both State v. Green and State v. Demery read the plea agreement he, as a North Carolina district attorney, and Larry Demery entered into to the Court. Britt spoke "Third paragraph, 'The defendant Agrees to testify truthfully at the trial of Daniel Andre Green'."

70. The facts referenced above clearly demonstrates that his motivation for changing his narratives that directly implicated me, the Defendant, in the

murder of James J. Dix was to "make his narrative "wash" (T.T.P. 4903: 17-20)

71. One of the definitions of "wash" is "To rid of corruption or guilt; cleanse or purify; wash sins away." (The American Heritage Dictionary of the English Language 5th Edition)

72. Lisbon Johnson Britt argued to the jury that Larry Demery, when he testified or compromised with the State for his plea arrangement, didn't sell it but that he "buried his soul" (T.T.P. 7384: 10-11)

73. The trial of the Daniel Green the Defendant was a trial for the capital offense of First Degree Murder for Felony Murder and Premeditated and Deliberate Murder. The State's desired goal was to put the Defendant on deathrow until the State killed him with premeditation and deliberation based on the evidence of Demery's "washed narrative."

74. Demery testified that one of the conditions of his plea was that he would be interviewed by S.B.I. agent Kim Heffney and Anthony Thompson of

Robeson County Sheriff's Dept. about matters relating to the murder of James Jordan. (T.T.P. 4901: 15 thru 4902: 10

75. The Court, Judge Gregory Weeks, told Angus Thompson "From a tactical point of view, the story ~~is~~ that we can attack, you don't want the wheat to be mixed up with the chaff, okay." Angus Thompson responded "What I'm trying to do, is seperate the wheat from the chaff." (T.T.P 4786: 24 thru 4787: 4)

76. Demery stated "Yes" when Thompson asked him, "And you were, pursuant to the plea bargain, to testify truthfully in this case; is that correct?" (T.T.P. 4794: 24 thru 4795: 1)

77. The Court, former judge Gregory Weeks, asked Former District Attorney Luther Johnson Britt if he contended the State offered any evidence of premeditated murder in the first degree. Mr. Britt answered in the affirmative and stated "Through the testimony of Larry Martin Demery, that he observed the defendant stick the gun into the car, pull the trigger. Also the evidence related

to the Clewis Demory robbery, in that the defendant is alleged to have shot Mr. Demery three times. And the Court specifically admitted that evidence under Rule 404-B as evidence of his intent as it related to the murder of Mr. Jordan." The Court interjected, "Well, intent--", Mr. Britt then said, "Specific intent to kill." (T.T.P. 6157: 6-25)

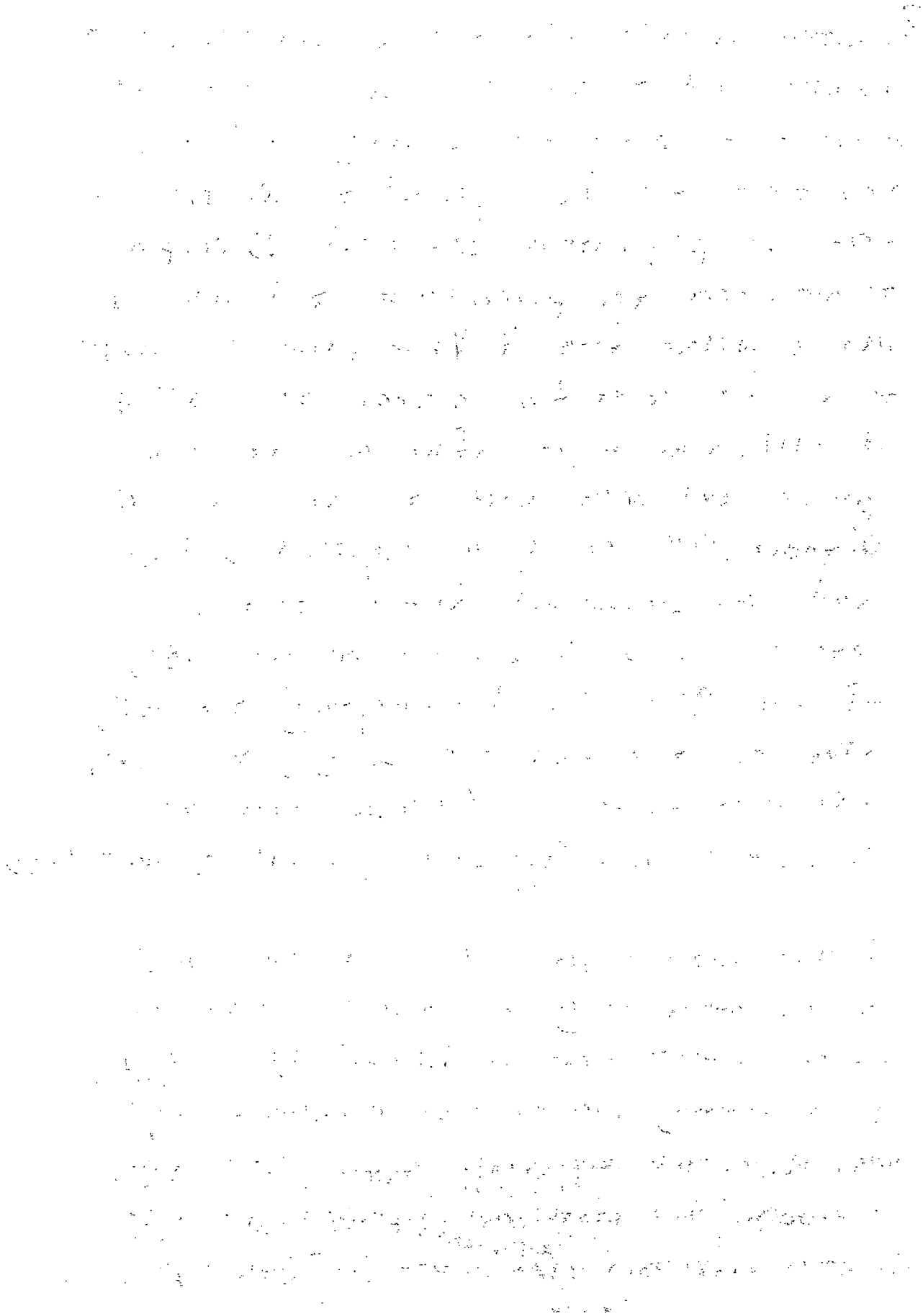
78. The State proceeded on both theories of First Degree Murder, premeditated and felony First Degree Murder (T.T.P. 6156: 14-20)

79. The Defendant was acquitted of premeditated murder

80. In its response to Defendants 5th Supplement, the State conceded that Defendants aren't convicted or acquitted of theories of murder but murder itself which means that the jurors verdict acquitting me, the Defendant, of premeditated murder is an acquittal of murder under any theory. The jurors Acquittal verdict is indicated on the verdict sheet as preceeding the guilty verdict of felony murder.

81. Demery testified that after he left the prison and went back to the jail that he saw the psychiatrist, "asked for something" (medication) the first time he requested to see him and that the psychiatrist prescribed Diazepam to him, that the psychiatrist told him it was a weaker form of Valium, that he stayed on it for about two months from August of 1994, that right after he left the prison and went back to the jail in October, 1995 he again requested medication and was prescribed Artane that he stated he "would say, the wonder drug of the 90's. It did everything for me.", that he took medication belonging to Henry Lee Hunt, known as Mulehead, that the medication was Kemodrin. (T.T.P. 4932-4935)

82. Henry Lee Hunt was convicted of two murders, one a contract killing, the other to silence a potential witness whom he described as a "water-headed, rotting son-of-a-bitch Larry Jones". He was represented by Angus Thompson, inter alia, on appeal, the state was represented by James J. Coman, inter alia and Justice C.J. Exum filed



A concurring opinion (See State v. Hunt 323 N.C. 407 373 S.E. 2d 400)(1988)

83. It is a well known common practice of the State and of other corporate entities to place more experienced criminals who have more experience with the criminal justice system in the immediate environment with those accused of crimes to initiate, mentor, and conduct them into how to manipulate the system in a way that benefits the State and corporate entities by presenting them with probable scenarios about the sentencing options available to them, how to use alleged confessions and "cooperation" as leverage in negotiating plea agreements and to make them susceptible to this behavior modification program, to use drugs, sex, gifts and fear to get the accused to comply.

84. Demery testified that he said he was flipping out and responding back to the radio to prevent from losing his mind. (4935:22 thru 4936:7)

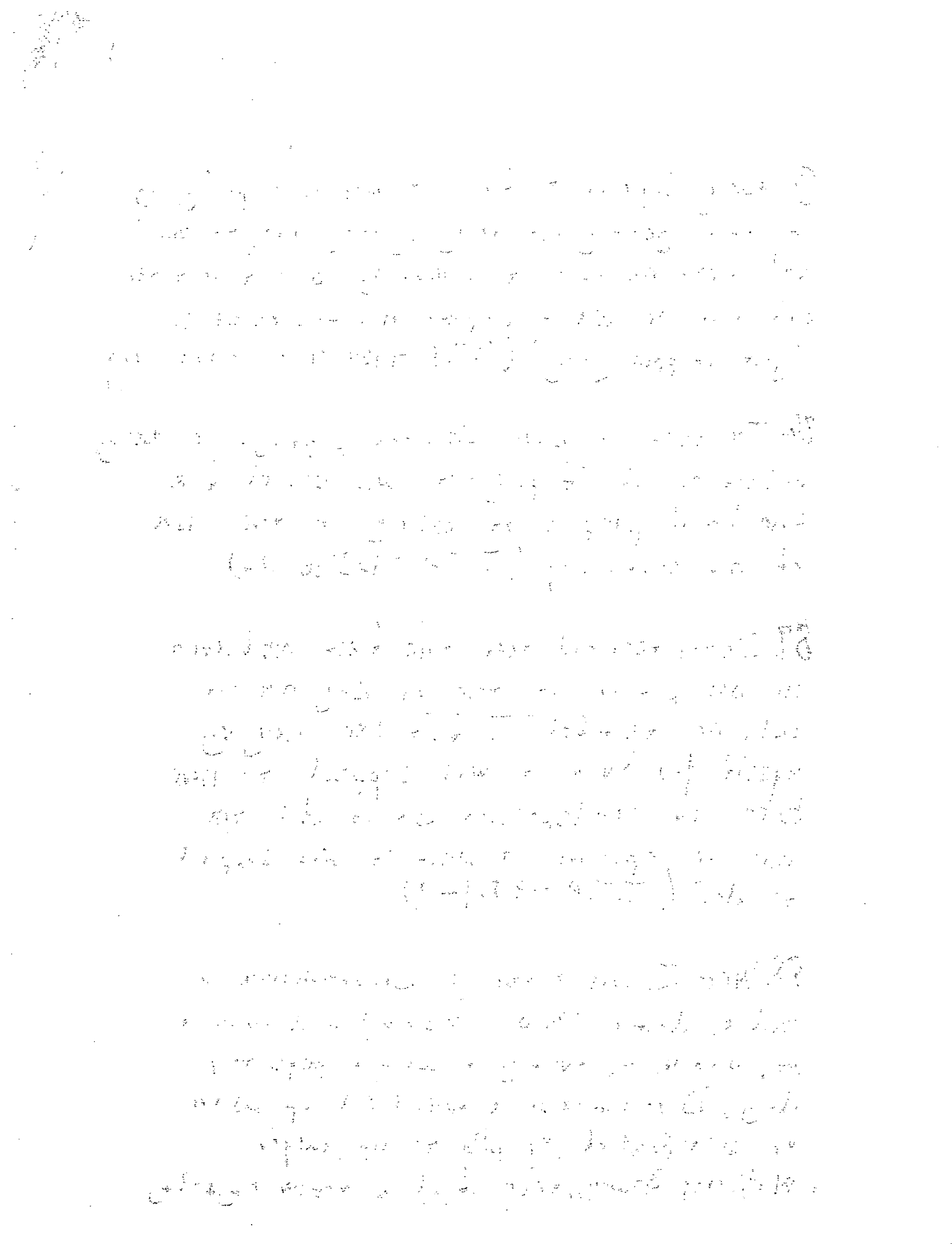
85. Demery testified that right after he turned 16 his Mom and dad asked him to see a psychiatrist or a psychologist in Lumberton, possibly Robeson Professional

Counseling Services to find out why he kept "going out there getting into things, getting into trouble" and that he went to counseling "about four times" and that he didn't complete his treatment, he "just stopped going." (T.T.P. 4924: 4-6; 4922-4923

86. The testimony about Demerys psychological counseling, medications and "flipping out" was elicited for the limited purpose of bearing on the issue of his credibility. (T.T.P. 4923: 16-25)

87. Demery testified that the first medication he was put on at the jail drug him out and, he testified "I felt like hanging myself. You know it was supposed to have been an antidepressant but it did the Absolute opposite of what it was supposed to do." (T.T.P. 4998: 1-7)

88. When I was in the jail Dr. Strawcutter, a medical doctor likewise prescribed medication to me, without me knowing it was a psychotropic drug. Darnel Locklear, a man locked up with me sent one of My pills to my lawyer. Woodberry Bowen then filed a motion regarding

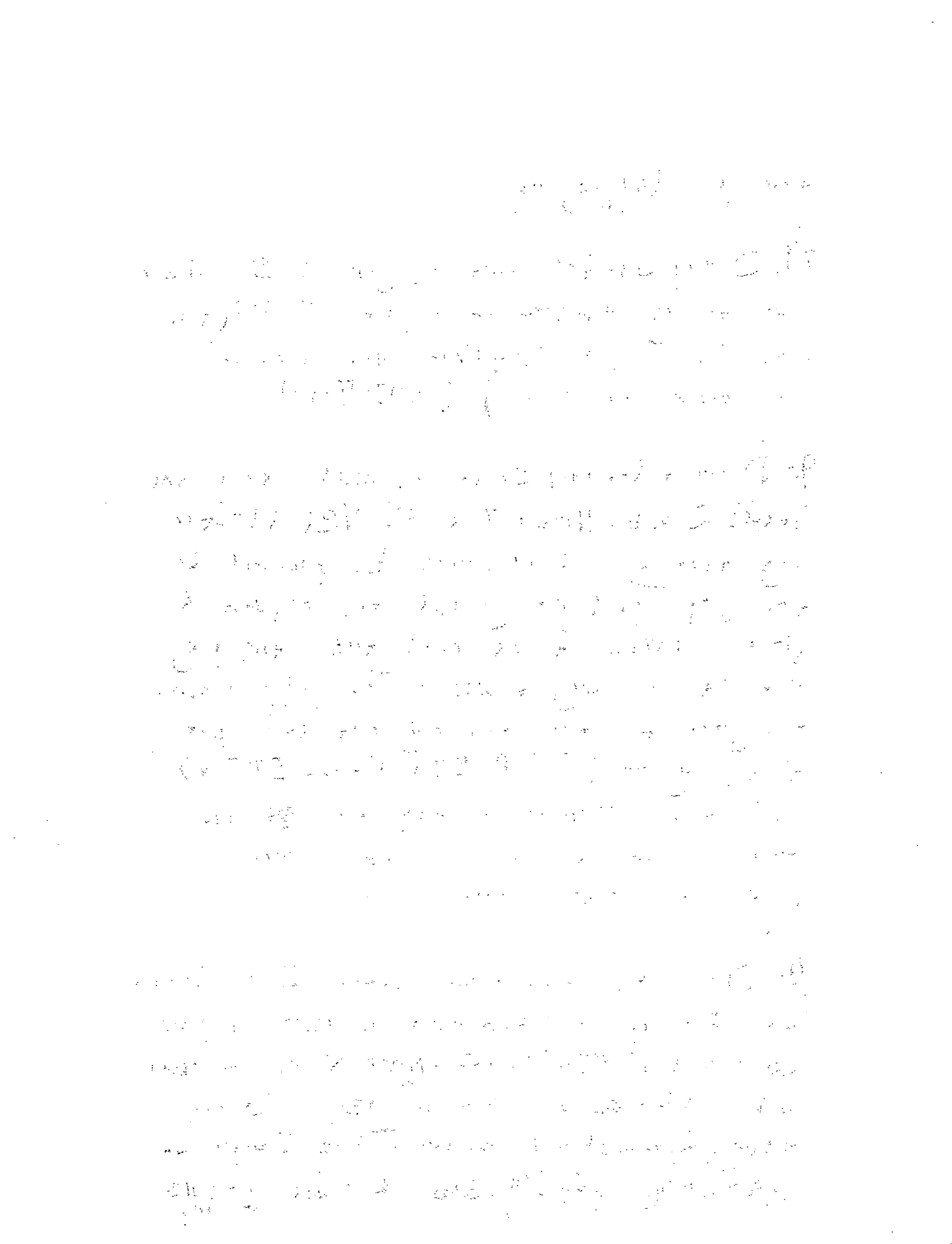


the jail dragging me.

89. Demery testified that he gave a .38 caliber gun to me, defendant, on August 14th 1993 (the same day I, the defendant was arrested and taken into custody). (4997: 7-10)

90. District Attorney Britt requested that the State's Exhibit Number 7, a 1986 NBA All-Star ring that was silver colored be published to the jury. The Court granted the request. A juror asked if he could take the ring out of a bag it was in. The judge allowed the juror to take the ring out and put the ring on. (T.T.P. 5706: 18th thru 5707: 6) And the verbatim Recording (audio) of the trial in the possession of the Clerk of Court of Robeson County.

91. Demery testified that after James Jordan was shot by the Defendant, he heard Jordan say "Oh Baby, I'm Sorry". When Angus Thompson asked him about what he heard Demery then testified that heard James Jordan say "something like "Oh, baby" it was groaned



out. That's what I heard." (#1481: 12-17)

92. The changes in Demerys versions about what occurred when James Jordan died only came to light after Demery was interviewed by District Attorney Johnson Britt, S.B.I. Agent Kim Heffney, Robeson County Sheriffs Dept. Detective Anthony Thompson and Demerys attorneys, Hugh Rogers and John Campbell.

93. Demerys trial version of James Jordans death and his two different versions of James Jordans last words being an apology was calculated to present the specter of a threat to ventilate allegations of crimes for leverage, as was Britts interview with Jon Evans of WECT which Britt used to make thinly veiled threats against Michael Jordan by commenting on his lawyers fear of Michael Jordan taking the stand. The Defendant has been portrayed as "difficult" for not allowing his post-conviction efforts to be utilized in like manner since I found

how greedy men were and had created conflict in this case to execute bunco scams against the Jordan Although, before figuring out what was going on the Defendant was mislead to believe these allegations as well These schemes will cease.

94. Britt, as District Attorney acting under oath, told the jury that Demery's life of crime started "when his lifelong buddy was back on the scene after being away for two and a half years", referring to the two and a half years I, the defendant was in prison since, because I hadn't lived around Demery since I was 14 years old, and then for only a year, "away" couldn't be a reference to merely being elsewhere. (T.T.P. 7384: 3-6)

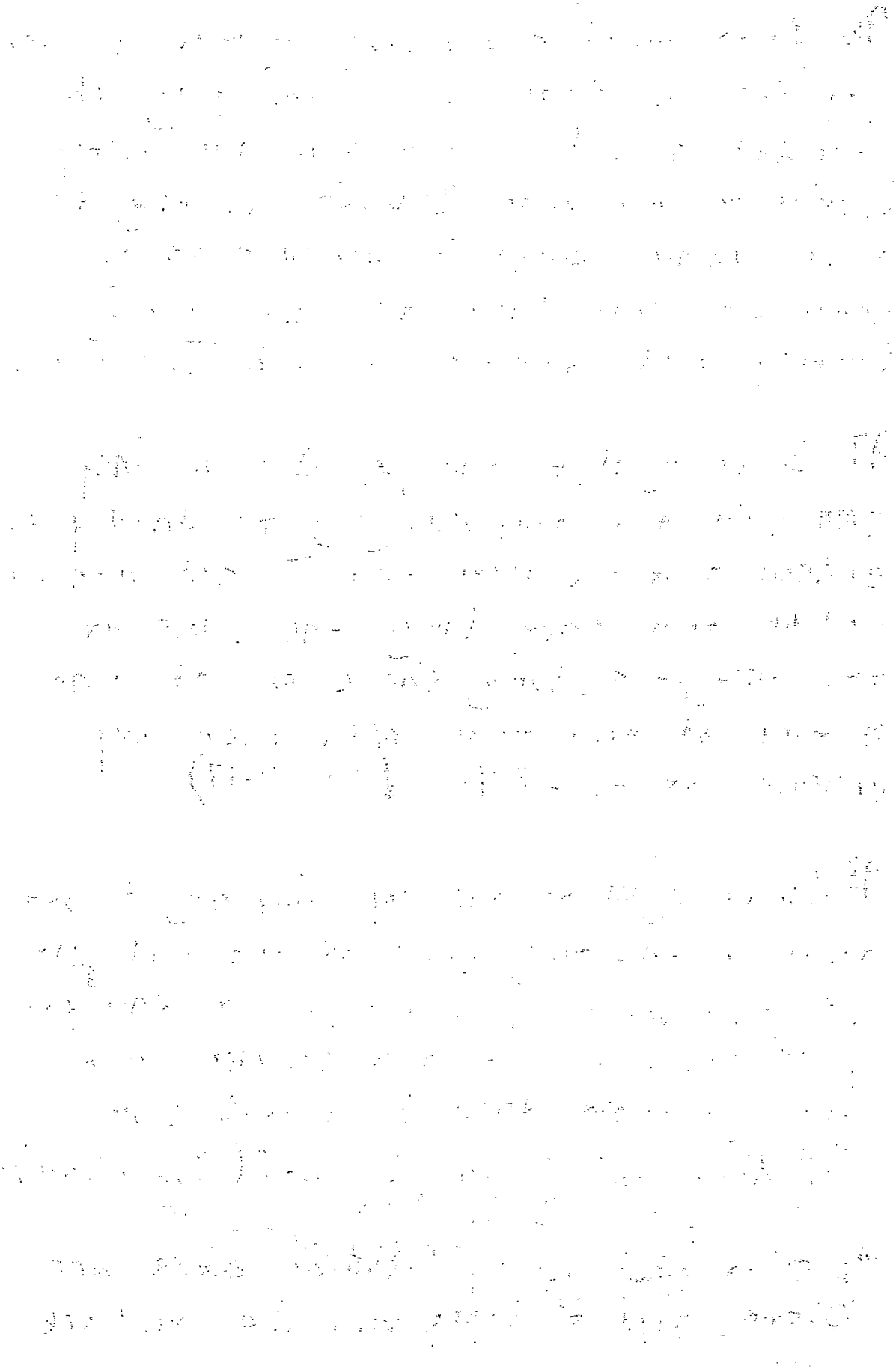
95. Britt stated his belief that "Credibility of anybody that stands in front of you is always an issue, whether it's a lawyer, whether it's a witness" and that the defense "didn't fulfill their promises" (T.T.P. 7318: 18-22) in his closing Argument to the jury.

96. Britt stated in his closing argument to the jury "Bobbi Jo Morillo. This is the young lady they said he had a choice, leave with Larry Demery or stay with Bobbie Jo. According to their evidence Bobbie Jo was with him the entire time. Why didn't they call her? Certainly would strengthen the alibi. (T314: 18-24)

97. Britt argued to the jury. "Selective. They even claim that they were going to show you evidence that the State, that I had withheld evidence from them during the course of this investigation, during the course of the history of this trial. Was their any evidence of that? No." (T318: 11-17)

98. Britt argued to the jury, "They hung it out there on this thing called an alibi. And just like that water that's in that pot when you pour the noodles into that colander, their alibi goes out those holes and down the drain and is gone forever." (T320: 5-10)

99. Britt asked the jury, "And who better, who better than to assist this alibi than the



defendant? He didn't testify in this case." (T.T.P. 7320:11-13)

100. Britt argued to the jury that "What the evidence in this case shows is that Daniel Andre Green is a cold blooded killer." (T.T.P. 7304:6-8)

101. Demery, according to Britts closing argument, that "Larry Demery told you that Daniel Green fired that shot"! (7302:8-10)

102. Britt told the jury that "... the defense contends that that was not James Jordan that was pulled from the Gum Swamp in Marlboro, South Carolina on August 3rd, 1993. They can't, they would not, if recall the evidence yesterday would not even acknowledge that was James Jordan's body. What even was it that James Jordan was wearing when Carolyn Robinson last saw him on July 22nd, 1993, the morning of July 23rd, 1993 when he left Wilmington on his way back to Charlotte? Golf shirt, gray shorts, she even took a picture. States exhibit Number 9. James Jordan, alive and well, on the afternoon of July 22nd 1993, standing by what? The Red Lexus. Wearing what?

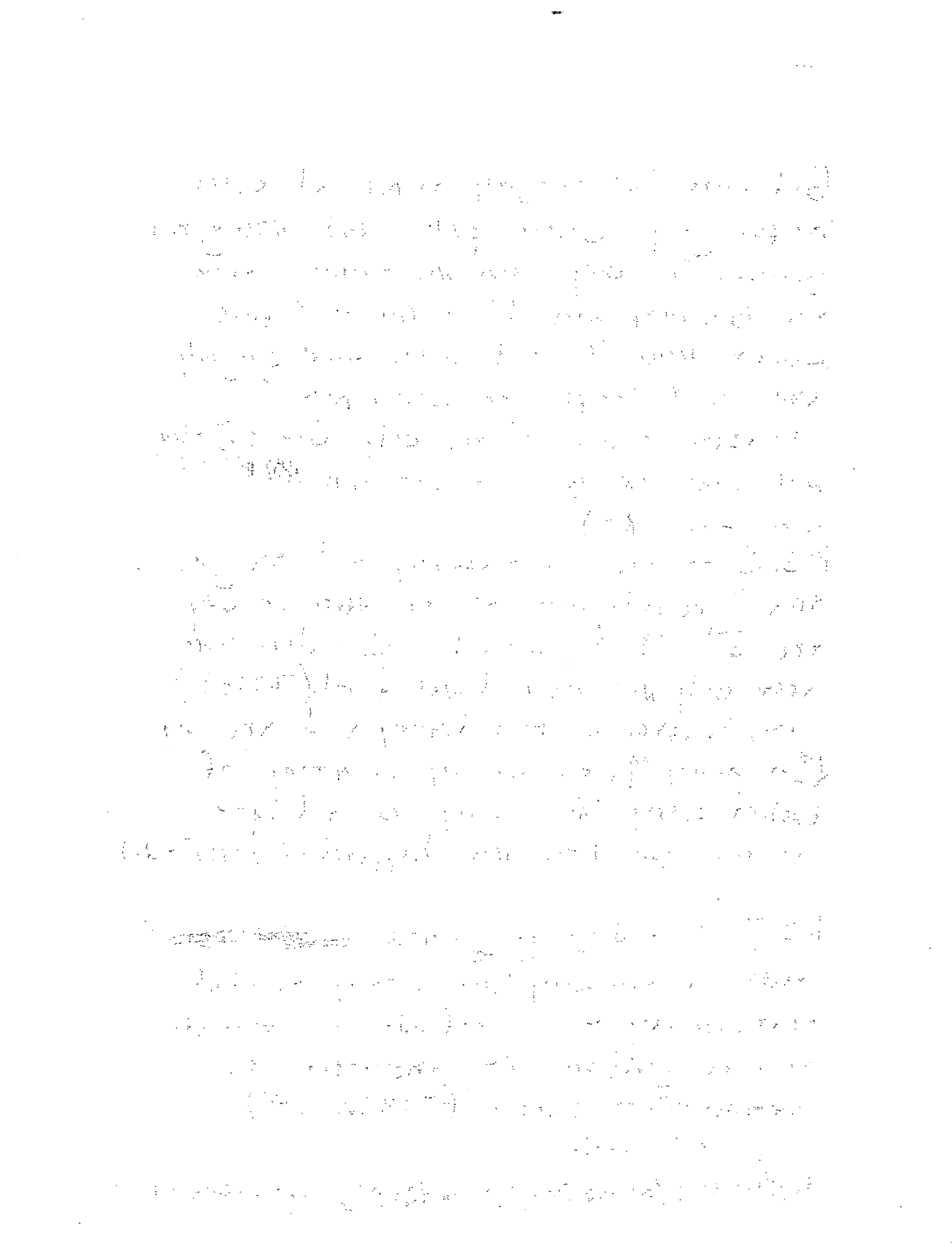
Golf shirt and burgundy stripes and black stripes, gray Dockers pants and wearing his glasses. The body that was recovered from the Gum Swamp, what did it have on? State's Exhibit Number 17. Golf shirt, white burgundy and black stripes, gray Docker pants."
"Exactly same clothes on the body James Jordan were when he was last seen alive." (T.T.P. 7414:23 thru 7416:2)

103. Britt, the District Attorney told the jury that "The body went into the water on July the 3rd 1993. August the 3rd, 1993. 11 days later that body was uncovered, was found. (7416:6-8)

104. Britt the District Attorney told the jury But Larry Martin Demery is worthy of belief. Larry Martin Demery has told you in his own words what happened. (7303:18-20)

105. The Court, Judge Gregory Weeks [redacted] stated that "... Larry Martin Demery testified that, contrary to his affidavit, any statements that he gave was not the result of intimidation or coercion" (T.T.P. 7280:8-11)

106. Not only does Demery's conflicting sworn testimonies

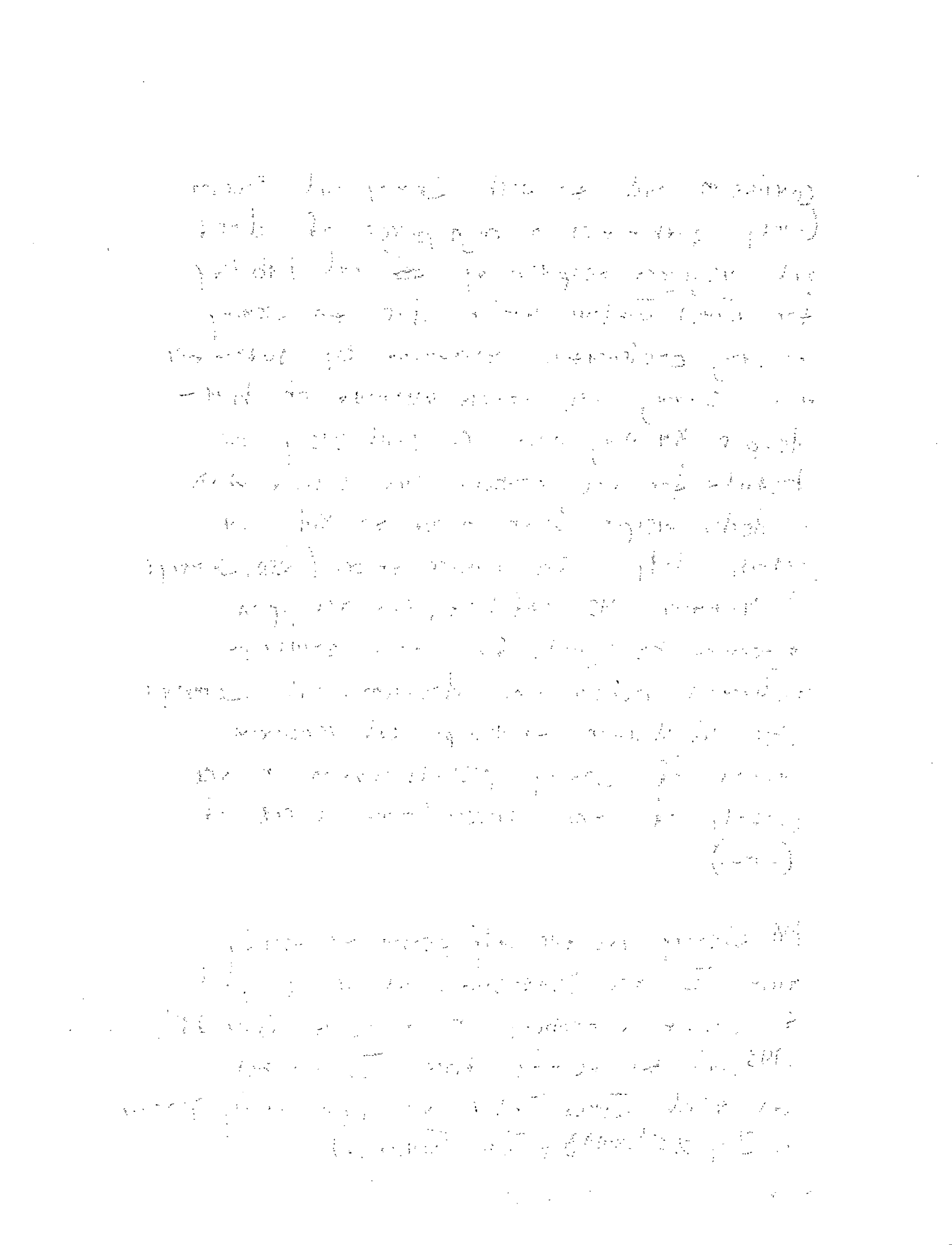


bear on his credibility but is also evidence of perjury in the murder case of James Jordan, a felony.

107. Demery's Affidavit, which, he testified under oath, was not truthful as he swore it was, was submitted to provide an evidentiary factual basis in support of his motion to suppress his interrogation by officers of the law. Once his motion was denied by the court and the Court ruled that his statements to officers were not procured by coercion and intimidation in violation of the North Carolina and United States Constitution, he changed his unsworn versions of James Jordans murder, and his sworn averments about his interview to police, to the sworn versions he orally testified to in open court in return for a plea that (1) give him immunity for his crimes, including perjury, committed in North Carolina Courts of law, (2) dismissed 1st degree murder under the theory of premeditation and deliberation (3) Allowed him to determine the truth about James Jordans murder, a narrative the State is constrained to defend to uphold the Defendants, my,

conviction and to wash Demery and Robeson County authorities in high places of direct and negligent responsibility for and liability for James Jordans murder due to Demery receiving preferential treatment by authorities not serving the arrest warrant on him - despite knowing where he could easily be located - for the robbery and assault with a deadly weapon with intent to kill an elderly lady in the Lumbee tribe. (See, Demerys 30 November 1995 affidavit, and the plea Agreement he signed, the trial transcript referenced herein this document, and Demerys plea adjudication transcript and verbatim Record of Demerys plea adjudication in the custody of the Robeson County Clerk of Court.)

108. Demery was the only person to testify that I, the Defendant, and he conspired to commit a robbery on or about July 23rd, 1993, and to testify that I robbed and killed James Jordan at approximately 3:00 AM on July 23rd, 1993. (Trial Transcript)

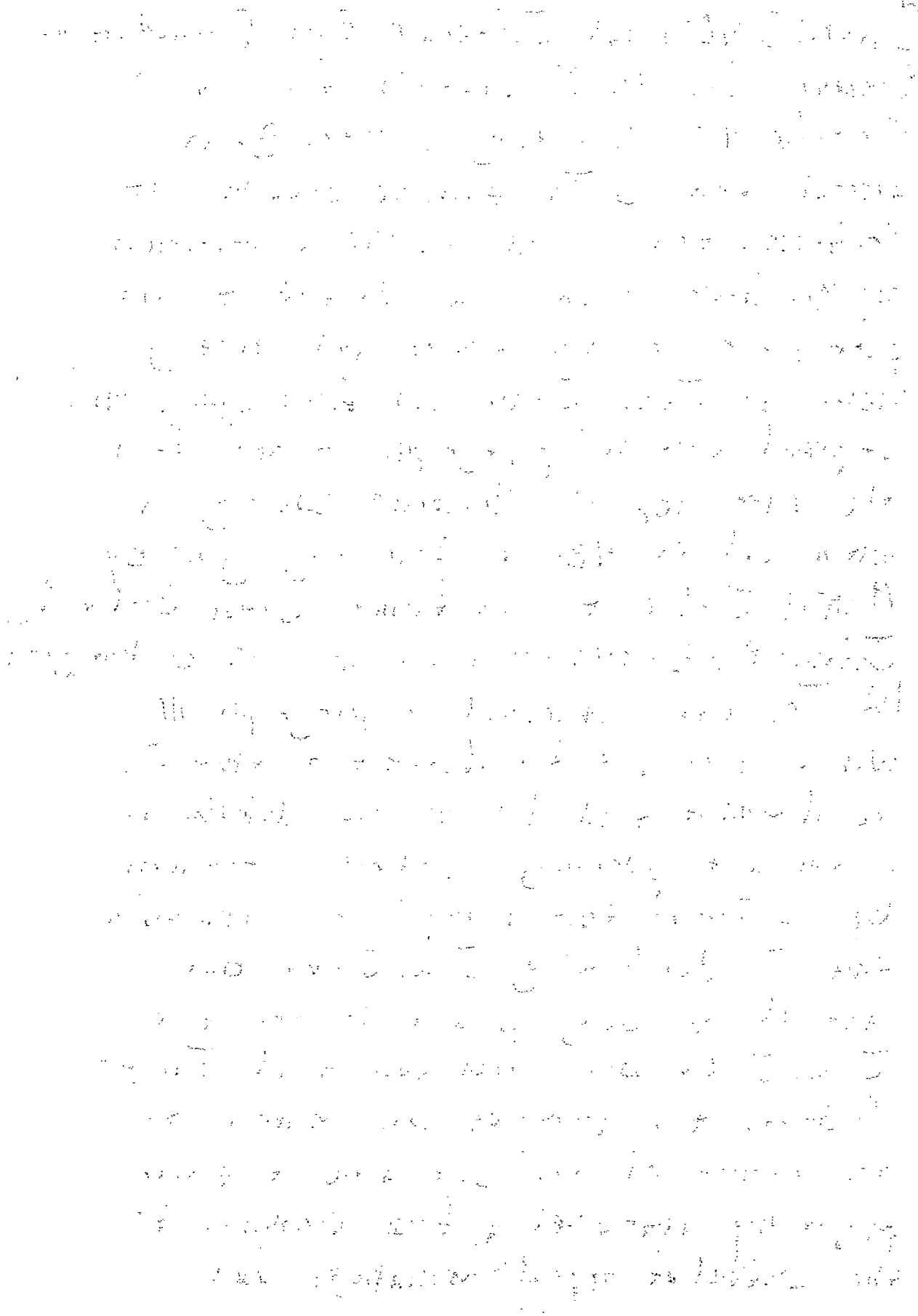


109. Overwhelming evidence of guilt beyond a reasonable doubt is a higher burden of proof than guilt beyond a reasonable doubt.

110. The State has alleged that there was circumstantial evidence of guilt, ~~of~~ beyond a reasonable doubt of 1st Degree murder, conspiracy and armed robbery in State v. Green but, in fact without Demerys testimony placing neutral circumstances that, standing alone, without Demerys constantly shifting narrative providing an inculpatory context, only provided evidentiary elements ~~for~~ for: nonexclusive possession of stolen property, violating the conditions of parole by Defendant traveling to South Carolina and Cumberland County; obstruction of justice, there was no evidence to meet the elements of felony murder, conspiracy and armed robbery and certainly there is no overwhelming evidence of guilt beyond a reasonable doubt (Trial Transcript, Defendants Motion for Appropriate Relief)

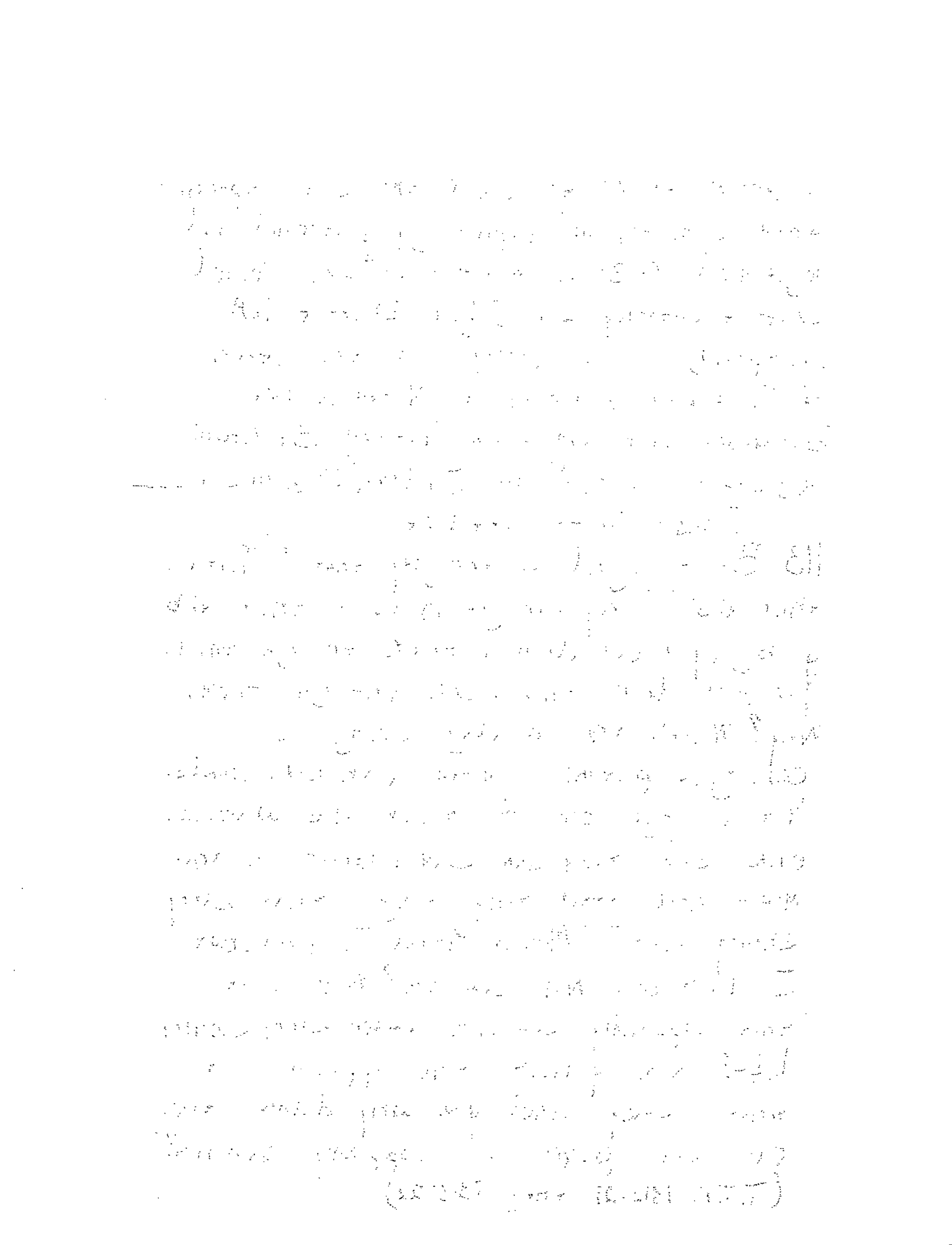
111. On 15 August 2007, Johnson Britt, NC State Bar # 14161 swore and subscribed an affidavit in Daniel A. Green v. Rob Tufano;

Channel 3 WBTV and Jefferson Pilot Communications Company, Case No.: 07-CVS-4713, filed in Charlotte, N.C., Mecklenburg county. Britt averred that "5. The evidence presented at Mr. Green's trial in 1996 included a statement by Mr. Green in which he admitted to his participation in the robbery and shooting death of James Jordan" and "6. His legal counsel stipulated that still photographs taken from the video depicted Mr. Green wearing a watch and an NBA All Star ring given by Michael Jordan to his father James Jordan." Jefferson Pilot Communications used to sponsor ACC broadcast games. 112. The case referenced in paragraph 111. was a civil suit for defamation that I, the defendant, filed due to the defendants in the suit publishing slanderous statements by Rob Tufano that conveyed the impression that I denied killing James Jordan but admitted to being present at the time James Jordan was robbed and killed. Therefore, Mr. Britts false averment was material to the outcome of the suit since it either perjuriously attributed a false confession to the Defendant or/and misleadingly used



rhetorical tricks to create the same impression thru sophistry and amphibology buttressed and legetimized Mr. Britts position as "the elected District Attorney for Judicial District 16B encompassing Robeson County" and the status of "... former University of North Carolina basketball star (and then National Basketball Association star) Michael Jordan. (See Exhibit ___ Johnson Britts affidavit.

113. Britt argued to the jury that, "That's their Alibi." "They have got holes in their Alibi so big, you can drive a truck through them. You could drive this Lexus through them. Why? What's the old adage, seeing is believing, a picture is worth a thousand words. Not a single one of their Alibi witnesses ever said they saw Daniel Green in that mobile home after they Allege that Larry Demery left." "Monica. Monica, I heard, but I didn't see." Who saw him? Who is it that supposedly saw him after Larry Demery left? Ask yourself the opposite of what they asked you, why didn't they call the people who supposedly saw him?" (T.T.P. 7312:21 thru 7313:22)



114. Jovan Carter was convicted of possessing the Lexus before my, the Defendants, trial. Jovan Carter testified that he was involved in the possession of the Lexus, charged with possession of the Lexus and was convicted of possessing the Lexus and received a 4 year sentence and went to prison As a result of being charged with possession of that stolen vehicle. (T.T.P. 1645-1646)

115. Jovan Carter testified that when the red Lexus automobile came to his house on July 26th of 1993 it was driven by an Indian Male. Larry Demery is a Native American. (T.T.P. 1625: 2-5)

116. Carter testified that there was no talk about the red Lexus, that he looked into the trunk, that he drove the Lexus, that the "why" we drove to his friends, Terrellis Teasley's house was "we had just rode over there." (T.T.P. 1629: 7-25; 1630: 2; 4-9)

117. Jovin Carter testified that when the Defendant, Demery, Rick Hiles, another guy arrived at Teasley's home that they started going through the car, looking at the stuff in the car, that James Jordans name came up on some papers in the car, that people said that it was Michael Jordans car, that the Defendant said it was not Michael Jordans car, and that there was never any conversation about what was to be done with the car, that there was a time when there was a conversation about doing something with the car when everything started coming up that whose car it was, when "they" found out it was Michael Jordans father's car," and that as a result of that conversation, Jovin Carter drove the car down to the woods on McNeil Road, that he drove the car to McNeil Road to get rid of it for the Defendant, T, and Larry, that the defendant did not tell him, Carter, why he wanted to get rid of the car (T.T.P. 1630: 16-22; 1631-21 thru 1632: 1-9; 1633: 1 thru 1634: 17 thru 1635: 3-11; 1636: 1-15; 1637: 15 thru 1638: 1-25)

118. Carter testified that the Defendant, at the time,

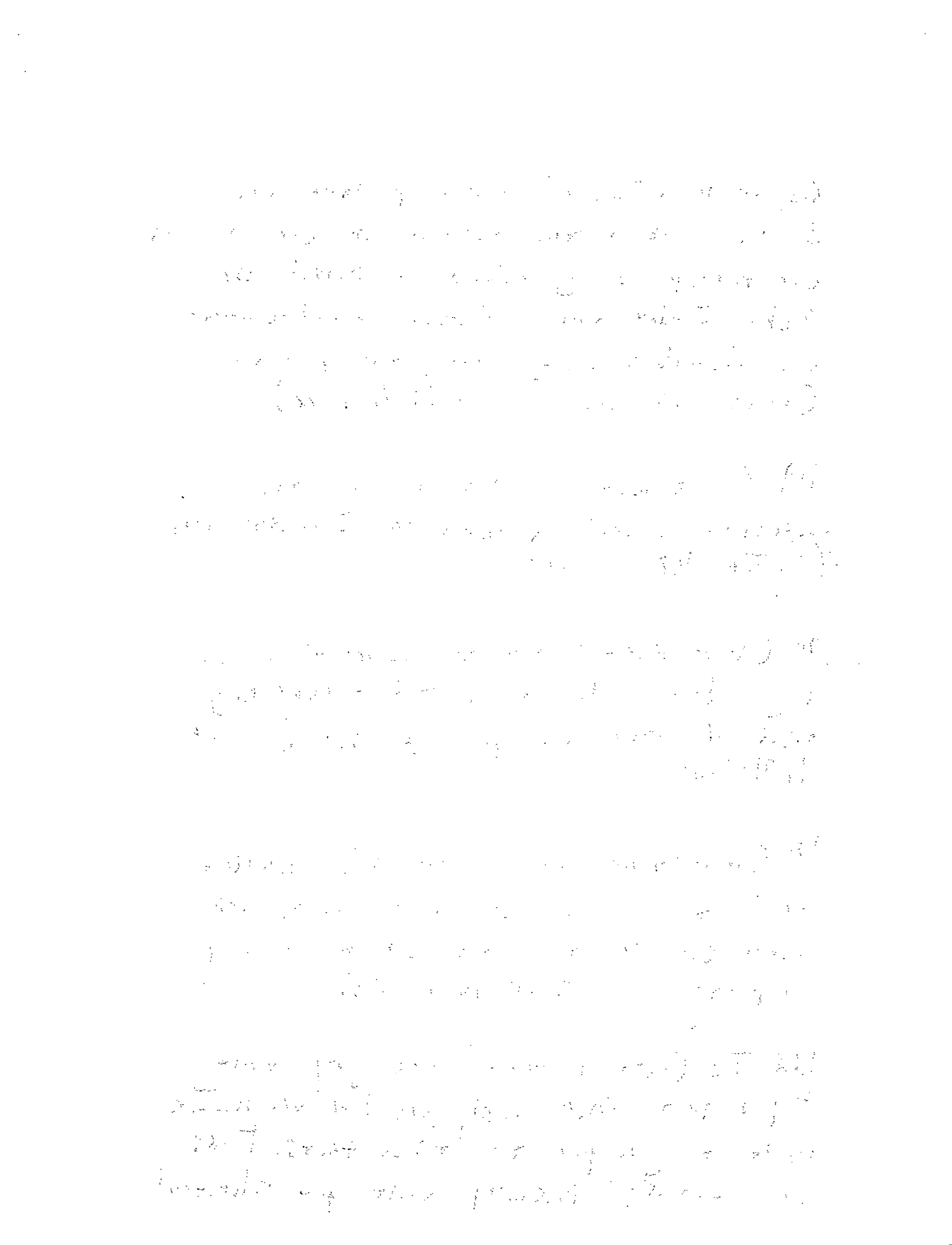
also known as "Walah," showed up after the discussions about the items in the car and the car perhaps being related or owned by Michael Jordan and Mr. Tenley couldn't remember the defendant being there initially with Carter and the others. (1671:1-22)

119. Carter testified that he and the Defendant smoked a blunt on July 26th, 1993. (T.T.P. 1688:17-25)

120. Carter testified that the Defendant pulled a gun from inside of a 4 foot black bag that was under the passenger seat. (T.T.P. 1691:1-25)

121. Carter never testified that the Defendant tried to sell the car, discuss selling the Lexus car, or taking the car to a chop shop to sell. (T.T.P. 1622-1693)

122. The Court instructed the jury that "You must then apply the law which I'm about to give you to those facts. Folks, it's absolutely necessary that you understand



And apply the law as I give it to you and not as you think the law is or as you might like the law to be. And this is of absolute importance, because justice requires that everyone tried for the same crime or crimes be treated in the same way and have the same law applied in everybody's such case." (T.T.P. 7439:12-20)

123. Britt told the jury and the public in Court that, "Larry Demery told you the truth." (T.T.P. 7436:25)

124. Britt told the jury and the Court and the public in Defendant's capital punishment trial that "The truth remains constant, the truth doesn't change, because when you tell the truth, it's easy to tell the truth again and again and again. And that's what Larry Demery, I argue to you, has done. He has told the truth since August the 15th when he gave up on telling the story about Rick, he came forward and said what happened." (T.T.P. 7432:13-20)

125. Britt told the jury, the Court and the public in Defendants capital punishment trial with a possible penalty of years on deathrow and Defendant being executed by State employees ~~paid~~ DG paid by North Carolina citizens ~~tax~~ DG tax dollars, that "The truth has a certain ring. It's a ring of consistency. And that's what Larry Demery has done." (T.T.P. 7433:6-8)

126. The Court, Judge Gregory Weeks stated, "Essence of the cross-examination dealt with what are you getting in exchange for your testimony, which is the heart of the case. The heart of the case is what if concessions were made in exchange for Mr. Demery's testimony. His credibility is the focal point of the case. The only real dispute in this case is who did what when. That's the ~~any~~ DG only real issue that I see involved in this case, who pulled the trigger. And in that regard, any concessions that have been offered bear on that. So I don't think it's collateral. (T.T.P. 6554:1-2; 6553:12-25)

127. On March 23rd, 2018, Luther Johnson Britt was interviewed by Jon Evans, a WECT news reporter for an episode of 1-on-1, a podcast available at Jevans@wect.com

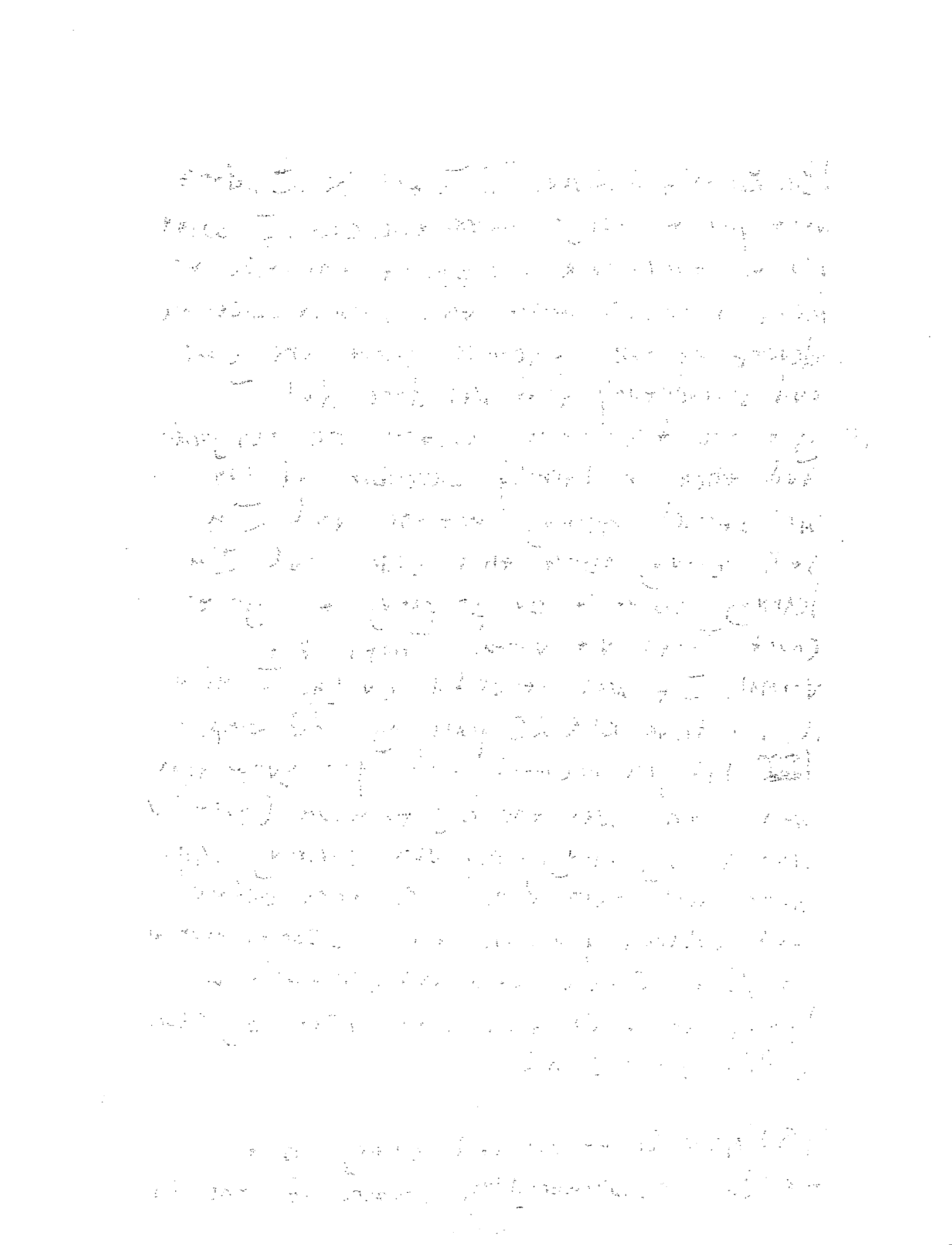
128. WECT is the "sister station" of WBTV, the station in Charlotte, N.C. that Britt provided a perjurious or misleading affidavit to in Daniel A. Green, Plaintiff, v. Rob Tufano; Channel 3 WBTV, And Jefferson Pilot Communications Company

129. Britt stated to Evans that "Chief Justice Exum from the Supreme Court declared it an exceptional case, first time it had ever happened in a criminal trial. And there was concern because this happened in July of '93. (Part 1 1-on-1)

130. Mr. Britt told Jon Evans that "And so um, I believe there was -- there was a real belief that they were being seen as scapegoats for an investigation that no one really knew anything about" (Part 1, 1-on-1)

131. Britt told Evans "... I was like I don't want you to assign anyone the case. I want you to turn over a copy of the file to me. Let me see what this is about. Let me develop my own theories about the case and so eventually that was done. And I got the file shortly before he resigned and then in literally December of 94 we started hearing motions and I'm still learning about this case and I'm learning about it by preparing to go to court. That's not normal. That's not Normal. It was stressful enough. I mean if you think back 25 years ago OJ Simpson [redacted] had just occurred and you know that was -- that was the big trial, um. Court TV was a big thing, they were covering cases never really been done like that before and suddenly you have this celebrity murder of Michael Jordan's Dad and everybody was looking at it. Oh, this is the next big case."
(Part 1-on-1 p.2)

132 While Britt was still learning about the case in December 1994, members of the U.S.

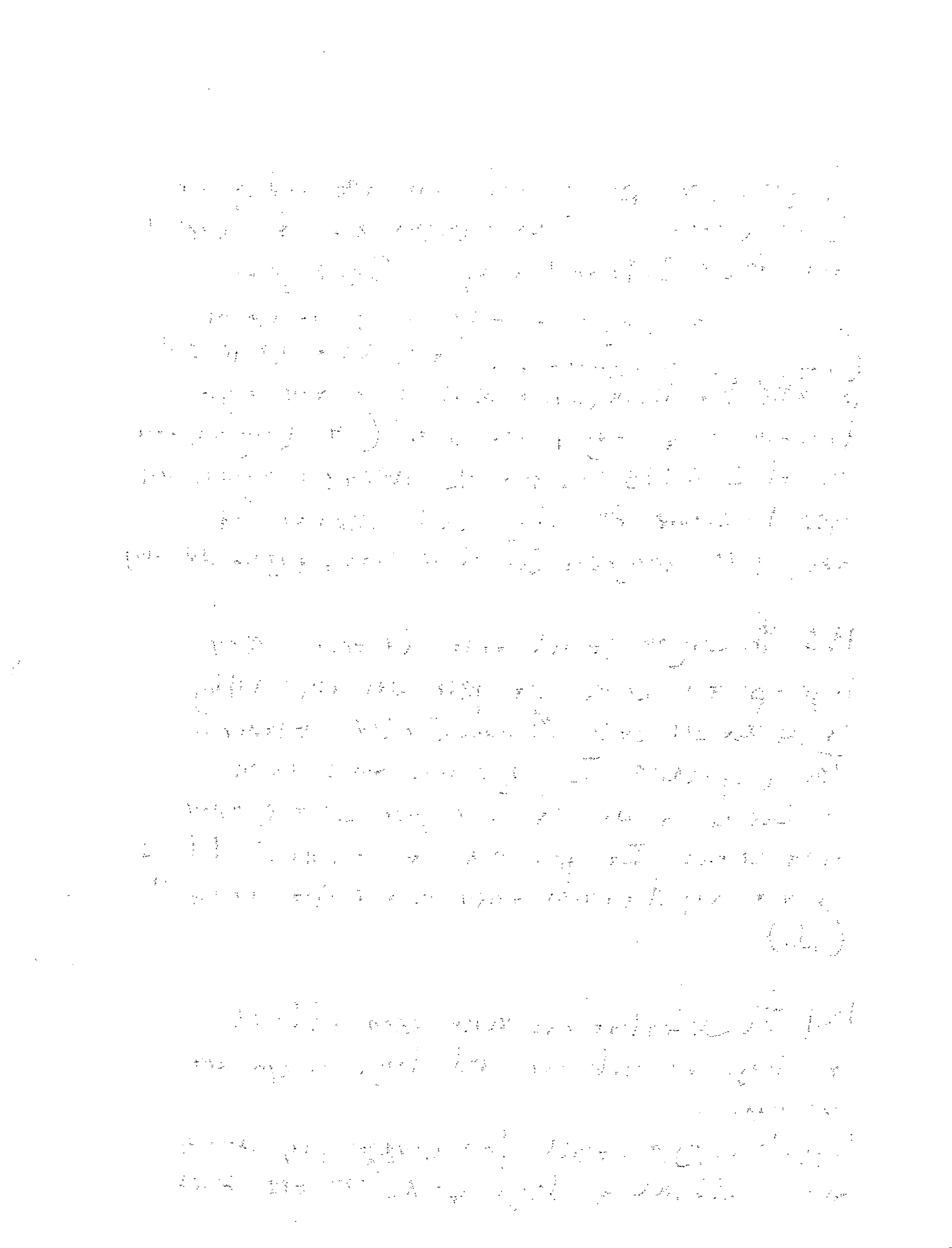


Congress to promote and pass the Violent Crime Control Law Enforcement Act to expand the Prison Industrial Complex. On August 24, 1994 Mr. Dorgan touted the Violent Crime Control Law Enforcement Act "the best crime bill in the last decade, which moves us in the right direction in fighting violent crime" (140 Congressional Record S12393-01, 1994 WL 460043, Congressional Record - Senate Proceedings and Debates of the 103rd Congress, Second Session, August 24, 1994)

133. Mr. Dorgan stated that "Another very high-profile crime last year was the killing of basketball star Michael Jordan's father. The only reason I single out this crime is because it was of a higher profile than most crimes. If you look into it, as I did, it is not any different than most violent crimes." (id.)

134. The Defendant has never been addicted to drugs nor used any hard drugs except for marijuana.

135 Mr. Dorgan stated "You cannot put someone who is addicted to drugs back on the streets



with that drug addiction because they will commit another crime within half an hour. They must feed their drug addiction... What will they do to feed their drug addiction today? They will find some INNOCENT American somewhere and they will commit a heinous crime" (Id)

136. Larry Demery was known to be a drug addict in 1993 and lost a Mapp contract to be paroled in 2022 due to his drug addiction.

137. Mr. Dorgon referenced my, the Defendants, conviction for assault with a deadly weapon with intent to kill which was vicated in 1995 after an evidentiary hearing in which the Defendants lawyer and the State elicited testimony that established every element of common law self-defense and ineffective assistance of counsel by Robeson County Public Defenders office. (See Clerks file)

138. Mr. Dorgon also referenced Larry Demergs conviction for Robbing and assaulting Wilma Dial." The other accused murderer was Martin

EXPLANATORY

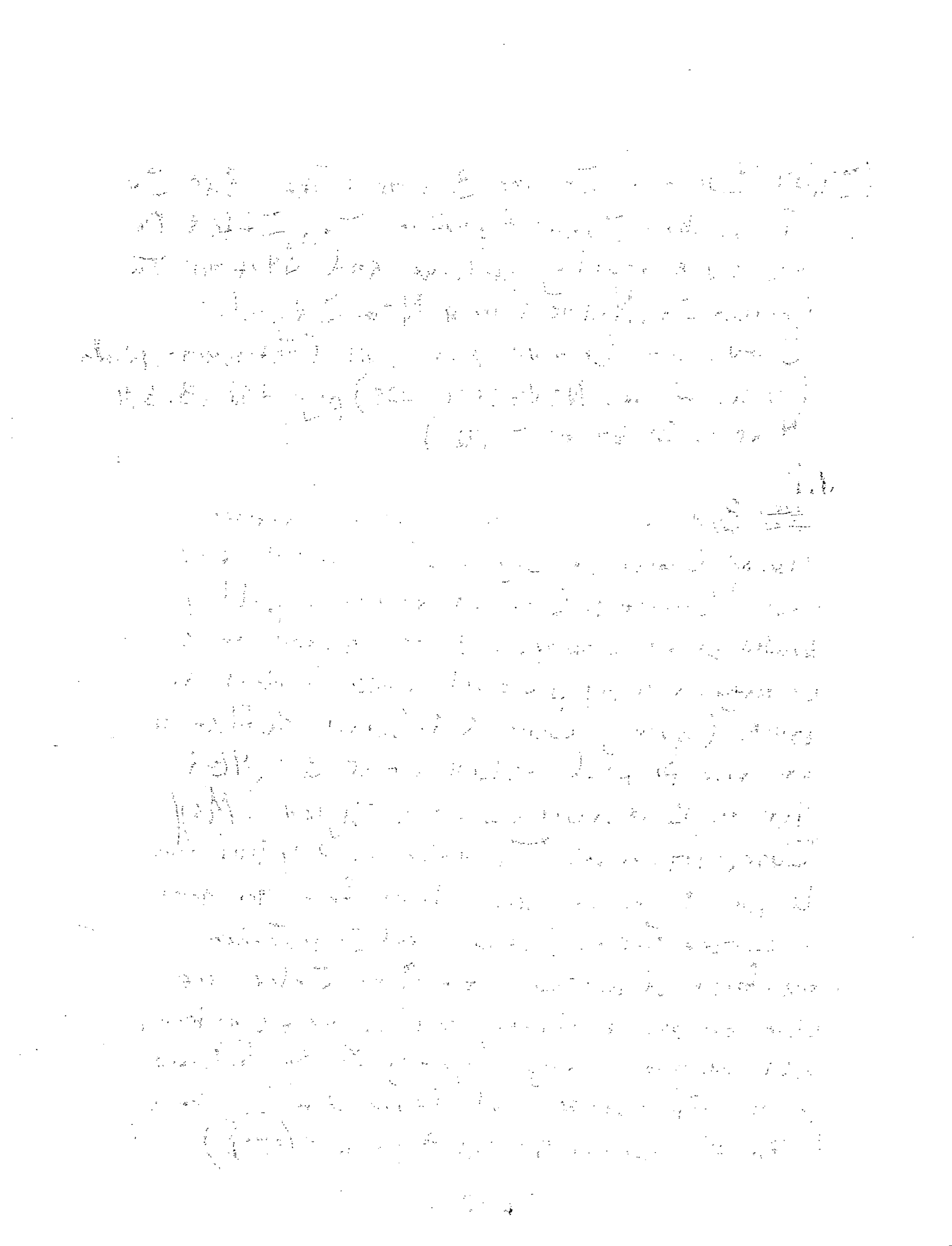
THE FOLLOWING DOCUMENT(S) MAY HAVE POOR IMAGES DUE TO POOR PHOTOGRAPHIC QUALITY OF PAPER.

Demery who was with Daniel Green. Before he allegedly killed James Jordan he had been indicted for clubbing a 61-year-old clerk with a cinder-block - he put her into a coma - while robbing a market eight months after his indictment, he was still free on bond, even though he had failed to appear in court for a hearing." (Id.)

139. During the same proceedings and debates Mr. Dorgon used Defendants wrongful conviction and his false statements that "Two years later, with good time credits and parole, he was out, and "Strangers to the system? Oh, no. People who had been in the system, people law officials knew, people who had been indicted, had been charged, had been convicted, had been sent to prison, and then found their way through the revolving door back to the streets Again to victimize another innocent American...", to Argue for the

(Id, See Blue Hairs In The Bighouse: The Rise In The Elderly Inmate Population, Its Effect On the Overcrowding Dilemma and Solutions To Correct It, Nadine Curran, New England Journal on Criminal and Civil Confinement, Vol. 26 (WestLaw 26 NENGJCCC 225) page 232, B, 3, 4 Note: 54, 64, 68, 71, 72)

140 ~~[redacted]~~, Blue Hairs In The Bighouse... Author Nadine Curran on page 232 referenced this case. "Corrections Corp. of America, a publicly traded prison company, is listed on the stock exchange. A highly publicized murder increases its stock." (quoting Derrick A. Carter, Reflections of the proposed Federal Crime Bill, NBA National Basketball Association Magazine, May/June, 1994, at 25. "The murders of Polly Klaas - the 12-year-old girl who was abducted from her home in Suburban Petaluma, California - and James Jordan - the father of basketball star Michael Jordan - are clear examples of individual incidents that considerable media and public outrage." (quoting Michael G. Turner et al., "Three Strikes and You're Out" Legislation: A National Assessment, 59 Fed. Probation 16 (1995).)



111. Nadine Curbins observations that "The danger of overcrowding is a negative factor to some in the prison industry, but positive to others because of the revenue it generates to build more prisons. With this windfall of profits, some claim prison overcrowding is a "Capital Commodity, an investment, the junk bond of the 90's or often referred to, a "prison industrial complex." "Other groups who benefit from prison overcrowding and prison construction are politicians, private companies and government officials Some claim these groups encourage spending on prisons whether or not it is actually needed. If it appears that the need for this type of spending wanes, then these politicians are alleged to use the "fear of crime" to spurn on more spending. The lure of big money is corrupting the nation's criminal-justice system, replacing notions of public service with a drive for higher profits. The eagerness of elected officials to pass 'tough-on-crime" legislation - combined with their willingness to disclose the true costs of these laws - has encouraged all sorts of financial improprieties. These allegations

These allegations are easy to believe with statistics such as thirty-five billion dollars spent each year on corrections (Id. at 233, 232) (Also see, Jonathan Turley, Our Prison Profiteers, N.Y. Times, August 3, 1990 about "real sheriffs who" earn a profit by supplying whatever free cell space they have at their jails for millions of dollars with little or no reporting on how the money is spent.)

142. On December 8, 2022 Jim Jordan, during a House Judiciary Committee hearing stated "One thing I've learned: People who mislead folks on small things mislead them on big things. You know what? You can lie in a book, that's not a crime. You can lie to the New York Times, that's not a crime. But when you come in front of Congress, and you say things that are not true, you're not allowed to do that". The hearing was looking into ethical violations related to the U.S. Supreme Court

143. On November 16, 1993 Senator Jesse Helms, during the Senate Proceedings and Debates of the 103rd Congress, First Session stated that "Most

Members of the Senate can relate to the shocking stories involving their own States, but let me speak for North Carolina where Gov. Jim Hunt is doing his best to cope with this awesome problem. Last year in North Carolina alone, more than 26,000 prisoners were given early releases from prisons. These 26,000 included 88 felons convicted of murder and 37 rapists. The father of basketball star, Michael Jordan, Mr. President, was killed by one such felon who had been given an early release. For a change, let us think about the rights of victims of violent crimes. And this Amendment will do exactly that. (139 Cong. Rec. S13745-01, 1993 WestLaw [WL 470980])

144. At the time Senator Jesse Helms made the foregoing remarks in Congress, November 16, 1993, the Defendant had been in jail about 90 days, no evidence had been released in court to substantiate his slanderous and libelous remark that James Jordan was killed by a felon paroled from prison, the Defendant, the only person charged with murdering James Jordan

who had been parole from prison and who had been to prison under our laws and under the United States Constitution, still had the presumption of innocence and only Larry Demery, who the police threatened with the death penalty by "a needle up your ass, son", claimed that the Defendant killed and/or was involved in James Jordan's robbery and murder, in a narrative that kept being revised, edited and modified until and during Demery's testimony at trial. (See, Demery's affidavits, pretrial statements, trial testimony in State v. Green, interviews with the press, Defendant's motion for appropriate relief, Demery's plea adjudication, and affidavits of facts that never changed of the people who Demery admitted he led on the Defendant to confessed he killed James Jordan during an alleged drug deal to, and before his plea was restructured to comply with law, admitted his lawyer put a loophole in his deal so that he could return to court to get out of prison. Also see Richard Lockleas testimony at Defendant's trial.)

145. ~~[illegible]~~ DG. Mr. Britt told the media, Jon Evans, "He always blamed Larry Demery. Um. Demery initially

um was denying any involvement and then as they shared information with Demery, Demery ended up telling his version of what happened." Jon Evans Responded by asking, "As you saw the evidence and as you're starting to learn it did you have an idea that you thought one would turn on the other because in essence isn't that what happened? Demery uh uh uh" Britt replied, "That's that's what ended up happening and it was after the motions to suppress. Um. Both of the motions had been denied. Um. We were still not in a position where we were headed to trial. We -- we had some other issues to deal with..." (Transcript of Int. Jon Evans 1-on-1 interview with Johnson Britt. JEvans & West.com)

146. Mr. Britt told Jon Evans "But, as we were in pre-trial it eventually becomes a situation where I go to Demery's lawyers. I believe Demery had the more plausible statement of what had happened and, I was like okay. Are we really gonna try this case? Your guy confessed to felony murder. He's looking at a minimum of life

in prison without parole or he's looking at the death penalty. Um, are you gonna plead and take your chances in sentencing with the jury or are you really gonna contest it because Demery had other cases, Demery was out on bond for another robbery, um, in which he had, um, badly assaulted a lady, um, who was a clerk at a convenience store in Pembroke, North Carolina. He dropped a cinder block on her head while she was taking out the trash so he was out on bond and on that he was out on bond... And I, you know my position was, you know if he doesn't want to do that then you understand that he is -- he is the likely candidate to get death. In light of his history" (Id. page 13,) (Id, 26:00-29:38)

147. Britt explained the materiality of other evidence besides Demery and my, the Defendants, statements to Jon Evans. "It became an issue of, okay, this is what we know based upon the physical evidence and the other evidence that's been put together. Put their

statements aside, who does the evidence point to as being the more culpable? Who does the evidence point to as being the, um, the shooter and one of the things that, um, played a significant role in this case was the um, or were the, um, cell t-- cellular phone telephone records. (I.d. page 4, Id. 5:26-12:00)

148. Judge Weeks presided over the Defendants trial. On transcript page 6553 he stated that Demery's credibility was the "focal point of the case" (T.T.P. 6553)

149 As note on pages 2001 - 2002 of the trial transcript Rule 611-B deals with a State witnesses propensity to deal when it's beneficial bears on credibility (T.T.P. 2002: 20-25)

149. Mr. Britt told Demerys Attorneys, According to what he told Jon Evans, that "I said, but what-- what I can do is stipu- stipulate in sentencing that he cooperated, that an early stage of the process he admitted

his wrong doing, that in the event he testifies against um, Green that I'll stipulate to that as a um, non-statutory mitigating circumstance in um, for sentencing for the jury to consider. And with that they went and talked to him and came back and they said they'd do it. And so we are this is probably September... October 93 No, it's even before that because we started jury selection in Daniel Green in October of 93 So it's, it maybe it's in the Spring And we have a hearing and Judge — Judge Weeks, is like if we need to hear anything just notify me... He accepted the plea agreement um PJ seen to everything in his continued judgement, conditioned upon him testifying against Daniel Green (Id, pge 14)(Id. 2958: 34:00)

150. To succeed on proving the existence of a non statutory mitigating circumstance the Defendant must establish that, inter alia, there is sufficient evidence of the existence of the circumstances to require it to be submitted to the jury, according to State v. Benson 323 N.C. 318 (1988). There

is NO evidence that Demery truthfully cooperated at an early stage of the criminal process. The criminal process, As defined by 15A-301 of the N.C. General Statutes, Article 17 "Criminal Process includes the citation, criminal summons, warrant for arrest, and order for arrest. (See trial transcript from State v. Green.) (See page 253, 2009 Ed. LexisNexis, Subchapter III. Criminal Process, and N.C.G.S. Article 17 §15-300 - §15.305) (See foregoing facts regarding Demerys interrogation statement and, pre-plea bargain statements being perjurious) (See Demerys plea Agreement). Demerys "cooperation" consisted of him eventually Agreeing to regurgitate the narrative the investigators forcefed him and threatened him to adopt under the threat of the death penalty, of "a needle up your ass son". The narrative used in Congress to pass the Violent Crime Control Law Enforcement Act, of 1994.

151. In 1994 Senator Conrad from North Dakota delivered a Message From The House regarding the Violent Crime Control And Law Enforcement Act of 1994. (See 140 Cong. Rec. S6018-02 At 1994 WL 196834 (West Law))

Mr. President, very recently we had a shocking case which I think illustrates very well the importance of the motion Senator Mack and I have offered today.

The father of Michael Jordan, the basketball star, was killed, murdered in a vicious crime in their home state. The county sheriff there, Hubert Stone, said, "Mr. Jordan would be alive now if the legal system worked the way it should."

Why did the sheriff say that? Mr. President, both of the 18-year-olds that were involved in that murder had extensive criminal histories at the time of the Jordan killing. Daniel Green, one of the perpetrators, was on parole after serving 2 years of a 6-year sentence for attempting to kill a Robert Ellison by smashing him in the head with an axe and putting him in a coma for 3 months. Larry Demery was awaiting trial for bashing Mrs Wilma Dial, a 61-year-old convenience store clerk in the head with a cinder block during a robbery, fracturing her skull and causing a brain hemorrage. Mr. President, how many more

examples are we going to have to have before we take action? (The Congressional Record -- Senate 6018-02)

152. Although Mr. Conrads quote Regarding Demerys crimes are accurate, Mr. Conrads Comments about the Defendant did not note nor credit the Defendants assertion to the investigators on August 14th thru August 15th that I wouldn't trust them because I had just been to prison for a crime I didn't commit and was on parole for. Nor did it note that one of the officers admitted to me, the Defendant, that I had no reason to trust them. (See recording of interview of Defendant on August 14th thru August 15th 1993. By investigators)

152. Mr. Conrads statements, used to promote the idea that people should be kept in prison as long as possible and when they are not innocent people die didn't take into account the possibility that the Defendant was wrongfully convicted.

153. On 25 August, 1995 Superior Court Judge Gregory A. Weeks ordered, adjudged and decreed

that the Defendants conviction for assault with a deadly weapon with intent to kill inflicting serious bodily injury be vacated.

Judge Weeks made finding of fact and conclusions of law to support his decision including that "a Minimal investigation would have revealed that there was an eyewitness to the alleged incident who would have provided evidence tending to exonerate Green of the charge of assault with a deadly weapon with the intent to kill inflicting serious bodily injury. 9. During the hearing on this motion, Green presented the testimony of Cedric Pate. Pate resided at the home which was the scene of the alleged incident. He witnessed the incident but was not interviewed by the State or trial counsel. T. p. 157. 10. Pate testified that on September 4, 1990, Green was visiting with him at his house when Robert Ellison, James David Blue and Bobby Reeves arrived. Pate further testified that Ellison approached Green who was sitting on the front porch and pushed him in the chest. Green then moved into the yard, holding an axe. Pate testified that Green warned Ellison to leave him alone, and began

swinging the axe in front of him, while stepping backwards, trying to keep himself seperated from Ellison. Pate testified that Green was swinging the axe with the blunt end facing Ellison as Ellison tried to jump between swings in order to get at Green but mistimed his jump and was struck. T. pp. 148-153. 11 Pate testified that after Ellison was struck by the axe, Green went to him then called the police and waited for their arrival. T. p. 155.

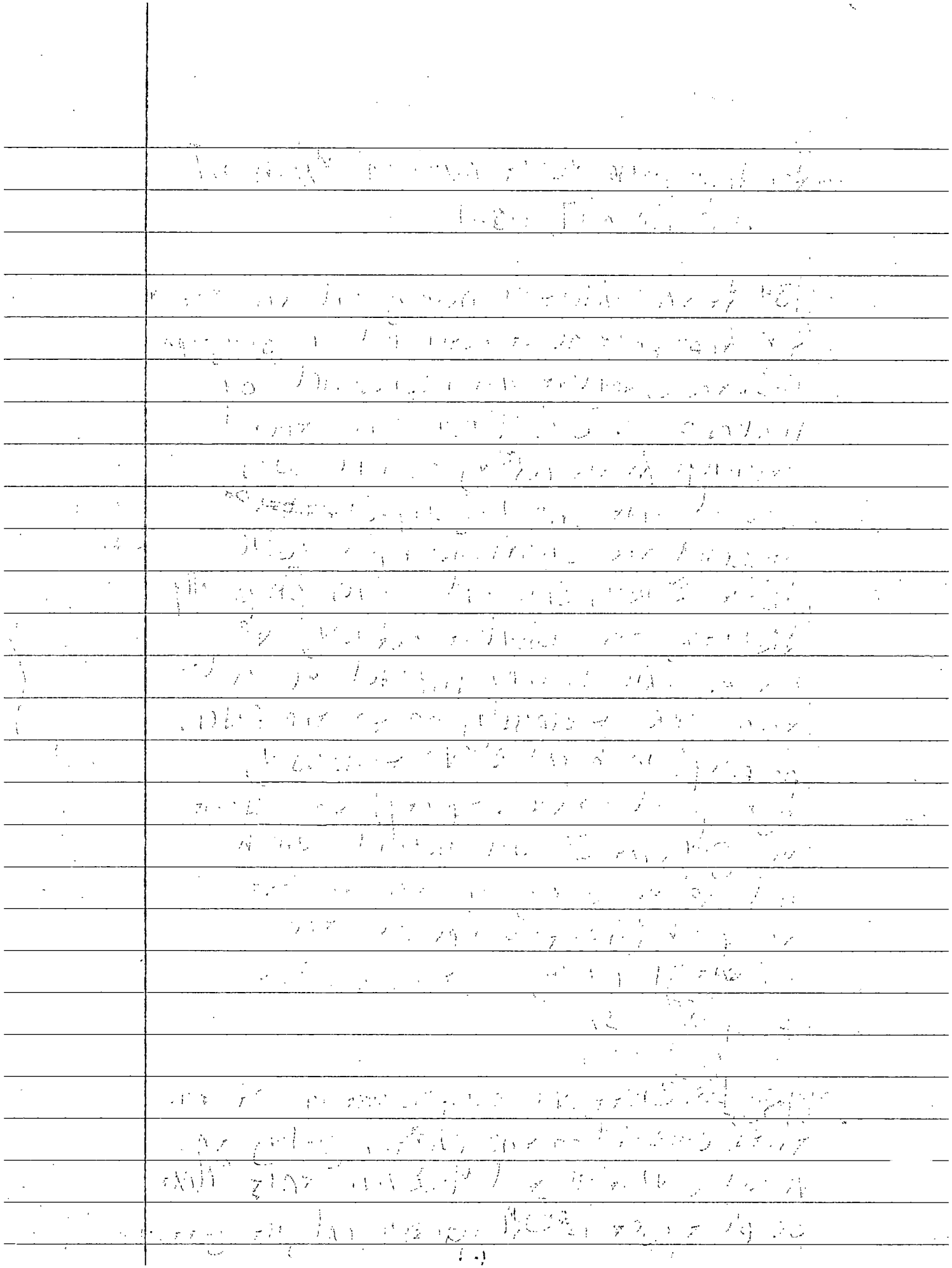
12. This testimony constituted evidence tending to show that Green did not intend to hit Ellison with the axe, and did not have the requisite intent to kill.

13. Further, trial counsel submitted, and the Court so finds, that Green always maintained that he did not intend to kill Mr. Ellison[3]. T. pp. 424, 444, 498 (25 August, 1995 order vacating my, the Defendants conviction of 19, March 1991, of assault with a deadly weapon with intent to kill referred to in the Congressional Records cited herein) (This order and transcript of the evidentiary hearing for the Motion

for Appropriate Relief, heard on March 6, 7, 9 and 10 March 17, 1995.)

154. At the evidentiary hearing and the Motion for Appropriate Relief referenced in paragraph 153, the Defendant was represented by Henderson Hill, Jim Moreno and other attorneys. At the hearing evidence was elicited that chronologically preceded the events described above about Ellison, Blue and Reeves physically assaulting the Defendant, refusing to let me leave as they assaulted me and then, later trespassing on to the Pates property (which had A NO trespassing sign posted on the property) to assault me again that I was assaulted which led to me picking up the axe off the porch. (See transcript of the evidentiary hearing on file, cited in paragraph 153.)

155. Mr. Britt, in a misrepresentation of the facts, commented on the events regarding the vacated conviction told Mr. Evins that "What people forget is Daniel Green had just gotten



out of prison for a horrible assault that he committed on another teenager. In fact, um, it -- it was a pre-arranged fight, number of people showed up to watch it. Daniel Green's there, the young man that he's gonna fight is there, and unbeknownst to everybody Daniel Green has an axe stuffed down, you know, the leg of his pants. And as they get ready to fight, he whips this axe out and he hits this kid in the head, not with the blunt end but with the sharp end and, um, killer's luck he did survive, he now has the mind of like a 10 year old and he ends up -- they were juveniles, the case was transferred to superior court, um for him as an adult. And he eventually pled guilty for that, he was sentenced, went to prison, got out of prison and then in the course of the Jordans proceedings there's a motion filed to set aside that conviction, um, based on the fact that his lawyer who was a member of the public defender's office did not advise him that she was going to leave that office, take a job as an ADA in Durham and basically said that he was threatened with

the prospect of that he could plead guilty in front of Judge A or they go try him in front of Judge B who was Joe Freeman Britt, whose reputation was that he was the hanging judge and so he ended up pleading." (See Transcript of Jon Evans 1-on-1 interview with Johnson Britt, Part 2 pp. 2-3 and 1-on-1 podcast, JEvans@wect.com)

156. As a prosecutor, Mr. Britt is aware that Assault is a crime, to falsely State that A person committed a crime is defamation and conduct that denigrates a public office. Mr. Britt knows and has commented at the trial of State v. Green that a courts judgement constitutes the "law of the case" and that the Courts judgement and order vacating the Assault with a deadly weapon with intent to kill felony conviction for which the defendant served two and a half years, from ages 16 to 18, in a N.C prison ran by racist pedophile and pederasts who broke the law daily, assaulted children with deadly weapons [redacted] daily and a few officers who were powerless and Afraid to serve and protect my peers,

which forced people like me to serve and protected them and be retaliated against for trying to assert Constitutional rights and the laws of the land. This is not an expression of resentment or bitterness, it is a focus on Accuracy and chronicling the reality that many have colluded to suppress to justify scapegoating our generation and my peers, for profit, without regard for truth, Reality or the facts by the use of false narratives. (T. Transcript) And me personally-being scapegoated. 157. Mr. Britt, as the prosecutor, could have re-tried me, the Defendant for assault if he actually believed I Assaulted Robert Ellison, as defined by N.C. General Statutes. Instead Mr. Britt dismissed the charges without prejudice which, since felonies have no statute of limitations, means that the State can re-charge me if it so desires as can any citizen if they choose to lie on an affidavit and submit it to a judicial official but not if they tell the truth, the whole truth and nothing but the truth. (See N.C. General Statute §14-32 (Felonious Assault w/deadly weapon), 14-51.3 (Use of force in defense of person; relief from criminal liability)

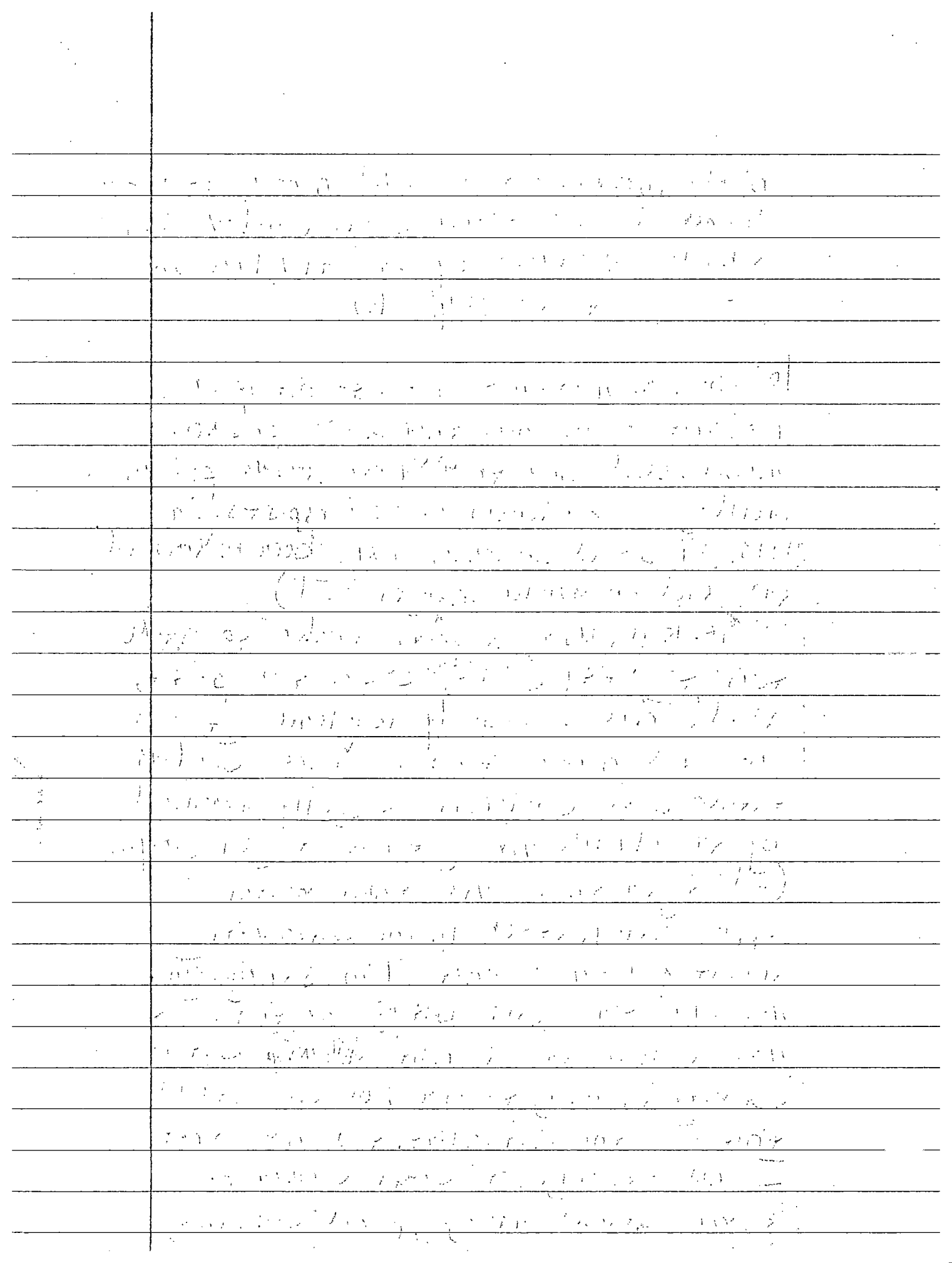
158. On November 19, 1993 Mr. Jesse Helms remarked that "Criminals are free to strike again, committing murders and rapes that wouldn't have happened if the federal judges had not imposed unreasonable ceilings on prison occupancy. If North Carolina had not had such a court-ordered cap, Michael Jordan's father would not have been killed and two Charlotte police officers would still be alive." (139 Cong. Rec S. 15584-01, 1993 WL 464022 [Westlaw Cite on westlaw.com] How could a Senator of North Carolina, a state with the highest motto "Esse Quam Videri" To Be Rather Than To Seem" base an argument to build more prisons on a presumption of guilt three months after my arrest, when the prosecutor, as late as 1995 still wasn't familiar with the case and had awarded the only person who claims to have direct knowledge with a plea agreement that was based, at the time the plea was unlawfully adjudicated, on a version that was later admitted to be false?

159. Mr. Helms modified his argument "There is a

bloody abundence of one-lined horror stories... Michael Jordan's father, James Jordan is Allegedly murdered by an individual who got out of jail early (Id.)

160. Mr. Helms went on to note, truthfully or not, that "in 1992 more than 26,000 prisoners were released early from North Carolina prisons, including 88 murderers, and 37 rapists. In 1993, 17 paroled prisoners have been re-Arrested and jailed on murder charges." (Id.)

Mr. Helms, using a guns murder to stoke fears to justify building prisons for profit, added, "There is a bloody Abundence of one-lined horror stories... Michael Jordan's father, James Jordan, is Allegedly murdered by an individual who got out of jail early... (Id) Again, this was three months, Approximately, after my, the Defendants, arrest, you know what I'm saying. This was over two years before my trial. It was a year and a half DG before Demery, according to him, lied and stated that I, the defendant, told him that I had knowledge of James Jordan or, "a gun" "started waking up and something

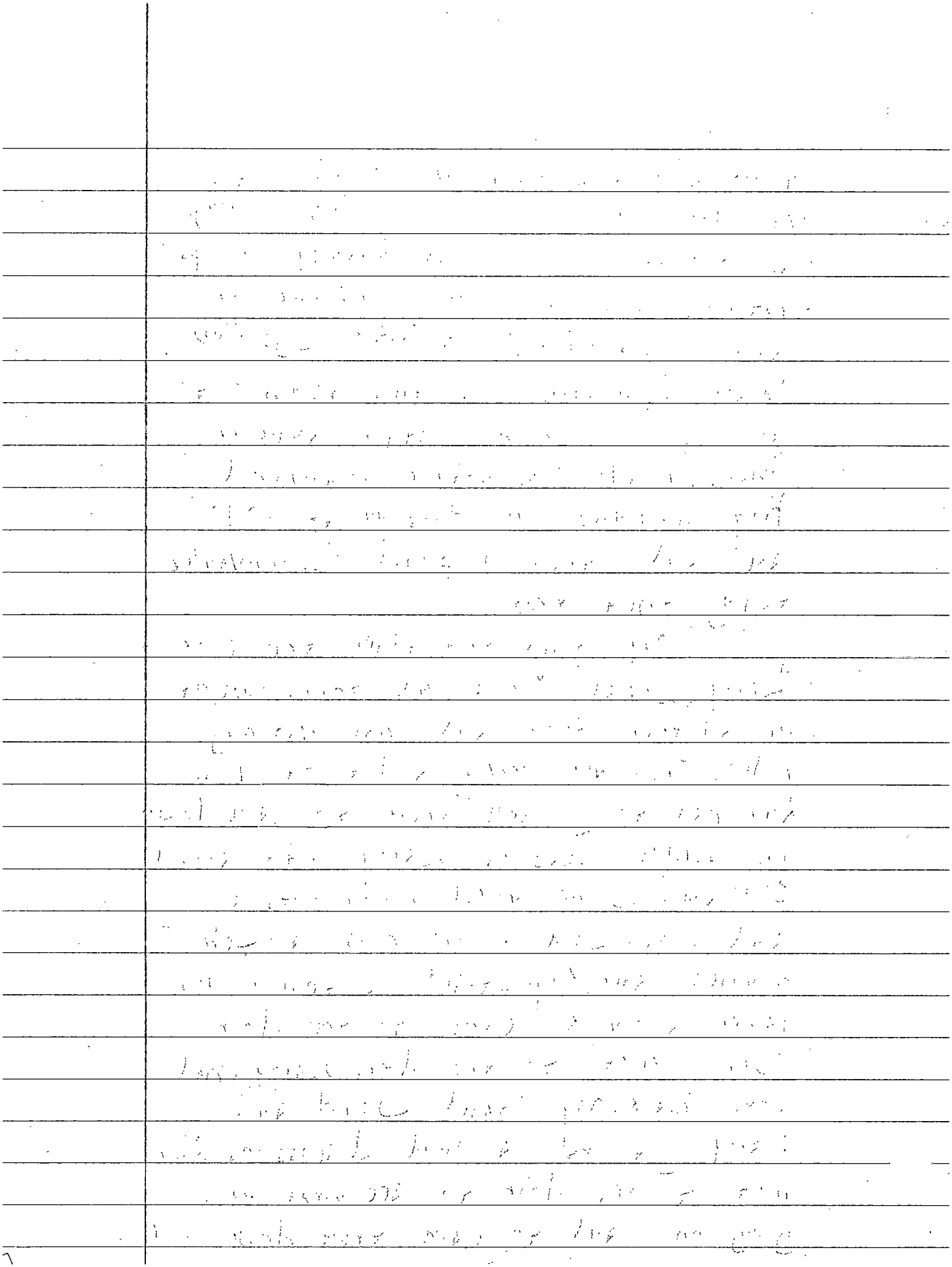


about the man seeing his (my?) face." (parentheses added) before Demery heard the gun fired from 60' ft. away, approximately, and after he observed "the man's" body pushed over in the passenger seat, and he knew the man had been shot. These statements, according to S.B.I. special agent, Kim Heffney and Robeson County Sheriff's Dept. detective, Anthony Thompson, were made by Demery on or about May 2nd, 1995 thru May 8th, 1995, the date they claimed Demery told them that he picked the Quality Inn to rob because they knew a tourist would be there and have plenty of money." (Defendants M.A.R. exhibit 75)

161. Mr. Helms presentation to the U.S. Congress on 10 November 1993 was three months after Demery, according to investigators, As indicated by Exhibit 42 of Defendants M.A.R., Bates Stamp number 000926, on 15 August 1993 omitted that he and I, the Defendant, was at the D[illegible] home of Kaye Hernandez, together, until 1:30 A.M. and omitted being at her home at all the

night James Jordan was killed until May 1995 when Denery is indicted telling SA. Kim Heffney and Det. Anthony Thompson that he, me, and Monica Hernandez were playing video. (Ex. 75 of M.A.R., page 1565). Denery, apparently, made this admission to the police 8 months after Anthony Thompson and Kim Heffney interviewed Kay Hernandez on 9-23-94 at 10:10 AM and they reported Ms. Hernandez telling them that:

"Kay stated that after the cookout Larry, Daniel, Monica and others went in another room and was watching video. They were making a lot of noise. Ann had to go tell them to calm down on several occasions. Larry left around 3:00 AM. Daniel walked Larry outside and came back in the house a few minutes later. Kay stated a few hours later a knock came to the door. Daniel went to the door. Larry had come back. Kay stated Daniel and Larry got into a loud discussions. Ann went to the door to see what was going on and to calm them down. Ann



said something to Larry about him coming to someone's house this time of morning and both of them being loud. Larry and Daniel left the house together. (Kaye Hernandez 9-23-94 interview by Anthony Thompson and Kim Heffney, Bates Stamp number 004424 from Discovery the State, Johnson Britt gave the Defense. This is an exhibit in the States first response to the Defendant's M.A.R.)

162. I, the Defendant, never told law enforcement investigators that I was at the Rowland Motel the night James Jordan was murdered (See, Recording of investigators, defendants interrogation on August 14th-15th 1993)

163. I, the Defendant, was never asked, and never said to investigators, where I was at at the time the State says James Jordan was murdered. (See Recording of investigators interrogation of Defendant on August 14th - 15th 1993)

164 An alibi is defined by Blacks Law

Dictionary, pg 1. A defense based on the physical impossibility of a defendant's guilt by placing the defendant in a location other than the scene of the crime at the relevant time. 2. The fact or state of having been elsewhere when an offense was committed. (See Blacks Law Dictionary, 8th Ed.)

165. To constitute an "inconsistent alibi", such would have to meet two conditions at least: (1) It would have to place one at a location different from the given alibi (2) at the same time the crime occurred. So, in order for me to have given an inconsistent alibi, I would've had to tell police that at the time James Jordan was murdered, I was elsewhere besides the home of Kaye Hernandez at 3:00 AM, July 23rd, 1993, the time the State has locked in as the time James Jordans robbery and death occurred [redacted] D6 According to Larry Demery whom the State [redacted] FG claims told the truth under oath, and who affirmed that truth when the State awarded Demery the benefit of the plea agreement contingent upon him testifying truthfully The Defendant

has never disputed the States narrative or facts about the time and place James Jordan was murdered, the only his stated direct knowledge, Defendant where the deceased body of James Jordan was located, what Demery told me happened to James Jordan after Demery left me at Kaye Hernandez's home after midnight on July 23rd, 1993 and before Demery returned to Kaye Hernandez's home in the early morning hours, around 4:30 AM to ask me, the Defendant to go with him and took me to where the car was parked beside an abandoned store next to Quality Inn Hotel on a service road that runs parralel to Interstate 95 in Lumberton, N.C. (See Defendant's Motion for Appropriate Relief)

166. The North Carolina Attorney General's office submitted a proposed order to The Honorable C. Winston Gilchrist upon the Courts request after summarily dismissing, or denying my, the Defendants Motion for Appropriate relief, motion for reconsideration. (See the Proposed Order denying Defendant's M.A.R. drafted by the

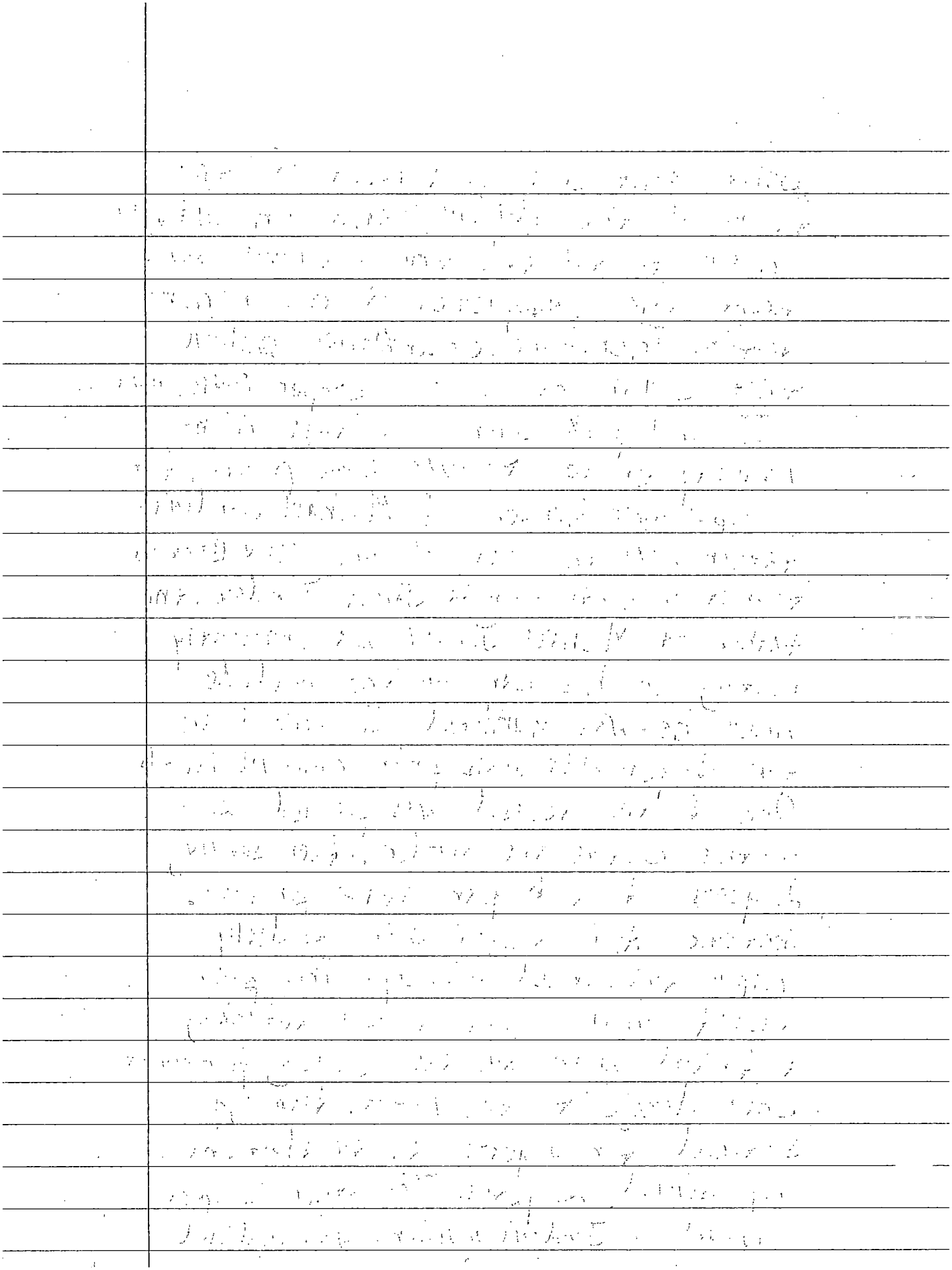
N.C. Attorney Generals office Special Deputy Attorney Generals Jonathan Babb and Senior Deputy Attorney General Danielle Marquis Zilder, Also known as Alana Danielle Marquis Zilder)

(See 167 In several instances, the states drafted by the state attorney generals office employees and signed by them, misleadingly misrepresented Defendants statements to police as being "directly contrary to the alibi defendant himself asserted when he was first interviewed by investigators following the robbery and murder of Mr. James Jordan". (See 54, of the proposed order denying the M.A.R., the recording of the interrogation and the trial transcript from Defendants trial)

On Thursday, November 4, 1993, Senator Mack from Florida, inter alia, stated that "Liberals believe crime is a result of the failure of society. That the actions of criminials are not their fault, but rather society's. And since society has failed, then it is society's obligation to rehabilitate these criminals. Conservatives

believe that crime is a result of the failure of the individual, that the individual chooses to act, and the individual must accept the consequences of his or her action. Therefore, conservatives believe that punishment is the proper consequence...

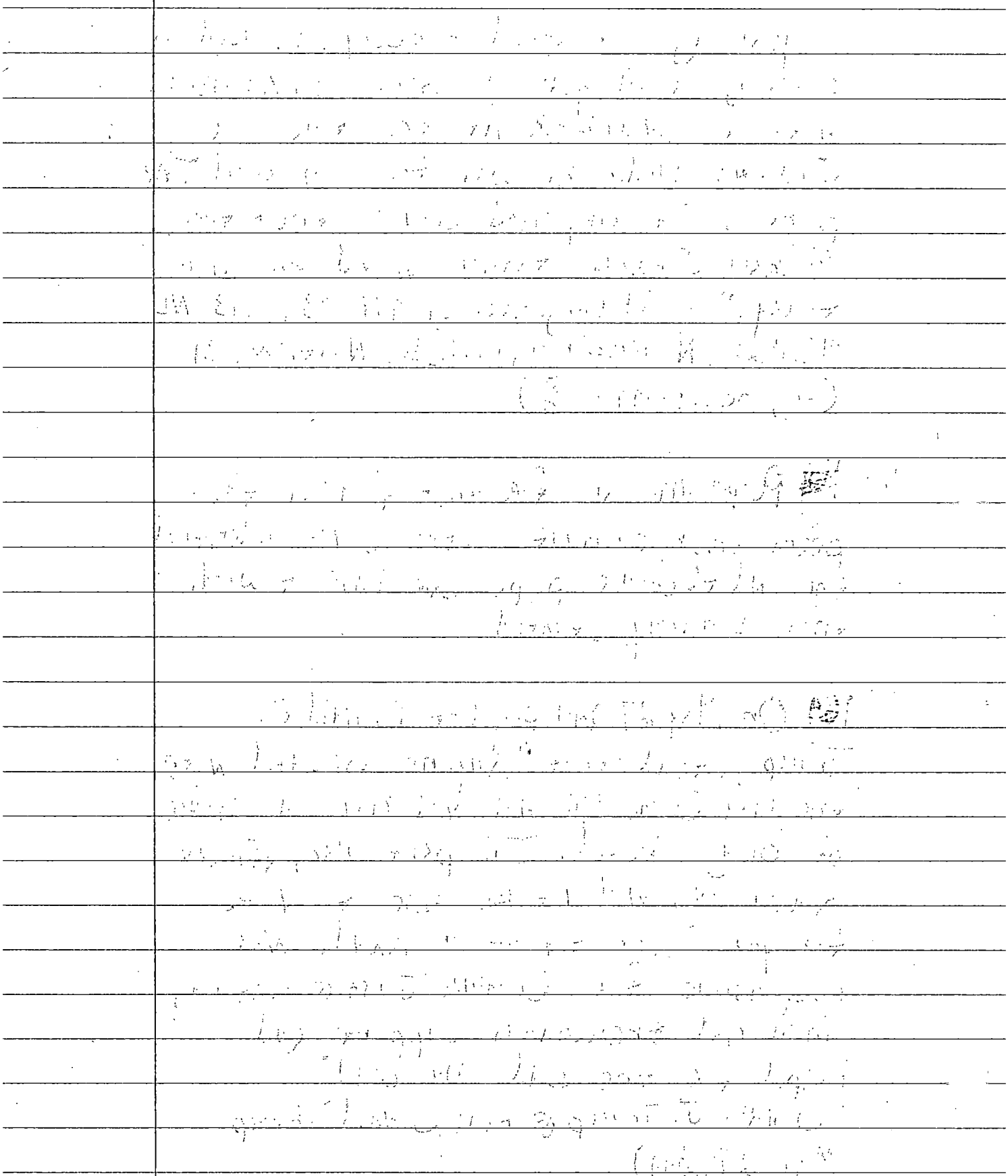
I will pick several of these high-visibility crimes to make some points; for example, the murder of Michael Jordan's father. Like the case of the slain British tourist in north Florida, James Jordan, the father of Michael Jordan, was innocently resting in his car on the roadside when he was murdered. The accused are two 18-year olds with prior criminal records. One of the accused was paroled 2 months before the murder, after serving 2 years of a 6-year state prison sentence for assault with a deadly weapon and armed robbery. The prior assault involved the accused attacking a friend with an axe causing permanent brain damage to the victim. Although sentenced for 6 years as an adult, he only served 2 years. The other suspect involved in Jordan's murder was indicted



A year ago on armed robbery, accused of smashing a 61-year-old store clerk's head with a cinderblock. At the time of Jordan's murder, he was free on bond. The point is: If they had served their time, Michael Jordan's father would be alive today." (139 Cong. Rec. S14977-03, 1993 WL 453820, November 4, 1993 (See Westlaw, 139 Cong. Rec. S14977-03))

169 People who care for their families, their peers, their communities often can't understand the indifference people can have towards those similarly injured.

170 On May 27, 2019 President Donald J. Trump stated that "Anyone associated with the 1994 Crime Bill will not have a chance of being elected. In particular, African Americans will not be able to vote for you. Joe, on the other hand, was responsible for Criminal Justice Reform, which had tremendous support and helped fix the bad 1994 bill!" (Donald J. Trump @ real Donald Trump May 27, 2019)



Several media outlets have commented on President Bill Clinton, President Joe Biden, and others apologizing for their roles in the passage of The Violent Crime Control and Law Enforcement Act:

171 *"Biden Apologizes Jan 22, 2019, As former Vice President Joe Biden mulls a potential 2020 presidential run, he's apologizing for his past stances on criminal-justice issues.

In a speech on Martin Luther King Jr. Day in Washington, the former vice president acknowledged the detrimental impact ~~of~~ of his approach to crime in the late 1980s and early 1990s.

"You know I've been in this fight for a long time. It goes not just to voting rights. It goes to the criminal justice system," Biden said at the National Action Network's "Martin Luther King Jr. breakfast. "I haven't always been right. I know we haven't always gotten things right, but I've always tried" Biden helped write an infamous 1994

crime bill - the 1994 Violent Crime Control and Law Enforcement Act. That bill is widely pointed to as one of the driving factors of mass incarceration in the US, as well as the disproportionate number of people of color who've ended up behind bars for drug-related crimes... Without specifically naming the 1994 bill on Monday, Biden said the decisions that were made in that era "trapped an entire generation." "It was a big mistake when it was made," Biden said. (John Halpiwaiter, The Business Insider Jan. 22, 2019)

172. "Bill Clinton has been doing a lot to demonstrate that he has seen the error of his ways and supports his wife's Reform efforts. He's made several statements acknowledging the errors of the 1994 crime bill he passed. And speaking to the NAACP on Wednesday, July 15, Clinton put it bluntly as he ever has: "I signed a bill that made the problem worse. And I want to admit that." We have too many people in prison. And we wound up spending - putting so many

people in prison that there wasn't enough money left to educate them, train them for new jobs and increase the chances when they came out that they could live productive lives." (Vox, July 15, 2015 Dara Lind dara @vox.com)

173. On April 28, 2016, Fox News Reported that "Democratic presidential front-runner Hillary Clinton said Thursday that she was sorry for what she described as the unintended consequences of a landmark 1994 crime bill signed into law by her husband, former President Bill Clinton. Clinton's past support for the law has come under fire from some African-Americans, who say that it has contributed to mass incarceration of young blacks...

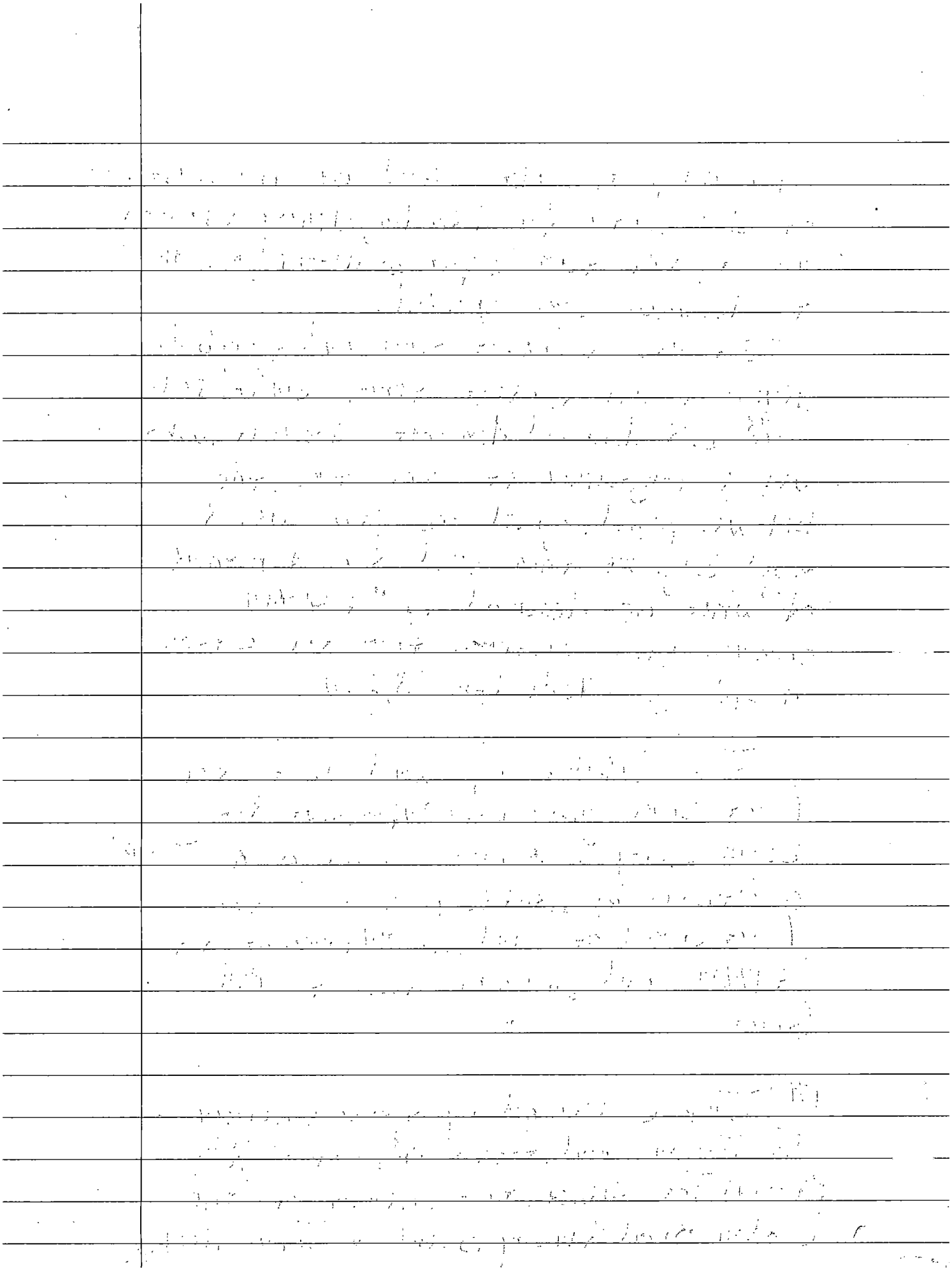
When pressed on her support for the law, Clinton said she was "sorry for the consequences that were unintended and that have had a very unfortunate impact on people's lives." She also noted that her husband had apologized for the law and that her opponent, Sen. Bernie Sanders, I-Vt., had voted for the bill.

For his part, Sanders stood by his criticism of Bill Clinton for defending Hillary Clinton's use of the term "super predators" in 1996 to describe some criminals.

"It was a racist term, and everybody knew it was a racist term," Sanders said. The self-described democratic socialist, who was a congressman at the time the bill was passed, agreed the law was a mixed bag. He then called for a rethink of what he described as "a broken criminal justice system... from the bottom on up." (Fox News, April 28, 2016)

-I, the Defendant only learned about the Violent Crime Control Law Enforcement Act because Larry Miller wrote, in his book "Jump" co-authored by Laila Ivey that "... the Violent Crime Control and Law Enforcement Act of 1994 ended prisoners' Access to Pell Grants."

174. "Jump" Co-authored by former Chairman of The Jordan Brand, former President of the Portland Trail Blazer, first Chairman of the Jordan Brand Advisory Board in January 2019 and



and who, at the age of sixteen, shot another teen in a gang tragedy and who had been convicted of a series of armed robberies at the age of twenty-five, Larry Miller, and Laila Lacy, a graduate of Howard University, an author, teacher and business development manager, was published in 2022. On page 20 of Jump Mr. Miller wrote "...Since the Violent Crime Control and Law Enforcement Act of 1994 ended prisoners' access to Pell Grants. This major funding cut ended an era of prison educational opportunities. The second chance that I was given would no longer be available." (page 280, Jump. ISBN 978-0-06-299981-8 by Larry Miller and Laila Lacy)

175. Mr. Miller wrote "I am to lend my voice to establishing a reformative and rehabilitative emphasis to the prison system, in addition to sentencing reforms and removing the overall stigma attached to people whove been incarcerated that often hinder their ability to achieve.

The time has come for me to devote myself to shining a light on the prison

value of rehabilitation in the prison system; to advocating for reviving education-release programs, trade school programs, and work-release programs; to improving access to books and learning materials; to banning the box; and to helping give both currently and formerly incarcerated people the opportunity to succeed. Consider this my new purpose." (Id. at page 283-284)

176. On October 18th, 2020 during an interview for ABC at the Constitutional Townhall in Philadelphia President Biden told George Stephanopolous that his support for the Violent Crime Control and Law Enforcement Act of 1994 was a mistake. George Stephanopolous pointed out that this crime bill led to an increase in the incarceration of black men. President Trump and his allies, according to Stephanopolous, said that this crime bill and other laws passed during that time led to systemic racism in the criminal justice system. (ABC.Com). Stephanopoulos asked President Biden "Was it a mistake to support it?" Biden responded "Yes, it was. But here's where the mistake came. The mistake came

in terms of what the states did locally."
"Things have changed drastically. That crime bill when we voted, the Black Caucus voted for it, every black mayor supported it across the board," (ABC(om), id.

117b. On September 23, 1993, President Biden gave a statement on introduced bills and joint resolutions. "Mr. President, I rise to introduce the Violent Crime Control Law Enforcement Act of 1993, a comprehensive, tough, and effective crime fighting measure that deserves, in my view, the support of the entire Senate and the Congress... At bottom, passing this bill is about keeping faith with the American people... it is about putting behind us arguments over the relative merits of the conservative approach to crime versus the liberal answer, and focusing instead on what really works, whether the Devil is conservative or liberal... If any of you wonder why when you walk through Union Station or downtown places throughout America and you see young men walking around in extremely baggy clothing - some of them have assault weapons under those

shirts. They are children. They are children chronologically and they are pariahs on society - in fact 24,000 murders last year, 24,000 Americans murdered.

177. 34 U.S.C.A. § 12601, Formerly cited as 42 USCA § 14141. States that "(a) It shall be unlawful for any governmental authority, or any agent thereof, or any person acting on behalf of a governmental authority, to engage in a pattern or practice of conduct by law enforcement authority, to engage in a pattern or practice of conduct by law enforcement officers or by officials or employees of any governmental agency with responsibility for the administration of juvenile justice or the incarceration of juveniles that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. (b) Whenever the Attorney General has reasonable cause to believe that a violation of paragraph (1) has occurred, ~~the Attorney General has reasonable cause to believe that a violation~~, the Attorney General, for or in the name of the United States, may in a civil

Action obtain appropriate equitable and declaratory relief to eliminate the pattern or practice. (§ 12601. Cause of Action, Title 34 USCA § 12601)

178. Provision 42 USCA §14141 was part of the enacted Violent Crime Control and Law Enforcement Act and provided authorization to the Federal Attorney General to bring civil actions for equitable and declaratory relief against any police department (or governmental authority or their agent) engaging in an unconstitutional "pattern or practice. When I last attended court, this Court commented on the 25 years this case has been litigated. This is partly due to the eight years C. Scott Holmes, Attorney and Central University professor and Ian Mance, former staff Attorney for Southern Coalition for Social Justice used State v. Green and the Motion for Appropriate Relief as a vehicle to memorialize Misconduct by Robeson County Sheriffs Dept., N.C. S.B.I. and other Agencies that perfectly fit the provision discussed herewhile curiously choosing not to document the same

Misconduct by the Cumberland County Sheriffs Dept. who suppressed negative luminol results Art Binder reported to the press prior to my arrest. Ian Munce obtained a consent decree from Cumberland County Sheriffs Dept. that keeps track of the race of people stopped by police. Not only did this result in thousands of pages of immaterial documents filed in this case, making a simple M.A.R. ~~convoluted~~ convoluted and clouding issues, it also obscured the fact that the Appellate Defenders office whose pattern and practice in 1996 - 2000 was to avoid filing Motions for Appropriate Relief based on potential grounds for errors, such as Ineffective Assistance of Trial Counsel, prevented my Appellate counsel, Janine Fodor, from filing a M.A.R. based on I.A.C. of trial counsel pursuant to N.C.G.S. 15A-1418(a)(b). This policy prevents claims from being filed with the protection of the constitutional gurantee of effective assistance of counsel during an appeal, and shifts the burden to post-conviction counsel - which defendants are not constitutionally entitled to and, therefore,

Are blamed for when the post-conviction Counsel "WAIVES" CLAIMS by Not RAISING them in A timely fashion. This deprivation of rights and privileges secured and protected by the Constitutional LAWS of the United States, specifically effective ASSISTANCE of trial AND Appellate Counsel AND the right to preserve these claims for review by Appellate Courts of North CAROLINA AND the United States of America Expecting due process does Not make me "ungrateful" "difficult" nor "angry".

179 On trial transcript page 7229: 6-15 the Robeson County District Attorney, Luther Johnson Britt III stated "Mr. Bowen, in essence, has called me a liar, he's called me a liar, he's called me a cheat. He said I perpetrated a fraud on this court. And when they conclude their closing Arguments today, I AM going to ASK the Court, I'm doing so Now, to Allow me to Argue in the MORNING, because I AM very ANGRY, AS I told you during the break, I don't CARE what the RULES

rules are at this juncture, and..." (T.T.P. 7229:6-15

The next day Mr. Britt stated "I owe this court an apology. Yesterday afternoon, I made some statements on the record that were inappropriate in that I said I didn't care what the rules of professional conduct were at the time. I was very angry at the time I said that. It was wrong for me to do that... But I took offense to the personal attack that was made upon me during that closing argument. I think I was justified in my anger if there is any time to really ever be justified. I do not lose my temper very often, but when I do, I lose it. And that was the case yesterday. (T.T.P. 7296:1-18)

180. North Carolina Rules of Evidence. 201(f) state that "Judicial notice may be taken at any stage of the proceeding." (See Also State v. Davis, 297 N.C. 400 (1979)

This the 16th Day of May, 2023 Daniel Green

JEVANS@WECT.COM

Transcript of Jon Evans (JE) 1-on-1 interview with Johnson Britt (JB)
Part I
3/23/18

JE: Hello everyone I'm Jon Evans. Welcome to another episode of 1-on-1. Johnson Britt was the new district attorney in his home town of Lumberton, North Carolina and he immediately had to immerse himself into what would become the biggest case of his career. Johnson Britt had to prosecute Daniel Green and Larry Demery, the two men charged with killing Michael Jordan's father 25 years ago this year. James Jordan had been in Wilmington on that July day in 1993. He was traveling back to Charlotte. He pulled over along the side of Highway 74 near Lumberton to get some sleep. That's where Daniel Green and Larry Demery came upon the car and shot and killed James Jordan and later they dumped his body in a swamp in South Carolina. In the first part of this intense interview Johnson Britt takes us through the story of James Jordan's murder. He takes us through how they gathered evidence against Green and Demery and a meeting he had with Michael Jordan before the trial began.

JE: Where was the James Jordan case? How far had it proceeded when you took office?

JB: It really hadn't proceeded very far and that was one of the reasons that Judge Weeks was appointed. Um basically it's a special judge to handle this case from beginning to end. . . Chief Justice { ?? can't understand the name} from the supreme court declared it an exceptional case, first time it had ever happened in a criminal trial. And there was concern because this occurred in July of '93.

JE: Mm hmm.

JB: They were arrested in August of '93. There was a lot of media coverage not only about the arrest but in the aftermath that there really wasn't a case. And that these two young men were being framed. And so um, I believe there was -- there was a real belief that they were being seen as scapegoats for an investigation that no one really knew anything about. And so my first involvement in the case was there was a hearing shortly after Judge Weeks was appointed in the Fall of 1994. And it was more of a status type check on the case.

JE: Okay

JB: And -- or the cases -- because there are 2 defendants. And my predecessor at the hearing said that he intended to bring one of those cases to trial before he left office. And Judge Weeks -- you got the impression -- was like you know, you need to slow down. We're not anywhere near trial stage.

JE: Mm hmm

JB: And what motions have been filed, what motions have been heard? None.

JE: Yeah

JB: And so it. . . that was in I want to say September. I mean they were arrested and indicted -- indicted almost immediately. And I was approached by some of the SBI investigators in the case. They knew that it wasn't going to go to trial between September and January. And so they were like how -- we need to find a way to get you involved because I was an Assistant DA in another county

JE: Right

JB: They were not authorized to turn the information over to me. The only person that could do that was the man that I just defeated in an election . . . um and there was some history there. And so they went and talked with him, I then went and talked with him, and, um he's like, well who do you want me to assign the case to? Within the office. I was like I don't want you to assign anyone the case, I want you to turn over a copy of the file to me. Let me see what this is about. Let me develop my own theories about the case and so eventually that was done.

JE: Mm hmm

JB: And I got the file shortly before he resigned and then in literally December of '94 we started hearing motions and I'm still learning about this case and I'm learning about it by preparing to go to court

JE: Right

JB: And so

JE: I take it that's not , that's not

JB: That's not normal. That's not normal. It was stressful enough

JE: Right

JB: I mean if you think back 25 years ago

JE: Yeah

JB: OJ Simpson has just occurred

JE: Mm Hmm

JE: and you know that was -- that was the big trial, um. Court TV was a big thing, they were covering cases never really been done like that before and suddenly you have this celebrity murder of Michael Jordan's Dad and everybody was looking at it. Oh, this is the next big case..

And they requested to come in and cover the case and Judge Weeks I think very wisely decided cameras weren't gonna' be there. Um. We saw in Motions hearings that lawyers were playing to the cameras as opposed posed to addressing him they would literally turn and look to the camera that was there and he's like whoa, whoa, wait a minute I'm over here

Cover up

JE: Really?

5:26

JB:Um he ended up ruling he wasn't going to let cameras in. He would let them in for the pre-trial matters but for the trial they would not be in.

Lawyers did not fight to let cameras in

JE: Mm hmm

JB: So we started progressing and we had motions to suppress both him and [unintelligible] made statements. Their lawyers didn't want the statements in front of the jury. And so we had literally back-to-back -- I was involved in back-to-back motion to suppress hearings -- that had different issues. Um. Daniel Green had not been advised of his Miranda rights. Um. It was a situation where he was not deemed to be in custody so they [unintelligible] um decided not to advise him of his Miranda rights, he was free to leave whenever he wanted to. And so he was talking. Uh Down the hall Larry Demery had actually been taken into custody so he had been advised of his rights so the issues were did Larry Demery knowingly waive his rights and agree to -- to talk with investigators. In Daniel Green's case did Daniel Green, should Daniel Green have been advised of his rights um so he could make the election of whether to knowingly talk or not and the judge ruled in the Green case that he wasn't in custody, it wasn't necessary to Mirandize him and in the Demery case he ruled that he had properly weighed um his rights and so both of the statements were coming into evidence. Larry Demery's statement was much more damning than Daniel Green's. Daniel Green gave a number of versions about how they came

JE: what happened, yeah

JB: yes and to the point Um, do you remember Jon Lovitz from

JE: sure yeah, yeah

JB: Saturday Night Live.

Je: yeah

JB: and his character

JE: yes

JB: I always called him the biggest liar

JE: Yeah

JB: you know he start off

JE: yeah

JB: he'd tell a story you don't believe and then he'd say well How about this? And that was kind of Daniel Green

JE: Right

JB: Um. It, eventually I lost count of how many different ways he described how they became -- how they came to be in possession of um the car. He always blamed Larry Demery. Um. Demery initially um was denying any involvement and then as they shared information with Demery, Demery ended up telling his version of what happened.

JE: As you saw the evidence and as you're starting to learn it did you have an idea that you thought one would turn on the other because in essence isn't that what happened? Demery uh uh uh

JB: That's -- that's what ended up happening and it was after the motions to suppress. Um. Both of the motions had been denied. Um. We were still not in a position where we were headed to trial. We -- we had some other issues to deal with, other motions, um, they never filed a motion to change venue. Of course I don't know where you would have changed venue in North Carolina in this case

Agree

JE: Right, that's

JB: It became an issue of, okay, this is what we know based upon the physical evidence and the other evidence that's been put together. Put their statements aside

Corroborate materiality of Elwell's testimony

JE: Okay

JB: Who does the evidence point to as being the more culpable? Who does the evidence point to as being the, um, the shooter

JE: Mm hmm

JB: And one of the things that, um, played a significant role in this case was the um, or were the, um, cell t -- cellular phone telephone records. This is the first case to my knowledge where cellular phone tel records had ever been used in a case in North Carolina where literally you tracked the movement of what was going on based on where the calls were being made.

JE: Had the investigators already done that?

JB: They did that

JE: Yeah they already had that?

JB: What people don't understand is that Mr. Jordan had been here in Wilmington, Um, he had driven from Charlotte down on that day to a funeral. After the funeral he went to the home of his friend who had died, um, there was a dinner, um, and Mr. Jordan was driving back to Charlotte because he was supposed to be in Chicago the next day for a charity golf tournament that Michael was sponsoring. And so he was driving back to Charlotte to catch a plane the next morning fly to Chicago, um, to be at this golf tournament, and . . .Michael had a driver, um, a young man that he met when he first signed with the Bulls, um. His luck was Michael Jordan shows up in Chicago, the Bulls weren't there to greet him, this guy drives a limo, he -- he can tell Michael Jordan's out of his element

ESPN Story

JE: Right

JB: and he says "Hey, where you going?". He says, "Well well I'm going to wherever the Bulls headquarters is located in this -- in this hotel" and he knew who Michael was and he said "Well I'll give you a ride." And so he drove him down there and from-- and from that they developed this relationship where Michael eventually hires him

JE: Right

JB: And he becomes the driver for Michael and for members of the family from Chicago. So he's there to meet Mr. Jordan the next day at the airport and he doesn't show

JE: Okay.

JB: He calls, tells him he hadn't shown. There's not a lot of concern because Mr. Jordan was known to not show up when he was supposed to be there. He was also known to change plans on a whim. He carried what I'll describe as simply an open, um, ticket, airline ticket in his pocket

token

JE: Oh, okay gotcha

JB: So if he was in Charlotte and was supposed to fly to Chicago he could pull out a ticket and say, no I I want to go to Los Angeles.

Cleanup complete through HERE 4/6 12:10 PM (11:19 on the podcast)

JE: At any point in time

JB: It-it wasn't unusual

JE: okay

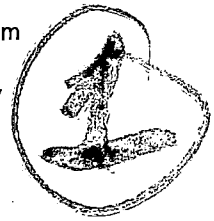
JB: And so they went on with the tournament. Still hadn't heard from him and it was actually Michael's security team that started the investigation. They were trying to determine where Mr. Jordan was

JE: Mm hm.

JB: And they couldn't get in touch with him. The um, so they were dispatched, they came to North Carolina and eventually the car was found in

JE: Right

JB: Outside of Fayetteville in Cumberland County, um. It had been stripped. They contacted um actually a highway patrolman had contacted the dealership in Chicago trying to run down the owner of the car who was Michael Jordan. The dealership notified the Jordan people and they came down . . . met with the Cumberland County sheriff's department it was in the middle of a wooded area that is now a residential section but it was nothing out there. It was east of Fayetteville. The car had been towed to a little garage in Steadman (2) North Carolina. They checked it out, there was no sign of anything of Mr. Jordan's remaining in the car.



JE: They took the laces, I mean they literally took everything

JB; They took the license plates, they took the wheels, they took the tires. Um, Mr. Jordan had a set of golf clubs um, that were in the trunk of the car. They were not there, um. Papers that would have identified [unintelligible] everything was gone and so at that point it Cumberland County Sheriff's department gets involved and they run down the individuals who actually stripped the car and they're like where's the man who owns this car. We don't know anything about a man that owns a car. We just know it was a black guy named Daniel, some Indian kid, we don't even know his name. Came up here with this car trying to sell it. And, um, we agreed to sell it and they left and went back to Lumberton and they left the car, we decided we'd strip it, that's what we did. And so they get arrested on possession of stolen goods. And it's at that point Daniel Green's name is introduced into this.

13:33

JE: Gotcha

JB: And so then they start looking at cell records. Daniel Green, where does he live, who's this other kid. And when they identify Daniel Green, he lived right outside Lumberton. Larry Demery lived between Lumberton and Pembroke, um, but cell records became important because they started tracking who jakldf jl; who called you and the overwhelming majority of the phone calls

were made by Daniel Green which was the first indication that Daniel Green was the one in control. Then as they found out who Daniel Green was they discovered he had a brother who was in the U.S. army Stationed in Fort Bragg. And he lived off base. So they go to Fort Bragg looking for him. Um, to the ID office, say we need to see, um, this gentleman, um, we believe he may have some information in what may be a potential homicide

JE: Mm hmm.

JB: Because at that point they hadn't made the connection with the body in South Carolina

JE: Right, yeah

JB: And so the . . . they locate Daniel Green, Daniel Green's brother is brought to the um . . . they talk to him. He was at a position in the Army he was either there for his career or he was getting out. And so he said when my brother came up here driving a fancy red sports car, never seen one like it before, um he's

JE Mm hmm

JB: He's got his friend Larry Demery with him and they came to my house. And where do you live. And he takes them to where he lives. And in the area surrounding his house they discover and find all of this memorabilia, items that >>>>> him to Mr. Jordan. The golf clubs are there

JE: Yeah

JB: Michael Jordan's name was written on the side of the bag. Um, there are other thing-- records that they collect and he Daniel Green's brother ends up telling them, um, look I told them to get rid of that stuff, get it away from me, they were they were going to put me in jeopardy . . . and they went and dumped it out here in the woods

JE: Okay. So the brother had some inclination that something bad had happened

JB: he had an inclination, um, his brother Daniel Green was wearing a watch, um, a gold watch that Michael eventually we learned had, um, commissioned to be made for his special friends commemorating the second NBA championship that they won, um. He also had a ring that Michael had commissioned to commemorate the first NBA championship ring that he was wearing.

JE: Mm hmm

JB: that had a Bulls emblem on it, had diamonds in it, and he had an NBA All-Star ring that Michael had, we learned, had given to his Dad when he had gotten injured I think his second year in the NBA and didn't play in the All-Star game but was voted to it but because he didn't play he didn't want the ring.

JE: Right

JB: And so again, you're looking from what I'm doing I'm looking all right, he's making the majority of the phone calls, he's the one that's in control of the car when they go there

JE: Mm hmm

JB: And then he's the one with what I"ll refer to as the spoils

JE: Right

JB: And so they end up not only following . . . they go interview everybody that they can identify that um through the phone calls and lock down this is who I talked to and in some of them it was a situation that they call them. They might pull up in front of somebody's house and call them and say "Hey, I'm just out front". And that happened in Laurenburg (??) North Carolina and it also happened in a little town in South Carolina with some, you know, some girls, and so that made it even stronger in terms of let's build a circumstantial evidence case we have because at each of those locations it was Daniel Green who was showing off.

JE: And he also showed off if I'm not mistaken in a video that he made right

Jb: Video was taken when he went to, um, when they went to Fayetteville to get rid of the car. Um. There was, um, a robbery that had occurred, been reportedly not been solved, um, in the parking lot of a hotel in Rowland, North Carolina. And Rowland is situated right on the North Carolina/South Carolina line.

JE: Right

JB: Two elderly couples traveling to Florida um stayed there overnight got up early the next morning and to beat traffic and to beat the heat and to to get on down to Florida and they're robbed in the parking lot. Um, one of the things that's taken is an old VHS camera. And, um, so , . . the Rowland Police department, sheriff's department know about this robbery but they don't have suspects. These people can simply say there was a young black man and a young Indian man or young Hispanic man they weren't sure which race Larry

JE: Demery

JB: Demery was. So while they're in Fayetteville they're right near Fayetteville State University and so they're over on the campus at Fayetteville State University and they're in I guess what used to be old gymnasium and it's being renovated and a videotape is made. Larry Demery is taking the video, Daniel Green is the subject of the video and he's singing a rap song, um, that videotape was not allowed into evidence. Um, but in it he sings about robbing people, he sings

about shooting people and from that video we were able to take steels of Daniel Green wearing the watch

JE: Right

JB: Wearing the various rings and ironically he's wearing a Chicago Bulls hat.

JE: I remember seeing that as we were in in the in the coverage of the trial. Once you got uh down the line and, and Demery decided to um uh uh comply and then said he was going to testify against Green, was that the big point in the investigation that you thought you were gonna be able to get both of them convicted.

JB: Yeah, I mean it I mean I thought I was going to get both of them convicted regardless

JE: I see

JB: I had Demery's statement

JE: Mm, hmm

JB: Demery's statement was a confession to felony murder. Um. I had Daniel Green with everything associated with the robbery. And so there was not only was the when they were arrested on the Jordan case when Mr Jordan's body had been discovered in South Carolina and there was the connection made that this unidentified black man who'd been found in Scotts Jiswell?

JE: In a swampy

JB: Marlboro County, South Carolina

JE: Swampy area

JB: Below Orenberg,

JE: Yeah

JB: Body'd been taken to Newberry South Carolina for an autopsy and so when they inquired the medical examiner in Newberry said yes I did an autopsy on a gentleman, I saved his clothes, um, I cut off his hands, and I removed his jaws, um for purposes of possibly identifying him. And so the Cumberland County folks, Michael Jordan's security people, they go to South Carolina, the clothes actually had been placed in a plastic . . . in a paper bag, but because they smelled so bad between being in the water, the blood, he had buried them. He dug them up. There was a photograph taken of Mr. Jordan the day he was in Wilmington for that funeral

JE: Mm, hmm.

JB: The clothes that the individual was wearing were the same clothes that Mr. Jordan had

JE: okay

JB: And they, um, took possession of the hands. They took possession of the teeth person that had died had extensive dental work. And so they took the hands to the um eventually they were examined at State, um, Lab in Raleigh where the fingerprints were rolled and compared with those that were in the system. Mr. Jordan had been arrested in New York as a young man. Um, he had been arrested here

JE: Mm, hmm.

JB: Um shortly I guess after Michael started playing basket-- professional basketball or maybe while he was at Carolina so he was both at the SBI system and the FBI system. So they made a positive identification on the fingerprints. Um, the dentist who had done the work for Mr. Jordan they contacted him in Charlotte, he was the dentist for, the Panthers, he was the dentist for the Hornets when they were originally there, they meet with him, he pulls his records, he does he says

JE: That's him

JB: This is him. So you have two of the three ways to positively identify someone. And so they knew they had Mr. Jordan. Now the issue was now where did this happen

22:51

JE: Right

JB: Car in Cum-- Cumberland County, car in South Carolina. What's in between and that's Robeson County

JE: Sure

JB: And Scotland county. And again that's where the cell phone records became important because not only was it the people being called it was the cell towers that were being ping-- that were being hit. I'll give you an example when Mr. Jordan was making phone calls it would ping Charlotte, Chicago, Cleveland, and then suddenly it's Pembroke, North Carolina, Rowland, North Carolina, Lumberton North Carolina, Latta South Carolina, Laurinburg, North Carolina

JE: Completely different from what was on . . .

JB: Totally changed

JE: yeah, yeah

JB: and so as we're, we're m-moving forward in this case and we're getting, well I mean we're looking at trial dates,

JE: Yeah

JB: It wasn't a matter of [unintelligible] if I was we're going to try them together if we try them together I'll lose Demery's statement um in terms of having had to had to redact portions I mean it remains a very powerful statement against him, um, but it's more powerful against Daniel Green.

JE: Mm, hmm

JB: And then I have Daniel Green's,um, number of different statements that also have the night that he agreed to go to the sheriff's department for -- to be questioned about this and that search that was executed at his mother's mobile home. And in the course of that search the, um, SBI agents find a gun that's hidden in the bottom of a shop vac vacuum cleaner, um. There'd been another robbery just a few days or weeks before Mr. Jordan disappeared in which two young men - black men - young black man and young indian man - robbed a store, um, on Highway 72 between Lumberton and Red Springs, uh. The clerk at the store, an elderly Indian man, um, reported he was shot 3 times, oooh, and he positively identified Daniel Green. Daniel Green made no attempt to conceal his identity. Larry Demery was wearing a bandana on his face and he said -- he said it was the young black man who came behind the counter with a gun, I reached my gun underneath the cash register and he shot me and he continued to shoot me. They took my gun.

lie

Lies

JE: Mm hmm

JB: That gun was the gun that was found

JE: Gotcha

JB: in the vacuum cleaner.

JE: So you're building this and you feel good about what you have against both of these young men

JB: yes

JE: when did you come in -- when did you come into contact with both of these guys for the first time?

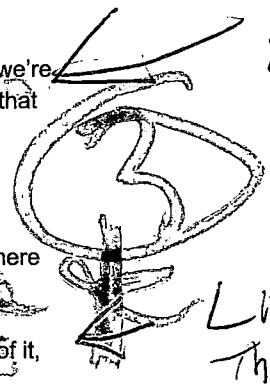
JB: the first time I was ever in court with them was at the motions to suppress

JE: Okay

JB: And so that was at -- I have to go back -- it may have been January

JE: Mm hmm

JB: maybe '94. I-- I just don't remember the dates cause we ended up doing a bunch of renovations in our courthouse and initially we were in a very large courtroom that no longer exists it's been divided into two but we're hearing the motions suppressed and as we're as we're going through, and when I got the case, when I officially became DA one of the things I did that at the time was not required



JE: Mm, hmm

JB: But because of the media scrutiny and the fact that there was so much talk about that there really wasn't a case against these guys, rather than doing just standard criminal discovery I made a copy of everything I had and turned it over to both sets of lawyers and as we got because -- because Judge Br-- Judge Weeks had been assigned this case he got a copy of it, too, so if it ever became an issue that oh, the state had withheld anything

JE: Mm hmm

JB: We had we had, um, date-stamped it, so we had page numbers, and yeah I could go well this is page number 342

JE: Right

JB: The judge could say go and he's well I've got it

JE: Oh

JB: Well as an example. That was to protect me. Now it was to try and protect the integrity of the case

JE: Sure, because with all -- with all that high profile you knew it was going to be

JB:Yes

JE: Questioned in some arena somewhere

JB: yes And so, um, they knew what I had it became a question of how I would present it and it became a question of how they would try to block my presentation. Um. From a standpoint of

trying it became very easy. It just chronologically you know starting with Wilmington to the time he's missing to the time that the body is found in South Carolina to the time that the -- um car is discovered and then just taking it that way. And eventually I think they knew what was how it was gonna -- how it was progressing but at that point they couldn't do anything -- there wasn't anything to stop it.Um. But as we were in pre-trial it eventaully becomes a situation where I go to Demery's lawyers. I believe Demery had the more plausible statement of what had happened and, I was like okay. Are we really gonna' try this case

JE: Mm, hmm

JB: Your guy confessed to felony murder. He's looking at a minimum of life in prison without parole or he's looking at the death penalty. Um, are you gonna' plead and take your chances in sentencing with the jury or are you really gonna contest it because Demery had other cases. Demery was out on bond for another robbery, um, in which he had, um badly assaulted a lady, um, who was a clerk at a convenience store in Pembroke, North Carolina. He dropped a cinder block on her hood

JE: OH!

JB: while she was taking out the trash so he was out on bond and on that he was out on bond and some other B&E cases and so, and they were like what can you offer us. Can you take first degree murder off the table and I was like no, I'm not taking first degree murder off the table

JE: ??

JB: This is what I'll do. We will . . . I am willing to let him plead to first degree murder in the felony murder rule which meant that the armed robbery charge merged. They had a separate conspiracy charge, um, that can merge and then I'll take everything else he has, consolidate that into a separate sentence and for a sentence of 40 years. And that it will be left up to the judge after a sentencing hearing in the murder case as to whether that 40 year case runs consecutively or concurrently with whatever sentences the jury hands down. And initially they're like, no no no you know we can't do that, he can't do , we can't advise him to do that. And I, you know, my position was, you know if he doesn't want to do that then you understand that he is, he is the likely candidate to get death

JE: Sure

29:58

JB: In light of his history. And then the other robberies were already involved, had been -- they'd been charged, um, in fact the couples from I thin-- Rhode Island and New Hampshire when they saw the story on national news that these boys had been arrested

JE: Yeah

JB: They called and said those were the boys that robbed us.

JE: So, so, you've got more than enough at this point in time. How long did it take Demery to agree to it?

JB: A few weeks

JE: Really, that long?

JB: Yeah, and it wasn't anything immediate, um, that I recall. They were like well can't you just do this and take the death penalty off the table and I said, ethically I can't do that.

Mm hm

I said, but what-- what I can do is stipu-- stipulate in sentencing that he cooperated, that an early stage of the process he admitted his wrongdoing, that in the event he testifies against, um, Green that I'll stipulate to that as a, um, non-statutory mitigating circumstance in, um, for sentencing for the jury to consider.

JE: Mm, hmm.

JB: And with that they went and talked to him and came back and they said they'd do it. And so we are, this is probably

JE: [unintelliglbe]

JB: September . . . October

JE: 95?

JB: 95. No, it's even before that because we started jury selection in Daniel Green in October of 95

JE: Mm hmm

JB: So it's, it maybe it's in the Spring and we have a hearing and Judge -- Judge Weeks is like if we need to hear anything just notify me. So we notif-- had -- had him notified that we had a matter that needed to be heard. And so we went into court. He wasn't aware of it, um, went into court, we approached the bench, um, as I recall, or we may have met with him in chambers before but then notified him of what we were doing. And, um, we proceeded with the plea hearing, um. He accepted the, he accepted the plea agreement, um, PJ seen to everything in his continued judgment, conditioned upon him testifying against Daniel Green. And so that really got the Green trial more-- really in motion and so

JE: Right

JB: And so in October of 1995 we started jury selection

JE: Along the way, and I want to get back to this in a second, but along the way are you in contact with Mrs. Jordan, with Michael, the family members and, and, and bringing them in on any decision whether to do this

JB: What -- what-- what we were asked to do, the Jordan family really tried to build a wall, um, they didn't want the media attention, they didn't want it to become a media circus, so, um, Michael's lawyers in Chicago became our contacts

So why make it public

JE: Okay

JB: So anytime anything was about to unfold I was on the phone with one of the lawyers in Chicago who had immediate access to Michael and it was going to Michael, um, Mrs. Jordan I've never spoken to her

JE: Oh really, oka

JB: Um I've met Michael, I've met his brother Larry and I've met his older brother James. His older brother was stationed at Fort Bragg

JE: Right

JB: In fact, um, it got to a point as we're preparing for Daniel Green's trial in the midst of jury selection, um, it became necessary to have some questions answered. And it was my belief the only person who could answer those was Michael Jordan. How much, what was the value of the rings, when were they given, who,you know, who got them, what were the circumstances under which the car

JE: Right

JB: And the lawyer was of the opinion, oh Larry can answer those questions. Larry lives in Charlotte. I had to go to a DA's meeting in Charlotte. And so the -- we arranged for a meeting between Michael's lawyer and Larry Jordan and we met in the hotel where I was staying out near the airport and, um, the more I asked Larry the more evident it became he couldn't answer the questions

JE: Gotcha

JB: I mean the answer I kept getting was you have to talk with the man

JE: Heh-heh

JB: And I'm like, and after about the third time I finally said who is "the man" you keep referring to. He said "You've gotta talk with Michael".

JE: Okay

JB: And so with that I look at the lawyer and I said okay, I need to meet Michael. When can we do this? And time is of the essence.

1995

JE: Sure

JB: And so he said well I have -- let me go back I'll talk with him, um, I'll be in touch with you. It may be that I call you on a moment's notice to go to the airport and pick up a ticket and you may fly to Phoenix because they had already started the NBA season.

JE: Sure

JB: And you may have to fly to Phoenix and interview him on the tarmac. Or it may be -- I was like okay

JE: Argh

Kim Heffney

JB: While, so we go through jury selection and we still haven't met -- I -- neither the SBI agent in charge of the case, the Robeson county sheriff's detective who became the lead person for them nor I have spoken to Michael Jordan. And it's

JE: Did you find that odd?

JB: No, I didn't find it odd, I mean I understood. I don't think what -- in hindsight I don't think that the lawyers when we eventually talked with him had fully explained to him why these 3 guys from--from Lumberton North Carolina were coming to meet him.

JE: Oh really?

JB: And so we ended up going -- we finished jury selection December like 19th or 20th, right before Christmas after 2 months. . .

JE: Right

Mr. Brant, M Jr lawyer

JB: of jury selection. And I get on the phone and I call, um, Mr. Brant, that was his lawyer's name. And I said look I gotta meet, I gotta meet him now

JE: Mm, hmm.

keep your distance
wear your mask
Avoid crowds

JB: You know Christmas is coming, we start evidence in January

JE: Yeah

JB: and he said OK. well let me see what we can do. And it was the season where the Bulls started off undefeated

JE: Right

JB: And then they go to New York and play on Christmas Day and they lose

JE: Oh

JB: And so the de-- the plan was we flew to Chicago, um, SBI agent Kim Heffney, um Anthony Thompson from Robeson Sheriff's department, we fly to Chicago to Raleigh, fly into O'Hare, they pick us up, in fact Michael's driver picks us up. We kind of interview him as we're driving back into Chicago. He takes us to the Sears Tower where the lawyers' officers are. We meet with them and they're really briefing us, they're like what are you -- what are you gonna ask him?

JE: Right

JB: And you know we just want to these are the questions we need, we need the answers to these. I mean this is vital

JE: Yeah

JB: (Cough) excuse me.

JE: Mm Hmm.

JB: And so okay. He says we're gonna go to lunch, um, so they end up taking us to Michael Jordan the restaurant, you ever been there? (laugh)

JE: Uh I've heard of it but I've never actually been there

JB: So there's a line down to the end of the block to get in

Yeah

We pull up front door and we walk right in and

Yueah

JB: And in this restaurant there's a private dining room but it's all glass. And it's for Michael when he -- I don't know if he still goes there or not but when he was go --

JE: Yeah

JB: That's where he can go. People could see him but yet he was walled off

JE: Yeah

JB: so we go in there and all these heads are turning like "Who are these people?" and it's like you could just hear the buzz "Is Michael Jordan coming? Is Michael Jordan gonna be --"? And that's where we thought we were gonna meet him.

JE: Yeah

JB: And after lunch it's like oh, let's walk over to Nike town. Why are we going . .. Oh look, there's Michael's statue. And I was like [jumping gole]

JE: Oh

JB: I've been to Chicago before but not like this and so we end up -- and the reason we went to Nike Town -- is because Michael's corporate office

JE: was there

JB: is across the street

JE: oh, okay

JB: is across the street and the tower of -- business tower of the hotel

JE: Mm hmm.

JB: And we go over there and Michael's on the way and we talk to them they came in last night from the game, they had practice this morning, it ran long because they lost. And so all of a sudden we're joined by some security people, Michael's personal bodyguards and they're aware that he's coming and we're just standing talking, the building was closed and next thing we know there's Michael Jordan

JE: He comes walking in

JB: He just walks in. And, uh, so we go up, we're talking on the elevator and we go into -- into his office. And he really thought he was going to be briefed about where we stood on the case.

JB: He said I know the trial's coming up. And -- chuckle -- then it was no, we need to interview you. You may need to come to Lumberton and testify. Cause I want -- you know the answers to certain questions

JE: Mm hmm.

JB: And the atmosphere changed

JE: Really?

JB: Cause he wasn't aware of what our intentions were and you know he kind of let his guard down at that point. It was funny cause it was cold. And he's -- he was giving us a hard time and he's like oh, no yo'ure all bundled up and it's not cold up here and I'm like wait a minute, time out

JE: Yeah

JB: I know where you're from.

JE: Right

JB: You're from Wilmington North Carolina

JE: Yeah

JB: Down the road from Lumberton

JE: Yeah

JB: It's cold. You can't tell me it's not cold

JE: Yeah

JB: He said you're right - it's cold

JE: (chuckles)

JB: But um we um, we had a great interview with him

JE: Mm hmn

JB: And so the -- I mean he looked at the photographs we had. He identified -- not I mean the photographs

We have not interview from

JE: I understand, yeah

JB: that we made from the video. Where Daniel Green's got the ring and the watch on. The watch literally is on his left hand, the ring is on his left hand so you see them both at the same time. You see the NBA All-Star ring, he said, he said yeah. I commissioned those. This jeweler I know here, uh, did this. had so many made to give to my special friends, my Dad was, my Dad got the first

JE: Any emotions shown at all from him at this point in time?

JB: No, not that I recall. I mean he had -- I think at some point prior to this they had come to accept what had happened

JE: Sure

JB: Um . . . didn't like it

JE: Right

JB: But they, um there was no emotion

JE: Like go get them I'm counting on you guys

JB: No, no he just said I understand what's been done, I understand there's a deal that's been made. He's gonna testify my lawyers explained to me after the hearings it was gonna be a race to the courthouse to see who got the first and best deal. He said I got no problem with that.

JE: Does that surprise you at all?

JB: No, no And so when we talked about him coming to -- possibly coming to Lumberton lawyers said he can't do that. I said he is a material witness. The only way it's gonna be avoided is if I can get lawyers to stipulate to what he has told us

JE: Mm hmm

JB: And I won't know that until I get back to Lumberton. So I said you know I said this is the way we can do it. I know you don't want the media attention because the media was everywhere outside the courthouse.

[Unintelligible]

Who's coming today. Is Michael coming. I said this is what we can do. Um. We'll start -- he'll be in the order of witnesses somewhere like during the middle of the day when nobody's outside watching what-what's going on. He'll come in -- not in -- not with you all may come in with him.

We'll put him in an unmarked police car. Drive him to the basement of the courthouse, he'll come in the [unintelligible] port, walk in the back door there, immediately get on the elevator from the basement that's private, um, it's where we transport prisoners and defendants up and down and then come in the back hallway, walk in the side, um, door, take the witness stand and leave the same way.

JE: Did he eventually testify

JB: No

JE: I didn't think he -- I didn't think I remembered he did

JB: No, the lawyers were so willing to stipulate as to what he said. They didn't want him there. They knew what the impact of Michael Jordan coming to that trial would be

JE: Right

JB: His brother Larry ended up testifying, um. James came for a couple of days in the trial. He told -- he told the press that he was uh, Larry's bodyguard

JE: Argh

JB: (chuckle.) Nobody knew who he was and so they ended up stipulating to not only what Michael had told us but that Larry -- that Daniel Green, the jewelry you saw in the photographs were items that he'd given his Dad. And that was the first evidence that the jury heard

JE: That takes us up to the trial where Johnson Britt would use all of that evidence and Larry Demery's confession to convict Daniel Green of first-degree murder for killing James Jordan. Next week in Part II Johnson Britt talks about the trial. He talks about the intense media scrutiny and about some of the other high profile cases he tried in his 24-year career including the one that had him break down and cry in court. If you know someone who you think would be a good interview for an upcoming episode send me an email. Please let me know about it. Jevans@wect.com. And if you leave me a rating or a review for this week's podcast or any others that we've done and you send me a screen shot of it by email well we pick one lucky listener at random and you could be the one getting that free WECT travel mud. I'm Jon Evans thanks for listening to this week's episode of 1-on-1.

JE: Can I, um--attorneys for Demery and attorneys for Daniel Green, after this all ended, I know that Green has continued to appeal, conversations with them over a beer somewhere about the inner workings of what happened during the--do attorneys share that kind of thing?

33:55

JB: We talk, I mean we're all friends. First and foremost, while we're adversaries in court, we're all friends outside of court, we all know each other, it's a small bar, in the scheme of things. I dare say, without really knowing, my guess is New Hanover and Wilmington have in excess of 200 lawyers. Um, Robeson County, at the time, we might have had 50. So you know everybody.

That's why he never had legs arrested for smoking crack- friends don't switch on friends

JE: Right

JB: And you work with everybody every day, on other cases. There was contentiousness. Was it contentious to the point that it severed relationships? No.

JE: Ok

JB: But, you know, one of the things, um, my dad helped Angus Thompson get to law school. Um, the--John Wishart Campbell, who was representing Larry Demery, Angus Thompson clerked for him when he was in law school. So, you know, there are connections.

WOW

His dad

JE: Everybody knows everybody

JB: Well, you know, in the aftermath, what I recall, in talking with Angus, was they knew they were in trouble when I struck the deal with Demery. Um, the, um, it's an incredible case to have prosecuted, it was an incredible case to have defended. Um, the, um, you know they were obviously relieved that their client didn't get the death penalty. Um, you know they were not happy that he got convicted, but they knew what the evidence was and they knew what could eventually happen. Um, you know, he did not testify, which, which was his right. And part of that was he was going to be fair game on cross examination because of all the prior inconsistencies.

JE: Yean, you could have taken him apart

JB: And you know, even today when he's professing his innocence, he keeps changing his story. And, after 25 years of being locked up for this, he still can't address what the truth is. And he says he didn't shoot him. Larry Demery didn't say that, doesn't say, that he shot him. Green wanted to point the finger at Demery, Demery points the finger at Green. In the end, they're both there, they're both involved in this, they're both culpable for what happened to Mr. Jordan. Do either one of them ever get out of prison? Um, what people forget is that Daniel Green came back into court months later and plead guilty to the other armed robbery charges, which are linked to this case. Um, and he has an additional 28 years that runs the expiration of

DRAFT

his life plus 10. So he's got 38 years on top of a life sentence. To my knowledge, he's never become eligible for parole. Larry Demery has.

JE: Do you think Demery will ever get out?

JB: I think eventually, um Larry Demery will get out of prison. If you go on the North Carolina Department of Corrections website, Larry Demery for the most part, he's been in prison, in DOC custody since 1996, he he's only had like 11 infractions. That says something to--about the type of person he has become since he's been locked up. I know that--his mother comes to see me periodically...

yep, SMr
he'll be on
a three to get
away with his crime

JE: Really?

JB: Yes. His mother and one of the ladies who works as the victim's assistant in my office go to church together. But Mrs. Demery has come to see me from time to time. And um, she's been in the courthouse and wanted to say hello. She's come by and asked me to help Larry in his efforts to get out of prison and to my knowledge he's come up for parole twice, maybe three times. And I don't reply, to the parole commission when they send me the notice but of the two, Larry Demery will get out of prison before Daniel Green.

DRAFT

JE: Have you ever heard from Michael since the trial ended?

JB: No, I've talked to his law--I talked to Mr. Brent shortly after the verdict came back on Daniel Green. As this has evolved with Daniel Green making these new motions, I've attempted to contact Michael Green--Michael Jordan through the Bobcats and Hornets. I've written him, notifying him of proceedings, never had a response. I think the last public statement that he made about either case was that they were going to let the justice system handle it. The justice system had done so, they were satisfied with it.

38:04

JE: I could talk to you about a whole lot of other issues here, but I do want to ask you, and in this most recent one you tried it was a police officer who was shot and killed.

End of discussion of Jordan case. The most notable things Britt says afterward is that he's not planning to run for reelection and that he explored running for congress in the 9th congressional district, but he came to the realization that it's got to be done years in advance because of the astronomical cost. He later said that wants to serve once he's left the DA's office. He's been approached about running for congress and running for Attorney General.

B

Transcript of Jon Evans (JE) 1-on-1 interview with Johnson Britt (JB)
Part 2
3/30/18

JE: Hello everyone I'm Jon Evans. Welcome to another episode of 1-on-1. In the first part of our interview with District Attorney Johnson Britt he went into the details of how Michael Jordan's father was killed near Lumberton 25 years ago. He talked about the investigators gathering evidence against the two suspects, Daniel Green and Larry Demery. How he kept in touch with the Jordan family during the national media attention that followed, and finally how Larry Demery agreed to a plea deal and then agreed to testify against Daniel Green. Well as we start part 2 of our interview Johnson Britt goes more into his preparation for the actual trial against Daniel Green. How it all played out in court. The strength of Larry Demery's testimony against Green in getting the conviction and Green's continued legal attempts -- even to this day -- to win himself a new trial.

JE: And as you go through this trial was there any point that you didn't think that you had Green convicted?

JB: No

JE: Or anything happen during the trial or was this pretty much textbook?

JB: No, no it was building. It became . . . in the scheme of things it became an easy case to try because there'd been so much prep put into it and the way you could just put it in segments and each segment built upon the previous and so it culminated with Larry Demery. And Larry Demery was on the stand for almost a week between his direct, his cross, re-direct, re-cross and, um, he was raked over the coals by the defense attorneys trying to get him to break from [unintelligible] and his story never changed.

JE: Right

JB: Um, from the moment that, um, he confessed at the Sheriff's department throughout the-- the remainder of the trial he never wavered on what he had, um said happened. And so, um, so it ends, it culminates with that and then it goes to the jury and the jury comes back, finds him guilty of felony murder.

JE: Mm hmm

JB: finds him guilty of conspiracy to commit armed robbery. We weren't trying the other robberies. We used those -- I used those in the course of the presentation to show 1) the identity of who the shooter was; 2) this course of conduct they were on cause it progressively got more violent and it ended with Mr. Jordan. So the, um, the [unintelligible] jury goes to

DRAFT

sentencing, the jury comes back life so he got sentenced to life for the murder and the merged robbery and then he got 10 years at the expiration of life for the conspiracy

JE: Mm hmm

JB: so he still has two remaining armed robbery charges and a felonious assault charge pending against him plus conspiracies. And so, um, he's sentenced, a month later we're back in court and I'm picking a jury for Larry Demery's sentencing hearing. And we go through that and basically it's a re-presentation of much of the case

JE: Mm hmm

JB: And then it goes to the jury. That jury comes back life for Larry Demery, um. Afterwards we're told that they gave him life because Daniel Green had gotten life. If Daniel Green had gotten death they'd have sentenced Larry Demery to death. Um, that-- that's you know,. . .

JE: And, and

JB: . . . the luck of the draw I guess for them

JE: what do you think kept the jury from giving Green the death penalty?

JB: you know I don't know. They had invested a lot in mitigation. They had a psy-- um, psychologist soci-- um sociologist come out and map down Daniel Green's life. What people forget is Daniel Green had just gotten out of prison for a horrible assault that he committed on another teenager. In fact, um, it-- it was a pre-arranged fight, a number of people showed up to watch it, Daniel Green's there, the young man that he's gonna fight is there, and unbeknownst to everybody Daniel Green has an axe . . .

JE: oooh

JB: stuffed down, you know, the leg of his pants. And as they get ready to [unintelligible] fight he whips this axe out and he hits this kid in the head, not with the blunt end but with the sharp end

JE: wow

4:58

JB: and, um, killer's luck he did survive, he now has the mind of like a 10-year old and he ends up -- they were juveniles, the case was transferred to superior court, um, for trial as an adult. And he eventually pled guilty for that, he was sentenced, went to prison, got out of prison and then in the course of the Jordan proceedings there's a motion filed to set aside that conviction, um, based on the fact that his lawyer who was a member of the public defender's office did not advise him that she was going to leave that office, take a job as an ADA in Durham and

DRAFT

basically said that he was threatened with the prospect of that he could plead guilty in front of Judge A or they go try him in front of Judge B who was Joe Freeman Britt, um, whose reputation was

JE: huh

JB: that he was the hanging judge

JE: yeah

JB: and so he ended up pleading

JE: right

JB: And, but it-- that was set aside which was an aggra-- a factor in aggravation that was taken away.

JE: would -- did you ever sit across the table from either one of these two young men

JB: Yes

JE: And have conversations with them?

JB: yes, um, and preparing for the trial, um, any good lawyer's gonna talk with their witnesses before they put 'em on the stand, um, cause you want to know what they're gonna say. You don't want to be surprised by something

JE: sure

JB: So . . yes

JE: Don't ask a question you don't know the answer to

JB: That's true

JE: Right

JB: um, and so, um; there were -- there were meetings where Mr. Heffney from the SBI, Mr. Thompson from the um, Sheriff's department and I would meet with Larry Demery and his lawyers, nothing was done without his lawyers there

JE: right

DRAFT

JB: And initially, um, we would meet late afternoon he'd be brought over from jail we'd meet in my office, um, Mr. Thompson could take him back to the jail, um, and so part of it was just to develop a rapport with him, um, which was kind of diff-- which was difficult not kind of, it was difficult. Larry was very withdrawn that's the type of personality he is and so it was-- at first it was like trying to dig information out of him.

JE: Mm hmm

JB: it was like you know, tell me what happened after this and just trying to get it chronologically and you-- I could tell that he was somewhat reluctant to testify against his friend. And so eventually we developed a rapport and his lawyers played their roles as defense attorneys, they-- they would cross-examine him, I wouldn't.

JE: Mm hmm

JB: um, and they were equally as tough on him as Green's lawyers were when we actually got to court. And so then, um, it became not only get him to talk about it but to understand the environment in which he was going to be, um, placed in and that was take him into a courtroom.

DRAFT

JE: And Green-- ever sit across a table from him?

JB: No, no. He, um-- Green denied everything and

JE: Still does to this day, right

JB: That kid, there was an interview with Channel 5 on . . .

JE: yeah

JB: . . . Monday or Tuesday with the new version of how things happened.

JE: yeah

JB: But um, no, Green-- Green tried to speak to me in the back hallway on a break, um, and I was like-- I just put my hand up, I was like you--you can't talk to me. And so we got back into court,. . . yeah I reported that the record show that Mr. Green spoke to me in the back hallway, I really don't under-- know what it was about but I made no attempt to follow up with him, his lawyers weren't there, and then they put on record-- oh he didn't want to talk with me about this case, he wanted to talk about a friend who was in jail and what was gonna happen with his case and I didn't know, I mean in the scheme of things we have 2000 pending cases at any time. If you ask me about defendant A and it's not one on my plate . . .

JE: Mm hmm

JB:. . . I don't know about it.

JE: Sure

JB: So, um, but no, he is, um-- he and I have never spoken, he and I will never speak, um, the, um, you know we have pending litigation right now. Um, they're trying to set-- get-- after 25 years to get it set aside now they're claiming he's innocent

JE: Mm hmm

JB: Um, initially it was a motion for a-a new trial, it's kind of evolved into, um, [unintelligible] Chris Mumma, I don't know if you're familiar with Miss Mumma

9:35

JE: yes, the head of the Innocence Commission

JB: um, well, there's a difference between the Innocence Commission and the Innocence Project, she runs an Innocence Project

JE: Project, I'm sorry, I'm sorry, right

JB: Um, the -- she has-- she has made an appearance and now is promoting that Daniel Green is innocent. But they're-- innocent of murder, they're they're saying that he was an accessory after the fact

JE: Does that kind of stuff when they come back afterwards, is that, to a prosecutor-- to the prosecutor of a case -- irritating, angering or just part of the job

JB: Um, it's both part of the job first and foremost. But it's irritating. Um, this is not Daniel Green' s first attempts to get a new trial. Um, the first time he filed a pro se motion. Um, a lawyer was appointed to represent him. That lawyer was appointed with the direction from the court to investigate his claims and to do -- and to review the, the record and to determine if there was a basis for filing a motion for appropriate relief for a new trial. That lawyer filed an affidavit with the court, said that in his professional opinion there were no issues to raise. Um, any that were appropriate to raise in a motion for appropriate relief had been addressed during the appeal

JE: Mm hmm

JB: A second lawyer was then appointed to again investigate. That lawyer did not file a motion for appropriate relief and eventually withdrew because of communication issues with Daniel Green. And then, now, um, . . . Scott Holmes and I can't remember the other-- the other guy's last name is Mance. They're out of Durham.

DRAFT

Include Iverssen's/Floyd's letter about why he withdrew

JE: Okay

JB: They end up, um, appearing and filing a motion and now Miss Mumma has joined them, um, during the course of this -- and that's pending. It was, um, had been assigned to an emergency judge who's a retired Superior Court judge and we were making progress. The Attorney General's office is handling the case, they've made me a witness in the case about allegations that they've made at me, um, and so the Attorney General's office is handling the case, um, we were-- they were progressing, um, then the legislature did away with emergency judge status

JE: Right

JB: And so our senior resident, um, judge in our, um, district asked uh, Judge Winston Gilchrist, um, who is judge out of Harnett County and is assigned our county for this 6-month term report, um, if he would take it, um, and it's my understanding [unintelligible] that we haven't had any, um -- there hasn't been any hearings, I don't know there's been any communications between Judge Gilchrist and the attorneys

JE: Mm hmm

DRAFT

JB: As I said I'm a-- I'm a witness, but if something's happening in the case the AG's office lets me know.

JE: What was the biggest piece of evidence, aside of Demery, was there another piece of evi-- evidence in that trial that just slam-dunked it for you?

12:39

JB: The gun being found in his mother's house

JE: Mm, hmm

JB: While the gun was never -- the bullet removed from Mr. Jordan was never positively identified as being fired from that gun there's similarities but there's insufficient microscopic detail to say it was a match. That, and then after, um, Green was arrested he asked to speak to the former sheriff, um,

JE: Hubert Stone, wasn't it?

JB: Hubert Stone was the sheriff

JE: Yeah

JB: Sheriff Stone contacted um, SBI agent Tony Underwood who was stationed in Lumberton and asked him to come to the office, that he needed to talk to him. And when Tony Underwood

MJ called him to Union County

gets there Daniel Green's sitting in the office and Daniel Green is talked with Hubert Stone and . . . so . . . Sheriff Stone looks at Daniel Green and says tell him what you just told me. Basically he says I can take you to where one of the rings is. And he had gone, um, so Tony Underwood takes him, um, they go to his grandmother's house in Rowland, North Carolina. And he said, you know, what are we-- what are we looking for? He said I can take you to the NBA champion-- the NBA All-star ring. Um, I buried it. Well, where'd you bury it? In my grandmother's backyard. Well, they get there and like, "where", and he said it's over there, so agent Underwood is trying to locate what he's talking about is the location for this ring

JE: MM hmm

JB: And he's digging, not finding anything

JE: Yeah

JB: And he-- Daniel Green is like go a little deeper, go a little deeper. And as he does he unearths the ring. Um, the, it ended up being a combination of ever-- a culmination of everything

JE: Right

JB: It was a very, very strong circumstantial evidence case against Daniel Green without Larry Demery. With Larry Demery it became an incredibly strong case. I mean one of the things that was happening that it was--it was, I guess what happens in it was my first case where a lot of media attention was focused on it--

JE: I was going to-- that was going to be my next question

JB: That, um, there's a lot of things said on the steps of the courthouse that are never said in the courthouse

JE: Right

JB: And so it became a situation where I gave the media a lot of access before trial but my-- I decided that during the trial, um, I wasn't gonna say anything just out of fear that I'd violated some ethics rule and but it came apparent that each day there was a press conference that was taking place on the steps of the courthouse and that it was the defense story that was getting out through the media and my story really wasn't-- what we were saying -- it became apparent that I had to address that so I would go out and speak to the media and some point they really stopped covering it because as it unfolded it went from, Oh they don't have anything on these guys, Oh wow, they really do.

15:57

JE: Mm hmm.

DRAFT

JB: Um, in fact there, was a guy by the name of Scott Raab. He wrote a scathing article during the pendency, early--early, shortly, um, after they were arrested, a scathing article about Sheriff Stone and about Robeson County. And about that, you know, culturally it was very diverse, very segregated, very crime-ridden. Um, that Larry Demery and Daniel Green were just scapegoats. And he had access to Daniel Green, Scott Raab, through the entire trial. He had spoken with me, but I had a little hesitancy because I knew what angle he was taking. Um, but as the trial went on, um, he eventually changed his whole tune about his aspects of--his view of the case and, in fact we learned some information during the middle of the trial. And Mr. Heffeney and Mr. Thompson, I dispatched them to somewhere in Sourth Carolina because of a potential witness and they get there and the investigator for the, um, Daniel Green's defense team and Mr. Raab were there.

JE: Wow

JB: Interviewing these people. So Mr. Thompson and Mr. Heffeney showed up and they're like " How did yall find out about him, why are y'all here"? And they're like, "You know, we've got a duty to follow up on this, we got this name, so we're here find out what this story is about." And Raab was like, "I've never heard of a prosecutor or an attorney who, during the midst of the trial, is sending their people out to follow up on what could be favorable evidence to the defendant. And, so eventually he approached me, one afternoon or one evening as I'm leaving the courthouse, and he said, "Can I just ask you a question?"

JE: On the record or off the record?

JB: I, I was just talking to him. And he said, "I want to ask you something. Why is it that we'll have these mini press conferences on the front steps of the courthouse and the defense is saying this is what's gonna happen, this is what they're going to do, and you'll give us bits and pieces of what to expect and everything you tell us pans out in court and theirs doesn't?" I said, "Because you gotta understand, my audience is not the people in the public. My audience is the 12 people sitting in that jury box." That's who I'm focused on. I don't' really pay attention--

JE: Right

LB: to--

JE: Court of public opinion anyway, right?

JE But I mean, I'll be honest with you. I've got every video recording ever made by a news agency.

JE: Mm hmm

DRAFT

JB: We're in the midst of renovating our house, we have this addition built on the back of our house and we put hardwood floors in. So all of our furniture was in one room. We had access to that, our den, our kitchen and that was it downstairs.

JE: Right

JB: So every evening I go in, my kids would be lined up on the sofa, my wife would be there and they'd be waiting form to come in. And they'd plug the tape in and hit the record button as we'd watch the news together. But, um--

Subpoena Tape

JE: With all that media attention and it being, I mean, you're, I guess you're a couple of years, maybe about a year and a half into your DA, as an official DA at this point--

JB: Right

19:42

JE: You couldn't have come under a tougher Baptism of fire than you did with that trial.

DRAFT

JB: And that's true. I mean it was the biggest thing going in the country at that time. I'd been an assistant DA there. I'd tried a lot of cases. I spent very little time in district court, I was always a superior court prosecutor. I graduated from law school in 1987 and started at the DA's office in 1989.

JE: Mm hmm

JB: And then, I lost my job, in Lumberton, um, over a rumor that I was running for DA. And, um, I was out of work for about 2 months. I started a little private practice. I was lucky. I got a job with Rex Gore in the 13th district.

JE: Yeah

JB: Which was Bur--

JE and JB in unison: Brunswick, Bladen, and Columbus.

JE: Yeah

JB: And my job was to run superior court in Brunswick, Bladen, and Columbus counties. Though I got an opportunity to get a lot more trial experience, got a lot more experience and freedom to prosecute, um, as I saw fit. In Lumberton, as an ADA, it was a situation where we didn't negotiate pleas. People either pled straight up or you tried them. I wasn't unusual to go to court and try five cases in a row with juries out in multiple courtrooms. It was just that kind of grind. But the experience I had working for Rex Gore gave me an opportunity to really develop as a

Research hire cases w appeal for unethical/ criminal behavior

prosecutor. And so, when I took office in Lumberton, I was coming with this additional experience. I was fully aware of what I was walking into. When, I announced that I was running, Larry Demery and Dan Green were already in custody. I announced in November of 93 that I was running. And then it became very apparent that it was going to be my case to try.

JE: Had you followed the goings on--

JB: Sure

JE: just like everybody else?

JB: Sure, I was interested in my hometown, my home county.

JE: Yeah

JB: It was in the courthouse were I had worked and, um, I knew that if I wanted it, it was going to be the case that I would get to try. And, I mean, the truth, truth be told, it was the biggest case I've ever tried and I've tried a lot of cases. Um, cases that have received a lot of media attention, nothing on this scale, but it was the biggest case of my career.

DRAFT

JE: What--were there any media outlets that were a pain to deal with or were most of those--I know Mitch Davis covered it for the local news here and, uh, we had a reporter that would go up there as well. The local reporters are one thing, it's when you get the national media to come in, it's a different story.

JB: The national media was really going through the affiliates. The one national person that actually came to Lumberton was Drew Levinson, I don't know if you knew Drew...

JE: Yes, I remember the name, sure.

JB: He was with NBC at the time. He may still be with CBS. Drew grew up in Fairmont. Drew and I knew each other.

JE: Oh really? I didn't know that.

JB: We went to basketball camp at UNC P together, played pick up basketball against--so we knew each other. So he's there and he was there for one day. And he and I spoke. And then Jim Kressula who was with CBS Radio out of Greensboro...

JE: Yeah

JB: We developed a good rapport. Essex Thompson who was a reporter with the AP out of Raleigh. Um, Channel 5 Mark Roberts--

JE: Mark, yeah

JB: came. I'm tryna think. Greg Barnes, Channel 11 and then Channel 13 out of Florence and then Channel 15 out of Florence. They were the primary coverage people, so they were people I already knew. I knew Greg having grown up in Lumberton. His sister is my age. I just knew him as her big brother. He was the radio guy, he was the DJ.

JE: What kind of, um, impact did it take on your family?

JB: They understood (small laugh). My youngest son was three turning four.

JE: Ok

JB: He was four after, he turned four after Green was completed in March. My oldest was born in 1987 so he was six years old. He's the one if you go back look at archives of photographs after the trial, I'm outside the courthouse talking to my wife and son, my son's got a Chicago Bulls hat on.

DRAFT

JE: (laughs)

JB: My oldest son was much more aware of what I was doing than I think my daughter, and certainly my youngest son.

JE: Sure

JB: But, it was a situation where my day went like this: I'd get up 6 in the morning, get ready to go to work. Um, see them before they got off to daycare or school and then go to work and I would try this case. I would come home as quickly as I could after we recessed. We'd have dinner together. Um, I would be there until it was time for them to go to bed. 8 or 9 o'clock, then I'd go back to the courthouse.

JE: Really?

JB: There were many nights that I was at the courthouse until 1 or 2 o'clcok in the morning, just prepping over what I was gonna do.

JE: With your team?

JB: No, just me.

JE: Wow

JB: I'm not a lawyer who, I can take a report, I don't make a written outline of what I'm gonna do, I don't have questions written out. My goal in every case I try, if you're my witness, develop rapport and when we go into court, we're just having a conversation.

JE Mm hmm

JB: And, um, so I know the inside and out of my case. So I got the report there with me. If you see me taking notes it's really during cross examination so that I can come back on redirect and address a point. But that's just the way that I operate. So, the night crew at the courthouse, their shift starts at 4 o'clock in the afternoon, they got home at midnight. There were many nights that they would come in and tell me, "Goodnight, we're leavin' " and I would be up there. Um, Robeson County Courthouse probably has ghosts.

JE: Yeah

JB: 'Cause there were times where I would be in my office, and it's configured differently now, but I would have my desk positioned so I could almost see out the front door as people would come in, and it's glass, and the lights would be off in the hallway, the lights would be off in the outer office and then all of a sudden, a light would come on from the hallway and it was an elevator opening. And I'm like, "Ok, it's time for me to go home." But I was running on adrenaline for the longest time. But they understood, my wife understood, the stress I was under and they couldn't have been more supportive.

DRAFT

JE: The day after Dem--cause I guess in the whole process of this, I know there was appeals, but the day after Demery's sentencing, I guess, was the last of the first round of everything...

JB: Yes

JE: Did you take a deep breathe that next day? Did you decompress that next day? Did you not go to work?

JB: No, I was a--no, I was elelated by the success that--when I say "we", the team had had. They did the work, my job was to just present it. And to be the voice for everybody in this case. Yeah, I was extremely elated. I went home, I don't remember what we did, but knowing us, we probably ordered a pizza--

JE: Right

JB: as a celebration. And I came to work the next day. Um, I am not one and never been one to, um, not work. Um, other than when I've been sick. Um, that case was over, it was now time to get everything boxed up so we could have a record of it and get ready for whatever was next.

JE: And is that the attorney in you or is that the man who wants the victim in the next case to think I'm going to give as much to that victim as I am to NBA North Carolina high profile guy Michael Jordan's family?

JB: It's a little bit of both. I'm a third generation lawyer

JE: Right

JB: And, um, my daddy and grand-daddy were both criminal defense attorneys and that's always what I thought I wanted to do. That's what I intended to do when I went to law school. That's what I intended to do when I got out of law school. I thought the DA was the bad guy. That's what, that was my vision.

JE Really?

JB: Of course Joe Freeman Britt was the DA in Robeson County

JE: Sure, and he was a cousin of yours right?

DRAFT

JB: We are related, yes. So, um, in 1989, in 1988, I'm practicing law and Eddie Hatcher

JE: Yup, I remember those...

JB: Takes place. We stood on top of the office building I worked in, in Lumberton, and we watched the police scurrying through the alley beneath us because the newspaper--

JE: He had taken everybody inside the Robesonian newspaper hostage.

JB: And there were helicopters. And you're like, "Wow, what in the world is..." And that was really, while I'd grown up there, um, I'd been away. I went to college in 1978. I got married in 1982. I ended up going to law school. So it was about a 10 year period where my mom--my dad had died right before I went to college. My mother had moved away. And so I didn't have a lot of contact with what was going on in Lumberton. I just knew that when I went to law school, I was going back to Lumberton and doing what I always dreamed of doing. My first dream was to practice law with my dad, but he died unexpectedly, he was 47. My granddad died while I was in college.

JE: Wow.

JB: And so, but I was so determined that I was going back to Lumberton as a lawyer. And so I get back and I'd heard--I mean, I'd lived in Winston Salem. I lived in Benson while I was in college. My wife worked in Raleigh and picked up the N&O, you'd read stories about what was going on, allegations that were being made, so you come back with a somewhat, with a jaded eye at what's being reported. Is this really the town that I grew up in? Is this really the

community? And Eddie Hatcher was the opening sonnet to, well it may have been the final sonnet, it brought all the criticism to a head. And it suddenly became a little local issue with some state coverage, suddenly it was a big state issue and a big national issue. And changes occured because of that.

JE: Yeah, I read one comment of yours that said, "Eddie Hatcher was right, he just went about it the wrong way."

JB: Yes. And I believe that that there was corruption in the Robeson County Sheriff's Department at some level. Did it reach all the way to Sheriff Stone? I don't know. Um, but in hind--looking back in history and having gone through what we did in the Tarnished Badge investigation that brought down--

JE: Glen Maynor

JB: the Glen Maynor regime, um, you can see how easily it could occur. So, yeah, Eddie Hatcher was on to something, he just didn't go through the right channels.

JE: Yeah

JB: So, with the changes that occured--Joe Freeman Britt became a superior court judge and the man he was running against was killed, in the midst of that election. Then the legislature creates a second superior court judgeship which is designated as a minority seat. And then when Joe Freeman Britt becomes a judge, Richard Townsend becomes the DA. And there were openings, there are people who left the office. And so Richard Townsend approached me. There was a public defender's office being opened. Angus Thompson was the first public defender in Robeson County who represented Daniel Green. He approached me about coming to work and, um, I waited. I knew I wanted to do trial work, um, and in the end it was what was the best way for me to get into court and develop experience trying cases. My idea was that I go work for the DA's office, stay for five years, go open a law firm, make a name for myself. But in the midst of all that, my oldest son, at the age of 3, was diagnosed with type 1 diabetes.

JE: Right

JB: So I had to have insurance.

JE: Right

JB: I could not go, have him go on Cobra a year later. And so, it became a big issue. And so, um, I liked what I was doing, um, I think I was pretty good at what I was doing.

JE: I mean, you held the office for 20--almost a quarter a century.

JB: And so, um...

DRAFT

EXPLANATORY

THE FOLLOWING DOCUMENT(S) MAY HAVE POOR IMAGES DUE TO POOR PHOTOGRAPHIC QUALITY OF PAPER.

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO.: 07-CVS-4713

DANIEL A. GREEN,

Plaintiff,

v.

ROB TUFANO; CHANNEL 3 WBTV, AND JEFFERSON PILOT COMMUNICATIONS COMPANY,

Defendants.

AFFIDAVIT OF JOHNSON BRITT

Johnson Britt, being duly sworn, deposes and says:

1. I am over the age of 21, am competent to make this affidavit, and the statements contained herein are true of my own personal knowledge.

2. Since 1994, I have been the elected District Attorney for Judicial District 16B encompassing Robeson County.

3. In 1996, I was the lead prosecutor on behalf of the State of North Carolina handling the trial of Daniel A. Green on charges of first-degree murder for the 1993 shooting death of James Jordan, the father of former University of North Carolina basketball star (and then National Basketball Association star) Michael Jordan.

4. Daniel A. Green was convicted by the jury in that case of first-degree murder and received a sentence of life imprisonment. The state of North Carolina had asked the jury to return a sentence providing for the execution of Mr. Green.

EXPLANATORY

THE FOLLOWING DOCUMENT(S) MAY HAVE POOR IMAGES DUE TO POOR PHOTOGRAPHIC QUALITY OF PAPER.

5. The evidence presented at Mr. Green's trial in 1996 included a statement by Mr. Green in which he admitted to his participation in the robbery and shooting death of James Jordan.

This is perjury!! N.C. G.S. §14-209

6. The evidence offered in that murder trial of Daniel A. Green, but ultimately not admitted in that format, included a video tape of Mr. Green dancing or moving about in front of a video camera and "rapping" about a shooting and robbery. His legal counsel stipulated that still photographs taken from the video depicted Mr. Green wearing a watch and an NBA All Star ring given by Michael Jordan to his father James Jordan.

Further the affiant sayeth not.

This the 15th day of August, 2007.

Johnson Britt
NC State Bar #14161

Sworn to and subscribed before me
This 15th day of August, 2007.

Alice L. Lassiter
Notary Public

My commission expires: 1-30-2010

The following are grounds for suspension of a district attorney or for his removal from office:
(2) Willful misconduct in office
(3) Willful and persistent failure to perform his duties
(5) Conviction of a crime involving moral turpitude;
(6) Conduct prejudicial to the administration of justice which brings the office into disrespute

(7A-66 Removal of district attorneys)

A proceeding to suspend or remove a district attorney is commenced by filing with the clerk of ~~court~~ superior court ... A sworn affidavit charging the D.A. with one or more grounds for removal. ~~The clerk~~ bring matter to attention of senior regular resident superior court judge who can within 30 days either review and act on the charges or [illegible] for review and action within 30 days to another superior [illegible] judge. If the judge finds the charges are true, [illegible] suspending the D.A. from performing ~~[illegible]~~ duties of his office [illegible] a final determination of the charges on the merits. (Judge can dismiss charges [illegible] provide cause exists for believing charges are true, or if true, do not constitute [illegible] grounds for suspension. If hearing is ordered, it must be heard, ~~between~~ 10 and 30 days)

EXHIBIT LIST

Exhibits

"A" 6/11/00 Letter from Claimant to JoAnn Lockleer Clerk of Court, Robeson County
"B" 6/30/00 " " " " " " " "
"C" 9/10/00 " " " " " " " "
"D" 7/5/00 Letter to Claimant from Deputy Clerk Patricia Rogers, Robeson County
"E" 2/28/02 Letter to Robeson County Clerk of Court from Claimant
"F" 6/3/04 " " " " " " " "
"G" 9/18/00 Letter to Claimant from Robeson County Senior Resident Superior Court Judge D. Brook
"H" 11/17/02 Letter from Judge Robert Floyd to Carlton Mansfield and Claimant
"I" 6/28/04 " " " " " " " "
"J" 11/29/04 " " " " " " " "
"K" 9/3/04 Complaint against Carlton Mansfield
"L" 2/10/06 Letter from Mansfield to "Frank" (Judge Floyd) suggesting he "throw away" 2/1/06 Affidavit
"M" 8/6/07 Letter from Mansfield to Claimant falsely promising to surrender Claimant's case file
"N" ~~Filed~~ Claimants N.C. State Bar Complaint against Mansfield and request for case file 7/27
"O" 2/19/02 Mansfield's home page for www.mansfield-law-firm.com
"P" 3/11/02 hearing transcript from hearing on Claimants motion to remove Mansfield
"Q" 8/9/05 hearing transcript on Mansfields motion to withdraw as counsel
"R" 2/1/06 Affidavit of Carlton Mansfield
"S" 6/23/04 Letter from Henderson Hill regarding Mansfields representation
"T" Carlton Mansfields Fee Application Form 11/28/00
"U" Photocopy of envelope sealed on 3/4/96 by Judge Weeks (Amended M.A.R. Ex. 14)
"V" 9/16/08 Petition For Writ of Mandamus filed in N.C. Court of Appeals by Claimant
"W" 10/2/08 States Response To Petition For Writ of Mandamus From N.C. Governor Roy Cooper
"X" 10/3/08 Order on 9/16/08 Petition for Writ of Mandamus from John Connol, N.C. C.O.A.

"Y" 9/26/08 Order Allowing Withdrawal of Attorney Carlton Mansfield
"Z" 10/2/08 Order of Summary Dismissal on Motion for Appropriate Relief
"AA" 11/7/13 Motion to View Documents Under Seal filed by C. Scott Holmes
"BB" All documents referred to in Amended Motion for Appropriate Relief Ex. 144 in custody of the office of the Clerk of Superior Court for Robeson County which Claimant moves the Court to order the Clerk of Court to Certify as True Copies.
"CC" 2/3/09 Letter from Judge Floyd to Indigent Defense Services (Thomas Maher, Director) stating Carl Ivarsson doesn't do post-conviction cases and requesting I.D.S. to appoint counsel for Claimants M.A.R.
"DD" 6/3/04 Letter from Claimant To Clerk of Court due to abandonment by Mansfield
"EE" 7/26/17 N.C. State Bar Complaints filed by Claimant Against Mr. Holmes and Mr. Mance
"FF" 10/2/10 Letter to Claimant sent to N.C. Prisoner Legal Services Director Mary Pollard regarding SBI forensic serology cover up "Response from Pollard 11-17-10
*"GG" ~~8/~~ 8/18/11 Letter from Claimant to N.C. Prisoner Legal Services Director Mary Pollard regarding SBI Forensic Serology cover up in Claimants case
"HH" 10/7/93 F.B.I. investigation of Sheriff Hubert Stones U.S. Marshall Candidacy/Judge Floyd Reference
"JJ" Woodberry Bowen's Affidavit regarding his destruction of Claimants file
"KK" * Aaron Johnson and Jim Mance Recorded interview of Woodberry Bowen
"LL" Claimants "Motion to Compel Defendants Constitutional Right of Access to the Courts" (filed in 1999, should've been liberally construed as M.A.R. Court never ruled on it
"MM" Sealed statements from Kaye Hernandez 3/1/96 and Nellie Montez 3/3/96
"NN" Photo of Red Lexus with 55ter rims sitting in enclosed area, taken by S.B.I.
"OO" Jimmie and Alice Baculich F.B.I. Statements 8/15/93

"PP" 2/8/99 Letter from Janine Foden to Claimant saying Courts, not law is the problem and that she saw "several grounds on which [I] might allege I.A.C

"QQ" 8/8/18 Hearing transcript of Judge Gilchrist's holding that Claimant can't have hybrid representation

"RR" 2/4/18 Fayetteville Observer article clipping 'New Law Limits Use of 'emergency judges' 2018

Motion To Correct Memorandum of Law/ Supplement MAR

NOW COMES the Claimant, Daniel Andre Green, in propria persona and files the following Motion to Correct A Memorandum of Law filed by current and previous counsel and to complete the record by adding documents referred to, but not included, in the Memorandum of law filed by counsel, on 10, October, 2017 in response to States 9/18/17 Motion to Deny M.A.R. on the Pleadings.

Corrections To "Procedural History"

1. On or About October 10th, 2017 current counsel, Christine Mumma, and former counsel, Scott Holmes and Ian Mance filed a "Memorandum of Law" in response to the States Motion to Deny M.A.R. on the Pleadings. ("M.A.R." is Motion for Appropriate Relief) filed on September 18, 2017.
2. The Memorandum of Law was not dated and was only signed by Ian Mance, giving the appearance that Mr. Holmes and Ms. Mumma didn't play a substantive role in drafting or researching the Memorandum.
3. The following corrections to the "Procedural History" are made for the sake of accuracy and because

Motion To Correct/Amend Supplement Memorandum of Law

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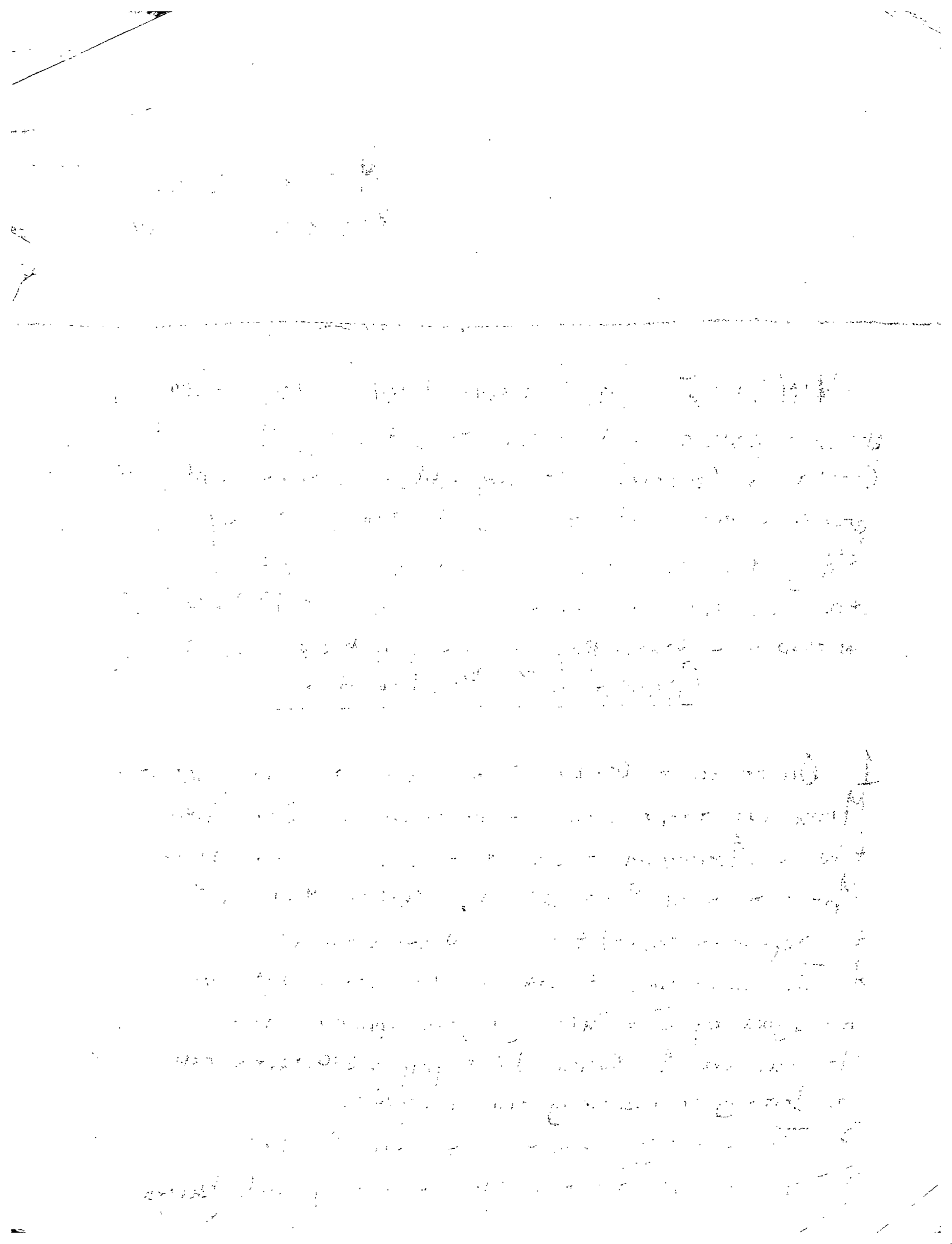


the accurate facts are material to the Courts determination on whether to procedurally default Claimants M.A.R.

4. In paragraph 2. of the Procedural History, Claimant Amends, supplements, and specifies Exhibit 144 by Adding the actual documents referred to in the "Defendant's timeline of interactions with Mr. Mansfield" These documents are the following exhibits contained Also in the case file maintained by Robeson County Clerk of Court, Superior Court in State v. Daniel A. Green No. 93 CRS 15291-15293:

Letters Addressed to Jo Ann Locklear, Clerk of Court/Ex officio Probate Judge

Ex. "A" 6/11/00 Letter from Claimant

Ex "B" 6/30/00 Letter from Claimant

Ex "C" 9/10/00 Letter from Claimant

Letters to Claimant from the office of the Robeson County Clerk Superior Court

Ex. "D" 7/5/00 From Deputy Clerk Patricia Rogers

Letters to Robeson County Clerk of Court from Claimant

Ex. "E" 2/28/02

Ex. "F" 6/3/04

Ex. "G" Letter to Claimant from Robeson County Senior Resident Superior Court Judge, Dexter Brooks 9/18/00

Letters to Claimant from Current Robeson County Senior Resident Superior Court Judge, Robert F. Floyd, Jr.

Ex. "H" 1/17/02; Letter from Judge Floyd to Mansfield and Claimant

Ex. "I" 6/28/04 Letter from Judge Floyd To Carlton Mansfield

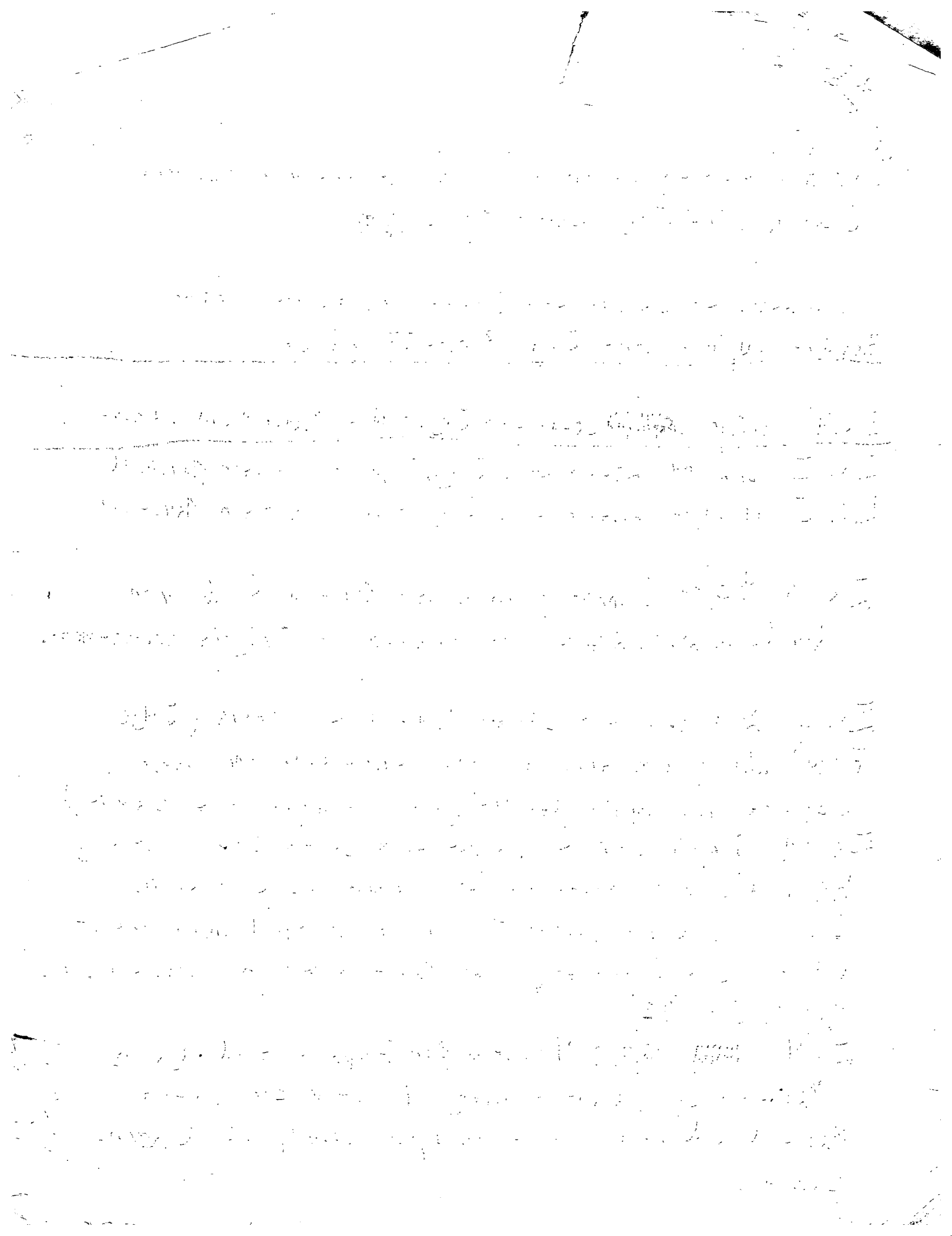
Ex. "J" 11/29/04 Letter from Judge Floyd To Carlton Mansfield

Ex. "K" 9/3/04 Complaint against Carlton Mansfield filed with Arnold Locklear, Chairperson of Committee on Indigent Appointments

Ex. "L" 2006 letter from Carlton Mansfield to "Frank" (Judge Floyd) advising him that he could "throw away" the other copy of his 2/1/06 Affidavit (instead of sending it to Claimant?!) 2/10

Ex. "M" 8/6/07 Letter to Claimant from Carlton Mansfield stating he would send Claimants file to Claimant as soon as he finished a Capital Murder Trial in Hoke County. He never sent it. Claimant sent another request to Mansfield for his case file on 9/8/07. Ex "M1"

Ex. "N" 12/7/7 N.C. State Bar Complaint filed against Mansfield by Claimant, requesting N.C. State Bar contact Mansfield and order him to relinquish custody of Claimants case file



Ex."O" Carlton Mansfields home page for www.mansfieldlawfirm.com 2/19/12

Ex."P" 3/11/02 hearing transcript from hearing on Claimants Motion to remove Mansfield, Judge Floyd presiding

Ex"Q" 8/9/05 hearing transcript on Mansfields motion to withdraw as counsel

Ex"R" 2/1/06 Affidavit of Carlton Mansfield

Ex."S" 6/23/04 Letter from Henderson Hill regarding Mansfields Representation.

Ex"T" Carlton Mansfield's Fee Application Form

Ex"U" Photocopy of envelope sealed on 3/4/96 by Judge Weeks (Amended M.A.R. Ex.14) order.

Ex"V" 9/16/08 Petition For Writ of Mandamus (copy) filed in N.C. Court of Appeals by Claimant

Ex"W" 10/2/08 State's Response To Petition For Writ of Mandamus From Roy Cooper and LaToya B. Powell, Attorney General and Assistant Attorney General, N.C. Dept. of Justice

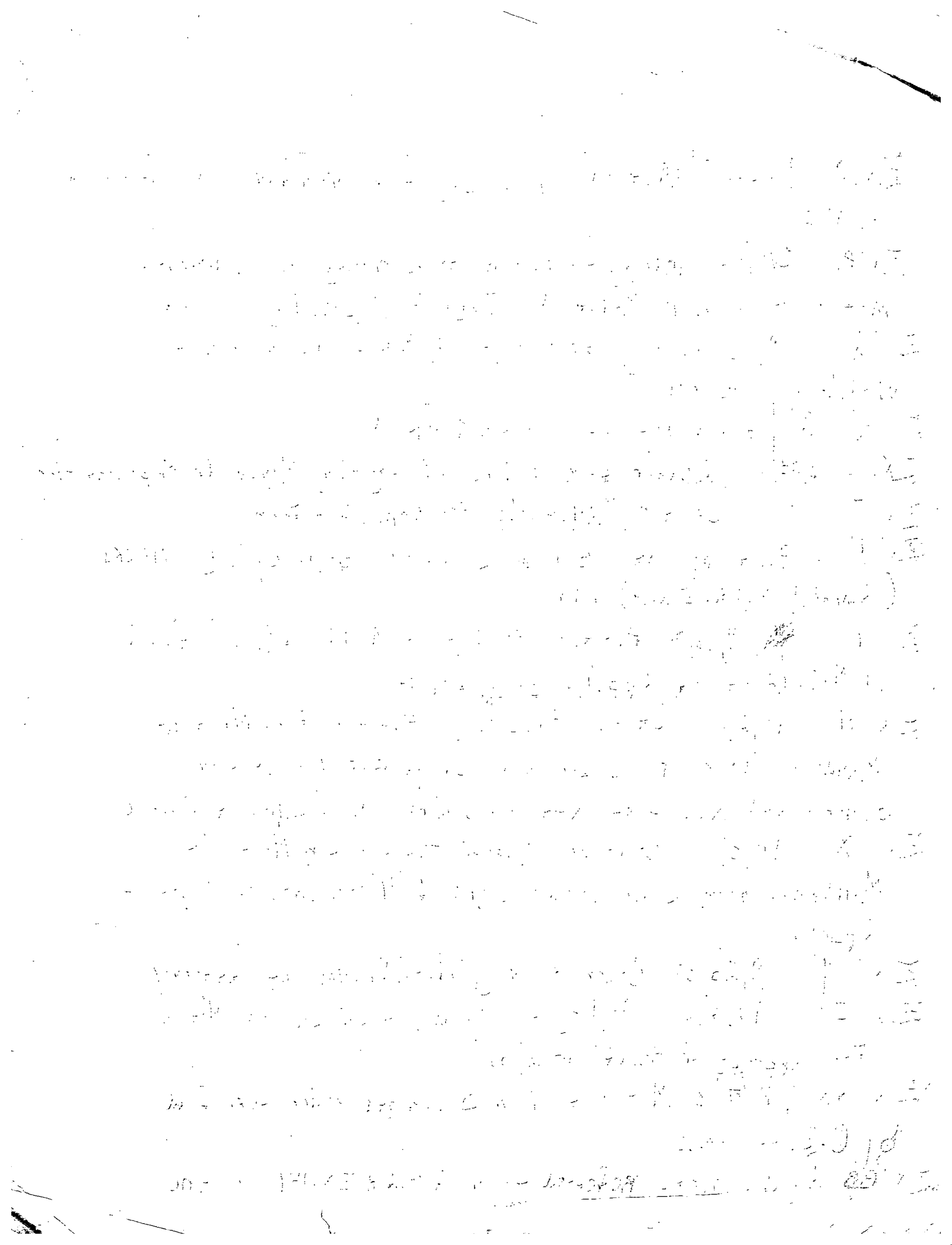
Ex"X" 10/3/08 Order on 9/16/08 Petition for Writ of Mandamus from John Connell, Clerk of North Carolina Court of Appeals

Ex"Y" 9/26/08 Order Allowing Withdrawal of Attorney

Ex"Z" 10/2/08 Order of Summary Dismissal on Motion For Appropriate Relief 10/2/08

Ex"AA" 11/7/13 Motion to View Documents Under Seal filed * by C. Scott Holmes

Ex"BB" All documents Referred to in A.M.A.R. Ex.144 in the



custody of the Office of the Clerk of Superior Court for Robeson County, Requested to be Certified by the Clerk of Superior Court.

Ex. "CC" 2/3/09 Letter from Judge Floyd to Indigent Defense Services (Thomas Maher, Director) stating Carl Ivarsson doesn't do post-conviction cases

Ex. "DD" 6/3/04 Letter from Claimant To Clerk requesting new counsel due to abandonme

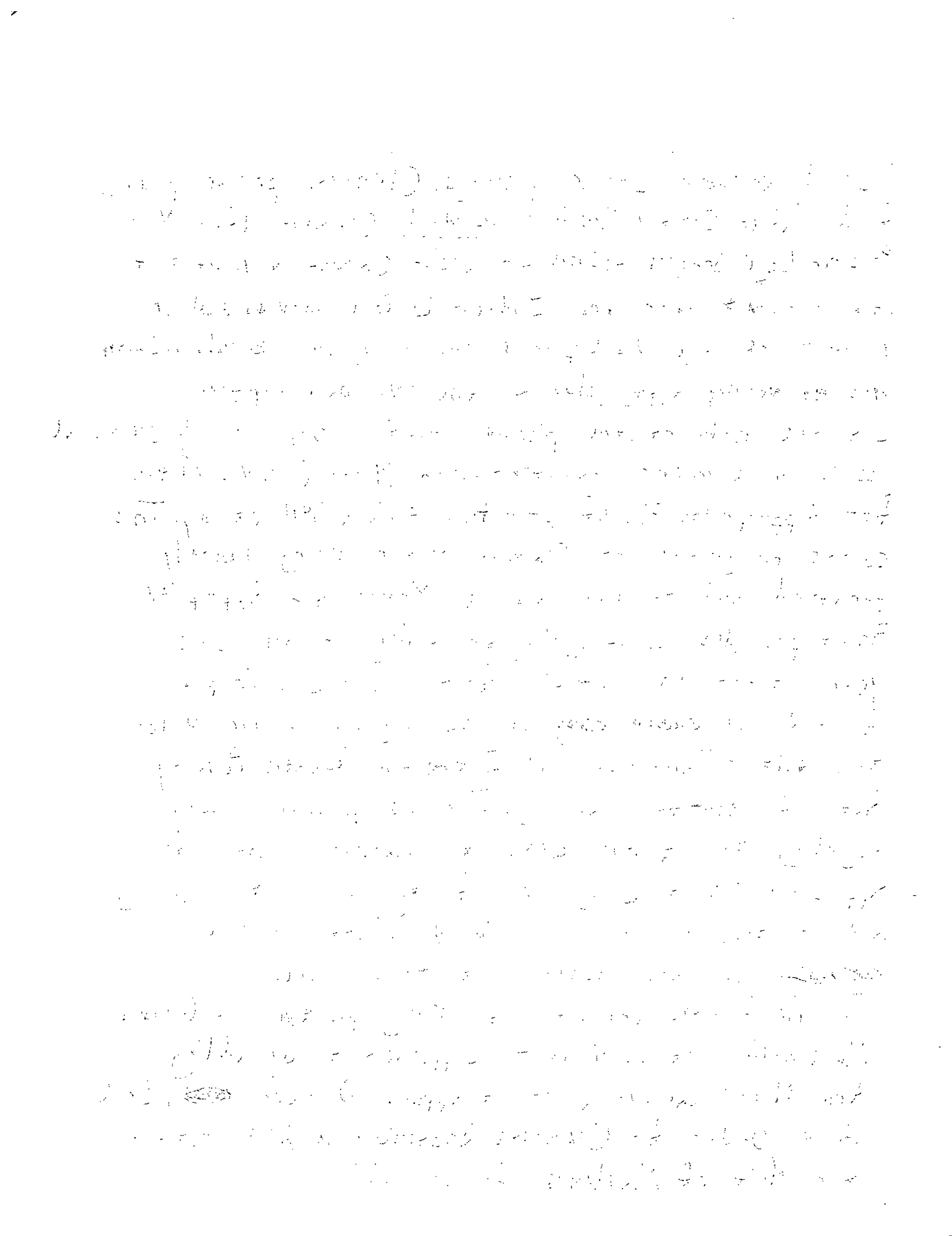
5. The second correction to the Procedural History in paragraph 2 counsels Memorandum of Law is that it doesn't specify, by date, which Writ of Mandamus Claimant petitioned the Court of Appeals for, is referred to. It should be Referred to as the Petition for Writ of Mandamus filed on September 16, 2008. Paragraph 2 is Amended hereby.

6. The third correction to Paragraph 2 of Counsels Memorandum of Law is that it should include, as an exhibit, Assistant Attorney General LaToya B. Powell's and former Attorney General Roy Cooper State's Response To Petition For Writ of Mandamus filed in the North Carolinas Court of Appeal on October 2nd 2008. This is materia because in it:

(A) The State conceded, as it must, that the May 5th, 2000 pro se Motion Requesting Appointment of Counsel was treated by the Court as A Motion for Appropriate Relief. The U.S. Supreme Court has held that Courts are allowed, and encouraged to

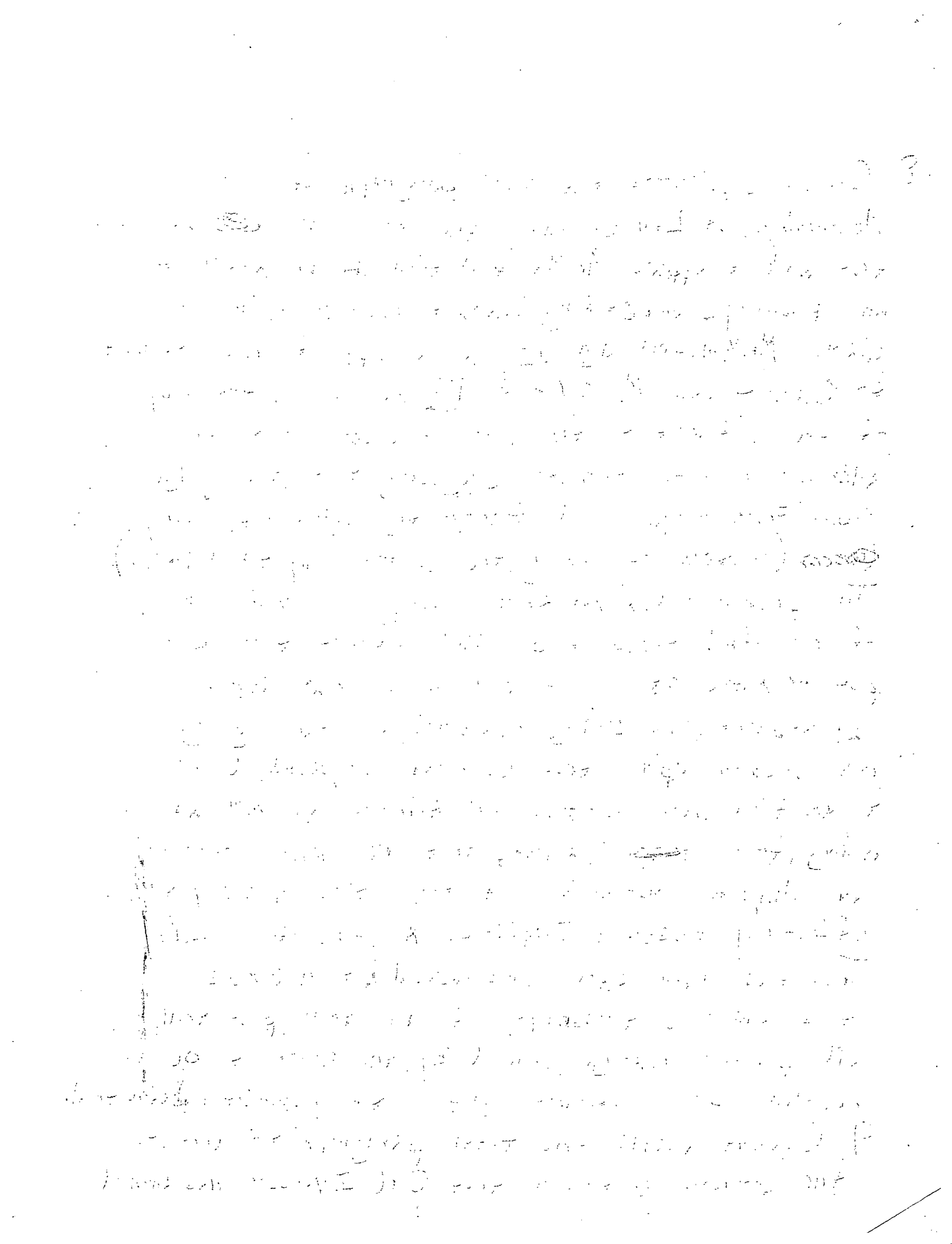
liberally construe pro se pleadings. Claimants pro se pleading, filed after Carlton Mansfield Abandoned Claimant, after N.C. Prisoner Legal Services refused to assist Claimant, in violation of it's contract with the Indigent Defense Services, and in violation of the U.S. Supreme Courts ruling in Bounds v. Smith was erroneously titled due to the incomplete caption but the body of the pleading itself clearly raised claims and issues in a manner consistent with North Carolina's Motion for Appropriate Relief Statutes §15A-1411, et seq. This courts recognition of Claimants Motion being liberally construed and treated as a Motion for Appropriate Relief precludes issues-regarding the tolling of the one year statute of limitations to file a Habeas Corpus, enacted by [redacted] the U.S. Congress in 1996 under the Anti-Terrorism and Effective Death Penalty Act of 1996-from arising. It also precludes issues regarding the factual basis of Claimants Motion for Appropriate Relief being pleaded to this Court from arising and, if they do arise, will aid in an efficient and [redacted] accurate resolution of those issues.

7. The fourth correction to Paragraph two of Counsels Memorandum of Law is to supplement it by adding the North Carolina Court of Appeals October [redacted], 3rd 2008 Order to Claimants September 16, 2008 Petition for Writ of Mandamus. (Ex. "X" and Ex "V")



8. Claimant supplements the third paragraph of the Memorandum of Law by adding the fact, under Affirmation, that while it appears Mr. Mansfield filed an Affidavit on February 1, 2006 stating Claimant had no meritorious claims, Mr. Mansfield did not mail a copy of his Affidavit to Claimant and Mr. Mansfield did mail an extra copy of the Affidavit to the Clerk of Superior Court and addressed a note thereto suggesting that the judge, Robert "Frank" Floyd could throw the extra copy away (Ex. "L", 2/10/06 (instead of mailing the extra copy to Claimant). This prevented Claimant from receiving any notice, or copy of his Affidavit, and it prevented Claimant from being put on notice of his then Counsels sneak attack by Affidavit, only sending Claimant a letter giving his unsworn opinion that Claimants requested Claims to be filed were meritless and frivolous as well as hiding, from Claimant, that he never conducted an adequate marshalling of the files necessary to effectively research Ineffective Assistance of Counsel and other claim These files include sealed records (Ex. "M"), trial Counsels files and the transcripts of all trial, post-trial, and pre-trial hearings ordered by the court to be recorded upon Defendants motion for recordation before trial.

9. Claimant amends the fifth paragraph to correct the erroneous contention that Carl Ivarsson was allowed



to withdraw as counsel after it was determined he had a conflict of interest in the case;

10. In fact, after Carlton Mansfield was removed from the case on September 26, 2008, Carl Ivarsson was appointed to the case to represent Claimant on a Motion for Appropriate Relief. After several months of no contact with Mr. Ivarsson except for his secretary saying Mr. Ivarsson interviewed witnesses, including Ronald Fletcher, Claimant determined Mr. Ivarrson did not interview Mr. Fletcher and thereafter, after Claimant communicated his intention to file a federal civil rights lawsuit related to obstruction of justice in this case, Mr. Ivarsson, according to Judge Floyd's office Administrator, notified the Court and informed the Court he needed to withdraw because he did not do post-conviction cases. (Ex. CC 2/4/09)

11. The State has claimed that Mr. Ivarrson withdrew from Claimant due to communication issues in its filings. Only recently, in 2017 or 2018, did Claimant find out from Alan Rick Persons that Mr. Ivarrson represented one of the States witnesses against him, Terellis Teasley. This means that Judge Floyd appointed a lawyer from a different district who happened to represent a witness who pleid guilty to possession of stolen vehicle (the Lexus) during the same time the State falsely claims Claimant had exclusive recent possession of the Lexus, an immediately recognizable conflict of interest.

12. Claimant corrects and amend the "Summary of Law" section of counsels Memorandum of Law, parigraph 3 on page 7. Counsel erroneously stated that "Defendant" has long asserted that "prior appellate counsel was ineffective for not raising claims, nor filing timely motions." Counsel refers to Exhibit 144-145. Obviously Counsel meant prior post-conviction counsel; not prior appellate counsel. Carlton Mansfield was prior post-conviction counsel; Janine Fodor was prior appellate counsel. Mr. Mansfield is the subject of both Exhibits 144 (A timeline of documents filed regarding Mr. Mansfields representation), and 145 (A petition for writ of mandamus from the Court of Appeals to the Robeson County Superior Court for an order to remove Mansfield after Claimant waited over three years for the Courts order and ruling on the matter of Mr. Mansfields abandonment of Claimants and Mansfields subsequent motion to withdraw from Claimants case).

13. This is not a trivial difference without distinction. G.S. 15A-1419 (c) subsection clearly distinguishes prior postconviction counsel from Appellate counsel. The former's ineffective assistance apparently ~~does~~ MAY not constitute Good cause for excusing the grounds for denial listed in G.S. 15A-1419(a). By contrast, the ineffectiveness of prior appellate counsel does indeed

Constitute good cause if the defendant establishes by a preponderance of the evidence that failure to raise a claim or file a timely motion was appellate or trial counsels fault due to ineffectiveness as framed by Strickland. For this reason, counsels argument and statement referred to in paragraphs 12. and 13., supra, are either gross error or an intentional attempt to sabatoge Claimants M.A.R. by leaving Claimant vulnerable to Procedural Bars for all claims other than Ineffective Assistance of Counsel, which protects counsels peers at my expense.

14. The reasons Claimant is forced to protect himself from possible attempts to sabatoge his M.A.R. was detailed in a July 26, 2017 Complaint against Mr. Mance and Mr. Holmes, filed with the N.C. State Bar on July 26, 2017. (Ex "EE")

15. Essentially, without waiving Attorney/client privilege, the Claimant was informed in 2008/2010 of an effort underway to cover up the fabrication of forensic serology evidence (blood evidence) used to convict him. Claimant notified N.C. Prisoner Legal Services, Inc. and Counsel, C. Scott Holmes about this effort by N.C. State Bureau of Investigation officials, Robeson County District Attorney and Clerk of Superior Court officials and N.C. Dept. of Justice Attorney General office officials. (Ex. "FF")

Letter from N.C. Prisoner Legal Services, Inc. (Ex. "GG")

16. Claimant was also aware of efforts by previous counsel

to cover up the deception of the Court with regard to Research and Analysis of Claims Claimant had personal knowledge of grounds in support of and the facts Claimant knew, and told Mr. Mansfield was in sealed records. This is detailed below. Mr. Mansfields self protecting deception created the illusion before the Court that Claimant was "difficult", which is used to set clients up for allegations of forfeiture of counsel. (See Paragraph 38(c) infra)

17. Mr. Mansfields self-protective deception to the Court, memorialized in his misleading Affidavit, and in the 8/9/05 hearing transcript held to allow him to withdraw also was done to subject Claimant to procedural bars under false pretenses, and kept Claimant out of a position to adequately raise the grounds and issues with the least onerous burden for Claimant to meet to gain relief from the conviction. (See 15A-1419(a)(1))

18. As a former/current member of the Orange County Bar Association and the N.C. State Bar, other counsel belonging to the same bars are obligated to demean themselves to protect Mr. Mansfield from being held Accountable which not only left Claimant ~~him~~ vulnerable to procedural bars but also wasted years which resulted in memories fading, witnesses, such as Ronald Fletcher dying and created time and changes of various guards

//

for evidence to be created and destroyed to Claimants detriment.

19. Claimants insistence on having his due process rights protected by Attorneys, whose loyalty should be to Claimant within the boundry of the Rules of ethics has resulted in Attorneys utilizing various manipulative, deceptive and compliance techniques to compel Claimant to waive his claims or lose them by force - A Mobson's choice.

20. Having failed to accomplish that goal, Attorneys representing Claimant have resorted to trying to push Claimants buttons by playing psychological games to get him to react by directing words at Claimant that are offensive against Claimants character. If Claimant responds how normal people respond he will be found to have forfeited counsel for abusive behavior. For this reason, Claimant requests this Court to order the N.C. Attorney General office, and N.C. Dept. of Public Safety - Adult Prison Division to preserve All of Claimants phone call recordings from 1996 to [redacted] the date of Claimants release made to counsel on the personal identification numbers *0154242-6285, and those made in his name prior to the use of P.I.N. numbers

21. Counsels knowledge that their mischief is preserved

will deter counsel from pressuring current or future counsel to use dilatory methods to drag this case out past the point the N.C. prison administration usually preserves the records. It also will aid in identifying the private citizens prison officials have sold edited versions of Claimants phone call conversations to in order to instigate them against Claimant.

22. Claimants observations noted above are not held by him alone. Current counsel, Ms. Mumms, made it clear that she did not trust previous counsel, that they placed self-serving goals, achievable by their position as Claimants counsel above Claimants interest and she herself have been threatened by them and the subject of the exact same methods they used against Claimant. This occurred when former counsel realized they could not use her to "nudge" Claimant into keeping them on the case and honoring an agreement Mr. Mance initiated and which was not fulfilled on their end but which Southern Coalition for Social Justice and Mr. Holmes benefitted from.

23. This agreement could've only been honored on priors counsels part by Claimant being released in 2017 after the swearing in of elected officials. Counsel's lie about the terms of this agreement was the final straw that constrained Claimant

to WAive Mr. Holmes, and discharge Mr. Mance with gratitude for the work which advanced the case and justifiable dissatisfaction for the broken promises and deception.

24. The issue is whether Counsel CAN deceive and manipulate a client to override an Absolute impasse of a position a client, Claimant, has consistently held since the end of trial, through Appeal, and in the post-conviction phase. And Claims based on newly discovered evidence of prosecutorial misconduct, State misconduct, and Ineffective Assistance of Counsel.

25. For the foregoing reasons Claimant Amends the 3rd paragraph of the Oct. 10, 2017 Memorandum of Law And supplements the 3rd paragraph with this Motion.

26. Claimant also supplements the October 10, 2017 Memorandum of Law by Adding the following:

27. On September 18, 2017 the State filed a Motion To Deny Motions For Appropriate Relief on The Pleadings

28. The State ~~[illegible]~~ misleadingly claimed, in paragraph two that "Counsel withdrew and Defendant thereafter represented himself in post-conviction"

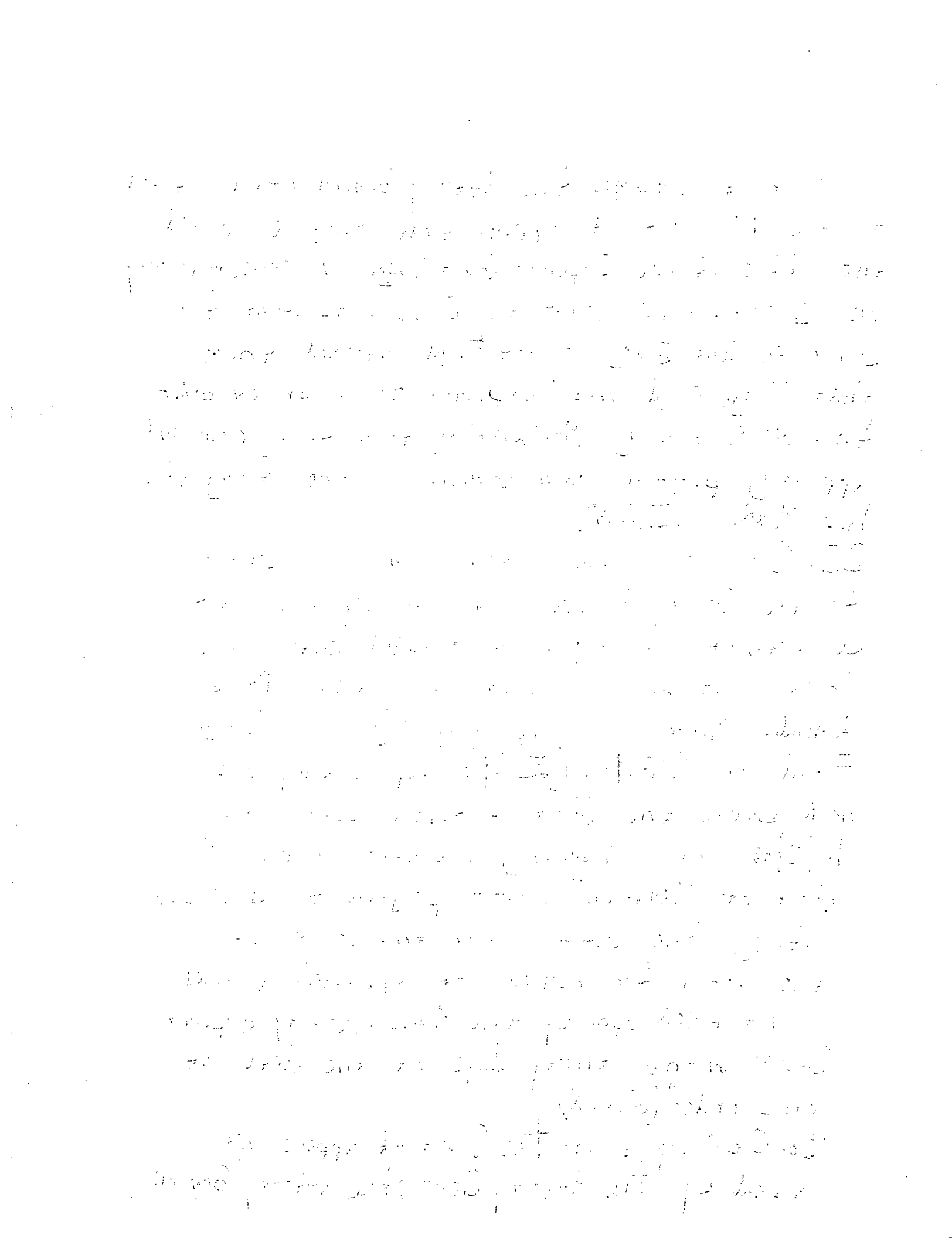
29. Contrary to the States misleading claim, the "Counsel" the State referred to, Carlton Mansfield, was indeed allowed to withdraw by Order of Judge Floyd on September 26, 2008 but Defendant (Claimant) did not, in fact,

"thereafter" represent himself in post-conviction.
30. In fact, Claimant filed an Amended M.A.R. on August 25, 2008 upon the suggestion of the Court at the August 9, 2005 hearing, "I would suggest that if you intend to file any Amendments to the M.A.R. that that would be done as soon as you can process.. the Court will have to determine--" (Ex. Q. T.p. 22:7-10)
31. At the August 9, 2005 hearing the Court told Claimant ~~he~~, "I will try to get it done this week (ruling on the motion to remove Mansfield) but it maybe outside the session." (Ex. Q. T.p. 18:24)
32. The Court did not rule that week. After 3 years Claimant filed the pro se Amended M.A.R. ~~and~~ on 8/25/08 A month later, Claimant filed A petition for Writ of Mandamus to the N.C. Court of Appeals (Ex. V) requesting the Court of Appeals to order the Robeson County Superior Court "to immediately remove Attorney Carlton Mansfield" from Claimants case on 9/16/08. At this time, Claimant was still represented by Mansfield.
33. The State, through Attorney General Roy Cooper (Now N.C. governor) and LaToya B. Powell responded to petition for Writ of Mandamus, ~~el~~electronically submitted on Oct. 2, 2008. (Ex. W)
34. On page 4 of said State's Response To Petition

for Writ of MANDAMUS the Attorney General office stated to the N.C. Court of Appeals that they contacted the office of the Superior Court Judge IN Robeson County on 1 October 2008, that the Judicial Assistant for Senior Resident Judge Robert Floyd informed them that Judge Floyd WAS "expected to enter AN order this week removing Mr. MANSfield from this CASE AND Appointing petitioner new counsel in the filing of his MAR." (EX:W)

35. Contrary to the Attorney Generals assertion to the Court of Appeals, AN order, which may NOT be authentic, or may be back dated before the Courts Oct. 2ND, 2008 ruling on Claimants Pro Se Amended M.A.R., WAS Apparently signed by Judge Floyd on 9/26/08 (EX"Y"), Approximately one week before the Court of Appeals issued it's 10/3/08 order dismissing CLAIMANTS Petition for Writ of MANDAMUS" without prejudice to defendant refiling the petition with this Court if the motion for removal of Appointed counsel is not ruled upon by the Robeson County Superior Court within thirty days of the date of this order." (EX:X)

36. Obviously, either the Court of Appeals WAS misled by the Attorney General; the Attorney General



was misled by Judge Floyds Judicial Assistant, or Judge Floyds Judicial Assistant was misled.
37. In any event, Claimants M.A.R. was filed while Mr. Mansfield was still counsel of record. In North Carolina Hybrid Representation is indeed prohibited which is why the appropriate response from the Court would have been to remove Mansfield, appoint new counsel, As the Court did on 10/2/08 (Ex. Z Order of Summary Dismissal On Motion For Appropriate Relief), appointing Carl Ivarsson and have Counsel re-file the M.A.R. filed by Claimant.
38. Due to above, Claimant was never "in a position to adequately raise the ground or issues" (G.S. 15A-1419 (a)(1)) the State has attempted to procedurally bar; ~~for~~ for the following reasons:
(a) The N.C. Carolina Common law prohibition against hybrid representation - which Judge Gilchrist noted at the August 3, 2018 hearing does not allow a pro se litigant to represent himself while counsel represents her. Although it appears as if the Court did not rule on the pro se motion until after Mr. Mansfield was ~~appointed~~ removed (which is in dispute due to the discrepency between the dates the Court is said to have ruled and would Rule (see paragraphs 34 - 36 Above) what is beyond

dispute is that Judge Floyd's order of Summary Dismissal was not signed until after he appointed new counsel, Carl Ivarsson, and, thus, the Court noting that Claimant was subject to ~~procedural bars~~ being treated in the future to procedural bars and the order of summary dismissal of other claims raised is nullified by the concurrent appointment of counsel at the time the ruling/order was signed afterwards. The prohibition against hybrid presentation prevented the Court from ruling on the pro se motion filed while Claimant was represented by Mansfield and it prevented the Court from ruling on the pro se motion while, and at the sme time, the Court itself appointed new counsel, Ivarsson. By Analogy, if Claimant made an oral motion while represented by counsel, he would be ordered by the Court to have Counsel make the oral motion instead due to the prohibition against hybrid representation. Again, see 8/3/18 hearing for an example of Judge Gilchrist of Lee County demonstrating this principle (Ex. "QQ" 8/3/18 Transcript

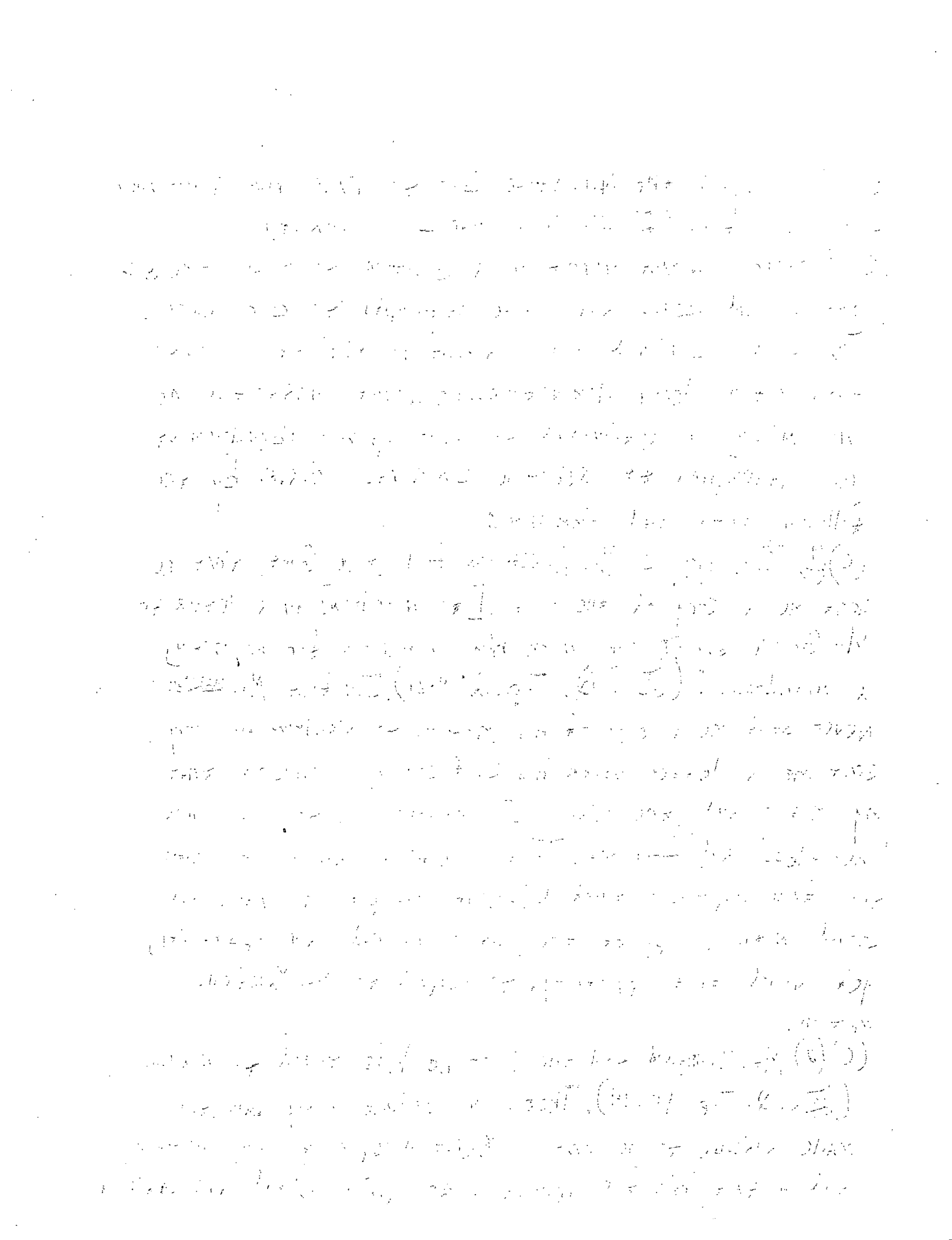
(b) Claimant also was not in a position to raise the grounds and issues due to Mansfield refusing to surrender Claimants file although he said he would (Ex. "M") and Claimant, pursuant to N.C. State Bar Rules of Professional Conduct 1.16(d), asked him to,

and requested the N.C. State Bar to have him surrender the case files (Ex."N" N.C. State Bar Complaint)

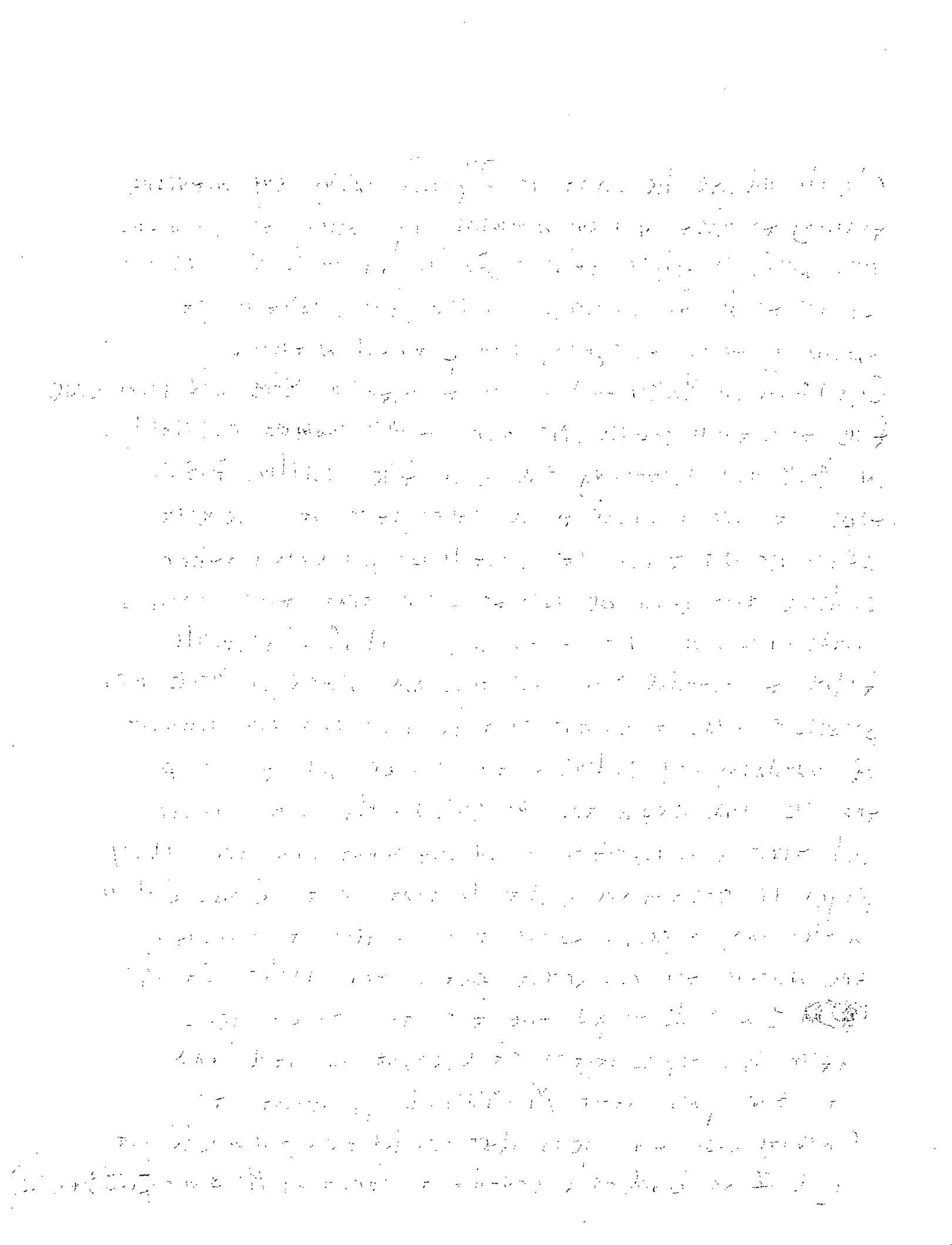
(C) Further, Claimant wasn't in a position to raise the §15A-1419(a)(1) grounds and issues the State attempts to bar because Mansfield abandoned the Claimant, as the record and this motion clearly demonstrates. He wasn't ineffective; he was missing in action; and to cover up his abandonment he attempted to sabotage Claimants M.A.R. by the following acts and ommissions:

(C)(1) On 8/9/05 Mr. Mansfield told the Court that he sent me "a copy of the motion [to withdraw] in a letter to Mr. Green summarizing with him my reasons for requesting a withdrawal." (Ex. Q. T.p. 2:19-21) In fact Mr. [redacted] Mansfield never sent me a copy of his motion to withdraw, he only sent me a letter with his self-serving conclusions that my Motion and the claims I wanted him to raise were "meritless" and "frivolous". This is material because it creates the false impression that Claimant was put on notice and served with a copy of the motion, and had an opportunity, yet waived that opportunity, to respond to Mr. Mansfields motion.

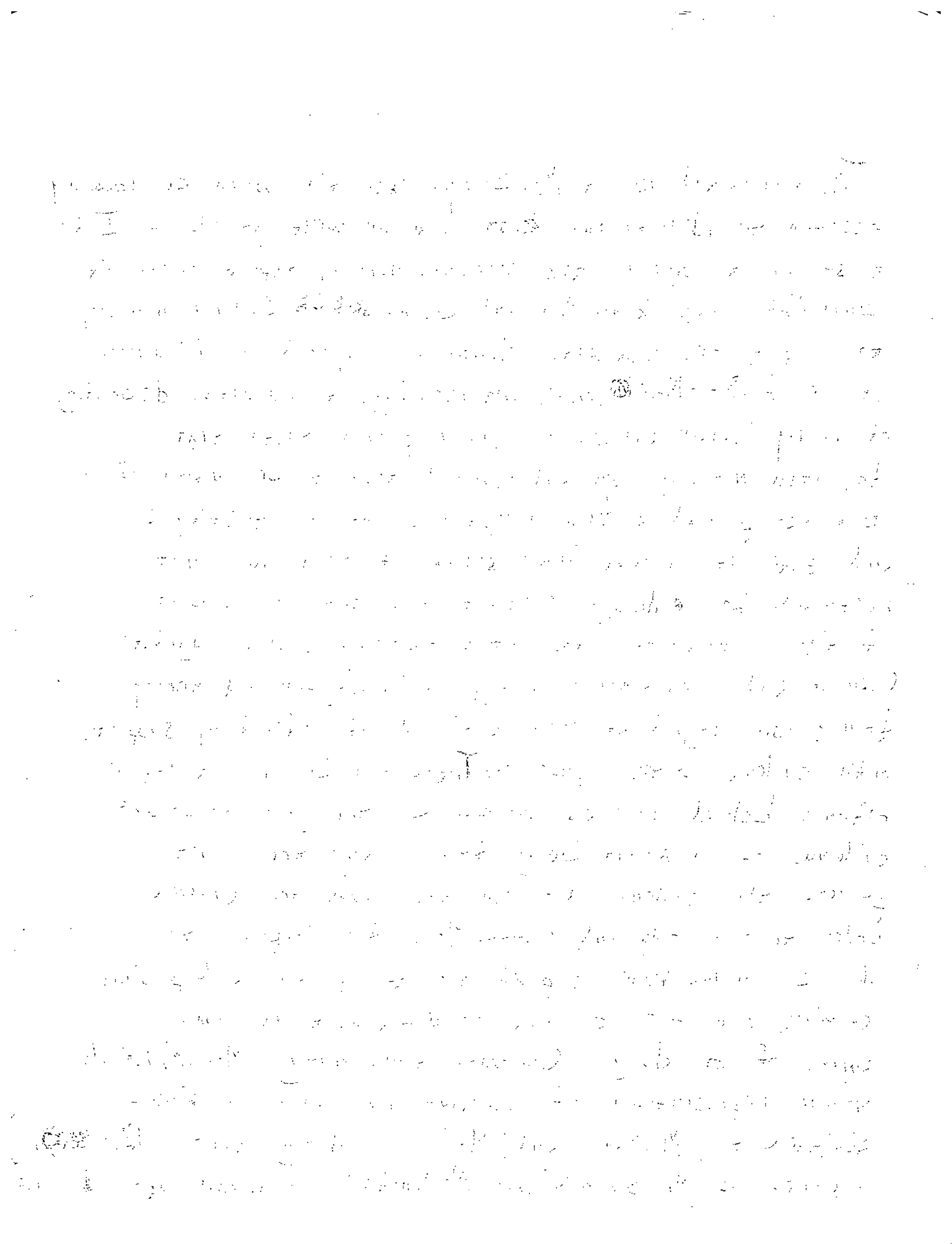
(C)(2) Mr. Mansfield told the Court he has "talked to witnesses" (Ex. Q. T.p. 10:14). There is no evidence in my case file made available to me that Mr. Mansfield spoke to any witness and, in fact, his fee application form (Ex. T.) and his affidavit



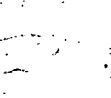
Clearly indicate he spent no time or expenses calling any witnesses, traveling to meet with any witnesses, nor speaking to any witnesses. Mr. Mansfields 2/1/06 affidavit (Ex:"R") mentions no attempt by him to do any research nor investigation consisting of marshalling facts by speaking with potential witnesses. C(3) Further Mr. Mansfield failure to retrieve Claimants case file from trial counsel, Woodberry Bowen resulted in Mr. Bowen destroying the case file, including F.B.I. tapes of the complete police interrogation of Claimant after he was taken into custody by police; and other evidence that could be used to prove that trial counsels ineffectiveness was not strategically sound. Mr. Mansfields failure to retrieve the case files and evidence in Mr. Bowens possession makes it evident that he never had any intention of marshalling any evidence that could be used to re-open the case and expose the role Mr. Mansfields narco-clients and their co-conspirators in law enforcement and the judiciary played in creating the conditions that led to James Jordans murder, and in keeping Demery free instead of executing the warrant for his arrest before the murder. If Mr. Bowen destroyed the file five to six years after his representation of Claimant he still had it two years after Mr. Mansfields appointment to Claimants case, two years after Mr. Mansfield knew Claimant alleged I.A.C. based on a conflict of interest by Mr. Bowen. (Ex'JJ' Bowens Aff.)

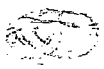


The review and use of Mr. Bowens case file would be absolutely essential to identify and determine what grounds of I.A.C. exist and to preserve the documents, including tape recordings of Danny Madison and Melinda Moore and Debris Sullivan necessary to support the Claimants M.A.R. as required by N.C. General Statutes § 15A-1420(b)(1). The recordings of Claimants debriefing of Danny Madison and Debris Sullivan provide facts that the State not only used and rewarded them to be informants/witness but also provided a false inculpatory script to testify to and enter into evidence. The materiality of this is not restricted to damage done at trial but also consist of the evidence of the State fabricating evidence against Claimant and selectively conducting an investigation - a theory trial counsel argued at trial but did not effectively support with evidence. There can be no strategical rationale behind counsels promise to the jury to present evidence of Claimant being framed and then not present the evidence although they have the evidence under their custody and control. Yet, for Mr. Bowen to do so would have exposed him to punitive and possibly criminal retaliation by the State - a fact he was aware of during Claimants trial, during Mr. Mansfields nominal representation of Claimant and which he himself Admitted to Mr. Mance and Mr. Johnsen during their (Ex. [redacted]) interview of Mr. Bowen in 2011. Mr. Mansfield could have, yet did not



conduct the basic research and marshalling of evidence that interns did, despite the "legal training and eleven years experience" (Ex. "P" T.p. 15:7) Mr. Mansfield told the court at the 8/9/05 hearing for his withdrawal to convince the Court that Claimants M.A.R. was meritless and frivolous, the same mistake the State wants this Court to make. Mr. Mansfields refusal or inability to identify and litigate I.A.C. based on a conflict of Attorney interest is not restricted to this case; In 2006, the same year Mr. Mansfield submitted his affidavit detailing the extent of his work on Claimants case he interjected himself into James Conley's case for one thousand dollars, with the State picking up the rest of the tab. In this case Mr. Mansfield, upon information and belief, concurrently represented Mr. Conley and a witness against Mr. Conley whose testimony was used to enter evidence of guilt of each element of Mr. Conley's charge. Because Conflict of Interest does not require prejudice to be proven like other I.A.C. claims- if the conflict adversely affected the trials outcome- Mr. Mansfields failure to adequately research Claimants Conflict of Interest claims, which were apparent from Claimants post-conviction filings (See Claimants Motion to Gain Access to the Courts filed in 1999 (Ex. "LL") 12/29/99 "Motion to Compel Defendants Constitutional Right of Access to the Courts) and Claimants 6/8/02 letter to Mr. Mansfield about Conflict of Interest claim (See AMAR. Ex "144",





C(4) Mr. Mansfield misled the Court at the 8/9/05 hearing by telling the Court "He's talking about a sealed document. I've gone through this entire file. The Court has ordered that everything sealed be open and copied for me. I've gone through everything. Well, he's talking about an issue that was raised during the trial that he waived." (Ex. "P" T.p. 14:16)

In fact, the documents that revealed this particular conflict of interest, different from the conflict of interest addressed in C(3) supra, were never unsealed nor reviewed after Judge Weeks ordered them sealed and they were sealed on 3/4/96 by Asst. Clerk, upon information and belief based on the initials, Sue Gaines. (Ex. "V"), until and after Attorney C. Scott Holmes filed a motion to have the envelope unsealed on 11/7/13, the Court ordered all sealed documents unsealed for Counsel to view it on 5/16/14. As stated, no one, not Mr. Mansfield, not Ms. Janine Fodor, Appellate Counsel, ever viewed these sealed documents and, in fact, Claimants main contention with Mr. Holmes and Mr. Mance was their insistence which Ms. Fodor adhered to as well, that the in camera hearing that resulted in those letters/affidavits (Ex. MM) being sealed never happened and were not documented in the trial transcripts in their possession (see, 2013 recorded phone calls from Claimant to Mr. Holmes. It was only

After Rick Persons produced a version of the transcripts and Ms. Montez was told to Mr. Holmes to have found her copy of Ms Montez and Ms. Hernandez affidavits that Mr. Munce and Mr. Holmes claimed to have found the reference to the in camera hearing at the place Claimant told Mr. Mansfield, Mr. Holmes, Mr. Munce for a total of 14 years it was at - the portion of the transcript from the first day of Claimants sentencing portion of the trial. Even now, the transcript from the in camera hearing and other portions of the trial is not accurate nor complete in material ways - An assertion of Claimant, along with Claimants insistence that the in camera hearing happened which has resulted in Counsel labeling Claimant as "difficult" to disguise their lack of due diligence or/and their refusal to protect Claimant by performing their ethical duty to report criminal activity by officers of the Court. For this reason Claimant has asked the Robeson County Clerk of Superior Court and Ms. Mumm to send him the actual trial back-up recordings the transcripts are supposed to memorialize. At one point the Clerk agreed to send the recordings for a price; Now the Clerk refuses to respond to Claimants request to confirm the price so he can order it.

The unsealed documents Mr. Mansfield used misleading language to print the impression he reviewed, (Ex "P" T.p. 14:16) in addition to Conflict of interest, also reveal trial (b)(2),(3)(4) Counsels I.A.C. for not filing a M.A.R. within (see 15A-1414(a) 10 days, post verdict, but before judgement based on James Cassidys relationship with Kaye Hernandez and Ronald Fletcher which also would've led to the revelation that Mr. Cassidy chose not to disclose that he and Mr. Anthony Thompson, the Robeson County Detective in charge of this case went to church together, knew eachother, which makes it all the more unlikely that Mr. Fletcher, who actively intimidated Ms. Hernandez into not testifying by convincing her that the trials outcome was already pre-determined, and who was Mr. Cassidys best friend were not colluding to affect the trials outcome (See Ex. "GG" Ms. Hernandez recorded conversation revealing Mr. Fletchers intimidating her as a potential witness)

C(5) On page 26 and page 23 of the transcript from the 8/9/05 hearing Claimant clearly asks the Court for his trial transcript, and notifies the Court that Mr. Mansfield refuses to communicate and cooperate with Claimant. The Clerk of Court file contains 8 years of correspondence with the Court asking the Court to direct Mr. Mansfield to do his job. The Court give numerous

directives to Mr. Mansfield to do his job and to conduct himself in accord with the N.C. State Bar Rules of Professional conduct with regard to the communication with Claimant, timely action on clients case and Mr. Mansfield still refused to comply.

Claimant filed 2 N.C. State Bar complaints against Mr. Mansfield and asked then to have him surrender Claimants case file to Claimant. Mr. Mansfield agreed to surrender the case file yet never did. These facts are overwhelmingly evident from the exhibits attached hereto. Claimant also attempted to get NCPLS, Inc to assist him, ACLU of N.C., N.C. Appellate Defenders office, the Robeson County Bar, filed a petition for writ of Mandamus to the N.C. Court of Appeals.

39. Claimant was never in a position to adequately raise the grounds nor issues underlying the Motion of Appropriate Relief nor the ~~[redacted]~~ Amendments and supplements ~~[redacted]~~ thereto due to Mr. Mansfields ~~[redacted]~~ abandonment of Claimant and his sabotage of Claimants M.A.R. and postconviction efforts once Claimant was constrained to ask the Court and others to compel him to do his job.

40. Further, Mr. Mansfield, as the first post-conviction counsel, as counsel with the first opportunity to raise Ineffective Assistance of Counsel of trial and appellate

Counsel based on grounds not evident from the Appellate record, ~~of~~ was ineffective himself under Coleman v. Thompson, 399 U.S. 1 (1991) and Martinez v. Ryan, 132 S.Ct. 1309 (2012)

41. Claimant requests the transcript from the [redacted] 3/11/2 hearing held in front of Judge Floyd. In that hearing, Mr. Mansfield blamed his secretary and the U.S. Postal [redacted] Service for his refusal to communicate with Claimant. The Court suggested to Claimant that Mr. Mansfield could be replaced by the Lumberton law firm Musselwhite and Musselwhite. Claimant respectfully declined and requested the Court appoint counsel outside of Robeson County. (See also back up recordings of 3/11/02 and 8/9/05 hearings regarding Mansfields representation of Claimant). It should be noted that in 1994 Musselwhite, Musselwhite, Musselwhite and Branch represented Hubert Larry Deese, in the U.S. District Court Eastern District of North Carolina (Old Fayetteville Division) Criminal Docket For Case #: 3:94-cr-00049-H. (A.M.A.R. Ex. 43). It should also be noted that ~~Hubert Larry Deese~~, Hubert Steve, former Sheriff, listed Judge Floyd as one of "two [redacted] people who know [him] well" for 30 years for an investigation conducted by the F.B.I. during a background check when Sheriff Stone was a U.S. Marshall Candidate on October 7, 1993 - two weeks after Claimants arrest. (Ex. "HH")

42. Mr. Mansfield was aware that Hubert Larry Deese told trusted

family members and associates that his father, Hubert Stone, the Sheriff of Robeson County was using a shirt from James Jordan to blackmail the Jordans and/or people involved in the murder investigation of James Jordan. Claimant told him via a legal letter.
43. Further as Ms. Mumma and Ms. Sullivan evidenced in the A.M.A.R. Sixth Supplement they filed, Mr. Mansfield represented Michael Oxendine, a man who S.B.I. agent, Randy Myers, who investigated Claimants case, interviewed on August 26, 1994. Mr. Oxendine informed the S.B.I. that he sold cocaine he purchased from Hubert Larry Deese, that Deese asked him to steal one of Jerry Porters cars, that Henry Oxendine, who sold cocaine for Deese drove a red sports car with 5 star rims and worked at Sterling Manufacturing, a trailer plant approximately one to two miles from where Claimant and Larry Demery lived, and about two to three miles from where James Jordan body was first seen by Claimant. Sterling Manufacturing was located on highway 74 and Buckswamp road. Oxendine said Deese gave him money for the purchase of cocaine in a duffel bag. Claimant never seen this statement until after Ms. Mumma and Ms. Sullivan filed it after November 2018, Yet, Claimant told [redacted] all Counsel that Larry Demery left Kaye Hernandez home on July 23rd after midnight with a duffel bag of money, to meet someone to pick up drugs on behalf of Hubert Larry Deese and Jerry Porter in a car, that Demery took Claimant to a Lexus, a red sports (Ex. NN Photo of Lexus) car with five star [redacted] Rims, that was either stolen or rented

for the purpose of smuggling drugs to New York. Demerys cousin and aunt, Janine and Alice Baculick, confirmed to the F.B.I. on August 15th, 1993 that Demery called at approximately 9:30 p.m. and said he was bringing something to New York to get rid of, that she "speculated" it had something to do with the taking or smuggling of marijuana plants near his home, that he was "troubled". It should be noted that the Baculicks spoke to F.B.I. Agent Robert Aldrich the same day Demery and Claimant were arrested, never had the opportunity nor motivation to consult with Claimant to manufacture a version of events to corroborate Claimants defense that Demery left Claimant at the Hernandez home to pick up a drug laden vehicle to smuggle drugs to New York. (Ex. "00" Janine and Alice Baculick F.B.I. Statements) It should also be noted that the State has argued in it's pleadings that Demery could've referred to the Car belonging to James Jordan as the "something" he was taking to New York to get rid of but the problem with that contention is that at the time Demery called the Baculicks he didn't have the Lexus and couldn't have known the Lexus would be in his possession since he couldn't have known it would be, for the sake of Argument, beside highway 74 several hours after he called his cousin. Also, Demerys own testimony contradicted the contention he called the Baculicks to set up a market for

A carjacked vehicle since, according to Demery's testimony, the decision to carjack James Jordan was an adhoc decision resulting from a failure to find other victims at the Quality Inn after spotting the Lexus beside the highway; not a plan made hours in advance.

44. Not only did Mr. Mansfield represent Michael Oxendine, he specializes in representing drug dealers and getting them sweet plea deals by their cooperation. According to Mr. Mansfield himself, this is how, when he represented Claimant, nominally, he was able to expose the Tainted Badge Drug Scandal which ended with the destruction of the Tainted Badge files. Therefore, he also had a conflict of interest that would've made it impossible to effectively represent Claimant

45. Mr. Mansfield did aver in his affidavit that Claimants M.A.R. Claims, and his review of the Clerk of Court files, trial transcripts revealed No meritable claims. Yet, on February 8, 1999 Janine Foden, Claimants Appellate Counsel, then employed by the Office of the Appellate Defender under Malcom Ray Hunter, Jr., Appellate Defender and UNC-Chapel Hill School of Government (Institute of Government) as an original co-author of the N.C. Public Defenders Manual, wrote Claimant and gave her expert opinion as follows:

"Other possibilities for continuing to litigate your case include filing a Motion for Appropriate Relief in the

Superior Court of Robeson County, alleging ineffective assistance of trial counsel (and if you wish, appellate counsel - I will not be offended, it's just the way the game is played). I can see several grounds on which you might allege ineffective assistance of trial counsel. I would like to come and talk with you about this... If you are interested in doing this, we might talk about some lawyers in the Fayetteville area who might be willing to represent you if the Court would appoint them. There is no time limit on filing a Motion for Appropriate Relief... The federal courts require that you file a Writ of Habeas Corpus no more than one year after the final action in the direct appeal... the date on which the U.S. Supreme Court ruled on the Petition. We could talk more about this when I come to visit... Please keep in touch and keep fighting the legal battle. The law is on your side, it's just a matter of finding some court that is willing to apply it. Sincerely, Janine Fodor Assistant Appellate Defender" (Ex "PP" [redacted])

Mrs. Fodor included a postscript regarding a book about the Nuremburg trials that she wanted me to read and mentioned a book by Justice Thurgood Marshall by Juan Brown she later sent to Claimant.

46. Claimant shared Ms. Fodors letter with Mr. Mansfield. Therefore he knew from Ms. Fodor's opinion three material expert conclusions:

(A) Ms. Fodor saw grounds, several grounds, not just one, for ineffective assistance of trial counsel from her review of the Appellate record; (b) Ms. Fodor believed I.A.C. of Appellate counsel could be litigated. Obviously, if she, as Appellate Counsel, saw grounds for I.A.C. of trial counsel, and didn't file I.A.C. herself in Appellate court, that negligence, in itself, would be I.A.C. of Appellate Counsel. In addition, Ms. Fodors failure to move the Court to unseal the statements by Ms. Hernandez and Ms. Montes was also I.A.C. of Appellate Counsel

(c) Ms. Fodor also identified the Court as the source of Chimants case being denied; not the law

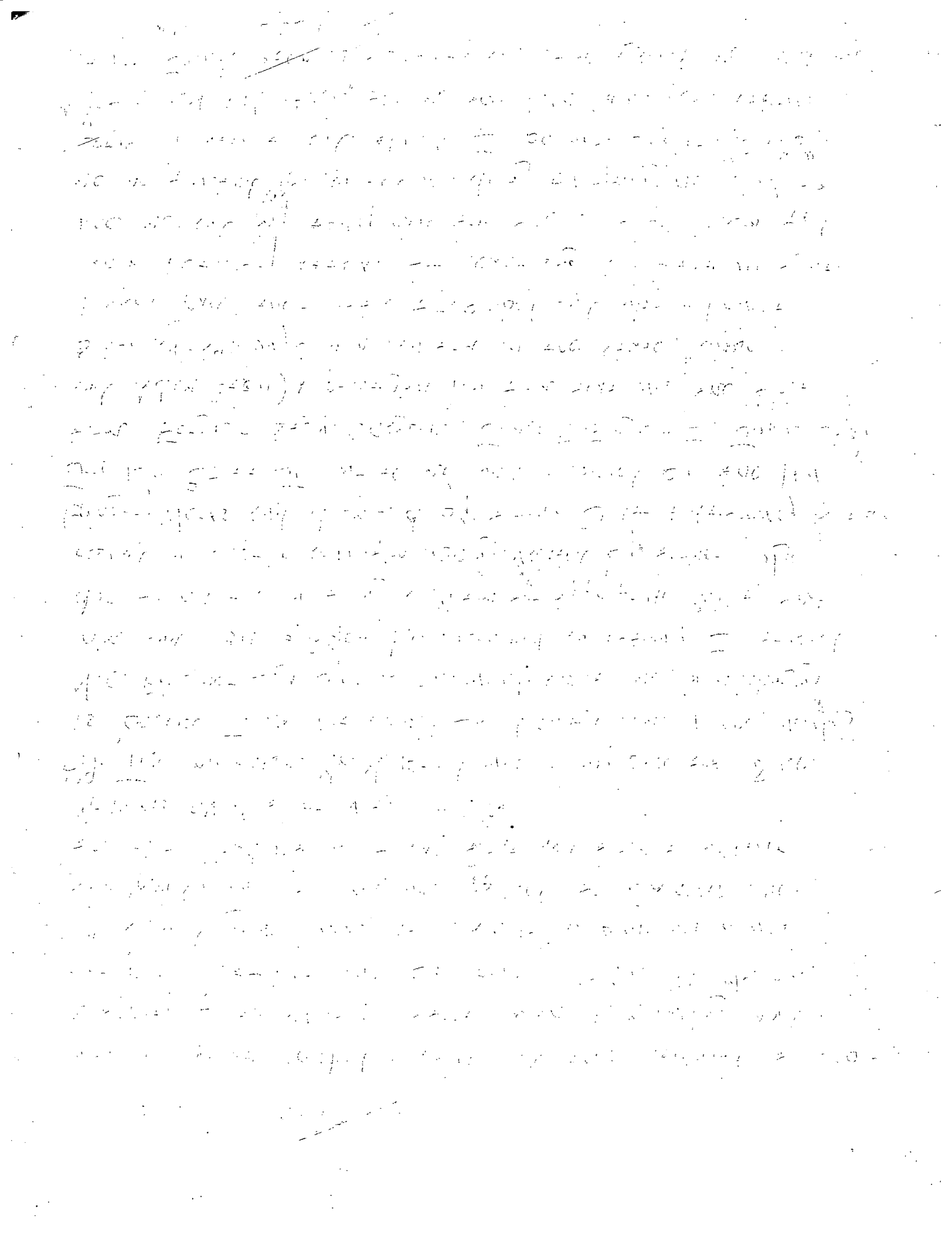
* 47. Ms. Fodor did not come see [redacted] the Chimant to discuss the I.A.C. grounds and instead was drafted to [redacted] work on the UNC-Chapel Hills Institute of Government N.C. Public Defenders Manuel and a position as [redacted] an Adjunct professor of law at UNC-Chapel Hill. Ms. Fodor then entered private practice and then left N.C. and surrendered her membership in the N.C. Bar - as did Chimants trial judge Gregory Weeks due to his loss of faith in N.C.'s justice system. Ex. [redacted] *

48. As the foregoing amply demonstrates, supported by documents and notarized Affidavits, the Chimant has went above and beyond the legal standard expected of a defendant with an eighth grade education, in a state with no law libraries,

(A)

with a lawyer who abandoned Claimant and then attempted to sabotage Claimants post-conviction efforts with a misleading and erroneous Affidavit, and by leading Mr. Mance and Mr. Holmes on a wild goose chases at claimants expense, which was the plan when Mr. Holmes was appointed to Claimants case - to cover Mr. Mansfields tracks first and foremost whether Mr. Holmes knew it or not.

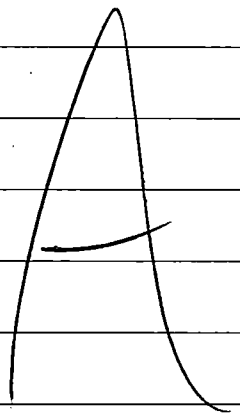
49. The only reasons Mr. Mansfield was on my case for 8 years is because I was not allowed to discharge him, no one, including N.C. Prisoner Legal Services, Inc. would assist me in discharging him and on 6/23/04 Henderson Hill, an Attorney I trusted due to his role in filing a Motion for Appropriate Relief that resulted in a prior conviction being vacated by former judge, Gregory Weeks and dismissed by former District Attorney Luther Johnson Britt III, wrote me while employed by the law firm Ferguson, Stein, Chambers (James E. Ferguson, III, Julius Chambers and Adam Stein) a prestigious law firm that was the first Bi African-American/Jewish law firm in the state, whose lawyers had their office firebombed and who underwent other retaliatory attacks for exercising Constitutional rights, like me and my family have for the exact same reason, told me he trusted Mr. Mansfield was doing everything he could to serve my interest and advised I be more patient. (Ex. "S") Yet, Counsel and others tell me that Adam Steins son, Attorney General Joshua Stein, is representing the State against me in a case



involving laws being changed by the North Carolina legislature to remove funding from judges with emergency judge status who were assigned to cases with clients represented by N.C. Center for Actual Innocence and where the N.C Attorney General stepped in and represented the State, instead of local county District Attorneys representing the State as is the norm. Not only is this illegal in that the legislature is being used to affect which judges are assigned to which cases, an encroachment on the judiciary constitutional powers, but specifically Claimant was prejudiced by the removal of Judge Beale because after holding several hearings and having, upon information and belief, spent over a year and 300 hours, at least, of work on Claimants case Judge Beale, according to Fayetteville Observer Staff writer Paul Woolverton, in a 2/4/18 newspiper article (Ex. "RR" 2/4/18 Fayetteville Observer clipping) and in a conversation Claimant held with Mr. Woolverton on the prison phone at Lumberton Correctional prison, which was recorded and is in the custody and control of former Assistant Director [redacted] of the State Bureau of Investigation, Eric Hooks, Mr. Woolverton was told by Judge Michael Beale of Richmond County that Claimant would be receiving an evidentiary hearing. Mr. Woolverton personally told me that Judge Beale told him this after I specifically asked Mr. Woolverton on 2/4/18 if Judge Beale told him, unambiguously, that he was going to grant the evidentiary

And where the only entity that, nominally, represents prisoners in the same procedural stance as Defendant during the time period under discussion herein, N.C. Prisoner Legal Services, Inc. refused to assist Defendant, in breach of their contract with the State (or, to preserve their contract by not biting the hand that feeds them).

48. As stated, Judge Floyd did offer to replace Mr. Mansfield with the Lumberton law firm, Musselwhite Musselwhite etc.. but this would have been a conflict of interest since this law firm represented Hubert Larry Deese, and, according to Southern Coalition for Social Justice Attorney Ian Mance this same firm represented former Sheriff Hubert Stone when he took



JUNE 11, 2000

DEAR MS. LOCKLEAR,

APPROXIMATELY A MONTH AGO, I FILED A MOTION REQUESTING THE APPOINTMENT OF AN ATTORNEY WITH YOUR OFFICE AND THE DISTRICT ATTORNEY OFFICE.

I AM WRITING TO MAKE SURE THAT MY MOTION WAS RECEIVED AND, IN ADDITION, TO REQUEST THAT YOU SEND ME A COPY OF THE MOTION SO THAT I CAN FORWARD A COURTESY COPY TO MY TRIAL JUDGE.

IF YOU DID NOT RECEIVE MY MOTION VIA U.S. POSTAL SERVICE, PLEASE LET ME KNOW. THANK YOU.

SINCERELY,

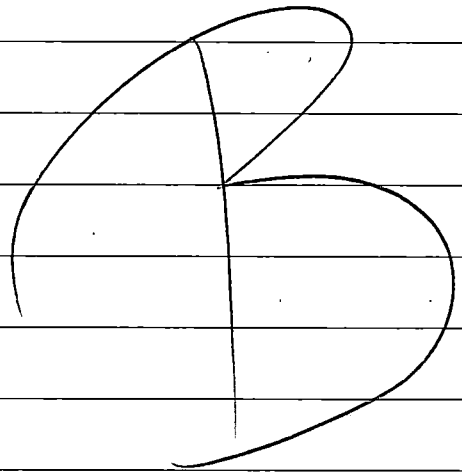
LORD DAAS U'ALLAH

LORD DAAS U'ALLAH AKA

DANIEL GREEN

6-19-00 copies mailed PNR

7-5-00 copy made of motion, mailed to Green PNR



T.W. JOANNE LOCKLEAR
Clerk of Court

6/30/00

DEAR MS. LOCKLEAR.

SEVERAL WEEKS AGO, I WROTE YOU REQUESTING A COPY OF THE MOTION I FILED REQUESTING AN ATTORNEY.

I AM IN RECEIPT OF TWO DOCUMENTS YOU MAILED ME IN RESPONSE (1) A COPY OF THE LETTER I SENT WITH MY MOTION AND (2) AN "ORDER OF ASSIGNMENT OR DENIAL OF COUNSEL", SIGNED BY JUDGE GREGORY WEEKS.

IN THE ORDER OF ASSIGNMENT THE ONLY SQUARE MARKED SAYS "THE ATTORNEY NAMED BELOW." BENEATH THIS IS THE NAME CARLTON MANSFIELD.

IF THIS MEANS THAT JUDGE WEEKS APPOINTED MR. MANSFIELD TO REPRESENT ME ON MY M.A.R. COULD YOU PLEASE AFFIRM THIS AND SEND ME ~~HERE~~ MR. MANSFIELD'S ADDRESS.

IF IT DOESN'T MEAN THAT COULD YOU PLEASE MANIFEST IT FOR ME.

THANK YOU VERY MUCH FOR YOUR ASSISTANCE.

TRULY YOURS,

[redacted]

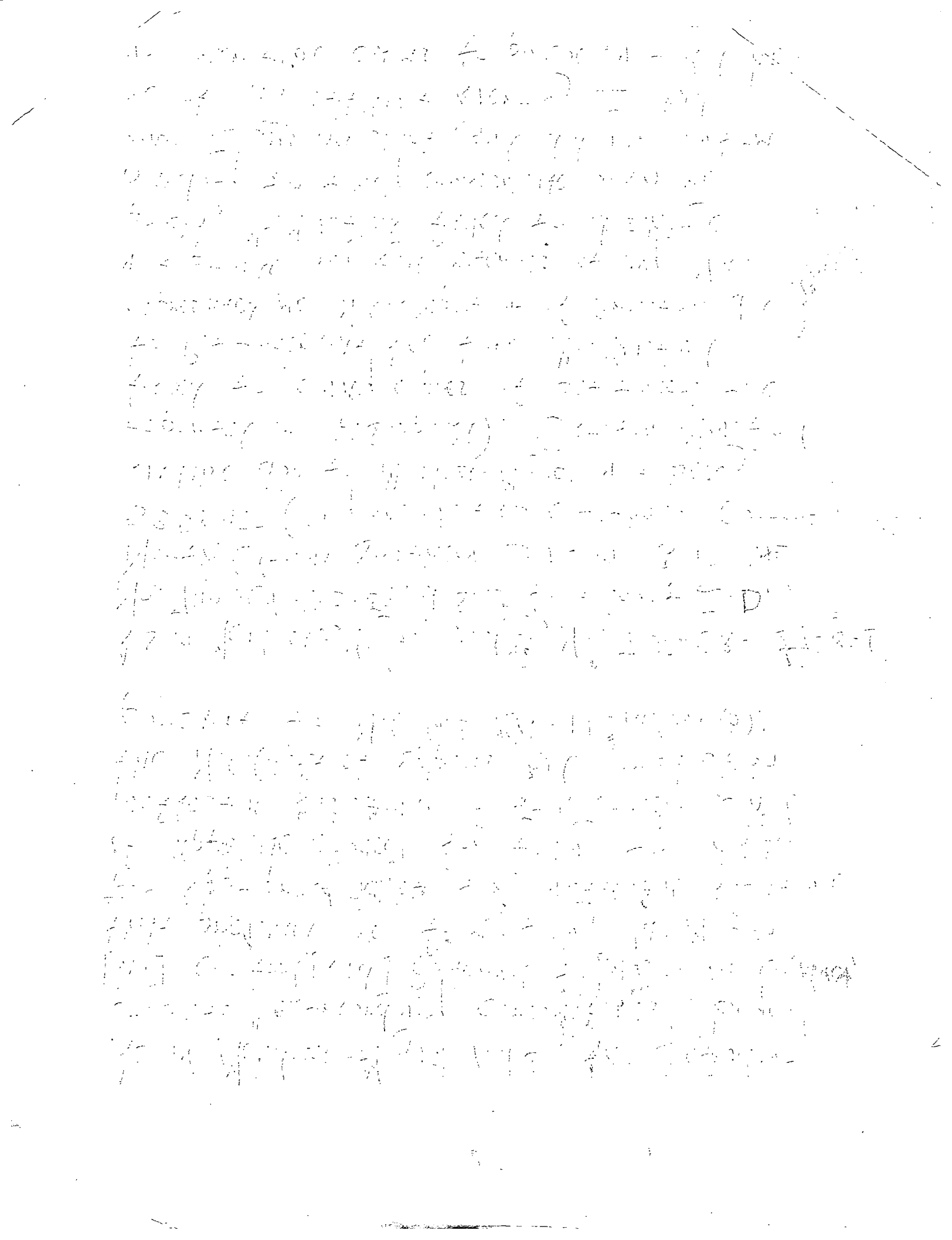
AKA

DANIEL GREEN

7-5-00
Letter answered
PLR

As in Mendoza-Miguel v. U.S., the Defendant presents "extraordinary circumstances", beyond [my] control [and] external to [my] own conduct, that prevented me from filing A Motion For Appropriate Relief for ineffective assistance of appellate counsel for failing to raise ineffective assistance of trial counsel while the N.C. Court of Appeals had jurisdiction pursuant to N.C. G.S. 15A-1418(a) and (b).

As in Mendoza-Miguel v. U.S., No. 7:08-CR-127-BO1 No. 7:10-CV-205-BO, U.S. District Court, E.D., North Carolina, Southern Division, 2010 WL 5353970 (Only the Westlaw citation is currently available due to Mendoza-Miguel not being reported in F.Supp.2d), Carlton Mansfield failed to convey copies of petitioner's file to Petitioner, at the time Mr. Mansfield represented me, N.C. Department of Corrections did not provide any legal materials at my N.C. prison, Mr. Mansfield failed to discharge his duty to timely communicate with me when I was his client (and did not inform me of his affidavit averring I had no meritable claims to pursue nor did he



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provide me with my trial transcript and files to use to research potential claims myself. (See

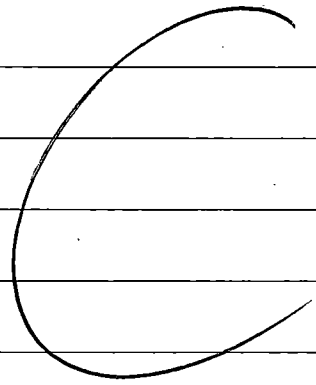
Before Mendoza-Miguel was decided on December 21, 2010 I alleged in great detail dilatory tactics by Mr. Mansfield and I showed diligence in pursuing my rights albeit quite clumsily as could be expected from one in my circumstances with my ignorance of the law. held in the belly of the Department of Corrections that actively worked to obstruct my access to the courts by a variety of tactics. District Judge, Terrence W. Boyle, in Mendoza-Miguel noted "with particular consternation the alleged dilatory tactics of petitioners lawyer." and Judge Boyle opined that a petitioner couldn't be deemed entirely responsible for the timeliness (or untimeliness) of his filings where the petitioners lawyer fails to discharge his duty to timely communicate with his client and in such a "narrow factual setting", where the petitioner has shown due diligence in pursuing his rights but extrinsic and extraordinary circumstances

prevented his timely filing," it would be unconscionable to enforce statutory procedural limitations against him.

The defendant requests this Court take judicial notice of Mendoza-Miguel v. U.S. as cited herein, a public record. Defendant also request that this Court take notice that Carlton Mansfield is the attorney that represented Mr. Mendoza-Miguel.

Daniel Green

/s/ John Doe This the 17th day of November, 2022



Received
9-17-2000

Ms. Joanne Locklear:
Clerk of Superior Court
Robeson County Superior Court
Lumberton, Nc.
28356

FILED

9/10/00

00 SEP 13 PM 12:23

ROBESON COUNTY, C.S.C.

Dear Ms. Locklear:

I would like to know if the M.A.R. that Judge Weeks has appointed Mr. Carlton Mansfield to me for has been put on the calender yet, and if so, when? I have yet to hear from Mr. Mansfield so I don't know.

Thank you very much.

Sincerely,

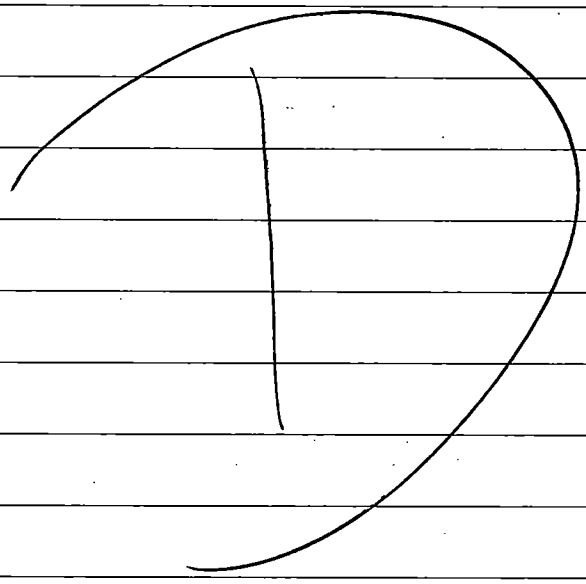
[signature]

Lord U'Allah / aka Daniel Green

P.O. Box 2405

Marion, N.C.

28752



State of North Carolina
General Court of Justice

CLERK SUPERIOR COURT

COPY

JO ANN LOCKLEAR
EX OFFICIO JUDGE OF PROBATE

ROBESON COUNTY
P. O. BOX 1084
LUMBERTON, NC 28359-1084

DALLAS A. CAMERON, JR., DIRECTOR
ADMINISTRATIVE OFFICE OF THE COURTS
DEXTER BROOKS
SENIOR RESIDENT JUDGE
ROBERT F. FLOYD, JR.
RESIDENT JUDGE

JULY 5, 2000

MR. DANIEL GREEN

P O BOX 2405

MARION, NC 28762

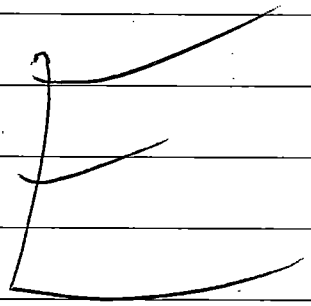
RE: COUNSEL APPOINTED

MR. GREEN:

MR. CARLTON MANSFIELD HAS BEEN APPOINTED TO REPRESENT YOU ON YOUR MOTION. HIS ADDRESS IS P O BOX 1241, LUMBERTON, NC 28359. MR. MANSFIELD HAS BEEN INFORMED OF HIS APPOINTMENT AND HAS RECEIVED A COPY OF HIS APPOINTMENT.

THANK YOU,

Patricia L. Rogers
DEPUTY CLERK



FILED

02 MAR -4 AM 9:35

ROBESON COUNTY, C.S.C.

2/28/02

Dear Clerk of Court:

I sent a letter to you requesting that my attorney be replaced a few months ago. For some reason, Judge Floyd responded to my request. It sounds like he received my letter. He said that he requested that my attorney contact me regarding my concerns. Judge Brooks has sent me two letters saying that he has made the same request. Neither request has had any affect; my attorney has not contacted me. For this reason it is impossible for me to discuss my concerns with him. Because of the nature of my motion for appropriate relief, time is very important. Whether intentionally or not, this stalling is hurting my case and has me extremely wary b/c there are issues in my case that involves a witness being paid off, and the police and possibly my attorney withholding evidence in order to protect the ~~reputation~~ image of Michael Jordan. For these reasons, I feel that this stalling is intentional and is being done to cover up and destroy evidence.

Once again, I am requesting that my attorney be replaced and that this motion be scheduled for a hearing before a judge as soon as possible.

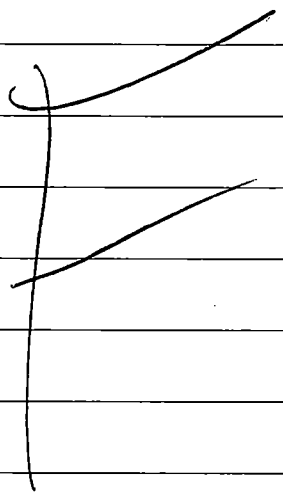
With best regards ...

Sincerely,

Daniel Green

P.O. Box 786 Troy, N.C. 27371-0786

3/5/02 Copy of this letter given to Judge Floyd letting him know that I was calendaring case for 3/11/02 Admin. Session; 3/6/02 Copy of this letter sent to D.A. and Carlton Mansfield.



Robeson County Clerk of Court
Lumberton, N.C.

600

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04 JUN -7 PM 2:43
ROBESON COUNTY, C.S.C.

6/3/04

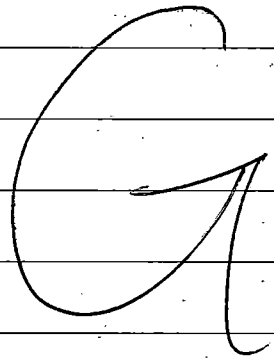
Robeson County Clerk of Court:

In May of 2000 Carlton Mansfield was appointed to represent me on a M.A.R. by Judge Weeks in case 93 CRS 15291+15293. That's 4 years ago yet I have seen no evidence that Mr. Mansfield has begun to prepare for, or investigate my motion. When I filed a motion to have Mr. Mansfield replaced due to the lack of communication he stated in court that the reason he hadn't started was the District Attorney & the Court was placing too many cases on him and he had not been able to get to my case. That was 2 years ago. In the two years since that hearing I have seen Mr. Mansfield once and still haven't seen any ~~seen~~ evidence that he has started on my motion.

Due to the nature of one of the issues of my motion (newly discovered evidence) I feel that the 4 year delay has damaged my case. For this reason I am asking that you treat this letter as a writ of mandamus to compell my attorney and the Court to explain on record what the delay is and I am asking for an outside research firm to aid Mr. Mansfield in the preperation of my motion if the problem is stemming from his workload being too heavy. Due to my transcript being in excess of 5000 pages, apparently it is too much for one lawyer to handle. This is damaging to my motion and justice in general. Please calander this for a hearing as soon as possible.

Sincerely,

Daniel Green



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2000 SEP 25 PM 3:21
MCDOWELL CO. C.S.C.

State of North Carolina
General Court of Justice
Superior Court District 16B

DEXTER BROOKS
SENIOR RESIDENT SUPERIOR COURT JUDGE

ROBERT F. FLOYD, JR.
RESIDENT SUPERIOR COURT JUDGE

18 September 2000

Mr. Lord U'Allah/aka Daniel Green
PO Box 2405
Marion, North Carolina 28752

Re: State v. Lord U'Allah/akaDaniel Green

Dear Lord U'Allah:

According to court records you are represented by an attorney. Under the law, therefore, you should only act through your attorney regarding your case. You should not correspond directly with the court or file paperwritings pro se (not prepared by your attorney) as long as you are represented by counsel. If you have concerns about your case please discuss them with your attorney. I am sending your letter or paperwriting to your attorney. By so doing, I am requesting that your attorney contact you regarding your concerns.

I urge you to discuss your concerns about your case with your attorney and try to resolve any problems. If you are unable to resolve these problems and you are unsatisfied with the representation of your attorney, you may write to the Clerk of Superior Court asking that your attorney be replaced. In your letter ask the Clerk to treat your letter as a motion and to schedule it for hearing by a judge as soon as possible. I must advise you, however, that an expression of an unfounded dissatisfaction with your court-appointed attorney does not entitle you to the services of another attorney. State v. Gibson, 14 N.C. App. 409(1972). Even if the judge agrees to replace your attorney, you must accept the attorney appointed by the court. Id. You do not have the right to the court-appointed attorney of your choice. State v. Weaver, 306 N.C. 629(1982). Think about what you are doing before you ask for a new attorney.

If you are still unsatisfied with the performance of your attorney after discussing your case with them, you may also file a complaint with Arnold Locklear, Chairperson of the Committee on Indigent Appointments, PO Box 999, Pembroke, NC 28372. If your

Please file. Letters have been received

complaint is justified, the Committee may take appropriate action, including suspending the attorney from receiving appointments in indigent cases for a definite or an indefinite time.

Now that I have explained the choices that you have you should not write to me again or file paperwritings with the Clerk of Superior Court. You should act through your attorney or ask the court to appoint you a new attorney.

You should also be aware that if you discuss your case with anyone--except your attorney--what you say about your case may very well be used as evidence against you at your trial. You should also be advised that I may have to send copies of your letters or paperwritings to the District Attorney.

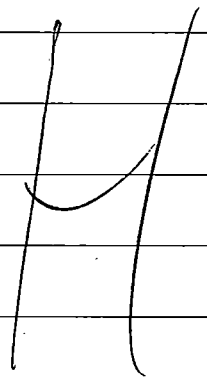
Sincerely,

Dexter Brooks
Senior Resident Superior Court Judge

DB/gc

cc: Carlton Mansfield
Attorney for Defendant

Luther Johnson Britt,III
District Attorney
(without enclosure)



93CRS 15291

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CSC
1-18-02
DSB

State of North Carolina
General Court of Justice
Superior Court District 16B

DEXTER BROOKS
SENIOR RESIDENT SUPERIOR COURT JUDGE

ROBERT F. FLOYD, JR.
RESIDENT SUPERIOR COURT JUDGE

17 January 2002

Lord U'Allah (Daniel Green)
PO Box 786
Troy, N.C. 27371-0786

Re: State v. Lord U'Allah (Daniel Green)

Dear Mr. U'Allah:

I am in receipt of your letter or motion requesting replacement of your attorney with new court-appointed counsel. I am sending a copy of this letter as well as a copy of your letter or motion to your present attorney. By so doing, I am requesting that your attorney contact you regarding your concerns. I am also sending your letter or motion to the Clerk of Superior Court so that if your case is in superior court your request can be considered as a motion and be scheduled for hearing before a judge at the next administrative session. The letter or motion will be filed by the Clerk of Court thereby becoming a part of your official court file.

I urge you to discuss your concerns about your case with your attorney and try to resolve any problems. If you are unable to resolve these problems and you are still unsatisfied with the representation of your attorney, ask the judge at the hearing to appoint you a new attorney. I must advise you, however, that an expression of an unfounded dissatisfaction with your court-appointed attorney does not entitle you to the services of another attorney. State v. Gibson, 14 N.C. App. 409(1972). Even if the judge agrees to replace your attorney, you must accept the attorney appointed by the court. Id. You do not have the right to the court-appointed attorney of your choice. State v. Weaver, 306 N.C. 629(1982). Think about what you are doing before you ask for a new attorney.

If you are still unsatisfied with the performance of your attorney after discussing your case with them, you may also file a complaint with Arnold Locklear, Chairperson of the Committee on Indigent Appointments, PO Box 999, Pembroke, NC 28372. If your compliant is justified, the Committee may take appropriate action, including suspending

Letter mailed
Please file
Thanks.

the attorney from receiving appointments in indigent cases for a definite or an indefinite time.

Now that I have explained the choices that you have you should not write to me again or file paperwritings with the Clerk of Superior Court. You must act through your attorney or ask the court to appoint you a new attorney.

You should also be aware that if you discuss your case with anyone--except your attorney--what you say may be used against you. You should also be advised that I may have to send copies of your letters to the District Attorney.

Sincerely,

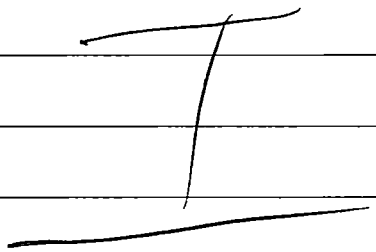
Robert F. Floyd, Jr.
Resident Superior Court Judge

RFF/gc

cc: Carlton Mansfield
Attorney for Defendant

Luther Johnson Britt, III
District Attorney

JoAnn Locklear
Clerk of Superior Court



State of North Carolina
General Court of Justice
Superior Court District 16B

Robert F. Floyd, Jr.
Senior Resident Superior Court Judge

Gary L. Locklear
Resident Superior Court Judge

June 28, 2004

Mr. Carlton Mansfield
Attorney at Law
PO Box 1241
Lumberton, NC 28359

Re: State vs. Daniel Green

Dear Mr. Mansfield:

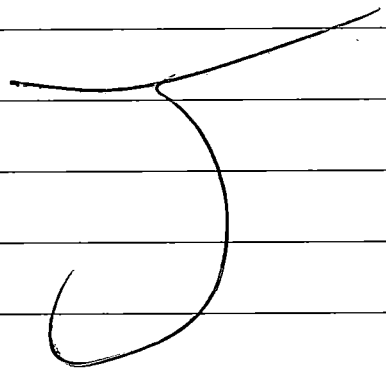
I am in receipt of a letter from Mr. Green dated June 2, 2004 in reference to you not visiting or having any communication with him. I am directing you to respond to defendant's letter and to file a copy of your response with the Court.

Sincerely,

Robert F. Floyd, Jr.
Senior Resident Superior Court Judge

RFF jr./gc

cc: Daniel Green
Defendant



93CRS 15291

State of North Carolina
General Court of Justice
Superior Court District 16B

Robert F. Floyd, Jr.
Senior Resident Superior Court Judge

Gary L. Locklear
Resident Superior Court Judge

FILED
04 NOV 30 PM 4:36
ROBESON, C.S.C.

November 29, 2004

Mr. Carlton Mansfield
Attorney at Law
Lumberton, NC 28358

Re: State vs. Daniel Green

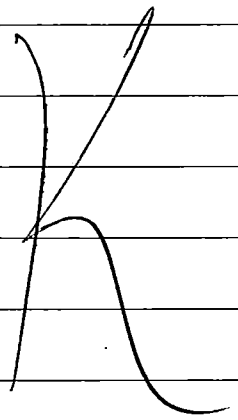
Dear Mr. Mansfield:

I am in receipt of a letter addressed to Mr. Arnold Locklear from Daniel Green. I understand that you represent Mr. Green. I am asking that you contact Mr. Green about his concerns within 10 days.

Sincerely,

Robert F. Floyd, Jr.
Senior Resident Superior Court Judge

cc: Daniel Green
Defendant



Arnold Locklear
Chairperson of Committee on Indigent Appointments
P.O Box 999
Pembroke N.C.
28372

RECEIVED
BY CS DATE 9/3/04

DEAR MR. LOCKLEAR:

A couple of years ago I wrote you concerning my apprehension about Mr. Carlton Mansfield, an attorney appointed to me by Judge Gregory Weeks to represent me on a motion for appropiate relief. The basis of my concern was our inability to communicate with eachother and the length of time it was taking for Mr. Mansfield to begin preparing for my case.

As of yet I still have not seen any evidence that Mr. Mansfield has begun work on my case. He did say in court and via letter a while back that the delay was caused by the fact that my transcript exceeds 8000 pages and bc the court keeps assigning a heavy caseload to him and is stacking his calendar. While I can appreciate his dilemma I must move forward with my case bc due to the nature of my mar. the passing of so much time can only be detrimental to my case. In addition, Mr. Mansfield and I still are not able to communicate at all. I have no way of contacting him via phone or through letters since he is not responding. Every attorney I have spoken to has said that 4 years is an abnormally long time to wait on a mar to be prepared and heard and that for an attorney to refuse to communicate at all with a client for years at a time is both unprofessional and unethical. I have informed the court that I want a new attorney or assistance provided to help Mr. Mansfield if the root of the problem is the burden of his schedule. I asked that my letter requesting this (sent to the clerk of court) be treated as a motion. After almost a year I still have not received a response. I am very

uncomfortable with this apparent conflict between the court, D.A. & Mr. Mansfield affecting my case.

Please consider this letter as a complaint to be acted upon by the Committee. If my situation is symptomatic of the way all indigent people are treated by Robeson County court officials then that should be addressed. If the problem is with Mr. Mansfield himself then that should also be addressed. I understand that those of us with out the funds to buy loyal and aggressive representation are already at a severe disadvantage in our justice system but, sir, I am paid 70¢ a day and N.C. prisoners do not have a law library like other progressive states. So, I simply have no choice but to rely on the courts to safeguard my constitutional rights.

Thankyou for any assistance you can provide. With best regards...

Sincerely,

Daniel Green 0154642
Box 2405
Marion, N.C.
28752

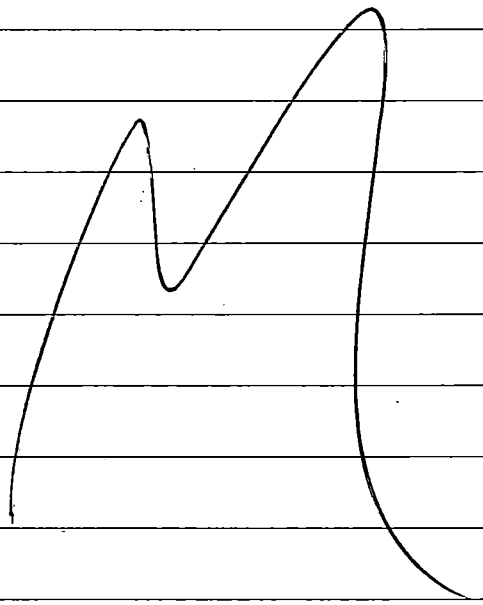
Frank,

Here is my original affidavit and a copy for you if you want it. If not just destroy it.

Call if you have questions.

Carlton

I need file or that portion of file that contains D's MAR. 2-10-06



Mansfield Law Firm PLLC

Mansfield Law Firm, PLLC
433 North Elm Street
Post Office Box 1241
Lumberton, NC 28359
PHONE: (910) 618.1665
FAX: (910) 618.1667

August 06, 2007

Daniel Green
0154242
P.O. Box 280
Polkton, NC 28135

Dear Mr. Green,

I have received your request to get your file. I am in a Capital Murder Trial in Hoke County that began on June 25, 2007 and should go on to the end of August. As soon as I am finished with this trial I will send you the materials that you requested. Thanks for your patience, if there is anything else that you need feel free to write or give us a call.

Sincerely,

Carlton M. Mansfield

CMM/mwl

EXPLANATORY

THE FOLLOWING DOCUMENT(S) MAY HAVE POOR IMAGES DUE TO POOR PHOTOGRAPHIC QUALITY OF PAPER.

9/8/07

[illegible]
[illegible]
[illegible] 2335

Mansfield [illegible], PLLC
[illegible] 33 N [illegible] St
Dr. Box [illegible]
Lumberton, NC 28357

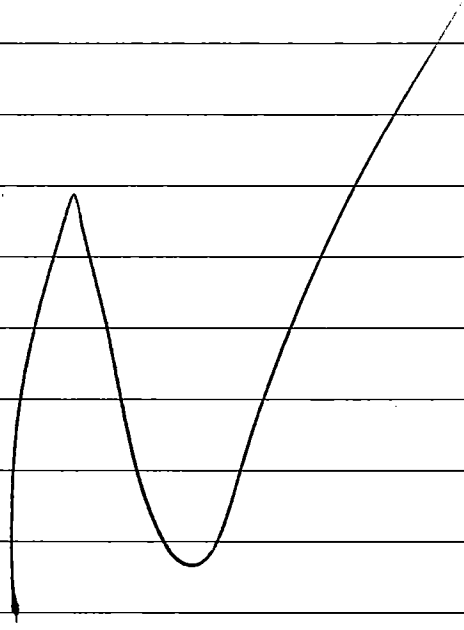
Dear Mr Mansfield:

I am in receipt of your letter of August 6th, 2007. Due to problems I have had over the years in all [illegible] staff I am requesting that when you send my file that you enclose a copy of, and keep a copy of an index of the contents. I am also requesting that you send copies of all [illegible] received and generated by you [illegible] your representation of me. If you decide to keep anything in my [illegible] specify what it is and why you are keeping it.

Thank you for your attention in this matter. I hope the trial you are in turn out for the best of all involved.

Sincerely,

[illegible]



THE GRIEVANCE COMMITTEE
THE NORTH CAROLINA STATE BAR
P.O. BOX 25908
RALEIGH, NC 27611
TELEPHONE: (919) 828-4620

OFFICE USE ONLY
FILE NUMBER

I, the undersigned hereby complain against (Name of Attorney) Carlton M. Mansfield
(Address) Mansfield Law Firm PLLC 433 North Elm (City) Lumberton NC (Zip) 28359
a practicing attorney of Robeson County. I agree to cooperate by furnishing to the representatives of the North Carolina State Bar all pertinent information and records in my possession concerning the alleged misconduct of said attorney. I further agree that if a hearing or inquiry is ordered concerning the alleged misconduct of said attorney, then I will furnish evidence concerning the facts by submitting to deposition or personal attendance at the hearing or inquiry. I hereby indicate that this information is provided and transmitted by me to the North Carolina State Bar for the purpose of investigating the alleged misconduct of the above-named attorney. I understand that I may also need to reveal this information to a privately-retained attorney to pursue private remedies on my behalf. I further understand that the immunity granted by North Carolina General Statute 84-28.2 applies only to those statements made without malice and intended for transmittal only to the North Carolina State Bar.

I also understand that the North Carolina State Bar may reveal this information to the accused attorney for his response to a formal inquiry and to others pursuant only to the Rules and Regulations of the North Carolina State Bar.

Name of Complainant
(Mr.) Mrs., or Ms. Daniel A. Green
(Please circle correct TITLE and TYPE or PRINT legibly)

Address P.O. Box 280 (N.C. Dept. of Corrections

City Polkton, NC State N.C. Zip 28135

Home Telephone ( ) NA

Work Telephone ( )

Daniel Green
Signature of complainant

THIS AFFIDAVIT SHOULD BE NOTARIZED

Sworn and subscribed before me this the 7th day of December, 20 07

Bettie F. Greene
(Notary Public)

My commission expires 7-10-2010

DESCRIPTION OF YOUR COMPLAINT

NOTE: In the space below, tell us what your complaint is about. Be sure to include all facts that you want the State Bar to consider, including names, dates, and places. Use additional sheets if necessary. Attach copies (not originals) of any papers that support your complaint.

1. On 3/22/05 A second complaint I filed against Attorney Carlton Mansfield was given the file number 0560139 by N.C. State Bar. The first complaint was never responded to.
2. On 6/28/05 I received a letter from Henry Babb, the Chair of N.C. State Bar Commitee informing me that there was "insufficient evidence" that Mansfield violated the Rules of Professional Conduct.
3. 6/30/05 - I wrote N.C. State Bar and asked how they dismissed my complaint without reviewing my proof. In fact, on 3/4/05 I wrote the N.C. State Bar and specifically told them that supporting documents to my complaint (over 40 letters) were in my possession but I had absolutely no access to a copier to make copies. The complaint form orders Complaintants to attach copies of supporting papers; Not originals.
4. 7/20/05 - I received a letter from N.C. State Bar (Gunn Simeon) saying "It was not necessary to receive other documents in reviewing this grievance."
5. I never received a Letter to Complainant Acknowledging my grievance, pursuant to B.0213 of the Rules of North Carolina State Bar (RNCSB) that serves notice to Complainants that they can submit information to the committee to consider.
6. I never received a Letter to complainant from investigating Attorney, pursuant to B.0215 ensuring that I had a chance to explain my complaint.

7. Considering the nature of my complaint, the only way the N.C. State Bar could have ruled on it fairly is to issue subpoenas for Mr. Mansfield; the transcripts from the days where my motion to have him removed from my case was heard in Robeson County Superior Court; to issue subpoenas for the over 40 letters between myself, Judge Gregory Weeks, Judge Dexter Brooks, Clerk of Court JoAnne Locklear (Robeson County), former Chairperson of the Committee on Indigent Appointments, Arnold Locklear, Mr. Mansfields secretary, Judge Floyd, Judge Craig B. Ellis, Charlotte Attorney Henderson Hill & Judge Carter, pursuant to B.0105

8. The N.C. State Bar's expressed purpose, pursuant to A.0101 of the RNCSB, is to, among other things, to promote reform in the law and in judicial procedure; to facilitate the administration of justice and to uphold and elevate the standards of honor, integrity and courtesy in the legal profession and to perform all duties imposed by law.

9. In order for the N.C. State Bar to carry out it's expressed purpose I, Daniel Andre Green, respectfully request that the N.C. State Bar Chairman, pursuant to the Rules of N.C. State Bar, B.0105 a)(14), (a)(8) and (a)(2), to rule on my request for reconsideration of the N.C. State Bar's decision to dismiss my last grievance on Carlton Mansfield without giving me the opportunity to present evidence to support the claims I made; to issue subpoenas, in the name of the N.C. State Bar, of documents, witnesses and transcripts that will shed light on my claims and lead to truthful and fair findings of fact and conclusions of law; and to recommend to the grievance committee that an

investigation be initiated.

10. In order to show good cause for my request to be granted I present to you the following:

Complainant, complaining of Carlton M. Mansfield, alleges and says:

1) Attorney, Carlton M. Mansfield is upon information and belief, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the N.C. State Bar and the Revised Rules of Professional Conduct, and was at all times referred to herein.

Upon information and belief, Complainant alleges:

2) During all times relevant to this complaint, except for 12/29/99, 5/5/00 Mansfield actively engaged in the practice of law in the State of NorthCarolina, in the County of Robeson and in the 16th-B Judicial District.

3) On. 5/16/00 Judge Gregory Weeks signed an "order of assignment of counsel" appointing Mansfield to represent Complainant on a "M.A.R." (Motion For Appropiate Relief). This order of assignment was in response to Complainants Motion to Compel Defendants Constitutional Right of Access To The Courts, filed on 12/29/99, and

MAILED FROM LANESBORO CORR. INST.

A Motion Requesting Appointment of Counsel to Assist Defendant in the preperation of a Motion For Appropriate Relief. The M.A.R. was integrated into this motion and was filed on 5/5/00

4) At all times relevant to this complaint, Complainant was indigent as defined by Rule 1.4 of the Indigent Defense Services and D.402 of the Rules of N.C. State Bar.

5) At all times relevant to this complaint, Complainant has had no access to a law library and the lawbooks and legal materials Complainant has gleaned on his own have constantly been taken from him by Dept. Of Corrections officials and has subsequently been "lost" or confiscated as contrawband by N.C. D.O.C. Make exhibit of Affidavit to support this.

6) Other than a few months worth of correpondence courses from Blackstone Paralegal Study Course, advertised in the back of Ebony magazine Complaintant has absolutely no formal legal training nor expertise. All efforts to gain knowledge of the lawcraft by Complaintant has been discouraged by N.C.D.O.C.'s staff through retaliatory action consisting of lost legal work product, lost lawbooks, false imprisonment in segregation, gas therapy (retaliatory transfers) and blatent noncooperation of N.C. D.O.C. staff in fulfilling their obligation to facilitate inmates right to gain access to the Courts.

7) Complainant has a 9th grade formal education, a GED obtained in N.C. Dept. of Corrections and a few semesters of college courses.

8) Mansfield was aware of or became aware of the facts set forth in paragraphs 4-7, and thus, knew or should have known that Complainant was and is in a vulnerable position and was totally dependant on him to represent Complainants best interest with reasonable diligence and in an ethical manner, and to file any meritable issues in a M.A.R.

9) Pursuant to Rule 1.3. of the Revised Rules of Professional Conduct, "A lawyer shall act with reasonable diligence and promptness in representing a client."

Exhibit 3? is a chronological account that reveals Mansfield complete and blatent disregard for Rule 1.3. Each document referenced in Exhibit is on record in the Clerks office of Robeson County Superior Court. Complainant is unable to obtain copies of the documents in his possession and, for this reason only, is not attaching them to this complaint. The following is obvious!

a) Not only did Mansfield procrastinate in acknowledging his appointment to represent Complainant by not responding to Complainants repeated inquires until 5 months after Judge Dexter Brooks told him to contact Complainant, he refused to accept responsibility for his negligence and assigned blame to his secretary, both or mailing the letter to the wrong address and for losing the letter that he claims was returned to him. Please note that in 16 years that Complainant has been incarcerated every letter that went to a prison he was not at has been forwarded to him.

b) By refusing to act with reasonable diligence and promptness in representing Complainant, Mansfield, upon information and belief, knowingly and intentionally allowed my interest to be adversely effected in the following manner:

1) The passage of time has made it that much more difficult to to find and get affavits from witnesses. In fact, contrary to Mansfield's statements to Complainant and the Court in August 2005, Mansfield never interviewed witnesses nor had a third party interview witnesses that would support Complainants M.A.R.

2) The passage of time from the time when Mansfield was appointed to Complainant until now may have allowed the 1 year statute of limitations to file a Federal Habeas Corpus to elapse if the time to file was not tolled by the filing of the motion that resulted in Mansfield being appointed to represent me. In fact, he refused to respond until the time the statute of limitations would have elapsed if the clock was not tolled.

3) The passage of time has made it possible that crucial evidence has disappeared, or been disposed of, especially footage of the juror Patricia Lockleam who acted in the dual capacity of a public relations representative for District Attorneys office and the main witness (Larry Martin Demery) against Complainant - in fact, the States only witness linking Complainant to the murder of James Jordan, and whom acted as a media commentator for the News and

IMAGED FROM LANESBORO CORR. INST.

Admitted to the trial court that she was working on a book about Complainants case. At the same time she was allowed by the Trial Court to continue talking with a juror during the trial. A juror who was one of the few who actually voted for Complainant to receive the death sentence.

4.) The passage of time is expected to have had an effect on the memories of all witnesses that would be called at a Motion for Appropiate Relief evidentiary hearing.

5.) The passage of time has provided the state with the opportunity to repeatedly steal and take, under threat of violence, documents that support Complainants post-conviction efforts; to engage in behavior designed to alienate Complainant from all avenues of emotional and logistical support neccessary to bring his M.A.R. to fruition; to repeatedly try to endanger Complainants life and health and to repeatedly take Complainants lawbooks in order to leave him ignorant about the legal issues pertinent to his post-conviction relief efforts

6. Mr. Mansfield did not control his workload so that his appointment to Complainants case could be handled competently. It was only until 5 years after Mansfield was appointed to my case - one month after the N.C. State Bar dismissed my Complaint against him - that Mansfield completed reviewing my case file and reached the conclusion that my M.A.R. was frivolous and he could find no issues that had merit in gaining post-conviction relief, According to Mr. Mansfield.

D. In summary Mansfield showed no ~~diligence~~ diligence in representing Complainant and passively thwarted Complainants Efforts to receive ~~my~~ diligent and

prompt attention and representation in this matter.

* * *

10. Pursuant to Rule 1.4. Communication: A lawyer should reasonably consult with the client about the means by which the client's objectives are to be accomplished; keep the client reasonably informed about the status of the matter; promptly comply with reasonable requests for information; and shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

An attorneys obligations under Rule 1.4. are not mere suggestions or guidelines; they are imperatives. Yet, as demonstrated in Complainants Chronological Account (Exhibit) Mansfield not only refused to reasonably consult with and keep Complainant informed and promptly reply to Complainant but he also refused several Judges orders to do so. Not once or twice, but repeatedly, which indicates either a total disregard for law and the Courts authority, or the knowledge that he could do so because the Court could not hold him responsible. Mansfield was so cavelier in his attitude about this matter that he joked in open court in August 2005 that he should switch sides or something to that effect. Meaning he should be working with the prosecutor against the Defendant. This was a hearing scheduled to decide if the Court would remove Mansfield from Complainants case. As Complainant has constantly requested. The Court, to Complainants knowledge, still has not ruled on this matter, two years later.

* * *

11. Pursuant to Rule 3.3. Candor toward the tribunal: A lawyer shall not knowingly make a false statement of material fact or law to a

tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; or offer evidence that the lawyer knows to be false.

In order to deceive the Court about his negligence and deliberate indifference for the best interest of the Complainant and for justice Mansfield knowingly made false statements of material fact to the Court in March 2002 and August 2005 when he stated that:

(a) He responded to my letters requesting confirmation that he was appointed to my case;

(b) That His secretary misplaced the letter he sent to me once it was sent back from Central Prison;

(c) That He sent letter to me at Central Prison;

(d) He interviewed the witnesses I told him about to support my M.A.R.

e) He investigated my case

f) He visited me twice at Robeson County Detention Center

g) He reviewed my file and found no possible errors

Mansfield also made false statements of law when he stated that my M.A.R. was frivolous and without merit (See exhibit Insert Affidavit on Rule 3-1) and when he stated that I waived the juror misconduct issue involving the juror who had sexually harassed my witnesses, had animosity towards them and was a close friend of a person on the D.A's witness list - knowledge that Complainants trial attorney possessed yet concealed from Complainant.

12) Pursuant to Rule 4.1. Truthfulness in Statements to others A lawyer shall not knowingly make a false statement of material fact or law to a third person, in the course of representing a client.

Indisputably, Mansfield made false statements of material fact and law to the Court as set forth in paragraph 11. It is also my belief that Mansfield made false statements of material fact and law to the N.C. chapter of the ACLU, the N.C. State Bar and also to the Appellate Defender in connection with Complainants original complaint filed with the State Bar against him; to defend his reckless disregard for Complainant's Post-Conviction Relief Efforts; and to justify his inaction and the characterization of Complainants M.A.R. as being frivolous and without merit. I am suggesting that his characterization of the M.A.R as being frivolous and without merit, and his claim that after reviewing my file he could find no errors was the result of his attempt to defend his unethical behavior in relation to his appointment to my case.

13. Pursuant to Rule 8.1. Bar admission and disciplinary matters. A lawyer in connection with a disciplinary matter shall not knowingly make a false statment of material fact.

When Complaint (File No. 056039) was filed by Complainant with the N.C. State Bar on 3/22/05, the N.C. State Bar contacted Mansfield. On 6/28/05 Henry Babb informed Complainant that there was "...insufficient evidence..." that Mansfield violate the Rules of Professional Conduct, and that the N.C. State Bar had dismissed

the complaint. It is Complainants belief and contention that the fact that his complaint was dismissed is evidence that Mansfield made false statements of material fact or law to the N.C. State Bar which is why the complaint was dismissed. If Mansfield would have admitted the allegations against him were true there is no way the N.C. State Bar could have, in good faith, dismissed the complaint. Not unless there is a double standard of justice and ethical responsibility for poor Black Complainants and Rich White Complainants, such as the Duke lacrosse players.

4) Pursuant to Rule 8.3. Reporting professional misconduct, a lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyers honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the North Carolina State Bar or the court having jurisdiction over the matter. Mansfield did not follow this mandate.

Mansfield was informed in detail how the District Attorneys who prosecuted the States case against Claimant violated Rule 3.6 (a) and also violated Rule 3.6 (a) via a violation of Rule 8.4 in the following manner:

a) The original D.A. on the case made constant statements to the media that portrayed the Claimant as the "Trigger Man" and other statements that irreversibly conditioned the public and jury pool to believe that the Claimant was a career criminal and was guilty of murdering the father of basketball legend, Michael Jordan.

b) The original D.A. also assisted and induced officers of the Robeson County Sheriff Dept, and the Cumberland County Sheriff's Dept., and others to violate Rule 3.6 and did so through the acts of another.

c) The trial D.A., Johnson Britt, also did the same acts set forth in paragraphs (a) and (b) and also assisted an ex-juror-who was removed from the jury for talking to Mr. Britt's cousin, a local A.M. radio personality, about the trial while she was still on the jury,— in giving press conferences during the trial, with Mr. Britt, and on her own, in which she expressed her belief that Claimant was guilty of being the "trigger-man" in the death of Mr. Jordan, and that Claimant had led the states ONLY witness linking Claimant to Mr. Jordans death, Larry Demery, into a life of crime. Most remarkable is the fact that at the time this juror made these statements to the media, no evidence had been presented during trial about Mr. Jordans death except for the identity of his body, which means that the juror, contrary to her answers during voir dire, was already biased against Complainant. This juror is also a close cousin of a RCSD deputy and lied about that as well. This juror gave these statements in press conferences held in the D.A.'s office, among other places, and also sat directly behind the D.A. immediately after and for some time, during the trial. She also sat beside the investigator who represented RCSD during the trial and who was the D.A.'s advisor during the whole trial. These are clear violations of Rule 3.6 and Rule 8.4 (a) and (d).

The trial D.A. Johnson Britt also misrepresented the facts of the verdict by constantly telling the Media and public that Claimant was

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convicted of being "the triggerman" even though the jury, the only fact-finders in the guilt/innocent phase of the trial specifically found that Claimant "... did not kill nor intend to kill the victim".

These are a few examples out of many. Mansfield knew All of this and was told these things by Claimant both verbally and in writing. Mansfield also admitted to Claimant that he was extremely familiar with the case due to his mother sending him articles during the trial and his own following of the trial. Other violations of Rule 8.3 (a) should be glaringly obvious to the N.C. State Bar upon investigation of this complaint.

15) Mansfields violations of Rule 8.4 Misconduct (a), (c) (d), (b) are apparent in paragraphs 1-14 set out in this claim and demonstrate that Mansfield violated Rule 8.4. (g) intentionally prejudice or damage his client during the course of the professional relationship. Claimant has no choice but to believe that Mansfield sold him out for ulterior reasons due to the controversial nature of the case; because Claimant is the subject of popular disapproval; due to powerful people having a vested interest in the truth being hidden about how Mr. Jordan died and who actually killed him.

From the beginning the media and the authorities have been focused on portraying Mr. Jordan as a victim of Black-on Black violence. The ramifications of this misrepresentation of the truth effect not just the Claimant but also conditions the public to, Black and White and Native Americans and Latino, to believe that young Black men

Are the personification of crime and senseless violence.

Mansfields actions have delayed justice for 7 years and has made a mockery of the N.C. State Bar, the Court he is an officer of, and of the State of N.C. whose motto is "to be rather than to seem". Mansfield would have N.C. State Bar to believe that what "seemed" like ~~edited~~ Ethical behavior on his part was carried out but in fact his behaviour was the exact opposite in this instance.

Go into Aggravating circumstances

Complainant Respectfully suggests that Mr. Mansfields misconduct is aggravated by the following factors:

a.) dishonest or selfish motive
b) a pattern of misconduct;
c) multiple offenses;
d) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;
e.) refusal to acknowledge wrongful nature of conduct before the Robeson County Superior Court on two hearings on these matters, and to the N.C. State Bar when this matter was initially investigated
f.) submission of false evidence, false statements or other deceptive practices during the disciplinary process;
g.) vulnerability of the victim, Daniel A. Green
h.) substantial experience in the practice of law

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Complainant respectfully suggests that Mr. Mansfields conduct is possibly mitigated by the following factors:

a. good reputation

b. pressure exerted upon him by third parties to sell complainant out in order to further hrs career and cover his own self

c. the effect of libelous and slanderous information about Complainant that he has received from other attorneys and officials involved in this case that distorted his perception of Complainant in order to condition him to follow the status quo in this case and to allow him to justify to himself that Complainants deserves to be sold out

d. Mr. Mansfields actions and inaction is in line with the corrupt culture of a county that has seen it's first Native American judge, Julian Pierce, assassinated; that has seen it's Sheriffs Dept. imploded by the conviction of the Sheriff and numerous deputies on Federal charges for alleged actions that Sheriff Glenn Maynor inherited from his predecessors; A county that has been attacked by the cancerous influence of poverty created by the loss of hundreds of factory and mill jobs due to the passing of NAFTA and the divide and

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conquer tactics that have pitted the people of Robeson County against eachother in order for a few to profit and prosper at the expense of the many. In this environment, in a case such as mine, it would be difficult for any young Attorney to risk incurring the wrath of his peers by aggressively advocating on behalf of a person he does not know and does not have to face. The victim in [redacted] Complainants conviction, James Jordan, was the father of Michael Jordan. Not only is Michael Jordan one of the most recognizable superstars in the world today but he is also one of the most lucrative marketing icons in the history of our country. If, as Complainant has asserted, from the beginning, James Jordan was not the victim of Black-on-Black violence; but was in fact killed by a young man viewed as being White and portrayed by the State as being a confused misled youth under Complainants influence that would raise serious racial questions that our State pretends does not exist. To say that a youth with an extensive history of robbing and assaulting victims was under the influence of a Black youth who has no history of criminal acts for pecuniary gain other than those committed with the White youth is patently racist. Due to his false testimony against Complainant, Larry Demery will do less time for his murder of James Jordan than if he had never killed James Jordan and had been convicted of the crimes he committed before him and Complainant became reacquainted during the summer of 1993. Due to his testimony and "cooperation"

with the State he will not have to serve one day for the 240 years worth of violent crimes he committed and initiated. The State refused to even give him a polygraph yet it gave polygraphs to two state employees who were witnesses. Why? Because District Attorney Johnson Britt knows Demery was lying to win the States approval, and to avoid the consequences of his actions.

Most importantly, Michael Jordan is the most famous alumni of the University of North Carolina. The School of Government for North Carolina is at UNC-Chapel Hill and it creates policy and coordinates government functions at every level. As state employees have pointed out to Complainant numerous times, he can not expect an impartial consideration of his case. Not during the investigation, not during the trial and not during post conviction relief efforts. Mr. Mansfields blatent disregard for the laws of North Carolina and the principles that are supposed to give the justice system legitimacy has resulted in significant harm and prejudice to the justice system, yet, his actions were not innovated by him but they reflect the way the justice system has historically treated minorities and poor people of all races in this world. In an adversarial system that promotes winning at all cost as being an indication of one's skill and prowess; truth in justice is an afterthought and it is my personal belief that Mr. Mansfield chose the path of least resistance in my case to position himself to better represent

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other clients he has developed a relationship with and ~~has~~ who do not come with the baggage this case brings.

Based upon the foregoing Complainant requests the following:

1. A full investigation of Carlton Mansfields behavior and the reasons thereof;

2. A determination concerning any influence any third parties may have had on Mr. Mansfields behavior, whether by deceiving him, manipulating him or by offering him anything of value, whether pecuniary, politically, or personally;

3. Any disciplinary actions that will insure that Mr. Mansfield Nor any other Attorney in Robeson County or the State of North Carolina deny any Defendants of the representation necessary to receive the same justice that criminal defendants with unlimited resources, such as the Duke LaCrosse Team, receives;

4. That an emphasis be placed on the N.C. State Bar to seek the truth in this matter by any available means, including polygraphs; instead of retributive justice that will only result in the punishment of Mr. Mansfield instead of focusing on changing the system. South Africa's example in valueing truth and change over punishment in dealing with Apartheid criminals is ideal.

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5. That the N.C. State Bar recommends attorneys who have the ethical fortitude to represent Complainant in the M.A.R. that Mr. Mansfield was appointed to represent Complainant in and the Amended M.A.R filed by Complainant.

In addition...

1. On 7/11/07 I wrote Mr. Mansfield and requested all of my case files in his possession pursuant to Rule 1.16 (d) of the Revised Rules of Professional Conduct of the North Carolina State Bar

2. On 8/6/07 Mr. Mansfield informed me via letter that he was in a Capital Murder trial in Hoke County that he expected to end by the end of August and he would then forward my materials to me.

3. On 9/8/07 I wrote Mr. Mansfield again in regards to said file and requested that he send me a copy of the index of contents to be sure I received everything when he sent it. Due to Mr. Mansfield stating that over the years he has organized my file this should not have posed a problem.

4. I have not received my file from Mr. Mansfield by this day, Nov. 29th 2007

TO: THE GRIEVANCE COMMITTEE
THE NORTH CAROLINA STATE BAR
P.O. BOX 25908
RALEIGH, N.C. 27611
TELEPHONE: (919) 828-4620

2008 AUG 21 A 8:43

ROBESON CO., N.C.

BY SSG

OFFICE USE ONLY
FILE NUMBER

I, the undersigned hereby complain against (Name of Attorney) Carlton M. Mansfield (Address) Mansfield Law Firm, PLLC, 433 North Elm Street (City) Lumberton NC (Zip) 28359 a practicing attorney of Robeson County. I agree to cooperate by furnishing to the representatives of the North Carolina State Bar all pertinent information and records in my possession concerning the alleged misconduct of said attorney. I further agree that if a hearing or inquiry is ordered concerning the alleged misconduct of said attorney, then I will furnish evidence concerning the facts by submitting to deposition or personal attendance at the hearing or inquiry. I hereby indicate that this information is provided and transmitted by me to the North Carolina State Bar for the purpose of investigating the alleged misconduct of the above-named attorney. I understand that I may also need to reveal this information to a privately-retained attorney to pursue private remedies on my behalf. I further understand that the immunity granted by North Carolina General Statute 84-28.2 applies only to those statements made without malice and intended for transmittal only to the North Carolina State Bar.

I also understand that the North Carolina State Bar may reveal this information to the accused attorney for his response to a formal inquiry and to others pursuant only to the Rules and Regulations of the North Carolina State Bar.

Name of Complainant
Mr., Mrs., or Ms. Daniel A. Green
(Please circle correct TITLE and TYPE or PRINT legibly)

Address P.O. Box 280 (N.C. Dept. of Corrections)

City Polkton State N.C. Zip 28135

Home Telephone ( ) N/A

Work Telephone ( ) N/A

Daniel A. Green
Signature of complainant

THIS AFFIDAVIT SHOULD BE NOTARIZED

Sworn and subscribed before me this the 29 day of July, 2008

Edith G. Martin
(Notary Public)

My commission expires 5-31-2009

DESCRIPTION OF YOUR COMPLAINT

NOTE: In the space below, tell us what your complaint is about. Be sure to include all facts that you want the State Bar to consider, including names, dates, and places. Use additional sheets if necessary. Attach copies (not originals) of any papers that support your complaint.

1. On March 22, 2005, a second complaint I filed against Carlton M. Mansfield, Esquire was given the file number 0560139 by the North Carolina State Bar. No response was ever received regarding the first complaint that I filed.

2. On June 28, 2005, I received a letter from Henry Babb, Chair of the North Carolina State Bar Committee, informing me that there was "insufficient evidence" to support my claims that Mr. Mansfield violated the Rules of Professional Conduct and further advising me that my complaint was being dismissed.

3. On June 30, 2005, I wrote the North Carolina State Bar and inquired as to how my complaint could be dismissed without review of the evidence that I have in support of my claims. In fact, on March 4, 2005, I wrote to the North Carolina State Bar and advised that I had in my possession supporting

documentation (approximately 40 letters, or more) regarding the concerns in my complaint but that I had no access to a copier in order to make copies to attach to my complaint. As noted above, the form orders copies to be attached of supporting documents, not originals.

4. On July 20, 2005, I received a letter from Gunn Simeon of the North Carolina State Bar saying "it was not necessary to receive other documents in reviewing this grievance."

5. To date, I have not received a Letter to Complainant acknowledging my grievance, pursuant to B.0213 of the Rules of the North Carolina State Bar (RNCSB) that serves notice to complainants that they can submit information to the Committee to consider.

6. To date, I have not received a Letter to Complainant from an investigating attorney, pursuant to B.0215 ensuring that I had a chance to explain the issues of concern in my complaint.

7. Considering the nature of my complaint, in order for the North Carolina State Bar to rule fairly on the concerns in my complaint would be to subpoena the transcripts from the days where my motion to have Mr. Mansfield removed from was case was heard in Robeson County Superior Court; to issue a subpoena for testimony of Mr. Mansfield; to issue a subpoena for the evidence I have collected to support the claims in my complaint which are 40-plus letters between myself, the Honorable Gregory Weeks, the Honorable Dexter Brooks, Clerk of the Court, JoAnne Lockler (Robeson County), former Chairperson of the Committee on Indigent Appointments, Arnold Locklear, Mr. Mansfield's secretary, the Honorable Judge Floyd, the Honorable Craig B. Ellis, Charlotte, North Carolina attorney Henderson Hill and the Honorable Judge Carter, pursuant to B.0105.

8. An expressed purpose of the North Carolina State Bar, pursuant to A.0101 of the RNCSB, is to, among other things, promote reform in the law and in judicial procedure; to facilitate the administration of justice and to uphold and elevate the standards of honor, integrity and courtesy in the legal profession and to perform all duties imposed by law.

9. I, Daniel Andre Green, respectfully request that the North Carolina State Bar Chairman, pursuant to the Rules of the North Carolina State Bar, B.0105(a)(14), (a)(8) and (a)(2), to rule on my request for reconsideration of the North Carolina State Bar's decision to dismiss my last grievance regarding Carlton Mansfield without being given the opportunity to present evidence to support the claims I made in said complaint; to issue subpoenas for documents, witnesses as well as transcripts that will support the claims in my complaint which will lead to truthful and fair findings of fact and conclusions of law; and, finally, to recommend to the grievance committee that an investigation be conducted in reference to the claims of my complaint.

10. In order to show good cause for my request to be granted, I present to you the following:

Complainant, complaining about the conduct of Carlton M. Mansfield, alleges and says:

1. Carlton M. Mansfield, Esquire is, upon information and belief, an attorney at law licensed to practiced in North Carolina who is subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct, and was at all times referred to herein subject to same rules and regulations.

Upon information and belief, Complainant alleges:

2. During all times relevant to this complaint, except for December 29, 1999 and May 5, 2000, Mr. Mansfield actively engaged in the practice of law in the State of North Carolina, County of Robeson and in the 16th-B Judicial District.

3. On May 16, 2000 the Honorable Gregory Weeks signed an "Order of Assignment of Counsel" appointing Mr. Mansfield to represent Complainant on a Motion for Appropriate Relief (hereinafter "M.A.R."). This Order of Assignment was in response to Complainant's Motion to Compel Defendant's Constitutional Right to Access to the Courts, filed on December 29, 1999 and a Motion Requesting Appointment of Counsel to Assist Defendant in the preparation for a M.A.R. The M.A.R. was integrated into this motion and filed on May 5, 2000.

4. At all times relevant to this complaint, Complainant was indigent as defined by Rule 1.4 of the Indigent Defense Services and D.402 of the Rules of the North Carolina State Bar.

5. At all times relevant to this complaint, Complainant has had no access to a law library and the law books and legal materials Complainant has gleaned on his own have constantly been taken from him by Department of Corrections officials and has subsequently been "lost" or confiscated as contraband by the North Carolina Department of Corrections.

6. Other than a few months worth of correspondence courses from Blackstone Paralegal Study Course, advertised in the back of Ebony magazine, Complainant has neither formal legal training nor expertise regarding legal matters. All efforts to gain knowledge of the law craft by Complainant has been discouraged by North Carolina Department of Corrections' staff through retaliatory action consisting of lost legal work product, lost law books, false imprisonment in segregation, gas therapy (retaliatory transfers) and non-cooperation of North Carolina Department of Corrections' staff in fulfilling their obligation to facilitate inmates' rights, including access to the Courts.

7. Complainant has a 9th grade formal education, a GED and a few semesters of college courses obtained while incarcerated at institutions within the North Carolina Department of Corrections.

8. Mr. Mansfield was aware or became aware of the facts set forth in paragraphs 4-7 and, thus, knew or should have known that Complainant was, and continues to be, in a vulnerable position and was totally dependent on Mr. Mansfield to represent the best interests of Complainant with reasonable diligence and in an ethical manner and to file any issues of merit in the M.A.R.

9. Pursuant to Rule 1.3 of the Revised Rules of Professional Conduct, "a lawyer shall act with reasonable diligence and promptness in representing a client." Exhibit 1 is a chronological account that reveals Mansfield's complete and blatant disregard for Rule 1.3 in representing the interests of Complainant, including the filing of the M.A.R. referred to above. Each document referenced in Exhibit ___ is on record in the Clerk's Office of Robeson County Superior Court. Complainant is unable to obtain copies of the original documents in his possession which are evidence to support his claims in this complaint and, for this reason only, is not able to attach said supporting documents to this complaint. The facts to support these allegations follow:

   (a) Not only did Mr. Mansfield procrastinate in acknowledging his appointment to represent Complainant by not responding to repeated inquiries from Complainant until five (5) months after the Honorable Dexter Brooks told him to contact Complainant, Mr. Mansfield refused to accept responsibility for his negligence and assigned blame to his secretary, both for mailing the letter to the wrong address and for losing the letter he claims was returned to him. Please note that in the 16 years that Complainant has been incarcerated, every letter that went to a prison he was not confined at, has been forwarded to him at the new address.

(b) By refusing to act with reasonable diligence and promptness in representing Complainant, Mr. Mansfield, upon information and belief, knowingly and intentionally allowed my interest to be adversely affected in the following manner:

(1) The passage of time has made it more difficult to find and get affidavits from witnesses. In fact, contrary to Mr. Mansfield's statements to Complainant and the Court in August, 2005, Mr. Mansfield never interviewed witnesses nor had a third-party interview witnesses that would support Complainant's M.A.R.

(2) The passage of time from Mr. Mansfield's appointment to represent the interests of Complainant until the present may have allowed the one year statute of limitations to file a federal habeas corpus to elapse if the time to file was not tolled by the filing of the motion that resulted in Mr. Mansfield being appointed to represent Complainant. In fact, he refused to respond until the time the statute of limitations would have elapsed if the clock was not tolled.

(3) The passage of time has made it possible that crucial evidence has disappeared, or been disposed of, especially footage of the juror, Patricia Locklear, who acted in the dual capacity of a public relations representative for the District Attorney's office and the star state's witness, Larry M. Demery, against Complainant regarding the murder of James Jordan, and whom acted as a media commentator for the news and admitted to the trial court that she was working on a book about Complainant's case. At the same time, she was allowed by the trial court to continue talking with a juror during the trial. A juror who was one of the few who actually voted for Complainant to receive a death sentence.

(4) The passage of time may, in some instances, have an adverse effect on the memories of all witnesses that could possibly be called to testify at a M.A.R. evidentiary hearing.

(5) The passage of time has provided the State with the opportunity to repeatedly steal, under threat of violence, documents that support Complainant's post-conviction efforts; to engage in behavior designed to alienate Complainant from all avenues of emotional and logistical support necessary to bring his M.A.R. to fruition; to repeatedly try to endanger Complainant's life and health and to repeatedly take Complainant's law books in order to leave him ignorant about legal issues pertinent to his post-conviction relief efforts.

(c) Mr. Mansfield did not control his workload so that his appointment to Complainant's case could be handled competently. It was only until five years after Mansfield was appointed to represent the interests in my case -- one month after the North Carolina State Bar dismissed the first complaint filed against Mr. Mansfield by Complainant – that Mr. Mansfield completed review of my case file and reached the conclusion that my M.A.R. was frivolous and could find no issues that had merit in gaining post-conviction relief, again, according to Mr. Mansfield.

(d) In summary, Mr. Mansfield showed no diligence in representing Complainant and passively thwarted Complainant's efforts to receive diligent and prompt attention and representation in this matter.

10. Pursuant to Rule 1.4 – Communication: a lawyer should reasonably consult with the client about the means by which the client's objectives are to be accomplished; keep the client reasonably informed about the status of the matter; promptly comply with reasonable requests for information; and shall

explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

An attorney's obligations under Rule 1.4 are not mere suggestions or guidelines, they are imperatives. Yet, as demonstrated in Complainant's chronological account (Exhibit ___), Mr. Mansfield not only refused to reasonably consult with and keep Complainant informed and to promptly reply to Complainant, but he also refused several judges' orders to do so, as well. Not once or twice, but repeatedly, which indicates either a total disregard for law and the Court's authority, or the knowledge that he could do so because the Court would not hold him responsible. Mr. Mansfield was so cavalier in his attitude about this matter that he joked in open court in August, 2005, that he should switch sides or something to that effect. Meaning he should be working with the prosecutor against the Defendant. This was a hearing scheduled to decide if the court would remove Mansfield from Complainant's case, a request by Complainant that has been constantly ignored. The Court, to Complainant's knowledge, still has not ruled on this matter, over two years later.

11. Pursuant to Rule 3.3 – Candor toward the Tribunal: a lawyer shall not knowingly make a false statement of material fact or law to a tribunal, fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer or offer evidence that the lawyer knows to be false.

In order to deceive the Court about his negligence and deliberate indifference for the best interest of the Complainant and for justice, Mr. Mansfield knowingly made false statements of material fact to the Court in March, 2002 and August 2005 when he stated that:

(a) Mr. Mansfield responded to Complainant's letters requesting confirmation that Mr. Mansfield was appointed to handle my Complainant's case;

(b) Mr. Mansfield's secretary misplaced the letter previously sent to Complainant once it was returned to his office from Central Prison;

(c) Mr. Mansfield sent a letter to Complainant at Central Prison;

(d) Mr. Mansfield interviewed witnesses identified by Complainant that could offer evidence or testimony to support Complainant's M.A.R.;

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(f) Mr. Mansfield visited Complainant twice at Robeson County Detention Center;

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Mansfield also made false statements of law when he stated that Complainant's M.A.R. was frivolous and without merit (see Exhibit ___) and when he stated that Complainant waived the juror misconduct issue involving the juror who had sexually harassed witnesses, had animosity towards them and was a close friend of a person on the district attorney's witness list – knowledge that Complainant's trial attorney possessed, yet concealed from Complainant.

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Indisputably, Mr. Mansfield made false statements of material fact and law to the Court as set forth in paragraph 11 above. It is also Complainant's belief that Mansfield made false statements of material

fact and law to the North Carolina chapter of the ACLU, the North Carolina State Bar and also to the Appellate Defender in connection with Complainant's original complaint filed with the North Carolina State Bar against him in order to defend his reckless disregard for the best interest of Complainant's post-conviction relief efforts and to justify his inaction and the characterization of Complainant's M.A.R. as being frivolous and without merit. Complainant is suggesting that Mr. Mansfield's characterization of the M.A.R. as being frivolous and without merit and his claim that after reviewing Complainant's file, Mr. Mansfield found no errors was the result of his attempt to defend his unethical behavior in relation to Mr. Mansfield's appointment to Complainant's case.

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Mansfield was informed in detail how the District Attorneys who prosecuted the State's case against Complainant violated Rule 3.6(a) and also violated Rule 3.6(a) via a violation of Rule 8.4 in the following manner:

(a) The original District Attorney on the case made constant statements to the media that portrayed the Complainant as the "trigger man" and other statements that irreversibly conditioned the public and jury pool to believe that the Complainant was a career criminal and was guilty of murdering the father of basketball legend, Michael Jordan.

(b) The original district attorney also assisted and induced officers of the Robeson County Sheriff's Department and the Cumberland County Sheriff's Department and others to violate Rule 3.6 and did so through the acts of another.

(c) The trial district attorney, Johnson Britt, also did the same acts set forth in paragraphs (a) and (b) as well as assisted an ex-juror, who was removed from the jury for talking to Mr. Britt's cousin, a local a.m. radio personality, about the trial while she was still on the jury, in giving press conferences during the trial, with Mr. Britt, and on her own, in which she expressed her belief that Complainant was guilty of being the "trigger man" in the death of Mr. James Jordan and that Complainant had led the State's only witness, Larry Demery, linking Complainant to Mr. Jordan's death, into a life of crime. Most remarkable is the fact that at the time this juror made these statements to the media, no evidence had been presented during the trial about Mr. Jordan's death except for the identity of his body, which means that the juror, contrary to her answers

during voir dire, was already biased against Complainant. This juror is also a relative of a Robeson County Sheriff's Department deputy and lied about this as well. This juror gave these statements in press conferences held in the District Attorney's office, among other places, and also sat directly behind the District Attorney immediately after and, for some time, during the trial. She also sat beside the investigator who represented Robeson County Sheriff's Department during the trial and who was the District Attorney's advisor during the whole trial. All of these allegations are clearly in violation of Rule 3.6 and Rule 8.4(a) and (d).

The trial District Attorney, Johnson Britt, also misrepresented the facts of the verdict by constantly telling the media and the public that Complainant was convicted if being the "trigger man" even though the jury, the fact-finders in the guilt/innocence phase of the trial, specifically found that Complainant ". . . did not kill nor intended to kill their victim."

These are a few examples, out of many, that show the injustice that was served in Complainant's trial and eventual conviction for the murder of Mr. James Jordan, which Complainant has maintained his innocence regarding Mr. Jordan's murder. Mr. Mansfield was made aware of this information both verbally and in writing by Complainant. Mr. Mansfield admitted to Complainant that he was extremely familiar with the case because his mother sent him articles during the trial and by his own following of the trial. Yet, more violations of Rule 8.3(a) should be glaringly obvious to the North Carolina State Bar upon investigation of this complaint.

15. Mr. Mansfield's violations of Rule 8.4 misconduct (a), (b), (c), (d) are apparent in paragraphs 1-14 set out in this claim and demonstrate that Mr. Mansfield violated Rule 8.4(g) intentionally which prejudiced and/or damaged his client during the course of the professional relationship. Complainant has no choice but to believe that Mr. Mansfield sold him out for ulterior motives due to the controversial nature of the case, because Complainant is the subject of popular disapproval; due to powerful people having a vested interest in the truth being hidden about how Mr. James Jordan died and who the party is that actually killed Mr. Jordan.

From the beginning, the media and the authorities have been focused on portraying Mr. Jordan as a victim of black-on-black violence. The ramifications of this misrepresentation of the truth effect not just the Complainant but also conditions the public, Black, White, Native American and Latino, to believe that young black men are the personification of crime and senseless violence.

Mr. Mansfield's actions have delayed justice for seven years and has made a mockery of the North Carolina State Bar, the Court he is an officer of, and of the State of North Carolina whose motto is "to be rather than to seem." Mr. Mansfield would have the North Carolina State Bar to believe that what "seemed" like ethical behavior on his part was carried out but in fact his behavior was the exact opposite in this instance.

Complainant respectfully suggests that Mr. Mansfield's conduct is aggravated by the following factors:

(a) dishonest or selfish motives;

(b) a pattern of misconduct;

(c) multiple offenses;

(d) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency;

(e) refusal to acknowledge wrongful nature of conduct before the Robeson County Superior Court on two hearings on these matters, and to the North Carolina State Bar when this matter was originally investigated;

(f) submission of false evidence, false statements or other deceptive practices during the disciplinary process;

(g) vulnerability of the victim, Daniel A. Green; and

(h) substantial experience in the practice of law.

Complainant respectfully suggests that Mr. Mansfield's conduct is possibly mitigated by the following factors:

(a) good reputation;

(b) pressure exerted upon him by third parties to sell Complainant out in order to further his career and cover his own tracks;

(c) the effect of libelous and slanderous information about Complainant that he has received from other attorneys and officials involved in this case that distorted his perception of Complainant in order to condition him to follow the status quo in this case and to allow him to justify to himself that Complainant deserves to be sold out.

(d) Mr. Mansfield's actions and inaction is in line with the corrupt culture of a county that has seen its first Native American judge, Julian Pierce, assassinated; that has seen its Sheriff's Department imploded by the conviction of the Sheriff and numerous deputies on federal charges for alleged criminal actions including, but not limited to, drug dealing, arson and kidnappings, to name a few, that Sheriff Glenn Maynor inherited from his predecessor; a county that has been attacked by the cancerous influence of poverty created by the loss of hundreds of factory and mill jobs due to the passing of NAFTA and the divide and conquer tactics that have pitted the people of Robeson County against each other in order for a few to profit and prosper at the expense of the many. In this environment, in a case such as the one Complainant has, it would be difficult for any young attorney to risk incurring the wrath of his peers by aggressively advocating on behalf of a person he does not know and does not have to face.

The victim in Complainant's wrongful conviction, James Jordan, was the father of Michael Jordan. Michael Jordan is not only one of the most recognizable celebrities in the world today, but he is also one of the most lucrative marketing icons in the history of our country. If, as Complainant has asserted from the beginning, James Jordan was not the victim of black-on-black violence, but was, in fact, killed by a young man viewed as being white and portrayed by the State as being a confused misled youth under Complainant's influence, that would raise serious racial questions that the State of North Carolina turns a blind eye to thereby making it seem as if these types of issues do not exist. To say that a white youth with an extensive history of robbery and assault was under the influence of a black youth who has no history of criminal acts for pecuniary gain, other than those committed with said white youth, is patently racist. Larry Demery's reward for his false testimony against Complainant is he will serve less time for his murdering of James Jordan as if he had never committed this crime and had simply been convicted of the crimes he committed before he and Complainant became reacquainted during the Summer of 1993. Due to his testimony and cooperation with the State, Mr. Demery will not have to serve one day for the 240 years worth of violent crimes he not only committed, but also

initiated. The State refused to give Mr. Demery a polygraph test, yet it gave polygraph tests to two State employees who were also witnesses. Why? It is simple. District Attorney Johnson Britt knew Mr. Demery was lying to win the State's approval and to avoid the consequences of his actions.

Most importantly, Michael Jordan is the most famous alumni of the University of North Carolina. The School of Government for North Carolina is at UNC-Chapel Hill and it creates policy and coordinates government functions at every level. As state employees have pointed out to Complainant numerous times, Complainant cannot expect an impartial consideration of his case – not during the investigation, not during the trial and not during post-conviction relief efforts. Mr. Mansfield's blatant disregard for the laws of North Carolina and the principles that are supposed to give the justice system legitimacy has resulted in significant harm and prejudice to the justice system, yet, his actions were not innovated by himself but they reflect the way the justice system has historically treated minorities and poor people of all races in this society. In an adversarial system that promotes winning at all cost be being an indication of one's skill and prowess, truth in justice is an afterthought and, it is Complainant's personal belief that Mr. Mansfield chose the path of least resistance in Complainant's case to position himself to better represent other clients he has developed a relationship with and who do not come with the baggage this case brings.

Based upon the foregoing, Complainant requests the following:

1. A thorough and complete investigation of Carlton M. Mansfield's behavior and the reasons thereof;

2. A determination concerning any influence any third parties may have had on Mr. Mansfield's behavior, whether by deceiving him, manipulating him or by offering him anything of value, whether pecuniary, politically or personally;

3. Any disciplinary actions that will insure that Mr. Mansfield nor any other attorney in Robeson County or the State of North Carolina deny any defendant of the representation necessary to receive the same justice that criminal defendants with unlimited resources, such as the Duke Lacrosse team, receives;

4. That an emphasis be placed on the North Carolina State Bar to seek the truth in this matter by any available means, including polygraph tests, instead of retributive justice that will only result in the punishment of Mr. Mansfield instead of focusing on changing the system. South Africa's example in valuing truth and change over punishment in dealing with apartheid criminals is ideal.

5. That the North Carolina State Bar recommends attorneys who have the ethical fortitude to represent Complainant in the M.A.R. that Mr. Mansfield was appointed to represent Complainant in and the amended M.A.R. by Complainant.

Further,

1. On July 11, 2007, Complainant wrote to Mr. Mansfield requesting all of the case files in his possession regarding Complainant's case pursuant to Rule 1.16(d) of the Revised Rules of Professional Conduct of the North Carolina State Bar.

2. On August 6, 2007, Mr. Mansfield informed Complainant, via correspondence, that he was involved in a capital murder trial in Hoke County that he expected to end by the end of August, 2007, and that he would then forward Complainant's case materials to him.

3. On September 8, 2007, Complainant wrote Mr. Mansfield a letter in regards to said file materials and requested that he send Complainant a copy of a file index to be sure Complainant received everything when Mr. Mansfield sent the materials. Due to Mr. Mansfield stating that over the years he had organized the file contents, this should not pose any problems.

4. To date, Complainant has not received the promised file materials from Mr. Mansfield.

Based upon the foregoing, Complainant further requests that the North Carolina State Bar contact Mr. Mansfield and order him to turn over Complainant's complete file forthwith, including copies of all correspondence received or generated by Mr. Mansfield on behalf of Complainant during his appointment as counsel for Complainant.

Further Affiant says not.

This the 29th day of July, 2008.

/s/ Daniel Green

Daniel A. Green
P.O. Box 280
Polkton, N.C. 28135

STATEMENT OF REASONS WHY WRIT SHOULD ISSUE

As U.S. Supreme Court Justice Hugo L. Black, stated in Polizzi v. Cowles Magazines Inc. 345 U.S. 663 (1953). "To delay justice may be to deny justice".

N.C. General Statutes gives indigent people the right to counsel if they have been sentenced to a term of imprisonment. N.C. General Statutes 7A-451(a)(3) and 15A-1420(b1)(2) extends this statutory right to encompass postconviction proceedings.

If this Court finds that poor people have the right to lawyers in this type of situation then the question of "what kind of lawyer" is one that is no longer necessary because our State and Federal Courts have already supplied the answer: the same kind of lawyer anyone else should get — the same kind that rich students get, the same kind anyone wants — A lawyer whose obligation is to simply do what a client can't do for themselves in the case and to do it ethically and with Due Diligence.

Over 8 years ago on May 16, 2000 the Honorable Gregory Weeks assigned Carlton Mansfield to represent Defendant on a M.A.R.

As is painstakingly detailed in the attached List of Supporting Evidence, Defendant wrote dozens of letters to Robeson County Court officials, including 5 judges, and to Mr. Mansfield in an effort to get Mr. Mansfield to fulfill his obligations. In response, Mr. Mansfield blamed his refusal or negligence to assist Defendant on the D.A. stacking his Calendar, the Court for appointing him too many clients and even on his secretary for losing his mail.

After enduring 5 years of Mr. Mansfields procrastination, deceit, and delays Defendant was forced to file a complaint with the N.C. State Bar and another Motion to remove him from his case. Mr. Mansfield then claimed that Defendants post-conviction efforts were without merit and frivolous. In effect Mansfield actions fit the description that a Master Teacher gave about the experts of the law who not only took away the key to knowledge of the law but whom also refused to enter the Courts of law on behalf of the people and then hindered them from entering the Courts themselves.

The Amended M.A.R. attached to this Petition belies Mr. Mansfields contention that Defendants original motion was without merit and is frivolous. Although this Amended M.A.R. drafted by a Defendant with no formal training in these types of matters and no resources - but with the help of supportive family, friends, inmates and prison staff - although it's far from the standards of a lawyer, it can not be said to be frivolous or without merit.

If Defendant could glean these issues, why couldn't Mr. Mansfield? Why was he so comfortable and cavelier about ignoring several Judges orders in regards to his duties to the Defendant?

Mr. Mansfields actions and inaction has prejudiced and damaged Defendants post-conviction relief efforts, and have eroded and undermined the cause of justice.

For the above reasons Defendants begs this Court to issue its Writ of Mandamus and stop this delay of justice. This the 7th Day of September

(in) [signature]

FROM LANESBORO

LIST OF SUPPORTING EVIDENCE

12/29/1999 – Defendant filed a Motion to Compel Defendant's Constitutional Right of Access to the Courts, detailing the State's denial of and direct prevention of Defendant preparing a Motion for Appropriate Relief, in Robeson County Superior Court.

05/05/2000 – Defendant filed Motion Requesting Appointment of Counsel to assist Defendant in the preparation of a Motion for Appropriate Relief in Robeson County Superior Court.

06/11/2000 – Defendant wrote Robeson County Clerk of Court to confirm Motion Requesting Appointment of Counsel was received after receiving no response from the Court prior to this request.

06/30/2000 – Defendant received a response from the Robeson County Clerk of Court and an "Order of Assignment of Counsel" signed by the Honorable Gregory Weeks appointing Carlton M. Mansfield to represent Defendant on a Motion for Appropriate Relief signed on May 16, 2000.

06/30/2000 – Defendant had not been contacted by Mr. Mansfield thereby causing Defendant to write a letter to the Clerk of the Court to request Mr. Mansfield's address and to confirm that Mr. Mansfield was indeed appointed to represent him on a Motion for Appropriate Relief.

07/05/2000 – Deputy Clerk of Court informs Defendant, via letter, that Mr. Mansfield was appointed to handle Defendant's case, however, Defendant still had not been contacted by Mr. Mansfield up until this date.

July and August 2000 – Defendant wrote to Mr. Mansfield on two occasions regarding Mr. Mansfield's representation of Defendant and, simple contact from the attorney to the client to acknowledge his representation of Defendant. To this date, still not contact had been made by Mr. Mansfield.

08/18/2000 – Defendant writes to the Honorable Gregory Weeks about not being contacted by Mr. Mansfield as of yet, concern about the statute of limitations to file a habeas corpus and requesting new counsel to represent Defendant's interests if Mr. Mansfield is too busy to handle Defendant's case.

09/10/2000 – Defendant writes to Clerk of the Court, JoAnne Locklear, asking if the Motion for Appropriate Relief had been placed on the calendar yet and noting there still has been no contact from Mr. Mansfield to Defendant regarding Defendant's case.

09/18/2000 – Defendant receives letter from the Honorable Dexter Brooks in response to Mr. Mansfield not responding to Defendant's correspondence. Judge Brooks informs Defendant that Mr. Mansfield was instructed to contact Defendant.

10/30/2000 – Defendant sends another letter to Mr. Mansfield.

11/18/2000 – Defendant receives letter from Anita Rivken Carothers, Esquire stating ". . . counsel who does not respond . . . not customary attorney-client relationship."

01/28/2001 – Defendant receives letter from Arnold Locklear, Chairperson of the Committee on Indigent Appointments, regarding filing concerns of Defendant about Mr. Mansfield for the Committee's review. Defendant never received response from Committee regarding same.

Exhibit 1

02/10/2001 – Defendant, finally some nine months later, receives response from Mr. Mansfield claiming he sent letter to Defendant at Central Prison and that it was returned then misplaced by Mr. Mansfield's secretary without his knowledge. Defendant has personal belief that this untrue especially since every letter Defendant sent to Mr. Mansfield had Defendant's current address at the time the letters were sent to Mr. Mansfield – never the Central Prison address.

01/07/2002 – Defendant sends letter to Clerk of Court requesting Mr. Mansfield be replaced as counsel to represent Defendant, to treat letter as informal motion and schedule hearing as soon as possible.

01/17/2002 – Defendant receives letter from Judge Brooks in response to request to replace Mr. Mansfield.

02/28/02 – Defendant sends correspondence to Clerk of Court requesting, once again, that Mr. Mansfield be replaced as counsel, noting that Judge Floyd responded to request and advised that Mr. Mansfield was instructed to contact me. Judge Brooks sent two letters during this time period advising that he made the same request of Mr. Mansfield. Defendant proceeds to express concern of the passage of time injuring Defendant's case and Defendant being concerned that the no contact is being done intentionally to cover up and/or destroy evidence that would assist Defendant positively. Defendant requests a hearing to be scheduled as soon as possible. (Clerk notes copies of letter given to Judge Floyd, the district attorney and Mr. Mansfield.)

03/11/2002 – Defendant transported to Court and at hearing Mr. Mansfield claims the district attorney has "stacked" his calendar and this is the reason why he has not had time to review Defendant's case. Mr. Mansfield also informs the Court that his secretary lost the letters from Defendant to Mr. Mansfield, among other items. This is the first time that Defendant and Mr. Mansfield meet and discuss issues.

06/08/2002 – Defendant sends letter to Mr. Mansfield regarding issues in case, conflict of counsel, jury misconduct, ineffective assistance of counsel, Giglio issue, etc.

07/20/02 – Defendant receives letter from Mr. Mansfield advising he was "plodding along" regarding Defendant's Motion for Appropriate Relief.

12/15/02 – Defendant sends letter to Mr. Mansfield emphasizing dissatisfaction with the time that has passed since he was appointed as counsel and still no results or timely responses from him.

01/01/2003 – Defendant sends letter to Mr. Mansfield regarding Woody's opening argument in trial being in conflict with case since Defendant signed a document admitting that Defendant helped Larry Demery dispose of the body and speaking of the incident where Defendant stopped Mr. Demery from robbing and killing Grant Locklear and family at 56's ranch beside Converse water tower.
56's ranch - owned by Grant Locklears family

09/25/2003 – Defendant writes letter to Judge Weeks regarding scheduling a hearing on the Motion for Appropriate Relief and comments that prior convictions should be wiped from Defendant's record (Robert Ellis incident).

10/14/2003 – Defendant receives response from Judge Weeks stating, in contradiction, what was said in open court at the hearing on the Motion for Appropriate Relief to vacate 1991 conviction, stating that vacation of judgment does not mean it is removed from my record.

11/20/2003 – Defendant sends letter to Robeson County Clerk inquiring as to the status of the Motion for Appropriate Relief being scheduled to be heard.

02/23/2004 – Defendant receives response from the Honorable Craig B. Ellis regarding Motion for Replacement of Counsel with newly appointed counsel. Judge Ellis states he instructed Mansfield to contact Defendant and also for the district attorney to set a date for the hearing.

06/03/2004 – Defendant sends letter to Clerk of Court requesting a hearing be scheduled regarding the motion to replace Mr. Mansfield as counsel on Defendant's case and detailing his lack of activity regarding Defendant's case. Defendant made note that since being appointed as his counsel in May of 2000, Defendant has only seen Mr. Mansfield once.

06/23/2004 – Defendant receives letter from Henderson Hill advising that he had spoken with Mr. Mansfield regarding Defendant's Motion for Appropriate Relief.
6/28/2004 - Floyd directing Mansfield to respond to me and file a copy with the court.
09/03/2004 – Defendant sends letter to Arnold Locklear regarding the failure of the Robeson County Court system to safeguard constitutional rights in regard to Defendant's situation with Mr. Mansfield and his non-response to Defendant's legitimate concerns as well as the conflict between the court, district attorney and Mr. Mansfield affecting Defendant's interests. File complaint to Committee of Indigent Appointments.

09/16/2004 – Defendant receives response from Arnold Locklear regarding Defendant's complaint and advising that Judge Carter was now the Chairperson of the committee and that he referred Defendant's letter to him.

10/07/2004 – Defendant sends letter to Judge Carter after receiving no acknowledgment from him regarding receipt of Defendant's complaint.

10/26/2004 – Defendant receives response from Judge Carter advising that he had no authority or jurisdiction over the matter and the complaint being referred to Judge Robert Floyd and Mr. Mansfield.

11/04/2004 – Defendant sends letter to Judge Weeks regarding the Court playing games with Defendant's case.

11/10/2004 – Defendant receives copy of letter Judge Weeks sent to Mr. Mansfield inquiring about the status of Defendant's motion for new counsel, copy of same sent to Judge Floyd.

11/29/2004 – Defendant receives copy of letter from Judge Floyd to Mr. Mansfield instructing him to contact Defendant.

01/13/2005 – Defendant sends complaint regarding Mr. Mansfield to Caroline Bakewell at the North Carolina State Bar.

02/03/2005, 02/08/2005 and 02/24/2005 – Defendant receives letters from ACLU regarding request for assistance with matter with Mr. Mansfield.

03/04/2005 – Defendant sends letter to North Carolina State Bar inquiring about status of Complaint and reminding them that supporting documents (all the above letters) are in my possession but I have no way to obtain copies.

03/10/2005 – Defendant receives response from Caroline Bakewell of the North Carolina State Bar saying Defendant's original complaint was never received and asking if Defendant has documents or witnesses to support the claims in my complaint.

- 03/22/2005 – Defendant sends copy of second complaint to the North Carolina State Bar regarding Mr. Mansfield (File No. 0560139).

03/24/2005 – Defendant receives response from the North Carolina ACLU regarding Defendants request for assistance with complaint against Mr. Mansfield.

04/21/2005 – Defendant sends request for assistance to mailroom inquiring if Defendant's legal mail to the North Carolina State Bar was mailed out.

05/23/2005 – Defendant receives letter from Shelagh Kenney, of the ACLU, regarding Defendant's request for assistance.

06/28/2005 – Defendant receives letter from Henry Babb, the Chair of the North Carolina State Bar Grievance Committee advising there was "insufficient evidence" to support Defendant's claims against Mr. Mansfield regarding violation of the Rules of Professional Conduct.

06/30/2005 – Defendant sends letter to the North Carolina State Bar asking how could the complaint be dismissed without review of the evidence to support the claims in the complaint.

07/20/2005 – Defendant receives letter from Gunn Simeon of the North Carolina State Bar advising "it was not necessary to receive other documents in reviewing this grievance." How can this be????

07/21/2005 – Defendant receives letter from Mr. Mansfield withdrawing from Defendant's case and calling the Motion for Appropriate Relief frivolous.

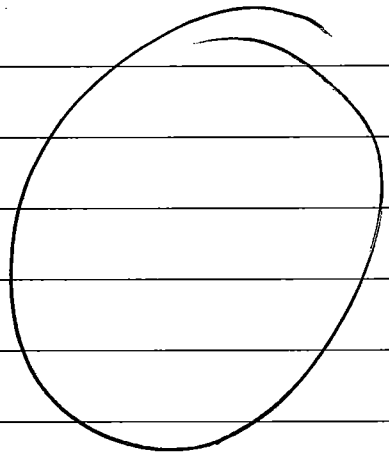
07/21/2005 – Defendant sends copy of Writ of Mandamus to Johnson Britt.

08/03/2005 – Defendant sends letter to North Carolina Court of Appeals inquiring about the status of the Writ of Mandamus. (It was later discovered that Angela never mailed it.)

08/05/2005 – Defendant receives letter from Shelagh Kenney of the ACLU advising that the ACLU contacted Mr. Mansfield.

August, 2005 – Defendant writes letter to Malcolm Hunter, an appellate defender, regarding letter from Mr. Mansfield, written on the same day District Attorney Johnson Britt received copy of Defendant's Writ of Mandamus, characterizing Defendant's Motion for Appropriate Relief as frivolous and without merit. No response was ever received. Defendant returns to Court and Judge Floyd states that he will render a decision regarding this issue "in a couple of months." Defendant was not allowed to bring anything documents or supporting evidence to Court in order to support his claims. Once again, being denied the chance to prove the allegations being made in regarding Defendant's various issues and concerns.

- 02/01/2006 – Defendant receives letter from Mr. Mansfield justifying his actions and stating that the transcript is 19,000 pages and once he arranged it in order, he found no possible errors.



Mansfield Law Firm PLLC

CARLTON M. MANSFIELD *Attorney*

Organizations & Affiliations

American Bar Association
Association of Trial Lawyers of America
First Presbyterian Church of Lumberton
(Diaconate, Class of 2007)
Honorable Order of Kentucky Colonels
Mill Prong Preservation, Inc.
(Board of Directors)
National Association of Criminal Defense Lawyers
North Carolina Academy of Trial Lawyers
North Carolina Bar Association
North Carolina State Bar
Robeson County Bar Association
(Secretary of Criminal Defense Section, May 1997 - September 1998)
(President of Criminal Defense Section, September 1998 - 2003)
Robeson County Community Corrections Board
(Board of Directors, January 1998 - present)
16-B District Bar
UNC Educational Foundation, Inc.
UNC General Alumni Association

Activities

Judge, ABA Southeast Regional Client Counseling Competition
sponsored by American Bar Association, Young Lawyers Division
Chapel Hill, North Carolina, 1995
Judge, NCATL High School Moot Court Competition
sponsored by North Carolina Academy of Trial Lawyers
Durham, North Carolina, 1995
Judge, James Braxton Craven Moot Court Competition
sponsored by Holderness Moot Court, UNC Law School
Chapel Hill, North Carolina, 1995

Former Associations

Carolina Indian Circle, 1986-89, 1991-96
(Community Advisor, 1994-95 and 1995-96 academic years)
Daniel H. Pollitt Criminal Defense Bar, 1992-96
(Founding Member; Treasurer, October 1992 - May 1996)
15-B District Bar, 1994-96
Orange Chatham Alternative Sentencing, Inc., 1995-96
(Board of Directors, November 1995 - May 1996)
(Secretary, January 1996 - May 1996)
Orange County Bar Association, 1994-96
Orange County Dispute Settlement Center, 1995-96
(Board of Directors, June 1995 - May 1996)
(Secretary, January 1996 - May 1996)
Pembroke Kiwanis Club
(President, October 2000 - September 2001)

Mansfield Law Firm PLLC

CARLTON M. MANSFIELD *Attorney*

Education

University of North Carolina at Chapel Hill
School of Law
JD, May 1994
Honors and Activities:

- 1993-94 Holderness Moot Court Bench
- Native American Law Students Association (President, 1992-94)
- William A. and Mildred M. Johnson Scholarship Recipient
- 1992 IOLTA Public Service Internship Grant Recipient

Undergraduate Education

University of North Carolina at Chapel Hill
College of Arts and Sciences
BA in Political Science, August 1990
Honors and Activities:

- Carolina Indian Circle (President, 1988-89)
- Dean's List
- Student Representative, Faculty Committee on the Status of Minorities and the Disadvantaged

Bio | Legal Experience | Bar Admissions | Organizations & Affiliations

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(Vice President, October 1999 - September 2000)
(Secretary, October 1998 - September 1999)
Robeson County Dispute Resolution Center
(Board of Directors, April 1997 - July 1998)
(Treasurer, January 1998 - July 1998)
Robeson Historical Drama Association ("Strike at the Wind")
(Board of Directors, 1997 - 2004)
Triangle Macintosh Users Group, 1994-96
Triangle Native American Society, 1994-96

Bio | Legal Experience | Bar Admissions | Education

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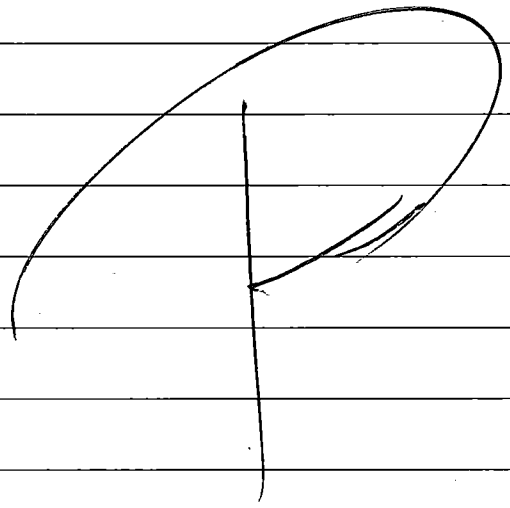

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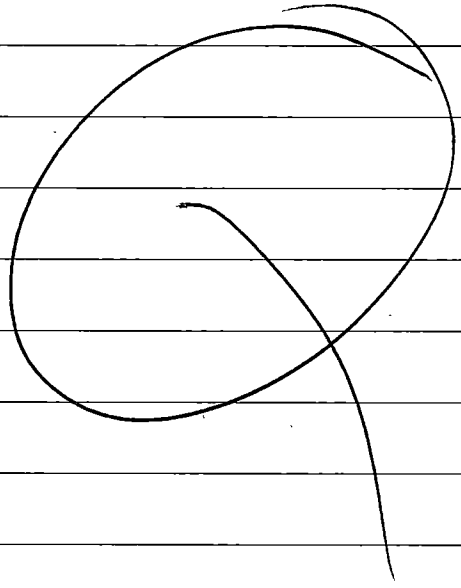

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION
COUNTY OF ROBESON	FILE NO. 93-CRS-15291, 2, 3

STATE OF NORTH CAROLINA, vs. DANIEL ANDRE GREEN, Defendant.	TRANSCRIPT OF THE MOTION HEARING VOLUME 1 OF 1

The above-captioned case coming on for hearing at the August 9, 2005 Criminal Session of the Superior Court of Robeson County, Lumberton, North Carolina, before the Honorable Robert F. Floyd, Jr., Senior Resident Judge presiding, and the following proceedings were heard, to wit:

APPEARANCES

For the State:
L. Johnson Britt, Esquire
District Attorney for Robeson County
Robeson County Courthouse
Lumberton, North Carolina 28359
(910) 671-3300

For the Defendant:
Carlton M. Mansfield, Esquire
205 E. Fourth Street
Lumberton, North Carolina 28358
(910) 618-1665

Tuesday, August 9, 2005

Reported by:
James A. Palmer, CVR

FORM/CSR-LASER REPORTERS PAPER & MFG. CO. 800-626-6313

EXHIBIT 16

2005 Transcript of Motion Hearing, State v. Green, 93 CRS 15291-93

PROCEEDINGS 9:44 a.m.

MR. MANSFIELD: Judge, this is lines 48 and 49 on the calendar, the State vs. Daniel Andre Green. We are here today, Judge, on my motion to withdraw as counsel of record which you should have in the file.

THE COURT: Dated July 21, 2005?

MR. MANSFIELD: Yes, sir.

THE COURT: Yes, sir.

MR. MANSFIELD: It's one of those situations, Judge, where I don't believe I can state on the record the grounds, but would indicate to the Court that I have talked with the ethics advisors, attorneys at the North Carolina State Bar, with regard to what I perceive as a conflict of interest. I've also talked with Mr. Staples Hughes who is the Appellate Defender for the State of North Carolina. And based on the factual situation as it lies, I have been advised by both the State Bar and the Appellate Defender's Office that I need to withdraw from this case.

I've sent a copy of the motion in a letter to Mr. Green summarizing with him my reasons for requesting a withdrawal.

THE COURT: There have been numerous-- looking at the file, there have been numerous requests in regards to counsel for Mr. Green apparently on the MAR that has been pending now for close to five years.

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MR. MANSFIELD: Yes, sir.

THE COURT: It appears, apparently, from his letters there are approximately 8,000 pages of transcript of trial.

MR. MANSFIELD: I think it's closer to 12.

THE COURT: Twelve-thousand.

Mr. Green, you are present and you have heard that Mr. Mansfield is now moving to withdraw as counsel from your case. The Court realizes this matter has been pending now, apparently, for approximately five years. There are approximately 12,000--based upon Mr. Mansfield's representation--pages of transcript. You say it exceeds 8,000, I believe, in one of your letters. And Mr. Mansfield is moving now because of ethical considerations to withdraw, understanding that there will be, probably, a substantial delay in new counsel's preparation or preparing for a hearing on the motion for appropriate relief.

Is there a motion for appropriate relief that has been filed?

MR. MANSFIELD: Yes, sir, there was a pro se motion filed.

THE COURT: All right. Well, counsel's determination whether they are going to adopt that motion in its entirety or ask to amend the motion or, at the very least, prepare for a hearing on the motion, it would be some

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substantial delay.

What is your position on Mr. Mansfield's motion to withdraw as counsel? If you would stand, please?

THE DEFENDANT: Yes, sir. Excuse me, what is your name?

THE COURT: Sir?

THE DEFENDANT: What is your name? Your name.

THE COURT: Robert Floyd.

THE DEFENDANT: Robert Floyd. So, you are who I've written. I've written you.

THE COURT: Several times.

THE DEFENDANT: And last year I filed a motion by letter to you to have Mr. Mansfield taken off the case or to have an assistant appointed to him because on the one time I saw him, he had indicated that it was because of the large amount, he was saying, of transcript that it was hard for him to work on the case as far as, like, get to the case I have. And my problem was, well, you know, how long was I--am I supposed to wait because from my understanding from what other lawyers told me, they said that was improper for it to be taking that long.

And there was also a problem with--depending on the case--some sort of documents I was supposed to be bringing with me to court. But they wouldn't allow me to bring anything from the prison. They said that on the writ it said

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This was it probably 2005

7/28/08

that we weren't allowed to bring any property. But I filed that motion and I also filed a writ of man--of mandamus to the Court of Appeals. I sent Mr. Britt a copy of it. And I filed this motion--

MR. BRITT: I see this copy in the file. It may be that I have the original of it. This was received in our office July the 28th and it's dated July the 21st. I showed it to Mr. Mansfield. It may, in fact, be the original.

THE DEFENDANT: I filed that prior to Mr. Mansfield filing his motion. My only problem is they characterized this motion, or, I guess, he characterized my issues in the case as far, you know what I'm saying, they was frivolous. He said he had investigated it. And according to the witness--I spoke to one of the witnesses last night. They told me that Mr. Mansfield, he had never spoken to them. And one of the things that was at issue was one of the jurors had sexually harassed one of my alibi witnesses. And this was brought to Mr. Angus Thompson's attention. And I don't know about--I'm not exactly certain if it was brought to Mr. Woodberry Bowen's attention.

But they filed an affidavit to that effect immediately to your court. Judge Weeks took it and said he put it in a sealed record. But that hasn't been investigated at all. I mean, I would like you to ask Mr. Mansfield to the

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extent that he has investigated these issues because my feeling when I was writing y'all, that I had to go through, I think it was three other judges. My thing with Mr. Mansfield was that I wasn't hearing anything at all from him.

And I know he had indicated one time he wasn't getting some of my mail. And so, I didn't know if these guys were getting my mail or not because I've had problems with my mail going out of the prison. So, this here was filed on the 28th, but it is dated on the 21st. So, that's six days difference. And there is no way it should have taken my mail six days to get out of the prison.

So, I couldn't judge whether this guy is not doing his mail do to the fact that it's taking so long. I made an attempt to contact him, and then, you know, y'all got back to him to contact me. And that's been over five years, you know. How long was I supposed to wait?

And then like I say, there are also several other issues. And I have cases stated, four circuit cases that support my position, you know. So, for him to characterize it as being frivolous, to my understanding, makes no sense. And also saying after investigating, I don't know what investigation he had did other than read some transcripts. I don't know how long he should have to read the whole transcript.

But, when I filed this writ, I said, well, you

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know, if nothing else, the Court will allow me access to legal--to law books and allow me access to the internet or something where I can pull these cases off directly. I filed most of my stuff because it's hard going through these lawyers to it gets to the point that I had reason--so I had one case that was overturned here in Robeson County--that was one of the issues that I went to trial because--

(Construction noise outside and emergency equipment sirens going by the courthouse)

THE REPORTER: Your Honor, with this noise outside, I'm having a real hard time understanding--

THE COURT: All right. Just speak up, sir, and slow down.

THE DEFENDANT: All right. Then this issue with Mr. Mansfield, it's almost to a point now that I need to file it myself. Except I understand that would hurt my chances. But, you know, I don't understand what the situation is, why he keep, you know what I'm saying, it's a problem, why it seems like it's intentional. So he won't communicate with me and, also, why this stuff keeps happening over and over again. I think I went to all the avenues I can to the point that I feel like I'm--I've been to the point of almost nagging y'all. I don't want to do that. I'm not trying to, you know what I'm saying, where I get y'all to have no power to get y'all to give me assistance.

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THE COURT: All right. Let me stop you here. Back to the original question was--and we'll address those issues as best we can if you will remain standing, please--but, as to Mr. Mansfield's motion to withdraw. The central issue before me here today is are you opposed to his motion to withdraw or are you in agreement with his withdrawal from your representation?

THE DEFENDANT: My agreement that he has to withdraw?

THE COURT: That he be allowed to withdraw as your attorney.

THE DEFENDANT: Yes, sir. If he doesn't want to be my attorney, I definitely, you know, I don't feel he should be my attorney.

THE COURT: All right.

Mr. Britt, do you have a position?

MR. BRITT: No, sir.

THE COURT: All right. Now the issue is--apparently you have brought up there have been some discussions between you and Mr. Mansfield as to the merits of your case. I don't know where that's part of the basis for the withdrawal. That would be some basis for the withdrawal that you brought up, the fact that you have discussed with Mr. Mansfield, and his opinion was, as I understood your argument just a moment ago, your statement was that your MAR

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was frivolous.

THE DEFENDANT: No, sir, I haven't discussed this with him.

THE COURT: You have not discussed it.

THE DEFENDANT: Since he wrote me this letter that he was speaking of.

THE COURT: Okay.

THE DEFENDANT: In the letter he said he was withdrawing from the case because it was frivolous. He didn't make any mention of the MAR. He said he was withdrawing because it was frivolous and it was meritless. And my contention, frankly, that his characterization of my case as being frivolous is due to the complaint I filed with the North Carolina State Bar earlier this year.

THE COURT: All right.

I'm going to ask Mr. Mansfield if he will approach the bench and let me make some inquiry because it may affect how I proceed.

(Bench conference off the record)

THE COURT: I think Mr. Green has brought before the Court, apparently, the issues, at least to some extent without going into our discussions here at the bench. But there has been some representation in the court that Mr. Mansfield has written Mr. Green and indicated that the case is frivolous. That would be a grounds to create some

Here!

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conflict. I can understand that. Apparently there have been discussions by Mr. Mansfield with the State Bar.

Mr. Green, based upon what has been represented to me here in open court--and let me just go on the record.

Mr. Mansfield, have you made investigation into the issues presented in Mr. Green's motion for appropriate relief?

MR. MANSFIELD: Judge, I have done investigation. I have read the entire trial transcript, pretrial motions. You will recall the trial was months long. And I think the transcript is somewhere in the neighborhood of 12,000 pages. I copied the entire court file which--I don't know if the court file is here, if it is. I have talked to witnesses. And primarily the issues raised were legal issues, and I have researched those legal issues. There are a few factual issues. And I have put in a considerable amount of my time involved in this case to investigate and to determine whether or not the motions should be carried forward for hearing.

THE COURT: And if you are required to participate in the hearing, are you prepared to go forward? After review of the case, have you made adequate review of the facts, the file and the evidence and issues presented by the motion and researched the same to go forward in the representation of Mr. Green?

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MR. MANSFIELD: If I was to go forward, Judge, there would be no evidence presented if I was the attorney prosecuting the motion. I believe that I would be ethically prohibited from presenting evidence.

THE COURT: All right.

Mr. Green, there seems to be a position you brought notice to the Court of in regards to your discussions with your counsel about the fact of his opinion of your motion, the merits of the motion, which leaves the Court--and apparently he, based upon his representation, made a full investigation into the facts primarily being presented based upon his representation being legal issues. I have not reviewed the motion here today. But based on the representations before me, it would leave me with two options. If I remove Mr. Mansfield as counsel, based upon what has been represented in open court, I think the only option left would be--practical option--is that you would represent yourself on your motion. You've had counsel appointed to make a full investigation into the facts, law and issues presented in your motion. Counsel has reviewed it and made that determination in regards to what he believes the appropriate preparation of the case and has apparently discussed it with the Bar about how to proceed. Based upon what you have indicated here in open court, at least, opened the door to Mr. Mansfield's representation. Counsel does not

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believe he would go forward with the presentation of any evidence in support or your motion.

I know that puts you in a predicament if you want to present those issues to the Court, in conflict with what the Bar has indicated to Mr. Mansfield in regards to his ethical obligations; but, I don't think you are entitled to another counsel, or removal of Mr. Mansfield and appointment of an additional counsel to make a similar review of the facts of your case. So, that leaves, I believe, just two options. Mr. Mansfield can continue in your representation. Or, upon the joint request, I can remove Mr. Mansfield and allow you to represent yourself on your motion. Yes, sir. If you want to be heard, stand, please.

THE DEFENDANT: All right. What he's saying, you know, first of all I would like to say this. It is that honestly I feel that any decision that you make, that you should make, whether appointment to further counsel or any other decision that you should make, shouldn't be based just on what he's saying. It should be based on evidence of him--of him presenting evidence to you that he has, in fact, you know, talked to other witnesses. What witnesses has he talked to. Also, it should be with the issues because this is, you know what I'm saying, when I met him, like I say, when I filed--I filed a--it wasn't a, ah, a MAR. I filed a motion to have counsel appointed, you know what I'm saying,

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to investigate my issues to help him prepare for this MAR. And I mentioned some of the issues that I know.

Now, when I talked with Mr. Mansfield on the one time that I saw him, Mr. Mansfield pointed out several other issues to me and told me that, well, you know, say, yeah, these are viable issues, you know. That's what he told me after I, you know what I'm saying, then writing y'all back and forth for the past three or four years and after, you know, I filed ~~this disclaimer~~ Complaint, you know, after having no other choice. Now, all of a sudden, this guy comes back and say, well, you know, I feel that this case is frivolous and these motions. And I'm pretty sure that he probably hasn't even read this letter, this sealed letter, that Judge Weeks placed, you know, under seal. Because if he had, then he would have had to speak to these witnesses. And he hasn't spoken to those witnesses. So, I mean, so for him, so--I don't feel like--I feel like that, that, and, also, you know, considering the fact that I wasn't allowed to bring my court documents, you know, to prove to you what I'm saying, I think that I should have an opportunity, if you're going to make any decisions as far as further appointment or what--whatever else, then it should be based on, you know what I'm saying, on an open hearing, you know what I'm saying, give me an opportunity to refute his contention that, you know, well, there are a fact. Because I'm saying to you that my belief

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is that his contention is based on the fact that I kept filing complaints on him, you know what I'm saying, and y'all kept directing him to respond to me. And if he didn't listen, you know what I'm saying, and wouldn't respect you saying, well, respond to this guy, and the three other judges, four other judges, saying respond to this guy over five years, then, I mean, I frankly feel that he doesn't have any credibility in this issue.

THE COURT: Mr. Mansfield?

MR. MANSFIELD: Judge, if I could?

THE COURT: Yes.

MR. MANSFIELD: Mr. Green has raised some issues and I feel that I'm compelled to respond to them. If he wants to do this, that's fine, if he wants to lay things out.

The Seal Wasn't broken until Floyd ordered it unsealed in 2015

He's talking about a sealed document. I've gone through this entire file. The Court has ordered that everything sealed be opened and copied for me. I've gone through everything. Well, he's talking about an issue that was raised during the trial that he waived.

THE DEFENDANT: No, sir, I'm not.

MR. MANSFIELD: Now, he did. He waived--

THE COURT: Mr. Green, I've heard from you. I'm going to hear from Mr. Mansfield now.

MR. MANSFIELD: It's something that arose

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before the case was finalized. And it was inquired with him and counsel during the trial and he chose not to address it at that time and waived it. And every one of these legal issues that he has raised is in a similar posture. They have no merit. It is my professional opinion. Mr. Green disagrees with it, and that's fine. But Mr. Green doesn't have legal training and eleven years' experience; and, my motion to withdraw was based on my professional opinion, based on my training and my experience, and if Mr. Green disagrees with it, that's up to Mr. Green. That's fine. He can disagree with it all day long; but, I'm in a position where I can't go forward with his claims.

THE COURT: All right. Let me just make inquiry on the record of Mr. Mansfield. Mr. Green has alluded to the fact that it is his belief that you are moving to withdraw as counsel also on the basis of his filing of complaints against you. Is that a basis for your...?

MR. MANSFIELD: It is one of the bases. And as stated in my motion, I cited rules 1.3 and 3.1. 1.3 deals with counsel's ability to diligently pursue. And I do believe that Mr. Green's filing of a complaint against me with the State Bar, which has been dismissed for the Court's information, impairs my ability to diligently represent him.

THE COURT: When was the complaint filed and ruled on by the State Bar?

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MR. MANSFIELD: I don't recall when it was filed. It was dismissed in late June or July.

THE COURT: Of this year?

MR. MANSFIELD: Of this year.

THE COURT: Well, one other option appears to the Court. Well, two other options, I guess. I could just remove you as counsel and appoint additional counsel which, quite honestly, doesn't make sense based upon the representation of your review of the facts. It may be the appropriate procedure. I'm going to have to investigate that, however.

The other option would be is to remove you as representing counsel of Mr. Green, but make you stand-by counsel and allow Mr. Green to go forward on his own motion and seek you for advice if that would become necessary in the course of presenting his case. And that's something I'm going to have to investigate.

MR. MANSFIELD: I think if the Court is to have standby counsel, it has to be different counsel.

THE COURT: I'm going to direct that you set forth in an affidavit presented to the Court, copy to Mr. Green, a more detailed basis in regards to the your ascertainment of the merits of his motion, the potential conflict that may have developed as a result of the grievance so I can review that together with the motion for appropriate

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relief filed by Mr. Green.

Let me also make inquiry. Mr. Green has alluded to the fact that you have made representations to him, or he has alluded to that possibility.

MR. MANSFIELD: Is the affidavit going to be sealed?

THE COURT: The affidavit will be sealed.

MR. MANSFIELD: Okay.

THE COURT: A copy to Mr. Green, however. And it will be sealed for court purposes. You can present it to me directly and then I will have it sealed and placed in the file for appellate purposes.

As to the--my question in regard to not only the merits of the issues presented in Mr. Green's motions, but the determination in your opinion of any other potential meritorious issues not included in his motion, if you have found there to be any.

MR. MANSFIELD: Obviously, if I had, then, I would have--

THE COURT: I just wanted to get it clarified on the record. You have found none. Is that my understanding?

MR. MANSFIELD: Yes, sir. And there are issues that were--Mr. Green is mistaken. He did file a motion for appropriate relief with affidavits attached that's in the

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file. He also, during the course of my representation, has sent me letters raising what he thought might have been additional issues which I have also investigated.

THE COURT: Mr. Green, I'm going to have Mr. Mansfield copy his affidavit to set out in a more detailed basis the conflicts that have arisen between you and he. I will review it. Some of that may be--based on what has been represented here today, it is not likely that I'm going to be the judge hearing the motion. We will set that before another judge when and if it becomes ripe for a hearing. But in any event, I'm going to review it. And if I feel there is any need for any further hearing, I will call for such and have you present. If not, I need to investigate exactly procedurally how I should proceed for a couple of reasons. You have a lot at stake. In all honesty the State has a lot at stake in regards to financial resources available. And there has been an appointment of counsel who has reviewed the merits of your motion; and, based upon the representation today that you have alluded to, apparently has found it not to be meritorious. So, I need to see exactly how I should proceed in this matter. So, I'm going to announce my decision, with the consent of counsel and defendant, outside this term of court. I will try to get it done this week, but it may be outside the session. And I will notify the defendant and the counsel by order unless I

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feel there is need for a further hearing. That depends on when I can get the affidavit.

MR. MANSFIELD: I had intended to spend this week preparing for my double homicide capital trial that starts Monday.

THE COURT: Mr. Green, there may be some delay in getting--I know Mr. Mansfield has a double homicide to begin Monday, I believe.

MR. MANSFIELD: Yes, sir.

THE COURT: I would like to get to review the affidavit, though, so I can have a little firmer foundation in regards to the facts and what he alleges.

MR. MANSFIELD: Yes, sir.

THE DEFENDANT: Your Honor, in all fairness, I think that I should have--that I should at least have access to material to also--to respond to his, to whatever it is he is saying. Because, this is the thing about it. He is saying that he needs to review this, um, this um, this, this affidavit that I'm speaking about. And he said that it was waived. And I think he has to have it mixed up because this, this, this happened at the end of my trial after I was found, found uh, found guilty.

MR. MANSFIELD: But before sentence.

THE DEFENDANT: On a Friday, yes, before the sentending. Judge Weeks was saying--

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THE COURT: Well, that's one reason I would have it set forth in a little more detail, so I will have something to follow as I read through your motion.

THE DEFENDANT: And it is also an, an, an issue of withholding exculpatory information that affected my motion to suppress, uh, you know, dealing with Miranda issues. And I spoke about that, I think, in the writ.

THE COURT: Well, I need to read your motion for appropriate relief. I want to see--there are some things that may be further detrimental to your presentation or your motion that you may--counsel, I know, does not want to present on the record from our discussion at the bench, and I want to see it in an ex-parte proceeding without being--

THE DEFENDANT: Well, can I say that in that motion--

THE COURT: Excuse me?

THE DEFENDANT: That's also to that motion, it's not a complete motion. It did not address all of my issues, the motion he's speaking about that he is saying it was an MAR. It maybe was. I mean, it was accepted as a MAR; but, on the motion it clearly says motion to appoint counsel.

THE COURT: All right. Well, I will have to review your motion. I'm going to review the affidavit. I will make my decision after I review that and consult with

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I06 → the proper--after I form my opinion about the proper procedure in regards to the information furnished.

THE DEFENDANT: Okay. Can you get an order to the prison to allow me to bring--when I do come back to court, to allow me to bring my documents--

THE COURT: I may not bring you back to court. What I'm saying is, I will try to make it clear to you, sir, is I will not bring you back for further hearing unless I feel it necessary. I may do my order based upon the review of the facts and my consultation with additional resources as to how to proceed.

I06 →

THE DEFENDANT: Will I have an opportunity to file an amended MAR?

THE COURT: Will you have an opportunity to file an amended MAR?

THE DEFENDANT: Yes, sir. Will I have an opportunity to file a MAR in order to obtain all the evidence here.

→ **THE COURT:** You can always file ~~any~~ motion. As to the merits or how the Court will rule on it, I won't know until you--

THE DEFENDANT: Because I don't want this Court to rule on it, the motion--

THE COURT: To what you are representing.

THE DEFENDANT: I don't want this Court to rule

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on it until I have an opportunity to present the issues that I feel like are appropriate.

THE COURT: The only issue right now is the determination whether I'm going to allow him to withdraw or not.

THE DEFENDANT: All right.

THE COURT: And how we're going to proceed. I would suggest that if you intend to file any amendments to the MAR, that that would be done as soon as you can process-- the Court will have to determine--

THE DEFENDANT: Can I have access to--

THE COURT: It's not set for hearing at this time, however.

THE DEFENDANT: Can I have access to legal material?

THE COURT: At DOC?

THE DEFENDANT: In order to prepare this amended--to this motion, or whatever, is what I'm asking. What I'm saying is that--

THE COURT: Well, let me tell you, Mr. Green, some of that will depend on how I rule on Mr. Mansfield's motion to withdraw. So, until such time as I rule on that, you can go ahead and file what you desire to file. But you have a counsel at this time.

THE DEFENDANT: I can't--

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THE COURT: Until counsel is withdrawn or removed, I would suggest you probably not file any additional motion to amend your MAR since it should be done through counsel. Once I rule on counsel, then you may proceed. You can proceed any way, but I would suggest you not until I rule on that issue.

THE DEFENDANT: What's happening is that I'm in prison. Like I say, I'm writing letters to him and I'm not getting no information nor feedback from him. And there is no way for me to, you know what I'm saying, to even communicate with the Court.

THE COURT: You have communicated to the Court over a period of time.

THE DEFENDANT: Right.

THE COURT: Let me rule on this and then you can decide how you want to proceed.

MR. MANSFIELD: If I could also get a copy of that writ of mandamus.

THE COURT: I don't have a file copy. I would like a copy, also.

MR. BRITT: I filed that with the Court. And the Court could have the clerk copy that for the parties.

THE COURT: This--it's been noted it is not filed in this court. It's filed in the Court of Appeals. We will file it here. It was sent to the Court of Appeals.

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MR. BRITT: I would assume it was sent to the Court of Appeals; because, normally, in situations like that where writs are filed, the AG's office notifies us or we get a notice from the Court of Appeals--

THE COURT: Let me make inquiry. As to your petition for a writ of mandamus, did you file that with the clerk of the Court of Appeals?

THE DEFENDANT: This is what happened. Because of the situation I was in, what I did was I filed a copy to Mr. Britt. I sent another copy to my aunt because I like to send on a five-dollar filing fee because in the prison they wouldn't--

THE COURT: The question being, did you file it with the clerk of the Court of Appeals?

THE DEFENDANT: No, sir. She filed it with the clerk of the Court of Appeals.

THE COURT: So, she was going to file on your behalf with the clerk?

THE DEFENDANT: Yes, sir.

THE COURT: All right.

THE DEFENDANT: As far as mailing it and sending the five-dollar filing fee.

THE COURT: You understand that the rules require that the paperwork not only be drafted but it requires it be filed properly. And failure to file would

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jeopardize your rights to any hearing on your petitions or your motions. You understand that?

THE DEFENDANT: I don't know what he is referring to.

THE COURT: Just be sure if you desire hearings on your paperwork, it is filed in the appropriate places.

THE DEFENDANT: Okay.

THE COURT: Anything further, Mr. Mansfield?

MR. MANSFIELD: No, sir.

THE COURT: All right. Mr. Green, as indicated, Mr. Mansfield is expected to start a case. I'm going to try to get the affidavit--

When can we reasonably expect and put a time limitation on this affidavit? We've been here five years now.

MR. MANSFIELD: Judge, I will see if I can get it done this week. But if I can't get it done this week, it will be October.

THE COURT: Let's see if we can't get it done this week, then, because I don't want this hanging over. You don't have to go in great detail if you will summarize some of the things we discussed here at the bench.

Anything else, Mr. Green?

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THE DEFENDANT: Can I have my transcript, my trial transcript?

THE COURT: Not yet. Depending upon my ruling and whether new counsel is appointed.

MR. MANSFIELD: He doesn't want me. Why don't you go ahead and rule on it?.

THE COURT: Well, I want to know what I'm going to do with you. I've never had a question where it has been noted now that the counsel has made a determination that in his opinion that the claims have no merit--and exactly how we're going to proceed.

THE DEFENDANT: It seems that it came right after this complaint and right after, you know, everything else.

THE COURT: All right. I'm going to take all that into consideration. I understand you don't want Mr. Mansfield and Mr. Mansfield, basically, believes your claims aren't meritorious, and for other reasons would move to withdraw. And I understand, also, the State has an investment in the review of 12,000 pages of transcript. So--and other items. I don't know that that has any bearing; but, I will check my resources about that.

Yes, sir.

MR. BRITT: For the sake of clarity, Your Honor, I would ask that a transcript of this hearing be

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prepared with the exception of the bench conference that the Court conducted with Mr. Mansfield.

THE COURT: I will ask Mr. Palmer to prepare such a transcript. Thank you.

(Whereupon, at 10:23 a.m., the hearing in the foregoing matter was closed.)

CERTIFICATE

STATE OF NORTH CAROLINA)
)
COUNTY OF ROBESON)

I, James A. Palmer, the officer before whom the foregoing proceeding was taken, do hereby certify that said hearing, pages 1 through 27, inclusive, is a true, correct and verbatim transcript of said proceeding.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action.

James A. Palmer
Official Court Reporter

August 9, 2005

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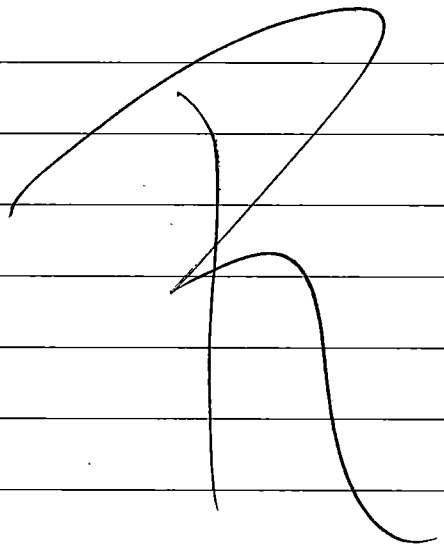


NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
93 CRS 15291-93

STATE OF NORTH CAROLINA)
)
v.) AFFIDAVIT
)
DANIEL ANDRE GREEN)

COMES NOW the undersigned, being first duly sworn, who deposes and says as follows:

1. I am an attorney duly licensed to practice law in the State of North Carolina. I have practiced primarily in the area of criminal law since I was first licensed in 1994.

2. Daniel Andre Green filed, *pro se*, a Motion for Appropriate Relief (hereafter "MAR") on May 5, 2000, in the above captioned matter.

3. I was appointed to represent Mr. Green on his MAR by Judge Gregory Weeks on May 16, 2000.

4. Upon receiving written notice of my appointment, I contacted the Clerk's Office to obtain a copy of Mr. Green's file and contacted the Appellate Defender's Office to obtain a copy of Mr. Green's trial transcript. I also obtained copies of the discovery provided to Mr. Green's trial counsel.

5. Because Mr. Green would be barred from raising additional claims once his MAR was heard, I reviewed everything possible to look for issues not raised in Mr. Green's original MAR.

6. The transcript of the trial consists of 29 volumes that deal with jury selection and jury excuses. These volumes total 6,357 pages. There are 48 volumes of the trial itself, consisting of 8,412 pages. There are also 16 volumes of transcript from pre-trial hearings that comprise an additional 4,607 pages. Over a long period of time, I have reviewed this transcript of more than 19,000 pages.

7. I have reviewed all of the discovery provided to Mr. Green's trial counsel which includes 1,703 pages.

8. I received a copy of Mr. Green's file from the Clerk's Office, which consists of 8 file folders that fill an entire banker's box. The material was organized and reviewed by me.

9. I have met with Mr. Green both at Troy Correctional Institution and at the Robeson County Detention Center when he has been brought back for court. We have discussed his contentions.

10. Mr. Green has written several letters, some of which have raised issues not raised in his original MAR and not mentioned in our conversations.

EXHIBIT 17

Affidavit of Attorney Carlton Mansfield

11. Upon a review of all materials associated with the trial of these matters and after researching and investigating the allegations made by Mr. Green, I have determined, in my professional opinion, that Mr. Green has no meritorious claims that would succeed in gaining him the relief which he seeks in his MAR.

12. It is further my professional opinion, based upon my legal research and factual investigation, that to proceed with a hearing on the issues claimed by Mr. Green would be a violation of Rule 3.1 of the Revised Rules of Professional Conduct of the North Carolina State Bar.

CARLTON M. MANSFIELD

Sworn to and subscribed before me this

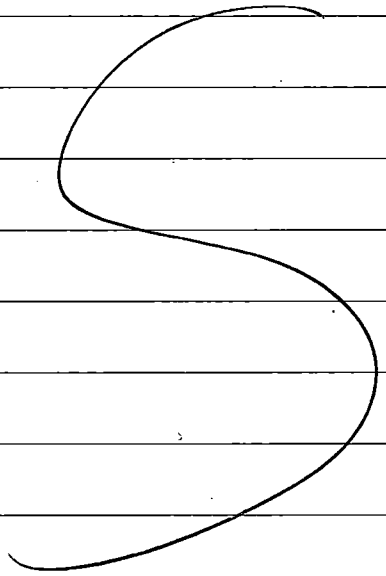
the 1st day of February, 2006.

Notary Public

My commission expires: 10/01/2010

EXHIBIT 18

Fee Sheet of Attorney Carlton Mansfield



FERGUSON STEIN CHAMBERS

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James E. Ferguson, II
Julius L. Chambers
Karl Adkins*
Joan W. Gresham
Geraldine Sumter
Henderson Hill
E. Margaret Covington
S. Luke Largess
Amy C. Reeder
Jacob H. Sussman

OF COUNSEL:
Jonathan Wallas*
*Certified Mediator

IN CHAPEL HILL:
William Simpson, Jr.

OF COUNSEL:
Adam Stein

312 West Franklin Street
Chapel Hill, NC 27516
Telephone: (919) 933-5300
Facsimile: (919) 967-4953

June 23, 2004

CONFIDENTIAL LEGAL MAIL

Mr. Daniel Green
#0154242
[redacted]
PO Box 1808
Laurinburg, NC 28353

Dear Daniel:

Greetings. I hope this letter finds you doing well under the circumstances. I apologize for taking so long to respond to your letter from earlier this year. Unfortunately, my litigation schedule has been inhuman this winter and spring. Also, I wanted to be sure my office spoke with Carlton Mansfield before writing you back. Due to Mr. Mansfield's similarly busy schedule, it took us a while to connect.

Mr. Mansfield reports that he is continuing to review the voluminous record in your case. As you know, once Judge Weeks appointed Mr. Mansfield to represent you in your Motion for Appropriate Relief, Mr. Mansfield had to be sure that there were no additional claims that needed to be raised. If there are any additional claims that are not raised before the state court, those claims might later be barred from further review. Thus, Mr. Mansfield is being appropriately deliberate and thorough in his review of the record. While this has resulted in delaying any hearing on your MAR claims, it is advisable to have Mr. Mansfield to continue with that review. For what it is worth, you should know that I hold Mr. Mansfield in very high regard as an attorney and person. I trust he is doing everything he can to serve your interests.

Personally, I have one non-capital MAR that I have been working on for five years and it still has not gone to court. It is not ready yet. Its hard on the client, because he is in prison and naturally spends a lot of his energy and that of his family pondering over the claims. However, time is often needed to identify, investigate and prepare post-conviction claims. Importantly, you don't get a second chance to file post-conviction claims, so you need to do it right the first time.

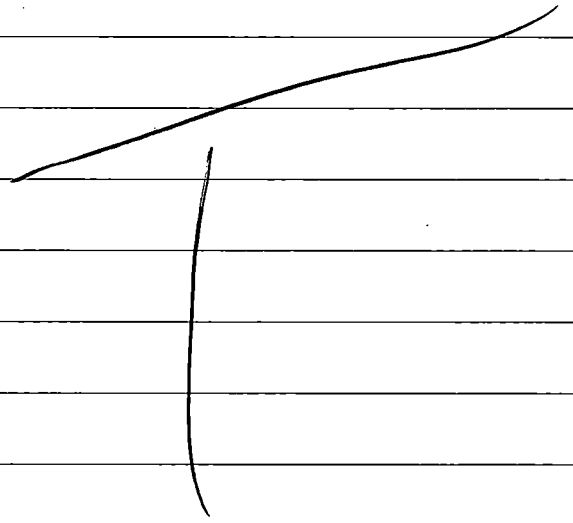
That being said, I recognize that waiting nearly four years for a court date after filing your MAR must be extraordinarily frustrating. However, any chance for any relief will only come with the most thorough presentation to the court. Thus, I can only advise more patience. Above all, please do not consider going *pro se*.

Notwithstanding your many youthful mistakes, I was always convinced that you were a bright young man, who would persevere, overcome the many obstacles in front of you, and find a way to make a positive contribution. I still believe that to be true. Tell me that you are reading and making stronger both your intellect and your character.

Take care, and stay strong.

Sincerely,

Henderson Hill



EXPLANATORY

THE FOLLOWING DOCUMENT(S) MAY HAVE POOR IMAGES DUE TO POOR PHOTOGRAPHIC QUALITY OF PAPER.

No. _____ 16B District

North Carolina Court of Appeals

* * *

State of North Carolina) From Robeson County
v.) No. 93 CRS 15291-93
Daniel Andre Green)

* * *

Petition For Writ of Mandamus

* * *

To the Honorable Court of Appeals of North Carolina; and Clerk of Court of Appeals:

Defendant Daniel A Green respectfully petitions this Court to issue its Writ of Mandamus pursuant to Rule 22 of the N.C. Rules of Appellate Procedure to compel Judge Robert Floyd, The Honorable Presiding Judge of Robeson County Superior Court, to immediately remove Attorney Carlton Mansfield from Defendant's Case as appointed counsel for Defendant's Motion for Appropriate Relief; and in support of this petition shows the following:

Facts

1) On May 16th 2000 the Honorable Gregory Weeks

EXHIBIT
145
PENGAD 800-631-6989

appointed Carlton M Mansfield to represent Defendant on a Motion for Appropate Relief *1 Defendant was convicted and sentenced in the Superior Court of Robeson County during the 1995 to 1996 Criminal Session of 1st Degree Murder, inter alia, File No. 93 CRS 15391-93. This is the conviction Defendant is seeking Appropiate Relief for. See Attachment A This Amended Motion For Appropiate Relief and the Exhibits Contained therein are incorporated by reference into this Writ of Mandamus;

2) Over a period of five (5) years Mr Mansfield was negligent in his responsibility as Defendants appointed attorney. He did not investigate Defendants claims. He did not research or analyze the issues presented in Defendants motions. The State Bar Complaint included as Exhibit 2 in support of Attachment A (Defendants Amended M.A.R.) describes this situation in detail;

3) Between August 8th and August 12th of 2005 Defendant was brought to Robeson County Superior Court to have his motion heard to remove Carlton Mansfield heard This motion was heard by the Honorable Robert Lloyd. This was the second time this same issue was brought before the Court of Robeson County.

4) At this hearing Mansfield claimed that he had

*1 Pursuant to N.C.G.S. 15A-1420 (b)(2) N.C.G.S. 7A-451 (a)(3)

EXPLANATORY

THE FOLLOWING DOCUMENT(S) MAY HAVE POOR IMAGES DUE TO POOR PHOTOGRAPHIC QUALITY OF PAPER.

investigated Defendant's claims asserted in the MAR and that he also read Defendant's transcripts. He also stated that he discussed potential claims for relief with Defendant and read letters from Defendant about these claims and that he found Defendant's claims to have no merit and were frivolous;

5) Manstock also stated that Defendant had filed a complaint against him and that he and Defendant both wanted Manstock taken off of the case;

6) Defendant pointed out that it wasn't until he had filed the NC State Bar Complaint against Manstock, after 5 years of trying to get Mr Manstock to comply with his ethical obligations to Defendant, did Manstock claim the MAR was meritless and frivolous and, in fact, it was one time Manstock visited him he expressed his belief that Defendant would receive a new trial;

7) Judge Tripp ordered Manstock to prepare a brief detailing the work he did on the case, any potential claims Defendant could assert and to basically explain how he reached the conclusion that Defendant's MAR was frivolous. Defendant subsequently filed a motion to compel Manstock to file his Anders Brief within weeks;

8) Judge Tripp told Manstock and Defendant that within a couple

[illegible] Defendant's motion and either allow Defendant to proceed pro se, proceed with another appointed attorney or order Mansfield to stay on the case, this was in 2005;

9. After no response from Mansfield or the Court Defendant received a response from Mansfield on February 1st 2006 over months later. Mansfield stated that the case file and transcript was over 19,000 pages and once he arranged it in order, he found no possible errors.

10. After [illegible] Mansfield [illegible] Defendant [illegible] attempt [illegible] transcriptions;

11. The [illegible] Defendant [illegible] Court [illegible] Defendant [illegible] Rep [illegible] 28311; [illegible] 131 [illegible] 28402, [illegible] 1401 [illegible] NE [illegible] 30309. Defendant [illegible] attempt to order the transcript.

12. [illegible]

Shannon Heinemann
1107 Gigi St.
[illegible] 28311

1401 Peachtree St.
Suite 160
[illegible] 30309

MAILED FROM LANESBORO CORR. INST

EXPLANATORY

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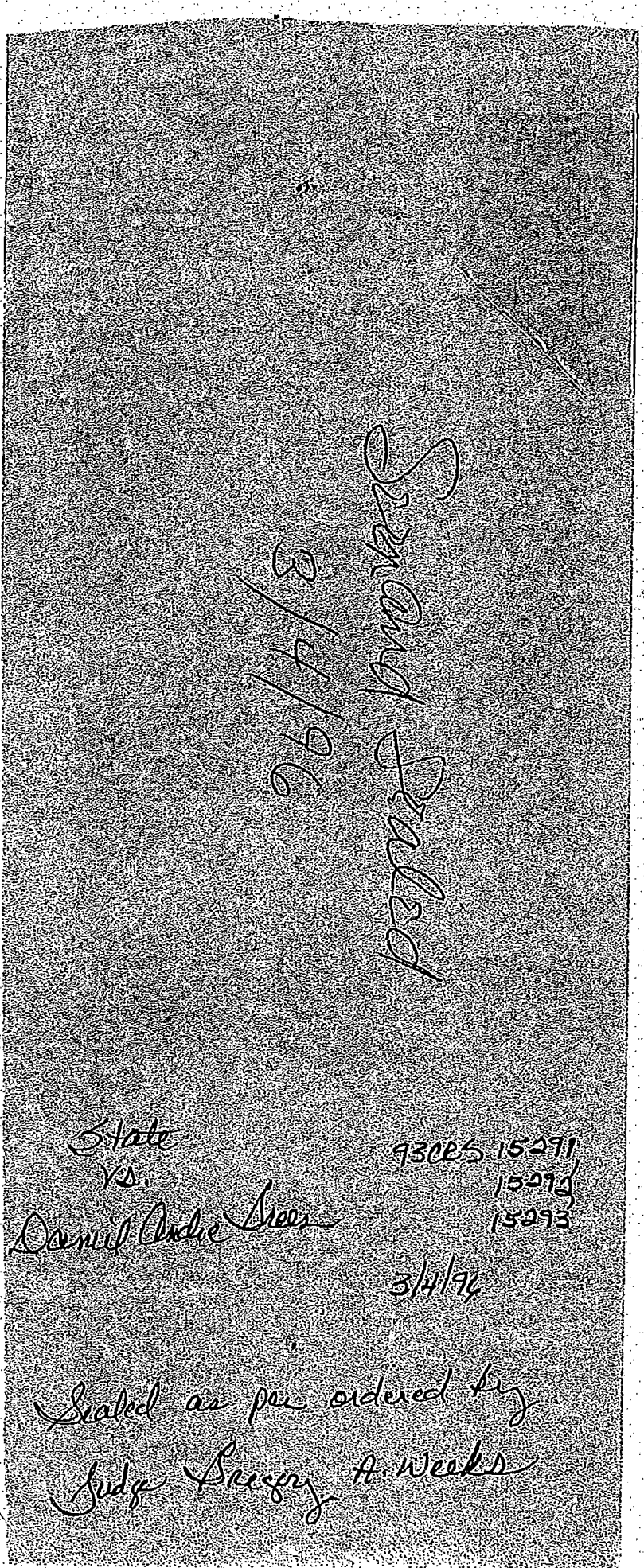
Sealed
Exhibits
(DG's copy)

Sealed
3/4/96

State
vs.
Daniel Andre Grees

93CRS 15291
15292
15293

3/4/96



Sealed as per ordered by
Judge Gregory A. Weeks

Exhibit 14

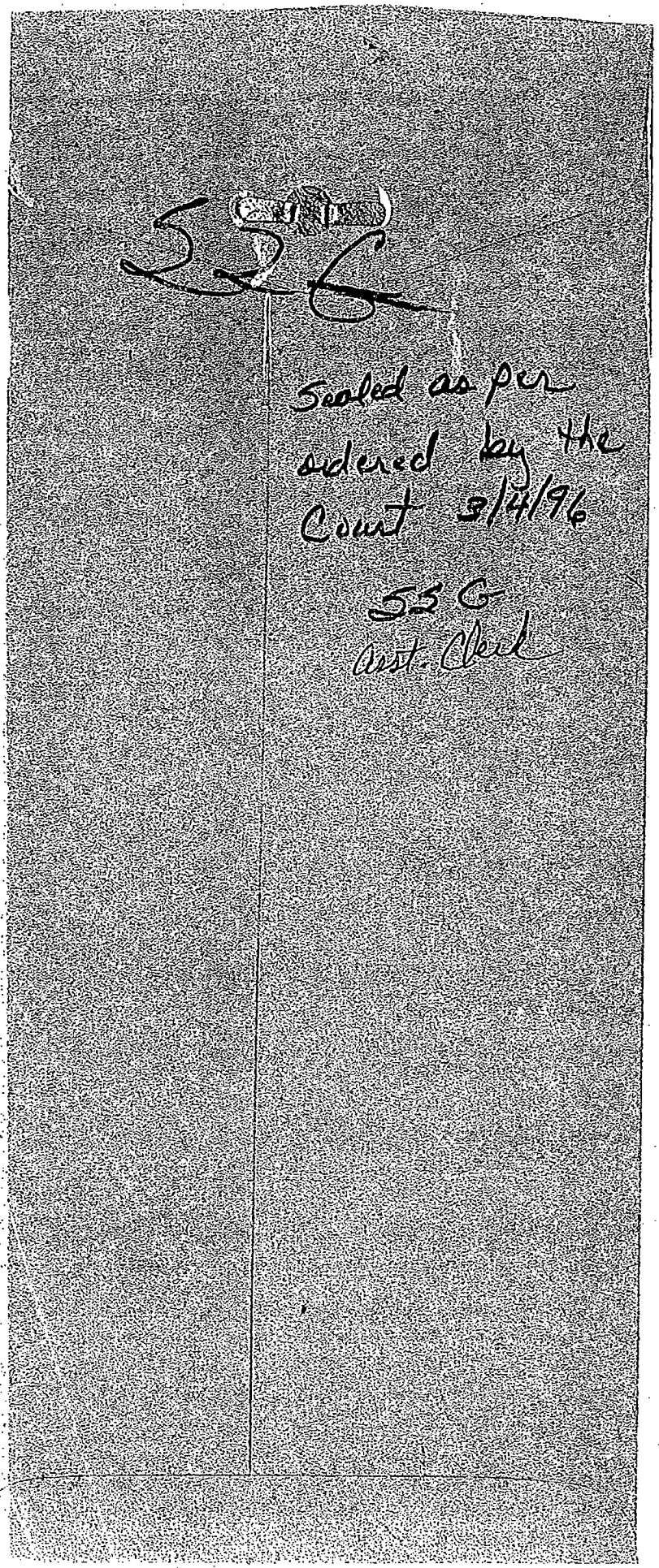

SEALED
Sealed as per
ordered by the
Court 3/4/96
SEG
Asst. Clerk

Exhibit 14

(TYPE OR PRINT IN BLACK INK)

In The General Court Of Justice
☐ District Court Division
☒ Superior Court Division

STATE OF NORTH CAROLINA
Robeson County

FILED
2008 DEC -2 P 2:21
ROBESON COUNTY, C.S.C.

File No.: 93 CRS 15291
Additional File Nos.: 93 CRS 15292, 93 CRS 15293

District Court cases must have CR file number. Superior Court cases must have CRS file number.

Name And Address Of Indigent Client
Daniel Andre Green

Social Security No. ☐ Has No Social Security No.

NON-CAPITAL CRIMINAL CASE TRIAL LEVEL FEE APPLICATION ORDER FOR PAYMENT JUDGMENT AGAINST INDIGENT

G.S. Ch. 7A, Art. 36; G.S. 122C-268(d), -286(d)

NOTE: *Use this form ONLY for non-capital criminal cases at the trial level - i.e. only for cases with a CR or CRS case caption. DO NOT use this form for non-criminal cases at the trial level, potentially capital cases at the trial level, appeals to the Court of Appeals or Supreme Court, or capital post-conviction cases. Attorneys should consult IDS Rule 1.9(a)(1a) for deadlines on the submission of final fee applications.*

INSTRUCTIONS: *Applicant completes and signs all applicable portions of Section I. The trial judge completes Sections II and III and signs Section IV to award payment or fix value of services and enter the appropriate judgments. If no judgments are to be entered, the trial judge must so indicate in Section III. Clerk mails private appointed counsel fee applications to: Administrative Office of the Courts, Attn: Indigent Program, Financial Services Division, Courier Box 66-10-50, Raleigh, NC, OR if courier is not available, mail to P.O. Box 2448, Raleigh, NC 27602.*

I. APPLICATION

I, the undersigned ☒ assigned counsel ☐ public defender ☐ IDS contract counsel make application for payment and reimbursement of necessary expenses incurred, or for determination of value of services rendered for the indigent. I certify that this information is correct to the best of my knowledge.

MOST SERIOUS ORIGINAL CHARGE AND MOST SERIOUS DISPOSITION: *Check ONE box in each of the following 3 columns.*

1. Original Charge *(most serious offense)*
- ☐ Felony Offense — *Must indicate Felony Class:* _____ *Name of Offense:* _____
- ☐ Felony Probation Violation
- ☐ Misdemeanor Offense (Non-Traffic)
- ☐ Misdemeanor Probation Violation
- ☐ DWI
- ☐ Other Traffic
- ☐ Criminal Contempt
- ☐ Treatment Court *(in columns 2 and 3, check other)*
- ☒ Non-Capital Motion For Appropriate Relief *(in columns 2 and 3, check other)*
- ☐ Other: _____

2. Disposition *(most serious disposition)*
- ☐ Guilty Plea Before Trial: Most Serious Original Charge
- ☐ Guilty Plea Before Trial: Other Offense — *Name of Offense:* _____
- ☐ Guilty Plea During Trial: Other Offense — *Name of Offense:* _____
- ☐ Trial: Guilty Most Serious Original Charge
- ☐ Trial: Guilty Other Offense — *Name of Offense:* _____
- ☐ Trial: Acquitted
- ☐ Probation Violation Found
- ☐ Dismissed With Leave
- ☐ Dismissed Without Leave
- ☐ Deferred/Diverted
- ☐ Held In Criminal Contempt
- ☐ No Probable Cause
- ☒ Attorney Withdrew
- ☐ None (Interim Fee)
- ☐ Other: _____

3. Judgment & Sentencing *(most serious)*
- ☐ Active Sentence — *Length of Sentence:* _____
- ☐ Split Sentence
- ☐ Supervised Probation
- ☐ Unsupervised Probation
- ☐ Probation Terminated
- ☐ PJC
- ☐ None (Acquitted/Dismissed)
- ☐ None (Deferred/Diverted)
- ☒ None (Attorney Withdrew)
- ☐ None (Interim Fee)
- ☐ Other: _____

FINAL FEES ONLY: *Disposition Date* ☐ Check here if you were appointed to represent this defendant in another case(s) at the time of the appointment to this case(s) and you already submitted a fee application for that case(s) in which the $50 attorney appointment fee was charged.

COMPLETE FOR THIS FEE: *(Attach detailed time sheets when required by judge. Time must be reported in decimals, not minutes.)*

Beginning Date This Fee Requested	Ending Date This Fee Requested	Prior Total Fees And Expenses Allowed By Judge
05/16/2000	11-28-08	$ 0

Name Of Judge Setting Fee	Time In Court	Time In Court Waiting	Time Out Of Court	Total Time Claimed This Fee
Robert Frank Floyd	10	03	2046	2059

Travel	Long Distance Telephone	Copying	Other	Total Expenses
$	$	$	$	$ 0.00

NOTE: *In assigned counsel cases, the applicant is always the individual attorney. If payment is to be made to individual applicant, write "same" under payee and give applicant's taxpayer ID No. (Federal Employer ID No. or, if no Federal Employer ID, SSN). If payment is to be made to applicant's firm, give firm name as payee and firm's taxpayer ID No.*

Name Of Applicant	Address
Carlton M. Mansfield	433 N Elm St Lumberton, NC 28358
Payee (see note): Mansfield Law Firm, PLLC	

Taxpayer ID No. (see note)	Telephone No.	Date	Signature Of Applicant
20-1952504	910-618-1665	11-28-08	

II. ORDER TO PAY OR FIX VALUE OF SERVICES

Based on the Findings of Fact set out in Section III, the Court ORDERS that the "Total Amount" stated on Line 4 below be
☒ *(Assigned Counsel)* paid by the State of North Carolina to the payee named above.
☐ *(Public Defender/IDS Contractor)* fixed as the value of legal services and other expenses of representation rendered by the applicant named above.

1. Hours Approved By The Court	185.00
2. Fees Allowed/Value Of Services Rendered (Hours Approved x IDS Rate) =	$
3. Other Necessary Expenses Allowed By The Court	$
4. TOTAL AMOUNT	$ 13,825.00

Ccmailed 12-2-08 Hms

III. FINDINGS OF FACT AND JUDGMENTS

After due notice to the defendant named on the reverse and opportunity to be heard, the Court finds that the defendant has previously been adjudged to be indigent; that he/she requested and has been provided counsel and other necessary expenses of representation; and that the applicant named on the reverse provided services and incurred expenses of which the money value is that stated in Line 4 of Section II, plus any interim fees listed in the box in Section I labeled "Prior Total Fees And Expenses Allowed By Judge."

NOTE: *Sign Section IV to enter judgments against the indigent defendant for the full value of attorney fees and expenses plus the $50 attorney appointment fee. If no judgments are to be entered, or judgments are to be entered for a different amount, the trial court must fill in the appropriate blanks below. When entering Judgment #1, the trial court should verify the amount of any interim fees awarded.*

NOTE: *To enter Judgment #1 against a parent/responsible person, pursuant to G.S. 7A-450.1 et. seq, a separate order must be entered (may be modeled after Section III of form AOC-G-200).*

JUDGMENT #1 *(Attorney Fees and Expenses)* Based on the above findings, it is ORDERED that the State of North Carolina recover from the indigent defendant the TOTAL AMOUNT stated in Line 4 of Section II, plus any interim fees listed in the box in Section I labeled "Prior Total Fees And Expenses Allowed By Judge," together with interest at the legal rate from the date the judgment is docketed until paid, unless one of the following boxes is checked:

☒ 1. This is an interim fee or this case is still pending, and no judgment shall be entered at this time *(this order shall be brought to the attention of the presiding judge at the time of final disposition)*; or

☐ 2. The defendant was not convicted of a criminal offense and no judgment for attorney fees and expenses shall be entered; or

☐ 3. Other: _____

JUDGMENT #2 *(Attorney Appointment Fee)* It is further ORDERED that the State of North Carolina recover from the indigent defendant the $50 attorney appointment fee pursuant to G.S. 7A-455.1, *unless* one of the following boxes is checked:

☒ 1. This is an interim fee or this case is still pending, and no judgment shall be entered at this time; or

☐ 2. The defendant was not convicted of a criminal offense and no judgment for the $50 attorney appointment fee shall be entered; or

☐ 3. The attorney named on the reverse was appointed to represent the defendant in another case(s) at the time of the appointment to this case(s) and he or she already submitted a fee application for that case(s) in which the $50 attorney appointment fee was charged *(see Section I, "Final Fees Only," on the reverse)*; or

☐ 4. Other: _____

IV. SIGNATURE OF JUDGE

By signing below, the Court enters an ORDER TO PAY APPLICANT OR FIX VALUE OF SERVICES in the amount indicated in Section II on the reverse, which shall be entered and filed this day in the office of the Clerk of Superior Court. Unless no judgment is ordered in Section III above, the Court further Orders that the FINDINGS and JUDGMENTS shall be entered and filed this day in the office of the Clerk of Superior Court. The Judgments shall become effective as provided by law.

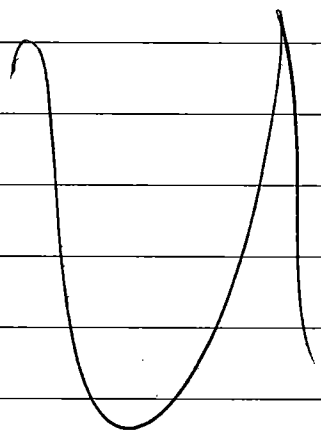
Date	*Name Of Judge (Type Or Print)*	*Signature Of Judge*
12-1-08	Robert Frank Floyd	

V. DOCKETING - CSC USE ONLY

NOTE: *Docket any judgments immediately on the date on which the defendant's conviction becomes final, unless the defendant is ordered as a condition of supervised or unsupervised probation to pay the State for the costs of his/her representation. If the defendant is so ordered, docket any judgments immediately on the date the defendant's probation is revoked or terminated by the Court, or when the term of probation expires, whichever occurs first; then docket the amounts owing.*

Date	*Time*	*Judgment #1 Docket Book And Page No.*	*Abstract No.*	*Amount Docketed*
	☐ AM ☐ PM			$
		Judgment #2 Docket Book And Page No.	*Abstract No.*	*Amount Docketed*
				$

© 2006 Administrative Office of the Courts



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No. _____ 16B D[illegible]

North Carolina Court of Appeals

* * *

State of North Carolina) From Robeson County
v.) No. 93 CRS 15291-93
Daniel Andre Green)

* * *

Petition for Writ of Mandamus

* * *

To the Honorable Court of Appeals of North Carolina; and Clerk of Court of Appeals

Defendant Daniel A. Green respectfully petitions this Court to issue its Writ of Mandamus pursuant to Rule 22 of the N.C. Rules of Appellate Procedure to compel Judge Robert Floyd The Honorable Presiding Judge of Robeson County Superior Court, to immediately remove Attorney Carlton Mansfield from Defendant's Case as appointed counsel for Defendant's Motion for Appropriate Relief; and in support of this petition shows the following:

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Facts

1) On May 16th 2000 the Honorable Gregory Weeks

appointed Carlton M. Mansfield to represent Defendant on a Motion for Appropriate Relief. Defendant was convicted and sentenced in the Superior Court of Robeson County during the 1995 & 1996 Criminal Session of 1st Degree Murder, inter alia, File No. 93CR 15291-95. This is the conviction Defendant is seeking Appropriate Relief for. See Attachment A This Amended Motion For Appropriate Relief and the Exhibits Contained therein Are incorporated by reference into this Writ of Mandamus.

2) Over a period of five(5) years M. Mansfield was NEGligent in his responsibility as Defendant's appointed attorney. He did not investigate Defendant's claims. He did not research or analyze the issues presented in Defendant's motions. The State Bar Complaint included as Exhibit 2 in Support of Attachment A (Defendant's Amended M.A.R.) describes this situation in detail.

3) Between August 8th and August 12th of 2005 Defendant was brought to Robeson County Superior Court to have his motion heard to remove Carlton Mansfield heard. The motion was heard by the Honorable Robert Floyd. This was the second time this same issue was brought before the Court of Robeson County.

4) At the hearing Mansfield claimed that he had

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investigated Defendants claims asserted in the M.A.R. and that he also read Defendants transcripts. He also stated that he discussed potential claims for relief with Defendant and read letters from Defendant about these claims and that he found Defendants claims to have no merit and were frivolous;

5) Manstield also noted that Defendant had filed a complaint against him and that he and Defendant both wanted Manstield taken off of the case;

6) Defendant pointed out that it wasn't until he had filed the N.C State Bar Complaint against Manstield, after 5 years of trying to get Mr. Manstield to comply with his ethical obligations to Defendant, did Manstield claim the M.A.R. was meritless and frivolous and at last the one time Manstield visited him he expressed his belief that Defendant should receive a new trial;

7) Judge Floyd ordered Manstield to prepare a brief detailing the work he did on the case, any potential claims Defendant could assert and to basically explain how he reached the conclusion that Defendants M.A.R was frivolous. Defendant attempted the Court order as requiring Manstield to file an Anders Brief within weeks;

8) Judge Floyd informed Defendant that within a couple

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EXPLANATORY

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of months he would rule on Defendants motion and either allow Defendant to proceed prose, proceed with another appointed attorney or order Mansfield to stay on the case; this was in 2005;

9. After no response from Mansfield or the Court Defendant received no response from Mansfield on February 1st 2006 [illegible] months later Mansfield stated that the case file and transcript was over 19,000 pages and once he arranged it in order he found no possible errors.

10. After waiting a year and still receiving no response from the Court [illegible] Mansfield [illegible] case and after writing numerous attorneys for assistance with no avail, Defendant contacted Robeson County Clerk of Court in an attempt to get his trial and pre-trial proceeding transcriptions;

11. The Robeson County Clerk of Court only response to Defendants response was to send the names and addresses of the Court Reporters involved in the case Kim Kay 701 Yorkshire Court Fairmont SC 29503; Shannon Henneman - 117 Big St. Lafayette Ill. N.C 28311; Georgia Mcal - 131 Green Swamp Rd. Supply, N.C. 28462; [redacted] N.E. Suite 160 Atlanta, Georgia 30309. Defendant wrote all of them in an attempt to order the transcript.

12. Except for Steven Husby [illegible] which no response came [illegible]

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of the letters came back stamped "Return To Sender. Unable to forward" This was in June of 2007;

13. In June or July of 2007 [illegible] that Mansfield to return his complete file including transcript pursuant to Rule 1.16(d) of the Revised Rules of Professional Conduct of the N.C. State Bar;

14. In August 2007 Mansfield responded that he would send the materials requested He never did send the materials even after Defendant sent another letter in September 2007;

15. Due to the facts [illegible] above and set forth in Defendant's Motion For Appropriate Relief on Page 3 (Notice of Pro Se Representation) and Defendant's Complaint against Carlton Mansfield filed with the NC State Bar (Exhibit 2 of the Amended Motion For Appropriate Relief) and in the List of Supporting Evidence for this Complaint, Defendant was left in limbo where technically he had an attorney (and therefore could not get another lawyer to assist him as that would be unethical) but in truth he was abandoned by his lawyer from the beginning of his appointment to Defendant. This abandonment was complete and was without regard of Mansfields ethical obligations as an officer of the Court, as an attorney and as Defendants appointed

a attorney;

16. For these reasons Defendant was forced to draft and file the attached Amended Motion for Appropriate Relief. In researching this Motion Defendant did not have access to his case file, transcripts and other materials.

STATEMENT OF ISSUES AND RELIEF SOUGHT

I. Should Carlton Mansfield be allowed to remain on Defendant's Motion for Appropriate Relief as Appointed Counsel?

II. Did Carlton Mansfield's [illegible] Abandonment, and his deceitful attempt to cover up his [illegible] abandonment, of Defendant deny Defendant his Constitutional Right under Sections 18, 19 and 21 of the North Carolina Constitution, and the 5th and 14th Amendment of the U.S. Constitution, to have due process and equal protection of the laws, and access to the Courts (under 6th Amendment)? Did these actions deny Defendant his Statutory right to Post-Conviction Counsel under North Carolina General Statute 7A-451(a)(3) and 15A-1420 (b)(2)

III. Has Robeson County Superior Courts failure to enter an order removing Carlton Mansfield from Defendant's case resulted in the denial of Defendant's Constitutional Rights of Due Process, Equal

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protection of the laws and Access to the Courts guaranteed to all under the United States Constitution, 5th, 6th and 14th Amendments and under N.C. Constitution Article 1, Sections 18, 19 and 21 and, does this failure deny Defendant his Statutory right to Post Conviction Counsel guaranteed by North Carolina General Statutes 7A-451(a)(1) and 15A-1420(b1)(2)?

Relief Sought

I First, Defendant requests that this Court obtain the following from the Robeson County Clerk of Court, in order to have the materials necessary to make an informed decision (Defendant does not have an attorney to get these materials for him, Northeastern Ohio [illegible] will not get [illegible] by M. Mansfield [illegible] and there is no profit incentive for them to get involved; and, Robeson County Clerk will not forward these materials to Defendant)

A. The correspondence between Defendant and Robeson County Court officials (Judges and Clerks) [illegible] as other documents described in Defendant's "List of Supporting Evidence" (Exhibit 1 of Defendants N.C. State Bar Complaint against Carlton Mansfield in this matter.

B. The transcripts of the hearings held by Judge Floyd in Robeson County on March 11th, 2002 and in August 2005 on

MAILED FROM LANESBORO CORR. INST.

Defendants motions to remove Carlton Mansfield from his case

II Defendant requests that this Honorable Court Compel The Honorable Robert Floyd to remove Carlton Mansfield from Defendants case and to make findings of facts in regards to Mr. Mansfields representation of Defendant and whether or not his representation upheld the ethical standards and Professional Conduct expected by an Officer of the Court and an Attorney licensed by the N.C. State Bar and furthermore whether or not Mr. Mansfield in fact did the work he claimed he did in this case and for which he has or will bill the State of North Carolina.

III Defendant requests that a Board Certified Specialist in State Criminal Law be appointed to represent him due to complex nature of his Motion for Appropriate Relief and that an investigator be appointed to gather evidence and affidavits from witnesses named in the Amended MAR and that this be done as soon as possible due to the fact that one of the witnesses Mr. Wade Lowery is fighting Parkinson Disease and other witnesses are in poor health as well due to the [illegible] that has passed since Mr. Mansfield was appointed to Defendant and his efforts to qualify Defendants post conviction relief efforts, irreparable harm has been done to Defendants case and urgency is now demanded to serve the best interest of justice.

Certificate of Service WRIT [illegible] Issue

As U.S. Supreme Court Justice, Hugo L. Black, stated in Polizzi v. Cowles Magazines Inc. 345 U.S. 663 (1953), "to delay justice may be to deny justice".

N.C. General Statutes gives indigent people the right to counsel if they have been sentenced to a term of imprisonment N.C. General Statutes 7A-451(a)(3) and 15A-1420(b)(2) extends this statutory right to encompass post-conviction proceedings.

If this Court finds that poor people have the right to lawyers in this type of situation then the question of what kind of lawyer is one that is no longer necessary because the State and Federal Courts have already supplied the answer: the same kind of lawyer anyone else should get - the same kind that rich students get the same kind anyone wants a lawyer who's obligation is to simply do what a client can't do for themselves in the case and to do it ethically and with due diligence.

Over 8 years ago on May 16, 2006 the Honorable Gregory Weeks assigned Carlton Mansfield to represent Defendant on a MAR.

As a painstakingly detailed in the attached List of Supporting Evidence Defendant wrote dozens of letters to Robeson County Court officials including 5 judges, and to Mr. Mansfield in an effort to get Mr. Mansfield to fulfill his obligations. In response Mr. Mansfield blamed his refusal to negligence to assist Defendant on the D.A. staff, his calendar, the Court for appointing him too many clients and even on his secretary for losing his mail.

FROM LANESBORO CORR. INST.

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WRIT OF MANDAMUS

EXPLANATORY

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STATEMENT OF REASONS WHY MOTION TO DISMISS

A delay in [illegible] Hughes Supply, Inc. v. [illegible] Center Mortgage, Inc., 225 U.S. 603 (1911) "to delay justice is to deny justice."

N.C. General Statute gives indigent people the right to counsel if they have been sentenced to a term of imprisonment.

N.C. General Statutes 15A-1101(a)(3) and 15A-1242(b)(2) [illegible] right to [illegible]

In this Case, I do trust pro per people rule the right to [illegible] I know the [illegible] that [illegible] Trial and Federal Courts already supplied the answer: the Sixth and Fourteenth Amendments to the United States Constitution require that a person charged with a crime be provided with counsel to assist in his defense.

Once a person is charged with a crime, he has the right to have counsel present at every stage of the proceedings against him.

A person who is financially unable to obtain counsel is entitled to have counsel appointed to represent him.

Evidence presented will show that Defendant was [illegible] Mr. Mansfield's duty to [illegible] Mr. Mansfield's negligence, Defendant has suffered damages. Defendant has made demand upon Mr. Mansfield to pay the damages, but Mr. Mansfield has refused to pay the damages.

EXPLANATORY

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Defendants [illegible] to remove Carlton Mansfield from his case.

II. Defendant requests that the Honorable Court Cooper [illegible] Honorable Robert Floyd to remove Carlton Mansfield from Defendants case, and to make findings of facts in regards to Mr. Mansfields representation of Defendant and whether or not his representation upheld the ethical standards and [illegible] Conduct expected by an officer of the court and an attorney licensed by the N.C. State Bar and furthermore whether or not Mr. Mansfield in fact did the work he claimed he did in this case and for which he has [illegible] by the State of North Carolina.

III. Defendant request that a Board Certified [illegible] State Criminal Law be Appointed to represent [illegible] due to [illegible] nature of his [illegible] Appropriate [illegible] that an investigator be appointed to [illegible] and [illegible] [illegible] Amended M.A.R. and that this be done [illegible] [illegible] Mr. [illegible] [illegible] Patricia [illegible] and [illegible] [illegible] [illegible] [illegible] [illegible] Mr. Mansfield [illegible] appointed to Defendant and [illegible] [illegible] Defendant [illegible] [illegible] irreparable [illegible] [illegible] Defendant [illegible] and urgency is now demanded to save the best interest of justice.

protection of the law and access to the courts guaranteed to all under the United States Constitution, 5th, 6th and 14th Amendments and under N.C. Constitution, Article 1, Sections 18, 19 and 21 and, does this failure deny Defendant his statutory right to Post-Conviction Counsel guaranteed by North Carolina General Statute 7A-451(A)(3) and 15A-1420(b1)(2)?

Relief Sought

I. First, Defendant requests that this Court obtain the following from the Robeson County Clerk of Court [illegible] the materials necessary to make [illegible] decision (Defendant does not have [illegible] to get these materials [illegible], North Carolina [illegible] [illegible] get [illegible] by Mr. Mansfield [illegible] assigned to Defendant and there is no [illegible] incentive for them to get involved, and Robeson County Clerk will not forward these materials to Defendant)

A. The correspondence between Defendant and Robeson County Court officials (Judges and Clerks) as well as other documents described in Defendants "List of Supporting Evidence" (Exhibit 1 of Defendants N.C. State Bar Complaint against Carlton Mansfield in this matter.

B. The transcripts of the hearings held by Judge Floyd in Robeson County on March 11th 2002 and in August 2005 on

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6 Attorney,

16 For these reasons Defendant was forced to draft and file the attached Amended Motion for Appropriate Relief. In researching this Motion Defendant did not have access to his case file transcripts and other materials

STATEMENT OF ISSUES AND RELIEF SOUGHT

I. Should Carlton Mansfield be allowed to remain on Defendants Motion for Appropriate Relief as Appointed Counsel?

II. Did Carlton Mansfield's unethical abandonment, and his deceitful attempt to cover up his unethical abandonment, of Defendant deny Defendant his Constitutional right under Sections 12, 17 and 21 of the North Carolina Constitution, and the 5th and 14th Amendment of the U.S. Constitution, to have due process and equal protection of the laws, and access to the Courts (under 6th Amendment)? Did these actions deny Defendant his statutory right to post-conviction Counsel under North Carolina General Statute 7A-451(A)(3) and 15A-1420(b)(2)

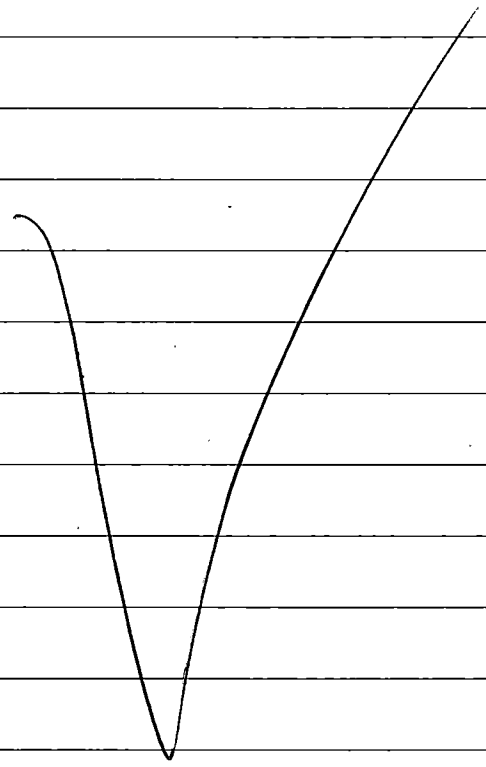
III. Has Rockingham County Superior Courts failure to enter an order removing Carlton Mansfield from Defendants case resulted in the denial of Defendants Constitutional Rights to Due Process, Equal

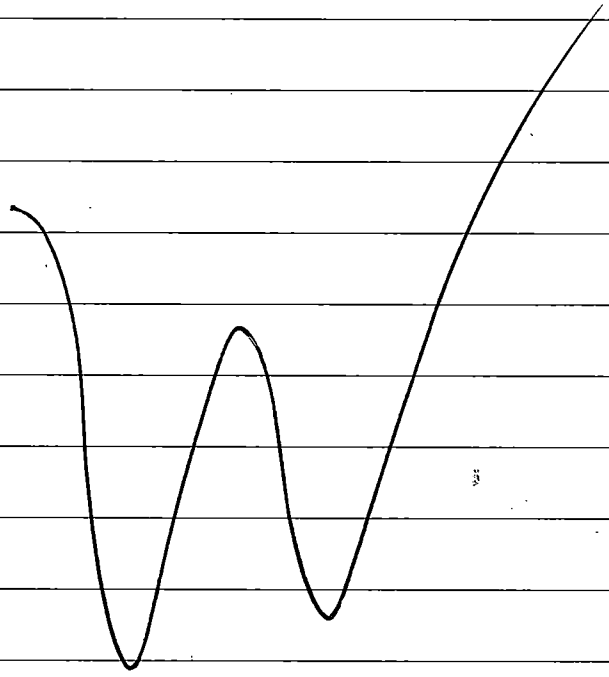
[illegible] stamped "Return To Sender Unable to forward" This was in June of 2007;

13. In June or July of 2007 requested, in writing, that Mansfield [illegible] complete [illegible] including transcript pursuant to Rule 140(d) of the Revised Rules of Professional Conduct of the N.C. State Bar,

14. In August 2007 Mansfield responded that he would send the materials requested. He never did send the materials - even after Defendant sent another letter in September 2007,

15. Due to the facts averred above and set forth in Defendants Motion For Appropriate Relief on Page 3 (Notice of Pro Se Representation) and Defendants Complaint against Carlton Mansfield filed with the N.C. State Bar (Exhibit 2 of the Amended Motion For Appropriate Relief) and in the [illegible] of Supporting Evidence for this Complaint, Defendant was left in [illegible] where technically he had an attorney (and therefore could not get another lawyer to assist here - as that would be unethical) but in truth he was abandoned by his lawyer from the beginning of his appointment to Defendant. This [illegible] was complete and was without regard of Mansfield's ethical obligations as an officer of the Court, as an attorney and as Defendants appointed





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No. _____ 16B District

North Carolina Court of Appeals

* * *

State of North Carolina) From Robeson County
v.) No. 93 CRS 15291-93
Daniel Andre Green)

* * *

Petition for Writ of Mandamus

* * *

To the Honorable Court of Appeals of North Carolina; and Clerk of Court of Appeals:

Defendant Daniel A. Green respectfully petitions this Court to issue its Writ of Mandamus pursuant to Rule 22 of the N.C. Rules of Appellate Procedure to compel Judge Robert Floyd The Honorable Presiding Judge of Robeson County Superior Court to immediately remove Attorney Carlton Mansfield from Defendant's Case as Appointed Counsel for Defendant's Motion for Appropriate Relief; and in support of this petition show the following:

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Facts

1) On May 16th 2000 the Honorable Gregory Weeks

appointed Carlton M. Mansfield to represent Defendant on a Motion for Appropate Relief.* Defendant was convicted and sentenced in the Superior Court of Robeson County during the 1995 to 1996 Criminal Session of 1st Degree Murder, inter alia, File No. 93 CRS 15891-93. This is the conviction Defendant is seeking Appropiate Relief for. See Attachment A. This Amended Motion For Appropiate Relief and the Exhibits contained therein are incorporated by reference into this Writ of Mandamus;

2) Over a period of five (5) years Mr. Mansfield was negligent in his responsibility as Defendants appointed attorney. He did not investigate Defendants claims. He did not research or analyze the issues presented in Defendants motions. The State Bar Complaint included as Exhibit 2 in support of Attachment A (Defendants Amended M.A.R.) describes this situation in detail;

3) Between August 8th and August 12th of 2005 Defendant was brought to Robeson County Superior Court to have his motion heard to remove Carlton Mansfield heard. This motion was heard by the Honorable Robert Floyd. This was the second time this same issue was brought before the Court of Robeson County,

4) At this hearing Mansfield claimed that he had

*Pursuant to N.C.G.S. 15A-1420(b1)(2) N.C.G.S. 7A-451(a)(3)

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investigated Defendants claims asserted in the M.A.R. and that he also read Defendants transcripts. He also stated that he discussed potential claims for relief with Defendant and read letters from Defendant about these claims and that he found Defendants claims to have no merit and were frivolous;

5) Manstield also noted that Defendant had filed a complaint against him and that he and Defendant both wanted Manstield taken off of the case;

6) Defendant pointed out that it wasn't until he had filed the N.C State Bar Complaint against Manstield, after 5 years of trying to get Mr. Manstield to comply with his ethical obligations to Defendant, did Manstield claim the M.A.R. was meritless and frivolous and so it's the one time Manstield visited him he expressed her belief that Defendant should receive a new trial;

7) Judge Floyd ordered Manstield to prepare a brief detailing the work he did on the case, any potential claims Defendant could assert and to basically explain how he reached the conclusion that Defendants M.A.R was frivolous. Defendant attempted the Court order as requiring Manstield to file an Anders Brief within weeks;

8) Judge Floyd informed Defendant that within a couple

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of months he would rule on Defendants motion and either allow Defendant to proceed prose, proceed with another appointed attorney or order Mansfield to stay on the case; this was in 2005;

9. After no response from Mansfield or the Court Defendant received a response from Mansfield on February 1st 2006 [illegible] months later Mansfield stated that the case file and transcript was over 19,000 pages and once he arranged it in order, he found no possible errors.

10. After waiting a year and still receiving no response from the Court [illegible] Mansfield [illegible] case and after waiting numerous attorneys for assistance with no avail, Defendant contacted Robeson County Clerk of Court in an attempt to get his trial and pre-trial [illegible] transcriptions;

11. The Robeson County Clerk of Court only response to Defendant's response was to send the names and addresses of the Court Reporters involved in the case Kim Kay - 701 Yorkshire Court Fairmont, NC 28340; Shannon Henderson - 117 [illegible] Lafayette, N.C. 28311; Georgia M[illegible] - 131 Green Swamp Rd. Supply, N.C. 28462; [redacted] N.E. Suite 160 Atlanta, Georgia 30309. Defendant wrote all of them in an attempt to order the transcript.

12. Except for Steven Husby, from which no response came, of

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of the letters came back stamped "Return To Sender. Unable to forward" This was in June of 2007;

13. In June or July of 2007 requested in writing that Mansfield to return his complete file including transcript pursuant to Rule 1.16(d) of the Revised Rules of Professional Conduct of the N.C. State Bar;

14. In August 2007 Mansfield responded that he would send the materials requested. He never did send the materials even after Defendant sent another letter in September 2007;

15. Due to the facts averred above and set forth in Defendant's Motion For Appropriate Relief on Page 3 (Notice of Pro Se Representation), and Defendant's Complaint against Carlton Mansfield filed with the N.C. State Bar (Exhibit 2 of the Amended Motion For Appropriate Relief) and in the List of Supporting Evidence for this Complaint, Defendant was left in limbo where technically he had an attorney (and therefore could not get another lawyer to assist him as that would be unethical) but in truth he was abandoned by his lawyer from the beginning of his appointment to Defendant. This abandonment was complete and was without regard of Mansfields ethical obligations as an officer of the Court, as an attorney and as Defendants appointed

Attorney;

16. For these reasons, Defendant was forced to draft and file the attached Amended Motion for Appropriate Relief. In researching this Motion Defendant did not have access to his case file, transcripts and other materials.

STATEMENT OF ISSUES AND RELIEF SOUGHT

I. Should Curtis Mansfield be allowed to remain on Defendant's Motion for Appropriate Relief as Appointed Counsel?

II. Did Curtis Mansfield's incorrect Abandonment of Defendant deny Defendant his Constitutional right under Section 19 and 23 of the North Carolina Constitution, and the Fifth and Fourteenth Amendment of the U.S. Constitution, to due process and equal protection of the laws, and access to the Courts? Did Mansfield's actions deny Defendant his Statutory right to Post-Conviction Counsel under North Carolina General Statute 7A-451(a)(3) and 15A-1420(b)(1)

III. Has Rowan County Superior Court's failure to enter an order removing Curtis Mansfield from Defendant's case resulted in the denial of Defendant's Constitutional rights to Due Process?

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protection of the laws and Access to the Courts guaranteed to all under the United States Constitution, 5th, 6th and 14th Amendments and under N.C. Constitution, Article 1, Sections 18, 19 and 21 and, does this failure deny Defendant his Statutory right to Pass Conviction Counsel guaranteed by North Carolina General Statutes 7A-451(a)(1) and 15A-1420(b1)(2)?

Relief Sought

I First, Defendant requests that this Court obtain the following from the Robeson County Clerk of Court, in order to have the materials necessary to make an informed decision (Defendant does not have an attorney to get these materials for him, North Carolina Prisoner Legal Services, Inc. will not get involved b/c Mr. Mansfield is assigned to Defendant and there is no profit incentive for them to get involved; and, Robeson County Clerk will not forward these materials to Defendant)

A. The correspondence between Defendant and Robeson County Court Officials (Judges and Clerks) as well as other documents described in Defendant's "List of Supporting Evidence" (Exhibit 1 of Defendants N.C. State Bar Complaint against Carlton Mansfield in this matter.

B. The transcripts of the hearings held by Judge Floyd in Robeson County on March 11th, 2002 and in August 2005 on

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Defendants motions to remove Carlton Mansfield from his case

II Defendant requests that this Honorable Court Compel The Honorable Robert Floyd to remove Carlton Mansfield from Defendants case and to make findings of facts in regards to Mr. Mansfields representation of Defendant and whether or not his representation upheld the ethical standards and professional conduct expected by an officer of the Court and an attorney licensed by the N.C. State Bar and furthermore whether or not Mr. Mansfield in fact did the work he claimed he did in this case and for which he has or will bill the State of North Carolina.

III Defendant requests that a Board Certified Specialist in State Criminal Law be appointed to represent him due to complex nature of his Motion for Appropriate Relief and that an investigator be appointed to gather evidence and affidavits from witnesses named in the Amended MAR and that this be done as soon as possible due to the fact that one of the witnesses Mr. [illegible] [illegible] Parkinson [illegible] and other witnesses are in poor health as well due to the [illegible] that has passed since Mr. Mansfield was appointed to Defendant and his efforts to [illegible] Defendant [illegible] [illegible], irreparable harm has been done to Defendants case and urgency is now demanded to serve the best interest of justice.

Certificate of Service

As U.S. Supreme Court Justice, Hugo L. Black, stated in Polizzi v. Cowles Magazines Inc. 345 U.S. 663 (1953), "to delay justice may be to deny justice".

N.C. General Statutes gives indigent people the right to counsel if they have been sentenced to a term of imprisonment.

N.C. General Statutes 7A-451(a)(3) and 15A-1420(b1)(2) extends this statutory right to encompass post-conviction proceedings.

If this Court finds that poor people have the right to lawyers in this type of situation then the question of what kind of lawyer is one that is no longer necessary because our State and Federal Courts have already supplied the answer: the same kind of lawyer anyone else should get — the same kind that rich students get the same kind anyone wants — a lawyer who's obligation is to simply do what a client can't do for themselves in the case and to do it ethically and with due diligence.

Over 8 years ago on May 10, 2000 the Honorable Gregory Weeks assigned Carlton Mansfield to represent Defendant in a MAR.

As is painstakingly detailed in the attached List of Supporting Evidence Defendant wrote dozens of letters to Robeson County Court officials including 5 judges, and to Mr. Mansfield in an effort to get Mr. Mansfield to fulfill his obligations. In response Mr. Mansfield blamed his refusal or negligence to assist Defendant on the D.A. stacking his calendar, to the Court for appointing him too many clients and even on his secretary for losing his mail.

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EXPLANATORY

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After enduring 5 years of Mr. Mansfield's procrastination, deceit and delays Defendant was forced to file a complaint with the N.C. State Bar and another Motion to remove him from his case. Mr. Mansfield then claimed that Defendant's post conviction efforts were without merit and frivolous. In effect Mansfield actions fit the description that a Master Teacher gave about the experts of the law who not only took away the key to knowledge of the law but when also refused to enter the Courts of law on behalf of the people and then hindered them from entering the Courts themselves.

The Amended M.A.R. attached to this Petition helps Mr. Mansfield's contention that Defendant's original motion was without merit and frivolous. Although this Amended M.A.R. drafted by a Defendant with no formal training in these types of matters and no [illegible] but with the help of supportive family friends, inmates and [illegible] staff — although it's far from the standards of a lawyer, it cannot be said to be frivolous or without merit.

If Defendant could [illegible] why couldn't Mr. Mansfield? Why was he so comfortable and careless about ignoring several Judges orders in regards to his duties to the Defendant?

Mr. Mansfield's actions and inaction has prejudiced and damaged Defendant's post conviction [illegible] efforts and have eroded and undermined the cause of justice.

For the above reasons Defendant begs this Court to [illegible] to Work of Mandamus and stop this delay of justice. This the 7th Day of September 20[illegible]

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WRIT OF MANDAMUS

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NO. P08-742 SIXTEEN-B DISTRICT

NORTH CAROLINA COURT OF APEALS

****

STATE OF NORTH CAROLINA	)	
	)	
v.	)	From Robeson
	)	
DANIEL A. GREEN	)	

****

STATE'S RESPONSE TO PETITION
FOR WRIT OF MANDAMUS

****

TO: THE HONORABLE CHIEF JUDGE AND ASSOCIATE JUDGES OF THE NORTH CAROLINA COURT OF APPEALS

NOW COMES the State of North Carolina by and through Roy Cooper, Attorney General, and LaToya B. Powell, Assistant Attorney General, and responding to petitioner's petition for writ of mandamus filed 16 September 2008, moves that the petition be denied.

PROCEDURAL HISTORY

1. Petitioner was convicted in February 1996 of first degree murder, robbery with a dangerous weapon, and conspiracy to commit robbery, following a jury trial in Robeson County Superior Court. On 22 March 1996, the Honorable Gregory Weeks sentenced petitioner to a term of life imprisonment plus ten years. Petitioner gave notice of appeal.

2. On 2 June 1998, a divided panel of this Court issued an opinion found no prejudicial error in petitioner's trial. State v. Reeder, 129 N.C. App. 933, 500 S.E.2d 452 (1998).

3. On 5 February 1999, the Supreme Court issued a per curiam opinion affirming this Court's decision. Shaw v. Keeter, 350 N.C. 59, 510 S.E.2d 375 (1999).

4. On 5 May 2000, petitioner filed a pro se Motion Requesting Appointment of Counsel with the trial court, which was treated by the court as a Motion for Appropriate Relief ("MAR").

5. On 16 May 2000, the Honorable Gregory Weeks, Superior Court Judge, appointed attorney Carlton M. Mansfield to represent petitioner in the preparation and filing of his MAR.

6. On 22 March 2005, petitioner filed a complaint with the North Carolina State Bar against Mr. Mansfield, alleging various violations of the Rules of Professional Conduct. This complaint was dismissed on 28 June 2005, based upon "insufficient evidence."

7. Petitioner also filed a motion with the trial court to have Mr. Mansfield removed as his appointed counsel based upon Mr. Mansfield's failure to investigate petitioner's claims and for his inaction in assisting petitioner with his MAR. Undersigned counsel is unaware of the specific date of the filing of this motion.

8. Upon information and belief, petitioner's motion to have Mr. Mansfield removed from his case was heard by the Honorable Robert Floyd, Senior Resident Superior Court Judge in August of 2005. At this hearing, Mr. Mansfield informed the trial court that he had investigated petitioner's file and found no meritorious claims to raise in an MAR. Judge Floyd ordered Mr. Mansfield to prepare a brief detailing his actions in this case and how he came to the conclusion that petitioner's MAR was meritless.

EXPLANATORY

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9. Upon information and belief, petitioner received a response from Mr. Mansfield on 1 February 2006, informing petitioner that he had read petitioner's trial transcript, which consisted of 14,000 pages, and found no possible errors.

10. Upon information and belief, petitioner has made several requests to Mr. Mansfield for his case file and transcripts, which have been unanswered. Petitioner received a letter from Mr. Mansfield in August of 2007, stating that Mr. Mansfield would mail the file to petitioner; however, petitioner has not received the file to this date.

11. Upon information and belief, no ruling has been made upon petitioner's motion to have Mr. Mansfield removed from his case.

12. On or about 12 May 2008, petitioner filed a pro se Amendment to his MAR.

13. On 16 September 2008, petitioner filed the instant Petition for Writ of Mandamus requesting this Court to order the Robeson County Superior Court "to immediately remove Attorney Carlton Mansfield from Defendant's case as appointed counsel for Defendant's Motion for Appropriate Relief."

REASONS WHY THE WRIT SHOULD NOT ISSUE

A writ of mandamus is an order from a court of competent jurisdiction to an inferior court, officer, or person commanding the performance of a specified official duty imposed by law. Sutton v. Figgatt, 280 N.C. 89, 93, 185 S.E.2d 97, 99 (1971). The writ is a remedy for inaction of an official and is a personal action based upon allegation and proof that the defendant has

neglected or refused to perform a personal duty which the plaintiff has a clear legal right to have him perform. Id. "A party seeking a writ of mandamus must have a clear legal right to demand it, and the party to be coerced must be under a positive legal obligation to perform the act sought to be required." St. George v. Hanson, 239 N.C. 259, 263, 78 S.E.2d 885, 889 (1954).

In this case, petitioner has requested this Court to issue its writ of mandamus to compel action by the Robeson County Superior Court with respect to the removal of attorney Carlton Mansfield from petitioner's case. Based upon the filing of this petition, undersigned counsel contacted the Office of the Superior Court Judge in Robeson County on 1 October 2008. The Judicial Assistant for Senior Resident Superior Court Judge Robert Floyd informed undersigned counsel that Judge Floyd is expected to enter an order this week removing Mr. Mansfield from this case and appointing petitioner new counsel in the filing of his MAR. Therefore, petitioner should receive a response from the trial court within the next few days.

Based upon this information, the State respectfully submits that the trial court has not neglected or refused to answer petitioner's motion and that it will respond within a reasonable period of time. Accordingly, the State requests that this Court allow the trial court a reasonable amount of additional time to respond to petitioner's motion.

WHEREFORE, the State respectfully requests that this Court deny petitioner's petition for writ of mandamus.

EXPLANATORY

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Electronically submitted this 2nd day of October, 2008.

ROY COOPER
Attorney General

Electronically Submitted
LaToya B. Powell
Assistant Attorney General

North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602
Telephone: (919) 716-6500
lpowell@ncdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **STATE'S RESPONSE TO PETITION FOR WRIT OF MANDAMUS** upon petitioner by placing same in the United States Mail, first class postage prepaid, addressed as follows:

Daniel A. Green 0154242
PO Box 280
Polkton, NC 28135

This the 2nd day of October, 2008.

Electronically Submitted
LaToya B. Powell
Assistant Attorney General

NO. P08-742 SIXTEEN-B DISTRICT

NORTH CAROLINA COURT OF APEALS

****

STATE OF NORTH CAROLINA	)	
	)	
v.	)	From Robeson
	)	
DANIEL A. GREEN	)	

****

STATE'S RESPONSE TO PETITION
FOR WRIT OF MANDAMUS

****

TO: THE HONORABLE CHIEF JUDGE AND ASSOCIATE JUDGES OF THE NORTH CAROLINA COURT OF APPEALS

NOW COMES the State of North Carolina, by and through Roy Cooper, Attorney General, and LaToya B. Powell, Assistant Attorney General, and responding to petitioner's petition for writ of mandamus filed 16 September 2008, moves that the petition be denied.

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2. On 2 June 1998, a divided panel of this Court issued an opinion found no prejudicial error in petitioner's trial. State v. Reeder, 129 N.C. App. 539, 500 S.E.2d 452 (1998).

3. On 5 February 1999, the Supreme Court issued a per curiam opinion affirming this Court's decision. State v. Reeder, 350 N.C. 59, 510 S.E.2d 375 (1999).

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5. On 16 May 2000, the Honorable Gregory Weeks, Superior Court Judge, appointed attorney Carlton M. Mansfield to represent petitioner in the preparation and filing of his MAR.

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7. Petitioner also filed a motion with the trial court to have Mr. Mansfield removed as his appointed counsel based upon Mr. Mansfield's failure to investigate petitioner's claims and for his inaction in assisting petitioner with his MAR. Undersigned counsel is unaware of the specific date of the filing of this motion.

8. Upon information and belief, petitioner's motion to have Mr. Mansfield removed from his case was heard by the Honorable Robert Floyd, Senior Resident Superior Court Judge in August of 2005. At this hearing, Mr. Mansfield informed the trial court that he had investigated petitioner's file and found no meritorious claims to raise in an MAR. Judge Floyd ordered Mr. Mansfield to prepare a brief detailing his actions in this case and how he came to the conclusion that petitioner's MAR was meritless.

9. Upon information and belief, petitioner received a response from Mr. Mansfield on 1 February 2006, informing petitioner that he had read petitioner's trial transcript, which consisted of 19,000 pages, and found no possible errors.

10. Upon information and belief, petitioner has made several requests to Mr. Mansfield for his case file and transcripts, which have been unanswered. Petitioner received a letter from Mr. Mansfield in August of 2007, stating that Mr. Mansfield would mail the file to petitioner; however, petitioner has not received the file to this date.

11. Upon information and belief, no ruling has been made upon petitioner's motion to have Mr. Mansfield removed from his case.

12. On or about 12 May 2008, petitioner filed a pro se Amendment to his MAR.

13. On 16 September 2008, petitioner filed the instant Petition for Writ of Mandamus requesting this Court to order the Robeson County Superior Court "to immediately remove Attorney Carlton Mansfield from Defendant's case as appointed counsel for Defendant's Motion for Appropriate Relief."

REASONS WHY THE WRIT SHOULD NOT ISSUE

A writ of mandamus is an order from a court of competent jurisdiction to an inferior court, officer, or person commanding the performance of a specified official duty imposed by law. Sutton v. Figgatt, 280 N.C. 89, 93, 185 S.E.2d 97, 99 (1971). The writ is a remedy for inaction of an official and is a personal action based upon allegation and proof that the defendant has

neglected or refused to perform a personal duty which the plaintiff has a clear legal right to have him perform. Id. "A party seeking a writ of mandamus must have a clear legal right to demand it, and the party to be coerced must be under a positive legal obligation to perform the act sought to be required." St. George v. Hanson, 239 N.C. 259, 263, 78 S.E.2d 885, 888 (1954).

In this case, petitioner has requested this Court to issue its writ of mandamus to compel action by the Robeson County Superior Court with respect to the removal of attorney Carlton Mansfield from petitioner's case. Based upon the filing of this petition, undersigned counsel contacted the Office of the Superior Court Judge in Robeson County on 1 October 2008. The Judicial Assistant for Senior Resident Superior Court Judge Robert Floyd informed undersigned counsel that Judge Floyd is expected to enter an order this week removing Mr. Mansfield from this case and appointing petitioner new counsel in the filing of his MAR. Therefore, petitioner should receive a response from the trial court within the next few days.

Based upon this information, the State respectfully submits that the trial court has not neglected or refused to answer petitioner's motion and that it will respond within a reasonable period of time. Accordingly, the State requests that this Court allow the trial court a reasonable amount of additional time to respond to petitioner's motion.

WHEREFORE, the State respectfully requests that this Court deny petitioner's petition for writ of mandamus.

Electronically submitted this 2nd day of October, 2008.

ROY COOPER
Attorney General

Electronically Submitted,
LaToya B. Powell
Assistant Attorney General

North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602
Telephone: (919) 716-6500
lpowell@ncdoj.gov

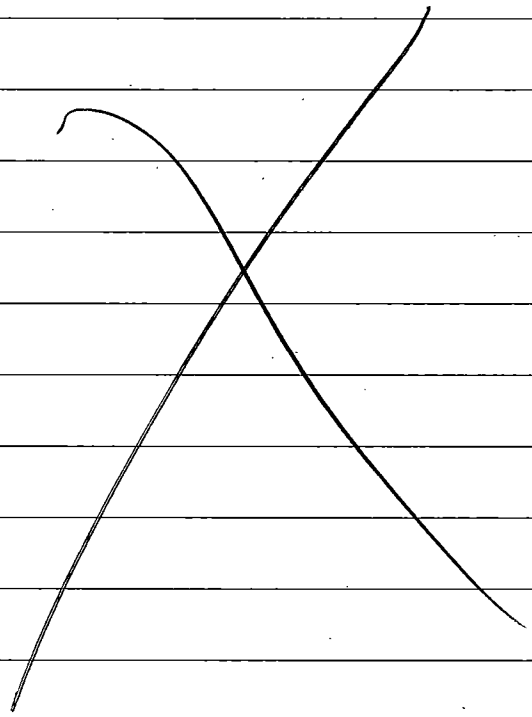
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **STATE'S RESPONSE TO PETITION FOR WRIT OF MANDAMUS** upon petitioner by placing same in the United States Mail, first class postage prepaid, addressed as follows:

Daniel A. Green 0154242
PO Box 280
Polkton, NC 28135

This the 2nd day of October, 2008.

Electronically Submitted
LaToya B. Powell
Assistant Attorney General



EXPLANATORY

THE FOLLOWING DOCUMENT(S) MAY HAVE POOR IMAGES DUE TO POOR PHOTOGRAPHIC QUALITY OF PAPER.

No. COAP08-742

North Carolina Court of Appeals

****

STATE OF NORTH CAROLINA

From Robeson
(93CRS15291-93)

v

DANIEL ANDRE GREEN

****

ORDER

The following order was entered:

The petition filed in this cause by defendant on 16 September 2008 and designated "Petition for Writ of Mandamus" is dismissed without prejudice to defendant refiling the petition with this Court if the motion for removal of appointed counsel is not ruled upon by the Robeson County Superior court within thirty days of the date of this order.

By order of the Court this the 3rd day of October 2008.

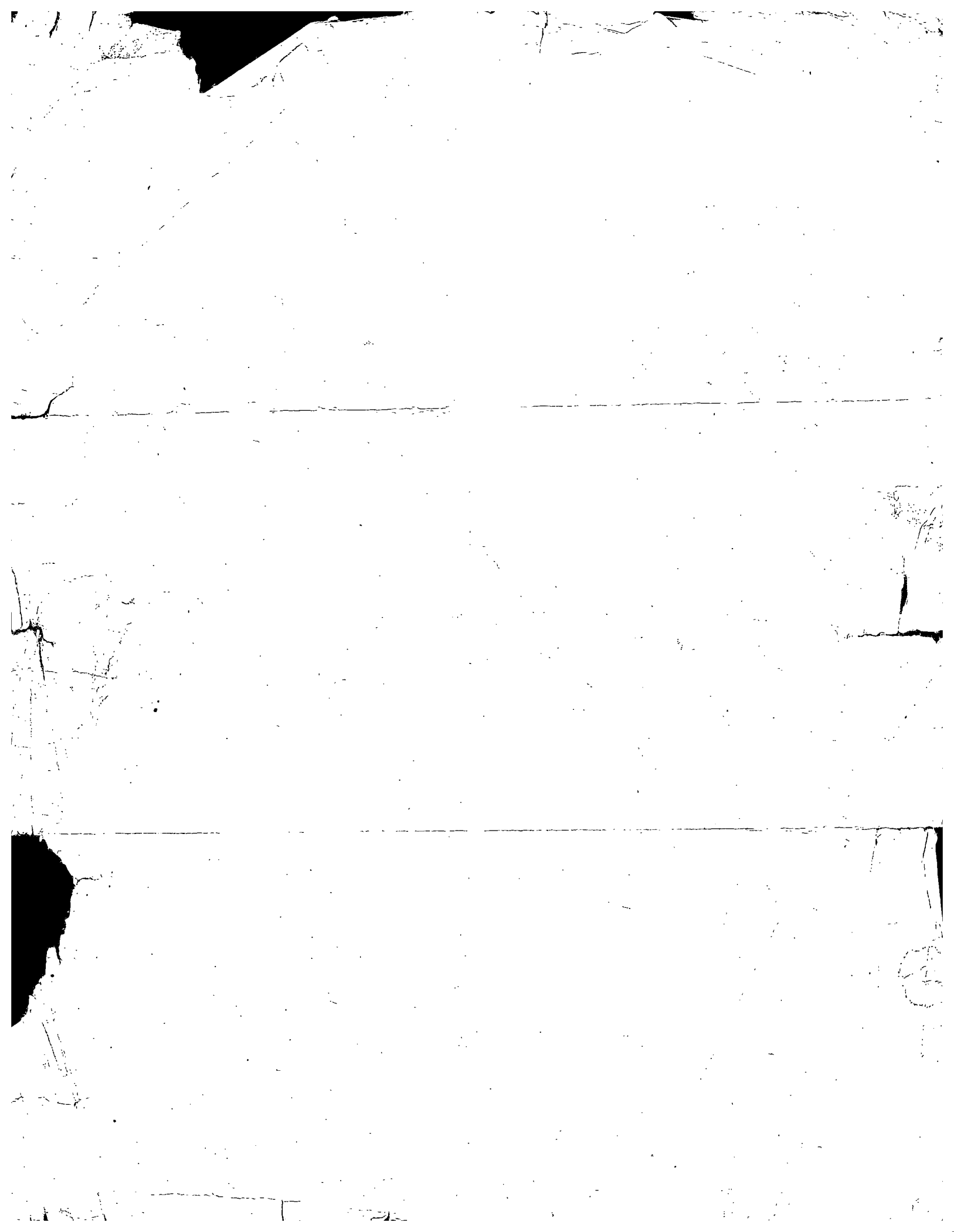
The above order is therefore certified to the Clerk of Superior Court Robeson County.

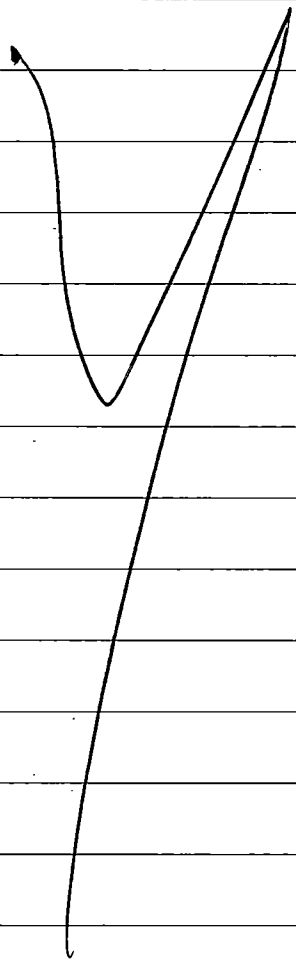
Witness my hand and official seal this the 3rd day of October 2008.

John H. Connell
Clerk of North Carolina Court of Appeals

CSC Orig
cc:
Mr. Daniel Andre Green
Ms. LaToya B. Powell

FILED THE 3RD DAY OF OCTOBER 2008 AT 2:26 PM IN THE OFFICE OF THE CLERK, COURT OF APPEALS OF NORTH CAROLINA





NORTH CAROLINA

ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
93 CRS 15291

FILED
2008 SEP 29 P 4:58
ROBESON COUNTY, C.S.C.
BY SSB

STATE OF NORTH CAROLINA)
)
v.)
)
DANIEL GREEN,)

ORDER
ALLOWING WITHDRAWAL
OF ATTORNEY

THIS CAUSE coming before the undersigned judge upon the request of Carlton M. Mansfield, Esq., to withdraw from the above captioned criminal proceeding; and it appearing to the Court that

1. The Carlton M. Mansfield was appointed to represent the Defendant to determine if there were sufficient grounds for the filing of a Motion for Appropriate Relief; and

2. Upon the record, and based upon conversations with the Defendant, Mr. Mansfield determined, in his professional opinion, that there were no issues for the filing of a Motion for Appropriate Relief; and

3. In 2005, the Defendant filed a grievance with the North Carolina State Bar against Mr. Mansfield for his failure to file a Motion for Appropriate Relief, thereby causing a genuine conflict of interest between the Defendant and Mr. Mansfield; and

4. The Defendant has now filed *pro se* a Motion for Appropriate Relief and has undertaken to represent himself in this matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Carlton M. Mansfield, Esq., is hereby allowed to withdraw as attorney for the Defendant and is relieved of any further obligation in this matter.

Entered this the 26th day of September, 2008.

HONORABLE ROBERT F. FLOYD
Senior Resident Superior Court Judge

Attachment A

(26 September 2008 order of Honorable Judge Robert F. Floyd)

NORTH CAROLINA

ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
93 CRS 15291

FILED
2008 SEP 29 P 4:58
ROBESON COUNTY, C.S.C.
BY

STATE OF NORTH CAROLINA)
) ORDER
v.) ALLOWING WITHDRAWAL
) OF ATTORNEY
DANIEL GREEN,)

THIS CAUSE coming before the undersigned judge upon the request of Carlton M. Mansfield, Esq., to withdraw from the above captioned criminal proceeding; and it appearing to the Court that

1. The Carlton M. Mansfield was appointed to represent the Defendant to determine if there were sufficient grounds for the filing of a Motion for Appropriate Relief; and

2. Upon the record, and based upon conversations with the Defendant, Mr. Mansfield determined, in his professional opinion, that there were no issues for the filing of a Motion for Appropriate Relief; and

3. In 2005, the Defendant filed a grievance with the North Carolina State Bar against Mr. Mansfield for his failure to file a Motion for Appropriate Relief, thereby causing a genuine conflict of interest between the Defendant and Mr. Mansfield; and

4. The Defendant has now filed *pro se* a Motion for Appropriate Relief and has undertaken to represent himself in this matter.

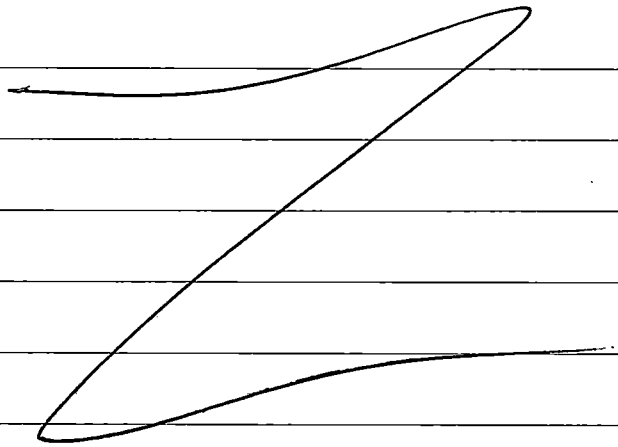
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Carlton M. Mansfield, Esq., is hereby allowed to withdraw as attorney for the Defendant and is relieved of any further obligation in this matter.

Entered this the 26th day of September, 2008.

HONORABLE ROBERT F. FLOYD
Senior Resident Superior Court Judge

Attachment A

(26 September 2008 order of Honorable Judge Robert F. Floyd)



NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 93 CRS 15291-93

FILED
2008 OCT -2 A 11: 20
ROBESON CO., C.S.C.
BY

STATE OF NORTH CAROLINA }
} ORDER OF SUMMARY DISMISSAL
VS. } ON MOTION FOR APPROPRIATE
DANIEL ANDRE GREEN } RELIEF
DEFENDANT }

This matter was heard upon a motion for appropriate relief filed on August 25, 2008, by defendant/petitioner, who is now confined in Department of Correction. The court, having considered the allegations contained in the motion and the case file, finds as a fact that the motion sets forth no probable grounds for the relief requested, either in law or in fact, as to all issues raised in defendant's motion for appropriate relief, except as to defendant's claim of ineffective assistance of trial counsel and the states failure to disclose the tape recordings of telephone conversations of Melinda Moore and Deloris Sullivan

The court concludes that there are no probable grounds for relief, and IT IS THEREFORE ORDERED that:

1. The motion is denied to all claims except as to ineffective assistance of trial counsel and the States failure to disclose the tape recordings of telephone conversations of Melinda Moore and Deloris Sullivan.

2. The defendant/petitioner's failure to assert any other grounds in his motion shall be subject to being treated in the future as BAR to any other claims, assertions, petitions, or motions that he might hereafter file in this case, pursuant to G.S. 15A-1419;

3. The Clerk shall forward a copy of this order to the defendant/petitioner and the District Attorney, 16B Judicial District.

4. Carl Ivarsson is appointed to assist the defendant in his Motion for Appropriate Relief.

ENTERED on this the 2nd day of ~~September~~ October 2008.

THE HONORABLE ROBERT F. FLOYD, JR.
Senior Resident Superior Court Judge

NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 93 CRS 15291-93

2008 OCT -2 A 11: 20

STATE OF NORTH CAROLINA

VS.

DANIEL ANDRE GREEN
DEFENDANT

ORDER OF SUMMARY DISMISSAL
ON MOTION FOR APPROPRIATE
RELIEF

BY NHL

This matter was heard upon a motion for appropriate relief filed on August 25, 2008, by defendant/petitioner, who is now confined in Department of Correction. The court, having considered the allegations contained in the motion and the case file, finds as a fact that the motion sets forth no probable grounds for the relief requested, either in law or in fact, as to all issues raised in defendant's motion for appropriate relief, except as to defendant's claim of ineffective assistance of trial counsel and the states failure to disclose the tape recordings of telephone conversations of Melinda Moore and Deloris Sullivan

The court concludes that there are no probable grounds for relief, and IT IS THEREFORE ORDERED that:

1. The motion is denied to all claims except as to ineffective assistance of trial counsel and the States failure to disclose the tape recordings of telephone conversations of Melinda Moore and Deloris Sullivan.

2. The defendant/petitioner's failure to assert any other grounds in his motion shall be subject to being treated in the future as BAR to any other claims, assertions, petitions, or motions that he might hereafter file in this case, pursuant to G.S. 15A-1419;

3. The Clerk shall forward a copy of this order to the defendant/petitioner and the District Attorney, 16B Judicial District.

4. Carl Ivarsson is appointed to assist the defendant in his Motion for Appropriate Relief.

ENTERED on this the 2nd day of ~~September~~ October 2008

THE HONORABLE ROBERT F. FLOYD, JR.
Senior Resident Superior Court Judge

10/2/08
Mailed to Green, Ivarsson & Johnson

Attachment B

(2 October 2008 order of Honorable Judge Robert F. Floyd)

NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 93 CRS 15291-93

2008 OCT -2 A 11:20

STATE OF NORTH CAROLINA

VS.
DANIEL ANDRE GREEN
DEFENDANT

ORDER OF SUMMARY DISMISSAL ON MOTION FOR APPROPRIATE RELIEF

This matter was heard upon a motion for appropriate relief filed on August 25, 2008, by defendant/petitioner, who is now confined in Department of Correction. The court, having considered the allegations contained in the motion and the case file, finds as a fact that the motion sets forth no probable grounds for the relief requested, either in law or in fact, as to all issues raised in defendant's motion for appropriate relief, except as to defendant's claim of ineffective assistance of trial counsel and the states failure to disclose the tape recordings of telephone conversations of Melinda Moore and Deloris Sullivan

The court concludes that there are no probable grounds for relief, and IT IS THEREFORE ORDERED that:

1. The motion is denied to all claims except as to ineffective assistance of trial counsel and the States failure to disclose the tape recordings of telephone conversations of Melinda Moore and Deloris Sullivan.

2. The defendant/petitioner's failure to assert any other grounds in his motion shall be subject to being treated in the future as BAR to any other claims, assertions, petitions, or motions that he might hereafter file in this case, pursuant to G.S. 15A-1419;

3. The Clerk shall forward a copy of this order to the defendant/petitioner and the District Attorney, 16B Judicial District.

4. Carl Ivarsson is appointed to assist the defendant in his Motion for Appropriate Relief.

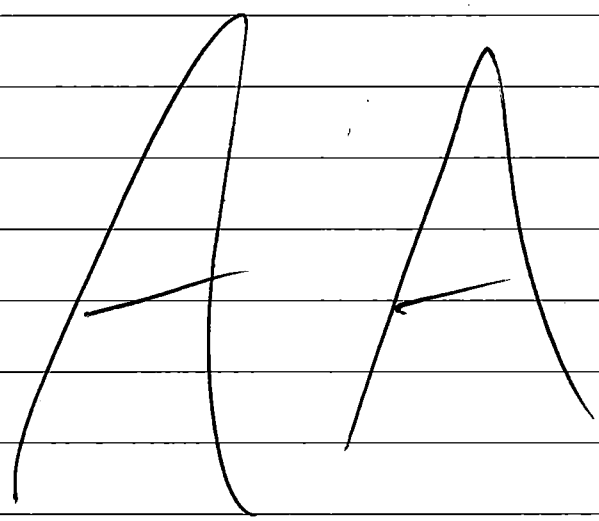
ENTERED on this the 2nd day of ~~September~~ October 2008

THE HONORABLE ROBERT F. FLOYD, JR.
Senior Resident Superior Court Judge

10/2/08
Mailed to Green, Ivarsson & Johnson

Attachment B

(2 October 2008 order of Honorable Judge Robert F. Floyd)



STATE OF NORTH CAROLINA COUNTY OF ROBESON	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION Court File Number: 93 CRS 15291-15293
STATE OF NORTH CAROLINA v. DANIEL ANDRE GREEN	MOTION TO VIEW DOCUMENTS UNDER SEAL

NOW COMES C. Scott Holmes, and moves this Court to order the Clerk of Court to open material under seal in the Court file in the above captioned case, make a copy for Defense counsel, mail a copy to Defense Counsel, and reseal. As grounds for this motion, counsel shows the following:

PROCEDURAL HISTORY

1. Green was indicted September 7, 1993 for the murder of James Jordan which allegedly took place July 23, 1993. Green was tried for first degree murder (93CRS15291), armed robbery of a 1992 Lexus 400 and personal items, (93CRS15292), and conspiracy to commit robbery with Larry Martin Demery (93CRS15293) at the January 3, 1996, Session of Criminal Superior Court for Robeson County, the Honorable Gregory Weeks, presiding. Green was found guilty on all counts. Following a sentencing proceeding, Green was sentenced to life in prison for the murder, and 10 years for the conspiracy to commit robbery to run consecutively.
2. The Court of Appeals affirmed Green's conviction with one dissent. State v. Green, 129 N.C. App. 539, 500 S.E.2d 452 (1998), aff'd, 350 N.C. 59, 510 S.E.2d 375 (1999), and

the United States Supreme Court denied review. Green v. North Carolina, 528 U.S. 846 (1999)

3. Thereafter Daniel Green filed a Motion for Appropriate Relief on May 5, 2000 and an Amendment to the Motion for Appropriate relief on August 21, 2008. Post-conviction counsel was appointed on May 16, 2000.
4. An Order was entered by the Honorable Robert F. Floyd, Jr. on October 2, 2008 summarily dismissing all claims except claims of ineffective assistance of trial counsel and the State's failure to disclose the tape recordings of telephone conversations of Melinda Moore and Deloris Sullivan. The Court appointed Carl Ivarsson to represent Mr. Green.
5. Attorney Carlton Mansfield was appointed May 16, 2000 and was allowed to withdraw September 16, 2008. Replacement counsel, Scott Holmes was appointed on March 18, 2009.
6. A Motion for Discovery and leave of court for depositions was filed by Defendant on July 10, 2013, and the State filed a response on October 15, 2013.

GROUNDS FOR MOTION

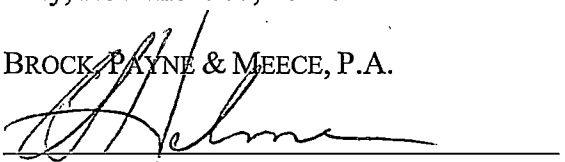
7. Defendant is indigent and is represented by court appointed counsel in the above captioned case with respect to the Motion for Appropriate Relief.
8. There are a number of documents under seal in the court file.
9. Counsel for Defendant needs to review these materials to make see if they are relevant to the issues of the Motion for Appropriate Relief and potential issues that could reasonably be raised in an amended Motion for Appropriate Relief.

WHEREFORE, the Defendant respectfully prays unto this Honorable Court for the following relief:

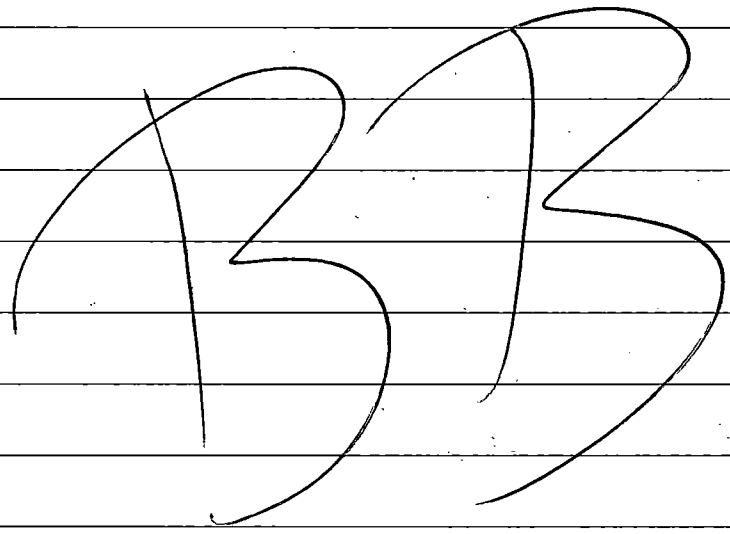
1. That this Honorable Court issue an Order for the clerk to open all documents under seal in the above captioned case, make a copy, send a copy to defense counsel, and reseal the material.
2. That this Ex Parte Motion and any Orders resulting from said Ex Parte Motion be sealed in the Court file of this case for appellate review and that said Ex Parte Motion and any Orders resulting from the same not be opened except upon order of this Court; and
3. For such other and further relief to which the Defendant may be entitled and which the Court may deem just and proper.

Respectfully submitted this day, Thursday, November 07, 2013.

BROCK, PAYNE & MEECE, P.A.

By: 

C. Scott Holmes
Attorney at Law
3130 Hope Valley Road
Durham, North Carolina 27707
Office: (919) 401-5913
Facsimile: (919) 419-1018
Email: Scott.Holmes@bpm-law.com
N.C. Bar No. 25569



LIST OF SUPPORTING EVIDENCE

12/29/1999 – Defendant filed a Motion to Compel Defendant's Constitutional Right of Access to the Courts, detailing the State's denial of and direct prevention of Defendant preparing a Motion for Appropriate Relief, in Robeson County Superior Court.

05/05/2000 – Defendant filed Motion Requesting Appointment of Counsel to assist Defendant in the preparation of a Motion for Appropriate Relief in Robeson County Superior Court.

06/11/2000 – Defendant wrote Robeson County Clerk of Court to confirm Motion Requesting Appointment of Counsel was received after receiving no response from the Court prior to this request.

06/30/2000 – Defendant received a response from the Robeson County Clerk of Court and an "Order of Assignment of Counsel" signed by the Honorable Gregory Weeks appointing Carlton M. Mansfield to represent Defendant on a Motion for Appropriate Relief signed on May 16, 2000.

06/30/2000 – Defendant had not been contacted by Mr. Mansfield thereby causing Defendant to write a letter to the Clerk of the Court to request Mr. Mansfield's address and to confirm that Mr. Mansfield was indeed appointed to represent him on a Motion for Appropriate Relief.

07/05/2000 – Deputy Clerk of Court informs Defendant, via letter, that Mr. Mansfield was appointed to handle Defendant's case, however, Defendant still had not been contacted by Mr. Mansfield up until this date.

July and August, 2000, Defendant wrote to Mr. Mansfield on two occasions regarding Mr. Mansfield's representation of Defendant and, simple contact from the attorney to the client to acknowledge his representation of Defendant. To this date, still not contact had been made by Mr. Mansfield.

08/18/2000 – Defendant writes to the Honorable Gregory Weeks about not being contacted by Mr. Mansfield as of yet, concern about the statute of limitations to file a habeas corpus and requesting new counsel to represent Defendant's interests if Mr. Mansfield is too busy to handle Defendant's case.

09/10/2000 – Defendant writes to Clerk of the Court, JoAnne Locklear, asking if the Motion for Appropriate Relief had been placed on the calendar yet and noting there still has been no contact from Mr. Mansfield to Defendant regarding Defendant's case.

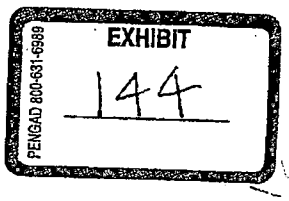
09/18/2000 – Defendant receives letter from the Honorable Dexter Brooks in response to Mr. Mansfield not responding to Defendant's correspondence. Judge Brooks informs Defendant that Mr. Mansfield was instructed to contact Defendant.

10/30/2000 – Defendant sends another letter to Mr. Mansfield.

11/18/2000 – Defendant receives letter from Anita Rivken Carothers, Esquire stating " . . . counsel who does not respond . . . not customary attorney-client relationship."

01/28/2001 – Defendant receives letter from Arnold Locklear, Chairperson of the Committee on Indigent Appointments, regarding filing concerns of Defendant about Mr. Mansfield for the Committee's review. Defendant never received response from Committee regarding same.

Exhibit 1



02/10/2001 – Defendant, finally some nine months later, receives response from Mr. Mansfield claiming he sent letter to Defendant at Central Prison and that it was returned then misplaced by Mr. Mansfield's secretary without his knowledge. Defendant has personal belief that this untrue especially since every letter Defendant sent to Mr. Mansfield had Defendant's current address at the time the letters were sent to Mr. Mansfield – never the Central Prison address.

01/07/2002 – Defendant sends letter to Clerk of Court requesting Mr. Mansfield be replaced as counsel to represent Defendant, to treat letter as informal motion and schedule hearing as soon as possible.

01/17/2002 – Defendant receives letter from Judge Brooks in response to request to replace Mr. Mansfield.

02/28/02 – Defendant sends correspondence to Clerk of Court requesting, once again, that Mr. Mansfield be replaced as counsel, noting that Judge Floyd responded to request and advised that Mr. Mansfield was instructed to contact me. Judge Brooks sent two letters during this time period advising that he made the same request of Mr. Mansfield. Defendant proceeds to express concern of the passage of time injuring Defendant's case and Defendant being concerned that the no contact is being done intentionally to cover up and/or destroy evidence that would assist Defendant positively. Defendant requests a hearing to be scheduled as soon as possible. (Clerk notes copies of letter given to Judge Floyd, the district attorney and Mr. Mansfield.)

03/11/2002 – Defendant transported to Court and at hearing Mr. Mansfield claims the district attorney has "stacked" his calendar and this is the reason why he has not had time to review Defendant's case. Mr. Mansfield also informs the Court that his secretary lost the letters from Defendant to Mr. Mansfield, among other items. This is the first time that Defendant and Mr. Mansfield meet and discuss issues.

06/08/2002 – Defendant sends letter to Mr. Mansfield regarding issues in case, conflict of counsel, jury misconduct, ineffective assistance of counsel, Giglio issue, etc.

07/20/02 – Defendant receives letter from Mr. Mansfield advising he was "plodding along" regarding Defendant's Motion for Appropriate Relief.

12/15/02 – Defendant sends letter to Mr. Mansfield emphasizing dissatisfaction with the time that has passed since he was appointed as counsel and still no results or timely responses from him.

01/01/2003 – Defendant sends letter to Mr. Mansfield regarding Woody's opening argument in trial being in conflict with case since Defendant signed a document admitting that Defendant helped Larry Demery dispose of the body and speaking of the incident where Defendant stopped Mr. Demery from robbing and killing Grant Locklear and family at 56's ranch beside Converse water tower.

09/25/2003 – Defendant writes letter to Judge Weeks regarding scheduling a hearing on the Motion for Appropriate Relief and comments that prior convictions should be wiped from Defendant's record (Robert Ellis incident).

10/14/2003 – Defendant receives response from Judge Weeks stating, in contradiction, what was said in open court at the hearing on the Motion for Appropriate Relief to vacate 1991 conviction, stating that vacation of judgment does not mean it is removed from my record.

11/20/2003 – Defendant sends letter to Robeson County Clerk inquiring as to the status of the Motion for Appropriate Relief being scheduled to be heard.

02/23/2004 – Defendant receives response from the Honorable Craig B. Ellis regarding Motion for Replacement of Counsel with newly appointed counsel. Judge Ellis states he instructed Mansfield to contact Defendant and also for the district attorney to set a date for the hearing.

06/03/2004 – Defendant sends letter to Clerk of Court requesting a hearing be scheduled regarding the motion to replace Mr. Mansfield as counsel on Defendant's case and detailing his lack of activity regarding Defendant's case. Defendant made note that since being appointed as his counsel in May of 2000, Defendant has only seen Mr. Mansfield once.

06/23/2004 – Defendant receives letter from Henderson Hill advising that he had spoken with Mr. Mansfield regarding Defendant's Motion for Appropriate Relief.

09/03/2004 – Defendant sends letter to Arnold Locklear regarding the failure of the Robeson County Court system to safeguard constitutional rights in regard to Defendant's situation with Mr. Mansfield and his non-response to Defendant's legitimate concerns as well as the conflict between the court, district attorney and Mr. Mansfield affecting Defendant's interests. File complaint to Committee of Indigent Appointments.

09/16/2004 – Defendant receives response from Arnold Locklear regarding Defendant's complaint and advising that Judge Carter was now the Chairperson of the committee and that he referred Defendant's letter to him.

10/07/2004 – Defendant sends letter to Judge Carter after receiving no acknowledgment from him regarding receipt of Defendant's complaint.

10/26/2004 – Defendant receives response from Judge Carter advising that he had no authority or jurisdiction over the matter and the complaint being referred to Judge Robert Floyd and Mr. Mansfield.

11/04/2004 – Defendant sends letter to Judge Weeks regarding the Court playing games with Defendant's case.

11/10/2004 – Defendant receives copy of letter Judge Weeks sent to Mr. Mansfield inquiring about the status of Defendant's motion for new counsel, copy of same sent to Judge Floyd.

11/29/2004 – Defendant receives copy of letter from Judge Floyd to Mr. Mansfield instructing him to contact Defendant.

0 1/13/2005 – Defendant sends complaint regarding Mr. Mansfield to Caroline Bakewell at the North Carolina State Bar.

02/03/2005, 02/08/2005 and 02/24/2005 – Defendant receives letters from ACLU regarding request for assistance with matter with Mr. Mansfield.

03/04/2005 – Defendant sends letter to North Carolina State Bar inquiring about status of Complaint and reminding them that supporting documents (all the above letters) are in my possession but I have no way to obtain copies.

03/10/2005 – Defendant receives response from Caroline Bakewell of the North Carolina State Bar saying Defendant's original complaint was never received and asking if Defendant has documents or witnesses to support the claims in my complaint.

03/22/2005 – Defendant sends copy of second complaint to the North Carolina State Bar regarding Mr. Mansfield (File No. 0560139).

03/24/2005 – Defendant receives response from the North Carolina ACLU regarding Defendants request for assistance with complaint against Mr. Mansfield.

04/21/2005 – Defendant sends request for assistance to mailroom inquiring if Defendant's legal mail to the North Carolina State Bar was mailed out.

05/23/2005 – Defendant receives letter from Shelagh Kenney, of the ACLU, regarding Defendant's request for assistance.

06/28/2005 – Defendant receives letter from Henry Babb, the Chair of the North Carolina State Bar Grievance Committee advising there was "insufficient evidence" to support Defendant's claims against Mr. Mansfield regarding violation of the Rules of Professional Conduct.

06/30/2005 – Defendant sends letter to the North Carolina State Bar asking how could the complaint be dismissed without review of the evidence to support the claims in the complaint.

07/20/2005 – Defendant receives letter from Gunn Simeon of the North Carolina State Bar advising "it was not necessary to receive other documents in reviewing this grievance." How can this be????

07/21/2005 – Defendant receives letter from Mr. Mansfield withdrawing from Defendant's case and calling the Motion for Appropriate Relief frivolous.

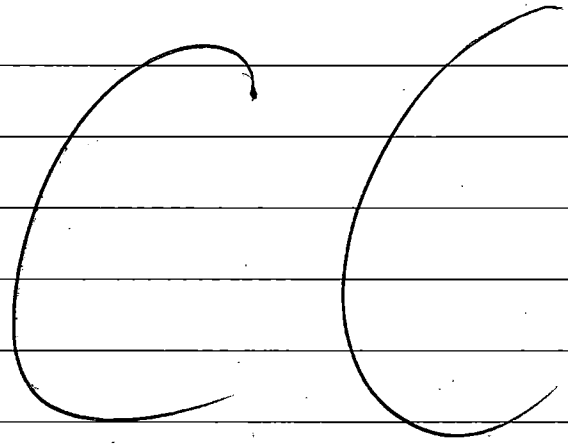
07/21/2005 – Defendant sends copy of Writ of Mandamus to Johnson Britt.

08/03/2005 – Defendant sends letter to North Carolina Court of Appeals inquiring about the status of the Writ of Mandamus. (It was later discovered that Angela never mailed it.) But it was filed.

08/05/2005 – Defendant receives letter from Shelagh Kenney of the ACLU advising that the ACLU contacted Mr. Mansfield.

August, 2005 – Defendant writes letter to Malcolm Hunter, an appellate defender, regarding letter from Mr. Mansfield, written on the same day District Attorney Johnson Britt received copy of Defendant's Writ of Mandamus, characterizing Defendant's Motion for Appropriate Relief as frivolous and without merit. No response was ever received. Defendant returns to Court and Judge Floyd states that he will render a decision regarding this issue "in a couple of months." Defendant was not allowed to bring anything documents or supporting evidence to Court in order to support his claims. Once again, being denied the chance to prove the allegations being made in regarding Defendant's various issues and concerns.

02/01/2006 – Defendant receives letter from Mr. Mansfield justifying his actions and stating that the transcript is 19,000 pages and once he arranged it in order, he found no possible errors.



EXPLANATORY

THE FOLLOWING DOCUMENT(S) MAY HAVE POOR IMAGES DUE TO POOR PHOTOGRAPHIC QUALITY OF PAPER.

State of North Carolina
General Court of Justice
Superior Court District 16B

Robert F. Floyd, Jr.
Senior Resident Superior Court Judge

James Gregory Bell
Resident Superior Court Judge

February 3, 2009

RECEIVED
FEB 4 2009
INDIGENT DEFENSE SERVICES
DURHAM, N.C.

Mr. Thomas Maher
Indigent Defense Services
123 West Main Street, Ste. 400
Durham, NC 27701

Re: State of North Carolina vs. Daniel Green, Robeson County File # 93CRS 15291-93

Dear Mr. Maher:

I am writing in reference to Mr. Daniel Andre Green, who was charged with First Degree Murder and found guilty of First Degree Murder and received a life sentence. Mr. Green is trying to pursue a Motion for Appropriate Relief. My Trial Court Coordinator spoke with Mr. Hunter in reference to this case and she called several attorneys to see if they would be willing to represent Mr. Green. We thought that Mr. (1) Carl Ivarsson would take the case, but he states that he does not do post conviction issues. My trial court coordinator called an attorney in (2) Chapel Hill and due to the (3) complexity of the case she would not accept the case. We are asking that you appoint someone to represent Mr. Green in his Motion for Appropriate Relief.

Thanking you in advance, I am.

Sincerely,

Robert F. Floyd, Jr.
Senior Resident Superior Court Judge

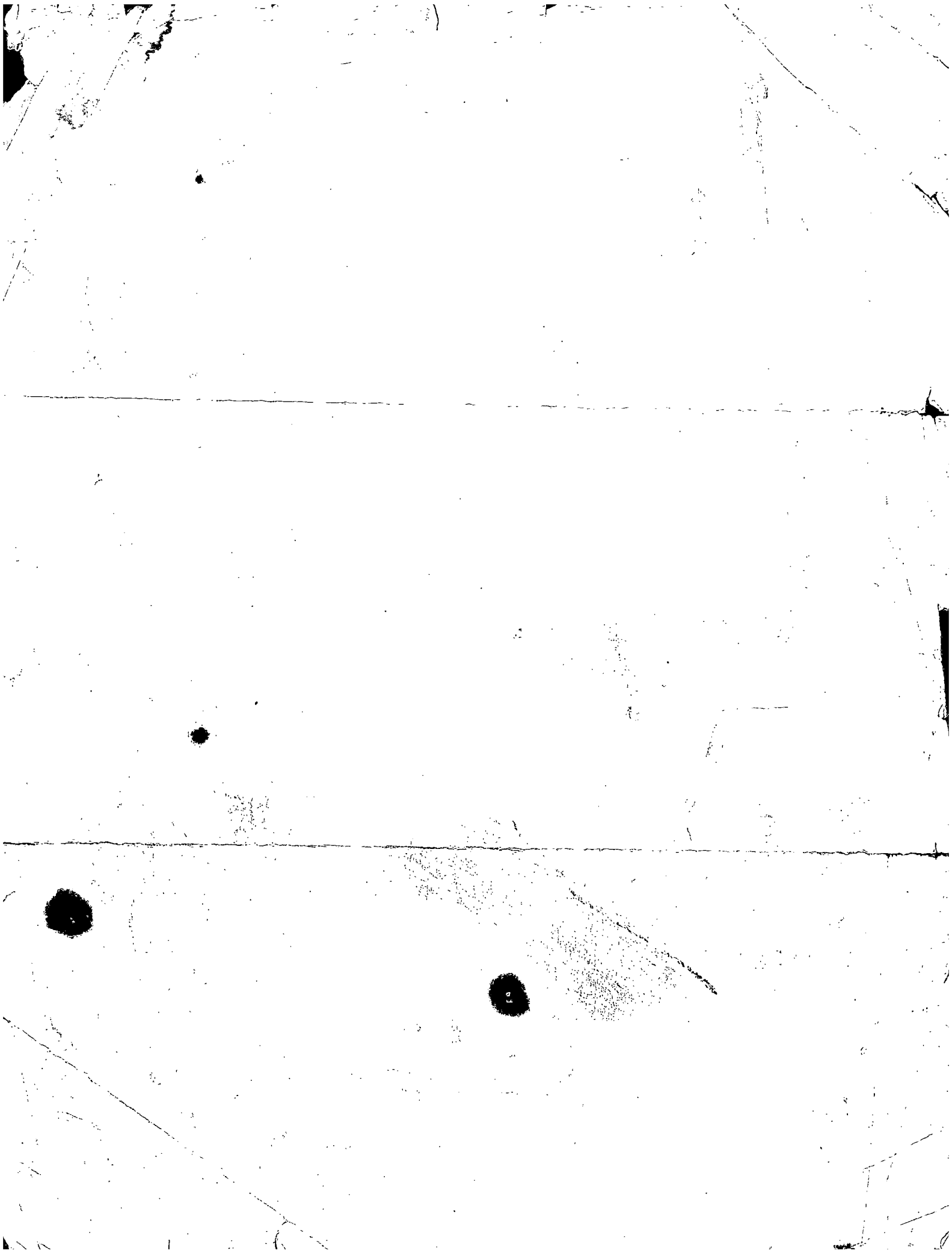
RFF jr./gc

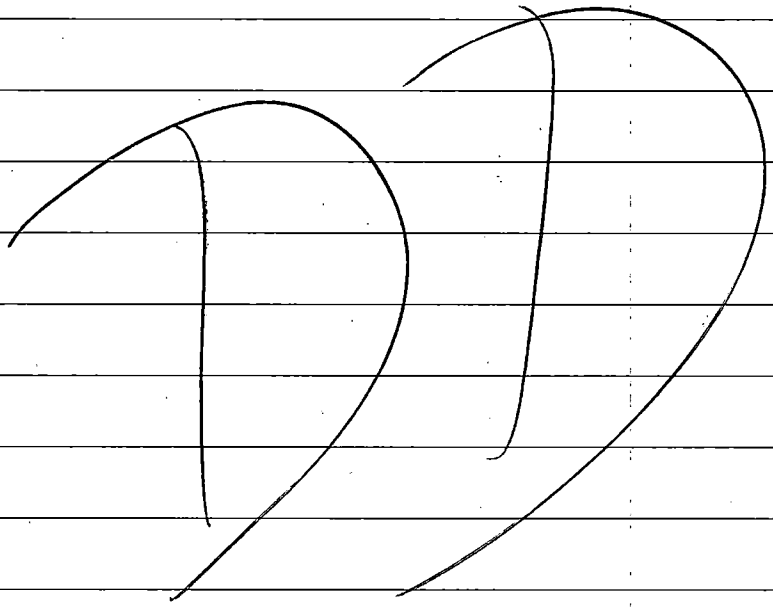
Cc: Mr. Daniel Green
Defendant

(1) Carl Ivarsson never should've been appointed to my case. They knew he represented Terrell Tessly - one of the guys who testified against me. He was accused of stripping the car in Fayetteville. They appointed him to my case for the same reason they hid that Samuel Carroll Gray was arrested for stripping the car, the new Cumberland County Authorities and the F.B.I. questioned about lawsuit documents [redacted] has the sealed records pertaining to this. So, to get past the procedural bars, raise this. Ivarsson and I had a conflict and they used him and Anita Riker Carothers to violate attorney/client privilege.

(2) Why the prerequisite that my lawyers be from Chapel Hill

(3) If the case is so complex why do they keep appointing lawyers with NO M.A.R. experience All from, or associated with Chapel Hill? To cover up [redacted]?





Robeson County Clerk of Court
Lumberton, N.C.

650

6/3/04

FILED
04 JUN -7 PM 2:43
ROBESON CO., C.S.C.

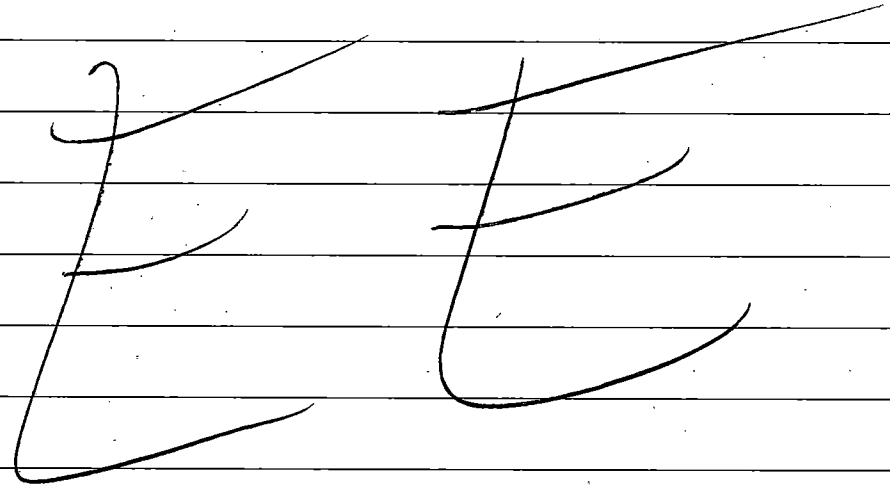
Robeson County Clerk of Court:

In May of 2000 Carlton Mansfield was appointed to represent me on A M.A.R. by Judge Weeks in case 93 CRS 15291 + 15293. That's 4 years ago yet I have seen no evidence that Mr. Mansfield has begun to prepare for, or investigate my motion. When I filed a motion to have Mr. Mansfield replaced due to the lack of communication he stated in court that the reason he hasn't started was the District Attorney & the Court was placing too many cases on him and he has not been able to get to my case. That was 2 years ago. In the two years since that hearing I have seen Mr. Mansfield once and still haven't seen any ~~other~~ evidence that he has started on my motion.

Due to the nature of one of the issues of my motion (newly discovered evidence) I feel that the 4 year delay has damaged my case. For this reason I am asking that you treat this letter as a writ of mandamus to compell my attorney and the Court to explain on record what the delay is and I am asking for an outside research firm to aid Mr. Mansfield in the preperation of my motion if the problem is stemming from his workload being too heavy. Due to my transcript being in excess of 8000 pages, apparently it is too much for one lawyer to handle. This is damaging to my motion and justice in general. Please calender this for a hearing as soon as possible.

Sincerely,

Daniel Green



Sugre

RECEIVED
JUL 28 2017
By

July 26th, 2017

N.C. State Bar
P.O. Box 25908
Raleigh, N.C. 27611

To Whom It May Concern:

I am writing to file a complaint against C. Scott Holmes and Ian Mance. Mr. Holmes was appointed to my case to represent me on a Motion for Appropriate Relief against my expressed wishes by Indigent Defense Services. Mr. Mance and Southern Coalition for Social Justice assumed representation of me. They are not now, nor have they ever been my attorneys. I have never given them that authority. They are lawyers who have colluded with others that violated my due process rights and N.C. General Statutes to create circumstances that render the remedies available in N.C. to exhaust state remedies (my Motion for appropriate relief) ineffective to protect my rights which has stagnated my M.A.R. for 8 years in pursuit of a claim that has delayed justice and prevented my right to an evidentiary hearing to settle factual disputes and, if necessary, a habeas corpus pursuant to Federal Statute § 2254.

Further, they have refused to marshall the facts,

or/And present those facts with the Applicable law, that Conflict with the political And/or personal Agenda they Are using this M.A.R. As A vehicle to carry it the expense of years of my life.

They have lied to me to Avoid pursuing claims based on officers of the Court Committing illegal Acts And crimes, both felonies And misdemeanors g to Convict me of crimes I Am innocent of, to retaliate Against me for Asserting my Constitutional rights -especially due process-; to protect their peers criminal Acts from being exposed; to suppress evidence of outside private party influence on this case in the investigation, pre-trial, trial, And post-conviction stage; to flood the court with exhibits And pleadings that have no material relevance to the M.A.R.; And to help the Attorney general office, their political Allies And personal Comrades to execute A Stalingrad defense.

They have suppressed evidence of crimes committed by their Allies - such As drug money being used to finance campaigns - which was uncovered during the investigations that I And third parties forced them to conduct due to the risk of these crimes being uncovered And exposed publicly via documentaries.

They have stripped claims I filed in my 2008

Amended M.A.R. of their evidentiary value by quoting, verbatim, my legal arguments in the M.A.R. they filed but failing to include the facts I and they uncovered that I supported with the legal arguments they quoted.

I do not have faith in these gentlemen. I have never trusted them nor their motives because they are not trustworthy. Regardless of the merits of the claim they have spent 7 years pursuing about corruption in Robeson County, they could and should have pursued the claims that are much easier to prove, that present standards much more difficult for the State to overcome, that are simple, direct and which could be adjudicated immediately.

Instead they chose to use my case to benefit themselves and their political and personal and professional allies knowing that to do so would deny me the opportunity to create a record of the crimes committed to frame me and which would, if legal precedent in State and federal common law and statutory law are adhered to, prove that my trial was rigged by the use of false testimony, false science and misleading statements about law.

In summary, I am convinced that these two

gentlemen have intentionally complicated my M.A.R. to justify their dilatory actions and meritless filings, to use my M.A.R. to conduct discovery for Southern Coalition for Social Justice other projects and to use against their political adversaries and to make themselves gatekeepers.

I affirm that they have broken with every element of fiduciary duty (good faith, trust, confidence and candor) they owed to me and to any client. I am not disparaging their personal character but I wish there to be no doubt that I am certain that my life doesn't matter when compared to their other priorities and this is reflected in their selective investigation, research and briefing of claims. I do not trust them to assertively represent me on claims they choose not to pursue for other than strategical reasons.

Pursuant to Rule 1.16(d) of the Professional Rules of Conduct I am requesting that you direct both of these gentlemen to send all documents generated and received about my case during their representation of me upon their immediate withdrawal from my case

My delay in filing this complaint is due to my reluctance to accuse anyone, to "switch" without being absolutely certain of

the legal ramifications.

Unlike Carlton Mansfield, the lawyer that sat on my case and used typical lawyer delay tactics to pad his bill while, according to Mr. Holmes, not even collecting and organizing the case file as Mansfield swore he did to justify being paid over thirteen thousand dollars for his "work" which included not making one phone call nor interviewing one witness - according to his fee Application sheet - Mr. Mance and Mr. Holmes have put in a lot of work; they simply have not put in the work that would gain me relief and protect my legal interests as they have protected the interests of other parties involved in this case.

Finally, this complaint is not due to frustration, emotional or psychological distress. Mr. Mance and Mr. Holmes have created the perception that I am a difficult client. Mr. Mances tactic to avoid answering questions that reveal his betrayal of fiduciary duty is to act offended, make accusations of people (me included) trying to bully him by calling until I get an answer, or presenting information to him that he does not want to gather because it creates a record of criminal behavior by the people he's trying to cover for.

I am sending this letter to Judge Beale

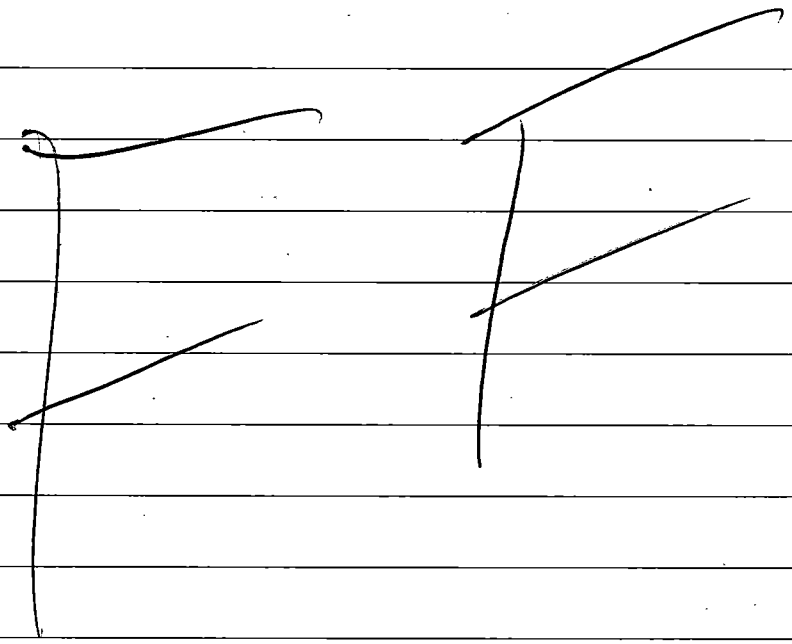
with a request that he remove Ian Munce and Scott Holmes from my case immediately. I filed a similar motion on May 6, 2011. Judge Floyd heard the motion and refused to grant it. Since that time Mr. Munce and Mr. Holmes have uncovered information that suggests that Hubert Stone ~~was~~ gave Judge Floyds name as a reference to the F.B.I. and this indicated a relationship between them that created a conflict of interest requiring him to recuse himself from the case. Therefore, since Mr. Munce and Mr. Holmes only addressed the Hubert Larry Deese/Stone claim after Rick Persons threatened to publicize their refusal to entertain it; not because they wanted to, ~~the~~ Judge Floyds ruling should be overturned based on recent developments. Ian Munce assumed representation in this case; he was not Appointed and I can fire him at will without any justification.

Sincerely,

Daniel Green #0154242
P.O. Box 1569
Lillington, N.C.
27546

P.S.
Please send affidavit/complaint forms to me.

cc: Judge Beale



Daniel A. Green # 0154242 · Po. Box 1569 · Lillington, N.C. 27546

10/2/10

Mary J. Pollard
Executive Director
Po. Box 25397
Raleigh, N.C. 27611

Re: SBI / Serology Division

Dear Ms. Pollard:

I am in receipt of your letter dated 9/24/10. Thankyou for contacting me.

As you may be aware, shortly after my case was placed on the list of cases affected by the problem with the SBI the S.B.I (Attorney General) ordered Chris Swecker to re-review only my case and to remove it from the list based on the words "further analysis revealed...". Apparently, their contention is that that phrase alone should have put my attorneys on notice that other tests were performed besides the one we were told about. From the A.P. Article it is clear to me that Swecker is following orders he doesn't agree with and that an effort is being made to take my case out of the fray b/c of the publicity it brings to the issues which would make it difficult to whitewash this and wheel and deal behind the scenes. It's like throwing Jonah off the ship to keep the rest of the crew from drowning.

I filed Public Records Request to get all the pertinent

documents necessary to determine exactly what is going on. I am aware that favors are being called in and people are being coerced/influenced to cover it up. My concern is that if my case is part of the other cases an under the table deal will be made that will benefit the other cases at the cost of sacrificing mine.

Anyway, I would Appreciate you assigning an Attorney to review my case for both civil and criminal violations. Thankyou in advance for your assistance.

Sincerely,

[redacted]

P.S.

If there is a conflict that would prevent you from Appointing an Attorney I would Appreciate your assistance in getting the relevant records.

NORTH CAROLINA PRISONER LEGAL SERVICES, INC.

Mary S. Pollard
Executive Director

Post Office Box 25397
Raleigh, North Carolina 27611
1110 Wake Forest Rd., Raleigh, NC 27604
(919) 856-2200
Facsimile Transmission (919) 856-2223

Elizabeth Albiston
Vernetta Alston
Lindsay Bass
Dawn Blagrove
Tucker Charns
Emily Coward
Sarah Jessica Farber
Ann Ferrari
April Giancola
J. Phillip Griffin
Laura Grimaldi
Hoang Lam
Tod Leaven
Michele Luecking-Sunman
Beth McNeill
Jason A. Miller
Allison Standard
Nicholas Woomer-Deters
Staff Attorneys

CONFIDENTIAL LEGAL MAIL

November 17, 2010

Mr. Daniel A. Green
Harnett Correctional Institution
OPUS# 0154242
PO Box 1569
Lillington, NC 27546

Dear Mr. Green:

Thank you for your letter. It appears that you are represented by counsel in post-conviction proceedings. As a result, NCPLS cannot help you on issues related to your conviction. If I am incorrect, and you are not represented, please write back to me and let me know that.

I can tell you that the SBI lab cases need to be looked at on a case-by-case basis. I can assure you that there will be no global resolution or "deal" on those cases. Please do not worry that NCPLS will take any action that would affect your ability to litigate your particular case.

We are always happy to help you with issues relating to your conditions of confinement.

Sincerely,

Mary Pollard

66

(1) Religion
(2) MP
(3) CC: JS
TML

RECEIVED AUG 26 2011

36
LIFE
DW

August 18th, 2011

Mary Pollard, Executive Director
P.O. Box 25397
Raleigh, N.C. 27611

RE: Grievance Form; Habeas Corpus; S.B.I.

Dear Ms. Pollard:

I trust that this letter will find you doing well. Enclosed is a grievance I filled out in response to NCPLS recent decision not to assist me in my effort to get D.O.C. to recognize and allow me to practice my religion.

Ms. Pollard until recently I had no idea that NCPLS has a grievance system. We (prisoners) are not told this nor is there any kind of notice making us aware of it. Should prisoners be made aware of this? It occurred to me that the ignorance of this process precludes the filing of legitimate grievances and the absence of grievances would contribute to the impression that all of our needs are being met in accordance with Bounds vs. Smith and Lewis v. Casey. This simply is not the case. I don't know how such things work but I'm assuming that if the actual need was documented via the grievance process, it would cause the state to provide more funding and resources. Is there anything that can be done to remedy this?

Switching gears, I am requesting assistance with filing a

Federal Habeas Corpus. I filed a M.A.R in 2000 but prior to that, in 1999 I filed a MAR motion in substance so I am still within the 1 year statute of limitations.

Basically my argument is that due to state action I have not been able to exhaust my state remedies. I still have not received my evidentiary hearing for the MAR. Three different Attorneys have been assigned to my case, the last in 2009 (Feb.). I have no way to get an attorney to marshall the evidence. They all have sat on my case and did nothing. None have had the witnesses interviewed. The first Attorney alerted the DA about a conflict interest issue before I knew about it and they have kept the records from me (the D.A. and Robeson County Attorney Hal Kinlaw). I filed a civil suit to compel them to produce the records pursuant to G.S. 132 Public Records Law. They refuse to calender the case.

There has been a very successful propoganda and smear campaign to portray me as guilty and to cover up the criminal acts of obstruction of justice by officials. I assure you, I am factually, legally and morally innocent and the conflict of interest issue, a structural error, warrants a new trial.

I am convinced that N.C. is not going to allow me to have an evidentiary hearing until all the witnesses are dead, senile, bought off or otherwise coerced into not telling the truth, and, until the evidence has disappeared.

I won't accuse counsel of outright selling me out

but none has done their job and my argument to the Federal Court is that the neglect/refusal/inability of three attorneys to get my case to court for the evidentiary hearing has made it impossible to create a record based on the facts for appellate review. It has made it impossible for me to exhaust. One attorney sat on my case for 8 years and I was forced to file a petition for a writ of mandamus to remove him from my case.

I understand the political influences on my case b/c the victim was Michael Jordans father and I know this is probably over your head but I must be able to show that I tried everything I could to get some play in State court. So I am seeking your help or an explanation of the legal basis with reference made to relevant case law. This is with regard to the Habeas Corpus; not the MAR. I have no attorney for a Habeas Corpus.

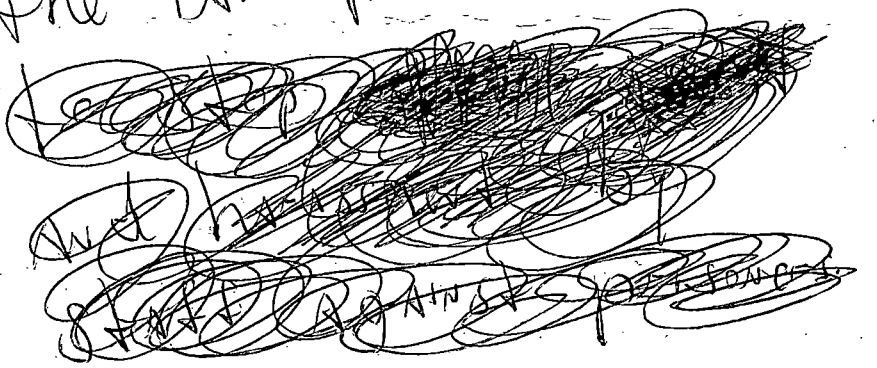
Finally, you contacted me about the SBI issue. Emily Coward a former staff attorney called up to the prison to ask me not to talk to the media about the SBI issue. I need to know who informed NCPLS that I was doing the interviews and why was I requested not to do it? I know that is common advice but in a high profile case its different b/c the State will crucify you before you ever get to court. I don't have a PR firm or a spokesman so why wouldn't I keep it as balanced as possible?

Thnx for your assistance in these matters.

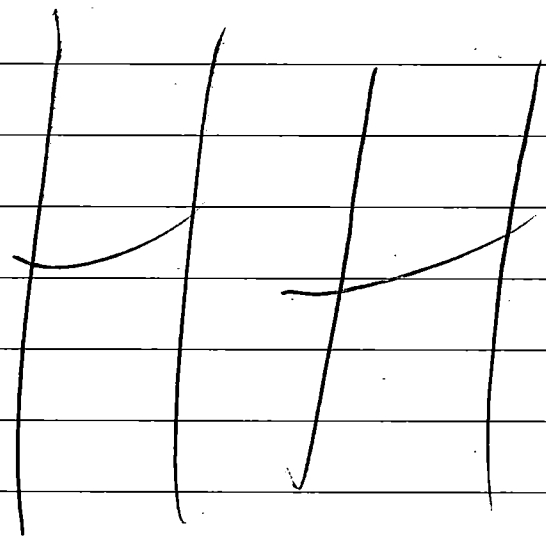
Sincerely, Daniel Green #0154242

P.S.

Please send me information About the law passed



I have an issue but I have not yet decided if to make it known would be in my best interest.



77A-HQ-1058602
RLP:lbs

The following investigation was conducted by Special Agent [redacted] on October 7, 1993: b6 b7C

REFERENCE

ROBERT FRANCIS FLOYD, date of birth [redacted] b6 Social Security Number [redacted] b7C Judge, District Court, Robeson County, North Carolina, Judicial District 16B, advised he has known the candidate since he began practicing law in 1979. FLOYD knew of the candidate prior to that time, however, he did not actually know him. FLOYD has been a Judge since 1988.

Judge FLOYD stated both while practicing law and while sitting on the bench, he has had regular contact with the candidate. FLOYD has occasionally fished with the candidate on the North Carolina coast. FLOYD does not socialize with the candidate and his family.

FLOYD advised the candidate has good moral character, and is honest, trustworthy and reliable.

FLOYD is not aware of the close associates of the candidate.

The candidate's reputation among the Judges, other law enforcement officers and the community is excellent. The fact the candidate has been Sheriff since 1978 is indicative of the reputation he has in Robeson County.

The candidate is a professional who is capable of managing a relatively large department. FLOYD has observed the candidate in stressful situations, and the candidate has always maintained his composure and handled the situations calmly. FLOYD has heard no complaints regarding the candidate's ability as an elected official and as the primary law enforcement official in Robeson County. The candidate works well with the Judges and other county officials in an effort to solve problems within the county.

There is no indication the candidate is living beyond his means, nor is FLOYD aware of any illegal drug use, prescription drug abuse or alcohol abuse by the candidate.

Judge FLOYD advised the candidate is not known to be bias or prejudice. The candidate is known to treat everyone fairly in every aspect of his life.

Judge FLOYD is not aware of any information, derogatory or otherwise, that would preclude the candidate from holding a position of trust and confidence with the U. S. Government.

Judge FLOYD considers the candidate to be a loyal American and a very capable individual. He would highly recommend him for the position of U. S. Marshal.

12 PEOPLE WHO KNOW YOU WELL

List two people who know you well and live in the United States.

- Don't list spouse, other relatives, or former spouses.
- Try not to list anyone mentioned in Item 9, 10, or 11.

	Name	Number Years Known	Telephone Number: (Day ( ) or Night ( ))
#1	James Johnson	50	b6 b7C
	Home Address	City (Country)	State / ZIP Code
	Name	Number Years Known	Telephone Number: (Day ( ) or Night ( ))
#2	Robert Frank Floyd	30	
	Home Address	City (Country)	State / ZIP Code

13 YOUR OUTSIDE ACTIVITIES

List any activities which you may wish to have considered as reflecting favorably on your reputation for leadership, responsibility, honesty, and integrity in the last 15 years. **(Response Optional)**

	Month/Year Month/Year	Activity	Location of Activity: City (Country)	State
#1	To			
#2	To			
#3	To			

14 YOUR FOREIGN ACTIVITIES

		Yes	No
a.	Do you have any foreign property, business connections, or financial interests?		X
b.	Are you now or have you ever been employed by or acted as a consultant for a foreign government, firm, or agency?		X
c.	In the last 15 years, have you had continuing contact with a national of any foreign country designated by the agency instructing you to fill out this form? **(NOTE: If the agency wants you to answer this question, it will provide you with a list of countries.)**		X

If you answered "Yes" to a, b, or c, explain in the space below:

15 FOREIGN COUNTRIES YOU HAVE VISITED

List foreign countries you have visited, **beginning with the most current (#1) and working backward 15 years.**

- Do not include countries covered in Items 9, 10, and 11.
- In the "Code" block, use one of these codes: **1 - Business 2 - Pleasure 3 - Education 4 - Other**

	Month/Year Month/Year	Code	Country		Month/Year Month/Year	Code	Country
#1	06/92 To 06/92	2	Canada	#3	To		
#2	To			#4	To		

16 YOUR MILITARY HISTORY

		Yes	No
a.	Have you served in the United States military?	X	
	Have you served in the United States Merchant Marine?		X

- If your answer to **both** questions is "No," **GO TO QUESTION 17.**
- If your answer to **either** question is "Yes," **GO TO b.**

b. Starting with the most current (#1) and working backward, enter information for all periods of active service into the table below.

- Mark "O" block for Officer or "E" block for Enlisted.
- In the "Code" block, use one of these codes:

1 - Air Force 2 - Army 3 - Navy 4 - Marine Corps 5 - Coast Guard 6 - Merchant Marine 7 - National Guard

	Month/Year Month/Year	Code	Service/Certificate #	O	E	Status (Mark "X" in appropriate blocks - use State Code for National Guard): None	Active Duty	Active Reserve	National Guard (show State)	Inactive Reserve	Retired
#1	11/49 To 01/53	2	RA 14339667		X	X					
#2	To										
#3	To										
#4	To										

Enter your Social Security Number before going to the next page →

SUPPLEMENT TO STANDARD FORM 86 (SF-86)

(Attach additional pages if necessary)

1S. Please list names of all corporations, firms, partnerships or other business enterprises, and all nonprofit organizations and other institutions with which you are *now*, or *during the past five years* have been, affiliated as an officer, owner, director, trustee, partner, advisor, attorney or consultant. In addition, please provide the names of any other organizations with which you were affiliated *prior to the past five years* that might present a potential conflict or appearance of conflict of interest with your prospective appointment. (Please note that in the case of an attorney's client listing, it is only necessary to provide the names of major clients and those that might present a potential conflict or appearance of conflict of interest with the prospective appointment).

NONE

NONE

2S. Please list all your interests in real property, other than a personal residence, setting forth the nature of your interest, the type of property and the address.

Owner, Vacation Home and lot
Brick Landing Road
Shallotte, North Carolina

3S. Have you or any firm, company or other entity with which you have been associated ever been convicted of a violation of any Federal, state, county or municipal law, regulation or ordinance? If so, please provide full details.

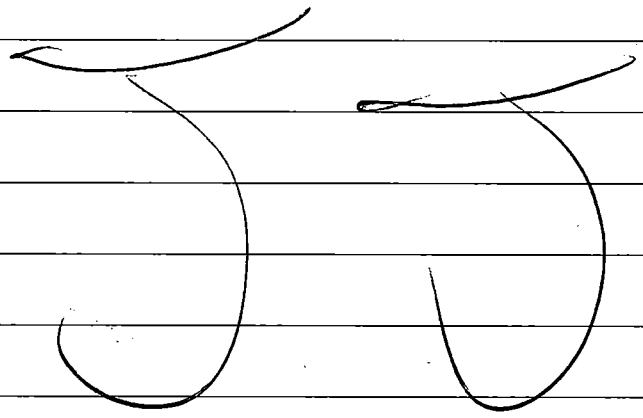
NO

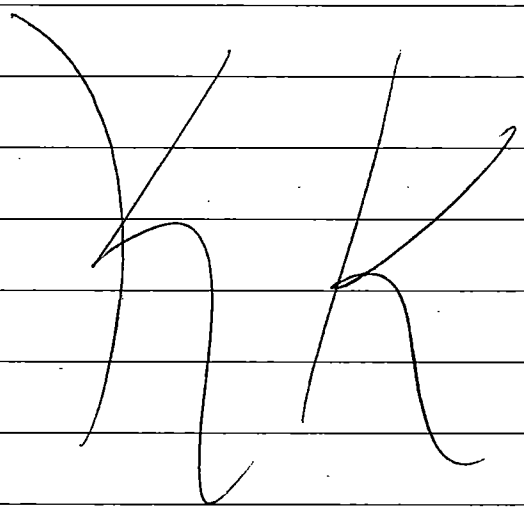
4S. Have you or any firm, company or other entity with which you have been associated ever been the subject of Federal, state or local investigation for possible violation of a criminal statute? If so, please give full details.

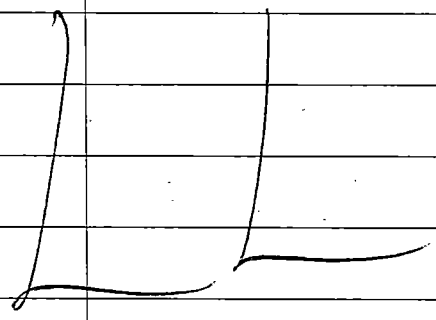
NO

5S. Have you ever been involved in civil or criminal litigation, or in administrative or legislative proceedings of any kind, either as a plaintiff, defendant, respondent, witness or party in interest? If so, please give full details identifying dates, issues litigated and the location where the civil action is recorded.

YES -- CIVIL LITIGATION in the form of divorce proceeding, as defendant, (with mutual agreement) from Ruth Stephenson McCormick, now deceased, McDowell County District Court, Marion, North Carolina







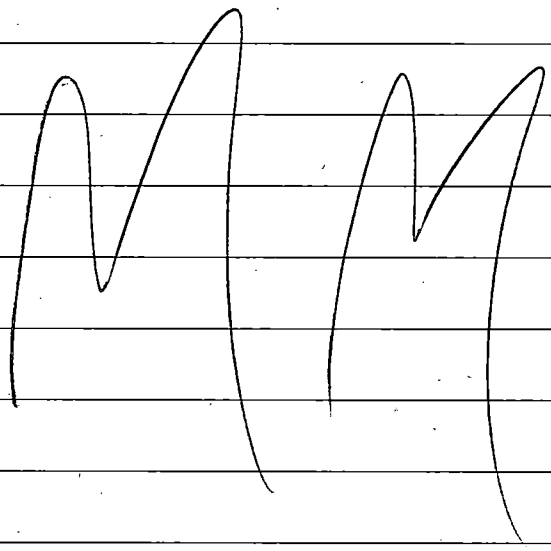


EXHIBIT
26

3-1st 96

Saturday Feb 17th 1996 I
was told by my daughter
Nellie Montes, that she knew
2 juror's And one of them I
know very Well a friend nam
Capp.
I had nellie ask was i
ok for us to tell the lawyer
and she did, and said it
was ok.
I've known Capp so many
many years
and I know all my girls
remember him since 1984
He has been to my home
over the years often, I met
him with a mother friend
Ronald Stetcher, I know my
girls all know him very well
from coming to my home.
He comes as yes as so do
other friends my girl Nelli
took on a big dislike for him
My home where I like no
he came over the holidays

in 95, thats the last time
I've seen him sence, untill
Thursday 29th feb 96.
In 19 Ann and her famil
lived at my home and Rona
& Capp came by on thier way t
Sayttiville to a club. he met Ann
Daniel, an Ebaney, all my
friends know Capp and Rona
and some live in other stat
that know him from my hou
my youngest girl Monica
told me one time, then
Sebette told me mama gue
who was one the ~~g~~ jurys they
said Capp. I told them the
Law said they knew.
My son in Law Hector, he
said, hay Capp was just at
youre house around Christma
all I know is that for my
self Capp did knows that
Daniel was here the morning
of the 23, 93 in July ~~g~~ just like
any one eles that knows my
family.

with all this seems like some
one else should know. at lea
some one other than my fami
We all know Capp Well

Kaye Hernandez

EXHIBIT
25

3.3.96

On Saturday February 17, 1996 I met with Council at the Woodbery Bowens' office within this time myself & Angus Thompson were talking about various aspects of the trial. We spoke of Claire Mathena, Mr. Jordan, Ronald Fletcher. In talking about Ronald and his life style we were talking about different events and times that were shared throughout the life long friendship with Mr. Fletcher We talked of a dance at the Bill Sapp Rec. Dept. that had to due with an organization in College Ronald attended. Thats when we started talking about a mutual friend Ronald and I have. We spoke of Mary McDonald, Kaye McDonald Lee Quick and ("Cap"). And Mr. Thompson informed me then that he was a juror. I told him then that I did not like "Cap" and went on to explain. I advised that on numerous occasions throughout the years that when Ronald visited my mothers he would have "Cap" with him and that as I grew to become a young woman "Cap" would look at me in ways that would make me very uncomfortable

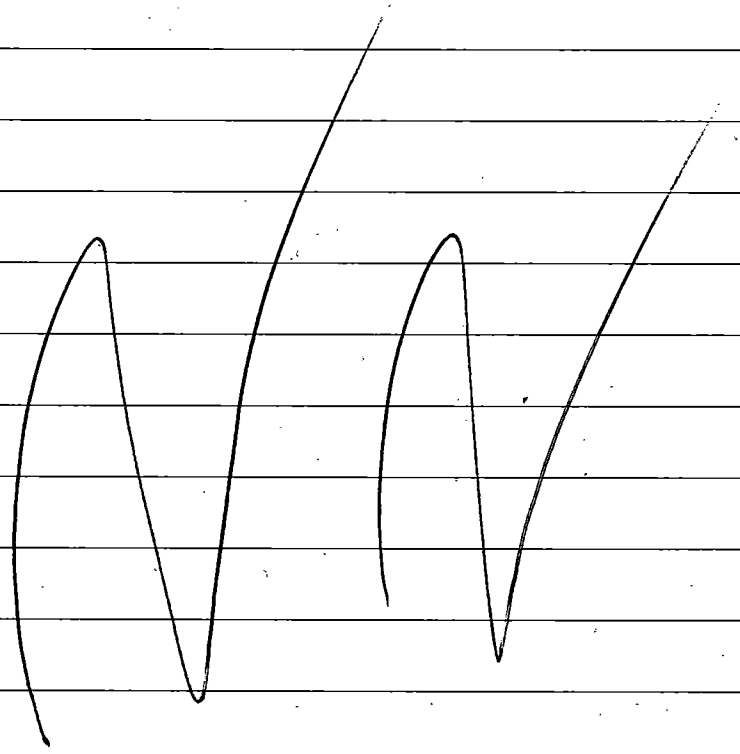
he would make body gestures that no adult male should make to a young woman (16 or 18yrs old) I also told him that he would make me feel as though he was raping me with his eyes and also how I would see him look at my mother and when she was near her how if he got the chance would put his hands where I thought was wrong. I also told him that I had spoke to Ronal about this and Ronald said he was ok not to worry. And so years passed and I got older and finally felt mature enough I spoke up and spoke my mind to "Cap" and was never bothered again. Then the time came that I moved out of my mothers home. I informed Ronald that he was free to visit my home anytime. I had no control of who come to my mothers house, But now I had moved out and had my own home he was to never bring "Cap" to my house and I mean never. I went so far as to tell he not to even bring him and leave him in the yard in the car in the drive way. I did not want him to know where I stayed at because there had been times while I was still living my mother that "Cap" had come to my

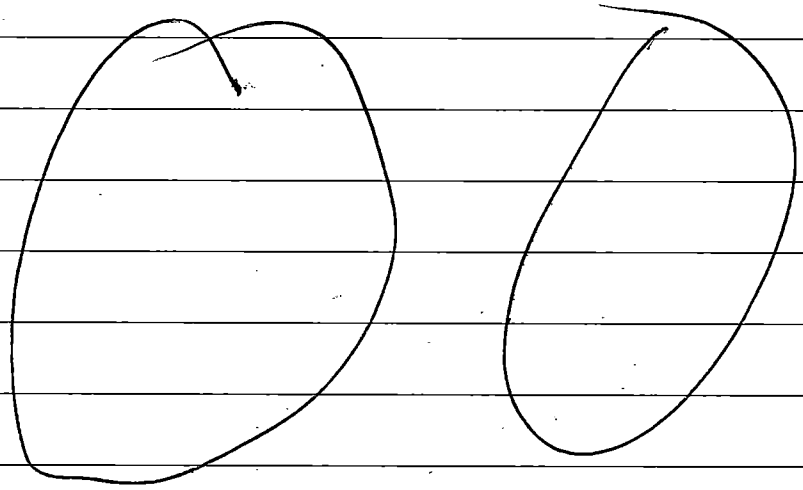
Moore's house alone and we would decide and act as if no one was home. Especially if I was there alone. I asked did Mr. Thompson think there would be a problem with him being a juror. I told him "Cap" how I did not like him but I had spoke my peace with him that one time and had seen him on numerous occasions since then with no problem. His reply was there should be no problem. Also since I have known "Cap" since "83" or 84" but it seems like I known him longer and very well could have because I had my son Daniel in 84" and I can remember seeing "Cap" before I got pregnant. Also ~~after~~ when I testified Monday February 19, 1996 I became aware that I also know another juror well Audrey Edwards she know her ever since 8th grade of school she did her student teaching in my class I still have her old address that she give me back in "78" or 79" and I think it must be her birthday Oct 4th because that date is written under her name. But our acquaintance goes further than that as not sure if it was 81" or 82" I started to date a guy named Dwight Mustoe. We stayed in the projects on King st.

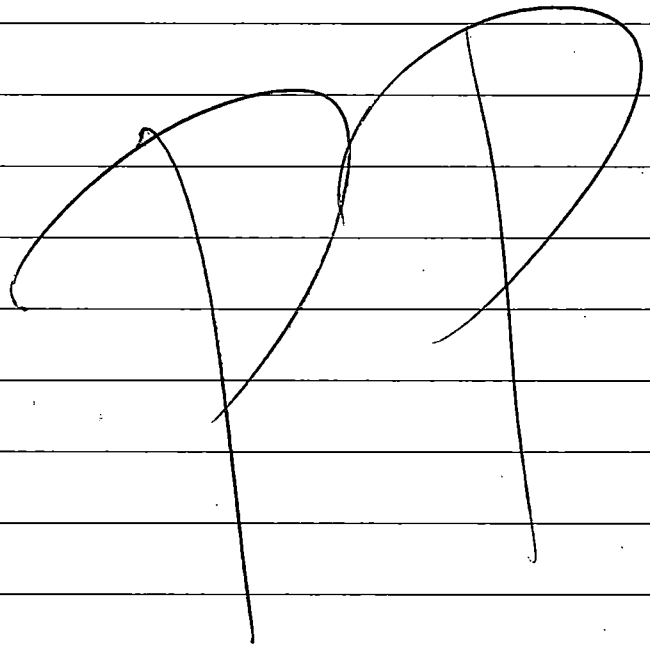
off West 5th Street. We had a pretty long relationship and he stayed right in front of us right behind the maintence building. And with our relationship and staying so close I got to meet most of his family upon I found out that Audrey was his Aunt. I became close to his other aunts Kim & Karen they were closer to my age I attended a wedding of his Aunt Connie at the beach and spent the weekend there with the family at his Aunt Connies house. Dwights mother was never very partial to me. So after the ~~Aunts~~ relationship ened. I would see his Aunts at different areas around town and we would talk and I would ask questions about the family I would see Audrey alot with his mom I would speak but just to say hello Audrey and I would pass knowing glances as is to to say he's fine. Because she knew I cared for him. As a matter of fact his Aunt Kim and I went to RCC college at the same time 92-94' I also brought up the fact that I knew Audrey after I testified wrong that was before I testified when I went up to Mr. Battles office to get Moneen out of school call mom about Hector and Selette. I thought it to be odd from the time I found out on the 17th that

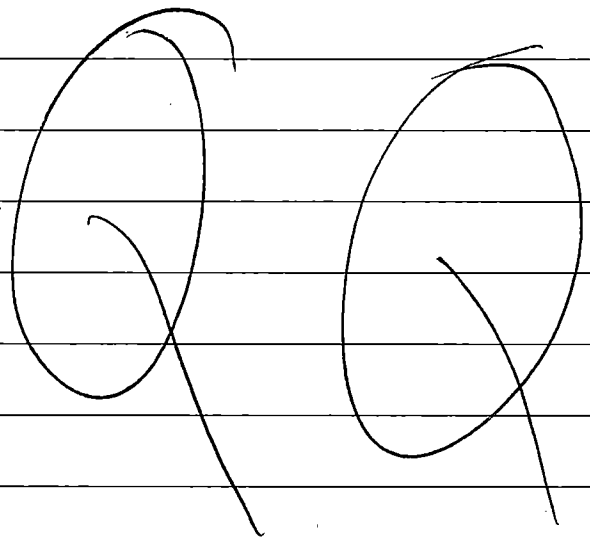
"Cap" was a juror. I thought that if the jurors knew anybody on the case that they could not be a juror, but after I had brought it to Council's attention and they thought it was fine I had no reason to think otherwise.

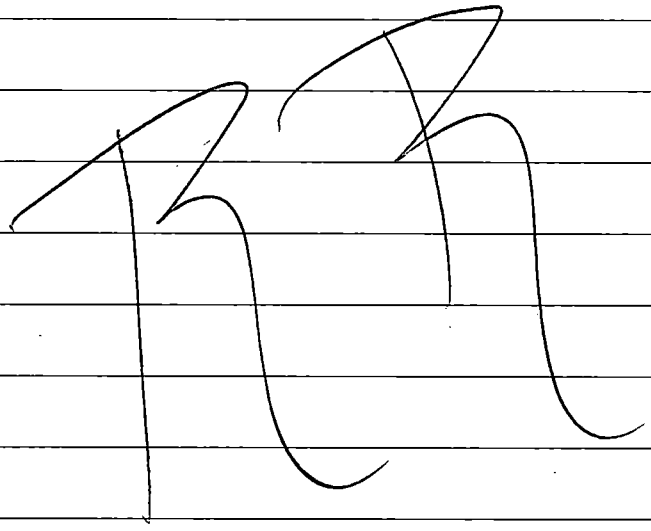
Nellie M. Mack
3-3-96











NORTH CAROLINA

ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 93 CRS 15291-93

STATE OF NORTH CAROLINA,]
]
vs.]
]
DANIEL ANDRE GREEN,]
]
DEFENDANT.]

C E R T I F I C A T E

I, Sherri A. Sealey, CVR, the officer before whom the foregoing proceeding was taken, do hereby certify that said transcript is a true, correct, and verbatim transcript of said proceeding.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard; and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of the action.

This the 28th day of November, 2018.

Sherri A. Sealey, CVR

Sherri A. Sealey, CVR-M

Sherri A. Sealey, CVR-CM
Certified Court Reporter

February 7, 2014

THE COURT: And if you'll submit it also to Mr. Britt before me.

MR. HOLMES: Yes, sir.

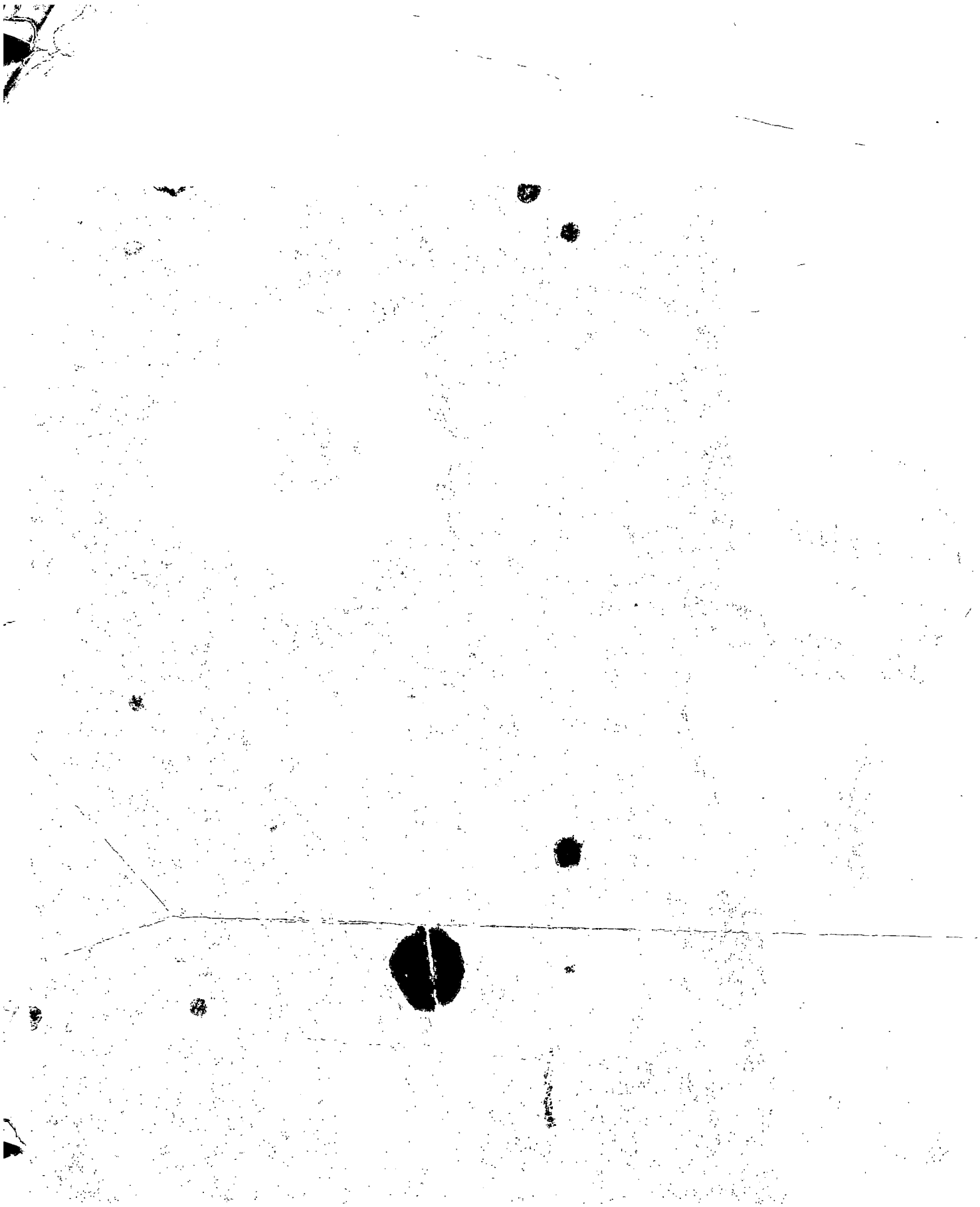
(Proceedings ended at 10:40 a.m.)

(END OF TRANSCRIPT)

EXPLANATORY

THE FOLLOWING DOCUMENT(S) MAY HAVE POOR IMAGES DUE TO POOR PHOTOGRAPHIC QUALITY OF PAPER.

Carlton Mansfield – 11 from
his site, "Slam Dunk" claim
Jorg...



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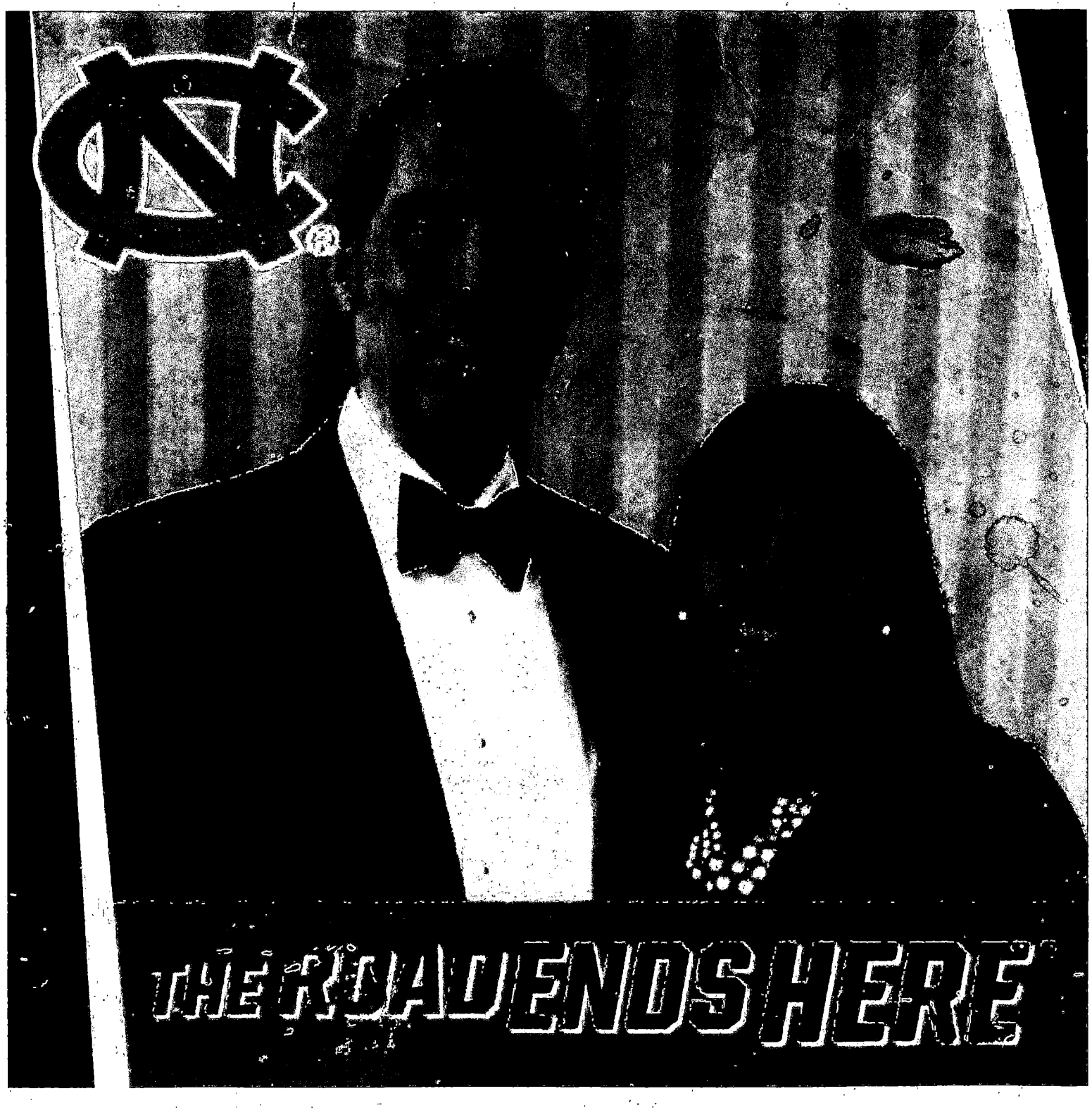
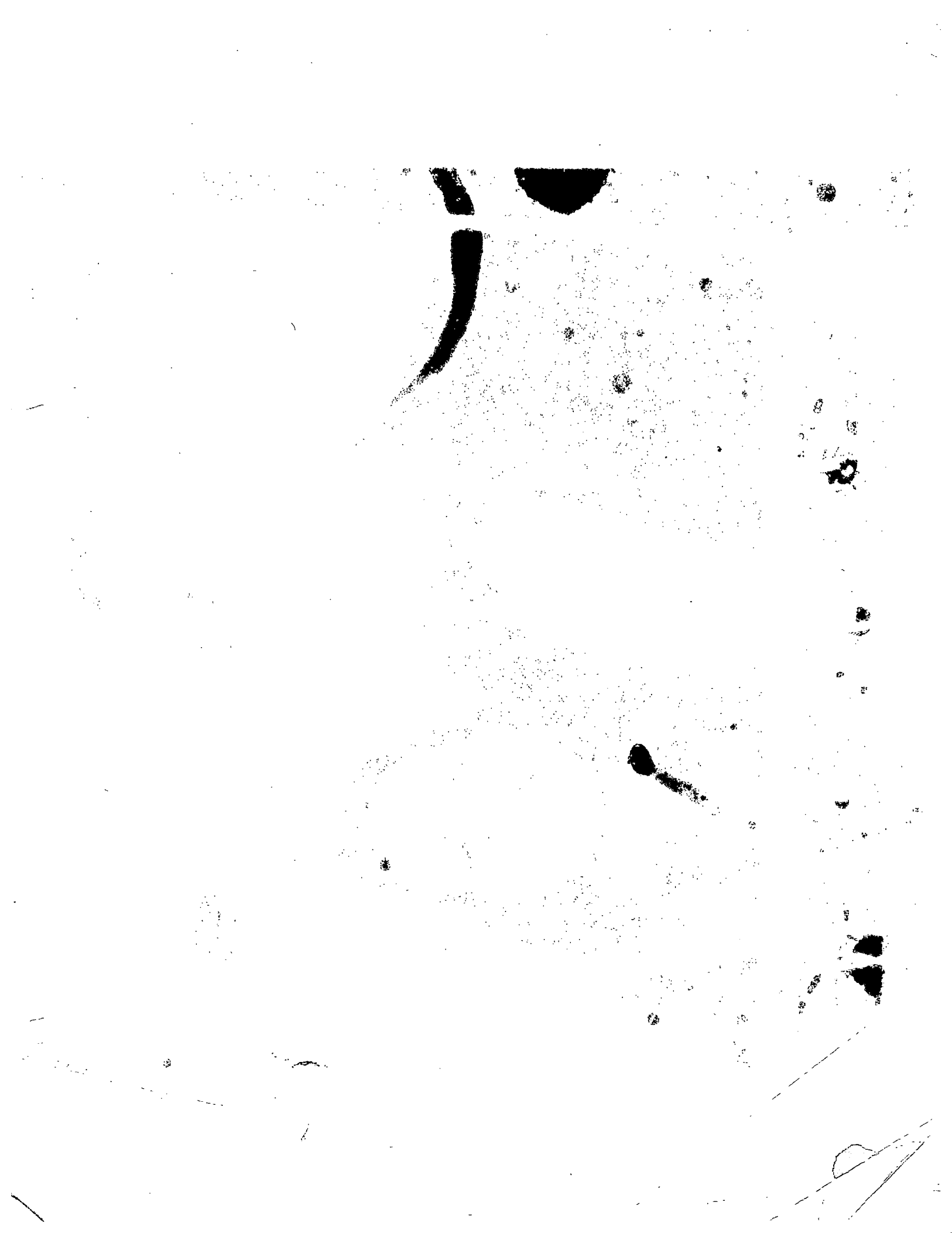
Canton
Mansfield





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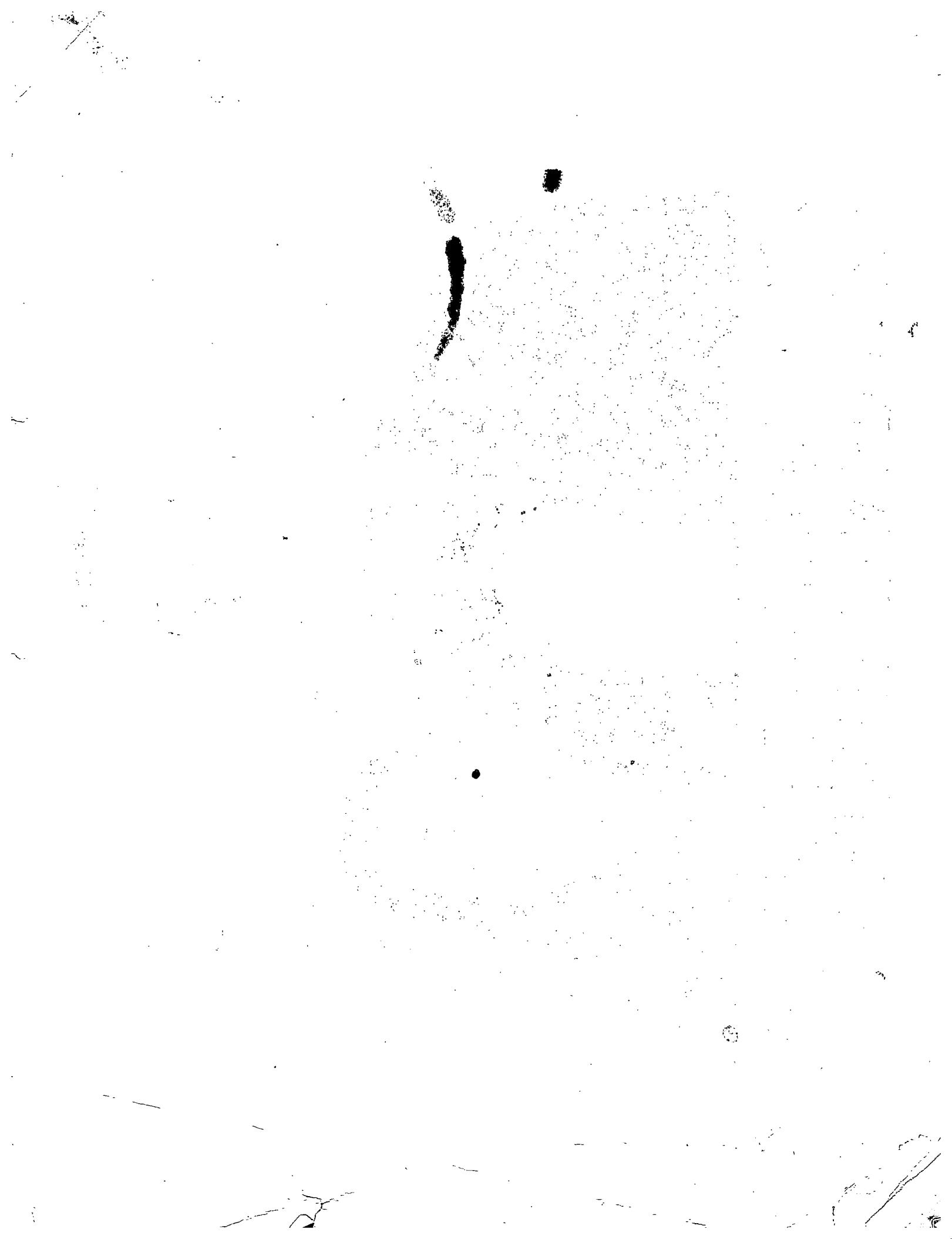
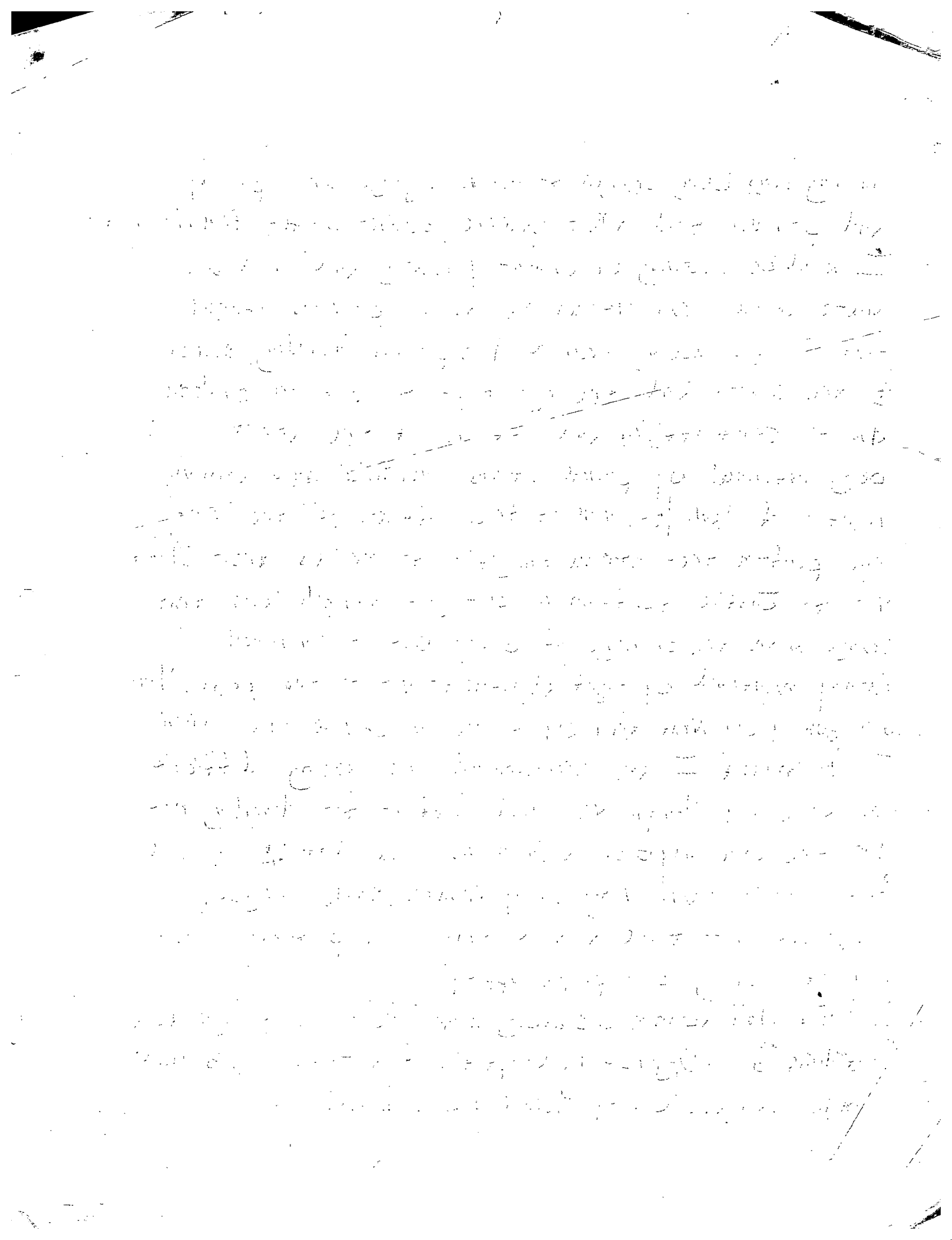
STEELHOG



involving laws being changed to remove a judge who publicly and privately told the Fayetteville Observer writer, Paul Woolverton I would be receiving an evidentiary hearing and in a case where counsel has informed me, as his previous counsel that I am being denied due process, including access to the courts and the legal right to put on evidence due to court officials and officers of the court being influenced by private citizens - an ethical and criminal violation of law. Yet, none of these officers of the Court will perform their ethical obligation to me as their client, Nor to Justice itself - which isn't just manmade laws that change with the exchange of power but it Universal Harmony maintained by right adjustment - nor to the people. None will publicly say what they say to me in private and when I do myself I am characterized as being "difficult" the same way Monique was called "difficult" for demanding her due, the same way Gabrielle Union was called "difficult", a word that actually means not easily handled (manus), managed, manipulated, not facile. A word that is a politically correct way of calling Black people "uppity"

50. In 1967 Abraham S. Blumberg wrote "The Practice of Law as a Confidence Game: Organizational Cooptation of A Profession", published by the Law and Society Review, Volume 1, 1967.



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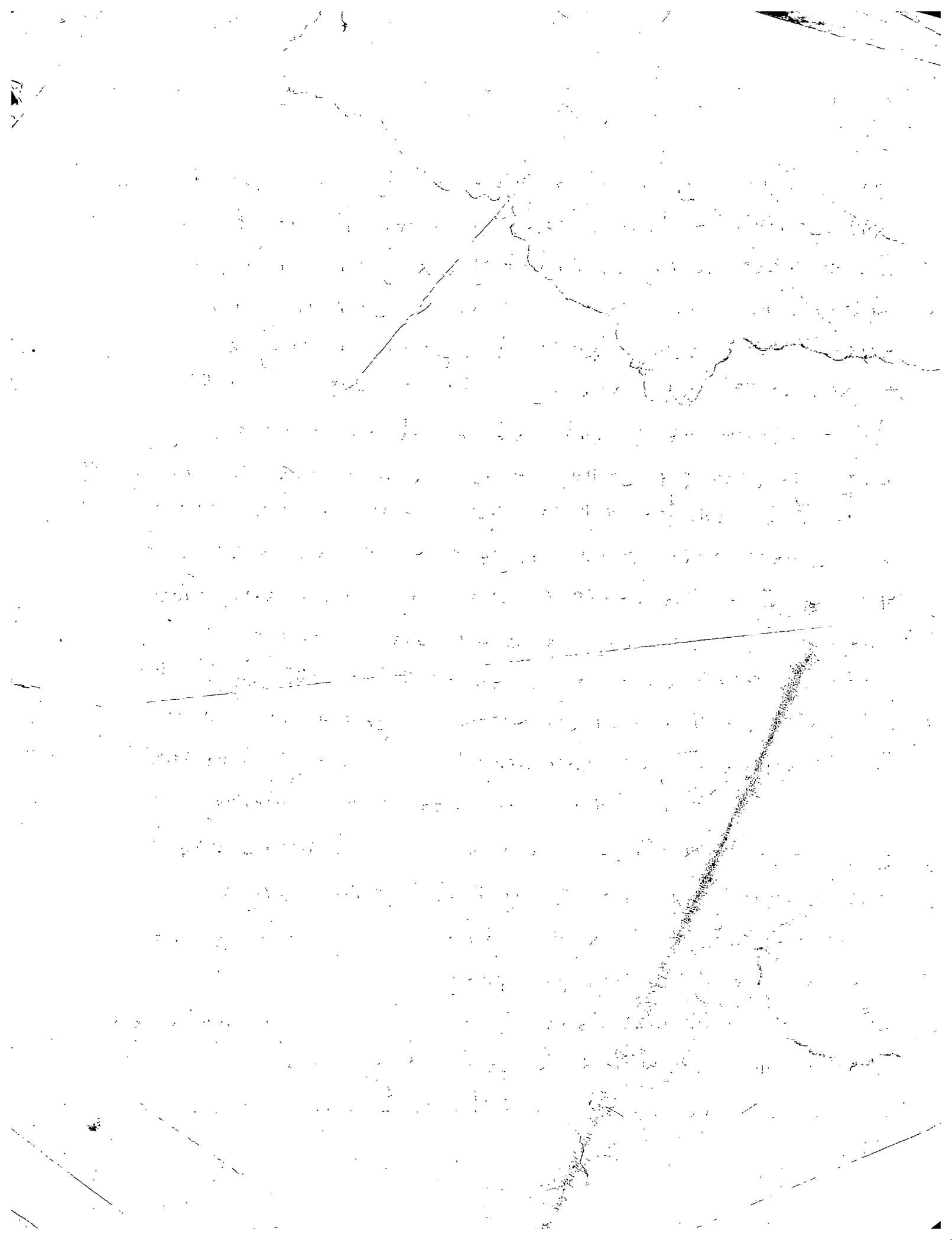

And where the only entity that, normally, represents prisoners in the same procedural stance as Defendant during the time period under discussion herein, N.C. Prisoner Legal Services, Inc. refused to assist Defendant, in breach of their contract with the State (or, to preserve their contract by not biting the hand that feeds them).

¶8. As Stated, Judge Floyd did offer to replace Mr. Mansfield with the Lumberton law firm, Musselwhite Musselwhite etc. but this would have been a conflict of interest since this law firm represented Hubert Larry Deese, and, according to Southern Coalition for Social Justice Attorney IAN MANCE this same firm represented former Sheriff Hubert Stone when he took

And where the only entity that nominally, represents prisoners in the same procedural stance as Defendant during the time period under discussion here is N.C. Prisoner Legal Services, Inc. refused to assist Defendant, in breach of their contract with the State (or, to preserve their contract by not biting the hand that feeds them).

45. As stated, Judge Floyd did offer to replace Mr. Munsticid with the Lumberton law firm, Musselwhite Musselwhite etc. but this would have been a conflict of interest since the law firm represented Hubert Larry Deese, and, according to Southern Coalition for Social Justice Attorney IAN MANCE this same firm represented former Sheriff Hubert Stone when he took

I have made every possible attempt to resolve this matter with due diligence and in good faith. Obviously, if an employee of the State of North Carolina does not respect their oath to uphold the laws and constitution of North Carolina and refuse to stand and abide thereby, I have no power to persuade them to comply with the laws that protect my due process.

Further the affiant sayeth not.
This the 19th day of July 2019

Daniel Green

Sworn to and subscribed before me
This 19 day of July, 2019

Theodore M Banks
Notary Public

THEODORE M BANKS NOTARY PUBLIC CUMBERLAND COUNTY, NC My Comm. Expires 7-27-2020

My commission expires: July 27, 2020

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Johnny Small, Incarcerated for 26 years

Johnny Small was convicted on April 7, 1989, for the 1988 murder of Pamela Dreher at the fish store she owned in Wilmington, NC. Although he was only 15 years old and had not even begun high school when the crime occurred, Mr. Small was tried as an adult and sentenced to life in prison plus twenty years.

On October 29, 1988, based upon information obtained from a Crime Stoppers tip, law enforcement arrested 19-year-old David Bollinger and Mr. Small for charges related to the murder. Mr. Small was tried and convicted based on the testimony provided by his co-defendant, Mr. Bollinger. At trial, Mr. Bollinger testified that he and Mr. Small were driving through downtown, and Mr. Small asked him to pull over into a strip mall so that he could make a phone call. When Mr. Small returned to the car, Mr. Bollinger drove back to Mr. Small's home and Mr. Small gave him $10. Mr. Bollinger testified that when he asked Mr. Small where he got the money, Mr. Small said he robbed the pet store and that he "had to shoot her." Mr. Bollinger's charges were dismissed shortly after Mr. Small's appeal was denied.

In May 2012, Mr. Bollinger contacted the Center of his own volition and stated that he had testified untruthfully at Mr. Small's murder trial. He now admits that he was not with Mr. Small when the crime was committed and he had and has no knowledge of the crime. He maintains that he testified falsely after being threatened with the death penalty and in exchange for his own charges in this case being dismissed.

After receiving Mr. Bollinger's full recantation, the Center began an investigation into Mr. Small's case. Mr. Small and Mr. Bollinger were arrested based on a false Crime Stoppers tip provided by Nina Raiford for reward money. Ms. Raiford did not contact Crime Stoppers until two months after the crime occurred. At trial she testified that after completing her shift at McDonalds she walked home and saw Mr. Small come out of the pet store and get into the passenger side of a light brown car. Other testimony and Ms. Raiford's own employee timecard prove that it was physically impossible for her to have been even near the crime scene when the crime occurred. Ms. Raiford made numerous inconsistent statements throughout her testimony that contradict other witnesses, crime scene facts, and previous statements she gave to Crime Stoppers and law enforcement, making her testimony utterly implausible.

After a three-year investigation, which included polygraphing both the recanting witness and the defendant, reviewing the entire record, and looking at the evidence as a whole, the only possible conclusion is that Johnny Small is innocent of the murder and robbery of Pamela Dreher. On July 10, 2015, the Center filed a detailed Motion for Appropriate Relief on Mr. Small's behalf. After receiving the Wilmington Police Department's investigative file, the Center amended its motion in July 2016 with additional claims, including several glaring *Brady* violations.

An evidentiary hearing held from August 8-11, 2016, included the testimony of 20 witnesses. During the hearing, the same people who had been teenagers in 1988 testified as grown adults that they were leaned on heavily by law enforcement, questioned without their parents present, told that Johnny Small was coming to get them, told that the shell casings taken from the crime scene were a perfect match to the casings collected from the gun Small was alleged to have in his possession, and told that their testimony would only help send a murderer to prison. Documents in the Wilmington Police Department file corroborated much of their testimony at the hearing and established that the teens were lied to by police. David Bollinger courageously testified that he had lied at the original trial and recanted his prior testimony, and Mr. Small testified and continued to maintain his innocence, as he had for 28 years.

Despite strong opposition by the Attorney General's Office, on August 11, 2016, Judge W. Douglas Parsons vacated Johnny's 1989 murder conviction, finding Mr. Bollinger's original trial testimony was false; the Crime Stoppers eyewitness could not have been at the crime scene as she had testified; and the gun Mr. Small allegedly used to commit the murder was collected by law enforcement in Charlotte, North Carolina, prior to Mr. Small's trial. The Court further found that the Wilmington Police Department had failed to fulfill its constitutional

obligation to disclose numerous exculpatory and impeaching documents to the district attorney's office, so they were not made available to the defense prior to trial as required by law. The district attorney dismissed all charges on September 8, 2016.

Mark Carver, Incarcerated for 5 years

Mark Carver was convicted on March 21, 2011 for the murder of Irina Yarmolenko, a student at the University of North Carolina-Charlotte, whose body was found on an embankment of the Catawba River. Mr. Carver and his cousin, Neal Cassada, had been fishing nearby on the river that day and although there was no clear evidence of guilt, both men were charged with Ms. Yarmolenko's murder. Mr. Cassada died as a result of his long-suffered heart problems the day before his trial and Mr. Carver was sentenced to life in prison.

On May 5, 2008, two jet skiers discovered Ms. Yarmolenko's body on the ground next to her car, which had rolled down an embankment. She had been strangled to death with three ligatures that came from within her vehicle. Mr. Carver was approached by an officer while fishing about 100 yards downriver, shook his hand, and provided the officer with his ID. He informed the officer that he had not seen or heard anything and that Mr. Cassada had been there earlier that day. Mr. Carver and Mr. Cassada later voluntarily provided cheek swabs and fingerprints to law enforcement. Testing by the State Crime Lab concluded that (1) A partial DNA profile was obtained from the pillar above the driver's side rear door of Ms. Yarmolenko's vehicle which was consistent with a mixture, meaning more than one profile was present, and the predominant DNA profile matched Mr. Carver. (2) Mr. Carver's DNA could not be excluded from the partial DNA profile obtained from the seat belt button of the passenger side back seat. (3) The swabs from the front passenger door armrest and the interior side front passenger door glass revealed profiles consistent with a mixture and the predominant DNA profile from both locations matched Mr. Cassada.

Mr. Carver and Mr. Cassada's DNA were excluded from all other evidence collected at the crime scene, including the ligatures used to murder Ms. Yarmolenko. On December 12, 2008, Mr. Carver and Mr. Cassada were arrested for the murder of Ms. Yarmolenko. Despite their arrests, DNA from ten alternate suspects was tested and a Crime Stoppers advertisement continued to run. Some of the testing of alternate suspects even occurred after trial dates had been set in the case.

Carver's attorneys did not present any evidence at trial. They relied entirely on cross-examination of the State's expert witnesses to defend him. Had they consulted with an experienced forensic scientist, they would have learned that in April 2010, almost a year before Mr. Carver's trial, the Scientific Working Group on DNA Analysis Methods published updated guidelines for interpretation and reporting of DNA mixtures that were relevant to the evidence presented at trial. Had the DNA testing been reported using the appropriate guidelines, none of it would have been reported as "matching" Mr. Carver.

Mr. Carver has always maintained his innocence. He has always denied touching or going anywhere near the car. This was the first case in North Carolina where an appellate court considered "touch" DNA evidence.

The Center has been investigating Mr. Carver's case for over two years. Based on the DNA evidence, as well as the identification of a number of other investigative flaws, on December 8, 2016, the Center filed a Motion for Appropriate Relief on behalf of Mr. Carver. The Center expects that litigation of this case will require significant expenditures of time and resources in 2017 and 2018. The case has garnered national attention and will impact many other cases where individuals were convicted based on outdated interpretation methods associated with DNA mixtures. The Center is currently meeting with NC State Lab representatives to encourage the lab to approach this issue cooperatively and proactively.

Ian Mance 1:09:20
I thought it was not the best.

Woody Bowen 1:09:21
Nope.

Ian Mance 1:09:22
Best play. But anyway, well Mr. Bowen -- we really appreciate your time. It's been a big help.

Woody Bowen 1:09:29
All right.

[Lots of scuffling while they get up to leave]

Back and forth. I think they have heard a lot of conspiracy theories about this Jordan [unintelligible] there. Man. I think we're hopeful that we was going to be a real [unintelligible and I wasn't able to help him go anywhere with that, right, which is the bandstand for me to get to talking about the angle of the bullets, and all those things that weren't consistent and the fact that I personally did believe in his innocence , insofar as the actual killing of the man, ~~right,~~ and so I gave an interview, I rode up there got his permission, or I made them get his permission. And then I gave an interview out. I don't know, if anything is ever going to come of it. I don't know who the people were, they were very professional film crew though, given their equipment and their lighting, and the way they conducted it. They were serious about their project.

Aaron Johnson 1:10:25
I have not come across them. That's, that's interesting.

Woody Bowen 1:10:29
But they said that I was one of the first that they interviewed

Let me I'll give you the card.

Daniel may know who it is.

Ian Mance 1:10:36
We are-- Aaron is at Duke and I'm at UNC. We we've been working for Scott this summer, and we're going to stay plugged in with the case. Btu Scott is is the attorney of record who we work for and he may follow up with you in the next month or two.

Woody Bowen 1:10:51
Oh, yeah.

Ian Mance 1:10:52

Just to kind of follow up on stuff we found from our conversation.

Aaron Johnson 1:10:55
I actually had just one more question on what he meant. Johnson Britt never actually turned the tapes over to you because he wasn't sure where they ended up? Whether

Ian Mance 1:11:04
that's right,

Aaron Johnson 1:11:05
they went down to the sheriff or whether.

Ian Mance 1:11:08
Do you -- yeah, that's right. He said we asked him where the tapes were that were seized from the jail cell and he said I think I may have given I think I probably gave them back to Mr. Bowen. And if I didn't,

Woody Bowen 1:11:18
I will bet you that I don't remember for sure. But I would bet you that they were introduced in that hearing that we had to have about it

Ian Mance 1:11:25
We got to figure -- we got to get transcript for that hearing.

Aaron Johnson 1:11:28
Yeah, we've got to

Ian Mance 1:11:28
This would have been before trial would you think like within a couple of months before trial?

Woody Bowen 1:11:40
Probably more than that.

[unintelligible]

Aaron Johnson 1:11:42
More than a couple months.

Okay. And I don't remember who that guy my client was

Ian Mance 1:11:46
Well we do have a date from your letter? June '95 was when you wrote Austin George so it'd probably be not long after that

Woody Bowen 1:11:54

So what was going on in that period of time. What did I tell Officer George?

Ian Mance 1:11:58
That was the letter I showed you where you just said uh, I was the one who gave them the tapes and Mr. Thompson didn't having to do with this basically .

Woody Bowen 1:12:05
Exactly

Ian Mance 1:12:06
Yeah, so we'll use that date we'll go talk to the clerk and maybe she can dig that up.

Woody Bowen 1:12:10
Yeah true. They were wanting to crucify me then and I said okay,

Woody Vulnerable To Police Feed back.

Ian Mance 1:12:14
In fact we should do that while we're here

Woody Bowen 1:12:16
But it's gonna come out what you've been doing to these defendants in these jails enlisting lawyers' own clients to come in here and rat on them so you can use it and conflict the lawyer out of the case.

Aaron Johnson 1:12:26
That's really interesting. It's just too bad they didn't actually give you the tapes That would be awesome

Woody Bowen 1:12:31
Well now I think you're gonna find - hopefully they were introduced as part of a record --

Aaron Johnson 1:12:37
Well let's go find out. Well we'll go ask her. It's just right across the street.

Woody Bowen 1:12:43
I think I think you can jog his memory on that hearing.

Aaron Johnson 1:12:46
We might want to go see if we can catch him again.

Woody Bowen 1:12:48
Because in that hearing is evidence of that having been pulled on me at least onece in the past and possibly twice but at least once. And I believe it's pulled on me in the Hunt case. And that that comes into that, here you can see the pattern of conduct.

Ian Mance 1:13:05
Okay. All right. We'll take a little break. This is

Aaron Johnson 1:13:09
You've been incredibly helpful.

Woody Bowen 1:13:11
Enjoyed it

Aaron Johnson 1:13:12
You're okay. All right, y'all. Is it [walking out lots of rustling.]

And it's 3:36 and recording over.

Transcribed by https://otter.ai

State of North Carolina)
v.)
Daniel A. Green)

Sixth Supplement To M.A.R. Supplementing Claim II of the First Supplement to MAR Juror Misconduct Constituting Sixth and Fourteenth Amend right to confront witnesses, due process and right to an impartial jury

NOW COMES the defendant, prose moveing this Court to consider the following fair presentation of facts, law and arguments to support vacating the conviction, due to juror misconduct, for following reasons

Summary of Argument

"One of the primary functions of the law of evidence," according to Edward T. Swaine in his Yale Law Journal article "Pre-Deliberations Juror Misconduct, Evidentiam Incompetence, and Juror Responsibility" is to immunize the judicial process against the frailties of the jury." (See, Westlaw.com 98 YLJ 187)

Indeed, as Swaine notes, "The first object of the [English] Rules [of evidence] was to prevent the jury from listening to material which it might not know how to value correctly." (See. P. Devlin TRIAL By Jury 114 (1956); C. Mueller & L. Kirkpatrick, Evidence Under The Rules: Text

Cases, And Problems 1 (1988) ('mistrust of jurors is the single overriding reason for the law of evidence'); G. Tullock, The Logic of the Law 93-94 (1971) ("When I took courses on Evidence in law school, the explanation given for this giant collection of rules was simply that jurors were stupid.... [T]his does appear to be the only explanation for the development of this branch of the law.")

While I don't believe that jurors are stupid I do believe that human beings at this current stage of our eternal evolutionary travels and Becoming aren't natural born critical thinkers and that the wisdom and compassion, both grounded in awareness of our sinful nature, required to think objectively and critically must be learned: A painful and time consuming life-sacrificial process. The Courts, recognizing this, have "remov[ed] control of factual determinations from jury" and the "Rules of evidence represent 'the most careful attempt to control the processes of communication to be found outside a laboratory'" [Evidence as

As a Problem in Communicating, 5 Vand. L. Rev. 277, 282 (1952)

When jurors circumvent the Courts determination of what evidence they should consider in reaching a verdict by conducting their own investigations, even after the Court has warned them not to, daily, not only does this misconduct reveal an isolated lapse in judgement, it indicates motives and intent that miss the mark of what a juror must project to make it through voir dire to be selected by the Court and officers of the Court to be on a jury in a capital punishment trial. This projection is expressed by the jurors verbal agreement to judge the case on the evidence and on the laws instructed by the court. The jurors give their word that they can be fair and impartial and even, as in this case, sign documents acknowledging receipt of the Courts instructions not to, in general, look for and/or accept, extraneous data. Jurors aren't required to be totally ignorant of facts and issues involved, and it is sufficient if jurors can lay aside their impression or opinion and render verdict

based on evidence presented in court; Not outside of court.

As Justice Frankfurter stated in his concurring opinion in Irvin V. Dowd, 366 U.S. 717, 729, 1961,

"More than one student of society has expressed the view that not the least significant test of the quality of a civilization is its treatment of those charged with crime, particularly with offenses which arouse the passions of a community. One of the rightful boasts of Western civilization is that the State has the burden of establishing guilt solely on the basis of evidence produced in court and unders circumstances assuring an accused all the safeguards of a fair procedure. These rudimentary conditions for determining guilt are inevitably wanting if the jury which is to sit in judgement on a fellow human being comes to its task with its mind inerradicably poisoned against him". How can fallible men and women reach a disinterested verdict based exclusively on what they heard in court when, before they entered the jury box

their minds were saturated by press and radio for months preceding by matter (such as congressional hearings and press releases by interested parties stating Defendant was guilty of this crime, guilty of similar (false) crimes (armed robbery and assault) that he was recently let out of prison for "early," according to sworn legislators who based arguments to pass laws that expanded the prison-for-profit industrial complex on the false premise that I should've been kept in prison, that I was guilty based on Larry Demerys coerced/intimated admittedly false testimony and statements to police months before my trial. False, deliberately incindiary allegations that I made a video rapping about killing James Jordan with "two shots to the head") designed to establish the guilt of the accused. A conviction so secured obviously constitutes a denial of due process of law in its most rudimentary conception." (Irvin v. Dowd 366 U.S. 717, ~~[illegible]~~ Pg) (Parentheses added). (Underlines added.)

How can a juror be impartial when their minds have been inerradicably poisoned by racism motivated by tribal recognition and survival?

OPERATIVE FACTS AND CONTROLLING LAW

1. Juror Paula Locklear averred, under oath, on 22 February 2016 before Wake County Notary Public Whitley J Carpenter that prior to my, the defendants, trial, she worked with the sister of the man who discovered Mr. James Jordan's body, that she had conversations with her about her brother's discovery of the body and that "During Mr. Green's 1996 trial, I conducted my own investigation into the case and travelled to the location in South Carolina where Mr. Jordan's body was discovered. This visit influenced my interpretation of the evidence and played a role in my deliberations of the case. Specifically, based on my visit to the scene, I came to believe that Mr. Jordan had died in South Carolina at the location where his body was discovered." (Ex. 1 Affidavit of Paula Locklear)

Defendant requests the Court to take judicial notice of the foregoing fact, and the following enumerated facts:

2. Whitley J. Carpenter is a well respected Attorney and has worked on cases for the NC NAACP, such as Dewalt, et al. v. Hooks, et al. 878 S.E.2d 832 (Mem) with Aviance Brown, Irving Joyner, Daryl V. Atkinson; and C. Scott Holmes, Attorney At Law, For Professors Dolovich, Reinert, Schlanger, and Stinneford. (See, Dewalt, et al. v. Hooks, et al. 878 S.E.2d 832 (Mem))

3. Whitley J. Carpenter also worked on the case COMMUNITY SUCCESS INITIATIVE; Justice Served NC, Inc.; Wash Away Unemployment; North Carolina State Conference of the NAACP; Timothy Locklear; Drakarus Jones; Susan Marien; Henry Harrison; Ashley Cahoon; and Shakita Norman v. Timothy K. Moore, in his official Capacity as Speaker of the North Carolina House of Representatives; Philip E. Berger, in His official Capacity as President Pro Tempore of the North Carolina Senate; the North Carolina State Board of Elections; et. al. Ms. Carpenter Represents Community Success Initiative along with Attorneys Daryl V. Atkinson, Adam K. Doerr Caitlin Swain and Paul E. Smith and Burton

Craige for Sentencing Project, et. al., an nonprofit organizations. (See Community Success Initiative v. Moore, et. al. 877 S.E. 2d 878 (Mem)

The Defendant requests the Court to take Judicial Notice of the foregoing facts (Paragraphs 2. and 3.)

4. Daryl Atkinson, the first-ever Justice Departments Second Chance Fellow who formerly served 40 months in prison before earning a bachelor's degree and a law degree was a Senior Staff Attorney at the Southern Coalition for Social Justice. At the time Whitley Carpenter notarized Paula Locklears affidavit, she and Ian Mance, who procured Paula Locklears affidavit, also worked for Southern Coalition for Social Justice (SCSJ) (See Attorney General Loretta E. Lynch Delivers Remarks at U.S. District of Columbia Reentry Court Ribbon Cutting Ceremony, on Westlaw at 2016 WL 3136945; City and County of San Francisco, California, et al. v. Teresa Sheehan at 2015 WL 673665 (U.S.) (Appellate Brief). SCSJ represented me, the Defendant, until 2018.

5. The United States Court of Appeals, Fourth Circuit stated in U.S. v. Lawson 677 F.3d 629, 648-649 that "We have held previously that "if even a single juror's impartiality is overcome by an improper extraneous influence, the accused has been deprived of the right to an impartial jury." Fullwood v. Lee, 290 F.3d 663, 678 (4th Cir. 2002)(citing Parker v. Gladden, 385 U.S. 363, 366. (1966)(per curiam)). Thus, the impact that the extrinsic information had on the juror who obtained the information is important in and of itself." (See U.S. v. Lawson 677 F.3d 629, 648-649) The defendant requests this court to take judicial notice of this fact.

6. In North Carolina A defendant is entitled to be tried by 12, Not 9 or even 10, impartial and unprejudiced jurors.

7. In U.S. v. ~~Dale~~ Sandalis the United States Court of Appeals, Fourth Circuit, held that A lower court, the district court erred by denying the motion for a new trial based upon potential juror bias without holding an evidentiary hearing to determine whether and to what extent the jury foreperson was

biased against them (U.S. v. Sandalis 14 Fed. Appx. 287, 288).

8. At page 289, the Sandalis Court summed up their conclusion, supported by numerous Rulings from the U.S. Supreme Court, Circuit Courts and Federal Rule of Evidence 606(b) (which N.C. Rule of Evidence 606(b) is a duplicate of) that "when a party makes a threshold showing that improper external influences come to bear on the decision-making process of a juror, an evidentiary hearing on juror bias is not only allowed under Federal Rules of Evidence 606(b), but is required". The same applies in North Carolina to external influences such as a juror being exposed to extraneous influences such as information gained by an unlawful investigation during trial.

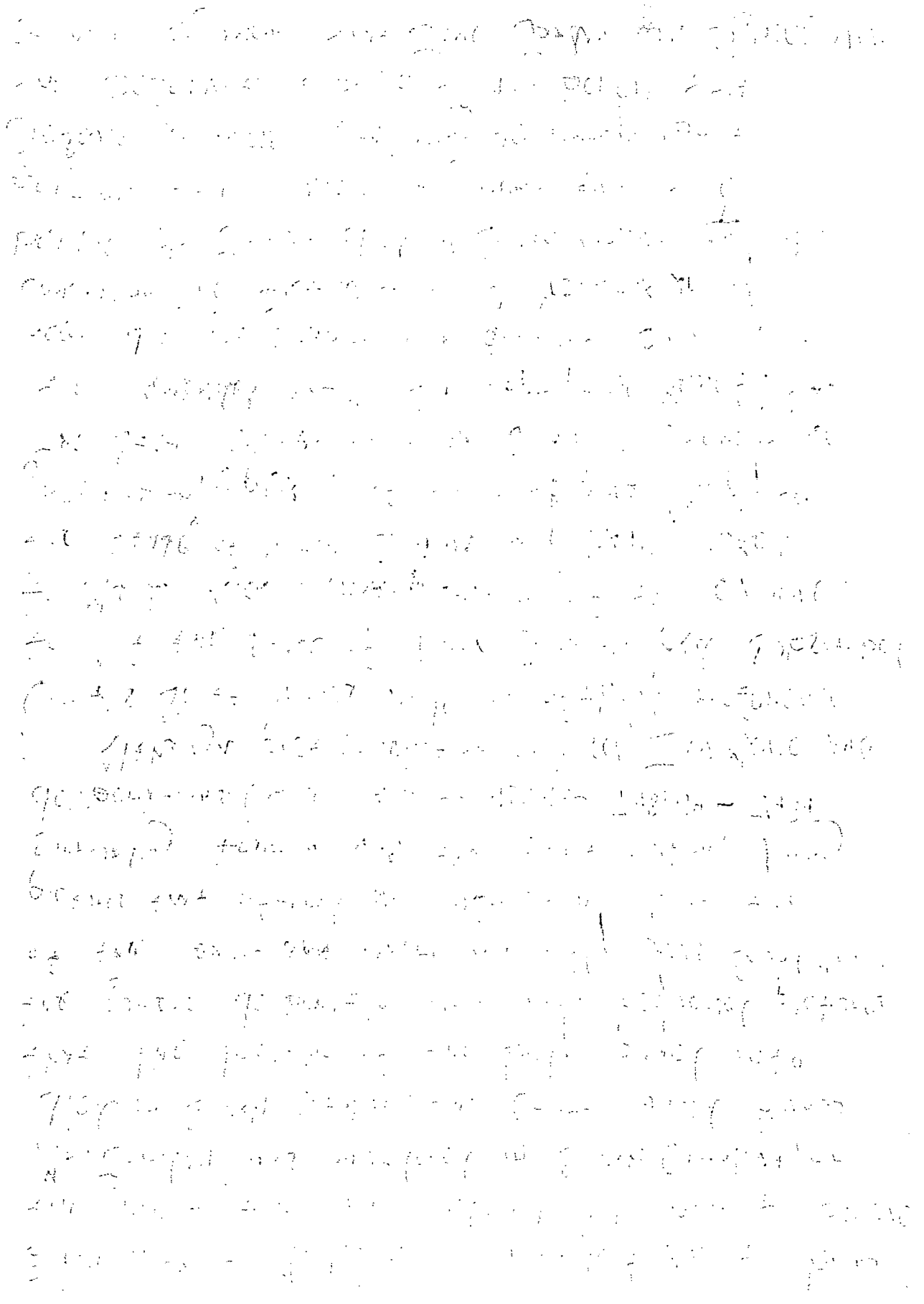
9. In Remmer v. United States, 74 S.Ct. 450, the U.S. Supreme Court held that where the defendant learned for the first time after verdict that the juror was exposed to improper external comments from an unnamed person, the defendant was entitled to a hearing to

determine effect of remark and investigation on jury and whether defendant had been prejudiced thereby. (Remmer V. U. S. 74 S. Ct. 450)

As in State V. Perry, 121 N.C. 533, 27 S.E. 997 (1897) the N.C. Supreme Court noted that "the object of a trial is to avail of every means to ascertain the truth of the issue, guarding against anything that may muddy its source." As in State v. Green, the juror in State v. Perry viewed premises without the Courts authority, which the N.C. Supreme Court characterized as - and considered "as a charge of misconduct by the juror." As in State v. Green, distance was material to guilt, and the jurors query was based upon the assumption of a given spot as the immediate locality of the crime, which the Defendant and the States evidence maintained was erroneous. Ms. Locklear averred in her affidavit that she "travelled to the location in South Carolina where Mr. Jordan's body was discovered." Based on her visit to the scene Ms. Locklear "came to believe that Mr. Jordan had died in South Carolina at the location where his body was discovered."

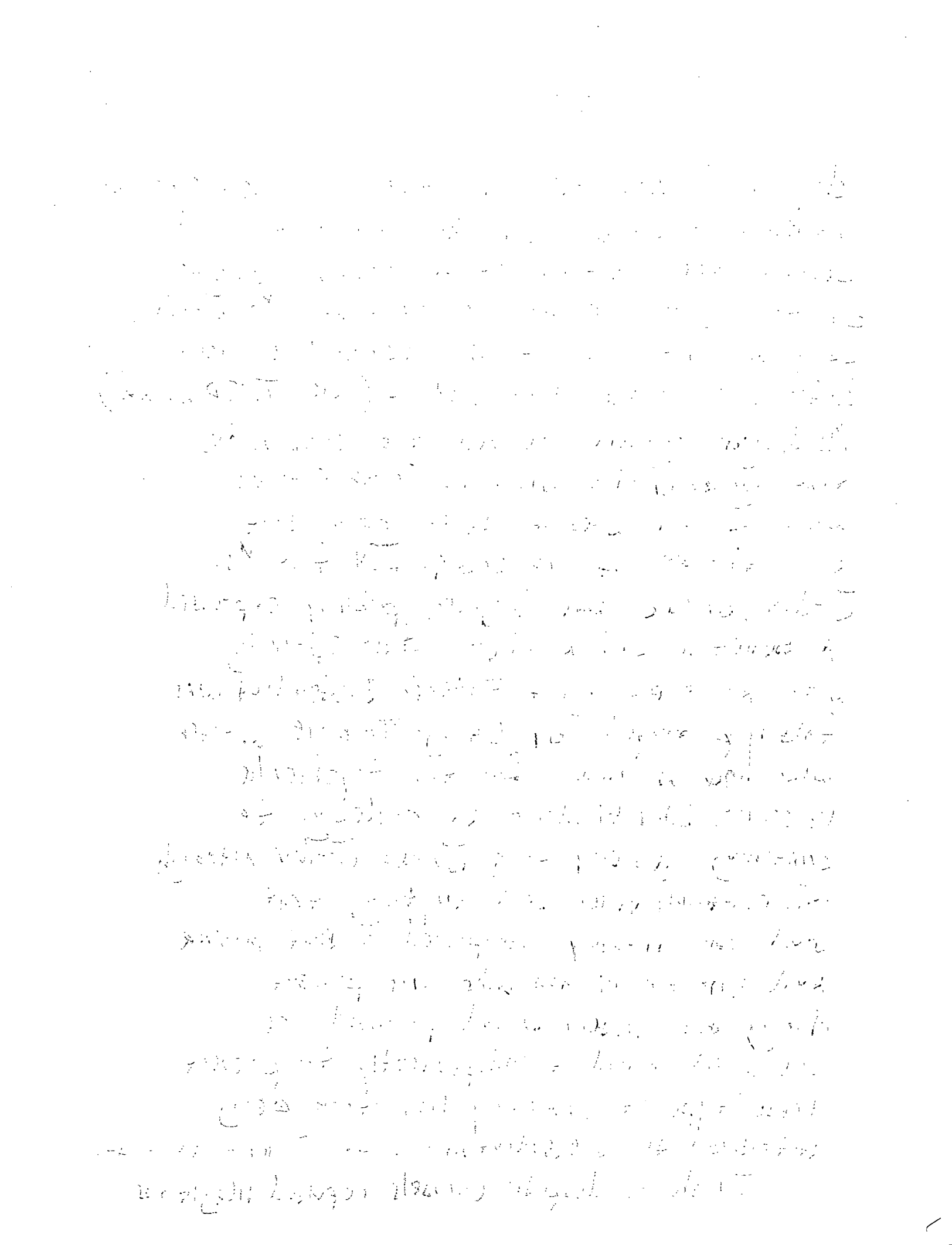
Even without Ms. Locklears averrment about how the investigation she conducted led her to believe Mr. Jordan was murdered in South Carolina, or died in South Carolina, the Court would know that the location of the body played into the jurors deliberation since they requested pictures of the exact spot where his body was found, "on tree" pictures that offered no information about the surrounding terrain nor the exact location, during deliberations. (See, trial transcript 7481:14 - 7484 Ex. 2)

Although post-conviction counsel, Irving Mance and Curtis Scott Holmes, made an offhand reference to "if the State of North Carolina had subscribed to Ms. Locklear's interpretation of the evidence, the State of North Carolina may have lacked jurisdiction", (page 9 of their response "Reply to the States answer to their second supplement to their Amended Motion for Appropriate Relief), the Record does not support nor discount such a conclusion. The fact is that if Ms. Locklear did believe Mr. Jordan died in South Carolina and disbelieved trial counsels argument and the Defense witnesses confusing testimony about the Defendants alibi, but did believe trial counsels argument that James Jordan was sighted alive



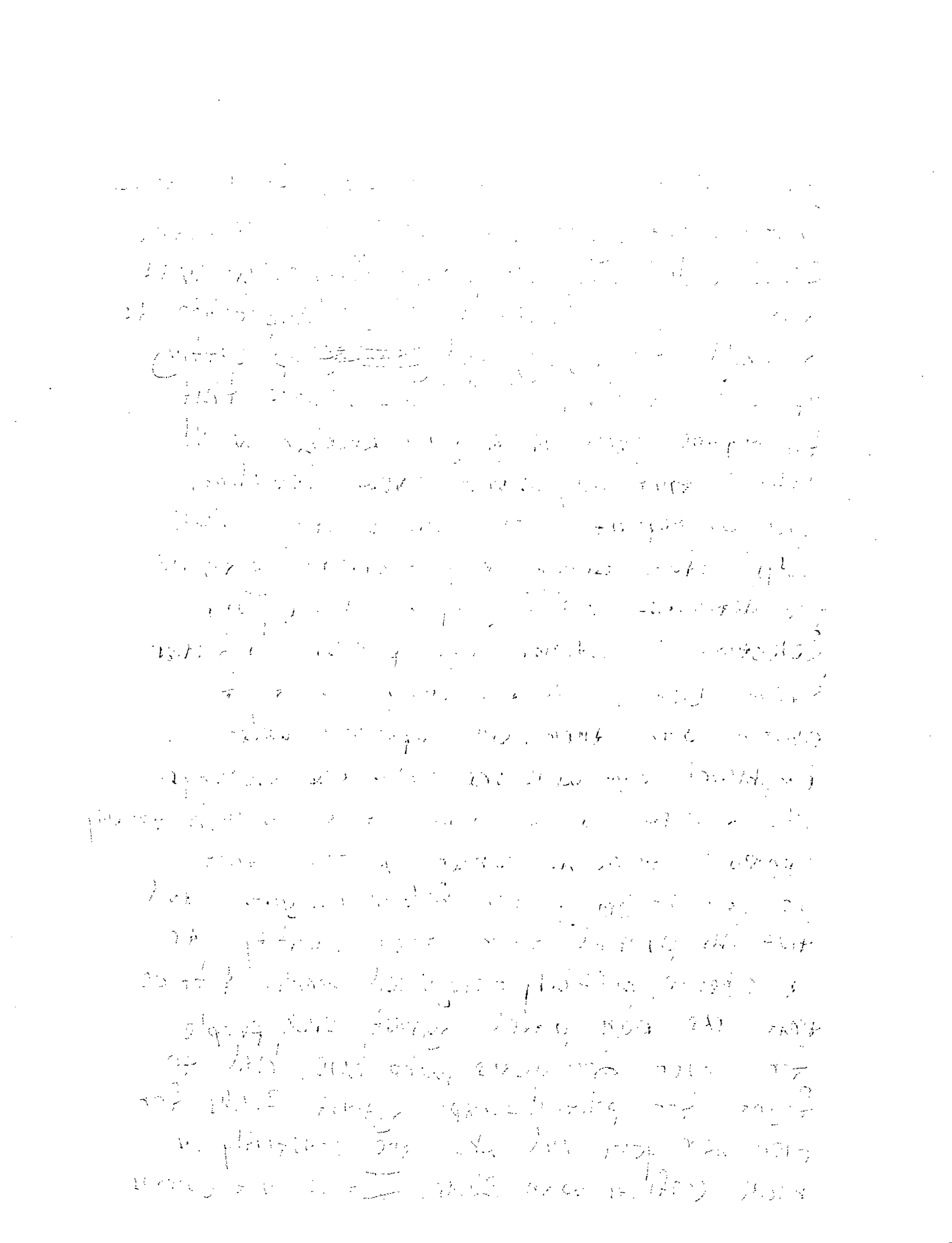
days or weeks after the States so-called credible witness, Larry Demery, said he was killed, and believed the testimony of Hal Lockler, elicited by trial counsel Woodberry Bowen, that Mr. Jordans body was not where it was discovered a week before Hal Lockler discovered it (See T.T.P. 211-212 Ex.3) Ms. Lockler could've reached the conclusion that James Jordan died in South Carolina while I was present after being shot and thrown into the creek. In fact, Ms. Jordan, James Jordans daughter, publicly expressed a belief in such a theory after speaking with an F.B.I. agent. Further, Defendant was falsely portrayed by Chicago Tribune writer who once worked for the Fayetteville Observer, Dan Wiederer, as confessing to snatching jewelry from James Jordan although I certainly never said anything that could be remotely interpreted in that manner and Christine Mumma, who was present during the interview and promised me she would record it independently to prevent these type of incendiary lies from being attributed to Defendant will testify I never said that.

In short, despite Counsels repeated Megathews

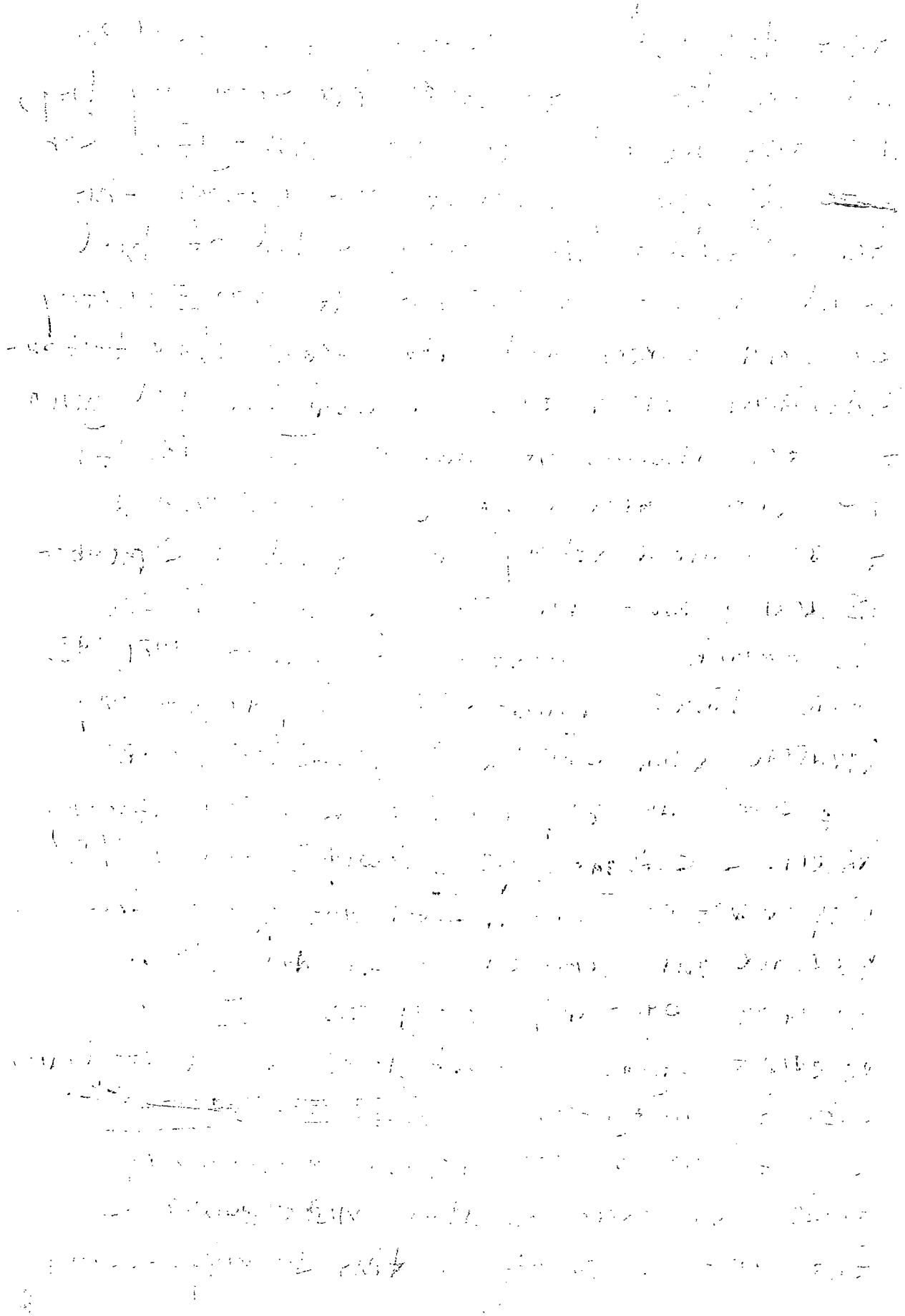


that the Jordans have rigged this case, which no evidence is known by me to support, they have seemingly labored to incentivize the Jordans to use influence by allowing such crazy theories to exist. James Jordan was deceased when I, the defendant first saw his body and helped transport it, unknowingly to South Carolina. Mr. Mure and especially Mr. Holmes can be presumed to know basic law. If James Jordan was robbed or shot in N.C. and died in S.C., N.C. would still have jurisdiction since part of the crime would've happened in N.C. No evidence exists that Mr. Jordan was killed or died in S.C when I, according to trial counsels argument to the jury, and according to pre-trial recordings, admitted to helping dispose of his body, irregardless of what Ms. Locklears belief was. The issue is whether Ms. Locklears visit to an unknown location could reasonably have affected her verdict. We know, as the State has conceded, that Ms. Locklear suppressed knowing the Defendant At the school I was forced to integrate

in spite of race-based resistence from staff (mostly Lumbee) who didn't want us there, the school, Union Elementary, that Ms. Locklear was aware of the defendants alleged "Reputation as a child for fighting and ~~[illegible]~~ up cutting up". The state noted "It is curious that twenty-one years later juror Locklear would state that she in fact knew defendant, even by reputation, from his elementary school days" after denying any familiarity with me, the defendant during jury voir dire (Jury Selection, 30 November 1995, p 945). Ms. Locklear knew Demery and his family, went to church with them, and, apparently, under emphasized how well she knew the Demerys. Ms. Locklear is a member of the same, historically oppressed tribe as Demery, a tribe that is still struggling for federal recognition and that has profited from their identity as a cohesive politically recognized whole. A tribe that has been pitted against Black people for over 200 years, who have had to fight for political scraps against Blacks for over 200 years and who are constantly in racial conflicts with Blacks. It is not curious



that Ms. Lockler hid information that could've led the defense to strike her from jury duty, nor that she hid her trial investigation for ~~[illegible]~~ 29 years just like its not curious that the Defendant was literally robbed of hard earned scholastic achievements at Union Elementary by school teachers and the schools administration- achievements taken from the Defendant and given to the students of teachers. Just like it's not curious that Sonya Calloway-Durham, a former Assistant Attorney General filed a September 15, 2021 lawsuit due to race, color and sex descrimination in violation of sections 1981, 1983, and 1985(3) against Senior Deputy Attorney General Alana Danielle Marquis-Elder while represented by the New South Law Firm Attorney Valerie L. Bateman (See Calloway-Durham v. N.C. Department of Justice). It's not curious that Ms. Elder has committed crimes and ethical violations by falsely stating that I, the defendant, gave investigators a contradictory alibi to investigators on ~~July 14th-15th, 1993~~ DE August 14th and 15th, 1993, and memorializing these and other misleading misstatements of fact. What is curious is that so many officials



and officers of the courts use phrases like "institutional racism" when it is politically expedient but use institutionalized racist tactics to deny us all justice and/or remain silent when they see it done and portray those of us whose lives are destroyed by these practices and patterns, as "difficult", "unruly" and "uppity".

Brandon Springer, then a student at Duke University interviewed Ms. Locklear. Based on internal notes, Mr. Springer specifically asked Ms. Locklear if she visited the bridge and the river where body was found during the trial and she said "yes". Mr. Springer is now employed by Alston and Bird, LLP. Charlotte, N.C. (See World Cam v. Omniboard Systems LLC U.S. Court of Appeals, Fourth Circuit ~~No. 19-2358~~ No. 19-2358 Filed 6/21/21 [2021 WL 5917114])

See also Ex. 4 (Nov. 2, 2015 E-mail from John Steven Tagert (former Duke University Law School) Mentioning Brandon Springer, Rachel Smith, Jay Leff, Lior Gelb and Carlos Marquez to Ian Mance and Scott Holmes) See notes provided to Daniel Green by Ian Mance when I asked him, with Christine Mumma present, who interviewed Ms. Locklear and who ~~[illegible]~~ procured her affidavit, Mr. Mance wrote the names (Ex 5) on 5/21/18

Post conviction counsels curious neglect to get an affidavit from Brandon Springer, a Duke law student

talented and skilled enough to land a job at one of the country's top lawfirms, a lawfirm that has been a source of many appointments by President Obama and President Biden's administration, and Trump, constrains the defendant to file this supplement to the juror claim. As in Williams v. Taylor, 529 U.S. 420, 441-442, a juror wasn't forthcoming about her knowledge of the Defendant, the State's witness, Demery, and his family. This silence "could suggest to the finder of fact ~~that~~ unwillingness to be forthcoming; this in turn could bear on the veracity of her explanation for not disclosing" her bias and her trial period investigation. Ms. Locklear's misleading responses under oath at jury voir dire and her omissions as a whole disclose the need for an evidentiary hearing.

In Shoop v. Cunningham 598 U.S. _, 143 S.Ct. 37 (Mem) the U.S. Supreme Court denied a petition for a writ of certiorari to review the Sixth Circuit's reversal and remanding Shoop back to the District Court to conduct an evidentiary hearing to investigate the defendant's, Cunningham, juror-bias claims. The majority held that the Ohio post-conviction courts unreasonably applied Remmer v. United States,

347 U.S. 277, 74 S.Ct. 450 (1954) by rejecting Cunningham's outside-information claim without conducting a hearing. 23 F.4th at 650.

Basically any "colorable claim" of outside jury influence entitles a defendant to a "Remmer hearing" Ex. 6. 5/17/18 e-mail between Holmes & Mumm re: jury claim

Ms. Locklear's affidavit, sworn and notarized, make a sufficient showing of her self-initiated exposure to extraneous information which is presumed to be prejudicial, because it involved the right of a criminal defendant to confront the witnesses and evidence against him guaranteed by the Sixth Amendment of the U.S. Constitution and Article 1, Section 23 of the N.C. Constitution. In a criminal prosecution, violation of a constitutional right is presumed prejudicial, and the presumption must be overcome by a showing that the violation was harmless beyond a reasonable doubt. State v. Lyles 94 N.C.App. 240, 248 In State v. Lyles the juror was exposed to extraneous information that contradicted the Defendants alibi defense. Ms. Locklear reached the exact same conclusion. Her investigation exposed her to information that circumvented

defendants alibi because she came to believe the alibi was mooted by her belief that Mr. Jordan died in the water. Defense counsels opening statement admitted the Defendant put Mr. Jordans body in. In effect, Ms. Lockleas investigation led her to believe that the State lied about where James Jordan died, that the crime scene was the very place near to where Defendant always admitted he was at, the landmark bridge in South Carolina. It is not Defendants fault that it took two decades for Ms. Lockleas to reveal her investigators or that counsel, all of whom are experienced in research and appeals, and M.A.R.S. and even Anders Briefs Ex. 7 (C. Scott Holmes) allowed a perception to exist that this jury claim could hinge on a false, on a nonmaterial, assertion of lack of jurisdiction if James Jordan died in South Carolina. The defendant nor the States witness, to my knowledge, never make such a claim. The jury squarely rebuked my notion of Demery being the source of credibility upon which their verdict rested when they didn't unanimously find that Demerys narrative, that I killed James Jordan was true. For this reason

other INCULPATORY evidence - INCLUDING Ms. Locklears illicitly gained INFORMATION - must be EXAMINED by ANY fact finder IN AN evidentiary hearing. AND is material AND prejudicial to the outcome.
The facts cited herein ARE supported by the trial record, the Motion for Appropriate Relief Record INCLUDING affidavits, documents AND is supported by the facts the defendant has Requested the Court to take judicial notice of AND which is hereby incorporated by reference. This request of the Court to take judicial notice of adjudicative facts (Ex. 8) is being filed concurrently with this supplement to the jury claim. These facts will amply demonstrate the following:

1) That the INFORMATION Ms. Pauh Locklear gained from her trial visit to where she thinks the body was discovered could not have been cumulative since:
(a) The trial testimony was contradictory and conflicting with regard to where exactly the body was discovered AND, therefore, can't be a source of cumulative evidence.
(b) We do not know exactly where she went to;
(c) We don't know what she saw during her trip.

More FACTS

Juror Paula Lecklear, like every juror in voir dire of the trial State v. Green, stated unequivocally that she would be able to arrive at determination of defendant's guilt or innocence based solely upon evidence presented at trial. (Exhibit 9, Trial Transcript of Jury Voir Dire)

Ms. Lecklear signed a document acknowledging receipt of the Courts orders not to conduct her own investigation and not to receive extrajudicial extraneous data about the case. (Exhibit 10 Judges orders)

The Court, the Honorable former Superior Court Judge, Gregory Weeks, instructed the jury daily not to conduct their own investigations, and, in generality, not to receive extraneous information about the case State v. Green (Ex. 11 Trial Transcript)

The Juror, Paula Lecklear (Also known as Paula Manuel) swore in her February 22, 2016 affidavit, that she conducted her own investigation of the case during the trial by making an

unsupervised visit to the place the body was discovered at, even though the trial court warned jurors to not "conduct any independent inquiry or research of any kind. (Ex 1 Ms. Locklears affidavit)

It is not surprising that Ms. Locklear would be curious about where the body of James Jordan was discovered since:

(1) The state offered conflicting testimony about exactly where James Jordans body was located at in relation to the bridge, the landmark all of the States witnesses used to explain how far away from the bridge the body was located. The Court can't depend on only one State witness, Mr. Locklears, narrative about where the body was located not it's position. Other witnesses contradicted him, he contradicted himself at trial and we will never know who the jury believed on these issues. (Ex 8 See Request Motions for Judicial Facts)

(2) The pictures of the body the State submitted into evidence only showed a small area in the creek where the body was found. The testimony elicited by the State from the witnesses not only raised issues about the distance of the body from the bridge, but also

whether the body was in the water snagged on a branch; hanging in a tree above the surface of the water; whether the water level changed between the time Demery testified he and I (the defendant), put the body in the water from the bridge and when it was discovered over 10 days later by Hal Locklear; How Hal Locklear couldve failed to see the body after the 23rd a week earlier when he testified the body was not on the tree limb he found it on a week later; how could a body end up above the surface of the water if the water level hadn't dropped after July 23rd, and, whether the victim was alive when he went into the water and climbed up the tree limb out of the water, partially, after being walked 50 yards or 300 yards or 400 yards into the terrain the creek ran through (the distance from the bridge the body was at on the tree limb according to the States witnesses conflicting testimony) (Ex8 See Request/Motion for Judicial Notice of Facts.)

The improbability, no, the impossibility of a

deceased body somehow ending up suspended above the surface of water at all, if the water level never raised or fell during the time the body entered the water, makes Paula Locklear's visit to where she went, where ever that actually was, material and prejudicial for the following reasons:

First, without examining Ms. Locklear under oath at an evidentiary hearing, and possibly taking her to the area she visited we have no way of knowing where she went since the trial testimony of those who said they saw the body where it was found is conflicting.

Did Ms. Locklear go 300 yards from the Bridge and see insurmountable obstacles (allegedly) in the creek that would prevent a body from floating 300 yards down the creek from the bridge where Demery testified the long deceased body was dropped, but, if the body was in fact only 50 yards away would not have prevented the body from arriving where it was discovered?

The Court can not assume that what Ms,

Locklear saw was cumulative of the evidence presented at trial. The only way to find a fact here, where the trial evidence was conflicting about the location of the body, and where we don't know where the juror look is to examine her under oath. Only then could the Court consider the impact of the evidence, the extraneous evidence, on the mind of the hypothetical Average juror.

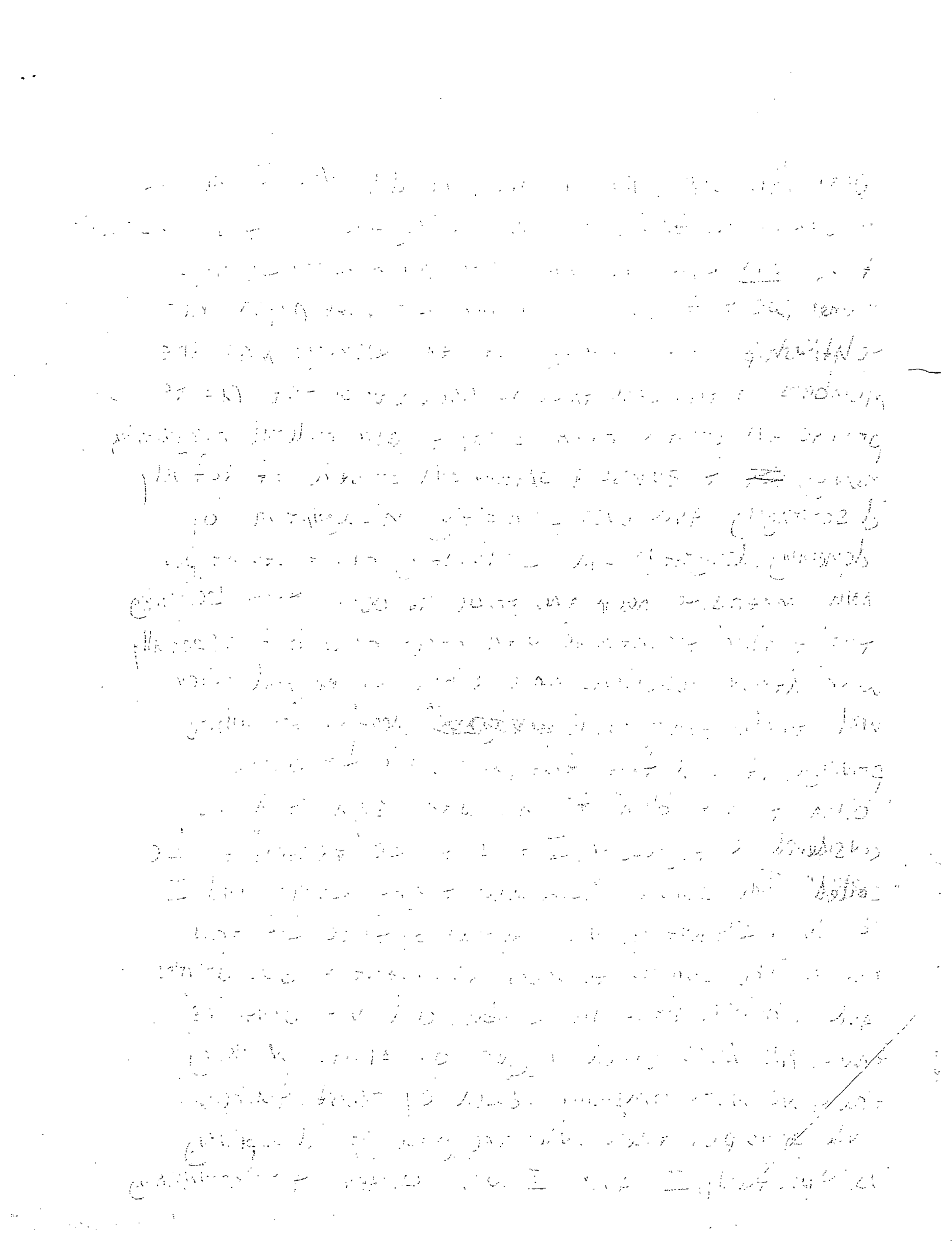
If post-conviction Counsel had escorted Ms. Locklear to the place she visited in order to put her description of the area into her affidavit the State would cry foul, and rightly so, since, one of the substantial policy considerations supporting the anti-impeachment rules (N.C.G.S. 15A-1420 and N.C.G.S. 8C-1 Rule 606(b)) is the protection of jurors from harassment and embarassment. The State is free to subpoena and examine post-conviction counsel to place on record, under oath, at an evidentiary hearing, about why they didn't take her on a field trip to the exact place she went to on her own in 1996, during the trial, if they wish, as well as about any State-claimed deficiencies in the affidavit of Ms. Locklear submitted

by Mr. Ivan Mance and Mr. Curtis Scott Holmes and certified by these gentlemen and the State claimed deficiencies in the pleading of this claim as well as their research, investigation and expertise on the subject matter of jury misconduct

At the evidentiary hearing, Ms. Locklear, in accordance with Rule 606(b), will testify about the extraneous prejudicial information improperly brought to her attention and she will testify about the outside influences improperly brought to bear upon her, both before the verdict and afterwards, including criminal activity designed to discourage her from testifying truthfully, whether from the local Robesonian Press paid to broadcast propaganda, or officers. Although Ms. Locklears prejudicial conduct is presumed to be prejudicial, the State can rebutt this presumption, if the facts show, at an evidentiary hearing, but since no juror can testify about their deliberations or the effect of anything on them the State will not be allowed to rebutt the presumption of prejudice with the use of testimony prohibited by Rule 606(b), of the N.C. Rules of Evidence and prohibited by N.C. Gen. Stat. §15A-1240

In addition, the fact that Ms. Locklear denied under

oath, that she knew me when she did know of me as A substitute teacher and had a negative and false impression of me and that she, under oath, knew Larry Demery's mother, went to school with her, but underplayed her relationship and knowledge of the Demerys who are members of the same tribe as her. A tribe that has to promote and practice racial purity to gain federal recognition, meaning, ~~that~~ to endorse a pattern and practice of Actively discouraging and even prohibiting miscegnation by demeaning, denigrating and broadcasting racist stereotypes and myths to keep the tribe members from becoming too "familiar", too intimate with other races but especially with African descendants. While a race may be, and often will trade their racial ~~privilege~~ identity for white privilege, it is a fact that, worldwide, to become "black", to act "black", to mix with Black stock is considered a regression. It is to be "tainted", to be "soiled". The school Ms. Lockler taught Demery and I at, Union Elementary, was integrated by force for this reason. The schools teachers, administration, bus drivers and children, almost all Lumbee, did not want us there. We were called nigger by Adults working there, we were physically abused by racist teachers and principles there under the guise of "disciplining us. Specifically, I ever, I was beaten for moonwalking



outside the classroom, for breakdancing on the playground for, for exhibiting symptoms of what is called "ADD". I knew that teachers colluded, and did in fact, deny us the academic recognition that we, that I, earned and when other teachers exposed these acts, these patterns and practices, they too were villified, demonized, and ostracized by their own tribe. They in effect, were socially scapegoated, socially exiled, for doing what any decent adult would do for a child - protect their growth and development by advocating for accurate documentation of their scholastic achievements - to deter others from doing the same. I knew that I was attacked, beaten, and denied hard earned scholastic recognition by teachers at Union Elementary, that preachers were brought in to speak to us from the gym stage about good teachings but also about how Black people came from Noahs curse on his son for seeing him naked.

I knew that although I lived, at most, four miles from Union Elementary, on Alston loop road, we were the last to get home after riding an hour on the bus in the evening but when we were picked up we were always the first. What this means is that we, the Black kids who lived nearer to the school than most Native Americans, had to get up at 5 a.m. or earlier to "catch the bus" and "would get home later than the Native American kids. This two hour lost of time cost us sleep and homework time which equals more difficulty keeping up.

Perhaps the parents of Black kids didn't advocate hard enough for us for fear of being labeled "Troublemakers", "Difficult", "crazy" and other labels used and designed to make those who speak inconvient truths unemployable, outcasts and, ultimately, "killable." Still, it can't be disputed that Union Elementary was a racist school and that every person who worked there knew about the racist tactics used by their co-workers to discredit and malign us and the integration policy our unwanted presence was a product of. While I am mindful that NativeAmericans, some of whom have always been "Negroid", have been victimized by genocidal policies that literally wiped many tribes off the face of the earth and out of memory - a genocidal policy that is still ongoing in other forms, that doesn't excuse those Native Americans who align themselves with racist patterns and practices to do the same to Black people, many of whom share the same bloodline and squalid social conditions. Even now predominately Black schools in Robeson County, such as Knuckles elementary in South Lumberton literally are poisonous to the kids due to mold and substandard resources, unlike their counterparts in predominately White and Native schools.

The above is familiar because it is true. It is material because of the following:

Upon information and belief Ms. Paula Locklear was interviewed

by Ian Munce and Law students from Duke University including but not limited to Brandon Springer, Rachel Smith and Stephen Tagert. Ex 11, 11/21 is Memo from Stephen Tagert to Ian Munce and Scott Holmes.

Ms. Locklear is documented telling the students that at the elementary school "No teacher wanted to have that child", that she visited the bridge and river during the trial where the body was found, that a Big piece of evidence for her was the video of me "bragging and singing about the crime and she said "we saw the video" and that I "grew up in a rough part of town"; and "was into drugs." (In fact, the jury weren't supposed to have seen the video, at no time did I sing about or rap about any crime in the video - that was propoganda based on racist stereotypes, and several teachers did want me at Union Elementary just not the racist ones she apparently talked to and associated with. She also told them that she believed James Jordan "wasn't in the car", that he was dumped over bridge and climbed out of river, died there - climbed in a tree" "up a tree that he then died in." Ex. 12. Duke Students notes about Ms. Locklears racist comments

Ms. Locklear is quoted verbatim telling Ian Munce

on November 17th, 2015 that she "went down to take a look. I wanted to see where he'd been throwed off to tell you the truth." Ex.13 "I says I wanted to see where he traveled to, course the tree done moved but that doesn't matter to me about the tree being moved". While Ms. Locklear can't testify about how the extraneous information she perceived on her extrajudicial visit affected her deliberations, there is no prohibition on her testifying about why she was motivated to seek out extraneous information, and, what she saw on her unlawful trip.

Ms. Locklear testified about how the jury were given the "rings" in court. In fact, not only were they given the ring but the Lumbee and Black jurors, LeeVern McGirt and James ~~Cassidy~~ Cassidy both tried the ring on, most likely for the same reason that I did; the successful marketing campaign we all grew up with made us all want to "be like Mike" by wearing anything with his name or likeness on it. There are constant references to "rings" in this case. There was no "ring" with Michael Jordan's name on it, only one All Star ring that I saw that looked silverish like Stainless steel. It is certainly not something anyone would

kill or rob someone for and, in fact, it looked like the commemorative rings that were advertised in magazines by Balfour, the same company that sells highschool class rings. I never saw a Championship ring and a cursory comparison of the shape of the gold class ring I had on in the pictures and videos introduced into evidence that the State claims Michael Jordan identified as his Championship ring and which the State officers of the court and law enforcement officers publicly, and in court, identified as a Chicago Bulls Championship ring, with the photographs of the Championship ring will clearly, and unambiguously reveal that it's not the same ring. Why would all of these college educated lawyers who prosecute cases duly and officers of law knowingly keep lying about me possessing the Championship ring? The same reason they keep describing the Championshipwatch as "Gold". It was stainless steel and had goldish accents on it. Citizen and Timex sell similar watches for less than 50 dollars. They tried to enhance the apparent value of these items to support there contention that I saw a man sleeping in the dark, saw shiny gold and diamond jewelry and lost my mind and

had to have it so I killed him and took it. This "goldlust" theory has always been used to demonize minorities whether Black, Jewish or ROMA. It is a mockery of justice to knowingly lie to the Court and the public to create a false perception to justify Arguing that I'm guilty. It's unethical, and unfair and those who would lie about such a matter where the stakes were the death penalty or a life sentence are criminals and as soon as they get on the stand under oath or affirmation they will be forced to admit their lies designed to kill me and destroy my family and criminal charges will be pressed for the trial court to publicly issue a summons or Arrest warrant pursuant to N.C. General Statutes CRIMINAL process, 15A-301-305, Statutes. I will do this with a clear conscience because I know they won't be treated like the villains, like the poor and locked up; but it will show how my conviction was won by connivance and blatent corruption. As Paul told Agrippa, these things were not done in a corner. (Acts 26:26)

In Munce asked Ms. Lockler if she "went out there on your own? Ms. Lockler responded "No, No."

Ms. Locklear told Mr. Mance she never said that noone at the school (the teachers) wanted me and that Indian and Black get along unlike a lot of other places. She says, according to the transcript of the recorded interview that she knew Larry but didn't know me but that I had a reputation for "fighting .. knocking, pushing, cutting up"

Ms. Locklear, according to the referenced transcript told Mr. Mance "Now Daniel liked people but he was a .. you ever seen a child that seemed just turnt loose?"

Ms. Locklear is quoted as saying, when Mr. Mance asked her, "Did you have an opinion as to who, who actually pulled the trigger?", "No. I did not." (Ex. 13)

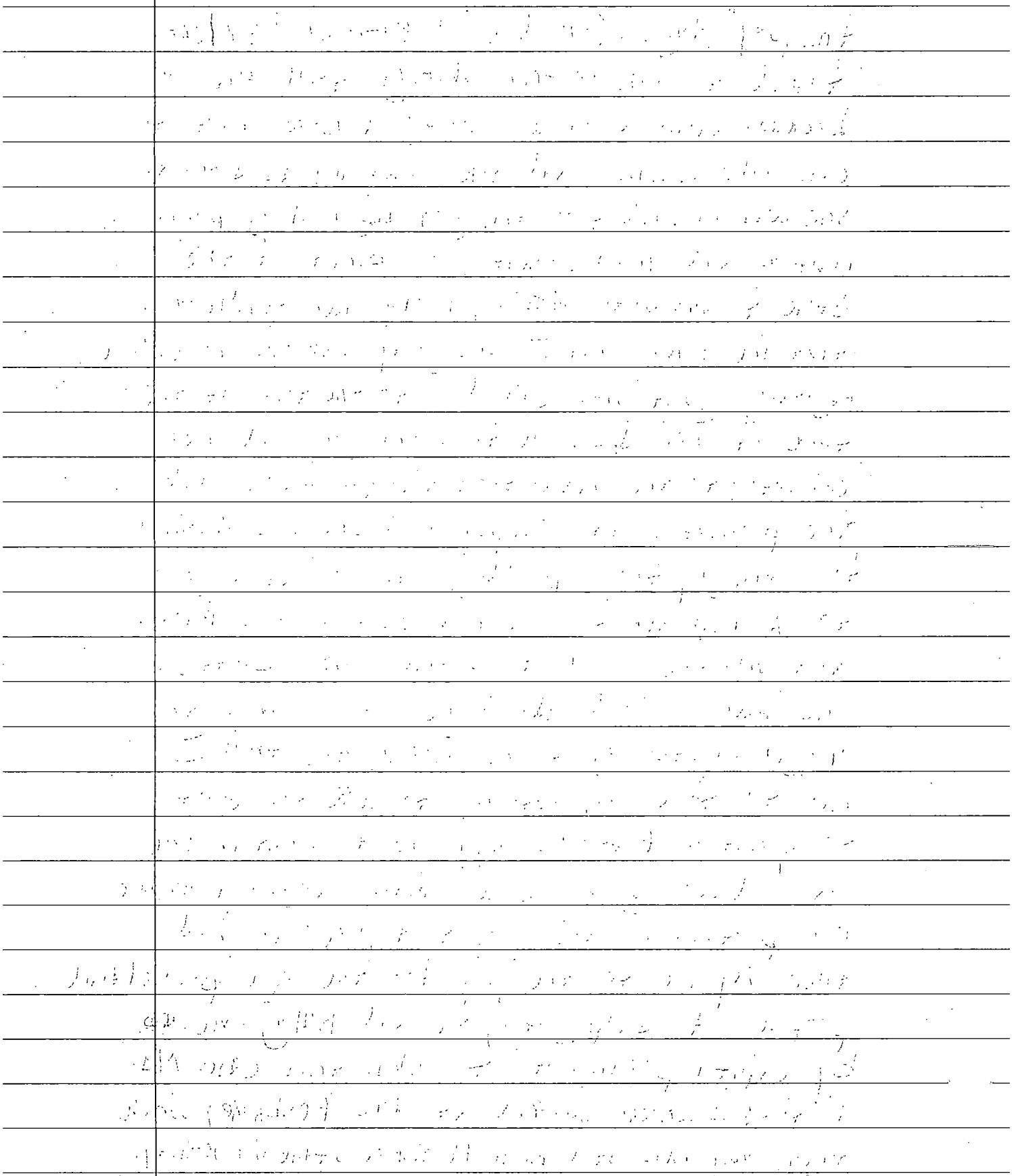
Mr. Mance asked Ms. Locklear "So when Larry, so when Larry testified that Daniel did it you didn't believe Larry necessarily, but you kinda just concluded that both of them were present, that's kind of what you settled on?" Ms. Locklear responded that's what I settled on that both of them was there ... either one could have said the same thing, Daniel could have said "hey Larry pulled the trigger." Larry could of said "hey Daniel pulled the trigger, both of - they were in this together."

Ms. Locklear told Ivy Munce that "Larry went to church with us"; that Virginia Demery, Larry's mother and her were "Friends, yes.. just not good friends.. I known her all my life, we went to school the same high school we lived in the same community", about Larry Demery she told Mr. Munce "Just cause they swear to tell an oath that don't mean they're telling the truth, if you backed into a corner, I don't care if your.. if you're backed into a tiny little corner you gone lie to get out" but, Ms. Locklear said... nevermind, its inadmissible because it involves her deliberations what I was going to quote.

Ms. Locklear said that James Cassidy watched the news to see what was going on about the trial, that a "White Widow" (Angela Coverdale), a school teacher on the jury, Audrey Chavis etc... watched the news as well while serving jury duty.

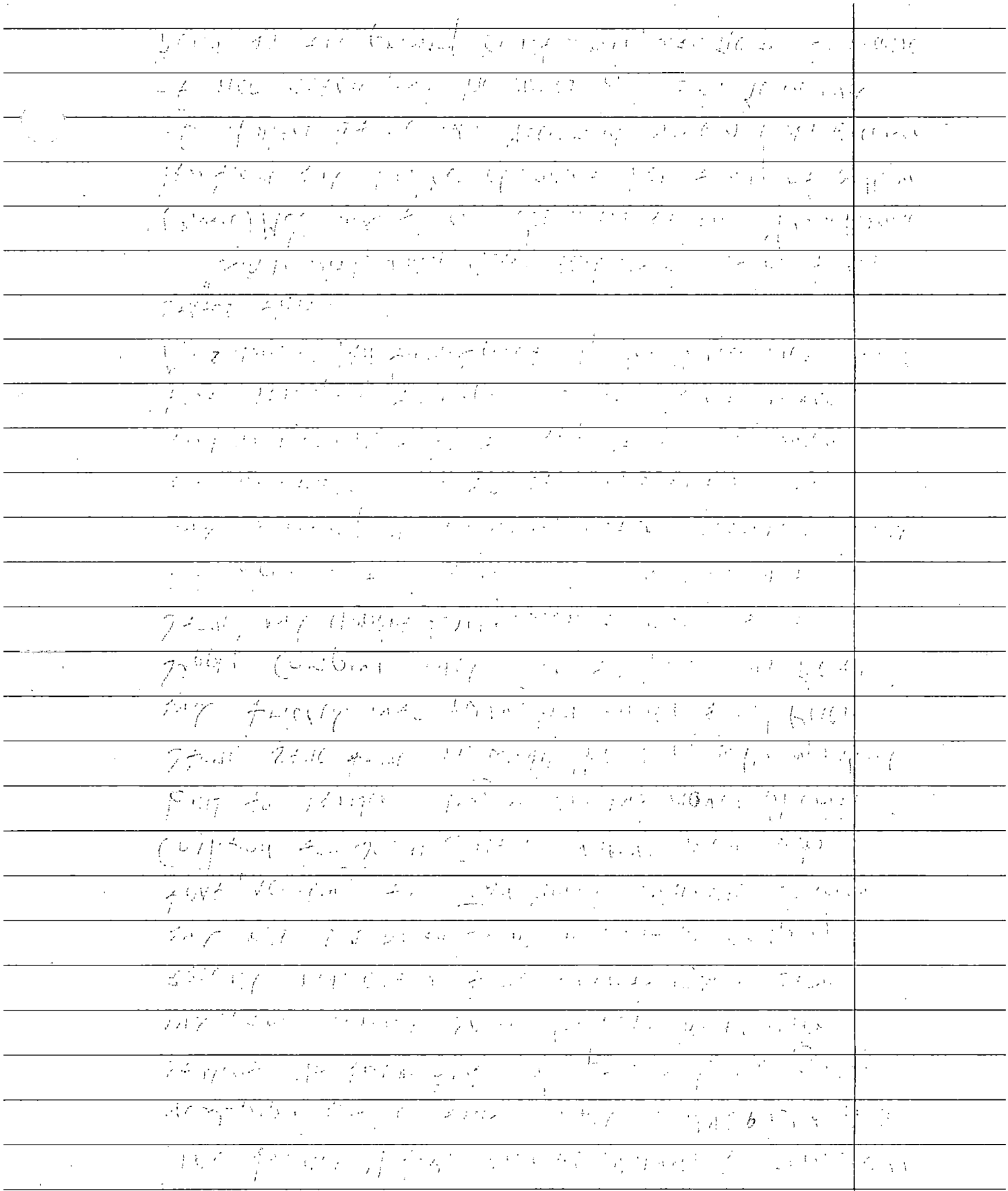
Ms. Locklear revealed that she was surprised when "the blonde" (Angela Coverdale) said that "Miss Pat" had been "running her mouth to some kind of reporter" even after the judge "definitely" told them "not to talk about it outside the courthouse". "Miss Pat is the juror that according to Ms. Locklear was "released from

the jury" Angela Coverdale and Patricia Locklear talked to one another during trial. Patricia Locklear admitted she was writing a book about the case under discussion and she immediately, as soon as she was removed from the jury, began doing public relations and news commentary on behalf of the State to and with WBTV, including her revelation that she knew that I was guilty although no evidence regarding guilt was entered into the trial at the time of her dismissal from the jury and her commentary to the media from the Courthouse and the prosecutors office. Keep in mind, she was dismissed from the jury from providing intelligence, as a juror, to a reporter for a radio station in Lumberton that was the cousin of Luther Johnson Britt, who she later claimed advised her to convict the nigger - referring to me. During the trial I had to force my attorneys to ask the Court to question Patricia Locklear about whether she was discussing my case with Angela Coverdale, her partner on the jury that, like her, lied their way on to the jury for the sole premeditated purpose of scapegoating me and killing me by capital punishment to close this case. Ms. Patricia Locklear worked at UNC-Pembroke, which then may have still been Pembroke State University,



The Amended M.A.R. exhibits includes a Robesonian newspaper article that quoted a UNC-P basketball student, Mr. Abdur-Rauf (Shaffy), who pronounced me guilty and, the exhibits show, Mr. Abdur-Rauf (Shaffy) later received real estate from Sheriff Hubert's Stone and his son, Keith Stone, real estate company that, according to Ian Munces internal Southern Coalition for Social Justice internal memo, was built to launder drug money and money Sheriff Stone stole from the wife he supposedly murdered and tricked into having her money from Pates Supply Company willed over to his sons Keith Stone and Hubert Larry Deese. According to the memo, which is filed concurrently with this motion and is hereby incorporated by reference, Mr. Stone used the exact same lawyers to steal his wifes money that Judge Floyd tried to appoint to me when I first attempted to replace Carlton Mansfield, the Musselwhite law firm. Specifically Mr. Munces memo (Ex. 14) states that:

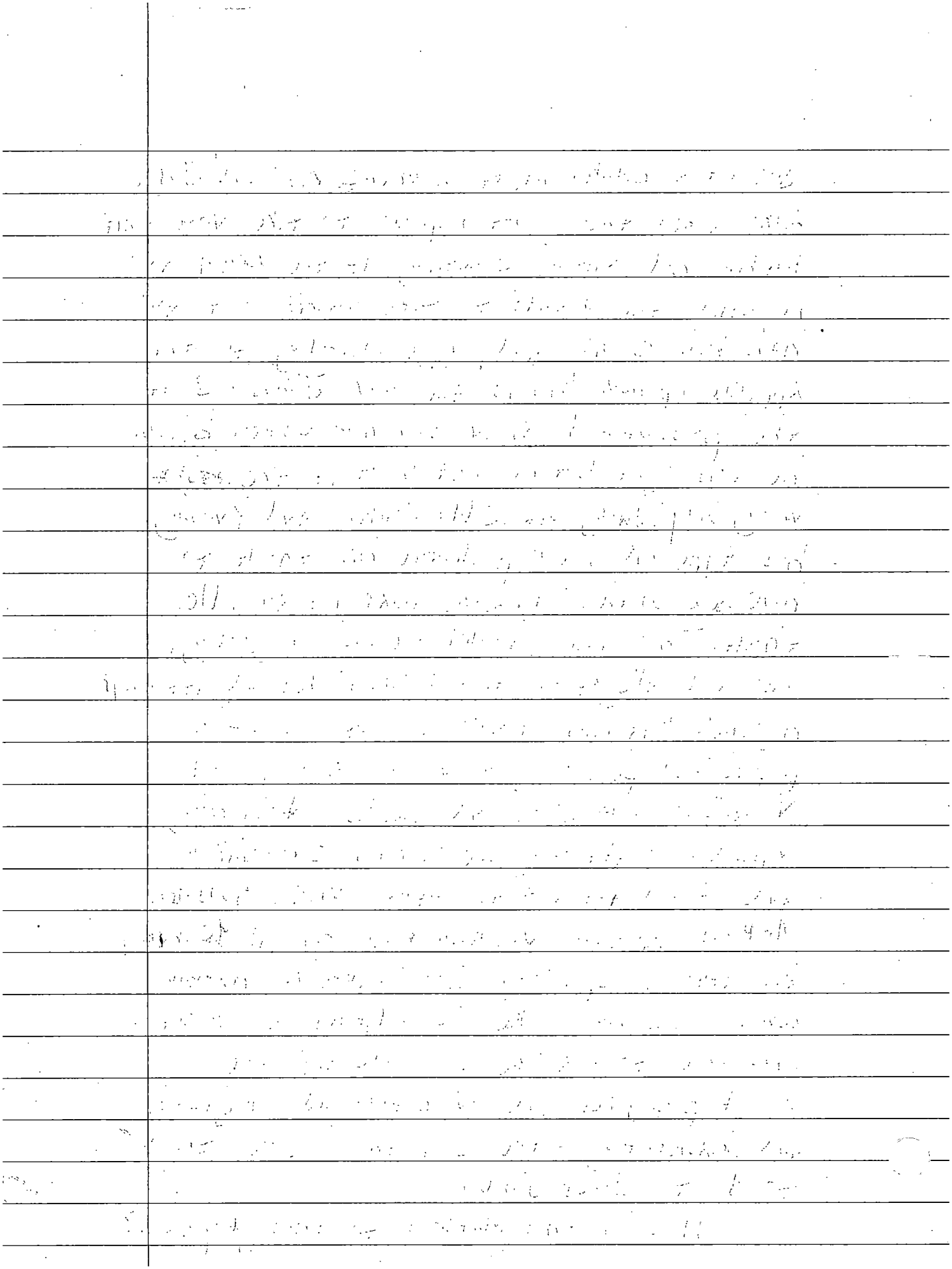
"Likely while under heavy medication Stone takes (Ruth) McCormick to his associates at the Musselwhite law firm and has her disinherit her family of millions of dollars. Stone has McCormick name him as executor of her estate, and he names his sons Keith and Kevin as the primary beneficiaries, with Keith to receive



the ownership interest in Pates Supply. The Musselwhites, likely recognizing this as a textbook case of undue influence, urge Stone to name a co-executor to mitigate the suspicion that is sure to arise when the will is read. Stone chooses William Teddy Currie ... Stone then kills McCormick" Mr. Mance, in the same memo also mentions William Kunstler, Lewis Pitts, and Barry Nakell of UNC-Chapel Hill, filing a "novel civil action alleging corruption and drug involvement on the part of the Sheriff's department. It flames out and the lawyers are heavily (Ex. 14) fined." The case Mr. Mance references is In re William M. Kunstler, In re Barry Nakell, In re Lewis Pitts, Appellants, Robeson Defense Committee: Carnell Locklear, Mary Sanderson; Thelma Clark; Eleanor Jacobs; Betty McKellar; Eddie Hitcher; Timothy Bryan Jacobs, Plaintiffs, v. Joe Freeman Britt; Richard Townsend; Lee Simpson; Hubert Stone; Lacy Thornburg; Morgan James Bowman ... Appellees, The North Carolina Association of Black Lawyers; North Carolina Civil Liberties Union; N.C. Academy of Trial Lawyer; National Lawyer's Guild, N.C. Chapter, Amici Curiae 966 F.2d 144 and In the Matter of Attorney Barry Nakell 104 N.C. App 638, 643 where Eddie Hitcher told Judge I. Beverly Lake Jr., "I'll fuck you ... you

son of a bitch'n racist, mother-fucker" and" Judge Like asked the court reporter to take note that Hitcher had thrown something at the bench and requested the bailiff to take Hitcher out and have him bound and gagged," according to the Appellate opinion. This is the new Johnson Britt, the prosecutor holds in such high esteem because he" was right but he went about it the ~~wrong~~ wrong way". Having met Eddie Hitcher and knowing his type and sexual preference his threat to have sex with Judge Like was not an idle threat. These cases litigated the issue regarding, inter alia, allegations that Hitchers desired Attorneys hijacked Hitchers criminal case for political purpose and personal gain, violated Rule 11 of N.C.G.S. Civil Procedure, and excessive fines being imposed on Attorneys Lewis Pitts, Barry Nakell and fined Attica Riots Attorney, William Kunstler. Mr. Pitts, Apparently, was represented by Al McSherkey the Attorney representing Dr. T. Anthony Spearman whose assissination, like Julian Pierces assassination, was made to look like a suicide by the use of propoganda and unsubstantiated allegations and backbiting - the same thing some tried to do to James Jordan.

How is this pertenint to this jury claim?



Ms. Paul Locklear told Mr. Mance that "the district attorney knew" that Larry Demery was "mixed up with Sheriff's Stone son" that [redacted] "did the sheriff threaten him, you have no - where you from baby?"

About Sheriff Stone Ms. Locklear asked Mr. Mance, "So you know about the land and the house and everything right?... There's a whole lot of personal stuff you didn't know about him... You know that people left money in the mailbox for him to pick up... You know about all the steals (stills?) in Robeson County, the pay off he took?.. You know about the land and the ... and the other places he's got?.. You have any idea how really dirty he is?" Ex. 13

Ms. Locklear, apparently talking about the sentencing form the jury had to fill out to verbalize the role they found I committed and didn't commit, the elements of felony murder they unanimously found or didn't find that I committed, commented to Mr. Mance "But... thinking about uh, Daniel and Larry doing this, you know how you go down and you mark "no" to all this stuff, you know? yeah, that's what I was doing cause I never, I never did believe... I'll be honest with you I don't believe they were bad, nothing made me believe that they pulled

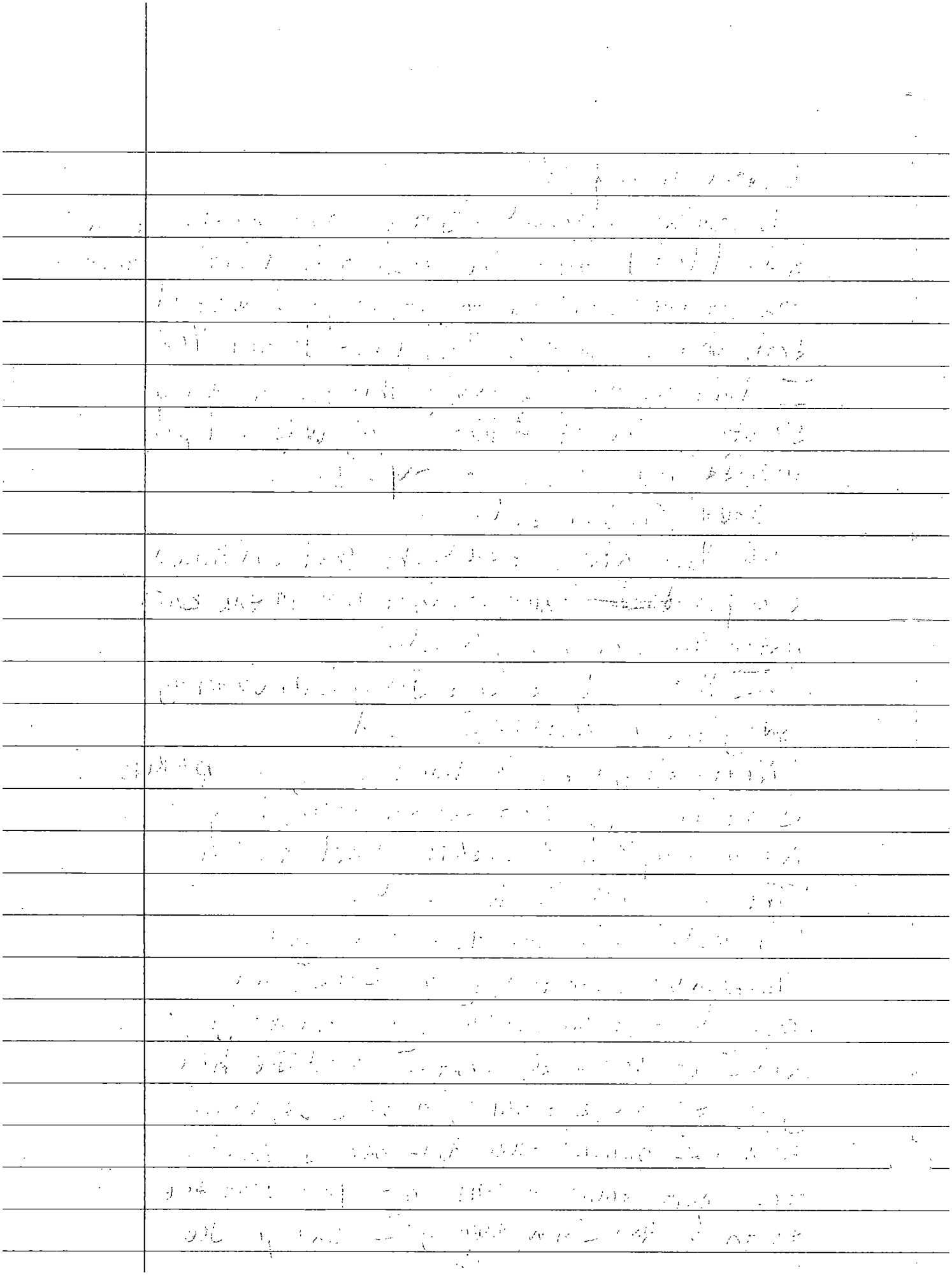
the trigger."

"Neither of them?" Mr. Mance asked.

"Neither one of them, No, Looky here, hell No. No, I always thought a cover up going on here. I just didn't know who or what or how. But you didn't, Steve, you didn't know Store at that time", Ms. Locklear stated, (Ex. 13)

Ms. Locklear speaks about overhearing people who sat behind her at the trial telling someone "make this evidence stick to him" and was surprised Mr. Mance hadn't heard this before... "seriously, you never heard this before?!"... "Would you believe me if I told you her boss looked at her and said "make it stick". Ms. Locklear, being Cautious, wouldn't be specific about who said this but made a point to tell Inv Mance "this trial wasn't supposed to take place when it did. What year that trial take place, was it 96?... Now, this trial was scheduled way up the calender... But afterwards, According to the news, Michael Jordan pushed for it to get done as quickly as possible and get it over with. I says oh, I understand, mom's involved in this and they don't, it, and, everything that's going on and... other things kinda came out like... everything points to Daniel Green, um, make this stick... you've never heard that

before have you?"
Ms. Locklear emphasized, "But you know what ... these kids didn't do this. They, these kids didn't - neither one of them pulled the trigger, do you understand that, what I'm saying? ... They didn't do this. Now I don't know who, you know what, let me tell you something. One of Huberto's sons WAS A deputy sheriff here in the country". (Ex. 13)
"Kevin" Mr. Munce said.
"OK" Ms. Locklear continued "... he shot and killed A boy in ~~[illegible]~~ D3 Fairmont, shot him in the back... WATCH this, he was unarmed."
"I know all about that, Jimmy Earl Cummings, swung the buckets ..." Ian said.
"Whites this, No, hell, he didn't swing NO buckets. Sometimes people won't tell the truth, do you know why? ..." Ms. Locklear asked Mr. Munce.
"They're scared" Mr. Munce said,
"Scared. To. Death." Ms. Locklear said.
Ms. Locklear clarified again. "But I never believed that he actually pulled the trigger, (Ex. 13) and I couldn't vote, what I could see him going to jail, but killing him? Just, no ... Look, I believed these kids were so scared they kept their mouths shut, You want the truth? ... And I'm wondering, I mean you see



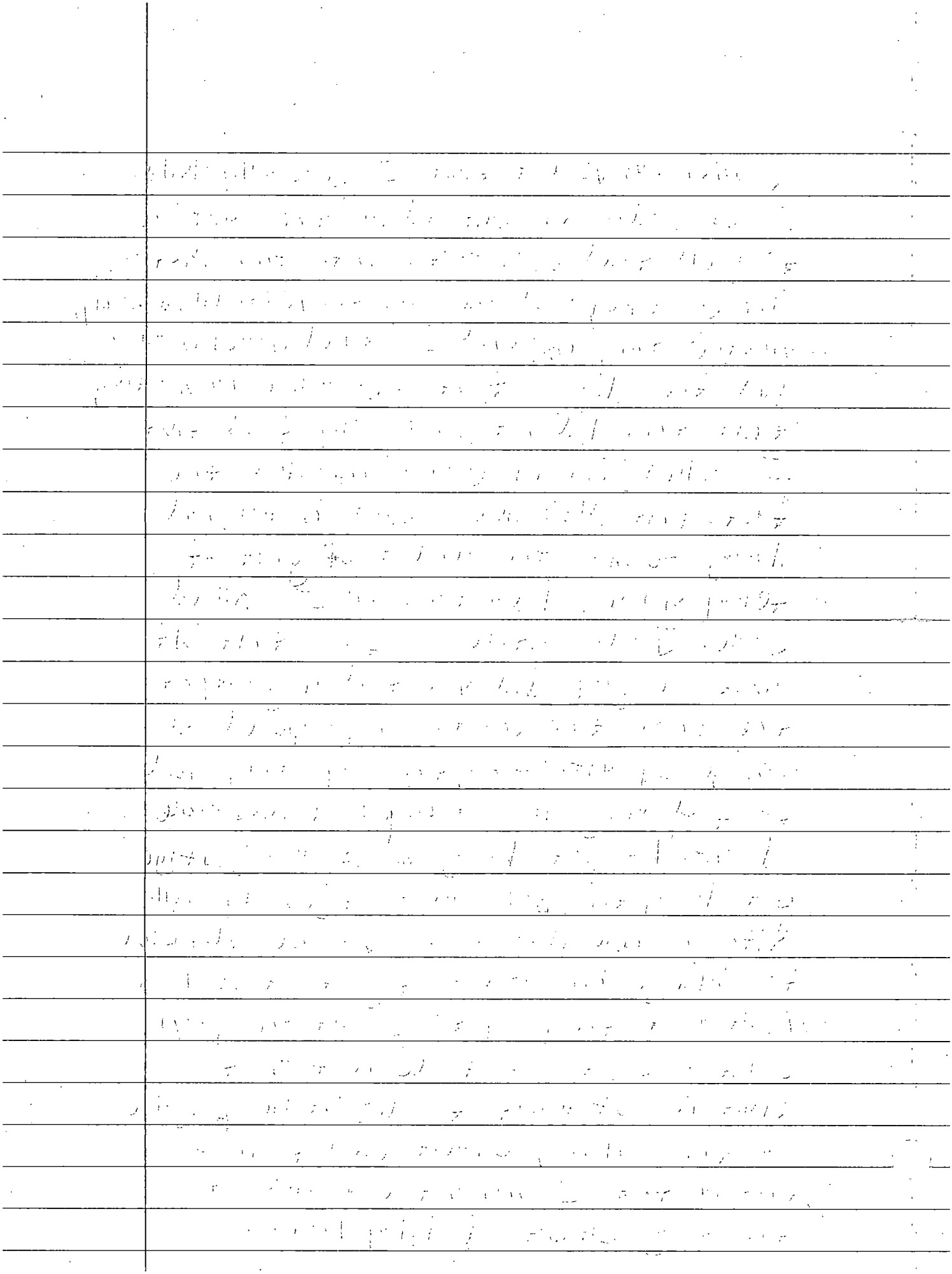
this mess all the time on tv. "I can get to you anywhere. But you know how powerful Hubert Stone was... Hubert could get to anybody, anywhere... yeah, he could... Well I don't know if it's been helpful, but if you want to do something really good, you need to find the real person that was there" (Ex. 13)

I aver that at my evidentiary hearing to suppress the interrogation of me by law enforcement I testified under oath that I didn't truthfully cooperate with the police because, among other reasons I was scared of them, that I knew they had shot a man in the back. I hereby incorporate that statement by reference hereto, and I incorporate by reference these verbatim statements of Ms. Locklear to Mr. Mace.

In summary, I amend the jury claim due to the facts of Mr. Ian Mace's interview, which he recorded, of Ms. Locklear to fairly present the following claims:

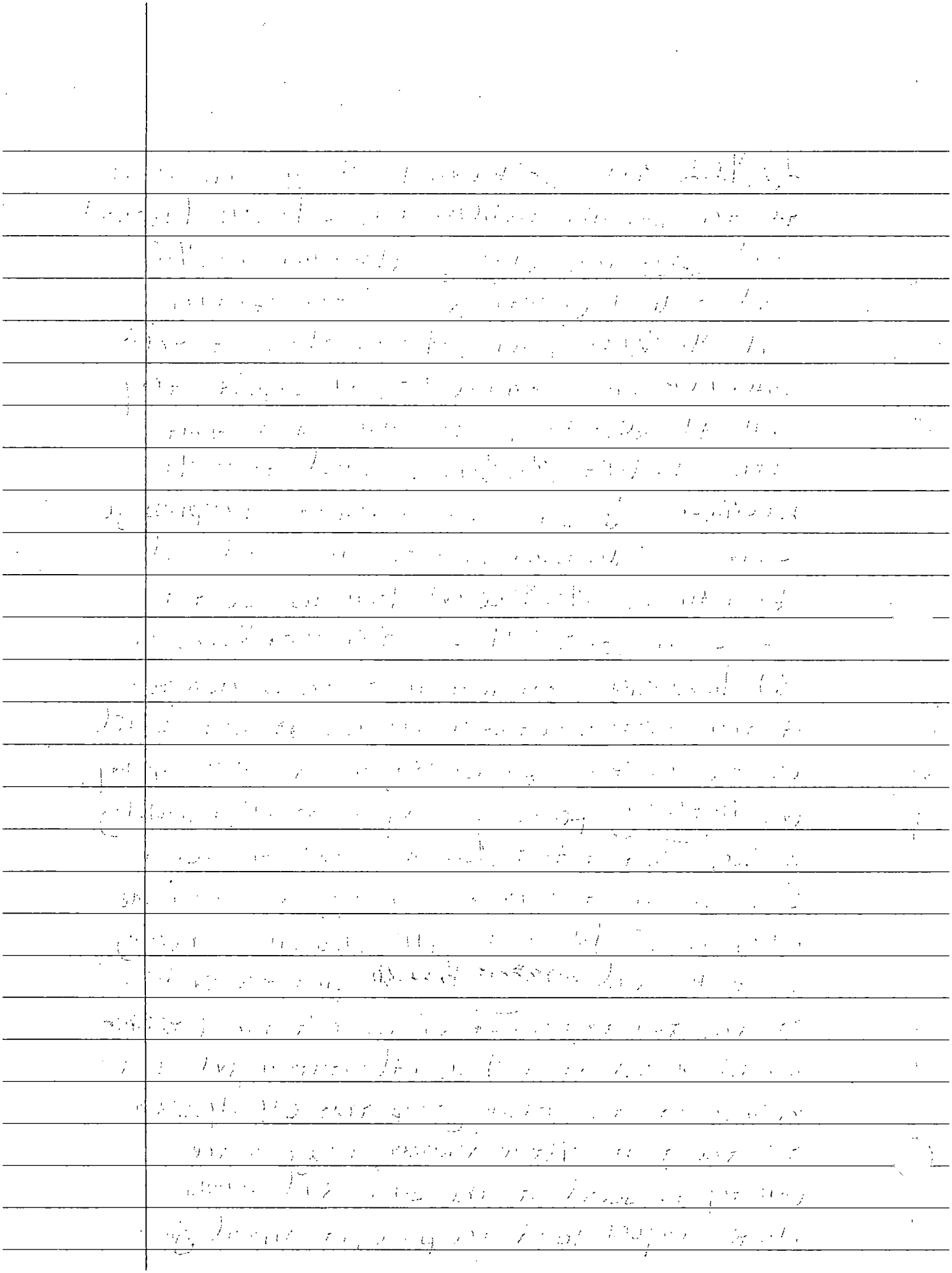
1) Ms. Locklear's admission and adament statement and assertion that she didn't believe I killed James Jordan, didn't pull the trigger, clearly rebuts the presumption that she followed the Court's instruction on the law that required

A unanimous verdict that I personally killed James Jordan as detailed in the motions to mend filed concurrently with this motion, The Court required the jury to ventilate, publicly, whether they believed I killed James Jordan and they did, in fact, memorialize in writing that they did not unanimously find that I killed James Jordan. Therefore, the fact that Ms. Locklear, even before, and during, reaching the verdict of guilt of felony murder, did not believe I killed James Jordan etches in stone that at least one jury did not find me guilty of the crime the Court was compelled to charge by instruction the jury they had to find me guilty of beyond a reasonable doubt. Not just during the sentencing stage but during the pre-verdict stages as well. Although these admissions may not be admissible to challenge her verdict of guilt, it is no violation of the policy to protect the juryes sanctum sanctorum of deliberations to admit her statement to demonstrate prejudice on the "missing element" claim, to show that in fact, I was not convicted of the killing element of Felony Murder.



2) Ms. Locklears statements about <u>why</u> she went to the place she believes the body was discovered and <u>what</u> she saw <u>is</u> admissible in N.C. and Federal courts as is the students and Mr. Munces notes, audio recordings of their interview which this Court can expect they will all testify is accurate And that the affidavit Mr. Munce procured from Ms. Locklear, despite its immaterial surplussage that is inadmissible is likewise sound and factual as Mr. Munce and Mr. Holmes certified it to be pursuant to Rule 11 of N.C.G.S. 11

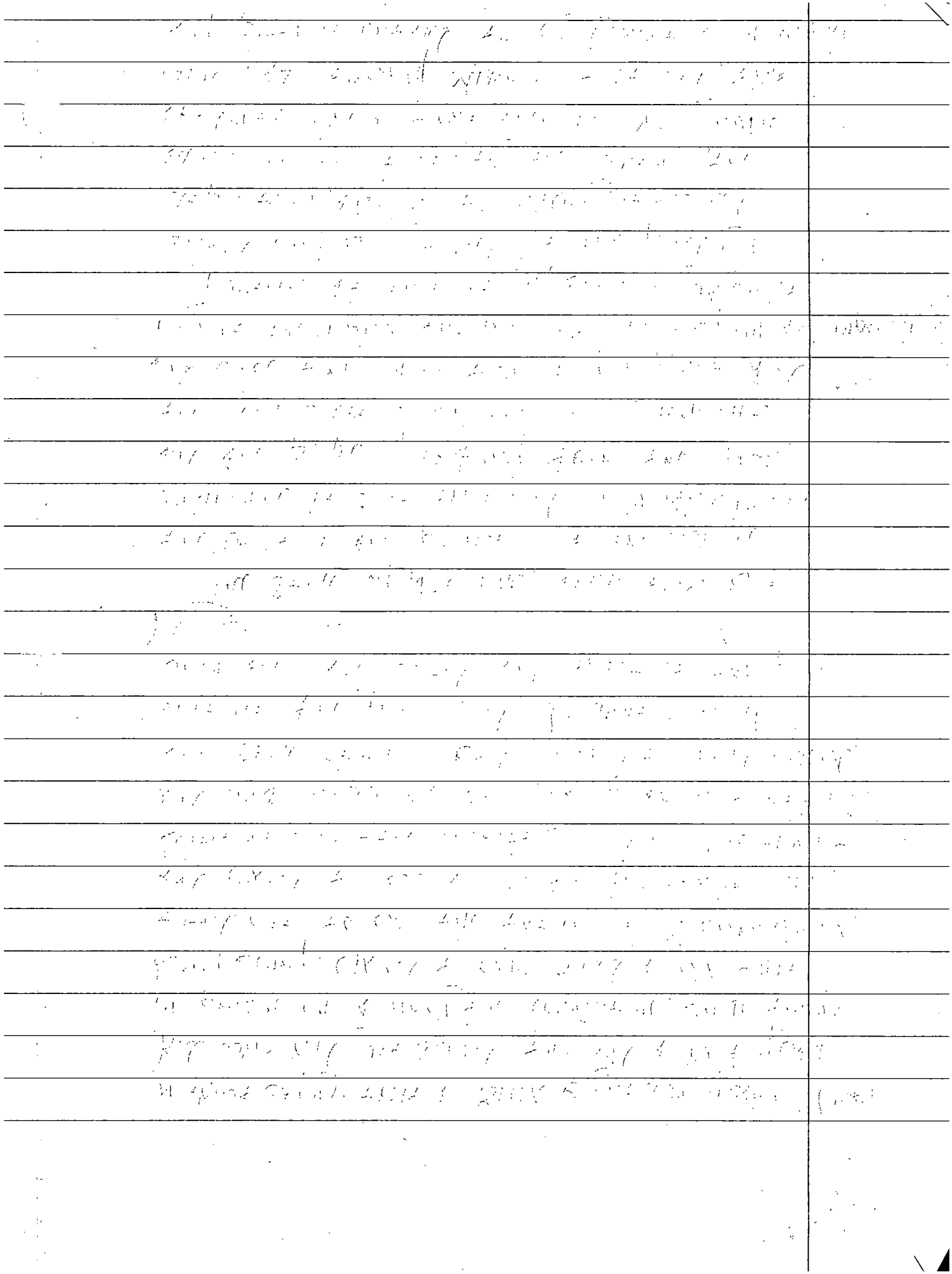
3) Ms. Locklears statements about the pervasive fear of then Sheriff Hubert Stone and his ~~sons~~ sons based on their reputation for breaking the law with impunity, and victimizing people in a myriad of ways, including murder. The fact that Ms. Locklear used the exact same example of Kevin Stone shooting a man in the back as I did in the 1995 suppression hearing is telling and ~~probative~~ probative evidence of the fear factor. If an assistant school teacher who also worked at a local radio station and is a member of the racial group that can lay claim to the first Native American college in the Country is scared of the police and warns White lawyers about the police, it should go



without saying that a Black eighteen year old (me) kid who had just served two and a half years in prison on a wrongful conviction, whose friend, Larry Demery, claimed to have killed a man that turned out to be the father of Michael Jordan and claimed to be a mule for Hubert Larry Deese, Sebastian Lodder - the Sheriff son and his subordinate, and whose experience with law enforcement officers and state officers bred mistrust, would indeed mistrust the police and do what kids do when they are scared and mistrust the police. lie to them.

The State may not like these facts but the Court is the protector of the people under the laws of this land in North Carolina, and the people justifiably fear the laws, the laws creators, and the laws interpreters and executors more than they respect and revere them when the law isn't applied equally and impartially.

Further, At this stage summary judgement should only be granted "if the pleadings, depositions, answers to interrogatories and admissions on files, together with the affidavits show that there is no genuine issue as to any material fact and that any party is entitled to a judgement as a matter



of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2005) This is, essentially, the holding in State v. Allen.

A moving party (for summary dismissal) "has the burden of establishing the lack of any triable issue of fact" and its supporting materials are carefully scrutinized, with all inferences reserved against it. Kidd v. Early, 289 N.C. 343, 352 (1976). Quoted and cited in Revels v. Miss America Organization 182 N.C. App. 334, 335, 336. (A case represented at trial by Carlton Mansfield and represented in Court of Appeals by Barry Nakell in 2007)

In this case, the State disputed the facts alleged by the Defendant in the States response to the Defendants "First Amended Motion For Appropriate Relief". In the same response the State moved for summary Dismissal.

In State's several motions for judgement on the pleadings the state likewise sought summary judgement. Therefore, the State is the moving party for summary judgement and has the burden of establishing the lack of any triable issue of fact. The States supporting materials and arguments, some of which are clearly false and misleading are to be carefully scrutinized

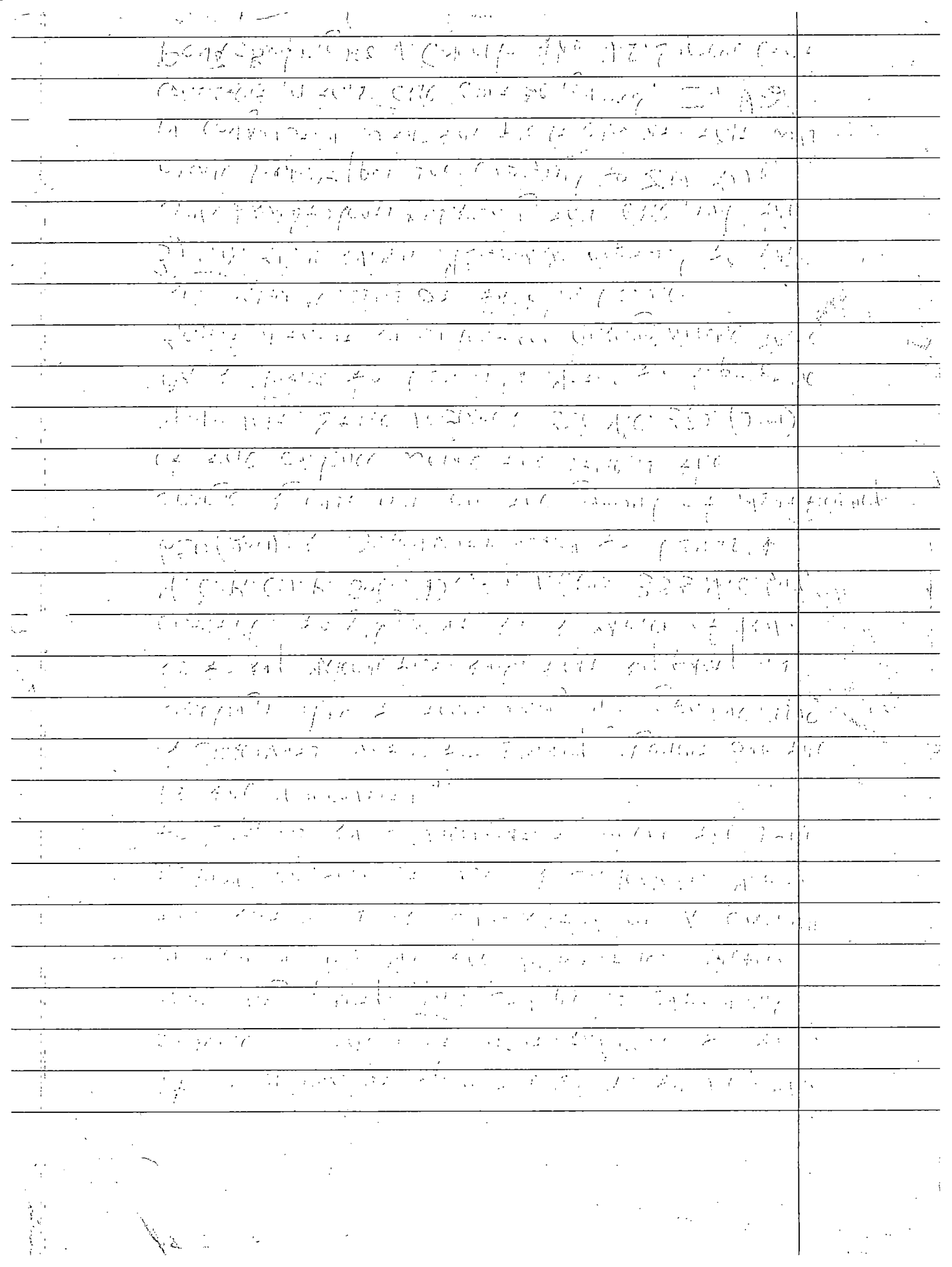
And All inferences resolved against the State because the State, repeatedly, moved for Summary judgement, and Motions for judgement on the pleadings which shall be treated as one for summary judgement - pursuant to N.C.G.S. Rules of Civil Procedure §1A-1, Rule 12 - and disposed of As provided in Rule 56.

Put Another way, the States motion for summary judgement and motions for judgement on the pleadings are the only reason the Defendant was not granted An evidentiary hearing or immediate relief As requested in Defendants MAR years Ago. The States motions made the Defendant the "Nonmoving party" that the Court must view the evidence in light of, for the purposes of determining whether the Defendant would be granted the requested evidentiary hearing And/or the convictions being vacated. The dissent by Justice ~~Reuby~~ Berger in State v. Allen 378 N.C. 286, 325, 326 (2021) makes this point due to the ultimate fact that Although the State or Defendant can be the Nonmoving party that receives the favorable ~~D~~ view light, it is always the mandate that when A party makes A motion to dismiss or for summary judgement (A motion for nonsuit?)

it is incumbent upon the Courts to view the evidence in the light most favorable to the nonmoving party. This principle is entrenched in law in N.C. and the United States, whether the action is a civil action or a criminal action, whether it be a Defendants Motion to Suppress an Interrogation (where the State is the nonmovant),.

A Defendants motion for summary judgement on the pleadings due to there being no genuine issue as to any material fact and that any party is entitled to judgement as a matter of law. N.C.R.Civ.P. 56(c) Dalton v. Camp 353 N.C. 647, 650 (2001); A Defendants motion to dismiss a charge against him on the ground of insufficiency of the evidence where the State is the nonmovant. State v. Garcia, 358 N.C. 382 (2004) Or, a Motion to dismiss a Motion for Appropriate Relief without an evidentiary hearing where there are material issues of fact in dispute

3) The Racial animus Ms. Locklear expressed to the Duke Law Students researching this case, and the racial stereotypes she expressed to Zan Mance, in conjunction with the racist element that was consistent in this case can't be ignored. In Peña-Rodriguez v. Colorado the U.S. Supreme Court



make it clear that the existence of racial animus and racial bias required that the "No-impeachment rule" give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee..

The mere mention of racism may be frowned upon and may be something this Court will punish me for but I am not attacking nor disparaging Ms. Locklear. It is a fact that we live in a racist world and that Black people, internationally, are the ones most targeted by racism whether it is here in America by races (including Black people), in Ukraine, Saudi Arabia, Tibet, Sweden, Brazil etc.. To be born into a Black body is considered to be incarnated into hell by some. So Ms Locklears views is not to her discredit. It is to her credit she voiced them. One of the main reasons that case has been played out for decades is due to racist agendas to use this case to attack Michael Jordan and his family which shows that success, status, eloquence and utility still can't obstruct anyone from racist views nor the power of these views to deny their target an unbiased, view not distorted by the mental illness that racism is whether it's benign or malignant.

To quote former Attorney, Lewis Pitts, from his 4/23/14 letter of Resignation from the NC State Bar, "I take no pleasure in ... assertions... I do not mean to be mean or flippant... law has been a powerful force in my life... I want these ... words to stir your minds and hearts into reflection, boldness, and transformational action. The harsh realities I describe are not readily apparent from the hegemonic corporate news that many rely on. But the naked simplicities of injustice are there in the alternative press. These should not be issues about which reasonable people differ... Today's "sorely stricken social order" contains monumental injustices. To list only a few such injustices... the President also picks from a list of individuals, including US citizens, which ones are to literally be assassinated without any formal charge or hearing... (the same way Dr. T. Anthony Spearmw was assassinated)... our nation has the highest rate of incarceration in the world; engages in "mass incarceration" based on

racist Assumptions and with racist results; every state has a growing "school to prison pipeline" so unjust that the US Senate held a hearing expressly about this pipeline in December 2012 (prevethecial material added) (Ex.15)

SUMMARY

Article I, §§18, 19, 23, 24, 26, 27 and 35 of the N.C. Constitution and My 8th, 6th, and 14th, 5th Amendments to the U.S. Constitutional rights were violated by:

1) The lack of a unanimous verdict on the charge of Felony Murder as the Court instructed since Ms. Locklear didn't find that I killed the victim; This violates Due Process;
2) Ms. Locklears extra judicial evidence-gathering investigation to resolve issues created by contradictory evidence of the location of the body. In doing so, she viewed extraneous evidence from the place she thinks the body was. This also violated Due Process and the right to a fair impartial jury
3) Ms. Locklears failure to fully disclose her actual relationship to the Demerys and her prejudicial presumed knowledge of me at the voir dire. This violates the 6th and 14th Amendments.

4) The benign Racism of Ms. Locklear that allowed her to undermine my life in order to justify convicting me of a crime she, in fact, didn't follow the Courts instructions to convict me of beyond a reasonable doubt, This violates the 6th Amendment right to an impartial jury, and due process under the 14th Amendment

5) Ms. Locklears fear of the Robeson County Sheriff, Hubert Stone, his son and Mr. Stones alleged involvement in extorting Drug dealers still operators, and murder by him and his deputies. While I do not subscribe to the veracity of these Allegations I do subscribe to the effect fear of law enforcement had, and still has, on citizens of Robeson County, statewide and nationally although I don't fear police, good or bad; politicians, good or bad; nor the power of the press or legal community, good or bad, As I once did because we are all one. My previous Attorneys have conveyed threats to me that include N.C.G.S. 14-12 secret societies killing me and the press lying on me if I don't shut up. I was told that I wouldn't be able to get other lawyers and that the law isn't going to be followed in this case if I take legal action

to stop the unethical and criminal actions being utilized to obstruct justice in this case, including officers of the court misrepresenting facts and applicable law to this court in court and in subscribed pleadings, motions and proposed orders. I'm not one to be threatened, manipulated or coerced into compliance to serve others political and personal profit agenda. The use of force or threats to demoralize, intimidate and subjugate is terrorism. This Court has commented on the 25 years it has taken for this court to get to this point. This is not my fault and this motion and the motions filed concurrently with it will absolutely show it's not my fault and if those the law characterizes as my agents are at fault for allowing the State and its agents to prolong this case by unethical and criminal dilatory tactics I aver under penalty of perjury that it was not for my interest nor with my knowing and intelligent consent. I have no obligation nor loyalty to protect anyone who uses lies to manipulate me and my loved ones to accomplish their extrajudicial agenda. My soul is not for sale.

WHEREFORE, the Defendant prays that

the Court:

1) Reconsider this jury claim in light of State v. Allen

2) Orders Christine Mumma, Curtis Scott Holmes, Ian Mance, Southern Coalition for Social Justice, and North Carolina Attorney General to surrender and turnover, respectively all discovery and investigite files regarding this claim, as well as all correspendence in my post-conviction Attorneys custody or control generated by their representation of me on this claim, and all Court files, transcripts, documents and audio recordings on this claim in their possession, by transferring said claims files, pleadings and documents to me in a manner that will allow me to review them to amend, supplement or otherwise dispose of this claim based on the facts and applicable law, and to certify to the Court that they have complied with the Courts order in full within 30 days of the Courts order

3) Order the Attorney Generals office to retrieve the same from every State, county, or federal, and private party who may have these materials and to likewise deliver them to the defendant.

4) Defendant prays the Court for leave to amend and substantially reduce this motion upon

upon receipt of the requested files
5) Upon information provided by one of my post-conviction Attorneys Defendant the jury claim was so strong a "slam dunk" claim, it alone would result in the conviction being vacated, according to another post-conviction counsel, the jury claim was a ruse intended by the counsel who discovered and litigated it to be a "dead end claim". Therefore, I specifically request the notes and audio recordings of the interviews of Ms. Locklear conducted by all post-conviction counsel. I am entitled to all files in previous counsels possession without exception
6) I pray the Court grant an evidentiary hearing on the jury claim and all other claims.
7) I request that all of my files delivered to me be stored ~~by~~ under lock with the keys in my possession only, as is my personal property so that staff, all of whom work for the State, some of whom are members of N.C.G.S. 14-12 Secret Societies and some of whom are gang members or employed by gangs cant read these files.
8) I pray that the Court issues an order ordering

the convictions for 1st Degree Murder, Armed Robbery and Conspiracy based on this claim, or, in the alternative, or in addition to, other claims filed in Defendants Motion for Appropriate Relief.

Respectfully Submitted This the 1 day of January 2023

Daniel Green

Daniel Andre Green #0154242

Legal Mail Address:
4600 Swamp Fox Hwy
Tabor City, N.C. 28463

Personal Mail Address
Text Behind.com
or
Daniel Green #0154242
Tabor Correctional Institution
P.O. Box 247
Phoenix, MD 21131
For Immediate Contact
GettingOut.com | Instagram: theintersection
FaceBook @ Daniel Green, ~~Instagram: theintersect~~

Exhibit List For Motion To Supplement Juror Misconduct Claim

	Exhibit	Page
1)	Affidavit of Paula Locklear	6, 23
2)	Trial Transcript Page (T.T.P) 7481:14 – 7484 ...	12, 31
3)	T.T.P. 211 – 212	13
4)	Nov. 2. 2015 E-mail from Joseph Tagert to Ian Mance	17
5)	Document with Ian Mances handwritten note of witnesses	17
6)	5/17/18 Memo between Attorney Mumma and Holmes	19
7)	Daniel Greens Affidavit dated 10/1/22 re: Mr. Holmes etc..	20
8)	Request/motion for judicial notice of adjudicative facts.	21, 23, 24
9)	Trial Transcript of Jury Voir Dire of Paula (Manuel) Locklear	22
10)	Paula Manuel (Locklear) signed document of Judges orders	22
11)	Trial Transcript	22
★ 12)	Duke students notes about Ms. Locklears racist views	31
13)	Transcript of Ian Mances interview of Paula Locklear	32, 35, 42, 43,
14)	Ian Mances / Southern Coalition for Social Justice Memo about Hubert Steve murdering Ruth McCormick & laundering money with Nash County Sheriff Keith Stone	38, 39
15)	April 23, 2014 Letter of Resignation from the State Bar of North Carolina by Lewis Pitts	
16)	North Carolina Superior Court Judges' Benchbook	
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STATE OF NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Court File Numbers: 93 CRS 15291-15293

STATE OF NORTH CAROLINA

v.

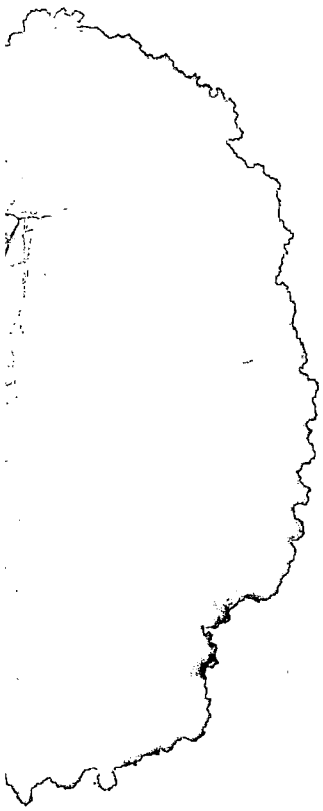
AFFIDAVIT OF PAULA LOCKLEAR

DANIEL ANDRE GREEN

NOW COMES Paula Locklear, who states the following under oath:

1. My name is Paula Locklear.
2. I am over 18 and competent to make this affidavit.
3. In 1996, I served on the jury for the trial of the State of North Carolina v. Daniel Andre Green.
4. I was selected to serve as the jury foreperson for a time, before Audrey Chavis assumed that role.
5. Prior to Mr. Green's trial, I worked with the sister of the man who discovered Mr. James Jordan's body. I had conversations with her about her brother's discovery of the body. During Mr. Green's 1996 trial, I conducted my own investigation into the case and travelled to the location in South Carolina where Mr. Jordan's body was discovered. This visit influenced my interpretation of the evidence and played a role in my deliberations of the case. Specifically, based on my visit to the scene, I came to believe that Mr. Jordan had died in South Carolina at the location where his body was discovered.
6. Prior to Mr. Green's trial, I had personally known Mrs. Virginia Demery, the mother of the State's chief witness, Larry Demery, for most of my life. I knew Mrs. Demery to be a good Christian woman.
7. I attended Baker's Chapel Baptist Church with the Demery family for many years prior to Mr. Demery's arrest for Mr. Jordan's murder.
8. While I was serving on the jury for Mr. Green's 1996 trial, Mrs. Demery addressed my church congregation and asked the congregants to pray for Larry.
9. I later saw Mrs. Demery in the courtroom during Larry Demery's testimony, during which time he identified Daniel Green as Mr. Jordan's killer.
10. Prior to Mr. Green's 1996 trial, I also knew of Daniel Green, having encountered him while working as a substitute teacher at Union Elementary School where both he and Larry Demery were students. I did not know Mr. Green personally; however, I was aware that he had a reputation as a child for fighting and cutting up.
11. During my service on Mr. Green's jury, I was aware of at least three members of the jury who disregarded the Court's instructions not to watch media coverage of the trial. Mr. James Cassidy told us that he was following news coverage of the case, and a number of

EXHIBIT
103



jurors said they were as well. I cannot recall the names of the other jurors who talked about information they learned from media coverage of the case, but I remember that one of them was an elderly white woman who was widowed, and another was a schoolteacher.

12. Because of the apparent lack of blood in the car, many of us on the jury had difficulty accepting the State's theory of the murder as a carjacking. However, we ultimately overcame those concerns because of the testimony of Agent Jennifer Elwell that she found blood in the car.

Further the Affiant sayeth not. Sworn and subscribed to, this the 22 day of February 2016.

Paula Locklear

Paula Locklear

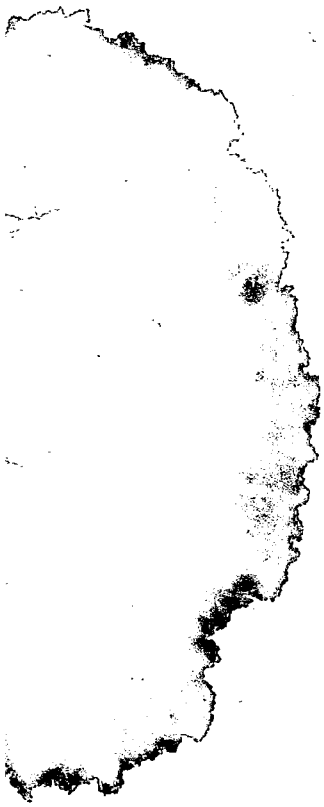
Sworn to and subscribed before me this __ day of February 2016.

Whitley J. Carpenter

Notary Public

Whitley J Carpenter
Notary Public
Wake County
North Carolina
My Commission Expires 11/22/20

My commission expires 11/22/2020



#1

From: **Chris Mumma** cmumma@nccai.org
Subject: Fwd: Fw: Interviews with jurors - 10-31-15
Date: March 11, 2018 at 3:00 PM
To: Cheryl Sullivan csullivan@nccai.org

nccai

for green dropbox tomorrow.....
---------- Forwarded message ----------
From: **Ian Mance** <lanmance@southerncoalition.org>
Date: Sun, Mar 11, 2018 at 2:54 PM
Subject: Fw: Interviews with jurors - 10-31-15
To: Chris Mumma <cmumma@nccai.org>, Scott Holmes <scott.holmes@meecelawfirm.com>

Here is the original memo/notes we got from the Duke students who first made contact with Paula.

Ian Andrew Mance
Staff Attorney, Criminal Justice
Southern Coalition for Social Justice
1415 W. NC Hwy. 54, Ste. #101
Durham, NC 27707
office: (919) 323-3380, ext. 156
cell: (828) 719-5755
www.southerncoalition.org

From: Stephen Tagert <john.tagert@lawnet.duke.edu>
Sent: Monday, November 2, 2015 1:18 AM
To: Ian Mance; Holmes, Scott
Cc: Brandon Springer; Rachel Smith; Carlos Marquez; Lior Golan; Jay Leff
Subject: Interviews with jurors - 10-31-15

Ian and Scott,

Brandon, Rachel, and I went down to Robeson county to interview as many jurors as we could. We met with Linda Dial, Paula Locklear, and Lee Vern McGirt. We found two wrong Audrey Chavises (and I added the new address of where I think another possibility is where she could live) and made contact with Ellen Louise Odum (who was a little spooked but is willing to talk on Tuesday). We tried two other jurors' houses and did not have contact.

I attached our notes, and I think it is worthwhile to look at them all, but I wanted to highlight a few things.

(1) Paula Locklear, the foreman, seemed like a sweet and genuine lady who wants for justice to be done in this situation, but she also seems like her memory may be failing her and her inclusion to the jury was prejudicial and she sounds like she committed some misconduct. She is a Lumbee, knew Larry's mother (and him a little bit) through her church, went to the bridge during the trial to look at it for herself, knew the sister of the person who found the body and had talked to her about it before trial, and, in my view, most importantly, when I asked what convinced her that Daniel committed the crime, she cited a lot of stuff that was outside the scope of the jury trial and based it off the fact that "he was mean." She was a substitute at an elementary school, where she said "no teacher wanted to have that child," and she said that she never told anyone this before, but she went to watch Daniel at one point and saw him hit another prison and also saw him argue with a deputy.

(2) Lee Vern McGirt did not want to talk to us, but in the minute that he did, he gave some potentially valuable information. First, I asked what his impression of the trial was, and he said, there wasn't enough evidence to prove either one pulled the trigger. Second, when Brandon asked "So was there any particular evidence that made you believe Daniel was guilty?" He responded, "I never said he was guilty!" This may or may not be useful

made you believe Daniel was guilty? He responded, "I never said he was guilty." This may or may not be useful because he also said that he did not remember much from the trial, so his memory could be fading.

(3) the evidence that they seemed to focus on was, in my view, impermissible character evidence. The Clewis Demery testimony was HUGE. Two of them said that convinced them that "if Daniel could rob once, he could do it again."

Carlos and Lior are going to go down on Tuesday, and I think that they should prioritize going to visit Odum (after calling first and possibly offering to meet at somewhere other than her house), then I think they should go to Michael Campbell's and Audrey Chavis's house (I think I finally found the right Audrey Chavis and the right address). If they can do all of those in a reasonable time, I think it is worth going by Patricia Haley's house again (if it is around 7 or 8 when you are coming back).

I hope some of this information is useful. I think the most useful is Paula Locklear's. Please let me, Brandon, and Rachel know if you have any questions.

Sincerely,

J. Stephen Tagert
Duke Law School, J.D. Candidate 2017
Furman University, BA 2013

Paula Locklear - Rachel'...s.docx

Paula Locklear - Stephe...s.docx

Juror Interview Notes,...n.docx

Juror Inform...n.docx

witnesses that they had failed to properly investigate or even interview. Counsel was unaware of relevant law and made numerous egregious strategic errors that significantly harmed Mr. Green's defense strategy.

- Mr. Green's lawyer Woodberry Bowen negotiated an unfair and unethical business contract with Mr. Green, to obtain the rights to music lyrics Mr. Green had written while awaiting trial, in exchange for 1,000 hours of studio time at Bowen's studio that Green could avail himself of only if he was acquitted. Mr. Bowen took famed Lumbee musician Willie French Lowery to the jail in the months before trial negotiate business deals with Mr. Green while defending him on first degree murder charges.

THE "NO DEAL" DEAL:

- New evidence indicates that District Attorney Johnson Britt made a secret plea arrangement with Larry Demery, allowing him to be eligible for parole in 2015, that was not disclosed to the defense, in violation of the law.

REPORTERS WHO KNOW SOMETHING ABOUT THIS STORY:

- Rich Oppel, Jr., *New York Times*
- John Tucker, *Independent Weekly* (Durham, NC)
- Amanda Lamb, *WRAL* (Raleigh, NC)

PEOPLE MOST LIKELY TO BE ANGERED AND VOCAL ABOUT THIS M.A.R.

- **District Attorney Luther Johnson Britt III:** Prosecuted Mr. Green in 1996. He failed to disclose information in his possession about the Sheriff's ties to drug traffickers and the connection between the state's chief witness, Larry Demery, and the Sheriff's son, convicted federal cocaine trafficker, Hubert Larry Deese..
- **Former Robeson Co. Chief of Detectives Mark Locklear:** He was lead detective on the case for RCSO and now admits to being longtime friends with Deese and having knowledge that he was the Sheriff's son. He has given contradictory and incoherent answers for why he did not pursue the Deese angle.
- **Former Cumberland Co. Detective Art Binder:** We do not have reason to believe he knew about the cover-up, but he remains highly invested in protecting this conviction. He feels betrayed by other law enforcement on the case.
- **Hubert Larry Deese:** Convicted cocaine trafficker, involved in a multi-million dollar drug operation at the time of the Jordan murder. He may well have had direct involvement in the murder of James Jordan, but he has never been interviewed by police.
- **Agent Jennifer Elwell:** She likely does not know what's coming, but her misconduct is at the heart of the claims relating to blood evidence.

Ian Mance
Whitley Carpenter
Stephen Tregent
Rachel Smith / Brandon

- witnesses to Burk Lockhart's statements about investigating on her own.

Chris Mumma <cmumma@nccai.org>

Re: LEGAL CONFIDENTIAL - DANIEL GREEN - MEETING WITH CHESHIRE

1 message

Chris Mumma <cmumma@nccai.org> Thu, May 17, 2018 at 1:47 PM
To: "Holmes, Scott" <scott.holmes@nccu.edu>
Cc: Ian Mance <ianmance@southerncoalition.org>

I was not aware you were going today. I thought we were all going together on Monday morning. Should I cancel that appointment?

As I told you previously, the Chicago Tribune is interviewing Daniel tomorrow so I planned on providing him with a copy of this email.

I am on the phone with Daniel right now and read him what you wrote about him being on the fence and, of course, he says that is not true.

I also explained to Daniel that what I wrote about getting off the case, is because I don't want to waste time any more time on this issue. This issue is between you and Daniel, and you are making it about you and me.

Daniel let me know that I originally became involved in the case because he was talking to Loevy & Loevy and Amanda Lamb about wanting you off the case. Daniel's feelings about your representation do not have anything to do with me, Scott. Please stop making it that way.

On Thu, May 17, 2018 at 1:05 PM, Holmes, Scott <scott.holmes@nccu.edu> wrote:
I had a good meeting with Daniel today, I think he is still leaning toward firing me, but is on the fence. I promised to forward him this email string.

I also think we had nothing to lose running this stuff by Cheshire and wonder why you reversed course on that.

Sent from my iPhone

On May 17, 2018, at 10:38 AM, Chris Mumma <cmumma@nccai.org> wrote:

I don't think we ever talked about an expert on the blood, as Elwell's own statements are the best evidence there. I have worked on the ballistics expert (if that's what you meant by forensic) and found a the same model car on auto traders so the expert can look at the car and the autopsy. I have talked to IDS about attorneys who would be good options for IAC, and could establish standards for the area of the State at the time, which would be the most compelling. I will try not to take all the years it took you to get my action items done.

In case you have difficulty figuring it out, I meant pro se instead of pro bono. Was typing and thinking quickly so as not to waste even more time on this crap.

I agree.

On Thu, May 17, 2018 at 10:16 AM, Holmes, Scott <scott.holmes@nccu.edu> wrote:
Expert Preparation: Another concern I have is that Chris has agreed multiple times to secure experts for the blood forensic, and IAC claims and has not done that. This would be a good time to have all our expert Materials and opinions nailed down, instead of trying to throw it all together before the hearing.

Sent from my iPhone

On May 17, 2018, at 9:49 AM, Chris Mumma <cmumma@nccai.org> wrote:

Finished responses below. Sorry for typos, but you'll get the point.

On Thu, May 17, 2018 at 9:03 AM, Chris Mumma <cmumma@nccai.org> wrote:
Sorry that was sent by accident. I'm still typing.

On Thu, May 17, 2018 at 9:03 AM, Chris Mumma <cmumma@nccai.org> wrote:
Good morning. Thanks for your email, Scott. I'm glad you finally were able to articulate some of this. My responses are below. Still waiting on your response regarding the meeting on the 23rd.

On Thu, May 17, 2018 at 4:47 AM, Holmes, Scott <scott.holmes@nccu.edu> wrote:

Dear Chris and Ian,

I have been thinking that when we meet with Joe Cheshire to discuss our disagreement about seeking an initial meeting with the judge, it may be a good opportunity to raise some of the other issues/disagreements I have with Chris to see what he thinks. These would include the following:

- **Getting a Meeting with the Judge and Keeping Judge Gilchrist:** When Judge Beale withdrew as the Judge, Chris contacted AOC to try to keep Judge Beale without talking to us. I thought we should vet the new judge to see if he is more favorable. Based upon our vetting, I believe he is

immensely more favorable because of his history defending capital cases and handling police misconduct cases. I proposed having a meeting with the judge to introduce ourselves as counsel, provide a brief summary of the case, and set a court date to start handling the case in phases. I think the judge might agree to bifurcate the hearing and considering our claims in phases, which would remove the need for the judge to have read everything prior to the first hearings. Chris disagreed. She does not believe it is productive to contact the judge and have a meeting. I think we would have had a court date by now if we had met in person with the judge when he was assigned. And, I think we are lucky to get Judge Gilchrist because we had to work really hard to educate Judge Beale on the basics of Brady material. **I completely disagree with you on this point. I distinctly remember talking to you about calling AOC because I had another case that was impacted in the same way, Mark Carver. Additionally, at the point we had the discussion, there wasn't much feedback from anyone about Gilchrist. We agreed to ask Danielle Carmen specifically because we weren't getting much information about him. Finally, Judge Beale was getting ready to rule on the evidentiary hearing. What I asked AOC was whether he could stay on long enough to make that ruling, which I believe would have been favorable, since he was already familiar with all the filings. If we had been able to keep Beale, it is likely we would have been in a much better position to move the case forward with the AG's office. There is no reason for them to consider doing anything as long as the evidentiary hearing has not been granted.**

- **Media is a bad idea**: I have always thought that media did not work in Daniel's favor. Because of the overwhelmingly negative media narrative from trial and the narrative of accessory after the fact - the media usually drags Daniel through the mud in a way that has no strategic value. The only exception to this was the media we generated around the corruption of Sheriff Stone, and the connection to Daniel's case through his illegitimate son, Hubert Larry Deese. Other than that media is not advancing Daniel's case. Chris indicated that with her experience with the media, she thought it would help get the case to the Jordan family and bring the AG's office to the table – but that has not happened. The media she has generated has been mixed, and has not leveraged meetings with decision makers or gotten a court date. **We had a long discussion about media when I started on the case. I that point you were pushing for media. After your meeting with Daniel, you wanted to have a press conference. In my mind, each piece of media has to have has to have a purpose. The podcast was factual and the purpose was to get facts out to the public and, hopefully, the Jordan's. There is no question in my mind that the Jordan family knows about what's happening and doesn't want to talk about it. I suspect that's because they know about what their father was doing that night than they want to talk about. With regard to the AG, the AG has come to the table - three times. As I mentioned before, there is no reason for them to do anything until the Judge grants a hearing. Everything they are hearing now, will impact how they respond once the hearing is granted, but they have not motivation to do anything now. The podcast provided more facts to the public than has ever been provided. Clearly, people can say, "well he did something, or he was wearing the jewelry, so he deserves to stay in prison for the rest of his life" are not the people we are trying to reach. The other media coverage has been Amanda Lamb (local audience), Lisa Capitanini (Chicago audience and a demand by Daniel), and the Chicago Tribune piece (Ian's).**

Plus, no media is better than erroneous media. Chris disagreed with our proposal to correct the portion of the POD cast which suggested that defense trial counsel had a strategic reason for not calling Bobbi Jo (young, not credible) – when our MAR says they never interviewed her and had no reason not to call her. This factual error undermines the IAC claim and creates a problem for us unnecessarily. I still don't understand why Chris didn't want to correct that factual error in the POD cast. **First, this is the language in the podcast about Bobbi Jo, "Then there is Bobby Jo Morillo. She signed an affidavit in 2016 confirming she was with**

Daniel. At the time of the trial, the defense opted to not put her on the stand - likely because

she was young and the defense thought they could cover the alibi with other witnesses." It never said she was not credible, it said she was young so the jury might not believe her. That was changed based on Ian's input. I sent the transcript to both of you and all you had to say was "this is good work, Chris." You never gave any input on changes. Ian and I exchanged several text messages and emails, copying you, without response. I did make the decision to leave it vague on why Angus didn't call Bobbi Jo. Jenks left it as his theory.

If you want to discuss why I made that decision, I'm happy to, but it's not worth typing out here.

- **Team Work:** I think Daniel is better served by a team of lawyers than Chris acting unilaterally. At different stages of the case Chris has had long meetings with the Daniel on an unsecured phone line without involving co-counsel. She has had meetings with the AG's office, with witnesses, and arranged media interviews without consulting co-counsel. She contacted AOC to try to keep Judge Beale without consulting co-counsel. This is poor practice and does not benefit Daniel. His case has so many moving parts; a collaborative defense model works better. I also disagree with Chris that I am easily replaceable as a team member. She will have a hard time finding anyone with my trial and appellate experience to help with the case, and anyone she finds will further delay the case because it will take months to get up to speed on all the facts and law of the case. I think Daniel would benefit from his current three lawyers who are committed to brainstorming each decision together before action is taken. **I've already answered the issue of Beale, so I'll leave that at that. We all agreed that I would try to get through to the AG's office because I was already meeting with David Elliott on other AG office related issues. My meeting with Leslie Cooley was not about Daniel's case, it was about case approaches generally, but at the end of the meeting I told her I would give her specific examples involving current cases. I do not have meeting with Daniel on the phone. We've all had the many phone calls with Daniel and know how that works, so I won't waste time responding to that comment. I try to ignore a lot of his calls, but I have missed many phone calls from other inmates because I made a decision not to answer a call from that number. Please let me know when I have interviewed witnesses or arranged media interviews without letting you know. For months and months and months, I told Daniel that he should stick with the team he has and that you and Ian were and are a huge asset to him. I got him to drop the State Bar complaints. I wanted it to be a collaborative defense. I do think group brainstorming is good. I only decided it was not a fight that could be won or that I can manage our way through when he started filing paperwork to waive his right to counsel, writing the judge and IDS, and telling me I would be breaking attorney-client privilege if I continued to talk to you about the case. I am in an untenable position with the relationship between you and Daniel. I have asked several colleagues what to do and each one of them says it's Daniel's choice. Please stop acting like this is coming from me. Although I disagree with your position that you will be difficult to replace, I am happy to drop off the case: Then you and Ian will be removed anyway and he will go forward pro bono because he thinks he's the best lawyer of all of us.**

→ Not true. Identity of inmates is given before they accept our calls.

- **Litigating the case with the focus on innocence is a mistake.** I believe Daniel is innocence, but his story of innocence is not compelling to the public or in court because of his role in taking Jordan's car and property and dumping his body over the bridge. By framing the case around Daniel's story we shift the focus away from the strengths of the case which are the serious legal errors which require a new trial. The false expert testimony about blood evidence and the corruption of the Sheriff's department are the claims which are likely to get Daniel relief. We need to be able to tell his story of innocence, (in the background) but litigating with that focus on innocence up front takes on an unnecessary burden of proving more than we need to prove to win, and it distracts from the stronger claims because Daniel admits to helping to dump the Jordan body off the bridge. **There is not a focus on innocence, but he is innocent of felony murder and he deserves and wants that to made clear. I agree that the blood, corruption (including the shirt), and IAC issues are the issues to focus on, contrary to your prior position that the juror issue was the winning issue and the Demery plea issue was strong. This point doesn't matter right now, however, because we are not litigating yet.**

These are just some thoughts, I am open to other issues on the agenda if you think that would be helpful. **I agreed to the meeting with the attorney of your choice on the one topic out of courtesy. Joe is not part of the defense team and I think he would agree that he is not in a position to discuss these issues. The fact that you want to bring in outside counsel to work our way through these points is the biggest justification for us not to work together. You've made it personal, so my personal view is that this is immature and unprofessional and your views are distorted because of your inflated view of yourself. We are all replaceable. It just comes at Daniel's expense.**

Scott

ORDER RE: JUROR INSTRUCTIONS

1. It is your duty not to talk among yourselves about the case.
2. It is your duty not to talk to anyone else about the case or to allow anyone else to talk to you about the case or to allow anyone to say anything in your presence about the case. If anyone attempts to communicate with you about the case you must report this to the bailiffs assigned to the courtroom immediately.
3. It is your duty not to talk to the parties, witnesses or any of the attorneys about the case or about anything at all.
4. It is your duty not to form any opinion or to express any opinion about the case until all of the evidence is presented and you are specifically instructed to begin your deliberations in the case.
5. It is your duty to avoid reading about the case in the newspaper, listening to any radio broadcasts about the case, or watching any television accounts about the case.
6. It is your duty not to conduct any independent investigation or research of any kind. It is also your duty not to go to any scene or place which is a subject matter of this case for the purpose of conducting any investigation or research.
7. It is your duty to remain open-minded about the case until all the evidence has been presented, you have heard the arguments of the attorneys and you have been instructed on the law by the court.

11/30/95
Date

Paula LockLear Manuel
Signature

(H) 521-1321
(W) 628-9777

contacted 12/22 X

Transcript of Ian Mance's November 17, 2015 Interview of Paula Locklear

Ian Mance (IM): This is Ian Mance, It's 12:05 p.m. on Tuesday, November 17th 2015 at 381 Bertha Jones Rd. in Roland, North Carolina at the home of Paula Locklear, who was a juror on the 1996 Daniel Green murder trial.

(Sounds of Ian getting out of car and walking...dogs Barking)

1:04

IM: Hi...hi, are you Miss Paula Locklear?

Paula Locklear (PL): Yes

IM: Hi, my name is Ian Mance, I'm an attorney, I, some students came and visited you the other week from Duke...

PL: Come on in (whispered)...inaudible

IM: I am uh

PL: Wait a minute, wait minute, wait minute

IM: ...alright...cough..oh..cough

PL: Don't sit down, I need you to do me a favor,

IM: Ok

PL: Kenny is asleep around there, (cough) my son...inaudible

IM: How can I help?

PL: I need just a little, tiny favor,

IM: OM

come here...inaudible...I always start a little early, I do, but I done set the Christmas table. Tell me the truth what you think?

IM: You want me to pick my favorite or...?

PL: I don't care how you do it, tell me the truth, what do you think?

IM: I think it's—you have a beautiful arrangement...this is uh, I mean, it's lovely, are you saying you want me to pick one of the sets?

PL: No...but if you want to pick go right ahead, I mean I don't care. I'm gettin' started so heck. That's pretty, ain't it?

IM: I was going to say, I think this might be my favorite, these are nice.

PL: Would you like one?

IM: No, that's ok, I've got more than enough mugs

PL: You be surprised...talkin' 'bout mug. I got a row or two of them below.

IM: It's very festive, very festive.

PL: You know how people decorate on the outside?

IM: Yeah. You like doing it all here

PL: I put it all on the inside.

IM: ...That's where you spend your time. Well I was hoping I could just get a few minutes with you on, just to follow up on, um. (Rustling)...follow up with the visit they had with you the other week.

PL: Ok

IM: Um, so you were one of the jurors in Daniel Green's trial, correct?

PL: Yeah

IM: So, I'm Daniel Green's attorney, they...they're—I'm one of his attorneys, they're helping me. And he is um, he's back in court. I don't know if you heard but his case was flagged a couple years ago in an audit of the State blood lab.

PL: Mmhmm

There'd been some, um, there'd been some wrongful convictions that caused the governor to order an audit of the State blood lab.

PL: Hmhmm

IM: And it turnes out that the um, some of the testimony that was given during the trial was inaccurate.

PL: Ok

IM: Um...mainly that they had found blood in the car.

PL: Mmhmm

IM: It turned out, it appears that they did not in fact find blood in the car. So, because of that a bunch of people are looking back into the case and so as part of that we're talking to jurors, so I had the Duke students come out and talk to the jurors last week and now I'm just kinda doing some follow ups.

PL: Ok

IM: So I understand that, um, you had at some point visited the creek where um, Mr....

PL: He was thrown...

IM: Were Mr. Jordan's body was found, can you tell me about that?

(landline starts ringing)

PL: There weren't really anything to tell you the truth.

IM: What do you remember about going to the creek?

PL: (indecipherable)...I wanted to look and see where...I heard Larry Demery's testimony...

IM: Mmhmm

PL: About how they went down there um, Marlboro County,

IM: Mmhmm

PL: Right round the edge of um, shoot. I started to say Clyde Oak...McCall

IM: Mmhmm

PL: And um...pulled up on the bridge, throwed the bod over. And I said to myself, I says, you know what I been through there many a time...at that time I worked at um, Laurinburg Eden Corporation so I had some friends over there. And I went that way all the time but I wanted to just see for myself.

IM: Mmhmm

PL: So, I went down to take a look. I wanted to see where he'd been throwed off to tell you the truth.

IM: Mmhmm

Who is we?

PL: so we...what am I saying was...I stopped on the bridge, have a look, walked up and down, have a look, you know. I guess I was just...I was more or less curious you know. If you throw somebody off the bridge...this is what made me curious, was that fact—he was found, he weren't found where they said he was throwed off at. It was like the body had moved, climbed up on a tree...

IM: Mmhmm

PL: ...and I asked myself, I says wait a minute, if they throwed him off, that means that he was alive ~~when they throwed him over at part of the bridge.~~ I says I wanted to see where he traveled to, course the tree done moved but that doesn't matter to me about the tree being moved.

IM: So you came to believe based on your visit to the, the creek that he had bene alive when he went over the bridge?

PL: Yeah

IM: Is that some...so um...

PL: I think everybody drew that conclusion.

IM: ~~Now, did you tell—when you say that everyone drew that conclusion did other~~ people go to the creek or is that something you told them...

PL: No, I didn't tell ~~anybody. It was something that came up on. Um, they asked for~~ photographs

IM: Mmhmm

PL: ...of ~~everything, um...the rings, uh, pictures of the creek...~~just, we were ~~in deliberations at that time when they asked for that~~

MH

PL: ...back and forth...well, part way...yeah, but uh, um, I was thinking to myself, what do you call it the jury foreman?

IM: Mmhmm

PL: Ok, I was the jury foreman.

IM: Mmhmm

PL: And when they asked to see photographs, you know I just asked for photographs, I had no idea what they was going to send, but hey look at them just to see them. Uh, I don't remember now what I even asked for...but um, but that was some of the ones that they got. Some of them wanted, you know how they um...he had the rings.

IM: Mmhmm

PL: And they wanted to see those

IM: Mmhmm

PL: And what else, they wanted to know about photographs of that.

IM: Would it be ok if I muted this tv?

PL: Let me do it for you

IM: Ok

PL: Well the photographs, they could get to look at.

IM: Mmhmm

PL: Course they had already passed us out the rings to look at. They put rings on Chris. like I told

IM: Mmhmm

PL: The jewelry sittin' in the courtroom and stuff

IM: Right

PL: So, but uh, that was something that came up. Who done—was it Mr. James who brought that up?

IM: Mr. James Cassidy? He was one of the jurors.

PL: That could be right.

IM: And he brought up what, the rings you said?

PL: No...I can't remember...that, there was an elderly lady

IM: Mmhmm

PL: What was her name...not Miss Ann...not, gosh I can't remember her name.

IM: Mmhmm

PL: But she may mention...she says, "did you hear...Larry talk about throwing him over the bridge?" And she says, "but when he was found he was found on the tree." And I says, uh, "that make sense." And she says, "no it don't." She says, "he was alive." And I looked at her and said "you right." But Mr. James said the same thing, he says, um, "if he'd a left" he says, "if he'd a left, if they've thrown him over the bridge." He says, "he might a not swimmed out, but he did climbed up on that tree." And I just says "ok." It made perfect sense. So,I decided to take the trip, I went down that next Saturday and had a look, you know. It wouldn't mattered where at on the bridge he was throwed off. He still went a little ways and climbed up on the tree to climb out.

IM: Now, how did you know, um, where, cause obviously the body wasn't out there when you went out there, how did you know where it was relative to the bridge, was someone with you kinda showing you where it was found or...?

No Answer? Did they refuse or delete Answer

PL: Uh-uh. I worked for Eden...I worked at Eden corporation and I also worked the radio station at that time, now we didn't do any news...

IM: Mmhmm

PL: ...our news came out of Raleigh,

IM: Mmhmm

PL: But like I said, regular people will go to Laurinburg, take 401 to go into South Carolina, Marlboro county, McCall, that's the first, when you run into a little place called Tatum and then McCall.

IM: Mmhmm

PL: But I never went like that. We've always lived in the country, tried to (inaudible). I go the back way cause it's faster.

IM: Mmhmm

PL: And going the back way in, you gonna, you have to cross that bridge. So they showed pictures in court of where this bridge was, and they told the road it was on. That's how I knew automatically where it was.

IM: Well, let me ask you this, was it apparent to you prior to going to the scene that the body was so far from the bridge or was it once you got out there you realized that the body was far from the bridge and that's when you concluded that he had crawled up?

PL: After I got out there.

IM: Ok

PL: I mean, I knew that, you know from the pictures. It actually showed, what did it show...it showed the—where the bridge was and stuff. But back in August, was it August when that body was found?

IM: Mmhmm, August the 13th

PL: Ok when that body was found, it actually showed the tree. And I said to myself, wait a minute this place is no different than every other bridge around here. If you pass by a bridge you gonna see little trails where children go down and go swimming.

IM: Mmhmm

PL: People use them same trails to go down and fish...

IM: Mmhmm

PL: And that's everywhere all over the place.

IM: Mmhmm

PL: So when stopping and looking, now I was coming from Maxim going into McCall. You could see the trails back and forth...

IM: Mmhmm

PL: And I said to myself, that guy was going fishing and went down the side over in there and saw him up on the tree now, but now I went back up on the bridge and had a look...I says ok, I says um....tree's gone..[rustling noise]...I says I know, I know what they're talkin' bout, from the pictures.

IM: Mmhmm, when you, when you got back—do you know if any of the other jurors went out there?

PL: No, I don't know.

IM: Did you um...um...

PL: Did I tell anybody? No, I didn't tell a soul.

IM: Um....am I, I may be confusing you with one of the other juror, one of the students had indicated that someone, someone they had talked to had known like the sister or the brother of the guy who had found the body, was that you?

PL: No that was me.

IM: That was you...tell me about that

PL: She also worked—they guy that found the boy?

IM: Mmhmm

PL: His sister also worked at Eden Corporation, she worked in the front office.

IM: What was her name, do you remember?

PL: I Can't remember her name...

IM: Ok

PL: But she's an Indian girl

IM: Ok

PL: [inaudible]...not just brothers and sisters...him and her could almost be twins.

IM: OK

PL: And...see nobody that was James Jordan

IM: Right

PL: Nobody knew this, even when they found that body and took it, you know

IM: Right

PL: Nobody knew this...but she might of mentioned, "hey that was my brothe—did y'all see my brother on tv, you know.

IM: Mmhmm

PL: Um

IM: Was this before you seated on the jury?

PL: Way before, honey. This was 93?

IM: Right and the jury was 96. 95, 96

PL: Yeah. She says, "that was my brother that found the black guy over at the river." Course the news at that time was full of some body they had found. Now you got to understand somethin', a lot of people might not recognize him. James Jordan...even

IM: Yeah, I've seen the photos...I

PL: But, what, people say "well what about all that gold in his mouth? Anybody who worked with South Carolina people, and Marlboro county is big for this. We had uh, uh, uh a custodian—maid at our company and her tooth...she had a st—it was gold on the outside...

IM: Mmhmm

PL: She had a star in the middle of it. People from Marlboro County, they to put gold fillings in.

IM: So people just assumed it was someone from Marlboro County?

PL: Yeah, that's what they were saying or somebody missing from somewhere.

IM: Mmhmm

PL: Nobody claimed the body, you know.

IM: Did you—the woman at Eden Corp, um, so this, so this is something you probably talked to her about well before you sat on the jury, kind of just—

PL: I didn't really talk to her, I just knew her.

IM: Oh, ok. So she wasn't the one who took you to the scene, you just went out there on your own?

PL: No, no.

IM: Um. Did you know, um, I noticed, uh, you live pretty close to the groc—the, the store that Clewis Demery used to run. Do you remember Clewis Demery?

PL: Yeah

IM: He was uh, he testified at trial

PL: Mmhmm

IM: Did you know Clewis, he worked at the store or just down the road I think.

PL: No. I didn't know him at that time. I don't even know him now, over him being in court.

IM: Uh huh

PL: That's the only thing I knew about him.

IM: Ok, so you never dealt with him before?

PL: No, uh-uh

IM: Ok. Um

PL: I never even stopped in there and got a drink before.

IM: Ok. Did you, um, had you ever met Daniel Green before? I heard that you might have been a sub—and again I might be conflating you with one of—they talked to all the jurors on their trip, but, was it you were (sic) the substitute teacher?

PL: Now, I was a substitute teacher.

IM: You were a substitute teach—

PL: Now he was in school there, but he was never in one in classes that I was in.

IM: Ok

PL: Never

IM: Now how did you know he was in the school you were substitute teaching in?

PL: How did I know? Him and Larry.

IM: Which uh, which school is this?

PL: This was Union Elementary. Him and Larry was good friends. Now this was not unusual, you know. Um, at that time, this was not unusual.

IM: What was not unusual?

PL: Um, Indian and black. Everybody got along, unlike a lot of places

IM: Mmhmm

PL: We all got along

IM: Mmhmm

PL: Um

IM: But you knew them, what age would they have been at the time?

PL: No, no I only knew Larry. I didn't really know Daniel Green. I only, you know how you see kids on the playground?

IM: Mmhmm

PL: That's how I knew these kids. Oh if you work in the school system you get to know pretty much half of the children there.

IM: So you were a sub for Larry not Daniel?

PL: No, I didn't even sub for Larry, uh uh

IM: But you were at the school when they were there?

PL: Mmhmm

17:18

IM: What age would they have been you think?

PL: Oh, lord (laughs)

(telephone starts ringing)

PL: I, I don't know, honey. I ain't got no idea...I got no idea.

IM: Would it be—but we're talking elementary school?

PL: Yeah, we're talking elementary. Baby, call me back later ok? Thank you.

IM: Um

PL: Yeah, this was elementary school.

IM: Now, you had, you had told one of the students I think that Daniel kind of had a reputation as, a troubled child, can you tell me a little about that?

PL: Fighting...um, knocking, pushing, cuttin' up. Just you know, just but now he weren't the only one (laughs)

IM: Right. Did you, they, their notes said something like that teachers didn't want him in their class or something like that is that right?

PL: No. That don't sound, that—no, uh uh

IM: No you didn't say that or no they didn't want him in the class?

PL: No, I didn't say that.

IM: Ok, ok that may be some—

PL: Every single—I haven't, I've never been in a class that you didn't have one that was a clown.

IM: Mmhmm

PL: One that loves to, to cut up, to have fun, just kept something going

IM: Mmhmm

PLand then not this class, but maybe the next class, you got one that just don't like anybody...now Daniel liked people but he was a...you ever seen a child that seemed just turnt loose? Do what I want to do...don't care...when you see a child out and going when they ought to be at home...when um, you wondering you know where's his momma and daddy at...that

IM: This is what you were wondering back when you were substitute teaching

PL: Mmhmm I wondered about this child but he's not the only one. ...I went to work on third shift in summer time now...July the whole month of July they had hun—every single day that year was hundred degree weather in Laurinburg...I'm talking about a hundred degrees. I worked on the docks I worked in shipping. I leave to go to work about 15 after 10...I'm going up..I go through the middle of town and I would look and there was kids 8 and 10 years old and a little older out. and this was after 10 o'clock at night and I'm saying to myself you know where in the word was their parents. I knew where my children was, they were in the bed and I says—and this was all the time..you see this and I'm sittin' there saying where's these kids' parents. Daniel wasn't no different. I mean, he wont the only child goodness God...it wasn't no different today...you'd be surprised the parents that turn'em loose and this is an excuse and they ain't [indiscernible]

NOT TRUE AT ALL.

IM: Did you um, Did you have an opinion as to who, who actually pulled the trigger

PL: no

IM: You didn't?

PL: I did not

IM: so when Larry, so when Larry testifed that Daniel did it you didn't believe Larry necessarily, but you kinda just concluded that both of them were present, that's kind of is what you settled on

PL: that's what I settled on that both of them was there... either one could have said the same thing, Daniel could have said "hey Larry pulled the trigger", Larry could of said "hey Daniel pulled the trigger. both of—they were in this together.

IM: Did um, I mean was, wa—did you kind of reflect back on that time that you knew them from young or when you were in the jury box

PL: No, you can't do that...

IM: Mmhmm

PL: Children is gone be children you can't stop that...they gone be themselves I don't care how rowdy they are, how rough they are

IM: but when you're sittin' there trying to figure out are these guys capable of this...if you have a past..you have some past interaction with them

PL: I did with Larry, Larry went to church with us

IM: You did what with Larry

PL: Um, um just church—I know his mother Virginia

IM: So larry went to church

PL: He went to church at baker's chapel, that's where he was raised to go to church

IM: Ok

PL: But children get up there and they think they're grown, he quit going

IM: What kind of church was baker's chapel

PL: That's a bap—it's a Baptist church

IM: Ok

PL: But now act—

IM: Now you said you knew his mother, that was Virginia

PL: Yeah, Virginia

IM: Virgina Demery, now what was your relationship like with her.

PL: Um, VA was ahead of me in school we weren't what you call good fiends bur we knew each other real well

IM: I mean were you friends just not good friends

Friends, yes..just not good friends.. I known her all my life, we went to school the same high school we lived in the same community

Mmhmm..did you ever deal with VA after the arrest of Larry?

No...

IM: Did you ever see her or talk to her

PL: I saw her a few times but never dealt with her or even had any conversations with her

What she ever at the trial?

Yes

She was

PL: When larry was at trial she was there...

When he was testifying?

PL: Yes

Umm

PL: VA Demery is a good woman, she really is..she's Christian woman, she believes in doing right...

Indiscernible background noise 23:53

Come on little boy...sound of a door shutting (possibly the bird cage)

IM: did um...and what about larry was he, was larry a Christian

PL: Larry was a teenager

IM: Was he, I mean, when you said that he went to church, did uh, did uh, did you feel like larry was telling the truth on the stand he had to swear an oath to god that he would tell the truth did you believe that he would honor that...

PL: Just cause they swear to tell an oath that don't mean they're telling the truth

Right

PL: If you backed into a corner, I don't care if your...if you're backed into a tiny little corner you gone lie to get out

IM: did you feel like he was lying when he was testifying to you or did you feel llike he was telling the truth..

PL: Long pause....I felt like he might have been telling the truth but I did not make mind up without hearing every thing, I wanted to know everything before I asked was..you know how you sound reasonable...yeah...he sounded reasonable...yeah

RC- what did she mean by this?

Ok..um..did you remember a man named James Cassidy being on the jury AA man...

PL: black man, yes I do

Do you remember anything about him any of your interactions with him

PL: What do you mean interactions

Well, I mean just...does anything stand out to you about him when you think about your time on the jury

Well, he was very nice...um...

Did he, do you know if he ever discussed knowing any of the witness or umm anything like that

PL: no

How bout the news...I mean this is obviously quite the trial for you to get seated on, I mean it was for a time one of the biggest stories in the country just because of the connection to Michael Jordan...did um, did you, did you—were you aware of that..kind of that amount of media attention that was on this case...

PL: I knew that the media

IM: ...when you were serving...

PL: attention here wasn't like it was anywhere else and if you worked in radio you know that

Just tell me what you mean by that

PL: ok, um, last Frida...um there was 153 people killed in paris, paris

Right

Dep. Fake news.

~~PL: Or I should say eight terrorists~~...uh, news, news, coverage here was unreal....and act—it made me think [rustling sound, PL indiscernible] all that was...but what they showed there was a totally different thing they don't show it there like they would here and I knew, I knew from the news, they wouldn't broadcast it here like they would other places...if you work in tv or news or radio or any ~~place else you know~~ this to be a fact.

What did you, what did you think about the news coverage of the trial?

PL: Here it was ....indiscernible (minimum??)...it was..whcih was a good thing because people are swayed sometimes by what they hear you know and that's not good without facts...

Right

PL: You need to know everything, if you gonna make your mind up about something you need to know everything its kind of like there's two sides to everything,

Mmhmm

PL: you gotta look at both sides, front and back...and news I don't care who you are I noticed that Dan watched the news to see what was going on

he did?

PL: But he won't the only one. I mean..several people said that...I uh, laughs, the news we ran at our station was only five minutes of news, so the truth was when it come to the news I didn't have time to listen I was too busy recording the weather and they weren't really telling anything except if we're adjourned early or it would take up tomorrow or

You were working at a news station while you were on the trial

PL: No, radio station

IM: Or a radio station

PL: We didn't do news

Ok, so the radio station did not cover the trial

No, they did not

Ok..and umm, you said Mr. James said he watched the news to see what was going on.. several people said that..what sort of things would they say about it?

PL: that's all that was said, they—you know, those, those comment made, you know what I watch the news, you know they didn't cover anything

What uh, what uh, how many of the jurors do you think would uh, would you put in that camp?

PL: Oh lord...umm...they elderly lady she worked at the thrift store and I cannot remember her name

White black or Indian?

PL: She was white, a widow...she watched some of the news

Ok, any other you can think of

This is the lady, Angela Coverdale that Indian female juror kicked off the jury talked with during the trial. Indian female juror did interviews the whole trial and said she wrote book. She immediately became a media/news personality upon her dismissal from the jury.

PL: Umm, school teacher, the..the...the lady who took my place..they

IM: Took your place...what do you mean by that?

PL: Let me, let me rephrase that. Ok, I was the jury foreman through the trial so at the end you could vote to have somebody new so became the jury foreman

Oh, you're talking Audrey Chavis?

PL: Is that her name?

That's who I always thought was the jury foreman and she's record d in the transcript as the foreman but it's towards the end

PL: Mmmm

IM: You were the jury foreman throughout trial

PL: Yeah

Was there a vote before that trial, how'd that, how, do you remember how that came about ?

PL: Um, no I don't hey told us that we they came in and told us that we needed to pick a jury foreman for the jury

IM: And that's when Audrey was selected or when you were selected

PL: No, I was selected first

Ok, and then somehow Audrey became the jury foreman

PL: and that the end of it, no....well, it was alright with me. She went around saying—we, we gone do the vote--saying I want to...we were gonna vote..I want to be the one and I thought to myself that's good, that was a good thing that way the news would show her. So yeah that was good..yeah

IM: Um, did..uh...trying to think what else I want to ask you bout...there were some reports—there was a video...that some jurors report seeing and it's not clear to me if the video was shown during the trial or if they might have seen it on the news, do you remember if there was video shown during the trial

PL: Yes there was a video shown during trial

What video do you remember being shown

PL: I was umm...Daniel Green doing a rap song. Um, long pause...I can't remember..

Do you remember what the rap song was about?

PL: No, I remember he was rapping about something he had done...uh

It wasn't the murder though was it?

PL: long pause...hmmm

she says vibe shown during trial.

IM: Or was it?

PL: that's a good question...long pause...it's been better than 20 years I can't remember but it won't good cause he was bragging, I mean you know, he was the man...laughs..he

What?

He was trying to impress a girl

IM: Mmhmm

PL: And I mean...truly that's what I got...laughs

Do you remember ever hearing anything about a confession?

PL: Um, they played a tape for us...the sheriff's department...questioned them..um...I'd like to it was...but it was not entered...but the sheriff's department questioned them, uh including Daniel Green on this tape and they played this in court and you could barely understand what he was saying it was so gibberish, gibberish...but he was scared too death

Mmhmm...um...do you remember Mr. Cassidy ever saying anything about any of the witnesses or any of the people that came to trial or any of the people who testified...kind of knowing them

PL: Knowing who?

IM: Just knowing anyone..uh..related to the trial, kind of personally

PL: No

IM: No? Ok

PL: Now he was at that end, that end I was at this end

Ok...umm...did, di—the jurors who were watching the media, you said there were a couple of them, did they...I mean were they aware that they probably shouldn't have bee watching the media while they were serving on the jury do you think they knew that?

PL: The truth is, the truth is

Mmhmm

PL: they all said the same thing, there weren't enough in there for you to even worry about or even watch...they weren't telling anything..I mean

IM: But did they know, was it clear to them that—cause normally judges will tell jurors not to watch media coverage of a case

PL: And no and no...

IM: Do you think they, do you think they understood that? Like did the judge give them enough explanation to know that

PL: oh yeah

IM: that they probably shouldn't watch

Oh yeah the judge did and he told them definitely not to talk about it outside the courthouse, which surprised me when that blonde up and said Miss Pat has been running her mouth to uh, uh some kind of reporter or something. That kind of knocked all of us down.

And what happened in that situation? Did she get...did she stay on the jury?

PL: Miss Pat was released from the jury

Ok, I thought so, I thought that was what you were...

PL: But indiscernible she needed to be thrown clean from here to Wisconsin is what she needed for what she did

And Did she, did she get asked off the jury or did she stay on the jury?

But she should have...

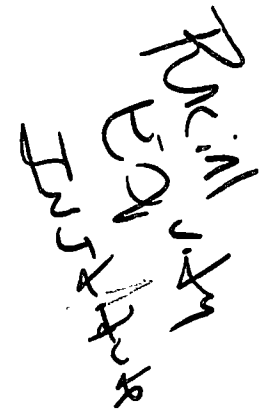
So tell me...who is this blonde...

PL: I don't know, honey I don't remember her name

B Gill Sharpe

And what was, what was she doin' that was wrong?

She had a bad ass attitude you want the truth?



Mmhmm

PL: Imma tell you something I didn't tell the kids...

Mmmhmm

She had a bad ass attitude...

Tell me about that

PL: ...laughs...long pause....I guess you say she had her mind made up. You know..she kinda had her mind made up already?

Do you know why?

PL: No, I don't know why

Did she seem to have it made up from the beginning

PL: No, not in the beginning, no. But ~~later on she had her mind~~ made up. You here people talk when they shouldn't talk

Mmhmm

PL: She was the one who was talking when she should not have been talking. She run her mouth at dinner. There was a little tiny café across and right down the street from the...and we all ate there from time to time. But um...

Did she ever say anything about Daniel's race, him being black?

PL: It won't about him being black, have you ever seen—I don't want to say this the wrong way, you ever seen anybody who just knew..."I know they're guilty"" that was her, she already knew and I was, I have never said this, but I always wondered how, now I'm a Christian, I believe in God ok...I believe in trying to live right. And I believe to this day that's the reason I was voted as the jury foreman the way that I was trying to live, the way that I presented my own self, but I'm not ashamed to say it. I don't see how in the hell you can make your mind up about a kid when you don't know this kid, anything about this kid and you can be their judge and jury and decide that hell they're guilty you know and....we had some...ok, I'm gone say it, we had some holdouts there. I mean they introduced kinda the death penalty to us and we had whole lot

who said no, but we had one or two that said yeah. And she weren't really ashamed that you know and I thought to myself these are kids you know. Hell, when you're 18 between 14, and hopefully you grow up before you're 20 you know. These is children we're talking about here you know. Kids so easy to get mixed up. And it don't matter who done it you ought to wait to find out, you know, the outcome before you make up your damn mind. So yes, she had her mind kinda made up there. I'll be honest with you, pissed me off. That's the reason I said I'd loved to have throwed her from here to Wisconsin clean off. Ms. Pat absolutely was one of the ones

39:53

IM: That's one of the blonde ones

PL: No, that's the one I wanted to throw away, the one who needed a kick you know

Whose...Miss Pat's the one who got kicked off?

PL: Right. She, she is the one that wanted to be on it..She had the most positive attitude about these children. And I like that in people. Don't make up your mind before you know what's going on you know, you can't judge something right now you know.

Um, miss did anyone, did anyone at any point that you can recall ever say anything racial

PL: Racial?

...On the jury

No, uh uh

Ok did anyone else on the jury have any sort of previous um, experience with either Daniel green or Larry Demery prior to being on the jury that you're aware of?

PL: uh uh, like I said I only knew larry from church. I was never his Sunday school teacher.

Can you just tell me what you do remember about him, just what you remember from church?

That's it...he sat with his momma. Him and his sister, they sat with momma. That's it. I knew him by name, I knew him by face. That was it. I didn't know anything else about him. I knew Miss VA because of church

Was she—so you'd interact with them occasionally but you didn't know

PL: Only VA, not with Larry. Uh uh...did not.

IM: What do you think miss VA thought about what happened?

PL: I have no idea. I know she done a lot of praying. That is something I do know . She asked all of us to pray too for larry and to pray for Daniel Green. That was in church. She said "pray for them youngins'" You know how people say that all the time, she said, "pray for them youngins'" you know. Pray for them. Both of 'em...was what, that was her words pray for both of them youngins.

IM: um, do you remember the testimony of Clewis Demery, the guy who got robbed and shot

PL: Mmhmm

IM: was that important testimony to you?

PL: long pause...yes it was

Can you tell me about why

PL: I wanted to know how truthful he would be. You know how you were talking about um, the blood evidence, you know?

Mmhmm

PL: Being presented and what they said you know...I believe in weighing things but also believe in waitin' on the rest of the answers to come too.

Mmhmmm

PL: He was kind of painfully honest you know. But at the same time, both of them was there. Both boys. And in weighing that I says one is guilty as the other. Truthfully, I believe...I don't believe Daniel green actually shot him out of trying to kill him or anything like that. I think that was even say, say it was larry pulling the trigger, I think that was an accident, I really do. If larry would have had a the gun in his hand and pulled tha trigger that was an accident. IF Daniel wouldn've had the gun in his hand and of pulled the trigger I would've been an accident. I don't believe that was, that was not intended. I think tho—you know how you scare somebody you know?

Mhmm

PL: I think that was, that was one of those rustling indiscernible...you scare them to death or something

IM: did the jury talk about the blood in the car?

PL: Yeah, that came up

What do you remember about that?

PL: long pause..coughs...'scuse me...I remember them talking about the um...no...yes...what they found in the backseat of the car

Mmhmmm

PL: And, ah, maybe I'm wrong here, but I thought all his bleeding was done internally. That didn't make a whole lot of sense. You want the truth? It didn't make any sense.

Mmhmm

PL: I mean...

IM: you're talking about the lack of, the fact there wasn't more blood?

PL: Lack of evidence, yes. Now today you might go on and drop today. But back then? No, we're talking about 1993. No.

IM: But you did have an analyst who came and testified. Do you remember her? She came and testified that she found blood in the care?

PL: Yeah, I remember that.

IM: Do you remember anything notable

45:46

IM: notable about her testimony.

PL: She didn't find enough of it...she didn't.

Mmhmm

PL: I mean, I can't look at you and say man, there's evidence to prove it

Right, But did that make you feel a little better about there actually being blood in the car the fact that she said she had found some.

She said she found some, and I—that was not credible to me, ok? That was not credible at all.

You think some of the jurors found it credible?

No.

IM: Why do you say that?

PL: long pause. Because, there weren't enough.

Mmhmm

PL: I mean, what they were talking about and then the evidence behind it was not enough to go on, you know?

This is false; Not her words

Yeah. It is very strange.

PL: It's kind of like, like um, you know how you see something or say something and you squash it, it don't matter. That's exactly what that was, it didn't matter cause there weren't enough evidence there for...uh uh. This was not a bleed out this weren't a puddle

Mmhhmm

And actually that's what people was looking for, an amount.

IM: Right

PL: But, they didn't say anything about, you know "we had a puddle, we had an amount" you know

IM: right

PL: It was just uh, according to them, this was a little bit. And then when they came back and was that a man, the bleeding was on the inside. They come back and says "yeah." I had to think about that myself. But it weren't, what you'd call credible evidence.

Right

PL: uh, uh

Right...well we now know that the it wasn't' blood, it was part of the reason I'm on this case is that it was not blood, that the murdered happened, however it happened, it didn't happen in the car. Um, well I think that's, that's all the questions I had for you. I really appreciate you taking the time to speak with me today.

PL: I done some things, for the kids and for you, I had never done before

IM: What's that?

PL: I actually talked about this case.

Mmhmm. And you had people tried to talk to you about it before? No, I told them I'm not allowed to, don't bring it up. The judge told us we were not supposed to talk about it and afterwards they said hey can we contact you, it's over, to talk about it. I said no, don't call me,

Right

PL: Don't, no

IM: Right. Well I appreciate that you did talk to me about it and being honest with me.

PL: I got a question to ask,

Mmhmm

PL: How much, how much credit—them not finding the blood in there, or actually there being no blood in the car, how does this help him.

Well it might get him a new trial, eventually. It's not, it's not just the lack of blood. You remember the cellphone records?

PL: Yea

IM: Well, you remember sheriff Hubert Stone?

PL: mmhmm

IM: Well, you know the cellphone records are how they ended up identifying Daniel and larry.

PL: Trace them...

IM: They figured out who these numbers have in common

PL: Mmmhmm

IM: Well the very first—the jury was not shared a very important piece of evidence, it was hidden from y'all and this might be a very important part of the reason why Daniel would get a new trial. But the very first person who was called from james jordan's cellphone after he was murdered was Hubert Stone's son. A guy named Hubert Larry Deese who was a son that he didn't acknowledge. He was half Lumbee.

PL: Mmhmm

IM: And shortly after the murder, he was arrested by the drug enforcement agency, uh, and, and, and convicted of trafficking cocaine.

PL: Hmmph

IM: In large amounts. And Sheriff stone, he's deceased now, but he managed to keep this a secret for all of his life, that he had a drug trafficker son. And his son worked with Larry Demery

PL: Mmhmm

IM: At a mobile home manufacturing pla—plant and larry demery was selling cocaine for his son. And we believe that the murder, I mean I don't know exactly why it happened, but I believe it is connected to drugs and uh, I think that Mr. Jordan was probably in the wrong place at the wrong time. Um, Daniel green has always maintained—and you didn't here from him at trial because

PL: No, he didn't say a word

IM: Because he had a um, he had a criminal conviction that he didn't want the jury to know about from his childhood that was an assault conviction that um, at the time his attorneys thought that y'all might hear that he had been convicted of assault and conclude that he was violent person. After he was convicted of the Jordan murder, that conviction was overturned because it turned out he was innocent. It was a self defense situation and the victim's family members came forward and admitted that the victim had attacked Daniel and Daniel had defended himself.

PL: Are you sure that didn't come out in court?

IM: Mhmm. Th—you talking about, I'm saying why Daniel didn't testify, was because they didn't want it to be known by the jurors that he had had this conviction. Um, Daniel has always maintained that he wasn't there when Mr. Jordan was shot and that Larry came and got him after that fact and that he helped larry um, hide the body. And obviously that's a very serious crime to commit, that's accessory after the fact, but it's a very different crime than murder. Um...so we know that, we know that larry was mixed up with Sheriff's stone's son, we know that the was a drug dealer and we know that the, the district attorney kept the jury from knowing about that. And you couple that with the um, the um blood

PL: The district attorney knew it

IM: The district attorney knew it and he fought to keep you from knowing about it. And um,

PL: Or did the sheriff threaten him, you have no—where you from baby?

IM: Durham. I know all about sheriff stone.

PL: Oh, do you?

IM: And I've spent about five years looking into sheriff stone

PL: So you know about the hand and the house and everything right?

IM: Mmhmm

PL: There's a whole lot of personal stuff you didn't know about him

IM: I know a lot about sheriff stone.

PL: You know that people left money in the mailbox for him to pick up. And um...

IM: I, I sure do.

PL: You know about all the steals in Robeson county, the pay offs he took

I sure do.

PL: you know about the land and—

mmhmm

PL: the indiscernible and the other places he's got

IM: I do, and...

PL: You have any idea how really he dirty he is

IM: I do, that's why I'm here and that's why I'm representing Daniel green cause I don't think Daniel green did this. I think that he was made a scape got so that sheriff stone could keep his son out of this murder

PL: Who's to say he didn't do it, I thought about that a many a times, I, I mean

IM: You thought about what?

PL: How in the world these kids get in the middle of—Larry's not the kind to pick a gun and shoot somebody, but let me tell you something, Daniel's not a bad kid either.

Yeah

PL: And my, and I wondered he was sittin' at trial, you know, this is only me now, now I ain't never indiscernible....but I always wondered if there was somebody else in the middle of this

IM: Yeah, there was and it was

PL: ...somebody else that was there.

Well, it wasn't, it wasn't just that, so there was this, this, this Hubert guy, Hubert deese...

PL: Did you know that he weren't there?

Well, I don't know that he wasn't there. I think he might have been there, he might have been the killer for all I know

PL: Let me tell you somethin'...I know how wild, I got four boys, I know just how wild a boy can be, and I know how damn rowdy they will be and back them into a corner and they'll lie their way out

Mmhmmm

PL: I'm a momma

Mmhmmm

PL: But...thinking about uh, Daniel and larry doing this, you know how you go down and you mark "no" to all this stuff, you know? yeah, that's what I was doing cause I never, I never did believe...I'll be honest with you I don't believe they were bad, nothing made me believe that they pulled the trigger.

Neither of them?

PL: Neither one of them, no. Looky here, hell no. No. I always thought a coverup going on here. I just didn't know who or what or how. But you didn't Stone, you didn't know Stone at that time.

Mmhmm

Terrible Transcript.

PL: Gloria Maynor, over Charles, Gloria maynor is the sheriff, I said to myself, "you really don't know. You didn't know Hubert stone."

IM: And then on top of that, Clewis Demery testified that Daniel had robbed them. He gave an interview three years before he told that to you and the rest of the jury where he said that all

black people looked a like to him and that he, and that he didn't know who robbed him. And somehow between the time he gave that interview in 1993 to a reporter and when he testified to you, he somehow was able to identify Daniel. But Daniel has always maintained that he didn't rob Clewis Demery. So that's, that's why I'm here, the whole—all the pieces of evidence that were presented to you that made Daniel look guilty over the years hasn't really stood up to scrutiny. So we're trying to get Daniel a new trial so that all the evidence can be aired out in front of a jury, because it wasn't fair to put you and the other jurors in the situation where you didn't have...

PL: everything

IM: Access to all the information. You were, you were given a curated version of the truth. Um, and, so I'm trying to see if something might be done to correct that because it wasn't right that they held certain things from you, such as the bull—mm, they gave you false blood evidence, they told you stuff was blood that was not blood. And they put up a witness whose

PL: If they lady had known that...would you believe me if I told you her boss looked at her and said "make it stick."

IM: Did you hear that?

PL: I'm not making that comment, but let me say this...long pause...moving around...um, I found out quite a few things down the line, I'm talking 'bout after the trial.

mmhhmm

PL: Words reached our ears, I'm sure there was a heap of people who heard the same thing that I heard.

Mmhmm

PL: um, this trial weren't supposed to take place when it did. What year that trial take place, was it 96?

Mmmhmm

PL: Naw, this trial was scheduled way up the calendar

Mmhmm

PL: But afterwards, according to the news, Michael Jordan pushed for it to get done as quickly as possible and get it over with. I says ok, I understand, mom's involved in this and they don't it and everything that's going on and...other things kinda came out like...everything points to Daniel green, um, make this stick...you've never heard that before have you?

Uh uh...who said that? "Make this stick?"

PL: I have no idea.

Where did you hear that? Did you hear that—did someone tell you that? Or you overheard that? I'm not sure I'm following you.

PL: I overheard this.

IM: Where?

PL: It's kinda like um...long pause...seriously, you never this before?

IM: Uh uh, "Make it stick?"

PL: Every thing points to this kid, doing what he done. "Make this evidence stick to him." But you know what, Daniel was no..Daniel weren't any different than my kids, my kids never got in trouble, well my boys was, they were all boys...

IM: Are you saying that during the trial you overheard someone tell the blood analyst "make it stick?"

PL: No, no...

IM: I'm not sure I'm following

PL: not then

IM: Ok

PL: It was later on. This was after the trial.

IM: Ok, after the trial you're somewhere and you overhear someone say...

PL: This need to, yeah, this was just right because this needed to stick to him. This is—And I said to myself, no, no, no.

Is this a state official? A police officer...

PL: No

IM: Anyone related with the government, saying this?

PL: I can't tell. There was um, two men and a couple women talking, but there was more at the table than that.

IM: And was one of those peop--

PL: Watch this...I'm sitting here like this, they're sitting behind me

Ok

PL: Now I don't know who—I do know it was not the guy that was sitting directly behind me, it weren't him, but it was somebody directly across from him

IM: Did you recognize any of the people at the table

PL: No, I didn't recognize anybody

IM: Interesting

PL: But you know what...these kids didn't do this. They, these kids didn't—neither one of them pulled the trigger, do you understand that, what I'm saying?

IM: I've been trying to prove this for years, you don't need to convince me.

PL: They didn't do this. Now I don't know who, you know what, let me tell you something. One of Hubert's son's was a deputy sheriff here in the county

IM: Kevin

PL: Ok...he shot and killed a boy in Fairmont, shot him in the back...watch this, he was unarmed.

IM: I know all about that, Jimmy Earl Cummings, swung the buckets...

PL: What's this, no hell he didn't swing no buckets. Sometimes people won't tell the truth, do you know why?

IM: They're afraid

PL: Scared. To. Death.

IM: I know. I know

PL: Rustling speech indiscernible

IM: ...so why did, so why did people, if people felt that way why did they vote find Daniel guilty if they didn't think he did it.

PL: Yeah, there people in there who thought that he was...

IM: What about you though? What was it that made you vote guilty?

PL: More evidence pointed to him, well what we had to go with.

Mmhmm

PL: More evidence pointed to him than it did to Larry.

Mmhmm

PL: Now, you'll never make me believe—now this is what it came down to, ain't no way we was gonna kill this kid, he might get life in prison. We had those one part here and this part was finished, then we moved to a second part

IM: Mmhmm

PL: And...

IM: But you did have the option to find him just not guilty, what was it that made you feel that you shouldn't vote not guilty?

PL: Too many, too many little tiny things. He had the rings. Um, cellphones. The rap video. He was trying to impress a girl

Mmhmm

PL: But different little things in the rap video. Uh, him driving the car, the car on the video. Fingerprints. Uh...

IM: So that all shows that he had possession of James Jordan's stuff,

PL: Mmhmm

IM: And his car, but that's, but that's not what he was charged with, he was charged with killing James Jordan. You assumed that because he had all these things that he must have been involved in killing him

PL: I figured he was involved.

IM: right

PL: But I never believed that he actually pulled the trigger, and I couldn't vote, what, I could see him going to jail, but killing him?

Right

PL: Just, no

IM: Well I'm glad, I'm glad you didn't.

PL: Look

Mmhmm

PL: I believed these kids were so scared they kept their mouths shut. You want the truth?

Mmhmm

PL: And I'm wondering, I mean you see this mess on tv all the time, "I can get to you anywhere"

Mmhmm

PL: But if you know how powerful Hubert Stone was...Hubert could get to anybody, anywhere.

IM: Yeah

PL: Yeah he could

IM: Oh, I know

PL: So, hey

IM: Sighs. Well this has been really helpful Miss Locklear, I really appreciate you.

PL: Well I don't know how it's been helpful, but if you want to do something really good, you need to find the real person that was there.

IM: Yeah, I'm working on that. I'm working on that. Would be ok if I used your restroom real quick.

PL: Yes, right here. Would you like something to drink. Indiscernible

IM: No thank you, I'm fine, just right here on the right?

PL: Mmmhmm.

Door closes. Rustling noises. Audio is cut

The plan works. Working hand-in-hand with the SBI, Sheriff Stone frames Daniel Green for the murder, just as he had framed Johnny Goins before him. Larry Demery cannot be ID'd as the shooter, reasons Stone, because he is an extended member of a drug organization to which the Sheriff is beholden. The lack of physical evidence supporting the new narrative of Green as a random carjacker is overcome when SBI Agent Jennifer Elwell—who is later suspended for lying about blood tests in a different murder case—claims to discover microscopic "blood" droplets in the seat of the Lexus. In truth, there is no real evidence of blood, a fact Elwell will later concede while serving a suspension from the SBI. The substance in the seat "could have been anything."

Larry Demery, too, is taken into custody and charged as an accomplice to the murder. He agrees to testify against Daniel in an effort to spare his life in a county that has sent more people to death row in recent years than nearly any in the country. In exchange for agreeing to point the finger at Daniel Green, Stone allows Demery certain perks, including arranging to sneak him out of the Robeson County jail to visit at home with his family. (His escort is Deputy Bobby Deese.) But Stone knows that the Green trial threatens to expose his connections to drug traffickers. So does Johnson Britt, who makes the decision not to disclose the paternal relationship to Green's defense attorneys, Woodberry Bowen and Angus Thompson. Robeson County Jailer Richard Locklear testifies that Demery is a cool customer in jail, confidently boasting that he'll be "out in eight," and saying Johnson Britt has made him assurances. (Daniel's mother has a different theory as to why Demery framed Daniel, believing that the RCSO threatened Demery's family if he didn't go along. A few years ago, Demery, who has had no communication with the family since the trial, sent her a Christmas card that said only, "I'm sorry. But blood is thicker than water.")

Deese, meanwhile, can't stay out of trouble. Six months after Daniel Green and Larry Demery are taken into custody, Deese is caught red-handed by DEA Agent Michael Grimes (possibly as a result of an anonymous tip from a disillusioned Larry Demery). Grimes is part of an inter-agency drug task force that includes two members of the Robeson County Sheriff's department, Steve Lovin and Thomas Strickland. The task force is a means by which Stone keeps tabs on federal drug enforcement efforts in Robeson County, allowing him to always stay a step ahead of those who might bring his operation down. Lovin and Strickland are part of Stone's trusted cadre of deputies and later become the first officers to go to prison when Operation Tarnished Badge comes to public attention in the 2000s. Lovin and Strickland tell Grimes that Deese is the Sheriff's "side son," a fact that never reaches federal prosecutors in the EDNC. While Daniel Green awaits trial on the Jordan murder, Deese offers to go undercover to expose his Colombian connection. He pleads guilty and is sentenced to a decade in prison, which is later reduced after he offers substantial cooperation that leads to multiple convictions.

Through this, Sheriff Hubert Stone is barely hanging on. If the public were to learn that Deese is his son, it would lend real credence to the truth that Eddie Hatcher and Julian Pierce effectively gave their lives trying to expose. Stone needs an exit plan. Though he has made a great deal of money through his connection with Jonathan Lowry, the fact that the proceeds of his illegal behavior are largely cash complicate his ability to leave a legacy to his children. He forms a plan

and later owned by Keith Stone, Hubert Stone's third son, who is the newly-elected (and very wealthy) Sheriff of Nash County, North Carolina.

At Crestline, Deese befriends fellow Lumbee Indian Larry Demery, a close childhood friend of Daniel Green, who is at the time away, serving years on a juvenile criminal charge that is ultimately vacated. Deese and Demery's job involves escorting mobile homes for Crestline into South Carolina over the small bridge at Gum Swamp, less than a mile from Crestline, where James Jordan's body is ultimately recovered. Rumors abound, some involving local mobile home businessman Ted Parker, that cocaine is regularly trafficked out of Robeson County in the walls of mobile homes. (It's been said that some people were caught red-handed.)

Hubert Larry Deese makes a decision that ultimately lays a big problem in the lap of his father, Sheriff Hubert Stone. Deese's associate Larry Demery has developed a taste for crack cocaine and is having a hard time controlling his problem. He's acting erratic. He starts using some of the drugs that he's supposed to be moving for Hubert Larry Deese (and ultimately for Jonathan Lowry's organization, with Sheriff Stone's blessing). Deese finds out and tells Demery that to make it up to him Demery is to pick up and drive a package to New York. He is to meet a person to pick up a car and drugs near the Quality Inn in the early morning hours of July 23, 1993. (It is possible that this individual is to be a black male driving a Lexus.)

On July 22, 1993, Larry Demery places a call from his mother's house to a cousin in Huntington, New York. He tells his cousin that he's coming to New York to deliver a package that his cousin understands to be drugs. Later that night, Demery leaves a gathering at Kay Hernandez's trailer, where Daniel Green is gathered with his mother, his sister Eboni Moore, Kay, her niece Monica, Bobbie Jo Murillo, and a few others. Most everyone but Larry stays the night. Demery is transient and sometimes stays with the Greens. They have their own trailer but have chosen to stay with the Hernandez family after men who they believe to be sheriff's deputies keep dropping by the household looking for Larry. After midnight, in the early morning hours of the 23rd, Larry leaves the Hernandez home, alone, and makes his way to the area near the Quality Inn, where he's supposed to make his connect. Instead, Larry Demery encounters James Jordan, who has pulled his car over near the Quality Inn, where he presumably intends to stay the night. For reasons still not entirely clear, Jordan is shot outside of the car and a single bullet pierces his heart.

Demery takes control of Jordan's Lexus and discovers an early model mobile phone in the console. In the hours immediately after the murder, before he calls anyone else (other than a 900 sex line), and before Daniel Green places any calls on the phone, Larry Demery calls Hubert Larry Deese from James Jordan's cell phone. Demery tells Deese that things did not go according to plan. Deese relays this information to his father, Sheriff Hubert Stone, who immediately assumes an active role in plotting a cover-up. By the time the body of James Jordan is finally recovered on August 13, 1993, Sheriff Hubert Stone has a plan in place to deal with this disastrous turn of events: He and his investigators will label the murder a random carjacking, thereby deflecting outside scrutiny on the drug-trafficking operation that directly, if unintentionally, caused the death of James Jordan, father of one of the world's biggest celebrities. Like Julian Pierce, James Jordan's death will go down in the books as just another random murder.

Shortly thereafter, Lumbee Civil Rights Lawyer Julian Pierce, concerned about corruption in the sheriff's department, runs for Superior Court Judge, after Stone's close ally, Joe Freeman Britt, announces his candidacy. As judge, Pierce tells people, he would be in a position to finally do something about the corruption under Hubert Stone and Joe Freeman Britt. But Pierce never gets the chance. Shortly before the election (which Pierce wins, posthumously), the Stones murder Julian Pierce in his home and pin the blame on Johnny Goins. Stone tells the press that he is confident the people of Robeson County will understand that this is "just another murder" and not political. Goins is the 24-year old ex-boyfriend of Pierce's girlfriend's daughter, who is 16. He makes for a plausible suspect, having recently been trespassed by the girl's mother. The Stones murder Goins and explain that he committed suicide as deputies moved in. Joe Freeman Britt becomes judge by default under a quirk in North Carolina law. Poor blacks and Indians don't stand a chance in the Robeson County criminal courts. (The Lumbee Tribe and Pierce family continue to call for a reinvestigation into his death, disbelieving Hubert Stone's account.)

Years later, for reasons unclear, and right around the time of the James Jordan murder, Assistant U.S. Attorneys in the Eastern District of North Carolina's Criminal Division initiate an investigation into Hubert Stone related to suspicions of connections to drug traffickers. After nearly 15 years of lucrative association with drug organizations, it's the 1990s and things are starting to go wrong for Sheriff Hubert Stone. He has managed to survive the scandal of his son and deputy, Kevin Stone, killing unarmed Lumbee Indian Johnnie Earl Cummings, even in spite of very public allegations from Cummings' family that Johnnie Earl had been selling cocaine that Kevin Stone had stolen from the Robeson Co. evidence lock-up. (Kevin Stone had one of the two keys. The other person, Deputy Mitchell Stephens, is prosecuted by Joe Freeman Britt for the theft. He testifies in his defense that the Sheriff is involved in drugs and is acquitted.)

However, it is one of Stone's other sons that really threatens to unravel it all. Hubert Larry Deese, half-Lumbee, is the child of Glenda Deese and Hubert Stone, the product of an extramarital affair. On Hubert Larry's birth certificate, Robert Otha Deese is named as the father. (It is unknown if Robert Otha Deese is the same Deputy "Bobby Deese" who Hubert Stone had escort Larry Demery out of the Robeson County jail while facing first degree murder charges in the James Jordan case so that Demery could spend time at home with his family.) Though it is rumored Sheriff Stone has numerous illegitimate children around town, few people know Deese to be the son of Stone. However, Robeson Co. District Attorney Johnson Britt knows. And so do Stone's select group of deputies, who coordinate his activities with drug dealer Jonathan Lowry. As Stone's son, Deese plays a special role as a go-between in Stone and Lowry's criminal enterprise.

Officially, Hubert Larry Deese is an employee of Crestline Mobile Homes. In reality, he is a high-level drug trafficker – one responsible for personally importing as much as $5 million in cocaine into Robeson County each year with Colombian and Venezuelan drug couriers Oscar Campillo Ortega and Jorge Cortez. Deese's operation involves unloading the cocaine from a service station near the I-74 and I-95 interchange, near the Quality Inn, and adjacent to the area where Johnson Britt contends Daniel Green carjacked and murdered James Jordan. Every six weeks, Deese and his associates meet Cortez and Ortega and load the cocaine on ATVs, which they drive through the woods to an area of Pembroke then owned by the Pates Supply Company

There is evidence to support the following:

Jonathan Lowry, according to District Attorney Johnson Britt, is possibly the "biggest drug dealer ever" to operate in Robeson County. Hubert Stone first meets Jonathan Lowry in the 1960s and the two become friends. In the mid-1970s, while a deputy, Hubert Stone marries rich widow Ruth McCormick, the 2nd largest owner of the lucrative Pates Supply Company (est. 1922). McCormick's family and Pates' employees, who do not know each other, believe Stone to be manipulative and never truly in love with McCormick.

After marrying McCormick, Stone immediately runs for Sheriff, using Ruth's immense wealth to carry him to victory. Shortly thereafter, the couple end their short marriage and file for divorce. Ruth initiates the divorce after obtaining a photo of Stone engaging in infidelity (a photo which remains in her safe deposit box until she dies in 1994). McCormick does not speak to Stone again for nearly 15 years. Stone is nonetheless re-elected Sheriff and remains so throughout the 1980s, during which time his friend Jonathan Lowry builds his well-documented multi-million dollar drug empire. Lowry is repeatedly the target of federal drug enforcement authorities. When arrested, Stone makes repeated attempts to help him, and even writes to federal prosecutors in Florida on his behalf. Though caught red-handed with hundreds of pounds of drugs and hundreds of thousands in cash, Lowry does little time. He remains a prominent figure in Robeson County. Lowry rents part of the Pates Supply offices in Pembroke and opens it as a florist shop. He is constantly acquiring and selling real estate as a means of laundering his drug money, a fact that ultimately catches up with him when DOJ investigators uncover his scheme.

Sheriff Hubert Stone, all the while, is on Lowry's payroll. He employs a select group of deputies, led by his son Kevin, who simultaneously work for Lowry's drug organization while conducting sting operations and arresting his rivals. The sheriff accepts regular protection money from Lowry's organization, advocates for him when the feds come after him, all while doing his best to maintain his tough law and order image through his close association and friendship with District Attorney Joe Freeman Britt. In the 2000s, some of these deputies are exposed and go to prison in Operation Tarnished Badge, the largest police corruption scandal in North Carolina history.

In the late '80s, the fact that Lowry's organization would distribute money to select sheriff's deputies comes to the attention of the Tuscarora and Lumbee Tribes, both of whose members engage in significant efforts to blow the whistle on Stone's corruption. Stone is openly and unapologetically racist towards blacks and Indians (as the Lumbee identify themselves), despite his affairs with Indian women. He is hated by many blacks and Indians, who together make up the majority of the county population. In 1988, Tuscaroran activists Eddie Hatcher and Timothy Jacobs take *The Robesonian* hostage in an attempt to get the federal government's attention and expose Stone's involvement in drug trafficking. They negotiate with the governor's office to surrender to federal authorities. After they are acquitted at a federal trial, Britt defies the Governor and tries and convicts them in Robeson County. Hatcher's legal team, consisting of famed civil rights attorney William Kuntsler, Lewis Pitts, and Barry Nakell of UNC, file a novel civil action, alleging corruption and drug involvement on the part of the Sheriff's department. It flames out and the lawyers are heavily fined.

to reconnect with his ex-wife Ruth McCormick. He visits McCormick in the hospital and tells her about his regrets; he says he doesn't want her to spend her final years alone.

Likely while under heavy medication, Stone takes McCormick to his associates at the Musselwhite law firm and has her disinherit her family of millions of dollars. Stone has McCormick name him as executor of her estate, and he names his sons Kevin and Keith as the primary beneficiaries, with Keith to receive the ownership interest in Pates Supply. The Musselwhites, likely recognizing this as a textbook case of undue influence, urge Stone to name a co-executor to mitigate the suspicion that is sure to arise when the Will is read. Stone chooses William Teddy Currie, a man who doesn't know Ruth McCormick other than to have served briefly as her CPA. Currie has no experience, before or since, probating an estate, much less one the size of McCormick's. Importantly, he is the primary accountant for the Pates Supply Company, the company in which the Stone family is about to acquire a powerful ownership interest in—the same company that rents office space to Jonathan Lowry and over whose land Hubert Larry Deese regularly ran drugs on ATVs. Currie's livelihood depends in part on the Pates account. With Keith Stone as the new boss, he's not in a position to ask too many questions.

With the paperwork finalized, Stone is discouraged when Ruth makes a full recovery. It turns out she's not nearly as close to death as he has hoped. Doctors say she is fine and McCormick is sent home from the hospital. She makes social plans with friends for the next week. She orders a new recliner from Pates' furniture store and has it delivered to her home. She arranges to have a young Lumbee woman, Minnie Locklear, look after her in case she has any further health complications.

Hubert Stone is growing impatient. He worries that if any more time passes, McCormick will realize what she has done with her Will and revoke it, denying him the millions that he plans to use to retire from the Sheriff's office and leave a legacy to his children (including Hubert Larry Deese). Stone decides to take action. However, because his greed knows no bounds, he first calls Ron Brown, the CFO of Pates Supply, and asks him if McCormick's chair can be returned. McCormick is still alive, but Stone knows her time on earth is limited and that she will have no need for the chair. Brown thinks it odd, but he agrees and says he will send someone to pick it up the following week.

Stone then kills McCormick, completing his plan, and almost shortly thereafter announces his retirement from the Sheriff's office. Both McCormick's family in Raleigh and her business partners at Pates Supply—who do not know each other—independently come to believe Stone is responsible for McCormick's death. However, as Stone is the chief law enforcement officer in Robeson County, they have no one to turn to. Unbeknownst to co-executor William T. Currie, an effort is made to challenge the Will and fails. The estate is probated, during which time Sheriff Hubert Stone tells William Currie that he had a strong hand in drafting the Will that made his children millionaires overnight.

Keith Stone assumes a large ownership interest in Pates Supply Company, much to the displeasure of Pates' other owners. His interest, listed on paper alternatively as $499,000 and $285,000, is actually worth much, much more, due to the use of illegal accounting tricks. After

an acrimonious negotiation process, he cashes out in June 2000, when Pates transfers a $1.1 million piece of property to H & K Stone Enterprises, a company formed months earlier and consisting of Hubert and Keith Stone, in an exchange for Keith's shares. This land becomes quite lucrative and is ultimately turned into a multi-million dollar real estate development. The two sell it off piece by piece and give some of the property to son/brother Hubert Larry Deese, who is recently out of federal prison for his drug trafficking arrest, in a transaction of which Sheriff Keith Stone denies any knowledge. The transaction occurs while Keith Stone is company President. Keith Stone maintains he has no idea who Hubert Larry Deese is and denies that he is his brother, a fact that Johnson Britt and Hubert Larry Deese concede is true. Hubert Larry Deese, meanwhile, builds a nice house on the property, apparently paying cash, and later sells it.

Having outmaneuvered all of his adversaries, Hubert Stone dies in retirement in 2008, after living comfortably off the McCormick fortune and the proceeds of his long association with drug traffickers. Kevin Stone works today as a U.S. Marshall. His brother Keith Stone continues to operate H & K Stone Enterprises on his own; he continues to develop and sell the many properties he inherited from the McCormick estate, in addition to those he got from the Pates' sale. He gets himself elected Sheriff of Nash County, NC in November 2014. In his campaign, Keith Stone announces that drug traffickers will be one of his top priorities as Sheriff. For the second time, Ruth McCormick unwittingly helps a Stone ascend to the office of Sheriff. The Stones' other brother, Hubert Larry Deese, today lives with his girlfriend in Robeson County.

April 23, 2014

NC State Bar
Membership Department
PO Box 26068
Raleigh, NC 27611

Ronald G. Baker, Sr. , NC State Bar President
Sharp, Michael, Graham & Baker LLP
4417 N. Croatan Hwy.
Kitty Hawk, NC 27949

Re: My Resignation from the NC State Bar
State Bar # 20592

Dear Mr. Baker and Bar Folks,

I am a member in good standing with the North Carolina State Bar and have been since 1994. On January 31, 2014 I retired from Legal Aid of North Carolina and the practice of law. After over 40 years of being a public interest attorney, I am hereby resigning from the NC State Bar. I am aware of the options for "inactive status" but do not want to exercise those options because they would require that I continue to be "subject to the Rules of Professional Conduct and to the disciplinary jurisdiction of the State Bar..." My resignation is because I see an overall breach by the Bar as a whole of the most basic notions of professional conduct and ethics such that I do not want to be associated with the Bar. Below is a summary of my reasoning.

But let me say first that I take no pleasure in my resignation and the assertions below. I do not wish to be mean or flippant. The ministry of law has been a powerful force in my life and I have had the pleasure of working with many terrific people in pursuit of justice - lawyers and non-lawyers. I want these parting words to stir your minds and hearts into reflection, boldness, and transformational action. The harsh realities I describe are not readily apparent from the hegemonic corporate news that many rely on. But the naked simplicities of injustice are there in the alternative press. These should not be issues about which reasonable people differ. As my friend and colleague Michael Tigar, well known litigator and law professor, wrote: "When I speak of a prosaic and down to earth idea of justice, I mean simply that one can deduce principles of right from human needs in the present time." "Crisis in the Legal Profession: Don't Mourn, Organize" Vol. 37 Ohio University Law Review 537 (2011).

I became a licensed and practicing lawyer in South Carolina immediately after law school in 1973. I was admitted to the District of Columbia Bar in the early 1980's and the North Carolina Bar in 1994. My work has focused on racial justice, environmental justice, children's rights, and participatory democracy. In February 2014 I received the Frank Porter Graham Award from the North Carolina ACLU "for longstanding and

significant contributions to the fight for individual freedom and civil liberties in North Carolina."

Several years ago I resigned from the the South Carolina and District of Columbia Bars.

From my earliest days as a lawyer I have been concerned that the role of our profession has been to serve and protect the political and business Establishment and not to uphold Rule of Law; not to adhere to the Preamble to the Rules of Professional Conduct mandate of being "a public citizen having a special responsibility for the quality of justice;" not to seriously fight for justice and equality for all. With notable exceptions for some very fine lawyers around the country and our state who use law as a tool for social change and see themselves as "public citizens," my career has seen the lawyers in our nation forego their ethical duties to seek economic and social justice and instead approach law practice as a business grounded first and foremost in making money. One benchmark of such devolution was decades ago when lawyers were allowed by their "self-regulated" system to begin to advertise their services.

Justice Harlan Stone, in an address to lawyers, law professors, judges, and law students during the early New Deal years titled "The Public Influence of the Bar" (48 Harv. L. Rev. 1, 1934), summed up back then what I have seen during more recent times: "Steadily the best skill and capacity of the profession has been drawn into the exacting and highly specialized service of business and finance. At its best the changed system has brought to the command of the business world loyalty and superb proficiency and technical skill. At its worst it has made the learned profession of an earlier day the obsequious servant of business, and tainted it with the morals and manners of the market place in its most anti-social manifestations." Justice Stone described the plight of the country as a "sorely stricken social order" with the Bar doing much to serve business but "...so little to make law more readily available as an instrument of justice for the common man (sic)."

There is stark injustice in our land and the Bar stands mostly silent to its affirmative duty as the collective conscience of individual lawyers to speak out as "public citizen(s)" in opposition to these legal and moral wrongs. Law must be grounded in notions of shared moral values. These have been made clear in our Founding Documents: justice, equality, liberty, the pursuit of happiness, the enjoyment of the fruits of one's own labor, domestic tranquility, and the general welfare - as well as the values contained in the Bill of Rights. Today those values are treated as if "special interests" or on the fringe instead of being core values. The "morals and manners of the market place" trample these values routinely in capital's mad hunt for profits while selectively claiming "freedom" and "liberty" to expropriate and accumulate as much wealth as possible. It is this hunt for profit that has turned our legal profession into the "legal industry" serving the market instead of the People.

Today's "sorely stricken social order," contains monumental injustices. To list only a few such injustices: (1) our nation's President orders indefinite detention of individuals without charges or hearing; astonishingly, the President also picks from a list of

individuals, including US citizens, which ones are to literally be assassinated without any formal charge or hearing; (2) our nation ranks internationally among "developed" nations as one of the worst with regard to levels of grinding poverty and wealth inequality between the 1% and the 99%; huge corporations and their CEOs receive millions of dollars yet pay wages so low we have coined a new term "the working poor;" (3) our nation has the highest rate of incarceration in the world; engages in "mass incarceration" based on racist assumptions and with racist results; every state has a growing "school to prison pipeline" so unjust that the US Senate held a hearing expressly about this pipeline in December 2012; (4) our nation's electoral system (state and federal) is awash with private money based on the absurd theory that the rich spending money that drowns out the voices of the vast majority is a protected First Amendment activity; the blunt, but accurate statement that we all pretend not to see, is that elected officials serve those who contribute the most to them; the distorting, corrosive effects of huge aggregates of capital accumulated through the corporate form and donated to politicians ensure public policy and laws that serve the interests of the 1%; we do not have one person one vote; we have one dollar one vote; we do not have democracy; we have plutocracy; (5) our nation engages in global wars over and for corporate interests at an unspeakable cost in human life, and suffering; financial resources needed for human services, school teachers, infrastructure maintenance, etc. are squandered on war; (6) our nation's highest court in 1886 declared, without providing any logic, history, or reasoning, corporations to be "persons" entitled to the constitutional rights of living persons; this silly construct has lead to corporate interests masquerading as "persons" striking down laws and regulations designed to protect the health, safety, and well-being of the People; (7) this same corporate power and its philanthropic "foundations" have purchased bipartisan electoral support for so-called "market-based reform" of public education; these policies, incorporated into President Obama's Race to the Top funding scheme, have translated into a dumbed-down, drill and kill, multiple-choice test-based curriculum; trumped up attacks on teachers and teachers' unions in an effort to make them more like low paid factory workers; lead to privatization and profit-making from "choice" and charter schools; lead to resegregation of schools based on race and class; such "education policies" can never provide our youth with the critical, creative, and courageous thinking skills essential for any self-governing democracy of the People, by the People, and for the People; listen to how often you hear the purpose of education to be "competing in the global economy" rather than becoming a good citizen; (8) human caused (mostly by oil, gas and other big corporations) global warming and climate change that literally threatens all life in a matter of decades, not centuries. The list could go on to describe our "sorely stricken social order."

Yet, the Bar does little but applaud as Big Firms make millions; hourly rates on the corporate side are sinful. Meanwhile, we have no Civil Gideon to provide much needed civil representation for the average person. The quality of legal representation on either the criminal or civil side depends on the amount of money one has. What a travesty: millions of people desperately need legal representation while there are a flood of lawyers who cannot find work such that bar associations discuss the crisis of too many law schools.

Yes, the Bar routinely laments the public perception of lawyers and goes through highly publicized exercises hinting at our professed calling and noble goals. But they are mostly to create a better public image rather than change the substance of what lawyers do to serve the wealthy. The many lawyer jokes we all know reflect how every day folks feel about us: "What do you call 500 lawyers at the bottom of the ocean? A darn good start."

Hence, I resign from the Bar and have ceased all practice of law. But I will continue to exercise my First Amendment rights to actively pursue justice along with the millions of others already doing so.

I close with my earlier point: I hope the reasons for my resignation will generate meaningful discussion and debate within and among law students, law teachers, lawyers, judges, and every day folks about how the legal profession can better serve, not business and finance, but the public good. We must be a legal profession, not a legal industry one-sidedly serving market interests. We will all be for it and so will our nation and state.

Sincerely,
s/

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JURY MISCONDUCT

Robert Farb, UNC School of Government (April 2017)

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I. **Introduction.** This chapter discusses the trial court's duties with respect to misconduct by and affecting jurors. The North Carolina Defender Manual, Ch. 26, Jury Misconduct (2d ed. 2012), and the North Carolina Prosecutors' Trial Manual, Jury Procedures and Juror Misconduct, 237-47 (5th ed. 2012), are excellent resources on this subject. I gratefully acknowledge the incorporation of excerpts from these publications.

II. **Ensuring the Right to a Fair Trial by an Impartial Jury--Generally.** Under the Sixth and Fourteenth Amendments to the United States Constitution, every criminal defendant who has a right to a jury trial is entitled to a fair trial by a neutral and impartial jury. *See* Pena-Rodriguez v. Colorado, 580 U.S. ___, 137 S. Ct. 855, 871 (2017); Morgan v. Illinois, 504 U.S. 719, 726-27 (1992); Duncan v. Louisiana, 391 U.S. 145, 149-50 (1968). This right also is guaranteed by Article I, Section 24 of the North Carolina Constitution. State v. Garcell, 363 N.C. 10, 43-44 (2009). It is protected in North Carolina through statutory admonitions, pattern jury instructions, the trial court's obligation to inquire into misconduct, and the trial court's authority to remedy misconduct.

A. **Statutory Admonitions.** G.S. 15A-1236(a) requires the trial judge at appropriate times to admonish the jurors that it is their duty:

- not to talk among themselves about the case except in the jury room after their deliberations have begun;
- not to talk to anyone else or to allow anyone else to talk with them or in their presence about the case, and to report to the judge immediately the attempt of anyone to communicate with them about the case;

- not to form an opinion about the guilt or innocence of the defendant or express any opinion about the case until they begin their deliberations;
- to avoid reading, watching, or listening to accounts of the trial; and
- not to talk during trial to parties, witnesses, or counsel.

The judge also may admonish the jurors about other matters that the judge considers appropriate. G.S. 15A-1236.

Although some cases hold that to constitute error, the defendant must object to any failure to properly admonish the jury and must show prejudice resulting from that failure, State v. Harris, 315 N.C. 556, 566 (1986), other cases suggest the issue is subject to plain error review on appeal. State v. Ward, 354 N.C. 231, 263 (2001) (the court noted that the defendant failed to assert plain error on appeal); State v. Smith, 222 N.C. App. 637, *3 (2012) (unpublished) (the court allowed plain error review of failure to instruct properly under G.S. 15A-1236, but did not find plain error).

B. **Pattern Jury Instructions.** The following pattern jury instructions contain admonitions to jurors about improper oral and electronic communications and contacts, impermissible research, and watching or listening to media:

- N.C.P.I. Crim.—100.25: Precautionary Instructions to Jurors (to be given after jury is impaneled)
- N.C.P.I. Crim.—100.31: Admonitions to Jurors at Recesses (to be given before first recess)
- N.C.P.I. Crim.—100.33: Recesses (to be given before second and subsequent recesses)

C. **Trial Court's Duty to Inquire about Misconduct.** "It is the duty and responsibility of the trial judge to insure that the jurors remain impartial . . . ." State v. Rutherford, 70 N.C. App. 674, 677 (1984). It is the trial judge's responsibility to conduct investigations into apparent juror misconduct, "including examination of jurors when warranted, to determine whether any misconduct has occurred and has prejudiced the defendant;" the scope of the inquiry is within the trial court's sound discretion. State v. Barnes, 345 N.C. 184, 226 (1997); *see also* State v. Burke, 343 N.C. 129, 149 (1996); State v. Gurkin, 234 N.C. App. 207, 212-13 (2014). Practice pointers about how to conduct the relevant inquiry are provided in Section II.E., below.

D. **Remedies for Misconduct.** If juror misconduct has occurred, the trial judge can take "any appropriate action." State v. Drake, 31 N.C. App. 187, 191 (1976). The most common remedies are:

- Using contempt powers. *See* G.S. 15A-1035 (a presiding judge may maintain courtroom order through the use of contempt powers as provided in G.S. Chapter 5A, Contempt); *see generally* Michael Crowell, Contempt in this Benchbook.
- Giving a curative Instruction. *Cf.* State v. Hines, 131 N.C. App. 457, 462-63 (1998) (so noting this as a possible remedy but finding it inadequate in a case where the prosecutor's notes erroneously were submitted to the jury). An

instruction should include a statement to the jury to disregard the conduct that occurred or the statements that were made. The judge may also individually or collectively determine if each juror will follow the judge's instruction.

- Discharging the juror and substituting an alternate juror. G.S. 15A-1215(a) authorizes a trial judge to replace a juror with an alternate if any juror becomes incapacitated or disqualified at any time before final submission of the case to the jury. *See also* G.S. 15A-2000(a)(2) (authorizing the substitution of an alternate juror during a capital sentencing hearing if any juror dies, becomes incapacitated or disqualified, or is discharged for any reason before the start of deliberations).

  An alternate juror may not be substituted once the jury has begun deliberations. State v. Bunning, 346 N.C. 253, 255 (1997).

  The exercise of the power to discharge a juror and substitute an alternate rests in the trial judge's sound discretion and is not reversible error absent a showing of an abuse of discretion. State v. Nelson, 298 N.C. 573, 593 (1979).
- Granting a motion for a mistrial, if the misconduct is discovered before the verdict. *See* G.S. 15A-1061 ("The judge must declare a mistrial upon the defendant's motion if there occurs during the trial an error or legal defect in the proceedings, or conduct inside or outside the courtroom, resulting in substantial and irreparable prejudice to the defendant's case."). Misconduct by a juror may result in a mistrial if it would render a fair and impartial trial impossible. Whether a motion for mistrial should be granted is a matter that rests in the trial judge's sound discretion, and this decision is not reversible absent an abuse of discretion. State v. McCarver, 341 N.C. 364, 383 (1995). *See, e.g.,* State v. Rutherford, 70 N.C. App. 674, 677 (1984) (no abuse of discretion in refusing to declare a mistrial when the judge made a full inquiry regarding a discussion between a juror and the State's witness during a lunch recess about whether they had mutual acquaintances). For information about mistrials, see Jessica Smith, Jury Deadlock and Absolute Impasse, and Robert Farb, Double Jeopardy, pp. 6-8, in this Benchbook.
- Granting a motion for a new trial for misconduct discovered after the verdict, typically made in a motion for appropriate relief. *Compare* State v. Sneeden, 274 N.C. 498, 504 (1968) (it was improper that the bailiff answered the jury's legal question, but no prejudice was shown), *with* State v. Johnson, 295 N.C. 227, 234 (1978) (bailiff's prejudicial comment to the jury that he was proud that the prosecutor had "stood up" for law enforcement officers required a new trial because the quality of the officers' investigation and their credibility were contested issues at trial). Like a motion for a mistrial, a motion for a new trial is addressed to the sound discretion of the trial judge, and unless his or her ruling is clearly erroneous or an abuse of discretion, it will not be disturbed.

E. Practice Pointers.

1. **How the Issue Arises.** The trial court may learn about potential misconduct from a variety of sources including courtroom staff, such as the bailiff, defense counsel, the prosecutor, or from the jurors themselves, typically in the form of a note.
2. **Inform and Hear from Counsel.** When an issue about juror misconduct arises, the trial court should, as a general rule, inform the parties and counsel of the issue, inform those persons how the judge plans to address the alleged misconduct, if at all, and hear from counsel on the issue.

3. **Address Issue in Open Court.** When misconduct is alleged to have occurred, the trial court typically will make inquiry of the relevant people in the courtroom, on the record, with the parties and their lawyers present. *See, e.g.*, State v. Drake, 31 N.C. App. 187, 191 (1976) (reversible error when the trial court denied a defense motion to examine a juror after hearing the uncontradicted testimony of a disinterested witness that she heard the juror during a recess tell other jurors his views of the defendant's defense). A trial court's ex parte conversation with a juror is disapproved, and it is prohibited in capital cases where a defendant has an unwaivable right to be present. State v. Harrington, 335 N.C. 105, 116-17 (1993) (ex parte conversation with a juror in a non-capital case about a juror's comments was disapproved, although it was not prejudicial to the defendant); JEFFREY B. WELTY, NORTH CAROLINA CAPITAL CASE LAW HANDBOOK 74-78 (3d. ed. 2013) (discussing a defendant's right to be present at trial, including a trial judge's communication with jurors).

As a general rule, the relevant persons should be examined one at a time and without the others present. For example, if it is alleged that a juror was seen speaking to a State's witness at lunch, the person who reported the conduct, the juror, the State's witness, and any other relevant persons should be examined individually and without the others present.

As a general rule, an inquiry should be made to determine whether other jurors were affected by the misconduct at issue. Thus, in the example above about a lunchtime conversation between a juror and a State's witness, the judge should ask the juror in question whether he or she spoke to any other jurors about the conversation or whether any other jurors may have overheard the conversation. Depending on the responses, it may be necessary to examine other potentially implicated jurors. Although an examination of other jurors is not *required* unless the trial court determines that some potentially prejudicial conduct occurred, *Harrington*, 335 N.C. at 115 (trial court did not abuse its discretion in not examining jurors other than the particular juror who was dismissed, because the dismissed juror's comments were not prejudicial to the defendant), the trial court has the discretion to engage in a broader inquiry to protect the record.

When the misconduct may be cured by an instruction, the judge should inquire whether the juror can continue to be impartial and follow the court's instructions.

4. **Re-Opening Voir Dire.** When it is determined that a juror failed to mention a pertinent fact during voir dire or was not truthful during voir dire, the trial court may need to consider re-opening voir dire. For a discussion of that issue and the parties' rights to exercise remaining challenges, see Section IV.D.2, below.
5. **Deciding on Appropriate Remedy.** When juror misconduct has been found to have occurred, the trial court must implement an appropriate remedy. Section II.D, above, discusses the options available to the trial court.
6. **Findings of Fact and Conclusions of Law.** The judge should make findings of fact and conclusions of law when a hearing is held on jury misconduct.

III. **Exposure to Extraneous Information and Impeaching the Verdict.** Juror misconduct encompasses a wide range of improper activities. Exposure to extraneous information has been the subject of many cases and is discussed here. Other types of misconduct are discussed in Section IV, below.

A. **What Constitutes Extraneous Information--Generally.** A fundamental aspect of a criminal defendant's constitutional right to confront witnesses and evidence against the defendant is that a jury's verdict must be based on evidence produced at trial, not on extrinsic information that has not been subject to the rules of evidence, supervision of the court, and other procedural safeguards of a fair trial. *See, e.g.,* Parker v. Gladden, 385 U.S. 363, 364 (1966); Turner v. Louisiana, 379 U.S. 466, 472-73 (1965). Issues of exposure to extraneous information are handled differently, depending on whether the issue is discovered before or after the verdict. Both scenarios are discussed below.

B. **Discovered Before the Verdict.** "'[W]hen there is a substantial reason to fear that the jury has become aware of improper and prejudicial matters, the trial court must question the jury as to whether such exposure has occurred and, if so, whether the exposure was prejudicial.'" State v. Campbell, 340 N.C. 612, 634 (1995) (trial court did not mishandle inquiries it made of the jury following a defendant's failed escape attempt that occurred out of jury's presence).

When information that would be inadmissible at trial reaches the jury, the trial judge must, after appropriate inquiry, weigh all the circumstances and determine in his or her discretion whether or not a defendant's right to a fair trial has been violated. State v. Jones, 50 N.C. App. 263, 268 (1981) (trial judge found that jurors had not formed an opinion as a result of reading a newspaper article revealing the defendant's prior heroin conviction and that they could make a decision based solely on the evidence presented at trial; denial of mistrial was not error); State v. Hines, 131 N.C. App. 457, 462 (1998) (the defendants' right to confrontation was violated and their motion for a mistrial should have been granted when the prosecutor's notes and typewritten list of statements made by the defendants, including hearsay statements, were mistakenly published to the jury without being admitted into evidence).

The denial of a motion for a mistrial based on alleged misconduct affecting the jury is equivalent to a finding by the trial court that prejudicial misconduct has not been shown, and the decision will be reversed only on a clear showing that the trial court abused its discretion. State v. Bonney, 329 N.C. 61, 74 (1991) (no error in denying a mistrial motion when the juror had not begun to read a book found in the jury room); State v. Degree, 114 N.C. App. 385, 392 (1994) (no error in denying a mistrial motion when a juror inadvertently saw a newspaper article reporting that the defendant, charged with rape, had AIDS; the trial court examined the juror regarding the article, who stated, "I was reading and I saw the defendant's name and I quit," and it was reasonable to conclude that the juror did not read the article and had formed no opinion that would jeopardize the defendant's right to a fair trial); State v. Salentine, 237 N.C. App. 76, 82-84 (2014) (no error in denying the defendant's mistrial motion and in not conducting an inquiry of other jurors; the trial judge's extensive examination of a juror and his credibility concerning the alleged misconduct in contacting non-jurors was sufficient to show that prejudicial misconduct had not occurred).

C. **Discovered After the Verdict.**

1. **General Rule: No Impeachment of the Verdict.** As a general rule, once a verdict is rendered, it may not be impeached—that is, a juror may not testify nor may evidence be received as to matters occurring during deliberations or calling into question the reasons on which the verdict was based. *See* State v. Cherry, 298 N.C. 86, 101 (1979) (jurors' general

knowledge of parole eligibility for first-degree murder was not grounds to set aside verdict). Consistent with the general rule, G.S. 15A-1240(a) provides that when there is an inquiry into a verdict's validity, no evidence may be received to show the effect of any statement, conduct, event, or condition on a juror's mind or concerning the mental processes by which the verdict was determined. *See* State v. Heavner, 227 N.C. App. 139, 150-51 (2013) (trial court erroneously admitted and considered in a hearing on a motion for appropriate relief a juror's testimony that his conversation with the defendant's mother did not in any way affect his deliberations in the defendant's case); State v. Lyles, 94 N.C. App. 240, 245 (1989) (the trial court did not err in a hearing on a motion for appropriate relief by excluding juror testimony about how extraneous information affected the jury's verdict); State v. Froneberger, 55 N.C. App. 148, 155-56 (1981) (testimony of defense counsel's secretary about a juror's conversation concerning "second thoughts" about the verdict was inadmissible under G.S. 15A-1240(a) in a motion to set aside the verdict). "However, harsh injustice has sometimes resulted from the view that jury verdicts are beyond challenge. Thus, as an 'accommodation between policies designed to safeguard the institution of trial by jury and policies designed to insure a just result in [an] individual case,' certain exceptions to the rule have been carved out." *Lyles*, 94 N.C. App. at 244 (1989) (a juror in the deliberation room removed a tape covering police information about the defendant in a photographic array exhibit that cast doubt on the defendant's alibi defense; the jurors' exposure to this extraneous information placed there by the police department was properly the subject of jurors' testimony in a hearing on a motion for a new trial and required a new trial because the information was prejudicial and violated the defendant's confrontation rights). Exceptions to the general rule are discussed in the sections that follow.

2. **Exceptions to the General Rule: G.S. 15A-1240(b) and (c).** G.S. 15A-1240(b) provides that G.S. 15A-1240(a) "do[es] not bar evidence concerning whether the verdict was reached by lot."

Additionally, G.S. 15A-1240(c)(1) allows impeachment of a verdict through a juror's testimony--subject to the limitations of G.S. 15A-1240(a)--when matters not in evidence came to the attention of one or more jurors under circumstances that would violate the defendant's constitutional right to confront the witnesses against the defendant. If the challenged evidence does not implicate the defendant's right to confrontation, G.S. 15A-1240(c)(1) does not apply. For example, in *State v. Rosier*, 322 N.C. 826, 832 (1988), the court ruled that the defendant's right to confrontation was not violated when the jury foreman watched a program on child abuse contrary to the trial judge's instructions, and the foreman told other jurors about a young friend of his who had been raped. The jurors' affidavits concerning these events should not have been considered by the trial court because "[p]arties do not have the right to cross examine jurors as to the arguments they make during deliberation as the foreman did in this case." *Id.* at 832.

Finally, G.S. 15A-1240(c)(2) allows a juror's testimony when it concerns bribery, intimidation, or attempted bribery or intimidation of a juror.

3. **Exception to the General Rule: Evidence Rule 606(b).** Evidence Rule 606(b), which applies in both criminal and civil cases, provides that a juror is competent to testify when the validity of a verdict is challenged, but only on the question (1) whether extraneous prejudicial information was improperly brought to the jury's attention, or (2) whether any outside influence was improperly brought to bear upon any juror.

Extraneous ~~information~~ under Rule 606(b) has been interpreted to mean information that reaches a juror without being introduced into evidence and that deals specifically "with the defendant or the case which is being tried." *Rosier*, 322 N.C. at 832 (judge's consideration of jurors' affidavits was improper when the affidavits revealed that the jury foreman watched a program on child abuse contrary to the trial judge's instructions and told jurors about a young friend of his who had been raped because that information was not "extraneous information" within the meaning of Rule 606 as it did not involve the defendant or the case being tried; also holding that other matters in the jurors' affidavits—that votes were changed because of the foreman's statements, that the foreman would not let a juror send a note to the judge, and that some of the jurors did not think the defendant was guilty—dealt with deliberations in the jury room and were inadmissible because a juror may not impeach a verdict through testimony); State v. Quesinberry, 325 N.C. 125, 132 (1989) (jurors' affidavits in a motion for appropriate relief showing that they considered the defendant's parole eligibility in a capital sentencing hearing were inadmissible under Rule 606 because they were internal influences; there were no allegations that jurors received the parole eligibility information from an outside source), *vacated on other grounds*, 494 U.S. 1022 (1990).

General information that jurors learn in their day-to-day experiences does not constitute "extraneous information." *Compare* State v. Heatwole, 344 N.C. 1, 12 (1996) (juror's communication with his professor about violent tendencies of paranoid schizophrenics was not "extraneous information" because it did not involve the defendant or the case being tried), *and Rosier*, 322 N.C. at 832 (1988) (see summary above), *with* State v. Lyles, 94 N.C. App. 240, 245 (1989) (testimony by jurors was proper under both Rule 606 and G.S. 15A-1240(c)(1) when a juror peeled paper from the bottom of an exhibit during deliberations and uncovered information that implied that the defendant had prior criminal involvement and directly contradicted the defendant's alibi witnesses; jurors' exposure to the information entitled the defendant to a new trial). *See also* 1 KENNETH S. BROUN, BRANDIS & BROUN ON NORTH CAROLINA EVIDENCE § 148, at 535-39 (7th ed. 2011) (discussing the anti-impeachment rule).

4. **Practice Pointers.** When a defendant asserts that he or she is entitled to relief under G.S. 15A-1240(c) or Rule 606(b), the judge first must determine whether the type of alleged misconduct falls within the scope of the statute or Rule 606(b) (as discussed above). If it does not, the judge may dismiss the matter summarily without a hearing. *See, e.g.,* State v. Barnes, 345 N.C. 184, 228 (1997) (the trial court did not abuse its discretion by failing to inquire of the jury concerning defense counsel's unsubstantiated assertions that: (1) the jury consulted a Bible before deliberations "[a]s there is no evidence that the alleged Bible reading was

in any way directed to the facts or governing law at issue in the case"; and (2) a juror's alleged actions in calling a minister to ask a question about the death penalty, when there was no alleged evidence that the content of any possible discussion prejudiced the defendants or that the juror gained access to improper or prejudicial matters and considered them in this case); State v. Patino, 207 N.C. App. 322, 330 (2010) (the trial court did not abuse its discretion by failing to inquire of the jury concerning alleged jury misconduct in looking up definitions of legal terms on the Internet because the definitions are not extraneous information under evidence Rule 606 and did not implicate the defendant's confrontation rights under G.S. 15A-1240).

If the alleged misconduct falls within the scope of the statute or Rule 606(b) and may be prejudicial, a hearing should be held, taking recorded testimony under oath, and with the defendant present unless the defendant waives the right to be present. But in a capital trial, a defendant has an unwaivable right to be present. *See* State v. Smith, 326 N.C. 792, 794 (1990) (error in capital case when judge spoke privately with prospective jurors); State v. Artis, 325 N.C. 278, 297 (1989) (error in a capital case when the judge spoke with a juror in chambers), *vacated on other grounds*, 494 U.S. 1023 (1990); JEFFREY B. WELTY, NORTH CAROLINA CAPITAL CASE LAW HANDBOOK 74-78 (3d. ed. 2013).

If the judge finds a violation of the defendant's constitutional confrontation rights, the error is presumed prejudicial and the burden is on the State to prove that the jury's exposure to the improper information was harmless beyond a reasonable doubt. *See* State v. Lyles, 94 N.C. App. 240, 248 (1989) (citing G.S. 15A-1443(b)).

The judge should make findings of fact and conclusions of law when a hearing is held on jury misconduct.

5. **Exception to the General Rule: Clear Statement that Juror Relied on Racial Stereotypes or Animus.** In *Pena-Rodriguez v. Colorado*, 580 U.S. ___, 137 S. Ct. 855, 869 (2017), the United States Supreme Court held that when a juror during jury deliberations makes a clear statement indicating that the juror relied on racial stereotypes or animus to convict a defendant, the Sixth Amendment requires that federal and state statutes and rules limiting impeachment of a verdict must give way to permit the trial court to consider the evidence of a juror's statement and any resulting violation of the Sixth Amendment right to a jury trial. (The Court includes within the right to a jury trial the fairness and impartiality of the jury's deliberations and resulting verdict.)

In that case, a Colorado jury convicted the defendant of harassment and unlawful sexual contact. Following the discharge of the jury, two jurors told defense counsel that during deliberations juror H.C. expressed anti-Hispanic bias toward the defendant and the defendant's alibi witness. Counsel obtained affidavits from the jurors describing a number of biased statements by H.C. The trial court acknowledged H.C.'s apparent bias but denied the defendant's motion for a new trial on the ground that Colorado Rule of Evidence 606(b) generally prohibits a juror from testifying about statements made during deliberations in a proceeding inquiring into a verdict's validity. The state appellate courts affirmed.

The United States Supreme Court reversed. It noted that the rule significantly restricting the impeachment of a jury verdict (described by the Court as the "no-impeachment rule," although there are exceptions to the rule that are discussed earlier in this section) evolved to give substantial protection to verdict finality and to assure jurors that, once their verdict has been entered, it will not later be called into question based on the comments or conclusions they expressed during deliberations. *Id.* at ___, 137 S. Ct. at 865. As the Court noted, this "case presents the question whether there is an exception to the no-impeachment rule when, after the jury is discharged, a juror comes forward with compelling evidence that another juror made clear and explicit statements indicating that racial animus was a significant motivating factor in his or her vote to convict." *Id.* at ___, 137 S. Ct. at 861. The affidavits by the two jurors described a number of biased statements made by juror H.C. Specifically, he told other jurors that he "believed the defendant was guilty because, in [his] experience as an ex-law enforcement officer, Mexican men had a bravado that caused them to believe they could do whatever they wanted with women." *Id.* at ___, 137 S. Ct. at 862. He also stated his belief that Mexican men are physically controlling of women because of their sense of entitlement, and further stated, "I think he did it because he's Mexican and Mexican men take whatever they want." *Id.* He further explained that, in his experience, "nine times out of ten Mexican men were guilty of being aggressive toward women and young girls." *Id.* And he said that he did not find petitioner's alibi witness credible because, among other things, the witness was "an illegal." *Id.* The Court noted that with respect to this last comment, the witness testified during trial that he was a legal resident of the United States.

The Court ruled that the Sixth Amendment requires an exception to the no-impeachment rule when a juror's statements indicate that racial animus was a significant motivating factor in the juror's finding of guilt. The Court elaborated on its ruling:

> Not every offhand comment indicating racial bias or hostility will justify setting aside the no-impeachment bar to allow further judicial inquiry. For the inquiry to proceed, there must be a showing that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict. To qualify, the statement must tend to show that racial animus was a significant motivating factor in the juror's vote to convict. Whether that threshold showing has been satisfied is a matter committed to the substantial discretion of the trial court in light of all the circumstances, including the content and timing of the alleged statements and the reliability of the proffered evidence.
> 580 U.S. at ___, 137 S. Ct. at 869.

Although the Court used the term "racial bias," it made clear, noting the defendant's Hispanic identity, that it recognizes "ethnic" bias within that term. It would appear that the Court also would recognize bias based on national origin (in this case, the juror's

comments referred to Mexicans) and religion (see lower court cases summarized below involving religious bias). It is also possible that the Court also would recognize sex bias, as it has done in the exercise of peremptory challenges in jury selection. *See* Robert L. Farb, Jury Selection, pp. 20-28, in this Benchbook.

Because the issue was not presented, the Court declined to address what procedures a trial court must follow when confronted with a motion for a new trial based on juror testimony of racial bias. It likewise declined to decide the appropriate standard for determining when evidence of racial bias is sufficient to require that the verdict be set aside and a new trial be granted.

In the absence of guidance from the Court or North Carolina appellate cases, some suggestions for a trial court in dealing with this issue are:

- determine if the allegation of a juror's racial or ethnic bias is sufficiently substantial to justify an evidentiary hearing
- question under oath the person reporting the conduct, to include the context of the remarks (permit counsel to ask questions)
- question under oath any person likely to have been a witness to the alleged conduct (permit counsel to ask questions)
- question under oath the juror alleged to have made the remarks (permit counsel to ask questions)
- question each person separately (that is, not in the presence of others)
- determine if a juror was racially or ethnically biased
- make findings of fact and conclusions of law to support the ruling

For cases in other jurisdictions that had recognized juror bias before *Pena-Rodriguez* and that may be useful until North Carolina's appellate courts have addressed bias issues, see:

State v. Santiago, 715 A.2d 1, 14 (Conn. 1998) (setting the standard for conducting the inquiry).

State v. Phillips, 927 A.2d 931 (Conn. App. Ct. 2007) (finding of racial prejudice automatically requires a new trial).

Spencer v. State, 398 S.E.2d 179, 184-85 (Ga. 1990) (a juror's affidavit showed only that two of the twelve jurors possessed some racial prejudice and did not establish that racial prejudice caused those two jurors to vote to convict defendant and impose the death penalty).

State v. Jackson, 912 P.2d 71, 80-81 (Haw. 1996) (jurors' comments concerning race and appearance of defendant's wife were not substantially prejudicial to deprive defendant of

right to fair trial by impartial jury, because comments were made after agreement on verdict had been reached).

Commonwealth v. Laguer, 571 N.E.2d 371, 375 (Mass. 1991) (if a juror's affidavit is found on remand to be essentially true that a juror or jurors were ethnically biased, the defendant will be entitled to a new trial).

Commonwealth v. McCowen, 939 N.E.2d 735, 761 (Mass. 2010) (setting out the procedure for the trial court to follow in deciding allegations of a juror's racial bias, including parties' burdens of proof).

Flesher v. Pepose Vision Inst., P.C., 304 S.W.3d 81, 89 (Mo. 2010) (the trial court abused its discretion in failing to hold an evidentiary hearing to determine whether the alleged juror misconduct occurred when the juror allegedly made anti-Semitic comments during deliberations).

State v. Hidanovic, 747 N.W.2d 463, 467 (N.D. 2008) (the trial court did not abuse its discretion in denying the defendant's motion for a new trial on the ground of juror misconduct consisting of alleged statement expressing bias against Bosnians).

State v. Brown, 62 A.3d 1099, 1108 (R.I. 2013) (allegations of a juror's racial bias did not warrant an evidentiary hearing).

State v. Hunter, 463 S.E.2d 314, 316 (S.C. 1995) (a juror's allegations about another juror's use of a racial epithet did not demonstrate racial prejudice toward the defendant).

After Hour Welding, Inc. v. Laneil Management Co., 324 N.W.2d 686, 689 (Wis. 1982) (remanding to the trial court to conduct a hearing in civil case concerning jurors' anti-Semitic comments as alleged in a juror's affidavit).

United States v. Villar, 586 F.3d 76, 84 (1st Cir. 2009) (district court erred when it concluded that it had no discretion to hold an inquiry into possible ethnic bias in jury deliberations).

D. Selected Examples of Extraneous Information.

1. Dictionaries & Similar Resources. Dictionary definitions consulted by jurors are not considered extraneous information under evidence Rule 606(b), and the consultation does not violate a defendant's constitutional right to confrontation. In *Lindsey v. Boddie-Noell Enterprises, Inc.*, 355 N.C. 487 (2002), the supreme court reversed per curiam the decision of the court of appeals, 147 N.C. App. 166 (2001), and adopted the reasoning of the dissenting opinion. The dissenting opinion stated that the dictionary definitions at issue were not "extraneous information" within the meaning of Rule of Evidence 606(b) because definitions of the words

"willful" and "wanton" did not specifically concern the defendant or the evidence presented in the case. 147 N.C. App. at 179. The definitions were simply matters of common knowledge that jurors were supposed to know. The dissenting opinion also stated that even if the dictionary definitions were "extraneous information" within the meaning of Rule 606(b), there was no actual prejudice to the defendant because the trial judge sufficiently instructed the jury about those definitions. *Id.* at 180. *See also* State v. Patino, 207 N.C. App. 322, 330 (2010) (definitions of legal terms that jurors consulted on the Internet were not extraneous information under Rule 606 and did not implicate the defendant's constitutional right to confront witnesses against him); *State v. McLain*, 10 N.C. App. 146, 148 (1970) (the court stated that it was improper for the jury to obtain and read a dictionary definition of one of the offenses, but the trial judge properly instructed the jury to disregard the dictionary definition and the defendant did not show that he was prejudiced).

2. **Bibles.** When a jury consults a Bible during its deliberations, the issues are whether a Bible is extraneous information under Rule 606(b) and whether the consultation violated a defendant's constitutional rights. These questions have not been squarely decided by North Carolina appellate courts. *But see* State v. Barnes, 345 N.C. 184, 228 (1997) (finding no abuse of discretion in the trial judge's failure to inquire of the jury concerning defense counsel's unsubstantiated assertion that the jury consulted a Bible before deliberations "[a]s there is no evidence that the alleged Bible reading was in any way directed to the facts or governing law at issue in the case").

3. **News Media Reports.** The trial court must weigh all the circumstances in determining in its sound judicial discretion whether the defendant's right to a fair trial has been violated when inadmissible information or evidence reaches the jury through news media reports. State v. Jones, 50 N.C. App. 263, 268 (1981) (although a newspaper article included the defendant's inadmissible prior heroin conviction, other circumstances found by the trial court justified its conclusion that the jurors who had read the article had not formed an opinion and they could make a decision solely on the evidence presented at trial).

When there is a substantial reason to believe that the jury has become aware of improper and prejudicial matters such as media reports, the trial court must question the jury concerning whether such exposure has occurred and, if so, whether the exposure was prejudicial. State v. Barts, 316 N.C. 666, 683 (1986) (no abuse of discretion in denying a mistrial motion when the defendant made no showing that the jury had been exposed to a highly prejudicial newspaper article about the defendant, and the trial court's inquiry of the jury as a whole revealed no violation of the judge's instruction to avoid exposure to the news media; specific questioning of each juror was not required in this case); State v. McVay, 279 N.C. 428, 433 (1971) (holding that while an inquiry of the jury was not required because there was no evidence that the jury actually was exposed to the newspaper article, the better practice is to inquire of the jurors to see if they had been exposed or influenced by it).

If a jury has been exposed to media coverage, the trial judge properly may deny a mistrial motion if the coverage was merely an objective account of what has occurred at trial and was not prejudicial to

the defendant. *See* State v. Woods, 293 N.C. 58, 65 (1977). However, when the jurors have been exposed to prejudicial matters and the error is not cured by a subsequent instruction by the court, a new trial is warranted. *See* State v. Reid, 53 N.C. App. 130, 131 (1981) (newspaper article read by four jurors in a homicide trial quoted the trial judge's comment (made outside the jury's presence), in denying the motion to dismiss the charge, "too many shots . . . motion denied;" when excessive force was a crucial issue, and the judge's statement irreparably prejudiced defendant).

When there is evidence that jurors read a newspaper or other media account of a trial, but the trial judge decides not to declare a mistrial, a jury instruction could include: "Your verdict must be based entirely on the evidence introduced at trial and you are not to be influenced by anything you may have read in a newspaper or by any other outside influence." This instruction is a substantially similar to that given in *State v. Woods*, cited above.

IV. Other Common Types of Misconduct.

A. Third Party Communication. It is misconduct for a juror during the trial to discuss the matter or to receive any information related to the case except in open court and in the manner provided by law. Thus, any communication between jurors and third parties including victims, defendants, counsel, courtroom personnel, witnesses, relatives, friends, etc., is prohibited except, for example, a bailiff's routine communications to the jurors about lunch breaks, travel arrangements for a jury view, etc.

If allegedly improper contact with a juror is discovered, or if a prejudicial statement is inadvertently overheard by a juror, the trial judge must determine whether such contact resulted in substantial and irreparable prejudice to the defendant. It is within the trial judge's discretion concerning what inquiry to make. State v. Burke, 343 N.C. 129, 149 (1996) (the trial judge did not err in not conducting an inquiry when defense counsel declined the judge's offer to question a juror who overheard a spectator's prejudicial comment about the defendant, and the trial judge took measures to insulate the jurors from future contacts); State v. Jacobs, 172 N.C. App. 220, 230 (2005) (the trial judge did not err in not conducting an inquiry when there was no indication that alleged inappropriate communication between the prosecutor and the court clerk in the vicinity of a juror had any influence on the juror or the jury's verdict).

If outside contacts are improperly brought to bear against a juror and are intended to influence the verdict and the contacts prejudice the defendant, the trial court abuses its discretion in denying a motion for a mistrial or new trial. *See* State v. Lewis, 188 N.C. App. 308 (2008) (granting the defendant a new trial when the lead detective made comments during a break to a deputy sheriff serving as a juror that were intended to influence the verdict, namely that the defendant had failed a polygraph test). "'[B]rief, public, and nonprejudicial conversations between jurors and parties or their relatives will not vitiate the verdict or require that the jury be discharged . . . .'" O'Berry v. Perry, 266 N.C. 77, 81 (1965) (a juror walked with the plaintiff and his witness from the courthouse to restaurant for lunch, but no conversation of case occurred; no abuse of discretion in denying motion to set aside verdict; this ruling would be equally applicable to criminal cases); State v. Barnes, 345 N.C. 184, 228 (1997) (the trial court did not abuse its discretion by failing to inquire of the jury concerning defense counsel's

unsubstantiated assertions that a juror's alleged actions in calling a minister to ask a question about the death penalty, when there was no alleged evidence that the content of any possible discussion prejudiced the defendants or that the juror gained access to improper or prejudicial matters and considered them in this case).

B. **Impaired Jurors.** "The law requires that jurors, while in the discharge of their duties, shall be temperate, and in such condition of mind as to enable them to discharge those duties honestly, intelligently, and free from the influence and dominion of" impairing substances. State v. Jenkins, 116 N.C. 972, 974 (1895). If a juror, while hearing the evidence, argument of counsel, or charge, or while deliberating as to verdict, is so incapacitated by reason of intoxicants or otherwise as to be physically or mentally incapable of functioning as a competent, qualified juror, the trial judge may order a mistrial (unless the impaired juror can be discharged and replaced with an alternate juror at any time before the jury has begun deliberations). State v. Tyson, 138 N.C. 627 (1905) (mistrial was proper when a juror was found to be intoxicated and unfit for duty during the trial). However, the use of impairing substances outside the courtroom does not justify granting a mistrial (or replacement of the impaired juror by an alternate juror) unless it is found that the juror is unfit to serve while present in court. *See* State v. Crocker, 239 N.C. 446, 451 (1954) (although several jurors became intoxicated during an overnight recess, a mistrial over the defendant's objection was not warranted when there was no evidence or finding that any of those jurors were impaired when the court reconvened the following morning).

Under G.S. 15A-1215, if a juror becomes incapacitated for any reason, an alternate may be substituted unless the jury has begun its deliberations.

C. **Sleeping or Otherwise Inattentive Juror.** A defendant in superior court has the state constitutional right to be convicted by a jury of twelve unless the defendant waives the right to a jury trial in a non-capital case. N.C. CONST. art. I, § 24; G.S. 15A-1201; State v. Hudson, 280 N.C. 74, 79 (1971). If a juror is sleeping during the trial or otherwise inattentive, the defendant can move to substitute the juror or for a mistrial. The defendant must show by competent evidence that the juror was inattentive or sleeping and the defendant was prejudiced thereby. State v. Lovin, 339 N.C. 695, 715 (1995) (no abuse of discretion in the denial of the defendant's motion to substitute an occasionally sleeping juror because the evidence was sufficient to support the conclusion that the juror, although inattentive to parts of the case, could nevertheless perform his duties); State v. Williams, 33 N.C. App. 397, 398 (1977) (no error in the trial judge's failure to grant a mistrial ex mero motu based on a juror falling asleep during cross-examination of a witness because the defendant did not show any prejudice at trial or on appeal and raised the mistrial ground for the first time on appeal). *See also* State v. Engle, 5 N.C. App. 101, 105 (1969) (no competent evidence was presented at trial that a juror was sleeping, and the court of appeals would not consider affidavits from courtroom witnesses about that juror when the affidavits were presented for the first time on appeal).

D. **Juror's Failure to Disclose Information During Voir Dire.**

1. **Discovery of Juror's Non-Disclosure Before Jury is Impaneled.** If it is discovered that a juror made an incorrect statement during voir dire before the jury is impaneled:

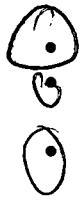
- the judge may examine, or permit counsel to examine, the juror to determine whether there is a basis for a challenge for cause;
- if the judge determines there is a basis for a challenge for cause, the judge must excuse the juror or sustain any challenge for cause that has been made;
- if the judge determines there is no basis for a challenge for cause, any party who has not exhausted his or her peremptory challenges may challenge the juror.

G.S. 15A-1214(g).

2. **Discovery of Juror's Non-Disclosure After Jury is Impaneled.** If the juror's failure to disclose is discovered after the jury is impaneled but before the jury begins its deliberations, the trial court may reopen the examination of the juror and its decision on reopening is with its sound discretion. State v. Holden, 346 N.C. 404, 428 (1997). (Some judges believe that they may question a juror about alleged misconduct without reopening the examination of the juror by the prosecutor and defendant, but it is unclear whether that view would be upheld by an appellate court.) If the trial court reopens the examination of the juror, then both the prosecutor and defendant have the absolute right to exercise any remaining peremptory challenges to excuse the juror (assuming, of course, that the trial court does not excuse the juror for cause). *Id.* at 428 (trial court did not err in allowing prosecutor to exercise a remaining peremptory challenge after all the evidence had been presented, but before the jury had begun deliberations); State v. Thomas, 230 N.C. App. 127, 128 (2013) (the trial court committed reversible error by reopening examination of a juror after impanelment but denying the defendant's motion to exercise remaining peremptory challenge); State v. Hammonds, 218 N.C. App. 158, 163 (similar ruling). If the juror is removed for cause or by a peremptory challenge, then the trial court must replace that juror with an alternate juror. If there is not an available alternate juror, then grounds for a mistrial may exist.

   If the failure to disclose is discovered after the jury has begun deliberations but before it reaches a verdict, then grounds for a mistrial may exist.

3. **Discovery of Juror's Non-Disclosure After Verdict.** If a juror fails to disclose or misrepresents potentially important information during jury selection, the party moving for a new trial (typically by a motion for appropriate relief) must show:



- the juror concealed material information during voir dire;
- the moving party exercised due diligence during voir dire to uncover the information; and
- the juror demonstrated actual bias or bias implied as a matter of law that prejudiced the moving party.

State v. Maske, 358 N.C. 40, 48 (2004) (a juror's inadvertent failure to disclose four-decades-old information that she had forgotten was not concealment and she did not demonstrate bias). If the party meets this

burden, the trial judge must grant the motion. For a discussion of the meaning of bias implied as a matter of law, see *State v. Buckom*, 126 N.C. App. 368, 382 (1997) (finding no implied bias by a juror based on limited association in the same organization as the State's witness).

E. **Unauthorized Jury View of Crime Scene.** A jury view is authorized by G.S. 15A-1229. An unauthorized view of a crime scene by jurors is considered misconduct. State v. Perry, 121 N.C. 533 (1897). However, the fact that a juror makes an unauthorized visit to the place of the crime is not grounds for a new trial unless it appears that the defendant was prejudiced. State v. Boggan, 133 N.C. 761 (1903) (no undue influence shown when the jurors passed through a crime scene during their stay at a hotel pending the trial); State v. Hawkins, 59 N.C. App. 190, 192 (1982) (although jurors used information about the lighting at the crime scene provided by a juror who visited the scene, there was no constitutional violation because there was testimony by an officer about the lighting conditions); State v. Smith, 13 N.C. App. 583, 585 (1972) (any possible prejudice from an unauthorized viewing by one juror was removed by the trial court's having the entire jury view the scene). Whether to grant relief for a juror's unauthorized view is in the trial judge's sound discretion. State v. Farris, 13 N.C. App. 143, 145 (1971).

For a discussion of all aspects of a jury view, see Jessica Smith, Jury View in this Benchbook.

F. **Presence of Unauthorized Person in Jury Room during Deliberations.**

1. **Alternate Jurors.** The presence of an alternate juror in the jury room during deliberations violates a statutory mandate and the defendant's state constitutional right to a jury trial as contemplated by article I, section 24 of the N.C. Constitution. *See* G.S. 15A-1215(a) (alternate jurors must be discharged on final submission of a case to the jury); State v. Bindyke, 288 N.C. 608, 627 (1975) (new trial granted based on constitutional violation when an alternate juror was present in the jury room for three to four minutes during deliberations).

The presence of an alternate juror in the jury room at any time after deliberations begin is reversible error per se. *Bindyke*, 288 N.C. at 627. However, if the alternate's presence is inadvertent and momentary, and occurs under circumstances from which it can clearly be determined that the jury has not begun deliberating, then the alternate's presence will not void the trial. If the trial judge believes it is probable that deliberations had not yet begun when the alternate was in the jury room, the trial judge may recall the jury and the alternate and make a limited inquiry concerning whether there has been any discussion of the case or comment as to what the verdict should be. If the answer is yes, the judge must declare a mistrial. If the answer is no, the alternate must be excused and the jury returns to deliberate. *Id.* at 628; State v. Jernigan, 118 N.C. App. 240, 245 (1995) (no mistrial warranted when the alternate was present in the jury room during the selection of a foreman because this did not amount to deliberation; the judge had instructed the jury to select a foreperson and not to deliberate while the judge talked with the lawyers); State v. Locklear, 180 N.C. App. 115, 120 (2006) (no prejudicial error occurred when an alternate spoke with jurors after deliberations had begun because the conversations did not take place in the deliberation

#6

From: **Chris Mumma** cmumma@nccai.org
Subject: Paula Locklear Claim
Date: November 29, 2018 at 12:17 PM
To: Scott Holmes scott.holmes@nccu.edu, Ian Mance ianmance@southerncoalition.org
Cc: Cheryl Sullivan csullivan@nccai.org

Dear Scott and Ian,

I am writing to let you know that we will be dropping the Paula Locklear juror claim. Daniel has focused on this issue for some time now as he was given the impression that you thought this was a winning claim for him. The fact that this was being presented as the strongest issue resulted in further research by my office and my interview of Paula Locklear (with Ian's knowledge) to ensure she was a credible and reliable witness.

Because Daniel has had the impression that this was a strong issue until I became involved, ~~he has decided~~ there are only two options - either you lied to him or I sabotaged the issue. I have explained to him that there is a third option, which is more accurate, that the facts have changed independent of any sabotage. In considering the claim, we have considered the law, the facts, and the witness.

Law - there is no favorable North Carolina precedent on the issue. If we rely on other state precedent, part of the analysis is the prejudicial impact. Because Locklear's conclusion that Jordan was alive and walked down the river bank added to her finding that Demery was not credible, if she had gone to the crime scene during the trial, the impact to Daniel would actually have been favorable.

Facts - Locklear says that the a number of the jurors were not sure who pulled the trigger (this is supported by juror interviews in the paper and the verdict). She also said several jurors determined Jordan was alive when he was in the water based on the way he was on the branch. Therefore, Locklear's conclusion was reached by others based on just the pictures. Finally, and most importantly, during Ian's recorded interview, Locklear never says she went to the bridge during the trial. She says she went to the bridge on the Saturday after the jury asked to look at the pictures during deliberations. The jury reached the guilty verdict on a Thursday and the sentencing verdict on a Tuesday. Whether she went after the guilty verdict, but before sentencing, or after sentencing, the timing of when she went decreases the potential prejudicial value substantially.

Witness - Locklear would be a hostile witness. I do not believe her, but she believes the affidavit I showed her is not the one she signed. Putting her on the stand and having her say that she was somehow pressured into signing an affidavit, or the affidavit was falsified, in addition to denying that she went to the bridge during the trail, would result in a losing issue. Cross-examination of her with the affidavit, Duke students, and Ian would not change the outcome and would hurt the defense image.

Please let me know if you'd like to talk about this further. We don't need any additional misunderstandings between us.

Thanks

Chris

EXPLANATORY

THE FOLLOWING DOCUMENT(S) MAY HAVE POOR IMAGES DUE TO POOR PHOTOGRAPHIC QUALITY OF PAPER.

The Fayetteville Observer

New law forces judge off Jordan murder retrial case

By Paul Woolverton
Staff writer
@FO_Woolverton

Posted Feb 3, 2018 at 2:00 PM
Updated Feb 3, 2018 at 2:52 PM

Robeson County murder defendant Daniel Andre Green's effort to win a new trial for the slaying of the father of retired NBA star Michael Jordan has been postponed at least six months by a new state law.

Green's case is one of at least two post-conviction murder cases postponed by the law. The other is that of Mark Carver from Gaston County, who is serving a life sentence for the death of a college student in 2008.

The new law has held up justice, said Green and Carver's lawyer, Chris Mumma. Mumma is the executive director of the North Carolina Center on Actual Innocence. "From our perspective, these are credible innocence claims and so their freedom is being delayed," she said.

The new law was enacted in June. Its directives led the North Carolina Administrative Office of the Courts to remove the judges who had been presiding over the Jordan and college student murder cases and assign new judges, the agency said.

The law applies to a group of judges called "emergency judges" — judges who come out of retirement as needed by the court system to fill in when full-time judges are unavailable. Prior to the new law, emergency judges often filled in when full-time judges were sick or on vacation, or tied up with long trials. They also could be called upon if the full-time judges had conflicts of interest with parties to a case.

Prior to the new law, emergency judges sometimes were assigned to time-consuming, complex cases such as the James Jordan murder case. One handled Cumberland County's long-running Racial Justice Act litigation in recent years.

The new law no longer allows the emergency judges to take those special assignments unless the case is a complex matter involving businesses.

The new law says emergency judges may be assigned only if a full-time judge is unavailable due to death, disability, military service, retirement or removal from office; or if there is a court case-management emergency.

Neither the Jordan case nor the college student case fit those criteria, a spokeswoman for the Administrative Office of the Courts said.

Emergency judges are paid $400 per day and are compensated for their travel expenses. The budget for them this fiscal year is $422,000, down $231,671 from $653,671 the previous fiscal year, the Administrative Office of the Courts said. Seven months into the fiscal year, the emergency judges program is running at least $148,000 over budget, according to figures the courts office provided.

Retired Superior Court Judge Michael Beale of Richmond County said he had worked on the Jordan murder case for more than a year before he was removed in September. Beale estimated he put in 300 hours of work. He said he spent the time reviewing thousands of pages of records and court filings and doing legal research. He conducted several hearings in Robeson County Superior Court.

"I'm sure I didn't even bill the state as many hours as I had in it," Beale said.

Michael Jordan's father, James Jordan, was shot to death in Robeson County in 1993. Two men, Green and Larry Demery, were convicted of the crime and are in prison.

Green asserts he is factually innocent — railroaded in an alleged effort by

law enforcement to protect the sheriff's son (who later was convicted for dealing drugs) from being investigated. He has asked for a new trial.

Beale had planned to hold hearings this past fall to consider Green's evidence, he said. If more hearings were warranted, Beale anticipated they would have come this spring and summer.

Instead, late last year Beale gave the Jordan murder case files to the new judge assigned to the case, Senior Resident Superior Court Judge Winston Gilchrist of Harnett County.

Gilchrist has not yet held hearings for the Jordan case. None are expected before March, the trial court coordinator for Robeson County Superior Court said.

As a retired judge, Beale said, he had plenty of time to review the records and the flexibility to schedule hearings at times that work well for the lawyers. Gilchrist is taking on the case on top of his other duties, Beale said.

Even though the new law does not allow Beale to continue working on the Jordan murder case, he remains on the roster of emergency judges.

In Gaston County west of Charlotte, Mark Carver was convicted in 2011 of first-degree murder for the death in 2008 of 20-year-old Ira Yarmolenko. She had been strangled, a Court of Appeals ruling says, her body found in her car on the bank of the Catawba River.

Carver had been fishing nearby. His DNA was found on the exterior of the car. Carver contends he never went near the car or touched it.

According to news accounts, Carver's defense team questions whether the DNA testing was done to sufficient scientific standards. And if the DNA really is Carver's DNA, the defense contends, it got there because a police officer touched the car after shaking Carver's hand at the river.

Emergency Superior Court Judge David Lee had been handling the case. He was removed in August, Carver and Green's lawyer Mumma said, and

replaced with Union County Senior Resident Superior Court Judge Christopher Bragg. A new hearing date has not been set, Mumma said.

In Fayetteville, the new law forced Cumberland County court officials to postpone two trials last year because emergency judges couldn't be assigned, Trial Court Administrator Ellen Hancox said.

Hancox could not recall the details of the cases, but she said she did not think the trials were long delayed.

Cumberland County District Court also has had to make adjustments with the new law, but it has not had to cancel court, said Chief District Court Judge Robert Stiehl.

"That would be an extreme measure leading to great inconvenience to the public," he said.

Prior to the law change, Stiehl said, he requested emergency judges to fill in when Cumberland County judges were on vacation or sick or had a conflict of interest with the parties. The new law no longer allows this.

Now, Stiehl said, he has Cumberland County's judges take on the extra caseload while their colleagues are absent. If there is a conflict of interest, he said, he arranges to temporarily swap a Cumberland County judge with one in a neighboring county.

The lawyers and courthouse staff "have handled and responded to these adjustments very well," Stiehl said.

It's not clear why the legislature curtailed the use of emergency judges.

Republican Sen. Shirley B. Randleman of Wilkesboro filed a bill last year to eliminate all emergency judges. Randleman is a retired clerk of Superior Court.

Her bill did not pass. Instead, the legislation that restricted the emergency judges' assignments appeared in the middle of the 438-page state budget bill that was passed in June.

Randleman responded to a request for comment on Wednesday with a message from her office that the legislature expects a report about the emergency judges in March from the Administrative Office of the Courts.

Staff writer Paul Woolverton can be reached at pwoolverton@fayobserver.com or 486-3512.

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STATE OF NORTH CAROLINA COUNTY OF ROBESON	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION Court File Numbers: 93 CRS 15291-15293
STATE OF NORTH CAROLINA v. DANIEL ANDRE GREEN	RESPONSE TO STATE'S MOTION TO STRIKE JUROR AFFIDAVIT

NOW COMES DEFENDANT, by and through the undersigned counsel, who respectfully files this response to the State's "Motion to Strike Inadmissible Evidence: Affidavit of Juror Paula Locklear," filed May 19, 2016. Mr. Green incorporates by reference previous responses to the State's previous motions to strike affidavits. Mr. Green makes the following arguments in addition and asks the Court to deny the motion to strike the affidavit of the Jury foreperson, Paula Locklear for the following reasons:

1. The State contends that the Affidavit of Jury foreperson Paula Locklear should be stricken because Paula Locklear's testimony as foreperson would not be admissible at the hearing. The State concedes that her statement that "she made an unauthorized view of the location where the victim's body was recovered is admissible as an alleged exposure to extraneous information." (State's Motion, ¶ 4)
2. The State contends, however, that the Court should not consider the effect the information had on her "deliberative process." (State's Motion, ¶4).
3. Rule of Evidence 606(b) provides:
    a. (b) Inquiry into validity of verdict or indictment.--Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring ***during the course of the jury's deliberations*** or to the effect

of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith, ***except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror***. N.C. Gen. Stat. Ann. Sec. 8C-1, Rule 606(b).

4. This rule of evidence has been interpreted by the case of *State v. Lyles*, 94 N.C. App. 240, 249, 380 S.E.2d 390, 396 (1989) (reversing a conviction and requiring a new trial where jurors interpreted extraneous information not admitted at trial in the form of a label on a photograph of the defendant in a way that contradicted the defendant's alibi witness).

5. In *Lyles*, the jurors requested to view the State's exhibit of the photographic lineup used by the State's main witness to identify the Defendant. Id. at 243, 380 S.E.2d at 392. The jurors peeled away a label on the photograph of the Defendant revealing a label which read, "Police Department, Wilson, North Carolina—12291, 12–07–81." Id. at 243, 380 S.E.2d at 392. The Jurors interpreted this label to mean that "defendant had been in the area in December 1981, a fact which, if true, contradicted the testimony of defendant's alibi witnesses that he lived in another state from 1980 to 1984 and had not returned to North Carolina during that time." Id.

6. The Court concluded this constituted extraneous information that violated the Defendant's constitutional right to confront witnesses. The Court noted, "[i]n this case, it is undisputed that information about the defendant, which had not been admitted in evidence, came to the attention of the jury and that this evidence directly

contradicted defendant's alibi witnesses. Because this exposure occurred during the jury's deliberations, defendant had no opportunity to challenge the evidence by cross-examination or to minimize its impact in his closing argument or through a curative instruction by the trial judge." Id. at 247, 380 S.E.2d at 395 ("Under these circumstances, the jury's exposure to the extraneous information clearly abridged defendant's constitutional right of confrontation").

7. Similarly in the present case, Jury Foreperson Paula Locklear visited the location where the body was found. *See* Exhibit 103, ¶5. During that visit she developed information that Mr. Jordan died in South Carolina where the body was found. Id.

8. Mr. Green's defense never contradicted that Mr. Green assisted Demery in the disposal of the body in South Carolina. This new information developed by Juror Locklear contradicted Mr. Green's defense that Jordan was already dead when he got involved as an accessory after the fact. This extraneous information would have allowed a reasonable juror to conclude that Mr. Green admitted to being present at the time Jordan was killed, and would have supported a verdict of guilty felony murder.

9. Therefore, here, as in *Lyles,* Mr. Green's Constitutional right to confront the evidence against him was violated.

10. In *Lyles*, the Court noted that the burden shifted to the State to show the Constitutional error was harmless. *See Lyles*, 94 N.C. App. at 249, 380 S.E.2d at 396. "An error of constitutional magnitude will be held to be harmless beyond a reasonable doubt only when "the court can declare a belief ... that there is no reasonable possibility that the violation might have contributed to the conviction." Id. (quoting State v. Lane, 301 N.C. 382, 387, 271 S.E.2d 273, 277 (1980)).

11. The *Lyles* Court noted that, "In assessing the impact of the extraneous evidence on the mind of the hypothetical "average juror," the court should consider: (1) the nature of the extrinsic information and the circumstances under which it was brought to the jury's attention; (2) the nature of the State's case; (3) the defense presented at trial; and (4) the connection between the extraneous information and a material issue in the case." Id.

12. Applying these factors to the facts in *Lyles*, the Court concluded that there was more than a reasonable possibility that an average juror could have been affected by the way jurors interpreted the information revealed on the photograph contradicted the alibi defense. Id.

13. Similarly in the present case, the State cannot show that the extraneous unconstitutional information that Jordan was still alive and killed in South Carolina was harmless beyond a reasonable doubt. This extraneous information contradicted the Defense theory that Jordan died in North Carolina before Demery involved Mr. Green. This extraneous information would have supported a verdict of guilty for felony murder, as Mr. Green admitted to being present in South Carolina when the body was disposed.

14. For these reasons, the Court should order a hearing allowing Mrs. Locklear to testify as to the information she received as a result of her extraneous view of the scene in South Carolina. The Court should deny the State's motion to strike her affidavit.

WHEREFORE, counsel for defendant respectfully requests this Court deny the State's motions to strike the affidavit of Juror Paula Locklear.

Respectfully submitted this date June __, 2016.

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CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that copies of the foregoing in the above entitled action were served by Email and United States Mail, placing it in a depository for that purpose, postage prepaid and addressed as follows:

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I asked Ian and Ivy to write a counter memo and they wouldn't. Rule ~~#0~~ #1 in legal research.

To: Ian Mance
From: Ivy Johnson
Re: The effect of extraneous evidence on a jury verdict

QUESTION PRESENTED

When does a jury/juror's exposure to extraneous information warrant a new trial?

[redacted] This memo does not even mention Evidence Rule 606(b) and NCGS 15A-1240(a), which, unlike most of the law cited in the memo, are binding on NC courts, and which severely limit a juror's impeachment of the verdict.

BRIEF ANSWER

The effect of the jury being exposed to extraneous evidence largely depends on the type of exposure, the type of evidence, and whether the evidence goes towards a disputed material fact. When the extraneous evidence bears on a material fact that was in dispute at trial, courts will, more often than not, overturn the verdict and grant a new trial. The courts are divided on how exactly to treat exposure to extraneous evidence, and much of the case law has been cobbled together from various state and federal courts of appeal. In North Carolina, the exact fact pattern present here has not been litigated, but there is case law to suggest North Carolina courts would grant a new trial if a juror embarks on an extrajudicial field trip to the scene of the crime in question.

DISCUSSION

Extraneous evidence has been interpreted as information that reaches a juror without having first been introduced into evidence and specifically deals "with the defendant or the case which is being tried." *State v. Rossier*, 322 N.C. 826, 832 (1988); *see also*, *United States v. Holk*, 398 F. Supp. 2d 338, 365 (E.D. Pa. 2005) ("'Extraneous information' has been interpreted to cover, among other things, consideration by the jury of facts and evidence not admitted in court."). The most common forms of extraneous information are communications between an attorney and a juror outside of court and exposure to media reports on the case at hand. *See, e.g., Mattox v. United States*, 146 U.S. 140, 150-51 (1892); *Irvin v. Dowd*, 366 U.S. 717, 725 (1961); *United States v. Cheek*, 94 F.3d 136, 141 (4th Cir. 1996). However, there are numerous other forms extraneous

In assessing the impact of the extraneous evidence on the mind of the hypothetical "average juror," the court should consider (1) nature of ext. info, circumstances under which it was bought to jury's attention (2) nature of state case (3) defense presented at trial (4) connection between the extraneous info and a material issue in the case.

Joshua
Sarah Elizabeth parker, ORA Cerner
Chanda Loyd

Prejudice? Extraneous info directly contradicts witness testimony about water level and ease of access due to different terrain between time body found and the time jury conducts investigation (summer terrain v. winter terrain)

evidence may take, such as unauthorized visits to crime scenes. A fundamental aspect to a defendant's right to confront witnesses and the evidence presented against them is that the verdict must be based on the evidence properly introduced at trial and not on extraneous information that has not been properly vetted by the procedural safeguards of the rules of evidence. *See, e.g., Parker v. Gladden*, 385 U.S. (1966); *Turner v. Louisiana*, 379 U.S. 466 (1865). Though courts are split on how they treat a jury's exposure to extraneous evidence, there are numerous courts of appeal that apply a presumption of prejudice when a jury is exposed to evidence not introduced at trial. *See, e.g., Mayhue v. St. Francis Hosp. of Wichita, Inc.*, 969 F.2d 919, 922 (10th Cir. 1992); *United States v. Perkins*, 748 F.2d 1519, 1533 (11th Cir. 1984); *United States v. Hillard*, 701 F.2d 1052, 1064 (2d Cir. 1983); *United States v. Bassler*, 651 F.2d 600, 603 (8th Cir. 1982). This presumption derives from the Supreme Court's opinion in *Remmer v. United States*, 347 U.S. 227 (1954). Once prejudice has been shown, the burden shifts to the State to show, beyond a reasonable doubt, that exposure to the extraneous evidence was harmless to the defendant. *See State v. Lyles*, 94 N.C. App. 240 (1989).

[redacted]: None of the cited jurisdictions are binding on NC

[redacted]: This makes clear that NC is not a jurisdiction where prejudice is presumed; it must first be shown by the defendant.

Page 248 of Lyles, contrary to this statement

Depending on the severity of the exposure to such extraneous information, a common remedy is to grant a new trial. *See State v. Hines*, 131 N.C. App. 457 (1998) (After jurors were accidentally given a copy of the prosecutor's notes and a typed list of all statements made by the defendants, including hearsay, the verdict was overturned and a new trial was granted.). To get a new trial based on exposure to extraneous information, a defendant must first pass a two-part test: first, the defendant must show the jury, or a single juror, was exposed to extraneous evidence, and second, that the defendant likely suffered "substantial prejudice" due to the jury's exposure to this evidence. *United States v. Holk*, 398 F. Supp. 2d 338, 364-65 (E.D. Pa. 2005). Typically, in order for the extraneous information to have a substantially prejudicial effect on the defendant so as to

Violation of any right guaranteed by U.S. Const. is presumed prejudicial, and burden is on State to show that it was harmless beyond reasonable doubt to defeat D's motion for new trial G.S. §15A-1443(b)

→ p 248: once it is established that extraneous material reached jury, a presumption of prejudice arises which may be overcome only by a showing that the error was harmless beyond a reasonable doubt

warrant a new trial, it must relate to the substance of the case at hand. *See United States v. Basham*, 561 F.3d 302, 321 (4th Cir. 2009). When extraneous information relates to a material fact at trial, exposure to such information, regardless of whether the material fact was resolved or disputed at trial, will typically result in a new trial. *See, e.g., Basham*, 561 F.3d at 318-19; *Ex Parte Potter*, 661 So. 2d 260 (Ala. 1994); *Crowell v. City of Montgomery*, 581 So. 2d 1130 (Ala. Crim. App. 1990); *Crawley v. Ill. Cent. R.R. Co.*, 248 So. 2d 774, 777 (Miss. 1971); *People v. Young*, 2008 Cal. App. Unpub. LEXIS 163, B195694 (Cal. Ct. App. Jan. 9, 2008).

[redacted]: What happened at the bridge was not a key part of Green's case

[redacted]: None of this case law is binding

Wiles is

In *Ex Parte Potter*, jurors conducted an unauthorized field trip to the alleged scene of the crime. In that case, the defendant was convicted of criminally negligent homicide after hitting a pedestrian while driving under the influence. *Potter*, 661 So. 2d at 260. At trial, the defendant sought to prove the accident was unavoidable. He testified that another car had pulled out in front of him and in order to avoid a collision, was forced to veer onto the side of the road where the victim's car was parked. *Id.* at 261. Testimony presented by both prosecution and defense witnesses tended to show the road where the accident occurred was narrow. *Id.* During a recess while the jury was in deliberations, several of the jurors travelled to the scene of the accident to determine the width of the road for themselves. *Id.* Upon learning of the jurors' exposure to extraneous evidence, the defendant filed a motion for a new trial, which was denied and he was ultimately convicted, a decision that was affirmed by the Alabama Court of Criminal Appeals. *Id.* The Court of Criminal Appeals affirmed the conviction on the basis that "the width of the road was not a disputed, material issue of fact in the case." *Id.* However, the Supreme Court of Alabama reversed the appellate court's decision and granted the defendant a new trial, holding that "the jurors viewed the street at most to help them resolve questions of fact or at least to help them understand better the evidence adduced at trial." *Id.* at 262. The Court held that even though the

exact width of the road was not specifically disputed at trial, the size of the road was a fact bearing on the defendant's theory that the accident was unavoidable and therefore, "the unauthorized viewing by two or three jurors of the street where the accident occurred might have unlawfully affected the verdict of the jury." *Id.* Thus, even when extraneous information obtained by the jury does not prove or disprove a fact at trial, if that fact has some importance to any theory presented, exposure to the extraneous information is prejudicial to the defendant and warrants a new trial.

An even stronger argument for a new trial resulting from exposure to extraneous information is when a jury or juror examines a place that is the subject of conflicting evidence. In *Crowell v. City of Montgomery*, the defendant was charged with driving while intoxicated and the condition of the road was a contested fact at trial. 581 So. 2d 1130 (Ala. Crim. App. 1990). The evidence in the case was presented over the course of a day and closing arguments were made the following morning. On her way to court before closing, one of the jurors drove over the portion of the road in question, not because it was a part of her normal route, but because she "kind of wanted to see what the road was like." *Crowell*, 581 So. 2d at 1132. The juror in this case admitted that the purpose of her driving over the road was to resolve a material dispute of fact at trial, and the "resolution of the conflict surely had a bearing on the juror's assessment" of the evidence presented. *Id.* at 1133. In reversing the defendant's conviction and ordering a new trial, the court held that "[a] new trial should ordinarily be granted when jurors, without the authority of the court or consent of the parties, have examined or inspected a place or thing which is the subject of conflicting evidence. That the juror was actually influenced by the examination or inspection need not be shown. It is sufficient that he may have been so influenced." *Id.*

Finally, a new trial does not require the extraneous evidence to contradict any evidence at trial. In fact, even when the extraneous information confirms evidence, such as pictures,

[redacted]: This case is not binding. Moreover, the facts are distinguishable; a more analogous situation would be an unauthorized view of the area around the Quality Inn.

[redacted]: What conflicting evidence was presented regarding the bridge?

Where the body was found - the distance of body from bridge, which was determinative of depth of water, demeanor, whether body could've floated to where it was discovered or victim was living & jumped in the water & swam to bank and climbed on it → whether he was living at time he went in water → if so Δ would be guilty of felony murder as robbery concluded. This would have circumvented Δ's defense (alibi) by proving murder. After alibi witnesses testified Δ left & not while Δ was with them. There is the prejudice of juror visit.

introduced at trial, courts have still found exposure to such evidence prejudicial to defendants. *See People v. Young*, 2008 Cal. App. Unpub. LEXIS 163, B195694 (Cal. Ct. App. Jan. 9, 2008). In *Young*, the People appealed when the trial court ordered a new trial after a juror visited the scene of the crime. The People's primary argument against the order for a new trial was that the evidence the juror was exposed to by visiting the scene did not actually contradict any of the evidence introduced at trial when photographs of the scene had been properly presented. *Young*, 2008 Cal. App. Unpub. LEXIS at *13. The People further argued that there were no discrepancies in the descriptions of the scene offered by the victim and offered by the defendant, and that the defense did not present any evidence that the condition of the crime scene made the defendant's participation in the crime any more or less likely. *Id.* at *13-14. Even here, where photographs of the scene of the crime had already been admitted into evidence and the conditions of the scene of the crime were not in dispute, the appellate court upheld the trial court's granting of a new trial because the juror's unlawful visit to the scene "led her to subsequently pit her beliefs against the defendant's testimony. This demonstrated at a minimum that this juror was less then impartial." *Id.* at *20.

[redacted]: An unpublished case from another jurisdiction has no precedential value whatsoever.

In the present case, like the three above-mentioned cases, a juror, in fact the jury foreperson, Paula Locklear, conducted her own extrajudicial field trip to where James Jordan's body was allegedly thrown off a bridge. Though she states she did not relay this information to anyone else on the jury, her visit to the scene removed doubt as to a particular theory of the case she had been considering and lead her to "pit her beliefs" against the defense. A key fact in this case revolves around Pea Bridge and where the body of James Jordan was found. A Deputy Monroe used photographs of the bridge where the body was allegedly dumped to illustrate his testimony as to how and where he and a Mr. Locklear, a local fisherman, found the body. Deputy

[redacted]: This is not a key fact. Key facts in the Green case are, for example, whether Green was at the Quality Inn when Jordan was shot, whether there was blood in the car, whether a bullet hole in Jordan's shirt was manufactured, etc. There is no dispute regarding the fact that Jordan's body was dumped off the bridge by Green and Demery.

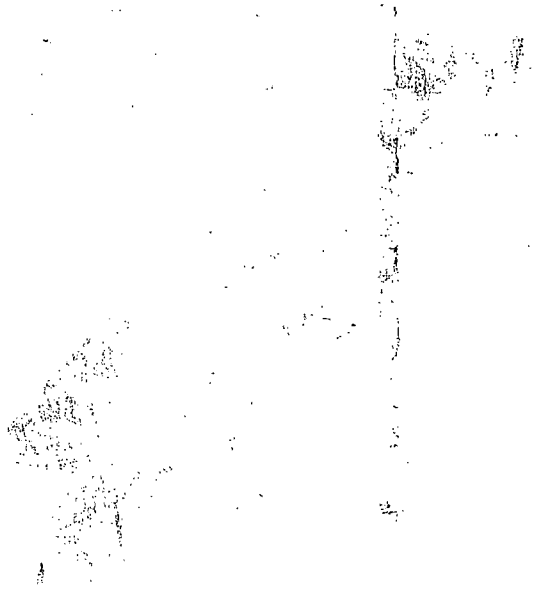
Monroe testified to having gone with Mr. Locklear to the wooded path on the left side of the bridge, which at that point is located in South Carolina, and following the path about 300 yards to the spot where they could see the body of James Jordan approximately 15 feet away in the middle of the creek. Deputy Monroe even went further to draw a diagram of the road and the two bridges he mentioned in his testimony. He used the diagram to identify the bridges, the creek, the wooded path, where the body was found, north, south, the state line, and what is up stream and what is downstream. On cross, Deputy Monroe was specifically asked whether he noticed any obstructions or impediments between the bridge and the location where the body was found and he said he noticed nothing other than the tree branch the body was located on. Later during the trial, Larry Demery, Daniel Green's co-defendant, described the bridge and ~~the location of~~ the body using the same photographs as Deputy Monroe. Other than to confirm that the bridge in the photographs was indeed the bridge where James Jordan's body had been dumped, Demery did not testify as to the distance between the bridge and where the body was ultimately found, or any other physical aspects of the bridge or the swamp below.

Paula Locklear, the jury foreman, stated that due to where she worked, she immediately recognized the bridge. She decided on her own, though the judge instructed the juror's not to conduct any of their own investigations into the case or the evidence presented, to drive to the bridge to see the seen for herself. While there she came to the conclusion that in order for James Jordan's body to have travelled as far down the creek as it did, he must have been alive at the time his body was dumped. Because of the curvature of the creek and the location of the branch upon which Jordan's body was eventually discovered, Paula Locklear concluded, after her unauthorized field trip to the scene, that James Jordan had still been alive and had been trying to climb his way out of the swamp when he expired on the branch. Though photographs of the scene were published

[redacted]: Evidence Rule 606(b) and NCGS 15A-1240(a) make her conclusion inadmissible

to the jury and Dep. Monroe testified to where the body was ultimately found, there was no mention at trial of the curvature of the creek or any of its other physical attributes. Paula Locklear's extrajudicial visit to the crime scene lead her to believe a theory of the case that had not even been presented at trial, and in fact lead her to a conclusion in direct contradiction to the evidence properly presented by the defense. Dep. Monroe was specifically asked on cross-examination whether there were any obstructions or impediments in the creek that would get in the way of James Jordan's body and he said there were not. The extraneous evidence Paula Locklear was exposed to not only had a bearing on a material fact on trial, but actually lead her to believe a theory of the case not presented and lead her to discredit the theory presented by the defense. Consequently, a judge in North Carolina may elect to grant a new trial based on juror exposure to extraneous evidence in this case.

[redacted] Still haven't shown prejudice



STATE OF NORTH CAROLINA
COUNTY OF ROBESON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 93 CRS 15291-15293

STATE OF NORTH CAROLINA	)	
v.	)	PROPOSED STIPULATIONS TO UNDISPUTED FACTS
DANIEL ANDRE GREEN	)	

NOW COMES Defendant Daniel Andre Green, by and through undersigned counsel, in the interest of judicial efficiency and justice, and presents a proposal for the stipulation of facts which are fully supported by the evidence and cannot be disputed by the State in good faith.

Signs & symbols of Freemasonry the sign language of the mysteries

Procedural History

1. On May 5, 2000, Daniel Green filed a *pro se* Motion for Appropriate Relief and on May 16, 2000 attorney Carlton Mansfield was appointed.
2. Five years later, on July 21, 2005, after having very minimal contact with Mr. Green, Mr. Mansfield filed a motion to withdraw as counsel citing a complaint against him by Mr. Green.
3. In a February 1, 2006 affidavit, filed without consultation with Mr. Green, Mr. Mansfield stated his opinion that Mr. Green had no meritorious claims.

Like this in to my 1st MIR in 1999 detailing newly discovered Evidence

4. On August 21, 2008 Daniel Green, on his own, filed an Amended Motion for Appropriate Relief. and Writ of Mandamus to compel court to remove Mansfield in ~~Sept 20~~
5. Mr. Mansfield was subsequently allowed to withdraw as counsel on September 16, 2008.

6. On October 2, 2008 the Honorable Robert F. Floyd, Jr. entered an order denying some of the claims raised in Mr. Green's Amended Motion for Appropriate Relief, but appointing attorney Carl Ivarsson to represent Mr. Green on the remaining claims of ineffective assistance of counsel and the State's failure to disclose tape recordings of phone conversations of Melinda Moore and Delores Sullivan. Mr. Ivarsson was later allowed to withdraw as counsel after it was determined he had a conflict of interest in the case.

7. On March 18, 2009, attorney Scott Holmes was appointed and, because Daniel Green had not yet been able to proceed on a represented Motion for Appropriate Relief, was allowed by the court to fully investigate all possible claims and to amend the Motion for Appropriate Relief. (*See* Memorandum of Law, Defense Exhibit 146).

8. On April 6, 2015, Daniel Green, through post-conviction counsel, filed his First Amended Motion for Appropriate Relief (hereinafter AMAR), which raised claims of ineffective assistance of counsel, as well as other claims of Due Process violations and evidence withholding by the State, with no objection from the Court.

9. The State filed its answer to the AMAR on December 2, 2015 and did not claim procedural bar of claims raised. On March 19, 2016, Mr. Green filed his First Supplement to his AMAR, to which the State filed its answer on May 19, 2016.

10. Mr. Green then filed his Second, Third, and Fourth Supplements to his AMAR on December 16, 2016, June 14, 2017, and July 26, 2017, respectively. The State filed its answer to these supplements on September 18, 2017.

11. On October 10, 2017, Mr. Green filed a Memorandum of Law summarizing the law negating the State's claims of procedural bar.

12. After over seventeen years of unresolved issues, claims, and litigation, the case is ripe for the Court's ruling pursuant to N.C. GEN. STAT. § 15A-1417 and § 15A-1420(c).

Proposed Stipulations

Stone, Deese, and Demery Relationship

1. Hubert Stone was Sheriff of Robeson County at the time of James Jordan's murder.
2. The Robeson County Sheriff's Office investigated the James Jordan murder.
3. Hubert Deese is the son of Hubert Stone.
4. Hubert Deese was a drug trafficker.
5. Hubert Stone and Hubert Deese were under investigation by the FBI and/or the SBI for drug trafficking at the time of James Jordan's murder. (Second Supplement To First Amended MAR, Defense Exhibit 115, DEA Report of Investigation 4/20/1998)
6. Hubert Stone knew that Hubert Deese was a drug trafficker at the time of James Jordan's murder. (*Id.*)
7. The second phone number called from James Jordan's cell phone after the murder was Hubert Deese's phone number. (First Amended MAR, Defense Exhibit 38, SBI Report of 11/19/1993 Activity)
8. Hubert Deese and Larry Demery both worked at Crestline Mobile Homes.
9. Hubert Deese trafficked drugs out of Crestline Mobile Homes. (Fourth Supplement to First Amended MAR, Defense Exhibit 139, DEA Report of Investigation 12/20/93)
10. Crestline Mobile Homes is located less than a mile from where James Jordan's body was found. (Trial Tr. p. 3990)

11. Prior to the trial, the FBI notified the SBI about the connection between Hubert Deese, Sheriff Stone, and the Jordan murder. (Def. Supp. to Discovery Motion and Request for Expedited Hearing, Defense Exhibit 108, FBI Report 11/19/1993)
12. The SBI told the FBI that they would interview Hubert Deese about his connection to Sheriff Stone and the Jordan murder. (*Id.*)
13. The SBI never interviewed Hubert Deese, nor did any other law enforcement agency.
14. The State had knowledge of Hubert Deese's relationship to Hubert Stone.
15. The State failed to disclose the information about the relationship between Deese and Stone prior to trial.
16. The relationship between Hubert Deese and Hubert Stone was exculpatory evidence.
17. The defense theory of the case was that James Jordan was murdered by Larry Demery in a drug deal gone bad. (Defense Opening, TT pp. 63-65)
18. The undisclosed SBI documents detailing the drug dealing activities of the son of the sheriff showed that he engaged in drug trafficking near the place Jordan was killed, around the time Jordan was killed, and that he used luxury cars like Jordan was driving for his drug trafficking. All of this information was consistent with the defense theory of Jordan being killed in a drug deal gone bad.
19. The trial judge denied the defense an opportunity to present its theory of the case. (Trial Tr. pp. 5748-5752)
20. The trial judge signed a sworn affidavit stating that had the evidence of the relationship between Stone and Deese and Deese and Demery been disclosed, he would have allowed the defense to present its theory of the case. (Defense Exhibit 119, Judge Gregory Weeks Affidavit 2/24/2017)

The "Blood" Evidence

21. The trial judge ordered the State to disclose all confirmatory tests and lab notes related to the blood testing. (First Amended MAR, Defense Exhibit 100, Judge Gregory Weeks Affidavit 3/30/2015)
22. Prior to trial, the State did not disclose all of the tests and lab notes. (First Amended MAR, Exhibit 15-G, Thompson Affidavit and Subpoena for SBI Lab documents)
23. Confirmatory tests conducted on the samples taken from James Jordan's Lexus did not reveal the presence of blood. (First Amended MAR. Defense Exhibit 6, Steve Hale Affidavit 11/10/2014)
24. Jennifer Elwell testified that in her professional opinion the substance from the Lexus was "blood." (Trial Tr. p. 5611)
25. There was no scientific basis for Jennifer Elwell's opinion that the substance from the Lexus was blood.
26. Subsequent to the trial, Jennifer Elwell stated that she could no longer testify that the substance in the car was blood, and, in fact, it "could have been anything." (First Amended MAR. Defense Exhibit 27, p. 1)

James Jordan's Shirt

27. During the autopsy, Dr. Joel Sexton specifically noted that he looked for a bullet hole in the chest area of James Jordan's shirt that correlated with the chest wound. (Third Supplement to First Amended MAR, Defense Exhibit 120, p. 3 Autopsy Report)
28. Dr. Sexton also referenced the absence of a hole in the chest region of the shirt on the anatomical diagram of Mr. Jordan's body included in the autopsy report. (Third Supplement. to First Amended MAR. Defense Exhibit 120, p. 28 Autopsy)

29. Dr. Sexton did note multiple other holes in the lower portion of the shirt. (Third Supplement to First Amended MAR, Defense Exhibit 120, p. 3 Autopsy Report)

30. In his own copy of the autopsy report, the prosecutor highlighted Dr. Sexton's note about the absence of a hole in the chest region of the shirt. (Third Supplement to First Amended MAR, Defense Exhibit 121, Prosecutor's copy of Autopsy Report)

31. After Dr. Sexton completed the autopsy, a private citizen, Mr. Art Sprenger, took custody of the shirt from law enforcement. (Trial Tr. p. 781)

32. At trial, when the shirt was presented to the jury, Agent R.N. Marrs testified that there was a hole in the upper right chest region of the shirt. (Trial Tr. p. 5258)

33. Agent Marrs testified that there was a "dark ring" consistent with gunshot residue around the hole. (Trial Tr. p. 5325)

34. The defense did not raise the discrepancy of the condition of the shirt at the time of the autopsy and at the time of the trial. (Third Supplement to First Amended MAR, Defense Exhibit 122, p. 2 Angus Thompson Affidavit 6/5/2017)

The Jury

35. The jury foreperson signed a sworn affidavit stating that she violated court orders and visited the scene where Mr. Jordan's body was found. (First Supplement. to First Amended MAR, Defense Exhibit 103, Paula Locklear Affidavit 2/22/2016)

36. The jury foreperson's affidavit states that as a result of her unauthorized visit to the scene, she changed her view about how the murder was committed. (*Id.*)

37. The jury doubted the credibility of Larry Demery, as reflected by its finding that Daniel Green did not kill James Jordan. (*See* Jury's Issue and Recommendations as to Punishment, March 12, 1996)

Respectfully submitted this date, _____ February, 2018.

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March 2018

STATE OF NORTH CAROLINA
COUNTY OF ROBESON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 93 CRS 15291-15293

STATE OF NORTH CAROLINA

v.

DANIEL ANDRE GREEN

MOTION FOR ORDER FOR STATE'S RESPONSE TO PROPOSED STIPULATIONS

NOW COMES Defendant Daniel Andre Green, by and through undersigned counsel, and moves for this Court, through its inherent authority, to order the State to respond to Defendant's Proposed Stipulations to Undisputed Facts.

1. On February 23, 2018, Defendant filed Proposed Stipulations to Undisputed Facts (Proposed Stipulations) in an attempt to increase efficiency and promote justice in this case.
2. The procedural history laid out in the Proposed Stipulations is incorporated hereto.
3. Defendant's *pro se* Motion for Appropriate Relief was filed nearly eighteen years ago and remains pending before this Court.
4. Defendant was not involved in the murder of James Jordan and justice requires his case be heard on the merits.
5. The Proposed Stipulations included thirty-seven facts which are fully supported by the evidence and cannot be disputed by the State in good faith.
6. Legal filings over an eighteen-year period, containing numerous credible claims of Constitutional violations leading to Defendant's wrongful conviction, have resulted in a complex factual case for this Court to review. In an effort to narrow the Court's focus to the disputed facts, Defendant filed his Proposed Stipulations.

7. The State has not responded to the Proposed Stipulations.

8. If the State believes it can legitimately dispute any of the proposed stipulations, it should do so in a formal response. Otherwise, the State should stipulate to the facts in the Proposed Stipulations in the interest of judicial efficiency.

WHEREFORE, Defendant respectfully prays unto the Court to issue an order instructing the State to respond to Defendant's *Proposed Stipulations to Undisputed Facts*.

Respectfully submitted this date, the ___ day of March, 2018.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies this **Motion for Order for State's Response to Proposed Stipulations** was filed with the Robeson County Clerk of Court and a copy of the foregoing was served upon the party listed below on the date indicated below, via the United States Postal Service:

Mr. Jonathan Babb and
Ms. Danielle Marquis Elder
Special Deputy Attorneys General
NC Department of Justice
P.O. Box 629
Raleigh, NC 27602

This the ___ day of March, 2018.

Christine C. Mumma
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JENNI WEINREB OWEN
~~KATHERINE LEWIS PARKER~~
DAVID R. TEDDY
NORMAND TRAVIS

October 18, 2013

Daniel A. Green, 0154242
Lanesboro Correctional Institution
P.O. Box 280
Polkton, NC 28135

Legal Mail – Confidential

RE: *State v. Green*
Robeson County
09 CrS 15291-93

Dear Mr. Green:

I received your letter. I realize that having an MAR filed and not acted on for so long is very frustrating, and that the passage of time may damage your case. I spoke to Scott Holmes about the situation and, although IDS cannot appoint a second lawyer in this case, we discussed some ways in which he could obtain some additional help on the case. I am sure he will be in touch with you about the case.

Sincerely,

Thomas K. Maher
Executive Director

Linda Dial – very kind woman who runs a farm

Her impression: this was a very sad case. She is a teacher in the community. Didn't want to be on the jury, but felt it was civic duty. Did not know either Demery or Green. Taught Demery's sister, Crystal, at the time of the trial. Crystal was very smart but became withdrawn at time. Friend who taught Daniel later told her that he was very smart and enjoyed poetry. Community rallied around the Demerys at the time. They were good, hardworking people.

Media was crazy. News vans were across from the school itself. Definitely did not consume any media, nor did Cassidy bring any info into deliberations. Bailiffs did a good job keeping the media away. The jury was very professional, and they tried to do their job according to the rules.

Cared a lot about Clouis Demory testimony – thought bullets matched up from that crime and that Daniel's face "twitched" during his testimony. The rest of the time, Green was stoic and silent. "If he did that, he could rob again." Grew up in a rough part of town; he was into drugs.

They were kids who got off track.

Added 11/1/15 – she also mentioned that Jordan was found in a tree. ST

Audrey Chavis – 2644 Deep Branch

We asked about her experiences and she said she didn't know anything or go to the trial. We asked specifically if she was a juror and she said was not and knew nothing about it. Wrong Audrey Chavis?

Audrey Chavis – 117 Isiah Rd. Maxton

Wrong woman. Guy who works with her said he would have known for sure if she was on the Daniel Green trial. She said she only has been a juror on a car accident case. This is interesting in light of Lee Vern McGirt, who said the atmosphere of the town was pretty normal – everybody else we talked to has distinct memories of the crime.

Added 11/1/15 – after looking up her address with her SSN, I think the correct address is
1027 PRICE RD
FAIRMONT, NC 28340-8667

ROBESON COUNTY

Paula Locklear
Jury forewoman
She was incredibly willing to talk. We trust her (she is very sincere and encouraged us to find the truth), but her memory may be struggling. Probably about 75 years old.

1) She visited the bridge and river during the trial where the body was found – water was really low because it had been incredibly hot and dry. Brandon asked her specifically if this was during the trial and she said yes.
2) She heard before the trial how the guy who found the body was terrified – it scared him to death. His sister was friends with Paula.
3) She saw Daniel Green hit another prisoner and argue with a deputy (Paul) in the hallway during the trial. (She said she never told anyone about this). "He was an angry guy." This was a the first factor she mentioned as why she made her decision.
4) She was a substitute teacher at an elementary school and knew of Daniel – "No teacher wanted to have that child."
5) Big piece of evidence for her was the video of Green singing and bragging about the crime. She said "We saw the video."
    a. She thinks it was bragging.

Demery was in the church choir with her. She knew his mother.

Also, she worked at a Christian radio station prior to the trial and heard news about how the body was found, etc.

Talked to her sister in Michigan, who said "the news was different there." But, she insists she didn't let her talk about the news specifically. But she did share with her sister about the process while in there.

One juror talked to "Jackie's boyfriend" at a restaurant (she doesn't know what about) and was then turned in to the judge by this guy and dismissed as a juror. Paula thinks Jackie's bf was arrogant. That juror apparently really wanted to be on the trial. Paula said she thought it was a mistake for her to be replaced.

Didn't know anything about Cassidy.

Also, the phone records, Green having the rings, the testimony about them getting the gun and robbing Clouis Demory were particularly helpful for her.

Has no memory of Audrey Chavis. Did seem to have a pretty good memory of who the other jurors were.

Questions to Ask Phone call – Script (Added 11/1/15 we followed this)

1. MENTION that we talked to other jurors and have a few clarifying questions
2. ASK – You mentioned the video where Daniel bragged earlier, can you tell us a little more about the video just to make sure we are talking about the same one?
    a. Do you remember if you saw that video during the trial or after the trial?
    b. Was it in the courtroom or the news that you saw it?
3. ASK – also you mentioned that you thought the juror who was dismissed name was Pat? We have a list of juror's names and were wondering if the name Patricia Haley sounded familiar.

Paula Locklear- foreman

Decided Daniel was guilty because she saw that he was angry, he yelled at bailiff for new glasses, altercation near the vending machine, punched man behind him, Paul? Mean deputy liked to stur things up? He was angry

Went to bridge DURING trial, low water? actually believed that mr. Jordan bled internally. Said he wasn't in the car, that he was dumped over bridge and climbed out of river, died there—climbed into a tree? Up a tree that he then died in....

- knew the sister of the person who discovered him
- gold in teeth

Talked to sister during trial about potential news—specifically Jordan owning company

Jury member removal

Evidence she considered:

- most important that Daniel was angry and mean
- testimony of store owner
- rings, video w. music, he bragged about it NOT IN EVIDENCE
    - she SAW it

She knew demery's sister? Relative? Someone? Larry sang in the church choir

Taught as a substitute teacher while Daniel was in school, none of the teachers wanted him, he was a trouble-maker and she believed that going in

Phone Conversation – 6:00 p.m.
Brandon: Hi, this is Brandon Springer from Duke, calling you back, how are you doing?
...
You saw.. there was a video where Daniel had bragged about committing the crime.. rings
Locklear: It was on a rap video, like singing in it, singing, um, about the car, that he had got and now it didn't say he had killed anybody, ok? But he was showing off the rings that he had, and he was doing this with a girl he had met.. some girl he had met. I don't remember all of it, but I do remember that
Brandon: this was played in court?
Yeah
Was it just short clips? Or was it the full rap video...
Paula: they only showed a few minutes of it
2nd question about juror that was dismissed, you mentioned the name Pat

- I thought that might be the name
- Does patricia haley sound familiar?
- The last name doesn't sound right...

- So it might have been a different woman??
- Yeah it was an elderly lady... she was white... she worked for the thrift store and she was in her sixties at the time. So I would imagine that she's not even alive at this time.
- [redacted] Brandon tells her that one of the attorneys spoke with Judge Weeks that presided over the case and based upon the blood evidence that has come out, he thinks Daniel deserves a new trial
- He said what now?
- That he believes that Daniel should get a new trial?
- Really?
- Yes... We felt that we should tell you that so you could understand what was going on.. there's still a few more motions that need to go through the court, but there may be a new trial.
- Okay well thank you, have a blessed trip now children.

I wish I knew the answers. I do know that they could not find Bobby Jo Morilla because her mother had issues with a private investigator. To be clear, this is speculation. And the point is that she never took the stand.

Number two:
A local newspaper editor, Connee Brayboy, said in a 2015 statement that Larry told her that he did kill James Jordan. Brayboy admitted she hadn't said anything until 2015 because she knew Larry Demrey's mother and was concerned for her ~~safety.~~

A motion my legal team put forth also cites six other people who say that Larry told them that he killed James and did it alone.

Number three:
The jury forewoman, Paula Locklear, said in a sworn statement that she did her own investigation during the trial. She said that during the trial she visited the South Carolina area where the body was found and developed her own theory on how the murder occurred. It's a direct violation of what the judge said during the opening of the hearing.

Additionally, Locklear had known and attended church with Larry Demrey's mother for many years, ~~another juror conflict.~~

Remember, on top of the this, there is no any DNA evidence, there is not any physical evidence, and other than Larry Demrey, there are no witnesses that tie me to the murder.

The Jordan family has already been put through unspeakable horror. But, I think because of politics, the ~~government is likely to continue to~~ deny me a retrial unless the family says something. I understand this is putting them in a hard position. I know that it requires incredible empathy and forgiveness. But I would never, and have never, killed anyone.

I send my love to all and appreciate your time.

Daniel Green

Please sign the petition:

#4

The juror

According to the defense team's filings, several jurors in Green's trial may have violated the trial judge's order by watching or reading news accounts about the case.

Former jury forewoman Paula Locklear did one better. In an affidavit last month, Locklear said that during the trial, she "conducted my own investigation" by visiting the swamp site where Jordan's body was found.

"This visit influenced my interpretation of the evidence and played a role in my deliberations," she said in her affidavit. Contrary to the state's assertion that Jordan died in his car along a Robeson County highway, Locklear said she came to believe that he had been killed in South Carolina, where his body was discovered. Efforts by the Observer to reach Locklear last week were unsuccessful.

Green's attorneys say Locklear's admission amounts to grounds for a new trial. Jim Cooney, a prominent Charlotte defense attorney who has handled several appeals of high-profile murder cases, says juror misconduct is a serious offense with potentially significant ramifications.

"As a juror, you decide the case on what's introduced in the courtroom," he said.

Charlotte School of Law professor Brian Clarke says a rogue juror investigation "is pretty darn serious."

"That's a tremendous problem ... a tremendous no-no for a juror," he said.

STAFF WRITER ELIZABETH LELAND AND STAFF RESEARCHER MARIA DAVID CONTRIBUTED TO THIS REPORT.

COMMENTS

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By MorningFinance

Close Ad

[Read a 6-part series on questions in another murder case: "Death by the river: The fisherman's defense]

Mance's affidavit says the serologist also told him that she had withheld the results and notes from four tests that failed to test positively for blood. That information was never disclosed despite an order by trial judge Greg Weeks that any SBI lab evidence favorable to the defense was to be shared with Green's attorneys.

Weeks, now a retired Cumberland County judge, declined last week to talk with the Observer. But in an affidavit included with the 2015 filings, he said if Elwell withheld notes, she violated his order about evidence. If she knowingly misrepresented the stains as blood, she submitted "false and misleading testimony on a material fact."

Elwell still works with the SBI. Last week, the Observer emailed her a series of questions about her testimony in the Jordan case. She referred them to an attorney general's spokeswoman, who said Friday that prosecutors can't comment on an ongoing case.

In its reply to the 2015 defense filings, the attorney general's office said allegations that Elwell would change her testimony were hearsay, and thus inadmissible in court.

The alleged confession

According to court documents, Demery cooperated with the investigation from the start. He was 18 at the time but had a history of violence across Robeson County, including several robberies that authorities said he committed with Daniel Green in the weeks leading up to Jordan's murder.

"These two guys were on a violent crime spree. No one else was at the killing but them," former SBI agent Tony Underwood says. "By the evidence, they were partners in these matters. As to who fired the shot (that killed Jordan), who knows?"

Green's attorneys allege in their documents that though Demery identified Green as the gunman, he has admitted on several occasions to killing James Jordan himself. Most of those assertions swing on the word of prison inmates who said they talked with Demery.

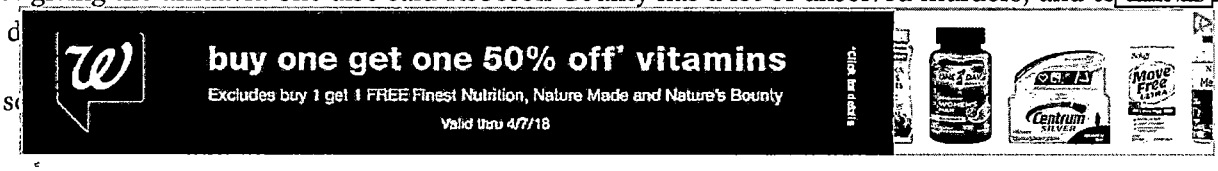
The most recent account does not. Shortly after Demery's arrest, Connee Brayboy says she went to speak with the teenager at the Robeson County Jail. She was the editor of the Carolina Indian Voice, a local Native American newspaper that has since closed.

During their jail conversation, "Mr. Demery stated to me that he was the person who had shot and killed Mr. James Jordan," Brayboy said in a November sworn statement. Demery also told her the killing had taken place outside of the Lexus, contrary to what his testimony against Green would be.

Brayboy says she did not write or talk about the interview out of concern for Demery's mother, who was a friend and had been "traumatized by his arrest."

Reached last week by the Observer, Brayboy, 68, said she suffers from health and memory problems and didn't remember giving the affidavit. She also said Robeson County has a lot of unsolved murders, and to talk about them can be a d

Demery s



N.C. State Conference NAACP v. McCrory
& SCSJ network including Arnold Cochlen 2016 831 F.3d 204

STATE OF NORTH CAROLINA
ROBESON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Court File Numbers: 93 CRS 15291-15293

STATE OF NORTH CAROLINA

v.

AFFIDAVIT OF PAULA LOCKLEAR

DANIEL ANDRE GREEN

NOW COMES Paula Locklear, who states the following under oath:

1. My name is Paula Locklear.
2. I am over 18 and competent to make this affidavit.
3. In 1996, I served on the jury for the trial of the State of North Carolina v. Daniel Andre Green.
4. I was selected to serve as the jury foreperson for a time, before Audrey Chavis assumed that role.
5. Prior to Mr. Green's trial, I worked with the sister of the man who discovered Mr. James Jordan's body. I had conversations with her about her brother's discovery of the body. During Mr. Green's 1996 trial, I conducted my own investigation into the case and travelled to the location in South Carolina where Mr. Jordan's body was discovered. This visit influenced my interpretation of the evidence and played a role in my deliberations of the case. Specifically, based on my visit to the scene, I came to believe that Mr. Jordan had died in South Carolina at the location where his body was discovered.
6. Prior to Mr. Green's trial, I had personally known Mrs. Virginia Demery, the mother of the State's chief witness, Larry Demery, for most of my life. I knew Mrs. Demery to be a good Christian woman.
7. I attended Baker's Chapel Baptist Church with the Demery family for many years prior to Mr. Demery's arrest for Mr. Jordan's murder.
8. While I was serving on the jury for Mr. Green's 1996 trial, Mrs. Demery addressed my church congregation and asked the congregants to pray for Larry.
9. I later saw Mrs. Demery in the courtroom during Larry Demery's testimony, during which time he identified Daniel Green as Mr. Jordan's killer.
10. Prior to Mr. Green's 1996 trial, I also knew of Daniel Green, having encountered him while working as a substitute teacher at Union Elementary School where both he and Larry Demery were students. I did not know Mr. Green personally; however, I was aware that he had a reputation as a child for fighting and cutting up.
11. During my service on Mr. Green's jury, I was aware of at least three members of the jury who disregarded the Court's instructions not to watch media coverage of the trial. Mr. James Cassidy told us that he was following news coverage of the case, and a number of

unless her investigation revealed in her acquiring other info besides what is mentioned, no prejudice, b/c (1) Her beliefs about what her investigation covered are to believe is N-L admissible (ISA-1240 (a)

so info about what they saw + heard off the record = No prejudice

Austin Howard Blakely
Michelle Stephanopoulos University of Chicago Law School
Kaftkaesque 1111 E. 60th St. Chicago, IL 60637

jurors said they were as well. I cannot recall the names of the other jurors who talked about information they learned from media coverage of the case, but I remember that one of them was an elderly white woman who was widowed, and another was a schoolteacher.

12. Because of the apparent lack of blood in the car, many of us on the jury had difficulty accepting the State's theory of the murder as a carjacking. However, we ultimately overcame those concerns because of the testimony of Agent Jennifer Elwell that she found blood in the car.

This will be struck (ISA-1420(a))

Further the Affiant sayeth not. Sworn and subscribed to, this the 22 day of February 2016.

Paula Locklear

Paula Locklear

Sworn to and subscribed before me this __ day of February 2016.

Whitley J. Carpenter

Notary Public

Jurat certificate

My commission expires 11/22/2020

expiration date & commission

Whitley J Carpenter
Notary Public
Wake County
North Carolina
My Commission Expires 11/22/20

Notary public Seal

See Linda Verdi Rice v. N.C. Dept of the Secretary of State

This sentiment can foster resentment and anger, which in turn can lead to issues affecting justice

The jurat of an officer authorized to administer oaths is prima facie evidence of all matters properly stated therein; but it is not conclusive and extrinsic evidence is admissible to prove that such statements are in fact false... the jurat on the affidavit is evidence, only prima facie to the contrary and therefore subject to contradiction

Bouldin v. Davis 200 N.C. 29

(Excuse the stains. I moved 4 times since I started this, one cell to another

February 11th, 2021

DEAR CHRIS,

First, please be aware that I have had access to the N.C. State Bar Lawyer's Handbook for years. My most recent edition is the 2014 edition but my first edition was obtained prior to me meeting Scott and Zinn, due to Mansfields mischief. Second, please be advised that Rule 1.2 (c) of the Rules of Professional Conduct prohibits attorneys from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Third, please verify, if my ethos is in doubt, that U.S. Supreme Court Justice Scalia, in Romer v. Evans, 517 U.S. 629, 652 (1996) an Equal Protection case, stated that "when the Court takes sides in the culture wars, it tends to be with the Knights rather than the villains - and more specifically with the Templars, reflecting the views and values of the lawyer class from which the Court's Members are drawn." The "Templars" referred to are the Knight Templars. In case you think there is ambiguity regarding what he is saying, please know that in U.S. v. Virginia, 518 U.S. at 601, Justice Scalia stated that "Without a strict observance of the fundamental Code of Honor, no man, no matter how "polished," can be considered a gentleman. The honor of a gentleman demands the inviolability of his word, and the incorruptibility of his principles. He is the descendent of the Knight, the crusader, he is the defender

* Therefore, if Scott lies, as you imply he will, about telling me the jury claim would go away if I discharged him, and was still a "slam dunk" win if I kept him [which means, contrary to your most revisio recent 'pivot', that even after you met with Paul Looklear, he still was confident he could win the jury claim. That fact overcomes all your rationale about him not being cognizant of all the facts you discov

of the defenseless and the champion of justice ... or he is not a Gentleman. See Note above. If he lies he loses his gentleman status, the worst

Please know that one of the definitions of a Knight Templar, according to the American Heritage Dictionary is "A man belonging to a Masonic order in the U.S." (This is, I believe, a reference to degrees within the York Rite, specifically (The Chivalric Rite) but also seven degrees and an investiture (Knight Commander of the Court of Honor) in the Scottish Rite. As you will recall, we all discussed Justice Blum being a KCCH. My point in mentioning Masons is to draw your attention to one of the tenets, Truth, and the ideal that while influenced by this divine principle, hypocrisy and deceit are unknown among gentlemen and sincerity and plain dealing distinguish ladies and gentlemen from the profane and the heart and tounge join in promoting our welfare. This, of course, is echoed in N.C. State Bar RPC 1.2(c), and the Inns of Court which I told you about in 2016-17.

For these [redacted] reasons speculation, equivocation, sophistry and other misleading rhetorical devices should be avoided, especially when presented as the basis of counter-arguments designed to overcome valid points.

Please keep in mind that in various phases of this case I was forced to play the roles of pro se counsel, investigator allowed to use deception to marshall facts (Gregory

Weeks, as Judge, in my trial not only did not condemn this practice, but, he ridiculed and chastised my trial counsel for suggesting investigators shouldn't lie during investigations. And, Weeks implied to me that my lawyers lost credibility by saying police shouldn't use deception in investigations) AND strategic public relations. As such, I played the hand dealt to me to guard [redacted] Evidence and, most importantly, Reality itself.

With that being said, any questions regarding ethics are to be "addressed concurrently by both the State Bar and the Courts." Iaw and Scott both pissed the State Bar and I will proceed with the assumption that both are gentlemen and familiar with their ethical requirements as lawyers and decent law abiding citizens, which means you're being tricked away from an easy win.

I am [redacted] also presuming that all parties concerned, especially the State, know the criminal statutes that could become relevant to the ultimate resolution of the issues you've raised in support of your contentions regarding Paula Lockler and the jury claim. These laws include, but are not limited to the following:

* Obstruction of Justice G.S. 14-3(a) and G.S. 14-3(b)
* Bribery of jurors G.S. 14-220
* Altering, destroying, or stealing evidence of criminal conduct G.S. 14-221.1
* Harassment of and communication with jurors G.S. 14-225.2

* Omitting or misrepresenting evidence or information required to be disclosed under discovery laws. G.S. 15A-903(d)
* Interfering or Intimidating with witnesses G.S. 14-226
* Intimidating a Witness, G.S. 14-226(a)

(To see how easy it is to prove the ~~latter~~ last two crimes see the case of Mark Fletcher. Chris, remember, in 2015 I gave you the M.A.R. I did for him which targeted other convictions but referenced the Intimidating a Witness charges based on him telling his girlfriend/victim that she didn't have to testify.

* Perjury 14-209 (G.S.)
* Subornation of Perjury G.S. 14-210
* Solicitation to commit perjury (A common law offense.)

In case you are not aware, (as you say you aren't, any ~~judicial official~~ "judicial official" (A magistrate, clerk, judge, ~~justices~~ of the General Court of Justice [Not including N.C. Supreme Court which is not part of the General Court of Justice which is why it was unlawful for Weeks to give jurisdiction to Justice Exum who appointed him]) See, G.S. 15A-101(5)) may issue criminal process (warrants or summons or citation) See, G.S. 15A, Art. 17 (G.S. 15A-301 through-305) According to UNC School of Government guru, Robert Farb. This is sometimes called a bench warrant. You have the capability, at any time, to call a press conference, tell them you are submitting an affidavit as an officer of the court to a judge

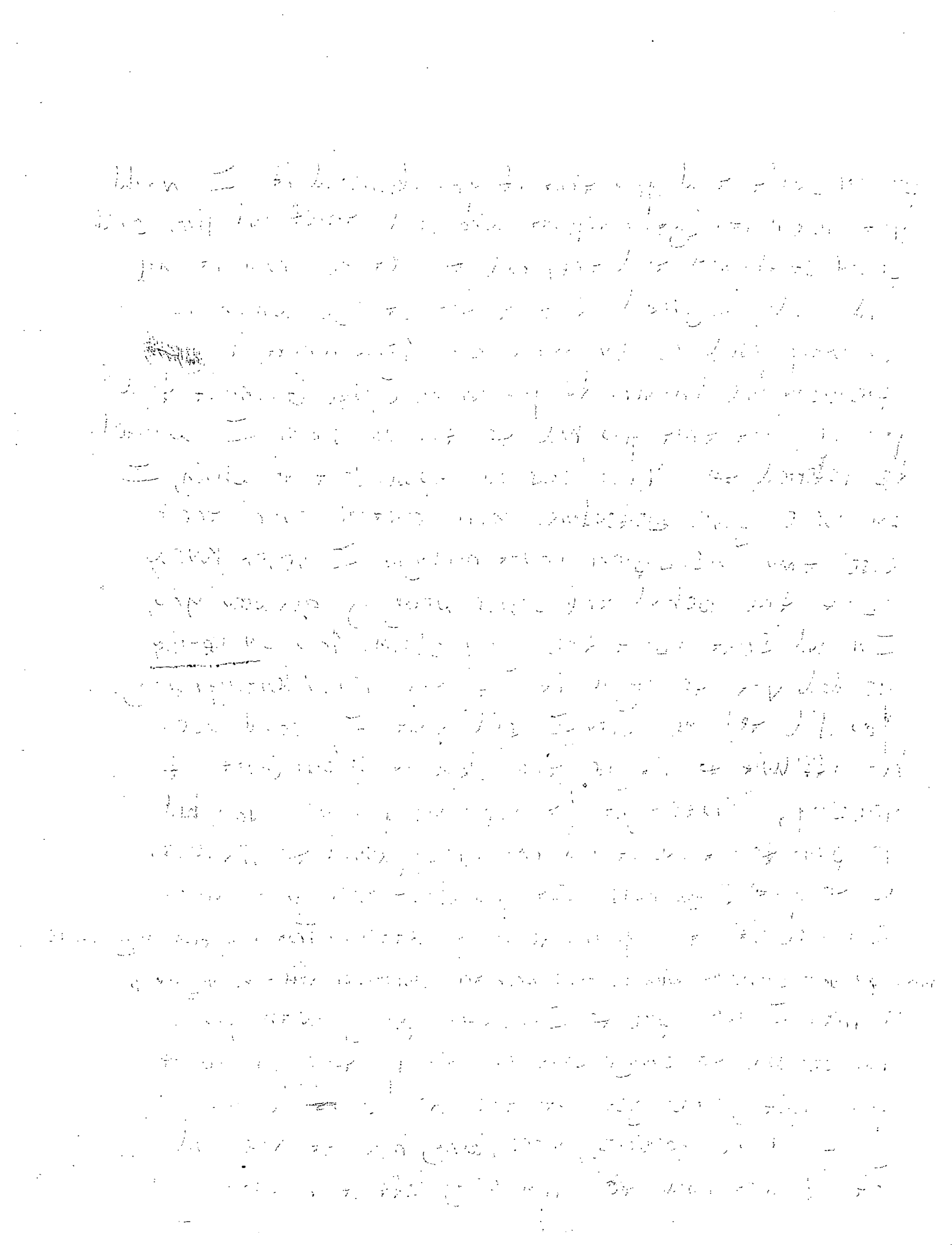
and Requesting them to issue a bench warrant or summons against anyone who commits a crime. In fact, if your peers have a problem with that you could remind them that it is their, and your, ethical duty pursuant to Rules of Professional Conduct 0.1 (Preamble); 8.3; to report misconduct, including crimes that obstruct justice, and they should follow your example in order to protect the integrity of their guild/profession and their monopoly on legal representation.

I have conducted my own factual analysis based on the documents you chose to send me. My last letter to you in response to the document you sent me titled Summary of Claims Review For PWC contained my ~~legal~~ analysis of the law NCCAI relied on to advise waiving the jury claim. I stand by my assertion that the reasons NCCAI provided for waiving the jury claim was insultingly flawed. If you are confident I am wrong place page 3 (claim 9) on your ~~site~~ website, verbatim, and use that same explanation to explain why NCCAI wants to drop the claim. Please tell me who wrote that. I do not want them on my case. Take them off.

I am suspending judgement until I see all documents you referred to in your 12/17/20. ~~letter~~ letter. You also stated in that same letter that ~~you~~ I "likely had [the supporting documents] before" which you selectively culled and sent to me. No, I did not. I have repeatedly asked you for my complete files. You said the

prison stuff told you that if you delivered it I would not receive it. Sgt. Hereyett, who is a thief and liar, said prison stuff were told they had to let me have it all and had designated a room for storage which is currently used as an office by Mr. Lawhead, a ~~[illegible]~~ good Freemason and Shriner. As you know, Judge Gilchrist told you in court that you had to file all claims I wanted. He referred to N.C.'s "Absolute impasse doctrine" which, I am sure, gives Defendants more control over their case than U.S. Supreme Court holdings. I never knew about the behind the scenes wrangling between you, Ian and Scott about the jury claim. You unilaterally decided not to argue it at the non-evidentiary hearing. You did tell me, when I said that I could use her affidavit to litigate the claim in federal Court if necessary, "That's Right." Yet, apparently, you knew you had no plan to litigate it and had already planned to waive it. So, to quote Judge Weeks, "If you don't make your record I'll make it for you... Accuracy matters." That is my reoccurring issue with you, your carelessness with accuracies when the inaccuracies affect me negatively.

* When I last spoke to Ian, after speaking with you he decided to change what he initially told me about you insisting he get out the car so ~~he~~ you could go to Paul Lockhart alone, leaving him "at the end of a dirt road" to, him being left at a store.

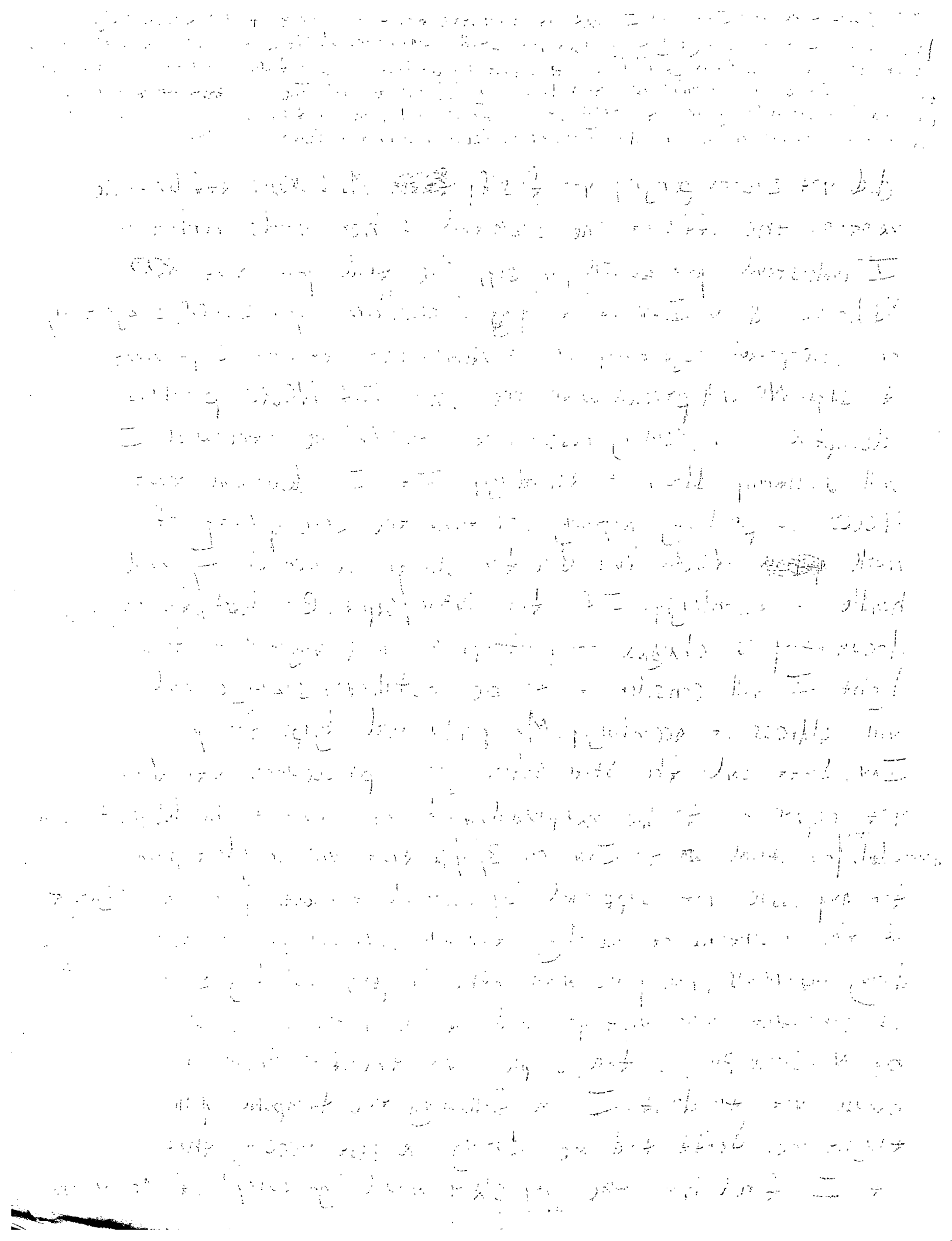


He told me, the call before the last call, that Nicole was fired from the nonprofit job she held for 10 years, which is when he came into the case - 10 years ago. Before he married Nicole Ian told me she was roommates with Dew Smiths niece, that he was going through her to establish a communication with the Jordan family and that the Duke Law school students did, indeed, make contact with them. These are the reasons he stated he and Scott decided not to use the newly discovered evidence in the book by Deloris Jordan, the daughter, that Scott said he had, which supported contentions made at trial by trial counsel, ~~[illegible]~~ denied by the State and which were, using the exact same standard and methodology applied to the Hubert Larry Deese claims and the bullet claim, Brady violations. He specifically stated in his memo that he and Scott did not want to even investigate and research this Brady info b/c they did not want to piss the Jordans off. At the time Mrs. Jordan, MJ's mom, was on the board at UNC-Chapel Hill Family Institute. Clearly Ian believes Nicole was fired in retribution for him telling me what he did about the Paula Lockleer jury misconduct claim which suggests she was hired b/c of this case to begin with. Unless Nicole herself was working against my interest intentionally and knowingly I would condemn using her as a pawn in the strongest terms and consider it to be both unethical and evil.

Further, during our last conversation Ian maintained he

* The first time you, Ian, and I met at Harnett Correctional, you mentioned Joseph Sledger pending lawsuit and that you were going to go meet with Lt. Gov. Dan Forrest. The doctors who examined Sledge after his release should've provided a life expectancy prediction specifically created from his medical examination. If so, you should've been told how long he had to live. The same for all your clients. It should be general for those still in prison, and specific for those exonerated after their release. We all will die. I make all decisions with that Reality in mind.

did not suborn perjury nor falsify Ms. Lockleurs affidavit. He maintains the affidavit she submitted is her words verbatim. I understand you believe, or say, she told you, that Ms. Lockler said Ian is "a lying Jackass." What you believe, subjectively or interpreted objectively is immaterial. Her affidavit says what it says. We will proceed with the claim. If NCCAI produces deceptive or misleading research to convince me otherwise I will unilaterally address it accordingly. If I determine that NCCAI is producing anything less than the same quality of work NCCAI has done for clients exonerated I will handle it accordingly. If the WRAL/Capital Broadcast/Amazon documentary is changed or portrays me in a negative or false light I will consider it to be retaliatory sabotage and will address it accordingly. My philis and sgipe for you, Ian, Scott and the State Actors, jurors, prosecutors etc. does not require me to be manipulated, nor for my freedom to be delayed til I'm almost dead.* You stated to Ian on 3/11/18 that we shouldn't push for any issue not supported by recorded statements. Your acknowledgement of the importance of recording statements, like Larrys, like mine during interviews, like yours with other lawyers, including Britt is consistent with what you told me early on, is allowed by N.C. State Bar, is free, simple and therefore there is no excuse not to do it. I am following the template y'all taught me. Scott told me during our last meeting that if I fired him the jury claim would "go away", if he wishes



*. The N.C. State Bar who came to see me when I filed the complaint on them said Ian's youth was to blame. So, obviously, they knew about the jury claim as well. My youth didn't prevent Fnied Black from selling me and over 40 other kids up the river so she could clear her calendar and go to work for Mike Nifong. Didn't keep N.C. D.O.C. officers from jumping me, ~~pounce~~ poisoning me with shit in my food, having their house nigga inmates beat up and rape other inmates. Youth didn't keep N.C. Courts from sentencing us as adults. Ian's grown and educated. Here's how to call me a liar; or say that he was using equivocal language, as Ian said and as you most recently said after saying he wanted to take me into court on a strawmans jury claim so he could lose the case, blame Ian's youthful inexperience and desire to create a WINNING claim, or so he could get paid for my case after his divorce so his ex wouldn't get his money... cool. I CAN, will, and have the resources to defend myself if you choose not to. It would be professional suicide for him to do so but that's on him. One more note about Ian's [redacted] alleged misconduct being attributed to his * youth. Ian isn't going to co-sign the idea that he acted incompetently or unethically due to his youth. Nor for any other reason. I happen to believe what we discussed before we decided to remove them from the case: They attempted to use you as eyecandy to manage me and to avoid out-of-State lawyers (Loevi and Loevi) [redacted] coming into my case. When you followed my directives to take over the case and stop talking to them about my case, b/c they wouldn't cooperate with you, Scott and, to some degree, Ian, attempted to portray you as taking the case from them. To Reiterate they did not want you using their "work product" (the claims and evidence). You stated the claims belong to me, which I already knew. They threatened to muddy your rep with the Durham and Local Bar to force a State mate which left me in limbo. The lawyers you told

* That is why he wrote the memo about H.L. Deese, Stone, and Musslewhite & Musslewhite claim. That claim is the one he put most of his time into, which the states agents cooperated with him on to convince him it was his path to fame and glory, and which Scott blew the most smoke up his butt about; not the jury claim. The jury claim evidence was secured to pacify me, to get me to trade the Cassidy/Fletcher/Masons

You could slap me through them

Me would come into the case once Scott and Ian were no longer on my case backed out (David Rudolph and Brad Bannon) which is what Scott told you would happen, that no other lawyer would or could replace him. All of a sudden, supposedly Locklear accuses Ian of falsifying her affidavit but no lawyer does their ethical duty to report him to have him disbarred? Why not? B/c she didn't say that, Ian wouldn't risk his career for me. He was newly married to a beautiful woman, buying a home, starting a career. Why do that?!! "To secure a winning claim", you say, but the H.L. Deese/Brady claim was the one he believed in the most. Ian, during our last conversation, out of the blue, said his problem with you was mainly that you said he said Scott was on drugs. First, a lot of people have said that, some who know Scott better than you or I. Second, almost everytime I've met with Scott he acted high but it could simply be he's extremely "cool", like Miles Davis, Prince Charlie Byrd, Michael Jackson, Juice World etc... Third, if Ian was saying† "Y'all pull off my mask, I'll pull of yours!" He won't. If he tried to it would backfire on him and Scott. After all, they told me they could find no trace of the in camera hearing with Weeks, Britt, Angus, Woody and I until years later after Rick produced an altered version of it, although my whole trial was recorded verbatim. Once any portion of a recorded conversation, or work product is introduced or made available, it opens the door

† An African proverb meaning "expose my secrets, I'll expose yours", essentially.

for all of it to come in. What incentive do I have to waive my privilege for him to go after you or vice versa? Plain and simple, Scott said that if I didn't fire him Lockler's testimony would stay the same. So, whatever may have been done to possibly make her lie needs to be undone b/c even if there is a successful effort made to avoid the evidentiary hearing to keep her off the stand I will file suit in federal court however I must to get her on the stand and find out from her why games are being played. If she testifies at an evidentiary hearing that Iaw falsified her affidavit I will introduce evidence to prove that years before she met him she told others the same about her trip before she found me guilty and I will file a motion based on her testimony that Iaw lied, to use her testimony to attack procedural bars.

Having said all of that, Chris, I want to address your contentions in your 12/17/20 letter:

(1) As stated, you nor anyone ever sent these documents before. You and Iaw did give me other documents purportedly from the same source but which is contradicted by these documents in several significant ways.

(2) The transcript you sent of the Paula Lockler interview by Iaw has DRIFT on each page, therefore it is not sufficient to overcome her affidavit nor, by my standard, is it

in a conditioned to be authenticated and entered into evidence.

(3) Both Scott and Lin certified the supplental MAR that contained the jury claim and the evidence providing the factual basis for the claim. The significance of their certification is that they are putting their professional reputation, and their ability to practice law on the claims they filed being meritable based on common law and statutory and Constitutional law. The purpose the certification is required by the MAR statutes, and why, without the certification the MAR must be dismissed is for the sake of efficiency; to hold attorneys accountable and most importantly for our current stage of the case, to allow lawyers to file short, concise, pleadings which don't force the Defendant to expose his whole hand to receive an evidentiary hearing. The lawyers certificate alone, is sufficient to obtain an evidentiary hearing b/c it verifies that the lawyer has properly researched and plead the claim and has the evidence to prove the facts. So, no need for Scott to say when in the trial Locklear conducted her investigation b/c the only way the claim could be meritable is if she took her trip and formed her opinion before the guilty verdict, as Scott confirmed before you came into the case. Otherwise his certification

Please Return to me by: 7/18/21

Juror Claim Analysis For Petition for Cert.

Question: Whether to file an appeal of Judge Bilchrist's denial of evidentiary claim in order to receive an evidentiary hearing for the Jury claim.

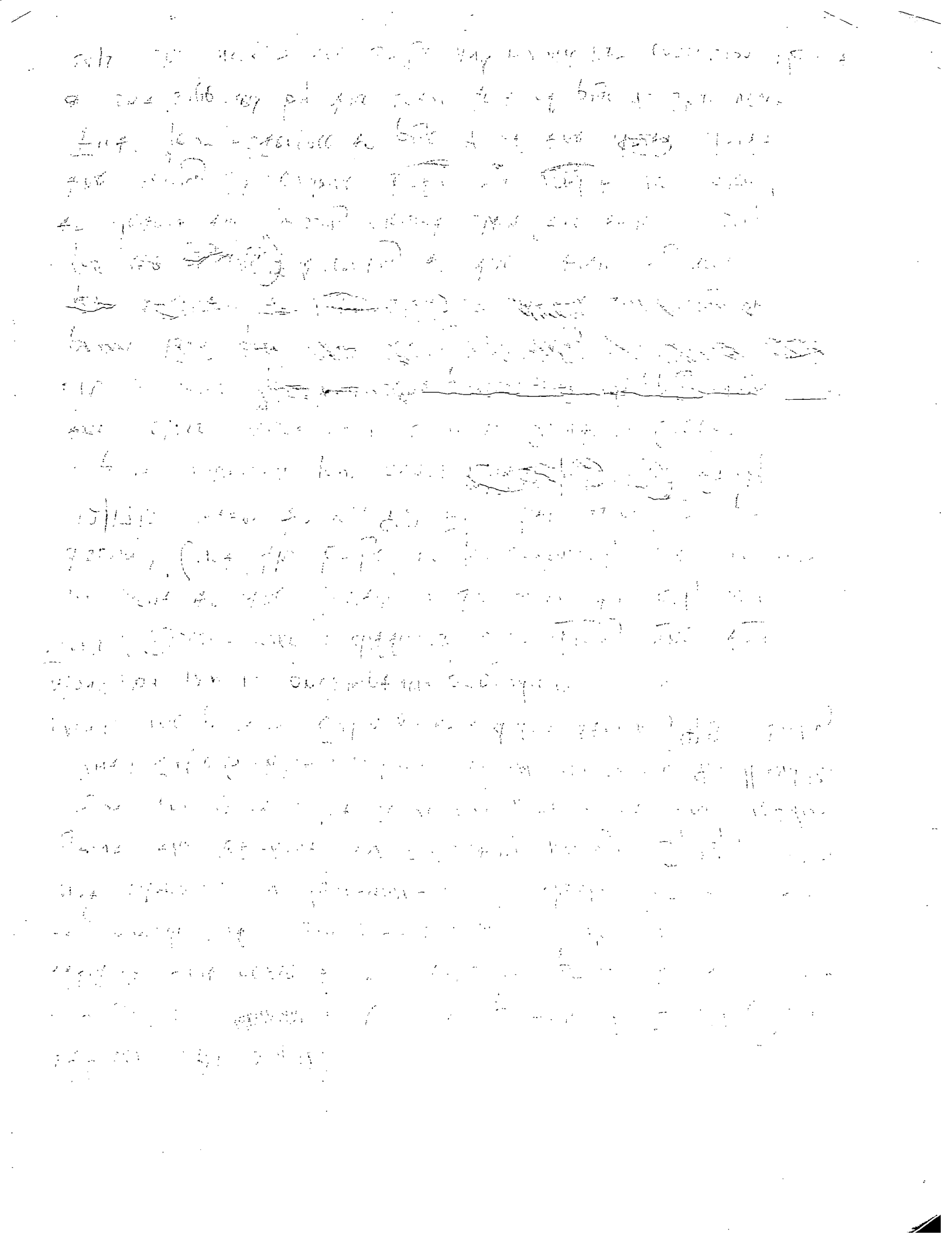
Answer: Yes. Based on data provided by NCCAI, Scott Holmes, Ian Mance, NCCAI, and others an evidentiary hearing of the jury claim will either ~~provide~~ verify the jurors (Pink Lockler [P.L.]) affidavit, or will provide evidence to overcome procedural bar by establishing the facts necessary to overcome procedural bars and to prove circumstances helpful to me, the defendant.

Facts: P.L.'s affidavit speaks for itself. The portions not struck by the court still establish that outside influences and extraneous info Ms. Lockler gained in violations of the courts duty & order to the jury not to conduct their own investigation. This imposes a heavy burden on the state to overcome by showing that this extraneous info were harmless to me. (See Remmer v. U.S. 347 U.S. 227 (1954); U.S. v. Lawson, 677 F.3d 629, 650-51 (4th Cir. 2012) (prejudice b/c juror in dogfighting case looked up element of offense on Wikipedia, an unreliable source; Barnes v. Joyner, 751 F.3d 229, 247-48, 251 (4th Cir. 2014) (abuse of discretion not to conduct hearing on potential prejudice resulting from juror's contact with ~~prosecutor and prosecutors~~ husband pastor regarding capital punishment.

Facts: The state filed a motion to strike portions of P.L.'s

Affidavit (¶'s 5, 11, 12).

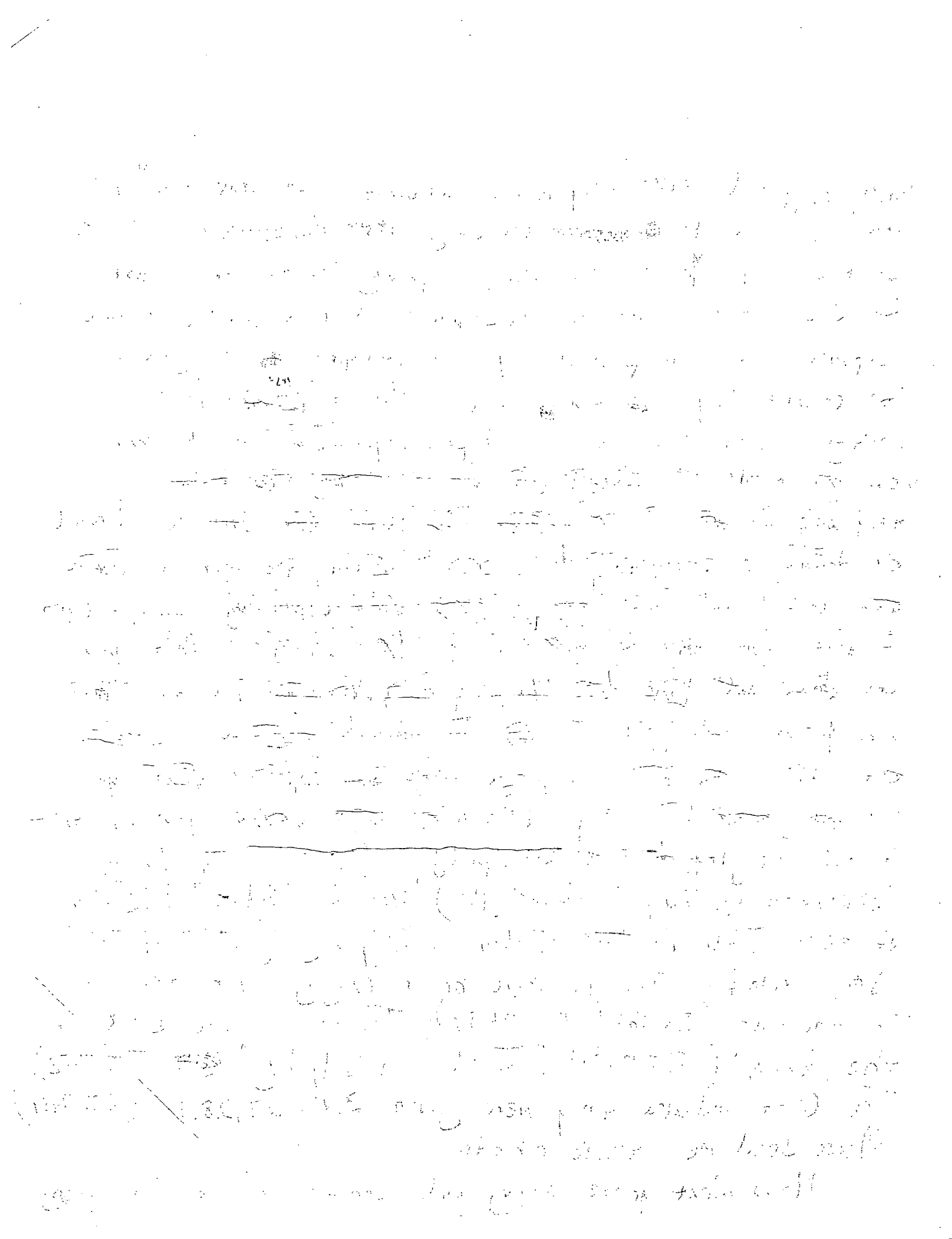
Judge Berle held that "portions of Ex. 103 (P.L.'s Affidavit that relate to the deliberation process or the effect of outside info upon Juror Locklear or other jurors are not admissible in determination of whether or not to grant the defendant an evidentiary hearing... 5/23/17 order. But the court didn't strike any portions of the affidavit; Until Judge Gilchrest issued his order in 2019 striking ¶'s 11 and 12. Facts. The portions Judge Gilchrist didn't strike, ¶5, standing alone, by law is presumptively prejudicial; but can be rebutted (Smith v. Phillips USSCT Facts." Doesn't make a difference when during the trial she went to the "location in S.C. where the body was discovered" (not "the bridge" as you erroneously claim in your 12/17/21 letter to me, ¶2. False data asserted to prove a point undermines your ethos, [redacted] Study [redacted] classic Rhetoricians such as Quintilian, Cicero and, Aristotle. [redacted] According to the States Arguments to defeat the missing element claim, "the trial" is only the hearing of evidence before the verdict was rendered. Fact: Your reference to page 4 of the [redacted] draft isn't supported by the actual text of page 4. She never says she "went to the bridge" and reached her conclusion about



what happened ... after they were in deliberations at that time" nor that "she went to the bridge after deliberations on the next Saturday". You are deliberately misquoting P.L. out of context to support your position. As the proponent of a complex convoluted explanation of this phenomenon you are attempting to get me to comprehend, you are being the burden of persuasion. You are violating occam's razor (the rule of parsimony). [redacted]

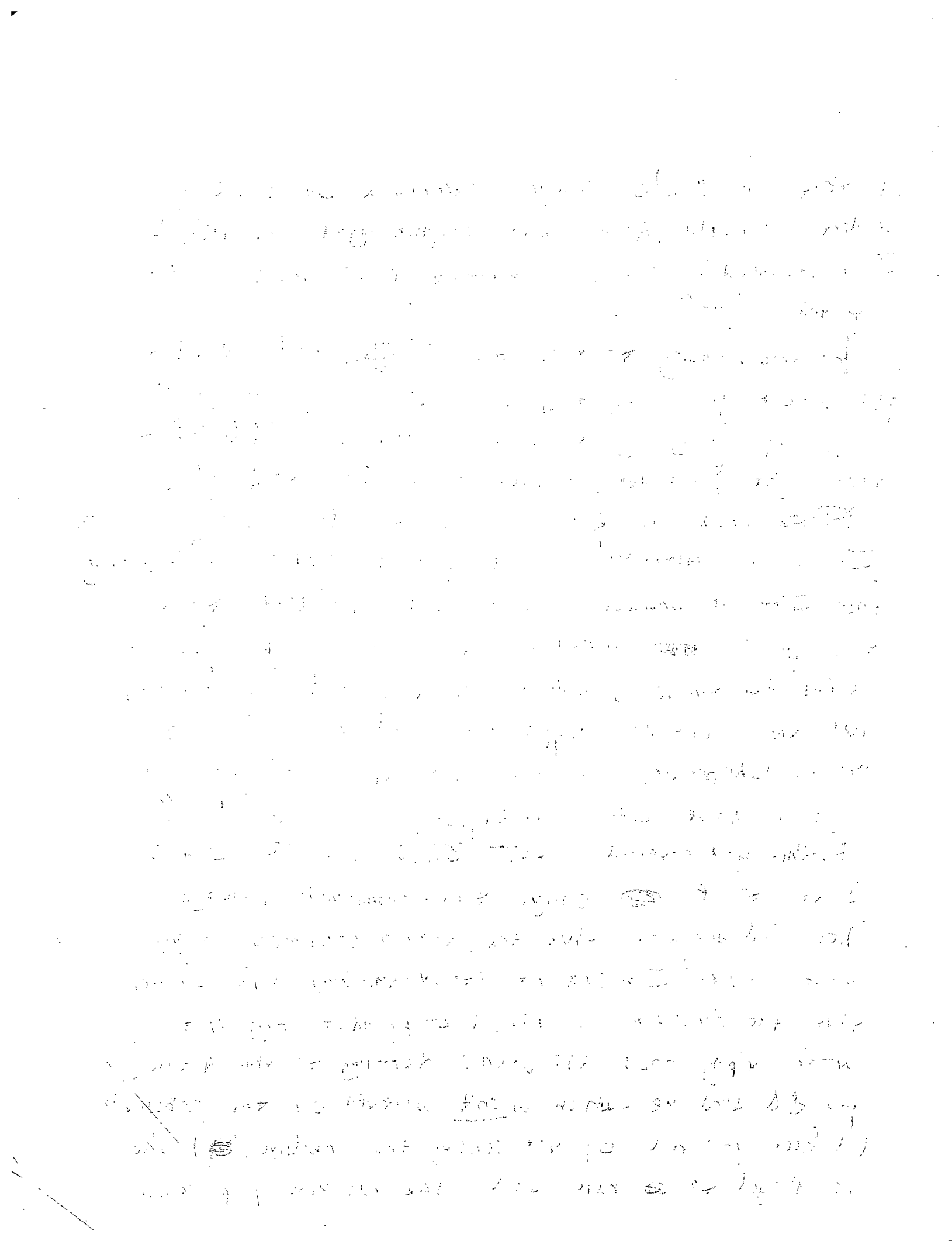
Facts: The jury did ask for photographs (T.T. 7483) during deliberations. Specifically, Ms. Munvel (P.L.) asked for "Picture # 9, Jordan at car. Jordan on tree. Jordan in body bag. (T.T. 7481-7482). She asked for "The one where he is hanging over the limb in the river" (Ex. 16) (T.T. 7483), "The one in the back of the truck." (T.T. 7484) ... "Jordan in body bag" (T.T. 7482). The Court indicated they were given Ex. 27, 28, 16 (T.T. 7484) Please send me these exhibits.

Now, what you're saying, and correct me if I'm wrong.



is that on 11/2/15 P.L. was interviewed by the Duke students, Brandon, Rachel and Stephen Tigert; on 11/17/15, Inv interviewed P.L.; on 2/22/16 P.L.'s affidavit was obtained. Right?

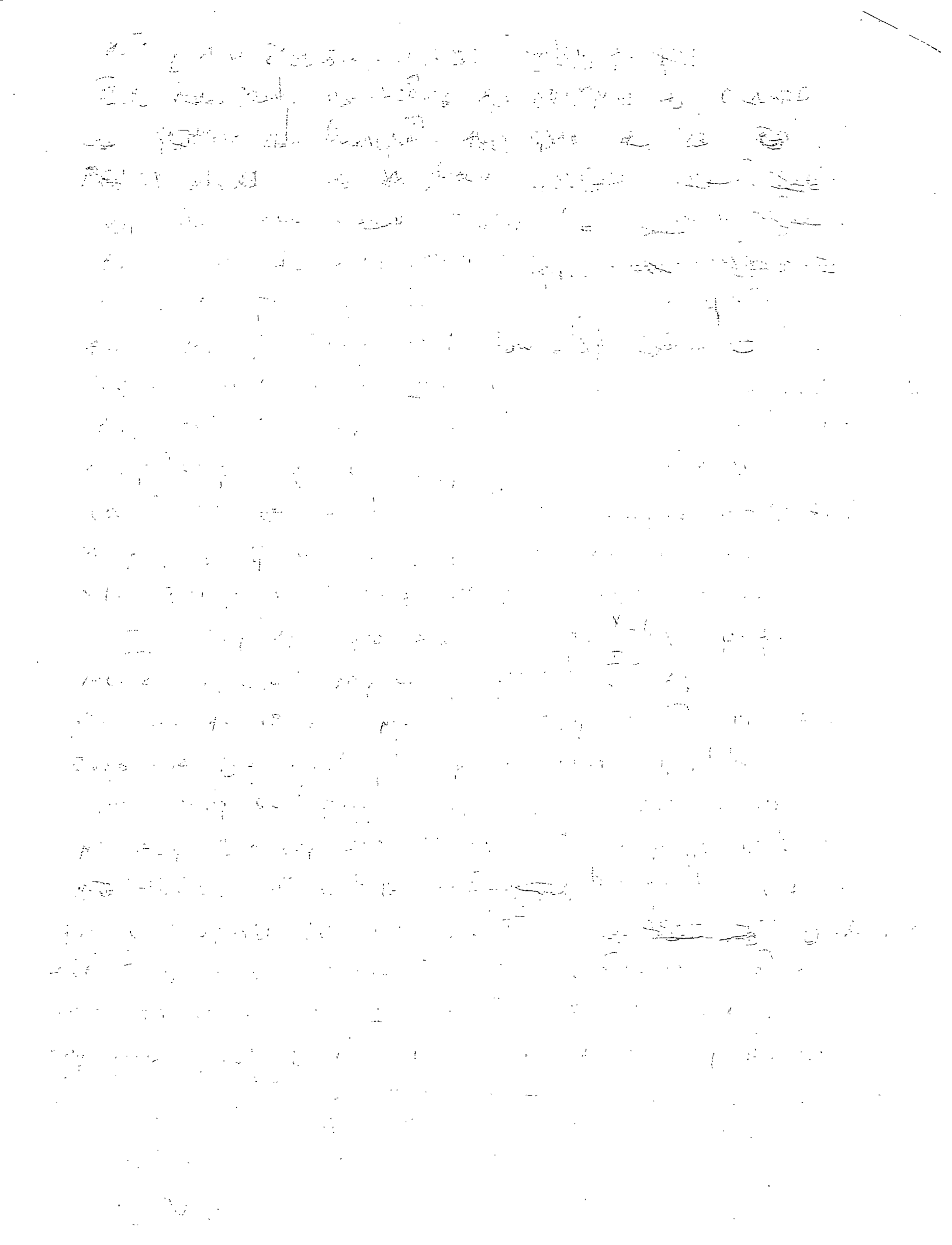
You are choosing to take P.L.'s [redacted] words, placed in the context you subjectively wish to, spoken on 11/17/15 [redacted] to justify disregarding a sworn and notarized affidavit? Is that right? You never considered that Inv [redacted] and Scott [redacted], used the Duke students to do the groundwork, Inv then interviewed her to get a better understanding; then Inv, or whomever obtained her affidavit took the prior [redacted] interviews, composed specific questions, asked P.L. those questions, [redacted] documented her answers, had the affidavit typed out, had her sworn by Whitley Carpenter, had her read the affidavit and sign it after which Whitley Carpenter notarized it? Further, you referred, in the 3/11/18 e-mail to Inv and Scott, to P.L. [redacted] calling the Robesonians coverage "lies". Did you know that the common consensus among a lot of Whites most Blacks (I'm Black; not "African-American"), and Lumbees is that the Robesonians is "lies", a propagandistic rag not worth wiping one's ass with? According to the Article (which is hearsay) you did send me - which wasn't written by the Robesonian (a fact you hid by not sending the headline, [redacted]) she is alleged to [redacted] have said she has memory problems,



Chris, Are you saying that Scott & Ian who federalized the juror claim by stating a violation of the U.S. Const. intended to defraud & trick a federal court? I doubt that

And that Robeson County has a lot of unsolved murders and talk about them (I'm guessing since the rest of the sentence was cut off) can be a dangerous thing to do. This indicates she was threatened, [redacted], into not [redacted] publicizing what she told Ian and the students b/c it would help me which would keep Larry locked up once the truth came out. Of course, you know that newspaper articles, her comments about what jurors said during deliberations aren't Admissible, and or is hearsay. Right?

Ian said, the last time he and I spoke, before y'all scared him, that he is convinced Scott would have drawn out the same info at the hearing as they did in her affidavit. I certainly could, and if she lied I could show she lied and why she lied. If you or others at NCCAJ couldn't, that's okay. That's no reason for me to drop this claim. I can't trust [redacted] your assessment b/c of your analytical methodology as applied to this matter. [redacted]



* ~~If the body except for part of a leg was elevated above the water, how did the shirt get so wet that it needed drying twice once "under hood" (then again by the S.B.I.? They lowered the creek somehow before the picture was taken, or put it up, or lied about shirt being wet. If the latter, Locklear lied about being at creek 7 days prior~~

With regard to Judge Gilchrist's order dated 12/20/19, I'll respond ¶ by ¶ using his enumeration:

Findings of Fact (I'm assuming you nor other counsel engaged in ex parte talks w/judge about this. Correct me if I'm wrong.

(1.) Body was discovered in creek, not the bridge she passed by daily, 200 to 300 yards alongside bridge (T.T. 235) according to Monroe; quarter mile or an 8th of a mile, according to Locklear; different bridges (first bridge according to Locklear, second bridge according to Monroe and medics.) led to the path. Import? No way of knowing from admissible evidence exactly where "body was discovered." Therefore, no telling where she went exactly nor how much this extraneous info was identical to several conflicting accounts of where body was found. Fact 1 is immaterial except she conducted her own investigation and she thinks she traveled to where body was discovered. Material issue (whether she went where body was found) in dispute.

(2) He's wrong. No indication she was in deliberations at time discussions were had. None whatsoever. Material Issue In Dispute (MIID)

(3) He's wrong. Locklear's (Hal) testimony about where body was found was inconsistent - he said 1/4 mile and 1/8 mile. Monroe's testimony conflicted with his. Plus, if creek was low for preceding month and tree trunk the body was on was, with the body, elevated above the water*, the body couldn't float, rise above water by itself. Yet, Locklear not credible 100% b/c he says no body on trunk one week before (7 days) before body found. Yet, one week before body found was July 28th - 5 days after Larry testified we put him in the

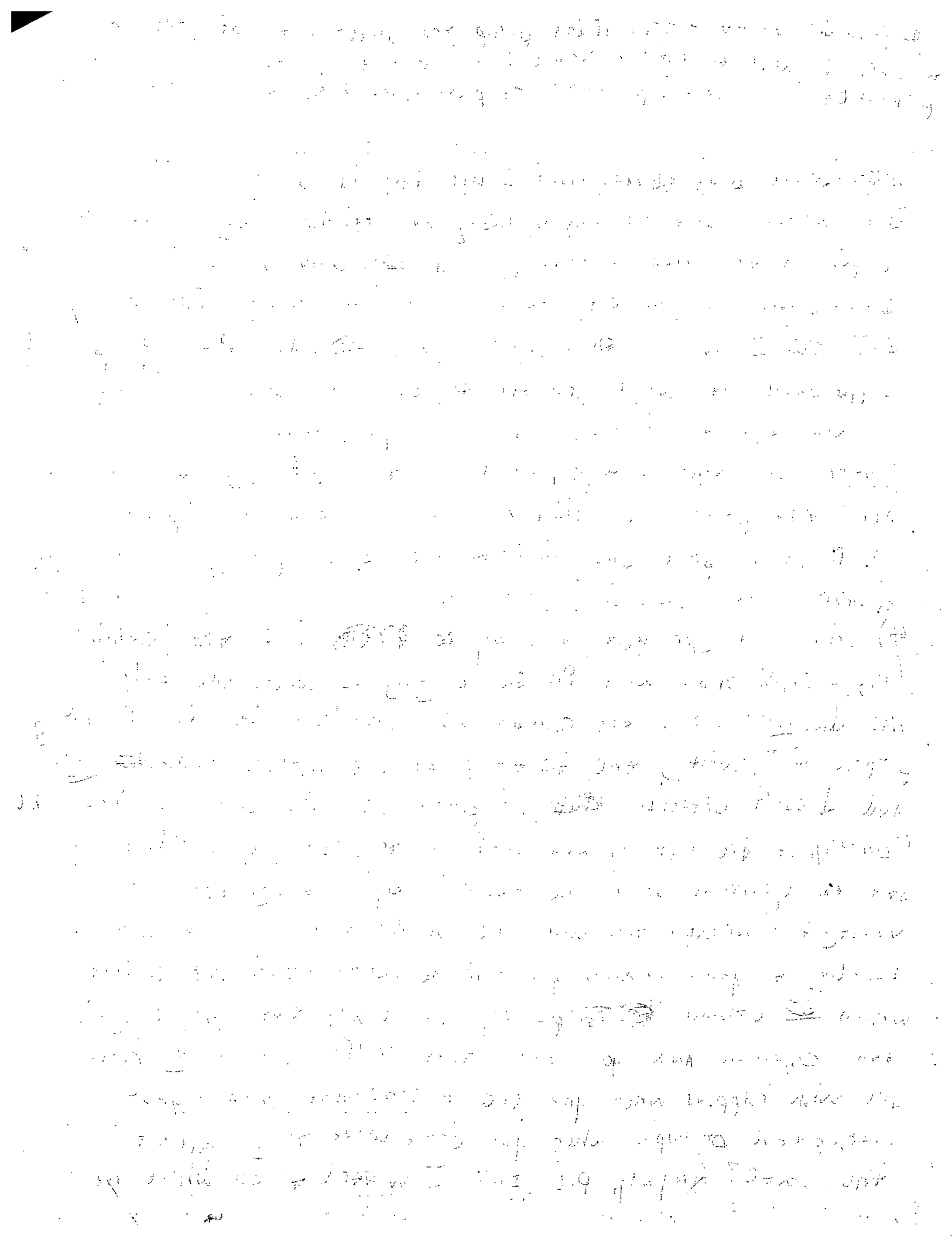
* How do we know they didn't pump the water out of the creek to make it easier to retrieve the body or damn it upstream for the same purpose? Barring all of the possibilities, the pictures are fakes or Hal Lockleat lied.

(*) Britt did authenticate pics as substantive evidence through guy who took pics, after my lawyer didn't object to them nor ask ~~why~~ whether water level dropped

water. So, the body elevated itself 5 days after he was killed? No. Only Jesus walked on water (a metaphor). So, obviously, he's lying about the depth of the creek; it rained, or a damn, human or beaver damn, busted and the water lowered,* or, he was killed after July 28th when I was in Fayetteville still. So, P.L's visit provided supplemental info which led her to believe he was still alive b/c the testimony of Hal, considered in pari materia with Monroes and others more experienced is too conflicting to say her visit provided no additional info to base her opinion on. Plus, no proof she went to the same spot body was discovered at. MIID. OR he's lying about being at creek a week earlie

(4) This is stronger. yet in no way does the exhibits (14, 15, 12, 13) show what P.L. seen by going to "where the body was discovered". Plus, the exhibits were introduced for the limited purpose of* illustrating the testimony of the witness" only ♀ and doesn't establish nor prove what P.L. believe it established. Obviously, if the testimony was sufficient for her she wouldn't have still had questions which she resolved by "conducting her own investigation." Whether those were her words verbatim is immaterial according to you. Remember, you told me Britt worded his affidavit, which is perjury, in a way that was ambiguos and equivical and you said that's lawful. Same thing here. See what happens when you aren't consistent with your interpretive principles when you don't want to go against the state?" Anyway, P.L. said "I wanted to see where he

♀ Until guy who took pics of body ... swamp testified, then Britt entered pics for substantive



‡ So, she's saying the "tree done moved" from where she expected it to be, or was told it was, or saw that it was prior. This is extraneous info conflicting with pictures & testimony.

* This indicates she went before deliberations b/c she stayed silent ~~and still~~ about going to creek but still "they came up on it themselves"

‡

traveled to, course the tree done moved but that doesn't matter to me about the tree being moved". So, she went to where she thinks the body was found on the tree; not just to the ~~bridge~~ bridge and based on her visit to the creek she came to believe he was alive when he went over the ~~creek~~ bridge. She didn't say she went during deliberations Chris, she said, in response to IAN's question, whether "others went to the creek or if she told them (the jury)", "No I didn't tell anybody, that* they came up on it themselves. To prove her assertion she said they, the jury, asked for photographs. That they were in deliberation when jury asked for pictures of the creek." So, she said, she stayed quiet about what she did and saw. Yes, she later says, arguably, that, "So, I decided to take the trip, I went down that next Saturday and had a look, you know..." Problem is, one, I have reason to doubt those are her words. And, she's rambling on. There's no attempt by IAN to clarify any of her remarks chronologically, i.e., to create a timeline ~~[illegible]~~ of the chain of events she's describing. There is no evidence on record that she took her trip after the finding of guilt. She says Jury already concluded he died on tree after her Saturday trip

(5) In light of the above, there is no evidence, in fact, that can be said to support this finding of fact b/c her affidavit doesn't adequately describe where she went on her trip. Her averment that she went "to the location where the body was discovered" is conclusory and prejudicial

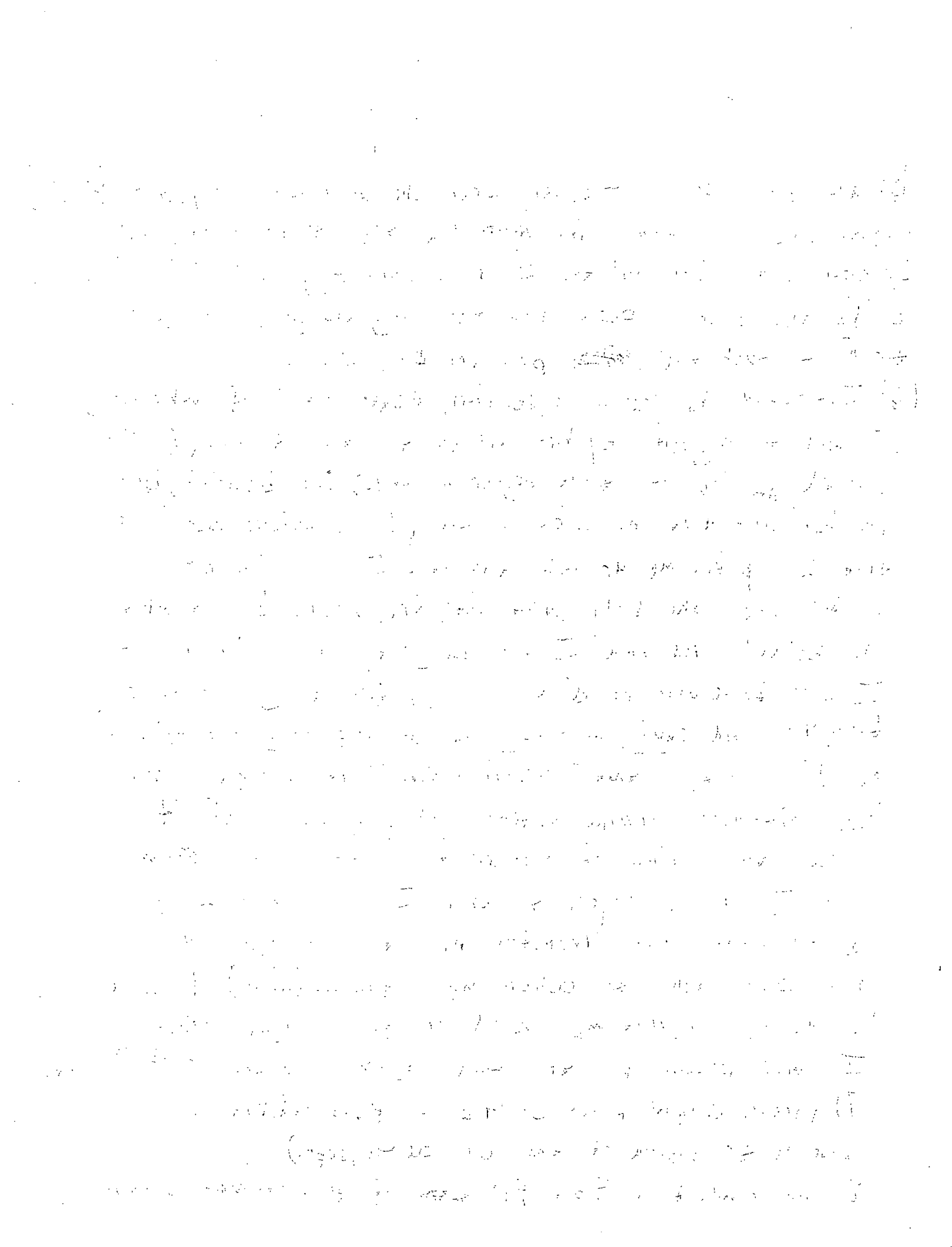
* where the body was found

because she doesn't ever exactly where she went which may not be exactly where she think she went.* The trial testimony of Hal Lechler, Daniel Morse and the EMTs is conflicting about which bridge the path is beside, how far along the path one would travel to reach the ~~body~~ place the body was at.

(6) Information she gleaned is absolutely determinative of whether I was found guilty by her. We can fix two facts. (1) she convicted ~~me~~ me of first degree murder. (2) She believed, based on her visit, that he died in S.C. (3) The defense case was that Larry picked me up and admitted I was with him in S.C. when the body went into the water. So, if what she believed was true I would be guilty of murder b/c if I was there when he died in S.C., after taking him there from N.C. And stealing or robbing the car (same thing. robbery) and he died what is that? Felony murder! That is what makes her extraneous evidence material and prejudicial b/c it moved the time of murder from the time ~~from~~ when I was at Kuyers, to when I was with Larry several hours later. Therefore, her trip resulted in her being able to believe my witnesses (alibi), disbelieve Larry, and convict me based on the thought that I was present at the time of the murder. See ¶ 7, infra.

(7) Factual dispute raised by ¶ 5 of P.L.'s affidavit is material to outcome of the case (see ¶ 6, supra)

(8) The claim from ¶ 6 & ¶ 10 ~~of~~ of P.L. affidavit would've



*(Lost my train of thought. Insert after "we had one...", "a claim based" voir dire violations because she hid the bias she had due to her opinions from her work at school. It's possible she got me mixed up with my cousin Burnie Green... You know, "all niggas look alike" to a lot of Robesonians.

⊕ You should've filed this in your supplement, you said you & cheryl were qualified...

raised, ~~from~~ based on the evidence brought out during the evidentiary hearing, if we had one*, based on (A) The Law - Irvin v. Dowd 366 U.S. 717 (1961) [Jurors made intentionally false and misleading statements during voir dire, 5th & 6th U.S. Const. Amend. violation]. She was vouched for by Garth Locklear, Larry's cousin, unbeknownst to me at the time, and her cousin. Garth was the spy on Angus team Woody Bowen referred to in his pre-trial motions. She hid her prejudicial views about me formed on her erroneous and racist views of me as a child.⊕ (Racist opinions, can be explored - it's a clear-cut exception to the rule that judges views can't be explored). Although the recent data you selectively sent me doesn't mention the racist remarks she made, allegedly you do have a record of it if you have Southern Coalitions for Social Justice and Scotts files. So, that is the re-occurring root of every problem we had which you choose to view as me being "difficult" - my refusal to accept your ~~[illegible]~~ violations of ~~[illegible]~~ fiduciary duties to me - to be candid, transparent, truthful with me. You promised you would honor these duties to me which I specifically identified in my first or second letter to you, I think. You criticized ~~and~~ Scott and Ian for not honoring these requirements and agreed they should be fired for those reasons - Scott fired before the evidentiary hearing and Ian fired ~~after~~ before the granting of the evidentiary hearing ~~[illegible]~~ when you reached the conclusion

cont. at top of next page

that Ian couldn't be trusted b/c he was too loyal to Scott even after Scott was discharged - which I concurred with.

Back to Gilchrists order...

(8) He notes the failure to raise the claim. Seems like he's acknowledging them throwing a claim, maybe to show to M.J.'s lawyers for their benefit. Ian did end up on staff at UNC Institute of Gov. the same place I specifically wrote Thomas Mihar and Danielle Carmen I didn't want a lawyer from, and which Scott used to work for. If you really are ~~[illegible]~~ in conflict with them as you portray why wouldn't you highlight this? "Me think the lady protest too much..." Seems like y'all are playing roles of adversaries to manipulate me. But, my issue with them was never personal, it was business." them selling me out with lies to drag this out for personal gain (Ian, Wiederer)

(9) Send me P.L. voir dire. She never mentioned working at Union Elementary, if she had I would've objected to her as a juror b/c of how racist the teachers were. Garth said she was a teacher in pembroke; Union elementary was in Rowland. Transcript he's referencing is false, plus, it wasn't admitted into evidence via M.A.R. pleadings or M.A.R. response and therefore he can't consider it

The above is the grounds I want to challenge the findings of facts on, to ~~preserve~~ preserve my ability to raise this in federal court if neccessary

Regarding Gilchrists Conclusions of Law

(1) This is a fact; not a ~~[illegible]~~ conclusion of law;

(2) Generally true;

(3) Not supported by facts, Speculative. No evidence this info was gleaned during deliberations as he concludes. Therefore, it shouldn't be ~~[illegible]~~ stricken ("it" beings ¶'s 11 & 12.

(4) True, but fails to mention the burden is on the state to prove harmless error b/c claim is based on Constitutional violations.

(5) 1st sentence is appealable b/c no evidentiary hearing held to determine harmlessness of error. 2nd sentence is not accurate for reasons explained above in findings of fact section of this letter/memo. 3rd sentence is accurate but completely immaterial to my case and the states case and to the M.A.R. No Allegation that Jordan died in S.C. after succumbing to injuries sustained in N.C. Dr O'Connor, who Scott sent, indicated the Jordans believed he died in S.C. Why? So basically, he or someone close to Scott and Ian lied to create this false perception to M. Jordan so they could leverage him into giving money to their causes, and to incentivize ~~him~~ into prying to keep me out of court as you say?

(6) Not supported by evidence. Evidence about area where body discovered conflicting. ~~[illegible]~~

(7) At the time of my trial I was not convicted of any of the other charges, they were all still at issue and the Court can't use my plea, which took place after the trial, to say the jury based their verdict on me having pled no contest to those charges. See State v. Mike Peterson. Any reference to that no contest plea as some of the "overwhelming evidence of guilt" should be struck. So, the Court can't use that to mitigate the damage done by her visit. See State v. Michael Peterson majority opinion on cert.

(8) Wrong, prejudice is presumed from her trip, plus, her trip and her conclusions based on her trip circumvented the one defense we offered. An alibi. That is why her trip was so prejudicial. No matter if 11 other jurors weren't affected by what she believed, based on her trip, if she was it violated my Right to a fair trial by 12 untainted jurors. One bad juror spoils the process b/c the verdict must be unanimous. They can convict on different theories but not with

(9) See above.

(10) Wrong

(11) Erroneous

So, to summarize, the findings of fact and conclusions of law must be appealed. If you think the State is going to (1) Call Lockhart's affidavit a lie, (2) In doing so subject Scott and Ian (including SCSJ with Burl) to ethical and

criminal charges which (3) they A.G.'s office may have known about but remained silent about IN violation of the Rules of Professional Conduct (4) IN open court... I would disagree. The more I look at this the more it looks as if Scott deliberately made me fire him so that he could get off the case so that you could come IN and cover up their collective mischief by dropping bread crumbs to make you think this claim is bad so that you would waive it so NO evidentiary hearing would be held on it which would expose all the crimes enumerated above. Then to make sure you didn't flip on them they used the threats about you taking the case from them to scare you off the claim and may have even sent someone to tell her what to say to you to make you want to drop it. IN fact, the last time I saw Scott when I walked in he was talking to, then, Lt. Locklear, a lady who used to smoke crack. It struck me b/c they clearly knew eachother. But they think they don't have to worry about ANY of this coming out b/c they thought you would convince me to waive the claim. If you want to waive it, get AN affidavit from P.C. saying what you think she's saying, enter this memo and your affidavit about this matter with IN's and Scott's affidavits and you press charges against them and the

A.G.'s involved in hiding it. That is the only way I'll be able to trust y'all are not working together to avoid AN evidentiary hearing that showcases N.C. justice system for what it actually is - AN instrument of war for profit. If they cross you, you won't expose them.

With all of that said, please know, believe and trust that I think the world of you, I think you, Scott and IAN, and all others in this process are essentially good people. Actually I think you are great on too many levels to count. You know that. Yet, we have different worldviews. The worst lie I have ever told is that I have faith in the legal system. I don't. I said that to accomodate your capicity as AN officer of the Courts. I shouldn't have done that. In doing so I betrayed my ANCESTORS who were killed by this system, who were oppressed, tortured AND broken by this system. I betrayed this generation who ARE being set up to be exterminated by this system if they don't comply, who ARE being isolated b/c the internet is A tree of Knowledge that they grew up eating from AND AS A result they ARE aware of their oppression to A degree our respective generations never were. And, I betrayed our mother earth who has been raped, and sold like A sex slave, piece by piece, by this system. I hate the sins, not the sinners. We can't allow ANYone to "manage" our perception. It's NEVER acceptable. It's NEVER okay.

241.2 Juror Misconduct

Last Updated: 08/06/21

Key Concepts

- Jurors are prohibited from any conduct that would interfere with ensuring a fair and impartial trial, such as having contact with the parties, talking with other people about the case, or allowing outside information or evidence to influence the jury's decision.
- The court has a duty to respond to any suspected misconduct, and to exercise its discretion in fashioning an appropriate remedy.
- Remedies typically involve giving cautionary instructions to the jury, replacing a juror with an alternate, or declaring a mistrial, but may also include more severe measures such as contempt proceedings, criminal charges, and other sanctions.

A. Juror Misconduct

The standard admonitions given to jurors are found in G.S. 15A-1236(a), and they instruct the jurors: (i) not to talk to among themselves about the case prior to deliberations, (ii) not to talk to anyone else about the case; (iii) not to form an opinion as to guilt or innocence prior to deliberations; (iv) to avoid reading, watching or hearing any accounts of the trial; and (v) not to talk to any of the parties, witnesses, or attorneys. The judge may also admonish the juror as to any other matters he or she considers appropriate to the case.

When juror misconduct is alleged or suspected, the trial judge must investigate the alleged misconduct, make findings, and determine based on the facts and circumstances of each case whether misconduct occurred resulting in prejudice. See *State v. Johnson*, 295 N.C. 227 (1978); *State v. Jackson*, 77 N.C. App. 491 (1985) ("where juror misconduct is alleged, it is incumbent upon the trial court to make such an investigation as is appropriate, including examination of the juror involved when warranted, to determine whether or not misconduct has occurred, and if so, whether such conduct has resulted in prejudice"). If the judge determines that misconduct did occur, the appropriate remedy depends on the nature of the misconduct and the particular facts of each case, but may include cautionary instructions, contempt or censure, removing the juror and replacing him or her with an alternate, declaring a mistrial, or ordering a new trial. Note that G.S. 15A-1215(a), as amended effective October 1, 2021, now allows the trial judge to replace a juror with an alternate even after deliberations have begun. Additional permissible sanctions are discussed later in this entry.

Some of the most common examples of juror misconduct, and the typical remedy, are summarized below:

1. Absence

The judge may substitute an alternate juror. G.S. 15A-1215(a); *State v. Carr*, 54 N.C. App. 309 (1981) (juror failed to return after lunch – no error or abuse of discretion for court to seat the alternate and continue, rather than declare a mistrial).

2. Sleeping/Inattentive

If appropriate, the judge may substitute an alternate juror. See G.S. 15A-1215(a); *State v. Barbour*, 43 N.C. App. 38 (1979) (no error for trial judge to excuse juror at close of arguments for "lack of attention" and seat the alternate). If the judge does not replace the juror, the record must contain findings of fact of actual sleeping or inattention (e.g., doing a puzzle, reading a book), supported by evidence, to show abuse of discretion on appeal. See *State v. Lovin*, 339 N.C. 695 (1995) (no error where defendant's motion to replace juror was denied because court found the juror was inattentive to some parts but still capable of performing duty). Findings must be made at the time; post-trial affidavits are insufficient. *State v. Engle*, 5 N.C. App. 101 (1969).

3. Reading/Watching Media Related to Trial

When there is substantial reason to fear that the jury has become aware of improper or prejudicial matters, an inquiry by the court is required and a mistrial or seating of alternate jurors may be warranted if the defendant's right to a fair trial would otherwise be violated. See *State v. Barts*, 316 N.C. 666 (1986) (court properly declined to order mistrial, no evidence to show jury was actually exposed to prejudicial newspaper article); *State v. Jones*, 50 N.C. App. 263 (1981) ("The problem is primarily one for the trial judge, who must weigh all the circumstances in determining in his sound judicial discretion whether the defendant's right to a fair trial has been violated when information or evidence reaches the jury which would not be admissible at trial."); see also *State v. Woods*, 293 N.C. 58 (1977) (several jurors read an article summarizing first day of the trial, which judge reviewed and found to be objective and non-inflammatory, so a cautionary instruction to disregard the article was a sufficient remedy).

4. Consulting Dictionary/Internet for Legal Terms

The trial judge will usually instruct the jurors not to do this, because it risks exposing them to prejudicial "extraneous" information. Extraneous information is "information dealing with the defendant or the case being tried, which information reaches a juror without being introduced in evidence. It does not include information which a juror has gained in his experience which does not deal with the defendant or the case being tried." *State v. Rosier*, 322 N.C. 826 (1988).

Notwithstanding the judge's instructions to avoid doing independent research, several appellate decisions have held that jurors looking up the definition of a legal term, without more, does not constitute prejudicial exposure to "extraneous information." See *Lindsey v. Boddie-Noell Enterprises, Inc.*, 355 N.C. 487 (2002) (finding that jurors looking up terms 'willful' and 'wanton' in dictionary did not fall under the definition of "extraneous information," and there was also no actual prejudice); *State v. Patino*, 207 N.C. App. 322 (2010) (because legal terms are not extraneous information under evidence Rule 606 and do not implicate the defendant's constitutional right to confront the witnesses against him, the allegations about jurors consulting the internet for legal terms are not proper matters for trial court inquiry); *State v. McLain*, 10 N.C. App. 146 (1970) (jury looked up "uttering" definition, but judge's instructions to disregard it were sufficient curative measure); see also *State v. Bauberger*, 176 N.C. App. 465 (2006) (affidavits regarding jury's use of dictionary could not be used to impeach verdict), *aff'd by equally divided court*, 361 N.C. 105 (2006); but see *In re Will of Hall*, 252 N.C. 70 (1960) (it was error for jury to use encyclopedia in jury room to look up the definition of "undue influence," but declining to reverse because this information came from jurors, who may not impeach their own verdict, plus the definition used actually favored appellant).

5. Failure to Disclose During Voir Dire

If a juror's lack of candor is discovered before the jury is impaneled, the court may allow the parties to ask additional questions and exercise challenges. See G.S. 15A-1214(g). If it comes out later, the party asking for a mistrial/new trial must show that an effort was made to draw out the information, the juror withheld it, and it shows bias against the moving party. See *State v. Maske*, 358 N.C. 40 (2004) (juror's inadvertent failure to mention she was victim of a robbery over 40 years prior did not warrant new trial, no evidence of prejudice – remanded for resentencing on other issues); *State v. Buckom*, 126 N.C. App. 368 (1997) (juror's minimal association with a state's witness, which was not disclosed in voir dire, insufficient to establish prejudice).

6. Expression of Opinion on Issue by Juror

Judge must investigate to determine if prejudice resulted. *State v. Drake*, 31 N.C. App. 187 (1976) (witness reported overhearing jurors at the coffee bar discussing case mid-trial and forecasting outcome – it was error for court not to investigate further before denying motion for mistrial).

7. Refusal to Deliberate According to the Law

Jurors must comply with the judge's instructions regarding following and applying the law as given, not considering any outside evidence, etc., or the court may declare a mistrial. See *State v. Sanders*, 347 N.C. 587 (1998) (manifest necessity supported judge's declaration of mistrial during capital sentencing hearing when there was "ample evidence that the jurors were disregarding the trial court's instructions concerning their duties and the law").

8. Conducting Experiments

Jurors should not conduct their own experiments which introduce extraneous information into the deliberations, but actual prejudice must be shown to warrant mistrial or reversal. *State v. Pridgen*, 20 N.C. App. 116 (1973) (during a recess, juror got inside a wooden crate where officers were hidden during a sting to see how good their view was – no prejudice shown).

9. Unauthorized Visit to Crime Scene

Prejudice must be clear, such as when jurors were exposed to evidence not offered at trial. *State v. Perry*, 121 N.C. 533 (1897) (new trial ordered because juror went to scene and spoke to passerby about distance to a house relevant to case); but see *State v. Hawkins*, 59 N.C. App. 191 (1982) (juror went to crime scene and provided information to fellow jurors about lighting at the scene - but no prejudice because the lighting was already described at trial by another witness); see also *State v. Smith*, 13 N.C. App. 583 (1972) (suggesting that prejudice from one juror viewing scene could be solved by allowing all jurors to view scene).

10. Intoxication

An intoxicated juror who is not physically or mentally capable of serving as a juror may be replaced with alternate, or the judge may declare a mistrial. See G.S. 15A-1215; *State v. Tyson*, 138 N.C. 627 (1905). The intoxication must occur during trial, not during a weekend or overnight recess, to require mistrial or substitution of an alternate. See *State v. Crocker*,

11. Reading Books or Watching Movies about Crimes

This issue is rarely raised in modern practice, and only actual prejudice would warrant a new trial, but historically some courts expressed a concern about jurors being exposed to inflammatory entertainment while the trial is underway. See *State v. Hawkins*, 214 N.C. 326 (1938) (no new trial required where jurors in murder trial were allowed to watch a movie depicting a murder mystery); but see *U.S. v. Stoehr*, 196 F.2d 276 (3rd Cir. 1952) (finding no prejudice, but noting that "[i]t is our belief, nonetheless, that films about crime and the underworld are probably not the best entertainment for juries engaged in a criminal case of any kind" and "it is dangerous practice for jurors to be allowed to attend motion pictures unless the nature of the picture is learned in advance"); *Norwood v. State*, 48 S.W.2d 276 (Tex. App. 1932) (new trial ordered when jury in a rape case was taken to a movie where the "moral was that illicit sexual relations destroy the home" even though "all of the jurors testified that the show had no influence upon them and that they rendered their verdict according to the law and evidence in the case").

B. Improper Contact with Jurors

1. Contact Between Juror and a Party

Such contact should always be avoided, but it does not necessarily require removal of a juror or declaring a mistrial if the contact had no impact on the case. Casual contact still requires an inquiry and investigation by the judge, but no action need be taken if no prejudice is found. *O'Berry v. Perry*, 266 N.C. 77 (1965). If contact was accidental and no prejudice is shown, a new trial is not required. *State v. Scott*, 242 N.C. 595 (1955). If the contact was surreptitious, the judge may substitute an alternate juror or order a mistrial. See G.S. 15A-1215(a); *State v. Cutshall*, 278 N.C. 334 (1971). Similarly, if a juror contacts counsel at home, the judge may substitute an alternate. *State v. Price*, 301 N.C. 437 (1980).

2. Contact Between Juror and a Witness

Contact between jurors and witnesses likewise should be avoided, but it does not necessarily require the removal of a juror or declaring a mistrial if the contact did not result in prejudice to either party. See *State v. Shedd*, 274 N.C. 95 (1968) (state's witness during recess discussed case within jury's hearing, but record failed to disclose what statements were made and defense failed to move for mistrial – in absence of record, facts did not require mistrial); *State v. Childers*, 80 N.C. App. 236 (1986) (defendant failed to show prejudice in casual conversations unrelated to case between one of the state's witnesses and two jurors); *State v. Rutherford*, 70 N.C. App. 674 (1984) (juror and state's witness discussed during lunch recess whether they had mutual acquaintances; judge did not abuse discretion in refusing to declare mistrial after full inquiry was made); *State v. Bowden*, 37 N.C. App. 191 (1978) (two jurors were seen talking to defense witness during recess, but no prejudice to defendant when court thoroughly examined jurors and determined that their verdict would not be affected).

3. Contact Between Juror and a Court Officer

Incidental contact or remarks unrelated to the case may not be considered prejudicial error, but more substantive interactions and/or comments about the case or the law likely will be. See *State v. Bailey*, 307 N.C. 110 (1982) (error when sheriff, who testified as state's witness, drove three jurors to restaurant for evening meal); *State v. Johnson*, 295 N.C. 227 (1978) (bailiff's comment to jury that he was proud that prosecutor "stood up" for law enforcement officers of Swain County was prejudicial, requiring new trial); *State v. Sneeden*, 274 N.C. 498 (1978) (error when bailiff answered jury's legal question, but no prejudice shown); but see *State v. Brown*, 315 N.C. 40 (1985) (fact that courtroom bailiff briefly sat down next to prosecutor was not a "communication" to the jury that the court was on the prosecution's side); *State v. Kornegay*, 70 N.C. App. 579 (1984) (conversation between juror and defendant's probation officer was not prejudicial).

4. Contact Between Juror and the Jury Custodian

The bailiff who serves as the jury custodian obviously needs to communicate regularly with jurors about scheduling, parking, directions, and other administrative matters, but he or she may not discuss the facts of the case with the jury. Furthermore, to avoid any possible risk of prejudice or even the appearance of any impropriety, the jury custodian must not be: (i) a witness for the state; or (ii) an immediate family member of a party, counsel, or witness. If the custodian is either a state's witness or a family member of a party, it is conclusively presumed to be reversible error. See *State v. Mettrick*, 305 N.C. 383 (1982) ("No matter how circumspect officers who are to be witnesses for the State may be when they act as custodians or officers in charge of the jury in a criminal case, cynical minds often will leap to the conclusion that the jury has been prejudiced or tampered with in some way. If allowed to go unabated, such suspicion would seriously erode confidence in our jury system. For this reason we have adopted the rule that prejudice is conclusively presumed in such cases."); *State v. Wilson*, 314 N.C. 653 (1985) (immediate family member of either a prosecutor trying a case, a defendant, defendants' counsel, or a crucial witness for either the prosecution or defense is prohibited from serving as custodian or officer in charge of jury).

By contrast, if a state's witness serves as one of the bailiffs in the courtroom, but not as the actual "custodian" of the jury, then actual prejudice must be shown to require a new trial. See *State v. Jeune*, 332 N.C. 424 (1992) (deputy sheriff, a state's witness, was bailiff but not custodian of jury -- prejudice not conclusively presumed); *State v. Macon*, 276 N.C. 466 (1970) (allowing two deputy sheriffs, who acted as court officers or bailiffs during trial, to testify against defendant did not amount to denial of due process or violate constitutional right to trial by impartial jury where exposure of jury to officers was brief and incidental and officers had no custodial authority over jury).

5. Contact Between Juror and Judge

The judge should not confer at the bench with a juror concerning questions the juror desires to ask, unless counsel is present or the conversation is recorded. *State v. Tate*, 294 N.C. 189 (1978). In a capital trial, it is error if the judge confers privately with jurors without the defendant being present. *State v. Smith*, 326 N.C. 792 (1990) (error in capital case when judge spoke privately with prospective jurors); *State v. Artis*, 325 N.C. 278 (1989) (error in capital case when judge spoke with juror in chambers); *State v. Johnson*, 331 N.C. 680 (1992); *State v. Moss*, 332 N.C. 65 (1992).

6. Contact Between Juror and Third Party

The decision whether to excuse a juror or declare a mistrial based on contact between a juror and a third party is left to the sound discretion of the trial judge, based on an appropriate inquiry into the facts and circumstances, and will not be disturbed on appeal absent a showing of abuse of discretion. See *State v. Hester*, 216 N.C. App. 286 (2011) (no error in not declaring mistrial when juror discussed case with a trial spectator over the weekend, and juror was replaced with alternate); *State v. Cooley*, 47 N.C. App. 376 (1980) (mistrial granted on state's motion was error when there was no evidence of connection between alleged jury tampering and defendant and his attorney); *State v. Johnson*, 295 N.C. 227 (1978) ("verdict will not be disturbed because of a conversation between a juror and a stranger when it does not appear that such conversation was prompted by a party, or that any injustice was done to the person complaining, and he is not shown to have been prejudiced thereby").

C. Matters Affecting Deliberations

1. Other People in the Jury Room

If an alternate juror participates in *any degree* in the deliberations, there is per se prejudicial error that requires a new trial. *State v. Bindyke*, 288 N.C. 608 (1975) (new trial granted where alternate was in jury room and participated in deliberations for first 3 to 4 minutes); *State v. Rowe*, 30 N.C. App. 115 (1976) (new trial cannot be waived). Note that G.S. 15A-1215(a), as amended effective October 1, 2021, now allows the trial judge to replace a juror with an alternate even after deliberations have begun.

But where the alternate (or another person) is in the jury room only inadvertently, for a brief period, and does not participate in deliberations, a mistrial is not required. See *State v. Battle*, 271 N.C. 594 (1967) (extra juror went into jury room just long enough to get a drink of water, and did not discuss case or deliberate); *State v. Washington*, 141 N.C. App. 354 (2000) (not an abuse of discretion to decline to order mistrial after bailiff briefly entered jury room during deliberations to retrieve some magazines); *State v. Riera*, 6 N.C. App. 381 (1969) (unauthorized woman entered jury room by accident – jury did not speak with her, no error in denying mistrial), rev'd on other grounds, 276 N.C. 361 (1970).

2. Other Materials/Information in Jury Room

See the entries above regarding jurors consulting dictionary/internet, or being exposed to media about the case – whether the material or information brought into the jury room is deemed extraneous and prejudicial depends on its nature. See *State v. Barnes*, 345 N.C. 184 (1997) (no evidence that jury's consultation of Bible before deliberations was directed to facts or law of the case); *State v. Quesinberry*, 325 N.C. 125 (1989) (jurors' belief about possibility that defendant would be paroled if given a life sentence was an internal influence on the jury during sentencing deliberations and therefore evidence concerning their consideration of the possibility of parole was not admissible to impeach verdict recommending death sentence).

3. Leaving the Jury Room

Deliberations must be conducted by all 12 jurors at all times, but minor interruptions such as jurors taking bathroom breaks have been found not to be error. See *State v. Hawkins*, 302 N.C. 364 (1981) (several jurors stepped out for a minute or two to use restroom during deliberations – no evidence as to what was discussed during those intervals, no error in judge denying mistrial); *State v. Sanders*, 280 N.C. 67 (1971) (presumption is in favor of finding regularity in the trial); see also G.S. 8C-1, Rule 606, Official Commentary; G.S. 15A-1240.

D. Sanctions for Misconduct By or Affecting Jurors

If the court becomes aware that any misconduct or improper contact has taken place, the trial judge must investigate and take any appropriate action to remedy the situation. See *State v. Drake*, 31 N.C. App. 187 (1976). The most common remedies are:

1. Caution or Instruction

The judge may give an appropriate instruction or admonishment to the jury, such as ordering them to disregard the improper outside influence or information. See G.S. 15A-1236 (Admonitions to Jurors); *State v. Hines*, 131 N.C. App. 457 (1998) (appropriate instructions may cure even constitutional errors); N.C.P.I.—Crim. 100.31 ("If you acquire any information from an outside source, you must not report it to other jurors and you must disregard it in your deliberations.")

2. Alternate Juror

The judge may discharge a juror and replace him or her with an alternate, if deemed necessary in the sound discretion of the court. See G.S. 15A-1215(a), G.S.15A-2000(a)(2); *State v. Nelson*, 298 N.C. 573 (1979). Note that G.S. 15A-1215(a), as amended effective October 1, 2021, now allows the trial judge to replace a juror with an alternate even after deliberations have begun.

3. Declare a Mistrial

The judge may declare a mistrial in response to misconduct discovered before the verdict if, in the sound discretion of the trial judge, it makes a fair and impartial trial impossible under the law. See G.S. 15A-1061; *State v. McCarver*, 341 N.C. 364 (1995).

4. Order a New Trial

The judge may also order a new trial based on misconduct discovered after the verdict - the ruling is in the judge's discretion, and will not be disturbed on appeal unless it is clearly erroneous or an abuse of discretion. See *State v. Johnson*, 295 N.C. 227 (1978); *State v. Sneeden*, 274 N.C. 498 (1968).

5. Contempt of Court

Any juror, party, bailiff, attorney, or third party guilty of misconduct may be cited for contempt. See G.S. 15A-1035; *State v. Pierce*, 134 N.C. App. 148 (1999) (juror properly found in criminal contempt for willfully violating judge's instruction not to do any research on one's own).

6. Attorney Discipline

An attorney may be disciplined directly by the trial judge, or reported to the North Carolina State Bar for further disciplinary proceedings.

7. Criminal Law Violations

Occasionally, efforts to interfere with jurors' work may also violate the criminal law. See G.S. 14-220 (bribery of a juror); 14-225.2 (harassment of or communication with a juror); 14-227.2 (secret listening to jury deliberations). The common law crimes of embracery and obstruction of justice are also effective in North Carolina. See *State v. Brown*, 95 N.C. 685 (1886) ("embracery" is the "willful and corrupt attempt to influence the deliberations and verdict of a pet[it] jury [...] by some direct or indirect approach to and communication with the jury, or, as in the case supposed, the delivery of money or something of value to some one, to be used in operating upon the minds of the jurors"); N.C.P.I.--Crim. 230.62 (obstruction of justice).

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240.1 Jury Instructions

Last Updated: 11/16/20

Key Concepts

- The judge is required to correctly instruct the jury on the law regarding all substantial features of the case, and may (or, if specifically requested by a party, must) also correctly instruct the jury on the subordinate issues in the cases.
- Parties must be given an opportunity to object to incorrect or improper instructions, and failure to object will waive the matter on appeal, unless it is plain error.
- In response to an incorrect or omitted instruction, a question from the jury, or a report of jury deadlock, the court may give additional instructions to address the issue and encourage the jury to reach a verdict.

Practice Pointer

Pattern Jury Instructions.

Pattern jury instructions are available for the vast majority of criminal and motor vehicle offenses, affirmative defenses, evidentiary considerations, and other related matters. These instructions can be accessed and searched online here.

If there are no pattern instructions available for a particular offense, the prosecutor should draft a proposed instruction that tracks the language of the statute and sets forth each of the elements the state has to prove and be prepared to submit that proposed instruction in writing to the judge at the charge conference. Similarly, if there are no pattern instructions available for an affirmative defense or any other legal matter arising in the case, the prosecutor should draft proposed instructions for that issue as well. See, e.g., *State v. Miller*, 258 N.C. App. 325 (2018) ("In North Carolina, there is no pattern jury instruction that expressly addresses the defense of necessity," but if the facts at trial support the defense, the trial court i obligated to give a proper instruction "in accordance with the establishec elements of that defense").

A. Purpose and Procedure

The primary reasons for instructing the jury are (i) to clarify the issues, (ii) elimina extraneous matters, and (iii) explain the applicable law. *State v. Cousin*, 292 N.C. 4 (1977); *State v. Little*, 163 N.C. App. 235 (2004). Most judges just rely on the North Carolin Pattern Jury Instructions to provide a concise and accurate summary of each element c issue, but the judge has wide discretion in presenting the issues to the jury and does nc have to use the exact words found in the pattern jury instructions. The judge may modify o even replace the suggested instructions, as long as the judge correctly charges th applicable principles of law and does not express an opinion as to whether any fact has or has not been proven. See G.S. 15A-1231, 1232; *State v. Harris*, 306 N.C. 724 (1982). The judge also may but is not required to, summarize the evidence presented at trial to the extent necessary tc explain the application of the law to the evidence. See G.S. 15A-1232; *State v. Blue*, 356 N.C. 79 (2002); *State v. Taylor*, 80 N.C. App. 500 (1986). But if the judge does decide to summarize the evidence, he or she must be vigilant not to express an opinion about the quality of the evidence or credibility of witnesses. See *State v. Artis*, 325 N.C. 278 (1989), *vacated on other grounds*, 494 U.S. 1023 (1990).

Before closing arguments, the judge must conduct a charge conference (outside the presence of the jury) to discuss the proposed instructions. G.S. 15A-1231(b). The judge must inform the parties which instructions (elements of the offense, lesser-included offenses, affirmative defenses, special requests, etc. – see more on this below) he or she plans to give. *Id.* The charge conference must be recorded, see G.S. 15A-1231(b), (d); G.S. 15A-1241; General Rules of Practice for Superior and District Courts, Rule 21, but failure to record the conference will not provide grounds for an appeal unless it was not corrected before the end of trial and it materially affected the defendant's case, see *State v. Brunson*, 120 N.C. App. 571 (1995). Again, the judge may not express any opinion about the strength of the case or what the jury's verdict ought to be. See G.S. 15A-1222; 15A-1232; N.C.P.I.—Crim. 101.35.

Conducting the conference

At the conclusion of all the evidence and before the closing arguments, the judge will excuse the jury and proceed to the charge conference. Most judges will already have a pretty good idea of which instructions they plan to give, and will recite a proposed list to both counsel ("I plan to give instruction 101.05 - function of the jury; instruction 101.10 - burden of proof

Practice Pointer

and reasonable doubt; 101.15 - credibility of witnesses," and so on). The judge will then ask counsel for both sides if they have any requests for modifications to the instructions selected, or for additional instructions not yet included.

Prosecutors should pay particular attention to the instructions on the substantive offenses and affirmative defenses, not only to make sure the judge has selected all the correct instructions, but also because these instructions often require the judge to fill in blank parentheticals where the instructions simply say "describe assault" or "name weapon," so it is extremely important to make sure the state agrees with how the judge proposes to characterize the evidence. If a prosecutor intends to ask for a specific phrasing, alteration of a pattern instruction, or a special instruction the prosecutor has drafted, those instructions should be prepared in writing ahead of time. The prosecutor should also be prepared to argue against any instructions requested by the defense that are not warranted by the law or the evidence.

The judge has the inherent authority to choose to give a written copy of the instructions to the jury, and he or she may also allow the jury to take those instructions with them into deliberations – the decision whether to provide written instructions is discretionary, and will not be reversed on appeal absent an abuse of discretion. See *State v. McAvoy*, 331 N.C. 583 (1992) (judge erred in advising jury that he did not have authority to provide the jury with written instructions); *State v. Hester*, 111 N.C. App. 110 (1993) (trial court could allow members of jury in murder prosecution to take written instructions into jury room).

B. Main Types of Jury Instructions

1. Substantial Features of the Case

, trial judge must state and explain the law on all substantive features of a case arising from ne evidence, whether or not specifically requested by attorneys in the case. G.S. 15A-1221(9), 231(c); -1232; *State v. Harris*, 306 N.C. 724 (1982). This means the judge must instruct the jury ; to the crime charged, any lesser-included offenses, affirmative defenses, and identity of the efendant as the perpetrator. See *State v. Shaw*, 322 N.C. 797 (1988); *State v. Kinard*, 54 N.C. 2p. 443 (1981). Note that when the state's evidence is positive as to each and every element the crime charged and there is no conflicting evidence, instructions on any lesser-included enses are not required, see *State v. Millsaps*, 356 N.C. 556 (2002); *State v. Harvey*, 281 N.C. 1 72), but if there is conflicting evidence or some positive evidence of a lesser offense, then e judge must instruct on the lesser-included offense as well, even if it is not specifically requested by the defense, see *State v. Lawrence*, 352 N.C. 1 (2000); *State v. Montgomery*, 341 N.C. 553 (1995); *State v. Lowe*, 150 N.C. App. 682 (2002) (stating that a judge should instruct on a lesser included "even in the absence of a request by the defendant, where sufficient evidence of the lesser offense is presented at trial").

In rare cases, the defense might not only decline to request instructions on a lesser-included offense, but actually object and request that the court *not* give the instructions, in the hope that the jury will return a not guilty verdict on the higher charge. Even when faced with an objection from the defense, the judge should still instruct on the lesser offense if it's appropriate based on the evidence. See *State v. Jones*, 149 N.C. App. 977 (2002) (unpublished) ("the cases cited by defendant do not support the proposition that a defendant has a right to *not* have lesser included offenses raised by the evidence submitted to the jury. [...] Likewise, our research has failed to disclose any case law or statutory authority for that proposition. Therefore, we conclude that a defendant has no such right."). However, if the court does honor the defendant's wishes and declines to charge the jury on the lesser offense, then the defendant is barred from later arguing on appeal that such an instruction should have been given. See *State v. Williams*, 333 N.C. 719 (1993) (defendant was charged with first-degree murder and indicated to the judge that he did not want the jury instructed on second-degree murder, so "any error in not instructing on the lesser-included offense was invited by defendant" and thus the defendant was "not entitled to any relief and will not be heard to complain on appeal").

2. Subordinate Issues and Requests for Special Instructions

Request for special jury instructions on subordinate issues in the case can be made by any party, and must be in writing with copies to other parties. G.S. 15A-1231(a). A "subordinate" issue is an evidentiary matter which does not relate to the elements of the crime charged or defendant's criminal responsibility. Examples of instructions on subordinate issues include witness credibility, flight, and impeachment by prior conviction. If the judge gives an instruction on a subordinate feature of the case, the judge must charge it fully and accurately. See *State v. Corn*, 307 N.C. 79 (1982) (although a trial judge is not required to give requested instructions verbatim, the court is required to give the requested instruction at least in substance if it is a correct statement of the law and supported by the evidence). In other words, the judge is not required to instruct on a subordinate issue or to elaborate on a particular point concerning an issue of substantive law unless a request for that special jury instruction is made by a party – but if a party does request an instruction on a subordinate feature, and if that instruction is correct in law and supported by the evidence in the case, then the judge must give it. See *State v. Monk*, 291 N.C. 37 (1976).

3. Reasonable Doubt Instruction

An instruction on the meaning of "reasonable doubt" is treated like a subordinate issue, so the judge is not required to give an instruction on it unless requested by a party. *State v. Shaw*, 284 N.C. 366 (1973). But in practice, the standard definition found in pattern jury instruction 101.10 is almost universally given, whether specifically requested or not. Some prosecutors prefer the alternate definitions of reasonable doubt found in cases like *State v. Williams*, 308 N.C. 47 (1983) ("fully satisfied or entirely convinced or satisfied to a moral certainty of the truth of the charge"), *State v. Ward*, 286 N.C. 304 (1974) (reasonable doubt is not "born of merciful inclination or disposition to permit the defendant to escape the penalty of law"), and *State v. Hammonds*, 241 N.C. 226 (1954) ("satisfied to a moral certainty"). However, prosecutors should avoid using any reasonable doubt instructions that include the phrase "moral certainty," since it may ultimately be found unconstitutional. See, e.g., *State v. Warren*, 348 N.C. 80 (1998) (noting several cases which have disapproved of the term because "when considered in reference to 'moral certainty' rather than evidentiary certainty, a reasonable jury could find the defendant guilty on a degree of proof less than a reasonable doubt"). The standard reasonable doubt instruction found in N.C.P.I.—Crim. 101.10 may be less expressive and colorful, but it is clearly constitutional.

4. Other Definitions

It is not error for the judge to decline to define or explain words of common usage and meaning known to the general public, unless of course it is requested by a party and supported by the evidence, in which case the court must give it. For example, most judges will choose to include the definition of "intent" in N.C.P.I.—Crim. 120.10, but it would not be error to decline to do so if it was not requested by either party. See *State v. Jones*, 300 N.C. 363 (1980). However, if the meaning of a word is not clear, or if it has a unique legal context, then the judge must define it to give the jury proper guidance. See *State v. Patton*, 18 N.C. App. 266 (1973) (error for judge not to define "drunk" or "intoxicated" in context of a public intoxication case).

5. Instructions About the Role and Conduct of Jurors:

The judge is required to instruct the jury that in order to return a verdict, all 12 jurors must agree to a verdict of guilty or not guilty. G.S. 15A-1235(a); N.C.P.I.—Crim. 101.35. The judge also "may" instruct the jury that they have a duty to deliberate and consult with one another with a view towards reaching an agreement, but also that they must each decide the case for themselves, and they should not hesitate to re-examine their own views but also should not surrender an honest conviction solely for the purpose of reaching a verdict. See G.S. 15A-1235(b); see also G.S. 15A-1236(a); N.C.P.I. – Crim. 100.31 (general admonitions to jurors before taking a recess); *State v. Richardson*, 308 N.C. 470 (1983) (trial judge properly admonished jury -- judge is not required to recite each provision of statute at every recess).

After the jury has retired for deliberations, the court may recall the jurors to give additional instructions when needed to: (i) respond to an inquiry from the jury; (ii) correct or withdraw an erroneous instruction; (iii) clarify an ambiguous instruction; or (iv) instruct on an additional point of law that should have been included in the earlier instructions. See G.S. 15A-1234; N.C.P.I.—Crim. 101.35. Whenever additional instructions are given, the judge may also exercise his or her discretion to repeat some or all of the original instructions that were previously given. See *State v. Prevette*, 317 N.C. 148 (1986). Repeating the entirety of the prior instructions is not required, and in fact it has been deemed "undesirable" or even erroneous in some circumstances. See *State v. Dawson*, 278 N.C. 351 (1971). Before giving any additional instructions, the judge must inform the parties of the instructions he or she intends to give and allow them an opportunity to be heard – but the judge does not have to give the parties an opportunity to be heard if he or she is merely repeating or clarifying the prior instructions. See G.S. 15A-1234(c); *State v. Weathers*, 339 N.C. 441 (1994); *State v. Davidson*, 131 N.C. App. 276 (1998).

If the court does give additional instructions, they must be given in open court, on the record, and the entire jury must be present in the courtroom. See G.S. 15A-1234(d); *State v. Tucker*, 91 N.C. App. 511 (1988). Additionally, if the new instructions change the permissible verdicts of the jury, counsel for all parties must be allowed to make additional arguments to the jury – otherwise, it is left in the court's discretion whether to allow additional arguments or not. See G.S. 15A-1234(c).

Practice Pointer

Get it in writing

Most judges will do this anyway, but if the jury indicates that it has a question about the instructions or a request for clarification, it is always preferable to have the foreperson write it down and send it out to the judge. The main reason for this is because it forces the jurors to clarify precisely what it is they need to know, but it also makes it easier for the judge and the parties to discuss (in advance, and outside the jury's presence) how best to respond, and avoids the risk that one "question" will turn into a back-and-forth "conversation" with the jury, inviting error on appeal.

E. Instructing a Deadlocked Jury (*Allen* Charge)

the jury informs the court that they are deadlocked, the judge may not attempt to "coerce" ne jury into reaching a decision or compel them to continue deliberating for an nreasonable length of time (see more about this in the related entry on Jury Deliberations) G.S. 15A-1235(c); *State v. Easterling*, 300 N.C. 594 (1980) (judge may not inform jury of potential expense and inconvenience of retrying case if it fails to agree). However, there are a couple things the judge can do that may help break the deadlock.

First, the court is permitted to inquire about the current "numerical division" of the jurors, such as whether they are divided 6-6 or 10-2, but the court should not ask whether the vote currently favors a verdict of guilty or not guilty. Inquiries about the numerical division of the jury are permitted because they are "often useful in timing recesses, in determining whether there has been progress toward a verdict, and in deciding whether to declare a mistrial because of a deadlocked jury." See *State v. Fowler*, 312 N.C. 304 (1984), quoting *State v. Yarborough*, 64 N.C. App. 500 (1983); accord *State v. Williams*, 315 N.C. 310 (1986). In addition to providing useful guidance to the parties and the court, this inquiry may also have the incidental effect of encouraging the jurors to continue to work towards a unanimous resolution.

Second, the judge may instruct (or re-instruct) the jury pursuant to G.S. 15A-1235(b) to remind them of their solemn duty as jurors, and encourage them to be open-minded and flexible in their attempt to reach a verdict, as long as they can do so without compromising their honest convictions solely for the purpose of reaching a verdict. This is commonly known as "giving an *Allen* charge," based on the Supreme Court's approval of an earlier version of this instruction given in *Allen v. United States*, 164 U.S. 492 (1896). Note that if the trial judge elects to give an *Allen* charge under G.S. 15A-1235(b), he or she must give the complete instruction. See *State v. Fowler*, 312 N.C. 304 (1984); *State v. Gillikin*, 217 N.C. App. 256 (2011). A recommended version of such an instruction is found in N.C.P.I. – Crim. 101.40, and states as follows:

> *Your foreperson informs me that you have been unable to agree upon a verdict. You are reminded that it is your duty to do whatever you can to reach a verdict. You have a duty to consult with one another and to deliberate with a view to reaching an agreement, if it can be done without violence to individual judgment. Each juror must decide the case for [himself] [herself], but only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, you should not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. However, you should not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict. You will now resume your deliberations and continue your efforts to reach a verdict.*

C. Objections to Instructions

Any objections to jury instructions must specifically state what part of the charge is objecte to and the grounds for the objection, and must be made before the jury retires and begins t deliberate. Failure to object to an alleged error in any part-of a jury instruction actually give or the omission of an instruction required by law constitutes a waiver of the right to assert th alleged error on appeal. G.S. 15A-1446(b); North Carolina Rules of Appellate Procedure, Rul 10(b)(2). *State v. Bennett*, 308 N.C. 530 (1983). Similarly, as discussed in Section B.1. above, defendant who does not request that the trial judge submit a lesser-included offense to the jury, or actually requests that the lesser-included *not* be submitted, waives the right to argue on appeal that the failure to give that instruction was error. *State v. Gay*, 334 N.C. 467 (1993); *State v. Williams*, 333 N.C. 719 (1993).

Practice Pointer

Opportunity to object

To give the parties a final opportunity to note any objections, the judge will usually excuse the jury at the conclusion of the instructions, but tell them not to begin deliberating until he sends in the verdict form. After the jury leaves, the judge will ask both sides if they have any objections to the instructions that were just given. If there is an objection, the judge will rule on it and then call the jury back out to re-instruct, if necessary. Otherwise, the judge will send in the verdict form and the jury will begin deliberating. See N.C.P.I.—Crim. 101.35.

If the defendant fails to object to an instruction, the objection is waived and the appellate courts will only reverse for plain error: "plain error or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." *State v. Odom*, 307 N.C. 655 (1983) (adopting plain error rule as an exception to Rule 10(b)(2)). See also *State v. Lawrence*, 365 N.C. 506 (2012) (reaffirming plain error standard in *Odom*, requiring showing of a fundamental error that resulted in prejudice); *State v. Lilley*, 318 N.C. 390 (1986) (no plain error when trial judge failed to instruct jury on right of one attacked in own home to act in self-defense without retreating). The courts have further explained that the plain error rule should apply only in truly exceptional cases. See *State v. Walker* 316 N.C. 33, 39 (1986); *State v. Morgan*, 315 N.C. 626 (1986); *State v. Oliver*, 309 N.C. 326 (1983) (party alleging error has the burden of establishing its right of appellate review); *State v. Odom*, 307 N.C. 655, 660-661 (1983) ("even when the plain error rule is applied, it is the rare case in which an improper instruction will justify reversal of a criminal conviction when no objection has been made in the trial court") (internal citations omitted).

D. Additional/Corrected Instructions

Practice Pointer

Don't overdo it

If the judge elects to give an *Allen* charge, the prosecutor should request that he or she give an instruction that closely follows the approved language above. If the judge's language is too "strong," or makes reference to improper considerations such as the burden and expense that would be caused by declaring a mistrial, the judge's charge may be deemed unduly coercive and lead to a reversal on appeal. See, e.g., *State v. May*, 368 N.C. 112 (2015) (assuming it was error for trial judge to tell the jurors that "the people have so much invested in this, and we don't want to have to redo it again," but finding that it did not rise to the level of plain error in this case since the judge also gave instructions on two other occasions "that substantially tracked the language of N.C.G.S. § 15A-1235(b)"); *State v. Burroughs*, 147 N.C. App. 693 (2001) (reversible error for judge to instruct the jurors that "if the jury in this trial cannot reach a unanimous verdict, in all probability the case will have to be tried before another jury of 12 citizens" which would be "very expensive to the taxpayers who pay for the court system").

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411.1 Motions for Appropriate Relief

Last Updated: 12/18/20

Key Concepts

- A motion for appropriate relief (or "MAR") is a motion to correct a purported error in the legal proceedings, and asks the court for relief such as vacating a conviction or ordering a new trial.
- There are statutory limits on both the time when an MAR may be filed, and the alleged errors which may be challenged in it.
- MARs are used primarily by defendants, but the state and the judge are also authorized to use them in certain circumstances, or they can be done by agreement of the parties.
- A hearing on the motion is usually required to resolve material factual disputes, but not for purely legal disputes.
- A district or superior court's ruling on an MAR can be appealed in some circumstances, subject to statutory limitations.

A motion for appropriate relief, usually referred to as an "MAR," is a motion filed after a guilty plea, verdict, or sentencing to correct an error that occurred before, during, or after the criminal proceeding. See *State v. Handy*, 326 N.C. 532 (1990). The statutes governing MARs are found in Article 89 of Chapter 15A (G.S. 15A-1411 through 1422). The purpose of enacting the MAR statutes was to simplify and replace the wide assortment of other motions (arrest judgment, set aside verdict, and so on, but notably not replacing writs of habeas corpus) which were previously used to seek post-conviction relief. See *State v. Bush*, 307 N.C. 152 (1982); see also the related entry on Writs of Habeas Corpus.

The statutes governing MARs are complex and detailed, and a comprehensive discussion of this type of post-conviction relief is beyond the scope of this entry. For more detailed information, prosecutors should consult the various other "Related Resources" linked with this entry, but a brief summary of the relevant law is provided here for general reference.

A. Motion for Appropriate Relief by the Defense

1. Filed Within 10 Days of Judgment

Under G.S. 15A-1414, the defendant may file an MAR within 10 days of entry of judgment (even if notice of appeal has already been entered) seeking relief for "any error" that occurred during the trial. Alleged errors might include ineffective assistance of counsel, the court's erroneous failure to dismiss charges, erroneous jury instructions, erroneous rulings on other matters of law, a sentence not supported by evidence, or any other cause which prevented the defendant from receiving a fair and impartial trial. See G.S. 15A-1414(b). MARs filed under this statute may be acted upon by the trial court even if a notice of appeal has already been given. See G.S. 15A-1414(c).

2. Filed at Any Time

Under G.S. 15A-1415, the defendant may file an MAR at any time after verdict (except in capital cases, which do have an outer time limit), but may only seek relief based on the specific grounds enumerated by the statute, which include lack of jurisdiction of the trial court, a significant change in the law, the sentence imposed was unauthorized, the conviction was in violation of the constitution, the acts charged did not constitute a violation of a criminal law, and other similar grounds (including ineffective assistance of counsel). See G.S. 15A-1415(b), (e). The defendant may also file an MAR under this statute on the grounds that newly discovered evidence entitles him or her to some relief, as long as the motion is filed within a reasonable time after the discovery of the evidence. See G.S. 15A-1415(c). MARs based on newly discovered evidence must be filed in the appellate division if the case is already on appeal and the trial court has been divested of jurisdiction. See G.S. 15A-1418(a).

B. Motion for Appropriate Relief by the State

1. Filed Within 10 Days of Judgment

After the verdict but not more than 10 days after entry of judgment, the state may seek appropriate relief for any error it would be able to argue on appeal. See G.S. 15A-1416(a). This applies to "appeals" from district to superior court, as well as appeals from superior court to the Court of Appeals. For more information on the grounds which can support an appeal by the state, see the related entry on State's Right to Appeal.

2. Filed at Any Time

At "any time after verdict," the state may move for appropriate relief to: (i) impose sentence in a case where prayer for judgment was continued, if the grounds for now imposing a sentence are asserted; or (ii) initiate a proceeding regarding a modification of a sentence in accordance with Article 82 (Probation), Article 83 (Imprisonment), or Article 84 (Fines). See G.S. 15A-1416(b). If the state seeks to modify a sentence under this statute, then "the procedural provisions of those Article are controlling." *Id.*; see, e.g., G.S. 15A-1344 (modification of probation); G.S. 15A-1363 (remission of fines).

C. Motion for Appropriate Relief by Agreement

G.S. 15A-1420(e) was added in 2012, and it states that nothing in this section is intended to prevent the parties of an action (i.e., the state and the defendant) from entering into an agreement regarding "any aspect, procedural or otherwise" of a motion for approrpriate relief. Apparently this statute would allow an MAR on any grounds and at any time, as long as both parties consent. See generally *State v. Chevallier*, 264 N.C. App. 204 (2019) (noting that alleged error for multiple convictions was not properly argued on appeal and thus was not before the appellate court, but this did not bar defendant seeking relief by other means, including an MAR by agreement).

Practice Pointer

Why would the state agree to that?

There is very limited appellate case law interpreting this provision, but it might be useful in cases where the state agrees that some relief is appropriate, but the grounds do not fit squarely within the normal statutes. For example, it could be used in a case where the state agrees that the sentence imposed after trial was not supported by the evidence, but more than 10 days have already passed since entry of that judgment. Rather than go through a lengthy and unnecessary appeal process, the state might prefer to consent to an MAR and agree to a new sentencing hearing while the facts of the case are still fresh in the judge's mind.

D. Motion for Appropriate Relief by the Court

Pursuant to G.S. 15A-1420(d), the court may grant relief "upon its own motion" at any time that a defendant would be entitled to a motion for appropriate relief. (See Section A, above). The court must give appropriate notice to the parties before acting under this statute. See G.S. 15A-1420(d). Notably, this statute does not have a corresponding authorization that would also allow the court to act on its own motion at any time that the *state* would be authorized to act (e.g., more than 10 days after judgment and for the purpose of imposing judgment in a case where judgement was previously continued). See G.S. 15A-1416(b).

E. Procedure and Available Relief

An MAR must be in writing (unless it is made orally, in open court, before the ruling judge, and within 10 days of judgment), state the grounds for the motion, set forth the relief sought, and be timely filed. See G.S. 15A-1420(a). The motion must be filed with the clerk of court in the district where the defendant was indicted, and be served on the district attorney. See G.S. 15A-1420(b1). The clerk must put the matter on the calendar, and promptly bring it to the attention of the senior resident superior or district court judge. See G.S. 15A-1413. The senior judge will assign the MAR to a trial judge for review and appropriate administrative action, which may include dismissal of frivolous motions, appointing counsel, directing the opposing party to file an answer, or scheduling a hearing,. See G.S. 15A-1420. Under G.S. 15A-1420(a)(4), an MAR in district court may not be granted without a signature from the district attorney, indicating that the district attorney has been given an opportunity to consent or object to the motion; however, the motion may be granted even without the district attorney's signature 10 business days after notice or service of the motion.

When a defendant is represented by counsel on an MAR in superior court, the state is required to make available, to the extent allowed by law, the complete files of law enforcement and prosecutorial agencies involved in the investigation and prosecution of the case. See G.S. 15A-1415(f). Defendant's trial counsel is likewise required to share his or her "complete files" with counsel for defendant on the MAR, if it is not the same attorney. *Id.*

If the MAR is not summarily denied by the court on procedural or legal grounds (untimely, frivolous, improper form, issue already resolved in prior MAR, issue could have been raised in previous MAR but defendant failed to do so, etc.), then the court may schedule the matter for hearing. See G.S. 15A-1420(c)(1) (parties usually entitled to a hearing unless MAR is "without merit"). Whether the MAR has "merit" appears to mean that the allegations in the motion, if true, would entitle the defendant to some relief. See *State v. Jackson*, 220 N.C. App. 1 (2012). But when an MAR presents only issues of law (rather than any genuine and material questions of fact), the court must resolve the motion *without* a hearing. See G.S. 15A-1420(c)(3); *State v. McHone*, 348 N.C. 254 (1998). If the court conducts an evidentiary hearing, the defendant has a waivable right to be present. See G.S. 15A-1420(c)(4). The defendant has no right to be present if only questions of law are being argued. See G.S. 15A-1420(c)(3).

The moving party bears the burden of proof in the hearing, which means that the party must establish necessary facts to justify relief by a preponderance of the evidence. See G.S. 15A-1420(c)(5); *State v. Howard*, 247 N.C. App. 193 (2016). The defendant must show the existence of prejudice in accordance with G.S. 15A-1443 (same standard used for showing prejudice on appeal), or else the relief must be denied. See G.S. 15A-1420(c)(6). The rules of evidence do apply at an MAR hearing. See G.S. 8C-1, Rule 101, Rule 1101; *Howard*, 247 N.C. App. at 211.

The judge must rule on the motion and enter an order, and if an evidentiary hearing was held, the judge must make findings of fact. See G.S. 15A-1420(c). If the judge decides to grant the MAR, the relief ordered may include any of the following: (i) new trial; (ii) dismissal of charges; (iii) relief sought by the state under G.S. 15A-1416; (iv) referral to the North Carolina Innocence Commission; or (v) any other appropriate relief. See G.S. 15A-1417(a).

F. Appeal of the Court's Ruling on MAR

1. From District Court

If the district court denies the defendant's MAR, there is no right to appeal since the defendant is entitled to seek trial de novo in superior court anyway. See G.S. 15A-1422(d). If the court grants the MAR, and if the relief granted includes a dismissal of charges or vacating a conviction, then the state may appeal through a written motion to the superior court within 10 days, based on the statutory authorization of G.S. 15A-1432(a)(1) (state's right to appeal from any "decision" or judgment dismissing a charge or count), and the state may also be permitted to appeal through a discretionary writ of certiorari to superior court. See generally *State v. Peterson*, 228 N.C. App. 339 (2013) (direct appeal); *State v. Thomsen*, 369 N.C. 22 (2016) (writ of certiorari).

Practice Pointer

MAR on a felony plea in district court?

If a defendant files an MAR challenging a felony plea that was entered in district court, at least one unpublished decision has concluded that an appeal from that ruling must be made to the Court of Appeals, rather than to superior court as indicated by G.S. 15A-1432. See *State v. Baker*, 247 N.C. App. 398 (2016) (unpublished). The *Baker* court reasoned that since a district court judge who hears such a motion is acting "in the same manner as a superior court judge would be authorized to act if the plea had been entered in superior court" pursuant to G.S. 7A-272(d), any "appeals that are authorized in these matters are to the appellate division." Prosecutors who wish to appeal this type of MAR ruling should review *Baker* and the applicable statutes before deciding where to file the appeal.

2. From Superior Court

If the defendant seeks relief through an MAR filed under G.S. 15A-1414 within 10 days of judgment, then appellate review of the ruling on that motion can only be sought as part of a regularly taken appeal. See G.S. 15A-1422(b). If defendant seeks relief more than 10 days after judgment on an MAR filed under G.S. 15A-1415, the avenues to appeal depends on timing. If the time to file an appeal has not yet expired, then review must be sought through a regular appeal. See G.S. 15A-1422(c)(1). If an appeal is already pending, then review of the MAR decision is through that same appeal. See G.S. 15A-1422(c)(2). If the time for filing an appeal has already expired, then review is only available through a writ of certiorari. See G.S. 15A-1422(c)(3).

The three paths to review just described apply regardless of whether the state or defendant prevailed on the MAR. See *State v. Stubbs*, 368 N.C. 40 (2015) ("given that the General Assembly has placed no limiting language in subsection 15A–1422(c) regarding which party may appeal a ruling on an MAR, we hold that the Court of Appeals h jurisdiction to hear an appeal by the State of an MAR when the defendant has won reli from the trial court"); see also *State v. Thomsen*, 369 N.C. 22 (2016) (similar ruling applied t MAR granted sua sponte by the court). But the state also has another avenue for seekin review in the Court of Appeals under G.S. 15A-1445, which allows the state to appeal superior court order dismissing charges or granting a new trial, and therefore it can als appeal the court's ruling on an MAR which orders such relief. See *State v. Peterson*, 228 N.C App. 339 (2013).

If the MAR was filed by the state, by agreement, or upon the court's own motion (as opposed to an MAR filed by the defense), then the statutes do not provide a clear right to appellate review, but it may still be allowed on a writ of certiorari. See *State v. Thomsen*, 369 N.C. 22 (2016) (explaining that in the absence of a clear revocation of its general authority, the appellate court has discretion to issue writs of certiorari for the purpose of regulating the proceedings of the trial courts); *State v. Ledbetter*, 371 N.C. 192 (2018) (holding that the Court of Appeals could issue writ of certiorari without suspending rules for extraordinary circumstances – the default rules control unless a more specific statute restricts jurisdiction for the particular class of cases at issue).

3. From Court of Appeals

When the same grounds asserted in an MAR are also being argued as part of a normal appeal filed within 10 days, the denial of the MAR does not affect the right to "assert error on appeal." See G.S. 15A-1422(e). Therefore, even if the MAR is denied, the disputed issue could potentially still be argued through the normal appellate process up to the N.C. Supreme Court, if otherwise allowed (e.g., based on a dissent or discretionary review). See G.S. 7A-31; G.S. 7A-32.

By statute, the decision of the Court of Appeals on an MAR filed more than 10 days after judgment is "final, and not subject to further review by appeal, certification, writ, motion, or otherwise." See G.S. 15A-1422(f); G.S. 7A-28; G.S. 7A-31(a). However, the North Carolina Supreme Court has previously held in a similar context that statutes cannot restrict its ability "to exercise jurisdiction to review upon appeal any decision of the courts below," so presumably it could apply the same standard to North Carolina Rules of Appellate Procedure, Rule 21(e) and consider a petition for writ of certiorari on an MAR. See *State v. Ellis*, 361 N.C. 200 (2007) ("it is beyond question that a statute cannot restrict this Court's constitutional authority under Article IV, Section 12, Clause 1 of the Constitution of North Carolina to exercise jurisdiction to review upon appeal any decision of the courts below.")

Portions of this entry were excerpted from 2012 North Carolina Defender Manual, Volume II, Chapter 35-3; "Motions for Appropriate Relief," Relief from a Criminal Conviction (2017 edition) by John Rubin; and "Motions for Appropriate Relief," N.C. Superior Court Judges' Benchbook (2017) by Jessica Smith.

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EXPLANATORY

THE FOLLOWING DOCUMENT(S) MAY HAVE POOR IMAGES DUE TO POOR PHOTOGRAPHIC QUALITY OF PAPER.

Exhibit List For Motion To Supplement Juror Misconduct Claim

Exhibit	Page
1) Affidavit of Paula Locklear	6, 23
2) Trial Transcript Page (T.T.P) 7[illegible]	12, 31
3) T.T.P. 24-212	15
4) Nov. 2 2015 E-mail from Joseph Tagert to Ian Mance	17
5) Document with Ian Mance [illegible]	17
6) 5/17/18 Memo between Attorney Murrow and [illegible]	19
7) [illegible] Affidavit [illegible]	20
8) Requestment for [illegible] Notice of Adjudicative Facts	21, 23
9) Trial Transcript of [illegible] Dire of Paula (Manuel) Locklear	22
10) Paula Manuel (Locklear) [illegible] document of Judges [illegible]	22
11) Trial Transcript	22
12) Dike students notes about Ms Locklear's [illegible]	31
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14) Ian Mance's [illegible] about Hubert Stone [illegible] with Nash County Sheriff Kevin Stone	38, 39
15) April 23, 2014 Letter of Resignation from the State Bar of North Carolina by Lewis Pitts	
16) North Carolina Superior Court Judges Breakbook	
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