



Unlock the Truth

INNOCENCE PROJECT OF FLORIDA

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July 20, 2020

The Office of Executive Clemency
Florida Commission on Offender Review
4070 Esplanade Way
Tallahassee, FL 32399-2450

Re: Thomas Gilbert, Application for Commutation of Sentence

Dear Clemency Board Member:

On October 25, 1973, two young men—Allen Hicks and Williams Watson—robbed a couple—Mr. and Mrs. Willits—who were vacationing in Miami Beach and fatally shot Mr. Willits.

Unfortunately, our client, Thomas Gilbert, was arrested, charged, and convicted as Watson's co-perpetrator of this crime in 1974.

In 1977, Allen Hicks wrote a letter to the State Attorney's Office in Miami confessing his involvement and stating that Mr. Gilbert was innocent. This led to the reopening of the Willits murder, an investigation that spanned several months and involved interviewing dozens of witnesses.

During the investigation, the following was confirmed: 1) Hicks correctly pinpointed the exact physical location at the crime scene where Mr. Willits was shot; 2) Hicks correctly identified the weapon used to shoot Mr. Willits. 3) Investigators uncovered significant evidence suggesting the identity of the individual who provided Hicks and Watson with the murder weapon; 4) Records, and Hicks' statements, confirmed that Hicks was staying at a hotel less than a mile from the crime scene; 5) Hicks admitted to approaching the victims first and being the shooter, consistent with trial testimony; 6) Thomas Gilbert passed a polygraph examination confirming that he was not involved; 7) Though Hicks' polygraph results were inconclusive, the examiner believed Hicks was involved; 8) Hicks identified a photo of Mrs. Willits; 9) Hicks confessed to seven different people, all of whom confirmed Hicks' statements; and 10) Watson confessed to five different people that it was he and Hicks who committed the crime, all of whom confirmed Watson's statements to them. Finally, no physical evidence points to Gilbert.

Despite this investigation revealing significant evidence of innocence, Mr. Gilbert was never freed, and he remains incarcerated to this day for this 1973 crime. Hicks, the true perpetrator, was never held accountable for this crime. Hicks has since died.

This letter is respectfully submitted in support of Mr. Gilbert's Application for Commutation of Sentence pursuant to Rule 5(B) of the Rules of Executive Clemency. Mr. Gilbert is serving consecutive life sentences for robbery and murder in Eleventh Judicial Circuit Case No. 73-CF-08475 stemming from the October 25, 1973 robbery of Eleanor and William Willits and second-degree murder of Mr. Willits. Mr. Gilbert was convicted along with co-defendant William Watson. Mr. Watson has since died.

Per the application, individuals serving a life sentence are eligible to apply after completing at least 12.5 years of the sentence imposed. Mr. Gilbert has been incarcerated for more than 40 years; thus, he meets the necessary requirement. Further, as this case is one of exceptional merit, we request expedited review pursuant to Rule 17.

This letter serves to provide a brief background and history of the case, as well as the evidence in support of Mr. Gilbert's innocence. It also includes a detailed transition plan to ensure a positive and successful reintegration back into free society (attached at Tab G). It is our hope that after your review, you will find his case worthy of clemency.

CASE FACTS

In October 1973, Eleanor Willits and her husband William were vacationing in Miami and staying at the Ocean Shore Motel on Collins Avenue. T. 229.¹ On October 25, 1973,² the two had gone to an Italian restaurant to pick up pizza to bring back to the motel. It was about 11:30 p.m. when they returned. T. 230-31. Mrs. Willits saw a young black man approaching them, and knew he wasn't staying at the motel because she didn't recognize him as a guest from their two-week stay. T. 233. As he approached, he smiled and softly told them to keep quiet and not to make any sounds. He held a gun close to his chest. T. 233-34.

The man ordered them into a corner, at which point a second man approached with a second gun. The second man took Mrs. Willits' handbag and her rings, and ordered her to give him the chain from her neck. T. 237-40. Meanwhile, the first man took everything Mr. Willits had. The two ordered the Willitses to their room. The second man led Mrs. Willits while the first man led Mr. Willits. T. 255-58. Mr. Willits and the first man were just a step ahead of Mrs. Willits and the second man when Mrs. Willits began to feel a little sick. She said, "I'm sick," and her husband said, "Don't hurt my wife, can't you see she's sick?" The first man told them to keep quiet and go to the room. They only went a few steps before the first man shot Mr. Willits, who had been holding the pizza box. T. 259-62. Mrs. Willits screamed and the men ran to their car. T. 263-64.

Guests began to come out of the motel as Mrs. Willits continued to scream. T. 267-68. Officer James Albritton was the first officer to arrive on scene. T. 354-55. When he pulled into the driveway of the Ocean Shore Motel, he saw a crowd of people standing toward the rear of the building waving him to the victims. T. 352-53. When he got out of the car, Officer Albritton observed a woman in an emotional state, and a white male lying on the sidewalk in the breezeway.

¹ All transcript references are to the trial of Mr. Gilbert's co-defendant Mr. William Watson and will be referred to as "T." followed by the page number. Per an email from the attorney general's office, Mr. Gilbert's trial transcripts have been destroyed.

² The transcript actually says the 29th, but the police reports and other information all indicate the crime occurred on the 25th.

He saw a white pizza box on the ground near the body. He roped off the area and radioed for backup. He did not find a weapon, nor did he recover anything from the scene. T. 354-58.

Officers Carl Adcock and James Casey with the crime scene section of the crime lab³ responded to the scene to collect evidence. T. 360-63. Officer Casey located and collected a lead projectile within the victim's shirt at his left side. He also collected a pizza box from Guidos Italian Restaurant and took nail scrapings from the victim's hands.⁴ Meanwhile, Officer Adcock responded to the North Miami Beach Police Department to conduct Neutron Activation Analysis⁵ on two potential suspects that had been apprehended.⁶ Investigation eventually cleared those suspects.⁷ That same night Sergeant Al Harper took a statement from Eleanor Willits, who explained that she and her husband arrived in Miami on October 9, 1973, and stayed at the Caravan Motel for three days before heading to the Ocean Shore Motel where they checked into Room 102.⁸ Mrs. Willits, a white female, then provided Harper details on the events of the 25th, as described above. She described the first subject as a "negro male," about 20 years old, 6 feet tall, slender build, with a medium afro, who had been wearing a sleeveless blue sweatshirt and unknown type pants. She described the second subject as a "negro male," also in his 20s, also 6 feet tall with a slender build and a medium afro. She said both subjects spoke with a soft voice and appeared to be "very polite."⁹

In describing the weapon, Mrs. Willits said it was a "small dark gun." She told Harper that during the course of the robbery, the perpetrators took her 18 karat gold ring, a white gold chain with an Italian emblem, her tan purse, her husband's brown wallet, watch, pocket watch, and American Express traveler's checks.¹⁰

Officers also interviewed Mr. and Mrs. Carl W. Barber, who were staying in Room 101 of the Ocean Shore Motel. They told officers they heard a woman screaming for help at about 11:40 p.m.¹¹ Mrs. Barber told officers that she told her husband that a white female was standing on the pavement screaming, at which point her husband put on a pair of pants and went outside to assist the female. Mr. Barber checked on Mr. Willits, and when he realized he was likely deceased, he ran to the motel office to call the police.¹²

Sergeant Harper then spoke with Ocean Shore Motel desk clerk Gregory Pipeson, who told investigators that just before Mr. Barber came into the office, he saw what he thought was a white Cadillac exiting the parking lot.¹³

³ At the time, the police department, and crime lab, was called the Dade County Public Safety Department.

⁴ 10-26-73 Police Report of James Casey, pg. 2 [hereinafter Casey report].

⁵ This appears to be the equivalent of a gunshot residue test.

⁶ Casey report, pg. 3.

⁷ 12-13-74 Supplementary Report of Jerome Coney. It is unclear how they were cleared, but the report notes that Detectives Ray Egger and Hough cleared the suspects through additional investigation. Hough's first name is not listed anywhere in the files undersigned counsel has in its possession.

⁸ 11-12-73 Harper report, pg. 2.

⁹ *Id.* at pg. 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at pg. 5.

¹³ *Id.*

On October 27, 1973, Mrs. Willits came to the Public Safety Department to view more than 300 mugshots. She identified no one.¹⁴ That same day, Harper was advised that a wallet and ID belonging to Mr. Willits had been found in the “negro district called Carver Ranches,” and that the property had been impounded.¹⁵ Detective Jerry Strickland and Harper went to West Hollywood to the home of Gloria Mulkey, who found the wallet and turned it over to the Broward Sheriff’s Office after finding it lying open on the ground about fifty feet north of S.W. 27th Street.¹⁶ Mulkey picked up the wallet and found several credit cards and miscellaneous pieces of ID. She showed the wallet to her friend, Sharon Hamilton, and the two of them returned to Mulkey’s residence and gave the items to Gloria’s mother Edith, who in turn contacted the Broward Sheriff’s Office. An officer responded and impounded the property.¹⁷ Mulkey pointed out the exact location she found the wallet to Strickland and Harper, who did a search of the surrounding area, which revealed nothing. The wallet was transported by Strickland to the identification section where it was turned over to an evidence technician.¹⁸

On November 1, 1973, Harper received a phone call from Detective Maurice Sandquist of the North Miami Beach Police Department who informed him that his officers had arrested two negro males shortly after a robbery in their jurisdiction.¹⁹ According to Sandquist, both subjects fit the description of the subjects involved in the homicide and there were similarities in the type of robbery that had taken place.²⁰ The two subjects were William Watson, who was 21 years old, 6’2”, and 156 lbs., and Thomas Gilbert, who was 20 years old, 6’3”, and 165 lbs. The vehicle in which officers found them was a 1966 white Cadillac sedan. Officers also impounded a .22 caliber revolver believed to be the weapon in the North Miami robbery.²¹

On November 2, 1973, Harper interviewed Gilbert and had him photographed and fingerprinted. While Gilbert refused to sign a *Miranda* waiver, he agreed to talk without an attorney.²² When asked where he had been the night of the Willits murder, Gilbert said he thought he had been to Charles’ Pool Hall until sometime between 11 p.m. and midnight and had gone home and to bed after. He told Harper he could not remember any of the people who had been at the pool hall to verify his story. He then told Harper he did not want to answer any more questions and wanted an attorney present.²³

Later that day, Harper interviewed Watson, whom Detective Coney had already interviewed and observed wearing a gold chain with an emblem similar to the one reported stolen by Mrs. Willits.²⁴ Harper had Watson photographed and fingerprinted. Watson refused to discuss his whereabouts on October 25, 1973 and would not talk to detectives without an attorney.²⁵

¹⁴ 11-12-73 Harper report, pg. 5

¹⁵ *Id.*

¹⁶ 10-27-73 Police Report of Detective Jerry Strickland, pg. 1 [hereinafter Strickland report].

¹⁷ *Id.*

¹⁸ *Id.* at 2.

¹⁹ 11-12-73 Harper report, pg. 6.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 7.

²⁵ 11-12-73 Harper report, pg. 7.

After interviewing Watson and Gilbert, Harper and Coney went to Larry's Garage where the Cadillac was stored. While there, the Public Safety Department's identification section notified them that they identified Watson's print as being consistent with a latent print lifted at the scene of the Willits murder, specifically a print lifted from the pizza box.²⁶

On Saturday, November 3, 1973, Detectives Jerome Coney and Richard Mueller traveled to Chesapeake, Virginia to meet with Mrs. Willits, who had returned home after the death of her husband.²⁷ Mrs. Willits' son, William Willits, Jr., was present for the lineup as well. In the first lineup, the detectives showed Mrs. Willits seven photographs, one of which was William Watson. She immediately identified Watson. Investigators then showed her a second lineup with five photographs, including Thomas Gilbert. Mrs. Willits positively identified Mr. Gilbert. Investigators showed Mrs. Willits a third lineup with five photographs, but she reaffirmed her identification of Watson and Gilbert.²⁸ Following the identification, investigators returned property to Mrs. Willits including several credit cards, insurance cards, and a driver's license.²⁹

On November 6, 1973, Harper contacted the State Attorney's Office to present the facts, and an assistant state attorney issued warrants for first-degree murder and robbery for both Gilbert and Watson, which a magistrate endorsed.³⁰ Harper arrested Gilbert later that day, at which time Gilbert said he could not remember where he was on October 25, 1973, but that he did not rob old men and old women.³¹ About an hour later, Harper arrested Watson, who again refused to talk.³² On November 19, 1973 investigators conducted two live lineups. The first was conducted with Gilbert's attorney Robert Rosenblatt present.³³ Mrs. Willits identified number three, Thomas Gilbert. During the lineup, she said, "I am in a bad way, I can't see very good."³⁴ At the second lineup, Watson's attorney Marty Saxon was present. Mrs. Willits identified number four, William Watson.³⁵ On December 4, 1973, the grand jury indicted both Gilbert and Watson on the charge of first-degree murder.³⁶

The transcripts of Mr. Gilbert's trial were destroyed, but Mr. Gilbert's trial was held from May 1-3, 1974, with Judge Ralph Ferguson presiding. Attorney Mike Morgan represented Mr. Gilbert, and Assistant State Attorney Jim Woodard prosecuted the case.³⁷ After several hours of deliberation, the jury found Mr. Gilbert guilty of second-degree murder and armed robbery.³⁸ On June 2, 1974, Judge Ferguson sentenced Mr. Gilbert to two consecutive life sentences for the

²⁶ *Id.*

²⁷ 11-7-73 Police Report of Jerome Coney, pg. 1 [hereinafter Coney report].

²⁸ *Id.* The report does not make clear whether Mrs. Willits' identifications distinguished who she thought was the shooter. The report also does not make clear who else was in the lineup.

²⁹ *Id.* at 2.

³⁰ 11-12-73 Harper Report, pg. 8.

³¹ *Id.*

³² *Id.*

³³ 11-20-73 Police Report of Al Harper [hereinafter 11-20-73 Harper report].

³⁴ 11-25-73 Transcript of Lineup.

³⁵ *Id.*

³⁶ 12-4-73 Police Report of Sergeant Al Harper.

³⁷ 5-7-74 Police Report of Jerome Coney.

³⁸ *Id.*

murder and robbery of William Willits.³⁹ Mr. Watson's case proceeded to trial on December 10, 1974. Attorney Harold Long represented Mr. Watson and Assistant State Attorney Robert Kaye prosecuted the case.⁴⁰

Eleanor Willits testified first for the state at Watson's trial. She testified as outlined above, and noted that the first man, and the shooter, was Thomas Gilbert, while William Watson was the man who approached second and took items off her person. T. 229-64. She described to the jury identifying the two men in photo lineups at her home in Virginia. T. 273-78. She stated that she did not learn of Gilbert's and Watson's arrests until after she picked their photos from the lineups. T. 290-94. She also described how she returned to Miami in November 1973 to make identifications at in-person lineups. T. 279-82. On cross examination, Mrs. Willits admitted that at the preliminary hearing she said she was not sure who took her necklace, and was told by officers it made no difference who did what because they were both equally guilty. T. 294-98. She also recalled that she said she did not know which individual ordered them into the rooms. T. 298-301.

Officer James Albritton testified that he was the first on scene and that he roped off the area and radioed for backup. T. 352-58. Detective Carl Adcock testified that at the time of the crime, he was assigned to the crime scene section of the crime lab, and he and Officer James Casey were assigned to process the Willits scene. Adcock assisted Casey with making a sketch, taking measurements, and processing various cars in the motel parking lot for latent prints, among other things. T. 360-63. Adcock noted that Casey took the pizza box into evidence. T. 360-63.

Detective Jack Longworth, a fingerprint technician with the Public Safety Department, testified that he fingerprinted Watson on November 2, 1973, and provided the standard to Donald Tilley of the identification section. T. 370-75. Longworth testified that he was able to make a comparison between the standard of Watson and the latent from the pizza box provided by Tilley. After finding one point of identification, Longworth determined the latent print on the pizza box and "the number six finger of Mr. Watson were made by one and the same person." T. 374-75.

Detective Donald Tilley next testified that he developed and lifted the fingerprint from the pizza box for comparison to a standard. When comparing the print to Watson's standard, Tilley said he found twelve points of similarity and no points of dissimilarity. He noted that the lab's standard operating procedure was eight points of similarity to establish a positive identification, but that he has found a positive identification with as few as six. Tilley testified that "there was no doubt" in his mind the latent print from the pizza box was the same as the standard. T. 378-89.

Officer Daniel Caruso, an officer with the City of North Miami Police Department, testified that he encountered Watson and Gilbert on the 2600 block of Northeast 135th Street in a white '66 Cadillac. T. 390-91. Caruso said that he stopped Watson who was with Gilbert. Caruso stated that the car belonged to Mr. Gilbert, but Watson was driving. T. 394.⁴¹ Caruso arrested both men. T. 389-94.⁴²

³⁹ 11-13-74 Police Report of Detective Jerome Coney.

⁴⁰ 12-13-74 Police Report of Detective Jerome Coney.

⁴¹ It is unclear why he testified the car belonged to Gilbert. Multiple other reports indicate the car was Watson's.

⁴² The trial transcript doesn't make clear when or why Caruso arrested Watson and Gilbert, but based on the police reports referenced *supra*, the arrest was in connection with a separate robbery on November 1, 1973, and the North

Detective Richard Mueller testified that he and Detective Coney traveled to Chesapeake, Virginia to conduct photo lineups with Mrs. Willits at her home. T. 396-99. He described the process used for each packet and noted that Mrs. Willits signed the back of the pictures she positively identified. T. 396-99. He noted he had no further involvement with the case. T. 402-04.

Detective Jerome Coney testified that he investigated the case along with Sergeant Harper who was then-lead. He testified that no weapon was ever found. He also noted that he, along with Detective Mueller, went to Virginia to conduct a photo lineup. T. 405-19. He admitted they did not take any handwritten notes concerning the conversations they had during the photo lineup in Virginia. T. 422-25. He also noted that he saw Watson with what appeared to be Mrs. Willits' necklace on November 2, 1973, the day after his arrest. T. 427-29.

After the State rested its case, the defense called William Watson as its sole witness to testify on his own behalf. He testified that on October 25, 1973, he was living at the Red Lion Motel and was sick and on drugs. Watson testified that he was on the beach near the ocean trying to purchase drugs when he heard a scream. T. 457-58. When he went to see where the screams were coming from, he saw a body lying on the ground and a white box. T. 454-59. He reached down to pick up the box and threw the box on the ground when he realized it contained nothing of value. T. 464-67. He went to the body to see if he could find any cash on him. Watson said he didn't know the man was dead. He planned to search the body, but heard the scream again, and did not want to be involved since he was on parole. T. 460-63. Watson testified that as he was leaving the scene, he saw a shine and reached down to see what it was, and when he saw it was a chain, he put it in his pocket and went out to Collins Ave. Watson said he attempted to exchange the chain for drugs, but was unsuccessful because it wasn't worth enough. He said he then went to Longs Restaurant and ordered a shrimp dinner. T. 464-71.

On cross-examination, Watson said he did not try to help the victim because he did not know what he was supposed to do. T. 479-80. He said that he did not run from the scene, he just left. He also said that Thomas Gilbert was a friend and that he saw him on November 1, 1973. Watson testified that the two were together when he was picked up by police for an unrelated crime. The day after, he heard over the radio that a man was murdered in a robbery. T. 483-86.

In rebuttal, the State recalled Officer Albritton who explained that he established his perimeter, went to check for weapons or physical evidence, then went down to the beach. When he returned, he noticed his footprint was visible from the sand, and as such, he made a mental note that the crime scene could not have extended to the beach, contrary to Watson's testimony, because he did not see any footprints in the sand when he went down to the beach. T. 495-97. On cross, he acknowledged that he only went to the beach one time, and that he did not know whether his footprints were still there hours later. T. 499-500.

Following deliberation, the jury found Watson guilty as to first-degree murder and robbery. T. 610-12. The state and defense then reached a stipulated agreement to waive the penalty phase of

Miami Beach Police Department believed that Watson and Gilbert matched the description of the suspects in the Willits' murder.

trial, and the judge sentenced Watson to life imprisonment for the murder to run consecutive to a ten-year sentence for the robbery.

THE 1977 INVESTIGATION

On July 27, 1977, Assistant State Attorney Jim Woodard received a letter from Allen Hicks confessing his involvement in the murder and robbery, along with William Watson, of William Willits on October 25, 1973. In his letter, Hicks indicated that his conscience compelled him to confess because of his guilt about Gilbert's wrongful conviction. As a result of this letter, Woodard directed Sergeant Jerome Coney to reopen and investigate the homicide of Willits.⁴³ Coney began an investigation on September 12, 1977. On October 25, 1977, Coney and Woodard met and determined that all productive avenues of investigation had been covered, and that they would hold a meeting the first week of November 1977.⁴⁴

On November 4, 1977, Coney met with Chief Assistant State Attorney Edward Carhart and Assistant State Attorney Jim Woodard. Following the meeting, the State determined there were not enough grounds to justify Gilbert's release and to seek an indictment against Hicks. The State further determined that the complete investigation, as well as all statements taken in connection with the investigation, would be forwarded along to Paul Morris of the Appeals Division of the Public Defender's Office to follow "whatever course of action they felt appropriate."⁴⁵ It is not clear that the Public Defender's Office ever received the contents of this investigation and, if it did, it apparently took no action. No one ever provided the contents of the investigation to Mr. Gilbert.⁴⁶

Despite the decision by the State Attorney's Office in 1977 to take no action to remedy Mr. Gilbert's conviction, the contents of its investigation demonstrate that Hicks, not Mr. Gilbert, committed this murder with Watson. Below is an outline of all the individuals involved in the 1977 investigation, and a discussion of how their statements are corroborated, where relevant.

Allen Hicks: On September 12, 1977, Coney interviewed Hicks at the Public Safety Department Homicide Office after signing him out of the Dade County Jail. Hicks told Coney that his letter to Woodard was not his first confession, and that he had sent confessions to various attorneys, including a Paul Morris.⁴⁷ After being given his *Miranda* rights, Hicks indicated to Coney that he was willing to answer questions and signed a waiver. He told investigators he was currently serving a 15.5-year sentence at Union Correctional Institution for robbery, burglary, auto theft, and other charges.⁴⁸ When shown a photocopy of the letter he sent to Woodard, he indicated that Gilbert had written the letter, and Hicks printed his name at the end.⁴⁹ Yet, Hicks still confirmed the contents of the letter. Hicks told Coney that in October 1973, he and Watson were staying on the beach, not too far from the scene of the homicide. As part of his investigation, Coney determined that Hicks

⁴³ See 1977 Willits Reinvestigation, pg. 1-2 [hereinafter 1977 investigation] (Attached at Tab A).

⁴⁴ *Id.* at pg. 28.

⁴⁵ *Id.* at pg. 30.

⁴⁶ Mr. Gilbert first saw the records from the 1977 in (2019), after IPF provided copies.

⁴⁷ *Id.* at pg. 2.

⁴⁸ *Id.*

⁴⁹ Hicks indicated that Gilbert wrote the letter, but Gilbert has difficulty reading and writing. Further, the police interview with Robert Procup suggests that Procup wrote the letter at Gilbert's direction after Gilbert learned Hicks had been confessing to multiple individuals. See 1977 investigation, pg. 18.

stayed at the Bimini Bay Motel at 17400 Collins Avenue.⁵⁰ Hicks said that on the night of the murder, he and Watson were headed to Dania in Watson's '66 Cadillac, and when they arrived, they borrowed a .32 from a black male they both knew.⁵¹ Hicks did not initially provide the name of the individual from whom they obtained the gun. After picking up the gun, Hicks and Watson went to Collins Avenue, where they drove around looking for a victim to rob.⁵² Hicks said the two spotted Mr. and Mrs. Willits walking toward their motel, and decided to rob them. Hicks said he exited the car first, while Watson parked the car.⁵³

Hicks said he confronted the victims between two walls of the motel. He said after he confronted them and told them he was going to rob them, Watson approached. When Watson approached, he robbed the woman. Hicks said he took a wallet off the man. He said he took about \$60, but denied taking any other property or jewelry.⁵⁴ Hicks indicated that Mr. Willits was wearing short pants, a short-sleeve shirt, and shoes.⁵⁵

Hicks was unable to tell Coney what Watson took because he was not really paying attention to Watson. Hicks indicated that he held the gun in his left hand.⁵⁶ After taking the wallet, Hicks said he started to walk away when Watson yelled, "watch out, watch out," at which point Hicks extended his "shooting arm" to his rear and was struck in the face with a pizza box, at which time the gun fired.⁵⁷ Hicks didn't know where the bullet hit, but assumed it was Mr. Willits' chest area.⁵⁸

Hicks fled the scene on foot and Watson picked him up, and they headed toward Carver Ranches.⁵⁹ Hicks said he still had the handgun at this time, but returned it to whomever he borrowed it from in Dania.⁶⁰ At the conclusion of the formal interview, Hicks told Coney the name of the individual from whom he borrowed the gun was Bill.⁶¹

Later in the day on September 12, Coney again removed Hicks from the Dade County Jail to take a polygraph examination. At the conclusion of the polygraph, polygrapher George Slattery informed Coney he believed Hicks might have committed the homicide, but was lying in some of his responses. Further, Slattery noted that Hicks' involvement in another crime, possibly a homicide, surfaced during the test and had an overriding influence controlling the other tests.⁶²

⁵⁰ The Ocean Shore Motel was located at 18601 Collins Avenue. 10-25-73 Albritton Report, pg. 1. According to Google Maps, those two addresses are less than a mile from each other, or a fifteen-minute walk.

⁵¹ 1977 investigation, pg. 3. The weapon used in the murder of Mr. Willits was, in fact, a .32. T. 408.

⁵² 1977 investigation, pg. 3.

⁵³ *Id.* That Mr. Watson approached the scene second is consistent with trial testimony. T. 237-38.

⁵⁴ 1977 investigation, pg. 3. This is somewhat inconsistent with the investigation. According to the original investigation, Mr. Willits' wallet had \$70-\$80 in it, and other property, including a regular watch, a pocket watch, and traveler's checks were taken from Mr. Willits. Harper report, pg. 3-4.

⁵⁵ 1977 investigation, pg. 3. This is consistent with the investigation. Mr. Willits was wearing brown "walking shorts," a tan short-sleeved shirt, and loafers. Casey report, pg. 1.

⁵⁶ This is inconsistent with the deposition of Eleanor Willits, who said the gun was in the perpetrator's right hand. E. Willits Deposition, pg. 20.

⁵⁷ 1977 investigation, pg. 4.

⁵⁸ *Id.* The wound was in the left chest area, 2.5 inches left of the centerline. Casey report, pg. 1.

⁵⁹ Mr. Willits' wallet was found in Carver Ranches a couple of days after the crime. Harper report, pg. 5.

⁶⁰ 1977 investigation, pg. 4.

⁶¹ *Id.* at pg. 5. This is consistent with several other statements.

⁶² 1977 investigation, pg. 5.

Further, while Slattery said the polygraph was “technically inconclusive,” he noted that Hicks confessed the act of shooting, but demonstrated convoluted logic about whether that act was illegal (i.e., Hicks agreed he shot the gun, but did not accept responsibility because Willits “got in the way” of the bullet).⁶³ Slattery’s report further indicates that Hicks may have felt compelled to admit his part in the crime to clear Gilbert, but was simultaneously trying to avoid conviction for the crime.⁶⁴ Finally, Slattery’s report indicates that Hicks gave the examiner the same version of events that Hicks gave in all other instances: That he and Watson had stayed at Bimini Bay hotel, borrowed the gun from Bill Hearn, that Hicks participated in the murder, and that he ditched the victim’s wallet in Carver Ranches, which is where wallet was found.⁶⁵

Also, on September 12, investigators checked Hicks’ fingerprints against the remaining unidentified prints, with negative results.⁶⁶ On September 13, Coney attempted to see whether Hicks’ fingerprints matched any prints recovered from the ’66 Cadillac, but was informed that investigators never processed the vehicle.⁶⁷ That same day, Coney again checked Hicks out of the jail and took him to an apartment complex at 18 N.W. 7th Avenue, Dania, where Hicks told investigators Bill lived. A check revealed that a man fitting Bill’s description had moved out about six months prior. Milton Jones, the apartment manager, told investigators that two black males, the Hearn brothers, lived in that apartment until about six months prior.⁶⁸ Based on the information provided, Coney located the names Bill and Jim Hearn, and confirmed their last address to be 113 NW 13th Court, Dania. He obtained the rap sheets and photographs of each of the brothers.

Several days later, after speaking with a couple of other witnesses, Coney again signed Hicks out of the Dade County Jail.⁶⁹ Coney took Hicks to “The Strip,” and once on Collins Avenue, Hicks pointed out the Bimini Bay Motel as the motel he stayed in both prior to and after the Willits homicide.⁷⁰ Investigators confirmed this with hotel manager Susan Koslovsky who pulled the records from 1973 and noted that the ledger indicated Hicks occupied Room 8 from October 20, 1973-October 31, 1973. When asked which room he occupied, Hicks could not specifically recall that it was Room 8, but pointed investigators in the general direction of that room.⁷¹ Coney then took Hicks to the Ocean Shore Motel and asked him to identify where the robbery/homicide took place. After studying the scene, Hicks indicated not only the correct area, but pointed to almost the exact location the victim’s body had been found, indicating that was where he shot the victim.⁷² Hicks said he then ran south in the parking lot and took a left between two of the motel buildings, then continued west along the south boundary of the motel onto Collins Avenue and then south where Watson picked him up.⁷³

⁶³ Letter from Slattery to Woodard regarding polygraph results [hereinafter Slattery Letter], pg. 1-3 (Attached at Tab B)

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 6.

⁶⁸ *Id.*

⁶⁹ 1977 investigation, pg. 10.

⁷⁰ *Id.* at pg. 10.

⁷¹ *Id.*

⁷² *Id.* at 11.

⁷³ *Id.* Though the trial transcript of Watson’s trial indicates that Mrs. Willits marked some routes on a diagram, undersigned counsel does not have this diagram, and is unable to verify whether this statement is corroborated.

From there, Hicks returned to the homicide office where he was shown photos of the Hearn brothers, who Hicks correctly identified. He further confirmed that Bill Hearn was the Bill from whom he and Watson borrowed the gun used in the Willits murder.⁷⁴ On September 30, 1977, investigators showed Hicks four photographs of women, and after viewing each, he identified Mrs. Willits, albeit tentatively, stating he could not be sure it was her.⁷⁵ Later that day, investigators had Hicks stand in a lineup with five other black males.⁷⁶ Investigators brought in Mrs. Willits and advised her she was going to view six black males. At the conclusion of the line-up, Mrs. Willits was unable to identify any of the participants.⁷⁷ These identification procedures took place five years after the crime.

After the lineup, Hicks requested that he be allowed to attempt a full-figure identification of the women he had been shown in the photographs. Those individuals were taken into the lineup room along with Mrs. Willits, but Hicks could not make an identification.⁷⁸

Thomas Gilbert: On September 15, 1977, Coney had Gilbert removed from the Dade County Jail to be interviewed at the police department. When asked by Coney why he had not protested his innocence, Gilbert told him he thought the charges were “trumped up,” and that he would beat them in court. At the time, he also believed Watson was innocent, and didn’t learn of Watson’s involvement until Watson admitted to him at the Dade County Jail that he had committed the crime. Watson said that after his trial was over, he would help Gilbert, but Gilbert went to trial first, and Watson never came forward.⁷⁹

Gilbert told Coney that both Watson and Hicks made multiple admissions to multiple inmates. He provided a list of seven individuals to whom either Hicks or Watson had confessed.⁸⁰ One of the inmates, Robert Procup, reportedly typed a statement that Hicks signed and notarized that was sent to Attorney Paul Morris. Gilbert also told him that attorney Thomas A. Daniel would have information relating to Mr. Gilbert’s case.⁸¹ Gilbert told Coney that he knew Hicks from the Carver Ranches area, but told Coney they were not friends. Gilbert said he and Watson had known each other since he was 10 or 11 years old.⁸² When asked about the November 1 robbery, while Gilbert initially denied guilt, he later admitted that both he and Watson were guilty of that unrelated robbery.

After speaking with Gilbert, Coney took him to see George Slattery for a polygraph examination. After extensive interviewing and testing, George Slattery indicated that *it was his opinion that Gilbert was truthful and had nothing to do with the homicide.*⁸³

⁷⁴ *Id.*

⁷⁵ *Id.* at 19.

⁷⁶ *Id.*

⁷⁷ *Id.* at 20.

⁷⁸ *Id.*

⁷⁹ *Id.* at 8.

⁸⁰ *Id.* The names are not listed here since officers spoke to all of these individuals and they will be discussed *infra*.

⁸¹ 1977 investigation, pg. 9.

⁸² *Id.*

⁸³ 1977 investigation, pg. 9

William Watson: On September 19, 1977, Coney interviewed Watson at the homicide office after removing him from the Dade County Jail. Watson refused to cooperate, indicating that he would not “sink” himself to free Gilbert.⁸⁴ Officers again interviewed Watson on October 6, 1977 in the presence of Mr. Gilbert. This time, Watson admitted his involvement.⁸⁵ He said he parked the car in the motel parking lot and Hicks arrived prior to him so he was unsure of which way Hicks approached. He said Mr. Willits threw the pizza box on Hicks, which is when Hicks shot him. Watson also said he was too busy taking items from Mrs. Willits to notice what Hicks took from Mr. Willits.⁸⁶

Watson told investigators that after the robbery, Hicks ran toward Collins Avenue and then south on Collins to a point several blocks south of the motel where Watson picked him up.⁸⁷ After picking up Hicks, the two went to Hallandale Carver Ranches and then returned to the beach in the “wee hours of the morning,” with Watson heading to the Red Lion Motel and Hicks going to the Bimini Bay Motel.⁸⁸

Watson said they had gone to Hallandale to buy drugs, but were unsuccessful. He also said that he and Hicks split the money taken during the robbery, and Hicks got the ring taken from Mrs. Willits.⁸⁹ Watson denied taking any other jewelry. He also said that he moved into the Bimini Bay Motel with Hicks after the murder. Finally, he told Coney that Hicks borrowed the gun, which was a .32 caliber revolver, and returned it several days after the homicide.⁹⁰

Watson would not provide the name of the individual from whom they borrowed a gun, but he did say the individual lived in Dania and that he drove a VW⁹¹ in 1973. He further stated that the person was a friend who “turned” Hicks onto him.⁹² Watson said they disposed of the purse in or near the rock pit located at 25th Street in Carver Ranches. He denied seeing any travelers checks and said Hicks pawned the ring. He also said he would not make a formal statement or repeat what he revealed to Coney to the Assistant State Attorney. Finally, he said he would never fully incriminate himself no matter how much time had expired.⁹³

Bill Hearn: On September 21, 1977, investigators, based on Hicks’ identification, went to speak with Bill Monroe Hearn. When shown photographs of Watson, Gilbert, and Hicks, Hearn denied knowing any of them.⁹⁴ When investigators informed Hearn of Hicks’ statement, and informed him that the State was not interested in prosecuting him, Hearn again denied knowing anyone involved, and said he never owned or possessed a .32 revolver.⁹⁵ Despite his denials, he gave Coney the “distinct impression” that if his lawyer assured him the State would not prosecute him,

⁸⁴ *Id.* at 10.

⁸⁵ 1977 investigation, pg. 21.

⁸⁶ *Id.*

⁸⁷ *Id.* This is consistent with Hicks’ story. *See generally* 1977 investigation, pg. 2-6.

⁸⁸ *Id.* at 21.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Jim Hearn confirmed Bill Hearn drove a 1966 or 1967 blue VW Hatchback in 1973. 1977 investigation, pg. 19.

⁹² *Id.* at 21-22.

⁹³ 1977 Investigation, pg. 22.

⁹⁴ *Id.* at 11.

⁹⁵ *Id.* at 12.

he might have some information.⁹⁶ On October 14, 1977, investigators again met with Bill Hearn, this time with his attorneys, who reassured him that the extended written guarantee by the State would shield him from prosecution. Despite this promise, Hearn still refused to admit anything. He denied knowing Watson and Hicks.⁹⁷ He said he owned many weapons during that time, and did not remember if he owned a .32 caliber revolver. He refused to confirm any personal knowledge about himself, including whether he owned a Volkswagen at the time, even when told his brother already confirmed that fact.⁹⁸

Sammy Choise: On September 22, 1977, investigators interviewed Sammy Choise at Union Correctional Institution. Investigators told Choise about Hicks' allegations and Gilbert's potential innocence. Choise correctly identified Watson, Hicks, and Gilbert from photographs.⁹⁹ Choise said he and Gilbert had been incarcerated together at Lake Butler Reception Center, and Gilbert told him he was not guilty of his crime and that, in fact, William Watson and Allen Hicks were guilty. While still at Lake Butler, Choise encountered William Watson, who told him that Gilbert was innocent of the crime, and that Hicks committed the robbery/murder. When asked about details, Choise said that Watson told him they were staying on Miami Beach at the time, and Hicks suggested the robbery.¹⁰⁰ He also said that in either December of 1975 or January of 1976, he and Watson had an additional conversation where Watson provided more details about the crime, stating that the victims of the robbery were a man and woman in their 40s or 50s.¹⁰¹ Watson said that when he and Hicks approached the motel, the man and woman were carrying a pizza box. Choise told investigators that he got the impression that when Hicks and Watson approached the couple and asked for money, the couple refused, and the man threw the pizza box on them, which made them angry and resulted in the shooting.¹⁰² Watson also told Choise about a necklace or neck piece taken from the woman.¹⁰³

Choise also encountered Allen Hicks at Lake Butler. Hicks reiterated what both Watson and Gilbert told him. Hicks said he committed the crime, but was never more specific than that.¹⁰⁴ When asked why Watson would have provided such detail, but Hicks didn't, Choise indicated that he felt Hicks could not really express himself that well. He also said he wasn't aware of any pressure either individual felt to come forward.¹⁰⁵

George Harrell: On September 22, 1977, investigators interviewed George Harrell at Union Correctional Institution. Coney informed Harrell of the allegations made by Hicks. Harrell identified Watson, Hicks, and Gilbert from photographs.¹⁰⁶ Harrell told investigators that while he and Watson were in the same cell block, Watson told him about his conviction and that he had been arrested on account of the medallion, or necklace, taken from him at his arrest. Watson told

⁹⁶ *Id.*

⁹⁷ *Id.* at 24-25.

⁹⁸ *Id.* at 25.

⁹⁹ 1977 investigation, pg. 13.

¹⁰⁰ *Id.* at 13.

¹⁰¹ *Id.* at 14.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ 1977 investigation, pg. 14.

¹⁰⁶ *Id.* at 15.

Harrell he took the necklace from one of the victims during a robbery. He also said that Gilbert became inadvertently involved because of the unrelated robbery committed shortly after the Willits crime. Watson told Harrell he did not want to incriminate himself by telling the police that Gilbert was innocent, and that Hicks committed the robbery/murder with him.¹⁰⁷ At some point, Watson mentioned a ring taken in the robbery, but Harrell could not remember anything more specific.¹⁰⁸ Harrell also said that several months earlier, he had a conversation with Hicks, who told Harrell that while he was at Lake Butler for another crime, he spoke with Gilbert about the case and told Gilbert he was willing to write to Dade County about the incident, but nothing ever came of it.¹⁰⁹ Harrell further indicated that Hicks never provided any specifics regarding the crime, only that Gilbert was not with him and Watson the night the robbery/murder took place. Harrell also stated he believed Watson drove a 1965 or 1966 white Cadillac at the time.¹¹⁰

Elcy Inman: On September 22, 1977, investigators interviewed Elcy Inman at Union Correctional Institution. He recognized photos of both Watson and Hicks, each of whom he had known for about ten years. He told investigators he was Gilbert's uncle, and was aware of the allegations made by Hicks. He said he first discussed the incident with Hicks and Gilbert in either 1974 or 1975 when he first talked with Watson.¹¹¹

Inman said that Watson told him Gilbert had nothing to do with the crime, and that Hicks was his co-perpetrator. Watson only told Inman that jewelry was taken, and that Hicks was the shooter. In later conversations, Watson told him the victims were a couple, and that the robbery/homicide had taken place somewhere on the beach. Watson also said that during the robbery, he got into a scuffle with one of the victims and told Hicks to shoot, and Hicks did.¹¹² Hicks confirmed to Inman that Watson had gotten into some trouble during the robbery, and he had to shoot to get Watson out.¹¹³

Joc Von Williams: On September 22, 1977, investigators interviewed Joc Von Williams at Union Correctional Institution. Williams identified Watson and Gilbert from photos and said he had known both for about 20 years. He identified Watson from a photo by his last name only. He also could identify photos of both Hearn brothers.¹¹⁴ Williams indicated he first learned of the incident in September 1976 when he arrived at Union. He met Hicks at Lake Butler Reception Center who told him that he and Watson had committed the crime, but Gilbert and Watson were arrested.¹¹⁵

Reynold James Frink: On September 22, 1977, investigators interviewed Reynold James Frink at Florida State Prison. Frink told investigators that he was also known as "Buck," and could positively identify a letter he received from Watson in December 1974.¹¹⁶ Frink could identify photos of Hicks, Watson, and Gilbert. Frink further indicated that he only had contact with Watson when Watson wrote him the 1974 letter in which he told Frink he allowed Gilbert to go to jail for

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 16.

¹⁰⁹ *Id.* at 15.

¹¹⁰ *Id.*

¹¹¹ 1977 investigation, pg. 16.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* at 17.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

something Gilbert did not do.¹¹⁷ Once in prison, Watson told Frink the robbery took place on the beach in Dade County, and that an older couple was robbed and the man was shot. Other than Hicks being his partner, Watson provided no other details.¹¹⁸

Robert Procup: On September 22, 1977, investigators interviewed Robert Procup at Florida State Prison. When shown a photo of Watson, Procup said the photo looked like Hicks. He correctly identified a photo of Gilbert, and could not identify a photo of Hicks.¹¹⁹ Procup said he first met Gilbert and Hicks at Union Correctional Institution and did not know either of them outside of the institution. Procup met Gilbert at Lake Butler and they both talked about their cases, and Gilbert told him he was convicted for something he did not do. Procup had a job in the chaplain's office, and when he and Gilbert met, it was at that location.¹²⁰ At one of these meetings, Procup drew up a confession (for Hicks) at Gilbert's direction.¹²¹ It was reportedly signed by Hicks and notarized, and from there, Procup was unsure what happened to it. Procup further stated that Hicks made statements to him on several occasions that he was responsible for the murder/robbery for which Gilbert was convicted, but Procup never asked for details, and if offered, Procup indicated he did not want to hear any details.¹²²

Jim Hearn: On September 27, 1977, investigators interviewed Jim Hearn at Dade Correctional Institution. Jim Hearn could not identify the photos of Hicks, Watson, or Gilbert.¹²³ He did state, however, that he recognized the name Willie, or Bill Watson. He did not know much about his brother's friends during 1973. When asked about the apartment on 7th Avenue, Jim Hearn indicated that he and Bill Hearn had lived there about six years before his brother left in 1976 after his arrest. Jim was not aware whether Bill owned a .32 revolver during the time in question or whether he had any friends who owned such a weapon.¹²⁴ Hearn also told investigators that in 1973, his brother Bill drove a 1966 or 1967 blue Volkswagen Hatchback.¹²⁵

Thomas A. Daniel: On September 30, 1977, Coney spoke to Attorney Thomas Daniel via phone. Daniel told Coney that he represented Gilbert from October 1976 until June 1977 and had multiple conversations with Watson, Hicks, and Gilbert during that time. Both Watson and Hicks admitted their involvement to Daniel.¹²⁶ Daniel indicated that he failed to pursue Gilbert's innocence claims because of a lack of investigative funds, as well as what he perceived to be a lack of newly discovered evidence. He also indicated that he did not find it unusual for one prisoner to confess to another's crimes.¹²⁷ He told investigators if they secured a release, he would send copies of his file.¹²⁸

¹¹⁷ 1977 investigation, pg. 18. Undersigned counsel does not have a copy of the 1974 letter.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 18.

¹²⁰ *Id.*

¹²¹ *Id.* Mr. Gilbert does not read or write well.

¹²² *Id.*

¹²³ 1977 investigation, pg. 19.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.* at 20.

¹²⁷ *Id.*

¹²⁸ *Id.* Mr. Daniel's files were not available to undersigned counsel. In a February 6, 2019 phone call, Daniel indicated he had no recollection of this case.

On October 18, 1977, Assistant State Attorney Jim Woodard apprised Coney they had received Daniel's files.¹²⁹ The package contained numerous pieces of correspondence, confessions, and a tape-recorded statement by Allen Hicks. In reviewing the correspondence, including communication between Thomas Daniel and Paul Morris, investigators learned that various confessions by both Watson and Hicks had been made and both indicated they would recant their confessions or refuse to testify on Gilbert's behalf. In a May 2, 1977 letter from Paul Morris to Thomas Daniel, it was noted that Watson had a copy of the photographs in this case. The tape-recorded confession taken by Daniel indicated that Hicks was under duress when some of his statements were made, and that he and his family had been threatened. Hicks tried to suggest another Allen Hicks might have been involved.¹³⁰ It should be noted that these equivocations all occurred before Hicks and Watson both unequivocally confessed to authorities as part of the 1977 reinvestigation of this case.

Gregory Sears: On October 6, 1977, investigators interviewed Gregory Sears at Sumter Correctional. He could identify photos of Hicks, Gilbert, and Watson, and said he had known Hicks for 10-11 years, and Watson and Gilbert for longer. He also correctly identified Bill Hearn, and said they met during an escape in 1976.¹³¹ Sears said he first learned information related to the Willits murder in October 1973 when he was incarcerated at the Broward County Jail. He later learned of Gilbert's and Watson's arrests from Darrell Smith. When Sears was transferred to the Dade County Jail, he had conversations with Gilbert and Watson. Gilbert told him he had been convicted for a crime committed by Watson and Hicks. Watson did not disclose anything.¹³² When Sears was transferred to Union Correctional Institution, he again spoke with Watson, who, though vague, confirmed that Gilbert was innocent.¹³³ Hicks, who was also vague, spoke with Sears and acknowledged that he was involved in the crime with Watson.¹³⁴

Darrell Anthony Smith: With the help of Sears, investigators located Darrell Anthony Smith and spoke to him on October 7, 1977 at his home in Hallandale.¹³⁵ Smith said he knew Watson, Gilbert, and Bill Hearn and correctly identified their photos. Smith was shown a photo of Hicks and did not recognize him. Smith said he knew Gilbert for about seven years and Watson for about ten years. Smith said he knew Bill Hearn for about five years. Smith's last contact with Hearn was in 1976 while the two were incarcerated at the Broward County Jail. The Broward County Jail confirmed the two were both incarcerated in December of 1976, but advised investigators there was no way to determine who occupied a particular cell at that time.¹³⁶

Smith said he and Bill Hearn got into a conversation about Watson and Gilbert. Hearn told Smith he loaned the gun to Watson that was used in the homicide, and that Hearn had been invited to go along that night, but declined.¹³⁷ Hearn said the gun was returned three days later and that he

¹²⁹ 1977 investigation, pg. 25.

¹³⁰ *Id.*

¹³¹ *Id.* at 22.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* at 23.

¹³⁵ 1977 investigation, pg. 23

¹³⁶ *Id.* at 25.

¹³⁷ *Id.* at 23.

disposed of it.¹³⁸ When asked how, Smith said he believed Hearn told him he threw the gun into a body of water, possibly a river or lake. He believed Hearn told him it was either a .38 or a .32.

Dr. C Wetlie: Investigators contacted Dr. Wetlie on October 7, 1977 to review the Willits autopsy. After reviewing the autopsy, Dr. Wetlie told investigators there was no positive means of identifying the position of the shooter at the time the shot was fired, indicating that either a frontal confrontation, or a position where the shooter was leaving and extending a firearm to the rear could have inflicted the wound.¹³⁹

PROCEDURAL HISTORY

The Third District Court of Appeal affirmed Mr. Gilbert's conviction and sentence on direct appeal. *Gilbert v. State*, 311 So. 2d 384 (Fla. 3d DCA 1975). It is unclear from the record, as many of the files are no longer in existence, but at some point prior to July 16, 1975, Mr. Gilbert filed his first motion for postconviction relief, which was denied by the trial court. Mr. Gilbert filed a number of subsequent postconviction motions, none of which were successful.

On May 4, 2020, Mr. Gilbert, through undersigned counsel, filed a motion for postconviction relief in the circuit court arguing that the newly discovered evidence of Bill Hearn's statements, coupled with the 1977 investigation, would lead to a reasonable probability of acquittal.

As of the time of this application, the motion remains pending.

EVIDENCE OF INNOCENCE

The State Attorney ultimately determined there was not enough to justify Gilbert's release and the seeking of an indictment against Hicks. Importantly, it appears from the reports of the 1977 reinvestigation that the State viewed these mutually exclusive events as needing to occur concurrently. Said another way, it seems the State did not exonerate Gilbert *because* it believed it could not build a case against Hicks. Without the benefit of this report, Mr. Gilbert unsuccessfully attempted several more post-convictions motions. To date, procedural bars have made it such that a court has not considered the 1977 investigation in its entirety, even though it contains significant evidence of Mr. Gilbert's innocence. Other evidence of Mr. Gilbert's innocence is as follows:

- **Bill Hearn's Statements:** Bill Hearn first became known to police during the 1977 reinvestigation of Mr. Gilbert's case, so it is clear that he was unknown at the time of trial. Police learned of Bill Hearn when interviewing Allen Hicks after he confessed to being the individual who committed the Willits robbery and murder with William Watson. Hicks informed investigators that Hearn supplied the murder weapon. When investigators followed up on that lead, Hearn denied even knowing Watson or Hicks, let alone admit to loaning them a gun. Hearn would not even confirm what kind of car he owned at the time.

Since that time, Mr. Hearn, though still denying any knowledge of the weapon, has changed his story dramatically. Innocence Project of Florida (IPF) investigator Jennie Nepstad first spoke with Mr. Hearn in person at his nephew's house in Miami on January 15, 2019. When Ms. Nepstad informed him that IPF was investigating Mr. Gilbert's claim of innocence, Hearn

¹³⁸ *Id.*

¹³⁹ *Id.* at 24.

responded, unprompted, that while he never knew Mr. Gilbert, he knew the other two—Allen Hicks and William Watson. He also indicated that he knew Mr. Gilbert was innocent and serving time for Hicks’ and Watson’s crime. Hearn said that in 1977, he was in Dade County Jail with William Watson, and during that time, Watson told Hearn that he and Hicks robbed and murdered a man in Miami Beach in 1973 or 1974. Watson further told Hearn that Hicks pulled the trigger and that the man they murdered threw a pizza box in Hicks’ face. Hearn told Ms. Nepstad that Watson and Hicks were “druggies” that committed robberies to support their addictions. In a follow-up phone interview with Hearn on January 18, 2019, Hearn reiterated that Watson confessed to him at the Dade County Jail around 1973. Hearn told Ms. Nepstad that Watson told him that Hicks shot Willits, and that Watson was driving a 1966 white Cadillac at the time. During this interview, Hearn told Ms. Nepstad that Allen Hicks also confessed to him in the Dade County Jail in 1977.

In a third interview on January 23, 2019, again by phone, Hearn reiterated the information he provided to Ms. Nepstad. He told Ms. Nepstad he saw Watson and Hicks together some time during 1973 and that Watson had a small gun on his belt. He denied providing Watson that gun. When asked if the name Darrell Smith rang a bell, Hearn said that it did and confirmed he had been incarcerated with Smith at one point in the Broward County Jail. He also confirmed that he spoke with Smith about this case, but denied telling Smith he loaned Watson the gun, and denied throwing the gun in a river or lake.

Even without admitting his own involvement in the crime, Hearn’s information is consistent with the crime scene, as well as with the information given by other witnesses. That both individuals who were involved in the crime confessed separately to Hearn significantly undermines confidence in Mr. Gilbert’s guilt.

- **Hicks correctly pinpointed exactly where Mr. Willits was shot:** As part of the 1977 reinvestigation, Coney took Hicks to the Ocean Shore Motel and asked him to identify where the robbery/homicide took place. Hicks pointed to “almost exactly where the victim’s body was found,” indicating that was where he shot the victim. It would be nearly impossible to do if Hicks was not present, as he indicated facts known only to law enforcement and the actual perpetrator.
- **Hicks said the weapon used to shoot Mr. Willits was a .32:** This fact was confirmed by the investigation.
- **Much of the evidence points to Bill Hearn providing the murder weapon:** Hicks initially implicated Bill Hearn. Hicks pointed out the complex where he and Watson went to get the gun in Dania, and the apartment manager confirmed the Hearn brothers lived there in 1973. Hicks was able to identify Bill Hearn in a photo. Watson, though he would not give Hearn’s name, also implicated Bill Hearn. He told Coney that Hicks borrowed the gun, which was a .32 caliber revolver, and returned it several days after the homicide. He also said the individual lived in Dania and drove a VW, facts about Bill Hearn confirmed by Jim Hearn, Bill’s brother. Both of these stories match that of Darrell Smith, who told investigators that Bill Hearn told him he loaned Watson the gun, and it was returned three days later. Smith believed Hearn told him it was a .32 or a .38. In a recent interview with IPF’s investigator, Bill Hearn

admitted he knew Watson and Hicks, and that he spoke with Darrell Smith about the case, though he would not admit anything about supplying the gun.

- **Hicks said he and Watson were staying on the beach, and that he was staying at the Bimini Bay Motel, less than a mile away from the crime scene:** Watson testified at his trial that he was staying at the Red Lion Motel (T. 456), while investigators determined Hicks was staying at the Bimini Bay Motel. Hicks' stay is corroborated by hotel records from 1973 that indicate he was registered at the hotel from October 20, 1973 – October 31, 1973. The murder occurred on October 25, 1973. According to an old postcard,¹⁴⁰ the Red Lion Inn was located at 19051 Collins Avenue, the Ocean Shore Motel was located at 18601 Collins Avenue, and the Bimini Bay Motel was located at 17400 Collins Avenue. According to Google Maps, it is one mile from the Red Lion to the Bimini Bay Motel with the Ocean Shore Motel located in between the two, but closer to the Red Lion.
- **Hicks admitted to approaching the victims first and to being the shooter:** As outlined above, this is consistent with trial testimony.
- **Thomas Gilbert passed a polygraph examination:** A polygraph examiner found that Gilbert was being truthful when he said he did not participate in the robbery and murder of the Willitses.
- **Though Hicks' polygraph results were inconclusive, the examiner believed he was involved:** The examiner told Detective Coney he believed Hicks might have committed the homicide, but was lying in some of his responses.
- **Allen Hicks identified a photo of Eleanor Willits:** On September 30, 1977, Hicks was shown four photographs, and after viewing each, he identified Willits, albeit tentatively, stating that he could not be sure it was her. Later that day, Hicks requested that he be allowed to attempt a full-figure identification of the women he had been shown in the photographs. Those individuals were taken into the lineup room along with Mrs. Willits, but Hicks could not make an identification. Of course, this was nearly four years after the crime, so it is not surprising that he could not be absolute in his identification.
- **Allen Hicks confessed to seven different people that it was he, not Gilbert, who committed the Willits murder and robbery with Watson.** Not only did Hicks provide a statement to investigators confessing in detail to the crime, he also confessed to Samuel Choise, George Harrell, Elcy Inman, Joc Von Williams, Robert Procup, Attorney Thomas Daniel, and Gregory Sears, *all of whom confirmed Hicks' statements*. Further, there really was no inconsistency in his statements to any of these individuals despite their varying level of detail.
- **Watson confessed to five different people that it was he and Hicks who committed the crime.** Even with Watson's reluctance to fall on his sword, he still confessed to five different individuals: Samuel Choise, George Harrell, Elcy Inman, Reynold Frink, and Attorney Thomas Daniel. Again, all the referenced individuals confirmed that Watson confessed to them.

¹⁴⁰ An image of this postcard is attached. (Tab C)

- **No physical evidence points to Gilbert.** Watson’s fingerprints were found at the scene,¹⁴¹ he admitted to being at the scene,¹⁴² and was arrested with the stolen necklace in his possession.¹⁴³ None of this was true for Gilbert. The *sole* evidence against him was the eyewitness identification of Mrs. Willits. The Supreme Court of Florida has recognized there is a substantial body of academic work challenging the reliability of eyewitness identifications in criminal cases.¹⁴⁴ Indeed, many studies show that identification of perpetrators by crime victims can be extraordinarily unreliable.¹⁴⁵ As DNA testing has repeatedly shown, even victims who believe they are certain they have correctly identified their attacker are often mistaken.¹⁴⁶ In fact, mistaken eyewitness identification is one of the primary causes of wrongful convictions.¹⁴⁷ The victim’s eyewitness identification of Mr. Gilbert in the instant case is especially problematic due to its cross-racial nature; as the Supreme Court of Connecticut has observed, “[c]ourts across the country now accept that . . . cross-racial identifications are considerably less accurate than same race identifications.”¹⁴⁸

Further, the circumstances of Mrs. Willits’ initial identification of Mr. Gilbert are completely unknown. We do not know what investigators told Mrs. Willits, but we know that at the time of her identification, officers had already arrested Watson and Gilbert,¹⁴⁹ that officers traveled to her home in Virginia with photo packs,¹⁵⁰ and that no notes or recordings exist from that meeting.¹⁵¹ Further, by the time investigators arrived at Mrs. Willits’ Virginia home, she had already looked at more than 300 mugshots,¹⁵² and more than a week had passed since the crime.¹⁵³

¹⁴¹ T. 377

¹⁴² See generally T 454-72.

¹⁴³ T. 427-29.

¹⁴⁴ See *McMullen v. State*, 714 So. 2d 368, 372 n. 6 (Fla. 1998); *Peterson v. State*, 154 So.3d 275 (Fla. 2014) (Pariente, J., concurring).

¹⁴⁵ See Gary L. Wells, et al., *Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads*, 22 LAW & HUM. BEHAV. 1, 1-3 (1998) (explaining that “eyewitness testimony is among the least reliable forms of evidence and yet persuasive to juries”).

¹⁴⁶ See Jennifer Thompson, *I Was Certain But I Was Wrong*, New York Times, June 18, 2000 (op-ed piece in which a rape victim explains that though she was “completely confident” in her identification of the defendant as her attacker, she nevertheless was mistaken and proven so by DNA testing).

¹⁴⁷ See The Innocence Project, The Causes, at <http://www.innocenceproject.org/causes-wrongful-conviction/eyewitness-misidentification> (last visited July 16, 2015) (noting that “[e]yewitness misidentification is the greatest contributing factor to wrongful convictions proven by DNA testing, playing a role in more than 70% of convictions overturned through DNA testing nationwide). Furthermore, a U.S. Department of Justice study of 28 cases in which individuals were wrongly convicted and later exonerated by DNA testing found that in every case, except for homicides, the victim(s) had misidentified the defendant prior to and at trial. See Edward Connors, et al., *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial*, 15 (National Institutes of Justice, Office of Justice Programs, U.S. Department of Justice) (1996). The Department of Justice report states, “[I]n the majority of these cases, given the absence of DNA evidence at trial, the eyewitness testimony was the most compelling evidence. Clearly however, those eyewitness identifications were wrong.” *Id.*

¹⁴⁸ *State v. Gilbert*, 49 A.3d 705, 721-22 (Conn. 2012).

¹⁴⁹ Gilbert and Watson were arrested on November 1, 1973. 11-12-73 Harper Report, pg. 6. Detectives traveled to Virginia on November 3, 1973. T. 396-401.

¹⁵⁰ T. 396-401.

¹⁵¹ T. 422-25.

¹⁵² 11-12-73 Harper Report, pg. 4.

¹⁵³ Investigators came to her home on November 3, almost ten days after the crime.

It would not be surprising for Mrs. Willits' identification to be incorrect, yet this identification is literally the only evidence of Mr. Gilbert's involvement.

RELIEF REQUESTED

Mr. Gilbert is innocent and his age puts him at great risk of sickness and death during this COVID-19 health crisis affecting Florida's Department of Corrections institutions. Therefore, we respectfully request you commute Mr. Gilbert's two consecutive life sentences to time served, and, alternatively, should you believe it is warranted, grant a full pardon. This will ensure Mr. Gilbert's safety during this pandemic while we await further litigation steps related to the propriety of his conviction.

Respectfully submitted,



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Appendix

1977 Willits Reinvestigation.....	Tab A
Letter from Slattery to Woodard regarding polygraph results.....	Tab B
Postcard Image of Red Lion Inn.....	Tab C
Certified copy of Indictment.....	Tab D
Certified copy of Judgment and Sentence	Tab E
Certified copy of Department of Corrections classification file ¹⁵⁴	Tab F
Transition Plan.....	Tab G

¹⁵⁴ For ease of review, we're providing a summary of the file, but can provide additional documentation upon request.