



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
2/1/11	SM	Fav/1 amendment

February 1, 2011

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

Re: **SB 46 (2011)** – Senator Mike Haridopolos
HB 23 (2011) – Representative Steve Crisafulli
Relief of William Dillon

SPECIAL MASTER'S FINAL REPORT

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

FINDINGS OF FACT:

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

John Parker drove to Canova Beach in his truck at 1:30 a.m. or a little later. He observed a man walk up from the beach. The man appeared unsteady and upset. He wore shorts and no shirt, but had a shirt in his hand. Parker pulled his truck over to the man and asked what was wrong. The man told Parker that he could not find his car and asked Parker for a

ride to the A-Frame Tavern, which was not far away. Parker later described the man as 21 to 27 years old, about 6 feet tall, and having a "medium" mustache. The man said his name was Jim. He was sweaty and had blood smears on his leg and pants. When Parker asked about the blood, the man said he had been in a bar fight. Parker propositioned the man for sex and performed oral sex on him in the truck. Parker then drove the man to the A-Frame Tavern.

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

At the time of the murder, Claimant James Dillon was 22 years old and unemployed. Dillon's attorneys described his status as "between jobs" as a construction worker, but his activities in the days before and after the murder are more suggestive of a beach bum. His father said he was "destitute" and not working. Dillon was usually broke and spent his days and nights sleeping on the beach, in cars, or at the apartments of acquaintances or strangers, smoking marijuana, and "bumming" cigarettes, drinks, meals, rides, and clothes. Dillon was often at the Pelican Bar, which is across A-1-A from Canova Beach. A couple of weeks before the murder, he met Donna Parrish at the Pelican Bar and was spending a lot of time with her.

Unlike the hitchhiker, Dillon did not have a mustache. The evidence was ambiguous as to whether Dillon had tried to grow a mustache and had recently shaved it, but he never had a mustache like the one depicted in the sketch developed from Parker's description of the hitchhiker. Parker described the hitchhiker as being about 6 feet tall. Dillon is 6 feet, 4 inches tall. The T-shirt left by the hitchhiker was a size "small." It is unlikely Dillon could have worn a size small T-shirt.

Interviews conducted by homicide investigators in the Canova Beach area after the murder caused Dillon to

become a suspect. Someone thought the sketch of the hitchhiker looked like Dillon. It was reported to police that Dillon said he had “rolled fags” for money. Police were also told that Dillon had a mustache that he recently shaved off and was dressing and acting differently after the date of the murder.

On August 22, Dillon was contacted and asked for an interview. At the interview conducted a few days afterward by Agent Thom Fair, Dillon said that he and Donna Parrish, had spent the entire night of August 16 in Cocoa Beach at the home of Linda and George Plumlee. Dillon said that the next day, August 17, he and Parrish stayed with his friend Matt Bocci in Satellite Beach. Agent Fair said that Dillon had recently-healed scratches on his hands at the time of the interview.

When Donna Parrish was first interviewed, she stated at one point that she and Dillon spent the night of August 15 with Charles and Rosanne Rogers, but at another point she said it was the night of August 16. In a second interview taken just a few minutes later with different investigators, Parrish said that she and Dillon went to the Bocci residence on August 16.

Parrish said she went by herself to the Pelican Bar that evening and Dillon arrived later. She said that they left the bar at about 1:00 a.m., crossed A-1-A to Canova Beach, and then she left Dillon alone at about 2:00 a.m. and hitchhiked to Sambo's in Satellite Beach. She said Dillon came into Sambo's at about 3:00 a.m. and had money with him that he did not have earlier. Parrish was interviewed a third time a few hours later and told investigators she had lied in her previous statements. She said that she and Dillon went to the Bocci residence on August 16, that they had an argument, that she went alone to the Pelican Bar, Dillon never showed up, and that she left the bar at about 12:30 a.m. and hitchhiked home. Parrish said she called the Pelican Bar and talked to Dillon at 2:00 a.m. and that he got a ride to her home and arrived about 3:00 a.m.

Parrish said Dillon was scared and depressed when he arrived at her house and told her the “police would be after him.” She said Dillon's hands were cut and he had dried blood on his hands. She also said Dillon told her that when

he needs money he sometimes goes to Canova Beach to “go home with queers and when they fall asleep I take their money.”

Dillon agreed to take a polygraph test and the examiner concluded that Dillon showed deception when he was asked whether he was at Canova Beach at the time of the murder and whether he “hit” Dvorak. At the conclusion of the test, Dillon said he could not have killed Dvorak because he was at the Bocci residence the evening of August 16 until the afternoon of August 18, and never left during that period. Later, Dillon told investigators that he lied about not leaving the Bocci residence. He said he left the evening of August 16, but he did not go to Canova Beach. In a second polygraph test taken to question Dillon about whether he stole money from Dvorak, the examiner concluded that Dillon showed deception when he was asked whether he had taken money from Dvorak.

No fingerprints, blood samples, or hair samples taken from the crime scene were ever linked to Dillon. When John Parker was first asked whether he could identify Dillon as the hitchhiker, Parker was unable to make a positive identification. However, during one of Dillon’s interviews, the deputies got Dillon to handle a piece of paper that was later given to John Preston, the handler of a tracking dog. According to Preston, his dog then connected Dillon’s scent on the piece of paper to the bloody T-shirt left in Parker’s truck, indicating that Dillon’s scent was also on the T-shirt.

Three or four people said that Dillon often wore a yellow “SURF IT” T-shirt like the one left in Parker’s truck by the hitchhiker. Pictures of Dillon taken around the time of his arrest show him wearing a yellow T-shirt with “EAT IT RAW” printed on the front. The words “EAT IT” were on top and the word “Raw” was below. Dillon’s “EAT IT” T-shirt could have been mistaken for the yellow “SURF IT” T-shirt.

Sometime after Dillon’s arrest, Charles and Rosanne Rogers contacted the Sheriff’s Office and said Dillon and Parrish had spent the night of August 16 with them in Cocoa Beach. Dillon did not claim to have stayed with the Rogers on August 16 until the Rogers came forward with that account. When Dillon was asked at his trial why he had not said earlier that he stayed with the Rogers on August 16, he said

he had forgotten their names. Matt Bocci said Dillon and Parrish were at his house on August 16 and they went out in the evening and returned after midnight. Bocci's fiancée, Tracey Hermann, confirmed that Dillon and Parrish were at Bocci's house on August 16. She was certain of the date because she had just arrived on that date from Texas. Matt Bocci's brother, Joe, and Glen Zeller also lived at the house. Both Joe Bocci and Zeller saw Dillon at the Bocci residence on August 16. Joe Bocci also said he saw Dillon sleeping at the Bocci residence at 6:00 a.m. on August 17 when he (Joe) left for work.

Several people said that they saw Dillon at the Pelican Bar on the night of August 16 and early morning hours of August 17. Mark Muirhead, who was a doorman/bouncer at the Pelican Bar, says he saw Dillon and Parrish arrive at the bar at about 10:00 p.m. on August 16, leave around midnight, and then return separately later. Muirhead said Dillon returned to the Pelican Bar near closing time at 2:45 a.m. and asked Muirhead for a ride. Muirhead drove Dillon to Parrish's residence. Brevard County Sheriff Deputy George McGee followed Muirhead from the Pelican Bar to the Parrish residence because he had observed Muirhead commit a traffic violation. Deputy McGee confirmed the time and date previously reported by Muirhead. Margaret McDonald was working as a bartender at the Pelican Bar on August 16 and she recalls seeing Dillon and Parrish at the bar around midnight. She remembers that Dillon gave her a tip that night, which was unusual because he never had any money. Dillon was also seen at the Pelican Bar on the night of August 16 by another bartender, Genevieve Tisdale. A patron of the Pelican Bar, Richard Drouin, saw Dillon and Parrish at the bar on the night of August 16.

There are simply too many people who swore they saw Dillon at the Bocci residence and at the Pelican Bar on the night of August 16 and in the early hours of August 17 for me to believe they could all be mistaken. These witnesses had no apparent reason to lie about Dillon's whereabouts. Dillon, himself, swore he was at the Bocci residence on August 16. The Rogers' were mistaken about Dillon and Parrish being with them on August 16.

A week after Dillon's arrest, Parrish changed her story again. She said that she and Dillon were at the Pelican Bar on the

night of August 16, she left by herself at 1:00 a.m. on August 17 and Dillon left shortly afterward. They talked for a short while outside the bar and then Parrish hitchhiked home. She says she returned to the bar and Dillon was not there, but then showed up again and he had money to buy drinks for himself, Parrish, and some other people. She got mad at Dillon and hitchhiked home. She then called the Pelican Bar and talked to Dillon and he got a ride to Parrish's house. Parrish said Dillon told her that he had gotten in a fight and hurt someone. She said he later told her he had beaten someone "so bad he died."

A month later, Parrish changed her story again. She said she saw Dillon in the parking area next to Canova Beach just after midnight on August 17, talking with someone at a parked car. She said she later went looking for Dillon, taking the path toward the beach, and came upon a body. She said Dillon was standing next to the body, putting on his jeans.

Parrish lied from her first interview and continuously thereafter. All of her statements, whether they helped or hurt Dillon, are subject to doubt unless they are corroborated by others.

It was later disclosed that, following an interview of Parrish by Chief Homicide Investigator Charles Slaughter, he drove her to his residence and had sexual intercourse with her. The sexual encounter was reported by Parrish, who filed a complaint about it with the Sheriff's Office. Slaughter admitted the sexual contact and he was immediately suspended, demoted, and transferred out of the homicide unit.

After Dillon's arrest on August 26, 1981, he was placed in a jail cell with Roger Chapman. Agent Thom Fair met with Chapman at the jail and Chapman told Agent Fair that Dillon said he had "sucker punched" a guy at the beach and then beat him with his fists. Agent Fair said Chapman initiated the meeting. At the claim bill hearing held on November 2, 2009, Chapman testified that he had been coerced by Agent Fair to make up lies about Dillon or face harsh prosecution on his own charge of sexual battery. Chapman's charges were later dropped. Agent Fair submitted an affidavit in which he asserts that Chapman's statement was not

coerced. The testimony of Chapman and Agent Fair on this point was not subject to cross-examination and is otherwise insufficient to resolve the conflicting claim about coercion. Nevertheless, I do not find Chapman's testimony about what Dillon told him to be credible.

At Dillon's trial, Parker identified Dillon as the hitchhiker who left the T-shirt in his truck, Preston testified that his dog matched Dillon to the bloody T-shirt, and Chapman testified about Dillon's "confession" to him when they were sharing a jail cell. There was testimony that Dillon often wore a yellow "Surf-it" T-shirt. Parrish testified that she saw Dillon at Dvorak's body. It is not surprising, therefore, that the jury found Dillon guilty of murder beyond a reasonable doubt.

Long after Dillon's trial, the dog handler, John Preston, was discredited. It was established that Preston was falsely claiming that his dogs were matching crime scene evidence to suspects when there was no match.

In addition to Dillon's loss of freedom and the many other deprivations caused by his incarceration, he claims to have been gang-raped while in prison. He also says he has dental problems due to the poor dental care he received in prison. Dillon had a good record in prison with respect to work assignments and general behavior.

LITIGATION HISTORY:

Dillon was tried in the circuit court for Brevard County. He was found guilty and sentenced to 25 years to life in prison.

A week after the trial, Dillon's attorney moved for a mistrial because Parrish wanted to recant her trial testimony. A hearing was held before the trial judge to consider the motion. Parrish said that she had lied about seeing Dillon at the body of the murder victim. She said she lied because Sheriff's deputies told her that, if she did not lie for them, she would "rot in jail for 25 years." Parrish did not explain what crime she could have been prosecuted for that could cause her to be sentenced to 25 years in prison. Following the hearing, the trial court denied the motion for mistrial, and Dillon was sent to prison.

In 2005, Dillon learned about the Wilton Dedge case and Dedge's exoneration for a rape conviction based on DNA testing. Dillon filed a motion for DNA testing. In 2007, an

interview of Dillon was seen by staff at the Innocence Project of Florida. The Innocence Project got involved to assist Dillon and paid for DNA testing of the bloody T-shirt by a private laboratory which used testing methods not available at the state laboratory. The DNA testing showed that the sweat and skin cells on the T-shirt did not come from Dillon. A motion for a new trial was granted in November 2008 and Dillon was released from prison. In December 2008, the State Attorney for the Eighteenth Judicial Circuit, Norman Wolfinger, decided not to pursue a new trial. In a letter sent to the Special Master, Wolfinger explained that “meeting the State’s burden of proof was going to be unrealistic in light of the nine witnesses who are now deceased and another key witness who has substantial medical issues.”

CONCLUSIONS OF LAW:

DNA Testing

Wilton Dedge and Alan Crotzer were convicted of rape. The DNA testing in their cases exonerated them because the semen taken from the victims was shown not to be their semen. Dillon’s attorneys assert that the DNA testing of the bloody T-shirt proves that Dillon is innocent. That notion is also frequently stated in the newspaper articles about the Dillon case. However, while the DNA testing shows that Dillon was not the hitchhiker, it does not erase all the other evidence against Dillon.

It cannot be said with certainty that the hitchhiker murdered Dvorak. It can only be said that the hitchhiker was involved in the murder because he had Dvorak’s blood on his T-shirt. Dillon is not the hitchhiker, but proof of Dillon’s innocence requires that his possible involvement with the murder be eliminated.

Credibility

Dillon’s prosecution involved unreliable witnesses, faulty memories, and official misconduct, making it difficult to sort out the events of August 16 and 17, 1981. In my own analysis, I disregarded the dog handler testimony and Parker’s identification of Dillon as the hitchhiker. I also disregarded Chapman’s testimony that Dillon confessed to the crime.

If Parrish were a credible witness, her testimony, alone, would be enough to prove Dillon’s involvement in the

murder. However, Parrish was not a credible witness. All her actions showed her to be a weak person, easily manipulated and willing to lie for Dillon or for her own self-interest.

As discussed above, I do not believe Dillon's alibi that he spent the night of August 16 in Cocoa Beach at the Rogers residence. I find more persuasive the multitude of witnesses who saw him at the Bocci residence and at the Pelican Bar on August 16 and August 17. Dillon was not truthful about his whereabouts at the time of the murder. That is the most troubling aspect of this claim bill.

There was no named respondent in this case. Dillon and his attorneys presented their argument and evidence at the claim bill hearing without opposing argument or evidence.

In a letter to the Special Master, State Attorney Wolfinger stated that the DNA testing did not exonerate Dillon. Thom Fair, now retired from the Brevard County Sheriff's Office, moved to intervene after the claim bill hearing and filed an affidavit to rebut the claim that he had coerced the statement of Chapman. He still believes that Dillon is guilty of the Dvorak murder. The motion to intervene was denied, but the affidavit was made a part of the record.

Burden of Proof

In the 2008 Session, the Legislature created Chapter 961, Florida Statutes, to compensate victims of wrongful incarceration. The relief provided under Chapter 961 is \$50,000 for each year of wrongful incarceration; a tuition waiver for up to 120 hours at a career center, community college, or university in Florida; and reimbursement of court costs, attorney's fees, and expenses incurred in the criminal proceedings. Dillon is ineligible to seek relief under Chapter 961 because that law is only available to persons who have no felony conviction other than the conviction for which they were wrongfully incarcerated. Dillon has a felony conviction for possession of a controlled substance -- a Quaalude -- for which he served no jail time, but paid a fine and served probation. If Dillon were eligible to use Chapter 961, he would not qualify for compensation unless he presented "clear and convincing evidence" that he "neither committed the act nor the offense that served as the basis for the conviction and incarceration" and he "did not aid, abet, or act

as an accomplice or accessory to a person who committed the act or offense.”

Chapter 961's requirement to prove “actual innocence” is substantially different than showing that guilt was not proved beyond a reasonable doubt. Although probably misunderstood by much of the general public, a jury's determination that a defendant is “not guilty” is not a determination that the defendant is actually innocent. The defendant is presumed to be innocent, but there is no determination of actual innocence. Some jurors may believe in the actual innocence of the defendant when they vote “not guilty,” but a belief that the defendant is innocent is unnecessary for an acquittal. Jurors can suspect that a defendant more likely than not committed the act for which he or she was charged, but still find the defendant “not guilty” because the jurors are not certain of guilt. A reasonable doubt remains in their minds. In our criminal justice system, a defendant who might have actually committed the crime for which he or she is charged must be set free if the State does not prove the defendant's guilt beyond a reasonable doubt.

In contrast, Chapter 961 does not presume innocence for the purposes of compensation. Under Chapter 961, it is not enough for a claimant to show that the evidence against him or her was insufficient to prove guilt beyond a reasonable doubt. The claimant cannot be compensated unless there is clear and convincing evidence of his or her actual innocence.

Dillon's attorneys asserted that the evidence of Dillon's innocence is clear and convincing, but they argued that the proper standard of proof for this claim bill is “preponderance of the evidence.” They note that this is essentially a claim bill seeking compensation for damages arising from the tort of false imprisonment and should qualify for the usual preponderance of the evidence standard that is applied in nearly all claim bills involving government torts. They also point out that previous claim bills for wrongful incarceration (Pitts, Lee, Dedge, and Crotzer) were not subject to a “clear and convincing” standard.

The Claimant's argument that the Senate should apply a preponderance of the evidence standard is a reasonable

position. However, the clear and convincing standard in Chapter 961 could be viewed as a new guide for legislative action on claims bills for wrongful incarceration because Chapter 961 is an expression of legislative intent and policy on the subject. There is no precedent to turn to in considering this issue because this is the first claim bill for wrongful incarceration since the enactment of Chapter 961.

In Dillon's case, the appropriate burden of proof is critical because, although I believe Dillon has shown by a preponderance of the evidence that he was wrongfully incarcerated, I do not believe that the evidence of his actual innocence is clear and convincing. I still have a reasonable doubt due to Dillon's presence in the area of the murder, at the time of the murder, and his not being truthful about it.

Conclusion

Because this is not a Chapter 961 proceeding, I believe the appropriate burden of proof is preponderance of the evidence. I recommend that Dillon be compensated for the 27 years he spent in prison because there is no physical evidence linking Dillon to the victim or the crime scene and Dillon would probably not have been found guilty with the credible evidence available to the prosecutors.

When Dillon first presented his claim in the 2010 Session, he was seeking the same compensation that is provided under Chapter 961. However, if the compensation provided by Chapter 961 goes only to a claimant who has no other felony conviction and who proves actual innocence by clear and convincing evidence, then it seems only logical that a claimant who has another felony conviction and proves wrongful incarceration by only a preponderance of the evidence should get less than the compensation provided by Chapter 961. Otherwise, there is no incentive for a wrongfully incarcerated person to use Chapter 961.

Dillon reduced his claim from \$1.35 million to \$810,000, which represents a reduction from \$50,000 for each year of wrongful incarceration to \$30,000 for each year. The "right" compensation in this situation is debatable, but \$30,000 for each year of wrongful incarceration is a reasonable figure and it protects the integrity of Chapter 961.

In addition, Dillon requests the same tuition waivers for 120 credit hours of schooling that is available under Chapter 961. That is reasonable and I believe the Senate should approve tuition waivers for Dillon.

ATTORNEYS FEES:

Dillon's attorneys are representing him *pro bono*. However, the Innocence Project of Florida reported \$27,611.85 of costs incurred in obtaining the release of Dillon from prison and assisting him thereafter. There is no lobbyist's fee.

OTHER ISSUES:

I recommend the deletion of the "whereas" clauses of the bill that assert that witnesses were coerced by investigators to give false testimony against Dillon. These assertions amount to legislative findings that crimes were committed by members of the Brevard County Sheriff's Office, but there have been no charges filed, no determinations by a court, and there was insufficient evidence presented to the Special Master to find that crimes were committed by the Sheriff's Office.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 46 (2011) be reported FAVORABLY, as amended.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Mike Haridopolos
Representative Steve Crisafulli
R. Philip Twogood, Secretary of the Senate
Counsel of Record

Attachment



696350

LEGISLATIVE ACTION

Senate

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House

The Special Master on Claim Bills recommended the following:

1 **Senate Amendment**

2

3 In title, delete lines 29 - 36

4 and insert:

5 WHEREAS, the prosecutors presented witness testimony
6 against William Dillon which the prosecutors knew or should have
7 known was unreliable, and

8