

May 2, 2018

Georgia State Board of Pardons and Paroles
2 M.L.K. Jr Drive SE #458
Atlanta, GA 30334

Re: Robert Earl Butts, Jr. – Supplement to Clemency Petition

Honorable Members of the Board:

Earlier this week, we reached out to Stephen Bradley, District Attorney for Baldwin County, to request a meeting so that we could notify him of the evidence that we have tendered in support of Robert Jr.'s clemency petition. We particularly wanted to apprise Mr. Bradley of the affidavit evidence demonstrating that Robert Jr. did not shoot Donovan Parks and that his co-defendant, Marion Wilson, engineered false testimony at trial claiming that Robert Jr. had confessed to doing so.

During our meeting, we were surprised to learn that Mr. Bradley intends to assert: 1) that it was Robert Jr., and not Marion Wilson, who had the murder weapon concealed under his jacket on the night of the crime; and 2) that the motivation for the murder was so that Robert Jr. could be initiated in or advance within the FOLKS gang, of which Mr. Wilson admitted to being a member and "chief enforcer." In addition, after our meeting with Mr. Bradley, the State submitted a filing in the Georgia Supreme Court that cites to the state habeas testimony of Robert Jr.'s trial counsel, Robert Westin, in which he asserted that Robert Jr. had told a private polygraph examiner that he was the shooter. As Mr. Bradley will likely repeat these contentions during their presentation to the Board this afternoon, and as we do not believe that they are supported by the record, we respectfully request leave to address them in this supplement.

I. The evidence shows that Mr. Wilson maintained possession of the sawed-off shotgun at all relevant times.

First, a review of the evidence presented at both trials shows that Mr. Wilson had the sawed-off shotgun used to murder Donovan Parks in his possession before the crime, was the only one who wore a coat of sufficient length to conceal the gun around the time of the crime, and kept the gun in his possession after the crime.

Kirk Jones testified at Robert Jr.'s trial that he saw Marion Wilson carrying around a long green bag. Butts Trial Tr. at 1425.¹ Mr. Jones further testified that the object in the bag "was a sawed-off shotgun." Ex. A, Butts Trial Tr. 1432. Finally, Mr. Jones attested that, prior to the date of the crime, Mr. Wilson had asked to borrow his hacksaw in order to saw the barrel off of a shotgun. Ex. A, Butts Trial Tr. at 1428. Nobody testified in Robert Jr.'s trial or habeas proceedings that they had any reason to believe that he was in possession of a sawed-off shotgun before the crime.

In addition, the evidence shows that Mr. Wilson maintained possession of the sawed-off shotgun at the time the crime occurred. During Mr. Wilson's trial, the State presented video footage of Mr. Wilson walking into a Flash Foods convenience store a short time after the murder. In the video, Mr. Wilson is wearing gloves and a long black coat that could have easily concealed the shotgun prior to the shooting.² Indeed, the State argued that very point during its closing arguments in the guilt-innocence phase of Mr. Wilson's trial:

On that warm March night, when it's too warm to wear a long jacket like this with gloves on, [Wilson's] got his own long jacket....It comes down to his ankles, that jacket At the time of this was 10:38 half an hour after the killing. As long as it would take to get from Milledgeville to Gray.

Ex. B, Wilson Trial Tr. at 1839-42.³

¹ The excerpts from Robert Jr.'s trial transcript cited in this supplement are attached as Exhibit A.

² We are in the process of converting this video footage — which is recorded on a VHS cassette — to a digital file, which we will submit to the Board as soon as possible.

³ The excerpts from Mr. Wilson's trial transcript cited in this supplement are attached as Exhibit B.

The thrust of this argument is clear. The State's theory was that Mr. Wilson was wearing this otherwise impractical coat to conceal the sawed-off shotgun, and was wearing gloves because he had pulled the trigger of the gun that killed Mr. Parks. Indeed, the State left no doubt as to its meaning during the closing argument of the penalty phase, when the district attorney urged the jury to "show [Mr. Wilson] the exact same amount of mercy that he granted Donovan Corey Parks when he blew his brains out on the side of the road." Ex. B, Wilson Trial Tr. at 2476.

Robert Jr., by contrast, sometimes wore a Colorado Rockies "Starter" jacket, which was recovered from his car. Unlike Mr. Wilson's long coat, it came only to his waist. Gary Garza, a jailhouse informant, testified that Robert Jr. had confessed to concealing the shotgun in the sleeve of this jacket. That testimony, however, is not credible – both because of Mr. Garza's previously detailed unreliability, and because it would have been difficult, if not impossible, for Robert Jr. to conceal a sawed-off shotgun in the sleeve of such a jacket, much less walk around a Walmart and pick up and pay for a pack of gum without attracting attention. Kenya Mosley, who saw Robert Jr. in the Walmart, rejected any suggestion that Robert Jr. was "moving unusually" or "with one arm straight." Ex. B, Wilson Trial Tr. at 1383-84. Indeed, one of Mr. Wilson's jurors, Zodie Carter, told an interviewer that Mr. Wilson's jury further disproved this theory by having one juror put on the Starter jacket and try to conceal the shotgun inside it. The jacket, however, was too short. As a result, Mr. Wilson's jury was convinced that Mr. Wilson was the shooter.⁴

Indeed, the State appears to have conceded that Mr. Wilson's long coat was the more likely hiding place for the gun in their closing argument at his trial, emphasizing that either Robert Jr. or Mr. Wilson had to be "wearing a big jacket" before expressly contrasting the Starter jacket with the long coat that Mr. Wilson wore into the Flash Foods store.

I want you to look at [Mr. Wilson's] jacket Take a look at that jacket and look at [the Starter jacket]. It's not the same This is not the same jacket. On that warm March night, when it's too warm to wear a heavy jacket like this with gloves on, [Mr. Wilson's] got his own long jacket We don't know where that jacket it, but that is a different jacket than this one that was found in Butts' car and we

⁴ Notes from Ms. Carter's interview are attached as Exhibit C.

know that [Mr. Wilson], the defendant right there, had his own long [coat]--look how long it is. Look where it comes down to on him.

Ex. B, Wilson Trial Tr. at 1840-41.

Finally, the evidence shows that Mr. Wilson kept the shotgun in his possession after the crime. It is undisputed that the police recovered the sawed-off shotgun from under the bed at the residence that Mr. Wilson shared with his girlfriend Angela Johnson. Although Ms. Johnson later testified that Robert Jr. had dropped off the sawed-off shotgun sometime after the murder, her testimony is materially inconsistent with her initial statement to police⁵, and she was pregnant with Mr. Wilson's child at the time. Given her shifting testimony and vested interest in the outcome of the proceedings, Ms. Johnson was simply not credible.

II. There is no evidence that Robert Jr. was in a gang, or that Mr. Parks's murder was gang-related.

As gang expert Dr. John Hagedorn writes in his attached supplemental report, we can “only assume that the police and prosecution’s belief that this crime was gang-related stems from Mr. Wilson’s admission of gang membership in his initial interview with police following his arrest, in which he proclaimed himself the chief enforcer of the FOLKS gang.”⁶ As noted in Robert Jr.’s petition to this Board, however, there is simply no evidence that Robert Jr. was in the FOLKS gang. As Robert Jr. writes in the attached supplemental statement⁷, while he knew some of the members of the gang, including his best friend, he himself was never in the gang.⁸ Dr. Hagedorn further notes that Robert Jr. “was not in the

⁵ Ms. Johnson’s bizarre description of events—in which (1) Robert Jr. allegedly walked up to the door to Ms. Johnson’s mobile home while openly holding the shotgun; (2) Ms. Johnson then went to the back of her mobile home to sit down; (3) Ms. Johnson then quickly came back to the door; (4) Robert Jr. asked Mr. Wilson to hold the gun for him for an unknown period of time; (5) Mr. Wilson agreed; and (6) Robert Jr. or Mr. Wilson placed the gun in a mysterious black bag, but Ms. Johnson was could not answer whether the bag was a garbage bag or some other type of bag—simply strains credulity. Ex. A, Butts Trial Tr. at 1832–36.

⁶ Dr. Hagedorn’s supplemental report is attached as Exhibit D.

⁷ Robert Jr.’s supplemental statement is attached as Exhibit E.

⁸ Robert Jr. does not minimize his error in associating with members of a gang. As he writes in his statement, “I regret that I hung out with them now but I just didn’t

Milledgeville gang database prior to the murder of Donovan Parks, as both Deputy Horn and Sheriff Sills admitted,” and that none of the members of the FOLKS gang in Milledgeville whom he interviewed identified Robert Jr. as a member of the gang.

Further, there is no evidence that the crime itself was gang-related. As Robert Jr.’s statement to the Board explains, both he and Mr. Wilson were desperate for money, and his motivation for participating in the crime was nothing more than economic. As Dr. Hagedorn notes, “Sheriff Sills testified as much, indicating that he did not suspect any gang connection during his initial investigation of this case.” Dr. Hagedorn further explains that “the prosecution’s theory that such crimes are done for purposes of advancement in the gang is unsupported,” as his research and that of other scholars have found that “the vast majority of gang-related crimes are the product of personal disputes or criminal ventures unrelated to ‘status’ or the advancement of the gang’s interests.” Finally, “[t]he theft of Mr. Parks’s car and the attempt to sell it to a chop-shop suggests that the motivation for the crime was as it appears: financial.”

III. Mr. Westin’s Changing Testimony Concerning the Polygraph Examination is Unreliable.

As Mr. Westin admits, he did not attend the polygraph examination and does not know what Robert Jr. said during the examination. Mr. Westin further conceded that Robert Jr. denied confessing to the polygrapher. Mr. Westin also gave the testimony in question at the habeas hearing challenging the effectiveness of his representation, and his testimony concerning Robert Jr.’s supposed confession painted Mr. Westin’s missteps in a better light. There was credible evidence concerning polygraph examinations, however. GBI Special Agent David Rush administered a polygraph examination to Mr. Wilson and testified that his responses were clearly deceptive.⁹ Indeed, Agent Rush was convinced that Mr. Wilson was the shooter. When combined with all of the evidence showing that Mr. Wilson maintained possession of the murder weapon and the new evidence that Robert never confessed to Horace May or Shone Holcomb, Special Agent Rush’s testimony is compelling evidence that Robert Jr. was not the shooter and deserves the Board’s mercy.

see or understand how much of a negative impact or influence that gangs have on the community.” He affirms, however, that “this whole crime had nothing to do with gang activity.”

⁹ Ex. A, Butts Trial Tr. at 2867-74

Thank you for your consideration of this additional information.

/s/ Philip E. Holladay, Jr.

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