

ATTACHMENT C

AFFIDAVIT OF WILLIAM R. CLUTTER

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Plaintiff,)	
)	
v.)	NO. 90-CF-328
)	
THOMAS MCMILLAN, ¹)	
Defendant.)	

AFFIDAVIT OF WILLIAM R. CLUTTER

STATE OF ILLINOIS)	
)	SS
COUNTY OF SANGAMON)	

I, WILLIAM R. CLUTTER, have been first been duly sworn state as follows:

1. I am a licensed private detective specializing in criminal defense investigations. I am employed as Director of Investigations for the Downstate Illinois Innocence Project at the University of Illinois at Springfield, which has undertaken a post-conviction investigation in the above-captioned case.

2. I started the case review and analysis in the spring semester of 2008 by assigning two students, Jennifer Donnelly and Jennifer Kirshner, to undertake a review of the case file that was provided to us by the family of Thomas McMillen. They scanned every document that was provided by the family, including trial transcripts and police reports. Our assessment of the case indicated that the State's case hinged in large measure on the testimony of a single witness, Donald "Goose" Johnston, a cooperating witness who had also been charged with the homicide, which testimony the State sought to corroborate with the testimony of five jailhouse informants. Our

¹ The caption of this case has an incorrect spelling of the petitioner's name, which should have an "e" not an "a" immediately before the last letter of his name.

assessment of the case also indicated a lack of any physical evidence directly linking Thomas McMillen to the crime. A further detailed review of this gathered information raised a significant question as to whether Johnston's admission of his participation in the crime along with McMillen was a false confession.

3. Since the introduction of DNA testing, the National Innocence Project has undertaken an examination of the DNA exoneration cases in the United States and found that in about 25% of those cases involved an individual who gave a false confession to police. Donald Johnston was described as an individual who is developmentally disabled. He could not read or write. In Illinois, the Governor's Commission on Capital Punishment studied the death row exoneration cases in Illinois and identified the conviction of Alejandro Hernandez in the 1983 murder of Jeanine Nicarico as a case where a false confession led to his conviction. Hernandez was a case that I am familiar with, since I worked on his defense team from 1988 thru 1991, in which he was reconvicted a second time. Hernandez, like Donald Johnston, was also mentally disabled. Hernandez falsely claimed to police that he knew who killed Jeanine Nicarico, and falsely confessed to participating in her murder. The Governor's Commission recommended that police video tape in their entirety all custodial interrogations, and cited law review articles that report that the mentally disabled are especially susceptible to making a false confession.

4. At the conclusion of this student assignment to evaluate the case file, I made the determination to accept the McMillen case to receive the investigative services of the Downstate Illinois Innocence Project.

5. During the summer of 2008, two new students, Sara Wellard and Priyanka Deo, were assigned to assist me in conducting a post-conviction investigation. One of the first tasks was to obtain complete sets of the police investigative files through the Illinois Freedom of Information Act. Complete sets of records were obtained from the Sangamon County Sheriff's Department, the Menard County Sheriff, the Illinois State Police, and the Sangamon County Coroner. These records have been scanned and stamped with a bates-stamp numbering system at the bottom of each page that will be used as a reference source. (See Clutter Affidavit Exhibit #1, the CD Rom containing bates-numbered PDF file).

6. In addition, I have obtained from the family of Thomas McMillen discovery materials turned over to Thomas McMillen, included in which was the report of Dr. Grant Johnson of his autopsy of the body of Melissa Koontz which he performed at Memorial Medical Center, Springfield, Illinois. Due to the graphic nature of the autopsy report it is not being appended to this Affidavit but will be made available upon request of the Court or the State. In addition, these materials included the transcripts of the grand jury proceedings

7. On Sunday July 20, 2008, we traveled to Carlinville, Illinois, where we met with the family of Thomas McMillen. After the meeting ended sometime around noon, we followed behind the vehicle of the brother-in-law of Thomas McMillen who was going to take us to the home of Donald Johnston. One of the students asked if I would pull into a gas station so she could use the restroom. As we waited outside, Mr. McMillen's brother-in-law pointed to a man who was emerging from the adjoining liquor store and stated, "That's Goose Johnston." I identified myself and the two students as working for

Budweiser beer in a brown paper bag. The liquor store had just opened for the day. I assured Johnston that he had already served his time in prison, and that the only way for him to get in trouble now is if he committed perjury. I explained to him that perjury is when a person is sworn to tell the truth and lies under oath. I asked him if we could speak to him about his testimony in Mr. McMillen's trial. The owner of the liquor store came outside and observed us talking to Johnston, and offered to have us come inside and use the back office. It was a hot summer day. Johnston placed the paper bag containing the unopened can of beer on the side of the outside wall, and agreed to accompany us inside. In the beginning of the interview, Johnston insisted he did not see anything, that he fell asleep that night and that Thomas McMillen and Gary Edgington told him the next morning that they murdered that girl. I pointed out to him that this story was substantially different than the story he told in court. I asked Johnston whether he had anything to do with the murder of Melissa Koontz. He stated that he was not involved in the murder. He then insisted that he was innocent. He then insisted that his then fifteen year old cousin, Danny Pocklington was innocent, too. Danny served 6 years in the juvenile DOC. I asked him, what about Danny's mother, Mary Pocklington. He insisted that she was innocent, as well. She was convicted of obstruction of justice in connection with the case. I then posed the question, "What about Thomas McMillen and Gary Edgington?" After posing this question, Johnston became emotional and began to cry. He made a statement that this has weighed on him all these years. He then stated that Thomas McMillen and Gary Edgington were also innocent. He said he feels responsible for the fact that they are both serving life in prison. He admitted he lied at Thomas McMillen's trial. He stated that it was a lucky

thing we came to talk to him. He felt relief in getting it off his chest. (See also Clutter Affidavit Exhibit #2, Report of Sara Wellard of Interview of Donald Johnston).

8. Donald Johnston agreed to allow me to set up a video camera and tri-pod so I could do a video recorded statement. Under oath, he repeated that he lied during the trial of Thomas McMillen. He admitted that that he was not present during the abduction of Melissa Koontz, and that his trial testimony at the trial of Thomas McMillen where he claimed to be a witness and participant in her abduction, was a lie. (See Clutter Affidavit Exhibit #3, DVD and transcript of video interview of Donald Johnston)

9. While on camera, Donald Johnston agreed to sign a mental health and medical authorization that would allow us to receive his mental health records. Sara Wellard delivered the medical authorization to the McFarland Mental Health Center, and received copies of Donald Johnston's mental health records. These records, to which the Court denied access to McMillen's defense counsel, contain information materially bearing upon Johnston's credibility as a witness.

10. On Aug. 15, 2008, Sara Wellard, Priyanka Deo and I met with Sangamon County Sheriff Neil Williamson, Lt. Joseph Roesch and Captain Thomas P. Hendrickson to brief them on our investigation. Captain Hendrickson confirmed that the Sangamon County Sheriff's Office has maintained all of the physical evidence in the Melissa Koontz homicide investigation. We discussed the fact that the Downstate Illinois Innocence Project would be seeking DNA testing of this evidence. Captain Hendrickson assured us that the physical evidence has been secured by his department and that the chain of custody has been maintained over the course of the last two decades.

11. On Nov. 13, 2008, Donald Johnston was re-interviewed by Dr. Richard Leo, a leading expert on false confession. I video recorded Dr. Leo's one hour interview of Donald Johnston. (See Clutter Affidavit Exhibit #4, Affidavit of Dr. Richard Leo and DVD and transcript of Dr. Leo's interview of Donald Johnston)

12. Toward the end of this interview, Johnston signed an affidavit under oath, again recanting his trial testimony. (See Clutter Affidavit Exhibit #5, Affidavit of Donald Johnston)

13. Among other matters, I made a review of the evidence of the location where the body and car of Melissa Koontz were found and the road routes implicated by that evidence. As an experienced investigator, this evidence would suggest that the abduction most likely occurred at the location where the victim left work. Melissa Koontz, 18 years old, was last seen leaving her job at Cub Foods, located at 3001 S. Veterans Parkway in Springfield, Illinois, at approximately 10:06 p.m. on the evening of June 24, 1989. An hour later, at 11:05 p.m., the Sangamon County Sheriff's Department received a call that her vehicle, a 1988 black Ford Escort hatchback, was found abandoned blocking the southbound lane facing south on the Waverly Blacktop Road (County Road 15 West). The vehicle was located approximately three miles south of the town of New Berlin. The location where her car was found was about 16 miles from Cub Foods, a drive time of approximately 16 minutes. (FOIA#00423 thru 424).

14. On July 1, 1989, the body of Melissa Koontz was found 2.5 miles west of Cub Foods laying in a prone position six rows into a corn field. This location is at the cross roads of what is now Iles Avenue and County Road 5.5 West. This location is a

short drive from Cub Foods, and is consistent with a theory that she was abducted from the employee parking lot and her killer drove to the nearest remote location to commit a sexually motivated assault. If one were to exit from the Cub Foods parking lot, turn right onto West White Oaks Drive, then make a left turn onto Iles Avenue, it is a direct drive due westerly to the location where her body was found.

15. The likelihood of the perpetrator stopping her vehicle 16 miles away on the Waverly Blacktop Road and driving back in the direction of Cub Foods are highly improbable. To find this location would be extremely difficult from the Waverly Blacktop. They would one, be required to turn the vehicle around, and drive three miles back toward New Berlin. From there, the perpetrator would have to choose one of three routes: 1) turn eastbound on route 54 which then becomes Wabash Avenue in Springfield, make a sharp left turn heading west, and then another turn north on County Road 5.5. West; 2) the second option at New Berlin is to enter I-72 eastbound toward Springfield and exit at Veterans Parkway (the Wabash exit did not exist in 1989). From there, one would have to drive by Cub Foods and turn left at either Wabash Ave. or at Iles Ave.; 3) the third option would be to continuing driving north from New Berlin and make a right turn on Old Jacksonville Road and then turn right as one approaches the outskirts of Springfield. None of these three scenarios make sense, driving a distance of almost 15 miles, if the perpetrator is looking for the nearest corn field in which to commit the crime.

16. Post-conviction investigation by the Downstate Illinois Innocence Project also included an interview of a key witness in the case who would have disputed the trial testimony of Donald Johnston. This witness is Ann Manning, now known by her

married named Bramblet. Mrs. Bramblet was interviewed by the Downstate Illinois Innocence Project on Feb. 21, 2009. The interview was video-taped. She was never called as a trial witness. (See Clutter Affidavit Exhibit # 6 DVD and transcript). Her observations would have rebutted the trial testimony of Donald "Goose" Johnston, who claimed that multiple people, including himself, stood in the middle of the Waverly Blacktop Road late at night and waived their hands in the air to get Melissa Koontz to stop her vehicle.

17. Our investigation has interviewed a number of witnesses who, according to the police reports in the case, reported seeing a suspicious person lurking outside Cub Foods in the employee parking lot around the time Melissa Koontz exited work.

18. At approximately 9:30 p.m. Deanna Brawner, her roommate Andrea Mott, and Mott's ten-year-old son Carl exited the store and were driving toward the exit behind Cub Foods. As they passed the south wall of the store, they observed a suspicious white male sitting between some bushes. They described the man in his late 20's or early 30's with sandy-blond hair, a thin build, and possibly sporting a moustache.² He was holding what appeared to be a bottle of liquor, one that was bigger than a beer bottle. Brawner told Sgt. J.D. Rachford that she used to work at Cub Foods, and stated that where the man was sitting was the south parking lot, where store employees parked their personal cars. (FOIA#00713: July 2, 1989, report of Sgt. J.D. Rachford). Brawner and Mott were both interviewed as part of my investigation.

19. Debbie Havenar called the Sangamon County Sheriff's Department and reported that she too had observed a man lurking in the south parking lot. He was

² Thomas McMillan did not have sandy-blond hair, nor did he have a thin build, according to video interview tapes I have reviewed at the time of his arrest in May of 1990.

described as approximately six feet tall with a thin-to-medium build, in his 30's, with dark blonde collar-length hair. At approximately 10 p.m. she had parked in the south parking lot on the south side of the building. As she walked toward the store Det. Hinsey reported, "she 'felt' that someone was watching her." She then observed the man standing between two cars. Det. Hinsey reported, "He did not appear to be getting in or out of any of the cars. His stare made her feel uncomfortable and she avoided eye contact." (FOIA#00524: July 3, 1989 report of Det. S. Hinsey). This description of the unidentified man was consistent with the description that was reported by Brawner and Mott.

20. Everett Cruz and his wife Karen were exiting Cub Foods after shopping and observed a dark colored car in the south parking lot. According to the report of Deputy Clifford Jones, "they noticed a white male and a white female sitting in a dark colored car in Cub's south parking lot. Mr. Cruz stated that he couldn't remember anything else about the vehicle but the occupants were facing each other and tried to duck down when his headlights illuminated them." (FOIA#00650: July 7, 1989 report by Dep. Clifford Jones). When interviewed by the Downstate Illinois Innocence Project, both Everett and Karen Cruz stated that the man was in the driver's seat, and the woman was in the front passenger's seat, and that the vehicle occupants appeared to be having a heated argument.

21. Although Donald Johnston's trial testimony claimed that Melissa Koontz was placed in the back seat of Mary Pocklington's white Chevy after she was allegedly stabbed in the arm by McMillen, there is no report in the homicide investigation where police ever found blood evidence in this vehicle, nor was blood found on the Waverly

Blacktop Road. I have interviewed Mary Pocklington under oath in a video recorded statement. (See Clutter Affidavit Exhibit # 7, DVD and transcript of interview of Mary Pocklington). She describes police searching her vehicle for evidence when she was initially interviewed by police in July of 1989. She stated that the car was disabled and parked in front of her house in rural Modesto, IL. When Mary Pocklington was interviewed by Sangamon County Deputies on July 12, 1989, detectives noted that she owned a white 1977 Chevy license NG5381. (FOIA#00029-30) While one set of detectives were interviewing Mary Pocklington, another set of detectives questioned Thomas McMillen about the car. McMillen reported that on June 24th (the date Melissa Koontz disappeared) the vehicle was not operational. The vehicle was parked in the yard. McMillen told detectives that on June 15, 1989, he punctured the radiator backing over a rocking chair. Mary Pocklington drove the vehicle unaware of the puncture and overheated the engine. According to the report: "The vehicle is now sitting in the yard of the residence [of Mary Pocklington in Medesto on] . . . 9 mile Road approximately 9 miles West of Virden." (FOIA#00031). Later that same afternoon according to police records, "McMillen gave R/D's [Deputy Brian Walker] permission to look around his house and grounds. (Note: A white Chevrolet was parked in the front yard). Det. Hinsey then took some Polaroid photos of this vehicle." (FOIA#00039). However, no blood evidence was ever observed inside this vehicle by police, despite Johnston's claim the following day that Melissa Koontz was placed inside this vehicle bleeding from a stab wound allegedly inflicted by Thomas McMillen. (FOIA#00042-44).

22. Pursuant to the Freedom of Information Act, I received from the Illinois State Police the contact sheets of the photographs that were taken of the vehicle by

crime scene technician Paul Schuh. Photograph # 5229_018.jpg shows rolled up dollar bills inside the ashtray of the vehicle. I have reviewed the trial record and the trial exhibits. This photograph was not presented to the jury that convicted Thomas McMillen, nor was there any testimony elicited from CST Schuh about his discovery of this paper money in the ashtray.

23. At trial, Crime Scene Technician Paul Schuh testified that there were unidentified latent fingerprints on the rearview mirror of Melissa Koontz's vehicle that did not match the Thomas McMillen, the victim, her family or police.

24. Following our meeting with Sangamon County Sheriff Neil Williamson, on Aug. 15, 1989, in which we briefed the Sheriff and two of his detectives on the status of our post-conviction investigation that included the recantation of Donald Johnston, Sheriff Williamson agreed to enter the unidentified latent fingerprint into the Automated Fingerprint Identification System (AFIS).

25. On Sept. 26, 2008, Illinois State Police latent fingerprint examiner Gary Havey ran the AFIS search at the request of the Sangamon County State's Attorney's office. Havey reported that he had identified an individual whose fingerprint matched the latent fingerprints that were lifted from the rearview mirror of Melissa Koontz's car. This individual had not previously appeared in any of the investigative reports involving the Koontz homicide investigation.

26. This individual was then interviewed by sheriff detectives on Sept. 29, 2008. I was provided with a copy of the interview report. This individual stated that he was acquainted with the brother of Melissa Koontz. They both attended Lanphier High School when Robert Koontz Jr. was living with his grandparents after transferring to

Lanphier from Jacksonville Rout High School. This individual told detectives that he "recalled Rob and Melissa shared a car . . . it was a black Ford Escort. Melissa drove the car to college, but Rob was allowed to drive the Escort in the summer when Melissa was home. . . [he claimed he] drove the Escort on several occasions . . . the last time he was inside the Escort was the day before Melissa was murdered. . . Rob picked [him up at his house]. . ."

27. However, police reports indicate that Robert Koontz, Jr. was working at Bonanza, a steakhouse, on Clearlake Ave. on the evening his sister disappeared and got off work at 9:15 p.m. They did not appear to share the Ford Escort, as he had a vehicle of his own. He drove past the location where his sister's car was later found around 10:10 and 10:15 p.m. on his way home to Waverly, however her car was not in the roadway at that time. (FOIA#00676). Police conducted interviews of the family to determine who had access to the vehicle, in order to run elimination prints. This individual was never identified by family members in the original investigation as someone who had access to the black Ford Escort. Police ran elimination prints of other co-workers and friends of Melissa Koontz, but not of this individual.

28. On or about July 16, 2008, I visited Thomas McMillen at the Pontiac Correctional Center. I asked him since he could not read or write very well, how was he able to file a pro se petition for executive clemency that had been denied by Gov. Blagojevich. He stated that he had a jailhouse lawyer at the prison who drafted the petition for him in which he claimed he was innocent.

FURTHER AFFIANT SAYETH NOT



WILLIAM R. CLUTTER

SIGNED AND SWORN TO BEFORE ME
this 3 day of November, 2009.



NOTARY PUBLIC

