

Your father has asked me to forward the enclosed CD containing materials about his case, including portions of the Motion for Appropriate Relief ("MAR") that Dionne Gonder and I filed in his behalf, affidavits collected from various witnesses, other motions filed in the case such as discovery motions against the State of North Carolina, and investigative findings to date. I have been through the entire file. As you may know, however, lawyers must be careful not to disclose certain documents that are "under seal" by the court, or which contain privileged or confidential material that could be subpoenaed by the State if provided to a family member or friend. Accordingly, we have compiled the enclosed CD and the information contained in this letter subject to certain legal restrictions, and will plan to meet with you personally to discuss the investigation and to answer any questions you may have.

The pending Motion for Appropriate Relief in this case ("MAR") is the primary document that has been filed in your father's case. It seeks overturn of his conviction and sentence, and a new trial. It raises a number of issues challenging the jury's verdict at the trial:

- That the District Attorney knowingly presented false testimony by the prosecution's chief eyewitness, Vanessa Smith, describing the shooting, the crime scene and aftermath, in violation of *Napue v. Illinois* (prosecutorial misconduct);
- That trial counsel were ineffective in investigating discrepancies between Vanessa Smith's statement to police and other available witnesses, who saw and spoke with Smith an hour after the shooting allegedly took place;
- That trial counsel were ineffective in cross-examining Vanessa Smith, by failing to point out serious and material discrepancies between the crime scene and her description of the shooting;

- That trial counsel were ineffective in failing to object to the prosecution's use of Smith's crime scene description and description of the shooting in its closing arguments, which were manifestly based on false evidence.

Dionne and I have always been cautiously optimistic about the MAR, since it makes clear that the State's case was based to a great extent on perjured testimony, a mishandled forensic investigation by the Sheriff's Department and the SBI, and questionable circumstantial evidence. The basic facts of the case are outlined at length in the MAR and do not need to be repeated here. We will be happy to discuss and explain the claims raised in that document when we meet with you.

In the meantime, the major areas of our on-going investigation are as follows:

I. Discrepancies between the State's evidence and the crime scene/physical and forensic evidence:

Vanessa Smith, who was your father's former girl friend, testified as follows:

- Your father, Smith and the victim, Chris Gailey, left the lake house/trailer where they were living and drove to the Uwharrie Forest about nightfall on July 9, 1999. They then hiked into the forest for about one hour. Gailey was carrying a .45 caliber semi-automatic pistol, while your father was allegedly carrying a sawed-off shotgun owned by Gailey.
- As the threesome walked single file down a narrow trail in the dark, just past a small cabin, Smith claims that your father pushed her down to the ground and then, without provocation, fired the shotgun at Gailey's back, who was leading the group down the trail.
- According to Smith, she and your father then went to the porch of the cabin to wait for Gailey to die for seven to eight hours, with your father periodically creeping over on his stomach to Gailey's body to throw rocks at him to discover if he would make a noise.
- According to Smith, she and your father did not leave the forest until daybreak the next morning. Smith further testified that Gailey lived throughout the night and that she heard Gailey fire his handgun numerous times as she and your father left the forest. (Tr. at 1542-3).
- Smith also testified that at your father's direction, Smith drove back to the lake house to get their belongings and to steal Gailey's wallet, which included Gailey's automated teller machine (ATM) card.

As outlined in the MAR, there are a number of statements in Smith's testimony which do not appear to fit the crime scene evidence:

- Gailey's body was discovered shirtless but otherwise clothed. The victim lay alongside a path in the forest, approximately seventy-five to one hundred feet downhill from an unoccupied cabin. Underneath the body lay a .45 caliber semiautomatic pistol, with one spent round still chambered and a round jammed in the receiver. There was also a flashlight under the body. Several feet to the side was the victim's tee-shirt, draped neatly across a large boulder and secured by a small stone, as though the victim had stopped to take a rest.
- On the other side of the body, approximately three feet away, was a gym bag with an open jack knife neatly placed on top. The blade of the knife was covered in blood. A holster for the .45 was also on the ground, approximately thirteen feet from the body. An additional full, .45 caliber magazine was located three to four feet away, along with spilled rounds of unspent .45 caliber ammunition and unspent shotgun shells, suggesting a struggle between the victim and his killer and an effort by one or both of them to reload.
- There were keys in the victim's pocket, along with his wallet. A yellow cannister containing \$1944.05 in cash was near the body, along with five spent shotgun shells.
- There was little blood at the scene, except for a small, round stain directly beneath the body three or four inches in diameter.

An independent crime scene expert, and criminologist with the FBI for over thirty years, has examined the evidence in our behalf and given a preliminary opinion that: 1) Vanessa Smith lied about almost every aspect of the events in the Uwharrie Forest; 2) the crime scene appears to represent a gunfight or exchange of gunfire, rather than a unilateral shooting; 3) there may have been additional individuals present at the time of the shooting; and 4) the crime scene resembles a drug transaction "gone bad."

II. Discrepancies in the State's Timeline of Events:

There are several witnesses identified in the investigation who recall that, on the night of the murder, Vanessa Smith returned to the lake house only an hour or so after leaving with your father and Chris Gailey. The drive to the cut-off to the cabin and crime scene takes fifteen minutes; the hike up to the cabin in the dark takes approximately one hour; a return walk and drive would require an additional hour and fifteen minutes, for a total of two hours and thirty minutes. Accordingly, Vanessa Smith could not possibly have witnessed the events she claims to have seen, when and how she described them, and been back at the lake house in an hour's time.

An additional witness has told us that your father spent most of the night at a different location, far from the crime scene, which has been corroborated by an elderly witness who has no interest whatsoever in the case.

III. The mental health and credibility of chief prosecution witness Vanessa Smith:

The investigation has located and obtained, by court order and otherwise, the extensive mental health records of chief prosecution witness Vanessa Smith. The records have been examined by an independent expert and his affidavit has been obtained. These documents and the affidavit are subject to a court protective order and cannot be disclosed at this time. They will, however, be introduced into evidence at a later time.

We also have obtained sworn testimony from persons who knew or lived with Vanessa Smith at the time, regarding her propensity for lying to, and manipulating, other people in order to obtain whatever she desires, regardless of the harm caused to others. This anti-social personality may explain why she gave false testimony to convict your father and obtain the harshest sentence possible. It is significant that your father had broken up with Smith shortly after Chris Gailey's death, and was dating another woman at the time Smith went to the police and told her story.

IV. Admissions made by Vanessa Smith to third parties during and following the trial:

Vanessa Smith told widely varying stories to her cell mates in prison, her former best female friend, and others in the months following Chris Gailey's death. The inconsistencies among the stories strongly suggest, again, that Smith was not telling the truth at trial. We can discuss this evidence when we meet to discuss the case.

V. The time and manner of Chris Gailey's death:

The pathology evidence, including the medical examiner's report, autopsy, and autopsy photographs, indicates that Chris Gailey could not have survived very long with the gunshot wounds he received. The placement and nature of the wounds would have caused death within a matter of minutes or, at most, an hour or so. Accordingly, the medical evidence provides additional support for the claim that Vanessa Smith lied about staying in the woods all night with your father waiting for Gailey to die.

It also contradicts the prosecution's argument at trial (relevant to sentencing) that Mr. Gailey suffered throughout the night before dying of the gunshot wounds.

VI. Alibi witnesses concerning your father's whereabouts during the evening of July 9 and morning of July 10, 1999:

Two witnesses have told us that your father spent part or most of the night at a house far from the crime scene. One is an elderly man who does not know your father, but saw him about the same time Vanessa Smith claims she and your father were in the Uwharrie forest. Several other witnesses have corroborated the fact that Vanessa Smith spent the night at the lake house, and that your father spent the night somewhere else.

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VII. ATM transactions using Chris Gailey's card following his death:

ATM surveillance camera photographs show that two unknown persons used Chris Gailey's ATM card in the days following his death. One additional photograph shows a woman who may or may not be Vanessa Smith (witnesses vary on this point). None of the photographs show your father using the card, or any vehicle associated with your father, Vanessa Smith, or the victim. We have not yet been able to identify the unknown persons in the surveillance photographs, but will continue our efforts to identify and question them.

VII. Alternate suspects:

The investigation has identified another individual who: 1) was angry with your father; 2) was looking for your father and/or Chris Gailey on July 9, 1999, the day of the shooting; 3) was told that your father and Gailey were at the cabin in the Uwharrie Forest; and 4) was last seen heavily armed and in camouflage clothing.