

No. 1951985

In the SUPREME COURT of ALABAMA

EX PARTE THOMAS D. ARTHUR,

In re: State of Alabama,

Petitioner,

v.

Thomas D. Arthur,

Respondent.

Opposing Rehearing of this Court's
Order Granting Stay of Execution

**THOMAS D. ARTHUR'S OPPOSITION TO THE STATE OF
ALABAMA'S APPLICATION FOR REHEARING OF THIS
COURT'S ORDER GRANTING A STAY OF EXECUTION**

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August 19, 2008

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PRELIMINARY STATEMENT

Without citing to any new law or facts in its application for rehearing, the State of Alabama merely rehashes the same arguments set forth in its July 30, 2008 opposition to Mr. Arthur's motion for a stay of execution.¹ Rather than acknowledging that this Court has carefully considered the relevant law and facts in staying Mr. Arthur's execution - including the sworn confession of Bobby Ray Gilbert - the State essentially asks this Court to set aside its own independent judgment and defer entirely to the decisions of other courts that did not even review this confession.

Nor did those other courts consider the State's disturbing admission that it has not been able to locate Judy Wicker's rape kit. Although Mr. Arthur has been requesting this critical piece of evidence since 2002 in an effort to prove his innocence, the State attempted to locate the rape kit for the first

¹ In its opposition, the State incorporated by reference its Motion to Dismiss Arthur's Successive Rule 32 Petition filed the same day in the Jefferson County Circuit Court.

time only within the last six months. According to Assistant Attorney General Clay Crenshaw, the State's only attempt to locate the rape kit consisted of the following: Crenshaw contacted "individuals with the Muscle Shoals Police Department, the Colbert County District Attorney's Office, and the Alabama Department of Forensics Science," who told him that "they do not have possession" of the rape kit.² The State has offered no explanation for its delayed search, the scope of such search, or the circumstances surrounding the alleged disappearance of the rape kit. Indeed, none of those courts whose decisions the State has invoked in its application was aware of the State's woefully inadequate efforts to locate the rape kit, or its failure to maintain a proper chain of custody for evidence in a capital case.

In a feeble attempt to discount the unquestionable value of DNA testing in Mr. Arthur's

² Affidavit of Clay Crenshaw ¶ 9, attached as Exhibit 4 to the State's Motion to Dismiss Arthur's Successive Rule 32 Petition, Circuit Court of Jefferson County, July 30, 2008.

case, the State argues that "it is very unlikely that Arthur's DNA will match any of the requested items." (Reh'g App. at 1-2.) The State's argument, however, misses the point entirely. DNA testing could confirm Gilbert's sworn statement that he - not Mr. Arthur - murdered Troy Wicker. In his affidavit, Gilbert asserted that he had unprotected sex with Judy Wicker on the morning of the murder. Because Wicker's rape kit was prepared the same day as the murder, if Gilbert's confession is true, then the DNA in the rape kit (assuming it can be located) would match Gilbert's DNA profile. Gilbert also asserted that he wore an "Afro wig" during the murder. If the DNA found in the wig matches Gilbert's DNA profile, then such result would confirm Gilbert's version of events.

The State of Alabama has no basis to challenge the Court's sound decision staying Mr. Arthur's execution. Before the State executes Mr. Arthur for a crime for which he has steadfastly maintained his innocence, critical questions bearing directly on his claim of innocence must be resolved. The State's

attempt to execute Mr. Arthur before permitting him to test the veracity of Gilbert's confession through DNA testing "appears to go beyond the reasonable and into the realm of zealotry." *Case Highlights Broader Concern*, Montgomery Advertiser, Aug. 4, 2008.

BACKGROUND

A. Mr. Arthur's Trial and Conviction

On the morning of February 1, 1982, the police responded to a call at the Wicker residence in Muscle Shoals, Alabama, where they found Judy Wicker lying on the floor with blood on her face and her sister Teresa Rowland kneeling beside her. (T.R. 310-11, 322, 337-42)³ The police found Troy Wicker's body in the bedroom with a gunshot wound to the right eye. (T.R. 318-20)

³ This was Mr. Arthur's third trial on the same charges. His two previous trials resulted in convictions and death sentences, which were overturned on direct appeal as a result of constitutional violations. "T.R. ___" denotes references to the reporter's trial transcripts from the record of Mr. Arthur's third trial.

The police collected physical evidence from the crime scene, including Judy Wicker's blood-stained clothing and torn undergarment (T.R. 365-66⁴), vacuum sweepings, hairs (T.R. 368), shell casings (T.R. 363-64), and a pillowcase with gunpowder flakes (T.R. 367). The police also dusted the area for latent fingerprints. (T.R. 368) The police located Judy Wicker's 1981 Buick Riviera, which had been abandoned in a parking lot; the police searched it and found a wig, hairs, and latent fingerprints. (T.R. 370-71) The murder weapon was never recovered. (T.R. 352) The hairs and fingerprints found at the crime scene and in the Buick Riviera were tested but they did not match Mr. Arthur's.

After the shooting, Judy Wicker was taken to the hospital and remained there for several days. (T.R. 776) She suffered "a bruise around her left eye, a laceration of her left upper lip, two chipped teeth and an abrasion on her left hip." *Wicker v. Alabama*,

⁴ See also 1987 Arthur trial transcript at 398-99.

433 So. 2d 1190, 1192-93 (Ala. Crim. App. 1983).
Moreover, on the same day as the murder, a rape kit was prepared and seminal fluid collected. (See Alabama Dep't of Forensics Memo, attached hereto as Ex. A.)

In response to questioning by investigators at the hospital, Judy Wicker provided the following account of the crime: She returned home after dropping her children off at school. *Wicker*, 433 So. 2d at 1194. When she entered her house, she found an African-American man burglarizing her home. *Id.* at 1192, 1194. The burglar raped her, knocked her unconscious, and then shot Troy Wicker. Consistent with this account, Officer Lanny Coan corroborated that shortly after he arrived at the crime scene, Judy Wicker told him that she had been raped by an African-American man. *Id.* at 1192.

Judy Wicker was eventually charged with her husband's murder under the theory that she killed him to collect approximately \$90,000 in life insurance proceeds. (T.R. 831) At her trial in 1982, she testified under penalty of perjury to the same version

of events that she had related to the investigators. *Wicker*, 433 So. 2d at 1192-94. Despite her claims of innocence, Judy Wicker was convicted of murdering her husband and was sentenced to life imprisonment. (T.R. 794-95)

At Mr. Arthur's trial in 1991, Judy Wicker gave a completely different account of the murder. (T.R. 787) Although she previously had sworn under oath that a burglar had murdered her husband, she now claimed that she, along with Teresa Rowland and her sister's boyfriend, Theron McKinney, had decided to kill Troy Wicker, and that she had paid Mr. Arthur to pull the trigger. (T.R. 776, 781, 800) She also paid Rowland \$6,000 and gave McKinney jewelry and a Trans Am in exchange for their assistance in carrying out the murder. (T.R. 780) The State of Alabama, however, never prosecuted Rowland or McKinney.

At the time she testified against Mr. Arthur, Judy Wicker was serving a life sentence for the same crime. In return for her testimony, the state prosecutor, Gary Alverson, promised to make a parole

recommendation on her behalf. (T.R. 823-26, 830-31) Prior to becoming a state prosecutor, Alverson had represented Judy Wicker and assisted her in procuring a deal from the then-prosecutor in exchange for her testimony. (T.R. 825-27) Thus, the State's prosecutor offered his former client a deal: assist in the prosecution of Mr. Arthur and obtain early parole. Judy Wicker was released after serving only about ten years of her life sentence.

The circumstantial evidence introduced at Mr. Arthur's trial to support Judy Wicker's story was weak. Officer Lang testified that he observed Judy Wicker driving past a school crossing twice prior to 8 a.m. (T.R. 306, 308-09) This testimony is not inconsistent with her prior testimony that someone other than Mr. Arthur assaulted her and killed her husband. Pat Halliday testified regarding Mr. Arthur's possession of a large amount of money after the murder, but this testimony was also consistent with evidence that Mr. Arthur had won money in a poker game. (T.R. 543, 882-83) Debra Philips testified merely that Mr. Arthur

threw a garbage bag into the Tennessee River. (T.R. 632-34)

Patricia Yarbrough Green, a convicted felon, testified that Mr. Arthur stopped by Cher's Lounge between 2 p.m. and 4:30 p.m. on the day before the murder, and asked her to purchase .22 mini mag long rifle bullets. (T.R. 562) Green further testified that she asked Terry Lewis to purchase these bullets from Woolco and he did so between 3 p.m. and 4 p.m., and that she gave these bullets to Mr. Arthur while he was still at Cher's Lounge. (T.R. 562, 575) According to Green, Mr. Arthur told her that the bullets would be used to kill someone in Tennessee. (T.R. 566) Troy Wicker, however, was killed in Alabama. Moreover, Lewis testified at Mr. Arthur's first and second trials that he gave the bullets to Green around 6 p.m. or 6:15 p.m.⁵ - not between 3 p.m. and 4 p.m. as Green had testified. Indeed, Lewis' testimony demonstrates that

⁵ See 1983 Arthur trial transcript at 1240; 1987 Arthur trial transcript at 574-75. Terry Lewis did not testify at Mr. Arthur's third trial.

there was no way that Green could have given Mr. Arthur the bullets before he left Cher's Lounge around 4:30 p.m. Green's testimony therefore is unreliable.

Notwithstanding such weak circumstantial evidence and the lack of any direct physical evidence, on December 5, 1991, Mr. Arthur was convicted of capital murder for the 1982 killing of Troy Wicker. On the same day, the penalty phase that followed lasted less than an hour and a half. Mr. Arthur's counsel conducted no independent investigation and offered no mitigation testimony. The jury recommended the death penalty by a vote of 11-1.

B. Mr. Arthur's Efforts to Obtain DNA Evidence

Mr. Arthur has diligently sought access to critical pieces of evidence in the State's custody that have never been subjected to DNA testing and that, subjected to such testing, could support his claim of innocence. These items include: (i) Judy Wicker's rape kit, (ii) the "Afro wig" recovered from her car, (iii) her blood-stained blouse, pants, and ripped

undergarments, and (iv) hairs collected from the crime scene.

For example, in June 2002, in connection with his federal habeas proceedings, Mr. Arthur filed a motion to conduct discovery including, *inter alia*, discovery of these same items; this motion was denied by the district court. Mr. Arthur appealed the denial of his discovery motion in the Eleventh Circuit, which affirmed the district court's order on June 21, 2006. Mr. Arthur filed a petition for certiorari with the U.S. Supreme Court, which was denied on April 16, 2007.

Mr. Arthur also filed an action on April 12, 2007, pursuant to 42 U.S.C. § 1983, seeking access to physical evidence for DNA testing. The State of Alabama moved to dismiss the complaint, which the district court granted on August 17, 2007. Rehearing was denied on August 30, 2007 and the district court's judgment was affirmed by the Eleventh Circuit on September 21, 2007. The U.S. Supreme Court denied Mr. Arthur's petition for a writ of certiorari on November 26, 2007.

ARGUMENT

I. DNA Testing Could Demonstrate that Mr. Arthur Is Innocent.

Although the State of Alabama has extensively cut and pasted from prior decisions in support of its argument that DNA testing cannot exonerate Mr. Arthur, it is beyond dispute that none of the courts issuing those decisions considered the sworn confession of Bobby Ray Gilbert. Nor did those courts consider that DNA testing could confirm whether Gilbert is telling the truth. The State's wholesale reliance on the prior decisions of those courts is therefore misplaced.

Unlike those courts, this Court has had the opportunity to consider the role of DNA testing in assessing the veracity of Gilbert's confession. If Gilbert had unprotected sex with Judy Wicker, as he stated under oath, his DNA should be found in her rape kit. If Gilbert wore the "Afro wig," as he stated under oath, and if skin cells were left behind, his DNA should be found inside the wig.

Because the State cannot dispute that DNA testing can confirm Gilbert's confession, the State

instead argues that DNA evidence from the crime scene will *not* match Mr. Arthur's profile and implies that relevant DNA evidence is not available at all. The State's efforts to discount the probative value of DNA testing are unavailing.

In an apparent attempt to downplay its failure to secure evidence in a capital case, the State makes the absurd argument that Judy Wicker's rape kit "has no relevance to this crime." (Reh'g App. at 23.) According to the State, although "DNA test results could state who Judy Wicker had sexual intercourse with in the days leading up to the crime," this "should not be a topic in which this this [sic] Court has an interest." (*Id.* at 24.) At issue, however, is whether Judy Wicker engaged in sexual intercourse on the morning of Troy Wicker's murder - not during the days leading up to the crime. The State ignores three critical facts: (i) Judy Wicker previously told the police that she had been raped by the same person who murdered her husband (*supra* at 5-6; *Wicker*, So. 2d at 1192); (ii) Judy Wicker's rape kit had been prepared

the same day as the murder (Alabama Dep't of Forensics Memo, Ex. A); and (iii) Gilbert swore under oath that he had unprotected sex with Judy Wicker after killing Troy Wicker (Affidavit of Bobby Ray Gilbert, attached hereto as Ex. B). Because DNA testing of Judy Wicker's rape kit can demonstrate whether Gilbert's confession is truthful, this evidence is certainly "relevan[t] to this crime" for which Mr. Arthur has been sentenced to die.

According to the State, the hairs collected from the crime scene will not contain Mr. Arthur's DNA, because he was wearing "long pants and a long shirt, gloves and an Afro-style wig" when he committed the murder and was therefore "completely covered." (Reh'g App. at 22.) Contrary to the State's assertion, Judy Wicker testified that Mr. Arthur was wearing a "blue jogging shirt" and she did not recall what kind of pants he wore. (T.R. 758-60) Such testimony, of course, does not mean that Mr. Arthur was "completely covered." Moreover, the State's assertion that wearing such clothing ensured that no DNA evidence would be

recovered is unfounded. There is no reason to accept the State's word that Troy Wicker's murderer did not leave behind any hairs at the crime scene.

The State also argues that "the blood on Judy Wicker's shirt will match her DNA." (Reh'g App. at 23.) According to the State, "Judy Wicker testified that Arthur hit her after he murdered Troy Wicker, knocking out several teeth and lacerating her lip." (*Id.*) The State, however, ignores the fact that her undergarment was torn suggesting that there had been a struggle. There is simply nothing in the record precluding the possibility that Troy Wicker's murderer left DNA evidence on Judy Wicker's blood-stained blouse, pants, or ripped undergarment.⁶

⁶ With respect to African American hairs found in Judy Wicker's car, the State argues that "[b]ecause of the amount of African-American hairs placed under the driver's headrest, an inference can be made that Arthur somehow collected these hairs and placed them in Judy Wicker's car to make it look like an African-American had committed the crime." (Reh'g App. at 23.) The State, however, has failed to provide any factual support for this argument.

More fundamentally, the State's argument that none of the DNA evidence will match Mr. Arthur's DNA profile fails to recognize that a DNA match to someone other than Mr. Arthur could actually demonstrate his innocence. The State's argument to the contrary reflects its misunderstanding of the power of DNA testing.

II. The State's Attempt to Discredit the Affidavit of Bobby Ray Gilbert Fails.

In a desperate attempt to undermine Gilbert's affidavit, the State suggests that Mr. Arthur's counsel improperly procured Gilbert's confession and accuses his counsel of having a "penchant" for submitting "incredible" affidavits.⁷ (Reh'g App. at 9.) These bald allegations are totally frivolous.

According to the State, Gilbert's affidavit should be discredited because "he would not speak to

⁷ In connection with the State's Motion to Dismiss Arthur's Successive Rule 32 Petition, the State submitted an affidavit from Judy Wicker, who claimed that she did not know Gilbert. The State, however, has not relied on her affidavit in connection with its motion for rehearing before this Court.

the State's attorneys about his alleged involvement in the Troy Wicker murder," but "later that same day, Arthur's counsel handwrote Gilbert's affidavit wherein he confessed to the Troy Wicker murder." (*Id.*) The fact that Gilbert was unwilling to speak freely about his role in a capital murder with the State's attorneys is hardly surprising, and certainly not a basis for the State to suggest that Mr. Arthur's counsel engaged in any impropriety.⁸ Nor is it of any moment that the eight-page affidavit was handwritten by Mr. Arthur's counsel - Gilbert's hands were shackled throughout the interview.

The State's attempt to discredit Gilbert's affidavit by relying on the wholly unrelated affidavits of two alibi witnesses fares no better. In connection with federal habeas proceedings, Mr. Arthur submitted the affidavits of two witnesses who swore under oath that they were with Mr. Arthur on the morning of Troy

⁸ The State fails to mention that during the entire meeting between Mr. Arthur's counsel and Gilbert (whose hands and feet were shackled), a Department of Corrections guard was present for "security reasons."

Wicker's murder. According to the State, it procured its own statements from these same witnesses, who subsequently changed their testimonies and stated that they were uncertain as to the date on which they had seen Mr. Arthur. The State, however, fails to mention the circumstances under which these witnesses changed their statements. For example, one witness expressed concern that he has a family to support and a business to run, and that he did not want to be carried away in handcuffs. Nor does the State mention that the district court - which did not have before it Gilbert's confession - denied Mr. Arthur's request for a hearing to explore the circumstances under which these witnesses changed their statements after being approached by State representatives.

In sum, although Gilbert's extensive prison record speaks for itself, there can be no dispute that Gilbert's confession can be verified through DNA

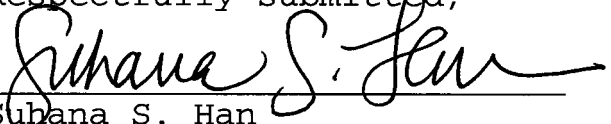
testing. The State's attempt to disparage Mr. Arthur's counsel does not change this fact.⁹

CONCLUSION

For the foregoing reasons, the Court should DENY the State of Alabama's Application for Rehearing of this Court's Order Granting Thomas D. Arthur a stay of execution.

Dated: August 19, 2008

Respectfully submitted,



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⁹ Relying on Mr. Arthur's complaint seeking to enjoin an autopsy, the State curiously urges this Court to "read the extensive filings that were made on the week of the scheduled execution to ascertain whether Arthur presented credible reasons to stop the scheduled execution." (Reh'g App. at 10-11.) Mr. Arthur's action to enjoin an autopsy, of course, assumes that his execution will proceed, and is therefore not a vehicle to "stop the scheduled execution."

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of August, 2008, I caused the foregoing to be served by U.S. mail on:

J. Clayton Crenshaw, Esq.
Office of the Attorney General
Capital Litigation Division
Alabama State House
11 South Union Street
Montgomery, Alabama 36130-1052

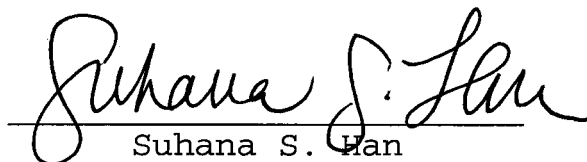

Suhana S. Han

Exhibit A



STATE OF ALABAMA
DEPARTMENT OF FORENSIC SCIENCES

CARLOS L. RABREN AUBURN
DIRECTOR

HUNTSVILLE DIVISION
P. O. BOX 128
HUNTSVILLE, ALABAMA 35804

March 16, 1982

Re: Case 02-82-15167
Judy Wicker, subject
Ref: 82-20615 HV

MEMORANDUM: To File

BY : Rodger Morrison, Criminalist

SUBJECT : Examination of Physical Evidence

February 3, 1982, at 1700 hours, the following evidence was received from Criminalist J.G. Wallace for analysis:

1. One sealed MARKIT Rape Kit labeled in part with the subject's name and containing:
 - a. one red-stoppered vial of blood identified as from Judy Wicker.
 - b. fingernail scrapings.
 - c. head hair sample.
 - d. saliva sample.
 - e. pubic hair combings.
 - f. pubic hair sample.
 - g. vaginal swabs and slides.

RESULTS:

The blood sample from Judy Wicker reacted in a manner consistent with ABO group A blood.

No debris was observed in the fingernail scrapings.

The saliva sample was bloody, however, it reacted in a manner consistent with having come from a group A secretor.

No hairs were found in the pubic hair combings.

A small number of spermatozoa were identified in the vaginal swabs and slides. A and H antigens were detected in the vaginal swab.

RDM:shs

Exhibit B

Affidavit of Bobby Ray Gilbert

I, Bobby Ray Gilbert, being duly sworn, deposes and says:

S. G.
M. (1) My name is Bobby Gilbert. I am currently 43 years old. I was born on September 5, 1964. I am currently serving a sentence of life without parole, two life sentences, two 99-year sentences, a 40-year sentence, a 20-year sentence, and a 10-year sentence. I am currently serving this sentence at St. Claire Correctional Facility in Alabama.

S. G.
(2) I first met Judy Wicker around early January 1982 at a bar or nightclub. I was 17 years old at the time. I had a sexual relationship with Judy Wicker. She was a petite blond.

S. G.
(3) In 1982, I lived in Grove Oak, Alabama with my girlfriend at the time. At this time, I was

working at Beason & Son Construction in Huntsville, Alabama.

P.G. (4) During the period when I had a sexual relationship with Judy Wicker, she mentioned to me that her husband was physically abusive. Judy told me that her husband beat her and was jealous.

P.G. (5) Around a month after Judy and I started our sexual relationship, she asked me if my cousin, Gerald Gilbert, would kill Judy's husband. Judy heard that Gerald was in jail and thought he might be willing to kill her husband. I told Judy that I would be willing to kill Troy. Judy offered to ~~that she would~~ give me something in return but she didn't say what this would be.

P.G. (6) Judy and I talked in advance what the plan would be to kill Judy's husband. Judy suggested that I wear an Afro wig and dark make-up.

B.G. (7) Judy initially wanted me to ~~drive~~^{as} meet her at her home, but my cousin, Gerald, thought it would be better to meet somewhere else. So we agreed to meet at a parking lot of a trade school, which was not far from Judy's house.

B.G. (8) One ^{early} morning in late January / early February 1982, ^{Gerald} Gilbert drove me to the parking lot of the school, and Judy met me there and picked me up in her car, which I believe was a maroon color. Judy gave me an Afro wig and make-up, which I applied while in her car. Judy then drove me in her car to her home.

B.G. (9) When I entered Judy's house, I went to her bedroom. Judy told me that her husband would be there. Her husband was sleeping in the bed. I used a .22 sawed-off rifle and shot him in the face. I was standing less than 20 inches from him.

Q. (10) I got this rifle from my dad when I was about seven years old. I got .22 caliber longs from Gerald, who told me that a dancer or stripper got the bullets for him.

Q. (11) I shot Judy's husband once in the face. Judy then held a mirror to her husband's face to see if he was still breathing. I and Judy ransacked the house, pulled out drawers, and turned over furniture. We then had sex up against a wall in the hallway. We didn't use a condom. Judy asked me to beat her up, so I did and punched her in the face a couple of times.

Q. (12) I drove Judy's car to the parking lot of the trade school. The keys were still in the ignition. I was still wearing the Afro wig and make-up, and met my cousin at the parking lot. I had not

removed the wig or make-up while I was at Judy's house. My cousin Gerald picked me up in his car and I left Judy's car in the parking lot.

^{2.3.} (13) ^{Before} ~~When~~ I left Judy, she had called her sister to come over.

^{4.9.} (14) When my cousin Gerald picked me up in the parking lot, we drove to Morgan's Cove ~~#1~~ off of Nanosanto Highway. I threw the .22 sawed-off rifle into the lagoon around early afternoon.

^{12.9.} (15) Around two or three weeks later, I met Judy at a club called the Hourglass in Huntsville, and she paid me \$2000 for killing her husband. Judy thanked me for doing this, and said that we should not see each other. After that meeting, I had not heard from Judy.

B.C.

(16) I spent my money on a 1972 Grand Torino and chicken fighting and alcohol.

B.C.

(17) In February 1985, I was put in county jail in Fort Payne, DeKalb County for first-degree murder. Since 1985, I have been incarcerated and spent time in different prisons. I did spend some time in Holman Prison but did not personally know Tommy Arthur.

B.C.

(18) I previously have never met Tommy's lawyers. I told certain people for the first time last year that I killed Judy's husband. I told Misty Michelle ~~Martin~~ Norton and asked her if she would try to contact Tommy's lawyers during her visit with me while I was at Holman Prison. I think this visit was in late August or early September of 2007. I also told two inmates from Holman Prison, Steve Murphy and Charles Hastings, that I had killed Judy's husband.

I also asked whether they know how to get in touch with Tommy's lawyers. I believe I spoke with Steve and Charles separately around September 2007 before Tommy's scheduled execution date. And I also told two guards at Holman Prison around September 2007, Captain Bishop and Sargent Fralick, that they would be making a big mistake by executing Tommy Arthur and ~~told~~ ^{told} them that I needed to speak to Tommy's lawyers. Nobody from Tommy's legal team ever contacted me, and I don't know whether any of my messages were ever passed to Tommy's attorneys.

⁵⁶ (19) I heard this year that another execution date had been set for Tommy Arthur. I am finally coming forward again to set the record straight. I spoke up in 2007 and do ~~so~~ ^{so} now because I am no longer afraid since the U.S. Supreme Court ruled that a minor cannot receive the death penalty.

B.G. (20) I killed Judy Wicker's husband and I would be willing to agree to a DNA test.

B.G. (21) I have not been offered anything by anybody for this confession.

B.G. (22) Before the Supreme Court's decision holding that minors cannot be executed, I would not have confessed to Tray Wicker's murder.

B.G. (23) I am not on any drugs or pain medication or anything else that would prevent me from telling the truth.

B.G. (24) I have read this entire affidavit and to the best of my knowledge, everything is true and accurate.

July 29, 2008

Bobby Gilbert

Latacha Hawkins

Sworn to me this 28th day of July, 2008

My commission expires 2/2/2011