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June 2, 2000

Guy Scott, Jr.
246-891
Ross Correctional Facility
PO Box 7010
Chillicothe, OH 45601

Re: Post Conviction Investigation

Dear Mr. Scott:


Here is a copy of the memo to the investigator I have retained in this case. It is self-explanatory. I intend to meet wit Mr. Maupin and your father within the next month. I am attempting to meet with your father in Florida as I have a tentatively scheduled vacation in that area for the last week of June. As fate would have it, Ms. Koch may also be in Florida on another case at that time, so we may be able to arrange a meeting at the end of June.

The purpose of the meeting will be to identify all the leads your father and Mr. Maupin have developed to date, to identify all potential witnesses and to categorize them as friendly or non-friendly. Ms. Koch and I will then develop an investigative strategy and begin interviews.

I have requested a complete copy of the autopsy report and protocol including pictures. Upon receipt I will meet with Dr. Patrick Fardal and have him review the matter. I anticipate that this will be accomplished prior to meeting with Mr. Maupin and your father.

If you have any questions, please feel free to contact me. If you cannot get me, my secretary/paralegal Catherine can probably answer your questions.

Sincerely,


Harry B. Reinhart

HRR:CRB

cc: Guy Scott, Sr.
Kathy Koch

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June 2, 2000

To: Kathy Koch

From: Harry Reinhart

Re: Guy Billy Scott, Jr. (AKA Guy Billie Lee Scott, Jr.)
Inmate No. 246-891, Ross Correctional Facility
Date of Offense = July 7-8, 1990
Victim = Lesa Buckley; Suspects = Lisa & Ronnie Johnson
Date of Conviction = Feb. 18, 1992 (Butler Co. C.P.)

The State's case is summarized in the appellate court decision filed in 1994:

The facts surrounding this case establish that on July 8, 1990 Lesa Buckley's body was discovered by appellant floating in Cedar Lake near New Paris, Ohio. An autopsy revealed that Lesa had been brutally beaten by fists and a hard object to the point that she was rendered unconscious. She had also been anally penetrated and sexually assaulted. Eventually, Lesa was dragged feet first into the water where she drowned.

An investigation by New Paris police revealed that the night before Lesa was killed she attended a party at Cedar Lake where appellant and about eighty other people were celebrating a friend's birthday. The investigation further revealed that several people noticed appellant and Lesa were missing from the party at the same time. Later in the evening, appellant returned to the party wet; Lesa was never seen alive again.

New Paris police officers also gathered information that Tony Young, who testified at trial for the state, had seen Lesa and appellant engaged in sexual activity in the grass by the lake. Furthermore, over the course of the next several months, police officers learned

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that appellant had admitted, on several occasions, that he killed Lesa.

In his first assignment of error, appellant alleges that the trial court erred by denying his motion for a new trial based on newly discovered evidence. Specifically, appellant claims that he did not know of the familial relationship the state's eyewitness, Tony Young, had with Ricky Stoner, a man appellant killed in self-defense. Appellant claims that Young was related to Ricky Stoner and that the state prevented appellant from discovering this information before trial. Appellant argues that this information was vital to his defense to show Young's bias. Appellant asserts that Young was seeking revenge against appellant for killing Stoner.

Crim.R. 33(A)(6) provides that a new trial may be granted when new evidence, material to the defense, is discovered that appellant could not have produced with reasonable diligence before trial. To warrant granting a motion for a new trial based on newly discovered evidence, the evidence must (1) disclose a strong probability that it will change the outcome of the trial, (2) have been discovered since trial, (3) have not been able to be discovered with the exercise of due diligence before trial, and (4) be material to the issues. *State v. Petro* (1947), 148 Ohio St. 505, syllabus; *State v. Wright* (Dec. 12, 1992), Warren App. No. CA92-05-040, unreported, 6. When reviewing a motion for a new trial based on newly discovered evidence, an appellate court will not reverse the trial court's decision unless the trial court has abused its discretion in denying the motion. *State v. Williams* (1975), 43 Ohio St.2d 88, second paragraph of the syllabus.

Upon review of the trial court's decision, we find that the trial court did not abuse its discretion by denying appellant's motion for a new trial because the newly discovered evidence does not fit the criteria established by the Ohio Supreme Court. First, the evidence of Young's familial relationship would not change the outcome of the trial and would not have been material to the issues at trial, because Young was not related to Ricky Stoner, the man appellant killed. Appellant claims that Tony Young's mother was married to David Stoner, Ricky Stoner's brother, thus making Young David Stoner's stepson. However, the affidavits

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filed with appellant's motion for a new trial do not support appellant's claim concerning the relationship between Young and the deceased Stoner. In her affidavit, Young's mother stated that she was never married to David Stoner and she did not have a common-law marriage with him. Rather, she and David Stoner had sporadically dated for a number of years and at times lived together. Since the familial relationship that appellant claims biased Young does not exist, the result of the trial would not have changed and the issues at trial would not have been materially affected.

Second, appellant should have been able to determine any bias Young may have had prior to trial. Appellant claims that he was precluded from doing so because the state refused to provide appellant with Young's address in order to protect Young. However, Young was deposed prior to trial by appellant and any questions concerning potential bias could have been raised at that time. Also, appellant was able to cross-examine Young, thus affording appellant yet another opportunity to determine whether Young had any bias.

The trial court did not abuse its discretion by denying appellant's motion for a new trial based on newly discovered evidence because there was no familial relationship and because appellant had several opportunities to ferret out any bias. Appellant's first assignment of error is overruled.

In his second and third assignments of error, appellant claims that his conviction for anal rape was against the manifest weight of the evidence and the evidence was insufficient. Appellant argues these two assignments of error together, thus, they will be considered together.

In reviewing the weight and the sufficiency of the evidence on appeal, an appellate court must review the evidence in a light most favorable to the prosecution and determine if a rational trier of fact could have found that the state proved each element of the crime beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 273. Appellant claims that the evidence did not support his conviction for anal rape because nothing in the record indicated that his penis penetrated Lesa's anal cavity.

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A rape occurs when an individual, by force or threat of force, compels another to engage in sexual conduct. R.C. 2907.02. Sexual conduct is defined as vaginal intercourse between a male and female or anal intercourse between two people. R.C. 2907.01(A).

In this case, the medical examiner testified that Lesa's anal injuries were consistent with penetration by a hard object, such as a stick or a bottle, rather than a penis. Appellant argues that this precludes an anal rape conviction. However, there is evidence that supports the anal rape conviction. "Tony Young testified" that he observed Lesa lying face down in the grass, while appellant, naked and on top of her, moved his hips and buttocks in a sexual motion while making grunting sounds. Another "state witness" testified that appellant admitted engaging in intercourse with Lesa. Further, the medical examiner testified that the scratch marks on Lesa's inner thighs as well as the injuries to her anus indicate that Lesa was sexually violated prior to her death. The deputy coroner's testimony that Lesa was penetrated by a stick or bottle does not preclude a jury finding that appellant also penetrated Lesa with his penis.

Thus, there is sufficient evidence from which the jury could have concluded that appellant anally raped Lesa. Accordingly, appellant's second and third assignments of error are overruled.

In his fourth and fifth assignments of error, appellant argues that his conviction for murder was against the manifest weight of the evidence and the evidence was insufficient. Appellant argues in his sixth assignment of error that his conviction on all counts was against the manifest weight of the evidence. In his seventh assignment of error, appellant alleges that he was wrongly convicted on all counts because there was insufficient evidence to identify him as the perpetrator. These four assignments of error will be considered together because appellant argues them together and the state responds to them together.

In reviewing both the sufficiency and the weight of the evidence, an appellate court should apply the same test. *State v. Jenks, supra*. The appellate court must view the evidence in a light most favorable to the prosecution and ask if a rational trier of fact could

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have found that the essential elements of the offense were proven beyond a reasonable doubt. *Id.*

Appellant was convicted of one count of murder, two counts of assault, and one count of rape. Upon review of the record, we conclude that all four convictions are supported by sufficient evidence and are not against the manifest weight of the evidence.

The record indicates that on July 8, 1990, while swimming with a group of people, appellant discovered Lesa's body floating in Cedar Lake. Appellant was able to identify the body despite the bloating and deformity. Once out of the water, appellant instructed Jerry York, a state witness, to throw a red Bic lighter York had found on the shore into the water. Appellant threw a large plastic cup he had filled with stones into the lake. At trial, there was testimony that Lesa possessed a red Bic lighter and that appellant was seen the night before with a large plastic cup.

Montgomery County Deputy Coroner, Dr. Lee Daniel Lehman, determined Lesa had been beaten about the head and body with a hard object. She was rendered unconscious by the severity of the blows. There were also bite marks around her nipples and fingernail scratches on her inner thigh. Her face was severely abraded and her ankles had abrasions and scratch marks indicating that she had been dragged feet first from the place where she was beaten to where she was placed in the water. Lesa also had injuries in her genital and anal regions. The cause of Lesa's death was drowning.

The night Lesa was killed she was at a large party at Cedar Lake. The night of the party, Lesa's friends and appellant's friends noticed that both appellant and Lesa were missing at the same time. Also, Lesa and appellant were seen walking away from the party together. When appellant returned to the party, his clothes and hair were wet. Also, pictures taken the day after the party show scratches on appellant's chest.

Tony Young, who had been at the party, testified that he saw Lesa and appellant together. He explained that he saw Lesa lying prone on her stomach on the ground. He saw appellant, naked from the waist down, on top of Lesa, moving his hips and buttocks in a sexual motion.

The state's evidence against appellant also consisted of statements appellant himself made to others about his activity the night of Lesa's death. At a party, several months after the murder, several witnesses overheard appellant yell, "Who thinks I killed Lesa and would you testify against me?" Appellant's statement was unrelated to any conversations occurring at that time. At a New Year's Eve party, appellant exclaimed, "I killed the bitch," while Lesa's death was being discussed.

Appellant also had a discussion with Jason Burkhardt, a state witness, while sitting in a truck outside a bar. Appellant asked Burkhardt if the state had enough evidence to convict him for killing Lesa. Appellant explained to Burkhardt that on the night of her death Lesa was "hanging all over him" but when he attempted to "come on to her" she rebuffed him. Appellant then explained that since Lesa "wouldn't give it up" he just took it." Appellant then told Burkhardt that Lesa threatened to go to the authorities and report what had occurred and therefore, he "took care of her." Appellant went on to explain to Burkhardt, who at that time was awaiting trial for attempted homicide, that if Burkhardt "took care of his bitch" like appellant did, then Burkhardt would not have been charged with attempted homicide. In appellant's twisted mind, his advice to Burkhardt may have been partially correct. By killing Lesa, the primary witness, appellant avoided being charged for several months. Murder is just assault with one fewer witness.

Substantial new evidence has come to light since the trial. Before discussing that, however, it is important to note the procedural posture of this case. The case became final in 1994 when the Ohio Supreme Court declined to hear the appeal from the decision of the Butler County Court of Appeals.¹ Since that date a post-conviction petition was filed and dismissed and a federal habeas corpus action has been filed and dismissed. What this means is that we will be attempting to bring this case back into court on a successor post-conviction petition/motion for a new trial. In this regard, we will have to deal with the amendments to the post-conviction statute which read (in relevant part) that:

¹ The crime occurred in Preble County, outside of New Paris, Ohio. Venue was changed to Butler County for the trial.

2953.21 PETITION FOR POSTCONVICTION RELIEF

(A) (1) Any person who has been convicted of a criminal offense or adjudicated a delinquent child and who claims that there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States may file a petition in the court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief. The petitioner may file a supporting affidavit and other documentary evidence in support of the claim for relief.

(2) A petition under division (A) (1) of this section shall be filed no later than one hundred eighty days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication or, if the direct appeal involves a sentence of death, the date on which the trial transcript is filed in the supreme court. If no appeal is taken, the petition shall be filed no later than one hundred eighty days after the expiration of the time for filing the appeal.

* * *

2953.23 SECOND OR SUCCESSIVE PETITIONS; ORDER; APPEAL

(A) Whether a hearing is or is not held on a petition filed pursuant to Section 2953.21 of the Revised Code, a court may not entertain a petition filed after the expiration of the period prescribed in division (A) of that section or a second petition or successive petitions for similar relief on behalf of a petitioner unless both of the following apply:

(1) Either of the following applies:

(a) The petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief.

(b) Subsequent to the period prescribed in division (A) (2) of Section 2953.21 of the Revised Code or to the filing of an earlier petition, the United States Supreme Court recognized a new federal or state