

PETITION FOR EXECUTIVE CLEMENCY

OF

RONALD BERNARD BENNETT

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I. THE COMMONWEALTH SHOULD NOT EXECUTE A MAN WHO MAY BE INNOCENT.

Ronald Bernard Bennett is scheduled to be executed on November 21, 1996 for the 1985 murder of Anne Vaden in Chesterfield County, Virginia. Developments in Bennett's case during the course of his federal habeas corpus proceedings raise a genuine concern that the Commonwealth may execute an innocent man, based solely upon the testimony of the people who in fact were responsible for the murder. Counsel for Bennett files this petition for executive clemency to assist the Governor in ensuring that the Commonwealth will not execute a man in the face of evidence casting a substantial doubt upon his guilt.

A. EXECUTIVE CLEMENCY IS THE "FAIL SAFE" FOR THE CONDEMNED MAN WHO MAY BE INNOCENT.

No one seriously can question that our system of justice is imperfect. In the wake of Joe Payne's case, it is obvious that, for a variety of reasons, even a death penalty case can reach the point of execution despite remaining unresolved questions concerning the condemned's guilt, and without any legal avenue of recourse.

The recent decision of the United States Court of Appeals for the Fourth Circuit in the Payne case explains that the federal habeas courts are not the "traditional forum" to address such unresolved questions raised by after-discovered evidence. See Payne v. Netherland, No. 4106, 1996 WL 467642 at 3 n.2 (4th Cir. Aug. 19, 1996). Indeed, the United States Supreme Court has emphasized that executive clemency is the appropriate avenue for relief based on evidence suggesting the innocence of a man on death row:

Executive clemency has provided the "fail safe" in our criminal justice system...it is an unalterable fact that our judicial system, let alone the human beings who administer it, is fallible. But history is replete with examples of wrongly convicted persons who have been pardoned in the wake of after-discovered evidence establishing their innocence.

Herrera v. Collins, 506 U.S. 390, 415 (1993).

Unlike the Payne case, the possibility that Bennett is innocent has not been the centerpiece of his habeas corpus litigation. This is so mainly because the evidence now presented to the Governor was not developed until long after Bennett's state habeas proceedings and well into his federal habeas proceedings. Nevertheless, this case presents a question similar to the one presented by Payne - should a man be executed in the face of evidence creating a substantial doubt concerning his guilt?

B. BENNETT WAS CONVICTED ALMOST EXCLUSIVELY UPON THE WORD OF A PROVEN LIAR.

The opinion of the Supreme Court of Virginia affirming Bennett's conviction and sentence is reported as Bennett v. Commonwealth, 374 S.E.2d 303 (Va. 1988), and it is included as Exhibit A.¹ The Court acknowledged that Bennett's conviction rested almost exclusively on the testimony of his wife, Mary Bennett. 374 S.E.2d at 307 ("the evidence adduced at trial by the Commonwealth came in large part from Mary's testimony").

In a detailed videotape affidavit given on August 30, 1994, Mary Bennett, who now is known as Mary Stroh, recanted her trial testimony completely. In fact, Mary admitted that on the night of the murder, she accompanied Bennett's cousin, Kenneth Harris, to the crime scene. There, she says she watched Harris kill Anne Vaden.

Admittedly, Mary also has disclaimed her recantation, and today claims that she told the truth at trial. Nevertheless, one thing is certain - Mary is a liar, and Bennett's conviction rests almost exclusively upon seriously questionable evidence. A copy of Mary Bennett's videotape affidavit

¹ The opinion of the federal district court and the United States Court of Appeals for the Fourth Circuit appear as Exhibits B and C.

accompanies this petition.

II. THE PRESENT STATE OF THE EVIDENCE RAISES SERIOUS QUESTIONS ABOUT BENNETT'S GUILT.

A. THE UNSOLVED MURDER OF ANNE VADEN.²

The offense for which Bennett was convicted occurred on November 16, 1985. On the evening of November 15, 1985, the victim, Anne Vaden, spoke with her parents, because all three of them were planning to leave on a trip early the next morning. Ms. Vaden agreed to meet her parents at their house in time to leave by 5:30 a.m.

At 4:50 a.m., the morning of November 16, 1985, Ms. Vaden's father, Mr. Keller, called her to make sure that she had awakened. When she answered the phone she said in a weak voice, "Daddy, are you coming to get me?" He reminded her that she was supposed to be at his house at 5:30 a.m. She replied, "Oh, that's right." Because he believed that something was wrong, Mr. Keller asked his wife to call her again. She called at 5:00 a.m. This time Ms. Vaden said, "Mother, I'll be all right."

Mr. Keller called again at 5:20 a.m., but got no answer. He thought she might have left to come to his house, but decided to drive to her apartment, which was eight miles away. When he got there, Ms. Vaden's car was still there, but she did not respond to his pounding at the door.

Mr. Keller returned home and had his wife call the apartment complex to have someone meet him with a key. When Mr. Keller arrived at the apartment, he touched the door and this time the door flew open.

Mr. Keller found his daughter's nude body at the foot of the bed. Her body was still warm.

² All of the facts described herein, unless otherwise noted, are derived from the trial transcripts, the Supreme Court of Virginia's opinion, and Bennett's federal habeas corpus petition.

She was bound hand and foot with blue pantyhose, and the same blue material was around her neck.

She was dead.

At trial, the medical examiner testified that Ms. Vaden had been beaten over much of her body with a blunt object, probably a liquor bottle found at the scene. She had sustained multiple blunt impact injuries to her head, face, and right hand. She had been stabbed four times: three times in the neck and once in the abdomen. She had been strangled. All of the injuries had been inflicted while she was alive. Each injury was potentially fatal. In the medical examiner's opinion, it would take twenty to thirty minutes for the victim to have sustained all of these injuries. The cause of death was determined to have been all the separate categories of injury.

The crime remained unsolved for more than a year, and the Chesterfield County Police Department investigated several suspects, including Ms. Vaden's estranged husband. No unidentified fingerprints were found in the apartment, but the clear imprint of a bloody, gloved left hand was found on one of the sheets. An examination of hairs taken from Ms. Vaden's sheets and pillowcases identified hairs of Negroid origin. The hair fragments, however, were such that no more specific identification could be made.

B. THE ARREST OF MR. BENNETT.

For more than a year, Bennett was not a suspect, even though he worked at the apartment complex where Ms. Vaden was murdered, and even though other employees were suspected and were actively investigated.

During this time, Bennett separated from his wife, Mary Bennett, and she returned to California, where the couple had lived before returning to Virginia. Early one morning in December, 1986, after an entire evening spent drinking heavily, Mary told her roommate, Sharon O'Shaughnessy, that the custom-made diamond ring which she wore once belonged to Anne Vaden,

and that her husband, Ronald Bennett, had murdered Vaden in the course of a robbery. Mary Bennett gave the ring to O'Shaughnessy for safekeeping, asked her not to tell anyone about her story, and told her that she needed to speak with a priest.

O'Shaughnessy's former husband was a parole officer in California. O'Shaughnessy was disturbed by the story Mary had told her, and she decided to seek advice from her former spouse. She confided in him, and he told her that it was imperative that the Virginia authorities be notified immediately of Mary Bennett's story.

When O'Shaughnessy told Mary Bennett that she had gone to the authorities with the story, Mary flew into a rage.

California law enforcement officials called the Chesterfield County police and told them about Mary's story. Chesterfield police officers flew to California, interviewed Mary, and retrieved from her the diamond ring which, according to Mary, had belonged to Anne Vaden. Based on the information provided by Mary, Ronald Bennett was arrested in December, 1986 and he was indicted in March, 1987.

C. PRE-TRIAL EVENTS.

When he was arrested, Bennett was indigent. In December, 1986, the Circuit Court of Chesterfield County appointed Richmond attorneys Robert J. Rice and Fred A. Talbot to represent him.

The only direct evidence linking Bennett to the crime was Mary's statement and a corroborating statement made by his cousin, Kenneth Harris implicating Bennett.³ There was no physical evidence linking Bennett to the crime.

³The police statements and transcripts of testimony of Mary Bennett and Harris are included as Exhibits D - H.

Bennett submitted a Physical Evidence Recovery Kit to the police. None of the physical evidence he submitted matched physical evidence found at the scene. The police also searched the car driven by Bennett the night of the murder, but found no blood or other physical evidence linking him to the crime, despite the fact that Mary and Harris claimed that Bennett arrived at his apartment the next morning completely covered with blood, and despite the fact that the crime scene demonstrated that the assailant must have been covered with blood. The police did not examine the car driven by Mary Bennett and Kenneth Harris on the night of the crime.

Bennett's trial originally was scheduled to begin on August 20, 1987. On August 15, 1987, defense counsel requested a continuance. They refused to state, in the presence of the Commonwealth's Attorney, their reasons for requesting the continuance.

The trial court permitted Bennett's counsel to state their reasons in an *ex parte* proceeding. There, they advised the court that Mary Bennett and Ronald Bennett had participated in a marriage ceremony on September 22, 1980, in California, but that previously, on November 12, 1976, also in California, Mary Bennett had married Donald Allbee and the couple never had received a final judgment of divorce. Defense counsel thus admitted that, as of August, 1987, Mary and Ronald Bennett were not married because their marriage was bigamous and, therefore, void.

Defense counsel also explained to the court that, in July, 1978, in California, Mary Bennett had filed for divorce from Donald Allbee and that in July, 1979, she had been awarded an interlocutory judgment of divorce. Counsel acknowledged that the interlocutory judgment was not a final judgment of divorce. They explained, however, that under California law, once an interlocutory judgment has been entered, a third party, such as Mr. Bennett, who is interested in securing the divorce, could request that the divorce be made final. Further, the California courts were empowered, by statute, to grant a *nunc pro tunc* final judgment of divorce which would

validate Mary Bennett's subsequent marriage to Ronald Bennett. Bennett's counsel asked for a continuance so that they could validate the marriage and keep Mary Bennett from taking the witness stand, pursuant to Code of Virginia § 19.2-271.2.

During the *ex parte* hearing, defense counsel made clear to the trial court that their entire strategy was to surprise the Commonwealth with the *nunc pro tunc* divorce judgment. The court granted a continuance to defense counsel until October 13, 1987. Although defense counsel initially succeeded in securing a *nunc pro tunc* judgment of divorce, thus validating the marriage between Mary and Ronald Bennett, their strategy ultimately failed because the court permitted the Commonwealth to take long continuances, enabling the Commonwealth to invalidate the *nunc pro tunc* judgment. Consequently, Mary Bennett was permitted to testify at trial.

D. THE EVIDENCE ADDUCED AT TRIAL.

It appears that, at the beginning of trial, Bennett's counsel intended to introduce an alibi defense, based upon Bennett's testimony. During part of counsel's opening statement to the jury, he promised that Bennett would testify in his own defense:

You have all promised and you have all acknowledged that Mr. Bennett doesn't have to prove anything to you, and that is a decision that Mr. Talbot and I will make, but I fully expect evidence will be presented in this case.

... Mr. Bennett was with [his wife and cousin], we're not contesting that. This was the week that Ronald Bennett's father had died. Kenneth Harris had been staying at Ronald Bennett's apartment with Ronald Bennett, and who he thought was his wife, but it turns out it wasn't his wife because she lied under oath. But, in any event, they were there, and they went to this house on Church Hill.

Ronald Bennett wasn't feeling much like doing what was going on there, and he will tell you, you know, it was a shooting gallery, people sitting around. It was an area in Church Hill predominately black. Mary Bennett is white. They were up in there, but Ronald Bennett didn't feel - he sat around with them for awhile, but didn't feel like doing any more drugs and told them to come on, I'm leaving. Do you all want to go with me? I'm going. He went out and sat in the car about five minutes. They never came out.

Ronald Bennett went to a friend's house about two o'clock in the morning. He left his friend's house and went home. Is that significant to you? Well, it should be because Ronald Bennett doesn't give any alibi to you as to where he was at the time Ann Vaden was murdered. He could have easily have said, I was at my friend's house all night. He says he went home, left about two o'clock, got home about 2:15 and went to bed.

Trial transcript at 1406-08.

Defense counsel fought hard to keep Mary Bennett's testimony out of the trial because the prosecution's case depended upon her. Indeed, the Supreme Court of Virginia describes as follows the evidence introduced through her testimony:

The evidence adduced at trial by the Commonwealth came in large part from Mary's testimony. Prior to and after Anne's murder, Bennett had worked as a maintenance man at Anne's apartment complex. On two occasions, Bennett had done work in Anne's apartment; once when she was at home, another time when she was not. On the occasion when Anne was at home, she gave Bennett and his supervisor something to eat. As a maintenance man, Bennett had access to the apartment complex's "grand master key." This key gave Bennett access to every unit at the complex. Prior to the murder, Bennett had secretly made a copy of the grand master key.

On November 15, 1985, at about 5:30 pm, Bennett, his cousin, Kenneth Harris, and Mary went to the Church Hill section of Richmond to a "dope house" to purchase and use drugs. After his money ran out, Bennett said he was going to get more money and left Mary and Ken at the dope house. He left between 9:30 and 10:00 pm. Mary and Ken waited until 1:00 a.m., but Bennett never returned. Mary called Bennett's mother who picked up Mary and Ken and took them to the apartment shared by Mary and Bennett. Mary's keys were locked inside so Ken forced the door open to gain entry. Mary retrieved her car keys and she and Ken drove around until 3:00 am looking for Bennett; they did not find him.

Bennett returned to the apartment about 7:00 am on November 16. Ken opened the door. Bennett was covered with blood and carrying a brown airline-type carry-on suitcase. Blood was on Bennett's shirt, pants, and tennis shoes. He explained to Ken and Mary that he had gotten into a fight with some men in Church Hill. Mary did not believe him.

Bennett and Mary went into the bedroom. There she argued with him about his being out all night. He then told Mary that "he had just killed a girl at the Boulders Apartments." Later, he explained that he had to kill her because she could identify him. Bennett removed his bloody clothes and took a shower. Then he put the

discarded clothes in a garbage bag and threw the bag in a dumpster behind his apartment.

That night, he took some rings from the brown flight bag and put them on the kitchen counter saying that he had taken them from the victim's apartment. One ring was a diamond ring with one large stone and eleven smaller stones. Another was an opal ring. The victim had worn these rings almost all the time. She was last seen wearing them at work about 3:00 p.m. on November 15. Mary kept the diamond ring. Bennett gave the opal ring to his brother who in turn gave it to his wife.

After the murder, Mary broke up with Bennett and ultimately moved to California. There, in December 1986, Mary showed the diamond ring to a friend, told the friend how she had gotten the ring and made clear that she wanted to tell someone what had happened. Mary told authorities in California who called authorities in Virginia. These calls resulted in Bennett's arrest.

He was advised of his rights and taken to police headquarters where his arrest warrants were read to him. One warrant was for aggravated sexual assault. When this warrant was read to him, Bennett remarked as follows: "you ain't saying I raped that girl, are you." A search of Bennett's mother's house produced the brown flight bag taken from the victim's apartment.

374 S.E.2d at 307-08.

After the Commonwealth rested its case, defense counsel's motion to strike the Commonwealth's evidence was denied. Immediately thereafter, counsel informed the trial court that the defense also rested.

Bennett was surprised that his trial counsel decided to rest without putting on evidence in his behalf. It was his understanding that defense counsel always intended to put on an alibi defense, because he steadfastly had maintained his innocence. In fact, Bennett had insisted from the start that he wanted to take the stand and testify in his own behalf. Counsel explained to Bennett that, in his opinion, the trial was so infected by error that it was sure to be reversed on appeal. Therefore, they explained, they would save Bennett's testimony for the new trial, so that the Commonwealth would not have the benefit of a preview of their defense.

During closing arguments, the defense presented by counsel was that Mary Bennett and

Kenneth Harris may have been responsible for the murder. In support of this argument, defense counsel pointed to certain inconsistencies between Mary's testimony and the testimony of Harris. Counsel also pointed to inconsistencies between the trial testimony of these witnesses and prior statements made by them.

Nevertheless, the jury convicted Bennett of capital murder. After a separate sentencing proceeding held the following day, the same jury sentenced Bennett to death.

E. THE FEDERAL HABEAS INVESTIGATION - MARY BENNETT RECANTS HER TRIAL TESTIMONY.

Bennett was represented on direct appeal by the same counsel who defended him at trial. Bennett was represented by new counsel during state habeas corpus proceedings. State habeas counsel, however, chose not to represent Bennett during the course of his federal habeas corpus proceedings. Instead, the Virginia Capital Representation Resource Center represented Bennett. As part of the federal habeas investigation, the Resource Center sought to interview Mary, because her testimony secured Bennett's conviction. Mary had long since left Virginia, and at first she was difficult to locate. Eventually, however, an investigator working for the Resource Center managed to locate her in the state of Washington, living under the name of Mary Stroh. Mary initially was very reluctant to discuss Bennett's case with the Resource Center's investigator. Eventually, however, Mary told the investigator that she wished to make a statement to him concerning her testimony at Bennett's trial. The investigator explained to her that he would rather not take this statement, but instead asked her if she would give a statement to Bennett's counsel. She agreed.

On August 30, 1994, Resource Center counsel and the Resource Center's investigator met Mary in Spokane, Washington, where they had made arrangements to take a videotape affidavit of

her statement. Counsel decided that it was important to perpetuate Mary's testimony on videotape because of her precarious physical condition. Mrs. Bennett suffers from hepatitis and other serious illnesses, and she informed the Resource Center's investigator that her illnesses might be life-threatening.

Mary's videotape affidavit now is before the Governor, and it speaks for itself. According to Mary, Bennett had no involvement in the murder of Ms. Vaden. Instead, as originally suggested to the jury by defense counsel, Kenneth Harris was responsible for Ms. Vaden's brutal slaying, and Mary was present that night. Mary's statement is remarkable, given that at the same time it completely exonerates Bennett, it implicates her in a case of capital murder.

After securing Mary's affidavit, the Resource Center continued to investigate, hoping to find evidence to support her claim that Harris, and not Bennett, killed Ms. Vaden. The Resource Center's investigators continued to stay in contact with Mary, and hoped to uncover further evidence through her. During the course of this investigation, however, Mary told one of the Resource Center's investigators that she had lied during the videotape affidavit in an effort to save Bennett's life. Since then, a Resource Center investigator has continued to investigate Bennett's case, with little further success.

Not surprisingly, Mary continues to disclaim her videotape affidavit. She has strong incentive to continue to do so. Obviously, an admission to being present during the course of a capital crime carries with it weighty implications. One thing, however, is certain about Mary Bennett - either she was lying at trial or she was lying in her videotape affidavit. It is disturbing that Bennett's conviction and death sentence rest entirely upon evidence of such dubious quality.

III. RON BENNETT SHOULD NOT BE EXECUTED WHILE A
SUBSTANTIAL DOUBT EXISTS CONCERNING HIS GUILT.

In the wake of the Payne case, counsel for Bennett is well aware that the Governor understands the nature and purpose of executive clemency in Virginia. Clemency indeed is the "fail safe" to avoid a terrible miscarriage of justice in the event evidence exists that casts grave doubt upon the accuracy of a capital conviction, but that cannot be properly considered in the courts. Indeed, this is not a situation faced only recently by Virginia's Governor. Historically, Virginia Governors long have provided just such a "fail safe" through grants of clemency. So far as records show, no one has ever been executed in Virginia based solely on the uncorroborated⁴ testimony of a witness acknowledged to be unreliable. For example, in 1912 Governor William Hodges Mann commuted the sentences of Eugene Dorsey, Calvin Johnson and Richard Pines because the accomplice who testified against them had "proven himself to be unworthy of credit." See Governor's List of Pardons, Commutations, etc. and reasons therefore, March 4, 1912. In an explanation that applies forcefully in Bennett's case, Governor Mann asserted the necessity for clemency as follows:

[the accomplice] was a confessed perjurer, and the judge in sentencing him declared that he was a perjurer, and no human being could tell whether he told the truth first or last, and this is the condition which confronts my conscience and involves the lives of three men. If all these facts had been before the juries trying the cases, I would have less difficulty in reaching a conclusion, but they were not, and after careful thought I am in such a frame of mind that, while I do not think the prisoners entitled to pardon, I do not think it just to them..., or to the Commonwealth which only deserves to punish those certainly guilty, to permit them to be electrocuted and thus to put correction of any mistakes which have been made out of the power of the State if the mystery which now surrounds the murder...shall ever be cleared up.

Id (emphasis added).

More recently, this same desire to punish only those "certainly guilty" and repugnance

⁴ Admittedly, certain parts of Mary's testimony were corroborated by Kenneth Harris. Given that her videotape affidavit implicates Harris, however, the existence of his testimony alone should not be a sufficient basis upon which to execute Bennett.

towards exclusive reliance on unreliable and possibly perjured testimony in capital cases was the basis for Governor L. Douglas Wilder's commutation of Herbert Russell Bassette's death sentence. Bassette's conviction was based solely upon the testimony of three alleged accomplices. In 1992, Bassette's sentence was commuted because the unreliable testimony of the three alleged accomplices was not corroborated, thus raising serious doubts as to his guilt. Governor Wilder also commuted the death sentences of Joseph M. Giarratano and Earl Washington based on evidence demonstrating the likelihood of their innocence.

Based on the present state of the evidence, it cannot be said that Bennett is "certainly guilty" of murdering Anne Vaden. Yet, he is scheduled to be executed based upon the testimony of a liar - indeed, based upon the testimony of a woman who may have been involved in the murder of Ms. Vaden, who had powerful incentive to lie at trial. It is unlikely that Bennett has any recourse in the courts based on the present state of the evidence. But, given Mary's conflicting statements, there remains doubt that, if the Commonwealth carries out Ron Bennett's execution, it will execute the guilty party and not an innocent man.

IV. CONCLUSION

Ron Bennett should not be executed for the murder of Anne Vaden unless the Commonwealth can be certain that it is executing the man who actually killed her. In this case, the only way to eliminate the tragic possibility that the Commonwealth will execute an innocent man is to grant clemency.

If, however, the Governor is not yet convinced that, based on the present state of the evidence, Bennett is entitled to clemency, we submit further that, at the very least, the Governor should grant a reprieve, and order a state police investigation to resolve the questions that remain.

Respectfully submitted,
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