

BEFORE THE GOVERNOR OF THE STATE OF TEXAS
AND
THE TEXAS BOARD OF PARDONS AND PAROLES

◆

HENRY WATKINS SKINNER
Gray County Criminal Case No. 5216
February 24, 2010 Execution Date

◆

**APPLICATION FOR COMMUTATION OF DEATH SENTENCE
TO LIFE IMPRISONMENT**

Per Texas Administrative Code, Title 37, Part 5, Rule 143.57(g)(3)
A PUBLIC HEARING REQUESTED

Per Texas Administrative Code, Title 37, Part 5, Rule 143.57(f)
**AN INTERVIEW WITH A MEMBER OF THE
TEXAS BOARD OF PARDONS AND PAROLES IS REQUESTED**

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AUTHORIZED REPRESENTATIVE FOR
HENRY WATKINS SKINNER [[SEE APPENDIX A.](#)]

This Application for Commutation of Death Sentence to Life Imprisonment is presented in behalf of Henry Watkins Skinner in compliance with § 143.57 of Title 37 of the Texas Administrative Code.

Table of Contents

Table of Contents	. . . . .	2
Table of Appendices	. . . . .	3
Application for Commutation of Death Sentence to Life Imprisonment		4
Introduction	. . . . .	5
Factual Background	. . . . .	7
Judicial Background and Status	. . . . .	9
Commutation Issues	. . . . .	10
1) The Prosecution Coerced a Witness to Lie.	. . . . .	10
2) A More Likely Suspect Was Not Properly Investigated.		15
3) No Meaningful Post Conviction DNA Testing Allowed.		18
Conclusion	. . . . .	21
Request for Relief	. . . . .	25

Appendices

A webpage is available to the members of Texas Board of Pardons and Paroles to keep them up-to-date on the actions and developments in the case of Henry Watkins Skinner. This webpage is

<http://www.excitatio.com/hanskinner/index.html>

Other information about Mr. Skinner's case is available online at

<http://www.hanskinner.org>

Table of Appendices

Appendix A	Authorization to File for Executive Clemency and Fee Waiver Affidavit.
Appendix B	True Bill of Indictment.
Appendix C	Verdict of the jury on Guilt, including the court's charge to the jury on Guilt/Innocence.
Appendix D	Verdict of the jury on Punishment, including the court's charge to the jury on Punishment.
Appendix E	Capital Judgment.
Appendix F	Order Setting Date of Execution and Death Warrant.
Appendix G	U.S. District Court Magistrate Judge explanation about why Mr. Skinner's Texas state habeas claims were dismissed.
Appendix H	September 29, 1994 Interview of Howard Mitchell by Gray County District Attorney Office Investigator Bill McMinn.
Appendix I	September 27, 1997 Andrea Joyce Reed Affidavit.
Appendix J	Letters in Support for Commutation from Relatives, Friends and Concerned Citizens. <ol style="list-style-type: none">1) Dr. David Protess, Director of the Northwestern University Medill Innocence Project.2) Reverend Albert Maggard, Mr. Skinner's Spiritual Counselor and Pastor of the First Pentecostal Holiness Church of Pampa, Texas.3) Sandrine Ageorges-Skinner, Mr. Skinner's wife.

February 1, 2010

To Texas Governor Rick Perry and the Honorable Members of the Texas Board of Pardons and Paroles:

Application for Commutation of Death Sentence to Life Imprisonment

Henry Watkins Skinner was convicted of capital murder and sentenced to death in 1995 in Tarrant County on a change of venue from Gray County. He is scheduled to be executed in Huntsville by lethal injection on February 24, 2010.¹

Mr. Skinner authorized me, Ward Schurman Larkin, to file this Application for Commutation of Death Sentence to Life Imprisonment. I am acting on Mr. Skinner's request and in his behalf, and I will receive no fee in connection with Mr. Skinner's Applications for Executive Clemency.²

Mr. Skinner requests an interview with a member of the Texas Board of Pardons and Paroles per Title 37 Rule 143.57(f) of the Texas Administrative Code. Mr. Skinner requests an open public hearing before the Texas Board of Pardons and Paroles as authorized by Title 37 Rule 143.57(g)(3) of the Texas Administrative Code. This Application for Commutation of Death Sentence to Life Imprisonment is presented to the Texas Board of Pardons and Paroles pursuant to Title 37 Rule 143.57 of the Texas Administrative Code.

¹ See [Appendix F](#): Order Setting Date of Execution and Death Warrant.

² See [Appendix A](#): Mr. Skinner's sworn Authorization to File Applications for Executive Clemency, and Ward Larkin's Fee Waiver Affidavit.

This Application for Commutation of Death Sentence to Life Imprisonment is necessarily incomplete because the State of Texas, through its District Attorney for the 31st Judicial District, continues to deny Mr. Skinner access to vital crime-scene evidence that has never been subjected to forensic DNA testing. If such access were permitted, and testing performed on that evidence, then the results of that testing would powerfully demonstrate Mr. Skinner's innocence and why Executive Clemency should be granted in this matter. The District Attorney's actions thus are denying Mr. Skinner a full and fair opportunity to seek Executive Clemency, in violation of the Constitution and laws of the State of Texas and the United States Constitution's guarantees of due process and against cruel and unusual punishment. This state-created interference with Mr. Skinner's rights is presently being challenged in federal court. Pending the outcome of that lawsuit, Mr. Skinner reserves to right to amend and/or supplement this Clemency Application, or to submit an entirely new Clemency Application, as may be necessary to present in its entirety his fully developed case for Clemency.

Introduction

Since his conviction and death sentence in March of 1995, Mr. Skinner has steadfastly proclaimed his innocence, vigilantly struggled in the courts to reclaim his freedom, and heroically defended his dignity while on Texas Death Row.

The best protection against convicting the innocent is competent legal representation and a properly working adversarial system of justice. Mr. Skinner

received neither. New evidence, not previously available at trial, now demonstrates that Mr. Skinner is most likely innocent and was definitely denied a fair trial: 1) the prosecution's star witness was coerced into making a false police statement and giving false testimony at trial, 2) the prosecution and Mr. Skinner's own defense attorneys didn't adequately investigate the most likely suspect, and more importantly, 3) there's vital crime-scene DNA evidence that still exists, has been properly preserved and still hasn't been tested.

Some of the crime-scene evidence was DNA tested, but not the most probative items. Now the State of Texas refuses to do any post conviction DNA testing, testing that would scientifically prove Mr. Skinner innocent. Similarly, the State of Texas and the courts refuse to allow Mr. Skinner to test this DNA evidence on his own, even at this own expense.

It's important to note that the trial court and the Gray County District Attorney agree that the evidence Mr. Skinner now seeks to test still exists and is in a condition making DNA testing possible, that the chain of custody is sufficient and the integrity of the evidence has been maintained, and that identity of the murderer was an issue in Mr. Skinner's trial.³

The State of Texas is about to execute a man without first letting him do forensic DNA testing on properly sealed, properly preserved vital crime-scene

³ See Texas Court of Criminal Appeals Sept. 23, 2009 denial of Mr. Skinner's second Motion for Post-Conviction DNA testing. *Skinner v. State*, 293 S.W.3d 196, 199-200 (Tex. Crim. App. 2009). Online at <http://www.cca.courts.state.tx.us/opinions/pdfOpinionInfo2.asp?OpinionID=18770>

evidence. This is not justice. This is a sad state of affairs, for DNA evidence has exonerated 249 from wrongful convictions in the United States since 1989, 17 from death row.⁴

Factual Background

Mr. Skinner lived with Twila Busby and her two adult sons, 22-year old Elwin Caler and 20-year-old Randy Busby.⁵ Around 9:30pm on December 31, 1993, Ms. Busby and Mr. Skinner phoned a friend, Howard Mitchell, and told him they wanted to attend his New Year's Eve party, but needed a ride. Between 10:15 and 10:30pm, when Mr. Mitchell came to pick up the pair, he found Mr. Skinner passed out on the couch, and even with exerted effort was unable to wake him.⁶ Mr. Skinner had been drinking heavily.⁷ Leaving Mr. Skinner in his stupor, Ms. Busby and Mr. Mitchell went to Mitchell's home where a party was in progress.

Ms. Busby's drunken uncle, Robert Donnell, followed her around at the party, making rude sexual advances toward her and generally agitating her until she asked Mr. Mitchell to take her home. Mr. Mitchell drove Ms. Busby home between 11:00 and 11:15pm, and left. Mr. Donnell was no longer at the party

⁴ The Innocence Project lists 249 DNA exonerations in the United States since 1989. [From <http://www.innocenceproject.org/Content/351.php> viewed on February 1, 2010.]

⁵ Mr. Skinner was 5'9" 145 lbs, Mr. Caler 6'6" 245 lbs, and Mr. Busby 6'1" 180 lbs.

⁶ [Appendix H](#) contains a September 29, 1994 interview of Howard Mitchell by Gray County District Attorney Office investigator Bill McMinn. Mr. Mitchell said that he "jerked on [Mr. Skinner's] arm and everything ... [a]nd there wasn't no response at all". See page 1.

⁷ At 5:48am on January 1, 1994, after his arrest, Mr. Skinner voluntarily gave blood for a toxicological test. His blood alcohol level was 0.11%, and he had 0.11 milligrams of codeine per liter of blood. Mr. Skinner is allergic to codeine, and ingested it by accident that night.

when Mr. Mitchell returned. At midnight police were dispatched to an address across the alley from Ms. Busby and Mr. Skinner's residence, finding Elwin Caler with a mortal stab wound under this left arm. Mr. Caler was taken to the hospital, where he died at 12:45am without identifying his killer. Twila Busby was found in her home strangled and beaten to death.⁸ Randy Busby was found dead in his bed, no apparent struggle, stabbed in the back.

Four blocks away, also about midnight, Mr. Skinner knocked at the door of a former girlfriend, Andrea Reed. Ms. Reed recognized his voice, and initially told Mr. Skinner to leave. After saying that he'd been shot and needed help, Ms. Reed turned on her front porch light and saw Mr. Skinner had blood on his shirt and pants. Ms. Reed invited Mr. Skinner into her home, but he fell over backwards when he tried to climb the stairs to the porch. Ms. Reed helped Mr. Skinner get up and let Mr. Skinner lean on her as they entered the house. Mr. Skinner was heavily intoxicated,⁹ and he also had a serious hand injury that Ms. Reed tried to treat.

⁸ The medical examiner testified at trial the Ms. Busby was first manually strangled with such force that her larynx and the right side of her hyoid bone were broken. She was next beaten with an ax handle 14 times. Pampa Police Officer Morse Burroughs concluded from crime-scene blood spatter that Mr. Caler was home, in the same room when his mother was beaten.

⁹ Dr. William Lowry, a forensic toxicologist, testified at Mr. Skinner's trial and at the November, 2005 evidentiary hearing. [See <http://www.excitatio.com/hankskinner/HT111705v2.pdf> PDF pages 53 to 145.] Each time Dr. Lowry testified that Mr. Skinner's intoxication levels at midnight would likely have been 0.21% blood alcohol and 0.44 milligrams of codeine (three times the therapeutic dose) per liter of blood. [See PDF page 56, lines 10-15.] If Mr. Skinner ingested codeine at 9:30pm, Dr. Lowry estimated Mr. Skinner's codeine intoxication might have gotten as high as 0.8 milligrams per liter of blood, a near lethal dose. [See PDF page 112, lines 5-11.] Dr. Lowry explained that alcohol taken with codeine has a synergist effect, a combined intoxication greater than the sum of the separate intoxicating effects. [See PDF page 58, lines 9-24.]

Mr. Skinner stayed at Ms. Reed's home for almost three hours before the Gray County Sheriff's Office arrested him. According to Ms. Reed, while Mr. Skinner there he told Ms. Reed a series of inconsistent statements about his hand injury and other recent events she knew couldn't have happened. Mr. Skinner repeatedly promised to tell Ms. Reed the truth, but he kept changing his story. At times, it appeared to Ms. Reed that Mr. Skinner didn't know where he was or to whom he was talking.

Judicial Background and Status

Mr. Skinner was sentenced to death in March of 1995, found guilty of intentionally and knowingly murdering more than one person during the same criminal transaction: namely, Mr. Skinner's girlfriend Twila Busby and her two adult sons, Randy Busby and Elwin Caler. The trial was held in Tarrant County on a change of venue from Gray County. Mr. Skinner has an appeal pending before the Supreme Court of the United States of America (Case Number 09-7784) and various original judicial actions either pending or planned.¹⁰ [Appendix B](#) contains the True Bill of Indictment in Mr. Skinner's case.

¹⁰ The following website is available to members of the Texas Board of Pardons and Paroles to keep them up-to-date on the actions and developments in each of Mr. Skinner's pending judicial actions. See <http://www.excitatio.com/hankskinner/index.html>

Commutation Issues.

Issue #1: The Prosecution Coerced a Witness to Lie.

The Pampa City Police and the Gray County District Attorney's Office coerced Andrea Reed into making a false police statement about her involvement with Hank Skinner on the night of the murders. Similarly, the police and the prosecution coerced Ms. Reed into giving false testimony at Mr. Skinner's capital murder trial.

Ms. Reed's false evidence was crucial to the prosecution's case against Mr. Skinner. The false portions of her police statement and trial testimony tied the loose ends of the circumstantial evidence against Mr. Skinner together. Ms. Reed gave the prosecution's case the necessary credibility. She successfully, but falsely, incriminated Mr. Skinner and cast sufficient doubt upon the expert testimony of forensic toxicologist Dr. William Lowry.¹¹

First, Ms. Reed testified that Mr. Skinner told her that he thought he might have "kicked" Twila Busby to death. However, there was no evidence at all that Ms. Busby had been kicked. Second, Ms. Reed testified that Mr. Skinner was not heavily intoxicated that night, and he could have killed Ms. Busby, Elwin Caler and Randy Busby. Then on September 27, 1997 Ms. Reed came forward and

¹¹ Dr. Lowry testified trial and at the November 16-18, 2005 federal evidentiary hearing that it was "virtually impossible" for Mr. Skinner to have murdered three people that night. [Online at <http://www.excitatio.com/hankskinner/HT111705v2.pdf> See PDF page 58, lines 17-24.] NOTE: this is page 58 of the PDF, not page 58 of the evidentiary hearing transcript.

issued an affidavit recanting her false police statement and trial testimony.¹²

Similarly, at the November 16-18, 2005 federal evidentiary hearing, Ms. Reed recanted the false portions of her police statement and of her trial testimony.¹³

Ms. Reed became frightened immediately after Mr. Skinner was arrested, for the police cordoned off her home and told her neighbors that her home was a triple homicide crime scene. Later the police actually threatened Ms. Reed. Specifically, Pampa City police officer Katie Gerhardt and Gray County District Attorney's investigator Bill McMinn kept asking Ms. Reed who were Mr. Skinner's accomplices.¹⁴ Ms. Reed kept answering honestly ("I don't know what you're talking about") until Gerhardt told Ms. Reed she could be arrested for being an accessory after the fact if she didn't start to cooperate.

Ms. Reed got the message. Cooperation with the Pampa Police and with the Gray County District Attorney's Office didn't mean telling the truth. It meant tell us what we want to hear. Tell us something that we can use against Mr. Skinner. And if you don't, then we'll put you under arrest.

Immediately, Ms. Reed started to give false statements also calculated to make it appear that she provided Mr. Skinner no willing assistance. And the police were happy to hear these new statements, because the statements further

¹² See [Appendix I](#), September 27, 1997 Andrea Joyce Reed Affidavit.

¹³ Ms. Reed's November 16-18, 2005 federal hearing testimony is available online. Her day one testimony at <http://www.excitatio.com/hankskinner/HT111605v1.pdf> See PDF pages 233 to 254. Her day two testimony at <http://www.excitatio.com/hankskinner/HT111705v2.pdf> See PDF pages 19 to 52. NOTE: these are PDF page numbers, not the transcript page numbers.

¹⁴ Clearly, the preliminary theory of the crime was that Mr. Skinner (that any suspect) must have had accomplices. However, that theory was quickly dismissed.

and further implicated Mr. Skinner. It was the proverbial stone that killed two birds: Ms. Reed was no longer threatened with arrest, and the police elicited a sworn statement that allowed them to get their man.

Ms. Reed's helping Mr. Skinner into her home became "he entered my house without my consent and I did not know how". Ms. Reed's voluntarily treating Mr. Skinner's injured hand became "I only treated Hank's wounded hand because he entered my house against my will and threatened to kill me". Mr. Skinner's "don't call anyone" became "don't call anyone or I'll kill you".

Ms. Reed knew that Hank was too drunk to have been a physical threat to her that night, but she told the police "I believed that Hank was capable of killing me because of his intoxicated condition". Ms. Reed knew that Mr. Skinner had been no threat to Twila Busby, Elwin Caler or Randy Busby. Then just before trial, the prosecution again threatened Ms. Reed, and again Ms Reed cooperated. Her trial testimony matched the information contained in her police statement.

This phenomenon of people giving false confessions in criminal cases is well understood by psychiatrists and physiologists who specialize in criminal law. Admittedly, Ms. Reed didn't strictly give a false confession. She gave a false witness statement to the police and false witness testimony, but the psychology of a false witness statement is the same as that of a false confession.

Dr. Saul Kassin is a Distinguished Professor of Psychology at John Jay College of Criminal Justice and is a leading researcher into false confessions,

which he separates into three categories: 1) voluntary, no external pressure needed whatsoever, 2) coerced-compliant, in which the person realizes he or she is not guilty but confesses in order to receive a promised reward or avoid an adverse penalty, 3) coerced-internalized, in which an innocent person is induced to believe he or she is guilty.¹⁵

Clearly, Andrea Reed's false witness testimony was coerced-compliant. Her reward was to avoid arrest, and criminal psychologists accept and understand well why people when threatened give police false confessions, false sworn statements and give false testimony.

Sadly, and in general, the police and the courts often doubt that the last two categories of false confession exist. The courts definitely doubted that Ms. Reed gave a coerced-compliant false witness statement, for U.S. Magistrate Judge Averitte provided in his Findings, Conclusions, and Recommendation that "the Fifth Circuit has recognized that recanting witnesses should be viewed with suspicion by the courts. See *Wilkerson v. Cain*, 233 F.3d 886, 893 (5TH Cir. 2000)".¹⁶ In turn, Judge Averitte found Ms. Reed's recantation not credible.

However, even though the courts and general police officers are slow to accept this new psychological science, at least Cold Case Police detectives aren't. The U.S. Department of Justice, Office of Justice Programs published a report in

¹⁵ See *Police-Induced Confessions: Risk Factors and Recommendations*, available online at <http://www.ap-ls.org/links/confessions.pdf>

¹⁶ *Skinner v. Quarterman*, 2007 WL 582808 (N.D. Tex. 2007)(unpublished).

July of 2003 entitled “Cold Case Squads: Leaving No Stone Unturned”,¹⁷ written by Ryan Turner and Rachel Kosa. A few passages are included here:

- “Although forensic analysis and investigative techniques have greatly improved over the years, the resolution of cold cases is primarily rooted in a squad’s ability to identify, locate, and secure the testimony and cooperation of witnesses and informants.”
- “Cold case investigations place particular emphasis on securing the participation of previously unknown or uncooperative witnesses.”
- “With the passage of time, however, witnesses may no longer feel intimidated by threats or by the initial shock and publicity of a homicide.”

Exactly – with the passage of time witnesses may no longer feel intimidated by threats! With the passage of time Andrea Reed no longer felt intimidated by police threats. A good Cold Case detective would have understood Andrea Reed’s recantation.

Also, it’s important to note that Andrea Reed was an Alcoholics Anonymous (AA) counselor.¹⁸ Thus, she supported AA’s 12-step recovery program, of which three of those steps are especially telling:

- 4) Make a searching and fearless inventory of yourself.
- 8) Make a list of all persons you have harmed, and become willing to make amends to them all.
- 9) Make direct amends to such people whenever possible, except when to do so would injure them or others.

¹⁷ Available online at <http://www.ncjrs.gov/html/bja/coldcasesquads/199781.pdf>

¹⁸ See Ms. Reed’s November 16-18, 2005 federal evidentiary hearing testimony, online at <http://www.excitatio.com/hankskinner/HT111705v2.pdf> See PDF pages 271 to 272.

It's reasonable that Ms. Reed's recantation was for herself, as part of her 12-step recovery program, than it was to help Mr. Skinner. More so, read her whole November 16-18, 2005 federal habeas evidentiary hearing testimony.¹⁹ It was consistent, unflinching, relevant and reliable. By recanting Ms. Reed simply wanted to tell the truth, to make amends.

Hank Skinner got convicted and sentenced to death because the Pampa City Police and the Gray County District Attorney's Office coerced Andrea Reed into giving false evidence. Ms. Reed was coerced into giving the trial jury the false impression that Mr. Skinner might have "kicked" Twila Busby to death, and that Dr. Lowry's expert forensic toxicological testimony was bunk.

Issue #2: A More Likely Suspect Was Not Properly Investigated.

Robert Donnell, Twila Busby's maternal uncle, should have been the prime suspect in the murders of Twila Busby, Elwin Caler and Randy Busby on the night of December 31, 1993. Even though Donnell had the means, motive and opportunity, the police didn't investigate him,²⁰ and worse, Mr. Skinner's court appointed trial attorneys didn't adequately investigate Donnell.

¹⁹ Ms. Reed's full November 16-18, 2005 federal hearing testimony is available online. Her day one testimony is in PDF <http://www.excitatio.com/hankskinner/HT111605v1.pdf> See PDF pages 233 to 254. Her day two at <http://www.excitatio.com/hankskinner/HT111705v2.pdf> See PDF pages 19 to 52.

²⁰ According to June 29, 2000 *Houston Chronicle* article "Another death penalty case becomes focus of scrutiny", by James Kimberly and Mike Tolson, Pampa Police Deputy Chief Terry Young never considered Donnell a suspect. Young was lead investigator into the murders of Twila Busby, Elwin Caler and Randy Busby. This *Houston Chronicle* article is available online at http://www.chron.com/CDA/archives/archive.mpl?id=2000_3224610

It's reprehensible that the prosecution didn't investigate Donnell. According to Texas State Law "[i]t shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done."²¹ But it's almost evil that Mr. Skinner's defense attorneys, Harold Comer²² and Kenneth Fields, didn't investigate Donnell. As criminal defense lawyers Comer and Fields were duty bound to assert and defend Mr. Skinner's lawful position ("I am innocent") with zeal.

Comer and Fields had two theories of the crime: 1) Mr. Skinner was too intoxicated to have killed anyone²³, which was defeated by Andrea Reed's false testimony, and 2) Robert Donnell might have been the murderer, but Comer and Fields stopped investigating Donnell as a suspect for no apparent reason.

It was established at trial that less than an hour before Ms. Busby was found dead Donnell followed her around at Howard Mitchell's New Year's Eve party making rude sexual advances toward her. Ms. Busby was so agitated at Donnell that she asked Howard Mitchell to take her back home. Donnell left the party soon after Ms. Busby left.

²¹ See Texas Code of Criminal Procedure Article 2.01.

²² Prior to representing Mr. Skinner in his capital murder trial, Harold Comer was the District Attorney of Gray County, where he had twice previously prosecuted Mr. Skinner. This created a conflict of interest that literally crippled Mr. Skinner's defense during the punishment phase of trial. Mr. Comer had a duty to protect the confidence of his prior client, the State of Texas. Therefore, during this capital murder trial, Comer could not do anything when the prosecution raised Mr. Skinner's prior crimes during the punishment phase of the capital murder trial.

²³ In addition to Dr. Lowry's testimony about Mr. Skinner's state of intoxication, occupational therapist Joe Tarpley testified at trial that, as result of an injury sustained six months before the murders, Mr. Skinner's right hand grasping strength was at the time of the murders half normal, seriously limiting Mr. Skinner's ability to choke Ms. Busby with enough force to break her larynx and hyoid bone.

It wasn't established at trial that early the next morning, after being told of the murders, Donnell was unemotional and simply said "okay". Then the same day Donnell thoroughly cleaned his rarely cleaned old beat up truck. Donnell literally removed the inside carpet and seats, then scoured the metal interior with an astringent cleanser, but Comer or Fields didn't know this because they never interviewed Donnell's next door neighbor Debra Ellis.²⁴

Ms. Ellis also testified that she lived next door to Donnell for three years, and general testimony about Donnell's drunkenness and violence. In short, Donnell drank heavily, and his temper got worse after he'd been drinking. Donnell threatened one person in Ms. Ellis's presence. Donnell frightened his wife, Willie Mae Gardner, by pushing and yelling at her. Once Donnell grabbed a pregnant woman by the throat, lifted her off her feet, slammed her against a wall and threatened to kill her.²⁵

Worst, there was DNA evidence (there still is DNA evidence) that would have (and still can) establish that Robert Donnell murdered Twila Busby, Elwin Caler and Randy Busby. Comer and Fields should have requested pretrial DNA testing on: 1) vaginal swabs taken from Twila Busby at her autopsy, 2) Ms. Busby's fingernail clippings, 3) the knife found on the front porch, 4) the knife

²⁴ Ms. Debra Ellis testified at Mr. Skinner's November 16-18, 2005 federal habeas corpus evidentiary hearing. Her testimony is available online at <http://www.excitatio.com/hankskinner/HT111605v1.pdf> [See PDF pages 29 to 61.]

²⁵ See [Appendix H](#), page 7. Howard Mitchell interview with Gray County D. A. investigator Bill McMinn: "[Donnell] was over at my house one time and he grabbed [a woman] by the throat, slammed her up against the wall and said I'll kill you, you son of a bitch, and she was pregnant."

and dish towel found in a plastic bag in the living room, 5) the windbreaker jacket found on the living room floor, and 6) hairs found in Ms. Busby's hands.

Donnell's guilt would have been established. Mr. Skinner's innocence would have been established, but instead Hank Skinner got convicted and sentenced to death because Harold Comer and Kenneth Fields didn't properly investigate Robert Donnell.²⁶ Comer and Fields didn't do their jobs.

Issue #3: No Meaningful Post Conviction DNA Testing Allowed.

Prior to trial the prosecution requested DNA testing on only four items: 1) selected samples of blood stains on Mr. Skinner's shirt and pants, 2) blood found on a blanket on Randy Busby's bed, 3) hairs found on Mr. Busby's blanket, and 4) hairs found on Mr. Busby's back and cheek. Mr. Skinner's attorneys requested no DNA testing. Mr. Skinner's pants were found to contain blood from himself, Ms. Busby and Elwin Caler. The blood on the blanket was found to be that of Randy Busby, the hair on Mr. Busby's body was also his, and the hair on the blanket came from Elwin Caler. These results tend to show that Mr. Skinner came in contact with with Twila Busby and Elwin Caler after they were injured. They do not indicate how that contact occurred or show that Mr. Skinner inflicted the injuries that caused their deaths.

Mr. Skinner was convicted based primarily on the circumstantial evidence that he was in the house when the murders occurred, that he had blood from two

²⁶ Robert Donnell died in an automobile accident in 1997.

of the victims on his clothes, and that he supposedly told Andrea Reed soon after the murders that he might have “kicked” Twila to death. Note, there was no physical evidence at all that Ms. Busby was kicked.

In 1999-2000 David Protes, Professor of Journalism at Northwestern University and Director of the Medill Innocence Project, lead a team of investigative reporting students on two trips to Pampa, Texas. Their goal was to find the truth, not to advocate on behalf of Mr. Skinner. Over the last 20 years the Medill Innocence Project uncovered evidence that led to the exoneration of 11 prisoners in Illinois and Michigan, five from death row, they also found evidence that affirmed four convictions. Their goal is in fact to see justice done.

Dr. Protes provides the details of his investigation into Mr. Skinner’s case in a statement included in [Appendix J](#), Letters in Support for Commutation from Relatives, Friends and Concerned Citizens. One particularly troubling comment is “[a] close friend of [Twila Busby] stated that she confided to having been raped by her uncle.”²⁷ Otherwise, Dr. Protes came to three conclusions from his 1999-2000 investigations: 1) Mr. Skinner’s guilt is questionable at best, and in fact he may well be innocent, 2) innocent or guilty, he did not receive a fair trial and

²⁷ From this statement and established facts one can envision what really happened between Robert Donnell, Twila Busby, Elwin Caler, Randy Busby and Henry Skinner on New Year’s Eve, 1993. Donnell made crude sexual advances upon Ms. Busby at Howard Mitchell’s party. Because of the prior rape, Ms. Busby felt especially threatened and immediately went back home. Donnell followed her back to her home to continue his sexual advances. Rebuffed once again Donnell, who had a history of violence while drinking, strangled, assaulted and killed Ms. Busby. Elwin Caler confronted Donnell and was fatally stabbed. Randy Busby was stabbed in his sleep. Mr. Skinner was wounded in the hand. Mr. Caler and Mr. Skinner hobbled away: Mr. Caler collapsed from his injuries in the alley; Mr. Skinner made it to Andrea Reed’s home.

sentence, and 3) physical evidence that has not been tested can still be used to help determine his innocence or guilt.

Dr. Protesch went public with his conclusions in 2000, and as a direct result Gray County District Attorney John Mann had some additional DNA material tested. Once again, all of the evidence available was not tested. Also, Mann ignored repeated requests by Mr. Skinner's attorneys to participate in the testing process to insure the relevance and reliability of the results. Mann unilaterally arranged for GeneScreen, a private laboratory in Dallas, to do the testing. GeneScreen issued four reports, but no results proved guilt or innocence.²⁸

On December 24, 2000 (before the fourth and final GeneScreen report was released) Mann announced in the Pampa News newspaper that the strands of hair found in Twila Busby's right hand belonged to Mr. Skinner. However, GeneScreen published entirely different results in their fourth and final report on February 6, 2001: "Henry Watkins Skinner is excluded as a potential contributor" to #1 hair from Twila Busby's right hand, and "[t]he profile from ... the #2 hair from [Ms. Busby's] right hand was inconclusive".

Mann demonstrated a win at all costs attitude instead of his sworn duty "not to convict, but to see that justice is done". All requests to test the remaining crime-scene DNA evidence, even when Mr. Skinner offered to pay the costs, have been refused. Similarly, all legal actions Mr. Skinner has filed with the

²⁸ The four GeneScreen reports were issued on August 24, 2000 (report 1), September 20, 2000 (report 2), October 2, 2000 (report 3) and February 6, 2001 (report 4). Each is available online at <http://www.excitatio.com/hankskinner/GeneScreen/index.html>

courts to force the State of Texas to test, or allow Mr. Skinner to test, the remaining evidence have been denied, or are pending appeal. This is not justice.

The remaining untested DNA crime scene evidence will provide proof. There are 1) the vaginal swabs take from Twila Busby at her autopsy, 2) Twila Busby's fingernail clippings, 3) the knife found on the front porch, 4) the knife and dish towel found in a plastic bag in the living room, 5) the windbreaker jacket found on the living room floor, and 6) the hairs found in Twila Busby's hands.

Justice screams to test this remaining evidence, to allow Mr. Skinner the chance to prove that Robert Donnell's DNA is on the vaginal swab, under Ms. Busby's fingernails, on either of the knives, on the windbreaker, or that the hairs found in Ms. Busby's hands were Donnell's.

Hank Skinner got convicted and sentenced to death because his trial attorneys didn't get all of the available DNA crime scene evidence tested before trial. Thus, because the State of Texas and the courts continue to refuse to allow Mr. Skinner to test the remaining crime scene DNA evidence, even at his own expense, an innocent man may get executed. This is not justice.

Conclusion

Given its current critical attention, this Clemency Application would be lacking if not to mention Cameron Todd Willingham and the ongoing Texas

Forensic Science Commission investigation into Mr. Willingham's case.²⁹

Cameron Willingham was convicted of capital murder and sentenced to death in 1992. The prosecution claimed he intentionally set fire to his home in order to kill his own three young daughters. In 2008 the Texas Forensic Science Commission agreed to investigate Mr. Willingham's case, and, in turn, the commission hired renowned arson expert Dr. Craig Beyler to review and analyze it. In August 2009, Dr. Beyler issued his report to the commission³⁰, concluding that the forensic science used to convict Mr. Willingham was wrong and the crime-scene fire investigators who gave testimony to the jury at trial should have known it was wrong.

The [crime-scene] investigators had poor understandings of fire science and failed to acknowledge or apply the contemporaneous understanding of the limitations of fire indicators. Their methodologies did not comport with the scientific method or the process of elimination. A finding of arson could not be sustained based upon the standard of care ... expressed by fire investigation texts and papers in the period 1980–1992.

It is likely that the Texas Forensic Science Commission will some day issue a report³¹ finding that Mr. Willingham's daughters were not murdered by arson, but instead died tragically in an accidental house fire. Then when that day comes, it will become official: the State of Texas executed an innocent man. The

²⁹ The case study article about Cameron Todd Willingham appeared in the September 7, 2009 edition of *The New Yorker*, entitled *Trial by Fire*, written by David Grann. It is available online at http://www.newyorker.com/reporting/2009/09/07/090907fa_fact_grann

³⁰ Dr. Craig Beyler's full August 17, 2009 report to the Texas Forensic Science Commission is available online at <http://www.excitatio.com/hankskinner/Beyler081709.pdf>

³¹ In October 2009 the Texas Forensic Science Commission put their investigation into Mr. Willingham's case on hold. The investigation is ongoing.

caution now is to prevent the same thing from happening to Mr. Skinner. There must not be another case where there's any doubt whatsoever about executing an innocent man or an innocent woman.

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Omar Khayyam (1048–1131). Rubaiyat 51.
Translation by Edward J. Fitzgerald. 1859.

The Moving Finger writes; and, having writ,
Moves on: nor all your Piety nor Wit
Shall lure it back to cancel half a Line,
Nor all your Tears wash out a Word of it.

Is it worth the risk of executing an innocent man? Once it's done, it can't be cancelled. The moving finger moves on. Having writ, it won't be forgotten, not half a line, not a word. Piety and Wit will be useless. Tears won't cleanse the soul. An innocent man will have been executed. Is it worth the risk?

————— ◆ —————
Mr. Skinner was not capable of committing the murders. Dr. Lowry testified at trial and at the November 16-18, 2005 federal habeas evidentiary hearing that given the amounts of alcohol and codeine in Mr. Skinner's system, it was "virtually impossible" for Mr. Skinner to have murdered three people at midnight on December 31, 1993. Howard Mitchell validated Dr. Lowry's assessment of Mr. Skinner that night: "[at about 10:30pm] I jerked on [Mr. Skinner's] arm and everything ... [a]nd there wasn't no response at all". Occupational therapist Joe Tarpley testified at trial that, as result of an

injury six months earlier, Mr. Skinner's right hand grasping strength was half normal, seriously limiting Mr. Skinner's ability to choke Ms. Busby with enough force to break her larynx and hyoid bone.

Andrea Reed deceived the jury with her false testimony. Andrea Reed's false testimony that Mr. Skinner was not overly intoxicated gave the jury the false impression that Dr. Lowry's expert toxicological opinion and Howard Mitchell's firsthand experience of Mr. Skinner's 1993 New Year's Eve stupor were incorrect. Ms. Reed's false testimony that Mr. Skinner supposedly told her that he might have "kicked" Twila Busby to death, even though there was no evidence that Ms. Busby was in fact kicked, gave the jury the false impression that Mr. Skinner committed the crimes.

Andrea Reed's recantation is credible. Expert criminal psychologist Dr. Saul Kassin explains how individuals fall victim to police coerced-compliant false witness statements. U.S. Department of Justice Cold Case squads explain how many times witnesses come forward with the truth only years after the original crime. Ms. Reed's commitment to Alcoholics Anonymous and its 12-step recovery program suggests why Ms. Reed was ultimately courageous enough to come forward and tell the truth in Mr. Skinner's case. That is, Ms. Reed recanted her prior false statements and false testimony to help herself, not to help Mr. Skinner. Ms. Reed needed, for herself, to make amends.

Robert Donnell was the most likely murder suspect. Donnell had a history of violence, in general, and a history of sexual violence against Twila Busby, in particular. He showed no emotion when he learned that Ms. Busby, Elwin Caler and Randy Busby were murdered the night before, but he immediately and meticulously cleaned his rarely clean truck. No one can account for his time or actions when and after the murders occurred.

Vital crime-scene DNA evidence remains untested. This is the greatest injustice of all. There is crime-scene DNA evidence available, for which the chain of custody is sufficient, the integrity of the evidence has been maintained, and the evidence can scientifically establish guilt or innocence. Yet this evidence remains untested.

Request for Relief

Immediately, Mr. Skinner requests the Texas Board of Pardons and Paroles to convene an Open Public Hearing. Otherwise, Mr. Skinner requests the members of the Texas Board of Pardons and Paroles to recommend to Governor Perry that he commute Mr. Skinner's death sentence to life in prison. Mr. Skinner may then seek to prove his innocence without any threat of execution.

Respectfully submitted,

Ward Larkin
Authorized Representative for Henry Watkins Skinner