

IN THE CIRCUIT COURT OF TALLADEGA COUNTY, ALABAMA

WILLIAM ERNEST KUENZEL,

Petitioner,

v.

STATE OF ALABAMA

Respondent.

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Case No. \_\_\_\_\_

(Related to Case No. CV-93-351)

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**AFFIDAVIT OF DAVID A. KOCHMAN IN SUPPORT OF  
PETITIONER KUENZEL'S SUCCESSIVE PETITION FOR  
RELIEF FROM JUDGMENT PURSUANT TO RULE 32 OF  
THE ALABAMA RULES OF CRIMINAL PROCEDURE**

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STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF NEW YORK )

I, David A. Kochman, hereby swear the following to be true and correct to the best of my knowledge under penalties of perjury:

1. I am an attorney of the law firm Reed Smith LLP, and am counsel to William Ernest Kuenzel ("Kuenzel"), petitioner in the within action. I make the following statements freely based upon facts within my personal knowledge and, if called to testify, would testify consistently with all of the facts contained herein. I submit this Affidavit in support of Kuenzel's Successive Petition for Relief From Judgment Pursuant to Rule 32 of the Alabama Rules of Criminal Procedure.

2. On Friday, March 5, 2010, counsel for the State, Assistant Attorney General J. Clayton Crenshaw, produced to me the following six (6) documents:

- (a) Handwritten notes from an interview conducted by someone with Crystal (Floyd) Moore that were undated;

- (b) Transcript of grand jury testimony from Crystal (Floyd) Moore, dated March 9, 1988 (Exh. J hereto);
- (c) Transcript of a police statement provided by Crystal (Epperson) Ward, dated December 9, 1987;
- (d) Transcript of grand jury testimony from Crystal (Epperson) Ward, dated March 9, 1988 (Exh. L hereto);
- (e) Transcript of a police statement provided by April Harris, dated December 9, 1987; and
- (f) Transcript of grand jury testimony from April Harris, dated March 9, 1988 (Exh. A hereto).

3. Prior to March 5, 2010, I had never before seen any of the above-referenced documents. Additionally, I reviewed the entire file I maintain in my office regarding Kuenzel's case, and was not able to locate any of these documents among my records. Although my records contained certain other witness statements, police notes and transcripts, the documents provided to me by Mr. Crenshaw on March 5, 2010 were not among those files.

4. On September 3, 2010, Mr. Crenshaw produced to me additional previously undisclosed documents, including handwritten police notes of statements made by Harvey Venn in the days following the murder but before Kuenzel was sought for questioning. I reviewed the entire file I maintain in my office regarding Kuenzel's case, and was able to locate only one of these statements from Venn—a police-prepared summary entitled "Substance of interview of Harvey Venn on Nov. 11, 1987" (Exh. E hereto)—among the documents in my case file. Prior to September 3, 2010, I had never before seen any of the other above-referenced documents.

5. I note that, following the untimely death in June 2006 of Kuenzel's prior *pro bono* post-conviction counsel, David Dretzin, I took possession of the entire case file he maintained regarding Kuenzel's matter. The case file I maintain in my office includes a complete copy of Kuenzel's trial counsel's original files—a fact that I verified both with Mr. Dretzin prior to his

passing, and with Kuenzel's trial counsel, William J. Willingham—and his appellate counsel's original files. Apart from current counsel of record, Mr. Dretzin was the only other attorney that represented Mr. Kuenzel in post-conviction proceedings prior to my tenure as counsel of record.

6. Attached hereto as Exhibit A is a true and correct copy of April Harris's previously undisclosed testimony before the Grand Jury, dated March 9, 1988.

7. Attached hereto as Exhibit B is a true and correct copy of "State Prod. #15", which are 5-pages of previously undisclosed notes taken by Officer Dusty Zook during an interview conducted with Harvey Venn at 8:33 p.m. on November 11, 1987.

8. Attached hereto as Exhibit C is a true and correct copy of "State Prod. #10", which is one page of previously undisclosed notes taken by the police during an interview conducted with Harvey Venn at 3:55 p.m. on November 11, 1987.

9. Attached hereto as Exhibit D is a true and correct copy of "State Prod. #11", which is one page of previously undisclosed notes taken by the police during an interview conducted with Harvey Venn.

10. Attached hereto as Exhibit E is a true and correct copy of "State Prod. #13", which is a police-prepared summary purporting to contain the "Substance of interview of Harvey Venn on Nov. 11, 1987." Of the documents containing statements from Venn produced by the State on September 3, 2010, State Prod. #13 was the only one Kuenzel previously possessed.

11. Attached hereto as Exhibit F is a true and correct copy of "State Prod. #14", which is one page of previously undisclosed notes taken by the police during an interview conducted with Harvey Venn.

12. Attached hereto as Exhibit G is a true and correct copy of a transcript of a statement given to the police by Harvey Venn, dated November 15, 1987, at 2:20 a.m.

13. Attached hereto as Exhibit H is a true and correct copy of a transcript of a statement given to the police by Harvey Venn, dated December 9, 1987.

14. Attached hereto as Exhibit I is a true and correct copy of the Declaration of Crystal Anne (Floyd) Moore, dated November 25, 2008.

15. Attached hereto as Exhibit J is a true and correct copy of Crystal Floyd's previously undisclosed testimony before the Grand Jury, dated March 9, 1988.

16. Attached hereto as Exhibit K is a true and correct copy of the Declaration of Carolyn Lewis-Gibbons, dated February 21, 1999, including two attachments thereto.

17. Attached hereto as Exhibit L is a true and correct copy of Crystal Epperson's previously undisclosed testimony before the Grand Jury, dated March 9, 1988.

18. Attached hereto as Exhibit M is a true and correct copy of the Case Action Summary from the Circuit Court of Clay County regarding Harvey Venn's arrest and prosecution on a felony drug charge around the time of the murder.

19. Attached hereto as Exhibit N is a true and correct copy of the Declaration of William Ernest Kuenzel, dated in or about June 2002. An original signed version of this document was placed on file with the Clerk of the Court for the Northern District of Alabama, Case No. 1:00-cv-316 at Docket 50.

20. Attached hereto as Exhibit O is a true and correct copy of 3-pages of notes taken by the police during an interview conducted with William Kuenzel at 9:10 p.m. on November 11, 1987. Kuenzel submits Exhibit O not for the substance of the witness statement, but to evidence that the police did not mention observing any bruising or injuries on Kuenzel on November 11, 1987. Yet, just 40 minutes earlier, the police observed and noted bruising on Venn's left eye and left arm during their interview with him. Compare Exh. O, with Exh. B.

21. In the event the substance of Kuenzel's November 11<sup>th</sup> statement is raised, I note the following context in which Kuenzel's statements were offered. On November 11, 1987, when the police questioned Kuenzel regarding Venn's whereabouts two days earlier on November 9<sup>th</sup>, Kuenzel "thought [Venn] might be in trouble for passing some bad checks." Exh. N, p. 8. Indeed, at the time, Kuenzel "had no idea [Venn] was suspected of murder in connection with the death of Linda Offord." Id. Further, when Venn returned to their shared residence on November 9<sup>th</sup>, Venn "said that, if anyone asked when he got home that night, it was around 10 or 10:30 p.m. [and Kuenzel] assumed [Venn] had been cheating on his girl friend, Crystal [Floyd], and didn't want her to know he was out late that night with someone else." Id. at p. 7. For this reason, to the extent Kuenzel told the police that Venn came home on November 9<sup>th</sup> "Right @ 10 or 5 after Monday," (Exh. O), Kuenzel did not know Venn was a murder suspect, and merely was trying to do his friend a favor. That said, Kuenzel became uncomfortable with this lie and, immediately thereafter, qualified his statement, telling the police that Venn "had been drinking [and it was] possible he [Venn] could have left when I went to bed. I did smoke." Id. In sum, the substance of Kuenzel's witness statement evidences nothing more than the fact that Kuenzel tried to help out his friend within limits, and corroborates Kuenzel's consistently-maintained position that he was not with Venn at any time between 8 p.m. and 11 p.m. on November 9<sup>th</sup>.

22. Attached hereto as Exhibit P is a true and correct copy of the Affidavit of James R. Gill, M.D., dated September 27, 2010, including Exhibits A through D appended thereto.

Dated: September 17, 2013

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David A. Kochman

Sworn to before me  
this 17th day of September 2013

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Notary Public