THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

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DATE	COMM	ACTION
3/30/23	SM	Favorable
4/3/23	JU	Favorable

March 29, 2023

The Honorable Kathleen Passidomo
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 8** – Senator Jones
HB 6001 – Representative Gottlieb
Relief of Leonard Cure by the State of Florida

SPECIAL MASTER'S FINAL REPORT

THIS IS A SUPPORTED CLAIM FOR $817,000 TO BE APPROPRIATED FROM THE GENERAL REVENUE FUND TO THE DEPARTMENT OF FINANCIAL SERVICES, AND A WAIVER OF TUITION AND FEES FOR UP TO 120 HOURS OF INSTRUCTION, TO COMPENSATE LEONARD CURE FOR 16 YEARS OF WRONGFUL INCARCERATION.

FINDINGS OF FACT:

General Overview of the Crime

On November 10, 2003, at 7:15 a.m., a man with a firearm forced his way into a Dania Beach Walgreens store. The man threatened one of the employees with the firearm and then left with $1,700 in cash. Only two employees, Ashraf Rizk and Kathy Venhuizen, were present during the robbery.[1]

Rizk, the manager of the Walgreens, saw the perpetrator in the parking lot when he arrived at work and asked the perpetrator if he needed anything. This occurred at

[1] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 1.

approximately 7:00 a.m.[2] The perpetrator responded that he was waiting to make sure his child got on the bus. When Rizk opened the door at 7:15 a.m. to let Venhuizen in the door, the perpetrator fought with Rizk and threatened him with a firearm. The perpetrator retrieved money from the store safe and fled the scene at approximately 7:24 a.m.[3] The perpetrator was described as wearing long jean shorts, a denim jacket, and a red baseball cap.[4]

Identification of Mr. Cure

The two witnesses gave conflicting statements as to the appearance of the perpetrator. Venhuizen described a black male, five foot eight inches, stocky, and missing teeth on the left side of his mouth, like a "vicious animal." She also described him as "neat" and "well-dressed." Rizk described the perpetrator as wearing a blue jean jacket and long blue jean shorts. He had no recollection of the perpetrator missing teeth. [5]

On November 12, 2003, both Rizk and Venhuizen met with Detective Gajate to work on a composite sketch. Detective Gajate, was not a trained sketch artist. Rizk and Venhuizen argued over the sketch, and Venhuizen "did most of the talking," in relation to the composite.[6]

Deputy Bell was posted outside of a nearby elementary school on the day of the robbery. Deputy Bell saw a boy walking to school with a man who was wearing blue jean shorts, a blue jean jacket, and a red baseball cap at approximately 7-8 a.m. Deputy Bell recognized the boy because she sees him regularly walking with his sister to school. She did not recognize the man at the time she saw him walking past her patrol car.[7]

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[2] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 3, (December 8, 2020).
[3] *Id*.; Innocence Project of Florida, Inc, *Statement of Facts and Case*, 1-2.
[4] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 3, (December 8, 2020).
[5] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 3, (December 8, 2020).Innocence Project of Florida, Inc, *Statement of Facts and Case*, 2.
[6] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 2, (December 8, 2020).
[7] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 2, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 2.

At approximately 7:24 a.m., a dispatch regarding the robbery went out. Deputy Bell arrived at the scene of the robbery where she learned the description of the perpetrator was a black male wearing blue jeans and a jacket. Deputy Bell did not mention seeing a man matching that description. It was not until a few days later that she remembered seeing a person matching the description of the perpetrator walk past her patrol car.[8]

A few days later, Lieutenant Stewart showed Deputy Bell a photograph of Leonard Cure, and Deputy Bell concluded Mr. Cure was the man she saw walking. After Lieutenant Stewart gave Deputy Bell Mr. Cure's name, Deputy Bell met Mr. Cure at his residence a few months earlier while she was reviewing criminal registrants and prison releases.[9]

Lieutenant Stewart stated she went onto a computer to search a program called "TRAP," which is a program that had information and photographs of people who have been arrested, or were on prisoner release, and lived in the area.[10] Lieutenant Stewart chose a photograph from the database based on Venhuizen's statement that the perpetrator's physical appearance was "neat." Stewart chose only Mr. Cure's photograph because it appeared he maintained a well-kept appearance.[11]

Approximately a week after the robbery, detectives constructed a lineup and asked both Venhuizen and Rizk to identify the suspect independently.[12]

Lineup and Arrest

On November 17, 2003, Vehuizen was presented six men in a photo lineup, and she chose number three, Leonard Cure, but noted he did not have the same skin tone as the perpetrator. Detective Mellies then showed her a second four-

[8] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 2-3, (December 8, 2020).
[9] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 3, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 2.
[10] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 6, (December 8, 2020).
[11] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 6, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 2.
[12] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 3.

person photo lineup where all four photos were of Leonard Cure.[13]

On November 19, 2003, Rizk was presented a photo lineup and narrowed it down to numbers one and three. He stated he was not 100 percent sure.[14] Rizk also stated he was not sure which person it was, and noted the issue of complexion. Detective Mellies then presented a second lineup with photos of only Leonard Cure.[15] Rizk did not realize the second set of photos were the same person and at trial testified "I thought they [were] three different people."[16]

Leonard Cure was arrested on November 20, 2003 for robbery with a firearm and assault with a firearm based on this identification.[17]

Trial and Conviction

The state relied on Venhuizen's identification of Mr. Cure and the fact he had a missing side tooth.[18]

The witness Venhuizen described the perpetrator as missing a tooth on the left side of his face. Mr. Cure had both a missing side and front tooth. Mr. Cure's girlfriend, Enid Roman testified that Mr. Cure wore a bridge and never left home without it. She never knew his teeth were missing until after they started dating. [19]

Detective Mellies testified at trial that he identified the young boy seen by Deputy Bell, and the boy selected Mr. Cure from a lineup. This boy was not called as a witness, the prosecutor had no knowledge of the boy's identity, and Mellies had no report of the boy's identification.[20]

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[13] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 5, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 3.
[14] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 3, (December 8, 2020).
[15] Innocence Project of Florida, Inc, *Statement of Facts and Case*, p. 3.
[16] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 3, (December 8, 2020).
[17] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 3.
[18] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 3.
[19] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 4.
[20] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 3.

Alibi Defense

Mr. Cure presented evidence of an alibi. Mr. Cure left home the morning of the robbery at 6:00 a.m. with his girlfriend Enid Roman and her three children. After Roman dropped the children off at school and daycare, she dropped Mr. Cure off at a bus stop. After exiting the first bus and before catching the second bus on the route he took to work, Mr. Cure stopped by an ATM. Mr. Cure withdrew 20 dollars at 6:52 a.m.[21]

Mr. Cure's manager testified Mr. Cure was a permanent worker with the company because Mr. cure was always on time. On the day of the robbery, Marty Weiss testified he entered the work site at 8:00 a.m., and Mr. Cure was already present. Additionally, Wayne Knox, Mr. Cure's co-worker, stated in his sworn statement that he arrived to work at 7:00 a.m., on the day of the robbery and Mr. Cure got there after him, between 7:00 a.m. and 7:20 a.m.[22]

Mr. Cure's work attire was construction boots and clothing suitable for construction work, including long pants.[23]

On August 17, 2004, the jury could not reach a unanimous decision and the court ordered a mistrial. Mr. Cure refused an offer of 7 years of incarceration in exchange for a guilty plea.

The second trial began several weeks later, and Rizk testified as a defense witness. Rizk testified he was not sure that Mr. Cure was the person who committed the robbery.[24]

Mr. Cure was found guilty and sentenced to life in prison for armed robbery and assault with a firearm.[25]

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[21] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 15-17, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 4.
[22] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 15-17, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 4.
[23] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 15-17, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 4.
[24] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 5.
[25] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 5,

Conviction Review Unit Findings and Recommendation

The Conviction Review Unit (CRU) of the 17th Judicial Circuit received a request from Mr. Cure to re-investigate his case. After initial review, Assistant State Attorney Arielle Demby Berger reached out to the Innocence Project of Florida, who became counsel for Mr. Cure in February 2020.[26]

As a result of the CRU's initial investigation, the Office of the State Attorney for the 17th Judicial Circuit agreed to resentence Mr. Cure to time-served to allow for his immediate release while the reinvestigation continued. [27] The order, in part, stated "[t]he CRU recommends that in light of all the facts and circumstances of the case it is in the best interest of justice to release Cure to a time-served sentence." Mr. Cure was released on April 14, 2020.[28]

The CRU made the following factual conclusions:

The Alibi: The CRU found undisputed evidence of Mr. Cure's alibi, including an ATM receipt showing Mr. Cure at a Wachovia at 6:52 a.m., 3.2 miles from the crime scene. Additionally, there was undisputed testimony Mr. Cure was at work at approximately 7:00 a.m., 7 miles from the crime scene. Mr. Cure did not have access to a car on the morning of the crime, and was relying on the bus system to get to work. The CRU timed the route and determined it was not possible for Mr. Cure to be at the ATM, go to the crime scene, and get back to work by the time he was seen by his coworker.[29]

The Identification: The CRU concluded the only reason Mr. Cure was in the photo lineup was because of Venhuizen's description that the perpetrator was "neat," and Lieutenant Stewart chose the only photo depicting a man who seemed to fit that description. Furthermore, the CRU's investigation determined "it is clear that Leonard Cure was not identified through the 'TRAP' program," as stated by Lieutenant Stewart. It is unclear how Mr. Cure's photo was retrieved.[30]

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[26] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 5.
[27] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 5.
[28] Claimant, Leonard Cure, Exhibit List, *Tab E –Resentencing Order* (April 14, 2020).
[29] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 15-17, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 6.
[30] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 8, (December 8, 2020).

The CRU further discovered a second photo array was shown to both victims that included four photos all of which were Mr. Cure. The CRU had serious concerns about the reliability of the identification due to the suggestive nature of the multiple lineups.[31]

The boy: The witnesses described the perpetrator with or waiting for a young boy. The State's theory was that this boy was Enid Roman's son. Detective Mellies indicated he spoke with the boy who identified Mr. Cure, but there was no corroborative documentation of this. The CRU's investigation determined the boy was not Enid Roman's son, and the police never spoke to Enid Roman's son regarding this case.[32]

Teeth: Venhuizen described the perpetrator as missing teeth on the left side of his mouth. Mr. Cure was missing a front tooth and one side tooth. Mr. Cure never left his house without wearing his bridge.[33] Based on an expert report the CRU determined Mr. Cure's teeth were different than that described by Venhuizen.[34] Additionally, the second eye witness, Rizk, did not describe the perpetrator as missing teeth. [35]

The CRU concluded the only item tying Mr. Cure to the crime is the identification by Venhuizen, who was under a great deal of stress during and following the crime.[36] Additionally, "a complete review of the evidence presented at trial and in discovery, as well as further investigation of that evidence demonstrates that the case against Mr. Cure gives rise to a reasonable doubt as to his culpability, and that he is most likely innocent."[37, 38]

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[31] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 6.
[32] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 12-14, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 6.
[33] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 8, (December 8, 2020).
[34] Claimant, Leonard Cure, Exhibit List, *Tab H –Expert Dental Report by Dr. Carrigan Parish, DMD, PhD,* (September 28, 2020).
[35] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 6.
[36] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 19, (December 8, 2020).
[37] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 6.
[38] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 2, (December 8, 2020).

Mr. Cure's convictions were vacated on December 10, 2020.[39] [40] [41] [42]

LITIGATION HISTORY:

November 20, 2003, Leonard Cure was arrested for robbery with a firearm and assault with a firearm.

August 17, 2004, there was a mistrial after the jury could not reach a unanimous decision. Several weeks later, another trial was held and Mr. Cure was convicted and sentenced to life in prison.

April 14, 202, Mr. Cure was released from prison.

December 10, 2020, Mr. Cure's conviction was vacated.

CONCLUSIONS OF LAW:

Standard of Proof in Wrongful Incarceration Compensation Claims

The appropriate standard of proof applied in a wrongful incarceration claim bill is whether there is *clear and convincing evidence* the claimant committed neither the act nor the offense that served as the basis for the conviction and the claimant did not aid, abet, or act as an accomplice.

Generally, the standard of proof in the claim bill process is preponderance of the evidence. However, in 2008, the Legislature established a clear and convincing standard of proof for wrongful incarceration claims under chapter 961, of the FloridaStatutes. While the Legislature is not bound to the statutory requirements, precedent[43] and equitability suggest the applicable standard of proof in a wrongful incarceration claim bill should be consistent with these statutory requirements. There have been two wrongful incarceration claim bills passed since the enactment of chapter 961, of the FloridaStatutes. Both of these bills have utilized a clear and convincing standard.[44] Additionally, a person who is barred from receiving compensation under the statutory framework

[39] Innocence Project of Florida, Inc, *Statement of Facts and Case*, p. 7.
[40] Claimant, Leonard Cure, Exhibit List, *Tabs F- Order Vacating Convictions and Sentences* (December 10, 2020) and *G- Nolle Prosequie*, (December 10, 2020).
[41] Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 17:14-17:26.
[42] *Id.* at 17:35-18:01.
[43] Senate Special Master Report Re: CS/SB 2 (2012) (November 1, 2011) (recommending relief regarding Mr. William Dillon's wrongful incarceration claim); Senate Special Master Report Re: SB 28 (2020) (January 23, 2020) (recommending relief regarding Mr. Clifford Williams' wrongful incarceration claim).
[44] *Id*.

due to prior felony convictions may only be compensated for a wrongful conviction through an act of grace by the Legislature. Applying a lower standard of proof to those barred from statutory relief would create an inequitable result.

Clear and convincing evidence is "evidence making the truth of the facts asserted 'highly probable."[45] A clear and convincing standard "is a greater burden than preponderance of the evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials."[46] Florida jury instructions provide clear and convincing evidence is "evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue."[47]

Compensation for Wrongful Incarceration Compensation Claims

Chapter 961,of the Florida Statutes, provides that compensation for wrongful incarceration is calculated at a rate of $50,000 for each year of wrongful incarceration, and is prorated as necessary.[48] Additionally, a petitioner may receive a waiver of tuition and fees for up to 120 hours of instruction at a career center, Florida College System Institution, or any state university;[49] the amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person;[50] and the amount of reasonable attorney's fees and expenses incurred by the wrongfully incarcerated person.[51] The total amount awarded may not exceed $2 million.[52]

Similar to the standard of proof, the Legislature is not bound by the statutory requirements of chapter 961, of the Florida Statues, but precedent and equitability suggest these requirements be applied.

[45] *Slomowitz v. Walker*, 429 So. 2d 797, 799 (4th DCA 1983).
[46] Bryan A. Garner, Black's Law Dictionary (2006).
[47] Standard Jury Instructions-Civil (No. 405.4).
[48] Section 961.06(1)(a), F.S.
[49] Section 961.06(1)(b), F.S.
[50] Section 961.06(1)(c), F.S.
[51] Section 961.06(1)(d), F.S.
[52] Section 961.06(1), F.S.

Conclusion Based upon Findings of Fact and Clear and Convincing Evidence

Mr. Cure presented strong, undisputed evidence of an alibi. There was an ATM receipt showing Mr. Cure at a Wachovia at 6:52 a.m., 3.2 miles from the crime scene. Additionally, there was undisputed testimony Mr. Cure was at work at approximately 7:00 a.m., 7 miles from the crime scene. Mr. Cure did not have access to a car on the morning of the crime, and was relying on the bus system to get to work. It was not possible for Mr. Cure to be at the ATM, go to the crime scene, and get back to work by the time he was seen by his coworker.

Further, the evidence relating to the identification of Mr. Cure was unreliable and suggestive in nature. The only reason Mr. Cure was in the photo lineup was because of Venhuizen's description that the perpetrator was "neat," and Lieutenant Stewart chose the only photo depicting a man who seemed to fit that description. The CRU's investigation determined Mr. Cure was not identified through the TRAP program as stated by the Lieutenant. It remains unclear how Mr. Cure's photo was retrieved. The second photo array shown to both victims only included four photos all of which were Mr. Cure.

Additionally, one victim described the perpetrator as missing teeth on the left side of his mouth. Mr. Cure was missing a front tooth and one side tooth, but never left his house without wearing his bridge. Based on an expert report the CRU determined Mr. Cure's teeth were different than that described by the victim.

The State's theory that the boy seen with the perpetrator was Enid Roman's son has been proven wrong. Detective Mellies indicated he spoke with the boy who identified Mr. Cure, but there was no corroborative documentation of this. The CRU's investigation determined the boy was not Enid Roman's son, and that the police never spoke to Enid Roman's son regarding this case.

The only evidence tying Mr. Cure to the crime is the identification by Venhuizen, who was under a great deal of stress during and following the crime.

The materials presented did not include any substantiated evidence demonstrating Mr. Cure's involvement in the crime.

Given the evidence provided during the claim bill process, the undersigned finds the claimant has demonstrated actual innocence by clear and convincing evidence.

The claimant was wrongfully incarcerated and the amount of $817,000, calculated at the rate of $50,000 per year is reasonable.

ATTORNEY FEES:

This bill does not allocate any funds for attorney or lobbying fees. Additionally, the claimant's attorney submitted a Statement on Payment for Attorney, stating the claimant had retained attorney Seth Miller of the Innocence Project of Florida, to represent him during the Special Master hearing. Mr. Miller, nor any other individuals rendering services on behalf of Mr. Cure in support of this claim bill are receiving any form of payment or compensation, and all representation is *pro bono*.[53]

RECOMMENDATIONS:

Based upon the evidence submitted prior to and during the special master hearing, the undersigned finds the claimant has demonstrated actual innocence by clear and convincing evidence. There is clear and convincing evidence that the claimant committed neither the act nor the offense that served as the basis for the conviction and that the petitioner did not aid, abet, or act as an accomplice, and the relief sought is reasonable.

The undersigned recommends the bill be reported FAVORABLY.

Respectfully submitted,

Amanda Stokes
Senate Special Master

cc: Secretary of the Senate

[53] *See*, Innocence Project of Florida, Inc. *Statement on Payment for Attorney* (2023).