Application for Executive Clemency

Submitted on Behalf of

Richard Charles Johnson

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to

The Honorable Jim Hodges
Governor of the State of South Carolina
Columbia, South Carolina

Pursuant to S.C. Const. § 14

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Richard Johnson seeks executive clemency because he did not commit the crime for which he was convicted and sentenced to death. He is innocent.

I

The story begins in September 1985, when Richard Johnson and Daniel Swansen, an eccentric businessman with a lengthy history of mental illness and psychiatric treatment, left Morehead City, North Carolina in Swansen's RV. The two had planned on driving to Florida, but they never made it that far.

The two men stopped at a rest area located near the border between North and South Carolina. While there, Swansen picked up two destitute hitchhikers: Connie Sue Hess and Curtis Harbert. The group continued on its way, with Johnson driving the RV. According to Hess, she and Harbert had sex with Swansen in the back of the RV, after which she joined Johnson in the driving compartment. As the group drove through Clarendon County, South Carolina, someone shot and killed Swansen.

The remaining three — Johnson, Hess, and Harbert — continued south on I-95, eventually entering Jasper County. Johnson's driving was dangerous and erratic. He'd been drinking heavily and using drugs all day and was by now so intoxicated that he could later remember nothing of the day's events. He was swerving and hitting guardrails. Trooper Bruce Smalls spotted the vehicle, and pulled it over. As he stood on the steps to the RV, he too was shot and killed.

The question, of course, was who did it?

Johnson, Hess, and Harbert ran from the scene. Hess and Harbert headed in one direction. Johnson in the opposite one. All

three were eventually caught. All three were threatened with prosecution for the crime of capital murder in connection with the deaths of Swansen and Trooper Smalls. But in the end, only Johnson was tried and convicted.

In fact, Richard Johnson was twice tried and twice convicted for the murder of Trooper Smalls, once in 1986 and again in 1988. On neither occasion, however, did the jury hear the full story. Most importantly, on neither occasion did the jury learn the truth: Harbert had killed Swansen; and Hess — by her own confession — had shot and killed Trooper Smalls.

The jury convicted and condemned an innocent man.

II

Following the killings, Hess and Harbert each gave statements to law enforcement officials. Harbert said that Johnson had killed both Swansen and Trooper Smalls, and that's what he subsequently told the jury at trial. In one statement, Hess, too, said that Johnson had killed Trooper Smalls. But in a later statement, Hess said that Harbert — not Johnson — was the one who killed Trooper Smalls. At trial, however, Hess decided to go with her first story. Johnson, she testified, had killed Trooper Smalls and Swenson.

The testimony of Hess and Harbert was key to the state's case against Johnson. They were the only ones who knew what happened in that RV. Johnson was so drunk and stoned he could remember absolutely nothing. Moreover, the physical evidence the state was able to find linking Johnson to the crime was all but non-existent. Indeed, what little evidence there was suggested Johnson could not have been the killer. No gunpowder residue was, for example, found on his hands. None was found on the hands of either Harbert or Hess, either. Johnson, however, was tested within the critical time frame during which powder — if

any was present — would have shown up; in contrast, Harbert and Hess were tested, for reasons that remain unclear, several hours outside the critical window of opportunity, so of course no residue was found.

Left only the testimony of two witnesses who could very well have been the perpetrators themselves, and with no real physical evidence, the state turned to an informant — Ronnie Dale Stevenson — for a helping hand.

Johnson was held in Cell Block 2 pending his trial for the murder of Trooper Smalls. Stevenson, it just so happened, was being held there too, or so the state claimed. It was, in any event, during this time that Stevenson said he spoke with Johnson about Trooper Smalls's killing. Stevenson later said at trial that he asked Johnson if he'd shot Trooper Smalls, and according to Stevenson, Johnson said in reply, "I don't remember shooting him, but I know I did it." A couple of days later, Stevenson said that he "talked to [Johnson] again and . . . asked him why did he shoot him and he [Johnson] said, because there was a dead man in the back of the RV . . . ."

That, more or less, was the evidence presented at Johnson's trial: The testimony of two eyewitnesses, one or both of whom could themselves have been the real killer or killers, and the hearsay testimony of an inmate to whom Johnson had allegedly confessed. That's a pretty thin case, but the jury nonetheless convicted and sentenced Johnson to death.

Johnson appealed to the South Carolina Supreme Court, which reversed his conviction and ordered a new trial. The second trial proceeded along much the same lines as the first. Harbert was once again the state's star witness, and once against testified that Johnson had killed Trooper Smalls. Stevenson also testified, saying once again that Johnson had confessed to him that he (Johnson) had killed Trooper Smalls.

Hess, however, did *not* testify at the second trial She was, according to the prosecutor, unavailable; she was in Nebraska, in some kind of institution. Rather than force her to return to South Carolina to testify, the prosecutor suggested simply reading to the jury her testimony from the first trial. The defense saw no reason to object.

Once again, the jury convicted Johnson and sentenced him to death. This time, the South Carolina Supreme Court did not reverse.

Following his conviction and sentence of death in connection with the death of Trooper Smalls, Johnson agreed to plead guilty to the murder of Swensen, in exchange for which the state agreed not to seek the death penalty. Why, one might ask, would an innocent man plead guilty to a crime he did not commit?

The better question, however, is why *wouldn't* he? Johnson already knew how at least one jury sized up the evidence against him. He already faced one death sentence, and didn't see any point in facing another. He couldn't remember anything that happened on that day in order to defend himself. And besides, his lawyer was telling him to take the deal. What would have been the point of insisting on a trial? Faced with the likelihood of yet another death sentence, a plea to life imprisonment looked like a good deal.

III

If Johnson was the real triggerman, if Johnson was the one who killed Trooper Smalls, then the fact that the jury sentenced him to death for that crime comes as no surprise. In the jury's mind, after all, Johnson was a cop-killer.

But the jury did not hear the real story. It did not have all

the facts before it. And if it did had all the facts, it's hard to believe the result would have been a conviction, much less a sentence of death. So, what evidence didn't the jury hear, and almost as important, why didn't it hear it?

To begin with, keep in mind that the state had no physical evidence whatsoever linking Johnson to the crime. Keep in mind as well that Johnson himself was so intoxicated he couldn't remember anything and was thus in no position to defend himself. Consequently, the case against Johnson turned almost wholly on the testimony of Harbert, Hess, and Stevenson.

Start with Harbert, who appeared at both trials, and who testified on each occasion that Johnson was the one who killed Trooper Smalls. The jury could obviously have surmised that Harbert had *some* incentive to lie, since he himself might have been the actual killer. Indeed, at the time of the killings, Harbert was wanted by authorities in West Virginia. (Johnson, on the other hand, had no criminal record).

What the jury did not know was *how much* of an incentive Harbert had to lie. Remember that at the time he agreed to testify for the state, Harbert, along with Johnson and Hess, was facing charges of capital murder. In exchange for his testimony against Johnson, however, the state agreed not to prosecute him. And indeed, three days after Johnson was convicted, all charges against Harbert were dropped.

But the fact that Harbert's testimony was given in exchange for a get-out-of-jail-free card was never brought to the jury's attention. The jury thought Harbert had no more incentive to lie than would anyone else who happened to be at the scene of a crime. But that wasn't true. Harbert's incentive to lie was bigger than that. He lied in exchange for the state's promise to let him go if he did, even if he was the actual killer.

So why didn't the jury know that Harbert was testifying

against Johnson in exchange for his own life? Because no one ever told Johnson or his attorneys that that's what was going on. Yet they should have. Prosecutors in the state of South Carolina, like prosecutors everywhere, have a constitutional obligation to give a criminal defendant any information that might help exculpate him, which the evidence of Harbert's bargain with the state surely would have done in Johnson's case. But the state failed to honor its obligation, and in so doing violated Johnson's right to the due processes of law.

Turn next to Stevenson, to whom Johnson allegedly confessed while the two were being held together in jail. The jury knew, of course, that Stevenson was a jailhouse inmate, and could have concluded all on its own that his credibility left something to be desired. But what the jury did not know was that Stevenson made a livelihood out of testifying against other prison inmates, and testifying against them falsely. Indeed, he'd been in the business since at least the early 1980's. Stevenson told the jury, however, that he'd only once before provided information helpful to law enforcement official — yet another lie. Nor did the jury know that law enforcement officials, fully aware of the fact that Stevenson was a professional snitch, purposely arranged to have Stevenson housed in the same facility as Johnson.

So why weren't these exculpatory facts — facts which would have gone far to put the jury in reasonable doubt as to Johnson's guilt — brought to the jury's attention? Once again, the state had a constitutional obligation to inform Johnson and his lawyers about Stevenson's history as an informant, and once again, the state failed to honor that obligation.

Turn finally to Hess, who also testified against Johnson at the first trial, and whose testimony at that trial was introduced against him at the second trial. Hess, like Harbert and Johnson, was initially charged with capital murder, and like Harbert, she

was offered immunity in exchange for her testimony against Johnson. Also like Harbert, the charges against her were dropped three days after Johnson was convicted. And, like Harbert, the deal she'd struck with the state — her testimony against Johnson in exchange for her life — was never revealed to the defense, nor, therefore, to the jury. Once again, the state failed to honor its constitutional obligations.

In short, the state withheld a host of evidence that could and would have helped Johnson prove his innocence. But it gets worse.

Hess had never been completely comfortable about placing the blame for Trooper Smalls' death on Johnson. True, she said in her initial statements to the police that Johnson did it, but she later told the police that Harbert — not Johnson — was the killer. Nonetheless, when it came time to testify, Hess stuck to her side of the bargain she'd struck with the state. Johnson, she said, was the killer.

Yet Hess's discomfort would not go away. It only got worse. In fact, it got so bad that Hess finally had to do something about it. Following Johnson's first trial, *but before his second one*, Hess contacted Marion Riggs, the lawyer who had been assigned to represent her in connection with the charges originally filed against her in connection with the killings. Hess told Riggs that she wanted to "correct the mistakes." She wanted to recant her testimony against Johnson. The real killer, Hess told Riggs, was Harbert. Harbert had killed both Swansen and Trooper Smalls. Johnson was innocent.

Hess told Riggs to forward her recantation to the sheriff, which Riggs did. He mailed a letter to the sheriff telling him that Hess had recanted her testimony against Johnson. The sheriff later testified that, to the best of his recollection, he'd passed the letter on "to proper channels," meaning he'd passed the letter

along to the chief SLED (South Carolina Law Enforcement Division) agent involved in the case, a fellow named Sonny Riley, "or to whoever was in charge of the case or the Solicitor." In other words, the state knew, at the time of the second trial, that Hess had recanted her prior testimony accusing Johnson of the murder.

The prosecutor should of course have turned that information immediately over to Johnson's defense lawyers, as he was constitutionally required to do. But he didn't. Even worse, the prosecutor was the one who suggested, rather than bring Hess back from Nebrasks to testify in person at Johnson's second trial, that they simply use instead the testimony she gave at the first trial. The defense agreed, but then again, the defense didn't know that Hess had recanted her original testimony. The state did, but decided to keep that information to itself, all at the price of Johnson's right to a fair trial.

Would any of this information — the immunity Harbert and Hess had gotten in exchange for their testimony, the fact that Stevenson had made a career out of lying against other inmates, and last but not least, the fact that Hess was now saying that Johnson was innocent and that Harbert was the real killer — have made a difference to the jury? Of course it would have. The state's case against Johnson was thin to begin with. No jury would have convicted him if it had heard all the evidence.

Johnson's lawyer at the second trial learned of Hess's recantation during proceedings that occurred some time after the trial was over. His reaction to learning of her recantation sums it up: "I think an innocent man is up there in prison."

Indeed, Johnson's trial had all the earmarks of a trial in which the risk of an innocent person being convicted is at its very highest. The experts who study such risks, most notably Professor Barry Scheck of the Cardozo Law School's Innocence

Project, and Professor Lawrence Marshall of the Northwestern University Law School's Center on Wrongful Convictions, have found that trials involving defendants who are convicted of a crime, but who are later exonerated through the use of DNA, share certain common features. In particular, they usually involve the following four elements:

- *The presentation of testimony from unreliable jail-house informants.* Here, Stevenson filled that role admirably.
- *The use of so-called "junk science."* Here, a police dog handler testified that his bloodhound had corroborated Harbert's testimony about the direction in which he ran following Trooper Smalls's shooting, thus enhancing Harbert's credibility in the eyes of the jury. Such "bloodhound testimony" is among the most notorious of junk science.
- *The resort to misconduct on the part of prosecutors.* Here, the most egregious — though by no means the only — example of prosecutorial misconduct was the failure to disclose to Johnson and his attorneys the critical evidence that would have lead to his acquittal; and
- *The failure of defense counsel to present an adequate defense.* Here, Johnson's defense lawyers — although hampered from the start by the state's failure to turn over critical exculpatory evidence — nonetheless fell short in a number of ways. In particular, they failed, despite the widespread publicity surrounding the killing of a state trooper, to request a change of venue. They failed to present all the exculpatory evidence they did have. Finally, even though (because of the state's misconduct) they didn't know

> about Stevenson's career as an informant, they nonetheless failed to impeach Stevenson based on the full range of his criminal convictions, of which there were many and of which they were fully aware, choosing instead to highlight only one.

IV

When the state violates a criminal defendant's constitutional right to a fair trial, as the state did here, the usual avenue of redress is through the courts. And accordingly, Johnson tried to avail himself of that avenue. But that avenue was never really open to him.

The critical evidence that should have been presented to the jury was withheld from Johnson and his lawyers by the state in violation of its constitutional duty to disclose that evidence. Nonetheless, the lawyers who represented Johnson on appeal discovered that evidence and presented it to the courts, both state and federal, confident that the courts would agree that the state had violated Johnson's right to due process and would order a new trial. Johnson's eventual vindication was just a matter of time.

But none of that happened. Instead, Johnson finds himself pleading for executive clemency. What went wrong?

To understand, you need to go back to Johnson's trial. Following his conviction, Johnson made the following statement to the jury during that part of the trial in which the jury was ask to decide his fate, life imprisonment or death:

> I haven't been before you during the guilt phase of this trial or until now because there was no defense for my actions, I realize that now .... I have no defense for anything or the tragedies that have

> occurred. All I have is sorrow [for] the lives that I have ruined. I realize that there were many that I have ruined.

This statement can be understood in one of two very different ways. The first is that it's an admission of guilt. Having already been convicted, Johnson decided at long last to come clean. The second is that it's the statement of a man who can't remember a single thing about the day on which, according to a jury of his peers, he killed a state trooper, but who's sorry if that's in fact what he did.

The first way of interpreting Johnson's statement is simply wrong. His statement can't be read as an admission of guilt, because Johnson didn't and can't remember doing anything for which he would have acquired guilt. Instead, the second interpretation is the right one. Johnson's statement was an entirely appropriate, and in fact, courageous, acknowledgment of the jury's verdict, but nothing more.

Nonetheless, the state court that heard Johnson's initial post-conviction appeal — which was Johnson's first appeal following his discovery of the critical evidence discussed above — interpreted his statement as an admission of guilt. Moreover, that court further found that any criminal defendant who admits his guilt cannot, under South Carolina law, raise any legal challenge to the validity of the process that led to his conviction. Consequently, the court refused, on the basis of this rule, to hear anything about the state's failure to turn over the evidence that would have led to Johnson's acquittal. In short, the state court turned a deaf ear to Johnson's appeal, just because he said — *assuming* the jury's verdict against him was true — that he was sorry for what they said he'd done.

Johnson could hardly believe it, nor could the lawyers who were representing him on appeal. They'd never heard of such a

rule, and for good reason: It doesn't exist. The lower court made it up.

The courts of the state of South Carolina are of course free to establish the procedural ground rules that tell criminal defendants what they must and must not do if they want the courts to listen to their appeals. Yet those rules cannot be created out of thin air. They must be clear and well-established in advance, so that a criminal defendant can at least know what he must and must not do if he wants the courts to listen. In fact, if a state court refuses to hear a defendant's appeal on the basis of a rule that is *not* well-established and regularly followed, he can ask a federal court to step and give him the redress he seeks.

Before doing that, however, Johnson asked the South Carolina Supreme Court — the final arbiter on what South Carolina law does and not say — to review the decision of the lower state court, and to say, definitively, whether or not South Carolina law does indeed recognize the rule on the basis of which the lower court refused listen to Johnson's appeal. Without explaining why, however, the South Carolina Supreme Court refused. It simply declined to accept is appeal for review.

With no hope of relief in the state courts, Johnson turned to the federal courts, asking them to listen. He asked them to ignore the rule on which the state courts had refused to hear his appeal. Despite what the lower state court had said, that rule, Johnson told the federal courts, was not and never had been the law in South Carolina. But the federal courts (though not without dissent) read South Carolina law in the same way the lower state court had read it: A defendant who admits his guilt forfeits his right to appeal on the basis of any claim — however meritorious — that casts doubt on the validity of the jury's verdict. Consequently, the federal courts, like the state courts, refused to hear Johnson's appeal.

Now running out of options, and still convinced that his reading of South Carolina law was the right one, Johnson decided once again to ask the South Carolina Supreme to decide, once and for all, whose reading of South Carolina law was correct: Did the rule that had so far prevented him from having his day in court really exist?

This time the South Carolina High Court agreed to give Johnson an answer, and it agreed with Johnson. The lower state court and the federal courts had been wrong. The rule that had locked the door to his appeal and to a new and fair trial had never been the law of South Carolina.

But Johnson's victory had come too late. The South Carolina Supreme Court had answered Johnson's question about the existence of the rule that had been thwarting him throughout his appeals, but it refused to hear the merits of his appeal itself. It declined to listen to his claim that the state had unconstitutionally withheld evidence of his innocence. And there was no way to get the federal courts to listen again, either. Their doors were now shut and could not be reopened.

The end result can only be characterized as a miscarriage of justice, if not Kafkaesque. State officials intentionally withhold critical evidence that would have lead to an innocent man's acquittal. The innocent man duly asks the courts for help, but the courts up and down the legal hierarchy refuse to listen based on a rule that never existed. When the non-existence of that rule is finally established, it's too late.

But it gets worse still.

V

Time was now running out. Trooper Smalls was shot and killed in September 1985. Fourteen years had passed, and

Johnson was still trying to get someone to listen to the evidence the state had wrongfully withheld from him and the jury some eleven years before.

In the hope of discovering still more information that might prompt the courts at last to listen to his pleas, one of Johnson's appellate attorneys, Diane Holt, set off for Nebraska in search of Connie Sue Hess. Holt found her living at the Liberty Center in Norfolk, Nebraska. What Holt learned was breathtaking: After receiving the advise of counsel, Hess swore an oath and signed an affidavit confessing that she was in fact the one who shot Trooper Smalls.

According to her statement, she and Harbert had been "impressed" by Swansen's apparent wealth, which was on open display in the RV, and thought the'd take some of it for themselves. After she and Harbert had sex with Swansen in the back of the RV, Hess moved to the front to talk with Johnson, who was driving. That's when she heard the shot. Harbert, who was still in the back of the RV with Swansen, had shot and killed him. Harbert, not Johnson, had killed Swansen.

When Trooper Smalls pulled the RV over, here, according to Hess, is what really happened:

> [Trooper Smalls] knocked on the door. Richard [Johnson] opened the door and asked the officer if he wanted to come inside the RV. I had become upset because I was afraid for Curtis [Harbert]. When the officer started up the RV, I shot him. The officer grabbed for his holster, but I shot him twice more. The officer was propped up against the door of the RV still on the steps of the RV. I am pretty sure he was dead. I kicked the officer out of the RV. I shot him as he lay on te side of the road. I screamed at him, "there you go, bastard." Curtis and I ran down

> the interstate. We had the gun with us. I threw the gun away.

All of this, moreover, is consistent with, and corroborated by, the physical evidence found at the scene of the crime. Hess knew what she was talking about.

The Liberty Center, where Hess was living at the time she confessed, is a facility that provides services to those suffering from some form of mental illness. And there's no doubt that Hess has problems, but she was nonetheless fully competent at the time she confessed. No one disagrees with that. Indeed, before signing, Hess conferred Jeffrey Hrouda, an attorney on the board of directors of the Liberty Center, who fully appraised her of her right to remain silent and of the ramifications of confessing to Trooper Smalls's murder. Indeed, Hrouda advised Hess not to sign, but she did so anyway. Two lawyers from the public defender's office were also present, and both prepared affidavits describing the circumstances under which Hess confessed. Both of their descriptions show that Hess was fully aware of what she was doing.

So why now? Why, after all these years, did Hess finally come forward, and why did she not come forward earlier?

Hess had of course always been ill at ease for placing the blame on an innocent man. She had lied in her original statement to the police because "[t]he solicitor told me I would fry if I had anything to do with it." But now, with Johnson's execution imminent, she could no longer bear the burden. So she told the truth, despite what it may cost her herself. I "cannot," she wrote, "let Richard Johnson die for something he did not do or have anything to do with at all."

VI

With Hess's confession in hand, Johnson turned once again,

and with confidence, to the South Carolina Supreme Court. Johnson asked the Court, on the basis of Hess's confession, to order a new trial. Surely the Court would not let Johnson's execution go forward under the circumstances. The Court took the case and assigned a special referee to assess whether Hess was competent to confess, and if so, whether she was credible.

The special referee found that Hess was indeed competent, but she was not, the special referee concluded, credible. Johnson filed papers with the Court explaining why, in his judgment, the special referee's assessment was wrong, and why Hess should indeed be taken at her word.

In the end, three members of the Court — a bare majority — sided with the special referee, and refused to give Johnson what he'd been asking for now for twelve over : A fair trial, and the chance to present all the facts of his case to a jury.

Two of the Court's members disagreed with the three-member majority. "Given the lack of physical evidence to indicate [Johnson], and not Harbert or Hess, fired the shots which killed Trooper Smalls, it is my opinion," wrote Justice Pleicones, "that Hess's confession would probably change the result if a new trial were granted." And, in Justice Waller judgment, "[c]onsidering the unusual circumstances of this case, I believe that to deny Johnson a new trial in the face of a confession by someone who was admittedly present when the murder was committed would constitute a denial of fundamental fairness shocking to the universal sense of justice."

VII

So Richard Johnson now comes to you, seeking clemency. He is joined in this request by Trooper Smalls' mother, who loved her son very much, but who has no desire to see an innocent man put to death. "Killing Mr. Johnson . . . will not," she's said, "bring

my son back and serves no purpose."

The governors of South Carolina, past and present, have been ask to consider many requests from condemned men for mercy. Some of the applicants have sought mercy because they were mentally disturbed at the time they committed the crime for which they were sentenced to death, or because they were mentally retarded. Others have pointed to unspeakable experiences in their childhood that helped make them into the kind of men who are capable of killing, or to experiences later in life, such the years they served in the military in Vietnam. And so on.

But never in the years since South Carolina reinstated the death penalty in the mid-1970's has a condemned man asked for mercy because he is innocent, and where he has in hand to support his claim the signed confession of someone else admitting to the murder for which he is scheduled to die.

Indeed, mercy is not really what Johnson is seeking. Only those who deserve to be punished for what they've done need mercy. Johnson is not guilty. He hasn't done what the state has said he's done. What he really seeks, therefore, is simple justice.

WHEREFORE, for the reasons stated herein, Richard Johnson, by and through his undersigned counsel, respectfully requests that his sentence of death be commuted to a sentence of life imprisonment without possibility of parole pursuant to Article IV, Sec. 14 of the Constitution of South Carolina and S.C. Code Ann. Sec. 16-3-20(A).

Alternatively, counsel would request a hearing before the Governor in which personally to plead his client's cause in favor of clemency. Counsel also requests to be notified of any information brought to the Governor's attention that would support a denial of clemency.

Respectfully submitted,

John H. Blume III
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Cornell Law School
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(607) 255-1030

BY:_____
JOHN H. BLUME

April 23, 2002

STATE OF NEBRASKA)
) AFFIDAVIT OF CONNIE SUE HESS
COUNTY OF MADISON)

I, Connie Sue Hess, after being duly sworn, depose and state as follows:

1. I was born July 9, 1968, in Omaha, Nebraska. I currently reside in Norfolk, Nebraska.

2. In 1986, I testified in the case of State v. Richard Charles Johnson. My testimony involving the death of South Carolina Trooper Smalls was false. I also testified falsely concerning the death of Mr. Swensen. The truth about what happened is as follows:

3. Curtis Harbert and I were hitchhiking in South Carolina when we met Richard Charles Johnson and Dan Swansen at a rest area. We got a ride with Dan in his RV. Dan and Rich were very nice. They gave me and Curtis food and lots to drink. We all had plenty drink.

4. Dan had plenty of money. Curtis and I saw him leave a $10 tip at the restaurant where he bought dinner for us. He told us he had a beach house and a yacht. We were really impressed. Dan told Curtis that he wanted to have sex with me and Curtis. We went in the bedroom with Dan. When I say we, I mean me and Curtis. We got naked with Dan and got in bed with him. I got up and went in the front of the RV and talked with Richard. Rich and I both heard the shot when it went off. Curtis shot Dan. Dan was dead. Curtis had broken into the compartment where Dan kept his guns. The compartment had an alarm on it but Curtis had cut the wire to the alarm.

5. Rich was really upset about what Curtis did to Dan. So was I. The next morning, Richard was driving the RV and struck a guard rail. We saw a police officer with someone pulled over on the side of the highway. The next thing we knew, we were being pulled over by the police officer. It was Officer Smalls. He knocked on the door. Richard opened the door and asked the officer if he wanted to come inside the RV. I had become upset because I was afraid for Curtis. Curtis handed me the gun. When the officer started up into the RV, I shot him. The officer grabbed for his holster, but I shot him twice more. The officer was propped up against the door way of the RV still on the steps of the RV. I am pretty sure he was dead. I kicked the officer out of the RV. I shot him as he lay on the side of the road. I screamed at him, "there you go, bastard." Curtis and I ran down the interstate. We had the gun with us. I threw the gun away.

6. Rich did not know I was going to shoot the trooper. When it happened, Rich was flabbergasted. He ran out of the RV and across the interstate after I shot the trooper.

7. I lied about what happened because I did not want to die. The solicitor told me I would fry if I had anything to do with it. I did not want to die.

8. I am telling the truth now because I cannot let Richard Johnson die for something he did not do or have anything to do with at all.

CONNIE HESS

Subscribed and sworn to before me
this 22nd day of October, 1999, by
Connie Hess

GENERAL NOTARY, STATE OF NEBRASKA
My commission expires MAY 31, 2001

GENERAL NOTARY-State of Nebraska
HARRY A. MOORE
My Comm. Exp. May 31, 2001

State of South Carolina
County of Beaufort

Affidavit of Thelma Blue

I, Thelma Blue, after being duly sworn, depose and State as follows:

1. My name is Thelma Blue. Bruce K. Smalls was my son. He died in 1985. He was killed while serving as a South Carolina State Trooper.

2. I have seen an affidavit of Connie Sue Hess, dated October 22, 1999, in which she admits to shooting and killing my son. It is my wish and my opinion that Richard Johnson not be executed. It is my opinion that Ms Hess' statement should be fully and properly investigated. I do not want an innocent man to be killed. I love my children very much. My son Bruce was precious to me. Why take an innocent man's life? Such a thing would dishonor my son's memory.

3. I am giving this Statement because I want Governor Hodges to know my opinions and my feelings. Killing Mr. Johnson, even if he is guilty, will not bring my son back and serves no purpose. Killing Mr Johnson if he is innocent would be an abomination.

Further affiant sayeth naught

Thelma Blue
Thelma Blue

Sworn to and Subscribed
before me, this the
26th day of October, 1999

Notary public for SC
my commission expires 2-8-2005