

A F F I D A V I T

DANIEL HAYDEN WILLOUGHBY, being first duly sworn, upon oath, deposes and states:

1. That I am the Petitioner in the above referenced Rule 32 proceeding, and make this supplemental affidavit on the basis of facts within my personal knowledge and to which I would testify at hearing in this matter.

2. Had I been allowed to testify, I would have rebutted the State's presentation of facts in their Response to Petition for Post-Conviction Relief, in the following particulars known by my attorneys prior to the second trial:

PHIL CABALLERO

3. In actuality, it was *Phil* who "padded" expense accounts, and who failed to call on customers, although his weekly sales report said he had. He and his cousin Carlos traveled to Mexico on several occasions to purchase drugs through Carlos' relatives. Phil would constantly try to sell these drugs to fellow workers, who complained about it to me, and I was forced to threaten to fire him for it.

4. I was also under a great deal of pressure from the corporate officers of A.E.I. to increase Phil's sales productivity, or fire him, as he was only producing less than 5% of sales for the district.

5. As for the "blackmail" alluded to by the State, it was Trina Janusch who told *me* that she was secretly tape recording Phil, because of his lewd phone calls to her. (For some reason, Phil was constantly dropping his pants and "mooning" people, in addition to his vulgar language around women *and* men.) I agreed that she should continue to tape these calls and then tell Phil to stop, or she would turn the tapes over to the police and/or Phil's wife. When I personally told Phil to stop these calls he said he "would get even with me" for my "interference." From his

trial testimony, I guess he did.

6. As for his testimony that there "were bilingual agents" of A.E.I. in Mexico, I would have refuted this. Agents were only in the largest Mexican cities. No one spoke English at the Ford Hermosillo office, which is why I needed to learn Spanish and/or have an interpreter with me. While I have never denied that I had an affair, I would have testified that my original reasons for being with Yesenia were nevertheless legitimate.

7. Again, concerning the "padding" of expenses, every single dime was spent for legitimate business expenses, and we were simply trying to be reimbursed for our out-of-pocket. Corporate only allowed so much for a certain item, and you could not tell your large customers that they were limited in the amount they could order. To recoup the money you spent out-of-pocket, you had to group this under another heading. However, in no instance did I seek reimbursement for amounts that had not already been legitimately spent.

FRANK (FRANCISCO) ORTIZ

8. Frank testified that I never asked him if he knew any "Mexican Hit Men." The only way I can fathom how this was played out is that there was a story in the El Paso newspapers about the "Ortiz Brothers Gang." Since I had business dealings with Frank on behalf of A.E.I., and did not want any association with this type of illegality, I asked him if he was related in some way to this "gang." In short, I would have corroborated Frank's testimony that I never made such a "hit man" inquiry, despite the attempts by the State to paint the opposite.

JACK MIELKE

9. The jury only heard about his three felony convictions, and the fact that he was currently in prison. I personally knew, and would have testified had I been allowed, that Jack Mielke hated me because he thought if he got rid of me, he would get Yesenia back. Mielke was a pedophile with his own son and other children, and I let him know how I felt about that. But no, the absurd story about "special forces" and "garroting" never took place, nor did anything even remotely resembling what he said occurred at the Rusty Pelican ever happen.

10. I have no idea what Mielke meant when he testified that I said that Trish "had enough" on me to imprison me. I had never done anything to warrant that, and I would have testified that I never made that statement.

11. I would have specifically rebutted his statements and the State's implication about how I supposedly said Trish would never divorce me, and therefore murder was the only way out. I categorically state that I never had the intention of divorcing my wife because I did not want to leave her and my children. I was simply having a middle-aged fling. Anything I said to Yesenia about love or that she construed as a marriage proposal was only to keep the affair going, although I knew it would never last, nor did I ever intend it to. My problem was in getting involved with a woman who had a "fatal attraction" complex. I would have testified that this anger Yesenia had toward my wife dated from the time that Trish confronted her at the apartment and called her a sleazy Mexican whore. This apparently enraged Yesenia so much that from that point on she made numerous statements to others about killing Trish.

GARY BUTTS

12. I would have refuted his testimony that he came to Phoenix to discuss "profitability problems" and my "resignation." At the time, the Phoenix district was grossing one million dollars a year, and I would have testified that two to three weeks prior to his arrival I had called the Vice President, Bob O'Connell, and told him that I planned to resign and retire.

13. I was hardly destitute when I left the company. I had amassed over \$100,000 in a SIP (Savings Investment Program), my 401(k), and stocks and bonds.

14. Trish and I had an agreement that when her company "TNT" reached a gross revenue of \$30,000 a month I would retire and become "Mr. Mom." It would be her turn to go out and support the family as I had done for the past 15 years, and in fact, she wanted to do so. I similarly would have testified that Thera Huish also knew about the arrangement Trish and I had.

15. As for the Jaguar, I withdrew \$10,000 of my own money from my Pension Plan for the down payment on it, and qualified for the loan based solely on my credit. Trish could not qualify, because she had a previous bankruptcy. So while she may have made payments, it was I who was the initial motivating force.

INSURANCE AGREEMENT AND INCORPORATION OF TNT

16. The only reason I ever discussed incorporation of TNT was because during that period of time Sam Kalenuk, the President of Matol, warned me that incorporation was needed as protection. This was due to the fact that Thera Huish was making outlandish statements to hundreds of people in Matol Conventions about what a "magic elixir" it was, and using herself as an example. In reality, she had undergone extensive plastic surgery, including breast

augmentation and face-lifts involving staples placed in her scalp to hold back her acid-washed skin. Yet, she was letting all the potential customers think it was because of their product, and I did not have to be a lawyer to see that a massive fraud lawsuit would eventually come out of that, and that therefore some protection was needed.

17. I was *not* asking to take out additional life insurance on Trish, as Trina Janusch stated. Rather, the insurance was for incorporation, and Richard Fuller even told me that he might have to put our 1986 insurance policies up as collateral. Trina simply was confused about this, and I would have testified to it.

18. I would also have testified that I never knew anything about an insurance policy until after Trish's death. That is when Bob Bjerken, the TransAmerica insurance agent met with me in a Scottsdale restaurant and told me about it. His testimony to this effect was presented at trial and corroborated by Phil Guthrie.

19. As for the "business trust" spoken of by the State on page 25 of its Response, this meeting dealt with setting up a "trust" which in actuality was a scheme to launder money through paper fiduciaries in the Cayman Islands, and to re-send these funds back to Ron Peters, the designee trustee of Thera Huish. I told Thera and Sterling that it was illegal and just another plan of Thera's to avoid paying taxes, and I wanted no part of it.

TRISH AND MEXICO

20. I previously had taken Trish and three children to Matzatlan in 1988, where everyone, including Trish, had a good time wind sailing and riding scooters. In fact, Matol had a convention in Acapulco in 1989-90 and all the TNT distributors went there, including Trish and Thera. Trish thoroughly enjoyed the fresh fruits and Mexican ambiance.

21. As for Rocky Point, I would have testified that Trish *wanted* to go there, because her brother Nick raved about the place and to her it seemed close enough to drive to. She, in fact, suggested to *me* that we go there based on what Nick had told her.

22. I had never liked going to border towns, and preferred the interior. In fact, Trish and I in the mid '80s drove the entire length of the Baja Peninsula, went to Puerto Vallarta, and traveled to Hermosillo, San Carlos, and other interior areas. This entire time Trish appeared to me to enjoy herself immensely. For someone who supposedly hated Mexico, Trish never ever gave me any indication of that. In fact, she told our typist Mary Martin she was "excited" about Rocky Point.

23. As for the house I rented in Rocky Point, I had intended it to be a gift and therefore wanted it to be a private as possible. I had to pick up the rental package personally, since if it was mailed to my house Trish would see it and it would spoil the surprise. Also, I could not rent the Salem house, since it only had a capacity of four people. At the time I was planning this, there were at least two adults, three children, and possibly more if Marsha brought a friend and/or if Thera accepted the invitation.

YESENIA IN ROCKY POINT

24. I would have testified that I never asked Tony Patino to drive his sister to Rocky Point that day, and that I never had any agreement to meet with them or anyone else. As Yesenia had said in numerous depositions and statements, she had *never* previously agreed to meet me at Manny's. I was *surprised* to see her there, and *never* saw Tony until a few moments later when he came up from the beach.

25. I do not know specifically how Yesenia came to be in Rocky Point that day. I may

have mentioned in passing that I was taking my wife and children there. I do recall her saying how she wanted to “the first” with me. We had traveled to Rocky Point several times as part of our affair, but on none of these trips did I show her the house where my family and I were going to stay. In fact, on our last trip to Rocky Point Yesenia and I had agreed that it was over and she wanted to see Mexico one last time before returning to Jack Mielke in Oregon. We did not, however, go anywhere near the house where I was intending on vacationing with my family. Rocky Point was a small town then, and it would have been very easy for anyone to find anyone else staying there.

MARSHA’S TESTIMONY

26. I would have refuted the testimony she gave in the second trial about “having” to go to the Museum. I would have stated, as she did in the first trial, that she could have stayed there and sunbathed. However, as she originally testified, it grew overcast, she became bored, and decided to accompany us.

27. It is critical to note that *both* Marsha and I in our interviews with Kay Lines both stated that Trish was going to go with us to the Museum! Only a few moments before we *all* were to leave did Trish decide to stay. This is why I would have testified that if all this were supposedly a plan, how would I have ever known that Trish was going to change her mind and stay? I could never have foreseen that. Further, Thera Huish had been invited to go, as well as Marsha’s friend Erika Bond, and they both begged off at the last minute. If this had been a conspiracy, what was I supposed to do with all these people?

28. The State has increased the time I spent in the house while the children were outside from Marsha’s 2-3 minutes at the first trial and in her statement to Kay Lines, and my own

statement to Kay Lines of 2-3 minutes, to now 7-10 minutes. I would have adhered to my own original statement, and further, would have testified that the door was not "locked," but rather, that she and I both reached for it at the same time. Finally, I did *not* prevent Marsha from entering the house, but simply told her to be quiet because her Mother was resting.

29. I would have rebutted outright Marsha's testimony about my changing my shirt. I *never* did this. Just as Gwen Gibson testified that Marsha told her I was wearing the same clothes, and that we both reached for the door at the same time, so Marsha testified in the first trial. Further, Mexican police searched and confiscated every material item from the place, and I never had the opportunity to return until that evening when I went back for my children's clothes and personal hygiene items. There was a Mexican policeman continually stationed outside the door. Had there been anything there, it would have been found and taken by the police.

POST-DEATH TESTIMONY

30. I would have testified that I was in utter shock the entire time, but I had to keep it together for my children's sake. Both Hayden and Thera saw me crying. Even Leigh Lowery said that I looked "scared" after the death, and Luz Rodriguez said I looked "sad." My only concern at that point was to get my children and my wife's body out of Mexico. My "speaking Spanish" on the telephone was an attempt with the switchboard operator to get an outside line to the Huish residence, which ultimately proved unsuccessful.

31. I would have refuted in every aspect the testimony of Judge Luz regarding attempts to "come on" to her. In fact, she drove me to *her house* to show me where she lived, should I ever come back, and moreover, invited me and my family to dinner if we ever returned.

32. I had not called James Parker for approximately a week after Trish's death, and then it was only to inform him of the time of the viewing of Trish's body at the funeral home. Weeks later, when Parker divulged to me that Thera Huish had already received \$250,000 insurance money from Beneficial Insurance, I *then* told him to expedite the payment of \$150,000 to me. This was for the sole purpose of obtaining a civil attorney who could go after Thera and recoup the money for my children. In fact, at trial Thera admitted that in a 30 day period of time she spent a majority of the money on cars, home improvements, jewelry, clothes, and *nothing* for my children. I would have testified that was indeed the case, and that I had to file a law suit in order to protect my children.

33. As for my neighbors, I had called attorney David Ochoa, who advised me to tell all my friends that they had the right not to talk to the police, or at least not without an attorney present, and to call him if they had any legal questions. *This* was the only thing I relayed to them, *not* that they should refuse to cooperate. Ochoa and I had stressed that these people should only remember the truth, and not feel intimidated by police and special agents.

34. The \$10,000 check I wrote to Clyde (Butch) Riggs was *not* for him to get an attorney. At the bottom of the check I had written "to be used for Marsha, Hayden and Thera Willoughby." Further, I *never* had a dinner in Mexico with Yesenia after Trish's death, and thus, there was never a receipt that Riggs talked about. In fact, no such receipt was ever produced.

35. At the meeting I had at La Perla with Tony Patino, I secretly taped-recorded him. He agreed that I had *never* asked him to take his sister to Mexico. He told me that Kay Lines and Steve Mitchell were coercing him into saying untrue things about me.

36. During the search of my house, boxes with the monthly payments for household expenses were being removed. I asked Kay Lines not to take them because then I would not know how or what payments to make. I would have testified that he told me that I "should have thought of that before I killed my wife." I asked him if he really thought I did it, and he replied "No, but I'm going to bury you anyway." I immediately called David Ochoa and his investigator Jon Sellers and told them what Kay Lines told me.

37. I would have testified about the love letter and its contents that I placed in my wife's coffin. I told her how I wished it had been me that was killed, how we would be together in Heaven, and what a good mother she had been. *I never told any one about this until I was informed by Ochoa that the State wanted to exhume my wife's body.* I then related to him what I had done. In fact, Kay Lines admitted in his cross-examination at the second trial that he had found the letter, stated that it "would not help" him, and threw it back, knowing or having reason to know that it would be destroyed by the water and other seepage.

38. My attorney for the second trial, Alan Simpson, told me he would go to California and see my brother Tom, and for me to ask Tom if he could locate Marsha so Alan could talk to her in a "favorable environment." Those were Alan Simpson's words, not mine. I discussed this "favorable environment" statement with Richard Gierloff and he took no action to clear it up.

39. Finally, I was hesitant to talk about my affair to Kay Lines, because he asked if *either* Trish or I had them. I knew Trish previously had several during our marriage, carried over from when I met her, and I did not feel it was Lines' business to know about anything personal like that, especially with Trish's recent death.

YESENIA

40. In essence, I would have testified that every blame she attempted to place on me was a lie. In fact, her testimony at the second trial in cross-examination by Alan Simpson was the truth in that she said she alone was responsible. I, of course, had no idea of the details of her killing until her testimony, but I would have stated that I knew nothing of her plan.

41. In fact, I personally listened to the tape recording my former attorney David Ochoa made of her *before* the first trial in 1992. She told him I did not have anything to do with the murder. This was well before 1995 when, as the State says on page 46 of its Response, she decided to "recant" her trial testimony.

42. My testimony thus would have been as my attorney argued (which I am told is not evidence): (1) If I had planned a conspiracy, I would not have locked the screen door; (2) If I had planned to kill my wife, she would have already been dead before Yesenia entered, so there would have been no need for her to take off her shoes and tiptoe, as she stated on numerous occasions; and (3) I did not know until the last minute that Trish was not going to the Museum. I could not have "planned" *anything* without knowing that.

43. Finally, Richard Gierloff and I even prepared for my testimony by going over the evidence that would likely have been presented, and my response to it. Once again, the only reason I did not testify was because of the erroneous legal advice I referred to in my original affidavit.

THE EVIDENTIARY HEARING

44. As for the evidentiary hearing the State has agreed is necessary, I declare that being transported to Maricopa County will cause me to lose my housing and probably my job, and thus

respectfully request that the hearing be held here, or that I be allowed to testify by conference call or videophone.

45. It took me approximately twelve years of "lockdown" incarceration before I could achieve a Level 3 yard. I have been a model prisoner for all this time, and have received only one very minor ticket. This is unheard of in a system where tickets are handed out for the smallest of infractions.

46. It also took me the better part of three years to get into what is called an "Honor Dorm," which is a single room in a large double wide trailer. Only those inmates who are considered model prisoners, and trusted with the most secure and high-profile jobs, are allowed to live there.

47. However, the rules state that if I am hospitalized, or go to court for an extended period of time (more than two weeks), the room is given to another inmate, and I would have to start all over.

48. Second, I am one of 6 trusted inmates, out of a population of 750 in East Unit, who take part in bicycle and television refurbishing. This is a program started two years ago by Deputy Warden McWilliams and has continued under present East Unit Deputy Warden Lee. Its purpose is to restore these items and donate them to needy, parentless children and abused women's shelters. I was specifically called upon to organize the program, and have done so. I am also allowed to possess what are called "Class A tools" for use in my work.

49. Once again, any period of time away over two weeks and I would lose my work privileges, in addition to accumulating a backlog of articles that could not be refurbished and donated. I do not know if or how soon my job could be regained.

50. I am not asking for special privileges, only that I be allowed to continue my present employment and housing without being forced to choose between them and pursuing my rights under Rule 32.

FURTHER AFFIANT SAYETH NAUGHT.

Daniel Hayden Willoughby
DANIEL HAYDEN WILLOUGHBY

SUBSCRIBED AND SWORN TO BEFORE ME this 24 day of October, 2005.

Karen Rhoden
Notary Public

My Commission Expires:
11-29-07

