

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
JASPER DIVISION**

JAMIE MILLS,

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Petitioner,

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vs.

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Case No. 6:17-cv-00789-LSC

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JOHN HAMM¹,

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Commissioner, Alabama

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Department of Corrections,

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Respondent.

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MOTION FOR RELIEF FROM JUDGMENT
PURSUANT TO RULE 60

Petitioner Jamie Mills was convicted of capital murder and sentenced to death in Marion County, Alabama. After exhausting his state court appeals, he petitioned for federal habeas corpus relief, which this Court denied in 2020. The Eleventh Circuit denied a certificate of appealability in 2021. Newly discovered evidence calls into question not only the reliability of the capital trial verdict in this case, but also the integrity of this Court’s consideration of Mr. Mills’ habeas petition. Specifically, this new evidence establishes that the District Attorney engaged in egregious misconduct when he affirmatively and falsely stated to the trial court, the

¹ At the time of Mr. Mills’ initial habeas petition, Jefferson Dunn was the Commissioner of Alabama Department of Corrections. John Hamm is now the Commissioner as of January 1, 2022.

jury, and defense counsel that there was no deal with the State's central witness, JoAnn Mills, who was at the time Jamie Mills' wife and whose testimony was crucial for the prosecution. An affidavit recently signed by JoAnn Mills' attorney, Tony Glenn, establishes that, prior to JoAnn's testimony, the District Attorney agreed to forgo the death penalty and to a life with parole sentence in her case if she agreed to testify against Jamie Mills. (Ex. 1.)

At every stage of the proceedings in this case—in motions proceedings before trial, to the judge and the jury at trial, on appeal to the State courts, in state postconviction proceedings, and again to this Court—the State has asserted that at the time of Mr. Mills' capital trial, the prosecution had no plea agreement with its central witness, JoAnn Mills. In his habeas corpus petition, Mr. Mills alleged that the failure to disclose the plea deal violated his constitutional rights and undermined the fairness of his trial and reliability of the verdict in the case. In response to Mr. Mills' allegation, the State did not disclose to this Court that there was a plea deal and argued that habeas relief should be denied. These knowingly false representations violate a basic premise of our legal system that the prosecution will refrain from dishonest and illegal conduct. “Courts, litigants, and juries properly anticipate that ‘obligations . . . plainly rest[ing] upon the prosecuting attorney, will be faithfully observed.’” Banks v. Dretke, 540 U.S. 668, 696 (2004) (quoting Berger v. United States, 295 U.S. 78, 88 (1935)).

Because the State's false representations were unquestionably material to critical decisions made by this Court, including whether Mr. Mills was entitled to an evidentiary hearing, discovery, a certificate of appealability and, ultimately, to habeas corpus relief, Mr. Mills seeks relief from this Court's November 30, 2020, order denying habeas corpus relief and a certificate of appealability pursuant to Rule 60(b) and Rule 60(d). **Because the State now seeks Mr. Mills' execution, there is a critical need for this Court to address this fundamental violation of Mr. Mills' rights and grant appropriate relief.**

I. STATEMENT OF FACTS.

This is a case primarily built on the testimony of a single witness: JoAnn Mills. Without her testimony, the State's case was very weak. The physical evidence was consistent with Mr. Mills' theory of defense that he was innocent and being framed by Benjie Howe who was identified as a suspect in the murders and arrested with the victims' pills and a large amount of cash. (R1. 40-41, 876, 882.) The victims' belongings, a machete, hammer, and tire iron, and clothing with the victims' DNA were found in the trunk of the Mills' car (R1. 545-48), but the State conceded that the vehicle's trunk had no functioning lock and could be easily opened (R1. 538, 792), and that Benjie Howe, a "well known" drug "user/dealer" in Guin, had been at the Mills' home numerous times in the weeks leading up to the crime (R1. 419, 422-23). In fact, the State's evidence established that Benjie

had been at the Mills' home on the day of the murders both *before* and *after* the offense, giving him an opportunity to have put the evidence in the trunk. (R1. 375, 418-19, 422-25, 520-21, 708-09, 798-801, 881). Unidentified DNA profiles were found on the murder weapons but testing comparing Jamie Mills excluded him. (R1. 616, 626.) Testing was never conducted with respect to Benjie Howe.² (R1. 617, 645.)

Mr. Mills chose to testify at trial. (R1. 785-827.) He testified that he did not know Vera or Floyd Hill or know where they live (R1. 792), that the hammer introduced into evidence was not his hammer (R1. 795), and that he did not kill Vera or Floyd Hill (R1. 811-12). Mr. Mills further testified that Benjie Howe had a key to the Mills' home (R1. 791) and had access to the Mills' car because "there was no key to the ignition and no lock on the trunk." (R1. 792).

On rebuttal, the State sought to discredit Mr. Mills' testimony with

²¹ The director of the Huntsville DFS Laboratory, Rodger Morrison, testified that the DNA samples were searched against Alabama's State DNA database and that "there were no matches in our database." (R1. 637.) Morrison further testified, however, that he did not take DNA standards from Benjie Howe or DNA type Benjie Howe himself, and did not compare Benjie's DNA against the DNA on the machete handle and lug wrench. (R1. 645.) "[N]o matches" in CODIS is not an exclusion. See, e.g., Williams v. State, No. 09-14-00463-CR, 2017 WL 1455962, at *1-2 (Tex. App. Apr. 19, 2017) (although "data entry sheet" indicated DNA profile had been uploaded to CODIS, profile had actually never been uploaded to CODIS database); State v. Police, 343 Conn. 274, 279 n. 3, 280 (Conn. 2022) (despite prison record that indicated DNA profile had been taken and uploaded to CODIS, DNA profile was in fact *not* in CODIS).

testimony from Benjie Howe who denied participation in the murders. (R1. 875-76.) Although Benjie was found with one of Vera Hill's prescription pill bottles, he testified that Mr. Mills sold him some of her pills on the evening of the murders. (R1. 877-78.) The State also sought to provide an alibi for Benji Howe through the testimony of cousins Thomas Green and Melissa Bishop. (R1. 866, 868.) However, Green and Bishop's testimony contradicted Benjie Howe on several key points. (R1. 864-66, 868-870.) Benjie Howe testified that he spent June 24, 2004, with Thomas Green, only leaving Green's house to go to Jamie and JoAnn's house around 7:00 p.m. "with two girls." (R1. 873-74, 877-78.) Melissa Bishop, however, testified that she picked Benjie up from Thomas Green's house sometime between noon and 3:00 p.m. that day, not 7:00 p.m. as Benjie testified. (R1. 868-69.) Thomas Green also admitted that he had told defense counsel previously that Benjie's trip with Melissa was in the afternoon, not in the evening. (R1. 865-66.) And while Benjie Howe testified two women were in the car, Melissa Bishop testified that only she and Benjie Howe were in the car. (R1. 868-69.) Benjie Howe's alibi witnesses also gave contradictory testimony about the length of time Benjie was gone from Thomas Green's home. While Melissa Bishop testified that they were gone for only a few minutes (R1. 868-69), Thomas Green testified that Benjie left with Melissa Bishop for several hours. (R1. 864-66.) Melissa testified that if her cousin Thomas stated they were "gone four hours" then

“he’d be lying.” (R. 869-70.)

Other than the evidence found in the unlocked car trunk, the only evidence connecting Mr. Mills to the crime was the third of three statements given by JoAnn Mills implicating Jamie Mills.³ Because her third statement was unquestionably necessary to the prosecution’s case, the State took steps to ensure (1) that she testified consistent with this third statement (the one implicating Jamie Mills) and (2) that the jury not be informed that she was testifying to gain favor with the State. Shortly before trial, JoAnn was provided with a copy of her third statement. (R1. 747.) Because the relative credibility of JoAnn and Jamie Mills was a central question of fact for the jury, the existence or non-existence of any inducement for JoAnn’s testimony at trial was pivotal for both the State and defense counsel. District Attorney Bostick understood this and that is why his first questions elicited her denial of any plea offer:

Q: And are you doing this of your own free will?

A: Yes, sir.

Q: Have there been any deals or offers or anything like that made to you?

³ In the two statements provided on June 25, 2004, JoAnn Mills denied any involvement in the murders, provided an alibi for Jamie Mills, and implicated Benjie Howe. JoAnn then provided a third statement on June 28, 2004, implicating Jamie Mills but JoAnn also told investigators that Benjie had been at her house twice on the day of the offense: once early in the morning to do meth and once in the evening to buy Lortab pills. (R1. 37, 58-60.)

A: No, sir.

(R1. 685-86.) Defense counsel, who had sought evidence of any pleas or inducements prior to trial, also questioned her about the existence of a deal:

Q: You're just up here admitting to capital murder without any hope of help from the district attorney's office?

A: No, sir.

Q: You do expect help from the district attorney's office?

A: No, sir.

Q: Has anybody told you that if you get up here and tell this story that the district attorney will have pity for you and let you plead to something besides murder?

A: No, sir.

Q: So you expect as a result of your testimony today to get either life without parole or death by lethal injection?

A: Yes.

(R1. 720-21.)

Defense counsel asked the trial Court for permission to question District Attorney Jack Bostick "on the record" about the existence of a plea offer or any inducement. Bostick responded: "There is not." (R. 830.)

MR. WILEY: Not a promise, not a maybe, not a nudge, not a wink, because we think it stretches the bounds of credibility that her lawyer would let her testify as she did without such an Inducement.

MRf. BOSTICK: There is none.

MR. WILEY: None?

MR. BOSTICK: Have not made her any promises, nothing.

MR. WILEY: Have you suggested that a promise might be made after she testifies truthfully?

MR. BOSTICK: No.

MR. WILEY: No inducement whatsoever?

MR. BOSTICK: No.

(R. 830).

JoAnn Mills' testimony—that there was no deal—was crucial to the prosecution. Without that testimony, the State could not have underscored, as it did throughout its guilt phase summation, that defense counsel had failed to impeach her:

She was not tripped up on anything. Made a promise? No. That's her choice. She presented us with she wanted to testify, and she did. The judge will also tell you you can judge by the demeanor and the character of the witnesses. Look at the way JoAnn testified. Look at the way Jamie testified. JoAnn is up here visibly upset. Some of y'all got visibly upset listening to her testify. It was emotional. It was gut wrenching. . . .

(R1. 915-17.)

During closing arguments, both the prosecution and the defense discussed the forensic evidence, the alleged role of methamphetamine in the crime, the possible role of Benjie Howe in the crime, and the possibility that the evidence in

Mr. Mills' car trunk was staged or planted. (See R1. 887–920.) But the primary question for the jury was whether or not to believe JoAnn Mills: If the jury found her to be credible, then Mr. Mills' testimony and defense counsel's arguments would have been undermined. On the other hand, if the jury had reason to question JoAnn's credibility, then the entire prosecution's case would have been called into question.

Without knowing that JoAnn had been given a plea deal by the State that would save her life, the jury convicted Mr. Mills of capital murder on all three counts on August 23, 2007. (C1. 78-80.) On September 14, 2007, he was sentenced to death. (C1. 116.)

Ten days later, on September 24, 2007, the State dismissed capital murder charges against JoAnn Mills. (Ex. 3.)

After learning that the State dismissed capital murder charges against JoAnn Mills, only thirty days after confessing to capital murder in her testimony at Mr. Mills' trial, counsel for Mr. Mills filed a motion for a new trial arguing that this evidence was sufficient to establish the existence of a deal. (C. 120-21.) Mr. Mills' motion for a new trial was denied without a hearing. (C. 120.) Mr. Mills raised this issue throughout state postconviction and federal habeas corpus proceedings in this Court, asking prosecutors whether Jack Bostick and JoAnn Mills truthfully represented to the jury, defense counsel, and the trial court that there was no plea

offer in exchange for JoAnn's testimony, and at each stage the State has asserted that there was no deal and that JoAnn and the District Attorney testified truthfully.

As the attached declaration reveals, newly discovered evidence establishes that the District Attorney's statements at trial, and the State's representatives throughout the appeals and postconviction proceedings, were false.

Attorney Tony Glenn represented JoAnn Mills in her capital murder case. Mr. Glenn asserts that prior to Mr. Mills' capital trial, he met with District Attorney Jack Bostick and the family of Vera and Floyd Hill and that during that meeting, he advocated for JoAnn by presenting her life history of mitigating evidence in an effort to obtain a deal that could spare her from the death penalty. Mr. Glenn was successful: the District Attorney ultimately agreed to a life sentence, instead of the death penalty, if she would testify truthfully at Mr. Mills' trial. (Ex. 3.) Mr. Glenn's affidavit is corroborated by his attorney fee declaration⁴ and by the fact that, consistent with the prosecution's plea deal with JoAnn, on September 24, 2007, just ten days after Jamie Mills was sentenced to death, the State dismissed Capital

⁴ In responding to Mr. Mills' March 4, 2024 state postconviction petition filed in the Marion County Circuit Court, the State pointed to several scrivener's errors in Mr. Glenn's fee declaration. The State's attempt, however, to assert that these errors undermine the reliability of Mr. Glenn's fee declaration is unpersuasive. Mr. Glenn inadvertently transposed the dates of JoAnn's testimony at Mr. Mills' trial and some of his preparation of JoAnn for this testimony. No party contests, however, the dates of Mr. Mills' trial, or the dates of JoAnn's plea on September 24, 2004. In fact, the State's affidavits filed with their Answer and Motion to Dismiss confirm that meetings did take place with the District Attorney's office *before* JoAnn's testimony at Mr. Mills' trial to "encourage" her to testify.

Murder charges against her and she pled to the lesser included offense of straight Murder. (Ex. 3.)

This evidence means that District Attorney Jack Bostick falsely told the trial court that JoAnn testified without a “nudge, [or] a wink” or even a “suggest[ion]” of a plea. (R1. 830.) It also means that the testimony the District Attorney elicited from JoAnn Mills—that she did not “expect help from the district attorney’s office” and that she understood as a result of her testimony that she would “get either life without parole or death by lethal injection” (R1. 721)—was false.

II. FEDERAL HABEAS CORPUS PROCEEDINGS.

Mr. Mills filed a petition for habeas corpus relief in this Court on May 12, 2017, in which he alleged that the State withheld favorable evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), and Napue v. Illinois, 360 U.S. 264 (1959). Pet. for Writ of Habeas Corpus, ¶¶ 200-04, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. May 12, 2017). Mr. Mills sought an evidentiary hearing and discovery relating to this claim. Pet. for Writ of Habeas Corpus, 112-13, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. May 12, 2017); Req. for an Evidentiary Hr’g, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. April 3, 2018). In response, the State argued that no understanding existed between the State and JoAnn prior to her testimony, and it urged this Court to dismiss the claim. Answer to Pet. for Writ of Habeas Corpus,

¶ 215, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017); Resp't Br. on the Merits, 95-96, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017). This Court dismissed Mr. Mills' claim without discovery or a hearing, and sua sponte denied a certificate of appealability. Mills v. Dunn, No. 6:17-CV-00789-LSC, 2020 WL 7038594, at *79 (N.D. Ala. Nov. 30, 2020); see also Dismissal Order, Mills v. Dunn, 6:17-CV-00789-LSC (N.D. Ala. Nov. 30, 2020); Order, Mills v. Dunn, 6:17-CV-00789-LSC (N.D. Ala. May 7, 2018) (denying motion for evidentiary hearing). In denying Mr. Mills relief, this Court relied on the understanding that no deal existed. "The prosecutor stated that the State had not made any promises to JoAnn; that the State had not suggested that a promise might be made after she testified truthfully; and that there was not any inducement whatsoever for JoAnn's testimony." Mills, 2020 WL 7038594, at *60.

The United States Court of Appeals for the Eleventh Circuit denied Mr. Mills a certificate of appealability on August 12, 2021. Mills v. Comm'r, Ala. Dep't of Corr., No. 21-11534, 2021 WL 5107477 (11th Cir. Aug. 12, 2021).

On January 29, 2024, the State filed a motion with the Alabama Supreme Court asking it to authorize the Governor to set an execution date for Mr. Mills. On March 4, 2024, Mr. Mills filed a Second Petition for Rule 32 Relief in the Marion County Circuit Court, alleging that newly discovered evidence establishes that the District Attorney engaged in serious misconduct when he affirmatively

stated to the trial court, the jury, and Mr. Mills that there was no deal with the State's central witness, whose testimony was crucial for the State. On March 20, 2024, the Alabama Supreme Court authorized the Governor to schedule an execution date. On March 27, 2024, the Alabama Governor scheduled an execution for May 30, 2024. (Ex. 3.)

III. THIS CASE PRESENTS EXTRAORDINARY CIRCUMSTANCES MERITING RELIEF.

Tony Glenn represented JoAnn Mills in her capital murder case. Mr. Glenn's attached declaration asserts that prior to Mr. Mills' capital trial, he had several conversations with District Attorney Jack Bostick about a plea agreement in exchange for JoAnn Mills' testimony at Jamie Mills' trial and that the District Attorney agreed to a life sentence, instead of the death penalty or life without parole, if she would testify truthfully at Mr. Mills' trial. (Ex. 1.) The fact that the prosecution had a plea deal with JoAnn before Mr. Mills' trial means that District Attorney Jack Bostick falsely told the court that JoAnn testified without a "nudge, [or] a wink" or even a "suggest[ion]" of a plea. (R1. 830.) It also means that the testimony the District Attorney elicited from JoAnn Mills—that she did not "expect help from the district attorney's office" and that she understood as a result of her testimony that she would "get either life without parole or death by lethal injection" (R1. 721)—was false.

The prosecutor violated his constitutional obligation to disclose to a criminal

defendant any known exculpatory and impeachment evidence. Brady v. Maryland, 373 U.S. 83, 86-88 (1963); Giglio v. United States, 405 U.S. 150, 153-55 (1972). The District Attorney also violated Mr. Mills’ due process rights by eliciting testimony from JoAnn that she did not have a plea deal. Napue v. Illinois, 360 U.S. 264, 269-72 (1959). Moreover, the District Attorney’s extraordinary misconduct rendered the proceedings against Mr. Mills “fundamentally unfair,” United States v. Agurs, 427 U.S. 97, 103 (1976) (“[A] conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.”), and undermines the reliability of the verdict and appeals in this case.

[I]f a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation.

Mooney v. Holohan, 294 U.S. 103, 112 (1935).⁵

The District Attorney’s misconduct was extraordinary and went to the crux

⁵ A prosecutor “is the representative not of an ordinary party to a controversy, but of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done.” Berger v. United States, 295 U.S. 78, 88 (1935); see also Cone v. Bell, 556 U.S. 449, 469 (2009) (quoting Berger, 295 U.S. at 88) (“Although the State is obliged to ‘prosecute with earnestness and vigor,’ it ‘is as much [its] duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.’”).

of the State's case. Jamie and JoAnn's testimony were equally consistent with the physical evidence in this case. While no one disputed that the victim's belongings and the murder weapons were found in the Mills' car (R1. 545-48, 553-55), there was undisputed evidence that anyone could have opened the trunk (R1. 46, 538, 792), testimony that Benjie had just as much access to it on the day of the offense as Mr. Mills, having been at the home both before and after the offense (R1. 58, 874, 877), and evidence that the car did not require a key to start. (R1. 789-92, 818-19; see also R1. 881, 689). Benjie was also found with the victim's medicine and a large amount of cash, consistent with the State's theory that the motive for the robbery was the large amount of cash the victims were known to carry. (R1. 40-41, 874, 882.) Moreover, Benjie's alibi witnesses, Thomas Green and Melissa Bishop, provided testimony that was inconsistent with Benjie's alibi and each other as to when Benjie went to the Mills, with whom he went, and how long he was gone. (R1. 864-66, 868-70, 873-78.)⁶

⁶ Critically as to timing, because the State did not provide a time of death for Floyd Hill, the Hills could have been killed or attacked much earlier in the day and not around 6:00 p.m., as the State attempted to establish. (R1. 740). Testimony from the victims' family raised questions about time. The Hills' granddaughter, Angela Jones, testified that her mother had called her around 6:30 p.m. on June 24, 2004, because her mother was "worried" that she "couldn't get in touch" with her parents. (R1. 388.) No evidence was presented as to how long Ms. Jones's mother had been trying to get in contact with the Hills, just that as of 6:30 p.m., their daughter was concerned enough to call Ms. Jones because "she couldn't get in touch with them." (R1. 388.) Neither Benjie Howe nor JoAnn Mills have an alibi for earlier that day. Thomas Green testified he was not with Benjie for several hours on the afternoon of June 24th. (R1. 865-66.) The State presented no

As the District Attorney told the jury, this case came down to a he said/she said:

You've got two people, a husband and a wife, that say -- both say we were together all day long. One says they went looking at houses and bought cigarettes. The other one says they participated in a horrible, horrible double murder. You can't put those two together. . . . Somebody's got to be telling a story.

(R1. 911.) JoAnn's testimony that there was no agreement was crucial to the prosecution. Without that testimony, the State could not have underscored, as it did throughout its guilt phase summation, that defense counsel had failed to impeach her:

[Defense counsel] got on her statement, and the only thing he got her confused on, the only thing, was when they put the stuff in the blue bag. When did the garbage bag come into play? That was it. She was not tripped up on anything. Made a promise? No. That's her choice. She presented us with she wanted to testify, and she did. The judge will also tell you you can judge by the demeanor and the character of the witnesses. Look at the way JoAnn testified. Look at the way Jamie testified. JoAnn is up here visibly upset. Some of y'all got visibly upset listening to her testify. It was emotional. It was gut wrenching. . . . JoAnn didn't need that statement. She was there. She saw it. You looked at those pictures. She didn't look at a single picture up there on the stand, and she nailed it. She went through that crime scene. She took you through everything and didn't miss a thing. Again, they tripped her up on a garbage bag at their house, or tried to, and that was it. She shucked it down, as the saying goes. She told y'all exactly what happened. . .

(R1. 915-17.)

corroboration for Joann Mills' whereabouts while Jamie Mills was sleeping. (R1. 795, 821.)

After state court appeals, Mr. Mills filed a federal habeas petition and alleged in this Court that his constitutional rights were violated because he suspected that there was a plea deal, but the State continued to maintain that there was no plea deal. Resp't Br. on the Merits, 95-96, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017) (“concerning the substance of Mills’s Brady claim, he offers no evidence . . . that an undisclosed Brady claim actually occurred in this case. Thus, Mills is due no relief.”); see also Answer to Pet. for Writ of Habeas Corpus, ¶ 215, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017). Relying on assurances from the State, this Court ruled on all aspects of Mr. Mills’ constitutional claims related to the plea deal, denying Mr. Mills relief without access to discovery or an opportunity to present witnesses under oath at an evidentiary hearing, and also denied him a certificate of appealability. Mills v. Dunn, No. 6:17-CV-00789-LSC, 2020 WL 7038594, at *79 (N.D. Ala. Nov. 30, 2020); see also Dismissal Order, Mills v. Dunn, 6:17-CV-00789-LSC (N.D. Ala. Nov. 30, 2020).

Where, as here, a State prosecutor engages in “deliberate deception of a court and jurors by the presentation of known false evidence,” a new trial should have been ordered in state court and federal habeas corpus relief should have been granted by this Court. Giglio, 405 U.S. at 153 (deliberate deception of this kind “is incompatible with rudimentary demands of justice”) (internal quotations omitted);

see also United States v. Bagley, 473 U.S. 667, 680 (1985) (quoting Agurs, 427 U.S. at 104) (“[T]he knowing use of perjured testimony involves prosecutorial misconduct and, more importantly, involves ‘a corruption of the truth-seeking function of the trial process.’”).

The State made knowing false statements to the trial judge, jury, defense counsel, and then to this Court, which went to the central question of fact for the jury at trial and this Court in its consideration of the habeas corpus claim. This misconduct undermines the confidence in the outcome of Mr. Mills’ trial and postconviction proceedings. Kyles v. Whitley, 514 U.S. 419, 434 (1995). The withholding of this information, considered individually and cumulatively, denied Mr. Mills his rights to due process, a fair trial, and a reliable sentencing procedure in violation of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Alabama law. Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972); Mooney v. Holohan, 294 U.S. 103 (1935).

IV. THE STATE’S EXTRAORDINARY MISCONDUCT COMPELS RELIEF PURSUANT TO RULE 60.

At trial and at every stage of his appeals, Mr. Mills asked prosecutors whether Jack Bostick, the District Attorney, and JoAnn Mills truthfully represented to the jury, defense counsel, and the trial court that there was no plea offer in exchange for JoAnn’s testimony. At each stage, the State falsely asserted that this

testimony was true.

The District Attorney's extraordinary misconduct—engaging in intentional deception of the trial court, the jury, and defense counsel—seriously undermines the integrity of every proceeding in this case, including the proceedings on Mr. Mills' federal claims in this Court. Mr. Mills was unable to obtain federal review of this claim because this Court relied on these false statements. In its order dismissing this claim as procedurally defaulted without an evidentiary hearing or discovery and denying a certificate of appealability, this Court evaluated Mr. Mills' claim against the factual backdrop established by these false statements:

By way of background, JoAnn testified at trial that she had not made any deals in exchange for her testimony. Mills thoroughly cross-examined her regarding whether she had made any deals in exchange for her testimony. The prosecutor stated that the State had not made any promises to JoAnn; that the State had not suggested that a promise might be made after she testified truthfully; and that there was not any inducement whatsoever for JoAnn's testimony.

Mills v. Dunn, No. 6:17-CV-00789-LSC, 2020 WL 7038594, at *60, 78-79 (N.D. Ala. Nov. 30, 2020).

The newly discovered evidence of the District Attorney's egregious misconduct raises serious questions about the integrity of the review process in this Court. The extraordinary constitutional violation is grounds for Rule 60(b) relief. "Rule 60(b) vests wide discretion in courts," Buck v. Davis, 580 U.S. 100, 123 (2017), and "provides courts with authority 'adequate to enable them to vacate

judgments whenever such action is appropriate to accomplish justice,” Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 864 (1988) (quoting Klapprott v. United States, 335 U.S. 601, 614-15 (1949) in discussion of Rule 60(b)(6)); see also Gonzalez v. Crosby, 545 U.S. 524, 538 (2005) (Rule 60(b) motion appropriate if it challenges “the District Court’s failure to reach the merits . . . and can [] be ruled upon by the District Court without precertification”).

A. Relief is Warranted Under Rule 60(b)(2)

Rule 60(b)(2) permits relief from a final judgment, order, or proceeding based on “newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)” Fed. R. Civ. P. 60(b)(2). To be entitled to relief under Rule 60(b)(2), the movant must demonstrate the new evidence was discovered after the judgment was entered and that he exercised due diligence in discovering that evidence, that the evidence is material and not merely cumulative or impeaching, and that the evidence was likely to produce a different result. In re Glob. Energies, LLC, 763 F.3d 1341, 1347 (11th Cir. 2014). Mr. Mills meets each of these requirements.

i. Despite Mr. Mills’ due diligence, evidence that the State falsely denied the existence of a plea was not discovered until after judgment was entered in this case.

Mr. Mills exercised due diligence in discovering this evidence. For seventeen years, counsel for Mr. Mills has been asking prosecutors in this case

whether Jack Bostick and JoAnn Mills truthfully represented to the jury, defense counsel, this Court and the appellate courts that there was no plea offer in exchange for JoAnn's testimony. Because the State denied the existence of this evidence under oath, and continued to rely on this denial throughout the appeals process, this evidence was not known to Mr. Mills or his counsel prior to February 23, 2024, when Tony Glenn revealed to undersigned counsel that he had a plea agreement in place when JoAnn Mills testified against Jamie Mills. In re Glob. Energies, LLC, 763 F.3d at 1348 (plaintiff entitled to relief from judgment on the basis of discovery of new evidence that involuntary bankruptcy filing was done in bad faith).

The Eleventh Circuit has addressed this scenario in the Rule 60(b)(2) context, in which "a sworn officer of the court" obstructed access to evidence. In re Glob. Energies, LLC, 763 F.3d at 1348. There, the Court found the fact that the petitioner eventually gained access to the evidence through other means, did not "diminish [his] due diligence." Id. at 1349 ("the parties, who had the evidence that Wortley needed to substantiate his claims, blocked his access to it and deliberately prevented him from finding it. Wortley eventually obtained the emails from a different attorney as part of another lawsuit, but that does not diminish Wortley's due diligence or his adversaries' apparent malfeasance in the litigation that led to this appeal"); see also Banks v. Dretke, 540 U.S. 668, 693 (2004) ("[B]ecause the

State persisted in hiding Farr’s informant status and misleadingly represented that it had complied in full with its Brady disclosure obligations, Banks had cause for failing to investigate, in state postconviction proceedings, Farr’s connections to Deputy Sheriff Huff.”).

ii. The new evidence is material and does not constitute cumulative or mere impeachment evidence.

The evidence that JoAnn Mills had a plea agreement with the State is not cumulative to other facts that were known at trial. With respect to evidence about the plea deal itself, the State presented false evidence that no deal or inducement “whatsoever” existed, (R1. 829-30), so there is nothing remotely cumulative about the new revelation that there was a plea deal.

More importantly, without JoAnn’s testimony the prosecution could not have proven its case against Mr. Mills beyond a reasonable doubt. This is because there was a real question about whether Benjie Howe was the person who committed the crime in this case. Benjie was arrested and charged with the murders in this case. He was found with the victims’ pills and a large amount of cash. (R1. 40-41, 874, 882.) While the State found the murder weapons, clothing, and victims’ belongings in the trunk of the Mills’ car, there was undisputed evidence that anyone could have opened the trunk (R1. 46, 538, 792) and that Benjie had just as much access to it on the day of the offense as Mr. Mills (R1. 58, 874, 877), as well as testimony that Benjie was at the Mills’ home twice on the day of the offense—both before

and after the murders (R1. 37, 58-60). JoAnn Mills inculpated Benjie, not Jamie, in her first two statements and only inculpated Jamie in her third statement. (R1. 44, 57, 747, 837-39.) As the District Attorney told the jury in closing argument, this case came down to a he said/she said and “somebody’s got to be telling a story.” (R1. 911.) JoAnn’s testimony was critical to, if not dispositive of, the State’s case. Scutieri v. Paige, 808 F.2d 785, 794 (11th Cir. 1987) (requiring under (b)(2) that outcome of case would “probably” have been different with new evidence).

Similarly, this Court’s reliance on the State’s the false statements that no plea deal existed, when in fact, one did, was critical to its decision to deny Mr. Mills discovery or the opportunity to prove his claim at an evidentiary hearing, a certificate of appealability and, ultimately to dismiss Mr. Mills’ habeas petition and deny him relief. “The prosecutor stated that the State had not made any promises to JoAnn; that the State had not suggested that a promise might be made after she testified truthfully; and that there was not any inducement whatsoever for JoAnn’s testimony.” Mills, 2020 WL 7038594, at *60, 77-79.

Evidence that the District Attorney lied to the trial court, jury, and defense counsel about the most critical issue at trial is not merely impeachment evidence, it undermines the reliability and integrity of the trial process. Giglio v. United States, 405 U.S. 150, 153 (1972) (“deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of

justice” and requires reversal) (internal quotations omitted); see also Bagley, 473 U.S. at 680 (quoting Agurs, 427 U.S. at 104) (when a prosecutor knowingly lies, it is not only prosecutorial misconduct but involves “a corruption of the truth-seeking function of the trial process,” and undermines the integrity of the outcome).

iii. There is a reasonable probability of a different result.

Had evidence of JoAnn Mills’ agreement with the State been presented at trial, the result would probably have been different. JoAnn’s testimony was critical to the State’s ability to prove its case against Mr. Mills beyond a reasonable doubt. The only pieces of physical evidence linking Mr. Mills to the offense were found in the trunk of the Mills’ car. (R1. 545-48.) The trunk, however, did not have a functioning lock (R1. 46, 538, 792) and the car itself did not require a key to start (R1. 792). Benjie Howe had driven the Mills’ car previously (R1. 881), and had access to it shortly before and after the offense (419, 422-23, 799-800). Benjie also had a key to the Mills’ home (R1. 791) and was found with the victims’ medicine and a large amount of cash (R1. 40-41, 874, 882).

In two of her three statements to police, JoAnn Mills implicated Benjie Howe, not Jamie Mills. (R1. 88 (“She immediately said that Benjie Howe had been over at the residence.”); R1. 121, 728-30, 837-838.) She told investigators that she thought Benjie had left stolen items in the house and directed them to some of the items. (R1. 88, 122-23.) She also stated that she was worried about items Benjie

might have left in the trunk of their car. (R1. 92-93 (“her main concern was that Benjie Howe had put something in the trunk of the car”).)

Mr. Mills was excluded from the DNA evidence found on the murder weapons (R1. 616, 626) and this evidence was never directly compared to Benjie’s DNA profile. (R1. 617, 645.)

In light of this new evidence, this Court is left with evidence that Benjie Howe had equal access to the Mills’ unlocked trunk (R1. 422-25, 538, 792, 798-801, 881); that Mr. Mills was excluded as a contributor to the unidentified DNA found on the handles of the murder weapons (R1. 616, 626); that the State never directly compared this DNA to Benjie’s DNA profile (R1. 617, 645); that Benjie Howe and JoAnn Mills do not have alibis for critical periods of June 24 (R1. 795-96, 865-70); that the State did not establish *when* the Hills were killed; that JoAnn’s testimony against Mr. Mills was obtained only after she was told capital murder charges would be dismissed if she testified against Mr. Mills (Ex. 2); and most critically, that the State prosecutor intentionally deceived not only defense counsel, but also the jury and the courts (R1. 829-30).

Evidence that JoAnn Mills did in fact receive a plea deal in exchange for her story, *prior* to her testimony (Ex. 1), that JoAnn Mills affirmatively lied about the existence of such a deal (R1. 685-86, 720-23), and most critically, that the State prosecutor himself knowingly made false statements to the jury, defense counsel,

and the courts about the existence of a deal (R1. 829-30), undoubtedly creates a probability of a different result at trial. Granting Mr. Mills relief from this Court's judgment would prevent a "grave miscarriage of justice." United States v. Beggerly, 524 U.S. 38, 47 (1998). A denial of this motion would reward the State's exceptional misconduct—misconduct that has prevented Mr. Mills from ever receiving merits review of this issue—and undermines the integrity of Mr. Mills' conviction and death sentence. Giglio, 405 U.S. at 153 ("deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice.'") (quoting Mooney v. Holohan, 294 U.S. 103, 112 (1935)).

B. The State's Representations Constitute the Kind of Fraud that Warrants Relief Under Rule 60(b)(3) and Rule 60(d).

The District Attorney made false statements under oath and on the record in this case. The State did not correct these false statements in federal habeas corpus proceedings, as it is obligated to do, Napue v. Illinois, 360 U.S. 264, 269 (1959),⁷ and instead urged this Court to rely on these false statements—and this Court did in fact rely on these statements—in denying Mr. Mills process and review of his claim. Mr. Mills asked for, and this Court denied, discovery, an evidentiary hearing, habeas corpus relief, and a certificate of appealability. Concealing

⁷ See also Alcorta v. State of Tex., 355 U.S. 28, 32 (1957) (petitioner entitled to habeas corpus relief where witness at trial lied regarding relationship with victim and prosecutor willfully failed to correct misrepresentation).

evidence about the plea deal that was central to Mr. Mills' habeas corpus petition is the kind of "fraud" contemplated by Rule 60 because it improperly influenced the Court's decisions related to this issue and prevented the Court from performing an impartial review of the claim in this case. Relief is warranted pursuant to Rule 60 because to allow the State to proceed with an execution predicated on a false representation about a critical question of fact for the jury and this Court—JoAnn's reliability—would be a miscarriage of justice.

Rule 60 provides two avenues for pursuing relief from a judgment: Rule 60(b)(3), which permits a court to set aside a judgment due to "fraud . . . by an opposing party" and Rule 60(d)(1) and (3), which provides that Rule 60 "does not limit a court's power to" either "entertain an independent action to relieve a party from a judgment" or to "set aside a judgment for fraud on the court." Fed. R. Civ. P. 60(b)(3), (d)(1), (d)(3). The commentary to Rule 60 notes that Rule 60(d) reflects the inherent power to vacate a judgment obtained by fraud on the court that the Supreme Court espoused in Hazel-Atlas. Fed. R. Civ. P. 60 advisory committee's note, 1946 Amendment (referencing Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944)) ("the rule expressly does not limit the power of the court, when fraud has been perpetrated upon it, to give relief under the saving clause").

Relief is warranted pursuant to Rule 60(b)(3) because new evidence establishes that the District Attorney committed egregious misconduct by lying to the court, the jury, and defense counsel, about the existence of a plea deal. The State continued to rely on this false evidence in arguing that Mr. Mills is due no process on his claims in federal court. The State's representation in its response to Mr. Mills' § 2254 petition that no evidence of a deal exists; failure to correct the false representations on the record; and use of those false representations in asking this Court to find that Mr. Mills is entitled to no process on his claim, are evidence of fraudulent deception. Waddell v. Hendry Cnty. Sheriff's Off., 329 F.3d 1300, 1309 (11th Cir. 2003) (citing Frederick v. Kirby Tankships, Inc., 205 F.3d 1277, 1287 (11th Cir. 2000)) (Rule 60(b)(3) warranted where moving party establishes that adverse party's misconduct "prevented them from fully presenting his case").

Relief is also warranted pursuant to Rule 60(d) where a party's fraudulent conduct interferes with the Court's ability to perform its duty in adjudging cases. Zakrzewski v. McDonough, 490 F.3d 1264, 1267 (11th Cir. 2007). The State, through District Attorney Bostick, made knowingly false statements to the trial court, the jury, and defense counsel, about a critical question of fact at trial. The State has not corrected these deceptive statements and has continued to repeat them in this Court. Fraud has been committed on this Court by the State's knowing endorsement of the District Attorney's intentional deception. Zakrzewski, 490 F.3d

at 1267 (quoting Travelers Indem. Co. v. Gore, 761 F.2d 1549, 1551 (11th Cir. 1985)) (“‘Fraud upon the court’ . . . embrace[s] . . . fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.”).

Rule 60(d) relief must be available in a case such as Mr. Mills in which, not only an attorney is implicated, but a State prosecutor is responsible. Berber v. Wells Fargo, NA, No. 20-13222, 2021 WL 3661204, at *3 (11th Cir. Aug. 18, 2021). The fraud “denied Petitioner of his right to due process and his right to full and fair access to [the district court], and it subsequently led to the denial of Petitioner’s habeas petition[,]” as well as denial of his ability to obtain discovery or an evidentiary hearing. Zakrzewski, 490 F.3d at 1266-67 (remanding to district court for proceedings to determine if the petitioner had met the requirements for fraud on the court).

The State’s extraordinary constitutional violation is grounds for Rule 60(b) and (d) relief allowing Mr. Mills to obtain merits review of this claim. Mr. Mills has always maintained his innocence and has persistently tried in every court available—including this Court—to get the State to reveal the truth about the plea deal, but the State has always maintained that there was no such deal, thereby preventing adequate consideration of the most important issue in this case.

C. Relief is Warranted Under Rule 60(b)(6)

Mr. Mills is entitled to relief under Rule 60(b)(6) due to the “extraordinary circumstances” his case presents. Buck v. Davis, 580 U.S. 100, 123, 128 (2017) (finding petitioner to be entitled to relief pursuant to Rule 60(b)(6) where use of race undermined integrity of the proceedings and “poison[ed] public confidence in the judicial process”) (internal quotations omitted); see also Bucklon v. Sec’y, Fla. Dep’t of Corr., 606 F. App’x 490, 493 (11th Cir. 2015) (finding petitioner established “extraordinary circumstances” necessary for relief under Rule 60(b)(6) where intervening decision established error in how federal court interpreted its own procedural rules).⁸

The District Attorney at Mr. Mills’ trial falsely denied the existence of any understanding with JoAnn Mills prior to her trial testimony (R1. 829-30) and deliberately misinformed the jury of this fact because he knew that JoAnn was the crux of the State’s case against Mr. Mills. The State has never corrected these false statements and in fact urged this Court to rely on them. Answer to Pet. for Writ of

⁸ See also Thompson v. Bell, 580 F.3d 423, 442, 444 (6th Cir. 2009) (reversing district court’s denial of Rule 60(b)(6) motion that asserted the district court erred when it dismissed four of petitioner’s ineffective assistance claims as procedurally defaulted in death penalty case, finding “[c]onventional notions of finality of litigation have no place where life or liberty is at stake and infringement of constitutional rights is alleged”) (quoting Sanders v. United States, 373 U.S. 1, 8 (1963)); Cnty. Dental Servs. v. Tani, 282 F.3d 1164, 1172 (9th Cir. 2002) (petitioner entitled to relief pursuant to Rule 60(b)(6) where attorney engaged in “grossly negligent conduct”).

Habeas Corpus, ¶ 215, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017); Resp't Br. on the Merits, 95-96, Mills v. Dunn, No. 6:17-CV-00789-LSC (N.D. Ala. Nov. 16, 2017).

This Court relied on the District Attorney's knowingly false statements in resolving this issue and declining to grant merits review: "The prosecutor stated that the State had not made any promises to JoAnn; that the State had not suggested that a promise might be made after she testified truthfully; and that there was not any inducement whatsoever for JoAnn's testimony . . . Mills still fails to allege what specific evidence or arguments his trial counsel could have presented . . . to show that JoAnn lied on the stand and was in fact testifying against Mills in exchange for a lesser sentence." Mills v. Dunn, No. 6:17-CV-00789-LSC, 2020 WL 7038594, at *60, 78 (N.D. Ala. Nov. 30, 2020).

The State's assertions in federal habeas proceedings that JoAnn in fact did not receive a plea deal in exchange for her testimony and that the District Attorney did not knowingly deceive the trial court and the jury, as well as this Court's reliance on those false assertions, constitutes "a defect in the integrity of the habeas proceedings," and requires relief from this Court's prior judgment. Gonzalez, 545 U.S. at 532 (federal courts have jurisdiction to consider Rule 60(b) motions in federal habeas proceedings where the motion "attacks, not the substance of the federal court's resolution of a claim on the merits, but some defect in the integrity

of the federal habeas proceedings”); Williams v. Chatman, 510 F.3d 1290, 1295 (11th Cir. 2007) (finding claim that district court should have granted additional briefing to be a proper Rule 60(b) motion because it attacks a “defect in the integrity of the federal habeas proceedings”).

Rule 60(b)(6) is intended to prevent this unnecessary “risk of injustice” and “risk of undermining the public’s confidence in the judicial process”. Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 864 (1988); see also Buck v. Davis, 580 U.S. 100, 123 (2017). This Court’s dismissal of Mr. Mills’ Brady, Giglio, and Napue claim, and decision not to grant merits-based review, was based on the State’s fraudulent assertions in its habeas petition and the District Attorney’s knowingly false statements at trial, that no understanding existed with JoAnn Mills prior to her testimony. Mills, 2020 WL 7038594, at *77-78. To allow such a ruling to stand “injures not just [Mr. Mills], but the law as an institution, . . . the community at large, and . . . the democratic ideal reflected in the processes of our courts.” Buck, 580 U.S. at 124 (quoting Rose v. Mitchell, 443 U.S. 545, 556 (1979)) (internal quotations omitted).

Much like the impermissible use of race in Buck, to prevent Mr. Mills from receiving federal merits-review based on the District Court’s reliance on the State’s false statements “is a disturbing departure from a basic premise of our criminal justice system.” Buck, 580 U.S. at 123. It is a basic premise of our criminal justice

system that prosecutors tell the truth and do not impermissibly obstruct or mislead the appellate and federal review process. See, e.g., Cone v. Bell, 556 U.S. 449, 469 (2009); Banks v. Dretke, 540 U.S. 668, 696 (2004); Strickler v. Greene, 527 U.S. 263, 281 (1999); Berger v. United States, 295 U.S. 78, 88 (1935). Mr. Mills’ case presents “extraordinary circumstances” because to date, the State has successfully impeded the federal review process by presenting the District Attorney’s false statements. Buck, 580 U.S. at 123.

Mr. Mills brought this motion within a “reasonable time,” as required by Rule 60(c)(1). Fed. R. Civ. P. 60(c)(1). Ms. Mills’ attorney’s willingness to come forward this year allowed Mr. Mills to discover the evidence contained in Tony Glenn’s affidavit just one-month prior, on February 23, 2024. Bucklon, 606 F. App’x at 494–95 (finding 18-month delay to be reasonable given facts and circumstances of case). Further, Mr. Mills exercised diligence in attempting to establish the State’s false statements. Mr. Mills should not be punished for the time in which it took him to establish the *State’s* misconduct—this Court has found it is reasonable for defense counsel to take “the government at its word” and “not undertake additional steps” to investigate issues of prosecutorial misconduct or Brady violations. Scott v. United States, 890 F.3d 1239, 1259 (11th Cir. 2018). Mr. Mills’ case, however, presents the extraordinary circumstance in which a petitioner continues to attempt to establish the State’s deception despite no requirement that

he do so, in an effort to finally receive federal review of his claim. This is precisely the type of diligence that makes this case “extraordinary.” Gonzalez, 545 U.S. at 537.

Because Mr. Mills has never received merits-based review of this issue, “an ‘extreme’ and ‘unexpected’ hardship will result” if this Court allows the State of Alabama to proceed with Mr. Mills’ death sentence, with no review of the State’s grave misconduct, and with no consequences to the State’s knowing endorsement of the District Attorney’s false statements before this Court. Horton v. Hand, 785 F. App’x 704, 706 (11th Cir. 2019) (quoting Griffin v. Swim-Tech Corp., 722 F.2d 677, 680 (11th Cir. 1984)). Further, providing relief in this case will “not produce injustice in other cases” but to the contrary, “may prevent a substantive injustice in some future case by encouraging” prosecutors and State attorneys to undertake their oath to pursue truth and justice, as opposed to upholding a conviction at any cost. Liljeberg, 486 U.S. at 868 (“providing relief in cases such as this [pursuant to Rule 60(b)(6)] will not produce injustice in other cases; to the contrary, the Court of Appeals’ willingness to enforce § 455 may prevent a substantive injustice in some future case by encouraging a judge or litigant to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered”); see also Buck, 580 U.S. at 126 (quoting Gonzalez, 545 U.S., at 529)

(“[T]he ‘whole purpose’ of Rule 60(b) ‘is to make an exception to finality.’”). Mr. Mills must be granted relief from this Court’s prior judgment.

V. CONCLUSION.

The “deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with ‘rudimentary demands of justice.’” Giglio, 405 U.S. at 153 (quoting Mooney, 294 U.S. at 112). To allow Mr. Mills to be executed without a merits review of his underlying Brady, Giglio, and Napue claim would reward the State’s misconduct and fly in the face of this Supreme Court precedent. The State has successfully prevented federal review of Mr. Mills’ underlying claim by knowingly endorsing the District Attorney’s false statements. Although Mr. Mills has diligently pursued this claim at all stages, he only recently obtained proof that an understanding *did* in fact exist between the State and their central witness. It cannot be that the State may conceal critical evidence throughout all stages of capital proceedings—trial, appeals, state and federal postconviction—and then rely on procedural hurdles and arguments of delay to prevent Mr. Mills from obtaining any process on this claim. *The State* has delayed a substantive review of this issue, not Mr. Mills. In light of the extraordinary aspects of Mr. Mills’ case, relief under Rule 60(b) and (d) is warranted.

Respectfully submitted,

/s/ Charlotte R. Morrison
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April 5, 2024

Counsel for Mr. Mills

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to: **Lauren Simpson**.

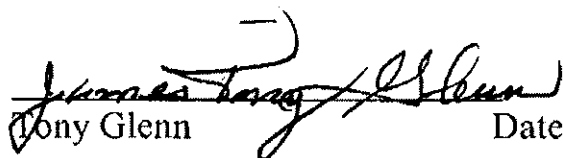
/s/ Charlotte R. Morrison
CHARLOTTE R. MORRISON

EXHIBIT 1

AFFIDAVIT OF TONY GLENN

1. My name is Tony Glenn. I am a practicing attorney in Hamilton, Alabama. My law office is located at 164 Bexar Ave. W., Hamilton, AL 35570.
2. I represented Jo Ann Mills in Marion County Case No. 2004-403. My client, along with her husband, Jamie Mills, were charged with capital murder in the deaths of Floyd and Vera Hill. My Attorney Fee Declaration Sheet in this case is attached.
3. During the summer of 2007, prior to Jamie Mills' trial, I had several discussions with Jack Bostick, who was the Marion County District Attorney at the time, about a plea offer based on Jo Ann's tragic mitigation history and her potential testimony at Jamie Mills' upcoming trial.
5. Prior to testifying in Jamie Mills' case, Jo Ann and I met with Mr. Bostick and the victim's daughter. I presented Jo Ann's tragic mitigation history. Based on Jo Ann's terrible childhood, the victim's family agreed for Jo Ann to get a plea to life with parole if she testified truthfully at Jamie Mills' trial. Mr. Bostick agreed that if Jo Ann testified truthfully, he would not pursue the capital charge and would agree to a plea to murder.
6. These meetings are recorded on my Attorney Fee Declaration Sheet.
7. The first time I spoke with any attorneys from the Equal Justice Initiative regarding Jamie Mills' case or Jo Ann's testimony in her husband's case was February 23, 2024.

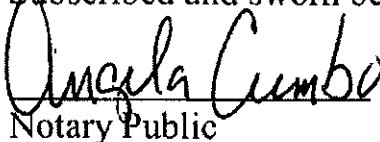
I have read this affidavit. Everything in this affidavit is the truth. I swear under penalty of perjury that the above and foregoing is a true and correct statement.


Tony Glenn

02-26-2024

Date

Subscribed and sworn before me on this 26th day of March, 2024.


Notary Public

My commission expires 10-8-2025

ANGELA CUMBO
Notary Public, Alabama State At Large
My Commission Expires 10/8/2025

COPY

State of Alabama Unified Judicial System Form CR-63A Rev. 6/06	ATTORNEY'S FEE DECLARATION (Adult) [For Work Performed On or After 10/1/2000]	County Code <u>47</u>	Case Number CC 2004-403 <small>Jurisdiction Year Case# Suffix</small>
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Mark Appropriate Court:

Circuit Court of Marion County

District Court of _____ County

Municipal Court of _____

Alabama Court of Criminal Appeals

Alabama Court of Civil Appeals

Supreme Court of Alabama

Indicate if Original Charge is: **Limits**

Capital Case (or charge carrying sentence of life without parole)

Class A Felony (NO Limit) CC

Class B Felony (\$3,500) FA

Class C Felony (\$2,500) FB

Other (\$1,500) FC

Appeal (\$1,000) OT

Petition for Writ of Certiorari (\$2,000) AP

Post-Conviction/Habeas Corpus (\$1,000) PC

Attorney Name (Please type or print)
J. Tony Glenn
63-1116644
 Social Security Number or FEIN

STYLE OF CASE: STATE OF ALABAMA
 MUNICIPALITY OF _____ v. JoAnn Green Mills
 Defendant

CHARGE: Murder - Capital - Robbery (x2), Murder - Capital - Two or more

Companion case numbers and charges or convictions: _____

The undersigned attorney declares that on (date) December 13 2004, the Honorable John Bentley Judge, appointed the undersigned to represent the above-named defendant or appellant, and on (date) 9/24/07 the case was heard by the Honorable John Bentley Judge. The case was disposed of by Plea Agreement

(Plea of guilty, conviction, acquittal, affirmance, reversal, cert. denied)

(1) In court Appearance (Trial Level or Post-Conviction Proceeding)	Total Hours <u>30.10</u> x \$ 60.00 per hour = <u>1,806.00</u>
(2) Out-of-Court Preparation (Trial Level or Post-Conviction Proceeding)	Total Hours <u>101.75</u> x \$ 40.00 per hour = <u>4,070.00</u>
(3) Preparation (Appellate Level)	Total Hours _____ x \$ 60.00 per hour = _____
(4) Extraordinary Expenses (If approved in advance by court)	<u>Preliminary Hearing Transcript</u> <u>126.70</u>
(5) Overhead Expenses (If approved in advance by court)	Total Hours <u>117.45</u> x \$ 35 Per hour = <u>4,110.75</u>
TOTAL CLAIM OF ATTORNEY <u>10,113.45</u>	

NOTICE TO ATTORNEY: Complete this form. Attach a copy of a complete itemization of (1) in-court appearance; (2) out-of-court preparation; (3) preparation for appeals; (4) extraordinary expenses; and/or (5) overhead expenses reflecting the date of actions and amount of time involved in each activity. Make a copy of same for the court's record and a copy for your records.

The undersigned attorney further declares that the above claim is true and correct and represents the services actually rendered by him/her as an attorney and the amount is due and payable. I further declare that the above claim is not a duplication of charges and expenses in any case (companion or otherwise)

Signature of Attorney: [Signature]
 Attorney Code: GLE 003

Sworn to and subscribed before me this _____
 Day of September 2007

Mailing Address of Attorney (please type or print) (including city, state, and zip code)
PO Drawer 1945
Hamilton, AL 35670

Notary Public Telephone Number 921-5000 Fax Number 921-9697

I, the undersigned judge, hereby certify that the foregoing claim has been presented to me, and I have reviewed the same and believe the same to be true and correct. I am further of the opinion that said attorney is not duplicating said charges and expenses in any case (companion or otherwise).

Based on the above, I hereby approve the declaration and claim in the amount of \$ 10,113.45

Done this September day of 25th 2007

Judge Signature: [Signature]

NOTICE TO ATTORNEY AND JUDGE: Sections 15-12-21 through 15-12-23, Ala. Code 1975, provide for the payment of attorney fees and extraordinary expenses incurred by counsel appointed to represent indigent defendants at the trial level on appeal (including petition for writ of certiorari to the Alabama Supreme Court) and in post-conviction proceedings.

THIS FORM MUST CONTAIN ORIGINAL SIGNATURES OF THE ATTORNEY AND THE JUDGE. THIS FORM WITH ATTACHED ITEMIZATION MUST BE SUBMITTED TO THE TRIAL COURT JUDGE OR PRESIDING JUDGE OR CHIEF JUSTICE OF THE APPELLATE COURT. FOR APPROVAL AFTER APPROVAL, FILE WITH THE CLERK, WHO SHALL SUBMIT THE ORIGINAL DECLARATION TO THE STATE COMPTROLLER (EXCEPT IN MUNICIPAL CASES) FOR AUDIT.

Filed in the Clerk's Office at Hamilton, Alabama, on 9-25-07 date

EXCEPT IN MUNICIPAL CASES, MAIL TO: State Comptroller, Indigent Defense Section, P.O. BOX 2000, Montgomery, Alabama 36130-2602.

Original: Comptroller Yellow: Court File Pink: **FILED** SEP 25 2007 HAMILTON COUNTY ALABAMA

Form CR-52 (back) Rev. 8/06	EXPLANATION OF RIGHTS AND PLEA OF GUILTY (Habitual Felony Offender - Circuit District Court)
<p>18 to person under age (18) or 13A-12-231 (drug trafficking), Ala. Code 1975, you shall be assessed an additional fee of \$1,000 if you are a first-time offender or \$2,000 if you are a repeat offender under one of these sections. Collection of all or part of the penalty will be suspended if, with court approval, you enter a drug rehabilitation program and if you agree to pay for a part of all of the program costs, upon successful completion of the program, you may apply to the court to reduce the penalty by the amount actually paid by you for participation in the program. Any suspension of the penalty can be withdrawn by the court if you fail to enroll in or successfully pursue or otherwise fail to complete an approved program. In addition, pursuant to Section 13A-12-214 (unlawful possession of marijuana in the second degree), Section 32-5A-191(a)(3) or Section 32-5A-191(a)(4) (DUI offenses involving drugs), you will lose your privilege to drive a motor vehicle for a period of six months, which shall be in addition to any suspension or revocation otherwise provided by law.</p> <p><input type="checkbox"/> Alcohol/Drug Related Offenses: If you are convicted of an alcohol or drug-related offense, you will be required to undergo an evaluation for substance abuse. Based upon the results of any such evaluation, you will be required to complete the recommended course of education and/or treatment and to pay for the evaluation and any cost of program to which you are referred. Failure to submit to an evaluation or failure to complete any program to which you may be referred will be considered a violation of any probation or parole you may be granted. You may also be required to attend monitoring sessions, including random drug and alcohol testing or blood, urine and/or breath, tests and to pay a fee for this service. You may request a waiver of part of all of the fees assessed if you are indigent or for any portion of time you are financially unable to pay. Community service may be ordered by the court in lieu of the monetary payment of fees.</p> <p><input type="checkbox"/> DNA Samples for Criminal Offenses In §36-18-24: Section 36-18-25(e), Ala. Code 1976, provides that, all persons convicted of any of the offenses set out in Section 36-18-24 (felony offense or any offense contained in Chapter 6 of Title 13A - offenses involving danger to the person - or attempt, conspiracy, or solicitation thereof), shall be ordered by the court to submit to the taking of a DNA sample or samples.</p> <p><input type="checkbox"/> Drug Possession: If you are convicted in any court of this state for drug possession, drug sale, drug trafficking, or drug paraphernalia offenses as defined in Section 13A-12-211 to 13A-12-280, inclusive, Ala. Code 1975, an additional fee of \$100.00 will be assessed pursuant to Section 36-18-7, Ala. Code 1975.</p> <p><input type="checkbox"/> Other: _____</p>	

RIGHTS YOU HAVE AND WAIVER OF YOUR RIGHTS

Under the Constitution of the United States and the Constitution and laws of the State of Alabama, you have a right to remain silent and you may not be compelled to give evidence against yourself. Your attorney cannot disclose any confidential talks he/she has had with you. You are not required to answer any questions. If you do answer questions knowing that you have a right to remain silent, you will have waived this right.

You have the right to enter, and continue to assert, a plea of "Not Guilty" or "Not Guilty by Reason of Mental Disease or Defect", and have a public trial before a duly selected jury. The jury would decide your guilt or innocence based upon the evidence presented before them. If you elect to proceed to trial, you would have the right to be present, you would have the right to have your attorney present to assist you, you would have the right to confront and cross examine your accuser(s) and all the State's witnesses, you would have the right to subpoena witnesses to testify on your behalf and to have their attendance in court and their testimony required by the court, and you would have the right to take the witness stand and to testify, but only if you choose to do so, as no one can require you to do this. If you elect to testify, you can be cross examined by the State, just as any other witness is subjected to cross examination. If you decide not to testify, no one but your attorney will be allowed to comment about that fact to the jury. Your attorney is bound to do everything he/she can honorably and reasonably do to see that you obtain a fair and impartial trial.

If you elect to proceed to trial, you come to court presumed to be innocent. This presumption of innocence will follow you throughout the trial until the State produces sufficient evidence to convince the jury (or the court if the trial is non-jury) of your guilt beyond a reasonable doubt. You have no burden of proof in this case. If the State fails to meet its burden, you would be found not guilty. If you are entering a guilty plea to a charge for which you have not yet been indicted, you are waiving indictment by a grand jury and you will be pleading guilty to a charge preferred against you by a District Attorney's Information filed with the court.

IF YOU PLEAD GUILTY, THERE WILL BE NO TRIAL. YOU WILL BE WAIVING THE RIGHTS OUTLINED ABOVE, EXCEPT YOUR RIGHTS RELATING TO REPRESENTATION BY AN ATTORNEY. THE STATE WILL HAVE NOTHING TO PROVE, AND YOU WILL BE CONVICTED AND SENTENCED BASED ON YOUR GUILTY PLEA. BY ENTERING A PLEA OF GUILTY, YOU WILL ALSO WAIVE YOUR RIGHT TO APPEAL, UNLESS (1) YOU HAVE, BEFORE ENTERING THE PLEA OF GUILTY, EXPRESSLY RESERVED THE RIGHT TO APPEAL WITH RESPECT TO A PARTICULAR ISSUE OR ISSUES, IN WHICH EVENT APPELLATE REVIEW SHALL BE LIMITED TO A DETERMINATION OF THE ISSUE OR ISSUES RESERVED, OR (2) YOU HAVE TIMELY FILED A MOTION TO WITHDRAW THE PLEA OF GUILTY AFTER PRONOUNCEMENT OF SENTENCE ON THE GROUND THAT THE WITHDRAWAL IS NECESSARY TO CORRECT A MANIFEST INJUSTICE, AND THE COURT HAS DENIED YOUR MOTION TO WITHDRAW YOUR PLEA, OR THE MOTION HAS BEEN DEEMED DENIED BY OPERATION OF LAW.

IF YOU HAVE A RIGHT TO APPEAL UNDER ONE OF THE CONDITIONS ABOVE AND YOU ARE DETERMINED BY THE COURT TO BE INDIGENT, COUNSEL WILL BE APPOINTED TO REPRESENT YOU ON APPEAL IF YOU SO DESIRE AND IF THE APPEAL IS FROM A CIRCUIT COURT JUDGMENT OR SENTENCE, A COPY OF THE RECORD AND REPORTER'S TRANSCRIPT WILL BE PROVIDED AT NO COST TO YOU.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS OR THE CONSEQUENCES OF PLEADING GUILTY, PLEASE LET THE COURT KNOW NOW AND FURTHER EXPLANATION WILL BE MADE.

Date 9/24/07 Judge [Signature]

ATTORNEY'S CERTIFICATE

I certify that the above was fully read to the defendant by me; that I explained the penalty or penalties involved with the defendant; that I discussed in detail defendant's rights and the consequences of pleading guilty; and that, in my judgment, the defendant understands the same and that he/she is knowingly, voluntarily, and intelligently waiving his/her rights and entering a voluntary and intelligent plea of guilty. I further certify to the court that I have in no way forced or induced the defendant to plead guilty and to my knowledge no one else has done so.

Date 09/24/07 Attorney [Signature]

DEFENDANT'S STATEMENT OF WAIVER OF RIGHTS AND PLEA OF GUILTY

I certify to the court that my attorney has read and explained the matters set forth above; that my rights have been discussed with me in detail and fully explained; that I understand the charge or charges against me; that I understand my rights, the punishment or punishments provided by law as they may apply to my case, and I understand the consequences of pleading guilty; that I am not under the influence of any drugs, medicines, or alcoholic beverages; and I have not been threatened or abused or offered any inducement, reward, or hope of reward to plead guilty other than the terms of the plea agreement which will be stated on the record.

I further state to the court that I am guilty of the charge to which I am entering a plea of guilty, that I desire to plead guilty, that I made up my own mind with my attorney's services and his/her handling of my case.

Date 09/24/07 Defendant [Signature]

Defendant JoAnn Green Mills			
Case No. DC 04-1045 and CC 2004-403			
<i>Date</i>	<i>In Court Time</i>	<i>Hours</i>	<i>AMOUNT</i>
12/13/04	Attendance & representation @ Preliminary Hearing	3.00	
01/11/05	Representation of defendant @ arraignment	2.00	
04/07/05	Plea - Attendance at	0.50	
04/25/05	Trial - Attendance at	0.50	
06/10/05	Plea - Attendance at	0.50	
06/20/05	Trial - Attendance at	0.50	
09/01/05	Plea - Attendance at	0.50	
09/12/05	Trial - Attendance at	0.50	
11/04/05	Plea - Attendance at	0.50	
11/14/05	Trial - Attendance at	0.50	
02/07/06	Plea - Attendance at	0.50	
02/13/06	Trial - Attendance at	0.50	
04/06/06	Plea - Attendance at	0.50	
04/24/06	Trial - Attendance at	0.50	
08/31/06	Plea - Attendance at	0.50	
09/11/06	Trial - Attendance at	0.50	
11/03/06	Plea - Attendance at	0.50	
11/13/06	Trial - Attendance at	0.50	
02/09/07	Plea - Attendance at	0.50	
02/12/07	Trial - Attendance at	0.50	
04/05/07	Plea - Attendance at	0.50	
04/30/07	Trial - Attendance at	0.50	
06/08/07	Plea - Attendance at	0.50	
06/08/07	Attendance & representation @ motions hearing	5.00	
06/18/07	Trial - Attendance at	0.50	
09/11/07	Attendance @ trial of co-defendant for testimony of client	4.00	
09/12/07	Attendance @ trial during testimony of client	2.00	
09/24/07	Attendance @ plea agreement hearing	0.50	
09/24/07	Discussing with Defendant ramifications of plea	0.40	
09/24/07	Discussions with DA re acceptance of plea	0.20	
09/24/07	Representation of Defendant @ presentation of plea	2.00	
TOTAL		30.10	1,806.00

<i>Date</i>	<i>Out of Court Preparation</i>	<i>Hours</i>
07/12/04	Set up office file	0.50
07/13/04	Conference with defendant's relatives	5.00
07/14/04	Meeting with Defendant @ Jail re issues & charges	3.50
07/21/04	Notice of appearance (DC04-105) preparation & filing	0.50
07/21/04	Motion for discovery (DC04-105) preparation & filing	0.50
07/21/04	Moton for mental examination (DC04-105) prep & filing	0.50
07/29/04	Order for mental evaluation - receipt & review	0.10
07/29/04	Order for preliminary hearing - receipt & review	0.10
07/29/04	Order setting preliminary hering for 8/23/04	0.10
07/30/04	Meeting with Defendant re evaluation @ Taylor Hardin	1.80
08/05/04	Letter from Taylor Hardin re psychiatric evaluation	0.20
08/06/04	Meeting with Defendant re infor for psychiatric evaluation	1.00
08/09/04	Completion of info for Taylor Hardin for evaluation	0.60
08/12/04	Motion for extra ordinary expenses - prep & filing	0.50
08/12/04	Order approving expenses - receipt & review	0.10
08/19/04	Letter from Alabama Prison Project	0.20
09/14/04	Telephone call from Defendant	0.20
09/22/04	Meeting with relatives of Defendant	2.00
10/06/04	Telephone conference with JoAnn & her relatives	1.00
10/20/04	Meeting with Defendant @ Jail	0.50
11/16/04	Research re issues pertaining to defendant's charges	0.80
12/13/04	Meeting with Defendant @ Jail	1.60
12/16/04	TC with Lucia Penland of Alabama Prison Project	0.30
12/22/04	Calendar 1/11/05 arraignment	0.10
12/23/04	Letter to Defendant re arraignment scheduled 1/11/05	0.30
12/28/04	Motion for discovery & inspection - prep & filing	0.50
12/28/04	Motion to Suppress - preparation & filing	0.50
01/07/05	Motion for Gag Order - preparation & filing	0.50
01/07/05	Motion to Sever - preparation & filing	0.50
01/07/05	Motion to appoint special investigator - prep & filing	0.50
01/07/05	Motion for copy of scientific reports - prep & filing	0.50
01/07/05	Motion for change of venue - preparation & filing	0.50
01/12/05	Meeting with Defendant @ Jail	1.50
01/13/05	Review of Carraway NW Med records re defendant	1.50
01/20/05	Telephone call with relatives of defendant	0.20
01/30/05	Letter from defendant	0.30
02/01/05	Review of letter from co-defendant to defendant	0.10
02/02/05	Meeting with Defendant @ Jail	2.00
02/03/05	Meeting with Defendant @ Jail	0.80
02/23/05	Telephone call from Defendant's aunt	0.30

02/23/05	Letter from defendant	0.20
03/02/05	Motion for appointment of psychiatrist - prep & filing	0.50
03/02/05	Motion for psychiatric assistance - preparation & filing	0.50
03/18/05	Calendar 4/7/05 plea & 4/25/05 trial dockets	0.10
03/24/05	Letter to Defendant re 4/7/05 & 4/25/05 dockets	0.30
03/28/05	Evaluation report of Taylor Hardin - receipt & review	0.50
04/25/05	Conference with Defendant @ jail	4.25
05/05/05	Letter from defendant	0.20
05/05/05	Letter to Jimmie D. Short re preliminary transcript	0.30
05/10/05	Calendar 6/10/05 plea & 6/20/05 trial dockets	0.10
05/11/05	Letter to Defendant re 6/10 & 6/20 trial dockets	0.30
06/10/05	Telephone call re issues with client @ jail	0.20
08/10/05	Communication with EJI re capital cases	0.20
08/17/05	Calendar 9/1/05 plea & 9/12/05 trial dockets	0.10
08/23/05	Conference with Defendant's aunt	1.90
08/23/05	Letter from defendant	0.20
08/23/05	Letter to Defendant re 9/1 & 9/12/05 dockets	0.30
10/04/05	Research law re motions to be filed	3.50
10/07/05	Motion for mitigation expert - preparation & filing	0.50
10/07/05	Motion for witness list w/memorandum - prep & filing	0.50
10/07/05	Motion to inspect physical evidence - prep & filing	0.50
10/07/05	Motion for appointment of additional counsel - prep & file	0.50
10/07/05	Demand for indictment & list of witnesses - prep & file	0.50
10/07/05	Motion for appointment of special investigator - prep & file	0.50
10/08/05	Research ABA Guidelines in capital cases	1.20
10/11/05	Calendar 11/4/05 plea & 11/14/05 trial dockets	0.10
10/18/05	Letter to Defendant re 11/4/05 & 11/14/05 dockets	0.30
11/18/05	Letter to Defendant re synopsis of life background	0.40
01/11/06	Calendar 2/7/06 plea & 2/13/06 trial dockets	0.10
01/20/06	Letter to Defendant re 2/7 and 2/13/06 dockets	0.30
02/06/06	Letter from defendant	0.40
02/13/06	Letter from defendant	0.20
03/06/06	Letter from defendant	0.20
03/20/06	Review forensic exam & analyses - Vera Hill	0.60
03/22/06	Calendar 4/6/06 plea & 4/24/06 trial dockets	0.10
04/27/06	Review forensic exam & analyses - Floyd Hill	0.60
06/22/06	Letter from defendant	0.20
07/24/06	Letter from defendant	0.20
08/15/06	Receipt of letter from client	0.30
08/16/06	Calendar 8/31/06 plea & 9/11/06 trial dockets	0.10
10/06/06	Letter from defendant	0.20
10/11/06	Calendar 11/3/06 plea & 11/13/06 trial dockets	0.10
10/13/06	Letter from defendant	0.20
10/31/06	Letter to Defendant re being relocated	0.30

10/31/06	Letter from defendant re being moved to another jail	0.30	
01/11/07	Calendar 2/9/07 plea & 2/12/07 trial dates	0.10	
02/27/07	Research law in preparation for defense & motions	4.20	
03/06/07	Preparation & filing motion to reveal mitigating	0.40	
03/06/07	Research law re mitigating circumstances	1.50	
03/06/07	Preparation & filing motion to sever	0.50	
03/06/07	Research law re severing of trial from co defendant	2.00	
03/06/07	Preparation & filing motion for enlargement of venire	0.50	
03/06/07	Preparation & filing motion to preclude prejudicial photos	0.50	
03/06/07	Research law re prejudicial photo evidence	1.60	
03/12/07	Order granting motion to sever	0.10	
03/12/07	Order denying enlargement of venire	0.10	
03/22/07	Calendar 4/5/07 plea & 4/30/07 trial dates	0.10	
05/02/07	Meeting with Defendant @ Jail	1.00	
05/05/07	Research law re issues for defense	2.90	
05/07/07	Preparation & filing motion to heightened standards	0.50	
05/07/07	Preparation & filing motion in limine	0.90	
05/07/07	Preparation & filing motion for prosecution files, etc.	0.60	
05/07/07	Research law re heightened standards	2.10	
05/11/07	Calendar 6/8/07 plea & 6/18/07 trial dates	0.10	
06/05/07	Calendar setting motions hearing 6/8/07	0.20	
07/08/07	Review of discovery and research	3.00	
07/17/07	Meeting with DA re defendant & proposed plea offer	1.00	
07/23/07	Meeting with Defendant re proposed plea offer	0.60	
08/01/07	Discussions with DA re testimony of defendant @ trial	0.50	
08/15/07	Meeting with Defendant re proposed plea & testimony	0.70	
08/21/07	Telephone call from Defendant	0.20	
08/21/07	Telephone call from relatives of defendant	0.20	
08/22/07	Discussions with DA re trial of co-defendant	0.30	
08/24/07	Meeting with Defendant @ Jail - re testimony	2.00	
08/27/07	Research re proposed plea & ramifications of testimony	3.20	
08/29/07	Continued discussions with DA re defendant & plea	0.50	
09/03/07	Meeting with Defendant re plea & testimony	0.50	
09/04/07	Meeting with Defendant @ Jail - prep for testimony	3.00	
09/05/07	Meeting with DA re defendant & plea offer	0.40	
09/06/07	Meeting with Defendant @ Jail re plea offered	4.00	
09/10/07	Meeting with Defendant @ Jail re testimony	1.60	
09/13/07	Meeting with Defendant @ Jail re jury verdict	1.00	
09/18/07	Discussions with DA re entry of plea for defendant	0.40	
09/19/07	Meeting with Defendant @ Jail re plea offered	1.50	
09/21/07	Meeting with Defendant @ Jail re entry of plea	2.00	
TOTAL		101.75	4,070.00

<i>Pre-Approved Office Overhead</i>	<i>Hours</i>	
Attorney's Office Overhead	117.45	4,110.75
Preliminary Hearing Transcript		126.70
		10,113.45

EXHIBIT 2

2

State of Alabama Unified Judicial System Form CR-52 (front) Rev. 8/06	EXPLANATION OF RIGHTS AND PLEA OF GUILTY (Habitual Felony Offender – Circuit or District Court)	Case Number Court <u>09-463</u> (court #, if applicable)
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IN THE Circuit COURT OF Marion, ALABAMA
 (Circuit or District) (Name of County)
 STATE OF ALABAMA v. _____
 Defendant

TO THE ABOVE-NAMED DEFENDANT: After the Court was informed that you wish to enter a plea of guilty in this case, this is to inform you of your rights as a criminal defendant.

PENALTIES APPLICABLE TO YOUR CASE

You are charged with the crime of Murder 13A-6-2, which is Class A Felony. The court has been informed that you desire to enter a plea of guilty to this offense or to the crime of _____ which is a _____ Felony. The sentencing range for the above crime(s) is set out below.

FELONY	
Class A	Not less than ten (10) years and not more than ninety-nine (99) years imprisonment or life imprisonment in the state penitentiary, including hard labor and may include a fine not to exceed \$80,000.
Class B	Not less than two (2) years and not more than twenty (20) years imprisonment in the state penitentiary, including hard labor and may include a fine not to exceed \$30,000. For imprisonment not more than 3 years, confinement may be in the county jail and sentence may include hard labor.
Class C	Not less than one (1) year and one (1) day and not more than ten (10) years imprisonment in the state penitentiary, including hard labor and may include a fine not to exceed \$15,000. For imprisonment not more than 3 years, confinement may be in the county jail and sentence may include hard labor.

You will also be ordered to pay the costs of court, which may include the fees of any appointed attorney, and restitution if there is any. You will also be ordered to pay an additional monetary penalty for the use and benefit of the Alabama Crime Victims Compensation Commission of not less than \$50 and not more than \$10,000 for each felony for which you are convicted.

As a reported habitual offender, you are further advised that the Alabama Habitual Offender Act, Section 13A-5-9, Ala. Code 1975, as amended by Act 2000-759, provides the following enhanced punishment for anyone who has been previously convicted of one or more felonies and who then is convicted of a subsequent felony:

Prior Felonies This offense	No Prior Felonies	One Prior Felony	Two Prior Felonies	Three + Prior Felonies
Class C Felony	1 Yr. & 1 Day – 10 Years In State Penitentiary Fine Up To \$15,000	2 – 20 Years In State Penitentiary Fine Up To \$30,000	10 – 99 Years In State Penitentiary Fine Up To \$60,000	15 – 99 Years or Life In State Penitentiary Fine Up To \$60,000
Class B Felony	2 – 20 Years In State Penitentiary Fine Up To \$30,000	10 – 99 Years or Life In State Penitentiary Fine Up To \$60,000	15 – 99 Years or Life In State Penitentiary Fine Up To \$60,000	Mandatory Life Imprisonment or any term of not less than 20 years Fine Up To \$60,000
Class A Felony (No prior convictions for any Class A Felony)	10 – 99 Years or Life In State Penitentiary Fine Up To \$60,000	15 – 99 Years or Life In State Penitentiary Fine Up To \$60,000	Life Imprisonment or Any Term Of Years Not Less Than 99 Fine Up To \$60,000	Mandatory Imprisonment For Life or Life Imprisonment Without Possibility of Parole Fine Up To \$60,000
Class A Felony (One or more prior convictions for any Class A Felony)	10 – 99 Years or Life In State Penitentiary Fine Up To \$60,000	15 – 99 Years or Life In State Penitentiary Fine Up To \$60,000	Life Imprisonment or Any Term Of Years Not Less Than 99 Fine Up To \$60,000	Mandatory Imprisonment For Life Without Possibility of Parole Fine Up To \$60,000

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SEP 26 2009

CIRCUIT CLERK, MARION COUNTY
 HULL, ALABAMA

This crime is also subject to the following enhancements or additional penalties as provided by law: (Provisions Checked Apply To Your Case)

- Enhanced Punishment For Use Of Firearm Or Deadly Weapon:** Sections 13A-5-6 (a) (4) and (a) (5), Ala. Code 1975, provide for the enhancement of a punishment for a Class A, B, or C, felony in which a "firearm or deadly weapon was used or attempted to be used in the commission of the felony." This section provides for the following punishments in such events: For the commission of a Class A Felony, a term of imprisonment of not less than 20 years; for the commission of a Class B or C, Felony, a term of imprisonment of not less than 10 years.
- Enhanced Punishment for a Felony Criminal Sex Offense Involving a Child:** Sections 13A-5-6 (a) (4) and (a) (5), Ala. Code 1975, provide for the enhancement of a punishment for a Class A or B felony criminal sex offense involving a child as defined in Section 15-20-21 (5). These Sections provide for the following punishment in such events: For a Class A felony criminal sex offense, not less than 20 years; for a Class B felony sex offense, not less than 10 years.
- Enhanced Punishment for Drug Sale Near School:** Section 13A-12-250, Ala. Code 1975, provides that any person who is convicted of unlawfully selling any controlled substance within a three (3) mile radius of a public or private school, college, university or other educational institution, must be punished by an additional penalty of five years imprisonment in a state correctional facility for each violation. This period of imprisonment is mandatory and the punishment imposed shall not be suspended or probation granted.
- Enhanced Punishment for Drug Sale Near Housing Project:** Section 13A-12-270, Ala. Code 1975, provides that any person who is convicted of unlawfully selling any controlled substance within a three (3) mile radius of a public housing project owned by a housing authority must be punished by an additional penalty of five years imprisonment in a state correctional facility for each violation. This period of imprisonment is mandatory and the punishment imposed shall not be suspended or probation granted.
- Enhanced Punishment For Sales Of Controlled Substance To Anyone Under 18:** Section 13A-12-215, Ala. Code 1975, provides that anyone convicted of selling, furnishing, or giving away a controlled substance to one who has not yet attained the age of 18 years, shall be guilty of a Class A Felony and the punishment imposed shall not be suspended or probation granted.
- Drug Demand Reduction Assessment Act and Loss of Driving Privileges:** Section 13A-12-281, Ala. Code 1975, provides that, if you are convicted of a violation of §13A-12-202 (criminal solicitation to commit controlled substance crime), 13A-12-203 (attempt to commit a controlled substance crime), 13A-12-204 (criminal conspiracy), 13A-12-211 (unlawful distribution of a controlled substance), 13A-12-212 (unlawful possession or receipt of a controlled substance), 13A-12-213 (unlawful possession of marijuana, 1st), 13A-12-215 (sale, furnishing, etc., of controlled substance by person over age

IN THE CIRCUIT COURT OF Marion COUNTY, ALABAMA

STATE OF ALABAMA

v.

Case No.: CC 09-403

John Mills
DEFENDANT

PLEA AGREEMENT

After discussion and negotiation between the parties, after a full explanation of rights has been given to Defendant, as evidenced by the accompanying Explanation of Rights form, and after such disclosure of information between the parties as each deems sufficient, it is agreed in this case, subject to acceptance by the Court, that:

- Defendant will enter a plea of GUILTY;
 - As charged in the indictment.
 - To the charge of MURDER 13A-6-2, and the Prosecutor will move for dismissal with prejudice of all other offenses charged in the indictment.
- The Prosecutor will recommend to the Court that the Defendant be given a sentence of Life years and _____ months.
- The Prosecutor will recommend to the Court that the sentence given to the Defendant by the Court be suspended and that the Defendant be placed on supervised/ unsupervised probation for a period of _____ years and _____ months.
 - The Prosecutor will not oppose the Court's suspending the sentence given to Defendant by the Court and placing Defendant on probation.
 - The Prosecutor will oppose probation.
 - Defendant will not apply for probation.
 - The Prosecutor will recommend to the Court that the sentence given to Defendant be split, with Defendant to serve _____ years and _____ months and the balance of Defendant's sentence to be suspended and Defendant placed on supervised/ unsupervised probation for _____ year and _____ months.

4. Other cases now pending against Defendant in this Court shall be treated as follows:

Case Numbers:

Action to be Taken:

- Dismissed with prejudice.
- Continued, to be dismissed with prejudice if restitution in the amount of \$ _____ is paid within _____ months.

- Youthful Offender treatment:
 - Will be recommended to the Court.
 - Will be applied for by Defendant.
 - Will not be applied for by Defendant.
 - Is not applicable.

- Defendant will pay court costs, a victim's assessment fee in the amount of \$ 50, restitution in the amount of \$ 11,094, and any court-ordered reimbursement of attorney's fees as follows:
 - In full within _____ days.
 - In weekly, semi-weekly, monthly installments of \$ 100, beginning on 90 days from release until paid in full.

- Other matters agreed upon:
 - Defendant shall submit to mental health evaluation and treatment at _____
 - Defendant shall submit to the Court Referral Officer Program for evaluation and referral to an appropriate education and/or treatment program.
 - Defendant shall attend and complete the _____ sex offender program.
 - Defendant shall reimburse the State of Alabama for monies expended for his/her court-appointed counsel.
 - Defendant shall be trespassed from the person and property of _____
 - Defendant shall not drive nor otherwise operate any motor vehicle in any manner nor for any purpose for a period of _____ years and _____ months.
 - Other: _____

- Any applicable provisions or terms contained in Paragraphs 6, 7, and/or 8 shall be made a special condition or special conditions of any probation granted to Defendant by the Court.
- Defendant knowingly and voluntarily waives his right to appear and certifies that he is fully satisfied with the legal representation provided to him by his counsel.
- Defendant warrants as a material condition of this agreement that the following is a complete listing of his past criminal convictions and juvenile and/or youthful offender adjudications (include name of offense and date of conviction or adjudication) _____

Defendant understands and acknowledges that this plea agreement shall be void and the Prosecutor shall not be bound by any term contained herein if there is any misrepresentation as to Defendant's past criminal record.

- Defendant understands and acknowledges that this plea agreement shall be void and the Prosecutor shall not be bound by any term contained herein if Defendant is arrested for any criminal offense or violation between this date and the date of any sentencing, probation, split-sentence, or youthful offender hearing or hearings.

- Defendant understands and acknowledges that the Court is not bound by the terms of this plea agreement nor by any recommendations made by the Prosecutor, and the Court may reject the same pursuant to Rule 14.3 (c)(2), Alabama Rules of Criminal Procedure.

This agreement entered into on this 29th day of September, 2017.

John Mills
DEFENDANT

[Signature]
DEFENDANT'S COUNSEL

[Signature]
PROSECUTOR

Case No. CC-04-403

THE STATE vs. JOANN MILLS

(BENCH) ORDERS OF THE COURT

DATE OF ORDER: September 24, 2007

The Defendant appeared in open Court with Counsel J. Tony Glenn and waived reading of the indictment; said defendant, upon hearing the charges(s) therein read and explained, for plea thereto says she is guilty of Murder. The court proceeded to examine defendant under oath and ascertained that defendant fully understands her constitutional rights, the crime charged against her, and the consequences of a guilty plea.

The court finds that defendant understandingly and voluntarily pleads guilty and waives her rights; it is ordered and adjudged that defendant's plea of guilty and waiver is accepted, and Court's Exhibit 2 be entered in the minutes of the court.

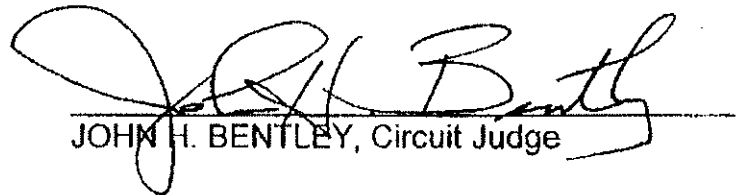
It is further ORDERED AND ADJUDGED that defendant is guilty of Murder, and any remaining counts are dismissed upon motion of the District Attorney.

Defendant continuing present with said counsel was afforded an opportunity to make a statement in her own behalf before sentencing. Both the State and defense waive any sentence hearing.

It is ORDERED AND ADJUDGED and is the sentence of the law that defendant be imprisoned in the penitentiary of this State for a period of Life, on which sentence she is entitled to total jail time credit as of this date of eleven hundred eighty-six (1186) days.

Defendant is further ordered to pay court costs, a \$50.00 Victim's Assessment Fee, \$11,094.00 to the Alabama Crime Victim's Compensation Commission and reimburse the State for court-appointed attorney fees.

All monies are payable through the Circuit Clerk's Office in monthly installments of \$100.00 beginning ninety (90) days after release and continuing each month thereafter until paid in full.


JOHN H. BENTLEY, Circuit Judge

FILED

SEP 26 2007

RW
CIRCUIT CLERK, MARION COUNTY
HAMILTON, ALABAMA 35570

EXHIBIT 3

OFFICE OF THE GOVERNOR

KAY IVEY
GOVERNOR



STATE CAPITOL
MONTGOMERY, ALABAMA 36130

(334) 242-7100
FAX: (334) 242-3282

STATE OF ALABAMA

March 27, 2024

John Q. Hamm, Commissioner
Alabama Department of Corrections
301 S. Ripley Street
Montgomery, AL 36130

Dear Commissioner Hamm:

The Supreme Court of Alabama has entered an order authorizing you to carry out inmate Jamie Mills' sentence of death for the capital murders of Floyd and Vera Hill. According to the Supreme Court's order, the execution must occur within a time frame to be set by the governor to begin not less than 30 days from March 20, 2024, the date of the order.

Accordingly, I hereby set a thirty-hour time frame for the execution to occur beginning at 12:00 a.m. on Thursday, May 30, 2024, and expiring at 6:00 a.m. on Friday, May 31, 2024.

The order of the Supreme Court of Alabama, which I enclose with this letter, constitutes the death warrant.

Although I have no current plans to grant clemency in this case, I retain my authority under the Constitution of the State of Alabama to grant a reprieve or commutation, if necessary, at any time before the execution is carried out.

Sincerely,

A handwritten signature in black ink that reads "Kay Ivey".

Kay Ivey
Governor

Enclosure

cc: Frieda Foresee, Court Specialist, Alabama Supreme Court