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Director, Appellate Division
Virginia A. Pomeroy

February 28, 1995

Mr. James McCloskey
Centurian Ministries
32 Nassau Street
Princeton, NJ 08542

Re: Alfonzo Hubanks

Dear Mr. McCloskey:

I am writing to provide some background and introduction for Alfonzo Hubanks, a.k.a. Alphonso Hubanks, because I understand he is requesting assistance from your organization in his efforts to prove that he was wrongly convicted of four counts of sexual assault, one count of armed robbery, and one count of abduction, all in Milwaukee County Circuit Court. For these offenses, which all allegedly arose from a single incident, he was sentenced to 120 years in prison.

I represented Mr. Hubanks in unsuccessful postconviction proceedings and direct appeals through the state system, culminating in a petition for writ of certiorari in the United States Supreme Court, which was denied. My work on Mr. Hubanks's has left me troubled about this case. I believe that the proceedings leading to Mr. Hubanks's conviction were unreliable and unfair. He adamantly, and with great sincerity, continues to maintain that he is innocent. Although there was sufficient circumstantial evidence to support his conviction in a strict legal sense, I believe that the state's evidence had significant weaknesses and that other important evidence indicating that he is innocent was never presented at trial.

The facts of this case are briefly summarized as follows. The state charged that Mr. Hubanks and another, unidentified, man jumped into the 15-year-old victim's car and drove off with her in the back seat. Her mother had left the car running while she ran into a store to buy some cigarettes. The two men put a hat over the girl's face so that she could not see them. They then sexually assaulted her several times, stole her jewelry, dropped her off on a corner, and drove off in her car. Several hours later police arrested Mr. Hubanks and another man, Charles Trunnell, when they observed them attempting to start the victim's car, which was then parked on a city street. They had the victim's car keys and jewelry in their possession.

The victim could not make a visual identification of her attackers. At a lineup, however, she picked out Mr. Hubanks based on his voice, which she described as frog-like. She did not identify Mr. Trunnell, and he was never charged. The state never charged a second assailant.

In addition to this evidence, the state also offered evidence at trial showing that crime lab tests of the semen taken from the victim's underpants were somewhat inconclusive. The state crime lab expert testified that Mr. Hubanks was included within the group of men who could have been the source of the semen. However, approximately 1/3 of all black me also could have been the source. The state did no DNA testing on the semen.

Additionally, at trial, the state asked the court to order Mr. Hubanks to say to the victim during trial, in the presence of the jury, for purposes of an in-court voice identification, words allegedly spoken during the assault. Specifically, the state asked the court to order Mr. Hubanks to say: "Do you want to feel good or die?" and "Don't let me have to kill you." Mr. Hubanks's trial attorney objected and indicated that Mr. Hubanks intended to remain silent at trial. Mr. Hubanks offered to speak for voice identification, but only if the identification were done fairly. He offered to participate in an in-court voice lineup, involving a group of men, and in which all of the men would be shielded from the victim's view, and all would say the same things, as a test of whether she really could identify her attacker's voice. The court denied the defendant's request for a voice lineup, and instead instructed the jury that Mr. Hubanks had been asked to speak for purposes of identification, had declined to speak, and that the jury could give that declination the weight they felt it deserved in determining Mr. Hubanks's guilt. The court did not tell the jury that Mr. Hubanks had volunteered to speak for voice identification as part of a line-up.

Defense counsel at trial called no witnesses and presented no defense. Instead, defense counsel simply argued to the jury that Mr. Hubanks was innocent and was found at the victim's car only because he was casing the car to attempt to steal it.

This was not the defense that Mr. Hubanks had provided to the police, to his probation officer, or to the court at sentencing. It was also not the defense he said he gave to his trial attorney. Instead, Mr. Hubanks maintained himself throughout that he had obtained the car and jewelry in a trade on a street corner with a man named "Red" for some lactose, which he told Red was cocaine. Although the police reports indicated that this was what Mr. Hubanks told police had happened, defense counsel made no attempt to investigate this defense.

After conviction I was appointed and I attempted to investigate this defense. I located another individual, Wiley Stubblefield, (who was at the time of the postconviction proceedings himself in jail on another matter) who testified that he saw Mr. Hubanks obtain some jewelry from another individual on a street corner in the area and on the night in question. This witness's credibility was

enhanced because he had not spoken to Mr. Hubanks prior to the postconviction hearing, and testified against his will; he preferred not to become involved in the case.

In the postconviction proceedings and then on direct appeal I raised numerous issues challenging the conviction, including claims of ineffective assistance of trial counsel and a challenge to the in-court voice identification procedure. I believe Mr. Hubanks is sending you the appellate briefs and decision, which set forth these facts of the case and the specifics of these arguments in more detail. The court of appeals first certified this case to the Wisconsin Supreme Court (indicating that it believed it involved important issues of first impression that warranted that court's review). When the supreme court declined to accept the case at that point, the court of appeals proceeded to affirm the conviction, and dodged some of the more difficult legal questions by finding that trial counsel had failed to raise adequate objections, and had thereby waived some of the issues.

After the direct appeal process had concluded I began trying to find new evidence upon which I could base a new postconviction motion. My investigator finally located Mr. Hubanks's cousin Earl, whom Mr. Hubanks had told us about from the very beginning, but whom we had been unable to locate previously. Earl Hubanks gave us a statement indicating that at the time of the assaults in this case he was at a bar with Mr. Hubanks, and that he left Mr. Hubanks after the time the assaults allegedly concluded, but before Mr. Hubanks was arrested with the car later that night. Earl's statement, providing a direct alibi, was never heard by the jury or any court.

Additionally, while the direct appeal was still pending I attempted to obtain from the police the physical evidence, including the collected semen samples, so that I could have DNA tests done on the evidence in hopes that the tests would exclude Mr. Hubanks. Milwaukee County police and the District Attorney's Office gave me a run-around for months (around nine months as I recall), during which not only did they refuse to turn over this evidence, but they even refused to tell me if it still existed. Finally, after many months, the police informed me that all of the evidence I was seeking had been destroyed by police while the case was still awaiting final disposition on direct appeal. The only evidence still in police custody consisted of a paper bag full of cassette tapes that Mr. Hubanks allegedly had removed from the car, and those tapes were scheduled to be destroyed as well.

I then requested that the police at least allow my expert to examine the bag and the cassettes on the remote possibility that he might be able to find trace evidence. Despite the fact that the police intended to just destroy the evidence, they nonetheless would not allow me to have access to these tapes, and began another drawn-out run-around.

At that point a new decision was handed down by the Wisconsin Supreme Court making it clear that Mr. Hubanks could not file the new postconviction motion we were contemplating unless a court were to find that I had provided ineffective assistance of counsel during the direct appeal by not raising all of Mr. Hubanks's new issues during the direct appeal. Accordingly, it became necessary for me to cease representing Mr. Hubanks and transfer the case to a new attorney who would be free to file a claim of ineffective assistance of counsel against me. Attorney Robert Dvorak in Milwaukee has now been appointed to represent Mr. Hubanks, and is in the process of reviewing the case. Mr. Dvorak has informed me that he would welcome your involvement in the case. He can be contacted at the following address and phone number:

Robert Dvorak
Dvorak & Fincke, S.C.
823 N. Cass Street
Milwaukee, WI 53202

(414) 273-0554

There are of course many more facts and complications in this case, but this I hope gives you an outline of the case. This is one of those cases that leaves me feeling that justice has miscarried. Mr. Hubanks is a very pleasant individual who has always been appreciative of my efforts to represent him, but who is suffering greatly because of his conviction in very suspect proceedings for a crime that he adamantly maintains he did not commit.

I hope this information is helpful to you in evaluating this case. If I can provide any additional information please let me know.

Sincerely,

KEITH A. FINDLEY
Assistant State Public Defender

cc: Mr. Robert Dvorak
Mr. Alfonzo Hubanks