

**EXECUTIVE SUMMARY RELATING TO
THE PETITION FOR CLEMENCY
FOR
JOSEPH J. DICK, JR.
DEREK E. TICE
DANIAL J. WILLIAMS**

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Three young men, Danial J. Williams, Joseph J. Dick, Jr., and Derek E. Tice are inmates in Virginia prisons serving life sentences without the possibility of parole for a rape and murder they did not commit. In November 2005, we submitted to then Governor Mark Warner a petition for clemency on behalf of these innocent young men. 1/ That clemency petition is now pending before Governor Timothy M. Kaine.

The Virginia Constitution empowers the Governor to right injustices that occur in unique cases like this one. Governor Kaine, unlike the judges and jurors involved in this case who were able to consider only portions of the evidence presented to them, is the first decision-maker to be able to review all of the evidence of innocence of the Norfolk Four. Much of that evidence is new – including a newly-discovered alibi witness who is also a highly-decorated sailor in the United States Navy – and it clearly establishes that Williams, Dick, Tice, and Wilson are innocent. Thus, Governor Kaine is the only person who can ensure that justice is finally achieved for these four innocent men, and we urge him to do so immediately. Without his intervention, three of the four men – all of whom are veterans of the United States Navy with no criminal history – will spend several more decades, and eventually die, in Virginia prisons for a crime they did not commit.

The Compelling Evidence of Innocence

In the early morning hours of July 8, 1997, Omar Ballard – whom the victim, Michelle Moore-Bosko knew and trusted – committed this horrific crime. DNA and crime scene evidence confirms that he committed this crime alone. There is no DNA or other physical evidence of any kind linking Williams, Dick, Tice, or Wilson to the crime. In fact, the only evidence against the Norfolk Four are their false confessions obtained by now-retired Detective Robert Glen Ford, the lead detective in this case, who has a well-documented history of eliciting false confessions in murder investigations. The purported confessions are completely unreliable and should not serve as the basis for keeping these innocent men in prison, especially given the overwhelming evidence of their innocence.

DNA Evidence Links Only Omar Ballard to the Crime

This case has several sources of DNA evidence. It is undisputed that only Ballard's DNA was found at the crime scene and that his DNA was found in three separate locations: (1) his blood was under the victim's fingernails; (2) his semen was inside the victim; and (3) his semen was on a blanket found near her body. None of the biological evidence ties Williams, Dick, Tice, or Wilson (or the other three sailors the Commonwealth also accused of participating in the crime 2/) to the crime. **Indeed, the DNA analysis categorically excludes Williams, Dick, Tice, and Wilson as contributors to the DNA found at the crime scene.**

1/ A fourth young man, Eric C. Wilson, was sentenced to eight-and-a-half years for rape, and he, too, is innocent. Wilson has also filed for relief from the Governor.

2/ Following Derek Tice's arrest, the police identified three more suspects, Geoffrey Farris, Richard Pauley, and John Danser. All three were interrogated, but each refused to confess. In addition to the exonerating DNA results, both Pauley and Danser had airtight alibis. Despite the alibis, exonerating DNA results, and lack of confessions, the prosecution initially forged ahead aggressively to prosecute them for capital murder along with the Norfolk Four. But the

Omar Ballard Committed the Crime Alone

This is not a “whodunit” case. We know who committed this horrific crime – Omar Ballard. Ballard was friends with the victim and regularly spent time at her apartment. His blood and semen were found at the crime scene. Before he was ever a suspect in this case, Ballard bragged about murdering the victim in a handwritten letter that he wrote to a friend from prison. It was not until Ballard’s letter was brought to the attention of police that Ballard became a suspect. **Since making himself a suspect, Ballard repeatedly has told police, and recently swore under oath, that he committed the crime by himself and that Williams, Dick, Tice, and Wilson are innocent.** To this day, Ballard insists that he committed the crime alone, that he did not know any of the other men charged with this crime, and that they had absolutely no involvement.

Crime Scene Evidence Establishes One Man Committed This Crime

At the outset of the investigation, the Norfolk police rightly concluded that only one person committed this crime. Their conclusion was drawn from the crime scene evidence, which was consistent with there being only one assailant. However, months later, after police could not find a DNA match to the crime scene, the Commonwealth’s theory began to evolve, ultimately morphing into a gang rape scenario, in which a pack of no less than eight men forcibly entered the victim’s 700-square foot apartment, attacked her, and forced her down a narrow hallway to the bedroom where the alleged gang rape and group stabbing occurred.

That theory is entirely inconsistent with the crime scene evidence. Anyone who reviews the crime scene evidence is struck by the unspoiled condition of the victim’s apartment. For example:

- There was no evidence of forced entry into the apartment.
- The furniture in the living/dining room was not disrupted in any manner, as it would have been if an unruly group of twenty-something men actually had burst into the apartment.
- The highly-polished wood floors showed no evidence of a scuffle or of a marauding gang of men running through the apartment, bent on rape and murder.
- Delicately balanced papers and paraphernalia on the hallway shelves were not disrupted as they certainly would have been had eight, frenetic young men dragged a young, healthy, and resistant 18-year-old woman down the two-and-a-half feet wide hallway into the bedroom where the crime occurred.

Commonwealth ultimately abandoned the prosecution against Farris, Pauley, and Danser when the prosecution was left with only wobbly testimony expected from Dick, which had been required by the plea offer Joe Dick’s attorney and family urged on him to avoid the death penalty. Nevertheless, the prosecutors presented their case against Tice on the theory that *all eight* men, including Omar Ballard, had participated in the crime.

- In the bedroom, there was no evidence that the victim was assaulted by more than one person. None of the furniture in the small bedroom was disturbed nor were any fragile items sitting on the furniture knocked over, even though much of the furniture was within inches of Ms. Bosko's body.

The state of the victim's body also proves that only one person committed this crime. Ms. Bosko died from stabbing and strangulation. All three penetrating stab wounds, clustered in a 2.75-inch by 2-inch area on the victim's left chest, were 5 inches deep, equidistant apart, and in the same direction. That wound pattern was created by one person who rapidly stabbed the victim several times consecutively. The stabbing pattern could not have been caused by eight excited men gang-raping a young woman, passing a knife around, and taking turns stabbing the victim as she struggled to survive.

Moreover, the blood evidence at the crime scene proves that the Commonwealth's theory is untrue. As the crime scene video and photographs show, the blood pooled around the victim was not smeared or otherwise disturbed. It would have been impossible for the blood around the victim to remain pristine and unsmeared if a wild group of men moved around the victim as they raped and stabbed her in a tiny bedroom.

Finally, no resident in Ms. Bosko's apartment complex heard or saw a group of men, either in the hallways or in the parking lot. There is simply no evidence that anyone other than Ballard was present in Ms. Bosko's apartment at the time of the crime.

Seven Sailors Charged with the Crime Have No Criminal History

Eight men were charged with this crime even though only one, Omar Ballard, was connected to the crime by physical evidence. Of the eight men charged, only Ballard has a criminal history. In line with the criminal behavior pattern that he started in New Jersey years before this crime, Ballard continued to commit crimes when he moved to Norfolk, including not long before he murdered Ms. Bosko. Two weeks before Ms. Bosko's murder, acting alone, in Ms. Bosko's apartment complex, Ballard assaulted a young white woman with a baseball bat. Ten days after the murder, again acting alone, Ballard raped a white teenage girl about a mile from Ms. Bosko's apartment complex. For that crime, Ballard was immediately arrested and ultimately convicted, finally bringing an end to his month-long crime spree against young Norfolk women.

The seven other men charged with this crime did not know Omar Ballard and had no criminal history before they were charged. All seven men are upstanding, law-abiding citizens who were serving, or had served, our country in the United States Navy. Nothing in their character or background remotely suggests that they are capable of the horrific crime for which they were charged.

Internally Inconsistent, Contradictory Confessions are Powerful Evidence of Innocence

The only evidence against Williams, Dick, Tice, and Wilson are their completely unreliable confessions. Rather than constituting evidence of guilt, these statements – **when examined together and in the context of how they unfolded – starkly demonstrate that none of the four sailors knew anything about the crime and that they are completely innocent.** The statements are internally inconsistent, inconsistent with each other, and inconsistent with the crime scene. Here are just a few of the multitude of examples that show these coerced confessions are false.

- Dan Williams told police that he, acting alone, beat the victim to death with a shoe. The indisputable crime scene evidence, however, shows that the victim was not beaten and that a shoe was not the murder weapon.
- Joe Dick told police that the crime occurred in the living room and (after being prompted with crime scene photos) that he covered the victim with a blanket after the crime. The indisputable crime scene evidence, however, shows that the crime occurred in the bedroom. And the victim's husband testified that it was he who covered his wife with a blanket when he found her body the next day.
- Derek Tice told police that he used a claw hammer to break down the door of the victim's apartment. The indisputable crime scene evidence, however, shows that there was no forced entry into the apartment.
- Eric Wilson told police that the victim was punched in the face and that the rape and murder occurred in the living room. The indisputable crime scene evidence, however, shows that the victim was not punched in the face and that the crime occurred in the bedroom.

These purported confessions are clearly false, and they provide no justification whatsoever for keeping these innocent men in prison for the rest of their lives.

How Do Four Innocent Men Falsely Confess to a Crime They Did Not Commit?

That question is best answered by considering the men's personalities and the coercive interrogations they underwent. Williams, Dick, Tice, and Wilson were raised to submit to authority figures and to respect law enforcement officers. None of them had ever been in trouble with the law before. When placed in the interrogation room, they trusted the police and expected the police to listen to them when they said they were innocent. Under intense questioning, each of the four men denied involvement in the crime for several hours. Their protests of innocence were dismissed, however, and the police resorted to even harsher questioning. Determined to obtain a confession in this high-profile case, Ford and other detectives lied to the men, telling them that there were witnesses and evidence against them. Ford also told them that if they did not confess to involvement in the crime, they would receive the death penalty. Fearing for their lives, the men eventually succumbed to the high-pressure interrogation and spewed out purported confessions to save their lives and end the interrogation. Their confessions were nothing more than a regurgitation of "facts" the police fed them, along with facts they surmised from crime scene photos or simply made up.

When read carefully in the aggregate, the confessions make absolutely no sense, proving that the men did not confess because they were guilty. Rather, they confessed because they felt they had no other reasonable option – their choice was to tell Ford and the other detectives what they demanded to hear to end the interrogation, or to continue to assert their innocence and face the death penalty.

This case is not the only case involving multiple false confessions. In the well-publicized 1999 Buddhist Temple case in Tucson, Arizona, four grown men falsely confessed to mass-murdering nine people in a Buddhist temple. Much like the Norfolk Four, the Tucson Four, as they came to be called, got key details of the crime wrong, and their confessions were inconsistent with each other and inconsistent with the crime scene. In the search for corroborating evidence against the four men, the police eventually located the two people who actually committed the crime. With the real culprits in custody, the Tucson Four were eventually released and charges against them were dropped. Just as the wrong in Arizona was corrected, so too should this wrong in Virginia be corrected.

New Evidence of Innocence Has Arisen Since the Convictions

In the past two years, significant new evidence of innocence has arisen that further demonstrates that Governor Kaine should grant clemency. This evidence, which has never been heard by any judge or jury in the Norfolk Four criminal cases, is highlighted below.

Senior Chief Michael Ziegler, United States Navy

In 2005, several years after the convictions in this case, attorneys for the Norfolk Four located Senior Chief Michael Ziegler, a highly-decorated twenty-four year veteran of the United States Navy who has been named Sailor of the Year, Battle Group Sailor of the Year, and SURFLANT Sea Sailor of the Year. **Senior Chief Ziegler was Joseph Dick's immediate supervisor when Joe Dick was a sailor on the USS SAIPAN in Norfolk, Virginia in 1997.** Before 2005, no defense attorney, prosecutor or investigator involved in this case had ever contacted Senior Chief Ziegler. As a result, no judge or jury ever heard Senior Chief Ziegler swear under oath, as he did in 2006, that **he is absolutely certain that Joseph Dick was on duty aboard a naval vessel on the night of the murder and that Dick, therefore, could not have participated in this crime.** The Commonwealth's precarious case was, and remains, dependent at its heart upon Joe Dick's coerced assertion of involvement in this crime. Senior Chief Ziegler's persuasive account disproves the fundamental core of the prosecution's case. And this critical new evidence proves that Dick, Williams, Tice, and Wilson are innocent.

Omar Ballard

In 2006, Omar Ballard testified under oath for the first time that he committed this crime alone, and that Williams, Dick, Tice, and Wilson were not involved in the crime and are innocent. Before 2006, no judge or jury ever heard Ballard testify that he was the sole culprit. This important new evidence confirms what the DNA evidence proves: Ballard acted alone. Only Ballard's DNA matched the DNA found in three different locations at the crime scene. Ballard's recent testimony that he acted alone is consistent not only with the DNA

evidence, but also with his March 1999 statements to police that he committed the crime by himself.

Moreover, no judge or jury ever heard that Ballard was on a violent crime spree against young women when he committed this crime. They never heard that two weeks before raping and murdering Ms. Bosko, Ballard had assaulted another young woman in Ms. Bosko's apartment complex with a baseball bat and was chased into Ms. Bosko's apartment by an angry mob, where Ms. Bosko and her husband gave him shelter. Nor did any judge or jury hear that ten days after this crime, Ballard raped a teenage girl about a mile from Ms. Bosko's apartment complex. In addition, no finder of fact heard that before Ballard was ever even a suspect in the case, he confessed to this murder in a letter he wrote to a friend from prison. In the letter, Ballard threatened to kill his friend just as he had killed "Michelle," and wrote, "Remember that night I went to Mommie's house and Michelle got killed. Guess who did that – ME. Ha. Ha."

Expert Testimony No Jury Ever Heard Further Confirms Innocence

Highly regarded experts in forensic pathology, DNA analysis, crime scene investigation, and interrogations and confessions have reviewed the evidence in this case, and they have each independently concluded that Williams, Dick, Tice, and Wilson are innocent. These experts' detailed testimony and reasoned conclusions about the significance of the DNA evidence, crime scene evidence, and false confessions were never presented to a judge or jury in any of the Norfolk Four cases. But Governor Kaine now has before him their expert testimony as objective and highly persuasive corroborating evidence of innocence.

Forensic Pathology Expert

Dr. Werner Spitz, an expert in forensic pathology, reviewed the crime scene and autopsy photographs and has concluded, based on his review and his more than five decades of professional experience, that the stab wounds on the victim were inflicted by one person in rapid succession, and that it is virtually impossible that multiple people inflicted the wounds. Dr. Spitz's conclusion that this was a single-offender crime is shared by Dr. John E. Adams, a Maryland forensic pathologist who has testified in more than 500 cases. Dr. Adams was never contacted by attorneys for the Norfolk Four and came to his conclusions based on an independent evaluation of the evidence. **No judge or jury ever heard testimony from any defense expert in forensic pathology such as Dr. Spitz or Dr. Adams, who could explain, from a forensics standpoint, the extreme implausibility of the police theory that multiple people inflicted the victim's wounds.**

DNA Expert

Todd Bille, an expert in DNA analysis and formerly of Bode Technology Group of Virginia, has concluded that **"the absence of any DNA evidence connecting Danial Williams, Joe Dick, Derek Tice, or Eric Wilson to the crime scene makes it overwhelmingly likely that these four men did not participate in the rape and murder of Ms. Bosko."** Testimony from an independent DNA expert, such as Mr. Bille, was never presented to a judge or jury.

Law Enforcement Experts

Current and former law enforcement officers with decades of experience in homicide and violent crime investigations each have independently concluded, beyond any doubt, that Omar Ballard raped and murdered Ms. Bosko by himself, and that Williams, Dick, Tice, and Wilson are innocent. Larry McCann, a twenty-six year veteran of the Virginia State Police, Gregg McCrary, a twenty-five year veteran of the FBI, and James Trainum, a current homicide detective who has served more than twenty years in the Washington, DC Metropolitan Police Department, have reviewed the crime scene video and photographs, the physical and forensic evidence from the crime scene, the autopsy report and photographs, and the statements and testimony of each of the Norfolk Four and Omar Ballard.

Based on their independent review of those materials and their extensive law enforcement experience, **Officer McCann, Agent McCrary, and Detective Trainum each have independently concluded that Omar Ballard committed this crime alone and that the police correctly believed at the outset of the investigation that this was a single-offender crime. They also have concluded that multiple people could not, and did not, commit this crime.** As just one of many examples from their analysis, they have concluded that the Commonwealth's entire theory of the case is disproved by incontrovertible evidence that the blood at the crime scene around the victim was not smeared or disturbed in any manner, an impossibility if multiple perpetrators were really involved in a vicious gang rape and stabbing. Likewise, they each have concluded that the inconsistent and non-sensical purported confessions of Williams, Dick, Tice, and Wilson are evidence of innocence rather than guilt. No judge or jury ever heard testimony from law enforcement experts such as Officer McCann, Agent McCrary, and Detective Trainum about the significance of the crime scene evidence that proves that Ballard committed this crime alone, and the extreme implausibility of the theory that several men committed this crime.

False Confessions Expert

Dr. Richard Ofshe, a nationally-recognized expert in police interrogations and confessions, reviewed the statements of the Norfolk Four and interviewed Williams, Dick, and Tice. Dr. Ofshe has concluded that the statements of Williams, Dick, Tice, and Wilson confessing to the crime are false. Dr. Ofshe's conclusions are based on the fact that their confessions are totally inconsistent with the crime scene and with each other, and are also internally inconsistent. Dr. Ofshe has concluded, among other things, that the threat of the death penalty was a significant reason the men confessed to a crime they did not commit. Retired FBI Special Agent Frank Stokes concurs in this assessment. He has no doubt these confessions are unreliable. And Detective Trainum knows first-hand that police can and do obtain false confessions, having obtained a false confession in another murder case, standing by that confession for years, and searching in vain for corroborating evidence until he had to admit his mistake. **Testimony from an expert in police interrogations and false confessions was never presented to a judge or jury in any of the Norfolk Four cases, and thus no trier of fact ever heard that innocent men of average intelligence can and do falsely confess to committing crimes they did not commit.**

Leading Virginians Support Clemency

Four former Attorneys General of the Commonwealth of Virginia – Richard Cullen, Tony Troy, Stephen Rosenthal, and Andrew Miller – have examined the evidence in this case, and have concluded that a terrible injustice has occurred. **They firmly believe that Governor Kaine should exercise his clemency power and grant Williams, Dick, Tice, and Wilson an absolute pardon.**

More than twenty members of the Richmond Chapter of the Society of Former Special Agents of the FBI have conducted an independent review of the case and have concluded that the Norfolk Four are innocent. The former Special Agents have called on Governor Kaine to grant clemency to the four Navy veterans.

E. Tazewell Ellett, a Past President of The Virginia Bar Association, has reviewed the evidence in this case, and he likewise has concluded that these four men are innocent and that the Governor should grant them clemency.

Clemency is the Only Just Result for the Norfolk Four

Governor Kaine is the only decision-maker in the criminal justice system who had, has, or ever will have before him all of the evidence of innocence. In addition, only the Governor, unlike the police, prosecutors, defense attorneys, judges, and jurors who were involved in only portions of this case before him, has the benefit of viewing the history of the two-year investigation and six-year prosecution of this crime in its entirety, and with the clarity and benefit of hindsight. This evidence and the case's history paint an undeniable picture of innocence, coerced confessions, and wrongful convictions.

These wrongful convictions can be corrected, and justice can be served in only one way – by the absolute pardon of the Norfolk Four. Because there is significant evidence of false confessions, because of the highly unusual nature of this case, and because of the overwhelming evidence of innocence, granting clemency here is absolutely necessary in order to ensure that justice is served. Granting clemency in this case will serve to strengthen the public's confidence in the fairness of Virginia's criminal justice system, because it will clearly demonstrate that the system is equipped to correct wrongful convictions in the rare instances where they occur.

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