

Early on the morning of December 15, 1974 I was awakened and found myself looking up at the barrel of guns pointed at me. Officers of the Elloree, South Carolina Police Department and the Orangeburg County Sheriff's Department were standing over me with their guns drawn. I was in my bed in my parent's home, and they told me "get up and get dressed." Then they handcuffed me and read me my rights. They told my parents that they just wanted to talk to me. It took only minutes to get to the Elloree City Hall. Once there I was placed in a small room to await the magistrate. There were only two pieces of furniture in the room, the chair I was sitting in and a small table in front of me.

Soon after I was put in the room, five men surrounded me. I sat there handcuffed and silent while they discussed with one another a crime that occurred earlier that night. Tiring of waiting for the magistrate, they decided to transport me to the Orangeburg County Jail. I arrived at the jail just before sunrise. I was in a total state of shock and confusion by all that was happening. I struggled the whole time, trying to get my senses together since I had been awakened from an alcohol induced sleep. I kept wondering "what is going on here?"

My mother and father found out I was at the jail and came to visit. Speaking with them through the thick wire mesh that separated us I could see the heartache on their faces. We were all in disbelief at what was happening.

#### **Phillip Robinsion was out drinking on December 14, 1974**

I was 21-years-old and I lived with my parents in Elloree. I would go out drinking occasionally with friends, but when I was low on cash I would simply stay at home with my mother and father. On the evening of Saturday, December 14 I was home when the doorbell rang. My father answered the door. Lewis Keitt was at the door and he told my father he wanted to speak to me. Keitt was a friend of mine, and he asked me if he could borrow a gun. At first, I told him "No." Then I asked him what he wanted the gun for. He told me that Phillip Scott, Ronnie Gilmore and he were going out partying. I asked him, "What is in the deal for me?" He told me, "A free high!" So I said, "Okay." I told my mother and father I was going out for a while.

We found my friend Mike, and he agreed to loan his gun to me. Scott, Gilmore, Keitt and I stopped in Elloree and drank for a while. Then we drove to the nearby town of Santee and stopped and bought a bottle of liquor. After we drank that we bought some more liquor and

## **Imprisoned For A Murder Another Man Was Convicted Of Committing – The Phillip Robinson Story**

By Phillip Robinson\*

drove around drinking liquor, smoking marijuana and talking and laughing. I drank more than the other guys and I soon became very drunk. Scott turned the heater up in the car and I remember asking him to turn it down because I was feeling woozy. I opened the window a little to get some fresh air but it seemed not to help. The next thing I knew I was awakened by the cold and opened my eyes. I was groggy and it was still dark, but I realized I was in my parent's front yard on their bench swing.\*\* I got up and went in the house and went to bed. The nightmare was about to begin.

#### **Gas station robbery and murder**

Earlier that morning a Texaco gas station near Santee owned by G&M Oil Company was robbed and the lone attendant, John Smith Jr., was killed by a single shotgun blast. A witness, Jimmy E. Pence, told police that about midnight he and his girlfriend pulled into the station in his car and observed "three colored boys" robbing the station. Pence stated two of the boys carried a cash register to a faded 1966 or 1967 Ford while the car's driver waited for them. As the two boys were putting the cash register in the vehicle, Pence stated a single shotgun blast was fired out the car's window. The three robber's then fled in the car. The shotgun blast killed Mr. Smith.

Phillip Scott pled guilty to "voluntary manslaughter" for shooting to death John Smith Jr. ... the same person that days earlier Phillip Robinson had been sentenced to death for shooting!

Shortly after the robbery J.K. Ulmer III was driving to Elloree from a party at Santee State Park when he observed a car positioned in the road next to a cash register. Ulmer was a licensed State Constable, and when the car took off at high-speed he gave chase until it failed to make a corner and wrecked in a peach orchard. Ulmer recognized and arrested Scott, the lone occupant of the wrecked vehicle – a faded 1967 Ford. Elloree barber Harrison Griffith was driving with his wife when he saw a car parked beside the road. He stopped at about the time Ulmer's car approached, and the car took off. Where the car had been stopped Griffith found the stolen cash register along with money and a shotgun. He collected the money and shotgun and turned them over to a sheriff's deputy.

The robbery was carried out by the three the young men, Scott, 17, Keitt, 18 and Gilmore, 15, that I had been out drinking with before I passed out and woke up alone outside my parent's home. Scott was the mastermind of the robbery, and his motive was clear: he needed money and needed it fast. Scott owed his two accomplices for the money they had loaned him to get his car out of the repair shop earlier that day. The three were arrested within hours. The police were told that I helped get from my friend the gun used in the robbery, which is why I was arrested.

#### **Robinson's two trials and death sentence**

New Years Day 1975 had come and gone and I had still not been appointed an attorney. On January 9, 1975 I was appointed attorney Tom Friday. Four days later I learned I was being indicted for "willful, deliberate, and premeditated" "Murder while in the commission of a robbery while armed with a deadly weapon." My heart just dropped. I was in shock. I was numbed with disbelief as to what was happening. Still, I was confident the truth would emerge. I had not done anything to anyone. Scott, Gilmore and Keitt were also indicted for capital murder. Under South Carolina law we were all facing a mandatory death sentence if convicted.

I was the first person to be tried. My trial began on April 7, 1975 in the Orangeburg County Courthouse. The judge declared a mistrial when the jury foreman became ill after the jury began deliberations. I just knew in my heart that the truth of my innocence was prevailing and that I would soon be home with my family.

My second trial began on September 18, 1975. C.F. Martin, operator of the Texaco station testified there was \$229 in the stolen cash register. He also stated the station was so well lighted that "anytime at night you could read the newspaper anywhere on the lot." He further testified "the lights run the whole length of the canopy – and they, of course, they are lighted just like daylight underneath the canopy." Which was where the robber's car was when John Smith, Jr. was shot.

Eyewitness Pence testified when asked how many robbers there were, "three, the two boys out of the car and the driver." He also testified the robbers were "colored." When asked by the prosecutor if he could identify any of the robbers Pence answered, "No sir." When cross-examined by my lawyer Pence confirmed there were "a total of three people" in the robber's car, the "driver" and "two

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passengers.” He also testified that as the two boys with the cash register “jumped in the car, I seen the barrel of the gun come to the window, the gun shot, the deceased fell between the gas pumps.” (Transcript, p. 18.)

Ulmer testified about seeing the cash register in the road, giving chase to the Ford until it crashed, and arresting Scott, the car’s driver and lone occupant.

Griffith testified about turning over to a sheriff’s deputy the money and shotgun that he found by the road where the car had been stopped before fleeing.

Scott did not testify. Keitt testified about the events leading up to, during, and after the robbery. He testified Scott drove the car and claimed I was in the car holding the shotgun on the attendant while he and Gilmore were stealing the cash register. He said he heard the shotgun blast but didn’t see John Smith Jr being shot. He also testified the robbery was planned before they went to my house to find a gun. Gilmore testified similar to Keitt, also testifying that he heard but didn’t see the actual shooting. When cross-examined by my lawyer, Keitt and Gilmore admitted to meeting with Solicitor (prosecutor) Norman E. Fogle, but they both denied agreeing to testify as a State witness in exchange for a promise of leniency.

An important part of Keitt’s testimony was he unwittingly revealed a dead-bang motive for Scott to kill John Smith Jr. – they *knew* each other. Mr. Smith would have immediately fingered Scott to the police as one of the robbers, and as Keitt testified, “A dead man couldn’t talk.” (Transcript, p. 85) Even though Scott had a perfect motive to gun down Mr. Smith, my lawyer did not ask either Keitt or Gilmore if Scott was the murderer.

Detective C.R. Smith testified on cross-examination that no fingerprints were recovered from either the shotgun or the cash register.

The State’s case was completed by the testimony of one of the five men present in the small room at the Elloree City Hall were I was taken after my arrest. Orangeburg County Sheriff Deputy William Martin testified the five men were talking amongst themselves a few feet from where I was sitting when I spontaneously said, “I am the one that pulled the trigger.” (Transcript, p. 128) When Solicitor Fogle asked Martin if I made any other statement he answered, “No, sir.” When Martin was asked if any written record was made of my statement he also answered, “No, sir.” (Transcript, p. 128)

The following exchanges took place when my attorney Friday cross-examined Martin about my alleged spontaneous confession:

Q. (Friday) All of you – all were present?

A. (Martin) Yes, sir.

Q. And you were all interrogating this defendant?

A. No, sir. He wouldn’t say anything to us.

Q. You mean to tell me all of these people were in the room and the defendant present, and nobody, not one of you, said anything to him?

A. Not at this time.

Q. In other words, you were all in the room, the defendant was sitting there handcuffed, surrounded by all of you all, and nobody –

A. He wasn’t –

Q. – said anything?

A. He wasn’t surrounded.

Q. Well, was anything said? Were you – all just standing there looking at him?

A. Well, we was talking among each other.

...

Q. And you are telling this court that all of a sudden he ups and says, “I am the trigger man”?

A. Yes, sir, he did ...

Q. And nobody said anything to him, nobody questioned him?

A. Nobody asked him a direct question. (Transcript, p. 136-138)

None of the other four men in the room testified that I made any statement of any kind. And no written record of any statement by me was introduced into evidence.

After the prosecution presented its case my court-appointed attorney did not call any defense witnesses. I did not know enough to insist on testifying.

My trial lasted only a few hours. After deliberating for a short period of time the jury of ten whites and two blacks found me guilty. About ten hours passed from the beginning of jury selection to my conviction by the jury. I returned to court the next day for my mandatory death sentence.

Three days before my twenty-second birthday Judge Harry Agnew casually declared an end to my life by electrocution. Those moments have seemed to last for eternity. Judge Agnew ended my sentencing with, “May God have mercy on your soul.”

A little more than 24-hours passed from the time my jury selection began to the time I was sentenced to death.

I was dazed. My conviction made no sense. Eyewitness Pence testified there were “three colored boys” involved in the robbery that

occurred under “daylight” conditions. The prosecutor did not attempt to impeach Pence’s testimony that matched his crime scene statement. Scott, Keitt and Gilmore were known to have been in the car when the robbery was committed. Yet, the jury disregarded the “reasonable doubt” created by Pence’s undisputed testimony and “stretched” the fact of three people being involved in the crime to convict a fourth “phantom” person of committing the shooting – me. It still doesn’t make sense today, thirty-four years later.

## Phillip Scott is convicted for shooting John Smith Jr. ... 17 days after Robinson’s death sentence

What I do know is this. In the same courthouse where 17 days earlier I was sentenced to death, Scott, Lewis and Gilmore pled guilty to “Robbery while armed with a deadly weapon.” They were each sentenced to 21 years in prison. The capital murder charge was dismissed against all three of them. Scott also pled guilty to “Voluntary manslaughter” for shooting to death John Smith Jr. ... the same person that days earlier I had been sentenced to death for shooting! The very unfortunate Mr. Smith was only shot once by one person, and Scott pled guilty in open court to being the person who shot him. Scott’s admission to shooting Mr. Smith is consistent with the eyewitness testimony that there were three robbers, and the lone shot was fired from the car while Keitt and Gilmore were getting in the car with the safe.

I appealed my conviction. The South Carolina Supreme Court denied the issues my court appointed attorney raised supporting a new trial, but it did overturn my death sentence and remanded my case back to the trial court for resentencing.

On January 26, 1977 Judge Lewis Rosen resented me to life in prison. Only fifteen months earlier Judge Rosen had sentenced Scott to prison for committing the exact same shooting he resented me to life for supposedly committing.

## Ronnie Gilmore’s affidavit exonerating Phillip Robinson

In 2000 I came face to face with Gilmore for the first time since he testified at my trial. He had been convicted of another crime and we happened to be assigned to the same prison construction project. He approached me and when we talked I asked him for an explanation of his testimony. He apologized for the lies he told at my trial. Twenty-six years after the horrible events of that December 1974 night, Gilmore on his own

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wrote and signed a sworn and notarized Statement in which he described what actually happened. The following is Gilmore's Statement of November 13, 2000:

"My name is Ronnie Gilmore. I am not being pressured or threatened to say anything. All I want to do is tell the truth.

I was fifteen years old at the time the crime happened (in December of 1974). I was placed in Orangeburg City Jail in a cell by myself. The cell was very dark. I could not tell day from night. The Sheriff's department kept me there for almost a month. The only time I would see light was when they came to question me.

I was only fifteen years old. All I could hear was "Boy, you are in a lot of trouble. You are looking at fifty years." Detective Rush and [Orangeburg County] Solicitor [Prosecutor] Fogle yelled at me, asking me "who was the trigger man?" I replied that I did not know. They kept yelling, "You are a damn liar. Boy you had better talk, and fast, or do fifty years." So they locked me back up. Later they brought me a honey bun, soda, and a cigarette. The very next day they were harassing me again about who was the trigger man. This went on for three weeks.

Then Solicitor Fogle had me escorted to his office and told me to say that Phillip Robinson was the trigger man. Solicitor Fogle told me that if I cooperate he would get me a light sentence. I was afraid and did not know what to do. I wanted to kill myself; because, I had heard about how people get raped in prison and become "punks." I didn't want to take the witness stand, but Detective Rush and Solicitor Fogle told me that they would help me get my story together. I know that an innocent man was going to prison for something he never did.

Phillip, I am so sorry for accusing you of a crime that you did not know anything about. I know it is going to be hard for you to forgive me. I am going to tell you just what had happened.

Phil Scott's car was in the shop. He needed some money to get it out. He came to the store where Lewis Keitt and I worked and told Lewis Keitt and me that if we would help him to get his car out of the shop, he would get our money back to us that night. Lewis Keitt and I agreed to give Phil Scott the money. After we gave him the money Phil Scott left.

Later Phil Scott picked up Lewis Keitt and me after we got off from work. We

started riding around and getting high. I asked Phil Scott how was he going to give Lewis and me our money back. Phil Scott said that he had a plan, but we needed a gun. Phil Scott asked, "Who can we borrow one from?" Lewis Keitt said that he knew where he could borrow one from.

So, Lewis Keitt told Phil Scott to go around to Phillip Robinson's house. That's when Phil Scott told Lewis Keitt to tell Phillip Robinson that we needed a gun because we were going out partying. Phillip Robinson, however, said that he wanted to go partying with us.

So, we took Phillip Robinson to the house of one of his friends, whose name was Mike; but Mike was at his girlfriend's house. We found Mike. Phillip Robinson and Mike talked a while. We took Mike and Phillip Robinson and got the gun. Then we brought Mike back to his girlfriend's house.

We went to Mr. Thadese Moore's Night Club in Elloree, SC, where we enjoyed ourselves and drank beer and wine. We decided to leave Elloree and go to Mr. Turbie's Club located in Santee, SC, where we bought marijuana and liquor. We went to a Shell station in Santee, SC, where we sat in Phil Scott's car smoking, drinking and getting high. Then we started riding around in Santee. We stopped and bought a big bottle of gin. Then we started smoking a joint and drinking gin.

Phillip Robinson told Phil Scott to cut down the heat; because, he was getting ready to pass out. Phil Scott told him it is good for him. Phillip Robinson passed out in the car. We put Phillip Robinson in the back seat of the car.

Phil Scott then brought up the subject about coming up with some money to pay back Lewis Keitt and me for getting his car out of the shop. Phil Scott stated that he knew a Texaco gas station we could knock off. Lewis Keitt and I listened to what Phil Scott had to say and agreed to his suggestion. Phillip Robinson was so drunk that we took him back home and put him in the swing that was in the yard.

Phil Scott, Lewis Keitt, and I went back to Santee, and we pulled up at the Texaco station. The station attendant started pumping gas as he was told by Phil Scott. Lewis Keitt and I quickly ran inside, lifted up the cash register, and carried it out the door. As we approached the car we heard a gun shoot. Lewis Keitt and I both fell, got back up, threw the cash register on the front seat, and jumped in

the car. At that time a car pulled in behind us, and Phil Scott drove off.

We went down Highway 6 going back toward Elloree, SC. Then we decided to stop and open up the cash register. A car was coming in at a high speed. Phil Scott jumped into his car and took off without Lewis and I. The car that was coming down the road in a high speed turned around and started following Phil Scott. So, Lewis Keitt and I ran into the woods and went home.

That is what happened. It hurts me to know that all of us with the help from Solicitor Fogle, Detective Rush, and the Sheriff's Office had an innocent person sent to prison (namely Phillip Robinson).

I Ronnie Gilmore hereby swear that the above statement is true.  
(Ronnie Gilmore Statement, November 13, 2000)

Gilmore's Statement is evidence of what I have known all along: my trial was a sham. The jury relied on deputy Martin's fantastic testimony that was supported by the perjured testimony suborned by Solicitor Fogle and other law enforcement officers. I was convicted and sent to death row on lies. I filed a state post-conviction relief petition based on the new evidence of Gilmore's statement. It was dismissed with prejudice on July 9, 2007 without a hearing being held. I then filed a *pro se* federal habeas corpus petition that was denied on March 20, 2008.

I am innocent of this terrible crime. Mr. Smith's confessed murderer is Phillip Scott. I have been incarcerated for more than 34 years since my December 1974 arrest. At the time I was 21. I am now 56 and many of my beloved family have died waiting and hoping that someday I would come home. I have lost my mother and father, two sisters and two brothers during this time. When will it end?

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\* *Justice:Denied* contributed to this article by editing and verifying facts.

\*\* *Justice:Denied* checked the weather records for Orangeburg, SC on December 15, 1974. The low temperature was 36°F, which is cold enough for a person to get the shivers and be awakened.

