Unlock the Truth
INNOCENCE PROJECT OF FLORIDA

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July 20, 2020

The Office of Executive Clemency
Florida Commission on Offender Review
4070 Esplanade Way
Tallahassee, FL 32399-2450

Re: Randy Seal, Application for Commutation of Sentence

Dear Clemency Board Member:

On January 3, 2004, Mr. Seal's home caught fire. His girlfriend Tscharna Hampton was inside and died as a result of the fire. Nearly nine months later, Mr. Seal was arrested and later convicted of murder and arson, even though there is no evidence to even suggest a crime occurred.

At trial, the State used faulty forensics to suggest that samples of clothing from Ms. Hampton contained gasoline, and that the fire was intentionally set, i.e., an arson. As the case sits today, experts on all sides agree that that the clothing samples collected from Mr. Seal's home **contain no gasoline**. In fact, none of the samples collected contain gasoline. Further, the physical evidence itself does not support that Ms. Hampton had gasoline on her clothing, as her carbon monoxide level, as explained in more detail below, was too high to suggest that she was killed in a flash fire, which would have been the result if she had gasoline on her.

Moreover, whereas trial investigators stated with certainty that the fire cause was intentional, experts on **both sides** now agree that the fire cause must be classified as undetermined. Finally, a jailhouse informant who testified against Mr. Seal at trial now acknowledges that he was not truthful in his statements that Mr. Seal confessed to him.

This letter is respectfully submitted in support of Randy Seal's Application for Commutation of Sentence pursuant to Rule 5(B) of the Rules of Executive Clemency. Mr. Seal is serving a thirty-year sentence for arson concurrently to a life sentence for first-degree murder in Seventh Judicial Circuit Case No. 04-CF-001683 stemming from the January 3, 2004 fire and death of Tscharna Hampton, Mr. Seal's then-girlfriend, at his residence in Putnam County.

Per the application, individuals serving a life sentence are eligible to apply after completing at least 12.5 years of the sentence imposed. Mr. Seal was sentenced to life imprisonment on June 4, 2007, but was arrested September 29, 2004, with credit awarded for his time incarcerated pretrial; thus, he meets the necessary requirement. Further, as this case is one of exceptional merit, we request expedited review pursuant to Rule 17.

This letter serves to provide a brief background and history of the case, as well as the evidence in support of Mr. Seal's innocence. It also includes a detailed transition plan to ensure a positive and successful reintegration back into free society (attached at Tab H). It is our hope that after your review, you will find his case worthy of clemency.

CASE FACTS

On January 3, 2004, Randy and Tscharna ran errands around the Florahome area. They started at the flea market in Waldo, then went to Wal-Mart in Starke where Tscharna bought a new pair of boots. They left Starke and went to the Crab Shack in Keystone, where they remained until about 4 or 5 p.m. From there, they went to Movie Gallery, rented a movie, then went to a bar called McGraw's, followed by another bar in Putnam Hall called the Howling Wolf. When they got to the Howling Wolf, they went through the drive-through to see if anyone had found Tscharna's lighter that they'd left there another time. T. 1043-44.[1] They then went to Captain Grog's in Keystone Heights around 6 p.m. for beers. T. 645. They wore matching shirts and showed the bartender/owner, Linda Rogers, wedding bands, indicating to her they had married. T. 661. After Randy had two beers and Tscharna had three (T. 659-60), Randy became upset with Tscharna and led her out of the bar by her arm. T. 661. They argued in the parking lot before leaving. T. 662.

When they returned, Randy parked in front of their home, a shed-like structure[2] next to a barn on his father Clinton Seal's property, about 300 feet back from his father's home, and about 15 feet back from the barn. T. 1653-54. Tscharna headed for the bathroom while Randy unloaded their flea market haul, some knick knacks and clothing, from the car. T. 1045-46. Randy saw Tscharna on the toilet with her hands on her head and her head between her knees and assumed she was suffering from one of her usual migraines. T. 1046. He went next door to see if his parents were home. When he saw they weren't, he returned to the shed to check on Tscharna, who was still on the toilet, before leaving the house again to buy drugs from Mike Cliffin (Attachment C).[3]

Meanwhile, between 6:30 p.m. and 7:00 p.m., Clinton and his wife, Yvonne Seal, returned home from Fleming Island where they had been helping their daughter build cabinets. T. 1658-59. While Yvonne went inside, Clinton went outside to check on the hens, approximately three or four feet from Randy's place, directly behind the barn. T. 1661. First, he walked around Randy's home, which was customary for him when he didn't see Tscharna and Randy at home. T. 1662. He didn't see or hear anything unusual. T. 1663. He did notice the jeep Tscharna drove was gone. T. 1664. Their door was closed, and a bucket was up against the door, which Tscharna and Randy used to keep the door closed because the latch was broken. T. 1664. Clinton then fed his chickens and returned home to eat the soup his wife had ready for him. T. 1665-66.

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[1] References to the trial transcript will be cited as "T." followed by the page number. References to the record on appeal will be cited as "ROA" followed by the page number. Reference to the postconviction evidentiary hearing transcript will be cited as "PC" followed by the transcript page number.

[2] This also may be referred to as "shed," or "Randy's house."

[3] Randy told officers he went to the Handy Way to buy beer. T. 1027. Detective Ross Heaton with the Putnam County Sheriff's Office obtained video footage from Handy Way to verify Randy's story, and provided it to William Robert Johnson with the State Fire Marshal's office. T. 812-14. Johnson reviewed the video and determined that Randy had never been inside. T. 1028. When officers told him that he was not on the video at the Handy Way, he changed his story to say that he forgot his wallet and never went inside. T. 1048. In reality, he didn't want officers to know he was smoking crack cocaine, particularly because he was on probation at the time.

Clinton's neighbor Louis Fearns went outside around 7:00 p.m. to smoke a cigarette. T. 669. From his front porch, he could see the Seals' property. T. 674. After finishing his cigarette, he went inside to finish making his dinner, and when he went back into the living room, he saw a bright orange glow across the street. T. 675. He ran over to see where the fire was coming from, and when he realized it was Randy's home, he ran back home to call 911. T. 676-77.

Mark Bradford, a volunteer firefighter, was the first to arrive on scene. T. 711. He observed fire blowing out of the eave of a small shed. T. 712. Clinton saw the fire truck pull up as he was eating. T. 1666. He jumped up and ran out on the porch barefoot and saw the smoke coming from Randy's home. He ran down by the fire truck, and Bradford, who hadn't yet gotten out his hose, asked Clinton if anyone was inside. Clinton told him no. T. 1667.

While Bradford put on his gear, he saw the first engine arriving with Chief Harry Childers and Assistant Chief Ron Price. T. 717. At that point, Bradford described the shed as "fully involved." T. 718. Bradford worked to prevent the fire from spreading. T. 718. Childers directed Price to attack the fire from the front part, or south end, of the shed. T. 764. Price sprayed water on the south end of the structure, which he also noted was fully involved. T. 745-47. He was having difficulty extinguishing the northwest and northeast corners of the building, so he and Bradford went to the northeast corner and started to pull down pieces of the wall. T. 749-50.

While Bradford worked, he felt someone grab his left shoulder, and heard the man, who turned out to be Randy Seal, screaming, "My girlfriend's in there, my girlfriend's in there. Have you found her? Have you found her?" T. 720. While Bradford tried to get Randy out of the way, Randy continued to yell for his girlfriend. T. 721. Randy also approached Price "hollering" that "she's in there." T. 751. Price told him to get out of the way, but Randy persisted. T. 752. Childers had a deputy remove Randy from the area. T. 771. After they successfully extinguished the fire, Price took a flashlight to do a search inside, at which point he discovered Tscharna's body. T. 753. Upon realizing there was a fatality, Price notified the county fire marshal. T. 754. Childers notified the deputy sheriff, who was on scene. T. 772.

Detective Doug Schwall with the Putnam County Sheriff's Office responded after being notified the fire department requested law enforcement. T. 782. Once there, Schwall saw firefighters working the scene. They directed him to Clinton's residence to speak with Randy, who may have had information about the fire. T. 786-87. Schwall said that when he attempted to speak with Randy, he was agitated and combative, and would not provide him the victim's name. T. 789.[4] After Schwall told him to calm down, Randy dropped to his knees and cried.

William Robert Johnson with the State Fire Marshal's office responded to the scene to investigate the origin and cause of the fire. T. 866. Though Johnson had investigated more than 1,500 fires (T. 832), he was never certified as a fire investigator.[5] T. 860. Further, though he called himself an expert in fire investigation (T. 842), he was unable to provide the heat release rate, or the energy needed to change the temperature, of a burning match or a mattress, claiming an engineer would

[4] Defense counsel pointed out on cross that Schwall's report made no reference to this supposed refusal. T. 802-03.

[5] There are two primary certifications for fire investigators—Certified Fire and Explosion Investigators (CFEI) are certified by the National Association of Fire Investigators (NAFI), and Certified Fire Investigators (CFI) are certified by the International Association of Arson Investigators (IAAI). T. 2128.

need to calculate that. "That's beyond my expertise." T. 1073. Reading fire patterns on different materials, however, requires an investigator to give "consideration . . . to heat release rate, form, and ignitability." National Fire Protection Association (NFPA) 1033, 4.2.5. Johnson further noted that knowledge of heat flux[6] was beyond his training. T. 1075.

When Johnson arrived on scene, the fire had been extinguished, but was still smoldering. T. 870. At some point, investigators measured the structure, and determined it was approximately 170 square feet. T. 870. Johnson met with Joe Guidry from the Putnam County Fire Marshal's Office. T. 871. They discussed the times of the fire, what firefighters found when they arrived on scene, suppression techniques used by firefighters, and the discovery of the body inside. T. 871.

Johnson began his examination of the scene by moving counterclockwise around the exterior. T. 871. His method was to work outside to inside, and from the area of least damage to heaviest damage. After his investigation, Johnson concluded the fire originated on the south part of the structure in the living room area. T. 873. He based his opinion on "reading fire patterns," (T. 873) including patterns on the floor in front of the bed that Johnson said "were consistent with what would be pour patterns[7] from an ignitable liquid." T. 952.[8] He cut a piece of flooring out at that area (T. 952), but the State Fire Marshal's office lost it and resultantly, never tested it. Of the samples of flooring the State did preserve,[9] both tested negative for ignitable liquids. T. 1234-35.

Johnson's reading of the patterns was based on his belief that flashover did not occur. T. 1074. He incorrectly stated the temperature needed to reach flashover was 1800 degrees Fahrenheit. T. 971, 1074. In reality, flashover occurs at 1100 degrees Fahrenheit. NFPA 921, 5.10.2.6 (2017). Further, while Johnson said he found no evidence of flashover (T. 971), all seven criteria for determining whether flashover occurred, as set forth by the Bureau of Alcohol, Tobacco, and Firearms (ATF), were met. *See* Report of Greg Gorbett, pg. 21-23 (Attachment D) [hereinafter Gorbett Report]. While Johnson acknowledged the fire department said the structure was fully involved, he would not concede flashover occurred. *Id.* Flashover, however, is simply one way to reach full-room involvement, which is post-flashover burning.[10] Moreover, full-room involvement is the condition that can create the irregular burn patterns "due to the effects of radiant flux and the convected heat

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[6] Heat flux "describes the amount of power per unit area," and is a basic principle to understanding ignition and combustion. Indeed, chapter five of the NFPA 921, entitled "Basic Fire Science," lists this term in the beginning of the chapter and notes that "[t]he fire investigator should have an understanding of ignition and combustion principles and **should be able to use them to help in the identification and interpretation of evidence at a fire scene** and in the development of testing of hypotheses regarding the origin and cause." NFPA 921, 5.1 (2017) (emphasis added). Further, "the recognition, identification, and **proper analysis** of fire patterns **depend on an understanding** of the dynamics of fire development and heat and flame spread. This . . . require[s] an understanding of the way that conduction, convection, and radiation produce the fire effects and the nature of flame, heat, and smoke movement within a structure." NFPA 921, 6.3.1.1 (2017) (emphasis added).

[7] Pour pattern is a term that "should be avoided," since it implies an intentional act. NFPA 921, 6.3.7.8.5 (2017).

[8] This is in direct contradiction to NFPA 921, 6.3.7.8 (2017), which states "Irregular . . . patterns should not be identified as resulting from ignitable liquids on the basis of visual appearance alone. In cases of full room involvement, patterns similar in appearance to ignitable liquid burn patterns can be produced when no ignitable liquid is present."

[9] The State submitted two samples from the flooring—Q-2, wood debris, and Q-13, carpet debris. Both tested negative for the presence of gasoline. T. 1234-35.

[10] "Flashover represents a transition from a condition where the fire is dominated by burning of the first item ignited . . . to a condition where the fire is dominated by burning of all items in the compartment. . . . **It is the triggering condition, not a close-ended event. The post-flashover condition is called full room involvement**." NFPA 921, §5.10.4 (2017) (emphasis added).

from the descending hot gas layer." NFPA 921, 6.3.2.4 (2017). Johnson was unable to even state what causes flashover. T. 1076.

Johnson further used the patterns to determine the fire "burned hot and fast for a short period of time." T. 966. He also determined that the front of the building "burned longer and hotter," indicating area of origin.[11] In the living room, Johnson observed some darker low burn patterns along the south wall, which he deemed significant because heat rises, "so the lower we find heat, the closer we are to either . . . a fuel source . . . an area of ignition. . . or area of origin." T. 927. While Johnson noted the area of origin to be on the south side of the building, he said he smelled gasoline in the northeast side of the structure, toward the bathroom area. T. 878. He did not document that finding in his report. T. 1140. Johnson said the damage in the bathroom indicated the use of an accelerant because it indicated heavy heat exposure without much fuel load. T. 960. Johnson said that kind of heat intensity without much there to burn is "consistent with some type of . . . ignitable liquid." T. 960.

Johnson first determined the cause of the fire to be an "open flame. . . of a liquid accelerant," (T. 980), but later said the first fuel ignited was a "common combustible." T. 1100. Based on this, Johnson determined the fire was "introduced," or incendiary. T. 879. "I mean, if it wasn't mechanical, if it wasn't chemical, if it wasn't electrical, if it wasn't natural, then we would have to assume that it was introduced."[12] T. 879.

Johnson noted two electrical sources to the shed: a large four-wire breaker box, with a black cord extending from a panel box to a hot-water heater in the shed, and a yellow drop cord that ran from an outlet in an adjacent barn, where the panel box was. T. 874. Johnson did not indicate whether the panel box was turned off, or whether the black cord was plugged in. Clinton Seal, however, said that he cut the power off, as he was asked to do so. T. 1709. Johnson said the yellow cord extended to an entertainment center and a washing machine. The cord was unplugged and the "patterns did not show a fire extending from those areas." T. 874. As a result, Johnson ruled out electrical[13] as a cause. He noted there was no electricity on in the shed (T. 925), but referenced only the yellow power cord when stating it was not plugged into anything.[14] T. 925. He said the black power cord ran from the barn to the hot water heater,[15] and as it was still relatively intact, he ruled it out as the cause. T. 929. Because there had been no rain the evening of the fire, he also ruled out natural causes. T. 880.

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[11] The NPFA warns against these types of assumptions. "The investigator should not assume that the fire at the origin burned the longest and therefore fire patterns showing the greatest damage must be at the area of origin. Greater damage in one place than in another may be the result of differences in thermal exposure due to differences in fuel loading, the location of the fuel package in the compartment, increased ventilation, or fire-fighting tactics." NFPA 921, 18.4.1.3 (2017).

[12] Fire cause may be classified as accidental, natural, incendiary or undetermined. NFPA 921, 20.1 (2017). Mechanical, electrical, and chemical are not actually classifications recognized by the NFPA.

[13] As noted *supra* note 12, electrical is not an NFPA cause classification.

[14] Clinton Seal testified that the yellow cord powered the washing machine, and thus, if it wasn't plugged in, it would not have affected the power to the living quarters. T. 1696.

[15] This testimony was in conflict with Clinton Seal's who said the black cord from the barn served as the primary source of power to the shed (not just the water heater) and the yellow cord serviced the air conditioner. T. 1639-43.

Johnson collected several pieces of evidence at the fire scene. T. 980. He collected carpet debris and fire debris from the living room floor and wood debris from the living room floor; he also took some sheets and towels, and a wool blanket located in the washing machine on the west side of the structure. T. 985-86. He also collected a pair of leather gloves found on the property adjacent to Clinton Seal's where Tscharna's truck (that Randy had been driving) was parked the night of the fire. T. 1013. Tscharna's body was transported to the medical examiner. T. 987. There, Johnson collected Tscharna's clothes for testing, including her undergarments, shirt and bra, boots, jeans, and socks. T. 987-89.

After investigating the scene, Johnson spoke to Randy at Clinton Seal's house to find out what Randy knew about the fire and to get consent to process the scene. T. 1026. Randy drew a diagram of the scene and signed a statement providing Johnson of his and Tscharna's whereabouts that day. T. 1035-36. He told Johnson when he left the shed, Tscharna was on the toilet. T. 1035. While Johnson claims he attempted to collect Randy's clothes and Randy refused, Johnson failed to document the request and Randy's alleged refusal. T. 1143.

Several days later, on January 7, 2004, Johnson and Detective Kenneth David Cheers with the fire marshal's office again interviewed Randy. T. 1037. Randy reiterated his and Tscharna's whereabouts the day of the fire. T. 1043-44. When he left the office with his father, Randy told his father he had actually gone to Howling Wolf Bar to buy crack cocaine. T. 2320.

On September 29, 2004, more than eight months after Tscharna's death, State Attorney Investigator Kevin Perry obtained a warrant for Randy's arrest. T. 1450-51. He went to the Manville and Interlachen area to a street called Pond Circle, where he believed Randy lived. T. 1451. Detectives John Merchant, Chris Stallings, Chris Middleton, and JD Azula, all former colleagues of Perry from his time at the Putnam County Sheriff's Office, accompanied him to the area. T. 1451. Detective JD Azula rode with Perry, while the other three rode together. T. 1457.[16] When they arrived, Randy was not there, so they waited about an hour until Randy pulled up in a jeep. T. 1452. Randy parked directly in front of Perry's vehicle, which was beside the other officers' vehicle. T. 1457. Detectives Middleton and Stallings got Randy out of his jeep, and directed him to get on the ground. T. 1458, 1476. Two other people were in Randy's vehicle. T. 1466. Perry cuffed Randy and read him his *Miranda* rights.[17] T. 1453-54. From there, Perry called for a "cage car" to transport Randy to jail. T. 1456. Stallings and Middleton stood behind Perry's vehicle while Perry sat inside his car with the door open to make the call. T. 1460.

According to Middleton, while Perry made his call, Randy allegedly said, "You guys got me, I know what I did, I'm going away for a long time." T. 1471. While Detective Stallings confirmed this version of events (T. 1487), he failed to write a report of the incident (T. 1491), and none of the other three officers heard him say anything.[18] Further, at least one of Randy's passengers, Patricia Copeland, heard Randy proclaim his innocence, but did not hear him say anything incriminating. PC 16-17.[19] Putnam County Sheriff's Office Deputy Sheriff Richard Campbell

[16] Detectives Middleton said that Perry rode by himself and the other four rode together. T. 1473
[17] Detective Middleton testified at his deposition that Merchant, Stallings, and Azula handcuffed Randy. T. 1476.
[18] Perry never heard Randy make any admission (1460-61), nor did Detective John Merchant (T. 1617). Joseph "JD" Azula testified at the postconviction evidentiary hearing that he also did not hear Randy say anything. (PC 30).
[19] Copeland did not testify at trial.

transported Randy to the Putnam County Jail. T. 1626. During the ride, Campbell said Randy was upset and began to cry. T. 1627. Randy said nothing to Campbell during the ride. T. 1627.

A grand jury indicted Randy on charges of first-degree murder and first-degree arson on October 18, 2004. ROA 1-2. After extensive pretrial litigation, the case proceeded to trial in May 2007. In addition to the testimony of fire investigators and arresting officers, the State put on several witnesses to testify about the physical evidence in the case.

Perry Koussiafes from the Florida State Fire Marshal Lab testified he identified the presence of gasoline on more than half of the items submitted for testing, including all of Tscharna's clothing, and a pair of leather work gloves found near the scene. T. 1222-31. Among the negative samples were the only two samples investigators collected of flooring. T. 1234-35.

Medical Examiner Terrence Steiner testified that at Tscharna's death, her blood alcohol level was .23, or nearly three times the legal limit (T. 1286), while her carbon monoxide level was near 87%. T. 1288. Her cause of death was asphyxiation due to smoke inhalation. T. 1288. From his observations of Tscharna's body, he did not see anything that would leave him to believe there was a fuel source on her body, nor did he detect any odors. T. 1305.

Florida Department of Law Enforcement (FDLE) Analyst Sukhan Warf testified that she conducted DNA testing on the leather gloves and found Randy to be a major contributor at two of thirteen genetic markers. T. 1338.[20] The right glove was a mixture of two individuals, while the left glove was a mixture of more than two. T. 1388. Other people, she explained, can also have the major profile found at those two markers. T. 1338. She would expect to see the same two-marker profile in one out of every 45,000 Caucasians, one out of every 320,000 African-Americans, and one out of every 53,000 Hispanics. T. 1343.[21]

Despite defense efforts to exclude the testimony, the State called three witnesses—Mary Mosley, Cindy Hampton, and James Spahn to testify about an incident occurring two full years before the 2004 fire, where Randy physically abused Tscharna after a day of drinking. T. 1362-1402. The remote incident, the State argued, supported Randy's motive—"a continuing battle between Randy Seal taking control over Tscharna Hampton." T. 2426-27.

The State also called Donna Arnold, who met Tscharna, a nurse, after her car accident. T. 1414. After, they met again at a restaurant, exchanged numbers, and became friends. T. 1415. Though she never met Randy, Donna knew he was Tscharna's boyfriend. T. 1416. She let Tscharna stay with her sometimes, and would sometimes loan Tscharna her car, but she gave Tscharna rules—specifically, no drinking, and no drugs. T. 1418. On December 14, 2004, a few weeks before the fire, Randy called Donna and told her Tscharna was drunk at Captain Grog's. T. 1418. She went there to pick up Tscharna, and took her to Dr. Restea's office where she worked. T. 1419-20. After,

[20] It is unclear from the trial transcript whether FDLE achieved the same two-loci profile for the major contributor on both glove samples, or whether it could resolve a major contributor at all on both glove samples.

[21] It is unclear whether these inclusion statistics represent the probability of another individual in the population having the same two-loci profile from the major contributor in this sample or whether these statistics represent the probability that another individual would be included as a contributor to the overall mixture.

Donna received numerous calls from Randy, some threatening, and saved the voicemails. T. 1421. She claimed Randy told her that if he could not have Tscharna, no one could. T. 1422. After Tscharna's death, police retrieved the voicemails. T. 1425. Though Donna claimed that in one of Randy's calls he told her she would die in the same manner as Tscharna, that threat was not recorded. T. 1425-26. She admitted she previously said the threats were recorded. T. 1435.

The State played the voicemails for the jury. In many, Randy expressed worry and concern for Tscharna's whereabouts. In one, he said "I love her to death. . . . She's drunk. She needs to come home." T. 1427. In another, he pled for Donna to tell him what was happening. "Let me know what's going on. . . I don't know what's going on. . . She's drunk out of her mind." T. 1428. He felt desperate, telling Donna he'd call until he got some answers. "Somebody please call me and let me know my girl is okay. I'm going to keep calling until somebody calls me or something. Leave me a message, something." T. 1429. The next few messages were similar, imploring Donna to let him know Tscharna was OK. T. 1429-30. While Randy used colorful language, the messages only expressed his concern for his incredibly drunk girlfriend's safety and whereabouts. In fact, at some point, Randy threatened to call 911, so Donna called instead. T. 1439. Donna claimed Randy left other messages threatening to kill both her and Tscharna. T. 1430. He supposedly also threatened to put drugs in both of their vehicles. T. 1431. Conveniently, those messages "dropped off," meaning the phone deleted them since they were too old. T. 1430.

The State then called Christopher Mullins, a multi-time felon, who had been Randy's cellmate. Mullins met Randy when he started dating Mullins' mother, Patricia Copeland. T. 1498. Mullins claimed that one time during visitation, Patricia and Randy fought. T. 1501. He further testified that Randy treated her badly during visitation, and that he told Mullins his mother could "burn like the last bitch." T. 1503. Patricia, on the other hand, testified at a postconviction evidentiary hearing that she and Randy never had any problems or difficulties during their relationship. PC 20-21. Mullins further testified that Randy told him he burned Tscharna, and gave different scenarios of how he did it. T. 1505. According to Mullins, Randy did so because Tscharna was going to leave him. T. 1507. Since trial, however, Mullins has recanted his testimony, claiming Randy never confessed to him. *See* Mullins' Affidavit, Tab C. He said he lied because the State pressured him into testifying, and he believed he had no alternative. *Id.* Finally, the State presented the testimony of Kenneth Pardon and Mark Bradford with the Putnam County Sheriff's Office regarding an incident where Randy used choice language with Bradford. T. 1551-61.

The defense opened its case with Steve Leary to testify he took photos of all the evidence Johnson collected, but did not photograph the leather gloves Johnson collected. T. 1572-77.

FDLE analyst James Pollock testified that investigators submitted several items of evidence to him to test for blood. Among the items tested—sheets and towels, a wool blanket, and leather gloves—none tested positive for the presence of blood. T. 1578-88.

Lieutenant Bernard Kleinschmidt, the supervisor of detectives at the Florida State Fire Marshal's Office, testified that he supervised William Robert Johnson prior to his 2006 retirement. T. 1590. When conducting an administrative review of Johnson's report in Randy's case, Kleinschmidt noted that Johnson "terminated employment with our bureau prior to completing the narrative portion of this report. Insufficient information exists in this case file to accurately document his

findings." T. 1595.[22] When Kleinschmidt attempted to contact Johnson to remedy his errors, Johnson failed to return any of his calls. T. 1597.

Clinton Seal testified he helped Randy build the structure Randy lived in about six months prior to the fire. T. 1632-33. Part of the structure was already built, and they added to it. They framed the roof and put on a tin roof. T. 1633. The structure had no windows, and one door. T. 1647. In total, the structure was 10 feet by 20 feet, and with the porch, 10 feet by 30 feet. T. 1645. They built the structure next to a barn on Clinton's property, which was about 300 feet back from Clinton's home, and about 15 feet back from the barn. T. 1653-54. Prior to the conversion, the structure was used to store lawn mowers and such. T. 1634. Clinton showed Randy how to hook up plumbing and electrical, but Clinton expressed concern that Randy didn't properly hook up the electric. T. 1636-37. After everything was built, Clinton checked out the property, and while the plumbing had been done properly, the feed wire, which fed electricity from the barn to the structure, wasn't properly put into the electrical box. T. 1637-39. Clinton thought the wire was too close to the bed, so if the bed moved too much, it could have gotten into the live wire. T. 1646.

Randy had a couple of other electrical cords plugged into his living quarters—one came around from the barn for a fan or something similar, and another had an air-conditioning unit hooked to it. T. 1640. Clinton testified the structure was wired much like a regular house, with receptacles, and things plugged into those receptacles. T. 1641. Randy installed the receptacles himself. T. 1645. Clinton recalled Randy had either a yellow or orange drop cord running to the air conditioner. T. 1641. A black band cord provided the main feed for electricity. T. 1642. Randy and Tscharna moved into the place unfinished, but finished it after moving in. T. 1647.

Adjacent to Randy's home was Clinton's cousin's trailer, where the cousin lived for three or four months a year. T. 1655-56. When Clinton's cousin wasn't there, Randy, Clinton, and Yvonne kept an eye on the trailer. T. 1656. Though a fence divided the trailer from Clinton's property, he cut a spot out of the fence so they could walk through his property. T. 1657.

The defense then put on its own experts. Walter Godfrey, president and senior fire and explosion analyst for Fire Reconstruction Consultants, testified about some of Johnson's investigative errors. Godfrey noted the National Fire Protection Association (NFPA) 921 Guide for Fire and Explosion Investigations outlines the method investigators should use in conducting a fire scene investigation, which is the scientific method.[23] T. 1872. Johnson could not even name all the steps of the scientific method. T. 860. In fact, when asked about two specific steps, developing a hypothesis (inductive reasoning), and testing a hypothesis (deductive reasoning), Johnson claimed he didn't even know what those terms meant, and couldn't describe them, even in a non-technical way. T. 862. Godfrey noted the importance of taking measurements beyond the building's length and width in order to figure out the fire's heat release rate. T. 1884-85.

[22] This portion of the report was read outside the presence of the jury.

[23] The NFPA defines the scientific method as a "principle of inquiry that forms a basis for legitimate scientific and engineering processes, including fire incident investigation." NFPA 921, 4.3 (2017). The steps are: 1) Identifying the problem, 2) defining the problem, 3) collecting data, 4) analyzing data, 5) developing hypotheses (inductive reasoning), 6) testing hypotheses (deductive reasoning), and 7) selecting a final hypothesis. *See* NFPA 921, 4.3.1-4.3.7 (2017).

Godfrey explained he would have collected more samples from the floor, since irregular burn patterns require corroborative evidence, namely lab confirmation, to determine the use of accelerant. T. 1886. Godfrey stressed that visually looking at a pattern, whether in person or in photographs, is insufficient, on its own, to determine whether accelerants were used. T. 1887.

Godfrey would have collected various electrical devices and had engineers examine them to see whether there were any failures. T. 1887-88. He also would have collected the space heater, and looked at the wiring. T. 2090-91. When investigating a fire, Godfrey said, the investigator should conduct "layering," or a process of going through each layer of material, photographing it, and looking for artifacts that will assist in determining fire cause. T. 1889. Looking at Johnson's photos, Godfrey could not determine whether Johnson used this technique. T. 1890. Godfrey said Johnson should have better documented the places from which he took samples. T. 2090.

In addition to pointing out some of Johnson's errors, Godfrey conducted his own analysis and interpretation. After explaining how a fire burns and how patterns are generated, Godfrey concluded, based on his reading of the patterns, that flashover did occur. T. 1897. The indicator here, Godfrey explained, was an even burn all around the lower areas of the fire. T. 1899. Further, Godfrey testified the temperature of the upper gas layer would have reached 1,060 degrees, right around the point at which flashover occurs.[24]

Godfrey also conducted a heat and flame vector analysis. T. 1916. A heat and flame vector is simply an arrow showing the direction of heat, smoke, or flame flow. NFPA 921, 3.3.102 (2017). The analysis is a system to locate the origin of the fire. T. 1917. Godfrey walked the jury through his analysis, resulting in his conclusion that the area of origin was on the bed on the west side of the structure. T. 2018-85. Godfrey said he was unable to determine cause. T. 2106.

John Lentini, an expert in both fire investigation and fire debris analysis, also testified for the defense. In his review of the case, he reached two major conclusions—first, that in each instance where Koussiafes identified gasoline in a sample, he was mistaken; second, Johnson's opinions did not comport with the standard of care. T. 2160.

Beginning with the fire debris, or chemical analysis, Lentini explained that the American Society for Testing and Materials (ASTM) E1618 sets forth the appropriate methodology for interpreting data from fire-debris residue. T. 2163. Minimum criteria must be met in order to characterize a sample as gasoline. T. 2164. A sample must contain five specific compounds, in the correct proportions, to be identified as gasoline, Lentini testified. T. 2165-66.

In the fire scene samples Koussiafes tested, at least three of those five compounds were not present, and the proportions of the compounds that were present were not in the correct proportions to indicate the presence of gasoline. T. 2168-71. Lentini showed the jury visual representations of these compounds, which appear as peaks on a chart known as a chromatogram.[25] One chart was the gasoline standard, while another was a sample from Randy's case. T. 2171-72. Visually, they were not close enough for the questioned samples to be called gasoline. T. 2172. Compounds not

[24] As noted previously, 1100 degrees is the point at which flashover occurs. NFPA 921, 5.10.2.6 (2017).

[25] A chromatogram is the output of a gas chromatograph, an instrument used to separate and analyze compounds in a questioned sample.

present in gasoline were present in the questioned samples. T. 2178. None of Tscharna's clothing, Lentini said, met the minimum criteria for the identification of gasoline. T. 2180. Lentini said there was, however, Isopar H. T. 2181. Isopar H is found in products like charcoal lighter, but also in a great number of consumer products, such as insecticide, furniture polish, shower gel, antiperspirant, detergent, shampoo, and cosmetics. T. 2184-86. As for the gloves, Lentini identified kerosene, but not gasoline. T. 2182.

Lentini then turned to Johnson's investigation and explained that he used "outmoded, invalid, and generally not accepted techniques," for classifying the fire as incendiary. T. 2187. Lentini said Johnson did not follow the scientific method and simply used the irregular burn patterns to determine the fire was intentionally set. T. 2187-89. He concurred with Godfrey that flashover occurred in this case. T. 2192. Flashover, coupled with airflow, can cause irregular patterns. T. 2204. He also noted the two samples collected from the floor tested negative for the presence of ignitable liquids. T. 2201. Lentini further testified that it's easy for an investigator's nose to be fooled while investigating a fire scene, since a lot of burned items might produce odors similar to that of petroleum products. T. 2202-03. Lentini noted that Tscharna's high carbon monoxide level was significant, because most people who die from carbon monoxide poisoning die far from the room of origin. T. 2211. An 86% carbon monoxide level, Lentini testified, is totally inconsistent with gasoline being poured on the clothing and subjected to fire. T. 2214-15.

After reviewing all the materials, Lentini also determined the area of origin to be the back of the bed. T. 2277. As to cause, Lentini said that without evidence to prove the fire was incendiary, he believed the cause was accidental. T. 2232. In support, he said that the victim's smoking could have provided a "perfectly competent" ignition source for the fire. T. 2232.

The defense closed its case with the testimony of Yvonne Seal, who supported Clinton's timeline as to their whereabouts the day of the fire. T. 2270-74. She further testified that after the fire engines arrived, Randy approached and shouted for Tscharna, asking Yvonne if she was inside. T. 2276. Randy told her his shed was on fire and told her that if Tscharna wasn't in the house, she must be in the shed. T. 2276. Yvonne said that he was very upset and started to cry. T. 2278.

In rebuttal, the State called Captain Ann Richie with the Putnam County Sheriff's Office who provided the times listed in the computer-aided dispatch reports. She said Louis Fearns called 911 at 7:13 p.m., units were dispatched at 7:14 p.m. and were on route two minutes later. Dispatch received an update at 7:24 p.m. that someone was inside the structure. T. 2303-11. Kevin Perry testified again that when he interviewed Clinton Seal the day after Randy's arrest, Clinton did not mention feeding the chickens or Randy going to the house to look for Tscharna. T. 2314-16.

Jack Ward, a fire consultant with Jack Ward Fire Consultants, also testified in rebuttal. Like Johnson, Ward determined flashover did not occur. T. 2353. As such, he also determined the irregular burn patterns indicated the use of an accelerant. T. 2359-60. While he agreed with Johnson that the fire was intentionally set, he disagreed with Johnson's origin that the fire was in front of the bed; instead, Ward said the area of origin was on the floor inside the door. T. 2373-74.

Following a seven-day trial, a jury convicted Mr. Seal of both charges. ROA 3597-98. The circuit court sentenced Mr. Seal to life imprisonment for first-degree murder, and thirty years for first-

degree arson, to run concurrently, in accordance with the jury's recommendation. ROA at 3668-80.

PROCEDURAL HISTORY

The Fifth District Court of Appeal *per curiam* affirmed his conviction and sentence. *Seal v. State*, 1 So. 3d 381 (Fla. 5th DCA 2009). Mr. Seal filed a petition alleging ineffective assistance of appellate counsel on June 23, 2009. The Fifth District Court of Appeal denied that petition on September 21, 2009, and denied rehearing on October 12, 2009. *See* Docket 5D09-2153.

Mr. Seal then filed a pro se Motion to Vacate Pursuant to Fla. R. Crim. P. 3.850 on June 25, 2010, raising eighteen claims, primarily ineffective assistance of counsel claims. The circuit court granted a hearing on three claims: 1) Counsel was ineffective for failing to present several theories of alternate perpetrators; 2) Counsel was ineffective for advising Mr. Seal not to testify; 3) Counsel was ineffective for failing to call multiple witnesses. *See* Court Order dated July 30, 2011, pg. 14. The court deferred ruling on one claim and denied the rest of the claims. *Id.* Following a one-day postconviction evidentiary hearing, the circuit court denied all remaining claims. *See* Order dated May 23, 2013, pg. 7-8.

On August 31, 2018, Mr. Seal, through Innocence Project of Florida counsel, filed, pursuant to Fla. R. Crim. P. 3.850, a second motion to vacate his conviction and sentence based on 1) a recantation by Christopher Mullins, and 2) the September 12, 2016 American National Standards Institute/American Society of Quality Control (ANSI-ASQ) National Accreditation Board (ANAB) Appeal Panel amended report upholding the Florida Division of Investigative and Forensic Services, Bureau of Forensic Services (BFS)[26] loss of accreditation in the fire debris analysis category based on nine nonconformities.

Chief among the nonconformities was the finding that in fourteen of twenty-six randomly selected cases where analysts identified gasoline, such an identification was not supported by the data. Said another way, in 54% of cases where BFS analysts found a sample to be positive for gasoline, the data did not support such a finding. In Randy Seal's case, the State argued he doused his girlfriend Tscharna Hampton with gasoline while she sat on the toilet, trailed it into the living area, and threw a match onto the pile of items the pair bought from the flea market. The primary evidence the State presented in support was the testimony of Perry Koussiafes, a BFS analyst, who testified that samples of Ms. Hampton's clothing tested positive for gasoline.

On September 12, 2019, Mr. Seal filed a supplement to his motion, arguing that the burn pattern evidence introduced at trial through the State's experts would no longer be admissible pursuant to *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993), which Florida adopted in May 2019.

On December 17, 2019, the State filed a response, and, rather than challenging the substance of any claims, simply argued a procedural bar. On December 21, 2019, Mr. Seal filed a reply, arguing that an evidentiary hearing was warranted.

[26] The lab was formerly known as the Florida Fire Marshal Bureau of Forensic Fire and Explosives Analysis.

On February 17, 2020, the State disclosed to Mr. Seal several documents, including: 1) A cover letter from Assistant State Attorney Mark Johnson, dated February 17, 2020; 2) A 155-page report from Brian Hoback; 3) New chromatographs from new testing by the BFS lab; and 4) A chart from BFS comparing the results of the recent testing with the original pre-trial results. The State filed these documents, save for the chromatographs, with the Court on February 21, 2020 as part of a Notice of *Brady* Disclosure, as the materials proved that the State's experts now agree with the defense experts regarding the fire cause and the lack of gasoline present on items.

Based on this disclosure, Mr. Seal filed a second supplement, arguing that the disclosed materials provided two additional items of newly-discovered evidence—1) the new results from the BFS lab, and 2) a change in position by the State regarding the origin and cause of the fire. Also, in addition to providing a basis for independent newly-discovered evidence claims, this evidence provides substantial and significant substantive support for most of the claims raised in Mr. Seal's 2018 postconviction motion.

As of the time of the submission of this application, the trial court had yet to rule on whether Mr. Seal was entitled to an evidentiary hearing, and, even if the court had made such a determination, given that postconviction proceedings are considered non-essential during this COVID-19 pandemic, there is no probable timeframe for actually conducting what would be a multi-witness, multi-day evidentiary hearing at which Mr. Seal could prove his claims.

EVIDENCE OF INNOCENCE

The basis for Mr. Seal's motion, which centered on newly-discovered evidence, was objective proof that the defense's trial experts were correct, while the State's trial experts were incorrect. This proof came in the form of an accrediting body's independent assessment of the BFS lab. Following a complaint by John Lentini, who testified on Mr. Seal's behalf, a team composed of two technical assessors and a lead assessor, all of whom were recognized experts in fire debris analysis, was gathered to assess the complaint's merits. They conducted an on-site special interim assessment of the BFS laboratory in January 2016. Following the assessment, the team issued an interim report citing 11 nonconformities and suspending the lab's accreditation in the fire debris analysis category. The State appealed and on September 12, 2016, ANAB issued an amended report upholding nine of the eleven nonconformities, overturning one, and upholding in part and overturning in part one. ANAB also upheld the suspension of accreditation in fire debris analysis.

While the State argued that this loss of accreditation was not relevant as the assessment did not review Mr. Seal's case, the specific reason for the loss of accreditation, namely, the misinterpretation of fire debris analysis samples resulting in a finding of gasoline where there was none, was present in Mr. Seal's case. Mr. Seal presented this evidence in his postconviction motion through the affidavit of Doug Byron, a chemist with Forensic and Scientific Testing, Inc. (FAST), a fire debris analysis lab. Byron noted that the analyst in Mr. Seal's case interpreted samples in an improper way, the same way that ANAB warned against in its assessment. Now, the State's chemist agrees, as does its expert in fire pattern analysis. Other evidence of Mr. Seal's innocence is as follows:

- **Experts retained by the State in postconviction agree that the samples at issue in Mr. Seal's case contain no gasoline**: The State retained Brian Hoback, a former agent with the

Bureau of Alcohol, Tobacco, and Firearms (ATF), to review Mr. Seal's case. As Hoback is not a chemist, he asked Dirk Hedglin, a forensic chemist for Great Lakes Analytical (GLA) Forensic Consulting and Analysis to analyze all the data from the investigation, including trial and deposition transcripts from the prosecution and defense. Hedglin concluded that, "**no classification of gasoline was found within any of the samples provided to GLA,"** and that he "**did not see any gasoline in any of the samples provided to him.**"[27] Hoback himself agreed with the assessment that there was no gasoline, going so far as to say he had no confidence in the BFS lab. "Based upon the information collected and my experience, training, and education, I found that the FM [Fire Marshal] laboratory may have misidentified the results they developed in 2004 and 2007." Hoback Report, pg. 12. Moreover, because of failure in evidence collection by State investigators, "any results that the laboratory concluded may be in question." Hoback Report, pg. 12. Finally, as pertains to the finding of gasoline, Hoback concluded: "Based on all the above in this section, I have no confidence in the laboratory analysis and the results of the evidence collected at this particular scene by the Florida State Fire Marshal's Office." Hoback Report, pg. 13. He added that even if the lab was correct, "the process by which the evidence . . . was collected was not in adherence with known guidelines." Hoback Report, pg. 13.

- **The physical evidence does not support a finding of gasoline on Tscharna Hampton's clothing**: Mr. Seal argued in his 2018 postconviction motion that testimony by a forensic pathologist would reveal that Ms. Hampton's carbon monoxide levels at her death (>80%), do not support the State's argument that Mr. Seal poured gasoline on her, because if he had, she would have died from a flash fire before being able to inhale so much carbon monoxide. That argument is supported by the State's newly-retained expert, who found, "after reviewing the above-mentioned photos along with other photos in this file, **one cannot see any signs of burns indicative of a fuel being poured on this victim's body**." *Id.* at 59-60 (emphasis added). "I believe the injuries to her and the damages to her clothing, especially the upper portions of her clothing . . . only confirm a fire originating in the south of her and moving toward her from the top down. But again, **I do not see any signs of fuel in a flash fire**." *Id.* at pg. 60 (emphasis added)."

- **New lab testing proves that the BFS lab is *still* employing improper interpretation methodology:** At some point in 2019, apparently prompted by Mr. Seal's Fla. R. Crim. P. 3.850 motion, the BFS lab undertook retesting of all the fire debris samples in Mr. Seal's case and reached different results. Item 2, wood/fire debris from an unknown area, tested positive for terpenes at the time of trial, but tested negative in 2019. The lab notes that this is because it no longer reports findings of terpenes in burned debris, but does not state why. It is likely because terpenes are a natural product in wood flooring. Hoback Report, pg. 26. Items 5-10, Tscharna Hampton's clothing, previously tested for a mix of gasoline and isopar. The results now state that the samples contain only gasoline, but noted that the lab only distinguishes isopar from gasoline when the isopar is of a greater concentration than normal alkanes in gasoline. Item 13, carpet debris, also from an unknown area, tested negative for an ignitable liquid at the time of trial, and in 2019, tested positive for gasoline. This, the lab says, is because of a "more sensitive newer instrument" resulting in a positive

[27] Report of Brian Hoback, Attached at Tab A.

finding. This is unlikely according to chemist Doug Byron, because "while new sensitivities in instrumental design can lead to an increase in abundance and sensitivity, the increase is not typically sufficient to change the outcome from a negative to a positive result, especially when the same sample is analyzed over a decade later. Part of this is due to the lessening of the chemical abundance over time (diminution of the sample). Increasing the sensitivity would increase not only contributions from an ignitable liquid, but from the interfering products of the matrix as well. The main issue in this data is specificity, not sensitivity."[28] Specifically, the specificity issue is the same issue of which Mr. Seal complained at trial, and the reason the lab initially lost its accreditation. And while BFS has regained its accreditation because of implementing new policies, those polices are still not, apparently, in compliance. "Changes to policy were indicated with the new testing performed, however, **the new policies apparently do not provide sufficient information to prevent analysts from misidentifying matrix contributions as positive samples**." *Id*. at pg. 3 (emphasis added). Finally, and most significantly, the leather glove that tested positive for gasoline at the time of trial now has a negative result. This is important because at trial, the State's primary support for its argument that Randy poured gasoline on Tscharna Hampton was the leather glove, which the State linked to Randy with DNA results. By arguing that the glove was Randy's and the glove contained gasoline, the State was able to argue that Randy must have worn those gloves while pouring gasoline on Tscharna, an argument that is no longer tenable. Aside from a change in result on the glove, the more noteworthy takeaway is that the new results demonstrate that the lab is still using scientifically improper protocols in interpreting fire debris samples, which is the reason it lost its accreditation, and provides support for Randy's claims.

- **The cause of the fire is undetermined**: At trial, the State argued, based on poor methodology and bad evidence collection, that that cause of the fire was intentional, or incendiary. In his 2018 motion for postconviction relief, Mr. Seal argued, through a new expert, that the fire cause was undetermined. The State's postconviction expert agrees. Absent an intentionally-set fire, the State has minimal evidence of any crime occurring at all; thus, it is highly significant when the State's expert agrees that the scientific evidence does not support a conclusion that the fire was intentionally set. Further, Hoback's report provides support for Mr. Seal's claim that the methodologies employed by the State's trial experts would not be admissible pursuant to *Daubert*. Without the original trial experts for the State testifying, the only expert opinions left are from experts who say the fire was not intentionally set. Said another way, the introduction of Hoback as an expert not only signifies a change in opinion by the State, but supports the exclusion of the State's trial experts altogether, thus irreparably undermining the theory of prosecution. Ultimately, Hoback concluded: "the origin of the fire is undetermined . . . . The classification of this fire is undetermined and the cause is unknown." Hoback Report, pg. 53.

- **Christopher Mullins recanted**: At trial, Mullins testified that Mr. Seal told him he burned Tscharna and gave different scenarios of how. Since trial, Mullins has recanted, claiming that Mr. Seal never confessed to him.[29] Not only has Mullins recanted, but Hoback's report provides support that Mullins was untruthful at trial because he explained that the two

[28] 3-9-20 Affidavit of Doug Byron, Attached at Tab B
[29] Affidavit of Christopher Mullins, Attached at Tab C.

scenarios Mullins claimed Mr. Seal stated regarding how he allegedly set the fire were actually scientifically impossible, and implausible, respectively. He also noted that the scenarios were inconsistent with each other. Hoback Report, pg. 14. One scenario was that Mr. Seal supposedly threw a bottle of kerosene through the bathroom window. "This scenario **could not be correct, because there was no bathroom window and there was no bottle of kerosene recovered at the scene.**" Hoback Report, pg. 14 (emphasis added). As to the second scenario, Mullins claims that Mr. Seal told him that he rigged up a heater so it would look like an accident. Hoback said that while that scenario was more plausible, it was "**not consistent with all of the evidence collected** and presented at trial." Hoback Report, pg. 16.

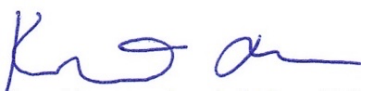
- **An alibi witness is available who did not testify at trial**: At trial, the State made much of Randy's fib about his trip to Handy Way the night of the fire. The State argued in closing he could not escape his lie. T. 2432. "He only ever said he went to the Handy Way, and that couldn't have taken very long. And by the time the fire department arrived, the structure was fully involved. It's a time line Randy Seal can't and won't escape." T. 2432. Randy did not go to the Handy Way, but this hardly means he poured gasoline on his girlfriend and set her on fire. Instead, he was with Mike Cliffin, who said that Randy came to his house somewhere between 6 p.m. and 7 p.m. the night of the fire to buy drugs.[30] He was there for an hour or so, and did not act out of the ordinary. Randy made up his trip to the Handy Way to avoid admitting to drug use. Cliffin's times match up with the fire. Cliffin Affidavit.[31] Randy returned home sometime between 7 p.m. and 8 p.m. while the fire was already in progress, so it is more likely he went to Cliffin's around 6 p.m., and left around 7 p.m., which would provide a reasonable alibi for Randy.

Ultimately, while there was some character evidence introduced at trial about Mr. Seal being a bad person, that is simply not enough to suggest that he doused his girlfriend in gasoline and set the room on fire in order to murder her. The evidence outlined above, supported by experts from both sides, proves that there was not an intentionally-set fire, and thus, not a murder.

RELIEF REQUESTED

Given his innocence, and the great risk posed to him during this COVID-19 health crisis affecting Florida's Department of Corrections institutions, we respectfully request you commute Mr. Seal's thirty-year sentence for arson and life sentence for first-degree murder, and, alternatively, should you believe it is warranted, grant a full pardon. This will ensure Mr. Seal's safety during this pandemic while we await further litigation steps related to the propriety of his conviction.

Respectfully submitted,



[30] Affidavit of Mike Cliffin, Attached at Tab D.

[31] This is supported by the deposition testimony of Elizabeth Leathers, who said that Randy and Tscharna pulled into the Howling Wolf between 6:15 p.m. and 7:15 p.m. and did not come in. ROA 3015.

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Appendix

[32] For ease of review, we're providing a summary of the file, but can provide additional documentation upon request.