

# DRANOFF AND PATRIZIO, P.C.

ARNOLD DRANOFF  
STEPHEN P. PATRIZIO

ATTORNEYS AT LAW  
2 Penn Center • Suite 1205  
1500 JFK Boulevard  
Philadelphia, PA 19102

TELEPHONE  
(215) 569-2121  
FAX NUMBER  
(215) 569-2042

Via Hand Delivery

April 9, 2018

Conviction Review Unit  
District Attorney's Office  
Three South Penn Square  
Philadelphia, PA 19107

**Re: Commonwealth v. George M. Tillery**  
**Superior Court No.: 3270 EDA 2016**  
**Lower Court No.: CP-51-CR-0305681-1984**

Dear Sir/Madame:

Enclosed please find the Conviction Review Unit Submission Form as well as the Conviction Integrity Unit Consent Form and supporting documents that have been prepared on behalf of my client, Major Tillery in regards to the above captioned matter.

Please give this matter your most serious consideration and do not hesitate to contact me if any additional information or materials are needed.

Thank you for your attention in this matter.

Very truly yours,



STEPHEN P. PATRIZIO

SPP/mef  
enclosures  
cc: Major G. Tillery

# PETITION OF MAJOR G. TILLERY FOR CONVICTION REVIEW

## I INTRODUCTION

This is a case of factual innocence. Major G. Tillery [Tillery or Petitioner] was convicted in May 1985 of homicide, assault, weapons and conspiracy charges for October 22, 1976 shootings, nine years earlier. Joseph Hollis died and John Pickens was wounded. Major Tillery was sentenced to life imprisonment without the possibility of parole. He is currently incarcerated at SCI Frackville.

John Pickens, the survivor of the shootings, gave a statement to police detectives immediately after the shooting that identified the shooters as individuals other than Tillery. Pickens did not testify at Tillery's trial.

There is no physical evidence linking Major Tillery to the crime.

Major Tillery has always asserted his innocence and innocence was his defense at trial.

The prosecution's case relied entirely on the false testimony of two jailhouse informants: that of Emanuel Claitt obtained in May 1980 and from Robert Mickens obtained in the fall of 1984.

### **Evidence of Innocence:**

Evidence of Tillery's actual innocence is contained in the sworn declarations of these witnesses, Emanuel Claitt [Exhibits A, B] and Robert Mickens [Exhibit C]. Both men state their trial testimony was entirely false. Neither man was at the scene of the shootings or had any direct knowledge of the shootings although they testified as witnesses.

Emanuel Claitt videotaped his reaffirmation of those sworn declarations on August 3, 2016. [Exhibit D]

Claitt testified that he was in the poolroom during the shootings and Mickens testified he was outside as a lookout for police.

Claitt and Mickens now swear their false testimony against Major Tillery was manufactured by the prosecution and police who coerced, threatened and induced them. They were coached to testify falsely at preliminary hearings and at trial.

Claitt and Mickens understood that the Commonwealth would penalize them if that did not lie on the witness stand and that they would be rewarded if they did.

**Prosecution and Police Misconduct:**

The informants’ false testimony against Tillery was the result of police and prosecutorial misconduct. The state misconduct was part of a pattern and practice of obtaining false inculpatory statements from jailhouse informants to secure convictions, particularly in cases of unsolved homicides. The misconduct included:

- (1) Coercion by threatening the imprisoned informant with false murder charges unless he cooperated;
- (2) Inducement by promising the imprisoned informant favorable plea deals and assistance in obtaining release on bail and clearing parole violations; and
- (3) Inducement by arranging private sexual liaisons in police headquarters and elsewhere for the imprisoned informant.

The police officers who participated in coercion and inducement of false testimony against Tillery were: Lt. William Shelton, detectives Leon Lubiejewski, Lawrence Gerrard, Ernest Gilbert, John Cimino, and James McNesby.

The prosecutors who had knowledge of, condoned, supervised and participated in the preparation of false testimony against Tillery were: assistant district attorneys Leonard Ross, Roger King and Barbara Christie.

**Fraud upon the Court and the Jury:**

The trial prosecutor, Barbara Christie, vouched for the veracity of these witnesses to the Court and the Jury, stating these witnesses had no reason to falsify their testimony. She asserted there were no plea agreements, knowing this was false. The witnesses’ false statements that there were no plea agreements were not corrected.

Additionally, Barbara Christie suppressed the fact that just days before Claitt gave his statement to Detective Gerrard, thirteen felony charges, including robbery, assault and firearms violations, were charged against him and were never disclosed to Tillery, or to the jury during the trial. *Infra.* p.

**II**  
**THE PROSECUTION’S CASE RELEVANT TO GUILT—**  
**WITNESSES CLAITT AND MICKENS**

The Superior Court decision denying Petitioner’s appeal from his December 9, 1986 judgment of sentence of the Philadelphia County Court of Common Pleas, *Commonwealth v. Tillery*, 563 A.2d 195 (Pa. Super. 1989), begins with the following:

The facts of this case have a rather long and tortuous past. At approximately 10:00 p.m. on October 22, 1976, Philadelphia police received a call to the address at Huntingdon and Warnock Streets in North Philadelphia. At that corner they broke down the locked door of a poolroom operated by William Franklin and discovered the dead body of John [Joseph] Hollis.... Around the corner from the poolroom at 2527 North 11<sup>th</sup> Street, police officers found John Pickens bleeding from a gunshot wound. He was treated at a hospital and survived his injuries. Both Pickens and Hollis were shot by different guns.

For more than three years, the shooting of Pickens and Hollis remained unsolved. However, in the spring of 1980, police detectives investigating the homicide of Samuel Goodwin, visited a Philadelphia prison to determine if Emanuel Claitt, an inmate who had known Goodwin, could provide any information about Goodwin's death. The information Claitt provided went far beyond the Goodwin case. Claitt described in detail the operation of what he labeled the "black mafia" a crime syndicate run by black Muslims in Philadelphia. His information described a vivid picture of the events culminating with the shootings of Pickens and Hollis.

Claitt testified that from 1976 until 1980, he engaged in drug dealing and extortion as a member of the Philadelphia "black mafia". The organization divided the city into sections for business purposes. Alfred Clark was the leader of the North Philadelphia branch. He held the rank of first lieutenant and had "the last word" for all business in the city. Sylvester White directed the West Philadelphia branch. John Pickens also dealt drugs in West Philadelphia. During the 1970s, appellant had the rank of first lieutenant and had "had control of the entire city as far as methamphetamines is concerned ...." Claitt received his heroin supply from Clark and his methamphetamine supply from appellant. Clark and [Tillery] were partners in the heroin and methamphetamine trade. Claitt characterized [Tillery] as Clark's "right hand man." ....

Based on Claitt's information, the police obtained an arrest warrant on May 23, 1980, for [Tillery]'s arrest. William Franklin was charged as well for the same offenses and went to trial in November 1980, was convicted and sentenced to life imprisonment.

However, for three years the police were not able to serve the warrant because [Tillery] could not be located. A detective in California finally arrested [Tillery] in November 1983. [Tillery] was returned to Philadelphia on December 8, 1983, to stand trial.

No physical evidence from the scene was presented as evidence against Petitioner. Fingerprints were not taken. NT 10:83.<sup>1</sup> Car keys found in the poolroom were identified as belonging to Fred Rainey, but he was not charged for anything having to do with the shootings. NT 13:12. A large plastic bag containing a controlled substance was found on the pool table. NT 13:8. Coats, a hat and glasses were found in the poolroom, but not linked to anyone. NT 13:33. Alfred Clark was detained after a car stop shortly after the shooting, but he was not charged. NT 13:43-44. Eighteen hundred dollars was confiscated but was later released to Clark. NT 13:31.

Shortly after the shooting, while in the hospital, surviving victim John Pickens gave a verbal and written statement to a homicide detective McGrath that “Dave” and “Rickie” were the shooters. [Exhibit E] NT 13:56 No charges were brought against Petitioner, or anyone else. NT 13:57.

Pickens never testified, not at William Franklin’s trial in Nov-December 1980 nor at Petitioner’s trial in May 1985. The prosecution didn’t try to subpoena Pickens as a witness.

### ***Claitt’s False Testimony***

The Commonwealth’s evidence against Petitioner that he was inside the poolroom and one of the shooters of Hollis and Pickens came solely from career jail informant Emanuel Claitt.

In April 1980 homicide detectives questioned Emanuel Claitt who was incarcerated on a probation violation and reportedly had 8 or 9 open cases. NT 14:8.

Claitt was questioned about the homicide of Samuel Goodwin NT 15:8 and provided information on that homicide, as well as others, including the homicides of Alfred Clark (April 1979) and Joseph Hollis (October 1976) and firebombings committed by him and others. NT 14:8<sup>2</sup>.

On May 20, 1980 Claitt gave a statement on the 1976 shootings of Hollis and Pickens, “Investigation-Interview Record,” to Detective Lawrence Gerrard. [Exhibit F] NT 15:8. This inculpated Petitioner and William Franklin.

According to Claitt, Petitioner threatened Hollis after Hollis pistol-whipped Clark during a dispute about drug selling in West Philadelphia on

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<sup>1</sup> Petitioner is indicating transcript pages by using NT followed by a number that is the date in May 1985 of that testimony followed by the page number.

<sup>2</sup> Between January 1980 and Petitioner’s 1985 trial Claitt provided information to and/or testified for the prosecution against Robert Lark, William Franklin, James Brand, George Rose, Major Tillery and Philip Frazier.

October 20, 1976. NT 14:30. Petitioner was involved in making arrangements for a meeting at the poolroom between Hollis and Clark with others. NT 14:32, 39.

Claitt said that it was arranged that everyone would meet at the mosque and go from there to the poolroom, but before the service was over Petitioner and Franklin got up and left. NT 14:42.

After the service, Claitt drove over to the poolroom with Clark and others, and was asked by Clark to guard the door inside the poolroom. NT 14:49. Claitt didn't see Petitioner and William Franklin at the poolroom until they came from behind a barrier and shot at Hollis and Pickens. NT 14:59.

Claitt said after Pickens was shot "he ran through this door which had a glass centerpiece in it."<sup>3</sup> NT 14:73.

Claitt was not charged in anyway in connection with the shootings.

### ***Mickens' False Testimony***

The other prosecution fact witness was Robert Mickens, also a jailhouse informant.

In February 1984 Robert Mickens was arrested on rape, assault and robbery charges and remained incarcerated through the May 1985 trial of Petitioner. NT 21:23, 54.

In September 1984 Mickens was taken to police headquarters at 8<sup>th</sup> and Race for questioning about the homicide of Ronald Johnson and volunteered information to the homicide detective about other homicide cases. NT 12:29.

On September 26, 1984, eight years after the shootings, Mickens gave police a statement regarding what he knew of the homicide of Joseph Hollis, recorded in an Investigation-Interview Record. [Exhibit G] NT 21:106-7.

Mickens was a surprise witness for the prosecution, kept secret from Petitioner until he was called to the witness stand. The Commonwealth had

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<sup>3</sup> The issue of whether Pickens went through a glass door, and even whether a glass door was in the poolroom in 1976 and/or an exist door from the poolroom, was an issue of extensive questioning to numerous witnesses at Petitioner's trial. None of the police officers at the scene in 1976 saw a glass door, or took photographs of any such door. Nor was the there any medical evidence that John Pickens was injured going through a glass door. It was only when ADA Barbara Christie prepared for Petitioner's trial in 1985 were photos taken of a hallway that reportedly once had a glass pane.

obtained a protective order prior pursuant to Rule 305 F<sup>4</sup>.

Mickens placed Petitioner outside the poolhall on the night of the shootings, asking Mickens to be a police look-out. NT 21:107.

Mickens testified that while walking down the street in front of the poolroom shortly before 10 pm on the night of the shooting, he was asked by Petitioner to be an outside “lookout” to watch for patrolling police cars. NT 21:36.

Mickens said Petitioner was on the poolroom steps with Franklin and Alfred Clark. NT 21:35,60.

Mickens also testified that he was asked to and agreed to be an alibi witness for Petitioner back in 1976, a few days after the shootings. NT 21:15.

Mickens testified at preliminary hearings two unrelated murder cases against George Brown and Kenneth Purnell, on December 8, 1984 and January 3, 1985. NT 21:27.

Mickens was identified in the prison as a snitch and placed in areas of protective custody in a Philadelphia prison and then transferred to a prison outside the Philadelphia area. NT 21:101,105.

### **III PETITIONER TILLERY’S EVIDENCE OF INNOCENCE AND STATE MISCONDUCT**

#### **A. Sworn Statements of Emanuel Claitt, May 4 and June 3, 2016**

Without the testimony of Emanuel Claitt there is no case, no evidence of Major Tillery’s involvement in the shootings of Joseph Hollis and John Pickens.

Prior to Claitt’s statement to police detectives May 20, 1980 there were no suspects in the October 22, 1976 shootings of Hollis and Pickens. It was only after Claitt’s statement that an arrest warrant was issued for Petitioner.

#### ***Verified Declaration of Emanuel Claitt, May 4, 2016***

I submit this declaration stating that I lied when I testified at the trial of Major Tillery in May 1985 for the murder of Joseph Hollis and attempted murder of John Pickens on October 22, 1976.

I wasn’t in the pool hall when Joseph Hollis was shot and killed and John Pickens shot and injured.

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<sup>4</sup> Petitioner objected to the *in camera* proceeding that led to the protective order that concealed the fact that Robert Mickens was going to be a prosecution witness on the grounds that there was no basis for a finding that Mickens needed protection from Petitioner. The court overruled the objection and preserved the record of the ex parte petition. NT 21:2-13.

I wasn't anywhere near Joseph Hollis and John Pickens when they were shot.

I lied when I testified that Major Tillery and William Franklin were in the pool hall and shot Hollis and Pickens.

I was in prison in 1980 on serious charges and I was approached by Philadelphia detectives Larry Gerrard and Ernest Gilbert. They threatened to charge me with the murder of Samuel Goodwin. I had eight or nine open cases; at least three of them were felonies with a lot of years of prison time.

I was threatened about the murder of Samuel Goodwin. The detectives really wanted information to get Major Tillery for murder.

Detectives and prosecutors ADA Lynn Ross and Barbara Christie promised if I said that Major Tillery and William Franklin were the shooters in the 1976 murder of Joseph Hollis and the attempted murder of John Pickens I wouldn't get state time in my many pending criminal charges and I wouldn't be charged in the murder of Samuel Goodwin, that I had nothing to do with.

I was threatened that I would get maximum prison time if I didn't cooperate to get Tillery and Franklin.

I was also allowed to have sex with my girlfriends (four of them) in the homicide interview rooms and in hotel rooms, in exchange for my cooperation.

Detectives Larry Gerrard and Ernest Gilbert, and Lt. Bill Shelton with the knowledge and direction of ADAs Lynn Ross, Roger King and Barbara Christie, promised me leniency, threatened me and allowed me private time for sex with girlfriends in the homicide interview rooms and hotel rooms.

Major Tillery couldn't be found when the prosecution wanted to arrest him and Franklin. So Franklin was tried in December 1980 and I falsely testified against William Franklin at his trial for the 1976 murder of Hollis and attempted murder of Pickens. In truth, I wasn't in or near the pool hall when the shootings happened.

After Franklin's trial I tried to recant but Lt. Shelton threatened me and said I would be framed on another murder.

At Major Tillery's trial in 1985, I testified about a meeting and an argument that supposedly took place on October 20, 1976 between Alfred Clark the leader of North Philadelphia drug selling and those in charge of drug selling in West Philadelphia, including Joseph Hollis and John Pickens. This argument supposedly took place in



the home of Dana Goodman. I testified that Major Tillery was there and after an argument and pistol slapping of Clark by Hollis, Major Tillery said that "Hollis would have to die for what he did."

This was not true. I was not at any such meeting and I didn't have any personal knowledge of this supposed argument and threat made by Major Tillery.

I also testified at Major Tillery's trial that after the argument in Goodman's house a group that included me as well as Clark and Major Tillery met at a mosque in North Philadelphia and drove a few blocks to a poolroom owned by William Franklin to demand Sylvester White, the head of the West Philadelphia drug selling, arrange a meeting with Hollis and Pickens.

None of this testimony was true. I had no involvement, if any of this actually happened.

I falsely testified that on October 22, 1976, I was standing by the door inside the pool hall during the meeting to prevent anyone from entering or leaving and that both Franklin and Pickens were in the pool hall.

I lied when I testified I heard gunshots in the pool hall, saw Pickens and Hollins shot and that Major Tillery and Franklin were in the pool hall and that they were the shooters.

At Major Tillery's trial I was forced by ADA Barbara Christie to testify about the "black mafia" and that they were run by Black Muslims in Philadelphia.

Before Major Tillery's trial, detectives instructed me to persuade Robert Mickens to become a witness against Major Tillery.

I was put in a police van to ride alone with Mickens back and forth from homicide up to the county holding prison on State Street, to make it clear to Mickens that he really had no choice, except to testify against Major Tillery.

I knew Robert Mickens before this and lied at Major Tillery's trial when I testified I had never met or spoken with him.

I also falsely accused Major Tillery of placing a fire-bomb on the front porch of Frank Henderson on Church Lane.

Everything I testified to at Major Tillery's trial and William Franklin's trial about witnessing an argument between Alfred Clark and Joseph Hollis, threats made by Major Tillery against John Pickens and the shootings at the pool hall a few days later was false.

My testimony was made up while being questioned by homicide detectives Gerrard and Gilbert and being prepped by ADAs Ross, Christie and King to testify against Major Tillery and William Franklin.

Detectives Larry Gerrard, Ernest Gilbert and ADAs Barbara Christie, Len Ross, Roger King interviewed me, and worked over my testimony to make sure Major Tillery and William Franklin were convicted of murder and attempted murder.

In exchange for my false testimony many of my cases were not prosecuted. I got probation. I was sentenced to just 18 months for fire-bombing and was protected when I was arrested between the time of Franklin's and Tillery's trials.

After Major Tillery's trial I was told I hadn't done good enough, that I "straddled the fence." In 1989 I was convicted of felony charges and spent 13 ½ years in prison for something I didn't do and framed by the ADA.

In 2014 I was given help by the prosecution in getting all my bond judgments dismissed on cases going back over 23 years.

I am now giving this verified declaration because I want to free my conscience. I need to be able to live with myself. It is vital I correct this.

I testified falsely against Major Tillery and William Franklin because I was threatened by the police and prosecutors with a murder prosecution for a crime I didn't commit. I was promised no state time for crimes I did commit if I lied.

I am ready to testify in court for Major Tillery and William Franklin and tell the truth that I lied against them at their trials, coerced by police and prosecutors.

***Verified Supplemental Declaration of Emanuel Claitt, June 3, 2016***

I submit this supplemental declaration about my false, manufactured testimony against Major Tillery and William Franklin in the November 1980 and May 1985 trials for the murder of Joseph Hollis and attempted murder of John Pickens on October 22, 1976.

The police detectives and prosecutors I met with knew I didn't have any personal knowledge that Major Tillery and William Franklin were involved or part of those shootings. They manufactured the lies I gave against Tillery and Franklin and coached me before the trials.

It was clear they knew I didn't have any direct knowledge about the shootings at the poolroom on October 22, 1976, that I wasn't there then or at the argument at Dana Goodman's house or meetings before the October 22, 1976 shootings.

For example: In our meetings I said you know I wasn't there – you have to fill in the blanks. Detectives Gerard, Gilbert, Lubiejewski, Lt. Shelton and ADA Ross would tell me, “you've got to say it this way.” I was told “we've got to bring him down—you've got to help us.” That meant I should lie. Barbara Christie told me: “You're the best. You should have been a lawyer.” That meant I knew how to lie.

The prosecutor against William Franklin in 1980 was Leonard Ross. I met with him as well as ADAs who worked with Barbara Christie soon after I met with Lt. Bill Shelton and Detectives Gerrard and Gilbert and Lubiejewski. I met with ADA Roger King also who had me lie in another case.

I was coached by ADA Barbara Christie before Major Tillery's trial. She was worried about my first statement that John Pickens had gone through a glass door. She coached me to testify about a second door leading out of the poolroom and that it had been a glass door.

ADA Christie coached me how to answer the defense attorney's questions about whether I had plea deals or any agreements for leniency in sentencing for all the charges I faced back in 1980 when I first gave a statement about the shootings of Hollis and Pickens and since then.

ADA Christie coached me on this like ADA Lynn Ross did before I testified against William Franklin.

Back in 1980 when I testified at Franklin's trial I lied when I said that the only plea agreement was that my sentences on three cases would run concurrently. But I had been promised the DA's recommendation to receive no more than 10 years. In fact I got one and a half-years.

When I was questioned about this at Major Tillery's case I repeated the lie that I had no plea deal about length of sentencing. ADA Christie knew that wasn't true.

I was scheduled to go to trial on my robbery case soon after the Tillery trial was over. ADA Christie coached me to stick to saying that the robbery case was “open” and that there were no agreements about leniency and sentencing.

She coached me to just say I knew the judge would be told about my cooperation in Major Tillery's case and other cases. That's what I stuck to.

But my testimony that there was no plea deal was a lie and ADA Christie knew that. She told me the robbery charge and other charges would be nolle prossed. And they were.

It was also a lie, known to ADAs Ross, Christie, King that Major Tillery and George Rose were involved in bombing-firebombings in 1979 and 1980 that I testified to in August 1985.

It was also a total fabrication that Major Tillery pulled a gun on me and threatened to shoot me in Philadelphia in early 1983.

I wasn't willing to tell the truth about the lies I testified to at these trials and that my false testimony was manufactured by the ADAs and police until now.

It has taken me all these years to be willing and able to deal with my conscience and put aside my fears of retaliation by the police and prosecution for telling what really happened at those trials.

I am now ready and willing to testify in court for Major Tillery and William Franklin and tell the truth that I lied against them at their trials, coerced by police and prosecutors.

## **B. Sworn Statement of Robert Mickens, April 18, 2016**

Robert Mickens was a surprise witness at Petitioner's trial. His testimony was intended to corroborate Emanuel Claitt that Petitioner was in the poolroom when shots were fired. Mickens was not a witness to the shootings.

### ***Verified Declaration of Robert Mickens, April 18, 2016:***

In May 1985 I falsely testified as a witness for the Philadelphia County District Attorney in the prosecution of Major George Tillery (CP-51-CR-0305681-1984) on murder charges.

The testimony I gave at that trial was false, manufactured by the prosecutor, Assistant District Attorney Barbara Christie.

I was coerced and promised favors if I falsely testified against Major Tillery.

I was arrested on February 28, 1984 on charges of robbery and rape and faced twenty-five years of imprisonment if convicted.

ADA Christie told me that if I “worked with [her] on the Major Tillery case” she “guaranteed” I wouldn’t be sent upstate on my robbery and rape case and would be “protected.”

ADA Christie and her homicide detectives, John Cimino and James McNesby, repeatedly brought me in for questioning on a number of robbery and murder cases, asking me to become a prosecution witness against Major Tillery.

On one occasion ADA Christie showed me what looked like a paper signed by Major Tillery saying that I was going to be an alibi witness for him. I told her I was.

I was brought down by homicide detectives to tell me that co-defendants Kenneth Pernell and Darry Workman were accusing me of being involved in the murder of Abe Green, a neighbor of the men.

When I agreed to become a witness against them, because Darry Workman had confessed to me that he had shot Abe Green, I was transferred out of the Philadelphia area to a prison in Easton, PA, Northampton County Prison for my protection.

Before the preliminary hearing and my cooperation with the prosecution was publicly known, this information was released and an article appeared in the *Philadelphia Daily News* saying that I was a witness against Pernell and Workman. This put me at risk as a known “snitch.” I complained to ADA Christie and she promised to take care of me.

I was brought down from Easton, supposedly to meet with the homicide detectives in Philadelphia. Instead I was put in a police van with Emanuel Claitt, who already testified against Major Tillery’s co-defendant. I rode back and forth from police headquarters to the county prison on State Street with Claitt, but never taken from the van.

Claitt told me I was “pretty hemmed up” and that Major Tillery was a “slime,” that Major Tillery had been spreading the word that I was a snitch and that I should testify against Major Tillery.

I told detectives Cimino and McNesby that I missed my girlfriend Judy Faust. I was given an hour and a half private visit with her in an interview room in the police headquarters so that we could have sex.

I was a secret witness for the prosecution at trial.

My identity as a prosecution witness was kept from Major Tillery and his lawyer before I was called as a witness at the trial on the

false grounds that I needed a protective order to protect me from Major Tillery.

That was not true. I had told Major Tillery that I would be a witness for him at the murder trial of John Hollis. He had no reason to think I would be a witness *against* him. I had no contact with Major Tillery once I was sent to Northampton County Prison. I did not fear him or ask for protection from Major Tillery.

At the trial I falsely testified that I was a lookout during the shooting of John Hollis and John Pickens. That was totally false. My entire testimony was scripted and rehearsed by ADA Barbara Christie.

I agreed to give this false testimony because I was I promised no prison time on the rape and robbery charges and that I would be protected by the prosecution. I was given sexual favors in exchange for my false testimony.

When I was sentenced on October 10, 1985 after my guilty plea of rape and criminal conspiracy, I didn't get prison time. I was sentenced to five years probation.

I didn't come forward earlier to recant and explain because of my own guilt for falsely testifying against Major Tillery and my fear of retaliation by the prosecution and police.

Much in my life has changed. I want to make amends for falsely testifying against Major Tillery. I am willing and ready to be a witness in any proceeding brought to challenge his conviction.

### **C. Tillery's Innocence, Based on Manufactured Witness Testimony**

The declarations of Emanuel Claitt and Robert Mickens establish that the entirety of the prosecution's case against Major Tillery was false. As succinctly stated in Claitt's declarations, "I wasn't in the pool hall when Joseph Hollis was shot and killed and John Pickens shot and injured...I lied." (May 4, 2016)

Robert Mickens swears in his declaration that his trial testimony was "totally false ...scripted and rehearsed by ADA Barbara Christie."

Further, Emanuel Claitt asserts that the Commonwealth knowingly presented false inculpatory testimonial evidence against Tillery. "The police detectives and prosecutors knew I didn't have any personal knowledge that Major Tillery and William Franklin were involved or part of those shootings. They manufactured the lies I gave against Tillery and Franklin and coached me before the trials." (June 3, 2016)

Claitt describes meetings with police and prosecutors in which they worked over what he would say, “filling in the blanks.” Police and prosecutors knew that Claitt didn’t have any personal knowledge of the poolroom shootings and what led up to that.

The pattern and practice of coercion against targeted informants included threatening arrest on false murder charges. Claitt states that his false testimony was based in part on the threats from police detectives that he would be charged with murders he did not commit if he refused to become a witness against Petitioner. Mickens states he was threatened with false murder charges, while being promised no state prison time on rape and robbery charges if he testified against Petitioner.

Claitt and Mickens each recount being put together on a prison transport vehicle back and forth from the Roundhouse to the State Road jail for Claitt to pressure Mickens to testify against Tillery, because Mickens had “no choice.”

Claitt tried to recant after Franklin’s trial but was threatened by a police lieutenant with being framed on a murder.

Claitt also details that prosecutor Barbara Christie worked him over and coached him to remedy a “problem” in his testimony in the Franklin trial that John Pickens fled the poolroom after being shot, running through a glass door.

It was made up for Claitt to testify that Petitioner pulled a gun on him and threatened to shoot him in 1983.

Claitt further states he was forced to testify that the Nation of Islam ran the “black mafia” controlling drug dealing in Philadelphia and to testify to everyone’s Muslim names.

Both Claitt and Mickens state they feared retaliation from police if they came forward with the truth that they were threatened and given favors if they lied and provided testimony to convict Major Tillery of murdering Joseph Hollis and wounding John Pickens.

#### **D. Witnesses’ Arrests and Plea Agreements with the Commonwealth**

Both Claitt and Mickens were prosecution witnesses with a criminal history, pending cases and were incarcerated during Petitioner Tillery’s trial. Tillery’s trial counsel repeatedly challenged the testimony of Claitt and Mickens on the grounds that it was false and that they had received favorable plea deals in exchange for their testimony against Petitioner.

### *Claitt's False Testimony of No Plea Deals*

Per Claitt's testimony, when he gave his statement to Detective Lawrence Gerrard he had "no agreement" regarding plea deals on his pending 8 or 9 cases. NT 14:78.<sup>5</sup>

The only "understanding" Claitt had with the Commonwealth was that after his testimony at preliminary hearings he would get help to be released on bail and he would have to fight his cases on his own "with no helping [sic] from the District Attorney's office." NT 14:83.

On June 4, 1980, Claitt testified at Franklin's preliminary hearing and at the separate preliminary hearing against George Rose.<sup>6</sup>

On June 10, 1980, Claitt was released from jail after the Commonwealth went to Judge Kubacki to lift Claitt's detainer on violation of probation on firearms charges. NT 14:81.

On July 9, 1980—a month later—while out on bail, Claitt was arrested on new charges for car theft. When back in prison, the Commonwealth also placed firebombings charges against him as well as Petitioner, George Rose and James Brand. NT 14:82.

Claitt made bail for firebombing charge, and was out on the streets when he testified against Franklin at trial Nov-early Dec 1980. NT 14:79, 82.

On November 29, 1980, during the Franklin trial, Claitt pled guilty to 3 of the pending charges, the firebombing and the 2 drug charges before the Hon. Judge Leon Katz. NT 14:83.

Claitt testified this was an "open plea...I pled guilty to the charges with no recommendation from the District Attorney's office...the Judge would decide my fate as to sentence." The only request to Judge Katz would be a recommendation that the sentences run concurrent. NT 14:5, 6.

On January 5, 1981 ADA Leonard Ross sent a letter to Judge Katz. NT 14:19. (Exhibit I) Claitt testified this letter was to inform Judge Katz that he had "cooperated with the District Attorney."

Claitt also said that the "agreement" he had with the District Attorney was that in view of this cooperation they would nolle prosequere three of his cases, but

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<sup>5</sup> Omitted from the trial testimony was that in addition to these "8 or 9" pending charges, there were another 13 charges before Judge Levy Anderson from May 16, 1980 including robbery, assault, firearms, CP-51-CR-1107131-1980. These were nolle prosequere April 13, 1982. [Exhibit H]

<sup>6</sup> Rose was charged with the murder of Alfred Clark but acquitted after a jury trial. NT 14:81.



“would not recommend a sentence, they would leave it up to the judge.” NT 14:86.

On Sept 18 1981 Judge Katz sentenced Claitt. On the three charges he pled guilty to he received concurrent sentences of one and a half to seven years, one and a half to five years and a matter of months. NT 14:83.

Claitt was acquitted of two cases and the District Attorney nolle prossed three cases. NT 14:20.

This sentence gave Claitt a total of one and half to seven years in prison and 5 and a half years under the supervision of the parole board. NT 14:80.

On November 22, 1982 Claitt was released on parole. NT 15:24.

Claitt served a year and a half in prison. NT 15:22.

On April 21, 1983 Claitt was arrested on charges of robbery and aggravated assault. 14:94 This robbery charge put Claitt in violation of state parole and put him back in custody. NT 14:94.

On February 29, 1984 Claitt was released on the parole violation and able to sign his own bond on the robbery case immediately after testifying against Petitioner at his preliminary hearing. NT 14:95.

Claitt was re-incarcerated for violation of parole for reporting to his parole officer with a knife in his sock. NT 14:99.

On May 14 and 15, 1985 Claitt testified against Petitioner, while incarcerated in violation of parole and with pending robbery and aggravated assault charges. NT 14:25, 93.

At the time of his trial testimony against Petitioner, Claitt had spent 8 ½ months in Philadelphia Detention Center, Isolation Unit, Protective custody. NT 14:3.

Claitt testified there was no sentencing agreement on the pending open robbery case, which was scheduled for trial June 24, 1985 before the Hon. Judge John J. Chiovero. NT 14:6, 94.

### ***Falsification of Claitt Plea Deals and Sentencing***

When questioned by prosecutor Christie and by Tillery’s attorney if there were plea and sentencing understandings or agreements Claitt’s testimony was “no” except that the judge would be told of Claitt’s cooperation with the prosecution.

This was not true. The full history of Claitt’s criminal record and dispositions was intentionally suppressed.

This practice is most graphically exposed by the failure to disclose to Tillery or to the jury that at the time of Claitt's May 20, 1980 statement to Detective Gerrard, which began his extensive cooperation as a jailhouse informant, he faced criminal prosecution on 13 charges including robbery, assault, firearms filed against him May 16, 1980.

This case was before Judge Levy Anderson. These charges were never referenced by Claitt or prosecutor Barbara Christie during Tillery's trial. Only the charges before Judges Katz and Chivero were acknowledged.

Consequently the jury had no information that that while Claitt was serving prison time for lesser offenses after being sentencing by Judge Katz, the prosecution nolle prossed the robbery and assault charges pending before Judge Anderson on April 13, 1982. CP-51-CR-1107131-1980 [Exhibit H]

Also undisclosed at Tillery's trial were the letters by Arnold Gordon, Chief, Homicide Unit to the Secretary of PA Parole Board, January 31, 1984 and District Attorney Edward Rendell's letter to Judge John J. Chiovero, February 18, 1984. [Exhibits J, K]

Whether there was a plea promise to Claitt for the pending 1983 robbery case was an issue of contention. CP-51-CR-0537641-1983 [Exhibit H] Claitt testified:

As to Agreement, the District Attorney merely mentioned that they did all they were going to do for me at that point but they would make Judge Chivoero aware of my prior cooperation and that I would be testifying in other trials in the near future. NT 14:94.

Prosecutor Barbara Christie objected to Tillery's attorney continued questioning of Claitt about a possible plea arrangement. She made the following representation to the Hon. John A. Geisz:

The witness has testified to his understanding of the Agreement. And now the witness has indicated that there is no agreement with regard to sentencing on the open robbery. There is no agreement. He goes to trial on that. He has a parole date of September 85 and that he is currently in custody for violating his parole. And his understanding of any agreement he has with the commonwealth is that the Commonwealth will make the parole board aware of his cooperation in this and the other cases. NT 14:98.

On May 28, 1985 ADA Christie gave her Summation to the Jury saying there was "no set deal" and that the Com would only enter into an "open plea" agreement with Claitt. NT 28:60. She further stated:

Claitt talked to the police in May 1980, *with no deal but with a great desire*, great desire for protection for himself and his family, particularly

after he went public in court and testified in June 1980 at a preliminary hearing and December 1980 at the Franklin trial.

Yes, Claitt was in and out of custody. He pled guilty to 3 crimes. He stood trial on 2 and he awaits trial on a third. NT 28:90.

In fact, this robbery charge was nolle prossed by the Commonwealth December 16, 1987, as was promised to him. [See Exhibit H]

This deprived the jury from having a full picture of Claitt's criminal record and an understanding of the compulsion he had from the prosecution to testify falsely against Tillery.

### ***Mickens' False Testimony That He Had An "Open Plea"***

On May 16, 1985 Mickens pled guilty to criminal conspiracy and rape before the Hon. Eugene Clarke Jr. and was scheduled to be sentenced on July 18, 1985. NT 21:24.

Mickens testified it was an "open plea" with no plea bargaining, 21:24 that his sentence would be up to the judge. NT 21:25.

Mickens was advised that he could get 10-20 years on the rape case, 5 to 10 on the conspiracy and that the sentences could run concurrent or consecutive. NT 21:26.

His only "understanding" with the District Attorney's office was that it would let Judge Clark know about his cooperation and that the other charges would be nolle prossed. NT 21:26.

In her summation, ADA Christie told the jury that Mickens "awaits sentence on a guilty plea to a rape charge and conspiracy. That could net him 15 to 30 years at the decision and discretion of the sentencing judge." NT 28:91.

When sentenced before the Hon. Eugene Clark, Jr. on October 10, 1985, Mickens received probation.

The sworn declarations of Emanuel Claitt and Robert Mickens, supported by their criminal docket sheets and other documentation, establish the inducement used by the police and prosecution to obtain and maintain the false testimony of these jailhouse informants against Major Tillery. Both prosecution witnesses lied on the witness stand and their false testimony was not corrected by the prosecution. Rather assistant district attorney Barbara Christie falsely reiterated the witness testimony of "no deals" and effectively vouched to the Court and Jury for the veracity of her witnesses.

## **E. Claitt and Mickens Were Allowed “Sex For Lies”**

The sworn declarations of Emanuel Claitt and Robert Mickens also reveal a pattern and practice by Philadelphia police detectives to induce jailhouse informants to falsify testimony by facilitating “sex for lies.”

According to both Claitt and Mickens a component of the favors and inducements provided to them by the Commonwealth to be false witnesses against Tillery, was arranging for them to have sexual relations with girlfriends. This was arranged while each of them was in state custody, and took place in a homicide interview room or in Claitt’s case, sometimes in a hotel.

Claitt named two women whose visits were arranged by homicide detectives Lawrence Gerrard and Ernest Gilbert: Helen Ellis and Denise Certain.

Helen Ellis has acknowledged that she had sex with Emanuel Claitt in the Roundhouse homicide interview rooms and that arrangements were made with detectives who brought her up to him. Supporting evidence is contained in Roundhouse log-in page 192 for December 14, 1983, which includes Emanuel Claitt signed in by Det. Gilbert and his girlfriend Denise Certain signed in under Det. Gerrard for an overlapping time period. [Exhibit L]

Mickens states he told detectives John Cimino and James McNesby that he missed his girlfriend Judy Faust. He was given an hour and a half private visit with her in an interview room in the police headquarters to have sex.

This pattern and practice of providing sexual favors to witnesses and even defendants to induce false statements is not a new assertion. In *Com. v. Arthur Lester*, 572 A2nd 694 (Pa. Super. 1990) the court found it coercive and a violation of due process and reversed a conviction based on Lester’s confession that was induced by the promise of sexual favors. The named homicide detectives involved in that 1983 case were Lawrence Gerrard and Ernest Gilbert, the same detectives who were central to the handling of Emanuel Claitt.

There are other cases in which Emanuel Claitt was the main witness and which are impacted by the “sex for lies” *modus operandi*. They include the prosecutions of William Franklin, Robert Lark, James Brand, Fred Rainey and Philip Frazier.

There are other cases in which detectives Gerrard and Gilbert employed the same “sex for lies” tactic with a different jailhouse informant. This includes the case of *Com. v. Willie Stokes CP-51-CR-0606661-1984*, who is now represented by Michael Jay Diamondstein.

During the October 2017 retrial of Robert Lark CP-51-CR-0120121-1980 on charges of first-degree homicide and to seek a new death sentence against him, defense attorney James Berardinelli attempted to cross-examine Detective Lawrence Gerrard about the “sex for lies” tactic. Emanuel Claitt was a named

“source” and it was the first acknowledged case of Claitt’s cooperation with homicide detectives and prosecutors. With the vociferous objection of assistant district attorney Andrew Notaristefano, Judge Steven R. Geroff did not allow Gerrard to be questioned about the “sex for lies” tactic.

The pattern and practice of “sex for lies” is currently at issue in the pending PCRA of Andre Harvey CP-51-CR-0703-51-1983, represented by Barnaby C. Wittels and Carole L. McHugh. Their Memorandum of Law in Support of the Amended Petition for PCRA Relief sets forth in some detail the supporting evidence that Detectives Gerrard and Gilbert assisted in providing jailhouse informant, Charles Atwell, with private Roundhouse visitations with his girlfriend for the purpose of having sexual relations. [Exhibit M]

Both Emanuel Claitt and Robert Mickens state they were induced to lie and testify to obtain a murder conviction against Tillery in exchange for plea deals and sexual favors.

#### **IV CONCLUSION**

##### **Tillery Has Provided a Case of Actual Innocence**

Without the testimony of Emanuel Claitt, there was *no evidence* against Major Tillery. It was only the testimony of Emanuel Claitt who put Petitioner inside the pool hall, pulling out a gun and shooting Joseph Hollis. It was Claitt who put Petitioner at a meeting where Petitioner supposedly made threats against Hollis’s life and helped arrange the poolroom meeting where Hollis was killed and Pickens wounded. There was no other evidence against Petitioner. That testimony was a lie.

Robert Mickens was brought in for Petitioner’s trial, to provide some corroboration to Claitt’s testimony by testifying that Petitioner asked him to be a lookout for police outside the poolroom. This was recognition that Claitt’s long criminal history, albeit significantly understated by the prosecution, might fatally impeach his testimony. As Mickens has sworn, his testimony was a total lie.

##### **Request for Open Files and Investigation**

Petitioner Tillery requests that the Conviction Review Unit examine the Homicide File and the full and complete records of the police and prosecution on Major Tillery. It is also requested that Tillery’s attorney have the benefit of an open files policy.

In investigating Tillery’s case, RTKL requests were made to obtain the police records relevant to the evidence represented, including the sign-in sheets and other records of the Police Administrative Building (Roundhouse) for 1980-

1985 and police transport information to corroborate the arranged encounter between Claitt and Mickens prior to obtaining Mickens inculpatory statement against Tillery. The response was the requested material was not available.

Based on the evidence presented above, MAJOR G. TILLERY requests the Conviction Review Unit to thoroughly review his conviction and is confident that a full review of his case will lead to the conclusion that his conviction should be vacated.

Dated: March 26, 2018

Respectfully Submitted,

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STEPHEN PATRIZIO, ESQUIRE  
Attorney for Petitioner,  
Major G. Tillery