

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF SOUTH DAKOTA
3 SOUTHERN DIVISION
4

5 -----X
6 Richard Marshall, :

7 Petitioner, :

8 vs. :

9 Herman Solem, Warden, :
10 South Dakota State Penitentiary, :
11 and Mark Meierhenry, Attorney :
12 General for the State of :
13 South Dakota, :

14 Respondents. :
15 -----X

16 DEPOSITION OF EVAN L. HULTMAN,

17 taken by and for Respondents pursuant to Order
18 and Notice before Mary K. Bintner, Notary Public
19 in and for the County of Hennepin, State of
20 Minnesota, at the Law Firm of Kenneth E. Tilsen,
21 400 Minnesota Building, St. Paul, Minnesota,
22 on August 23, 1983, commencing at 10:00 a.m.
23

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25

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1 refer to here in the total colloquy that I make that
2 kind of an analysis.

3 Q Mr. Hultman, if I understand your testimony and you
4 can correct it and change it if you want and correct
5 me if I'm misstating you, you did make a determination
6 not to call Myrtle Poor Bear as a witness in the
7 Butler and Robideau cases among other reasons
8 because there was not a scintilla of evidence that
9 she was there? You have so testified?

0 A Yes.

1 Q All right. Now, --

2 A But that was not based upon my reading of three
3 Affidavits and comparing them.

4 Q You have now indicated it was not based upon your
5 reading?

6 A Yes.

7 Q Was it based upon your knowledge of the existence of
8 those Affidavits?

9 A No, it was not.

0 Q Did you know that they existed at that time?

1 A My very, very best recollection to you is that I --
2 I have no recollection of that effect. I think it
3 would be fair to conclude that at some time in the
4 discussion of witnesses with the attorney who had
5 the assignment of that witness that he would indicate

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1 statement, does it?

2 A I'm not indicating that. I'm saying an event took
3 place, that's all I'm saying.

4 Q The event is that they were acknowledged by the Clerk?

5 A So they're an open matter, that is correct. They
6 aren't done back in a U.S. Attorney's office or in
7 an FBI office or something else.

8 Q You don't know where they were typed, do you?

9 A I have no knowledge about the Affidavits.

10 Q You don't know whether they were typed in an FBI
11 office or in a U.S. Attorney's office?

12 A I have no knowledge because at that time that
13 responsibility --

14 Q You have no knowledge today of where and how they
15 were typed?

16 A That is correct.

17 Q Or by whom?

18 A That's correct.

19 Q All right.

20 A All I have knowledge is what I've read in the record
21 that I have just referred to.

22 Q Mr. Hultman, was it based on all of the available
23 evidence in this case that you made your statement
24 to the Court of Appeals that "It was clear to me,"
25 and I'm quoting from page three "that her story

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1 didn't later check out with anything in the record by
2 any other witness in any way"?

3 A Yes, that's a very true statement. That is the
4 ultimate reason that I determined that she's
5 incompetent. And I felt ultimately that she was
6 incompetent, I felt that to the Court and I feel it
7 yet here today, incompetent in a factual, primary
8 way because there's no evidence to support that
9 she's there.

10 Q And the "no evidence," and I don't want to expand
11 the record by getting into the details but I do want
12 to get into it just this much. This no evidence
13 means that if one were to look at all the witnesses
14 who were there, who testified and who gave
15 statements to the FBI and there quite a number of
16 them, and all the physical evidence, the clothing,
17 there was a lot of clothing, there were fingerprints,
18 there was personal property of various sorts that
19 none of that checked out to indicate she was there.

20 That's why I used the word scintilla, no, that's
21 absolutely correct. Absolutely no evidence to point
22 that she was physically there.

23 Q Now, --

24 A You see, I don't have any -- it wouldn't be on any
25 other basis primarily because I don't have -- and

1 I've never seen any medical reports as to her mental
2 condition or anything of that kind. The reason why
3 I say that secondarily is because when she is saying
4 different things at different times and to different
5 people, that then goes to me to a state of mentality
6 and that's the other part that I'm referring to.

7 Q All right. Mr. Hultman, I want to direct your
8 attention now to page three of the statement.

9 A All right. To page three of what?

10 Q Of the exhibit --

11 A The exhibit we're still talking about?

12 Q Yes which is Hultman Deposition Exhibit Number 1.

13 A Yes.

14 Q You make the statement, "Your Honor, I was personally
15 not present at that stage. I read the Affidavits
16 after they had been submitted so I want the Court
17 to know that," and then Judge Ross interrupts and
18 says "The government -- " and then you go on and say
19 "I don't excuse by my remark."

20 Now, I want to direct first -- my first question;
21 "I read the Affidavits after they'd been submitted,"
22 that would be the Myrtle Poor Bear Affidavits in
23 the Peltier extradition?

24 A Yes. Yes.

25 Q And you mean to convey to the Court that you had not

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