

**AFFIDAVIT/DECLARATION OF ANTHONY THOMAS
PURSUANT TO 28 U.S.C. § 1746 AND 18 Pa.C.S. § 4904**

I, Anthony Thomas, pursuant to 28 U.S.C. § 1746 and 18 Pa.C.S. § 4904, swear, affirm and depose that the following is true and correct:

1. My name is Anthony Thomas. In 2002 and 2003 I was a licensed attorney in the Commonwealth of Pennsylvania.

2. I represented Samuel B. Randolph, IV at the preliminary hearing proceedings of his capital murder trial, and served as the second-chair attorney with Allen Welch, Esquire in his representation of Mr. Randolph at the trial. I had no training in capital litigation, and never had any experience in a capital case prior to the trial.

3. I became involved in Mr. Randolph's case with the understanding and full expectation that Samuel Stretton would represent Mr. Randolph at trial. Mr. Randolph's family intended to hire Mr. Stretton from the beginning, but had to find the funds to retain him.

4. I worked with the family for many months trying to help them obtain the funds through the sale of the family bar known at that time as Big Jay's Bar. Tax issues prevented the sale of the real estate, but the liquor license from the bar was eventually sold despite numerous difficulties. However, because of the time required to resolve those difficulties, the funds from the sale were not available for Mr. Stretton's retainer until only a few days before the scheduled trial date.

5. The family and I made Mr. Stretton aware that funds for his retainer were received. Mr. Stretton then explained that he had a prior commitment on the same day as the trial date with the Pennsylvania Supreme Court Disciplinary Board. As such, Mr. Stretton entered his appearance, but asked the Dauphin County Court of Common Pleas to grant his

request for a short continuance of only a few days so that he could be present for jury selection. Mr. Stretton further explained to me and the family that he couldn't try Mr. Randolph's case unless he had the opportunity to select the jury, and that his request for a brief delay was reasonable under the circumstances in this type of case.

6. During this time and prior to trial, I attempted to lend support to Mr. Stretton's motion for continuance. In one of numerous in-chambers conferences with Judge Todd A. Hoover, the presiding judge, Assistant District Attorney Fran Chardo, Mr. Welch and I, I advised the Court of the problems the family had been having up to that point with obtaining Mr. Stretton's retainer. I recall that Mr. Welch and I both argued that a delay of only a few days would not be prejudicial to the Commonwealth's case and that any inconvenience to the Court should only be minimal.

7. Nevertheless, the Court denied Mr. Stretton's request. The Court refused to allow a brief continuance, which meant that Mr. Stretton could not be there for the start of trial. As a result, Allen Welch was allowed to continue representing Mr. Randolph.

8. Mr. Welch requested that I stay on the case suggesting that I could act as a mediator between him and Mr. Randolph because the relationship between them had deteriorated so badly by that time. Mr. Randolph trusted and freely communicated with me despite his knowledge that I didn't have the requisite experience to try his case. Mr. Randolph and I acknowledged his strained relationship with Mr. Welch before the Court. At the Court and Mr. Randolph's request, I agreed to accept the Court's appointment to assist Mr. Welch at trial.

9. Between the time of the preliminary hearing and the trial date, Mr. Welch sent me to the Dauphin County Prison on several occasions to relay messages to Mr. Randolph and to try to smooth things over between them. Mr. Randolph expressed his extreme displeasure with the

fact that Mr. Welch did not come to visit him. Mr. Randolph wanted Mr. Welch to visit him to discuss the details of his case, and the investigation with him. During this time period, I was still expecting that Mr. Stretton would eventually be trying the case.

10. I also wanted to sit down with Mr. Welch to go over in detail all of the paperwork, the discovery documents, and to map out a defense. Although I made several requests to do so, he always seemed to have some scheduling conflict. To the best of my recollection, we only ever spoke generally about the case and certainly never discussed specific trial strategy. Mr. Randolph was adamant that he was innocent and that he had an alibi, but I don't recall that ever being the focus for Mr. Welch. From everything I saw, Mr. Welch didn't appear to have a theory of the case. My impression was that Mr. Welch thought Mr. Randolph was guilty, and I never saw anything to suggest he thought otherwise.

11. Mr. Welch was completely unprepared for trial. Leading up to the time of Mr. Randolph's trial, Mr. Welch was running for District Attorney of Perry County. I recall that on at least two occasions when I wanted to discuss his trial strategy, Mr. Welch had other obligations, specifically, campaign duties. His attitude was that he had seen the materials, and, since he was lead counsel, there was no reason to go over everything together. I remember him saying that he "had it under control." It was obvious to me that Mr. Randolph's trial was definitely not his number one priority at the time. In fact, when Mr. Welch ultimately lost the election for District Attorney of Perry County, he told me that he lost because of "this damn trial," and I recall how bitter he was about it.

12. I tried to put the fact that Mr. Welch was unprepared for trial on the record several times. In one of the several in-chambers conferences, I told the Court that Mr. Welch and I were "woefully unprepared" for trial. On another occasion, I told the Court that Mr. Welch and I

disagreed on our preparedness.

13. In addition to serving as the mediator between Mr. Welch and Mr. Randolph, my other primary role was to investigate the case. My experience in this regard was minimal at best, but I knew someone had to do it. Although Mr. Welch actually requested and was granted funds to hire an experienced investigator, to the best of my knowledge and recollection, he never followed through with it. To have had an experienced investigator with knowledge of investigative procedures, collection of evidence, locating of witnesses and obtaining admissible statements undeniably would have made an enormous difference, and would probably have even affected the outcome of the trial. I don't know why Mr. Welch never took advantage of this resource.

14. During the course of my own investigation, one of the witnesses I spoke with was Ronald Roebuck, the owner of Roebuck's Baby Grand Bar. Mr. Roebuck told me personally that he didn't see anything relating to the drive-by shooting on 6th street outside of his bar on September 2, 2001, because he was inside his bar at the time and not physically in a position to see the car or anyone in it. When I questioned why he was named as a witness of the shooting in the police report, Mr. Roebuck told me that the only reason police put his name in the report was because he was the only credible witness on the scene at the time. Mr. Roebuck also told me he had a good relationship with local police, including Detectives Lau and Heffner, but was frustrated that his name was in the report. He expressed serious concern with the possibility of testifying to something he didn't see, but was equally concerned that local authorities were constantly "hassling" him because of code violations at his bar. He told me that there was an apparent effort to make him close or move Roebuck's Baby Grand because of the State's plan to erect a state building on the property directly behind his bar. It is now my understanding that this

is ultimately what happened.

15. Initially, Mr. Roebuck seemed willing to tell the truth about what he did and didn't see the night of the drive-by shooting at his bar if called to testify. Later, however, his willingness to cooperate evaporated. Instead, he developed animosity and motivation to cause trouble for the Randolph family because of money he lost in a business arrangement he had with Mr. Randolph's mother.

16. Mr. Randolph's mother wanted to sell Big Jay's, the family bar, to raise money for Mr. Stretton's retainer. Mr. Roebuck had a serious interest in purchasing Big Jay's because of pressure against him from the State at his own bar. When the real estate was unavailable for sale for tax reasons, Mr. Roebuck eventually agreed to buy the liquor license from the family. The sale required payment of a ten thousand dollar (\$10,000) deposit and scheduled payments of the balance.

17. When Mr. Roebuck stopped making the required payments, he lost his entire deposit after Judge Hoover signed an order granting a declaratory judgment related to the contract and sale of the liquor license. Mr. Roebuck was extremely upset with the Randolph family after the loss of his ten thousand dollar deposit. He shared with me that he was in the midst of his own financial troubles and didn't have anything to show for the loss.

18. I shared all of this information with Mr. Welch, and fully expected it to be used at the time of trial to impeach Mr. Roebuck's testimony, if called as a witness, and to demonstrate police misconduct through their investigator's fabrication of non-existent facts. Unfortunately, that didn't happen. I told Mr. Welch what Mr. Roebuck told me about not actually seeing anything related to the shooting outside of his bar. I remember asking Mr. Welch to let me cross-examine Mr. Roebuck at trial, but he refused. Mr. Welch didn't or wouldn't even

acknowledge me when I tried to get him to ask Mr. Roebuck specific questions on cross-examination. Although I can't recall the specific reason Mr. Welch gave for refusing to allow me to handle the cross-examination, when he ignored me, I remember thinking that either he was in a state of "hyper-focus," was preoccupied with other concerns or had some other motivation, which I couldn't resolve in my mind at the time. I even thought that it might have been because of my inexperience.

19. Nevertheless, despite my inexperience, Mr. Welch depended on me to tell him who the defense witnesses were and what to ask on his cross of the Commonwealth witnesses (with the inexplicable exception of Ronald Roebuck.) This was a complete surprise because he never sat down with me to prepare a trial strategy, and didn't even bother to inform me that this was his plan ahead of time.

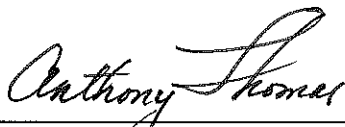
20. I never thought that I would be conducting any of Mr. Randolph's trial. Mr. Welch even told the Court that I wasn't competent to handle a capital case because of my total lack of capital experience. I agreed with him. Yet, after the prosecution rested, Mr. Welch informed me for the first time that I would be examining the defense witnesses on the stand because I was the one who had spoken with them. I told him I wasn't prepared to handle the examination of the witnesses, particularly with no advance warning. Up to that point, I honestly believed that Attorney Stretton would be conducting the trial. I never prepared any of the witnesses before they actually testified. At most, when I spoke with each of them initially, I may have told them they would be called as witnesses at some point, and to just tell the court the same story they told me.

21. When I expressed concern to Mr. Welch about my unpreparedness to examine any of the witnesses I distinctly remember him telling me that I had to "wing it," and that "now's a

good time to get your feet wet.”

22. I was still conducting my own limited investigation during trial and gathering names of witnesses the night before and the day the defense case started. I presented witnesses at the last minute without adequate preparation or plan to show how they fit into the defense theory, which was ultimately reduced to simply arguing that Mr. Randolph wasn't guilty. Without reservation, I acknowledge that I was unprepared to handle and should not have been solely responsible for the defense witnesses. Still, I felt compelled to do so at Mr. Welch's direction, and his decision for us to proceed in this manner was consistent with what I perceived as his careless and reckless attitude about Mr. Randolph's trial.

I hereby certify that the foregoing is true and correct to the best of my knowledge, information and belief pursuant to 28 U.S.C. § 1746 and 18 Pa.C.S. § 4904.



Anthony Thomas

Date: 5/1/2013