WRIT OF HABEUS CORPUS
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"JUSTICE" amerikkkan style in the DESSIE WOODS CASE

DESSIE WOODS' FREEDOM IS LONG OVERDUE!

The case of Dessie Woods is a case in point of the oppression of African and other subject peoples within the curent U.S. borders. On June 16, 1975 Ronnie Horne, a white insurance salesman, attempted to rape Dessie Woods, a black mother of two children, and her friend, Cheryl Todd. Dessie, refusing to be raped, shot Horne with his own gun. For defending herself and her friend, she is serving 22 years in a women's prison in Hardwick, Georgia.

On November 1, 1977, the State Supreme Court of Georgia affirmed the February 1976 Woods conviction, thus keeping in line with "New South" justice. Defense attorneys are presently petitioning the U.S. district court in Macon, Georgia for a habeas corpus hearing.

The National Committee to Defend Dessie Woods has always stressed that the people, not any U.S. court, will free Dessie Woods. In a bulletin released in September, 1978, the National Committee states that:

> "According to Attorney Lane, a lawyer working on Dessie Woods' case, the Habeas Corpus is not much hope, although it has been filed the outlook is dim. Let us not view this as a defeat. Never once in the history of colonial "Justice" has the state ever admitted to its guilt willingly. It is the pressure applied through struggle, commitment and hard work along with mass support that will force the state into Freeing Dessie Woods! Keep the pressure on!"

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This pamphlet is being printed by the Bay Area Dessie Woods Support Coalition (California). We are a primarily North American (white) organization which works under the leadership of the National Committee to Defend Dessie Woods. We are united behind a commitment to Free Dessie Woods and Smash Colonial Violence, and to give political and material support to the national defense efforts of the NCDDW. We work to free Dessie Woods as part of the fight to free all political prisoners and to build solidarity with the African liberation movement in the U.S.

Dessie Woods - February 1978

Defense lawyers on behalf of Dessie Woods have filed a writ of habeas corpus with the middle District Federal Court in Macon, Ga. The writ of habeas corpus documents the many state and federal violations of Dessie Woods' rights, and asks the court to show cause as to why in light of these violations, Dessie Woods is still being held in prison. The writ is reprinted here in its entirety. We hope that the material will expose and educate people to understand the real nature of the U.S. criminal "justice" system. We hope that this pamphlet will impress upon people the need for massive amounts of support so that the people can Free Dessie Woods!

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DESSIE X. WOODS,

Petitioner

v. C.A. No. _____

LELAND LINAHAN
Warden, of the Georgia
Rehabilitation Center
for Women,

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

Comes now Dessie X. Woods, through her attorney, and petitions this Court for a writ of habeas corpus, pursuant to 28 U.S.C. Sec. 2241.

JURISDICTION

1

Petitioner is presently confined in the Georgia Rehabilitation Center for Women, which is located in Hardwick, Georgia. Petitioner's confinement is being effected by the respondent, who is the warden of that institution.

PRIOR PROCEEDINGS

2

Petitioner has exhausted her state remedies pursuant to 28 U.S.C. Sec. 2254. She was convicted of voluntary manslaughter and armed robbery in the Superior Court of Pulaski County and was sentenced to concurrent sentences of ten and twelve years respectively. On November 1, 1977 the Supreme

Court of Georgia upheld her conviction (Woods v. The State, 240 Ga. 265(1978). A copy of the judgment of that court is attached to this petition as Exhibit A.

RESPECTS IN WHICH PETITIONER'S RIGHTS HAVE BEEN VIOLATED

3

Petitioner, having been arrested, made incriminating statements while in the custody of the police without having been given any Miranda warnings. Testimony concerning these highly prejudicial statements was allowed during the trial without the protection of a hearing concerning the voluntariness of these statements. This denial of a hearing resulted in denial to the petitioner of her right against self-incrimination and her Fourteenth Amendment right to due process.

4

Petitioner's conviction was obtained by the help of a man paid by the victim's family to make sure a conviction was had. This man did not have the authority nor the training of a state prosecutor but was a private attorney hired for this particular case. Petitioner's conviction and sentence was therefore obtained in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

5

Petitioner was convicted from what the judge labeled circumstantial evidence. The only direct evidence of what happened at the time of the alleged crimes came from petitioner and her co-defendant themselves. The defendants' own version of the events was not only reasonable, but a logical theory of their innocence. The judge's refusal to set aside the verdict or to direct a verdict was a denial to petitioner of her Fourteenth Amendment right to due process of law.

6

Because of the foregoing facts, petitioner is being restrained of her liberty by the respondent in violation of the Constitution of the United States.

PETITIONER THEREFORE PRAYS:

That a hearing be held on this matter;

That this writ be granted and an order be entered discharging her from custody;

That this Court grant such other and further relief as it deems just and proper given the circumstances and facts of this case.

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SMASH COLONIAL VIOLENCE! FREE DESSIE WOODS!

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

DESSIE X. WOODS,

Petitioner,

vs. C.A. No. _____

LELAND LINAHAN, Warden,
Georgia Rehabilitation Center
for Women,
Respondent.

MEMORANDUM OF LAW IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS

A. Statement of Facts

On June 14, 1975, Ms. Woods, the petitioner, and Ms. Todd, her co-defendant, both Black women, being without car or money, were hitch-hiking from their homes in Atlanta to Reidsville, Georgia, to visit Ms. Todd's brother, an inmate in the state prison, who had been injured and was without adequate medical attention. (T. 1997; 2008-2009) As they neared the prison, Ms. Todd, who is subject to seizures, fell out. She testified, "Well, I fainted. When I came to I woke up and I saw two men dressed in uniforms with guns, and they were pulling on me and kicking me, and Dessie, she jumped up in defense, and she was trying to stop them from beating on me and everything." (T.2011) According to both women, they were forcibly arrested and loaded into a vehicle, initially being charged with trespass and later with being drunk pedestrians on the highway. (T. 2012, 1704, 1866) The state's witnesses did not refute the statement that Ms. Todd had seizures. The women were not examined by a doctor at the time of the events nor were they given tests for alcohol.

"Free Dessie Woods!" - Atlanta, Ga. Sept.4, 1977

On June 16 both women were released and began hitch hiking back to Atlanta. At around 9:00 p.m. a white insurance salesman (the victim) from Rentz, Georgia, picked them up in Lyons, Georgia. (T. 2015) The victim, representing himself to the women as a detective (T.2017), radioed his associate, Mr. Yawn, on his two-way radio. Mr. Yawn met the victim and the two women in a restaurant, where Ms. Todd had something to eat. Testimony showed that the victim had been drinking whiskey and indeed was intoxicated. (T. 1935) When the three got back into the victim's car, Ms. Todd said, "where are you taking us?" The victim replied, "We are going to get us a drink, and we are going down here in the woods, and we are going to get us a 'piece' first and we are going to have us a good time." (Todd tape, T. 1706). Ms. Todd testified that Horne said "he wanted some pussy," "he wanted to take us in the woods and have some sex with both of us." (T.2019) The women demanded to be let

out, got out, and began to walk back towards the restaurant. (T. 2019-2020). Ms. Todd was then crying. They were met by Yawn, who told them "I'm going to get after Horne for scaring you like that." (T.2020) Yawn subsequently met the victim, who told him he had been going in the wrong direction by accident.

The victim again approached the women on the highway, apologized for his previous conduct and told the women some police were following them and they would probably get locked up if they didn't get into his car. (T.2054-2056) They got into his car, Ms. Todd at the passenger door and petitioner in the middle. The victim again began to talk to the petitioner about wanting to "go in the woods" and wanting "some pussy". (T.2022) He drove down a road and turned onto a smaller road. (T.2022) Ms. Todd, who was seated next to the door, jumped out and started to run. (T.2022) Ms. Woods started getting out when she saw the victim go for his gun. She struggled with him, somehow got the gun from him and shot him, all in a single flurry. (T. 1291-1292 , 1681, 1728, 2023) Ms. Woods felt he was going to kill tnem. He had said he would. (T.1729) She located Ms. Todd and told her "he was dead and that he would not bother us any more." (T.2072) The women took the gun and what they thought was "hit" money with them and began hitch-hiking towards Atlanta to report what had happened to law enforcement officials, and to turn over the gun and money to them. (T.2079, 2091, 1571) Ms. Woods defined the "hit money" as "the money what (sic) they paid him to kill us with. I took it out, and I went and told the black people. I went and I talked to some black people. I told them that we were sit (sic) up to be killed, and they hired a professional killer to kill us and that they paid him money to kill us (Woods Tape, T. 1681-1682)"

The women got rides from a series of people, all of whom were told the story of the "hit man", the gun, and the money. (T.1841-1842)

The autopsy report on the victim revealed a blood alcohol level of .09 percent. (T. 1803) The testimony of state witnesses differed as to whether this would result in moderate intoxicated (T. 1803), a staggering drunk (T. 1868-1869), or impaired reflexes, slower speech, sight and such (T.1868-1869). The victim was a five foot nine inch tall man weighing about 215 pounds (T.1793). Petitioner is a small woman, only five feet, two inches tall. (T. 1363, 1871)

Petitioner did not testify at trial. Her statements as to the events are contained in two documents, which the state introduced at trial: a taped interview of her recorded by a Georgia Bureau of Investigation agent right after her arrest (T.1675-1699), and a signed statement in her handwriting. Petitioner did not consult with counsel before or while making these statements. There was no substantial variation between the account given by the two women of the struggle over the gun, the shooting and taking of the "hit money" to the authorities and the testimony presented by state witnesses as to what happened, and as to what the women related about these events to the various people who gave them rides.

I. THE TRIAL COURT'S REFUSAL TO HOLD A HEARING TO DETERMINE THE VOLUNTARINESS OF DEFENDANT'S IN-CUSTODY STATEMENTS DEPRIVED HER OF DUE PROCESS OF LAW AND HER PRIVILEGE AGAINST SELF-INCRIMINATION.

Just prior to the killing which petitioner was convicted for, she and her companion were arrested in Reidsville, Georgia. (Her companion had been suffering a seizure, which had been mistaken by Reidsville police to be public drunkeness.) This arrest was warrantless and according to petitioner's and her companion's statements, (e.g. T 1677-78) without probable cause. Also, no Miranda warnings were given. Brown v. Illinois, 422 U.S. 590 (1975) established that under such a situation, even the subsequent interjection of Miranda warnings could not cure the defect, and that the exclusionary rule would therefore be in order.

> "Arrests made without warrant or without probable cause, for questioning or 'investigation', would be encouraged by the knowledge that evidence derived therefrom could well be made admissable at trial by the simple expedient of giving Miranda warnings." at 602.

In the instant case, there was not even an attempt to cure the defective detention by administering Miranda warnings. Thus, the in-custody statements, timely objections having been made (T 1898), should have been the subject of a Jackson-Denno hearing. However, the state was permitted to offer about fifty pages of testimony (beginning at T 1848) concerning the statements of petitioner and her companion during their arrest and incarceration.

Several damaging admissions were put into evidence. For example, Ms. Woods was said to have refused a breathalizer test upon being arrested for drunkenness on the highway (T 1851-52, 1863, 1866, 1877), this being close to an admission of guilt. She was quoted as accusing the police of picking on her (T1854) Then she was said to have cursed and threatened the police (T1855, 1864-65, 1878-79). She was also alleged to have said things that impeached her explanations in her typed statement of her actions. By use of her in-custody statements, she is generally portrayed as an undesirable person.

These alleged admissions were clearly intended by the state to be, and actually were, damaging. The Court denied the request for a hearing on voluntariness on the grounds that the statements were not "incriminating or possibly incriminating." (T 1900) Query: why, then, did the State adduce the evidence?

Dessie Woods Supporters - Sept. 4, 1977

Of course the statements were not technically a confession. But this is not the test of admissability, as is made clear by Ashcraft v. Tennessee, 327 U.S. 274 (1946). There, in an earlier appearance of the case (322 U.S. 143) the court had ruled that Ashcraft's confession was involuntary and thus inadmissable. On retrial the state used those portions of his statement, also involuntarily made, which fell short of being an actual confession. The court refused to engage in semantics when it could see "no relevant distinction" between a legal confession and highly incriminating remarks. It applied the same standard as to a confession at 276.

Jackson v. Denno, 378 U.S. 368 (1964) established the minimum procedural requirements for determining the admissibility of these statements. There the court was concerned with whether a jury would feel free to acquit knowing a confession to be true but feeling it to be involuntary; whether a jury could truly disregard evidence of an involuntary confession; and whether a jury, where there are lingering doubts concerning the sufficiency of other evidence, is likely to lay such doubts to rest with evidence of an involuntary confession. The admissions admitted in the instant case perpetrated exactly what Jackson sought to avoid. It left the jury with a potpourri of issues and non-issues to consider, effectively diverting their attention from focusing upon the real issue.

The necessity of a Jackson-Denno hearing was presented by the state itself-questions of the petitioner's state of mind abounded - was she drunk, sober, sick, intimidated, etc. These are exactly the types of questions which prompted the Jackson-Denno court to construct its safeguards.

II. THE TRIAL COURT ERRED IN DENYING PETITIONER'S MOTION TO DISQUALIFY LEON GREENE AS SPECIAL PROSECUTOR. (Error No. 7)

On November 3, 1975 Trial Judge James B. O'Connor, announced in open court:

> "Another thing I would like to call to your attention, Mr. Greene, who is here with the District Attorney, has orally communicated to me effective today that he has been retained by the family of the alleged victim in this case to represent their interest

and to assist the state...." (T.MV. 5, p.1)
(Emphasis supplied)

Disregarding petitioner's strenuous objections to his participation in the case and her request of a hearing prior to any intervention on the case by Mr. Greene (M. TV. 5, p.2), the trial court allowed him to take over the case as a "special" prosecutor.

A hearing on petitioner's Motion to Disqualify the special prosecutor was held on January 13 and 14, 1976 (M. TV. 6pp. 15-139; M.TV. 7 pp. 169-248) and on January 16, 1976 the trial court denied said Motion holding that under Georgia law "a privately hired attorney may assist in a prosecution...(but said prosecution)... must be in charge of someone sworn and appointed...(in accordance with)... the Georgia Code Section and that a private attorney may only properly participate subject to the control and authority of the District Attorney or somebody else authorized by the court to act in that capacity" (M.TV. 8 p.5)

A. The Participation of the Special Prosecutor in the Instant Proceeding Deprived Appellant of her Right to a Fair Trial under the U.S. Constitution.

Mr. Leon Greene was no ordinary prosecutor; he was a private or "special" prosecutor retained by the family and friends of the deceased, promised a $2,000.00 fee, including $500 if the trial went longer than "normal". (T. MV. 7 pp. 183, 196). He candidly admitted the existence of an attorney-client relation with those who hired him* (T. MV. 6, 17, 20) as well as a corresponding obligation to represent the interests of his clients:

> "I feel I owe... (an obligation)... to the State of Georgia, to my own standards which I value, and I have an obligation to the people who hired me, the people who saw fit to involve me in the case. (T. MV. 6, 59).

Thus, we must inquire into the nature of the Private Prosecutor's "obligation to the people who hired" him.

Mr. Greene's clients were all very consistent in testifying about their reasons for hiring him: "to help in the case"

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* The existence of this attorney-client relationship between Mr. Greene and his fee paying clients was recognized and upheld by the trial court. (T. MV. 6, 113)

(Louis Horne) (T. MV. 6, 87), "to assist the District Attorney" (Johnnie Horne) (T. MV. 6, 115), "just to help him" (Bobby Glover) (T. MV. 7, 176), "to be representing the state" (Ashley Warnock) (T. MV. 7, 186), because "we just felt he (District Attorney Mullis) might need some help" (Robert Sapp) (T. MV. 7, 197), "to assist the District Attorney (Frankie Runyon) (T. MV. 7, 201). However, throughout the proceeding it became obvious, ** (and a careful analysis of the record shows) that Leon Greene was hired to prosecute and get a conviction against the defendants.

Louis Horne (father of the deceased) had expectations which went far beyond mere "help" or "assistance";

Q. All right sir. Do you expect Mr. Greene to help conduct the trial?
A. Yes, sir. I expect him to go all the way.
Q. To go all the way?
A. Yes, sir.
Q. And what do you mean by go all the way?
A. Just do exactly like you all are figuring on doing on your side. Just go all the way. You all started to go all the way, didn't you? What good would it have been if he wasn't going all the way to have even started?
Q. Well, I'm not sure that you have the same understanding of going all the way as maybe I do. You tell me what you think, what you mean by going all the way.
A. I mean to stay with it until the trial is over with.
Q. So you expect that this case not be ended in any way other than a trial?
A. That's right. That's what I expected. I expected that in the beginning.
Q. In the beginning?
A. That's right. And from then until now. That is still the way I expect it.
Q. That is still your expectation?
A. That's right.

** It would be naive to think that "justice" for the family and friends of Ronnie Horne could have meant anything less than a conviction. "We need not to shut our minds as judges to truths that all others can see and understand." Bailey v. Drexel Furniture Co., 259 U.S. 20, 37 (1921).


FREE DESSIE WOODS
SMASH COLONIAL VIOLENCE

"TELL THE PEOPLE DESSIE WOODS IS STRONG, STRONG STRONG... AND BLACK PEOPLE WILL BE FREE!"

Dessie Woods is in prison because she, like untold numbers of black people before her, refused to submit. She courageously took action to protect herself and companion Cheryl Todd from the rape attack of Ronnie Horne. Dessie Woods dared to resist a traditional form of colonial violence - the rape of black women by white men.

The case of Dessie Woods is more than a struggle to free a political prisoner. It is part of the general struggle for Independence being waged by Africans within the U.S. When Dessie Woods fought back, she exposed the true nature of life for Africans living within the U.S. - for what it is - COLONIALISM.

How does colonialism affect the lives of African people within the U.S.?

IT MEANS:

that one out of every four black men will be sent to prison in their lifetime

70% of the women in prison are black

60% of Death Row inmates are black

IT MEANS:

intolerable conditions of life for African people

genocide/legal lynchings through the racist selective reinforcement of the Death Penalty (on the general black population)

forced sterilization

police terror - the murder of black youth like Clifford Glover, Tyrone Guyton and others

massive unemployment, poor schools, atrocious housing

KKK-led mobs roaming the streets, attacking black schoolchildren in Chicago, Louisville and Boston

armed white vigilante groups terrorizing the black community with government approval

IT MEANS:

that in the state of Georgia, NO white man has ever been convicted of raping a black woman, despite the fact countless numbers of black women have been raped by white men since the first Africans were brought to the U.S. in chains

IT MEANS:

No U.S. court will ever set Dessie Woods free!

We must fight against these conditions!
We must fight colonialism!
We must FREE sister Dessie Woods!

six months. To the contrary, the court held:

> But we do not know and cannot now ascertain what would have happened if the prosecuting attorney had been free to exercise the fair discretion which he owed to all persons charged with crime in his court. "Before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt." Chapman v. California, 386 U.S. 18, (1967). Ganger v. Peyton, (supra at 714)

It cannot be said that the special prosecutor's error in representing private individuals with interests other than to see that justice be done was "harmless beyond a reasonable doubt." A prosecutor, we must remember

> "does not occupy the position of a defendant's counsel, but appears before the jury clothed in official raiment, discharging an official duty." Latham v. U.S. 226 F. 420 (5th Cir. 1915).

B. The Employment of a Private Prosecutor Violates Standards Set Out by Federal Caselaw and Also Violates Georgia Law.

The only federal case in this circuit which has passed upon the "special prosecutor" issue sets forth standards to be followed when a special prosecutor is to be used: Powers v. Hauck, 399 F. 2d. 322 (1968) said that the used of a special prosecutor does not violate the constitution and is not cause for reversal "so long as the Criminal District Attorney retains control and management of the prosecution, the special prosecutor is not guilty of conduct prejudicial to the defendant, and the rights of the defendant are duly observed..." Obviously the standards were not met in the instant case. Here, "Special"Prosecutor Greene took almost absolute control of the case conducted himself in a manner which resulted in prejudice to the defendant; and caused the rights of the defendant to be violated.

1. The "special" prosecutor attempted to, and at times succeeded in, obtaining unchecked and unsupervised control of the case, running it as he saw fit:

a) He admitted that he intended "to be lead counsel." (T. MV. 6, 76)

b) He disregarded commitments made by District Attorney Mullis (T. MV. 6, 52).

c) While Mr. Mullis was District Attorney, Mr. Greene

Atlanta Courthouse - Sept. 4, 1977

never "met with him face to face concerning the case..." (T. MV. 6-67).

d) From January 2, 1976, (the day District Attorney Mullis announced his resignation), to January 12, 1976, (the day he had Assistant District Attorney Sparks sworn in) the "special" prosecutor was the only prosecutor in the case. During this period of time he held at least one pre-trial conference and admittedly made decisions on his own without consulting any District Attorney allegedly because "(He) was the only one available" (T. MV. 6, 35-36)

e) It was Mr. Greene who requested that an Assistant District Attorney be named to assist him once District Attorney Mullis announced his resignation. In Mr. Greene's own words: "I did request (D.A. Mullis) to call the Prosecuting Council of Georgia and get me somebody quick" (T. MV. 6, 35) (Emphasis added). It was Mr. Greene who requested that Mr. Sparks be sworn as an Assistant District Attorney. (T. MV. 6-10).

f) He never gave taped interviews of witnesses nor transcripts of the interviews to the District Attorney (T. MV. 6, 64)

g) He obtained possession of the District Attorney's fil
(T. MV. 6, 62)

h) He held and taped interviews of witnesses without con-
sulting with the District Attorney (T. MV. 6, 24).

i) He called meetings of the prosecutorial team. (T. MV.
5, 34).

j) He filed a motion under his signature, but not having
a District Attorney's signature, without the District Attorne
approval, without having had any "contact with him"(T. MV. 5,
47).

Thus, it is apparent that the district attorney did not "retain control and management of the prosecution" as is required by Powers v. Hauck, supra. Quite to the contrary, control was completely relinquished to the "special" prosecutor-the victim's attorney. In fact, it is obvious that the district attorney not only was unaware of much that was going on in the case, but also was completely absent during a period of the litigation. Clearly this unbridled control violates the standards set out by Powers; certainly it violates basic requirements of due process.

2. The "special" prosecutor was guilty of conduct prejudicial to the petitioner. The petitioner's rights were over looked in deference to the conflicting interests of the "special" prosecutor. The contingent fee arrangement between the prosecutor and the victim's family virtually dictated such con duct and such a result. His fee was contingent upon two thing First, part of his fee was dependent upon whether or not the petitioner was actually brought to trial. If the trial went longer than "normal" then he received an additional $500.00 (T. MV. 7-196). Thus the size of his fee was contingent upon the length of the trial. There was an incentive to prosecute and try the case or not in the best interests of the State.

Secondly, part of his fee was probably contingent upon th satisfaction of the private clients. Though this may not have been explicitly stated, there certainly was pressure to prosecute from the friends and family of the deceased who contributed Special Prosecutor Greene's fee. As $700.00 of the minimum agreed fee of $1,500.00 was not paid in advance (T. MV. 7-196), payment of this remainder of the fee depended upon the good will and satisfaction of these clients. Those clients expected Special Prosecutor Greene to carry the case to trial

and saw no other alternatives.

Q. All right, sir. Do you expect Mr. Greene to help conduct this trial?

A. Yes, sir. I expect him to go all the way.

Q. To go all the way.

A. Yes, Sir.

Q. And what do you mean by go all the way?

A. Just do exactly like you all are figuring on doing on your side. Just go all the way. You all started to go all the way, didn't you? What good would it have been if he wasn't going all the way to have even started?

Q. Well, I'm not sure that you have the same understanding of going all the way as maybe I do. You tell me what you think, what you mean by going all the way.

A. I mean to stay with it until the trial is over with.

Q. So you expect that this case can not be ended in any way other than a trial?

A. That's right. And from then until now. That is still the way I expect it.

Q. That is still your expectation?

A. That's right.

Q. Mr. Horne, do you personally have any objections to the form- to any form of compromise other than a full trial in this case?

A. I don't see where there would be a compromise.

(T. MV. 6-104)

There was then no way for Mr. Greene to satisfy his private clients except by carrying out a full trial, despite any evidence which might have indicated that the accused women should not have had to undergo that entire process and despite the prosecutor's responsibility to the State and the accused which might demand selection of another alternative. His private clients expected a trial and they still had to "some way or some how" raise the remaining $700.00 for his base fee plus $500.00 if the trial took more than an ordinary amount of time. (T. MV. 7-196).

The "special" prosecutor's conduct, throughout the proceedings, showed that he could not separate his obligation to his clients from his obligation to justice. Throughout the entire proceeding he showed a lack of regard and impartiality toward Ms. Woods making evident that his paramount obligation was to defend the interests of his clients. He evidenced his

Plains, Georgia - July 4, 1978

inability to separate his loyalty to the deceased's family by moving that allegations of sexual misconduct (which incidentally, was the mainstay of appellant's claim to self-defense) on the part of the deceased, "put a terrible strain and burden on his family" (T. MV. 6, 49). He refused to answer even simple questions asked by Appellant's counsel, until the court ordered him to do so. (e.g. T. MV. 6, 26). He backed up from commitments made by District Attorney Mullis, blatantly announcing that he didn't feel bound by them (T. MV. 6, 52). The commitments involved were favorable to the defendant.

Pressure from the private persons who hired him and the likelihood of not receiving the remainder of his fee if he did not carry out the trial hindered Mr. Greene's ability to fairl consider the alternatives to a full trial. This pressure prohibited him from fairly considering his responsibilities to th state, to the accused and to justice, all to the defendant's prejudice. She received a twenty-two year sentence, in all probability due to the zeal of the prosecutor who was motiva-

ted by revenge and money rather than by justice. Clearly the second and third prongs of the Powers standard have been severely violated in this case.

In Nicholls v. State, 17 Ga. App. 593 (1915) the court, in disqualifying a solicitor general who had, as Mr. Greene in the case at bar, split loyalties, quoted approvingly from McKay v. State, 90 Neb. 63 132 N.W. 741 (1911), where the Supreme Court of Nebraska held that under a Nebraska statute, analagous to Ga. Code S 24-2913, it was error to permit private counsel to assist in the prosecution, when such assistance was not procured by the county attorney under the direction of the district judge. In so holding the Nebraska Supreme Court stated: "Counsel thus procured (as provided by statute) will not be actuated by sordid motives. He will enter upon the discharge of his duties in the same spirit that any honorable county attorney would enter upon the same, viz., with the simple desire simply to see justice done. (Quoted in Nicholls v. State, supra, at 605).

A review of Georgia cases where a special prosecutor was involved finds they fall into two categories: 1) cases where the State employed and paid the prosecutor; and 2) where private persons employed and paid the prosecutor. The courts have consistently upheld the use of assistant prosecutors hired by the State. But, the hiring by private persons of prosecutors is not allowed.

"A solicitor general or prosecuting officer for a particular circuit has only the State for a client. He cannot be employed by a private person to prosecute a case, nor to give advice. His is a public duty. " Hicks v. Brantley, 102 Ga. 264, 271 (1897); Nichols v. State, 17 Ga. App. 593 (1915), quoted in Mach v. State, 17 Ga. App. 593 (1915), quoted in Mach v. State, 109 Ga. App. 158 (1964).

Concerning the use itself of the private or "special" prosecutor, "The practice developed out of an ancient belief in private vengeance as the principal means of enforcing the criminal law." Andrew Sidman, "The Outmoded Concept of Private Prosecution," American University Law Review, 25: 754, 762. However, the practice was largely discontinued because it was repeatedly the case- that"... the system tended to encourage bribery, collusion and illegal compromise." Id at 760.

Clearly the use of a special prosecutor as it was instituted in the instant case violates federal standards, Geor-

gia standards and the constitutional right of due process.

III. THERE WAS NO EVIDENCE TO SUPPORT THE VERDICT IN THAT THE CIRCUMSTANTIAL EVIDENCE DID NOT EXCLUDE EVERY OTHER REASONABLE HYPOTHESIS.

The only direct evidence of what happened at the time of the killing and alleged robbery was from the defendants. And this made out a clear case of self defense. So circumstantial evidence was essential to the state's case. The trial judge recognized this when he charged the jury that:

> "When the guilt of a defendant depends upon circumstantial evidence alone, as in this case... (T 2203) (emphasis added)

He then proceeded to give the standard charge on circumstantial evidence, requiring it to "exclude every other reasonable theory of each defendant's innocence" (T 2204) and that the circumstances be "wholly inconsistent (sic) with any reasonable theory of the defendant's innocence...." (id.).

The only trouble with this charge is that, instead of giving it, the judge should have directed a verdict (or set the jury's verdict aside). For the defendant's own version of the crucial events, regardless of whether the jury believed the defendants, was a "reasonable theory" of their innocence.

It's not at all unreasonable to hypothesize that the burly slightly drunk insurance salesman out driving around on a summer Saturday night and egged on by his also drunk buddy, decided to show off or "have a little fun" with the two comely and sprightly young Black women who were so obviously out of their element. It's clear from the women's statements that, having ventured far from the urban ghetto into the countryside they were overwhelmed and very frightened.

It matters not to the hypothesis whether the man actually intended to carry his "fun" to its apparent logical conclusion; it's at least easy to see how things might have gotten out of hand.

The Fifth Circuit recognizes the circumstantial evidence charge is not an empty legalism, to be read to the jury and thenceforth forgotten. For example in Rent v. U.S., 209 F. 2d. 893 (1954), one marijuana cigarette was found in the defendant' pocket. He was convicted of conspiracy to acquire, obtain and receive marijuana. The court there said,

> "The 'one small piece of marihuana' found in the dust-

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ings of Curry's pocket might well have dropped from a match box borrowed from an associate or have otherwise accidently found its way into his pocket." at 900

The Court thereby found the evidence insufficient to sustain the defendant's conviction, saying,

> "To sustain the conviction of (the defendant) the inferences reasonably to be drawn from the evidence must not only be consistent with his guilt but inconsistent with every reasonable hypothesis of his innocence. Kassin v. U.S., 5 Cir., 87 F.2d. 183, 184."

See also U.S. v. Schorr, 462 F.2d. 953 (1972) which also quotes Kassin, supra saying

> "... in each case, however, where the evidence is purely circumstantial, the links in the chain must be clearly proven, and taken together must point not to the possibility or probability, but to the moral certainty of guilt... (Emphasis supplied by Schorr)" at 95.

Someone else putting marijuana into Mr. Rent's pocket is probably not as likely as the petitioner's hypothesis in this case. And it must be remembered that petitioner didn't testify

so she is not bound only to the testimony of her co-defendant (who said she wasn't there for the final crucial moments) or her own statement.

Perhaps the jury's finding of guilt is based on its failure to fully perceive the significant difference between whether its members <u>believed</u> petitioner's nontestimonial statement and whether it merely presented the basis for a "reasonable theory." For it is only a "reasonable theory" that requires acquittal.

Conclusion

For the foregoing reasons, petitioner should be released from custody forthwith and a finding be made that her rights under the United States Constitution have been violated.

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Trust Fund:

The National Committee to Defend Dessie Woods finds it necessary to communicate to all our supporters the urgency of freeing our courageous sister Dessie Woods, from the death grip of the U.S. colonial state! Time is of the essence!

Comrades, the National Committee to Defend Dessie Woods is calling on all supporters to intensify your active support for Dessie Woods. It is very necessary that we get the word out about Dessie Woods and intensify the pressure on the state.

The National Committee to Defend Dessie Woods is in the process of setting up a trust fund for Dessie's two children, Samantha and Calvin, who are presently barely surviving in Savahnna, Georgia with Dessie Woods' elderly grandmother. We are appealing to supporters to begin preparation for special benefits, specifically for this Trust Fund.

What you can do:

1. Letters and telegrams to Governor George Busbee c/o Capital Building Atlanta, Georgia, and President James Earl Carter White House, Washington, D.C. should continue and increase.
2. Mailagrams should be sent to K. Linahan, head warden at Georgia Women's Institute of Corrections (G.W.I.C.) demanding that he guarantee the safety of Dessie Woods. Send to: K. Linahan, G.W.I.C. Hardwick, Georgia 30134
3. Judge Wilbur Owens should be saturated with letters demanding that he grant Dessie Woods an appeal. Pressure should be applied immediately and continuously, in that he has the authority to grant an appeal. Judge Wilbur Owens P.O. Box 65 Macon, Georgia 31202 and United States District Court For the Middle District of Georgia c/o Judge Wilbur Owen Macon, Georgia 31202.
4. Write to Dessie Woods: Dessie Woods (A78927) Georgia Women's Institute of Corrections, Hardwick,Georgia 30134
5. Write a check or money order as soon as possible and send it to the National Committee to Defend Dessie Woods. P.O. Box 92084, Morris Brown Station, Atlanta, Georgia 30314

Build the African National Prison Organization!
Mass Prison Meeting Called!

Currently there are efforts underway in four different states (California, Florida, Georgia and Kentucky) to build prototypes which will serve as the basis for building the African National Prison Organization (ANPO). But why build this particular organization?

In the face of increasing colonial attacks being carried out by the state against African people within current U.S. borders--on both sides of the walls--nothing could be more clear than the urgent need for black people to organize ourselves around our particular relationship to the prison question. We owe it to ourselves and our loved ones to build a nationwide prison organization that will have the capacity of effectively challenging the miserable plight of black prisoners, while at the same time, serving as a basis of unity for all pro-Independence forces to advance anti-imperialist, anti-colonialist struggle for socialism within current North American borders.

Our efforts to build ANPO represents the possible realization of just such an organization. But ANPO has actually yet to be built. You can help. We are doing extensive agitational and propaganda work, calling on all black people to support this necessary and long overdue effort. Attend the California mass meeting to create the California Bay Area Organizing Committee to Build ANPO, scheduled for November 18-19. If you cannot attend, but wish to support our efforts, please send your check to us at the below address and request more information about ANPO and our solidarity committees.

ANPO, 611 Haight Street, San Francisco, CA 94117, or call (415) 626-7509.
ANPO, P.O. Box 12792, St.Petersburg, Florida 33733

BUILD TO WIN!

Free Dessie Woods!

Send to: National Committee to Defend Dessie Woods, P.O. Box 92084, Morris Brown Station, Atlanta, Ga. 30314.

( ) Here's my contribution of $_____. Please place me on your mailing list.

( ) Please send _____ T-shirt(s) and/or poster(s). I have enclosed $3.00 and $4.50 per T-shirt. Size(s)__

( ) Please send _____copy(ies) of this pamphlet.

( ) I would like to set up a Committee to Free Dessie Woods. Please let me know what I have to do.

NAME_____ADDRESS_____

CITY_____STATE_____ZIP_____

For a continuous update on the struggle to FREE DESSIE WOODS subscribe to the Burning Spear newspaper, published by the African People's Socialist Party.
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