BEFORE THE TEXAS BOARD OF PARDONS AND PAROLES

In re

Gregory Wright,

Petitioner.

PETITION FOR A RECOMMENDATION OF COMMUTATION OF DEATH SENTENCE OR, IN THE ALTERNATIVE, A 180-DAY REPRIEVE

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APPLICANT

This request is made on behalf of Gregory Edward Wright, TDC#999331, who is currently incarcerated in the Polunsky Unit of the Texas Department of Criminal Justice awaiting the imposition of a sentence of death.

ATTORNEYS

Gregory Edward Wright is represented in this application by Bruce Anton and Mary Margaret Penrose, attorneys at law, who are acting in his behalf, pro bono.

SUPPORTING DOCUMENTATION

Certified copies of the indictment, judgment, verdict of the jury and jury charges for both guilt/innocence and sentencing phases of trial, and the order setting execution date are attached hereto as exhibits 1, 2, 3, and 4.

STATEMENT OF THE OFFENSE

Gregory Edward Wright was convicted of the murder of Donna Vick. The murder was alleged to have occurred on March 21, 1997, in Donna Vick's home. Both Gregory Edward Wright and John Wade Adams were tried and convicted for stabbing Ms. Vick and stealing her property.

PROCEDURAL HISTORY OF THE CASE

Gregory Edward Wright was indicted for capital murder alleged to have occurred on March 21, 1997. A jury trial was held, and Wright was sentenced to death on December 10, 1997. He perfected a notice of appeal to the Court of Criminal Appeals. The Appeal was affirmed on June 28, 2000. A writ of certiorari was denied on January 22, 2001. Wright filed for relief under Tex. Code Crim. Proc., Art 11.071 on July 22, 1999. That writ was denied on September 13, 2000. Thereafter on January 18, 2002, Wright filed an Application for Relief Pursuant to 28 U.S.C. § 2254. The Court of Appeals entered its opinion denying a certificate of appealability on November 17, 2006. The Court of Appeals denied Mr. Wright's timely petition for panel rehearing on December 19, 2006. A writ of certiorari to the United States Supreme Court was thereafter refused. On May 8, 2008, Dallas County District Court Judge Robert Francis set an execution date for September 9, 2008. On September 6, 2008, Judge Francis reset the execution date for October 30, 2008.

PENDING LEGAL ISSUES

Originally, Gregory Edward Wright complained of the use of John Adams's written, custodial confession to the police. Adams's written confession placed virtually all of the blame for the offense on Gregory Edward Wright. The statement came into evidence even though Adams did not testify at Wright's trial.

Few other meritorious claims were raised in Wright's original judicial proceedings. His initial post-conviction attorney, Toby Wilkerson, did virtually no work on Wright's behalf. Wilkerson has subsequently been removed from the list of attorneys deemed qualified to represent inmates in death penalty proceedings due to his confessed incompetence. Therefore, many of the issues and circumstances detailed below have not been properly reviewed by the legal system.

After Wright's initial requests for relief were denied, he petitioned the court for DNA testing of the evidence--particularly the clothes allegedly worn by the perpetrator. The request for testing has been granted and is ongoing at this point. Although John Wade Adams has specifically denied ever wearing the jeans which were found soaked in Ms. Vick's blood, there are preliminary indications that his DNA was found on the inside of the right pant leg. Although further testing may be necessary to obtain a more positive match, the district attorney's office appears to be opposed to such testing.

Additionally, John Wade Adams has submitted written statements for use in court and has told many clergy and fellow inmates that he is guilty of the murder and that Wright is innocent. However, Adams has refused to acknowledge the truth of these admissions of guilt under oath. Litigation regarding his recent expressions of

guilt are ongoing. On September 8, 2008, the Court of Criminal Appeals granted Wright the opportunity to pursue these claims.

LENGTH OF REPRIEVE

Wright is requesting a reprieve for a period of 180 days as an alternative to clemency in order to pursue the additional evidence of his innocence through the judicial process.

VICTIM IMPACT

Wright, through his counsel, has not been made aware of the impact the crime had upon the family of the victim, Ms. Vick. Therefore, those effects cannot be addressed in this application.

REASONS FOR GRANTING RELIEF

Gregory Wright petitions this court to commute his sentence of death to a life sentence. The primary justification for this request is that substantial evidence of his innocence has been uncovered since his trial. As noted above, due to the inadequacy of his legal representation, the courts have refused to consider the weight of this evidence. Still, a person of ordinary sensibility, having reviewed this additional evidence as set out hereafter, would undoubtedly harbor doubt about Wright's participation in this offense as well as the fairness of the underlying judicial process.

Newly Discovered Evidence of Actual Innocence

At the time of his arrest, John Wade Adams, Wright's co-indictee, gave a written confession that implicated Wright in the murder of Donna Vick. This confession was used at Wright's trial as strong evidence of Wright's guilt. Adams's defense at his own trial was that Wright committed the murder and that he, Adams, was innocent. Since that time, in his post-conviction proceedings, Adams has continued to protest his innocence and blame Wright for the murder. Adams's version of the offense, as taken from Adams's website, demonstrates Adams's continuing efforts to blame Wright for the murder.

On July 7, 2008, Wright's counsel received an unsolicited declaration signed by Adams. The declaration, given against the apparent advice of Adams's counsel, states that Adams's prior written confession is a lie. Instead, Adams now admits what Wright has claimed all along, that Adams alone committed the murder and that Wright is innocent.

Adams's new declaration sets forth sufficient facts to establish Wright's actual innocence of the offense. Although Adams has refused to admit the truth of these declarations in open court, his recent vacillations underscore Wright's claims that Adams was the true perpetrator and that any conviction relying upon the truth of any declaration made by Adams is inherently unreliable. Simply stated, the truth cannot

be ascertained from an examination of Adams's version of the offense. Instead, by looking at other evidence and circumstances which have been uncovered since Wright's trial, this board should find that substantial questions remain concerning Wright's guilt, and Wright's execution would be a gross miscarriage of justice.

Other Procedural Irregularities Justify Relief

Adams's recantation, provided in the July 2007, declaration referenced above contains a statement of innocence so strong that no court could have confidence in Wright's guilt given the numerous constitutional violations that occurred at Wright's trial. Restated, Adams's recantation has established a sufficient showing of actual innocence so as to require an examination of Wright's claims of constitutional violations in order to avoid a miscarriage of justice.

These constitutional violations include:

1. *Brady v. Maryland* claims that:

   a. The prosecution suppressed evidence of an offer for immunity against prosecution made to a witness in exchange for testimony implicating Wright in the offense;

   b. Suppression of statements of guilt made by Adams to two different witnesses and suppression of a 911 tape memorializing one of these inculpatory statements;

   c. Suppression of evidence that a knife and jeans used in the murder were found near Adams's property at a shack where Adams stayed.

2. *Napue v. Illinois* claims that:

a. The prosecution falsely denied making a plea offer to one of the witnesses at Wright's trial who provided testimony inculpating Wright in the murder;

b. The prosecution falsely indicated that the State did not know the whereabouts of a witness to one of Adams's admissions of guilt;

c. The prosecution falsely informed the jury that a knife and jeans used in the murder were found in a shack solely inhabited by Wright, and not Adams

d. The prosecution falsely informed the jury that a fingerprint found on the victim's bedding matched Wright.

3. *Strickland v. Washington* claim:

Trial counsel failed to challenge, via a *Daubert* hearing, the opinion of a state's expert that a fingerprint found on the victim's bedding matched Wright.

All of these constitutional violations concern evidence of Wright's innocence that mirror and support Adams's newly-available declaration of Wright's innocence. After examining these circumstances more closely, this board should determine that Wright's execution is not warranted.

Overview of Adams's Recantation

On March 21, 1997, Donna Vick's body was found in her home. She died of multiple stab wounds. Subsequently, Adams approached a store clerk and told him of the murder. The police were called. Adams was arrested. As a result of Adams's

custodial confession[1], Wright was arrested. Wright was tried first as the primary actor. Subsequent to Wright's conviction, Adams was then tried separately on a multiple parties theory.

On July 7, 2008, after years of denying his role in Vick's murder, John Adams wrote an unsolicited declaration of guilt[2] that reads as follows:

> "My name is John Wade Adams #999278. I want the record clear that Greg Wright is innocent of the crime he's here on death row for. If you kill him your (sic) killing a innocent man. Greg Wright was used as a scape goat. I'm doing this because I'm tired of seeing innocent people being killed for murders they've not done the statement I made is a lie the one that I made at the first of our arrest. Greg Wright is innocent! I was there and know better."

On August 11, 2008, Adams sent a supplemental declaration clarifying Wright's role in the offense.[3]

> 8. Did you place the murder of Donna D. Vick on the hands of Gregory E. Wright? Yes to make it look like he did it. I set him up.
>
> 9. Is Gregory E. Wright actually and factually innocent of the murder of Donna D. Vick and never knew of any intent to harm before the crime took place? Yes he's innocent of this crime. I did it.
>
> 13. Did you kill Donna D. Vick? Yes
>
> 23. Do you have anything additional to add, relevant to the subject of Gregory E. Wright's trial, evidence, conviction, sentence, or date of execution, not previously covered in your above and ofregoing

[1] Exhibit 5 attached hereto
[2] Exhibit 6 attached hereto
[3] Exhibit 7 attached hereto

(sic) answers? Greg is innocent. You will be killing a innocent man.

Adams's recantation completely exonerates Wright. Adams's recantation does more than unequivocally establish Wright's innocence; it also renounces Adams's written confession[4] used at Wright's trial to obtain a conviction against Wright.

The most remarkable aspect of Adams's recantation is that Adams himself is facing a death sentence. His recent habeas victory is currently pending in the Fifth Circuit Court of Appeals, having been granted a new sentencing hearing by the federal district court. If his appeal is reversed, Adams faces execution. If his appeal is affirmed, Adams faces a resentencing hearing in which his recantation would be admissible and very damaging.

This recantation, apparently made over Adams's own counsel's advice, has the capacity to subject Adams to execution. No statement ever given is more against penal interest. Therefore, no statement ever given carries a greater indicia of reliability than Adams's recent recantation.

Adams's recantation is further supported by Adams's admission of guilt to another inmate–William Mason.[5]

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[4] To avoid confusion, the written confession that Adams gave at the time of his arrest, exhibit 5, which implicated Wright, is referred to throughout as the "confession." Adams's recent declarations renouncing that confession, recanting that confession and exculpating Wright, exhibits 6 and 7, are referred to throughout as the recantation.

[5] Exhibit 8 attached hereto.

My name is William M. Mason and my number is 999040. I have known John Adams since he was received in Texas D/R. I've never testified against anyone and I've been in Texas Prison since 1973 and on death row since "92." I do read quite a bit of capital law and keep up with most cases. I was abandon by my attorney back about the time John Adams came to D/R in 1998. If I can be of help to Mr. Wright I will be glad to help. Mr. Adams has told me several times that he panicked and was scared and that Mr. Wright, AKA Mavrick, did not kill the lady. Respectfully, Billy Mason.

Newly Discovered Evidence Establishes that Wright Is Actually Innocent of the Offense of Which He Was Convicted.

The State's Theory of Prosecution.

The state's express position is that only two people were present in Ms. Vick's home on the evening of her death – Wright and Adams. In fact, the State has adopted this version, not only from the previous trials of Adams and Wright, but also from the polygraph examination taken by Wright. See State's Response to Defendant's Motion to Obtain Evidence for Print Comparison testimony at 4.

Wright claims to have passed a polygraph examination in May of 2007, by stating truthfully that (1) he saw "John Adams take a knife and thrust it into Donna Vick" and (2) he did not "cause" the death of Donna Vick and (3) did "take a knife from John Adams which was used by him to stab Donna Vick."

Further, the State tried Wright as the primary actor, not a party to the offense. In that context, Adams's recantation now shows that Adams is admittedly the primary actor and Wright is innocent. The state's position can yield no other result.

The Importance of Adams's Initial Confession, Now Known to be False

Adams's initial confession goes well beyond a direct statement that he saw Wright murder the deceased. The confession gives a detailed and specific chronology of the events, right down to the hour and minute that the murder took place. More importantly, the initial confession contains a detailed and gruesome account of the murder in which the deceased screamed and hollered for help and Wright, in a cold-blooded fashion, stabbed her repeatedly and acquired a second knife in order to finish her off. Adams's initial confession describes Wright coolly cleaning up after the murder and disparaging Adams for not assisting. According to Adams's initial confession, the decision to pawn the property was Wright's as well, and in fact, Wright alone loaded the car with Vick's property. Adams claimed that Wright was the one who disposed of the victim's car. None of these details are corroborated elsewhere in the record, and none can be inferred from the remainder of the trial record. Thus, Adams's initial confession served as the best evidence of Wright's guilt.

Further, none of the details provided by Adams's initial confession are corroborated through physical evidence or other witnesses. Finally, Adams's initial confession bolsters the State's picture of Wright as a cold-blooded killer when it implicates Wright in another, unrelated murder.

Adams's Initial Confession, Now Known to be False, Made Wright the Primary Actor.

The State was denied a requested jury instruction that Wright could be found guilty as an accomplice to the murder. Under Texas Criminal Trial Procedure, the trial court conclusively decided that all of the evidence pointed to Wright as a direct participant and not a mere aider and abettor. In final argument, when the State attempted to suggest that Wright was *not* the perpetrator, but a mere accomplice, the trial court sustained objections to this theory. (RR49.10, 11)

In closing argument at the punishment phase of trial, the State specifically argued that Wright alone killed Ms. Vick. (R51.17) These facts must be juxtaposed against the repeated assertions made in previous filings that the State never alleged that Wright acted alone. (R1.359, n.7) The trial court, in a better position to determine the effect of the statement at the time, saw the evidence as excluding party liability. The trial court found no evidence that Wright acted as merely a party to the crime. If Wright was not the sole perpetrator, then he was either a co-actor, an

accomplice, or a mere bystander. However, none of the latter theories are supported by Adams's initial confession.

Other Trial Irregularities

The State Suppressed

Brady v. Maryland, 373 U.S. 83 (1963) held that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

The State's Suppression of the Offer Made to Mosley in Exchange for His Testimony at Trial Deprived Wright of Material Evidence that Could Have Been Used to Attach the Credibility of Mosley, a Key Witness for the State.

Prior to trial, the defense filed the following request:

> . . . the Defendant requests that the State disclose to the Defendant whether it has made, promised, or implied any promises, benefits, or concessions to any prospective witness in order to induce or influence his testimony, and further, to determine and disclose whether any such benefits or inducements have been made to any witness by any law enforcement agency or by any other individual, or whether any individual has coerced, forced, or threatened the witness in any way to procure the witnesses' testimony.

Defendant's Omnibus Pretrial Motion, p. 4.

On July 18, 1997, the trial court granted the above-mentioned portion of Wright's motion. RR. 2, p. 4. In response to Wright's request, the State provided no

evidence of any offers, inducements or agreements with any of the witnesses in the case.

Mosley's Testimony

There is no doubt that Mosley was a material witness for the prosecution. The State elicited testimony from Mosley inculpating Wright in the murder of Ms. Vick. Specifically, Mosley testified that Wright and a woman came to his house around 5:00 p.m. the evening of the murder to buy crack cocaine. RR. 45, pp. 106-108. Although Mosley testified that this woman was definitely *not* Donna Vick, the prosecution continued to refer to the woman as Ms. Vick throughout the trial.[6] RR. 45, pp. 128, 146.

Mosley testified that Wright was riding in what was later identified as Ms. Vick's car, a white Chrysler. RR. 45, p. 146. Mosley said the woman and Wright stayed for about 35 to 40 minutes as Mosley and Wright smoked crack cocaine together. RR. 45, p.130. Mosley testified that Wright then left with the woman in the white Chrysler. *Id.* Mosley testified that he saw Wright and the woman again at about 11:00 p.m. that night. RR. 45, p. 146. They again were driving the white Chrysler. *Id.*

[6]Mosley's story changed when he testified in Adams's trial six months later. In that trial Mosley testified the woman with Wright was definitely Ms. Vick. (Exhibit 9)

Mosley speculated that they had come to his house to buy more crack. Instead, they met with Adams and the three left together in the Chrysler. RR. 45, p. 145-146. Mosley testified at about 4:00 a.m. that morning, Wright and Adams arrived at Mosley's house again in the white Chrysler. RR. 45, pp. 147-148. This time, Wright was driving the car, and Adams was the only passenger. RR. 45, p. 148. They had a flat tire and a trunk load of what Mosley thought was stolen property. RR. 45, pp. 114-115. They asked Mosley if he knew where they could get rid of the items from the trunk. RR. 45, p. 148. When Mosley asked where they got the items, Adams stated that they got them from some woman in DeSoto. RR. 45, p. 149.

Mosley allowed Wright and Adams to take the items into his house while Mosley changed the flat tire. RR. 45, p. 150. Mosley testified that during this time, Wright and Adams seemed cheerful -- giving each other "high fives". RR.45, p. 151. Mosley testified that once inside his house, Mosley saw Wright and Adams making deals with a drug dealer named JT, exchanging various items for various amounts of drugs. RR. 45, p. 153. Mosley testified that Wright was more or less in charge of the deal making. RR. 45, p. 154. After Wright and Adams made their drug deals, Mosley smoked crack with them at his house. RR. 45, p. 155 - 156.

Mosley's Obvious Criminal Exposure

On Sunday, March 23, 1997, a SWAT team of police officers broke into Mosley's house after firing tear gas at the windows. RR. 45, p. 157. Mosley was detained by police following the raid on his house. RR. 45, p. 172. On March 25, 1997, while in custody at the DeSoto jail, Mosley gave a written statement to Investigator Pothen regarding the events that occurred at Mosley's house on March 20, and March 21, 1997. RR.45, p. 158. During the course of Mosley's testimony in Wright's trial, Mosley admitted to committing several crimes, including: receiving stolen property, possessing a controlled substance (crack cocaine), and delivery of a controlled substance. RR. 45, pp. 101-102, 115, 125, 156, 164-166.

Mosley also testified that he had a criminal record and had been incarcerated in the past for burglary of a vehicle and possession of a controlled substance in 1988 and possession of a controlled substance in 1990. RR. 45, p. 101-102. Clearly, under governing Texas law, Mosley faced significant criminal exposure to prosecution.

Investigating a Deal

Despite the fact that Mosley admitted to the commission of several serious crimes, Mosley was never charged with *any* crime relating to the events about which he testified in Wright's case. The State's failure to pursue any charges against Mosley prior to trial led Wright's trial counsel to suspect that Mosley had some kind of deal

with the State. Trial counsel became further suspicious about a deal between Mosley and the State when, during Wright's trial, the trial court halted Mosley's testimony to allow him to confer with an attorney appointed by the trial court to preserve Mosley's right against further self-incrimination. RR. 45, p. 135.

Following the appointment of counsel for Mosley, he met with the attorney in a room just off the courtroom. RR. 45, p. 137. At the end of the meeting, Wright's trial counsel saw Mosley leave the room with his court-appointed attorney, Kent Traylor, and two attorneys from the district attorney's office, Kimberly Moore and Ricardo Jordan. RR. 45, p. 141-142. This led Wright's trial counsel to further inquire about any kind of deal that Mosley may have been offered in exchange for his testimony. RR. 45, pp. 160-164.

Despite the State's obligation to disclose any kind of offer, inducement or deal made with Mosley to refrain from prosecuting him in exchange for his testimony, the State and Mosley himself denied any such deal when questioned at trial. RR. 45, pp. 125-126, 139-143, 160-161.[7] In fact, it was the prosecutor, Mr. Jordan, who objected to Wright's attorney questioning whether Mosley had been given immunity or **any assurances not to prosecute** in exchange for his testimony. RR. 45, p. 125.

[7] Exhibit 10

Subsequently, at Adams's trial it became abundantly clear that Mosley was, indeed, made an offer of immunity by the State -- if he testified against Wright, the State would not prosecute him for any of the crimes he testified to having committed.

> "THE COURT: Mr. Traylor, in regards to that, to finish up this hearing, do you understand the question: Was there an implied agreement entered into between Mosley and the District Attorney's Office for his testimony?
>
> THE WITNESS: I understand the question.
>
> THE COURT: I'm instructing you now to go ahead and answer that question.
>
> THE WITNESS: Now, there was not an agreement implied or expressed. It was an offer. That's the best I can - -
>
> THE COURT: And again, I'm going to instruct - -
>
> MR. LUCAS: We would ask for permission - -
>
> MR. GILLETT: Well, Your Honor, we're going to object to that portion of the answer. The answer calls for a yes or no answer, not a - - not - - I mean, the question is, was there or wasn't there?
>
> MR. LUCAS: And our next question would be: Was there an offer between the District Attorney's Office and the witness in regard to the witness testifying?
>
> MR. DAVIS: And our position would be that that falls within the attorney/client privilege. Certainly that would involve a communication between Mr. Traylor and myself, part of the attorney/client privilege. I just heard Mosley say he wants to assert his attorney/client privilege.
>
> MR. LUCAS: Well, the record will reflect that the witness just moments ago indicated there was an offer. It's in the record.

THE COURT: All right. Go off the record a second.

(Off-the-record bench conference was had.)

MR. DAVIS: What I'm going to ask for, when the jury returns, that you give them an instruction to disregard the last part of that answer regarding offer, since that was non-responsive.

THE COURT: I'll just instruct the witness at this point in time not to - -

MR. PICKETT: Excuse me. That wasn't in front of the jury.

MR. LUCAS: I don't think it was in front of the jury.

THE COURT: Yeah. I'm going to instruct the witness not to say that in front of the jury. Simply limit his answer to the question.

MR. DAVIS: Okay.

Adams. RR. 34. p. 133-135.

As the transcript in Adams's trial clearly sets forth, Mosley was made an offer by the State. The State vigorously tried to conceal Mosley's offer by improperly suggesting that the State of Texas maintained an attorney-client privilege with both Mosley and Mosley's court-appointed attorney. Due to the State's lack of candor, and desire to protect its conversations with Mosley, the exact nature of the State's offer was never disclosed. But the fact of the offer, and the State's desire to conceal the offer, is undisputed in Adams's trial.

The prosecution's failure to disclose its offer not to prosecute Mosley likely affected the outcome of Wright's trial. The defense could have used the information

that Mosley had been offered immunity, to further impeach the credibility of Mosley, the only witness called by the State to link Wright to the property of the victim immediately following the murder. The disclosure of the offer the State made to Mosley would have provided a motive for Mosley's highly unreliable testimony at trial. Mosley faced a sentence of 25 years to life in prison for the crimes to which he admitted – certainly, quite an incentive to fabricate testimony.

Furthermore, as the State argued to the jury in its closing,

> MR. DAVIS: Let me make this very clear to you. If there's a one of you on this jury, even one of you, who believes the State of Texas, anyone at this table right over here, myself included, that any of us conspired with Llewelyn Mosley, . . . I don't even want you to go back and even look at the facts of guilt/innocence. I want you to just simply go back there as a group in unison and say not guilty. That's the end of it. I don't care what the facts are, because it wasn't done right.

RR. 49, p. 49.

Mosley was crucial to the State's case because Mosley placed Wright in Ms. Vick's car the day of the murder. Mosley alone provided motive for the crime – to sell Vick's belongings for crack. Mosley alone provided eyewitness testimony to the demeanor of Wright – purportedly giving celebratory high-fives to Adams – just after the murder. As the State alluded in its closing, to undermine the credibility of Mosley would be tantamount to undermining confidence in the outcome of the trial.

The suppression of Mosley's offer of immunity deprived Wright of exculpatory information. The suppression of Mosley's immunity offer was material to both guilt and punishment and, accordingly, violates *Brady v. Maryland.*

The prosecutors made a deal with Mosley in order to get him to implicate Wright. Testimony in a death penalty case should not be illegally bought and paid for. Wright should not be executed on the theory that he stole Vick's property in order to obtain drugs when such evidence was illegally purchased.

The State's Suppression of the First Statement Made by Daniel McGaughey to the Police Deprived Wright of Material Exculpatory Information.

McGaughey Affidavit

In sworn testimony, Daniel A. McGaughey testifies via affidavit that the police detectives working on the Vick murder case knew he was staying at the DeLuxe Inn on Jupiter Road in Garland, Texas, and, thereafter, that he moved into his ex-mother-in-law's home. McGaughey Affidavit, at 1.[8] McGaughey further testifies that "[s]tarting in early 1998, possibly January of 1998, I started getting visits from representatives of the Dallas County District Attorney's office in preparation for" Adams's murder trial. *Id.* at 2. Finally, McGaughey testifies that he was subpoenaed to testify, and actually showed up two different days prepared to testify in Adams's trial. *Id.*

[8] Exhibit 11

From McGaughey's Affidavit testimony, it is clear that the State was working closely with McGaughey as a potential witness in the Vick murder. The State knew where McGaughey was living and successfully subpoenaed McGaughey to testify against Adams.

Trial Record

Daniel McGaughey worked for 24 Hour Video. RR. 56, Def. Ex. 2. On March 23, 1997, Adams approached him and asked him to call 911. Only McGaughey's official regarding this episode was provided to the defense. The more precise notes, taken by Dallas Police Officer Freeman, indicating what McGaughey had originally Stated about Adams's confession were inexplicably withheld. RR. 53, Ex. 1.[9]

According to Mr. McGaughey's ambiguous written admitted into evidence, when McGaughey asked Adams why he wanted him to call 911, "[Adams] told me there was a murder and he wanted to turn himself in." *Id.* However, prior to March 25, 1997, the date when the ambiguous was provided, Mr. McGaughey confirms he spoke with an investigator, Officer Freeman, about the 911 call. RR. 56, Def. Ex. 2.[10] At the time Mr. McGaughey met with Officer Freeman, he told the officer that Adams approached Mr. McGaughey and stated to Mr. McGaughey, **"I murdered someone in DeSoto and I can't deal with it. I want to turn myself in."** *Id.* There is a

[9] Exhibit 12
[10] Exhibit 13

SIGNIFICANT and CRUCIAL distinction between the two statements attributed to Mr. McGaughey.

The differing accounts provided in McGaughey's two statements make the 911 tapes critical evidence in the case. However, the 911 tapes were misplaced by the State prior to the defense being given an opportunity to review them. Those tapes are still missing and have never been provided to Wright or his counsel.

The defense became aware of Mr. McGaughey's first statement wherein Adams inculpates himself when, on December 1, 1997, after the trial had begun, the State provided the defense with numerous documents pertaining to the case. RR. 46, pp. 70-74. Wright's trial attorneys found the new statement to be crucial to the case. Trial counsel immediately sent an investigator to find Mr. McGaughey. RR. 46, pp. 76-79. When the investigator was unsuccessful in locating Mr. McGaughey, the defense asked the State to provide assistance in ascertaining Mr. McGaughey's latest whereabouts. Despite its frequent contacts with Mr. McGaughey, as evidenced by McGaughey's Affidavit testimony, the State falsely claimed that it had no contact with Mr. McGaughey for over two months and did not know how to locate him. RR. 46, p. 75. However, Mr. McGaughey's affidavit demonstrates that the State knew where he was and intentionally withheld this information from Wright.

The State had in its possession a statement in which Wright's co-indictee, John Adams, unequivocally confessed to murdering Donna Vick. Officer Freeman's notes plainly indicate that McGaughey recalled Adams's stating, "I murdered someone in DeSoto and I can't deal with it. I want to turn myself in." RR. 56, Def. Ex. 2. Adams's claiming that he (Adams) individually killed Donna Vick is undeniably exculpatory evidence as to Wright and inculpatory evidence as to Adams. In retrospect, these notes clearly support Adams's recent recantation.

Despite the obvious exculpatory nature of this statement and the constitutional requirement to provide this statement to the defense, the State suppressed these notes about Adams's precise statement to McGaughey until **after** Wright's trial had begun. The State prevented Wright from mounting a defense based on the exculpatory statement the State had in its possession. Not only did the State's withholding of this evidence prevent the defense from effectively investigating the exculpatory statement, the State further prevented the defense from using Mr. McGaughey as a witness by falsely stating that it was unaware of McGaughey's whereabouts. When asked of Mr. McGaughey's whereabouts, the prosecutor falsely claimed that the State had no recent contacts with McGaughey and did not know how to locate him. *But see* McGaughey Affidavit, at 1-2.

If the State had provided the defense with Mr. McGaughey's original statement to Officer Freeman prior to trial, the defense could have located Mr. McGaughey **and** Officer Freeman.[17] Certainly, the defense could have used the statement provided just hours after the murder to discredit Adams's later rendered self-serving confession, now recanted, which placed all blame for the murder on Wright.

Further, Wright could have used the statement to support his claim of factual innocence in the case and to point to the actual killer—Adams.

Had Wright and his counsel received full disclosure of this *Brady* evidence, a reasonable probability exists that a jury would have sentenced Wright to life in prison rather than his current sentence of death.

The State's Suppression of the 911 Tapes Made of Mr. McGaughey's Call Deprived Wright of Material Exculpatory Information.

As set forth in the preceding section of this application, McGaughey called 911 at the request of Adams. During the very first interview McGaughey had with law enforcement, McGaughey told Officer Freeman that Adams made the unequivocal statement, "I murdered someone in DeSoto and I can't deal with it. I want to turn myself in." As this brief sets forth, this statement was not given to the defense prior to the beginning of trial.

Of course, the 911 tape made contemporaneously with Mr. McGaughey's call would have provided the best evidence as to what Adams told Mr. McGaughey at the

time. The defense requested copies of any 911 tapes that existed. The State informed the defense in a pre-trial hearing that there were none.

Some time after the trial began, the defense became aware of the existence of two 911 tapes, one of a call made by Mr. McGaughey and another made by Adams. Obviously, after the disclosure of McGaughey's initial, but withheld, statement to Officer Freeman, the defense became aware of the significance of the 911 tapes. They became aware that Adams did not just **report** a murder to the police, he confessed to the murder.

The trial transcript reflects trial counsel, Paul Brauchle's, discovery request for these tapes.

> MR. BRAUCHLE: Also, in that regard, in regard to Off. Trippel's testimony, it would seem that there were two 911 tapes that were made, which are given service numbers, Dallas Service Number 251842-F, and 251908-F, one being the 911 call of Mr. McGaughey, and the other one being the 911 call of Adams.
>
> We would request to be provided with those at this time, also. And that the first – we had asked if 911 tapes existed prior to the start of trial. We were told that there were none, but this would seem that there – there are 911 tapes in existence, and we would ask to be provided with those under exculpatory evidence rules.
>
> THE COURT: All right. Mr. Davis, I just have a few questions in that regard. Investigative work (obtaining the exculpatory from Mr. McGaughey) that was in question. Do you know of any 911 tapes that exist today?
>
> MR. DAVIS: No, Your Honor, I do not.

The Umen jeans were a crucial part of the State's case against Wright. The State had to link the Umen jeans to Wright in order to paint him as the primary perpetrator of the crime. The State made the connection between Wright and the Umen jeans by falsely arguing that everything found in the Beckley shack belonged to Wright. The State used the testimony of Lt. Pothen, the DSPD officer in charge of the investigation, to cement its argument that Wright controlled the Beckley shack:

> Q: Following your conversation with John Adams, did you – did you order the tactical unit of the DeSoto Police Department to go to a location?
>
> A: Yes.
>
> Q: And what location did you order them to go to?
>
> A: To a – to a shack in about the 6 to 700 block of North Beckley in a – in a field.
>
> Q: Okay. Is this behind a K-Mart?
>
> A: Yes.
>
> Q: At some point did you also go to that shack?
>
> A: Yes.
>
> Q: And was Gregory Edward Wright arrested at that location, sir?
>
> A: Yes, he was arrested by the tactical unit.

RR. 46, p. 22.

Lt. Pothen then went through all of the items seized from inside the Beckley shack: five pairs of jeans, a dinner plate, a black-handled knife, a Bible, a drinking glass, another Bible with an inscription to Gregory Wright, several dozen cans of gold spray paint, and documents from Jackson Hewitt Tax Service that contained the name Gregory E. Wright. RR. 46, pp. 29-42. On direct examination Lt. Pothen never mentioned that anything belonging to Adams was found in the shack. In fact, even when asked on cross-examination whether he knew whose property was found at the Beckley shack, Lt. Pothen feigned ignorance.

> Q: Okay. And you don't have any personal knowledge of how many different people resided in this shack, do you?
>
> A: No, sir.
>
> Q: You don't know whose property any of this is, do you?
>
> A: No.
>
> Q: Okay. It could just as easily be John Adams's property, couldn't it?
>
> A: I don't know.

RR. 46, pp. 62-63.

The State attempted to link all of the evidence found at the shack to Wright at trial, as if he were the only person who resided at the Beckley shack. RR. 46, pp. 25-44, 61, 63. However, the State failed to disclose, until after Lt. Pothen testified, correspondence and other documents that clearly belonged to Adams, which had been

found in the Beckley shack near the bloody jeans, dinner plate, and knives. The State had not given the defense these documents linking Adams to the Beckley shack where the bloody jeans were found until the last day of the State's case-in-chief. RR. 48, p. 35. Accordingly, the State created a false impression that the jeans were found with Wright's belongings, not Adams's belongings, when, in fact, they were found near a stack of personal papers that belonged to Adams.

These papers belonging to Adams were not available to the defense to use in cross-examining Det. Pothen when he testified that he did not know of anyone else's property, other than Wright's, which was found at the Beckley shack. Lt. Pothen was in charge of the investigation. He testified that he reviewed all the evidence found at the Beckley shack. His testimony regarding the ownership of items within the shack was false, and the State knew it was false. The State had within its possession the documents belonging to Adams that were found inside the shack. Those documents show that some of the property in the shack clearly was the property of Adams. Without this crucial impeachment evidence, Det. Pothen, the head of the investigation in this case, was able to provide the jury with a one-sided presentation –that the things found in the Beckley shack were the property of Wright, not Adams. As Adams's documents attest, Adams was as likely an owner of the bloody jeans as Wright.

Adams's papers were clearly *Brady* material. As set forth above, the State argued vigorously that Wright exercised sole control over the shack. The State denied knowing of any other person who lived in the shack. Therefore, the State was able to tie all the incriminating evidence found in the shack to Wright. The fact that Adams, a co-indictee in the case, kept his things in the Beckley shack as well, would have been exculpatory evidence as to Wright. The State was obligated to turn Adams's papers over to the defense. The State failed to do so until the trial was almost over. The State prevented the defense from establishing a coherent trial strategy and prevented the defense from effective cross-examination of Lt. Pothen.

The State made it clear in closing that it was important to link the killer to the Beckley shack where evidence of the murder was found. In Wright's trial the State argued Wright had control over the Beckley shack:

> MR. DAVIS: That doesn't end the story either, though, because we know in that shack where only one person was found, -- this man right over here: Gregory Edward Wright. He's alone, folks. Okay? In that shack. He's in control of that shack.

RR. 49, p. 54.

In Adams's trial it was just as important to the State to tie Adams to the Beckley shack as it was to eliminate his presence at the shack in Wright's case. The same prosecutors who withheld Adams's documents from Wright's counsel, focused

on the incriminating nature of Adams's ties to the Beckley shack in Mr. Adams's trial. In the State's opening statement, the prosecutor stated:

> MR. DAVIS: Now the evidence will show further, ladies and gentlemen, that the DeSoto Police went to a shack there in the 600 block of North Beckley. That is a shack that was **shared by two people: Gregory Edward Wright and John Wade Adams.** And the evidence will show that certain pieces of property were retrieved from that shack that belonged to Donna Duncan Vick.

Adams RR. 32, p. 33 (emphasis added).

The State extensively cross-examined Adams at his trial about his connection with the Beckley shack.

> Q: As a matter of fact, you had been living at that hooch [shack]?
>
> A: No, sir, I wasn't.
>
> Q: Your clothes were there in that trunk.
>
> A: There wasn't none of my clothes.
>
> Q: What size blue jeans do you wear, Adams?
>
> A: At the time I was probably wearing 32s. I was weighing 165. I wear 34s now. I've gained a few pounds. I've been locked up a year and a half. I've gained a lot of weight.
>
> Q: As a matter of fact, in that trunk, the blue jeans that had the gold paint, those belonged to Greg Wright, because he huffed gold paint, right?
>
> A: Most of them clothes there was Greg Wright's.
>
> Q: Most of them, but not all of them.

A: I've bought clothes from K-Mart and had clothes there.

Q: You had clothes there because that's where you were staying.

A: I didn't stay there. Occasions I stayed there. Once or twice.

Q: As a matter of fact, that's where you –

A: I got run off by the police. That's why I couldn't stay there. They run us off from the corner. That's why I couldn't stay, Mr. Davis.

Q: And that's why you kept your mail there, wasn't it?

A: My letters from prison? Yeah, they was there. I had took them over there with me when Maverick first brought me over to the house.

Q: I mean, you kept your mail where you stayed at.

A: Not necessarily. When you live on the street, you keep stuff scattered all over the place. I had stuff scattered from one end of the block to the next.

Q: So, the matter of the fact is, Greg Wright didn't live in that shack by himself. You stayed there also. Even by your own account on some occasions.

A: I stayed there once or twice, yes.

Q: And you were there that Saturday after this murder took place, weren't you?

A: No, I wasn't.

Adams RR. 34, pp. 201-202.

Clearly it was important in Adams's trial for the State to link Adams to the Beckley shack. The link established that Adams had played a role in the murder.

Adams hid evidence in the Beckley shack, and the evidence found in the shack could be attributed to him. For the same reasons it was important for the State to establish a link between Adams and the Beckley shack in Adams's trial, it was just as important for Wright to link Adams to the Beckley shack in his own trial. Unfortunately for Wright, the State thwarted his efforts to make this same link. The State failed to give the papers belonging to Adams over to the defense until it was too late.

The State's Suppression of the Existence of Jerry Causey and his Statement that Adams Confessed to the Murder Deprived Wright of Material Exculpatory Information.

Jerry Causey rode in a white Chrysler with Adams just hours after the murder. He asked Adams whose car Adams was driving. Adams said, "It's the bitch[' s] car." Jerry Causey direct examination.[11] When Mr. Causey asked, "What bitch?" Adams responded, "The bitch I killed." This evidence confirms that Adams unequivocally claimed responsibility for the murder just hours after it occurred. Not only did he claim responsibility, he did it while driving the car that belonged to the murder victim. The fact that the co-indictee made a confession shortly after the murder while driving the victim's car was exculpatory information that supported Wright's claim of factual innocence.

[11] Exhibit 14

The State had spoken with Mr. Causey about Adams's confession prior to Wright's trial. Affid. of Jerry Causey.[12] However, the State, contrary to its constitutional duty under *Brady v. Maryland,* failed to provide the defense with Jerry Causey's name or the information he provided regarding Adams's confession. Affid. of Karo Johnson[13], trial counsel for Wright. The exculpatory information confirming that Adams was the primary, if not sole, actor could have been used by Wright to create reasonable doubt as to his guilt. When coupled with the failure to disclose Mr. McGaughey, another State witness possessing exculpatory information under *Brady,* the error is compounded exponentially.

The odds that an innocent man would confess to two separate individuals who are strangers to each other on two separate occasions is prohibitively improbable. The State's suppression of Causey and his information regarding Adams's admitted guilt in the murder, sufficiently undermined confidence in the outcome of the trial. Therefore, pursuant to *Brady v. Maryland,* Wright is entitled to a new trial in which all exculpatory material is fully disclosed prior to trial.

A reasonable probability exists that, if the prosecution had disclosed the existence of Jerry Causey and his statement that Adams confessed to killing a woman in DeSoto, the outcome of the trial would have been different. The defense could

[12] Exhibit 15
[13] Exhibit 16

have used the information to discredit Mr. Adams's , which placed all responsibility for the murder on Wright. Wright could have better developed a defense that pointed to the actual perpetrator of the crime — Adams.

According to Mr. Causey's affidavit, the State knew of his existence and actually spoke with him about the murder prior to Wright's trial. Affid. of Jerry Causey. However, the State never disclosed Mr. Causey's existence to the defense. Affid. of Karo Johnson.[14] Had the State provided the defense with Mr. Causey's name or his statement, the defense would have investigated Mr. Causey's claims that Adams confessed to murdering a woman in DeSoto. Affid. of Karo Johnson.

The defense could have called Mr. Causey as a witness during its case-in-chief to attest to Wright's innocence, or the defense could have used Mr. Causey's statement at trial to discredit Adams's self-serving statement placing all blame for the murder on Wright. The State's failure to disclose Mr. Causey deprived Wright of valuable evidence that could have been used for impeachment and, more importantly, could have been used to assert Wright's claim of factual innocence.

[14] Exhibits 15 and 16

Napue Claims

Napue v. Illinois, 360 U.S. 264 (1959), establishes that the State may not knowingly use false evidence to obtain a tainted conviction, even when such false testimony or evidence goes solely to the issue of a witness's credibility.

1. The State knowingly created a false impression that Llewelyn Mosley did not receive any offers or assurances from the State that he would not be prosecuted if he testified against Wright.

As set out in the claim above, evidence from Adams's trial demonstrates that Mosley agreed to testify against Wright in exchange for the State's offer not to prosecute him for several crimes he committed, and admitted to committing, during the State's investigation of Donna Vick's murder. That previous argument and recitation of facts is incorporated herein.

Mosley accepted the State's offer by testifying against Wright during the guilt/innocence phase of Wright's case. The State fulfilled its part of the deal by not pursuing charges against Mosley for several felonies which, because Mosley would be considered a habitual felon, could have resulted in a minimum prison term of 25 years and a maximum sentence of life.

Despite the fact that Mosley admitted to committing several serious crimes, Mosley was never charged with any crime relating to the events about which he testified in Wright's case.

As the transcript in Adams's trial clearly sets forth, Mosley was made an offer by the State. The exact nature of that offer was not disclosed due to strenuous and misplaced objections by the State. But the fact of the offer is undisputed in Adams's trial.

The importance of Mosley's testimony in this case cannot be overstated. He was the only witness at trial whose testimony linked Wright with the murder and robbery of Ms. Vick. At trial the State relied solely on the testimony of Mosley to place Wright with Adams and a woman inferred to be Ms. Vick prior to the murder, and later selling her belongings for crack. RR. 45, pp. 132-34, 148-54. The State called no other witnesses at trial to validate Mosley's testimony, despite the fact that Mosley was not alone at his house on the evening and morning in question. RR. 45, pp. 112, 129-31. Mosley's testimony was the only testimony that provided the jury with evidence of a motive for the killing -- to raise money for the purchase of illegal drugs. Mosley also was the only witness to testify about Wright's demeanor after the murder. His allegation that Wright was cheerful and giving Adams "high fives" was

very damning testimony against Wright, affecting not just the guilt/innocence phase of the trial but the punishment phase as well. RR. 45, pp. 151-52.

The State admitted that its case relied on the credibility of Mosley. At closing the prosecutor Stated,

> "Let me make this very clear to you. If there's a one of you on this jury, even one of you, who believes the State of Texas, anyone at this table right over here, myself included, that any of us conspired with Llewelyn Mosley, . . . I don't even want you to go back and even look at the facts of guilt/innocence. I want you to just simply go back there as a group in unison and say not guilty. That's the end of it. I don't care what the facts are, because it wasn't done right."

RR. 49, p. 49.

The prosecutor again recalled the testimony of Mosley regarding the demeanor of Wright the morning after the murder,

> "And who's out there high-living as though they scored a touch down, literally. I mean, they're in the end zone, aren't they. I mean, they completed that long pass. The defense has been wiped out here. They've gotten exactly what they wanted."

RR. 49, p. 54.

And when the State closed in the punishment phase of the trial, the prosecutor again referenced Mosley's testimony stating:

> MR. PASK: What happened after the offense? This man was so caught up in his desires, so caught up in his wants and needs, he gathered up her property, went straight to the dope house, and got his fix and gave his buddy a high-five afterwards. That's the mark of this man right there.

Vol. 51, pp. 13-14.

Instead of glossing over the non-existence of a deal, the State repeatedly and emphatically, through several examinations, hammered home to the jury that no deal had been made with Mosley. In light of the subsequent disclosure of the "offer," it appears the State "doth protest too much." In vehemently protesting that a deal was closed, the State missed a crucial point. Mosley inculpated Wright after being enticed by an "offer" not to prosecute him. Whether the deal was closed, the perception is the reality. Like the donkey hauling the cart, Mosley chased the carrot.

Mosley's testimony has proven to be highly unreliable. First of all, Mosley's trial testimony differed significantly from his written statement, given two days after his arrest. Thereafter, Mosley again took the stand when Adams was tried for the murder of Donna Vick. Because Adams's trial took place after Wright's trial, Wright was unable to discredit Mosley's testimony by pointing out the discrepancies between Mosley's testimony in his own trial and Mosley's testimony in Mr. Adams's trial. Additionally, Wright did not have the knowledge that Mosley had received an offer from the State.

If Wright's trial counsel had been aware that Mosley had been offered protection from prosecution if he testified, Wright's counsel would have been able to alert the jury to Mosley's bias. The offer by the State of Texas not to prosecute

Mosley provided Mosley with a motive to change his story in order to incriminate Wright in the murder. Mosley falsely denied having an agreement with the State while on the stand, under oath and in front of the jury. The State participated in denying the existence of an offer not to prosecute, and the jury was left with a false impression that Mosley had no motivation to lie or to color his testimony in such a way as to incriminate Wright.

The State's behavior in concealing Mosley's offer of immunity violates *Napue* because a State may not knowingly rely on false evidence, even when such evidence goes solely to the issue of witness credibility. *Napue v. Illinois*, 360 U.S. 264 (1959).

2. The State, through its expert witness, James Cron, knowingly provided false testimony concerning a fingerprint match between a partial bloody fingerprint found on a pillowcase found near the deceased and Wright's known prints.

The crime scene investigation of Vick's house revealed traces of blood on bedding found in her room. A pillowcase contained a partial bloody fingerprint that the prosecution attempted to identify as Wright's. (State's Ex. 45A, a partial bloody fingerprint found on the pillowcase near the head of the victim. RR. 47, pp. 90-91.) The crime scene officer who acquired this crucial physical evidence, Eric Rosenstrom[15], was not trained to handle evidence, having lied on his résumé about his qualifications and experience. Subsequently, Rosenstrom himself was indicted

[15] RR46.11-14

for murder and is currently a fugitive from justice.[16] In fact, it appears that Rosenstrom is currently listed among "America's Most Wanted." The fact that Rosenstrom was involved in this investigation provides an additional taint to the proceedings and, in particular, the purported lifting of a partial bloody fingerprint. Rosenstrom's handling of a crucial piece of physical evidence merits further investigation into the validity of the questioned print used against Wright at trial.

Nonetheless, this print was turned over to the identification division of the Dallas Sheriff's Office for comparison to known prints. Ultimately, when Wright was identified as a suspect, prints were obtained from him. RR. 47, p. 99. The prints were examined by Detectives Jumper and Howell of the Dallas County Sheriff's Office. Each of these officers had extensive experience and training in the comparison of latent and patent prints. RR. 46, pp. 73, 78. After careful study, neither officer found the partial bloody fingerprint comparable. RR. 46, pp. 76, 79-80. Accordingly, neither were able to provide testimony linking the incomparable print to any suspect.

But, rather than present these members of the prosecution's own investigative team as witnesses, knowing that their testimony would undermine the veracity of any print comparison, the State chose to call a retired print examiner, James Cron, to

[16] See exhibit 17.

make a strained comparison. RR. 46. 86. Mr. Cron acknowledged his experience in the Dallas Sheriff's Office and testified that he had worked with officers Jumper and Howell. RR. 46, pp. 86-88, 90. Mr. Cron further acknowledged that Detectives Jumper and Howell had been unable to identify the bloody fingerprint. However, utilizing the same training and identification techniques used by the officers, Mr. Cron testified that he drew a positive correlation between the bloody fingerprint and Wright's known prints. RR. 46, p. 98.

Mr. Cron produced no exhibits nor did Mr. Cron draft a report of his findings and used only one grainy photograph to illustrate his testimony. RR. 46, p. 99. Mr. Cron also testified that he did not bring the photo of the print on which he had marked the comparisons. RR. 46, pp. 104-105.

When asked to justify his conclusions, Mr. Cron dismissed conflicting testimony by calling the Dallas Sheriff's Office career deputies (whom he had trained and worked with for a decade) "unqualified". RR. 46, p. 124. He told the jury that if the points of comparison were not observable, the jury would just have to take his word for it. RR. 46, pp. 127-128. Mr. Cron's testimony was patently false. The error made by Mr. Cron is an all-too-common ploy in the field of fingerprint identification called "teasing out the points," i.e., telling the lay audience that points of comparison

exist but are too subtle to notice. Mr. Cron's testimony was false because Mr. Cron testified to finding points of comparison that did not, and do not, exist.

The State was aware of this false testimony because its usual experts refused to provide such testimony. Unlike Cron, who displayed extraordinary abilities, the State's usual testifying experts admitted that the existing print was incapable of comparison. The State knew that Cron was providing false scientific evidence based on their other experts.

The bloody fingerprint was the only physical evidence directly connecting Wright to the victim's body or the room in which the murder occurred. The partial fingerprint was obviously damning evidence against Wright. As the State maintained in final argument, "We've got to prove to you that (Gregory Wright) is the individual who committed this murder. What do we know? What do we know from Granada, first? We know that this man's bloody fingerprint is on the pillowcase that is right next to the head of the deceased. Not only just his fingerprint, but that it touched that finger; that it touched that pillowcase." RR. 49 p. 51.

This fingerprint argument was literally the prosecutor's opening statement of his summation. In order to waylay any notion that Mr. Cron had falsified the fingerprint testimony, the prosecutor dared the jury to find Wright not guilty if the jury felt that the fingerprint evidence was a lie. RR. 49, p. 49.

Unfortunately for the State, the fingerprint testimony was a lie. Unable to find a law enforcement officer in the entire metroplex who would be willing to "match-up" the fingerprints, the prosecutor shopped around until he could find Mr. Cron. The State's usual experts – and their testimony – were ignored, if not entirely discarded in favor of someone able to force a comparison.

At the time Mr. Cron was called, the prosecution well knew that the opinions of the fingerprint section deputies of the Dallas Sheriff's office, the very people that the prosecution had relied on for at least the past decade to testify in virtually every criminal prosecution, were that the fingerprints did not match.

Mr. Cron's testimony was crafted in such a way that no exhibits or points of comparison were shown to the jury, even though fingerprint experts in Dallas County have routinely produced comparison exhibits for demonstrative purposes. Mr. Cron did not produce a written report in advance of trial to lessen the chance of effective cross-examination. His testimony was false, and every effort was made to present that false testimony in a manner difficult to challenge directly. When experts testify in a false manner, the subsequent conviction is tainted. Lab scandals have become all too common. See the Joyce Gilchrist[17] case and the notorious Fred Zain Case. See *In the matter of the investigation of the West Virginia State Police crime laboratory,*

[17] Exhibit 18

438 S.E.2d 501, 505 (West Virginia 1993). When prosecutors intentionally use false expert testimony to secure a conviction, the conviction must be set aside. See *e.g., Davis v. State,* 831 S.W.2d 426, 429 (Tex.Civ.App. Austin 1992). False expert testimony is a clear *Napue* violation. *See Napue v. Illinois*, 360 U.S. 264 (1959). Since, as the prosecution argued, the fingerprint was the most telling circumstance of guilt, it follows that the misrepresentation of this single item of evidence, without regard to the rest of the record, is sufficient to warrant a retrial.

3. The State knowingly presented evidence in a false light when Det. Pothen testified that the Beckley shack was the exclusive residence of Wright.

As stated above, the State failed to turn over exculpatory evidence found in the Beckley shack until the last day of its case-in-chief. This failure occurred despite the fact that the State found a stack of papers that belonged to Adams in the Beckley shack. The State falsely argued that Wright maintained control of the Beckley shack. Therefore, the items inside must belong to him. At the same time, the State suppressed items found in the same shack that tied Adams to the shack.

A *Napue* violation occurs even when the State does not solicit false evidence but does knowingly fail to correct it. *See Napue v. Illinois*, 360 U.S. 264 (1959). This is because a conviction obtained through the use of false evidence, known to the State to be false, falls under the Fourteenth Amendment. *Id.*

There is a reasonable likelihood that Lt. Pothen's false testimony could have affected the jury's verdict. The State had to link the contents of the Beckley shack to Wright to obtain a conviction for capital murder against Wright. Unlike Adams, who confessed to the crime, who confessed that the murder weapon was his knife, and whose belongings were found in the victim's stolen car, Wright had no direct link to the crime. Further, Wright has consistently maintained his innocence.

The only way to link Wright to the crime was with evidence obtained from the Beckley shack. The jury had to believe that the evidence found at the shack belonged to Wright, not Adams. If the evidence belonged to Wright, then he (Wright) must have been the primary perpetrator, not Adams.

As the State argued in its closing:

> MR. JORDAN: Of course, if you're this man over here, and you know what's happened, and you know what your part in what happened was, you'd probably be a little concerned about your jeans, because that's the one thing in that shack that can tie you to this capital murder. That's the one thing that can scream even more loudly than Donna Duncan Vick about your guilt. That's the one thing, ladies and gentlemen, that can positively put you at the scene of the crime and tie you to this murder.

RR. 49, pp. 15-16.

The State made clear the significance that the jury tie Wright, and only Wright, to the Beckley shack. In closing, the prosecutor argued:

> MR. DAVIS: That doesn't end the story either, though, because we know in that shack where only one person was found, -- this man right

over here: Gregory Edward Wright. He's alone, folks. Okay? In that shack. He's in control of that shack.

RR. 49, p. 54.

The prosecutor continued to argue that the State found damning evidence in the shack linked to Wright – Ms. Vick's knives and the Umen jeans.

Finally, the State admitted that its case rested on the credibility of three witnesses: Lt. Pothen, James Cron and Llewelyn Mosley. The State told the jury:

> MR. DAVIS: Let me make this very clear to you. If there's a one of you on this jury, even one of you, who believes that the State of Texas, anyone at this table right over here, myself included, that any of us conspired with Llewelyn Mosley, **if one of you believe that Lt. Pothen of the DeSoto Police Department came down here and lied to you, if** there's a one of you that believes that James Cron prostituted himself down here during the course of this trial and lied to you about that fingerprint, I don't even want you to go back and even look at the facts of guilt/innocence. I want you to just simply go back there as a group in unison and say not guilty. That's the end of it. I don't care what the facts are, because it wasn't done right.

RR. 49, p. 49 (emphasis added).

Fictional Fingerprint Evidence

On the pillowcase near Vick's body a partial bloody fingerprint was discovered. This fingerprint was preserved by crime scene investigators. RR. 47, pp. 90 – 91. Two career Dallas Sheriff's office deputies reviewed the print but could not "match" it to the known prints of Wright. RR. 46, p. 76, 79 – 80. The State then contacted a retired employee named James Cron. Mr. Cron, utilizing the same

exhibits and the same techniques as deputies Jumper and Hollowell, testified that he found the prints capable of comparison and, further, that they matched Wright. RR. 46, p. 98.

In court, Mr. Cron could not produce any exhibit which showed the match. RR. 46, p. 104 - 105. Instead, Mr. Cron testified that the jury should take his word for it because the deputies "were not qualified". RR. 46, p. 124. Mr. Cron reviewed his findings with the defense team's expert, Mr. Tom Ekis. Mr. Ekis reported that the prints did not match and that Mr. Cron was simply "teasing out" the prints, i.e., he was finding points of comparison where none existed. The defense did not challenge Mr. Cron's opinion or expertise outside of the jury's presence, nor did they call Mr. Ekis to testify. Affid. of Tom Ekis.[18]

Additionally, Mark Acree, a forensic scientist, has recently reviewed the materials used by Cron to make the fingerprint comparison. According to his affidavit, attached hereto,[19] no scientific comparison can be made based on the materials submitted at trial. The photograph of the print taken from Vick's pillowcase is so blurry that identification is impossible. In short, Cron's opinion is without factual or scientific foundation. Such "junk-science" opinion fails the

[18] Exhibit 19
[19] Exhibit 20

mandate of *Daubert* and, therefore, raises a duty in counsel to lodge a timely and proper objection.

In order to bolster a weak case that relied almost exclusively on the unreliable account of John Wade Adams, the prosecution was able to find "an expert" willing to say something that no other reputable scientist would say, that Wright's fingerprint was found at the crime scene. Too many people have been executed on the basis of junk science.

Conclusion

Gregory Wright did not obtain a fair trial. The State hid key witnesses, suppressed key evidence and bought and paid for manufactured testimony in order to implicate Wright. Wright is on death row primarily because his co-defendant, John Adams, pointed the finger at Wright in order to avoid the death penalty himself. Adams's recent statements now establish his absolute unreliability as a witness. In the absence of Adams's Statements, Wright is facing execution even though:

- The State hid three witnesses who heard Adams say that Adams committed the murder.
- The State hid evidence linking Adams to the murder weapons and the clothing worn by the murderer.
- The State purchased the testimony of a witness who claimed to have seen Wright hocking the victims property for drugs.

- The State "witness shopped" until a "fingerprint expert" was found who would testify that Wright's fingerprint was found at the crime scene.

- Adams's DNA has preliminarily been located on the inside thigh of the jeans worn by the murderer.

A death sentence should be imposed only when people of reasonable sensibility harbor no real doubt that the accused actually committed the crime. We respectfully urge this Board to recommend that Gregory Wright serve a life sentence for his crime.

Respectfully submitted, this 8th day of October 2008.

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