

FILED

2009 OCT 12 AM 9:33
Nos. AW 94-54687-NS (B) and
W 94-54688-NS (B)

GAUNT T. ZIMMERMAN
DISTRICT CLERK
DALLAS CO., TEXAS
DEPUTY

EX PARTE RICHARD MILES

) IN THE 282nd JUDICIAL
)
) DISTRICT COURT
)
) DALLAS COUNTY, TEXAS

**STIPULATED PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

COME NOW, Applicant, RICHARD RAY MILES, by and through his attorney of record, Cheryl B. Wattley and the State of Texas by and through its attorney of record, Michael Logan Ware, and hereby stipulate to the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1) The Court finds that on August 25, 1995, Applicant was convicted by a jury after pleas of not guilty to the murder of Deandre S. Williams and the attempted murder of Robert Ray Johnson in the 282nd Judicial District Court in Cause Nos. F94-54687-NS and F94-54688-NS.

2) The Court finds that Applicant was sentenced to 40 years imprisonment on the murder case and 20 years imprisonment in the attempted murder case.

3) The Court finds that Applicant appealed both convictions and they were affirmed by the Fifth District Court of Appeals in Dallas on July 2, 1997.

4) The Court finds that Applicant filed an application for writ of habeas corpus which was denied by the trial court on February 24, 2006 and denied by the Court of Criminal Appeals on April 4, 2007.

5) The Court finds that this is Applicant's second application for a writ of habeas corpus. He alleges that (1) his convictions were obtained by the failure of the prosecution to disclose evidence favorable to the defense (2) his convictions rested upon the introduction of discredited scientific evidence, and (3) newly discovered evidence establishes that he is actually innocent of both offenses.

6) The Court finds that prior to the time of trial, the Dallas Police Department had two police reports that had not been turned over to Applicant's trial attorney (the defense). One undisclosed report regarded detailed information from an anonymous phone caller to the Dallas Police Department. The caller claimed to have knowledge that a person other than Applicant committed the crimes. The call was made approximately a year after the offense but over three months prior to Applicant's trial and provided detailed information about both the offense and the alleged individual involved who was someone other than the Applicant.

7) The Court finds that the second undisclosed report involved an altercation between the victims and a third person that occurred five days before the shootings in the instant case. This third person could also have been the perpetrator. The undisclosed information also provided potential impeachment material Applicant could have used at trial.

8) The Court finds that neither of the police reports were turned over to the defense counsel.

CONCLUSIONS OF LAW

1) The Court concludes that the State has an affirmative duty to disclose all material exculpatory evidence to the defense under *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

2) The Court concludes that to establish a *Brady* claim, a habeas applicant must demonstrate that (1) the prosecution suppressed evidence; (2) the evidence was favorable to the

applicant, and (3) the evidence was material. *United States v. Bagley* 473 U.S. 667, 682 (1985); *Ex parte Kimes*, 872 S.W.2d 700, 702-03 (Tex. Crim. App. 1993).

3) The Court concludes that evidence is material only if there is a reasonable probability that had the evidence been disclosed to the defense, the result of the proceeding would have been different. *United States v. Bagley*, 473 U.S. at 682. A “reasonable probability” is a “probability sufficient to undermine confidence in the outcome.” *United States v. Bagley*, 473 U.S. at 682.

4) The Court concludes that the prosecutor has a duty to learn of any favorable evidence known to others, including police officers, acting on the government’s behalf. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

5) The Court concludes that the two undisclosed police reports were definitely exculpatory and would have constituted impeachment evidence within the purview of *Brady* and thus timely disclosure of this evidence should have been made.

6) The Court concludes that because the prosecutor is charged with the duty to learn of any favorable evidence known to others acting on the government’s behalf, such as the investigating law enforcement agency, and because there is at least a reasonable probability that had the evidence been timely disclosed to the defense, the result of the proceedings would have been different.

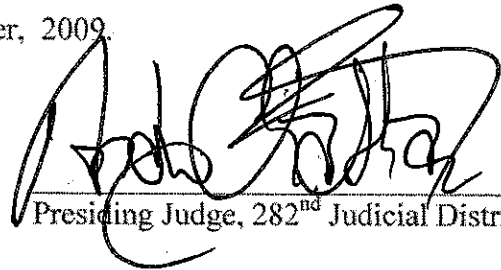
7) The court also concludes that the probability of a different outcome had the information been timely disclosed to the defense is sufficient to undermine confidence in the outcome of the case.

8) The Court concludes that the State is still conducting its investigation regarding Applicant's claims concerning the gunshot residue tests and actual innocence.

9) The Court concludes that in the interest of justice, Applicant is entitled a new trial in both cases due to the *Brady* violations.

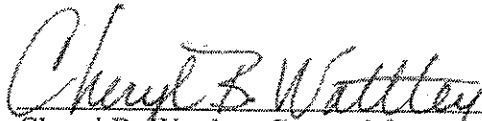
10) The Court concludes that this Court is not precluded from supplementing its Findings of Fact and Stipulation of Evidence at a later date as to Applicant's remaining claims.

ENTERED this 12 day of October, 2009.


Presiding Judge, 282nd Judicial District

AGREED AND STIPULATED:


Michael Logan Ware, Assistant District Attorney


Cheryl B. Wattley, Counsel for Applicant

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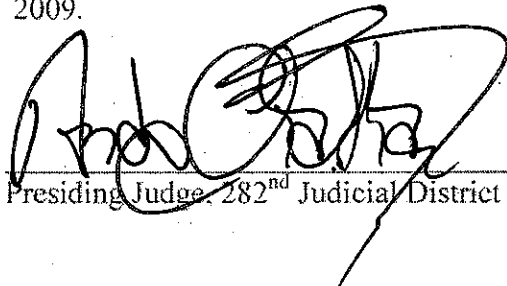
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