

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

SEP 21 2

PRESTON HUGHES, III (TDCJ #000939),
Petitioner

David J. Bradley, Clerk of Court

v

CIVIL ACTION NO.
H-01-4073

United States District Court
Southern District of Texas
FILED

Rick Thaler, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,
Respondent.

SEP 21 2012

Clerk

MOTION TO REPLACE COURT APPOINTED ATTORNEY

I am Preston Hughes, III. In 1989 I was convicted of Capital Murder and sentenced to death in the 174th Texas District Court of Harris County, criminal case number 511676. On July 18, 2012 Texas District Judge Ruben Guerrero issued an Order setting me a November 15, 2012 execution date.

I am innocent. My court appointed attorney, Mr. Patrick F McCann, has categorically refused to advance any of my legitimate claims of innocence or my lawful objectives of full exoneration. As far as Mr. McCann has informed me, he hasn't even investigated my innocence.

Per 20 U.S.C. 848(q)(8) I file this my own motion to have Patrick McCann replaced. In the interests of justice please immediately appoint an attorney or attorneys who will investigate my claims of innocence and who will file associated applications for relief.

This motion by itself is not intended to delay my November 15, 2012 execution. Volunteer layman investigators have just recently realized evidence of my innocence coupled with evidence of prosecutorial misconduct. [See www.skepticaljuror.com] New counsel should be able to research, prepare and file a meritorious successor application for habeas relief within 30 days. I want my November 15, 2012 execution stayed, but not by this motion, but instead by another successor application for habeas relief as filed by new counsel.

Such a successor application for writ of habeas corpus will show that Shandra Charles did not name, and physically could not have named, me as her attacker just before she died. Such a successor

application for writ of habeas corpus will show that the hunting knife presented to the jury as the murder weapon was not, and could not have been, the true and correct murder weapon. Such a successor application for writ of habeas corpus will show that Houston Police Department officers fabricated evidence and committed perjury. Such a successor application for writ of habeas corpus will show that my two confessions were false. Yes, I understand that Texas State courts and this court have already ruled that the State of Texas did not violate any of my constitutional rights when getting my confessions. However, such a successor application for writ of habeas corpus will show that my confessions were false nonetheless.

SHANDRA CHARLES DID NOT NAME PRESTON HUGHES AS HER ATTACKER.

The autopsy report for Shandra Charles provides that her left common carotid artery and her left jugular vein were completely severed: "There was transection of the left common carotid artery and the left jugular vein." [See exhibit A, page 4, 1st paragraph.]

Arteries carry blood from the heart. Veins return blood to the heart. When severed, arteries spurt and gush blood. There is a spurt and gush with each heartbeat. There are actually three carotid arteries in each side of the neck region. Most of the neck has the common carotid artery. That is the one that was severed in Miss Charles' neck. A little higher up, the common carotid artery splits in two, into the internal and external carotids. Because the common carotid artery carries all the blood carried by both the internal and external carotid artery, a severed common carotid artery is going to spill blood at even a higher rate than a severed internal or external carotid.

Within two or three minutes after the attack, Shandra Charles was, at the very best, in shock, unconscious and unresponsive. Miss Charles was most assuredly dead with 15 minutes of her attack, the minimum amount of time it took for Houston Police Department (HPD) Sgt. Hamilton to arrive at the crime scene and "speak" with Miss Charles. Upon appointment of new counsel I will immediately instruct them to get expert opinion on this from at least one pathologist.

Furthermore, I note the reports of HPD officers J.L. Cook and D.J. Becker, the first police officers on the scene:

Officers walked east along the path ... approx 30 yards when observing a black female laying face down in the path. ... There was blood along the neckline and she was breathing deep but was unconscious. Officers notified the west side dispatcher of the find. The blood appeared to be fresh so officers looked ... for possible susp(s).

These officers claim to have found a victim, alive but unconscious. They notified the dispatcher, but did not initiate any first aid. Instead, they felt it more important for both of them look for possible suspects.

That same police report continues:

Approx 40 to 50 feet east of the female's location officers found a small boy laying in the brush face down approx 2 to 3 feet north of the path. ... The boy did not appear to be breathing nor have a pulse. ... Officers notified the dispatcher of the find and began emergency first aid. Officer cook observed the boy's left shoulder area still bleeding and turned him over to check for any sign of life. Both eyes, pupils were dilated and there was still no pulse or breathing. ... The boy did not respond to any resuscitation [sic] attempts.

Even more disturbing is the officers' reported response to finding Marcell compared to their reported response to finding Shandra. Upon finding Marcell, they notified the dispatcher, as they did after finding Shandra. However, after notifying the dispatcher, they began emergency first aid. They applied first aid to Marcell, though he appeared dead. They did not apply first aid to Shandra, though they claimed she was still alive and could more clearly have benefited from it. They made note of blood still being pumped from the Marcell's shoulder wound. They made no note of blood still being pumped from Shandra's neck.

Miss Charles was first transported to the West Houston Medical Center, a mile away. She was taken inside the hospital, where all of her personal possessions, except the shirt on her back, were taken. Miss Charles was apparently not admitted to that hospital, but instead transported to Ben Taub hospital, 15 miles away, where she was

declared DOA. Miss Charles must have been dead when she arrived at the West Houston Medical Center, otherwise that hospital refused any attempt to stop bleeding from a neck wound demanding immediate attention.

PRESTON HUGHES' HUNTING KNIFE WAS NOT THE MURDER WEAPON

Regarding the knife injuries, the autopsy report for Shandra Charles provides the following:

There was a stab wound in the left side of the neck at the left submandibular area located 2 inches to the left of midline and 8 inches below the top of the head. The wound measured 1-1/8 inches in length and gaped up to 1/8 inch in width. There was no blunt end.

There was a stab wound in the left side of the chest located 1-1/2 inches to the left of midline, 4 inches below the suprasternal notch and 16 inches below the top of the head. The wound measured 1 inch in length and gaped to 1/2 inch in width. There was no blunt end.

[See Exhibit A.]

Regarding the knife injuries, the autopsy report for Marcell Taylor provides the following:

There was a stab wound in the left side of the neck at the left submandibular area located 1-1/2 inches to the left of midline and 7 inches below the top of the head. The wound measured 1 inch in length and gaped up to 1/8 inch in width. There was no blunt end.

There was a stab wound to the left side of the chest located 2-1/2 inches to the left of midline, 3 inches below the suprasternal notch and 12 inches below the top of the head. The wound measured 1 inch in length and gaped up to 3/16 inch in width. There was no blunt end.

[See Exhibit B.]

There was no blunt end. For each of the wounds described above, there was no blunt end. This means that the knife used to stab and kill Miss Charles and Mr. Marcell Taylor was double-edged. A wound from a double-edged knife will have no blunt ends, such as all of the wounds described here. A wound from a single edged knife will have one blunt end and one pointed end.

The knife that the police found in my apartment, and the prosecution presented to the jury at my trial as the murder weapon, was a single-edge hunting knife.

Furthermore, skepticaljuror.com website provides 2-D graphical recreations of the stab wounds. My knife could not have created the neck wounds, not only because my knife had only one sharp edge, but also because the blade of my knife was 1 inch wide. The graphical recreations (which account for the curvature of the human neck) show that the murder weapon had a blade no more than 5/8" wide. See www.skepticaljuror.com/2012/04/case-of-preston-hughes-iii-shandras_19.html

Thus, my knife was not the murder weapon. Thus, the prosecution presented false evidence to the jury in order to convict me of Capital Murder. Upon appointment of new counsel I will immediately instruct them to get expert opinion about this from at least one pathologist.

HPD OFFICERS FABRICATED EVIDENCE AND COMMITTED PERJURY

A HPD Property Invoice in this case is clearly dated September 27, 1988 and time stamped 2:58am. [See Exhibit C.] This indicates that HPD took some of my things from my apartment and entered them into an HPD property locker. Obviously HPD went to my apartment beforehand and gathered my property for their safekeeping. HPD didn't have a warrant at the time to search my apartment. The HPD claims to have received a voluntary consent to search form no earlier than 5:30am. [See Exhibit D.] Though I maintain that the document was manufactured, the point here is that not even the HPD claims to have permission to search prior to 5:30am. Thus, HPD searched my apartment and seized my property illegally. Yet HPD claims that they searched my apartment only once, beginning at 9:15am on September 27, ~~1988~~.

It was during this second 9:15am search in which HPD found Miss Charles' eyeglasses. Note, the eyeglasses are not listed on the September 27, 2:58am HPD property invoice. Since the items turned into the property locker at 2:58am were photographed once again in my apartment after 9:15am, the items must have been staged for purposes of photography. The eyeglasses were used as a key piece of evidence

against me at trial, but it is now finally clear that the eyeglasses were planted.

The crime scene police reports and autopsy reports make sense (don't contradict themselves) only if Miss Charles was already dead when HPD officers J.L. Cook and D.J. Becker arrived at the scene. Why else would J.L. Cook and D.J. Becker simply walk away from Miss Charles when they first encountered her? Miss Charles was dead when she arrived at West Houston Medical Center. Why else would the hospital refuse to treat a bleeding neck wound that posed an immediate threat to her life? It now makes sense why Sgt. Hamilton, and only Sgt. Hamilton, reported to have heard Miss Charles speak. She could not speak because she was most likely dead and most assuredly unconscious. It now makes sense why Sgt. Hamilton allegedly interviewed a victim dying of a bleeding neck wound, rather than providing her with first aid. She was dead. Sgt. Hamilton fabricated his reports and perpetrated a most heinous fraud upon the court.

Instead of hearing Miss Charles say "Preston" and "He tried to rape me", Sgt. Hamilton was at the command station when he heard of the victims over the radio. Sgt. Hamilton most likely learned of my name by a quick search of the police records, since I lived nearby, since I was on probation for a sex offense, and since the HPD had been to my apartment just that month. [See Exhibit E.] That's how HPD knew how to find me at Lakehurst Apartments. Even though Miss Charles allegedly described a Preston who lived at Lakeside, the HPD did not search the nearby Lakeside Green or Lakewood Village complexes. They searched only the Lakehurst Apartments, knowing that I lived there, thereby revealing that they were searching for me in particular rather than any Preston, particularly one who lived at Lakeside.

BOTH PRESTON HUGHES CONFESSIONS WERE FALSE

Again, I understand that Texas State courts and this court have already ruled that the State of Texas did not violate any of my constitutional rights when getting my confessions. However, my confessions were false nonetheless.

After the Central Park Jogger exonerations, it should be apparent to everyone that criminal suspects confess to crimes they don't commit, and that police interrogators are more interested in clearing pending cases than uncovering the truth. The New York Police Department got four of five young men to confess to a crime to which not one of them committed. Antron McCray, Kevin Richardson, Raymond Santana and Kharey Wise falsely confessed to the assault and rape of Trisha Meili. Yusef Salaam didn't implicate himself, he was instead falsely implicated by the other four. And Matias Reyes, the real perpetrator, remained free and would go on to rape and kill.

More importantly, the Innocence Project reports that in about 25% of DNA exoneration cases, innocent defendants made self-incriminating statements, delivered outright confessions or pled guilty. One quarter of the people exonerated by DNA were imprisoned because they gave false self-incriminating statements, gave false confessions, or falsely pled guilty. False confessions are not an isolated problem.

I could give some explanations for false confessions:

That police interrogators are more interested in clearing cases than uncovering the truth,

The inherent dishonesty associated with the minimization-maximization interrogation technique,

The bogus science connected with the Reid Nine Steps of Interrogation Methodology.

What is no longer debatable is that confessions should be tested against all of the evidence in the case. In each of my confessions, I revealed my lack of knowledge of the crime by claiming that I stabbed Miss Charles wildly as many as 10 tens. In my second confession I added that I stabbed her young cousin wildly and repeatedly. The autopsy reports and show that each victim was stabbed only twice, and each victim was stabbed with great precision, and each victim was stabbed just as the other. Each victim suffered one non-fatal stab wound to the upper left chest area. Each victim suffered one fatal wound to the left side of the neck that severed or perforated both the carotid artery and the jugular vein. [See Exhibits E and F, my first and second confessions.]

ADDITIONAL COMMENTS ABOUT PATRICK McCANN

On August 27, 2012 Patrick McCann filed a Motion with this court (Docket entry 52) entitled OPPOSED MOTION TO PERMIT EX PARTE SEALED CONSIDERATION OF APPLICATION FOR AUTHORIZATION FOR FUNDING AND APPOINTMENT OF MITIGATION INVESTIGATOR.

Mr. McCann provided that any clemency petition to the Texas Board of Pardons and Paroles was to be presented "on or before November 1, 2012". This is incorrect. The Texas Administrative Code is very clear. Applications for Executive Clemency in a death penalty case must be filed with the Texas Board of Pardons and Paroles not later than the 21st calendar day before the day the execution is scheduled. [See 37 TAC 143.43(a) and 37 TAC 143.57(b).] Any associated amendments to an application for Executive Clemency in a death penalty case must be delivered to the Texas Board of Pardons and Paroles not later than the 15th calendar day before the execution is scheduled. [See 37 TAC 143.43(b) and 37 TAC 143.57(c).] Even the 15th calendar day before November 15, 2012 is October 31, 2012, not November 1, 2012.]

Also, I don't understand why Mr. McCann would now ask for money to hire a mitigation investigator, when on July 3, 2012 he filed a successor Texas State application for writ of habeas corpus on mitigation. One of the two issues raised there was on mitigation. Mr. McCann should have obtained the services of a mitigation investigator before he filed the July 3, 2012 Texas State successor application for writ of habeas corpus. Mr. McCann should have done his mitigation investigation first then filed the Texas State successor application for writ of habeas corpus on a claim of mitigation.

This becomes even more troubling, especially for me, because on August 29, 2012 the Texas Court of Criminal Appeals denied that Texas State successor application for writ of habeas corpus because Mr. McCann didn't present adequate or proper mitigation evidence. [See Exhibit G.]

Mr. McCann should have asked for money to investigate my innocence.

CONCLUSION

All of the underlying facts presented in this motion are old, but the derived facts are new. That Miss Charles did not and could not have identified her attacker is new. That Miss Charles and Mr. Taylor were stabbed by a double-edged knife, and not a single-edged hunting knife, is new. That the blade of the murder weapon was no wider than 5/8" is new. That my apartment was searched twice, not once, is new. That items must have been staged for photographic purposes during the second search, including the victim's glasses, is new. That HPD officers fabricated evidence and committed perjury is now new.


I contend that Mr. McCann didn't derive these same facts because he didn't look. Thus, he needs to be replaced by counsel who will advance my legitimate claims of innocence. However, the prosecution and all of the associated state appeals attorneys did not derive these new facts either, and they were duty bound to look. The prosecution and all of the state appeals attorneys are duty bound not to convict (or affirm convictions) but to see that justice is done. [See Texas Code of Criminal Procedure Article 2.01.] The prosecution and all of the state appeals attorneys are duty bound to exercise due diligence at all times, during all stages of criminal proceedings.

Thus, since the state attorneys did exercise due diligence and didn't derive these new facts, then my attorney couldn't have derived them either, even if he did exercise due diligence.

PRAYER

For the above reasons I, Mr. Preston Hughes, III, respectfully pray, in the interests of justice, for immediate appointment of replacement counsel. I also pray for further relief as this court may see fit.

Respectfully submitted,



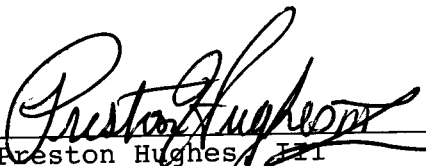
PRESTON HUGHES, III Pro Se
000939 TDCJ Polunsky Unit
3872 FM 350 South
Livingston, TX 77351-8580

CERTIFICATE OF SERVICE

I hereby certify that on or about the date entered below a true and correct copy of this MOTION TO REPLACE COURT APPOINTED ATTORNEY was delivered via United States Postal Service first class mail, with adequate postage prepaid, to the following two individuals:

Fredericka Searle Sargent
Office of Attorney General
Capitol Station
PO Box 12548
Austin, TX 78711-2548

Patrick F. McCann
Rice Hotel
909 Texas St Ste 205
Houston, TX 77002-3149


Preston Hughes, III
000939 TDCJ Polunsky Unit
3872 FM 350 South
Livingston, TX 77351-8580

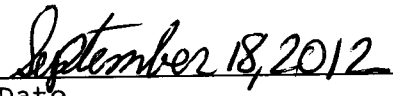

Date

EXHIBIT A

AUTOPSY REPORT FOR MISS SHANDRA CHARLES

JOSEPH A. JACHIMCZYK, M.D., J.D.

FORENSIC PATHOLOGIST

ATTORNEY AT LAW

CHIEF MEDICAL EXAMINER



(713) 796-9292

(713) 796-6815



OFFICE OF THE MEDICAL EXAMINER OF HARRIS COUNTY
JOSEPH A. JACHIMCZYK FORENSIC CENTER

1885 OLD SPANISH TRAIL

HOUSTON, TEXAS 77054

AUTOPSY REPORT

Case 88 - 6085

September 27, 1988

PATHOLOGICAL DIAGNOSES ON THE BODY

OF

LaShandra Rena Charles

2301 Hayes Road, #6214

Houston, Texas

1. Stab wound of the neck.
2. Stab wound of the chest.

OPINION

It is our opinion that the decedent, LaShandra Rena Charles, came to her death as a result of stab wound of the neck, Homicide.

A handwritten signature in cursive script, reading "Joseph A. Jachimczyk".

Joseph A. Jachimczyk, M.D., J.D.

Chief Medical Examiner

A handwritten signature in cursive script, reading "Vladimir M. Parungao".

Vladimir M. Parungao, M.D.

Assistant Medical Examiner

Case 88 - 6085

-2-

POSTMORTEM EXAMINATION ON THE BODY OF

LaShandra Rena Charles
2301 Hayes Road, #6214
Houston, Texas

HISTORY: This 15 year old black female was pronounced dead at 12:58 a.m., on September 27, 1988, at Ben Taub General Hospital. (See Companion Case 88 - 6084).

AUTOPSY: The autopsy was performed in the Joseph A. Jachimczyk Forensic Center of Harris County by Assistant Medical Examiner Vladimir M. Parungao, M.D., at the request of Chief Medical Examiner Joseph A. Jachimczyk, M.D., J.D., beginning at 10:00 a.m., on September 27, 1988.

EXTERNAL APPEARANCE: The body was that of a 15 year old black female, appearing older than the stated age, measuring 65 inches in length and weighing 127 pounds. The body was well developed and well nourished in appearance. There was total body rigidity and fixed postmortem lividity posteriorly. The head was normocephalic with a normal amount of kinky black hair which was beaded, measuring 12 inches in length. The eyes were covered with corneal caps. The ears and nose were unremarkable. The mouth contained natural teeth. The neck was symmetrical and stable. There was a stab wound in the left upper side at the left submandibular area. The thorax was symmetrical in shape and contour with unremarkable breasts bilaterally. There was a stab wound on the left side. The abdomen was flat. The external genitalia were those of a normal adult female with unremarkable pubic hair in normal distribution. There was no injury to the mucosa or submucosa of the vagina. The perineum was intact. The lower extremities showed no edema. The toenails were partially covered with red nail polish. The upper extremities showed recent needle punctures in the left and right cubital areas. The fingernails were covered with pink nail polish. The back was unremarkable. The cerebrospinal fluid was clear.

INTERNAL EXAMINATION: Section: The body was opened through the usual Y-shaped thoracoabdominal incision. There was a slight increase in subcutaneous fat and muscle tissue encountered upon dissection that measured 1-1/2 inches at the level of the umbilicus. There was a stab wound track involving the left 3rd intercostal space. There was also a stab wound track involving the left 4th intercostal space. After removal of the sternal plate, there were approximately 50 milliliters of blood tinged fluid in the left pleural cavity and none in the right. There were no adhesions observed. The pericardial sac was smooth and glistening and upon opening, there was no increase in fluid or adhesions. The abdominal

LaShandra Rena Charles

Case 88 - 6085

-3-

cavity contained no increase in fluid or adhesions. There was no organ displacement noted. The diaphragmatic domes were normally situated and the appendix was present in the right lower quadrant.

HEART: The heart weighed 275 grams. The epicardial surface was smooth and glistening. The epicardial fat was normal in amount and distribution. On section, the right ventricle averaged 3/16 inch in thickness and the left ventricle averaged 5/8 inch in thickness. The myocardium was beefy red in appearance. The endocardium, papillary muscles, chordae tendineae, the valves and their cusps, the foramen ovale, the coronary vessels and the aorta were all grossly unremarkable on section.

LUNGS: The right lung weighed 250 grams and the left lung weighed 200 grams. The pleurae were smooth and glistening. The fissures were well demarcated. On section, the parenchyma was grossly unremarkable. Examination of the tracheobronchial tree showed a small amount of mucoid secretions. Examination of the pulmonary vessels showed no evidence of thrombi or emboli.

LIVER: The liver weighed 950 grams. The capsule was smooth and glistening. On section, the parenchyma was orange-brown in appearance. The gallbladder contained 10 milliliters of bile and appeared grossly unremarkable as was the biliary tree.

Pancreas: The pancreas was normal in shape and configuration and on section, it was grossly unremarkable.

Adrenals: The adrenal glands were unremarkable, bilaterally.

SPLEEN: The spleen weighed 100 grams. The capsule was smooth and glistening. On section, the parenchyma was grossly unremarkable.

GENITOURINARY TRACT: The kidneys together weighed 210 grams. The capsules were thin, easily stripped, exposing a smooth surface. On section, the corticomedullary junctions were well demarcated. The calyces, pelves, ureters and urinary bladder were grossly unremarkable. The uterus with the attached cervix and both adnexa weighed 50 grams. On section, the cervix, endocervix, endometrium, myometrium, tubes and ovaries were grossly unremarkable.

GASTROINTESTINAL TRACT: The stomach was normal in shape and configuration. The serosal surfaces, muscularis layer and mucosa were grossly unremarkable. The lumen contained 50 milliliters of yellow-brown mucoid food particles. The duodenum and the rest of the small and large intestines including the appendix and esophagus were grossly unremarkable.

BONES: There were no fractures of the long bones.