

In the 174th Judicial District Court of Harris County, Texas
and in the Court of Criminal Appeals in Texas

Ex parte Preston Hughes III, Mr. Hughes

APPLICATION FOR WRIT OF HABEAS CORPUS
and
MOTION FOR STAY OF EXECUTION

THIS IS A CAPITAL CASE

Execution: November 15, 2012

Preston Hughes III, Mr. Hughes, filing pro se

Mr. Hughes Preston Hughes III is currently confined on death row at the Polunsky Unit in Livingston, Texas, pursuant to a judgment by the 174th Judicial District Court on May 4, 1989. Mr. Hughes was wrongfully convicted of capital murder and therefore wrongfully sentenced to die. He is scheduled for execution on November 15, 2012.

Mr. Hughes' court-appointed post-conviction counsel has, for more than two decades, refused to raise claims based on Mr. Hughes' innocence. Even now, in the face of recently discovered and compelling evidence of innocence, and police and prosecutorial misconduct, post-conviction counsel refuses to raise these claims or argue that Mr. Hughes' innocence allows this court to reach their merits. By refusing to withdraw and by failing to inform Mr. Hughes of his right to proceed pro se, post conviction counsel has actively prevented Mr. Hughes from presenting constitutional claims that rest on evidence that simultaneously shows he has been framed for a crime he did not commit.

Against Mr. Hughes express wishes, post-conviction counsel has filed successors knowing that his unauthorized action could jeopardize Mr. Hughes' ability ever to litigate his claims.

Mr. Hughes latest motion for replacement counsel was recently denied. He therefore proceeds pro se. This Court should stay Mr. Hughes execution in order to consider the extraordinary evidence of innocence and police and prosecutorial misconduct that laypersons have labored to bring before the Court in the face of resistance from recalcitrant, conflicted, post-conviction counsel.

The issues of innocence and misconduct presented herein implicate the integrity of the system of justice, as well as Mr. Hughes fundamental constitutional rights. They are raised now, not to delay the carrying out of a just sentence, but to prevent a gross injustice. The evidence undergirding these claims was developed long ago; however, Mr. Hughes was prevented from presenting the evidence sooner because his attorney refused to withdraw despite express and irreconcilable differences.

STANDARDS GOVERNING SUCCESSOR APPLICATIONS

The claims for relief presented herein can be reached under TCCP 11.071 Section 5(a)(2), which codifies the gateway innocence exception in *Schlup v. Delo*, 513 U.S. 298 (1995) to claims otherwise subject to dismissal as an abuse of the writ. The vast preponderance of the evidence shows that no reasonable jury would have convicted Mr. Hughes if presented with the proof herein of police and prosecutorial misconduct. The evidence of misconduct includes a perjured identification of Mr. Hughes, false and misleading scientific testimony by the thoroughly discredited supervisor of the infamous crime lab's serology section, evidence planted by officers of the Houston Police Department, and a confession coerced by the promise of leniency.

The preponderance of this evidence demonstrating that the State framed Mr. Hughes also demonstrates the constitutional violations of which he complains. The State is left with no evidence of his guilt. Mr. Hughes is actually innocent and his trial was constitutionally marred by the most despicable sort of police and prosecutorial misconduct imaginable. This court should, therefore, reach the merits of the claims to follow.

This court can reach the merits of Mr. Hughes Claims I through X below under TCCP 11.071 Section 5(a)(1). The seminal decisions in *Ex parte Chabot* on which these claims depend was not available until 2009, long after Mr. Hughes' filed his original application. Mr. Hughes court appointed habeas counsel, Pat McCann filed successor applications since *Ex parte Chabot*, but these successors were not authorized by Mr. Hughes and

should be struck. Mr. Hughes has repeatedly tried to dismiss McCann. He has told his attorney he did not want to be represented by him and has demanded that McCann cease litigating in his name. Mr. Hughes asks this honorable Court to strike Mr. McCann's unauthorized and inadequate application and to replace it with this application.

The Great Writ has for centuries been the last hope of innocent people held incommunicado. Mr. Hughes is an innocent man. Mr. Hughes as been effectively held incommunicado, at least with respect to presenting his claims of innocence to this honorable Court. His post-conviction attorneys have refused, both passively and assertively, to promote his claims of innocence.

Mr. McCann has used articles in the *New York Times*, the *Texas Tribune*, and the *Houston Chronicle* to tell the nation that not only will he not defend his client's innocence, but that he feels ethically compelled not to do so. Mr. McCann thereby injected suspicion into the public consciousness that there is evidence of Mr. Hughes' guilt of which Mr. McCann cannot speak. Mr. McCann's very statement – that he cannot ethically raise innocence claims – violated Mr. Hughes' privilege of confidentiality and undermined Mr. Hughes right to present claims in a successor petition under Section 5(a)(2).

Although the failings of state habeas of attorneys are common complaints, the conflict between Mr. Hughes and his appointed counsel is of a different magnitude. Mr. McCann has not just failed Mr. Hughes, he has actively prevented him from raising meritorious claims for relief by filing unauthorized successor petitions that undercut Mr. Hughes ability under both section 5(a)(1) and 5(a)(2). Mr. McCann's latest unauthorized filing is

a case in point. McCann makes no claim that Mr. Hughes is innocent, though that has been Mr. Hughes' position for nearly two and a half decades. Instead, Mr. McCann attempts to plant suspicion in the mind of this Court that Mr. Hughes is guilty, just as Mr. McCann previously planted suspicion of guilt in our nation's consciousness. This Court should not recognize the pleadings of an attorney who has purposefully ignored evidence of innocence developed by others, who, by refusing to withdraw, prevented Applicant from raising claims pro se based on evidence of innocence that simultaneously prove police and prosecutorial misconduct, and who now files unauthorized pleadings deleterious to the procedural posture of an Applicant's case. Instead, it should treat this pro se application as an initial successor and reach the merits of the claims herein under Section 5(a)(1) and 5(a)(2).

PROCEDURAL HISTORY

The Texas Court of Criminal Appeals (CCA) denied relief on Mr. Hughes' initial post-conviction application for Writ of Habeas Corpus and dismissed his first subsequent habeas application. *Ex parte Hughes*, WR-45,876-01 (Tex. Crim. App. Sept. 13, 2000; not for publication) and *Ex parte Hughes*, WR-45,876-02 (Tex. Crim. App. Nov. 14, 2001; not for publication). No petition for writ of certiorari was filed with the U.S. Supreme Court.

On November 21, 2001 a petition for writ of federal habeas was filed before U.S. District Judge Kenneth Hoyt, which was dismissed on April 30, 2004. Judge Hoyt also denied Mr. Hughes COA to the U.S. Court of Appeals for the Fifth Circuit.

On January 4, 2006 the U.S. Court of Appeals for the Fifth Circuit granted Mr. Hughes COA. *Hughes v. Dretke*, Case No. 04-70022 (5th Cir. Tex., 2006; not for publication).

On June 5, 2008 the U.S. Court of Appeals for the Fifth Circuit denied Mr. Hughes habeas relief. *Hughes v. Quarterman*, 530 F.3d 336 (5th Cir. Tex., 2008). On May 18, 2009 the Supreme Court denied certiorari. *Hughes v. Quarterman*, 556 U.S. 1239 (2009).

On July 25, 2012 the Court of Criminal Appeals received Mr. Hughes' second subsequent state habeas application; denied on August 29, 2012. *Ex parte Hughes*, 76,869 (Tex. Crim. App. 2012; not for publication). An appeal to the Supreme Court is pending.

On September 17, 2012 a civil suit was filed in Harris County District Court on behalf of Mr. Hughes asserting that TDCJ has denied him the right to be free from cruel and

unusual punishment by changing the protocol for lethal injections. On October 3, 2012 the CCA ordered the presiding trial judge to refrain from issuing any order purporting to stay Mr. Hughes' November 15, 2012 execution. A final court decision is pending.

On September 12, 2012, Mr. Hughes submitted a motion to the United States District Court for the Southern District of Texas, Houston Division, asking the court to replace Patrick F. McCann as Mr. Hughes' counsel. On October 10, 2012, U.S. District Judge Kenneth Hoyt denied Mr. Hughes' motion for new counsel.

No later than October 30, 2012, Mr. Hughes notified Patrick F. McCann, Carmen Roe, and this Court that Mr. Hughes dismissed Patrick F. McCann and Carmen Roe as his attorneys.

SUMMARY OF CLAIMS

Preston Hughes III was convicted in violation of his right to due process and a fundamentally fair trial under the Fourteenth Amendment because of:

- I False and misleading scientific testimony regarding blood on Mr. Hughes' knife, presented by completely discredited Criminalist James Bolding, then supervisor of the serology section of the Houston Police Department crime lab; withholding of exculpatory evidence regarding the behavior of the chemical reagent o-tolidine; withholding of blood-specific confirmatory tests on Mr. Hughes' knife.
- II False and misleading scientific testimony regarding invisible blood on Mr. Hughes clothing, presented by the same discredited James Bolding working in concert with Assistant Medical Examiner Robert Jordan and Assistant District Attorney Chuck Noll; withholding of exculpatory evidence regarding blood-specific confirmatory tests on Mr. Hughes' clothing;
- III False and misleading testimony about the absence of blood on victim's clothing, presented by Assistant Medical Examiner Robert Jordan in concert with Assistant District Attorney Robert Jordan; withholding of exculpatory evidence regarding blood on a victim's short pants.
- IV False and misleading scientific testimony regarding the consistency of the victims' wounds with Mr. Hughes' knife, presented by Assistant Medical

Examiner Robert Jordan who admittedly familiarized himself with Mr. Hughes' case only as he sat in his car on the morning of his testimony;

- V False and misleading police testimony about a dying declaration purportedly given by one of the victims, though that victim was at least unconscious and probably dead to a medical certainty;
- VI False and misleading testimony by HPD officers regarding the means by which they identified Preston Hughes as a suspect; withholding of exculpatory evidence regarding the means by which the HPD identified Preston Hughes as a suspect.
- VII False and misleading testimony about an illegal search of Mr. Hughes' apartment by Sgt. Gafford and/or other officers of the Houston police department; evidence planted in Mr. Hughes' apartment by officers of the Houston Police Department;
- VIII False and misleading testimony about witnessing a victim's glasses in Mr. Hughes' apartment, presented by Sgt. Dennis Gafford of the Houston Police Department.
- IX Two false confessions coerced under the promise of leniency by Sgt. Dennis Gafford, the same HPD officer who provided false and misleading testimony regarding the illegal search of Mr. Hughes' apartment and the planting of evidence therein;
- X The cumulative effect of the false and misleading testimony and other State misconduct identified in claims I through VII above.

Each and all of these actions were in violation of Mr. Hughes' right to due process under the Fourteenth Amendment of the U.S. Constitution.

Mr. Hughes is an innocent man, falsely convicted by police and prosecutorial misconduct, whose execution will violate the Fourteenth Amendment to the Constitution.

STATEMENT OF FACTS

The Victims

On 26 September 1988, 15-year-old Shandra Charles and 3-year-old Marcell Taylor were murdered in a dark, overgrown field in west Houston. Each had been stabbed twice: once in the left shoulder and once in the left side of the neck. Marcell Taylor had also suffered a cutting wound (a slash) to his left chest extending to his left arm.

The stab wound to Shandra Charles' neck severed both her carotid artery and her jugular vein. She quickly lapsed into unconsciousness and died within minutes.

The stab wound to Marcell Taylor's neck perforated both his carotid artery and his jugular vein. He survived somewhat longer than did Shandra Charles, but he was dead on the scene when the first officers arrived.

The Houston Police Department (HPD) claimed that Shandra Charles survived longer than did Marcell Taylor.

Mr. Hughes as the Suspect

Just nine days prior to the murders, the HPD had questioned Mr. Hughes about his relationship with a married woman. Mr. Hughes and the married woman had, on several

occasions, engaged in consensual sex at Mr. Hughes' apartment. The husband had confronted Mr. Hughes regarding the matter and had reported to the police that Mr. Hughes had kidnapped and raped his wife. The police investigated and found no basis for pursuing a case. They did, however, include the incident in their database.

It was that recent incident, coupled with the proximity of Mr. Hughes' residence to the crime scene, that prompted the HPD to pursue Mr. Hughes as the one and only suspect in the murders of Shandra Charles and Marcell Taylor.

The HPD claimed otherwise. In their police reports, the HPD claimed they approached and questioned Mr. Hughes only because Shandra Charles, in a dying declaration, identified her attacker as someone named Preston who lived at Lakeside. After reviewing the tenant list from only the Lakehurst apartments, the HPD found one person named Preston. They asked that person, Mr. Preston Hughes III, downtown for questioning.

The First Search of Mr. Hughes' Apartment

As Mr. Hughes was being transported downtown, HPD officers searched his apartment without warrant or consent. The officers secured items from his apartment. Among the items secured were Mr. Hughes' knife, its sheath, and some of his clothing. The items were checked into the police property room at 2:58 AM.

Despite the date and time on their own property invoice, the HPD denies conducting the first search.

The First False Confession

Mr. Hughes' interrogation began at 4:10 AM, more than an hour after the items from his apartment had been checked into the property room. The HPD assured Mr. Hughes that the female victim had identified him as her attacker and that the HPD found the murder weapon in his apartment. The HPD placed Mr. Hughes under arrest.

After causing Mr. Hughes to fear a murder conviction based on falsified evidence, the HPD provided him with an alternative. The HPD offered to release him if he signed a statement in which he admitted stabbing the female victim in innocent fashion. Because Mr. Hughes was ignorant of the murders, the resulting false confession contained multiple, demonstrable errors. After he signed the statement, the HPD allowed him to make phone calls. Mr. Hughes first called his employer to inform him that he would not be into work that day but would be into work the next.

In their police reports and during trial, the HPD denied offering Mr. Hughes leniency in exchange for his statement.

The Second Search of Mr. Hughes' Apartment

After sunrise, the HPD conducted a second search of Mr. Hughes' apartment. The HPD removed from the property locker the items they had checked in previously at 2:58 AM. At 9:15 AM, they returned the previously secured items to Mr. Hughes' apartment and placed them approximately as they had been found during the first search. They then photographed the items as if they were conducting an original search, not a recreation. It was during this second search, the one in which they staged Mr. Hughes' knife, sheath,

and clothes, that they first photographed Shandra Charles' eyeglasses between the cushions of Mr. Hughes' couch.

The HPD denied any search other than the 9:15 AM search. The HPD denied planting the eyeglasses.

The Second False Confession

Instead of being released as promised, Mr. Hughes was charged with capital murder and jailed. As Mr. Hughes waited in jail for his promised release, he became concerned about the deal he had struck with the police. He attempted to contact his mother via the jailhouse pay phone. He reached his mother's colleague instead. As he was speaking with her, he was informed that he would have to change his previous statement. "They're telling me to change my statement," he told his mother's colleague. "I have to go to change my statement. ... They're here. I have to go."

Mr. Hughes was then told he would have to sign a second statement explaining how he accidentally stabbed the young boy. Mr. Hughes signed that second statement, unwittingly introducing additional factual errors.

The Serology Testing and Testimony of James Bolding

No blood was apparent on Mr. Hughes' clothing he wore that night, nor on the knife he allegedly used to inflict the spurting wounds on two murder victims. For seven months, the clothing remained untested until, only three days before trial testimony began, James Bolding conducted one non-specific screening test and two blood-specific confirmatory tests on Mr. Hughes' blue jeans and blue work shirt. The non-specific

screening test returned positive for blood or for any of the many other substances that react in the same fashion as blood. The two blood-specific confirmatory tests returned negative for blood in general and human blood in particular.

James Bolding withheld the results of the blood-specific confirmatory tests. He testified that his testing indicated the presence of blood on Mr. Hughes' clothing.

His testing of the knife was even more egregious. He tested the knife while sitting in the witness box, with the jury present. He added a color change reagent to the knife, well aware that the reagent would react with the rust on the knife. He told the that his courtroom demonstration indicated he had just discovered blood on the knife.

Malfeasance at the Houston PD Crime Lab

In 2002, the city of Houston was shaken by a series of devastating disclosures focusing on its police crime lab. "The people of Houston and many of the city's public officials quite appropriately questioned how many wrongful convictions may have been obtained based on flawed forensic evidence and its presentation to Harris County juries." [Reference 1] The city of Houston and the HPD therefore commissioned an independent investigation to answer the profound questions about the depth and breadth of the problems infecting the lab. James Bolding would turn out to be the central figure in the scandal. It was the same James Bolding that fabricated evidence of Mr. Hughes guilt and withheld actual evidence of his innocence.

Of the many problems uncovered during the investigation of the crime lab and property room, contamination of test samples was a recurring theme. [Reference 1]

Paper bags, boxes, and a variety of other containers are used to store most pieces of evidence, which, among other things, make retrieval more difficult because the evidence is difficult to see without breaking the seal and removing the evidence from the container. Removing the evidence creates unnecessary risks that can be avoided by HPD Crime Lab Independent Investigation submitting evidence in transparent plastic evidence bags. **For example, evidence can be lost or stolen, create a hazard, or become contaminated when removed from its container.** [Emphasis added]

DNA Testing

Soon after the malfeasance of the HPD crime lab was first exposed, Shandra Charles' DNA mysteriously appeared on Mr. Hughes blue jeans. Though the DNA test report was dated January 21, 2003, a copy of the report was not provided to Mr. Hughes for more than nine and one-half years. Mr. Hughes received the scant documentation only recently, on August 23, 2012.

The report from Orchid Cellmark Laboratory explained that Mr. Hughes' blue jeans were subjected to a presumptive blood screening test, and that the test returned positive. The region that tested positive was then subjected to DNA testing. The results of that test were that Shandra Charles' DNA was present but Marcell Taylor's DNA was absent.

The result is suspicious on its face. The result suggests that someone could stab Shandra Charles in the neck and in the chest, leave no visible evidence of blood on his clothing, but leave a single invisible trace detectable only by sophisticated DNA analysis. The result would further suggest that the same person could also stab Marcell Taylor in the neck and in the chest, and inflict an additional slash wound to the chest and arm, yet not leave even one trace of blood detectable by sophisticated DNA testing. The circumstances of such blood spatter are impossible.

The result is suspicious also due to the history of the serology testing on those jeans. No blood was apparent on Mr. Hughes' jeans before they were tested by James Bolding of the HPD crime lab. Some portions of those jeans, however did return positive during the presumptive blood screening test. The portions that tested positive were literally cut from the blue jeans and subjected to two blood-specific confirmatory tests. Those blood-specific confirmatory tests both returned negative for blood. The second of those two tests returned, more specifically, negative for human blood.

The jeans in Cellmark's possession had not previously returned a positive result to a blood screening test, much less to any blood-specific confirmatory test. It is therefore suspicious that those jeans returned a positive result to Cellmark's blood screening test.

The result is more suspicious still in light of the police and lab misconduct in Mr. Hughes' case. His jeans had already been surreptitiously and improperly removed from the proper chain of custody and control, and had been so removed for illicit purpose. They had been removed from Mr. Hughes apartment during an illegal nighttime search, then returned and staged in Mr. Hughes' apartment for photographic purposes.

The sudden appearance of blood on blue jeans that had been free of blood eleven years earlier must reflect contamination, either unintentional or otherwise. Disturbingly, a recent examination of the trial exhibits remaining at the courthouse revealed that Shandra Charles' bloody shorts were stored in the same cardboard box as the other exhibits, but were not enclosed in a plastic bag or protected in any fashion. The opportunity for contamination is obvious.

Most disturbing still is the possible role of Sgt. Don Hamilton in the contamination. As will be detailed in Claim V, Sgt. Hamilton fabricated Shandra Charles' dying declaration and testified falsely in that regard. Sgt. Hamilton conceded during his testimony that he had some of Shandra Charles' blood on his person and/or his clothing, that he accompanied the detectives to Mr. Hughes' apartment to confront Mr. Hughes, and that he accompanied Mr. Hughes to his bedroom as Mr. Hughes dressed. The blue jeans were left behind on the bedroom floor.

The Report of the Independent Investigator

The results of the independent investigation commissioned by the City of Houston and the HPD were presented in a series of reports culminating with the *Final Report of the Independent Investigator for the Houston Police Department Crime Laboratory and Property Room*, published in June of 2007. [Reference 1] The independent investigator, Michael R. Bromwich, was aided by a law team of eight members, a scientific advisory board of three members, a forensic team of ten members, and a statistics team of three members.

The results of the investigation cast serious doubt on the quality of the convictions in which the HPD crime lab serology section had been involved. In 21% of the 810 cases where the defendant was still incarcerated, the investigators "found major issues calling into question the reliability of the serology work performed by the Crime Lab or the accuracy of the results it reported". In 41% of the 29 cases in which the defendant had already been executed, the investigators found similar "major issues".

To repeat, the independent commission found major issues in the serology work in 41% of the executions they reviewed.

Mr. Hughes' case is a remnant of that crime lab scandal. Mr. Hughes was identified in the report both by name and by case number as one of the defendants whose case involved major serology issues.

The independent investigator and his team issue five recommendations relevant to any and all prisoners whose cases involved major serology issues.

1. The HPD was tasked to determine whether evidence currently exists and can be located for each and every case. Mr. Hughes is unaware of any such action taken by the HPD in his case.
2. The District Attorney's Office and the HPD were tasked to notify each prisoner that an independent investigation had identified at least one potentially significant serologic issue associated with his case. Mr. Hughes has received no such notification.
3. The District Attorney's Office was tasked to advise each prisoner that DNA testing could possibly be performed on the evidence. Though there is substantial DNA evidence available for testing in Mr. Hughes' case, including a vaginal swab having semen that the State maintains came from the murderer, Mr. Hughes has not been contacted by the District Attorney's Office regarding possible DNA testing. Mr. Hughes notes herein that he desires such DNA testing.
4. Harris County and the HPD were tasked with arranging the DNA analysis to be performed without cost to the prisoner. Neither Harris County nor the HPD has

offered to arrange and pay for analysis of DNA evidence in Mr. Hughes' case. Mr. Hughes reiterates his desire for such DNA testing.

5. Harris County and the City of Houston were tasked with appointing a special master to review the complete investigative, prosecutorial, appellate, and post-conviction habeas record of each major-issue serology case identified in the report. Mr. Hughes is unaware of any such special master being assigned to his case.

The HPD, the City of Houston, the District Attorney's Office, and Harris County have now failed for more than five years to act on the recommendations of the independent investigators that the City and the HPD commissioned. Mr. Hughes now faces execution for a crime he did not commit, not only because of the actions of the HPD and its crime lab, but also because the department, the city, the county, and the DA refuse to act on their knowledge that the crime lab engaged in unscientific and fraudulent practices, and that Mr. Hughes' case has been identified by the independent investigators as one of those individuals worthy of review by a special master.

The Role of James Bolding

The central figure in the crime lab scandal, James Bolding, is a central figure in Mr. Hughes' case as well. Mr. Bolding's conduct lies at the heart of the first three claims presented in this application.

Mr. Bolding was, at the time of the of Mr. Hughes' trial and at the time of the investigation into the crime lab malfeasance, the supervisor of the serology section. The independent investigators described his performance with unkind words.

Mr. Bolding joined the Crime Lab in October 1979 and worked as a drug chemist for approximately eighteen months. ... Less than a year after Mr. Bolding began training in serology, his supervisor died. ... The rapid promotion of Mr. Bolding as HPD's lead forensic serologist would prove fateful for the quality of the Crime Lab's analysis of biological evidence for decades to come. With Mr. Bolding, the Crime Lab never had a well-trained or technically competent leader of its Serology Section.

The investigators found that the serology cases investigated under Mr. Bolding's tenure were typically "devoid of any indication that Mr. Bolding or anyone else reviewed the work performed by the Crime Lab's serologists". More to the point, the investigators found no evidence that anyone reviewed the cases analyzed by Mr. Bolding "who, ironically, was the sloppiest of all the Crime Lab's serologists."

Of the many people involved in the scandal, the investigators reserved their harshest criticism for Mr. Bolding.

We have identified three cases in which Mr. Bolding was involved in the wholly inappropriate and unethical alteration of bench notes reflecting the serology results obtained by either himself or another Crime Lab serologist. Each of these cases reflects a disturbing lack of integrity on the part of Mr. Bolding. Moreover, Mr. Bolding's conduct in connection with the case of currently incarcerated defendant Dwight Riser appears to constitute scientific fraud and perjury.

The independent investigators, though, were not the only people to conclude that Mr. Bolding engaged in scientific fraud. One of Mr. Bolding's victims, George Rodriguez, was exonerated by DNA testing after seventeen years of wrongful imprisonment. Mr. Rodriguez sued Mr. Bolding and the city of Houston. Mr. Bolding settled out of court,

but the city went to trial. The city conceded that Mr. Bolding's serology report was knowingly fabricated, but claimed the city was nonetheless not liable.

One of the questions posed to the jurors was: "Did James Bolding's knowingly misleading and scientifically inaccurate serology report play a substantial part in bringing about or actually causing Plaintiff's injuries or damages?" To that question, the jurors answered "Yes".

Just this week, the mayor of Houston apologized to George Rodriguez for the injustice brought upon him by James Bolding and the HPD crime lab.

"On behalf of the citizens of Houston, I want to apologize to you," said Mayor Parker to Mr. Rodriguez. "You were an innocent victim of a faulty system and I am sincerely sorry for the injustice you suffered. There is no amount of money that can make up for the years of your life that have been lost to this ordeal. But, hopefully, this settlement will somehow help in moving forward with the rest of your life."

Though Mr. Hughes was similarly framed by James Bolding, Mr. Hughes faces his imminent execution. Rather than seeking an apology from the mayor of Houston, Mr. Hughes seeks relief from this honorable Court.

CLAIM I

In violation of his Fourteenth Amendment rights to due process and a fundamentally fair trial, Mr. Hughes was convicted based on the false and misleading testimony of Criminalist James Bolding regarding the finding of blood on Mr. Hughes' knife.

In the midst of the trial, while sitting in the witness box, Mr. Bolding tested Mr. Hughes' rusty knife for blood, the very knife that the State claimed was the murder weapon. Mr. Bolding purposefully used a reagent known within the serology community to react with rust as readily as it reacts with blood. Mr. Bolding then testified that the dramatic color change of the reagent indicated the presence of blood on Mr. Hughes' knife.

The test procedure, test setting, and test report violated all accepted scientific protocols and methods, and thereby violated Mr. Hughes' right to due process and a fundamentally fair trial guaranteed by the Fourteenth Amendment.

Discussion

Mr. Hughes' knife was secured from his apartment on the day after the murders, sometime before 2:58 AM on September 27, 1988. No blood was apparent on the knife.

[V18 P270 L14]

Other than a surreptitious return trip to Mr. Hughes' apartment, the knife seemingly remained in the HPD property room, untested, for the next seven months. Just four days prior to the beginning of testimony at Mr. Hughes' trial, the knife was transferred to the serology section of the HPD Crime Lab and received by James Bolding. [Exhibit 1 P37]

The next day, someone at the serology section filled out a form identifying the evidence in Mr. Hughes' case that was to be tested for blood. The knife was not among the items to be tested. [Exhibit 2]

The knife would not be tested until the day after trial testimony began. That was the day James Bolding was scheduled to testify. Mr. Bolding, in fact, tested the knife in the midst of the trial, while he was sitting in the witness box in the presence of the jury. [V19 P443 L11]

Mr. Bolding intended to perform a cheap magic trick in the guise of a blood screening test. A blood screening test consists of applying one of various chemical reagents to a test sample. If the reagent comes into contact with even a slight trace of blood, it will change color or it will glow, depending on the reagent used.

While simple and inexpensive, blood screening tests are non-specific. The reagents respond to a long list of substances other than blood. Screening tests are therefore typically used when blood is not apparent to help identify regions worthy of more difficult, more expensive, blood-specific confirmatory testing.

The reagent selected by Mr. Bolding was o-tolidine, also known as orthotolidine. [V19 P452 L15] Mr. Bolding knew or should have known that the o-tolidine would change color whether or not there was blood on the knife. O-tolidine reacts to rust as it reacts to blood, and Mr. Hughes' knife was rusty.

Mr. Hughes described his knife as rusty in his first confession, and that confession was read into the court record. [V18 P238 L23] A photograph of the knife taken at Mr.

Hughes' apartment confirms the blade was rusty. A region of rust is visible near the tip of the blade. [Exhibit 3] No one has ever disputed that Mr. Hughes' knife had rust on it.

As early as 1825, investigators were worried about rust returning false positives during tests for blood. [Reference 2 P74] Reference 3 provides a table showing which reagents return false positives for various substances other than blood. That table is included below. It shows that use of orthotolidine on a rusty test sample will result in a false positive.

	TMB	Phenolphthalein	Leucomalachite Green	Orthotolidine
Vegetables	✓			✓
Fruits	✓			✓
Horseradish	✓	✓	✓	✓
Rust	✓			✓

Interestingly, the table shows also that phenolphthalein will not result in a false positive when used on a sample contaminated with rust. Mr. Bolding could just as easily chosen to conduct the courtroom testing with phenolphthalein. According to the table, that would not have resulted in a false positive.

In fact, during the investigation into the crime lab corruption, the independent investigators mentioned that the crime lab "typically would screen suspected bloodstains by applying a color test using the chemical phenolphthalein." [Reference 1 P70]

Mr. Bolding, nevertheless, elected to use o-tolidine as the reagent for the test, and thereby insured that the test would return positive, as it in fact did. The prosecutor then elicited testimony from Mr. Bolding that blood had been detected on the knife.

[V19 P451 L5]

Defense counsel attempted to blunt the adverse outcome of the surprise testing by eliciting testimony that other substances might have caused the reaction. Mr. Bolding agreed and listed "radishes, carrots, and beets" as examples of such substances. Mr. Bolding could have and certainly should have then informed the jury that rust would also result in false positives. He chose not to do so. [V19 P455 L16]

It is obvious that the State (in the person of James Bolding and possibly Assistant DA Chuck Noll) staged the testing to ensure that a false positive reaction would occur, that James Bolding would be asked if the test indicated blood, that James Bolding would testify that the test did indicate blood, and that the defense would be left without an effective response. The evidence of that nefarious scheme is:

1. Mr. Bolding elected to use o-tolidine as the reagent, even though it would provide a false positive in the presence of rust. According to the independent investigators, the use of o-tolidine was at least a bit unusual, since the serology lab usually used phenolphthalein. [Reference 1 P70]. According to Reference 3, phenolphthalein would not have resulted in a false positive.
2. When asked a specific question about which substances would cause a false positive, James Bolding elected not to include rust as one of the substances. He instead mentioned "radishes, carrots, and beets." [V19 P455 L16] He thereby demonstrated his knowledge of substances which cause false positives, but he excluded rust.
3. The testing on the knife was delayed even longer than the testing of Mr. Hughes' clothing. The delay was intentional, since the knife was not listed with the other

items to be tested the week prior to trial. [Exhibit 4] By delaying the testing until James Bolding's testimony, any blood-specific confirmatory test would never be performed on the knife. James Bolding's test results would never be challenged.

Despite abetting James Bolding's fraud on the court, Prosecutor Chuck Noll mocked Mr. Hughes' defense for their concern about the integrity of Mr. Bolding's courtroom testing. [V21 P51 L21]

They checked for blood not only on the clothing but on the knife right here in front of you. Normally the defense tactic would be they did something over there sneaky, but this time it was done in the witness stand where they could watch and still they're complaining.

Mr. Bolding told you based on his scientific training that there was evidence of blood on this knife.

To support their presentation of false and misleading testimony, the State withheld exculpatory evidence from Mr. Hughes' defense team. By intentionally delaying the testing until the defense had no time to perform independent research and testing, the state effectively withheld knowledge of the response of o-tolidine to rust. Similarly, by delaying the non-specific blood screening test until the State's witness was testifying, the State effectively withheld any blood-specific confirmatory testing that would normally and properly follow a positive screening test. Similarly, by delaying the testing in such extreme fashion, the State effectively withheld the lab report that would normally and properly follow any serological test.

Somehow, under a guise of science, the State managed to transform exculpatory evidence of no blood apparent on the knife into inculpatory evidence of blood on the knife. The State did so without any valid screening test, without any confirmatory test,

without any trustworthy test at all. The State also withheld exculpatory evidence critical to Mr. Hughes' defense. The State (as represented by Criminologist James Bolding and Assistant DA Chuck Noll) thereby violated Mr. Hughes' rights to due process and a fundamentally fair trial as guaranteed by the Fourteenth Amendment.

CLAIM II

In violation of his Fourteenth Amendment rights to due process and a fundamentally fair trial, Mr. Hughes was convicted by the false and misleading testimony of Criminalist James Bolding regarding the presence of blood on Mr. Hughes' clothes. The prejudice of Bolding's testimony was compounded by the State's withholding of exculpatory evidence and by the prosecutor's failure to prevent false testimony from being presented to the jury.

Mr. Bolding knew that two blood-specific confirmatory tests had detected no blood on Mr. Hughes' clothing. He withheld that exculpatory evidence from the defense and from the jury. Instead he testified that his testing had indicated blood on Mr. Hughes' clothing.

The withholding of the exculpatory evidence and the presentation of false and misleading testimony violated Mr. Hughes' rights to due process and a fundamentally fair trial guaranteed by the Fourteenth Amendment.

Discussion

Both Shandra Charles and Marcell Taylor were stabbed in the same precise fashion. Each was stabbed once in the left side of the chest and once in the left side of the neck. The knife in each case entered from the front and, in Mr. Taylor's case, exited in the rear. In each case, the knife compromised both the left common carotid artery and the left jugular vein. Marcell Taylor's carotid artery was perforated. Shandra Charles' carotid artery was transected. [Exhibit 4 P4, Exhibit 5 P4]

As is well known and as testified to in court, arterial injuries spurt copious amounts of blood. [V19 P506 L19] There is no doubt that Shandra Charles bled profusely, and not just from her neck wound. Sgt. Hamilton testified that her chest wound was "bleeding pretty seriously". [V18 P40 L13] He testified that her neck wound was "bleeding rather profusely". [V18 P41 L14] He noted that there was a "puddle of blood on the ground where she was lying". [V18 P40 L19] That is an understatement. The crime scene photos reveal an elongated bloodstain extending from the weeds on one side of the trail, soaking the entire width of the trail, and ending somewhere in the weeds on the other side of the trail. [Exhibit 6]

Given the bloody nature of the crime, it is a near certainty that the attacker ended up with blood on his clothing and his person. Dr. Lloyd White made the point in a 2001 affidavit he prepared for Mr. Hughes. [Exhibit 7]

Based on more than thirty years experience as a medical expert in death investigation, it is my opinion that, barring intervening action such as changing clothes and bathing, it would be atypical and unusual for an assailant to inflict multiple, ultimately fatal, stab and cut wounds, including injuries of major arteries in the neck, upon two individuals during the course of the same attack without

having some blood on his own clothing or body surface. The absence of such blood, either readily visible or detectable by standard forensic techniques, suggests an exquisite attention to procedural detail inconsistent with the known history and abilities of the alleged assailant, in the circumstances in which the bodies were found and with the injuries documented at autopsy. Even surgeons, creating wounds in highly controlled conditions, virtually always get blood somewhere on their gowns, shoes and/or head coverings.

During his cross examination, Assistant Medical Examiner Robert Jordan acknowledged that he too found blood on his gown, gloves, mask, hat, and hair after surgery.

Not surprisingly then, the crime lab noted that blood was apparent on Shandra Charles' clothing. [Exhibit 2] Though the crime lab did not examine Marcell Taylor's clothing, the crime scene photos are unambiguous. Marcell Taylor's clothing was soaked in blood.

It is entirely reasonable that the HPD identified and secured the clothing that Mr. Hughes had been wearing on the night of the murders, given they considered him a suspect. (The manner in which they secured the clothing from his apartment, however, was far from reasonable or permissible.) From Mr. Hughes' apartment and person, the HPD secured: one pair of blue jeans, two blue work shirts, one maroon pullover shirt, one maroon belt, and one pair of white and blue tennis shoes. [Exhibit 1 P21] It is also reasonable that the HPD checked Mr. Hughes' apartment for any evidence that he had attempted to wash blood from his clothing or person. They found none. [V18 P269 L15]

Not only did Mr. Hughes' apartment reveal no evidence of any effort to remove blood, there was no evidence either that blood was apparent on any of Mr. Hughes' clothes. The crime lab made no note of any blood apparent on Mr. Hughes' clothes, though the crime

lab noted specifically that blood was apparent on Ms. Charles' clothes. [Exhibit 2]. The photographs of Mr. Hughes' clothes show no apparent blood. Mr. Hughes' shoe, tested in court by Mr. Bolding at the same time he tested the knife, had no blood apparent on it nor any detectable by the addition of o-tolidine. [V19 P443 L14]

No one disputes that Mr. Hughes' clothing had no blood apparent on it.

In short, no blood was apparent on Mr. Hughes' clothing. Blood, however, would be expected if he had just recently stabbed two victims in such bloody fashion. Nor did Mr. Hughes' apartment show any evidence of cleaning blood from his clothing or person. The blood-free status of Mr. Hughes' clothing and property was clearly powerful exculpatory evidence that he did not commit the murders. The State, however, would turn that evidence upside down as they presented it to the jury.

James Bolding began testing Mr. Hughes' clothes just four days before he was to testify. Mr. Bolding tested only the blue jeans and one of the two work shirts. He subjected those two items of clothing to three separate and distinct tests for blood: a non-specific screening test and two blood-specific confirmatory tests. [Exhibit 2]

The screening test involved adding a catalytic reagent to the sample to identify possible areas of blood. Catalytic reagents change color or glow when they come in contact with blood or with a wide variety of other substances. It is not clear which catalytic reagent Mr. Bolding used. Reference 1 reports that the lab usually relied on phenolphthalein, which turns red. Mr. Bolding elected to use o-tolidine, which turns blue-green, when he wanted to generate a false positive reaction in the courtroom. The test summary page indicates one of those two reagents was used for testing Mr. Hughes'

jeans and work shirt. [Exhibit 2] Mr. Bolding, however, testified that he applied a "fluorescent reagent that reacts only in dark". [V19 P452 L9] Two possible fluorescent reagents are luminol and fluorescein.

All catalytic reagents that react to blood also react to similar (but not necessarily identical) lists of organic and inorganic substances. The composite list of foods that may trigger a false positive includes, but is hardly limited to: apples, asparagus, avocado, broccoli, cabbage, carrots, celery, corn, cucumbers, garlic, green beans, lettuce, onions, potatoes, radishes, spinach, and tomatoes. The list of inorganic items that may trigger a false positive includes, but is not limited to: bleach (some types), cigarette ash and smoke, enamel paint, furniture polish, iodine, and rust. [References 4, 5, 6, 7]

The catalytic screening test on Mr. Hughes' clothing returned positive either for blood or for one of the many other items that react similarly. The test technician, apparently Mr. Bolding himself, indicated a positive reaction by entering the letters "Pos" in the appropriate box. According to the legend at the upper left of the form, "Pos" indicates a positive reaction. [Exhibit 2]

Because catalytic screening tests are non-specific, they are frequently (and properly) followed with more complex, more time-consuming, more expensive, more blood-specific confirmatory testing. The screening test on Mr. Hughes' clothing was therefore followed by a confirmatory test, one then commonly in use known as the Takayama test. That blood-specific confirmatory test returned negative for blood. To be clear, the test that could determine blood to the exclusion of all other substances found no blood. The technician, presumably Mr. Bolding, indicated so by placing a minus sign in

the appropriate box. According to the legend at the upper left of the form, a minus sign indicates a negative reaction. [Exhibit 2]

The third test to which Mr. Hughes' jeans and shirts were subjected was an anti-human test. In that test, a positive result indicates the presence of not just blood, but human blood. A negative result indicates the absence of human blood. The technician, presumably Mr. Bolding, indicated a negative reaction (no human blood) by placing the letters "Neg" in the appropriate box. According to the legend at the upper left of the form, "Neg" indicated a negative result, just as the minus sign indicated a negative result for the Takayama test. [Exhibit 2]

In summary, Mr. Hughes' clothing was subjected to not just one, but two separate and independent blood-specific confirmatory tests. Both of the tests returned negative for blood. There simply was no blood on Mr. Hughes' clothing; none was apparent and none was detected by either of two blood-specific tests. Neither the defense nor the jury, however, would learn that the two independent confirmatory tests failed to detect blood on Mr. Hughes' clothing. James Bolding and Assistant DA Chuck Noll withheld that information from the defense and from the jury.

Instead of providing at least the one-page summary of test results [Exhibit 2], Mr. Noll simply informed Mr. Hughes' attorney by telephone, during juror voir dire, that the crime lab had detected blood on his client's clothes. [V19 P440 L25]

The defense requested time to retain an expert and perform its own testing. Despite the unambiguous 5th Circuit Ruling in *Grandy v. Alabama* (569 F.2d 1318 (1978)) that due process demands a defendant have "sufficient time within which to prepare a

defense", the court denied Mr. Hughes any time whatsoever. [V19 P444 L18] Mr. Hughes was left defenseless against the fraudulent scientific testing of Mr. Bolding and the carefully tailored questioning of Prosecutor Noll.

Prosecutor Noll elicited testimony from James Bolding that the testing indicated blood on Mr. Hughes' blue jeans and work shirt. [V19 P448 L11, V19 P449 L25] Prosecutor Noll limited questions about any confirmatory testing to whether or not further testing had been able to tell whether the blood was animal or human. [V19 P448 L21, V19 P450 L3] Mr. Noll never asked, and Mr. Bolding never volunteered, that two confirmatory tests were conducted and that neither revealed any blood at all, whether from an animal or a human.

The well-coordinated misrepresentation of the test results explains what is otherwise a mystery regarding the sequence of testing. Normally, a screening test is conducted first to identify possible areas of blood. If the screening test indicates the possibility of blood, the highlighted areas are subjected to a blood-specific confirmatory test, such as the Takayama test. If no blood is detected during the first confirmatory test, then no additional testing is warranted or conducted. If, however, blood is detected during the first confirmatory test, then the sample is subjected to an even more expensive, more time-consuming, more specific anti-human test. The anti-human test establishes whether blood detected during the first confirmatory test came from a human or an animal.

Conducting the anti-human test simply makes no sense if no blood was discovered during the first confirmatory test. Since the first confirmatory test on Mr. Hughes'

clothing found no blood, it is unusual and suspicious that Mr. Bolding conducted the anti-human test.

That is nonetheless exactly what Mr. Bolding did. Though the first confirmatory test returned negative for blood, Mr. Bolding conducted an anti-human test. Not surprisingly, that test returned negative for the presence of human blood. As Mr. Bolding would describe the result at trial, he "could not get a reaction in that." [V19 P442 L21]

Mr. Bolding did not inform the jury, however, that his failure to "get a reaction in that" meant that there was no human blood detected. Instead, Mr. Bolding, acting in concert with carefully tailored questioning by Mr. Noll, explained that he was unable to determine whether the blood he discovered was human or animal blood. He used the negative results of the second confirmatory test to bolster his misleading testimony that he had discovered blood on Mr. Hughes' clothing.

The negative results from the two independent confirmatory tests are in complete accord with the lack of apparent blood on Mr. Hughes' clothing. The negative results are in complete accord with the lack of evidence that Mr. Hughes attempted to clean his clothing or his person of blood. The negative results are in complete accord with Mr. Hughes' persistent and insistent claim that he is innocent.

Mr. Bolding and Mr. Noll, however, withheld the written results of the tests. Working together as they did with the knife, they transformed clearly exculpatory test results on the clothing into inculpatory results. Once again, they made this transformation so late that Mr. Hughes' counsel had no opportunity to respond in effective fashion. And after depriving Mr. Hughes' defense of exculpatory data and the time necessary to respond,

Mr. Noll mocked them for their efforts to counter the falsified evidence that surprised them. [V21 P45 L7]

Now, you didn't hear Preston tell you anything about how he had been peeling radishes in that pair of pants and that shirt, did you, to explain what might have caused it. No. ... It had to come from someplace and it didn't come from any radishes and you know that.

Once again, under a guise of science, the State (as represented by Criminologist James Bolding and Assistant District Attorney Chuck Noll) violated Mr. Hughes' rights to due process and a fundamentally fair trial as guaranteed by the Fourteenth Amendment.

CLAIM III

In violation of his Fourteenth Amendment rights to due process and a fundamentally fair trial, Mr. Hughes was convicted by the false and misleading testimony of Assistant Medical Examiner Robert Jordan acting in concert with Criminalist James Bolding and Assistant District Attorney Chuck Noll. Together, the three provided false and misleading testimony regarding the absence of blood on Shandra Charles' clothes.

Mr. Bolding observed, during his pre-trial examination of the serological evidence, that blood was apparent on Shandra Charles' clothing but none was apparent on Mr. Hughes' clothing. [Exhibit 2] Mr. Bolding withheld that exculpatory information from Mr. Hughes' defense and from the jury. With the evidence withheld, Prosecutor Noll presented Shandra Charles' short pants to the jury as if they had no blood on them.

Prosecutor Noll then had Dr. Jordan testify that no blood need be apparent on Mr. Hughes clothes' since none was apparent on the Shandra Charles' clothes.

The withholding of the James Bolding's exculpatory evidence and the presentation of false and misleading testimony by Dr. Jordan and Mr. Noll violated Mr. Hughes' rights to due process and a fundamentally fair trial guaranteed by the Fourteenth Amendment.

Discussion

The discussion of Claim I detailed the process by which the State contrived and presented fraudulent evidence of blood on Mr. Hughes' knife. In that instance, Criminalist James Bolding was the central figure and Assistance District Attorney Chuck Noll may have knowingly abetted him.

The discussion of Claim II detailed the process by which the State contrived and presented fraudulent evidence of blood on Mr. Hughes' blue jeans and shirt, though no blood was detected by two independent, blood-specific, confirmatory tests. In that instance, James Bolding was once again the central figure and Assistant DA Chuck Noll may once again have knowingly abetted him.

This discussion of Claim III will now detail how Shandra Charles' bloody shorts were presented to the jury as if they had no blood on them. The purpose of this contrivance was to convince the jurors that Mr. Hughes' clothes need not have blood apparent on them since Ms. Charles' clothes did not spill her own blood on her own clothes. In this instance, James Bolding was a secondary figure, responsible for the withholding of evidence, but not responsible for the testimony.

In this instance, the testifying witness was also a secondary figure. Assistant Medical Examiner Robert Jordan was merely a last minute addition to the State's team, woefully ignorant of the facts of the case. His ignorance was a feature rather than a shortcoming. Dr. Jordan's role was to dutifully respond in expected fashion to the questions presented to him by Assistant DA Chuck Noll.

In this instance, Mr. Chuck Noll was the central figure. It was his carefully constructed questions that were intended to deceive the jury. Mr. Noll was the person who presented and argued the evidence, pausing only on occasion to get acknowledgment from the dutiful Dr. Jordan. Though Dr. Jordan sat in the witness box, Mr. Noll was effectively the witness. In that dual role as prosecutor and witness, Mr. Noll provided false and misleading testimony to the jury.

The contrived testimony demanded that the defense and the jury be deprived of exculpatory evidence that Shandra Charles' white shorts had blood apparent on them. James Bolding knew that Shandra Charles' white shorts did indeed have blood on them since he had himself so noted on the blood test summary sheet. [Exhibit 2] As noted in the discussion of Claim II, James Bolding withheld that sheet and the exculpatory information it contained from the defense and from the jury. On that sheet, he described Shandra Charles' shorts thus: "1 Pr. white shot PANTs Bld is App"

HOUSTON POLICE DEPARTMENT LABORATORY EXAMINATION				CASE
1-P. white Shoes	1 P. white short	1-P. of Blue jeans	1-Blue Shirt	#1
Blood is Apparent	PANTS Bld is App			

Note that blood was apparent on Shandra Charles' shoes and white short pants. Note also that no blood was apparent on Mr. Hughes' blue jeans or blue shirt. This sheet was critical to Mr. Hughes' defense, but was withheld from them by Mr. Bolding and Mr. Noll.

The contrived testimony required also that the forensically naive jurors would not recognize the blood on Shandra Charles' shorts for what it was. As shown in Exhibit 9, her shorts were certainly and thoroughly stained. To the untrained eye, however, the cause of those stains could have been dirt and/or chemicals applied by the crime lab. If told by someone in authority that the stains were not blood, the jurors would have no reason to disbelieve the testimony.

Assistant Medical Examiner Robert Jordan was the third element of the contrived testimony. His knowledge of the case was conveniently slight. He did not conduct or observe either autopsy. He did not even read the autopsy report or examine the autopsy photos until the morning of his testimony, and only then while sitting in his car.

[V19 P481 L7, V19 P483 L3]. When asked "You came down here in a capital murder

case today to testify about the cause of death and the first time you ever saw this stuff was this morning?", Dr. Jordan answered "That is correct." [V19 P483 L6]

Dr. Jordan conceded under cross examination that the victims suffered multiple stab wounds, deep and serious, and that the wounds would have resulted in copious bleeding and the spurting of blood. [V19 P506 L4] Dr. Jordan would not concede, however, that the attacker would necessarily have blood on his clothing. Contrary to the evidence, he presumed the attacker may have been wearing protective gear. "If I'm wearing a rain coat or a Nomex suit with a helmet and you take -- and I'm covered with blood and you take that helmet and Nomex suit and gloves away, I haven't got a drop on me."

[V19 P514 L25] He speculated, contrary to the evidence he had just reviewed while in his car, that the bleeding may have been slowed because the attacker left the knife in the victim. He posed his own question to Mr. Hughes' counsel: "Suppose the knife isn't pulled out?" [V19 P515 L22]

Dr. Jordan was clearly there to vouch for the State rather than to relay objective fact and honest expertise to the jury.

It was then during the redirect examination of Dr. Jordan that Assistant DA Chuck Noll used Shandra Charles' bloody pants to convince the jury that there was no blood on them and that, therefore, there was no reason to expect that blood would be visible on Mr. Hughes' clothes.

Q. When we say a gushing, bleeding wound, are we talking about something that is shooting out away from the body or is it something that's oozing out of the body? Is there a difference in your mind?

A. Well, arterial pressure is considerably higher than venous pressure; and usually when an artery is severed, it is followed by spurting of blood and it can go some distance.

Q. Now, would the angle of the head, given the nature of these wounds, have anything to do with where it spurting?

A. Certainly.

Q. For example, if Shandra Charles had been wearing these white shorts at the time she was stabbed, depending on the angle that the blood was going, there may not have been any blood on these shorts, could there?

A. That is correct.

Q. Even though she was stabbed right here in the neck and right here in the chest, her shorts could still have no evidence of blood on them?

A. That is correct.

Q. Certainly if her shorts could have no evidence of blood, the man who or woman who stabbed her might have had no evidence of blood on them; is that correct?

A. Yes, sir.

It is an astounding sequence of questioning.

Prosecutor Noll spoke of Shandra Charles wearing the white shorts as if the event were a hypothetical: "... *if Shandra Charles had been wearing these white shorts at the time she was stabbed ...*" He spoke so even though his own witnesses had established those were the very shorts Shandra Charles wore that night. [V18 P46 L2]

Prosecutor Noll spoke as if the blood on her shorts were but a hypothetical. "... *if her shorts could have no evidence of blood ...*" He spoke so even though the criminologist with whom he was working, James Bolding, had already reported that blood was apparent on her shorts. [Exhibit 2]

Prosecutor Noll conducted his redirect examination after he had already abetted James Bolding, intentionally or otherwise, in Bolding's effort to deceive the jury about the existence of blood on Mr. Hughes' clothing.

A strict, literal reading of his Mr. Noll's words does not support a claim that he told the jury that Shandra's shorts had no blood on them. Only a such a literal reading, however, can spare Mr. Noll of a disturbing conclusion. Read in its entirety, and read in light of the scientific deception that had just occurred with Mr. Bolding's testimony, Mr. Noll's questions were intended to convince the jurors they should not be concerned that no blood is apparent on Mr. Hughes' clothes. Shandra Charles, after all, spilled no blood even on her own.

In his closing argument, Prosecutor Noll gives voice to the concern that prompted him to introduce the false testimony. [V21 P44 L21]

Mr. Bolding testified to you he checked the clothing found in the defendant's apartment and he found on the shirt and on the jeans evidence of blood. Not enough to determine it was human blood, not enough to type it. If he hadn't checked it at all, you know what you would have heard up here today. "Where is the evidence of blood?"

The evidence of blood certainly wasn't on Mr. Hughes' jeans or on his shirt. By falsely portraying Shandra Charles' pants as being free of blood, Mr. Noll provided the jury an explanation.

By withholding the exculpatory evidence that Shandra Charles spilled blood on her own shorts, and by providing misleading testimony to the jury, the State (as represented by Criminologist James Bolding, Assistant ME Robert Jordan, and Assistant DA Chuck

Noll) violated Mr. Hughes' rights to due process and a fundamentally fair trial as guaranteed by the Fourteenth Amendment.

CLAIM IV

In violation of his Fourteenth Amendment rights to due process and a fundamentally fair trial, Mr. Hughes was convicted by the false and misleading testimony of Assistant Medical Examiner Robert Jordan regarding the victims' wounds.

Dr. Jordan was aware that that none of the victims' wounds had a blunt edge. Dr. Jordan was aware that Mr. Hughes' knife did have a blunt edge. Dr. Jordan knew or should have known that the wounds were therefore inconsistent with Mr. Hughes' knife. He testified just the opposite.

Dr. Jordan's presentation of false and misleading testimony thereby violated Mr. Hughes' rights to due process and a fundamentally fair trial guaranteed by the Fourteenth Amendment.

Discussion

Human tissue has alignment patterns equivalent to grain patterns in wood. In humans, these patterns are referred to as Langer lines. The concept of Langer lines was first detailed in 1861 by Austrian anatomist Karl Langer. [Reference 9 P19] The Langer lines and their significance have long been understood by surgeons, since surgical cuts are usually made in the direction of Langer lines to minimize scarring. [Reference 9 P20]

With respect to Shandra Charles and Marcell Taylor, consider the comparative widths of the neck wounds to the chest wounds. Each neck wound was 1/8" wide. The chest wounds were three to four times as wide. Marcell Charles' chest wound gaped to 3/8". Shandra Charles' stab wound gaped to 1/2". [Exhibit 5 P4, Exhibit 4 P4] The neck wounds were much thinner because they were nearly parallel to the Langer lines. The chest wounds were much thicker because they were nearly perpendicular to the Langer lines.

Since Dr. Jordan testified that he had conducted surgeries on live individuals [V19 P514 L4], it is likely he was instructed on the concept of Langer lines so that he would be able to make his initial incisions to leave the smallest scars.

When a blade is inserted into the body parallel to the Langer lines, as it was in the case of Shandra Charles and Marcell Taylor, the wound approximates the cross section of the blade. The cross section of their neck wounds therefore revealed critical detail about the cross section of the blade. [Reference 9 P49]

One of the most significant determinations that must be made, along with width, thickness and length of the blade, is whether the blade was single- or double-edged or serrated. If the victim has been stabbed with a single edge blade, they will have an acute angle at one end of the stab wound, with the other end being blunted or squared off.

[I]f the stab wound runs parallel to Langer's lines, then one end will have an acute angle and the other will be blunted or squared off. In this particular case the width of the of the blunt end of the stab wound will represent to a substantive degree the width of the non-cutting edge of the knife.

According the autopsy reports, none of the stab wounds had a blunt edge.

[Exhibit 4 P4, Exhibit 5 P4] This fact is unenlightening with respect to the chest wounds,

since those wounds were nearly perpendicular to the Langer lines. The lack of any blunt edge is, however, of particular interest with respect to the neck wounds. As noted previously, the neck wounds were nearly parallel with the Langer lines. The wound cross section therefore preserved the blade cross section.

As noted in the autopsy reports, none of the wounds had a blunt end. The blade of the murder weapon, therefore, had no blunt edge.

Mr. Hughes knife was best described as an Army knife, a hunting knife, or a buck knife. It had a blade approximately five inches long and one inch wide. Significantly, the blade had one sharp edge and one blunt edge. Dr. Jordan examined the knife while testifying, and described it as having a single-edge blade. [V19 P494 L24] It had one sharp edge and one blunt edge. Dr. Jordan saw that.

As woefully unprepared to testify as Dr. Jordan was, he had everything he needed to realize that Mr. Hughes' knife could not have been the murder weapon. Mr. Hughes' knife had a blunt edge. Neither of the two neck wounds had a blunt edge. Since the neck wounds were nearly parallel to the Langer lines, and since the neck wounds preserved the cross section of the blade, Mr. Hughes' knife could not be the murder weapon.

Dr. Jordan, however, testified otherwise. As he was examining the knife, Mr. Noll asked him: "Would that instrument be of a type that would be consistent with the injuries that you've noted in those two autopsy reports?" Dr. Jordan responded: "It is."

Once again, the State managed to transform exculpatory evidence into inculpatory evidence. It appears in this instance, once again, that the misrepresentation was intentional. To understand that, compare the autopsy description of Shandra Charles neck

wound with Dr. Jordan's testimony regarding her neck wound. The autopsy description first, followed by Dr. Jordan's testimony:

There was a stab wound to the left side of the neck ... located 2 inches to the left of the 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.** The stab wound track perforated the soft tissues and muscles of the neck, transected the left jugular vein and the left common carotid artery ... [Exhibit 4 P4; emphasis added]

There was a stab wound to the left side of the neck located 2 inches to the left of the midline and 8 inches below the top of the head. The instrument perforated the left jugular vein and the left common carotid artery, two of the large vessels in the neck. [V19 P492 L12]

It is clear from many of Dr. Jordan's answers, including the one above, that he was referring to the autopsy report as he answered questions about it. When relating to the jury what the autopsy report said about Shandra's neck wound, Dr. Jordan elected to skip over the portion about the wound having a blunt end.

Though the autopsy report described each of the four stab wounds as having a blunt edge, and though Dr. Jordan read from the autopsy report to describe each of the four stab wounds, Dr. Jordan never mentioned that any of the four stab wounds had a blunt edge.

Though Dr. Jordan would describe the significance of such obscure details as "ossification centers of the scapula" and the discovery of "acid phosphatase" in vaginal secretions, he would never used the word "blunt", much less inform the jury of the significance of stab wounds having "no blunt end."

Though Dr. Jordan had conducted approximately 3500 autopsies, and though he was well versed in the minutiae of stab wounds, he conveniently ignored the most exculpatory portion of the autopsy reports.

Once again, the State had transformed exculpatory scientific evidence into inculpatory scientific evidence. In this most recent example, two autopsy reports that described wounds inconsistent with Mr. Hughes' knife were presented to the jury as two autopsy reports describing wounds consistent with Mr. Hughes' knife.

By withholding his knowledge of the significance of blunt end wounds, and by providing misleading testimony to the jury regarding the consistency of the Mr. Hughes' knife with the victims' wounds, the State (as represented by Assistant ME Robert Jordan and Assistant DA Chuck Noll) violated Mr. Hughes' rights to due process and a fundamentally fair trial as guaranteed by the Fourteenth Amendment.

CLAIM V

In violation of his Fourteenth Amendment rights to due process and a fundamentally fair trial, Mr. Hughes was convicted by the false and misleading testimony of HPD Sgt. Don Hamilton regarding a purported dying declaration given to him by Shandra Charles.

Forensic medical evidence, confirmed by objective studies on animal models, demonstrates Shandra Charles was unconscious and dead before Sgt. Hamilton arrived at the scene. Hamilton's testimony that Ms. Charles provided him a dying declaration, in which she spoke coherently, in complete sentences and named "Preston" as her attacker is a fabrication that deprived Mr. Hughes of his due process rights guaranteed the Fourteenth Amendment and by this Court in *Ex parte Chabot*, 300 S.W.3d 768 (Tex.Crim.App.2009).

Discussion

The autopsy report for Shandra Charles reveals that her left common carotid artery had been transected. [Exhibit 4 P4] That means both large vessels on the left side of her neck supplying and carrying blood to and away from the brain were cut through and through. Dr. Jordan, when describing the content of the autopsy reports to the jury, repeatedly and properly described Shandra's carotid artery as having been severed. [V19 P492 L22, V19 P512 L19]

The carotid is a major artery arising directly from the aortic arch. Without immediate medical attention, bleeding from arterial injuries is voluminous and swift. [V19 P506 L19] There is no doubt that Shandra Charles bled profusely, and not just from her neck wound. Sgt. Hamilton testified that the chest wound was "bleeding pretty seriously". [V18 P40 L13] He testified that the neck wound was "bleeding rather profusely". [V18 P41 L14] Although Charles was lying on a permeable surface of dirt and weeds, rather than on a sidewalk or hard flooring, Sgt. Hamilton still noted that there was a "puddle of blood on the ground where she was lying". [V18 P40 L19] The crime scene photos reveal an elongated bloodstain extending from the weeds on one side of the trail, soaking the entire width of the trail, and ending somewhere in the weeds on the other side of the trail. [Exhibit 6]

Dr. Robert Lloyd White is currently the Deputy Medical Examiner for Tarrant County. He was previously the Chief Medical Examiner for Neuces County. In an affidavit prepared for Mr. Hughes on October 22, 2012 [Exhibit 8], Dr. White explains that:

[I]t is neither anatomically nor physiologically possible that Ms. Charles could've been conscious for more than 30-60 seconds given the expected rate of blood loss when a common carotid artery is cut. The electric activity in the brain simply stops after even a short interruption in blood flow. ... [I]t is simply not medically feasible that this young woman ... could have spoken to the officers as they claimed.

Studies on animal models support Dr. White's opinion that loss of consciousness is rapid. Sheep provide a good analogue for controlled studies. Adult sheep coincidentally have nearly the same blood volume and cardiac output as did Shandra Charles.

[Reference 10] In one study, sheep were subjected to controlled testing to determine how long they maintain brain function after having one or both carotid arteries and jugular veins severed. [Reference 11]

On average, severing both carotid arteries plus jugular veins took 14 sec to induce a loss of brain responsiveness, whereas severing only one carotid artery plus one jugular vein took 70 sec.

Shandra Charles suffered one severed carotid artery and one severed jugular vein.

Since sheep are a good analogue for humans, the study provides compelling evidence that Shandra Charles could have remained conscious no longer than several minutes after she was stabbed in the neck, just as Dr. Lloyd White affirmed.

Law enforcement officers have long known that a violent suspect can be quickly subdued by depriving his brain of blood. [Reference 12]

The "choke holds" known as shime-waza used in the sport of judo have been taught and used by law enforcement officers to subdue violent suspects. ... If the carotid artery hold is properly applied, unconsciousness occurs in approximately 10 seconds (8-14 seconds).

The referenced article further substantiates that sheep provide a good analogue for humans when studying the effect of severed carotids. A sheep loses brain function in 14

seconds (on average) after losing all fresh arterial blood to the brain; a human lapses into unconsciousness in 10 seconds (on average) after losing all fresh arterial blood to the brain.

On rare occasion, the speed at which a severed carotid incapacitates the victim has been reasonably well established. Reference 13 describes the case of a mother who let out a yell just before inadvertently falling on a broken wine glass. The glass transected her left common carotid artery, an injury quite like that of Shandra Charles. The woman's daughter heard the yell and immediately rushed downstairs only to find her mother lying incapacitated on a bloody floor. The mother was declared dead minutes later. The daughter was confident that she arrived within 20 seconds of hearing her mother yell.

Reference 14 describes a case in which the left carotid and vertebral arteries were severed and the victim was able to maintain physical activity for only 10 seconds.

Shandra Charles' body was discovered sometime before 11:30 PM. [Exhibit 1 P22, V19 P496 L8] Sgt. Hamilton arrived at least 13 minutes later. [Exhibit 1 P24] There is no conceivable chance that Shandra Charles was alive, much less conscious, when Sgt. Hamilton arrived.

Sgt. Hamilton nonetheless testified that Shandra Charles provided him with a dying declaration identifying her attacker as Preston. [V18 P42 L6]

Q. When you turned the young lady over, did she say anything immediately to you?

A. Not initially, no, sir.

Q. Did you say something to her?

A. Yes, sir.

Q. What did you say to her?

A. I asked her, after discovering the condition of her clothes, "What happened?"

[Objection; overruled]

A. She replied, "He tried to rape me."

Q. What did you say to her then?

A. I asked her, "Who tried to rape you?" She stated, "Preston." ... I asked her if she knew Preston's last name.

Q. Did she gave you a last name? ...

A. [S]he stated something. I could not understand it. It was more of a mumble.

To a medical certainty, Sgt. Hamilton's testimony was perjurious and unconstitutionally prejudicial to Mr. Hughes. In his closing argument, Prosecutor Noll further prejudiced Mr. Hughes' by relying heavily on Sgt. Hamilton's testimony.

Sergeant Hamilton came out to the scene. What would you ask of Sergeant Hamilton? When he comes to the scene and he walks down the path and he finds a 15-year-old girl laying face down in the dirt, her nose, her face in the dirt, I believe he said, turned her over and he cradled her. What would you expect him to do when that girl tells him, "Preston tried to rape me"? Go look for Preston. Is that a reasonable thing to do? Of course it is. [V21 P5 L15]

... So they did what you, I hope, would expect of your police officers. They investigated. They went out and they did the footwork. They went over there to that apartment complex and checked it out. What did they find out? You recall the evidence. They found out that Preston Hughes, III, was the only tenant in the Lakehurst Apartments with the name Preston. [V21 P6 L14]

The HPD officers, as it is now turns out, were not to be trusted. In addition to all the medical evidence that falsifies Sgt. Hamilton's claim of a dying declaration, the actions of the HPD officers themselves belie his words.

Officers V.L. Cook and C.J. Becker, the first officers on the scene, explicitly reported that Shandra Charles was unconscious when they discovered her. [Exhibit 1 P22] Since

Shandra Charles could only have lost more blood before the arrival of Sgt. Hamilton, she must have been unconscious when he arrived.

After encountering Shandra Charles laying in the trail, Officers Cook and Becker followed the trail until they encountered the body of Marcell Taylor. They deemed him to be recently deceased. [Exhibit 1 P22] They were unable to resuscitate him.

[Exhibit 1 P23] The prioritization of their efforts to render first aid in a triage situation indicates that they believed Shandra Charles was already dead when they discovered her.

Sgt. Hamilton also failed to render first aid to Shandra Charles. Instead of applying pressure to her bleeding neck wound or chest wound, he claims to have interviewed her.

According to Cook and Becker's joint report, there were "numerous officers" attending to Shandra Charles. [Exhibit 1 P23] None of these "numerous" officers reported rendering any first aid. None of them reported hearing Shandra Charles provide a dying declaration.

Shandra Charles herself, though allegedly conscious and calm, made no effort to staunch the flow of blood from her own neck. Sgt. Hamilton described seeing the neck wound bleeding profusely [V18 P41 L14] but he did not note that Shandra Charles put her own hand over her neck wound.

The paramedics arrived at 11:55 PM. [Exhibit 1 P23] That is twelve minutes after Sgt. Hamilton arrived. During those twelve minutes, Sgt Hamilton did not apply pressure to Shandra Charles' chest wound, which he described as "bleeding pretty seriously" [V18 P40 L13], or to her neck wound, which he described as "bleeding rather profusely".

[V18 P41 L14] Instead Sgt. Hamilton merely sat beside her for twelve long minutes until the paramedics arrived. [Exhibit 1 P25] She was dead when they arrived. [V18 P45 L9]

Well, once the paramedics arrived, they started an IV in her situation at that point in resuscitation.

The term "resuscitate" is generally understood to mean the act of bringing someone thought recently dead back to life, as when Cook and Becker reported that Marcell Taylor "did not respond to any resuscitation attempts".

Sgt. Hamilton's testimony is simply not credible. When considered in light of all the evidence, including the medical evidence, Sgt. Hamilton's testimony was perjurious.

By providing misleading testimony to the jury regarding Shandra Charles purported dying declaration, the State (as represented by HPD Sgt. Don Hamilton) violated Mr. Hughes' rights to due process and a fundamentally fair trial as guaranteed by the Fourteenth Amendment and by this Court in *Ex parte Chabot*, 300 S.W.3d 768 (Tex.Crim.App.2009).

CLAIM VI

In violation of his Fourteenth Amendment rights to due process and a fundamentally fair trial, Mr. Hughes was convicted by the false and misleading testimony of HPD Sgt. Don Hamilton regarding the reason the HPD pursued Mr. Hughes as the one and only suspect. Sgt. Hamilton then compounded the prejudice by withholding exculpatory evidence regarding the reason the HPD pursued Mr. Hughes as the one and only suspect.

Discussion

Sgt. Don Hamilton testified that Shandra Charles, in a dying declaration, identified a person named Preston as her attacker. [V18 P43 L12] Based on that information, he and Sgt. Dennis Gafford and Sgt. Ted Bloyd confronted Mr. Hughes [V18 P51 L5] after Sgt. Gafford determined Mr. Hughes was the only person named Preston living at the Lakehurst apartments. [V18 P49 L1]

Sgt. Dennis Gafford testified similarly. He testified that Sgt. Hamilton had obtained the name Preston from Shandra Charles [V18 P76 L12], that the three of them confronted Mr. Hughes [V18 P78 L3] after he determined that Mr. Hughes was the only person named Preston living at the Lakehurst apartments. [V18 P77 L8]

Sgt. Ted Bloyd testified similarly. He testified that after determining that Mr. Hughes was the only person named Preston living at the Lakehurst apartments [V19 P387 L4], the three of them confronted Mr. Hughes at his apartment. [V19 P387 L9]

Since, as discussed in Claim V, Shandra Charles was dead or unconscious to a medical certainty before Sgt. Hamilton arrived at the scene, Sgt. Hamilton provided false and misleading testimony when he told the jury that Shandra Charles had identified her attacker as someone named Preston. That issue was just discussed in Claim V. With respect to this claim, Sgt. Hamilton provided false and misleading testimony when he told the jury he and the other HPD officers suspected Mr. Hughes because Mr. Hughes was the only person named Preston living in the Lakehurst apartment complex.

Sgt. Hamilton's perjury is further evidenced by his own police report in which he claimed that Shandra Charles told him that Preston lived at Lakeside. [Exhibit 1 P25] The

three of them, Sgts Hamilton, Gafford, and Bloyd, searched the resident list only of the Lakehurst apartment complex. They did not search the resident list of the equally nearby Lakewood Village apartment complex. More significantly, they did not search the resident list of the nearby Lakeside Green condominium complex.

It is abundantly clear that the HPD officers confronted Preston Hughes for some reason other than the dead or unconscious Shandra Charles identifying her attacker as someone named Preston who lived at Lakeside, though Mr. Hughes lived at Lakehurst. The HPD, however, withheld from the defense the actual reason for their suspicion of Mr. Hughes.

An ongoing investigation of Mr. Hughes' case by lay citizens has recently discovered the actual source of the HPD suspicion. Just nine days prior to the murders, the HPD had questioned Mr. Hughes about his relationship with a married woman. Mr. Hughes and the married woman had on several occasions engaged in consensual sex at Mr. Hughes' apartment. The aggrieved husband had confronted Mr. Hughes regarding the matter and reported to the HPD that Mr. Hughes had kidnapped and raped his wife. The HPD investigated and found no basis for pursuing a case against Mr. Hughes. The HPD did, however, include the incident in their database.

On the night of the murders, when the first call came out over the radio, Sgt. Don Hamilton was inside the command station, within easy access of the HPD's database. [Exhibit 1 P24] Sgt. Hamilton did not respond immediately to the radio call from the crime scene. After a brief delay, however, he inserted himself as the predominant figure

at the crime scene, though he was not the supervising sergeant of the district in which the crime occurred. [V18 P29 L7]

Though the HPD reports are unclear, the supervising sergeant for the district seemed to be Sgt. J.H. Parham. Sgt. Parham was one of only two supervising sergeants identified as being at the scene. [Exhibit 1 P3] Though Sgt. Parham was a witness to the events that unfolded at the crime scene, and though he was responsible for the crime scene until the detectives arrived, he neither filed a police report nor testified at Mr. Hughes trial. Instead, Mr. Hughes and this Court have been left with only with the testimony of Sgt. Hamilton, a man who claimed he obtained a dying declaration from a young woman who was most certainly dead or unconscious at the time.

The HPD reports, however, do preserve a vestige of the reason the HPD suspected Mr. Hughes and only Mr. Hughes. Sgt. Gafford reported that before interviewing Mr. Hughes, he checked the HPD database to see if Mr. Hughes had any criminal history or outstanding warrants. [Exhibit 1 P10] Sgt. Gafford checked the same database to which Sgt. Hamilton had immediate access when he first heard of the murders.

Sgt. Gafford found that Mr. Hughes had, two years earlier, been charged with aggravated sexual assault of a child.

(Mr. Hughes maintains that he was innocent of that charge, that he rejected several plea offers that involved prison time, and that he pled guilty only after being assured he would be set free in exchange for a admission of guilt. Mr. Hughes was in fact released in exchange for his admission of guilt. He was serving the third year of probation at the time of his arrest for the murders of Shandra Charles and Marcell Taylor. That experience of

being set free in exchange for a false admission of guilt made Mr. Hughes more susceptible to Sgt. Gafford's coercive offer of leniency, as will be discussed under Claim IX.)

Sgt. Gafford also found a second database entry for Mr. Hughes, one dated "Sep/88". For some reason, Sgt Gafford entered only a series of dashes where a description of the incident would be expected. [Exhibit 1 P10] That incident, as just explained, involved unsubstantiated claims leveled by an aggrieved husband that led to no charges. Nonetheless, these two entries would provide police reason to suspect Mr. Hughes, particularly in light of the proximity of his apartment to the crime scene.

So convinced was the HPD of Mr. Hughes' guilt that they failed to pursue the most obvious leads. Though a husband and wife reported that they had just been chased from the field by several dark figures, the HPD labeled their information as irrelevant. [Exhibit 1 P12] Though the autopsy revealed that Shandra Charles had fresh needle marks in the crook of each elbow [Exhibit 4 P2], and though she carried just enough money for a "dime bag" [Exhibit 1 P19], the HPD did not consider the possibility that she was in the dark field for a drug transaction.

In her pocket the HPD found a note with only the nickname "Dog" and the phone number 884-1217. [Exhibit 1 P18] The HPD did not bother to dial the phone number.

Shandra Charles' best friend, Evelyn Brown, reported that they had been together until just before the murders. Ms. Brown testified that the two of them had earlier visited several friends at the Lakehurst apartment complex, the same complex where Mr. Hughes lived. Ms. Brown reported further that the two of them had returned to the Lakehurst

apartments shortly before the murders so that Ms. Brown could secure a ride home.

[Exhibit 1 P29] The HPD, however, made no effort to identify the people that Shandra and Evelyn visited, though those friends may have been the last people to see Shandra Charles alive and well.

In short, the HPD settled on Mr. Hughes as the one and only subject because of his police record and the proximity of his residence to the crime scene. The police ignored numerous viable leads and instead manufactured a case against Mr. Hughes. As part of the manufacturing, Sgt. Hamilton fabricated a dying declaration. To mask that fabrication, Sgt. Hamilton provided perjured testimony about the reason they initially suspected Mr. Hughes. Sgt. Hamilton and other HPD officers compounded the prejudice by withholding evidence that would reveal their deception. They withheld, for example, the details of their recent HPD visit to Mr. Hughes' apartment, and they withheld the police report and testimony of Supervising Patrol Sgt. J.H. Parham.

By providing false and misleading testimony regarding source of the HPD's initial suspicion of regarding Mr. Hughes, and by withholding exculpatory evidence related to the source of suspicion, the State (as represented by Sgt. Don Hamilton and other HPD officers) violated Mr. Hughes' rights to due process and a fundamentally fair trial as guaranteed by the Fourteenth Amendment and by this Court in *Ex parte Chabot*, 300 S.W.3d 768 (Tex.Crim.App.2009).

CLAIM VII

In violation of Mr. Hughes' Fourth Amendment right to be free from unreasonable searches and seizures and in violation of his Fourteenth Amendment rights to due process and a fundamentally fair trial, HPD officers conducted an illegal search of Mr. Hughes' apartment and planted evidence therein. The HPD officers then compounded their prejudice by withholding exculpatory evidence and by presenting false and misleading testimony.

Discussion

The HPD claims that Mr. Hughes willingly signed a Voluntary Consent for Search and Seizure form at approximately 5:30 AM. Mr. Hughes does not dispute signing that form, willingly, near that time.

The HPD claims they searched Mr. Hughes' apartment one time and one time only, beginning at 9:15 AM. Mr. Hughes does dispute that claim. Mr. Hughes argues herein that the HPD searched his apartment twice, once before 2:58 AM and once beginning at 9:15 AM.

Mr. Hughes argues further that the items seized during the first search were returned to his apartment for the second search, and planted therein for the purpose of staging a photographic session during daylight. It was during that second search, when the HPD planted Mr. Hughes' own possessions in his own apartment, that the HPD also planted and photographed Shandra Charles' eyeglasses between the cushions of Mr. Hughes' couch.

The HPD seized at least nine items from Mr. Hughes' apartment. Those items were one pair of blue jeans, two blue work shirts, one maroon pullover shirt, two tennis shoes, a wrist watch, a knife and its sheath. Those items were turned into the property room at 2:58 AM, as shown on the property invoice prepared by CSU Officer F.L. Hale and received by Property Officer F.L. Martin. The property invoice is provided as Exhibit 10. The upper left corner of that invoice is presented below. It shows that Mr. Hughes' property was received at 2:58 AM.

BOOK	PAGE	LINE		
11-832-12			CASE NO.	788 158 88
DATE	9/27/88	DIVISION	HOMICIDE	TYPE OF OFFENSE
TIME	2:58am			CAPITAL MURDER
DEFENDANT: NAME, ADDRESS, CITY				
PRESTON CRAIG HUGHES 2310 CRESCENT PARK 138A				

89-459 JB

Since Mr. Hughes property was turned into the HPD property room at 2:58 AM, the HPD must have searched his house prior to 2:58 AM. That search would have been without warrant or consent, since Mr. Hughes did not sign the Consent for Search and Seizure form until 5:30 AM.

Mr. Hughes asks that this Court take particular notice of the time on the property invoice, not primarily because it is compelling evidence of an illegal search and seizure, but because it provides additional evidence of Mr. Hughes innocence. Since his property was turned into the property room at 2:58 AM, and since the same property appeared in the photographs taken during the 9:15 AM search, the HPD must have removed his

property from the property room, returned it to his apartment, and planted it therein. Furthermore, since the victim's eyeglasses were not listed among the items seized prior to 2:58 AM, and since they first appeared in his apartment only when his possessions were being staged for the daylight search, it is abundantly clear that the HPD planted the victim's eyeglasses between the cushions of his couch.

Photographs taken by HPD CSU Officer F. L. Hale provide additional compelling evidence that the HPD searched Mr. Hughes' apartment twice. One photograph, an exterior shot taken at night, shows the stairway and landing leading to Mr. Hughes' apartment door. [Exhibit 11] Another photograph shows sunlight coming through and around translucent curtains. [Exhibit 12] The photographic record thereby preserved compelling evidence that Mr. Hughes' apartment was searched twice, once when it was dark outside, and once when it was light outside.

Still other evidence points to two searches of Mr. Hughes apartment. An accounting of Officer Hale's photographs suggests that many photographs were withheld. Officer Hale reported that he exposed two rolls of 35mm 100 ASA film. [Exhibit 1 P18]. In response to an open records request for all evidence in Mr. Hughes' case, 50 photographs were provided. That number precludes use of 2 rolls of 24 exposure film, and indicates Officer Hale instead exposed two rolls of 36 exposure film. Assuming Officer Hale used all 72 exposures, that leaves 22 photographs unaccounted for. Furthermore, since Officer Hale took at least 14 interior photographs during the second search, he likely took approximately that many during the first.

More convincing is the missing bed sheet. Mr. Hughes' bed sheet is missing from the photographs taken during the daylight search. [Exhibit 13] The bed sheet was apparently seized during the first search, but not checked into the property room along with Mr. Hughes' other items.

In addition to the property invoice, the nighttime photograph of the stairway, the daytime photograph of the curtains, the missing photographs, and the bed sheet, the trial testimony of apartment manager Joe Casler reveals that the HPD obtained a set of master keys for Mr. Hughes' apartment. [V19 P594 L17]

A: When they went to Mr. Hughes apartment that evening or that morning, I should say, they had a set of my master keys to get in. Once they brought those keys back to me, they, you know basically said, "Don't go back into the apartment".

Q. Okay. Did they tell you when you could go back into the apartment?

A. They said that the apartment would be released sometime in the future.

Q. Did they show you any authority or anything to get the master key from you?

A. The identification, the police identification.

Mr. Casler testified that the police officers approached him for the specific purpose of obtaining those master keys. [V19 P595 L9]

Q. But at any rate, having identified themselves at least, you gave them master keys to get into the apartment?

A. Yes, sir, I did.

Q. Is that why they came to see you to get the keys or for some other purpose?

A. For that purpose.

During cross examination, Sgt. Gafford reluctantly agreed that he might have received the master keys from Mr. Casler. [V19 P667 L2]

Q. All right. Well, are you saying you're not sure whether he gave it to anybody or not sure -- can you say for yourself whether you got any master keys, pass keys from Mr. Casler?

A. I don't recall for certain if I did or not.

Q. Would you --

A. I seem to recall a little bit about asking him for some, but I'm not certain if we obtained any or not.

Despite all the evidence to the contrary, Sgt. Gafford testified on direct examination that he did not reenter Mr. Hughes' apartment. [V19 P89 L13]

Q. When you went downstairs and put the defendant in the patrol car to be taken down to the headquarters building, did you then go back to his apartment or did you go back to your patrol car?

A. We went to our unmarked car, which was parked over by the manager's office, and got in it and drove down to the station from there.

Sgt. Gafford testified further that he never returned to Mr. Hughes' apartment.

[V19 P668 L17]

Q. Did you ever enter that apartment on any occasion other than the one you testified about where you knocked on the door for eight to ten minutes and Mr. Hughes came to the door and you went in and talked to him in the hallway?

A. No, sir, never.

Q. Not before that time and not ever since then?

A. No, sir.

Given the compelling evidence that Mr. Hughes' apartment was searched twice, once at night and once after sunrise, and given that Sgt. Gafford obtained the master keys for the apartment, Sgt. Gafford perjured himself when he testified he did not reenter Mr. Hughes' apartment.

By providing false and misleading testimony to the jury regarding the first search, and by withholding the property invoice providing evidence of that search, and by withholding the photographs from that first search, and by planting evidence in Mr. Hughes' apartment, the State (as represented by Sgt. Gafford and other officers of the Houston Police Department) violated Mr. Hughes' rights to due process and a fundamentally fair trial as guaranteed by the Fourteenth Amendment.

By providing perjured testimony regarding the second search of Mr. Hughes' apartment, Sgt. Gafford violated Mr. Hughes' rights to due process as guaranteed by the Fourteenth Amendment and by this Court in *Ex parte Chabot*, 300 S.W.3d 768 (Tex.Crim.App.2009).

CLAIM VIII

In violation of Mr. Hughes' rights to due process guaranteed by Fourteenth Amendment and by by this Court in *Ex parte Chabot*, 300 S.W.3d 768 (Tex.Crim.App.2009), Sgt. Gafford perjured himself when he testified he observed Shandra Charles' eyeglasses wedged between the cushions of Mr. Hughes' couch.

Discussion

Sgt. Gafford testified that he noticed a pair eyeglasses when he was inside Mr. Hughes' apartment while asking Mr. Hughes downtown for questioning. [V18 P90 L21]

A. I observed something that I felt was suspicious but didn't know anything -- know what it was at that point.

Q. What was it you observed that was suspicious?

A. A pair of eyeglasses that were stuffed between the cushions of the couch. They were partially protruding out from the couch. So, I could see those.

Q. Where was that couch located?

A. Directly beside me in the living room. That's where I was standing talking to Mr. Hughes.

Sgt. Gafford provided a more detailed description of those eyeglasses in his police report.

[Exhibit 1 P10]

Sgt. Gafford was standing in the living room as Hughes was preparing to secure the apartment, and Sgt. observed a pair of eye glasses partially stuffed between the cushions of the couch. The glasses appeared to have silver colored frames with round eye-pieces. It was unknown to whom these belonged, and little was thought of it at the time.

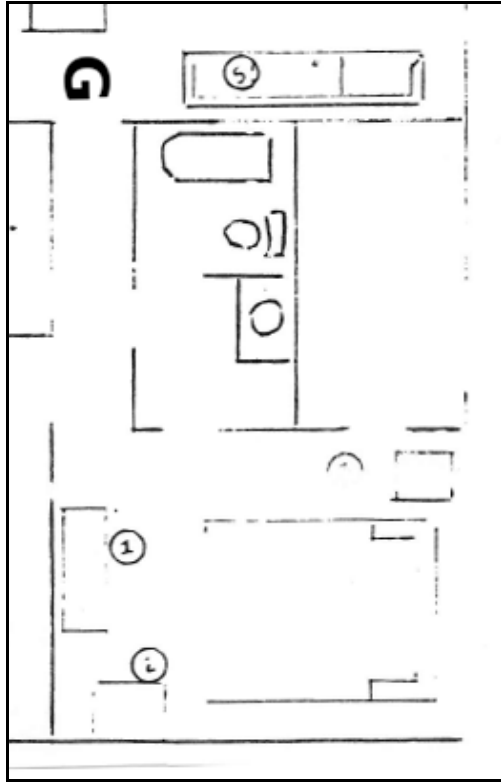
Sgt. D. A. Ferguson testified that he began searching Mr. Hughes' apartment at 9:15

AM. [V18 P283 L22] He testified that he found a pair of eyeglasses in Mr. Hughes' apartment. [V18 P249 L7] He testified that he found them between the cushions of Mr. Hughes' couch. [V18 P253 L18]

CSU Officer F. L. Hale testified that as he entered the apartment, he was led into the living room and shown a pair of silver rim glasses found between the cushions of a three-cushion couch. [Exhibit 1 P19] As the CSU officer, he took possession of them.

[V19 P337 L20]

Sgt. Hale prepared a diagram of the apartment. The diagram is reasonably close to scale since Sgt. Hale traced it from a floor plan of the apartment. [V19 P378 L12] That diagram is included as Exhibit 14 and shown below.



The diagram shows the elongated couch at the south wall of the living room, next to the "G", which is rotated 90 degrees. The glasses were purportedly discovered between the cushions of that couch. The critical portion of that diagram is presented below.

The large "G" is not in the original. It is included above to indicate where Sgt. Gafford was standing when he purportedly saw the glasses wedged between the cushions of the couch. The "G" is rotated 90 degrees to indicate the direction Sgt. Gafford was facing, based on his testimony. [V18 P82 L19] Sgt. Gafford was facing south, towards the bottom of the image.

The living room was "directly beside" him. The living room is at the upper right of the cropped image. The couch in which the eyeglasses were purportedly found is the only piece of furniture shown in the living room. [V18 P82 L16]

Sgt. Gafford testified he could see down the hallway to the bedroom and the bathroom. The bedroom is at the bottom of the cropped image. [V18 P82 L19]

A. ... As a matter of fact, I was standing beside a couch. I could also see down a hallway which led to the bedroom and bathroom.

The couch was not in front of him as it would have been if he had been facing the living room. Instead, he described the couch as being beside him. Since he was looking down the hallway as the couch was beside him, he must have been facing south, looking down the hallway.

During the daylight search, CSU Officer Hale took two photographs of the couch: one from in front and one from above. They were introduced at trial as State's Exhibits 34 and 35. They are included as Exhibit 15 to this application. The eyeglasses are nearly impossible to see in either photograph, even in the more narrowly focused photograph shot from directly above.

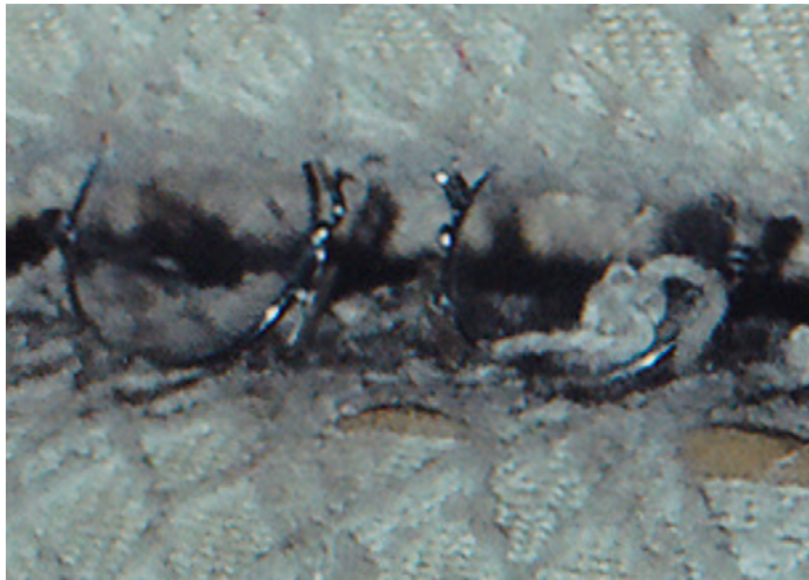
Shandra Charles' friend, Evelyn Brown, testified that the eyeglasses belonged to Ms. Charles and that Ms. Charles was wearing them on the day she was murdered.
[V19 P406 L4]

Shandra Charles' mother, Cynthia Charles, also testified that the eyeglasses belonged to her daughter and that her daughter "wore them all the time." [V19 P527 L19]

As discussed in Claim VII, there is already substantial evidence that the eyeglasses were planted. The police searched Mr. Hughes' apartment twice, recovered items during the first search, then planted the items back in the apartment for the second search. It was

during that second search that the eyeglasses were suddenly discovered and photographed between the cushions of the couch.

An enlargement of the overhead photograph from Exhibit 15 provides additional evidence that the eyeglasses were planted.



The eyeglasses did not simply fall or slide into that position. They were inserted into that position. The temples (the hinged arms that close behind the lenses or open rearward) are open. If they were closed, you would see them through the lenses, nearly parallel with the lenses. Instead, you can barely see any portion of them. That is because they were opened and inserted into the space between the cushions. It was the extended temples that allowed the glasses to remain in the unnatural and precarious position in which they were purportedly found.

Sgt. Gafford's testimony is not falsified merely by the positioning of the eyeglasses. His words are belied by the testimony of his fellow officers.

Sgt. Ferguson, the person who purportedly found the glasses, unwittingly testified during cross-examination that anyone standing where Sgt. Gafford claimed to stand could not have seen them. [V18 P268 L17]

Q. Would that be correct, if someone was standing here in this area, here in this front room, at the intersection of this passageway from the entrance to the couch and beside the kitchen area and the hallway going back into the bedroom and bathroom area do you understand what I'm talking about?

A. (No response.)

Q. Okay. If someone were standing in this area and they looked toward this couch, they would be standing here, looking this direction, correct?

A. Yes, sir, I think so.

Q. If they did that and those glasses were down in the cushion the way they're shown to be here, you couldn't see them from the end of the couch looking that way because they would be down below the eye level in between the cushions; is that correct?

A. I would -- yes, sir.

Q. That's why you had to shoot this picture from the top and this one from the front in order to get the glasses in the picture at all?

A. That's correct.

Sgt. Hamilton, who was with Sgt. Gafford as they asked Mr. Hughes downtown for questioning, also unwittingly testified that Sgt. Gafford could not have seen the glasses. Under cross-examination, while explaining that he did not conduct even a casual search of Mr. Hughes' apartment, Sgt. Hamilton testified that it was too dark to see anything.

[V18 P63 L7]

A. During the entire time that we were there, Mr. Hughes and Sergeant Gafford and Bloyd were in the living room, I stood right behind them in the hallway. The apartment was dark; and if I wanted to look around, I couldn't see anything anyway.

Q. It was dark in the apartment? Anybody turn on any lights?

A. When he went to get dressed, yes, sir, he turned on a light.

Q. Y'all went through -- what would it be, the living area, living room and into a bedroom? Did you go through any other rooms to get in there?

A. It's just a hallway.

Q. And you're telling me that the living room area where y'all were talking was in darkness the whole time you were there?

A. There's a hallway outside the door, the breezeway, whatever you would describe that as, has a light. The door was open the entire time. We stepped right out of the breezeway to the entrance of the living room. We were all standing there pretty much together.

Q. Was the bedroom dark when you went in? Did he have to turn on the light to change clothes?

A. Yes, sir, he turned on the light.

Q. Did all three of you go into the bedroom with him or just you?

A. No, I followed him in there.

Q. The other two detectives stayed in the front room?

A. Yes, sir.

Q. In the dark?

A. Yes, sir.

By providing perjured testimony regarding the his viewing of the victim's eyeglasses in Mr. Hughes' apartment, Sgt. Gafford violated Mr. Hughes' rights to due process as guaranteed by the Fourteenth Amendment and by this Court in *Ex parte Chabot*, 300 S.W.3d 768 (Tex.Crim.App.2009).

CLAIM IX

In violation of his Fourteenth Amendment right to due process and a fundamentally fair trial, HPD Sgt. Dennis Gafford coerced a confession from Mr. Hughes' by improperly promising him leniency in exchange for signing the statement. Officer Gafford compounded his prejudice by presenting false and misleading testimony at Mr. Hughes' trial.

Sgt. Gafford's coercion violated Mr. Hughes' rights to due process and a fundamentally fair trial guaranteed by the Fourteenth Amendment.

Discussion: Undisputed Facts

The lead detectives in the case, Sgt. Dennis J. Gafford and his partner Sgt. Ted C. Bloyd, confronted Mr. Hughes at his apartment in the very early morning hours of September 27, 1988. They asked him downtown for questioning. Mr. Hughes complied of his own free will.

The interview room was "just a small office on one side of the homicide division office" with "no windows" about "five foot by eight foot". It had "a door" and "a table set inside with a typewriter on it and a couple of chairs." [V18 P95 L14].

The homicide division had both audio and video recording equipment available for preserving the interrogation session. The equipment was used on occasion, but not on this occasion. [V18 P282 L2] In this case, neither Sgt. Gafford nor Sgt. Bloyd elected to record the interrogation session. Had either elected to record the session, there would be no factual dispute before this Court whatsoever.

Sgt. Gafford and Sgt. Bloyd began interviewing Mr. Hughes at 4:10 AM. [Exhibit 1 P10] Mr. Hughes was arrested at 4:30 AM. [Exhibit 1 P11] Sgt. Bloyd then left the room [V18 P115 L9] leaving Mr. Hughes alone with Sgt. Gafford to be interrogated without a witness present [V118 P115 L7] and without audio or video recording to preserve the conversation.

Sgt. Gafford told Mr. Hughes that he was under arrest for capital murder.

[V18 P117 L1] Sgt. Gafford confronted Mr. Hughes with a claim that Shandra Charles had named Mr. Hughes as their attacker. [Exhibit 1 P14]

Mr. Hughes was "visibly upset" by this claim. [Exhibit 1 P14] Sgt. Gafford informed Mr. Hughes that it was his "firm belief" that Mr. Hughes was the person who had stabbed the two victims. Mr. Hughes "broke down" [Exhibit 1 P11], "started weeping" [V18 P117 L20] and said "that he was afraid to go to jail and that he did not want to go to jail." [Exhibit 1 P11] Mr. Hughes expressed his concern "that if he didn't get to work tomorrow he would lose his job." [Exhibit 1 P15]

Sgt. Gafford read Mr. Hughes his Miranda warnings. [V18 P105 L21] Sgt. Gafford typed a statement for Mr. Hughes to sign. [V18 P111 L1] According to that statement, Mr. Hughes stabbed Shandra Charles by mistake, thinking instead he was protecting himself from an assault in the midst of a dark field, late at night. [V18 P239 L1]

Sgt. Gafford called Sgt. Theresa M. Ross and Sgt. L.B Smith into the interrogation room at 7:10 AM [Exhibit 1 P26] to witness Mr. Hughes' signature. [V18 P119 L2]

Sgt. Ross and Sgt. Smith asked Mr. Hughes questions and satisfied themselves that Mr. Hughes' signature would be voluntary. [V18 P210 L16, V18 P190 L14] Mr. Hughes signed the confession. [V18 P211 L19]

After signing the confession, Mr. Hughes asked to use the telephone. [Exhibit 1 P16]. Sgt. Gafford brought a telephone into the interrogation room and allowed Mr. Hughes to make some phone calls. [Exhibit 1 P16] Mr. Hughes first called his boss. [Exhibit 1 P16] Mr. Hughes then called his probation officer. [Exhibit 1 P16]

During trial, the State called as witnesses Mr. Hughes' boss (Mr. Bill Lillico) and Mr. Hughes' probation officer (Mr. Mikal Klumpp).

Mr. Lillico testified that, during the call, Mr. Hughes was "cool, calm, and collected", that he had no major concern other than his job. [V19 P841 L16] Mr. Hughes did not tell Mr. Lillico anything about being threatened or abused. [V19 P842 L3] Mr. Hughes did not specify the nature of his trouble, nor did he leave Mr. Lillico with the impression that he was in serious trouble. [V19 P842 L16] Remarkably, Mr. Hughes informed Mr. Lillico that he would not be into work that day [V19 P843 L11] but that he would be into work the next. [V19 P841 L2]

Mr. Mikal Klumpp testified that Mr. Hughes "sounded very calm" [V19 P360 L21], that he did not seem to be upset or excited. [V19 P427 L22]. Mr. Hughes made no mention of "police brutality" or of being coerced into signing any statement. [V19 P360 L25] He made no mention of any threats, abuse, or promises. [V19 P428 L4] Remarkably, Mr. Klumpp testified that Mr. Hughes informed him he thought he was going to be charged with assault [V19 P365 L5, V19 P429 L3] though "at that point he knew that children had died." [V19 P430 L2] "I asked him what, specifically, he was being charged with. He said at that point he thought he was being charged with assault." [V19 P360 L19]

Discussion: The Falsity of the Confession

There is no dispute that the confession Mr. Hughes so calmly signed was neither complete nor accurate. Sgt. Gafford noted that the confession excluded any mention of

the second victim. [V18 P146 L7] In fact, the first confession excluded the possibility that Mr. Hughes stabbed anyone other than Shandra Charles, whether or not by accident.

[V18 P239 L9]

I swung the knife six, eight, probably ten times, and then just took off running toward my apartment. I went straight up to my apartment and turned the TV back on to see what the score was.

In his trial testimony, Sgt. Gafford made it clear that did not believe Mr. Hughes told the complete truth. [V18 P155 L19] He conceded there were considerable differences between the first and second confession. [V18 P146 L22] He did not believe everything that was in either of the confessions. [V18 P155 L24]

Though Sgt. Gafford claims Mr. Hughes revealed that he accidentally stabbed the young boy as he was accidentally stabbing the young girl, Sgt. Gafford chose not include that information in Mr. Hughes' first statement. [V18 P156 L20] Sgt. Gafford attempted to explain this material omission by claiming that Mr. Hughes mentioned it before, but not while, Sgt. Gafford was typing the statement. [V18 P157 L17] Sgt. Gafford added: "And if he doesn't say it, then I wasn't going to put it down."

Earlier in his testimony, however, Sgt. Gafford explained that he asked Mr. Hughes questions as he typed Mr. Hughes' answers. [V18 P110 L21]

I went back to the beginning where he -- and brought up points that we had started off the conversation. I would talk to him, ask him questions and to tell me what had happened. So that he would begin again, and we would take it line by line. I would type it out as he said it and we would agree on what was to be put down. I would type it out and just the entire statement went the same way.

It was Sgt. Gafford's choice not to ask about a double murder while typing Mr. Hughes' statement. Sgt. Gafford in fact conceded that he didn't care if Mr. Hughes'

statement was full and complete. [V18 P147 L14] Apparently, he simply wanted a statement, any statement, to leverage more refined compliance later.

In addition to mentioning nothing of a second victim, the confession is false with respect to the number and nature of the wounds. The confession is false also with respect to the murder weapon involved.

According the confession, Mr. Hughes stabbed Shandra Charles as many as ten times. [V18 P239 L9] In reality, Shandra Charles was stabbed twice and with great precision: once to the left side of the chest and once to the left side of the neck. [Exhibit 4 P4] The pattern was identical to that suffered by Marcell Taylor: one stab wound to the left side of the chest and one stab wound to the left side of the neck. [Exhibit 5 P4] In both cases, the stab wound to the neck compromised both the jugular vein and the carotid artery. [Exhibit 4 P4, Exhibit 5 P4]

The confession is false as well since Mr. Hughes claims to have used his knife to stab Shandra Charles, and later to stab Marcell Taylor. As discussed in Claim IV, the murder weapon had a double-edge blade and therefore created stab wounds with no blunt edge. Mr. Hughes' knife, on the other hand, had a single-edge blade and was therefore not the murder weapon.

Discussion: The Offer of Leniency

The undisputed evidence regarding the first confession makes it abundantly clear that Mr. Hughes' demeanor changed between the time he was arrested for capital murder and the time he spoke with his boss and his probation officer.

When arrested for capital murder, Mr. Hughes knew that Shandra Charles could not have identified him as her killer, since he killed neither her nor her young cousin. Mr. Hughes therefore knew he was being framed for crimes he did not commit. He "broke down", "started weeping", stated that he was "afraid to go to jail" and "did not want to go to jail".

By the time he spoke with his boss and his probation officer, however, Mr. Hughes was "cool, calm, and collected." He told his boss that he would be into work the next day. He told his probation officer that he had believed he would be charged with assault.

In between those events, Sgt. Gafford willfully and knowingly prepared a confession that excluded necessary elements of capital murder.

These undisputed facts can be explained rationally only by an offer of leniency to reduce the capital murder charge to a simple assault charge, and to allow Mr. Hughes to remain free while that charge was being adjudicated. Because Mr. Hughes had previously been allowed to remain free in exchange for a false admission of guilt, Mr. Hughes was particularly susceptible to Sgt. Gafford's promise of leniency.

Since Sgt. Gafford orchestrated the interrogation session to exclude all witness, and since Sgt. Gafford elected not to preserve the evidence by means of video or audio recording, the Court is left with only the facts and circumstances surrounding the confessions, and with the word of Sgt. Gafford.

Discussion: The Veracity of Sgt. Gafford

Sgt. Gafford testified explicitly that he did not make any offer of leniency to Mr. Hughes. [V18 P116 L12] That claim, however, is inconsistent with the totality of the undisputed facts surrounding the confession.

Sgt. Gafford casts doubt on his own veracity since he excluded all direct means of corroborating his claim that he offered no leniency. His partner, Sgt. Bloyd left the interrogation room soon after Mr. Hughes was arrested. Sgt. Gafford did not ask the two purported witnesses to enter the room until the statement Sgt. Gafford typed had been completed. Sgt. Gafford did not preserve the conversation either by audio or video recording, though equipment was readily available for that purpose.

Sgt. Gafford casts further doubt on his own veracity by willfully and purposefully preparing a statement that could not support a capital murder conviction, though he had just told Mr. Hughes he would be charged with capital murder. Sgt. Gafford, by his own testimony, reveals that the second murder was not mentioned in the first confession because he choose not to ask questions about that second murder as he was typing the statement.

As discussed in Claim VII, Sgt. Gafford perjured himself regarding the first search of Mr. Hughes' apartment.

As discussed in Claim VIII, Sgt. Gafford perjured himself regarding seeing the victim's eyeglasses in Mr. Hughes apartment.

In summary, Sgt. Gafford is not a credible witness to the conditions under which Mr. Hughes' first confession was taken.

Discussion: Case Law

The State standard set by *Henderson*, *Janecka*, and *Muniz* is that a confession is involuntary if induced by an improper promise that was:

1. positive
2. made or sanctioned by someone in authority, and
3. of such an influential nature that it would cause a defendant to speak untruthfully.

The conditions surrounding Mr. Hughes first confession make it abundantly clear that all three conditions of the *Henderson* test have been met.

In *Leyra* (1954), the Supreme Court ruled that a confession obtained by a promise of leniency violates the Fourteenth Amendment. The Court ruled further that "once a promise of leniency is made a presumption arises that it continues to operate on the mind of the accused."

Accordingly, Mr. Hughes second confession was coerced just as the first.

In *Lynnum* (1963), the Supreme Court noted that it had ...

... uniformly held that even though there may have been sufficient evidence, apart from the coerced confession, to support a judgment of conviction, the admission in evidence, over objection, of the coerced confession vitiates the judgment because it violates the Due Process Clause of the Fourteenth Amendment.

Accordingly, this Court could vitiate the judgment against Mr. Hughes based on the coerced confession alone.

By coercing a confession from Mr. Hughes via the promise of leniency, Sgt. Gafford violated Mr. Hughes' rights to due process and a fundamentally fair trial as guaranteed by the Fourteenth Amendment.

CLAIM X

The cumulative effect of the fabricated evidence, false and misleading testimony, the evidence withheld, and the coerced confessions discussed in Claims I through X above violated Mr. Hughes' Fourteenth Amendment rights to Due Process and a fundamentally fair trial.

PRAYER FOR RELIEF

Because of the new evidence and constitutional errors set forth herein, and

In accordance with TCCP 11.071 Section 5(a)(1), and/or

In accordance with TCCP 11.071 Section 5(a)(2), and/or

In accordance with *Schlup v. Delo*, 513 U.S. 298 (1995), and/or

In accordance with *Ex parte Chabot*, 300 S.W.3d 768 (2009), and/or

In accordance with *Henderson v. State*, 962 S.W.2d 544 (1997)

Preston Hughes III prays that this Court:

1. Stay his execution scheduled for November 15, 2012.
2. Issue a Writ of Habeas Corpus to discharge him from his unconstitutional confinement and restraint and relive him of his unconstitutional conviction and sentence of death and the verdict against him.
3. Grant him an evidentiary hearing at which he may present evidence in support of the claims presented herein.
4. Grant him leave to conduct discovery, including the authority to obtain subpoenas in forma pauperis for witnesses and discover of documents and other information, including but not limited to the physical evidence in the custody of the State, necessary to prove the facts alleged in this application.
5. Grant such other relief as law and justice require.

Respectfully Submitted on or about November 7, 2012:

/s/ Preston Hughes, III

Preston Hughes III
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3872 FM 350 South
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