

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

PRESTON HUGHES, III, Plaintiff

vs.

ANNISE D. PARKER, Defendant
Mayor, City of Houston, Texas
P.O. Box 1562
Houston, TX 77251

COMPLAINT

1. Plaintiff Preston Hughes, III is scheduled to be executed by the State of Texas on November 15, 2012.
2. In 2007, an independent investigator commissioned by the City of Houston made a specific recommendation regarding the appointment of a special master to reinvestigate Plaintiff's case.
3. Defendant has denied Plaintiff the special master recommended by the City's own special investigator. Despite having substantial reason to suspect the integrity of Plaintiff's conviction, and despite having recently apologized to a person similarly harmed as Plaintiff, and despite agreeing to a multi-million dollar settlement with that similarly-harmed person, Defendant continues to deny Plaintiff the special master recommended by the City's own special investigator.
4. Beginning in November 2002, the Houston Police Department ("HPD") Crime Lab and Property Room ("Crime Lab") became the subject of a two-year

wave of adverse publicity regarding the quality of the Crime Lab's forensic work. As a result of that adverse publicity, the City of Houston and the HPD commissioned an independent investigator, Michael Bromwich, to conduct a thorough review of the Crime Lab and to make recommendations to mitigate its past errors and to prevent future errors. While the Defendant has acted responsibly on the recommendations to prevent future errors, Defendant has willfully ignored all recommendations regarding the mitigation past and ongoing errors.

5. Mr. Bromwich organized a team of 27 forensic experts, scientists, statisticians, and legal experts (the "Investigative Committee") to conduct the investigation. The Investigative Committee began its work in 2005 and published its final report in 2007: *Final Report of the Independent Investigator for the Houston Police Department Crime Laboratory and Property Room* ("Final Report")

6. During its investigation and in its Final Report, the Investigative Committee identified many convictions that involved "major issues" with the Crime Lab's work. The Investigative Committee identified Plaintiff Preston Hughes by name as one of the prisoners whose case had "major issues".

7. Regarding those cases having "major issues", the Investigative Committee made four recommendations to mitigate past errors. One of those recommendations is repeated below.

Harris County and the City [of Houston] should appoint a special master to review the complete investigative, prosecutorial, appellate, and post-

conviction habeas record for all 180 of the major issue serology cases we identified that relate to a currently incarcerated prisoner ... The purpose of this review should be to determine (1) what role, if any, work performed by the Crime Lab played in the defendant's conviction and (2) whether DNA analysis of evidence in the case should be performed in order to substantiate the defendant's conviction ... Harris County and the City should arrange for the DNA analysis of evidence in the case without cost to the prisoner.

8. Defendant, by following the Investigative Committee's recommendations intended to prevent future injustices while simultaneously ignoring the Investigative Committee's recommendation to mitigate Plaintiff's ongoing injustice, Defendant continues to violate Plaintiff's constitutional rights to due process and his Eighth Amendment right to be free from cruel and unusual punishment.

9. Plaintiff requests of this Court an order declaring that Defendant's continued failure to act violates Plaintiff's constitutional rights and requiring that Defendant act with all due speed to mitigate the severe harm she continues to bring upon Plaintiff.

I. JURISDICTION

10. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343, 1651, 2201, and 2202, and under 42 U.S.C. § 1983.

II. VENUE

11. Venue lies in this Court under 28 U.S.C. § 1391 because the Defendant is being sued in her official capacity and she maintains an office in the Southern District of Texas.

III. PARTIES

12. Plaintiff is currently incarcerated, under a sentence of death imposed by the 174th District Court of Harris County, Texas at the Polunsky Unit of the Texas Department of Criminal Justice in Livingston, Texas. He is scheduled to be executed on November 15, 2012.

13. Defendant Annise D. Parker is the Mayor of Houston, Texas. She maintains an office in that city. She is being sued in her official capacity. She has harmed Plaintiff and continues to harm Plaintiff by ignoring the recommendation of the very Investigative Committee her city commissioned, i.e. that she appoint a special master to review the complete investigative, prosecutorial, appellate, and post-conviction habeas record of Plaintiff's case, and that, should the special master so decide, she arrange for DNA testing at no cost to Plaintiff.

IV. PROCEDURAL BACKGROUND

14. On May 3, 1989 in the 174th District Court of Harris County, Texas, Plaintiff was found guilty of capital murder. On May 4, 1989 the jury answered the special issues submitted and the trial court set Plaintiff's punishment at death. On original submission on direct appeal, the Texas Court of Criminal Appeals

reversed Plaintiff's conviction and death sentence. *Hughes v. State*, 878 S.W.2d 142 (Tex. Crim. App. 1992 – Case No. 70,901, decision Dec. 9, 1992). However, on rehearing, the Texas Court of Criminal Appeals affirmed his conviction and sentence. (Tex. Crim. App. 1993 – Case No. 70,901, decision June 23, 1993) (not designated for publication). The United States Supreme Court denied a writ of certiorari from the rehearing decision. *Hughes v. Texas*, 511 U.S. 1152 (June 6, 1994).

15. The Texas Court of Criminal Appeals denied relief on Plaintiff's initial post-conviction application for writ of habeas corpus and dismissed his first subsequent habeas application. *Ex parte Hughes*, Case No. WR-45,876-01 (Tex. Crim. App. Sept. 13, 2000) (not designated for publication), and *Ex parte Hughes*, Case No. WR-45,876-02 (Tex. Crim. App. Nov. 14, 2001) (not designated for publication). No petition for writ of certiorari from either denial of state habeas relief was filed with the United States Supreme Court.

16. 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 Plaintiff any Certificate of Appealability 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 Plaintiff a Certificate of Appealability. *Hughes v. Dretke*, Case No. 04-70022 (5th Cir. Tex., 2006) (not designated for publication). On June 5, 2008 the U.S. Court of Appeals for the Fifth Circuit denied Plaintiff federal habeas relief. *Hughes v. Quarterman*, 530 F.3d 336 (5th Cir. Tex., 2008). On May

18, 2009 the U.S. Supreme Court denied certiorari. *Hughes v. Quarterman*, 556 U.S. 1239 (2009).

17. On July 25, 2012 the Texas Court of Criminal Appeals received Plaintiff's second subsequent state habeas application. It was denied on August 29, 2012. *Ex parte Hughes*, Case No. 76,869 (Tex. Crim. App. (2012)) (not designated for publication). An appeal to the Supreme Court of the United States was filed and a final decision is pending.

18. On September 17, 2012 a civil suit was filed in Harris County District Court. Plaintiff asserted that the Texas Department of Criminal Justice has, under color of state law, denied him due process and the right to be free from cruel and unusual punishment by arbitrarily deciding to change the protocol used for lethal injections from three drugs to a single drug. A final decision is pending.

19. On October 3, 2012 Plaintiff filed a Complaint in U.S. District Court claiming that Texas Department of Criminal Justice Director Rick Thaler and Harris County, Texas District Clerk Chris Daniel had violated his federal civil rights. The Complaint was dismissed on November 6, 2012.

20. On October 29, 2012 the U.S. District Court received First Motion to alter judgment. On November 7, 2012 the U.S. District Court issued an Order denying relief.

21. On October 31, 2012 the Texas Court of Criminal Appeals received Plaintiff's third subsequent state habeas application, which was dismissed on November 5, 2012.

22. On November 8, 2012 the Texas Court of Criminal Appeals received and dismissed Plaintiff's fourth subsequent state habeas application.

23. On November 9, 2012 the U.S. District Court received and denied Plaintiff's Memorandum for Stay of Execution and In Support of Motion for Relief From Final Judgment.

24. On November 12, 2012 the 174th District Court of Harris County received Plaintiff's Chapter 64 motion for DNA testing. A decision is pending.

V. THE ROLE OF THE CRIME LAB IN PLAINTIFF'S CONVICTION

25. The evidence presented at trial showed that fifteen-year-old Shandra Charles and her three-year-old cousin Marcell Taylor were stabbed to death in a dark overgrown field in west Houston on September 26, 1988. Each suffered a stab wound to the left chest and a stab wound to the left side of the neck. Shandra Charles' left jugular vein and common carotid artery were completely severed. Marcell Taylor's left jugular vein and common carotid artery were perforated.

26. Shandra Charles' murder was particularly bloody. Arterial injuries are known as spurting wounds, and her carotid artery had been completely severed. An HPD officer on the scene described Shandra Charles chest wound as "bleeding pretty seriously" and her neck wound as "bleeding rather profusely." Although Shandra Charles was lying on a permeable surface of dirt and weeds, rather than on a sidewalk or hard flooring, the officer still noted that there was a "puddle of blood on the ground where she was lying". The blood pooled more quickly than it

could be absorbed. 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. Her clothes were, not surprisingly, covered in blood.

27. Under such grisly circumstances, it is almost certain that the attacker would have blood on his knife, his person, his clothing, and his shoes. Dr. Lloyd White affirmed that point in an affidavit prepared for Plaintiff. Dr. White is currently the Deputy Medical Examiner for Tarrant County. He was previously the Chief Medical Examiner for Neuces County. He affirmed that the absence of such blood would suggest "an exquisite attention to procedural detail" and that even "surgeons, creating wounds in highly controlled conditions, virtually always get blood somewhere on their gowns, shoes and/or head coverings."

28. Though the HPD questioned Plaintiff soon after the murder, and though they secured his knife, clothing, and shoes soon thereafter, there was no blood apparent on Plaintiff, on his clothing, on his shoes, or on his knife. Furthermore, the HPD found no evidence in Plaintiff's apartment that he made any effort to clean blood from his person, his clothing, his shoes, or his knife. The complete absence of blood was powerful evidence that Plaintiff did not commit the murders.

29. At the time of Plaintiff's trial, James Bolding was the supervisor of the serology section of the Crime Lab. James Bolding conducted the testing on Plaintiff's clothing and knife. He testified that he found invisible blood on Plaintiff's blue jeans, work shirt, and knife. To make his case that he found

invisible blood where none was apparent, Mr. Bolding willfully withheld exculpatory results from two independent, blood-specific confirmatory tests that he had himself conducted on the same clothing. After withholding the exculpatory evidence regarding the clothing, Mr. Bolding then, while sitting in the witness box in front of the jury, subjected Plaintiff's knife to a blood screening test that Mr. Bolding knew would return a false positive. The knife blade was rusty, and Mr. Bolding selected a testing reagent well known to react with the iron in rust as easily as it reacts with the iron in blood.

30. Because Mr. Bolding tested the clothing just days before he testified, and because he tested the knife while he testified, Mr. Bolding surprised Plaintiff's defense team and left them no opportunity to uncover the fraud that he had just perpetrated on the court and the jury.

31. In their Final Report, the Investigative Committee identified James Bolding as the central figure in the unprofessional and even fraudulent work that had been taking place at the Crime Lab's serology section for several decades. They 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.

32. The Investigative Committee 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 Investigative Committee 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.

VI. THE PARALLEL CASE OF GEORGE RODRIGUEZ

33. One of Mr. Bolding's victims, George Rodriguez, also suffered at the willful inaction of Defendant. As in the case of Plaintiff, Mr. Rodriguez was on the Investigative Committee's list of prisoners having "major problems" with their Crime Lab work. As in the case of Plaintiff, Mr. Rodriguez was ignored by the City of Houston. Mr. Rodriguez, however, walks free today in spite of all those who ignored him though tasked to reinvestigate his case. Mr. Rodriguez was exonerated by DNA testing pursued by the Innocence Project.

34. Mr. Rodriguez was exonerated, after seventeen years of wrongful imprisonment, despite the wrongful inattention of the Defendant. Mr. Rodriguez then sued James Bolding and the City of Houston for their role in his wrongful incarceration. James Bolding settled out of court. The City went to trial. The City conceded that James 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".

35. Just this month, Defendant Annise Parker, acting in her role as Mayor of Houston, apologized to George Rodriguez for the injustice brought upon him by James Bolding, by the HPD crime lab, and by the inaction of the City of Houston. "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."

36. Despite the lesson purportedly learned from the George Rodriguez' case, Defendant still ignores the recommendation of the Investigative Committee to mitigate her past and ongoing misdeeds.

VII. NUMEROUS OTHERS WERE HARMED BY THE CRIME LAB AND THE DEFENDANT'S REFUSAL TO ACT

37. The Final Report of the Investigative Committee cast serious doubt on the quality of the convictions in which the HPD crime lab serology section had been involved. In 21% of the 850 cases where the defendant was still incarcerated, the Investigative Committee "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". Even more disturbing, should that be possible, in 41% of the 29 cases in which the defendant had already been executed, the Investigative Committee found similar "major issues".

VIII. THE HARM INFLICTED AND STILL BEING INFLICTED ON PLAINTIFF

38. Plaintiff was convicted in part because James Bolding withheld the exculpatory results of two independent blood-specific confirmatory tests, and because he willfully and maliciously fabricated fraudulent evidence of guilt right before the jury.

39. In 2007, the Investigative Committee commissioned by the City of Houston made a specific recommendation directly applicable to Plaintiff's case that would have, if not ignored, led to his exoneration and freedom. Instead, Plaintiff faces execution within days. The City's own Investigative Committee

recommended that Plaintiff be assigned "a special master to review the complete investigative, prosecutorial, appellate, and post-conviction habeas record of Plaintiff's case".

40. Had the special master been assigned to Plaintiff's case, the special master would have easily discovered powerful evidence of his innocence, as have lay citizenry discovered just this year.

41. The special master could have, for example, simply by reviewing the police reports, realized that Shandra Charles' purported dying declaration in which she purportedly named "Preston" as her attacker, was but a fabrication by the only HPD officer who claimed to have heard it. The HPD officers who discovered her laying face down on the trail reported that she was already unconscious when they found her. The special master would have realized as well that this exculpatory information was kept from the jury. Dr. Lloyd White, discussed previously, would have then only confirmed the finding of the special master when he recently affirmed that Shandra Charles could have remained conscious for no more than 60 seconds after suffering her severed carotid.

42. Similarly, the special master could have, simply by reviewing the autopsy reports, realized that Plaintiff's knife was not the murder weapon. None of the victim's wounds had a blunt edge. Plaintiff's knife did. For anatomical reasons, the contrast is significant only with respect to the neck wounds; only the neck wounds preserved the cross section of the blade that created them. Those neck wounds

reveal the blade that created them was double-edged. Plaintiff's knife was single-edged.

43. Similarly, the special master could have, simply by reviewing the chain of custody documents, realized that the HPD searched Plaintiff's apartment not just once, as they claimed, but twice. During the first, unreported search, the HPD officers seized items and then turned them into the property locker at 2:58 AM. Before their acknowledged search beginning at 9:15 AM, HPD officers removed those same items from the property locker and staged them back in Plaintiff's apartment for the purpose of a photography session. It was during that staged photography session that the HPD "discovered" Shandra Charles' eyeglasses wedged between the cushions of Plaintiff's couch. Those eyeglasses had not been previously turned into the property locker along with the other items seized during the first search.

44. Similarly, the special master could have, simply by reading the police reports and the trial transcripts, realized that Plaintiff's two confessions were contradictory with one another, contradictory with the evidence at the crime scene, and coerced by an offer of leniency. By his false confessions, Plaintiff revealed that he had no knowledge of the crime or the crime scene. Plaintiff was wrong about the number of wounds, the precision with which they were inflicted, the relative locations of the two victims, and about the murder weapon itself. Though Plaintiff had just been arrested for capital murder, he was told he would be able to walk free if he only signed a confession that minimized his guilt. Plaintiff signed

the confession. He then called his boss and told his boss that he would miss that day of work, but would be into work on the next day.

45. In summary, had Defendant not refused to act on the recommendation of her Investigative Committee, Plaintiff's claim of actual innocence would have already been investigated and substantiated by a special master, and Plaintiff would be free rather than facing execution within days.

IX. FIRST CLAIM FOR RELIEF: DENIAL OF DUE PROCESS

46. Plaintiff realleges and incorporates herein by reference the allegations contained in all the preceding paragraphs of this Complaint.

47. By refusing to act on the recommendation of the Investigative Committee, Defendant continues to deny Plaintiff a special master to reinvestigate his case. Defendant has thereby deprived and continues to deprive Plaintiff of his liberty interests in utilizing state procedures to obtain reversal of his conviction and/or to obtain a pardon or reduction of his sentence, all in violation of his right to Due Process of Law under the Fourteenth Amendment to the Constitution of the United States.

X. SECOND CLAIM FOR RELIEF: CRUEL AND UNUSUAL PUNISHMENT

48. Plaintiff realleges and incorporates herein by reference the allegations contained in all the preceding paragraphs of this Complaint.

49. By refusing to act on the recommendation of the Investigative Committee, Defendant continues to deny Plaintiff a special master to reinvestigate his case.

Defendant has thereby deprived and continues to deprive Plaintiff of his liberty interests in utilizing state procedures to obtain reversal of his conviction and/or to obtain a pardon or reduction of his sentence, all in violation of his right to be free from Cruel and Unusual Punishment under the Eighth Amendment to the Constitution of the United States.

XI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court order Defendant to act quickly and in good faith on the recommendation of the Investigative Committee, specifically that Defendant "appoint a special master to review the complete investigative, prosecutorial, appellate, and post-conviction habeas record" of Plaintiff's case.

WHEREFORE also, Plaintiff prays that the Court stay Plaintiff's execution so that the harm still being inflicted on him by Defendant can be mitigated, so that extreme and imminent harm can be avoided, and so that Defendant will have an opportunity respond to the order of this Court.

Respectfully submitted on November 13, 2012

/s/ Preston Hughes, III
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