

N0. F97-01215-J

In the Criminal District Court No. 3 of Dallas County, Texas  
and  
In the Court of Criminal Appeals of the State of Texas

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*Ex Parte* Gregory Edward Wright

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First Subsequent Application for  
a Post-Conviction Writ of Habeas Corpus  
and  
Motion for a Stay of Execution

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CAPITAL CASE -- EXECUTION DATE SEPTEMBER 9, 2008

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**TO THE HONORABLE JUDGE OF THE CRIMINAL DISTRICT COURT  
NO. 3 OF DALLAS COUNTY, TEXAS and  
TO THE HONORABLE JUDGES OF THE COURT  
OF CRIMINAL APPEALS OF THE STATE OF TEXAS:**

COMES NOW Applicant Gregory Edward Wright, through his undersigned  
counsel, who in support of this First Supplemental Application for Post-Conviction  
Writ of Habeas Corpus brought pursuant to Section 5 of Article 11.071 of the  
Texas Code of Criminal Procedure (“CCP”), would respectfully show as follows:

## **I. SUMMARY AND FUNDAMENTALS**

Applicant Gregory Edward Wright asks this court to issue a post-conviction writ of habeas corpus, granting him relief from his unconstitutional conviction and sentence of death, for two reasons:

### **A. Newly Discovered Evidence of Actual Innocence That Was Unavailable at the Time Wright filed His Initial Application Satisfies the Exception to Successive Applications Set Out in Sec. 5(a)(1).**

Under Tex. Code Crim. Proc., Art. 11.071 § 5(a)(1), a subsequent application may be filed for a claim containing sufficient facts that were not, and could not have been, filed at the time the initial application was filed because the factual basis for the claim was then unavailable.

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

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

Adams' new declaration sets forth sufficient facts to establish Wright's actual innocence of the offense. Since the declaration was received on July 7, 2008, it was unavailable to Wright on the date his original application was filed in 2001. The factual basis for Wright's actual innocence claim did not exist until Adams wrote the declaration. Since his arrest, Adams has been represented by counsel, and therefore, unavailable for Wright to interview. Therefore, the declaration was unavailable until authored by Adams. For these reasons, this claim is cognizable under Tex. Code Crim. Proc., Art. 11.071 § 5(a)(1).

**B. This Newly Discovered Evidence Also Opens "Gateway" Claims under Tex. Code Crim. Proc., Art. 11.071 § 5(a)(2).**

Under Tex. Code Crim. Proc., Art. 11.071§ 5(a)(2) a subsequent application may be filed for a claim containing sufficient facts establishing, by a preponderance of the evidence, that but for violations of the United States Constitution, no rational juror could have found the applicant guilty beyond a reasonable doubt.

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

These constitutional violations include:

1. *Brady v. Maryland* claims that:
  - a. The prosecution suppressed evidence of an offer for immunity against prosecution made to a witness in exchange for testimony implicating Wright in the offense;
  - b. Suppression of statements of guilt made by Adams to two different witnesses and suppression of a 911 tape memorializing one of these inculpatory statements;
  - c. Suppression of evidence that a knife and jeans used in the murder were found near Adams' property at a shack where Adams stayed.
2. *Napue v. Illinois* claims that:

- a. The prosecution falsely denied making a plea offer to one of the witnesses at Wright's trial who provided testimony inculcating Wright in the murder;
- b. The prosecution falsely indicated that the state did not know the whereabouts of a witness to one of Adams' admissions of guilt;
- c. The prosecution falsely informed the jury that a knife and jeans used in the murder were found in a shack solely inhabited by Wright, and not Adams
- d. The prosecution falsely informed the jury that a fingerprint found on the victim's bedding matched Wright.

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

All of these constitutional violations concern evidence of Wright's innocence that mirror and support Adams' newly-available declaration of Wright's innocence. By a preponderance of the evidence, no rational juror would find Wright guilty beyond a reasonable doubt, given Adams' recantation and the evidence wrongfully denied Wright at his trial due to constitutional error.

## **II. PROCEDURAL HISTORY**

Gregory Edward Wright was indicted for capital murder alleged to have occurred on March 23, 1997. A jury trial was held, and Wright was sentenced to death on December 8, 1997. He perfected a notice of appeal to the Court of Criminal Appeals. The Appeal was affirmed on June 28, 2000. A writ of certiorari was denied on January 22, 2001. Wright filed for relief under Tex. Code Crim. Proc., Art 11.071 on July 22, 1999. That writ was denied on September 13, 2000. Thereafter on January 18, 2002, Wright filed an Application for Relief Pursuant to 28 U.S.C. § 2254. The Court of Appeals entered its opinion denying a certificate of appealability on November 17, 2006. The Court of Appeals denied Mr. Wright's timely petition for panel rehearing on December 19, 2006. A writ of certiorari to the United States Supreme Court was thereafter refused. On May 8, 2008, Dallas County District Court Judge Robert Francis set an execution date for September 9, 2008.<sup>1</sup>

## **III. CLAIMS FOR RELIEF**

### **Overview of Adams' recantation**

On March 22, 1997, Donna Vick's body was found in her home. She died of multiple stab wounds. Subsequently, Adams approached a store clerk and told him of the murder. The police were called. Adams was arrested. As a result of Adams'

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<sup>1</sup> Exhibit 1

custodial confession<sup>2</sup>, Wright was arrested. Wright was tried first as the primary actor. Subsequent to Wright's conviction, Adams was then tried separately on a multiple parties theory.

On July 7, 2008, after years of denying his role in Vick's murder, John Adams wrote an unsolicited declaration of guilt<sup>3</sup> that reads as follows:

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

On August 11, 2008, Adams sent a supplemental declaration clarifying Wright's role in the offense.<sup>4</sup>

8. Did you place the murder of Donna D. vick on the hands of Gregory E. Wright? Yes to make it look like he did it. I set him up.

9. Is Gregory E. Wright actually and factually innocent of the murder of Donna D. Vick and never knew of any intent to harm before the crime took place? Yes he's innocent of this crime. I did it.

13. Did you kill Donna D. Vick? Yes

23. Do you have anything additional to add, relevant to the subject of Gregory E. Wright's trial, evidence, conviction, sentence, or date of execution, not previously covered in your above and ofregoing

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<sup>2</sup> Exhibit 2 attached hereto

<sup>3</sup> Exhibit 3 attached hereto

<sup>4</sup> Exhibit 4 attached hereto

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

Adams' recantation completely exonerates Wright. Adams' recantation does more than unequivocally establish Wright's innocence; it also renounces Adams' written confession<sup>5</sup> used at Wright's trial to obtain a conviction against Wright.

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

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

Adams' recantation is further supported by Adams' admission of guilt to another inmate—William Mason.<sup>6</sup>

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<sup>5</sup> To avoid confusion, the written confession that Adams' gave at the time of his arrest, exhibit one, which implicated Wright is referred to throughout as the "confession." Adams' recent declarations renouncing that confession, recanting that confession and exculpating Wright, exhibits two and three, are referred to throughout as the recantation.

<sup>6</sup> Exhibit 5 attached hereto.

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

**A. Ground for Relief Number One**

**Basis for Relief: Actual innocence**

**1. Newly discovered evidence establishes that Wright is actually innocent of the offense of which he was convicted.**

A claim of actual innocence is cognizable in an application for a writ of habeas corpus. See *Ex parte Elizondo*, 947 S.W.2d 202, 205 (Tex.Crim.App. 1996); also see, *Ex parte Tuley*, 109 S.W.3d 388 (Tex.Crim.App. 2002). This is because incarceration of an innocent person offends federal due process. *Ex parte Elizondo, supra*. An applicant is entitled to relief on a freestanding actual innocence claim if he proves by clear and convincing evidence that no reasonable juror would have convicted him in light of newly available evidence of innocence. *Id.* at 209. Whether an applicant has met this burden is determined by "assess[ing] the probable impact of the newly available evidence upon the persuasiveness of the State's case as a whole...[by] weigh[ing] such exculpatory evidence against the evidence of guilt adduced at trial." *Id.* at 206.

## **2. The state's theory of prosecution.**

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

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

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

## **3. The recantation is newly discovered evidence that was not available to Wright at the time his original writ was filed.**

Adams adamantly blamed Wright for the murder until July 7, 2008, when he had a change of heart. His website, a copy of which is attached hereto<sup>7</sup>, attests to his steadfast contention that Wright was guilty. Under Tex. Code Crim Proc., art. 11.071

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<sup>7</sup> Exhibit 6

§5(a) (1) this claim could not have been presented before Adams' recantation. This recantation did not exist at the time Wright's original 11.071 application was filed.

**4. The importance of Adams' initial confession, now known to be false.**

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

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

implicates Wright in another, unrelated murder. The additional harm of this unproven allegation magnifies the effect on the jury's view of this crime.

**5. Adams' initial confession, now known to be false, made Wright the primary actor.**

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

In closing argument at the punishment phase of trial, the State specifically argued that Wright alone killed Ms. Vick. (R51.17) These facts must be juxtaposed against the repeated assertions made in previous filings that the State never alleged that Wright acted alone. (R1.359, n.7) The trial court, in a better position to determine the effect of the statement at the time, saw the evidence as excluding party liability. The trial court found no evidence that Wright acted as merely a party to the crime. If Wright was not the sole perpetrator, then he was either a co-actor, an accomplice, or a mere bystander. However, none of the latter theories are supported by Adams' initial confession.

## **6. Lack of Corroboration**

Adams' initial confession was the blueprint for the prosecution of Wright. Without it, the remaining evidence fails to corroborate Wright's role in the stabbing. As the State conceded in final argument (R49.50), the evidence, aside from Adams' initial confession, is entirely circumstantial. Without Adams' false confession, the prosecution is left with equivocal evidence of Wright's guilt.

### **a. The property in the shack**

Bloody jeans and kitchen knives (R46.29-33, 43-44) were found at a shack where both Wright and Adams lived. The State claimed that the murder jeans had paint flecks on them, and that since Wright sniffed paint, he wore the jeans. (R49.55-57) These jeans have been subjected to DNA testing. A profile found on the jeans does not match Wright. Additional testing has been requested over the state's vigorous objections.

Further, the record shows that paint was found all around the shack and that both Adams' and Wright's belongings were found nearby in the shack. All of the jeans found in the shack had paint on them as well. (R46.37-39) This assertion ultimately proves nothing. Moreover, Adams's knife, the murder knife, was not found at Wright's shack and is not linked to Wright in any way. Adams knife was smeared undisputably with Vick's blood. (R47.135-140)

The inference of guilt derived from the presence of a potential murder weapon and clothes used in the murder is entirely ameliorated by the fact that Adams, the co-defendant, also lived in the same shack. Certainly, had Wright been in sole possession of a potential murder weapon or the bloody jeans, a suggestion could be made that he committed the murder. That suggestion is entirely eviscerated when the fact finder is informed that the co-defendant was in possession of those items to the same, if not a greater degree, than Wright.

**b. The jeans**

The state also emphasized (R1.357) that Vick's blood was found on jeans attributed to Wright. But, at trial, the jury was not properly informed that the jeans in question were found at a shack belonging to *both* Wright and Adams. Therefore, the jeans were just as likely to belong to Adams as Wright. And the record shows that Wright was seen wearing new dark jeans on the evening of the murder. (R45.60-61) Even a cursory examination of the Umen jeans worn by the murderer gainsays that these jeans are not dark and not new. Rather, they are old and tattered. As the State argued at trial, the murderer straddled the victim and stabbed her while wearing the Umen jeans. The jeans have been partially subjected to DNA testing with no conclusive results to date. At least one identifiable profile on the jeans is not Wright's. The State has refused to submit these jeans to Wright's requested additional testing.

**c. The partial bloody print**

The only other piece of physical evidence potentially tying Wright to the crime scene was a partial bloody fingerprint that only one of the State's witnesses, to the exclusion of all other witnesses, including Dallas County Deputy Sheriffs Howell and Watson (R47.123-124), conjectured was Wright's. (R46.73-80) When James Cron, the only expert able to draw a "comparison," was asked to scientifically demonstrate his findings for the jury, he could not. He admitted that the jury was just going to have to "accept his testimony on faith".

In other words, for the one piece of physical evidence that the State used to tie Wright to the murder scene, Cron stated that the jury would "just have to take his word for it". (R47.127-128) The regular Dallas County Sheriff's employees were unable to make any comparison due to the lack of identifiers on the partial print.

**d. Contradictory evidence**

Not only is the State's case against Wright far from overwhelming, it is overburdened by conflicting evidence that Adams was the perpetrator, even without Adams' recent admission. Adams lived in the shack where the murder jeans and some knives were found. Adams pawned Vick's property. Adams' wallet was found in the Vick's car. Adams confessed to the murder to at least two people before he was arrested. And, by Adams's own admission, the knife used in the murder was his. This

evidence contradicts the evidence offered against Wright and totally corroborates Adams' recent recantation.

**e. Prejudice**

In truth, the facts and evidence directly lead to the conclusion that Adams, not Wright, was the murderer – a position the State readily embraced when it successfully tried Adams for capital murder.

Thus, based upon the recent recantation of Adams, and for the reasons set out above, Wright has established his actual innocence of the offense. The anticipated testimony of Adams conclusively establishes that Wright is not guilty. No physical evidence or confession refutes this testimony. Adams now admits that he, not Wright, killed Donna Vick.

**B. Ground for Relief Number Two**

**Basis for Relief: Gateway Claims**

*Schlup v. Delo*, 515 U.S. 298, 327 (1995) states that "if a petition such as [applicant's] presents evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of non-harmless constitutional error, the petitioner should be allowed to pass through the gateway and argue the merits of his underlying claim." *Schlup*, 513 U.S. at 316. *Schlup* does not provide an independent basis for habeas relief but, rather,

simply protects individuals, such as Wright, from having their constitutional claims procedurally barred. *Id.* The *Schlup* standard is embodied in 11.071§5(a) (2). Further, it was endorsed in *Holmes*<sup>8</sup>, which held that the execution of an innocent person violated the Due Process Clause of the Constitution, and *Elizondo*,<sup>9</sup> which confirmed that, when constitutional trial error is found, the new evidence must only establish “sufficient doubt about his guilt that execution would be a miscarriage of justice.”

In Wright’s case, the State’s *Brady* violations, the State’s *Napue* violations and Wright’s *Strickland* claims set out hereinafter have resulted in a miscarriage of justice that require an examination of Wright’s innocence claims.

[H]abeas corpus is, at its core, an equitable remedy.” *Schlup* at 327. *Kyles v. Whitley*<sup>10</sup> reminds reviewing courts that the “duty to search for constitutional error with painstaking care is never more exacting than it is in a capital case.” *Id.* at 422 (citing *Burger v. Kemp*, 483 U.S. 776, 785 (1987)). Wright’s trial was so infected with constitutional error that the verdict was unreliable and has resulted in the confinement of an innocent man. When an applicant claims innocence, *Schlup*’s “more likely than not” standard provides the appropriate measure of review. *See Calderon v. Thompson*, 523 U.S. 538, 560 (1998). *Schlup* merely requires that

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<sup>8</sup> *Ex Rel Holmes v. Court of Appeals*, 885 S.W.2d 389, 397 (Tx. Crim. App. 1994)

<sup>9</sup> *Ex Parte Elizondo*, 947 S.W.2d 202 (Tex. Cr. App. 1996).

<sup>10</sup> *Kyles v. Whitley*, 514 U.S. 419 (1995).

Wright “show that it is more likely than not that no reasonable juror would have convicted him in light of the new evidence.” *Schlup*, 513 U.S. at 327.

Because the excluded and misstated evidence set out below surmounts the *Schlup* “more likely than not” standard, Adams’ recantation provides the necessary gateway to consider Wright’s innocence claim. Adams’ recantation alone undermines confidence in the jury verdict. Any trier of fact is now required to give Adams’ recantation close scrutiny. This evidence wholly undermines the State’s theory that Wright wielded the murder weapon. Adams admits he, not Wright, killed Donna Vick. In fact, this evidence, much like the evidence withheld in *Graves*<sup>11</sup>, is exacerbated by the lack of physical evidence tying Wright to the murder. *See Graves*, at 4-5. Under prevailing Supreme Court precedent, Wright is entitled to all requested relief.

In light of those standards, Wright now urges the following constitutionally based claims.

### **1. Brady Claims**

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

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<sup>11</sup>*Graves v. Dretke*, 442 F.3d 334 (5<sup>th</sup> Cir. 2006) cert. denied

- a. **The State's suppression of the offer made to Mosley in exchange for his testimony at trial deprived Wright of material evidence that could have been used to attach the credibility of Mosley, a key witness for the state.**

Prior to trial, the defense filed the following request:

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

Defendant's Omnibus Pretrial Motion, p. 4.

On July 18, 1997, the trial court granted the above-mentioned portion of Wright's motion. RR. 2, p. 4. In response to Wright's request, the state provided no evidence of any offers, inducements or agreements with any of the witnesses in the case.

(1) Mosley's testimony

There is no doubt that Mosley was a material witness for the prosecution. The State elicited testimony from Mosley inculpatng Wright in the murder of Ms. Vick. Specifically, Mosley testified that Wright and a woman came to his house around 5:00 p.m. the evening of the murder to buy crack cocaine. RR. 45, pp. 106-08. Although Mosley testified that this woman was definitely *not* Donna Vick, the prosecution

continued to refer to the woman as Ms. Vick throughout the trial.<sup>12</sup> RR. 45, pp. 128, 146.

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

Mosley speculated that they had come to his house to buy more crack. Instead, they met with Adams and the three left together in the Chrysler. RR. 45, p. 145-46. Mosley testified at about 4:00 a.m. that morning, Wright and Adams arrived at Mosley's house again in the white Chrysler. RR. 45, pp. 147-148. This time Wright was driving the car and Adams was the only passenger. RR. 45, p. 148. They had a flat tire and a trunk load of what Mosley thought was stolen property. RR. 45, pp. 114-115. They asked Mosley if he knew where they could get rid of the items from the trunk. RR. 45, p. 148. When Mosley asked where they got the items, Adams stated that they got them from some woman in DeSoto. RR. 45, p. 149.

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<sup>12</sup>Mosley's story changed when he testified in Adams' trial six months later. In that trial Mosley testified the woman with Wright was definitely Ms. Vick. (Exhibit 7)

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

(2) Mosley's obvious criminal exposure

On Sunday, March 23, 1997, a SWAT team of police officers broke into Mosley's house after firing tear gas at the windows. RR. 45, p. 157. Mosley was detained by police following the raid on his house. RR. 45, p. 172. On March 25, 1997, while in custody at the DeSoto jail, Mosley gave a written statement to Investigator Pothen regarding the events that occurred at Mosley's house on March 20, and March 21, 1997. RR.45, p. 158. During the course of Mosley's testimony in Wright's trial, Mosley admitted to committing several crimes, including: receiving stolen property, possessing a controlled substance (crack cocaine), and delivery of a controlled substance. RR. 45, pp. 101-02, 115, 125, 156, 164-66.

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

### (3) Investigating a Deal

Despite the fact that Mosley admitted to the commission of several serious crimes, Mosley was never charged with *any* crime relating to the events about which he testified in Wright's case. The State's failure to pursue any charges against Mosley prior to trial led Wright's trial counsel to suspect that Mosley had some kind of deal with the State. Trial counsel became further suspicious about a deal between Mosley and the state when, during Wright's trial, the trial court halted Mosley's testimony to allow him to confer with an attorney appointed by the trial court to preserve Mosley's right against further self-incrimination. RR. 45, p. 135.

Following the appointment of counsel for Mosley, he met with the attorney in a room just off the courtroom. RR. 45, p. 137. At the end of the meeting, Wright's trial counsel saw Mosley leave the room with his court-appointed attorney, Kent Traylor, and two attorneys from the district attorney's office, Kimberly Moore and Ricardo Jordan. RR. 45, p. 141-142. This led Wright's trial counsel to further inquire

about any kind of deal that Mosley may have been offered in exchange for his testimony. RR. 45, pp. 160-164.

Despite the State's obligation to disclose any kind of offer, inducement or deal made with Mosley to refrain from prosecuting him in exchange for his testimony, the State and Mosley himself denied any such deal when questioned at trial. RR. 45, pp. 125-26, 139-43, 160-61.<sup>13</sup> In fact, it was the prosecutor, Mr. Jordan, who objected to Wright's attorney questioning whether Mosley had been given immunity or **any assurances not to prosecute** in exchange for his testimony. RR. 45, p. 125.

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

"THE COURT: Mr. Traylor, in regards to that, to finish up this hearing, do you understand the question: Was there an implied agreement entered into between Mosley and the District Attorney's Office for his testimony?

THE WITNESS: I understand the question.

THE COURT: I'm instructing you now to go ahead and answer that question.

THE WITNESS: Now, there was not an agreement implied or expressed. It was an offer. That's the best I can - -

THE COURT: And again, I'm going to instruct - -

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<sup>13</sup> Exhibit 8

MR. LUCAS: We would ask for permission - -

MR. GILLET: Well, Your Honor, we're going to object to that portion of the answer. The answer calls for a yes or no answer, not a - - not - - I mean, the question is, was there or wasn't there?

MR. LUCAS: And our next question would be: Was there an offer between the District Attorney's Office and the witness in regard to the witness testifying?

MR. DAVIS: And our position would be that that falls within the attorney/client privilege. Certainly that would involve a communication between Mr. Traylor and myself, part of the attorney/client privilege. I just heard Mosley say he wants to assert his attorney/client privilege.

MR. LUCAS: Well, the record will reflect that the witness just moments ago indicated there was an offer. It's in the record.

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

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

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

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

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

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

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

MR. DAVIS: Okay.

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

The prosecution's failure to disclose its offer not to prosecute Mosley likely affected the outcome of Wright's trial. The defense could have used the information that Mosley had been offered immunity, to further impeach the credibility of Mosley, the only witness called by the state to link Wright to the property of the victim immediately following the murder. The disclosure of the offer the State made to Mosley would have provided a motive for Mosley's highly unreliable testimony at trial. Mosley faced a sentence of 25 years to life in prison for the crimes to which he admitted – certainly, quite an incentive to fabricate testimony.

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

MR. DAVIS: Let me make this very clear to you. If there's a one of you on this jury, even one of you, who believes the State of Texas, anyone at this table right over here, myself included, that any of us conspired with Llewelyn Mosley, . . . I don't even want you to go back and even look at the facts of guilt/innocence. I want you to just simply go back there as

a group in unison and say not guilty. That's the end of it. I don't care what the facts are, because it wasn't done right.

RR. 49, p. 49.

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

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

By a preponderance of the evidence, but for the State's failure to disclose the offer given to Mosley, the defense would have used the information to completely discredit Mosley's testimony; and therefore, no rational juror could have found Wright guilty beyond a reasonable doubt. The State's suppression of the offer sufficiently undermined confidence in the outcome of the trial to warrant a new trial for Wright based on the State's violation of *Brady*. In the alternative, the evidence submitted in this application provides the court with an appropriate basis to order an evidentiary

hearing to further develop the record regarding the suppression of Mosley's offer of immunity.

**b. The state's suppression of the first statement made by Daniel McGaughey to the police deprived Wright of material exculpatory information.**

(1) McGaughey affidavit

In sworn testimony, Daniel A. McGaughey testifies via affidavit that the police detectives working on the Vick murder case knew he was staying at the DeLuxe Inn on Jupiter Road in Garland, Texas, and, thereafter, that he moved into his ex-mother-in-law's home. McGaughey Affidavit, at 1.<sup>14</sup> McGaughey further testifies that “[s]tarting in early 1998, possibly January of 1998, I started getting visits from representatives of the Dallas County District Attorney’s office in preparation for” Adams’ murder trial. *Id.* at 2. Finally, McGaughey testifies that he was subpoenaed to testify, and actually showed up two different days prepared to testify in Adams’ trial. *Id.*

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

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<sup>14</sup> Exhibit 11

(2) Trial Record

Daniel McGaughey worked for 24 Hour Video. RR. 56, Def. Ex. 2. On March 23, 1997, Adams approached him and asked him to call 911. Only McGaughey's official statement regarding this episode was provided to the defense. The more precise notes, taken by Dallas Police Officer Freeman, indicating what McGaughey had originally stated about Adams' confession were inexplicably withheld. RR. 53, Ex. 1.<sup>15</sup>

According to Mr. McGaughey's ambiguous written statement admitted into evidence, when McGaughey asked Adams why he wanted him to call 911, "[Adams] told me there was a murder and he wanted to turn himself in." *Id.* However, prior to March 25, 1997, the date when the ambiguous statement was provided, Mr. McGaughey confirms he spoke with an investigator, Officer Freeman, about the 911 call. RR. 56, Def. Ex. 2.<sup>16</sup> At the time Mr. McGaughey met with Officer Freeman, he told the officer that Adams approached Mr. McGaughey and stated to Mr. McGaughey, "**I murdered someone in DeSoto and I can't deal with it. I want to turn myself in.**" *Id.* There is a SIGNIFICANT and CRUCIAL distinction between the two statements attributed to Mr. McGaughey.

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<sup>15</sup> Exhibit 9

<sup>16</sup> Exhibit 10

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

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

The State had in its possession a statement in which Wright's co-indictee, John Adams, unequivocally confessed to murdering Donna Vick. Officer Freeman's notes plainly indicate that McGaughey recalled Adams' stating, "I murdered someone in

DeSoto and I can't deal with it. I want to turn myself in." RR. 56, Def. Ex. 2. Adams' statement claiming that he (Adams) individually killed Donna Vick is undeniably exculpatory evidence as to Wright and inculpatory evidence as to Adams. In retrospect, these notes clearly support Adams' recent recantation.

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

If the State had provided the defense with Mr. McGaughey's original statement to Officer Freeman prior to trial, the defense could have located Mr. McGaughey **and** Officer Freeman.<sup>17</sup> Certainly, the defense could have used the statement provided just

hours after the murder to discredit Adams' later rendered self-serving confession, now recanted, which placed all blame for the murder on Wright.

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

Had Wright and his counsel received full disclosure of this *Brady* evidence, a reasonable probability exists that a jury would have sentenced Wright to life in prison rather than his current sentence of death. And, *Brady* violations are an affront to “due process where the evidence is material either to guilt or to punishment.” *Brady v. Maryland*, 373 U.S. 83 (1963).

By a preponderance of the evidence, if the prosecution had disclosed the original statement Mr. McGoughey made to Officer Freeman, no rational juror could have found Wright guilty beyond a reasonable doubt. Certainly, the State's failure to provide such obvious exculpatory information sufficiently undermined confidence in the outcome of the trial such that Wright is entitled to a new trial, or at a minimum, an evidentiary hearing to more fully develop the record on Wright's *Brady* claim.

**c. The State's suppression of the 911 tapes made of Mr. McGaughey's call deprived Wright of material exculpatory information.**

As set forth in the preceding section of this application, McGaughey called 911 at the request of Adams. During the very first interview McGaughey had with law

enforcement, McGaughey told Officer Freeman that Adams made the unequivocal statement, "I murdered someone in DeSoto and I can't deal with it. I want to turn myself in." As this brief sets forth, this statement was not given to the defense prior to the beginning of trial.

Of course, the 911 tape made contemporaneously with Mr. McGaughey's call would have provided the best evidence as to what Adams told Mr. McGaughey at the time. The defense requested copies of any 911 tapes that existed. The State informed the defense in a pre-trial hearing that there were none.

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

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

MR. BRAUCHLE: Also, in that regard, in regard to Off. Trippel's testimony, it would seem that there were two 911 tapes that were made, which are given service numbers, Dallas Service Number 251842-F, and 251908-F, one being the 911 call of Mr. McGaughey, and the other one being the 911 call of Adams.

We would request to be provided with those at this time, also. And that the first – we had asked if 911 tapes existed prior to the start of trial. We were told that there were none, but this would seem that there – there are 911 tapes in existence, and we would ask to be provided with those under exculpatory evidence rules.

THE COURT: All right. Mr. Davis, I just have a few questions in that regard. Investigative work (obtaining the exculpatory statement from Mr. McGaughey) that was in question. Do you know of any 911 tapes that exist today?

MR. DAVIS: No, Your Honor, I do not.

THE COURT: Did any 911 tape exist at the time of the pretrial hearing in regards to that request?

MR. DAVIS: I can say this to the Court: That I know that a 911 tape did exist at one point. Det. Trippel and Marshall had informed me, when I asked them for that 911 tape, they informed me that they brought that up there to the front desk of our office on the 11<sup>th</sup> floor. We have inquired of the receptionist up there on the 11<sup>th</sup> floor, and she has stated to us that she did not receive any 911 tapes. We have checked everywhere that we can possibly check. I have never been in possession of the 911 tape, and, again, talking about Detectives Trippel and Marshall, they are no longer in possession of the tape, so I don't know where it is. I have never seen it.

They say they delivered it to our office, but our office has no record of receiving it, so at this point, I don't know that it exists.

RR. 46, pp.83-84.

The trial transcript makes clear, the State, either through the police department or prosecutor's office, had possession of two 911 tapes which were inculpatory to Adams and exculpatory to Wright. The State never disclosed to the defense that such

911 tapes existed. Instead, when the defense found a reference to the tapes during the trial, the State claimed to have misplaced the tapes. Certainly, after discovering McGaughey's first statement to Officer Freeman, these tapes, more likely than not, must have contained evidence favorable to Wright. The State was obligated by *Brady* to notify the defense of the existence of these tapes and to turn the contents of the tapes over to the defense. Clearly, this was never done.

Like McGaughey's convenient disappearance at the time of trial, when the defense finally became aware of the existence of the 911 tapes, they also disappeared. The tapes now corroborate Adams' recent recantation. If the defense had been given the 911 tapes prior to trial, the tapes could have been used to point the finger at the actual killer – Adams. The tapes could have been used to impeach the self-serving statement Adams made to Det. Trippel, placing all the blame for the murder on Wright. Certainly, if the tapes memorialized the substance of McGaughey's statement to Officer Freeman, the tapes could have been used to confirm that Wright was not the primary actor.

By a preponderance of the evidence, if the State had disclosed the content of those 911 tapes, no rational juror could have found Wright guilty beyond a reasonable doubt. Certainly, the State's failure to provide such obvious exculpatory information sufficiently undermined confidence in the outcome of the trial such that Wright is

entitled to a new trial, or at a minimum, an evidentiary hearing to more fully develop the record on Wright's *Brady* claim.

**d. The State's suppression of the materials belonging to Adams that were found in the Beckley shack.**

The DeSoto Police Department raided a shack located in the 700 block of N. Beckley in DeSoto and found evidence the State used to link Wright to the murder. RR. 46, p. 22. The State found several pairs of jeans in the Beckley shack. RR. 46, p. 29. Among the jeans found at the Beckley shack were the Umen jeans, which contained Ms. Vick's blood on the leg and crotch area. RR. 47, p. 145. DSPD also found a knife inside the Beckley shack. A knife block with knives that belonged to Ms. Vick were also found just outside the Beckley shack. RR. 46, pp. 30, 33, 43-44. Finally, the State found a dinner plate that belonged to Ms. Vick at the Beckley shack. RR. 46, p. 29-30.

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

Q: Following your conversation with John Adams, did you – did you order the tactical unit of the DeSoto Police Department to go to a location?

A: Yes.

Q: And what location did you order them to go to?

A: To a – to a shack in about the 6 to 700 block of North Beckley in a – in a field.

Q: Okay. Is this behind a K-Mart?

A: Yes.

Q: At some point did you also go to that shack?

A: Yes.

Q: And was Gregory Edward Wright arrested at that location, sir?

A: Yes, he was arrested by the tactical unit.

RR. 46, p. 22.

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

when asked on cross-examination whether he knew whose property was found at the Beckley shack, Lt. Pothen feigned ignorance.

Q: Okay. And you don't have any personal knowledge of how many different people resided in this shack, do you?

A: No, sir.

Q: You don't know whose property any of this is, do you?

A: No.

Q: Okay. It could just as easily be John Adams's property, couldn't it?

A: I don't know.

RR. 46, pp. 62-63.

The State attempted to link all of the evidence found at the shack to Wright at trial, as if he were the only person who resided at the Beckley shack. RR. 46, pp. 25-44, 61, 63. However, the state failed to disclose, until after Lt. Pothen testified, correspondence and other documents that clearly belonged to Adams, which had been found in the Beckley shack near the bloody jeans, dinner plate, and knives. The State had not given the defense these documents linking Adams to the Beckley shack where the bloody jeans were found until the last day of the State's case-in-chief. RR. 48, p. 35. Accordingly, the State created a false impression that the jeans were found with Wright's belongings, not Adams' belongings, when, in fact, they were found near a stack of personal papers that belonged to Adams.

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

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

The State prevented the defense from establishing a coherent trial strategy and prevented the defense from effective cross-examination of Lt. Pothen.

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

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

RR. 49, p. 54.

In Adams' trial it was just as important to the State to tie Adams to the Beckley shack as it was to eliminate his presence at the shack in Wright's case. The same prosecutors who withheld Adams' documents from Wright's counsel, focused on the incriminating nature of Adams' ties to the Beckley shack in Mr. Adams' trial. In the State's opening statement, the prosecutor stated:

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

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

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

Q: As a matter of fact, you had been living at that hooch [shack]?

A: No, sir, I wasn't.

Q: Your clothes were there in that trunk.

A: There wasn't none of my clothes.

Q: What size blue jeans do you wear, Adams?

A: At the time I was probably wearing 32s. I was weighing 165. I wear 34s now. I've gained a few pounds. I've been locked up a year and a half. I've gained a lot of weight.

Q: As a matter of fact, in that trunk, the blue jeans that had the gold paint, those belonged to Greg Wright, because he huffed gold paint, right?

A: Most of them clothes there was Greg Wright's.

Q: Most of them, but not all of them.

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

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

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

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

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

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

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

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

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

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

A: I stayed there once or twice, yes.

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

A: No, I wasn't.

Adams RR. 34, pp. 201-202.

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

By a preponderance of the evidence, if the State provided Adams' papers to the defense prior to trial, the defense could have effectively cross-examined Lt. Pothen about the contents found in the Beckley shack. Furthermore, the defense could have made a convincing argument that evidence of the murder found at the Beckley shack belonged to Adams, not Wright. No rational juror could have found Wright guilty beyond a reasonable doubt. According to the dictates of the Fourteenth Amendment to the United States Constitution, Wright is entitled to relief and should receive a new trial.

**e. The State's suppression of the existence of Jerry Causey and his statement that Adams confessed to the murder deprived Wright of material exculpatory information.**

Jerry Causey rode in a white Chrysler with Adams just hours after the murder. He asked Adams whose car Adams was driving. Adams said, "It's the bitch['] s] car." Jerry Causey affidavit.<sup>17</sup> When Mr. Causey asked, "What bitch?" Adams responded, "The bitch I killed." This evidence confirms that Adams unequivocally claimed responsibility for the murder just hours after it occurred. Not only did he claim responsibility, he did it while driving the car that belonged to the murder victim. The fact that the co-indictee made a confession shortly after the murder while driving the victim's car was exculpatory information that supported Wright's claim of factual innocence.

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<sup>17</sup> Exhibit 12

The State had spoken with Mr. Causey about Adams' confession prior to Wright's trial. Affid. of Jerry Causey.<sup>18</sup> However, the State, contrary to its constitutional duty under *Brady v. Maryland*, failed to provide the defense with Jerry Causey's name or the information he provided regarding Adams' confession. Affid. of Karo Johnson<sup>19</sup>, trial counsel for Wright. The exculpatory information confirming that Adams was the primary, if not sole, actor could have been used by Wright to create reasonable doubt as to his guilt. When coupled with the failure to disclose Mr. McGaughey, another State witness possessing exculpatory information under *Brady*, the error is compounded exponentially.

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

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

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<sup>18</sup> Exhibit 13

<sup>19</sup> Exhibit 14

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

According to Mr. Causey's affidavit, the State knew of his existence and actually spoke with him about the murder prior to Wright's trial. Affid. of Jerry Causey. However, the State never disclosed Mr. Causey's existence to the defense. Affid. of Karo Johnson<sup>20</sup>. Had the State provided the defense with Mr. Causey's name or his statement, the defense would have investigated Mr. Causey's claims that Adams confessed to murdering a woman in DeSoto. Affid. of Karo Johnson.

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

Furthermore, even if the jury found Wright guilty of the murder, the defense could have used Mr. Causey's testimony to argue lessened culpability for Wright, warranting a life sentence rather than a sentence of death. If the defense had used Mr. Causey's statement at trial, a reasonable probability exists that the outcome of the trial

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<sup>20</sup> Exhibit 14

would have been different in the guilt/innocence phase. And, as set forth above, the withholding of *Brady* materials “violates due process where the evidence is material to *either* guilt or punishment.” *Brady v. Maryland*, 373 U.S. 83 (1963)(emphasis added).

By a preponderance of the evidence, but for the suppression of Mr. Causey and the exculpatory information he provided to the State, no rational juror could have found Wright guilty beyond a reasonable doubt. In the alternative, the evidence submitted in this application provides the court with an appropriate basis to order an evidentiary hearing to further develop the record regarding the suppression of Mr. Causey.

## 2. NAPUE CLAIMS

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

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

As set out in the claim above, evidence from Adams’ trial demonstrates that Mosley agreed to testify against Wright in exchange for the State's offer not to

prosecute him for several crimes he committed, and admitted to committing, during the State's investigation of Donna Vick's murder. That previous argument and recitation of facts is incorporated herein.

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

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

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

The importance of Mosley's testimony in this case cannot be overstated. He was the only witness at trial whose testimony linked Wright with the murder and robbery of Ms. Vick. At trial the State relied solely on the testimony of Mosley to place Wright with Adams and a woman inferred to be Ms. Vick prior to the murder,

and later selling her belongings for crack. RR. 45, pp. 132-34, 148-54. The State called no other witnesses at trial to validate Mosley's testimony, despite the fact that Mosley was not alone at his house on the evening and morning in question. RR. 45, pp. 112, 129-31. Mosley's testimony was the only testimony that provided the jury with evidence of a motive for the killing -- to raise money for the purchase of illegal drugs. Mosley also was the only witness to testify about Wright's demeanor after the murder. His allegation that Wright was cheerful and giving Adams "high fives" was very damning testimony against Wright, affecting not just the guilt/innocence phase of the trial but the punishment phase as well. RR. 45, pp. 151-52.

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

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

RR. 49, p. 49.

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

"And who's out there high-living as though they scored a touch down, literally. I mean, they're in the end zone, aren't they. I mean, they

completed that long pass. The defense has been wiped out here. They've gotten exactly what they wanted."

RR. 49, p. 54.

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

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

Vol. 51, pp. 13-14.

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

Mosley's testimony has proven to be highly unreliable. First of all, Mosley's trial testimony differed significantly from his written statement, given two days after his arrest. Thereafter, Mosley again took the stand when Adams was tried for the murder of Donna Vick. Because Adams' trial took place after Wright's trial, Wright

was unable to discredit Mosley's testimony by pointing out the discrepancies between Mosley's testimony in his own trial and Mosley's testimony in Mr. Adams' trial. Additionally, Wright did not have the knowledge that Mosley had received an offer from the State.

If Wright's trial counsel had been aware that Mosley had been offered protection from prosecution if he testified, Wright's counsel would have been able to alert the jury to Mosley's bias. The offer by the State of Texas not to prosecute Mosley provided Mosley with a motive to change his story in order to incriminate Wright in the murder. Mosley falsely denied having an agreement with the State while on the stand, under oath and in front of the jury. The State participated in denying the existence of an offer not to prosecute, and the jury was left with a false impression that Mosley had no motivation to lie or to color his testimony in such a way as to incriminate Wright.

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

By a preponderance of the evidence, but for the false testimony concerning Mosley's offer of immunity, no rational juror could have found Wright guilty. As the prosecution admitted, the jury had to believe Mosley's testimony to find Wright guilty

of capital murder. Thus, according to the dictates of the Fourteenth Amendment, Wright is entitled to federal habeas relief and should receive a new trial.

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

The crime scene investigation of Vick's house revealed traces of blood on bedding found in her room. A pillowcase contained a partial bloody fingerprint that the prosecution attempted to identify as Wright's. (State's Ex. 45A, a partial bloody fingerprint found on the pillowcase near the head of the victim. RR. 47, pp. 90-91.)

The crime scene officer who acquired this crucial physical evidence, Eric Rosenstrom<sup>21</sup>, was not trained to handle evidence, having lied on his resumé about his qualifications and experience. Subsequently, Rosenstrom himself was indicted for murder and is currently a fugitive from justice.<sup>22</sup> In fact, it appears that Rosenstrom is currently listed among "America's Most Wanted." The fact that Rosenstrom was involved in this investigation provides an additional taint to the proceedings and, in particular, the purported lifting of a partial bloody fingerprint. Rosenstrom's handling of a crucial piece of physical evidence merits further investigation into the validity of the questioned print used against Wright at trial.

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<sup>21</sup> RR46.11-14

<sup>22</sup> See exhibit 15.

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

But, rather than present these members of the prosecution's own investigative team as witnesses, knowing that their testimony would undermine the veracity of any print comparison, the State chose to call a retired print examiner, James Cron, to make a strained comparison. RR. 46. 86. Mr. Cron acknowledged his experience in the Dallas Sheriff's Office and testified that he had worked with officers Jumper and Howell. RR. 46, pp. 86-88, 90. Mr. Cron further acknowledged that Detectives Jumper and Howell had been unable to identify the bloody fingerprint. However, utilizing the same training and identification techniques used by the officers, Mr. Cron testified that he drew a positive correlation between the bloody fingerprint and Wright's known prints. RR. 46, p. 98.

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

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

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

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

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

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

At the time Mr. Cron was called, the prosecution well knew that the opinions of the fingerprint section deputies of the Dallas Sheriff's office, the very people that

the prosecution had relied on for at least the past decade to testify in virtually every criminal prosecution, were that the fingerprints did not match.

Mr. Cron's testimony was crafted in such a way that no exhibits or points of comparison were shown to the jury, even though fingerprint experts in Dallas County have routinely produced comparison exhibits for demonstrative purposes. Mr. Cron did not produce a written report in advance of trial to lessen the chance of effective cross-examination. His testimony was false, and every effort was made to present that false testimony in a manner difficult to challenge directly. When experts testify in a false manner, the subsequent conviction is tainted. Lab scandals have become all too common. See the Joyce Gilchrist<sup>23</sup> case and the notorious Fred Zain Case. See *In the matter of the investigation of the West Virginia State Police crime laboratory*, 438 S.E.2d 501, 505 (West Virginia 1993). When prosecutors intentionally use false expert testimony to secure a conviction, the conviction must be set aside. See *e.g.*, *Davis v. State*, 831 S.W.2d 426, 429 (Tex.Civ.App. Austin 1992). False expert testimony is a clear *Napue* violation. See *Napue v. Illinois*, 360 U.S. 264 (1959). Since, as the prosecution argued, the fingerprint was the most telling circumstance of guilt, it follows that the misrepresentation of this single item of evidence, without regard to the rest of the record, is sufficient to warrant a retrial.

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<sup>23</sup> Exhibit 16

In light of Adams' recantation, the falsity of Cron's fingerprint testimony is crucial. It is the only physical evidence allegedly tying Wright to the stabbing. Adams' recantation alone is enough to impeach Cron's far-fetched opinion. Aside from Cron's opinion, the remaining evidence all corroborates Adams' recent recantation. By a preponderance of the evidence, but for Cron's false testimony, no rational juror could have found Wright guilty beyond a reasonable doubt.

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

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

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

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

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

As the State argued in its closing:

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

RR. 49, pp. 15-16.

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

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

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

RR. 49, p. 54.

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

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

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

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

By a preponderance of the evidence, if the jury had been made aware of Adams' control over the Beckley shack and the fact this his possessions and papers were kept there, no rational juror could have found Wright guilty beyond a reasonable doubt. The defense's argument, that the Umen jeans were not Wright's jeans, they were Adams' jeans, would have been bolstered by the fact that the Umen jeans were found near a stack of papers that belonged to Adams. The tie to the Umen jeans was crucial

for a guilty verdict. According to the dictates of the Fourteenth Amendment to the United States Constitution, Wright is entitled to relief and should receive a new trial.

### 3. STRICKLAND CLAIM

*Strickland v. Washington*, 466 U.S. 668 (1984) provides that counsel is constitutionally ineffective in violation of the Sixth Amendment where: (1) counsel fails to perform according to reasonable professional norms (the deficiency prong), and (2) that deficient performance caused prejudice to the defendant (the prejudice prong).

- a. **Trial counsel failed to request a *Daubert* hearing in order to keep out incompetent evidence concerning the comparison of a partial bloody fingerprint found at the crime scene and Wright's known print.**

On the pillowcase near Vick's body a partial bloody fingerprint was discovered. This fingerprint was preserved by crime scene investigators. RR. 47, pp. 90 – 91. Two career Dallas Sheriff's office deputies reviewed the print but could not "match" it to the known prints of Wright. RR. 46, p. 76, 79 – 80. The State then contacted a retired employee named James Cron. Mr. Cron, utilizing the same exhibits and the same techniques as deputies Jumper and Hollowell, testified that he found the prints capable of comparison and, further, that they matched Wright. RR. 46, p. 98.

In court, Mr. Cron could not produce any exhibit which showed the match. RR. 46, p. 104 - 105. Instead, Mr. Cron testified that the jury should take his word for it

because the deputies "were not qualified". RR. 46, p. 124. Mr. Cron reviewed his findings with the defense team's expert, Mr. Tom Ekis. Mr. Ekis reported that the prints did not match and that Mr. Cron was simply "teasing out" the prints, i.e., he was finding points of comparison where none existed. The defense did not challenge Mr. Cron's opinion or expertise outside of the jury's presence, nor did they call Mr. Ekis to testify. Affid. of Tom Ekis.<sup>24</sup>

This failure to challenge Cron's methods under *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579 (1993), amounts to deficient performance as reasonable professional norms existing at the time of Wright's trial would have required that physical evidence be subjected to proper scientific testing and scrutiny. Despite this known requirement, counsel did not interpose any *Daubert* objection or seek a *Daubert* hearing.

Additionally, Mark Acree, a forensic scientist, has recently reviewed the materials used by Cron to make the fingerprint comparison. According to his affidavit, attached hereto<sup>25</sup>, no scientific comparison can be made based on the materials submitted at trial. The photograph of the print taken from Vick's pillowcase is so blurry that identification is impossible. In short, Cron's opinion is without factual

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<sup>24</sup> Exhibit 17

<sup>25</sup> Exhibit 18

or scientific foundation. Such “junk-science” opinion fails the mandate of *Daubert* and, therefore, raises a duty in counsel to lodge a timely and proper objection.

The trial court has a gatekeeping function under *Daubert* to preclude the admission of highly questionable “scientific” evidence. *Id.* In retrospect, defense counsel has acknowledged that a *Daubert* hearing may have been appropriate. Affid. of Paul Brauchle<sup>26</sup>; Affid. of Karo Johnson<sup>27</sup>.

**b. Deficiency Prong of *Strickland v. Washington***

For all the reasons set forth above, Wright has proven that trial counsel performed deficiently under the Supreme Court’s *Strickland* test. The partial bloody print testimony was heavily relied upon by the prosecution in final argument as proof of the Wright's guilt. RR.49, p. 51. The defense attorneys have acknowledged that the failure to contest the evidence was an oversight. Affid. of Paul Brauchle; Affid. of Karo Johnson. And, reasonable professional norms governing at the time of Wright’s trial would have mandated that counsel lodge timely and proper objection to improperly-supported “junk-science” testimony.

**c. Prejudice Prong of *Strickland v. Washington***

The fingerprint comparison was a crucial piece of the State's puzzle. Obviously, if the fingerprint did not “match,” then the State's case is significantly

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<sup>26</sup> Exhibit 19

<sup>27</sup> Exhibit 14

weakened. When the State's case relies upon evidence it presents as “science” as its most damaging evidence, and counsel is aware that the State’s own experts – at least those usually and customarily relied upon – are unable to apply true science to the evidence, then counsel is deficient in failing to attempt to object and exclude such testimony. *Compare Chatom v. White*, 858 F.2d 1479, 1486 (11<sup>th</sup> Cir.1988 )(failure to object to atomic absorption evidence was ineffective). *See also Daubert v. Merrill Down Pharmaceuticals*, 509 U.S. 579 (1993). Counsel is also ineffective for failing to procure independent fingerprint evidence that would have strengthened the defense position. *People v. Moore*, 2001 WL 1190796 (Cal.App. Dist. p.3). In this case, counsel was obliged to do both and instead, did neither. Governing professional norms at the time of Wright’s trial mandated an objection and testing of this so-called “scientific” evidence.

Clearly, this deficient performance prejudiced Wright. The jurors, faced with self-serving testimony from Wright’s co-indictee, false evidence about ownership of the evidence found at the shack, induced and biased testimony from a felon (who was offered immunity from prosecution), needed something “scientific” to find Wright guilty. The State realized the importance of, and need for, scientific evidence in aggressively seeking out someone, anyone, who could testify – accurately, or otherwise – to the source of a partial fingerprint found on the victim’s pillowcase.

The defense, also, should have appreciated the significance of this evidence, but, admittedly, failed to do so.

Had the jury not been presented with any “scientific” evidence, there is a reasonable probability that Wright would not have been found guilty of murder. Rather, had the partial fingerprint been kept out, counsel could have lodged a vigorous challenge against all the other marginal circumstantial evidence – evidence that has since been discredited with Adams’ recantation – there is a reasonable probability that the outcome of Wright’s trial would have been different. As Adams’ recent recantation demonstrates, Wright is innocent. Without the partial fingerprint’s false suggestion of scientific reliability of guilt, a reasonable jury would not have convicted Wright. At a minimum, counsel’s failures undermine confidence in the verdict.

By a preponderance of the evidence, had counsel not failed to properly challenge the admissibility of Cron’s fingerprint comparison testimony, no rational juror could have found Wright guilty beyond a reasonable doubt.

#### PRAYER FOR RELIEF

WHEREFORE, premises considered, applicant Gregory Edward Wright prays that:

1. The Court of Criminal Appeals stay Mr. Wright's scheduled execution date of September 9, 2008, by vacating or modifying the district court's Amended Death Warrant and Amended Execution Order entered May 8, 2008;

2. The Court of Criminal Appeals grant a writ of habeas corpus pursuant to Section 5 of CCP Article 11.071, and remand the cause to the district court for an evidentiary hearing and other appropriate proceedings;

3. Upon remand, the district court should determine the claims presented in this application as follows:

a. Determine that, in light of all the relevant evidence, applicant has shown by clear and convincing evidence that no rational juror would convict him of the crime of capital murder, in violation of Texas Penal Code §19.03(a)(8), and set aside and annul the judgment and sentence of this court upon which he now stands convicted;

b. Determine that, in light of all the relevant evidence, applicant has shown by a preponderance of the evidence that but for a violation of the United States Constitution, no rational juror would have convicted him of the crime of capital murder, and on that basis, proceed to hear and determine that the judgment and sentence on

which applicant now stands convicted was obtained in violation of applicant's rights under the due process clause of the Fourteenth Amendment to the United States Constitution, and set aside and annul the judgment and sentence of this court upon which applicant now stands convicted;

4. The Court grant such other and further relief as is appropriate.

By: \_\_\_\_\_

Bruce Anton

Sorrels, Udashen & Anton

*Attorney for Applicant Gregory Edward Wright*

[Verification of this Subsequent Application follows]

**VERIFICATION**

State of Texas

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§  
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§

City and County of Dallas

Bruce Anton, first duly sworn, deposes and says:

1. I am a member of the Bars of the State of Texas, the Supreme Court of the United States, the United States Courts of Appeals for the Fifth Circuit, and the United States District Courts for the Central, Eastern, Western, Northern, and Southern Districts of Texas. I am a partner of the law firm of Sorrels, Udashen & Anton. My office address is 2301 Cedar Springs Road, Suite 400, Dallas, Texas 75201, telephone: (214) 468-8100; facsimile: (214-468-8104); e-mail: [ba@sualaw.com](mailto:ba@sualaw.com).
2. I verify that each fact stated in this Application is true either of my own personal knowledge as one of counsel for Mr. Wright, or is based upon and derived from the record or other documents in this cause (including the Exhibits to this Application) with which I am familiar, or is otherwise true to the best of my knowledge, information, and belief. I further verify that each document that is presented as an Exhibit to this Application is, to the best of my knowledge, information, and belief, a true copy of what it purports to be.

I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct, and that I have executed this Verification on August \_\_\_\_, 2008, in Dallas, Texas.

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Bruce Anton

Subscribed and sworn to before me, a Notary Public of the State of Texas, and proved to me on the basis of satisfactory evidence to be the person who appeared before me on August \_\_\_\_, 2008, at Dallas, Texas.

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Notary Public, in and for State of Texas