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COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
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ABEL ACOSTA
CLERK

DOCKET NO. _____

IN THE
COURT OF CRIMINAL APPEALS
AT AUSTIN, TEXAS

RECEIVED
COURT OF CRIMINAL APPEALS
5/15/2015
ABEL ACOSTA, CLERK

IN RE:
BRANDON JAY CARTER,
Relator

PETITION FOR WRIT OF MANDAMUS AND FOR WRIT OF PROHIBITION

Trial Cause No. 12-DCR-061186
In the 240th Judicial District Court of Fort Bend County, Texas
Honorable Thomas R. Culver III, Presiding

D. Chris Hesse # 24049081
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Of counsel to Relator

IDENTITIES OF PARTIES AND COUNSEL

Relator: Brandon Jay Carter

Counsel for Relator:

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Respondent:

Honorable Thomas R. Culver, III
240TH Judicial District Court
Fort Bend County Justice Center
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Courtroom: Room 3E
Richmond, Texas 77469
(281) 341-8600
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Real Parties In Interest:

State of Texas

Counsel for the State of Texas:

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TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Relator, Brandon Jay Carter, shows:

STATEMENT OF THE CASE

The underlying suit (Cause No. 12-DCR-061186 in the 240TH Judicial District Court) is an indictment alleging burglary of a habitation with intention to commit a sexual assault. On December 10, 2012, David Christopher Hesse was appointed to represent Relator. Relator pleaded "not guilty," and the first trial of the case resulted in a hung jury. This hung jury caused a mistrial to be declared by the trial court on February 26, 2015. Although Relator had not expressed any dissatisfaction with or even any desire to have Hesse removed, on March 2, 2015, Respondent *sua sponte* signed an order that removed Hesse and appointed Harris S. Wood, Jr. to represent Relator. After the Relator filed his Petition for Writ of Mandamus in the First Court of Appeals, the Respondent signed an Amended Order removing David Christopher Hesse and appointing Harris Wood, Jr..

The case is now set on the court's docket for June 1, 2015 at 1:30 p.m..

STATEMENT OF JURISDICTION

This Petition is brought pursuant to, and this Court has jurisdiction of this Petition pursuant to Article V, § 1, Texas Constitution.

This Petition is also brought under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. And this Petition is brought under Art. 1, § 10, Texas Constitution.

QUESTIONS PRESENTED

QUESTION NO. ONE: Does the power of the trial court to appoint counsel to represent indigent defendants carry with it the concomitant power to remove counsel at the judge's discretionary whim, without a request from the defendant and without a hearing? If not, will mandamus issue to cause Respondent to set aside his order appointing Harris S. Wood, Jr. to represent Relator?

QUESTION NO. TWO: When a defendant is seeking mandamus relief to set aside an order appointing new counsel, will a writ of prohibition issue to stay proceedings in the trial court to thereby prevent interference with the jurisdiction of the Court of Appeals?

STATEMENT OF FACTS

Relator was indicted for burglary of a habitation with intention to commit sexual assault. A true and correct copy of that indictment is attached hereto, marked Appendix 1, and incorporated by reference for all purposes. Relator denies the allegations of that indictment. Relator denies the

allegations of that indictment.

On December 10, 2012, David Christopher Hesse was appointed to represent Relator in Cause No. 12-DCR-061186 in the 240TH Judicial District Court. A true and correct copy of that order is attached hereto, marked Appendix 2, and incorporated by reference for all purposes.

Trial of this case was held from February 16, 2015 to February 26, 2015. On February 26, 2015, because of a hung jury, a mistrial was declared. A true and correct copy of the docket sheet is attached marked Appendix 3, and incorporated by reference for all purposes.

On March 2, 2015, Respondent removed David Christopher Hesse as Relator's attorney and appointed Harris S. Wood, Jr. to represent him. A true and correct copy of that order is attached and marked Appendix 4, and incorporated by reference for all purposes. No hearing was held before Respondent signed the order removing David Christopher Hesse as counsel for Relator.

Relator has not requested new counsel and, indeed, wishes for David Christopher Hesse to continue to represent him. *See* Relator's Declaration which is attached and incorporated herein as Appendix 5.

David Christopher Hesse did not find out about the order removing him

until he received a call from Harris S. Wood, Jr. on March 4, 2015. See Declaration of David Christopher Hesse attached hereto and incorporated herein as Appendix 8.

On March 13, 2015, Respondent signed an Amended Order removing David Christopher Hesse as Relator's attorney and appointing Harris S. Wood, Jr. to represent him. A true and correct copy of that order is attached and marked Appendix 6, and incorporated by reference for all purposes. No hearing was held before Respondent signed the amended order removing David Christopher Hesse as counsel for Relator.

Relator sought mandamus relief from the First Court of Appeals, which denied relief. See Appendix 7, attached hereto and incorporated herein. The instant application results.

SUMMARY OF THE ARGUMENT

A trial judge acts without reference to guiding authority and violates the defendant's Due Process rights when, without a request from the defendant and without a hearing, the judge removes appointed counsel from representing an indigent defendant and appoints new counsel. Mandamus will issue to require the trial judge to set aside that order. Mandamus relief is available to address this abuse of discretion as Relator has no adequate

remedy by appeal and is entitled to mandamus relief.

A writ of prohibition should issue to prohibit Respondent from taking any further action on the underlying case until this appellate proceeding is concluded.

ARGUMENT AND AUTHORITY

QUESTION NO. ONE RESTATED: The power of the trial court to appoint counsel to represent indigent defendants does not carry with it the concomitant power to remove counsel at the judge's discretionary whim and without a hearing. Mandamus should issue to cause the order removing counsel to be vacated.

Relator's right to counsel implicates his rights under the under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. It also implicates his rights under Art. 1, § 10, Texas Constitution.

Relator's right to be heard before his appointed counsel is removed also implicates his Due Process rights under the Fourteenth Amendment of the United States Constitution.

As shown by his Declaration, Relator is not dissatisfied with his attorney and has not requested new counsel to be appointed. As no request for new counsel was made and since no hearing was held, it is clear that Respondent issued the orders *sua sponte*.

The "reasons" that Respondent recites in the Amended Order (Appendix

6) do not afford grounds for removing appointed counsel without a hearing. The amended order appears to be an "after-the-fact" attempt to justify the unjustifiable.

The recitation in the amended order of Hesse's request to be removed from the case relates to what transpired during trial in front of the Honorable Lee Duggan, Jr. and was necessitated by his failure to follow the procedure that this Court established as relates to an attorney's contempt.[1]

In ***Pink***, this Court established the procedure to be used when an attorney is to be held in contempt in a trial.[2] When a trial judge does not follow the procedure set forth in ***Pink*** and threatens to hold an attorney in contempt during trial, that creates a conflict of interest for the attorney. This conflict is between the attorney's duty to zealously and aggressively represent his client[3] and being able to afford only "tentative representation, not the zealous representation that our profession rightly regards as an ideal and that the public has a right to expect"[4] because of the threat of being held in contempt.

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1 ***Ex parte Pink***, 645 S.W.2d 262 (Tex. Crim. App. 1982).

2 ***Ex parte Pink***, 645 S.W.2d 262 (Tex. Crim. App. 1982).

3 ***Gaia Environmental, Inc. v. Galbraith***, 451 S.W.3d 398, 407 (Tex. App. – Houston [14TH Dist.] 2014, review denied).

4 ***Gaia***, 451 S.W.3d at 403.

Such a situation forces counsel to divide his loyalty between his duty to his client and his concerns that he may illegally deprived of his liberty. It was those concerns that prompted David Christopher Hesse to move for a mistrial and to request being withdrawn during trial.

That concern has passed in that nothing that David Christopher Hesse does at this point can cause him to again be held in contempt for aggressively and competently representing his client. Trial was before a visiting judge and counsel presumes that Respondent or the next judge will properly follow the procedure set forth in ***Pink***.

The fact that there is a contempt proceeding pending against counsel does not change that fact or afford grounds to remove counsel.

Respondent's Right to Remove Counsel:

This Honorable Court has held "[T]hat the power of the trial court to appoint counsel to represent indigent defendants does not carry with it the concomitant power to remove counsel at his discretionary whim."[5] This Court further noted that, "the trial court did not have the inherent power to validly remove appointed counsel and doing so patently violated the relator's right to

[5] ***Stearnes v. Clinton***, 780 S.W.2d 216, 223 (Tex. Crim. App. 1989).

counsel."[6]

But that is what the Respondent did.

Due Process Concerns:

The Supreme Court has held that the "fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner."[7]

But Relator was denied the opportunity to even be heard before his attorney was removed – originally or in the amended order.

Entitlement to Writ of Mandamus:

This Court has mandamus jurisdiction in criminal-law matters.[8]

Mandamus is an extraordinary remedy. Mandamus will issue only to correct a clear abuse of discretion or the violation of a duty imposed by law. Mandamus relief is available if the trial court violates a duty imposed by law.[9] A writ of mandamus will issue to correct trial court actions when there has been a clear abuse of discretion, particularly where the remedy by appeal is

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6 ***Stearnes***, 780 S.W.2d at 223.

7 ***Mathews v. Eldridge***, 424 U.S. 319, 333 (1976).

8 ***Padilla v. McDaniel***, 122 S.W.3d 805, 807 (Tex. Crim. App. 2003) (orig. proceeding) (per curiam).

9 ***Walker v. Packer***, 827 S.W.2d 833, 839 (Tex.1992).

inadequate.[10] A trial court abuses its discretion if it acts without reference to any guiding rules and principles or if the trial court's act is arbitrary or unreasonable.[11] "A trial court has no discretion in determining what the law is or applying the law to the facts."[12] The "trial court's erroneous legal conclusion, even in an unsettled area of law, is an abuse of discretion."[13]

A writ of mandamus will issue to correct trial court actions when there has been a clear abuse of discretion, particularly where the remedy by appeal is inadequate.[14] This Court has previously held that the remedy by appeal in a situation such as this is inadequate.[15]

But that is exactly what Respondent has done. He has violated the law as laid down by this Court in ***Stearnes v. Clinton***,[16] by removing appointed

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[10] ***In re Kuntz***, 124 S.W.3d 179, 180 (Tex. 2003); ***Ayres v. Canales***, 790 S.W.2d 554, 556 (Tex. 1990); ***Garcia v. Peeples***, 734 S.W.2d 343, 345 (Tex. 1987); ***West v. Solito***, 563 S.W.2d 240, 244 (Tex. 1978); ***Walker v. Packer***, 827 S.W.2d 833, 843 (Tex. 1992); ***Jampole v. Touchy***, 673 S.W.2d 569, 572 (Tex. 1984).

[11] ***Downer v. Aquamarine Operators, Inc.***, 701 S.W.2d 238, 241-42 (Tex. 1985).

[12] ***Huie v. DeShazo***, 922 S.W.2d 920, 927 (Tex. 1996)(citing ***Walker v. Packer***, 827 S.W.2d 833, 840 (Tex. 1992)).

[13] *Id.*

[14] ***Ayres v. Canales***, 790 S.W.2d 554, 556 (Tex. 1990); ***Garcia v. Peeples***, 734 S.W.2d 343, 345 (Tex. 1987); ***West v. Solito***, 563 S.W.2d 240, 244 (Tex. 1978).

[15] ***Stearnes v. Clinton***, 780 S.W.2d 216 (Tex. Crim. App. 1989).

[16] ***Stearnes v. Clinton***, 780 S.W.2d 216 (Tex. Crim. App. 1989).

counsel without a hearing and on his whim. And in so doing, he has acted directly in contravention of controlling precedent to interfere with the attorney-client relationship that exists between Relator and David Christopher Hesse. Mandamus should issue to set aside this order.

QUESTION NO. TWO RESTATED: A Writ of Prohibition should issue to prohibit Respondent from holding any hearings on the case until such time as the application for writ of mandamus shall have been determined.

Respondent has set the case on the trial court's docket on June 1, 2015, at 1:30 p.m.. As it presently stands, David Christopher Hesse has been removed as Relator's attorney and has no right to represent Relator at that hearing. Relator does not know whether this Court can rule on this application before that time.

Entitlement to Writ of Prohibition:

The writ of prohibition is an extraordinary judicial writ that may be issued by a Court of Appeals, as a court of superior jurisdiction, directed to a court of inferior jurisdiction. Its purpose may be to prevent an inferior tribunal from exercising a jurisdiction that it has no lawful right to exercise. The writ of prohibition as used in Texas has three principal functions: (1) preventing interference with the higher courts in deciding a pending appeal;

(2) preventing an inferior court from entertaining suits which will relitigate controversies which have already been settled by the issuing court; and (3) prohibiting a trial court's action when it affirmatively appears that the court lacks jurisdiction.[17]

Mandamus and prohibition are available in a criminal proceeding if the relator shows that: (1) the act he seeks to compel or prohibit does not involve a discretionary or judicial decision; and (2) he has no adequate remedy at law to redress the harm that he alleges will ensue.[18] The first prong requires the relator to show that he has a clear right to the relief sought, meaning that the facts and circumstances dictate only one rational decision under unequivocal, well-settled, and clearly controlling legal principles.[19] When a relator seeks extraordinary relief that amounts to the undoing of an accomplished judicial act, that relief is more in the nature of mandamus than prohibition.[20]

Any attempt by Respondent to force the underlying case to hearings or

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[17] ***Humble Oil Co. Inc. v. Walker***, 641 S.W.2d 941, 943 (Tex. App. – Dallas 1982, orig. proceeding).

[18] ***Simon v. Levario***, 306 S.W.3d 318, 320 (Tex. Crim. App. 2009) (orig. proceeding); *see also* ***In re State ex rel. Weeks***, 391 S.W.3d 117, 122–23 (Tex. Crim. App. 2013) (orig. proceeding); ***De Leon v. Aguilar***, 127 S.W.3d 1, 5 (Tex. Crim. App. 2004) (orig. proceeding).

[19] ***Simon***, 306 S.W.3d at 320.

[20] *Id.* at 320 n. 2.

to trial will interfere with this Court's jurisdiction and will deprive Relator of the right to have the impropriety of the challenged order removing David Christopher Hesse determined before he is subjected to hearings or a trial hereunder.

A writ of prohibition should issue to prevent the Respondent from taking any action to proceed to hold hearings or to proceed to trial on the indictment against Respondent.

CONCLUSION

This Court should hold that Respondent abused his discretion when, without a hearing, he removed David Christopher Hesse as Relator's attorney and appointed Harris S. Wood, Jr. to represent Relator. This Court should further hold that a writ of prohibition is necessary to prevent the Respondent from proceeding to trial on the indictment against Relator. This Court should thereafter issue its writs of mandamus and prohibition in conformity with the allegations of this Petition and the Court's findings. This Court should grant Relator general relief.

Respectfully submitted,

/s/ D. Chris Hesse

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Tel: (806) 350-6785
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Cedar Hill, Texas 75104
(972) 795-2401
Fax: (972) 692-6636
michael@mowlalaw.com

CERTIFICATE OF SERVICE

I, the undersigned attorney, in accordance with the Rule 9.5, T.R.A.P., certify that a true and correct copy of the foregoing Petition was delivered to:

Honorable Thomas R. Culver, III
240TH Judicial District Court
Fort Bend County Justice Center
1422 Eugene Heimann Circle
Courtroom: Room 3E
Richmond, Texas 77469
Becky.Fisher@fortbendcountytx.gov

John F. Healey, Jr., District Attorney
Gail Kikawa McConnell, Ass't District Attorney
1422 Eugene Heimann Circle
Richmond, TX 77469
Gail.McConnell@fortbendcountytx.gov

Harris S. Wood, Jr.
701 North Post Oak Road #425
Houston, Texas 77024
Fax: (281) 579-1586
hwoodatty@yahoo.com

On May 14, 2015.

/s/ D. Chris Hesse
D. Chris Hesse

CERTIFICATE OF COMPLIANCE

This is to certify that, using the word count feature of WordPerfect X7, the total number of words in the Petition is 2138, *except* in the following sections: caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of questions presented, statement of procedural history, signature, proof of service, certification, certificate of compliance, and appendix. This document also complies with the typeface requirements because it has been prepared in a proportionally-spaced typeface in 14-point Georgia and the footnotes are in a proportionally-spaced typeface in 12-point Times New Roman.

/s/ D. Chris Hesse
David Christopher Hesse

APPENDICES

APPENDIX 1

THE STATE OF TEXAS

VS

BRANDON JAY CARTER

Amanda Bolin
30.02 (d)
22990007

D.O.B.: 04/25/1991	**DA CONTROL NO:** 12-006209
FELONY CHARGE: BURGLARY HABITATION INTEND SEX OFFENSE/ F1	**ARREST DATE:** Not arrested on this charge
CAUSE NO: 12-DCR-061186	**OFFENSE DATE:** September 26, 2011
DISTRICT COURT NO: 240th	**AGENCY/AGENCY NO:** FORT BEND COUNTY SHERIFF'S OFFICE/ 110025389
BAIL AMOUNT: $ 50,000.00	**PRIOR CAUSE NO:**
RELATED:	**CO-DEF:**

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

The duly organized Grand Jury of Fort Bend County, Texas, presents in the District Court of Fort Bend County, Texas, that in Fort Bend County, Texas, **BRANDON JAY CARTER**, hereafter styled the Defendant, heretofore on or about **September 26, 2011**, did then and there intentionally or knowingly enter a habitation, without the effective consent of Larissa Treybig, the owner thereof, and attempted to commit or committed the felony offense of sexual assault;

Unofficial

FILED
2012 AUG 20 PM 12: 22
CLERK DISTRICT COURT
FORT BEND CO., TEX.
A. Bentancourt
Deputy
Annie Elliott

AGAINST THE PEACE AND DIGNITY OF THE STATE.

12-DCR-061186
INDI
Indictment
2039636

John C. Whitten
FOREMAN OF THE GRAND JURY

INDICTMENT (ORIGINAL/DA)

APPENDIX 2

ORDER APPOINTING COUNSEL

Cause No. 12-DCR-061186 -240TH

The State of Texas

Vs.

BRANDON JAY CARTER

Upon determination by the Court that this Defendant is indigent, DAVID CHRISTOPHER HESSE is hereby appointed to defend BRANDON JAY CARTER.

December 10, 2012

Thomas R. Culbreth

Presiding Administrative Judge

FILED

2012 DEC 12 PM 2:14

Annie Rebecca Elliott

CLERK DISTRICT COURT
FORT BEND CO., TX

12-DCR-061186
ORAP
Order Appointing
2206042

Unofficial

APPENDIX 3

12-DCR-061186
DOSH
Docket Sheet
2775499

CRIMINAL DOCKET

CAUSE NO: 12-DCR-061186

COURT NO.	STYLE OF CASE	ATTORNEYS	CASE TYPE FILED
240th Judicial District Court	THE STATE OF TEXAS VS BRANDON JAY CARTER	DISTRICT ATTORNEY STATE DEFENDANT	Adult Felony - Filed by Indictment
DATE OF FILING: MONTH / DAY / YEAR: August 20, 2012			OFFENSE: BURGLARY HABITATION INTEND SEX OFFENSE

DATE OF ORDERS MONTH	DAY	YEAR	ORDERS OF COURT
			BAIL SET AT: 50,000
11	26	12	Reset to 1.9.13 @ 2:30 pm
12	10	12	David Christopher Jussel appointed to represent defendant per order on file.
1	9	13	Arraignment. 2-6-13 @ 2:30pm
2	6	13	RS 3.6.13 @ 2:30 pm
03	06	2013	Reset to 03-25-2013 @ 1:30 pm
03	25	13	Reset to 04/29/13 @ 1:30 pm @
04	29	13	Reset to 06/06/13 @ 9:00 am @
06	25	13	Reset to 8-13-13 @ 9:00 am

Unofficial

CAUSE NO: 12-DCR-061186
THE STATE OF TEXAS vs BRANDON JAY CARTER

DATE OF ORDERS			ORDERS OF COURT
MONTH	DAY	YEAR	
08	05	13	Order on State's Motion to collect Defendant's Finger print granted per order on file.
08	13	13	R/S to 09/30/13 @ 1:30pm.
09	30	13	Reset to 11-4-13 @ 1:30pm
11	04	13	R/S to 12/02/13 @ 1:30pm.
11	4	13	D gained with counsel Chris Hess. Same grand (Stat Patel) Record No. 131106164741. Court ordered fingerprint taken of the Defendant. Writ Hearing conducted. Defense called Stephanie Ramsey (Mother of D) who testified. Both sides closed and argued. Bond Reduced to $40,000 - with conditions.
12	02	13	R/S to 01/13/14 @ 1:30pm.
01	13	14	R/S to 02.18.14 @ 9:00 am.
2	18	14	Reset to 3-10-14 @ 1:30pm
3	17	14	Reset to 4-7-14 @ 1:30pm
04	07	14	R/S to 05/19/14 @ 1:30pm.
05	19	14	R/S to 06/23/14 @ 1:30pm
06	23	14	Agreed Discovery Order signed [illegible]
8	7	14	RS 8/18/2014 @ 1:30pm
08	18	14	Reset to 09/23/14 @ 9:00am.

Unofficial

CRIMINAL DOCKET

CAUSE NO: 12-DCR-061186

COURT NO.	STYLE OF CASE	ATTORNEYS	CASE TYPE FILED
240th Judicial District Court	THE STATE OF TEXAS VS BRANDON JAY CARTER	DISTRICT ATTORNEY	Adult Felony - Filed by Indictment
DATE OF FILING		STATE	OFFENSE
MONTH DAY YEAR		DEFENDANT	BURGLARY HABITATION INTEND SEX OFFENSE (F1)
August 20, 2012			

DATE OF ORDERS MONTH	DAY	YEAR	ORDERS OF COURT
			BAIL SET AT: 50,000
09	23	14	Reset to 10/14/14 @ 1:30pm
10	14	14	D & (atty Chris Hesse) + Asst. D.A. Patel present on D's Mot. for Appt. of Eyewitness I.D. Expert. D sworn. D rejected any State's offer for a plea. Db Mot. for Expert is granted ($7250.00)
(Reported: Liz)			[signature] Judge
12	02	14	Reset to 02/17/15 @ 8:30am.
2	17	15	Deft present in person & by counsel, Chris Hesse; State present by Asst DAs STUTI PATEL & AMANDA BOLIN. Pre Trial Motion heard & ruled on of record. Jury panel summoned. Deft's request for jury panel shuffle GRANTED. Shuffled panel seated at 11:35 A.M. Court's voir dire instructions given (over)

Unofficial

CAUSE NO: 12-DCR-061186
THE STATE OF TEXAS vs BRANDON JAY CARTER

DATE OF ORDERS			ORDERS OF COURT
MONTH	DAY	YEAR	
2	17	15	(Continued) until 12:03 P.M. Panel admonished & excused until 1:30 P.M. Resumed 1:30. State's vair dire ~~continued~~ began then, concluding at 3:00 P.M. Recess. Resumed & Deft's vair dire began at 3:42 & concluded at 5:15 P.M. Conference betw Court & Counsel. Panel excused until 9 AM Wed 2/18/15.
2	18	15	Resumed 9 AM Indiv'l jurors questioned. Jury selection completed at 11 AM. Motions in limine heard out of jury's presence. Jurors selected were recalled to Courtroom and sworn. Indictment presented to which Deft pleaded NOT GUILTY. Witnesses sworn & rule invoked. State's opening statement began at 11:38 AM, concluding at 11:45 A.M. Deft's opening statement began, concluding at ~~[illegible]~~ 11:55 AM. Recessed until 1:30 P.M. Resumed 1:30 P.M. State's evidence began. ~~continuing until~~ Witness (1) Ft. Bend Dep. Sheriff Don Kimball testified on direct exam until 1:57 PM; on cross exam until 2:13 P.M., on re-direct until 2:14 PM. Witness Complainant (2) Larissa Treybig testified on direct exam until 2:59 P.M. Recess until 3:15 P.M. State's evidence Witness Complainant cont'd on direct exam until 4:10 P.M., on cross exam until 4:45 P.M. Court recessed until 9 AM 2/19/15
2	19	15	Resumed 9:13 AM State's evidence cont'd (2) Compl continued on cross exam until 9:53 AM, on re-direct until 9:59. Recess until 10:15 Resumed 10:20 AM. State's evidence continued. Witness (3) WANDA HARRIS (Forensic Artist) testified on direct exam until 10:40 AM, on cross until 11 AM. Witness (4) Former Ft. Bend Dep. Charles SCOTT testified on direct exam until 11:18 AM, on cross until 11:25 AM. Recess (Jury retired for witness to revoke tape)

(next page)

DOCKET

CAUSE NO.

COURT NO.	STYLE OF CASE	ATTORNEY'S	TYPE OF ACTION	DATE OF FILING
	THE STATE OF TEXAS	STUTI PATEL		MONTH / DAY / YEAR
STENOGRAPHER USED?		PLAINTIFF AMANDA BOLIN		
(YES) / NO	VS.			
LIZ WITTU	BRANDON JAY CARTER	DEFENDANT CHRIS HESSE		JURY FEE
				PAID BY

DATE OF ORDERS			ORDERS OF COURT	MICROFILM	
MONTH	DAY	YEAR		REEL	FRAME
2	19	15	(Cont'd) Witness Dep Charles Scott cont'd before jury Legg 11:37AM, concludes 11:50 Noon Recess until 1:20 PM Resumed 1:32PM. State's evid. cont'd. Witness (5) Investigator CRAIG CRABTREE Ft. Bend Co Crime Scene Unit testified on direct exam until 1:40 P.M. on cross-exam until 1:48 P.M. State's witness (6) Ft Bend Co Sgt KIMORESKOVICH testified on direct exam until 2:18 P.M., on cross exam until 2:25 P.M., on re-direct and re-cross until 2:30 P.M. Recess at 2:30 until 2:45 PM Resumed 2:46 P.M. State's Witness (7) Chambers County Sheriff's office C.I.D. Capt. Duane Wright testified on direct exam until 4 PM Recess Resumed 4:16. Witness Capt Wright cont'd on direct exam until 4:31 PM Jurors excused until 9AM Friday 2/20/15. Recess until 9AM.		
2	20	15	Resumed 9:10 AM. Witness Capt Wright on Stand. Video exhibit played for jury beginning at 9:18 AM, concluding at 10:32 A.M. Recess until 10:55 A.M. Def's cross-exam began then, concluding at 12:05 P.M. recess until 1:35 P.M. Resumed 1:49 PM Capt Wright cont'd on cross exam until 2:55 P.M. Recess until 3:18 P.M. Witness Capt Duane Wright cont'd on cross exam until 3:27 P.M Re-direct exam until 3:37 P.M Witness Forensic Scientist Clare MOYERS testified on direct exam until 4:05 PM. Recess until 8:45 AM Monday 2/23/15 (over)		

Unofficial

NO. _____ _____ VS. _____

DATE OF ORDERS			ORDERS OF COURT CONTINUED	MICROFILM	
MONTH	DAY	YEAR		REEL	FRAME
2	23	15	Resumed 9 AM. All counsel & Deft present. Jury brought into Courtroom & excused until 10:45. Out of jury's presence, State witness (1) Lovely Hale heard pertaining to extraneous offense. State's witness Lovely Hale sworn & testified on direct exam from 9:20 until 9:30, on cross exam until 10:05, on re-direct (including playing of tape (SX 23) until 10:21 P.M., on re-cross. Jury recalled & Witness Lovely Hale testified on direct exam until 11:47 AM., on cross exam until 12:20 P.M., redirect until 12:30 PM Recess until 1:55 P.M. Resumed 2 PM. State's evid continues. Re: Hale Extraneous Offense. Witness (2) Harris Co Dep Sheriff RYAN testified on direct exam until 2:20 PM, on Cross Exam until 3:13 P.M., Recess until 3:30 P.M. Resumed 3:45 P.M. Extraneous Offense witness Harris Co Deputy Raven testified on direct exam until 3:59 P.M., on cross exam until 4:20 P.M. Extraneous Witness Dorothy DENKINS testified on direct exam re "DENKINS INCIDENT Extraneous Offense until 4:28 P.M., on cross exam until 4:54 P.M. Argument heard & Evidence ruled as admissible extraneous offense evidence. Jury recalled at 5:23 PM & Witness DENKINS testified on direct exam until 5:40 P.M. State offers, & Court admits, SX-31 (Deft's Conviction for Public Lewdness). Jury recessed until 9 AM Tuesday 2/24/15.		
2	24	15	All counsel & Deft present. Resumed before Jury at 9:15 A.M. (JUROR LATE) Deft's Witness LLOYD MALPESS was heard by Agreement out of turn before State rested. Deft witness, Professor LLOYD MALPESS testified on direct exam until 10:45 Recess until 11:00 Witness' direct exam cont'd until 12:15 P.M. Lunch recess until 1:45 P.M. Resumed 1:50 P.M. Witness MALPESS cont'd on direct exam until 1:58 P.M., on cross exam until 2:54 P.M., on re-direct until 2:55 P.M. pending arrival of State's next witness upon resumption of recessed State's case (next)		

CRIMINAL DOCKET

CAUSE NO:

COURT NO.	STYLE OF CASE	ATTORNEYS	CASE TYPE FILED
240th Judicial District Court	THE STATE OF TEXAS VS BRANDON JAY CARTER	DISTRICT ATTORNEY	Adult Felony - Filed by Indictment
DATE OF FILING (MONTH / DAY / YEAR)		STATE	OFFENSE
		DEFENDANT	

DATE OF ORDERS (MONTH / DAY / YEAR)	ORDERS OF COURT
2 24 15	(Continued). Resumed before jury at 3:16 P.M. State's Witness Detective Tommy Thompson testified on direct exam until 4:01, on cross exam until 4:55 Recessed until 9 AM WOD 2/25/15
2 25 15	Resumed 9:08 A.M. State's Witness Detective Tommy Thompson continued on Cross-Exam until 10 AM, on redirect exam until 10:12 A.M., on re-cross State rests at 10:14 AM. Outside presence jury retired. Deft's Motion for Directed Verdict urged & DENIED. Charge to the Court's proposed charge was made. Charge approved with changes made. Jury recalled to Courtroom at 11:04 A.M. Deft rests without evidence. Charge filed & read to jury beginning at 11:09 P.M. concluding at 11:23 A.M. State's Argument began then, concluding at 11:48 Deft's argument began then, concluding at 12:36; State close began then, concluded at 12:39 P.M. Jury retired to deliberate at that time.

Unofficial

CAUSE NO:
THE STATE OF TEXAS vs

DATE OF ORDERS			ORDERS OF COURT
MONTH	DAY	YEAR	(Continued)
2	25	15	Two messages in writing from jury received. Jury recalled to Courtroom at 2:35 PM and (1) Question One (1:15 PM) read. (2) Question Two – Reporter's notes, both Answers by consent of both parties. Jury returned to deliberate at 2:38 PM. Message in writing from jury, answered in writing by agreement of both sides (re definition of "identity"). Juror allowed to recess from jury room as a group in bailiff's custody returning to resume deliberations at 4:06 P.M. Jury requested separation for the day at 6:50 PM. State & Defense and Deft personally agree on record to separation. Jury recalled to Courtroom at 7:02 P.M., admonished, excused until 9 AM Thursday 2/26/15
2	26	15	Jury resumed deliberations at 9:20 AM. Message in writing from jury at 10:50 AM indicating "we are at an impass [sic]" and our differences are irreconcilable." "Allen" charge approved by both sides, was sent in at 11:35 A.M. Message from jury in writing at 11:50 AM. Jury recalled to Courtroom at 12 Noon. Message from jury read. Deft's motion for mistrial GRANTED. Jury discharged.
			Court entered Judgment and Commitment Order upon finding Contemnor, Christopher Hess in Contempt with punishment set at a $500 fine. Contemnor is authorized to make personal appearance bond as an officer of the Court.

JUDICIAL

APPENDIX 4

12 – DCR – 061186
ORDER
Order
3454475

ORDER TO SUBSTITUTE COUNSEL

STATE OF TEXAS

VS

BRANDON JAY CARTER

Cause No. 12-DCR-061186

Upon determination by the Court that this defendant is indigent,

ATTORNEY HARRIS S. WOOD, JR. is hereby appointed to substitute

ATTORNEY CHRIS HESSE to defend BRANDON JAY CARTER.

Date: March 02, 2015

Raquel Levy
COURT ADMINISTRATION COORDINATOR

Unofficial

FILED
MAR 2015
AT 1:44 P M.
Clerk, District Court, Fort Bend Co., TX

ORDER APPOINTING COUNSEL

Cause No. 12-DCR-061186

The State of Texas

Vs.

BRANDON JAY CARTER

Upon determination by the Court that this Defendant is indigent, HARRIS S. WOOD, JR is hereby appointed to defend BRANDON JAY CARTER.

March 02, 2015

Presiding Administrative Judge

FILED

MAR 2015

AT 1:44P M.

Clerk District Court, Fort Bend Co., TX

Unofficial

BRANDON JAY CARTER
802 Vestabend
Houston, Tx 77073
Home: 281-232-6744

ORDER AND NOTICE OF COURT APPOINTED ATTORNEY

Cause No. 12-DCR-061186

The State of Texas Vs. BRANDON JAY CARTER

You are hereby notified that HARRIS S. WOOD, JR, whose address and telephone number appear below, is hereby appointed as your attorney. Such representation will continue until this case is disposed, and appeals are exhausted, or replaced by an attorney whom you choose to retain.

Your FIRST COURT DATE is as follows: April 06, 2015 at 1:30 PM at the 240th District Court.

IMPORTANT: If the Bail Bond you received at the jail gives you a different court date than the one listed above for the bond cases, you MUST appear on the earliest date to prevent your bond from being forfeited. It is your responsibility to be present at all of your court dates.

You should arrive at the Court Room at least thirty (30) minutes prior to your arraignment time to allow for parking and to meet your attorney. If you are late or do not appear, a warrant will be issued for your arrest and your bond will be forfeited.

Presiding Administrative Judge

HARRIS S. WOOD, JR
2190 NORTH LOOP WEST
STE 308
HOUSTON, TX 77018
281-924-5876

Unofficial

MAR 3 2015
11:45 P
Court Court, Fort Bend, TX

Levy, Raquel

From: Levy, Raquel
Sent: Monday, March 02, 2015 3:55 PM
To: 'hwoodatty@yahoo.com'
Subject: FELONY APPOINTMENT - CERTIFICATE OF CONTACT
Attachments: CERTIFICATE OF CONTACT.doc

Dear Counsel:

You have been appointed by the court to represent:

Name: Brandon Jay Carter

DOB: 04/25/1991

Address: 802 Vestabend
Houston, Tx 77073

Phone: 281-232-6744

Charge: Burglary Habitation Intend Sex Offense – C#12-DCR-061186

Court Date: 4-6-15 @ 1:30 PM IN THE 240TH DISTRICT COURT

If the defendant has made bond, they may be reached at this address and phone otherwise they will be in the Fort Bend County Jail. As you are aware it is your responsibility to make every reasonable effort to contact the defendant by the end of the next working day after today. Failure to comply with this responsibility may result in your replacement as counsel for the defendant pursuant to Art. 26.04(k) of the Code of Criminal Procedure.

Please reply to this email IMMEDIATELY and acknowledge your receipt of receiving.

Raquel Levy
Administrative Court Services
Indigent Defense Coordinator
301 Jackson St.
Richmond, Tx 77469
281-341-3780
FAX #281-238-3224
Raquel.Levy@fortbendcountytx.gov

Unofficial

FILED
MAR 13 2015
AT 11:45 M.
Clerk District Court, Fort Bend Co., TX

APPENDIX 5

UNSWORN DECLARATION
CPRC § 132.001

"My name is Brandon Jay Carter, my date of birth is April 25th, 1991, and my address is 1410 Ransom Road, Richmond, Texas 77469. I declare under penalty of perjury that the following is true and correct.

I want Attorney David Christopher Hesse to remain as my court appointed attorney in Cause # 12DCR61186 in the 240th District Court, Fort Bend County, Texas. I never asked for another counsel in this matter."

EXECUTED in Fort Bend County, State of Texas on the 4th day of March, 2015.



Declarant

APPENDIX 6

12-DCR-061186
ORDER
Order
3471820



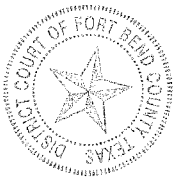
No. 12-DCR-061186

THE STATE OF TEXAS	§	IN THE 240TH JUDICIAL
VS.	§	DISTRICT COURT OF
BRANDON JAY CARTER	§	FORT BEND COUNTY, TEXAS

AMENDED ORDER TO SUBSTITUTE APPOINTED COUNSEL

On March 2, 2015, the Presiding Administrative Judge, James H. Shoemake, upon the request of Thomas R. Culver, III, the elected judge of the 240th District Court, entered an Order appointing Harris S. Wood, Jr. to defend Defendant, Brandon Jay Carter. In accordance with this Court's docket entry, the Court Administration Coordinator issued a notice substituting Mr. Wood for appointed attorney Chris Hesse. This amended order is now entered to memorialize good cause for the substitution of counsel.

Mr. Hesse represented Defendant in a jury trial, commencing February 17, 2015, with the selection of a petit jury, which was empaneled and sworn on February 18, 2015. The jury could not come to a unanimous decision, and Defendant's motion for a mistrial was granted on February 26, 2015. After the jury was released from service, Mr. Hesse was found in contempt of court by the Hon. Lee Duggan, Jr., sitting by assignment. Mr. Hesse sentenced to a $500 fine, and released on a personal recognizance bond. Attached hereto, without



attachments, is a copy of the Notice of Allegations of Contempt and Order Setting Show Cause Hearing set for March 23, 2015. [Exhibit 1]

In addition to the allegations of contempt, the reporter's record reflects several exchanges between Mr. Hesse and the trial court wherein Mr. Hesse expressed his concern about being held in contempt and "asked to be removed from this case because my interests are adverse to my client's at this very moment." [Exhibit 2, RR-Feb. 24, 2015 at 5] And again, "I ask that I be withdrawn as attorney of record. . . ." [Exhibit 3, RR-Feb 25, 2015 at 57]

Because Mr. Hesse is subject to a show cause hearing for contempt and had asked to be removed from this case because he might be held in contempt, this Court hereby finds good cause to remove David Christopher Hesse as the appointed attorney in this cuase and to substitute Harris S. Wood, Jr. to defend Brandon Jay Carter.

In addition, on March 3, 2015, the Indigent Defense Coordinator has notified the Court that Mr. Hesse asked to be removed from all appointment lists because he is moving to Amarillo in May 2015. [Exhibit 4, being the affidavit of Raquel Levy]

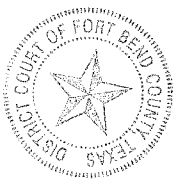
Signed on March 12, 2015.

Thomas R. Culver, III
Presiding Judge, 240th District Court

FILED
MAR 12 2015
AT 4:24 P M
Clerk District Court, Fort Bend Co., TX

DISTRICT COURT OF FORT BEND COUNTY TEXAS

Exhibit 1



COPY

No. 12-DCR-061186

STATE OF TEXAS	§	IN THE 240TH JUDICIAL
VS.	§	DISTRICT COURT OF
BRANDON JAY CARTER, Defendant	§	FORT BEND COUNTY, TEXAS

IN RE: DAVID CHRISTOPHER HESSE

NOTICE OF ALLEGATIONS OF CONTEMPT AND
ORDER SETTING SHOW CAUSE HEARING

Notice is hereby given to Respondent, David Christopher Hesse, that certain conduct by you, more fully set forth hereinbelow, is considered by this Court to be prima facie evidence of contempt of court. Attached hereto as Exhibit A, and incorporated herein, is a copy of the Reporter's Record of the Court's Judgment of Contempt and Commitment Order. Attached hereto as Exhibit B, and incorporated herein, is a copy of the Reporter's Record of the Testimony of Detective Thompson. Attached hereto as Exhibit C, and incorporated herein, is a copy of the audio recording of the trial proceedings on February 24-26, 2015.

1. *Factual Allegations*

1.01 Respondent is the attorney of record for the Defendant in the above-entitled and numbered cause.

FILED
2015 MAR -9 AM 8:40
DISTRICT COURT OF FORT BEND COUNTY, TEXAS
CLERK DISTRICT COURT
FORT BEND CO., TX

1.02 A jury trial commenced on February 17, 2015, with the selection of a petit jury on February 18, 2015, which was sworn that day.

1.03 On February 18, 2015, the indictment was read, and the Defendant pleaded, "Not Guilty." The State and Respondent for the defense presented opening statements, after which the State's evidence began.

1.04 On February 24, 2015, defense witness Lloyd Malpess testified by agreement of the parties out of order, before the State rested its case.

1.04 On February 24, 2015, Respondent argued with the Court's rulings.

1.05 On February 24, 2015, Respondent interrupted the Court as the Court spoke.

1.06 On February 24, 2015, Respondent pursued questioning on certain matters after being instructed not to do so.

1.07 On February 24, 2015, The Court advised Respondent outside the presence of the jury, that his conduct was contemptuous, that he would not be held in contempt for what had occurred thus far, and that he should proceed with care and would be held in contempt if he persisted in such behavior.

1.08 On February 25, 2015, despite the Court's warnings the day before, Respondent again persisted in disrupting the proceedings of the Court during his cross-examination of the State's witness, Detective Tommy Thompson.

1.081 Respondent argued with the Court's rulings, including "I want to know more about this DeMarcus Hawthorne" [Ex A at 54]; "I have a

right to confront, sir" [Ex A at 56]; "I object to being denied--" [Ex A at 80-81]; "I can put my objection, now, sir. My objection--" [Ex A at 81]; "My objection is I--" [Ex A at 81]; "My client is being denied—my client is being denied--" [Ex A at 81]; "And I want to put it on the record, sir. I want to put it on the record--" [Ex A at 81]; "I object that my client is being denied his right to confront--" [Ex A at 81]; "Every time you talk over me, sir, I'm not getting on the record. I object--" [Ex A at 82]; "I'd like to make an offer of proof now, sir" [Ex A at 82]

1.082 Respondent refused to give an estimate of how long Respondent intended to cross-examine the witness, "As long as I see fit, sir," "I don't know," "I'll determine that," "You can deal with that when it comes sir," and when the Court asked for Respondent's best estimate, Respondent twice answered, "No, sir." [Ex A at 58-62]

1.082 Respondent four times continued to pursue questioning about bad acts or convictions of DeMarcus Cortez Hawthorne after the State's object to relevance was sustained, and the Court had instructed counsel to move on to another topic. [Ex A at 43-45, 80]

1.083 Respondent twice continued to pursue questioning about latent prints after the State's objection was sustained, and the Court had

COURT OF HARRIS COUNTY TEXAS DISTRICT

instructed Respondent to move on to new material. [Ex A at 55-56]

1.084 Respondent interrupted the Court when the Court spoke:

The Court: You have the usual pathway of objections—

Respondent: And I want to put it on the record, sir. I want to put it on the record—

The Court: And do not talk over the Judge.

[Ex A at 81]

1.09 On February 25, 2015, the State rested after Det. Thompson's testimony, the defense rested, and the evidence was closed. The Court's charge was read, closing arguments were made, and the jury was retired to deliberate on guilt-innocence. The jury was allowed to separate at about 6:50 p.m. on the agreement of the parties.

1.10 On February 26, 2015, the jury resumed deliberating, but sent out a written note stating "our differences are irreconcilable." The Court prepared an Allen charge that was approved by the parties and which was sent to the jury. However, at about noon, the jury was returned to the courtroom, Defendant's motion for mistrial was granted, and the jury was discharged.

1.11 On February 26, 2015, after the jury had been discharged, the Court entered a Judgment of Contempt and Commitment Order after finding Respondent in contempt and authorized Respondent to make a personal appearance bond as an officer of the Court.

DISTRICT COURT OF FORT BEND COUNTY, TEXAS

2. Allegations of Contempt

2.01 The conduct of the Respondent, as described hereinabove, is contumacious for the reason that it significantly disrupts the orderly proceedings of the court and the proper and effective administration of justice by causing unnecessary delay and the waste of judicial resources.

3. Legal Principles

3.01 In determining whether or not the Respondent is in contempt, this Court is cognizant of and guided by the principle that the essence of contempt is not an offense against a particular judge's personal sensibilities, but is instead an affront to the authority, justice or dignity of the court, which conduct obstructs the proper and effective administration of justice. *Brown v. United States*, 386 U.S. 148 (1958).

3.02 Contempt has been defined as an act which is reasonably calculated to impede, embarrass, or obstruct the court in the lawful discharge of its duties. *Ex parte Soape*, 347 S.W.2d 621 (Tex. 1961).

4. Range of Punishment

4.01 The range of punishment for contempt is a fine of not more than $500.00, or confinement in the county jail for a period of not more than six months, or by both a fine and a period of confinement.

DISTRICT COURT OF FORT BEND COUNTY TEXAS

5. Assigned Judge

5.01 Pursuant to Section 21.002(d) of the Government Code, the Honorable Olen Underwood, presiding judge of this administrative region, has appointed the Honorable Michael Seiler, to determine the guilt or innocence of the Respondent.

Signed March 6, 2015.

Lee Duggan, Jr.

Hon. Lee Duggan, Jr.
Judge Presiding by Assignment
240th District Court
Fort Bend County, Texas

DISTRICT COURT OF FORT BEND COUNTY TEXAS

SHOW CAUSE ORDER

IT IS HEREBY ORDERED that the Respondent, David Christopher Hesse, appear before this Court at 10:00 a.m. on March 23, 2015, to show cause why he should not be held in contempt of court and punished accordingly.

NOTICE OF SHOW CAUSE ORDER

IT IS FURTHER ORDERED that the Clerk of this Court shall cause a NOTICE OF SHOW CAUSE ORDER to be served on Respondent in person on March 9, 2015, upon his appearance at 10:30 a.m. in this Court as Respondent swore he would when released on a personal recognizance bail bond. A copy of this notice and order shall also be provided to the Honorable Olen Underwood, Administrative Judge; the Honorable Michael Seiler, Presiding Judge by assignment; and the Honorable Thomas Culver, Presiding Judge of the 240th District Court.

Signed March 6th, 2015

Hon. Michael Seiler
Judge Presiding by Assignment
240th District Court
Fort Bend County, Texas

DISTRICT COURT OF FORT BEND COUNTY TEXAS

Exhibit 2



REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES
TRIAL COURT CAUSE NO. 12-DCR-61186

THE STATE OF TEXAS	)	IN THE DISTRICT COURT
	)	
vs.	)	FORT BEND COUNTY, TEXAS
	)	
BRANDON JAY CARTER	)	240TH JUDICIAL DISTRICT

EXCERPT OF BENCH CONFERENCE

On the 23rd day of February, 2015, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable LEE DUGGAN, JR, Presiding Judge, held in Richmond, Fort Bend County, Texas.

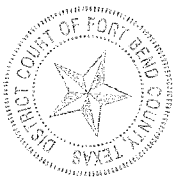
Proceedings reported by computerized stenotype machine.

DISTRICT COURT OF FORT BEND COUNTY TEXAS

APPEARANCES

AMANDA BOLIN
STUTI PATEL
DISTRICT ATTORNEY'S OFFICE
301 Jackson Street
Richmond, Texas 77469
Telephone: 281-341-4460
Attorney for The State of Texas

CHRIS HESSE
ATTORNEY AT LAW
1110 Front Street, Ste. C
Richmond, Tx 77469
Telephone: 281-984-0051
Counsel for Brandon Carter



(Judge enters)

(Out of the presence of the jury)

THE COURT: Thank you, have a seat.

MR. HESSE: Your Honor, my we approach on the record?

THE COURT: Approach.

MR. HESSE: Your Honor --

THE COURT: Do you want your defendant here before we speak?

MR. HESSE: Yes, that would be great.

THE COURT: Counsel, may I have both of you here for a bench conference?

MS. PATEL: Yes, Judge.

MS. BOLIN: Yes, your Honor.

THE COURT: I don't want to talk to either of you about evidence in the matter at this time but simply scheduling and procedure.

Are your witnesses here for those matters that you propose to offer proof about?

MS. PATEL: Yes, your Honor.

THE COURT: Is your out of town witness here?

MR. HESSE: Your Honor, just before we hit that just really quick.

THE COURT: I'm sorry?

DISTRICT COURT OF FORT BEND COUNTY TEXAS

MR. HESSE: Just before we talk about that, I would like -- just prior to the court reporter coming into the courtroom, you called us up to talk to us about the case.

THE COURT: That's correct. I did.

MR. HESSE: And I demanded that everything be put on the record.

THE COURT: And I don't want to hear some authority from you on that the fact the Judge is not entitled to have the cooperation of lawyers on non-trial matters.

MR. HESSE: I demanded that everything that's said between the attorneys and the Judge be put on the record and at which point you advised me if I persist in making that demand, you would hold me in contempt.

THE COURT: I'm going to certainly consider it because you've been an impediment to the orderly flow of the case. You haven't been held in contempt yet.

MR. HESSE: That's what -- um -- what you told me is you would -- if I persist in that course of action insisting that this be put on the record that you would hold me in contempt. And so, sir, now -- if you would allow me to speak -- now that I'm afraid of being

DISTRICT COURT OF FORT BEND COUNTY, TEXAS

held in contempt --

THE COURT: Be careful. We are starting even.

MR. HESSE: Now that I'm afraid of being held in contempt, I ask for a continuance and I ask for a mistrial and I ask to be removed from this case because my interest are adverse to my client's at this very moment.

THE COURT: Tell me how your interests are adverse to your client?

MR. HESSE: I can't defend my client when I'm afraid of being held in contempt.

THE COURT: As I say, you have not been and although I've been told orally about matters that I didn't hear that have been said that you said so you are treading close. But it's a clean slate and a brand new week. So your motion is for --

MR. HESSE: For a continuance, for a mistrial and that I be withdrawn as the attorney of record.

THE COURT: Each of your motions is overruled.

DISTRICT COURT OF FORT BEND COUNTY, TEXAS

STATE OF TEXAS

COUNTY OF FORT BEND

I, Liz Wittu, Official Court Reporter in and for the 240TH District Court of Fort Bend, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $_____ and was paid/will be paid by _____.

/S/ Liz Wittu

Liz Wittu, CSR
Texas CSR 7928
Official Court Reporter
240TH District Court
Fort Bend County, Texas
301 Jackson
Houston, Texas 77469
Telephone: 281-341-8601
Expiration: 12/31/2015

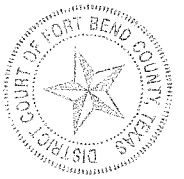


Exhibit 3



REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES
TRIAL COURT CAUSE NO. 12-DCR-61186

THE STATE OF TEXAS	)	IN THE DISTRICT COURT
	)	
vs.	)	FORT BEND COUNTY, TEXAS
	)	
BRANDON JAY CARTER	)	240TH JUDICIAL DISTRICT

EXCERPT OF TESTIMONY

On the 24th & 25th day of February, 2015, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable LEE DUGGAN, JR, Presiding Judge, held in Richmond, Fort Bend County, Texas.

Proceedings reported by computerized stenotype machine.

COURT OF FORT BEND COUNTY, TEXAS DISTRICT

APPEARANCES

AMANDA BOLIN
STUTI PATEL
DISTRICT ATTORNEY'S OFFICE
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Richmond, Texas 77469
Telephone: 281-341-4460
Attorney for The State of Texas

CHRIS HESSE
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1110 Front Street, Ste. C
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Telephone: 281-984-0051
Counsel for Brandon Carter

OFFICIAL COURT REPORTERS FORT BEND COUNTY, TEXAS DISTRICT

rule on the objections, that's it. I don't want to argue about it. That's contempt. I'm trying to stay away from contempt. I would like to finish this case.

How long, additionally, do you think it's going to be before you're finished this evening?

MR. HESSE: Sir, are you threatening me with contempt?

THE COURT: Sir?

MR. HESSE: Are you threatening me with contempt?

THE COURT: No, sir, I'm telling you that your conduct borders on it. But I've overlooked a lot, and I intend to continue to try to overlook a lot.

MR. HESSE: If my conduct borders on contempt, I ask for a continuance. I ask for a mistrial. I ask that I be withdrawn as attorney of record, and I ask that the issue of my contempt be --

THE COURT: We've been over all this before.

MR. HESSE: The issue of my contempt be --

THE COURT: And do not try to talk over me. She only takes my voice when the two of us are being heard.

MR. HESSE: That's very unfortunate, sir.

THE COURT: Sir?

FORT BEND COUNTY, TEXAS DISTRICT COURT

STATE OF TEXAS

COUNTY OF FORT BEND

I, Liz Wittu, Official Court Reporter in and for the 240TH District Court of Fort Bend, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $_____ and was paid/will be paid by _____.

/S/ Liz Wittu

Liz Wittu, CSR
Texas CSR 7928
Official Court Reporter
240TH District Court
Fort Bend County, Texas
301 Jackson
Houston, Texas 77469
Telephone: 281-341-8601
Expiration: 12/31/2015



Exhibit 4



THE STATE OF TEXAS

COUNTY OF FORT BEND

AFFIDAVIT OF RAQUEL LEVY

BEFORE ME, the undersigned authority, on this day personally appeared Raquel Levy, who swore or affirmed to tell truth, and stated as follows:

"My name is Raquel Levy. I am over the age of eighteen years and have personal knowledge of the facts stated herein, which are true and correct.

I am currently employed as the Indigent Defense Coordinator, Administrative Court Services, Fort Bend County. I have been so employed since the year of 2007.

As part of my duties, I maintain the Misdemeanor and Felony Lists of attorneys qualified for appointment to criminal cases. On February 12, 2015, Mr. Hesse asked me to remove him from all appointment lists because he is moving to Amarillo in May 2015. I notified the judges of Mr. Hesse's request on March 3, 2015."

Raquel Levy

Raquel Levy

COURT OF FORT BEND COUNTY TEXAS DISTRICT

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority on March 12, 2015, by Raquel Levy.

REBECCA FISHER
NOTARY PUBLIC
STATE OF TEXAS
EXPIRES
11-12-2018



Rebecca Fisher

Notary Public in and for the State of Texas
My commission expires:

I, Annie Rebecca Elliott, District Clerk of Fort Bend County, Texas, do hereby certify that the foregoing is a true, correct and full copy of the instrument herein set out as appears of record in the District Court of Fort Bend County, Texas.
Thru 13 day of March 20 15

ANNIE REBECCA ELLIOTT, DISTRICT CLERK
By Lisa Tucker Deputy
Lisa Tucker

APPENDIX 7

Opinion issued May 7, 2015

In The

Court of Appeals

For The

First District of Texas

NO. 01-15-00216-CR
NO. 01-15-00217-CR

IN RE BRANDON JAY CARTER, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Relator, Brandon Jay Carter, has filed a petition for (1) a writ of mandamus challenging an order substituting his appointed trial counsel, and (2) a writ of prohibition preventing the trial court from holding hearings or proceeding to trial in the underlying case.[1] We **deny** the petition.

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[1] The underlying case is *State of Texas v. Brandon Jay Carter*, cause number 12-DCR-061186, pending in the 240th District Court of Fort Bend County, Texas, the Honorable Thomas R. Culver, III presiding.

PER CURIAM

Panel consists of Justices Keyes, Bland, and Massengale.

Do not publish. TEX. R. APP. P. 47.2(b).

APPENDIX 8

UNSWORN DECLARATION OF D. CHRIS HESSE

Under 28 U.S.C. § 1746 and Texas Civil Practice and Remedies Code § 132.001 *et seq*., I declare under penalties of perjury that my name is David Christopher Hesse. I am also known as D. Chris Hesse. I am over the age of 18 years, and am competent to make this declaration. My date of birth is April 30, 1973. My address is 112 West 8th Avenue, Suite 301 Amarillo, Texas 79101. This document is not a lien required to be filed with a county clerk, an instrument concerning real or personal property required to be filed with a county clerk, or an oath of office or an oath required to be taken before a specified official other than a notary public. I have not been forced to sign this declaration. I declare that under the penalties of perjury that all assertions provided in this document are correct and true.

The documents that are attached to the Petition for Writ of Mandamus are true and correct copies of the original documents which are to be found among the papers of Cause No. 12-DCR-061186 in the Office of the District Clerk of Fort Bend County, Texas, or among the papers in Docket No. 01-15-00216-CR and Docket No. 01-15-00217-CR in the First Court of Appeals in Houston, Texas. I did not find out about the order removing me as the attorney for Relator until I received a phone call from Harris Wood, Jr., on March 4, 2015. There was no hearing held before the original or the amended

order was signed by Judge Culver.

Signed on May 11, 2015.

/s/ David Christopher Hesse
David Christopher Hesse