83,308-01

ExParte

Application for Writ of Habeas Corpus

From Bowie County

DATE: 09-23-15
FILE IN WRIT FILE
BY: LKR

STEDMON MONTREL DEWBERRY
(Name of Applicant)

5th District Court

1ST SUPPLEMENTAL
TRIAL COURT WRIT NO. **11F0763-005-A**
CLERK'S SUMMARY SHEET

APPLICANT'S NAME: STEDMON MONTREL DEWBERRY
(As reflected in judgment)

OFFENSE: MURDER
(As reflected in judgment)

CAUSE NO. : 11F0763-005
(As reflected in judgment)

PLEA: GUILTY / **NOT GUILTY** / NOLO CONTENDERE (CIRCLE ONE)

SENTENCE: 50 YEARS TDC
(Terms of years reflected in final judgment)

TRIAL DATE: 11/03/2011
(Date upon which sentence was imposed)

JUDGE'S NAME: RALPH BURGESS
(Judge presiding at trial)

APPEAL NO.: 06-12-00025-CR
(If applicable)

CITATION TO OPINION: -S.W.2d-
(If applicable)

RECEIVED IN
COURT OF CRIMINAL APPEALS
SEP 21 2015
Abel Acosta, Clerk

HEARING HELD: X YES ___ NO
(Pertaining to the application for writ of habeas corpus)

FINDINGS & CONCULSION FILED: ___ YES X NO
(Pertaining to the application for writ of habeas corpus)

RECOMMENDATION: ___ GRANT ___ DENY X NONE
(Trial court's recommendation regarding application for writ of habeas corpus)

JUDGE'S NAME: BILL MILLER
(Judge presiding over habeas corpus proceeding)

This document contains some pages that are of poor quality at the time of imaging.

INDEX

1.	COURT'S DOCKET	1
2.	DOCKET SHEET	10
3.	SUPPLEMENTAL MEMORANDUM OF LAW	12
4.	ORDER SETTING HEARING	29
5.	ORDER RESCHEDULING HEARING	30
6.	RECEIPT OF EXHIBITS	32
7.	MOTION FOR EXTENSION OF TIME	33
8.	CLERK'S CERTIFICATE	35

5TH DISTRICT COURT

CASE SUMMARY

CASE NO. 11F0763-005

The State of Texas vs Stedmon Montrel Dewberry

§ Location: **5th District Court**
§ Judicial Officer: **Burgess, Ralph K**
§ Filed on: **09/22/2011**
§ Legacy Track Number: **181691**
§ Prosecutor Control Number: **11-02814**
§

CASE INFORMATION

Offense	Deg	Date	Case Type: **Adult Felony**
1. MURDER	F1	08/28/2010	
TRN: 9028106804 TRS: D001			
Filed As: MURDER	F1	9/21/2011	
Arrest: 08/29/2010			

Statistical Closures
11/03/2011 NGP/J VERDICT

Warrants
Capias - DEWBERRY , STEDMON MONTREL

11/03/2011	12:00 AM	Recalled
09/30/2011	12:00 AM	Received
09/30/2011	12:00 AM	ACTIVE WARRANT
09/30/2011	12:00 AM	ACTIVE WARRANT
09/23/2011	12:00 AM	Issued

Fine: $0 Bond: $0
Notes:
11/03/2011 Issuing Department: TTPD
11/03/2011 By MPARKER from SHERIFF: RECALLED PER STEVE GRAHAM
09/30/2011 Warrant Location: SO
09/30/2011 By MPARKER from SHERIFF: T10-07276 FILED: DEWBERRY, STEDMON MONTREL
09/30/2011 Warrant Location: B
09/30/2011 NCIC Entered: C
09/30/2011 NCIC Entered: B
09/30/2011 State Entered 09-30-2011
09/30/2011 State Cleared 11-03-2011
09/30/2011 Indictment Number: 11F0763-005 Indictment Date: 09-22-2011

CASE ASSIGNMENT

Current Case Assignment

Case Number	11F0763-005
Court	5th District Court
Date Assigned	09/22/2011
Judicial Officer	Burgess, Ralph K

PARTY INFORMATION

		Lead Attorneys
State	**STATE OF TEXAS**	
Defendant	**DEWBERRY , STEDMON MONTREL**	**HENRY, CRAIG L** *Retained* 903-792-4645(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
09/22/2011	$FILE (Judicial Officer: Burgess, Ralph K) *Event Code: $FILE Memo: Automatic File Date Event*	

CASE SUMMARY

CASE NO. 11F0763-005

09/22/2011	COURT DOCKET (Judicial Officer: Burgess, Ralph K) *Event Code: COUD*
09/22/2011	Filed by Indictment (OCA) *Event Code: IND*
09/23/2011	CAPIAS ISSUED (Judicial Officer: Burgess, Ralph K) *Event Code: KPS*
09/27/2011	Pre-Trial Reset *Event Code: PRTR Memo: 10/31 @ 1:30P NB*
09/27/2011	Pre-Trial Reset *Event Code: PRTR Memo: 10/4 @ 1:30P NB*
09/28/2011	Order to Appear *Event Code: OA*
09/28/2011	APPLICATION FOR SUBPOENA (Judicial Officer: Burgess, Ralph K) *Event Code: APPL/SUBP*
09/28/2011	Issue *Event Code: ISS*
09/28/2011	Order to Appear *Event Code: OA*
09/29/2011	Issue *Event Code: ISS*
09/29/2011	APPLICATION FOR SUBPOENA (Judicial Officer: Burgess, Ralph K) *Event Code: APPL/SUBP*
10/03/2011	SUBPOENA RETURN SERVED (Judicial Officer: Burgess, Ralph K) *Event Code: SRS*
10/04/2011	Order to Appear *Event Code: OA*
10/04/2011	PRE-TRIAL FINAL/RESET (Judicial Officer: Burgess, Ralph K) *Event Code: PF Memo: 10/25*
10/07/2011	APPLICATION FOR SUBPOENA (Judicial Officer: Burgess, Ralph K) *Event Code: APPL/SUBP*
10/07/2011	Issue *Event Code: ISS*
10/07/2011	APPLICATION FOR SUBPOENA (Judicial Officer: Burgess, Ralph K) *Event Code: APPL/SUBP*
10/07/2011	Issue *Event Code: ISS*

10/07/2011	APPLICATION FOR SUBPOENA (Judicial Officer: Burgess, Ralph K) *Event Code: APPL/SUBP*
10/07/2011	Issue *Event Code: ISS*
10/12/2011	APPLICATION FOR SUBPOENA (Judicial Officer: Burgess, Ralph K) *Event Code: APPL/SUBP*
10/12/2011	Issue *Event Code: ISS*
10/12/2011	APPLICATION FOR SUBPOENA (Judicial Officer: Burgess, Ralph K) *Event Code: APPL/SUBP*
10/12/2011	Issue *Event Code: ISS*
10/12/2011	APPLICATION FOR SUBPOENA (Judicial Officer: Burgess, Ralph K) *Event Code: APPL/SUBP*
10/12/2011	Issue *Event Code: ISS*
10/12/2011	SUBPOENA RETURN SERVED (Judicial Officer: Burgess, Ralph K) *Event Code: SRS*
10/12/2011	APPLICATION FOR SUBPOENA (Judicial Officer: Burgess, Ralph K) *Event Code: APPL/SUBP*
10/12/2011	Issue *Event Code: ISS*
10/12/2011	APPLICATION FOR SUBPOENA (Judicial Officer: Burgess, Ralph K) *Event Code: APPL/SUBP*
10/12/2011	Issue *Event Code: ISS*
10/12/2011	APPLICATION FOR SUBPOENA (Judicial Officer: Burgess, Ralph K) *Event Code: APPL/SUBP*
10/12/2011	Issue *Event Code: ISS*
10/12/2011	APPLICATION FOR SUBPOENA (Judicial Officer: Burgess, Ralph K) *Event Code: APPL/SUBP*
10/12/2011	Issue *Event Code: ISS*

CASE SUMMARY

CASE NO. 11F0763-005

10/17/2011	APPLICATION FOR SUBPOENA (Judicial Officer: Burgess, Ralph K) *Event Code: APPL/SUBP*
10/17/2011	SUBPOENA RETURN SERVED (Judicial Officer: Burgess, Ralph K) *Event Code: SRS*
10/17/2011	SUBPOENA RETURN SERVED (Judicial Officer: Burgess, Ralph K) *Event Code: SRS*
10/18/2011	Issue *Event Code: ISS*
10/19/2011	NOTICE (Judicial Officer: Burgess, Ralph K) *Event Code: NOTICE Memo: EXPERTS*
10/19/2011	STATES NOTICE OF INTENT TO USE EXTRENOUS OFFENSES (Judicial Officer: Burgess, Ralph K) *Event Code: NOI*
10/21/2011	APPLICATION FOR SUBPOENA (Judicial Officer: Burgess, Ralph K) *Event Code: APPL/SUBP*
10/21/2011	Issue *Event Code: ISS*
10/21/2011	APPLICATION FOR SUBPOENA (Judicial Officer: Burgess, Ralph K) *Event Code: APPL/SUBP*
10/21/2011	Issue *Event Code: ISS*
10/21/2011	BENCH WARRANT ISSUED (Judicial Officer: Burgess, Ralph K) *Event Code: BENCH*
10/21/2011	STATES WITNESS LIST (Judicial Officer: Burgess, Ralph K) *Event Code: SLOW*
10/25/2011	APPLICATION FOR SUBPOENA (Judicial Officer: Burgess, Ralph K) *Event Code: APPL/SUBP Memo: DEFENDANT*
10/25/2011	ISS SUBPOENA(S) (Judicial Officer: Burgess, Ralph K) *Event Code: ISS/SUBP*
10/25/2011	TRIAL DATE SET (Judicial Officer: Burgess, Ralph K) *Event Code: TRIAL Memo: 11/1 @ 9A NB*
10/26/2011	Order to Appear *Event Code: OA*
10/31/2011	MOTION IN LIMINE (Judicial Officer: Burgess, Ralph K) *Event Code: MOT/IN/LIM*

10/31/2011	MOTION IN LIMINE (Judicial Officer: Burgess, Ralph K) *Event Code: MOT/IN/LIM*
10/31/2011	SUBPOENA RETURN SERVED (Judicial Officer: Burgess, Ralph K) *Event Code: SRS*
10/31/2011	SUBPOENA RETURN SERVED (Judicial Officer: Burgess, Ralph K) *Event Code: SRS*
11/01/2011	ELECTION/PUNISHMENT BY THE JURY (Judicial Officer: Burgess, Ralph K) *Event Code: ELECTION*
11/01/2011	Jury Sworn (OCA) (Judicial Officer: Burgess, Ralph K) *Event Code: J/SWORN*
11/01/2011	JURY VOIR DIRE (Judicial Officer: Burgess, Ralph K) *Event Code: J/VOIR DIRE*
11/01/2011	JURY PANEL LIST (Judicial Officer: Burgess, Ralph K) *Event Code: JPL*
11/01/2011	JURORS SELECTED (Judicial Officer: Burgess, Ralph K) *Event Code: JUS*
11/01/2011	JURY SHUFFLE-1ST (Judicial Officer: Burgess, Ralph K) *Event Code: JS1*
11/03/2011	CHARGE ON PUNISHMENT (Judicial Officer: Burgess, Ralph K) *Event Code: PUNISHMENT/CH*
11/03/2011	CHARGE OF THE COURT (Judicial Officer: Burgess, Ralph K) *Event Code: J/CHARGE*
11/03/2011	RECEIPT OF EXHIBITS (Judicial Officer: Burgess, Ralph K) *Event Code: REE Memo: TRIAL EXHIBITS*
11/03/2011	**Disposition** (Judicial Officer: Burgess, Ralph K) *Conf. Type: TDC (TEXAS DEPT CORRECTIONS) Conf. Length: 50Yrs Sentence Date: Nov 3 2011 12:00AM To Commence: Nov 3 2011 12:00AM Reporter: JR (JANA ATCHISON RUSHING) Jury Trial: Yes* 1. MURDER Not Guilty
11/03/2011	**Sentence** (Judicial Officer: Burgess, Ralph K) 1. MURDER Adult Sentence Confinement to Commence 11/03/2011 50 Years , Texas Department of Criminal Justice, Texas Department of Criminal Justice
11/18/2011	ORDER FOR PAYMENT OF WITNESS EXPENSES
11/30/2011	CJIS FORM (Judicial Officer: Burgess, Ralph K) *Event Code: CJIS*

CASE SUMMARY
CASE NO. 11F0763-005

11/30/2011	LETTER COMMITMENT PAPERS (Judicial Officer: Burgess, Ralph K) *Event Code: LTR/CP*
12/01/2011	MOTION FOR NEW TRIAL (Judicial Officer: Burgess, Ralph K) *Event Code: MO/NW/TRL*
01/30/2012	Notice of Appeal *Transcript Due: Mar 2 2012 12:00AM Motion New Trial: Dec 1 2011 12:00AM Notice of Apppeal: Jan 30 2012 12:00AM Attorney: M.MOWLA (MICHAEL MOWLA) Active: No*
01/30/2012	Notice of Appeal
01/31/2012	C/DA/CR/COA (Judicial Officer: Burgess, Ralph K) *Event Code: CDACRCOA*
01/31/2012	ORDER FOR ATTORNEY WITHDRAW (Judicial Officer: Burgess, Ralph K) *Event Code: OGAW*
01/31/2012	ORDER TO APPOINT ATTORNEY ON APPEAL (Judicial Officer: Burgess, Ralph K) *Event Code: ORAAA*
01/31/2012	AFFIDAVIT OF INDIGENCY (Judicial Officer: Burgess, Ralph K) *Event Code: AOI*
02/01/2012	REQUEST REPORTER'S RECORD (Judicial Officer: Burgess, Ralph K) *Event Code: RFRR*
02/01/2012	REQUEST CLERK'S RECORD (Judicial Officer: Burgess, Ralph K) *Event Code: REQ/CR*
02/03/2012	LETTER COURT OF APPEALS NOTICE OF APPEAL RECEIVED (Judicial Officer: Burgess, Ralph K) *Event Code: LCOANR*
02/07/2012	EXHIBITS CHECKED OUT (Judicial Officer: Burgess, Ralph K) *Event Code: EXC*
02/07/2012	Capias Returned Unserved *Event Code: CU*
02/17/2012	EXHIBITS RETURNED (Judicial Officer: Burgess, Ralph K) *Event Code: EXRE*
03/01/2012	Clerks Record *Event Code: CR*
03/06/2012	REQUEST REPORTER'S RECORD (Judicial Officer: Burgess, Ralph K) *Event Code: RFRR*
03/06/2012	Trial Court Certificate *Event Code: TCC*

CASE SUMMARY

CASE NO. 11F0763-005

03/07/2012	Trial Court Certificate *Event Code: TCC*
03/07/2012	ORDER (Judicial Officer: Burgess, Ralph K) *Event Code: ORDER Memo: GRANTING MOTION FOR FREE REPORTER'S RECORD & CLERK'S RECORD*
03/07/2012	Clerks Record *Event Code: CR Memo: 1ST SUPPLEMENTAL*
03/07/2012	COURT OF APPEALS LETTER (Judicial Officer: Burgess, Ralph K) *Event Code: COAL*
03/08/2012	REPORTERS RECORD (Judicial Officer: Burgess, Ralph K) *Event Code: RR Memo: VOL 1-5 ON CD AND VOL 6 A HARD COPY*
03/09/2012	CARD RECEIVED FROM COURT OF APPEALS (Judicial Officer: Burgess, Ralph K) *Event Code: CARD*
04/27/2012	Grant/Approval *Event Code: GRANT*
04/30/2012	C/C TO AUDITOR (Judicial Officer: Burgess, Ralph K) *Event Code: CA*
05/17/2012	REPORTERS RECORD CHECKED OUT (Judicial Officer: Burgess, Ralph K) *Event Code: RRC Memo: SENT VIA COURIER TO KRISTIAN YOUNG - DA'S OFFICE*
09/07/2012	COURT OF APPEALS OPINION (Judicial Officer: Burgess, Ralph K) *Event Code: CTS OPINION*
09/07/2012	COURT OF APPEALS JUDGMENT AFFIRMED (Judicial Officer: Burgess, Ralph K) *Event Code: COAJA*
09/10/2012	REPORTERS RECORD RETURNED (Judicial Officer: Burgess, Ralph K) *Event Code: RRRE Memo: VOL 6 OF 6 RETURNED*
03/15/2013	MANDATE/AFFIRMED (Judicial Officer: Burgess, Ralph K) *Event Code: MANA*
05/13/2014	HABEAS CORPUS POST CONVICTION *(A) - Copy to Court and DA*
05/13/2014	MEMORANDUM OF LAW
05/22/2014	REPORTERS RECORD CHECKED OUT *Leisa Pearlman*
07/21/2014	AMENDED APPLICATION FOR WRIT OF HABEAS CORPUS
07/21/2014	MEMORANDUM OF LAW *AMENDED*

CASE SUMMARY

CASE NO. 11F0763-005

07/30/2014	MOTION *TO RELEASE ITEMS FOR TESTING*
07/31/2014	Order Setting Hearing *8/29/14 9am NB*
08/18/2014	Order Setting Hearing *9/11/14 1:30pm NB*
09/11/2014	**Motion Hearing** (1:30 PM) (Judicial Officer: Burgess, Ralph K) *DNA TESTING*
09/23/2014	ORDER *Order for Scientific Testing...sent certified copy to DA, Leisa Pearlman, Craig Henry, F. Clinton Broden*
10/21/2014	ORDER *for evidence to be handed over to TTPD and then to Forensic Ballistics in Ft Worth, Tx. for testing.*
11/10/2014	EXHIBITS CHECKED OUT *by Scott Lillis with TTPD - #66, 67, 68, 69, 70 and 71*
03/02/2015	REPORTERS RECORD RETURNED *Becky brought back. Record was on Leslie's desk after Leisa left.*
05/04/2015	Motion for Extension of Time
05/12/2015	Clerks Record
05/12/2015	Clerks Record to CCA
05/12/2015	LETTER CLERK RECORD MAILED *F. Clinton Broden Attorney*
06/18/2015	COURT OF CRIMINAL APPEALS ORDER/WRIT *Supplemental to be mailed within 120 days*
06/26/2015	MEMORANDUM OF LAW *SUPPLEMENTAL-Copy to Court*
08/03/2015	Order Setting Hearing *on HABEAS CORPUS for 8/28/2015 9am NB*
08/06/2015	HEARING RESET *on HABEAS CORPUS for 9/11/2015 10am NB*
08/28/2015	**Hearing** (9:00 AM) (Judicial Officer: Miller, Bill) *30 Minutes-Habeas*
09/11/2015	Motion for Extension of Time

09/11/2015	RECEIPT OF EXHIBITS	
09/11/2015	**Hearing** (10:00 AM) (Judicial Officer: Miller, Bill) *30 Minutes-Hearing on Writ of Habeas Corpus*	

DATE	FINANCIAL INFORMATION	
	Defendant DEWBERRY , STEDMON MONTREL	
	Total Charges	259.00
	Total Payments and Credits	0.00
	Balance Due as of 9/16/2015	**259.00**

5th District Court
COURT DOCKET

11F0763-005 09/22/11

STATE OF TEXAS
VS
STEDMON MONTREL DEWBERRY

MURDER

DATE OF ORDERS	ORDERS OF COURT
9 27 11	Def. waived Arraignment; NG plea entered;
	J. Arnold retained; Case set for trial
	Oct. 31, 2011; Final Pre-Trial set Tuesday
	Oct. 4, 2011
10 4 11	Final Pre-Trial Hearing
10 24 11	Final Pre-Trial Hearing
11 1 11	Jury Panel Assembled; Oath Administered;
	Qualifications and Exemptions Made; Panel
	Seated in the Courtroom; Voir Dire; Challenges
	For Cause and Peremptory Strikes Made; Jury
	and Alternate Juror Seated and Oath of
	Office Administered; Jury Recessed For the
	Day; Case Recessed For the Day
11 2 11	Rule Excluding Witnesses Invoked; and Witnesses Sworn; Defendant
	Arraigned before the Jury; Pleaded Not Guilty;
	Opening Statements; State's Case in Chief;
	State Rested; Case Recessed For the Day;

5th District Court
COURT DOCKET

DATE OF ORDERS

MONTH	DATE	YEAR	ORDERS OF THE COURT
11	3	11	Reserved Trial; Defendant's Case in Chief;
			Defendant Rested; State's Rebuttal Case;
			State Rested and Closed; Charge Conference;
			Charge Read to the Jury; Closing Arguments;
			Jury Began Deliberating; Verdict Reached;
			Def. Found Guilty; Jury Polled and Jurors
			Acknowledged Verdict; Verdict Received;
			Punishment Phase; State's Punishment Case;
			State Rested; Defendant's Punishment Case;
			Defendant Rested; State Closed; Charge
			Conference; Charge Read to the Jury; Closing
			Arguments; Jury Began Deliberating;
			Verdict Reached; 50 years TDC and No
			Fine; Jury Polled; Jurors Acknowledged
			Verdict; Verdict Received; Victim Impact
			Statement; Defendant Formally sentenced
			to 50 years TDC; CTS; remanded to custody
9	11	14	Hearing on Def's Motion For Ballistics
			Testing
9	11	15	Hearing on Motion of Ballistics and DNA test on bullets
			Additional DNA Testing ordered

BRODEN, MICKELSEN HELMS & SNIPES LLP

FILED FOR RECORD
2015 JUN 26 PM 1:05
BILLY FOX
CLERK BOWIE CO. TX.
DEPUTY

* Board Certified, Criminal Law - Texas Board of Legal Specialization
* Board Certified, Criminal Appellate Law - Texas Board of Legal Specialization

A team approach to criminal defense

F. Clinton Broden*
Mick Mickelsen*
John Helms
Michael Snipes

June 24, 2015

Bowie County District Clerk
710 James Bowie Drive
New Boston, Texas 75570-3512

Dear District Clerk:

Please find the original Supplemental Memorandum of Law in Support of Application for Writ of Habeas Corpus Pursuant to Tex. Code Crim. P. Art. 11.07.

I have also enclosed, along with a self-addressed, stamped envelope, one extra copy of each for file stamping.

If you have any questions or concerns please feel free to contact us at the number below. Thank you for your assistance.

Sincerely,

Sarah Klein
Legal Assistant

Enclosures (2)
Cc w/ Enclosure: Bowie County District Attorney's Office
710 James Bowie Drive
New Boston, Texas 75570-3512

2600 State Street • Dallas, Texas 75204 • Tel. (214) 720-9552 • Fax (214) 720-9594
www.DallasCriminalLawyers.com

No. 11F0763-005-A

FILED FOR RECORD
2015 JUN 26 PM 1:05
BILLY FOX
DISTRICT CLERK BOWIE CO. TX
DEPUTY

EX PARTE	)	**5th DISTRICT COURT**
	)	
STEDMON DEWBERRY	)	**BOWIE COUNTY, TEXAS**
	)	

SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR WRIT OF HABEAS CORPUS PURSUANT TO TEX. CODE CRIM. P. ART. 11.07

I. INTRODUCTION

As noted in Stedmond Dewberry's Memorandum of Law in Support of Application for Writ of Habeas Corpus Pursuant to Tex. Code Crim. P. Art. 11.07, the sole focus of the trial in this case was the question of who shot, Latasha Antwine. Was it Mr. Dewberry, as repeatedly argued by the State, or was it Brioni Dansby or Brandon Antwine?

In his Application, Mr. Dewberry argued, *inter. alia*, that he was denied effective assistance of counsel when his trial attorney failed to consult with, retain and call as a witness a ballistics expert. Indeed, Mr. Dewberry's trial counsel had submitted an affidavit stating that the only reason he did not retain a ballistics expert was because of cost. *See* Attachment 1.[1]

The United States Court of Appeals for the Fifth Circuit has held several times

[1]The Court of Criminal Appeals has made clear that an attorney can be found to be ineffective when he declines to hire an expert for economic reasons even if that attorney is retained. *See, e.g., Ex Parte Briggs*, 187 S.W.3d 458 (Tex. Crim. App. 2005).

that it can constitute deficient performance for a trial attorney to fail to consult with and present the testimony of a ballistics expert in a case such as this. *Williams v. Thaler*, 684 F.3d 597, 604 (5th Cir. 2012) ("It is uncontested here that trial counsel's performance fell below an objective standard of reasonableness. Williams's counsel failed to obtain any independent ballistics or forensics experts, and was therefore unable to offer any meaningful challenge to the findings and conclusions of the state's experts...."); *cert. denied*, 133 S.Ct. 866 (2013); *Draughon v. Dretke*, 427 F.3d 286, 295-97 (5th Cir. 2005) (State habeas court unreasonably applied settled federal law in holding that trial counsel had not been ineffective in failing to obtain forensic examination of path of fatal bullet.), *cert. denied*, 547 U.S. 1019 (2006); *Soffar v. Dretke*, 368 F.3d 441, 478-79 (5th Cir. 2004) (Trial counsel was found ineffective where he "failed to consult with a ballistics expert" even though the physical crime scene evidence was a key issue in the case).[2]

II. RESULTS OF BALLISTIC/DNA TESTING

Over the State's objection, this Court ordered the release of all the ballistic evidence in this case for scientific testing. Included among the items released was a bullet fragment identified by the State in its crime scene investigation as CSE-2 and

[2]Likewise, the Court of Criminal Appeals has acknowledged that a trial attorney's failure to present the testimony of a ballistics expert could constitute ineffective assistance of counsel when it remanded a case for further factual development on this issue. *Ex parte Vargas*, 2006 WL 3086217 (Tex. Crim. App. Nov. 1, 2006).

at trial as State's Exhibit 66. Ballistics expert Richard Ernest was first able to determine that State's Exhibit 66 was a .40 caliber bullet. *See* Attachment 2. Mr. Ernest was able to remove biological material from this .40 caliber bullet. *Id.* This biological material was later sent to Cellmark Forensics for testing. *Id.* Although Cellmark did not have a sample of the DNA from the female victim in this case, Cellmark did confirm that the biological material from the .40 caliber bullet contained female DNA. *See* Attachment 3. Significantly, it was undisputed at trial that Mr. Dewberry was firing a 9mm weapon and *Brioni Dansby* was firing a .40 caliber weapon.[3] Moreover, the State actually argued in its closing that it was "common sense" that CSE-2/Exhibit 66 came from Dansby's gun. *See* November 3, 2011 Transcript at 50.

In light of this finding, Mr. Dewberry submits that his trial counsel did, in fact, afford him ineffective assistance of counsel because of his failure to undertake scientific testing of the ballistics evidence in this case. The knowledge that the .40 caliber bullet contained traces of female DNA raises "a reasonable probability" of a different result had this information been made known to the jury. *Strickland v.*

[3]Moreover, according to the State's crime scene diagram, this bullet was located between where Brioni was firing and where Mr. Dewberry was firing but it was located significantly closer to Mr. Dewberry further indicating it was shot by Brioni toward Mr. Dewberry.

Washington, 466 U.S. 668, 694 (1984).[4] Indeed, Mr. Dewberry submits that this knowledge alone is sufficient to undermine the confidence in the verdict and sentence in this case. Alternatively, it justifies a comparison of the victim's DNA, if available, to the DNA removed from Exhibit 66 and/or a ballistic comparison between State's

---

[4]*Strickland* defines a "reasonable probability" as "a probability sufficient to undermine confidence in the outcome." *Id.* at 694. *Strickland* itself expressly rejected an "outcome determinative standard" requiring the defendant to show that counsel's deficient conduct "more likely than not altered the outcome" of the case. *Strickland*, 466 U.S. at 693-94 (1984). Instead, "[t]he result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome." *Id.* Thus, the "reasonable probability" standard — a probability sufficient to undermine confidence in the outcome — is a less onerous burden than even the preponderance of the evidence standard. *Strickland* makes this clear:

> *[W]e believe that a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case.* This outcome-determinative standard has several strengths. It defines the relevant inquiry in a way familiar to courts, though the inquiry, as is inevitable, is anything but precise. The standard also reflects the profound importance of finality in criminal proceedings. Moreover, it comports with the widely used standard for assessing motions for new trial based on newly discovered evidence. See Brief for United States as Amicus Curiae 19-20, and nn. 10, 11. Nevertheless, the standard is not quite appropriate.
>
> Even when the specified attorney error results in the omission of certain evidence, the newly discovered evidence standard is not an apt source from which to draw a prejudice standard for ineffectiveness claims. The high standard for newly discovered evidence claims presupposes that all the essential elements of a presumptively accurate and fair proceeding were present in the proceeding whose result is challenged. An ineffective assistance claim asserts the absence of one of the crucial assurances that the result of the proceeding is reliable, so finality concerns are somewhat weaker and the appropriate standard of prejudice should be somewhat lower. *The result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome.*

Id. at 693-94 (citation omitted) (emphasis added).

Exhibit 66 and Dansby's .40 caliber gun.

Respectfully submitted,

F. Clinton Broden
Tx. Bar 24001495
Broden, Mickelsen, Helms & Snipes
2600 State Street
Dallas, Texas 75204
214-720-9552
214-720-9594 (facsimile)

Attorney for Applicant
Stedmon Dewberry

CERTIFICATE OF SERVICE

I, F. Clinton Broden, certify that, on June 24, 2015, I caused a copy of the above document to be served via first class mail, postage prepaid, on:

Bowie County District Attorney's Office
710 Bowie Drive
New Boston, Texas 75570-3512



F. Clinton Broden

ATTACHMENT 1

AFFIDAVIT OF JOHNNY P. ARNOLD

Johnny P. Arnold, being at least eighteen years of age, pursuant to Texas Civil Practice and Remedies Code § 132.001, deposes and states as follows:

1. I have been license to practice law in the State of Texas since 1977.

2. I was retained to represent Stedmon Dewberry against murder charges brought in the Fifth District Court in case number 11F0763-005

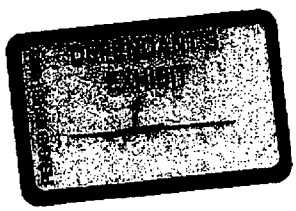
3. The simple fact is that the Dewberry family could not afford to hire a ballistics expert so I did not obtain an expert. I even had to cut my fee so they could afford to hire an appellate attorney.

My name is Johnny P. Arnold, my date of birth is November 11, 1949, and my address is 4015 N. Stateline Avenue, Texarkana, Texas 77503. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Bowie County, State of Texas, on the 15 day May 2014

JOHNNY P. ARNOLD

SHAUNNA SUZANNE LUNSFORD
NOTARY PUBLIC STATE OF TEXAS
COMMISSION EXPIRES:
11-20-2016



ATTACHMENT 2

ORIGINAL

No. _____

EX PARTE	)	**5th DISTRICT COURT**
	)	
STEDMON DEWEBERRY	)	**BOWIE COUNTY, TEXAS**
	)	

AFFIDAVIT OF RICHARD N. ERNEST

Richard N. Ernest, being at least eighteen years of age, deposes and states as follows:

1. I am an expert in the field of forensic ballistics and the reconstruction of shooting scenes. I have been in this field since 1977 and have worked at the Georgia Bureau of Investigation and the Tarrant County Medical Examiner's Office. I am a member of several professional organizations and a Distinguished Member of the Association of Firearms & Toolmarks Examiners. I have authored several papers in these areas. I have worked on well over 10,000 firearms related cases including numerous cases involving shooting scene reconstructions. I have testified in state, federal and military courts throughout the nation and believe I have offered testimony in over 1,000 cases. My resume is attached to this affidavit.

2. As per this Court's order, I was provided with what purported to be all bullets, bullet components and fragments related to this case. I was provided with seven items. I noted that it does not appear that I was provided CSE-15 which was allegedly a bullet found at the crime scene. Likewise, I was not provided CSE-13 which was described as a copper bullet jacket removed from a white Mercury Grand Marquis.

3. Nevertheless, included in the material I received was a bullet identified by the State in its crime scene investigation as "CSE-2." CSE-2 was located in the vicinity of where Mr. Dewberry was alleged to have been standing during the incident in question. In my internal notes I refer to CSE-2 as Item 2A.

ORIGINAL

4. Based upon my examination, I have concluded that CSE-2/Item 2A was fired from a .40 caliber weapon. My understanding is that it was undisputed that, during the incident, Mr. Dewberry was firing a 9mm weapon and Brioni Dansby was firing a .40 caliber weapon.

5. I determined that the .40 caliber bullet identified as CSE-2/Item 2A contained trace evidence. I removed a sampling of this trace evidence and packaged it in an epp. tube and envelope and labeled the package Item 2B. At the direction of F. Clinton Broden I then sent Item 2B by overnight delivery to Cellmark Laboratories for further testing.

My name is Richard N. Ernest, my date of birth is 02/16/1951, and my address is 6058 E. LANCASTER AVE., FORT WORTH, TX 76112. I declare under penalty of perjury that the foregoing is true and correct.

Executed in TARRANT County, State of TEXAS, on the 9th day April, 2015.

Richard N. Ernest

RICHARD N. ERNEST

State of Texas County of Tarrant
Subscribed and sworn before me on 04/09/15 (Date)

(Notary Signature)

Benjamin Joseph Eakin
Notary Public
State of Texas
Expires
July 13, 2016

ATTACHMENT 3

Cellmark FORENSICS
LabCorp Specialty Testing Group

13988 Diplomat Dr. Suite 100
Dallas TX 75234
Phone: 1-800-752-2774
Fax: 214-271-8322

Report of Laboratory Examination

April 14, 2015
Supplemental - FR15-0025-A

F. Clinton Broden
Broden, Mickelsen, Helms & Snipes
2600 State Street
Dallas, TX 75204

CELLMARK FORENSICS NO: FR15-0025
AGENCY CASE NO: 2014-0423-CRD
ADD'L AGENCY NO: N/A

EXHIBITS

Client Item	CF Item	Received	Item Description	PCR
2014-0423-CRD-001-2B	FR15-0025-01	1/30/2015	Trace Evidence	Y

RESULTS

DNA testing using the polymerase chain reaction (PCR) and the MiniFiler™ STR Amplification Kit was performed on Item 01. The loci tested and the results obtained for each tested sample are listed in Table 1 (see attachment).

DNA testing using the polymerase chain reaction (PCR) and the AmpFlSTR Identifiler Plus™ Amplification Kit was performed on Item 01. The loci tested and the results obtained for each tested sample are listed in Table 2 (see attachment).

This report supplements Cellmark Forensics' Laboratory Report FR15-0025 dated February 25, 2015.

CONCLUSIONS

FR15-0025-01.01.1
The partial DNA profile obtained from the trace evidence is consistent with originating from an unknown female. Comparison to a reference sample(s) will be made upon request.

DISPOSITION

In the absence of specific instruction, evidence will be returned to the submitting agency by Federal Express or another appropriate carrier.

REVIEW

The results described in this report have been reviewed by the following individuals:

Analyst: Jennifer L. Smith
Jennifer L. Smith / Senior Forensic DNA Analyst

Technical Reviewer: D. Lankford
Deanna D. Lankford / Associate Laboratory Director

Procedures used in the analysis of this case adhere to the Quality Assurance Standards for Forensic DNA Testing Laboratories. Cellmark Forensics is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board. The results in this report relate only to the items tested.

Cellmark FORENSICS
LabCorp Specialty Testing Group

13988 Diplomat Dr. Suite 100
Dallas TX 75234
Phone: 1-800-752-2774
Fax: 214-271-8322

Report of Laboratory Examination

4/14/2015

Supplemental - FR15-0025-A

CELLMARK FORENSICS NO: FR15-0025
AGENCY CASE NO: 2014-0423-CRD
ADD'L AGENCY NO: N/A

Table 1 **MiniFiler**

Sample Name	D13S317	D7S820	AMEL	D2S1338	D21S11	D16S539	D18S51	CSF1PO	FGA
Trace Evidence FR15-0025-01.01.1 2014-0423-CRD-001-2B	11, 13	10~	X~	24~	27, 29	11, 12	16, 18	11~	23~

X = Female
~ = Below stochastic threshold. Additional peak(s) may be present below limit of detection.

The results listed in the table do not depict intensity differences. Only alleles exceeding validated analysis threshold are included in table.

27

Cellmark FORENSICS
LabCorp Specialty Testing Group

13988 Diplomat Dr. Suite 100
Dallas TX 75234
Phone: 1-800-752-2774
Fax: 214-271-8322

Report of Laboratory Examination

4/14/2015

Supplemental - FR15-0025-A

CELLMARK FORENSICS NO: FR15-0025
AGENCY CASE NO: 2014-0423-CRD
ADD'L AGENCY NO: N/A

Table 2 **Identifiler Plus**

Sample Name	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	AMEL	D5S818	FGA
Trace Evidence FR15-0025-01.01.1 2014-0423-CRD-001-2B	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR

X = Female
NR = No Result

The results listed in the table do not depict intensity differences. Only alleles exceeding validated analysis threshold are included in table.

Accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board - International

FILED FOR RECORD

2015 AUG 10 PM 3:31

DISTRICT CLERK BOWIE CO TX

DEPUTY

No. 11F0763-005-A

STATE OF TEXAS

VS.

STEDMON DEWBERRY

IN THE DISTRICT COURT

5TH JUDICIAL DISTRICT

BOWIE COUNTY, TEXAS

ORDER SETTING HEARING ON DEFENDANT'S
WRIT OF HABEAS CORPUS

The Court is of the opinion that the Defendant is entitled to a hearing on his writ of habeas corpus. It is therefore ordered that a hearing is set for the 28th day of August, 2015 at 9:00 o'clock a.m. in the 5th Judicial District Courtroom located on the 2nd floor of the Bowie County Courthouse, New Boston, Texas.

Signed and entered on the 3rd day of August, 2015.

Bill Miller, District Judge

Craig L. Henry
ATTORNEY AT LAW

FILED FOR RECORD
2015 AUG 17 AM 9:11
BILLY FOX
DISTRICT CLERK BOWIE CO TX
DEPUTY

August 14, 2015

Billy Fox Branson
Bowie County District Clerk
Bowie County Courthouse
New Boston, Texas

Re: State of Texas vs. Stedmon Dewberry
Cause No. 11F0763-005-A

Dear Billy:

Enclosed herewith please find an original and one (1) copy of Order Rescheduling Hearing on Defendant's Writ of Habeas Corpus. Please file the original, affix your file stamp to the copy and return same to my office.

By copy of this letter, I am serving a true and correct copy of the foregoing letter on Lauren Sutton, Assistant District Attorney for Bowie County via hand delivery – return receipt requested.

Thank you for your attention in this regard. Should you have any questions or concerns, please don't hesitate to call.

Sincerely,

Craig L. Henry

CLH/kf
Enclosures
Cc: Lauren Sutton – hand delivery – return receipt requested

P.O. Box 3226 | 723 Main Street | Texarkana, Texas 75504-3226 | Phone: (903) 792-4645 | Fax: (903) 792-5073
Licensed in Texas, Arkansas & Oklahoma

FILED FOR RECORD

2015 AUG 17 AM 9:11

No. 11F0763-005-A

STATE OF TEXAS

VS.

STEDMON DEWBERRY

IN THE DISTRICT COURT

5TH JUDICIAL DISTRICT

BOWIE COUNTY, TEXAS

ORDER RESCHEDULING HEARING ON DEFENDANT'S WRIT OF HABEAS CORPUS

The August 28th hearing previously set in this case is hereby reset for September 11, 2015 @ 10: 00 a.m. in the 5th Judicial District Courtroom located on the 2nd floor of the Bowie County Courthouse, New Boston, Texas.

Signed and entered on the 6th day of August 2015.

Bill Miller, District Judge

RECEIPT FOR EXHIBITS - CCP. 2.21 & TRC 75a

CAUSE NO. 11F0763-005

The State of Texas	§	**IN THE DISTRICT COURT**
	§	FILED FOR RECORD
vs.	§	5TH JUDICIAL DISTRICT 2015 SEP 11 PM 12:27
	§	
Stedmon Dewberry	§	**BOWIE COUNTY, TEXAS** BILLY FOX DISTRICT CLERK BOWIE CO. TX.

DEPUTY

I, Leslie P. Bates, Court Reporter for the 5th District Court, do hereby tender for filing to Billy Fox Branson, District Clerk in and for Bowie County, Texas, the following exhibits in the above numbered and styled cause:

_____ Exhibits		Defendant's Exhibits
1.		1.
2.		2.
3.		3.
4.		4. email from Cellmark
5.		5.
6.		6.
7.		7.
8.		8.
9.		9.
10.		10.
11.		11.
12.		12.
13.		13.
14.		14.
15.		15.

Leslie P. Bates
Court Reporter

I, Billy Fox Branson, District Clerk, do hereby acknowledge receipt of the above-listed exhibits in the above numbered and styled cause.

Dated this the 11th **day of** September, 2015.

Billy Fox Branson, District Clerk
Bowie County, Texas

By: _____, **Deputy**

FILED FOR RECORD

2015 SEP 11 PM 3:15

BILLY FOX
DISTRICT CLERK BOWIE CO. TX.
DEPUTY

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

No. WR-83, 308-01

EX PARTE STEDMON DEWBERRY, Applicant

MOTION FOR EXTENSION OF TIME TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW

TO THE HONORABLE JUDGES OF SAID COURT:

On or about May 13, 2014, Applicant, Stedmon Dewberry, filed a Writ of Habeas Corpus, followed by an Amended Writ of Habeas Corpus on July 21, 2014, asserting ineffective assistance of trial counsel. On or about July 30, 2014, Applicant filed a Motion to Release Items for Testing. The 5th District Court held a hearing on said Motion on September 11, 2014. Thereafter, on September 23, 2014, the Court entered an Order for Scientific Testing, and on October 21, 2014, the court entered an Order for evidence to be turned over to the Texarkana Police Department and then to Forensic Ballistics Consultant and Laboratory in Ft. Worth, Texas for testing and submission of a report. The Order further stated that upon the completion of testing, the evidence should be returned to the Texarkana Police Department by overnight delivery.

On or about June 18, 2015, the Court of Criminal Appeals entered an Order directing the District Court to make findings of fact and conclusions of law it deems relevant and appropriate to the disposition of Applicant's claim for habeas corpus relief within 90 days of the Order. The Order further stated that an extension of time shall be obtained from the Court.

On or about June 26, 2015, Applicant filed a Supplemental Memorandum of Law in support of Application for Writ of Habeas Corpus, attaching the Affidavit of his ballistics expert, and discussing the expert's findings. As a result of the ballistics testing performed by the expert, a hearing was held on September 11, 2015 to discuss the need for additional testing to determine

whether the biological matter allegedly found on a bullet matched the victim's DNA. The Court ordered that the State take possession of the bullet in question and attempt to secure additional DNA testing on the bullet or otherwise determine that no DNA matching the victim could be found absent exhuming the victim. The Court has ordered the State to present a preliminary determination to the Court within fourteen days of the September 11, 2015 hearing on (i) whether comparative DNA samples can be obtained and (ii) the time frame for conducting a comparative DNA analysis if sample can be obtained.

Accordingly, until it is determined whether DNA testing may be performed, and if so, until said testing is performed, the District Court cannot make findings of fact and conclusions of law as additional forensic analysis is required.

To further complicate matters, the Court ordered the District Court to order trial counsel to respond to Applicant's claims of ineffective assistance of counsel. Applicant's trial counsel is deceased, and therefore, an affidavit responding to Applicant's ineffective assistance of counsel claims cannot be obtained from trial counsel.

Therefore, the Court requests an extension of time to enter findings of facts and conclusions of law in connection with Applicant's Application for Writ of Habeas Corpus to and until a determination is made as to whether DNA testing can be performed, and if so, until such times as testing is performed, a report is prepared and the Court has an opportunity to evaluate said report and prepare its findings of fact and conclusions of law.

Signed this 11th day of September 2015.

Bill Miller, Judge
5th District Court of Bowie County

CLERK'S CERTIFICATE

THE STATE OF TEXAS

COUNTY OF BOWIE

I, BILLY FOX, Clerk of the 5th District Court of Bowie County, Texas do hereby certify that the above and foregoing are true and correct copies of the originals as on file in my office.

GIVEN UNDER MY HAND AND SEAL OF THE SAID COURT at office in New Boston, Texas, this the on this the 16th day of September, 2015.

BILLY FOX, DISTRICT CLERK
BOWIE COUNTY , TEXAS

BY: _____
Lori Caraway, Supervisor
Criminal Department