62,970-07

In The Court of Criminal Appeals
of Texas

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COURT OF CRIMINAL APPEALS
DEC 17 2015
Abel Acosta, Clerk

No. WR-62,970-06

In Re: Michael Dean Perry, Relator

On Application For A Writ of Mandamus
Cause No. 42,139-A In the 188th District Court
From Gregg County

To the Honorable Justices of The Court of Criminal Appeals;

Now Comes Michael Dean Perry, Relator, in the above styled and numbered cause and respectfully moves this honorable Court to issue an order directing The District Attorney Carl Dorrough, and/or The District Court Judge David Brabham, to issue a Subpoena With/Without Duces tecum For The witnesses Tim Cone and Carl Dorrough to bring with him or her or otherwise provide The Relator the following;

1. Carl Dorrough — All DVD/CD and Pictures/Videos of Relators Arrest and Subsequent illegal Search of His Back Pack and Residence!

2. Tim Cone — Tape Recorded Conversation With the alleged Victim, Alanna McKinney on Micro-Cassette

and The Grandmother Wilma McKinney also on Micro-cassette of Which Attorney Tim Lowe Continues to retain in his File. Never having produced the tape recordings before, during, or even after Trial. Said recordings are Material and exculpatory in nature. (See Tim Lowes letter exhibit #22A)

1. Carl Dorrough, Criminal District Attorney
Who resides at: 101 E. McArthur ST. Longview, Tx 75601 (Gregg County Tx)

2. Tim Lowe, Attorney at Law, Trial Attorney, Court Appointed for Appellant
Who resides at: P.O. box 413, Gilmer, Tx 75644

Said Subpoena with (without duces tecum being issued for the witnesses to appear and provide said items aforesaid at the following time and place and date:

Time: 04:15 am to 06:15 am o'clock
Date: 12/23/2015

Place: Ellis 1 Unit C/o Law Librarian, Mrs. Chenevert
1697 Fm 980 Supervisor, Mr. Schaufish
Huntsville, Tx 77343

The Evidence requested is Material and exculpatory in Support of the Defense and/or Appeal.
Furthermore, Relator was entitled to Discovery Long before Trial. See Code of Criminal Procedures Art. 39.14; Brady v. Maryland, 373 U.S. 83 (1963)

Relator avers that this Court appointed Attorney Mr. Tim Cone waits until just two days before Trial on the Merits to present the video evidence of Relators arrest and Search of his back pack Whereas, Mr. Cone came to the Gregg County Jail and has Relator brought to a Visitation room in order to have Relator view the Police Car Video Camera recording of the illegal Search of Relators back pack where the alleged Steak Knife was found however, Mr. Cones Lap Top Computer Would Not Function before Relator could actually view the Video. Relator Never viewed the video and did not Witness the Police retrieve a Steak knife from his back pack, only the dubious word of Mr. Cone! Subterfuge! Mr. Cone Convinced Relator that the Asst. District Attorney Lacy a Reed Stipulated to Not using the alleged Steak knife at Trial or even Mentioning it being found in the back pack and that She would not agree to a Suppression of evidence hearing! Furthermore, Relator had No idea that all of those pictures had been taken of the alleged victim, or of the inside of his home! All Without a Search Warrant or Consent! Alanna McKinney was under indictment at the time and therefore, any pictures of her and/or statements made by her violated Attorney/Client Privilege as well! Notwithstanding the hearsay ground raised by Lew Dunn in Appellates brief! (Emphasis Supplied) Chicanery, Right?

Relator avers that all of the Parties involved in the case at bar, aside from Relator, knew about the illegal Search and Seizure, Not only of the back pack, but Relators home as Well, and long before Trial!

Relator Filed two pro se Motions for Discovery long before Trial and even two Motions for an Examining Trial! There is No excuse for the arbitrary acts of the Prosecutor and Court Appointed Counsel! Skulduggery, Right?

Furthermore, they all knew about Alanna Mckinneys Indictment long before Relators Arrest in Court, Alanna was indicted on August 12, 2012, two months before Relators arrest. The Police knew better than to continue to badger Miss Mckinney into giving a Statement!

Notwithstanding the averments aforesaid, the gravamen of this writ is the production of the exculpatory evidence that Relator was entitled to long before his dubious Trial! Not only the Police Car camera recording of Relators unlawful arrest and subsequent illegal search of his person and back pack, but also the video recorded testimony formally taken from the Eye Witness, Wilma Mckinney and the Formally taken testimony of Alanna Mckinney, the alleged Victim, who recanted her Statement that was made to Police by way of Coercion! Of which Time Lone States that the continues to retain in his File! There was No Sound Trial Strategy at work here - With holding this important exculpatory, impeachment, and Material evidence! Notwithstanding all of those photographs taken of the inside of Relators Home and all of those photographs taken of the alleged Victim! One can't help but Wonder what other evidence was withheld! Did the Grand Jury know about any of this evidence? What if?

Relator previously filed a Motion for a Subpoena in the 188th District Court, in and for Gregg County, Texas on November 16th, 2015 for the production of the aforesaid, See Appendix A, Relator avers that he allowed the respondents plenty of time in which to respond to his request, up to and including December 1st, 2015 However, as of

To date of this request there has been no response whatsoever from the respondents! Maybe they discarded all the video and photograph evidence as well! After all, the respondents showed no compunction in discarding 800 plus pages of the Writ of Habeas Corpus and Exhibits,

Relator respectfully request that the Court issue an order directing all the Party's aforesaid, obey the request for Subpoena as reasserted herein to wit:

Said subpoena with/without duces tecum being issued for the witness or witnesses to appear at the following time, date and place:

Time: 04:15 am to 06:15 am

Date: December, 21, 2015

Place: Ellis 1 Unit Law Library, Mrs. Chenevert, Law Librarian
1697 Fm 980 Mr. Schaufish, Supervisor
Huntsville, Tx 77343

The testimony and video evidence of said witnesses is Material to the Defense and Subsequent Writ of Habeas Corpus Appeal!

Signed this 14th day of December, 2015

Respectfully Submitted,

/Michael Dan Lowe/, Relator

5.

Unsworn Declaration

I, Michael Dean Perry TDCJ No. 1838827 being presently incarcerated in the Texas Department of Criminal Justice at the Ellis 1 Unit, 1697 FM 980 Huntsville, Tx 77343 Declare under penalty of perjury that the above and foregoing is true and correct.

Executed on this the 14th day of December, 2015

By the Appellant/Relator x Michael Dean Perry TDCJ No. 1838827

Certificate of Service

I, Michael Dean Perry TDCJ No. 1838827 do hereby Certify that a true and correct copy of the above and foregoing request for Subpoena, unsworn declaration, and Certificate of Service have been served by placing same in the U.S. Mail, first class postage prepaid on this the 14th day of December, 2015.

By the Appellant/Relator x Michael Dean Perry TDCJ No. 1838827

Return Service Requested x Michael Dean Perry TDCJ No. 1838827
Ellis 1 Unit
1697 FM 980
Huntsville, Tx 77343

Appedix A

Writ No. 42,139-A-W-1

188th District Court, Gregg County, Tx

Ex parte: Michael Dean Perry, pro se, Writ of Habeas Corpus, 11.07

In Re: Michall Dean Perry, Relator No. WR-62,970-06 Application For Writ of Mandamus 188th District Court Court of Criminal Appeals of Texas

Request For Subpoena

To the Clerk of the District Court;

Michael Dean Perry, pro se, Appellant, Relator, respectfully request the issuance and return of a subpoena for the following individual Witness and/or Witnesses, indicating name and address of each, as follows;

1. Carl Dorrough, Criminal District Attorney
Who resides at: 101 E. Methvin ST. Longview, Texas 75601 (Gregg County, Tx)

2. Tim Cone, Attorney at Law, Trial Attorney, Court Appointed
Who resides at: P.O. Box 413 Gilmer, Texas 75644

With / Without duces tecum for said witness and/or Witnesses to bring with him or her or otherwise provide the Appellant, Relator the following;

Name of Witness	Items to be Provided
Carl Dorrough	All DVD/CD and Pictures/Videos of Appellants Arrest and Search of his Back Pack and Home/Residence
Tim Cone	Tape recorded Conversation with Alanna McKinney and Wilma McKinney on Micro-cassette in File! See Exhibit #22A Tim Cones letter That Was Submitted with the Writ of Habeas Corpus on June 1, 2015 (Recant Statement Made by The Alleged Victim) (Date of letter March 12, 2013 Exhibit #22A)

Said Subpoena With/Without Duces Tecum being issued for the Witnesses to appear and provide said items aforesaid at the following Time and place and date;

Time: 04:15 am to 06:15 am o'clock
Date: December 1, 2015

Place of Ellis Unit, Ho Law Library, Mrs. Chenevert, Law Librarian
1697 Fm 980 Mr. Schanfish, Supervisor
Huntsville, Tx 77343

The evidence requested is Material to the Defense and/or Appeal!

Signed this 16 days of November, 2015

Respectfully Submitted,
Michael Dan Perry
Appellant/Relator

Unsworn Declaration

I, Michael Dean Perry TDCJ-No 1838827 being presently incarcerated in the Texas Department of Criminal Justice at the Ellis Unit, 1697 Fm 980, Huntsville, Tx 77343 Declare under penalty of perjury that the above and foregoing is true and correct.

Executed on this the 16th day of November, 2015

By Appellant/Relator: Michael Dean Perry TDCJ-No. 1838827

Certificate of Service

I, Michael Dean Perry TDCJ-No 1838827 do hereby certify that a true and correct copy of the above and foregoing Motion for Subpoena duces tecum, unsworn declaration, and certificate of service have been served by placing same in the U.S. Mail, first class postage prepaid on this the 16th day of November, 2015

By Appellant/Relator: Michael Dean Perry TDCJ-No. 1838827

Return receipt Requested: Michael Dean Perry TDCJ-No. 1838827
Ellis Unit
1697 Fm 980
Huntsville, Tx 77343