CAUSE NO. 114-1918-13 84,346-01

DEMETRIUS KELLUM
TDCJ-ID # 01936979
RELATOR

RECEIVED IN
COURT OF CRIMINAL APPEALS
DEC 18 2015
Abel Acosta, Clerk

V.

SMITH COUNTY DISTRICT CLERK
IN HER/HIS OFFICIAL CAPACITY
RESPONDENT

§ IN THE 114TH JUDICIAL
§
§
§
§ DISTRICT COURT OF
§
§
§ SMITH COUNTY, TEXAS

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

PLAINTIFF'S ORIGINAL APPLICATION FOR WRIT OF MANDAMUS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, DEMETRIUS KELLUM RELATOR, PRO SE IN THE ABOVE STYLED AND NUMBERED CAUSE OF ACTION AND FILES THIS ORIGINAL APPLICATION FOR WRIT OF MANDAMUS, PURSUANT TO ARTICLE 5, SECTION 5 OF THE TEXAS CONSTITUTION AND ART 4.04 OF THE CODE OF CRIMINAL PROCEDURE. AND WOULD SHOW THE COURT THE FOLLOWING:

RELATOR

I.

DEMETRIUS KELLUM, TDCJ-ID # 01936979 IS AN OFFENDER — INCARCERATED IN THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE AND IS APPEARING PRO SE, WHO CAN BE LOCATED AT W.G. MCCONNELL UNIT 3001 EMILY DR, BEEVILLE, TEXAS 78102-8583. RELATOR HAS EXHAUSTED HIS REMEDIES AND HAS NO OTHER ADEQUATE REMEDY AT LAW.

ON THE 19th DAY OF DECEMBER, 20 13. AND INDICTMENT OF _____ INFORMATION WAS RETURNED TO THE 114th DISTRICT COURT OF SMITH COUNTY, TEXAS CHARGING THE RELATOR WITH THE OFFENSE OF AGG ASSAULT/WITH deadly WEAPON ON THE DAY OF NOV. 15th 20 13. RELATOR, I WOULD LIKE TO SHOW PROOF...

ON NOVEMBER 15th, 20 13 THE STATE ACCUSES THAT WHILE AFTER A Club CALLED "THE BANANA TREE" THAT THE APPELLANT WAS UPSET WITH ALLEGED VICTIM WINDELL WILLIAMS FROM BEING FORCED TO LEAVE THE Club WHEN ALL PARTY'S CAME IN THE SAME VEHICLE (Id. AT 68) STATE ACCUSES THAT AFTER AN ARGUMENT IN THE VEHICLE, THE SUV CAME TO A STOP AT A NEARby STOPSIGN; THAT BOTH MEN JUMPED OUT AND HAD A FISTFIGHT (Id. AT 69-72, 75-77). STATE ACCUSES THAT APPELLANT STABBED WINDELL WILLIAMS WITH A POCKET KNIFE MULTIPLE TIMES, THAT WILLIAMS HAD (TWO PENETRATING) WOUNDS TO HIS CHIN AND ABDOMEN (Id. AT 39, 78-80 STATE EX. 46). NOT multiple STABB WOUNDS AS ALLEGED. HOWEVER THE STATE ALLEGED WINDELL WILLIAMS SUFFERED SERIOUS Bodily INJURY, AFTER BOTH MEN RETURNED TO THE VEHICLE AND CONTINUED ON TO APPELLANTS HOME WINDELL WILLIAMS EXITED THE VEHICLE AGAINE TO START ANTHER PHYSICAL CONFRONTATION, AT APPELLANTS HOME, SHOWING NO SIGNS HE WAS SUFFERING FROM multiple STABB WOUNDS (NOR) SERIOUS Bodily INJURY.

ON NOVEMBER 15th 20 13, TYLER SMITH COUNTY POLICE OFFICERS ARRESTED AND found A RED POCKET KNIFE IN POSSESSION OF APPELLANT'S POCKET, OFFICERS TOOK THIS KNIFE INTO EVIDENCE AND ACCUSED ME OF STABBING WINDELL WILLIAMS WITH THIS KNIFE. (Id. AT 34-38). WINDELL WILLIAMS NEVER WAS BEING TREATED FOR STABB WOUNDS IN THE EMERGENCY ROOM THAT NIGHT. THERE IS NOTHING IN THE RECORD THAT WINDELL WILLIAMS TESTIFIED THAT WHEN HE WALKED (NOR) HE EVER SAW (NOR) WAS HE STABBED AS HE WAS COMEING AROUND THE VEHICLE (IX REP.'S. AT 71-72; AT 37-39, 50-51, 85). THEREFORE, THE "MEDICAL RECORDS"

DETERMING THAT THE ENTIRE JURY CHARGE WAS ERRONEOUS. FORENSIC DNA TESTING OF (EX. 46) CONTAINING biological MATERIAL IN RELATION TO THIS CASE AND WAS IN THE POSSESSION OF THE STATE DURING THE TRIAL OF THE CASE, "WAS NEVER TESTED."

I WOULD NOT HAVE BEEN CONVICTED IF EXCULPATORY RESULTS HAD HAD BEEN obtained THROUGH DNA TESTING. AND THE REQUEST FOR THE PROPOSED DNA TESTING IS NOT MADE TO UNREASONABLY delay THE EXECUTION OF SENTENCE OR ADMINISTRATION OF JUSTICE.

"I SWEAR UNDER OATH THAT THE FACTS AND ALLEGATIONS IN THE ABOVE IN SUPPORT OF THIS MOTION ARE TRUE AND CORRECT.

Demetrius Kellum
RELATOR

SIGNED UNDER OATH BEFORE ME, ON THIS day 10th OF December 20 15.

II.

RESPONDENT

RESPONDENT, Lois ROGERS, IN HER/HIS CAPACITY AS DISTRICT CLERK OF SMITH COUNTY TEXAS HAS A MINISTERIAL DUTY TO RECEIVE AND FILE ALL PAPERS IN A CRIMINAL PROCEEDING, AND PERFORM ALL HER duties IMPOSED ON THE CLERK BY LAW PURSUANT TO TCCP ART. 2.21 AND IS RESPONSIBLE UNDER ARTICLE 5 SECTION TO IMMEDIATELY TRANSMIT TO THE A COPY OF THE MOTION ANY ANSWERS FILED. AND A CERTIFICATE RECITING THE DATE UPON WHICH THAT Lois ROGERS, District CLERK SMITH COUNTY MAY BE SERVED AT HER PLACE OF BUSINESS AT 100 N. BROADWAY, ROOM 204 TYLER, TEXAS 75702.

III.

VIOLATION OF ART 2.21 THE TEXAS CODE OF CRIMINAL PROCEDURE

(1) THE RESPONDENT Violated ministerial DUTY by FAILING TO PROVIDE A Immediately TRANSMIT OF ARTICLE 64 TO ATTENTION OF THE COURT

(2) REQUEST FOR THE TRANSMITTAL OF THE MOTIONS WERE MADE BY RELATOR TO Lois ROGERS, DISTRICT CLERK SMITH COUNTY, by CERTIFIED MAILED letters dated 10-26-15; PURSUANT TO ARTICLE 5, 2.21 TRUE AND ACCURATE COPIES OF THE ABOVE LETTERS ARE ATTACHED HERETO AS EXHIBITS "A" THROUGH "B" ARE INCORPORATED BY REFERENCE HEREIN FOR ALL PURPOSES. (TO DATE, RELATOR HAS PUT RESPONDENT ON NOTICE)

(3) RELATOR HAS GONE WELL BEYOND ANY REQUIREMENT OR OBLIGATIONS IMPOSED UPON ME BY THE (TCCP) IN CONTRAST TO RELATOR'S EFFORTS. RESPONDENT HAS WHOLLY FAILED TO COMPLY WITH THE (TCCP) IS ACTING IN bad FAITH AND HAS ALSO FAILED TO AFFORD RELATOR THE PROFESSIONAL AND COMMAN COURTESY OF ANY WRITTEN RESPONSES TO MY REQUESTS.

IV.

PRAYER FOR RELIEF.

WHEREFORE, PREMISES CONSIDERED, RELATOR DEMETRIUS KELLUM PRO SE, RESPECTFULLY REQUEST THAT THIS HONORABLE COURT GRANT HIS WRIT OF MANDAMUS AND AFTER CONSIDERING THE GROUNDS FOR REVIEW RAISED HEREIN, ASSIST RELATOR IN OBTAINING AN ORDER FOR DNA TESTING (EX. 46) KNIFE AND REMAND THIS CAUSE FOR A NEW TRIAL.

RESPECTFULLY SUBMITTED,

BY: Demetrius Kellum
RELATOR

NOTARY
OFFENDER NOTARY PUBLIC SERVICE

Under both Federal law (28 U.S.C. § 1746) and State law (V.T.C.A. Civil Practice & Remedies Code, § 132.001-132.003), offenders incarcerated in Texas may use an unsworn declaration under penalty of perjury in place of a written declaration verification, certification, oath, or affidavit sworn before a Notary Public. An example of an unsworn declaration is as follows:

"I Demetrius Kellum (Insert offender name and TDCJ number), being presently incarcerated in McConnell (insert TDCJ unit name), in Bee ville County, Texas, declare under penalty of perjury that the foregoing is true and correct.

Executed on 12/10, 20 15. X Demetrius Kellum" (Offender Signature)

In a request for Notary Public service, each offender must explain why an Unsworn Declaration is insufficient before Notary Public service will be provided.

1936979

NOTARY
NOTARY PUBLIC SERVICE DENIAL

Regarding your request for Notary Public service, insufficient justification was provided necessitating Notary Public service. However, you may proceed with an Unsworn Declaration.

(Signature – Notary) 12/10/15 (Date)

Exp 9/3/17

THE STATE OF TEXAS §
COUNTY OF BEEVILLE §

AFFIDAVIT §

I SWEAR UNDER OATH THAT THE FACTS AND ALLEGATIONS IN THE ABOVE APPLICATION FOR WRIT OF MANDAMUS ARE TRUE AND CORRECT.

Demetrius Kellum
RELATOR

SIGNED UNDER OATH BEFORE ME, ON THIS THE 10th DAY OF DECEMBER, 20 15.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS.

PRINTED OR TYPED NAME
MY COMMISSION EXPIRES 9/3/17

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE COPY OF THE ABOVE APPLICATION FOR WRIT OF MANDAMUS WAS SERVED ON THURSDAY BY PLACING A COPY IN THE U.S. MAIL ADDRESSED TO: COURT OF CRIMINAL APPEALS ON THIS THE 10th DAY OF DECEMBER, 20 15.

Demetrius Kellum
RELATOR

CAUSE NO. 114-1918-13

DEMETRIUS KELLUM
TDCJ-ID 01936979
RELATOR

§ IN THE 114TH JUDICIAL
§
§
§
§ DISTRICT COURT OF
§
§
§ SMITH COUNTY, TEXAS

V.

LOIS ROGERS COUNTY DISTRICT CLERK
IN HER OFFICIAL CAPACITY
RESPONDENT

ORDER

ON THIS DAY, CAME ON TO BE HEARD THE FOREGOING RELATOR'S APPLICATION FOR MANDAMUS AND IT APPEARS TO THE COURT THAT THE SAME SHOULD BE:

_____ GRANTED

IT IS THEREFORE ORDERED THAT THE DISTRICT CLERK SHALL IMMEDIATELY TRANSMIT TO THE COURT OF CRIMINALS APPEALS A COPY OF THE _____ _____. ANY ANSWERS FILED, AND A CERTIFICATE RECITING THE DATE UPON WHICH THAT TRANSMITTAL WAS MADE.

SIGNED ON THIS THE _____ DAY OF _____, 20_____.

_____
PRESIDING JUDGE

CAUS NO. 114-1918-13

DATE: 11-11-2015

TO: Lois Rogers (CLERK)
100 N. Broadway, Rm 204
Tyler, TX 75702

& MOTION CHAPTER 64.01(C)
REQUESTING DNA

NOTICE

DEAR CLERK,

ON 10/26/15 I MAILED YOU A COPY/MOTION REQUESTING DNA EVIDENCE FROM TRIAL COURT (114-1918-13). AND FOR SAID MOTION BE BROUGHT BEFOR THE TRIAL COURT 114th DISTRICT.

HOWEVER, I HAVE NOT RECEIVED ANY RESPONSE FROM YOU OR my STAMPED file date THAT my MOTION BROUGHT BEFOR SAID COURT AS REQUESTED. I AM WAITING MY RESPONSE, AND ANY RESULTS REQUESTED:

RESPECTFULLY SUBMITTED,

C.C. Filed COPY
Exhibit "A"

Demetrius Rellum #1936979
MOVANT PRO SE
W.G. McConnell unit
3001 Emily Dr
Beeville, Texas 78102

DATE 10-26-2015.

LOIS ROGERS COUNTY DISTRICT CLERK
100 N. BROADWAY, RM 204
TYLER, TEXAS 75702

RE: _____
CAUSE NO. _____

DEAR CLERK:

ENCLOSED PLEASE FIND MOVANT'S MOTION FOR APPOINTMENT OF COUNSEL. ORDER AND AFFIDAVIT OF INDIGENCY IN THE ABOVE STYLED AND NUMBERED CAUSE; PLEASE FILE THIS, AND BRING IT TO THE ATTENTION OF THE COURT.

YOUR ASSISTANCE IN THIS MATTER IS GREATLY APPRECIATED

SINCERELY,

DEMETRIUS KELLUM
MOVANT PRO SE
TDCJ# 1936979
W. G. McCONNELL UNIT
3001 Emily DR
BEEVILLE, TEXAS 78102
ADDRESS

C.C. FILE COPY
Exhibit "B"

NO. 114-1918-13

THE STATE OF TEXAS § IN THE DISTRICT COURT

V. § 114th JUDICIAL DISTRICT

DEMETRIUS KELLUM, §
TDCJ #1936979 § SMITH COUNTY, TEXAS

REQUEST FOR APPOINTMENT OF COUNSEL

PURSUANT TO ARTICLE 64, CODE OF CRIMINAL PROCEDURE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW DEFENDANT DEMETRIUS KELLUM, TDCJ NO. 1936979, AND REQUESTS APPOINTMENT OF COUNSEL TO ASSIST DEFENDANT IN OBTAINING AN ORDER FOR DNA TESTING FROM THE COURT PURSUANT TO ARTICLE 64.01(C) CODE OF CRIMINAL PROCEDURE, DEFENDANT WISHES TO SUBMIT A MOTION PURSUANT TO CHAPTER 64 REQUESTING DNA TESTING AND DEFENDANT IS INDIGENT, AN AFFIDAVIT OF INDIGENCY IS ATTACHED AND INCORPORATED HERETO AS EXHIBIT "1".

RESPECTFULLY SUBMITTED,

DEMETRIUS KELLUM
PETITIONER PRO SE
TDCJ-#ID 1936979
W.G. McCONNELL UNIT
3001 EMILY DR
BEEVILLE, TEXAS 78102

COPY:

NO. 114-1918-13

THE STATE OF TEXAS § IN THE DISTRICT COURT

V. § 114th JUDICIAL DISTRICT

DEMETRIUS KELLUM, § SMITH COUNTY, TEXAS
TDCJ # 1936979

ORDER APPOINTING ATTORNEY

CAME ON THIS DAY FOR CONSIDERATION, THE DEFENDANT'S REQUEST FOR APPOINTMENT OF COUNSEL TO ASSIST HIM IN OBTAINING DNA TESTING PURSUANT TO ARTICLE 64.01(C) CODE OF CRIMINAL PROCEDURE, THE COURT HAS REVIEWED THE REQUEST AND _____ AFFIDAVIT OF INDIGENCY IN THIS MATTER AND IT IS HEREBY

ORDERED THAT AN ATTORNEY SHALL BE APPOINTED TO REPRESENT DEFENDANT PURSUANT TO ARTICLE 64.01(C), CCP. ACCORDINGLY, THE FOLLOWING ATTORNEY IS HEREBY APPOINTED AND INSTRUCTED TO CONTACT HIS CLIENT REGARDING THIS MATTER _____ Address

_____.

IT IS FURTHER ORDERED THAT A COPY OF THIS ORDER SHALL BE SENT TO THE DEFENDANT BY THE CLERK OF THIS COURT.

_____

JUDGE PRESIDING

EXHIBIT "1".

DECLARATION OF INABILITY TO PAY COST

(THE FOLLOWING DECLARATION IS MADE PURSUANT TO THE TEXAS RULES OF CIVIL PROCEDURE AND TITLE 6 CHAPTER 132 OF THE CIVIL PRACTICES AND REMEDIES CODE).

NOW RESPECTFULLY COMES DEMETRIUS KELLUM, TDCJ# 1936979 AND DECLARES THAT I AM UNABLE TO PAY THE COST IN THIS CIVIL ACTION AND REQUESTS LEAVE OF THE PROCEED IN FORMA PAUPERIS IN THIS ACCOMPANYING CIVIL ACTION AND WOULD SHOW THE COURT THE FOLLOWING:

(1) I AM PRESENTLY INCARCERATED IN THE W.G. McCONNELL UNIT OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE WHERE I AM NOT PERMITTED TO EARN OR HANDLE MONEY.

(2) I HAVE NO SOURCE OF INCOME OR SPOUSAL INCOME

(3) I CURRENTLY HAVE $ Ø CREDITED TO ME IN THE INMATE TRUST FUND.

(4) DURING MY INCARCERATION IN THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE I HAVE RECEIVED APPROXIMATELY $ 25.00 PER MONTH AS GIFTS FROM RELATIVES AND FRIENDS.

(5) I NEITHER OWN NOR HAVE AN INTREST IN ANY REALTY, STOCKS, BONDS, OR BANK ACCOUNTS AND I RECEIVED NO INTEREST OR DIVIDEND FROM ANY SOURCE.

(6) I HAVE 1 DEPENDENTS.

(7) I HAVE TOTAL DEBTS OF APPROXIMATELY $ Ø.

(8) I OWE $ Ø AS RESTITUTION.

(9) MY MONTHLY EXPENSES ARE APPROXIMATELY $ 25.00.

I, DEMETRIUS KELLUM, TDCJ# 1936979. BEING PRESENTLY INCARCERATED IN THE McCONNELL UNIT OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE IN BEEVILLE COUNTY, TEXAS, VERIFY AND DECLARE UNDER PENATIY OF PERJURY THAT THE FOREGOING STATEMENTS ARE TRUE AND CORRECT. EXECUTED ON THIS THE 8th DAY OF DECEMBER, 20 15.

AFFIDAVIT

THE STATE OF TEXAS §

COUNTY OF BEEVILLE § §

STATMENT OF FACTS

ON THE 19th DAY OF NOVEMBER, 2013, AN INDICTMENT OF INFORMATION WAS RETURNED TO THE 114th DISTRICT COURT OF SMITH COUNTY, TEXAS CHARGING THE RELATOR WITH THE OFFENSE OF AGG ASSAULT/with deadly WEAPON ON THE DAY OF NOV. 15th, 2013 I WOULD LIKE TO SHOW PROOF ON NOVEMBER 15th, 2013 THE STATE ACCUSES THAT WHILE AFTER A Club CALLED "THE BANANA TREE" THAT THE APPELLANT WAS UPSET WITH ALLEGED VICTIM WINDELL WILLIAMS FROM BEING FORCED TO LEAVE THE Club. WHEN ALL PARTY'S CAME IN THE SAME VEHICLE (Id. at 68) STATE ACCUSES THAT AFTER AN ARGUMENT IN THE VEHICLE. THE SUV CAME TO A STOP AT A NEARBY STOPSIGN. THAT BOTH MEN JUMPED OUT AND HAD A FISTFIGHT (Id. AT 69-72, 75-77). STATE ACCUSES THAT APPELLANT STABBED WINDELL WILLIAMS WITH A SMALL POCKET KNIFE MULTIPLE TIMES. THAT WILLIAMS HAD (TWO PENETRATING) WOUNDS TO HIS CHIN AND ABDOMEN (Id. AT 39 78-80 STATE'S EX. 46.) NOT MULTIPLE STABB WOUNDS AS ALLEGED. HOWEVER, THE STATE ALLEGED WINDELL WILLIAMS SUFFERED SERIOUS BODILY INJURY. AFTER BOTH MEN RETURNED TO THE VEHICLE AND CONTINUED ON TO APPELLANTS HOME, WINDELL WILLIAMS EXITED THE VEHICLE AGAINE TO START ANOTHER PHYSICAL CONFRONTATION, AT APPELLANTS HOME.

SHOWING NO SIGNS HE WAS SUFFERING FROM MULTIPLE STABB WOUNDS (NOR) SERIOUS BODILY INJURIES.

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"I SWEAR UNDER OATH THAT THE FACTS AND ALLEGATIONS IN THE ABOVE IN SUPPORT OF THIS MOTION ARE TRUE AND CORRECT.

Demetrius Kellum
RELATOR

SIGNED UNDER OATH BEFORE ME, ON THIS DAY 8th OF DECEMBER, 20 15.