

Atty Randy Schaffer file -

1995-2007

MEMO October 17, 1995
TO Scott Kerman
FROM Randy Schaffer
RE Shirley Southerland
DUE DATE October 20

The State cross-examined the defendant from the statement of a person who was unavailable as a witness at trial. The prosecutor would preference his questions, "Didn't you ask Larry Patterson for a gun that night? Didn't you ask Larry Patterson to get rid of the deceased? Didn't you tell Robby Carter that anybody who messed with you had to pay the price?" The prosecutor admitted to the court that he was questioning the defendant from the written statement of the unavailable witness, insisting that the defendant's remedy was to argue to the jury that the questions were not evidence and the State did not call the witness. I seem to recollect a case holding that this is improper cross-examination. Find it.

hlv

Memorandum

TO Randy Schaffer
FROM Scott Kerman
RE Southerland - Cross-examination
DATE 10/24/95

In **Gannaway v. State**, 823 S.W.2d 675 (Tex. App. - Dallas 1991, pet. ref'd) and **Sills v. State**, 846 S.W.2d 392 (Tex. App. - Houston [14th Dist.] 1992, pet. ref'd), the court of appeals held that it was improper for the State to question a witness from the witness's statement, where that witness refuses to testify.

In both cases, a witness who gave a statement to police refused to answer questions regarding the statement on direct examination by the State. The State read the statement to the jury as a summary-form question. Both witnesses did not say the statement was wholly true, did not fully testify, and was not cross-examined about the statement. The **Gannaway** court held that this was a "back door" way for the State to get facts into evidence which the witness refused to testify about at trial. 823 S.W.2d at 678. The **Sills** court agreed. 846 S.W.2d at 396.

Both courts held that the defendants were harmed by the statements, as they were unable to conclude beyond a reasonable doubt that the inadmissible statement did not contribute to the convictions. In both cases, the inadmissible statements were the chief piece of evidence against the defendants.

November 15, 1995

Shirley Southerland
Inmate Number 555516
9055 Spur 591 (K-25)
Amarillo, Texas 79107

Dear Ms. Southerland:

I enjoyed meeting with you at the prison unit to discuss your case. You are something else (exactly what, I am not sure).

I believe that the following omissions of trial counsel were deficient:

- a. failure to object to evidence suggesting that you were a drug dealer;
- b. failure to impeach Jesus Cavazos with his deferred adjudication probation for burglary after the prosecutor misled the jury regarding Cavazos' criminal history;
- c. failure to object to Wanda White's testimony that you had previously been in jail;
- d. failure to object to Wanda White's testimony that you threatened to kill three more people upon your release from jail; and
- e. failure to object adequately to the prosecutor cross-examining you from the written statement of Larry Patterson.

As I explained, you must show not only that counsel's performance was deficient, but also that these deficiencies essentially resulted in your conviction. I am not sure that these deficiencies, standing alone, are sufficiently compelling to sustain this burden of proof.

Ms. Southerland
Page 2
November 15, 1995

I believe that we should continue to investigate whether Wanda White, or any other prosecution witness, had an agreement to obtain consideration in exchange for testimony. Obtaining this information will take time, money and, quite frankly, some luck.

Should further investigation reveal sufficient grounds for habeas corpus relief, I anticipate that the fee will be in the range of \$15,000.00 to \$20,000.00 plus expenses for me, or \$10,000.00 to \$15,000.00 plus expenses for an associate. Thus, you will need an additional \$5,000.00 to \$15,000.00, plus expenses, for representation through the Texas Court of Criminal Appeals. You will have as much time as you need to pay the fee with the understanding that the application will not be filed until the fee has been paid in full.

You presently owe \$280.00 in expenses. I would appreciate payment at your earliest convenience.

Please contact me should you have any questions.

Faithfully yours,

Randy Schaffer

RS:hlv

MEMO November 15, 1995
TO Cindy Henley
FROM Randy Schaffer
RE Shirley Southerland
DUE DATE December 1, 1995

Compare all case settings of Wanda White (522646, 532073 and 530638; 552289) and Shirley Southerland (526673) to determine whether White's cases were intentionally reset until she had testified (a) before the grand jury and (b) at trial.

hlv

WANDA WHITE

← Jailhouse witness

552246 (theft of cash) 2/15/89

resets:

Date reset prepared:	date reset to:	reason/notes:
3/9/89	4/13/89	non trial
4/13/89	5/12/89	mtn discov
4/20/89	off dkt from 5/12 to 5/26	Judge at conf.

docket sheet:

2/16/89; 3/9/89; 4/13/89; 5/26/89; 6/9/89

(Note Scham appointed 5/26)

Pled 6/9/89 to an agreed 2 years.

532073 (theft of cash from person) 5/1/89

reset:

Lee Scham appointed 5/31/89 (only reset)

docket sheet:

5/31/89; 6/20/89; 6/9/89

530638 (robbery) 5/14/89

reset:

5/16/89	5/26/89	"also 522646 pending"
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docket sheet:

5/16/89

5/26/89 (Scham's mtn withdraw granted)

5/30/89 (Scham appear and reset off docket WHC hrg)

6/9/89 plea

WANDA WHITE ←

Jailhouse
witness

552246 (theft of cash) 2/15/89

resets:

Date reset prepared:	date reset to:	reason/notes:
3/9/89	4/13/89	non trial
4/13/89	5/12/89	mtn discov
4/20/89	off dkt from 5/12 to 5/26	Judge at conf.

docket sheet:

2/16/89; 3/9/89; 4/13/89; 5/26/89; 6/9/89

(Note Scham appointed 5/26)

Pled 6/9/89 to an agreed 2 years.

532073 (theft of cash from person) 5/1/89

reset:

Lee Scham appointed 5/31/89 (only reset)

docket sheet:

5/31/89; 6/20/89; 6/9/89

530638 (robbery) 5/14/89

reset:

5/16/89	5/26/89	"also 522646 pending"
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docket sheet:

5/16/89

5/26/89 (Scham's mtn withdraw granted)

5/30/89 (Scham appear and reset off docket WHC hrg)

6/9/89 plea

552289 (theft of cab fare)

enhanced with 532073 (6/9/89); 385785 (1/12/84 - misd. theft);
530638 (6/9/89)

\$2,000 bond made and counsel appointed 1/18/90

resets:

2/9/90	6/11/90	offer 2 yr TDC
5/7/90	5/18/90	
5/22/90	reset from 6/11 to 6/18	
6/18/90	6/20/90	def. in hospital
6/20/90	7/10/90	for sentencing

(NOTE: complainant had forgery by pssn case 9/25/75 for which he received 4 years.)

plea - St moved to sentence under 12.44 (a)

docket sheet:

1/18/90; 2/1/90; 2/7/90; 2/9/90; 5/9/90 (off docket and to
5/18/90); 5/18/90 (defendant's appearance waived; reset to
6/11/90); 5/22/90 (Jennings appears off-docket and reset to 6/18/90
JTRL); 6/18/90; 6/20/90 (def. pled to 10 mo. HCJ & reset to
7/10/90); 7/10/90

MEMO November 13, 1995
TO Scott Kerman
FROM Randy Schaffer
RE Shirley Southerland
DUE DATE December 1, 1995

On direct examination, the prosecutor elicited that a key witness had never been convicted of a felony or misdemeanor involving moral turpitude. In fact, the witness was on felony deferred adjudication probation for burglary of a habitation.

Ordinarily, a witness is not subject to impeachment with a felony deferred adjudication probation. However, it would seem that the State opened the door in this instance by attempting to mislead the jury regarding the witness' criminal history.

Is habeas corpus relief available on the ground that the prosecutor presented a false impression of the witness to the jury in eliciting that the witness had never been convicted of a felony when the prosecutor knew that the witness was on felony deferred adjudication probation?

witness for the state Jesus Carrvayon
had been convicted of a felony before
trial date

See pgs

See pg

- Arrest file > Jesus Carrvayon

Pedro Carrvayon arrest file

LINENAMRPPTY RAC SEX DOBSPN & CLS

CAVAZOS, JESUS GUILLERMO D M M 08167109992549995
CAVAZOS, JESUS GUILLERMO D M M 081671 00992549996
AVAZOS, JESUS GUILLERMO D M M 081671 00992549997
CAVAZOS, JESUS GUILLERMO D M M 081671 00992549998
CAVAZOS, JESUS GUILLERMO D M M 081671 00992549999
LAST ADDRESS: 10501 NORVIC JACINTO CI TX 77029 PHONE: 713-673-5347
HGT: 508 WGT: 174 EYES: BRO HAIR: BLK SKIN: OLV BLD: LGH SMT: NONR

..... CASE INFORMATION

LN CDI CASE NUMBER CRT CON FIL-DT OFFENSE NXT-ST S CST INS DISPOSITION
01 002 953021001010 012 DEF 073095 OTHER MISC 100495 D D MIN DISM-100495
02 003 065111101010 230 DEF 120592 BURGLARY 022493 D C FID DISP-022493
03 003 056096301010 230 DEF 040890 OTHER FEL 022493 D C MRP DISP-022493
04 003 051917801010 230 DEF 010689 BURGLARY 022493 D C MRP DISP-022493

..... END OF DISPLAY TO SEE NEXT PAGE PRESS ENTER. CLEAR TO TERMINATE. PF4=QMNQ PF5=QBDI PF6=NAM50 LNR NO. -->

Memorandum

TO Randy Schaffer
FROM Scott Kerman
RE Southerland - Misleading the jury re: deferred adjudication
DATE 11/28/95

Texas Rule of Criminal Evidence 609 prevents the use of a witness's prior felony conviction where the conviction is not final or the witness has successfully completed probation. An exception to Rule 609 arises when a witness, during direct examination, leaves a false impression as to the extent of either his prior: (1) arrests; (2) convictions; (3) charges; or (4) trouble with the police. *Prescott v. State*, 744 S.W.2d 128, 131 (Tex. Crim. App. 1988). "When ... a false impression as to a witness's criminal history is given to the jury on direct examination, the opposing party is entitled to elicit testimony from the witness which will correct the false impression." *Hinojosa v. State*, 780 S.W.2d 299, 302 (Tex. App. - Beaumont 1989, pet. ref'd). See also *Delk v. State*, 855 S.W.2d 700, 704 (Tex. Crim. App. 1993), cert. denied, 114 S.Ct. 481 (1993) (where the witness opens the door, "opposing counsel may expose the falsehood").

The typical scenario in which this issue arises is where the witness is asked a specific question concerning the extent of his prior arrests, charges, convictions or troubles with the police, and the witness then completely or partially fails to properly identify the extent of his prior "troubles." *Prescott v. State*, 744 S.W.2d at 132. When determining to what extent a witness opens the door, "it is important to examine how broadly one would interpret the question that was asked." *Hammett v. State*, 713 S.W.2d 102, 106 (Tex. Crim. App. 1986). For instance, in *Hammett*, the court held it was error to permit the State to question the defendant in a DWI trial

about prior convictions where the defendant merely asserted that he had only once before been convicted for public intoxication. *Id.* at 101-04. The court found that “the narrower import of the question was the more likely interpretation, i.e., that he only had one conviction for public intoxication.” *Id.* at 106.

On the other hand, in *Tripple v. State*, 535 S.W.2d 178 (Tex. Crim. App. 1976), the court held that impeachment was proper where the State’s witness portrayed himself as a law-abiding citizen attempting to help the police out of a sense of civic duty, and then denied that he had ever been convicted of a crime. The court held it was error to exclude evidence of the witness’s prior conviction for assault on a woman, even though he had successfully completed probation.¹ See also *Theus v. State*, 845 S.W.2d 874, 879 (Tex. Crim. App. 1992) (discussing *Tripple*).

In *Hinojosa v. State*, *supra.*, the prosecutor asked the witness, “Prior to this offense had you ever been convicted in this state or any other state of a felony offense?” The witness responded “no.” The defendant then sought to impeach the witness with a prior federal conviction. The court of appeals held that it was error to exclude this cross-examination, even though the witness had successfully completed probation. The court found that the form of the prosecutor’s question was misleading, for jurors are not sophisticated in the technicalities of the rules of criminal evidence. Based on the prosecutor’s question, the witness’s testimony “left

¹See also *Ex parte Carter*, 621 S.W.2d 786 (Tex. Crim. App. 1981) (incomplete listing during direct examination of his prior troubles); *Bell v. State*, 620 S.W.2d 116 (Tex. Crim. App. 1981) (incomplete response to question, “Have you anything in your past that is of a criminal nature?”); *Reese v. State*, 531 S.W.2d 638 (Tex. Crim. App. 1976) (incomplete response to question, “What kind of trouble do you have with the law?”); *Thomas v. State*, 530 S.W.2d 834 (Tex. Crim. App. 1975) (“I’ve never been in any trouble like this before.”); *Hoffman v. State*, 514 S.W.2d 248 (Tex. Crim. App. 1974) (denial of existence of any prior complaints); *Nelson v. State*, 503 S.W.2d 543 (Tex. Crim. App. 1974) (incomplete response to questions, “Have you ever been in trouble before?” and “Is that all of the trouble you have been in?”); *Gilmore v. State*, 493 S.W.2d 163 (Tex. Crim. App. 1973) (defendant denied involvement in any prior robbery on direct examination); *Page v. State*, 486 S.W.2d 300 (Tex. Crim. App. 1972) (denial of any prior arrests for violent crimes); *Alexander v. State*, 476 S.W.2d 10 (Tex. Crim. App. 1972) (defendant testified on direct that “he had not been in trouble before”); *Orozco v. State*, 164 Tex.Cr.R. 630, 301 S.W.2d 634 (Tex. Crim. App. 1957) (“Have you ever been convicted of a felony or a misdemeanor or paid a fine or anything of that nature?”).

the impression he had *never been* convicted of a felony. This impression was patently false.” 780 S.W.2d at 302 (emphasis in original).

The *Hinojosa* decision was discussed by the *Theus* court, which found that the court of appeals decided that case correctly. “To open the door to the evidence of prior crimes, ... the witness must in some way convey the impression that he has never committed a crime.” *Theus v. State*, 845 S.W.2d at 879. The witness, by directly denying that he had ever been convicted, left the impression that he had never been convicted of a felony. *Id.*

The closest case on-point with the specific issue in *Southerland*—a deferred adjudication—is an unpublished case out of the court of appeals in Dallas—*Shavers v. State*, 1994 WL 259438 (Tex. App. - Dallas 1994, no pet.). Appellant complained that the prosecutor committed fundamental error by failing to correct a false impression left with the jury where the prosecutor questioned a State witness about her 1977 misdemeanor theft conviction, but did not question the witness about her 1981 deferred adjudication for felony theft. The trial court had previously ruled that the 1981 deferred adjudication was not admissible for impeachment. Appellant contends that fundamental error occurred because the jury was left with the impression that the witness had never been convicted of a felony. Appellant argued that one exception to the general rule that deferred adjudications may not be used for impeachment is when the witness, during direct examination, leaves a false impression with the jury as to the extent of his prior arrests, convictions, charges or troubles with the law. (citing *Prescott v. State*, *supra.* and *Hinojosa v. State*, *supra.*).

The *Shavers* court first noted that a deferred adjudication is not a final conviction. *Jones v. State*, 843 S.W.2d 487, 496 (Tex. Crim. App. 1992), cert. denied, 113 S.Ct. 1858 (1993). The court then found that the witness did not suggest to the jury that the 1977 conviction was her only arrest. Thus, since a deferred adjudication is not a final conviction, the prosecutor did not leave a false

impression with the jury. "Instead, he left the only impression that he could and that was the fact that [the witness] had one misdemeanor conviction for theft." *Shavers v. State*, *supra*. Since the prosecutor did not leave a false impression with the jury, counsel was not ineffective for failing to object to this testimony.

In applicant's situation, the prosecutor specifically elicited that the witness had never been convicted of a felony. However, the witness was on felony deferred adjudication at the time. Thus, as in *Hinojosa*, the natural interpretation of the prosecutor's question and witness's response is that the witness has never before committed a crime or been in trouble with police.² By presenting a false impression of the witness to the jury, the prosecutor violated applicant's rights to due process. See *Napue v. Illinois*, 360 U.S. 264, 269 (1959) and *Giglio v. United States*, 405 U.S. 150, 153-55 (1972) (a defendant's right to due process is implicated when the State obtains a conviction based upon testimony that the State knows is false or misleading).

²However, the fact that the witness in *Southerland's* situation was on deferred adjudication may be enough to distinguish it from *Hinojosa*. Article 42.12 § 5(a) of the Texas Code of Criminal Procedure specifically provides that there is no conviction or finding of guilt if a person is placed on deferred adjudication. *Ex parte Sillings*, 641 S.W.2d 538, 540 (Tex. Crim. App. 1982); *Soliz v. State*, 809 S.W.2d 257 (Tex. App. - San Antonio 1991, pet. ref'd). Deferred adjudication is not the same as regular probation as far as impeachment purposes are concerned. *Id.* at 258. "The legislative scheme of deferred adjudication specifically requires that no finding of guilt be entered." *Id.*

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➔ Texas Department of Public Safety Detail

Person ID No. 5007931	Gender MALE	Race WHITE	Ethnicity UNKNOWN - CCH
Height 508	Weight (lbs.) 174	Eye Color BROWN	Hair Color Brown

<i>Name(s)</i>

Name Entry ID No. 12070246	Full Name CAVAZOS, JESUS G	Last Name CAVAZOS	First Name JESUS G
Type Code Supplemental Value			

Name Entry ID No. 12070247	Full Name CAVAZOS, JESUS GUILLERMO	Last Name CAVAZOS	First Name JESUS GUILLERMO
Type Code Base Record Value			

<i>Birthdate(s)</i>

DOB ID No. 5347992	Date of Birth Aug 16 1971	Type Code Base Record Value
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2006 - Age 35 / 1989 - Age 18

<i>Individual</i>

Individual ID No. 5007931	DPS ID No. 04322295
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<i>TRN</i>

TRN ID No. 7749035	Date of Arrest Apr 8 1990	Sequence Code A	Tracking Incident Number
Arresting Agency			

PD HOUSTON

TRS

TRS ID No.
9683879TRS/TRN ID
*002

Offense Detail

none found

Prosecution

none found

Court Status

<i>Court Sequence</i> a	<i>Agency</i> none found	<i>Court Offense</i> 22000000	<i>Court Disposition</i> CONVICTED
<i>Court Offense Literal</i> BURGLARY HABITATION W-I COMMIT THEFT	<i>Action Related to Offense</i> none found	<i>Level and Degree of Offense</i> none found	<i>Cause Number</i>
<i>Date of Sentencing</i>	<i>Final Pleading</i> none found	<i>Court Provision Literal</i> 10 YRS SHOCK PROB	<i>Court Provision (Numeric)</i> 363
<i>Date of Judicial Disposition</i>	<i>Amount of Time Suspended by Court</i>	<i>Amount of Fine Suspended by Court</i>	<i>Court Confinement</i> 90D
<i>Time on Probation</i>	<i>Court Fine</i>	<i>Court Cost Imposed</i>	<i>Date of Appeal</i>
<i>Disposition of Offender During Appeal</i>	<i>Final Court Decision</i>	<i>Agency ID</i>	<i>Agency Literal</i> none found
<i>Sentence Concurrent/Consecutive</i>	<i>Domestic Violence Involved</i>		

Court Charge Reason

<i>Offense Code</i> 22000000	<i>Offense Description</i> BURGL-(FREE TEXT)	<i>Level and Degree of Offense</i> none found	<i>Statute Citation of Disposed Offense</i>
<i>Statute Code</i>			

TRS ID No. 9683878	TRS/TRN ID *001
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Offense Detail

Date of Offense	Agency ID	Internal Agency Person Number 585453	Arrest Offense (Numeric) 52030000
Action Related to Offense none found	Level and Degree of Offense none found	Date of Disposition Immediate to Arrest	Arrest Disposition none found
Prosecutor ORI Referred To none found	Arrest Offense Literal CARRYING A PROHIBITED WEAPON	Arrest Disposition Literal	Agency Case Number
Domestic Violence Involved			

Arrested Charge

Offense Code 52030000	Offense Description CARRYING PROHIBITED-(SPECIFY WEAPON)	Level and Degree of Offense none found	Statute Citation of Disposed Offense
Statute Code			

Prosecution

none found

Court Status

Court Sequence a	Agency none found	Court Offense 52120000	Court Disposition CONVICTED
Court Offense Literal POSS SHORT BARRELL FIREARM	Action Related to Offense none found	Level and Degree of Offense none found	Cause Number
Date of Sentencing	Final Pleading none found	Court Provision Literal 10 YRS SHOCK PROB	Court Provision (Numeric)

<i>Date of Judicial Disposition</i>	<i>Amount of Time Suspended by Court</i>	<i>Amount of Fine Suspended by Court</i>	<i>Court Confinement</i> 90D
<i>Time on Probation</i>	<i>Court Fine</i>	<i>Court Cost Imposed</i>	<i>Date of Appeal</i>
<i>Disposition of Offender During Appeal</i>	<i>Final Court Decision</i>	<i>Agency ID</i>	<i>Agency Literal</i> none found
<i>Sentence Concurrent/Consecutive</i>	<i>Domestic Violence Involved</i>		

Court Charge Reason

<i>Offense Code</i> 52120000	<i>Offense Description</i> POSSESSION OF-(SPECIFY)	<i>Level and Degree of Offense</i> none found	<i>Statute Citation of Disposed Offense</i>
<i>Statute Code</i>			

Custody

<i>Date of Offense</i> Apr 8 1990	<i>Agency Identifier</i> DEPT OF CRIMINAL JUSTICE HUNTSVILLE	<i>County of Commitment</i> none found	<i>Custody Status Starting Date</i> Jul 16 1990
<i>Status Supervision</i> RECEIVED	<i>Status Supervision Literal</i> FROM HARRIS COUNTY	<i>Agency Receiving Custody Upon Release</i> none found	<i>Paroled Until Date</i>
<i>Sentence Expiration Date</i> Dec 5 1998	<i>Custody Entry ID No.</i> 1887070	<i>Tracking Number</i>	

<i>Date of Offense</i> Apr 8 1990	<i>Agency Identifier</i> DEPT OF CRIMINAL JUSTICE HUNTSVILLE	<i>County of Commitment</i> none found	<i>Custody Status Starting Date</i> Oct 11 1990
<i>Status Supervision</i> SHOCK PROBATION	<i>Status Supervision Literal</i> FR SPECIAL ALTERNATIVE INCARCERATION PROGRAM-SAIP	<i>Agency Receiving Custody Upon Release</i> none found	<i>Paroled Until Date</i>
<i>Sentence Expiration Date</i> Dec 5 1998	<i>Custody Entry ID No.</i> 1887071	<i>Tracking Number</i>	

<i>Date of Offense</i> Dec 5 1992	<i>Agency Identifier</i> DEPT OF CRIMINAL JUSTICE HUNTSVILLE	<i>County of Commitment</i> HARRIS	<i>Custody Status Starting Date</i> Dec 2 1994
<i>Status Supervision</i> RECEIVED	<i>Status Supervision Literal</i> TX236065C 685295	<i>Agency Receiving Custody Upon Release</i>	<i>Paroled Until Date</i>

		none found	
<i>Sentence Expiration Date</i> Dec 5 1998	<i>Custody Entry ID No.</i> 1887074	<i>Tracking Number</i>	

<i>Date of Offense</i> Apr 8 1990	<i>Agency Identifier</i> DEPT OF CRIMINAL JUSTICE HUNTSVILLE	<i>County of Commitment</i> none found	<i>Custody Status Starting Date</i> Oct 5 1994
<i>Status Supervision</i> RECEIVED	<i>Status Supervision Literal</i> TX236065C 685295	<i>Agency Receiving Custody Upon Release</i> none found	<i>Paroled Until Date</i>
<i>Sentence Expiration Date</i> Dec 5 1998	<i>Custody Entry ID No.</i> 1887072	<i>Tracking Number</i>	

<i>Date of Offense</i> Apr 8 1990	<i>Agency Identifier</i> DEPT OF CRIMINAL JUSTICE HUNTSVILLE	<i>County of Commitment</i> none found	<i>Custody Status Starting Date</i> Dec 2 1994
<i>Status Supervision</i> RECEIVED	<i>Status Supervision Literal</i> TX236065C 685295	<i>Agency Receiving Custody Upon Release</i> none found	<i>Paroled Until Date</i>
<i>Sentence Expiration Date</i> Dec 5 1998	<i>Custody Entry ID No.</i> 1887073	<i>Tracking Number</i>	

The detail view of this record will be recorded as one 'Detail look-up'.

SCHAFFER, LAMTRIGHT, ODOM, & SPARKS †

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FINANCIAL OFFICE
BANK OF AMERICA

CYNTHIA JENNEY

November 28, 1995

Shirley Southerland
Inmate Number 555515
9055 Spur 591 (K-25)
Amarillo, Texas 79107

Dear Ms. Southerland:

I discussed your case with the prosecutor who supervises all post-conviction matters. He could not understand why Judy Frazier would tell the police that she saw the murder if that was not true. He was also concerned that the lenient sentences imposed on Wanda White, shortly after she testified, might have been the result of a "deal." He has agreed to obtain from the warehouse your file, and all files concerning Wanda White, for us to review together. He will not require that I file an open records request to obtain these files. However, he will be on vacation during most of December, and will not be able to obtain the files until January.

This could be a major break in the case. I do not believe that this prosecutor will participate in a cover-up; if there is evidence favorable to you, I will obtain it.

Do not disclose to anyone that this prosecutor is allowing me to see the files. If you do, and the word gets back to Bill Delmore, he could be pressured into not disclosing the files to me.

I will advise you after I have met with Ken Goode.

Please advise me immediately (a) how and when you learned of Judy Frazier's statement to the police and (b) the source of your information that Wanda White testified before the grand jury that indicted you.

Faithfully yours,



Randy Schaffer

William "Bill" Delmore
of the Tx Open Records Act litigation

SCHAFFER, LAMBRIGHT, ODOM, & SPARKS †

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CYNTHIA HENLEY

November 30, 1995

Shirley Southerland
Inmate Number 555516
9055 Spur 591 (K-25)
Amarillo, Texas 79107

Dear Ms. Southerland:

I met with Ken Goode this morning concerning your case. He gave me a copy of his file, which consists of about 100 pages of notes. He and I will meet after I review the notes, which are handwritten, and are extremely difficult to read. I probably will not fully understand his notes until I have met with him in mid-December.

I will keep you advised.

Faithfully yours,



Randy Schaffer

RS:hly

6-89-Adm
73-Envelope

8-9-95 Date of Arrest
Wanda Jean Skelton White
204 W James
3 times for up

4-1-96 plead out-

need to know what deal she made on these
felony - in 1989

Case No. 5-30638

8-19-95 Arrest = prior name No.

Boyd
6000
Martin

SPN 00855766-996

Hobby No. # 03077876 Wanda J. White

Wanda is in ↑ 589865 SPN

release date 2007

555516 SIS,

Huntsville - computer - TDCS - #
409-2956371

selling info on inmate
TDC No.

SID - State ID No.

Judy Frazier

SID IX 04717555 = invalid

Terrance Worden -

Wanda J. White 1818 Demarce Lane Houston 7
E.D. 2-16-51
Born 3-16-65 = 24yrs old in 1990

Bruce Johnson

WANDA Faye White W.F. 00388454
D.B. 2-3-56

~~Wanda Joyce White W.F. 00439612
D.B. 1-17-62~~

~~Wanda Michelle White W.F. 2-14-58 00577050~~

Wanda Denise White W.F. 8-15-63 - 00638448

Wanda Jean White W.F. 8-29-65 00853766

01 Newert 003 07012740 179

02 Additional spine case 00505195

03 SSN 454-13-9896 234 Arbor, Baytown

1 State ID TX 0307787L

HGT. 5'7" 180#
Eyes Blue - Hair Bld Light skin
Brid med.

PTR info.

single
2-18-89 Kelling
3-30-89 Charge Filed
3-31-89 Shisly

SS. Arrested

→ Manned in '95 AKA Wanda Jean Short 204 W James Baytown

in place 30 yrs. 204 W James Baytown - Txf. (713) 427-8596
2 Hills - 6-11 in '95 77520 (281)

She says she had
lying

(6-6-89)

don't know Stante

girl on jail

look sth →

news at bar
death
fight bar

Scissors

bar fight = al

bar closes - I am

throw out bar = Doub

shut - cataracts - Rolle (at bar)

deputy - Det. Johnson

supplied all info.

told her to take polygraph

insisted new girl killed

hell leave me alone

She has nightmares from pictures
(Det. wouldn't let her call atty.)

Ron Moak - evaluated

MEMO

TO: RS
FROM: CRH
RE: SOUTHERLAND/Lee Scham
DATE: December 6, 1995

I spoke with Lee Scham. (I recognized his voice and know who he is.) He says he did not know that White testified in any case and that he never discussed it with any prosecutors. He says that she was on bond (with probation offers), picked up a new case (robbery) and that the D.A.'s office then offered 2 years. He felt that was a good offer and encouraged her to take it. He knows of no "deals" with the D.A.'s office in exchange for the offer.

MEMO

TO: RS
FROM: CRH
RE: SOUTHERLAND/jail records
DATE: December 8, 1995

The jail does maintain records showing where inmates have been housed. They will not release the information without subpoena. Subpoena "Female Classification Records" and include the inmates' full name, SPN and the time period of interest.

MEMO December 27, 1995
TO File
FROM Randy Schaffer
RE Wanda White

Southerland told White that she committed the murder (although White now believes that Southerland did not really do so, and was just "talking big" in an effort to sound "tough"). They later argued about a drawing that Southerland had given to White, who let another inmate copy it. White got scared that Southerland would harm her, contacted a jailer, and asked to be moved to another tank.

Thereafter, a sergeant and a detective interviewed White, who repeated what Southerland had told her. They said that her testimony alone could "put Southerland away," and offered to "help her if she helped them." When she asked how, they responded, "You know how." She understood them to mean that they could help with her three pending charges.

After White gave the information to the officers, she was offered a plea bargain of the minimum 2 year sentence on all three cases. She accepted the plea bargain and ultimately paroled directly from the county jail.

The State subpoenaed White to testify at Southerland's trial. By then, she had a second offender theft charge pending. She asked the prosecutor for help; he responded that he did not make deals. She said that she would not testify; he responded that he would call her to the stand and she would "go to jail for perjury" if she

did not testify. She said that she would testify that she "forgot" what Southerland told her; he got mad and responded that she could "get on that stand and act like she forgot if she wanted to," walked out and slammed the door. She was sufficiently scared that she agreed to testify, after which he coached her extensively on how to do so.

White has bipolar disorder (mood swings) and was taking lithium and mellaril. The latter affects her memory.

White was making contemporaneous notes of these events; they are in the possession of her father, Vernon Short.

hlv

January 3, 1996

Wanda White
SPN Number 00855766
Harris County Jail (4C1)
1301 Franklin
Houston, Texas 77002

Dear Ms. White:

Thank you for meeting with me last week.

Please call me collect as soon as you have received a copy of your notes. I would like to review those notes with you as soon as possible.

Thank you for your continued cooperation.

Sincerely,

Randy Schaffer

RS:bjm

January 5, 1996

Calvin Hartmann
Assistant District Attorney
201 Fannin
Houston, Texas 77002

Re: State of Texas vs. Shirley Southerland (aka Stokely)
180th District Court
Cause Number 526673

Dear Calvin:

I was recently hired to review Shirley Southerland's conviction for a 1989 murder. After reviewing the record and conducting a preliminary investigation, I have doubts whether the right person was convicted.

There was no physical evidence linking Ms. Southerland to the murder. She was convicted on the testimony of a "jailhouse informant" and four drug dealers who testified that she "confessed" to them. Although a first offender, she received life imprisonment and a \$10,000.00 fine.

It is my understanding that a lady named Judy Frazier was arrested for public intoxication, wearing bloody clothes, on the date of the offense near the location where the complainant's body was found. Detectives questioned her about the murder, and ultimately, she gave a statement admitting that she saw a mexican man kill the deceased. Neither the State nor the defense brought this evidence to the attention of the jury. Two mexican men (and their wife and girlfriend) later implicated Southerland.

The jailhouse informant, Wanda White, had three felony charges pending at the time she told the police of Southerland's "jailhouse confession." Several days later, she pled guilty to all three charges for minimum sentences of two years, and was released from jail. Six months later, while Southerland's case was still pending, White was charged with felony theft, enhanced to second offender status. Three months after she testified against Southerland, she pled guilty for misdemeanor jail time.

Calvin Hartmann
Page 2
January 5, 1996

I have reason to believe that police officers offered White leniency on her pending cases in exchange for her cooperation and testimony against Southerland. I have no reason to believe that Southerland's prosecutor was aware of this; nonetheless, for purposes of disclosure under **Brady**, knowledge of the police is imputed to the State.

I request access under the Texas Open Records Act to the State's files in Southerland's murder case (number 526673) and Ms. White's cases (numbers 522646, 530638, 532073 and 552289). I ask that you review these files, with a view toward providing access to me.

Thank you for your consideration of this matter. I look forward to hearing from you.

Sincerely,

Randy Schaffer

RS:hlv

goode and goode

6420 richmond avenue suite 490 houston, texas 77057 (713) 266-0335

lawyers

January 29, 1996

Mr. Randy Schaffer
1301 McKinney
Houston, Texas 77002

RE: Shirley Stokley

Dear Mr. Schaffer:

Enclosed please find the only copies I could find of my notes that are pertinent to Wanda White.

As I mentioned to you, I have no memory of being told that the State had any agreements with this witness prior to her testimony against my client. As you can see from the notes attached, my client certainly believed that this witness was a general "snitch", but there was nothing in the offense report regarding any State agreements with this witness.

With the exception of the list of cause numbers, the records enclosed are notes from interviews with Shirley.

Sincerely yours,


KEN GOODE

KG:pg
Encls.

MEMO January 30, 1996
TO Shirley Southerland file
RE Wanda White

The cover of the State's file on the charge of theft from the person reflects that a recommendation of seven years, with the notation, "ALL FILES CLOSED", initialed by John Brook on May 31, 1989. A supplemental offense report by F.J. Pratt (badge number 514) reflects that he received White's information about Southerland on June 5, 1989. The grand jury indicted Southerland on June 6, 1989. White pled guilty for two years on all three charges on June 9, 1989.

The cover of the State's file on the charge of theft of services reflects a recommendation of 10 years. Three months after White testified against Southerland, she pled guilty and was sentenced to 10 months in county jail.

SCHAFFER, LAMBRIGHT, ODOM, & SPARKS †

ATTORNEYS AT LAW

1301 MCKINNEY, SUITE 3100

HOUSTON, TEXAS 77010

RANDY SCHAFFER, P.C.
DON LAMBRIGHT
WENDELL A. ODOM, JR.
KENNETH W. SPARKS
RANDY McDONALD, P.C.
ROBERT J. FICKMAN

713/951-9555
FAX: 713/951-9854

CYNTHIA HENLEY

January 31, 1996

Shirley Southerland
Inmate Number 555516
9055 Spur 591 (K-25)
Amarillo, Texas 79107

Dear Ms. Southerland:

In case you think I have forgotten about you, this letter will summarize the events of the past couple of months.

Ken Goode has been avoiding me. I have had little success comprehending his handwritten file notes, and have asked my associate, Cynthia Henley, to attempt to do so. I believe that Ken is being difficult because he thinks that I am going to allege that he was ineffective. I am still working on him.

Wanda White gave me a handwritten statement admitting that police officers had offered her consideration in exchange for her testimony against you. She denied that your trial prosecutor knew about this offer. However, knowledge of the police is imputed to the State. Your prosecutor had a duty to determine whether any police officer had offered White consideration for her testimony, and should have disclosed same to defense counsel. I am attempting to get White to give me a sworn affidavit.

I reviewed Judy Frazier's written statement to the police. I am enclosing a copy of my summary of her statement. It demonstrates that additional investigation is required.

There are three possible issues for habeas corpus review:

- a. whether you are actually innocent of the murder;
- b. whether trial counsel was ineffective for (among other things) failing to offer Judy Frazier's testimony that she saw a Mexican man kill the deceased, and failing to request a laboratory analysis and comparison of the blood found on Frazier's clothes and the deceased's blood; and

Ms. Southerland
Page 2
January 31, 1996

c. whether the State suppressed evidence that police officers had offered Wanda White consideration on her pending cases in exchange for her testimony against you.

I will charge \$15,000.00 plus expenses to represent you on an application for writ of habeas corpus through the Texas Court of Criminal Appeals. If you cannot afford that fee, I will charge \$10,000.00 plus expenses for my associate to represent you. The \$5,000.00 retainer fee will be applied toward the total fee.

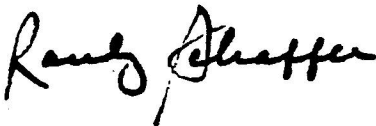
We need to hire a first rate private investigator to interview certain people who, I am quite certain, will not talk to a lawyer. It would benefit you (to put it mildly) to get money for this purpose.

I will work with you in terms of the payment of the fee and expenses. I do not know whether you are guilty, but I do know that you did not have a fair trial. As far as we know, the blood on Frazier's clothes was never analyzed and compared with the deceased's blood. The jury did not hear about White's favorable arrangement nor that Judy Frazier saw a mexican man kill the deceased. In my opinion, there was a reasonable doubt as to your guilt.

I am still concerned about whether the Court of Criminal Appeals will consider your case on the merits in view of the fact that you previously filed a pro se habeas corpus application. The court has not yet resolved whether the amendment to article 11.07 of the Code of Criminal Procedure, which basically limits an inmate to one post-conviction habeas corpus application (with certain exceptions), applies to inmates who filed their first application before its effective date. Nonetheless, I recommend that you go forward and challenge your conviction.

The ball is in your court. I look forward to hearing from you.

Faithfully yours,



Randy Schaffer

RS:hlv

AFFIDAVIT OF WANDA WHITE

My name is Wanda White. This affidavit concerns the circumstances under which I testified at Shirley Southerland's murder trial in March of 1990.

In May of 1989, I was confined in the Harris County Jail on charges of robbery (number 530638), felony theft from the person (numbers 522646 and 532073), and misdemeanor theft (number 8915948). The State had offered me a plea bargain of seven years on the felony charges.

While Shirley Southerland and I were confined in the same tank, she told me details of her pending murder charge. We later argued about a drawing that Southerland had given me. I asked a deputy if I could be moved to another tank because I was scared of Southerland. The deputy said that he would notify someone who could help me.

Officer Umis then questioned me about this situation. I said that I wanted to be moved to another tank because Southerland had told me about her case, and after we had argued about something else, I feared that she would harm me. Officer Umis asked what Southerland told me about the crime. I related the details. Officer Umis asked if I would talk to a homicide detective about Southerland. I responded that I would do so only if I was moved to another tank.

I was then moved into another tank. Several days later, two homicide detectives interviewed me; I repeated what Southerland

I never told White details of anything because I did not know details of the murder - I told her I was being held pending a murder investigation.

had told me. They asked me to give a written statement. I asked how they could help me with regard to my pending cases. They said that they could not make any promises. I said, "Neither can I." They left without obtaining a statement.

A day or so later, Lt. White interviewed me. Lt. White said that the State could use my information in the Southerland murder case and asked what she had told me. I repeated the details. Lt. White said that if I helped the State, I would not regret it; that the State would help me "undercover" on my pending charges, although I would not know the particulars until I went to court on those charges. I asked what I had to do. Lt. White responded that I had to make a written statement and testify against Southerland. I asked how I could be sure that the State would help me. Lt. White responded, "I promise we won't let you down if you don't let us down." I then gave a written statement.

On June 9, 1989, I went to court on my felony charges. The State offered the minimum of two years on each charge, which I accepted. On August 14, 1989, I pled guilty to the misdemeanor theft charge for 120 days in jail. I was released on parole directly from the Harris County Jail.

On January 10, 1990, I was charged with theft as a second offender (number 552289) for an offense committed on December 30, 1989. I was released on bond on January 19, 1990. The State initially offered me a plea bargain of 10 years on this charge.

In March of 1990, I was subpoenaed to testify at Southerland's trial. I believed that the State would dismiss or reduce the

pending theft charge in exchange for my testimony. I asked Steve Baldassano, the assistant district attorney prosecuting Southerland, how he would help me on my pending charge. He said that he could not help me. I related the promises made to me in jail; although those promises related to the charges pending at that time, I expected that they would carry over to the new charge. Mr. Baldassano said that it sounded to him like I had been misled. I said that I would not testify. He got upset and said that if I refused to testify, I could go to jail for "volunteering false evidence." I then said that I had forgotten what Southerland told me. He had me review my written statement, showed me photographs of the deceased, and asked how I would feel if Southerland had murdered my sister or child. He said that if I testified contrary to my written statement, I would go to jail for perjury. I was pregnant, and became emotional and scared.

While I was waiting outside the courtroom, the mother of the deceased asked me to testify. In addition, a Mexican man said that I would be sorry if I did not testify. I gave in and testified as reflected in the record.

When I got home, Mr. Baldassano called and said that I had done a very good job and would not regret it. When I asked what he meant, he said, "Have a good day." When I asked again what he meant, he said, "A job well done - congratulations."

On June 20, 1990, I returned to court on the theft charge, pled guilty, and was sentenced to 10 months in the Harris County Jail. I knew that my sentence was less than the State's previous

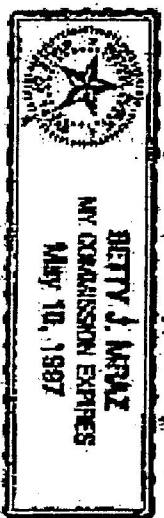
recommendation of 10 years as a result of my testimony against
Boutherland.

This affidavit is true and correct.

Wanda White
Wanda White

SUBSCRIBED AND SWORN TO before me on this 12th day of
April, 1996.

Betty J. Arviz
NOTARY PUBLIC in and for the
State of Texas



SUBSTANCE ABUSE PROGRAM

~~Handwritten scribbles~~

I was escorted by Officer Umis out of my cell to the visitation area. "inmate visitation" she pulled up 2 white chairs from out side in the hall-way - she ~~the~~ Ms. Umis ask me what I was going on in my cell concerning Shirley Southerland and I told her nothing other than she draw's pictures and draws on handkerchiefs then officer Umis said well Ms. White why was you pulled out by deputy Reeves the other day concerning Shirley Southerland I then stated to her that Shirley told me about her case and what she had done and then Shirley and I got into a argument and I got scared and I told the officers that was working my quad to please pull me out because I'm in fear of my life - that's when Deputy Reeves that I thought was a Sgt. at the time but it was brought to my attention that he was only

SUBSTANCE ABUSE PROGRAM

a deputy, ~~to~~ He told me that
He would Notify someone
that could help me, But that
He had to put me back in
the cell with her and if she
came after me or harmed
me in any kind of way to
start screaming for the Deputy.
Then He put me up and I
haven't talked with anyone else
about it - until Now Mrs. Urris
brought me here and ask
me about it. Then Mrs. Urris
ask me to specify what
Shirley Sonthers had told
me about his crime. So
I told her everything I
had heard Shirley told me.
Then Mrs. Urris ~~told~~ me would
I be willing to talk to ~~the~~
a homicide detective about
this case. I told her I need
to be moved away from
her "Shirley" in order to get
~~the~~ involved any further.
That's when I was moved
into 4A3 then a few days
later I was pulled out
of the tank and 2 Men
in suits identified themselves
as Homicide detectives and

SUBSTANCE ABUSE PROGRAM

They ask me could they please talk to me concerning Shirley Case I said Yes Sir- They ask me what I knew - I told them the details that Shirley told me then they ask me would I be willing to give them a written statement and take a polygraph I told them I want to know if it's going to help me out on my case they told me they can't make any promises so I told them I can't either then. So they left with nothing left said. Then the very next day a St. White pulled me out of my cell took me to the attorney booth and said Mr. White I hear that you have alot of information that the State could use in this Murder Case against Shirley Sutherland I said all I know is what she told me and St. White said well could you please tell me what it is that you know? And I told him every thing that I know and he said well what if the State could help you

SUBSTANCE ABUSE PROGRAM

out under cover. Maybe you
wouldn't even know they helped
you until you go to Court.
But I can guarantee you this
if you help us with this case
you won't repeat it - I told
him what does he want me
to do - he said we will subpoena
you to Court then you will
have to get on the stand
and tell them everything you
know concerning Shirley's case
and if you would we need
you to come down stairs and
take a polygraph and sign a
statement - and I said
well what if I do all this
and the State don't help me
and he said "I promise
we won't let you down if
you don't let us down" So
I went down stairs and took
2 polygraph tests I passed
both of them I gave
them a statement and went
back to my cell. I then did
the rest of my time in jail
and went home then I was
subpoena to Court I also still
had a case pending which I
had believed the D.A. was

SUBSTANCE ABUSE PROGRAM

going to dismiss or reduce
for my testimony - So I
got to the court and the
D.E.A. called me in to go over
what I remembered I told
him first I want to know
what for how they was
going to help me with my
case?!! The D.E.A. told me that
he could not do that I then
told him all the promises
that I was told while in
jail - He told me well I'm
sorry I can't do that - it
sounds to me that you was
misled I said well I'm
not testifying for the state
then. He jumped up and said
you mean to tell me that
you knowing that your testimony
alone could have her put away
for the murder of a young
girl and your saying that
you won't testify, and I
said yes that's exactly
what I'm saying then the
D.E.A. told me that if I
don't ~~testify~~ testify I could
go back to jail for volunteering
false evidence - I said the
State begged me for my

SUBSTANCE ABUSE PROGRAM

Statement and they know its not false because I passed 2~~to~~ polygraphs and the D.E.A. said Absolutely that's why we need you on that stand- who if that was your Sister or your Child she Murdered? Then I was still Mad because of all the lies they promised and I said well I don't forget what she told me then the D.E.A. said well let's go in the Judges Chambers and read your statements - So we did and he told me to read it over & over so I would remember and then he showed me pictures of the little girl that was murdered and it really hurt me to see that and I thought how- could ~~anyone~~ anyone do that to a child - and I was pregnant at the time I was very emotional and so I decided to get on the stand and tell all that Shirley told me in that cell that day, I was also a scared of going to jail so I testified

SUBSTANCE ABUSE PROGRAM

Also during the trial the Mother of the Murdered Girl put a lot of pressure on me because of the D.E.A. had pointed me out to her outside the courtroom and she walked up to me asking me to testify so Shirley would be punished for killing her step daughter. There was some Mexicans outside the Court room telling me that I would be sorry if I didn't testify - Cause everyone outside the courtroom knew that I didn't want to testify cause I made it clear I didn't. I was upset with the D.E.A. After I testified and went home the step Mother and D.E.A. called my parents house and told me I did a very good job - and I would not repeat it and I hurry up and ask the D.E.A. what he did he mean and he would not say anything he just said have a good day MS White and I repeated myself what do you mean Sir that I won't repeat it and he said "A job well done MS White" "Congratulations" and

SUBSTANCE ABUSE PROGRAM

he hung up the telephone and then when I went to court I got a very light sentence and I knew it was because of my testimony.

Wanda White

SUMMARY OF THE STATEMENT OF JUDY FRAZIER

Two weeks ago, I met a female at a bar off of Hempstead Highway (the same female as in the photos that detective Johnson showed me). We became friends and talked a couple of times in bars.

On February 18, 1989, Shelley and I went to Don's Lounge between 12:00 p.m. and 1:00 p.m. Shelley left at 3:00 p.m. I stayed and drank. I had a fight outside the bar at 6:00 p.m. I returned to the bar and finished my drink.

I left to walk to a Burger King on Hempstead Highway. I was eight buildings from the bar when a car pulled up to me. The driver was a mexican man, 5'8", overweight, with a medium complexion (I do not remember if he was clean shaven). The passenger was a woman. She asked if I wanted to "go ride and party." She slid over and I got in the front seat of the car.

We drove around, drank beer, parked and smoked a joint at a steakhouse near Don's. We talked about sex. They kissed and felt each other. I asked them to take me home. She asked if I had ever been with a woman. I said that I did not remember. They said, "Don't knock it 'til you try it." She played with my [redacted] while he drove around.

We drove to a house in a wooded area. We went inside and smoked a joint. They smoked crack and talked about sex. She played with my [redacted] while he felt us both. I decided that if I did not go along, I would never get home.

We entered the bedroom. The woman, who had undressed, kissed me and put her hands between my legs. The man played with her. She started acting crazy, and grabbed and jerked me around. She got in the man's face and they argued. I think he was mad about her not giving him any ~~sex~~^{PUSSY}. He said, "~~sex~~, you owe me," and slapped and hit her. He got a gun from the area of the nightstand. I was about to leave when I heard a shot (I am not sure if he shot once or twice). She fell to the floor. I screamed. He grabbed me and hit me all over. I shut up.

The man left the bedroom for two or three minutes. He returned with a red plastic can that you put beer kegs in. He made me help pick up the woman and put her in the can. We put trash on top of her naked body.

We carried the can to the car and drove around. I do not remember if I was with him when he got rid of the body, or how I got away from him. The next thing I remember is a cop picking me up.

103

SCHAFFER, LAMBRIGHT, ODOM, & SPARKS †

ATTORNEYS AT LAW
1301 MCKINNEY, SUITE 3100
HOUSTON, TEXAS 77010

713/951-9555
FAX: 713/951-9854

RANDY SCHAFFER, PC
DON LAMBRIGHT
WENDELL A. ODOM, II
KENNETH W. SPARKS
RANDY McDONALD, PC
ROBERT J. FIDMAN

CYNTHIA MENLEY

February 14, 1996

Duplicate P-27

Shirley Southerland
Inmate Number 555516
9055 Spur 591 (K-25)
Amarillo, Texas 79107

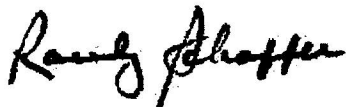
Dear Ms. Southerland:

The prosecutor disclosed to me this morning that the lab found type O blood on Judy Frazier's windbreaker.

The autopsy report reflects that the deceased had type O blood.

We may be in business.

Faithfully yours,



Randy Schaffer

RS:hlv

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MEMO

TO: RS/Southerland file
FROM: CRH
RE: Wanda White
DATE: February 28, 1996

Wanda White reviewed the affidavit you prepared. Several times she commented that she had not written that. I told her that you had written the affidavit based on your interview with her and the notes she had given you but if she had any changes to let me know. She finished reading it and said it was okay and there were no changes. She said that she would not sign it until after Monday. She said her lawyer was very mad at her for giving you that other "statement" and he told her not to sign another thing. He told her that she could be prosecuted for perjury and wanted to know why we had not explained that to her. (I told her I did not think she would be prosecuted for perjury but I thought that the affidavit did not conflict really with her testimony. She agreed, slightly.) She continued to refuse to sign the affidavit and swore that she would sign it after she got out. (She says the complainant is in Ohio and told her family that he will not be there for trial Monday. She thinks her case will be dismissed Monday and she is getting out.)

She provided the following:

204 West James
Baytown, Texas 77520
427-8596 - h
428-7080 - sister - Charlotte Yates

April 1, 1996

Wanda White
SPN 00855766
Harris County Jail
1301 Franklin (12B6)
Houston, Texas 77002

Dear Ms. White:

Enclosed please find a copy of your affidavit and an original signature page. Please sign the signature page, have it notarized, and return it to me. You may keep the copy for your records.

As soon as you are able to arrange it, I would like to obtain your original handwritten notes regarding the sequence of events.

Should you be moved out of Harris County, please send me your address.

I appreciate your cooperation. Please contact me should you have any questions.

Sincerely,

Randy Schaffer

RS:hlv

SCHAFFER & HENLEY

LAWYERS
1301 MCKINNEY, SUITE 3100
HOUSTON, TEXAS 77010

RANDY SCHAFFER, P.C.
CYNTHIA RUSSELL HENLEY

(713) 951-9555
FAX: (713) 951-9854

May 15, 1996

Shirley Southerland
Inmate Number 555516
9055 Spur 591 (K-25)
Amarillo, Texas 79107

Dear Ms. Southerland:

First, the good news. The sheriff's office still has Judy Frazier's blood-stained jacket. The blood on the jacket is the same blood type as the deceased. Hopefully, either the medical examiner's office or the sheriff's department has retained a blood or hair sample of the deceased. We need to obtain a DNA comparison to determine with certainty whether the deceased's blood is on Frazier's jacket.

Now, the bad news. All of this will cost money, and probably a lot of it. If no physical specimens of the deceased have been preserved, we will have to seek an exhumation of the body. I cannot imagine how much this will cost, but I am confident that it will not be inexpensive.


I hope that you can find someone who cares enough about your freedom to raise money for legal fees and expenses. Otherwise, you will remain where you are for quite a while.

Faithfully yours,



Randy Schaffer

RS:hlv



Shirley Southerland 555516
1500 State School Rd
Gatesville, TX 76598

Mr Marvin Zindler
Eyewitness News
P.O. Box 13
Houston, Tx 77001

August 3 2006

Dear Mr Zindler

I wrote your office in June 2006 requesting information concerning the letter sent to you by prosecutor Steve Baldassano on July 17 1990 (copy enclosed).

My inquiry is a simple matter. One that surely won't take much time or thought to reply upon. I am asking whether Mr Baldassano's letter to you is in response to a letter from you? A phone call? An email? A meeting? This letter concerns my case and I would like to know why Mr Baldassano wrote you?

I am also curious as to why you or your office did not respond to my letter to you? Or for someone in your office to, at least, write to inform me you were not interested in my complaint?

I wrote your office twice from Harris County Jail and never received any response. I am asking you and whoever answers your mail to please answer this letter, if for no other reason than to tell me to suck an egg!

I have to know how Mr Baldassano knew what was in my letter of June 9, 1990 addressed to you. Will you or someone in your office please answer me?

Sincerely,



Shirley Southerland

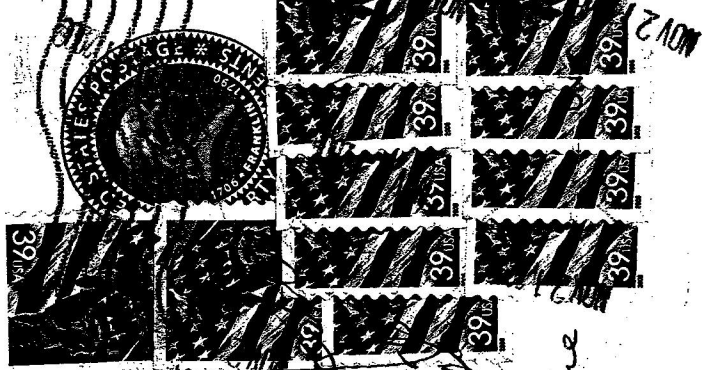
I never received a response!

Money sent via...
Hilltop Unit A-30
1500 State School Rd
Daterville, TX 75001

779 SENDER
RETURN TO SENDER
UNABLE TO FORWARD
7500-05927-21-33

Name
1st Notice
2nd Notice
Return

Legal
Mund



7000 1530 0003 5160 6724

Kenneth Goode, attorney
14502 Juniper Forest Lane
Houston, TX 77062

7706242336

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF RETURN ADDRESS. FOLD AT DOTTED LINE

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

KENNETH GOODE, ATTY
14502 JUNIPER LANE
HOUSTON, TX 77062

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) _____ B. Date of Delivery 11-24-60

C. Signature X Agent Addressee

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below: _____

3. Service Type
 Certified Mail
 Registered
 Insured Mail
 Express Mail
 Return Receipt for Merchandise
 C.O.D.

4. Restricted Delivery? (Extra Fee) Yes No

2. Article Number (Copy from service label)

7000 1530 0003 5160 6724

PS Form-3811, July 1999

Domestic Return Receipt

102595-00-M-0952

Shirley Southerland 555516
Hilltop Unit D1-A-30
1500 State School Rd
Gatesville, Tx 76598

Kenneth Goode, attorney
14502 Juniper Forest Lane
Houston, Tx 77062

November 20, 2006

Dear Mr Goode,

This will be my second attempt to acquire files from you. I first wrote you on April 17, 2006 requesting copies of all files you have pertaining to my 1990 murder trial under Cause No. 526673. You were my court appointed counsel, Mr Goode. Surely, you recall the case?

Mr Goode, I am requesting copies of all the files, motions, writs, briefs that were compiled by you for my defense. I, also, request copies of the following:

1. The handwritten statement from Yolanda Lomax, who stated that she witnessed Wanda Jean White going through my legal papers while I was not in the cell block (9-C-2). I gave you this written statement during one of your visits.

2. I gave you a "Crime Stoppers" sheet that had information concerning Paul Reyes. This man had outstanding warrants at that time and was listed, with his photo in "Crime Stoppers". You had asked me if I knew of anyone who may have had reason to harm Shawnte Collins and I gave you the name Paul Reyes and told you Reyes knew Shawnte. I want that "Crime Stopper's" sheet with Paul Reyes picture in it.

3. I gave you papers left in 9-C-2 when Wanda Jean White was suddenly moved from the cell. You had told me White was a police informant and she meant me harm. I want the papers she left behind that had her "snitch notes" taken from information she found in the legal files she went through.

4. I want copies of all witness statements given to the Sheriff's Department and the statements given to the grand jury by: Judy Ann Frazier, Wanda Jean White, Jesus Cavazos, Pedro Cavazos, Yvonne Munoz, Angelica Cavazos, Pedro Isaac Murillo, Ronald Joe Sutherland, Kitty Smith and Arnulfo Ramirez. I want any and all statements by each of those people.

5. I want copies of the "handwritten note" discovered with Miss Collins' body. I want copies of the "lab tests" done by Officer Talmadge "before he threw away the evidence".

6. I want copies of the four fingerprints discovered with Miss Collins' body. And copies of fingerprints from State witnesses: Pedro Carvazos, Jesus Cavazos, Angelica Cavazos, Yvonne Munoz,

Paul Reyes, and Pedro Isaac Murillo.

Mr Goode, I will appreciate a response to this letter concerning my request for these files. I have, over the past 17 years of prison learned patience. I have also learned about the law. Something I knew nothing about in 1989-1990. I would appreciate your cooperation in this matter. Just gather up all the files and documents I've requested and "bundle them up" with your 100 pages of scribbled notes (the same notes you gave to attorney Randy Schaffer, then put them in the mail to me. If there is a charge for these copies, then tell me and I will have the money sent to you. If you prefer, I can have these files picked up from your office by a hired private investigator. How you get these files to me is your choice...but understand, Mr Goode, I want these files. By law I am entitled to these files.

I am anxious to hear from you and to receive these files by no later than December 14, 2006. Thank you.

Sincerely,

Shirley Southerland

Shirley Southerland

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

SO. Southerland
5555/6
OFFICIAL USE

Postage	\$	—
Certified Fee		2.40
Return Receipt Fee (Endorsement Required)		1.85
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	4.25



Sent To
 Kenneth Goode, Attorney
 Street, Apt. No.; or PO Box No.
 14502 Juniper Forest Lane
 City, State, ZIP+4
 Houston TX 77062

4229 0915 E000 DE5T 0002 7000

THE SCHAFFER FIRM
LAWYERS

1301 MCKINNEY, SUITE 3100
HOUSTON, TEXAS 77010
(713) 951-9555

Randy Schaffer, P.C.
Josh Schaffer

FAX: (713) 951-9854
E-Mail: noguilt@swbell.net
www.schafferfirm.com

February 2, 2007

Shirley Southerland
Inmate Number 555516
Hilltop Unit
1500 State School Road
Gatesville, Texas 76598

Dear Ms. Southerland:

Thank you for your letter of January 29, 2007.

I sent you my entire file. If Ken Goode's notes with my "translation" are not there, I do not have them. I think that I threw them away (they were illegible) when you did not hire me. I suggest that you contact Ken for a copy of his file.

Good luck.

Sincerely,


Randy Schaffer

RS/am

01-01-03



Wrongly convicted gather

Men tell Senate: DNA tests freed us

BY JEFF CARLTON
The Associated Press

AUSTIN — One by one, quite wrongly convicted men stood up on the floor of the Texas Senate on Thursday to explain how innocent men ended up in prison and how to prevent it from happening again.

"I'm here to tell you I lost everything. I am still hurting. I am still broken," said James Giles, who spent 10 years in prison for a rape he did not commit. "We can do better in the justice system. The system failed all of us."

A week after a man who spent 27 years in prison became the 18th Dallas County man since 2001 to have his conviction tossed

aside after DNA testing, state officials and men who lost years of their lives behind bars met in the Capitol to discuss what they said was Texas' "disturbing number of wrongful convictions."

The event was billed as the nation's first "Summit on Wrongful Convictions." It brought together lawyers, police chiefs, judges and lawmakers, who sought to identify systemic problems that could be addressed through changes in law.

Since 2001, DNA testing has cleared 33 Texans who spent a combined 427 years in prison, according to The Justice Project, a Washington, D.C.-based group. Eyewitness misidentification was a factor

in 27 of those cases, easily the most common link.

State Sen. Rodney Hills, D-Houston, said he will sponsor a bill during next year's legislative session that would mandate police departments use specific procedures when presenting live lineups or photo arrays to eyewitnesses. Several of the men who were wrongly convicted talked about how an incorrect identification by an eyewitness was a key factor in their false convictions.

Perhaps the most notorious case of bad eyewitness ID came from James Waller, who was identified by a rape victim by his eyes and the sound of his voice. The rapist in that case was described as being 5-foot-8. Waller, who is 6-foot-4, spent 10 years in prison.

Among the more intriguing reforms mentioned was a crime lab oversight group that would have the same sort of authority health inspectors

wield at restaurants. Judge Barbara Henry of the Texas Court of Criminal Appeals referred to the idea as a pet project of hers, adding that Texas would be the first state in the nation to enact such a plan.

Along the same lines was the idea of regional crime and DNA labs operated independently of police departments, a topic broached by Houston Police Chief Harold Hurt. That idea was also favored by state Court of Criminal Appeals Judge Cheryl Johnson, who acknowledged that crime labs run by police departments can present conflicts.

Reforms in Dallas County also drew praise. Under District Attorney Craig Watkins, Dallas has begun a program in which law students supervised by the Innocence Project of Texas, are reviewing hundreds of requests by inmates for post-conviction DNA testing.

"I can be argued that Texas may have one of the worst criminal justice systems in the country," Watkins said. "We have to start where we have the most problems."

Jeff Blackburn of Amarillo, the chief counsel for the Innocence Project of Texas, also suggested overhauling how the courts deal with writs filed by inmates. Blackburn pointed out that James Woodard, who was released last week, was labeled an abuser of the system after filing six writs and two requests for DNA testing.

But the event's most powerful moments belonged to those who had been exonerated. Billy Smith talked about how he considered suicide once or twice a year during his 19-year prison stay for a rape he didn't commit. Waller spoke of his wife, who was eight months pregnant dying in a car accident on the way to one of his hearings.

*Article in the TRI-STATE news, Fri. May 9, 2008 - Amarillo Blade News - Sect. 11-A
Amarillo.com
I copied from the header at top of news paper*