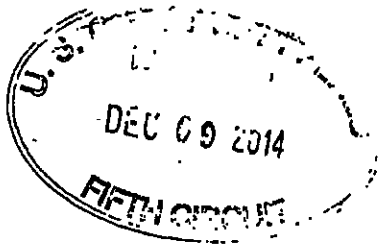
No. _____

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT



In re **CLINTON LEE YOUNG,**

Movant

MOTION FOR AN ORDER AUTHORIZING FILING AND CONSIDERATION OF SECOND PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2254

THIS IS A DEATH PENALTY CASE

I. INTRODUCTION

In 2003, Clinton Young was convicted and sentenced to death for the capital murders of Doyle Douglas and Samuel Petrey. Young has always maintained his innocence of these crimes. The state based its case against him on testimony by a close-knit group of three accomplices and longtime friends who were present at the murders: David Page, Mark Ray, and Darnell McCoy. The three men accused Young—a younger newcomer to their group—of shooting the victims and masterminding the crimes. All three accomplices were present during Douglas's shooting, but Page was the only accomplice present at Petrey's shooting and provided the only trial testimony regarding it. (All three denied at trial that the state had made them any plea offers or deals for their testimony.) After trial, Ray pled guilty to kidnaping and was sentenced to fifteen years. Page pled guilty to aggravated kidnaping and was sentenced to thirty years. McCoy was never charged with any crime.

Eleven years after Young's conviction, in February 2014, Page admitted for the first time that the state had secured his trial testimony by offering him a thirty-year prison sentence instead of a potential life or death sentence for capital murder, and promising him "you help us, and we'll help you." This revelation constitutes just one in a recent litany of similar disclosures from witnesses who testified for the state against Young. Over the past year, three more such witnesses have admitted that the state obtained their trial testimony through clandestine offers of leniency and promises of "help" with their criminal cases or prison terms. The state concealed this evidence from Young's trial counsel, presented false testimony denying it, and ensured that Young's trial attorneys would never know the truth about how it had built its case—at least not before Young was convicted and sentenced to death. Had Young's trial counsel known, they would have revealed the state's case for what it really was: a house of cards built on the self-interested

testimony of frightened and pliable witnesses, lying to save their own lives and secure their own freedom. In fact, Page has since confessed to at least four people that he himself shot Petrey, and framed Young for that crime. Because this newly-obtained evidence invalidates Young's capital murder conviction and death sentence, Young moves under 28 U.S.C. § 2244(b)(3)(C) for an order authorizing the filing and consideration of a second petition for writ of habeas corpus.[1]

The state charged Young with capital murder under two theories, both of which required Young's jury to find that Young killed Petrey or that (if not the actual shooter) Young intended to promote or assist in Petrey's killing.[2] First, the state alleged that Young killed Douglas and Petrey in a single scheme and course of conduct. (1.CR. 4-5.)[3] Second, the state alleged that Young killed Petrey in the course of a kidnaping and robbery. (*Id.*) Because either basis required a finding that Young killed, or intended to assist in, Petrey's killing, Page's testimony that Young shot Petrey was essential to Young's capital murder conviction. In 2008, Ray admitted that he had lied at Young's trial when he denied receiving plea offers or deals, and that the state had in fact made him numerous secret plea offers and a secret five-year plea deal to secure his testimony. (Ex. 1 [Transcript, *Ex Parte*

[1] A copy of Young's proposed Second Petition for a Writ of Habeas Corpus is attached as Exhibit A to this motion.

[2] The state charged Young with the murders both on the theory that he was the actual shooter and under a provision of Texas's Law of Parties, Texas Penal Code § 7.02, that allowed the jury to find Young guilty as a non-shooter if it concluded that he intended to promote or assist the commission of a killing committed by another person. (Tex. Penal Code § 7.02(a)(2); 5.CR.813-17.) Section 7.02(b) of the Law of Parties statute, which does not require proof of such intent to promote or assist, was not charged in Young's case. (5.CR.813-17.)

[3] "CR" "RR" and "SRR" reference the trial Clerk's, Reporter's, and Supplemental Reporter's Records. Volume and page numbers precede and follow these notations.

Clinton Lee Young], at bates no. 63; Ex. 8 [3/11/09 Decl. of Mark Ray]; Ex. 23 [Mark Ray plea agreement].)[4]

In February 2014, Page finally admitted that he, too, had received undisclosed plea offers before Young's trial. Instead of the life or death sentence Page faced for capital murder, the state offered Page thirty years. The state reinforced that offer, and suggested Page might obtain an even more favorable plea deal, by telling him, "you help us, and we'll help you." After Young's trial, just as promised, the state entered a plea agreement with Page for a thirty-year sentence to aggravated kidnaping.

Further newly-discovered evidence shows the state's promises to Page and Ray were just one part of a broad pattern of undisclosed inducements to key witnesses:

- In April 2014, witness Patrick Brook revealed that Longview police "guaranteed" him he would not serve more than ten years in prison on an armed robbery charge if he talked to them about the Doyle Douglas shooting. The police also told Brook that Young had "ill intentions" towards Brook and "wished [him] harm." Young's counsel had previously interviewed Brook in July 2008, but Brook had not disclosed the state's "guarantee," or its statements about Young having "ill intentions" towards him or wishing him harm, in that interview. (Had reason to retaliate against me.)
- In April 2014, witness Joshua Tucker revealed that a Midland County DA investigator told him and Brook, who were both serving prison

[4] Citations to "Ex." refer to exhibits to Young's proposed Second Petition for Writ of Habeas Corpus. The references to page numbers in Exhibit 1, the transcript of *Ex Parte Clinton Lee Young*, are to the bates numbers printed at the bottom right corner of each page.

sentences, that the Harrison County District Attorney would "put in a good word" for them with prison authorities if they testified against Young. Luckie also encouraged Tucker and Brook to testify by telling them Young was a child molester, had molested someone while in custody at the Texas Youth Commission, and had beaten his girlfriend. Though Young's counsel previously interviewed Brook in July 2008 and Tucker in October 2009, neither witness disclosed the promise of a "good word" to prison authorities during those interviews.

- In May 2014, witness Dano Young stated that Harrison County law enforcement told him that testifying against Clinton Young could possibly help him with his pending criminal case. Dano Young was on parole when he testified, and had recently been arrested by police after being caught in possession of drugs and under their influence. A Midland County DA investigator later told Dano Young that he would make Dano's jail time "hard" if Dano did not cooperate with Young's prosecutors, and that "everyone knows Clint is guilty."

The state's use of favors and threats to procure key testimony from at least four critical guilt/innocence witnesses—Page, Ray, Brook, and Dano Young—prevented the jury from accurately assessing the merits of its case, and caused Young to be wrongly convicted of capital murder. At least two witnesses, who served jail time with Page, have recently revealed that Page admitted to them that he shot Petrey himself and framed Young for that crime at trial. These witnesses' statements comport with 2003 trial testimony by another fellow inmate of Page's, who stated that Page made a similar confession to him, as well as a 2008 declaration by another inmate attesting to a another such confession by Page. (27.RR.273-75; Ex. 52 [Decl. of Raynaldo Villa].) Young tried to interview the two new witnesses in 2010, but the state prohibited his counsel from doing so and

agents of the Midland County District Attorney's office discouraged the witnesses from revealing what they knew by visiting them in jail, questioning them in a hostile manner, trying to tape record their statements, and bringing up the possibility of additional jail time. Page's culpability is further supported by his gloves, found near Petrey's body, which had only Page's DNA inside and possible gunshot residue outside. (25.RR.169-72; 26.RR.241; 27.RR.254-57.) Page even failed a polygraph test when he denied shooting the victims, and talked before the crime about the best way to get away with shooting and killing someone. (Ex. 29 [David Page polygraph test results]; Ex. 36 [Decl. of Amanda Williams].) Page has also recently admitted that his testimony about Young's role in Petrey's death was at least partially false, and that Young never expressed any prior intention to steal Douglas's car to travel to Midland, as the state claimed to support its capital murder charge that Young killed the victims during a single scheme. (Ex. 38 [5/22/14 Decl. of David Page].)

Had the state complied with its *Brady* obligations and disclosed its inducements to multiple witnesses, Young' jury would have appreciated the deeply incredible nature of those witnesses' testimony, given more weight to inconsistencies between that testimony and the physical evidence, and found at least a reasonable doubt as to Young's guilt. Because Young's new evidence satisfies the prima facie standard for authorization from this Court to file a successive federal habeas petition under 28 U.S. C. 2244(b)(3)(C), *see, e.g., In re Hearn*, 418 F.3d 444, 447-48 (5th Cir. 2005), he requests authorization to file a second habeas corpus petition raising new claims under *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and *Napue v. Illinois*, 360 U.S. 264 (1959).

II. JURISDICTION

This Court has subject matter jurisdiction of this case pursuant to 28 U.S.C. § 2244(b). Young is under a judgment and sentence of death entered in the 385th Judicial District Court of Midland County, Texas. Young seeks leave to challenge his sentence in the underlying successive petition for writ of habeas corpus.

III. TRIAL OVERVIEW AND PROCEDURAL HISTORY

A. Young's Trial

1. The Douglas Shooting

The accomplices testified that they were on a car trip with Douglas and Young when Young, sitting in the front passenger's seat of Douglas's two-door Pontiac, suddenly shot Douglas twice in the head as Douglas sat in the driver's seat. Though at least two accomplices had loaded guns (21.RR.133, 181-89; 26.RR.166-68, 174; 27.RR.135-36, 175-76), they testified that Young somehow intimidated all three of them into helping dispose of Douglas's body in the woods, then forced Ray to shoot Douglas a third time while Douglas lay face down in a creek.

Several pieces of physical evidence cast doubt on the accomplices' account of the Douglas shooting. While Ray and Page testified that Young shot Douglas from just inches away in the front seat of Douglas's Pontiac (22.RR.166-67 (6-8 inches); 27.RR.13-14 (approximately 12-18 inches)), physical evidence suggested a distance of at least three feet: more than would have separated Young from Douglas in the two-door car. (22.RR.268-70, 288-90.) McCoy gave a very different account, testifying that Young held the gun down in his lap and shot upward from Douglas's right. (21.RR.164-66). But the bullet to Douglas's right did not have the predominantly upward trajectory to be expected from such a shot. (22.RR.295, 298-99.)

Physical evidence also contradicted the accomplices' accounts of the third gunshot to Douglas, delivered by Ray at the creek. Ray and Page testified that Ray shot Douglas in the "back of the head" with a gun labeled State's Exhibit 5, (22.RR.178, 250-51; 27.RR.143-44), but the state's expert testified that Douglas's backside head wound could not have been caused by that gun. (22.RR.267-68, 285; 25.RR.161-62.) Moreover, the left side of Douglas's head was facing up in the creek when he was found, suggesting that the shot Ray delivered went into the left side. (23.RR.126-131; 29.RR.15.) Yet the evidence showed that Douglas's left-side head wound did not come from the gun Ray claimed to have used. (Ex. 46 [4/6/06 Ballistics Report by Richard Ernest], Ex. 47 [10/8/08 Decl. of Richard Ernest].) In fact, all three accomplices admitted initially lying to police by claiming Young, not Ray, shot Douglas at the creek. (22.RR.211-13, 228; 27.RR.20-21, 107-112.) Conflicting with the accomplices' claims that they were coerced by Young, Ray later bragged that he had kicked Douglas's body into the creek himself. (21.RR.266-67.) The state's pathologist testified that Douglas's body bore wounds consistent with such kicking. (22.RR.282.)

To bolster its case, the state relied on questionable testimony by witnesses Patrick Brook and Dano Young, Young's half-brother. Dano was high on drugs, or coming down off them, when he testified. (Ex. 42 [Decl. of Dano Young].) Dano testified that Young told him before Douglas's shooting that he was going to knock Douglas out and take his car. (21.RR.289-90.) Dano has since admitted to Young's federal habeas counsel, however, that the state told him before the trial that his testimony against Young might help him with his own then-pending criminal case, and threatened to make Dano's jail time "hard" if he did not cooperate with Young's prosecutors. (Ex. 42 [Decl. of Dano Young].)

Brook testified for the state that Young visited him at a motel room shortly after the Douglas shooting and confessed to having shot Douglas. (21.RR.265-66.) But Brook's version of the shooting conflicted starkly with the accomplices'

testimony. The accomplices testified that Ray shot Douglas once at the creek, but Brook claimed Ray said he shot Douglas twice. (21.RR.265-66; 22.RR.85-91; 26.RR.158-161.) The accomplices testified that Young shot Douglas to steal his car, but Brook claimed Young did so because Douglas was an undercover police informant. (21.RR.252-53.) Brook also claimed Young used "Hippie's gun," which was a revolver Ray was carrying, to shoot Douglas, whereas the accomplices testified Young used State's Exhibit 3, a Colt semiautomatic pistol. (Ex. 53 [11/29/01 Statement by Patrick Brook to Longview police]; 22.RR.9-17;[5] 21.RR.107-110; 22.RR.89; 26.RR.158.)[6]

2. The Petrey Shooting

Page provided the only testimony about the Petrey shooting. He testified that after Ray and McCoy were dropped off, he and Young traveled towards Midland. Page further testified that Young abducted Petrey at a grocery store parking lot in Eastland, abandoned Douglas's car, and proceeded to Midland in Petrey's truck with Page and Petrey, Page driving much of the way while Young slept. (26.RR.200-20.) They arrived in Midland around 2:00 a.m. and drove around, making several stops at Walmart and 7-Eleven stores. (26.RR.214-38.) A bystander noticed Page was driving. (24.RR.12-17; 26.RR.225-27.) The next morning, Page testified, Young shot Petrey outside the truck. (26.RR.240-41, 246-47.) Page later confessed to a fellow inmate that he had shot Petrey while wearing gloves, and failed a polygraph test when he denied doing so. (27.RR.239-41, 271-

[5] John ("Hippie") Nunn testified that his gun was a .22 revolver. (22.RR.9-17.)

[6] Brook also testified he had "hard feelings" towards Young (thus a motive to fabricate) (21.RR.243-44), was high on speed when he allegedly heard the confession (21.RR.276), and was facing criminal charges on appeal (30.RR.176-77), and admitted it "couldn't hurt" to "have the State as a friend." (30.RR.177.)

75; Ex. 29 [David Page polygraph test results].) Gloves found near Petrey's body had possible gunshot residue on the outside, and only Page's DNA—not Young's—inside. (25.RR.169-72; 26.RR.241; 27.RR.254-57.)

At trial, all three accomplices denied under oath that the state had offered them any plea deals for their testimony. (21.RR.190-91; 22.RR.147; 26.RR.257; 27.RR.127.) Young was convicted of capital murder in March 2003, and sentenced to death on April 14, 2003. (5.CR.866.) Though Ray, Page and Young had each initially been charged with capital murder, Ray and Page pleaded guilty to the significantly lesser charges of kidnaping and aggravated kidnaping after testifying for the state against Young. (Ex. 23 [Mark Ray plea agreement]; Ex.28 [David Page plea agreement].)

B. Young's Direct Appeal and Initial State Habeas Proceedings

The Texas Court of Criminal Appeals ("TCCA") affirmed Young's conviction and sentence on September 28, 2005. *Clinton Lee Young v. State of Texas*, 2005 WL 2374669 (2005) (unpublished). The Supreme Court denied certiorari on April 3, 2006. *Clinton Lee Young v. Texas*, 547 U.S. 1056 (2006). The TCCA denied Young's initial state habeas corpus application on December 20, 2006. *Ex Parte Young*, 2006 WL 3735395 (Tex. Crim. App. 2006) (unpublished).

C. Young's Federal Proceedings and 2010 State Habeas Hearing

In July 2008 Ray admitted for the first time that, contrary to his trial testimony, the state had made him numerous verbal plea offers and a verbal five-year plea deal before Young's trial, and instructed him to keep these facts secret. (Ex. 4 [Decl. of Brad Levenson]; Ex. 7 [7/11/08 Decl. of Mark Ray]; Ex. 8 [3/9/09 Decl. of Mark Ray].) Page, that same month, denied having been offered any plea deals before his testimony. (Ex. 4 [Decl. of Brad Levenson], ¶ 3; Ex. 5 [3/9/09 Decl. of Greg Krikorian], ¶ 10.) Page's attorney, however, told Young's counsel

in 2009 that Young's prosecutors had offered Page a 15-30 year sentence before Young's trial, that was contingent on Page testifying and also passing a polygraph test establishing his innocence. (Ex. 10 [Decl. of Woody Leverett, Jr.], ¶ 4.) Page took the polygraph test before Young's trial, but failed it. (Ex. 29 [David Page polygraph test results].)

Based on this information, Young filed an amended federal petition in 2008, asserting *Brady* and *Napue* claims based on the inducements to Ray and on the 15-30 year offer to Page contingent on his polygraph test results.[7] Young also obtained permission from the TCCA to file a subsequent habeas application based on this evidence. The state court held a hearing on Young's *Brady/Napue* claims in January 2010. The federal court denied Young's habeas petition, including the *Brady/Napue* claims, on February 10, 2014.

IV. THE NEWLY DISCOVERED EVIDENCE

Starting in December 2013, Young uncovered a raft of previously-unknown evidence showing that the state had actually offered Page a 30-year plea deal that was not contingent on him passing a polygraph test, and had secretly offered leniency to at least three more key prosecution witnesses to secure their trial testimony. Page admitted in February 2014 that Young's prosecutors had offered him a reduced sentence of 30 years, instead of a life or death sentence for capital murder, that was not contingent on him doing anything except testifying for the state against Young. Page further admitted in April 2014 that the state had repeatedly promised him before Young's trial, "you help us, and we'll help you." Another witness revealed in 2014 that Page had bragged, before Young's trial, that

[7] Young alleged in the prior petition that the requirement that Page pass a polygraph test implicitly ceased to be a condition of the deal after Page failed the polygraph test and DA Schorre continued to discuss Page's testimony with Page without revoking his prior 30-year offer.

he was going to plead guilty to a charge less than murder, in exchange for a sentence of twenty years' probation. Further newly-discovered evidence revealed that the state had offered witnesses Dano Young, Joshua Tucker, and Patrick Brook "help" with their criminal cases or prison terms and suggested they might suffer adverse consequences if they did not assist in Young's prosecution. Young had previously interviewed Tucker and Brook in 2008 and 2009, but they had not revealed this information. This critical impeachment evidence, which would have cast the state's entire case into question, gives rise to new *Brady* and *Napue* claims.[8]

A. Newly-Discovered Evidence that Page Received a 30-Year Plea Offer Before Young's Trial, That Was Not Contingent on Him Passing a Polygraph Test

1. 2013 Declaration by Russell Stuteville

The investigation that produced Young's new evidence commenced on December 13, 2013, when Young's counsel interviewed Russell Stuteville. Although Young's counsel had first learned of Stuteville around April 2011, they had not been able to locate him, request a visit, and obtain funding to travel to Texas to interview him until October 2013, due to the federal budget sequester. (Exs. 58-61 [Decls. of Joseph Trigilio and Greg Krikorian].) They were not able to obtain clearance from the prison to visit Stuteville, or schedule a visit, until December 2013. (Ex. 59 [Decl. of Joseph Trigilio], ¶¶ 2-9; Ex. 61 [Decl. of Greg Krikorian], ¶¶ 2-11.)

[8] Young previously asserted *Brady* and *Napue* claims in federal court that were based on offers made to Ray, as well as an offer to Page of a fifteen-to-thirty year prison sentence contingent on him passing a polygraph test that he later failed. Young's new claims are much broader because they are based on an offer to Page of a thirty-year sentence that was not contingent on him passing a polygraph test, and are also based on additional inducements to witnesses Tucker, Brook, and Dano Young.

Stuteville told Young's counsel that he was in custody with Page between 2001 and July or August 2002, before Young's trial. (Ex. 31 [Decl. of Russell Stuteville], ¶¶ 1-3.) When he first met Page, Page would use the word "we" to describe what he and Young had done in connection with the Petrey homicide. (*Id.*, ¶ 5.) Stuteville heard Page admit that he had held Petrey hostage at gunpoint when Young went into stores or gas stations for cigarettes or gas. (*Id.*, ¶ 6.)

Soon after those admissions, however, Page began receiving frequent visits from officials with the Midland County DA's office. (*Id.*, ¶ 8.) He began saying that he had been to the DA's office and to lunch with Midland DA Al Schorre and Schorre's co-workers. (*Id.*) Instead of saying "we" when talking about the Petrey shooting, Page began saying "Clint Young did this, Clint Young did that," and claiming that he had been scared of Young and unable to escape. (*Id.*, ¶¶ 7, 11.) Page told Stuteville that he was going to plead guilty to a lesser charge than murder, in exchange for a sentence of twenty years' probation. (*Id.*, ¶ 10.)

2. <u>January 2014 Statements by Page</u>

Based on Stuteville's statements, Young's counsel re-interviewed Page on January 9, 2014. During that interview, Page said for the first time that he believed he had entered a plea agreement with Young's prosecutors before he testified at Young's trial. (Ex. 62 [Decl. of Greg Krikorian], ¶ 4.) But when Young's investigator showed Page a copy of his signed plea agreement, dated after Young's trial, Page said he must have had his dates wrong. (*Id.*)

3. <u>February 2014 Statements by Elias Gomez</u>

Based on Stuteville's statements, and Page's January 2014 statement that he might have had a pretrial plea deal, Young's counsel interviewed Elias Gomez on February 20, 2014. Gomez served time with Page in 2001, before Young's trial, and recalled Page saying he had a plea deal with the state and was cooperating with the District Attorney to avoid getting a life sentence. (Ex. 32 [Decl. of Elias

Gomez], ¶¶ 3-4.) Page told Gomez he would testify against a co-defendant pursuant to a plea bargain with the District Attorney. (*Id.*, ¶ 4.)

4. February 2014 Statement by Page

Young's counsel re-interviewed Page on February 21, 2014. (Ex. 62 [Decl. of Greg Krikorian], ¶ 5.) In that February interview, Page admitted for the first time that Young's prosecutors had, in fact, made him an unconditional plea offer of thirty years before Young's trial that was not contingent on him passing any polygraph test. (*Id.* at ¶¶ 5-6; Ex. 33 [2/21/14 Decl. of David Page].)

5. April and May 2014 Statements by Page

Young's counsel interviewed Page again on April 24, 2014 and May 22, 2014. (Ex. 62 [Decl. of Greg Krikorian], ¶ 6; Ex. 38 [5/22/14 Decl. of David Page].) During those interviews, Page said the thirty-year deal he was offered was a "verbal thing," and remained on the table through the date he testified at Young's trial. (Ex. 62 [Decl. of Greg Krikorian], ¶ 6; Ex. 38 [5/22/14 Decl. of David Page], ¶¶ 7-8.) Page also said the Midland County DA and DA investigator had both promised him, during meetings about his testimony in Young's case, "you help us, and we'll help you." (Ex. 62 [Krikorian Decl.], ¶ 6; Ex. 38 [5/22/14 Decl. of David Page], ¶ 2.) Page stated that Midland DA Schorre and Schorre's investigator repeatedly told Page how important it was for him to testify against Young, and Page told them in return, "Give me what I want and I'll give you what you want." (Ex. 38 [5/22/14 Decl. of David Page], ¶ 8.)

B. Newly-Discovered Evidence of Inducements and Threats to Additional Witnesses

Also in 2014, Young discovered new evidence that the state had also made inducements to Dano Young, Tucker, and Brook. Young had previously interviewed Brook in July 2008 and Tucker in October 2009 and asked them about such inducements, but neither one had disclosed the below information in those interviews. (Ex. 54 [Decl. of Greg Krikorian], ¶¶ 2-6.)

1. Inducements to Joshua Tucker and Patrick Brook

Young's counsel interviewed Tucker in April 2014. Tucker testified at Young's punishment-phase trial that he and Young had participated in a robbery of a drug dealer named Carlos Torres (the "Torres robbery") shortly before the Douglas and Petrey shootings. (30.RR.139-49.) Tucker received a four-year prison sentence for his role in the Torres robbery, which he was serving at the time of Young's trial. (Ex. 40 [Josh Tucker Decl.], ¶ 1.) One day, Tucker was unexpectedly visited and picked up by J.D. Luckie, an investigator with the Midland District Attorney's Office. (*Id.*, ¶ 2.) With Luckie was Patrick Brook. (*Id.*, ¶ 3.)

Luckie drove Tucker and Brook to Young's trial. (*Id.*, ¶ 4.) During the drive, Luckie assured Tucker and Brook that if they testified against Young about the Torres robbery then Joe Black, the Harrison County District Attorney, would put in a good word for them with prison authorities. (*Id.*, ¶ 9.) This promise meant a lot to Tucker, and convinced him he might get out of prison sooner than he was expecting if he testified for the prosecution. (*Id.*) Luckie also told Tucker and Brook that Young was a child molester and had molested someone while in custody at the Texas Youth Commission (TYC), and that Young's girlfriend had testified that Young was a bad guy who used to beat her. (*Id.*, ¶ 6.) The claim about Young being a child molester was a gross exaggeration: it apparently referred to an isolated incident, testified to at Young's punishment phase trial, in which Young allegedly stuck his penis in the ear of a fellow TYC inmate during a fight. (31.RR.14-30.) No other evidence of molestation by Young, of anyone, was ever presented. (31.RR.15-16.) Luckie bought Tucker and Brook lunch at a hamburger stand and stopped to buy them cigarettes. (*Id.*, ¶ 5.) That same day, Brook and Tucker were taken to the courthouse and testified against Young. (*Id.*, ¶ 8.)

Though Tucker had not initially wanted to testify, the things Luckie said made Tucker angry at Young and persuaded him to do so. (*Id.*, ¶ 7.) Tucker states that he would not have testified against Young had Luckie not said the bad things he said about Young, or told Tucker that Black would put in a good word for Tucker with prison authorities. (*Id.*, ¶ 10.)

2. Additional Inducements and Threats to Patrick Brook

In April 2014, Young's investigator interviewed Brook. (Ex. 37 [Decl. of Patrick Brook].) Brook stated that Longview police arrested him on November 28, 2001, in connection with the Torres robbery, and questioned about that incident and Douglas' shooting.[9] (*Id.*, ¶ 2.) The detective who was questioning Brook said, "I guarantee you, if you speak to us, you won't do more than ten years in prison." (*Id.*, ¶ 3.) The same detective tried to convince Brook to give harmful evidence against Young by telling him Young had "ill intentions" towards Brook and "wished [him] harm." (*Id.*, ¶ 4.)

3. Inducements and Threat to Dano Young

Young's investigator also interviewed Dano Young in May 2014.[10] (Ex. 41 [Decl. of Alane Mabaquiao].) Dano said that when he testified at Young's trial, he was on parole and had drug charges pending. (*Id.*, ¶ 4; Ex. 42 [Dano Young Decl.], ¶ 2.) He was also high on, or coming down from, drugs. (Ex. 42 [Dano Young Decl.], ¶ 6.)

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[9] The Torres robbery was one of the incidents on which the prosecution presented evidence at the punishment phase of Young's trial.

[10] Though Young's investigator initially interviewed Dano Young in May 2014, Young was not able to obtain a signed and notarized declaration from Dano reflecting the statements in that interview until November 2014. (Exs. 41, 42 [Decls. of Alane Mabaquiao; Dano Young].)

The day before Dano testified, he said, he was at a gas station with some friends when police arrived and searched his friend's car. (*Id.*, ¶ 3.) They found drugs in the car, ran the names of Dano and his friends, and arrested Dano, likely because they believed Dano had violated the terms of his parole. (*Id.*) Dano was not only in possession of drugs, but actually high on them, when arrested. (*Id.*, ¶ 6.)

The next day, a Harrison County Sheriff's Deputy named Todd Smith drove Dano to Midland to testify at Young's trial. (*Id.*, ¶¶ 3-4.) During the ride, Smith told Dano that if he cooperated, the Sheriff's Department might be able to help him with his case. (*Id.*, ¶ 4.)

At the courthouse, Midland County DA investigator J.D. Luckie escorted Dano downstairs in an elevator and to a room to prepare for his testimony. (*Id.*, ¶ 5.) While Dano and Luckie were alone in the elevator, Luckie told Dano that if he did not cooperate Luckie would make his time "hard." (*Id.*) Dano understood this to mean Luckie had the power to make his time in Midland County Jail more difficult, or add time to his sentence. (*Id.*) Luckie told Dano over and over, "everyone knows Clint is guilty." (*Id.*)

C. Newly-Discovered Evidence that Page Shot Samuel Petrey

The state's nondisclosure of its numerous inducements falsely bolstered the credibility of Page, whose questionable testimony about Petrey's shooting apparently masked his own guilt of that crime. At least two new witnesses, James Kemp and John Hutchinson, have now said they heard Page confess in 2010 to having shot Petrey himself.

1. December 2013 Declaration of James Kemp

On December 13, 2013, Young's investigator interviewed James Kemp. Kemp had served jail time with Page in late 2009 and early 2010. Young had previously tried to interview Kemp during his 2010 state habeas hearing, but the

jail prevented his counsel from visiting Kemp at the Midland County jail where Kemp was housed. (Ex. 1 [Transcript, *Ex Parte Clinton Lee Young*], at bates nos. 85, 152.) Young's counsel asked the trial court to order the jail to admit them, but the trial court refused to do so. (*Id.*) Although Young called Kemp to testify at the 2010 hearing, two agents of the Midland County District Attorney's office visited Kemp before he testified and intimidated him by bringing up his criminal record, telling him he was facing a lot of additional prison time, and trying to tape record his statements. (Ex. 34 [Decl. of James Kemp], ¶¶ 11-15.) Kemp, who was facing criminal charges with a potential 99-year sentence, began to fear going to "prison for years" if he testified favorably for Young. (*Id.*, ¶¶ 4, 14.) Rather than "risk [his] freedom by looking bad in front of the DA," Kemp decided to limit his testimony at Young's hearing, and did not disclose what he knew. (*Id.*, ¶ 15; Ex. 2 [Hearing Transcript], at 285-97 [testimony of James Kemp].). His withholding of information benefited him; within a week of his state writ testimony, the prosecutor—Teresa Clingman, who prosecuted Young at his capital trial—reduced Kemp's charges and offered him a ten-month sentence to run concurrently with the sentence he was already serving. (Ex. 34 [Decl. of James Kemp], ¶ 18.)

When interviewed by Young's counsel in December 2013, Kemp said that while he was in jail with Page in late 2009 or early 2010, he overheard Page talking with another inmate through the jail's ventilation system. (Ex. 34 [Decl. of James Kemp], ¶¶ 5-8.) Page described the Petrey shooting and said the police never found fingerprints on the gun used in the shooting because Page had worn gloves that night. (*Id.*, ¶ 7.) Page also said he wasn't angry at receiving a long prison sentence, but instead felt lucky because if the police knew what really happened, he might have been facing capital murder. (*Id.*, ¶ 8.)

2. February 2014 Declaration of John Hutchinson

Young's counsel also re-interviewed John Hutchinson in February 2014. Hutchinson, like Kemp, was a witness Young tried to interview during his 2010 hearing. The jail refused to permit Young's counsel access, however, and the trial court refused to order the jail to do so. (Ex. 1 [Transcript, *Ex Parte Clinton Lee Young*], at bates nos. 85, 152.) Instead, the trial court ordered that Young's counsel could only question Hutchinson by calling him to testify at Young's hearing without having interviewed him first. (*Id.*) Like Kemp, Hutchinson received a hostile visit from law enforcement before testifying at the hearing, which caused him not to disclose what he knew in his 2010 testimony. (Exs. 34, 35 [Declarations of James Kemp and John Hutchinson]; Ex. 2 [Hearing Transcript] at 297-302 [testimony of John Hutchinson].)

In February 2014, Hutchinson told Young's investigator that he was custody at the Midland County jail with Page in 2010. He heard Page "bragging about how he had shot and killed" Petrey with a ".22 caliber handgun while his accomplice [Young] was asleep because he had been doing drugs." (Ex. 35 [Decl. of John Hutchinson] at ¶¶ 2-3). Page said he got a "good deal because the other guy involved in the crime was on Death Row." (*Id.*, ¶ 5.)

3. April 2014 Declaration of Amanda Williams

Page made further inculpatory statements overheard by Amanda Williams. One night in 2001, before the Douglas and Petrey shootings, Williams heard Page talking with McCoy about how not to get caught if you shoot someone. (Ex. 36 [Decl. of Amanda Williams], ¶ 4.) Page did most of the talking, and said that you need to wipe off the bullets in a gun before you put them in, so that the shell casings don't leave any fingerprints. (*Id.*, ¶ 5.)

Page and McCoy kept talking about ways not to get caught, and Williams soon realized they were serious. (*Id.*, ¶ 6.) Another time, Williams heard Page say that if you ever get in trouble you should be the first one to go to the police because they will believe you more and you will get a better deal. (*Id.*, ¶ 7.) That statement is eerily resonant with Page's conduct immediately after the Petrey shooting: he immediately separated from Young, turned himself into authorities, and blamed Young for the entire incident. (26.RR.248-56.)

V. THIS COURT SHOULD AUTHORIZE REVIEW OF MR. YOUNG'S *BRADY/NAPUE* CLAIMS PURSUANT TO 28 U.S.C. § 2244

"The relevant provisions of the AEDPA-amended habeas statutes, 28 U.S.C. §§ 2244(b)(1)-(3), impose three requirements on second or successive habeas petitions: First, any claim that has already been adjudicated in a previous petition must be dismissed. § 2244(b)(1)." *Gonzalez v. Crosby*, 545 U.S. 524, 529-30 (2005). Thus, Young must show that his current claims have not been adjudicated in any previous petition.

Second, as relevant here, the movant must show that "(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." 28 U.S.C. § 2244(b)(2)(B).

Third, this Court, acting in a "gatekeeping" rule, must determine whether a petitioner has made a prima facie showing that his application satisfies the requirements of section 2244(b). 28 U.S.C. § 2244(b)(3)(C). A "prima facie" showing is "simply a sufficient showing of possible merit to warrant a fuller exploration by the district court." *In re Morris*, 328 F.3d 739, 740 (5th Cir. 2003) (quoting *Bennett v. United States*, 119 F.3d 468, 469 (7th Cir. 1997)); *see also In*

re Johnson, 334 F.3d 403 (5th Cir. 2003). "[P]ermission [to file a subsequent application] will be granted when it 'appears reasonably likely that the application satisfies the stringent requirement for the filing of a second or successive petition." *In re Swearingen*, 556 F.3d 344, 347 (5th Cir. 2009). This Court has found that standard satisfied when the movant "has put forth minimally sufficient evidence to make a prima facie case" and "there is sufficient, albeit slight, merit in [the] motion to warrant further exploration by the district court." *Hearn*, 418 F. 3d at 447-48. *See also In re McDonald*, 514 F.3d 539, 546 (6th Cir. 2008) ("'Prima facie' in this context means simply sufficient allegations of fact together with some documentation that would 'warrant a fuller exploration in the district court.'")

Young clearly satisfies these requirements.

A. The Claims in Young's Proposed Successive Petition Were Not Presented in any Prior Habeas Corpus Application

Young's newly-discovered evidence gives rise to new claims that have not been presented in any prior habeas corpus application. 28 U.S.C. § 2244(b)(2). New evidence gives rise to a new and separate claim when it does not merely "supplement[]," but instead "fundamentally alters" a claim asserted previously, *Vasquez v. Hillery*, 474 U.S. 254, 259 (1986), such as when "the basis of [the petitioner's previously-asserted] claim . . . was quite different from the claim he now presents," *Burns v. Estelle*, 695 F.2d 847, 849 (5th Cir. 1983), or new evidence "change[s] the focus of [the petitioner's] federal claim to substantive areas not previously raised." *Smith v. Quarterman*, 515 F.3d 392 (5th Cir. 2008). In *Smith*, for example, this Court held that a new ineffective assistance claim had been asserted where the petitioner's prior claim focused on trial counsel's failure to obtain sufficient information to enable preparation of a life history report about the petitioner, whereas the new claim added declarations describing specific aspects of the petitioner's life history. 515 F.3d at 400-02. Similarly, this Court held in *Kunkle v. Dretke* that the petitioner pled a new claim by submitting an affidavit and

psychological report in support of his previously-asserted claim that trial counsel ineffectively failed to investigate his background and mental illness. 352 F.3d 980, 988 (5th Cir. 2003).

Here, Young's newly discovered evidence "fundamentally alters" the *Brady/Napue* claim he alleged in his prior federal habeas corpus petition.[11] Young's previous *Brady/Napue* claim was based on evidence that his prosecutors offered Ray plea deals, and struck a verbal five-year deal with Ray, as well as evidence that Midland DA Schorre told Page he could get a fifteen-to-thirty year sentence if he passed a polygraph test and testified for the state at Young's trial. (*See* Record on Appeal, *Clinton Young v. William Stephens*, 5th Cir. Appeal No. 14-70011, at ROA2644-2709.)

Young's current *Brady/Napue* claim, by contrast, is based on Page's admission that the state made him a 30-year plea offer before Young's trial that was never conditioned on him passing any polygraph test (or, indeed, on Page doing anything other than testifying against Young). It is also based on the clear quid pro quo evidenced by the prosecutor's promises to Page, "you help us, and we'll help you," and Page's reciprocal statements to the prosecutor, "give me what I want and I'll give you what you want." (Exs. 33, 38 [2/21/14 and 5/22/14 Decls. of David Page].) Young's new evidence also shows that Page talked before Young's trial about having a plea deal whereby he would receive twenty years' probation in exchange for pleading guilty to a lesser charge than murder. (Ex. 31 [Decl. of Russell Stuteville].)

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[11] Young amended his 2008 federal petition by filing a Second Amended Petition in the district court in October 2012. The *Brady/Napue* claim in that petition was based on the same inducements to Ray and Page alleged in Young's 2008 federal petition, but incorporated evidence from the 2010 state habeas hearing.

Young's new claim also focuses on several "substantive areas not previously raised" in his prior federal petition, *Smith*, 515 F.3d at 402: the inducements to Brook, Tucker, and Young. The new claim alleges that authorities promised Brook and Tucker that Harrison County DA Joe Black would put in a "good word" for them with prison authorities if they testified against Young, and prejudiced them against Young by saying Young was a child molester who had beaten his girlfriend. (Ex. 40 [Decl. of Josh Tucker].) It also includes Brooks's declaration that Harrison County police "guaranteed" him a maximum ten-year sentence if Brook talked to them about the crime, and told him Young had "ill intentions" towards him and "wished [him] harm." (Ex. 37 [Decl. of Patrick Brook].) Finally, Young's new claim includes Dano Young's statement that Harrison County law enforcement told him the Sheriff's Department might be able to help him with his case if he assisted in Young's prosecution, and that investigator Luckie told Dano he would make his time "hard" if Dano did not cooperate. (Ex. 42 [Decl. of Dano Young].)

Taken together, this new evidence shifts the focus of Young's *Brady/Napue* claim. The original claim focused on the state's inducements to Ray, and its offer to Page contingent on his polygraph test results. The new claim focuses on a far-reaching pattern of inducements extended by the state to Ray, Page, Brook, Tucker, Dano Young, and likely other witnesses as well. It therefore has not been "presented in a prior application" under 28 U.S.C. § 2244(b)(2).

B. <u>The Factual Predicate For the *Brady/Napue* Claim Could Not Have Been Discovered Previously Through the Exercise of Reasonable Diligence</u>

Young also satisfies section 2244(b)(2)(B)'s requirement that "the factual predicate for [his new *Brady/Napue*] claim[s] could not have been discovered previously through the exercise of due diligence." 28 U.S.C. § 2244(b)(2)(B)(i). A petitioner's diligence in discovering the facts necessary to state a claim "must

merely be due or reasonable under the circumstances." *Starns v. Andrews*, 524 F.3d 612, 619 (5th Cir. 2008). The "factual predicate" for a claim exists when a petitioner "knows (or through diligence could discover) the important facts" underlying his claim. *Cole v. Warden*, 768 F.3d 1150, 1157 (11th Cir. 2014).

1. Young Could Not, With Reasonable Diligence, Have Discovered Before February 21, 2014 that Page Was Offered a 30-Year Plea Deal Not Contingent on Polygraph Results

Here, the core "important fact" to Young's new claim is that Page was offered a 30-year plea deal before Young's trial that—contrary to his attorney's 2010 testimony—was not contingent on him passing a polygraph test. Young first learned that fact on February 21, 2014, when Page revealed it for the first time to Young's investigator. (Ex. 62 [Decl. of Greg Krikorian], ¶ 5; Ex. 33 [2/21/04 Decl. of David Page].) That predicate could not have been discovered with due diligence before February 21, 2014. First, Young's prosecutors had a duty to disclose that information to Young's trial counsel under *Brady* but failed to do so, even despite the trial court's 2003 order specifically directing the state to disclose any agreements with its witnesses. (Ex. 43 [Decl. of Ian Cantacuzene], ¶ 2; Ex. 44 [Decl. of Paul Williams], ¶ 3; Exs. 17, 18 [Orders Requiring Disclosure of Plea Agreements].) Young cannot be faulted for not discovering evidence the state unconstitutionally withheld. *See, e.g., Banks v. Dretke*, 540 U.S. 668, 675-76 (2004); *Starns*, 524 F.3d at 619. Second, Young actively tried to investigate whether Page had received pretrial plea deals, repeatedly questioning Page on that issue between 2003 and 2014. But until February 21, 2014, Page always denied having received any such offers until after Young's trial. *See, e.g., In re Swearingen*, 556 F.3d 344, 349 (5th Cir. 2009) (the factual predicate of the petitioner's *Brady* claim could not have been discovered earlier with reasonable diligence because it "rest[ed] . . . on the State's interactions with its witness, which could not be known before [the witness's] affidavit.")

a. Young Had no Duty to Investigate Whether Page Received an Unconditional 30-Year Offer

"Reasonable diligence does not require a [federal habeas] petitioner repeatedly to scavenge for facts that the prosecution is unconstitutionally hiding from him." *Jefferson v. United States*, 730 F.3d 537, 541 (6th Cir. 2013), *cert. denied*, 134 S. Ct. 2820. Thus "when[, as here,] the prosecutor 'was an active participant in shielding any evidence of the facts underlying the *Brady* claim,' a prisoner does not have a burden to investigate whether there exists evidence that the government had a constitutional obligation to disclose, but did not." *Id.*

Here, Young had no duty to investigate whether his prosecutors had made plea offers to Page, because the state failed to disclose them, and even affirmatively denied such offers' existence under oath in pretrial hearings. (2.SRR.109-13, 124, 127, 130-31.) The state also presented, without correction, Page's false testimony that he had received no such offers. (27.RR.127, 130-31.) *Jefferson*, 730 F.3d at 541; *see also Banks*, 540 U.S. at 675-76. "[T]here was no requirement that [Young] act diligently to investigate further assuming the state could be taken at its word." *Starns*, 524 F.3d at 619.

b. Young's 2003 Attempts to Learn of Plea Offers to Page

Despite having no duty to do so, Young repeatedly sought out evidence of the state's plea offers to Page over the eleven-year period between 2003 and 2014, to no avail. In 2003, Young's attorneys asked the prosecutors under oath whether they had extended any such offers or deals to Ray or Page, but the prosecutors denied having done so. (2.SRR.109-13, 124, 127, 130-31.) Young's trial counsel scoured the prosecution's files, but saw no indications to the contrary. (2.RWR2d.107-08, 192-94.) Young's attorneys also obtained a pretrial order from the trial court directing the state to "disclose . . . any agreement, written or unwritten, express or implied, with" any witness that "could possibly influence the witness's testimony." (Exs. 15-18.) Yet the prosecution never produced any

evidence of such offers or deals. Trial counsel tried again at Young's 2003 trial, cross-examining Page on whether the state had offered him any type of agreement. Page denied it, saying "[t]hey haven't came [sic] to me with anything." (27.RR.127, 130-31.) Ray made a similar denial, which he admitted in 2008 was false. (22.RR.147, 240; Ex. 1 [Transcript, *Ex Parte Clinton Lee Young*], at bates no. 137; Ex. 4 [Decl. of Brad Levenson]; Ex. 7 [7/11/08 Decl. of Mark Ray]; Ex. 8 [3/11/09 Decl. of Mark Ray].)

c. Young's 2005 Attempts to Learn of Plea Offers to Page

In 2005, Young's counsel again attempted to learn of plea offers to Page, by interviewing Page through an investigator. Page again did not admit having received any such offers. (Ex. 4 [Decl. of Brad Levenson], ¶ 5.) Young thus had no reason to suspect the contrary. Indeed, the TCCA so held in 2009, when it approved the filing of Young's subsequent *Brady/Napue* claim under Article 11.071, section 5, on the basis that the previously-asserted inducements to Ray and Page could not have been discovered by the April 22, 2005 filing of Young's first state habeas application. *Ex Parte Young*, 2009 WL 1546625 at *1 (Tex. Crim. App., June 3, 2009).[12]

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[12] Article 11.071, section 5 provides in relevant part,

> If a subsequent application for a writ of habeas corpus is filed after filing an initial application, a court may not consider the merits of or grant relief based on the subsequent application unless the application contains sufficient facts establishing that:
>
> (1) the current claims and issues have not been and could not have been presented previously in a timely initial application or in a previously considered application filed under this article or Article 11.07 because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application.

d. Young's 2008 Attempt to Learn of Plea Offers to Page

Young's counsel again interviewed Page in July 2008, and Page again denied he had received any plea offers from the state before Young's trial. (Ex. 4 [Decl. of Brad Levenson], ¶ 3; Ex. 5 [Decl. of Greg Krikorian], ¶¶ 9-10.) The only information Young learned regarding an offer to Page came from Page's trial attorney, Leverett, who said the Midland DA offered Page a 15-30 sentence *if he passed a polygraph test absolving him of guilt* and testified against Young. (Ex. 4 [Decl. of Brad Levenson], ¶ 4; Ex. 10 [Decl. of Woody Leverett, Jr.], ¶¶ 4-5.) Leverett did not mention any offer of 30 years that was not conditioned on Page passing a polygraph test.

Page continued to deny receiving any pretrial plea offers when Young's counsel re-interviewed him on May 6, 2009, and again under oath, at Young's 2010 state habeas hearing. (Ex. 1 [Transcript, *In re Clinton Young*], at bates nos. 166-68; Ex. 62 [Decl. of Greg Krikorian], ¶ 3.) Page had a strong incentive to deny the plea offers during the 2010 hearing, because he was actively seeking the prosecutor's help in reducing his prison sentence by sending "time cut" requests. (Ex. 1 [Transcript, *Ex Parte Clinton Lee Young*], at bates nos. 163-64, 251-52; Ex. 56, Ex. 57 [time cut request by David Page].) Midland DA Schorre also denied having extended Page any plea offers or deals. (Ex. 1 [Transcript, *Ex Parte Clinton Lee Young*], at bates nos. 140-41.) Leverett also did not testify in 2010 about a 30-year plea offer that was not, at least initially, contingent on the polygraph test results. (Ex. 1 [Transcript, *Ex Parte Clinton Lee Young*] at bates nos. 31-49, 55-57.) Young thus had no reason as of 2010, or thereafter, to investigate or suspect the possibility that Page had been offered a 30-year plea deal before Young's trial that was not conditioned on him passing a polygraph test.

e. Young's January 2014 Attempt to Learn of Plea Offers to Page

Page first deviated from his outright denials of pretrial plea offers or deals in a January 9, 2014 interview with Young's investigator, when he said he thought he had reached a plea agreement before testifying against Young. (Ex. 62 [Decl. of Greg Krikorian], ¶ 4.) But Page backed away from that statement when Young's investigator showed him his written plea agreement dated after Young's trial, by saying he must have gotten his dates wrong. (*Id.*)

f. Page Finally Admits a Pretrial Plea Offer in February 2014

Young's investigator re-interviewed Page on February 21, 2014. (Ex. 62 [Decl. of Greg Krikorian], ¶ 5.) During that interview, Page admitted for the first time that Young's prosecutors had, in fact, extended him a 30-year plea offer before Young's trial that was not conditioned on him passing a polygraph test. In a follow up interview on April 24, 2014, Page stated that Young's prosecutors had repeatedly told him, "you help us, and we'll help you." (*Id.*, ¶ 6.) In May 2014, Page signed a declaration setting forth this information, and stating that he told Young's prosecutor "Give me what I want and I'll give you what you want." (Ex. 38 [5/22/14 Decl. of David Page].) Page's new admission appears to have resulted from a religious conversion: he told Young's investigator that he had undergone such a conversion during his years in prison and was no longer angry at Young. (Ex. 55 [12/3/14 Decl. of Greg Krikorian], ¶ 4.)

These facts show that Young could not have obtained Page's admission to receiving an unconditional pretrial plea offer—the factual predicate for his claim—any earlier than February 21, 2014 through the exercise of due diligence.

2. Young Could Not Have Discovered the Inducements to Brook or Tucker Before April 2014 With Reasonable Diligence

Young also could not have discovered the inducements to Brook or Tucker before their April 2014 interviews. Young interviewed both witnesses previously— Brook in July 2008 and Tucker in October 2009—but neither disclosed Luckie's promise that DA Black would put in a good word for them with prison authorities if they testified against Young. (Ex. 54 [12/5/14 Decl. of Greg Krikorian], ¶¶ 3-6.) Nor did Brook disclose that Harrison County law enforcement had "guarantee[d]" him no more than ten years if he talked to police about the crime, or told him Young had "ill intentions" against him or "wished [him] harm." (*Id.*, ¶ 4.)

3. Young Could Not Have Discovered the Evidence from Kemp or Hutchinson Before December 2013 With Reasonable Diligence

Kemp and Hutchinson testified at Young's 2010 state writ hearing, but did not disclose the information they provided to Young's counsel in December 2013 and February 2014. They explain in their declarations that this was because they felt intimidated by the state when they testified in 2010. The jail and trial court refused to permit Young's counsel to interview Kemp and Hutchinson before calling them to testify at the 2010 hearing. (Ex. 1 [Transcript, *Ex Parte Clinton Lee Young*], at bates nos. 85, 152.) At the time of the hearing, Kemp was facing criminal charges that carried a potential new prison sentence of up to 99 years. (Ex. 34 [Decl. of James Kemp], ¶ 4.) The day before he testified at the hearing, two agents from the Midland DA's office visited him, asked him questions about his criminal case, and told him he was looking at a lot of new prison time. (Ex. 34 [Decl. of James Kemp], ¶ 11.) One of them tried to tape record Kemp's statements, even though Kemp protested. (*Id.*, ¶ 12.) Kemp felt intimidated, and decided to "watch his words" at Young's hearing so as not to "look[] bad in front

of the DA." (*Id.*, ¶¶ 13-15.) At the hearing, he did not reveal that he had heard Page admit to shooting Petrey. (Ex. 2 [Hearing Transcript], at 285-97 [testimony of James Kemp].)

Hutchinson received a similar visit from Midland DA agents before his 2010 testimony. The agents acted hostile, asked Hutchinson questions suggesting they wanted to protect Page, became angry when Hutchinson would not talk to them, and tried to tape record Hutchinson with a hidden tape recorder. (Ex. 35 [Decl. of John Hutchinson], ¶¶ 11-15.) Hutchinson became scared and nervous, (*id.* at ¶ 15), and, like Kemp, withheld from his testimony that he had heard Page confess to the Petrey shooting. (Ex. 2 [Hearing Transcript] at 297-302 [testimony of John Hutchinson].)

Young exercised due diligence by attempting to learn the information in Kemp's and Hutchinson's 2013 and 2014 declarations by attempting to interview them during the 2010 hearing and then examining them at the hearing. The state's coercive conduct during its agents' visits with Kemp and Hutchinson caused those witnesses to suppress what they knew in their 2010 testimony.

C. The Facts Underlying The Claim, If Proven and Viewed In Light of the Evidence As A Whole, Would Be Sufficient to Establish By Clear and Convicting Evidence That, But For Constitutional Error, No Reasonable Factfinder Would Have Found Young Guilty of The Underlying Offense

Authorization is further warranted under §2244(b)(2)(B)(ii) because Young has made at least a prima facie showing that, but for the prosecution's *Brady* and *Napue* violations, no reasonable factfinder would have found Young guilty of capital murder.

"[T]he 'actual innocence' requirement . . . focus[es] on those elements that render a defendant eligible for the death penalty." *Sawyer v. Whitley*, 505 U.S. 333, 347 (1992). Here, the entire basis for Young's capital murder charge, and thus his eligibility for the death penalty, hinged on the jury placing sufficient

weight on Page's testimony to believe Page's claim that Young shot Samuel Petrey. A finding that Young murdered Petrey was essential to satisfy either of the bases for the state's capital murder charge: (1) that Young killed both Douglas and Petrey pursuant to the same scheme and course of conduct under Texas Penal Code § 19.03(a)(7), or (2) that Young intentionally killed Petrey during the commission of robbery and kidnaping, under Texas Penal Code § 19.03(a)(2). (1 CR at 4-5.) Although the prosecution charged guilt under the Law of Parties, the provision relied on by the prosecution required Young's jury to find that he "act[ed] with *intent to promote or assist* the commission of" the murder before it could find him guilty as a non-shooter. *Id.*; 5 CR 808-817 (emphasis added). All of the state's evidence was directed towards showing that Young actually shot Petrey; no evidence suggested that Young intended to promote or assist such a shooting by anyone else. Therefore, had the jury rejected Page's testimony that Young shot Petrey, it would not have had a sufficient evidentiary basis to find Young guilty of Petrey's murder as a non-shooter and would have lacked sufficient evidence to convict him of the state's capital murder charge.

1. The Inducements Would Have Discredited Page

Young's jury would almost certainly have rejected Page's testimony that Young shot Petrey had it known the state had secured that testimony through a thirty-year plea deal and promises of further "help." Even on the existing record, Young's jury had doubts about whether Young shot both victims: it sent out a note during punishment phase deliberations asking, "[r]egarding issue number 2, cause the death of deceased individuals, intended to kill the deceased individuals. Question: Do you have to believe both or at least one?" (36.RR.135.)

The jury's ambivalence is not surprising. Even without evidence of his plea offers, Page's testimony about the Petrey murder was rife with inconsistencies. Page initially told law enforcement that Young had shot Petrey "in the right side of

the head." (27.RR.43.) At trial he changed course and testified that Petrey was shot in the left. (27.RR.37-44, 47.) He admitted that this about-face resulted from prompting by law enforcement, which corrected his story by telling him Petrey was actually shot "in the left and back." (27.RR.37-44, 47.) In yet another version of events, Page testified he did not see Petrey's shooting at all. (27.RR.94-95, 208-10.)

Even more incredible was Page's claim that Young commandeered him to assist in Petrey's kidnaping. The evidence, including Page's admissions, showed if anything that Page directed the kidnaping himself. He drove Petrey's truck for two or three hours, between Abilene and Midland, while Young slept. (26.RR.214-17.) At one point, Young exited the car to use the bathroom at a Walmart, but Page did not drive away. (27.RR.82-83.) At another point, Page remained in Petrey's truck with the keys, the gun, and Petrey for eleven minutes while Young walked around inside at a 7-Eleven store, without making any attempt to escape or release Petrey. (24.RR.216-19; 277-78; 26.RR.224.) At still another point, Page and Petrey left the truck and used the bathroom at a rest stop while Young slept in the car. Again, Page made no attempt to escape or free Petrey. (27.RR.34-35.) Page's conduct in connection with Douglas's murder is equally suspect: though he claimed to have been in fear of Young, McCoy testified that Page conferred with Young about where to abandon Douglas's body, removed Douglas's money from his wallet and threw the wallet away, burned Douglas's ID, and nonchalantly bought and ate French fries with Douglas's body still in the trunk while he waited for Young, McCoy, and Ray to return from Brook's motel room. (21.RR.118-20; 26.RR.169.)

Page's testimony was also refuted by forensic evidence. Page testified that Young shot Petrey from six to ten feet away, when physical evidence showed the distance was just six to twelve inches. (26.RR.27-31, 34-36; 27.RR.42; State's Trial Exs.100-101.) Page initially claimed to police that Petrey was facing away from the truck when shot, putting Page on his left—the side from which the shots

came—but reversed his story at trial to claim that Young was on Petrey's left. (27.RR.209.) Page also claimed Young told Petrey before shooting him, "Sorry Sam. You know too much. You got to die," (26.RR.246), but crime scene photographs show Petrey lying relaxed on the ground with one hand in his pocket, not tensed as he likely would have been after hearing such a speech. (State's Trial Exs. 80-82; 26.RR.32.) A fellow inmate testified that Page admitted shooting Petrey while wearing gloves (27.RR.271-75), and lead-spattered gloves found at the crime scene had Page's DNA, but not Young's, inside. (25.RR.168-69, 172; 27.RR.253-57.)

Page also had a clear motive to kill Petrey. Shortly before Page and Young drove Petrey to the oil lease where Petrey was shot, Page learned from a telephone conversation with his father that the FBI and Texas Rangers were searching for him in connection with Douglas's disappearance. (27.RR.87.) Page admitted that he and Young could have killed Petrey in Callahan County, when they drove Douglas's car to a secluded rural area, but did not do so until after Page learned that he was wanted by law enforcement. (27.RR.88-89.) By Page's own admission, the only thing that changed between the time Page and Young abandoned Douglas's car and the time Petrey was shot was that Page learned he was wanted for Douglas's murder. (27.RR.88.)

2. The Inducements Would Have Cast Doubt on the State's Entire Case

Beyond simply discrediting Page, the inducements would have caused Young's jury to distrust the state's entire case as based on a pattern of manipulation and favors. Instead of vigorously investigating the evidence, the state appears to have relied from the outset on Page's shifting and incredible account of the Petrey shooting, spoon-fed him information so he could conform his testimony to the physical evidence, and actively sought out evidence that could bolster Page's suspect claims. Indeed, Page admitted at

trial that police coached him on the physical evidence until he changed his accounts of both shootings: he initially told police Young shot Douglas from the right, (27.RR.15), but changed his story after Midland County police, Midland DA investigator J.D. Luckie, and his lawyer told him "[his] story didn't match the facts, didn't match the ballistics," and that Douglas "did not have two bullet holes in the right side of his head." (27.RR.16-17, 59, 144-46.) Regarding the Petrey shooting, Page initially claimed Young shot Petrey from the right, but began claiming it was from the left after Midland County police told him Petrey was shot in the left. (27.RR.43-44.)

The accomplices' testimony about the Douglas shooting would have been equally discredited by the state's pattern of favors to witnesses. Ray, Page, and McCoy were close friends with every reason to exculpate each other by placing the blame on Young, the youngest member of their group, who they had only known for a short time. (21.RR.85-90, 143-45; 22.RR.40-44, 152-54; 26.RR.131; 27.RR.22-23.) Indeed, all three admitted falsely accusing Young of shooting Douglas at the creek in their initial police interviews, to exculpate Ray. (22.RR.211-13, 228; 27.RR.20-21, 107-112.) That at least two of the accomplices were armed with loaded guns sharply undermines their claim that Young somehow single-handedly held them hostage and forced Ray to shoot Douglas a third time against his will. (21.RR.133, 181-89; 26.RR.166-68, 174; 27.RR.135-36, 175-76.)

The accomplices also gave sharply conflicting versions of the shooting itself: Ray and Page claimed Young held the gun up to Douglas's head, while McCoy claiming he shot upwards from his lap. Neither version matched the physical evidence that Douglas was shot from several feet away and that the bullet did not travel predominantly upwards. (21.RR.164-66; 22.RR.166-67, 268-70, 288-90, 295, 298-99; 27.RR.13-14.) The ballistics evidence also showed Douglas was not shot as the accomplices claimed: the bullet to Douglas's left, where he was apparently shot at the creek, did not come from Ray's gun; and the bullet to

Douglas's right side, from which the accomplices claimed Young shot him, did not come from the gun the state claimed Young used. (23.RR.126-131; 29.RR.15; Ex. 46 [4/6/06 Report of Richard Ernest]; Ex. 47 [10/8/08 Decl. of Richard Ernest], ¶¶ 6-8.) Ray himself bragged to Brook that he had kicked Douglas's body into the creek: a claim borne out by wounds on Douglas's body. (21.RR.266-67; 22.RR.282.)

The inducements to witnesses would also have highlighted the incomplete and deficient nature of the state's investigation. So focused was the state on proving Young's guilt that it omitted to perform basic and critical investigative tasks. To this day, at least two key crime scenes in the case remain unexamined: no witness testified at Young's trial about any effort to collect evidence at the house where Douglas was allegedly shot, nor was any substantial effort made to investigate the grocery store parking lot from which Petrey was allegedly abducted. The state apparently never canvassed the parking lot for witnesses, nor did it introduce any such witnesses or surveillance video from the lot at Young's trial. In fact, outside of Page's testimony, no evidence even showed that Young was ever present in that parking lot at all. The lot itself, and the property where Douglas was shot, could have yielded important facts, such as blood spatter, gunshot residue, DNA, dropped items, or other physical evidence that could have helped the jury decide whether to believe the accomplices' accounts. Yet law enforcement apparently made no effort to obtain such evidence.

What little investigation was conducted was woefully mishandled: a fact that would have further discredited the state's case in combination with the inducements to witnesses had they been disclosed. Paul Hallmark, a Midland County Sheriff's investigator, was in charge of the Petrey crime scene but overlooked evidence in plain view: Page's gloves and a tire iron. (25.RR.57.) Another officer later found the gloves in a conspicuous location

at the site. (24.RR.at 321-23; 25.RR.45, 56.) Hallmark did not even measure distances between items at the crime scene with a tape measure—he simply "walked the scene" with his feet. (25.RR.56.) Although he had a video camera in his car, he did not use it. (25.RR.65-67.) He noticed tire tread marks, but did not collect rubber from them or make any casts of tires, because he was "just a layman as far as tire prints go." (24.RR.313; 25.RR.73-74.) Hallmark also failed to notice that there was a bullet in one of the fingers of one of the gloves. (25.RR.63-64.) When he finally opened the belatedly-discovered gloves and a butterfly knife found at the crime scene, he violated protocol by failing to place a sheet of paper or "catch cloth" underneath them to catch hair or fiber evidence. (25.RR.65-68.) Instead, he simply left the crime scene evidence on a cluttered desk surface—a violation of protocol for preventing evidence contamination. (*Id.*)

Had Young's jury been told the state relied on inducements and threats in place of evidentiary investigation, it would have viewed the state's entire case skeptically, given more weight to the substantial evidence that Page directed Petrey's kidnaping and prevented his escape, and rejected Page's untenable testimony that Young shot Petrey. Page has, in fact, now admitted four times to shooting Petrey himself: before trial, to fellow inmates Christopher McElwee and Raynaldo Villa (27.RR.271-75; Ex. 52 [Decl. of Raynaldo Villa]), and in 2010 to James Kemp and John Hutchinson. (Ex. 34 [Decl. of James Kemp]; Ex. 35 [Decl. of John Hutchinson].) Page's confessions are borne out by his lead-spattered gloves, found at the Petrey crime scene with his DNA inside, and his failed polygraph test results. (25.RR.168-69, 172; 27.RR.240-41, 253-57; Ex. 29 [David Page polygraph results].) Page has even admitted that he testified falsely at trial by claiming Young talked about slitting Petrey's throat, and that Young in fact never said that. (Ex. 38 [5/22/14 Decl. of David Page], ¶ 15.) Page apparently

manufactured such aggravating facts at trial in response to the state's promise to "help" him: a promise that clearly suggested Page could get a much more favorable prison sentence than thirty years by ensuring Young's conviction and death sentence. (Ex. 38 [5/22/14 Decl. of David Page], ¶ 8 (Page thought he "would get a lot less than 30 years" if the state "liked [his] testimony.")

Had the state's already-problematic case been further discredited by its pervasive use of inducements to secure critical testimony, Young's jury would almost certainly have acquitted Young of capital murder. At the very least, Young's new evidence suffices to establish the minimal prima facie case required for this Court to authorize the filing of a second or successive petition under 28 U.S.C. § 2244(b).

VI. CONCLUSION

For the foregoing reasons, this Court should conclude that Young has made a prima facie showing that he satisfies the requirements for obtaining authorization to file a subsequent petition, and grant such authorization.

Respectfully submitted,
HILARY POTASHNER
Acting Federal Public Defender

DATED: December 8, 2014 By: Margaret P. Farrand
[illegible] Bar No. 2357951

1 David Pages Lawyer

DECLARATION OF H.W. "WOODY" LEVERETT, JR.

I, H.W. "WOODY" LEVERETT, JR., declare as follows:

1. I have been a criminal defense attorney in the State of Texas since 1979 and am currently license to practice law in Texas and the U.S. District Court for the Western District of Texas.

2. On December 10, 2001, I was appointed by 238th District Judge John G. Hyde to defend David Lee Page in a capital murder case in Midland County, Texas.

3. Beginning in February, 2002, I attended at least three meetings with the Midland County District Attorney and staff about David Page's case, in an attempt to secure a plea agreement that would allow Page a reduced sentence, in exchange for his testimony against co-defendant Clinton Young.

4. During the first of the meetings on February 5, 2002 District Attorney Schorre said he would offer Page "around 30 years" but in any event "a minium of 15 years" on a charge of murder, provided (1) a polygraph examination absolved Page of Sam Petrey's murder, and (2) Page testified against Clinton Lee Young. D.A. Investigator J.D. Luckie also attended this meeting.

5. Throughout these discussions, I was attempting to get the best deal I could on behalf of my client in exchange for his testimony against Young. Although Page failed the polygraph, the District Attorney never told me he was withdrawing the "plea offer," nor did he ever convey to me that the polygraph results nullified the "plea offer". In my mind, the District Attorney had verbally committed to a plea offer in the 15 to 30 year range, provided that Page did not throw the prosecutors a curve ball when he testified. The only open questions were what the final offer would be, in terms of years, and whether Page would accept that plea offer. I kept Page informed of all plea offers of

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the State, and all plea discussions with the prosecutors.

6. According to my notes, on March 24, 2002, David Page and I met with First Assistant D.A. Teresa Clingman, D.A. Investigator J.D. Luckie, and Sheriff's Deputy Paul Hallmark. At this meeting, Page recounted the events surrounding the killing of Doyle Douglas in East Texas, and briefly described the kidnapping of Sam Petrey and the trip to Midland.

7. On January 12, 2003 I attended another interview of David Page - this time by District Attorney Al Schorre, A.D.A. Clingman, and Investigator Luckie. At this meeting, the prosecutors and investigator asked specific questions about aspects of the case, the evidence, and the chain of events. Schorre told us that he expected the testimony to begin on February 23 or 24, and that Page would not be the first witness, but would be somewhere in the middle of the State's case.

8. On April 15, 2003, District Attorney Schorre offered Page a 35 year sentence on a plea to Aggravated Kidnapping, rather than the 15 to 30 years that had been previously discussed.

9. On May 1, 2003, District Attorney Schorre phoned me about moving Page's case to a conclusion. I told Schorre that my client would agree to a 15-year sentence. Schorre rejected my proposal, and said my client and I might as well get ready to try the case. I remember being angry with the prosecutor, because I believed my client had testified for the State exactly as he had been expected to, and I felt we had been led to believe we could very likely receive a plea offer well below 30 years.

10. On December 16, 2003, my client pled guilty to aggravated kidnapping. He received a 30-year sentence, and is now serving time in a Texas state prison.

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I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 6th day of March, 2009 in Midland, Texas.

H.W. LEVERETT, JR.

SWORN TO AND SUBSCRIBED BEFORE me this the 6th day of March, 2009.

NANCY L. PIETTE
MY COMMISSION EXPIRES
April 30, 2012

NOTARY PUBLIC, State of Texas

(1)

DEFENDANT'S EXHIBIT
CASE NO. CR 27, 181-C
EXHIBIT NO. 39

Kathy

Hey there, how are things going for you? Good I hope. As for me, things could be better. Them saying I was a co-defendant was true because I am also a defendant in a different case but same charges as Clint. The newspaper is a crock of shit anyway. They are told one thing but they write something totally different in the papers. If I would have made a deal with the DA it would have made my testimony no good. My lawyer came up here the other day and told me that the DA sent him up here with the offer of 35 years for Agg Kidnapping and they would not take me to trial on the murder charges if I took their offer. Tell mom that I am still trying to get ahold of the DA so I can meet with him and see what's up. I helped them and they said they would help me but if this is what they call help they can stick it up their ass.

Love Always

P.S. Mom said she was going to send me a picture of my neice but I haven't got [illegible]

(2) Transcribed copy of Devid's letter to his stepmom.

Kathy,

Hey there, how are things going for you. Good I hope. As for me things could be better. Them saying I was a co-defendant was true because I am also a defendant in a different casem but same charges as Clint. The newspaper is a crock of shit anyway. They are told one thing but the write something totally different in the papers. If I would have made a deal with the DA it would have made my testimony no good. My lawyers came up here the other day and told me that the DA sent him up here with the offer of 35 years for Agg Kidnapping and they would not take me to trial on the murder charges if I took the offer. Tell mom that I am still trying to get ahold of the DA so I can meet with him and see what's up. I helped them and they said they would help me, but if this is what they call help then ca shove it up their ass.

Love always

P.S. Mom said she was going to send me (illegible) of my niece but I haven't got.

& Official Copy of lie detector test &

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SAN ANGELO POLICE DEPARTMENT
C.I.D./POLYGRAPH SECTION
POLYGRAPH REPORT

R02-022

STATE'S EXHIBIT 33 WHIT

OFFENSE: HOMICIDE

VICTIM: Doyle Douglas, White, Male
Samuel Petry, DOB: [redacted]47, White, Male

EXAMINATION REQUESTED BY: J.D. Luckie, Chief Criminal Investigator

POLYGRAPH SUBJECT: David Lee Page (Jr.), DOB: [redacted]81, White, Male,
DL: 18873721 TEXAS, SSN: [redacted]7239

CASE BRIEF: On this date, David Lee PAGE (in the presence of his attorney-H.W. Leverett (Jr.), Investigator Luckie and Deputy Kent Spencer) gave this investigator a synopsis of what took place in the murders of Doyle Douglas and Samuel Petry.

On Sunday morning at about 2:00 a.m., (PAGE said that) he, Clinton YOUNG, Mark RAY and Darnell MCCOY were in Longview, Texas with Doyle Douglas. PAGE said that YOUNG shot DOUGLAS on the right side of the head with a .22 caliber automatic. YOUNG said the bullets bounced off DOUGLAS'S head. DOUGLAS was placed in the trunk of his car and driven to an area just inside Harrison County. PAGE said he could hear a gurgling sound come from the trunk as they drove to a location to dump the body. PAGE said he knew that DOUGLAS was still alive.

In Harrison County, all present helped remove DOUGLAS from the trunk of the car. PAGE said that YOUNG threatened to shoot them if they did not participate. PAGE said that RAY shot DOUGLAS on the back of the head with a .22 caliber revolver. DOUGLAS'S body was left in Harrison County. PAGE said the revolver belonged to "Hippie" HALLMARK and once returning to Longview, the revolver was returned to HALLMARK. (A .380 caliber weapon was also in the car at the time of DOUGLAS'S murder, but was not used to kill DOUGLAS.)

PAGE said all four returned to Longview in DOUGLAS'S car. RAY and MCCOY were dropped off in Longview and YOUNG drove PAGE to Ore City, Texas.

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Investigation: HOMICIDE
Examinee: PAGE David Lee (Jr.)
Polygraph #R02-022

At the Brookshires Grocery Store parking lot, YOUNG and PAGE drove up to Samuel PETRY. PAGE said that they spoke to PETRY and then YOUNG "put the gun to PETRY'S face". YOUNG got in the truck with PETRY and PAGE followed in DOUGLAS'S car. PAGE said the car was left at a hunting lease. PAGE said all three left in PETRY'S truck and drove to Midland, Texas. PAGE said PETRY was shot in Midland County, just outside the Midland city limit sign.

PAGE said YOUNG drove them to an oil lease. As PETRY paced back and forth, smoking a cigarette, PAGE said YOUNG shot PETRY in the head twice. PETRY'S body was left there. PAGE said they cleaned the truck out. PAGE grabbed the .22 shells, a butterfly knife and a pair of gloves. PAGE stuffed the .22 shells and the butterfly into a glove and threw them out in the field. YOUNG grabbed the tire tool and threw it out as well.

PAGE said after they left the oil lease, he told YOUNG to drop him off at the police station. Not knowing their way around Midland, YOUNG dropped PAGE off at an IHOP Restaurant. PAGE said he walked around for a long time before walking up to the county courthouse.

PAGE told this investigator that he did not shoot DOUGLAS or PETRY. PAGE said that he did not touch or pull the trigger on any of the weapons used to shoot DOUGLAS and PETRY.

POLYGRAPH SUBJECT IS: Suspect

PLACE AND DATE OF EXAMINATION: San Angelo Police Dept. – February 25, 2002

RESULTS: DECEPTION INDICATED

(3)

Investigation: HOMICIDE
Examinee: PAGE, David Lee (Jr.)
Polygraph #: R02-022

BRIEF SUMMARY OF RESULTS: Utilizing case information furnished by Investigator Luckie and information given by David Page, a polygraph examination was constructed and administered to PAGE. Evaluation of PAGE'S polygraph charts **did** reveal, to this examiner, significant criteria to indicate deception to the questions pertaining to knowledge of and/or actual participation in the offense.

The following relevant questions were administered to PAGE in the U-Phase (Zone) Comparison Test. Verbal responses given by PAGE, during the administration of this test, have been included along with the following questions.

DID YOU SHOOT DOYLE DOUGLAS?	**NO**
DID YOU SHOOT SAM PETRY?	**NO**
DID YOU FIRE A BULLET INTO EITHER DOYLE DOUGLAS OR SAM PETRY?	**NO**

PAGE, in the presence of his attorney and Investigator Luckie, was told the results of his polygraph test. This investigator told PAGE that he had not been truthful about his involvement. PAGE was told that he had not given investigators and his attorney complete details about what had happened or his direct involvement in the murders. PAGE commented that he knew what "it" was. 4

Irma Rodriguez
Polygraph Examiner

4 Did not Protest or Proclaim innocense. His statement reinforced that he was not truthful.

Article 4413 (29cc) Sec. 19A, VTCS forbids disclosure of any information contained in this report, except as provided by law.

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DECLARATION OF GREG KRIKORIAN

I, GREG KRIKORIAN, hereby declare as follows:

1. I am an investigator with the Federal Public Defender's Office in Los Angeles and assigned to the capital habeas case of Clinton Young.

2. On April 25, 2014, in connection with Clinton Young's case, I interviewed a Texas inmate named Joshua Tucker at the Ellis Unit in Huntsville, Texas.

3. Tucker told me that in or about July 2002, he was sentenced to four years in state prison in Texas for burglarizing a house in Longview, Texas occupied by a drug dealer named Carlos Torres in 2001.

4. He said that within the first year of his sentence, at the Choice Moore Unit in Bonham, TX, he was unexpectedly moved to a county jail and soon after picked up there by J.D. Luckie, an investigator with the Midland County District Attorney's Office.

5. Tucker said that when investigator Luckie arrived at the jail, he was with Patrick Brook, a friend of Tucker's who was in prison for the same 2001 burglary that sent Tucker to prison.

6. Tucker said that investigator Luckie drove both Tucker and Brook to the Midland County courthouse, where Young was then undergoing his trial for capital murder.

7. On the way to Midland, Tucker said, Luckie told Tucker and Brook that he wanted them to testify for the government at Young's trial and talk about how Young was with them during the 2001 burglary in Longview. Tucker said that Luckie tried to soften up the men - Tucker and Brook - by buying them lunch at a hamburger stand and stopping to buy them cigarettes.

8. Tucker said that Luckie told Tucker and Brook that Clint Young was a child molester and that he had molested someone while in custody at the Texas Youth Commission (TYC). Tucker told me he and other prison inmates hate pedophiles and he said he could think of no worse crime or criminal. He told me that when Luckie told him Young had molested

GK
Initials

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someone at the TYC, it made him angry at Young. Tucker also told me that Luckie said Young's girlfriend, Amber Lynch, had just testified in court about what a bad guy Young was and how Young used to beat her. Tucker said he remembered that Luckie told him Amber had "fried" Young on the witness stand.

9. Tucker told me he liked Young okay and that he didn't know him that well but felt he was easily influenced. Tucker said he was already doing time in prison and had no plans to testify against Young at Young's trial. But he said that when Luckie told Tucker and Brook the negative things about Young, it made Tucker so mad he agreed to testify for the government against Young.

10. Tucker said that on the same day he and Brook were driven to Midland, they were taken to the courthouse and testified against Young at Young's trial. The day after his testimony, Tucker told me, he was driven back to prison.

11. Tucker told me that before he and Brook testified, Luckie assured them that Joe Black, who was then the Harrison County District Attorney and the former Assistant District Attorney of Gregg County, would put in a good word for them with the prison authorities if they testified against Young. Tucker said that meant a lot to him and led him to believe that he might get out of prison sooner than he was expecting if he testified for the prosecution.

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12. Before our meeting ended, Tucker told me he would not have testified against Young if Luckie had not said what he said about Young, and had not told Tucker that District Attorney Black would put in a good word for Tucker with the prison authorities. As Tucker put it, he was already in prison serving a sentence, so why would he want to testify unless he would get something in return?

I declare under penalty of perjury under the laws of the United States of America and the state of Texas that the foregoing is true and correct. Signed this 20th day of June 2014, in Los Angeles, California.

GREG KRIKORIAN

Initials

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DECLARATION OF DAVID PAGE JR.

I, David Page Jr., hereby declare as follows:

1. In 2001, I was arrested in Midland County for murder and aggravated kidnapping.

2. After my arrest, I met numerous times with Midland County District Attorney Al Schorre and investigator J. D. Luckie. They wanted me to testify against Clinton Young and both used the phrase, "You help us, and we'll help you."

3. At first, I was offered a sentence of 60 years in prison if I pleaded guilty and testified against Clinton Young. I rejected the 60-year offer.

4. That offer was soon followed by an offer of 30 years. I first heard this offer before I was taken

DLP

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to San Angelo, TX for a polygraph exam. I was driven to the exam by J. D. Luckie.

5 I was never told that the 30-year offer was contigent on how I did in the polygraph exam.

6 On the ride back to Midland County jail, J. D. Luckie never told me whether I passed or failed the polygraph exam but he did tell me, "You didn't do too good."

7 The 30-year offer remained on the table and Al Schorre and J. D. Luckie kept telling me it was important for me to testify against Clinton Young.

8 I told the District Attorney Schorre and investigator Luckie, "Give me what I want and I'll give you what you want." The 30-year offer was a verbal thing and I thought if they liked my testimony

JLP

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I would get a lot less than 30 years.

9. Months after I testified, J.D. Luckie picked me up at the Midland County Jail, which was not unusual. He had done this multiple times so we could talk about the case.

10. This time, J.D. Luckie told me the District Attorney Schorre wanted me to agree to a plea. I said, "How much time am I going to get?" and J.D. Luckie told me it was the same 30 years that had been on the table since before Clint trial.

11. I was shocked and upset. I told J.D. Luckie, "I did what you asked me to do. So why aren't you helping me?" I was hoping my testimony would get me no more than 15 years in prison. I asked J.D. what happened and he didn't say anything. He just gave me a blank stare.

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12. My attorney, Woody Leverett, was there during this conversation and told me I better take the 30 year deal or I could get a lot more time in prison if I went to trial and was found guilty.

13. I want to clarify a couple of statements I previously made to authorities:

14. Clint Young never mentioned going to see his girlfriend, Amber Lynch, before the shooting of Doyle Douglas.

15. Clint Young never said he wanted to slit the throat of Samuel Petray.

I declare under penalty of perjury under the laws of Texas and the United States of America that the foregoing is true and correct. Signed this 22nd day of May 2014, in Tennessee Colony, TX.

Shauna L. Vestal
Notary Public, State of Texas
My Commission Expires
02 01 2017
Notary Without Bond

David L Page Jr
David Page Jr.

Shauna Vestal

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DECLARATION OF PATRICK BROOK

I, Patrick Brook, hereby declare as follows:

1. On Nov. 28, 2001, I was arrested by Longview Police and Gregg County Sheriffs for aggravated assault on Carlos Torres.

2. I was held at the Longview City Police Station and questioned for hours about the shooting of Torres and other crimes including the murder of Doyle Douglas

3. Right off the bat, I asked, "Aren't I supposed to have an ~~attorney~~ attorney?" P.B A Det Watley said: "You want an attorney? We will send you downtown to jail right now. Or you can help us out and help yourself out by talking." Det Watley also said: "I guarantee you, if you speak to us, you won't do more than 10 years in prison." P.B

PB

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4. In that same conversation, Det Watley told me that another suspect in the Torres shooting and the murder of Douglas named Clinton Young had "ill intentions" against me and wished me harm.

5. At that point, I agreed to talk to the police.

P.B

6. I never spoke to an attorney during this whole interview process even though I had asked for one. In fact, it was a couple of weeks before I spoke to a lawyer about these cases. When I finally spoke to the attorney, Michael Lewis, he said I would receive a 20-year prison sentence if I testified against Young in the Douglas and Torres cases.

7. I never had another meeting

P.B

PB

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with my attorney until I pleaded guilty to aggravated robbery. I was later sentenced to 35 years.

I declare under penalty of perjury under the laws of the United States of America and the State of Texas that the foregoing is true. Signed this 9 day of April, 2014

Shawn M Ellison
expires 11-26-17

Patrick Brook
Patrick Brook

SHAWN M. ELLISON
Notary Public, State of Texas
My Commission Exp 11-26-17

Patrick Brook
[redacted]

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DECLARATION OF JOSH TUCKER

I, Josh Tucker, hereby declare as follows:

1. In July 2002, I was sentenced to four years state prison in Texas for burglarizing a house in Longview occupied by a drug dealer named Carlos Torres.

2. Within the first year of my sentence at the Choice Moore Unit in Bonham, TX, I was unexpectedly moved to a county jail and soon after picked up there by J.D. Luckie, an investigator with the Midland County District Attorney's Office.

3. When investigator Luckie arrived at the jail, he was with Patrick Brook, a friend of mine who was doing time in prison for the same November 2001 incident in Gregg County that sent me to prison.

4. Investigator Luckie drove both Pat and me to the Midland County courthouse. That was where the trial of Clinton Young, who was accused of murder, was happening.

5. On the way to Midland, investigator Luckie told Pat and me that he wanted us to testify for the government at Clint's trial and talk about how he was with us during the 2001 robbery in Longview. He tried to soften us up by buying us lunch at a hamburger stand and stopping to buy us cigarettes.

6. Luckie told Pat and I that Clint was a child molester. That he had molested someone while in custody at the Texas Youth Commission. We frown in

J.T.

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prison on pedophiles. There is nothing worse as far as I am concerned. So when Luckie told me this about Clint, it made me angry at Clint. Luckie also told us that Clint's girlfriend, Amber Lynch, had just testified in court about what a bad guy Clint was and how he used to beat her. I remember Luckie told us Amber had "fried" Clint on the witness stand.

7. I liked Clint okay. I didn't really know him that well but felt he was easily influenced. I was already doing time in prison and had no plans to testify against him in his case. But when investigator Luckie told me and Pat these things about Clint, it pissed me off.

8. That same day Luckie drove us to Midland, Pat and I were taken to court and testified against Clint at his trial. The next day, he took me back to prison.

9. I remember that before we testified, Luckie told Pat and me that Joe Black, the Harrison County District Attorney, would put in a good word for us with the prison authorities if we testified against Clint. That meant a lot to me. I thought I might be able to get out of prison sooner than I was expecting.

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J.T.

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10. I would not have testified against Clint if Luckie had not said what he said about Clint and offered to put in a good word for us. I mean, I was already serving my sentence, so what good would it do me to testify unless I was going to get something?

11. If called at a hearing, I would be willing to testify to the above facts.

My name is Joshua Tucker, TDCJ number 1547519. My date of birth is 3-26-82, and I am presently incarcerated at the Alfred Hughes Unit in Lorrell County, Texas. I declare under penalty of perjury under the laws of the United States of America and the state of Texas that the foregoing is true and correct. Signed this 2 day of Dec., 2014 in Gatesville, TX.

[redacted] JOSH TUCKER

IENATA MASIN
Notary Public
STATE OF TEXAS
My Comm. Exp. 10-11-2017
Notary Without Bond

J.T.

(1)

DECLARATION OF ALANE MABAQUIAO

I, ALANE MABAQUIAO, declare as follows:

1. I am an investigator with the Office of the Federal Public Defender in Los Angeles. Our office has been appointed to the federal capital habeas case of Clinton Young.

2. In the course of my duties as an investigator for the capital habeas unit, I contacted and interviewed Dano Young in Ore City, Texas on May 8 and May 9, 2014.

3. Dano Young told me that he is Clint Young's older half-brother, and that he testified for the prosecution at Clint's trial on March 17, 2003.

4. Dano Young told me that at the time he testified at Clint's trial, he was on parole and had drug charges pending.

5. Dano Young also told me that the day before his testimony at Clint's trial, he was at a gas station with some friends and police showed up and searched his friends' car. While he was in the store, the police found drugs. They ran all of their names and told Mr. Young that his name was "flagged," and they arrested him. The next day, he was transported to Midland to testify at Clint's trial.

6. Dano Young told me that Todd Smith, a Harrison County Sheriff's Deputy, drove him to Midland. During the ride to Midland, Mr. Smith told Dano Young that if he cooperated, the Sheriff's Department might be able to help him with his case.

7. Dano Young told me that at the Courthouse, J.D. Luckie, an investigator for the Midland County District Attorney's Office, escorted him downstairs in an elevator and to a room to prepare for his testimony. Dano Young said that while he and Mr. Luckie were alone in the elevator, Mr. Luckie told him that if he didn't cooperate, Mr. Luckie would make his time "hard." Dano Young took this to mean that Luckie had the power to make his time in Midland

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Initials

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County Jail more difficult, or add time to his sentence. Dano Young told me that Luckie told him over and over again that "everyone knows Clint is guilty."

8. Dano Young told me that was definitely high on drugs when he was arrested, and was still high - or least coming down off his high - by the time he testified at Clint's trial.

9. Dano Young said that after he testified at Clint's trial, J.D. Luckie drove him and Mark Ray to Dallas. During that drive, Lucky kept insulting Dano Young and Ray and saying that he would shoot them if they tried to run.

I declare under penalty of perjury under the laws of the United States of America and of the State of California that the foregoing is true and correct.

DATED: June 20, 2014

ALANE MABAQUIAO

Initials

(1)

DECLARATION OF PAUL WILLIAMS

I, Paul Williams, declare as follows:

1. I was the lead attorney on Clinton Lee Young's capital trial case. My co-counsel on the case was Ian Cantacuzene.

2. Based upon the Midland County District Attorney's open file policy, I reviewed the DA file on numerous occasions up until the time of Young's trial.

3. During the times I reviewed the Midland DA file, I never saw any documents, notes, or writings regarding or reflecting any plea offer made to David Page before the conclusion of Young's trial. Nor was I ever otherwise informed, by any means, of any such plea offers, despite my specific requests. In fact, the prosecution denied under oath during pretrial hearings that any such offers to Page had been made.

4. During the times I reviewed the Midland DA file, I never saw any documents, notes, or writings regarding or reflecting any plea offers or benefits extended to Darnell McCoy, including any dismissal or abandonment of criminal charges against Mr. Coy by law enforcement, or any agreement not to prosecute Mr. McCoy for any crime. I also did not see any documents, notes, or writings reflecting any threats to Mr. McCoy of adverse consequences if he did not cooperate with law enforcement and/or testify at Young's capital trial. Nor was I otherwise informed, by any means, of such plea offers, benefits, or threats to Mr. McCoy, despite my specific requests for information about express or implied plea agreements between the state and its witnesses.

5. During the times I reviewed the Midland DA file, I never saw any documents, notes, or writings regarding or reflecting any statements by any representative of law enforcement to Patrick Brook that if Brook spoke to law enforcement about the crime for which Young was being tried he could obtain a

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shortened prison sentence, including any prison sentence of ten years. I never saw any documents, notes, or writings reflecting that any shortened prison term or specific prison term was "guaranteed" to Brook if he spoke to law enforcement about the crime for which Young was tried. Nor was I ever otherwise informed, by any means, of any such statements by law enforcement to Patrick Brook, despite my specific requests for information about express or implied plea agreements between the state and its witnesses.

6. During the times I reviewed the Midland DA file, I never saw any documents, notes, or writings regarding or reflecting any statements by law enforcement (including representatives of the Midland or Harrison County District Attorney's Offices) to Joshua Tucker to the effect that the Harrison County District Attorney or any other law enforcement or government agent would put in a good word for Tucker with prison authorities in exchange for his testimony against Young. Nor did I ever see any documents, notes, or writings regarding or reflecting any statements by law enforcement (including representatives of the Midland or Harrison County District Attorney's Offices) to Joshua Tucker to the effect that Young had molested anyone, that Young was a child molester, or that Young had ever beaten or otherwise harmed his girlfriend. Nor was I ever otherwise informed, by any means, of any such statements to Joshua Tucker, despite my specific requests for information about express or implied plea agreements between the state and its witnesses.

7. During the times I reviewed the Midland DA file, I never saw any documents, notes, or writings regarding or reflecting any statements by law enforcement (including representatives of the Midland or Harrison County District Attorney's or Sheriff's Offices) to Dano Young to the effect that if Dano Young cooperated with law enforcement and/or with Young's prosecutors, law

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enforcement might be able to help Dano Young with his own criminal case. I was never otherwise informed of any such statements to Dano Young, despite my specific requests for information about express or implied plea agreements between the state and its witnesses. Nor did I ever see any documents, notes, or writings regarding or reflecting any statements by law enforcement (including representatives of the Midland or Harrison County DA's Offices) to Dano Young to the effect that if he failed to cooperate with the prosecution law enforcement would make Dano Young's prison or jail time "hard," or that "everyone knows Clint is guilty." Nor was I ever otherwise informed of any such statements made to Dano Young.

8. If I had known the state had made a plea offer to David Page before Young's trial, I would have vigorously cross-examined Page about the plea offer and used it as impeachment evidence.

9. Had evidence of a plea offer to Page come out on cross-examination, I would have asked the judge for a mistrial based on government misconduct, because the prosecution had testified under oath during pre-trial hearings that no plea agreement had been reached, and that no plea discussions had occurred.

10. If the motion for a mistrial was denied, I would have addressed the state's misconduct during closing argument to the jury, and argued that the jury should be skeptical of the state's case against Mr. Young because the government had lied about extending plea offers and deals to its two most important witnesses: Mark Ray and David Page, and had likely extended plea offers or deals to others of its witnesses as well. I would also have argued to the jury that Mark Ray's and David Page's testimony was not credible, because they had been offered and/or were receiving reduced sentences for their testimony. I would also have argued that the plea offers and/or deals to Ray and/or Page indicated that the third

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accomplice witness in Young's case, Darnell McCoy, had probably also received inducements for his testimony.

11. If I had known that law enforcement had extended benefits to Mr. McCoy, and/or threatened him with criminal prosecution or other adverse consequences if McCoy did not cooperate with Young's prosecutors, I would have argued to the jury that these inducements and/or threats undermined the credibility of McCoy's testimony, as well as the credibility of the state's other witnesses because those other witnesses had most likely been influenced by similar rewards and/or threats.

12. In addition, had I known of any of the above-described statements to Brook, Tucker, and/or Dano Young, I would have argued to the jury that the state's inducements to these witnesses, either alone or in conjunction with the state's plea offers and deals to Ray and/or Page, cast serious doubt on the credibility of all of the state's evidence against Young. In particular, I would have argued that the inducements to multiple state's witnesses showed a pattern of manipulation by Young's prosecutors, and indicated that they had a practice of obtaining inculpatory evidence by extending witnesses promises of benefit and/or threatening them with adverse consequences. I would have argued that this lack of credibility should cause the jury to find a reasonable doubt as to Young's guilt or innocence, and (if Young were convicted at the guilt phase) would have argued at the punishment phase that the jury should answer "no" to the first and second special issues presented for its consideration (whether Young posed a future danger, and whether he actually caused the death of the deceased or intended to kill the deceased or another or anticipated that a human life would be taken.)

13. Indeed, had I known the state had extended a plea offer to Page, or made any of the above-described statements to Tucker, Brook, and/or Dano

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Young, I would have made such inducements, and the resulting lack of credibility of the state's case, a central theme of Young's defense at the guilt and punishment phases.

14. Had the above information come to my attention before the start of Young's trial, I would have asked prospective jurors how they would view the credibility of a witness who received a plea offer from the state, or was told by the state that they could receive assistance and/or a shortened prison term by testifying for the state against a defendant.

I declare under penalty of perjury under the laws of the United States and the State of Texas that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 17 day of Nov., 2014 at Midland, Texas.

Paul Williams
PAUL WILLIAMS

Stephanie Anne Ramos 11-24-14

STEPHANIE ANNE RAMOS
Notary Public, State of Texas
My Commission Expires
May 27, 2018

P.W.

DECLARATION OF DANO YOUNG

I, Dano Young, declare as follows:

1. I am Clint Young's older half-brother. I testified for the prosecution at Clint's trial on March 17, 2003.

2. When I testified at Clint's trial, I was on parole and had drug charges pending.

3. The day before I testified at Clint's trial, I was at a gas station with some friends and police showed up and searched my friends' car. While I was in the gas station store, the police found drugs. They ran all our names and told me my name was "flagged," and they arrested me. The next day, I was taken to Midland to testify at Clint's trial.

4. Todd Smith, a Harrison County Sheriff's Deputy, drove me to Midland. During the ride, Mr. Smith told me that if I cooperated, the Sheriff's Department might be able to help me with my case.

5. At the courthouse in Midland, a Midland County District Attorney investigator named J.D. Luckie took me downstairs an elevator and to a room to prepare for my testimony. Mr. Luckie told me that if I didn't cooperate, he would make my time "hard." I took this to mean that Luckie had the power to make my time in Midland County Jail (where I was being housed in Midland) more difficult, or add time to my sentence. Luckie told me over and over again, "everyone knows Clint is guilty."

6. I was definitely high on drugs when I was arrested, and was still high - or least coming down off my high - by the time I testified at Clint's trial.

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7. After I testified at Clint's trial, J.D. Luckie drove me and Mark Ray to Dallas. During that drive, Lucky kept insulting us, and saying that he would shoot us if we tried to run.

8. If called at a hearing, I would be willing to testify in court to the above information.

I declare under penalty of perjury under the laws of the United States of America and the state of Texas that the foregoing is true and correct. Signed this 30 day of November 2014 in County of Tarrant, Texas.

DATED: Nov 30th 2014

Dano Young

(13)

State of Texas
County of Tarrant

Before me, (Amy Patricia DeLapp), on this day personally appeared Dano Young, known to me (or proved to me on the oath of N/A or through (Texas Drivers License) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 30 day of November, (2014).

(Personalized Seal) Notary Public's Signature

AMY PATRICIA DELAPP
Notary Public, State of Texas
My Commission Expires
September 09, 2018

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DECLARATION OF IAN CANTACUZENE

I, Rodion ("Ian") Cantacuzene, Jr., declare as follows:

1. I represented Clinton Young as his attorney in his 2003 capital trial case. My co-counsel on the case was Paul Williams.

2. During my representation of Mr. Young I never saw any documents, notes, or writings regarding or reflecting any plea offer made, before the conclusion of Young's trial, to David Page. Nor was I ever otherwise informed, by any means, of any such plea offers, despite specific discovery requests. In fact, I believe the prosecution denied under oath during pretrial hearings that any such offers to Page had been made.

3. During my representation of Mr. Young I never saw any documents, notes, or writings regarding or reflecting any plea offers or benefits extended to Darnell McCoy, including any dismissal or abandonment of criminal charges against Mr. Coy by law enforcement, or any agreement not to prosecute Mr. McCoy for any crime. I also did not see any documents, notes, or writings reflecting any threats to Mr. McCoy of adverse consequences if he did not cooperate with law enforcement and/or testify at Young's capital trial. Nor was I otherwise informed, by any means, of such plea offers, benefits, or threats to Mr. McCoy, despite specific discovery requests for information about express or implied plea agreements between the state and its witnesses in Young's case.

4. During my representation of Mr. Young I never saw any documents, notes, or writings regarding or reflecting any statements by any representative of law enforcement to Patrick Brook to the effect that if Brook spoke to law enforcement about the crime for which Young was being tried he could obtain a shortened prison sentence, including any prison sentence of ten years. I never saw any documents, notes, or writings reflecting that any shortened prison term or

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R.C., JR

specific prison term was "guaranteed" to Brook if he spoke to law enforcement about the crime for which Young was tried. Nor was I ever otherwise informed, by any means, of any such statements by law enforcement to Patrick Brook, despite specific discovery requests for information about express or implied plea agreements between the state and its witnesses.

5. During my representation of Mr. Young, I never saw any documents, notes, or writings regarding or reflecting any statements by law enforcement (including representatives of the Midland or Harrison County District Attorney's Offices) to Joshua Tucker to the effect that the Harrison County District Attorney or any other law enforcement or government official would put in a good word for Tucker with prison authorities in exchange for his testimony against Young. Nor was I ever otherwise informed, by any means, of any such statements by law enforcement to Tucker, despite specific discovery requests for information about express or implied plea agreements between the state and its witnesses.

6. During my representation of Mr. Young, I never saw any documents, notes, or writings regarding or reflecting any statements by law enforcement (including representatives of the Midland or Harrison County District Attorney's or Sheriff's Offices) to Dano Young to the effect that if Dano Young cooperated with law enforcement and/or with Young's prosecutors, law enforcement might be able to help Dano Young with his own criminal case. I was never otherwise informed of any such statements to Dano Young, despite specific discovery requests for information about express or implied plea agreements between the state and its witnesses. Nor did I ever see any documents, notes, or writings regarding or reflecting any statements by law enforcement (including representatives of the Midland or Harrison County DA's Offices) to Dano Young to the effect that if he failed to cooperate with the prosecution law enforcement

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RC. JR

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would make Dano Young's prison or jail time "hard," or that "everyone knows Clint is guilty." Nor was I ever otherwise informed of any such statements to Dano Young.

7. If I had known the state had made a plea offer to David Page before Young's trial, such as a plea offer for a thirty-year sentence that was conditioned only on Page testifying against Young, Mr. Williams or I would have vigorously cross-examined Page about the plea offer and used it as impeachment evidence.

8. Had evidence of a plea offer to Page come out on cross-examination, Mr. Williams or I would have asked the judge for a mistrial based on government misconduct, because the prosecution had testified under oath during pre-trial hearings that no plea agreement had been reached, and that no plea discussions had occurred.

9. If the motion for a mistrial was denied, Mr. Williams and I would have addressed the state's misconduct during closing argument to the jury, and argued that the jury should be skeptical of the state's case against Mr. Young because the government had lied about extending plea offers and deals to its two most important witnesses, Mark Ray and David Page, and had likely extended plea offers or deals to others of its witnesses as well. Mr. Williams or I would also have argued to the jury that Mark Ray's and David Page's testimony was not credible, because they had been offered and/or were receiving reduced sentences for their testimony. We would also have argued that the plea offers and/or deals to Ray and/or Page indicated that the third accomplice witness in Young's case, Darnell McCoy, had probably also received inducements for his testimony.

10. If I had known that law enforcement had extended benefits to Mr. McCoy, and/or threatened him with criminal prosecution or other adverse consequences if McCoy did not cooperate with Young's prosecutors, Mr. Williams

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RC. JR

and I would have argued to the jury that these inducements and/or threats undermined the credibility of McCoy's testimony, as well as the credibility of the state's other witnesses who the state most likely influenced with similar rewards and/or threats.

11. In addition, had I known of any of the above-described statements to Brook, Tucker, and/or Dano Young, Mr. Williams and I would have argued to the jury that the state's inducements to these witnesses, either alone or in conjunction with the state's plea offers and deals to Ray, Page, and/or McCoy, cast serious doubt on the credibility of the state's evidence against Young. In particular, we would have argued that the inducements to multiple state's witnesses showed a pattern of manipulation and dishonesty by Young's prosecutors, and indicated that the state had obtained inculpatory evidence by extending witnesses promises of benefit and/or threatening witnesses with adverse consequences. We would have argued that this lack of credibility should cause the jury to find a reasonable doubt as to Young's guilt or innocence, and (if Young were convicted at the guilt phase) would have argued at the punishment phase that the jury should answer "no" to the first and second special issues presented for its consideration (whether Young posed a future danger, and whether he actually caused the death of the deceased or intended to kill the deceased or another or anticipated that a human life would be taken.)

12. Indeed, had Mr. Williams and I known the state had extended a plea offer to Page, made threats and/or offered benefits to McCoy, and/or made any of the above-described statements to Tucker, Brook, and/or Dano Young, we would have made such inducements, and the resulting lack of credibility of the state's case, a central theme of Young's defense at the guilt and punishment phases, and

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R.C., JR

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used these arguments to support Mr. Young's claims that he never pulled the trigger during the murders.

13. Had the above information come to our attention before the start of Young's trial, we would have asked prospective jurors how they would view the credibility of a witness who received a plea offer from the state, or was told by the state that they could receive assistance and/or a shortened prison term by testifying for the state against a defendant.

I declare under penalty of perjury under the laws of the United States and the State of Texas that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 20th day of November, 2014 at Midland, Texas.

Rodrun Cantacuzene
Rodrun IAN CANTACUZENE, JR

State of Texas
County of Midland

Subscribed and sworn to before me
this 20th day of November, 2014.

CARRIE STEWART
MY COMMISSION EXPIRES
MAY 30, 2018

Carrie Stewart
Notary Public RCJR
RC.JR

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DECLARATION OF MICHAEL DUANE BYRNE

I, Michael Duane Byrne, declare as follows:

1. In 2003, I served as a juror on the case of *State of Texas v. Clinton Lee Young*. I served throughout the entire guilt and punishment phase deliberations.

2. During that trial, I believed that there were no plea bargains, agreements, or special treatment afforded to the three men who were with Clinton Young during the crimes and who testified for the State against him.

3. If there had been evidence presented that Mark Ray had a verbal plea agreement with the government, David Page was in active negotiations with the government about a plea bargain, and that Darnell McCoy was avoiding formal charges and/or jail time for other crimes he committed before Mr. Young's trial, I would have felt that Mr. Young was being treated too harshly. I don't believe in protecting criminals, and hearing all of this would have made me believe that Mr. Young was made the scapegoat for crimes that the others were also involved in.

4. If the defense had convincingly countered the State's ballistics evidence with regard to the Petrey murder, I would have been less likely to convict Young of killing Petrey.

5. This was a very difficult case for all of the jurors involved including

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myself. I remember that after the trial, I received a letter from Judge Hyde. The letter thanked me for my service and told me that the jurors had reached the correct verdict because Judge Hyde knew about other evidence involving Young that confirmed he was both guilty of the murders charged, and dangerous to society.

6. On September 20, 2008, I met at my home with an investigator for the Office of the Federal Public Defender who told me that his office is representing Young in a federal habeas proceeding. The investigator advised me that I had an absolute right not to discuss my jury experience. If I had been asked by anyone prior to this time about the above information, I would have been willing to talk about it and to testify. I have read and reviewed this two-page declaration.

I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 20th day of September, 2008 in Midland, Texas.

MICHAEL DUANE BYRNE

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DECLARATION OF RAYNALDO RAY VILLA

I, Raynaldo Ray Villa, declare as follows:

1. In October 2002, I was an inmate at the new Midland County jail in Cell Block B.

2. When I was in custody, I met an inmate named David Page. Page and I were housed in the same cell block.

3. One day, I overheard Page tell another inmate that he had shot a man named Petrey.

4. The next day I asked Page about what I had overheard. While the two of us played cards and dominoes in his cell, Page told me that he had been charged with the kidnaping and murder of a man named Sam Petrey. Page stated that he, and not Clinton Young, had shot Petrey outside of Petrey's truck.

5. I remembering asking Page if he regretted what he had done. He never answered my question.

6. I overheard Page tell other prisoners that he had killed Petrey. While Page may have told others what happened in order to appear tough in prison, he did not tell me that story as a bluff because he knew it would not frighten me. I am a large man, weighing more than 300 pounds, and, have been incarcerated with

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inmates much tougher than Page.

7. Sometime after my conversation with Page, I was involved in a jail fight and assigned to lockdown at the old county jail on the third floor of the Midland County courthouse.

8. At that jail, I was assigned to a cell next to one occupied by Clinton Young.

9. Though we could not see each other because of the design of our adjoining cells, Young and I began talking about why were in custody. At some point I realized Young was the young man who had been arrested with Page.

10. I told Young that I knew about his case but I did not want to talk in front of the jailers and other inmates. I told him I would write him a letter and do what I could to help him prove his innocence in the kidnaping and killing of Petrey.

11. In March 2003, while still in custody, I wrote Young a letter about my conversation with Page. In that letter, I told Young that Page confessed to killing Petrey but was blaming it on Young because Page did not want to get sentenced to life in prison.

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12. In April 2003, I signed an affidavit for Young's defense about Page's confession.

13. Around May 2003, after I had served my time in custody, I received an unexpected visit at my home from Midland County District Attorney's Investigator J.D. Luckie.

14. I already knew Investigator Luckie because he had questioned me years earlier when I was prosecuted for taking about $200 in food stamps for my family when I was between jobs.

15. Luckie wanted to question me about my affidavit concerning Page. I told Luckie, as I had told Young in the letter, that Page had confessed to me that he had killed Petrey.

16. Luckie spent about five minutes or so asking me about the affidavit. He told me he did not think what I had to say would help Young in his defense.

17. I remember Luckie asking me, "Why are you trying to help this guy?" I told him, "Because he didn't do it. The other guy told me he did it."

18. Luckie asked me if I wanted to make a statement and I said I did.

19. I later signed a second affidavit prepared by Luckie that included my original comments about Page. The second affidavit also said that Page had

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bragged to other prisoners about shooting Petrey and suggested that Page was lying because he wanted to make himself seem tough in jail to other inmates.

20. I signed the second affidavit because it could be true that Page told other prisoners about the shooting to keep them from hassling him. But the original statement I made is also true: Page told me he killed Petrey and he did not tell me that to scare me off.

21. I am not trying to get back at anyone by making this statement. I am making it because I have been railroaded a lot in my life and believe that no one should be convicted for another person's crime.

22. On June 12, 2008, I spoke with two investigators from the Office of the Federal Public Defender. The investigators explained to me that their office represents Clinton Young in connection with a federal habeas proceeding. I have read and reviewed this four-page declaration.

I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 23rd day of September, 2008 in Midland, Texas.

Raynaldo Ray Villa

JULIO CAZARES
NOTARY PUBLIC
State of Texas
Comm. Exp. 08-21-2011

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DECLARATION OF GREG KRIKORIAN

I, Greg Krikorian, hereby declare as follows:

1. I am employed as an investigator in the Capital Habeas Unit ("CHU") of the Office of the Federal Public Defender, Los Angeles, California. I have been assigned to the capital habeas case of Clinton Young since 2008.

2. On June 19, 2008, in the course of my duties for Mr. Young's case, attorney Brad Levenson and I interviewed Patrick Brook at the Robertson State Prison in Abilene, Texas. During that interview, Mr. Levenson and I asked Brook whether he had been offered any plea deals or other types of leniency on his own criminal case or sentence, in exchange for his testimony for the prosecution at Young's 2003 trial.

3. During the June 19, 2008 interview, Brook never said that Midland District Attorney investigator J.D. Luckie or any other law enforcement official had ever told him or Josh Tucker that Harrison County District Attorney Joe Black would put in a good word for them with prison authorities if they testified against Young. Nor did Brook tell me that Luckie had told him negative things about Young to try to convince him to testify for the state at Young's trial.

4. Brook also did not say, during the June 19, 2008 interview, that Longview Police, Harrison County law enforcement, or anyone else told or "guaranteed" him after his arrest that he would not serve any more than ten years

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in prison if he talked to them about the Doyle Douglas shooting or any other crime. Brook also did not say in the June 19, 2008 interview that any law enforcement officer told him that Young had "ill intentions" towards him or wished him harm.

5. Also in the course of my duties for Mr. Young's case, on September 30, 2009 I interviewed Josh Tucker at the Joe F. Gurney Unit at Tennessee Colony, Texas. During that interview, I asked Tucker whether he had agreed to testify at Young's trial after engaging in plea negotiations with Young's prosecutors.

6. During the September 30, 2009 interview, Tucker did not disclose that any law enforcement official, including J.D. Luckie, had told him or Patrick Brook that if they testified against Young the Harrison County District Attorney, Joe Black, would put in a good word for them with prison authorities.

7. If called at a hearing, I would be willing to testify to the above facts.

I declare under penalty of perjury under the laws of the United States and the States of California and Texas that the foregoing is true and correct.

Executed this 5th day of December, 2014, at Los Angeles, California.

GREG KRIKORIAN

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SUPPLEMENTAL DECLARATION OF GREG KRIKORIAN

I, Greg Krikorian, declare as follows:

1. I am an investigator with the Federal Public Defender's Office and assigned to the capital habeas case of Clinton Young.

2. I previously executed declarations in this case dated May 2, 2014, June 20, 2014, and November 26, 2014. This declaration is a supplement to my declaration dated May 2, 2014.

3. As stated in my May 2, 2014 declaration, I interviewed David Page on January 9, 2014, February 21, 2014, and April 24, 2014. I also interviewed Page again on May 22, 2014, and obtained a declaration from him on that date. Page also executed a declaration dated February 21, 2014.

4. During my visit with Page on January 9, 2014, and in addition to the statements set forth in my May 2, 2014 declaration and Page's February 21, 2014 and May 22, 2014 declarations, Page told me that he was upset with Young during Young's 2003 trial. But Page said he has undergone a sort of spiritual conversion during his years in prison and that he is no longer angry with Young. He said he believes that both he and Young are in prison because they broke laws as young men but that he does not believe Young should be executed.

5. On November 24, 2014, I also spoke by telephone with Darnell McCoy, who testified as a government witness at Young's capital trial. In 2001, McCoy testified, he was present with Page, Young, and Mark Ray when Doyle Douglas was shot and killed in his car in East Texas.

6. During my November 24, 2014 conversation with McCoy, he told me that he never heard Young say he intended to take Douglas' car or travel to Midland. McCoy told me that to this day he does not know why Douglas was shot.

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7. On November 26, I sent McCoy a text message asking him to call me so I could read him a brief statement for a sworn declaration. He said he did not want to speak with me or sign a declaration because he was tired of dealing with the case and had already been to court.

I declare under penalty of perjury under the laws of the United States of America and of the State of Texas that the foregoing is true and correct.

DATED: December 3, 2014

GREG KRIKORIAN

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DECLARATION OF GREG KRIKORIAN

I, Greg Krikorian, declare as follows:

1. I am an investigator with the Federal Public Defender's Office in Los Angeles and assigned to the capital habeas appeal in Texas of Clinton Young.

2. In April 2011, I was asked by our client to locate a Russell Stuteville. Young said Stuteville might know if David Page had a plea bargain agreement with the Midland County District Attorney in exchange for testifying against Young in a 2003 capital murder trial in Midland.

3. Young said that Stuteville and Page had been in the Midland County jail at the same time. He said that Stuteville might not only have heard Page talk about a plea deal but also might know the identities of others who could establish that Page received a deal in exchange for testifying against Young and avoiding a murder trial.

4. On April 19, 2011, I located an address in Midland for Stuteville. That same day, I spoke with a Midland private investigator named Nancy Piette who had worked on Clint's murder trial and also had worked on a case involving Stuteville.

5. Over the coming months, Piette and I traded messages about locating Stuteville and having her speak to him first because she was already in Texas and had known him from a previous case. But Piette was busy with her own

private investigation business and trials so we agreed to talk when she was free

6 On August 2, 2012, Piette told me that she had located Stuteville and that he was being held at the Price Daniel Unit in Snyder, TX, about 90 minutes from Midland.

7. On Aug. 17, 2012, I sent a letter to Stuteville at the Price Daniel Unit. In the letter, I told him who I was and that our office is representing Young in the habeas appeal of his conviction. I told him I would like to speak with him by telephone and said that if he was represented by an attorney and wanted me to speak first with his attorney, I would be happy to do so. I also sent him a stamped, self-addressed envelope so he could write me if he was unable to access a telephone prison.

8. I never heard back from Stuteville and in February 2013, I determined that he had been transferred to the Stevenson Unit in Cuero, TX.

9. A proposal was made in February 2013 to send me to the Stevenson Unit to speak with Stuteville. However, because of the federal budget cuts, all non-essential travel in our office was essentially frozen so I was unable to interview Stuteville in prison and had no other way to reach him.

10. In late October 2013, the attorneys working on Young's case resubmitted a request for me to fly to Texas to interview Stuteville and other potential witnesses and that request was approved. I then determined that

87

Stuteville had again been moved to another Texas prison, this time the Hughes Unit in Gatesville, TX.

11. On November 11, 2013, I began the process of receiving the necessary clearances to visit Stuteville in prison and on Dec. 4, my visit was confirmed.

12. On Dec. 11, 2013, I interviewed James Kemp at his residence in Midland, TX. The following day, I went back to his residence and obtained a declaration from him.

13. On Dec. 13, 2013, I interviewed Russell Stuteville at the Hughes Unit in Gatesville, TX and obtained a declaration from him that same day.

I declare under penalty of perjury and the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. Signed this 20th day of December 2013in Los Angeles, CA.

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DECLARATION OF GREG KRIKORIAN

I, Greg Krikorian, declare as follows:

1. I am an investigator with the Federal Public Defender's Office in Los Angeles and am assigned to Clinton Young's capital habeas case in Texas.

2. In the course of my duties relating to Clinton Young's case, on July 18, 2008 I, along with Deputy Federal Public Defender Brad Levenson, interviewed David Page in a Texas Department of Criminal Justice prison where he was housed. During that interview, Mr. Page denied that he had any plea agreement with the prosecution before the trial of Clinton Young. He also denied that the prosecution had made him any plea offers before Young's trial.

3. On May 6, 2009, also in the course of my duties for Mr. Young's case, I returned to Texas with Mr. Levenson and again interviewed Mr. Page. In that interview, Mr. Levenson and I asked Mr. Page whether the prosecution had made him any plea agreements or plea offers before he testified for the state at Mr. Young's trial. Mr. Page denied that the prosecution had made him any plea agreements or plea offers before Young's trial.

4. On January 9, 2014 I returned to Texas, this time alone, and interviewed Mr. Page again. I asked Mr. Page if the prosecution had extended him any plea agreements or offers before Mr. Young's trial. He told me at that time that he thought he had signed his plea agreement before he testified against Mr. Young. However, I showed Mr. Page his plea agreement, which is dated December 16, 2003, and pointed out that Mr. Young's trial had occurred earlier in 2003. Mr. Page said maybe he had gotten the dates wrong.

5. Based on Mr. Page's statement that he believed he had signed a plea agreement before he testified against Young, I returned to Texas and interviewed Page again on February 21, 2014. During that interview, Mr. Page told me for the first time that the prosecution had

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extended him a plea offer of thirty years in late 2002 or early 2003, before he testified at Young's trial.

6. Based on the new information I had learned from Mr. Page in February 2014, I returned to Texas and interviewed Page again on April 24, 2014. During this visit, Mr. Page confirmed that he had received an offer from Young's prosecutors for a thirty-year plea deal in late 2002 or early 2003, and that the offer was not contingent on Mr. Page passing apolygraph test. Mr. Page also told me that, before Young's trial, someone from Young's prosecution team said to him something to the effect of, "If you help us, we'll help you."

I declare under penalty of perjury under the laws of the United States of America and of the State of California that the foregoing is true and correct to the best of my knowledge. Signed this 5th day of December 2014 in Los Angeles, CA.

GREG KRIKORIAN

(1)

DECLARATION OF RUSSELL STOTEVILLE

I, Russell Stoteville, hereby declare as follows:

1. In 2001, I was arrested in Midland County for aggravated assault with a deadly weapon.

2. I was held in custody at Midland County Jail until July/Aug. 2002 when my trial was held.

3. While I was in custody, I met David Page, who had been arrested with Clinton Young for murder. I spoke with Page but never spoke with Young.

4. Over the course of months, Page talked a lot about his case and bragged about being in custody for murder. He said this in general population.

5. At first, when he talked about the murder, he always said "we" when describing what he and Young had done.

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(2)

6. I remember that Page said that he held the kidnap victim hostage at gunpoint when Yonny would go to stores or gas stations for cigarettes or gas.

7. Over time, his story changed and he started saying he was scared of Yonny and had been unable to escape.

8. His story changed when he started receiving visits from the District Attorney's Office. He had a lot of visits and I recall he told me he had been to D.A. Al Schorre's office and even taken out to lunch with Schorre and others from the DA's office.

9. As his story changed, he started telling me that he was going to plead guilty to a lesser charge than murder.

10. In exchange for his plea, Page

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told me that he was going to receive a sentence of 20 years probation. I had never heard of such a sentence.

11. From that point on, Page's story about the crime never changed. It was never "we" did this. It was always "Clint Young did this, Clint Young did that."

12. The Dec. visits to Page occurred constantly and lasted as long as I was in custody at Midland County Jail with him.

I declare under penalty of perjury and the laws of the State of Texas that the foregoing is true to the best of my recollection. Dated this ___ of December, 2013 in Gatesville, TX.

Signed 12/13/2013

Russell Stateville

Russell Stateville

(3)

(4)

STATE of TEXAS
County of CORYELL

Signed before me this 13th Day of
December 2013.

Stephen Fullman

STEPHEN FULLMAN
Notary Public
STATE OF TEXAS
My Comm. Exp. October 20, 2015
NOTARY WITHOUT BOND

(1)

DECLARATION OF ELIAS GOMEZ

I, Elias Gomez, hereby declare as follows:

1. In late 2001, I was an inmate at the Midland County Jail in custody for aggravated assault

2. I was held in custody in the B Block along with an inmate named David Page.

3. Page told me he was in custody on murder charges and was cooperating with the District Attorney to avoid getting a life sentence.

4. Page told me he would testify against his co-defendant in a plea bargain with the District Attorney.

5. I do not remember how much time Page told me he would receive in a sentence but I am sure he told me he had a plea agreement.

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6. I was later moved from B Block to isolation because I got into a fight in the visitation area.

7. For next 8 months or so, I was in custody with Clint Young, who I learned was Page's co-defendant.

8. I later pleaded guilty in my case and was sentenced to state prison in late 2002.

I declare under penalty of perjury and the laws of the state of Texas and the United States that the foregoing is true to the best of my recollection. Signed this 20 day of Feb, 2014.

ELIAS GOMEZ

T. KYLE RUSSELL
Notary Public
State of Texas
My Comm. Expires 05-11-2017

Signed:
On February 20, 2014

(1)

DECLARATION OF DAVID PAGE JR.

I, David Page Jr, hereby declare as follows:

1. In 2001, I was arrested in Midland County for murder and aggravated kidnapping.

2. As I was awaiting trial with my co-defendant, Clinton Young, I was trying to reach a plea agreement with the Midland County District Attorney's Office but they at first only offered me 60 years if I pleaded guilty.

3. I told my attorney, Woody Leverett, to negotiate a lesser prison sentence and the negotiations went on for months.

4. Sometime in late 2002 or early 2003, before Clinton Young's trial, the District Attorney Al Schorre met with me and my attorney and offered a sentence of 30 years.

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5. I told my lawyer I wanted him to try and get a lower sentence. I knew I had a 30-year offer but wanted no more than 15 years.

6. I figured 30 years was the worst I would get as a sentence and that if the D.A.'s office liked what I said as a government witness they might go down on my sentence.

7. After my testimony against Clinton Young in 2003, I put a counter plea offer to the D.A.'s office and asked for 15 years. My offer was rejected.

8. In December 2003, I finally accepted a plea deal for 30 years for aggravated kidnapping.

I swear under the laws of Texas and the U.S. that the foregoing is true to the best of my recollection. Signed this 21st day of Feb 2014, in Tennessee Colony, TX

Shauna L. Vestal
Notary Public, State of Texas
My Commission Expires
02 01 2017
Notary Without Bond

David Page Jr.
DAVID PAGE JR.

SK [redacted] DECLARATION OF JAMES DANE KEMP

I, James Dame Kemp, declare as follows:

1. In September 2009, I was arrested for burglary in Midland, TX. I later pleaded guilty and was sentenced to one year.

2. I served the first part of my sentence in the Midland County Jail that was then on top of the country courthouse.

3. While I was in custody, I and two other inmates were accused of attempting to escape because we had been outside our cells. We were not trying to escape. We were only trying to get parts to build a tattoo gun that we used to make tattoos in jail.

4. We were charged with engaging in an organized crime with intent to escape the jail. I understood that charge to be a First Degree Felony that could result in a prison sentence of 5 years to 99 years on top of the sentence I already received for the burglary.

5. While I was awaiting trial on the new charge, I overheard one of my co-defendants, Michael Kessler, talking with another inmate named David Page. I knew Kessler. I did not know David Page personally, but I knew that Kessler and Page had been friends. From their conversation at the jail, I learned that Page had previously been convicted in the murder of a man whose car had been stolen.

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6. Kessler and Page spoke for a long time, maybe two hours, by shouting into the ventilation system at the jail. I could hear the entire conversation. I remember that Kessler asked Page what he was doing back in Midland, and that Page said that he had been subpoenaed to testify at a court hearing for Clint Young.

7. I heard Page describe the events surrounding the shooting of a man whose car was stolen. Page said that the police never found fingerprints on the gun used in the shooting because Page had worn gloves the night it occurred.

8. I also remember Kessler telling Page that he must be upset because he helped the DA's case and was still given a long prison sentence. Page told Kessler he wasn't angry at all and that he had been lucky because if only the police knew what really had happened, he might have been facing capital murder.

9. Shortly after that conversation, Page was suddenly moved out of his cell and to another jail in Midland. And right after that, the deputies put Young in that same cell.

10. I later spoke to Young, also through the ventilation system. Young heard about the conversations that Kessler and I had with Page and I told Young that I would testify about what I heard David Page say. Clint said his lawyers would come speak with me the next day. I also heard Young talking to his family on a pay phone many times and crying that he did not kill the man whose car had been stolen.

11. The next day, two men called me out to speak with me and I assumed these men were Young's lawyers. They took me to an interview room where inmates talk to their attorneys.

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They began asking me questions about my own case and told me I was looking at a lot of new prison time.

12. I realized these two men were not with the defense and I asked them who they were. They told me that they were with the District Attorney's Office. I also noticed that one of them had a small tape recorder in his shirt pocket and I asked him if I was already being recorded. He said he had been recording. I told him I did not think he had permission to record me without my approval and he said he did not need my consent.

13. At that point, I became concerned because I felt that the DA's office was trying to trick me. I already had told Clint I would go to court and tell them what Page had said. But then I started thinking about how the DA's people had come in and started questioning me. I thought to myself, if they can go in and start questioning you and recording you without your permission, what else can they do? I was intimidated.

14. I also knew that they had this other "escape" charge pending against me that could send me to prison for years when I was scheduled to get out on the burglary charge in months.

15. When I got to court, I was under pressure. The same two men who interviewed me at the jail were at Young's hearing the next day. I had to watch my words. I thought 'Hell no, I'm not going to risk my freedom by looking bad in front of the DA.' If I had been interviewed someplace other than in a courtroom, or not in front of these two men who had interviewed me previously, I would have been more clear-headed and would have remembered more; I was shaking the whole time I was up there, it was scary.

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16. I have no reason to lie for Clint Young. I don't know him or David Page. I've never seen David and only saw Clint Young face-to-face when I came into the courtroom for the hearing, we spoke only through ventilators while we were in the jail and I've never met him before and haven't spoken to him after.

17. Within a week or so of my testimony in Young's case, my attorney, Rusty Wall, came to me with a plea deal. He told me that the First Degree Felony had been reduced to a Fourth Degree and that I would receive a 10-month sentence that would run concurrent with the burglary sentence that I was already serving. So I accepted the plea and was out in several months. The prosecutor in both of my cases was Theresa Clingman.

I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 23 day of February, 2014 in Midland, Texas.

JAMES DANE KEMP

SIGNED Before me the 23rd of Feb. 2014

James Kemp

ANNE MARIE CARTER
My Commission Expires
July 3, 2016

Anne M. Carter
Midland, Midland Co. Tx.

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JK

(1)

DECLARATION OF JOHN HUTCHINSON

I, John Hutchinson, declare as follows:

1. In 2010, I was held in custody at the Midland County Jail after my arrest for violating parole in Colorado.

2. During my time at the jail, above the county courthouse, I heard another inmate talking through the air vents and bragging about how he had shot and killed another man.

(3.) The other inmate was David Page and he talked about how he shot this man twice in the head with a .22 caliber handgun while his accomplice was asleep because he had been doing drugs.

(4.) I remember Page originally saying he had done the killing of this man but then he later started to back away from that story and made it sound like he was not responsible for the killing.

(5.) I also remember Page saying that he got a good deal because the other guy involved in the crime was on Death Row.

6. From my cell, I could see the corridor where they would take people out of the maximum security area and I saw Page being led out of the jail.

7. After Page left the jail, the guards brought in another inmate and he also was talking about why he was in Midland. He said he was convicted of capital murder but was innocent.

(8.) I remember that this second inmate said he was asleep when the murder occurred and what he said clicked with me because I remember that Page had talked about how his accomplice was asleep when he murdered the man.

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9. I later learned that the second inmate was Clint Young but did not ever see him until I was called into court during his hearing on the appeal of his conviction.

10. During that hearing, I was brought into court along with other inmates who had overheard what Page was saying while he was at the Midland County Jail.

11. Before I went to court, I was taken to an interview room above the courthouse and questioned by two investigators with the District Attorney's Office.

12. I remember that they asked me questions that seemed like they wanted to protect Page.

13. The investigators got mad because I wouldn't talk to them and I remember that one of them was a big guy who was rude as hell and tried to secretly tape record me by putting a recorder on a book shelf and trying to hide it behind his arm.

14. When I wouldn't talk to them, the investigators got real angry and left the room and I could hear them outside the room cussing.

15. The whole experience of going to court for the hearing was kind of scary and I was nervous.

16. Though I saw Page in the jail before I testified in court, I had never seen Young before I came to court and did not know either one of them before this whole period of time in the Midland County Jail.

I declare under penalty of perjury under the laws of Texas that the foregiong is true and correct to the best of my knowledge. Signed this 24 day of FEB, 2014, in Midland, TX.

John Hutchinson

SWORN TO AND SUBSCRIBED by the said JOHN HUTCHISON on this the 24th day of February, 2014.

Nancy L. Piette
NOTARY PUBLIC
STATE OF TEXAS

NANCY L PIETTE
My Commission Expires
April 30, 2016

ID# [redacted]
10-29-01
Before trial

Mr. Berry,

I would appreciate it very much if you would come up here and discuss my case with me.
I am ready to plea bargan with you.
I have been locked up since Nov 26 '01

If you have any spare time please come and see me.

Sincerely,
Mark W. Ray

* THIS LETTER WAS WRITTEN BY MARK RAY TO THE PROSECUTOR BEFORE MY TRIAL. IT MAKES VERY CLEAR, MARK SEEKS A PLEA DEAL BEFORE MY TRIAL. THE PROSECUTOR HID THIS PIECE OF EVIDENCE, BY SENDING THE LETTER TO MARKS LAWYER. WHICH WE THEN WOULD NOT HAVE ACCESS TO THAT FILE, UNTILL THE CONCLUSION OF MARKS CASE. WHICH DID NOT HAPPEN UNTILL AFTER MY TRIAL.
BY LAW, THE PROSECUTOR WAS SUPPOSED TO PROVIDE A COPY OF THE LETTER TO MY TRIAL LAWYERS. BEYOND NOT DOING THIS, THEY DID NOT KEEP A COPY IN THEIR OWN FILE.
AS MY TRIAL LAWYERS COULD SEARCH THAT FILE & THEN UNCOVER THIS DOCUMENT. IT GOES TO SHOW THE STATES EFFORT TO COVER UP THE HIDDEN DEALS.