

THE STATE OF TEXAS,

v.

WILLIAM AIKIN

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54TH DISTRICT COURT

OF

MCLENNAN COUNTY, TEXAS

FILED
2017 DEC -5 AM 11:24
JON R. BINGLE
DISTRICT CLERK
MCLENNAN CO. TX.
DEPUTY

MOTION TO COMPEL FULL DISCLOSURE OF EVIDENCE
UNDER MICHAEL MORTON & BRADY

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant WILLIAM AIKIN, along with counsel, and files this, his Motion to compel full, immediate disclosure of evidence under Texas Code of Criminal Procedure §39.14 (the *Michael Morton Act*) and *Brady*.¹ Under information and belief, counsel makes this Motion and would show as follows:

I. Additional Evidence Pertaining to Manuel Chavez

It has come to the attention of the Defense that on, or about, October 31, 2017, the District Attorney called for a witness conference at the District Attorney's office in which Detective Manuel Chavez of the Waco Police Department was present. In attendance with Mr. Chavez was his personal attorney, J.R. Vicha, who represents Mr. Chavez in the pending Court of Inquiry hearing. Ostensibly, the purpose of the hearing was to prepare for Mr. Chavez's testimony. However, Mr. Chavez was not called as a witness after this conference. It is the belief of the Defense that this meeting was in order to compare, and prepare, testimony in the upcoming court of inquiry hearing which is to be scheduled in the near future and ensure that the state and Mr. Chavez were "on the same page".

¹ See *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995);

It is clear from testimony in the disqualification hearing in the matter of the *State of Texas v. Matthew Clendennen*, that there are glaring contradictions between the sworn testimony of Abelino Reyna and Manuel Chavez. Any changes in the testimony of those witnesses is relevant to the defense of William Aikin's case as both will be fact witnesses in his trial. The variances between their testimony could have far reaching impact in the cases of the other 154 co-defendants indicted in this case, and therefore must be disclosed to the Defense as soon as practicable. Any subsequent, consistent statements of the witnesses are material to the defense as it would corroborate the testimony of the witness. Any inconsistent statements of the witnesses are equally material as they would show that the witnesses have previously contradicted themselves.

The presence of any other witnesses, or the District Attorney, to the meeting between Mr. Vicha and Mr. Chavez erodes the Attorney-Client Privilege. Likewise, any meeting between the District Attorney and Manuel Chavez (or any other witness) in which Mr. Vicha is present is not protected by the Attorney Work Product Privilege. Therefore, Defendant Moves that this Court ORDER disclosure of any recordings, notes, and/or statements made during the meeting *by any party to the meeting*.

_____ GRANTED

_____ DENIED

_____ GRANTED AS FOLLOWS: _____

II. Undisclosed Evidence Under Protective Order

On or about November 17, 2017, this Honorable Court held a hearing in the matter of the *State of Texas vs. Christopher Jake Carrizal*, Cause No. 2015-2263-C2. In that hearing, it is Defendant's belief that certain items of discovery which have not previously been disclosed were

placed under a protective order in said case – including statements made by a representative of the Attorney General’s office that indicate that the District Attorney has not fully disclosed information to Defendant to which he is entitled, despite a legal and ethical duty to do so. Defendant has not been provided with additional discovery since the trial of Jake Carrizal began. Thus, Defendant is under the impression that the state does not intend to disclose these items, or intends not to disclose them as soon as practicable. Therefore, Defendant Moves this court ORDER the State to produce any items in its possession that it knows the Attorney General’s Office (or an Attorney General liaison to the McLennan County District Attorney’s Office) believes ought to be disclosed to the defense.

_____ GRANTED

_____ DENIED

_____ GRANTED AS FOLLOWS: _____

III. Undisclosed Evidence Released Only to Casie Gotro During Trial

During the trial of the matter of *The State of Texas vs. Christopher Jake Carrizal* (Cause No. 2015-2263-C2), there were several occasions in which it came to the Court’s attention that the District Attorney had not fully provided discovery to Ms. Gotro who served as lead counsel for Mr. Carrizal. Those same items have not been provided to Defendant in his case. Therefore, Defendant Moves this court ORDER the State to produce any items in its possession that were disclosed to the defense in the matter of *The State of Texas vs. Christopher Jake Carrizal* which have not been provided to Defendant in his case.

_____ GRANTED

_____ DENIED

_____ GRANTED AS FOLLOWS: _____

IV. Undisclosed Evidence Which Tends to Show that Michael Jarrett Has Participated in Actions Which Make He, and Other Members of the District Attorney's Office, Fact Witnesses

Defendant is in possession of information which suggests that First Assistant District Attorney Michael Jarrett has admitted that he and District Attorney Abel Reyna ordered the arrest of the 177 bikers at Twin Peaks at a time when the police were still treating them as witnesses with the intent to release them. This information has been corroborated in a sworn affidavit prepared by Greg Davis, former First Assistant District Attorney for McLennan County.²

Mr. Davis' reputation as a career prosecutor is unassailable and it is for this very reason that Mr. Reyna recruited him to be a member of his staff. Indeed, Mr. Reyna previously stated of Mr. Davis, "His presence in the office has been an integral part in both achieving justice for victims and helping other prosecutors to learn from his vast prosecutorial experience."³

In a normal criminal case, pertinent information is released to the defense during the regular course of discovery. However, in the instant case, the State has been caught withholding evidence on numerous occasions. This includes at least one proven instances of intentionally withholding evidence in the matter of *The State of Texas vs. Christopher Jake Carrizal* in which it was proven that the prosecutors in the *Carrizal* matter were present in the room when a witness gave a recorded, exculpatory statement to the elected District Attorney which was not turned over to the defense.⁴

² See Attachment A, affidavit of Greg Davis.

³ http://www.wacotrib.com/news/courts_and_trials/mclennan-county-prosecutor-likely-holds-active-death-row-record/article_548a4b86-4742-5f0a-aa35-bce4a41ad89a.html

⁴ <http://www.kcentv.com/news/twin-peaks-defense-attorney-calls-prosecutors-behavior-criminal-/489500387>; See *Ex Parte David Mark Temple*, No. WR-78,545-01

Thus, it has become clear that neither the Court, nor the defense, can trust the state to release evidence as required by law. Therefore, Defendant Moves this court ORDER the State to affirm, or deny, either by sworn affidavit or live testimony under oath, the assertions made by Mr. Davis (Par. 16) in his affidavit pertaining to the arrest of the bikers at Twin Peaks.⁵

_____ GRANTED _____ DENIED

_____ GRANTED AS FOLLOWS: _____

V. Undisclosed Notes Made by Mr. Jarrett for the Purpose of Writing a Book

Defendant has credible information which leads him to believe that First Assistant District Attorney Michael Jarrett has been keeping notes about items pertaining to the investigation and prosecution of this case which may contain mitigating or exculpatory information. As it appears that the District Attorney has made himself, and his office, witnesses to this case any such notes are recorded recollections and are discoverable under Texas Code of Criminal Procedure §39.14.⁶

Therefore, Defendant Moves this court ORDER the State to produce and permit the inspection and the electronic duplication, copying, and photographing of any written or recorded statements of Mr. Jarrett that constitute or contain evidence material to any matter involved in this action.

_____ GRANTED _____ DENIED

⁵ Defendant specifically seeks the sworn testimony of Abel Reyna, Michael Jarrett, Mark Parker, Amanda Dillon, Gabe Price, Sterling Harmon, and Heather Nering.

⁶ *See Also*, Texas Disciplinary Rules of Professional Conduct 1.08, Comment 4.

_____ GRANTED AS FOLLOWS: _____

VI. All Undisclosed Evidence in the Possession of the State Which Has Not Been Produced in a Timely Fashion

As the Court is aware, the Michael Morton Act requires the state to produce discovery to the defense “as soon as practicable”. As of the writing of this Motion, the state has had two years and six months to create a feasible manner in which to release the discovery to the defense. It is clear that the state has had a sufficient amount of time to marshal the discovery and produce it, in an organized manner, in toto, to the defense. This is obvious because discovery has already been produced in that manner to Ms. Gotro (whose trial recently ended) as well as the special prosecutors in the *Clendennen* case.

Even still, discovery has been produced to the defense in piecemeal over the last two and a half years. Therefore, in light of the volume of discovery, and the proven difficulties in turning the discovery over in a timely manner, Defendant asks that the Court ORDER the state⁷ to produce all discovery, *Brady* evidence, *Giglio* evidence, and evidence that the state intends to use at trial to the defense no later than ten (10) days after the date of this order, at which time that the state also be required to file a letter, in writing, with the clerk of the Court demonstrating compliance with this Order. Defendant also asks that the Court ORDER the state to create a complete log of all the evidence, reports, recordings, and related materials that exist in this case, as well as those items which the state asserts privilege over, and that said privilege log be submitted to the Court no later than ten (10) days after the date of this order so that the Court can conduct an *en camera*

⁷ Under *Brady* and Tex. Code Crim. Proc. Ann. art. 39.14, all state actors are treated alike. *In Ex parte Mitchell*, 977 S.W.2d 575, 578 (Tex. Crim. App. 1997), the Texas Court of Criminal Appeals, while citing *Kyles v. Whitley*, 514 U.S. 419 (1995), notes that “Brady has been extended to include the required revelation to an accused of material exculpatory evidence in the possession of police and other parts of the ‘prosecutorial team’”. *See also*, Tex. Code of Crim. Proc. Ann. Art. 39.14(k). “Even if the prosecutor was not personally aware of the evidence, the State is not relieved of its duty to disclose because ‘the State’ includes, in addition to the prosecutor, other lawyers and employees in his office and members of law enforcement connected to the investigation and the prosecution of the case.” *Ex parte Miles* 359 S.W.3e 647, 665 (Tex. Crim. App. 2012)(emphasis added).

inspection of any items over which the state asserts privilege.

WHEREFORE, PREMISES CONSIDERED, the Defendant prays that his Motion be in all things granted.

Respectfully Submitted,




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callahankinglaw@gmail.com

Attorney for Defendant
William Chance Aikin

CERTIFICATE OF SERVICE

I certify that a true copy of the above motion has been delivered by hand delivery to the office of the District Attorney of McLennan County, Texas on December 5, 2017



Robert Callahan
Attorney for Defendant

No. 2015-2196-C2

THE STATE OF TEXAS,

v.

WILLIAM AIKIN

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54TH DISTRICT COURT

OF

MCLENNAN COUNTY, TEXAS

ORDER SETTING HEARING

On the ____ day of _____, 2017 there was presented to me a MOTION
SUPPRESS. The Court finds it necessary and proper to set a Hearing to hear said Motion.

IT IS THEREFORE ORDERED that the hearing on this matter will be held before this
Court the ____ day of _____, 2017 at ____ o'clock __m.

Signed on this ____ day of _____, 2017.

Judge Presiding

Attachment A

THE STATE OF TEXAS	§	IN THE 54 th JUDICIAL
	§	
V.	§	DISTRICT COURT OF
	§	
MATTHEW ALAN XLENDENNEN	§	McLENNAN COUNTY, TEXAS

AFFIDAVIT

BEFORE ME, the undersigned official, on this day appeared Gregory S. Davis, who is personally known to me, and first being duly sworn according to law upon her oath, deposed and said as follows:

1. "My name is Gregory S. Davis. I am over 18 years of age, and I am fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are all true and correct to the best of my knowledge.
2. I have been licensed to practice law in the State of Texas since 1977. I served as a prosecutor for more than 26 years, I served in that capacity in Dallas, Collin and McLennan counties. I was employed in the McLennan County District Attorney's Office from February, 2011 to August, 2014; serving as the Deputy First Assistant District Attorney from February 2011 to November 2013, and as the First Assistant District Attorney from November 2013 to August 2014.
3. During my employment in the McLennan County District Attorney's Office I became aware of several cases in which the elected District Attorney, Abel Reyna, arranged for his campaign supporters, persons associated with campaign supporters, and friends to receive

preferential treatment. I believe that he did so for political and/or personal gain.

4. In at least three cases I believe Reyna effectively dismissed valid criminal cases of his campaign supporters and friends by instructing subordinates to refuse to accept their cases for prosecution. For example:

Donal Sharp

In March 2012, Reyna informed First Assistant District Attorney, Michael Jarrett, and me that one of his "big" supporters (Donal Sharp) had been arrested for Driving While Intoxicated (DWI). Jarrett and I assumed that Reyna would recuse the DA's office in Sharp's case. Instead, Reyna gave the case to Joe Layman, Chief of the Misdemeanor Division, who subsequently refused to accept Sharp's case for prosecution – effectively dismissing the case.

I reviewed Sharp's case and found ample evidence to support his prosecution and conviction: his blood alcohol content (by blood draw) was nearly twice the legal limit, he badly failed the videotaped field sobriety tests, and his companion that night told the arresting officer that Sharp was too drunk to drive. I concluded that the case had been refused for political reasons.

I was told that Sharp contributed to Reyna's re-election campaign after the refusal of his DWI case.

Kim Falcone

Kim Falcone was arrested for DWI in McLennan County in 2013. According to Reyna's administrative assistant, Julissa West, Falcone was the wife of a prominent doctor and a friend of Reyna's wife. Reyna gave Falcone's file to Joe Layman who subsequently refused to accept it for prosecution.

I reviewed Falcone file, and found sufficient evidence to support her prosecution - leading me to conclude that the case had been refused for personal reasons.

I later learned that Falcone and/or her husband contributed to Reyna's re-election campaign after the refusal of her DWI case

Joseph Martin

Martin was arrested for Possession of Marihuana in Waco in 2013. His mother, Lori Martin, employed Reyna's wife and had contributed to Reyna's campaign.

Reyna gave Martin's case to Joe Layman who subsequently refused to accept this case for prosecution.

I reviewed Martin's file, and found ample evidence to support his prosecution and conviction. The marihuana had been found in Joseph Martin's bedroom pursuant to a valid search warrant. I concluded that the case had been refused for personal and/or political reasons.

5. In March 2013, I spoke with Michael Jarrett about the Sharp and Falcone cases. He agreed that Reyna's actions were inappropriate and that we needed to speak with him. Shortly thereafter, Jarrett and I met with Reyna to voice our concerns. When we confronted him about his actions, Reyna said words to the effect of 'Never get in my fucking business again'.
6. In December 2013, Michael Jarrett and I met with Texas Ranger Matt Lindemann to discuss our concerns about Reyna's actions.
7. Following the March 2013 meeting with Reyna, I believe he began using other methods to help his campaign supporters and friends. For example, I believe he used the Pre-Trial Intervention Program (PTIP) to effectively dismiss cases that did not by any objective

standards deserve pre-trial diversion. For example, Reyna ordered staff members to place **Amity Harrell** in PTIP even though she was a convicted felon and PTIP was intended for misdemeanor offenders. Harrell's father, Jim Densman, contributed to Reyna's re-election campaign after his daughter's placement in PTIP.

8. I also believe that Reyna used or attempted to use specially appointed prosecutors to help his campaign supporters and friends. Reyna would falsely claim that the DA's office had conflicts in prosecuting certain individuals and arrange for special prosecutors to be appointed who would ultimately dismiss the cases.

For example, in 2014 one of Reyna's campaign supporters (**Bill McCoy**) called the office because wanted Reyna to make a DWI case on one of his Hispanic employees "go away". I was told that Reyna arranged to have a special prosecutor appointed who agreed to dismiss the employee's case. I do not recall the name of the employee, but I believe it is included in the many documents that I gave Michael Jarrett prior to my resignation. These documents include copies of files, letters and notes related to cases which Reyna manipulated to favor his campaign supporters and friends.

9. In addition to having cases dismissed for political and/or personal reasons, I also know that Reyna wrote at least one letter requesting a full pardon for a campaign supporter's relative. For example, even though the DA's office had a policy of opposing early parole for offenders, Reyna wrote a letter in December 2013 requesting a full pardon for **Sammy Citrano's nephew, Kevin Chirafis**, who had been convicted of the felony offense of Manufacture and Delivery of a Controlled Substance in Brazos County.
10. In August 2014, I met with FBI Agent Dan Burst regarding a public corruption investigation of Reyna. Attached hereto as Exhibit A is a memo of that meeting which I

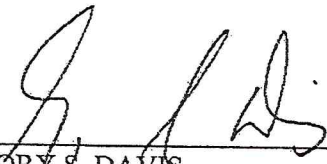
drafted shortly after the conclusion of the meeting.

11. It is my understanding that Michael Jarrett, Julissa West and Amanda Dillon have also met and/or spoken with Agent Burst in connection with the FBI's public corruption investigation of Reyna.
12. It is my understanding that the FBI's public corruption investigation of Reyna's prosecutorial decisions is ongoing.
13. It is my understanding that Reyna has hired and/or consulted with Waco attorney, Bill Johnston, regarding the ongoing FBI public corruption investigation.
14. In August 2014, Michael Jarrett told me that he purchased another cellphone so that he could covertly communicate with Agent Burst without Reyna learning that he was speaking with federal agents behind his back.
15. I ultimately resigned from the McLennan County District Attorney's office because it had become apparent to me that despite my warnings and advice Reyna had no intention of stopping his practice of giving preferential treatment to his campaign supporters and friends. I firmly believe that neither politics nor wealth should play any role in prosecutorial decisions and Reyna's actions were completely antithetical to my beliefs and the oath that all prosecutors take to do justice.
16. Approximately two to three months after the Twin Peaks incident, I received a call from Michael Jarrett. At one point, when the conversation turned to what had happened at Twin Peaks, Jarrett told me that the McLennan County District Attorney's Office was responsible for having all of the bikers arrested despite the fact that the police simply wanted to question the bikers, get their information and then release them while they (the police)

conducted an investigation. Jarrett told me that he (Jarrett) told Assistant Police Chief Gentsch that the police "were going to arrest them all" and they were not going to be permitted to release the bikers.

17. I would willingly testify at any hearing where my information was relevant. Nevertheless, I have pre-paid plans to be out of the country from November 19, 2017 to November 29, 2017.

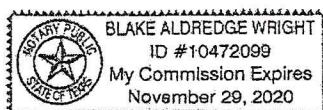
I have read the foregoing and I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge

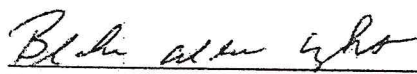


GREGORY S. DAVIS

STATE OF TEXAS
COUNTY OF DALLAS

SUBSCRIBED AND SWORN TO BEFORE ME on this 9 day of
November, 2017.





Notary Public

8-6-14

Drove to FBI Austin office this morning to meet with agents, Dan Brust and Tommy _____. Interview began at 10:30 am and concluded at 2:00 pm with 10 minute bathroom break in the middle. Had not reviews documents prior to interview. Began with explanation of how I got to Waco and indictment in Collin County. Asked why we chose day after filing deadline to go to Rangers – I said two reasons: (1) Mike's indecision whether to run against Abel and (2) policy of not initiating investigation to get political advantage.

Asked what was first thing that triggered suspicion - said unsure whether it was Chapman or Sharp case. Detailed each case. Detailed Falcone case as well. Detailed first confrontation with Abel regarding Sharp and Joe's admission that he had Falcone case because of Abel. Asked why I thought Abel didn't fire me after confrontation – I said because he decided he needed me to try cases. Explained lack of communication after confrontation.

Detailed marijuana case. Detailed PTIP and Harrell case. Explained I had no part in setting up PTIP and that Mike explained it to the office. Explained how I learned of Harrell through Julissa and my review of her file showing she had criminal record. Explained how Julissa connected Harrell to Jim Densman, contributor. Explained how I did not know how Abel paid for office picnic – campaign funds or forfeiture funds? (Julissa later said campaign funds).

Detailed meeting with Lindemann.

Detailed two clemency letters and our policy of opposing all parole applications.

Detailed problems with two recent attorney pro tem cases and Heather's role in the process.

[REDACTED]

[REDACTED]

[REDACTED]

Asked about Abel's possible drug use and associates – detailed his marked change in behavior and information provided by Mike's CI about the Salty Dog. Talked about Dre and JJ per Julissa.

Concluded with discussion about my reasons for resignation – Harrell's child, Julissa's resignation and reputation.