

— Aldape: State Habeas
Pleadings (5/42-9/42) (v.2) —

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IN THE COURT OF CRIMINAL APPEALS

STATE OF TEXAS

AT AUSTIN

EX PARTE

IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

RICARDO ALDAPE GUERRA

248TH DISTRICT COURT

MOTION FOR DISCOVERY
(Capital Murder)

ORIGINAL

GINA BENCH
Certified Court Reporter
248th District Court
Harris County, Texas

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CAUSE NO. 359805-A

THE STATE OF TEXAS	*	IN THE 248TH DISTRICT COURT
	*	
VS.	*	HARRIS COUNTY, T E X A S
	*	
EX PARTE	*	
RICARDO ALDAPE GUERRA	*	MAY TERM, A.D., 1 9 9 2

A P P E A R A N C E S

FOR THE STATE OF TEXAS:	Ms. Kari Sckerl Assistant District Attorney Houston, Texas
FOR THE DEFENDANT:	Mr. Scott J. Atlas And Mr. Richard A. Morris VINSON & ELKINS 2500 First City Tower 1001 Fannin Houston, Texas 77002 And Mr. Stanley G. Schneider 11 E. Greenway Plaza Suite 3112 Houston, Texas

BE IT REMEMBERED, that upon this 28th day of July, 1992, the above entitled and numbered cause came for Motion For Discovery before Woody R. Densen, JUDGE of the 248th District Court of Harris County, Texas; and the State appearing by counsel and the Defense appearing by counsel announced ready to proceed; and all preliminaries having been disposed of, the following proceedings were had, viz:

1 JULY 28, 1992

2
3 MR. ATLAS: Your Honor, first,
4 if I may briefly give the Court a description of a
5 very brief overview of the facts in this case.
6 Because I think in order to understand the
7 significance of the discovery, it helps just to have
8 a fundamental appreciation of what happened on the
9 night in question, according to the uncontested
10 testimony.

11 MS. SCKERL: Your Honor, before
12 he does that, based on what he said earlier, I have
13 objections to his rendition as not being accurate of
14 what the trial transcript contains. Since the
15 transcript speaks for itself, I'm not going to
16 object during his rendition of the facts as long as
17 you know that I don't agree with it.

18 THE COURT: Okay.

19 MR. ATLAS: Your Honor, almost
20 exactly ten years ago, on July 13th, 1982, two
21 illegal aliens -- my client Ricardo Aldape Guerra
22 and a fellow whose name, as far as we know, was
23 Roberto Carrasco Flores, who I will call
24 Carrasco -- were driving --

25 MS. SCKERL: Just one thing.

1 Just so it's clear from the record at trial, at
2 direct appeal and now, recently the Defense has
3 started calling Ricardo Aldape Guerra "Aldape
4 Guerra" and Roberto Carrasco Flores "Roberto
5 Carrasco Flores" as opposed to what they were called
6 at trial.

7 For purposes of continuity, I request that
8 we call them "Guerra" and "Flores," since that's
9 what they were called throughout the entire trial.

10 THE COURT: Is there any
11 objection to that?

12 MR. ATLAS: Your Honor, my only
13 problem with that is I have gotten used to calling
14 one "Aldape Guerra" and the other "Carrasco
15 Flores," and since I do use the names that they used
16 at trial with the additional name of each, I would
17 hope that it won't be too confusing.

18 THE COURT: I suppose that
19 doesn't make any difference. We know who you are
20 talking about.

21 MR. ATLAS: All right. In any
22 event, in mid-July of 1982, these two illegal
23 aliens -- my client and Mr. Carrasco Flores -- were
24 driving in the east part of Houston, in the Magnolia
25 area, about 9:30, 10 o'clock at night.

1 The testimony is somewhat conflicting. It
2 appears, and it is the State's theory, and I don't
3 think we're going to dispute it, that Mr. Aldape
4 Guerra was the driver of the car.

5 About 10 o'clock at night they were
6 stopped. The car actually died in the middle of an
7 intersection. In fact, I'm going to try to display
8 that, because I think it makes it easier to
9 understand. I'll draw a little picture. This is
10 the east/west street of Walker and the north/south
11 street was Edgewood.

12 Mr. Aldape Guerra's car came to rest,
13 blocking most of the intersection of the south side
14 of Walker. These are just approximations in the
15 drawing.

16 And the police car pulled up somewhere to
17 the north, just behind Aldape Guerra's car. It's
18 not entirely clear where the police officer's
19 vehicle was, because it was moved apparently by an
20 ambulance driver to make way to let the ambulance
21 get out after he was killed. But it was somewhere
22 behind him, to the north of him and fairly close.

23 Officer Harris apparently got out and stood
24 behind the driver's door or even with it. And when
25 the smoke had cleared, one of the two people in my

1 client's car, either him or Mr. Carrasco Flores, had
2 murdered a police officer, Houston police officer,
3 James Harris, in cold blood, without provocation, as
4 far as we can tell.

5 The two of them took off running, going
6 east down Walker; one on one side of the street and
7 one on the other. And that is what the State's
8 theory was, too, that the killer was on the north
9 side and the other one was on the south side based
10 on where they found the bullets and shell casings.

11 And the killer, the one who had killed
12 Officer Harris, killed an innocent bystander who was
13 driving in his car, with his two children, somewhere
14 on Walker. He shot him without provocation, in cold
15 blood.

16 About an hour-and-a-half later, a couple of
17 blocks away, really about a block-and-a-half, two
18 blocks away, I guess, at the house where my client
19 Aldape Guerra had been living until very recently,
20 there was a shoot-out. Carrasco Flores came out of
21 a dark garage as police were searching for the two
22 of them, and he came out shooting, and he wounded a
23 Houston police officer several times in the chest,
24 fortunately, not fatally. And he, in turn, Carrasco
25 Flores, was shot dead by other Houston policemen who

1 were on the scene.

2 When they found him lying on the ground, he
3 had dropped on the ground and apparently had been
4 using in the shooting a .9 millimeter Browning semi-
5 automatic pistol with a clip on it, that they later
6 determined was probably the murder weapon that had
7 killed Officer Harris. So he had the murder weapon
8 on him during the shooting.

9 When they got him to the morgue, they found
10 stuffed in his belt, in his pants, underneath his
11 shirt, the dead policeman's .357. So he had both
12 the murder weapon and the dead policeman's weapon on
13 his person, and he was the one who came out
14 shooting.

15 A few minutes later they found my client
16 nearby, huddled behind a horse trailer, with a
17 completely different gun, a .45 caliber, wrapped in
18 a bandanna and placed underneath the horse trailer.

19 There's no indication he made any move
20 toward it. They arrested him. They immediately
21 bagged his hands, cuffed him, and took him down to
22 the station.

23 They could not find any of my client's
24 fingerprints on either the murder weapon or on the
25 dead policeman, Officer Harris' weapon, and they

1 could not find any metal trace on him. They ran
2 metal traces on both his hands, on his abdomen.
3 They determined that the .45 that was near him when
4 they arrested him did not leave a metal trace
5 because of the kind of metal that was on either
6 side, but both the .9 millimeter, which was the
7 murder weapon, and the policeman's gun, the .357,
8 would leave metal traces. They couldn't find
9 anything on my client that indicated that he had
10 ever touched either of those guns, no physical
11 evidence of any kind.

12 They did find on Carrasco Flores' hands, as
13 I said, the right hand had metal trace for the
14 policeman's .357. The left hand had a metal trace
15 they could not match up to the murder weapon. So at
16 that point all of the physical evidence and, in
17 fact, during the entire trial there wasn't any
18 physical evidence that tied my client to the murder
19 of Officer Harris or the murder of the innocent
20 bystander. The conviction was based entirely on
21 eyewitness testimony.

22 That night the murder of Officer Harris was
23 at about 10 o'clock. Carrasco came out shooting
24 about 11:30, according to all the police statements.
25 That night they rounded up witnesses, the police

1 did, who they found here on Walker and over near
2 where Carrasco Flores was killed, and they took them
3 down to the police station, and the witness
4 statements of the people who were supposedly
5 eyewitnesses to the murder were all over the lot and
6 they differed in a number of respects on whether my
7 client was the driver or the passenger in the car,
8 on whether the murderer had long hair or short hair,
9 on whether the murderer had blond hair. Several
10 people, including one who purported to know my
11 client already, testified or gave a witness
12 statement that the murderer had blond hair.

13 You should know there is a big physical
14 difference between the two people. Carrasco Flores
15 had no facial hair, although he hadn't shaved in a
16 day or two, I guess, and had a little bit of a
17 stubble, but no beard, no moustache, whereas my
18 client had both a beard and a moustache.

19 In fact, with Your Honor's permission,
20 there are pictures that show the mannequins as well
21 as a better picture of Carrasco Flores. This is
22 Carrasco, which was State Exhibit 71, and then a
23 picture of the mannequins, which is one of the post-
24 trial exhibits submitted for purposes of appeal,
25 which shows you Mr. Aldape Guerra, who

1 had long hair, a moustache, goatee, as opposed to
2 Mr. Carrasco is clean-shaven, short hair, no
3 moustache, no goatee.

4 Carrasco Flores, uncontradicted, was called
5 by people who knew him by the Spanish term "Werro,"
6 W-e-r-r-o, which in Spanish means the fair one or
7 pale-faced one, pale-skinned one.

8 In any event, witnesses, a number of
9 witnesses, including some who knew my client, said
10 that the killer had blond hair. They disagreed
11 about whether the killer or the driver or the
12 passenger had facial hair or had long hair. The two
13 people had very different-colored clothes on. My
14 client had a green army fatigue-type shirt and blue
15 jeans. Carrasco had a dark plumb-colored shirt and
16 brown pants. And witnesses differed on what color
17 clothes the killer had been wearing. A number of
18 them kept on insisting that he had worn brown
19 clothes.

20 They differed on where the two people were
21 at the time of the shooting, whether one or both of
22 them had their hands on the police vehicle or
23 whether one was out of sight completely, whether
24 they were by the car they had been driving, by the
25 north side of the trunk part of the car they had

1 been driving or whether they were by the front of
2 the hood of the policeman's car, which side of the
3 street they ran down after the shooting, and as I
4 mentioned earlier, whether the shooter was right-
5 handed or left-handed.

6 My recollection, one witness said left
7 handed. I don't believe anybody else said one way
8 or another.

9 All these statements were taken from about
10 midnight late the night of the 13th, going on into
11 the 14th of July, 1982, and continuing on for
12 several hours.

13 All of the witnesses, if we are given an
14 opportunity to have a hearing, we will proffer
15 witnesses who participated in the lineup who will
16 testify that they were all kept in one room, that
17 they were allowed to speak to each other, even
18 during the lineup, although that is certainly not
19 the State's position; they will dispute that
20 mightily. But we will take the position that they
21 were all together in one room and allowed to talk to
22 each other during the lineup and that they saw Mr.
23 Aldape Guerra in the lineup. Carrasco Flores was
24 obviously dead.

25 At least one witness in the lineup,

1 according to the police records, had actually been
2 shown a picture from Aldape Guerra's house
3 beforehand. We hope to have an opportunity to find
4 that picture. We're not sure which one it is. And
5 there may have been others who saw a picture of one
6 or both of them. In fact, there's at least one
7 witness who saw a picture of Carrasco Flores in
8 advance.

9 We will have pictures of the lineup itself,
10 which has only two people with facial hair, I
11 believe. There may be a third. The others, who
12 look very different from Aldape Guerra.

13 And a number of the 15 or so people in the
14 lineup -- and we have the State's records on that --
15 nine or ten of them were shown as having given a
16 positive identification. Because of the statements
17 that they gave and the testimony that they gave, we
18 know that only two or three of those actually were
19 testifying that the person they were identifying in
20 the lineup was the shooter. Several of them were
21 identifying or saying that Aldape Guerra was a
22 person that they either knew from the neighborhood
23 or they had seen driving the car earlier in the
24 night, which is neither proof nor inconsistent with
25 him being innocent or guilty.

1 In any event, the lineup was held about 6
2 o'clock in the morning. The witnesses were all in
3 the same room, seated one seat apart. The police
4 will say and the prosecutor will argue that they
5 weren't allowed to talk to each other. We'll argue
6 exactly the opposite.

7 After the lineup, about a week later,
8 actually, to be precise, eight days after the
9 morning of the lineup, there was a re-enactment, and
10 at the re-enactment, at least one witness, perhaps
11 two, depending on how one views them, changed their
12 testimony. Two of the witnesses at the lineup who
13 had not identified Aldape Guerra -- well, let me
14 rephrase that.

15 At the re-enactment, one of the witnesses
16 who had not identified him, came forward during the
17 re-enactment and said that she had not identified
18 him previously because she thought enough other
19 people had, but now she claimed that she could
20 identify him, and she gave a new statement.

21 The ten-year-old boy whose father had been
22 killed, who was the innocent bystander, had not
23 identified him at the lineup and, in fact, in his
24 statement it said he didn't recognize anyone, he
25 didn't think he could identify them and didn't

1 recall what kind of clothes they were wearing or
2 what color clothes they were wearing.

3 After the re-enactment, which was the 22nd
4 of July, there was then a long period up to the
5 start of the trial, which was on August 30th of
6 1982, the weekend before the trial, the prosecutors
7 had a number of the witnesses come to their offices
8 here downtown, presumably for witness preparation,
9 and also to show them some mannequins which had been
10 prepared, which I think Your Honor has seen them.
11 There were some very sophisticated mannequins molded
12 to look like Carrasco Flores and Aldape Guerra as
13 they looked that night, including putting on the
14 clothing that they had worn that night.

15 By the time the witnesses testified at
16 trial, a number of them gave testimony that was
17 flatly inconsistent with the statements they had
18 given, in terms of who they had seen.

19 The young boy now testified that he in fact
20 had been able to recognize my client at the lineup
21 but he was too scared to do so, but that he could
22 now. His statement said that he saw one man, I
23 guess Carrasco tapped my client's hand and then my
24 client reached behind him with his left hand and
25 pulled out and shot the police officer.

1 At the trial they didn't talk about left
2 hand or right hand at all. That never came out at
3 trial. And he said nothing in his statement about
4 facial hair, although when he testified, he talked
5 about long hair and, of course, identifying through
6 the mannequin the fact that it was my client who had
7 facial hair.

8 Another witness said that she saw my client
9 turn towards the officer. She testified that she
10 saw him turn towards the officer and point, although
11 she never saw a gun. In her statement she had said
12 nothing about facial hair, but at trial she
13 identified my client as the person because of the
14 facial hair and because of the long hair. And
15 although her statement said nothing about shirt
16 color, she identified him in court through shirt
17 color as well.

18 The two sisters testified, who had been due
19 south of my client's car more or less, standing on
20 the sidewalk on the south side of Walker, more or
21 less in front of my client's car, although it's not
22 clear exactly where, since we don't have a map.

23 One of them, Vera, after giving a
24 statement, where she said only that she heard shots
25 and ran, said that the shooter had blond hair and

1 that she could not identify him and was silent about
2 facial hair or the length of his hair. By the time
3 she testified, in fact, by the time of the re-
4 enactment, she gave a new statement, and by trial
5 she was identifying my client with facial hair and
6 long hair and the color of his clothes. And she
7 said that she saw two men with their hands on the
8 police car, with the other man closer. She heard
9 shots and she assumed my client had been the
10 shooter, because she saw him running down the street
11 after Officer Harris was shot. So she didn't really
12 add anything to who the shooter was, or at least she
13 couldn't actually testify as to who shot the gun,
14 because it was only after seeing him shoot, as he
15 was running down the street, that she made the
16 conclusion that he was actually the one who had been
17 doing the shooting.

18 Her sister Olinda also testified that it
19 was a man with blond hair, and she kept insisting
20 that he had a brown shirt and pants on, even though
21 that's not what my client wore, and even though the
22 mannequins were there, wearing different colored
23 clothes, and obviously not having blond hair. She
24 testified about the locations of the shooter. They
25 were very different from what everybody else did;

1 that my client was standing near the trunk of his
2 car and that he pulled something out of his pants.
3 She started running. She couldn't tell what he had
4 pulled out of his pants. She started running and
5 then she heard shots. So she didn't actually see
6 anybody commit the murder either.

7 Along with the ten-year-old boy, the most
8 harmful witness that testified at the trial was a
9 woman named Galvan. Her testimony describing the
10 shooter and the ten-year-old boy's testimony
11 describing the shooter were the only testimony that
12 the jury requested while they were deliberating.

13 She testified she was standing by her
14 house, which was on the north side, on the sidewalk.
15 There were some trees here, but she said she could
16 see between the trees. And, essentially, after
17 having given a statement, saying that the shooter
18 had blond hair and had brown or black clothes and
19 said nothing about facial hair, she testified that
20 the policeman was even with his driver's door and
21 that the driver, which she said had blond hair,
22 because of the light or street light that was over
23 here, that the policeman may have pushed my client
24 up against the hood of his car. She had said that
25 more clearly in her statement and she backed off of

1 it in her testimony.

2 She then said she saw him turn toward the
3 policeman and she then heard shots, saw a flash, saw
4 no gun, and the shooter then ran past her, with
5 blond hair and black or brown shirt and brown pants.

6 My client put on several witnesses, four
7 witnesses besides my client, one of whom was
8 standing with Ms. Galvan, who insisted, as my client
9 did, that my client was near the hood of the car and
10 that Carrasco had circled around behind and shot the
11 police officer from the side. And another man who
12 was standing in front of his house, which I think is
13 on the south side, essentially testified to the same
14 thing. Plus, two of my client's roommates, who the
15 jury very obviously didn't believe, who testified
16 that after hearing some shooting, Carrasco Flores
17 came running in, all bug-eyed, out of breath,
18 admitting he had shot a policeman and holding the
19 policeman's gun along with the murder weapon. And
20 then shortly thereafter, my client came in and
21 essentially said the same thing, and they kicked
22 them both out because they didn't want to have any
23 trouble. And later the cops came and took them out
24 of the house and made them lie on the ground at
25 gunpoint.

1 In any event, Carrasco Flores and Aldape
2 Guerra had left the house, going to hide in places
3 where the police eventually had the shoot-out with
4 Carrasco and found my client and arrested him.

5 And then my client testified to essentially
6 the same thing that the witnesses on his side had,
7 who had been eyewitnesses, and, that is, he'd gone
8 and had his hands on the hood of the car. That he
9 had seen Carrasco go around the front of the car and
10 come out over here and then he heard shots right
11 behind him and over his shoulder; he thinks close,
12 although he wasn't looking, but it sounded close.
13 And he looked back and he saw that the police
14 officer had obviously been shot, and he took off
15 running, scared, and got about three fourths of the
16 way down the street, on the south side of Walker,
17 which some of the witnesses said they saw him
18 running on, and he heard some shots behind him,
19 after seeing the car that the innocent bystander was
20 in go past him. He assumed it was Carrasco
21 shooting, but didn't know what was happening. He
22 got scared and he didn't want Carrasco following
23 him, since Carrasco now murdered a police officer,
24 and he shot his .45 twice in the air, which is
25 consistent with the bullets they found. Actually

1 not bullets, they found two shell casings at the
2 next to the last house before the corner.

3 It's clear from the police reports, and the
4 police concluded this as well, that the shooter went
5 down the north side of Walker, towards the east, to
6 the next street called Lennox and turned north, and
7 the other person, who was not the shooter, went down
8 the south side of Walker, where they found the .45
9 shell casings, and turned south and then eventually
10 made their way back to the house where they lived up
11 on Rusk, which is a block further north.

12 As was indicated in the initial application
13 for writ of habeas corpus, we have a witness who has
14 come forward, who the police report will show,
15 talked to the police. He says he told the police
16 that he saw a fellow who meets Carrasco's
17 description -- in fact, he knew him, although not
18 well, because they lived next door -- running west
19 on Rusk, which is consistent with the killer --
20 because the killer went north on Lennox and the
21 very next block is Rusk, and if you're going to
22 end up over where the house was where Aldape Guerra
23 had been living, then you would turn west on
24 Rusk -- carrying a gun that sounds very much like
25 the .9 millimeter with a clip and not like

1 a .45 at all.

2 He insists he gave a statement to the
3 police. That doesn't show up in the records. It
4 does show --

5

6 MS. SCKERL: Well, wait a
7 minute, Your Honor. It does, too, show up in the
8 records, that he gave a statement.

9 MR. ATLAS: He did give a
10 statement. The statement, as I was about to say --
11 I'm sorry, Your Honor, where we come from, we don't
12 interrupt in the middle.

13 He gave a statement that said essentially
14 they had not seen the shooting of Carrasco. He
15 didn't give a statement; this is the police report.

16 They supposedly have a tape recording of
17 his interview, and the police reports reflect that
18 that interview was tape recorded, but those tapes
19 are nowhere to be found, and we have asked for them.
20 Ms. Sckerl has given me her assurance she has looked
21 for them. I don't doubt that. She can't find them,
22 so we don't have them.

23 Now, with that as background, perhaps I
24 should stop a moment and ask Ms. Sckerl, with the
25 Court's permission, if she sees anything that she

1 disagrees with that I've said, then I have no
2 problems with her stating her position before I get
3 to the discussion about the particular items for
4 which we want discovered.

5

6 THE COURT: Ms. Sckerl, do you
7 have anything you want to offer?

8 MS. SCKERL: At this time, Your
9 Honor, no, I don't. The evidence has already been
10 examined by the Court of Criminal Appeals and
11 they've ruled that it was sufficient to uphold the
12 conviction, and I'll stand by that.

13 THE COURT: Okay. Why don't we
14 take a short recess, then you can get into your
15 discovery motion request.

16 MR. ATLAS: And I should point
17 out that there was no insufficiency argument on
18 appeal.

19 (A recess.)

20 THE COURT: Mr. Atlas, you may
21 proceed.

22 MR. ATLAS: Your Honor, in the
23 habeas application that was filed a few months ago
24 and in the amended application that we will file,
25 there are a number of claims made that relate to, if

1 not all, most, in, I think, all of the document
2 requests that we have in front of the Court now. We
3 have made a Brady claim. We have made a claim of
4 ineffective assistance of counsel. We have made a
5 claim of a Clarence Brantley-type investigative due
6 process claim. We have made a suggestive
7 investigative procedures claim and, of course, an
8 innocence claim.

9 All of these are claims, with the exception
10 of innocence, particularly the first three, the
11 kinds of claims that you can really only make on
12 habeas, and in order to properly establish them, we
13 think a certain amount of limited discovery tailored
14 to deal with those issues is in fact relevant and
15 critical in order to be able to fairly present a
16 habeas petition.

17 With that in mind, Your Honor, let me turn
18 to the physical evidence, the list of physical
19 evidence that we have requested, which is on Page 6.

20

21 THE COURT: Mr. Atlas, is your
22 written motion in the file?

23 MR. ATLAS: Yes, Your Honor.
24 It was filed, and, in fact, ours is filed stamped
25 July 13th, 1992, and it's styled Ricardo Aldape

1 Guerra's Motion For Discovery. I may have an extra
2 copy here.

3 MS. SCKERL: If not, Judge, I
4 may have a copy. If you would like to use this just
5 for the time being, that's fine with me.

6 THE COURT: Thank you.

7 MR. ATLAS: Your Honor, I will
8 skip over the ones where all I'm requesting is
9 access to an opportunity to observe trial exhibits.
10 I see no point, since it's my understanding that the
11 State has agreed -- perhaps it's worth restating on
12 the record now, that the State has no objection, and
13 the Court, apparently, is agreeable to us having
14 access to all of the trial exhibits for the purpose
15 of examining them, photographing them, and if they
16 are photographs or documents, photocopying them and
17 taking their measurements, in particular, of the
18 guns.

19 Is that a fair and accurate description?

20 MS. SCKERL: That is fair as
21 long as they are not removed from the premises of
22 the -- for a better term -- lockbox of the court-
23 evidence-holder people.

24 THE COURT: Okay.

25

1 MR. ATLAS: Your Honor, Mr.
2 Morris has pointed out to me that some of the
3 photographs are in such poor condition, that a xerox
4 copy may not be adequate and may need an opportunity
5 to have laser copies, color copies, made, which
6 we'll obviously pay for. I assume that Ms. Sckerl
7 has no objection to that.

8 MS. SCKERL: Actually, I object
9 to anything being taken from the evidence lockbox of
10 the Court without first talking with you about it,
11 because we have to worry about the chain of custody,
12 et cetera.

13 THE COURT: During discovery,
14 maybe the State could be present, and any
15 reproduction and photographs that they take may not
16 be removed from the premises, obviously.

17 MR. ATLAS: Your Honor, I have
18 no objections to that. What we will do is review
19 the trial exhibits, both physical evidence and the
20 remaining exhibits, on our own in the presence of
21 the custodian, wherever the lockbox is, and if there
22 are any documents that we want to have color-copied,
23 we will notify the State and make sure that a
24 representative of the State participates and is
25 agreeable to whatever means we are forced to use to

1 make copies.

2 THE COURT: I think everyone
3 has pretty much of an understanding as far as trial
4 exhibits.

5 Let's get to the areas where you want to
6 make a discovery that the State is objecting to.

7 MR. ATLAS: Your Honor, since I
8 need to have a court order to get access to the
9 physical exhibits, I have prepared such an order,
10 and it's my understanding that Ms. Sckerl, with one
11 modification, which is the interlineation that we
12 not be allowed to take anything from the premises
13 where they are held in custody, but other than that,
14 she has no objection to the order.

15 MS. SCKERL: That's correct,
16 Your Honor.

17 THE COURT: Okay. If you will
18 submit that order, I will approve it.

19 MR. ATLAS: Your Honor, the
20 first item on the physical evidence that goes beyond
21 what is provided in this order that we just
22 described is, number three, an opportunity to test-
23 fire the .9 millimeter Browning that is State
24 Exhibit 44.

25 MS. SCKERL: For the record, if

1 you wouldn't mind just going like maybe No.
2 1/agreed, No. 2/agreed.

3 MR. ATLAS: Okay. If that's
4 the Court's preference, I would be happy to.

5 One, I understand is agreed.

6 THE COURT: Okay.

7 MR. ATLAS: Two is agreed; is
8 that correct?

9 MS. SCKERL: I will object if I
10 have any disagreements with you.

11 MR. ATLAS: No. 3, they don't
12 object to our having access to it and taking a tape
13 measurement of it in the presence of the custodian,
14 but we would like to have an opportunity to test-
15 fire it with whatever precautions in the presence of
16 whomever the State wishes to have there.

17 MS. SCKERL: We object to any
18 tests being done on the weapon.

19 THE COURT: That request will
20 be denied.

21 MR. ATLAS: May I state at
22 least the purpose of this request for the record?

23 It is to determine how far the shell
24 casings go, so that given what we know from the
25 police reports about where the shell casings were

1 located on the ground, we can determine where the
2 shooter was located and what direction he was going
3 relevant to the five issues I mentioned at the
4 beginning of this.

5 THE COURT: Which number is
6 this?

7 MR. ATLAS: This is No. 3.

8 THE COURT: That will be
9 denied.

10 MR. ATLAS: This is the
11 physical evidence on Page 6.

12 THE COURT: I have No. 3 on
13 this request, "Any and all documents."

14 MR. ATLAS: Your Honor, I'm
15 starting a few pages later. The physical evidence,
16 since that includes the trial exhibits, it is easier
17 to go through those first.

18 THE COURT: I see. That will
19 be denied, No. 3.

20 MR. ATLAS: As I understand
21 correctly, the only part of that No. 3 being denied
22 is the opportunity to test-fire?

23 THE COURT: That is correct.

24 MR. ATLAS: No. 4, I'm asking
25 only for .9 millimeter clips or cartridges -- I'm

1 sorry, I'm asking for both State's Exhibit 43A,
2 which is a trial exhibit, and the clips and
3 cartridges that were taken from the body of Carrasco
4 Flores at the morgue, which are not exhibits
5 relevant to each of the five issues I mentioned at
6 the beginning.

7 THE COURT: Does the State have
8 any objection?

9 MS. SCKERL: I have no
10 objection to State Exhibit 43A. I have an objection
11 to anything that was not introduced into evidence.

12 THE COURT: Was this introduced
13 into evidence?

14 MR. ATLAS: Your Honor, only
15 Exhibit 43A. Some of them were not.

16 THE COURT: I am going to allow
17 you to discover 43A and no other items that are not
18 admitted into evidence.

19 MR. ATLAS: Your Honor, what
20 about items that were in possession of the Police
21 Department that were accumulated as part of the
22 investigation in this case?

23 THE COURT: Well, I am going to
24 allow you, of course, to discover anything that was
25 introduced into evidence. At this point we're not

1 going to get beyond that, but we are going to go
2 item-by-item and see what you're requesting.

3 MR. ATLAS: To the extent these
4 clips or cartridges are in the possession of the
5 Police Department, but not trial exhibits, then you
6 are denying my request; is that correct?

7 THE COURT: Does the State
8 object to that?

9 MS. SCKERL: I agree with what
10 he just said. I object to the discoverability of
11 anything that was not admitted into evidence
12 regarding No. 4.

13 THE COURT: That is what I
14 stated a moment ago, so that will take care of 4.

15 MR. ATLAS: No. 5 is the same
16 request for .45 caliber ammunition and .9 millimeter
17 ammunition recovered in connection with this case,
18 including the trial exhibits, but that also includes
19 ammunition that is in the possession of the Police
20 Department that were not made trial exhibits.

21 THE COURT: Only the trial
22 exhibits will be discoverable.

23 MR. ATLAS: And the purpose of
24 requesting both of these, the .9 millimeter and the
25 .45 caliber ammunition, is to determine to some

1 degree of the location of the shooter at the time,
2 the angle of the bullets, how much damage there is
3 to the shells, to the slugs, in order to be able to
4 determine where the shooter was at the time,
5 relevant to the five issues I mentioned at the
6 beginning. And perhaps for the sake of convenience,
7 I should say, when I refer to the five issues
8 mentioned at the beginning, I mean the Brady claim
9 or ineffective assistance of counsel claim or
10 Brantley investigative due process claim or
11 suggestive investigator procedures claim or
12 innocence claim.

13 And if I understand, the Court has ruled,
14 again, I may have access to the trial exhibit but
15 not to any of the items requested in physical
16 evidence request No. 5 that was not a trial exhibit.

17 THE COURT: That is correct.

18 MR. ATLAS: No. 6, I am asking
19 for the personal effects of Carrasco Flores,
20 including items recovered in his pockets and in his
21 possession at any time, including items found at the
22 two addresses where he had lived.

23 In particular, Your Honor, there was a
24 handwritten note in his pocket. We have a xerox
25 copy of that note from the police files that were

1 given to me by Ms. Sckerl, but it was folded and
2 very difficult to discern. We would like to have an
3 opportunity to look at the original, since it's the
4 same document, but it's very difficult to tell part
5 of it because the word stops in the middle and I
6 can't tell if it's because the crease is in the
7 wrong place or if it's because the document simply
8 stops there.

9 THE COURT: Was this a trial
10 exhibit?

11 MR. ATLAS: No, Your Honor, it
12 is not a trial exhibit. A copy of it was in the
13 police reports, and we're interested in it for
14 several reasons: one, because the information on it
15 seems to provide us an opportunity to determine who
16 Carrasco was and, second, because if we see the
17 original, we may be able to determine from his
18 handwriting, according to an expert I've consulted,
19 whether he was right or left-handed, which is
20 obviously relevant to all five issues that I
21 mentioned.

22 MS. SCKERL: We object, in that
23 it's immaterial at this point.

24 THE COURT: I will deny
25 discovery under 6.

1 Perhaps so everyone can understand, as we
2 go through these requested discovery numbers, if you
3 could state whether or not they are exhibits in the
4 trial, that would help the Court to make a ruling.

5 MR. ATLAS: Yes. I apologize.
6 When they are, I've been saying it, but I'll try to
7 make a point of saying they're not exhibits when
8 they are not.

9 THE COURT: Okay.

10 MR. ATLAS: No. 7 is the gun
11 holster found on the body of Carrasco Flores on the
12 date of the murder or the next day, and this is,
13 again, among other things to see, if the holster was
14 right or left-handed, and it was not an exhibit.

15 THE COURT: That will be
16 denied.

17 MR. ATLAS: No. 8 is the
18 holster that was found on the body of Officer
19 Harris, the police officer who was murdered, for
20 purposes of fingerprint testing. The several
21 witnesses testified, Your Honor, that Officer Harris
22 did not have his gun out of his holster at the time
23 he was shot, which means that the murderer
24 apparently took it from him. While there is no
25 guarantee that fingerprints would still be on there

1 ten years later, if they are, that would give us a
2 very strong indication on the innocence and the
3 other five issues that I mentioned earlier. It was
4 not an exhibit.

5 THE COURT: That will be
6 denied.

7 MR. ATLAS: No. 9 is clothing
8 and/or hats recovered within a few blocks from the
9 scene of the crime on the night of the murder or the
10 next day. Again, relevant to the five issues that I
11 mentioned. They were not trial exhibits.

12 THE COURT: That will be
13 denied.

14 MR. ATLAS: No. 10 is any items
15 confiscated or taken or seized from the Buick Regal.
16 It has a license plate there. That is the car that
17 Mr. Aldape Guerra and Mr. Carrasco Flores were
18 driving in at the time, and there are a number of
19 police reports talking about items taken from there,
20 including items held for testing, with no indication
21 of whether the testing was conducted, and if so,
22 what the test results were. They were not exhibits.

23 THE COURT: That will be
24 denied.

25 MR. ATLAS: For the sake of

1 time, I am not repeating, even though I think I have
2 made myself clear, that I think all of these are
3 relevant to the five issues I mentioned earlier.

4 THE COURT: Okay.

5 MR. ATLAS: No. 11 is any maps
6 or diagrams used during the trial, including but not
7 limited to State Exhibit No. 5. Frankly, Your
8 Honor, I'm interested in knowing the chain of
9 custody and the efforts that have been made to
10 obtain this document from any source. However, that
11 is a State Exhibit, No. 5, in addition to others
12 that may not be, and if it's anywhere in the Court's
13 records, I sure would like to find it, because
14 that's the map that shows where everybody was
15 standing at the time.

16 MS. SCKERL: Your Honor, State
17 Exhibit 5 was introduced into evidence. The State
18 does not have it at this point. If they have any
19 idea where it is, I'd be happy -- I've looked
20 through our warehouse, I've looked through our
21 office and I have not been able to locate it. If I
22 find it, I would be happy to give them State's
23 Exhibit 5, but at this point, to my knowledge, it is
24 not in the possession of the State.

25 THE COURT: You are certainly

1 entitled to it if it's found.

2 MR. ATLAS: Your Honor, the
3 only other piece of information we know about it is
4 that the jury asked for it and apparently was given
5 it. I don't know if that helps the Court in knowing
6 about any files that have been reviewed. But since
7 this is the only evidence introduced at trial that
8 gives us any real indication of where everybody was
9 standing in the line of site, it's obviously a
10 significant piece of evidence to us.

11 I have asked, in addition to that request,
12 for non-exhibits that are maps or diagrams that were
13 used by the State during the course of the trial,
14 but that was not an exhibit, again, for the same
15 purposes.

16 THE COURT: No. 12.

17 MR. ATLAS: Your Honor, if they
18 know even what the map is, if they have a xerox of
19 it, even without the notations that they wrote on it
20 during the trial that, admittedly, was not an
21 exhibit, I would like to see it so we'll know what
22 it is when we find it.

23 MS. SCKERL: Once again, for
24 the record, they have had complete access to the
25 State's file, short of prosecutorial notes, since

1 the beginning of habeas proceedings, and if there is
2 anything in there, they're welcome to look at it.
3 They've requested copies of a number of things.

4 THE COURT: Okay, let's go on
5 to 12.

6 MR. ATLAS: No. 12 is the
7 clothing worn by either Aldape Guerra, Officer
8 Harris or Carrasco Flores on the night of the
9 murder, with an opportunity to test for the presence
10 of nitrates and/or nitrites. As I mentioned before
11 we started recording this, the principal reason for
12 requesting access to the clothing is to conduct a
13 nitrite test on the right shoulder and just below
14 that of Aldape Guerra's clothing to determine
15 whether there is any nitrites consistent with his
16 story and that of at least one or two witnesses,
17 that Carrasco Flores did the shooting very close to
18 him, over his right shoulder.

19 While we understand that the clothing had
20 apparently been ironed, an iron has nitrites, and
21 that means there would be nitrites all over the
22 shirt. If we find it all over the shirt, then we'll
23 know that finding it on the right shoulder is
24 skewed. If we find it only on the right shoulder,
25 then we're happy to do it in the other places too,

1 just for the purpose of making sure that we got a
2 fair test. If it's only on the right shoulder, that
3 would be a strong indication that my client is
4 innocent as well as the other issues, the other five
5 issues, that we mentioned earlier.

6 THE COURT: That will be denied
7 as to the test.

8 MR. ATLAS: Your Honor, I
9 should say actually the clothing itself we do have
10 access to, because they are on mannequins that were
11 made State's exhibits.

12 THE COURT: That is correct.

13 MS. SCKERL: However, for
14 clarity's sake, I do not believe that they have
15 access to Officer Harris' clothes. I don't believe
16 they were admitted into evidence and, Your Honor, I
17 don't know where they are. I can look for those, if
18 they want to look at the clothing.

19 THE COURT: Okay.

20 MR. ATLAS: Your Honor, we
21 would like to have an opportunity to look for it if
22 Ms. Sckerl could find it. We appreciate her offer.

23 No. 13 is all the bullets, slugs, shell
24 casings and/or spent hulls found within two blocks
25 of the intersection of where the murder took place,

1 including State Exhibits 45 to 63. But this goes
2 beyond the exhibits to non-exhibits as well that are
3 in the possession of the State or of the police,
4 again, relevant to the five issues we mentioned
5 earlier.

6 THE COURT: The trial exhibits
7 will be discoverable and I have seen those 45
8 through 63.

9 MR. ATLAS: I take it, Your
10 Honor, if they are not trial exhibits, they are not
11 discovery?

12 THE COURT: They're not
13 discovery.

14 MR. ATLAS: No. 14 is any
15 fingerprints, including fingerprint tapes and/or
16 cards, whether usable or not, known to belong to
17 Carrasco Flores or Aldape Guerra as well as
18 photographs taken related to such fingerprints.

19 Your Honor, the single most significant
20 issue here is an opportunity to find out about this
21 mysterious apparently violent fellow, Carrasco
22 Flores, and the only effective way to find that out
23 is to obtain a copy -- whatever the proper
24 terminology is -- to obtain a copy of the card that
25 he has with his fingerprints on it so that we can

1 then determine if we can find out who he was.
2 Nobody, including the few people who knew him who
3 testified at trial or anybody else, seemed to know
4 anything about the man other than he was violent and
5 he hated police. Had that information been brought
6 forward, we think it might well have been a
7 different verdict, but the only way to be able to
8 verify that beyond a doubt is to have access to his
9 fingerprints, which were not exhibits.

10 MS. SCKERL: As Your Honor well
11 knows, characteristic of violence is not admissible
12 at trial, therefore that's immaterial who Carrasco
13 Flores was, in that acting as the character -- like
14 if it goes to motive, intent, obviously it's
15 admissible, but just because Carrasco Flores was or
16 was not a violent person does not make any
17 difference whether or not Guerra shot the police
18 officer, therefore it's immaterial and we are
19 opposed.

20 THE COURT: I believe we have
21 discussed that prior to getting into the hearing. I
22 will deny 14.

23 MR. ATLAS: For the record,
24 Your Honor, let me say that in order to find prior
25 adjudicated crimes that this man supposedly did,

1 that's the only real way we can do it. I understand
2 that doesn't change the ruling.

3 No. 15, any fingerprints or related
4 information taken from the Buick Regal, which was
5 the car that Aldape Guerra and Carrasco were riding
6 in or the patrol car that Officer Harris was riding
7 in or the Ford Elite that the innocent bystander,
8 Jose Armijo, was riding in or any photographs
9 relating to and including any palm prints referred
10 to in the trial testimony. These are not exhibits,
11 Your Honor, and they are directly relevant to
12 innocence and ineffective counsel, because in a
13 habeas action, in order to be able -- if innocence
14 is relevant or if ineffective counsel isn't
15 something that one can determine, in order to show
16 prejudice, you have got to be able to show what the
17 trial counsel could have demonstrated if he had
18 examined particular pieces of evidence, and that's
19 why we would like to have this information, because
20 some of them were identified as belonging to
21 Carrasco Flores or Aldape Guerra. One, as I
22 mentioned, the smudge print on the hood, which was
23 the most critical one, is almost certainly put there
24 by the person who was innocent, and with both
25 computer-enhancement techniques as well as a

1 verification that could have been done at the time
2 of trial, we think we can demonstrate my client's
3 innocence and the other four issues that I mentioned
4 earlier.

5 THE COURT: The trial exhibits
6 will be discoverable.

7 MR. ATLAS: These are not trial
8 exhibits.

9 THE COURT: I see you cite
10 Volume 20, Pages 113-14 of the statement of facts.

11 MR. ATLAS: There was testimony
12 in the record about the fact that these fingerprints
13 were taken and they identified them as belonging to
14 one or the other or said they couldn't identify
15 them, but they never made them exhibits. They are
16 not trial exhibits; they're merely subject of the
17 testimony.

18 THE COURT: I will deny your
19 discovery motion.

20 MR. ATLAS: No. 16 is all
21 fingerprints or related fingerprint cards taken from
22 the .9 millimeter pistol or the .45 caliber pistol
23 as well as photographs taken relating to such
24 fingerprints, and this is relevant to the five
25 issues I mentioned, and I'm talking here about

1 documents that were not in evidence, that was not
2 made trial exhibits.

3 THE COURT: That will be
4 denied.

5 MR. ATLAS: Your Honor, I don't
6 believe we have said on the record, and perhaps we
7 should at this point, that it is my position, and I
8 think Ms. Sckerl agrees with me, that the Court has
9 discretion, subject to the abuse of discretion
10 standard, to allow discovery in any habeas corpus
11 action but is not required to do so.

12 It is also my understanding that is also
13 the Court's position. The Court has taken a
14 position that in its discretion, it is denying the
15 discovery.

16 THE COURT: That is correct.

17 MR. ATLAS: Have I stated that
18 fairly, Ms. Sckerl?

19 MS. SCKERL: To a certain
20 extent. I don't believe there is any discovery in
21 habeas, however, if there is, it's within your
22 discretion.

23 THE COURT: Okay. That's
24 understood.

25 No. 17.

1 MR. ATLAS: No. 17 is any
2 fingerprints or related cards or tapes taken during
3 the robbery of the Rebel Gun Store located on
4 Kuykendahl, in Harris County, occurring on July 8th,
5 1982. There were fingerprints found at this gun
6 store robbery. Some of them are trial exhibits; I
7 think it's 86 through 89. I believe others were not
8 made exhibits, and I would like to have access to
9 those, relevant to the issues I mentioned as well as
10 innocence at the punishment phase.

11 THE COURT: The trial exhibits
12 will be discoverable, and I am denying your request
13 on any other matters that are not part of the trial
14 exhibits.

15 MR. ATLAS: No. 18 is any
16 fingerprints or related tapes or cards taken in this
17 case and photographs taken in the areas
18 fingerprinted that were not previously requested in
19 this document. This obviously goes beyond trial
20 exhibits, Your Honor, relevant to the issues, the
21 five issues I mentioned.

22 THE COURT: No. 18 will be
23 denied.

24 MR. ATLAS: No. 19 is all
25 fibers or hairs taken or collected in this case.

1 Your Honor, there were a number of fibers
2 or hairs found both in the officer's car and at
3 various places, some of which were submitted for
4 testing but no indication in the police records of
5 what the test results were.

6 You will see when we get to the documents
7 that we asked for any of those test results, but
8 since we don't think they've still got them, if they
9 ever had them, the only way to duplicate them is to
10 do them ourselves. So we wanted to have access to
11 any fibers or hairs taken in this case relevant to
12 the five issues I mentioned.

13 THE COURT: They're not
14 exhibits, so that will be denied.

15 MR. ATLAS: No. 20, any and all
16 other items of physical evidence introduced at trial
17 in this case. The Court has already ruled that the
18 exhibits we can have access to subject to the
19 restrictions set out in the order we presented to
20 the Court.

21 THE COURT: Okay.

22 MR. ATLAS: Now, Your Honor, we
23 go back to where Your Honor was at the beginning,
24 which was on Page 3 of the documents requested.

25 THE COURT: Let me ask, off the

1 record here, and it might expedite this hearing.

2 (Whereupon an off-the-record
3 discussion was had.)

4 MR. ATLAS: The first is
5 documents concerning interviews of people at 4911
6 Rusk and across the street. That's the house next
7 door to where Aldape Guerra had been living. This
8 is relevant to the Brady claim, because of the
9 witness next door who the records show was
10 interviewed.

11 MS. SCKERL: Your Honor, I have
12 no objection to that if I can find it. I have
13 spoken to Mr. Atlas, and prior to Mr. Atlas, Ms.
14 Babcock, that at this point I don't have the tape.
15 I have had police officers and custodians of records
16 at HPD look for the tape. I've looked through all
17 of our files. I cannot find the tape. If I find
18 the tape, he may have full access to it.

19 THE COURT: I will grant that
20 to you, subject to that being found.

21 MR. ATLAS: Your Honor, I would
22 like to have the opportunity to take the deposition
23 of the people who could tell me what the chain of
24 custody of those tapes and those videotapes that are
25 now lost was so that we can perhaps determine where

1 they are and what happened to them.

2 THE COURT: That will be
3 denied.

4 MR. ATLAS: They are also
5 relevant to the five issues we mentioned earlier.

6 The second item is documents about the July
7 22, 1982 reenactment. One witness changed her
8 statement. This is relevant to our suggestive
9 investigator procedures and the other five issues we
10 mentioned earlier.

11 MS. SCKERL: Your Honor, on
12 some of these I need to put on the record why I am
13 opposed to it. This is pure work product of the
14 State. Well, I say that: any notes made by the
15 prosecutor in preparation for trial is work product
16 of the State.

17 Mr. Atlas and trial counsel -- and when I
18 speak of Mr. Atlas, I mean he or his representative
19 or an attorney prior to you on habeas counsel or on
20 habeas litigation -- had access to the offense
21 report made by the police officers regarding the
22 walk-through, but I am opposed to any of the
23 prosecutor's notes regarding the walk-through.

24 THE COURT: That request then
25 on No. 2 will be denied.

1 MR. ATLAS: No. 3 is documents
2 regarding the weekend meeting immediately pre-trial
3 at the District Attorney's Office concerning the
4 suggestive investigator procedures, and we have at
5 least some witnesses who claim that there were
6 videotapes taken or tape recordings taken of part of
7 that meeting, where the mannequins were shown to the
8 witnesses that were there.

9 If those videotapes or tape recordings
10 exist, we would like to see them as well as whatever
11 documents describe those meetings.

12 MS. SCKERL: Our contention is
13 that that is work product.

14 THE COURT: That will be
15 denied.

16 MR. ATLAS: Your Honor, just
17 for clarification, I'm not sure if Ms. Sckerl
18 intends for her work-product argument to encompass
19 tape recordings or videotapes that were taken then.

20 MS. SCKERL: Yes, I do.

21 THE COURT: No. 4.

22 MR. ATLAS: No. 4 are any
23 documents relating to the trace metal test. That
24 was actually conducted by the police experts from
25 the lab, again, relevant to the five issues we

1 mentioned earlier.

2 MS. SCKERL: Your Honor, they
3 have had access to the offense report.

4 THE COURT: If they are trial
5 exhibits, they're discoverable.

6 MR. ATLAS: Your Honor, we
7 understand that. We're asking now for not only the
8 trial exhibits and what was in the offense reports,
9 but any other documents the prosecutor has regarding
10 trace metal tests given to any of her people
11 involved in this.

12 THE COURT: I am going to limit
13 to the trial exhibits, and apparently there are some
14 that were listed here, 65, 67 through 69.

15 MR. ATLAS: Yes, Your Honor.

16 MS. SCKERL: We contend that
17 anything else was work product.

18 MR. ATLAS: Your Honor, I take
19 it, except for trial exhibits, the Court is denying
20 our request?

21 THE COURT: That is correct.

22 MR. ATLAS: No. 5 are documents
23 and photographs related to material regarding the
24 July 14th, 1982 lineup.

25 Some witnesses say that the lineup was

1 taped. Some witnesses at the lineup signed
2 statements afterwards and others did not. At least
3 we don't have those statements in the police reports
4 or the documents the prosecutor has provided us.
5 Some witnesses say they saw at least one of the
6 participants in the lineup beforehand or that they
7 saw my client in handcuffs in advance or that they
8 saw Carrasco Flores dead or a picture of him dead,
9 and we have not seen any of those or any documents
10 explaining any of that, and we're asking for items
11 that are not trial exhibits that go beyond what the
12 prosecutor has produced in the police reports.

13 THE COURT: That will be
14 denied.

15 MR. ATLAS: Your Honor, let me
16 ask as a blanket request, where the prosecutor
17 indicates that what is being requested as work
18 product, we would like to formally request, with
19 respect to each of these requests for documents and
20 the physical evidence, et cetera, that the Court
21 conduct an in camera hearing to inspect the files
22 that the prosecutor points to as being work product,
23 with an opportunity to present them an ex parte
24 explanation of the specific items that we think the
25 Court should be looking for, or in the alternative,

1 that the Court appoint a master for this hearing.

2 THE COURT: That will be

3 denied.

4 Let's take a short recess.

5 (A recess.)

6 THE COURT: I believe we were

7 on No. 6; is that correct?

8 MR. ATLAS: Yes, Your Honor.

9 We finished 5.

10 My co-counsel, Mr. Schneider, tells me that

11 I can speed this up by asking for each and every

12 item requested in the trial exhibits, which the

13 Court has already ruled upon, in items 6 through 24

14 of the documents requested in Pages 4 through 6 of

15 Aldape Guerra's -- in Schedule B of Ricardo Aldape

16 Guerra's motion for discovery, filed July 13, 1992,

17 and each and every one relates to the five issues

18 that I mentioned at the beginning.

19 MS. SCKERL: Your Honor, I have

20 a basic problem with that, in that much of what they

21 are requesting, they have already gotten. So I

22 think if we make a blanket denial on the record,

23 it's going to look like they don't have it, when

24 they actually already had access to it.

25 MR. ATLAS: I think that's

1 true, Your Honor. I think that's a fair objection,
2 Your Honor.

3 Let me make exceptions to the broad request
4 that I just made so that I can indicate which items
5 the State has been kind enough to provide to me. I
6 think that is a very fair request, and I should have
7 anticipated that.

8 THE COURT: Let me ask this,
9 Mr. Atlas. Have you been supplied the entire record
10 of the entire trial, with all exhibits and
11 documents?

12 MR. ATLAS: No, Your Honor. We
13 have been given the entire trial record with many of
14 the exhibits, but not the over-sized photographs and
15 not the physical evidence, because we needed a court
16 order to do that, but Ms. Sckerl does not object to
17 that. In fact, we will present Your Honor, at the
18 very end of this argument, in the form of an order
19 that we have now agreed to with respect to the trial
20 exhibits. But I have been given access to what Ms.
21 Sckerl represents to me to be the entire set of
22 offense reports, the entire set of photographs that
23 she has in the DA's files and all the witness
24 statements and test results that she says she has in
25 the DA's files.

1 Is that a fair statement?

2 MS. SCKERL: That is fair, Your
3 Honor.

4 MR. ATLAS: And I am getting
5 all the lineup pictures that I selected as well.

6 THE COURT: At Mr. Schneider's
7 suggestion, I am granting all the trial exhibits and
8 documents in your request, throughout the document
9 request motion, 4 through 20 or wherever we left
10 off, 6 through 20, if they are a part of the record,
11 trial exhibits and documents, you will be granted
12 that, as far as discovery, and you will be denied on
13 your motion for discovery of other documents and
14 exhibits -- excuse me, they wouldn't be documents --
15 exhibits, if they are outside the record.

16 MR. ATLAS: Your Honor, that
17 goes through 21 through 24 of the document request
18 as well?

19 THE COURT: That is correct.

20 MR. ATLAS: I guess I should
21 point out for the record, I am dropping our request
22 for No. 24, because it asks for materials relating
23 to a Batson claim that was in the original
24 application for habeas corpus that we are dropping.

25 THE COURT: Okay. That will be

1 noted.

2 MR. ATLAS: Your Honor, with
3 respect to each of the items requested in Schedule
4 B, both the documents in items 1 through 24, 1
5 through 23 now, and the physical evidence in items 1
6 through 20, we would ask that each of the documents
7 that is responsive to each and every one of these
8 requests for which the State claims is work product
9 protection, that it be placed under seal so that we
10 can have a record for appeal in subsequent court
11 hearings.

12 THE COURT: I basically denied
13 for which you wanted me to take an in camera
14 consideration and now you want me to make it part of
15 the record?

16 MR. ATLAS: Your Honor, part of
17 the record for purposes of appeal and --

18 THE COURT: Does the State have
19 some response?

20 MS. SCKERL: Yes, Your Honor.
21 If we're going to do that, then we need to go
22 through each individual numbers so that I can say
23 what I feel is work product, because if not,
24 everything is going to have to be turned over. I
25 mean, you'll have to go through everything. Unless

1 we go through number by number, they're not going to
2 know what I'm saying I won't turn over because it's
3 work product.

4 THE COURT: Do you know that
5 now?

6 MS. SCKERL: I would be happy
7 to do that. I don't have the same document, so I
8 don't know what page number we're on, but under
9 "Documents," No. 5, which you had already denied,
10 any documents that have to do with the lineup that
11 were made by the prosecutor are work product. This
12 Defense has already had access to the offense report
13 regarding the lineup.

14 No. 6, they have already had access to the
15 offense reports regarding any photographic arrays

16 No. 7, any and all documents regarding
17 tests run. They have already had access to the
18 offense report, and as far as I know, no other tests
19 were run.

20 No. 8, that has nothing to do with work
21 product.

22 No. 9, they have had access to all police
23 reports in connection with this case, including but
24 not limited to four numbered offense reports
25 regarding specifically the shooting of Carrasco

1 Flores, the shooting of Officer Harris, the shooting
2 of Armijo and the shooting of Trepagnier as well as
3 offense reports regarding the arrest or stopping of
4 Jose Martinez, I believe his name was, on an evading
5 arrest charge. An offense report regarding the
6 aggravated robbery that was used as an extraneous
7 offense as well as one other offense report, that I
8 don't remember what it was about.

9 MR. SCHNEIDER: Have you
10 examined the Internal Affairs reports regarding any
11 of the police shootings?

12 MS. SCKERL: I have examined
13 the Civil Rights reports. I have not done anything
14 with Internal Affairs.

15 MR. SCHNEIDER: Has anyone
16 examined the Internal Affairs reports?

17 MS. SCKERL: We have never been
18 requested to. And it is our contention that any
19 Internal Affairs Division reports are, number one,
20 immaterial to this case, because they have nothing
21 to do with the shooting of Officer Harris, because
22 that took place an hour and a half before the second
23 shooting by Officer Trepagnier and the two other
24 officers in Carrasco Flores' death, therefore they
25 are immaterial and, secondly, they are work product.

1 THE COURT: That request will
2 be denied.

3 MR. ATLAS: Does that obviate
4 the need to make a formal request for the Internal
5 Affairs reports, the Internal Division reports?

6 THE COURT: I will give you
7 leave to make it on the record or you can do it in
8 writing.

9 MR. ATLAS: I would like to
10 formally request the Internal Affairs reports
11 relating to any of the shooting incidents that
12 night.

13 MS. SCKERL: It's our
14 contention that is work product.

15 THE COURT: I understand. I
16 deny their request.

17 MR. ATLAS: I would like to
18 request that that be submitted under seal to carry
19 along with the case for appeal.

20 THE COURT: That will be
21 denied.

22 MS. SCKERL: No. 10, any
23 documents they have had access to in the offense
24 reports. No. 11, they have had access to the
25 offense reports regarding any documents on

1 ballistics or firearms. No. 12, they have had
2 access to the offense reports regarding any
3 fingerprint testing done. The same for No. 13, No.
4 14 and No. 15.

5 No. 16, any and all documents relating to
6 investigation of the crime scene, including but not
7 limited to any videotape pictures taken by Officer
8 Bradshaw. They have not had access to the videotape
9 by Officer Bradshaw. I have not looked for that
10 videotape, however, I will do that, and if I find
11 it, they are welcome to look at it, and if I can't
12 find it, then I can't show it to them.

13 No. 17, any and all documents relating to
14 the police radio transmission. There was reference
15 to it in regards to the offense report. If we still
16 have the tape of the transmission, they may listen
17 to it. I have no objection to that, but I don't
18 know if we have it.

19 No. 18, I believe there was an offense
20 report regarding the arrest of Jose Martinez. I
21 have no objection to that. Anything else is
22 immaterial and work product.

23 No. 19, the same with Alex Sanchez. They
24 have had access to all the offense reports.

25 No. 20, they have had access to the offense

1 reports.

2 No. 21, I object to anything that they have
3 not been given already regarding the prosecution
4 files, in that it's work product.

5 No. 22, they have had access to all
6 photographs that I know of. No. 23, I object
7 because it's immaterial. And No. 24, they dropped.

8 THE COURT: Does that cover it?

9 MR. ATLAS: Your Honor, I would
10 formally request that the work product that Ms.
11 Sckerl has identified be sealed for purposes of
12 carrying along on this case for appeal.

13 THE COURT: That will be
14 denied.

15 MR. ATLAS: Your Honor,
16 although I think this is formally covered by the
17 request, for clarification purposes I want to be
18 clear: In addition to the lab reports, we envision
19 our request encompassing the lab notes as well, and
20 we haven't been given access to any lab notes.

21 MS. SCKERL: Any lab notes we
22 maintain are work product.

23 THE COURT: That will be
24 denied.

25 MR. ATLAS: And we would

1 request that they be sealed and carried along with
2 the case for appeal and federal habeas as well.

3 THE COURT: That will be
4 denied.

5 MR. ATLAS: Your Honor, I'm not
6 sure whether I covered this or not, but let me be
7 clear on this. Among the trial exhibits are a
8 number of fingerprints, fingerprint cards, and I
9 would like to have the opportunity, under whatever
10 safeguards the District Attorney thinks appropriate,
11 to obtain copies of those fingerprints, just trial
12 exhibits we're talking about now, in the presence of
13 anyone they'd like or even handled by anyone they'd
14 like. I'd be happy to accommodate them with any
15 reasonable request for procedure.

16 THE COURT: Is there any
17 problem with that?

18 MS. SCKERL: I have no
19 objection to them making photocopies of the
20 fingerprint cards that are in evidence.

21 THE COURT: Okay.

22 MR. ATLAS: Your Honor, at this
23 time, without waiving our objections to the items
24 that the Court has denied us in discovery, we do
25 have an order for the Court that has been agreed to

1 by both sides with respect to those items that the
2 Court has agreed to our request on, which are the
3 trial exhibits, and it provides that any inspection,
4 photocopying or photographing to be done on the
5 premises where the evidence is located.

6 I have shown this to Ms. Sckerl. In fact,
7 her associate has actually interlineated it as they
8 deemed appropriate, and I assume she has no
9 objection.

10 MS. SCKERL: I have no
11 objection, Your Honor.

12 THE COURT: All right.

13 MR. ATLAS: Your Honor, one
14 additional clarification I think needs to be made.
15 As the Court knows, we asked for copies of
16 photographs. I would have to look to find out
17 exactly where, but we envisioned it encompassing
18 photographs taken of Carrasco Flores after he died,
19 whether at the morgue or otherwise. I haven't
20 formally requested that. I would like to. And Ms.
21 Sckerl, I think, ought to express her own position
22 on this.

23 MS. SCKERL: Your Honor, up
24 until now they have had full access to the
25 photographs in the State's file, and any of it they

1 wanted copied, we have had laser copies made of
2 those.

3 It is our general counsel's contention that
4 photographs, specifically of autopsies, and my
5 understanding, also of dead bodies are a violation
6 of that person's family's right to privacy. So
7 while they can have full access to them and look at
8 them, we will not copy the photographs, therefore
9 they're not being denied discovery of those.

10 THE COURT: I believe there are
11 some considerations as far as just releasing the
12 pictures, but you wanted to review them or perhaps
13 you wanted to make copies of them and take them with
14 you?

15 MR. ATLAS: Your Honor, we
16 didn't know they existed when we were first given
17 access to the photographs. Ms. Sckerl just realized
18 last Friday, I think it was, that she hadn't given
19 them to us before, so we're seeing them for the
20 first time now.


21 I should point out that since nobody ever
22 found Mr. Carrasco Flores' family in part, because
23 we don't think that's his real name, so there is no
24 family to assert any privacy rights, the best that
25 anybody can tell.

1 MS. SCKERL: Just because
2 there's no one to assert it at this point -- I mean,
3 they're having full access to them. They can look
4 at them, they can come to my office and view them at
5 any time, so they're not being denied discovery.
6 THE COURT: Why don't you view
7 them at the office and see if that will help.
8 MR. ATLAS: All right, Your
9 Honor. If I could have a moment.
10 Your Honor, we will review them and if
11 there are any we feel like we need access to, we
12 will renew our request with the Court.
13 THE COURT: Okay.
14 MR. ATLAS: But I will say that
15 while I don't think Ms. Sckerl has gone as far as
16 I'd like, I appreciate the access that she has given
17 me today.
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1 THE STATE OF TEXAS *
2 COUNTY OF HARRIS *

3
4 I, Gina Bench, Certified Court
5 Reporter for the 248th District Court of Harris County,
6 Texas, do hereby certify that the foregoing pages of
7 typewritten material contain a true and correct
8 transcript of all evidence adduced and admitted at the
9 MOTION FOR DISCOVERY in the case shown in the caption
10 hereof; that I was present in open court and reported
11 said testimony in shorthand, and that later I transcribed
12 same into typewriting.

13 IN TESTIMONY WHEREOF, witness my official
14 signature on this the 17th day of August,
15 1992.

16 
17 GINA BENCH
18 Certified Court Reporter
248th District Court
Harris County, Texas

19 Certification Number: 221
20 Certification Expires: 12-31-92
21 Business Address: 248th District Court
301 San Jacinto
Houston, Texas 77002
22 Telephone Number: (713) 755-7094

IN THE COURT OF CRIMINAL APPEALS

STATE OF TEXAS

AT AUSTIN

EX PARTE

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IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

RICARDO ALDAPE GUERRA

248TH DISTRICT COURT

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IN THE COURT OF CRIMINAL APPEALS

STATE OF TEXAS

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IN THE DISTRICT COURT OF

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248TH DISTRICT COURT

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IN THE COURT OF CRIMINAL APPEALS

STATE OF TEXAS

AT AUSTIN

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IN THE DISTRICT COURT OF

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IN THE TEXAS COURT OF CRIMINAL APPEALS

and

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA

Harris County
Cause No. 359805-A

MOTION TO WITHDRAW ORDER SETTING EXECUTION DATE
PENDING CONSIDERATION AND DISPOSITION OF
APPLICATION FOR WRIT OF HABEAS CORPUS PROCEEDING

Comes now Petitioner, Ricardo Aldape Guerra, and moves this Honorable Court, pursuant to Rule 233, Texas Rules of Appellate Procedure, to withdraw the order setting his September 24, 1992, execution date pending consideration and disposition of his amended application for post-conviction writ of habeas corpus. Petitioner presents the following information and argument in support of this motion.

1. Either a withdrawl of the order setting Petitioner's September 24, 1992 date, or a modification of the order setting that date is necessary to ensure his application for habeas corpus relief receives full and fair review by the state courts and that, in the event he is denied relief by the state courts, he has sufficient time to prepare and present his claims to the federal courts. For reasons set forth below, this court should withdraw the order setting an execution date pending a determination on his habeas corpus application rather than modify the execution date.

2. Petitioner's case is before this court on his first

state post-conviction application for writ of habeas corpus. He has raised dozens of meritorious claims for relief in his amended application, raising numerous factual issues. Before disposing of his application, this Court must designate the factual issues that must be resolved and give the state an opportunity to respond to the application and address the issues to be resolved. See Tex. Code Crim. P. Art. 11.07 (2)(c).

3. Petitioner has requested an evidentiary hearing in order that this court may resolve the disputed factual issues he has raised in his amended application. Among the factual issues to be resolved are allegations of police intimidation and manipulation of witnesses, concealment of exculpatory evidence by prosecutors, numerous other examples of prosecutorial misconduct, improper appeals to ethnic prejudice, and ineffective assistance of defense counsel. All of these claims, and others Petitioner has raised, must be viewed against the backdrop of his claim of innocence. Petitioner's amended application not only alleges that the evidence introduced at his trial was insufficient to support a guilty verdict, but he describes new evidence, some of which was suppressed by the state, that has surfaced since his 1982 conviction that lends convincing support to his claim that Roberto Carrasco Flores, not Mr. Guerra, shot Officer James Harris. Mr. Guerra is entitled to an evidentiary hearing in order to fully and fairly present this important evidence.

4. Petitioner has also raised meritorious claims identical to issues currently pending before the United States Supreme

Court in Herrera v. Collins, No. 91-7328 (U.S. February 19, 1992), and Graham v. Collins, ____ U.S. ____, 60 U.S.L.W. 3827 (1992). Pending the Court's decisions in Herrera and Graham, Petitioner's execution should be stayed.

5. Should this court elect to schedule an evidentiary hearing, Petitioner's execution date must necessarily be postponed by several months. Preparing for the hearing, conducting the hearing, allowing for the filing of the transcript by the court reporter, and allowing time for the parties to submit briefs and proposed findings of fact, will take, at minimum, several months. This court, or a magistrate appointed by this court, must then sift through the information presented at the hearing and by the parties in their pleadings in order to issue findings of fact and conclusions of law that are supported by the record. To continually modify Petitioner's execution date, instead of withdrawing the date at the outset of this litigation, would unnecessarily waste judicial resources.

6. Proceeding without a pending execution date until Petitioner's state court application for habeas corpus relief is decided serves the interests of all parties in this matter. Furthermore, it does not impair any legitimate interest of the state, and improves the quality of judicial review. Proceeding without a pending execution date ensures that the court and the attorneys can perform their respective roles outside the crisis atmosphere created by a looming execution that must be rescheduled from month to month as the case proceeds. It also

prevents the unwarranted and unnecessary uncertainty and turmoil that an ever-pending (but frequently modified) execution date creates for courts that will be considering future appeals, for prison officials, for the attorneys both for the State and Mr. Guerra, and for Mr. Guerra's family. At the same time, it does not prevent this court from handling Mr. Guerra's appeal in a timely and expeditious manner while fairly taking into account its own schedule, other demands on attorneys for the State and Mr. Guerra, and the nature and complexity of the issues to be resolved.

7. This Court has authority under Rule 233, Texas Rules of Appellate Procedure, to withdraw or modify the order setting the execution date in order to consider fully the issues raised by Petitioner's Article 11.07 application. Fair and efficient judicial administration would be furthered more by a withdrawal of the order rather than a modification.

8. In order to manage the workload generated by capital habeas litigation, it is critical that the attorneys for all parties be able to predict, with some degree of reliability, the major time demands in pending cases. This requires that there be a reasonable window of time following a court's ruling before the next major event takes place, e.g., before a pleading is due or a hearing is conducted. This can be accomplished more efficiently by scheduling orders entered by the court than by a pending execution date.

9. It is equally important to the fair administration of

justice that attorneys for death row inmates seeking relief in their first habeas appeals have a reasonable window of time after one court denies relief within which to prepare and file appropriate pleadings and briefs for the next appeal. The Court can ensure this by (1) making it known to the parties that an execution date will be set within a specified period of time after relief is denied if the next appeal is not filed within that time or (2) entering an order when the state court denies relief, scheduling the execution date long enough away to provide sufficient time, considering other current obligations of counsel, to prepare and file the next appeal. None of these circumstances are facilitated by an outstanding execution date, the timing of which is not necessarily related to the actual advancement of the proceeding.

10. Furthermore, the unnecessary pendency of an execution date creates administrative burdens for the Texas Department of Criminal Justice. Before this court set an execution date for Petitioner, Petitioner was a participant in the Death Row "Work Capable" program. This program, the only one of its kind in the nation, permits inmates who qualify (after assessment by a TDCJ classification committee) to work daily shifts in the garment factory contained within the Ellis One Unit. However, so long as an execution date is pending, Petitioner is ineligible to participate in the work program. Any prisoner with a pending execution date -- no matter how distant -- is automatically ineligible to participate in the work program.

11. The Texas Death Row "Work Capable" program, established in part to comply with the dictates of Ruiz v. Estelle, 503 F.Supp. 1265 (E.D. Tex. 1980), has been widely recognized as a success. As one account described it,

Inmates trained to work various machines make sheets, aprons, towels, uniforms, and other products. Overall, the garment factory is a model of efficiency, producing more goods per inmate than the other TDC garment factories. Sales of its products to other state agencies totaled over \$1.25 million in 1987. The Texas garment factory is considered a model project, being the most extensive program of its kind, and has received visits from numerous state correctional officials.¹

12. Equally important, the prisoners who qualify to participate in the "Work Capable" program are permitted limited privileges that are denied to those who elect not to work. Although understandably limited, these privileges are no less significant to those who have worked hard to earn them. Some of these privileges follow:

Their cells lack the wire mesh [that covers the bars of the cells of the prisoners who are not work-capable]. As a rule they are not handcuffed, even when outside their prison wing, nor are they strip-searched [as the non-work-capable prisoners must be whenever they leave their cells]. They are fed from the steam tables buffet style and are allowed to eat either in their cells or in dayrooms. They [are allowed to] take showers in the general prison population's bathhouse. These [work-capable] prisoners are also permitted to be out of their cells for 14 hours a day on weekdays and 10 hours a day on weekends. ... Overall, they are treated like the general inmate population [except that they are denied any "contact" visits whatsoever].

Id.

¹ Sorenson and Marquart, "Working the Dead," in Facing the Death Penalty (Radelet, ed.) (1989) at 174.

13. The efficiency of the garment factory and the incentive provided by the limited privileges available to those who work there are reflected in the overall atmosphere surrounding the program:

[T]hese inmates are very productive. The garment factory and the work-capable wings [where participating inmates are housed] are clean and quiet, especially when one compares the noise level of the segregation [non-work-capable] wings. Overall, the prisoners seem to have much better attitudes There is less stress. Since the inception of the program, no serious violent incidents have occurred in the living and work areas [of the work-capable prisoners]. The garment factory supervisor stated that disciplinary infractions are rare -- less than one a month -- and he recalled only one fistfight [circa March, 1988]. This is a testimony to the good behavior of these inmates, since the inmate-to-staff ratio in the factory is ten to one: 2 guards and 3 outside staff members supervise 50 inmates each shift. Perhaps this is so because these inmates, as opposed to those in segregation, do have something to lose.

Id.

14. As long as Petitioner is under a pending execution date and disqualified for the work program, Texas Department of Criminal Justice must keep him in a different cell in order to comply with a number of procedures that are required for those inmates who are not work capable. This results in a net loss of one cell space, as Petitioner may otherwise be celled with another inmate. Prisoners who are not work capable, unlike those who are on the work program, must be housed in separate cells.

15. In sum, the existence of an outstanding execution date for Petitioner deprives him of the few small privileges that he could otherwise continue to earn, frustrates the attempts of the State to comply with the requirements of Ruiz v. Estelle, and

unnecessarily imposes an artificial sense of urgency on this court's proceedings that does not facilitate their fair and orderly resolution.

16. This Court can control the filing, docketing, and hearing of matters relevant to these proceedings without the pendency of an execution date. If, after the Court enters findings, the Court of Criminal Appeals denies relief, this Court can promptly schedule Mr. Guerra's execution for 30 or more days away, thereby ensuring that the case will not lie dormant while still allowing his attorneys time to prepare a federal habeas petition that properly takes into account the state court decision.

17. The existence of an outstanding execution date does not advance the litigation in this case in any way that this court could not readily accomplish by scheduling orders. Instead, it imposes an unwarranted urgency that actually interferes with the fair and orderly administration of the courts and that, in some circumstances, could deprive Mr. Guerra of a fair opportunity to present fairly and fully his claims for relief.

WHEREFORE, for the reasons set forth above, Petitioner moves the court to withdraw the order setting his execution date, presently scheduled for September 24, 1992, pending final disposition of his state post-conviction application for habeas corpus relief.

A proposed order is submitted with this Motion.

Respectfully submitted,

VINSON & ELKINS L.L.P.

by: Scott J. Atlas
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Attorney for
Ricardo Aldape Guerra

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading and proposed order was served by mail/delivery on Roe Wilson, Assistant District Attorney of Harris County on the 16th day of September, 1992.


SCOTT J. ATLAS

IN THE TEXAS COURT OF CRIMINAL APPEALS

and

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA

)
)
)
)
)
Case No. _____
(Harris County
Cause No. 359805-A)

ORDER WITHDRAWING SETTING OF EXECUTION DATE

The matter comes before this Court on applicant's motion to withdraw order setting execution date;

The Court finds that defendant's application for writ of habeas corpus filed pursuant to Article 11.07 of the Code of Criminal Procedure, is pending before this court;

The Court finds that the State will require additional time to respond and that the Court will require additional time to determine whether there are controverted, previously unresolved facts, to designate issues of fact to be resolved, and to issue findings of fact pursuant to the provisions of Article 11.07(d);

The Court further finds that in the interest of justice, this Court will require additional time to review and consider defendant's application, matters related thereto and the response filed by the State.

IT IS THEREFORE ORDERED that this Court's order setting the execution date of Ricardo Aldape Guerra September 24, 1992, is hereby withdrawn and his execution is stayed during the pendency of his Article 11.07 habeas corpus proceedings.

SIGNED this _____ day of September, 1992.

JUDGE OF THE 248TH
JUDICIAL DISTRICT OF
HARRIS COUNTY, TEXAS

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17

S. Alc

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KATHERINE TYRA
District Clerk

JUL 14 1992

Harris County, Texas

By

Deputy

Re: Ex Parte Ricardo Aldape Guerra

Dear Judge Densen:

Enclosed to be filed in this case are the following documents:

1. Ricardo Aldape Guerra's Ex Parte Motion for Compensation of Experts and Investigators, and Reimbursement of Counsel's Out-of-Pocket Expenses;
2. Application to Set for Argument Ricardo Aldape Guerra's Ex Parte Motion for Compensation of Ex Parte Motion for Compensation of Experts and Investigators, and Reimbursement of Counsel's Out-of-Pocket Expenses; and
3. The Order accompanying the enclosed Motion.

Please file stamp the extra copy and return it to me in the enclosed self-addressed, stamped envelope.

Thank you for your consideration and courtesy.

Very truly yours,

Scott J. Atlas

Scott J. Atlas

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA

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)
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Case No. _____
(Harris County
Cause No. 359805-A

**RICARDO ALDAPE GUERRA'S EX PARTE MOTION FOR
COMPENSATION OF EXPERTS AND INVESTIGATORS,
AND REIMBURSEMENT OF COUNSEL'S OUT-OF-POCKET EXPENSES**

Applicant Ricardo Aldape Guerra ("Aldape Guerra"), who is indigent and has requested leave to proceed *in forma pauperis*, respectfully requests *ex parte* that this Court enter an order to facilitate the fair disposition of the claims asserted in his Application for Writ of Habeas Corpus by authorizing the expenditure of reasonable funds for factual investigation and expert assistance, including the presentation of expert testimony. See *Ake v. Oklahoma*, 470 U.S. 68, 82-83 (request for an expert is to be made *ex parte*). Petitioner respectfully submits that investigation conducted in the time and with the resources available to counsel establish a *prima facie* showing of deprivation of the constitutional and other legal rights asserted in the Petition for Writ of Habeas Corpus, as shown by the affidavits and other exhibits submitted in support of the Petition. Because Applicant is indigent, he is unable to conduct further investigation and expert analysis that would be necessary for him to make an adequate evidentiary presentation on claims asserted in his Application for Writ of Habeas Corpus. See *id.* (indigent defendant entitled to funds for expert). In addition,

Petitioner's counsel has incurred reasonable, yet substantial, out-of-pocket expenses conducting the investigations necessary to make a prima facie showing of deprivation of Petitioner's constitutional and other legal rights and assuring that Petitioner's sentence would be held in abeyance pending these investigations.

Expert assistance will be necessary to develop material facts for presentation in an evidentiary hearing. Petitioner's counsel and investigation assistants have not yet been able to complete their investigations of facts material to the constitutional claims asserted in the Petition. Without additional assistance from experts and an investigator, and additional expenses attending presentation of expert testimony, Petitioner will be unable to present evidence necessary for full and fair litigation of his claims.

Experts.

In particular, Aldape Guerra requests funds for experts in the following fields:

- a. memory
- b. ballistics
- c. trace metal detection
- d. crime scene reconstruction
- e. nitrite testing
- f. fingerprint analysis
- g. personality

A memory expert is necessary to review witness statements provided to the police and trial testimony to demonstrate how improper police identification procedures (including a suggestive line-up, a walkthrough of the crime, and the use of mannequins) tainted identification testimony of the State's witnesses in violation of Aldape Guerra's constitutional rights.

A ballistics expert is necessary to examine and test fire the Browning 9mm pistol used to kill Officer James D. Harris ("Officer Harris"), to determine the trajectory of shots fired, and to demonstrate that the identification testimony of various State witnesses is contrary to the physical evidence, including but not limited to the direction of blood spatter patterns.

A trace metal detection expert is necessary to examine the Browning 9mm pistol found on the body of Roberto Carrasco Flores ("Carrasco Flores"), the .45 caliber pistol found near Aldape Guerra, and the .357 magnum belonging to Officer Harris, to demonstrate that properly conducted trace metal detection tests would likely have provided further physical evidence that Aldape Guerra did not shoot and kill Officer Harris. Further, a trace metal detection expert is needed to rebut testimony by State experts explaining why trace metal from Carrasco Flores' Browning 9mm pistol could be found on Carrasco Flores' hands but not on Aldape Guerra's hands.

A crime scene reconstructionist is necessary to review all evidence and in particular witness statements in order to identify changes or fallacies in the witness statements that should have been detected by trial counsel. Further, the assistance of such an expert is critical and will reveal how improper and suggestive police

identification procedures affected the State's witness identifications. Such an expert is also necessary to assist Aldape Guerra's counsel in confronting State's identification witnesses should they testify during an evidentiary hearing.

An expert is needed to test the clothing worn by Aldape Guerra on July 13, 1982 for the presence of nitrites. The presence of nitrites on the back of Aldape Guerra's clothing may conclusively demonstrate that Carrasco Flores and not Aldape Guerra shot and killed Officer Harris.

A fingerprint expert is needed to determine if prints lifted from the crime scene, including but not limited to prints taken from Officer Harris' patrol car, the pistols mentioned above, and the holsters found on Carrasco Flores and/or Officer Harris, might conclusively demonstrate that (1) Aldape Guerra did not handle the Browning 9mm pistol that was used to kill Officer Harris, (2) Aldape Guerra rather than Carrasco Flores, was the person seen by certain witnesses with his hands on Officer Harris' car and not the person who circled around to the side of Officer Harris and then shot him.

A psychologist on personality is necessary to show that Aldape Guerra is not prone to violence and is not dangerous or impulsive. This would demonstrate what Aldape Guerra's counsel could have proven.

Finally, all the above experts are needed to prepare for cross-examination of State experts or to provide rebuttal testimony.

Investigations.

Additionally, investigators are needed to further develop material facts for presentation in an evidentiary hearing. Because of limited funds and time constraints caused by other obligations, Aldape Guerra's counsel have not yet been able to complete their investigation of facts material to the claims asserted in Aldape Guerra's Application for Writ of Habeas Corpus. In particular, investigators are needed to search for witnesses who testified on the State's behalf and witnesses who were present during the line-up and/or walkthrough in order to demonstrate (1) how improperly suggestive police procedures tainted the State's witnesses' trial testimony regarding identification of Aldape Guerra as Officer Harris' killer, (2) how proper investigation by trial counsel could have provided exonerating and mitigating evidence, and (3) how Aldape Guerra was innocent.

Request for Sealed Records.

Finally, Aldape Guerra requests that this motion, all orders related to this motion, and all transcripts of hearings related to this motion be placed under seal. *See Brooks v. State*, 385 S.E.2d 81 (1989) (indigent defendant has the right to present applications for funds for expert and investigative assistance *ex parte* out of the presence of the District Attorney and the public; records and transcript are to be placed under seal). "[T]o allow participation, *or even presence*, by the State would thwart the Supreme Court's attempt to place indigent defendants, nearly as possible, on a level of equality

with nonindigent defendants." *McGregor v. State*, 733 P.2d 416 (Okla. Crim. App. 1987) *reaff'd* in *McGregor v. State*, 754 P.2d 1216 (1988) (emphasis added).

WHEREFORE, Applicant, Ricardo Aldape Guerra, respectfully requests that the Court enter an order providing for reasonable reimbursement for any and all funds expended for investigative and expert assistance, including any testimonial expenses incurred, and that this motion, all orders related to this motion, and all transcripts of hearings related to this motion be place under seal.

Respectfully submitted,

VINSON & ELKINS, L.L.P.

A handwritten signature in black ink, reading "Scott J. Atlas". The signature is fluid and cursive, with the first name "Scott" and last name "Atlas" clearly legible.

Scott J. Atlas
Texas. Bar No. 01418400
1001 Fannin, Suite 2500
Houston, Texas 77002-6760
PH: (713) 758-2024
FAX: (713) 758-3338

ATTORNEYS FOR RICARDO ALDAPE
GUERRA

c:\guerra\compensa.mot

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA

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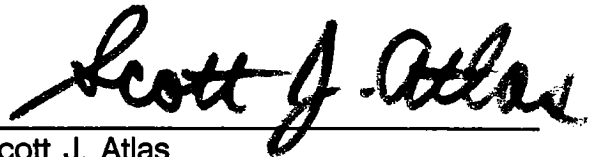
Case No. _____
(Harris County
Cause No. 359805-A

**APPLICATION TO SET FOR ARGUMENT RICARDO ALDAPE GUERRA'S
EX PARTE MOTION FOR COMPENSATION OF EXPERTS AND INVESTIGATORS,
AND REIMBURSEMENT OF COUNSEL'S OUT-OF-POCKET EXPENSES**

Applicant Ricardo Aldape Guerra respectfully moves that this Court enter an order setting a date for argument on Ricardo Aldape Guerra's Ex Parte Motion For Compensation of Experts and Investigators, and Reimbursement of Counsel's Out-of-Pocket Expenses pertaining to his Application for Writ of Habeas Corpus.

Respectfully submitted,

VINSON & ELKINS, L.L.P.



Scott J. Atlas
Texas. Bar No. 01418400
1001 Fannin, Suite 2500
Houston, Texas 77002-6760
PH: (713) 758-2204
FAX: (713) 758-2346

ATTORNEYS FOR RICARDO ALDAPE
GUERRA

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA

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Case No. _____
(Harris County
Cause No. 359805-A

ORDER

On this day came to be considered Ricardo Aldape Guerra's Ex Parte Motion for Compensation of Experts and Investigators, and Reimbursement of Counsel's Out-of-Pocket Expenses in the above-styled and numbered cause. The Court, having examined the foregoing motion, and being of the opinion that good cause has been shown, finds the motion should be GRANTED and that the following Orders should be entered.

It is ORDERED that Ricardo Aldape Guerra receive reasonable reimbursement for funds expended for expert assistance, including any testimonial expenses incurred, and the hiring of investigators.

It is further ORDERED that this motion, all orders related to this motion, and all transcripts of hearings related to this motion be placed under seal.

Dated: _____, 1992

JUDGE PRESIDING
248TH DISTRICT COURT

16

THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20004-1008
TELEPHONE (202) 639-8500
FAX (202) 639-8604

HUNGARIAN EXPORT BUILDING
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121069 MOSCOW, RUSSIAN FEDERATION
TELEPHONE 011 (70-95) 202-8418
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47 CHARLES ST., BERKELEY SQUARE
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VINSON & ELKINS
L.L.P.
ATTORNEYS AT LAW

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WRITER'S DIRECT DIAL
(713) 758-2024

July 13, 1992

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816 CONGRESS AVENUE
AUSTIN, TEXAS 78701-2496
TELEPHONE (512) 495-8400
FAX (512) 495-8612

3700 TRAMMELL CROW CENTER
2001 ROSS AVENUE
DALLAS, TEXAS 75201-2916
TELEPHONE (214) 220-7200
FAX (214) 220-7718

BAGATELA 12
OO-585 WARSAW, POLAND
TELEPHONE 011 (48-22) 625-33-33
FAX 011 (48-22) 625-22-45

By Messenger

Mr. Raymond Posado
Manager
Post Trial System - Criminal Division
301 San Jacinto, Room 101A
Houston, Texas 77002

Re: Ex Parte Ricardo Aldape Guerra

Dear Mr. Posado:

Enclosed to be filed in this case are the following documents:

1. Ricardo Aldape Guerra's Motion for Discovery;
2. Order on Ricardo Aldape Guerra's Motion for Discovery; and
3. Application to Set for Argument Ricardo Aldape Guerra's Motion for Discovery.

Please file stamp the extra copy and return it to me in the enclosed self-addressed, stamped envelope.

Thank you for your consideration and courtesy.

Very truly yours,

Scott J. Atlas
Scott J. Atlas

*Hearing held
on 7/28/92;*

Mr. Raymond Posado
July 13, 1992
Page 2

0399-2580
c:\aldape\posado.713

Enclosures

cc: By Certified Mail
Return Receipt Requested -

Ms. Rosemary Wilson
Assistant D.A.
Harris County D.A.'s Office
201 Fannin, Suite 200
Houston, Texas 77002

IN THE TEXAS COURT OF CRIMINAL APPEALS
and
IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA

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Case No. _____
(Harris County
Cause No. 359805-A

RICARDO ALDAPE GUERRA'S MOTION FOR DISCOVERY

Applicant Ricardo Aldape Guerra ("Aldape Guerra"), who is indigent and has filed for leave to proceed in forma pauperis, respectfully moves this Court, pursuant to Tex. Code of Crim. P. 11.07(2)(d) and the Constitutions of the State of Texas and United States of America, to order discovery. In support of this motion, undersigned counsel for Aldape Guerra states that this request for discovery is made for good cause and that such discovery is essential for Aldape Guerra to present sufficient evidence on facts material to the constitutional issues asserted in his Application for Writ of Habeas Corpus.

Aldape Guerra moves this Court to grant leave to subpoena the documents and physical evidence identified in attached Schedule B for inspection, and/or appropriate testing, copying and reproduction, and to serve Notice of Depositions and to take depositions, said depositions to be held at times and places directed by this Court. The aforementioned Notice of Depositions are attached hereto as Exhibit A. Aldape Guerra further requests that the Court grant leave to engage in further discovery as

992 JUL 13 PM 3:50
CLERK OF COURT
BY DEPUTY

may be necessary in this matter, including interrogatories, requests for admission, depositions, and further necessary requests for production.

It is essential that Aldape Guerra obtain the requested evidence through discovery since he has no other means of obtaining it. To deny the relief requested in this motion would be to deny Aldape Guerra the opportunity for a full and fair hearing on his constitutional claims in this Court.

WHEREFORE, Applicant, Aldape Guerra, prays that this Court grant his Motion and order the above enumerated discovery to facilitate the speedy and orderly presentation of evidence in support of his Application for Writ of Habeas Corpus.

Respectfully submitted,

VINSON & ELKINS, LLP.

A handwritten signature in black ink, reading "Scott J. Atlas". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Scott J. Atlas
Texas. Bar No. 01418400
1001 Fannin, Suite 2500
Houston, Texas 77002-6760
PH: (713) 758-2204
FAX: (713) 758-2346

ATTORNEYS FOR RICARDO ALDAPE
GUERRA

IN THE TEXAS COURT OF CRIMINAL APPEALS
and
IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA
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)

Case No. _____
(Harris County)
Cause No. 359805-A

FILED
1997 JUL 13 PM 5:51
CLERK OF DISTRICT COURT
HARRIS COUNTY

ORDER ON RICARDO ALDAPE GUERRA'S MOTION FOR DISCOVERY

Ricardo Aldape Guerra's Motion for Discovery is hereby GRANTED.

IT IS ORDERED that Counsel for Ricardo Aldape Guerra ("Aldape Guerra") is granted leave to subpoena the documents and physical evidence described in Schedule B attached to Ricardo Aldape Guerra's Motion for Discovery for inspection, copying and/or testing.

IT IS FURTHER ORDERED that counsel for Aldape Guerra be granted leave to serve Notice of Depositions and to take such depositions at the following times and places, or as otherwise agreed:

Place

Date and Time

Custodian of Houston
Police Records

Clerk of the District Court
of Harris County

Custodian of Harris County
District Attorney's
Office Records

Custodian of Harris County
Constables Office,
Precinct No. 4's Record

Custodian of Harris County
Sheriff's Records

Signed and entered this _____ day of _____, 1992

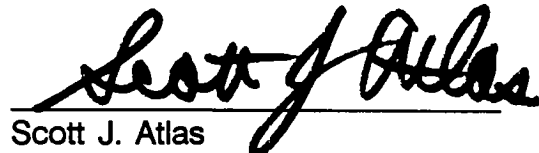
JUDGE PRESIDING
248TH JUDICIAL DISTRICT COURT

ATTORNEYS FOR RICARDO ALDAPE
GUERRA

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the above and foregoing Ricardo Aldape Guerra's Motion for Discovery, proposed Order, and Application to Set for Argument Ricardo Aldape Guerra's Motion for Discovery was this 13th day of July, 1992, mailed certified mail, return receipt requested, to the following counsel of record:

Roe Wilson
Assistant District Attorney
201 Fannin
Houston, Texas 77002


Scott J. Atlas

EX PARTE RICARDO ALDAPE GUERRA

1992 JUL 13 PM 5:50
BY DEPUTY

As we get locs, may be more;
to ~~prove~~ authenticate, chain of custody;
depose trace metal

PLEASE TAKE FURTHER NOTICE that each deponent will be required to bring with him or her the documents indicated in the attached Schedule B.

The oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

Respectfully submitted,

VINSON & ELKINS, LLP.

Scott J. Atlas
Texas. Bar No. 01418400
1001 Fannin, Suite 2500
Houston, Texas 77002-6760
PH: (713) 758-2204
FAX: (713) 758-2346

**ATTORNEYS FOR RICARDO ALDAPE
GUERRA**

SCHEDULE A--LOCATIONS AND DATES OF DEPOSITIONS

	<u>Place</u>	<u>Date and Time</u>
Custodian of Houston Police Records		
Clerk of the District Court of Harris County		
Custodian of Harris County District Attorney's Office Records		

Case No. _____
(Harris County
Cause No. 359805-A

The term includes communications not only in words but in symbols, drawings, sketches, pictures, graphs, maps, plats, charts, fingerprints, photographs, phonographs,

sound recordings, film, tapes, and information stored in, or accessible through, computer or other information storage or retrieval systems. If the information is kept in a computer or informational storage or retrieval system, the term also includes codes and programming instructions and other materials necessary to understand such systems.

The term includes but is not limited to: calendars, checkbooks, agenda, agreements, analyses, bills, invoices, records of obligations and expenditures, corporate bylaws and charters, correspondence, diaries, files, legal documents, financial documents including balance sheets and profit and loss statements, letters, memoranda, recordings of telephone or in-person conferences, manuals, books, press releases, purchase orders, records, schedules, memos of interviews, evaluations, written reports or scientific tests or experiments, public relations releases, telegrams, teletypes, workpapers, drafts of documents, and all other writings which contents relate to the subject matter of the discovery request.

"this case": The term "this case" shall mean any and all investigations relating to the deaths of Roberto Carrasco Flores ("Carrasco Flores") and Officer James Harris ("Officer Harris") on or about July 13, 1982, the wounding of Officer Lawrence Trepagnier on or about July 13, 1982, and the robbery of The Rebel Gun Store, located on or near the 18000 block of Kuykendahl, Harris County, Texas, occurring on or about July 8, 1982.

DOCUMENTS REQUESTED

Any and all documents in your custody or control relating to Ricardo Aldape Guerra ("Aldape Guerra") and/or Carrasco Flores, including but not limited to, the following:

1. Any and all documents, including but not limited to original and duplicate sound recordings, of or relating to all witness statements taken in this case, including but not limited to statements provided by the following persons as reflected on pages 2.020 and 2.021 of Houston Police Department Current Information Report bearing incident no. 42667682. (A copy of the relevant pages of the report are attached hereto and marked as Attachment 1.): Ilda A. Anguiano, Erma Trevino Anguiano, Hector Trevino Anguiano, Amada Anguiano Lamid, Nariso Gonzales, Marylou Gonzales, Dinah Gonzales, Carlos Gonzales, Jesus Gonzales, Linda Marie Pedrosa, and Tranquilino Arteaga Anguiano.

2. Any and all documents relating to the walk-through of the crime scene conducted on or about July 22, 1982.

3. Any and all documents relating to a meeting at the Harris County District Attorney's office on or about the Saturday before Aldape Guerra's trial commenced on October 4, 1982, before, during or after which time witnesses viewed the mannequins of Aldape Guerra and Carrasco Flores (hereinafter, "the Mannequins").

4. Any and all documents relating to any trace metal detection tests conducted in this case, including but not limited to State's Exhibit 65, 67-69.

Internal Division reports?

5. Any and all documents, including but not limited to photographs, relating to the police line-up of Aldape Guerra conducted on or about July 14, 1982.
6. Any and all documents, including but not limited to photographs, relating to photographic arrays (see State's Exhibit 80) or "show-ups" conducted in this case.
7. Any and all documents relating to nitrate and/or nitrite tests performed in this case, including but not limited to every page of the report prepared by Houston Police Department chemist, Danita Smith, a copy of which has several pages missing. A copy of the report is attached hereto and marked as Attachment 2.
8. Any and all documents relating to the clothing worn by Aldape Guerra or Carrasco Flores on or about July 13, 1982, including but not limited to laundry receipts.
9. Any and all police reports prepared in connection with this case.
10. Any all documents including photographs confiscated, taken or seized from the house located at 4907 Rusk, Houston, Texas on or about July 13 or 14, 1982.
11. Any and all documents relating to ballistics or firearms tests conducted in this case, including but not limited to test firings of the Browning nine millimeter pistol found near the body of Carrasco Flores on or about July 13, 1982 and reports prepared by firearms examiner C. E. Anderson.
12. Any and all documents relating to fingerprint tests conducted in this case, including but not limited to State's Exhibits 87-89.
13. Any and all documents relating to distance tests conducted in this case.
14. Any and all documents relating to testing of fibers or hairs in this case, including but not limited to the hair(s) identified in the report bearing incident number

42614582 and Houston Police Department Officers' Supplemental Field Notes. A copy of the Report is attached hereto as Attachment 3.

15. Notwithstanding the foregoing, any and all documents relating to any scientific test(s) conducted in this case.

16. Any and all documents relating to investigation of the crime scene, including but not limited to any videotaped pictures taken by an Officer Bradshaw or anyone else. *- we can look at if she finds*

17. Any and all documents relating to police radio transmissions relevant to this case, including but not limited to taped radio transmissions to or from Officer James Harris from 6:00 p.m. July 13, 1982 until 6:00 a.m. July 14, 1982.

18. Any and all documents relating to the questioning, detention and/or arrest of Jose Sanchez Martinez. *w/p*

19. Any and all documents relating to the questioning, detention and/or arrest of Alex Sanchez. *w/p*

20. Any and all documents relating to the questioning, detention and/or arrest of Enrique Torres Luna, including but not limited to notes in any prosecution files.

21. Any and all prosecution files relating to this case. *w/p*

22. Any and all photographs taken in connection with this case, including but not limited to State's Exhibits 1-14, 6-10, 21, 23-42, 70-80 and Defendants Exhibits A-F.

23. Any and all documents, including but not limited to training materials used by or made available to policemen in the Houston Police Department, with respect to

any witness identification and/or lineup procedures from January 1, 1982 to October 26, 1982.

24. Any and all documents, including but not limited to training materials used by or made available to attorneys in the Harris County District Attorney's Office, with respect to any jury selection criteria in felony cases from January 1, 1970 to October 26, 1982.

PHYSICAL EVIDENCE

Notwithstanding the foregoing, Aldape Guerra requests the right to inspect, copy, reproduce and/or conduct appropriate tests of any and all physical evidence in your custody or control relating to this case, including but not limited to, the following:

1. Officer Harris' service revolver (State's Exhibit 66);
2. The 45 caliber Detonic pistol recovered near where Aldape Guerra was arrested on or about July 13 or 14, 1982 (State's Exhibit 43);
3. The nine millimeter Browning pistol recovered near the body of Carrasco Flores on or about July 13 or 14, 1982 with the opportunity to test fire this pistol (State's Exhibit 44);
4. Any and all nine millimeter clips or cartridges, including but not limited to State's Exhibit 43A;
5. Any and all 45 caliber ammunition and/or nine millimeter ammunition recovered in connection with this case on or about July 13 or 14, 1982, including but not limited to State's Exhibit 43A;

6. Any and all personal effects of Carrasco Flores, including but not limited to items recovered from his pockets and items that were in his possession at any time, including but not limited to items found at 4625 Woodside, Harris County, Texas and 306 Lockwood, Harris County, Texas; - ^{handwritten} esp. a note in pocket wallet - not inventoried

7. The gun holster found on the body of Carrasco Flores on or about July 13 or 14, 1982; ~~fingerprints~~ - to see if rt or left-handed;

8. Any and all gun holsters found on the body of Officer Harris on or about July 13 or 14, 1982 for purposes of fingerprint testing;

9. Any and all clothing and/or hats recovered within a two block radius of the intersection of Edgewood and Walker, Harris County, Texas, on or about July 13 or 14, 1982;

10. Any and all items confiscated, taken or seized from the Buick Regal with Texas license plate number YXT 479, occupied during part of the evening of July 13, 1982 by Aldape Guerra;

11. Any and all maps or diagrams used during the trial of this case, including but not limited to State Exhibit No. 5; - ^{handwritten} chain of custody; efforts to find

12. Any and all clothing worn by either Aldape Guerra, Officer Harris or Carrasco Flores on or about July 13, 1982 with the opportunity to test for the presence of nitrates and/or nitrites;

13. Any and all bullets, "slugs", shell casings and/or spent hulls found within a two block radius of the intersection of Edgewood and Walker, Harris County, Texas including but not limited to State's Exhibits 45-63; - ^{handwritten} to determine location of shooter

14. Any and all fingerprints, including but not limited to, fingerprint tapes and/or cards, whether usable or not, known to belong to Carrasco Flores or Aldape Guerra as well as any photographs taken related to such fingerprints.

15. Any and all fingerprints, fingerprint tapes and/or cards, whether usable or not, taken from the Buick Regal with Texas license plate number YXT 479, occupied during part of the evening of July 13, 1982, by Aldape Guerra, the Houston Police Department patrol vehicle 360015 driven by Officer Harris on or about July 13, 1982, the 1976 Ford Elite, with Texas license plate number JYN 576, driven by Jose Francisco Armijo on the evening of July 13, 1982, as well as any photographs taken relating to such fingerprints including but not limited to the palm prints referred to in Volume XX pages 113-14 of the Statement of Facts.

16. Any and all fingerprints, fingerprint tapes and/or cards, whether usable or not, taken from the nine millimeter pistol or the 45 caliber pistol referred to in paragraphs 2 and 3 above as well as photographs taken relating to such fingerprints.

17. Any and all fingerprints, fingerprint tapes and/or cards whether usable or not, taken during the robbery of the Rebel Gun Store located on or near the 18000 block of Kuykendahl, Harris County, Texas, occurring on or about July 8, 1982;

18. In addition to fingerprints requested in paragraphs 16, 17, and 18 above, all fingerprints, fingerprint tapes and/or cards, whether usable or not, taken in this case, as well as any and all photographs taken of areas fingerprinted.

19. Any and all fibers or hairs taken or collected in this case.

20. Any and all other item(s) of physical evidence introduced at trial in this case.

c:\guerra\schedule.B

INCIDENT NO. 042667682 CURRENT INFORMATION REPORT PAGE 2.020

DET GL DOLLINS #45936 TOOK POSSESSION OF THESE ITEMS.

SUPPLEMENT ENTERED BY - 59096
REPORT REVIEWED BY-V W WEST
COPIES ALSO SENT TO- RP1/ / / EMPLOYEE NUMBER-030529
DATE CLEARED- 07/13/82 ACTION DUE DATE- / /

NO-C003

OFFENSE- DEAD MAN (SHOOTING)

NUMBER- 4911 NAME-RUSK STREET LOCATION INFORMATION
DATE OF OFFENSE-07/13/82 TYPE- SUFFIX-
COMPLIS LAST-WEDO DATE OF SUPPLEMENT-07/20/82
LAST- FIRST- MIDDLE-
FIRST- MIDDLE-

NONE RECOVERED STOLEN VEHICLES INFORMATION
OFFICER1-ME ST JOHN EMP#-060607 SHIFT-3 DIV/STATION-HOMICIDE

SUPPLEMENT NARRATIVE

SUPPLEMENT DATED 7/14/82

THIS CASE IS RELATED TO THE ATTEMPT CAPITAL MURDER OF A POLICE OFFICER CASE #42667382. (SEE OTHER REPORT)

THIS DATE, DET ST JOHN WAS ASSIGNED THE DUTY OF INTERVIEWING VARIOUS POTENTIAL WITNS IN THE NEIGHBORHOOD OF THE 4900 BLOCK OF RUSK STREET. DET ST JOHN ARRIVED AT THE SCENE WITH DETS KENT AND WALTHON AND CONTINUED THE INVESTIGATION ALREADY BEGUN BY DETS BOSTOCK AND WEST.

DET ST JOHN OBTAINED A MINI-CASSETTE RECORDER FROM ASSIST D.A. T. WILSON AND ALONG WITH OFFICER J ROBINETTE, #65656, UNIT 2A29, BEGAN INTERVIEWING THE WITNS IN THE RESIDENCES OF 4911 RUSK. MOST OF THE WITNS INTERVIEWED DIDNT SPEAK ENGLISH AND SO OFFICE ROBINETTE SERVED AS THE INTERPRETER DURING THE INTERVIEWS.

THE FOLLOWING SIX (6) WITNS LIVE AT 4911 RUSK AND WERE PRESENT AT THAT LOCATION ASLEEP WHEN THE SHOOTING OCCURRED IN THEIR BACKYARD. ALL SIX PERSONS WERE INTERVIEWED IN SPANISH AND THEIR RESULTING CONVERSATION WAS TAPED BY THE CASSETTE AND THE CASSETTE TAGGED ACCORDINGLY. ALL PERSONS TAPED WERE ADVISED THAT THEY WERE BEING TAPED AND ALL CONSENTED. THE WITNS ARE AS FOLLOWS:

- (1) AMADA ARTEAGA ANGUIANO LAM42, 4911 RUSK, DOB: 6/18/41, HOME #928-5163, TOL #11037901
- (2) ILDA A ANGUIANO LAF42, 4911 RUSK, DOB: 8/28/41, HOME #928-5163 (WIFE)
- (3) ERMA TREVINO ANGUIANO LAF14, 491 RUSK, DOB: 12/21/67 (DAUGHTER)
- (4) HECTOR TREVINO ANGUIANO, LAM19, 4911 RUSK, DOB: 8/12/62 (SON)
- (5) AMADA ANGUIANO LAM10, 4911 RUSK, DOB: 2/21/72 (DAUGHTER)

ATTACHMENT 1 (AI)

F 000267

INCIDENT NO. 042667682 CURRENT INFORMATION REPORT PAGE 2.021

(6) TRANQUILINO ANGUIANO LAM8, 4911 RUSK (SON)

ALL OF THE ABOVE WITNS STATED THAT THEY WERE AWAKENED BY THE SHOTS AND POLICE SURROUNDING THEIR HOUSE SHINNING FLASHLIGHTS. NONE OF THESE WITNS ACTUALLY SAW THE SHOOTING AND NONE OF THEM KNEW WHO FIRED FIRST OR HOW MANY TIMES. SEVERAL OF THESE WITNS STATED THAT THEY KNEW THE MAN NEXT DOOR AND SAID THAT THEY WERE TROUBLEMAKERS AND WERE ALWAYS SHOOTING THEIR GUNS. THESE WITNS ARE ON SIDE "A" OF THE CASSETTE TAPE AND AT THE BEGINNING OF THE TAPE. NONE OF THESE WITNS WERE BROUGHT DOWN TO THE HOMICIDE OFFICE FOR STATEMENTS.

THE NEXT GROUP OF WITNS TO BE INTERVIEW LIVED ACROSS THE STREET FROM 4911 RUSK WHERE THE SHOOTING OCCURRED AND THEY HAD WITNS PART OF THE INCIDENT. ONCE AGAIN, MOST OF THESE WITNS WERE INTERVIEWED IN SPANISH AND THEIR CONVERSATION IS ON SIDE "A" AND "B" OF THE CASSETTE TAPE. THESE WITNS WERE ALSO ADVISED THAT THE CONVERSATION WOULD BE TAPED AND ALL CONSENTED. THE WITNS ARE AS FOLLOWS:

- 11) NARCISO GONZALES LAM34, 4916 RUSK, DOB: 3/21/46, TDL #05644722, H#926-1992 NO WORK PHONE
- 12) MARYLOU GONZALES LAF36, 4916 RUSK, DOB: 10/3/46, H#926-1992, W# UNKNOWN AT ASSOC BLDG SERVICE (WIFE)
- 13) DINAH GONZALES LAF22, 4916 RUSK, DOB: 11/6/59, H#926-1992, W#921-1025 (DAUGHTER)
- 14) CARLOS GONZALES LAM14, 4916 RUSK, DOB: 10/23/67 (SON)
- 15) JESUS GONZALES LAM7, 4916 RUSK, DOB: 1/7/75 (SON)
- 16) LINDA MARIE PEDROSA LAF21, 4916 1/2 RUSK, DOB: 6/16/61 H# NONE, W# NONE
- 17) TRANQUILINO ARTEAGA ANGUIANO LAM34, 4916 1/2 RUSK, DOB: 9/23/48, H# NONE W# UNKNOWN, VEE CONSTRUCTION (BEECHNUT) (BOYFRIEND)

ALL OF THESE WITNS WERE ON THE PORCH OF THE 4916 RUSK RESIDENCE WHEN THE SHOOTING OCCURRED. MOST WITNS SPOKE SPANISH DURING THE INTERVIEW SO A TRANSLATION OF THE CASSETTE TAPE WILL BE NECESSARY FOR FULL DETAILS OF THE INTERVIEW. THE ESSENCE OF THE INTERVIEW WAS THAT THE WITNS WERE ON THE PORCH AND SAW THE POLICE CARS DRIVE UP TO 4911 RUSK (ACROSS THE STREET) AND ONE OFFICER GO TO THE DOOR WHILE SEVERAL OTHERS WERE ALONG THE SIDES TO THE HOUSE.

SEVERAL OF THE WITNS STATED THAT THEY HEARD SEVERAL SHOTS (ONE WITN STATED 3) COME FROM THE REAR OF THE HOUSE & THEY ALL SOUNDED LIKE THEY WERE FROM THE SAME GUN. THEN THE WITNS STATED THAT THE OFFICERS BEGAN TO RETURN FIRE DIRECTING THEIR FIRE TOWARDS THE REAR OF THE HOUSE. THE WITN STATED THAT THE SHOOTING STOPPED WHEN ONE OFFICER YELLED TO STOP ALL FIRE THAT AN OFFICER HAD BEEN SHOT. THE WITNS STATED THAT THEY COULDN'T SEE THE OFFICER SHOT OR THE SUSP BUT THEY KNEW THAT BOTH HAD BEEN SHOT. NONE OF THE WITNS STATED THAT THEY SAW ANYONE RUN FROM THE SCENE. ALL WITNS STATED THAT THEY INITIALLY HEARD A FEW SHOTS FROM THE SAME WEAPON AND THEN THE MASSIVE SHOOTING FROM THE OFFICERS. NONE OF THESE WITNS KNEW THE SUSPS BY NAME OR HAD HEARD ANYTHING ABOUT THEM. ALL WITNS WERE COOPERATIVE AND KNEW THAT THEY WERE BEING TAPED.

DET ST JOHN AND OFFICER ROBINETTE THEN KNOCKED ON SEVERAL OTHER DOORS IN AN EFFORT TO FIND ANY OTHER WITNS.

DET SPOKE WITH A ANDREA LUNA LAF12, DOB: 5/23/70, AT 4920 RUSK, H#921-0729, AND THIS WITN STATED THAT SHE WAS ALONE AT THE RESIDENCE AND HEARD SOME SHOTS BUT NEVER SAW ANYTHING OR ANYONE. SHE STATED THAT SHE WAS TOO SCARED TO LOOK OUT SIDE.

DET SPOKE WITH A GRACE MACIAS LAF30, DOB: 5/2/52, H# NONE, W# NONE, AT 4919 RUSK

ATTACHMENT 1 (P.2)

F 000268

HOUSTON POLICE DEPARTMENT
OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE HOMICIDE LOCATION 4900 Walker
COMPLAINANT(S) J. D. Harris, HPD Officer DATE OF OFFENSE 7-13-82
DATE SUPPLEMENT MADE 8-23-82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
--	--	--

RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____
CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____
☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)
RECOVERY LOCATION _____ DIST _____ SEAT _____
VEH. RELEASED: TO _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC:

SUSPECT: RICARDO ALDAP GUERRA LA/M/ 20

REF: L82-5806

STR:

COPY
For District Attorney
FROM: LABORATORY DIVISION
HOUSTON POLICE DEPARTMENT

On July 13, 1982 D. D. Smith, Criminalist II, payroll # 64569, examined the above location and vicinity and recovered a brown felt hat from the driveway at 4937 Walker, one paper sack on the street at 4925 Walker, a yellow and white baseball type cap, a wooden sandal, and debris from the windshield and hood of the 2-door 1976 Ford Elite (Texas license "JYN576" and Vin # "F6G21H174311F") at 4925 Walker, debris from the bullet holes and bullet impact areas at the residence at 4919 Walker, and a hair fragment from the outside roof of the driver side of the complainant's vehicle (HPD patrol vehicle-Texas "360015") at the intersection of Edgewood and Walker.

On July 14, 1982 this chemist examined and performed a trace metal test on the hands and abdominal area of suspects Jose Sanchez Martinez and Ricardo Aldape Guerra.

On July 14, 1982 Detective L. E. Webber, badge #D-571, submitted to this laboratory one short sleeve green jacket, one pair of white socks, one pair of white underwear, one pair of white tennis shoes, one pair of blue jeans and known head hairs all from suspect Ricardo

☐ SUPPLEMENT COMPLETE

☒ CONTINUED

OFFICER 1 D. D. SMITH EMP# 64569 SHIFT 8AM-4PM DIVISION / STATION # Crime Lab
OFFICER 2 d.d. smith EMP# _____ SHIFT _____ DIVISION / STATION # _____
CALLER'S NAME _____
PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

ATTACHMENT 2 (p.1)

F 000198

PROGRESS OF INVESTIGATION ADDITIONAL INFORMATION, ETC:

Adalpe Guerra.

On July 14, 1982 Detective D. R. Bostock, badge # D-535, submitted to this laboratory one sample, fingernail scrapings, and hair samples from the head wound area of the complainant J. D. Harris.

On July 15, 1982 the undersigned examined the complainant's vehicle (marked HPD patrol vehicle - Texas license "360015") and recovered known paint samples from the driver and passenger side, front and rear fenders and doors and the front and rear areas below the hood and trunk respectively, and foreign black substance from the driver's side rear fender and both doors.

Additionally, on July 15, 1982 this chemist examined the suspect's vehicle (1977-black, 2-door Buick Regal - Texas license "YTX 479" and Vin # "4J57J7Z108413") and recovered hair from the front and rear, driver and passenger floorboards, foreign paint and two pieces of bumperguard from the driver's side rear bumper.

On July 16, 1982 Detective D. R. Bostock, badge # D-535, submitted to this laboratory one pair of black lace-up shoes, one pair of black socks, one pair of white underwear, one short sleeve white "t" shirt, one pair of blue uniform pants, a black belt, and a short sleeve blue uniform shirt.

On July 16, 1982 R. M. Jordan, firearms examiner, submitted to this laboratory three fired bullets, a silver colored, semi-automatic, .45 caliber weapon (Detonics-serial # 245P287128) four live cartridges, a black-colored semi-automatic weapon (Browning Arms, 9mm--serial # "245P287128"), and two empty magazines.

On July 21, 1982 Detective V. W. West, badge # D-464, submitted to this laboratory a black colored, six shot, .357 Magnum revolver (Colt Python, serial # "21267E") and six live rounds

Examination of the brown felt hat, the yellow and white baseball type cap, the left hand of suspect Ricardo Aldape Guerra and his clothing (i.e. one short sleeve green jacket, one pair of white socks, white underwear) and vehicle (Buick Regal-1977-black-Vin# "4J57J7Z108413" Texas license "YTX479") and the complainant's weapon (black colored Colt Python .357 Magnum revolver -serial # "21267E") revealed hairs to be present. These hairs, along with the hair recovered from the roof of the complainant's vehicle, and the known head hair of the suspect, Ricardo Aldape Guerra, will be retained for possible future examination and/or comparison.

Examination of the complainant's uniform shirt revealed no bullet holes to be present.

☐ SUPPLEMENT COMPLETE

☒ CONTINUED

ATTACHMENT 2 (P.2) F000198A

HOUSTON POLICE DEPARTMENT

OFFICER'S SUPPLEMENTAL FIELD NOTES

INCIDENT NO. 42614582

OFFENSE HOMICIDE LOCATION 4900 Walker
COMPLAINANT(S) J. D. Harris, HPD Officer DATE OF OFFENSE 7-13-82
DATE SUPPLEMENT MADE 8-23-82

<input type="checkbox"/> CONTACTED COMPLAINANT NO ADDITIONAL INFORMATION DATE & TIME _____	SHORT FORM SUPPLEMENT INFORMATION <input type="checkbox"/> CONTACTED WITNESS/S LISTED NO ADDITIONAL INFORMATION DATE & TIME _____	<input type="checkbox"/> UNABLE TO CONTACT COMPLAINANT AND/OR WITNESS/S LISTED DATE & TIME _____
--	--	--

RECOVERED STOLEN VEHICLE YEAR _____ MAKE _____ MODEL _____ LIC. YR. STATE & NO. _____
CONDITION OF VEHICLE ☐ DAMAGED ☐ WRECKED ☐ BURNED AMOUNT OF DAMAGES _____
☐ STRIPPED (LIST ITEMS STRIPPED AND THEIR VALUE AT START OF NARRATIVE BELOW)
RECOVERY LOCATION _____ DIST _____ SEAT _____
VEH. RELEASED TO: _____ TOWED TO: _____ BY: _____

PROGRESS OF INVESTIGATION, ADDITIONAL INFORMATION, ETC: _____

CONTINUED FROM PAGE #1

SUSPECT: RICARDO ALDAPE GUERRAREF: L82-5606

COPY
For District Attorney
FROM: LABORATORY DIVISION
HOUSTON POLICE DEPARTMENT

SIR: _____

Further examination revealed several nitrate and nitrite powder particles to be present on the collar area.

Examination of the hair from around the complainant's head wound revealed no powder particles to be present.

Examination of the hands of the suspect, Ricardo Aldape Guerra, revealed both palms to be covered with dirt and debris. Trace metal testing of both hands in this condition revealed no trace metal pattern to present. Trace metal testing of the abdominal area revealed no trace metal pattern to be present.

Examination and testing of the suspect's Ricardo Aldape Guerra, green jacket and pair of

☐ SUPPLEMENT COMPLETE☒ CONTINUED

OFFICER P.D. SMITH EMPS 64569 SHIFT 8am-4pm DIVISION / STATION crime lab
OFFICER 2 d.d. smith EMPS _____ SHIFT _____ DIVISION / STATION _____
CALLER'S NAME _____
PHONE _____

FORM NO. REC-0007
(Revised June 27, 1980)

F 000199

ATTACHMENT 2 (p.3)

PROGRESS OF INVESTIGATION ADDITIONAL INFORMATION, ETC:

blue jeans revealed no trace metal pattern to be present in the waist line area.

Testing of the complainant's weapon (black-colored, six-shot Colt Python .357 Magnum rev serial #21267E) revealed it to be capable of leaving a trace metal pattern.

Testing of the silver-colored semi-automatic weapon (Detonics, .45 cal-serial # "CR16126" revealed it to be incapable of leaving a trace metal pattern.

Testing of the black-colored semi-automatic weapon (Browning Arms, 9mm-serial #245PZ87128) revealed it to be capable of producing a trace metal pattern when held for longer than four five seconds.

The two semi-automatic weapons, four live cartridges, and three fired bullets, were released to firearms via the firearms lock box in the homicide division on July 20, 1982.

The revolver and six live rounds were released to the police property room on July 21, 1982.

Examination and comparison of the blue foreign paint from the driver's side rear bumper of suspect's vehicle to the known paint from the complainant's vehicle revealed them to be, in my opinion, dissimilar to each other.

The remaining evidence will be retained for possible future examination and/or comparison.

jl

☒ SUPPLEMENT COMPLETE

☐ CONTINUED

ATTACHMENT 2 (P. 4F000199)

PROGRESS OF INVESTIGATION AND ANAL INFORMATION, ETC:

Adalpe Guerra.

On July 14, 1982 Detective D. R. Bostock, badge # D-535, submitted to this laboratory one sample, fingernail scrapings, and hair samples from the head wound area of the complainant J. D. Harris.

On July 15, 1982 the undersigned examined the complainant's vehicle (marked HPD patrol vehicle - Texas license "360015") and recovered known paint samples from the driver and passenger side, front and rear fenders and doors and the front and rear areas below the box and trunk respectively, and foreign black substance from the driver's side rear fender and both doors.

Additionally, on July 15, 1982 this chemist examined the suspect's vehicle (1977-black, 2-door Buick Regal - Texas license "YTX 479" and Vin # "4J57J7Z108413") and recovered hair from the front and rear, driver and passenger floorboards, foreign paint and two pieces of bumperguard from the driver's side rear bumper.

On July 16, 1982 Detective D. R. Bostock, badge # D-535, submitted to this laboratory one pair of black lace-up shoes, one pair of black socks, one pair of white underwear, one short sleeve white "t" shirt, one pair of blue uniform pants, a black belt, and a short sleeve blue uniform shirt.

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Examination of the brown felt hat, the yellow and white baseball type cap, the left hand of suspect Ricardo Aldape Guerra and his clothing (i.e. one short sleeve green jacket, one pair of white socks, white underwear) and vehicle (Buick Regal-1977-black-Vin# "4J57J7Z108413" Texas license "YTX479") and the complainant's weapon (black colored Colt Python .357 Magnum revolver -serial # "21267E") revealed hairs to be present. These hairs, along with the hair recovered from the roof of the complainant's vehicle, and the known head hair of the suspect, Ricardo Aldape Guerra, will be retained for possible future examination and/or comparison.

Examination of the complainant's uniform shirt revealed no bullet holes to be present.

☐ SUPPLEMENT COMPLETE

☒ CONTINUED

ATTACHMENT 3

F000198A

15

GOLDBERG BROWN
ATTORNEYS AT LAW

5444 WESTHEIMER, SUITE 1750 TELEPHONE (713) 871-8222
HOUSTON, TEXAS 77050 TELECOPIER (713) 871-0174

TELECOPY COVER SHEET

DATE:

July 17, 1992

FROM:

Stuart V. Kinsin

PLEASE DELIVER TO:

NAME:

Scott Atlas

FIRM:

Vinson & Elkins

TC#:

758-3358

TOTAL NUMBER OF PAGES (including cover sheet):

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MESSAGE:

Please call us if the transmission is incomplete or illegible.
Our telephone number is (713) 871-8222; ask for Joan.

For future reference, our telecopier number is (713) 871-0174.

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY
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07/17/92

09:59

GOLDBERG BROWN

002

IN THE TEXAS COURT OF CRIMINAL APPEALS

AND

IN THE 248TH JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA(HARRIS COUNTY
CAUSE NO. 359805-A)NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that Charles N. Goldberg and Barry A. Brown of Goldberg Brown, 5444 Westheimer, Suite 1750, Houston, Texas 77056 have been retained as additional counsel in the above-referenced matter to represent the Government of Mexico through its representative, Ricardo Ampudia, Consul General of Mexico, in Houston, Texas. Copies of all future orders, correspondence and pleadings should be sent to Charles N. Goldberg and Barry A. Brown as additional counsel for the Government of Mexico in addition to all present parties and counsel of record.

Respectfully submitted,

GOLDBERG BROWN

RECEIVED IN POST TRIAL
SYSTEMS-DISTRICT CLERK'S
OFFICE2-10-92
[Signature]
DEPUTY[Signature]
Charles N. Goldberg, TBA #08074000
Barry A. Brown, TBA #03093000
5444 Westheimer, Suite 1750
Houston, Texas 77056
Telephone: (713) 871-8222
Telecopier: (713) 871-0174ATTORNEYS FOR GOVERNMENT
OF MEXICO

07/17/92

10:00

GOLDBERG BROWN

003

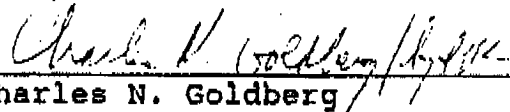
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Notice of Appearance was forwarded to the following parties, by certified United States mail, return receipt requested, on this the 9th day of ~~June~~^{July}, 1992:

Frumencio Reyes, Jr.
Reyes & Reyes-Castillo, P.C.
3715 North Main
Houston, Texas 77009

Sandra Babcock
Texas Resource Center
Vieux Carre Building
3223 Smith Street, Suite 215
Houston, Texas 77006

Roe Wilson
Assistant District Attorney
Office of the Harris County District Attorney
201 Fannin
Houston, Texas 77002-1901



Charles N. Goldberg

IN THE TEXAS COURT OF CRIMINAL APPEALS

AND

IN THE 248TH JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA(HARRIS COUNTY
CAUSE NO. 359805-A)ORDER

After due consideration of the motion for leave to file amicus curiae brief on writ of habeas corpus from the 248th District Court, Harris County, Texas; Cause No. 359805, styled State of Texas vs. Ricardo Aldape Guerra, filed by the Government of Mexico, this Court is of the opinion that such motion has merit and should be granted. It is, therefore,

ORDERED, ADJUDGED AND DECREED that leave is granted for the Government of Mexico to file amicus curiae brief on writ of habeas corpus from the 248th District Court, Harris County, Texas; Cause No. 359805, styled State of Texas vs. Ricardo Aldape Guerra.

Signed on this the _____ day of _____, 1992.

Judge Presiding

P0630J1/M18C

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OFFICE

7-10-92

DEPUTY

07/17/92

10:01

GOLDBERG BROWN

005

JUN-30-92 TUE 10:13

P. 02

RECEIVED IN POST TRIAL
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5-8-92 1:00
DEPUTY

IN THE TEXAS COURT OF CRIMINAL APPEALS

AND

IN THE 248TH JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA }

CASE NO. _____
(HARRIS COUNTY
CAUSE NO. 359805-A)

MOTION FOR LEAVE TO FILE AMICUS CURIAE
BRIEF ON WRIT OF HABEAS CORPUS FROM
THE 248TH DISTRICT COURT, HARRIS
COUNTY, TEXAS; CAUSE NO. 353805,
STYLED STATE OF TEXAS VS. RICARDO ALDAPE GUERRA

TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS:

COMES NOW, THE GOVERNMENT OF MEXICO, through its representative, RICARDO AMPUDIA, Consul General of Mexico, in Houston, Texas, and FRUMENCIO REYES, JR., Attorney at Law and moves for leave to file an amicus curiae brief in the instant Petition for Writ of Habeas Corpus. The amicus brief is conditionally filed herewith pursuant to Tex. R. App. Procedure 20.

1. GROUND FOR LEAVE:

a. As the representative of the Government of Mexico in Houston, Texas, one of my fundamental duties is to protect the rights of Mexican nationals. In particular, the Consulate General of Mexico is charged with assisting Mexican nationals who are imprisoned in the Consular district, in accordance with the laws of Texas, of the United States, and of Mexico, as well as with international law and applicable multilateral and bilateral treaties and agreements in force between Mexico and the United States.

07/17/92

10:01

GOLDBERG BROWN

006

JUN-30-92 TUE 1 :13

P.03

b. Petitioner is a Mexican national. Ever since he was sentenced to death in October, 1981, the Government of Mexico has been concerned about his fate. In fact, the Government of Mexico expressly stated its opposition to the setting of an execution date for Petitioner, on March 19, 1992.

c. The Mexican Government considers that Petitioner has not been afforded all the procedural protection and due process guarantees that he is entitled to under the Constitution and Laws of the United States and of Texas, under international law, and under applicable international treaties.

d. The Mexican Government considers that the treatment currently given to Petitioner is not in accordance with International Human Rights standards.

e. The Government of Mexico has gathered and obtained new evidence which is crucial to this case. The evaluation of such evidence is a matter of paramount importance for the Government of Mexico.

f. The Government of Mexico's amicus brief seeks to inform this Court of its position on this case according to the grounds already mentioned.

WHEREFORE, the Government of Mexico would respectfully request that this Court grant its Motion for Leave to File Amicus Curiae Brief, permit the Amicus Curiae Brief, conditionally filed herewith, to be filed among the papers of the above captioned habeas corpus, and grant such further relief to which petitioner

07/17/92

10:02

GOLDBERG BROWN

007

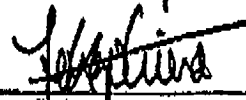
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P. 04

may be entitled.

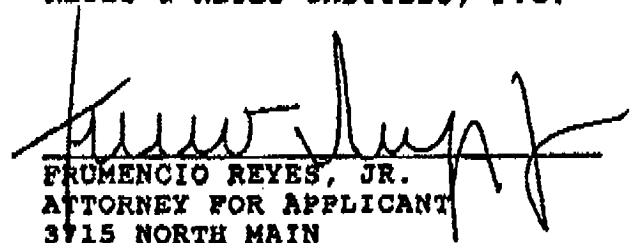
Respectfully submitted,

Ricardo Ampudia



RICARDO AMPUDIA
CONSUL GENERAL OF MEXICO
3015 RICHMOND AVE., STE. 100
HOUSTON, TEXAS 77098
(713) 524-4861
FAX NO. 523-6244

REYES & REYES-CASTILLO, P.C.



PROMENCIO REYES, JR.
ATTORNEY FOR APPLICANT
3715 NORTH MAIN
HOUSTON, TEXAS 77009
(713) 864-4700
FAX NO.: 880-2902
TBN: 16794400

* Nothing in this motion shall be construed, read or interpreted, either implicitly or explicitly, as a waiver of the immunities pertaining to the United Mexican States, the Consulate General of Mexico or the Consular agents of Mexico in Houston, Texas.

07/17/92

10:02

GOLDBERG BROWN

008

JUN-30-92 TUE 10:14

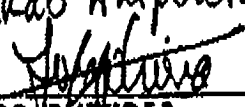
P. 05

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF was sent by certified mail, return receipt requested, on this the 8th day of May, 1992 to the following:

SANDRA BABCOCK
TEXAS RESOURCE CENTER
VIEUX CARRE BUILDING
3223 SMITH STREET, STE. 215
HOUSTON, TEXAS 77006
(713) 522-2733 (FAX)

ROE WILSON
ASSISTANT DISTRICT ATTORNEY
OFFICE OF THE HARRIS COUNTY DISTRICT ATTORNEY
201 FANNIN
HOUSTON, TEXAS 77002-1901
(713) 755-5809 (FAX)

Ricardo Ampudia


RICARDO AMPUDIA



KATHERINE TYRA
HARRIS COUNTY DISTRICT CLERK

R. Aldape
RECEIVED *AIC*

JUL 09 1992

July 8, 1992

S.J.A.

Mr. Scott J. Atlas
Vinson & Elkins
1001 Fannin Suite 2500
Houston, Texas 77002-6760

Re: Ricardo Aldape Guerra
Cause No. 359805-A
248th District Court

Please be advised that the following were received and filed
on July 2, 1992 :

- 1) Scott J. Atlas' Unopposed Motion To Appear As Substitute
Counsel And For Leave To File Amended Writ Of Habeas Corpus
Judge granted it on July 7, 1992
- 2) Sandra Babcock's Motion To Withdraw And Substitute Counsel
Judge granted it on July 7, 1992

Trusting this information will prove helpful I remain

Very truly yours,

Raymond Posado lm

Raymond Posado, Manager
Post Trial Systems
Criminal Division
for Katherine Tyra, District Clerk
Harris County, Texas

RP:lm

VINSON & ELKINS
L.L.P.
ATTORNEYS AT LAW

THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20004-1008
TELEPHONE (202) 639-6500
FAX (202) 639-6604

HUNGARIAN EXPORT BUILDING
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121069 MOSCOW, RUSSIAN FEDERATION
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FAX 011 (70-95) 200-4218

47 CHARLES ST., BERKELEY SQUARE
LONDON W1X 7PB, ENGLAND
TELEPHONE 011 (44-71) 491-7236
FAX 011 (44-71) 499-5320

2500 FIRST CITY TOWER
1001 FANNIN

HOUSTON, TEXAS 77002-6760

TELEPHONE (713) 758-2222
FAX (713) 758-2346

WRITER'S DIRECT DIAL
(713) 758-4579

July 2, 1992

FIRST CITY CENTRE
816 CONGRESS AVENUE
AUSTIN, TEXAS 78701-2496
TELEPHONE (512) 495-8400
FAX (512) 495-8612

3700 TRAMMELL CROW CENTER
2001 ROSS AVENUE
DALLAS, TEXAS 75201-2916
TELEPHONE (214) 220-7700
FAX (214) 220-7716

BAGATELA 12
00-585 WARSAW, POLAND
TELEPHONE 011 (48-2) 625-33-33
FAX 011 (48-2) 625-22-45

Mr. Raymond Posado
Manager
Post Trial System - Criminal Division
301 San Jacinto, Room 101A
Houston, Texas 77002

Re: C.A. No. 359805-A; *Ex Parte Ricardo Aldape Guerra v. State*; in the Texas
Court of Criminal Appeals and in the 248th Judicial District of Harris
County, Texas

Dear Sir:

Please find enclosed for filing in the above-referenced proceeding, an original
and one copy of:

1. Scott J. Atlas' Unopposed Motion to Appear as Substitute Counsel and
for Leave to File Amended Writ of Habeas Corpus;
2. Proposed Order; and
3. Sandra Babcock's Motion to Withdraw and Substitute Counsel.

Please file-stamp the enclosed copies and return to the undersigned. All counsel
of record are being provided a copy of this filing.

Sincerely,



Richard A. Morris

Enclosures

1064:4075

c:\guerra\clerk1-ltr

cc: All Counsel of Record

IN THE TEXAS COURT OF CRIMINAL APPEALS
and
IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA

)
)
)
)
)
Case No. _____
(Harris County
Cause No. 359805-A

**SCOTT J. ATLAS' UNOPPOSED MOTION TO APPEAR AS SUBSTITUTE
COUNSEL AND FOR LEAVE TO FILE AMENDED WRIT OF HABEAS CORPUS**

TO THE HONORABLE COURT:

Undersigned counsel, Scott J. Atlas ("Movant"), respectfully moves this Court, without opposition, to substitute him as counsel of record for Ricardo Aldape Guerra ("Aldape Guerra") in the above-styled cause. Movant anticipates filing by July 31, 1992 an amended writ of habeas corpus that will completely replace the original writ currently on file. In support of this motion, Movant states the following:

1. I am a partner at the law firm of Vinson & Elkins, 1001 Fannin, Suite 2500, Houston, TX 77002-6760, and a member of the Texas Bar (Texas Bar No. 01418400).
2. In early June 1992, I was contacted by Sandra Babcock of the Texas Resource Center regarding my possible representation of Mr. Aldape Guerra. I spoke with Ms. Babcock again in mid-June 1992 and agreed to assume Mr. Aldape Guerra's representation.

14-996

3. I then asked Ms. Kari Sckerl, one of the assistant district attorneys handling this case, if she would object to my substitution and my filing a new amended writ of habeas corpus, with an anticipated filing date of July 31, 1992. She stated that she did not oppose this request.

4. Ms. Babcock has assured me that the Texas Resource Center would provide support and assistance to me if I assumed Mr. Aldape Guerra's representation. However, I understand that, as counsel of record, I would bear full and ultimate responsibility for the case.

WHEREFORE, Movant respectfully requests that this Court substitute undersigned counsel as counsel of record and grant Mr. Aldape Guerra leave to file an amended writ of habeas corpus.

Respectfully submitted,



Scott J. Atlas
Texas. Bar No. 01418400
1001 Fannin, Suite 2500
Houston, Texas 77002-6760
(713) 758-2024

F I L E D

KATHERINE TYRA
District Clerk

JUL 02 1992

Time: 4:15

Harris County, Texas

By J. Martinez

Deputy

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the above and foregoing Scott J. Atlas' Unopposed Motion to Appear as Substitute Counsel and for Leave to File Amended Writ of Habeas Corpus, was this 2nd day of July, 1992, mailed certified mail, return receipt requested, to the following counsel of record:

Roe Wilson
Assistant District Attorney
201 Fannin
Houston, Texas 77002

Scott Atlas / by permission
Scott J. Atlas
RM

JUL 9 7 1992

Granted

WDan

IN THE TEXAS COURT OF CRIMINAL APPEALS
and
IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA

)
)
)
)
)
Case No. _____
(Harris County
Cause No. 359805-A

ORDER

On this day came on to be considered the Motion of Scott J. Atlas to be substituted and appear as counsel for Ricardo Aldape Guerra in the above-styled and numbered cause. The Court, having examined the foregoing motion, and being of the opinion that good cause has been shown finds the motion should be granted and that the following Order should be entered:

It is ORDERED that the motion of Scott J. Atlas to be substituted and appear as counsel in the above-styled and numbered cause be, and is hereby, GRANTED.

It is further ORDERED that the motion of Scott J. Atlas to prepare an Amended Application for Writ of Habeas Corpus to replace the application currently on file should be, and is hereby, GRANTED.

JUL 07 1992

Signed and entered this ____ day of July, 1992.



PRESIDING JUDGE FOR THE
248TH DISTRICT COURT

IN THE TEXAS COURT OF CRIMINAL APPEALS

and

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA

)
)
)
)
Case No. _____
(Harris County
Cause No. 359805-A)

SANDRA BABCOCK'S MOTION TO WITHDRAW AND SUBSTITUTE COUNSEL

TO THE HONORABLE COURT:

Sandra Babcock ("Movant") files this motion to withdraw as counsel and to substitute Scott J. Atlas of Vinson & Elkins as counsel of record for Ricardo Aldape Guerra ("Aldape Guerra"). This motion is based on good cause and is not sought for delay. In support of this motion, Movant states the following:

1. Movant is an attorney with the Texas Resource Center ("Center") in Houston. The Center is a non-profit organization established to recruit and assist attorneys representing Texas death row inmates in their post-conviction appeals. Its attorneys are involved in more than 120 cases. In the majority of those cases, The Center's role is to provide advice and litigation support to counsel of record. The Center is funded to work with outside attorneys representing death-sentenced inmates and represents relatively few individuals directly.

2. As noted above, the new attorney to be substituted in this matter is Scott J. Atlas of Vinson & Elkins, 1001 Fannin, Suite 2500, Houston, TX 77002-6760, Texas Bar No. 01418400.

3. Movant spoke to Mr. Atlas in early June 1992 about the possibility of assuming Mr. Aldape Guerra's representation in this

14-995

Court. Mr. Atlas agreed in mid-June 1992 to represent Mr. Aldape Guerra. He indicated that he believed it was imperative for him to obtain adequate time to properly prepare briefs and argument in the case. Mr. Atlas is acquainted with the legal issues surrounding capital litigation in general, but was entirely unfamiliar with Mr. Aldape Guerra's case.

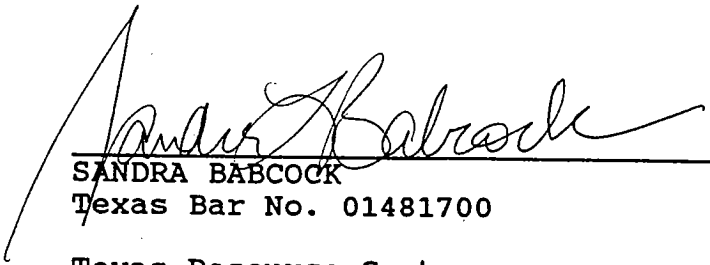
4. Mr. Aldape Guerra has consented to this motion after having been informed of his right to object to the motion.

5. The Center has agreed to provide Mr. Atlas with advice and technical support if he takes on Mr. Aldape Guerra's representation, but Mr. Atlas will be primarily responsible for the case.

6. Movant cannot personally represent Mr. Aldape Guerra. Again, the Center's function is to provide support and assistance to outside attorneys. Further, the Center does not have the resources necessary to provide for Mr. Aldape's entire defense. Movant has located a qualified attorney to take over Mr. Aldape Guerra's case.

WHEREFORE, for the foregoing reasons, Movant respectfully requests that this Court grant her leave to withdraw from Mr. Aldape Guerra's case and substitute Scott J. Atlas as counsel of record for Mr. Aldape Guerra. For this Court's convenience, a proposed Order is attached.

Respectfully submitted,


SANDRA BABCOCK
Texas Bar No. 01481700

Texas Resource Center
3223 Smith Street, Suite 215
Houston, Texas 77006
(713) 522-5917

F I L E D

KATHERINE TYRA
District Clerk

JUL 02 1992

Time: 4:15

Harris County, Texas

By 
Deputy

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing motion and proposed order was served by messenger on Roe Wilson, Assistant District Attorney of Harris County, on the 1st day of July, 1992.


SANDRA BABCOCK

JUL 07 1992

Granted

WDanS

STATE OF TEXAS
COUNTY OF HARRIS

I, Katherine Tava, District Clerk of Harris County, Texas, do hereby certify that the foregoing is a true and correct copy of the original record, now in my lawful custody. This certificate was filed on: 7-2-92 as appears of record in my office.

Witness my official hand and seal of office, this 7-8-92

KATHERINE TAVA, DISTRICT CLERK
Harris County, Texas

By [Signature] Deputy

cc: Team
O-f- Page #1C
6-30-92

VINSON & ELKINS
L.L.P.
ATTORNEYS AT LAW

THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVE., N.W.
WASHINGTON, D. C. 20004-1007
TELEPHONE (202) 639-6500
FAX (202) 639-6604

HUNGARIAN EXPORT BUILDING
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1001 FANNIN

HOUSTON, TEXAS 77002-6760

TELEPHONE (713) 758-2222
FAX (713) 758-2346

WRITER'S DIRECT DIAL
758-2024

June 30, 1992

FIRST CITY CENTRE
816 CONGRESS AVENUE
AUSTIN, TEXAS 78701-2496
TELEPHONE (512) 495-8400
FAX (512) 495-8612

3700 TRAMMELL CROW CENTER
2001 ROSS AVENUE
DALLAS, TEXAS 75201-2916
TELEPHONE (214) 220-7700
FAX (214) 220-7716

BAGATELA 12
OO-585 WARSAW, POLAND
TELEPHONE 011 (48-2) 625-33-33
FAX 011 (48-2) 625-22-45

Ms. Kari Sckerl
Assistant D.A.
Harris County D.A.'s Office
201 Fannin, Suite 200
Houston, Texas 77002

RE: Ex Parte Aldape Guerra, Cause No. 359805

Dear Kari:

Once again, thank you for agreeing in our telephone conversation on June 26, to extend the due date for the amended application for writ of habeas corpus until the end of the day on Friday, July 31, 1992. On request, I will extend you the same courtesy.

Please indicate your confirmation that this accurately describes our agreement by signing below and returning a signed copy of this letter to me at your earliest convenience.

Very truly yours,



Scott J. Atlas

AGREED


Kari Sckerl

0399:4912
c:\atlas\aldape\sckerl.630

6-17-92
f A 1 (e)

VINSON & ELKINS
L.L.P.
ATTORNEYS AT LAW

RECEIVED

JUN 19 1992

THE WILLARD OFFICE BUILDING
1455 PENNSYLVANIA AVE., N.W.
WASHINGTON, D.C. 20004-1008
TELEPHONE (202) 639-6500
FAX (202) 639-6604

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HOUSTON, TEXAS 77002-6760

TELEPHONE (713) 758-2222
FAX (713) 758-2346

WRITER'S DIRECT DIAL

(713) 758-2024

June 17, 1992

FIRST CITY CENTRE
816 CONGRESS AVENUE
AUSTIN, TEXAS 78701-2496
TELEPHONE (512) 495-8400
FAX (512) 495-8612

3700 TRAMMELL CROW CENTER
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BAGATELA 12
00-585 WARSAW, POLAND
TELEPHONE 011 (48-2) 625-33-33
FAX 011 (48-2) 625-22-45

Deliver By Messenger

Kari Sckerl
Assistant D.A.
Harris County D.A.'s Office
201 Fannin, Suite 200
Houston, Texas 77002

Re: Cause No. 359805; Ex Parte Ricardo Aldape Guerra, in the 248th Judicial District Court of Harris County, Texas

Dear Kari:

As we discussed in our telephone conversation yesterday, I have agreed to become the attorney in charge of Mr. Aldape's habeas corpus proceeding in the captioned case. Within a few days after Sandra Babcock returns from a two-week conference, we will be filing a substitution of counsel.

I appreciate your agreeing to giving me four weeks, which I calculate to be the end of the day on July 14, 1992, to file an amended application. As I mentioned, you should assume that the amended application will probably contain discussion of additional issues, although I am not yet in a position to identify them.

After you receive the amended application, I will be happy to agree to any reasonable request for an extension of time to file a response, with the minimum being the amount of time you had from the filing date of the original application to July 1.

Kari Sckerl
June 17, 1992
Page 2

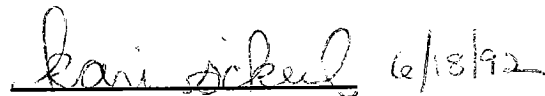
If I have accurately described our conversation, please indicate by signing a copy of this letter and returning it to me.

Very truly yours,



Scott Atlas

AGREED:



Kari Sckerl
Assistant District Attorney

0339/2580
c:\aldape\sckerl.617



DON STRICKLIN
FIRST ASSISTANT



JOHN B. HOLMES, JR.
DISTRICT ATTORNEY
HARRIS COUNTY, TEXAS
May 14, 1992

*Bring to Guerra file
by Sandra Mendez
Logged by 5-13-92*
DISTRICT ATTORNEY'S BUILDING
201 FANNIN, SUITE 200
HOUSTON, TEXAS 77002

Ms. Sandra Babcock
Texas Resource Center
3223 Smith Street
Suite 215
Houston, TX 77006

RE: Ricardo Aldape Guerra

Dear Sandra:

Enclosed please find a Motion Requesting a Designation of Issues and an Order Designating Issues, which was signed by Judge Densen and filed with the Clerks of the Post-Conviction Writ Section of the Harris County Clerk's Office on May 13, 1992.

Sincerely,

Kari Sckerl

Kari Sckerl
Assistant District Attorney
(713) 221-5826

/ks

Enclosure

*A1(c)
o-f. Aldape pldz
CC: Team
These are the issues
identified by the D.A.
What else do we
have?*

*Scott
cc: Babcock (p.1 only)*

Cause No. 359805-A

EX PARTE	§	IN THE 248TH DISTRICT COURT
	§	OF
RICARDO ALDAPE GUERRA, Applicant	§	HARRIS COUNTY, TEXAS

MOTION REQUESTING A DESIGNATION OF ISSUES

Respondent, the State of Texas, by and through its Assistant District Attorney for Harris County, requests that this Court, pursuant to **Tex. Code Crim. Pro.** Article 11.07, §2(d), designate the following as issues to be resolved in the above-captioned cause:

1. allegations that the State used impermissibly suggestive identification procedures;
2. allegations that the State deprived the applicant of potentially exculpatory evidence;
3. allegations that the State used inaccurate information at trial;
4. allegations of ineffective assistance of counsel;
5. allegations that "the hostile atmosphere" of the trial denied the applicant his constitutional rights under the sixth and fourteenth amendments;
6. allegations of insufficient evidence at the guilt-innocence phase of trial;
7. allegations that failure to review claim of actual innocence violates applicants rights under the eighth and fourteenth amendments;
8. allegations that the State withheld exculpatory evidence;
9. allegations that two witnesses testified in violation of "The Rule";
10. allegations that the trial court improperly failed to excuse jurors;

11. allegations that the applicant's right to equal protection was violated by the application of Tex. Code Crim. Pro. §35.13;
12. allegations that the trial court violated the applicant's constitutional rights by questioning the jury during deliberations;
13. allegations of prosecutorial misconduct;
14. allegations that the applicant was denied a fair trial;
15. allegations that the State improperly commented on the applicant's failure to testify;
16. allegations of the improper admission of victim-impact evidence;
17. allegations that the trial court failed to instruct the jury on lesser included offenses;
18. alleged constitutional violations in the trial court's failure to define vague terms in the jury instructions;
19. allegation that jury was unable to give effect to mitigating evidence of youth;
20. alleged violation of equal protection in admission of evidence of unadjudicated offenses;
21. alleged unconstitutionality of sentencing scheme because of failure to allow instruction to the jury on parole implications;
22. allegations that the applicant's constitutional rights were violated by admission of prejudicial photos;
23. allegation that the Harris County District Attorney's office has a systematic and intentional practice of using peremptory strikes to exclude qualified black and hispanic venirepersons.

Service has been accomplished by mailing a true and correct copy of the foregoing instrument to:

Sandra Babcock
Texas Resource Center
3223 Smith Street, Suite 215
Houston, Texas 77006

on the 13th day of May, 1992.

Respectfully submitted,

Kari Jackson

Assistant District Attorney
Harris County District Attorney's Office
201 Fannin
Houston, Texas 77002-1901

Cause No. 359805-A

EX PARTE

§

IN THE 248TH DISTRICT COURT

§

OF

RICARDO ALDAPE GUERRA,
Applicant

§

HARRIS COUNTY, TEXAS

ORDER DESIGNATING ISSUES

Having reviewed the applicant's petition for writ of habeas corpus and the State's motion to designate issues, the Court finds that those issues identified in the State's motion to designate issues need to be resolved. Therefore, pursuant to Article 11.07, §2(d), this Court will resolve the following issues and then enter findings of fact:

1. allegations that the State used impermissibly suggestive identification procedures;
2. allegations that the State deprived the applicant of potentially exculpatory evidence;
3. allegations that the State used inaccurate information at trial;
4. allegations of ineffective assistance of counsel;
5. allegations that "the hostile atmosphere" of the trial denied the applicant his constitutional rights under the sixth and fourteenth amendments;
6. allegations of insufficient evidence at the guilt-innocence phase of trial;
7. allegations that failure to review claim of actual innocence violates applicants rights under the eighth and fourteenth amendments;
8. allegations that the State withheld exculpatory evidence;
9. allegations that two witnesses testified in violation of "The Rule";
10. allegations that the trial court improperly failed to excuse jurors;

11. allegations that the applicant's right to equal protection was violated by the application of Tex. Code Crim. Pro. §35.13;
12. allegations that the trial court violated the applicant's constitutional rights by questioning the jury during deliberations;
13. allegations of prosecutorial misconduct;
14. allegations that the applicant was denied a fair trial;
15. allegations that the State improperly commented on the applicant's failure to testify;
16. allegations of the improper admission of victim-impact evidence;
17. allegations that the trial court failed to instruct the jury on lesser included offenses;
18. alleged constitutional violations in the trial court's failure to define vague terms in the jury instructions;
19. allegation that jury was unable to give effect to mitigating evidence of youth;
20. alleged violation of equal protection in admission of evidence of unadjudicated offenses;
21. alleged unconstitutionality of sentencing scheme because of failure to allow instruction to the jury on parole implications;
22. allegations that the applicant's constitutional rights were violated by admission of prejudicial photos;
23. allegation that the Harris County District Attorney's office has a systematic and intentional practice of using peremptory strikes to exclude qualified black and hispanic venirepersons.

The Clerk of the Court is ORDERED to transmit a copy of this order designating issues to the Court of Criminal Appeals. The Clerk of the Court is ORDERED NOT to transmit at this time any other documents in the above-styled case to the Court of Criminal Appeals until further ordered by this Court.

PRESIDING JUDGE, 248TH District Court

10

f Aldape
(in A/C) w/
M/ to Withdra
Exec. Date)

(92/192) ~~Final Hrg. on M/50~~ ~~withdraw~~ ~~amended~~ F-aldape

1. we are requesting order w/ drawing 954 exc. etc.
pending disposition of his application for writ of h.c.
in state of ~~it~~, if nec, fed it.
~~last moved~~, when a. this is 1st state app. for writ of h.c.

2. in June, when it rejected all my discovery
requests except trial exhibits, it said
\$ any indication that RAG had been
treated unfairly at his trial

3. Reasons

2

* in our app., we raised dozens of
meritorious claims, w/ many fact issues

a. ~~we~~ - we are requesting an evidentiary
hrg to resolve these fact issues;

~~examples~~ examples = allegations of
(1) police intimidation &
manipulation of witnesses

(2) concealment of exculpatory evidence
by police & prosecutors

(3) many other examples of
prosecutorial misconduct

(4) improper appeals to ethnic
prejudice

(5) IAC

(6) ~~insuff.~~ insuff. evidence at trial

(7) new evidence, some suppressed
by the state, showing RCF,
not RAG, shot after Harris

Bob Wally
5/2/463-2080

Shirley Hannel
*TRH-AM 740
227-6787

p. 3

b. we've raised claims identical to issues currently in U.S. S. Ct. -

- Herrera

- Graham

& issue resolved in our favor in Nichols

- so need stay pending final decisions

c. if Ct agreed to evidentiary hrg, both sides need time to

- (1) ① prepare, ② have hrg, ③ let Ct rephr prepare & file transcript
- ④ submit briefs & proposed findings of fact
- ⑤ ~~Ct~~ must sift thru evid at hrg & pledge to issue findings & conclusions

to continually Δ date wastes Ct's time;

d. w/drawal of date: eliminates crisis atmosphere

- (1) eliminated turmoil for
 - (a) courts considering future appeals
 - (b) prison officials
 - (c) attys for both sides
 - (d) RAG & family

- (2) lets attys predict time demand between deadlines

4

5

(3) fairness requires that atty in
1st h.c. have reasonable window
of time after 1st denial relief to
prepare ~~the~~ pldgs & brief for
next appeal by either

- (a) having period of time after
relief is denied before new
exec date is ~~set~~ set unless
next app. is filed, or
- (b) wait until state ct denies relief,
then schedule exec date ~~long~~
w/ enuff time for atty to
file next appeal

(4) admin burdens on Tx Dept of Crim Justice

- a. before ct set exec date, RAE was
participant in "Death Row" Work
"Capable" program, set up to comply
w/ Ruby
(i) only one in U.S.
- (ii) late inmates who qualify work
in garment factory at Ellis Island
- b. w/exec. date, ~~the~~ no matter how
distant, prisoner is ineligible
- c. program is success - ~~substantially~~
(i) produces more goods/inmate than
any other TDC garment factory
(ii) sold \$1.25 m of products to
other state agencies in '87

6

- c. prisoners qualifying for Work Capable program get limited privileges
- (1) no wire mesh on cell bars
 - (2) not handcuffed outside prison wing, usually
 - (3) not strip searched when leaving their cells
 - (4) fed from steam tables, buffet style
 - (5) allowed to eat in cells or dayroom
 - (6) can shower in gen'l prison population bathhouse
 - (7) permitted out of cells 14 hrs/day on weekdays & 10 hrs/day on weekends

Overall, treated like gen'l inmate population, except no contact with

- d. qualifying inmates are better behaved & better attitudes than those in segregation
- (i) few disciplinary violations
 - (ii) less stress
 - (iii) need fewer guards per prisoner ~~the~~ b/c have something to lose
 - (iv) use fewer cells, b/c no need for 1 cell/prisoner

e. in sum, presence of exec date
 (1) deprives him of a few small privileges
 (2) complicates state efforts to
 comply w/ Ruij requests

(3) imposes unrec & artificial
 urgency on ct's proceedings
 (4) doesn't contribute to fair & full presentation

F. ct can control filing, docketing
 & hrs of matters here w/o
 a pending exec date;

(1) if ct of Crim App denies
 relief, this ct can promptly
 schedule RAG's exec > 30 days
 away, so case won't lie
 dormant, ~~while~~ ~~but~~ ~~att~~

but attys will have time to prepare
 Fed-R. C. pet. .

F- A1C 5-11-92

KATHERINE TYRA
HARRIS COUNTY DISTRICT CLERK

May 11, 1992

Sandra Babcock
Texas Resource Center
3223 Smith Street, Suite 215
Houston, Texas 77006

Ricardo Aldape Guerra
RE: Cause No. 359805-A
248th District Court

Dear Sir:

Enclosed herewith please find a copy of the instrument indicated by the "X" mark at the side. Pursuant to Article 11.07 of the Code of Criminal Procedures, we are sending you this copy for your information concerning the Post-Conviction Writ which you filed in said cause.

_____ State's Original Answer Filed _____
_____ Affidavit of Attorney _____
xx _____ Court Order Dated May 11, 1992
_____ Proposed Findings of Facts _____
_____ Other _____

Very truly yours,

Raymond Posado

RAYMOND POSADO, Manager
Post-Trial Systems
Criminal Division
for KATHERINE TYRA, District Clerk
Harris County, Texas

RP: lm

Enclosure Motion To Withdraw Order Setting Execution Date
 Order Withdrawing Setting of Execution Date

PC/CR-5 R01-01-91

EX PARTE RICARDO ALDAPE GUERRA

MOTION TO WITHDRAW ORDER SETTING EXECUTION DATE
PENDING CONSIDERATION AND DISPOSITION OF
APPLICATION FOR WRIT OF HABEAS CORPUS PROCEEDING

Proceeding without a pending execution date until Mr. Aldape's state court application for habeas corpus relief is decided serves the interests of all parties in this matter.

14-998 ✓
13-998 ✓

Furthermore, it does not impair any legitimate interest of the state, and improves the quality of judicial review. Proceeding without a pending execution date ensures that the court and the attorneys can perform their respective roles outside the crisis atmosphere created by a looming execution which must be rescheduled from month to month as the case proceeds. It also prevents the unwarranted and unnecessary uncertainty and turmoil which an ever-pending (but frequently modified) execution date creates for courts that will be considering future appeals, for prison officials, for the attorneys both for the State and Mr. Aldape and for Mr. Aldape's family. At the same time, it does not prevent this court from handling Mr. Aldape's appeal in a timely and expeditious manner while fairly taking into account its own schedule, other demands on the State's and Mr. Aldape's attorneys, and the nature and complexity of the issues to be resolved.

Mr. Aldape's case is before this court on his first state post-conviction application for writ of habeas corpus. He is requesting an evidentiary hearing and discovery. Before disposing of his application, this Court must designate the factual issues which must be resolved and give that an opportunity to respond to the application and address the issues to be resolved.

This Court has authority under Rule 233, Texas Rules of Appellate Procedure, to withdraw or modify the order setting the execution date in order to consider fully the issues raised by

Mr. Aldape's Article 11.07 application. Fair and efficient judicial administration would be furthered more by a withdrawal of the order rather than a modification.

In order to manage the workload generated by capital habeas litigation, it is critical that the attorneys for all parties be able to predict, with some degree of reliability, the major time demands in pending cases. This requires that there be a reasonable window of time following a court's ruling before the next major event takes place, e.g. a pleading is due or a hearing is conducted. This can be accomplished more efficiently by scheduling orders entered by the court than by a pending execution date.

It is equally important to the fair administration of justice, that attorneys for death row inmates seeking relief in their first habeas appeals have a reasonable window of time after one court denies relief within which to prepare and file appropriate pleadings and briefs for the next appeal. The Court can ensure this by (1) making it known to the parties that an execution date will be set within a specified period of time after relief is denied if the next appeal is not filed within that time or (2) entering an order when the state court denies relief, scheduling the execution date long enough away to provide sufficient time, considering other current obligations of counsel, to prepare and file the next appeal. None of these circumstances are facilitated by an outstanding execution date, the timing of which is not necessarily related to the actual

advancement of the proceeding.

Furthermore, the unnecessary pendency of an execution date creates administrative burdens for the Texas Department of Criminal Justice. Until Mr. Aldape's present execution date was set, he was a participant in the Death Row "Work Capable" program. This program, the only one of its kind in the nation, permits inmates who qualify (after assessment by a TDCJ classification committee) to work daily shifts in the garment factory contained within the Ellis One Unit. However, so long as an execution date is pending, Mr. Aldape is ineligible to participate in the work program. Any prisoner with a pending execution date -- no matter how distant -- is automatically ineligible to participate in the work program.

The Texas Death Row "Work Capable" program, established in part to comply with the dictates of Ruiz v. Estelle, 503 F.Supp. 1265 (E.D. Tex. 1980), has been widely recognized as a success. As one account described it,

Inmates trained to work various machines make sheets, aprons, towels, uniforms, and other products. Overall, the garment factory is a model of efficiency, producing more goods per inmate than the other TDC garment factories. Sales of its products to other state agencies totaled over \$1.25 million in 1987. The Texas garment factory is considered a model project, being the most extensive program of its kind, and has received visits from numerous state correctional officials.¹

Equally important, the prisoners who qualify to participate in the "Work Capable" program are permitted limited privileges

¹ Sorenson and Marquart, "Working the Dead," in Facing the Death Penalty (Radelet, ed.) (1989) at 174.

that are denied to those who elect not to work. Although understandably limited, these privileges are no less significant to those who have worked hard to earn them. Some of these privileges follow:

Their cells lack the wire mesh [that covers the bars of the cells of the prisoners who are not work-capable]. As a rule they are not handcuffed, even when outside their prison wing, nor are they strip-searched [as the non-work-capable prisoners must be whenever they leave their cells]. They are fed from the steam tables buffet style and are allowed to eat either in their cells or in dayrooms. They [are allowed to] take showers in the general prison population's bathhouse. These [work-capable] prisoners are also permitted to be out of their cells for 14 hours a day on weekdays and 10 hours a day on weekends. ... Overall, they are treated like the general inmate population [except that they are denied any "contact" visits whatsoever].

Id.

The efficiency of the garment factory and the incentive provided by the limited privileges available to those who work there are reflected in the overall atmosphere surrounding the program:

[T]hese inmates are very productive. The garment factory and the work-capable wings [where participating inmates are housed] are clean and quiet, especially when one compares the noise level of the segregation [non-work-capable] wings. Overall, the prisoners seem to have much better attitudes There is less stress. Since the inception of the program, no serious violent incidents have occurred in the living and work areas [of the work-capable prisoners]. The garment factory supervisor stated that disciplinary infractions are rare -- less than one a month -- and he recalled only one fistfight [circa March, 1988]. This is a testimony to the good behavior of these inmates, since the inmate-to-staff ratio in the factory is ten to one: 2 guards and 3 outside staff members supervise 50 inmates each shift. Perhaps this is so because these inmates, as opposed to those in segregation, do have something to lose.

Id.

As long as Mr. Aldape is under a pending execution date and disqualified for the work program, Texas Department of Criminal Justice must keep him in different cell, in order to comply with a number of procedures that are required for those inmates who are not work capable. This results in a net loss of one cell space, as Mr. Aldape may otherwise be celled with another inmate. Prisoners who are not work capable, unlike those who are on the work program, must be housed in separate cells.

In sum, the existence of an outstanding execution date for Mr. Aldape deprives him of the few small privileges which he could otherwise continue to earn, frustrates the attempts of the State to comply with the requirements of Ruiz v. Estelle, and unnecessarily imposes an artificial sense of urgency on the proceedings in this Court which does not facilitate their fair and orderly resolution.

This Court can control the filing, docketing, and hearing of matters relevant to these proceedings without the pendency of an execution date. If, after the Court enters findings, the Court of Criminal Appeals denies relief, this Court can promptly schedule Mr. Aldape's execution for thirty or more days away, thereby ensuring that the case will not lie dormant while still allowing his attorneys time to prepare a federal habeas petition which properly takes into account the state court decision.

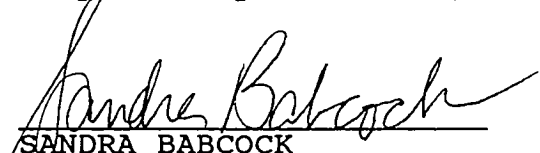
The existence of an outstanding execution date does not advance the litigation in this case in any way that this court

could not readily accomplish by scheduling orders. Instead it imposes an unwarranted urgency which actually interferes with the fair and orderly administration of the courts and which, in some circumstances, could deprive Mr. Aldape of a fair opportunity to present fairly and fully his claims for relief.

WHEREFORE, for the reasons set forth above, Mr. Aldape Guerra moves the court to stay his execution, presently scheduled for May 12, pending final disposition of his state post-conviction application for habeas corpus relief.

A proposed order is submitted with this Motion.

Respectfully submitted,



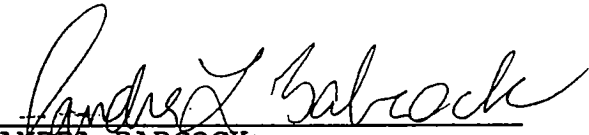
SANDRA BABCOCK
Texas Bar No. 01481700

Texas Resource Center
3223 Smith St., Suite 215
Houston, Texas 77006
(713) 522-5917

Attorney for
Ricardo Aldape Guerra

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading and proposed order was served by mail/delivery on Roe Wilson, Assistant District Attorney of Harris County on the 8th day of May, 1992.

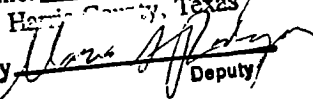

SANDRA BABCOCK

FILED

KATHERINE TYRA
District Clerk

MAY 08 1992

Time: 1:30 pm
Harris County, Texas

By 
Deputy

IN THE TEXAS COURT OF CRIMINAL APPEALS

EX PARTE RICARDO ALDAPE GUERRA

Case No. _____
(Harris County
Cause No. 359805-A)

ORDER WITHDRAWING SETTING OF EXECUTION DATE

The matter comes before this Court on applicant's motion to withdraw order setting execution date;

The Court finds that defendant's application for writ of habeas corpus filed pursuant to Article 11.07 of the Code of Criminal Procedure, is pending before this court;

The Court finds that the State will require additional time to respond and that the Court will require additional time to determine whether there are controverted, previously unresolved facts, to designate issues of fact to be resolved, and to issue findings of fact pursuant to the provisions of Article 11.07(d);

The Court further finds that in the interest of justice, this Court will require additional time to review and consider defendant's application, matters related thereto and the response filed by the State.

IT IS THEREFORE ORDERED that this Court's order setting the execution date of Ricardo Aldape Guerra May 12, 1992, is hereby withdrawn and his execution is stayed during the pendency of his Article 11.07 habeas corpus proceedings.

SIGNED this 11 day of May, 1992.

Denise

W. Dennis
JUDGE OF THE 248TH
JUDICIAL DISTRICT OF
HARRIS COUNTY, TEXAS

KATHERINE TYRA
HARRIS COUNTY DISTRICT CLERK

May 11, 1992

Sandra Babcock
Texas Resource Center
3223 Smith Street, Suite 215
Houston, Texas 77006

Ricardo Aldape Guerra
RE: Cause No. 359805-A
248th District Court

Dear Sir:

Enclosed herewith please find a copy of the instrument indicated by the "X" mark at the side. Pursuant to Article 11.07 of the Code of Criminal Procedures, we are sending you this copy for your information concerning the Post-Conviction Writ which you filed in said cause.

_____ State's Original Answer Filed _____
_____ Affidavit of Attorney _____
xx Court Order Dated May 11, 1992
_____ Proposed Findings of Facts _____
_____ Other _____

Very truly yours,

Raymond Posado

RAYMOND POSADO, Manager
Post-Trial Systems
Criminal Division
for KATHERINE TYRA, District Clerk
Harris County, Texas

RP:lm

Enclosure Motion For Admission Pro Hac Vice
Order Granting Admission Pro Hac Vice

PC/CR-5 R01-01-91

IN THE TEXAS COURT OF CRIMINAL APPEALS

and

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA

Case No. _____
(Harris County
Cause No. 359805-A)

MOTION FOR ADMISSION PRO HAC VICE

Comes now the undersigned, Mandy Welch, and respectfully moves for admission to practice before this court for the purpose of representing Ricardo Aldape Guerra in connection with the above number cause. In support of this motion, the undersigned states to the Court, under oath, the following:

1. She is an attorney with the Texas Resource Center, 3223 Smith Street, Suite 215, Houston, Texas 77006, Telephone No. (713) 522-5917, and has agreed to represent Ricardo Aldape Guerra

2. She is associated in this case with Sandra Babcock, Texas Bar No. 01481700, whose address is:

Texas Resource Center
3223 Smith Street, Suite 215
Houston, TX 77006
(713) 522-5917

Sandra Babcock is a licensed practicing attorney in this State.

3. The undersigned attorney is a member in good standing of the following bars:

<u>Court</u>	<u>Date of Admission</u>
State of Oklahoma	1976
Supreme Court of the United States	1985

14-999
13-999

United States Court of
Appeals for the Tenth Circuit 1986

United States District Court
for the Eastern District of
Oklahoma 1976

United States District Court
for the Northern District of
Oklahoma 1985

United States District Court
for the Eastern District of
Texas 1985

She recently joined the Texas Resource Center, a non-profit corporation that assists in the representation of death row inmate, and is in the process of applying for admission to the Texas Bar.

4. She has not been the subject of disciplinary action by any Bar or courts during the preceding five (5) years.

5. She has not been denied admission to the courts of any state or to any federal court during the preceding five (5) years.

6. She is familiar with the Rules of the State Bar of Texas governing the conduct of members of the State Bar of Texas, and will at all times abide by and comply with the same as long as such trial or hearing is pending, and said applicant has not withdrawn as counsel therein.

7. This motion is accompanied by a motion of Sandra Babcock, the resident practicing attorney of this State with whom the undersigned attorney shall be associated in this particular cause, recommending the undersigned's admission to practice before this court.

WHEREFORE, the undersigned attorney prays that this Court

grant this motion and allow her to appear pro hac vice on behalf of Ricardo Guerra in this action.

Mandy Welch

MANDY WELCH
Oklahoma Bar No. 9455

Texas Resource Center
3223 Smith Street, Suite 215
Houston, Texas 77006
(713) 522-5917

FILED
KATHERINE TYRA
District Clerk

MAY 11 1992
Time: 9:23
Harris County, Texas
By: *[Signature]*
Deputy

STATE OF TEXAS)
) SS
COUNTY OF CHAMBERS)

I, Mandy Welch, upon oath state that I have read the foregoing motion, am familiar with its contents, and I believe the matters set forth therein are true and correct.

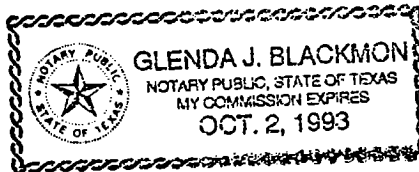
Mandy Welch
MANDY WELCH

Subscribed and sworn to before me this 11 day of May, 1992.

Glenda J. Blackmon

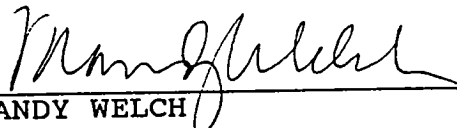
My commission expires:

10-2-93



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading was served by mail/delivery on Roe Wilson, Assistant District Attorney of Harris County on the 1st day of May, 1992.


MANDY WELCH

IN THE TEXAS COURT OF CRIMINAL APPEALS

and

IN THE 248TH JUDICIAL DISTRICT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA

)
)
)
)
)
Case No. _____
(Harris County
Cause No. 359805-A)

ORDER GRANTING ADMISSION
PRO HAC VICE

The motions of Mandy Welch and Sandra L. Babcock for the admission of Mandy Welch to practice before this Court as attorney for Ricardo Aldape Guerra in above numbered cause and related proceedings are hereby granted.

IT IS SO ORDERED this 11 day of May, 1992.



DISTRICT COURT JUDGE

MAY 11 1992

9



WOODY R. DENSEN
JUDGE, 248TH DISTRICT COURT
301 SAN JACINTO
CRIMINAL COURTS BUILDING
HOUSTON, TEXAS 77002

Copy to file
Copy to Sandra
F. AIC
5-11-92

5/11/92

May 11, 1992


Mr. Ricardo Aldape Guerra
Execution No. 727
Ellis I Unit
Huntsville, Texas 77343

Dear Sir:

Enclosed you will find a certified copy of this Court's Order of May 11, 1992.

Please note that the order modifies your execution date and sets it for September 24, 1992.

Sincerely,


Judge, 248th District Court
Harris County, Texas

cc: S. O. Woods, Director
Records and Classifications
P. O. Box 99
Huntsville, Texas 77340

Bill Zapalac
Assitant Attorney General
P. O. Box 12548
Austin, Texas 78711

John B. Holmes, Jr.
Harris County District Attorney
201 Fannin, Suite 200
Houston, Texas 77002-1901

Thomas Lowe, Clerk
Court of Criminal Appeals
P. O. Box 12308
Austin, Texas 78711

Sandra Babcock
Texas Resource Center
3223 Smith Street
Suite 215
Houston, Texas 77006

EN13/00/986 CCR

CAUSE NO. 359805

EX PARTE	§	IN THE 248TH DISTRICT COURT
	§	OF
RICARDO ALDAPE GUERRA, Applicant	§	HARRIS COUNTY, TEXAS

ORDER MODIFYING EXECUTION DATE


This court, having received the application for writ of habeas corpus, is of the opinion that additional time is needed for the Respondent to file an answer and for this Court to properly consider the issues raised in the applicant's writ of habeas corpus and render a decision thereon.

Therefore, pursuant to Texas Rule of Appellate Procedure 233, this Court now modifies the Court's order of March 19, 1992, setting the applicant's execution date for May 12, 1992. IT IS NOW ORDERED that the death warrant issued pursuant to the March 19, 1992 order be in all things recalled. IT IS FURTHER ORDERED that Ricardo Aldape Guerra be put to death by an executioner designated by the Director of the Texas Department of Corrections, before the hour of sunrise on Thursday, September 24, 1992.

It is ordered that the Clerk of this Court shall issue a death warrant in accordance with this order and deliver such warrant to S. O. Woods, the Director of the Texas Department of Criminal Justice, Institutional Division, at Huntsville, Texas. Finally this Court orders that the Harris County District Clerk's Office issue telephonic communications to the Director of Records and

Classifications, Texas Department of Criminal Justice,
Institutional Division, immediately upon signing of this order,
that the warrant of execution for May 12, 1992, has now been
recalled.

Signed this the 11th day of May, 1992.



WOODY DENSEN
JUDGE, 248TH DISTRICT COURT
HARRIS COUNTY, TEXAS

8

07/17/92

10:01

GOLDBERG BROWN

005

JUN-30-92 TUE 10:13

P. 02

RECEIVED IN POST TRIAL
SYSTEMS-DISTRICT CLERK'S
OFFICE

5-8-92 1:00

DEPUTY

IN THE TEXAS COURT OF CRIMINAL APPEALS

AND

IN THE 248TH JUDICIAL DISTRICT COURT OF HARRIS COUNTY, TEXAS

EX PARTE RICARDO ALDAPE GUERRA }

CASE NO. _____
(HARRIS COUNTY
CAUSE NO. 353805-A)

MOTION FOR LEAVE TO FILE AMICUS CURIAE
BRIEF ON WRIT OF HABEAS CORPUS FROM
THE 248TH DISTRICT COURT, HARRIS
COUNTY, TEXAS; CAUSE NO. 353805,
STYLED STATE OF TEXAS VS. RICARDO ALDAPE GUERRA

TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS:

COMES NOW, THE GOVERNMENT OF MEXICO, through its representative, RICARDO AMPUDIA, Consul General of Mexico, in Houston, Texas, and FRUMENCIO REYES, JR., Attorney at Law and moves for leave to file an amicus curiae brief in the instant Petition for Writ of Habeas Corpus. The amicus brief is conditionally filed herewith pursuant to Tex. R. App. Procedure 20.

1. GROUND FOR LEAVE:

a. As the representative of the Government of Mexico in Houston, Texas, one of my fundamental duties is to protect the rights of Mexican nationals. In particular, the Consulate General of Mexico is charged with assisting Mexican nationals who are imprisoned in the Consular district, in accordance with the laws of Texas, of the United States, and of Mexico, as well as with international law and applicable multilateral and bilateral treaties and agreements in force between Mexico and the United States.

JUN-30-92 TUE 1 :13

P. 03

b. Petitioner is a Mexican national. Ever since he was sentenced to death in October, 1981, the Government of Mexico has been concerned about his fate. In fact, the Government of Mexico expressly stated its opposition to the setting of an execution date for Petitioner, on March 19, 1992.

c. The Mexican Government considers that Petitioner has not been afforded all the procedural protection and due process guarantees that he is entitled to under the Constitution and Laws of the United States and of Texas, under international law, and under applicable international treaties.

d. The Mexican Government considers that the treatment currently given to Petitioner is not in accordance with International Human Rights standards.

e. The Government of Mexico has gathered and obtained new evidence which is crucial to this case. The evaluation of such evidence is a matter of paramount importance for the Government of Mexico.

f. The Government of Mexico's amicus brief seeks to inform this Court of its position on this case according to the grounds already mentioned.

WHEREFORE, the Government of Mexico would respectfully request that this Court grant its Motion for Leave to File Amicus Curiae Brief, permit the Amicus Curiae Brief, conditionally filed herewith, to be filed among the papers of the above captioned habeas corpus, and grant such further relief to which petitioner

07/17/92

10:02

GOLDBERG BROWN

007

JUN-30-92 TUE 1 :14

P. 04

may be entitled.

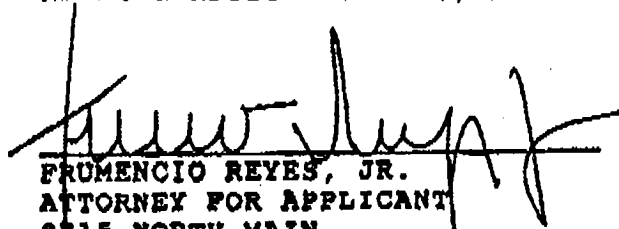
Respectfully submitted,

Ricardo Ampudia



RICARDO AMPUDIA
CONSUL GENERAL OF MEXICO
3015 RICHMOND AVE., STE. 100
HOUSTON, TEXAS 77098
(713) 524-4861
FAX NO. 523-6244

REYES & REYES-CASTILLO, P.C.



PRUMENCIO REYES, JR.
ATTORNEY FOR APPLICANT
3715 NORTH MAIN
HOUSTON, TEXAS 77009
(713) 864-4700
FAX NO.: 880-2902
TBN: 16794400

* Nothing in this motion shall be construed, read or interpreted, either implicitly or explicitly, as a waiver of the immunities pertaining to the United Mexican States, the Consulate General of Mexico or the Consular agents of Mexico in Houston, Texas.

JUN-30-92 TUE 10:14

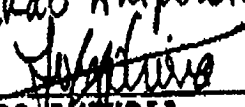
P. 05

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF was sent by certified mail, return receipt requested, on this the 8th day of May, 1992 to the following:

SANDRA BABCOCK
TEXAS RESOURCE CENTER
VIEUX CARRE BUILDING
3223 SMITH STREET, STE. 215
HOUSTON, TEXAS 77006
(713) 522-2733 (FAX)

ROE WILSON
ASSISTANT DISTRICT ATTORNEY
OFFICE OF THE HARRIS COUNTY DISTRICT ATTORNEY
201 FANNIN
HOUSTON, TEXAS 77002-1901
(713) 755-5809 (FAX)

Ricardo Ampudia


RICARDO AMPUDIA