

of her attacker being someone other than Appellant would have caused the State to prosecute him for some other crime than capital murder. It would have made all of his claims much more viable if that evidence had been retested/tested and it had been shown by the test/retest that said DNA was from some other donor than Applicant. .

Under *Ake v. Oklahoma*, 470 U.S. 68, 105 S.Ct. 1087, (1985), the United States Supreme Court explained that due process required access to the raw materials integral to the building of an effective defense. 470 U.S. 68, 77 , 105 S.Ct. 1087, 1093 (1985). The State must provide an indigent defendant the basic tools to present a defense within the adversarial system. See *Rey v. State*, 897 S.W.2d 333,337 (Tex. Crim. App. 1005). It should be without question that the defense has a right to test or retest alleged biological materials that the State is relying upon for his execution. .

Applicant's basic right to fundamental fairness and his right to prepare a defense for this writ of habeas corpus was denied by the trial court's denial of access to test the materials seized in this case.

CLAIM FOR RELIEF NUMBER TWENTY-FOUR

**APPLICANT WAS DENIED HIS U.S. CONST. AMEND. VI & XIV
RIGHT TO DUE PROCESS AND A FAIR JURY TRIAL BY THE PERJURED
TESTIMONY OF STATE'S WITNESS TAMARA LLAMAS.**

CLAIM FOR RELIEF NUMBER TWENTY-FIVE

APPLICANT WAS DENIED HIS U.S. CONST. AMEND VI & XIV

RIGHT TO FAIR JURY TRIAL BY THE STATE'S FAILURE TO DISCLOSE THE REASON WHY TAMARA LLAMAS WOULD TESTIFY AS SHE DID AT THE TRIAL, NAMELY, THAT HE HUSBAND WOULD BE TRANSFERRED FROM LOUISIANA FEDERAL CORRECTIONAL FACILITY TO A FEDERAL CORRECTIONAL FACILITY IN FT. WORTH, TEXAS.

When Applicant was pro-se he asked the State for any **Brady**¹⁵ evidence. The State responded, "There is no Brady material". (RR4, 13)

Then during a pre-trial hearing the following occurred:

By the State: "Judge the next one is number 6, motion to require the State to reveal agreements.

I have told Mr. Loper and Mr. Arnold that at this point we don't have any agreements with any witnesses, but there is a possibility that one may be made with the witness named Tamara Llamas, Llamas, but I have not spoken with her yet because she's in federal custody. We are in the middle of the paperwork to get her down here and not until I meet with her can I see if, No. 1, we are going to use her and No. 2, if we do, if we are going to make any kind of agreements. That's the reason why that one has not been complied with yet.

By the Court: Any idea when you are going to have her?

By the State: They called - - Kim Brian is working on it right now. The Feds are the Feds. You know, we put a deadline on there, I think November 1st, hoping to get her by December

¹⁵ **Brady v. Maryland**, 373 U.S. 83 (1963)

1st. That's all I can say. She's only in Fort Worth, but you know, it could be Siberia as far as they are concerned.

By the defense: Judge, they can go talk to her. She doesn't have to come down here.

By the Court: I will say to be complied with by November 21st." (RR5, 136, 137)

Then the defense made it known to the Court that they wanted to know if there was a deal before voir dire started. The State responded that they all should just voir dire on the issue as if there was a deal. The defense argued that they did not want to voir dire on it at all if it didn't apply. Then the State made this statement:

By the State: "I can put this out there, Judge. If there ever is a deal cut with her, the only deal that could be cut with her because she's in federal prison serving several federal life sentences, the only deal that I could make with her would be after your testimony, if you testify in my opinion truthfully and completely, then I will notify your federal prosecutor who then will decide, if he wants to and he thinks it is worth it, he will notify your federal judge of judges, plural, and then that judge can decide if he wants to, whether or not there is any kind of time cut that you deserve based on what you have done.

So that's as good as it is ever going to get if a deal is ever made with her and that's what would be laid out for the jury.

There is not a whole lot more you can deal with, with a federal defendant." (RR5, 140, 141)

At trial the following occurred: