

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:

By the State: "Okay. I want to ask you, first off, have I promised you anything for your presence here today?"

By Tamara Llamas: No, ma'am.

By the State: Have I promised you anything for testifying in this case?

By Tamara Llamas: No, ma'am.

By the State: Has Miss Siegler promised you anything for being here or testifying today?

By Tamara Llamas: No, ma'am.

By the State: Has any member of the District Attorney's Office promised you anything in exchange for your testimony?

By Tamara Llamas: No, ma'am.

By the State: Has Detective Wedgeworth promised you anything?

By Tamara Llamas: No, ma'am.

By the State: Did Detective Harry Fikaris promise you anything?

By Tamara Llamas: No, ma'am.

By the State: Did any member of the Harris County Sheriff's Department promise you anything for your presence in testifying here today?

By Tamara Llamas: No, ma'am.

By the State: Did you ask to be here?

By Tamara Llamas: No, ma'am.

By the State: Did we have you brought here on a federal writ and placed in the Harris

County, Jail?

By Tamara Llamas: Yes, ma'am." (RR24, 25,26)

During the closing argument the State made mention over and over again that Tamara Llamas was getting nothing for her testimony.

By the State: "She ain't getting anything other than maybe a little bit of peace of mind; other than being able to sit in front of this family and do the decent thing in her life. . . .

So, what she has to gain is a little peace of mind, I guess. But they can't touch what she told you." (RR25, 21,22)

The other prosecutor then argued:

By the State: " And now you know there never was a deal. But you are on this jury because you told us you were okay with listening to whether somebody was believable, even if there as a deal. And now you know there has never been a deal with Tamara. Never.

She's never asked for a deal. They never offered her one. We never offered her one. And just like the lady told you, there can never be a deal unless Casey and I are involved in the process. And it can never happen. You know why else there is not a deal? Because we don't need a deal." (RR25, 73,74)

When Tamara Llamas testified in this case she was housed in a federal corrections facility in Ft. Worth, Texas. Her husband was housed in a federal corrections facility in Louisiana. Mysteriously, her husband was transferred to a federal corrections facility in Ft. Worth, Texas, after her testimony. See exhibit " O " the affidavit of Darlene "Dee Dee"

Hughes.

“The prosecution’s affirmative duty to disclose evidence favorable to a defendant can trace its origins to early 20th century strictures against misrepresentation. . . .” **Kyles v. Whitley**, 514 U.S. 419, 432 (1995). In cases such as **Mooney v. Holohan**, 294 U.S. 103 (1935), **Pyle v. Kansas**, 317 U.S. 213 (1942), and **Alcorta v. Texas**, 355 U.S. 28 (1957) the United States Supreme Court decided time and time again that governmental deception of the court and jury, or knowing suppression of evidence favorable to the accused, was conduct inconsistent with the most “rudimentary demands of justice” **Mooney**, 294 U.S. at 112; see also **Napu v. Illinois**, 360 U.S. 264 (1959). Today this principle is usually considered a **Brady**, violation recognizing the landmark decision of **Brady v. Maryland**, 373 U.S. 83 (1963).

In **Brady**, the Court explained that the “principles of **Mooney v. Holohan**, is not punishment of society for misdeeds of prosecutors but it is the avoidance of an unfair trial to the accused.” 373 U.S. at 87. Because of suppression of evidence that “would tend to exculpate him or reduce the penalty” results even when suppression is not the result of guile in a proceeding “That does not comport with standards of justice.” The Supreme Court held “that suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to either guilt or to punishment irrespective of the good faith or bad faith of the prosecution.” *id* at 87-88. The Court soon made it clear that “when the reliability of a given witness may well be determinative of guilt

or innocense, nondisclosure of evidence affecting credibility falls within this general rule.” **Giglio v. United States**, 405 U.S. 150, 154 (1972) (quoting **Napue**, 350 U.S. at 269); see also **Moore v. Illinois**, 408 U.S. 786, 794-97. (1972).

Because the Prosecutor is entrusted with the responsibility in the first instance, of assuring compliance with the dictates of **Brady**, each “individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case including the police.” **Kyles**, 514 U.S. at 437.

The statement of Darlene Hughes would show that Tamara Llamas lied, under oath, in this trial. Further, that she did so for the reason that she sought some gain from giving her perjured testimony. From what she told Darlene Hughes she sought the removal of her husband from a Louisiana federal correctional institution, and his subsequent move to a Ft. Worth, Texas, federal correctional institution. The only fact known is that Tamara Llamas husband did in fact get moved from Louisiana to Ft. Worth, sometime after Tamara Llamas testified. Her husbands name is Larry Wayne Llamas, his federal register number is 23626-079, and he is presently housed at Fort Worth FMC, 3150 Horton Road, Ft. Worth, Texas 76229. FOIA requests by the undersigned writ attorney have gone unheeded by the feds. Her testimony was the only direct testimony that the State had to show that Applicant actually killed Michelle Shadbolt in the course of raping her.

Impeaching evidence that this witness was testifying in hopes that it would secure her desires in other matters was **Brady**, material. This evidence was exculpatory, it was material