

CAUSE NO. 10-11-8506

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|--------------------------|---|------------------------------------|
| STATE OF TEXAS | § | IN THE DISTRICT COURT |
| | § | |
| VS. | § | JACKSON COUNTY, TEXAS |
| | § | |
| CHRISTIAN BLAIR ROBINSON | § | 24 TH JUDICIAL DISTRICT |

D15
APPLICATION TO TAKE DEPOSITION OF WITNESS

TO THE HONORABLE JUDGE OF SAID COURT:

CHRISTIAN BLAIR ROBINSON submits this Application to take the deposition of a person listed by the State as a witness, Danielle Vickers, whose testimony will be critical to outcome of the trial and whose pre-trial interview or deposition is essential to Christian Blair Robinson receiving effective assistance of counsel.

Danielle Vickers possesses information critical to significant factors at trial and has information relevant to the charges in this prosecution that is exclusively within her knowledge.

Applicant is entitled to take the deposition of a witness "if good reason exists for taking the deposition." Article 39.02 C.C.P.

Good reason exists for taking the deposition of Danielle Vickers because she possesses knowledge and information critical to significant factors at trial; and, she has information concerning this case exclusively within her knowledge; and she refuses to talk to or participate in an interview with Applicant's counsel or investigator.

In the absence of an interview or deposition, Danielle Vickers will be subject to a limited and incomplete cross-examination, and Applicant will be deprived of his right to effectively confront and cross-examine this witness against him. In the absence of an

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 At 9:40 AM/PM
 SHARON MATHIS
 Clerk District Court
 Jackson County, Texas
 By Kathryn Rodriguez Deputy

interview or deposition, Applicant will be deprived of effective assistance of counsel. Sixth Amendment, United States Constitution; Art. I, Sec. 10, Texas Constitution.

Applicant's investigator/mitigator has communicated with Danielle Vickers. She has stated she will not participate in an interview and answer the questions necessary for Applicant's attorneys to provide effective assistance of counsel. Applicant's attorney has exhausted every reasonable means of obtaining an interview with this witness other than to take her deposition.

The "refusal of a witness who possesses information critical to a significant factor at trial, or who has information exclusively within that witness' knowledge, to talk to the defendant's counsel (or investigator) constitutes good reason for ordering such witness' deposition under Article 39.02." Morrow v. State, 139 S.W.3d 736, 743.

Defense counsel "has a responsibility to seek out and interview potential witnesses..., and failure to do so is to be ineffective, if not incompetent..." Stearnes v. Clinton, 780 S.W.2d 216, 224 (Tex. Crim. App. 1989); Ex Parte Duffy, 607 S.W.2d 507, 517 (Tex. Crim. App. 1980); Ex Parte Ybarra, 629 S.W.2d 943, 946 (Tex. Crim. App. 1982); See also Ex Parte Welborn, 785 S.W.2d 391, 393 (Tex. Crim. App. 1990).

Reading a police report is not an adequate substitute for an interview. Sullivan v. Fairman, 819 F.2d 1382, 1389 (7th Cir. 1987). The State "opening its file" to defense counsel is insufficient and the State has not done so in this case. The completeness and accuracy of witness statements are affected by the person directing questions and recording answers. Witness statements are not determinative of all relevant information with the knowledge of the person giving the statement. Duffy, supra.

The Sixth Amendment imposes on counsel a duty to investigate the facts of the case

because effective assistance must be based on professional decisions and choices that can be made only after investigation. Strickland v. Washington, 466 US 668, 688(1984), addressing analysis of lower court.

Additional good reason exists for taking this deposition because in the absence of such deposition, Applicant will also be denied:

1. the right to make an opening statement informing the jury of the “nature of the defenses relied upon and the facts to be proven in their support...” Art. 36.01 (a)(5) C.C.P.; and

2. the right to a fair and impartial trial and to bring to investigation all evidence tending to produce acquittal. Art. 1.03 (4)(5) C.C.P.; and

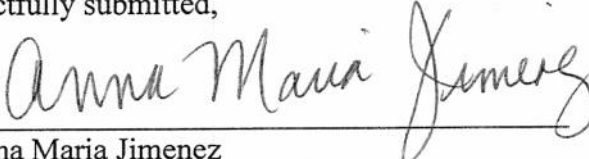
3. the right to obtain evidence to impeach and contradict the witness concerning matters raised by the testimony of the witness at trial.

Applicant would further move the Court to Order the Stearnes protocol for witness statements to be followed by all attorneys conducting interviews or engaging in communication with witnesses in this cause.

WHEREFORE, premises considered, Applicant prays that this Court set this Application for hearing and authorize such Deposition and further Order the Stearnes protocol for witness statements to be followed by all attorneys conducting interviews or engaging in communication with witnesses in this cause.

Respectfully submitted,

By:


Anna Maria Jimenez
State Bar No.: 24027031

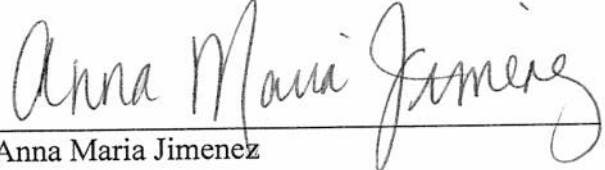
James R. Lawrence
State Bar No.: 12047000

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ATTORNEYS FOR CHRISTIAN BLAIR ROBINSON

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been furnished to counsel for the State, on this 14th day of October, 2011.


Anna Maria Jimenez

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**AFFIDAVIT OF FACTS CONSTITUTING GOOD REASON FOR
TAKING OF WITNESS'S DEPOSITION**

STATE OF TEXAS }
COUNTY OF KLEBERG }

BEFORE ME, the undersigned authority, this day personally appeared Anna Maria Jimenez to me well known, and after being by me duly sworn, did depose and state upon oath the following:

“I am the attorney representing Christian Blair Robinson on a pending criminal prosecution for an alleged felony offense of Capital Murder.

The State has listed or will list Danielle Vickers as a witness. Danielle Vickers was the wife of the Defendant at the time that Camden Blair Robinson died. She was present at the time it is alleged that Defendant killed his son.

Danielle Vickers possesses knowledge and information critical to significant factors at trial.

Danielle Vickers has information concerning this case exclusively within her knowledge.

Danielle Vickers refuses to talk to or to participate in an interview with Applicant's mitigation specialist or investigator.

The testimony of Danielle Vickers will be critical to the outcome of the trial.

Awareness of the facts known by Danielle Vickers is essential in the preparation of a defense of this accusation.

Awareness of the facts known by Danielle Vickers is essential to effectively cross-examine her at the trial of this action.

It is my opinion based upon my experience in dealing with numerous cases of this nature that additional efforts on my part to obtain an interview would be futile.

I have exhausted every reasonable means known to me of obtaining an interview with this witness other than to take her deposition.

I will not be able to conduct a sufficient investigation of the facts of this case to provide Applicant with effective assistance of counsel unless I am able to depose the witness.

In the absence of an interview or deposition, I will not be able to conduct a full and complete cross-examination of this witness, and this witness will be subject only to a limited and incomplete cross-examination.

In the absence of a deposition, Applicant will be deprived of the right to develop and articulate a coherent theory of defense.

In the absence of a deposition, Applicant will be deprived of the right to make an opening statement informing the jury of the nature of the defenses relied upon and the facts to be proven in their support because the nature of the defenses and the facts to be proven will not be known at the time such statement is to be given.

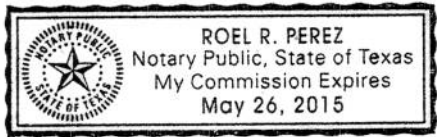
In the absence of a deposition, Applicant will be deprived of the right to a fair and impartial trial and to bring to investigation all evidence tending to produce acquittal.

In the absence of a deposition, Applicant will be deprived of the right to obtain

evidence to impeach and to contradict the witness concerning matters raised by her testimony at trial, because such impeachable statements will not be known until after it will be too late for Applicant to obtain such contradictory evidence.”

Anna Maria Jimenez
Anna Maria Jimenez

Before me, the undersigned notary public, on 14th day of October, 2011, personally appeared Anna Maria Jimenez, known to me to be the person whose name is subscribed to the foregoing document, and being by me first duly sworn, she then and there declared that the statements therein contained are true and correct of her own personal knowledge, to certify which witness my hand and seal of office.



Roel R. Perez
Notary Public, State of Texas