

IN THE UNITED STATES DISTRICT COURT.
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

STANLEY E. JALOWIEC,

Petitioner,

-vs- :

MARGARET BRADSHAW, WARDEN, :

Respondent.

: Case No. 1:03 CV 0645

: Judge Donald Nugent

: *DEATH PENALTY CASE*

DECLARATION OF JOSEPH C. GRUNDA

IN THE STATE OF GEORGIA)
COUNTY OF GWINNETT)

I, Joseph C. Grunda, after being duly sworn according to law, state:

1. I was lead counsel in Stanley Jalowiec's death penalty case. I worked with co-counsel Edward Cleary.
2. At the time of the client's trial, I was living and practicing law primarily in Lorain County, Ohio. I left Lorain County, Ohio in June of 1999, and currently reside in Stone Mountain, Georgia. I was first admitted to practice law in Ohio in May, 1979, Ohio Bar No. 0015289. I was admitted to practice law in Georgia in May of 2002, Georgia Bar No. 314612. While in Ohio, I participated in over 50 Felony jury trials, winning a majority of them. While in Ohio, I was Rule 20 certified. I was involved in three Capital murder trials. I left Ohio to become General Counsel for a company that went public. I now practice Corporate and Gaming law.

3. I no longer have any files in my possession regarding the client's case. I believe that I turned my files over to the client's state court appellate counsel which was my standard practice for the few cases that I did not win at trial.

4. I do not recall many specifics of the client's case because of the passage of ten years, but in general, the process for getting discovery in Lorain County at that time was such that if the Defense wanted it, we would file for it. But strategically, if the Defense had any information that we did not want the state to know, then we would not file for discovery. At that time, the Lorain County Prosecutor's Office had a No Plea Bargaining Policy which created a very adversarial situation. If I didn't file for discovery on behalf of the Defendant it was because Chief Assistant Prosecuting Attorney Jonathan Rosenbaum and the prosecutor's office would have filed back. My recollection is that the Defense, on behalf of Stanley Jalowiec, was receiving discovery without filing for it because it was filed for by one of the other two co-defendants and it was being provided to all co-defendants.

5. I felt the Lorain County Prosecutor's Office covered for the police and they, in return, would cover for them. They had a cozy relationship with a win-at-any-and-all-cost attitude, rather than pursue the truth. I felt the Prosecutor's Office and the police would pick and choose what evidence they wanted to present to the jury rather than provide all information to the Defense to allow them to decide what and how to use the information and decide what is exculpatory.

6. I do not recall the name Terry Hopkins.

7. We hired Lemmie Davis as our investigator in this case because there was no one else in Lorain County to use. Mr. Davis used to work for the Lorain County Sheriff's

Department. I don't recall any other investigators in Lorain County at that time that would have been approved by the court.

8. Recently, the appellate attorneys, who are working on Stanley Jalowiec's federal habeas case, showed me portions of discovery that they have just received from the Cleveland Police Department, the Elyria Police Department, and the Lorain County Prosecutor's Office. These documents included police reports from both the Cleveland Police Department and the Elyria Police Department relating to the murder of Ronald Lally, several witness and/or co-defendant statements recorded by Detective Leiby, investigative summaries and reports created by various officers who were part of this investigation, and letters written by the Assistant Prosecuting Attorney. I do not recall ever seeing any of these documents before. Had I been given these documents before the client's trial, I would have wanted to do much more investigation of the facts of this case and witnesses. Obviously, several of these reports were necessary for Attorney Cleary and me to do an adequate and proper cross-examination of the majority of the state's witnesses. A few of the things that jumped out at me as I reviewed the reports were the following:

- a. It would have been important to us in the cross-examination of various State's witnesses to have copies of each and every previous statement that they made to the police. It is my recollection that we routinely asked for prior statements when we cross-examined witnesses. These statements are particularly crucial for cross examination purposes when the witness has changed his or her story; once or on numerous occasions. After reviewing these statements, I have noticed that several of the State's witnesses, including Terry Hopkins, Lynne Altpater, Michael Smith, and Sandra

Williams, appeared to change their story at least one time. I do not recall the prosecutor ever giving me a majority of the statements that these witnesses made and that I have now reviewed. Obviously, copies of these statements are still available, in either print and/or recorded form.

- b. I also reviewed several notes, documents, and other statements, which infer that several other witnesses' statements were taken, yet subsequently withheld at the time of the client's trial. These still missing statements include those of: Lynne Altpater, Terry Hopkins, Sharon Hopkins, Joann Corinne Fike, and Carl Hartman.
- c. In addition to not having copies of many of the State's witnesses' statements, I do not recall the prosecutor giving me copies of all of the client's co-defendant's statements (including several statements made by both Danny Smith and Raymond Smith). To the best of my recollection, the only statements I was made aware of prior to or at trial were the following: Danny Smith's April 28, 1994 statement and Raymond Smith's July 5, 1994 and July 11, 1995 statements. I do not recall ever seeing Danny Smith's statement dated January 7, 1995. Additionally, I do not recall ever seeing Raymond Smith's statements that are referenced on bate stamp p. 79 of his July 11, 1995 statement.
- d. I was shown an Investigative Summary dated December 28, 1994 written by Officer John Homoki, at the request of Detective Alan Leiby, concerning the incident at Mr. Hero's. This incident occurred on September 15, 1993, over a year prior to the writing of this report. This

report would have been essential in challenging the memory of the specific events that occurred at Mr. Hero's during the cross-examination of Officer Homoki.

- e. I reviewed a letter in the discovery documents from the Lorain County Prosecutor's Office from Chief Assistant Prosecuting Attorney Jonathan Rosenbaum to Dennis O'Toole, attorney for Joann Corinne Fike, granting her transactional immunity for her involvement, if any, in the death of Ronald Lally. This was an exculpatory document, which would have been crucial to have for use during Ms. Fike's cross-examination at the client's trial. I do not recall ever seeing this document before. I feel I would have remembered and used this document during my cross examination of Ms. Fike, as I would have never passed up the opportunity to show her bias or prejudice for receiving this benefit. I would have jumped all over that opportunity!
- f. I examined an agreement between Vernard Berry, Detective Alan Leiby, and Chief Assistant Prosecuting Attorney Jonathan Rosenbaum dismissing two pending charges for aggravating trafficking in drugs in exchange for his cooperation with the Ron Lally investigation. Berry did not testify for the State at trial, but he was listed as a witness by the State before the client's trial began. Because Berry was evidently an important State's witness, at least at one time, I should have been made aware of this document so that I could understand the importance of investigating his knowledge of the Lally homicide. I do not recall ever seeing this

agreement before. Further, after investigating this, I may have called him as a Defense witness.

- g. I also saw a letter between Shawndell Donald, his attorney, Mary Papke, Detective Alan Leiby, and Chief Assistant Prosecuting Attorney Rosenbaum, granting Shawndell Donald immunity from prosecution in the Ron Lally homicide if he fully and truthfully cooperated in such investigation. In addition, I reviewed a document, which demonstrated that Donald broke into Ron Lally's apartment shortly after this homicide. These documents are exculpatory and would have been extremely important during a pre-trial investigation in that they point to an alternate suspect in the Lally homicide. I do not recall ever seeing any of these documents before. I feel I would have remembered something this significant. This was the type of information Mr. Cleary and I were searching for, in order to prepare for trial and present a defense for our client.
- h. I was shown a witness list from the client's trial that listed all witnesses that received assistance from the Elyria Police Department. Specifically listed was the name, Sharon Hopkins. Sharon Hopkins was a particularly important State's witness, and she is even more noteworthy since the Chief Assistant Prosecuting Attorney Jonathan Rosenbaum specifically mentioned her name during his closing argument in stating: "I also want to point out that there is no testimony or no argument that Lynne Altpater's testimony was secured by anyone and the same for Sharon

Hopkins." Tr. 926. This list, or the information that Sharon Hopkin's was given consideration in exchange for her testimony, would have been essential in both cross-examination of this witness and objecting during closing argument, which I have done many times before, when it did not conform to the evidence presented at trial. I do not recall ever seeing this document before.

- i. I was shown several documents and a compact disk (CD) that included an interview between Detective Alan Leiby and Mike Lopez, which all demonstrate that the Elyria Police Department along with the prosecutor's office, specifically Chief Assistant Prosecuting Attorney Jonathan Rosenbaum, granted consideration to several individuals associated with this investigation. These individuals did not testify, but solely provided information in exchange for the consideration granted in their case. These people include: Shawndell Donald, Israel Alvarez, Vernard Berry, and possibly Mike Lopez. This information would have been imperative at the time of trial in order to complete a thorough investigation particularly for the trial phase of the client's trial. I do not recall ever seeing any of these documents before.
- j. I additionally saw a letter from Detective Alan Leiby to Chief Assistant Prosecuting Attorney Jonathan Rosenbaum requesting that Tammy Green be granted transactional immunity for her role, if any, in this homicide, for her testimony in front of the client's Grand Jury. Because Green was a

witness in front of the Grand Jury, this information should have been provided to us. However, I do not recall ever seeing this letter before.

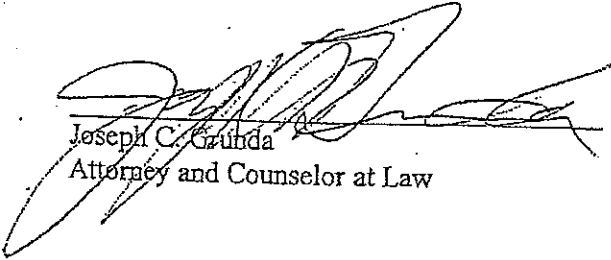
- k. It is recounted on one report from the Elyria Police Department that the client was involved in an incident on January 29, 1994 with a Jeffery W. Hicks in front of 360 Depot St. I was aware of this incident, as Mr. Hicks testified during the mitigation phase of the client's trial. However, according to my review of the transcript, Hicks testified that "Stock", who he identified as the client, beat him with a bat. There is no bat mentioned in the incident report in the discovery documents. This document would have been crucial during the cross-examination of Mr. Hicks. I do not recall having ever seen this report. I feel I would have recalled and definitely would have investigated and used this information during cross examination at trial. I would have never passed up this opportunity!
- l. Additionally, I read a statement taken from Melissa Arroyo on November 29, 1995, and also a letter written from Robert Quillen to Detective Leiby prior to the client's trial. These documents both implicated one Danny Smith and not the client in the Lally homicide. This material was exculpatory and should have been made available to us prior to the client's trial. I do not recall ever seeing either of these documents. Also, I never received any information whatsoever that would exclude the Defendant and not put him at the scene of the crime. This was exactly the type of information Mr. Cleary and I were searching for, in order to prepare for trial and present a defense for our client.

- m. I also listened to a compact disk containing an interview between Detective Alan Leiby, Detective Duane Whitely, and Jeff Buteau. Jeff Buteau lived with Joann Corinne Fike and was present when Detective Leiby picked-up Fike's LeBaron with a search warrant. On the disk, Buteau was questioned repeatedly if the client had confessed to him about this homicide. He stated over and over that the client did not incriminate himself during any conversation that they had. I do not recall ever hearing the conversation on this disk before. This information was never turned over during pre-trial discovery by any Assistant Prosecuting Attorney. Again, this was the type of information Mr. Cleary and I were searching for, in order to prepare for trial and present a defense for our client.
- n. I read a report by the Cleveland Police Department that a Carrie Bandy reported that she overheard Andre Smith talking about killing a man in the cemetery "b/c he thought he had some cheese." This report was never turned over during discovery by any Assistant Prosecuting Attorney. This report was exculpatory in that it suggests an alternate suspect in this homicide and therefore would have been important to our pre-trial investigation and trial presentation. I do not recall ever seeing this report before. I feel I would have remembered something this significant and know I would have used it at trial. This was the type of information Mr. Cleary and I were searching for, in order to prepare for trial and present a defense for our client.

- o. I reviewed two Computer Voice Stress Analyzer (CVSA) reports given to two apparent suspects, Terry Hopkins and Frank Sciabica. I also reviewed notes made by Detective Alan Leiby requesting that several potential States' witnesses take a polygraph to prove their truthfulness. The individuals to whom this request was directed were: Terry Hopkins, Vernard Berry, Israel Alvarez, Danny Smith, Raymond Smith, Darren Tackett, Shawndell Donald, and Joann Corinne Fike. There is no documentation in the records that any tests were ever given. I do not recall ever seeing these notes or CVSA reports before. I believe I would recall something this significant.
- p. I looked over several tape-recorded and transcribed phone conversations between Danny Smith and Carl Hartman, while Danny Smith was in jail awaiting trial. These phone conversations were apparently used to prosecute Danny Smith on a bribery charge. Carl Hartman was an important State's witness, who testified against the client at his trial. Additionally, Danny Smith was a co-defendant of the client. Therefore, these transcribed conversations should have been turned over during pre-trial discovery. These conversations illustrate Danny Smith's attempt to bribe Hartman to take care of Terry Hopkin's testimony. Additionally, these conversations, particularly the conversation of February 8, 1996, demonstrate that Danny Smith was attempting to manipulate and control this homicide investigation from his jail cell. These conversations would have been important in both the cross-examination of Carl Hartman and

during our pre-trial investigation of this homicide. I do not recall ever receiving or reading any of these transcribed conversations or hearing the taped conversations before. I believe I would recall something this significant and definitely would have investigated this prior to trial.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 26th day of October, 2006.



Joseph C. Grunda
Attorney and Counselor at Law