

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

STANLEY E. JALOWIEC,

Petitioner,

-vs- :

MARGARET BRADSHAW, WARDEN, :

Respondent.

:

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:

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Case No. 1:03 CV 0645

Judge Donald Nugent

DEATH PENALTY CASE

DECLARATION OF EDWARD CLEARY

IN THE STATE OF OHIO)

COUNTY OF CUYAHOGA)

I, Edward Cleary, after being duly sworn according to law, state:

1. I was co-counsel in Stanley Jalowiec's death penalty case. I worked with Joseph Grunda.
2. It has been over ten years since the events in this trial took place. At no time, until the present case, has any appellate attorney contacted me for any information regarding the matter. My memory is imperfect and my files are gone. I had intended to fully review the transcript of these proceedings, but have been unable to because of the recent illness and death of my father in New York State. Thus, I am not as fully prepared as I would like to be to complete and cross reference matters.
3. I currently reside in Lakewood, Ohio, and additionally, I lived there at the time of Stanley Jalowiec's capital trial. I was first admitted to practice law in November, 1988, and am admitted to practice before the Supreme Court of Ohio and the United States

District Court for the Northern District of Ohio. I still practice criminal defense, though I am currently not Rule 20 certified. I was at the time of the trial and remained so for years after.

4. It was my usual practice to file a discovery motion prior to trial. I fully understood that there was not an open discovery practice on the part of the Lorain County Prosecutor. Regardless, I did expect to receive full disclosure in the present case due to a number of factors: 1) There were three co-defendants, to be tried separately. Raymond Smith's trial was first, and we were obtaining complete information and cooperation from his attorney; 2) Discovery was being issued for all three cases at the same time to save duplication of effort from the prosecutor's office; and 3) we were told we could have "whatever we wanted" and that we would receive whatever we were entitled to. Discovery was not filed in this case because we believed we were already, without having formally asked, getting all of the discovery we were entitled to. That way, we would not have to give reciprocal discovery to the prosecutor.

5. I believe that the State of Ohio sent their primary witness, Michael Smith, to Arizona before and during the pendency of co-defendant Raymond Smith's trial. All six of the attorneys involved found it extremely unusual for a deposition of a criminal witness to be taken, at the behest of the State. I was unable to attend said deposition because of the

immediacy of its being called and because I was in trial in Cuyahoga County. Shortly after said deposition, we were informed that Michael Smith was no longer available. I further recall either asking the Judge or filing a motion requesting the location of the witness. The Judge refused to order it. As a result, I not only missed my only opportunity to observe Mr. Smith at the deposition, but also to watch him at his father's trial. Further,

we were not informed that Michael Smith would magically "reappear" in time for our trial.

6. Until informed by the State Public Defender's office in preparation for this statement, I never knew what had happened to this primary witness during the interval between his deposition before his father's trial and the trial of Stanley Jalowiec. I have been informed that he was taken to Arizona.
7. If Michael Smith had been available and would have testified during Raymond Smith's trial, I would have definitely been at the trial watching both the direct and the cross for use during the client's trial. I would have definitely contacted him for an interview - even if it would have been refused.
8. I believe that, under the circumstances, the Judge was incapable of giving a fair trial to my client. He (the Judge) was consulted with continuously by the lead investigator in this matter in order to obtain warrants and cut witnesses loose from either prison or to "help" potential State witnesses with their legal problems - all in exchange for their testimony. For over a year he would meet privately with the lead investigator and, as near as I can tell, gave him carte-blanche to deal away any offense, prison time, or probation in order to purchase the testimony of a witness. In short, he was the "go-to guy" for the lead investigating officer for putting the entire case together. More aggravating was the fact that he refused to acknowledge that he even knew what we were talking about when we asked about recusal. We attempted to explore judicial bias, and further attempt to explore the method of investigation of the lead investigative officer in this regard by issuing a subpoena to the Judge in order to discover what he was told about this case prior to the indictment. The subpoena was successfully quashed by the State prior to trial. To this day

I believe it was prejudicial for the judge in the case to not recuse himself. In short, I believe he was tainted by exposure to the case before trial.

9. 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 having seen these documents. Had I been given these documents before the client's trial, I would have investigated the material. Also, several of these reports were necessary for Attorney Grunda and I to do an adequate 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 in my cross-examination of various State's witnesses to have copies of each and every previous statement that they made to the police - or even to know that there were multiple prior statements. These statements are particularly crucial for cross examination purposes when the witness has changed his or her story 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. To the best of my recollection, the prosecutor never gave 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 witness 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, the prosecutor did not give the defense copies of all of the client's co-defendant's statements (including several statements made by both Danny Smith and Raymond Smith). The only statements I recall being 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 never saw Danny Smith's statement dated January 7, 1995. Additionally, I never saw Raymond Smith's statements that are referenced on 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 an 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 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 Fike's cross-examination at the client's trial. I have never before seen this document. Indeed, I recall absolutely no mention of the word "immunity" at any point of the trial, except perhaps in regard to Michael Smith.

f I examined an agreement between Vernard Berry, Detective Alan Leiby, and 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 having seen any of these documents.

g I also saw a letter between Shawndell Donald, his attorney, Mary Papke, Detective Alan Leiby, and 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 having seen any of these documents.

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 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 during closing argument. I do not recall ever having seen any of these documents.

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 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 through investigation particularly for the trial phase of the client's trial. I do not recall ever having seen any of these documents.

J. I additionally saw a letter from Detective Alan Leiby to 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 had never seen this letter before.

k It is recounted on one report from the Cleveland 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 have never before seen this report. I might add that the Judge in this case specifically, in an angered tone of voice, mentioned the bat in his sentencing as a primary reason for giving him the death penalty.

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 have never before seen either of these documents.

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. This

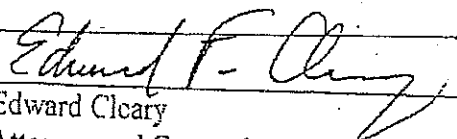
compact disk was never turned over during discovery by the Assistant Prosecuting Attorney. I have never heard this disk before. Indeed, I would have played it had I had possession.

- n. I read a report found in the City of Cleveland, Department of Law files 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 the Assistant Prosecuting Attorney. This report was exculpatory in that it suggests an alternate suspect in this homicide and because would have been important to our pre-trial investigation. I have never seen this report before.
 - 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 State's 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 have never seen these notes nor these CVSA reports before.
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- p I looked over several tape-recorded and transcribed phone conversations between Danny Smith and Carl Harman, while Smith was in jail awaiting trial. These phone conversations were apparently used to prosecute 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 discovery.

These conversations illustrate Smith's attempt to bribe Hartman to take care of Terry Hopkin's testimony. Hopkins was another witness at the client's trial. Additionally, these conversations, particularly the conversation of February 8, 1996, demonstrate that 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 have never read any of these transcribed conversations before.

In conclusion, I find there is a lot of material which I believe, had it been in the possession of the Defense, would have changed the nature of the trial, our ability to better defend Mr. Jalowiec and, more importantly, its outcome.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 21st day of January, 2007.


Edward Cleary
Attorney and Counselor at Law