

IN THE 21<sup>st</sup> JUDICIAL DISTRICT COURT  
OF BURLESON COUNTY, TEXAS

THE STATE OF TEXAS

v.

ANTHONY CHARLES GRAVES

§  
§  
§  
§  
§

Cause No. 11,136

**DEFENDANT'S OBJECTIONS TO THE STATE'S  
OFFER OF THE RECORD OF THE OCTOBER 7, 1992 BOND HEARING**

To The Honorable Court:

Now comes defendant Anthony Graves, and makes his objections to the record of the October 7, 1992 bond hearing offered by the State as evidence at the hearing on Mr. Grave's application for habeas corpus conducted by this Court on March 9, 2007:

**General Objections**

In determining the propriety of bail prior to retrial, the Court should take into account the entire record in the case, including in the opinions of the appellate courts that have reviewed the case. *Ex Parte Cates*, 231 S.W. 396, 397 (Tex.Crim.App. 1921).

This is a case in which the State deliberately presented perjured testimony to convict Mr. Graves of capital murder. As stated by the United States Court of Appeals for the Fifth Circuit: "Perhaps even more egregious than District Attorney Sebesta's failure to disclose Carter's most recent statement is **his deliberate trial tactic** of eliciting testimony from Carter and the chief investigating officer, Ranger Coffman, **that the D.A. knew was false** and designed affirmatively to lead the jury to believe that Carter made no additional statement tending to exculpate Graves." *Graves v. Dretke*, 442 F.3d 334, 341 (5<sup>th</sup> Cir. 2006). Graves' constitutional rights were abridged not only by the *Brady v. Maryland* violations, but also by the State's deliberate introduction of

FILED 1:14 PM  
DATE 3-21-07  
Joy Brymer  
Clerk of Court, Burleson County  
By *[Signature]*

perjured trial testimony against Mr. Graves. The findings of the Fifth Circuit are binding on this Court. *Wilhite v. Adams*, 640 S.W.2d 875 (Tex. 1982); *U.S. v. Becerra*, 155 F.3d 740 (5<sup>th</sup> Cir. 1998).

With respect to Ranger Coffman, the Fifth Circuit's conclusions were further reinforced on November 30, 2006, when Ranger Coffman testified as follows:

Q. Did you make a statement a few minutes ago that Carter told you **several times** that Graves didn't do it?

A. Yes, over a period of several months, yeah.

Q. During what timeframe would we be talking about?

A. The trial was in '94 or '95, whenever that was—

Q. In '94.

A. From the start.

Q. From '92 when the crime occurred?

A. He would change his testimony, yes.

Q. Change his testimony back and forth?

A. He would change his testimony back and forth—well, it wasn't testimony but he would change his story.

Q. His story, right, because he was just talking to you at the time and it wasn't testimony.

A. Right.

Q. But sometimes he would say Graves did it and the other times he would say Graves didn't do it?

A. Right.

Q. And that occurred in a series of conversations between 1992 and 1994?

A. From the time that he was arrested up until, probably, that trial, yes.

Q. Mr. Graves' trial?

A. To Mr. Graves' trial, right.

Transcript, November 30, 2006 Hearing, p. 49, l. 21 to p. 50, l. 19 (Exhibit 16 attached hereto).

Ranger Coffman's November 30, 2006 testimony directly contradicts his testimony at Graves' trial, and answers the question posed by the Fifth Circuit about whether Coffman knowingly perjured himself. At Graves' trial, Ranger Coffman testified:

Q. Counsel asked you about how many different statements that Robert Carter has given you or the opportunities that you had to interview him and I think you indicated what, quite a few?

A. Yes, sir.

Q. All right. In how many of those statements did he actually implicate Anthony Graves?

[Objections by defense counsel overruled]

A. He implicated him in **all but one**.

Q. All right sir, and that one was which one?

A. That was the grand jury testimony.

Coffman Trial Testimony, Volume 38, p. 3790, l. 15 to p. 3791 l. 3 (Exhibit 17 attached hereto).

It is no wonder that the Fifth Circuit set aside Mr. Graves' conviction in light of Ranger Coffman's perjury.

Now that Mr. Graves' fraudulently procured conviction has been set aside, the State is holding him on \$1 million bail, and seeks to justify that detention by submitting hearsay

statements from perjurers Carter and Coffman, as well as several witnesses who the State did not deem credible enough to present at the first trial.

Generally hearsay is admissible at bail hearing. Obviously the reason for this rule is to allow the state time to develop its case and to present testimony and evidence in admissible form at the trial on the merits. The idea is that witnesses' hearsay statements will ripen into admissible trial testimony.

With respect to Carter, that is most emphatically not the case. He has been executed and his trial testimony, presented in violation of Brady as well as perjured, is inadmissible on retrial. *Cook v. State*, 940 S.W.2d 623, 627-628 (Tex.Crim.App. 1997) (“we are convinced that Hoehn’s unavailability for any retrial, given the Supreme Court’s holdings in *Brady*, *Moore*, *Kyles* and *Bagley*, would bar use of his testimony from appellant’s prior trials or any statements he may have given concerning this case at any such retrial. Clearly, any testimony or statements of Hoehn are tainted by the State’s prior misconduct, which cannot now be corrected by cross-examination or other means and fundamental fairness and due process forbid their use at any retrial of appellant.”). The Fifth Circuit stated that “the case against Graves rests almost entirely on Carter’s testimony” *Graves v. Dretke*, 442 F.3d 334, 344 (5<sup>th</sup> Cir. 2006), and further found that the testimony of county employees, Beal and Eldridge, was extremely thin evidence in light of the cross examination. *Id* at 340. Yet it is this dubious evidence on which the State now attempts to hold Graves on \$1 million bail.

While hearsay evidence is generally admissible at a bail hearing, it is not admissible to show probable cause to detain Mr. Graves pending further proceedings. *Garcia v. State*, 775 S.W.2d 879 (Tex.App.—San Antonio 1989); *Ex. Parte Hebert*, 579 S.W.2d 486 (Tex.Crim.App.

1979); and *Ex Parte Williams*, 587 S.W.2d 391 (Tex.Crim.App.—1979). Stripped of hearsay, the State really has no evidence whatsoever to hold Mr. Graves.

**Specific Objections**

1. Mr. Graves objects to the testimony of Ranger Coffman, at the following pages and lines for the reasons stated above:

Page	Line	to	Page	Line
72	12		73	6

2. Mr. Graves objects to the testimony of Ranger Coffman, at the following pages and lines for the reasons stated above, and also because Ranger Coffman is repeating allegedly “hypnotically enhanced” hearsay statements of Mildred Bracewell, which was never offered at Mr. Graves’ trial, and which is not shown to meet the standards for admission of hypnotically enhanced testimony set forth in *Zani v. State*, 758 S.W.2d 233, 243-244 (Tex.Cr.App. 1988)(State must show by clear and convincing evidence that the testimony is trustworthy. Factors include: “the level of training in the clinical uses and forensic applications of hypnosis by the person performing the hypnosis; the hypnotist’s independence from law enforcement investigators, prosecution, and defense; the existence of a record of any information given or known by the hypnotist concerning the case prior to the hypnosis session; the creation of recordings of all contacts between the hypnotist and the subject; the presence of persons other than the hypnotist and the subject during any phase of the hypnosis session, as well as the location of the session; the appropriateness of the induction and memory retrieval techniques used; the appropriateness of using hypnosis for the kind of memory loss involved; the existence of any evidence to corroborate the hypnotically-enhanced testimony; the presence or absence of overt or subtle cuing or suggestion of answers during the hypnotic session).

Page	Line	to	Page	Line
74	6		78	12

Remarkably, the State at Mr. Graves' first trial did not disclose on direct to Judge Towslee that Ranger Coffman was referring to statements by Ms. Bracewell that had been hypnotically induced, but that fact was shown during cross examination at page 92, l. 10 to page 107, l. 5 and Ranger Coffman's report, Defendant's Ex. 4, paragraphs 27-28. Additionally Ms. Bracewell's alleged hypnotically induced identification of Mr. Graves in a lineup contradicts her own statement to Ranger Coffman before hypnosis in which she said that one black male who bought gasoline at her store was 18 to 22 years old, 5'11" tall with an "oblong" face and the other was younger than 18 to 22, 6' tall and skinny—descriptions that did not fit either Carter or Graves. (Coffman Report, paragraphs 23-24, 109-111)(Graves was 26 years old, 5'8" tall with a round face at the time of his arrest, see Exhibit 5 attached, and Carter was 26 years old, 5'6" tall with a thin face). Even after the hypnosis the police drawing created under Ms. Bracewell's direction looks nothing like Mr. Graves. (See Exhibit 13 attached hereto). The Court should also note that Mr. Bracewell, who also claimed to be present for one of the gasoline purchases and who was also hypnotized, was unable to identify either Graves or Carter in a lineup. (Coffman Report, paragraphs 25-26, 111).

3. Mr. Graves objects to Ranger Coffman's testimony about statements made by Sherry Stifflemire, in which she claimed to have overheard conversations on the jail intercom system, for the reasons stated above and because even Ranger Coffman admits that Ms. Stifflemire was unable to authenticate the alleged statements as those of Mr. Graves, page 135, l. 6 to page 135, l. 13, and any statements by Mr. Carter would be inadmissible for the reasons stated above.

Page	Line	to	Page	Line
76	16		83	25

4. Mr. Graves objects to the following testimony of Ranger Coffman about statements made by Deputy Ronnie Beal, for the reason that at page 169, line 3 to page 169, line 16 and page 170, line 3 to page 170, line 6 of the October 1992 bond hearing transcript, Deputy Beal admits that he is unable to authenticate the alleged statements as those of Mr. Graves, and any statements by Mr. Carter would be inadmissible for the reasons stated above.

Page	Line	to	Page	Line
84	1		84	19

5. Mr. Graves objects to the following testimony of Ranger Coffman about statements made by John Bullard, an inmate, for the reason that there is no showing of any foundation or authentication by Ranger Coffman to establish that John Bullard had the opportunity to overhear Mr. Graves:

Page	Line	to	Page	Line
84	20		85	3

The Court should also note that Mr. Bullard's report of what Mr. Graves allegedly said is not incriminating, and that Mr. Bullard, who is a self-admitted paranoid schizophrenic, has since admitted that he made the whole story up. (See Exhibit 14 attached hereto).

6. Mr. Graves objects to the following testimony of Deputy Ronnie Beal, for the reason that at page 169, line 3 to page 169, line 16 and page 170, line 3 to page 170, line 6 of the October 1992 bond hearing transcript, Deputy Beal admits that he is unable to authenticate the alleged statements as those of Mr. Graves, and any statements by Mr. Carter would be inadmissible for the reasons stated above.

Page	Line	to	Page	Line
149	4		149	21
169	22		170	19

7. Mr. Graves objects to the following testimony of jailer Shawn Eldridge for the reasons stated above, and also on the basis of hearsay, and lack of any foundation as to how jailer Eldridge would be able to identify and distinguish the voice of Anthony Graves from the voice of Robert Carter, in that Carter was supposedly questioning Graves, and thus if Graves could hear Carter and respond to him, Carter's voice must also have been audible on the intercom system.

Page	Line	to	Page	Line
215	9		215	21

The Court should note that Eldridge's statement of what Graves supposedly said makes no sense, because Carter would have no need to ask Graves if Graves committed the murders if Carter, as everyone agrees, himself committed the murders. Also Eldridge's testimony, in which he says he was alone in the jail with Marque Jones, completely contradicts the statements of Beal, Stifflemire, and Robertson about who was present at the jail and overheard the alleged statements.

8. Mr. Graves objects to State's exhibit 13, which is the recorded statement of Robert Earl Carter, for the reasons stated above, and relies upon *Graves v. Dretke*, 442 F.3d 334 (5<sup>th</sup> Cir. 2006) and *Cook v. State*, 940 S.W.2d 623, 627-628 (Tex.Crim.App. 1997), which require exclusion of Carter's statements.

9. Mr. Graves objects to Defendant's exhibit 4, which is apparently a composite of all the various law enforcement agency reports, only to the extent it includes the report of Ranger Coffman, for the reasons stated above. Mr. Graves specifically objects to paragraphs 21-28,

109-111, 127-128 (regarding the Bracewells) for the reasons stated in specific objection no. 2 above. Mr. Graves specifically objects to paragraphs 83-93 (regarding Carter's implication of Graves) for the reasons stated in specific objection no. 1 above. Mr. Graves specifically objects to paragraphs 133-136, (regarding Marque Jones) because Ms. Jones did not testify at the first trial, the State denies knowing her location, and thus there is no reason to believe she will be present or available for a trial. Moreover, Ms. Jones is unable to authenticate the voice she heard as Graves, and her testimony directly contradicts the testimony of Shawn Eldridge, in that Ms. Jones says the events in question occurred on August 24 and Mr. Eldridge says the events occurred on August 25. Mr. Graves specifically objects to paragraphs 137-138 (regarding Stifflemire) for the reasons stated in specific objection no. 3 above. Mr. Graves specifically objects to paragraphs 139-140 (regarding Deputy Beal) for the reasons stated in specific objection no. 4 above. Mr. Graves specifically objects to paragraphs 141-142 (regarding John Robertson) for the reasons above and additionally because Mr. Robertson is deceased, and a *Brady v. Maryland* violation was committed regarding his trial testimony because the fact that he was under indictment and personally owed prosecutor Sebesta money at the time he testified was not disclosed to defense counsel. (Exhibit 15 attached hereto). Moreover, Mr. Robertson's testimony directly contradicts the testimony of Eldridge and Beal and the statements of Stifflemire and Jones in that Mr. Robertson says he was alone with Deputy Meads when the statements were made, yet all the other alleged eavesdroppers claim they also were present, but they don't remember Eldridge being present. Mr. Graves specifically objects to paragraphs 143-148 (regarding Sally Hubert) for the reasons stated above, because she never testified at trial, and because no foundation is laid for how she knows any of her scandalous statements, making them nothing more than her own insane ramblings and speculations.

**Defendant's Exhibits Offered in Rebuttal to the State's  
Offer of the October 7, 1992 Bond Hearing Transcript and Exhibits**

Mr. Graves offers the following attached exhibits in evidence in rebuttal to the State's offer of the October 7, 1992 Bond Hearing Transcript and Exhibits:

11. *Graves v. Dretke*, 442 F.3d 334, 341 (5<sup>th</sup> Cir. 2006).
12. Police reports describing Graves and Carter at or near the time of arrest.
13. Mildred Bracewell's hypnotically induced and directed police artist drawing of person who purchased gasoline.
14. Statement of John Bullard.
15. Indictment of John Robertson and Statement of Charles Sebesta that Robertson owed him money.

**Defendant's Exhibits Conditionally Offered in Rebuttal to the  
State's Offer of the October 7, 1992 Bond Hearing Transcript and Exhibits**

If the Court admits any statement of Robert Carter, Mr. Graves offers the following attached exhibits in evidence in rebuttal to the State's offer of the October 7, 1992 Bond Hearing Transcript and Exhibits:

16. Transcript, November 30, 2006 Hearing, p. 49, l. 21 to p. 50, l. 19.
17. Coffman Trial Testimony, Volume 38, p. 3790, l. 15 to p. 3791 l. 3.
18. Grand Jury Testimony of Robert Carter 8-26-92.
19. Statement of Carter on eve of his testimony at Graves trial as reported in *Graves v. Dretke*, 442 F.3d 334 (5<sup>th</sup> Cir. 2006).
20. Affidavit of Carter dated June 30, 1997.
21. VHS Recorded Statement of Carter dated June 30, 1997 (8 minutes).
22. Letters from Carter dated January 14, 1998.

23. Carter recorded statement dated June 19, 1998.
24. Carter's dying declaration dated May 31, 2000.

Respectfully submitted,

**MULLIN HOARD & BROWN, L.L.P.**

David Mullin, TSB 14651600

SDTX # 15981

Brad McCall, TSB 24037055

Of Counsel

500 South Taylor, Suite 800

Amarillo, TX 79101

Telephone: (806) 372-5050

Facsimile: (806) 372-5086

Jeff Blackburn, TSB 02385400

718 W. 16<sup>th</sup> Avenue

Amarillo, TX 79101

Telephone: (806) 371-8333

Facsimile: (806) 350-7716

Professor Nicole Casarez, TSB 02952100

University of St. Thomas

3800 Montrose Blvd.

Houston, TX 77006

Telephone: (713) 525-3578

Facsimile: (713) 284-5540



---

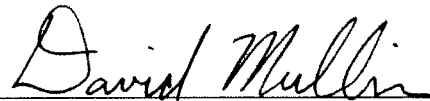
Of Counsel

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by first class mail, return receipt requested on March 20<sup>th</sup>, 2007 to:

Patrick K. Batchelor, Esq.  
P.O. Box 521  
Corsicana, TX 75151

Julie A. Stone, Esq.  
Assistant Attorney General  
State of Texas Office of Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548



---

David Mullin

J:\05237\0523700024A.doc

## EXHIBIT INDEX

<i>Graves V. Dretke</i> , 442 F.3d 334, 341 (5 <sup>th</sup> Cir. 2006).	Exhibit No. 11
Police reports describing Graves and Carter at the time of arrest.	Exhibit No. 12
Mildred Bracewell's hypnotically induced and directed police artist drawing of person who purchased gasoline.	Exhibit No. 13
Statement of John Bullard.	Exhibit No. 14
Indictment of John Robertson and Statement of Charles Sebesta that Robertson owed Sebesta money.	Exhibit No. 15
Transcript, November 30, 2006 Hearing, pp. 49, 1. 21 to 50, 1. 19.	Exhibit No. 16
Coffman Trial Testimony, Vol. 38, pp. 3790, 1. 15 to 3791 1. 3.	Exhibit No. 17
Grand Jury Testimony of Robert Carter 8-26-92.	Exhibit No. 18
Statement of Carter on eve of his testimony at Graves' trial as reported in <i>Graves v. Dretke</i> , 442 F.3d 334, 341 (5 <sup>th</sup> Cir. 2006).	Exhibit No. 19
Affidavit of Carter dated January 30, 1997.	Exhibit No. 20
VHS video statement of Carter dated June 30, 1997.	Exhibit No. 21
Letters from Carter dated January 14, 1998.	Exhibit No. 22
Carter recorded statement dated June 19, 1998.	Exhibit No. 23
Carter's dying declaration dated May 31, 2000.	Exhibit No. 24