

CAUSE NO. 8701

RODNEY REED	§	
	§	IN THE DISTRICT COURT
	§	
	§	
vs.	§	21ST JUDICIAL DISTRICT
	§	
	§	
	§	OF BASTROP, TEXAS
STATE OF TEXAS	§	
	§	
	§	

Motion For Withdrawal of Execution Date

To the Honorable District Court Judge:

Rodney Reed files this motion requesting a withdrawal of his execution date, currently scheduled for November 20, 2019.¹ In recent weeks, two witnesses who knew the victim’s fiancé, Jimmy Fennell, at the time of the murder have come forward with information which both supplements the already substantial evidence of innocence and establishes a violation of Due Process under *Brady v. Maryland*. A withdrawal of the impending execution date is required to allow for further investigation of this newly discovered evidence essential to the filing of an application for writ of habeas corpus pursuant to Article 11.071 § 5 of the Texas

¹ This motion is filed subject to Mr. Reed’s objection that the order setting his execution is void because the 2014 assignment of Retired Harris County District Judge Doug Shaver had lapsed upon the CCA’s issuance of its June 26, 2019 Final Judgment denying Mr. Reed’s habeas application. There is no apparent impediment to this case being heard by the elected 21st District Court Judge in Bastrop County, who does not require a special assignment to consider matters filed in his court.

Code of Criminal Procedure. *See* Tex. Crim. Proc. Code Ann. § 43.141 (d)(1) (withdrawal of execution date permitted if additional proceedings necessary on subsequent habeas application); *cf* *McFarland v. Scott*, 512 U.S. 849, 859 (1994) (federal court has jurisdiction to stay execution to ensure meaningful presentation of anticipated habeas petition).

A. Newly Discovered Evidence Implicating Fennell.

New evidence has emerged since the Court of Criminal Appeals denied Mr. Reed's most recent state habeas petition on June 26, 2019—in fact, since the setting of Mr. Reed's latest execution date. This newly discovered evidence meaningfully inculpatates Ms. Stites's fiancé, Jimmy Fennell, in her murder. The new evidence forming the basis of the petition includes testimony from: (1) an insurance salesperson that Fennell threatened to kill Ms. Stites while applying for life insurance; and (2) Jim Clampit, a Deputy in the Lee County Sheriff's Office at the time of the murder, that Fennell made an alarming and inculpatory statement at Stites's funeral directed towards Ms. Stites's body. See Exhibit 1 (Affidavit of Insurance Salesperson); Exhibit 2 (Affidavit of Jim Clampit). Other witnesses have also come forward and are being actively investigated. In the coming weeks, Mr. Reed will file a subsequent writ of habeas corpus pursuant to Article 11.071 §5 (a), seeking habeas relief in light of this new evidence. This is a necessary proceeding under Art. 43.141(d)(1).

This evidence presents new issues of fact that could not have been discovered or presented in any of Mr. Reed's previous pleadings and also supports a showing of actual innocence in compliance with 11.071§5 (a)(1)&(2).

1. Fennell Threatened Ms. Stites In Front of Insurance Salesperson.

The first piece of new evidence at issue is the testimony of a local insurance salesperson who was familiar with Fennell and witnessed him threaten to kill Stacey Stites.² See Exhibit 1 (Affidavit of Insurance Salesperson). The salesperson describes how the salesperson came to know Fennell and Stites and how the two applied for life insurance together in November 1995. See Exhibit 1 at 1-2. This transaction is confirmed by a contemporaneous record from the insurance company. Exhibit 1 at Ex.1.

In describing the interaction, the salesperson recounted that, while filling out her application, Stites remarked "I really don't know why I need life insurance since I'm so young." Exhibit 1 at 2. Fennell then replied, "If I ever catch you messing around on me, I will kill you and no one will ever know it was me that killed you." *Id.* The salesperson did not take this as a joke:

I remember it well because of the tone of voice that he used. It was not presented as a joke. That concerned me and still concerns me

² Information identifying this witness has been redacted to address the witness's expressed safety concerns in light of Fennell's recent release from prison after completing his ten-year sentence. However, counsel for the State knows the identity of the witness and their investigators have interviewed the witness. Unredacted copies of identifying documents will be filed under seal at the Court's request.

today, because I took it as a threat on her life. I found it harsh and abrasive, and I have never forgotten it.

Exhibit 1 at 2. The salesperson did not describe telling anyone about Fennell's threat to Stites until years after Reed's trial. Exhibit 1 at 3. The salesperson left a phone message intended for Reed's attorneys "sometime in the early 2000s," but explained "I was not sure I was calling the right place." *Id.* In light of the substantial forensic and other evidence implicating Fennell in the murder, this specific threat to kill Stites provides strong evidence of motive showing that Fennell murdered Stites because she was "messing around on him."

2. Fennell's Inculpatory Statement at Ms. Stites's Funeral

Jim Clampit, a former Texas Game Warden and Lee County Sheriff's Deputy, has also come forward in the past few weeks with evidence that Fennell made an inculpatory statement at Ms. Stites's funeral. See Exhibit 2 (Affidavit of Jim Clampit). Mr. Clampit worked in the Sheriff's Office at the time of Stites's murder and knew Fennell from working in law enforcement in Giddings, Texas. Mr. Clampit attended Ms. Stites's funeral with other law enforcement officers, and his name appears on the guest register from the service. See Exhibit 3 (Funeral Guest Register).

Recalling the funeral in detail, Mr. Clampit has now reported an alarming statement by Fennell, which he directed towards Ms. Stites's body:

I recall that at the viewing services, Ms. Stites's body was inside of a casket in a small viewing room. Her body was dressed in a white dress which looked like a wedding dress. I distinctly remember standing in the doorway to the viewing room next to Jimmy Fennell. Jimmy was looking at Ms. Stites. At that moment, Jimmy said something that I will never forget. Jimmy said something along the lines of, "You got what you deserved." Jimmy was directing his comment at Ms. Stites's body. I was completely shocked and floored by what Jimmy said. It did not strike me as something a grieving partner would say to their murdered fiancé.

Exhibit 2 at 2. Even though he was an experienced lawman with an agency that participated in the murder investigation,³ Mr. Clampit only recently discussed what he heard from Fennell:

Over the years, I have often thought about what Jimmy said at Ms. Stites's services. I am still shocked by it. Recently, after reading about Rodney Reed's case in the newspaper, I started thinking about what Jimmy said more and more. I told a couple friends and my wife about what I heard Jimmy say. The more I thought about it, the more I knew that I would not be able to live with myself if I did not come forward.

Id. Mr. Clampit's statement only became available following the setting of Mr. Reed's current execution date. The factual issue of Mr. Reed's innocence to be raised in his forthcoming habeas petition could not have been included in a previous filing because this evidence was known only to Mr. Clampit at that time.

B. Withdrawal of the Execution Date is Necessary.

The currently scheduled execution date was requested by the Bastrop County District Attorney without consultation with Mr. Reed's counsel and on an accelerated timeframe that interferes with ordinary federal review of Mr. Reed's

³ See Exhibit 2 at 3.

claims. The newly discovered evidence described above will require additional investigation and the preparation of a new application for writ of habeas corpus which properly raises newly available innocence and due process claims in the context of a lengthy trial and voluminous post-conviction record. These claims cannot be properly investigated and presented while undersigned counsel is conducting stay litigation in various proceedings in the Federal District Court, Fifth Circuit Court of Appeals, and United States Supreme Court and simultaneously advocating for executive clemency. Withdrawal of the execution date is necessary so that this new evidence may be thoroughly investigated and properly presented to the Texas courts in an orderly fashion. Accordingly, Mr. Reed respectfully asks that this Court withdraw the currently scheduled execution date pending the presentation and resolution of claims relating to the newly discovered evidence described above.⁴

Respectfully submitted,

Dated: October 4, 2019

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⁴ In the alternative, and at a minimum, Mr. Reed respectfully requests that his execution date be postponed no less than 120 days so that these substantial matters can be presented in a manner that is not disruptive to counsel and the judiciary.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the District Clerk using the Texas Online eFiling for courts system and served all counsel of record by electronic service or United States Postal Service, this 4th day of October, 2019 on the following:

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