

**IN THE DISTRICT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA**

THE STATE OF OKLAHOMA,

Plaintiff,

Vs.

Case No. CF-2007-3829

**DONALD KRUSHAWN JORDAN,
Defendant.**

Motion For Leave to Amend

Comes now Donald Jordan by and through his attorney of record and request that this Court grant counsel the right to amend Mr. Jordan's pro se application for post-conviction relief. In support of this motion counsel for Mr. Jordan shows the court the following:

PROCEDURAL BACKGROUND

Mr. Jordan was convicted of trafficking in cocaine at a jury trial conducted in front of the Honorable Jefferson Sellers. On June 10, 2008 Mr. Jordan was sentenced to twenty-five years in prison. Mr. Jordan appealed his conviction to the Oklahoma Court of Criminal Appeals. On August 18, 2009 Mr. Jordan's conviction was affirmed by the Oklahoma Court of Criminal Appeals.

On May 4, 2010 Mr. Jordan filed a pro se application for post-conviction relief. In the May 4, 2010 filing Mr. Jordan raised the following two propositions:

(Proposition One)

*BASED UPON NEWLY DISCOVERED EVIDENCE OF POSSIBLE ALLEGED POLICE
CORRUPTION BY DETECTIVE JEFF HENDERSON, PETITIONER HAS*

ESTABLISHED "ACTUAL AND FACTUAL INNOCENCE", WHICH WOULD REQUIRE REVERSAL OF THE PETITIONER'S CONVICTION, AND; PETITIONER'S CLAIMS ARE NOT PROCEDURALLY DEFAULT.

(Proposition Two)

PETITIONER'S TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO BRING FORTH THAT EVIDENCE OF INNOCENCE AT TRIAL

Undersigned counsel has been contacted Mr. Jordan and his family numerous times concerning the possibility of counsel representing Mr. Jordan. Mr. Jordan and his family have been without the funds to hire an attorney to represent Mr. Jordan in this matter. Undersigned counsel has agreed to represent Mr. Jordan on a *pro bono* basis because of the importance of the issues presented.

JUDICIAL ECONOMY FAVORS AMENDING THE PETITION

Mr. Jordan's application for post-conviction relief is poorly written. Mr. Jordan raised the issue of the ongoing Federal Grand Jury investigation and the corruption investigation of Officer Henderson as it relates to his conviction. However, Mr. Jordan framed the issue poorly.

In addition to framing the issue poorly there have been recent developments that have occurred since Mr. Jordan drafted and signed (April 28, 2010) and filed (May 4, 2010) the application. Counsel believes that these recent developments would give Mr. Jordan the right to file a successive application for post-conviction relief.

However, since there is already an application for post-conviction relief on file counsel believes that judicial economy will be served by simply allowing counsel for Mr. Jordan the opportunity to amend his application for post-conviction relief.

Information Known to Counsel Regarding The Ongoing Investigation

On March 30, 2010 in the District Court in and for Tulsa County in the case styled *State of Oklahoma v. Fred Allen Shields* (CF-2008-1713) there was a Motion to Dismiss filed. Attached to that Motion to Dismiss was a motion filed by United States Attorney Jane Duke in Tenth Circuit Case *USA v. Larry Wayne Barnes, Sr. Case No. 08-5147*. (See attached Exhibit A) In that motion titled UNITED STATES OF AMERICA'S MOTION FOR: (1) REMAND TO DISTRICT COURT FOR FURTHER PROCEEDINGS; AND (2) ISSUANCE OF PROTECTIVE ORDER, US Attorney Jane Duke described how the United States has acquired evidence that former ATF Agent Brandon McFadden, Tulsa Police Officer Jeff Henderson and an individual named Ryan Logsdon committed perjury during the jury trial of Larry Barnes, Sr. and Larita Barnes in April of 2008.

In that motion (attached as exhibit A) US Attorney Jane Duke describes how Officer Jeff Henderson provided Ryan Logsdon with 3 ounces of methamphetamines and Officer Henderson stated "you just bought this from Larry and Larita Barnes." (See pg. 4, Exhibit A) The motion goes on to describe how Officer Henderson told Ryan Logsdon that "Larry and Larita Barnes were major drug dealers in the Tulsa area, but that law enforcement officers had been unable to make a prosecutable case against the Barnes." (See pg. 4, Exhibit A)

The motion further describes how Former Agent McFadden and Officer Henderson coached Ryan Logsdon to commit perjury during the Barnes jury trial and that former agent McFadden, Officer Henderson and Ryan Logsdon all testified falsely during the Barnes jury trial.

On April 7, 2010 former agent Brandon McFadden was indicted in Northern District of Oklahoma Case No. 10-CR-58-JHP. The above described incident is described as an overt act of the conspiracy in paragraph g page 8 of the McFadden indictment. (See Attached Exhibit B, McFadden Indictment) On page 8 paragraph g of the McFadden indictment, it is believed by counsel for Mr. Bailey, that officer Henderson is described as TPD Officer A.

In the McFadden indictment it is also alleged that in January of 2007 that former Agent McFadden and TPD Officer A " planted a quantity of marijuana in Individual I's garage and pretended to discover it while executing a search warrant on Individual I's residence." (See Exhibit B, McFadden Indictment pg. 6) In the McFadden indictment it is also alleged that former agent McFadden and TPD Officer A seized \$60,000 from an individual but only reported and turned in \$10, 127. (See Exhibit B, McFadden Indictment pg. 6-7)

In the McFadden indictment it is alleged that former agent McFadden and TPD Officer A sold an individual, 10 ounces of methamphetamine in February of 2007. (See Exhibit B, McFadden Indictment pg. 7)

On May 6, 2010 former Agent McFadden pled guilty to Count 1 of the indictment. During his guilty plea, former agent McFadden implicated Officer Henderson.

From January 7th of -- to May of 2008, I conspired with others, including Tulsa police officer, Jeff Henderson, to distribute methamphetamine in the Northern District of Oklahoma. During the time period, that I used the position as a special agent with ATF to further the drug conspiracy and abused my position as a special agent. During this time, myself and Henderson seized drugs and money which were kept for our own personal benefit, falsified investigative reports, and failed to document events, and obstruct justice through falsely testimony under oath and persuading other individuals to do the same. In 2007, myself and Henderson -- Officer Henderson seized methamphetamine from a Tulsa area drug dealer named Ryan Logsdon. Working together with one of Officer Henderson's cooperating witnesses, myself and Henderson sold the methamphetamine back to Ryan Logsdon during the transactions that occurred at the Tulsa Community College. Ryan Logsdon later became a co-conspirator in a drug conspiracy with McFadden and Henderson.

Also, in the spring of 2007, myself and Tulsa police officer, who was not Jeff Henderson, performed a traffic stop on an individual who later became a co-conspirator with myself. During the traffic stop, I and the other Tulsa police officer seized cash and methamphetamine from the individual which was kept for our own personal benefit.

On or about June the 12th, 2007, myself and other Tulsa police officers, one of who was Henderson, conducted a warrantless search at a residence in Tulsa. Discovered a large sum of cash. Myself, Henderson, and other officers kept almost \$10,000 of cash for their own personal benefit.

In May 12th of 2008, myself and other -- a Tulsa police officer make a traffic stop on two people. During the traffic stop, myself seized a quantity of methamphetamine which was delivered to Ryan Logsdon to distribute. The two individuals in possession of the methamphetamine were never charged with any drug offense.

Sometime in May of 2008, I provided cash to an individual who thought was conducting a law enforcement controlled buy for myself in effort to gain a downward departure in his pending federal case. Instead of being a law enforcement controlled buy, this transaction was -- was actually for my own personal benefit and I actually took the drugs to Ryan Logsdon and had Logsdon distribute the drugs.

On another occasion in 2008, I arranged for a drug transaction between Ryan Logsdon and an unidentified female in which the female was going to sell methamphetamine to Ryan Logsdon. During the transaction, I showed up in my capacity of a special agent with ATF, seized the drugs and did not arrest anyone. I later sold the drugs to Ryan Logsdon, in which in turn for him to distribute it.

In April of 2008, myself and Officer Henderson testified falsely in a criminal case in the Northern District of Oklahoma, the United States versus Larry Barnes and Larita Barnes. In the jury trial, McFadden and -- myself and Henderson also got Ryan Logsdon to testify falsely that he made a controlled buy from the Barnes on May the 8th of 2007, when, in fact, it did not happen. Both the Barnes were convicted on jury trial based on the false testimony of myself, Logsdon, and Henderson.

(See Attached Exhibit C, Transcript of McFadden Plea)

Not only is there substantial evidence concerning Officer Henderson's corruption involving former agent Brandon McFadden there is evidence of corruption that predates Officer Henderson's involvement with former agent McFadden.

On May 10, 2010 US Attorney Jane Duke filed a RESPONSE TO PETITION FOR RELIEF UNDER 28 U.S.C. § 2255 in Northern District Case *USA v. Bobby Wayne Haley*, Case No. 04-CR-127-TCK. (See Attached Exhibit D, Haley Motion) In that motion US

Attorney Duke described how the government has credible evidence that Officer Henderson committed perjury in a pre-trial hearing on the Bobby Wayne Haley case on April 7, 2005.

The motion and the supporting affidavit describe how "in an *ex parte* sealed hearing regarding the existence and identity of Henderson's purported confidential informant upon whom he relied in obtaining search warrants for the petitioner's properties" that officer Henderson committed perjury. In the Haley motion and the attached affidavit it also describes how Rochelle Martin testified falsely at the urging of Officer Henderson and Tulsa Police Officer Bill Yelton.

The full extent of officer Henderson's corruption may never be known, however, the Tulsa World reports that as of May 16, 2010 that a total of 10 criminal cases have been dismissed or overturned because of the ongoing corruption investigation. (See Attached Exhibit E, Tulsa World Article May 16, 2010) Those case are;

U.S. DISTRICT COURT CASES

- USA v. Larita Annette Barnes 07-cr-00135-CVE, freed from federal prison July 2.
- USA v. Larry Wayne Barnes Sr. 07-cr-00135-CVE : freed from federal prison July 2.
- USA v. Fred Allen Shields Jr. 08-CR-207-GKF: Convicted of drug trafficking in March 2009. Conviction dismissed Feb. 19, 2010.
- USA v. Demarco Deon Williams: 08-CR-21-CVE Convicted of drug charges in April 2008 and freed from federal prison April 30. Was serving two life sentences.
- USA v. Jamon Armin Pointer: 08-CR-74-TCK. Convicted in October 2008 of drug trafficking. Conviction dismissed April 9, 2010.
- *USA v. Bobby Wayne Haley*, Case No. 04-CR-127-TCK. Conviction overturned on may 21, 2010. (See attached Exhibit F, May 21, 2010 order vacating Mr. Haley's sentence)

TULSA COUNTY DISTRICT COURT CASES

- State v. Richard Miller: No. CF-2009-4323 Charged Sept. 10, 2009 with possession of a controlled drug. Case dismissed April 20, 2010.

- State v. Melanie L. Richardson: CF-2009-4905 Charged Oct. 14, 2009 with possession of a controlled drug with intent to distribute. Case dismissed April 9, 2010.
- State v. Seanta G. Sinclair: CF-2009-4905 Charged Oct. 14, 2009 with possession of a controlled drug with intent to distribute. Case dismissed April 9, 2010.
- State v. Rodney E. Titsworth: CF-2010-155 Charged Jan. 14, 2010 with possession of a controlled drug with intent to distribute. Charge dropped April 20, 2010.
- State v. Terry U. Perryman: CF-2010-155 Charged Jan. 14, 2010 with possession of a controlled drug with intent to distribute. Charge dropped April 20, 2010.

THE NEEDED AMENDMENT

Counsel request the opportunity to amend Mr. Jordan's application to frame the issue of the Henderson corruption in a clearer manner. As counsel sees the issue, the defect in Mr. Jordan's conviction is that the state of Oklahoma failed to disclose to Mr. Jordan *Brady* and *Giglio* information.

To obtain a new trial based on an alleged *Brady* violation, a defendant “must show that (1) the prosecution suppressed evidence, (2) the evidence was favorable to the defendant; and (3) the evidence was material.” *United States v. Torres*, 569 F.3d 1277, 1281 (10th Cir. 2009). Even if attorneys for the prosecution are unaware of the suppressed evidence, knowledge by police officers and agents of their own misconduct is imputed to the prosecution under *Brady*, when the agents or police officers were members of the prosecution team. *United States v. Buchanan*, 891 F.2d 1436, 1442 (10th Cir. 1989).

Accordingly, here, Henderson’s knowledge of his own misconduct (in the *Barnes*, the *Haley* cases and other instances described in the McFadden plea allocation) must be imputed to the government, even though counsel for the government was unaware of the information until long after trial.

Evidence that Henderson suborned perjury, planted evidence, and committed perjury in another case was undeniably favorable to Mr. Jordan. Officer Henderson testified at Mr. Jordan's trial that when he made entry into the home Mr. Jordan was located, that he witnessed Mr. Jordan with his hand inside a couch and that after the home was secure that Officer Henderson claims that he recovered drugs from inside that couch. (See Jury Trial Transcript Volume II, page 83-84)

HENDERSON "SEALED THE DEAL" FOR THE PROSECUTION

Thus, the only question remaining is whether the evidence of Henderson's misconduct was material. "Evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Torres*, 569 F.3d at 1282. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* (internal quotations and citations omitted).

Counsel believes that the evidence not turned over to the defense concerning Officer Henderson's corruption was highly material and that if the information would have been disclosed that Mr. Jordan would not have been convicted.

If there were in fact drugs present at 4950 N. Trenton Ave (before Officer Henderson arrived) there is a serious question about whether or not Donald Jordan had dominion and control of those drugs. However, Officer Henderson "sealed the deal" for the prosecution by testifying that he just so happened to witness Donald Jordan's hand stuck in the couch as the police were kicking in the door of 4950 N. Trenton Ave. (See Jury Trial Transcript Volume II, page 83-84) Officer Henderson testified that he later discovered drugs inside the couch about six inches down. (See Jury Trial Transcript Volume II, page 87)

Without Henderson's testimony the prosecution would not have been able to establish that Donald Jordan possessed the drugs in question. (If the drugs were not in fact planted by Officer Henderson himself.) It is counsel's understanding there was DNA recovered from the baggie that contained the drugs but, it is counsel's understanding that DNA was never compared to Mr. Jordan's DNA. Counsel will be requesting that the DNA be compared to Mr. Jordan to prove Mr. Jordan's actual innocence. Not only is Henderson's testimony convenient and questionable there was sworn testimony that contradicted Officer Henderson's claims.

DONALD JORDAN IS NO "JOHNNY COME LATELY"

A skeptic may wrongfully presume that Mr. Jordan is coming into court with a clever argument because his case just so happened to involve Officer Henderson. This is not a case where a defendant is coming back into court with a new theory to meet changing circumstance. Donald Jordan has been here for years.

During Mr. Jordan's trial Claudia Williamson, the home owner of 4950 N. Trenton Ave, testified that her son had been shot the night before and that she called Mr. Jordan and asked him to take her to the grocery store. (See Jury Trial Transcript Volume III, page 42) Ms. Williamson testified that Mr. Jordan was helping her put up groceries when he looked out the window and said there are a bunch of people in the yard. (See Jury Trial Transcript Volume III, page 43) Williamson testified that Mr. Jordan approached the door and that before he could reach the door the police opened the door, came inside the house and ordered everybody to the floor. (See Jury Trial Transcript Volume III, page 43) If Williamson's testimony is to be believed Officer Henderson is a liar and a perjurer.

THE CROSS-EXAMINATION THE JURY NEVER HEARD

“Evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Torres*, 569 F.3d at 1282. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* (internal quotations and citations omitted).

When considering whether or not the evidence that is know about Officer Henderson would have made a difference it may be helpful to consider the questions that the jury never heard. After considering the incredible potential for impeachment counsel believes that no reasonable jury would have believed the testimony of Officer Henderson.

Officer Henderson isn't it true that.....

- *....you provided Ryan Logsdon with 3 ounces of methamphetamines and told him that "you just bought this from Larry and Larita Barnes."*
- *... you told Ryan Logsdon that "Larry and Larita Barnes were major drug dealers in the Tulsa area, but that law enforcement officers had been unable to make a prosecutable case against the Barnes."*
- *...you coached Ryan Logsdon on how to commit perjury during the Barnes jury trial*
- *...you, former agent McFadden and Ryan Logsdon conspired to commit perjury during the Barnes trial.*
- *...that from January 7th of -- to May of 2008, you conspired with others, including Agent Brandon McFadden to distribute methamphetamine in the Northern District*

of Oklahoma.

- *...that you and Agent Brandon McFadden seized drugs and money which were kept for your own personal benefit, falsified investigative reports, and failed to document events, and obstructed justice through falsely testimony under oath and persuading other individuals to do the same.*
- *.... In 2007, you and Agent McFadden --seized methamphetamine from a Tulsa area drug dealer named Ryan Logsdon and you and Brandon McFadden sold the methamphetamine back to Ryan Logsdon during the transactions that occurred at the Tulsa Community College.*
- *....on April 7, 2005 that yourself and your fellow Tulsa Police Officer Bill Yelton encouraged Rochelle Martin to lie under oath and claim that she was a confidential informant for a search warrant issued for Bobby Haley.*
- *Officer Henderson isn't true that.....*

Of course Mr. Jordan's defense counsel would never have the opportunity to ask Officer Henderson such questions; because if such information would have been available to the defense, the government would have never put Officer Henderson on the stand. And since officer Henderson would have never taken the stand the defense would have never been able to call the rebuttal witnesses such as, former Agent Brandon McFadden, Ryan Logsdon, Larry Barnes, Larita Barnes, or Rochelle Martin.

However, without the convenient and questionable testimony of Officer Henderson the state would have not been able to establish dominion and control of the drugs Mr. Jordan was

convicted of possessing. This of course presumes that Officer Henderson did not plant the drugs himself. If given an evidentiary hearing counsel will be able to introduce evidence concerning the motive for officer Henderson to plant drugs at 4950 N. Trenton Ave.

CONCLUSION

Counsel has notified the state of his intention to file this motion so that the attorney for the state did not waste his time responding to an application that may be amended. Counsel request an opportunity to amend Mr. Jordan's application and properly frame the issues in the case. Counsel request permission not only to amend the application to include the issue described above, but to include other issues Mr. Jordan may have missed.

Respectfully Submitted,

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CERTIFICATE OF DELIVERY

I hear by certify that a copy of the foregoing instrument was mailed or delivered on May 28, 2010 to the office of the following:

Jimmy Dunn
Tulsa County DAs Office
500 S Denver Ave
Tulsa, OK 74103

Kevin Adams