APPENDIX

APPENDIX A

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 31, 2022
Lyle W. Cayce
Clerk

No. 20-50331

TROY MANSFIELD,

Plaintiff-Appellant

versus

WILLIAMSON COUNTY,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC 1:18-CV-49

Before HIGGINBOTHAM, COSTA, and OLDHAM, *Circuit Judges*. PATRICK E. HIGGINBOTHAM, *Circuit Judge*:

Troy Mansfield brings this suit under 42 U.S.C. § 1983 against Williamson County, Texas, alleging that county prosecutors denied him due process secured by the Fourteenth Amendment by lying to his counsel during plea negotiations, misconduct assertedly caused by the County's "closed-file" policy. The magistrate judge granted summary judgment to

the County, and Mansfield appealed to this Court.[1] We affirm.

I.

On August 13, 1992, a state grand jury in Williamson County indicted Mansfield on three counts of sexual misconduct with a child. On October 26, 1992, Mansfield's defense counsel filed a motion asking the state trial court to order the disclosure of all exculpatory evidence prior to trial, consistent with *Brady v. Maryland*.[2] On May 17, 1993, the state court granted the *Brady* motion, and the next day prosecutors interviewed the victim and her mother. On June 23, 1993, a prosecutor noted in the case file that during the May 18 interview the victim made statements contradicting her prior identification of Mansfield. Specifically, prosecutors noted that the victim would "be difficult to sponsor in Court. She told me she does not remember what happened! . . . Spent 2 hours [with] this witness — will be nigh impossible to sponsor her in court. At one point, told me nothing happened, then says little boy might have done it ([Mansfield]'s son)."

The prosecutors did not tell Mansfield and his counsel about the victim's contradictory statements during plea bargaining. Instead, four days before trial, facing the trigger of an extant *Brady* order, the prosecutors stated that the victim would be a strong witness at trial and that they had a doctor's statement and physical evidence corroborating the victim's identification of Mansfield. They did not. The

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[1] This case comes to us from the ruling of a magistrate judge as the parties consented to have the case referred to a magistrate judge pursuant to 28 U.S.C. § 636(c).

[2] 373 U.S. 83 (1963).

prosecutors added that the plea offer was revocable, and that Mansfield faced a sentence ranging from 99 years to life if convicted of all the charges of his indictment. With this Hobson's choice, Mansfield accepted the offer, pleading guilty to the lesser charge of indecency with a child four days prior to his scheduled criminal trial in 1993, and spent 120 days in county jail, ten years on probation, and registered as a sex offender.[3]

Mansfield later learned of the prosecutors' false statements. In 2016, a state habeas proceeding vacated his conviction, holding that the prosecutors violated his due process rights by lying to avoid disclosing exculpatory evidence—evidence which they were under court order to produce four days later.[4]

II.

Mansfield then sued Williamson County in federal court under 42 U.S.C. § 1983, alleging that the closed-file policy implemented by the Williamson County District Attorney, Ken Anderson, led prosecutors to violate his constitutional rights. In his complaint, Mansfield alleged that both his *Brady* and due process claims were enabled by the county's closed-file policy which prevented his attorneys from examining evidence, leading him to involuntarily plead guilty. The County moved for summary judgment, arguing that an intervening decision by this Court barred Mansfield's suit and that no county policy supported a

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[3] One of the prosecutors later characterized the punishment recommendation as "unusually light."

[4] *Ex parte Mansfield*, No. 92-435-K277A (277th Dist. Ct., Williamson County, Tex. Jan. 19, 2016).

finding of county liability.[5] The magistrate judge granted the County's motion and Mansfield timely appealed.

III.

Mansfield's argument for county liability goes as follows. In 1993, the District Attorney's office was relatively small, with only six prosecutors. The prosecutors had a reputation for not trying cases they could lose. Anderson, as the District Attorney, set the closed-file policy. Closed-file policies enable prosecutors to withhold information until trial when the obligations of *Brady* are triggered. Alternatively, under open-file policies prosecutors disclose relevant information to defense attorneys with only limited exceptions. District Attorneys can also decline to adopt either policy, instead leaving the timing and scope of disclosure to the individual prosecutor's discretion.

Mansfield then points to Anderson's past prosecutorial misconduct. As a prosecutor, Anderson engaged in unethical conduct by suppressing exculpatory evidence during the 1987 trial of Michael Morton.[6] Morton spent nearly 25 years in prison before his conviction was vacated after the exculpatory evidence and Anderson's misconduct were discovered.[7] In 2013, Anderson was convicted of criminal contempt, for which he served jail time and surrendered his law

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[5] *Alvarez v. City of Brownsville*, 904 F.3d 382 (5th Cir. 2018) (en banc).

[6] *Morton v. State*, 761 S.W.2d 876 (Tex. App.—Austin 1988).

[7] *Ex parte Morton*, No. 76-663, 2011 WL 4827841 (Tex. Crim. App., Oct. 12, 2011). *See also Norwood v. State*, No. 03-13-00230-CR, 2014 WL 4058820 (Tex. App.—Austin 2014) (affirming the conviction of Christine Morton's actual killer).

license.[8] While Anderson was not one of the three prosecutors who directly worked on the Mansfield case, half of the prosecutors in the small office did. The current Williamson County District Attorney and one of prosecutors who worked on the Mansfield case each testified that Anderson, as the District Attorney, probably knew of the unusually light plea offer to Mansfield. This was the environment in which prosecutors, faced with a extant *Brady* order, lied to Mansfield and his counsel about the specific contents of a file that the prosecutors would have been compelled to disclose if the case went to trial.

IV.

We review *de novo* a grant of summary judgment.[9] Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." [10] "The moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of [his] case with respect to which [he] has the burden of proof."[11]

V.

For his § 1983 claim to succeed, Mansfield must show that a Williamson County policy directly caused a constitutional violation. Mansfield argues that the closed-file policy caused the prosecutors to violate his due process rights by lying about evidence they were

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[8] *In re Honorable Ken Anderson (A Court of Inquiry)*, No. 12-0420-K26 (26th Dist. Ct., Williamson County, Tex. Apr. 19, 2013).
[9] *Alvarez*, 904 F.3d at 389.
[10] Fed. R. Civ. P. 56(a).
[11] *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

under court order to disclose, which led to his involuntary guilty plea.

Under *Monell*, as counties are persons within the meaning of § 1983, they cannot be vicariously liable—that is a county must be the actor.[12] Mansfield needed to plead facts sufficient to show that an official county policy was the "moving force" behind his claimed constitutional violation, and that the policy was implemented with "deliberate indifference" to the known or obvious consequence that constitutional violations would result. [13] Mansfield's pleadings identified Anderson as the county policymaker and the closed-file policy as the official policy.

Where a plaintiff alleges that a municipality's policy caused its employee to deny the plaintiff's rights, "rigorous standards of culpability and causation must be applied to ensure that the municipality is not held liable solely for the actions of its employee."[14] The causal connection required for *Monell* liability is demanding. "Establishing a direct causal link between the [ ] policy and the constitutional deprivation is a high threshold of proof. This connection must be more than a mere 'but for' coupling between cause and effect."[15]

We need not here reach the issue of whether the prosecutor's actions violated *Brady* and Mansfield's due process rights. Even assuming that they did, Mansfield falls short of alleging either that the closed-

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[12] *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978).
[13] *Alvarez*, 904 F.3d at 389–90.
[14] *Bd. of Cty. Comm'rs of Bryan Cty., Okl. v. Brown*, 520 U.S. 397, 405 (1997).
[15] *M. D. by Stukenberg v. Abbott*, 907 F.3d 237, 253 (5th Cir. 2018) (internal quotations omitted).

file policy was the moving force behind the due process violation or a "pattern of injuries" suggesting that the closed-file policy caused prosecutors to lie in plea negotiations.[16] Mansfield offers only the misconduct of Anderson and another prosecutor who suppressed exculpatory evidence during the *Morton* trial five years before Mansfield's indictment.[17]

We cannot conclude that the closed-file policy caused the prosecutors to lie. Mansfield argues that the closed-file policy enabled the prosecutors to lie, but a system that fails to prevent lying is not necessarily one that causes lying. Mansfield thus failed to create a triable issue on the causal connection demanded by *Monell*.

Why the prosecutors chose to lie is elusive. One might infer that the culture within the small office, continuing from the days of *Morton*, or personal ambition led the prosecutors to secure a guilty plea at any cost in a high priority case involving a little girl as the victim. Mansfield urges that Anderson, taking a page from *Morton*, pressured his staff to obtain convictions—not dismiss cases after indictments. And, that the plea bargain was "unusually light" compared to the possible sentence attending a conviction at the very least suggests a determined effort to avoid trial and a likely acquittal. Regardless, our issue here is *Monell* liability and we cannot conclude that the closed-file policy was the moving force that caused the prosecutors to lie. Accepting that the closed-file policy enabled the prosecutors' lies, it does not necessarily follow that it caused their misconduct. The

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[16] *See Bryan Cty.*, 520 U.S. at 409.

[17] *See Ex parte Morton*, 2011 WL 4827841; Morton, 761 S.W.2d 876.

prosecutors' underlying motivations to lie and misrepresent exculpatory evidence aside, without a direct causal link between the closed-file policy and the alleged constitutional violation, the demands of *Monell* are not met.[18]

VI.

To the extent that Mansfield asks us to consider whether his *Brady* claim is foreclosed, we hold that it is foreclosed.

While *Brady* and its progeny necessitate that prosecutors disclose exculpatory evidence during trial, this Court's precedent has consistently held that *Brady* focuses on the integrity of trials and does not reach pre-trial guilty pleas.[19]

Mansfield concedes this Court, sitting en banc, recently affirmed this principle in *Alvarez*.[20] *Alvarez* and the earlier case of *United States v. Conroy* held that there is no constitutional right to exculpatory evidence during plea bargaining. Mansfield argues that these cases were wrongly decided and should be reconsidered as they conflict with decisions by our sister circuits. However this argument is foreclosed; three-judge panels in the Fifth Circuit abide by controlling precedent not overruled by the Supreme Court or an en banc sitting of this Court.[21]

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[18] *See, e.g., Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587–88 (1986); *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc).

[19] *See e.g. Matthew v. Johnson*, 201 F.3d 353, 361–62 (5th Cir. 2000); *United States v. Conroy*, 567 F.3d 174, 178 (5th Cir. 2009) (per curiam).

[20] 904 F.3d at 392.

[21] *Gahagan v. U.S. Citizenship & Immigr. Servs.*, 911 F.3d 298, 302 (5th Cir. 2018).

Consistent with *Alvarez*, we hold that Mansfield does not have a *Brady* claim for his pre-trial guilty plea. Thus, Mansfield failed to identify a violation of the Fourteenth Amendment to support his § 1983 claim.

VII.

We AFFIRM the magistrate judge's grant of summary judgment to Williamson County as there is no showing that a county policy was the moving force behind the constitutional violation and because Mansfield's argument is foreclosed by this Court's precedent.

We pause to note the severity of the allegations here and the prosecutorial misconduct in *Morton*.[22] While Texas passed the Michael Morton Act to address the misconduct and environments that closed-file policies enabled, it is ultimately up to prosecutors to abide the ethical standards their stations demand.[23] They are lawyers and will be held to their common oath and the ethical standard of bench and bar in their role—judge, prosecutor, or defense counsel. Loss of a law license is a large price to pay for their breach, but small compared to the price paid by Mansfield, Morton, and others.

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[22] *See Morton*, 761 S.W.2d 876.

[23] 2013 Tex. Sess. Law Serv. Ch. 49 (S.B. 1611). *See also* Due Process Protections Act, Pub. L. 116-182, 134 Stat. 894 (2020) (amending FED. R. CRIM. P. 5 to require the judge to issue an oral and written order to prosecution and defense counsel that confirms the disclosure obligation of the prosecutor under *Brady*).

Patrick E. Higginbotham, *Circuit Judge*, joined by Gregg Costa, *Circuit Judge*, concurring:

I write separately to accent the difficulties attending the *Brady* doctrine in its present form. [1] As the Supreme Court has observed, "[n]inety- seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas."[2] The reality is "that criminal justice today is for the most part a system of pleas, not a system of trials."[3] The law's toleration of the conduct of these prosecutors is to these eyes inexplicable.

While *Brady* and its progeny would have required the prosecutors to disclose exculpatory evidence to Mansfield at trial, this Court has consistently held that *Brady* focuses on the integrity of trials and does not reach pre-trial proceedings leading to guilty pleas. [4] Our en banc court recently affirmed this principle in *Alvarez v. City of Brownsville*.[5] *Alvarez* and our earlier case *United States v. Conroy* both held that there is no constitutional right to exculpatory evidence during plea bargaining.

However, the actions of the prosecutors here are distinguishable from *Alvarez*, where there was no indication the prosecutors ever possessed or knew of exculpatory evidence, as the police never presented it

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[1] *Brady v. Maryland*, 373 U.S. 83 (1963).
[2] *Missouri v. Frye*, 566 U.S. 134, 143 (2012).
[3] *Lafler v. Cooper*, 566 U.S. 156, 170 (2012).
[4] *See Matthew v. Johnson*, 201 F.3d 353, 361 (5th Cir. 2000); *United States v. Conroy*, 567 F.3d 174, 178 (5th Cir. 2009) (per curiam).
[5] 904 F.3d 382, 392 (5th Cir. 2018) (en banc).

to them.[6] Here, the prosecutors directly frustrated the protection *Brady* affords defendants. The prosecutors made notes in their file detailing exculpatory evidence, fully aware of their obligation to disclose should no plea deal materialize before trial. Under the shadow of the *Brady* order, the prosecutors sought to secure a plea and avoid disclosure at trial. In the state habeas proceeding, the State conceded that the prosecutors' lies, directly contradicted by documents they were under order to produce, denied Mansfield due process.[7] In my view, this shielding of exculpatory evidence violated *Brady* and denied the constitutional right to process it seeks to protect.

Limiting *Brady*'s reach to trial ignores the reality of the excesses of an unchecked adversary system. To guarantee due process in the modern criminal justice system, *Brady* must at least reach a prosecutor's intentional decision to withhold exculpatory evidence in pre-trial plea bargaining. The line between impeachment and exculpatory evidence may in concept be thin at the margins. Yet that line is often distinct as with an essential witness or physical facts such as DNA or fingerprints of another—not the accused—and in any event, genuine uncertainties may be answered by the default of produce. The point is that we cannot look away from uncertainties within the processing of ninety-seven percent of the federal

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[6] 904 F.3d at 388. *See also United Sates v. Avellino*, 136 F.3d 249, 255 (2d Cir. 1998) ("The *Brady* obligation extends only to material evidence [ ] that is known to the prosecutor.").

[7] *Ex parte Mansfield*, No. 92-435-K277A (277th Dist. Ct., Williamson County, Tex. Jan. 19, 2016).

criminal docket as Professor, now Judge, Stephanos Bibas has laid out.[8]

Only the Supreme Court can fully address this signal flaw in the jurisprudence of plea bargaining, a set that processes ninety-seven percent of the federal criminal docket. We must bring exculpatory evidence within the reach of *Brady* and refuse to sanction lying by prosecutors to avoid *Brady* obligations, at the least definitively resolve the acknowledged circuit split.[9]

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[8] *See* Stephanos Bibas, *Designing Plea Bargaining from the Ground up: Accuracy and Fairness without Trials as Backstops*, 57 Wm. & Mary L. Rev. 1055 (2016) ("It is even unclear whether defendants have a right to classic *Brady* exculpatory evidence before they plead guilty."). *See also Stephanos Bibas*, *Plea Bargaining outside the Shadow of Trial*, 117 Harv. L. Rev. 2464 (2004); Stephanos Bibas, *Regulating the Plea-Bargaining Market: From Caveat Emptor to Consumer Protection*, 99 Calif. L. Rev. 1117 (2011).

[9] "The First, Second, and Fourth Circuits also seem to have doubts about a defendant's constitutional entitlement to exculpatory *Brady* material before entering a guilty plea . . . The Seventh, Ninth, and Tenth Circuits, however, recognized the possible distinction noted by the Supreme Court [ ] between impeachment and exculpatory evidence in the guilty plea context." *Alvarez*, 904 F.3d at 392–93, *citing United States v. Mathur*, 624 F.3d 498, 506–07 (1st Cir. 2010); *Friedman v. Rehal*, 618 F.3d 142, 154 (2d Cir. 2010); *United States v. Moussaoui*, 591 F.3d 263, 285 (4th Cir. 2010); *McCann v. Mangialardi*, 337 F.3d 782, 788 (7th Cir. 2003); *United States v. Ohiri*, 133 F. App'x 555, 562 (10th Cir. 2005); *Smith v. Baldwin*, 510 F.3d 1127, 1148 (9th Cir. 2007); *Sanchez v. United States*, 50 F.3d 1448, 1454 (9th Cir. 1995). *See also Campbell v. Marshall*, 769 F.2d 314 (6th Cir. 1985) *and White v. United States*, 858 F.2d 416, 423 (8th Cir. 1988) (Decisions predating *United States v. Ruiz*, 536 U.S. 622 (2002), but which adopted a framework for determining when a defendant could challenge a guilty plea under *Brady*). For discussion of the evolution of this circuit split, *see* Michael Nasser Petegorsky, *Plea Bargaining in the Dark: The Duty to Disclose*

The cold reality is that the want of certitude shadows the federal criminal dockets across the country.

Gregg Costa, *Circuit Judge*, specially concurring:

The outcome of this case is yet another injustice resulting from our mistaken view that *Brady* does not require turning over exculpatory evidence before a guilty plea. *See Alvarez v. City of Brownsville*, 904 F.3d 382, 394 (5th Cir. 2018) (en banc). Troy Mansfield pleaded guilty to one of the most heinous crimes—sexual misconduct with a child—without knowing that the victim had told prosecutors that "nothing happened" with Mansfield. For the age-old question of why an innocent person might plead guilty, this case reflects a common answer: The benefit of pleading—180 days in jail plus probation versus the risk of a life sentence with a trial—was too great to pass up.

No other circuit limits *Brady* like we do. *See id.* at 411 (Costa, J., dissenting) (citing circuit decisions reading *Brady* to require the disclosure of exculpatory evidence before pleas); *id.* at 414 (noting that although some courts have questioned whether *United States v. Ruiz*, 536 U.S. 622 (2002), undermines cases recognizing a preplea disclosure requirement for exculpatory evidence, none have overruled their precedent). And state high courts addressing the issue read the federal due process right as requiring disclosure of exculpatory evidence at the plea stage. *See id.* at 406 (citing cases from five state high courts).

Exculpatory Brady Evidence During Plea Bargaining, 81 Fordham L. Rev. 3599 (2013).

Texas has long done so, *see Ex parte Lewis*, 587 S.W.2d 697, 701 (Tex. Crim. App. 1979), which enabled Mansfield's state habeas relief vacating his conviction. We stand alone.

I have previously explained why the consensus view of other courts is correct. Requiring disclosure of exculpatory evidence before a plea is consistent with *Brady*'s rationale, reflects that the Due Process Clause is not limited to trials (unlike many Sixth Amendment rights), and retains *Brady*'s vitality in a criminal justice system in which almost everyone pleads guilty. *See Alvarez*, 904 F.3d at 407–08 (Costa, J., dissenting).

Mansfield adds another point: One of the cases *Brady* relied on for its landmark ruling was a plea case. *See Wilde v. Wyoming*, 362 U.S. 607 (1960) (per curiam), *cited in Brady v. Maryland*, 373 U.S. 83, 87 (1963). *Wilde* involved the suppression of exculpatory evidence before the defendant pled guilty to murder. *See Wilde*, 362 U.S. at 607. In reviewing the state habeas proceeding, the Supreme Court remanded for a hearing on the claim that prosecutors had withheld "the testimony of two eyewitnesses to the alleged crime which would have exonerated the petitioner." *Id.* The Court needed a federal issue to make that ruling in a state proceeding, so it necessarily saw a due process right to exculpatory evidence. A few years later, *Brady* confirmed this. It cited *Wilde* immediately before pronouncing that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment." 373 U.S. at 87. *Brady*'s lineage thus further rejects carving guilty plea cases out of its protections.

To be sure, *Ruiz*'s later holding about impeachment evidence has created uncertainty about whether a pleading defendant has the right to exculpatory evidence. What is not debatable is the importance of this issue in a system of pleas rather than trials. And what is not tenable is affording defendants in many jurisdictions a constitutional right to exculpatory evidence before they are deprived of their liberty while those in this circuit do not enjoy the same protection. The split on this issue begs for resolution.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

TROY MANSFIELD,	§	
Plaintiff,	§	
V.	§	
	§	
WILLIAMSON COUNTY,	§	A-18-CV-49-ML
Defendant.	§	

ORDER

Before the court[1] are Williamson County's Motion for Summary Judgment (Dkt. #62), Second Motion for Summary Judgment (Dkt. #70), Motion to Exclude Testimony of David Sheppard (Dkt. #80), and all related briefing. Having considered the parties' written submissions, oral arguments, the pleadings, the relevant case law, as well as the entire case file, the undersigned **GRANTS** Williamson County's first Motion for Summary Judgment (Dkt. #62) and, finding that dispositive of all issues in this case, does not reach the remaining motions.

I. BACKGROUND

On August 13, 1992, Troy Mansfield was indicted on three counts of sexual abuse of a child, including at least one count of first degree felony Aggravated Sexual Assault of a Child, which carried a 5-99 year

[1] The parties have consented to proceed before a Magistrate Judge, and the case has been transferred to the undersigned's docket. Dkt. #44, #47.

prison sentence, and a count of second degree felony Indecency with a Child, which carried a much lower sentence. Dkt. #62-2 (Indictment); Dkt. #1 (Compl.) at ¶ 61. The inside front case jacket of the prosecutors' file in Mansfield's case contained handwritten notes concerning his case. Dkt. #77-3 (Prosecutors' Notes). Some of the notes are specifically dated; in other instances, it is less clear when the note was written. *Id.* The first relevant note states the "child's version to me differs from version to police (greatly differs)." This note may have been written as early as August 26, 1992, but was made before June 23, 1993. *Id.* On May 17, 1993,[2] the judge presiding in Mansfield's criminal case granted his motion to order "the prosecution disclose all exculpatory evidence which the prosecution may have in its possession." Dkt. #77-5 (Exculp. Evid. Order). Another note written on the case jacket states:

> Note: Home interviewed this victim + mother on 5/18/93—Victim will be difficult to sponsor in court. She told me she does not remember what happened! I suggest this case be disposed of w/out trial, since victim cannot testify. Her mother wants her to not have to go through it. . . . Spent two hours w/ this victim—will be nigh impossible to sponsor in court. At one point, told me

[2] The motion was filed in October 1992, and the proposed order's signature block includes space for the judge to write in the month and day with "1992" pre-printed for the year. Thus, the order reads that it was "Signed this 17 day of May, 1992," but all parties agree it was actually signed on May 17, 1993. Dkt. #77-5 (Exculp. Evid. Order).

> nothing happened, then says little boy might have done it (Λ's son).

Dkt. #77-3 (Prosecutors' Notes). Notes dated September 8, 1993 indicate a plea deal was reoffered to Mansfield with the understanding that the offer could soon be withdrawn. *Id.*

On September 13, 1993, four days before his criminal trial setting on his first and second degree felony charges—and not knowing that the child victim had provided inconsistent statements and even recanted her statements accusing him—Troy Mansfield pleaded guilty to second degree felony Indecency with a Child. Dkt. #1 (Compl.) at ¶¶ 2, 61, 62, 64; Dkt. #62-1 (Plea Agreement). He was sentenced to ten-years of probation, 120 days in the county jail as a condition of probation, and the requirement that he register as a sex offender while on probation. Dkt. #1 (Compl.) at ¶ 65; Dkt. #62-1 (Plea Agreement); Dkt. #62-3 (Criminal Judgment).

Nearly 23 years later, a state habeas court determined that Mansfield's due process rights were violated and his plea not voluntary. Dkt. #62-4 (Habeas Order). Specifically, the state habeas court found that the prosecutors' notes in the case indicated that the "victim did not remember what happened, denied anything happened and suggested 'the little boy,' meaning [Mansfield's] son, may 'have done it.'" *Id.* at ¶ 10. The state habeas court found credible Mansfield's defense counsel's affidavit that "he had filed multiple motions, and that no one from the District Attorney's office ever told him that the complaining witness had 'recanted the allegations against Mr. Mansfield.'" *Id.* at ¶¶ 9, 12.

The state habeas court found "these particular statements by the victim in this case, constitute the type of information that *Brady v. Maryland*, and its progeny requires the State to disclose" and Mansfield's due process rights were violated because he was not provided this information. *Id.* at ¶¶ 11-12. The state habeas court further found "the undisclosed information regarding the alleged victim [had] a 'direct nexus' to [Mansfield's] plea" and "failure to make the required disclosures did, in this particular set of facts, render [Mansfield's] plea involuntary." *Id.* at ¶ 18. Determining that Mansfield was entitled to relief on these grounds, the state habeas court refused to reach his claim that he was actually innocent. *Id.* at ¶¶ 20-22.

Mansfield brings this § 1983 action against Williamson County alleging that it maintained specific policies and practices during its criminal prosecutions that fraudulently deprived him of his liberty and caused him to plead guilty to a crime he did not commit. Dkt. #1 (Compl.) at ¶ 71. Specifically, Mansfield identified the following policies in his Complaint:

- Maintaining and implementing a closed file policy;
- Failing to disclose witness recantations/ statements indicating a defendant's innocence;
- Failing to follow Court orders concerning the disclosure of evidence;
- Failing to disclose exculpatory evidence to individuals facing criminal charges;
- Purposefully training, tolerating, and permitting prosecutors or investigators to conceal exculpatory evidence to circumvent their disclosure obligations;

- Tolerating and failing to discipline prosecutors or investigators for fraudulent behavior and for circumventing *Brady* and court orders mandating disclosure of exculpatory evidence and inadequate supervision; and
- Retaining prosecutors or investigators that conceal exculpatory evidence or fraudulently obtain guilty pleas.

Id. Much of Mansfield's Complaint, and Williamson County's Second Motion for Summary Judgment (Dkt. #70),[3] addresses Williamson County's alleged policies under then-District Attorney Ken Anderson. Anderson was held in criminal contempt and disbarred for his intentional withholding of exculpatory evidence in the murder trial of Michael Morton, resulting in Morton's wrongful conviction and 25 years spent in prison. Dkt. #77-23, #77-24, #77-25. Mansfield contends that under Anderson's tenure, the Williamson County District Attorney's Office regularly failed to disclose exculpatory information in violation of *Brady*, and such policies and practices led to Mansfield's wrongful conviction. Specifically, Mansfield alleges Anderson oversaw a "closed file policy," in which prosecutors only selectively relayed information in the case file to defense counsel, and a "see what you can get" policy, in which prosecutors were expected to extract a guilty plea from criminal defendants, and these policies allowed prosecutors to lie to criminal defendants and withhold exculpatory evidence leading to the likely outcome that innocent people, like Mansfield, would plead guilty or be convicted. Dkt. #77 at 3-4.

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[3] Williamson County's Second Motion for Summary Judgment, which the court does not reach, addresses whether Mansfield has sufficient evidence to prove Williamson County is liable under *Monell v. Dep't of Social Services*, 436 U.S. 658 (1978). Dkt. #70.

Williamson County's first Motion for Summary Judgment presents the legal question of whether Mansfield can establish a violation of his federal constitutional rights in light of *Alvarez v. City of Brownsville*, 904 F.3d 382 (5th Cir. 2018) (en banc), *cert. denied*, 139 S. Ct. 2690 (2019). Williamson County argues that under *Alvarez*, the *Brady* right to exculpatory evidence is a trial right that does not apply to plea bargains and thus Mansfield had no right to the child victim's later statements. Mansfield argues that *Alvarez* does not foreclose his claim because *Alvarez* is factually differently in that the failure to disclose exculpatory evidence in *Alvarez* was inadvertent whereas the disclosure in his case was intentional, Williamson County's reading of *Alvarez* is contrary to Supreme Court precedent, and his claim includes due process violations apart from *Brady/Alvarez* claims.[4] Thus, the issue before the court is whether Mansfield can establish a violation of his federal constitutional rights.

II APPLICABLE LAW

Municipalities and other local governments may incur section 1983 liability where official policy or custom causes a constitutional violation. *Bennet v. City of Slidell,* 728 F.2d 762, 766 (5th Cir. 1984). For municipal liability to attach, the plaintiff must show three elements: (1) a policymaker; (2) an official policy; and (3) a "violation of constitutional rights whose 'moving force' is the policy or custom." *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001)

[4] Although Mansfield makes much of Williamson County's "closed file" and "see what you can get" policies, those policies are not inherently unconstitutional but could potentially lead to constitutional violations.

(quoting *Monell v. Dep't of Social Services*, 436 U.S. 658, 694 (1978)).

In *Brady*, the Supreme Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland,* 373 U.S. 83, 87 (1963). Even before the en banc *Alvarez* decision, "settled precedent in this circuit held that there was no constitutional right to *Brady* material prior to a guilty plea." *Alvarez*, 904 F.3d at 392 (citing *United States v. Conroy*, 567 F.3d 174, 178–79 (5th Cir. 2009); *Matthew v. Johnson*, 201 F.3d 353, 361–62 (5th Cir. 2000)). The en banc *Alvarez* decision declined to disturb that settled precedent. *Id.* at 389, 392.

III. Analysis

In order to state a section 1983 claim against Williamson County, Mansfield must show a violation of his constitutional rights. *See Piotrowski*, 237 F.3d at 578. Accordingly, the court will first consider whether *Alvarez* forecloses Mansfield's *Brady* claim and then consider whether Mansfield has shown a due process violation outside the sphere of *Brady* and *Alvarez*.

A. *Alvarez v. City of Brownsville*

1. Factual Differences

Mansfield attempts to factually distinguish *Alvarez* on two bases. Mansfield first contends Williamson County was deliberately indifferent to Mansfield's rights, whereas in *Alvarez* the City was merely negligent. Mansfield is correct that *Alvarez* found there was no direct causal link between the policy and the violation and there was no deliberate indifference

shown. *Alvarez*, 904 F.3d at 390, 391-92. However, even if the court assumes Williamson County acted with deliberate indifference, this does not sufficiently distinguish *Alvarez*. After determining there was no deliberate indifference, the Fifth Circuit went on to state that "Alvarez points to no case from any circuit that premises § 1983 municipal liability on a policymaker's deliberate indifference to a constitutional right that a circuit court has expressly held does not exist—e.g., the defendant's right to be presented with *Brady* material before entering a guilty plea." *Id.* at 391-92. Although the circumstances of the withheld exculpatory evidence are different here from those in *Alvarez*, like Alvarez, Mansfield cannot base a § 1983 municipal liability claim on a constitutional right that does not exist. Thus, to prevail, Mansfield must show *Alvarez's* reiterated holding that there is no right to *Brady* material when a defendant pleads guilty should not be applied to his case or he must show his claim is based on some other constitutional violation.

Mansfield also contends *Alvarez* is factually distinguishable because Mansfield's plea was similar to the "eleventh-hour" plea bargain in *Ohiri* that *Alvarez* distinguished. In *United States v. Ohiri*, 133 F. App'x 555 (10th Cir. 2005), Ohiri entered a guilty plea on the first day of jury selection without the benefit of all exculpatory evidence. *Id.* at 562; *Alvarez*, 904 F.3d at 393. *Alvarez* noted "'the unusual circumstances presented' by the defendant's acceptance of an 'eleventh hour plea agreement' on the day the defendant was set to go to trial was highlighted in the court's reasoning." *Alvarez*, 904 F.3d at 393 (citing *Ohiri*, 133 F. App'x at 562). *Alvarez* also noted the Tenth Circuit "concluded by stating that

'the Supreme Court [in *Ruiz*] did not imply that the government may avoid the consequence of a *Brady* violation if the defendant accepts an eleventh-hour plea agreement while ignorant of withheld exculpatory evidence in the government's possession.'" *Id.* (quoting *Ohiri*, 133 F. App'x at 562).

Mansfield argues *Alvarez* distinguished *Ohiri* based on the timing of Ohiri's plea agreement. However, *Alvarez* did not give any indication that the timing of the plea agreement was dispositive to Alvarez's case. In *Ohiri*, the Tenth Circuit distinguished *Ruiz*, in which the Supreme Court held the Constitution does not require disclosure of material impeachment evidence prior to entering a plea agreement. *Id.* at 393 (describing *Ohiri*, 11 F. App'x at 562); *id.* at 392 (describing *United States v. Ruiz*, 536 U.S. 622, 633 (2002)). *Alvarez* considered *Ohiri* as evidence that the Tenth Circuit "recognized the possible distinction noted by the Supreme Court in *Ruiz* between impeachment and exculpatory evidence in the guilty plea context." *Id.* At 393. Notably, *Ohiri* was decided four years before *Conroy*, in which the Fifth Circuit "[u]nequivocally . . . rejected the defendant's argument that *Ruiz* states that impeachment and exculpatory evidence should be treated differently, and that exculpatory evidence must be turned over before the entry of a guilty plea." *Id.* (describing *United States v. Conroy*, 567 F.3d 174, 178–79 (5th Cir. 2009)). Thus, *Alvarez* did not distinguish *Ohiri* on the basis of when Ohiri's and Alvarez's guilty pleas were entered but on how the two circuits treated the right to exculpatory evidence after *Ruiz*.

Mansfield also quotes one of the *Alvarez* concurring opinions, which stated that "[u]nder *Brady*, the

defendant has the right to review exculpatory material from the prosecution team in order to prepare for trial." Dkt. #77 at 35 (citing *Alvarez*, 904 F.3d at 398 (Ho, J. concurring)). Mansfield argues that he "fully intended to go to trial" and "clearly wanted" the exculpatory material as shown by his pretrial motion. *Id*. This argument, as well as the argument just discussed, are foreclosed by *Conroy*. In *Conroy*, the defendant entered her guilty plea four days before trial was scheduled to begin and without knowledge of certain exculpatory evidence. *Conroy*, 567 F.3d at 177. The Fifth Circuit upheld the district court's denial of her motion to withdraw her guilty plea after she learned of the exculpatory evidence and held "a guilty plea precludes the defendant from asserting a *Brady* violation." *Id.* at 178. *Alvarez* expressly refused to disturb *Conroy* and other prior precedents. *Alvarez*, 904 F.3d at 392, 394. Mansfield's arguments based on the timing of his guilty plea and his intent to go to trial are foreclosed by *Conroy*.

2. *Alvarez* and Supreme Court Precedents

Mansfield "recognizes that this Court is bound by the Fifth Circuit's opinions," but argues "the Fifth Circuit's position in *Alvarez* is contrary to both Supreme Court precedent and numerous other Circuit Courts of Appeal." Dkt. #77 (Resp.) at 36. Mansfield's arguments, which echo some arguments made in the *Alvarez* dissents, are not without appeal. As demonstrated by the *Alvarez* dissents and the majority opinion's description of the circuit courts that have not followed the *Alvarez* majority opinion's reasoning, there are strong policy and legal arguments to support Mansfield's position. Nonetheless, this court is bound by the *Alvarez* majority opinion and the issues in *Alvarez* cannot be materially distinguished from those

in this case. To the extent Mansfield wants to argue *Alvarez* was wrongly decided or wrongly applied Supreme Court precedent, those arguments are better made to the appellate courts.

3. Williamson County's Prior *Alvarez* Argument

Mansfield also argues Williamson County previously presented this *Alvarez* argument in its motion to reconsider denial of its motion to dismiss. *See* Dkt. #26 (Mtn. to Reconsider); Dkt. #28 (Reply). Mansfield contends the court should again reject Williamson County's argument. Dkt. #77 at 35-36.

The court previously denied Williamson County's motion to reconsider on procedural grounds,[5] not on the merits of Williamson County's *Alvarez* argument. Dkt. #31. The court denied the motion to reconsider because the motion to dismiss failed to raise the *Alvarez* issue, Williamson County did not supplement its objections to the undersigned's Report and Recommendation to raise the *Alvarez* argument,[6] and *Alvarez* did not establish new law in this circuit but specifically reaffirmed settled precedent on the right to *Brady* material before entering a guilty plea. *Id.* Accordingly, Williamson County's summary judgment

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[5] At the time, District Judge Lee Yeakel was presiding over the case. However, the undersigned has no disagreement with how Judge Yeakel treated Williamson County's motion to reconsider. Williamson County's motion to dismiss exclusively argued it could not be held liable for the District Attorney's policy at issue. *See* Dkt. #4. A motion to reconsider is not the proper vehicle to raise entirely new arguments that were available when the original motion was filed. Such a practice would negate Rule 12's timing requirement. *See* FED. R. CIV. P. 12(g)(2).

[6] The en banc *Alvarez* decision was rendered during the objection period to the undersigned's Report and Recommendation.

motion is this court's first opportunity to examine this issue, and the court's ruling on Williamson County's motion to reconsider is not dispositive of the issue.

B. Non-*Brady/Alvarez* Due Process Violations

Mansfield also argues he is asserting direct due process violations, not just *Brady* claims, that rendered his plea involuntary. To the extent Mansfield bases these "direct due process violations" on prosecutors' failures to disclose information to him, his arguments fail under *Alvarez* for the reasons given above. *See* Dkt. #77 at 31-32 ("the County's policy was intended to and, in fact, did 'wrongfully and intentionally conceal information crucial to' Mansfield's ability to seek redress in state courts, including a grant of habeas corpus or simply success in his underlying criminal case"). In *Conroy*, the defendant also contended the prosecution's failure to disclose exculpatory information rendered her plea involuntary, but the Fifth Circuit rejected that argument:

> Conroy's primary argument relates to the sixth factor. She claims that the government withheld allegedly exculpatory evidence in violation of *Brady* by failing to turn over the FBI report containing Pierce's statements, which rendered her guilty plea unknowing and involuntary. We do not need to reach the merits of her argument because it is foreclosed by our precedent holding that a guilty plea precludes the defendant from asserting a *Brady* violation. *See Matthew v. Johnson*, 201

F.3d 353 (5th Cir.2000); *Orman v. Cain*, 228 F.3d 616 (5th Cir. 2000).

Conroy, 567 F.3d at 178. Mansfield's attempt to categorize the prosecution's withholding of material exculpatory information as a general due process, rather than a *Brady*, claim fails as a matter of law.

Mansfield also contends Williamson County "intentionally coerced Mansfield to involuntarily plead guilty[7] by causing prosecutors to misrepresent the evidence—repeatedly lying to Mansfield's defense counsel—and violate court orders."[8] Dkt. #77 (MSJ Resp.) at 26. Specifically, Mansfield argues prosecutors misrepresented the evidence against him in the following ways:

1. Prosecutors repeatedly urged that the alleged victim was a "strong witness," a "good witness," and "very adamant that Mr. Mansfield did this to her";
2. Prosecutors repeatedly claimed that "her mother wanted Mr. Mansfield prosecuted";
3. Prosecutors told [Mansfield's attorney] that Mansfield was a "baby fucker";
4. Prosecutors said they were ready for trial and intended to send Mansfield to prison—to even "bury him under the jail";

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[7] Notably, not all guilty pleas that are later determined to be involuntary involve constitutional violations. Accordingly, even if Mansfield were to demonstrate his guilty plea was involuntary, he must still show a constitutional violation.

[8] Mansfield does not present any cases holding that prosecutors' violation of the state trial court order to disclose exculpatory evidence is itself a constitutional due process violation.

5. Prosecutors had a videotaped statement by the alleged victim;
6. Prosecutors had a doctor who would corroborate the allegations; and
7. Prosecutors had physical evidence corroborating the allegations.

Dkt. #77 (MSJ Resp.) at 5-6. Notably, the second, third, and arguably the fourth statements are not characterizations of evidence. Mansfield does not explain what physical evidence he was told prosecutors had. *See* Dkt. #77 (MSJ Resp.) at 6 (citing Dkt. #77-10 (Mansfield Depo.) at 87:5-15). Mansfield also does not explain whether this physical evidence or the doctor's testimony would implicate him specifically or merely corroborate that the victim had been abused. *Id*.

First, this claim—that prosecutors violated his due process rights by misrepresenting the evidence against him—was not asserted in his Complaint as a basis for relief. Although Mansfield did include allegations that the prosecutors misrepresented or lied about the evidence against him in his Complaint, Dkt. #1 (Compl.) at ¶¶ 7, 60-62, he did not allege Williamson County had a policy or practice that allowed prosecutors to misrepresent or lie about the evidence thus causing his injury, *see id.* at ¶ 71 (listing policies and practices and relating them to *Brady* or the concealment exculpatory information). Although the en banc *Alvarez* decision foreclosing his *Brady* arguments was published before Mansfield's deadline to amend his Complaint, he did not amend his Complaint to expressly assert constitutional violations other than the failure to disclose exculpatory evidence.

See Alvarez, 904 F.3d at 382; Dkt. #53 (Scheduling Order).

Second, even if the court considers this claim properly pleaded, Mansfield has not presented the court with a case holding that prosecutors violate the due process clause when they lie or misrepresent the evidence during plea negotiations. Mansfield's theory is first based on the well-settled law that:

> [A] plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), *misrepresentation* (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes).

Brady v. United States, 397 U.S. 742, 755 (1970) (emphasis added) (quoting *Shelton v. United States*, 246 F.2d 571, 572 n.2 (5th Cir. 1957) (en banc), rev'd on other grounds, 356 U.S. 26 (1958)); *see also United States v. Amaya*, 111 F.3d 386, 389 (5th Cir. 1997) ("A situation in which a defendant is induced by deception, an unfulfillable promise, or *misrepresentation* to enter a plea of guilty does not meet the standard for voluntariness.") (emphasis added). *But see Brady*, 397 U.S. at 757 ("We find no requirement in the Constitution that a defendant must be permitted to disown his solemn admissions in open court that he committed the act with which he is charged simply

because it later develops that the State would have had a weaker case than the defendant had thought . . . ."). Most of the cases Mansfield cites simply restate this common language or do not specifically address prosecutors' misrepresentations of evidence. *See Brady*, 397 U.S. at 744 ("[P]etitioner sought relief under 28 U.S.C. § 2255, claiming that his plea of guilty was not voluntarily given because § 1201(a) operated to coerce his plea, because his counsel exerted impermissible pressure upon him, and because his plea was induced by representations with respect to reduction of sentence and clemency."); *Amaya*, 111 F.3d at 389 (misrepresentation about judicial authority to *sua sponte* consider a downward departure); *Santobello v. New York*, 404 U.S. 257, 257–58 (1971) ("We granted certiorari in this case to determine whether the State's failure to keep a commitment concerning the sentence recommendation on a guilty plea required a new trial.").

The most relevant case cited by Mansfield is *United States v. Scruggs*, 691 F.3d 660, 670 (5th Cir. 2012). Mansfield contends this case "suggest[s] government misrepresentation of a witness' [sic] testimony could render a plea involuntary." Dkt. #77 (MSJ Resp.) at 27. In that case, Scruggs sought relief under 28 U.S.C. § 2255 contending his "guilty plea was involuntary due to government misrepresentation." *Scruggs*, 691 F.3d at 662. Specifically, Scruggs alleged the government engaged in misconduct when it falsely represented to the court that a witness would testify that Scruggs was fully aware of certain criminal conduct in an underlying case.[9] *Id.* at 670. The Fifth Circuit affirmed

[9] From the factual background provided in *Scruggs*, it appears the government's false statement was based on a misunderstanding

the district court's denial of his § 2255 motion after determining the claim failed on its merits because Scruggs had not shown the alleged misconduct induced him to plead guilty. *Id.* at 671. Because the court in *Scruggs* found he did not rely on the misstatement, it did not affirmatively determine that such a misstatement, if actually relied upon, would have rendered his guilty plea involuntary. Moreover, the alleged misrepresentation in *Scruggs* is materially different than those made to Mansfield. In *Scruggs*, the misrepresentation was made to the court, to which attorneys owe a duty of candor. In Mansfield's case, the misrepresentations were out-of-court statements made to either himself or his attorney. *See* Dkt. #77 (MSJ Resp.) at 5-6.

Mansfield also relies on cases in which a defendant was threatened with the use of false testimony or manufactured evidence. *See* Dkt. #77 (MSJ Resp.) at 27-31 (citing *Waley v. Johnston*, 316 U.S. 101, 103 (1942) (vacating denial of habeas corpus because threats to use false statements or make false evidence could have coerced guilty plea); *Santobello*, 404 U.S. at 266 ("a guilty plea is rendered voidable by . . . threatening to use false testimony"); *Cole v. Carson*, 802 F.3d 752 (5th Cir. 2015) cert. granted, judgment vacated sub nom. *Hunter v. Cole*, 137 S. Ct. 497 (2016), and opinion reinstated in part, 905 F.3d 334 (5th Cir. 2018), and on rehearing en banc 935 F.3d 444 (5th Cir. 2019); *Boyd v. Driver*, 579 F.3d 513, 517 (5th Cir. 2009); *Ryland v. Shapiro*, 708 F.2d 967, 968 (5th Cir. 1983)). However, prosecutors did not threaten to use false testimony against Mansfield. Threatening to use testimony or evidence the defendant knows is false or

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and nonetheless was later softened during the same hearing it was made. *Id.* at 665.

manufactured is very different than misrepresenting what evidence actually exists to the defendant. When prosecutors threaten to use evidence or testimony the defendant knows is manufactured by the prosecution, the prosecution has in effect told the defendant he will not receive a fair trial. In that situation, a defendant's guilty plea and waiver of his right to trial cannot be seen as voluntary. Here, Mansfield makes no arguments that he pleaded guilty because he did not believe he would receive a constitutionally fair trial.

Mansfield also likens his circumstances to those cases above in which manufactured evidence was actually used against a defendant to obtain an indictment or at trial. However, in contrast to those cases, there is no allegation here that prosecutors fabricated evidence in order to charge Mansfield. Despite Mansfield's attempt to equate the prosecutors' alleged false statements to obtain a guilty plea with the use of false evidence at trial, it is undisputed that no false evidence was used at any trial. There is no allegation that prosecutors created a fabricated videotaped statement by the victim or a fabricated doctor's report corroborating the victim's allegations or manufactured other physical evidence corroborating the allegations, and there is no allegation that Mansfield was presented with such fabricated evidence.

While the court may find the prosecutors' actions in this case disgraceful, Mansfield can point to no case that holds a prosecutor cannot lie or misrepresent inculpatory evidence during plea bargaining. Although Mansfield contends he is asserting due process rights separate and apart from *Brady* rights, he is in fact advocating for cleverly disguised *Brady* rights. Had Mansfield had access to the exculpatory

information, he would have been able to more accurately assess the inculpatory evidence prosecutors claimed they had. Mansfield's argument requires this court to stretch existing precedent to recognize a never-seen-before due process right to complete honesty in plea negotiations. This court is unwilling to do that.

IV. CONCLUSION

Following the proven unethical and unconstitutional behavior of Williamson County's District Attorney's Office in Michael Morton's trial, it is easy to question whether any defendant during Anderson's tenure was treated fairly. The court is not without sympathy for Mansfield. He was put to an excruciating choice—the safe certainty of lenient sentence or putting the state to its burden of proving his guilt and risk decades of his life in prison for a crime he still avers he did not commit. He now argues he was entitled to more information before he made his plea bargain. However, in light of *Alvarez* and current precedents' inapplicability of the *Brady* right to exculpatory evidence at late-stage plea bargains made days before trial, Mansfield made his decision with all of the information he was constitutionally entitled to know at the time.

For these reasons, the court **GRANTS** Williamson County's Motion for Summary Judgment (Dkt. #62). As this disposes of all claims in this case, the court **DISMISSES** Williamson County's Second Motion for Summary Judgment (Dkt. #70) and Motion to Exclude Testimony of David Sheppard (Dkt. #80) as moot.

SIGNED March 18, 2020

/s/
MARK LANE
UNITED STATES MAGISTRATE
JUDGE

APPENDIX C

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 31, 2022
Lyle W. Cayce
Clerk

No. 20-50331

TROY MANSFIELD,

Plaintiff-Appellant

v.

WILLIAMSON COUNTY,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:18-CV-49

Before HIGGINBOTHAM, COSTA, and OLDHAM, *Circuit Judges*.

J U D G M E N T

This cause was considered on the record on appeal and was argued by counsel.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that each party bear its own costs on appeal.

PATRICK E. HIGGINBOTHAM, *Circuit Judge*, joined by GREGG COSTA, *Circuit Judge*, concurring.

GREGG COSTA, *Circuit Judge*, specially concurring.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TROY MANSFIELD,	§	
Plaintiff,	§	
V.	§	
	§	
WILLIAMSON COUNTY,	§	A-18-CV-49-ML
Defendant.	§	

FINAL JUDGMENT

The Magistrate Court issues this Final Judgment pursuant to 28 U.S.C. § 636(c). The parties consented to this court's jurisdiction, and the case was assigned to this court's docket for all purposes (Dkt. #44, #47). The court has granted Williamson County's motion for summary judgment, disposing of all claims in this case. Accordingly, the court enters the following Final Judgment pursuant to Federal Rule of Civil Procedure 58.

IT IS HEREBY ORDERED that all claims and causes of action brought by all parties in this action are hereby **DISMISSED WITH PREJUDICE**. Each party is to bear its own costs and fees.

IT IS FURTHER ORDERED that all pending motions are hereby **TERMINATED**.

IT IS FURTHER ORDERED that all relief not expressly granted is hereby **DENIED**.

IT IS FINALLY ORDERED that the case is hereby **CLOSED**.

SIGNED ON March 18, 2020.

/s/
MARK LANE
UNITED STATES MAGISTRATE JUDGE

APPENDIX E

CAUSE NO. 92-435-K277

THE STATE OF TEXAS	<	IN THE 277TH JUDICIAL
VS.	<	DISTRICT COURT OF
TROY DALE MANSFIELD	<	WILLIAMSON COUNTY, TEXAS

MOTION FOR EVIDENCE FAVORABLE TO THE DEFENDANT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, TROY DALE MANSFIELD, Defendant in the above entitled and numbered cause by and through his attorney of record, STEPHEN A. CIHAL, prior to trial and moves the Court to order the prosecution to disclose all exculpatory evidence which the prosecution may have in its possession, and further that the prosecution reveal its entire file to the Court for review by the Court in camera for the Court's determination as to what evidence therein is exculpatory and, finally, that the Court order that a copy of that portion of the prosecution's file not deemed to be exculpatory be sealed for future review by the appellate court if necessary.

WHEREFORE, PREMISES CONSIDERED, the Defendant prays that the Court grant this motion.

Respectfully submitted,

MALLETTE, POZZI & ClHAL
110 S. Main
P. 0. Box 2408
Victoria, Texas 77902

(512) 573-9109
(512) 573Z-9874

FILED
at 1 o'clock PM
OCT 26 92
/s/
District Clerk,
Williamson Co., TX
[SCANNED]

By: /s/
STEPHEN A. CIHAL
Bar Card No. 04251050
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

A true copy of the foregoing has been mailed to the Criminal District Attorney of Williamson County, Texas on the 23rd day of October, 1992.

By: /s/
STEPHEN A. CIHAL

ORDER

ON THIS DAY came on to be heard the above and foregoing Motion for Evidence Favorable to the Defendant in the above styled and numbered cause, and the Court having considered the same is of the opinion that such Motion should be:

GRANTED: √ DENIED: _____

SIGNED this 17 day of May, 1992.

By: /s/
JUDGE PRESIDING

APPENDIX F

Edward J. Ganem
Co-Counsel
Suite 202
First Victoria Nat'l Bank Bldg.
P.O. Box. 1367
Victoria, TX
77902

STEPHEN A. CIHAL
LAWYER

Mallette, Pozzi, & Cihal
P.O. Box 2408
Victoria, Texas 77902

110 South Main St.
Victoria, Texas 77901
(512) 573-9109
FAX: (512) 573-9874

NOTES: *8/26/92 – Ed J. Ganem came by. Will bond defendant out & his firm will represent him. Gave him discovery.*

Δ will take polygraph – Child's version to me differs from version to police (greatly differs).

6/23/93: Δ took polygraph – flunked – offered Δ Indecency with child. Did not firm up plea offer – Δ wants deferred – Said no – If we consider probation – told his attorney lots of jail time as condision of prob.

NOTE: Have interviewed this victim & mother on 5/18/93 – Victim will be difficult to sponsor in court. She told me she does not remember what happened! I suggest this can be disposed of w/out trial, since victim cannot testify. Her mother wants her to not have to go through it. Shock w 10 prob + jail. Spent 2 hours w/ this witness – will be nigh impossible to sponsor in court. At one point, told me nothing happened, then says little boy might have done it (Δ's son).

9-8-93 PW. TOLD Δ ATTY THAT Δ COULD STILL HAVE THE 10 SHOCK OR THE 120 DAYS ON MONDAY, BUT THAT THE OFFER COULD BE WITHDRAWN AFTER THAT IF JERGINS CHOSE TO. ALSO TOLD HIM Δ COULD RESET SENT. IF HE PG ON 9-13-93

9-13-93 PW. ROSIE BORDEN'S # ([REDACTED]) NOT IN SERVICE. DOESN'T WORK AT DUPONT PHOTOMASK ([REDACTED]) ANY MORE, FOR 3 MO. CALLED MARY RYLE. SHE WILL TRY TO CONTACT V'S MOTHER

APPENDIX G

NO. 92-435-K277

STATE OF TEXAS,	§	IN THE 277th JUDICIAL
VS.	§	DISTRICT COURT OF
TROY DALE MANSFIELD	§	WILLIAMSON COUNTY, TEXAS

AFFIDAVIT

I represented Troy Mansfield in Cause Number 92-435-K277. Throughout my representation there were numerous discussions I had with the Williamson County District Attorney's Office prosecutors handling the case. In preparing for trial on the matter, I filed several motions in the case.

At no time during my representation of Mr. Mansfield did any prosecutor or anyone from the Williamson County District Attorney's Office ever convey to me that the complaining witness had recanted the allegations against Mr. Mansfield.

Signed this the 21st day of November, 2014

/s/
STEPHEN A. CIHAL

THE STATE OF TEXAS

COUNDY OF VICTORIA

SWORN TO and SUBSCRIBED BEFORE ME by Stephen A. Cihal, this the 21st day of November,

2014, to certify which witness my hand and seal of office, in the capacity therein stated.

/s/
Notary Public, State of Texas

SIGNED under oath before me on November 21, 2014.

/s/
Notary Public, State of Texas

APPENDIX H

NO. **92-435-K277**

STATE OF TEXAS,	X	IN THE DISTRICT COURT OF
VS.	X	WILLIAMSON COUNTY, TEXAS
TROY DALE MANSFIELD	X	277TH JUDICIAL DISTRICT

WAIVERS, CONSENT, JUDICIAL CONFESSION & PLEA BARGAIN AGREEMENT

The defendant waives the right to service of a copy of the indictment or information, and the time allowed by law to file motions and pleadings and to prepare for trial. The defendant waives the right to a trial, including the right to trial by jury, the appearance and confrontation and cross-examination of the witnesses against him, the right to remain silent, and the right not to be compelled to give evidence against himself. The defendant waives reading of the indictment. The defendant waives and abandons all motions, pleadings, and objections made before the entry of the plea. If a presentence report has not been made, the defendant requests that one not be made. The defendant consents to an oral stipulation of the evidence and testimony and to the introduction of testimony by affidavits, written statements of witnesses, and any other documentary evidence. The defendant JUDICIALLY CONFESSES to committing **Indecency with a Child - Count Three** exactly as charged within the indictment or information.

The State of Texas agrees to recommend that the Court assess a fine of **$ -0-** ,

confinement for **10 years** in the ~~jail~~/Institutional Division of the Texas Department of Criminal Justice
imposition of sentence suspended and probation for **10** years,
~~deferred adjudication and probation for _____ years~~,
120 days in jail as a condition of probation.
(If probation is recommended, it is understood that THE COURT WILL IMPOSE OTHER CONDITIONS OF PROBATION, IN ITS DISCRETION.)

The State of Texas agrees to dismiss/recommend that the Court take into consideration certain unadjudicated offenses:

/s/ _____ /s/ _____
Defendant Defendant's Attorney

Acknowledged before me on Sept. 13, 1993.

/s/ _____
Deputy District Clerk

The State of Texas consents to and approves the foregoing.

/s/ _____
Assistant District Attorney

The Court consents to and approves the foregoing waivers and consent to stipulation and introduction of evidence.

/s/
Judge Presiding

APPENDIX I

No. 92-435-K277

STATE OF TEXAS, X IN THE DISTRICT COURT OF

VS. X WILLIAMSON COUNTY, TEXAS

TROY DALE MANSFIELD X 277TH JUDICIAL DISTRICT
SID NO. TX04708199

JUDGEMENT OF PLEA OF GUILTY BEFORE COURT WAIVER OF JURY TRIAL

JUDGE PRESIDING	: John R. Carter	DATE OF JUDGMENT:	11-01-93
ATTORNEY FOR STATE	: Michael Jergins	ATTORNEY FOR DEFENDANT:	Steve Cihal
OFFENSE CONVICTED OF	: Count Three – Indecency with a Child PC § 21.11(a)(1)		
DEGREE	: Felony 2	DATE OFFENSE COMMITTED:	08-01-92
CHARGING INSRUMENT	: Indictment		
PLEA	: GUILTY on 09-13-93		
TERM OF PLEA BARGAIN (IN DETAIL)	: P/G 10 years	ID-TDCJ-Probated,	120 days jail
PLEA TO ENHANCEMENT PARAGRAPH(S)	: NA	FINDINGS ON ENHANCEMENT: NA	
FINDINGS ON USE OF DEADLY WEAPON	: NA		
DATE SENTENCE IMPOSED	: 11-01-93	COSTS:	$124.50
PUNISHMENT AND PLACE OF CONFINEMENT	: 10 years	ID-TDCJ-Probated, 120 days jail	
DATE TO COMMENCE	: 11-01-93		

	TOTAL AMOUNT OF RESTITUTION/	
TIME CREDITED:: 1 day jail	REPARATION:	$50.00
	RESTITUTION TO BE PAID TO:	
	NAME:	
	ADDRESS:	

CONCURRENT UNLESS OTHERWISE SPECIFIED.

RESTITUTION

$50.00 –	Community Supervision and Corrections Dept.,
	Williamson County Courthouse,
	Georgetown, Texas 78626

DEFENDANT'S RIGHT THUMBPRINT

FILED
at 1 o'clock PM
NOV 09 1993
/s/
District Clerk,
Williamson Co., TX
[SCANNED]

On the date stated above, the above numbered and entitled cause was regularly reached and called for trial, and the State appeared by the attorney stated above, and the defendant appeared in person, with counsel stated above also being present, thereupon both sides announced ready for trial, and it appearing to the Court that the defendant, defendant's counsel, and the State have agreed in open court and in writing to waive a jury in the trial of this cause and to submit it to the Court; and the Court having consented to the waiver of a jury herein, the reading of the indictment was waived, and the defendant, upon being asked by the Court as to how the defendant pleaded, entered a plea of "GUILTY" to Count Three within the charge(s)

in the indictment relied upon by the State; thereupon the defendant was admonished by the Court of the consequences of said plea, and it appearing to the Court that the said defendant is competent and that the defendant is not influenced in making said plea by any consideration of fear, or by any persuasion prompting a confession of guilt, the said plea of "GUILTY" is by the Court received and is here now entered of record in the Minutes of the Court as the plea herein of said defendant; and the Court after having heard all evidence for the State and the defendant, and having heard argument of counsel, is of the opinion and finds that the said defendant is guilty of the offense(s) stated above and that the defendant committed said offense(s) on the date(s) stated above, as confessed in said plea of guilty.

It is therefore CONSIDERED, ORDERED, ADJUDGED and DECREED by the Court that the defendant is guilty of the offense(s) stated above, as confessed in said plea of guilty herein made, and that punishment be fixed as stated above, as determined by the Court, and the State of Texas do have and recover of said defendant all Court costs in this prosecution expended for which execution will issue.

However, the Court, after due consideration, is of the opinion, and so finds, that the ends of justice and the best interests of both the public and the defendant will be subserved if the imposition of the sentence in this cause be suspended and the defendant be placed on probation under the supervision of the Court.

It is therefore ORDERED by the Court that the imposition of the sentence in this cause is hereby suspended during the good behavior of the defendant, and the defendant is placed on probation for the same

term of years, beginning on this date, under the supervision of the Court and the duly appointed and acting Adult Probation Officer of Williamson County, Texas, subject to the following conditions of probation, and that during the term of probation the defendant shall:

1. Commit no offense against the laws of this or any other State or of the United States.
2. Avoid injurious or vicious habits; abstain from the use of alcoholic beverages; abstain from the use of narcotic or habit-forming drugs without a doctor's prescription.
3. Avoid persons or places of disreputable or harmful character; do not associate with persons with felony criminal records, persons who possess, use, or sell narcotics or habit-forming drugs; avoid places where narcotic or habit-forming drugs are illegally possessed, sold or used, and places where alcoholic beverages are possessed, sold or used.
4. Report to the Probation Officer by the 15th day of each month, the first reporting date to begin November 15, 1993.
5. Permit the Probation Officer to visit you at your home or elsewhere.
6. Work faithfully at suitable employment as far as possible.
7. Do not change employment or place of residence without the permission of the Court or Probation Officer.
8. Remain within Williamson County, Texas, unless permitted to depart by the Court or Probation Officer.

9. Support your dependents.

10. Pay your fine, if one be assessed, and the costs of Court, in one or several sums, and make restitution or reparation in any sum the Court shall determine, to-wit:

    $ 124.50 Court Costs
    $ -0- Fine
    $ 50.00 Restitution
    $ 174.50 Total

    The above unpaid total of $174.50 is to be paid in payments of $20.00 each month, until fully paid, to the Williamson County Adult Probation Department; the first monthly payment shall begin on December 15, 1993. Each monthly payment shall be made by the 15th of each month.

11. Pay $40.00 a month probation supervision fee to the Williamson County Adult Probation Department beginning on the first reporting date on December 15, 1993.

12. Perform 300 hours of Community Service Restitution at a governmental, charitable, or non-profit organization as assigned by the Adult Probation Officer in charge of your case, at a rate of no less than 8 hours per month, beginning within thirty (30) days of today's date.

13. Submit urine samples to the Adult Probation Officer in charge of the defendant's case at any time requested, to be used for the detection of alcohol or drug usage and be responsible for any costs of said testing.

14. Pay a one time fee of $50.00 to the Community Supervision and Corrections Department of Williamson County, Texas, for the Williamson

County Crimestoppers Program, within 90 days of today's date.

15. Attend and participate in the sex offenders program(s) recommended by the Adult Probation Officer in charge of his case, participate in psychological, psychiatric and/or psycho-physiological testing and report for clinical polygraph examinations as directed by the therapist or the adult Probation Officer in charge of his case, abide by all rules and conditions of the program and do not leave, be late or tardy, withdraw, or otherwise vacate the program without the permission of the program director and the Adult Probation Officer in charge of the case, and be responsible for any cost of the program(s).

16. Follow all recommendations of the therapist and the Adult Probation Officer concerning contact with John and Mason Mansfield.

17. Voluntarily submit yourself to the Care Clinic of Georgetown for chemical dependency out-patient treatment. Participate in all programs offered, abide by all rules of the facility and do not leave or withdraw from the facility without the permission of the Adult Probation Officer in charge of the case and the director of the treatment facility or his official designate, and be responsible for any costs of the program. If you are found not to be acceptable to the Care Clinic for treatment, you will enter a chemical dependency treatment program recommended by the Adult Probation Officer in charge of the case.

18. Attend and participate in the chemical abuse aftercare treatment program approved by the

Adult Probation Officer in charge of the case. Participate in all programs offered, abide by all rules of the program, and do not leave or withdraw from the program without the permission of the Adult Probation Officer in charge of the case and the director of the program or his official designate, and be responsible for any costs of the program.

19. Attend Alcoholics Anonymous/Narcotics Anonymous meetings on a weekly basis or as instructed by the Adult Probation Officer in charge of the case.

20. The defendant shall have approval from his Probation Officer before changing residence.

21. Have no contact, either verbally, in person, in writing, or by telephone with Sarah Borden or any member of her family.

22. Do not frequent, remain about, enter into any place where unsupervised minor children under the age of 17 normally congregate.

23. Accept no employment or participate in volunteer activity requiring contact with unsupervised minor children under the age of 17.

24. The defendant shall not reside in the vicinity of parks, schools, day cares, pools, playgrounds, or other places where female children under the ages of 17 normally congregate.

25. The defendant shall register as a sex offender with the Senior Sergeant of the Sex Crimes Office of the County Sheriff's Department and the City Police Department in which he resides, within seven days of today's date, and shall re-register within 72 hours of any change of address.

26. Have no unsupervised contact with females under the age of seventeen.

27. Report to the Texas Employment Commission during all periods of unemployment for assessment and evaluation on the date designated by the Adult Probation Officer in charge of the case and participate in any job training or job placement made available to you.

28. The defendant shall contact Consumer Credit Counseling if during the term of probation he becomes two months delinquent in court ordered monies, attend all orientation programs and individual meetings and continue counseling until the defendant has been current on court ordered monies for a period of two months.

29. The defendant shall serve 120 days in the Williamson County Jail.

SIGNED this the 5 day of November, 1993.

/s/
JUDGE PRESIDING

NOTICE OF APPEAL: Waived

APPENDIX J

92-435-K277

STATE OF TEXAS,	IN THE DISTRICT COURT OF
VS.	WILLIAMSON COUNTY, TEXAS
TROY DALE MANSFIELD	277TH JUDICIAL DISTRICT

CONDITIONS OF PROBATION

In accordance with the authority conferred by the Adult Probation and Parole Law of the State of Texas, you have been placed on probation in this cause for a period of **ten (10)** years. It is the Order of the Court that you shall comply with the following conditions of probation:

1. Commit no offense against the laws of this or any State or of the United States.
2. Avoid injurious or vicious habits; abstain from the use of alcoholic beverages; abstain from the use of narcotic or habit-forming drugs without a doctor's prescription.
3. Avoid persons or places of disreputable or harmful character; do not associate with persons with felony criminal records, persons who possess, use, or sell narcotics or habit-forming drugs; avoid places where narcotic or habit-forming drugs are illegally possessed, sold or used, and places where alcoholic beverages are possessed, sold, or used.
4. Report to the Probation Officer by the 15th day of each month, to begin by 11-15-93.

5. Permit the Probation Officer to visit you at your home or elsewhere.
6. Work faithfully at suitable employment as far as possible.
7. Do not change employment or place of residence without the permission of the Court or Probation Officer.
8. Remain within Williamson County, Texas, unless permitted to depart by the Court or the Probation Officer.
9. Support your dependents.
10. Pay your fine, if one be assessed, and the costs of Court, in one or several sums, and make restitution or reparation in any sum the Court shall determine, to-wit:

    $ 124.50 Court Costs

    $ 0 Fine

    $ 50.00 Restitution

    $ 74.50 Total

    The above unpaid total of $ 174.50 is to be paid in payment of $ 20.00 each month, until fully paid, to the Williamson County Adult Probation Department; the first monthly payment shall begin on 12-15-93 .
    Each monthly payment shall be made by the 15th day of each month.

11. Pay $ 40.00 , a month probation supervision fee to the Williamson County Adult Probation

Department beginning 12-15-93. Each monthly payment shall be made by the 15th day of each month.

12. Perform 300 hours of Community Service Restitution at a governmental, charitable, or non-profit organization as assigned by the Adult Probation Officer in charge of your case, at a rate of no less than 8 hours per month, beginning within thirty (30) days of today's date.

13. Submit urine samples to the Adult Probation Officer in charge of the defendant's case at any time requested, to be used for the detection of alcohol or drug usage and be responsible for any costs of said testing.

14. Pay a one-time fee of $50.00 to the Community Supervision and Corrections Department of Williamson County, Texas, for the Williamson County Crimestoppers program, within 90 days of today's date.

15. Attend and participate in the sex offenders program(s) recommended by the Adult Probation Officer in charge of his case, participate in psychological, psychiatric and/or psycho-physiological testing and report for clinical polygraph examinations as directed by the therapist or the adult Probation Officer in charge of his case, abide by all rules and conditions of the program and do not leave, be late or tardy, withdraw, or otherwise vacate the program without the permission of the program director and the Adult Probation Officer in charge of the case, and be responsible for any cost of the program(s).

16. Follow all recommendations of the therapist and the Adult Probation Officer concerning contact with John and Mason Mansfield.

17. Voluntarily submit yourself to the Care Clinic of Georgetown for chemical dependency out-patient treatment. Participate in all programs offered, abide by all rules of the facility and do not leave or withdraw from the facility without the permission of the Adult Probation Officer in charge of the case and the director of the treatment facility or his official designate, and be responsible for any costs of the program. If you are found not to be acceptable to the Care Clinic for treatment, you will enter a chemical dependency treatment program recommended by the Adult Probation Officer in charge of the case.

18. Attend and participate in the chemical abuse aftercare treatment program approved by the Adult Probation Officer in charge of the case. Participate in all programs offered, abide by all rules of the program, and do not leave or withdraw from the program without the permission of the Adult Probation Officer in charge of the case and the director of the program or his official designate, and be responsible for any costs of the program.

19. Attend Alcoholics Anonymous/Narcotics Anonymous meetings on a weekly basis or as instructed by the Adult Probation Officer in charge of the case.

20. The defendant shall have approval from his Probation Officer before changing residence.

21. Have no contact, either verbally, in person, in writing, or by telephone with Sarah Borden or any member of her family.

22. Do not frequent, remain about, enter into any place where unsupervised minor children under the age of 17 normally congregate.

23. Accept no employment or participate in volunteer activity requiring contact with unsupervised minor children under the age of 17.

24. The defendant shall not reside in the vicinity of parks, schools, day cares, pools, playgrounds, or other places where female children under the ages of 17 normally congregate.

25. The defendant shall register as a sex offender with the Senior Sergeant of the Sex Crimes Office of the County Sheriff's Department and the City Police Department in which he resides, within seven days of today's date, and shall re-register within 72 hours of any change of address.

26. Have no unsupervised contact with females under the age of seventeen.

27. Report to the Texas Employment Commission during all periods of unemployment for assessment and evaluation on the date designated by the Adult Probation Officer in charge of the case and participate in any job training or job placement made available to you.

28. The defendant shall contact Consumer Credit Counseling if during the term of probation he becomes two months delinquent in court ordered monies, attend all orientation programs and individual meetings and continue counseling until the defendant has been current on court ordered monies for a period of two months.

29. The defendant spend 120 days in the Williamson County Jail as a condition of probation. The defendant shall report to the Williamson County Jail by 8:00 a.m. on consecutive Saturdays and Sundays until said jail time is completed. The defendant is allowed to participate in the Weekend CSR program and will be released from custody at the conclusion of the workday by Sheriff's Department officials. The defendant is to participate in all community service work activities as ordered by Sheriff's Department officials.

You are hereby advised that under the laws of this State, the Court shall determine the terms of conditions of your probation, and may at any time during the term of probation, alter or modify the conditions of your probation. The Court also has the authority at any time during the period of your probation to revoke probation for violation of any of the conditions set out above.

WITNESS OUR SIGNATURES this the 1 day of November, 1993.

/s/_____

JUDGE PRESIDING

/s/_____

PROBATION OFFICER

Defendant's right thumbprint:

Receipt is hereby acknowledged on the date above, of one copy of the above conditions of Probation.

/s/_____

DEFENDANT

APPENDIX K

No. **92-435-K277**

EX PARTE	§	IN THE 277TH JUDICIAL
	§	DISTRICT COURT OF
TROY DALE MANSFIELD, Applicant	§	WILLIAMSON COUNTY, TEXAS

ORDER

Pursuant to Texas Code of Criminal Procedure, Article 11.072, section 7(a), the trial court hereby enters the following findings of facts and conclusions of law.

I. PROCEDURAL HISTORY

Applicant pleaded guilty to Indecency with a Child on November 1, 1993, and was sentenced on to 10 years of incarceration probated for a period of 10 years of community supervision. Applicant has completed his period of supervision. Counsel for applicant requested and was granted full access to the State's file in this matter. Upon completion of that review, Applicant filed his application for the instant writ on March 31, 2015, asserting that he was entitled to relief on the grounds that (1) he is actually innocent based on newly discovered evidence, (2) his plea was involuntary based on the failure of the state to disclose certain evidence, and (3) the State violated his due process rights by failing to disclose exculpatory evidence.

The State filed its answer on May 1, 2015, agreeing that the State did fail to disclose exculpatory evidence and that such failure did constitute a due process violation. The State generally denied Applicant's other asserted grounds.

FILED
at 10:10 o'clock AM
JAN 22 2016
/s/
District Clerk,
Williamson Co., TX

II. NO EVIDENTIARY HEARING NECESSARY

This Court, having reviewed the instant application for Writ of Habeas Corpus and supporting memorandum, and the State's answer, finds that, especially in light of the State's partial agreement, there are no material, controverted facts that are material to the legality of Applicant's confinement that cannot be determined based on the evidence already before the Court. The Court, therefore, concludes that no evidentiary hearing is necessary and one will not be scheduled in this case.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

(burden of proof)

1. In a postconviction collateral attack, the burden is on the applicant to allege and prove harm, that is, that the complained-of error did, in fact, contribute to his conviction and punishment. *Ex parte Maldonado*, 688 S.W.2d 114,116 (Tex. Crim. App. 1985).

2. Relief may be denied when an applicant fails to plead facts and instead only states conclusions. *Ex parte Maldonado*, 688 S.W.2d 114,116 (Tex. Crim. App. 1985).

3. In most instances, an applicant must plead facts that entitle him or her to relief and must prove his or her claim by a preponderance of the evidence. Failure to support factual allegations with proof may result in denial. *Ex parte Williams*, 65 S.W.3d 656, 658 (Tex. Crim. App. 2001); *Ex parte McPherson*, 32 S.W.3d 860, 861 (Tex. Crim. App. 2000); *Ex parte Rains*, 555 S.W.2d 478, 481 (Tex. Crim. App. 1976).

4. When there is contrary proof of an applicant's claim, the applicant's sworn allegations alone are not sufficient proof of his claims. *Ex parte Empey*, 757 S.W.2d 771, 775 (Tex. Crim. App. 1988).

5. In some cases, an applicant's delay in seeking relief may prejudice the credibility of the applicant's claim. *Ex parte Young*, 479 S.W.2d 45,46 (Tex. Crim. App. 1972).

6. The trial court's judgment is presumed to be truthful and should not be lightly set aside. *Breazeale v. State*, 683 S.W.2d 446, 450-51 (Tex. Crim. App. 1985) (op. on reh'g) (citing *Ex parte Morgan*, 412 S.W.2d 657 (Tex. Crim. App. 1967)). Thus, the applicant bears the burden of establishing that any recitations in the record are incorrect. *Id*. at 451.

(Failure to Disclose Exculpatory Evidence)

7. In his first ground for review Applicant alleges the State violated his right to due process of law by

failing to disclose exculpatory evidence. The State, in its answer, agrees that the failure to disclose occurred, that such failure violated Applicant's due process rights, and that Applicant is entitled to relief.

8. As both Applicant and the State recognize, the guarantee of due process does require the prosecution to disclose exculpatory and impeachment evidence to the defense that is material to either guilt or punishment. *Ex parte Reed*, 271 S.W.3d 698, 726 (Tex. Crim. App. 2008); *Brady v. Maryland*, 373 U.S. 83 (1963); *United States v. Bagley*, 473 U.S. 667 (1985). To succeed in showing a due-process violation for the suppression of evidence, a defendant must show that: (1) the evidence is favorable to the accused because it is exculpatory or impeaching; (2) the evidence was suppressed by the State, either inadvertently or willfully; and (3) the suppression of the evidence resulted in prejudice. *Reed*, 271 S.W.3d at 726; see *Pena v. State*, 353 S.W.3d 797, 809 (Tex. Crim. App. 2011) (quoting *Hampton v. State*, 86 S.W.3d 603, 612 (Tex. Crim. App. 2002)).

9. This Court has received the affidavit of Stephen A. Cihal in which Mr. Cihal states that he represented Applicant in this cause (a fact corroborated by the Clerk's record of this case), that he filed multiple motions, and that no one from the District Attorney's office ever told him that the complaining witness had "recanted the allegations against Mr. Mansfield."

10. This Court has also reviewed a copy of the notes made by the prosecutor originally assigned to the case taken during his meeting with the victim in

this case. These notes include statements that at points during the interview the victim did not remember what happened, denied anything happened and suggested "the little boy", meaning Applicant's son, may "have done it." These notes also contain statements the prosecutor that the victim would be "difficult" or "nigh impossible" to "sponsor in court," as well as a suggestion that the case be resolved without a trial, "since the victim cannot testify."

11. This Court finds these particular statements by the victim in this case, constitute the type of information that *Brady v. Maryland*, and its progeny requires the State to disclose.

12. Because both parties agree, and because this Court finds Mr. Cahil's affidavit credible, this Court finds that the State in this cause violated Applicant's due process rights by failing to disclose the information contained in the prosecutor's notes regarding his interview of the victim in this cause.

13. Based on that violation, this Court grants relief.

(Involuntary Plea)

14. Applicant also asserts that his plea in this cause was involuntary because had the State disclosed the information contained in the prosecutor's notes, he would not have accepted the plea bargain or entered a guilty plea.

15. The code of criminal procedure requires the trial court to admonish a defendant, either orally or in writing, before accepting a guilty plea in a felony case. TEX. CODE CRIM. PROC. art. 26.13(a). When a trial court substantially complies with

article 26.13(a), it constitutes a prima facie showing the defendant's guilty pleas were entered knowingly and voluntarily. *Grays v. State*, 888 S.W.2d 876, 878 (Tex. App.-Dallas 1994, no pet.). Applicant then has the burden to affirmatively show he was unaware of the consequences of his plea and that he was misled or otherwise harmed by the admonishments. *Id*.

16. Further, when an Applicant, as here, claims that the failure to disclose information before his plea renders his plea involuntary the court must review Applicant's claim under the Helms/Young Rule. *See Jacobs v. State*, 80 S.W.3d 631, 632 (Tex. App.-Tyler 2002, no pet. h.). Therefore, this Court must determine if here "the judgment of guilt was rendered independent of, and is not supported by, the error." *Young v. State*, 8 S.W.3d 656, 667 (Tex. Crim. App. 2000); *Jacobs v. State*, 80 S.W.3d 631,632 (Tex. App.—Tyler 2002). That is, this Court must determine whether the Brady violation bears a "direct nexus" with Applicant's guilt or innocence. *See Brink v. State*, 78 S.W.3d 478, 484 (Tex. App.-Houston [14th Dist.] 2001, no pet.) (applying Young to claimed error in substitution of counsel).

17. Some courts, including the *Young* court, have found such a direct nexus in the denial of a motion to suppress. *See e.g. Young*, 8 S.W.3d at 667, Guerrero v. State, 64 S.W.3d 436, 440 (Tex. App.—Waco 2001) (applying *Young* to hold that the judgment was not independent of the denial of a motion to suppress an allegedly involuntary confession and finding a basis to reject defense counsel's Anders brief and abate the appeal). However, in an

unpublished case that, while not binding, is illustrative, the 13th Court of Appeals has find no direct nexus between the absence of medical proof of penetration, which the prosecutor failed to disclose to defense, to a charge of Aggravated Sexual Assault of a Child by contact, not by penetration. *Browning v. State*, 2002 Tex. App. LEXIS 8929, *9 (Tex. App. Dallas Dec. 17,2002).

18. Given this background, this Court finds that the undisclosed information regarding the alleged victim does have a "direct nexus" to Applicant's plea. The failure to make the required disclosures did, in this particular set of facts, render Applicant's plea involuntary.

19. This Court, thus, grants relief on this basis, as well.

(Actual Innocence)

20. Applicant also asserts herein a claim that he is actually innocent based on newly discovered evidence.

21. The purpose of the writ for which Applicant has applied is to remedy the improper restraint of any person resulting from a felony judgment imposing a penalty other than death. Therefore, if Applicant meets his burden as to even one ground, that alone is sufficient to obtain relief.

22. Because this Court finds Applicant is entitled to relief on the grounds that his due process rights were violated in a manner that rendered his plea involuntary, and grants relief on those grounds, it is unnecessary for this Court to address Applicant's final claim.

ORDER

Thus, this Court finds that Applicant's due process rights were violated and that his plea was not voluntary. This Court therefore orders that, on this basis, the present habeas corpus application is **GRANTED.**

SIGNED 1-22-, 2016.

/s/
JUDGE PRESIDING
277th Judicial District Court

APPENDIX L

NO. 86-452-K26

THE STATE OF TEXAS, Plaintiff	IN THE DISTRICT COURT OF
VS.	WILLIAMSON COUNTY, TEXAS
MICHAEL MORTON, Defendant	26TH JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF KEN ANDERSON

OCTOBER 31, 2011

ORAL AND VIDEOTAPED DEPOSITION OF KEN ANDERSON, produced as a witness at the instance of the Defendant, and duly sworn, was taken in the above-styled and numbered cause on October 31, 2011, from 9:49 A.M. to 6:07 P.M. before Sherri Santman Fisher, CSR in and for the State of Texas, reported by machine shorthand, at the Williamson County Courthouse, Grand Jury Conference Room, 405 Martin Luther King Street, Georgetown, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated in the record or attached hereto.

APPEARANCES

FOR THE PLAINTIFF:

Lindsey Roberts
First Assistant District Attorney
405 Martin Luther King Street, No. 1
Georgetown, Texas 78626

Kristen Jernigan
Assistant District Attorney
405 Martin Luther King Street, No. 1
Georgetown, Texas 78626

FOR THE DEFENDANT:

John W. Raley
Raley & Bowick
1800 Augusta Drive, Suite 300
Houston, Texas 77057

Barry Scheck
Innocence Project
Worth Street, Suite 701
New York, New York 10013

FOR THE WITNESS:

R. Mark Dietz
Dietz & Jarrard
106 Fannin Avenue East
Round Rock, Texas 78664

Also Present:
Michael Morton
Rachel Pecker
Al Rodriguez, Videographer

* * *

[Page 85]

* * *

Q. * * * "Undersigned has also been informed by Bill Allison and Bill White, Defendant's trial attorneys, that neither of them possesses any additional files in this case - nor do they remember (and they submit that they surely would have remembered) seeing the foregoing transcripts in their file had it been provided to them during discovery."

Now, that's referring to this transcript of Sergeant Wood talking to Ms. Kirkpatrick.

A. Okay. There's two things. First of all, if we're -- if one of your questions had the word "Brady" in it, you know, Brady involves admissible evidence and that's different than just pure what a layman would call exculpatory evidence. And Eric's testimony was not going to be admissible.

And then you keep talking about this transcript. And I'm having -- you know, if I gave that information to them, I would not have given them the transcript. I would have given them an oral report or summary that Eric said a monster killed his mother.

* * *

[Page 311]

NO. 86-452-K26

THE STATE OF TEXAS, Plaintiff(s)	IN THE DISTRICT COURT OF
VS.	WILLIAMSON COUNTY, TEXAS
MICHAEL MORTON Defendant(s)	26TH JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF KEN ANDERSON

NOVEMBER 11, 2011

Volume 2 of 2

ORAL AND VIDEOTAPED DEPOSITION of KEN ANDERSON, produced as a witness at the instance of the Defendant, and duly sworn, was taken in the above-styled and numbered cause on the 11th of

November, 2011, from 9:18 a.m. to 11:45 a.m., before Glenda Fuller, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Dietz & Jarrard, 106 Fannin Avenue East, Round Rock, Texas, pursuant to the Texas Rules of Civil Procedure.

* * *

[Page 388]

* * *

Q. * * * But just dealing with the evidence that we have, let us assume that this was indeed in your file, and let us further assume that there is no record of any follow-up with respect to this report. Would you not agree that when Judge Lott asked you, Mr. Anderson, do you have any Brady material to disclose at the pretrial hearing, you should have said, Judge, yes, here's this report by Traylor. I have to disclose this to the defense about the green van and the man walking behind the Morton residence.

A. And I think I already testified to that at the first deposition that this is the sort of stuff that you would typically turn over.

Q. And when you disclosed this, would you disclose the actual document in terms of your typical routine, or would you just say to the defense attorneys sitting across the table, I have a report here. Let me tell you what the information is, but you wouldn't show them the document?

A. You know, my general practice was not to actually hand a physical document to somebody. You know, I -- well, I am guessing I would have summarized it.

* * *

REPORTER'S RECORD
VOLUME 6 OF 7 VOLUMES
TRIAL COURT CAUSE NO. 12-0420-K26

IN RE	*	IN THE DISTRICT COURT OF
	*	
HONORABLE	*	
KEN ANDERSON	*	WILLIAMSON COUNTY, TEXAS
	*	
(A COURT OF INQUIRY)	*	26TH JUDICIAL DISTRICT

****

COURT OF INQUIRY PROCEEDINGS

****

On the 8th day of February, 2013, the following proceedings came to be heard in the above-entitled and numbered cause before the Honorable Louis Sturns, Judge Presiding, held in Georgetown, Williamson County, Texas. Proceedings reported by machine shorthand.

* * *

[Page 24]

* * *

Q. And specifically, Judge Anderson, did you have a concern that you were seeking to remedy, specifically, with respect to child victims?

A. We didn't have a lot of adult rape victims. We didn't have a lot of other kinds of victims. Although, we had a rash of murders, as everybody was, in the sort of mid to late '80s. But we had an enormous number of child victim cases.

Q. When we're talking about child victim cases, are we talking about child molestation cases?

A. In the 16 and a half years I was district attorney, I think we calculated we had successfully prosecuted and sent to prison over 500 child molesters. Our office wasn't that big. That was a huge number.

* * *

[Page 31]

* * *

Q. (BY MR. NICHOLS) Now, with respect to the dismissals in Exhibit 40, do some of these bear your signature?

A. Grundy, Davis, me, Grundy, Randy Dale, Randy Dale. There's a second one I signed. Judge Womack. Third one I signed. Judge Womack. They must be Phillips' signature.

Q. So just so we can see --

A. Davis.

Q. Judge, just so we can see what it is that you're looking at, you can see I pulled a page out of Respondent's Exhibit 40 that relates to a case, State of Texas vs. Steve Brown.

A. Okay.

Q. And this one bears your signature. Correct?

A. It does.

Q. As district attorney. Correct?

A. Correct.

Q. Now, with respect to these other dismissals that are signed by others, did they have the authority on their own to just unilaterally decide to dismiss a case?

A. They generally talked to me. It would somewhat depend, but usually they would run it by me.

* * *

[Page 93]

* * *

Q. And so I go back to my question again. Do you not think that a prosecutor and part of a prosecutor's duty to be fair would not be harmed but enhanced, in fact, by a requirement that there be an open file so that the defense has access to all the information the government has about his accusation?

A. Presumably, I'm never going to prosecute another case. If I did, given what happened to me in this case -- and I don't want to claim victim -- you know, I probably wouldn't be a good prosecutor anymore because I'm going to be like handing you everything.

Q. You're going to be what?

A. I'm going to be handing you everything.

Q. Why would that not be -- make you a good prosecutor? Why wouldn't that make you just a hell of a good prosecutor?

A. I don't know. But, I mean -- you know, if I were to go into court and you were the defense attorney, you know, I would hand you my file. I would Bates stamp it. I would -- I would do everything. You would probably beat the [holy] heck out of me and some guilty guy would walk free. But nonetheless, I would do that.

Q. Isn't the fear --

A. You would probably beat the heck out of me anyway.

Q. That's not true. But isn't it true, Judge, that the whole system is predicated on the idea that we don't want the innocent convicted, and therefore it should be willing to run the risk of exposure to where both sides have a fair fight and then maybe even part of that a guilty person may get loose?

But the system has decided that there's a presumption of innocence. And if the State can't prove their case because giving the defendant full access to their information, then sobeit. But at the end of the day, when two adversaries line up here, the accused person is presumed innocent and should have access to everything the government has in trying to convict him. Do you not think that's a fair way to do it?

A. You know, that sounds great in the abstract. But if that guy who did that to his little girl walked because we overbalanced the system in the other direction to make sure that miscarriages of justice on the other side don't happen, you know, it's just not like he walks; it's like he walks and gets to go back home with the little girl who he molested. * * *

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[Page 116]

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Q. (BY MR. HARDIN) Judge, when we talk about the prosecutor's duty is to be fair, I'm just curious -- I understand what you're saying now. But why wouldn't you want to give defense attorneys what their client said to the police? Just out of curiosity.

A. Why?

Q. Why would you not want to?

A. Because the more time they have to work with it, the more time they would have to massage what they were going to say. And I don't think I'm the only prosecutor who ever thought that a defense attorney might have massaged something.

Q. I'm sure you're not. I'm sure you're not.

A. I would hate to be inside baseball again, but I would be shocked. Maybe you've never had such thoughts. But if I remember correctly, you were a fairly hard-charging prosecutor I think people feared.

Q. With an open file.

A. Which is a wonderful position to be in, but I don't think that solved all the Brady issues.

Q. It doesn't. I'm sure it doesn't.

My question to you, though, is, Judge, that's at the heart of a lot of this, is it not, that if you give the defense too much, they may be able to misuse it from your point of view because they're representing, in your point of view, a guilty person? Is that a fair statement?

A. You said it better than I just said it, but that's the same thing I just said, I think.

Q. That is what you're saying, is it not?

A. Yes, sir. Probably if I was standing where you're standing and you were sitting here, I could phrase things better than you.

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[Page 145]

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Q. (BY MR. HARDIN) Judge, you can't swear you told them about it, can you?

A. No, sir, I cannot.

Q. All right. And then what you're saying is, it is so -- obviously, helpful information to the accused, that you believe you would have given it to them. Right?

A. No. It was in my file. I would -- Bill Allison, as far as I know, had only tried two -- defended two cases with me at the time of this case. One was a marijuana farm. And he made some argument -- search and seizure argument, and I successfully argued open fields doctrine. And in this case and in his affidavit, he explains -- and maybe Ms. Cummings was the one who wrote that part of the affidavit. I didn't -- I can't remember how that came. But if it was in his first one, he's talking exactly about how I remember giving discovery in every case. I would go through the file. I would read or summarize the reports. I mean, that was just standard -- SOP. I mean, how else would you -- I mean, I don't know that we did a lot of plea negotiations in this case, but -- I mean, it's just what you do. You read the reports.

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APPENDIX M

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TROY MANSFIELD,	§	
	§	
Plaintiff,	§	
V.	§	CIVIL ACTION NO.
	§	1:18-CV-49
WILLIAMSON COUNTY,	§	
	§	
Defendant.	§	

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ORAL AND VIDEOTAPED DEPOSITION OF
SHAWN W. DICK

May 8, 2019

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[Page 33]

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A. * * * He was a real stickler for doing the right thing. And I had him overrule a number of my bosses on a very small misdemeanor case one time because he knew that I felt -- I felt the right thing was to do -- to dismiss it, and my bosses wanted me to try it.

And Mr. Holmes found out about it and instructed all of them that either he was going to sign the dismissal or they were. But he pulled me aside and said, Don't ever let anybody in this office tell you to try something you don't believe in. And that stuck with me as a young prosecutor, and I've kind of kept that as --

Q. That's different than a mentality of, if you lose a case, we're going to fire you. Right?

A. Absolutely.

Q. I'll represent to you that in casual conversation, it's been told to me that that's how the office worked when Ken Anderson was the district attorney, certainly in the early '90s. Have you heard that as well?

A. I've heard a version of it. I could only tell you what happened under Mr. Bradley.

Q. Tell me the version you heard, though.

A. I heard we didn't lose cases. I've never heard of somebody actually being fired for losing a case, but I've heard, you don't try a case you could lose. And it wasn't looked favorably to go forward on a trial that you could lose. You know, I -- but under Ken, I don't know. I have not heard of someone being fired for that reason.

Q. Did you ever hear of anybody losing a case during the Ken Anderson time frame?

A. I don't know. I just -- I don't know because I wasn't around for those cases.

Q. So here is what -- when I hear something like that, like, the word on the street, whether it's true or not, is that, look, it's so important to win these cases that you'll be fired if you lose, that's a disastrous thing

from a managerial standpoint to ever let out into the ether. Right?

A. I think it's bad policy anyway, but, yes.

Q. Well, it's bad policy, it may be stupid, it may be unjust, but just from a pure standpoint of causing prosecutors to not want to lose --

A. Right.

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[Page 36]

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Q. And if you have a win at all costs mentality, the loser in that, the intended or unintended victim, is ultimately going to be somebody who didn't do it. Right?

A. Right.

Q. Okay. And just so I -- we're operating on the same page. When I say "closed file policy," what I mean is that there is information in the prosecutor's file that defense attorneys are not privy to unless -- until they get to trial, and until the district attorney deems it fair. Is that your understanding of a closed file policy?

A. Yes. Yeah, there are varying degrees of it, but, yes.

Q. Sure. And there -- okay. That's that was the -- that was the policy, at least to your knowledge, in existence at the Williamson County District Attorney's Office, at least when Ken Anderson was there. Correct?

A. Yes.

Q. That was also the policy or continued by John Bradley for numerous years until he lessened it and modified it somewhat?

A. Right.

Q. Okay. And then he modified it somewhat in the late 2000s, where some information was provided to defense counsel or -- and if I'm --

A. Yeah.

Q. Is that correct?

A. I feel like, and I -- I could be wrong, but I feel like it was around the time of the Michael Morton hearings that all of a sudden the files started to open up somewhat. They still weren't open, but we were given the opportunity -- I was a defense lawyer at that time.

Q. Sure.

A. We were given an opportunity to at least read offense reports, read some of the information in the file.

Q. That wasn't the way things were done until Michael Morton came to light?

A. No.

Q. Okay.

A. Not here.

Q. But that's how it was done in Harris County. Right?

A. In Harris County, we literally -- I just took my file in court and I handed it to the defense * * *

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[Page 57]

* * *

Q. -- and you would walk into the prosecutors attorney and say, I'm doing you the biggest favor ever, drop this case. Right?

A. So the question is, are you thinking Shawn in a perfect world or Shawn having actually had real life experience in cases like this as a defense lawyer? I mean --

Q. I don't care. Let's --

A. -- my expectations changed --

Q. Let's start with perfect world --

A. In a perfect world, this should be something you could walk up to a prosecutor, show them this, and after the prosecutor has had a brief time to review all the information, they should be able to make very quick decisions about this case.

Q. In a perfect world, the prosecutor ought to walk up to you and say, I'm really, really sorry for putting your client through any of this. I apologize on behalf of the District Attorney and Williamson County. Right?

A. Yes.

Q. Okay. In a less than perfect world, that's what should happen. Right?

A. Yes.

Q. In the real world, that's what should happen. Right?

A. That's what should happen, yes.

Q. Well, the beauty of being able to restore the integrity of the process is, you can tell the jury, that's

what going to happen from now on, at least if you know about it. Right?

A. Right.

Q. That's not what happened with Troy Mansfield, is it?

A. It doesn't sound like it.

Q. Well --

A. And only because I just don't know a lot about it factually at all.

Q. Fair enough. But you have got three prosecutors that looked at this and didn't turn it over, didn't disclose it to anybody, and put a man through hell. Correct?

A. If you say so. I don't know about the three prosecutors. All I know, literally, is what -- I knew the names of two prosecutors that people thought maybe could have written the note.

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[Page 78]

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Q. So now it would be impossible to -- probably, to try the case.

A. Right.

Q. But I'm just trying -- I'm struggling -- obviously, this is separate and apart from this lawsuit, which has to do with Ken Anderson's office and the dangerous policies it had which -- well, let me just ask you about that.

If you have a closed file policy in which you're hiding important evidence of innocence like Mr.

Mansfield, isn't one of the known and obvious consequences of having that closed file policy that you can keep the important evidence from the defense attorney and force people into this terrible choice of life in prison or -- with freedom versus prison when they're really innocent? Isn't that one the consequences?

A. I felt like that was -- that was kind of the purpose of it back then.

Q. Yeah. Okay.

A. I mean, when I got to the office, that's what I felt comfortable about, was that, I was choosing or deciding what evidence to turn over to the defense lawyer.

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[Page 86]

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Q. The victim did not remember what happened, denied anything happened, and suggested the little boy, meaning the applicant's son, may have done it.

The notes also say that the victim would be difficult or nigh impossible to sponsor in court. And say that the -- maybe the case should be resolved without a trial since the victim cannot testify.

A. Right.

Q. Okay. I read that correctly?

A. Yes.

Q. Okay. Any reason why the district attorney would dispute this?

A. No.

Q. And then I guess, on paragraph 12, in light of all of that, the Court finds that the -- that the appellant's due process rights were violated by failing to disclose the information contained in the prosecutor's notes regarding his interview of the victim in this cause.

A. Yes.

Q. The District Attorney's Office agrees with all that. Right?

A. Yes.

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[Page 117]

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Q. If you've got a policy that says you can't give it to them, and it's closed, you know, you could -- the good -- I guess, if you want to look at it in the best way is, maybe some guilty people who deserve to go to jail will go to jail even though we couldn't convict them, because, you know, sometimes guilty people do it so successfully that we just can't convict them. But maybe, if we kind of skew the battlefield, they'll have to plead guilty. Right?

A. So one of the notions that I've always fought against and one of the things that I have -- that, you know, I hope doesn't -- never happens in my office, like, we talk about it. But there was this notion when I worked here previously that every case, you had to get something for it. So the phrase was, see what you can get.

Q. So would you explain that for the jury? I mean, I understand you're talking to people that don't -- aren't as familiar with the office as you are.

A. Sure.

Q. What is that practice of seeing what you can get?

A. Practically, it meant it was very difficult, without facing a lot of resistance from your bosses -- and by bosses, we really had a first assistant and a D.A.

But if you were to try to find a way to get rid of a case, meaning a dismissal or you presented the case to a grand jury and the grand jury no billed the case, the only real acceptable way to get rid of a case back then would have been to -- the grand jury hears the evidence and they no bill it.

If you were to try to dismiss it, there would be some questions about, why are we dismissing this case? You're the one that filed it. You're the one that brought it to court. And it was frowned upon to -- to just dismiss cases. And so the thought process was, people would insinuate, you've got to get something for it, meaning, maybe it started off as, you know, a second degree felony and maybe you are pleading it to a misdemeanor, but at least you got something for it. You didn't just dismiss the case. * * *

APPENDIX N

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TROY MANSFIELD,	§	
	§	
Plaintiff,	§	
V.	§	CIVIL ACTION NO.
	§	1:18-CV-49
WILLIAMSON COUNTY,	§	
	§	
Defendant.	§	

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ORAL AND VIDEOTAPED DEPOSITION OF
JOHN C. PREZAS

DECEMBER 19, 2019

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[Page 25]

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Q. And when done right, prosecution can be incredibly meaningful work. Right?

A. Yes, sir. When done ethically, yes, sir.

Q. And that's a really important part of being a prosecutor is operating ethically. Right?

A. Extremely important, yes, sir.

Q. Likewise, when people don't -- when prosecutors don't act ethically, it's important to identify that and have consequences for that. Right?

A. It's important to resolve it, especially when it creates unfair or inappropriate outcomes.

Q. Mr. Mansfield suffered an unfair and inappropriate outcome, didn't he?

A. Yes, I would say so.

Q. And one of the reasons why he suffered that unfair and inappropriate outcome was because people didn't provide evidence to his attorneys and lied to his attorneys. Right?

A. Well, okay. So that's two questions. So in terms of --

Q. How do you want me to break that up, because I'm happy to.

A. Sure. I guess the first question is, evidence wasn't provided to him. What I can tell you -- and if you want, I can describe sort of the writ process on how I got there, but I have always assumed that it is true that he was not provided evidence, agreed with that, assumed that, that was my starting point was, evidence was not provided to him and there was a Brady violation.

I never actually investigated that in the way that I normally would with other cases. I assumed that that was true from the beginning, and so I'm assuming that is true today.

In terms of the lying, I've seen that referenced in -- maybe it was the complaint. But I guess I don't

know enough about that yet to have an opinion. I don't know what lies were told or to whom * * *

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[Page 29]

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Q. Well, it's not that it may have occurred, it did occur, and it occurred under oath. Mr. Cihal, the lawyer for Mr. Mansfield, has testified that Williamson County prosecutors lied to him.

A. Okay.

Q. This -- do you dispute that?

A. I don't have any evidence to dispute it. I mean, if he testified to that under oath, I mean, he was there, I was not. I haven't been able to speak with anyone who would shed any light otherwise, so, no, I don't have any evidence to dispute that.

Q. Okay. If that happened, that is incredibly unethical and wrong. Right?

A. Yes, sir, I . . .

Q. It's also -- okay.

A. No, I agree, a prosecutor should not lie about the case.

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[Page 33]

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Q. Well, it's a fact that the Court found and a fact that the County agreed --

A. Yes.

Q. -- with the finding. Right?

A. Yes. The County agreed to the finding, yes, sir.

Q. And those findings were that exculpatory evidence was not produce[d] to Mr. Mansfield and that his plea was not knowing and involuntary. Correct?

A. Was not knowing and involuntary, yes, sir.

Q. And the consequences of a plea not being knowing and voluntary is, it is essentially invalidated. Right?

A. Yes. It is -- in order for a plea to be constitutionally given, it has to be knowing and voluntary.

Q. Mr. Mansfield's wasn't. Correct?

A. It was not voluntary because he did not have the information that he needed for it to be a voluntary plea. Yes, sir.

Q. So it's invalid. Correct?

A. Yes. It's legally invalid. Yes, sir.

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[Page 121]

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Q. That is directly contradictory to what you learned in your investigation. Correct?

A. Yes.

Q. Okay. It is a lie if it was -- if it was told, that is a lie, isn't it?

A. That the girl would make a strong witness? Yes, that would -- that is not true.

Q. Okay. That is yet another reason or a rationale for rendering a plea involuntary, isn't it?

A. A reason, yes, sir.

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[Page 263]

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Q. * * * [I]n your review of the file, did you -- did you see that a judge had ordered the disclosure of exculpatory evidence in Mr. Mansfield's case prior to his plea?

A. I believe -- so, yes, I did review some motions and there's a variety of motions, and I believe -- yes, I believe there was a motion for exculpatory evidence. Yes.

Q. Okay. And that was not followed by the prosecutors in the Mansfield case. Correct?

A. We agreed that it was not followed, yes.

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APPENDIX O

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TROY MANSFIELD,	§	
	§	
V.	§	CASE NO.
	§	1:18-CV-00049-LY
WILLIAMSON COUNTY	§	
	§	

* * * * * * * * *

ORAL AND VIDEOTAPED DEPOSITION OF

STEPHEN CIHAL

TAKEN ON DECEMBER 6, 2019

* * * * * * * * *

ORAL AND VIDEOTAPED DEPOSITION of STEPHEN CIHAL, produced as a witness at the instance of the Defendant, and duly sworn, was taken in the above-styled and numbered cause on the 6th day of December, 2019, from 9:54 a.m. to 2:15 p.m., before SYLVIA KERR, CSR, RPR, CRR, in and for the State of Texas, reported by machine shorthand, at the offices of Stephen Cihal, 106 E. Constitution Street, Victoria, Victoria County, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions attached hereto.

APPEARANCES

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ALSO PRESENT:

MR. TROY MANSFIELD
MRS. AMY MANSFIELD
MR. DOUG HOFFMAN, Videographer

* * *

[Page 18]

* * *

Q. And then what is the order right above his -- there are two sentences, if you could read those.

A. "Thus, this Court finds that applicant's due process rights were violated and that his plea was not voluntary. This Court, therefore, orders that on this basis the present habeas corpus application is granted."

Q. Okay. And a couple weeks ago you and I spoke, I think maybe for the second time. Do you

remember we talked about -- we talked about this case again as we were getting closer to the deposition. Do you recall we talked again about this information that was not disclosed. And you also had indicated that you, of course, stood by your affidavit and your sworn testimony, and that not only was it not disclosed to you, but that the prosecutors along the way were very adamant that the person in this case, the complainant, was very adamant that Mr. Mansfield did this to her? Do you remember that?

MR. LEAVITT: Objection, leading.

A. Yes, I was told that the victim, or alleged victim, was a strong witness and that her mother wanted Mr. Mansfield prosecuted.

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[Page 20]

Q. Okay. So do you believe it was Mr. Branson that told you that the complainant was a strong witness and that her mother wanted him prosecuted?

MR. LEAVITT: Objection, leading.

A. I believe it was Mr. Branson.

Q. Okay. Do you believe anybody else told you those statements?

A. Well, I recall the conversations with Mr. Branson because I believe he had previously been a prosecutor in Galveston County, and we had actually had a case that there were just phone conversations on, but we talked about that. So I mean, there was a

little bit of contact there. There was never anyone from Williamson County DA's office that contradicted that information about the victim being a solid witness and the mother desiring prosecution.

MR. LEAVITT: Objection, nonresponsive. (Exhibit No. 3 was marked.)

Q. (By Ms. Etter) Okay. And I'm going to show you Deposition Exhibit 3. It sounds like this is one of the pieces of information that you've already reviewed or that you already brought today.

A. Yeah, that's the same.

Q. Is that the same?

A. The one I looked at.

Q. And you believe that this came from the prosecutor's file?

A. From reading it, that's what I believe. I mean, it appears to be written by someone in the district attorney's office.

Q. Okay. And just to be clear, had you ever seen this back during your representation of Mr. Mansfield?

A. No.

Q. Okay. And when you testified that the prosecutors had conveyed to you throughout your representation that the girl was a strong witness, what statements in those notes completely contradict that?

A. Well, where it says "child's -- I believe it's "version to me differs from version to police, greatly differs as in" --

* * *

[Page 26]

Q. And did anybody ever tell you that the version of the child differed from the version to the police, greatly differed?

A. No.

* * *

[Page 31]

Q. Okay. So you're saying in conjunction with the different times that you appeared in court on Mr. Mansfield's behalf, you also drove down on, you said, one or two different occasions and met with the prosecutor in his office?

A. Yes, I drove to Georgetown and met with the prosecutor.

Q. Okay. And who do you believe that prosecutor was?

A. I believe it was Mr. Branson.

Q. Okay. And what do you recall discussing during those meetings with Mr. Branson?

A. I mean, basically discussing the case, talking about -- trying to find out if they really wanted to go to trial, what their position was on the case. I believe when Mr. Ganem had talked with me, he had told me that the district attorney's office said they were going to send Mr. Mansfield to prison.

Q. Okay.

A. So it appeared it was a case that was going to go to trial, so I wanted to find out as much as I could and try to get an idea of what the State's position was.

Q. Okay. So the message that you recall being conveyed to you is that they were trying to send Mr. Mansfield to prison?

A. That's what --

MR. LEAVITT: Objection, leading.

A. -- Mr. Ganem had told me, and I think initially Mr. Branson.

Q. Okay. And I believe in the record there was also an announcement of ready. I think you referenced an announcement of ready by the State. They -- did they convey to you that they were ready for trial throughout this case?

A. Well, yes, they did. They said they were ready to try the case. I mean, the announcement of ready, I think, was just something the State filed at the same time as the indictment, just saying they were ready.

Q. Okay. But those meetings were -- you testified that were about saying they were ready, they wanted Mr. Mansfield to go to prison. Anything else that you recall in those meetings?

A. Well, I had filed a motion to determine the competency of the victim as a witness, and I know we discussed that.

Q. And why did you file that motion? We'll get into some of the other motions that you filed, but that one in particular, why did you file that?

A. Usually whenever I have a case where there's a child victim, I file that. I think I've only had one case where a judge has determined that the victim wasn't competent to testify. But I filed that because of the age of the victim and the type of case.

Q. And you said you remember talking with Mr. Branson about that particular motion. What was the discussion about?

MR. LEAVITT: Hearsay.

A. About the victim's ability to testify, to determine right from wrong, to understand the oath. And I mean, whether she was -- whether she was a good witness. Was she able to identify Mr. Mansfield? And also whether her parents -- because I think at some point in time in this they got divorced but -- and that's reflected in some of the stuff that I received -- wanted her to testify.

Q. Okay. And so Mr. Branson, his response about that particular motion was what? That -- did he convey anything about her competency or her position as a witness?

A. That she was a good witness.

Q. Okay.

A. There weren't -- she identified Mr. Mansfield and that she was hurt and she wanted something done to him.

Q. Okay.

A. And the mother did, too.

Q. Okay. And, again, if we were to take these notes as true representations from the prosecutor's file, we know that those statements -- how would you characterize those statements?

A. Well, statements from, I believe, Mr. Branson would not be consistent with what's in these notes in Exhibit 3 --

Q. Okay.

A. -- at all.

Q. Okay. And when you say "not consistent," what do you mean?

A. It would be completely different.

Q. Okay. Would you characterize that as a misrepresentation?

A. Yes.

Q. Okay. Or a lie?

A. Both.

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[Page 43]

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Q. (By Ms. Etter) Would you agree that – you've already testified that the misrepresentations that were made to you amount to falsification of evidence.

MR. LEAVITT: Objection, leading.

A. You know, it certainly was not provided evidence that contradicted what they said the victim said. I mean, what I was told the victim said is inconsistent with what are in these notes.

Q. Okay. And so they were false?

MR. LEAVITT: Objection, leading.

Q. (By Ms. Etter) Were they false?

MR. LEAVITT: Objection, leading.

A. The representations to me were false if these notes are correct. And I mean, I don't know why they would be in the file unless they were correct.

Q. Okay. And did those falsifications and lies continue up through Mr. Mansfield's plea?

A. Yes.

Q. Okay. And did they then, in fact, continue up through his sentencing as well?

A. Yes.

* * *

[Page 49]

Q. Okay. So they put, it sounds like, a time limitation, either accept the probation offer or they would reject it -- or I guess, withdraw it; is that your understanding?

A. Yes.

Q. Okay. So we have gone from only prison time to now, I guess, in September of '93 right before, and it looks like it was a few days before the jury trial setting if the jury trial is 9/13 and you're saying you're having this conversation on 9/8 of '93?

A. Correct.

MR. LEAVITT: Question objection, leading.

Q. (By Ms. Etter) Are you having this conversation five days before the jury trial setting?

MR. LEAVITT: Objection, leading.

A. Yes.

Q. And do you remember – you're saying -- is that the conversation you're saying you're not sure if it was in person or in -- on the phone?

A. I'm sorry, I didn't mean to -- no. The one I'm saying I don't remember if it was in person or on the phone was the same day as the polygraph.

Q. Okay. So this conversation on 9/8, is it in person or on the phone, do you remember?

A. I think it was in person.

Q. Okay. And do you have -- do you remember, was Mr. Mansfield there or was it just you and the prosecutor? And by this point at 9/8, we see PW. Do you think that was Paul Womack who you said that you were dealing with as of May of '93?

A. That's what I believe.

Q. Okay. And --

A. And I do not -- okay. I'm sorry to interrupt.

Q. No, go ahead. No.

A. I don't believe Mr. Mansfield was in Williamson County on September 8th.

Q. Okay. And it looks like from the docket sheet -- I mean, the case had been set a couple of different times for trial. This 9/13 setting, I guess, were you planning on having a trial on 9/13 or were you -- before that conversation on 9/8, do you remember?

A. My recollection is that when I met on September 8th that I was told it wasn't going to go to trial on the 13th, but if Mr. Mansfield wanted to do the plea, he had to do the plea.

Q. On the 13th; is that what --

A. Yes.

* * *

[Page 53]

Q. Okay. So -- go ahead.

A. And there was a discussion about pleading nolo, nolo contendere, and I don't know if it was on the day of the plea or before. I was told that that wasn't an option, that Mr. Mansfield had to plead guilty if he wanted to get the recommendation.

Q. Okay.

A. And the statement about loving to put drug dealers and sex offenders, I think it was phrased a little bit differently, that I may have related in those terms.

Q. How do you believe it was phrased?

A. A little more crudely.

Q. Okay. And I know this is going to go to the jury, but if you just can tell me how -- even if it is crude, that's fine, just exactly how you recall it.

MR. LEAVITT: Obviously objecting, continuing to object hearsay, but go ahead.

A. I don't recall which prosecutor it was, it would not have been Mr. Branson. And the reference was to drug dealers and baby fuckers. And basically he did want to put him under the jail, which I took to be a reference that he was a -- well, that's just an assumption on my part. He did make that statement.

Q. So you do recall Paul Womack saying and calling Troy a baby fucker and telling you that they wanted to bury him under the jail?

A. I can't say if it was Mr. Womack or if it was the gentleman that did the plea.

Q. Okay. Mr. Jergins?

A. Yes.

Q. And you would have conveyed that then to Mr. Mansfield?

A. I don't think I conveyed it in those terms.

Q. Okay.

A. But that if he didn't do the plea, they were going to – "they" meaning Williamson County prosecutors were going to try to send him to prison for life.

Q. Okay. And knowing now what you know about the case and the true nature of their case, had you known that at the time, how -- how would you have handled this case differently?

MR. LEAVITT: Objection, speculation.

A. I would have given Mr. Mansfield this information and I would have suggested that he go to trial.

* * *

[Page 146]

Q. Okay. So if Michael Jergins is listed as the attorney for the State on the date of the plea of guilty, is that who you believe made those statements to you?

MR. LEAVITT: Objection, leading.

A. It's most likely he did, but my recollection of that day is there was some back and forth, leaving the courtroom to go talk to the prosecutor and coming

back. And Jergins had said he wasn't scared to try the case if there wasn't a plea. I know that took place in the courtroom. I can't tell you that -- and my recollection is the comment about the dope dealer and sex offender took place outside of the courtroom because it was -- my recollection is it was said loudly enough where it wouldn't have been said in the courtroom.

* * *

APPENDIX P

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TROY MANSFIELD,	§	
	§	
V.	§	NO. 1: 18-CV-
	§	00049-LY
WILLIAMSON COUNTY	§	

ORAL DEPOSITION OF TROY MANSFIELD

JULY 18, 2019

ORAL DEPOSITION OF TROY MANSFIELD, produced as a witness at the instance of the Defendant and duly sworn, was taken in the above styled and numbered cause on Thursday, July 18, 2019, from 9:43 a.m. to 12:04 p.m., before JANALYN ELKINS, CSR, in and for the State of Texas, reported by computerized stenotype machine, at the offices of Sumpter & Gonzalez, 3011 N. Lamar Boulevard, Suite 200, Austin, Texas, pursuant to the Federal Rules of Civil Procedure and any provisions stated on the record herein.

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[Page 87]

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Q. * * * I appreciate you taking the time on that but I do want to learn about the pleading. So tell me what you think is meant by fraud and deception?

A. I was told by my attorney that the state had, according to them, they had a doctor's statement that corroborated or -- whatever you say that word is, to the girl's statement. They had physical evidence. They had a videotape, supposedly, of her describing in detail what Mr. Mansfield did. And I didn't know how they could have that evidence. I didn't know how that's possible. But I knew my attorney, who I thought would be working on my behalf and I'm assum[ing] that he was, was just translating to me what was being told to him by the prosecutors which we find out later is not true.

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