

**IN THE 358th JUDICIAL DISTRICT COURT  
OF ECTOR COUNTY, TEXAS  
AND  
IN THE COURT OF CRIMINAL APPEALS OF TEXAS  
IN AUSTIN, TEXAS**

**Ex parte**

**MICHAEL DEAN GONZALES,**

**Applicant**

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**Trial Court No. D-23,730**

**CCA No. WR-40,541-\_\_**

**MOTION FOR STAY OF EXECUTION**

1. On February 28, 2022, Gonzales filed a subsequent application for writ of habeas corpus in the 358th Judicial District Court and the Court of Criminal Appeals.

2. The application pleads four grounds for relief:

- **Intellectual disability (Claim I):** The application establishes that Gonzales has Intellectually Disability and his execution would violate the Eighth Amendment.

- **Significant official misconduct (Claims II and III):** Gonzales’s 1995 trial was marked by pervasive prosecutorial misconduct, including the State’s suppression of the lead investigator’s long history of misconduct and dishonesty; the State’s suppression of exculpatory and impeaching information about evidence

used to connect Gonzales to the murders; and the prosecution's knowing sponsorship of false evidence from that lead detective and a bloodstain pattern analyst on key pieces of physical evidence.

- **Actual innocence (Claim IV).** Finally, compelling new evidence shows that Gonzales is innocent of the murders for which he was convicted. The evidence now shows that Jesse Perkins, Daniel Lugo, and Julian Olivarez—who the police treated as suspects but never charged—committed the murders.

- An affidavit from a witness, Eduardo Nino, states that in late April 1994 Perkins confessed to committing the murders with Lugo and Olivarez. Nino asked Perkins why his left hand and wrist were bandaged, and Perkins said he got cut during the murders. Nino was never interviewed by police, was soon afterward incarcerated on a parole violation, and was only found by accident during counsel's recent investigation. The account given to him by Perkins is corroborated by the police investigation in 1994 and most powerfully, by physical evidence he could not have known because it was independently discovered only recently.

- Perkins recently admitted to Gonzales' investigator that his blood would be at the crime scene.

- A man named Rito Suniga also came forward to describe threats made by Julian Olivarez and Daniel Lugo after the murders to silence Gonzales from speaking about their commission of the murders.

3. A stay of execution should be granted to afford necessary review of the grounds for relief above. A stay of execution is also appropriate because of extraordinary developments that will allow Gonzales to supplement the evidence in support of his innocence. The Odessa Police Department has recently provided Gonzales important new physical evidence that may fundamentally change the evidentiary picture.

4. **Fingerprint and footwear evidence.** Gonzales has diligently pursued fingerprint and footwear evidence in this case for the past two years. The District Attorney Pro Tem stymied Gonzales's independent efforts to get the evidence when the recused District Attorney's office attempted to provide a complete prosecution file to the defense. Notwithstanding the District Attorney Pro Tem's obstruction, the Odessa Police Department eventually searched their files, and—until recently—believed that all the fingerprint cards in the case were lost.

Affidavit of Stephanie Bothwell February 22, 2022 ¶ 3 (filed as Exhibit 42 with the subsequent habeas application).

5. Less than a month before the execution, counsel for Gonzales learned from the Crime Scene Unit Supervisor Stephanie Bothwell of the Odessa Police

Department that the OPD had just found 136 latent print cards from the case, which had been placed out of order in a storage box. Bothwell Affidavit ¶ 4. Bothwell prepared these cards in a high-resolution format appropriate for examination on February 14, *id.* ¶ 8, and they were received by Gonzales’s counsel on Friday February 18.

6. This is far more prints than were even listed in the reports in the OPD offense report. *See* May 14, 2021 Affidavit of Matthew Marvin ¶¶ 9-11 (filed as Exhibit 68 with the subsequent habeas application) (summarizing OPD reports on prints). Bothwell also released known fingerprint cards from other suspects that investigators collected, including Perkins and Lugo (but not Olivarez). Preliminary examination by a latent print examiner has determined there are over 60 latent fingerprints that are suitable for comparison (or “of value”)<sup>1</sup> among the 136 latent print cards. These include prints from the crime scene and from the stolen property.

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<sup>1</sup> This is the first step in the standard latent print examination procedure, sometimes termed “ACE-V” (Analysis, Comparison, Evaluation, Verification):

The examiner makes a determination, based upon previous training, experience, understanding, and judgments, whether the print is sufficient for comparison with another print. If one of the prints is determined to be insufficient, the examination is concluded with a determination that the print is insufficient for comparison purposes.

*See* National Institute of Justice, *The Fingerprint Sourcebook* 9–13 (2011), <https://www.ojp.gov/pdffiles1/nij/225320.pdf>; *see also id.* Appendix D: SWGFAST Standard Terminology Of Friction Ridge Examination, v. 3.0 (“Suitable. The determination that there is sufficiency in an impression to be **of value** for further analysis or comparison.”) (emphasis added).

7. Police did not conduct comparison of the vast majority of these cards during their investigation. Regrettably, it will take months of painstaking work for experts to compare these latent prints against the known fingerprints. *See* February 28, 2022 Affidavit of Heather L. McNeill ¶ 7 (filed as Exhibit 69 with the subsequent habeas application). If the experts' examination excludes Gonzales's prints from the interpretable prints at the crime scene and identifies one or more of the suspects' prints there, that will be strong additional exonerating information that Gonzales was not involved.

8. The fact that the Odessa Police Department just discovered this evidence and made extraordinary efforts to turn it over to Gonzales speaks to the importance of carefully examining this evidence. It is regrettable that the attorney for the State refused to learn about this potentially exculpatory information himself out of a belief that he had no duty to learn of evidence in the police's possession, placing the victims' family, the parties, and the Court in this situation. The Court should stay the execution date to allow time for forensic experts to uncover the truth of what happened.

9. **Potential blood stains on the interior of the flannel shirt.** The most important piece of physical evidence in this case was never introduced at trial: an insulated flannel shirt taken by the police from Jesse Perkins' house (Item 121 in the OPD evidence log). It was never photographed by police and there is no record

that it was shown to the defense. In 2003, police learned the shirt had the DNA of both victims on it in two different bloodstains on the exterior of the shirt. *See* October 17, 2003 DPS Report (filed as Exhibit 32 with the subsequent habeas application). No other item recovered outside the crime scene had even one of the victims' blood.

10. The wearer was certainly involved with the murders and burglary of the Aguirre home. Police already knew Michael Gonzales had no washed-away blood or wounds on his arms or hands from testing they performed the day after the murder. *See generally* 20 RR (luminol testing on Gonzales's arms, concealed by the State at the 1995 trial). By contrast, police knew Jesse Perkins had wounds on his arms in the days following the murder—a major clue that he was one of the attackers. *See* Report of Det. Robertson, October 14, 1994 and Photographs of Jesse Perkins' Scars, Dec. 6, 1994 (filed as Exhibits 34 and 26 with the subsequent habeas application). Attacks involving stabbings often cause the attacker to be cut, and “[i]n a case with multiple stabbings, there is a good probability that the perpetrator will be injured and bleeding.” First Affidavit of Bloodstain Pattern Expert Paulette Sutton, Jan. 31, 2022, ¶ 58 (filed as Exhibit 33 with the subsequent habeas application).

11. On February 14, 2022, the Odessa Police Department agreed to re-inspect Item 121 and photograph its inner lining. Bothwell Affidavit ¶ 6.

Gonzales's counsel believed it was far likelier that if Perkins wore the shirt the night of the murder and had a role in the murders, then there would be stains on the inside that were left by someone with wounds on their arms. No previous examination of the inside had been documented in the OPD or crime lab files.

12. The inspection of the inside of the shirt confirms Gonzales's theory. There are visible stains on the inner lining of the shirt that nobody ever saw before.

13. Crime Scene Unit supervisor Stephanie Bothwell agrees there are stains. Bothwell Affidavit ¶ 9 ("I observed discolorations on various spots on the inner lining"). The police even agreed to apply an alternate light source to the shirt's lining to enhance the stains. *Id.* The police found several additional stains that were not visible to the naked eye. *See* OPD Photographs of Flannel Shirt, February 14, 2022 (Exhibit 43 to subsequent habeas application); OPD Photographs of Flannel Shirt Under Alternate Light Source, February 22, 2022 (Exhibit 44 to subsequent habeas application).

14. These stains must be tested. If these stains contain blood and the DNA belongs to Perkins, then Perkins was certainly involved.

15. The new photographs of the shirt also lead Gonzales's bloodstain pattern expert to draw several additional conclusions. Paulette Sutton opines that the lack of blood spatter on the outside of the shirt, coupled with the types of stains on the cuffs and the staining on the inside, are consistent with a theory that the shirt

was first worn after the murder—as though to conceal a wound. Third Affidavit of Paulette Sutton, Feb. 25, 2022, ¶¶ 33, 35 (filed as Exhibit 3 with the subsequent habeas application). This would be consistent with a new declaration from Ruby Luna who remembers Perkins wearing a long flannel shirt the night of the murder that almost covered his hands. *See* Declaration of Ruby Luna (filed as Exhibit 40 with the subsequent habeas application). It would also be consistent with the affidavit of Eduardo Nino—the person to whom Perkins confessed in late April 1994—who says Perkins boasted about committing the murder of Merced Aguirre, was seen with a bandaged left hand, and said that he had received a flannel shirt from Gonzales after the murder. *See* Affidavit of Eduardo Nino (filed as Exhibit 1 with the subsequent habeas application).

16. The overlooked information on this shirt could be the basis for overturning a grave injustice. Gonzales requests time to work with the police and prosecution to try to develop and test this new evidence.

WHEREFORE, Mr. Gonzales respectfully requests that the Court stay his execution to allow further proceedings on his meritorious application and due consideration of recently disclosed potentially exculpatory physical evidence.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served on the following attorneys by electronic service on the 28th day of February, 2022.

Erich Dryden  
District Attorney Pro Tem  
Ector County, Texas  
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Richard Burr