

July 18, 2009

Dallas County Grand Jury
Frank Crowley Courts Building
133 N. Industrial Boulevard
Dallas, Texas 75207-4399

Re: IN THE MATTER OF BUDDY MILLER
JD-52129-W-304TH
PANEL _____ REPORT NO. _____
BURGLARY OF A HABITATION WITH INTENT
INDECENCY WITH CHILD

Dear Grand Jury Members:

I represent Mr. Buddy Miller in the above referenced case. The State is asking you to approve a Petition pending in the 304th District Court charging the first degree felony offense of burglary of a habitation with intent to commit indecency with a child and the second degree felony offense of indecency with a child (contact). Buddy Miller is a sixteen-year-old youth with no criminal history. He lives in Balch Springs with his mother, older brother and older sister. His father is deceased. Buddy has a close relationship with his grandparents and is staying with them until this case is over, having been released from detention by the District Judge of the 304th District Court. He is a good student at Spruce High School. His goal for next year is to make the varsity basketball team.

The relevant facts in this case are as follows:

On Monday, May 14, 2001, Buddy Miller and Ricky Smith were at Buddy's house after school. The neighbor across the street was Donna Gordon, the complaining witness. Donna had a crush on Buddy and asked Ricky Smith about him. She related to both Ricky and Buddy that she was sixteen years of age and attended West Mesquite High School. See the Affidavit of Ricky Smith attached hereto as Exhibit A. Further, Donna Gordon has a history of telling all of the residents in her neighborhood that she is sixteen years old. See the Affidavit of Nosy Neighbor attached hereto as Exhibit B. Contrary to the statements contained in the police report, Donna asked Buddy and Ricky over to her house. See the Affidavits of Gordon Goodpal and Devon Dependable attached hereto as Exhibits C and D.

While at Donna's home, Buddy and Ricky watched television and talked with Donna. Nothing of a sexual nature occurred. However, when Donna's mother arrived home unexpectedly, Donna knew she would be in trouble and attempted to hide the fact that she had friends over from her mother. When Donna's mother found out about the boys being over, Donna needed to concoct a story to keep her from getting into trouble. The only

eyewitness to the offense is Ricky Smith and he vehemently denies anything took place in the home.

Based on the Affidavits, we ask that you not approve the Petition. If you do not approve the Petition, the State will not be able to seek penitentiary time for Buddy Miller. The allegations of Donna Gordon should not subject this sixteen-year-old boy to the possibility of penitentiary time. There is no other evidence except her word, which is highly suspect given the affidavits of other witnesses. Further, the 304th District Judge will still have available the full-range of punishment for these offenses should either of them be found to be true after a jury trial. Additionally, if adjudicated, Buddy Miller may have to register as a sex offender.

Buddy Miller is not guilty of the charges pending against him. His case is set for a jury trial in September. We are asking that you not make his case a determinate sentence case. He has never been in trouble before at home or at school and should not have to face the prospect of losing forty years of his life.

Thank you for your time in reviewing this letter and enclosed materials.

Sincerely,

January 21, 2009

Dallas County Grand Jury
Frank Crowley Courts Building
133 N. Industrial Boulevard
Dallas, Texas 75207-4399

**Re: IN THE MATTER OF RESPONDENT
PANEL B1 REPORT NO. 1503
INDECENCY WITH CHILD (CONTACT)**

Dear Grand Jury Members:

I represent Mr. Johnny Johnson in the above referenced case. The State is asking you to approve a Petition charging my client with the second degree felony offense of indecency with child (sexual contact). Johnny is now a sixteen year old youth with no criminal history. He lives in Dallas with his family, holds a part-time job and attends Dallas High School. He has plans to attend college after graduation. He was fifteen years old and a ninth grader at the time of the alleged offense.

The Assistant District Attorney has referred this case to the grand jury seeking an advisory opinion. In 1999 the legislature enacted Section 53.035 of the Texas Family Code allowing prosecutors in ordinary juvenile proceedings to obtain grand jury advice as to whether a juvenile case should be pursued. If the Assistant District Attorney seeks grand jury advice, the grand jury has the same jurisdiction and powers to investigate the facts and circumstances concerning an offense as it has to investigate other criminal activity. If the grand jury votes to take no action on an offense referred, the prosecuting attorney may not pursue the case unless this grand jury or a future one approves the case. We ask that this grand jury vote to take no action on the offense referred regarding Johnny Johnson.

The Relevant Facts:

On December 18, 2008, Officer Goodfellow, the Dallas High School Resource Officer, took a report from Joe Blow regarding Joe's cousin Connie Complainer. Joe Blow reported that Johnny tried to force Connie to perform oral sex in the stairwell at Dallas High School after school on December 17, 2008. Officer Goodfellow called Connie Complainer to his office and she repeated the allegation. She also reported that during this "attack" a teacher came up the stairs and told them to go home and she went down the stairs and went home. Connie Complainer also told police that she had a reputation of performing oral sex on male students, that she had given Johnny a "hand job" before in class and that during the encounter with Johnny she made moaning sounds which Johnny could have construed as "her liking it."

Attached to this letter are affidavits of four Dallas High School students: Sonny Disposition, Jane Johnson, and Debbie Doright. None of these students believe that Johnny would do such a thing. Further there is an affidavit from Vincent Dumped, Connie Complainer's previous boyfriend,

who states that she has done this before: made allegations against someone in her school and had him “locked up.” Also attached is the affidavit of Rosie Neighbor, a close family friend of Johnny’s family which states that he is a good and trustworthy young man from a nice family. Johnny contends that he did not have any sexual contact with Connie Complainer on this day or any other day but that she liked him and had been pursuing him for some time. Johnny has a girlfriend, Mary Sunshine, and is not interested in Connie Complainer.

In reviewing this case, I hope the grand jury will consider the following:

1. Connie Complainer never reported this crime. She was called into the resource officer’s office after her cousin made an allegation against Johnny;
2. Connie Complainer never told the teacher who appeared in the stairwell she was being attacked and the teacher never reported the encounter with Johnny and Connie Complainer. Obviously the teacher did not notice anything amiss with Connie Complainer or there was no teacher and no encounter on the stairwell between Connie Complainer and Johnny;
3. At the time the police wrote their report, they had still been unable to locate the teacher Connie Complainer claimed was in the stairwell at the time of this attack;
4. Connie Complainer claims she left 7th period with a friend and Johnny followed her into the stairwell but she fails to name this friend;
5. Connie Complainer claims others (Whitney Liar and Jenny Fibber) also said Johnny had done similar things with them but no statements from these other girls had been obtained by the police at the time the report was sent to the Assistant District Attorney.

We ask that this grand jury vote to take no action on the offense referred regarding Johnny Johnson. In addition to the fact that the evidence does not support a finding of probable cause, a sexual offense filed against someone is in and of itself a terrible thing. The mere accusation of being a sexual offender might very well ruin this young man’s life. He was forced to spend a week in juvenile detention before being released. He has also been referred to the alternative school and made to leave Dallas High School.

Thank you for your time in reviewing this letter and enclosed materials.

Sincerely,

Laura A. Peterson

CAUSE NO JD-12345-W

IN THE MATTER OF

§
§
§
§
§

IN THE 304TH JUDICIAL

DISTRICT COURT OF

RESPONDENT

DALLAS COUNTY, TEXAS

MOTION FOR DISCOVERY AND INSPECTION

To the Honorable Judge of Said Court:

COMES NOW RESPONDENT in the above-entitled and numbered cause, by and through her attorney of record, Laura Peterson, and moves the Court to order the District Attorney to make available and to permit the inspection and copying or photographing the following:

1. A list of names, addresses, and telephone numbers, of all prospective prosecution witnesses who have knowledge of the facts of the present cause, and who in reasonable likelihood will be used at any stage of the trial as witnesses in any capacity for the prosecution.

GRANTED _____ DENIED _____

2. The names, addresses, and telephone numbers of all persons interviewed by any employee, agent, or official of the State of Texas or subdivision thereof or the United States government, concerning this case who in reasonable likelihood may not be used as a witness at the trial of this case, but who may have knowledge of facts material to the guilt or innocence of the Respondent or his reputation or criminal record, if any and would potentially give testimony favorable to the Respondent if called as a witness.

GRANTED _____ DENIED _____

3. The criminal record of any prospective witness, including indictments, convictions, acquittals or charges now pending against any State witness which information might conceivably be useful to the defense to determine whether there exists bias or prejudice on the part of the States' witnesses.

GRANTED _____ DENIED _____

4. Any evidence as to the competency of any prospective witness including a history

of mental illness or psychiatric care which the State may have.

GRANTED _____ DENIED _____

5. Any agreement between the State and any prospective witness in this case which could in any manner affect the testimony, attitude, or conduct of the witness.

GRANTED _____ DENIED _____

6. All written statements concerning the events of the alleged offense herein purportedly made by Respondent to any peace officer, or employee, agent or official of the State of Texas or of the United States.

GRANTED _____ DENIED _____

7. All notations, memorandums and recordings of any oral statements concerning the events of the alleged offense herein purportedly made by Respondent to, or in the presence of, any peace officer, or employee, agent or official of the State of Texas or of the United States.

GRANTED _____ DENIED _____

8. All written or oral statements concerning the events of the alleged offense herein purportedly made by Respondent to any person other than a peace officer, or employee, agent or official of the State of Texas or of the United States.

GRANTED _____ DENIED _____

9. The criminal record of Respondent, including all events, incidents, or occasions known to the State which might possibly be used in impeachment of the Respondent.

GRANTED _____ DENIED _____

10. The names and addresses of all identification witnesses, the time and place of any photographic or corporal identification, any and all written notices of any statements made by the witnesses who viewed the Respondent in a lineup or show up as well as the police lineup sheet (and/or photographs) with pertinent information concerning the procedure followed during the identification process and the participants in the lineup, including their race, age, sex, height, weight, hair color, eye color, clothes, distinguishing marks, in order that defense counsel may make some determination concerning any undue suggestions or impropriety

which would render the lineup process as violative of the Respondent's right to due process of law.

GRANTED _____ DENIED _____

11. Any and all photographs or photographic spreads used by State or local officers and displayed to any witness for the purpose of obtaining identification of the Respondent plus the name and address of all identification witnesses as well as the time and place of any photographic identification and the names of the persons who demonstrated the photographs to the witnesses.

GRANTED _____ DENIED _____

12. The name and address of any person other than Respondent identified by any witness as the principal of the underlying offense and the name and address of the witness.

GRANTED _____ DENIED _____

13. All fingerprints, palm prints, foot prints and tire tracts of all persons and vehicles which were obtained from the scene of the alleged offense herein or from anything removed from the scene of the alleged offense herein or fruits thereof, if any.

GRANTED _____ DENIED _____

14. The results of the comparison of all latent fingerprints, palm prints, foot prints and tire tracts obtained with known prints, together with the name, address, and telephone number of persons making the comparison.

GRANTED _____ DENIED _____

15. All articles of a tangible nature and papers seized at the scene of the alleged offense herein, at the scene of the arrest or booking procedure, or taken from Respondent's person or property at any time.

GRANTED _____ DENIED _____

16. All diagrams, drawings, plats, maps, photographs and videotapes made of the scene of the alleged offense herein.

GRANTED _____ DENIED _____

17. All photographs motion pictures and videotapes of the Respondent, witnesses, or alleged victim, taken by any law enforcement agency as part of its investigation

or booking procedures in this case.

GRANTED _____ DENIED _____

18. The results of any chemical or scientific tests of any nature performed by the State in connection with this case, including a full description of all items and substances tested, the dates and location of the tests, the type of test performed, the name and address of the individuals who performed the test, and a full description of the equipment and its operation which was used to perform said tests.

GRANTED _____ DENIED _____

19. All reports of psychological and psychiatric examinations of the Respondent performed under the direction of the State of Texas or any of its agents which reports are now in the possession of the District Attorney of Dallas County, Texas, or an agency of the State.

GRANTED _____ DENIED _____

20. All medical reports of the victim relating to the injuries and treatment received as the results of the events of the alleged offense.

GRANTED _____ DENIED _____

21. The Texas Department of Public Safety and the Dallas Police Department arrest and conviction record and the Federal Bureau of Investigation arrest and conviction record of the victim herein.

GRANTED _____ DENIED _____

22. For the purpose of cross-examination and impeachment after a witness called by the State has testified, that the following be made available to the Respondent i.e.: prior written, taped or video statement of the witness, including grand jury testimony and police reports; and any material used to refresh the memory of the witness or used before the jury.

GRANTED _____ DENIED _____

In support of this Motion, the Respondent would show the Court as follows:

1. The items requested are in the exclusive possession, custody, and control of the State of Texas or the United States Government by and through its agents, the

police and the prosecuting attorneys' office, and the Respondent has no other means of ascertaining the disclosures requested.

2. The items requested are not privileged or exempt from discovery.
3. The items and information are material to this cause and the issues of guilt or innocence and punishment to be determined in this cause.
4. The Respondent cannot be ready to go to trial without such information and inspection, nor can the Respondent adequately prepare his defense to the charges against him.
5. That absent such discovery Respondent's right under Article 39.14, Tex.Code Crim. Pro. Ann., Article 1, Section 10 of the Constitution of the State of Texas, and the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States of America will be violated, to his irreparable injury and thus deprive the Respondent of a fair trial herein.

WHEREFORE, PREMISES CONSIDERED, Respondent prays that the Court set a timely Pre-Trial Hearing on said Motion, and that on hearing the court enter the following order:

- (a) The District Attorney permits the Respondent to inspect, copy or photograph the items enumerated in this Motion prior to the trial in this cause which are in the possession or subject to the control of the State of Texas or any agency thereof.
- (b) That an "in camera" inspection of all evidence sought to be discovered but withheld by the prosecution be allowed.
- (c) That this Order for Discovery be an ongoing one and the Prosecution, Police, and their agents be ordered to advise the Respondent's attorneys of any new evidence coming into their possession or knowledge subsequent to the granting of this Order, which evidence would be subject to discovery under this Order, and to then permit appropriate inspection, photographing, and copying of same. Further, that the State be ordered to exercise reasonable diligence in ascertaining any of the matters of discovery of which is sought herein.
- (d) That any and all evidence requested but not ordered subject to discovery by this Honorable Court be included in the Appellate record of this cause for review by the Appellate Court; and for any and all further relief to which this Court may deem the Respondent entitled.

Respectfully submitted,

LAURA PETERSON
Humphreys & Peterson
5502 Broadway Boulevard
Garland, Texas 75043
(972) 303-4529
(972) 303-1673 fax
State Bar No. 15837690

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

By affixing my signature below, I do hereby certify that a true and correct copy of the above and foregoing MOTION FOR DISCOVERY AND INSPECTION was delivered to the Office of the District Attorney for Dallas County, Texas, on the same day of filing.

FIAT

The foregoing motion has been set for hearing before the District Court Judge for the 304th District Court at _____ o'clock ____ m. on the ____ day of _____, 2009.

CAUSE NO JD-12345-W

IN THE MATTER OF

§
§
§

IN THE 304TH JUDICIAL

DISTRICT COURT OF

RESPONDENT

§
§

DALLAS COUNTY, TEXAS

ORDER

On the _____ day of _____, 2009, came on to be heard the foregoing Motion for Discovery and Inspection, and the Court having heard and considered the same;

IT IS ORDERED that: The items noted "Granted" are hereby GRANTED, and the items noted "Denied" are hereby DENIED.

As to paragraphs (a), (b), (c) and (d) of the Prayer, the following action is taken, to wit:

- (a) Granted _____ Denied _____
- (b) Granted _____ Denied _____
- (c) Granted _____ Denied _____
- (d) Granted _____ Denied _____

Judge Presiding

ORDER SPECIFYING TIME AND PLACE

The court having heard Respondent's Motion for Discovery and Inspection and having granted the same as to certain items in the possession of the State;

It is the order of the court that the time for inspection be set _____ o'clock _____M. on the _____ day of _____, 2009 at the office of the District Attorney of this County.

Judge Presiding

CAUSE NO JD-12345-W

IN THE MATTER OF

§
§
§
§
§

IN THE 304TH JUDICIAL

DISTRICT COURT OF

RESPONDENT

DALLAS COUNTY, TEXAS

MOTION FOR DISCLOSURE
OF EVIDENCE FAVORABLE TO THE ACCUSED

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the Respondent in the above-styled and numbered cause and respectfully moves the Court to instruct the attorneys for the State to disclose to the Respondent and his attorney all evidence favorable to the Respondent as is required by the laws and Constitution of the State of Texas and of the United States of America, and in support of this motion would respectfully show the Court the following:

I.

The Respondent hereby requests the attorneys and agents for the State of Texas to disclose all evidence favorable to the Respondent which would *show or tend to show* the Respondent is not guilty of the offense(s) alleged in the State's petition including, but not limited to, the following particulars:

1. Summary of witnesses' interviews (written or oral).
2. The criminal record of all of the witnesses for the State.
3. Evidence which does or tends to impeach any of the witnesses for the State.
4. The Certificate of Approval of Juvenile Petition by Grand Jury signed by the Foreman of the Grand Jury disapproving the Petition in this cause, if any.
5. Evidence of any nature which aids or would tend to aid the Respondent in supporting any of the legal motions which the Respondent represents to the Court in this cause.

6. A list of all documents in the possession of the State concerning this cause which the State does not intend to introduce into evidence. The attorneys for the State of Texas are hereby put on notice that this motion will be re-urged after the State rests its case and a list of all written documents in the possession of the State concerning this case which were not introduced into evidence will be requested at that time.
7. A list of all the witnesses known to the State who have some knowledge about this case but who the State does not intend to call to testify. The attorneys for the State of Texas are hereby put on notice that this motion will be re-urged after the State rests its case and a list of witnesses having knowledge about the case which the State did not call to testify will be requested at that time.
8. Statements of witnesses which the State does not intend to introduce into evidence. The attorneys for the State of Texas are hereby put on notice that this motion will be re-urged after the State rests its case and copies of statements by witnesses which were not previously produced will be requested at that time.
9. The Respondent requests the State through its attorneys to give in open Court and made a part of the record, an oral summary of any other evidence favorable to this Respondent, even though the State has in no way reduced the same to writing or summarized the same in writing, or made any sort of report concerning same; and also that the State made such oral disclosure concerning any written evidence which has been destroyed, lost or misplaced, or removed from its possession or control.
10. Any document, memorandum or note created by the arresting or investigating police department which indicates the police department wishes to reduce or release the charges against the Respondent for any reason.
11. Any document, memorandum, note, or conversation which indicates that the complainant is incompetent to testify because of reason of age.

II.

The Respondent specifically and particularly requests any favorable written instruments including police reports, supplemental reports, and personal written notes of police officers or any investigators for the State.

III.

This Motion is filed as a continuous motion on behalf of the Respondent and is specifically renewed after the State rests its case in chief against this Respondent and after both sides have rested and closed.

IV.

In support of this motion, the Respondent would show that due process of law requires that the State disclose evidence favorable to this Respondent, material either as to guilt or punishment, and failure to disclose such evidence violates the Constitution of the United States of America irrespective of the good faith or bad faith of the prosecution. Brady v. Maryland, 373 U.S. 83 (1963); Giles v. Maryland, 386 U.S. 66, 76 (1967); Giglio v. U.S., 405 U.S. 150 (1972). The duty to disclose favorable evidence to the accused is that of the government and failure to disclose such information is not excused merely because the prosecutor did not have actual knowledge of such favorable evidence. This duty to disclose favorable evidence encompasses all persons involved in the State's investigatory process, including police officers and investigative agencies. The prosecutors in charge of the case therefore have a duty to find and disclose this evidence prior to trial. Pyle v. Kansas, 317 U.S. 213 (1942); United States v. Auten, 632 F.2d 478 (5th Cir. 1980); Rhinebart v. Rhay, 440 F.2d 725 (9th Cir. 1971), *cert. denied*, 404 U.S. 825 (1971); Barbee v. Warden, 331 F.2d 842 (4th Cir. 1964). Also, the duty to disclose encompasses evidence which is as equally accessible to the Respondent and his attorney as it is to the State of Texas. Levin v. Katzenbach, 363 F.2d 287 (D.C. Cir. 1966).

The State Bar of Texas requires a prosecutor in a criminal case to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of

the accused or mitigate the offense. In connection with the sentencing, the prosecutor must disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor. State Bar Rule 3.09(d), Article 10, Section 9.

WHEREFORE, PREMISES CONSIDERED, the Respondent requests the attorneys and all agents for the State of Texas to disclose all evidence favorable to this Respondent as required by the Constitution and laws of the State of Texas and of the United States of America.

WHEREFORE, the Respondent respectfully prays that this motion be, in all things, granted.

Respectfully submitted,

LAURA PETERSON
Humphreys & Peterson
5502 Broadway
Garland, Texas 75043
(972) 303-4529
(972) 303-1673 fax
State Bar No. 15837690

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Motion was served on the District Attorney of Dallas County by personal delivery on the same date of filing herewith.

LAURA PETERSON

FIAT

The foregoing motion has been set for hearing before the District Court Judge for the 304th District Court at _____ o'clock ____ m. on the ____ day of _____, 2009.

CAUSE NO JD-12345-W

IN THE MATTER OF

§
§
§
§
§

IN THE 304TH JUDICIAL

DISTRICT COURT OF

RESPONDENT

DALLAS COUNTY, TEXAS

ORDER

On the _____ day of _____, 2009, the said Motion came on to be heard, and same is hereby GRANTED/DENIED, to which action the Respondent excepts.

JUDGE PRESIDING

Constitution; Jackson v. Denno, 378 U.S. 368 (1964).

- D. The statements of the Respondent were made pursuant to custodial interrogation by a law enforcement agent or an agent of the State of Texas investigating alleged criminal conduct. Cates v. Texas, 776 S.W.2d 170 (Tex.Cr.App. 1989).
- E. Because of the Respondent's age and level of sophistication, the Respondent did not knowingly and intelligently waive his rights.
- F. The statements of the Respondent are not admissible pursuant to §51.095 of the Texas Family Code.
- G. The statements of the Respondent are not admissible for failure to comply with §§52.02 and 52.025 of the Texas Family Code.
- H. And for such other and further reasons as may appear or be urged upon hearing of this case.

WHEREFORE, premises considered the Respondent prays that upon hearing, that his Motion be in all things granted.

Respectfully submitted,

LAURA PETERSON
Humphreys & Peterson Law Firm, P.L.L.C.
5502 Broadway Boulevard
Garland, Texas 75043
(972) 303-4529
(972) 303-1673 fax
State Bar No. 15837690
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing motion was served upon the Attorney for the State, by hand delivery on the same day of filing.

FIAT

The foregoing motion has been set for hearing before the District Court Judge for the 304th District Court at _____ o'clock ____ m. on the ____ day of _____, 2009.

Judge Presiding

CAUSE NO JD-61440-W

IN THE MATTER OF

§
§
§
§
§

IN THE 304TH JUDICIAL

DISTRICT COURT OF

JUAN CASTANEDA

DALLAS COUNTY, TEXAS

ORDER

On this the ____ day of _____, 2005, came on to be heard the Respondent's Motion To Suppress Evidence. After considering the evidence and the argument of counsel, the same is hereby Granted/Denied to which Respondent excepts.

SIGNED and **ENTERED** this __ day of _____, 2005.

JUDGE PRESIDING

A:\15SUPPRE.

CAUSE NO. JD-12345-W

IN THE MATTER OF

§
§
§
§
§

IN THE DISTRICT COURT

304TH JUDICIAL DISTRICT

RESPONDENT

DALLAS COUNTY, TEXAS

MOTION TO SUPPRESS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Respondent, in the above entitled and numbered cause, by and through his attorney of record, and pursuant to Article 28.01 of the Texas Code of Criminal Procedure, respectfully moves the Court to suppress the following evidence:

- (1) All evidence of any sort seized as a result of any search of Respondent's person.
- (2) All statements, oral or written, and any actions made by Respondent at the time of and after his apprehension by law enforcement officers or their agents.

In support of this motion, Respondent would show the Court the following:

I.

The Mesquite Police Officers went to twelve-year-old Respondent's home to execute ticket warrants on his seventeen-year-old brother. Investigator Phillips went to the back of Respondent's house where he found Respondent in the backyard. An unidentified male ran into the garage and into the house. Respondent was detained outside the garage. Investigator Phillips claims Respondent had a strong odor of marijuana on his clothes. He conducted a pat down of Respondent for weapons. During the pat down, Investigator Phillips saw a piece of plastic baggie sticking out from Respondent's pants watch pocket. Investigator Phillips retrieved the baggie out of the watch pocket and located a small amount of marijuana in the bag.

II.

Terry Stop and Frisk

Time and again, the Supreme Court has observed that searches and seizures "conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable

under the Fourth Amendment - subject only to a few specifically established and well delineated exceptions." *Thompson v. Louisiana*, 469 U.S. 17, 19 -20 (1984) (per curiam) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967) (footnotes omitted)); *Mincey v. Arizona*, 437 U.S. 385, 390 (1978); see also *United State v. Place*, 462 U.S. 696, 701 (1983). One such exception was recognized in *Terry v. Ohio*, 392 U.S. 1 (1968), which held that, "where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot. . .," the officer may briefly stop the suspicious person and make "reasonable inquiries" aimed at confirming or dispelling his suspicions. *Id.*, at 30; *See Also Adams v. Williams*, 407 U.S. 143, 145 -146 (1972). Assuming that the police officer believed that Respondent was involved in illegal activity from the odor of marijuana emanating from his clothing, he would be justified in making reasonable inquiries of Respondent.

Terry further held that, "[w]hen an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others," the officer may conduct a patdown search "to determine whether the person is in fact carrying a weapon." *Terry, supra, at 24*. "The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence. . . ." *Adams, supra*, at 146. Rather, a protective search - permitted without a warrant and on the basis of reasonable suspicion less than probable cause - must be strictly "limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby." *Terry, supra*, at 26; see also *Michigan v. Long*, 463 U.S. 1032, 1049 , and 1052, n. 16 (1983); *Ybarra v. Illinois*, 444 U.S. 85, 93 -94 (1979). If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under *Terry* and its fruits will be suppressed. *Sibron v. New York*, 392 U.S. 40, 65 -66 (1968). *Terry* authorizes an officer, without probable cause for arrest, to conduct a limited search for weapons when specific and articulable facts lead to the belief the accused is armed and dangerous. A police officer may conduct a patdown search when he observes conduct suggesting a crime may be occurring **and** the suspect is armed and dangerous. If there are no specific and articulable facts suggesting the suspect is armed and dangerous, the officer is not justified in conducting a patdown search. *Zeno v. State*, 862 S.W.2d 165 (Tex. App.—Houston [1st Dist.] 1993, pet. ref'd); *Harris v. State*, 827 S.W.2d 49 (Tex. App.—Houston [1st Dist.] 1992). Here, there are no facts that would lead the officer to believe that twelve-year-old Respondent was armed and dangerous. Respondent was in his own backyard on a Wednesday

afternoon.

III.

Plain Feel Doctrine

The purpose of a *Terry* frisk is not to discover evidence of a crime. *Davis v. State*, 829 S.W.2d 218 (Tex. Crim. App. 1993). However, the police may seize nonthreatening contraband detected through the sense of touch during a protective patdown search of the sort permitted by *Terry*, so long as the search stays within the bounds marked by *Terry*. *Minnesota v. Dickerson*, 508 U.S. 366, 372-377 (1993).

In *Michigan v. Long*, [463 U.S. 1032, 1050](#) (1983), the seizure of contraband other than weapons during a lawful *Terry* search was justified by reference to the Court's cases under the "plain view" doctrine. That doctrine permits police to seize an object without a warrant if they are lawfully in a position to view it, if its incriminating character is **immediately apparent**, and if they have a lawful right of access to it. Arguing by analogy in *Dickerson*, the Supreme Court held if an officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity **immediately apparent**, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons. If the object is contraband, its warrantless seizure would be justified by the realization that resort to a neutral magistrate under such circumstances would be impracticable, and would do little to promote the Fourth Amendment's objectives.

Applying these principles to the facts of in *Dickerson*, the Supreme Court found that the officer who conducted the search was not acting within the lawful bounds marked by *Terry* at the time he gained probable cause to believe that a lump in respondent's jacket was contraband. The officer never thought that the lump was a weapon and did not immediately recognize it as cocaine. Rather, he determined that it was contraband only after he squeezed, slid, and otherwise manipulated the pocket's contents. While *Terry* entitled him to place his hands on respondent's jacket and to feel the lump in the pocket, his continued exploration of the pocket after he concluded that it contained no weapon was unrelated to the sole justification for the search under *Terry*. Because this further search was constitutionally invalid, the seizure of the cocaine that followed was likewise unconstitutional. *Dickerson, supra* at 377-379.

In *Campbell v. State*, 864 S.W.2d 223 (Tex. App.—Waco 1993, pet. ref'd), respondent was stopped for a traffic violation. Officers suspected he was guilty of DWI and patted him down for "safety reasons." The officer felt a film canister, removed it and found cocaine. The officer stated it

did not feel like a weapon, that such canisters were commonly used for drugs and that the canisters contained film fewer than ten percent of the time. The Court of Appeals, relying on *Dickerson*, held that the officer exceeded the scope of the *Terry* frisk by seizing the canister. The incriminating nature of the canister was not immediately apparent.

In *Graham v. State*, 893 S.W.2d 4 (Tex. App.—Dallas 1995), the appellant was stopped for having a crumpled front license plate. Failure to keep a license plate number plainly visible is a traffic offense. Officers claimed that Appellant looked startled, was moving around and leaning forward. This, claims the officers, led them to believe Appellant might be armed. A patdown revealed a “cracking sound” in Appellant’s watch pocket. Officers suspected Appellant was holding narcotics, searched the watch pocket and found cocaine. The Court held the initial stop and the subsequent *Terry* frisk was lawful but held the search exceeded the scope of a *Terry* frisk under *Dickerson, supra*, because it was not immediately apparent the cracking sound was contraband.

IV.

A person is entitled to an expectation of privacy as to the contents of his pockets. *Katz v. United States*, 389 U.S. 347 (1967). Society is prepared to recognize this expectation as objectively reasonable. *Id.* In this case, the officers have no articulable facts that justify a *Terry* frisk. Further, in this case, as in *Graham*, the officer suspected something was in Respondent’s pants watch pocket. At no time did the officer believe what was in Respondent’s watch pocket was a weapon. The officer’s search exceeded the scope of a *Terry* frisk under *Dickerson, supra*, because it was not immediately apparent the baggie was contraband.

Wherefore, Premises Considered, Respondent prays this Court order the suppression of any evidence seized by the Mesquite Police Department. The police had no facts to support a *Terry* frisk of Respondent. Further, even if the police were entitled to a *Terry* frisk, the incriminating nature of the baggie in Respondent’s pocket was not immediately apparent and therefore the officer’s search of the watch pocket exceeded the scope of a *Terry* frisk. Because this further search was constitutionally invalid, the seizure of the marijuana that followed was likewise unconstitutional.

Respectfully submitted,

Laura A. Peterson
5502 Broadway Boulevard
Garland, Texas 75043
972-303-4529
972-303-1673 (fax)
State Bar No. 15837690
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Suppress Evidence has been hand-delivered to the Dallas County District Attorney's Office, Juvenile Division on the same day of filing pursuant to the Texas Rules of Civil Procedure.

CAUSE NO JD-12345-W

IN THE MATTER OF

§
§
§
§
§

IN THE 304TH JUDICIAL

DISTRICT COURT OF

RESPONDENT

DALLAS COUNTY, TEXAS

MOTION IN LIMINE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Respondent in the above styled and numbered cause and files this Motion in Limine and written objections to the admission of certain evidence and for good cause would show the court as follows:

1. The Respondent is charged by an Original Petition with the offense of aggravated robbery. The Respondent objects to the introduction into evidence before the jury of any extraneous offenses and conduct for the purpose of showing the offense tried before the jury occurred or for any other reason because introduction of such evidence would cause the Respondent to be tried as a criminal generally. The prejudice to the Respondent of such evidence would outweigh its probative value.

2. The Respondent would further object to the introduction of such extraneous offenses if she has not been given notice in advance of trial of the State's intention to introduce into evidence those alleged offenses so that she might adequately prepare to defend against those charges, which would deprive her of due process of law as guaranteed by the Fifth and Fourteenth Amendments, United States Constitution, Article 1, Section 19, Texas Constitution and Article 1.04 C.C.P., and effective assistance of counsel and the right to be informed of the nature of the accusations against her as guaranteed by the Sixth Amendment, United States Constitution, Article 1, Section 10 and Section 15, Texas Constitution and Articles 1.05 and 1.051, C.C.P.

3. Additionally, the Respondent would object to the introduction of such extraneous offenses until the State has satisfied the Court, in a hearing outside the presence of the jury, that it can prove such extraneous offenses beyond a reasonable doubt.

4. Respondent moves the court to order the prosecuting attorney to approach the bench before the state offers evidence of any extraneous offenses and requests that a hearing be held outside the presence of the jury to determine the admissibility of such evidence thereby giving the Respondent an opportunity to rebut the contentions of the State that such evidence is admissible.

5. Further, Respondent requests that the State be ordered not to allude to any extraneous offenses in its questioning of witnesses. Finally, Respondent requests that the State be ordered to instruct its witnesses not to allude to, volunteer, or provide information of any extraneous offenses in answer to any question until the Court has allowed the admission of such evidence.

WHEREFORE, PREMISES CONSIDERED, the Respondent prays that this honorable court order the prosecutor to approach the bench prior to eliciting any testimony or offering any evidence regarding any extraneous offenses, that a hearing be held on the admissibility of such evidence, and that the court rule that such evidence is inadmissible.

Respectfully submitted,

LAURA PETERSON
Humphreys & Peterson, P.L.L.C.
5502 Broadway
Garland, Texas 75043
(972) 303-4529
(972) 303-1673 fax
State Bar No. 15837690

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing motion was served upon the Attorney for the State by hand delivery on the same day of filing herewith.

FIAT

The foregoing motion has been set for hearing before the District Court Judge for the 304th District Court at _____ o'clock ____ m. on the ____ day of _____, 2009.

CAUSE NO JD-12345-W

IN THE MATTER OF

§
§
§
§
§

IN THE 304TH JUDICIAL

DISTRICT COURT OF

RESPONDENT

DALLAS COUNTY, TEXAS

ORDER

On this day, came on to be heard the Respondent's Motion In Limine And Objections To Admission Of Extraneous Offenses. The court, having considered the motion and the argument of counsel, finds that the motion should be:

_____ (**GRANTED**, and the prosecuting attorney is ordered to approach the bench prior to eliciting any testimony or offering any evidence regarding other acts of the Respondent so that a hearing may be held outside the presence of the jury to determine the admissibility of such evidence);

_____ (**GRANTED**, and the court finds that evidence of other acts of the Respondent are inadmissible);

_____ (**DENIED**, except as granted above, to which the Respondent duly excepts);

_____ (**DENIED**, in full, to which the Respondent duly excepts).

SIGNED this _____ day of _____, 2009.

JUDGE PRESIDING

A:\11LIMOBJ.EXT

CAUSE NO JD-12345-W

IN THE MATTER OF

§
§
§
§
§

IN THE 304TH JUDICIAL

DISTRICT COURT OF

RESPONDENT

DALLAS COUNTY, TEXAS

REQUEST FOR NOTICE

To: _____, **Assistant District Attorney**

Now comes Respondent in the above entitled and numbered cause, by and through his attorney of record, and pursuant to Texas Rules of Criminal Evidence and the Texas Code of Criminal Procedure requests you give, in proper written form, ten (10) working days prior to trial, notice to the Respondent of the proposed use of evidence, specifically:

I.

Pursuant to Texas Rules of Criminal Evidence Rule 404(b), written notice by the State of its intent to introduce evidence in its case in chief of any other crimes, wrongs, or acts allegedly committed by the Respondent other than those alleged in the State's Petition.

II.

Pursuant to Texas Rules of Criminal Evidence Rule 609(f) written notice by the State of its intent to use evidence of any prior convictions for the purpose of attacking the credibility of the Respondent, Respondent's parents or of Respondent's known witnesses. Further, the Respondent requests information whether the conviction involves either a felony or a misdemeanor involving moral turpitude; whether the conviction occurred at a time so remote as to have no bearing on present credibility; whether the Respondent or the respondent's parent or witness is the same person previously convicted; whether the prior conviction is a final conviction with no direct appeal pending in any court; whether the prior conviction resulted in the probation of a sentence that has been discharged; and, whether the prior conviction was obtained at a time when the Respondent or the Respondent's parent or witness was indigent and without counsel and in the absence of an

effective waiver of counsel.

The Respondent also requests the above information relating to the State's witnesses pursuant to Brady v. Maryland, 373 U.S. 83 (1963).

III.

Pursuant to Article 37.07, Sec. 3(g) of the Code of Criminal Procedure, written notice by the State of its intent to introduce, at the disposition phase of the trial, evidence of extraneous crimes or bad acts allegedly committed by the Respondent.

Respectfully submitted,

LAURA PETERSON
Humphreys & Peterson
5502 Broadway
Garland, Texas 75043
(972) 303-4529
(972) 303-1673 fax
State Bar No. 15837690

ATTORNEY FOR RESPONDENT

CAUSE NO JD-12345-W

IN THE MATTER OF

§
§
§
§
§

IN THE 304TH JUDICIAL

DISTRICT COURT OF

RESPONDENT

DALLAS COUNTY, TEXAS

REQUEST FOR NOTICE

To: _____, **Assistant District Attorney**

Now comes Respondent in the above entitled and numbered cause, by and through his attorney of record, and pursuant to Texas Rules of Criminal Evidence and the Texas Code of Criminal Procedure requests you give, in proper written form, ten (10) working days prior to trial, notice to the Respondent of the proposed use of evidence, specifically:

I.

Pursuant to Texas Rules of Criminal Evidence Rule 404(b), written notice by the State of its intent to introduce evidence in its case in chief of any other crimes, wrongs, or acts allegedly committed by the Respondent other than those alleged in the State's Petition.

II.

Pursuant to Texas Rules of Criminal Evidence Rule 609(f) written notice by the State of its intent to use evidence of any prior convictions for the purpose of attacking the credibility of the Respondent, Respondent's parents or of Respondent's known witnesses. Further, the Respondent requests information whether the conviction involves either a felony or a misdemeanor involving moral turpitude; whether the conviction occurred at a time so remote as to have no bearing on present credibility; whether the Respondent or the respondent's parent or witness is the same person previously convicted; whether the prior conviction is a final conviction with no direct appeal pending in any court; whether the prior conviction resulted in the probation of a sentence that has been discharged; and, whether the prior conviction was obtained at a time when the Respondent or the Respondent's parent or witness was indigent and without counsel and in the absence of an

effective waiver of counsel.

The Respondent also requests the above information relating to the State's witnesses pursuant to Brady v. Maryland, 373 U.S. 83 (1963).

III.

Pursuant to Article 37.07, Sec. 3(g) of the Code of Criminal Procedure, written notice by the State of its intent to introduce, at the disposition phase of the trial, evidence of extraneous crimes or bad acts allegedly committed by the Respondent.

Respectfully submitted,

LAURA PETERSON
Humphreys & Peterson
5502 Broadway
Garland, Texas 75043
(972) 303-4529
(972) 303-1673 fax
State Bar No. 15837690

ATTORNEY FOR RESPONDENT

CAUSE NO. JD-12345-W

IN THE MATTER OF	§	IN THE 304TH JUDICIAL
	§	
	§	DISTRICT COURT OF
	§	
RESPONDENT	§	DALLAS COUNTY, TEXAS

MOTION FOR AUTHORIZATION OF FUNDS
FOR INVESTIGATOR

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Laura Peterson, attorney of record in the above entitled and numbered cause and files this motion for appointment of an investigator and in support thereof, would respectfully show as follows:

I.

Respondent is charged with the first degree felony offense of aggravated robbery.

II.

The attorney in this case is of the opinion that the appointment of an investigator is absolutely essential to allow effective representation of the Respondent for the following reasons:

- a) The Respondent is indigent. The undersigned counsel has been appointed by this Court to represent the Respondent. Respondent is a juvenile and Respondent's family does not have sufficient funds to procure the services of an investigator.
- c) The State has all of the resources of all law enforcement officials to use in its investigation, while the Respondent, being indigent, does not have adequate resources to hire an investigator.

III.

Article 26.05 of the Texas Code of Criminal Procedure, provides for the reasonable expenditure of public funds for the expenses incurred for an investigator. By virtue of *Ake v. Oklahoma*, 105 Sup.Ct. 1087, the Respondent, if not indigent, would employ an investigator as would be necessary to prepare the defense of the alleged offense.

Denial of this motion or a limitation of funds by this Court available for investigators would be a deprivation of a fair trial, effective assistance of counsel, due process, and equal protection under the law in violation of Respondent's rights under Art. 1, § 10, 13, and 19 of the Texas

Constitution; *Harper v. State*, 850 S.W.2d 736, 739 (Ct.App.-Amarillo 1993); *Rosales v. State*, 748 S.W.2d 451, 455 (Tex.Crim.App. 1987); *Abdnor v. State*, 712 S.W.2d 136, 141 (Tex.Crim.App. 1986).

WHEREFORE, PREMISES CONSIDERED, Respondent respectfully prays that this Motion be, in all things granted without further hearing; or in the alternative that the Court set a hearing to determine the foregoing motion.

Respectfully Submitted,

Laura A. Peterson
Humphreys & Peterson, P.L.L.C.
5502 Broadway Boulevard
Garland, Texas 75043
972-303-4529
(Fax) 972-303-1673
State Bar No. 15837690
Attorney for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion was hand-delivered to the District Attorney of Dallas County, Texas, on the same day of filing herewith.

ORDER

On the _____ day of _____, 2009, came on to be heard Respondent's Motion for Authorization of Funds for Expert Witnesses. The Court, having considered the Motion and argument of counsel, hereby GRANTS/DENIES the Motion. Respondent is authorized to spend \$ _____. Any further amounts are subject to court approval.

Judge Presiding

CAUSE NO. JD-12345-W

IN THE MATTER OF	§	IN THE 304TH JUDICIAL
	§	
	§	DISTRICT COURT OF
	§	
RESPONDENT	§	DALLAS COUNTY, TEXAS

MOTION FOR AUTHORIZATION OF FUNDS
FOR EXPERT WITNESSES

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Laura Peterson, attorney of record in the above entitled and numbered cause and files this motion for appointment of expert witness, and in support thereof, would respectfully show as follows:

I.

Respondent is charged with the second degree felony offense of indecency with child.

II.

The attorney in this case is of the opinion that the appointment of an expert witness is absolutely essential to allow effective representation of the Respondent for the following reasons:

a) The Complainant in this case was three years at the time the case was filed. In addition to making an outcry against Respondent, she made an outcry against “a handful of men” known by her mother not to be around complainant unsupervised. See the outcry statement filed on December 17, 2008 by the Assistant District Attorney. There is much literature to support a child age 3 may not be able to differentiate between reality and fiction. Further, it must be demonstrated that the complainant can understand the significance of the oath and be subject to meaningful cross-examination to be deemed competent to testify. Respondent requests that the complainant be examined by a forensic psychologist to determine if she is competent to testify.

b) The State has the burden of demonstrating the reliability of an outcry statement before it may be admitted. Further the child must testify or be available to testify. If the child is unable to testify, then the outcry statement may not be used. *Rodriguez v. State*, 802 S.W.2d 716 (Tex. App.—San Antonio 1991), *aff’d as reformed*, 819 S.W.2d 871 (Tex. Crim. App. 1991)(Where the child is not available due to a lack of intelligence or for another reason, the statement is not admissible under Article 38.072).

Further, the questioning of the child by the outcry witness may render the statement unreliable. If the outcry witness used coercive or suggestive questioning techniques, the reliability of the statement is then in question. An expert is necessary to examine the statement and to discuss the questioning techniques used by the outcry witness to determine if the techniques were suggestive. An expert witness would be able to testify as to why the statement is reliable or unreliable based on this examination. See "Challenging Outcry Witness Statements in Child Abuse Cases," *Voice for the Defense*, Vol. 29 No.11, February 2001.

c) The evidence in this case involves various "sexual acts" by the complainant. An expert witness is necessary to describe to the jury what "normal" sexual behavior is for three year olds. The State has taken the position that sexual acts by three year olds evidence some form of abuse to the three year old, abuse which must have been perpetrated by the Respondent. This position is not supported by the medical or psychological literature on normal sexual development of three year olds. Respondent needs an expert witness to offer an alternative explanation to the jury. See "Normative Sexual Behavior in Children: A Contemporary Sample," *Pediatrics*, Vol. 101 No. 4, April 1998

d) The complainant was interviewed by the Irving Advocacy Center. Studies have shown that a proper interview conducted after suggestive interviews will not cure the damage done by the suggestive interviews. Respondent needs an expert to examine this interview and to determine if it was suggestive or to explain how prior suggestive interviewing, if any was conducted, would taint a subsequent good interview. Goodman, G.S., & Clarke-Stewart, A. (1991). Suggestibility in children's testimony: Implications for child sexual abuse investigations. In J.L. Doris (Eds.), *The suggestibility of children's recollections* (pp. 92-105). Washington, DC: American Psychological Association.

e) The Respondent is indigent. The undersigned counsel has been appointed by this Court to represent the Respondent. Respondent is a juvenile and Respondent's family does not have sufficient funds to procure the services of an expert witness

f) The State has all of the resources of all law enforcement officials to use in its investigation and various psychological experts on contract with the County, while the Respondent, being indigent, does not have adequate resources to hire an expert witness.

Respondent understands that any expert testimony will have to satisfy Rule 702 of the Texas Rules of Evidence to be admissible.

III.

Article 26.059(a) of the Texas Code of Criminal Procedure, provides for the reasonable expenditure of public funds for the expenses incurred for an expert witness. By virtue of *Ake v. Oklahoma*, 105 Sup.Ct. 1087, the Respondent, if not indigent, would employ such expert witnesses as would be necessary to prepare the defense of the alleged offense.

Denial of this motion or a limitation of funds by this Court available for expert witnesses would be a deprivation of a fair trial, effective assistance of counsel, due process, and equal

protection under the law in violation of his rights under Art. 1, § 10, 13, and 19 of the Texas Constitution; *Harper v. State*, 850 S.W.2d 736, 739 (Ct.App.-Amarillo 1993); *Rosales v. State*, 748 S.W.2d 451, 455 (Tex.Crim.App. 1987); *Abdnor v. State*, 712 S.W.2d 136, 141 (Tex.Crim.App. 1986).

WHEREFORE, PREMISES CONSIDERED, Respondent respectfully prays that this Motion be, in all things granted without further hearing; or in the alternative that the Court set a hearing to determine the foregoing motion.

Respectfully Submitted,

Laura A. Peterson
Humphreys & Peterson, P.L.L.C.
5502 Broadway Boulevard
Garland, Texas 75043
972-303-4529
(Fax) 972-303-1673
State Bar No. 15837690
Attorney for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion was hand-delivered to the District Attorney of Dallas County, Texas, on the same day of filing herewith.

ORDER

On the ____ day of _____, 2009, came on to be heard Respondent's Motion for Authorization of Funds for Expert Witnesses. The Court, having considered the Motion and argument of counsel, hereby GRANTS/DENIES the Motion. Respondent is authorized to spend \$_____. Any further amounts are subject to court approval.

Judge Presiding