



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. WR-61,055-02

EX PARTE LINDA CARTY, Applicant

**ON APPLICATION FOR WRIT OF HABEAS CORPUS
CAUSE NO. 877592 IN THE 177TH JUDICIAL DISTRICT COURT
HARRIS COUNTY**

***Per curiam.* RICHARDSON, J., filed a concurring opinion in which HERVEY and WALKER, JJ., joined. WALKER, J., filed a concurring opinion in which HERVEY, J., joined. ALCALA, J., concurred. NEWELL, J., did not participate.**

ORDER

This is a subsequent application for writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071, § 5.

Applicant was convicted of murdering Joana Rodriguez in the course of kidnapping her. Prior to the instant offense, Rodriguez was pregnant and was living in the same

apartment complex where Applicant resided. Applicant told people that she wanted Rodriguez's baby and that she was going to "cut the baby out" of her. Applicant recruited a group of men to break into Rodriguez's apartment to commit robbery and kidnap Rodriguez. These men included Christopher Robinson, Gerald Anderson, and Carliss Williams. A fourth man, Marvin Caston, was involved in their discussions but did not participate in the home invasion.

Robinson, Anderson, and Williams kicked in the door of Rodriguez's apartment after midnight on May 16, 2001, while Applicant waited outside. When the men entered the apartment, they became aware that Rodriguez had already given birth to a baby boy. They beat and bound Rodriguez's husband and another male relative. Rodriguez was brought outside and placed in a car trunk, and Applicant took the baby. The group drove to a residence where Applicant instructed the men to tie up Rodriguez. Williams opened the trunk, taped Rodriguez's mouth and hands, then shut the trunk. Another man, Zebediah Combs, was present at the residence and saw Rodriguez inside the car trunk.

Robinson testified at trial that he, Anderson, and Williams left the residence. When Robinson returned, he saw that the car trunk was open. He testified that Rodriguez was face down in the trunk and Applicant was holding a plastic bag over her head. Robinson testified that he tore open the bag and observed that Rodriguez was dead.

Police later questioned Applicant about the disappearance of Rodriguez and her baby. Charles Mathis, a Drug Enforcement Administration (DEA) agent with whom Applicant had

worked as a confidential informant, was present while she was being questioned. Applicant thereafter led police to the residence where the baby and Rodriguez's body were located.

Robinson, Caston, Combs, and Mathis testified for the State at Applicant's trial. The jury found Applicant guilty of the offense of capital murder in February 2002. *See* TEX. PENAL CODE § 19.03(a)(2). At punishment, the jury answered the special issues submitted pursuant to Texas Code of Criminal Procedure Article 37.071, and the trial court, accordingly, set Applicant's punishment at death. This Court affirmed Applicant's conviction and sentence on direct appeal. *Carty v. State*, No. AP-74,295 (Tex. Crim. App. April 7, 2004)(not designated for publication). This Court denied relief on Applicant's initial post-conviction application for writ of habeas corpus. *Ex parte Carty*, No. WR-61,055-01 (Tex. Crim. App. March 2, 2005)(not designated for publication).

Applicant presents six allegations in her -02 writ application in which she challenges the validity of her conviction and resulting sentence. We remanded this application for the trial court to consider three of Applicant's claims:

- A. Whether Applicant's right to due process was violated by the State's presentation of false and misleading testimony at trial, in violation of her rights to due process and due course of law under *Giglio* and *Napue*.
- B. Whether Applicant's right to due process and due course of law was violated by the State's presentation of false and misleading testimony against her at trial, in violation of her rights under *Chabot* and *Chavez*.
- C. Whether Applicant's right to due process was violated by the State's failure to disclose impeachment and exculpatory evidence in violation of *Brady v. Maryland*.

Applicant specifically asserts in Claims A, B, and C that the prosecutors coerced Robinson and Caston to testify falsely at trial, that they threatened Anderson and Mathis, and that they failed to disclose impeachment and exculpatory evidence with regard to Robinson, Caston, Anderson, and Mathis.

After holding a hearing on Claims A, B, and C, the trial court made findings of fact and conclusions of law recommending that those claims be denied. This Court has reviewed the record with respect to those allegations. Based upon the trial court's findings and conclusions and our own review, we deny relief on Claims A, B, and C.

In Claims D and E, Applicant contends that the "cumulative impact of the constitutional errors" violated her state and federal constitutional rights to due process and due course of law. In Claim F, Applicant contends that she "is actually innocent and her conviction and death sentence therefore violates the Eighth and Fourteenth Amendments to the United States Constitution." With regard to these claims, we find that Applicant has failed to satisfy the requirements of Article 11.071, § 5(a). Accordingly, we dismiss Claims D, E, and F as an abuse of the writ without reviewing the merits of those claims.

Applicant has also filed in this Court a "Motion for Remand and Alternatively, Motion to Stay." Applicant asserts in this motion that the State failed to disclose to defense counsel that it had a deal with Combs in exchange for his trial testimony. This claim, which was not contained in the instant writ application, was raised by Applicant during the post-remand hearing in the trial court. Because we do not have jurisdiction to review this claim, we deny

Applicant's motion to remand this application to the trial court for consideration of the merits of the claim.

IT IS SO ORDERED THIS THE 7TH DAY OF FEBRUARY, 2018.

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