

AFFIDAVIT OF JANET GILGER-VANDERZANDEN, ESQ.

I, Janet Gilger-VanderZanden, state and declare as follows:

1. My name is Janet Gilger-VanderZanden. I am a member in good standing of the Texas State Bar, admitted in January 2012. Additionally, I am a member in good standing (currently inactive) of the California State Bar, admitted in December 2003. I graduated from the University of Arizona, College of Law in May 2003.
2. I am currently working with the Office of Capital Writs (OCW) on a part-time basis as a post-conviction attorney, and have done so since approximately October 2011. Prior to contracting with the OCW, I worked as a Deputy State Public Defender at the Office of the State Public Defender in San Francisco, California for over six years. I have served as attorney of record on a multitude of both capital and non-capital criminal cases.
3. In my capacity as a contract attorney with the OCW, I had the occasion to work on the post-conviction capital case of Rickey Donnell Cummings.
4. On February 14, 2014, per my instruction, OCW post-conviction investigator Gabriel Solis traveled to Waco, Texas, and visited the home of Nickoll Henry, the testifying eyewitness against Mr. Cummings. At that time, Ms. Henry declined to speak with Mr. Solis. Over the course of the next several weeks, however, the OCW became aware that Ms. Henry expressed to other people involved in Mr. Cummings' case that her testimony at trial had been inaccurate and she was willing to speak with Mr. Cummings' appellate lawyers.



5. Mr. Solis and I made plans to speak with Ms. Henry together. The day before Mr. Solis and I intended to travel to Waco for the purpose of interviewing Ms. Henry, we learned she had been arrested. I checked the McLennan County Jail register online, and from the information available it appeared as though Ms. Henry was arrested on case number 2011-1190-C2, a prior assault charge.
6. Based on the court records and transcripts available to us, I determined that Ms. Henry's counsel of record on that particular assault charge was Waco attorney Alan Bennett. I called Mr. Bennett, and he indicated that he no longer represented Ms. Henry and therefore had no issue with the OCW speaking with her.
7. On May 15, 2014, OCW investigator Gabriel Solis and I traveled to the McLennan County jail and requested to speak with Ms. Henry. She was brought into an interview room, and I introduced myself and provided her with my business card. I informed Ms. Henry that the OCW represented Rickey Cummings on his post-conviction habeas litigation. I asked Ms. Henry why she was in jail, and she said she was there on a probation violation. I asked her whether she was represented by an attorney, and she stated that she believed it was someone named Richard Ferguson.
8. I told Ms. Henry that we were interested in what she had to say about Rickey Cummings trial and her knowledge of the underlying offense. I asked her if she was willing to speak with us and she said yes. Ms. Henry became extremely emotional and said that the Cummings case haunted her because she believed it was possible that she helped send an innocent man to death row. Ms. Henry revealed that despite the fact that she testified at trial she was "100% certain" she saw Mr. Cummings



racking a gun at her door the night of March 28, 2011, her testimony had not been truthful.

9. Ms. Henry said that on the night of March 28, she was resting on her couch and felt something hit her leg. At the same time she heard a commotion at the front door. Someone burst through the front door and ran toward the back of the apartment, leaving the front door open. Ms. Henry got up to close the door and saw a black man wearing a hoodie several feet away from where she was standing. The hoodie was black and the hood was pulled up on top of this person's head. Ms. Henry said she could see the man's eyes and mouth. He had a firearm that he racked several times because it appeared to be jammed. Ms. Henry and the male made direct eye contact before she slammed and locked the front door. Ms. Henry told us emphatically that she cannot say who the man in the hoodie was or whether she knew him. She reported that it was very dark outside and it all happened very fast.
10. Ms. Henry told us that she hung around the apartment and apartment complex while the police were processing the crime scene but that she ultimately left to sleep at her mother's house. Ms. Henry said that she returned to her apartment on March 30 to collect some of her belongings and found a bullet and bullet casings on her front door step. She took these items to the apartment complex manager who immediately called Waco Police Detective Steve January. Ms. Henry denied ever calling Detective January herself and denied ever speaking with him on the phone.
11. Ms. Henry reported that Detective January was already at the complex when the manager called him, and he arrived at the office minutes later. Detective January took Ms. Henry to the back room of the apartment



manager's office, and showed her multiple photographic line-ups that he had brought with him. Ms. Henry said that before she looked at any of the line-up photos, Detective January told her that Rickey Cummings had already been identified as a person involved in the shooting. Detective January asked Ms. Henry if she recognized anyone in the photos and she told him that she recognized Rickey Cummings.

12. Ms. Henry said that she saw Mr. Cummings walking through the breezeway of the apartment complex approximately thirty minutes before the shooting. She also saw him at the complex later that night, after the shooting, when the police and investigators were there. There were hundreds of people all around the complex at that time. Ms. Henry said she knew of Mr. Cummings because she had seen him and members of his family around the apartment complex. Ms. Henry knew that Mr. Cummings' grandmother lived in the complex. She also reported that she and Mr. Cummings did not directly interact often and only had a very few brief conversations. She said she was much more familiar with Mr. Cummings' brother, Tyrece Richards.
13. Ms. Henry also said that on at least three different occasions from August 2012 through October 2012, two Caucasian men brought large boxes of groceries to both her and her mother. The men said they were there on behalf of Detective January. She also received cigarettes directly from Detective January. He once asked Ms. Henry to find her niece Jacqueline Rocha and to drive Ms. Rocha from Dallas to his office. Detective January arranged for Ms. Henry to receive approximately \$127 from the District Attorney's Office for bringing Ms. Rocha to him.
14. Ms. Henry said that right before she testified at Mr. Cummings' trial, Detective January and a woman from the District Attorney's Office,



Tracy Viladevall, talked to her several times about what she would be asked on the stand. Ms. Viladevall took Ms. Henry shopping and bought her new clothes and shoes for the trial.

15. We thanked Ms. Henry for speaking with us and asked if we could come and talk to her again. She said we were welcome to come back. Once in Austin, I contacted Waco attorney Richard Ferguson by phone and left him a voice mail message. I explained who I was and that I represented Rickey Cummings and had spoken with Ms. Henry about her involvement in the case. I did not receive a call back.
16. On May 20, 2014, Gabriel Solis and I returned to the McLennan County Jail to visit Ms. Henry. Ms. Henry agreed to speak with us and reiterated her prior statement that she was not 100% certain that the person she saw at her door with a gun was Rickey Cummings. Ms. Henry reiterated that she did not know who the person was because it was very dark and it happened extremely fast.
17. Ms. Henry provided us with additional details regarding the night of March 28, 2011, some of which seemed implausible or simply impossible. She reported that after slamming and locking the front door she pushed furniture in front of it in order to keep others out. However, she also reported that after hearing gunshots she ran outside to the parking lot and saw one of the victims take his last breath. She recalled telling Detective January these memories but did not testify about them at Mr. Cummings' trial. Ms. Henry told us we were welcome to visit her again.
18. On June 4, 2014, Gabriel Solis and I returned to the McLennan County Jail and asked to speak with Ms. Henry again. At this meeting, Ms. Henry again agreed to speak with us, but revealed that she was in great



physical and emotional pain because she believed she was currently experiencing a miscarriage. She reported that no one at the jail knew she was pregnant and she was not receiving any medical care or attention. She told us that she had a court date and expected to be released the next week and that an attorney named Tom Ragland had been out to see her and would be representing her in court. Ms. Henry said that she had not told Mr. Ragland about us. I told her that we would call him and let him know that we had been out to see her. I asked her if she wanted us to call him so he could intervene with the jail medical staff on her behalf that day and she said no. She was apologetic about not speaking with us further but reiterated that her physical condition prohibited it. She asked us to come back the next week.

19. On June 9, 2014, at approximately 8:15 a.m., I left a voice mail message for Waco attorney Thomas Ragland. Later that morning, Gabriel Solis and I returned to the Waco County Jail, arriving at approximately 11:30 a.m. Ms. Henry was brought into the visiting room and said that, on the advice of her attorney, she would not be speaking with us and all inquiries should now be directed to her attorney.
20. That afternoon I called Mr. Ragland again and spoke with him regarding Mr. Cummings' case and why we had been out to visit Ms. Henry. He indicated he would speak with her about it the next time he saw her and would be in touch with us regarding her position.
21. On June 17, 2014, I received a letter in the mail from Ms. Henry that stated she was standing by her original trial testimony and would no longer speak with anyone from the OCW. Attached to the letter was a signed and notarized affidavit.




22. Throughout the course of post-conviction investigation, the OCW made numerous attempts to obtain documentation of law enforcement's contact with Ms. Henry, including but not limited to: law enforcement investigation reports; audio and/or video recordings; handwritten notes from law enforcement; and/or documentation of the actual line-up provided to Ms. Henry on March 30, 2011. Attempts to obtain this information through traditional methods, including public records requests and discovery, have proved unsuccessful.
23. After attempting to contact Detective January several times, I finally spoke with him via telephone on August 22, 2014. Detective January indicated that he did not have any documentation that he could personally provide and that we would need to contact Michael Jarrett in the District Attorney's Office. I contacted Mr. Jarrett and left a voice mail message for him that same day, and I sent a follow-up e-mail to him on August 28. Mr. Jarrett responded via e-mail on September 1 and indicated that he was at a seminar but would contact me the next week. I followed up via e-mail on September 8 and left a phone message for him on September 10. As of the signing of this affidavit, I have not yet heard back from him. (*See Attachment A.*)



24. I have read and reviewed this 8-page affidavit.

I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct to the best of my knowledge and that this affidavit was executed on Sept. 10, 2014, in Austin, Travis County, Texas.

  
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JANET GILGER-VANDERZANDEN

Subscribed and sworn to before me on 9-10, 2014.

  
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Notary Public, State of Texas

