



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

NO. WR-52,123-03

EX PARTE TELISA DEANN BLACKMAN, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. W97-50638-U(C) IN THE 291ST DISTRICT COURT
FROM DALLAS COUNTY**

PER CURIAM. MEYERS, WOMACK, and JOHNSON, JJ., would grant relief.

ORDER

Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court this application for writ of habeas corpus.¹ Telisa Blackman was convicted of murder and sentenced to life imprisonment. The Fifth Court of Appeals affirmed her conviction.²

In her application, Blackman contends, among other things, that the State failed to

¹ *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967)

² *Blackman v. State*, No. 05-98-01750-CR, 2000 WL 567985 (Tex. App.—Dallas May 8, 2000) (not designated for publication).

disclose exculpatory evidence in violation of *Brady v. Maryland*,³ namely, a 911 call in which State’s witness Cherissa Adams described the person later identified as Blackman (a female) as a man and evidence of Adams’s equivocation in identifying Blackman from a photographic lineup.

The trial judge found that the 911 recording and Cherissa Adams’s uncertainty in selecting Blackman from the photo line-up were favorable to Blackman, but were not disclosed. In recommending that we grant relief on her two *Brady* claims, the trial judge concluded that both “[are] material, such that there is a reasonable probability that had the evidence been disclosed to the defense, the outcome of the trial would have been different.” We will defer to a trial judge’s findings of fact and conclusions of law when they are supported by the record.⁴ But “[w]hen our independent review of the record reveals that a trial judge’s findings and conclusions are not supported by the record, [this Court] may exercise [its] authority to make contrary or alternative findings and conclusions.”⁵ The trial judge’s conclusion that the withheld evidence is material is not supported by the record. Further, our independent review of the record reveals that Blackman fails to demonstrate the withheld evidence’s materiality.

To prevail on a *Brady* claim, an applicant must show that: (1) the prosecution withheld

³ 373 U.S. 83 (1963).

⁴ *Ex parte Reed*, 271 S.W.3d 698, 727 (Tex. Crim. App. 2008).

⁵ *Id.*

evidence from the defense; (2) the evidence withheld is favorable to the defense; and (3) the evidence is material such that there exists a reasonable probability that, had the evidence been disclosed, the outcome at trial would have been different.⁶ As the trial judge correctly identified, the materiality requirement applicable to Blackman’s claims is satisfied only if “there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.”⁷ A reasonable probability means that the likelihood of a different result is great enough to undermine confidence in the trial’s outcome.⁸ “The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish ‘materiality’ in the constitutional sense.”⁹ To determine whether the materiality standard is met, a court must balance the exculpatory evidence against the evidence supporting conviction.¹⁰

Blackman first complains that the State withheld the recording of Adams’s 911 call the night of the murder, during which she reported seeing a black man move a lifeless body. Blackman is female. Blackman’s second claim regarding Adams’s identification of

⁶ *Ex parte Miles*, 359 S.W.3d 647, 665 (Tex. Crim. App. 2012); *Hampton v. State*, 86 S.W.3d 603, 612 (Tex. Crim. App. 2002).

⁷ *United States v. Bagley*, 473 U.S. 667, 682 (1985).

⁸ *Smith v. Cain*, 132 S. Ct. 627, 630 (2012).

⁹ *United States v. Agurs*, 427 U.S. 97, 109-10 (1976); *Ex parte Miles*, 359 S.W.3d at 666.

¹⁰ *Ex parte Miles*, 359 S.W.3d at 666.

Blackman from the photographic lineup on the night of the murder stems from a note in the prosecution's case file relating to a conversation with Adams about the identification. The note reads, in part, "[p]icked out someone else first, then changed mind [and] selected [Blackman] (Bust photo)." Blackman contends, and trial counsel confirmed at the writ hearing, that if the prosecution had disclosed this evidence, the defense could have used it to impeach Adams's testimony at trial that she saw Blackman drag a body into her apartment and might have followed a different investigative trail. Counsel also stated that, had he known this information, he would not have called Blackman as a witness and the jury would not have heard her testify about dragging the victim into her apartment.

With regard to the investigative value of this withheld evidence, Blackman fails to identify what, if anything, this might have unearthed that would have sufficiently undermined confidence in the outcome at trial. Similarly, she fails to show how impeaching Adams would probably have affected the results of the proceedings, particularly given the fact that—as Blackman concedes in her memorandum in support of her application—at least one officer testified at trial that Blackman admitted to dragging the victim into her apartment. Finally, Blackman makes no showing that the outcome would probably have been different had she chosen not to testify. Relief is denied.

FILED: October 10, 2012

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