



## IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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NO. WR-22,074-10

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**EX PARTE ROBERT GANDY, Applicant**

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**ON APPLICATION FOR A WRIT OF HABEAS CORPUS  
CAUSE NO. 532347-E IN THE 351ST DISTRICT COURT  
FROM HARRIS COUNTY**

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***Per curiam.* YEARY, J., filed a dissenting opinion in which KELLER, P.J., and KEASLER and SLAUGHTER, JJ., joined.**

### **OPINION**

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 a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant was convicted of aggravated robbery and sentenced to life imprisonment. The First Court of Appeals affirmed his conviction. *Gandy v. State*, 835 S.W.2d 238 (Tex. App. — Houston [1<sup>st</sup> Dist.] 1992).

Applicant contends that he was denied due process and is entitled to a new trial pursuant to Article 11.073 of the Texas Code of Criminal Procedure, because the State relied on false and misleading “junk science” evidence and testimony to obtain his conviction. Applicant alleges that

the evidence relied upon by the State at trial has since been contradicted by relevant scientific evidence that was unavailable at the time of his trial. Applicant alleges that but for the false and misleading testimony of the F.B.I. examiner, he would not have been convicted. We remanded this application to the trial court for findings of fact and conclusions of law.

At trial, an F.B.I. examiner testified that tests on bullets found in Applicant's residence and vehicle, in the residence of a co-defendant, and at the scene of the offense showed that some of the bullets from each location could have come from the same box of ammunition. Although the examiner testified that the bullets could have come from any group of boxes manufactured at the same location and about the same date, he testified that his opinion was that they likely came from the same box of ammunition. The F.B.I. has since conducted a review of all compositional bullet lead analysis testimony given by its examiners, and has determined that the examiner's testimony in this case exceeded the limits of the science, and is not supported by the F.B.I..

The trial court on remand has considered affidavits and arguments from the parties, and finds that the testimony of the F.B.I. examiner at Applicant's trial was false and misleading. The trial court finds that relevant scientific evidence is currently available and was not available at the time of Applicant's trial or previous habeas applications, and that such evidence would have been admissible at trial under the Texas Rules of Evidence. The trial court finds by a preponderance of evidence that but for the false testimony of the F.B.I. examiner, Applicant would not have been convicted of this offense.

Relief is granted. The judgment in Cause No. 532347 in the District Court of County is set aside, and Applicant is remanded to the custody of the Sheriff of Harris County to answer the charges as set out in the indictment. The trial court shall issue any necessary bench warrant within 10 days

after the mandate of this Court issues.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice–Correctional Institutions Division and Pardons and Paroles Division.

Delivered: May 8, 2019

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