

COPY

Cause No. 3083-A

FILED
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MAY 23 2002

AT 4:00 M O'CLOCK
CELIA KUYKENDALL
LAMB COUNTY DISTRICT CLERK

COURT OF CRIMINAL APPEALS OF TEXAS

**SECOND SUPPLEMENTAL FACTS AND MEMORANDUM OF LAW
IN SUPPORT OF ALBERTO SIFUENTES'S APPLICATION FOR
A WRIT OF HABEAS CORPUS SEEKING RELIEF FROM
FINAL FELONY CONVICTION**

Petitioner Alberto Sifuentes files this Second Supplemental Facts and Memorandum of Law in Support of his Application for a Writ of Habeas Corpus Seeking Relief From a Final Felony Conviction ("Writ of Habeas Corpus") filed on May 16, 2002 in the 154th District Court of Lamb County, Texas, and is incorporated therein.

INTRODUCTION

This Second Supplemental Facts and Memorandum of Law in Support of Mr. Sifuentes's Application for Writ of Habeas Corpus provides additional evidence in support of Claims One, Two and Three set forth in Mr. Sifuentes's Writ of Habeas Corpus. Specifically, this Memorandum provides the recently obtained affidavit from Pauline Robles, the alibi witness whose expected testimony was outlined in Claims One, Two and Three in the Writ of Habeas Corpus.

As discussed below in more detail, Ms. Robles, who was never investigated nor interviewed by the police or defense counsel concerning the murder of Angie Cruz, provides conclusive evidence exonerating Mr. Sifuentes of the crime for which he stands convicted.

THE TESTIMONY OF PAULINE ROBLES

As set forth in Claims One, Two and Three, no testimony was presented at Mr. Sifuentes's trial concerning any patrons at the Paradise Club in Lubbock who saw Mr. Sifuentes and Mr. Ramirez that night. Pauline Robles knew Jesus Ramirez¹ and saw him, Mr. Sifuentes and Mary Wood at the Paradise Club in Lubbock *at 2:00 a.m.* on the night of the murder. Since the prosecution's entire case hinged on an assumption that Mr. Sifuentes, Mr. Ramirez and Mary Davila Wood left the Paradise Night Club in Lubbock in sufficient time to reach Littlefield by 2:00 a.m. on August 6th - the time that Angie Cruz was shot - this testimony could not have been more exculpatory. It exonerates Mr. Sifuentes.²

Ms. Robles has recently provided an affidavit concerning the events on the evening of August 5th and the early morning of August 6th. A true and correct copy of Ms. Robles's affidavit is attached as Exhibit 41 (Exhibits 1 to 40 are attached to the Supplemental Facts and Memorandum of Law filed on May 16, 2002).

¹ Pauline Robles referred to Jesus Ramirez by a nickname, Jesse.

² Ms. Robles's testimony also shows that Brenda Ayala, the State's supposed eyewitness, never saw Mr. Sifuentes or Mr. Ramirez in the Jolly Roger store in Littlefield at 12:30 a.m. According to Ms. Robles, Mr. Sifuentes and Mr. Ramirez were at the Paradise Club in Lubbock at that time. *See* Affidavit of Pauline Robles, at ¶ 5.

Ms. Robles, who knew Jesus Ramirez, was at the Paradise Club in Lubbock on the night of the murder. When she was at the club, she saw Mr. Ramirez, Mr. Sifuentes and Mary Wood.

In her affidavit, Ms. Robles has provided the following testimony:

- She saw Mr. Ramirez, and another man and a woman whom she did not know (Mr. Sifuentes and Mary Wood) at the Paradise Club in Lubbock. Ms. Robles had not seen Mr. Ramirez in several years, and when she spoke to him at the club, she told him that “he was losing his hair on top.” Affidavit of Pauline Robles, at ¶ 4.
- Mr. Ramirez asked her dance while they were at the club, but Ms. Robles declined because she was with her boyfriend at the time. *Id.*
- Mr. Ramirez and the two people he was with were sitting at a table near Ms. Robles, and she could see them the entire evening. Mr. Ramirez (and Mr. Sifuentes and Mary Wood) “were at the club the entire time, listening to the band, until the band stopped playing around 1:30 a.m.” *Id.* at ¶ 5.
- The band at the Paradise Club stopped playing at 1:30 a.m., and Mr. Ramirez and the two people he was with “listened to the jukebox.” Ms. Robles put money in the jukebox, and she saw Mr. Ramirez “put money in the jukebox. He played three songs on the jukebox after the band stopped playing” at 1:30 a.m. *Id.* at ¶ 6.
- Ms. Robles and her boyfriend left the Paradise Club at the same time that Mr. Ramirez (and Mr. Sifuentes and Mary Wood) left the club. “It was 2:00 a.m. That is the time that the club closed, and we had to leave.” *Id.* at ¶ 7.
- **“I am sure that I saw Jesse (Mr. Ramirez) and the two people he was with that night leave the Paradise Club in Lubbock at 2:00 a.m.” *Id.***

The jury, however, never heard this testimony and never knew Pauline Robles existed.

The police investigating the murder never interviewed Ms. Robles or attempted to contact any of the patrons who were at the Paradise Club that night in an attempt to verify the whereabouts of the defendants. Further, despite knowing that this witness existed, defense counsel for Mr.

Sifuentes (and Mr. Ramirez) never investigated Pauline Robles, never interviewed her, and never provided her critical testimony, which would have exonerated Mr. Sifuentes, to the jury.³

The jury never knew that Mr. Sifuentes and Mr. Ramirez had left the bar in Lubbock at 2:00 a.m., the bar's closing time. They never knew that it was thus impossible for Mr. Sifuentes and Mr. Ramirez to have committed the robbery and murder at the Jolly Roger store in Littlefield, which was 35 miles away from the bar, before 2:08 a.m.

Ms. Robles's affidavit is provided in support of Claims One, Two and Three in Mr. Sifuentes's Writ of Habeas Corpus. As set forth in those claims, Ms. Robles is a critical alibi witness whose testimony exonerates Mr. Sifuentes. He could not have committed the murder in Littlefield when he was more than 30 miles away in Lubbock at the time of the shooting. This newly discovered evidence establishes that Mr. Sifuentes is innocent, and his continued incarceration violates the Due Process Clause of the Fourteenth Amendment as set forth in Claim One. Under the standards in *Herrera v. Collins*, 506 U.S. 390 (1993), or *Schlup v. Delo*, 513 U.S. 298 (1995), the newly discovered testimony of Pauline Robles proves that Mr. Sifuentes did not commit the murder for which he was convicted. Further, as set forth in Claims Two and Three, defense counsel's failure to investigate and present the testimony of Pauline Robles to the

³ The fact that Pauline Robles existed was known to defense counsel through witness statements made available to them well before trial. See Voluntary Statement of Accused, Mary Davila Wood, Texas Department of Public Safety, August 13, 1996, p. 2, attached as Exhibit 11 to the Supplemental Facts and Memorandum of Law filed on May 16, 2002 ("I saw a woman come over and hug "Michael [Jesus] and talked with Gilbert [Alberto]. They never introduced her to me.").

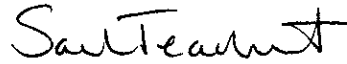
jury constituted ineffective assistance of counsel under the two-prong test of *Strickland v. Washington*, 466 U.S. 668 (1984).

The missing testimony of this alibi witness severely undermines the confidence to be placed in the outcome of this case. The prosecution's entire case was based on the most circumstantial of evidence. No witness placed them at the Jolly Roger at 2:00 a.m. There was no physical evidence tying them to the store or the murder. The prosecution's case hinged on dubious testimony by the bartender of the Paradise Club and an intoxicated Mary Wood that Mr. Sifuentes and Mr. Ramirez left the bar in Lubbock by midnight on the night of the murder, giving them plenty of time to be at the Jolly Roger in Littlefield by 2:00 a.m. Pauline Robles's testimony would have shown that these witnesses were wrong. She could have told the jury that the defendants were at the bar when it closed at 2:00 a.m. - testimony that would have completely exonerated Mr. Sifuentes.

CONCLUSION

Ms. Pauline Robles's affidavit is submitted in support of Mr. Sifuentes's Writ of Habeas Corpus. Her testimony establishes that trial counsel were ineffective for failing to investigate and present this highly exculpatory evidence. Importantly, Ms. Roble's testimony shows that Mr. Sifuentes is innocent. Accordingly, as set forth more fully in his Application, Mr. Sifuentes's Writ of Habeas Corpus should be granted.

Respectfully submitted,



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**ATTORNEYS FOR APPLICANT
ALBERTO SIFUENTES**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served upon the Lamb County District Attorney by Federal Express on this 22nd day of May 2002.



STATE OF TEXAS §
 §
COUNTY OF LUBBOCK §

AFFIDAVIT OF PAULINE ROBLES

1. My name is Pauline Robles. I am more than twenty-one (21) years of age, of sound mind, and am wholly competent to sign this Affidavit. I live in Lubbock, Texas. I have personal knowledge of the facts stated in this Affidavit, and they are true and correct.
2. I remember hearing in a newscast that a clerk was murdered at the Jolly Roger store in Littlefield, Texas, shortly after the murder occurred. I remember that I was at the Paradise club in Lubbock, Texas two or three days before I heard about the murder. I was there with my boyfriend, Alfredo Martinez.
3. While I was at the club, I saw Jesus Ramirez (who I know as Jesse). He was with another man and a woman who I did not know.
4. I know Jesse (Mr. Ramirez) because we used to date. I had not seen him for several years. He came up to the table where I was sitting and said hello, and I almost didn't recognize him. I remember telling him that it like "he was losing his hair on top." He asked me to dance. I told him that I was with my boyfriend who was in the bathroom at the time.
5. I remember that the three of them were sitting at a table nearby where I could see them. My boyfriend and I and Jesse (Mr. Ramirez) and the two people he was with were at the club the entire time, listening to the band, until the band stopped playing around 1:30 a.m.
6. I remember that, after the band stopped playing at 1:30 a.m., my boyfriend and I, Jesse (Mr. Ramirez), the two people he was with, and a few other people stayed and listened to

the jukebox. I put money in the jukebox, and I saw Jesse (Mr. Ramirez) put money in the jukebox. He played three songs on the jukebox after the band stopped playing.

7. My boyfriend and I left the club at the same time that Jesse (Mr. Ramirez) and the two people he was with left the club. It was 2:00 a.m. That is the time that the club closed, and we had to leave. I am sure that I saw Jesse (Mr. Ramirez) and the two people he was with that night leave the Paradise club in Lubbock at 2:00 a.m.

8. I was never interviewed by the police or any attorneys representing Jesse (Mr. Ramirez) concerning this matter.

FURTHER, Affiant sayeth not.

Pauline Robles
PAULINE ROBLES

This instrument was acknowledged before me on this 19th day of May, 2002, by

Richard Reyna
Notary Public in and for the State of Texas

