

**CLERK'S RECORD**

VOLUME 1 of 1

Trial Court Cause No. **0836979A**

In the **213TH DISTRICT COURT**  
of Tarrant County, Texas  
Hon. **ROBERT K. GILL**, Presiding Judge

**BARTON RAY GAINES, APPELLANT**

VS.

THE STATE OF TEXAS

Appealed to the Court of Appeals  
for the 2nd Supreme Judicial District of Texas  
at Fort Worth, Texas

ATTORNEY FOR THE APPELLANT

WHITNEY WIEDEMAN, APPT.  
P. O. BOX 9412  
FORT WORTH, TEXAS 76147  
PHONE: 817-247-4779  
FAX: N/A  
SBOT: 00797662  
Attorney for BARTON RAY GAINES, Appellant

Delivered to the Court of Appeals for the 2nd Supreme  
Judicial District of Texas at Fort Worth, Texas, on the  
17th day of April 2003

THOMAS A. WILDER, DISTRICT CLERK,  
TARRANT COUNTY, FORT WORTH, TEXAS  
Nancy Gilliland  
NANCY GILLILAND  
Deputy District Clerk

(Court of Appeals)  
Cause No. \_\_\_\_\_  
Filed in the Court of Appeals for the 2nd Supreme Judicial  
District of Texas, at Fort Worth, Texas, this

\_\_\_\_\_ day of \_\_\_\_\_  
STEPHANIE LAVAKE, Clerk  
By \_\_\_\_\_, Deputy

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## *Presentment Of The Indictment*

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APRIL 25, 2002

On this day came the Grand Jury, into open Court, in a body, a quorum there of being present, and through their Foreman, presented to the Judge of the **213th District Court** the following Bills of Indictment, and stated to the Court that at least nine Grand Jurors had concurred in the return of each of such Bills of Indictment.

Said Bills of Indictment were, by the Judge of the Court, delivered to the Clerk, and Ordered filed and docketed, and all necessary process issued thereon.

TRIAL COURT CAUSE NO. **0836979A**

THE STATE OF TEXAS

VS.

**BARTON RAY GAINES**

**CHARGE:**

AGGRAVATED ROBBERY WITH A DEADLY WEAPON, TO-WIT: A FIREARM. CAPITAL MURDER-ATTEMPT

NAME BARTON RAY GAINES  
ADDRESS 1001 EDGEWOOD TRL.  
GRANDBURY TX 76049  
RACE W SEX M AGE 19 DOB 10-25-82  
CASE NO. 0836979 FILED: (DATE) 03-06-02  
PC HAS BEEN DETERMINED  
TRANSFERRED TO COURT

& AGG ROBB-DW  
OFFENSE USE CAPITAL MURDER-ATTEMPT  
DATE 02-21-02  
I. P. ANDREW HORVATH  
C. C. 0836650 0836985 0837134 0837136  
AGENCY FORT WORTH PD  
OFFENSE NO. 02132262 COURT D213

INDICTMENT NO. 0836979 A

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURORS OF TARRANT COUNTY, TEXAS, duly elected, tried, empaneled, sworn and charged to inquire of offenses committed in Tarrant County, in the State of Texas, upon their oaths do present in and to the \* \* \* \* \*

213th DISTRICT COURT

of said County that \* \*

BARTON RAY GAINES hereinafter called Defendant, in the County of Tarrant and State aforesaid, on or about the 21ST day of FEBRUARY 2002, did

THEN AND THERE, WITH THE SPECIFIC INTENT TO COMMIT THE OFFENSE OF CAPITAL MURDER OF ANDREW HORVATH, INTENTIONALLY SHOOT ANDREW HORVATH WITH A DEADLY WEAPON, TO-WIT: A FIREARM, DURING THE COURSE OF OR ATTEMPTING TO COMMIT ROBBERY, WHICH AMOUNTED TO MORE THAN MERE PREPARATION THAT TENDED BUT FAILED TO EFFECT THE COMMISSION OF THE OFFENSE INTENDED,

COUNT TWO: AND IT IS FURTHER PRESENTED IN AND TO SAID COURT THAT THE SAID DEFENDANT IN THE COUNTY OF TARRANT AND STATE AFORESAID OR OR ABOUT THE 21ST DAY OF FEBRUARY, 2002, DID THEN AND THERE INTENTIONALLY OR KNOWINGLY, WHILE IN THE COURSE OF COMMITTING THEFT OF PROPERTY AND WITH INTENT TO OBTAIN OR MAINTAIN CONTROL OF SAID PROPERTY, THREATEN OR PLACE ANDREW HORVATH IN FEAR OF IMMINENT BODILY INJURY OR DEATH, AND THE DEFENDANT DID THEN AND THERE USE OR EXHIBIT A DEADLY WEAPON, TO-WIT: A FIREARM,

AGAINST THE PEACE AND DIGNITY OF THE STATE.

*Imi Curry*

Criminal District Attorney  
INDICTMENT - ORIGINAL

*Philip C. Bell*

Foreman of the Grand Jury

Filed (Clerk's use only)

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

APR 25 2002

Time 12:30p  
By *13* Deputy

# CRIMINAL DOCKET

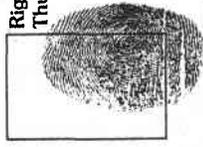
TRS 39 DL

DISPOSITION OF CASE:

S DPS

DETAINER \_\_\_\_\_  
 (CRIMINAL) DISTRICT COURT 213  
 TRANSFERRED TO \_\_\_\_\_  
 State's Attorney ROBERT FORAN, MICHELE HARTMANN  
 On Probation Revocation \_\_\_\_\_  
 Defendant's Attorney GREG WESTFALL, CHEYENNE MINICK  
 On Probation Revocation \_\_\_\_\_  
 Surety \_\_\_\_\_  
 Appeals Attorney REAGAN WYNN appt'd.

1. 35 years IDTDCJ + \$10,000.00 A
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_



COMPLAINT FILED. BOND SET AT \$ 350,000

Indexed	Right Thumb Print	Date	Description
		8-22-02	<u>motion for continuance filed and granted.</u>
		SEP 03 2002	<u>TRIAL DOCKET CALL</u>
		OCT 11 2002	<u>State's motions (2) filed</u>
		11-13-02	<u>State's Notice to Introduce Evidence of Other Crimes, Wrongs or Acts. Filed</u>
		DEC - 3 2002	<u>Brady vs. Maryland Compliance Notification filed</u>
		DEC - 3 2002	<u>Supplemental Notice of Extensive Offenses filed</u>
		DEC - 9 2002	<u>TRIAL DOCKET CALL</u>
			<u>Writ of attachment issued for Lilia Gonzalez</u>
			<u>DEFENDANT'S MOTION FOR ASSESSMENT OF PUNISHMENT (BY JURY) FILED</u>

MAR 06 2002  
 3-18-02 Haver & App. Counsel  
 APR 25 2002 Order to Allow Access by Psychologist filed INDICTMENT VOL.MTH PAGE 23  
 APR 25 2002 State's Announcement of Ready Piled  
 6-3-02 Order to Allow Access by Investigator filed  
 JUN 24 2002 TRIAL DOCKET CALL, Defendant's motion for production of photographs, videotapes & digital images filed & Granted  
 7-5-02 Defense motions & Requests filed  
 8-7-02 Pro Se Application for Writ of Habeas Corpus filed  
 8-19-02 State's Expert Witness List filed

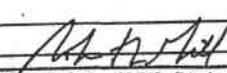
**Thomas A. Wilder**

DISTRICT CLERK  
 TARRANT COUNTY, TEXAS

THESE ARE CRIMINAL COURT PAPERS AND MUST NOT BE REMOVED

- OVER -

## CRIMINAL DOCKET

12-9-02 (Continued)	DEFENDANT ARRAIGNED. DEFENDANT ENTERED HIS PLEA OF GUILTY TO COUNT TWO TO THE COURT. JURY CALLED AND SEATED.
12-10-02	JURY SWORN, WRIT OF ATTACHMENT ISSUED FOR AFTAB AHMED.
12-12-02	DEFENDANT ENTERED HIS PLEA OF "GUILTY" TO COUNT TWO TO THE JURY. TESTIMONY BEGAN.
12-12-02	COURT'S CHARGE FILED. JURY VERDICT: GUILTY OF AGGRAVATED ROBBERY WITH A DEADLY WEAPON, TO-WIT: A FIREARM; -35- YEARS IN THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE PLUS A \$10,000.00 FINE. DEFENDANT SENTENCED TO -35- YEARS IN THE INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE, PLUS A \$10,000.00 FINE, TO BE CREDITED WITH TIME SPENT IN JAIL. JUDGMENT, DEFENDANT ADVISED OF HIS RIGHT OF APPEAL, WRITTEN NOTICE OF APPEAL FILED, MOTION FOR FREE REPORTER'S RECORD AND AFFIDAVIT OF INABILITY TO PAY FOR COUNSEL AND REPORTER'S RECORD FILED.
12-12-02	ORDER APPOINTING COUNSEL, FOR THE APPEAL AND ORDER FOR COURT REPORTER TO PREPARE REPORTER'S RECORD
	 Presiding Judge, 213th District Court
DEC 16 2002	Letter to appointed attorney w/enclosures
12-17-02	Copy of Judgment, Notice of Appeal and Attorney Appointment Letter sent to State and Court of Appeals
1-3-03	Amended Designation of The Record on Appeal filed
*12-20-02	Designation of the Record on Appeal
*12-20-02	Motion for New Trial filed
1-9-03	Copy to State and Court of Appeals
3-26-03	Attachment Order filed
3-26-03	Bench Warrant Issued
4-10-03	Attachment Hearing
4-10-03	New Appointment Substituted Counsel (Whitney Watson) for the Appeal; Defendant to be returned to JPDOS
4-10-03	Letter to Attorney with Attachments Copy of Letter sent to Defendant

NAME BARTON RAY GAINES  
ADDRESS 732 DANIELS  
CROWLEY TX 76036  
RACE M SEX M AGE 19 DOB 10-25-82  
CASE NO. 0834979 FILED: (DATE) 03-06-02  
PC HAS BEEN DETERMINED  
TRANSFER: COURT DATE

OFFENSE CAPITAL MURDER-ATTEMPT  
DATE 02-24-02  
I. P. ANDREW HORVATH  
C. C. 0836650 0836651  
AGENCY FORT WORTH PD  
OFFENSE NO. 02132262 COURT 0213  
0834979

COMPLAINT NO.

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

Before me, the undersigned Assistant District Attorney of Tarrant County, Texas, this day personally appeared the undersigned affiant, who upon his oath says that he has good reason to believe and does believe that in the County of Tarrant and State of Texas \* \* \* \* \*

BARTON RAY GAINES

hereinafter called Defendant, in the County of

Tarrant and State aforesaid, on or about the 21<sup>ST</sup> day of FEBRUARY 2002, did THEN AND THERE, WITH THE SPECIFIC INTENT TO COMMIT THE OFFENSE OF CAPITAL MURDER OF ANDREW HORVATH, INTENTIONALLY SHOOT ANDREW HORVATH WITH A DEADLY WEAPON, TO-WIT: A FIREARM, DURING THE COURSE OF OR ATTEMPTING TO COMMIT ROBBERY, WHICH AMOUNTED TO MORE THAN MERE PREPARATION THAT TENDED BUT FAILED TO EFFECT THE COMMISSION OF THE OFFENSE INTENDED,

COUNT TWO: AND IT IS FURTHER PRESENTED IN AND TO SAID COURT THAT THE SAID DEFENDANT IN THE COUNTY OF TARRANT AND STATE AFORESAID OR OR ABOUT THE 21<sup>ST</sup> DAY OF FEBRUARY, 2002, DID THEN AND THERE INTENTIONALLY OR KNOWINGLY, WHILE IN THE COURSE OF COMMITTING THEFT OF PROPERTY AND WITH INTENT TO OBTAIN OR MAINTAIN CONTROL OF SAID PROPERTY, THREATEN OR PLACE ANDREW HORVATH IN FEAR OF IMMINENT BODILY INJURY OR DEATH, AND THE DEFENDANT DID THEN AND THERE USE OR EXHIBIT A DEADLY WEAPON, TO-WIT: A FIREARM.

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Sworn to and subscribed before me on this the 6 day of March 2002

Affiant

COMPLAINT

Assistant District Attorney of  
Tarrant County, Texas

Filed (Clerk's use only)

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

MAR 06 2002

Time \_\_\_\_\_  
By \_\_\_\_\_ Deputy

D213  
Case # 0830.79

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

MAR 07 2002

Barton Ray Gaines

Time 8:00  
By AC Deputy

Defendant's name ~~Morris, Johnny~~  
Sex M Race W SSN \_\_\_\_\_

CID no. \_\_\_\_\_  
Arrest no. \_\_\_\_\_  
Service no. \_\_\_\_\_  
Warrant no. \_\_\_\_\_

**WAIVER OF APPOINTED COUNSEL**

I have been told by the magistrate that I have the right to request the appointment of a lawyer. I understood the warnings given to me by the magistrate. I wish to waive my right to an appointed attorney at this time. I do not want the magistrate to appoint an attorney for me at this time.

Barton Gaines  
(Defendant)

**REQUEST FOR APPOINTED COUNSEL**

I have been advised by the court of my right to representation by counsel in the trial of the charge pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me.

\_\_\_\_\_  
(Defendant)

**ORDER SETTING CONDITIONS OF BOND**

IT IS THE ORDER OF THE COURT that if you receive an appointed attorney and make bond, you shall comply with the following additional terms and conditions of bond:

1. You shall keep all appointments with your attorney.
2. You shall attend all court settings.
3. You shall notify your attorney or your attorney's office of any changes in your residence address, business address or telephone numbers within 24 hours of such change.

Any violation of these conditions may result in your bond being held insufficient and you being returned to custody.

\_\_\_\_\_  
Judge/Magistrate

I understand these conditions of my bond.

\_\_\_\_\_  
Defendant Date

CAUSE NO. 0836979

FILED  
TARRANT COUNTY

MAR 18 AM 10:38  
THOMAS A. WILDER  
DISTRICT CLERK  
*den*

THE STATE OF TEXAS

§ IN THE 213TH JUDICIAL

v.

§  
§ DISTRICT COURT OF

BARTON RAY GAINES

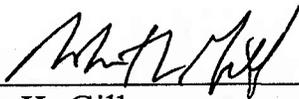
§  
§ TARRANT COUNTY, TEXAS

**ORDER TO ALLOW ACCESS BY PSYCHOLOGIST**

TO THE TARRANT COUNTY SHERIFF:

YOU ARE HEREBY ORDERED to allow Mary Connell, Ed.D. to have private, contact access to BARTON RAY GAINES, DOB 10-25-82, for the purpose of psychological consultation and testing.

SIGNED THIS 15TH DAY OF MARCH, 2002.



\_\_\_\_\_  
Robert K. Gill  
Judge Presiding  
213th District Court  
Tarrant County, Texas

*sch. handling*

NO. 083697a

**THE STATE OF TEXAS**

207X  
**IN THE CRIMINAL DISTRICT**

**VS.**

**COURT NUMBER** \_\_\_\_\_

Barton

**TARRANT COUNTY, TEXAS**

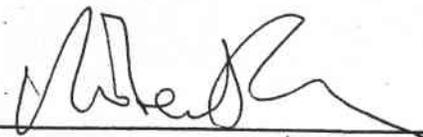
**STATE'S ANNOUNCEMENT OF READY**

**TO THE HONORABLE JUDGE OF SAID COURT:**

*NOW COMES the State of Texas in the above styled and numbered cause and announces to the Court that the State is ready for trial in this case.*

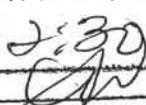
*Respectfully submitted,*

**TIM CURRY  
CRIMINAL DISTRICT ATTORNEY  
TARRANT COUNTY, TEXAS**

By:   
**Assistant Criminal District Attorney**

**FILED**  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

APR 25 2002

Time 12:30  
By  Deputy

THE STATE OF TEXAS

WRIT, 0836979A

Writ to Serve Indictment

D213

To Any Peace Officer of the State of Texas – GREETINGS:

YOU ARE HEREBY COMMANDED to immediately deliver to

BARTON RAY GAINES

6210

the defendant, in person, in the case of the STATE OF TEXAS vs.

BARTON RAY GAINES

No. 0836979A

pending in the Criminal District Courts of Tarrant County,

the accompanying certified copy of Indictment in said cause.

HEREIN FAIL NOT, and make due return hereof FORTHWITH.

WITNESS my signature and official seal on this the

25TH day of APRIL 20 02

THOMAS A. WILDER Clerk, District Courts, Tarrant County, Texas

By Delma Windom, Deputy

OFFICER'S RETURN:

Came to hand the same day issued and executed by me

on the 25<sup>th</sup> day of April 20 02, by delivering to

Barton Ray Gaines the within named

Defendant in person, the within named certified copy of indictment in said cause.

Returned on this the 27<sup>th</sup> day of April 20 02.

Dee Anderson, Sheriff

By Jefferson 6898, Deputy

FILED  
TARRANT COUNTY

2002 APR 29 PM 1:52

THOMAS A. WILDER  
DISTRICT CLERK

25

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

MAY 30 2002

CAUSE NO. 0836979A

THE STATE OF TEXAS

v.

BARTON RAY GAINES

§  
§  
§  
§

IN THE 213TH JUDICIAL DISTRICT COURT OF TARRANT COUNTY, TEXAS

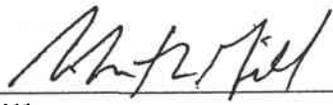
Time \_\_\_\_\_  
By MC Deputy

**ORDER TO ALLOW ACCESS BY INVESTIGATOR**

TO THE TARRANT COUNTY SHERIFF:

YOU ARE HEREBY ORDERED to allow FRED PENDERGRAF and PAUL GORDON to enter the Tarrant County Jail for the purpose of interviewing BARTON RAY GAINES, DOB 10-25-82, and any other persons necessary for the defense of his case.

SIGNED THIS 3rd day of June, 2002.



Robert K. Gill  
Judge Presiding  
213th District Court  
Tarrant County, Texas

THE STATE OF TEXAS

§  
§  
§  
§  
§

IN THE 213th DISTRICT JUN 24 2002

v.

COURT OF

Time 3:30  
By Er Deputy

BARTON RAY GAINES

TARRANT COUNTY, TEXAS

**DEFENDANT'S MOTION FOR PRODUCTION  
OF PHOTOGRAPHS, VIDEOTAPES AND DIGITAL IMAGES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, BARTON RAY GAINES, by and through undersigned counsel, and respectfully requests the Court to issue an order to all law enforcement agencies who have investigated any matter pertaining to the above cause to produce copies of all photographs, videotapes and digital images and would show the Court as follows:

I.

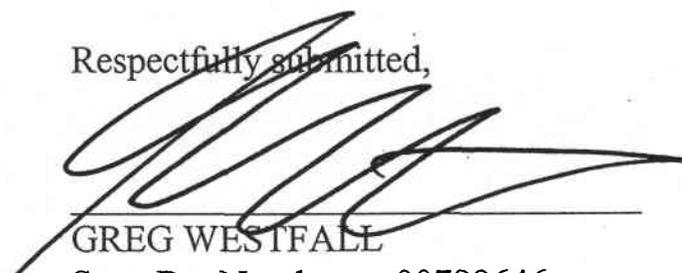
Defendant is charged with attempted capital murder arising out of an investigation by at least the Fort Worth Police Department. Law enforcement officers took photographs and/or digital images during their investigation. Officers also seized film, photographs and/or digital images. Officers also collected a videotape from a WalMart store purporting to show Defendant.

II.

Obtaining a complete set of all photographs, videotapes and digital images taken in connection with this case, that are true, correct and accurate, is essential to Counsel's ability to adequately defend Defendant in accordance with the Sixth Amendment to the United States Constitution.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the Court order the State of Texas to reproduce from the original negatives any photographs in the possession of the State, or make color copies of any photographs where the State has no negatives, make true and accurate copies of any videotapes and makes hard copies or provide a disk of any digital photographs taken or seized by law enforcement in connection with this case and provide same to Defendant in a timely manner.

Respectfully submitted,



GREG WESTFALL

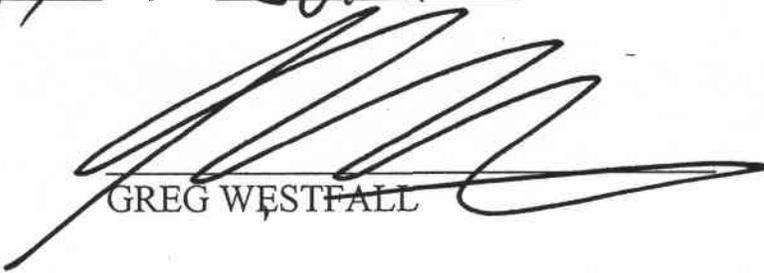
State Bar Number: 00788646

WESTFALL, PLATT & CUTRER  
910 Mallick Tower

One Summit Ave.  
Fort Worth, Texas 76102  
(817) 877-1700  
(817) 877-1710 (fax)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion has been hand-delivered to the office of Robert Foran, Esquire, Tarrant County Criminal District Attorney, Tarrant County Courthouse, 401 West Belknap, Fort Worth, Texas 76196 on this 17 day of June, 2002.

  
GREG WESTFALL

CAUSE NOS 0836979D

THE STATE OF TEXAS                   § IN THE 213th DISTRICT  
  §  
v.   § COURT OF  
  §  
BARTON RAY GAINES                   § TARRANT COUNTY, TEXAS

**ORDER ON DEFENDANT'S MOTION FOR PRODUCTION  
OF PHOTOGRAPHS, VIDEOTAPES AND DIGITAL IMAGES**

On this date was heard Defendant's motion and finding same to be meritorious, it is hereby GRANTED.

The State of Texas is therefore ordered to, in a timely manner, request copies from all law enforcement agencies of all photographs, videotapes and digital images associated with any aspect of investigation performed by any law enforcement agency having anything to do with the above-styled case.

The photographs shall be reproduced from negatives, where the law enforcement agency has access to the negatives and shall be color photocopied where the agency does not have access to the negatives. Digital images shall be produced either on disk or as photographs. Videotapes shall be copied.

SIGNED THIS 24 DAY OF June, 2002.

By: \_\_\_\_\_

  
HON. ROBERT K. GILL  
JUDGE PRESIDING

JUL - 5 2002

Time 8:50 AM  
ew Deputy

Cause No. 0836979D

THE STATE OF TEXAS

§  
§  
§  
§  
§  
§  
§

IN THE 213<sup>TH</sup> CRIMINAL

VS.

DISTRICT COURT OF

BARTON RAY GAINES

TARRANT COUNTY, TEXAS

**DEFENDANT'S MOTION TO REQUIRE THE  
ENDORSEMENT OF NAMES OF WITNESSES UPON  
WHOSE TESTIMONY THE INDICTMENT WAS FOUND**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes **BARTON RAY GAINES**, Defendant in the above styled and numbered cause, by and through his attorney of record, and respectfully moves the Court to direct the Tarrant County District Attorney to conform the Indictment in the above styled and numbered cause to the requirements of Article 20.20, Texas Code of Criminal Procedure, and in connection therewith, would respectfully show the Court the following:

I.

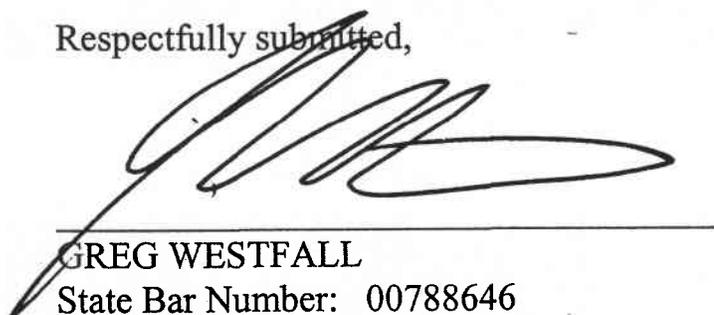
The Indictment in the above entitled and numbered cause does not contain the names and addresses of any witnesses who appeared before the Grand Jury.

II.

The Defendant contends that it is necessary and mandatory that the State, by and through her District Attorney, be required to endorse the names and addresses of each and every witness who appeared before the Grand Jury on the Indictment in this cause.

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully moves the Court to enter an order requiring the prosecuting attorney to comply with the provisions of article 20.20 of the Texas Code of Criminal Procedure.

Respectfully submitted,



---

GREG WESTFALL

State Bar Number: 00788646

WESTFALL, PLATT & CUTRER  
910 Mallick Tower  
One Summit Avenue  
Fort Worth, Texas 76102  
(817) 877-1700  
(817) 877-1710 (fax)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been hand-delivered to the office of Tim Curry, Tarrant County Criminal District Attorney, Tarrant County Justice Center, 401 West Belknap, Fort Worth, Texas 76196, on this 26 day of JUNE, 2002.

  
GREG WESTFALL

**ORDER**

This the \_\_\_\_\_ day of \_\_\_\_\_, 2002, the foregoing Motion having been presented and heard by the Court, it is hereby ORDERED that:

All relief requested is hereby GRANTED.

\_\_\_\_\_  
JUDGE PRESIDING

The relief requested is granted in part as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
JUDGE PRESIDING

All relief requested is DENIED, to which action Defendant excepts.

\_\_\_\_\_  
JUDGE PRESIDING

Cause No. 0836979D

JUL - 5 2002

THE STATE OF TEXAS

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§

IN THE 213<sup>TH</sup>

CRIMINAL

8:50 AM  
By                      Deputy

VS.

DISTRICT COURT OF

BARTON RAY GAINES

TARRANT COUNTY, TEXAS

**MOTION FOR PRODUCTION OF WITNESS' STATEMENTS**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes **BARTON RAY GAINES**, Defendant in the above styled and numbered cause, by and through his attorney of record, and based upon the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, Article I, Section 10, of the Texas Constitution, and articles 1.05 and 39.14, Texas Code of Criminal Procedure, and respectfully moves this Honorable Court to order the prosecuting attorney to produce, after a witness called by the State of Texas has testified on direct examination, the following items, to-wit:

1. Any and all statements of witnesses called on behalf of the prosecution which were taken by any member of the federal, county, or city law enforcement departments or agencies, particularly the office of the District Attorney of Tarrant County, Texas, the Fort Worth Police Department, the Tarrant County Sheriff's Department, or the Texas Department of Public Safety, or any other person, which statements are within the control or possession of the office of the District Attorney of Tarrant County, Texas, or executive authority of the State of Texas.

2. All documents used by the witness to refresh his/her memory concerning the facts in this cause, either prior to his/her testimony in this case or as he/she was giving direct testimony in this cause before the trier of fact.
3. A transcript of the Grand Jury testimony of any witness called by the State of Texas to testify after the witness has completed his or her direct examination.
4. Any document, object, photo or chart, the contents of which have in any way been placed before the jury before direct examination of the witness.
5. Any police report where same is shown to purport to be what the witness observed or did at the time in questions and which concerns facts testified to by the witness on direct examination whether made by the witness or not as long as the witness has adopted same as correct.

The Defendant requests that such statements be made available to Defendant's counsel after any witness making such statement has testified before the jury in this cause on direct examination and before any cross-examination begins.

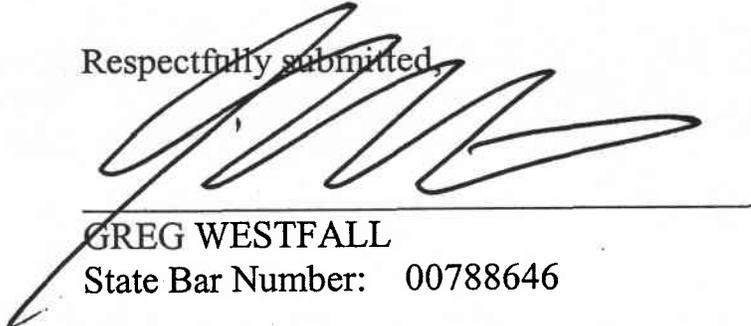
Defendant further requests the Court to order the prosecuting attorney to not offer, in the presence of the jury, any of the foregoing statements, documents, charts, photographs or other requested objects in evidence until their admissibility has been established outside the presence of the jury.

As a further basis for this motion, the Defendant would show that Defendant will not be able to effectively confront and cross-examine State's witnesses without the production of the material requested above.

The Defendant would further, and in the alternative, request that in order to speed up the trial of the case, and in the interest of judicial economy, that the Court order the prosecuting attorney to produce the above requested statements at a time prior to the commencement of said trial in order that Defendant's counsel could be prepared to cross-examine said witnesses from said statements without requiring the necessity of a recess after each witness has testified.

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully prays this Motion be in all things granted.

Respectfully submitted,



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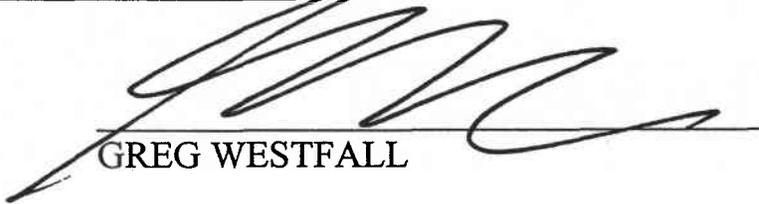
GREG WESTFALL

State Bar Number: 00788646

WESTFALL, PLATT & CUTRER  
910 Mallick Tower  
One Summit Ave.  
Fort Worth, Texas 76102  
(817) 877-1700  
(817) 877-1710 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been hand-delivered to the office of Tim Curry, Tarrant County Criminal District Attorney, Tarrant County Justice Center, 401 West Belknap, Fort Worth, Texas 76196, on this 26 day of JUNE, 2002.

  
GREG WESTFALL

*11/22/02  
st. apud. to provide  
to witness st. list at GTE.  
no*

ORDER

This the \_\_\_\_\_ day of \_\_\_\_\_, 2002, the foregoing

Motion having been presented and heard by the Court, it is hereby ORDERED that:

All relief requested is hereby GRANTED.

\_\_\_\_\_  
JUDGE PRESIDING

The relief requested is granted in part as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
JUDGE PRESIDING

All relief requested is DENIED, to which action Defendant excepts.

---

JUDGE PRESIDING

Cause No. 0836979D

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

JUL - 5 2002

Time 8:50 AM  
Deputy

THE STATE OF TEXAS

§  
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§  
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§  
§

IN THE 213<sup>TH</sup> CRIMINAL

VS.

DISTRICT COURT OF

BARTON RAY GAINES

TARRANT COUNTY, TEXAS

**MOTION FOR DISCLOSURE OF IMPEACHING INFORMATION**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes **BARTON RAY GAINES**, Defendant in the above styled and numbered cause, by and through his attorney of record, and respectfully moves this Court, pursuant to Article 39.14, Texas Code of Criminal Procedure, and the principles of *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); and *United States v. Bagley*, 473 U. S. 264 (1985), for entry of an order directing the State forthwith to make inquiry and disclose all of the following within the possession, custody or control of the State, or the existence of which is known or by the exercise of due diligence could become known by the State of Texas, and which relate to any of the States' witnesses:

1. All final convictions for all felonies and all misdemeanors involving moral turpitude which have occurred in the last ten years measured from the date of conviction or the date of release from incarceration, whichever is latest;

All felony convictions and misdemeanor convictions involving moral turpitude which have resulted in a suspended sentence which has not been set aside; and

All felony convictions and misdemeanor convictions involving moral turpitude which have resulted in the persons being placed on probation, wherein the period of probations has not expired.

2. Any and all consideration or promises of consideration given to or on behalf of the witness or expected or hoped for by the witness. By "consideration" Defendant refers to absolutely anything, whether bargained for or not, which arguably could be of value or use to a witness or to persons of concern to the witness, including, but not limited to, formal or informal, direct or indirect, leniency, favorable treatment or recommendations, or other assistance with respect to any pending or potential criminal, parole, probation, pardon, clemency, civil, tax court, court of claims, administrative, or other dispute with the State or with any other authority or with any other parties; criminal, civil or tax immunity grants; relief from forfeiture; payments of money, rewards or fees, provision of food, clothing, shelter, transportation, legal services or other benefits; placement in a "witness protection program", informer status of the witness; and anything else which arguably could reveal an interest motive or bias in the witness in favor of the State of Texas or against the defense or act as an inducement to testify or to color testimony.
3. Any and all threats, express or implied, direct or indirect, or other coercion made or directed against the witness, criminal, prosecutions, investigations, or potential prosecutions pending or which could be brought against the witness, any probationary, parole, deferred prosecution, or custodial status of the witness, and any civil, tax court, court of claims, administrative, or other pending or potential legal disputes or transactions with the State of Texas or over which the State has real, apparent or perceived influence.
4. The existence and identification of each occasion on which the witness has testified before any court, grand jury, or other tribunal or body or

otherwise officially narrated in relation to the Defendant, the investigation, or the facts of this case.

5. The existence and identification of each occasion on which each witness who was or is an informer, accomplice, co-conspirator, or expert has testified before any court, grand jury, or other tribunal or body.
6. The same records and information requested in items 1 through 5 above with respect to each non-witness declarant whose statements are offered in evidence.

The District Attorney does have the means at his disposal to obtain a full and complete criminal record of each of the State's witnesses or possible witnesses. Such prior criminal records is relevant and material for impeachment purposes and to test the bias, motive, animus and ill feelings of each said State's witness who testifies against the Defendant.

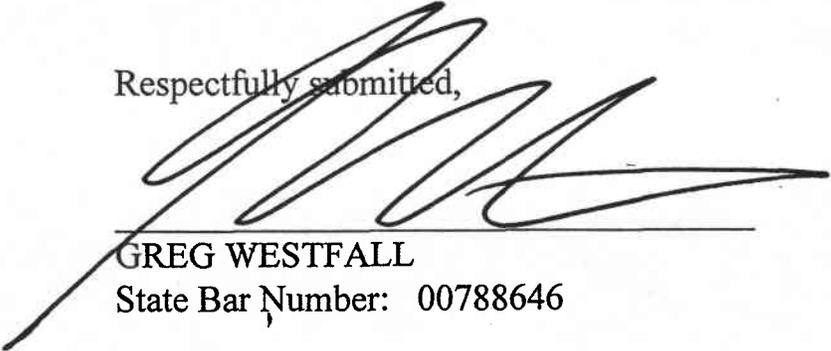
The State should not be permitted to avoid the responsibility of requesting the proper law enforcement authorities to obtain a full and complete prior criminal record of the State's witnesses or possible witnesses, and should not be permitted to respond to this motion by advising the Court that the District Attorney does not have any indication in his file of any prior criminal record of such witnesses simply because he has not made the necessary inquiries.

If the District Attorney does not request the proper law enforcement authorities to obtain a full and complete criminal record of such witnesses and reveal all of said

information to the Defendant, the District Attorney will be secreting evidence which directly affects the credibility of the witnesses and the weight to be given their testimony and will therefore be secreting evidence which would probably affect the verdict.

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully prays that this motion be granted.

Respectfully submitted,

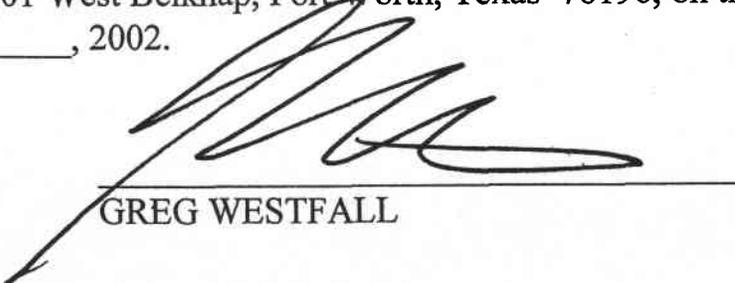


GREG WESTFALL  
State Bar Number: 00788646

WESTFALL, PLATT & CUTRER  
910 Mallick Tower  
One Summit Ave.  
Fort Worth, Texas 76102  
(817) 877-1700  
(817) 877-1710 (fax)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been hand-delivered to the office of Tim Curry, Tarrant County Criminal District Attorney, Tarrant County Justice Center, 401 West Belknap, Fort Worth, Texas 76196, on this 26 day of JUNE, 2002.



GREG WESTFALL

**ORDER**

This the \_\_\_\_ day of \_\_\_\_\_, 2002, the foregoing Motion having been presented and heard by the Court, it is hereby ORDERED that:

All relief requested is hereby GRANTED.

\_\_\_\_\_  
JUDGE PRESIDING

The relief requested is granted in part as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
JUDGE PRESIDING

All relief requested is DENIED, to which action Defendant excepts.

\_\_\_\_\_  
JUDGE PRESIDING

Cause No. 0836979D

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

JUL - 5 2002

Time \_\_\_\_\_  
By DISTRICT 8:50 AM  
Deputy

THE STATE OF TEXAS

§ IN THE 213<sup>TH</sup>

§

§

VS.

§ COURT OF

§

§

BARTON RAY GAINES

§ TARRANT COUNTY, TEXAS

**DEFENDANT'S MOTION FOR DISCOVERY**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes **BARTON RAY GAINES**, Defendant in the above styled and numbered cause, by and through his attorney of record, GREG WESTFALL, under the authority of Article 39.14, Texas Code of Criminal Procedure, Article 1, Section 10 of the Texas Constitution, and the Fourth, Fifth, Sixth and Fourteenth Amendments of the United States Constitution, and makes this Motion For Discovery, and moves the Court to order the State of Texas, by and through her prosecuting attorneys, to produce the material and information designated below, and permit the Defendant to inspect, copy, photograph, and/or conduct chemical or analytical tests on such items.

**I.**

In order to show good cause, the Defendant maintains that the information hereinafter sought is either in the possession of the Tarrant County District Attorney's Office, its agents, or law enforcement officers, or is readily accessible to them, and that none of the information is available to the Defendant prior to trial except by order of

this Court, and that the information requested is not privileged and is within the proper scope of Article 39.14, Texas Code of Criminal Procedure, and further, Defendant needs to inspect such material prior to trial so that he can properly prepare his objections thereto and can properly prepare his defenses for trial on the merits.

**REQUEST NUMBER ONE:**

Defendant, **BARTONRAY GAINES**, specifically requests the names, addresses, and telephone numbers of all persons the State, in good faith, intends to call as witnesses in the following stages of the trial:

1. The State's case in the guilt/innocence stage;
2. The State's rebuttal in the guilt/innocence stage;
3. The punishment stage.

*See Young v. State*, 547 S.W.2d 23 (Tex. Crim. App. 1977); TEX. CODE CRIM. PROC. ANN. art. 37.07, § 3(a), (g) (Vernon Supp. 2000).

All relief requested is GRANTED. \_\_\_\_\_

The relief requested is granted in part as follows:

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All relief requested is DENIED. \_\_\_\_\_

**REQUEST NUMBER TWO:**

Defendant, **BARTON RAY GAINES**, specifically requests any and all inculpatory or exculpatory statements or confessions made by him to the police, prosecuting attorney, law enforcement agents, or private citizens, which are within the knowledge of the investigating law enforcement agents or the prosecuting attorney. This request includes written and oral statements allegedly made by the Defendant prior to and/or after arrest.

All relief requested is GRANTED. \_\_\_\_\_

The relief requested is granted in part as follows:

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All relief requested is DENIED. \_\_\_\_\_

**REQUEST NUMBER THREE:**

Defendant, **BARTON RAY GAINES**, specifically requests to be made aware of whether or not any State's witness stands charged by indictment, information or complaint with any offense.

All relief requested is GRANTED. \_\_\_\_\_

The relief requested is granted in part as follows:

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All relief requested is DENIED. \_\_\_\_\_

**REQUEST NUMBER FOUR:**

Defendant, **BARTON RAY GAINES**, specifically requests to be furnished with a copy of any Affidavits For Search Warrants, or Affidavits For Arrest Warrants, or Consent To Search forms applicable to this Defendant along with a copy of the actual Search or Arrest Warrants, either applied for or actually executed, in connection with the investigation of the offense charged herein.

All relief requested is GRANTED. \_\_\_\_\_

The relief requested is granted in part as follows:

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All relief requested is DENIED. \_\_\_\_\_

**REQUEST NUMBER FIVE:**

Defendant, **BARTON RAY GAINES**, specifically requests any statements made by a State's witness in his or her communications with the District Attorney, police, or

other investigative agency or person, whether written or oral, which are inconsistent with the testimony the State intends to elicit from said witness during the trial herein.

All relief requested is GRANTED. \_\_\_\_\_

The relief requested is granted in part as follows:

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All relief requested is DENIED. \_\_\_\_\_

**REQUEST NUMBER SIX:**

Defendant, **BARTON RAY GAINES**, specifically requests copies of any medical or scientific reports, testings, examinations, comparisons, analysis, and/or experiments received or made dealing with any person or physical evidence associated with this case.

All relief requested is GRANTED. \_\_\_\_\_

The relief requested is granted in part as follows:

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All relief requested is DENIED. \_\_\_\_\_

**REQUEST NUMBER SEVEN:**

Defendant, **BARTONRAY GAINES**, specifically requests the Court to order the State of Texas to produce and exhibit to the Defendant and his counsel at a reasonable time prior to trial, any material, documents, and physical or demonstrative evidence that the State intends to use in the trial of this cause, or which may be used as a basis of questioning witnesses. This request includes, but is not limited to, all photographs, memorandum, business records, diagrams, weapons, fingerprints, charts, clothing, and/or exhibits.

All relief requested is GRANTED. \_\_\_\_\_

The relief requested is granted in part as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All relief requested is DENIED. \_\_\_\_\_

**REQUEST NUMBER EIGHT:**

Defendant, **BARTONRAY GAINES**, specifically requests the Court to order the State, pursuant to *Brady v. Maryland*, 370 U. S. 883 (1963), to provide the Defendant with any evidence or information in the possession of, in control of, or known to, agents of the State of Texas, which is inconsistent with the alleged guilt of the Defendant, or

which is relevant to the mitigation of punishment, if any, to be assessed against the Defendant.

All relief requested is GRANTED. \_\_\_\_\_

The relief requested is granted in part as follows:

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All relief requested is DENIED. \_\_\_\_\_

**REQUEST NUMBER NINE:**

Defendant, **BARTON RAY GAINES**, specifically requests any and all documents, photographs, or data compilation or any other form representing the results of any testing, examination, or experiment conducted by any governmental agency or any private person or business who conducted such testing, examination or experiment for any governmental agency. This request includes, but is not limited to, materials from the Fort Worth Department Crime Lab and the Tarrant County Medical Examiner.

All relief requested is GRANTED. \_\_\_\_\_

The relief requested is granted in part as follows:

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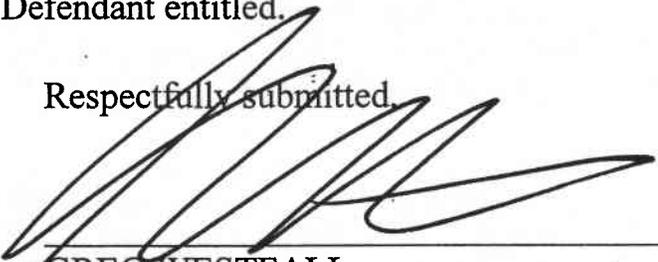
All relief requested is DENIED. \_\_\_\_\_

**II.**

In the granting of this motion, Defendant requests the Court to instruct the State's attorney to provide the Defendant with a written answer setting forth the requested information within a reasonable time following the presentation of this Motion For Discovery. The Defendant further accordingly requests the Court to order the State's attorney that, in the event additional evidence is obtained by the State subsequent to the filing of this motion, and which the Court has ordered to be provided to the Defendant, that the State's attorney make such evidence immediately available to the Defendant.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the Court grant the preceding request for discovery, and further prays for such other and further orders to which this Court may find Defendant entitled.

Respectfully submitted,



\_\_\_\_\_  
GREG WESTFALL  
State Bar Number: 00788646

WESTFALL, PLATT & CUTRER  
910 Mallick Tower  
One Summit Ave.  
Fort Worth, Texas 76102  
(817) 877-1700  
(817) 877-1710 (fax)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been hand-delivered to the office of Tim Curry, Tarrant County Criminal District Attorney, Tarrant County Justice Center, 401 West Belknap, Fort Worth, Texas 76196, on this 26 day of June, 2002.



GREG WESTFALL

*11/22/02  
Att to provide Brady  
d access to their file  
by agent. jw*

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

JUL - 5 2002

Time  
By                       
8:50 Am  
Rw Deputy

Cause No. 0836979D

THE STATE OF TEXAS

§ IN THE 213<sup>TH</sup> DISTRICT  
§  
§  
§ COURT OF  
§  
§  
§  
§ TARRANT COUNTY, TEXAS

VS.

BARTON RAY GAINES

**MOTION FOR DISCLOSURE OF FACTS  
OR DATA UNDERLYING EXPERT OPINION**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes **BARTON RAY GAINES**, Defendant in the above styled and numbered cause, by and through his attorney of record, and, pursuant to Rule 705 of the Texas Rules of Evidence, files this Motion For Disclosure Of Facts Or Data Underlying Expert Opinion and in support thereof would show the Court as follows:

I.

The Defendant in good faith believes that an expert witness may be called by the State of Texas in the above entitled and numbered cause and testify to certain opinions and findings as a result of his/her analysis and evaluation. Rule 705(b) of the Texas Rules of Evidence states that prior to an expert giving his/her opinions or disclosing the underlying facts or data, a party against whom the opinion is offered shall, upon request, be permitted to conduct a voir dire examination directed to the

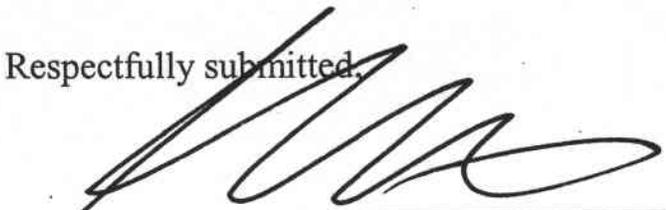
underlying facts or data upon which the opinion is based. This rule further specifies that such examination shall be conducted outside of the presence of the jury.

II.

The Defendant specifically requests that he be permitted to conduct voir dire examination of any expert witness appearing on behalf of the State of Texas as a witness in the trial of this cause, outside the presence of the jury and prior to the testimony of any expert in the presence of the jury.

WHEREFORE, PREMISES CONSIDERED, the Defendant prays this Honorable Court set this Motion for hearing and grant the Defendant all the relief requested herein and such other further relief to which he is entitled by law or equity.

Respectfully submitted,



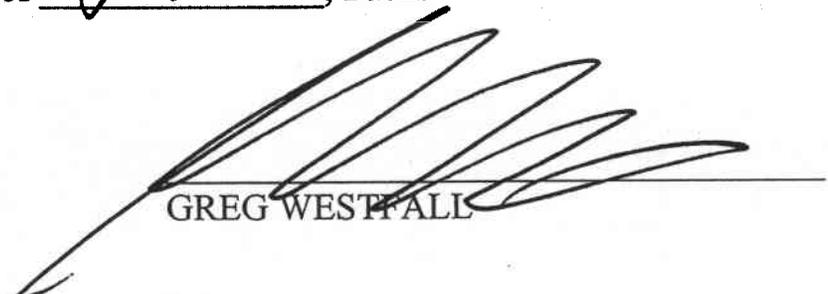
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GREG WESTFALL  
State Bar Number: 00788646

WESTFALL, PLATT & CUTRER  
910 Mallick Tower  
One Summit Avenue  
Fort Worth, Texas 76102  
(817) 877-1700  
(817) 877-1710 (fax)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been hand-delivered to the office of Tim Curry, Tarrant County Criminal District Attorney, Tarrant County Justice Center, 401 West Belknap, Fort Worth, Texas 76196, on this 26 day of JUNE, 2002.



GREG WESTFALL

**ORDER**

This the \_\_\_\_\_ day of \_\_\_\_\_, 2002, the foregoing Motion having been presented and heard by the Court, it is hereby ORDERED that:

All relief requested is hereby GRANTED.

\_\_\_\_\_  
JUDGE PRESIDING

The relief requested is granted in part as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
JUDGE PRESIDING

All relief requested is DENIED, to which action Defendant excepts.

\_\_\_\_\_  
JUDGE PRESIDING

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

JUL - 5 2002  
8:50 AM  
em Deputy

Cause No. 0836979D

THE STATE OF TEXAS

§ IN THE 213<sup>TH</sup> DISTRICT

VS.

§ COURT OF

BARTON RAY GAINES

§ TARRANT COUNTY, TEXAS

**MOTION TO LIST EXPERT WITNESSES**  
**[ARTICLE 38.14 CODE OF CRIMINAL PROCEDURE]**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes **BARTON RAY GAINES**, Defendant in the above styled and numbered cause, by and through his attorney of record, GREG WESTFALL, and files this Motion to List Expert Witnesses, and in support thereof would show the Court as follows:

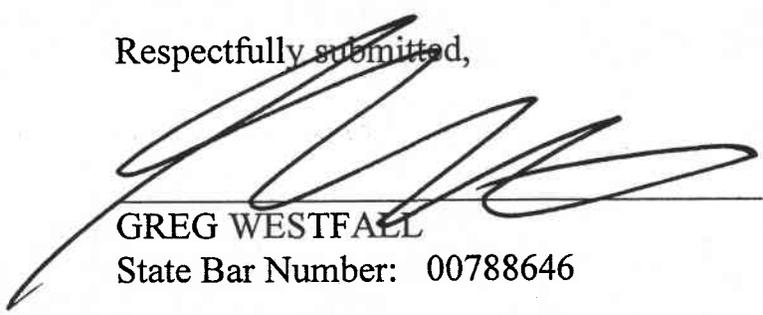
I.

Pursuant to Article 39.14 of the Code of Criminal Procedure, the Defendant requests the Court to order the State to provide the names and addresses of each person that the State may use at trial to present evidence under Rule 702, 703, and 705 of the Texas Rules of Evidence. The Defendant further requests that the Court order the State to make such disclosures not later than the twentieth (20<sup>th</sup>) day before the date the trial begins.

WHEREFORE, PREMISES CONSIDERED, the Defendant requests that the

Court order the State to produce the names and addresses of such expert witnesses at least twenty (20) days before the date the trial begins.

Respectfully submitted,

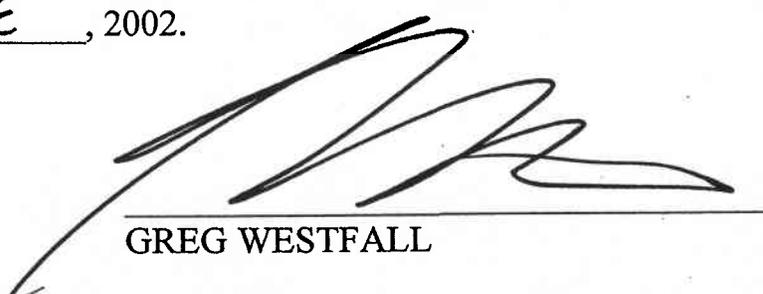


GREG WESTFALL  
State Bar Number: 00788646

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(817) 877-1700  
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GREG WESTFALL

Cause No. 0836979D

THE STATE OF TEXAS

§ IN THE 213<sup>TH</sup> DISTRICT

§

§

VS.

§

§

§

BARTON RAY GAINES

§

COURT OF

TARRANT COUNTY, TEXAS

**ORDER**

Before the Court is Defendant's Motion to List Expert Witnesses, and the Court finds that said motion is meritorious and should in all things be GRANTED;

IT IS THEREFORE ORDERED that the State provide to the Defendant in writing the names and addresses of any person that the State may use at trial to present evidence under Rule 702, 703 and 705 of the Texas Rules of Evidence, and such disclosure shall be made in writing no later than the twentieth (20<sup>th</sup>) day before the date the trial begins.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
JUDGE PRESIDING

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

JUL - 5 2002

8:50 AM  
By     RW     Deputy

Cause No. 0836979D

THE STATE OF TEXAS

§ IN THE 213<sup>TH</sup> DISTRICT  
§  
§ COURT OF  
§  
§ TARRANT COUNTY, TEXAS

VS.

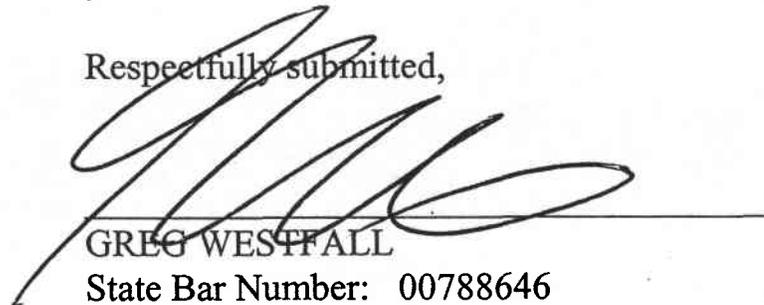
BARTON RAY GAINES

**DEFENDANT'S REQUEST FOR NOTICE UNDER RULE 404(b) OF THE TEXAS RULES OF EVIDENCE AND ARTICLE 37.07 OF THE TEXAS CODE OF CRIMINAL PROCEDURE**

The Defendant requests that the prosecuting attorney provide him with advance written notice of the State's intent to offer any evidence of other crimes, wrongs, or acts pursuant to Rule 404(b), Texas Rules of Evidence, and Article 37.07(3)(a); (g), Texas Code of Criminal Procedure.

This request does not require any court action.

Respectfully submitted,



GREG WESTFALL

State Bar Number: 00788646

WESTFALL, PLATT & CUTRER  
910 Mallick Tower  
One Summit Avenue  
Fort Worth, Texas 76102  
(817) 877-1700  
(817) 877-1710 (fax)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been hand-delivered to the office of Tim Curry, Tarrant County Criminal District Attorney, Tarrant County Justice Center, 401 West Belknap, Fort Worth, Texas 76196, on this 26 day of JUNE, 2002.



GREG WESTFALL

Cause No. 0836979D

JUL - 5 2002

THE STATE OF TEXAS

§ IN THE 213<sup>TH</sup> CRIMINAL 8:50 AM  
§ By pn Deputy

VS.

§ DISTRICT COURT OF

BARTON RAY GAINES

§ TARRANT COUNTY, TEXAS

**REQUEST FOR NOTICE OF INTENT  
TO USE EVIDENCE OF A CONVICTION**  
*[Rule 609(f) Texas Rules Evidence]*

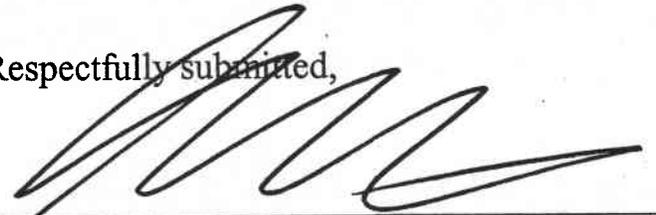
Request is hereby made, pursuant to Rule 609(f), Texas Rules of Evidence, for the State to provide the Defendant with sufficient advance written notice of intent to use evidence of a conviction of a crime for impeachment purposes in regard to the following witnesses:

1. ***BARTON RAY GAINES***

(Defendant in the above styled cause)

This request does not require Court action.

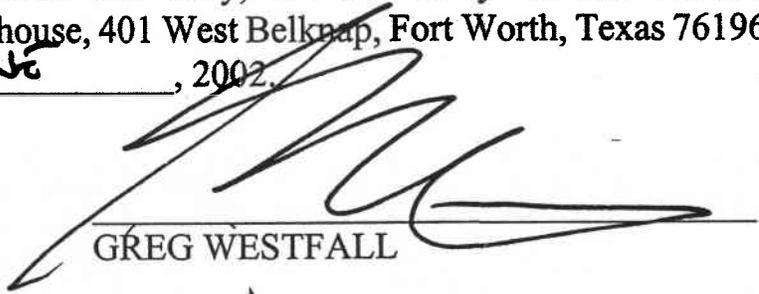
Respectfully submitted,

  
\_\_\_\_\_  
GREG WESTFALL  
State Bar Number: 00788646

WESTFALL, PLATT & CUTRER  
910 Mallick Tower  
One Summit Avenue  
Fort Worth, Texas 76102  
(817) 877-1700  
(817) 877-1710 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been hand-delivered to the office of Tim Curry, Tarrant County Criminal District Attorney, Tarrant County Courthouse, 401 West Belknap, Fort Worth, Texas 76196 on the 26 day of June, 2002.



GREG WESTFALL

AUG - 7 2002

Time 12:20 PM  
By RW Deputy

CAUSE No. 0836979  
0836985

BARTON RAY GAINES JR.	X	IN THE CRIMINAL
	X	
VS.	X	DISTRICT COURT NO. <u>213</u>
	X	
THE STATE OF TEXAS	X	TARRANT COUNTY, TEXAS

APPLICATION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE JUDGE SAID COURT:

Presented to Court

Comes now, BARTON RAY GAINES JR., PETITIONER IN THE ABOVE ENTITLED AND NUMBERED CAUSE AND HEREBY PETITIONS THIS COURT PURSUANT TO THE U.S. CONSTITUTION, TEXAS CONSTITUTION, AND TEXAS CODE OF CRIMINAL PROCEDURE ARTICLE 17.151<sup>(3)</sup>, TO BE RELEASED ON PERSONAL BOND OR 15% BAIL REDUCTION PENDING DISPOSITION OF THIS CAUSE. IN SUPPORT OF THIS APPLICATION, THE PETITIONER WOULD SHOW THE COURT AS FOLLOWS:

I.

THE PETITIONER IS CHARGED WITH THE OFFENSE OF ATTEMPTED CAPITAL MURDER PENDING IN THIS COURT.

THE PETITIONER HAS BEEN UNDER CONTINUOUS INCARCERATION SINCE THE FEB. DAY OF 23 2002.

PAGE 1 OF 2

-file-  
per Court

II.

MEMORANDUM OF LAW IN SUPPORT OF THIS PETITION

THE U.S. AND TEXAS CONSTITUTION PROVIDES A SPECIFIC RIGHT TO BAIL PENDING TRIAL IN ALL CASES. THIS COMPORTS THAT LIBERTY IS THE NORM, THEREFORE THE FINANCIAL INABILITY TO POST BAIL DOES NOT DIMINISH THE RIGHT TO LIBERTY PENDING DISPOSITION OF THIS CASE.

TEXAS CODE OF CRIMINAL PROCEDURE ART. 17.151<sup>51</sup> STATES THAT, "AN ACCUSED MUST BE RELEASED, EITHER ON PERSONAL BOND OR BY REDUCTION OF BAIL, IF THE STATE IS NOT READY FOR TRIAL OF THE PENDING ACCUSATION WITHIN THE FOLLOWING NUMBER OF DAYS: NINETY DAYS FROM THE COMMENCEMENT OF DETENTION IF THE OFFENSE IS A FELONY."

NO STATUTORY PROVISIONS FOR DENYING BOND ARE APPLICABLE IN THIS CASE. HOWEVERS ART. 17.151.51 IS MANDATORY AND PETITIONER MUST BE RELEASED.

WHEREAS ALL PREMISES CONSIDERED THE PETITIONER PRAYS THAT THE COURT WILL IN ALL THINGS GRANT AND ORDER THIS WRIT OF HABEAS CORPUS BY ORDERING THE RELEASE OF PETITIONER TO PERSONAL BOND OR BY REDUCING THE AMOUNT OF BAIL TO 10,000.

8/5/02

DATE

RESPECTFULLY SUBMITTED,  
BARTON BARTON GAINES

BARTON RAY GAINES JR.  
LIC# 057923

ORDER

ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2002, CAME ON  
TO BE HEARD PETITIONERS APPLICATION FOR WRIT OF  
HABEAS CORPUS AND IT APPEARS TO THE COURT THAT THIS  
WRIT SHOULD BE \_\_\_\_\_ GRANTED \_\_\_\_\_ DENIED.

\_\_\_\_\_  
JUDGE PRESIDING

THE STATE OF TEXAS	§	IN THE 213 <sup>TH</sup> CRIMINAL
VS.	§	DISTRICT COURT OF
BARTON RAY GAINES	§	TARRANT COUNTY, TEXAS

STATE'S EXPERT WITNESS LIST

COMES NOW, the State of Texas by and through her Criminal District Attorney, of Tarrant County, Texas, and files this STATE'S EXPERT WITNESS LIST.

H. P. Gass ID 2749	CSSU	350 W. Belknap, Fort Worth, Texas
P. C. Ray, ID 2449	CSSU	350 W. Belknap, Fort Worth, Texas
Ron Fazio	Firearms Expert	350 W. Belknap, Fort Worth, Texas
W. L. Waller, ID 2273	CCSU	350 W. Belknap, Fort Worth, Texas

The State will supplement this list promptly should additional information be discovered.

Respectfully submitted,

TIM CURRY  
CRIMINAL DISTRICT ATTORNEY  
TARRANT COUNTY, TEXAS

  
ROBERT F. FORAN, Assistant  
Criminal District Attorney  
Tarrant County, Texas

**FILED**  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

AUG 19 2002

Time 4:05  
By [Signature] Deputy

CERTIFICATE OF SERVICE

I, ROBERT F. FORAN, do hereby certify that on the 19th day of August, 2002, a true and correct copy of the foregoing STATE'S EXPERT WITNESS LIST was filed and faxed / mailed / hand delivered to GREG WESTFALL, the attorney of record for the Defendant.

  
ROBERT F. FORAN, Assistant  
Criminal District Attorney

AUG 22 2002

CAUSE NOS. 0836979A & 0836985A

Time 1030  
By [Signature] Deputy

THE STATE OF TEXAS                   §           IN THE 213th DISTRICT  
  §  
v.   §           COURT OF TARRANT  
  §  
BARTON RAY GAINES                   §           COUNTY, TEXAS

**DEFENDANT'S MOTION FOR CONTINUANCE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, BARTON RAY GAINES, Defendant, by and through counsel, and presents this, his Motion for Continuance, and for good cause would show as follows:

I.

This case is set for trial on September 9, 2002. This is Defendant's first motion for continuance.

II.

These are both attempted capital murder cases which arise from the same incident.

III.

During the punishment case in these matters, Defendant will call Gail Inman. She is Defendant's grandmother. She currently resides at Rural Route 2, Box

64, Graham, TX 76450. Defendant lived with her off and on during his childhood. Her testimony will be material and critical to the defense's punishment case.

Ms Inman recently underwent a radical mastectomy. Counsel was aware of that. What counsel was not aware of until August 16, 2002, was that Ms Inman is currently undergoing chemotherapy. In discussions with her on this matter, counsel has learned that Ms Inman suffers some severe side-effects from this, including nausea and weakness such that testifying in court would be extremely difficult for her and more than likely affect her ability to effectively testify.

Counsel requested Ms Inman to call her doctor to notify counsel on her condition during the scheduled upcoming trial. Dr. Redrow wrote counsel to state that Ms Inman's course of chemotherapy will continue through September 19. Her side-effects would continue for some time after that, but then, apparently, she would steadily improve to the point where she could be fully available for Defendant's trial. *See* Letter of August 19, attached hereto as Exhibit 1.

Defendant is therefore respectfully requesting a continuance of his currently scheduled trial date so that Ms Inman may complete her chemotherapy and overcome its side-effects and be able to testify.

IV.

This motion is made not for the purposes of delay, but so that justice may be done. Ms Inman is not absent through the procurement or consent of Defendant.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this Court will continue this cause until the next available trial date.

Respectfully submitted,



GREG WESTFALL  
State Bar No. 00788646

One Summit Avenue, Suite 910  
Fort Worth, TX 76102  
(817) 877-1700  
(817) 877-1710 (fax)

ATTORNEY FOR DEFENDANT  
BARTON RAY GAINES

TEXAS ONCOLOGY  
DR. MARK REDROW, MD  
750 EIGHTH AVENUE  
FORT WORTH, TEXAS 76104

FACSIMILE TRANSMITTAL SHEET

TO: Greg Westfall FROM:  
COMPANY: DATE:

FAX NUMBER: 817 877-1710 TOTAL NO. OF PAGES INCLUDING COVER:  
PHONE NUMBER: SENDER'S PHONE NUMBER:

RE: Gail Inman SENDER'S FAX NUMBER:  
817-335-1934

- URGENT
- FOR REVIEW
- PLEASE COMMENT
- PLEASE REPLY
- PLEASE RECYCLE





Texas Oncology, P.A.

---

August 19, 2002

Greg Westfall  
Attorney at Law  
Fax: 817-877-1710

Dear Mr. Westfall:

Gail Inman is currently under my care for the treatment of breast cancer diagnosed May 30<sup>th</sup>, 2002. Her current treatment regimen requires chemotherapy every three weeks. Due to the toxicity of her treatment she takes several different medications which also have side effects and she requires frequent rest periods. She is scheduled to receive four cycles and has completed two of these. Her expected completion date will be September 19th.

In light of the above, I would request that any court appearances be delayed until her treatment is complete and she is no longer on all of these medications. If you have any questions or I can be of any further assistance, please contact my office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark Redrow".

Mark Redrow, M.D.

MWR/tms

CAUSE NOS. 0836979A & 0836985A

THE STATE OF TEXAS

v.

BARTON RAY GAINES

§  
§  
§  
§  
§

IN THE 213th DISTRICT

COURT OF TARRANT

COUNTY, TEXAS

ORDER ON MOTION FOR CONTINUANCE

Before the Court is Defendant's Motion for Continuance, and the Court being sufficiently advised finds that said motion is meritorious and should be

GRANTED;

*to 12/1/02*

SIGNED this 22 day of August, 2002.

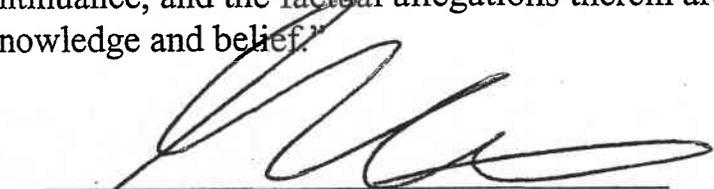


JUDGE PRESIDING

**VERIFICATION**

Before me, the undersigned notary, appeared Greg Westfall who, after being duly sworn, deposed and stated as follows:

“My name is Greg Westfall. I am counsel of record in the above cause. I have read the above Motion for Continuance, and the factual allegations therein are true and correct to the best of my knowledge and belief.”

  
\_\_\_\_\_  
Greg Westfall

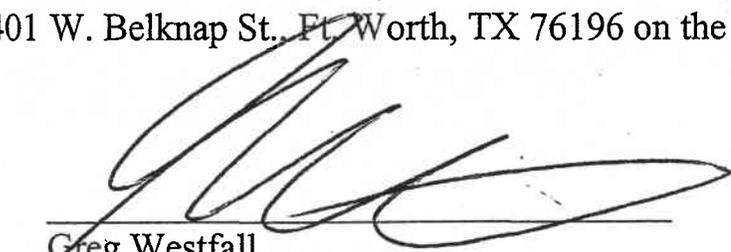
Subscribed and sworn before me on the 20th day of August, 2002.

  
\_\_\_\_\_  
Notary Public in and for the State of Texas



**CERTIFICATE OF SERVICE**

This is to certify that a copy of this motion was hand delivered to Assistant District Attorney Robert Foran at 401 W. Belknap St., Ft. Worth, TX 76196 on the 20th day of August, 2002.

  
\_\_\_\_\_  
Greg Westfall

CAUSE NO. 0836979A & 0836985A

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

OCT 11 2002

THE STATE OF TEXAS

IN THE 213<sup>TH</sup>

Time

11:45 Am

VS.

DISTRICT COURT

By

RW Deputy

BARTON RAY GAINES

TARRANT COUNTY, TEXAS

STATE'S MOTION IN LIMINE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the State of Texas, represented by her Assistant Criminal District Attorney, prior to jury selection in the above styled and numbered cause(s), and requests the Court to direct the Defendant, counsel for the Defendant, and all defense witnesses, not to mention, refer to, interrogate concerning, or bring to the attention of the jury or venire in any manner directly or indirectly any of the following matters without first approaching the bench and obtaining a ruling on their admissibility. The mere mention of such matters would be error and would harm and prejudice the right of the State of Texas to a fair trial. Further, the harm and prejudice created thereby could not completely be cured by an instruction to disregard.

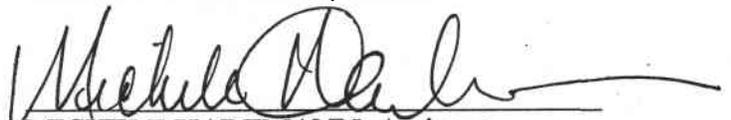
- A. Any act of misconduct on the part of any witness for the State of Texas, not amounting to a final conviction for a felony or a misdemeanor involving moral turpitude.
- B. Any evidence concerning the character or trait of character of any witness for the State.
- C. Any evidence of crimes, wrongs or bad acts by any witness for the State.
- D. Any evidence concerning an opinion about or the reputation of any witness of the State for truth and veracity.

- E. Any reference, statement or argument that the State of Texas, the Government or the Tarrant County District Attorney's Office has in any way acted inappropriately, unethically or in bad faith.
- F. Any reference, statement or argument of plea bargaining or the lack of plea bargaining in this case or any other case. Additionally, any reference, statement or argument of specific offers made to this Defendant or any other Defendant charged with the same or similar offense.
- G. Any mention or reference to mental health counseling or treatment of the Defendant during the guilt/innocence phase of the trial.
- H. Any mention of the consequences to the Defendant if found guilty, including but not limited to loss of job, hardship on family, affect on any minor children under the Defendant's care.
- I. That Counsel for the Defendant or any witness for the Defense holds any personal belief that the Defendant is not guilty.

**WHEREFORE, PREMISES CONSIDERED**, the State requests this Motion be granted and the Defendant, counsel for the Defendant and all defense witnesses be instructed and directed not to allude to or mention any of the above subjects until a ruling can be obtained from the Court outside the presence of the jury.

Respectfully Submitted,

**TIM CURRY  
CRIMINAL DISTRICT ATTORNEY  
TARRANT COUNTY, TEXAS**



MICHELE HARTMANN, Assistant  
Criminal District Attorney  
Tarrant County, Texas  
TX State Bar No. 09167800

**CERTIFICATE OF SERVICE**

I, Michele Hartmann, do hereby certify that on the 11<sup>th</sup> day of October, 2002, a true and correct copy of the foregoing Motion was hand delivered/ ~~faxed~~ mailed to Greg Westfall, the attorney of record for the Defendant.



MICHELE HARTMANN, Assistant  
Criminal District Attorney  
Tarrant County, Texas  
TX State Bar No. 09167800

**ORDER**

The foregoing State's Motion in Limine having been duly considered is hereby:

\_\_\_\_\_ GRANTED

*12/2/02  
D in agreement w/ motion*

\_\_\_\_\_ DENIED

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

*[Signature]*  
\_\_\_\_\_  
**ROBERT K. GILL, Judge Presiding**  
**213<sup>th</sup> Judicial District Court**

CAUSE NO. 0836979A & 0836985A

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

OCT 11 2002

Time 11:45 AM  
By RM Deputy

THE STATE OF TEXAS

IN THE 213<sup>TH</sup>

VS.

DISTRICT COURT

BARTON RAY GAINES

TARRANT COUNTY, TEXAS

**STATE'S MOTION FOR DISCOVERY OF EXPERT WITNESS(ES)**

COMES NOW the State of Texas, by and through her Criminal District Attorney of Tarrant County, Texas and pursuant to Article 39.14 (b) of The Texas Code of Criminal Procedure and makes this her **Motion for Discovery of Expert Witness(es)** and moves this Honorable Court to **ORDER** the above-named Defendant to disclose the name and address of each person the Defendant may use at trial to present evidence under Rules 702, 703, and 705 of the Texas Rules of Evidence.

The State of Texas requests that the Court **ORDER** the Defendant to make such disclosure not later than the twentieth day before the trial begins or as soon thereafter as the Defendant engages the services of any expert witness governed by the aforementioned Article 39.14 (b) of the Texas Code of Criminal Procedure.

**WHEREFORE, PREMISES CONSIDERED**, the State of Texas prays that her foregoing motion be in all things granted.

Respectfully Submitted,

TIM CURRY  
CRIMINAL DISTRICT ATTORNEY  
TARRANT COUNTY, TEXAS



MICHELE HARTMANN, Assistant  
Criminal District Attorney  
Tarrant County, Texas  
TX State Bar No. 09167800

*11/22/02  
Agmt. to provide  
by 12/4 - both sides -  
mm*

CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of October, 2002 a true and

correct copy of the foregoing Motion was hand delivered/ faxed/mailed to

Greg Wentz, the attorney of record for the Defendant.



**MICHELE HARTMANN**, Assistant  
Criminal District Attorney  
Tarrant County, Texas  
TX State Bar No. 09167800

**ORDER**

The foregoing State's Motion for Discovery of Expert Witness(es) is hereby:

\_\_\_\_\_ **GRANTED** \_\_\_\_\_ **DENIED**

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
**ROBERT K. GILL, Presiding Judge**  
**213<sup>th</sup> District Court**  
**Tarrant County, Texas**

CAUSE NO. 0836979A & 0836985A

NOV 13 2002

THE STATE OF TEXAS

IN THE 213<sup>TH</sup>

Time

900

By

*Shane* Deputy

VS.

DISTRICT COURT

BARTON RAY GAINES

TARRANT COUNTY, TEXAS

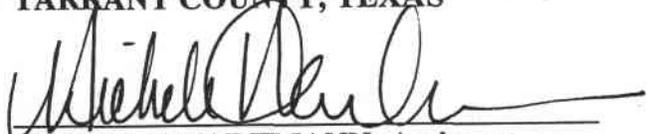
**STATE'S NOTICE TO INTRODUCE EVIDENCE  
OF OTHER CRIMES, WRONGS OR ACTS**

COMES NOW, THE STATE OF TEXAS, by and through Tim Curry, the Criminal District Attorney, and files this State's Notice To Introduce Evidence of Other Crimes, Wrongs or Acts pursuant to Art. 37.07 and Art. 38.37 of the TX Code of Criminal Procedure and Rule 404(b) and Rule 609 of the Texas Rules of Criminal Evidence, in the above-styled and numbered cause(s). In support thereof, the State would give notice of its intent to offer the following under the appropriate evidentiary provision(s):

1. Barton Ray Gaines, in the County of Tarrant and State of Texas, on or about the 18<sup>th</sup> day of August, 2001 solicited, encouraged, directed, aided or attempted to aid Tony Durham in the assault on a disabled individual, Robert Lee Haynie.
2. Barton Ray Gaines, in the County of Hood and State of Texas, on or about the 23<sup>rd</sup> day of February, 2002 committed aggravated assault on Richard Weaver by shooting at him with a firearm.
3. Barton Ray Gaines, in the County of Hood and State of Texas, on or about the 23<sup>rd</sup> day of February, 2002 committed aggravated assault on Stephen Ancira by shooting at him with a firearm.
4. Barton Ray Gaines, in the County of Tarrant and State of Texas, on or about the 21<sup>st</sup> day of July, 2001, did then and there intentionally or knowingly, enter in a habitation owned by another without the effective consent of said owner, David Shipman, and the said Barton Ray Gaines had notice that the entry was forbidden.
5. Barton Ray Gaines, in the County of Tarrant and State of Texas, on or about the 18<sup>th</sup> day of August, 2001 did then and there intentionally or knowingly possess a usable quantity of marihuana of two ounces or less; victim: State of Texas and Officer R.L. Thetford, ID#3139 & Officer Moore of the Fort Worth Police Department.
6. Barton Ray Gaines, in the County of Tarrant and State of Texas, on or about the 24<sup>th</sup> day of February, 2002, did attempt to commit the offense of Evading Arrest or Detention from Officer J.F. Shipp, ID#3101, Fort Worth Police Department.

Respectfully Submitted,

**TIM CURRY  
CRIMINAL DISTRICT ATTORNEY  
TARRANT COUNTY, TEXAS**



**MICHELE HARTMANN, Assistant  
Criminal District Attorney  
Tarrant County, Texas  
TX State Bar No. 09167800**

**CERTIFICATE OF SERVICE**

This is to certify that on this 13<sup>th</sup> day of November, 2002,  
was delivered via facsimile mail/hand delivery to Greg Whitfield,  
Attorney of record for the Defendant.



CAUSE NO. 0836979A & 0836985A

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

DEC - 3 2002

Time 11:20  
By [Signature] Deputy

THE STATE OF TEXAS

IN THE 213<sup>TH</sup>

VS.

JUDICIAL DISTRICT COURT

BARTON RAY GAINES

TARRANT COUNTY, TEXAS

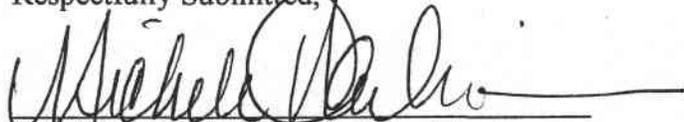
**BRADY VS. MARYLAND COMPLIANCE NOTIFICATION**

COMES NOW THE STATE OF TEXAS and files this notice in compliance with Brady vs. Maryland and the Court's pre-trial ruling. This notice serves both as written notice and confirmation of Brady material previously disclosed orally to the Defendant through his attorney of record, Greg Westfall.

1. Both Andrew Horvath and Michael Williams initially failed to disclose all the facts surrounding the offense to law enforcement. Specifically, both failed to disclose that the purpose of being at the offense location was to facilitate the Defendant purchasing marijuana from a source known to Michael Williams.
2. Both Mindy Keisel and Tarah Green initially failed to disclose all the information they knew regarding admissions made by the Defendant Barton Gaines, and the two co-defendants, Daniel Aranda and Jason Tucker. Now that's the mark of a good attorney; push it back onto opposing counsel.
3. Both Mindy Keisel and Tarah Green reported to the TC District Attorney's Office in separate meetings that Jason Tucker had admitted to them that he had loaded the weapon used in the offense.
4. Stephen Ancira and Gregory Peterson were unable to correctly identify the Defendant out of a photo spread. sounds like a drawl, not positively certain I was not the same
5. Jheen Ancira was able to identify the Defendant out of a photo spread but the identification was qualified by the following statements, "it's been a long time ago, this one keeps jumping out at me. I'm pretty sure he's the one."

This must've been like pulling teeth b/c in every other instance it was Jason only handled them.  
- Unless, of course, Hartmann deviated therefrom on what she believed, only Westfall didn't attempt to ascertain? But it was a big step in the Brady or Strickland analysis.

Respectfully Submitted,



MICHELE HARTMANN, Assistant  
Criminal District Attorney  
Tarrant County, Texas  
TX State Bar No. 09167800

**CERTIFICATE OF SERVICE**

The foregoing notice was faxed and mailed to Greg Westfall, attorney of record for the Defendant on this the 3<sup>rd</sup> day of December, 2002.

  
MICHELE HARTMANN

CAUSE NO. 0836979A & 0836985A

DEC - 3 2002

Time 1:08 PM  
By EW Deputy

THE STATE OF TEXAS

IN THE 213<sup>TH</sup>

VS.

JUDICIAL DISTRICT COURT

BARTON RAY GAINES

TARRANT COUNTY, TEXAS

**SUPPLEMENTAL NOTICE OF EXTRANEIOUS OFFENSES**

COMES NOW THE STATE OF TEXAS and submits this supplemental notice of extraneous offenses under Rule 404 (b), Art. 37.07 and Art. 38.37.

1. On or about February 21, 2002 the Defendant in the County of Tarrant and the State of Texas did ask Mindy Keisel and Tarah Green to lie to law enforcement and others about what knowledge they had regarding the Defendant's involvement in the charged offense.
2. Defendant had a reputation among his peers as a heavy partier and was known to take pills.
3. On or about February 21, 2002 the Defendant in the County of Tarrant and the State of Texas did consume alcohol while **under the legal age** of consumption.
4. On or about February 21, 2002 the Defendant in the County of Tarrant and the State of Texas did consume pills, **Klonopin**.

Klonopin? Still a long shot from Paxil, but they're getting closer

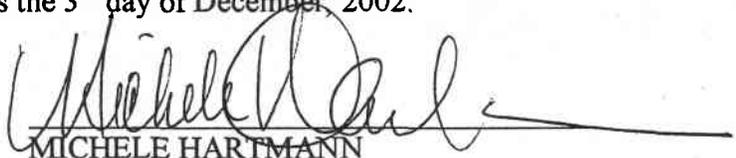
Respectfully submitted,



MICHELE HARTMANN, Assistant  
Criminal District Attorney  
Tarrant County, Texas  
TX State Bar No. 09167800

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing notice was mailed and faxed to Greg Westfall, attorney of record for the Defendant on this the 3<sup>rd</sup> day of December, 2002.



MICHELE HARTMANN

CASE NOS. 0836979A AND 0836985A

THE STATE OF TEXAS

§  
§  
§  
§  
§

IN THE 213th

VS.

DISTRICT COURT

BARTON RAY GAINES

TARRANT COUNTY, TEXAS

ATTACHMENT FOR A WITNESS

TO ANY CERTIFIED PEACE OFFICER, SHERIFF OR ANY CONSTABLE OF TARRANT COUNTY, STATE OF TEXAS, GREETINGS:

You are hereby commanded to take the body of LILIA GONZALES, whose address is WHERE FOUND, TARRANT COUNTY and bring said LILIA GONZALES, before the 213th District Court, of Tarrant County, Texas, on DECEMBER 9, 2002 INSTANTER, at the 213th District Court, then and there to testify as a witness in behalf of the <sup>State</sup> in the case of THE STATE OF TEXAS vs. BARTON RAY GAINES, in Cause No. 0836979A AND 0836985A, pending before said Court, said witness having disobeyed a subpoena, with a Duces Tecum of BRINGING GERARDO MORENO, D.O.B. 10/20/85.

The Bail Bond required of said witness is fixed at \$ No Bond.

Herein fail not, and due return make of this Writ, on or about INSTANTER.

Witness my signature and seal of office on December 9, 2002.

THOMAS A. WILDER  
DISTRICT CLERK  
TARRANT COUNTY, TEXAS

By:

Rebecca Wilder  
Deputy District Clerk  
213th DISTRICT COURT

CASE NOS 0836979A and 0836985A

THE STATE OF TEXAS

VS.

BARTON RAY GAINES

§  
§  
§  
§  
§

IN THE 213th DISTRICT

COURT OF

TARRANT COUNTY, TEXAS

TO THE HONORABLE JUDGE OF SAID COURT:

The Defendant herein represents that he has never been convicted of a felony in this or any other state, and asks the Court to submit to the Jury this application for a probated sentence.

x Barton Gaines  
DEFENDANT

Subscribed and sworn to before me this 9th day of December, 2002.

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

DEC - 9 2002

Time 1:28 PM  
By Rm Deputy

Rebecca Wilder  
DEPUTY DISTRICT CLERK  
TARRANT COUNTY, TEXAS

SEAL

THE STATE OF TEXAS

IN 213<sup>th</sup>  
DISTRICT COURT \_\_\_\_\_  
TARRANT COUNTY, TEXAS

vs. Nos. 0836979A +  
0836985A

BARTON RAY GAINES DATE: Dec. 9, 2002

DEFENDANT'S MOTION FOR ASSESSMENT OF PUNISHMENT

Comes now the Defendant herein, with his attorney, \_\_\_\_\_  
GREG WESTFALL, and PRIOR to Entering a Plea to the allegations  
contained in the indictment in the above styled and numbered cause, HERE-  
BY REQUESTS that the punishment, if any, be assessed by the JURY.\*

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

DEC - 9 2002

1:28 PM

Time \_\_\_\_\_  
By rw Deputy

x Barton Gaines  
DEFENDANT

[Signature]  
ATTORNEY FOR DEFENDANT

FILED

\* insert either "JUDGE" or "JURY"

CASE NO. 0836979A and 0836985A

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

DEC 11 2002

Time 3:15 PM  
By [Signature] Deputy

THE STATE OF TEXAS  
VS.  
BARTON RAY GAINES

§  
§  
§  
§  
§

IN THE 213th  
DISTRICT COURT  
TARRANT COUNTY, TEXAS

ATTACHMENT FOR A WITNESS

TO ANY CERTIFIED PEACE OFFICER, SHERIFF OR ANY CONSTABLE OF TARRANT COUNTY, STATE OF TEXAS, GREETINGS:

You are hereby commanded to take the body of AFTAB AHMED, whose address is 7451 McCART AVE., FORT WORTH, TX, OR WHEREVER FOUND, and bring said AFTAB AHMED, before the 213th District Court, Tarrant County, Texas, on DECEMBER 10, 2002, at INSTANTER, then and there to testify as a witness in behalf of the STATE in the case of THE STATE OF TEXAS vs. BARTON RAY GAINES, in Cause Nos. 0836979A and 0836985A, pending before said Court, said witness having disobeyed a subpoena.

The Bail Bond required of said witness is fixed at \$ No Bond.

Herein fail not, and due return make of this Writ, on or about INSTANTER.

Witness my signature and seal of office on December 10, 2002.

THOMAS A. WILDER  
DISTRICT CLERK  
TARRANT COUNTY, TEXAS

By: Rebecca [Signature]  
Deputy District Clerk  
213th DISTRICT COURT

DEC 12 2002

Time \_\_\_\_\_  
By Bill Ann Deputy

CAUSE NO. 0836979A

THE STATE OF TEXAS	X	IN THE DISTRICT COURT
VS.	X	TARRANT COUNTY, TEXAS
BARTON RAY GAINES	X	213TH JUDICIAL DISTRICT

**COURT'S CHARGE**

**MEMBERS OF THE JURY:**

The defendant, Barton Ray Gaines, stands charged by indictment with the offense of aggravated robbery with a deadly weapon.

Specifically, the indictment alleges that the defendant, Barton Ray Gaines, in Tarrant County, Texas, on or about the 21st day of February, 2002, did then and there intentionally or knowingly, while in the course of committing theft of property and with intent to obtain or maintain control of said property, threaten or place Andrew Horvath in fear of imminent bodily injury or death, and the defendant did then and there use or exhibit a deadly weapon, to-wit: a firearm.

To this charge the defendant has pled "guilty".

You are therefore instructed to find the defendant guilty of aggravated robbery with a deadly weapon as charged in the indictment and to set the punishment of the defendant within the range of punishment, which is life, or for any term not more than 99 years or less than 5 years. In addition, you may assess a fine not to exceed \$10,000.

Under our law, when a defendant has been found guilty of more than one offense arising out of the same **criminal episode** prosecuted in a single criminal action, sentence for each offense for which he has been found guilty shall **run concurrently**

You are instructed that in deliberating on the punishment to be assessed, you may take into consideration all the evidence admitted before you in the full trial of this case and the law submitted to you by the Court.

In a criminal case the law permits a defendant to testify in his own behalf but he is not compelled to do so, and the same law provides that the fact that a defendant does not testify shall not be considered as a circumstance against him. You will, therefore, not consider the fact that the defendant did not testify as a circumstance against him; and you will not, in your retirement to consider your verdict, allude to, comment on, consider, or in any manner refer to the fact that the defendant has not testified.

The State has introduced evidence of extraneous crimes or bad acts other than the one charged in the indictment in this case. Said evidence was admitted only for the purpose of assisting you, if it does, in determining the proper punishment for the offense for which you have found the defendant guilty. You cannot consider said testimony for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other acts, if any were committed.

legal fiction; of course, I'm being punished for the extraneous too, all without the benefit of grand jury, or even worse yet, despite a grand jury's finding to the contrary.

what about criminal responsibility; what if not criminal responsible? Can I be held strictly liable?  
Westfall had plenty of experience with strict liability holdings in *Burke v. State*, 28 S.W.3d 545, 549 (Tex. Crim. App. 2000, judgm't vacated)(All of the offenses under Chapter 49 are strict liability offenses.)

In this case the defendant has filed, before trial, his sworn motion in which he prays that in the event he is convicted he be granted community supervision. If the punishment assessed by you is not more than ten years confinement in the penitentiary and you further find that he has not ever been convicted of a felony in this or any other State, and if you recommend community supervision be granted in this case, then let your verdict show the punishment which you assess and show that the defendant has never before been convicted of a felony in this or any other State, and further show that you recommend that his sentence be suspended.

If the jury recommends community supervision the Court must grant it.

The conditions of community supervision may include but shall not be limited to the following:

1. That the defendant commit no offense against the laws of this State or of any other State or of the United States.

2. That the defendant avoid injurious or vicious habits.

3. That the defendant avoid persons or places of disreputable or harmful character.

4. That the defendant report to the community supervision officer as directed and obey all rules and regulations of the community supervision department.

5. That the defendant permit the community supervision officer to visit at home or elsewhere.

6. That the defendant work faithfully at suitable employment as far as possible.

7. That the defendant shall remain within a specified place.

8. That the defendant pay the fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums, and make restitution or reparation in any sum that the Court shall determine.

9. That the defendant support his dependents.

10. That the defendant pay a community supervision fee of not to exceed \$60.00 per month during the community supervision period.

11. That the defendant participate for a time specified by the Court in a community-based service work program designated by the Court.

12. That the defendant attend psychological counseling sessions at the direction of the probation officer and at the defendant's own expense.

13. That the defendant not directly communicate with the victim of the offense or go near a residence, school or other location, set forth by the Court, frequented by the victim.

14. That the defendant submit to a period of detention in a county jail to serve a term of imprisonment not to exceed 180 days.

It is possible that the length of time for which the defendant will be imprisoned might be reduced by the award of parole.

Under the law applicable in this case, the defendant, if sentenced to a term of imprisonment, may earn time off the period of incarceration imposed through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

It is also possible that the length of time for which the defendant will be imprisoned might be reduced by the award of parole.

Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, he will not become eligible for parole until the actual time served equals one-half of the sentence imposed or 30 years, whichever is less, without consideration of any good conduct time he may earn. Eligibility for parole does not guarantee that parole will be granted.

It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if he is sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

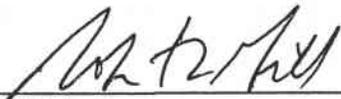
You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this

particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant.

It will not be proper for you in determining the penalty to be assessed, to fix the same by lot, chance, or any other method than by a full, fair and free exercise of the opinion of the individual jurors under the evidence admitted before you.

You are charged that it is only from the witness stand that the jury is permitted to receive evidence regarding the case, or any witness therein, and no juror is permitted to communicate to any other juror anything he may have heard regarding the case or any witness therein, from any other source than the witness stand.

Your verdict must be by a unanimous vote of all members of the jury. In deliberating on the case you are not to refer to or discuss any matter or issue not in evidence before you.

  
Bob Gill, Judge  
213th District Court

VERDICT FORM - NO COMMUNITY SUPERVISION

We, the jury, having been instructed by the Court to find the defendant guilty of the offense of aggravated <sup>with a deadly weapon</sup> assault with a **deadly weapon** as charged in the indictment, so find; and we assess his punishment at confinement in the Institutional Division of the Texas Department of Criminal Justice for **35 years** ("life"; or a term of years not less than 5 or more than 99); and in addition to such confinement, we assess a fine of \$ **10,000.00** ("none"; or an amount not to exceed \$10,000), and **WE DO NOT RECOMMEND** that he be placed on community supervision.

THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

DEC 12 2002

Time 12:12 PM  
By [Signature] Deputy

[Signature]  
Foreperson

VERDICT FORM - COMMUNITY SUPERVISION

We, the jury, having been instructed by the Court to find the defendant guilty of the offense of aggravated <sup>with a deadly weapon</sup> assault as **charged in the indictment**, so find; and we assess his punishment at confinement in the Institutional Division of the Texas Department of Criminal Justice for \_\_\_\_\_ years (a term not less than 5 or more than 10); and in addition we assess a fine of \$ \_\_\_\_\_ ("none"; or an amount not to exceed \$10,000); and we the jury, having assessed the punishment of the defendant at not more than ten years' confinement in the Institutional Division of the Texas Department of Criminal Justice and having further found that he has never before been convicted of a felony in this or in any other state, **WE DO RECOMMEND** that the imposition of his sentence be suspended and he be placed on community supervision.

(If fine is assessed, answer the following by checking the appropriate blank:)

WE RECOMMEND:

- \_\_\_\_\_ (A) that the Defendant be required, as a condition of community supervision, to pay the fine assessed; OR
- \_\_\_\_\_ (B) that payment of the fine be suspended.

\_\_\_\_\_  
Foreperson

1- the group photo  
taken 2.21.02  
5 kids

2- photos of injured  
victims - Andrew + Mike

②-

Iman Nareck

#1  
11-15  
MM

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

DEC 12 2002

Time 11:05 AM  
By R- Deputy

JURY NOTE

# 1

We have reached a verdict.

*Janis M. Morack*

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

DEC 12 2002

Time 11:45 AM  
By RW Deputy

*RW  
11:45  
AM*

**JURY NOTE**

# *2*

CERTIFICATE OF PROCEEDINGS

CASE: 0836979 DATE: 12/12/02 DOCKET: 0836979A CID: 0579723

DEFENDANT: GAINES, BARTON RAY WARRANT: MICRO: INDICTED: Y DATE: 04/25/02

COURT: D213 HEARD: TRANSFER COURT:

CHOV: / / I/O: COUNTY:

CHARGE OFFENSE: 099020 CAPITAL MURDER-ATTEMPT DATE: 02/21/02 LSR INC:

DISPOSITION OFFENSE: 120109 Agg Robb w/D.W.

PLEA: PGBJ - (count 2) BOND TYPE: FINE:

DISP: FELC / / STATUS: CT COST:

SENTENCE: P035Y / / EVENT: MISC:

ACTION: APLD / / DUE: / /

PROB (MOS): / / AMOUNT: PAID:

FORFEIT: / /

INST VERD: BONDSMAN:

PROCEEDINGS: 12-9-02: Jury seated, 12-12-02 Jury Verdict: Guilty of Agg Robb w/D.W. (count 2) 35 yrs. IDTCJ + \$10,000.00 Fine

CTS ccw/TC \$1,000 appt'd atty fees as cond of Parole

JUDGE / MAGISTRATE: Rob Westfall CLERK: Rebecca White

CTS 2-23-02 to DOS  
21

Altaived  
Foran  
Robert  
Nichole Hartmann

✓ (RM)  
Voir dire - Kay - ct reporter  
trial - Steve Schiller

Greg Westfall 85  
Cheyenne Minick

CASE NO. 0836979A

THE STATE OF TEXAS  
 VS.  
 BARTON RAY GAINES

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 §  
 §

IN THE 213TH DISTRICT  
 COURT OF  
 TARRANT COUNTY, TEXAS

JUDGMENT ON JURY VERDICT OF GUILTY  
 PUNISHMENT FIXED BY COURT OR JURY - NO PROBATION GRANTED

Judge Presiding	: HON. ROBERT K. GILL	Date of Judgment	: DECEMBER 12, 2002
Attorney for State District Attorney	: TIM CURRY	Assistant District Attorney	: ROBERT F. FORAN MICHELE HARTMANN
Attorney for Defendant	: GREG WESTFALL CHEYENNE MINICK	Charging Instrument:	INDICTMENT
<u>Offense Date</u>	<u>Convicted Offense</u>		
FEBRUARY 21, 2002	AGGRAVATED ROBBERY WITH A DEADLY WEAPON, TO-WIT: A FIREARM		
<u>Degree</u>	<u>Count</u>	<u>Plea</u>	
1ST	TWO	GUILTY	
Findings on Deadly Weapon	: THE JURY AFFIRMATIVELY FINDS THAT THE DEFENDANT USED OR EXHIBITED A DEADLY WEAPON, TO-WIT: A FIREARM DURING THE COMMISSION OF THE OFFENSE OR DURING THE IMMEDIATE FLIGHT THEREFROM.		
Plea to Enhancement Paragraph(s)	: NONE		
Plea to Habitual Paragraph(s)	: NONE		
Findings on Enhancement/Habitual Paragraph(s)	: NONE		
Jury Verdict	: GUILTY		
Punishment Assessed By	: JURY		
Date Sentence Imposed	: DECEMBER 12, 2002	Date to Commence	: DECEMBER 12, 2002
Punishment	: COUNT TWO - THIRTY-FIVE(35) YEARS		
Place of Confinement	: INSTITUTIONAL DIVISION OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE		
Fine	: \$10,000.00 TEN THOUSAND DOLLARS AND ZERO CENTS		
Time Credited	: 295 DAYS	Court Costs	: \$273.00
Reparation	: \$1,000.00	Restitution	: NONE
	: APPOINTED COUNSEL FEES IN THE AMOUNT OF \$1,000.00 TO BE PAID AS A CONDITION OF PAROLE		
	IT IS FURTHER ORDERED THAT APPOINTED COUNSEL FEES FOR PURPOSES OF TEX. CODE OF CRIM. PROC., ANN., ARTICLE. 26.05 BE SET AT \$1,000.00 AND MADE PAYABLE TO AND THROUGH THE CRIMINAL DISTRICT CLERK'S OFFICE OF TARRANT COUNTY, TEXAS		
Multiple Sentences	: TO BE SERVED CONCURRENTLY WITH SENTENCE(S) RENDERED IN TARRANT COUNTY		

86 rm G



On this day, set forth above, this cause came for trial, and the State appeared by the above-named attorney, and the Defendant appeared in person in open court, the above-named counsel for Defendant also being present, or, where a Defendant is not represented by counsel, that the Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel; and the said Defendant having been duly arraigned and it appearing to the Court that Defendant was mentally competent, and having pleaded as shown above to the indictment herein, both parties announced ready for trial and thereupon a jury, to-wit, the above named foreman and eleven others, was duly selected, impaneled and sworn, who having heard the indictment read and the Defendant's plea thereto, and having heard the evidence submitted, and having been duly charged by the Court, retired in charge of the proper officer to consider the verdict, and afterward were brought into Court by the proper officer, the Defendant and Defendant's counsel being present, and returned into open court the verdict set forth above, which was received by the Court, and is here now entered upon the minutes of the Court as shown above.

Thereupon, the Defendant elected to have punishment assessed by the above shown assessor of punishment, and when shown above that the indictment contains enhancement paragraph(s), which were not waived, and alleges Defendant to have been convicted previously of any felony or offenses for the purpose of enhancement of punishment, then the Court asked Defendant if such allegations were true or false and Defendant answered as shown above. And when Defendant is shown above to have elected to have the jury assess punishment, such jury was called back into the box and heard evidence relative to the question of punishment and having been duly charged by the Court, they retired to consider such question, and after having deliberated, they returned into Court the verdict shown under punishment above; and when Defendant is shown above to have elected to have punishment fixed by the Court, in due form of law further evidence was heard by the Court relative to the question of punishment and the Court fixed the punishment of the Defendant as shown above.

IT IS THEREFORE CONSIDERED AND ORDERED by the Court, in the presence of the Defendant, that the said judgment be, and the same is hereby in all things approved and confirmed, and that the Defendant is adjudged guilty of the offense set forth above as found by the verdict of the jury, as set forth above, and said Defendant be punished in accordance with the Jury Verdict or the Court's Finding, as shown above and that the Defendant is sentenced to a term of imprisonment or fine or both, as set forth above, and that said Defendant be delivered by the Sheriff to the Director of the Institutional Division of the Texas Department of Criminal Justice, or other person legally authorized to receive such convicts for the punishment assessed herein, and the said Defendant shall be confined for the above named term in accordance with the provisions of law governing such punishments and execution may issue as necessary.

And, if shown above that the Defendant has been duly and legally convicted of a prior offense by showing the court, cause number, and offense, together with the punishment for such offense and date Defendant was sentenced for such offense in accordance with such conviction, then it is further ORDERED AND ADJUDGED that the punishment herein adjudged against said Defendant shall begin when the judgment in such prior offense, when shown above, shall have ceased to operate.

And the said Defendant is remanded to jail until said Sheriff can obey the direction of this judgment.

  
PRESIDING JUDGE

Date Signed : DECEMBER 12, 2002

Notice of Appeal : DECEMBER 12, 2002

Mandate Received : \_\_\_\_\_

IN THE 213<sup>TH</sup> Criminal District Court of Tarrant County, Texas

Offense: Attempted Murder

Cause No.: 0836979A & 0836985A - The State of Texas vs. Barton Ray Gaines

APPLICATION FOR SUBPOENA

TO THE CLERK OF THE DISTRICT COURTS OF TARRANT COUNTY, TEXAS:

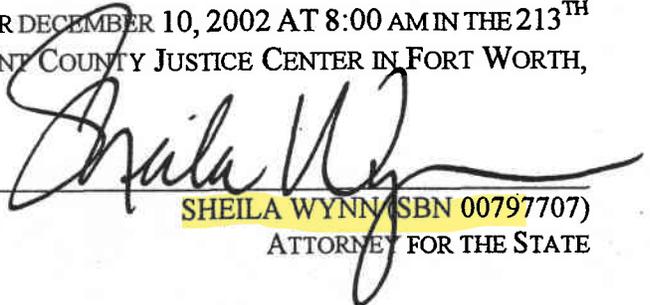
You will please issue subpoena in accordance with law in the above numbered and entitled cause for the following named witnesses, whose testimony is material to the State or the defense.

NAME OF WITNESS	VOCATION, ADDRESS AND TELEPHONE NUMBER	COUNTY
Gary Green	Wherever found	Tarrant
Sherry Green	Wherever found	

Duces tecum Produce the minor child Tarah Green for testimony in the above cause.

THESE WITNESSES ARE TO PERSONALLY APPEAR DECEMBER 10, 2002 AT 8:00 AM IN THE 213<sup>TH</sup> DISTRICT COURT COURTROOM IN THE TARRANT COUNTY JUSTICE CENTER IN FORT WORTH, TEXAS.

This is my initial appeal attorney's wife. Other than filing this motion, as far as can tell, she had no part in my prosecution.



SHEILA WYNN (SBN 00797707)  
ATTORNEY FOR THE STATE

Issued 25 day of Novemb, 2002, by tgs

Signature of person serving subpoena if other than officer of the State

SUBPOENA

DATE OF ISSUE: November 25, 2002

TO ANY SHERIFF OR ANY PROPER PERSON AUTHORIZED BY THE STATE OF TEXAS, GREETINGS:

You are hereby commanded to summon the hereinafter named person or persons to be and personally appear before the below named court of Tarrant County, Texas, at the Tarrant County Justice Center of said County, in the City of Fort Worth, at the below shown date and time, then and there to testify on behalf of the below shown party in the styled and numbered action shown below pending in said Court, and there remain from day to day and from term to term until discharged by said Court.

CASE NO. 0836979A & 0836985A

THE STATE OF TEXAS

VS.

BARTON RAY GAINES

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§  
§  
§  
§

IN THE 213TH

DISTRICT COURT OF

TARRANT COUNTY, TEXAS

And the said witness is further directed to bring with him and produce in Court the following instrument or instruments in writing or other thing desired as evidence: PRODUCE THE MINOR CHILD TARAH GREEN FOR TESTIMONY IN THE ABOVE CAUSE

To appear as a Witness for the STATE. Witness is to appear on DECEMBER 10, 2002, 8AM.

GARY GREEN  
WHEREVER FOUND

TARRANT COUNTY

SHERRY GREEN  
WHEREVER FOUND

TARRANT COUNTY

HEREIN FAIL NOT, but of this subpoena make due return, showing how you have executed the same.

A disobedience of this subpoena is punishable by fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases.

THOMAS A. WILDER  
District Clerk  
Tarrant County, Texas

By: [Signature]  
Deputy

(Felony cases. To be read to witness if served in Tarrant County and to be executed by delivering a copy to each witness named outside of Tarrant County. May also be used for duces tecum.)

OFFICER'S RETURN

CAME TO HAND on the 25th day of November, 2002, and executed by reading the within subpoena to and within the hearing of the witnesses, summoned in Tarrant County, and by delivering a true copy of this Writ to the within named witnesses summoned outside of Tarrant County, or by Duces Tecum, on the dates and at the places hereinafter set forth as follows:

NAME	ADDRESS	Date Summoned	Time Summoned	Mileage	Total Fees
<u>Gary Green</u>	<u>117 Tom [unclear] TX</u>	<u>11-25-02</u>	<u>1:30pm</u>		

The following named witnesses not summoned for the reasons set opposite their names in accordance with Art. 24.04 C.C.P.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

DEC - 5 2002  
10:40

Time \_\_\_\_\_  
By [Signature] Deputy

[Signature] County, Texas  
By [Signature] Deputy  
Investigator

IN THE D 213 DISTRICT COURT OF TARRANT COUNTY, TEX

OFFENSE: Attempted Capital Murder

NO. 0836979A & 0836985A THE STATE OF TEXAS VS. Baron Ray Guinis

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

APPLICATION FOR SUBPOENA

NOV 25 2002

TO THE CLERK OF THE DISTRICT COURTS OF TARRANT COUNTY, TEXAS:

Time 8:25

You will please issue subpoena in accordance with law in the above numbered and entitled cause the following witnesses, whose testimony is material to the State or the Defense.

tgq Deputy

NAME OF WITNESS VOCATION, ADDRESS AND TELEPHONE NUMBER COURT

- ① Mindy Keisel Where found Tarrant
- ② Tara Green Where found Tarrant
- ③ Michael Williams Where found Tarrant
- ④ Andrew Horvath Where found Tarrant
- ⑤ Richard Weaver Where found Hood
- ⑥ Stephen Ancira Where found Hood
- ⑦ Greg Peterson Where found Hood

Duces tecum:

THESE WITNESSES ARE TO PERSONALLY APPEAR ON THE 10<sup>th</sup> DAY OF December A.D. 2002 AT 8:00 O'CLOCK A .M, AT THE D213 DISTRICT COURT NO. \_\_\_\_\_ COURTROOM IN THE TARRANT COUNTY COURTHOUSE IN FORT WORTH, TEX

Michael Paul  
ATTORNEY FOR STATE, DEFENDANT

Issued 25 day of November, 2002 by tgq

SUBPOENA

DATE OF ISSUE: November 25, 2002

TO ANY SHERIFF OR ANY PROPER PERSON AUTHORIZED BY THE STATE OF TEXAS, GREETINGS:

You are hereby commanded to summon the hereinafter named person or persons to be and personally appear before the below named court of Tarrant County, Texas, at the Tarrant County Justice Center of said County, in the City of Fort Worth, at the below shown date and time, then and there to testify on behalf of the below shown party in the styled and numbered action shown below pending in said Court, and there remain from day to day and from term to term until discharged by said Court.

CASE NO. 0836979A & 0836985A

THE STATE OF TEXAS

VS.

BARTON RAY GAINES

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IN THE 213TH

DISTRICT COURT OF

TARRANT COUNTY, TEXAS

And the said witness is further directed to bring with him and produce in Court the following instrument or instruments in writing or other thing desired as evidence: NONE

To appear as a Witness for the STATE. Witness is to appear on DECEMBER 10, 2002, 8AM.

MINDY KEISEL  
WHEREVER FOUND

TARRANT COUNTY

TARAH GREEN  
WHEREVER FOUND

TARRANT COUNTY

MICHAEL WILLIAMS  
WHEREVER FOUND

TARRANT COUNTY

ANDREW HORVATH  
WHEREVER FOUND

TARRANT COUNTY

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

DEC - 5 2002

Time 10:40  
By DMW Deputy

HEREIN FAIL NOT, but of this subpoena make due return, showing how you have executed the same.

A disobedience of this subpoena is punishable by fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases.

THOMAS A. WILDER  
District Clerk  
Tarrant County, Texas

By: Daryl Coy  
Deputy

(Felony cases. To be read to witness if served in Tarrant County and to be executed by delivering a copy to each witness named outside of Tarrant County. May also be used for duces tecum.)

OFFICER'S RETURN

CAME TO HAND on the 25th day of November 2002, and executed by reading the within subpoena to and within the hearing of the witnesses, summoned in Tarrant County, and by delivering a true copy of this Writ to the within named witnesses summoned outside of Tarrant County, or by Duces Tecum, on the dates and at the places hereinafter set forth as follows:

NAME	ADDRESS	Date Summoned	Time Summoned	Mileage	Total Fees
<u>Michael Williams</u>	<u>304 Wilson, Clewley</u>	<u>12-4-02</u>	<u>11am</u>		
<u>Mindy Keisel</u>	<u>6508 St. Johns</u>	<u>12-4-02</u>	<u>4pm</u>		

The following named witnesses not summoned for the reasons set opposite their names in accordance with Art. 24.04 C.C.P.

Andrew Horvath, Tarah Green are juveniles & were served with appropriate subpoenas.

Tarrant County, Texas  
By Daryl Coy Deputy

SUBPOENA

DATE OF ISSUE: November 25, 2002

TO ANY SHERIFF OR ANY PROPER PERSON AUTHORIZED BY THE STATE OF TEXAS, GREETINGS:

You are hereby commanded to summon the hereinafter named person or persons to be and personally appear before the below named court of Tarrant County, Texas, at the Tarrant County Justice Center of said County, in the City of Fort Worth, at the below shown date and time, then and there to testify on behalf of the below shown party in the styled and numbered action shown below pending in said Court, and there remain from day to day and from term to term until discharged by said Court.

CASE NO. 0836979A & 0836985A

THE STATE OF TEXAS

VS.

BARTON RAY GAINES

§  
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IN THE 213TH

DISTRICT COURT OF

TARRANT COUNTY, TEXAS

And the said witness is further directed to bring with him and produce in Court the following instrument or instruments in writing or other thing desired as evidence: NONE

To appear as a Witness for the STATE. Witness is to appear on DECEMBER 10, 2002, 8AM.

RICHARD WEAVER  
WHEREVER FOUND

HOOD COUNTY

STEPHEN ANCIRA  
WHEREVER FOUND

HOOD COUNTY

GREG PETERSON  
WHEREVER FOUND

HOOD COUNTY

HEREIN FAIL NOT, but of this subpoena make due return, showing how you have executed the same.

A disobedience of this subpoena is punishable by fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases.

THOMAS A. WILDER  
District Clerk  
Tarrant County, Texas

By: [Signature]  
Deputy

(Felony cases. To be read to witness if served in Tarrant County and to be executed by delivering a copy to each witness named outside of Tarrant County. May also be used for duces tecum.)

OFFICER'S RETURN

CAME TO HAND on the 25th day of November, 2002, and executed by reading the within subpoena to and within the hearing of the witnesses, summoned in Tarrant County, and by delivering a true copy of this Writ to the within named witnesses summoned outside of Tarrant County, or by Duces Tecum, on the dates and at the places hereinafter set forth as follows:

NAME	ADDRESS	Date Summoned	Time Summoned	Mileage	Total Fees
<u>Richard Weaver</u>	<u>Erath Co. S.D.</u>	<u>11-26-02</u>	<u>6:30pm</u>		
<u>Stephen Ancira</u>	<u>Erath Co. S.D.</u>	<u>11-26-02</u>	<u>6:30pm</u>		
<u>Greg Peterson</u>	<u>Erath Co. S.D.</u>	<u>11-26-02</u>	<u>6:30pm</u>		

The following named witnesses not summoned for the reasons set opposite their names in accordance with Art. 24.04 C.C.P.

\_\_\_\_\_  
\_\_\_\_\_

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

DEC - 5 2002

Time 10:40  
By [Signature] Deputy

TARRANT County, Texas  
By [Signature] Deputy  
Investigator 92

IN THE D213 DISTRICT COURT OF TARRANT COUNTY, TEX

OFFENSE: Attempted Capital Murder

NO. 0836979A & 0836985A THE STATE OF TEXAS VS. Burton Ross

FRED WILDER  
TARRANT COUNTY, TEXAS  
DIST. CLERK

**APPLICATION FOR SUBPOENA**

NOV 25 2002

TO THE CLERK OF THE DISTRICT COURTS OF TARRANT COUNTY, TEXAS:

Time 8:25  
By tg

You will please issue subpoena in accordance with law in the above numbered and entitled cause the following witnesses, whose testimony is material to the State or the Defense.

NAME OF WITNESS VOCATION, ADDRESS AND TELEPHONE NUMBER COURT

① Aftab Ahmed 7451 McCurt Ave Tarrant  
Fw, TX or where  
found.

② Gerardo Moreno 5211 Southcrest Tarrant  
ct, Fw, TX  
or where found

Duces tecum:

THESE WITNESSES ARE TO PERSONALLY APPEAR ON THE 10<sup>th</sup> DAY OF December  
A.D. 2002 AT 8:00 O'CLOCK A.M., AT THE D213 DISTRICT  
COURT NO. \_\_\_\_\_ COURTROOM IN THE TARRANT COUNTY COURTHOUSE IN FORT WORTH, TEX

Michelle D...  
ATTORNEY FOR STATE, DEFENDANT

Issued 25 day of November, 2002 by tg

SUBPOENA

DATE OF ISSUE: November 25, 2002

TO ANY SHERIFF OR ANY PROPER PERSON AUTHORIZED BY THE STATE OF TEXAS, GREETINGS:

You are hereby commanded to summon the hereinafter named person or persons to be and personally appear before the below named court of Tarrant County, Texas, at the Tarrant County Justice Center of said County, in the City of Fort Worth, at the below shown date and time, then and there to testify on behalf of the below shown party in the styled and numbered action shown below pending in said Court, and there remain from day to day and from term to term until discharged by said Court.

CASE NO. 0836979A & 0836985A

THE STATE OF TEXAS

VS.

BARTON RAY GAINES

§  
§  
§  
§  
§

IN THE 213TH

DISTRICT COURT OF

TARRANT COUNTY, TEXAS

And the said witness is further directed to bring with him and produce in Court the following instrument or instruments in writing or other thing desired as evidence: NONE

To appear as a Witness for the STATE. Witness is to appear on DECEMBER 10, 2002, 8AM.

AFTAB AHMED  
7451 MCCART AVE  
FORT WORTH, TX  
OR WHEREVER FOUND

TARRANT COUNTY

GERARDO MORENO  
5211 SOUTHCREST CT  
FORT WORTH, TX  
OR WHEREVER FOUND

TARRANT COUNTY

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS  
DEC - 5 2002  
Time 10:40  
By RWC Deputy

HEREIN FAIL NOT, but of this subpoena make due return, showing how you have executed the same.

A disobedience of this subpoena is punishable by fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases.

THOMAS A. WILDER  
District Clerk  
Tarrant County, Texas

By: David Cox  
Deputy

(Felony cases. To be read to witness if served in Tarrant County and to be executed by delivering a copy to each witness named outside of Tarrant County. May also be used for duces tecum.)

OFFICER'S RETURN

CAME TO HAND on the 25th day of November, 2002, and executed by reading the within subpoena to and within the hearing of the witnesses, summoned in Tarrant County, and by delivering a true copy of this Writ to the within named witnesses summoned outside of Tarrant County, or by Duces Tecum, on the dates and at the places hereinafter set forth as follows:

NAME	ADDRESS	Date Summoned	Time Summoned	Mileage	Total Fees
<u>Aftab Ahmed</u>	<u>7451 McCart Ave.</u>	<u>11-27-02</u>	<u>5:45pm</u>		

The following named witnesses not summoned for the reasons set opposite their names in accordance with Art. 24.04 C.C.P.

Gerardo Moreno determined to be a juvenile & must be served on another subpoena.

Tarrant County, Texas  
By: David C. Hubbard  
Investigator

IN THE D213 DISTRICT COURT OF TARRANT COUNTY, TEX.

OFFENSE: Attempted Capital Murder

NO. 0836979A & 0836985A THE STATE OF TEXAS VS. Barton Gairns

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

DEC - 2 2002

Time 10:00 AM

By PA Deputy

### APPLICATION FOR SUBPOENA

TO THE CLERK OF THE DISTRICT COURTS OF TARRANT COUNTY, TEXAS:

You will please issue subpoena in accordance with law in the above numbered and entitled cause for the following witnesses, whose testimony is material to the State or the Defense.

NAME OF WITNESS	VOCATION, ADDRESS AND TELEPHONE NUMBER	COUNTY
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<u>Jheen Ancira</u>	<u>where Found</u>	<u>Hood</u>
---------------------	--------------------	-------------

<u>*Lilia Gonzales</u>	<u>where Found</u>	<u>Tarrant</u>
------------------------	--------------------	----------------

\*Duces tecum: Please bring Gerardo Moreno, dob: 10-20-85.

THESE WITNESSES ARE TO PERSONALLY APPEAR ON THE 9<sup>th</sup> DAY OF December A.D. 2002 AT 9 O'CLOCK A.M, AT THE D213 DISTRICT COURT NO. \_\_\_\_\_ COURTROOM IN THE TARRANT COUNTY COURTHOUSE IN FORT WORTH, TEX.

Michael D. [Signature]  
ATTORNEY FOR STATE, DEFENDANT

Issued 2nd day of December 2002 by Sebera [Signature]

SUBPOENA

DATE OF ISSUE: December 4, 2002

TO ANY SHERIFF OR ANY PROPER PERSON AUTHORIZED BY THE STATE OF TEXAS, GREETINGS:

You are hereby commanded to summon the hereinafter named person or persons to be and personally appear before the below named court of Tarrant County, Texas, at the Tarrant County Justice Center of said County, in the City of Fort Worth, at the below shown date and time, then and there to testify on behalf of the below shown party in the styled and numbered action shown below pending in said Court, and there remain from day to day and from term to term until discharged by said Court.

CASE NO. 0836979A AND 0836985A

THE STATE OF TEXAS

VS.

BARTON RAY GAINES

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IN THE 213th

DISTRICT COURT OF

TARRANT COUNTY, TEXAS

And the said witness is further directed to bring with him and produce in Court the following instrument or instruments in writing or other thing desired as evidence: NONE

To appear as a Witness for the STATE. Witness is to appear on DECEMBER 9, 2002 AT 9:00 A.M.

JHEEN ANCIRA WHERE FOUND HOOD COUNTY

HEREIN FAIL NOT, but of this subpoena make due return, showing how you have executed the same.

A disobedience of this subpoena is punishable by fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases.

THOMAS A. WILDER  
District Clerk  
Tarrant County, Texas

By: Rebecca h [Signature]  
Deputy

(Felony cases. To be read to witness if served in Tarrant County and to be executed by delivering a copy to each witness named outside of Tarrant County. May also be used for duces tecum.)

OFFICER'S RETURN

CAME TO HAND on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and executed by reading the within subpoena to and within the hearing of the witnesses, summoned in Tarrant County, and by delivering a true copy of this Writ to the within named witnesses summoned outside of Tarrant County, or by Duces Tecum, on the dates and at the places hereinafter set forth as follows:

NAME	ADDRESS	Date Summoned	Time Summoned	Mileage	Total Fees

The following named witnesses not summoned for the reasons set opposite their names in accordance with Art. 24.04 C.C.P.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ County, Texas  
By \_\_\_\_\_ Deputy

SUBPOENA

DATE OF ISSUE: December 2, 2002

TO ANY SHERIFF OR ANY PROPER PERSON AUTHORIZED BY THE STATE OF TEXAS, GREETINGS:

You are hereby commanded to summon the hereinafter named person or persons to be and personally appear before the below named court of Tarrant County, Texas, at the Tarrant County Justice Center of said County, in the City of Fort Worth, at the below shown date and time, then and there to testify on behalf of the below shown party in the styled and numbered action shown below pending in said Court, and there remain from day to day and from term to term until discharged by said Court.

CASE NO. 0836979A AND 0836985A

THE STATE OF TEXAS

VS.

BARTON RAY GAINES

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IN THE 213th

DISTRICT COURT OF

TARRANT COUNTY, TEXAS

And the said witness is further directed to bring with him and produce in Court the following instrument or instruments in writing or other thing desired as evidence: DUCES TECUM: PLEASE BRING GERARDO MORENO, D.O.B. 10-20-85.

To appear as a Witness for the STATE. Witness is to appear on DECEMBER 9, 2002 AT 9:00 A.M.

LILIA GONZALES WHERE FOUND TARRANT COUNTY

HEREIN FAIL NOT, but of this subpoena make due return, showing how you have executed the same.

A disobedience of this subpoena is punishable by fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases.

THOMAS A. WILDER  
District Clerk  
Tarrant County, Texas

By: Rebecca Wilder  
Deputy

(Felony cases. To be read to witness if served in Tarrant County and to be executed by delivering a copy to each witness named outside of Tarrant County. May also be used for duces tecum.)

OFFICER'S RETURN

CAME TO HAND on the 2nd day of December, 2002, and executed by reading the within subpoena to and within the hearing of the witnesses, summoned in Tarrant County, and by delivering a true copy of this Writ to the within named witnesses summoned outside of Tarrant County, or by Duces Tecum, on the dates and at the places hereinafter set forth as follows:

NAME	ADDRESS	Date Summoned	Time Summoned	Mileage	Total Fees
<u>Lilia Gonzales</u>	<u>4800 South Rwy F102</u>	<u>12-3-02</u>	<u>7:30</u>		

The following named witnesses not summoned for the reasons set opposite their names in accordance with Art. 24.04 C.C.P.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tarrant, County, Texas  
By: Frank C. [Signature] Deputy  
J. [Signature] 97

IN THE 213TH CRIMINAL DISTRICT COURT OF TARRANT COUNTY, TEXAS

OFFENSE: ATTEMPTED CAPITAL MURDER

CAUSE NUMBER: 0836979A

THE STATE OF TEXAS v. BARTON RAY GAINES

### APPLICATION FOR SUBPOENA

FILED  
TARRANT COUNTY  
REC-2  
MILDER  
DISTRICT CLERK

TO THE CLERK OF THE DISTRICT COURTS OF TARRANT COUNTY, TEXAS:

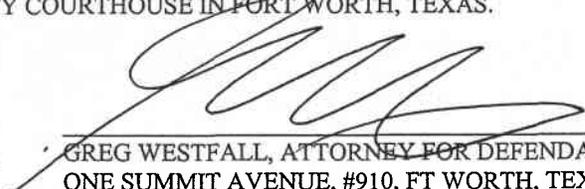
You will please issue a subpoena or subpoenas in accordance with law in the above numbered and entitled cause for the following witness or witnesses, whose testimony is material to the DEFENSE.

<u>NAME OF WITNESS</u>	<u>VOCATION, ADDRESS AND TELEPHONE NUMBER</u>	<u>COUNTY</u>
Custodian of Records Fort Worth Independent School District		Where Found, Tarrant

#### DUCES TECUM:

All records in your possession or control pertaining to Barton Ray Gaines, DOB: 10-25-82, including but not limited to all special education records, all alternative education placement records, all disciplinary records, all medical records, all grade reports, any results of any testing for any reason, including any results of any standardized testing for academic progress as well as the results of any type of aptitude testing or testing for placement into any types of programs.

THESE WITNESSES ARE TO PERSONALLY APPEAR ON THE 10<sup>th</sup> DAY OF Dec, 2002, AT 9 O'CLOCK A M. AT THE 213TH CRIMINAL DISTRICT COURT COURTROOM IN THE TARRANT COUNTY COURTHOUSE IN FORT WORTH, TEXAS.

  
GREG WESTFALL, ATTORNEY FOR DEFENDANT  
ONE SUMMIT AVENUE, #910, FT WORTH, TEXAS  
817-877-1700

ISSUED 2nd DAY OF December, 2002 BY Rebecca W. Out

  
\_\_\_\_\_  
Signature of person serving subpoena if other than officer of the State

SUBPOENA

DATE OF ISSUE: December 2, 2002

TO ANY SHERIFF OR ANY PROPER PERSON AUTHORIZED BY THE STATE OF TEXAS, GREETINGS:

You are hereby commanded to summon the hereinafter named person or persons to be and personally appear before the below named court of Tarrant County, Texas, at the Tarrant County Justice Center of said County, in the City of Fort Worth, at the below shown date and time, then and there to testify on behalf of the below shown party in the styled and numbered action shown below pending in said Court, and there remain from day to day and from term to term until discharged by said Court.

CASE NO. 0836979A

THE STATE OF TEXAS

VS.

BARTON RAY GAINES

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IN THE 213th

DISTRICT COURT OF

TARRANT COUNTY, TEXAS

And the said witness is further directed to bring with him and produce in Court the following instrument or instruments in writing or other thing desired as evidence: DUCES TECUM: ALL RECORDS IN YOUR POSSESSION OR CONTROL PERTAINING TO BARTON RAY GAINES, DOB: 10-25-82, INCLUDING, BUT NOT LIMITED TO, ALL SPECIAL EDUCATION RECORDS, ALL ALTERNATIVE EDUCATION PLACEMENT RECORDS, ALL DISCIPLINARY RECORDS, ALL MEDICAL RECORDS, ALL GRADE REPORTS, ANY RESULTS OF ANY TESTING FOR ANY REASON, INCLUDING ANY RESULTS OF ANY STANDARDIZED TESTING FOR ACADEMIC PROGRESS, AS WELL AS THE RESULTS OF ANY TYPE OF APTITUDE TESTING FOR PLACEMENT INTO ANY TYPES OF PROGRAMS.

To appear as a Witness for the DEFENSE. Witness is to appear on DECEMBER 10, 2002 AT 9:00 A.M.

CUSTODIAN OF RECORDS  
FORT WORTH INDEPENDENT SCHOOL DISTRICT

WHERE FOUND TARRANT COUNTY

HEREIN FAIL NOT, but of this subpoena make due return, showing how you have executed the same.

A disobedience of this subpoena is punishable by fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases.

THOMAS A. WILDER  
District Clerk  
Tarrant County, Texas

By: *Rebecca [Signature]*  
Deputy

(Felony cases. To be read to witness if served in Tarrant County and to be executed by delivering a copy to each witness named outside of Tarrant County. May also be used for duces tecum.)

OFFICER'S RETURN

CAME TO HAND on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and executed by reading the within subpoena to and within the hearing of the witnesses, summoned in Tarrant County, and by delivering a true copy of this Writ to the within named witnesses summoned outside of Tarrant County, or by Duces Tecum, on the dates and at the places hereinafter set forth as follows:

NAME	ADDRESS	Date Summoned	Time Summoned	Mileage	Total Fees

The following named witnesses not summoned for the reasons set opposite their names in accordance with Art. 24.04 C.C.P.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ County, Texas

By \_\_\_\_\_ Deputy

IN THE 213TH CRIMINAL DISTRICT COURT OF TARRANT COUNTY, TEXAS

OFFENSE: ATTEMPTED CAPITAL MURDER

CAUSE NUMBER: 0836979A

THE STATE OF TEXAS v. BARTON RAY GAINES

FILED  
TARRANT COUNTY  
DEC-2  
10 10:11  
KILLER  
DISTRICT CLERK

### APPLICATION FOR SUBPOENA

TO THE CLERK OF THE DISTRICT COURTS OF TARRANT COUNTY, TEXAS:

You will please issue a subpoena or subpoenas in accordance with law in the above numbered and entitled cause for the following witness or witnesses, whose testimony is material to the DEFENSE.

<u>NAME OF WITNESS</u>	<u>VOCATION, ADDRESS AND TELEPHONE NUMBER</u>	<u>COUNTY</u>
Custodian of Records Crowley Independent School District		Where Found, Tarrant

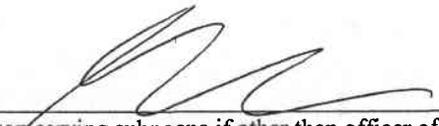
DUCES TECUM:

All records in your possession or control pertaining to Barton Ray Gaines, DOB: 10-25-82, including but not limited to all special education records, all alternative education placement records, all disciplinary records, all medical records, all grade reports, any results of any testing for any reason, including any results of any standardized testing for academic progress as well as the results of any type of aptitude testing or testing for placement into any types of programs.

THESE WITNESSES ARE TO PERSONALLY APPEAR ON THE 10<sup>th</sup> DAY OF Dec  
2002, AT 9 O'CLOCK AM M. AT THE 213TH CRIMINAL DISTRICT COURT  
COURTROOM IN THE TARRANT COUNTY COURTHOUSE IN FORT WORTH, TEXAS.

  
GREG WESTFALL, ATTORNEY FOR DEFENDANT  
ONE SUMMIT AVENUE, #910, FT WORTH, TEXAS  
817-877-1700

ISSUED 2nd DAY OF December, 2002 BY Rebecca W. O'Neil

  
\_\_\_\_\_  
Signature of person serving subpoena if other than officer of the State

SUBPOENA

DATE OF ISSUE: December 2, 2002

TO ANY SHERIFF OR ANY PROPER PERSON AUTHORIZED BY THE STATE OF TEXAS, GREETINGS:

You are hereby commanded to summon the hereinafter named person or persons to be and personally appear before the below named court of Tarrant County, Texas, at the Tarrant County Justice Center of said County, in the City of Fort Worth, at the below shown date and time, then and there to testify on behalf of the below shown party in the styled and numbered action shown below pending in said Court, and there remain from day to day and from term to term until discharged by said Court.

CASE NO. 0836979A

THE STATE OF TEXAS

VS.

BARTON RAY GAINES

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IN THE 213th

DISTRICT COURT OF

TARRANT COUNTY, TEXAS

And the said witness is further directed to bring with him and produce in Court the following instrument or instruments in writing or other thing desired as evidence: DUCES TECUM: ALL RECORDS IN YOUR POSSESSION OR CONTROL PERTAINING TO BARTON RAY GAINES, DOB: 10-25-82, INCLUDING, BUT NOT LIMITED TO, ALL SPECIAL EDUCATION RECORDS, ALL ALTERNATIVE EDUCATION PLACEMENT RECORDS, ALL DISCIPLINARY RECORDS, ALL MEDICAL RECORDS, ALL GRADE REPORTS, ANY RESULTS OF ANY TESTING FOR ANY REASON, INCLUDING ANY RESULTS OF ANY STANDARDIZED TESTING FOR ACADEMIC PROGRESS, AS WELL AS THE RESULTS OF ANY TYPE OF APTITUDE TESTING FOR PLACEMENT INTO ANY TYPES OF PROGRAMS.

To appear as a Witness for the DEFENSE. Witness is to appear on DECEMBER 10, 2002 AT 9:00 A.M.

CUSTODIAN OF RECORDS  
CROWLEY INDEPENDENT SCHOOL DISTRICT

WHERE FOUND TARRANT COUNTY

HEREIN FAIL NOT, but of this subpoena make due return, showing how you have executed the same.

A disobedience of this subpoena is punishable by fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases.

THOMAS A. WILDER  
District Clerk  
Tarrant County, Texas

By: Rebecca [Signature]  
Deputy

(Felony cases. To be read to witness if served in Tarrant County and to be executed by delivering a copy to each witness named outside of Tarrant County. May also be used for duces tecum.)

OFFICER'S RETURN

CAME TO HAND on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and executed by reading the within subpoena to and within the hearing of the witnesses, summoned in Tarrant County, and by delivering a true copy of this Writ to the within named witnesses summoned outside of Tarrant County, or by Duces Tecum, on the dates and at the places hereinafter set forth as follows:

NAME	ADDRESS	Date Summoned	Time Summoned	Mileage	Total Fees

The following named witnesses not summoned for the reasons set opposite their names in accordance with Art. 24.04 C.C.P.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ County, Texas  
By \_\_\_\_\_ Deputy

IN THE 213TH CRIMINAL DISTRICT COURT OF TARRANT COUNTY, TEXAS

OFFENSE: ATTEMPTED CAPITAL MURDER

CAUSE NUMBER: 0836979A

THE STATE OF TEXAS v. BARTON RAY GAINES

### APPLICATION FOR SUBPOENA

TO THE CLERK OF THE DISTRICT COURTS OF TARRANT COUNTY, TEXAS:

You will please issue a subpoena or subpoenas in accordance with law in the above numbered and entitled cause for the following witness or witnesses, whose testimony is material to the DEFENSE.

<u>NAME OF WITNESS</u>	<u>VOCATION, ADDRESS AND TELEPHONE NUMBER</u>	<u>COUNTY</u>
Custodian of Records Fort Worth City Credit Union 2309 Montgomery Street Fort Worth, Texas 76107		Tarrant

FILED  
 TARRANT COUNTY  
 DISTRICT CLERK  
 THOMAS A. MURDER  
 11 11 AM  
 2002

DUCES TECUM:

Copies of all checks written on account number 0020379012, said account being in the name of Bart Gaines

THESE WITNESSES ARE TO PERSONALLY APPEAR ON THE 10<sup>th</sup> DAY OF Dec  
 2002, AT 9 O'CLOCK A M. AT THE 213TH CRIMINAL DISTRICT COURT  
 COURTROOM IN THE TARRANT COUNTY COURTHOUSE IN FORT WORTH, TEXAS.

  
 \_\_\_\_\_  
 GREG WESTFALL, ATTORNEY FOR DEFENDANT  
 ONE SUMMIT AVENUE, #910, FT WORTH, TEXAS  
 817-877-1700

ISSUED 2nd DAY OF December, 2002 BY Rebecca [Signature]

\_\_\_\_\_  
 Signature of person serving subpoena if other than officer of the State

SUBPOENA

DATE OF ISSUE: December 2, 2002

TO ANY SHERIFF OR ANY PROPER PERSON AUTHORIZED BY THE STATE OF TEXAS, GREETINGS:

You are hereby commanded to summon the hereinafter named person or persons to be and personally appear before the below named court of Tarrant County, Texas, at the Tarrant County Justice Center of said County, in the City of Fort Worth, at the below shown date and time, then and there to testify on behalf of the below shown party in the styled and numbered action shown below pending in said Court, and there remain from day to day and from term to term until discharged by said Court.

CASE NO. 0836979A

THE STATE OF TEXAS

VS.

BARTON RAY GAINES

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IN THE 213th

DISTRICT COURT OF

TARRANT COUNTY, TEXAS

And the said witness is further directed to bring with him and produce in Court the following instrument or instruments in writing or other thing desired as evidence: DUCES TECUM: COPIES OF ALL CHECKS WRITTEN ON ACCOUNT NUMBER 0020379012, SAID ACCOUNT BEING IN THE NAME OF BART GAINES.

To appear as a Witness for the DEFENSE. Witness is to appear on DECEMBER 10, 2002 AT 9:00 A.M.

CUSTODIAN OF RECORDS

FORT WORTH CITY CREDIT UNION  
2309 MONTGOMERY STREET  
FORT WORTH, TEXAS 76107

TARRANT COUNTY

HEREIN FAIL NOT, but of this subpoena make due return, showing how you have executed the same.

A disobedience of this subpoena is punishable by fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases.

THOMAS A. WILDER  
District Clerk  
Tarrant County, Texas

By: Rebecca [Signature]  
Deputy

(Felony cases. To be read to witness if served in Tarrant County and to be executed by delivering a copy to each witness named outside of Tarrant County. May also be used for duces tecum.)

OFFICER'S RETURN

CAME TO HAND on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and executed by reading the within subpoena to and within the hearing of the witnesses, summoned in Tarrant County, and by delivering a true copy of this Writ to the within named witnesses summoned outside of Tarrant County, or by Duces Tecum, on the dates and at the places hereinafter set forth as follows:

NAME	ADDRESS	Date Summoned	Time Summoned	Mileage	Total Fees

The following named witnesses not summoned for the reasons set opposite their names in accordance with Art. 24.04 C.C.P.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ County, Texas  
By \_\_\_\_\_ Deputy

IN THE 213TH CRIMINAL DISTRICT COURT OF TARRANT COUNTY, TEXAS

OFFENSE: ATTEMPTED CAPITAL MURDER

CAUSE NUMBER: 0836979A

THE STATE OF TEXAS v. BARTON RAY GAINES

**APPLICATION FOR SUBPOENA**

FILED  
TARRANT COUNTY  
NOV 20 2002  
THOMAS A. WILDER  
DISTRICT CLERK

TO THE CLERK OF THE DISTRICT COURTS OF TARRANT COUNTY, TEXAS:

You will please issue a subpoena or subpoenas in accordance with law in the above numbered and entitled cause for the following witness or witnesses, whose testimony is material to the DEFENSE.

<u>NAME OF WITNESS</u>	<u>VOCATION, ADDRESS AND TELEPHONE NUMBER</u>	<u>COUNTY</u>
Custodian of Records Tarrant County Sheriff's Office / Jail		Where Found, Tarrant

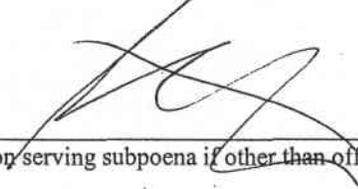
DUCES TECUM:

All psychiatric and medical records in your possession or control pertaining to Barton Ray Gaines, Jr., DOB: 10-25-82.

THESE WITNESSES ARE TO PERSONALLY APPEAR ON THE 10<sup>th</sup> DAY OF Dec, 2002, AT 9 O'CLOCK A M. AT THE 213TH CRIMINAL DISTRICT COURT COURTROOM IN THE TARRANT COUNTY COURTHOUSE IN FORT WORTH, TEXAS.

  
GREG WESTFALL, ATTORNEY FOR DEFENDANT  
ONE SUMMIT AVENUE, #910, FT WORTH, TEXAS  
817-877-1700

ISSUED 2nd DAY OF December, 2002 BY Rebecca W. Cant

  
\_\_\_\_\_  
Signature of person serving subpoena if other than officer of the State

SUBPOENA

DATE OF ISSUE: December 2, 2002

TO ANY SHERIFF OR ANY PROPER PERSON AUTHORIZED BY THE STATE OF TEXAS, GREETINGS:

You are hereby commanded to summon the hereinafter named person or persons to be and personally appear before the below named court of Tarrant County, Texas, at the Tarrant County Justice Center of said County, in the City of Fort Worth, at the below shown date and time, then and there to testify on behalf of the below shown party in the styled and numbered action shown below pending in said Court, and there remain from day to day and from term to term until discharged by said Court.

CASE NO. 0836979A

THE STATE OF TEXAS

VS.

BARTON RAY GAINES

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IN THE 213th

DISTRICT COURT OF

TARRANT COUNTY, TEXAS

And the said witness is further directed to bring with him and produce in Court the following instrument or instruments in writing or other thing desired as evidence: DUCES TECUM: ALL PSYCHIATRIC AND MEDICAL RECORDS IN YOUR POSSESSION OR CONTROL PERTAINING TO BARTON RAY GAINES, JR., DOB: 10-25-82.

To appear as a Witness for the DEFENSE. Witness is to appear on DECEMBER 10, 2002 AT 9:00 A.M.

CUSTODIAN OF RECORDS TARRANT COUNTY SHERIFF'S OFFICE/JAIL TARRANT COUNTY WHERE FOUND

HEREIN FAIL NOT, but of this subpoena make due return, showing how you have executed the same.

A disobedience of this subpoena is punishable by fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases.

THOMAS A. WILDER  
District Clerk  
Tarrant County, Texas

By: Rebecca W. [Signature]  
Deputy

(Felony cases. To be read to witness if served in Tarrant County and to be executed by delivering a copy to each witness named outside of Tarrant County. May also be used for duces tecum.)

OFFICER'S RETURN

CAME TO HAND on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and executed by reading the within subpoena to and within the hearing of the witnesses, summoned in Tarrant County, and by delivering a true copy of this Writ to the within named witnesses summoned outside of Tarrant County, or by Duces Tecum, on the dates and at the places hereinafter set forth as follows:

NAME	ADDRESS	Date Summoned	Time Summoned	Mileage	Total Fees

The following named witnesses not summoned for the reasons set opposite their names in accordance with Art. 24.04 C.C.P.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ County, Texas

By \_\_\_\_\_ Deputy

IN THE D213 DISTRICT COURT OF TARRANT COUNTY, TEX.

OFFENSE: Attempted Capital Murder

NO. 0836979A THE STATE OF TEXAS VS. Barton Grimes  
0836985A

**APPLICATION FOR SUBPOENA**

TO THE CLERK OF THE DISTRICT COURTS OF TARRANT COUNTY, TEXAS:

You will please issue subpoena in accordance with law in the above numbered and entitled cause for the following witnesses, whose testimony is material to the State or the Defense.

NAME OF WITNESS	VOCATION, ADDRESS AND TELEPHONE NUMBER	COUNTY
* Rosemary Horvath	Where found.	Tarrant
<del>Walter Horvath</del>	<del>Where found</del>	<del>Tarrant</del>

FILED  
THOMAS A. WILDER, DIST CLERK  
TARRANT COUNTY, TEXAS

DEC - 4 2002

Time 11:30 AM  
By RW Deputy

\* Duces tecum: Bring Andrew Horvath.

THESE WITNESSES ARE TO PERSONALLY APPEAR ON THE 10<sup>th</sup> DAY OF December  
A.D. 2002 AT 8:00 O'CLOCK A.M., AT THE D213 DISTRICT  
COURT NO. \_\_\_\_\_ COURTROOM IN THE TARRANT COUNTY COURTHOUSE IN FORT WORTH, TEX.

Michael Paul  
ATTORNEY FOR STATE, DEFENDANT

Issued 4 day of December 2002 by Schoene

SUBPOENA

DATE OF ISSUE: December 4, 2002

TO ANY SHERIFF OR ANY PROPER PERSON AUTHORIZED BY THE STATE OF TEXAS, GREETINGS:

You are hereby commanded to summon the hereinafter named person or persons to be and personally appear before the below named court of Tarrant County, Texas, at the Tarrant County Justice Center of said County, in the City of Fort Worth, at the below shown date and time, then and there to testify on behalf of the below shown party in the styled and numbered action shown below pending in said Court, and there remain from day to day and from term to term until discharged by said Court.

CASE NO. 0836979A/0836985A

THE STATE OF TEXAS

VS.

BARTON GAINES

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IN THE 213TH

DISTRICT COURT OF

TARRANT COUNTY, TEXAS

And the said witness is further directed to bring with him and produce in Court the following instrument or instruments in writing or other thing desired as evidence: \*BRING ANDREW HORVATH

To appear as a Witness for the STATE. Witness is to appear on DECEMBER 10, 2002 AT 8:00 A.M. IN THE 213TH DISTRICT COURT.

\*ROSEMARY HORVATH  
WHERE FOUND/TARRANT COUNTY

HEREIN FAIL NOT, but of this subpoena make due return, showing how you have executed the same.

A disobedience of this subpoena is punishable by fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases.

THOMAS A. WILDER  
District Clerk  
Tarrant County, Texas

By: [Signature]  
Deputy

(Felony cases. To be read to witness if served in Tarrant County and to be executed by delivering a copy to each witness named outside of Tarrant County. May also be used for duces tecum.)

OFFICER'S RETURN

CAME TO HAND on the 4th day of December 2002, and executed by reading the within subpoena to and within the hearing of the witnesses, summoned in Tarrant County, and by delivering a true copy of this Writ to the within named witnesses summoned outside of Tarrant County, or by Duces Tecum, on the dates and at the places hereinafter set forth as follows:

NAME	ADDRESS	Date Summoned	Time Summoned	Mileage	Total Fees
<u>Rosemary Horvath</u>	<u>10,308 Fawn Meadow</u>	<u>12-4-02</u>	<u>5 AM</u>		

The following named witnesses not summoned for the reasons set opposite their names in accordance with Art. 24.04 C.C.P.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

DEC - 5 2002

10:40

Time \_\_\_\_\_  
By [Signature] Deputy

[Signature] County, Texas  
By [Signature] Deputy  
[Signature]

IN THE D213 DISTRICT COURT OF TARRANT COUNTY, TEX.

OFFENSE: Attempted Capital Murder

NO. 0836979A & 0836985A THE STATE OF TEXAS VS. Barton Ray Gaines

**APPLICATION FOR SUBPOENA**

TO THE CLERK OF THE DISTRICT COURTS OF TARRANT COUNTY, TEXAS:

You will please issue subpoena in accordance with law in the above numbered and entitled cause in the following witnesses, whose testimony is material to the State or the Defense.

NAME OF WITNESS	VOCATION, ADDRESS AND TELEPHONE NUMBER	COUNTY
<del>Debra Harwood</del> Custodian of Records	Custodian of Records Harris Methodist Hospital 1301 Pennsylvania Ave. Fort Worth TX 76104	Tarrant

**FILED**  
**THOMAS A. WILDER, DIST. CLERK**  
**TARRANT COUNTY, TEXAS**  
 DEC - 5 2002  
 Time 3:30  
 By [Signature] Deputy

Duces tecum: Please produce records for admission, treatment, testing & diagnosis on Michael Williams DOB: 09-28-84 for admission & treatment, date February 21, 22, 2002 starting 9th

THESE WITNESSES ARE TO PERSONALLY APPEAR ON THE ~~20~~ DAY OF December A.D. 2002 AT 9:00 O'CLOCK A .M. AT THE D213 DISTRICT COURT NO. \_\_\_\_\_ COURTROOM IN THE TARRANT COUNTY COURTHOUSE IN FORT WORTH, TEX.

Why not include the date they were released too (i.e., the 23rd)? Did they show Mike was released first, thereby contradict Charla reason why she didn't ask Andy to identify me before I was arrested too?

[Signature]  
 ATTORNEY FOR STATE, DEFENDANT

Issued 5th day of December 2002 by Rebecca K. Hart

Cause Number 0836979A

FILED  
TARRANT COUNTY

BARTON RAY GAINES

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§  
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IN THE 213TH DISTRICT COURT OF TARRANT COUNTY  
DEC 20 2002

VS.

TOMAS A. WILDER  
DISTRICT CLERK

THE STATE OF TEXAS

TARRANT COUNTY, TEXAS

**MOTION FOR NEW TRIAL**

The above referenced Defendant, through the undersigned attorney, pursuant to Rule 21.1 and Rule 21.4(a), Texas Rules of Appellate Procedure, moves the Court to grant him a new trial for the following reason:

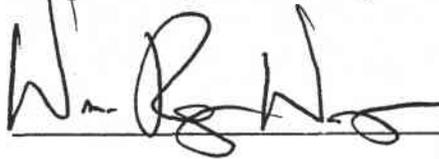
I.

The verdicts are contrary to the law and evidence.

II.

This motion is filed as a supplement to any previously filed motion and should be considered amended by any subsequently timely filed motion for new trial.

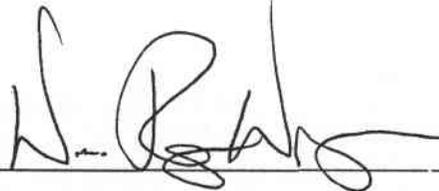
Respectfully submitted,



**WM. REAGAN WYNN**  
State Bar Number: 00797708  
**THE KEARNEY LAW FIRM**  
Wells Fargo Building  
505 Main Street, Suite 220  
Fort Worth, Texas 76102  
(817) 336-5600  
(817) 336-5610 (fax)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Motion for New Trial has been hand-delivered to the office of Tim Curry, Tarrant County Criminal District Attorney, 401 West Belknap, Fort Worth, Texas 76196, on this 29th day of March, 1999.



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WM. REAGAN WYNN

Cause Number 0836979A

BARTON RAY GAINES § IN THE 213TH  
VS. §  
THE STATE OF TEXAS § DISTRICT COURT OF  
§ TARRANT COUNTY, TEXAS

AMENDED DESIGNATION OF THE RECORD ON APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, BARTON GAINES, Defendant in the above styled and numbered cause, by and through his attorney of record, *WM. REAGAN WYNN*, and designates that the following instruments, documents, and transcriptions of proceedings be included in the record on appeal:

1. All materials required by Rule 34, Texas Rules of Appellate Procedure;
2. The affidavits or arrest warrants (with return), and complaints, first charging Defendant, if any;
3. All bills of exception and bystander's bills of exception filed by or on behalf of the Defendant, if any;
4. All trial and pre-trial briefs and motions filed by or on behalf of the Defendant, as well as the Court's orders or responses to them, including, but not limited to, the following:
  - a. All Motions and amended motions for new trial, if any;
  - b. Motions for settings;
  - c. Defendant's trial brief;
  - d. Motions for discovery;
  - e. Motions to suppress;

FILED  
THOMAS A. WILDER, DIST. CLERK  
TARRANT COUNTY, TEXAS

JAN 3 2003

Time 10:30  
By [Signature] Deputy

5. Any statements of the Defendant, or any witness, which were subject of dispute at trial or use for cross-examinations at the hearing on Defendant's Motion for New Trial -- or at any other hearing in this case, if any;

6. The originals of all exhibits offered or admitted at trial or any pre-trial or post-trial hearing, if any;

7. The statement of facts - including both the guilt/innocence phase and punishment phase of the trial;

8. All voir dire proceedings including the State, the defense, and any conversations at the bench with the trial court;

9. The jury arguments;

10. The transcriptions of the Court Reporter's notes from all pre-trial and post-trial hearings, including the hearing on any Motions to Suppress Evidence and Defendant's Motion for New Trial, if any;

11. Objections to the Court's charge, whether oral or written, and orders of the Court in response;

12. All requested jury instructions and orders of the court in response;

13. The jury list and the juror information cards or true copies of them, reflecting the respective strikes of the State and of the Defendant;

14. All jury notes, the Court responses, and any objections and requests of counsel, as well as the court's responses;

15. This designation of record on appeal;

16. Any and all motions by the Defendant to correct the record and orders of the Court in response;

17. The transcriptions of any oral arguments on the briefs;

18. The transcription of any hearing on the approval of the record;
19. All pleadings filed by the Defendant and by the State of Texas, and all rulings of the Court thereon;
20. All docket entries made by the Court;
21. The testimony of all witnesses during all pre-trial hearings, and the hearings on guilt/innocence and punishment;
22. All hearings held outside the presence of the jury;
23. All communications between the trial court and the Defendant, counsel for the Defendant, and counsel for the State;
24. The Court's charge submitted by the Court to the Jury during the hearings on guilt/innocence and punishment;
25. The judgment and sentence of the Court;
26. Defendant's Motion for New Trial, if any;
27. A transcription of all testimony and evidence introduced at the hearing on the Defendant's Motion for New Trial and the order of the Court with respect thereof, if any;
28. the Defendant's Notice of Appeal;
29. The Appeal Bond;
30. The order of the Court approving the record in this cause;
31. The briefs of the appellant and the State;
32. All applications for subpoenas by both the State and the Defendant, including any notations as to attempts to serve and the actual returns.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully prays that the Clerk and the Court Reporter of this Court make and prepare as part of the record in the appeal of this cause true and correct copies of all matters stipulated above, and make them a part of the record in the appeal of this cause.

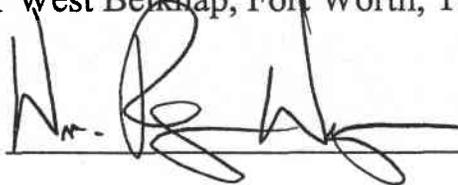
Respectfully submitted,



WM. REAGAN WYNN  
State Bar Number: 00797708  
THE KEARNEY LAW FIRM  
Wells Fargo Building  
505 Main Street, Suite 220  
Fort Worth, Texas 76102  
(817) 336-5600  
(817) 336-5610 (fax)

**CERTIFICATE OF SERVICE**

On this the 3<sup>rd</sup> day of January, 2003, I hereby certify that a true and correct copy of the above and foregoing Designation of the Record on Appeal was delivered to Charles Mallin, Assistant Deputy Chief of the Appellate Section of the Tarrant County District Attorney's Office, 401 West Bellmap, Fort Worth, Texas 76196.



WM. REAGAN WYNN

CASE NO. 0836979A AND 0836985A

THE STATE OF TEXAS

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§  
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In The 213TH

Vs.

District Court

BARTON RAY GAINES

Tarrant County, Texas

**ORDER APPOINTING SUBSTITUTE COUNSEL FOR THE APPEAL**

On this day, it being made known and appearing to the Court that the Defendant is without counsel of his own selection to represent him herein, and that he is too poor to employ counsel, or give security therefor, to represent him herein and the Defendant having requested that an attorney be appointed to represent him in the above styled and numbered cause.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that Whitney Niederman, a regularly licensed and practicing attorney is hereby appointed as substitute counsel to represent the Defendant as his attorney, and said Attorney is hereby authorized to proceed to perform the duties of the Attorney for the defendant in this cause.

Robert Hill  
Presiding Judge

4/10/03  
Date Signed



TARRANT COUNTY

Thomas A. Wilder

*District Clerk*

April 10, 2003

WHITNEY WIEDEMAN  
P. O. BOX 9412  
FORT WORTH, TEXAS 76147

Re: BARTON RAY GAINES vs: The State of Texas

CASE NO. 0836979A AND 0836985A

OFFENSE: AGGRAVATED ROBBERY-DW  
AGGRAVATED ROBBERY-DW

DATE OF SENTENCE: DECEMBER 12, 2002

SENTENCE: 35 YEARS IDTDCJ  
35 YEARS IDTDCJ

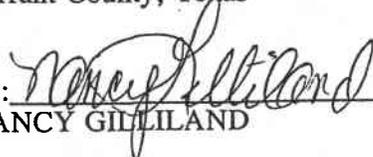
Dear MR. WIEDEMAN:

Please be advised that you have been appointed as substitute counsel to represent the above referenced defendant on appeal.

Thank you for your attention to this matter.

Very truly yours,

Thomas A. Wilder  
*District Clerk*  
Tarrant County, Texas

By:   
NANCY GILLILAND

CC: BARTON RAY GAINES

213TH District Court

THE STATE OF TEXAS

§

COUNTY OF TARRANT

§

I, Thomas A. Wilder, Clerk of the District Courts of Tarrant County, Texas, do hereby certify that the documents contained in this record to which this certification is attached are all of the documents specified by Texas Rule of Appellate Procedures 34.5(a) and all other documents timely requested by a party to this proceeding under Texas Rule of Appellate Procedure 34.5(b) in Cause Number **0836979A**, styled The State of Texas vs **BARTON RAY GAINES** in said court.

GIVEN UNDER MY HAND AND SEAL at my office in Tarrant County, Texas, this \_\_\_\_\_, day of \_\_\_\_\_, A.D. \_\_\_\_\_.

THOMAS A. WILDER  
DISTRICT CLERK  
TARRANT COUNTY, TEXAS

By Nancy Gilliland  
NANCY GILLILAND  
Deputy District Clerk