

**M**y name is Richard Clay. In May 1994 I was arrested in New Madrid, Missouri for the murder of Randy Martindale, who was shot to death in his estranged wife's home.

## Perjury And Concealed Evidence Pave Way To Death Row – The Richard Clay Story

By Richard Clay

Physical evidence and motives for Martindale's murder do exist, but they point to his estranged wife, Stacy Martindale. For months Stacy had actively recruited her boyfriend Charles Sanders to commit the crime. Both were also charged in the murder. I didn't know Martindale, but I was acquainted with Stacy, and Sanders was a friend of mine.

Sanders was having a long-term affair with Stacy at the time of Martindale's murder. The affair started in 1990. They in fact had a child together while she was married to Martindale. In February 1994 Stacy asked Sanders to help her kill her husband. She was unhappy in her marriage and she was the primary beneficiary of her husband's \$100,000 life insurance policy. During the spring of 1994, every time she met with Sanders they discussed various plans to kill her husband. This is explained in *State v. Clay*, 975 S.W.2d 121 (Mo.banc 1998).

Stacy offered Sanders \$10,000 to kill her husband. Sanders testified to this during Stacy's trial, and that she gave him a check for nearly \$5,000 as a down payment. Sanders said that a few weeks later he returned the check to her after refusing to kill Martindale. A carbon copy of the check was later discovered at a friend's home. Instead of destroying it as Sanders' requested, the individual gave it to the police.

The prosecution contended that after Sanders refused to do so, Stacy hired me to kill her husband. Yet no proof was ever presented indicating such an arrangement existed. Neither did anyone testify they heard me express an interest in committing the crime, nor did the prosecution present any eyewitnesses who claimed to have seen me commit the shooting, or who claimed to have seen me at the house when it happened.

### Police implicate Richard Clay in the murder

So how did the police decide I was involved in Martindale's murder? The night of the murder, but before the police dispatcher reported the shooting, New Madrid Police Officer Claude McFerren has testified that he saw a car driving towards him with sparks flaring from its undercarriage. He also testified he turned his vehicle around to follow the car because he thought the driver might be drunk. When the car, which wasn't speeding, turned down a gravel road, officer McFerren continued on the main road that he

knew intersected with the gravel road around the corner. When he next saw the car it had stopped on the gravel road, no one was inside, the engine was still running, and both doors were open. He went to the driver's side and turned the engine off. When it was reported on the police radio that there had been a murder, the Missouri Highway Patrol was contacted and a search ensued for the car's occupants. I was arrested the next day. The car was Stacy's red Camaro that I was the passenger in while Sanders was the driver.

I have steadfastly denied any connection with Martindale's murder. I testified at my trial that on that evening a few hours before the murder I got a ride from the Double Nickel Bar in Sikeston, Missouri to the nearby Ramada Inn. I went there to pick up methamphetamines from two contacts who fronted me the drugs to sell. Sanders and Stacy met me outside the Ramada Inn's bar. The three of us then went in Stacy's Camaro to her home so she could pay me for the drugs she wanted to buy. While Sanders and I waited in the car she went into the house. A couple of minutes later, Martindale arrived with his two sons and went inside. Stacy then came out and gave her car keys to Sanders. I could not hear the conversation between them, since Sanders had gotten out of the car. Sanders then got back into the car and told me we were leaving. Martindale had parked behind us, so Sanders had to pull forward into the carport where he apparently snagged a child's toy. That was what caused the sparks seen under the Camaro by officer McFerren.

**"Officer McFerren told me that no matter what they tried to make him say, he knew there were two people in the Camaro."  
(Affidavit Of Raburn Evans)**

When I realized a police car was following the Camaro, I asked Sanders to let me out because I still had the drugs that I had not yet paid my suppliers for. After we stopped on the gravel road, Sanders and I took off running in opposite directions. My shoeprints were later identified as those leading away from the passenger side door. I was unaware that Martindale had been killed until I was caught the next day. Martindale's murder had not been called into the police by his wife until about the time Sanders and I ran from the Camaro.

During the police search for whoever ran from the Camaro, which resulted in my arrest, a bullet allegedly matching the make and caliber of those which were used to shoot Martindale was found in a field about 150 yards from any footprints. However, the footprints that were found 150 yards from the bullet did not match my shoes. One thing that was proven is Sanders had a gun of the same caliber as the gun used to shoot Martindale. Sanders testified at my trial that the gun disappeared from his car before Martindale was killed, and that there had been times that I borrowed his car.

Stacy told the police that she was in her bedroom when she heard gunshots, but she didn't see who was doing the shooting. After seeing her husband had been shot, she immediately ran to her next-door neighbor's house to call 911, leaving her two kids in the house. So only a minute or two at the most would have elapsed from the time of the shooting to when it was reported to the police. Later a crime lab technician testified at my trial to finding gunpowder residue on Stacy's hands. Although the prosecution claimed at my trial that I shot Martindale, my hands were not tested for gunpowder residue.

The core of the prosecution's theory at my trial was that I had hidden in a closet at the Martindale house, and I jumped out and shot him. The prosecution also claimed that after the shooting I took off alone in Stacy's Camaro and dumped the gun during the search for me. The police exhaustively searched for the murder weapon, and even drained a body of water where I had been hiding, but they found nothing. It later proved significant that Stacy's prosecutor Kenny Hulshof, who was also my prosecutor, argued to her jury the opposite of what he had argued to my jury, namely that Stacy shot her husband – not me! The prosecution also claimed that Sanders had backed out of Stacy's plot and he was not present that night. Yet, Sanders was charged with first-degree murder until after he testified at my trial, and then Stacy's trial.

### Conviction and death sentence

I was convicted of first-degree murder in June 1995 and sentenced to death. Later in 1995 Stacy was convicted after a separate trial of second-degree murder and sentenced to 15 years in prison. Sanders cooperated with the police and prosecutors, testifying as the prosecution's "star" witness at both trials. Sanders testified about Stacy's persistent efforts to enlist him to murder her husband, that I could have taken his gun from his car, and that he was neither

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at the Martindale home on the evening of the murder nor in the Camaro.

In exchange for Sander's testimony the first-degree murder charge was dismissed and he was sentenced to five years probation after pleading guilty to tampering with physical evidence – a class D felony. It would later become a major issue in my post-conviction appeal that the jurors in my trial were falsely told by the prosecutor, and Sanders falsely testified, that in exchange for his cooperation he was being given a ten-year prison sentence for his role in the crime. It is also worth noting that Sander's first-degree murder charge wasn't dismissed with prejudice, so it still hangs over his head if he were to get a pang of conscience and come forward and tell the truth that he and I were in the Camaro, and that we were a mile or so from the Martindale home when the murder occurred.

### Exculpatory evidence not disclosed by the prosecution is discovered after trial

After my conviction the State provided separate lawyers to handle my direct appeal and my post-conviction petition. My post-conviction lawyer's investigation discovered that the prosecution did not disclose several key witness interviews to my two trial attorneys. Those witness interviews supported my testimony of key events on the evening of Martindale's murder. On the night of the murder, Debra Garrett, Scott Sullivan and Saman-

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eleven years after Love's trial the prosecutor's claimed for the first time that the alleged rapes didn't occur when the alleged victim testified they happened — but many months later when Love returned to the U.S.

Love filed a Motion to Dismiss the Indictment based on double-jeopardy. Love's Memorandum cited extensive state and federal case law that a defendant can only be retried for the exact same charge he or she was tried for originally. Love argued he was being charged him with entirely new crimes, since when the prosecution had the opportunity to do so during his 1996 trial it presented no evidence that any crimes occurred on the dates alleged in the new Bill of Particulars.

A hearing on Love's Motion to Dismiss is scheduled for January 28, 2008.

#### Sources:

Man Two Thousand Miles From Alleged Rape Scene Fighting For New Trial – The James Love Story, *Justice Denied*, Issue 30, Fall 2005.  
Motion to Dismiss, *State of Ohio v. James Franklin Love*, Case No. B9601201, Motion To Dismiss, October 19, 2007.

tha Fitzgerald, all of whom had no direct connection to Sanders, me, or the Martindales, were traveling home together in the same car and witnessed the police pulling up on the red Camaro. A New Madrid Police Department officer interviewed the three witnesses about what they had seen. Each person told the officer that he or she saw the Camaro stop and the driver side door and the passenger side door open simultaneously. That could only happen if there were two people in the car.

During my trial how many people were in the Camaro was hotly contested. The prosecution argued to the jury that the only person in the car was me. The non-disclosed witness interviews proved the jurors had been deceived by the prosecution's false theory. Among other claims, my state post-conviction petition claimed that the failure of my trial lawyers to investigate and find the three exculpatory witnesses was constitutionally ineffective assistance of counsel.

In 1998 the Missouri Supreme Court denied both my direct appeal and my post-conviction petition, which were consolidated into one decision. *State v. Clay*, 975 S.W.2d 121, 130 (Mo.banc 1998).

### Federal habeas corpus petition

For my federal post-conviction I obtained a number of affidavits, supporting the claims made in my state post-conviction petition. One of those was an affidavit from Sanders dated April 14, 2001 that repudiated his trial testimony that he expected a ten-year prison sentence in exchange for his prosecution favorable testimony. Sanders' affidavit states in part:

“4. That on the day that Rick Clay's trial was scheduled to begin, I was in a room at the courthouse with my lawyers (Dan Gralike and Nancy McKerrow), the prosecutors (Riley Bock and Kenny Hulshof) and other law enforcement officials. My lawyers were discussing my plea agreement with the prosecutors. It was on this day that I agreed to the ten-year sentence in exchange for my testimony. Riley Bock told me that the ten years would be what was on paper, but that he would not push it with my sentencing judge, meaning he would not try to push the judge to actually sentence me to ten years in prison. Mr. Bock indicated that it couldn't appear to the jury that nothing was going to happen to me or they would not believe my testimony. My attorneys said that because the prosecutor wasn't going to push the ten-year sentence, the court would never give me such a sentence. I never believed that I would receive a sentence of ten years in

prison.” (Affidavit Of Charles Sanders, April 14, 2001.)

There is no statute of limitations in Missouri for murder, so I believe that out of fear the murder charge would be reinstated, Sanders wouldn't admit in his affidavit to being at the Martindale house the night of the murder or driving the Camaro.

I also obtained affidavits from the three witnesses who all swore that they saw the doors of the Camaro open simultaneously when it stopped. They all also swore that they were interviewed by Officer Raymond Creasey of the New Madrid Police Department on the evening of May 19, 1994, (the evening of Martindale's murder) and that they were not contacted again by anyone prior to my trial. They also swore that they would have willingly testified as to what they saw if they had been subpoenaed to do so.

I also obtained an affidavit from Raburn Evans, Martindale's best friend, about a conversation he had with Officer McFerren when he was waiting to testify at Stacy's trial. Evans' affidavit dated February 9, 2001 states in part:

“3. That while I was at the courthouse in Perryville, Missouri for the Stacy Martindale trial, I talked to Officer Claude McFerren about his knowledge of the homicide. Officer McFerren told me that he saw two people in the Camaro he attempted to stop on the night Randy Martindale was killed. In addition, Officer McFerren told me that no matter what they tried to make him say, he knew there were two people in the Camaro.” (Affidavit Of Raburn Evans, February 9, 2001.)

I also obtained an affidavit from Len Deschler, an investigator for my post-conviction counsel. Deschler stated that he met with McFerren, who had by then been promoted to the New Madrid City Police Chief, and McFerren was agreeable to signing an affidavit titled, “Affidavit Of Claude McFerren.” Deschler's affidavit states in part:

“4. That Chief McFerren then stated, “I don't see why I can't sign this.” McFerren then expressed concern that he should contact the prosecutor, Riley Bock, to obtain Bock's approval before signing the affidavit because Chief McFerren did not want to hurt his working relationship with the prosecutor by doing anything against Bock's wishes.”

5. That Chief McFerren then talked to Riley Bock on the phone and stated that Bock wanted him to bring the affidavit to

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his (Bock's) office. Chief McFerren then asked Ms. Brewer and me to follow him to Bock's office, which we did. Chief McFerren entered Bock's office with the affidavit while Ms. Brewer and I waited in the car. Approximately five minutes later, Chief McFerren reappeared and told me that Riley had told him not to sign the affidavit. Chief McFerren apologized, handed me back the affidavit, and we parted company." (Affidavit Of Len Deschler, February 9, 2001.)

The key point of Chief McFerren's affidavit that prosecutor Bock likely objected to is that it provides evidence that McFerren could have inadvertently destroyed the physical evidence that a person exited out of the Camaro's driver's side door – and thus prove there were two people in the vehicle. That second person was Sanders, and the prosecution's case against me depended on sustaining their claim that Sanders wasn't present when Martindale was shot, and that I was alone in the Camaro. If Sanders could be placed in the Camaro, the entire theory of the prosecution's case against me would collapse. The affidavit that prosecutor Bock wouldn't let McFerren sign states in part:

"3. That while I was at the scene of the red Camaro, one of the other officers who arrived was Trooper Greg Kenley of the Missouri State Highway Patrol. Trooper Kenley asked me about a set of footprints coming from the driver's side of the Camaro. I told him that they must have been my prints as I had approached the driver's side of the car and turned off the ignition. *Any footprints that I left on the driver's side of the car would have covered prints made by the driver of the car as he exited the car.*

4. That if I had been asked about any of the above information when I testified at the trial of *State of Missouri v. Richard Clay*, I would have testified to these facts during my trial testimony." (Affidavit Of Claude McFerren, unsigned.) (Emphasis added by Richard Clay)

I also obtained an affidavit from Nina Neal that on the day before Martindale's murder she received a phone call for me and took a message for me to call the person back. In her affidavit she states that later that day when I was at her house I went to the back bedroom of her house, "presumably to return the phone call." (Affidavit Of Nina Neal, February 9, 2001.) That call was to arrange for me to front drugs to sell, some of which Stacy wanted to buy from me the

next day, and which was why I was at her house just before Martindale's murder.

### Federal habeas petition granted and new trial ordered

Based on the evidence I amassed, in 2001 U.S. District Court Judge Dean Whipple granted my habeas corpus petition and vacated my conviction and death sentence. (See, *Clay v. Bowersox*, Case No. 98-8006-CV-W-1 (2001).) He also ordered the State of Missouri to either retry me or release me within 90 days. In May 2002 Judge Whipple amended his order, but the remedy remained the same – retry or release me. Judge Whipple based his ruling on four of my grounds:

1. The prosecution's failure to disclose the terms of Sanders plea agreement under which he was only sentenced to probation instead of the ten years the jury was told was a *Brady* violation. That constitutional violation was aggravated by the prosecution misleading the jury during its closing argument that Sanders was credible because he was going to be sentenced to ten years in prison. Judge Whipple considered this *Brady* violation particularly harmful because, "the State's case against Clay crucially depended on Sander's testimony."

2. My trial counsel's failure to conduct a reasonable investigation to locate the three witnesses who saw the Camaro's doors open simultaneously was constitutionally ineffective assistance of counsel.

3. The prosecution's failure to disclose to the defense the exculpatory police statements by the three witnesses who saw the Camaro's doors open simultaneously was a *Brady* violation. In his decision Judge Whipple wrote, "the testimony of Garrett, Sullivan and Fitzgerald, probably would have resulted in a not guilty verdict, at the very least, the Court finds the verdict in this case no longer worthy of confidence."

4. The prosecution's failure to disclose to the defense that officer McFerren had possibly destroyed the evidence that a person exited out of the Camaro's driver's side door was a *Brady* violation.

The State appealed Judge Whipple's ruling to the federal Eighth Circuit Court of Appeals.

### The District Court's ruling is overturned by the Eighth Circuit Court of Appeals

More than two years after Judge Whipple's ruling, the Eighth Circuit issued its decision that overturned all four grounds of his deci-

sion. The decision is, *Clay v. Bowersox*, 367 F.3d 993 (8th Cir. 05/17/2004).

The Court ruled it wasn't material that the prosecution failed to disclose the terms of Sanders' plea agreement for his testimony under which he was sentenced to five years probation and not the ten years imprisonment that the jury was told would be his sentence. The Court ruled that it didn't think the non-disclosed information would have affected the jury's assessment of Sanders' credibility, so my right to due process wasn't prejudiced by the prosecution's concealment. Therefore Judge Whipple had erred by ruling the prosecution had committed a *Brady* violation.

The Court also ruled that the prosecution's non-disclosure of the three witness statements wasn't material, and my trial lawyer's failure to investigate and interview those exculpatory witnesses wasn't prejudicial to my defense. The Court ruled the testimony of the three witnesses would have been cumulative to the testimony of one defense witness who testified he saw "the silhouette" of two people in the Camaro, and "When the government fails to disclose only cumulative evidence, "it has committed no *Brady* violation." Therefore Judge Whipple had erred by ruling the prosecution had committed a *Brady* violation and that my trial lawyers ineffectively represented me.

The Court further ruled that the prosecution's failure to disclose that officer McFerren could have destroyed the footprints of a person exiting out of the Camaro's driver side door was procedurally barred, since the issue had not been litigated in my direct appeal or state post-conviction petition. Therefore Judge Whipple had erred by ruling the prosecution had committed a *Brady* violation. The Court disregarded that I didn't learn of this new evidence until after the Missouri Supreme Court denied all my state claims.

The Court also ruled, "There is no federal constitutional right to the effective assistance of post-conviction counsel." The Court made that ruling in upholding Judge Whipple's denial of an ineffective assistance of counsel claim against my state post-conviction counsel for not raising a *Brady* claim on a police report that the prosecution did not disclose to my trial counsel.

Thus with the sweeping away of all four grounds of Judge Whipple's decision, *any one of which he thought by itself merited awarding me a new trial*, my murder conviction and death sentence were reinstated by the appeals court.

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### Conclusion and current status

I wore no halo before my arrest for Martindale's murder. I had been a drug dealer for several years. However, I was only arrested once for drug possession and unlawful use of a weapon, a key chain's little knife. I know it was my involvement in drugs that led to my involvement in this case. I wanted to sell Stacy drugs and she didn't have the money on her to pay for them, so I went to her house where I waited in her car for her to come out with the money. If not for those actions of mine, I would not have been at her house just before Martindale's murder. I had good reason to flee from the police that night due to the illegal drugs I had on me, but I had no motive whatsoever to kill Martindale, and I had nothing to do with his murder. Yet, here I am, on Missouri's death row.

I have exhausted all my appeals, so in the absence of startling new evidence – such as Stacy unequivocally stating that I had nothing to do with her husband's murder, or Sanders coming forward and stating he was with me in the car and that my account of that evening's events is absolutely correct, or Chief McFerren coming forward and acknowledging he could have destroyed the drivers side footprints – I am simply awaiting my turn at being put to death unless Missouri joins New Jersey in abolishing the death penalty, or the Supreme Court somehow intervenes. But all that would do is transform my death sentence into life without parole – for a murder I did not commit and had no knowledge of until the day after it happened.

There is justice, just not here, and we need to find it for everyone, or we will only continue to condemn innocent men and women to prison and execution. I can be written at: Richard Clay 990120  
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My lawyer is Jennifer Herndon. Her email is, jennifernix@netcom.com

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Larry regretted what he said to save his own hide when he was flown to Los Angeles to testify against me at my trial. However, the detectives and prosecutors ignored him when he recanted his statement.

### 1998 trial and conviction

During my trial in 1998, the prosecution's theory of the crime was that Slaughter killed Jerome at my direction for both our financial gain. Slaughter didn't testify, but a detective testified that Slaughter confessed on the "lost" tape to committing the murder in exchange for \$25,000. My brother testified that he lied in his statement: Under oath he told the jury that he knew nothing about Jerome's murder and I never made any admissions to him about the murder. A detective testified about being present when Larry gave his statement, and who is a jury going to believe: a convicted child abuser or an LAPD detective?

The prosecution contended my motive was to collect two large life insurance policies on Jerome allegedly purchased just before his death. The proof offered by the prosecutor was the videotape of an 83-year-old insurance agent. Suffering from severe, late stage Alzheimer's disease, the agent rambled on about remembering Jerome. The insurance agent was so mentally debilitated that he was totally incoherent on the tape. Yet my public defender did not even attempt to call into question his competency to "testify" via the videotape about the policies. The insurance agent, who I had no opportunity to cross-examine, died later that year. My public defender failed to question the underlying truth of the prosecution's claims about these policies. In fact, we had several children together, and the smaller policy that paid about \$30,000 was purchased more than a year before Jerome's death, while the other policy was canceled before his murder. (I obtained written proof about both policies from the insurance company six years after my trial.)

The seventeen-year gap between the crime and my trial caused me severe problems in defending myself. Crucial

evidence had been lost, several witnesses had died or disappeared, and a detective from the original investigation had died. The murder weapon stained by blood that did not have either my fingerprints or Slaughters' on it was "lost" by homicide detectives prior to my trial, so it couldn't be subjected to state of the art DNA or other forensic tests. Also, Jerome's heart and brain had disappeared making an independent examination of his general physical condition by an independent pathologist impossible.

The coroner that testified about Jerome's cause of death had lost organs from other cases, and in other cases he had been proven wrong in his opinion of the deceased person's cause of death. My public defender, however, failed to discover this. I found proof of the coroner's questionable findings and past conduct on my own after my trial was over. The prosecution also alleged that Jerome wasn't gay so his murder couldn't have been related to his edgy gay lifestyle. (Remember, things were much different for gay people in 1981 when Jerome was murdered.) Again, my public defender failed me by not subpoenaing witnesses who could not only have established that Jerome was living a very risky gay lifestyle, but that we divorced when he came "out of the closet" and revealed to me that he was gay.

Needless to say, largely on the basis of testimony about Slaughter's fictitious confession and my brother's recanted statement, the jury convicted me of first-degree murder and conspiracy to commit murder. I was sentenced to life in prison without the possibility of parole.

Many things didn't add up with me (or Slaughter) being charged with this crime, including the total lack of any physical or forensic evidence, or any eyewitnesses linking either Slaughter or me to the crime.

### Appeals denied

My state direct appeal and post-conviction petition were both denied. I filed a federal habeas corpus petition in 2002 that was denied, but I was awarded a certificate of appealability in December 2003 on the issue that my constitutional right to a speedy trial had been violated by the sixteen year delay in charges being filed against me. My hopes, however, were shot down in June 2004 when the federal Ninth Circuit Court of Appeals ruled that my federal habeas petition had been untimely: It was filed *one day* later than allowed by the Anti-Terrorism and Death Penalty Act.

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