

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ALFRED DEWAYNE BROWN,

Plaintiff

vs.

**CITY OF HOUSTON, TEXAS;
HARRIS COUNTY, TEXAS;
BRECK McDANIEL;
TED C. BLOYD; and
D.L. ROBERTSON,**

Defendants.

CIVIL ACTION NO. 4:17-CV-01749

JURY DEMANDED

**DEFENDANT HARRIS COUNTY'S RULE 12(b)(6) MOTION TO DISMISS CLAIMS
RELATED TO ALLEGED *BRADY* VIOLATIONS**

Respectfully submitted,

OF COUNSEL:
VINCE RYAN
HARRIS COUNTY ATTORNEY



SETH HOPKINS
CELENA VINSON
1019 Congress Plaza, 15th Floor
Houston, Texas 77002
(713) 274-5141 (telephone)
(713) 755-8924 (facsimile)
Seth.Hopkins@cao.hctx.net

Attorneys for Harris County, Texas

TABLE OF CONTENTS

TABLE OF CONTENTS.....	ii
TABLE OF EXHIBITS.....	iv
TABLE OF AUTHORITIES.....	v
INTRODUCTION.....	1
STANDARD FOR A MOTION TO DISMISS.....	2
A. Motion to Dismiss under Rule 12(b)(6).....	2
B. Harris County incorporates four exhibits that are central to Plaintiff’s claims	
1. Ericka Dockery’s phone records are referenced 34 times in Plaintiff’s	2
Complaint and are central to Plaintiff’s claims against Harris County..	3
2. Brown’s Fifth Submission of Supplemental Evidence to Application	
for Post-Conviction Writ of Habeas Corpus is central to Plaintiff’s	
claims against Harris County.....	4
3. The 351st District Court of Texas’ Agreed Proposed Findings of	
Fact, Conclusions of Law, and Order is referenced 10 times in	
Plaintiff’s Complaint and is central to Plaintiff’s claims against	
Harris County.....	4
FACTS.....	5
A. A jury convicted Brown of murdering Houston Police Officer Charles Clark	
during a botched robbery of a check cashing store.....	5
B. Brown’s conviction was vacated because of Dockery’s records.....	6
ARGUMENT.....	7
A. Dockery’s records are not <i>Brady</i> material and they prove Dockery’s	
testimony was accurate.....	7
1. Brown called from Williams’ apartment to Dockery’s apartment at	
10:07:13 a.m.....	8
2. Brown was patched to Ms. Berry’s house through Dockery’s	
apartment at 10:08:19 a.m.....	9

3.	The records prove Dockery correctly testified that Brown’s call to Ms. Berry’s house originated from Williams’ apartment.....	10
B.	Brown misrepresented these inculpatory records during his writ application...	12
	THE COURT SHOULD DISMISS BROWN’S CLAIMS REGARDING DOCKERY’S PHONE RECORDS.....	14
	CONCLUSION AND PRAYER.....	14

TABLE OF EXHIBITS

Exhibit 1	Phone records referenced in Plaintiff's complaint, Bates labeled HC/Brown-53908-53930.
Exhibit 2	Affidavit of Ben Levitan and attachments necessary to read Exhibit 1.
Exhibit 3	Brown's April 11, 2013 Fifth Submission of Supplemental Evidence to Application for Post-Conviction Writ of Habeas Corpus in the case of <i>State of Texas v. Alfred DeWayne Brown</i> , Cause No. 1035159-A, in the 351st District Court of Harris County, Texas.
Exhibit 4	Agreed Proposed Findings of Fact and Conclusions of Law and Order signed by the 351st District Court in the case of <i>State of Texas v. Alfred DeWayne Brown</i> , Cause No. 1035159-A, Harris County, Texas

TABLE OF AUTHORITIES

Statutes

42 U.S.C. 1983..... 14

Cases

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).....2

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).....2

Brady v. Maryland, 373 U.S. 83 (1963)..... 1, 2, 7, 14

Causey v. Sewell Cadillac-Chevrolet, Inc., 394 F.3d 285, 288 (5th Cir. 2004).....2

Ex Parte Alfred Dewayne Brown, No. WR-68,876-016

Fedge v. Penthouse Int'l, 840 F.2d 1012, 1015 (1st Cir. 1988)3

Funk v. Stryker Corp., 631 F.3d 777, 783 (5th Cir. 2011).....2

In re Katrina Canal Breaches Litig., 495 F.3d 191, 205 (5th Cir. 2007).....2

Isquith for & on Behalf of Isquith v. Middle S. Utilities, Inc., 847 F.2d 186, 196 (5th Cir. 1988)..2

Leleux v. Hassan, No. CV 17-1237, 2018 WL 328155, at *1 (W.D. La. Jan. 8, 2018).....3

Strickler v. Greene, 527 U.S. 263, 281 (1999)..... 14

Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007).....2

Webb v. State, 232 S.W.3d 109, 114 (Tex. Crim. App. 2007)..... 14

Wilson v. Nextel Commc'ns, No. CV 17-0862 (TSC), 2017 WL 5135551, at *1
(D.D.C. Nov. 3, 2017).....3

Rules

Fed. R. Civ. Proc. 12(b)(6) 1, 2, 15

**DEFENDANT HARRIS COUNTY’S RULE 12(b)(6) MOTION TO DISMISS CLAIMS
RELATED TO ALLEGED *BRADY* VIOLATIONS**

Defendant Harris County files this Motion to Dismiss Claims Related to Allegedly Withheld Phone Records, and respectfully represents as follows:

**I.
INTRODUCTION**

Alfred Brown bluffed his way out of prison by telling the 351st Judicial District of Texas that a phone record proved he was at his girlfriend’s apartment only minutes after the double murder of Alfredia Jones and Houston Police Officer Charles Clark. Both the District Attorney’s Office and the Court accepted this misrepresentation, but an accurate review of these records disproves Brown’s story and calls into doubt everything he has said for the last half decade.

Brown’s own records preserved a crucial fact that he withheld from the courts during his bid to be released—the call he claims he made from his girlfriend’s apartment was a three-way call that places him exactly where the jury heard he was when they convicted him. Brown’s call originated from the apartment of a woman named Patricia Williams (“Shondo”) as Brown and his two co-murderers gathered with her to destroy evidence and watch news coverage of their exploits. This corroborates the trial testimony that convicted Brown and establishes that the phone records at the center of this case are not *Brady* material.

The very documents that secured Brown’s freedom may become his undoing. They are inculpatory evidence that destroys Brown’s alibi, supports the testimony against him, and helps to establish his guilt. A prosecutor has no duty to produce such inculpatory evidence, and there was no *Brady* violation. These unimpeachable records preserved the technical details that led to this conclusion and are undeniable facts that form an integral part of Plaintiff’s pleadings and support Harris County’s Motion to Dismiss under Rule 12(b)(6).

II.
STANDARD FOR A MOTION TO DISMISS

A. Motion to Dismiss under Rule 12(b)(6).

Federal Rule of Civil Procedure 12(b)(6) allows a defendant to file a motion to dismiss when a complaint fails “to state a claim upon which relief can be granted.” To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)(quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). As discussed, *infra*, Brown cannot state a claim for a *Brady* violation because no exculpatory evidence was withheld.

B. Harris County incorporates four exhibits that are central to Plaintiff’s claims.

In ruling on a motion to dismiss, a court considers pleadings and “other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss,” including documents incorporated into the complaint by reference and matters of judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (citations omitted). *See also, Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011).

Certain documents are so important to a case they are considered pleadings themselves, and a party seeking dismissal may attach these documents as exhibits. An exhibit becomes part of a pleading if it is (1) referenced in a complaint and (2) central to plaintiff’s claims:

As the Fifth Circuit opined in *Isquith*, 847 F.2d at 196, courts do have discretion to consider documents other than the complaint: “when *non-pleading materials* are filed with a motion to dismiss ... a district court has complete discretion under the Federal Rules of Civil Procedure to either accept the exhibits submitted or not...” However, if the documents in question are attached to a motion to dismiss, referenced in the complaint, and central to the plaintiff’s claims, they are considered pleading materials. *In re Katrina Canal Breaches Litig.*, 495 F.3d at 205. Courts may consider documents meeting these criteria without converting the motion to dismiss into one for summary judgment. *See Causey v. Sewell Cadillac-Chevrolet, Inc.*, 394 F.3d 285, 288 (5th Cir. 2004).

Leleux v. Hassan, No. CV 17-1237, 2018 WL 328155, at *1 (W.D. La. Jan. 8, 2018)(emphasis in original). *See also, Wilson v. Nextel Commc'ns*, No. CV 17-0862 (TSC), 2017 WL 5135551, at *1 (D.D.C. Nov. 3, 2017)(finding that phone company may attach subpoena to motion to dismiss to show records were properly released); *Fedge v. Penthouse Int'l*, 840 F.2d 1012, 1015 (1st Cir. 1988)(“[W]hen plaintiff fails to introduce a pertinent document as part of his pleading, defendant may introduce the exhibit as part of his motion attacking the pleading.”)

Harris County attaches four exhibits: (1) The phone records which form the basis for Brown's claim against Harris County, (2) A report that explains how to read the records, (3) Brown's April 11, 2013 “Fifth Submission of Supplemental Evidence to Application for Post-Conviction Writ of Habeas Corpus” to the 351st District Court, and (4) The 351st District Court's “Agreed Proposed Findings of Fact, Conclusions of Law, and Order.”¹

1. Ericka Dockery's phone records are referenced 34 times in Plaintiff's Complaint and are central to Plaintiff's claims against Harris County.

Ericka Dockery's April 3, 2003 phone records are the linchpin of Brown's case. He claims these records are exculpatory, and that Defendants withheld them. These records are so central to Brown's case that he incorporates them into his pleadings by referring to them (or the phone calls they document), in 34 paragraphs of his Complaint.²

As explained, *infra*, these records include Southwestern Bell Call Detail information, which is clear, objective, and reliable engineering data that faithfully records the time, place, and detail of each call. These records are not subject to multiple interpretations and cannot

¹ If the Court determines these documents are not central to Plaintiff's case and cannot be incorporated into the pleadings, it has the discretion to convert this into a motion for summary judgment. Harris County alternatively requests that the Court treat this as a motion for summary judgment, without prejudice to file an additional motion for summary judgment at the close of discovery, if this case is not dismissed.

² *See*, Doc. 1., Plaintiff's Complaint, ¶¶ 8-10, 13, 86-87, 112, 126-141, 143, 153, 162-165, 174, and 176-179.

reasonably be challenged or disputed. However, unlike a standard phone bill, these records are printed in a format that requires explanation. While a layperson can easily read these records, he must be provided a key to do so. Harris County attaches the phone records as **Exhibit 1** to this Motion, and a Report by telephone expert Ben Levitan that explains how to read the records as **Exhibit 2** to this Motion.

2. Brown's Fifth Submission of Supplemental Evidence to Application for Post-Conviction Writ of Habeas Corpus is central to Plaintiff's claims against Harris County.

Harris County attaches Brown's April 11, 2013 Fifth Submission of Supplemental Evidence to Application for Post-Conviction Writ of Habeas Corpus as **Exhibit 3**. This is the Texas state court pleading where Brown first presented evidence of Dockery's phone records. In this pleading, Brown judicially admits facts central to his complaint in this case. Though not directly referenced in Brown's Complaint, this document is so central to the instant case that it is incorporated into Brown's pleadings.

3. The 351st District Court of Texas' Agreed Proposed Findings of Facts, Conclusions of Law, and Order is referenced 10 times in Plaintiff's Complaint and is central to Plaintiff's claims against Harris County.

Harris County attaches the 351st District Court's May 28, 2013 Agreed Proposed Findings of Fact and Conclusions of Law and Order as **Exhibit 4**. The 351st District Court signed this document, which concluded that Dockery's phone records were exculpatory. This document is so central to Brown's case that he incorporates it into his pleadings by referring to these findings (or proceedings resulting from the findings) in 10 paragraphs of his Complaint.³

³ See, Doc. 1, Plaintiff's Complaint, ¶¶ 25-27 and 137-144.

III. FACTS

A. A jury convicted Brown of murdering Houston Police Officer Charles Clark during a botched robbery of a check cashing store.

Elijah Joubert (“Ghetto”), Dashan Glaspie (“Shon”), and Alfred Brown (“Doby”) were convicted of the April 3, 2003 murders of Alfredia Jones and Houston Police Officer Charles Clark during a botched robbery of an ACE check cashing store.⁴ Police quickly discovered the identities of Joubert and Glaspie and arrested them.⁵ They both implicated Brown “as the shooter in the murder of Officer Clark.”⁶

Several witnesses testified that Joubert, Glaspie, and Brown had gathered earlier that day at the Villa Americana apartments and drove to ACE to commit an aggravated robbery.⁷ At 9:39 a.m., they forced the clerk, Alfredia Jones, into the store as she was opening for the day. Jones triggered an alarm, and Officer Clark responded.⁸ At trial, the evidence showed that Joubert shot Jones, and Brown shot Officer Clark.⁹

At 9:45 a.m., Joubert, Glaspie, and Brown fled back to the Villa Americana, where they went to two or three apartments for at least 30-45 minutes to dispose of evidence and watch news coverage of their crime.¹⁰ While at the Villa Americana, all three men called their girlfriends. Joubert and Glaspie’s girlfriends came and picked them up. Brown’s girlfriend, Dockery, was working at the home of an elderly woman named Alma Berry and could not leave. When Brown called Dockery around 10 a.m., he told her to change Ms. Berry’s TV to Channel 26 so she could

⁴ Brown was convicted of Clark’s murder, but all three men are responsible under the felony murder rule.

⁵ Exhibit 4 at 4.

⁶ *Id.* at 1.

⁷ *Id.* at 3.

⁸ *Id.* at 4.

⁹ *Id.* at 4.

¹⁰ *Id.* at 4.

watch the live coverage of the shootings.¹¹ He then got a ride back to Dockery's apartment.¹² A jury heard this evidence and convicted Brown.

B. Brown's conviction was vacated because of Dockery's records.

Brown never disputed that he placed the call, or that he told Dockery to watch the live coverage of the shooting.¹³ However, he claimed he slept all morning at Dockery's apartment and could not have participated in the murders.

Dockery refuted Brown's alibi and testified that during their call, Brown admitted he was at "Shondo's" (Williams) apartment at the Villa Americana (with the killers).¹⁴ However, Dockery also testified that caller ID showed Brown was calling from her own apartment.¹⁵ Brown exploited this and accused Dockery of being untruthful. Until now, there was no explanation for Dockery's seemingly inconsistent statements, which became the focus of Brown's appeal.¹⁶ Brown's appellate counsel told the court, "*Dockery's feeble attempts to place Mr. Brown at an unidentified woman named 'Shondo's' house cannot refute caller ID.*"¹⁷

In 2013, a Houston Police officer who investigated the murders found Dockery's April 3, 2003 landline phone records. These records showed a call from Dockery's apartment to her work at 10:08 a.m.¹⁸ At first glance, that seemed to corroborate Brown's story, and Brown convinced the District Attorney's Office and Texas courts that this was undisclosed exculpatory evidence.

¹¹ *Id.* at 5.

¹² *Id.* at 4.

¹³ *Id.* at 5.

¹⁴ *Id.* at 5. Dockery referred to Williams as "Shondo"—the nickname Brown used. Dockery apparently did not know Shondo at the time of the call.

¹⁵ *Id.* at 5-6.

¹⁶ As discussed, *infra*, now that Dockery's phone records have been analyzed, her testimony makes perfect sense.

¹⁷ Exhibit 3 at 40 (emphasis added).

¹⁸ Exhibit 4 at 6-8.

On May 22, 2013, the 351st District Court of Texas signed an Agreed Proposed Findings of Fact, Conclusions of Law, and Order concluding: “the applicant’s due process rights were violated by the State’s failure to disclose the Dockery phone records to trial counsel.”¹⁹ The Court declined to address any other issues,²⁰ and no court has declared Brown innocent. On November 5, 2014, the Texas Court of Criminal Appeals vacated Brown’s conviction and sentence based on these findings. None of these courts were ever told that Brown’s call actually originated in Williams’ apartment.

IV. ARGUMENT

A. Dockery’s records are not *Brady*, and they prove Dockery’s testimony was accurate.

Brown filed this suit on the premise that Dockery’s phone records are *Brady* evidence that establishes he was at Dockery’s apartment when he called Ms. Berry’s house. To the contrary, the records clearly show that Brown’s infamous call originated at Williams’ apartment at the Villa Americana—just like Dockery said. Dockery’s number patched Brown from Williams’ apartment to Ms. Berry’s house for 2 minutes and 18 seconds—from 10:08:19 a.m. to 10:10:35 a.m.—using Southwestern Bell’s three-way calling service.

Dockery’s landline records consist of (1) three pages of a United States Marshal’s Office Summary and (2) the underlying Southwestern Bell Call Detail records used to create that Summary.²¹ The U.S. Marshal’s Summary is incomplete and inaccurate work product that omits critical details about the calls and was never intended to be used at trial. For example, the

¹⁹ Exhibit 4 at 9.

²⁰ Exhibit 4 at 8.

²¹ Exhibit 1. The United States Marshal’s Summary is Bates labeled HC/Brown-53908-53910. The underlying Southwestern Bell Call Detail records are Bates labeled HC/Brown-53911-53930. The two calls that comprised the three-way call relevant to the case are Bates labeled HC/Brown-53912-53913.

Summary rounds up to the nearest minute, does not show call duration, does not indicate when calls overlap, and does not show what services (such as three-way calling) were activated.²²

In contrast, the Call Detail records are “highly reliable engineering records” and “‘Best Evidence’ when used for analysis in legal actions such as the subject matter.”²³ They are “standardized across the industry” and “memorialize a wealth of technical information about a phone’s activity.”²⁴ Brown has had Dockery’s Call Detail for five years.

While the Call Detail records are clear, straightforward, and not susceptible to challenge, they require some guidance to read. Because of this, telephone expert Ben Levitan provided an affidavit explaining how to read the Southwestern Bell Call Detail records.²⁵

1. Brown called from Williams’ apartment to Dockery’s apartment at 10:07:13 a.m.

As shown in the Call Detail records, and explained by Levitan, Brown called Dockery through a two-step process. At 10:07:13 a.m., Brown called from Williams’ apartment to Dockery’s apartment. This is shown by the following Southwestern Bell Call Detail record:²⁶

```

AA40220C HEX-ID AND STRUCTURE
  047C Call type
  0194713C Sensor (Office)
  0964214C Collector ID
  00000C Timing indicator
  001C Completion indicator
  027C Service feature
  2640244C Originating number
  00713C Terminating NPA
  1007135C Connect time
  057700101C SLIP ID
  002C Party ID
  YYYYYYYYYY Service provided ID
  1010000C Supporting information
  577C Digits ID
  10001570000C Tandem Digits Dialed 1
  000C Module ($
  036C Sensor type
  032C Collector type
  30403C Date (YMMDD)
  0000000C Study indicator
  0C Operator action
  713C Originating NPA
  0C Overseas=InternationalIn
  6496385C Terminating number
  000003386C Elapsed time (mmssst)
  720C Module (Sub structure)
  YYYYYYYYYYYY Local routing number
  YYYYYYYYYYYY Location
  040C Module (Sub structure)
  011C significant digits
  00000000000000C Tandem Digits Dialed 2
  
```

²² Exhibit 2 at ¶¶ 11, 19.

²³ Exhibit 2 at ¶ 13.

²⁴ Exhibit 2 at ¶ 12.

²⁵ Exhibit 2.

²⁶ Exhibit 1 at HC/Brown 54913. A highlighted version is provided in Exhibit 2 at ¶ 21.

The “Originating NPA” (area code) is (713). The “Originating number” is 264-0244. The U.S. Marshal’s Summary identified that as Williams’ number.²⁷

The “Terminating NPA” (area code) is (713). The “Terminating number” is 649-6385, which is Dockery’s apartment. The call originated from Williams’ apartment to Dockery’s apartment. The “Connect time” on the left indicates the call was answered by someone at Dockery’s apartment²⁸ at 10:07:13 a.m. (“1007135”)²⁹ The “Elapsed time” indicates this call lasted three minutes and 36.6 seconds (“3366”).

2. Brown was patched to Ms. Berry’s house through Dockery’s apartment at 10:08:19 a.m.

At 10:08:19 a.m., the person answering Dockery’s phone patched Brown to Ms. Berry’s house through Southwestern Bell’s three-way calling feature. This is shown by the following Southwestern Bell Call Detail record:³⁰

AA40220C HEX-ID AND STRUCTURE	036C Sensor type
047C Call type	013C Collector tupe
0167713C Sensor (Office)	30403C Date (YYMMDD)
0964214C Collector ID	0000000C Study indicator
00000C Timing indicator	0C Operator action
001C Completion indicator	713C Originating NPA
010C Service feature	0C Overseas=IntnatioIn
6496385C Originating number	5906316C Terminating number
00281C Terminating NPA	000002153C Elapsed time (mmmsst)
>1007195C Connect time	720C Module (Sub structure)
057700101C SLIP ID	Y99999999999 Local routing number
002C Party ID	Y99999999999 Location
Y9999999999 Service provided ID	040C Module (Sub structure)
1010000C Supporting information	011C Significant digits
577C Digits ID	00000000000000C Tandem Digits Dialed 2
10007297000C Tandem Digits Dialed 1	
000C Module 13	

²⁷ Exhibit 1 at HC/Brown 53909.

²⁸ Two of Dockery’s relatives—Reginald Jones and Rubin Jones—were at her apartment that day. *See*, Exhibit 4 at 4.

²⁹ *See* explanation, Exhibit 2 at ¶ 21. As noted in the record after the “Elapsed time” field (“mmmsst”), Southwestern Bell’s clock records time to one tenth of a second. This call actually originated at 10:07:13.5 seconds.

³⁰ Exhibit 1 at HC/Brown 54912. A highlighted version is provided in Exhibit 2 at ¶ 22.

The “Originating NPA” (area code) is (713). The “Originating number” is 649-6385 (Dockery’s apartment).

The “Terminating NPA” (area code) is (281). The “Terminating number” is 590-6316, which is Ms. Berry’s house. This call originated from Dockery’s apartment to Ms. Berry’s house. The “Connect time” on the left indicates the call was answered by someone at Ms. Berry’s house at 10:08:19 a.m. (“1008199”).³¹ The “Elapsed time” indicates this call lasted two minutes and 15.3 seconds (“2153”).

3. The records prove Dockery correctly testified that Brown’s call to Ms. Berry’s house originated from Williams’ apartment.

The 10:07 and 10:08 a.m. calls were not independent. They overlapped from 10:08:19 a.m. to 10:10:35 a.m., thus connecting Williams’ apartment with Ms. Berry’s house for 2 minutes and 18 seconds. To further prove this, the Southwestern Bell Call Detail records show that someone at Dockery’s apartment initiated Southwestern Bell’s three-way call service.

As Levitan explains in his affidavit, phone companies share standardized Service Feature Codes “memorialized in a document published by an organization called Bellcore in a standards document known as GR-1100-CORE. Bellcore (Bell Communications Research) provides standards coordination for the regional Bell operating companies.”³² These Service Feature Codes indicate whether a subscriber used a particular feature, such as call forwarding or three-way calling. Because these codes must work between phone companies, they rarely change. The GR-1100 Code for three-way calling is “010”, as shown below:³³

³¹ More precisely, this call originated at 10:08:19.9 seconds. *See* explanation, Exhibit 2 at ¶ 22.

³² Exhibit 2 at ¶ 18.

³³ Exhibit 2, Attachment D.

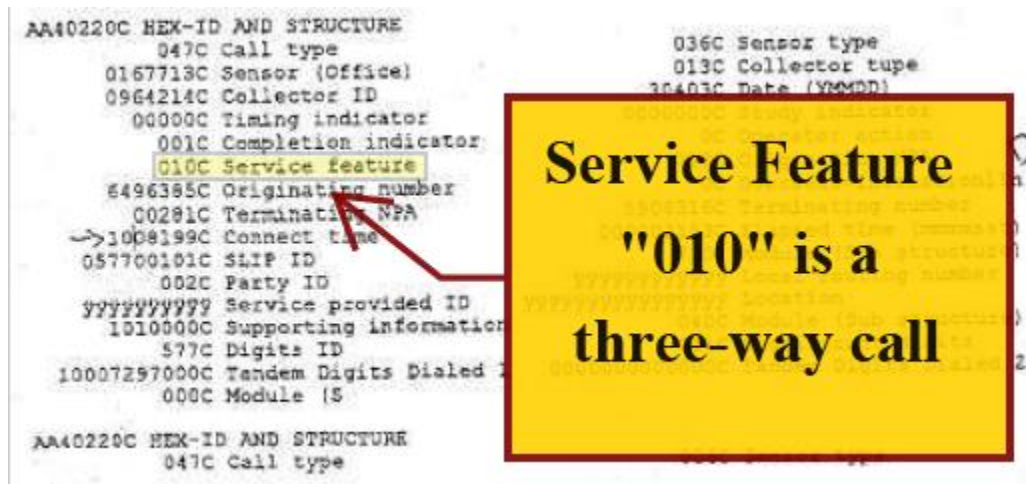
Table 12 - Service Feature Code

Chars Meaning

1-3 Service Feature Code

- 000 = None of the following values apply
- 001 = Local Exchange Carrier (LEC)-owned standard interface public line
- 002 = Hotel/motel, no tax
- 003 = PICTUREPHONE (3 ESS) (Vendor Specific)
- 004 = Postpay coin (Vendor Specific)
- 005 = Chargeable quotation
- 006 = Centrex attendant
- 008 = Inward Wide Area Telecommunications Service (INWATS)
- 009 = Common Channel Interoffice Signaling (CCIS) INWATS Intrastate (Vendor Specific)
- 010 = Three-Way Calling**
- 011 = Hotel/motel with tax
- 012 = Call Forwarding
- 014 = Call Forwarding Busy Line or Call Forwarding Don't Answer

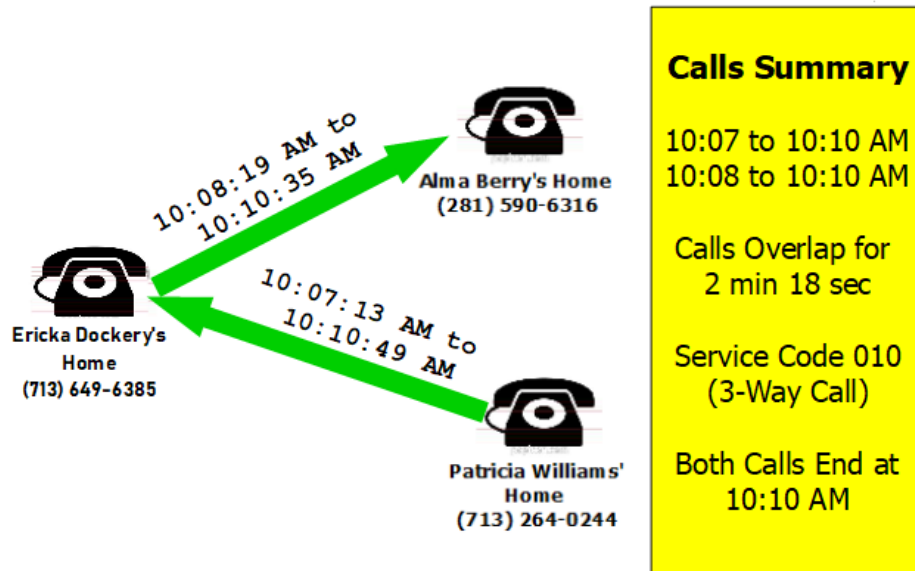
The 10:08 a.m. Call Detail Record proves the Three-Way Service Feature (“010”) was activated, thus connecting Williams’ apartment with Ms. Berry’s house, as shown below.³⁴



Leviton illustrates this entire sequence with the following diagram.³⁵

³⁴ The underlying document is in Exhibit 1 at HC/Brown 54913.

³⁵ Exhibit 2 at ¶ 22.



These records solve one of the biggest mysteries in the case—how Brown could admit to Dockery that he was at Williams’ apartment, yet Ms. Berry’s caller ID showed he was calling from Dockery’s apartment. As Levitan explains (and most people have experienced), when a three-way call is placed, only the number making the final call shows up on the receiver’s caller ID.³⁶ Dockery’s trial testimony was correct and consistent. These records destroy Brown’s alibi and place him with Joubert and Glaspie only 23 minutes after the murders.

B. Brown misrepresented these inculpatory records during his writ application.

During the writ application, Brown’s counsel analyzed the same Southwestern Bell Call Detail records now before the Court. In Brown’s Fifth Submission of Supplemental Evidence to Application for Post-Conviction Writ of Habeas Corpus (“Fifth Supplement”) filed in the 351st District Court on April 11, 2013, Brown attached these records and claimed he had “*critical new evidence*” which includes the “Technical Logs of Calls Originating and Terminating for Number 6496385.” Exhibit 3 at HC/Brown-29507-08. Specifically, Brown told the Court:

³⁶ Exhibit 2 at ¶ 22.

[T]he recently discovered phone summary and records of calls to and from Ms. Dockery’s apartment now demonstrates that Mr. Brown was in fact *at Ms. Dockery’s apartment* when he called Ms. Berry’s number to speak to Ms. Dockery shortly after 10:00 a.m. . . . This information is supported by information on page 8 of the technical log of calls, which shows a Connect Time of 10:08 from Originating Number 6496385 to Terminating Number 5906316. . . . This conclusively demonstrates that when Mr. Brown called Ms. Berry, he did so from Ms. Dockery’s apartment at 10:08 a.m., only twenty-two minutes after the actual perpetrators—not Mr. Brown—fled the ACE store, contrary to Glaspie’s testimony that he, Joubert, and Mr. Brown had returned to the VA following the murders, where they proceeded to wash up and change clothes and then watch news coverage of the murders. . . . Thus, this single phone record exonerates Mr. Brown, conclusively proving he is innocent, and no rational juror could convict Mr. Brown if shown this evidence.³⁷

To make this detailed analysis of the “technical logs,” Brown must have consulted with someone knowledgeable about these records. That person would have known the 10:07 a.m. and 10:08 a.m. calls overlapped, that Service Feature “010” indicated a three-way call, and that Williams’ apartment connected to Ms. Berry’s house for more than two minutes. Even an untrained person would have understood that Dockery testified truthfully when she said Brown was calling from Williams’ apartment, despite her number appearing on caller ID.

Brown knew about this 10:07 a.m. call all along. In fact, he filed a copy of the 10:07 a.m. Call Detail Report with his Fifth Supplement. Brown’s copy even had a handwritten arrow pointing to the 10:07:13 a.m. “connect time” of the inculpatory call and a line between the hour (10) and minutes (07) to emphasize the time:³⁸

```

2640244C Originating number
00713C Terminating NPA
→ 1007135C Connect time
057700101C SLIP ID
002C Party ID

```

Brown never disclosed this 10:07 a.m. call during his technical analysis, and his Fifth Supplement denies exactly what Brown did. It should read that the records place Brown with the

³⁷ Exhibit 3 at HC/Brown-29510-11 (emphasis in original).

³⁸ Exhibit 3 at HC/Brown-29526 (highlight added for emphasis).

“actual perpetrators” as they “proceeded to wash up and change clothes and then watch news coverage of the murders.”³⁹

**V.
THE COURT SHOULD DISMISS BROWN’S CLAIMS REGARDING
DOCKERY’S PHONE RECORDS**

A person seeking to prevail on a *Brady* claim must show three things: (1) the evidence in question is favorable to the accused, (2) the evidence was suppressed by the State, and (3) the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict. *Strickler v. Greene*, 527 U.S. 263, 281 (1999).⁴⁰

Brown’s own pleadings, incorporated by reference, establish he cannot meet the first and third elements of a *Brady* claim—much less a claim under 42 U.S.C. § 1983. Dockery’s phone records are not favorable to Brown, and under no circumstances could they have resulted in the jury reaching a different verdict. The Southwestern Bell phone records establish that Dockery correctly testified Brown was with the other killers at Williams’ apartment only 23 minutes after the murders. These records could not have been used to impeach Dockery, and they would have destroyed Brown’s alibi and further convinced a jury he is responsible for the heinous murders of Alfredia Jones and Officer Charles Clark. Brown’s case should be dismissed.

**VI.
CONCLUSION AND PRAYER**

Brown presented only one part of a three-way call and told a half-truth to gain his freedom. In filing this suit, he attempted to recycle this false information in a quest for

³⁹ Quoting from Brown’s Fifth Supplement, Exhibit 3 at HC/Brown-29510-11 (emphasis added).

⁴⁰ Texas State courts have similarly described the elements as: (1) the State failed to disclose evidence, (2) the withheld evidence was favorable to the applicant, and (3) that evidence was material. *Webb v. State*, 232 S.W.3d 109, 114 (Tex. Crim. App. 2007).

compensation. Brown invited scrutiny of Dockery's phone records, and in the process, Harris County learned they implicate him in the murder for which he was convicted.

For these reasons, Harris County respectfully prays that Brown's case be dismissed under Rule 12(b)(6). In the alternative, Harris County respectfully prays that the Court treat this extraordinary development as a Motion for Summary Judgment, without prejudice to file an additional Motion for Summary Judgment at the close of discovery, if this case is not dismissed.

Respectfully submitted,

OF COUNSEL:
VINCE RYAN
HARRIS COUNTY ATTORNEY



SETH HOPKINS
Assistant County Attorney
Texas Bar No. 24032435
Federal (Southern District) No. 2043155
1019 Congress, 15th Floor
Houston, Texas 77002
(713) 274-5141 (telephone)
(713) 755-8924 (facsimile)
Seth.Hopkins@cao.hctx.net

CELENA VINSON
Assistant County Attorney
Texas Bar No. 24037651
Federal (Southern District) No. 2220428
1019 Congress, 15th Floor
Houston, Texas 77002
(713) 274-5181 (telephone)
(713) 755-8924 (facsimile)
Celena.Vinson@cao.hctx.net

Attorneys for Harris County, Texas

CERTIFICATE OF SERVICE

I certify that on the 8th day of May, 2018, a true and correct copy of the foregoing document was delivered to all counsel of record via the CM/ECF system and served by electronic notice to all parties of record.

A handwritten signature in black ink that reads "Seth Hopkins". The signature is written in a cursive style with a horizontal line underneath it.

Seth Hopkins