Exhibit 1

Cause No. 0901049-B

THE STATE OF TEXAS	§	**IN THE DISTRICT COURT**
	§	
v.	§	**180th JUDICIAL DISTRICT**
	§	
RONALD HAMILTON, JR.	§	**HARRIS COUNTY, TEXAS**

APPLICANT HAMILTON'S PROPOSED FINDING OF FACT AND CONCLUSIONS OF LAW

The Texas Court of Criminal Appeals remanded Claim One of Ronald Hamilton's subsequent application for writ of habeas corpus to this Court for consideration. *See* September 12, 2018, Order. Claim One consists of three sub-claims which all relate to whether or not Hamilton committed an extraneous capital murder (hereinafter referred to as the "Holman Murder") used against him at his punishment trial. Claim One alleges: (1) that the State presented materially inaccurate evidence that Hamilton had committed the Holman Murder in violation of the Eighth Amendment to the U.S. Constitution; (2) that the State presented false and misleading evidence that Hamilton had committed the Holman Murder in violation of the Federal Due Process Clause, and the Texas Constitution's Due Course of Law provisions; and (3) that the State suppressed favorable evidence that was material to proving Hamilton did not commit the Holman Murder in violation of Due Process. Additionally, as part of sub-claims one and two, Hamilton presented that the State misled the trial court about the existence of a plea deal with Hamilton's

co-defendant, Mr. Shawon Smith, allowing inaccurate, misleading, and false evidence to go uncorrected.

This Court finds that Mr. Hamilton has proven the constitutional violations alleged in Claim One, and each of its sub-claims, and recommends that the Texas Court of Criminal Appeals grant relief and order that a new punishment hearing be held in this matter.

FINDINGS OF FACT

I. EVIDENCE PRESENTED AT TRIAL.

Hamilton was indicted and charged with the offense of capital murder – for the shooting death of Ismail Matalkah, a convenience store clerk, during the commission of a robbery (hereinafter the "Yellowstone Murder"). 16 RR at 10-18. Hamilton entered a guilty plea to the indicted capital murder charge and the case proceeded directly into the punishment phase. It was during this punishment phase that the State introduced evidence of an extraneous capital murder – the Holman Murder.

A. Evidence presented regarding the extraneous Holman Murder.

1. The trial prosecutors, Colleen Barnett and Luci Davidson, represented to both the Court and defense during a pretrial conference that there were no fingerprint comparisons, or other testing results in connection with either the Yellowstone or Holman Murders. 2 RR at 7-8, 13-14.
2. The Holman Murder became the focus of the prosecution's case. The State discussed the Holman Murder in opening statements, referred to Yellowstone murder as the "first capital murder," called three police officers to testify about the Holman murder, called three civilian witnesses to testify about the

murder, and called medical examiner Paul Shrode who testified that the Holman murder was similar to the Yellowstone murder. 16 RR at 22-25; 17 RR at 198-224, 224-299; 18 RR at 8-98, 98-102.

3. The first witness the State called concerning the Holman murder was inmate Joseph Montoyer. Montoyer testified that he cut Mr. Hamilton's hair in jail, and that he overheard Hamilton discussing a "Holman Street" robbery of an Asian or Chinese man. 17 RR at 182-88. Montoyer later explained the information about a "Chinese man" was not included in his statement to police, and that he used the term "Holman" as a reference to a general area of Houston, not the street in particular. *Id.* at 188, 193-95, 197.

4. Prior to Montoyer's testimony, trial prosecutor Luci Davidson told the defense that there had been no deals in exchange for Montoyer's cooperation. 17 RR at 179-80. It was later revealed that Montoyer's bond had been lowered in exchange for providing the information to the State. 19 RR at 113-17. Montoyer admitted that he had two convictions for forgery, and a prior felony conviction for possession of marijuana. 18 RR at 181, 19 RR at 128-29. Montoyer denied having any other felonies or crimes of moral turpitude besides the forgery. 17 RR at 195.

5. Houston Police Department Officer Dunn was dispatched to the murder scene, located at 3235 Holman, at 6 p.m., on December, 9, 2001. 17 RR at 201. Officer Dunn knew the store owner, Mr. Huynh, by his nickname "Tulson." Through Officer Dunn, the State entered dozens of pictures of the Holman crime scene, including gruesome pictures of Mr. Huynh lying in a pool of his own blood. *Id.* at 66-70.

6. Houston Police Department Officer Thomas testified that he was friends with Mr. Huynh, knew that Mr. Huynh's wife had passed away shortly before Mr.

Huynh's murder, and pointed out Mr. Huynh's family in the courtroom. 17 RR at 214-22. The prosecutors once again went over the pictures of Mr. Huynh lying in a puddle of his own blood. *Id.* at 218.

7. Charles Douglas was an eyewitness to the Holman murder. He and his friend Wanda Johnson walked to the Holman store on the night in question to purchase cigarettes and beer. 17 RR at 240. Douglas testified that he saw a man (he later identified in-court as Hamilton) at the counter of the store. *Id.* at 241, 259. Douglas took his beer and walked outside, looked back into the store, and saw the man and Mr. Huynh struggling. *Id.* at 243. The man then shot Mr. Huynh one time, after which Douglas walked back into the store as the man ran out. *Id.* at 247. Two days later Douglas met with a sketch artist and helped to produce a sketch of the man. *Id.* at 249-50. Douglas was given the sketch to take home with him. *Id.* at 254. Twenty days later, Douglas picked Hamilton out of a photo lineup. *Id.* at 256.

8. Mr. Douglas had originally identified the shooter as being a teenager weighing 140 pounds. 17 RR 254, 259. (Hamilton, who was born on April 21, 1977, was 24 years old at the time of the Holman Murder. Marshall Dwayne Knight, born on December 17, 1980, was 20 at the time of the murder). *See also* Defendant's Ex. 28 (District Clerk records showing that Knight weighed 150 lbs.).

9. Wanda Johnson walked to the store with Mr. Douglas. 17 RR at 276. It was dark when they arrived and she saw a dark two-door car parked on the side of the store, and a man urinating over a bench and a 40-ounce beer bottle. *Id.* at 277. A heavy-set black man was sitting in the driver seat of the car. *Id.* at 279. The man who was urinating walked into the store just before Ms. Johnson and approached the counter. *Id.* at 281-82. She made an in-court

identification that the man was Hamilton. *Id.* When she left the store, she heard a pop and saw Tulson (Mr. Huynh) fall to the floor. *Id.* at 283-85.

10. Wanda Johnson also believed the shooter was in his late teens. 17 RR at 269-70. When she first met with police, she also believed that the shooter had an "afro." 18 RR at 56-57. She was given a copy of the police sketch just like Mr. Douglas, and she looked at the sketch every day until she picked Hamilton out of a photo lineup weeks after the shooting. 17 RR at 295.

11. Houston Police Department Detective Connie Park, one of the investigators for the Holman Murder, testified that the car and suspect descriptions in the Yellowstone and Holman murders were similar. 18 RR at 43-44. She never investigated whether the car used in the Yellowstone murder was available on the day of the Holman murder.[1] Park testified that prints had been found on the glass door of the store and on the 40 ounce bottle found outside of the store on a rail, and that none of the evidence tied back to Hamilton, or his Co-Defendant, Shawon Smith. 18 RR at 39-41. However, no testimony established the fingerprint evidence found at the scene had been compared to any suspects. *Id.*

12. To combat the idea that Shawon Smith's car had not been used in the robbery, Detective Park falsely testified that Smith was not a suspect in this crime. 18 RR at 45-47.[2]

[1] The car used in the Yellowstone Murder was in a police impound lot on the day of the Holman murder. 18 RR at 110-12.

[2] We now know that Smith was a suspect in the Holman Murder, because he is listed as a suspect on the long-suppressed evidence envelopes containing the fingerprint lifts in this case. *See* Defense Ex. 3, 4.

13. Assistant Medical Examiner Paul Shrode testified that the Yellowstone and Holman murders were similar. 18 RR at 60-97. To prove the point, the State entered detailed photos of the autopsies of both complainant Matalkah and Huynh. *Id.* Prosecutor Barnett walked a picture of Mr. Huynh's brain in front of the jury to drive the point home. *Id.* at 82-95.

14. Immediately after showing the picture of Mr. Huynh's brain to the jury, the State called Mr. Huynh's daughter to testify and entered a nice picture of Huynh. 18 RR at 97; State's Trial Exhibit 96. The State then rested its punishment case.

15. Prosecutor Luci Davidson presented the State's initial closing arguments. 21 RR at 4-25. She argued that "on December 9th of 2001, a little over one month later, the defendant takes a gun, goes into the Tucson store and in a cold-blooded manner blows away Mr. Tucson." 21 RR at 11. The jury was told "on December 9th of 2001 he blew away Mr. Tucson with one of his guns, another unarmed man. That's how we know this defendant likes guns." *Id.* at 14. The jury was told Hamilton was frustrated he couldn't find a job so he killed Mr. Tucson. *Id.* at 16. Davidson spent four pages of closing argument explaining the reasons why the jury should believe Hamilton committed the Holman murder. *Id.* at 20-24. The prosecution noted the crimes were only a month apart, occurred in the same area of town, around the same time, and were at convenience stores. *Id.* at 21. The prosecutor also misled the jury by asking "[i]s it just a coincidence that there weren't any prints found at either scene?" *Id.* at 22.

16. Prosecutor Colleen Barnett made the State's final arguments. 21 RR at 69-91. Barnett repeatedly emphasized the two capital murders. *Id.* at 75, 77, 79, 84-88. … Barnett argued: "[Hamilton] wanted to commit the two capital

murders," "[h]e is standing trial on two capital murder cases," "[W]e don't know what car he and Shawn used on that second capital. We don't know. I wish we did. We are doing everything we can to find it out. But we know he committed that second capital. And you know it, too.", "Even, ladies and gentlemen, without that second capital, he is a future danger; but, with it, he is an absolute menace," "[Hamilton] will just go in there and kill the clerk a second time," "[T]here is not a thing that you can do to him that is as horrible as what he did to Mr. Tucson." *Id.*

17. Prosecutor Barnett also misled the jury during her closing argument by suggesting there was no DNA to test in the Holman Murder. *Id.* at 85. The State explained that because the witnesses "didn't come forward until two days later. Certainly, there was not any evidence there to collect at that time." *Id.* at 86.

B. The prosecution's other future dangerousness evidence.

18. The State presented evidence during the punishment trial to prove that Hamilton had committed the Yellowstone Murder, the offense to which Hamilton had plead guilty. The State called Officer Wofshohl, who arrived the scene of the crime shortly after the shooting; Ms. Miller, who witnessed the suspects fleeing from the scene; and Ronald's friend Billy Norris to whom Hamilton had confessed after the murder. 16 RR at 28-116. Brooke Rogers, Hamilton's child's mother, also testified that Hamilton had confessed to her. *Id.* at 154-56. Officer Robertson testified about Hamilton's arrest which was based upon the tip from Brooke Rogers. *Id.* at 116-135. Detective Straughter explained the complete investigation into the Yellowstone murder, and fellow

clerk Ahmad Naimi explained what happened during the robbery that resulted in Mr. Matalkah's death.

19. The State also presented evidence from Brooke Rogers (Hamilton's child's mother) about her various altercations with Mr. Hamilton -- specifically:

    a. Mr. Hamilton was not a good father to their four-year-old son. 16 RR at 136-40.

    b. Mr. Hamilton and Brooke had fought about a remark another man made to her shortly after the birth of their son. She claimed that Hamilton had kicked and pushed her, causing her to call the police. Hamilton took their child with him for the night, and did not bring him back till the next day. *Id.* at 161-62.

    c. Hamilton and Brooke got into another fight where he assaulted her, causing her to spray him in the eyes with air freshener, which prompted him to throw a telephone at her. *Id.* at 170-73; 17 RR at 62-70.

    d. When asked if "he ever tried to shoot you," Brooke replied "[a] while back. I mean, he shot at me, but, I mean." 16 RR at 182. Brooke could not remember the year, month, or date that this event allegedly took place. *Id.*

20. Mr. Hamilton had previously been arrested for various drug offenses:

    a. When Hamilton was 17 years old, and while he was walking down the street with his mom, he was arrested for possession of cocaine. 17 RR at 26-29.

    b. Hamilton was arrested in 1997 – after he was caught running from a house where marijuana was being sold. He was charged and plead guilty to felony possession of marijuana. 17 RR at 31-60.

    c. In 1998, Hamilton was stopped by police in a truck found to contain five grams of cocaine and a gun under the front seat. 17 RR at 106-07.

Hamilton was only charged with possession of a controlled substance and was sentenced to two years in prison. *Id.* at 111-12.

21. Finally, the State offered evidence of Hamilton's misconduct while in the Harris County Jail. In 1997, Hamilton had been in a fight with a man named Ortiz in the county jail. 17 RR at 80. That same year, he admitted to putting hair remover in another inmate's shampoo bottle. 17 RR at 114-16. In June 2002, Hamilton received two food trays during a meal. 17 RR at 127-28. Also in 2002, Hamilton fought with another inmate, Jason Curley, who was in jail for aggravated assault with a deadly weapon. 17 RR at 141-48.

C. Hamilton's dire upbringing and remorsefulness would provide a convincing mitigation case, were it not for the extraneous capital murder.

22. Billie Norris, a prosecution witness and friend of Hamilton's, explained that his own dad and Hamilton's dad had been in prison together, that Hamilton's family consisted of drug addicts, that his mother was "walking the streets" when they were growing up, and that Hamilton was "fried out"[3] at the time of the Yellowstone Murder. 16 RR at 90-101.

23. Norris also testified regarding Hamilton's remorsefulness about the Yellowstone Murder. Norris testified that Hamilton said "he made a mistake," and that "he was sorry." 16 RR at 78-80. Norris testified that, following the Yellowstone Murder, Hamilton was remorseful, started attending church every Sunday, and confessed his sins to the Lord. 16 RR at 80, 102.

24. Brooke Rogers confirmed Billie Norris's testimony. She recalled that Mr. Hamilton's entire family was on drugs, and that he grew up in a crack house.

[3] This means that Hamilton was smoking embalming fluid laced with PCP. *Id.* at 193, 199.

16 RR at 186-92. Hamilton's mother was prostituting herself and abusing drugs. *Id.* After the murder Hamilton had broken down and told her that he was trying to rob the store because he was broke (referring to the Yellowstone Murder). 16 RR at 155, 194-95.

25. Ronald Hamilton, Sr., is Hamilton's dad (hereinafter Hamilton, Sr.). While pregnant with Hamilton, Hamilton's mom smoked marijuana and drank beer every day. 18 RR at 124. When Hamilton was a child, both of his parents sold drugs out of the house, but soon thereafter, Hamilton's parents separated and he would rarely see his dad anymore. *Id.* at 124-27. Hamilton Sr. explained that the house where Hamilton grew up was in bad shape, and that the only stable person in the house was Hamilton's Aunt Viola. *Id.* at 132-33. When she died in the 1980's, young Hamilton was left to fend for himself. *Id.*at 135. Hamilton Sr. also explained that he had been a serious drug abuser himself, shooting drugs intravenously and smoking crack cocaine. *Id.* at 136-37. However, Hamilton Sr. emphasized that he never used "fry" (the drug Hamilton was using during the Yellowstone Murder) because that drug left its users "completely out of control." *Id.* Hamilton Sr. spent most of Hamilton's life either in prison or high on various drugs. *Id.* at 141. Hamilton Sr. also confirmed that Hamilton never learned to read and was socially promoted through school. *Id.* at 146-47.

26. Elsie Tippins, Hamilton's mom, verified Hamilton Sr.'s testimony. She had smoked marijuana and drank during her pregnancy with Hamilton, and confirmed that Hamilton grew up in a violent household. 18 RR at 182-86. Instead of caring for her boy, Elsie was engaged in prostitution and abusing cocaine. *Id.* at 186-193.

27. Hamilton's cousin Darious Graves testified that Hamilton had never been a violent person until he began smoking "fry." 19 RR at 15-24. He explained that Hamilton was a good person, but that when he smoked fry "his mind changed." *Id.* Graves recalled times when Hamilton would smoke fry and punch holes in the walls, or cry, or run naked in the streets. *Id.* at 25-26.

28. Finally, the defense called Deedee Halpin, an education diagnostician. She explained that Hamilton had always struggled in school, remaining in the 2nd grade when he should have been in the 4th grade. 19 RR at 53-54. Hamilton suffered from a disorder that made him unable to assign a meaning or sound to letters. *Id.* Hamilton was placed in special education classes and when he was thirteen, was still reading at the 1st grade level. *Id.* at 54. He was socially promoted in school. *Id.* at 56-58. His reading ability was in the bottom .1 percentile. *Id.* Halpin explained that Hamilton's disabilities severely hampered his ability to perform in the social settings of school. *Id.* at 61-67.

29. The record also shows the defense intended to call Shawon Smith to testify that "after the incident on Yellowstone, that Mr. Hamilton was very upset by what happened and very affected by what happened and very sorry for what happened." 19 RR at 118. Additionally, the defense intended to call Smith to testify: "that Mr. Smith was not present during the Holman Murder, that Mr. Smith's car was not used in that incident, and that, to Mr. Smith's knowledge, the defendant, Mr. Hamilton, was not involved in that incident, and Mr. Smith would also testify about his car being totaled by Mr. Hamilton several days prior to the Holman incident occurring." 19 RR at 118. This plan was thwarted by the State's representation that it was no longer planning to honor the plea deal that it originally had in place because they had "to check some things out." 19 RR at 101.

II. MR. HAMILTON DID NOT COMMIT THE HOLMAN MURDER.

The evidence presented at trial showing that Hamilton committed the Holman murder was false, misleading, and materially inaccurate. Hamilton has proven that he did not commit this extraneous murder. This Court makes the following findings related to the previously designated issues:

A. The evidence is clear: the Holman shooter sat down the 40-ounce bottle prior to shooting Mr. Huynh.

30. Wanda Johnson, the eyewitness to the Holman Murder, testified during the habeas proceedings. Ms. Johnson is credible. She recalled the night of the Holman Murder, and she identified the crime scene. 5 RR2019 at 5-7; Defense Exhibit 31.

31. Ms. Johnson recalled walking to the Holman store about 7 p.m., with her friend Charlie. She bought a beer and pack of cigarettes. 5 RR2019 at 8. After arriving at the store and making her purchase, Ms. Johnson was waiting outside of the store for Charlie. A car pulled up, and a guy drinking a 40-ounce beer got out. *Id.* at 9. He finished the 40-ounce and set it on the little iron bench outside the store, and then he urinated over it before walking into the store. *Id.* at 9.

32. Ms. Johnson describing the same 40-ounce bottle that HPD Fingerprint Examiner Debbie Benningfield found sitting outside of the Holman store while processing Mr. Huynh's murder scene. 5 RR2019 at 9.

33. After setting the bottle down and urinating the man walked into the store, waited in line, and eventually killed "Tulson" (Mr. Huynh). 5 RR2019 at 10. When Ms. Johnson saw this happen, she took off running. *Id.* at 11.

34. Ms. Johnson remembers telling the police about the bottle being sat down by the shooter, and she was also clear that the shooter never picked the bottle back up after it was sat down. 5 RR2019 at 12. She never told the police that shooter had not touched the bottle. *Id.* at 13.

35. Ms. Johnson has maintained that the shooter touched this 40-ounce bottle. Ms. Johnson told detectives this fact on the first day that she spoke with them. *See Hoffmaster Deposition* at 15-16; Defendant's Exhibit 8, at 11. Ms. Johnson was clear about this during her testimony before the Court. 5 RR2019 at 17. Her testimony meshes with the Houston Police Department Holman Murder offense report, which states that although it was not included in her written and sworn statement, Ms. Johnson told police she witnessed the shooter "sit down an empty 40 once (sic) beer bottle on the rail that runs along the Burkett side of the store." *See Hoffmaster Deposition* at 15-16; Defendant's Exhibit 8, at 11; see also Defendant's Exhibit 31 (showing the store and the metal rail/bench). Ms. Johnson does not recall ever telling any detectives that shooter did not set down the bottle. *Id.* at 19.

36. Ms. Johnson is so certain about the shooter setting down the bottle; she "would put [her] life on it." *Id.* at 29.

B. The fingerprints on the 40-ounce beer bottle belong to Marshall Knight.

37. Fingerprint Examiner Rachel Green, lead latent print examiner for the Houston Forensic Science Center (HFSC), is credible and is an expert in fingerprint analysis. She explained that fingerprints are unique to each individual. 2 RR2019 at 32.

38. Examiner Green explained that AFIS, the Automated Fingerprint Identification System, is a system which allows fingerprint labs to run unknown prints through a database of known prints in the hopes of finding a match. *Id.* at 35.

39. The HSFC uses "the Harris County system, the State (the DPS) system, and the FBI system" in AFIS to search for known matching prints. 2 RR at 43.

40. When reviewing records from the Holman murder, Ms. Green found pictures of the latent print collected from "from a 40-ounce Schlitz Malt Liquor bottle recovered on metal rail outside beside store." 2 RR2019 at 65. She matched these prints to Marshall Knight. *Id.* at 66. She made this match from the FBI AFIS database. *Id.* at 67. Ms. Green obtained Knight's actual print card from the FBI and verified that the print on the 40-ounce bottle was indeed Marshall Knight's print. *Id.* at 67-68. She was also able to match a second copy of a fingerprint taken from the same bottle to Marshall Knight. *Id.* at 72, 121. *See* Defendant's Ex. 16; State's Exhibit 1, Latent Print Section.

41. The only other identifiable print found by Ms. Green was a fingerprint of eyewitness Charles Alonzo Douglas, which was found on a "Schlitz malt liquor can on top of outside ice cooler." 2 RR2019 at 43, 118; State's Exhibit 1, Latent Print Section, at 1-2; Defendant's Ex. 16. This matches with trial testimony showing that Charles Douglas had purchased a beer at the convenience store prior to the shooting.

42. None of the fingerprints found on the 40-ounce Schlitz Malt Liquor bottle matched Ronald Hamilton. 2 RR2019 at 75; *see* Defendant's Ex. 16. He was

excluded from leaving any of the comparable prints found at the scene. 2 RR2019 at 99; see Defendant's Ex. 16.

43. No technology was needed to compare the fingerprints of a known suspect, Ronald Hamilton, to the prints found at the scene. 2 RR2019 at 124. This could have been done prior to trial without running Hamilton's prints through AFIS. *Id.*

C. Marshall Knight asserted his Fifth Amendment Privilege and refused to answer any questions posed by Applicant.

44. Marshall Knight was called by Mr. Hamilton as a witness during the habeas hearing. He was represented by appointed counsel at the request of the parties. Defense counsel tendered six questions to Mr. Knight and his appointed counsel. 6 RR2019 at 8. Mr. Hamilton intended to ask Mr. Knight (1) if he was at the Tulson Convenience Store at 3235 Holman Street on December 8th of 2001; (2) if he "set down a 40-ounce beer bottle on the rail outside of the store on December 8th of 2001"; (3) if he could "explain how [his] fingerprints were found on the bottle sitting outside the store on the railing on December 8th of 2001"; (4) if he had possession of or access to a .380 auto handgun on December 8th of 2001; (5) if he entered the store at 3235 Holman Street on December 8th of 2001; and (6) whether he shot the clerk inside 3235 Holman on December 8, 2001. *Id.* at 8-9.

45. Knight, through his appointed counsel, asserted his Fifth Amendment rights and refused to answer any questions. 6 RR2019 at 9. Knight's counsel verified he had discussed the matter with Knight and that Knight would "indeed invoke his right against self-incrimination to each question." *Id.*

46. The Court finds that the Marshall Knight had an arrest record prior to the Holman murder. *See* Defendant's Ex. 15. Knight had been arrested by the Houston Police Department five times prior to the date of the Holman Murder. *Id.* Those arrests included unlawfully carrying a weapon and aggravated robbery with a deadly weapon. *Id.* The Court also finds that Knight was adjudicated guilty for this aggravated robbery in February 2002, for using alcohol while on community supervision. *See* Defendant's Ex. 21.

47. The Court finds that the Houston Police Department had taken Mr. Knights prints and loaded them into the local AFIS system prior to the date of the Holman murder. *See* Defendant's Exhibit 29, AFIS records including prints from 1998.

D. The fingerprints on the bottle are more direct proof about the identity of the perpetrator of the Holman murder than the prior eyewitness identifications.

48. Eyewitnesses Douglas and Johnson both described the shooter as being in his teens. Mr. Douglas had originally identified the shooter as being a teenager weighing 140 pounds. 17 RR 254, 259.

49. Hamilton, who was born on April 21, 1977, was 24 years old at the time of the Holman murder. Additionally, records indicate that Hamilton weighed 170 lbs. See Defendant's Ex. 3, at 3. Marshall Dwayne Knight was born on December 17, 1980, and was 20 at the time of the murder. *See* Defendant's Ex. 28. Knight weighed 150 lbs. Applicant's Memorandum, Appendix 2 – Mugshot Photos & Criminal History Info of Marshall Dwayne Knight.

50. The police failed to use an up-to-date photo of Mr. Hamilton in the photo lineup. Witnesses Douglass and Johnson were presented with Hamilton's

September 3, 1998, booking photo, instead of the more recent January 21, 2002, booking photo. *Cf.* Defendant's Ex.'s 11, 13.

51. Dr. Trent Terrell is a professor at the University of Mary Hardin-Baylor in Belton, Texas. 4 RR2019 at 124. Dr. Terrell's main area of research is eyewitness memory, and eyewitness identification. *Id.* at 126-27. The Court finds that Dr. Terrell was properly qualified as an expert in eye-witness identification, and that eye-witness identification is a proper area for scientific witness expert testimony.

52. Dr. Terrell testified about factors that affect the ability of witnesses to make an identification from a photo-lineup. 4 RR2019 at 137. Certain variables affect a person's ability to correctly identify a suspect at a later time, and the "most important factor by far" is "called latency" which relates to the amount of time which passes between witnessing a crime and a later identification. *Id.* at 147. In this case, seven weeks had passed between the crime and when the witnesses picked Hamilton out of a photo-lineup. *Id.* After a week's delay "you see a majority of participants not able to make a correct identification." *Id.*

53. Even the accuracy of the police sketch, which was made three days after the crime, could have suffered from the effects of latency. *Id.* at 148.

54. Dr. Terrell was certain that witness Wanda Johnson's identification of Hamilton would have been affected by the police providing her the police sketch, which she looked at every day. *Id.* at 148. The police sketch "very likely became [the witnesses] memory of who they saw. . ." *Id.* at 150. "The presence of the sketch is the biggest problem in this case." *Id.* at 211.

55. As Dr. Terrell pointed out, and as mentioned at trial, Ms. Johnson had originally described the shooter as having an afro, while Mr. Douglas

described the shooter as clean shaven with short hair. 4 RR2019 at 208, 213; 18 RR at 56-57.

56. This Court finds noteworthy that the simultaneous "six-pack" lineup used in this case is not the currently suggested best practice. 4 RR2019 at 153. Today, it is recommended that a sequential administration be used. *Id.* "Someone is more likely to make an identification when they are shown all the photos at once rather than when they see them one at a time." *Id.* However, at the time the lineup was made, the Department of Justice had not suggested that a sequential lineup was preferable to a simultaneous lineup. *Id.* at 198-99.

57. Dr. Terrell also noted that the lineup created in this case showed Hamilton "clearly holding a sign right here." 4 RR2019 at 154; *see* Defense Exhibit 11. This is a problem because "[a]nything that is distinctive can cause a photo to be chosen when that feature is not present in the others." *Id.* at 155. Outside of Hamilton's holding of a sign, this was a "pretty good lineup." *Id.* at 200. Dr. Terrell also agreed that three of the six persons in the lineup had some sort of distinguishing mark in their picture, but that Hamilton's was the most obvious. *Id.* at 202.

58. Hamilton's lineup was also "presented by an officer who knew who the suspect was." 4 RR2019 at 156. This is not the most reliable way to present a lineup, instead, whoever presents the lineup should have "no knowledge whatsoever of who the suspect is." *Id.*

59. Whenever creating a lineup, "[a]n effort should always be made to find as recent a picture as possible." 4 RR2019 at 162. As noted above, the detectives in this case did not use a recent picture of Hamilton when creating the lineup. *See* Defense Exhibit 13, Defense Exhibit 11. Instead, the detectives used a mugshot over three years old.

60. The Court finds that Dr. Terrell cannot testify concerning whether or not Mr. Hamilton committed the Holman murder. 4 RR2019 at 175. However, the Court finds Dr. Terrell's testimony is relevant in explaining how and why two eyewitnesses could mistakenly identify Hamilton as the shooter even if he was not involved in the Holman Murder.

61. The Court finds that the fingerprints found on the 40-ounce bottle are the most direct and reliable evidence showing who committed the Holman Murder. As discussed above, the eyewitnesses in this case both identified a teenager as having committing the Holman Murder, and one witness originally described the shooter as having an afro. The Court finds that the long period of time in between the commission of the Holman murder and the presentation of the line-up; the providing the witnesses with the sketch from a sketch artist; the use of a lineup where Mr. Hamilton is holding a booking placard; the use of an outdated photo; the presentation of the lineup by detectives who knew the identity of the suspect; and the use of a the six pack lineup all contributed to a false identification of Hamilton as related to the Holman murder.

E. The DNA evidence is also exculpatory for Hamilton.

62. The parties' experts both agree that Hamilton cannot be included as contributor to the DNA found under Mr. Huynh's fingernails or on the mouth of the 40-ounce bottle. However, the experts disagree about whether the items of evidence were suitable for comparison.

63. After Hamilton's trial, the Houston Forensic Science Center performed DNA testing and analysis on a few items of evidence collected in this case, specifically "one was a swab from the mouth area of the malt beer bottle, and then two other fingernail scrapings from the right fingernail and the left

fingernail from the victim; and then they also received two reference samples, which would be the victim's profile and suspect's profile." 5 RR2019 at 78; State's Ex. 1, 12-14.

64. Dr. Collins, who testified as an expert for Mr. Hamilton, explained that he disagreed with the Houston Forensic Science Center's (HFSC's) conclusion about the DNA found on the mouth of the bottle. *5 RR2019* at 91-92. The HFSC concluded that there was a partial DNA profile found on the bottle, but also found there was *potentially* a second contributor to the DNA found on the mouth of the 40-ounce bottle. *Id.* at 91; State's Ex. 1 at 13. Because of the potential second contributor, the lab concluded the DNA on the bottle was not suitable for comparison. *Id.*

65. Dr. Collins believed a scientifically acceptable conclusion is that the DNA recovered from the mouth of the bottle came from a single person – so that the results showed only a single DNA profile. *Id.* at 91-92. Based upon the single contributor conclusion, Mr. Hamilton is excluded from the partial profile found on the 40-ounce malt liquor bottle. *Id.* at 94-95. Dr. Collins believed a single male profile was present because the data showed no possible alleles above the analytical threshold (which would have suggested a second contributor). 7 RR2019 at 95.

66. Related to the right fingernail scrapings from Mr. Huynh, Dr. Collins agreed that Ronald Hamilton was excluded as a contributor to the major component of this DNA mixture. 5 RR2019 at 96. However, he once again disagreed with the HFSC's conclusion that the minor profile was not suitable for comparison. *Id.* at 96-97. Instead, he explained that, assuming Mr. Huynh's DNA was present under his own fingernails, Hamilton would be excluded from the remainder of the DNA found. *Id.*at 99. He testified that Hamilton

could not have contributed the minor profile found under Mr. Hunyh's fingernails. *Id.* at 99; 7 RR2019 at 61.

67. Dr. Collins also found that, assuming Mr. Huynh's DNA was present in the fingernail scrapings from his left hand, Mr. Hamilton was excluded as a contributor to the DNA discovered under the fingernails on Mr. Huynh's left hand. *Id.* at 99-100.

68. On cross-examination, Dr. Collins affirmed that his single contributor conclusion about the 40-ounce bottle was based upon the fact that there were never more than two alleles at any location on the allele table. 7 RR2019 at 32.

69. No witnesses testified that any of the DNA tested from the scene belonged to Mr. Hamilton. 7 RR2019 at 41.

70. Jessica Powers is a DNA analyst with the Houston Forensic Science Center. 7 RR2019 at 69-70.

71. Ms. Powers affirmed that a DNA allele should only be "called," or considered an allele, when it is above the analytical threshold. 7 RR2019 at 82. In the HFSC lab the analysist will "not use data below the analytical threshold to call as a true allele because it hasn't been called by the software." *Id.* at 84. However, the lab analyst will still consider non-called alleles in their interpretation. *Id.* Although only the alleles above the analytical threshold are "considered real," peaks below the threshold cause the lab analyst to be cautious. *Id.* at 84.

72. Ms. Powers, like Dr. Collins, would only use the alleles above the analytical threshold when making a comparison. 7 RR2019 at 85.

73. Ms. Powers believed the DNA found on the mouth of the 40-ounce bottle was low template DNA, meaning there was very little DNA. 7 RR2019 at 89. Therefore, she had to be cautious. *Id.*

74. Ms. Powers would not make the same conclusions about Ronald Hamilton being excluded as a contributor the DNA tested because she is cautious. 7 RR2019 at 88.

75. Ms. Powers does not dispute that the DNA profile on the 40-ounce beer bottle was a single source DNA profile, but she did decide not to draw any conclusions about the beer bottle. 6 RR2019 at 105. She wanted to be cautious in calling this a single source DNA profile. *Id.* at 106. She was able to base her opinions on her "[a]nalyst discretion, whenever it's used in our standard operating procedure, it just means that you have a little bit of flexibility in what you're looking at on your electropherogram." *Id.* at 107. She decided that presence of peaks below the analytical threshold might, or might not, mean there is a second contributor. *Id.*at 111. She "would say that there is evidence that there is possibly a second contributor." *Id.* at 114.

76. Regarding the fingernail scrapings, Ms. Powers agreed that it was permissible to subtract Mr. Huynh's profile from the DNA sample, which is what Dr. Collins had done in reaching his conclusion. 7 RR2019 at 61-62; 109. However, Ms. Powers did not do that in this case. *Id.* Once again, Ms. Powers did not "make any calls on the minor" contributor the DNA. *Id.*at 109. According to Ms. Powers, the minor contributor DNA could have belonged to a mixture of up to four people. 7 RR2019 at 122.

77. Regarding Dr. Collins exclusion of Hamilton from the DNA samples taken from Mr. Huynh's fingernail scrapings, Ms. Powers simply explained she "would not use that approach in our lab." *Id.*at 110.

78. Ms. Powers thought that Dr. Collins technique "would be bias, unfair, and not correct." *Id.* at 126.

79. Ms. Powers knew who the "suspect" or "defendant" was prior to beginning her analysis. 7 RR2019 at 127-28

80. All of the data suggesting there might have been a second contributor to the DNA found on the 40oz beer bottle was below the analytical threshold. 7 RR2019 at 130.

81. Ms. Powers agreed, that "if I made the assumption that all of these alleles called were from one contributor, I would have excluded Ronald Hamilton from this piece of evidence." *Id.* at 131. Ms. Powers thought that the DNA sample in this case was "somewhere in between" a single source and mixture DNA sample. 7 RR2019 at 131-32. She also recognized that she could not "call this [DNA sample] two [people], because you don't see clear signs of two." 7 RR2019 at 134. That is why the sample is not a mixture. *Id.* at 134.

82. Related to the fingernail scrapings, Ms. Powers agreed that "if I were able to say that this was a mixture of that two and I assumed that there were only two, I would have excluded Ronald Hamilton from the minor contributor." *Id.* at 135-36.

83. Ms. Powers was clear that the assumption of a single source DNA sample on the bottle, and a two-person mixture under Mr. Hunyh's fingernails, were simply "more aggressive than we're willing to do in our lab." 7 RR2019 at 137. However, she would not go so far as claiming that Dr. Collins' assumptions were unsupported by the evidence. *Id.*

84. The Court finds that DNA evidence collected at the scene is additional evidence that Hamilton was not involved the Holman Murder. Hamilton's DNA was not found at the scene or on the bottle which the shooter sat down

prior to shooting Mr. Huynh. Further, although Ms. Green would not have made the same conclusions about the number of contributors to the DNA in question, the court finds that a jury might credit Dr. Collins testimony about the number of contributors because there are no alleles above the analytical threshold which prove there was more than a single contributor to the DNA found on the bottle, or more than two contributors to the DNA found under Mr. Huynh's fingernails. A jury could have given weight to the fact that Hamilton's DNA profile was not present on any of the evidence found at the scene.

85. The Court also finds there is no proof that the DNA evidence in this case was tested or compared prior to trial. The DNA evidence was in the possession of the State of Texas at all times. Specifically, the evidence was in the possession of the Houston Police Department. As a result, the Court finds the DNA evidence is new evidence which was not previously available to Hamilton.

III. THE STATE AND ITS PROSECUTION TEAM – THE HOUSTON POLICE DEPARTMENT, TRIAL PROSECUTORS, INVESTIGATORS AND FINGERPRINT EXAMINERS -- ACTIVELY SUPPRESSED EXCULPATORY EVIDENCE.

86. The Court finds, and is troubled by, the prosecution team's active suppression of exculpatory evidence. The Court finds that both the Houston Police Department and trial prosecutor Colleen Barnett actively suppressed exculpatory evidence that Mr. Hamilton was excluded from contributing the fingerprints at the Holman Murder scene, and particularly on the 40-ounce bottle that witness Johnson saw the shooter set down.

A. Fingerprint Examiner Debbie Benningfield actively suppressed that she had compared Mr. Hamilton's fingerprints to those found at the scene, and that he had been excluded as a contributor.

87. Debbie Benningfield is now retired from the Houston Police Department and her previous role as a fingerprint examiner. 3 RR2019 at 57-58. She spent her entire career in the HPD Identification Department. She had previously worked in the Ten Print Section, where her job was to record fingerprints of people who were arrested. 59. By 1985, HPD had obtained an automated fingerprint system. *Id* at 60-62. Eventually Ms. Benningfield became the manager of the AFIS for HPD.

88. Ms. Benningfield was well versed in using HPD's AFIS system. 3 RR2019 at 63. At the time of the Holman murder, HPD used an AFIS system called Print Track. *Id.* at 64. HPD had access to the Texas Department of Public Safety fingerprint system, called NES. *Id.* at 65. Also, Print Track would have contained the HPD database. *Id.* Someone at HPD had the job of entering the fingerprints of arrested people into the AFIS system. *Id.* at 69. Anyone arrested on a jailable offense would have had their fingerprints taken and entered into the HPD AFIS system. *ID.* at 71. Even when fingerprints were taken by ink, HPD would try to get the prints entered into the AFIS system the same day they were taken. *Id.* at 73. HPD has a policy of keeping and saving fingerprints of anybody that they arrest. *Id.* at 145. HPD would have had "their own fingerprints in their system based on the arrests within their agency." 4 RR2019 at 70, 101-02.

89. A record should have been made when any unknown latent print was entered into the Print Track system for comparison with known prints. *Id.* at 76. The record would be made by notation on the envelope containing the print.

90. On December 9, 2001, around 8 pm, Ms. Benningfield was called to the scene of a murder at 3235 Holman in Houston, Texas. *Id.* at 81. Benningfield would have discussed the scene with the detectives, and would have collected whatever evidence she deemed relevant. *Id.* at 82.

91. At scene of the murder Ms. Benningfield collected: "[o]ne Schlitz Malt Liquor can, one 24-ounce Heineken bottle, one 40-ounce Schlitz Malt Liquor beer bottle, and one 12-ounce Heineken bottle." *Id.* at 84. She would not just randomly pick up trash outside of stores. *Id.* at 85. She might have decided to pick up bottles and cans outside of the Holman store because she had been told by the "daughter [of] the complainant . . . that the business was kept clean by her father." 3 RR2019 at 86. Benningfield learned it was rare for there to be trash outside of the store where the Holman Murder took place. 4 RR2019 at 111. She would have collected evidence she felt "was important or could have an impact. . ." on solving the murder. 3 RR2019 at 87.

92. The bottles collected were submitted to the crime lab for DNA testing and fingerprinting. 3 RR2019 at 87.

93. If "prints of value" were found on any evidence, an offense report supplement would be created. *Id.* at 89. A supplement would be made "[i]f we made the scene, then we had a supplement. If we brought evidence back to the lab and processed it, we did a supplement. If there was a comparison request or if there was an identification in the case, then a supplement was typed." 3 RR2019 at 89.

94. However, if there was a request to test fingerprints, and a known suspect was excluded from having left a fingerprint recovered from a crime scene, no offense report supplement would be made. *Id.* at 90.

95. The Court finds there was no evidence of a comparison or exclusion of fingerprint evidence in the offense report related to the Holman Murder. *See* Defendant's Ex. 8. Indeed, there is no evidence in the offense report or elsewhere that the fingerprints collected from the scene, or evidence collected from the scene, were ever compared to any suspect. *Id.*

96. According to Debbie Benningfield, it was HPD's policy to only make an offense report supplement if there was a fingerprint match found. *Id.* at 90. HPD's "standard practice" was not to issue reports on eliminations. 4 RR2019 at 61. A supplement would have been typed had there been an identification. 4 RR2019 at 61. The only notice given in the case of an elimination would have been to the person requesting the comparison. *Id.* at 62.

97. The HPD policy of not documenting fingerprint exclusions is troubling and directly led to the suppression of evidence in this case. If a defendant was excluded from leaving a print at a scene or on an item of evidentiary value, that information should always be turned over the to the defense. HPD policy prevented that from happening in this case.

98. Benningfield testified that members of the District Attorney's Office could simply call the lab and ask if fingerprints had been compared, and learn the results. 5 RR2019 at 62. This would not happen with defense attorneys. *Id.* at 62. If a defense attorney called, the examiner would not discuss a case with them, but would notify HPD legal about the defense's request to speak with the examiner. *Id.* at 63. This policy compounded the problem in this case, and amounts to an active suppression of evidence.

99. Three fingerprints suitable for comparison were found on the 40 oz. Schlitz Malt Liquor bottle prior to Hamilton's trial. *Id.* at 91. This is the bottle that came from a rail outside of the business. *Id.* at 91. The bottle was taken to

Montgomery County, to a man named Butch Emmons, so that he could take special pictures of the print. This was done to get a better print for comparison. *Id.* at 92.

100. Based on a review of the Offense Report Supplements created by Debbie Benningfield, there was absolutely no indication that she compared any fingerprints in the Holman murder. 4 RR2019 at 93. Nor was there any indication that there was a request made to compare the prints. *Id.* at 94.

101. Someone else would have given Debbie Benningfield the names of "suspects" which were written on the envelopes containing fingerprints in this case. *Id.* at 98; Defendant's Ex. 3-4.

102. Debbie Benningfield compared the fingerprints found at the scene, and on the 40 oz. Schlitz malt liquor bottle, to both Ronald Hamilton and Shawon Smith prior to trial. *Id.* at 101, Defendant's Ex. 3-4. This fact was never mentioned in her offense report supplements. *Id.* at 101. Hamilton and Smith were excluded as having left all of the fingerprints found at the scene. *Id.* at 101-03. Debbie Benningfield did not make a notation in the offense report about this exclusion because "if we did not identify the print, we did not type a supplement if we excluded it." *Id.* at 101. However, the information about the exclusion would be relayed to the person who requested the comparison. *Id.* at 102. The Court finds that either Detective Park or Hoffmaster knew that Hamilton had been excluded from leaving the prints found at the scene.

103. Prior to trial, Hamilton was excluded from leaving the prints found on the side of the cash register, the 40-ounce Schlitz Malt Liquor bottle, and all other prints found at the scene of the Holman Murder. 5 RR2019 at 67.

104. In addition to excluding Hamilton from the prints found at the scene, the print from the malt liquor bottle was run through the Houston and Texas AFIS

databases. 3 RR2019 at 109-110. Based on the fact that there was no offense report made about the AFIS search, Debbie Benningfield concluded the AFIS search did not return any fingerprints matching the prints from the 40 oz Schlitz Malt Liquor bottle. *Id.* at 113-114.

105. Notes found with the fingerprint evidence suggest that Connie Park, investigator in this case, requested that the prints found at the scene be compared with potential suspects, including Ronald Hamilton. *Id.* at 127-28. Further, it was generally the investigators who would guide Benningfield concerning what evidence to collect and test. 4 RR2019 at 43, 47.

106. In addition to testing Hamilton's and Smith's prints against those found at the scene, Debbie Benningfield also compared the prints to previously undisclosed suspects. Those additional suspects were also eliminated as having left the prints at the scene. 3 RR2019 at 131. Once again, this elimination was not reported in the offense report. *See* Defense Ex. 8. The names and identities of these additional suspects was not mentioned anywhere in the offense report, and were never disclosed to the defense.

107. The only way a non-law-enforcement person could have discovered that the fingerprints were compared to Hamilton's would be for the person to personally view the evidence collected from the scene, specifically the envelopes containing the fingerprints. 5 RR2019 at 51-53. However, even if this was done, the person would not know the prints had been compared to Hamilton's, and that he was excluded, unless the person knew Debbie Benningfield's standard practices for recording her work. *Id.*

108. Debbie Benningfield could not recall if she had run the fingerprints associated with Marshall Knight (the prints found on the 40-ounce bottle) through the AFIS system. 4 RR2019 at 88-89. If an unknown print was run through AFIS

but not saved in the AFIS system, HPD policy at the time was simply to not record that the print had been run through AFIS. *Id.*

109. Debbie Benningfield knew, prior to trial, that the four prints suitable for comparison collected at the scene of the Holman Murder excluded Ronald Hamilton, and his co-defendant Shawon Smith, from having left the prints. 4 RR2019 at 94. She actively suppressed this evidence by not making a supplement to the police report.

110. During these habeas proceedings, Debbie Benningfield refused to have a meeting with habeas counsel without the Assistant District Attorney's being present. 4 RR2019 at 94-96. The same would have been true prior to Hamilton's trial – Benningfield would not have spoken to defense counsel, but would have referred them to HPD legal. *Id.* at 96.

111. If the District Attorney had walked in and asked to the see evidence envelopes, they would have been shown the evidence envelopes, but if a defense attorney asked to the do the same thing, the defense attorney would have been directed to HPD legal. *Id.* Without permission from HPD's legal department, Benningfield would not speak with defense counsel, and would show them nothing. 4 RR2019 at 96-97.

112. There was no indication in the police report about Hamilton's (or Shawon Smith's) prints being compared to those found at the scene, nor was there any mention of the other suspects. *4 RR2019* at 97-98; Defendant's Ex. 8.

113. Benningfield would have obtained the names of Levigne and Brown, the alternative suspects, from one of the detectives, although this was never mentioned in the offense report. 4 RR2019 at 97-99.

114. Nothing in the offense report even suggests that comparisons were ever made to the prints found at the scene. 4 RR2019 at 98.

115. The Court finds that HPD's policy of not documenting exclusions was designed to suppress relevant evidence from defense counsel, and that the policy succeeded in this case.

B. The Harris County District Attorney's Office, the prosecution team, and trial prosecutor Colleen Barnett were aware the fingerprints on the 40 oz. bottle did not belong to Mr. Hamilton, or his co-defendant.

116. George "Buddy" Barringer was an investigator for the Harris County District Attorney's office at the time of Hamilton's trial. 5 RR2019 at 41. The Court finds that his testimony at the habeas hearing was credible.

117. As part of his job, Barringer would follow up on tasks he had been assigned by trial prosecutors. 4 RR2019 at 45.

118. As part of Hamilton's case, Mr. Barringer was asked by trial prosecutor Colleen Barnett to conduct certain tasks. 4 RR2019 at 47. Specifically, Mr. Barringer was asked to check for fingerprint results in both the Yellowstone Capital Murder, and in the separate Holman Murder. 4 RR2019 at 48; Defense Ex. 9. Mr. Barringer discovered that prints were found in the Holman Murder case, and that they were "compared to defendants and eliminated." Defense Ex. 9.

119. Mr. Barringer was confident that the trial prosecutor would have known that Hamilton, and his co-defendant, had been eliminated from having left the prints found at the scene of the Holman Murder. *Id.* at 48.

120. Mr. Barringer believed, based on reviewing his Investigator's Reply, that he would have checked on the fingerprint results prior to April 15, 2002. 5 RR2019 at 53, Defense Ex. 9. Pretrial proceedings did not commence in

Hamilton's case until October 7, 2002, and testimony did not begin until November 6, 2002. *See* Trial Reporters Records vol. 2 and 16.

121. Mr. Barringer explained that as a member of the District Attorney's Office, he could simply call up HPD and ask for the result of the print comparisons, and the agency would "report back whether or not – they wouldn't give me a written report. They would do that in a supplement type thing to their cases." 5 RR2019 at 52.

122. Mr. Barringer also believed that generally an offense report would tell you if prints had been tested. *Id.* at 53.

123. The Court finds based upon Mr. Barringer's testimony, and the Investigators Reply (Defendant's Exhibit 9) that trial prosecutor Colleen Barnett knew, or should have known, prior to trial that Hamilton had been excluded from leaving all of the prints recovered from the Holman Murder scene.

IV. THE DEFENSE WAS NEVER MADE AWARE THAT HAMILTON'S FINGERPRINTS HAD BEEN EXCLUDED FROM ALL FINGERPRINTS COLLECTED FROM THE HOLMAN MURDER SCENE.

124. Loretta Muldrow is an experienced criminal defense attorney practicing mostly in Harris County. 6 RR2019 at 21-22. Prior to practicing criminal defense, she worked for 6 years at the Harris County District Attorney's office as an assistant district attorney. *id.* Ms. Muldrow was lead counsel for the defense at Hamilton's capital murder trial. *Id.* at 27. The Court finds her testimony credible.

125. At the time of Hamilton's trial, the discovery practices in Harris County were "arduous. Where what you had to do was go to the [DA's] office." 6 RR2019 at 23. The DA's office would not allow defense counsel to make copies of

offense reports; defense counsel would be allowed to review the offense report and take handwritten notes. *Id.* At 24.

126. The defense was not provided with copies of any documents prior to trial. *Id.* at 24.

127. Defense counsel would not be permitted to review DA work product. 6 RR2019 at 25. Ms. Muldrow did not recall ever seeing work product in any of the DA files she was permitted to review at the time of Hamilton's trial.

128. If Ms. Muldrow had question for the HPD latent print lab, as a defense attorney, it would not have been possible for her to simply call the lab and ask them a question. 6 RR2019 at 26. If she tried to call the lab, she would be directed to "go through the D.A.'s Office and that was never ever going to be a direct call to law enforcement." *Id.* In 2001, "[l]aw enforcement and the Defense community had a gulf between them and there was no bridge connecting either side." *Id.* at 27.

129. Related to the future dangerousness special issue, the Holman Murder was the most important portion of the case for the defense. 6 RR2019 at 30.

130. The defense intended to prove that Hamilton was not involved in the Holman Murder though the testimony of Shawon Smith. 6 RR2019 at 31.

131. Defense counsel knew of a plea deal that Smith reached with the State through prosecutor Colleen Barnett and Smith's attorney, Alvin Nunnery. *Id.* At 32. The defense expected that Smith would testify at Hamilton's trial if called as a witness.

132. The defense planed on proving that Smith's car, the same car used in the Yellowstone Murder, had been wrecked and was in the impound storage lot at the time of the murder. 6 RR2019 at 32. Ms. Muldrow's belief was that the state acted as if Shawon Smith might no longer have a deal simply because

the state did not want Smith to testify that Hamilton could not have committed the Holman Murder. 6 RR2019 at 32-40. She was not aware of the State needing to perform any additional investigation related to Smith. *Id.*

133. The Court finds that the defense team was aware of the deal in place for the co-defendant prior to trial.

134. Ms. Muldrow noted that after the time for a motion for new trial had passed, the prosecution team from Hamilton's case went ahead and honored the agreement with Smith. *Id.* at 41.

135. Ms. Muldrow was allowed to view the offense report in this case, prior to trial. 6 RR2019 at 41-42. However, the report did not mention that any fingerprints found at the scene had been compared to any known persons prints. *Id.*

136. The defense never learned prior to trial that the fingerprints had been compared in this case. 6 RR2019 at 42. The defense never learned from any sources that Hamilton's fingerprints had been excluded from all the prints collected in this case. 6 RR2019 at 42.

137. Had the defense known that Hamilton's prints had been compared to, and excluded from, all prints found at the Holman Murder scene, the defense strategy would have changed. 6 RR2019 at 43-44. Defense counsel would have employed her own fingerprint expert. *Id.* at 44.

138. Defense counsel did have a *Brady* motion granted in this case, but defense counsel was never allowed, before trial, to review any evidence except for the offense report. 6 RR2019 at 45-46.

139. Defense counsel never saw the envelopes containing the latent prints, which were in the possession of the Houston Police Department, prior to trial. 6 RR2019 at 46.

140. Based upon the statements of the trial prosecutors, and the lack of lab supplements noting fingerprint comparisons, defense counsel was led to believe that there were no identifiable fingerprints recovered at the scene of the Holman Murder – not that Hamilton was actually excluded from the found prints. 6 RR2019 at 48.

141. The open file policy in Harris County at the time of Hamilton's trial meant defense counsel had "to rely on the integrity of the person who was presenting those files for review, either prosecutors or the State of Texas." 6 RR2019 at 49.

142. When Ms. Muldrow examined Connie Park at trial, she did not know whether or not the fingerprints from the Holman Murder scene had actually been examined. 6 RR2019 at 50. Because the State had represented in the pretrial hearing that there were no scientific results in this case, she presumed there would be no prints to prove a "connection to Ronald James Hamilton, Junior and Shawon D. Smith." 6 RR2019 at 51. Had she been told that the prints excluded both men, Ms. Muldrow would have changed the way she examined Investigator Park. *Id.* Further, Ms. Muldrow chose to stop her examination regarding the absent of fingerprints linking Hamilton to the scene because she believed the prints had never been tested. 6 RR2019 at 132-33.

143. Ms. Muldrow recalls that the DA's file related to Mr. Hamilton's case was generally in the possession of Colleen Barnett. 6 RR2019 at 59. Colleen Barnett was the person Ms. Muldrow would typically deal with on the prosecution team. 6 RR2019 at 71.

144. Ms. Muldrow explained that during the preparations for a capital murder trial, the defense has to focus not only investigating and strategizing for the charged offense, but also for all other future dangerousness evidence, and the

mitigation case. 6 RR2019 at 70-71. The defense cannot simply focus on any single aspect the case. *Id.*

145. The defense team had multiple investigators working on various parts of the case from guilt and innocence to mitigation. 6 RR2019 at 87-91. In spite of these investigators, the State has completely failed to present any evidence showing that any of the investigators knew, or should have known, that the prosecution team had suppressed the fact that Hamilton had been excluded from leaving any of the prints discovered at the scene of the Holman Murder.

146. There is evidence, on a note from the prosecutor's file, that Ms. Muldrow was provided with copies of some discovery in this case. 6 RR2019 at 97-98; State's Ex. 7. The note discusses Hamilton's statement to police, a copy of scene photos, a copy of the photo spread, a copy of the "c.m.," a copy of the composite sketch, and a copy of Smith's statement. *Id.* The note shows these documents were for the benefit of Hamilton's co-defendant, Shawon Smith, and were being given to Alvin Nunnery through Ms. Muldrow. *Id.* There is no evidence that the defense was provided a copy of the Holman Murder offense report, or was ever notified that the fingerprints obtained from the scene of the Holman Murder had been compared to Hamilton's and that Hamilton was excluded from leaving the prints.

147. The State has not presented any evidence showing that the defense was aware, or was made aware, that the comparable fingerprints found at the scene of the Holman murder were compared to Hamilton and Smith, but that they were both excluded from having left the prints.

148. The Court notes that the State did not call the original trial prosecutors, Colleen Barnett or Lucy Davidson to testify in this case. There is no evidence that the fingerprint evidence was ever made known to the defense. Rather,

the credible evidence presented to this Court is that the defense team was never made known about Hamilton's exclusion from the fingerprint testing prior to trial.

149. The defense theory related to the Holman Murder was that Hamilton was not present at the scene. 6 RR2019 at 100-101. Proving that his fingerprints were not present at the scene would have been strong evidence bolstering the defense punishment case.

150. Defense counsel believed Prosecutor Davidson when she explained there were no comparison tests performed in this case. 6 RR2019 at 114. The Court finds it is reasonable for a defense attorney to rely on the representations of trial prosecutors.

151. At trial, prosecutor Barnett told the court that there were no scientific tests, including fingerprint comparisons in this case. 6 RR2019 at 131. Ms. Muldrow rightfully took the prosecutor at her word. *Id. At 131, 134, 138.*

152. Ms. Muldrow was never shown the investigator's report proving that Hamilton had been excluded from leaving the prints recovered from the Holman Murder. *Id.* At 139-40.

V. THE PROSECUTION HAD REACHED A DEAL WITH CO-DEFENDANT SHAWON SMITH PRIOR TO TRIAL.

153. Alvin Nunnery is a long time Harris County criminal defense attorney, who also previously worked for the Harris County District Attorney's Office, the Tarrant County District Attorney's Office, and the Texas Attorney General's Office. 5 RR2019 at 107-08. The Court finds Mr. Nunnery to be credible.

154. Mr. Nunnery represented Mr. Hamilton's co-defendant, Shawon D. Smith. *Id.* at 108. Mr. Nunnery, after reviewing the clerk's record from his client's case,

testified that there was a plea agreement in place for his client. *Id.* at 110. "In exchange for him testifying in the matter of the State vs. Mr. Hamilton, his charge wherein he was indicted for capital murder was to be reduced to aggravated robbery. And in exchange for truthful testimony, he was to be sentenced to 20 years TDC, credit for any time that he had already served." *Id.*

155. Mr. Nunnery was certain this plea agreement would have been solidified *prior* to setting the case for a plea. *Id.* at 111. Mr. Nunnery remembered the plea "would have been entered into and negotiated prior to the trial of Mr. Hamilton." *Id.* at 111. The clerk's records show that the plea would have been agreed upon by October 3rd, 2002. 5 RR2019 at 111. The trial testimony did not begin until November 6, 2002. *See* Trial Reporter Record vol 16.

156. Mr. Nunnery would have made the deal with either Prosecutor Colleen Barnett or Luci Davidson. 5 RR2019 at 12.

157. Mr. Nunnery also affirmed that his client, Shawon Smith, had previously provided information to the prosecution in exchange for his plea agreement. 5 RR2019 at 117.

158. Mr. Nunnery was present at Hamilton's trial on the day Mr. Smith was expected to testify. 5 RR2019 at 114-15. He has no idea of the reason why the plea agreement was potentially revoked, but because of prosecutor Luci Davidson's suggestion that there was no longer a plea agreement in place, Mr. Nunnery was forced to invoke the Fifth Amendment on behalf of his client. *Id.* at 115-16, 131, 135.

159. It was Mr. Smith's position that he was not involved in the Holman Murder. 5 RR2019 at 133. Further, Mr. Smith believed that Ronald Hamilton was not involved in the Holman Murder. *Id.* However, after the State suggested it had revoked Mr. Smith plea offer, Mr. Nunnery would not have permitted his testimony. *Id.* at 134.

160. Had the prosecution not suggested the plea deal for Mr. Smith had been called off, Mr. Nunnery would have permitted his client to testify at Hamilton's trial. *Id.* at 136. Mr. Smith knew that Hamilton did not commit the Holman Murder based upon "Mr. Hamilton's inability to or not have access to the vehicle." *Id.* at 137. "And that their relationship was such that had he been involved; I think he said he would have probably told [him]." *Id.*

161. Mr. Nunnery believed that Smith would have testified "[t]hat Mr. Hamilton could not be involved in that extraneous if he did not have access to his car, which I understood he would testify to was at a mechanic shop." 5 RR2019 at 140.

162. After Hamilton's trial, the prosecution decided to honor its previous plea agreement with Smith. *Id.* at 117-18. Mr. Smith did not do anything after the trial to have the original plea agreement put back in place. *Id.*

163. The Court finds that prior to Hamilton's trial the State of Texas had reached a deal with co-defendant Shawon Smith. Shawon Smith was to testify truthfully at Hamilton's trial, and in exchange would plead guilty to aggravated robbery and a 20-year sentence. The Court finds that Smith provided consideration for this deal, specifically, he had already provided

information to the police and prosecution team. After Hamilton's trial was complete, Mr. Smith was given the same deal agreed to before trial.

164. The Court finds that there was no evidence presented by the State of Texas showing that additional investigation was needed, at the time of Hamilton's trial, before the State of Texas would honor the previously agreed upon deal with Mr. Smith. Instead, the most likely reason that the prosecution claimed there was no deal in place is because the prosecution knew Smith would testify truthfully about Hamilton's non-involvement in the Holman Murder, and sought to prevent that testimony.

VI. THE FACTUAL BASIS OF THESE CLAIMS WAS NOT PREVIOUSLY AVAILABLE TO HAMILTON.

165. The Court finds that the State's failure to disclose Hamilton's exclusion from the prints found at the scene is the direct result of the Houston Police Department's policy of not reporting exclusions related to forensic evidence, and the Harris County District Attorney's Office's failure to turn over the fingerprint evidence in this case.

166. The Court would note that, in addition to the withheld fingerprint comparisons which excluded Hamilton, other comparison evidence was omitted from the offense report. For example, although not dispositive to the issue of who committed the Holman Murder, the Court would note that there was a comparison of firearm shell casings related to the Holman Murder, but that no offense report supplement was ever made concerning this comparison. 4 RR at 14-22. Once again, related to the shell casing's comparison, there was also an elimination. The firearm examiner would have conveyed the results of the comparison to the investigating officers who apparently did not request that an offense report supplement be made. 4 RR2019 at 21. However, had there

been an identification between the two shell casings, then there would have been a report made. *Id.* at 22.

167. The firearm examiner, like the fingerprint examiner, explained that it was not the standard practice of HPD at the time of trial to document eliminations. *Id.* at 24.

168. The Court finds that the firearm examiner's testimony is yet more proof that it was the practice of the HPD crime lab to create supplemental offense reports when identifications were made, but to not make supplemental reports if exclusions were made.

169. Appropriately, the former HPD crime lab has since changed its policy. Fingerprint Examiner Green testified that she always documents everything she does in cases. 2 RR2019 at 76. This includes documenting comparisons that don't result in a match, and any prints that are run through AFIS. *Id.* at 76. This is done for transparency, and has been a consisted part of her job no matter what lab she was working with. *Id.* For the last 13 years that she worked as an examiner, she has always documented exclusions. *Id.* at 100, 123. Had Ms. Green eliminated Hamilton from prints found at the scene, she would have made a record of the elimination. *Id.* at 124. She would make a report. *Id.* at 125. In the hours and hours of training that Ms. Green has gone through, it has never been suggested that she should not record and report elimination comparisons. *Id.* at 139.

170. Fingerprint Examiner Green, who had access to all of the evidence in this case, had not seen any evidence that, prior to her work, the prints in this case were previously compared. 2 RR2019 at 77,92-39, 134-35. The Court finds that if the State's own fingerprint examiner experts could not tell that the prints had

been previously tested, then Hamilton and his attorneys certainly could not tell that the prints had been tested prior to trial.

171. Even the representatives of the Harris County District Attorney's Office, throughout these current proceedings, were not aware that the fingerprints had previously been tested. As the State recognized in its *State's Original Answer After Remand*: "here, there is no indication the evidence had been tested prior to trial, or that the State was in possession of the results of this testing. Additionally, even during the October 7, 2002, pretrial conference, the State informed the trial court there were no reports of any scientific tests like DNA or fingerprint comparisons." *See* State's Original Answer After Remand at 23. Additionally, the State represented: "On May 11, 2017, the applicant's federal habeas counsel contacted the State to see if the State would oppose forensic testing in the Holman Murder. After checking with HPD and finding no indication that any forensic analysis had been conducted on the recovered prints or DNA swabs, the State did not oppose counsel's request for the forensic testing and comparison of certain items." *See* State's Original Answer After Remand at 11.

172. The State learned for the first time just days prior to June 21, 2019, that there were no written supplements made for any comparisons, because HPD did not "do elimination reports at the time." R.R. June 21, 2019, Hearing, at 5-6. The lab only made "positive identification reports." *Id.* at 6. This is why HPD's general litigation did not find any fingerprint comparison reports. Indeed, had the Harris County DA's office had known that Hamilton's prints had been excluded from those found at the scene prior to this date, the DA's office would not have agreed to retesting. *Id.* The DA's "post-conviction counsel did not know about these eliminations." *Id.* The Court finds that if the

attorneys working for the State of Texas did not know that the prints in this case had been compared to Hamilton's and excluded, then Hamilton's attorneys could not have known that the fingerprints on the 40-ounce bottle, and the Holman Murder scene, had ever been compared to Hamilton and that he had been excluded.

173. It was not until just before the June 21, 2019, hearing that the DA's office turned over the pretrial memorandum written to Colleen Barnett which shows that the trial prosecutors were aware, prior to trial, that Hamilton's fingerprints did not match those found on the 40 oz. beer bottle. R.R. June 21, 2019, Hearing, at 5-9.

174. Defense counsel cannot be faulted for failing to go beyond the police report in trying to discover that the fingerprint evidence had been tested. Detective Hoffmaster explained that pretty much everything that was learned by detectives would go into the police report. Depo at 8. Hoffmaster believed that everything relevant would make it into the offense report. *Id.* Detective Hoffmaster believed that if the lab had performed testing or comparisons on forensic evidence, the lab personnel would create a supplement concerning the results of the forensic testing. *Id.* at 20, 23-24, 29. If it was reasonable for the investigating detective to believe the offense report was complete and accurate, it was also reasonable for Hamilton's defense counsel to believe the offense report was complete and accurate.

175. The DNA in this case was never tested until ordered by this Court, but, as noted by the prosecution, Hamilton had no legal ability to have the DNA evidence tested until the District Attorney's office agreed to his request.

CONCLUSIONS OF LAW

I. HAMILTON WAS SUBJECTED TO CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AMENDMENT TO THE U.S. CONSTITUTION THROUGH THE STATE'S USE OF MATERIALLY INACCURATE EVIDENCE.

1. Hamilton was subjected to cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution, applicable to the States via the Fourteenth Amendment to the U.S. Constitution, because his death sentence was obtained upon the use of materially inaccurate evidence. Accordingly, this Court recommends that the Texas Court of Criminal Appeals grant relief on this claim.

2. In *Johnson v. Mississippi*, the Supreme Court reversed a sentence of death where the "jury was allowed to consider evidence that has been revealed to be materially inaccurate." *Id* at 590. The *Johnson* Court applied a two-factor test in analyzing the presented Eighth Amendment claim: 1) determining whether the jury was allowed to consider materially inaccurate evidence; and 2) determining whether the evidence was prejudicial. *Id.* at 586. This Court applies this test in analyzing Hamilton's presented Eighth Amendment claim.

3. This Court concludes that, with respect to the first factor, the jury in Hamilton's case was allowed to consider materially inaccurate evidence – namely, any and all evidence presented at the original trial that Hamilton committed the extraneous Holman Murder. The evidence regarding the

Holman Murder presented originally at trial is described in Section I-A of the above Findings of Fact and is incorporated by reference herein.

4. This evidence presented at the punishment trial was materially inaccurate in light of the firmly established evidence showing that the perpetrator of the Holman Murder held, drank out of, and set down a particular 40-ounce beer bottle on a rail outside of the store immediately prior to committing the murder – and that forensic testing on this bottle excludes Hamilton and inculpates another individual, Marshall Knight, in the Holman Murder. *See* Findings of Fact Section II-A, II-B (incorporated by reference herein).

5. Eyewitness Wanda Johnson observed the shooter holding this bottle, drinking out of it, setting it down on a metal rail outside the store, and urinating over it immediately before entering the store and shooting and killing Mr. Huynh.

6. This 40-ounce bottle was collected as evidence by HPD Fingerprint Examiner Debbie Benningfield during the scene investigation which took place immediately following the murder. Forensic testing on this bottle, including fingerprint and DNA testing, establishes that Hamilton was not the person who possessed or touched this bottle. Hamilton was excluded as a contributor to the fingerprints found on the bottle. Hamilton was also excluded as a contributor to any and all identifiable fingerprints found at the Holman Murder scene. Additionally, a scientifically valid interpretation of the DNA

testing results excludes Hamilton as a contributor to the DNA found on the bottle. (This Court observes that the State's DNA expert, using interpretative discretion, concluded that the DNA on the fingernail scrapings was insufficient for comparison – thus, the State's expert made no conclusions regarding the DNA test results.).

7. Additional forensic DNA testing was conducted on both the left and right fingernail scrapings of the Holman Murder victim, Mr. Huynh, with whom the shooter had a brief physical struggle before committing the murder. A valid interpretation of the DNA testing results excludes Hamilton as a contributor to both these left and right fingernail scrapings. (This Court observes that the State's DNA expert, using interpretative discretion, and concluded that the minor profile DNA from the fingernail scrapings was insufficient for comparison – thus, the State's expert made no conclusions regarding the DNA test results.).

8. Fingerprint testing and comparisons were originally conducted on the prints taken from this bottle in 2002. The prints from the bottle were compared with the known prints of Hamilton and his co-defendant, Shawon Smith. The results of the 2002 fingerprint testing and comparisons excluded Hamilton, Smith, and two other suspects that were never previously disclosed to the defense. Similarly, the exclusion of both Hamilton and Smith from being the

contributors to these fingerprints was never revealed or disclosed to Hamilton or the defense.

9. Despite the State's awareness of these facts, prosecutors Colleen Barnett and Luci Davidson represented to the trial court and to the defense that there were no fingerprint comparisons during the original pretrial hearing. 2 RR at 8-9.

10. Additional fingerprint testing, in 2017, excluded Hamilton and identified Marshall Dwayne Knight as the individual whose fingerprints were found on the bottle. *See* Findings of Fact Section II-B (incorporated herein for all purposes). This Court also notes that the Houston Police Department would have had Knight's fingerprints, through multiple arrests, in their fingerprint database at the time of the fingerprint testing and comparisons in 2002. There is no direct evidence, however, that the Houston Police Department identified Knight prior to the 2017 testing.

11. The DNA testing was conducted exclusively in 2017, and there is no indication that any DNA testing was conducted prior to 2017.

12. In addition to the forensic evidence directly linking Knight to the bottle, Knight's physical description was also similar to the descriptions provided by eyewitnesses Charles Douglas and Wanda Johnson. Both witnesses described the shooter as being a teenager. And eyewitness Douglas described the shooter as weighing 140 pounds. Knight was 20 years old at the time of the

Holman Murder, and District Clerk records indicate that Knight weighed 150 lbs. By contrast, Hamilton would have been 24 years at the time of the Holman Murder and records indicate that Hamilton weighed 170 lbs.

13. Knight also had a criminal history involving violence, and a history involving alcohol use. At the time of the Holman Murder, Knight had been previously convicted of unlawful carrying of a weapon and was on a deferred adjudication for aggravated robbery with a deadly weapon. Knight was adjudicated guilty for this aggravated robbery in February 2002, for using alcohol while on community supervision.

14. Knight was called as a witness during the writ hearing and exercised his Fifth Amendment privilege to refuse to answer the questions that were posed by Applicant. *See* Findings of Fact Section II-C (incorporated herein for all purposes).

15. In light of the above, and this Court's Findings of Fact, this Court concludes that Hamilton has proven by a preponderance of the evidence that the State presented materially inaccurate evidence at Hamilton's punishment trial. Further, the Court finds it is more likely that Marshal Knight committed the Holman murder than Hamilton.

16. This Court concludes, after analyzing the second factor, that Hamilton was prejudiced by the State's introduction of the materially inaccurate and false

and misleading evidence – the extraneous Holman capital murder in this death penalty case.

17. Because Hamilton had entered a guilty plea to the capital murder charge with which he was indicted, the Yellowstone Murder, the Holman Murder became the State's main focus during the punishment trial.

18. At the punishment phase of the trial, the jury was tasked with answering Texas's two special issues relating to future dangerousness and mitigation. *See* 2 CR at 330; see also TEX. CODE CRIM. PROC. art. 37.071 §(b)(1), (e)(1).

19. The extraneous capital murder was material to the analysis of both special issues.

20. At the outset of the punishment trial, prosecutor Colleen Barnett emphasized the importance of the Holman Murder, stating during opening statements that the State would prove the extraneous murder beyond a reasonable doubt and that, therefore, the State would meet their burden on both prongs of the punishment question. 16 RR at 22-25.

21. During the trial, the State presented eight witnesses, hundreds of pages of testimony, and numerous exhibits to prove up that Hamilton had committed this extraneous capital murder. *See* Findings of Fact I-A (incorporated by reference). These exhibits included, among other items, gruesome

photographs of Mr. Huynh laying in his own blood and pictures of his brain. Prosecutor Barnett walked the picture of Mr. Huynh's brain in front of the jury just before resting the State's case. *Id.*

22. The State also heavily and repeatedly emphasized and relied on this extraneous capital murder in each of its closing arguments – arguing that the jury should answer the special issues in a manner that resulted in a death sentence. *See* Findings of Fact I-A, (incorporated by reference) (discussing the closing arguments given by prosecutors Colleen Barnett and Luci Davidson).

23. The jury was also instructed that it could not consider evidence of an extraneous crime or bad act in answering the special issues, unless the State had first shown beyond a reasonable doubt that Hamilton had committed the extraneous crime or bad act. 2 C.R. at 325. Both prosecutors emphasized that the jury should find beyond a reasonable doubt that Hamilton committed the Holman Murder – an extraneous capital murder. The State made this argument while depriving Hamilton of the strongest evidence that he did not commit this extraneous capital murder – exculpatory forensic testing results from an item of physical evidence left behind by the true Holman shooter.

24. This Court finds that Hamilton has proven by a preponderance of the evidence that he was deprived of his right to be free from cruel and unusual punishment

under the Eighth Amendment to the U.S. Constitution through the State's use of materially inaccurate evidence at his punishment trial. This Court recommends that the Texas Court of Criminal Appeals grant relief on this claim.

25. Finally, the Court finds that the factual basis of this claim was not previously available to Mr. Hamilton. *See* Tex. C. Crim. P. art. 11.071, Sec. 5 (a)(1); *See* Findings of Fact, VI, *supra.* The fact that the fingerprint evidence had been compared to Hamilton's prior to trial, and that Hamilton was excluded from all fingerprint evidence was actively suppressed by the prosecution team. Further, the DNA evidence, which has been in the exclusive possession of the prosecution team, was not tested until after Hamilton's initial habeas application was denied, and Hamilton had no legal mechanism to have the DNA evidence tested without the blessing of the state. Finally, the identity of Marshal Knight and the presence of his fingerprints on the 40-ounce beer bottle was not known or disclosed until after Hamilton's initial application was denied.

26. The Court also finds that "[a] rule thus declaring 'prosecutor may hide, defendant must seek' is not tenable in a system constitutionally bound to accord defendants due process." *Banks v. Dretke*, 540 U.S. 668, 696 (2004).

Based upon clear Due Process jurisprudence the failure to disclose the favorable evidence in this case falls on the State of Texas.

II. HAMILTON WAS DEPRIVED OF HIS RIGHT TO DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT OF THE U.S. CONSTITUTION AND DEPRIVED OF HIS RIGHT TO DUE COURSE OF LAW UNDER THE TEXAS CONSTITUTION THROUGH THE STATE'S USE OF FALSE AND MISLEADING EVIDENCE.

27. This Court finds Hamilton was deprived of his right to due process of law under the Fourteenth Amendment to the U.S. Constitution because his death sentence was obtained upon the use of false and misleading evidence material to the punishment decision.

28. This Court also finds that Hamilton was deprived of his right to due course of law under Art. I, §§ 13 and 19 of the Texas Constitution because his death sentence was obtained upon the use of false and misleading evidence material to the punishment decision in this case.

29. The Fourteenth Amendment's due process clause prohibits the State from securing a conviction or death sentence through the use of false or highly misleading evidence. *See Napue v. Illinois*, 360 U.S. U.S. 264, 269 (1959) (holding that "a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment.") "The same result [is obtained] when the State, although not

soliciting false evidence, allows it to go uncorrected when it appears." *Id.* at 79.

30. It is not necessary that the State actually knew that the testimony in a case was false, it is enough that the prosecution should have known as much. *See e.g., U.S. v. Agurs*, 427 U.S. 97, 103) (1976) (explaining this error occurs with the use of false evidence where the "evidence demonstrates that the prosecution's case included perjured testimony and that the prosecution knew, or should have known, of the perjury."). Convictions based on false evidence must be reversed if the false evidence "may have had an effect on the outcome of the trial." *Napue*, 360 U.S. at 272 (1959).

31. Texas also recognizes that "'[t]he Due Process Clause of the Fourteenth Amendment can be violated when the State uses false testimony to obtain a conviction, regardless of whether it does so knowingly or unknowingly.'" *Ex Parte Chavez*, 371 S.W.3d 200, 207–08 (Tex. Crim. App. 2012) (citing *Ex parte Robbins*, 360 S.W.3d 446, 459 (Tex.Crim.App.2011)); *see also Ex parte Ghahremani*, 332 S.W.3d 470, 478 (Tex. Crim. App. 2011).

32. The question is whether the testimony, taken as a whole, gives the jury a false impression. *Ghahremani*, 332 S.W.3d at 477.

33. "The present standard for materiality of false testimony is whether there is a 'reasonable likelihood that the false testimony affected the applicant's'

conviction or sentence. This standard is 'more likely to result in a finding of error' than the standard that requires the applicant to show a 'reasonable probability' that the error 'affected the outcome.'" *Ex Parte Chavez*, 371 S.W.3d at 206-07 (internal citations omitted).

34. As with Hamilton's related Eighth Amendment claim, this Court finds that Hamilton has proven the constitutional violation.

35. This Court concludes that, with respect to the first factor, the jury in Hamilton's case was allowed to consider materially inaccurate evidence – namely, any and all evidence presented at the original trial that Hamilton committed the extraneous Holman Murder. *See* Findings of Fact section I-A.

36. This evidence presented at the punishment trial was materially inaccurate in light of the firmly established evidence showing that the perpetrator of the Holman Murder held, drank out of, and set down a particular 40-ounce beer bottle on a rail outside of the store immediately prior to committing the murder – and that forensic testing on this bottle excludes Hamilton and inculpates another individual, Marshall Knight, in the Holman Murder. *See* Findings of Fact Section II-A, II-B (incorporated by reference herein); *see also* Conclusions of Law Section I.

37. In light of the above, and this Court's Findings of Fact, this Court concludes that Hamilton has proven by a preponderance of the evidence that the State

presented false and misleading evidence at Hamilton's punishment trial. Indeed, based upon the evidence before this Court, the Court finds that Hamilton has proven his false and misleading evidence claim by clear and convincing evidence.

38. This Court concludes, after analyzing the second factor, that Hamilton was prejudiced by the State's introduction of the false and misleading evidence – the extraneous Holman capital murder in this death penalty case. *See* Conclusions of Law Section I (detailed discussion of harm).

39. This Court concludes that the record shows that there is a reasonable likelihood that the false and misleading evidence – that Hamilton had committed the Holman Murder – affected the judgment of the jury during the punishment phase of trial. *See Chavez*, 371 S.W.3d at 207-08.

40. Because Hamilton had entered a guilty plea to the capital murder charge with which he was indicted, the Yellowstone Murder, Hamilton's trial went directly into the punishment phase. The Holman Murder became the State's focus during the punishment trial.

41. The extraneous capital murder was material to the analysis of both special issues – to both the future dangerousness and mitigation prongs.

42. The State relied upon the false evidence that Hamilton committed a second capital murder throughout trial, starting with opening statements and ended in

closing argument. The State used the testimony to prove that Hamilton was a future danger to and to refute the defense's mitigation case. The State called eight witnesses to prove the Holman murder, but concealed the evidence needed for Hamilton to prove he was not involved in the murder. *See also* Conclusions of Law Section I (discussing harm in more detail).

43. This Court finds that Hamilton has proven by a preponderance of the evidence that he was deprived of his right to due process of law under the Fourteenth Amendment to the U.S. Constitution, and under the due course of law provisions of the Texas Constitution, based on the State's use of false and misleading evidence at his punishment trial. This Court recommends that the Texas Court of Criminal Appeals grant relief on this claim.

44. For the reasons discussed in Conclusion of Law no. 25, and Findings of Fact section VI, the factual basis of this claim was not previously available to Mr. Hamilton. *See* Tex. C. Crim. P. art. 11.071, Sec. 5 (a)(1); *See also* Findings of Fact, VI, *supra.* Further, to the extent that this claim relies upon the unknowing use of false testimony, the legal basis of this claim was not previously available to Mr. Hamilton. *Ex Parte De La Cruz,* 466 S.W.3d 855 (Tex. Crim. App. 2015) (establishing the *Ex parte Chabot* grated new law for Texas' applicants in 2009).

III. HAMILTON WAS DEPRIVED OF HIS RIGHT TO DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION, AND UNDER THE DUE COURSE OF LAW PROVISIONS OF THE TEXAS CONSTITUTION, BECAUSE THE STATE FAILED TO DISCLOSE EXCULPATORY EVIDENCE THAT WAS MATERIAL TO HAMILTON'S DEFENSE.

45. Hamilton was deprived of his right to due process of law under the Fourteenth Amendment to the U.S. Constitution because the State failed to disclose exculpatory information that was material to Hamilton's defense. Hamilton was also deprived of his right to due course of law under Art. I, §§ 13 and 19 of the Texas Constitution because of the State's failure to disclose exculpatory information that was material to Hamilton's defense. Accordingly, this Court recommends that the Texas Court of Criminal Appeals grant relief on these claims.

46. In *Brady v. Maryland*, the Supreme Court held that suppression by the State of "evidence favorable to the accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. 83, 87 (1963). *Brady* applies even if there has been no request by the defendant, *United States v. Agurs*, 427 U.S. 97 (1976), and that this duty includes both impeachment and exculpatory evidence. *United States v. Bagley*, 473 U.S. 667 (1985).

47. The State is deemed to possess evidence that is in the possession of any part of the prosecutorial team. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). The Court finds, that in addition to the trial prosecutors, the prosecutor's investigator, and all police officers investigating this case (including Debbie Benningfield) were part of the prosecution team. *Ex Parte Miles*, 359 S.W.3d 647, 665 (Tex. Crim. App. 2012).

48. Evidence withheld by the State is material, and a new trial is required, if there is a reasonable probability that, had the evidence been disclosed to the defense, the outcome of the proceeding would have been different. *See e.g. Giglio v. U.S.*, 405 U.S. 150, 154 ("A new trial is required if 'the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury.)

49. With respect to the first and second prongs, this Court finds that the State failed to disclose favorable evidence to Hamilton – evidence that was both exculpatory and had impeachment value.

50. The prosecution team failed to disclose to Hamilton that fingerprint comparisons had been made from the fingerprints taken from the Holman Murder scene, and particularly from the 40-ounce bottle that witness Wanda Johnson saw the shooter hold, drink from, and set down on the metal rail

immediately before committing the murder. *See* Findings of Fact Sections III-IV, *supra*, fully incorporated by reference herein.

51. Wanda Johnson told police when she was first interviewed that the shooter held the bottle. Either Detective Connie Park or Sgt. Larry Hoffmaster documented Johnson's statement about the shooter holding the bottle in the Holman Murder offense report.

52. The prosecution team knew about the existence of the fingerprint comparisons. Members of the prosecution team specifically knew that Hamilton and Shawon Smith were excluded from leaving all identifiable prints at the murder scene, but the prosecution team actively concealed this information from the defense team.

53. HPD had a policy of not documenting fingerprint comparisons that resulted in an exclusion, and specifically did not document these exclusions in the offense report or any supplement to the offense report in this case. Rather, Benningfield would relay the result of the exclusion to the person who had requested that she conduct a comparison – either Detective Connie Park of Sgt. Larry Hoffmaster, the HPD lead investigators in this case.

54. The State's prosecutors were made aware of the results of the fingerprint exclusions before trial. Prosecutor Colleen Barnett assigned DA's Office investigator George "Buddy" Barringer the task of determining whether there

were fingerprint comparisons and results in the Holman Murder. Barringer documented in an internal DA's office memorandum that in the Holman Murder case "prints found were compared to defendants and eliminated." This information was never given to Hamilton or his defense, and was only revealed in the days before the habeas hearing in this Court.

55. Compounding this error, the State's prosecutors represented to both the trial court and the defense team during the pre-trial conference that there were no fingerprint comparisons. 2 RR at 8-9. Further, the State was ordered to turn over fingerprint comparisons, but specifically failed to do so. 2 RR at 14.

56. Hamilton's exclusion from the fingerprints on the bottle has significant exculpatory and impeachment value. Exculpatory evidence is that which may justify, excuse, or clear the defendant from fault. *Ex parte Miles*, 359 S.W.3d 647, 665 (Tex.Crim.App. 2012). The fingerprints constituted direct forensic evidence about the identity of the shooter in the Holman Murder, as it was an item of physical evidence the State's own witness, Wanda Johnson, observed the shooter leave behind at the murder scene. And she told police about this fact on the day she was interviewed. The testing of these prints, and Hamilton's resulting exclusion, would have been the strongest evidence available to clear Hamilton from fault in that extraneous capital murder – and

he was wholly deprived of using this evidence, despite specifically asking that fingerprint comparisons be produced.

57. Additionally, the testing results showing Hamilton's exclusion from this physical evidence would serve to dispute, disparage, deny, and contradict the entirety of the State's evidence presented suggesting Hamilton's involvement in the Holman murder – a vitally important task in Hamilton's defense of the extraneous capital murder, and what was described as the most important task in the defensive effort to keep Hamilton from receiving a death sentence.

58. Finally, although there is no direct evidence that the Houston Police Department identified Knight prior to the 2017 testing, Knight's fingerprints were in the Houston Police Department's database on account of his multiple arrests. The Houston Police Department arrested Knight shortly after they arrested Hamilton in connection with the Yellowstone Murder. Knight was arrested and booked by the Houston Police Department on February 11, 2002, many months before Hamilton's November 2002 trial ultimately took place. It could very well be the case that had this favorable evidence been turned over, and not actively suppressed, that either the State or Hamilton's defense team would have been able to figure out what was established in 2017 – Marshall Knight's identity and the fact that it was his fingerprints that were on this bottle.

59. For these reasons, and those described below, the Court finds that the withheld and favorable evidence was material – and that there is a reasonable probability that, had the evidence been disclosed, the outcome of the trial would have been different.

60. This Court applies the principles set forth in *Kyles v. Whitley*, 514 U.S. 419, 437 (1995), in conducting its materiality analysis and concluding that there is a reasonable probability that, had the evidence been disclosed, the outcome of the trial would have been different.

61. The confidence in Hamilton's punishment verdict is undermined by the State's failure to disclose the favorable evidence in this case. Restated, the undisclosed favorable evidence related to the extraneous capital murder could reasonably be taken to put the whole case in such a different light as to undermine confidence in the punishment verdict.

62. The Holman Murder – an extraneous capital murder – was, in connection with the Yellowstone Murder – the strongest future dangerousness evidence presented in this death penalty punishment case. Additionally, it was the strongest evidence that there was not a sufficient mitigating circumstances or circumstances warranting that a sentence of life imprisonment rather than death be imposed.

63. This Court does recognize that other evidence was presented in the State's future dangerousness and lack of sufficient mitigation case. *See* Findings of Fact I-B, *supra* (incorporated by reference). However, none of the other presented bad acts or extraneous crimes rise nearly to the level of a second capital murder -- none were as severe, strong, or determinative in evaluating the future dangerousness and mitigation special issues. And the State recognized as much in its closing arguments, heavily emphasizing the importance of this extraneous capital murder in the jury's analysis of the special issues.

64. The verdict given in the punishment phase of this case is not worthy of confidence where Hamilton was deprived of the most vital and important evidence illustrating that he did not commit the extraneous Holman Murder – forensic testing excluding him from an important piece of physical evidence and inculpating another in that crime.

65. This Court finds that Hamilton has proven by a preponderance of the evidence that the State violated his right to due process of law under the Fourteenth Amendment to the U.S. Constitution and under the due course of law provisions of due course of law under Art. I, §§ 13 and 19 of the Texas Constitution. Accordingly, this Court recommends that the Texas Court of Criminal Appeals grant relief on these claims.

66. Finally, the Court finds that the factual basis of this claim was not previously available to Mr. Hamilton. *See* Tex. C. Crim. P. art. 11.071, Sec. 5 (a)(1); *See* Findings of Fact, VI, *supra.* The fact that the fingerprint evidence had been compared to Hamilton's prior to trial, and that Hamilton was excluded from all fingerprint evidence discovered at the Holman murder scene was actively suppressed by the prosecution team.

CONCLUSION

Ronald Hamilton's death sentence was obtained in violation of the United States and Texas Constitutions. The Applicant has demonstrated that his death sentence was unlawfully obtained, and therefore it is recommended to the Texas Court of Criminal Appeals that relief be granted in the from of a new punishment proceeding.

By the following signature the Court adopts these findings of fact and conclusions of law in this cause number and recommends that relief be granted.

Signed this 30th day of OCTOBER, 2019

Signed:
10/30/2019

Honorable DaSean Jones

180th District Court, Harris County, Texas

Cause No. 0901049-B

THE STATE OF TEXAS	**§**	**IN THE DISTRICT COURT**
	§	
v.	**§**	**180th JUDICIAL DISTRICT**
	§	
RONALD HAMILTON, JR.	**§**	**HARRIS COUNTY, TEXAS**

ORDER

THE CLERK IS HEREBY ORDERED to prepare a transcript of all papers in cause number 901049-B and transmit same to the Court of Criminal Appeals as provided by Article 11.071 of the Texas Code of Criminal Procedure. The transcript shall include certified copies of the following documents:

1. all of the applicant's pleadings filed in cause number 901049-B including any exhibits and affidavits;
2. all of the Respondents pleadings filed in cause number 901049-B including exhibits and affidavits;
3. all orders of the Court (including the order regarding Larry Hoffmaster's deposition, and the deposition itself);
4. all proposed findings filed by either party;
5. A complete transcript of all Reporters Records relating to the proceedings which took place before this Court (including the habeas hearing and all recorded habeas proceedings);
6. the indictment, judgment, sentence, docket sheet;

7. appellate record in cause number 901049 unless they have been previously forwarded to the Court of Criminal Appeals, and;
8. Any other matters used by the convicting court in resolving issues of fact.

THE CLERK IS FURTHER ORDERED to send a copy of these findings to both parties, either by electronic means or by mail.

Signed this 30TH day of OCTOBER, 2019

_____

Honorable DaSean Jones

180th District Court, Harris County, Texas