No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

CHESTER ALAN STAPLES-PETITIONER

VS.

FIFTH CIRCUIT-RESPONDANT

ORDER:

FROM THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

Denying Chester Alan Staples, Texas prisoner#01853049, motion for certificate of appealability to appeal the district court's denial of his 28 U.S.C.§2254 application challenging his convictions for murder and unlawful possession of a firearm by a felon.

Chester A. Staples
#01853049
264 FM 3478
Huntsville, TX 77320

Chester A. Staples

pro se

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 19-40231

CHESTER ALAN STAPLES,

Petitioner-Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent-Appellee

Appeal from the United States District Court
for the Eastern District of Texas

O R D E R:

Chester Alan Staples, Texas prisoner # 01853049, moves for a certificate of appealability (COA) to appeal the district court's denial of his 28 U.S.C. § 2254 application challenging his convictions for murder and unlawful possession of a firearm by a felon. He contends that the district court erred in applying the Antiterrorism and Effective Death Penalty Act's deferential framework and denying his claims that the trial court erred with respect to its jury instructions and that trial counsel was ineffective.

A COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court has rejected a constitutional claim on the merits, a COA will be granted only if the prisoner "demonstrate[s] that reasonable jurists would

find the district court's assessment of the constitutional claims debatable or wrong" or that the issues presented are "adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks and citation omitted). Staples fails to make the required showing. *See id.*

Although Staples raised numerous other claims in his § 2254 application, he has failed to adequately brief them in his COA motion. Those claims are therefore abandoned. *See McGowen v. Thaler*, 675 F.3d 482, 497 (5th Cir. 2012); *Yohey v. Collins*, 985 F.2d 222, 225 (5th Cir. 1993). Accordingly, Staples's motion for a COA is DENIED.

/s/James E. Graves, Jr.

JAMES E. GRAVES, JR.
UNITED STATES CIRCUIT JUDGE.

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

CHESTER ALAN STAPLES-PETITIONER

VS.

FIFTH CIRCUIT-RESPONDANT

ORDER OF DISMISSAL

FROM THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

Dismissing Chester Alan Staples' pro se filed petition for writ of habeas corpus under 28 U.S.C.§2254 alleging the illegality of his convictions.

Chester A. Staples
#01853049
264 FM 3478
Huntsville, TX 77320

Chester A. Staples

pro se

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

CHESTER ALAN STAPLES, #1853049	§	
VS.	§	CIVIL ACTION NO. 6:16cv1041
DIRECTOR, TDCJ-CID	§	

ORDER OF DISMISSAL

Petitioner Chester Alan Staples ("Staples"), *pro se*, filed this petition for writ of habeas corpus under 28 U.S.C. § 2254 alleging the illegality of his convictions. The cause of action was referred to the United States Magistrate Judge, the Honorable John D. Love, for findings of fact, conclusions of law, and recommendations for the disposition of the petition.

After a review of the record and pleadings, Judge Love issued a Report, (Dkt. #31), recommending that Petitioner's petition be dismissed, with prejudice, and that Petitioner also be denied a certificate of appealability *sua sponte*. Petitioner has filed timely objections, (Dkt. #36).

As an initial matter, a party objecting to a Magistrate Judge's Report must specifically identify those findings to which he or she objects. Frivolous, conclusory, or general objections need not be considered by the District Court. *See Nettles v. Wainwright*, 677 F.2d 404, 410 n.8 (5th Cir. 1982) (*en banc*), *overruled on other grounds by Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*).

Here, Petitioner's objections are general and conclusory. Petitioner made no objections to any of Judge Love's specific findings or analyses contained in the Report—other than to say he disagrees and has shown a constitutional violation. Specifically, Petitioner begins by remarking that he "objects to all adverse rulings in the Report and Recommendation." (Dkt. #36, pg. 1). Petitioner also states that he "contends that all arguments show color and substantial merit,

APPENDIX B

[therefore] the objection still stands." *Id.* Because Petitioner does not address specific findings articulated in the Report, his objections are general in nature and will be overruled.

The crux of Petitioner's objections is his disagreement with Texas state habeas procedures. Specifically, Petitioner opines that he "objects to the Report and Recommendation due to the fact that the Court's adjudication is based on 'No Action,' 'No Hearing,' 'No conclusions of law,' and 'No findings of facts.' The Report and Recommendation is unsupported." (Dkt. #36, pg. 3). Petitioner then proceeds, for about eight pages, to explain how the Texas state habeas procedures, under Article 11.07, are inadequate because the state habeas court did not make findings of fact and conclusions of law. Petitioner then highlights how there was a dissenting opinion within his habeas adjudication—which is nonbinding and only argues that Petitioner be appointed post-conviction counsel to better articulate his claims. (Dkt. #18, pg. id. #1114-15).

However, it is well-settled than any alleged infirmities in state habeas proceedings are not grounds for federal relief. *See Haynes v. Quarterman*, 526 F.3d 189, 195 (5th Cir. 2008); *see also Rudd v. Johnson*, 256 F.3d 317, 320 (5th Cir. 2001) ("That is because an attack on the state habeas proceeding is an attack on a proceeding collateral to the detention and not the detention itself.").

Furthermore, the failure to enter express findings of fact does not preclude deference under the AEDPA because "[a]s a federal court, we are bound by the state habeas court's factual findings, both implicit and explicit." *See Young v. Dretke*, 356 F.3d 616, 629 (5th Cir. 2004); *see also Becerril v. Quarterman*, 2007 WL 1701869 *4 (S.D.Tex.—Houston Jun. 11, 2007) ("The Texas Court of Criminal Appeals adopted the trial court's findings when it denied relief. A federal court is bound by the state habeas court's factual findings, both implicit and explicit.") (citation omitted).

In Texas, when the Court of Criminal Appeals denies a state habeas petition—with or without an order or opinion—the "denial" means that the court addressed and rejected the merits

of a particular claim. *See Ex parte Torres*, 943 S.W.2d 469, 472 (Tex.Crim.App. 1997) ("In our writ jurisprudence, a 'denial' signifies that we addressed and rejected the merits of a particular claim while a 'dismissal' means that we declined to consider the claim for reasons unrelated to the claims merits."); *Miller v. Johnson*, 200 F.3d 274, 281 (5th Cir. 2000) ("Under Texas law, a denial of relief by the Court of Criminal Appeals serves as a denial of relief on the merits of the claim.").

Here, the Texas Court of Criminal Appeals denied Petitioner's state habeas application. (Dkt. # 18, pg. id. #1004). Accordingly, the state court addressed and rejected the merits of his habeas claims—irrespective of whether it entered explicit findings of fact and conclusions of law. Because the AEDPA requires federal courts to provide deference to the state habeas courts' express and implicit findings, Petitioner's objections are meritless.

The Court has conducted a careful *de novo* review of record and the Magistrate Judge's proposed findings and recommendations. *See* 28 U.S.C. §636(b)(1) (District Judge shall "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made."). Upon such *de novo* review, the Court has determined that the Report of the United States Magistrate Judge is correct and the Petitioner's objections are without merit. Accordingly, it is

ORDERED that Petitioner's objections, (Dkt. #36), are overruled and the Report of the Magistrate Judge, (Dkt. #31), is **ADOPTED** as the opinion of the District Court. It is also

ORDERED that the above-styled habeas action is **DISMISSED WITH PREJUDICE**. Moreover, it is

ORDERED that Petitioner Staples is **DENIED** a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

So **ORDERED** and **SIGNED February 25, 2019.**

Ron Clark, Senior District Judge

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

CHESTER ALAN STAPLES-PETITIONER

VS.

FIFTH CIRCUIT-RESPONDANT

REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

FROM THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

Petitioner Chester Alan Staples filed a petition, pro se, for writ of habeas corpus under 28 U.S.C§2254 alleging therillegality of his convictions. The cause of action was refered for findings of fact, conclusions of law, recommendations for the disposition of the petition.

Chester A. Staples
#01853049
264 FM 3478
Huntsville, TX 77320

Chas A. Sts
pro se

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

CHESTER ALAN STAPLES, #1853049	§	
VS.	§	CIVIL ACTION NO. 6:16cv1041
DIRECTOR, TDCJ-CID	§	

REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRTE JUDGE

Petitioner Chester Alan Staples ("Staples"), pro se, filed this petition for writ of habeas corpus under 28 U.S.C. § 2254 alleging the illegality of his convictions. The cause of action was referred for findings of fact, conclusions of law, and recommendations for the disposition of the petition.

I. Procedural Background

A jury convicted Staples of one count of murder and one count of unlawful possession of a firearm. In 2013, he was sentenced to fifty-five years' imprisonment on the murder count and to fifty years' imprisonment for the unlawful possession charge, both to be served concurrently. His convictions were affirmed on direct appeal in September 2014. *See Staples v. State*, 2014 WL 4637966 (Tex.App.—Tyler 2014). Staples then filed a petition for discretionary review, which was denied and then subsequently denied on rehearing in May 2015. The United States Supreme Court denied his petition for certiorari in November 2015, as well as his petition for rehearing. Staples then filed a state habeas application, which was denied without a written order in June 2016. This federal habeas petition, filed in September 2016, follows.

II. Factual Background

The Twelfth Court of Appeals summarized the facts of the case as follows:

APPENDIX C

> The evidence at trial showed that on May 25, 2010, Appellant went to the home of the victim, Tracey Polley, to retrieve a lawn mower that he had sold Polley and for which he had received only partial payment. The two had previously argued about the mower over the phone, and Polley told Appellant that he would shoot him if he came to get it. Appellant, a convicted felon, obtained a handgun before going to the residence.
>
> As Appellant was preparing to load the mower, Polley came out of the house with a loaded handgun. After a brief argument outside the residence, the two men opened fire on each other. Appellant was shot through the hand and in the eye. Polley was shot five times and died before paramedics arrived. The evidence is conflicting as to who fired first.
>
> The trial court's jury charge included an instruction on self-defense. Appellant requested an additional instruction on the defense of necessity, but the trial court denied his request. Ultimately, the jury found Appellant "guilty" of murder and unlawful possession of a firearm. The jury assessed his punishment at imprisonment for fifty-five years and fifty years, respectively. This appeal followed.

Staples, 2014 WL 4637966 at *1.

III. Staples's Federal Habeas Petition and the Response

Staples raises thirteen claims for relief, some of which are related. He claimed that the trial court abused its discretion by (1) denying his request for a necessity instruction; (2) including an instruction concerning unlawfully carrying a weapon; (3) overruling thirty-one of his challenges for cause during jury selection; (4) allowing the State to speak to its own witnesses outside the room before questioning; and (5) failing to explain to the jurors the exceptions to the jury instructions regarding provocation.

Additionally, Staples maintains that counsel was ineffective for (6) failing to argue the trial court's omission of the necessity instruction on direct appeal; (7) failing to confer with him about trial strategies; (8) failing to object to the State referring to the case as "the murder of Tracey Polley"; (9) arguing the merits of a necessity defense poorly; (10) failing to object to the State's improper questioning of potential jurors; (11) failing to "rectify" the State's discovery violation;

(12) failing to articulate an opening statement; and (13) failing to move for a jury instruction regarding any lesser-included offenses.

In response to his petition, Respondent asserts that Staples failed to present constitutional claims necessary for habeas review, raised claims conclusively refuted by the record, and presented meritless arguments. Staples then filed a reply, to which he elaborated on his claims and specifically addressed each of Respondent's assertions.

IV. Standard of Review

1. Federal Habeas Review

The role of federal courts in reviewing habeas corpus petitions filed by state prisoners is exceedingly narrow. A prisoner seeking federal habeas corpus review must assert a violation of a federal constitutional right; federal relief is unavailable to correct errors of state constitutional, statutory, or procedural law unless a federal issue is also present. *See Lowery v. Collins*, 988 F.2d 1364, 1367 (5th Cir. 1993); *see also Estelle v. McGuire*, 503 F.3d 408, 413 (5th Cir. 2007) ("We first note that 'federal habeas corpus relief does not lie for errors of state law.'") (internal citation omitted). When reviewing state proceedings, a federal court will not act as a "super state supreme court" to review error under state law. *Wood v. Quarterman*, 503 F.3d 408, 414 (5th Cir. 2007).

Furthermore, federal habeas review of state court proceedings is governed by the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996. Under the AEDPA, which imposed a number of habeas corpus reforms, a petitioner who is in custody "pursuant to the judgment of State court" is not entitled to federal habeas corpus relief with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

> 1. resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established law, as determined by the Supreme Court of the United States; or

225 (d)

2. resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings.

28 U.S.C. § 2254(d). The AEDPA imposes a "highly deferential standard for evaluating state court rulings," which demands that federal courts give state court decisions "the benefit of the doubt." *See Renico v. Lett*, 559 U.S. 766, 773 (2010) (internal citations omitted); *see also Cardenas v. Stephens*, 820 F.3d 197, 201-02 (5th Cir. 2016) ("Federal habeas review under the AEDPA is therefore highly deferential: The question is not whether we, in our independent judgment, believe that the state court reached the wrong result. Rather, we ask only whether the state court's judgment was so obviously incorrect as to be an objectively unreasonable resolution of the claim."). Given the high deferential standard, a state court's findings of fact are entitled to a presumption of correctness and a petitioner can only overcome that burden through clear and convincing evidence. *Reed v. Quarterman*, 504 F.3d 465, 490 (5th Cir. 2007).

2. Ineffective Assistance of Counsel

To show that trial counsel was ineffective, Staples must demonstrate both deficient performance and ensuing prejudice. *See Strickland v. Washington*, 466 U.S. 668 (1984). In evaluating whether an attorney's conduct was deficient, the question becomes whether the attorney's conduct fell below an objective standard of reasonableness based on "prevailing norms of practice." *See Loden v. McCarty*, 778 F.3d 484, 494 (5th Cir. 2016).

Moreover, to establish prejudice, the petitioner must show that there is a reasonable probability that—absent counsel's deficient performance—the outcome or result of the proceedings would have been different. *Id.*; *see also Reed v. Stephens*, 739 F.3d 753, 773 (5th Cir. 2014) (quoting *Strickland*, 466 U.S. at 687)). It is well-settled that a "reasonable probability" is one that is sufficient to undermine confidence in the outcome of the proceedings. *Strickland*, 466 U.S. at 694. Importantly, the petitioner alleging ineffective assistance must show both deficient

performance and prejudice. *See Charles v. Stephens*, 736 F.3d 380, 388 (5th Cir. 2013) ("A failure to establish either element is fatal to a petitioner's claim.") (internal citation omitted). Given the already highly deferential standard under the AEDPA, establishing a state court's application whether counsel was ineffective "is all the more difficult." *Harrington v. Richter*, 562 U.S. 86, 105 (2011); *see also Charles v. Stephens*, 736 F.3d 380, 389 (5th Cir. 2013) ("Both the *Strickland* standard and the AEDPA standard are highly deferential, and when the two apply in tandem, review is doubly so.") (internal quotations and citation omitted).

V. Discussion and Analysis

1. Claims of Trial Court Error

As an initial matter, the Court notes that Respondent has repeatedly asserted in its answer that several of Staples's claims, in which he contends that the trial court abused its discretion or committed plain error, are not cognizable in his federal petition because such claims are solely issues of state law. Respondent's assertions suggest that it believes Staples's claims of trial court error are foreclosed under federal habeas review because such claims are always state issues.

Importantly, however, the Fifth Circuit has repeatedly held that claims of trial court error may justify federal habeas relief if the error "is of such magnitude as to constitute a denial of fundamental fairness under the due process clause." *See Krajcovic v. Director*, 2017 WL 3974251 at *6 (E.D. Tex. June 30, 2017) (quoting *Skillern v. Estelle*, 720 F.2d 839, 852 (5th Cir. 1983)); *see also Brecht v. Abrahamson*, 507 U.S. 619, 637-38 (1993) (To be actionable in federal court, the trial court error must have "had substantial and injurious effect or influence in determining the jury's verdict."). In other words, trial court error may constitute a due process issue, which certainly is a federal issue. Accordingly, Staples's claims of trial court error are not necessarily foreclosed under federal habeas review.

A. Request for Necessity Jury Instruction

Staples argues that the trial court abused its discretion in denying his request for a necessity instruction. Specifically, he maintains that the instruction must be given if there is evidence sufficient to support the defensive theory. The Court's failure to provide the instruction, he claims, seriously impaired his ability to present the necessity defense.

However, this claim was specifically addressed, analyzed, and ultimately deemed meritless in Staples's direct appeal. The Twelfth Court of Appeals characterized this issue as follows:

Necessity Defense

> In his sole issue, Appellant [Staples] argues that the trial court erred in refusing to submit a jury instruction on the defense of necessity. The state disagrees, contending that Appellant is not entitled to an instruction on the defense because the harm was not imminent when he armed himself with the firearm, and because he placed himself in a dangerous situation.
> . . .
>
> The Texas Penal Code provides that
>
> [c]onduct is justified if:
>
> > (1) the actor reasonably believes the conduct is immediately necessary to avoid imminent harm;
> >
> > (2) the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing conduct; and
> >
> > (3) a legislative purpose to exclude the justification purpose to exclude the justification claimed for the conduct does not otherwise plainly appear.
>
> Tex. Penal Code Ann. § 9.22 (West 2011).
> . . .
>
> The evidence shows that Polley threatened to shoot Appellant if he came for the lawn mower. Appellant then obtained a gun and took it to Polley's house. Based on Polley's threat, Appellant may have reasonably had a generalized fear of future harm, but the undisputed facts show a complete absence of immediate necessity

> and imminent harm at the time he obtained the gun and took it to Polley's house. Therefore, any belief of Appellant that these actions were immediately necessary to avoid imminent harm was unreasonable as a matter of law. *See Miller v. State*, No. 02-11-00155-CR, 2013 WL 362792 at *8 (Tex.App.—Fort Worth, Jan. 31, 2013, pet. ref'd) (mem. op., not designated for publication) (no imminent harm where appellant carried firearm into bar because he feared bouncer had been involved in robbery of his girlfriend), *cert. denied*, 134 S.Ct. 640 (2013). Thus, the evidence does not raise the first element of the necessity defense in regard to the offense of unlawful possession of a firearm by a felon.
>
> ....
>
> While some of the evidence is conflicting, we conclude that a rational juror could accept the evidence as sufficient to prove that Appellant reasonably believed shooting Polley was immediately necessary to avoid the imminent harm of being shot again. Therefore, the evidence raises the first element of the necessity defense in regard to the offense of murder.
>
> . . .
>
> We have carefully reviewed the record for any evidence that would support a rational juror's conclusion that the harm Appellant avoided clearly outweighed the harm he inflicted. Appellant suggests no reason on appeal why his own death would have been a greater harm than Polley's, and we find no evidence in the record to support such a conclusion. Therefore we conclude that the evidence does not raise the second element required to raise the defensive issue of necessity in regards to the offense of murder.

Staples, 2014 WL 4637966 at *1-4.

Essentially, the court found that the necessity defense was neither applicable to the murder offense nor the unlawful possession of a firearm offense. With respect to the unlawful possession offense, the court reasoned that there was no immediate necessity and imminent harm when Staples retrieved a handgun and took it to Polley's house. Similarly, regarding the murder, Staples failed to demonstrate that the harm he sought to avoid—being shot again by Polley—outweighed the harm he inflicted on Polley, which included shooting Polley five times and killing him. *See, e.g., Rios v. State*, 1 S.W.3d 135 (Tex.App.—Tyler 1999, pet. ref'd) (finding that appellant did not demonstrate how his safety in prison, after being repeatedly attacked and threatened, outweighed the safety of all inmates and prison employees regarding his necessity claim for possessing a

deadly weapon in prison). As a result, the appellate court found that the trial court did not abuse its discretion in refusing to submit necessity instruction because Staples failed to meet all the elements of the defense.

Staples has failed to demonstrate this state adjudication was unreasonable or contrary to clearly established law. A review of the record demonstrates also that the appellate court's decision was not an unreasonable determination of the facts outlined in the state proceeding. For these reasons, this claim is meritless and should be dismissed.

B. Instruction on Unlawfully Carrying a Weapon

Next, Staples contends that the trial court committed plain error by allowing "an instruction to be presented to the jury that pertained to an alleged criminal act that was not presented to the grand jury for indictment." Specifically, he notes that his indictment was for murder, but the charge of the court included the offense of unlawfully carrying a weapon, which is a misdemeanor. He also notes that the statute of limitations expired on the weapon charge.

Nevertheless, this claim is refuted by the record: Staples' indictment included the charge for murder, count one, and then the charge of "intentionally or knowingly possess a firearm," count two. Furthermore, the charge of the court—which was presented to the jury before deliberations—included the charge of murder and the unlawful possession of a weapon/firearm. Because the indictment and the charge of the court are consistent with respect to Staples's charges, it is unclear how his indictment included a charge that was not within the indictment. *See Ross v. Estelle*, 694 F.2d 1008, 1011 (5th Cir. 1983) ("Absent evidence in the record, a court cannot consider a habeas petitioner's bald assertions on a critical issue in his pro se petition, unsupported and unsupportable by any else contained in the record.").

C. Overruling Challenges for Cause

Staples asserts that "counsel for defendant entered challenges for cause on venire persons in a total of 31 on the grounds that they acknowledged that they could not be fair. The court overruled 30 of these challenges."

However, as Respondent highlights, this exact claim was raised in his state habeas application, which was denied without a written order. Consequently, this Court must give great deference to the state court's adjudication of this claim—whether accompanied by a written opinion or not. *See Harrington v. Richter*, 562 U.S. 86, 98 (2011) ("By its terms, §2254(d) bars relitigation of any claim adjudicated on the merits in state court, subject only to the exceptions in §§2254(d)(1) and (2). There is no text in the statute requiring a statement of reasons."). Moreover, Staples failed to demonstrate that the state court's adjudication of the claim was unreasonable or contrary to federal law or precedent. *Id.* ("Where a state court's decision is unaccompanied by an explanation, the habeas petitioner's burden still must be met by showing there was no reasonable basis for the state court to deny relief."); *see also States v. Hall*, 2017 WL 4422523 at *1 (5th Cir. Oct. 4, 2017) (same). This claim should be dismissed.

131 S.Ct. 770 → refer to 131 S.Ct. 759

D. State Conversing with a Witness

Next, Staples contends that the court abused its discretion by allowing the State to converse with its own witness for thirty seconds outside of the courtroom, immediately prior to the witness' testimony. Specifically, he denotes that permitting the State to "seemingly coach" its witness was unprofessional and prejudicial, further remarking "[f]or the trial court Judge to let the Prosecutor dominate the courtroom like a [Monarch] of some kind was abuse of discretion."

As the Respondent asserts, again, this exact claim was addressed by the state habeas court and denied. The state court's denial should be given deference. *See Woodford v. Visciotti*, 537

U.S. 19, 360 (2002) (explaining that §2254(d)'s standard is highly deferential, which demands that state court decisions be given the benefit of the doubt.") (internal citation omitted). Furthermore, even without that deference, Staples's claim is wholly conclusory: His claim rests on the conclusion that the State "seemingly" coached the witness, of which he proffers no support or evidence. Because mere conclusory statements do not raise or present constitutional issues, this claim should be dismissed. *See United States v. Jones*, 614 F.2d 80 (5th Cir.), *cert. denied*, 446 U.S. 945 (1980).

E. Provocation Instruction

Staples further maintains that the trial court committed plain error by giving the jurors an incomplete instruction regarding provocation. Specifically, as he maintained in his state habeas application, "the instruction did not properly advise the jury that the accused's right of self-defense would not necessarily be abridged by the fact that he carried arms to the scene of difficulty."

As Staples raised this claim in his state habeas application, which was denied, the adjudication of that claim is state court must be given great deference. The crux of his claim is that the jury was never instructed on the principle that simply because an individual carries a weapon, that individual may not exercise his or her right to self-defense.

However, Staples's characterization of this legal "principle" is misguided and omits crucial facts. Staples arrived to the situation while he unlawfully possessed a weapon, which does not justify the lawful use of force when he sought discussion or explanation about his lawn mower. Under the pertinent portion of the Texas statute, the use of force is **not justified**:

> . . .
>
> (4) if the actor provoked the other's use or attempted use of unlawful force, unless:
>
> > (A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and

(B) the other nevertheless continues or attempts to use unlawful force against the actor; or

(5) **if the actor sought an explanation from or discussion with the other person concerning the actor's differences with the other person while the actor was:**

(A) **carrying a weapon in violation of Section 46.02**; or

(B) possessing or transporting a weapon in violation of Section 46.05

§ 9.31, Tex. Penal Code (2007) (emphasis supplied). Accordingly, because Staples was a convicted felon—prohibited from carrying a weapon under section 46.02—who sought an explanation/discussion from Polley about the lawn mower while he unlawfully carried his weapon, his use of force was not justified—even if provoked. The record demonstrates that the jury was given this instruction on self-defense, rendering it unclear how the jury was not advised regarding provocation. This claim should therefore be dismissed.

2. Claims of Ineffective Assistance

Staples also raised eight claims of ineffective assistance of counsel, for which he must demonstrate both counsel's deficient performance and ensuing prejudice.

A. Appellate Counsel

First, Staples contends that appellate counsel was ineffective on direct appeal because he failed to raise the "confession and avoidance" doctrine. He maintains that even though the doctrine was the sole issue on direct appeal, it "should have been properly addressed."

As an initial matter, this exact claim was presented to the state habeas court and was denied. Therefore, Staples must overcome the difficult burden in demonstrating that the decision was unreasonable or contrary to federal law. Second, the claim is conclusively refuted by the record: Appellate counsel raised the issue of necessity on direct appeal, which embraces the "confession and avoidance" doctrine under Texas law. Accordingly, for reasons explained below, appellate counsel cannot be ineffective for failing to do something in which he, in fact, did.

Under Texas law, the "confession and avoidance" doctrine stems from the defenses of justification, which include both self-defense and the necessity defense. *See Jordan v. Stephens*, 2014 WL 4379086 at *4 (N.D. Tex.—Wichita Falls, Sept. 3, 2014). The "confession and avoidance" doctrine, generally, requires the defendant to admit to all elements of the charge, including the act/omission and the requisite mental state. *See Juarez v. State*, 308 S.W.3d 398, 403 (Tex.Crim.App. 2010). In other words, much like the self-defense and necessity defense, the "confession and avoidance" doctrine requires that the defendant admit that he committed the conduct but was justified in doing so.

However, because the defense of necessity embraces the "confession and avoidance" doctrine, which has already been found inapplicable to his defense, the claim once again fails. Counsel cannot be ineffective for failing to raise a meritless issue or objection. *See Green v. Johnson*, 160 F.3d 1029, 1037 (5th Cir. 1998); *Turner v. Quarterman*, 481 F.3d 292, 298 (5th Cir. 2007). As mentioned, the appellate court found the necessity defense inapplicable to both the murder and weapon charge because (1) there was no immediate necessity or harm that required Staples to bring a handgun with him to the victim's residence; and (2) Staples could not illustrate that the harm he sought to avoid outweighed the harm he inflicted on the deceased. Accordingly, because the "confession and avoidance" doctrine was raised on direct appeal through the necessity issue—which was meritless at the outset—this claim must fail. *See Juarez*, 308 S.W.3d at 406 ("The doctrine of confession and avoidance applies to the Penal Code's necessity defense.").

B. Trial Strategies

Next, Staples maintains that counsel was ineffective for failing to confer with him regarding potential trial strategies. Specifically, he states that counsel "never conferred with me prior to trial (other than in the courtroom) about developing a strategic line of defense to be

presented at trial." He notes that if counsel would have conferred with him, counsel "could have prepared some type of defense," further highlighting that three witnesses would have testified that he was "attacked by the deceased."

First and foremost, Staples offers no evidence or proof that counsel never once conferred with him regarding trial strategies. His declaration that counsel "didn't know what to do. So he done nothing at all," is wholly conclusory and does not raise a constitutional issue, and can be dismissed for this reason alone.

Nevertheless, this claim reverts back to Staples main complaint: His conduct, which resulted in Polley's death, was justified because he was attacked. However, this issue was presented at trial, on direct appeal, and within his state habeas application—and was rejected each time. The defense of necessity was not applicable in Staples's case. To the extent that Staples argues that the reason why the necessity instruction was not given to the jury was because of counsel's poor argument, the Court notes that the Constitution requires only that a criminal defendant receive adequate counsel—not error-free or perfect counsel. *See U.S. v. Freeman*, 818 F.3d 175, 178 (5th Cir. 2016); *Emery v. Johnson*, 139 F.3d 191, 197 (5th Cir. 1997) ("The Sixth Amendment does not guarantee criminal defendants the right to error-free representation.").

C. Failing to Object to the "Murder of Tracy Polley"

Staples contends that counsel was ineffective for failing to object to the State's repeated characterization of his case as "the murder of Tracy Polley." He argues that the "prosecutor was leading the jury down a path of destruction for the defense," by muttering this comments.

Again, this claim was previously raised in his state habeas application and is wholly conclusory. While he contends that these comments were prejudicial, he fails to explain or identify

how. Staples provides no details or specifics as to how these comments harmed his defense, which does not raise a constitutional issue. This claim should be dismissed.

D. Arguing Poorly

While this claim is not entirely clear, it seems that Staples asserts that counsel was ineffective for poorly arguing the need for a necessity instruction. Specifically, he denotes that "when trial court Judge questioned counsel for defendant about matters related to the requested instruction on the 'defense of necessity,' counsel for [the defendant's] response was 'I do not know.'"

This claim remains meritless, as the necessity defense was inapplicable to Staples's case. Even if it were applicable, as explained above, the Constitution does not guarantee perfect representation. Accordingly, even if counsel argued for the instruction poorly or incorrectly, this claim would still fail.

E. Improper Juror Questioning

Staples contends that counsel was also ineffective for failing to object to the following line of questioning regarding intent during *voir dire*:

> STATE: So how does the State prove or show what someone intended to do?
>
> POTENTIAL JUROR: Evidence you make when you investigate the crime. If there's DNA or whatever kind of evidence that he left, maybe a bullet, the shell or whatever you may have.
>
> STATE: Okay. So that proves he did it. I guess that would also prove his intent to do so, would you agree?
>
> Potential Juror: Yes. He planned it.

According to Staples, counsel "should not have let this happen without an objection." He elaborates no further.

However, as Respondent maintains, Staples fails to point to a reason for which an objection would have been required. Simply stating—without more—that the State's questioning of potential jurors was prejudicial or harmful is conclusory and speculative, at best. This claim should be dismissed.

F. Discovery Violation

Staples asserts that counsel was ineffective for failing to object to the State's purported discovery violation. Specifically, Staples highlights that the trial court issued a discovery order that required the State to provide the defense with evidence and documents within fifteen days before trial; however, on the second day of trial, the State informed the court and the defense that it had just received a patrol video from the scene, which had not been in the State's file. The court ended proceedings early to allow the defense to review the tape. Staples maintains that this constitutes a discovery violation that should have been rectified, as the tape had not been turned over within fifteen days before trial. Moreover, he states that "for counsel's entire time to review and investigate the contents of the video to consist of one night is not adequate for preparation of defensive action in a murder trial, or a trial for any kind for that matter."

First and foremost, Staples's assumption that counsel could not adequately review the contents of the tape within one evening is purely speculation. Second, Staples cannot show that an objection on this basis would have been meritorious because the State had just received the tape that morning and informed the court immediately. Likewise, because defense counsel had ample time to review the tape, Staples cannot demonstrate that the failure to object at that moment harmed his case. In fact, Staples provides no support for his contention that counsel's failure to object was harmful to his case and does not identify what counsel should have done to "rectify" the situation. This claim should be dismissed.

G. Failure to Articulate an Opening Statement

Staples also believes that counsel's failure to give an opening statement was ineffective. He argues that "counsel for defendant did not attempt to inform the jury of any nature of defense" and "to make no opening statement falls below the standards of *Strickland*, and this deficient performance resulted in a conviction."

Nonetheless, contrary to Staples's contention, the failure to present an opening statement does not necessarily constitute ineffective assistance of counsel—for counsel's decision to render an opening statement is a strategic choice. *See Murray v. Maggio*, 736 F.2d 279, 283 (5th Cir. 1984) ("The decision whether to present an opening statement falls within the zone of trial strategy."); *Gilliard v. Scroggy*, 847 F.2d 1141, 1147 (5th Cir. 1988) ("Gilliard's counsel chose not to make an opening statement. That is the essence of a strategic choice."). Because strategic choices are generally not the basis for constitutionally ineffectiveness unless the choices permeate the entire trial with obvious unfairness, Staples's claim fails. *Crane v. Johnson*, 178 F.3d 309, 314 (5th Cir. 1999) (quoting *Garland v. Maggio*, 717 F.2d 199, 206 (5th Cir. 1983)). Staples has presented nothing to demonstrate that counsel's failure to give an opening statement permeated throughout his trial. Moreover, as this claim was raised in his state habeas application, which was denied, Staples failed to demonstrate that the state court's denial was unreasonable or contrary to federal law. This claim should be dismissed.

H. Lesser-Included Offense

In his final claim, Staples argues that counsel was ineffective for failing to seek an instruction regarding a lesser-included offense, particularly the offense of manslaughter.

However, any request for a manslaughter instruction would have undermined the defense theory at trial. In Texas, a person commits manslaughter if he or she recklessly causes the death

of another. *See* Tex. Penal Code Ann. § 19.04 (2010). By arguing self-defense, the defendant is necessarily asserting that his actions were justified and, therefore, he or she did not act recklessly. *See Alonzo v. State*, 353 S.W.3d 778, 782 (Tex.Crim.App. 2011). ("An assertion of a [self-defense] justification defense is an assertion that the defendant's actions were justified. An assertion that a defendant acted recklessly is an assertion that the defendant was aware of and consciously disregarded a substantial and unjustifiable risk in gross deviation from the standard of care that an ordinary person would have exercised in those same circumstances. A fact-finder therefore cannot find that a defendant acted recklessly and in self-defense.").

Therefore, Staples cannot also claim that his justified actions were reckless. If Staples was justified in shooting Polley in self-defense, then it stands to reason that his actions in doing so would not have been reckless or without conscious regard. *See Alonzo*, 353 S.W.3d at 782 ("The cases cited by the Court of Appeals for the proposition that 'Texas courts have routinely noted that an individual cannot recklessly act in self-defense' all dealt with murder defendant who argued self-defense and then requested that the jury be charged with the lesser-included offense of manslaughter. The very reason for denying the manslaughter charges was that the defendants' evidence was that in committing the homicide, they acted intentionally in self-defense, not merely recklessly. We do not call these cases into question.") (internal citations omitted).

Because the defense theory at trial was self-defense, Staples cannot show that he was prejudiced by counsel's failure to request a manslaughter instruction—which would have been antithetical to the defense's case. Staples cannot show that the outcome of the proceedings would have been different had counsel requested an instruction that would have been inconsistent with the articulated defense theory. *See, e.g., Okonkqwo v. State*, 398 S.W.3d 689, 697 (Tex.Crim.App. 2013) ("Under the record of the case, we conclude that counsel was not objectively unreasonable

by failing to request an instruction on mistake of fact because that theory was inconsistent with a theory that counsel advanced at trial, and it would have misled the jury as to the State's burden of proof."); *Hamner v. Deputy Secretary of Fla. Dept. of Corrections*, 438 Fed.App'x 875, 880-82 (11th Cir. 2011) (Notably, Hamner's trial counsel was able to elicit information from witnesses about the victim's mental health issues before her prior rape. The defense's theory of the case, however, did not rely heavily upon these facts. Instead, the defense argued that the victim intentionally fabricated the rape story because he feared she would lose her job. Evidence that, at the hospital, the victim appeared delusional and possibly was having a flashback to the earlier rape would have undermined that theory."). For these reasons, this claim should be dismissed.

VI. Conclusion

Staples has failed to demonstrate that the state habeas court's adjudication of his claims resulted in a decision that was contrary to or involved an unreasonable application of clearly established federal law, as determined by the United States Supreme Court, or resulted in a decision based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. His application for federal habeas corpus relief is thus without merit.

VII. Certificate of Appealability

"A state prisoner whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal." *Buck v. Davis*, 137 S. Ct. 759, 773 (2017). Instead, under 28 U.S.C. § 2253(c)(1), he must first obtain a certificate of appealability ("COA") from a circuit justice or judge. *Id.* Although Petitioner has not yet filed a notice of appeal, the court may address whether he would be entitled to a certificate of appealability. *See Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000) (A district court may *sua sponte* rule on a certificate of appealability because "the district court that denies a petitioner relief is in the best position to

determine whether the petitioner has made a substantial showing of a denial of a constitutional right on the issues before the court. Further briefing and argument on the very issues the court has just ruled on would be repetitious.").

A certificate of appealability may issue only if a petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To make a substantial showing, the petitioner need only show that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). The Supreme Court recently emphasized that the COA inquiry "is not coextensive with merits analysis" and "should be decided without 'full consideration of the factual or legal bases adduced in support of the claims.'" *Buck*, 137 S. Ct. 773 (quoting *Miller-El*, 537 U.S. at 336). Moreover, "[w]hen the district court denied relief on procedural grounds, the petitioner seeking a COA must further show that 'jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" *Rhoades v. Davis*, 852 F.3d 422, 427 (5th Cir. 2017) (quoting *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012)).

Here, Staples failed to present a substantial showing of a denial of a constitutional right or that the issues he has presented are debatable among jurists of reason. He also failed to demonstrate that a court could resolve the issues in a different manner or that questions exist warranting further proceedings. Accordingly, he is not entitled to a certificate of appealability.

RECOMMENDATION

For the foregoing reasons, it is recommended that the above-styled application for the writ of habeas corpus be dismissed with prejudice. It is further recommended that Petitioner Staples be denied a certificate of appeal *sua sponte*.

Within fourteen (14) days after receipt of the Magistrate Judge's Report, any party may serve and file written objections to the findings and recommendations contained in the Report.

A party's failure to file written objections to the findings, conclusions and recommendations contained in this Report within fourteen days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto Ass'n.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

So ORDERED and SIGNED this 28th day of November, 2017.

JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

No. 19-40231

Chester Alan Staples, Petitioner-Appellant

V.

Lorie Davis, Director, Texas Department of Criminal Justice,
Correctional Institutions division,
Respondant-Appellee

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

_____

Petition for a Writ of Mandamus
to the United States District Court for the
Eastern District of Texas

Chester A. Staples
#01853049
264 FM 3478
Huntsville, TX 77320

Chester A. Staples

pro se

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-40231

CHESTER ALAN STAPLES,

Petitioner - Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent - Appellee

Petition for a Writ of Mandamus
to the United States District Court for the
Eastern District of Texas

Before HAYNES, GRAVES, and ENGELHARDT, Circuit Judges.

PER CURIAM:

This panel previously denied Appellant's motion for certificate of appealability. The panel has considered Appellant's motion for reconsideration. IT IS ORDERED that the motion is DENIED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

May 19, 2020

#01853049
Mr. Chester Alan Staples
CID Estelle Unit
264 FM 3478
Huntsville, TX 77320-3320

No. 19-40231 Chester Staples v. Lorie Davis, Director
USDC No. 6:16-CV-1041

Dear Mr. Staples,

Your petition for rehearing filed on May 18, 2020 has been accepted in its present form but is being treated as a motion for reconsideration. A petition for panel rehearing of an administrative order is not allowed.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Monica R. Washington, Deputy Clerk
504-310-7705

cc:
Ms. Cara Hanna
Mr. Benjamin Graham Lancaster

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

IN THE COURT OF CRIMINAL APPEALS

OF Texas

NO. WR-85,187-01

EX PARTE CHESTER ALAN STAPLES, Applicant

DENIAL AND DISSENTING OPINION

ON APPLICATION FOR WRIT OF HABEAS CORPUS
CAUSE NO. 30979-A IN THE 3RD JUDICIAL DISTRICT COURT
FROM ANDERSON COUNTY

Chester A. Staples
#01853049
264 FM 3478
Huntsville, TX 77320

Chester A. Staples
pro se

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

6/29/2016
STAPLES, CHESTER ALAN Tr. Ct. No. 30979-A **WR-85,187-01**
This is to advise that the Court has denied without written order the application for writ of habeas corpus. PRESIDING JUDGE KELLER NOT PARTICIPATING; JUDGE MEYERS NOT PARTICIPATING

Abel Acosta, Clerk

CHESTER ALAN STAPLES
ESTELLE UNIT - TDC # 1853049
264 FM 3478
HUNTSVILLE, TX 77320-3322

COURT OF CRIMINAL APPEALS

P.O. BOX 12308, CAPITOL STATION
AUSTIN, TEXAS 78711

June 29, 2016

Chester Alan Staples
Estelle Unit - TDC # 1853049
264 FM 3478
Huntsville, TX 77320-3322

Re: STAPLES, CHESTER ALAN
CCA No. WR-85,187-01
Trial Court Case No. 30979-A

A dissenting opinion has issued in the above styled case.

Sincerely,

Abel Acosta, Clerk

cc: District Clerk Anderson County (DELIVERED VIA E-MAIL)
District Attorney Anderson County (DELIVERED VIA E-MAIL)

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-85,187-01

EX PARTE CHESTER ALAN STAPLES, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 30979-A IN THE 3RD JUDICIAL DISTRICT COURT FROM ANDERSON COUNTY

ALCALA, J., filed a dissenting opinion in which JOHNSON, J., joined.

DISSENTING OPINION

This is another claim of ineffective assistance of counsel addressed by this Court based on pleadings that have been presented by a *pro se* litigant. I respectfully dissent from this Court's judgment that denies post-conviction habeas relief in this case. Instead, I would remand this case to the habeas court for the appointment of counsel in the interests of justice, permit counsel to amend applicant's ineffectiveness-claim pleadings, and decide the ultimate merits of applicant's claim after those events.

As I have previously expressed in my dissenting opinions in *Ex parte Garcia* and *Ex parte Honish*, in my view, an indigent *pro se* habeas applicant is entitled to the assistance of appointed post-conviction counsel in the interests of justice whenever either the pleadings

or the face of the record gives rise to a colorable ineffective-assistance claim. *See Ex parte Garcia*, No. WR-83,681-01, 2016 WL 1358947 (Tex. Crim. App. Apr. 6, 2016) (Alcala, J., dissenting); *Ex parte Honish,* No. WR-79,976-05, 2016 WL 3193384 (Tex. Crim. App. June 8, 2016) (Alcala, J., dissenting). Without the appointment of counsel in those situations, I have observed that it is unlikely that most *pro se* applicants will be able to properly present their substantial ineffective-assistance claims, thereby increasing the likelihood that such claims will be deprived of meaningful consideration on post-conviction review and, as a result, that violations of defendants' fundamental Sixth Amendment rights will go unremedied. *See Garcia*, 2016 WL 1358947, slip op. at 2, 16; *Honish*, 2016 WL 3193384, at *2. And, as I have observed in my prior opinions, the statutory basis for appointing counsel to an indigent *pro se* habeas applicant in the interests of justice already exists in Texas, but that statutory basis is seldom used by this Court in order to mandate the appointment of counsel in these situations. *See* TEX. CODE CRIM. PROC. art. 1.051(d)(3) ("An eligible indigent defendant is entitled to have the trial court appoint an attorney to represent him in . . . a habeas corpus proceeding if the court concludes that the interests of justice require representation.").

Applying these principles here, and having liberally construed applicant's *pro se* pleadings to examine them for substantive merit rather than for technical procedural compliance, I conclude that these pleadings are adequate to give rise to a colorable ineffective-assistance claim that would justify the appointment of counsel in the interests of

justice under the current Texas statutory scheme. In order to afford applicant his one full bite at the apple in this initial habeas proceeding, and in order to ensure that applicant has been fully afforded his Sixth Amendment rights, I would remand this case to the habeas court for the appointment of post-conviction counsel and further proceedings as to applicant's ineffectiveness claims. Because the Court instead declines to do so and denies relief, I respectfully dissent.

Filed: June 29, 2016

Do Not Publish

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Chester Alan Staples pro se, Petitioner

VS

The United States Court of Appeals
for the Fifth Circuit

REQUEST FOR CERTIFICATE OF APPEALABILITY
WITH BRIEF IN SUPPORT

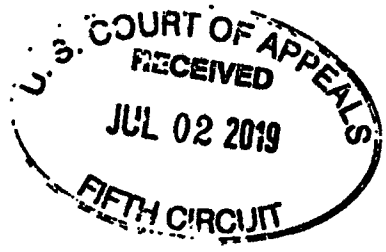
Chester A. Staples
#01853049
264 FM 3478
Huntsville, TX 77320

Chester A. Staples
pro se

No. 19-40231

In the United States Court of Appeals

for the Fifth Circuit



Comes now:

Chester Alan Staples
pro se

Request for Certificate of Appealability

with

Brief in support

Chester Alan Staples
pro se
264 FM 3478
Estelle Unit
Huntsville, Tx 77320

APPENDIX F

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

TO THE:

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

OFFICE OF THE CLERK

No. 19-40231 Chester Staples v. Lorie Davis, Director
USDC No. 6:16-cv-1041

"MOTION REQUESTING CERTIFICATE OF APPEALABILITY

I. INTRODUCTION

On February 25,2019 the UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION ENTERED AN ORDER OF DISMISSAL.

ORDERED that Petitioner's objections, (Dkt.#36), are overruled and the Report of the magistrate Judge, (Dkt.#31), is ADOPTED as the opinion of the District Court. It is also ORDERED that the habeas action is DISMISSED WITH PREJUDICE.

Moreover, it is ORDERED that the Petitioner Staples is DENIED a Certificate of Appealability sua sponte.

II. ARGUMENT

LEGAL STANDARDS FOR CERTIFICATE OF APPEALABILITY

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a habeas petitioner cannot appeal from a District Court judgement unless he obtains a Certificate of Appealability. See 28 USC § 2253.

A petitioner is entitled to a Certificate of Appealability if he Makes "substantial showing of the denial of a Constitutional Right", 28 USC § 2253(c)(2). The U.S. Supreme Court in Barefoot

v. Estelle, 463 US 880,893 (1983), held that this means the appellant need not show that he would prevail on the merits, but must demonstrate that the issues are debatable among juriat of reason; or that the questions are adequate to proceed further". Miller-El v. Cockrell, 537 US 322,338 (2003). Therefore, doubts as to whether to issue a Certificate of Appealability should be resolved in favor of the appellant. Fuller v. Johnson, 114 F.3d 491,495 (5th Cir. 1997); Buxton v. Collins, 925 F.3d 816, 819 %th Cir. 1991).

I. JURISDICTION

The District Court for the Eastern District of Texas had jurisdiction over my habeas petition because I alleged that I was in custody of the state of Texas in violation of the Constitution of the United States. See 28 USC § 2241(c)(3). This request for a Certificate of Appealability is taken from the final judgement entered on February 25,2019 dismissing the petition for a writ of habeas corpus with prejudice. I filed a Notice of Appeal with this Court and received a notice from the Clerk that stated: "We have docketed your appeal." March 22,2019. This Court has jurisdiction to grant the Certificate of Appealability, under 28 U.S.C. 2253.

II.STATEMENT OF THE CASE: QUESTIONS PRESENTED

1. Whether the Court abused it's discretion by denying a timely requested instruction on, "Defense of Necessity."
2. Whether the Court committed plain error at trial by presenting in the "Charge of the Court" an instruction on "Unlawfully Carrying a Weapon", (Tex.Pen.Code § 46.02), when it was not presented to the grand jury for indictment.
3. Whether assistance of Counsel at trial was ineffective when Counsel did not object to the instruction on "Unlawfully Carrying a Weapon", (Te. Pen. Code § 46.02), when it was not presented to the granf jury for indictment, which is a Class A misdemeanor that the Statute of Limitations had also expired on.
4. Whether the jury instruction constructively amended the indictment by including the instruction (Tex. Pen. Code § 46.02).

5. Whether the Court abused it's discretion by not dismissing jurors that were "Challenged for Cause" when they made it clear to the Court that they could not be fair.
6. Whether Counsel was ineffective for not requesting an instruction on the lesser included offense of manslaughter.
7. Whether Assistance of Counsel was ineffective for lack of pre-trial investigation.

STATEMENT OF THE CASE

I, Chester Alan Staples, was indicted for: Murder/Unl Poss of a Firearm by a Felon, Counts 1&2. Filed for Record (2012 JUL PM 12:59) GJ#2 in Anderson County, Tx. Cause No. 30979. The trial was by jury and I was found guilty on counts 1&2 on April 11,2013 and sentenced to confinement in the Texas Department of Criminal Justice on April 12,2013. Timely Notice of Appeal was given to the Court.

The sole issue presented on Direct Appeal was the denial of the requested instruction for Tex. Pen, Code 9.22, Necessity Defense. If the trial court committed reversible error in failing to grant this request. Direct Appeal was presented to the Twelfth Court of Appeals, Tyler Texas. Convictions were affirmed by that Court. Writ of habeas corpus under Code of Criminal Procedure, Article 11.07 was filed by me April 27,2016 in the convicting court, which was sent to the Court of Criminal Appeals and denied without written order on June 29,2016. A Petition for Writ of habeas corpus: 28 U.S.C. § 2254 was filed in the United States District

Court, for the Eastern District of Texas, Tyler Division on July 25,2016. (Dkt.#1) Case# 6:16-cv-01041-RC-JDL which was dismissed with prejudice on Feruary 25,2019. (Dkt.#52). In this case the Respondant was Ordered to SHOW CAUSE September 13,2016 (Dkt.#10). Response to 1 was filed January 13,2017 (DKT#19). My Reply to the Response was filed May 12,2017 (Dkt#27) with a Motion for Correction or Modification, and a Motion for evidentiary hearing, (Dkt#25-26). Those Motions were denied, (Dkt#28) 05/16/2017. Report and Recommendation was filed by the Magistrate on 11/28/2017 (Dkt#31). Objection to the Report and Recommendation was filed by me on 01/30/2018 (Dkt#36). Motion for Leave to file Motion Requesting Discovery was filed by me on 08/14/2018 (Dkt#37-#38). Order denying 37 & 38 was filed on 08/20/2018 (Dkt#42). Motion to vacate Order denying 37 & 38 was filed by me on 08/28/2018 (Dkt#45). Order of Dismissal. Ordered that the habeas action is dismissed with prejudice. Ordered that petitioner Staples is denied a Certificate of Appealability sua sponte. Ordered that any and all Motions that may be pending in this action are hereby denied was filed on 02/25/2019 (Dkt#51). Final Judgement that Petitioner's case is dismissed with prejudice was filed on 02/26/2019 (Dkt#52). Notice of Appeal was filed by me on 03/14/2019 (Dkt#53). Motion for Findings of Facts and Conclusions of Law was filed by me on 03/14/2019 (Dkt#54). Order denying 54 was filed 03/19/2019 (Dkt#55).

STATEMENT OF FACTS

On May 25,2010 I, Chester Staples, called Tracy Polley and told him I was coming to get the mower that he would nt finish paying for. When I got to his house and backed my haul trailer up to the mower, his mechanic went inside and told him I was there to get the mower. He came out with a psitol and walked up and hit mw, breaking my jaw. We both started shooting. He was shot five times and I was shot twice. He was pronounced dead at the scene. I was life flighted to a hospital in Tyler, Texas.

SUMMARY OF ARGUMENT

The State of Texas sought to charge me with murder and unlawful poss. of a firearm by a felon, and presented this to the grand jurors. (exhibit #1 attached) I was indicted on both counts and proceeded to trial by jury. The indictment listed no Article of the Texas Penal Code, but did in fact return (exhibit #1). Judgement of Conviction by Jury (exhibit #2 attached) shows Offense for which defendant was convicted: CT1 MURDER / CT2: Unl Poss. Firearm by Felon. Charging Instrument: INDICTMENT Statute of Offense: CT1: 19.02(b)(1)PC / CT2: 46.02(a) PC. Degree of Offense: CT1: 1St DEGREE FELONY-ENH 25 to life / CT2: 3RD DEGREE FELONY-ENH 25 to life.

The "Charge of the Court" included on instruction on Section 46.02 of the Texas Penal Code. [to wit] Unlawfully Carrying Weapons. This is a Class A misdemeaner, except as provided by Subsection(c). "Charge of the Court" (exhibit #3 attached).

The Court denied a timely requested instruction on "Necessity Defense". (exhibit #4 attached).

"Charge of the Court" contained an instruction on a criminal act that was not presented to the grand jury for indictment. That being "Unlawfully Carrying a Weapon" (Tex. Pen. Code 46.02). Refer to exhibits #1 and #3. Counsel was ineffective for not objecting to the instruction of (Tex. Pen. Code 46.02) being presented to the jury.

The Court abused it's discretion by not dismissing jurors when Counsel had entered a Challenge for Cause. Counsel presented to the Court that jurors challenged had made it plainly clear that they could not be fair.

Counsel was ineffective for not requesting an instruction on the lesser-included offense of manslaughter.

The ORDER OF DISMISSAL from the District Court was based on state habeas court's factual findings, both implicit and explicit. Stating that the Federal Court is bound by the state habeas court's factual findings, both implicit and explicit. I present to this Court the CLERK"S SUMMARY SHEET in Trial Court Writ No. 30979-A of the Anderson County Third Judicial District Court. (exhibit #5 attached). The Clerk's Summary Sheet will show that there were no Findings and Conclusions filed.

The actions and errors of the Court and Counsel presented in the petitions for post-conviction relief will show that defendant's Constitutional Rights have been violated. The 5th, 5th, and 14th

Amendments of the United States Conctitution, that are guaranteed. Leading to an unreasonable outcome at trial. Defendant prays this Court grant the Certificate of Appealability.

STANDARD OF REVIEW

1. "A defendant is entitled to every defensive issue raised by the evidence, regardless of whether it is strong, feeble, unimpeached, or contridicted, even if the Court thinks that the testimony is not worthy of belief. (Walters v. State, 247 S.W.3d 204,209 (Tex.Crim.App.2007). This rule is designed to insure that the jury, not the judge, will decide the relative credibility of the evidence." (Granger v, State, 8 S.W. 3d 36,38 (Tex.Crim.App. 1999). "If evidence is such that a rational juror could expect it as sufficient to prove a defensive element, it is said to raise that element. "ID". Thus if the issue is raised by any party, refusal to submit requested instruction is an abuse of discretion." (Darty v. State, 994 S.W. 2d 215,218 (Tex.App.San-Antonio 1999). (United States Court of Appeals for The Fifth Circuit, 960 F.2d 426 (1992). Crim.Law&Proc.>Jury Instr.>Request to Charge. In order for a defendant to be entitled to an instruction, any evidence in support of the defensive theory must be sufficient for a reasonable jury to rule in favor of defendant on that theory. The refusal to give a requested jury instruction constitutes error if the instruction (1) was substantially correct; (2) was not substantially covered in the charge given to the jury; and (3) concerned an important issue so that the failure to give

it seriously impaired the defendant's ability to present a given defense.

ARGUMENT

I'm asking this Court to decide whether it is a reversible error for the trial Court's refusal to present to the jury the requested instruction on the "Necessity Defense". I believe that it is substantially presented in previous cases that it is for the jury to decide whether the instruction applies to the present case. If so, has the guaranteed right to due process been violated?

STANDARD OF REVIEW

2. Amendment [V] Constitution of the United States: No person shall be held to answer for a capitol. or other wise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the mi litia, when in actual service in time of war or public danger; nor shall any persom be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of the law; nor shall private property be taken for public use, without just compensation.

ARGUMENT

I am asking the Court to decide whether the convicting Court committed Plain Error at trial by presenting to the jury, vie, "Charge of the Court", an instruction on "unlawfully Carrying

a Weapon", (Tex.Pen.Code § 46.02), when it was not presented to the grand jury for indictment. Thus, resulting in a violation of Amendment [V] of the Constitution of the United States.

STANDARD OF REVIEW

3. Texas Criminal Procedure-Code and Rules: Article 12.02 Misdemeanors (a) An indictment or information for any Class A or Class B misdemeanor may be presented with in two years from the date of the offense, and not afterward.

ARGUMENT

Was counsel ineffective for not objecting to the instruction of (Tex. Pen. Code 46.02), "Unlawfully Carrying a Weapon". This statute is a Class A misdemeanor which had hot been presented to the grand jury for indictment and the statute of limitations, being two years, had expired on. The comission of the offense at hand was committed on 05/25/2010. The indictment was presented on 07/12/2012. Counsel should have objected to the presentation of an instruction that was inadmissable, pursuant to the Texas Criminal Procedure-Code and Rules. Would this lack of action be considered a violation of Amendment [VI] Constitution of the United States?

STANDARD OF REVIEW

4. A jury instruction that constructively amends a grand jury indictment constitutes per se reversible error because such an instruction violates a defendant's Constitutional Right to be tried only on charges presented in a grand jury indictment and

creates the possibility that the defendant may have been convicted on grounds not alleged in the indictment. Stirone v. U.S. 212,217-18, 80 S.Ct. 270,273-74 (1960) Peel, 837 F.2d 979). A defendant has the right to be tried solely on the charges presented in an indictment returned by the grand jury. Once the grand jury has spoken, the defendant goes to trial prepared to defend these charges, and the government is bound to prove the essential elements of the charges specified in the indictment. See United States v. Texier, 474 F.2d 369,371 (5th Cir. 1973). The rules of the game are fixed prior to the Judges charge to the jury. (United States Court of Appeals for therEleventh Cir. 1973) By instructing the jury on the elements of a crime that was not alleged in the indictment, the District Court committed pro se reversible error. Under U.S. Constitutional Amendment [V] appellant had the right to answer for, and be convicted of, the crimes charged in the indictment.

ARGUMENT

The trial court Judge provided the jury with a partial instruction on self-defense, (Tex. Pen. Code 9.31(5)(a) stating that: The use of force against another is not justified: if the actor sought an explanation from a discussion with the other person while the actor was carrying a weapon in violation of (Tex.Pen. Code 46.02). This instruction basicially modified the grand jury's indictment, effectively amending it, by presenting to the jury an element not presented to the grand jury for indictment.

Resulting in a violation of Amendment [V] of the Constitution of the United States.

STANDARD OF REVIEW

(U.S.ex-rel. Barnard v. Lane, 819 F.2d 798 (7th Cir. 1978). Counsels failure to request a jury instruction on a lesser-incluced offense was ineffective assistance of counsel. Prou v. U.S. 199 F.3d 37,38 (1st Cir. 1999). When an attorney fails to raise an important obvious defense without any imaginable strategic or tactical reason for omission, his performance falls below the standard of proficient representation that the Constitution demands.

ARGUMENT

An instruction on a lesser-included offense of manslaughter; (Tex.Pen.Code 19.04) should have been requested. During voir dire, ((Reporter's Record) R.R. vol. 3 page 33) the state presented to the Venire Persons the possibility of whats called a lesser included offense, manslaughter. Tex.Pen.Code 19.04(a) Manslaughter: A person commits an offense if he recklessly causes the death of an individual. (b) an offense under this section is a felony of the secon degree. Heat of Passion as defined in Blacks Law Dictionary: Rage, terror or furious hatred suddenly aroused by some immediate provocation, usually another person's words or actions. At commom law, the heat of passion could serve as a mitigating circumstance that would reduce a murder charge to manslaughter. (Tex.Pen.Code 19.02) Murder (a)(2) cont. (d)

At the punishment phase of a trial, the defendant may raise the issue as to whether he caused the death under the immediate influence of sudden passion arising from an adequate cause. (Tex. Pen.Code 19.02(1) "Adequate Cause" means cause that would commonly produce a degree of anger, rage, resentment or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection. (2) "Sudden Passion" means passion that was directly caused by and rising out of provocation by the individual killed, which passion arises at the time of the offense and is not solely the result of former provocation.

All the elements of this line of defense were presented at trial. The trial transcript will reflect that the testimony of three witnesses was consistant and presented the evidence that I was attacked by the deceased at the time of the offense. Along with the statements from me at the hospital that sudden passion / heat of passion is supported by the evidence.

STANDARD OF REVIEW

(Strickland v. Washington, 466 U.S. 668 (1984). "Counsel has a duty to make a reasonable investigation or to make a reasonable decision that makes a particular investigation unnecessary" "Id" 466 U.S. 668,694 104 S.Ct. 2052,2068, L.Ed, 2nd 674 (1984).

A defendant is entitled to a new trial if he can show (1) that trial counsel's performance was defective; and (2) a reasonable probability that, but for the deficient performance, the outcome of the proceeding would have been defferent. A petitioner can

meet this standard by showing that counsel failed to conduct (inter alia) adequate pretrial investigation. (Bower v. Quarterman, U.S. court of Appeals for the Fifth Cir. 497 F.ed 459 (2007). Crim. Law & Proc. > Habeas Corpus > Review > Specific Claims > I.A.C. A defendant's Sixth Amendment Rights are violated if counsel's assistance was deficient and the defendant was therefore prejudiced. An attorney has a duty to independently investigate the charges against his client. There must be a reasonable amount of pretrial investigation. (Sincox v. U.S. 517 F.2d 876 Fifth Cir. 1978). We find that Counsel's failure to request an instruction amonts to the abdication of Counsel's duty to make informed tacti cal choices at trial.

ARGUMENT

Pre-trial investigation would have sufficiently revealed to Counsel that manslaughter was applicable in this case. And also, one glance at the indictment would have been all it took for counsel to see that defendant had not been indicted on a charge, that was presented to the jury through "Charge of the Court" (Tex.Pen.Code 46.02). Therefore should not have been presented to the jury.

CONCLUSION

For the reasons stated, I ask the Court to grant a Certificate of Appealability. So that these issues may be resolved and fundamental justice will prevail.

DATED this 26 day of June 2019.

Respectfully submitted,

Chester Staples

Chester Staples#01853049

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Chester Alan Staples pro se, Petitioner

VS

The United States Court of Appeals
for the Fifth Circuit

EXHIBITS SUPPORTING REQUESTED CERTIFICATE OF APPEALABILITY

Chester A. Staples
#01853049
264 FM 3478
Huntsville, TX 77320

Chester A. Staples
pro se

MURDER; UNL POSS FIREARM BY FELON
First Degree Felony; 3rd Degree Felony - Enhanced Habitual 25 to Life.

CAUSE NO. 30979

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS

The Grand Jurors for the County of Anderson, State of Texas, duly selected, impaneled, sworn, charged and organized as such as the July Term, A.D. 2012, of the Third Judicial District Court of said County, upon their oaths present in and to said Court, that **CHESTER ALAN STAPLES,** on or about the 25th day of May, 2010, and before the presentment of this indictment, in said County and State, did then and there,

COUNT 1

intentionally or knowingly caused the death of an individual, namely, Tracey Polley, by shooting him with a firearm; or

with intent to cause serious bodily injury to an individual, namely, Tracey Polley, commit an act clearly dangerous to human life that caused the death of said Tracey Polley, by shooting him with a firearm.;

COUNT 2

having been convicted of the felony offense of Tampering with or Fabricating Physical Evidence on the 11th day of April, 2001, in cause number 26353 in the 3rd District Court of Anderson County, Texas, in a case on the docket of said Court and entitled The State of Texas vs. Chester Allen Staples, intentionally or knowingly possess a firearm after the fifth anniversary of the defendant's release from confinement following conviction of said felony at a location other than the premises at which the defendant lived, to-wit: 4435 Hwy 155, Palestine, TX.

CASE NO. 30979 COUNT 1,2
INCIDENT NO./TRN: 9177563549

THE STATE OF TEXAS	§	IN THE 3RD JUDICIAL DISTRICT
	§	
V.	§	COURT
	§	
CHESTER ALAN STAPLES	§	ANDERSON COUNTY, TEXAS
	§	
STATE ID NO.: TX0109492307	§	

JUDGMENT OF CONVICTION BY JURY

Judge Presiding: Hon. Pam Foster Fletcher	Date Judgment Entered: 4/12/2013
Attorney for State: Stanley Sokolowski	Attorney for Defendant: MELVIN WHITAKER
Offense for which Defendant Convicted: CT 1: MURDER CT 2: UNL POSS FIREARM BY FELON	FILED FOR RECORD AT 4:15 o'clock p.m.
Charging Instrument: INDICTMENT	Statute for Offense: CT 1: 19.02(b)(1) PC CT 2: 46.04 (a) PC APR 12 2013
Date of Offense: May 25, 2010	JANICE STAPLES District Clerk, Anderson County, TX
Degree of Offense: CT 1: 1ST DEGREE FELONY-ENH 25 to LIFE CT 2: 3RD DEGREE FELONY-ENH 25 to LIFE	Plea to Offense: NOT GUILTY by _____ Dep.
Verdict of Jury: GUILTY	Findings on Deadly Weapon: YES, A FIREARM - CT 1 ONLY
Plea to 1st Enhancement Paragraph: TRUE	Plea to 2nd Enhancement/Habitual Paragraph: TRUE
Findings on 1st Enhancement Paragraph: TRUE	Findings on 2nd Enhancement/Habitual Paragraph: TRUE

Punished Assessed by:	Date Sentence Imposed:	Date Sentence to Commence:
JURY	4/12/2013	4/12/2013

Punishment and Place of Confinement: 55 YEARS INSTITUTIONAL DIVISION, TDCJ-CT 1
50 YEARS INSTITUTIONAL DIVISION, TDCJ-CT 2

THIS SENTENCE SHALL RUN CONCURRENTLY.

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A .

Fine:	Court Costs:	Restitution:	Restitution Payable to:
$ N/A	$ 279	$ N/A	☐ VICTIM (see below) ☐ AGENCY/AGENT (see below)

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was N/A .

Time Credited: If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.
From 6/3/2010 to 6/18/2010 From 1-7-13 to 4-12-13 From to
From to From to From to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.
N/A DAYS NOTES: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in Anderson County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel. 16 (Exhibit #2)

☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

True and correct copy of a document on file at Anderson County, Texas
Janice Staples, District Clerk
Page 1 of 2

MST27B

CAUSE NUMBER 30979

THE STATE OF TEXAS	§	**IN THE DISTRICT COURT**
	§	
VS.	§	**THIRD JUDICIAL DISTRICT**
	§	
CHESTER ALAN STAPLES	§	**ANDERSON COUNTY, TEXAS**

FILED FOR RECORD
ANDERSON COUNTY, TX
2015 APR 11 AM 9:
ANDERSON COUNTY, TEXAS

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

The defendant, **CHESTER ALAN STAPLES**, stands charged by indictment with the offenses of Murder – Count 1 and Unlawful Possession of Firearm – Count 2. The offenses are alleged to have been committed on or about the 25th day of May, 2010 in Anderson County, Texas.

The defendant, CHESTER ALAN STAPLES, has entered a plea of "not guilty."

1.

Section 19.02 of the Texas Penal Code provides that a person commits the offense of murder if he; (1) intentionally or knowingly causes the death of an individual; or (2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual.

Section 46.04 of the Texas Penal Code provides that a person commits the offense of unlawful possession of firearm if he has been convicted of a felony and possesses a firearm: (1) after conviction and before the fifth anniversary of his release from confinement following conviction of the felony or his release from supervision under community supervision, parole, or mandatory supervision, whichever is later; or (2) after the period described above, at any location other than the premises at which he lives.

Section 46.02 of the Texas Penal Code provides that a person commits the offense of unlawful carrying weapon if he intentionally, knowingly, or recklessly carries on or about his person a handgun if he is not: (1) on his own premises or premises under his control; or (2) inside of or directly en route to a motor vehicle that is owned by him or under his control.

2.

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

"Deadly Weapon" means a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or anything that in the manner of its use or intended use is capable of causing death of serious bodily injury.

"Firearm" means any device designed, made, or adapted to expel a projectile through a barrel

DEFENDANT'S REQUEST FOR "NECESSITY DEFENSE" IN CHARGE

DEFENDANT requests an issue in the court's charge on Penal Code 9.22 that Chet Staples on the date of the death of Polley reasonably believed that his conduct in carrying a handgun and shooting Polley was immediately necessary to avoid imminent harm to himself from Polley, and that the desirability and urgency of avoiding the harm clearly outweighed according to ordinary standards of reasonableness the harm sought (being shot and killed by Polley) to be prevented on the occasion in question,

Request granted:_____

Request denied: Dan Fowler Fletcher **April 10, 2013**
4/11/13

FILED FOR RECORD
At 8:45 o'clock a.m.
APR 11 2013
JANICE STAPLES
District Clerk, Anderson County, TX
by_____ Dep.

18 (Exhibit #4)

APPLICATION FOR WRIT OF HABEAS CORPUS

EX PARTE
CHESTER ALAN STAPLES

ANDERSON COUNTY
THIRD JUDICIAL DISTRICT COURT

CLERK'S SUMMARY SHEET

TRIAL COURT WRIT NO. 30979-A

APPLICANT'S NAME: CHESTER ALAN STAPLES
(As reflected on Judgment)

OFFENSE: COUNT 1 MURDER; COUNT 2 UNL POSS FIREARM BY FELON
(As described on Judgment)

CAUSE NO. 30979
(As reflected on Judgment)

SENTENCE: COUNT 1 55 YEARS; COUNT 2 50 YEARS TDCJ
(As described on Judgment)

TRIAL DATE: 04.12.2013
(Date upon which sentence was imposed)

JUDGE'S NAME: PAM FOSTER FLETCHER
(Judge presiding at Trial)

APPEAL NO:
(If Applicable)

CITATION TO OPINION: N/A
(If Applicable)

HEARING HELD: ____ YES _X_ NO
(Pertaining to the Application for Writ)

FINDINGS & CONCLUSIONS FILED: ____ YES _X_ NO
(Pertaining to the Application for Writ)

RECOMMENDATION: ____ GRANT ____ DENY _X_ NONE
(Trial Court's recommendation regarding Application)

JUDGE'S NAME: PAM FOSTER FLETCHER
(Judge presiding over habeas proceedings)

CERTIFICATE OF SERVICE

I certify that I sent today two copies of Petitioner's Request for a Certificate of Appealability and Brief in support, by first-class U.S. Mailto:

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK
F. EDWARD HEBERT BUILDING
600 S. MAESTRI PLACE
NEW ORLEANS, LOUISIANA 70130-3408

June 26, 2019
Date

Chester Staples
Chester Staples/pro se
#01853049
264 FM 3478
Huntsville, Tx 77320

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

CHESTER ALAN STAPLES
Appellant

V

THE STATE OF TEXAS
Appellee

NO. 12-13-00126-CR

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

TYLER, TEXAS

MEMORANDUM OPINION

Chester A. Staples
#01853049
264 FM 3478
Huntsville TX 77320

Chas A. Staples
pro se

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

SEPTEMBER 17, 2014

NO. 12-13-00126-CR

CHESTER ALAN STAPLES,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 3rd District Court
of Anderson County, Texas (Tr.Ct.No. 30979)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

NO. 12-13-00126-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

CHESTER ALAN STAPLES, APPELLANT	§	*APPEAL FROM THE 3RD*
V.	§	*JUDICIAL DISTRICT COURT*
THE STATE OF TEXAS, APPELLEE	§	*ANDERSON COUNTY, TEXAS*

MEMORANDUM OPINION

Chester Alan Staples appeals his convictions for murder and unlawful possession of a firearm, for which he was assessed sentences of imprisonment for fifty-five years and fifty years, respectively. Appellant raises one issue challenging the trial court's refusal to submit a jury instruction on the defense of necessity. We affirm.

BACKGROUND

Appellant was charged by indictment with murder and unlawful possession of a firearm and pleaded "not guilty." The matter proceeded to a jury trial.

The evidence at trial showed that on May 25, 2010, Appellant went to the home of the victim, Tracey Polley, to retrieve a lawn mower that he had sold Polley and for which he had received only partial payment. The two had previously argued about the mower over the phone, and Polley told Appellant that he would shoot him if he came to get it. Appellant, a convicted felon, obtained a handgun before going to the residence.

As Appellant was preparing to load the mower, Polley came out of the house with a loaded handgun. After a brief argument outside the residence, the two men opened fire on each other. Appellant was shot through the hand and in the eye. Polley was shot five times and died before paramedics arrived. The evidence is conflicting as to who fired first.

The trial court's jury charge included an instruction on self-defense. Appellant requested an additional instruction on the defense of necessity, but the trial court denied his request. Ultimately, the jury found Appellant "guilty" of murder and unlawful possession of a firearm. The jury assessed his punishment at imprisonment for fifty-five years and fifty years, respectively. This appeal followed.

NECESSITY DEFENSE

In his sole issue, Appellant argues that the trial court erred in refusing to submit a jury instruction on the defense of necessity. The State disagrees, contending that Appellant is not entitled to an instruction on the defense because the harm was not imminent when he armed himself with the firearm, and because he placed himself in a dangerous situation.

Standard of Review

"A defendant is entitled to an instruction on every defensive issue raised by the evidence, regardless of whether the evidence is strong, feeble, unimpeached, or contradicted, and even when the trial court thinks that the testimony is not worthy of belief." ***Walters v. State***, 247 S.W.3d 204, 209 (Tex. Crim. App. 2007). "This rule is designed to insure that the jury, not the judge, will decide the relative credibility of the evidence." ***Granger v. State***, 3 S.W.3d 36, 38 (Tex. Crim. App. 1999). To raise a defensive issue, the evidence must raise each element of the defense. ***Stefanoff v. State***, 78 S.W.3d 496, 499 (Tex. App.–Austin 2002, pet. ref'd). "If evidence is such that a rational juror could accept it as sufficient to prove a defensive element, then it is said to 'raise' that element." ***Id.***

"When evidence from any source raises a defensive issue, and the defendant properly requests a jury charge on that issue, the trial court must submit the issue to the jury." ***Muniz v. State***, 851 S.W.2d 238, 254 (Tex. Crim. App. 1993). "Thus, if the issue is raised by any party, refusal to submit the requested instruction is an abuse of discretion." ***Darty v. State***, 994 S.W.2d 215, 218 (Tex. App.–San Antonio 1999, pet. ref'd). When reviewing a trial court's refusal to submit a defensive instruction, we view the evidence in the light most favorable to the requested instruction. ***Bufkin v. State***, 207 S.W.3d 779, 782 (Tex. Crim. App. 2006).

Applicable Law

The Texas Penal Code provides that

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Chester Alan Staples
Appellant

v.

The State of Texas
Appellee

FROM THE COURT OF CRIMINAL APPEALS
CAPITOL STATION, AUSTIN, TEXAS

DENIAL OF MOTION FOR REHEARING.

Chester A. Staples
#01853049
264 FM 3478
Huntsville, TX 77320

Chester A. Staples
pro se

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

5/20/2015
STAPLES, CHESTER ALAN Tr. Ct. No. 30979 **PD-1354-14**
On this day, the Appellant's motion for rehearing has been denied.
PRESIDING JUDGE KELLER WOULD GRANT

Abel Acosta, Clerk

CHESTER ALAN STAPLES
TDC# 1853049
ESTELLE UNIT
264 FM 3478
HUNTSVILLE, TX 77320

51-221

APPENDIX I