

Original

In The
Supreme Court of The United States
In re
Allen "F" Calton

Petitioner's Affidavit Appendix In Support of Petition For Writ of Habeas Corpus

To The Honorable Supreme Court:

Now comes Allen "F" Calton, the prose petitioner, in the above cause pursuant to 28 U.S.C. § 1746 and presents his Affidavit Appendix as a self contained document numbered sequentially. But asks this Court that the same be incorporated and considered with the petition for Writ of Habeas Corpus on file herein for all intents, purposes and as support thereof in light of the competent evidence contained herein. I state and depose that I am over (21) years of age, of sound mind and capable of making this affidavit and have personal knowledge that the (248) pages of documents contained as exhibits attached and incorporated hereto are true and correct copies of the originals and I can testify to the same as being the truth of the matter.

(1) Appendix "A" Is a true and correct copy of the U.S. Court of Appeals Fifth Circuit's judgment dated 4-26-21 denying Allen "F" Calton leave to file a second or successive Petition cause No. 21-10295 app. p. 1-3

Petitioner's Affidavit Appendix Index page 1

In The
Supreme Court of The United States
In re
Allen "F" Calton

Petitioner's Affidavit Appendix In Support of Petition For Writ of Habeas Corpus

To The Honorable Supreme Court:

Now comes Allen "F" Calton, the prose petitioner, in the above cause pursuant to 28 U.S.C. § 1746 and presents his Affidavit Appendix as a self contained document numbered sequentially. But asks this Court that the same be incorporated and considered with the petition for Writ of Habeas Corpus on file herein for all intents, purposes and as support thereof in light of the competent evidence contained herein. I state and depose that I am over (21) years of age, of sound mind and capable of making this affidavit and have personal knowledge that the (248) pages of documents contained as exhibits attached and incorporated hereunto are true and correct copies of the originals and I can testify to the same as being the truth of the matter.

(1) Appendix "A" Is a true and correct copy of the U.S. Court of Appeals Fifth Circuit's judgment dated 4-26-21 denying Allen "F" Calton leave to file a second or successive Petition cause No. 21-10295 app. p. 1-3

Petitioner's Affidavit Appendix Index page 1

(2) Appendix "B" Is a true and correct copy of the judgment of The Texas Court of Criminal Appeals denying Allen "F" Carlton relief on his state Application for writ of Habeas Corpus on 7-12-17 in reference to cause No. WR-65,590-22 app. p. 4

(3) Appendix "C" Is a true and correct copy of 28 U.S.C. § 2241 app. p. 5

(4) Appendix "D" Is a true and correct copy of 28 U.S.C. § 2241 app. p. 6-7

(5) Appendix "E" Is a true and correct copy of 28 U.S.C. § 2254 app. p. 8-9

(6) Appendix "F" Is a true and correct copy of an excerpt of Garland P.O. record i.e. Investigation / Incident Report in reference to Allen "F" Carlton's arrest on 4-23-02 app. p. 10

(7) Appendix "G" Is a true and correct copy of the miranda warning and Police Statement to Fortworth P.O. signed by Allen "F" Carlton on 4-26-02 app. p. 11-12

(8) Appendix "H" Is a true and correct copy of Allen "F" Carlton's Affidavit in support of his petition for writ of Habeas Corpus app. p. 13-18

(9) Appendix "I" Is a true and correct copy of trial statement of facts cause No. 0843168 Volume 8 p. 161-164 app. p. 19

(10) Appendix "J" Is a true and correct copy of trial statement of facts cause No. 0843168 Volume 8 p. 209-224 app. p. 20-24

Petitioner's Affidavit Appendix Index page 11

(11) Appendix "K" Is a true and correct copy of trial statement of facts Cause No. 0843168 Volume 8 p.177-184 app. p. 25-26

(12) Appendix "L" Is a true and correct copy of trial statement of facts Cause No. 0843168 Volume 6 p.69-72 app. p. 27

(13) Appendix "M" Is a true and correct copy of trial statement of facts Cause No. 0843168 Volume 9 p.5-16 app. p. 28-30

(14) Appendix "N" Is a true and correct copy of The Tarrant County District Attorney office response to Allen "F" Carlton T.C.C.P. Art 64.01 motion for DNA testing app. p. 31-51

(15) Appendix "O" Is a true and correct copy of trial statement of facts cause No 0843168 volume 5 p. 33-40 app. p. 52-53

(16) Appendix "P" Is a true and correct copy of the certificate of Record Affidavit of Custodian of Records For The Garland Police Department namely Cynthia Timbrell certifying (57) Fifty-Seven pages involving Allen "F" Carlton's arrest by the Garland Police Department on 4-23-02 and the (51) Fifty-Seven pages of records certified by Cynthia Timbrell's affidavit dated 5-3-04 app. p. 54 - 111

(17) Appendix "Q" Is a true and correct copy of the subpoena application and subpoena issued on 5-13-04 and served on 5-14-04 to Bobbie Parks compelling the Garland P.D. record custodian to bring the 'Butcher Knife' to court instanter app. p. 112-114

(18) Appendix "R" Is a true and correct copy of the open record request made by Deadrian Tutt and the chain of custody Advanced Sheet pertaining to the 'Butcher Knife' seized by the Garland P.D. on 4-24-02 app. p. 115-116

(19) Appendix "S" Is a true and correct copy of the Affidavit of Deadrian Tutt signed into effect on 11-26-18 app. p. 117

(20) Appendix "T" Is a true and correct copy of excerpts trial statement of facts of Cause No. 0843168 TSFV4 p.49-52 app. p.118

(21) Appendix "U" Is a true and correct copy of excerpts trial statement of facts of Cause No. 0843168 TSFV4 p.57-61 app. p.119-120

(22) Appendix "V" Is a true and correct copy of excerpts of 1-16-04 Pretrial Hearing statement of facts of Cause No. 0843168 Volume 1 of 1 p.21-23 app. p.121-123

(23) Appendix "W" Is a true and correct copy of Brady motion filed by Allen "F" Calton on 6-11-03 in reference to Cause No. 0843168 among others granted by the trial court on 1-8-04 app. p. 124-126

(24) Appendix "X" Is a true and correct copy of Brady motion filed by Allen "F" Calton on 6-11-03 in reference to Cause No. 0843168 among others granted by the trial court on 7-2-03 app. p. 127-129

(25) Appendix "Y" Is a true and correct copy of an excerpt of 1-8-04 Pretrial Hearing Statement of Facts of Cause No. 0843168 Volume 1 of 1 p.12 app. p.130

(26) Appendix "Z" Is a true and correct copy of an excerpt of 4-26-04 Pretrial Hearing Statement of Facts of Cause No. 0843168 Volume 1 of 1 p.6-7 app. p.131-132

(27) Appendix "AA" Is a true and correct of the letter to the Garland P.O. from Allen "F" Calton making an open records request for information pertaining to the 'Butcher Knife' dated 10-25-16 app. p.133.

(28) Appendix "BB" Is a true and correct copy of the U.S. postal service P.S. Form 3811 establishing Garland P.O.'s receipt of the 10-25-16 open records request app. p.134

(29) Appendix "CC" Is a true and correct copy of the letter to the Garland P.O. from Allen "F" Carlton making an open records request for information pertaining to the 'ButcherKnife' dated 10-31-16 app. p. 135

(30) Appendix "DD" Is a true and correct copy of the U.S. Postal Service P.S. Form 3811 establishing Garland P.O.'s receipt of 10-31-16 Open records request app. p. 136

(31) Appendix "EE" Is a true and correct copy of the letter from the Fort Worth P.O. dated 10-14-16 denying Carlton's open record request app. p. 137

(32) Appendix "FF" Is a true and correct copy of Allen "F" Carlton's medical records for treatment rendered on 4-8-02 at Harris Methodist Hospital in Fort Worth, Texas app. p. 138-147

(33) Appendix "GG" Is a true and correct copy of an excerpt of trial statement of facts of cause No. 0843168 Volume 7 p. 41-44 app. p. 148

(34) Appendix "HH" Is a true and correct copy of Allen "F" Carlton's medical records for treatment rendered on 4-24-02 by the Garland Fire Department app. p. 149-153

(35) Appendix "II" Is a true and correct copy of an excerpt of trial statement of facts of Cause No. 0843168 Volume 4 p. 97-100 app. p. 154

(36) Appendix "JJ" Is a true and correct copy of trial statement of facts excerpts of Cause No. 0843168 Volume 3 p. 17-32 app. p. 155 - 158

(37) Appendix "KK" Is a true and correct copy of an excerpt of trial statement of facts of Cause No. 0843168 Volume 3 p. 45-48 app. p. 159

(38) Appendix "LL" Is a true and correct copy of excerpts of Everett Angle's T.P.S. Hospital medical records for treatment rendered on 4-23-02 app. p. 160-161

(39) Appendix "MM" Is a true and correct copy of an excerpt of trial statement of facts of cause No. 0843168 Volume 4 p. 137-140 app. p. 162

(40) Appendix "NN" Is a true and correct copy of the search warrant return # 7639 executed at 1744 Wiseman Ave by Fort Worth P.D. on 4-21-99 app. p. 163

(41) Appendix "OO" Is a true and correct copy of the search warrant return # 8694 executed at 1744 Wiseman Ave by Fortworth P.D. on 11-6-00 app. p. 164

(42) Appendix "PP" Is a true and correct copy of the search warrant return # 8960 executed at 1744 Wiseman Ave by Fortworth P.D. on 3-6-01 app. p. 165-166

(43) Appendix "QQ" Is a true and correct copy of the search warrant return # SW-16014-02 executed at 1744 Wiseman Ave by Fortworth PD on 4-11-02 app. p. 167

(44) Appendix "RR" Is a true and correct copy of the search warrant return # SW-0142-03 executed at 1744 Wiseman Ave by Fortworth PD on 2-21-03 app. p. 168

(45) Appendix "SS" Is a true and correct copy of excerpts of trial statement of facts of cause No. 0843168 Volume 5 p. 73-80 app. p. 169-170

(46) Appendix "TT" Is a true and correct copy of the open records request to the city of Garland made by Court Appointed Investigator Jeff Bunch dated 9-30-03 and the call for service Call ID # 2002 2044554 in reference to a 911 phone call made by Alter "F" Carlton at 355 South Garland Rd. on 4-23-02 at 10:15 P.M app. p. 171-173

(47) Appendix "UU" Is a true and correct copy of excerpts of trial statement of facts cause No. 0843168 Volume 5 p. 93-112 app. p. 174-178

(48) Appendix "VV" Is a true and correct copy of excerpts of trial statement of facts cause No. 0843168 Volume 4 p. 1-24 app. p. 179-184

(49) Appendix "WW" Is a true and correct copy of the Intake Screening Form of the Garland T.O. pertaining to Aller "F" Calton's arrest on 4-23-02 app. 185-188

(50) Appendix "XX" Is a true and correct copy of an excerpt of trial statement of facts cause No. 0843168 Volume 5 p. 85-88 app. p. 189

(51) Appendix "YY" Is a true and correct copy of an excerpt of trial statement of facts cause No. 0843168 Volume 4 p. 69-72 app. p. 190

(52) Appendix "ZZ" Is a true and correct copy of excerpts of trial statement of facts cause No. 0843168 Volume 5 p. 117-124 app. p. 191-192

(53) Appendix "AAA" Is a true and correct copy of an excerpt of trial statement of facts cause No. 0843168 Volume 6 p. 61-64 app. p. 193

(54) Appendix "BBB" Is a true and correct copy of an excerpt of trial statement of facts cause No. 0843168 Volume 7 p. 21-28 app. p. 194

(55) Appendix "CCC" Is a true and correct copy of an excerpt of trial statement of facts cause No. 0843168 Volume 8 p. 193-196 app. p. 195

(56) Appendix "DDD" Is a true and correct copy of an excerpt of trial statement of facts cause No. 0843168 Volume 8 p. 169-172 app. p. 196

(57) Appendix "EEE" Is a true and correct copy of excerpts of trial statement of facts Cause No. 0843168 Volume 4
p.81-88 app. p. 197-198

(58) Appendix "FFF" Is a true and correct copy of excerpts of trial statement of facts Cause No. 0843168 Volume 7
p. 1-8 app. p. 199-200

(59) Appendix "GGG" Is a true and correct copy of excerpts of trial statement of facts Cause No. 0843168 Volume 8
p.11-32 app. p. 201-204

(60) Appendix "HHH" Is a true and correct copy of an excerpt of trial statement of facts Cause No. 0843168 Volume 6
p.53-56 app. p. 205

(61) Appendix "III" Is a true and correct copy of Everett Angle's Medstar Ambulance Service medical records for treatment rendered on 2-16-02 app. p. 206-208

(62) Appendix "JJJ" Is a true and correct copy of Everett Angle's Medstar Ambulance Service medical records for treatment rendered on 4-23-02 app. p. 209-213

(63) Appendix "KKK" Is a true and correct copy of an excerpt of trial statement of facts Cause No. 0843168 Volume 3
p. 161-164 app. p. 214

(64) Appendix "LLL" Is a true and correct copy of excerpts of trial statement of facts Cause No. 0843168 Volume 6
p. 29-36 app. p. 215-216

(65) Appendix "mmm" Is a true and correct copy of an excerpt of trial statement of facts Cause No. 0843168 Volume 9 p. 33-36 app. p. 217

(66) Appendix "NNN" Is a true and correct copy of excerpts of 5-1-02 Bond Hearing Statement of Facts Cause No. 0843168 Volume 1 of p. 80-82 app. p. 218-220

(67) Appendix "OOO" Is a true and correct copy of excerpts trial statement of facts cause no. 0843168 Volume 3 p. 53-64 app. p. 221-223

(68) Appendix "PPP" Is a true and correct copy of excerpts of 1-16-02 Pretrial hearing Statement of Facts of Cause No. 0843168 Volume 1 of p. 8-9 app. p. 224-225

(69) Appendix "QQQ" Is a true and correct copy of Fort Worth P.D. Offense Report # 02258236 entry date 4-23-02 pertaining to a search warrant executed at 1744 Wiseman Ave on 4-11-02 app. p. 226-229

(70) Appendix "RRR" Is a true and correct copy of an excerpt of trial statement of facts Cause No. 0843168 Volume 8 p. 45-48 app. p. 230

(71) Appendix "SSS" Is a true and correct copy of the letter from Texas Board of Pardons and Paroles Employee George Reyes Jr. dated 7-15-21 and Texas Board of Pardons and Paroles Rule excerpt pertaining to Executive Clemency Chapter 143 §§ 143.1 and 143.2 app. p. 231-232

(72) Appendix "TTT" Is a true and correct copy of the motion for Evidentiary Hearing filed by Allen "F" Calton on 5-26-17 in reference to cause no. C-213-010065-0843168-M app. p. 233-237

(73) Appendix "UUU" Is a true and correct copy of the grievance Allen "F" Calton filed against police officer Michael G. Clark #2769 with the Garland P.D. Internal Affairs dated 1-2-19 app. p. 238-239

(74) Appendix "VVV" Is a true and correct copy of Garland Police Department's Chief of Police M.L. Bates letter Allen "F" Calton dated 1-15-19 app. p. 240

(75) Appendix "WWW" Is a true and correct copy of the Court Reporter Certification Board's Final Order in reference to In re Steve Schiller Cause No. 12-4665-22 pertaining to a grievance Allen "F" Calton filed against Steve Schiller with the Board dated 12-7-12 app. p. 241-243

(76) Appendix "XXX" Is a true and correct copy of Steve Schiller's answer to Allen "F" Calton's complaint filed against Steve Schiller with the Court Reporter Certification Board dated 3-29-12 app. p. 244-245

(77) Appendix "YYY" Is a true and correct copy of Steve Schiller's letter to Allen "F" Calton dated 7-20-12 app. p. 246

(78) Appendix "ZZZ" Is a true and correct copy of the U.S. Supreme Court opinion and order dated 10-5-20 denying Certiorari Relief app. p. 247

(79) Appendix "AAAA" Is a true and correct copy of 28 U.S.C. § 1651 app. p. 248

Respectfully Submitted,
Certification Allen "F" Calton

I, Allen "F" Calton #1123880, incorporated at the Connally Unit, in Karnes County, Tx. hereby state under the penalty of perjury that the documents attached and Petitioner's Affidavit Appendix Index page X

incorporated hereto are true and correct copies of the originals and I have personal knowledge of the same. The Court can take judicial notice of said documents contained herein because the same are in the public records or are from a source whose accuracy cannot be reasonably questioned. Cf Langdale v Villamil 813 sw22 187, 189-190 (Tex. App. Houston [14th Dist] 1991) ("Taking judicial notice of judgment of disbarment because the judgment is a matter of public records and such it is capable of accurate and ready determination by resort to a source whose accuracy cannot be reasonably questioned").
Executed on 9-2-21 Allen "F" Colton



United States Court of Appeals for the Fifth Circuit

A True Copy
Certified order issued Apr 26, 2021

Tyke W. Cuyce
Clerk, U.S. Court of Appeals, Fifth Circuit

No. 21-10295

IN RE: ALLEN FITZGERALD CALTON,

Movant.

Motion for an order authorizing
the United States District Court for the
Northern District of Texas to consider
a successive 28 U.S.C. § 2254 application

Before DAVIS, SOUTHWICK, and HAYNES, *Circuit Judges*.

PER CURIAM:

Allen Fitzgerald Calton, Texas prisoner # 1123880, was convicted of attempted murder and sentenced to serve life in prison. Currently before this court is his purported 28 U.S.C. § 2241 habeas corpus petition, which he wants transferred to the district court. This filing, which raises essentially the same claims concerning a knife and his theory of self-defense that were presented in his two most recent motions for authorization to file a successive 28 U.S.C. § 2254 application, is actually his fifth motion for authorization to file a successive § 2254 application. *See Felker v. Turpin*, 518 U.S. 651, 662 (1996); *Hartfield v. Osborne*, 808 F.3d 1066, 1071-73 (5th Cir. 2015); *see also Hernandez v. Thaler*, 630 F.3d 420, 426-27 (5th Cir. 2011). He also moves this court for an evidentiary hearing, to declare 28 U.S.C. § 2244(b) unconstitutional, for expansion of the record, and for production from the respondent.

Appendix "A" app. p. 1

No. 21-10295

A prisoner who wishes to file a second or successive § 2254 application may not do so without this court's authorization. 28 U.S.C. § 2244(b)(3). This authorization will be granted only if the applicant makes a *prima facie* showing that either (1) his claim "relies on a new rule of constitutional law" that was "made retroactive to cases on collateral review by the Supreme Court" and was previously unavailable or (2) "the factual predicate for the claim could not have been discovered previously" through due diligence, and the underlying facts, if proven, "would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." § 2244(b)(2); *see* § 2244(b)(3)(C). Calton has not met this standard.

Insofar as he contends that his purported actual innocence serves as a gateway to file his proposed successive § 2254 application, he has failed to present new evidence showing that "it is more likely than not that no reasonable juror would have found [him] guilty beyond a reasonable doubt." *Schlup v. Delo*, 513 U.S. 298, 327-29 (1995) (quote at 327); *see McQuiggin v. Perkins*, 569 U.S. 383, 399 (2013). We lack jurisdiction to consider his constitutional challenge to 28 U.S.C. § 2244(b). *See Truman v. Johnson*, 205 F.3d 844, 846 (5th Cir. 2000); 28 U.S.C. §§ 1291, 1292, 1296. IT IS ORDERED that the motion to declare § 2244(b) unconstitutional is DISMISSED FOR WANT OF JURISDICTION and all other remaining outstanding motions are DENIED.

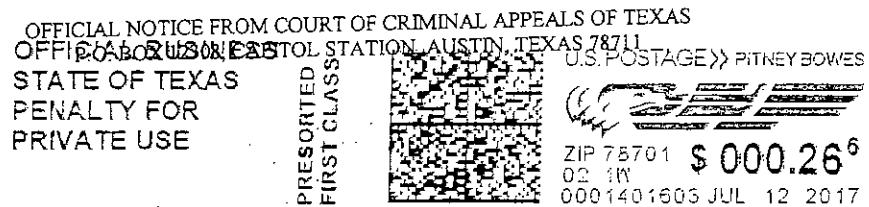
Finally, Calton was previously warned that he could be subject to sanctions if he filed "frivolous, repetitive, or otherwise abusive pleadings." *See In re Calton*, No. 19-11206, at 2 (5th Cir. Nov. 26, 2019) (unpublished). His current pleadings, which reiterate the same claims concerning a knife that have already been rejected twice, fit into all three of these categories. Accordingly, we now IMPOSE upon Calton a SANCTION of \$100, to be

Appendix "A" app. p. 2
2

No. 21-10295

paid to the clerk of this court. Until the sanction is paid in full, Calton is BARRED from filing in this court, or any court subject to this court's jurisdiction, any pleading seeking to challenge his conviction or sentence without first obtaining authorization from this court or the forum court. Calton is also WARNED that filing more frivolous, repetitive, or otherwise abusive pleadings will subject him to additional and progressively more severe sanctions. Calton is DIRECTED to review any pending matters and move to dismiss any actions or withdraw any pleadings that violate our warnings.

Appendix "A" app. p.3



7/12/2017
CALTON, ALLEN FITZGERALD Tr. Ct. No. C-213-011065-0843168-M WR-
65,590-22

This is to advise that the Court has denied without written order the application for
writ of habeas corpus.

Deana Williamson, Clerk

AF 340
ALLEN FITZGERALD CALTON
STILES UNIT - TDC # 1123880
3060 FM 3514
BEAUMONT, TX 77705

DAB

77705

00000000000000000000000000000000

Appendix "B" app p. 4

§ 2241. Power to grant writ

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

(e) (1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

USCS

§ 2244. Finality of determination

(a) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255 [28 USCS § 2255].

(b) (1) A claim presented in a second or successive habeas corpus application under section 2254 [28 USCS § 2254] that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 [28 USCS § 2254] that was not presented in a prior application shall be dismissed unless—

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3) (A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

USCS

© 2021 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

Appendix "D" app. p. 6

(c) In a habeas corpus proceeding brought in behalf of a person in custody pursuant to the judgment of a State court, a prior judgment of the Supreme Court of the United States on an appeal or review by a writ of certiorari at the instance of the prisoner of the decision of such State court, shall be conclusive as to all issues of fact or law with respect to an asserted denial of a Federal right which constitutes ground for discharge in a habeas corpus proceeding, actually adjudicated by the Supreme Court therein, unless the applicant for the writ of habeas corpus shall plead and the court shall find the existence of a material and controlling fact which did not appear in the record of the proceeding in the Supreme Court and the court shall further find that the applicant for the writ of habeas corpus could not have caused such fact to appear in such record by the exercise of reasonable diligence.

(d) (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

§ 2254. State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b) (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B) (i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted 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 Federal law, as determined by the Supreme Court of the United States; or

(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 proceeding.

(e) (1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substance Acts [21 USCS § 848], in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254 [28 USCS § 2254].

USCS

© 2021 Matthew Bender & Company, Inc., a member of the LexisNexis Group. All rights reserved. Use of this product is subject to the restrictions and terms and conditions of the Matthew Bender Master Agreement.

Appendix "E" app p. 9

MIRANDA WARNING

Warning to be given before taking any oral or written statement

- (1) You have the right to remain silent and not make any statement at all, and any statement you make may be used against you at your trial;
- (2) Any statement you make may be used as evidence against you in court;
- (3) You have the right to have a lawyer present to advise you prior to and during any questioning;
- (4) If you are unable to employ a lawyer, you have the right to have a lawyer appointed to advise you prior to and during any questioning;
- (5) You have the right to terminate the interview at any time.

MMH Person warned

John (Signature)

4/26/02

Date warned

112710

Time warned

M. M. Hanoly 2151

Warned by

WARNING TO BE GIVEN BEFORE TAKING
ANY ORAL OR WRITTEN STATEMENT

- (1) You have the right to remain silent and not make any statement at all and any statement you make may be used against you at your trial;
- (2) Any statement you make may be used as evidence against you in court;
- (3) You have the right to have a lawyer present to advise you prior to and during any questioning;
- (4) If you are unable to employ a lawyer, you have the right to have a lawyer appointed to advise you prior to and during any questioning;
- (5) You have the right to terminate the interview at any time.

The officer who takes the statement must give the accused the warning. The accused must then knowingly, intelligently and voluntarily waive his right to counsel and his right to remain silent. Silence of an accused is not a WAIVER. The warning and waiver must appear on the face of the written statement. Failure to comply will void the statement.

Appendix "G" app. p. 11

COUNTY OF TARRANT

I, Allen F. Caltan, prior to making any statement, having been duly warned by M.M. Hardy, the person to whom this statement is made; that I have the right to remain silent and not make any statement at all and that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning; and that I have the right to terminate the interview at any time. Having been informed of these, my rights, and understand same, I hereby freely, intelligently, voluntarily and knowingly waive these rights and not desiring a lawyer, voluntarily choose to make the following statement:

On Tuesday, 4/23/02 at night time I went to Chuck's house in my Tan 1986 Olds Cutlass 2dr, with Mike Ray. Mike Ray lives with me at 2012 Wissman. Mike wanted me to go to Chuck to talk to Chuck. I pulled up in front of Chuck's house. Chuck came out to car and Chuck was talking to Mike. Mike and Chuck started arguing about money. Chuck reached in with some kind of sharp object and tried to cut Mike. Chuck was reaching over me to try to cut Mike. I tried stopping Chuck and I got cut on my right hand, right thumb and right middle finger. I heard some shots from inside the car, Mike had to be doing the shooting. I don't know how many shots. I did not know Chuck got shot. I thought Chuck ran into the house. Mike told me to drive. I started driving to Dallas. Mike said if ~~I~~ ^{he} didn't drive he would shoot ~~me~~ ^{him} too. I drove to Dallas and called 911 on pay phone at Jackin the Box on Jupiter. Mike told me to get back in the car. I started driving and ended up at White Rock Lake.

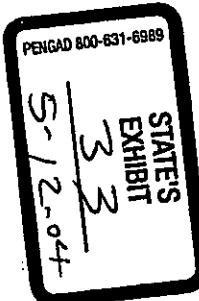
Detective Hardy wrote this statement because of the cut on my right hand. I have read this statement and it is true and correct.

Appendix "G" app. p. 12

Witness: M.M. Hardy 2151

Appendix "G" app. p. 12 (Allen)

Caltan



TIME:

115pm

PLACE:

Dallas County Jail

DATE:

4/26/02

Petitioner's Affidavit In Support Of His Writ Of Habeas Corpus

To The Honorable Court:

Now comes Allen "F" Calton, the pro se petitioner in this Cause Pursuant to Tex. Civ. Prac. Rem. Code § 132.001(a) and 28 U.S.C. § 1746 and presents this his Affidavit In Support of His Petition for Writ of Habeas Corpus. Composed the same being of sound mind and competent and over the age of (21) declares, deposes and states under the penalty of perjury that the below facts are true and correct and based upon personal knowledge and I can testify to the same in a court of law under oath as the truth of the matter.

- (1) Allen "F" Calton the undersigned affiant submits this Affidavit As competent evidence in support of his Petition for Writ of Habeas Corpus
- (2) Since becoming incarcerated on 4-23-02 I have been unable to earn money or even handle money for that matter while incarcerated in a Texas prison. I have no spousal support and have been ostracized by most family and friends since my conviction for this violent crime. In the 17 years plus since my incarceration I have been unable to hire an attorney to make an open records request to the city of Garland Police Department in an attempt to obtain any information in reference to the 'Butcher Knife' seized by Garland P.D. on 4-24-02. Nor have I been able to convince any one to do an open records request until asking De Adrian Tutt to do so on 7-16-18.
- (3) In 2001 my court Appointed Investigators made an open records request to obtain information from the Garland P.D. and city of Garland in reference to the 'Butcher Knife' that was unsuccessful for all intents and purposes

(4) I have personally made several open records request personally to the City of Garland and to the Garland P.D. beginning in the fall of 2004 and continuing up until the fall of 2016. I never received any type of response to my requests

(5) On 4-26-04 after inquiring to Judge Gill about my inability to ascertain any information concerning the 'Butcher Knife' that was seized by the Garland P.D. on 4-24-02. Judge Gill insisted there be an off the record discussion concerning the matter of the 'Butcher Knife' between myself and prosecutor David Hagerman.

(6) At which time I explained to Mr. Hagerman in the presence of and within earshot of Judge Gill who was also involved in this off the record discussion between the prosecutor and myself. I told them both that the reason the 'Butcher Knife' was relevant to the defense was due to the fact on the night in question. The victim Everette Charles Angle was brandishing towards me a sharp object while arguing over money. While reaching into the driver's side window of my parked car. While I sat in the driver's side seat.

(7) In response to ward off the victim's attack I grabbed the blade of what turned out to be a 'Butcher Knife' and sustained substantial injuries to my right hand to the extent that I could not write and Detective Matthew Hardy, wrote out my statement to police on 4-26-02 and I signed it. I momentarily took possession of the 'Butcher Knife'. And that is how it was able to be seized by the Garland P.D. out of the vehicle I was sitting in at the time of the shooting the victim was leaning inside brandishing in a threatening manner the 'Butcher Knife' Carlton was

Cut with. In response to being cut by the victim with the 'Butcher Knife'. Carlton shot the victim one time in self-defense

(8) Approximately two hours after the offense occurred in Fort Worth Texas. I was arrested by the City of Garland P.O. for committing the offense of Evading Arrest in Garland, Texas. My erratic driving through a school parking lot led to the initiation of a police stop by officer James Puckett of Garland P.O.

(9) Although Judge Robert K. Gill conducted an in camera review of 59 pages of my arrest records the Garland P.O. for a relevancy determination on or about 5-3-04 the week before the 5-10-04 trial on the merits. And Although I had just informed Judge Gill on 4-26-04 the week before he conducted his in camera review on 5-3-04 that I had been unsuccessful in finding out if the Garland P.O. had seized and possessed a Knife. But that I need to know in order to prepare my defense for if there was or was not a Knife in the possession of police. Although there were two police reports contained in the records Judge Gill reviewed in camera that memorialized that Garland P.O. had seized a 'Butcher Knife' Judge Gill did not inform me of the same or provide the arrest records to me before trial so I could have discovered the same on my own accord. Judge Gill belatedly provided me the relevant records on 5-13-04 the day of and right before the city of Garland Records Custodian Cynthia Timbrell was about to testify for the defense on the fourth day of trial. Judge Gill's failure to put me on notice before trial of the Garland P.O.'S possession of the 'Butcher Knife' caused me to abandon lines of independent investigation to procure evidence to support my defensive theories hinged on the 'Butcher Knife' and also resulted in me changing my trial strategy from focusing on defenses hinged on the 'Butcher Knife' to focusing on an Automatism Defense as a result of being under the influence of Hypoglycemia at the time of the offense. Judge Gill did not inform me at anytime before, during or after trial that police had seized a 'Butcher Knife'

(10) On 5-17-02 during a personal visit with Court Appointed attorney Leon Haley Jr. Calton informed Mr. Haley that he grabbed that blade of a knife the victim was brandishing in a threatening manner towards me while leaning inside my parked vehicle.

(11) Mr. Haley then asks me if was cut by the victim and I told him yes. I then showed Mr. Haley the visible healing scar. Mr. Haley then asks me if I had been treated by medical personnel for this injury. I told Mr. Haley no I had not. Because when I became combative at the hospital doctors had me removed by police before treatment could be rendered.

(12) Mr. Haley then tells me the injury needs to be medically documented for a self-defense defensive theory. He then told me to request that jail medical personnel document the injury for legal purposes. So I did so that same day on 5-17-02 after my legal visit with Mr. Haley and the next day the injury was documented on 5-18-02 by Nurse L. Parsley.

(13) At no time while Mr. Haley was my attorney for the underlying offense from his appointment of counsel on 5-9-02 until I waived my right to counsel on 5-9-03 did Mr. Haley ever inform me in any way that there was a 'Butcher knife' seized by police out of the vehicle where the offense occurred. That the victim was leaning inside brandishing a 'Butcher Knife' towards me. When I grabbed it to ward off the attack and then I shot the victim one time

(14) On 4-26-04 during an off the record discussion at a pretrial. I had a discussion about whether or not a 'Knife' was in the Garland Police Department evidence room. Judge Robert K. Gill ordered State's Attorney David Hagerman by stating: "If there is a 'Knife' in the possession of police. Get it to the defense or make it known to the defense. Because the same is Brady material."

(15) In response to Judge Gill's order and statement State's Attorney David Hagerman states: "Judge according to my investigator there was no 'Knife' seized by police or currently in possession of police in relation to this offense. Detective Hardy in the course of his investigation did not collect a 'Knife'. So there is not a 'Knife' in the evidence room of the Fort Worth Police Department. And there is not a 'Knife' in the Garland Police Department evidence room. I'll double check Judge and if a 'Knife' is located I'll produce it to the defense.

(16) At no time before or during the trial or after the trial did the prosecution produce the 'Butcher Knife' or provide information to the defense to afford the defense the opportunity to have procured the 'Butcher Knife' on its own accord. That was in the evidence room of the Garland Police Department.

(17) On 5-17-04 officer Michael G. Clark #2769 in response to the defense's subpoena to produce the 'Butcher Knife' shows up in court without the 'Butcher Knife' and lies to the defense by stating: "There was no 'Butcher Knife' in the police's possession and that there was no indication it had been logged into the police property room. Because the 'Butcher Knife' was not used during the commission of the evading arrest offense Garland P.D. arrested Calton for. Officer Clark did not produce the 'Butcher Knife' in open court at any time during trial as subpoena compelled.

(18) Due to the fact that I had not been able to surmount Gov't Code § 552.028 as an incarcerated Texas prisoner. I used T.C.C.P. Art. 64.01 as a fishing expedition to obtain pertinent information concerning the 'Butcher Knife' in question. And on 3-29-17 received papers that established that police possessed the 'Butcher Knife' at the time of my trial.

Respectfully Submitted,

Allen "F" Calton

Verification

I, Allen "F" Calton #1123880, incarcerated at the Connally Unit, in Karnes County, Texas, do hereby state under the penalty of perjury that the foregoing facts contained in this affidavit are true and correct and are based upon personal knowledge. I can testify to the veracity thereof in a court of law, under oath, as the same being the truth, and nothing but the truth.
Executed on 9-2-21 Allen "F" Calton

1 Q. Pretty close to the curb?
 2 A. Pretty close to the curb.
 3 Q. How far away from the curb would you tell the jury
 4 he was pulled?
 5 A. About the same if you was on the right side of the
 6 road.
 7 Q. Hold up your hand for the distance between the curb
 8 --
 9 A. I would say about like that (indicating).
 10 Q. Within 18 inches at least, correct?
 11 MR. BRANDENBERG: Object to leading.
 12 THE COURT: Sustained.
 13 THE WITNESS: But you didn't run over the curb
 14 when you pulled it in there.
 15 BY PRO SE DEFENDANT:
 16 Q. But I was pretty close, wasn't I?
 17 A. You were close to the curb.
 18 Q. Okay. Now, let's go to this. Everett Angle stood
 19 out there and talked to Allen Calton for a substantial amount
 20 of minutes, didn't he?
 21 A. Yes, I would say.
 22 Q. And in some of that time he leaned in the car,
 23 didn't he?
 24 A. I seen him have his hands on the door. He was
 25 leaning on the car with his hands on the car.

1 A. Yes, I do.
 2 Q. You were quite -- you were around Everett Angle
 3 quite a bit; you worked there, correct?
 4 A. Yes, I did.
 5 Q. You did a lot of lawn mower repairs, right?
 6 A. Right.
 7 Q. Is that Everett Angle's slipper there?
 8 A. I'm sure it is.
 9 Q. Look like something Everett Angle ever wore before?
 10 A. Yes, it may be.
 11 Q. Look like something he was wearing that day?
 12 A. I don't know.
 13 Q. How about this. Does it look like that's where he
 14 was standing that day?
 15 A. Yeah, that's where he was standing.
 16 Q. That is definitely where he was standing, wasn't it?
 17 A. Yes.
 18 Q. And you were the eyewitness there that night,
 19 weren't you?
 20 A. Yes, I am.
 21 Q. And it's your testimony before this jury that's
 22 where Everett Angle was standing, right there, wasn't it?
 23 A. That's where he was standing.
 24 Q. And leaning into that car?
 25 A. No. He was standing -- he was leaning in -- he was

1 Q. Which would make him be very close to whoever was in
 2 the car by him leaning, correct?
 3 A. Yes.
 4 Q. That's what you mean by you're standing and then you
 5 lean, you're getting closer --
 6 A. Yeah, he had both his hands on the door when he was
 7 leaning.
 8 Q. So he was in reach of the car?
 9 A. Yes. He was at the door. He was leaning on the
 10 car.
 11 Q. And whoever was in the car was within reach of
 12 Everett Angle?
 13 A. Yes.
 14 Q. And whoever was in the car was in reach of Everett
 15 Angle, correct?
 16 A. Yes.
 17 Q. Everett Angle could touch the person in the car?
 18 A. Right.
 19 Q. And the person in the car could touch Everett Angle?
 20 A. Yes.
 21 Q. Now, I want you to take a look at Defense Exhibits
 22 No. 4 and 7 -- State's Exhibit 4 and 7 are two photographs. I
 23 want you to take a look at those right quick, Mr. Tate.
 24 A. Okay.
 25 Q. Do you see a slipper and a blood spot?

1 on the curb leaning in the car, but when he stepped back,
 2 that's where you turned around and put the gun to his head and
 3 shot him.
 4 Q. Okay. So --
 5 A. Then when he fell -- you want me to tell you the
 6 rest of it?
 7 Q. Yeah. He fell back and busted his head right here
 8 on this bloody spot.
 9 A. When he fell back, you took two steps and then shot
 10 him two more times in the head.
 11 Q. All right.
 12 PRO SE DEFENDANT: No further questions for
 13 that witness, Your Honor.
 14 MR. BRANDENBERG: No questions, Your Honor.
 15 THE COURT: You may step down, sir.
 16 MR. BRANDENBERG: May this witness be finally
 17 excused?
 18 PRO SE DEFENDANT: We'll keep him subject to
 19 recall, Your Honor; you never know. But he possibly probably
 20 will not testify again.
 21 And for the Fifth -- the Fifth purposes, we're
 22 going to call Allen Calton to the stand, Your Honor. DSS368
 23 0:19:28.8.
 24 THE COURT: Ladies and gentlemen of the jury,
 25 there's a matter of law I'm going to have to take up outside

1 Q. Mr. Calton, Mr. Hagerman talked to you a little bit
 2 about self-defense, you remember that?
 3 A. Yes, sir, I do.
 4 Q. Now, Mr. Calton, you don't know if you were actually
 5 acting in self-defense when you tried to grab that knife out
 6 of Mr. Angle's hand and grabbed this weapon. You don't know
 7 if you were acting in self-defense or not, do you?
 8 A. No, sir, I don't.
 9 Q. Mr. Calton, with your faculties unstable, you may
 10 have actually been acting in self-defense as well, not knowing
 11 what was going on fully?
 12 A. That could be true.
 13 Q. Now, Mr. Calton, Mr. Hagerman talked about the
 14 amount of shots fired, and he talked about how many shots
 15 Everett Angle testified to. And you heard that testimony,
 16 didn't you, Mr. Calton?
 17 A. Yes, I did.
 18 Q. How many shots did Mr. Angle indicate before this
 19 jury when he testified?
 20 A. Well, he clearly stated he was shot three times.
 21 Q. And, Mr. Calton, you actually -- you actually didn't
 22 receive that Joe Snow report from Medstar until very late; is
 23 that correct?
 24 A. That is correct.
 25 Q. And, of course, the State was supposed to get you

1 that Medstar Joe Snow report that clearly states one shot,
 2 weren't they, Mr. Calton?
 3 A. Yes, they were.
 4 Q. But the State didn't give you that, did they, Mr.
 5 Calton?
 6 A. No, they didn't.
 7 Q. Now, Mr. Calton, you know now why the State didn't
 8 give you that Joe Snow report, don't you, Mr. Calton?
 9 A. Yes, I do.
 10 Q. Why, Mr. Calton?
 11 A. It's because it told the truth. It told that they
 12 knew that he was only shot one time and that would clearly
 13 negate any intent or any specific act or knowledge of Everett
 14 Angle being shot.
 15 Q. What do you mean by that?
 16 A. Well, Mr. Hagerman here is quite familiar with
 17 meeting a quota, quite familiar with getting a conviction, and
 18 he will do anything to get it. So he fabricated a lie. He
 19 fabricated more shots to make this thing look like it's
 20 specific intent. He even fabricated some steps, opening the
 21 door and getting out and shooting once and then taking two
 22 more steps and shooting twice.
 23 Q. Mr. Calton, let me ask you a little bit about these
 24 medical records. The State here has all this stuff and has
 25 got all this stuff, as you can clearly see, and just handed

1 you the trial transcript that you have as well. That's true,
 2 isn't it, Mr. Calton?
 3 A. Yes, sir.
 4 Q. The State's familiar with this whole case, aren't
 5 they, Mr. Calton?
 6 A. Yes, sir.
 7 Q. And the State had Joe Snow's medical record, didn't
 8 they, Mr. Calton?
 9 MR. HAGERMAN: Object to the witness leading
 10 himself.
 11 THE COURT: Sustained.
 12 BY PRO SE DEFENDANT:
 13 Q. Mr. Calton, the State knew about the medical records
 14 and Dr. McReynolds' treating Everett Angle at the hospital,
 15 didn't they?
 16 A. Yes, sir, they knew.
 17 Q. But the State didn't come in here and tell the jury
 18 the truth about that one shot, did they, Mr. Calton?
 19 A. No, they didn't.
 20 Q. The State came in here and talked about three shots,
 21 didn't they, Mr. Calton?
 22 A. Yes, sir.
 23 Q. And the State and Mr. Hagerman knew exactly from the
 24 very beginning because they had all the records from the very
 25 start that there was only one shot fired, isn't that true, Mr.

1 Calton?
 2 A. Yes, sir.
 3 Q. Mr. Calton, are you a little more elevated on the
 4 legal term of a lot more people than maybe the Judge and those
 5 two District Attorneys? You're familiar with the law a little
 6 better than maybe these jurors or some of the people out in
 7 the gallery, that's true?
 8 A. Yes, sir, it is.
 9 Q. And you know why they want three shots versus one
 10 shot, don't you, Mr. Calton?
 11 A. Yes, I do.
 12 Q. What's the difference in three shots and one shot,
 13 Mr. Calton?
 14 A. Well, the difference is here that one shot could
 15 have been in self-defense or an accident, whereas the three
 16 shots is more intent and more specific in knowledge of
 17 committing the crime.
 18 Q. Now, of course, Mr. Calton, we know that if you got
 19 one shot, you wouldn't have a very strong intent or knowledge,
 20 essential elements of the crime, would you, Mr. Calton?
 21 A. No, you wouldn't.
 22 Q. Mr. Calton, if you get three shots and you hit
 23 someone taking some steps and shooting at somebody head, that
 24 pretty much shows that he was really trying to hurt that
 25 person or kill that person, doesn't it, Mr. Calton?

1 A. Yes, it does.
 2 Q. Mr. Calton, let's talk a little bit about the
 3 statement here. Mr. Calton, let's go back into your
 4 educational background. Can you tell the jury a little bit
 5 about your education?
 6 A. Yes, sir. I graduated high school. Couple years of
 7 college. Was a National Honor student. Made a 23 on my SAT.
 8 High -- fairly intelligent.
 9 Q. Now, Mr. Calton, looking at this statement and the
 10 grammar and the different terms, does that look like
 11 "nighttime" is a term that you would use?
 12 A. No, sir, it doesn't.
 13 Q. What would you have used instead?
 14 A. Well, of course, "at night" instead of nighttime.
 15 Q. Now, Mr. Calton, we talked a little bit about police
 16 conspiracy. Can you elaborate on that a little bit?
 17 A. Well, initially, I knew that I hadn't done anything
 18 wrong. I knew that I hadn't shot Everett Charles Angle. I
 19 knew that that wasn't right. And looking at these officers'
 20 reports, they were all just pointing the finger at me, and
 21 that's how that police conspiracy came about.
 22 Q. Any other thing with that police conspiracy,
 23 Mr. Calton?
 24 A. Well, yes. During the psychotic episode from April
 25 16th to May 15th, as Mr. Leon Haley, my appointed counselor at

1 PRO SE DEFENDANT: No further questions, Mr.
 2 Calton.
 3 RECROSS-EXAMINATION
 4 BY MR. HAGEMAN:
 5 Q. Mr. Calton, I take it that when you say that you
 6 were having some unusual feelings between April 16 of 2002 and
 7 April 23 of 2002, you didn't recognize that as being some
 8 medical condition, right?
 9 A. No, sir. Again, I was always the picture of health.
 10 I was happy. I had a business I had just put together and I
 11 was doing great. Best time of my life, up until April 16,
 12 2002.
 13 Q. So you had never experienced this before?
 14 A. No, sir.
 15 Q. Certainly in January of 2002, you hadn't experienced
 16 this either.
 17 A. No, sir.
 18 Q. Mr. Calton, how many people did you subpoena for
 19 this trial?
 20 A. I don't have an exact number, sir. They're in the
 21 records. You can take a look at it and you can inform us all.
 22 Q. A lot, right?
 23 A. Yes, sir, because I wanted to bring --
 24 (unintelligible). I'm glad you brought this up. I wanted the
 25 jury to know the truth and, of course, you didn't like that

Page 214

1 that time, clearly indicated, I thought people were following
 2 me. I mean, I thought people were trying to kill me. I even
 3 thought my family, who are sitting over there to the right,
 4 were out to get me.
 5 I mean, I didn't know what was going on.
 6 Things were just not right. And I thought everybody was out
 7 to get me. And that's how the police conspiracy and that's
 8 how the denial of everything, shooting Everett Angle, and
 9 that's how all that -- denial of hypoglycemic state, that's
 10 how all that came about.
 11 Q. But, Mr. Calton, after completely and honestly
 12 looking this situation over, do you think you shot Everett
 13 Angle April 23, 2002?
 14 A. Yes, I do.
 15 Q. Do you remember shooting him April 23, 2002?
 16 A. No, I don't.
 17 Q. Well, how do you figure you did?
 18 A. Well, after looking this over, and giving my honest
 19 opinion, there is nobody else in the car, nobody else there.
 20 I don't know no Michael Ray and I didn't know what was going
 21 on. And I see that I was -- I know what I went through on
 22 April 16th and I know how it felt that week, so due to a
 23 hypoglycemic state, being semiconscious, I may have took that
 24 gun off of Everett Angle's waist that they say he wears around
 25 that they recovered from his house. I may have done that.

Page 216

1 a -- lot of stuff that you have. You didn't want to hear from
 2 a lot of witnesses because you didn't want the truth to be
 3 known.
 4 Q. You subpoenaed a lot of witnesses, correct?
 5 A. For the truth, sir, yes, sir.
 6 Q. You subpoenaed a lot of witnesses, correct?
 7 A. Yes, sir, for the truth. I'm telling you that, sir.
 8 Q. I'm not asking you why you subpoenaed them; I'm
 9 asking you, did you subpoena a lot of witnesses?
 10 A. Yes, sir.
 11 MR. HAGEMAN: Pass the witness.
 12 FURTHER REDIRECT EXAMINATION
 13 BY PRO SE DEFENDANT:
 14 Q. Mr. Calton, why did you subpoena all those
 15 witnesses?
 16 A. Well, it was due to the fact that that's just normal
 17 trial strategy. What you want to do is, you may need a
 18 witness's testimony and, of course, it is unfortunate that you
 19 have to keep these people here tied up so long, but it's an
 20 important issue. My life is at stake here. You want a fair
 21 trial. And if one of these people were here, they'd
 22 understand too.
 23 PRO SE DEFENDANT: No further questions, Mr.
 24 Calton.
 25 MR. HAGEMAN: Nothing else, Judge.

1 THE COURT: Ladies and gentlemen, let's take a
 2 stretch break. Please retire to the jury room and remember
 3 and follow your instructions.

4 (Jury not present)

5 THE COURT: Are both sides ready?

6 MR. HAGEMAN: State's ready, Your Honor.

7 PRO SE DEFENDANT: Defense is ready, Your
 8 Honor.

9 (Jury present)

10 THE COURT: Defense may proceed.

11 PRO SE DEFENDANT: Defense rests, Your Honor.

12 MR. HAGEMAN: State close.

13 PRO SE DEFENDANT: Rest and close.

14 THE COURT: Ladies and gentlemen of the jury,
 15 both sides have rested and closed. That's all the testimony
 16 you'll hear in the trial. It is now my responsibility to get
 17 the Court's Charge ready, and that will take me some time to
 18 do.

19 We're going to recess, then, until nine o'clock
 20 tomorrow morning. And when we reconvene, I'll read you the
 21 Court's Charge, you'll hear summations and then the case will
 22 be yours for deliberations.

23 Please remember and follow your instructions.

24 We'll see you tomorrow morning at nine o'clock. Have a good
 25 evening.

1 (Jury not present)

2 THE COURT: one more thing for the record. We
 3 still have the alternate juror with the jury and tomorrow what
 4 we'll do we'll is read the charge to the jury and then we'll
 5 go right into summations. And after summations, I'm going to
 6 ask the jury to step back into the jury room without the
 7 charge. I'll tell them they can begin their deliberations as
 8 soon as they receive the charge. Then we'll have the
 9 alternate step out of the jury room for good and we'll hand
 10 the jury the charge and they can begin their deliberations.
 11 We'll discharge the alternate.

12 PRO SE DEFENDANT: Your Honor, again, now, I'm
 13 not too clear on this. I've been reading over this a little
 14 while. The Mendenhall case, on 77 Southwest 3rd Edition, 815
 15 talks about the no-mental defense and the no-voluntary-act
 16 defense.

17 And I'm thinking that those jurors -- I had
 18 looked forward to those jurors being charged on these matters,
 19 and I don't understand how the Court has made a determination
 20 that that cannot be included in the charge.

21 THE COURT: I made that determination because I
 22 have listened to all the testimony that's been brought out
 23 here, and I will charge the jury on theories that have been
 24 presented and I will not charge them on anything that's not
 25 been presented.

1 PRO SE DEFENDANT: And what theories do you
 2 have presented as defenses in this case?

3 THE COURT: I have self-defense, and another
 4 defensive theory was that the Defendant did not form the
 5 requisite intent to commit the offense.

6 PRO SE DEFENDANT: Okay. So there could be a
 7 lack of mens rea necessary for criminal liability?

8 THE COURT: That is my understanding of what
 9 your defense is.

10 PRO SE DEFENDANT: And those jurors will -- so
 11 you're saying you don't understand -- you don't understand
 12 that Allen Calton did not engage in a voluntary act, you
 13 didn't see that?

14 THE COURT: Yes, sir. There's been no
 15 testimony to raise that issue.

16 PRO SE DEFENDANT: Semiconscious state.

17 THE COURT: They are two different things.

18 Voluntary act and semiconsciousness are two completely
 19 separate theories.

20 PRO SE DEFENDANT: And --

21 THE COURT: You did raise the semiconscious-
 22 state-lack-of-intent defense.

23 PRO SE DEFENDANT: I did raise that?

24 THE COURT: You did raise that.

25 PRO SE DEFENDANT: Will that be in the charge?

1 THE COURT: There is no separate charge on

2 that. The theory is simply that the State has not met their
 3 burden of proof to prove beyond a reasonable doubt that the
 4 act was done intentionally, or intentionally and knowingly,
 5 depending on the two separate charges we're talking about.

6 PRO SE DEFENDANT: And this charge will be --
 7 contain definitions to assist the jury, correct?

8 THE COURT: Yes.

9 PRO SE DEFENDANT: Of course, you're going to
 10 go out there and -- you're not going to cheat me, are you?

11 THE COURT: What I'm going to do is I'm going
 12 to finish writing the charge, and I'm going to give you a copy
 13 to look at. And then you're going to get to read it, and then
 14 we'll formally take objections to it at that point.

15 PRO SE DEFENDANT: Okay.

16 THE COURT: So you were kind of talking about
 17 something that you don't really know much about right now.
 18 Let me get the draft finished, and we'll take it up from
 19 there.

20 PRO SE DEFENDANT: All right, Judge. Sounds
 21 good to me.

22 (Jury not present)

23 THE COURT: Has the State received a copy of
 24 the Court's proposed charge?

25 MR. HAGEMAN: The State has.

1 THE COURT: Do you have any objections or
2 special requests?

3 MR. HAGEMAN: No special requests. The State
4 would just object to the instruction on self-defense. The
5 State would argue that it was not raised by the evidence.
6 Everything the Defendant said was all could-be's or maybe's or
7 maybe this happened, but there was no affirmative evidence
8 that was put forth in front of this jury that a jury could
9 reasonably find that any use of deadly force by this Defendant
10 was immediately necessary to protect himself against the use
11 or attempted use of unlawful deadly force by Everett Angle.

12 THE COURT: Overruled. Anything else?

13 MR. HAGEMAN: That's all.

14 THE COURT: Defense have a copy?

15 PRO SE DEFENDANT: Yes, sir, I do.

16 THE COURT: Any objections or special requests?

17 PRO SE DEFENDANT: Yes, sir, I have the
18 objections that it didn't contain anything in relation to
19 Texas Penal Code 6.01 or anything in relation to Texas Penal
20 Code 6.02. And I, from the very start, informed this Court,
21 even when we first had an expert appointed by this Court
22 doing -- or dealing with the automatism defense. And I've
23 been arguing and putting on testimony for 6.01 and 6.02. I
24 see nothing in this charge that has a reference to that, and I
25 have asked for that. I've actually just filed a motion for

1 required.

2 PRO SE DEFENDANT: So it's the Court's opinion
3 that 6.01 or 6.02 are not to be included in the charge as far
4 as instruction-wise, period?

5 THE COURT: If you're talking about a
6 definition and a charge on voluntary conduct, that was not
7 raised by the evidence. If you're talking about --

8 PRO SE DEFENDANT: It was raised. I'd asked
9 the witness about involuntary conduct -- involuntary conduct
10 being associated with hypoglycemia. We had that come from
11 that witness stand.

12 THE COURT: That was all hypothetical. That
13 was not raised. As far as raising defenses, you have brought
14 up negating the intent element. That's as far as the law
15 requires -- as far as the law allows me to charge on that.

16 PRO SE DEFENDANT: Oh, it's the Court's
17 opinion that you didn't hear any evidence to get the
18 involuntary-act defense?

19 THE COURT: That's correct.

20 PRO SE DEFENDANT: You didn't hear anything
21 come from the witness stand concerning involuntary acts?

22 THE COURT: I heard nothing that raised the
23 Defense.

24 PRO SE DEFENDANT: All right. I have a motion
25 for requested jury charge pursuant to Texas Criminal Code

1 that. I'm having it filed as we speak. And I want to get a
2 ruling on those requests. And I requested those, and the
3 Court informed me that they -- something to the effect they'd
4 be in here, but I did not see anything near that in this
5 charge.

6 THE COURT: The objections are overruled.

7 PRO SE DEFENDANT: So you mean to tell me you
8 don't have anything about intent or semiconscious or --

9 THE COURT: Well, I can't use the word
10 semiconscious. There's no specific legal charge about that.

11 The charge requires the State to prove beyond a
12 reasonable doubt that you intentionally committed attempted
13 murder or intentionally or knowingly committed aggravated
14 assault, and your Defense went to negate that. There's no
15 specific charge allowed when the defense simply goes to
16 negating an element of the State's case.

17 PRO SE DEFENDANT: And when we had evidence
18 come from the witness stand to -- from expert Dr. Caviano that
19 a hypoglycemic state is a semiconscious state, and when that
20 is a defense, why wasn't that allowed to be included in this
21 charge?

22 THE COURT: It is included. The State has to
23 prove beyond a reasonable doubt that it was done either
24 intentionally or intentionally or knowingly. And your defense
25 goes to negating that. So there is no specific charge

1 36.14, filed May 18, 2004. I'd like to present that -- be
2 heard on that through the Court.

3 THE COURT: Let me read it real quick.
4 (Pause in the proceedings)

5 THE COURT: I've included your requested charge
6 on self-defense, so that's granted. Required mental state
7 Defense, that has been charged on, so that is granted. And
8 involuntary-act defense, there was no evidence raising that
9 Defense, so that is denied.

10 PRO SE DEFENDANT: And, you know, you -- I
11 don't see anything in this charge or anything that says
12 anything about required mental state. You didn't inform the
13 jury anywhere in here to help them understand. I don't see a
14 definition or anything to help them understand that -- the
15 lack of mens rea or the required mental state. Doesn't say
16 anything in the charge nowhere.

17 THE COURT: Here's what it says. There's a
18 definition of intentionally, there's a definition of
19 knowingly. The charge goes on to require the State to prove
20 beyond a reasonable doubt that the acts -- that the attempted
21 murder was done intentionally, and they're required to prove
22 beyond a reasonable doubt that the aggravated assault was done
23 intentionally or knowingly. That is how you charge on that
24 legal theory.

25 PRO SE DEFENDANT: What about informing the

Page 177

Page 179

1 Q. And you left there right before the tornado hit?
 2 A. The tornado -- when you ask me if I left before it
 3 hit, are you saying when it actually was on the building, was
 4 I inside the building?
 5 Q. That's the question.
 6 A. No, sir. When it was on top of the building, I was
 7 backing up.
 8 Q. You were in your car, right?
 9 A. Yes, sir.
 10 Q. Didn't hit your car?
 11 A. I don't know about that. It was real windy. The
 12 car was shaking over the road, so I can't say that it didn't
 13 hit it.
 14 Q. What kind of car were you driving that day?
 15 A. It was actually the same 1986 Cutlass that we've
 16 been talking about this whole trial. That was my work car.
 17 Q. So no doubt that the car that's depicted in State's
 18 exhibits, that's your car, right?
 19 A. That is the car that I own, yes, sir.
 20 Q. The car that Everett Angle described?
 21 A. The car that Everett Angle described, yes, sir.
 22 Q. Your car?
 23 A. That is my car, yes, sir.
 24 Q. Was your car?
 25 A. Yes, sir.

Page 178

Page 180

1 Q. And then you drove to your mom's house, right?
 2 A. Yes, sir.
 3 Q. Was she physically okay?
 4 A. Yes, sir.
 5 Q. No injuries?
 6 A. No physical injuries. She was a little startled.
 7 She heard the branch coming through the window.
 8 Q. She didn't go to the hospital?
 9 A. She did not go to the hospital.
 10 Q. Branch didn't hit her?
 11 A. No, sir. By the grace of God, it did not hit her.
 12 Q. Your family okay? The rest of your family okay?
 13 A. Yes, sir. There were no physical injuries.
 14 Q. So they were okay physically?
 15 A. Yes, sir.
 16 Q. And physically you were okay?
 17 A. I can't say that.
 18 Q. Well, did you have any physical injuries?
 19 A. I don't know. I had a bump on my head. I don't
 20 know if it came from the Garland officer hitting me in the
 21 head or getting hit in the tornado. I don't know.
 22 Q. The bump on your head that you've been describing,
 23 you don't know if that came from the Garland police officers?
 24 A. Again, as I explained earlier, I'm giving you my
 25 honest opinion from April 16 until May 15, I really don't know

1 what happened. I can't say what is or what isn't true.
 2 Q. Well, you're certainly suing Garland PD for them
 3 putting a bump on your head, aren't you?
 4 A. I'm mostly suing them for letting the dog bite me
 5 for no reason.
 6 Q. But you're also suing them for putting a bump on
 7 your head, aren't you?
 8 A. It's not necessarily a bump on the head; it was some
 9 bumps and bruises all over my body.
 10 Q. Well, did you get those from the tornado?
 11 A. Again, I don't know, sir, but those have been noted
 12 in the medical records. I don't know where they came from.
 13 Q. After you discovered the business was destroyed, you
 14 still had your barber's license, right?
 15 A. Yes, sir.
 16 Q. Didn't have to reapply for that?
 17 A. You have to reapply every two years, sir.
 18 Q. Well, at that time you didn't have to reapply?
 19 A. No, sir.
 20 Q. That was a valid license, wasn't it?
 21 A. Of course, sir. Yes, sir.
 22 Q. Did you try to find another place for another shop?
 23 A. No, sir, I haven't been able to do so.
 24 Q. Did you try to get on with somebody else after that,
 25 as a barber?

Page 181

Page 183

1 Everett Angle was trying to cut me with a knife that I grabbed
 2 out of his hand that ended up in my car that was recovered by
 3 police officers.

4 Q. So you consider that a psychotic episode?

5 A. Unless Everett Angle was attempting to try to really
 6 stab me.

7 Q. You don't remember that, right?

8 A. I remember grabbing the knife, but I don't know if
 9 he was just waving it talking, or was he trying to stab me.

10 Q. Oh, so you do remember some things happening out
 11 there at the scene?

12 A. I told you, I can -- I can -- you can hear
 13 conversations in this -- in this -- I guess this hypoglycemic
 14 state I'm trying to describe. You can -- you can hear, you
 15 can kind of see what's going on, but it just isn't normal like
 16 now. I can interpret everything you're saying quite clear and
 17 just like I can speak back quite clearly, but at that time I
 18 didn't really know what was going on was real or fake.

19 Q. Do you remember some things that happened at the
 20 scene on April 23rd of 2002?

21 A. I remember thinking Everett Angle was trying to stab
 22 me or somebody else.

23 Q. But you didn't answer my question, Mr. Calton. Do
 24 you remember some things at the scene on April 23rd of 2002?

25 A. And, again, I hear you clearly and I answered that

Page 182

Page 184

1 question. What I'm telling you, on the scene, I'm thinking
 2 Everett Angle tried to stab me or somebody else. That's what
 3 I remember.

4 Q. So now your defense is self defense?

5 A. I'm not saying that. I told you what I remember.

6 Q. But you don't know if that's true or not because
 7 you're having one of these psychotic episodes; is that right?

8 A. My point exactly. I don't know what -- if that's
 9 how it took place or not. I can't say for sure.

10 Q. You're saying that your family told you some things
 11 that you did?

12 A. Yes, sir.

13 Q. What kind of things?

14 A. One day I was in the house and I -- my brother's
 15 room door was closed, and I busted it down running through,
 16 thinking -- panicking for some reason.

17 Q. Anything else?

18 A. They told me I was just driving around with my head
 19 down, not communicating, just -- just, I guess, not acting
 20 normal in general.

21 Q. When was that?

22 A. That would be from a day or two after the tornado
 23 all the way up to April 23rd and a few days after.

24 Q. And during that time between after the time when
 25 your barber shop was destroyed and when Everett Angle was

1 shot, you didn't apply for a barber shop -- try to get a new
 2 barber shop or get another business going, did you?
 3 A. After that traumatic experience and everything,
 4 life's been up in a total jumble. I mean, I just -- still
 5 recuperating from all that now. Between that and the Garland
 6 trauma and the excessive force arrest, my life is still in
 7 shambles to this day.

8 Q. So the answer is no, correct?

9 A. That would be a great answer, no, yes, sir.

10 Q. Now, you said that you did some law research on
 11 this; is that right?

12 A. And plenty of it, yes, sir, I have.

13 Q. What cases are we talking about here?

14 A. What cases do you want to know about, sir?

15 Q. The law research that you talked about to this
 16 jury. What cases are we talking about?

17 A. We have --

18 Q. You said some cases. What cases?

19 A. We have Mendenhall versus the State is the governing
 20 case in the Texas Court of Criminal Appeals in Austin, Texas.

21 Q. What else?

22 A. We also have a Brumelo case as well, and that's a
 23 very important case as well.

24 Q. What else?

25 A. Of course, the other Mendenhall case.

1 handwriting?
 2 A. Yes, sir.
 3 Q. So you filled all this information out?
 4 A. Yes, sir.
 5 Q. Is this a true reflection of the events that took
 6 place at that time?
 7 A. Yes, sir.
 8 Q. At 1744 Wiseman Avenue?
 9 A. Yes, sir.
 10 Q. Has anybody made any additions or deletions to this
 11 paperwork, sir?
 12 A. No, sir.
 13 Q. This was, of course, done in the course of business as
 14 a Medstar paramedic, correct?
 15 A. Yes, sir.
 16 Q. Carrying out your job?
 17 A. Yes, sir.
 18 Q. Doing it right?
 19 A. I'm attempting to, yes, sir.
 20 Q. Yes, sir.
 21 PRO SE DEFENDANT: Now, I would like to tender to
 22 the State Defendant's Exhibit No. 21, Your Honor, and ask that
 23 it be admitted into evidence.
 24 MR. HAGEMAN: No objection, Judge.
 25 THE COURT: 21 is admitted.

1 (Defendant's Exhibit No. 21 received)
 2 Q. Mr. Snow, only a couple more questions, and I will let
 3 you go. I know you're busy.
 4 Now, you were subpoenaed originally to testify
 5 Tuesday?
 6 A. Yes, sir.
 7 Q. And what exactly -- why didn't you testify?
 8 A. I had worked the previous night, all night; came home;
 9 set two alarms and slept right through them, and didn't wake up
 10 until about 7:00 o'clock that night and freaked out, and so I
 11 was resubpoenaed, and here I am.
 12 Q. Thank you for your time, Mr. Snow.
 13 MR. BRANDENBERG: May I have a moment, Your
 14 Honor.
 15 Pass the witness, Judge.
 16 THE COURT: You may step down, sir.
 17 MR. BRANDENBERG: May this witness be excused to
 18 go on about his business?
 19 THE COURT: He may.
 20 PRO SE DEFENDANT: Yes, sir.
 21 (Pause in the proceedings)
 22 PRO SE DEFENDANT: Your Honor, at this time, I
 23 call Dr. McReynolds, the treating physician of Everett Charles
 24 Angle.
 25 (Witness Sworn)

1 Whereupon,
 2 DR. DAVID MCREYNOLDS,
 3 having been first duly sworn, testified as follows:
 4 DIRECT EXAMINATION
 5 BY PRO SE DEFENDANT:
 6 Q. State your name for the record, sir.
 7 A. David B. McReynolds.
 8 Q. And how are you employed, Mr. McReynolds?
 9 A. I am a full-time staff physician with North Texas
 10 Affiliated Medical Group that works with John Peter Smith
 11 Hospital, Tarrant County Hospital District.
 12 Q. Were you employed in that same capacity on April 23rd,
 13 2002?
 14 A. Yes, I was.
 15 Q. How long have you been a physician, sir?
 16 A. A physician? Since 1970.
 17 Q. That's 34 years.
 18 A. Well, actually '74. That's it. I finished medical
 19 school in '74. College in '70; medical school in '74.
 20 Q. Got quite a few years of experience, correct?
 21 A. Yes.
 22 Q. Treated quite a few trauma patients, correct?
 23 A. Yes, I have.
 24 Q. Did you happen to treat Everett Angle on April 23rd,
 25 2002?

1 A. Yes, I did.
 2 Q. And what did you treat him for, sir.
 3 A. I believe he came to the hospital after suffering a
 4 gunshot wound to the face.
 5 Q. When you say "a gunshot wound to the face," is that
 6 two or three or one?
 7 A. Well, there is some debate about that, looking at the
 8 medical record. He had one major gunshot wound that went into
 9 his -- left side of his face, through and through.
 10 Q. Okay. And when you -- as far as your recollection,
 11 and going over your medical records, you were the treating
 12 physician, correct?
 13 A. Yes, one of the treating physicians.
 14 Q. Okay. Did you -- how many gunshot wounds did you
 15 treat him for?
 16 A. Well, if you look at the medical record and you look
 17 at all the physicians that took care of him, all the physicians
 18 who wrote notes, all the physicians were describing one gunshot
 19 wound.
 20 Q. Okay. Do you see any of those --
 21 PRO SE DEFENDANT: No further questions, Your
 22 Honor.
 23 CROSS-EXAMINATION
 24 BY MR. HAGEMAN:
 25 Q. Dr. McReynolds, when a patient comes into the ER,

1 The evidence is legally and factually
 2 insufficient under Jackson vs. Virginia 443 U.S. 307 1979 and
 3 *Kidd vs. Florida 457 U.S. 31, 1982 and therefore should not
 4 be submitted to the jury. **Cluess vs. State 922 Sw 2nd
 5 Edition 126, 133.

6 Again, this the Court, as a matter of law,
 7 should instruct the jury to render a judgment of acquittal
 8 proven by the defense the affirmative defense insufficient
 9 evidence to rebut the defense disproving the essential
 10 elements of the offense.

11 The Jackson standard incorporates the heavy
 12 trial burden of beyond a reasonable doubt. The Court in
 13 Jackson specifically adopted this standard review to replace
 14 the previous no-evidence standard to ensure that the minimum
 15 Federal Constitutional guarantees were met. Jackson 443 U.S.
 16 at 319. No longer is some evidence required, but sufficient
 17 evidence of guilt beyond a reasonable doubt is necessary. See
 18 also Butler, 769 Southwest 2nd Edition at 239.

19 **Winshift requires that no criminal Defendant
 20 may be convicted of a criminal offense on less than proof
 21 beyond a reasonable doubt. In RE: Winshift 397 U.S. 358 364,
 22 1970.

23 Your Honor, this case was not proven by the
 24 State beyond a reasonable doubt. The evidence is legally
 25 insufficient and the case should not be submitted to the jury.

1 It is a question of law. Ex parte **Hula, 846 Sw2nd Edition
 2 850, 852 Texas Criminal Appeals, 1993.

3 It is not a question of law; it is indeed a
 4 mixed question of law and fact, one that requires the
 5 factfinder to first resolve the fact question by weighing all
 6 the evidence, then applying the fact found to the applicable
 7 law. See Romero vs. State, 800 Sw2nd Edition 538, Texas
 8 Criminal Appeal, 1990; Higby vs. State, 780 Sw2nd Edition,
 9 228 Texas Criminal Appeal 1989. That's all I have on that
 10 matter.

11 THE COURT: All right. I have read your motion
 12 for instructed verdict, and that motion is denied.

13 PRO SE DEFENDANT: Could I get you to sign my
 14 copy, please?

15 THE COURT: Yes.

16 We're ready to proceed with arguments. Are
 17 both sides ready for the jury?

18 MR. HAGERMAN: State's ready, Your Honor.

19 PRO SE DEFENDANT: Bring the jury out, Your
 20 Honor.

21 (Jury present)

22 THE COURT: Good morning, ladies and
 23 gentlemen. I am going to read you the Court's Charge.

24 (Court's Charge read by the Court)

25 THE COURT: Each side has 20 minutes for

1 summation. The State may proceed.

2 MR. BRANDENBERG: Thank you, Your Honor. Would
 3 you notify me if I have used five minutes?

4 STATE'S OPENING ARGUMENT

5 MR. BRANDENBERG: Ladies and gentlemen of the
 6 jury, this is the first time I have had to address you
 7 directly, and the first thing I would like to do is thank you
 8 for your service. I know that serving on a jury is
 9 inconvenient, particularly when it goes into a second week,
 10 but I hope you know that all of us here appreciate your
 11 service and without you, we couldn't have the system that we
 12 have.

13 And frankly, service on a jury is the best way
 14 that you can actually participate in self-government other
 15 than voting, and we just want you to know that we appreciate
 16 it.

17 First thing I'd like to do is talk to you
 18 about a couple of housekeeping matters. Obviously since your
 19 foreperson is going to have to sign the verdict form that was
 20 just read to you by the Judge, you will get to take the Charge
 21 back there with you so you will have an opportunity to read
 22 and discuss any of those definitions or whatever is contained
 23 in the charge.

24 Another thing, with respect to the evidence,
 25 the best thing is for your foreperson to write a note, send it

1 out and ask that all the evidence be sent back to you. That
 2 way you don't have to worry about a particular exhibit number.
 3 It is all there for you.

4 Everything that -- documents, pictures, whatnot
 5 that's been admitted into evidence is available for you to
 6 look at when you go back and do your deliberations. There is
 7 a videotape admitted into evidence. If you desire to see
 8 that, send a note by the bailiff, and that will be arranged
 9 for you.

10 Testimony. It's been a somewhat long trial,
 11 and the law provides that if you desire or feel a need to have
 12 testimony reread to you or covered again, there are some
 13 pretty specific requirements for that.

14 First of all, the law requires there be a
 15 disagreement as to a particular point in the testimony. For
 16 example, Witness A, you will send a note that we have a
 17 disagreement as to Witness A said the hat was red or green,
 18 something of that nature. It has to be very specific. But if
 19 you have a disagreement as to a specific point, send such a
 20 note and that can be done for you.

21 Some of the things you don't have to decide.
 22 There has been a lot of testimony in this trial as to how many
 23 times Chuck Angle, who is sitting back here, was shot, whether
 24 once, twice or three times. You don't have to decide that.
 25 That's not an element of this offense.

1 You don't have to decide where he was standing
 2 when he was shot, whether between the street -- or the street
 3 and the sidewalk or the sidewalk and the house. Those aren't
 4 part of the elements, and I will talk more about that in a
 5 moment.

6 As far as your deliberations, you heard the
 7 Court's Charge read. There are two charges here, attempted
 8 murder and aggravated assault. The way the charge is
 9 structured you are asked to consider the attempted-murder
 10 charge first. I suggest to you that you do that and
 11 deliberate on that particular charge; and if you are able to
 12 arrive at a guilty verdict on that the offense, you are done.
 13 You don't have to consider the aggravated-assault charge.

14 It is only if you agree unanimously that he's
 15 not guilty of that or unable to reach a verdict on that charge
 16 that you go to the second charge of aggravated assault with a
 17 deadly weapon. First consider the attempted murder. If you
 18 are able to submit a verdict on that, which we submit the
 19 evidence is overpowering, then you should reach a verdict on
 20 that charge, return that verdict, and that part is done.

21 Another thing I would like to remind you of,
 22 ladies and gentlemen. Although the Defendant in this case has
 23 no burden of proof, he has the same right as we do to subpoena
 24 witnesses, to have evidence brought forward, contested. You
 25 saw evidence of that. He subpoenaed dozens of witnesses and

1 brought them up here to tell his story. So although he has no
 2 burden, he has the same power that we do, the State of Texas
 3 does, in providing witnesses to you.

4 There was some testimony that a knife that
 5 wasn't testified (sic). If the Defendant wanted that done, he
 6 could have it done. He has no burden, mind you, but he could
 7 have.

8 Let me talk briefly about the charge. First,
 9 the charge has some definitions. Definition of an attempt,
 10 the offenses themselves are defined, bodily injury, deadly
 11 weapon, obviously there is no issue in this case whether or
 12 not a deadly weapon was used. Chuck Angle was shot in the
 13 face a with a gun. A gun is a firearm. A firearm is a deadly
 14 weapon. No issue on that.

15 It talks about intentionally or knowingly.
 16 Reasonable doubt. There is no definition of what beyond a
 17 reasonable doubt is. That's something that each and every one
 18 of you have to decide on your own. You may each -- all 12 of
 19 you have a different definition in your own mind. Obviously
 20 it is a serious, heavy burden. It is something that you need
 21 to be comfortable with when you make that decision.

22 But it is beyond a reasonable doubt not beyond
 23 all doubt; and actually, it is almost better to look at it in
 24 the reverse. In other words, if you have a reasonable doubt,
 25 act accordingly. If you do not have a reasonable doubt, then

1 you may convict the Defendant.

2 THE COURT: You have used five minutes.

3 MR. BRANDENBERG: Thank you, Your Honor.

4 The charging paragraphs in here are the two
 5 that says, "Now bearing in mind the foregoing definitions, et
 6 cetera. Those are the elements that we have to prove beyond a
 7 reasonable doubt. The statement that was given in this case
 8 clearly was freely and voluntarily given. The Defendant
 9 himself was the one that asked the officer to come up and take
 10 the statement.

11 Now, obviously we don't believe that statement
 12 is what happened out there, but we offered that to you to show
 13 that that's one of the Defendant's versions of events. And
 14 there are things in that statement that show he knew what was
 15 going on, he wasn't in some hypoglycemic state. He
 16 remembered the lake; he remembered what happened on the other
 17 part of it.

18 PRO SE DEFENDANT: I object to that. There is
 19 no lake in that statement.

20 THE COURT: Overruled.

21 MR. BRANDENBERG: The State's case, ladies and
 22 gentlemen, is very simple. Detective Boetcher, went and
 23 talked to Chuck Angle on April 22, 2002, and Chuck Angle told
 24 Detective Boetcher that the word on street was that the
 25 Defendant was good for Billy Hanks. And the very next day the

1 Defendant goes over in the afternoon and talks to Chuck Angle.
 2 And I submit that you can infer from the
 3 evidence that somebody that was there the day before dropped
 4 the dime on Chuck Angle and told this Defendant what happened
 5 the day before.

6 PRO SE DEFENDANT: Your Honor, he's talking
 7 about things that aren't in evidence. Nobody said anything
 8 about Chuck dropped a dime on the Defendant. Nobody testified
 9 to that fact.

10 THE COURT: Overruled.

11 MR. BRANDENBERG: Goes over to 1744 Wiseman the
 12 next evening. The testimony of Chuck and Craig is very clear.
 13 The Defendant was very clear and deliberate in what he did.
 14 He fired at least one, if not three, shots at Chuck Angle with
 15 the specific intent to kill. You don't shoot somebody in the
 16 head fooling around. You intend to kill them, and it's a
 17 wonder that he's here today.

18 And ladies and gentlemen, when you find him
 19 guilty of this attempted murder, you're not going to be
 20 telling him anything he doesn't already know. Thank you.

21 THE COURT: The Defense may proceed

22 PRO SE DEFENDANT: Your Honor, I would like to
 23 get a ten-minute, a five-minute and a two-minute warning, if
 24 it please the Court.

25 DEFENDANT'S ARGUMENT

Page 13

Page 15

1 PRO SE DEFENDANT: Good morning, ladies and
 2 gentlemen. Let's start off with the automatism defense. With
 3 the help of several investigators through an investigation
 4 process, several issues were uncovered. The fact is the
 5 Defense didn't actually find out about the Garland Fire
 6 Department medical records on Allen Calton suffering a seizure
 7 and going into convulsions due to an excessive low blood-sugar
 8 level.

9 Jeff Bunch was able to obtain that information
 10 from Garland on February 4, 2004, almost two years after the
 11 crime. Once looking over those records, I personally applied
 12 the facts and medical gissen (phonetic) to the law, and it is
 13 obvious there was a clear defense negating the intent or
 14 knowledge of this crime, also making the commission of this
 15 crime an involuntary act.

16 There is no required mental state, no intent,
 17 no knowledge. Not guilty is the verdict. Without intent or
 18 knowledge, folks, you are in a semiconscious state; and when
 19 you are in a hypoglycemic state, low blood sugar will rob your
 20 brain of necessary nutrients in order to function properly.
 21 It is the law, and as jurors you are bound by the law, and you
 22 will receive the proper instructions from this Court.

23 You will see intentionally or knowingly in that
 24 Charge it appears in the indictment; but again, it wasn't
 25 proven beyond a reasonable doubt.

Page 14

Page 16

1 Let's talk a little bit about the continuum.
 2 The continuum odyssey started around April 16, 2002, as
 3 witnesses' testimony clearly indicated. April 17, 2002, was
 4 the most
 5 horrifying and depressing day of Allen Calton's life.
 6 Everything gone in a matter of seconds. That tornado was
 7 obviously a factor in the low blood sugar level that occurred
 8 for about a month. Never had that problem before the tornado,
 9 never had it after May 15, 2002, after a JPS emergency room
 10 visit with, of course, a blood sugar level of 53, another case
 11 of hypoglycemia.

12 Witnesses testified about Allen Calton not
 13 being himself, being confused, having difficulty
 14 understanding, being uncooperative, passive, appearing
 15 intoxicated, distracted and,
 16 of course, odd and bizarre behavior, even acting strange.

17 Take a look at Defendant's Exhibit 1 compiled
 18 by Garland detention officers. Would they lie for me? No
 19 way. And they took that information two a half hours after
 20 the
 21 shooting, and that supports all the testimony about that
 22 hypoglycemic state.

23 The officers making that observation, he checks
 24 off the signs and symptoms of a hypoglycemic state. It's very
 25 clear, folks. Attorney Leon Haley got right up on that

1 witness stand. He was appointed by the Court. He's not a
 2 friend of mine. He was appointed May 9, 2002, right in that
 3 window where we're having hypoglycemia states.

4 He testified he saw Allen Calton staring out
 5 into space, hard to deal with Allen Calton, Allen Calton not
 6 having any understanding; of course, acting oddly as well as
 7 displaying odd behavior again with an attorney. That's why he
 8 got a competency examination done on me. Something was wrong.

9 You have another hypoglycemic state recorded on
 10 May 14, 2002. That's that 53 I was telling you about. All
 11 again in that window from the tornado April 16, 2002, to May
 12 15, you've got a continuum.

13 As a matter of fact on that 53, it takes one
 14 amp of D-50. We know all about D-50 now. April 24, two hours
 15 after the shooting, it took a double amp of D-50 to bring
 16 Allen Calton back. Thank the Lord for those Garland
 17 paramedics that saved my
 18 life. Next step after that seizure could have been a coma and
 19 then brain damage, then death. Dr. Lowen cleared that up, an
 20 expert again on hypoglycemia.

21 Several experts testified about excessive low
 22 blood sugar levels causing seizures, convulsions and even
 23 coma.

24 How about this? Motives for lying. Let's talk
 25 about Craig Alan Tate and Everett Charles Angle. You know

1 they had motives to lie. Both of them made deals with this
 2 very gentleman sitting right here --

3 MR. HAGERMAN: Judge, we will object to that.
 4 There is no evidence that they cut a deal on anything.

5 THE COURT: overruled.

6 PRO SE DEFENDANT: Everett Angle again made
 7 deals with this prosecutor, has five drug charges, been to the
 8 penitentiary for selling drugs, the guy gets two years.
 9 That's the minimum sentence. Come on. I'd lie too for two
 10 years. Anybody would.

11 All right. Now we go. We look in here. The
 12 minimum. Craig Angle again. He gets five days for breaking
 13 into a car. Sounds like some deal cutting to me, sounds like
 14 some
 15 lies being told as well. Slap on the wrist, folks, five days
 16 and two years in prison for convicted drug dealers.

17 Now, let's get back to what we're here for
 18 today. The Prosecutor needed some help in getting that
 19 intentionally and knowingly elements of the crime, and nothing
 20 would do better than accomplishing that goal by getting
 21 multiple shots. As you can clearly see, they are wavering
 22 back and forth. One minute it's one shot, one minute it's two
 23 shots, doesn't matter about the shots.

24 Yes, it does matter about the shots. It's
 25 important. Accident, mistake or confusion can lead to one



SHAREN WILSON

Criminal District Attorney
Tarrant County

March 23, 2017

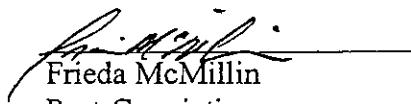
Allen Fitzgerald Calton
TDCJ-ID#: 01123880
Stiles Unit
3060 FM 3514
Beaumont, Texas 77705

RE: Calton, Allen Fitzgerald - Case No.: 0843168D

Dear Sir,

Enclosed, please find file marked copies of the State's Supplemental Article 64.02 Notice; State's Reply to Defendant's Motion for Forensic DNA Testing; State's Proposed Memorandum, Findings of Fact and Conclusions of Law in the above referenced case which were filed this date with the Tarrant County District Clerk's Office.

Sincerely,



Frieda McMillin
Post-Conviction
Litigation Specialist

Enclosures

Appendix "N" app. p. 31

NO. 0843168D

THE STATE OF TEXAS

v.

ALLEN FITZGERALD CALTON

§ IN THE 213TH JUDICIAL
§ DISTRICT COURT OF
§ TARRANT COUNTY TEXAS
THOMAS A. WILDER
DISTRICT CLERK

2017 MAR 23 AM 9:19

TARRANT COUNTY

STATE'S SUPPLEMENTAL ARTICLE 64.02 NOTICE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the State of Texas, by and through the Criminal District Attorney of Tarrant County, Texas and files this supplemental notice pursuant to article 64.02 of the Texas Code of Criminal Procedure.

I.

The defendant was convicted by a jury of attempted murder on May 19, 2004. See Judgment. After finding that the defendant was a habitual offender, the jury sentenced him to life confinement. See Judgment. The Court of Appeals for the Second District of Texas overruled the defendant's three points of error and affirmed his conviction. See *Calton v. State*, 2005 WL 3082202 (Tex. App. - Fort Worth November 17, 2005, pet. withdrawn) (not designated for publication).

Appendix "N" app. p. 32

COPY

II.

The defendant filed a fourth motion for DNA testing of evidence on November 18, 2016, requesting DNA testing on a steak knife found inside his car after his arrest by the Garland Police Department on April 23, 2002. See Motion for DNA Testing & Affidavit in Support of Motion for DNA Testing. On December 1, 2016, this Court has ordered the State to respond within sixty (60) days after being served with the defendant's motion. See Order Pursuant to Article 64.02.¹ The State filed its original article 64.02 notice on January 27, 2017. See State's Article 64.02 Notice.

III.

The Garland Police Department has concluded its investigation into whether it still possesses the steak knife in question. Its records indicate that all evidence related to the defendant's arrest was released on February 17, 2005, for a civil action, and that no evidence was returned to their possession. The City of Garland no longer retains any documents regarding this case because it has been resolved. See Affidavit of Shelli Pryor, page 2.

¹ Texas Code of Criminal Procedure Article 64.02 obligates the State to determine whether there exists evidence potentially containing biological material or explain why the State cannot deliver such evidence to the Court. See Tex. Code Crim. Proc. Art. 64.02.

Respectfully submitted,

SHAREN WILSON
Criminal District Attorney
Tarrant County, Texas

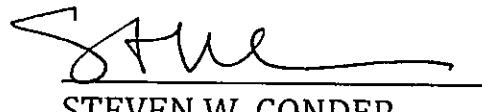
DEBRA WINDSOR
Chief, Post-Conviction



STEVEN W. CONDER, Assistant
Criminal District Attorney
401 W. Belknap
Fort Worth, Texas 76196-0201
(817) 884-1687
FAX (817) 884-1672
State Bar No. 04656510

CERTIFICATE OF SERVICE

A true copy of the above supplemental notice has been mailed to the defendant, Mr. Allen F. Calton, TDCJ-ID #01123880, Stiles Unit, 3060 FM 3514; Beaumont, Texas 77705, on this, the 23rd day of March, 2017.



STEVEN W. CONDER

c18.calton allen fitzgerald.dna/64.02supplemental notice

Appendix "N" app. p.34

AFFIDAVIT

Before me, the undersigned authority, personally appeared Shelli Pryor, who being by me duly sworn, deposed as follows:

My name is Shelli Pryor, I am of sound mind, capable of making this affidavit, and am personally acquainted with the facts herein stated. I am the property/evidence custodian for Garland Police Department Property Room. I have thoroughly searched for any property or evidence relating to our Offense Report No. 2002R011507 - Defendant - Calton, Allen F. - Offense - Evading Arrest or Detention-Vehicle, which might contain biological evidence and have found the following stated facts to be true and correct:

All evidence relating to the above case number was destroyed on _____.

Documentation of evidence destruction attached.

Documentation of evidence destruction is not available.

Our records indicate that our agency was never in possession of any evidence relating to the above case/cause number.

Evidence or property exists relative to the above case number that might contain biological evidence. An evidence list is attached;

Appendix "N" opp. p.35

Our records indicate that our agency is in possession of property or evidence relative to the above case/cause number; however, it cannot be located.

Our records indicate all evidence relating to the above case/cause number was released to: Lt. VanCleave on 2/17/05 for civil court. Although there is no record of this evidence being submitted into the record during trial, this case has subsequently been resolved and all documents retained by the City has been purged. We have no record of the evidence being returned to the City of Garland Property Room.

Further affiant sayeth naught.



Affiant

SWORN TO AND SUBSCRIBED before me on this the 20th day of March, 2017.



Notary Public, State of Texas



My commission expires: 2-19-18

Appendix "N" opp. p. 36

NO. 0843168D

THE STATE OF TEXAS

v.

ALLEN FITZGERALD CALTON

IN THE 213TH JUDICIAL
DISTRICT COURT OF
TARRANT COUNTY

FILED
TARRANT COUNTY
2011 MAR 23 AM 9:20
THOMAS A. WILDEK
DISTRICT CLERK

STATE'S REPLY TO DEFENDANT'S
MOTION FOR FORENSIC DNA TESTING

COMES NOW, the State of Texas, by and through the Criminal District Attorney of Tarrant County, Texas, and makes this reply to the defendant's motion for forensic DNA testing.

I.

The defendant was convicted by a jury of attempted murder on May 19, 2004. See Judgment. After finding that the defendant was a habitual offender, the jury sentenced him to life confinement. See Judgment.

The Court of Appeals for the Second District of Texas overruled the defendant's three points of error and affirmed his conviction. See *Calton v. State*, 2005 WL 3082202 (Tex. App. - Fort Worth November 17, 2005, pet. withdrawn) (not designated for publication).

Appendix "A" opp. p. 37

COPY

II.

The defendant filed a fourth motion for DNA testing of evidence on November 18, 2016, requesting testing on a steak knife found inside his car after his arrest by the Garland Police Department on April 23, 2002. See Motion for DNA Testing & Affidavit in Support of Motion for DNA Testing.¹ The State is filing a supplemental article 64.02 notice addressing the steak knife's status with this reply. See State's Supplemental Article 64.02 Notice.²

III.

There is no free-standing due-process right to DNA testing. *Ex parte Gutierrez*, 337 S.W.3d 883, 889 (Tex. Crim. App. 2011). A convicting court may order forensic DNA testing only if the statutory preconditions of Texas

1 The defendant has filed previous requests for post-conviction forensic DNA testing which have been denied by this Court and upheld by the appellate courts because his identity is or was not an issue and because there is no evidence that he would not have been convicted had exculpatory DNA results been obtained. See *Calton v. State*, 2009 WL 9760004, at *1, 4 (Tex. App. - Fort Worth April 9, 2009, pet. refused) (not designated for publication); *Calton v. State*, 2015 WL 3918013, at *1-2 (Tex. App. - Fort Worth June 25, 2015, pet. refused) (not designated for publication). The defendant was also denied post-conviction forensic DNA testing because he has not shown that newer DNA testing would yield more accurate and probative results in his case. See *Calton v. State*, 2015 WL 3918013, at *2.

2 The State previously filed an article 64.02 notice on January 30, 2017, setting forth the known existing evidence potentially containing biological material. See State's Article 64.02 Notice.

NO. 0843168D

THE STATE OF TEXAS

v.

ALLEN FITZGERALD CALTON

§ IN THE 213TH JUDICIAL
§ DISTRICT COURT OF
§ TARRANT COUNTY TEXAS
THOMAS A. WILLIAMS
DISTRICT CLERK

2017 MAR 23 AM 9:20

FILED
TARRANT COUNTY

STATE'S PROPOSED MEMORANDUM, FINDINGS OF FACT
AND CONCLUSIONS OF LAW

The State proposes the following Findings of Fact and Conclusions of Law regarding the issues raised in the Defendant's Request for Forensic DNA Testing.

MEMORANDUM

The defendant was convicted by a jury of attempted murder on May 19, 2004, and sentenced to life confinement. See Judgment. The Court of Appeals for the Second District of Texas overruled the defendant's three points of error and affirmed his conviction. See *Calton v. State*, 2005 WL 3082202 (Tex. App. - Fort Worth November 17, 2005, pet. withdrawn) (not designated for publication). The defendant has filed a motion for DNA testing of evidence on November 18, 2016, requesting testing on a steak knife found inside his car after his arrest by the Garland Police Department on April

Appendix "N" app. p. 39

COPY

10. Mr. Angle survived the shooting, but was left with only his peripheral vision. See Reporter's Record III:32.
11. The defendant was arrested later that night after a lengthy high-speed police chase culminating with him driving his car into White Rock Lake. See Reporter's Record V:29-31, 38-40, 51, 62, 156-57.
12. The Garland Police Department no longer possesses the steak knife in question. See Affidavit of Shelli Pryor, page 2.
13. The Garland Police Department has no record of the steak knife's location following its release for a civil action on February 17, 2005. See Ms. Pryor's Affidavit, page 2.
14. The steak knife in question does not currently exist or is not currently available for post-conviction forensic DNA testing.
15. Substantial evidence independent of the steak knife establishes the defendant's guilt.
16. There is nothing in the record to suggest that a steak knife played any part in the defendant's attempted murder of Everett Angle.
17. The defendant cannot show by a preponderance of the evidence that testing the steak knife would establish his innocence given the substantial existing evidence that he shot Mr. Angle three times at close range.
18. The defendant has failed to meet the requirements of article 64.03 for post-conviction forensic DNA testing.

CONCLUSIONS OF LAW

1. There is no free-standing due-process right to DNA testing. *Ex parte Gutierrez*, 337 S.W.3d 883, 889 (Tex. Crim. App. 2011).
2. A convicting court may order forensic DNA testing only if the statutory preconditions of Texas Code of Criminal Procedure chapter 64 are met.

Holberg v. State, 425 S.W.3d 282, 284 (Tex. Crim. App. 2014); **Tex. Code Crim. Proc. art. 64.01-.03.**

3. Article 64.03 requires that the evidence still exist before a trial court can order post-conviction forensic DNA testing. **Tex. Code Crim. Proc. art. 64.03(a)(1)(A)(i).**
4. The defendant is not entitled to post-conviction forensic DNA testing because the steak knife in question does not currently exist or is not currently available.
5. Article 64.03 requires a defendant to prove by a preponderance of the evidence that he would not have been convicted if exculpatory results had been obtained through DNA testing. **Tex. Code Crim. Proc. art. 64.03(a)(2)(A).**
6. A defendant must establish a reasonable probability that exculpatory DNA testing of the evidence for which he seeks testing would prove his innocence. *Skinner v. State*, 122 S.W.3d 808, 811 (Tex. Crim. App. 2003); *Rivera v. State*, 89 S.W.3d 55, 59 (Tex. Crim. App. 2002); *Kutzner v. State*, 75 S.W.3d 427, 439 (Tex. Crim. App. 2002).
7. A defendant must do more than simply ask for forensic DNA testing so that he might cast doubt on the verdict. *Eubanks v. State*, 113 S.W.3d 562, 566 (Tex. App. - Dallas 2003, no pet.).
8. It is not enough to argue that where the presence of a defendant's DNA would indicate guilt, its absence indicates innocence. *Rivera v. State*, 89 S.W.3d at 59.
9. A defendant must show that there exists a 51% chance that he would not have been convicted. *Smith v. State*, 165 S.W.3d 361, 364 (Tex. Crim. App. 2005).
10. A defendant does not satisfy his burden if the record contains other substantial evidence of guilt independent of what he wants DNA tested. *Swearingen v. State*, 303 S.W.3d 728, 736 (Tex. Crim. App. 2010).
11. Given the substantial evidence independent of the steak knife

Appendix "A" opp. p. 41

Code of Criminal Procedure chapter 64 are met. *Holberg v. State*, 425 S.W.3d 282, 284 (Tex. Crim. App. 2014); **Tex. Code Crim. Proc. art. 64.01-03.** The defendant does not meet those statutory requirements.

IV.

A trial court may order post-conviction forensic DNA testing only if the evidence in question still exists. **Tex. Code Crim. Proc. art. 64.03(a)(1)(A)(i).** The Garland Police Department no longer possesses the steak knife in question, and has no record of its location following its release for a civil action on February 17, 2005. See Affidavit of Shelli Pryor, page 2. Since there is no knife available for post-conviction forensic DNA testing, the defendant is not entitled to such testing. See *Bolden v. State*, 112 S.W.3d 312, 313-14 (Tex. App. - Fort Worth 2003, pet. refused) (trial court reasonably denied post-conviction forensic DNA testing where no evidence is available to test).

V.

In order to obtain post-conviction forensic DNA testing, a defendant must prove that he would not have been convicted if exculpatory results had been obtained through the requested DNA testing. **Tex. Code Crim. Proc.**

Appendix "N" app. p. 42

art. 64.03(a)(2)(A). In other words, he must establish that there exists a reasonable probability that exculpatory DNA testing of the evidence for which he seeks testing would prove his innocence. *Skinner v. State*, 122 S.W.3d 808, 811 (Tex. Crim. App. 2003); *Rivera v. State*, 89 S.W.3d 55, 59 (Tex. Crim. App. 2002); *Kutzner v. State*, 75 S.W.3d 427, 439 (Tex. Crim. App. 2002).

A defendant must do more than simply ask for forensic DNA testing so that he might cast doubt on the verdict. *Eubanks v. State*, 113 S.W.3d 562, 566 (Tex. App. – Dallas 2003, no pet.). Likewise, it is not enough to argue that where the presence of a defendant's DNA would indicate guilt, its absence indicates innocence. *Rivera v. State*, 89 S.W.3d at 59. The defendant must show that there exists a 51% chance that he would not have been convicted. *Smith v. State*, 165 S.W.3d 361, 364 (Tex. Crim. App. 2005).

A defendant does not satisfy this burden if the record contains other substantial evidence of guilt independent of what he wants DNA tested. *Swearingen v. State*, 303 S.W.3d 728, 736 (Tex. Crim. App. 2010). The record herein shows that:

- On the night of April 23, 2002, the defendant drove to Everett Angle's house where Craig Tate was outside storing mowers and Mr. Angle was inside making dinner. See Reporter's Record III:20-23, 103.
- Mr. Angle walked outside to talk to the defendant at his car. See Reporter's Record III:23-24.

- The two men appeared to have a friendly conversation. See Reporter's Record III:24.
- As they spoke, the defendant reached under his car seat, but Mr. Angle thought nothing of it. See Reporter's Record III:25.
- When Mr. Angle turned toward Mr. Tate to ask him to put away the lawnmowers, the defendant got out of his car approached Mr. Angle, and shot him in the face. See Reporter's Record III:26, 105-06, 125-26.
- When Mr. Angle fell to the ground, the defendant stood over him and shot him a second time which glanced off his skull. See Reporter's Record III:27.
- While Mr. Angle remained on the ground, the defendant stood over Mr. Angle and fired a third shot at his head. See Reporter's Record III:28, 107.
- The defendant then returned to his car and drove away. See Reporter's Record III:107.
- The defendant was arrested later that night after a lengthy high-speed police chase culminating with him driving his car into White Rock Lake. See Reporter's Record V:29-31, 38-40, 51, 62, 156-57.
- Mr. Angle was transported by ambulance to the hospital. See Reporter's Record III:29, 32.
- Mr. Angle survived the shooting, but was left with only his peripheral vision. See Reporter's Record III:32.

Put simply, substantial evidence independent of the steak knife establishes the defendant's guilt. Moreover, there is nothing to suggest that a steak knife played any part in this attempted murder.

The Court should deny the defendant's request for post-conviction forensic DNA testing because he cannot demonstrate by a preponderance of the evidence that forensic DNA testing would establish his innocence. See *Swearingen v. State*, 303 S.W.3d at 736; *Skinner v. State*, 122 S.W.3d at 814; *Rivera v. State*, 89 S.W.3d at 60.

V.

The Court should deny the defendant's current request for post-conviction DNA testing on the steak knife because he cannot show that knife still exists for testing or that there exists a reasonable probability that exculpatory DNA testing of the knife would prove his innocence.³

3 The defendant is not entitled to post-conviction DNA testing of evidence currently in the State's possession because that evidence has already been subjected to DNA testing. See Southwestern Institute of Forensic Sciences - Laboratory Report #04P0382, pages 1-2; Orchid Cellmark Laboratory Report - Case No. FOR3578, page 1. Chapter 64 only permits a defendant to obtain post-conviction forensic DNA testing of evidence previously subjected to DNA testing if he can establish that newer testing techniques are available that would reasonably result in more accurate or probative results than the results of the previous test. See *Swearingen v. State*, 303 S.W.3d at 733-34; Tex. Code Crim. Proc. art. 64.01(b)(2).

Both prior laboratories - the Southwestern Institute of Forensic Sciences and Orchid Cellmark - were unable to develop any usable DNA results due to insufficient genetic information or insufficient amounts of DNA. See Southwestern Institute of Forensic Sciences - Laboratory Report #04P0382, pages 1-2; Orchid Cellmark Laboratory Report - Case No. FOR3578, page 1. The defendant presents no evidence that newer testing techniques would provide more accurate and probative results, or that retesting of this evidence is necessary. See Motion for DNA Testing. As the Second Court

WHEREFORE, PREMISES CONSIDERED, the State prays the Court deny the defendant's DNA testing request.

Respectfully submitted,

SHAREN WILSON
Criminal District Attorney
Tarrant County, Texas

DEBRA WINDSOR, Assistant
Criminal District Attorney
Chief, Post-Conviction



STEVEN W. CONDER, Assistant
Criminal District Attorney
401 W. Belknap

of Appeals explained when it upheld the trial court's second denial of Defendant's motion for DNA testing:

A movant for DNA testing must do more than simply move for such relief; he bears the burden to satisfy the requirements of the statute allowing such testing and must provide facts in support of the motion. [citations omitted] Because the evidence at issue here previously was subjected to DNA testing, Calton was required to allege facts to support his contention that newer testing techniques are available and that it is reasonably likely that such techniques would yield more accurate and probative results. [citations omitted] In his supporting declaration, Calton stated that "DNA testing technology has evolved tremendously over the past few years" and "several [new] methods" would "clearly trump[] the testing capabilities that were available when testing was done ... in 2002." These bare allegations are insufficient to establish the need for further testing.

Calton v. State, 2015 WL 3918013 at *2. Put simply, there exists no reasonable likelihood that re-testing or newer testing techniques would produce more accurate or probative results based on the minuscule amount of DNA that previously was insufficient. See *Swearingen v. State*, 303 S.W.3d at 733-34. Thus, the defendant does not meet the requirements for new forensic DNA testing of the evidence previously tested.

Appendix "N" app. p. 46

Fort Worth, Texas 76196-0201
(817) 884-1687
FAX (817) 884-1672
State Bar No. 04656510

CERTIFICATE OF SERVICE

A true copy of the above reply has been mailed to the defendant, Mr. Allen F. Calton, TDCJ-ID #01123880, Stiles Unit, 3060 FM 3514; Beaumont, Texas 77705, on this, the 25th day of March, 2017.



STEVEN W. CONDER

c18.calton allen fitzgerald.dna

Appendix "N" opp. p. 47

23, 2002. See Motion for DNA Testing & Affidavit in Support of Motion for DNA Testing.

FINDINGS OF FACT

1. On the night of April 23, 2002, the defendant drove to Everett Angle's house where Craig Tate was outside storing mowers and Mr. Angle was inside making dinner. See Reporter's Record III:20-23, 103.
2. Mr. Angle walked outside to talk to the defendant at his car. See Reporter's Record III:23-24.
3. The two men appeared to have a friendly conversation. See Reporter's Record III:24.
4. As they spoke, the defendant reached under his car seat, but Mr. Angle thought nothing of it. See Reporter's Record III:25.
5. When Mr. Angle turned toward Mr. Tate to ask him to put away the lawnmowers, the defendant got out of his car approached Mr. Angle, and shot him in the face. See Reporter's Record III:26, 105-06, 125-26.
6. When Mr. Angle fell to the ground, the defendant stood over him and shot him a second time which glanced off his skull. See Reporter's Record III:27.
7. While Mr. Angle remained on the ground, the defendant stood over Mr. Angle and fired a third shot at his head. See Reporter's Record III:28, 107.
8. The defendant then returned to his car and drove away. See Reporter's Record III:107.
9. Mr. Angle was transported by ambulance to the hospital. See Reporter's Record III:29, 32.

Appendix "N" app p 48

establishes the defendant's guilt, he cannot show by a preponderance of the evidence that forensic DNA testing of the steak knife would establish his innocence. See Swearingen v. State, 303 S.W.3d at 736; Skinner v. State, 122 S.W.3d at 814; Rivera v. State, 89 S.W.3d at 60.

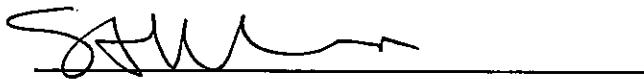
12. The defendant does not meet the requirements of article 64.03 for post-conviction forensic DNA testing.
13. The defendant's motion for post-conviction forensic DNA testing is denied.

WHEREFORE, PREMISES CONSIDERED, the State prays that the Court adopt its proposed findings of fact and conclusions of law.

Respectfully submitted,

SHAREN WILSON
Criminal District Attorney
Tarrant County, Texas

DEBRA WINDSOR
Chief, Post-Conviction



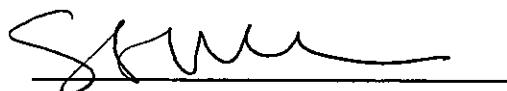
STEVEN W. CONDER, Assistant
Criminal District Attorney
401 W. Belknap
Fort Worth, Texas 76196-0201
(817) 884-1687
FAX (817) 884-1672
State Bar No. 04656510

CERTIFICATE OF SERVICE

A true copy of the above proposed findings of fact and conclusions of

Appendix "N" app. p. 49

law has been mailed to the defendant, Mr. Allen F. Calton, TDCJ-ID #01123880, Stiles Unit, 3060 FM 3514; Beaumont, Texas 77705, on this, the 25th day of March, 2017.



STEVEN W. CONDER

c18.calton allen fitzgerald.fi/dna

Appendix "N" opp. p. 5 (2)

NO. 0843168D

THE STATE OF TEXAS

v.

ALLEN FITZGERALD CALTON

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

ORDER

Having carefully reviewed the State's proposed findings of fact and conclusions of law, the Court hereby orders, adjudges and decrees that they be adopted as its own, and denies the defendant's request for forensic DNA testing.

The Court further directs the Tarrant County District Clerk's Office shall send copies of this order to:

- Mr. Allen F. Calton, TDCJ-ID #01123880, Stiles Unit, 3060 FM 3514; Beaumont, Texas 77705;
- Post-Conviction Unit, Tarrant County Criminal District Attorney's Office, 401 W. Belknap Street, Fort Worth, Texas 76106-0201.

SIGNED AND ENTERED this the 5th day of April 2017.

Paul J. Sterns
JUDGE PRESIDING

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

APR 05 2017

TIME 1:42
BY 16 DEPUTY

COPY
Appendix "N" app. p. 51

1 Q. Did he have any ideas for you?
 2 A. He, to the best of my recollection, just said he
 3 thought it was probably in relation to the accident that I had
 4 been in in Grand Prairie in April of 2002.

5 Q. Nothing else?
 6 A. Not really, no.

7 Q. Kind of upset at that driver, aren't you, Ms.
 8 Danchak?

9 A. Probably at the time that it happened I was upset
 10 with the driver. It been two years, and I don't think I have
 11 any ill will toward the person that was driving the car.

12 Q. When you still see that damaged bumper, does that
 13 remind you of the accident?

14 A. I haven't really thought about it, to be honest with
 15 you.

16 Q. So you have no animosity toward the Defendant or
 17 that accident or that night, period.

18 A. Not really.

19 Q. So your testimony here today that he was trying to
 20 really escape and flee from Tarrant County, that's just
 21 something that you -- that's just your opinion of what went on
 22 that day.

23 A. My opinion, yeah. I don't know why he was going --
 24 driving that fast or why hit me. I have no idea.

25 Q. But, of course, in your mind you think he was

1 in the fast lane and sped away from you?

2 A. It is a straight road, so for long as I could see it
 3 until I pulled off at McArthur.

4 Q. So you got off the freeway pretty immediate -- got
 5 off right where the accident happened?

6 A. I want to say that I probably drove like a mile
 7 because I had the whole mile. I didn't pull off the road. I
 8 was on my cell phone as I was driving, so I don't think that I
 9 pulled off immediately.

10 Q. Did anybody else pull off or witness the accident,
 11 ma'am?

12 A. The two people cars beside us witnessed the
 13 accident, but neither one of them stopped.

14 Q. So it was a big accident, but I guess nobody didn't
 15 see what happened or essentially care and they definitely
 16 didn't stop.

17 A. I would assume that they saw it. My guess is they
 18 just didn't stop.

19 Q. And is your vehicle outside, ma'am?

20 A. Yeah, it is.

21 PRO SE DEFENDANT: That's all we are going to
 22 have right now. You will be subject to recall. I would like
 23 to get a picture of that bumper so we can see how hard she got
 24 hit. If you would, please, would you speak to one of these
 25 gentlemen, and they will escort you, make sure nothing happens

1 really, really fleeing something, driving a hundred miles an
 2 hour. Is that your testimony here today?

3 A. He was driving really fast. I don't know if it was
 4 quite a hundred miles an hour, but it was much faster than the
 5 65 or 70 miles an hour that I was driving.

6 Q. But, of course, looking at the vehicle and looking
 7 at the -- were you hurt?

8 A. I was a little bit sore the next day, but I wasn't
 9 physically hurt.

10 Q. Did you go to the doctor?

11 A. No, I didn't.

12 Q. Did you go to the hospital?

13 A. No.

14 Q. Did you ever call a doctor to get any medication?

15 A. No, I didn't.

16 Q. You weren't that sore then?

17 A. I was sore, but not sore enough to go to the doctor,
 18 no.

19 Q. Of course, the accident was obviously not hard
 20 enough to -- you said neither of you lost control. Were you
 21 able to see the vehicle and observe that it was being driven
 22 perfectly straight? Is that your testimony today?

23 A. Once the car got around me and got in the fast lane,
 24 yes, it was driving straight.

25 Q. How long did you get to look at the car when it got

1 to you, get a picture -- and take a picture, if you don't
 2 mind?

3 THE WITNESS: Sure.

4 PRO SE DEFENDANT: Pass the witness.

5 MR. HAGEMAN: Nothing further.

6 THE COURT: You may step down.

7 PRO SE DEFENDANT: Subject to recall, Your
 8 Honor, until I take a look at that photo and see what you have
 9 on this vehicle.

10 (Pause in the proceedings)

11 (Witness Sworn)

12 Whereupon,

13 CYNTHIA TIMBRELL,

14 having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY PRO SE DEFENDANT:

17 Q. State your name for the record, ma'am.

18 A. Cynthia Timbrell.

19 Q. Ms. Timbrell, how are you employed?

20 A. I am a custodian of records and the records
 21 supervisor for Garland Police Department.

22 Q. How long have you been employed in that capacity?
 23 A. In that capacity?

24 Q. Yes, ma'am.

25 A. 12 years.

Page 37

1 Q. Did you bring some records pertaining to Allen
 2 Calton today, ma'am?
 3 A. I brought another copy. I had certified copies. My
 4 subpoena said I was here to testify to those 57 pages I
 5 already certified.
 6 Q. Did you bring another copy of them?
 7 A. Yes, sir.
 8 Q. Would you hand -- you are the records custodian for
 9 the Garland Police Department, right?
 10 A. Correct.
 11 Q. And those records were kept in the course of
 12 business as an employee representative of whoever works for
 13 the city?
 14 A. Yes, sir.
 15 Q. And you brought those records over here -- you put
 16 them together yourself?
 17 A. Yes, I did.
 18 Q. You put anything in there that has anything to do
 19 with Allen Calton on April 23 and getting arrested at the
 20 Garland Police Department all the way until his transfer or
 21 release from the Garland Police Department?
 22 A. Yes, sir.
 23 Q. Did you swear to that being true and that's what
 24 those are?
 25 A. Yes, sir.

Page 39

1 PRO SE DEFENDANT: Your Honor, at this time
 2 tender to the State Defense Exhibit 10 and ask it be admitted
 3 into evidence.
 4 MR. HAGEMAN: May I have a moment to look at
 5 these?
 6 THE COURT: You may.
 7 (Pause in the proceedings)
 8 MR. HAGEMAN: Your Honor, may I take the
 9 witness on voir dire?
 10 THE COURT: You may.
 11 VOIR DIRE EXAMINATION
 12 BY MR. HAGEMAN:
 13 Q. Fair to say those reports or records and statements
 14 are a compilation of your law enforcement agency?
 15 A. Yes, sir.
 16 Q. Were they prepared in lieu of a criminal case or a
 17 criminal matter and did they arise out of a criminal matter?
 18 A. Yes, sir.
 19 Q. And were they prepared by law enforcement officers
 20 or other law enforcement personnel?
 21 A. Yes, they were.
 22 Q. Employed by your department?
 23 A. Yes, sir.
 24 MR. HAGEMAN: Your Honor, we would object
 25 under 803.8(b).

Page 38

1 Q. You have an affidavit up there on that?
 2 A. Not on these records. On the ones I already sent to
 3 the Court. I certified those last week.
 4 Q. Let me take a look at what you have got, ma'am.
 5 Now, what's been marked Defense Exhibit No.
 6 10, Ms. Timbrell --
 7 A. Yes.
 8 Q. -- that's that certified copy that you forwarded to
 9 the Court, correct?
 10 A. Yes.
 11 Q. And that's your affidavit right there on top.
 12 A. Correct.
 13 Q. Is that your signature at the bottom?
 14 A. Correct.
 15 Q. And, of course, those are the actual records that
 16 were kept in the course of business over there in the city of
 17 Garland.
 18 A. Yes.
 19 Q. Did it have any additions or deletions or anything
 20 in there, ma'am?
 21 A. Not to my knowledge.
 22 Q. That would be true reflections of what occurred in
 23 the course of business over there in the city of Garland,
 24 correct?
 25 A. Correct.

Page 40

1 THE COURT: May I see the documents?
 2 PRO SE DEFENDANT: Your Honor, excuse me. I
 3 was distracted. I didn't understand what went on.
 4 (Pause in the proceedings)
 5 THE COURT: Sustained
 6 PRO SE DEFENDANT: Your Honor, what was the
 7 objection?
 8 THE COURT: Repeat the objection, please. He
 9 wasn't listening.
 10 PRO SE DEFENDANT: Sir?
 11 MR. HAGEMAN: Object under 803.8(b).
 12 (Pause in the proceedings)
 13 PRO SE DEFENDANT: Your Honor, under Rule
 14 803 -- THE COURT: If we are going to have
 15 legal discussions, we are going to have it outside the
 16 presence of the jury. Do you have any other questions for
 17 this witness?
 18 PRO SE DEFENDANT: Yes, sir.
 19 THE COURT: Go ahead.
 20 PRO SE DEFENDANT: Oh, no, sir, not until --
 21 yes, sir, we -- not until after the hearing outside the
 22 presence of the jury.
 23 THE COURT: All right. Let's go ahead and take
 24 a stretch break anyway, ladies and gentlemen. Please retire
 25 to the jury room and remember and follow your instructions.

GARLAND

City of Garland
P.O. Box 469002
Garland, Texas
75046-9002
972-205-2000

CERTIFICATE OF RECORD

THE STATE OF TEXAS
COUNTY OF DALLAS AFFIDAVIT

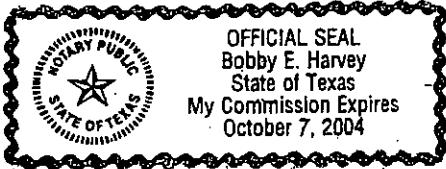
BEFORE ME, the undersigned authority, personally appeared CYNTHIA TIMBRELL who, being duly sworn, deposed as follows:

My name is CYNTHIA TIMBRELL, and I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the custodian of the records for the Garland Police Department. Attached hereto are FIFTY-SEVEN PAGES INVOLVING ALLEN FRITZGERALD CALTON, DATE OF BIRTH OCTOBER 2, 1967 from the Garland Police Department. These said fifty-seven pages are kept by the Garland Police Department in the regular course of business, and it was in the regular course of business of the Garland Police Department for an employee or representative of the Garland Police Department, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or transmit information thereof to be included in such records, and the record was made at or near the time or reasonably soon thereafter. The records hereto are the original or exact duplicates of the original.

Cynthia Timbrell
AFFIANT

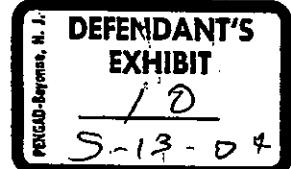
SUBSCRIBED AND SWORN TO BEFORE ME this 29th day of April A.D. 2004.



My Commission Expires on 10-07-04.

Bobby E. Harvey
Notary Public in and for Dallas
County, Texas

Appendix "P" app. p. 54



**Additional material
from this filing is
available in the
Clerk's Office.**