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[SEAL]

11/10/2021
MARSHAL, ANTOIN DENEIL WR-92,202-01
Tr. Ct. No. 1087328-A

This is to advise that the Court has denied without written order on the findings of the trial court after hearing the application for writ of habeas corpus and on the Court's independent review of the record.

Deana Williamson, Clerk

RANDY SCHAFFER
ATTORNEY AT LAW
1021 MAIN ST. #1440
HOUSTON, TX 77002
* DELIVERED VIA E-MAIL *

CAUSE NO. 1087328-A

EX PARTE	§	**IN THE DISTRICT**
	§	**COURT**
	§	
	§	**OF HARRIS COUNTY,**
	§	**TEXAS**
	§	
ANTOIN DENEIL MARSHALL	§	**337th JUDICIAL**
	§	**DISTRICT**

TRIAL COURT'S FINDINGS OF FACTS AND CONCLUSIONS OF LAW

(Filed Dec. 23, 2020)

The Court conducted an evidentiary hearing on the Application for Writ of Habeas Corpus in the above-styled matter. Having observed the demeanor of the witnesses and the manner in which each testified, assessed the credibility and the weight to be accorded such testimony, and after having considered the evidence, arguments of the parties, along with the Clerk's record and Court Reporter's record, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On October 25, 2005, off-duty Houston police officers Reuben DeLeon and Starlyn Martinez met at an apartment maintained for police officers at the Woodscape Apartment Complex in Houston. DeLeon stored a shotgun in a bedroom closet, and Martinez placed both officers' duty weapons in the trunk of her car. Martinez and DeLeon then left the apartment

to meet other police officers at a local venue. DeLeon and Martinez returned to the apartment at approximately 2:30 a.m. Within minutes, the pair heard a knock at the apartment door. Looking through the door's peephole, each observed a black male neither recognized. DeLeon told Martinez he would find out what the person wanted. As Martinez walked to the back of the apartment, she heard DeLeon and the unknown person having a calm conversation. Martinez next heard the door shake and then heard a gunshot (2 R.R. 21, 27-30, 32-33, 35-40, 43-51).

2. Martinez ran to the bedroom closet to retrieve the shotgun. While she was removing the gun from its zippered case, she heard more shots. As Martinez emerged from the closet she heard DeLeon say, "Starlyn, get the shotgun," before he fell to the floor (2 R.R. 51-54).

3. Officer DeLeon sustained a gunshot to the chest. The bullet passed through his heart and left lung. A second bullet lodged in his right arm. (3 R.R. 102)Martinez attempted resuscitation, however, DeLeon died at the apartment (2 R.R. 58, 195-197).

4. Police found a "do-rag" in the grass between the apartment and the parking lot and a watchguard from a man's wristwatch on the stairwell (3 R.R. 13-16). This evidence was not disclosed to the media, nor were reporters informed of the location of DeLeon's injuries, the caliber of weapon used, or his final words to Martinez (4 R.R. 85-87).

5. Houston Police Department (HPD) homicide investigator Todd Miller testified that an anonymous caller informed CrimeStoppers that he saw "Brandon" run out of the apartment complex (4 R.R. 62-63).

6. Calvin Finnels, Jr., a resident of the apartment complex, told Miller that he saw two men enter and leave the building that housed apartment 1015, and thought he could identify them (4 R.R. 64, 66, 69).

7. Finnels testified that he was talking on the phone on the balcony of apartment 2204 between 2:30 a.m. and 3:00 a.m. when he saw two black men enter the building across from him, heard gunshots, and ducked down on the floor as they ran away (4 R.R. 104-07, 110-12).

8. Brandon Zachary was arrested in Beaumont on October 31, 2005 (3 R.R. 169).

9. Finnels positively identified Zachary in a photospread, and, later, in a lineup (4 R.R. 66-68, 116-18).

10. Martinez positively identified Zachary in a lineup as the man she saw at the front door and the blue New York Yankees jacket that he was wearing (3 R.R. 164-66).

11. Antoin Marshall was arrested in Wichita Falls on November 2, 2005 (3 R.R. 180-81).

12. Finnels identified Marshall in a photospread and, thereafter, in a lineup (4 R.R. 77-84, 112-14, 118-20).

13. Michael Buchanan, an inmate in the Harris County Jail who was charged with burglary of a habitation as an habitual offender, testified against Marshall (2 R.R. 109-187, 109-10, 115-19). Buchanan was sentenced to two years for the burglary two (2) months before his testimony at trial (2 R.R. 122). Buchanan testified that he did not receive a benefit for his cooperation (2 R.R. 120-123).

14. Buchanan testified that Marshall confessed in jail that he shot DeLeon, ran into a staircase, fell down, and, when he reached the car, his "do-rag" and watch were gone (2 R.R. 146-47). Michael Buchanan testified that Applicant told him in detail of the roles that he and Zachary played in the shooting of DeLeon. Buchanan testified that Applicant stated that he and Zachary witnessed a third person, alleged gang member Nickolaus Victoria, shoot a man. Victoria told Applicant and Zachary that they also had to shoot someone to prove that Victoria could trust them. Buchanan testified that Applicant told him Victoria chose DeLeon as the victim and waited in a car while Applicant and Zachary committed the murder. Buchanan also attributed statements to Applicant that indicated he had knowledge of the evidence recovered from the scene that had not been publicly disclosed (2 R.R. 137, 139-150).

15. Buchanan has absconded and his whereabouts are unknown. It is unknown whether Buchanan is alive (6 W.R 47-48).

16. Marshall testified that he was in not in Houston at the time of the shooting (5 R.R. 31).

17. Marshall testified Zachary was a good friend, and that he previously had left his Yankees jacket in Zachary's car (5 R.R. 30, 33-35).

18. Marshall testified that he never owned a "do-rag", never went to that apartment complex, and did not lose a watch there (5 R.R. 34, 38-39).

19. During Marshall's trial, the jury heard evidence that no fingerprint examined from the scene of the shooting matched Applicant (3 R.R. 158-159). The jury also heard evidence that Applicant's DNA was not found at the scene of the shooting, and that no DNA from the "do-rag" or the broken watch piece "comes back to" Applicant (3 R.R. 170-171).

20. Sgt. Michael Scott of the Houston Police Department testified that Applicant made statements shortly after his arrest in which Applicant admitted he was with Brandon Zachary "the entire night of the night that Officer DeLeon was killed." Scott also testified that Applicant admitted to being in a gang in Beaumont. According to Scott, Applicant also stated that "Brandon did something stupid" (5 R.R. 131).

21. Applicant was convicted by a jury of capital murder in the death of Officer DeLeon, and sentenced to life in prison on December 14, 2006 (C.R. Image No. 41262272, Judgment

Entered December 14, 2001, Cause No. 1087328).

22. The Fourteenth Court of Appeals affirmed Applicant's conviction on February 28, 2008 (C.R. Image No. 41242871, Mandate Issued Cause No. 1087328, *Marshal v. State*, 14-06-01133-CR, 2008 WL 516786, (Tex. App.—Houston [14th Dist.] Feb. 28, 2008, pet. ref'd)).

23. Applicant wrote letters to the Texas Innocence Networks at the University of Houston Law School in 2007 and the University of Texas Law School in 2009. Each rejected his case in 2011 (5 R.R. 79-82; 11 W.R. 79-80).

24. Lead Prosecutor, Craig Goodheart, was diagnosed with cancer in 2010 and underwent chemotherapy from 2010-2011 (10 W.R. 154-155).

25. Marshall's family hired the National Legal Professional Associates (NLPA) in February 2012 and completed payment for services in July 2014 (5 W.R. 82-84, 95-97; Applicant's Laches Exhibit 9).

26. Calvin Finnels died June 20, 2014 (Applicant's Laches Exhibit 21).

27. The NLPA sent drafts of a habeas corpus application and a memorandum of law to Marshall and an attorney named Christopher Goldsmith in 2014 and 2018 (5 R.R. 94, 97, 99, 102, 104).

28. Marshall refused to sign and authorize Goldsmith to file either application, claiming the

application would have been dismissed because it was not on the form required by the Court of Criminal Appeals (5 R.R. 103-106).

29. The defense investigator, John Castillo, employed by Applicant's appointed defense attorney, Charles Brown, has since died (7 W.R. 59).

30. Marshall's family hired present counsel to conduct a habeas investigation in April 2019 (5 R.R. 109). He provided an evaluation of the case in August 2019, wherein he advised laches might bar relief, stating "Additionally, the courts could refuse to consider the merits of your case under the Doctrine of Laches because of the delay in filing the application." (5 W.R. 129).

31. Marshall's family hired present habeas counsel in June 2020 to file a habeas application (5 R.R. 109-10). He filed the application, brief, and exhibits in July 2020 (C.R. Image Nos. 91434677, 91434684, 91438422, 91434678).

32. Applicant's application for writ of habeas corpus does not allege an actual innocence claim (C.R. Image Nos. 91434677, 91434678).

33. The final hearing and argument of counsel on this writ matter concluded December 10, 2020 (12 W.R 136).

34. On December 14, 2020, the State filed an advisory that a CODIS search had been completed on the "do-rag" found outside the apartment on the night of the shooting The full-male profile DNA found on the "do-rag" has been determined to match David W.

Wesley. Wesley was never identified as a witness, an alleged accomplice, nor a victim during Applicant's trial (C.R. Image No. 93515323, Advisory to the Court Regarding Fornesic DNA Testing).

35. Wesley's DNA profile was collected on July 9, 2006 (before Applicant's trial), and uploaded into CODIS on August 1, 2007 (after Applicant's trial was over) (C.R. Image No. 93515323, Advisory to the Court Regarding Fornesic DNA Testing).

36. Applicant's Advisory to the Court filed December 21, 2020, is conclusory and speculative. Applicant put forth no evidence regarding what any innocence project would do if Wesley's identity had been known. The entities contacted by Applicant knew at the time that each declined representation that Applicant's DNA was not on the "do-rag" (C.R. Image No. 93617828).

37. Eleven years lapsed from the time the court of appeals affirmed Applicant's conviction to the filing of this application for writ of habeas corpus.

38. The common-law doctrine of laches is an equitable remedy that applies to bar a long-delayed application for a writ of habeas corpus. Ex Parte Perez, 398 S.W.3d 206, 208 (Tex. Crim. App. 2013).

39. The State is not required to make a "particularized showing of prejudice" to allege laches. *Id.* at 215.

40. In laches inquiries, courts may more broadly consider material prejudice resulting from delay. *Id.*

41. In Texas, the definition of prejudice has been expanded under the laches doctrine to permit consideration of anything that places the State in a less favorable position, including prejudice to the State's ability to retry a defendant, so that a court may consider the totality of the circumstances in deciding whether to grant equitable relief. *Id.*

42. No precise time limit has been defined under Texas law to determine the applicability of laches, but Texas law recognizes that delays of more than five years may generally be considered unreasonable in the absence of any justification for the delay. *Id.* at FN 12.

43. The writ of habeas corpus is an extraordinary remedy, any grant of which must be underscored by elements of fairness and equity. *Id.* at 216.

44. Courts should engage in a case-by-case inquiry to determine whether equitable relief is warranted in light of the particular circumstances surrounding each case. *Id.* at 216-217.

45. In resolving issues of laches, courts should consider the reasonableness of the party's behavior under the circumstances, and may consider among all relevant circumstances, factors such as the length of the Applicant's delay in filing the application, the reasons for

the delay, and the degree and type of prejudice resulting from the delay. *Id.* at 217.

46. In laches inquiries, courts must balance the parties' overall conduct, and may draw reasonable inferences from circumstantial evidence to determine whether excessive delay has likely compromised the reliability of a retrial. *Id.*

47. Applicant testified at the writ evidentiary hearing that his eleven-year delay in filing the writ application was due to "the trials and the tribulations we went through dealing with the lawyers" (11 W.R. 82)

48. The Applicant testified at the writ evidentiary hearing that he sought legal assistance from the Innocence Project at the University of Texas Law School; that he applied in 2009 and was denied by the organization in 2011 (11 W.R. 79-80).

49. The Applicant sought assistance from the University of Houston Law Center Texas Innocence Center Non-Capital Division. In 2007 he applied for assistance asserting a claim of actual innocence. The organization could not find sufficient exonerating information and concluded its investigation. The organization notified the Applicant in January 2013 that its investigation was terminated. *Applicant's Laches Exhibit 23.*

50. During 2012, the Applicant started to communicate with Houston-based attorney R. Christopher Goldsmith (11 W.R. 82);

Goldsmith was referred to the Applicant by the National Professional Legal Associates (NLPA).

51. Applicant did not call Goldsmith to testify at the writ evidentiary hearing, or provide an affidavit from Goldsmith.

52. Applicant provides no explanation for the lack of activity and diligence between 2014 and 2018. Habeas counsel acknowledged to the Court that the absence of documentation during this period "speaks for itself" (12 W.R. 36).

53. The lead prosecutor, Craig Goodheart, no longer remembers this case at all due to the passage of time and having what he self-described as "chemo brain." Since being diagnosed with cancer in 2010 (10 W.R. 155)

54. Generally, the jury in all cases, is the exclusive judge of the facts proved, and the weight to be given the testimony. TEX. CODE CRIM. PRO. ANN. art. 38.04.

55. Assuming without deciding that Calvin Finnels' testimony could be read to a new jury, because Mr. Finnels is deceased, the State would be at a disadvantage in trying to rebut arguments undermining the weight to be given to Finnels' testimony and/or attacks on his credibility.

56. In light of the information regarding the DNA on the "do-rag" matching David Wesley, Calvin Finnels' testimony regarding who he saw, and whether it could have been Wesley instead of Applicant, can never be put before

or considered by a jury because Finnels is dead.

57. Had Applicant been more diligent in pursuing his claim, Applicant could have discovered the information about Wesley before Finnels died in 2014.

58. The defense investigator, John Castillo, also is deceased and cannot corroborate Defense counsel, Charles Brown's efforts in investigating the scene of the shooting in order to attack the reliability of Finnels' identifications (7 W.R. 59)

59. Were a retrial to be required, the State would be at a disadvantage because the jury would be unable to assess Finnels' credibility and, as in the instant writ, the Applicant would almost certainly present evidence to raise doubt about Finnels' identification. See *Perez*, 398 S.W.3d at 210 citing *Ex parte Carrio*, 992 S.W.2d 486, 487-88 (Tex. Crim. App. 1999) (inequitable to permit long delayed claims to proceed when trial participants are dead); *Ex parte Westerman*, 570 S.W.3d 731, 734 (Tex. Crim. App. 2019) (Yeary, Slaughter J.J., Keller P.J. dissenting) (same).

60. By declining to sign proposed applications for writs of habeas presented to Applicant by Goldsmith, Applicant has indicated he understood the need to file an adequate writ of habeas corpus after the appellate mandate issued (5 R.R. 103-106) (11 W.R. 79).

61. The Court finds the equitable doctrine of laches applies and prevents consideration of the Applicant's claims for relief

62. Applying *Perez* to the instant case:

    a. Applicant's eleven-year delay was unreasonable. The Applicant knew when the appellate mandate issued in 2009 that he would need to file a writ. During 2009-11, the Applicant's efforts to pursue a writ were limited to correspondence with the Innocence Project. From 2012-18 he engaged the NLPA, rather than an attorney, for legal advice, i.e., his delays are not the result of the "trials and tribulations" with attorneys. He provides no documentation to support that he ever hired attorney-at-law Goldsmith. The Applicant does not provide any explanation for the lack of diligence during 2014-18.

    b. The State has been materially prejudiced by the delay. Finnels died in 2014, the period during which the Applicant provides no explanation for lack of post-conviction activity. In the event of a retrial, the State would be prejudiced by the State's inability to present Finnels' credibility.

    c. The memories of the prosecutors who tried the case and the lead trial attorney who defended Applicant are all diminished due to the passage of time.

d. Applicant presents no other compelling reason for equitable relief. Applicant has presented no claim of actual innocence. The lack of funds alone does not outweigh the length of time that has passed in the instant case.

Conclusion of Law

1. The equitable doctrine of laches applies because the eleven-year lapse before the filing of Applicant's petition for writ of habeas corpus places the State in a much less favorable position because of the passage of time, the death of a key witness, the cancer diagnosis and complete lack of memory of the lead prosecutor, all of which prejudice the State's ability to retry this Applicant.

Cause No. 1087328-A

EX PARTE	§	IN THE 337TH DISTRICT COURT
	§	OF
ANTOIN MARSHALL, Applicant	§	HARRIS COUNTY, TEXAS

ORDER

THE CLERK IS HEREBY ORDERED to prepare a transcript of all papers in cause no. 1087328-A and transmit same to the Texas Court of Criminal Appeals, as provided by TEX. GRIM. PROC. CODE ANN. art. 11.07. The transcript shall include certified copes of the following documents:

1. All of the Applicant's pleadings filed in cause no. 1087328-A, including his writ of habeas corpus;
2. All of the State's pleadings filed in cause no. 1087328-A;
3. All affidavits and exhibits filed in cause no. 1087328-A and all transcribed oral arguments of counsel;
4. This Court's Findings of Fact, Conclusions of Law, and Order recommending relief is barred by laches in cause no. 1087328-A;

5. Any Proposed Findings of Fact, Conclusions of Law submitted by either the Applicant or the State;

6. The indictment, judgment, sentence, docket sheet, and appellate record in cause number 1087328, unless they have been previously forwarded to the Court of Criminal Appeals; and

7. The reporter's record and clerk's transcript for the writ evidentiary hearing in cause no. 1087328-A.

THE CLERK IS FURTHER ORDERED to send a copy of the Court's Findings of Fact and Conclusions of Law, including its order, to Applicant's counsel: Randy Schaffer, 1021 Main Street, Suite 1440, Houston, TX 77002; and counsel for the State: Joshua A. Reiss; Assistant District Attorney; Harris County District Attorney's Office; 1201 Franklin, Suite 600; Houston, TX 77002.

BY THE FOLLOWING SIGNATURE, THE COURT MAKES THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW IN CAUSE NUMBER 1087328-A, AND ADOPTS THE STATE'S FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE ISSUE OF LACHES, AS EDITED BY THE COURT AND ATTACHED AS EXHIBIT "A," AND INCORPORATED HEREIN BY REFERENCE.

SIGNED this 23rd day of December, 2020.

/s/ Herb Ritchie
Presiding Judge
337th District Court

[SEAL]

CAUSE NO. 1087328-A

EX PARTE	**§ IN THE**
	§ DISTRICT COURT
	§
	§ OF HARRIS
	§ COUNTY, TEXAS
	§
	§ 337th JUDICIAL
ANTOIN DENEIL MARSHALL	**§ DISTRICT**

TRIAL COURT'S FINDINGS OF FACTS AND CONCLUSIONS OF LAW EXHIBIT A – EXCERPT FROM STATE'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW ADOPTED BY TRIAL COURT AS EDITED BELOW

II. LACHES

3. The Court finds that an assessment of whether the equitable doctrine of laches should apply is appropriate given: (i) the eleven-year delay between the appellate mandate and the writ application; and (ii) habeas counsel's case evaluation that concluded, "the courts could refuse to consider the merits of your case under the Doctrine of Laches because of the delay in filing your application" (~~IV~~ V W.R. at 129).[1]

PERTINENT LAW

4. In order for laches to apply, the State does not need to demonstrate particularized prejudice resulting

[1] "W.R." denotes the writ evidentiary hearing record, "R.R." the trial record, and "C.R." the clerk's record.

from the applicant's significant delay in filing his writ. *Ex parte Perez*, 398 S.W.3d 206, 215 (Tex. Crim. App. 2013). Instead, Texas jurisprudence requires this Court to employ a "flexible" approach that allows for the consideration of "anything that places the State in a less favorable position, including prejudice to the State's ability to retry a defendant, so that a court may consider the totality of the circumstances in whether to grant equitable relief." *Id.* The Court of Criminal Appeals has explained:

> [N]o single factor is necessary or sufficient. Instead, courts must engage in a difficult and sensitive balancing process that takes into account the parties' overall conduct. In considering whether prejudice has been shown, a court may draw reasonable inferences from the circumstantial evidence to determine whether excessive delay has likely compromised the reliability of a retrial. . . . If prejudice to the State is shown, a court must then weigh that prejudice against any equitable considerations that militate in favor of granting habeas relief.

Id. at 217 (citations and quotation marks omitted). The broad scope of the prejudice inquiry helps to "ensure that courts are permitted to consider the State's and society's interest in the finality of a conviction in determining whether laches should apply." *Id.* at 218.

5. In *Perez*, the Court of Criminal Appeals further held that, "With regard to the degree of proof required, the extent of the prejudice the State must

show bears an inverse relationship to the length of the applicant's delay." *Id.* at 217. If an applicant delays filing for "much more than five years" after conclusion of his direct appeal the less evidence the State must present to demonstrate prejudice. *Id.* at 218. A court should reject the application of laches when the record shows that: (1) the applicant's delay was "not unreasonable because it was due to a justifiable excuse or excusable neglect", (2) "the State would not be materially prejudiced as a result of the delay", or (3) "the applicant is entitled to equitable relief for other compelling reasons, such as . . . that he is reasonably likely to prevail on the merits." *Id.*

PERTINENT FACTS

6. The Court finds that the applicant declares (*Applicant's Writ Exhibit No. 2* at 2) in support his writ application: "I have diligently pursued habeas relief through counsel since my conviction was affirmed on appeal in 2009"; that at the writ evidentiary hearing the applicant testified that his eleven-year delay in filing his writ application was due to "the trials and the tribulations we went through dealing with the *lawyers* before" retaining current habeas counsel (XI W.R. at 82) (emphasis added);

7. The Court finds that the applicant's writ hearing testimony is not credible (XI W.R. 57-94; XII W.R. 7-51); that his explanations for the eleven-year delay are not supported by the record; that the applicant is generally not credible in light of the fact that he acknowledged he lied under oath at his

trial so many times that he could not be certain of the exact amount (XII W.R. 44-45).

8. The Court finds that a review of the record reveals the applicant engaged and chose to be represented by non-attorneys for the majority of the eleven-years in question.

9. The Court finds that the applicant presented the testimony of his sister, Eumiko Egins, during the writ hearing (V W.R. at 99-137); that, according to habeas counsel, Egins was presented as a "procedural" witness to explain the timetable of events and introduce documents (V W.R. at 123); that Egins acknowledged on cross-examination that the applicant was the "client," i.e., the ultimate decision-maker (V W.R. at 130).

10. The Court finds that the applicant's efforts to secure counsel for a habeas petition between 2009-2012 were passive:

    i. The applicant testified at the writ evidentiary hearing that he sought legal assistance from the Innocence Project at the University of Texas Law School; that he applied in 2009 and was denied by the organization in 2011; ~~that the applicant provides no files, questionnaires, applications, or correspondence to support his testimony~~ (XI W.R. at 79-80).

    ii. The applicant sought assistance from the University of Houston Law Center Texas Innocence Center Non-Capital Division; that in 2007 he applied for assistance asserting a claim of actual innocence; that

the organization could not find sufficient exonerating information and concluded its investigation; that the organization notified the applicant in January 2013 that its investigation was terminated. *Applicant's Laches Exhibit 23.*

11. The Court finds that during 2012, the applicant started to communicate with Houston-based attorney R. Christopher Goldsmith (XI W.R. at 82); that Goldsmith was referred to the applicant by the National Professional Legal Associates (NLPA).

12. The Court finds that the applicant did not call Goldsmith to testify at the writ evidentiary hearing, or provide an affidavit, to explain his work on behalf of the applicant, if any; that the applicant provides no written documentation (i.e., invoices, receipts, a contract) to demonstrate Goldsmith was ever retained; that the absence of written documentation of a formal agreement for services stands in sharp contrast to the extensive documentation between the applicant and the NLPA. *Applicant's Laches Exhibit No. 2-10.*

13. The Court finds that from 2011-2018 the applicant's post-conviction energies were centered on his communications and interactions with the NLPA; that the applicant read "all" communications from the NLPA (XII W.R. at 12); that the applicant was aware the NLPA did not and could not provide legal representation to file a post-conviction writ of habeas corpus (XII W.R. at 31); that the NLPA would only provide research to the applicant and his counsel (XII W.R. at 32); that the NLPA advised the applicant deadlines needed to

be taken into account (XII W.R. at 15-16); to wit, the NLPA told the applicant:

i. "It is important for you to understand that . . . NLPA is not a law firm and cannot represent you in court. NLPA cannot directly provide legal advice to you, nor can NLPA offer its research services directly to you. Therefore, you must be represented by counsel licensed to practice in the appropriate court and your counsel must be willing to work with NLPA in order for us to be of assistance." (XII W.R. at 12-14). *Applicant's Laches Exhibit No. 2.*

ii. "Once completed, our research will be forwarded to you, your family, and the attorney who has agreed to receive the research. You then will be able to review this research with that lawyer to come up with your game plan on how you wish to proceed, based upon our lawyer's recommendations. . . . Please keep in mind that the post-conviction motion for your area, however, may require that certain criteria be met, including deadlines" (XII W.R. at 15-16). *Applicant's Laches Exhibit No. 3.*

iii. "NLPA is not a law firm, professional services are only provided to licensed counsel in all areas that involve the practice of law." (XII W.R. at 19-20). *Applicant's Laches Exhibit No. 4.*

iv. "Regarding your attorney, please remember that you have engaged NLPA to work

> with and assist your attorney in your case. However, if you do not presently have an attorney, we are happy to refer you to several attorneys licensed in your jurisdiction who NLPA has worked with extensively in the past. Should you elect to have one of these attorneys authorize this evaluation and review it with you upon completion, they will be doing so at no additional charge to you. Should you choose to retain that attorney for any additional legal services beyond a review of the evaluation, you will have to agree on a fee for that assistance with that attorney. The evaluation fee does not cover any attorney's legal representation fees for performing any service beyond a review of the evaluation prepared by NLPA." (XII W.R. 20-21). *Applicant's Laches Exhibit No. 5*.

14. The Court finds that the NLPA prepared two draft writs of habeas corpus for attorney Goldsmith's signature; that these writ applications are dated 2014 and 2018; that neither of these applications were ever filed (XII W.R. at 30-32). *Applicant's Laches Exhibits No. 11-13.*

15. The Court finds that the applicant provides no explanation for the lack of activity and diligence between 2014 and 2018; that habeas counsel acknowledged to the Court that the absence of documentation during this period "speaks for itself" (XII W.R. at 36).

16. The Court finds that State's trial witness Calvin L. Finnels died on June 20, 2014 (*Applicant's Laches Exhibit No. 21*); that Finnels was a necessary and critical witness for the State who testified that he saw the applicant in the apartment complex moments before and after the capital murder (Findings of Fact No. 49-52, *infra*.); that the critical nature of Finnels' testimony is underscored by the extensive briefing, testimony, and exhibits presented by the applicant in his writ application that questions Finnels' ability to make a positive identification of the applicant at the crime scene (V W.R. at 23-77), *Applicant's Writ Exhibits No. 23-25*; that were a retrial to be required, the State would be at a disadvantage because the jury would be unable to assess Finnels' credibility and, as in the instant writ, the applicant would almost certainly present evidence to raise doubt about Finnels' identification. See *Perez*, 398 S.W.3d at 210 citing *Ex parte Carrio*, 992 S.W.2d 486, 487-88 (Tex. Crim. App. 1999) (inequitable to permit long delayed claims to proceed when trial participants are dead); *Ex parte Westerman*, 570 S.W.3d 731, 734 (Tex. Crim. App. 2019) (Yeary, Slaughter J.J., Keller P.J. dissenting) (same).

17. The Court finds that the applicant understood the need to file a writ of habeas corpus after the appellate mandate issued (XI W.R. at 79).

APPLICATION OF THE FACTS TO THE LAW

18. The Court finds that the equitable doctrine of laches applies and prevents consideration of the

applicant's claims for relief; that, applying *Perez* to the instant case, the following are pertinent:

i. The applicant's eleven-year delay was unreasonable. The applicant knew when the appellate mandate issued in 2009 that he would need to file a writ. During 2009-11, the applicant's efforts to pursue a writ were limited to correspondence with the Innocence Project. From 2012-18 he engaged the NLPA, rather than an attorney, for legal advice, i.e., his delays are not the result of the "trials and tribulations" with attorneys. He provides no documentation to support that he ever hired attorney-at-law Goldsmith. The applicant does not provide any explanation for the lack of diligence during 2014-18.

ii. The State has been materially prejudiced by the delay. Finnels died in 2014, the period during which the applicant provides no explanation for lack of post-conviction activity. In the event of a retrial, the State would be prejudiced by the State's inability to present Finnels' credibility. In addition, the jury witnessed an important in-court demonstration of the distance from which Finnels observed the applicant at the crime scene (IV R.R. at 109) (emphasis added); this strength of this demonstration is lost amidst a dry record:

> Q. What's the closest they get to you?
>
> A. The distance between the street and my balcony.

Q. *You see where I'm standing now*?

A. Uh-huh.

Q. The distance we are apart. When you're as close to those individuals as you get, *are you closer than this*?

A. *Give or take maybe a foot or two.*

Q. *More like that*?

A. But I'm elevated, looking down; so, it's kind of different, you know, as to the way I was seeing them.

iii. The applicant presents no other compelling reasons for equitable relief. He does not present a claim of actual innocence and he does not prevail on any claims for relief in the instant writ. *Infra.* In addition, albeit in an unpublished opinion, the Court of Criminal Appeals has held that "[l]ack of funds, pro se status, and/or the lack of sophistication of the law" would not, without more, excuse an extensive delay in seeking habeas relief. *Ex parte Caudill*, No. WR-86,762-02, 2019 WL 1461929, at *7 (Tex. Crim. App. Jan. 30, 2019) (not designated for publication).

iv. The memories of the prosecutors who tried the case, and the trial attorney who defended the applicant, are all diminished due to the passage of time.

FILE COPY

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

[SEAL]

5/2/2022
MARSHAL, ANTOIN DENEIL WR-92,202-01
Tr. Ct. No. 1087328-A

This is to advise that the applicant's suggestion for reconsideration has been denied without written order.

Deana Williamson, Clerk

RANDY SCHAFFER
ATTORNEY AT LAW
1021 MAIN ST. #1440
HOUSTON, TX 77002
* DELIVERED VIA E-MAIL *

CASE: PD-1199-08

Case:

PD-1199-08

Date Filed:

12/11/2008

Case Type:

PDR Case Type

Style:

MARSHAL, ANTOIN DENEIL

v.:

APPELLATE BRIEFS

Date	Event Type	Description	Document
No briefs.			

CASE EVENTS

Date	Event Type	Disposition	Document
02/06/2009	FINAL DISP	Refused	
01/14/2009	PDR DISP	Refused	
12/11/2008	PDR FILED		
08/26/2008	EXT PDR DISP/NFE	Granted	
08/26/2008	EXT PDR FILED		

CALENDARS

Set Date	Calendar Type	Reason Set
02/06/2009	STORED	RETURNED COA

2008 WL 516786
Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR
DESIGNATION AND SIGNING OF OPINIONS.

MEMORANDUM OPINION
Do Not Publish Tex.R.App. P. 47.2(b).

Court of Appeals of Texas,
Houston (14th Dist.).

Antoin Deneil MARSHAL, Appellant
v.
The STATE of Texas, Appellee.

No. 14-06-01133-CR.
|
Feb. 28, 2008.
|
Discretionary Review Refused Jan. 14, 2009.

On Appeal from the 337th District Court, Harris County, Texas, Trial Court Cause No. 1087328.

Attorneys and Law Firms

Windi Akins, for Antoin Deneil Marshal.

William J. Delmore III, for The State of Texas.

Panel consists of Justices YATES, GUZMAN, and SEARS.*

---

* Senior Justice ROSS A. Sears sitting by assignment.

MEMORANDUM OPINION

EVA M. GUZMAN, Justice.

A jury convicted Antoin Deneil Marshal of capital murder, and he was automatically sentenced to life imprisonment in the Institutional Division, Texas Department of Criminal Justice. In three issues, he challenges the admission of certain testimonial evidence. We affirm.

I. Factual and Procedural Background

On October 25, 2005, off-duty Houston police officers Reuben DeLeon and Starlyn Martinez met by prior agreement at an apartment maintained for police officers at the Woodscape Apartment Complex in Houston. Before going out for the evening, DeLeon stored a shotgun in a bedroom closet, and Martinez placed both officers' duty weapons in the trunk of her car. Martinez and DeLeon then met several other police officers at a local venue and returned to the apartment at approximately 2:30 a.m. Within five minutes, someone knocked at the door, and DeLeon looked through the door's peephole. Martinez followed DeLeon, looked through the peephole, and observed a black male. She told DeLeon that she did not recognize the man, and DeLeon stated, "Well, let me see who it is. Let me see what they want." As Martinez walked to the back of the apartment, she heard DeLeon and the unknown person having a calm conversation. According to Martinez, she then heard the door shake, and before she could turn, she heard a gunshot.

Martinez ran to the bedroom closet to retrieve the shotgun, and while she was removing the gun from its zippered case, she heard several more shots. According to Martinez, she heard approaching footsteps, and as she emerged from the closet she heard DeLeon say, "Starlyn, get the shotgun," before he fell to the floor. Officer DeLeon had been shot in the chest, and the bullet had passed through his heart and left lung. A second bullet lodged in his right arm. Despite Martinez's resuscitation efforts and the response of emergency personnel, DeLeon died at the scene.

Outside the apartment, investigators recovered a black skull cap or "do-rag" and a watchguard from a man's wristwatch. This evidence was not disclosed to the media, nor were reporters informed of the location of DeLeon's injuries, the caliber of weapon used, or his final words to Martinez.

At a live line-up, Martinez identified Brandon Zachary as the person she saw through the peephole on the night of the murder. Another resident of the apartment complex testified that he saw Zachary and appellant enter the apartment building immediately before the shots were fired and run away from the building immediately afterward. The resident had never seen appellant or Zachary before.

Over appellant's objections, appellant's fellow inmate Michael Buchanan testified that appellant told him in detail of the roles that he and Zachary played in DeLeon's murder. According to Buchanan, appellant stated that he and Zachary witnessed a third person,

alleged gang member Nickolaus Victoria, shoot a man. Victoria told appellant and Zachary that they also had to shoot someone to prove that Victoria could trust them. Buchanan testified that appellant told him Victoria chose DeLeon as the victim and waited in a car while appellant and Zachary committed the murder. Buchanan also attributed statements to appellant that indicated he had knowledge of the evidence recovered from the scene that had not been publicly disclosed.

Appellant testified that he had known Zachary for years, and the pair had previously been arrested together. He stated that he had seen Zachary in Beaumont on the evening before the murder and left his jacket in Zachary's car; however, appellant denied that he was in Houston on the night of the murder.

Finally, Sergeant Michael Scott of the Houston Police Department described appellant's prior statement that he and Zachary were fellow gang members and that he was with Zachary the entire night of the murder. According to Scott, appellant further stated that "Brandon did something stupid."

The jury convicted appellant of capital murder, and he was sentenced to imprisonment for life. This appeal timely ensued.

II. Issues Presented

Appellant presents three issues for review. In his first two issues, appellant challenges the trial court's admission of evidence of appellant's alleged gang

affiliation and prior narcotics offenses. In his third issue, appellant contends that the prosecutor improperly introduced hearsay evidence that his alibi witnesses denied seeing him on the night of the murder. The State responds that appellant presents nothing for review because he failed to preserve error on any of these issues.

III. Analysis

A. Standard of Review

We review the trial court's evidentiary rulings for abuse of discretion. *Montgomery v. State*, 810 S.W.2d 372, 379 (Tex.Crim.App.1990) (en banc). We will not disturb the trial court's ruling if it is "within the zone of reasonable disagreement." *Winegarner v. State*, 235 S.W.3d 787, 790 (Tex.Crim.App.2007). Instead, we will uphold the ruling if it is reasonably supported by the record and correct on any theory of law applicable to the case. *Willover v. State*, 70 S.W.3d 841, 845 (Tex.Crim.App.2002).

To preserve error for appellate review, the complainant must make a timely, specific objection that the trial court refuses. Tex.R. Evid. 103; Tex.R.App. P. 33.1(a); *Young v. State*, 137 S.W.3d 65, 69 (Tex.Crim.App.2004) (en banc). Ordinarily, an objection is required every time inadmissible evidence is presented. *Valle v. State*, 109 S.W.3d 500, 509 (Tex.Crim.App.2003). Error in allowing inadmissible evidence is cured when the same evidence is admitted without objection. *Id.*

B. Buchanan's Testimony

In his first two issues, appellant contends that the trial court erred in admitting testimony from witness Michael Buchanan. In several instances, defense counsel renewed prior objections; consequently, the grounds for these objections cannot be discerned unless the content of the prior objections is also related. We therefore present the relevant testimony, objections, and rulings together.

Before Buchanan was called to testify, the following exchange occurred outside the jury's presence:

> Defense: I'd like the record to reflect that we would object at this time to any testimony that he has based on what someone told him *because at this point there's no connection to my defendant with the scene.* This is jailhouse snitches who are coming after any custodial investigations, after any statements alleging that they know what my client did or how he did it, for example, the watchband and all that. *None of this has been brought up yet, and we'd object that it's totally hearsay at this time. And also to relevance.*
>
> Court: Well, as to when you say somebody told him—
>
> Defense: Well, he's going to argue that it's my client. All right? But at this time, there's nothing that's been connected to my client—not a watch, not a fingerprint, not an identification, not a statement or anything. So, now we have a snitch who's coming in, saying: Oh, your client told me. So, we're going to argue that this is a statement

> against penal interest. *But it's still at this point irrelevant because nothing has connected my client to this crime.*

(emphasis added). In sum, defense counsel asserted hearsay and relevancy objections to Buchanan's testimony on the ground that previously-admitted evidence did not connect appellant to the murder. The trial court overruled these objections.

Buchanan was then called to testify, and defense counsel objected as follows:

> State: Do you know a person by the name of Antoin Marshal?
>
> A: Yes, sir.
>
> Defense: Your Honor, at this time *we'd like to renew our objection as to being irrelevant at this time* and the objection that we made earlier outside the presence of the jury and ask for a running objection.
>
> Court: It will be overruled. Make your objection as—
>
> Defense: May I have a running objection?
>
> Court: No, sir. You won't get a running. You'll need to make it at the time.

. . .

> A: I asked him [appellant] what was he doing down here in Houston.
>
> State: And he said what?

A: Hustling.

State: What does "hustling" mean on the streets?

A: Making money, selling drugs, whatever.

State: Doing whatever?

A: Right.

State: And what else did y'all talk about?

A: He just told me that as far as the drugs, it was cheaper down here in Houston.

Defense: *Your Honor, I renew my objection.* I'd ask for a running objection so that every time he talks about some kind of an extraneous offense or not even related to this offense, that I won't have to stand up.

Court: *Go ahead and make your objection for the record.*

Defense: We object *that this is irrelevant, that he has not been even connected to this crime, that this is a back door attempt to get a statement against penal interest without even first connecting my client to this crime.* We would argue that it's—basically, now all of this is hearsay, let alone a statement against penal interest.

Court: It's overruled. Tailor your questions, though, to the focus of this inquiry.

State: Yes, sir.

. . .

State: Did he tell you about the crime itself that he was inside for?

A: Yes, sir.

State: What I'd like you to do is I'd like you to start at the beginning as to what he told you, the sequence of events.

Defense: *We'd like to renew our objection at this time*, Your Honor.

Court: Overruled.

. . .

State: And then what does he say happened?

A: He said that Nickolaus told them this is the one they had to do.

State: This is the one they had to do?

A: Right.

State: Meaning what?

A: They had to do—to shoot him like he shot the other ones.

Defense: *Objection. This is not exculpatory as to this case.*

Court: It's overruled.

(emphasis added). The rulings challenged in appellant's first and second issues are those quoted above. We turn now to the specific issues and arguments raised in connection with these quoted exchanges.

1. Evidence of Gang Affiliation

Although appellant contends in his first issue that the State improperly elicited testimony from Buchanan concerning appellant's alleged gang membership, appellant has failed to identify the objectionable testimony in the record. Moreover, appellant does not even assert that defense counsel raised such an objection to Buchanan's testimony, nor have we found this to be the case.[1] Thus, appellant's first issue presents nothing for review. *See* Tex.R.App. P. 33.1; *Cruz v. State*, 225 S.W.3d 546, 548 (Tex.Crim.App.2007) (objection essential for preservation of error). We therefore overrule his first issue.

2. Evidence of Prior Narcotics Offenses

Appellant next contends the trial court erred by allowing the State to introduce evidence of appellant's prior dealings in narcotics. In support of this position, appellant argues that the evidence (i) is improper

---

[1] In addition, appellant subsequently testified as follows:

State: Isn't it true that you've admitted to being a 5-9 PIRU Blood?

A: Yes, sir.

State: You admitted to that, right?

A: Yes, sir.

State: You and I both know what 5-9 PIRU Blood is, don't we?

A: Yes, sir.

State: What is it?

A: It's a Blood gang.

character-conformity evidence, (ii) is not same transaction contextual evidence, and (iii) is unfairly prejudicial.

a. Character-Conformity Evidence

Appellant first argues the trial court erred in overruling his objections because such evidence has great potential to be misused as evidence of bad character and should be excluded unless admission is justified under Texas Rule of Evidence 404(b). *See* Tex.R. Evid. 404(b) (providing that "[e]vidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith"). The State responds that appellant failed to raise a timely and specific objection on this basis.

A review of the record shows that, when Buchanan initially testified that appellant was in Houston selling drugs, defense counsel renewed his earlier objections that the testimony was irrelevant hearsay because appellant had not yet been connected to the crime. Defense counsel continued, "I'd ask for a running objection so that every time he talks about some kind of an extraneous offense or not even related to this offense, that I won't have to stand up." Although appellant now suggests that this objection was based on Texas Rule of Evidence 404(b), this basis was not apparent at trial. Instead, defense counsel renewed his original objections and indicated his intent to renew his prior hearsay and relevancy objections whenever evidence of extraneous offenses was introduced. Thus, the objection was

ambiguous at best. The trial court then allowed defense counsel to clarify, and again, defense counsel restated the earlier hearsay and relevancy objections on the grounds that appellant had not yet been connected to the charged offense.

Based on our review of the record, we conclude that the objections made at trial failed to preserve the distinct arguments made on appeal regarding improper admission of extraneous-offense evidence. *See* Tex.R.App. P. 33.1; *Vasquez v. State*, 225 S.W.3d 541, 543 (Tex.Crim.App.2007) (noting that a court of appeals may not overturn a trial court's decision on a legal theory not presented to the trial court); *Reyna v. State*, 168 S.W.3d 173, 177 (Tex.Crim.App.2005) ("Whichever party complains on appeal about the trial judge's action must, at the earliest opportunity, have done everything necessary to bring to the judge's attention the evidence rule in question and its precise and proper application to the evidence in question.") (quoting 1 Stephen Goode, et al., Texas Practice: Guide to the Texas Rules of Evidence: Civil and Criminal ' 103.2 (2d ed.1993)).

b. Same Transaction Contextual Evidence

Appellant next contends that evidence of drug dealing does not qualify as "same transaction contextual evidence." But in our review of the record, we find no indication that the State offered the evidence on that basis, or that appellant objected on that ground. Thus, this argument presents nothing for review.

c. Unfair Prejudice

Finally, appellant asserts that evidence of drug dealing is unfairly prejudicial. As with appellant's first argument, the State responds that there was no timely and specific objection under Texas Rule of Evidence 403. *See* Tex.R. Evid. 403 (allowing the exclusion of relevant evidence if its probative value is substantially outweighed by, inter alia, the danger of unfair prejudice). We agree with the State that appellant did not raise this objection at trial; thus, appellant's third argument is waived.

In sum, each of appellant's arguments asserted on appeal fails to comport with the objection raised at trial. An objection stating one legal basis may not be used to support a different legal theory on appeal because the trial judge did not have an opportunity to rule on that legal theory and the State did not have an opportunity to remove the objections or supply other testimony. *Cook v. State*, 858 S.W.2d 467, 474 (Tex.Crim.App.1993) (en banc). For the foregoing reasons, we overrule appellant's second issue.

C. Improper Introduction of Hearsay Evidence

Appellant's third issue is based on an exchange that occurred during his cross-examination.[2] Appellant

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[2] Appellant asserts that the prosecutor purposefully introduced these hearsay statements through the following cross-examination:

> State: Did you know that the Houston Police force went to Beaumont and interviewed all of these

people that you claimed to be your alibi? Did you know that?

A: No, I didn't.

State: They talked to all of them?

A: No, I didn't. I'm pretty sure that they were—

State: Because they wanted to check it out, see if you were telling the truth; isn't that right?

A: Yes, sir.

State: You know what? They all said you weren't there that night.

Defense: *Objection to hearsay as to what they said.*

Court: *Sustained as to what they said.*

State: You realize that nobody saw you that night. Do you know that now?

A: That's not true.

State: So, all these people have lied, then?

A: I mean, I can't—I mean, I wasn't there to hear. You know, I wouldn't—I can't say what they said. I don't know what they said.

State: If they all said that you were not there on the night of Tuesday—

Defense: *Objection as to hearsay.*

Court: *Sustained as to hearsay.*

State: Are you calling your friends liars?

A: I mean, I don't know what they said. I mean, they could have told me anything.

State: They could have told who anything?

A: I mean, the police could have said anything. I'm not for sure what happened, how they went about saying this or . . .

State: So the police are lying?

A: I mean, I don't—I mean, it's possible. I mean, it ain't impossible for them not to. But I'm not saying they are. I really just—this is just what you're telling

frames his third issue as follows: "The prosecutor improperly introduced hearsay evidence that the Appellant's acquaintances in Beaumont contradicted the Appellant's claim that he was with them in Beaumont at the time of the offense."

This issue is without merit for several reasons. First, appellant does not identify an improper ruling by the trial court, but instead contends that the prosecutor's questions improperly introduced evidence. Questions, however, are not evidence. *Kercho v. State*, 948 S.W.2d 34, 37 (Tex.App.-Houston [14th Dist.] 1997, pet. ref'd).[3] Second, appellant failed to pursue his objection to an adverse ruling. *See Archie v. State*, 221

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me. So, I mean, I don't know the truth about anything.

State: Well, if it's not impossible that the police lied, then would it be possible that all your friends were telling the truth when they said you weren't with them?

A: No, that's not impossible.

State: So, it's possible—

A: Yeah, it's possible.

State: —that you weren't with them?

A: Yes, it is possible, sir.

(emphasis added).

[3] Appellant did not object to the questions on the grounds that they constituted testimony by counsel or assumed facts not in evidence. *Cf. Duncan v. State*, 95 S.W.3d 669, 673 (Tex.App.-Houston [1st Dist.] 2002, pet. ref'd) ("Prohibiting this kind of interjection of prejudicial hearsay as fact, in front of the jury, is the purpose of the objections 'assumes facts not in evidence' and 'counsel testifying.' ") (citing *Ramirez v. State*, 815 S.W.2d 636, 652 (Tex.Crim.App.1991)).

S.W.3d 695, 699 (Tex.Crim.App.2007) (holding that, to preserve error in prosecutorial argument, a defendant must pursue his objections to an adverse ruling). Appellant also failed to ask the trial court for a jury instruction directing the jury to disregard the prosecutor's statements. *See Ovalle v. State*, 13 S.W.3d 774, 783 (Tex.Crim.App.2000) (en banc) (stating that a prompt instruction to disregard ordinarily will cure error associated with an improper question and answer). Thus, appellant already has received all the relief he requested. And although appellant implies in his brief that this line of questioning constituted prosecutorial misconduct, no such complaint was raised in the trial court. Therefore, this argument is waived. *See Shelling v. State*, 52 S.W.3d 213, 222-23 (Tex.App.-Houston [1st Dist.] 2001, pet. ref'd) (holding that counsel waived appellate review of his contention of prosecutorial misconduct because he objected only on the grounds that prosecutor's questions were indefinite, open-ended, leading, multifarious, and assumed facts not in evidence, and further objected to "form of the question" and to counsel's testimony).

In sum, appellant has failed to preserve his third issue for review. We therefore overrule appellant's last issue.

IV. Conclusion

Because the issues presented on appeal do not comport with timely, specific objections made in the trial court, appellant has failed to preserve the errors

alleged. We therefore overrule each of appellant's three issues and affirm the judgment of the trial court.

1087328

[SEAL] **CASE NO. ~~1087325~~03**

INCIDENT NO./TRN: 903648815X-A001

THE STATE OF TEXAS	§	**IN THE 337TH DISTRICT**
v.	§	**COURT**
ANTOIN DENEIL MARSHAL	§	**HARRIS COUNTY, TEXAS**
STATE ID NO.:TX07412013	§	

JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	**HON. DON STRICKLIN**	Date Judgment Entered:	**12/14/2006**
Attorney for State:	**MARC BROWN/ CRAIG GOODHART**	Attorney for Defendant:	**CHARLES BROWN/ MIKE FOSHER**

Offense for which Defendant Convicted:
CAPITAL MURDER

Charging Instrument: **INDICTMENT**	Statute for Offense: **N/A**
Date of Offense: **10/26/2005**	
Degree of Offense: **CAPITAL FELONY**	Plea to Offense: **NOT GUILTY**
Verdict of Jury: **GUILTY**	Findings on Deadly Weapon: po ~~**N/A**~~ Yes a Firearm
Plea to 1st Enhancement Paragraph: **N/A**	Plea to 2nd Enhancement/ Habitual Paragraph: **N/A**
Findings on 1st Enhancement Paragraph: **N/A**	Findings on 2nd Enhancement/Habitual Paragraph: **N/A**

Punished Assessed by:	Date Sentence Imposed:	Date Sentence to Commence:
JURY	**12/14/2006**	**12/14/2006**

Punishment and Place of Confinement: **LIFE INSTITUTIONAL DIVISION, TDCJ**

THIS SENTENCE SHALL RUN CONCURRENTLY.

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

Fine:	Court Costs:	Restitution:	Restitution Payable to:
$ **N/A**	$ 446.00	$ **N/A**	☐ **VICTIM** (see below) ☐ **AGENCY/AGENT** (see below)

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

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

Time Credited:

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

From to From to From to

From to From to From to

If Defendant is to serve sentence in county fail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: N/A

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

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

Counsel/Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.

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

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and **ORDERED** it entered upon the minutes of the Court.

Punishment Assessed by Jury/Court/No election (select one)

☒ **Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

☐ **Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

☐ **No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court **FINDS** Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

☒ **Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the **Director, Institutional Division, TDCJ**. The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from

confinement, Defendant proceed immediately to the **Harris County District Clerk's office**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **County Jail—Confinement/Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the **Sheriff of Harris County, Texas** on the date the sentence is to commence. Defendant shall be confined in the **Harris County Jail** for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the **Harris County District Clerk's office**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the **Office of the Harris County**. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution/Suspension of Sentence (select one)

☒ The Court **ORDERS** Defendant's sentence **EXECUTED**.

☐ The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged

period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Furthermore, the following special findings or orders apply:

See below

Signed and entered on December 14, 2006

X D.R. Stricklin
DON STRICKLIN
JUDGE PRESIDING

Ntc Appeal Filed: _____ Mandate Rec'd: 02/18/09 Affirmance

After Mandate Received, Sentence to Begin Date is: 12/14/06

Def. Received on _____
at _____ AM / PM

By: _____,
Deputy Sheriff of Harris County

Clerk: D.B.

[Right Thumbprint Omitted]

Right Thumbprint

Deadly Weapon.

The Court **FINDS** Defendant used or exhibited a deadly weapon, namely, FIREARM, during the commission of a felony offense or during immediate flight therefrom or was a party to the offense and knew that a deadly weapon would be used or exhibited. TEX. CODE CRIM. PROC. art. 42.12 §3g.