

APPENDIX TABLE OF CONTENTS

	Page
Texas Court of Criminal Appeals Order denying relief (March 29, 2023).....	App. 1
436th District Court Order on Post-Conviction Writ of Habeas Corpus (May 31, 2022).....	App. 2
436th District Court Supplemental Order (Feb. 15, 2023)	App. 18
Texas Court of Criminal Appeals Order denying reconsideration (May 3, 2023)	App. 28

App. 1

FILE COPY

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

CORRECTED NOTICE

3/29/2023

JOYNER, JOSHUA ISAIAH

Tr. Ct. No. 2016CR3747-W1 WR-93,359-01

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 STREET, SUITE 1440
HOUSTON, TX 77002
* DELIVERED VIA E-MAIL *

WR-93, 359-01
TRIAL COURT NO. 2016-CR-3747-W1

EX PARTE § **IN THE DISTRICT**
JOSHUA ISAIAH JOYNER § **COURT**
§ **436TH JUDICIAL**
§ **DISTRICT**
§ **BEXAR COUNTY,**
§ **TEXAS**

ORDER ON POST-CONVICTION
WRIT OF HABEAS CORPUS

(Filed May 31, 2022)

Joshua Isaiah Joyner, through counsel, Randy Schaffer, has filed an application for post-conviction writ of habeas corpus pursuant to Article 11.07, Texas Code of Criminal Procedure, attacking his conviction in Cause Number 2016-CR-3747.

HISTORY OF THE CASE

On February 9, 2016, following a hearing, the juvenile court waived its jurisdiction and transferred Applicant to criminal court for adult proceedings. Applicant was certified as an adult for the offense of Capital Murder. Said offense was alleged to have been committed on or about July 24, 2015. Applicant was indicted on April 21, 2016, for the capital murder of Albert Nelson. Following a jury trial, Applicant was found guilty. On October 3, 2016, Applicant was sentenced by the court to life imprisonment. Applicant

App. 3

appealed his conviction. Under appellate cause number 04-16-00677-CR, the Fourth Court of Appeals issued an opinion on September 20, 2017, affirming Applicant's conviction. Mandate issued on February 27, 2018.

On June 1, 2021, Applicant filed an Application for Writ of Habeas Corpus pursuant to 11.07 of the Code of Criminal Procedure. This is Applicant's first application for post-conviction relief pursuant to Article 11.07. This application was transferred from the 386th District Court to the 436th District Court because Judge Jacqueline Herr Valdes, who was a prosecutor who worked on Applicant's case, is now the judge of the 386th District Court. The Applicant filed a supplemental and second supplemental Application for Writ of Habeas Corpus under 11.07 on September 16, 2021, and October 28, 2021, respectively.

APPLICANT'S ALLEGATIONS

Ground One: Ineffective assistance of counsel at the guilt-innocence stage

Ground Two: Denial of due process of law and a fair trial because the state unknowingly presented false testimony

Ground Three: Cumulative Prejudice

Ground Four: Denial of due process of law and a fair trial because the state suppressed favorable impeachment evidence.

FINDINGS OF FACT

1. On September 9, 2015, the State of Texas filed an Original Petition for Waiver of Jurisdiction and Discretionary Transfer to Criminal Court. Said petition was assigned cause number 2015-JUV-01344. The complainant in this petition was Albert Nelson.
2. On February 9, 2016, the Court held a contested hearing on the State's Petition for Waiver of Jurisdiction and Discretionary Transfer to Criminal Court. Following the hearing, the Court waived juvenile jurisdiction, transferred the Applicant to criminal court, and certified the offense of capital murder.
3. The Applicant was indicted on April 21, 2016, for the capital murder of Albert Nelson and cause number 2016-CR-3747 was assigned.
4. A jury trial was held, in cause number 2016-CR-3747, from September 26, 2018, through October 3, 2016.
5. On October 3, 2016, a jury found Applicant guilty of capital murder.
6. On October 3, 2016, Applicant was sentenced, by the court, to life.
7. Applicant appealed his case to the Fourth Court of Appeals. The appellate court, under Cause Number 04-16-00667-CR, affirmed the trial court's judgment.
8. Following the issuance of a mandate, Applicant's conviction was final on February 27, 2018.

App. 5

9. Applicant filed an Application for Writ of Habeas Corpus under Code of Criminal Procedure Article 11.07 on June 1, 2021 alleging ineffective assistance of counsel at the guilt-innocence stage, denial of due process of law and a fair trial because the state unknowingly presented false testimony, and cumulative prejudice.

10. The Bexar County District Attorney's Office was provided a copy of the application on June 4, 2021.

11. The Bexar County District Attorney's Office filed State's Response to Applicant's Petition for Writ of Habeas Corpus on June 18, 2021.

12. On June 22, 2021, this writ and the underlying case were transferred from the 386th District Court to the 436th District Court because the current sitting judge of the 386th District Court participated in Applicant's case and jury trial as a prosecutor.

13. An order designating issues was signed and sent to the Court of Criminal Appeals on July 2, 2021.

14. This court sent trial counsel, Mario Trevino, an order requiring him to file a written affidavit with the Bexar County District Clerk's Office on or before August 3, 2021, responding to Applicant's allegation of ineffective assistance of counsel.

15. On August 2, 2022, Mr. Trevino filed an affidavit addressing Applicant's ineffective assistance of counsel allegations.

App. 6

16. The trial court finds Mario Trevino's affidavit to be credible and truthful.
17. On September 16, 2021, Applicant filed a supplemental application alleging additional facts to support his claim of ineffective assistance of counsel.
18. On October 4, 2021, the State filed a response to Applicant's motion for production of favorable evidence.
19. On October 28, 2021, Applicant filed a second supplemental application alleging additional instances of ineffective assistance of counsel and a new ground: denial of due process of law and a fair trial because the state suppressed favorable impeachment evidence.
20. On November 29, 2021, this court submitted a motion for extension of time to resolve timely designated issues.
21. A supplemental order designating issues was submitted to the Court of Criminal Appeals on November 29, 2021.
22. On December 9, 2021, the Court of Criminal Appeals granted the trial court's request for an extension. The clerk's record containing the 11.07 writ application is due in the Court of Criminal Appeals of Texas on June 7, 2022.
23. In response to Joyner's supplemental and second supplemental applications, Mr. Trevino filed a supplemental affidavit on November 22, 2021, at the request of the trial court.

24. The trial court finds Mario Trevino's supplemental affidavit to be credible and truthful.

CONCLUSIONS OF LAW

1. To establish a claim for ineffective assistance of counsel, applicant must meet the two-prong test established in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). First, an applicant must show that counsel's performance was deficient. *Id.* at 687. Counsel's performance is measured by an objective standard of reasonableness. *Id.* at 688. Second, the applicant must show that counsel's deficient performance prejudiced the defense. *Id.* The applicant must show that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

In his first ground, Applicant alleges ineffective assistance of counsel. Applicant contends counsel was ineffective for: (1) failing to file a motion in limine, timely object, and preserve error in the admission of Detective Arevalos' inadmissible opinion testimony that Joyner committed capital murder; (2) failing to file a motion in limine and object to Detective Arevalos' hearsay testimony regarding the extraneous offense that the Glock used to shoot Nelson had been stolen from a home a block from Joyner's home; (3) failing to file a motion in limine to exclude testimony regarding Nelson's good qualities; (4) failing to advise Joyner of

the defenses of self-defense and defense of a third person; (5) failing to request jury instructions on self-defense and defense of a third person; (6) failing to impeach a witness on cross-examination; (7) failing to ask the State to produce the witness' prior inconsistent statement; (8) failing to ask the witness on cross examination what changes he made; (9) failing to call the detective who took the statement to testify about the prior inconsistent statement; (10) allowing Nelson's mother to mislead the jury; (11) failing to present testimony regarding the circumstances surrounding the criminal charges pending against Nelson at the time of his death; and (12) failing to request the offense reports and present testimony to support the defense and impeach Nelson's mother.

Trial counsel disputes that he failed to advise his client about the law of self-defense and defense of a third person. Mr. Trevino indicates that he did, in fact, advise his client about the law. He also discussed the same issue with Applicant's family. By the time trial counsel spoke with the Applicant, Mr. Trevino states, Applicant and his parents were already aware of Applicant's right to self-defense. Even so, trial counsel "went over it with them on several occasions."

Applicant alleges that counsel did not ask the State to produce De Jesus' prior inconsistent statement and did not ask De Jesus on cross-examination what changes he made to his initial statement. The record indicates that Mr. Trevino did file motions for discovery of exculpatory and mitigating evidence and for production of evidence favorable to the accused.

App. 9

Both motions were agreed upon by the parties and granted by the court prior to trial. On direct examination, De Jesus admitted that he did not recall the changes he made to the statement (10 R.R. 31). The trial record indicates that Mr. Trevino elicited testimony from De Jesus that his first statement was “a complete blatant lie” (10 R.R. 41). Trial counsel also asked the witness: “And that second statement isn’t all truthful either, is it?” To which De Jesus responded, “No, sir.” (10 R.R. 41).

Trial counsel attributes several of his actions to trial strategy and the facts of the case. For example, Mr. Trevino, in his affidavit, explained that he did not object to the testimony of Nelson’s mother that her son was a “good young man” or the pathologist’s statement the deceased had a tattoo of Jesus Christ because “it would make his [Nelson’s] pending criminal matters admissible.” During the testimony of Geana Nelson, the deceased’s mother and in response to Ms. Nelson’s positive description about her son, Mr. Trevino approached the bench and informed the court that he intended to ask questions to address the fact that Nelson was out on felony bond at the time of his death (10 R.R. 199). After a discussion, the trial judge allowed Mr. Trevino to question Nelson’s mother about her son’s felony bond status but not go into the facts.

Mr. Trevino also indicates that he would have pursued further cross-examination of Mr. Nelson’s mother regarding the pending felonies if self-defense or defense of a third person had been an issue. Mr. Trevino also expressed that he did not want to propose through

App. 10

cross-examination that the victim was “worthy of being shot to death because he was a bad man” as he believed the jury would not have been receptive to that argument. As to the allegation that trial counsel failed to request a jury instruction on self-defense and defense of a third person, Mr. Trevino explains that he did not request an instruction on self-defense and defense of a third person because Applicant denied shooting Nelson. He also considered all of the evidence including Mr. Evan’s and other witnesses and decided he did not want to contradict his client’s version of the facts.

Trial counsel acknowledges that he should have objected to Detective Arevalos’ testimony sooner but when he did object, his objection was sustained. Mr. Trevino was of the opinion that the jury understood the line of questions and answer was improper and not to be considered. Trial counsel further agrees that he should have requested an instruction to disregard and a hearing, prior to trial, on a motion in limine.

Although trial counsel concedes he did make some errors, Applicant does not have a right to error-free representation. After considering the allegations raised by the Applicant and considering the totality of the representation, the court finds that counsels’ representation did not fall below an objective standard of reasonableness under prevailing professional norms.

Should, however, the Court of Criminal Appeals determine that Applicant’s trial counsel performance was deficient, Applicant has failed to show that but for counsel’s alleged deficient performance, there is a

App. 11

reasonable probability that the outcome of this case would have been different.

Ground one should be denied.

2. The use of material false testimony to procure a conviction violates a defendant's due process rights. *Ex Parte De La Cruz*, 466 S.W.3d 855, 866 (Tex. Crim. App. 2015). To evaluate a material false testimony claim, a reviewing court must determine (1) whether the testimony was false and, if so, (2) whether the testimony was material. *Ex parte Weinstein*, 421 S.W.3d 656, 665 (Tex. Crim. App. 2014). To establish falsity, "the record must contain some credible evidence that clearly undermines the evidence adduced at trial, thereby demonstrating that the challenged evidence is, in fact, false." *Ukwuachu v. State*, 613 S.W.3d 149, 156 (Tex. Crim. App. 2020). To meet the falsity prong, some 'definitive or highly persuasive evidence' is needed to undermine the truthfulness of the evidence adduced at trial." *Id.* at 157

In his second ground, Applicant alleges he was denied due process of law and a fair trial because the state unknowingly presented false testimony. To support his false testimony claim, Applicant submitted a transcription of an interview between habeas counsel, Randy Schaffer, and Justo De Jesus. At the time of the interview, De Jesus was incarcerated on unrelated charges.

De Jesus tells Applicant's counsel he made statements at trial that were false. However, the interview does not contain an indication of what De Jesus'

App. 12

testimony would have been had he testified truthfully at trial. A careful reading of the entire interview raises questions as to the credibility of and possible motivations for De Jesus' statement that his trial testimony was false.

No other evidence was offered to support the false evidence claim. Applicant has not presented credible evidence to undermine the evidence adduced at trial, nor has he established that the trial testimony was, in fact, undisputedly false. Should, however, the Court of Criminal Appeals determine that the De Jesus' testimony at trial was false, a review of case record indicates that the Applicant has not shown a reasonable likelihood that the allegedly false testimony affected the outcome at trial.

Ground two should be denied.

3. The cumulative effect of a number of errors may be found harmful. *Chamberlain v. State*, 998 S.W.2d 230, 238 (Tex. Crim. App. 1999). In his third ground, Applicant alleges cumulative prejudice because the cumulative effect of the prejudice resulting from his ineffective assistance of counsel allegations and the presentation of false testimony requires relief. However, Applicant has not shown that errors, if any occurred, denied Applicant a fair trial.

Ground three should be denied.

4. In *Brady v. Maryland*, the Supreme Court held that suppression of evidence "favorable to an accused upon request violates due process where the evidence

App. 13

is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.” 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963). The duty to disclose favorable evidence applies whether the accused requests the evidence or not. *United States v. Agurs*, 427 U.S. 97, 107, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976). This duty applies to both impeachment evidence and exculpatory evidence. *United States v. Bagley*, 473 U.S. 667, 676, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). Because the duty to disclose favorable evidence includes evidence known only to the police, the “individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.” *Kyles v. Whitley*, 514 U.S. 419, 437, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995).

Materiality is not established by the “mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial.” *Agurs*, 427 U.S. at 109-10. In *Bagley*, the court determined that evidence is material ‘if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.’ *Bagley*, 473 U.S. at 682. Reasonable probability of a different result is shown when evidentiary suppression undermines confidence in the outcome of the trial. *Kyles*, 514 U.S. at 434.

In his fourth ground, Applicant alleges denial of due process of law and a fair trial because the state suppressed favorable impeachment evidence. Applicant contends that the state failed to disclose De Jesus’

App. 14

prior inconsistent statement to Detective Mendez and the state withheld the offense reports in the felony cases pending against Nelson at the time of his death.

To support his contention regarding De Jesus' prior inconsistent statement, Applicant submitted with his application, a copy of Detective Mendez' supplemental report. The report outlines what occurred when De Jesus was transported to Detective Mendez' office to give his statement. It indicates that an initial statement was printed for De Jesus' review. Eventually, the statement was redone so that the witness "could tell the whole truth."

Applicant, through habeas counsel, also filed a motion for production of favorable evidence. On October 4, 2021, the state filed a response and outlined actions taken upon request for "anything contained in the prosecution and law enforcement files indicating that the shooting occurred during a marijuana buy instead of a robbery." The state provided scanned witness statements and digital copies of the State's file. The state also requested a verbatim scan of its file, including work product and other notes from the time of Applicant's prosecution to be created and disclosed to Applicant via his counsel. According to the Applicant, Mendez either destroyed the initial statement or kept it but did not turn it over to the district attorney's office. Nonetheless, Applicant alleges, the officer's knowledge of the substance of the prior inconsistent statement is imputed to the prosecution.

App. 15

Applicant also alleges that the state disclosed the deceased's pending criminal charges but withheld the underlying offense reports. The Third Amended Discovery Acknowledgment signed by the prosecutor and trial counsel and filed with the court prior to trial includes a section entitled "Information Disclosed but Withheld from Discovery." That section contains an entry for criminal listings and active warrants information for Albert Nelson. Furthermore, in an affidavit signed by trial counsel and submitted along with Applicant's second supplemental application, Mario Trevino expressed that he did not recall the State disclosing the facts of the theft, robbery, and aggravated assault cases to him before the trial. If he had known the facts, he would have used the information to support the defense and to rebut the mother's testimony regarding Nelson's good qualities. In its response to applicant's motion for production of favorable evidence, the state indicates that it provided a full digital file on the cases pending against Nelson at the time of his death, including the theft \$50-\$500 charge (481185) and the Aggravated Assault with a deadly weapon charge (2015CR6321). The offense reports were submitted with Applicant's second supplemental application.

Applicant has shown that the state failed to disclose a witness' prior statement to police, as well as some underlying police reports related to pending felony charges against the complainant/deceased. However, Applicant has not shown that there is a reasonable probability that, had the evidence been

App. 16

disclosed to the defense, the result of the proceeding would have been different.

Ground four should be denied.

ORDER

The District Clerk of Bexar County is ordered to forward the application, affidavits and this order along with attachments to the Court of Criminal Appeals of Texas. The clerk is also ordered to forward a copy of the order to each of the following:

1. Joshua Isaiah Joyner, TDCJ-CID #2093639
Robertson Unit
12071 FM 3522
Abilene, TX 79601
2. Randy Schaffer
Attorney at Law
1021 Main, Suite 1440
Houston, Texas 77002
3. Lauren Zamora
Assistant Criminal District Attorney
Bexar County District Attorney's Office
101 W. Nueva
San Antonio, Texas 78205

App. 17

SIGNED AND ORDERED this 31ST day of MAY_____,
A.D., 2022.

/s/ Lisa Jarrett
Lisa Jarrett (Jun 1, 2022
21:21 COT)
LISA K. JARRETT, JUDGE
436TH DISTRICT COURT
OF TEXAS

WR-93, 359-01
TRIAL COURT NO. 2016-CR-3747-W1

EX PARTE § **IN THE DISTRICT**
§ **COURT**
§ **JOSHUA ISAIAH JOYNER** § **436TH JUDICIAL**
§ **DISTRICT**
§ **BEXAR COUNTY,**
§ **TEXAS**

SUPPLEMENTAL ORDER

(Filed Feb. 15, 2023)

Joshua Isaiah Joyner, through counsel, Randy Schaffer, has filed an application for post-conviction writ of habeas corpus pursuant to Article 11.07, Texas Code of Criminal Procedure, attacking his conviction in Cause Number 2016-CR-3747.

HISTORY OF THE CASE

On February 9, 2016, following a hearing, the juvenile court waived its jurisdiction and transferred Applicant to criminal court for adult proceedings. Applicant was certified as an adult for the offense of Capital Murder. Said offense was alleged to have been committed on or about July 24, 2015. Applicant was indicted on April 21, 2016, for the capital murder of Albert Nelson. Following a jury trial, Applicant was found guilty. On October 3, 2016, Applicant was sentenced by the court to life imprisonment. Applicant appealed his conviction. Under appellate cause number

App. 19

04-16-00677-CR, the Fourth Court of Appeals issued an opinion on September 20, 2017, affirming Applicant's conviction. Mandate issued on February 27, 2018.

On June 1, 2021, Applicant filed an Application for Writ of Habeas Corpus pursuant to 11.07 of the Code of Criminal Procedure. This is Applicant's first application for post-conviction relief pursuant to Article 11.07. This application was transferred from the 386th District Court to the 436th District Court because Judge Jacqueline Herr Valdes, a former prosecutor, worked on Applicant's case and is now the judge of the 386th District Court. The Applicant filed a supplemental and second supplemental Application for Writ of Habeas Corpus under 11.07 on September 16, 2021, and October 28, 2021, respectively. Applicant filed a third supplemental application on November 17, 2022.

On May 31, 2022, this court issued an order recommending denial of all grounds alleged in the June 1, 2021, September 16, 2021 and October 28, 2021 applications. The writ record was submitted to the Court of Criminal Appeals along with the trial court's Findings of Fact and Conclusions of Law. The parties filed an Agreed Motion to Withdraw Findings of Fact and Conclusions of Law on June 10, 2022. On June 17, 2022, Applicant filed his objections to the trial court's Findings of Fact and Conclusions of Law. On September 7, 2022, the Court of Criminal Appeals remanded this proceeding for further development of the record and ordered the court to conduct an evidentiary hearing

and to make any other findings and conclusions that it deems appropriate in response to Applicant's claims.

Judge Lisa K. Jarrett presided over the evidentiary writ hearing on November 7, 2022 and heard the arguments of counsel on December 14, 2022. Judge Jarrett retired from her position as the judge of the 436th District Court of Bexar County on December 31, 2022. She signs this order, which contains her additional findings of fact, to supplement the previously entered findings of fact and conclusions of law and to include her response to Applicant's third supplemental application filed November 17, 2022, as a visiting former district court judge.

ADDITIONAL FINDINGS OF FACT

1. On May 31, 2022, this court issued an order recommending denial of all grounds in the June 1, 2021, September 16, 2021 and October 28, 2021 writ applications.
2. The parties filed an Agreed Motion to Withdraw Findings of Fact and Conclusions of Law on June 10, 2022.
3. Applicant filed his objections to the trial court's finding of facts and conclusions of law on June 17, 2022.
4. Following the September 7, 2022 remand order from the Court of Criminal Appeals, the trial court conducted an evidentiary hearing on November 7, 2022.

5. At the hearing, the following witnesses testified: Justo De Jesus, Richard Mendez, Mario Trevino, Khris-tina Fielder, Judge Jacqueline Herr Valdes, and Joshua Joyner.

a. On the advice of counsel, Justo De Jesus asserted his Fifth Amendment right against self-incrimination.

b. Richard Mendez, who the court finds to be truthful and credible, testified that he interviewed Justo De Jesus during the investigation and, based on the interview, prepared an initial statement. He testified that he printed a statement for Mr. De Jesus' review and signature. Officer Mendez did not recall if he saved that statement on his computer nor did he know what happened to the first statement he printed out for De Jesus' review. Officer Mendez denied destroying or concealing De Jesus' initial statement in order to impair its availability in the investigation or trial.

c. Mario Trevino, who the court finds to be truthful and credible, testified as follows:

As to the opinion testimony of Detective Arevalos, Mr. Trevino did initially object but agreed that he should have asked for an instruction to disregard and moved for a mistrial had his request for an instruction been granted. Trial counsel also indicated that he should have filed a Motion in Limine to limit the opinion testimony and should have objected to Detective Arevalos' opinion testimony offered after Trevino's initial objection was sustained. Mr. Trevino admitted that he did not object to testimony that the

gun used to kill Nelson had been stolen from a home a block away from Joyner's house because the defense theory was "we had no gun, we fired no gun, we don't know where that gun came from." (2 H.R.R 71).

Mr. Trevino did not recall specifically asking the state to produce De Jesus' first statement given to Officer Mendez. Although he acknowledged that he should have specifically asked for the first statement, Mr. Trevino felt that what was important was that De Jesus had initially lied to Officer Mendez. Had Mr. Trevino been able to show prior to trial that De Jesus' initial statement had been thrown away or not saved, Mr. Trevino would have moved to suppress De Jesus' testimony on the basis that he could not effectively cross examine De Jesus. Defense counsel did not interview Officer Mendez before trial about what De Jesus said in his initial statement.

Trial counsel did not object to the testimony given by the victim's mother, Geana Nelson, because Mr. Trevino wanted the door opened regarding Nelson's pending criminal cases. Trevino did not make a bill of exception when the trial court granted the state's request that he not go into the facts of Nelson's case. Trevino testified that he did not know the facts of the charges against Nelson and that he did not think the state had produced the offense reports underlying Nelson's pending charges. Trevino did not recall if he asked for the reports. According to Mr. Trevino, the state did not disclose the offense reports in either discovery or pursuant to Brady. On cross examination, Mr. Trevino admitted that he did not have affirmative

knowledge of the fact that the prosecutors did not turn over police reports in this case. However, the Third Amended Discovery Acknowledgement signed by the state and defense and filed with the court on September 26, 2016, does not address the offense reports regarding Nelson's pending charges.

As to the issue of self-defense, Joyner refused to bring up the defense during trial. Trevino went over the defense of parties and defense of a third person and Joyner "never admitted it." (2 H.R.R. 91). Trial counsel also spoke with Joyner's parents about self-defense. Mr. Trevino did not want to put thoughts in Joyner's head that were not there. Trevino's belief is that "it's not proper, ethical for an attorney to force a client into a set of facts he denies . . ." (2 H.R.R. 91). Defense counsel did not want to pursue self-defense or defense of a third person in light of Evan's testimony that Nelson appeared to be reaching for a gun because he would have had to call his client a liar with nothing to substantiate that. (2 H.R.R. 98) Furthermore, Trevino did not have all the facts about Nelson's pending charges to explain to his client how those charges could have been used to show Nelson was the aggressor.

d. Khristina Fielder testified that the District Attorney's office did not have a copy of De Jesus' first statement nor was she aware what De Jesus' first statement contained. Ms. Fielder does not know if she provided Mr. Trevino with a copy of the police reports regarding Nelson's pending charges. However, Ms. Fielder testified that the District Attorney's office has an open file policy, and, she believes, Mr. Trevino was

App. 24

aware of the pending cases and that he could have looked at the police reports. Ms. Fielder denied actively trying to hide or suppress evidence from the defense. Ms. Fielder testified that the state's file was made available to defense counsel, Mario Trevino, whenever he needed to look at it.

e. Judge Jacqueline Herr Valdes, who the court finds to be truthful and credible, testified that she does not have an independent recollection of her interview with Detective Mendez. As a result, she did not recall asking Detective Mendez what happened to the physical copy of De Jesus' first statement nor what specific things De Jesus said in the first statement that he changed in his second statement. Judge Valdes denied eliciting testimony about Nelson's tattoo to create the impression with the jury that the victim was a devout young man of good character. Judge Valdes testified that defense counsel Trevino had the offense reports regarding Mr. Nelson's pending charges. She believed Mr. Trevino had reviewed the offense report prior to trial as she recalled speaking to Mr. Trevino about it. Judge Valdes was transparent about everything and all documents the state had in their possession and denied actively trying to hide any evidence from the defense. Finally, when asked about Detective Mendez' motives for not providing the initial statement, Judge Valdes testified that she did not think anyone actively tried hiding information from the State.

f. Joshua Joyner testified that he did not tell the police, his parents or his attorney the truth about the events surrounding Nelson's death. Joyner never

admitted to firing the gun and now claims that he denied shooting Nelson because he did not understand self-defense. The Applicant claims that Trevino never explained the law of self-defense to either Joyner or his parents. Joyner stated that he was unaware that Albert Nelson had pending charges. According to Joyner, Mr. Trevino, did not tell him that the facts of Nelson's pending robbery charge were similar to what happened in Joyner's case. Furthermore, Joyner alleges that Mr. Trevino did not explain how Nelson's pending cases could be used to support self-defense or defense of a third person. Joyner claims that if Trevino had informed him of the facts of Nelson's cases, Joyner would have told his attorney the truth and admitted that he shot Nelson in self-defense and in defense of Elijah Evans.

As to the day in question, Joyner's new version of the events indicate that he intended to purchase marijuana from Nelson. Joyner admits that he carried a weapon with him for protection. Joyner testified that he "raised up" when he saw Nelson reach under the seat and realized that Nelson came up with a weapon. Joyner stated that he saw Nelson point the gun at Elijah Evans. Joyner approached the car with his gun pointed, as well. According to Joyner's testimony, Nelson and Joyner shot at each other at the same time. Joyner testified at this evidentiary hearing that he shot Nelson in self-defense.

6. Applicant filed additional exhibits in support of his application on November 8, 2022 and November 14, 2022.

App. 26

7. Applicant filed a third supplemental application on November 17, 2022.
8. The trial court filed a Motion for Extension of Time with the Court of Criminal Appeals on December 5, 2022.
9. On January 27, 2022, said Motion for Extension of Time to comply with the Court of Criminal Appeals' order dated September 7, 2022 was granted. The supplemental record is due in the Court of Criminal Appeals of Texas on March 6, 2023.

Based on the testimony from the evidentiary hearing, this court does not offer any additional conclusions of law as to the grounds alleged in the June 1, 2021, September 16, 2021 and October 28, 2021 writ applications nor any conclusions of law as to the new grounds alleged in applicant's third supplemental writ application. Based on the affidavits, exhibits and testimony from the evidentiary hearing, the Court recommends denial of all new grounds alleged by the applicant on November 17, 2022.

ORDER

The District Clerk of Bexar County is ordered to forward the application, supplemental applications, trial record, affidavits, exhibits, proposed findings of fact and conclusions of law submitted by both parties, this order and all other documents filed herein to the Court of Criminal Appeals of Texas. The clerk is also

App. 27

ordered to forward a copy of this supplemental order to each of the following:

1. Joshua Isaiah Joyner, TDCJ-CID #2093639
Robertson Unit
12071 FM 3522
Abilene, TX 79601
2. Randy Schaffer
Attorney at Law
By email at: noguilt@schafferfirm.com
3. Lauren Zamora
Assistant Criminal District Attorney
Bexar County District Attorney's Office
By email at: Lauren.Zamora@bexar.org

SIGNED AND ORDERED this 31ST day of MAY_____,
A.D., 2022.

/s/ Lisa K. Jarrett
LISA K. JARRETT, JUDGE
VISITING FORMER
DISTRICT COURT JUDGE
436TH DISTRICT COURT
OF TEXAS

App. 28

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

[SEAL]

5/3/2023

JOYNER, JOSHUA ISAIAH

Tr. Ct. No. 2016CR3747-W1 WR-93,359-01

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

Deana Williamson, Clerk

RANDY SCHAFFER
ATTORNEY AT LAW
1021 MAIN STREET, SUITE 1440
HOUSTON, TX 77002
* DELIVERED VIA E-MAIL *
