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RESPONDENT'S APPENDIX A

**REMAND ORDER OF THE COURT OF
CRIMINAL APPEALS OF TEXAS
(OCTOBER 18, 2017)**

IN THE COURT OF
CRIMINAL APPEALS OF TEXAS

EX PARTE ARELI ESCOBAR

No. WR-81,574-02

On Application for Writ of Habeas Corpus
Cause No. D-1-DC-09-301250 in the
167th Judicial District Court, Travis County

Per Curiam.

ORDER

This is a subsequent post-conviction application for writ of habeas corpus filed pursuant to the provisions of Texas Code of Criminal Procedure Article 11.071, § 5.1.¹

In May 2011, a jury convicted applicant of the offense of capital murder. The jury answered the special issues submitted under Article 37.071, and the trial court, accordingly, set punishment at death. Art. 37.071, § 2(g). This Court affirmed applicant's

¹ Unless otherwise indicated, all references to Articles are to the Texas Code of Criminal Procedure.

conviction and sentence on direct appeal. *Escobar v. State*, No. AP-76,571 (Tex. Crim. App. Nov. 20, 2013) (not designated for publication).

Applicant filed his initial post-conviction application for writ of habeas corpus in the convicting court in May 2013. This Court denied relief. *Ex parte Escobar*, No. WR-81,574-01 (Tex. Crim. App. Feb. 24, 2016) (not designated for publication).

Applicant then filed this subsequent habeas application in the convicting court on February 15, 2017. In compliance with Article 11.071, § 5(b)(1), the convicting court forwarded this application to this Court.

Applicant alleges that this subsequent application should be considered on the merits. He argues that the factual or legal basis for his claims was unavailable on the date he filed the previous application. Art. 11.071, § 5(a). He also argues that he is entitled to relief under Article 11.073.

To satisfy Article 11.071, § 5(a), the legal or factual basis must have been unavailable as to all previous applications. We have held that Article 11.073 provides a new legal basis for habeas relief in the small number of cases where an applicant can show by a preponderance of the evidence that he would not have been convicted if the newly available scientific evidence had been presented at trial. *Ex parte Robbins*, 478 S.W.3d 678, 690 (Tex. Crim. App. Nov. 26, 2014). “An applicant also must establish that the facts he alleges are at least minimally sufficient to bring him within the ambit” of Article 11.073. *Id.*

Article 11.073 applies to relevant scientific evidence that was not available to be offered by the defendant at trial, or that contradicts scientific evidence

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relied on by the State at trial. Art. 11.073(a). In this case, with regard to Allegations One through Four, applicant has alleged prima facie facts sufficient to invoke Article 11.073. Additionally, with regard to that portion of Allegation Six in which applicant asserts that the State violated his right to due process by presented misleading testimony about his proximity to the murder scene based on cell-tower location information, applicant has alleged prima facie facts sufficient to satisfy Article 11.071, section 5(a)(2). Therefore, as to those five allegations, the application satisfies the requirements of Article 11.071, § 5(a), and the cause is remanded to the convicting court for consideration on the merits. *See* Art. 11.071, § 5(c); *Robbins*, 478 S.W.3d at 690.

IT IS SO ORDERED THIS THE 18th DAY OF
OCTOBER, 2017.

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