No._____

IN THE

SUPREME COURT OF THE UNITED STATES

RENE DANIEL VILLARREAL,
Petitioner,

v.

THE STATE OF TEXAS,
Respondent.

On Petition for Writ of Certiorari
To the Texas Court of Criminal Appeals

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,

Angela Moore
Attorney at Law
316 Martinez Street
San Antonio, Texas 78205
(361) 389-3329 - Office
angelamooreattorney@gmail.com

Requesting Appointment
In Forma Pauperis

QUESTION PRESENTED FOR REVIEW

Whether the Texas Court of Criminal Appeals Erred In Rejecting the Trial Court's Recommendation For Habeas Relief On The Basis That Trial Counsel Rendered Ineffective Assistance of Counsel At Trial That Prejudiced The Petitioner.

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PRAYER

The petitioner, RENE DANIEL VILLARREAL, (Petitioner) respectfully prays that a writ of certiorari be granted to review the Texas Court of Criminal Appeals's order denying habeas relief, reverse the Petitioner's conviction for murder, and remand his case for a new trial.

OPINIONS BELOW

On September 24, 2025, the Texas Court of Criminal Appeals rejected the district court's grant of habeas relief to Villarreal under Tex. Crim. Pro. Art. 11.07.

JURISDICTION

The jurisdiction of the Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

This petition implicates the Sixth Amendment and the Due Process Clause of the 14th Amendment to the United States Constitution, which provide, in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right … to have the Assistance of Counsel for his defence.
>
> *U.S. Const. amend. VI*

> …nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> *U.S. Const. amend. XIV*

STATEMENT OF THE CASE

A. Procedural History of the Case:

After a jury trial, on August 17, 2011, Petitioner, Rene Daniel Villarreal (Villarreal) was convicted of murder and sentenced to 99 years in the Texas Department of Criminal Justice. CR. 6-7; 5RR50; 5RR117; [1] After exhausting his state appeals, Petitioner filed an application for a Tex. Crim. Pro. Art. 11.07 post-conviction writ of habeas corpus. After a number of evidentiary hearings, on February 12, 2023, the district court filed findings of fact and conclusions of law, recommending that the Texas Court of Criminal Appeals (TCCA) grant relief in the form of a new trial. On September 24, 2025, the TCCA denied Petitioner relief on his 11.07 application in an opinion without findings. Mr. Villarreal's certiorari petition is due to be filed no later than Tuesday, December 23, 2025.

A. Mr. Villarreal's Statements

On the early morning of September 17, 2010, during his first statement to law enforcement following his arrest, Petitioner, Rene Daniel Villarreal (Mr. Villarreal) recounted the events at a party he attended the previous evening. He stated to law enforcement investigators that Chris Martinez had cut him, that Martinez had started the fight, and that Villarreal needed to defend himself against Martinez. Villarreal added that he wasn't sure if what Martinez cut him with was a knife, but he thought it was a sharp point, that he took it from Martinez, and that he then "punctured" Martinez with it. 4RR(Exhibit 33). In his second statement that same morning,

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[1] The Clerk's Record on appeal, titled CR [page number] and the Reporters Record, is referred to as RR [page number].

Villarreal added that, previous to the fight, Martinez had taken his shirt off to fight Villarreal. 4RR (Exhibit Tab 21).

C. Defense Counsel's Pretrial Preparation

Some five months prior to trial, there was a discussion by the parties before the court about an "evidence exchange." 4RR4-5. The Court referred trial counsel to its website, which contained its local rules (effective 9-1-10) and which provided:

> [LOCAL] RULE 6.12 DISCOVERY
>
> A. Discovery shall be conducted in accordance with Article 39.14 of the Texas Code of Criminal Procedure.
>
> B. A standing discovery order may be entered by each court at arraignment. The discovery order shall set forth procedures for the exchange of information, evidence inspection, expert designations and deadlines to comply with the discovery order. [2]

In accordance with Local Rule 6.12 A., discovery was to be conducted in accordance with [former] Article 39.14 of the Texas Code of Criminal Procedure, which at the time required defense counsel to affirmatively request notice of the state's expert witnesses.

Trial Counsel filed a "Motion for Discovery" (CR20-26) that included a request for "2. A list of the names, addresses and professions of all expert witnesses the prosecution intends to call at trial, along with each expert's qualifications, the subject and a description of his or her contemplated testimony, and his or her report," (CR20). However, trial counsel did not urge a ruling on any of these motions, to include notice of expert testimony.

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[2] *See* http://www.webbcountytx.gov/DistrictClerk/LocalRules/localrules10.pdf at p. 33.

B. Jury Trial

In his opening statement, Villarreal's trial attorney proffered the events that led to Villarreal confessing to have stabbed Martinez:

> He (Villarreal) tells them (the investigators questioning him) I was at that party, there at 609 Miraflores Street. And there was a fight between me and Chris Martinez. He said, "As we were fighting I saw something." He can't describe it, but he said it was a sharp object. And as Mr. Martinez tried to do this and he shows them in the statement, you're gonna see that. He tried to do this. He said, "I grabbed it. And then he shows them." He said, "Look, I cut my hand."
>
> Let's move to the - and he shows them. And they photograph his hand. He said, "As I tried to take that knife," he didn't call it a knife, he said the sharp object. "And when I got it from him, all I did was defend myself."

2 RR; 29-30. (emphasis by Appellant). [3] Trial Counsel made no claims to a mistaken identity defense in his opening statement.

At trial, the three state's witnesses who claimed to have seen the events leading to the stabbing each gave more than one rendition of the events. Of these, two admitted to have been under the influence of drugs at the time of the incident, and the third conceded not "thinking correctly."

Dolores Oropeza saw Martinez "get mad" and take his shirt off. She also saw Martinez hit Mr. Villarreal. 2RR101. Although Oropeza testified that she saw Mr. Villarreal "go at" Martinez with a knife (2RR103), she admitted that when she first gave a statement to the Sherriff's office, she did not give that rendition, and that she changed her testimony in a second

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[3] When questioned by the prosecutor, state's expert Dr. Corinne Stern, whose testimony is discussed below, confirmed that Villarreal presented a self-defense theory: (Q: [By prosecutor] And they said the defense is claiming that Mr. Villarreal grabbed that silver butter-flying (butterfly) knife and cut his hand? A. [Stern] Yes.)) 2RR176.

statement to law enforcement. 2RR108-109. On cross-examination, she admitted that she gave two statements (2R. 115), the first on September 17, 2010 and the second on October 1, 2011. 2RR115-116. She admitted that in her first statement, she did not mention that she had seen anybody with a knife, and that she did not see anybody get stabbed. 2RR117. Oropeza added that she only remembered seeing Martinez take his shirt off. 2RR124. She further admitted that she had taken two "roaches (drugs)," that night. 2RR124.

Mario Alberto Esquivel testified that he saw Mr. Villarreal start an argument with Martinez. 2RR130. Esquivel testified that Martinez and Mr. Villarreal "argued a little bit. Chris took his shirt off and they were gonna fight, but Rene didn't – Rene didn't get close to him, so Chris left." 2RR132, 157. Esquivel stated that Mr. Villarreal started stabbing Martinez after he escorted Martinez from his house (2R. 134), but admitted, like Oropeza, that he did not say this when he gave his first statement. 2RR158-61. He admitted that he did not see a knife, as recounted on his statement. 2RR158. He further admitted that the first time he stated that he saw a knife and saw someone get stabbed was during his testimony before the jury, and not in his statement. 2RR159. Esquivel stated that at the time of the alleged stabbing he "wasn't thinking correctly." 2RR163.

Sheriff's Investigator Juan Gonzalez testified that the night of the incident several of the witnesses had recanted their statements and made different statements to him. 2RR224. He recalls these as being Travis Sweet and Dolores Oropeza. *Id.* He testified that Travis Sweet had told him that he saw Martinez with a knife. 2RR246. He added that Sweet had told him that he was not sure who had cut him, Martinez, or Mr. Villarreal. 2RR247-248. He recalled that Mr. Villarreal had told him, more than once, that he'd only stabbed Martinez once, and that Martinez

had gone at him. 2RR254-55. He admitted that Oropeza, Esquivel and Sweet all told him that Martinez and Mr. Villarreal were fighting, and that each "changed their story" weeks after the incident. 2RR258.

Travis Sweet testified that he'd obtained a knife from Saida Villarreal, and then gave it to Mr. Villarreal about 30 minutes before the fight. 3RR11. He stated that it was after Chris took his shirt off that Mr. Villarreal stabbed Martinez, adding that he didn't know how many times Mr. Villarreal stabbed Martinez, because he "didn't see" and "didn't know." 3RR14-15. He stated that he'd been "lying" when he gave the first statement soon after he was at the station. 3RR27. He had a second encounter with the Sheriff's office, when he said he gave another statement, but stated he did not remember what he said at that time. 3RR29. During cross-examination, Sweet stated that he'd given the first statement on September 17th, when he stated that Martinez and Mr. Villarreal had been fighting, and that "[he'd seen a knife in Chris' Martinez] hand." 3RR34. He elaborated that during that first statement, he stated that he tried to separate Martinez and Mr. Villarreal, and that it was then that his hand was cut and that he did not know who had cut him. 3RR35. He admitted he gave a second statement afterwards, because he was concerned that people were blaming him for the stabbing, which was three days after the first statement. 3RR36, 38. He testified that he then met a third time with Investigator Gonzalez, at his mother's house, on September 21st. At that time, he never corrected his statement that he'd seen Martinez with a knife, that he got in to separate the two, and that he'd cut his finger while jumping the fence, admitting that his divorce from those facts was his testimony before the jury. 3RR39-40. He added that the night of the incident, he was "high on pills." 3RR44. The Fourth Court of Appeals observed, on original appellate submission, that

"the matter of the reasonableness of [Villarreal's] use of deadly force was a *hotly contested issue at trial.*" *Villarreal v. State,* 453 S.W.3d 429 (Tex. Crim. App. 2015) (citing *Villarreal v. State,* 393 S.W.3d 867 at 876).

Dr. Corinne Stern, Chief Medical Examiner, testified for the state that Martinez's cause of death was by stabbing. (2RR169), and that Martinez' autopsy revealed positive tests for alcohol and marijuana. 2RR172. However, Stern was also questioned by the state for the purpose of discrediting Villarreal's self-defense theory. The following is the testimony elicited by the prosecutor, seconds before the end of his direct examination:

> Q. In your - in your work, do you see a lot of wounds, lacerations, injuries?
>
> A. Yes.
>
> Q. I'm gonna show you what's already been marked as State's Exhibit No. 18. That's a picture of the Defendant's hand. If I asked you as a doctor based on your practice, your experience if that - well, what is it, first, on his hand?
>
> A. It appears to be a laceration because it is so irregular. That is what it appears to be just looking at this photograph.
>
> Q. By irregular, I'm sorry, explain further on the –
>
> A. The wound is very - the wound is very, can they see my - no, okay. It's jagged. It looks like little like peaks and valleys, like a mountain-top. It is very irregular.
>
> **Q. Okay. So, your medical opinion would be that those injuries were not caused by that blade?**
>
> **A. They were not caused by that blade, that's correct.**
>
> [Prosecutor]: No further questions, Your Honor.

2RR165-175 (emphasis added). In cross-examination, trial counsel first restated Mr. Villarreal's claim that he grabbed the knife, cut his hand, and disarmed Martinez, then got Stern to admit that Mr. Villarreal's hand wound was shown to her only a few days prior to her testimony at trial. 2RR176-77. Trial counsel did not contest Stern's findings about the (longer) cut containing the "little peaks and valleys," but attempted to convince Stern that the other (smaller) cut on Villarreal's hand, which was not discussed in her exchange with the prosecutor, may have been caused by the knife, but she disagreed. 2RR178-79. Trial Counsel then attempted but failed to have Dr. Stern agree that other than examine the image of the hand wound, Stern was asked by the prosecutor to "to refute what the Defendant, Mr. Villarreal claimed happened." 2RR179-180.

Following Dr. Stern's testimony, Villarreal's counsel switched his theory of defense to one of mistaken identity, drawing attention to Travis Sweet as the culprit, a maneuver that was not lost on the TCCA, when it considered Villarreal's (unrelated) arguments on direct appeal:

> At trial, defense counsel attempted to establish that the State had failed in its burden to prove appellant's identity as the person who stabbed Martinez, and he further attempted to discount appellant's statements to the police, *which were the sole evidence of self-defense* and which had been admitted by the State, as not credible.

See Villarreal, 453 S.W.3d at 440-441 (emphasis added).

During closing argument in the guilt-innocence phase of the trial, after topically recapping the trial evidence in chronological order, Mr. Villarreal's lawyer told the jury:

> Last thing. Let's move on to the last one, last one. Let's go to the last one, last one. Last slide. That one. **I'm not gonna tell you what to do. I'm not gonna tell you find this or find that. My job is to bring in facts. My job is to question witnesses. My job is to look at the evidence.** But you took an oath yesterday and you said that you would truthfully render a true verdict and you said so help me God.

So the first, **the only request I have of you**, ladies and gentlemen, **the only thing I do ask**, when you go back into that room, **first thing I ask you to do is pray and say Lord, help us to return a true verdict. And he's gonna lead you. Whatever verdict this is, whatever verdict it is, I will never tell you what to do because your creator will. He's gonna lead you. You see the law, you see the evidence, you pray. And you say Lord, help us return a true verdict.**

Based on what we heard of the witnesses, help us discern what was true and what wasn't true. Help us discern what evidence we should look at and how we should look at the evidence and help us discern have a true vote and return a true verdict in this case because that judgment should reflect only one thing, the truth.

And I thank you on behalf of myself, my staff, Mr. Villarreal. I thank you on behalf of this family for the time that you've given us last couple of days even though it's a serious matter, it's a serious case, even though it only took us two days, we did this to try to expedite matters and agree to introduce most of the evidence prior to the actual trial, ladies and gentlemen because **I believe that you'll be led in returning what just and right and true verdict that is.**

And I thank you for your time, ladies and gentlemen.

3RR91 (emphasis added). After 45 minutes, the jury returned a verdict of guilty to the charge of murder. 3RR98.

During closing argument in the sentencing phase of the trial, Mr. Villarreal's lawyer said:

May it please the court, Mr. Garza, Mr. Thompson and good afternoon to you, ladies and gentlemen of the Jury. We began on Monday, Monday morning when we were here **I said that the purpose of the trial is to search for the truth. And you have answered one of those questions under the guilt or innocence.** And we receive that and we respect it and we received it.

You have found that verdict and Mr. Rene Villarreal receives it and I receive it with him. And I believe that you were very diligent and that you took your oath very seriously. But now we come to the second part of the, not the second part, the last part, which is the punishment, okay.

And the first paragraph of the punishment charge, it says it is your duty to determine punishment, what punishment to be assessed against the Defendant. **And we learn as a society I told you that the oath you took ended with the**

words so help me God. And when you sat in this box, the Judge gave you a second note to return a true verdict and you have done that.

Now that verdict continues with the punishment and that oath also ended with so help me God. And we live - our judicial system has its beginnings in the Christian Judeo System. The Judeo being the law and the Christian being the grace. And the Judeo of the law said an eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot, a lie for a lie. That's the old law, the Judeo law.

The Christian part of our system has the following: some Pharisees found a lady and they caught her in adultery. And they brought her to the master and said here, she was caught in plain adultery. And the law says that when we catch someone in adultery we stone them. That's the law.

And then the Christian part of it, the master stood up and said there's grace. So you see how our system has the law part of it and it has the Judeo part and it has the Christian part, the grace. It is your job now to come up and figure out what is the proper punishment for a person that has been found guilty. And again, I think the person who said it best is the young man, Martinez; I believe his name is Jaime Martinez. He said we all make mistakes. Of all the witnesses that have been brought into this courtroom he said we all make mistakes. That young man said that.

And then he said we all can change. And the only reason I stand before you this afternoon, ladies and gentlemen is because we all can change. Because if it were by the law I shouldn't be in this courtroom because I've made mistakes in my life. And then he said something else. The last words the young man says, but God will guide us. He said that. If you've taken that oath and he's gonna guide you. What is the proper punishment? I believe in our system. **I'm not a lawyer just to get verdicts of not guilty. I'm not a lawyer just to get awards of money. I'm a lawyer because I believe in the truth. And I believe in what that young man said earlier. He said God will guide us.**

And when I leave this courtroom and Mr. Villarreal leaves the courtroom and you leave this courtroom and the Judge leaves the courtroom and the prosecutor leaves the courtroom and the Martinez family leaves the courtroom and the Villarreal family leaves the courtroom, and all the investigators and everyone her in this courtroom, when we leave, **we're gonna have peace at whatever verdict you reach you are guided by God because I know you've taken that oath seriously.**

> Now on that Charge you take into consideration all the evidence you heard yesterday and all the evidence that you heard today. **And if you find by a preponderance of the evidence - preponderance of the evidence is a lesser standard than beyond a reasonable doubt, that Mr. Rene Villarreal acted, okay, under sudden passion and that there was adequate cause for that, then you would find in the affirmative, a yes. And if you find that he did not then you find in the negative.**
>
> If you find in the affirmative what does that do, we spoke to you on jury selection. It's a sentence of no less than two years and up to 20 years and a fine of up to $10,000. If you find in the negative then your decision is no less than five years and up to 99 or life. **Again, just like I told you at the guilt or innocence, I will not tell you what to do because I believe there is something greater, which is the oath that you've taken and I believe you're gonna follow that. And I'm gonna believe and I believe and I ask you the only request that I have is that you go in there and before you decide what punishment to return that you do ask your creator. You say guide us, lead us in returning a true and proper verdict regarding the punishment.**
>
> Again on behalf of the Villarreal family, Mr. Rene Villarreal, I think you for your time, ladies and gentlemen and I don't want you to just because it only took us two or three days to try this case to say that it's not important. We could have taken a week; we could have taken two weeks. **And just again I ask you take the oath that you took yesterday and that you ask the Lord and you say guide us, give us the discernment; give us what is the true verdict regarding punishment.** I thank you for your time, ladies and gentlemen.

4R. 60-64 (emphasis added). After roughly one hour of deliberation, the jury returned a sentence of 99 years in the Texas Department of Criminal Justice. 4R. 68.

C. Habeas Hearing

On February 20, 2018, Mr. Villarreal presented testimony from Dr. Randall Frost, board certified forensic pathologist and current Bexar County Chief Medical Examiner. At the time of his testimony, Dr. Frost had been medical examiner and deputy medical examiner for Bexar County for 21 years, with the last 11 as Chief Medical examiner for the county. RRHabeas (2-

20-18). [4] Dr. Frost testified as to his examination of two pictures, exhibits at Mr. Villarreal's trial, specifically exhibits 2 and 3. *Id.* at 11. Frost explained that his first concern with the image of the hand wound (Copy Exhibits 2 and 3) was its "very low quality." *Id.* 12. As he "zoomed it up to try and get a better look at it digitally, it pixilated" and "degraded to the point that he couldn't use it anymore." *Id.* Frost could not, as a result of the "suboptimal" quality of the image, give an opinion about what it was that caused the wounds on the hand. *Id.* 12-13. Frost asked to examine the original exhibits, and he acknowledged examining original trial Exhibit 18, previous to the hearing. *Id.* 13. Having examined the original exhibit, Dr. Frost's opinion did not change, feeling that the original "exhibit image was also not very good quality" which "caused [him] a lot of problems in - - making a decision." *Id.* at 14. Frost explained that he is qualified to render opinions about the cause of injuries, "[w]hen possible." *Id.* He was unable to render an opinion about the cause of the hand wound depicted in Exhibit 18 given the poor quality of the image. *Id.* Frost also reviewed and, at the habeas hearing read out loud Dr. Stern's trial testimony on August 16, 2011 (Exhibit 4), as transcribed on page 173, specifically, lines 15-25 and 1-7, on pages 173 and 174, respectively, which contained her opinion about the cause of the injuries on Villarreal's hand. *Id.* 15-16. Frost testified that he disagreed with Stern's opinion that the injuries on Villarreal's hand would not have been caused by the butterfly knife depicted in Exhibit 7, explaining that it was possible that the injuries could have been caused by the blade. *Id.* at 16. In explaining his opinion, Dr. Frost elaborated that in order to best decipher the cause of an injury, it is always best to examine the injury firsthand, or have good photographic documentation of it. *Id.* The original exhibit photograph was, in his words, "very poor photographic documentation in

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[4] The Habeas Record is titled [volume number] RR [page number].

that the edges of the wounds are not even visible. They are - - again, I would use the term pixilated, although there are other ways to describe it, probably." *Id.* at 16-17.

> The image breaks down there so that I can't get a good idea of what the edge of the wound looks like. I can't tell anything about the depth of the wound, either. And certainly, this is a black-and-white image, so there's no color to allow me to get a better look at the wound. In addition, in a case like this, we're attempting to discriminate between two objects that both have some degree of sharpness -- a knife blade and some barbed wire. So, in many cases, the injuries they produce may cross over into one another. And I find that I cannot give a definitive opinion in this case based on the information I have.

Id. at 17. Frost explained that in order to determine the cause of the cuts, he would have attempted to examine Villarreal's hand wounds in person, as soon as practicable after they were sustained. Alternatively, a good medical photography of the wounds at high resolution with proper color balance would have been better than nothing. *Id.* at 18. But even assuming a good image of the injuries, Frost expressed that "there are difficulties in attempting to discriminate between one type of sharp object and another, because the characteristics can cross over in some instances." *Id.* at 18-19. Frost then explained the importance of being board certified in his field:

> Board certification is something that, in medicine, is used to denote that a physician has completed a certain course of training and has passed certain examinations that yield, presumably, a certain level of competence in their specialty. Most specialties now require board certification in order to get hospital privileges. Most medical examiners' offices in Texas require board certification within a certain timeframe and order to work in them.

Id. at 19. Dr. Frost explained that he did "five years total postgraduate training to take the board certification examinations in anatomical and clinical pathology," and after passing those examinations, the American Board of Pathology gave him a certificate of special qualification in those specialties. *Id.* at 20. In sum, board certification requires experience in anatomical and clinical pathology, a training program, and a boards test. *Id.* When asked, he expressed

familiarity with Dr. Vincent DiMaio, his predecessor in the Bexar County Medical Examiner's Office, and that he had worked for Dr. DiMaio for ten years before the latter retired, and Frost replaced him as Chief Medical Examiner for Bexar County. *Id.* Frost expressed: "[i]t is not possible for me to render an opinion to a reasonable degree of satisfaction as to whether or not that knife caused any of the injuries." *Id.* at 21.

On cross-examination, Frost explained that a knife "can cause an incised wound or a cut, or it can, if the tip is dragged across the skin, cause an abrasion." *Id.* at 25. He agreed, when asked by the Court, that "[d]espite any questions by counsel, [his] opinion remain[ed] the same th[e image of the hand wound did] not lend itself to allow [Dr. Frost] to render an opinion about the cause of the - - whatever you want to call those marks on the hand...". *Id.* at 27. Frost confirmed, when asked by the Court, that he had "review[ed] the trial record with regard to Dr. Stern's testimony centering in and around her opinion with regard to the hand wound," and agreed that there wasn't "anything else" - besides the picture itself - "that was made available [to her] as a resource to be able to opine in regards to the opinion - - or opine with regard to the - - whether or not the - - the wounds on the hand were defensive wounds." *Id.* at 27. [5]

On March 25, 2018, the Petitioner presented testimony from the state's expert, Webb County Chief Medical Examiner Corinne Stern. When shown the image of Villarreal's hand would by the prosecutor on direct examination, Dr. Stern expressed no difficulty determining that the wound was a laceration, because it had "little flaps of skin where it [was] torn." RRHabeas11 (3-25-18). She expressed that her opinion at trial, about the cause of the wound had

[5] The original trial exhibit images of the knife and hand wound, and Dr. Stern's trial testimony were marked and introduced into evidence at the habeas hearing as Defendants' Exhibits 2, 3 and 4, respectively.

not changed. *Id.* at 12. Stern testified that knives do generally cause incisions rather than lacerations around the edge. *Id.* at 13.

On cross-examination, Stern explained that she did not have a chance to personally examine Villarreal's hand wound prior to trial. *Id.* at 15. She "absolutely" agreed that an examination of the hand wound, at a time closest to the time of the injury was best to determine its cause. *Id.* Stern examined the actual image given to her at trial of Villarreal's hand wound (Exhibit 3). Stern acknowledged some pixilation in the image of the long hand wound, as it was blown up. *Id.* at 20. She agreed to have preferred an image with better resolution, because "we want to see everything under perfect light conditions and as crystal clear as possible." *Id.* 21. She acknowledged not seeing the image at a resolution that exposed much pixilation in the pattern of the wound. *Id.* at 22. She acknowledged pixilation in the image of the hand wound, but added that the pixilation in the length of the inside of the hand wound would have had no bearing on her opinion as to whether the injury was an incision or a laceration (wincing, squeezing eyes a bit). *Id.* 25-26. She disagreed with Frost's opinion that the quality of the image of the hand wound would not allow an opinion as to it being the product of an incision or a laceration. *Id.* She added that a higher resolution would have been of no value to her examination, because "I look as close – I look life size. And so, it helps me to look as close to the actual size as possible." She agreed to disagree with Dr. Frost's opinion, and believed that like hers, it was reasonable. *Id.* at 26. She also had no occasion to have examined any particular sample of barbed wire, which was alleged at trial by the State (and agreed by her) to have caused the "laceration" on Villarreal's hand. *Id.* She expressed that, despite not being shown any sample of barbed wire, her familiarity with barbed wire allowed her to make a "comment like that" at trial. *Id.* She

acknowledged that all barbed wire tips are not the same, and that some could be as sharp (one in particular) as to cause an incision such as that cause by a knife. *Id.* at 27-28. She acknowledged, when viewing another wound in the hand, that the "tissue bridging" she alleged in her testimony could just as well have been, on a high magnification during her habeas testimony, the product of a bad picture, and that her opinion about the cause of that wound could have been different at trial. *Id.* at 29-30. Stern agreed that a knife cut across wrinkled skin, such as a "partially closed palm" could have caused the pattern that she described in her testimony as "little peaks and valleys," but in her opinion, that could not have happened, based on her examination of the image of the hand wound. *Id.* at 32. When asked under what circumstances Dr. Stern would believe the zig-zag pattern on the hand could be caused by a knife, on a partially closed palm, Stern explained:

> A. If -- if we're just talking about the pattern, without this being a laceration, if this were an incised wound, and it did have clean edges, the only way to create that in this area would be to have the knife move in a zigzag pattern down the palm of the hand. But this, again, this looks like a laceration to me. I'm sorry, it does not look like an incised wound from a knife. So it's really difficult for me to answer the -- the question how you're asking me.
>
> Q. Now, you said with clean edges. Could that take into account the poor quality of the picture? (state's objection overruled)
>
> A. No. Because I - - I believe, in this photograph, I can see it clearly enough to - - to form my opinion.

Id. at 33-34. Stern disagreed that a board certification would have allowed her to render a more accurate opinion in Villarreal's case, and that no matter the resolution of the hand wound image, her opinion would not change, but agreed that it's always good to have the best picture possible,

with the best lighting, the optimal lighting, and best clarity, adding "this is what I had to work with." *Id.* at 35.

On the same day that Dr. Stern presented her habeas testimony before the district court, the following exchange took place between the undersigned counsel and the Petitioner's trial counsel:

> Q. And you recall, during the Direct Examination of Dr. Stern by the State -- I believe it may have been Mr. Garza, who is now present -- that towards the end of that Direct Examination, the attention then turns to the subject of the cut on [Mr. Villarreal's] hand.
>
> A. Correct.
>
> Q. And that [Dr.] Stern was then asked straight up, after a series of questions, whether she believed that the wounds that she examined after seeing Exhibit -- original Exhibit 18, our Exhibit 3, could not have been caused by the knife?
>
> A. Correct.
> Q. It's all part of the record.
>
> A. Yes.
>
> Q. And so, at that juncture, Mr. Villarreal, did it dawn on you that the State was presented expert evidence that destroyed your client's -- our client's -- self-defense –
>
> A. I mean, that's the first time she –
>
> Q. Correct.
>
> A. -- she mentioned it.
>
> Q. You didn't anticipate that?
>
> A. There was -- it was not on her report. It was – it was not on her -- on anything.

Q. Okay.

A. It's the first time she mentioned it. I figured I -- I was going to cross her on her lack of putting in, you know, her lack -- you just saw this wound couple of days before.

Q. Sure.

A. So –

Q. You were going to do conventional Cross-Examination after being confronted with some adverse testimony?

A. Correct. And -- and, you know, I crossed her on, you met with the D.A. just recently, he showed you this photograph, and then this is what you're saying.

Q: Well, let me ask you this. The moment that you heard [Dr. Stern] -- or Mr. Garza ask [Dr. Stern's] opinion about whether the knife could have caused that wound consistent with Mr. Villarreal's self-defense theory, did it dawn on you to object, perhaps, that you were surprised by this testimony and you needed time to consult with your own expert?

A: No. I just -- I figured, I'll cross her, and that's it.

Q: Was it your thought at that time that you were going to cross her without the aid of an expert?

A. Correct.

Q. And you felt that that was, for lack of a better description, that you would have been well-armed to be able to do that without your own expert?

A. Correct. Because I had Mr. Villarreal, you know, the defendant's statement immediately after his arrest. I felt that was very credible.

Q. But Mr. Villarreal is not a doctor, correct?

A. No, he's not a doctor.

Q. And you will agree with me that the medical examiner of Webb County, her testimony carried considerable weight as an expert, as a medical expert, before that jury?

A. Yes.

Q. And it's fair to say that, when Dr. Stern refuted the knife as a cause of those wounds, that she basically told the jury that Mr. Villarreal's defense was not true or not valid?

A. That's what the jury -- I mean, that's basically what she -- what she said.

***

Yes. And -- and again, I just -- I -- I felt at that point that, just cross her. Based on the other witnesses, the -- the -- who had testified, again, weighing heavily again on -- on Mr. -- the defendant's statement, I felt, you know, we had enough there, but --

Q. Did you feel surprised by this testimony?

A. No. No. I wasn't surprised. If I would have felt surprised, I'm pretty confident I would have at least said, time out, Judge, here, you know. I felt, again, I believe one of my strongest points is cross-examination. And I felt I'd just go forward. I mean, I've – I've been in situations where -- where, as a lawyer defending a case, there have been surprises. And at least, I say, Judge, time out. Give me half a day; give me a day. I reviewed the -- the transcript here. I – I didn't see that. I don't -- I don't believe I -- I felt surprised. I believe strongly, again, on, again, relying on his statement that he had given immediately after his arrest.

Q. So, just to clarify, prior to the testimony by Dr. Stern about the cause of this wound, you had no information from the State whatsoever, look, she's going to testify the knife didn't cause -- didn't even tell you that orally? Nothing at all? No tip, nothing? Expect her to testify something along those lines?

A. That's a correct statement. I -- I didn't see anything, any report or anything, look, she's going to come in and testify about that

particular.

Q. Had you known that they were going to come at you with that evidence, would you have done things differently?

A. I don't -- I don't know. I'll be honest with you, I -- I don't know.

Q. It would have been important, however, for you to counter the medical examiner's opinion about the exclusion of this knife as the cause of that wound to support --

A. Yes.

Q. -- Mr. Villarreal's theory of defense?

A. Yeah, definitely. I mean, I would have -- obviously, would I have – I've -- I mean, I would have preferred to have known, honestly.

Q. Okay.

A. You know, but I -- again, I – I've been in cases where – where I've been surprised. And -- and I clearly have to ask for time out. You know, Judge, give me a little bit of time here. But I don't remember doing it in this one. I'll be honest -- you know, I looked at the transcript. I don't remember doing it. But was that the first time that I heard about her testifying, or about what she was going to refute? It was the first time.

Q. You mentioned other situations where you were surprised. In all honesty, Mr. Villarreal, it's fair to say that you were surprised here as well, because you'd never seen this before or heard this before, until trial?

A. If -- if -- I -- if I would have been surprised, I'm pretty confident and sure I would have asked for -- for some time. Okay?

Q. But you'd never seen it before. Can we agree on that?

A. Yes, you're right. Had I seen that before? No, I had never seen it.

Q. So -- so, given the fact that you had never seen it before and that it could be disastrous, as I believe it was, we can agree, to your client's defense, then, it was obviously something that caught your attention at the very least?

A. Yes. Yes.

Q. You will agree with me, Mr. Villarreal, that it's always the more effective manner of cross-examining an expert is by the testimony of your own expert if you can find it?

A. Well, I've been -- this November will be 27 years, and I've retained only two experts in my whole career as a criminal defense lawyer.

Q. You were court-appointed in this case?

A. I don't think so.

Q. Were you retained?

A. I think I had been retained. Maybe I was court-appointed.

Q. I believe you were. But --

A. Okay.

Q. -- on the assumption that you were [court appointed], you will agree with me that the Court would have been in a position --

A. Yes.

Q. -- or maybe give you a (inaudible) to grant the necessary funds to present a defense?

A. Correct.

Q. You will agree with me that, had you asked the Court for funds sufficient to obtain the necessary expertise to review your client's -- well, the picture of his hand –

A. Yes.

Q. -- that the Court would have been obligated to give it to you?

A. Correct.

Q. But you didn't ask for that?

A. I did not ask for it.

Q. In hindsight, Mr. Villarreal, would you have requested funds for your own expert to review this evidence for you, privately, in preparation for trial?

A. I think that's correct.

RRHabeas49-54 (3-25-18). On the subject of his closing arguments during the guilt innocence and sentencing phases of trial, Trial Counsel admitted to being a born again Christian, that he has a relationship with Christ. *Id.* at p. 57. He does not discuss the burden of proof during closing argument because he assumes the jury understands that during jury selection, and that "by the time the jury is sitting in the box, they know what my case is about, and they know the burden of proof, and they know what law I believe the judge would instruct them on. In this case self-defense." *Id.* at 58. He added that he believed "you win a case at jury selection, or whatever you call winning." *Id.* at 59. While winning for some is obtaining an acquittal, or a conviction, for Trial Counsel, "winning is having the right verdict…a true verdict, the right verdict." He added that "[i]f the jury sits down in any of my cases, and they don't know what my defense is, they don't know the burden of proof, they don't know about the right to remain silent, they don't know the whole law that the judge will give them at the end, then I believe I've failed…before I open my mouth in opening statement, I know the jury knows what I'm – what – how the case – what the defense is and what the law is." *Id.* "…[I]n closing arguments, not only in this case but in the majority of my cases, I -- I don't go over the law and spend half of my time discussing the

law because I've – I've done that already at the jury selection part." *Id.* at 59-60. Trial Counsel does not discuss the burden of proof, the presumption of innocence, and he never asks for a verdict of not guilty, but just asks the jury to take their oath seriously." *Id.* at 60. He added that he never asks a jury to believe one piece of evidence over another piece of evidence." *Id.* at 61. Trial Counsel's "only hope," is for the jury "to come up with a true verdict." *Id.* at 62. Trial Counsel's purpose during closing arguments was to summarize what he believed "the facts of the case were, and for them to take it and make a decision." *Id.* at 63. When asked whether his job was to advocate his client's position, he added that he believed his job was to, "again, just help the jury in reaching what is a right and true verdict. That's the way I see it. Maybe I'm wrong. That's the way I see it." *Id.* at 63. As to the sentencing phase of trial, he added that because he mentioned the word "fight...at the closing argument at the guilt innocence," he was thinking "if he gets convicted of murder, at least in the punishment phase, they have implanted in their mind – or I've implanted in their mind – that this was a fight, thinking about sudden passion." *Id.* at 63-63. He disagreed that if a juror was not a Christian, or did not believe in the way that Trial Counsel asked them to find a true verdict (through prayer), that such could be a problem, when asked to find a verdict. *Id.* at 64. Trial Counsel explained that he believed his job was to find the truth and to hold [the jury] to that burden of proof." *Id.* at 64-65. On cross-examination, defense counsel responded that he has commonly used a strategy of asking a jury to pray to God for a verdict. *Id.* at 68-69.

REASON FOR GRANTING THE WRIT [RESTATED]

MR. VILLARREAL'S TRIAL ATTORNEY RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL DURING VILLARREAL'S JURY TRIAL THAT PREJUDICED HIM.

A. Standard of Review

To prevail on a Sixth Amendment claim alleging ineffective assistance of counsel, a defendant must show that his counsel's performance was deficient and that his counsel's deficient performance prejudiced him. *Andrus v. Texas*, 590 U.S. 806, 813 (2020) (citing *Strickland v. Washington*, 466 U. S. 668, 694 (1984). To show deficiency, a defendant must show that "counsel's representation fell below an objective standard of reasonableness." *Id.* (citing *Strickland* at 688). And to establish prejudice, a defendant must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 813-814 (citing *Strickland* at 694). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Strickland* at 694. When determining whether a defendant was prejudiced, "the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." *Id.* at 695. "The result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome." *Id.* at 694. "The 'ultimate focus of inquiry,'" the Supreme Court explained in *Strickland*, must be on the fundamental fairness of the proceeding whose result is being challenged. In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable

because of a breakdown in the adversarial process that our system counts on to produce just results. *Id.* at 696.

B. Trial Counsel Rendered Ineffective Assistance of Counsel At Trial That Prejudiced Villarreal

1. ***Trial Counsel Failed to Prevent Surprise State Expert Testimony and to Request The Appointment of a Defense Forensic Expert***

In *Washington v. Texas*, 388 U.S. 14 (1967), the Supreme Court wrote:

> "The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.
>
> . . . The Framers of the Constitution did not intend to commit the futile act of giving to a defendant the right to secure attendance of witnesses whose testimony he had no right to use. *Few rights are more fundamental than that of an accused to present witnesses in his own defense.*" *Chambers v. Mississippi*, 410 U.S. 284 (1973).

Washington, 388 U.S. at 476-477 (emphasis by Mr. Villarreal). More recently, in *Holmes v. South Carolina*, the Supreme Court held, "Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" *See Holmes v. South* Carolina, 547 U.S. 319 at 324 (2006) (citations omitted)). *See also California v. Trombetta*, 467 U.S. 479, 486, n.6, (1984) ("In related cases arising under the Sixth and Fourteenth Amendments, we have recognized that criminal defendants are entitled to call witnesses on their own behalf and to cross-examine witnesses who

have testified on the government's behalf." (citing *Davis v. Alaska*, 415 U.S. 308 (1974); *Washington v. Texas*, 388 U.S. 14 (1967)). The Supreme Court said in *Pointer v. Texas*:

> There are few subjects, perhaps, upon which this Court and other courts have been more nearly unanimous than in their expressions of belief that the right of confrontation and cross-examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal. *Indeed, we have expressly declared that to deprive an accused of the right to cross-examine the witnesses against him is a denial of the Fourteenth Amendment's guarantee of due process of law.*

Pointer v. Texas, 380 U.S. 400, 405 (1965) (emphasis added).

In *Ake v. Oklahoma*, 470 U.S. 68 (1985), this Court first recognized an indigent defendant's general, constitutional right to court-appointed expert assistance, when it is necessary to establish a defense at trial, under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. In *Hinton v. Alabama*, 571 U.S. 263 (2014), the Court later recognized that a lawyer's failure to understand his right to seek proper funding to obtain the qualified appointment of a forensic expert constituted ineffective assistance of counsel under *Strickland*. Mr. Villarreal submits that his Trial Counsel's failure to learn of Stern's expert testimony well in advance of trial by failing to request proper notice under Texas law, his failure to object to Dr. Stern's expert testimony about the cause of his hand wound at trial, his resulting failure to cross-examine Stern with the aid of his own expert, and his failure to present any expert testimony to counter Stern's devastating opinion testimony deprived Villarreal of a complete defense, specifically, the heart of his defense, namely, that Martinez cut Mr. Villarreal's hand, after which Villarreal disarmed Martinez and stabbed him in self-defense.

Clearly, the state sprang Stern's expert, opinion testimony that excluded the stabbing knife as the cause of the cut on Mr. Villarreal's hand, which the trial court captured:

"THE COURT: Because the way it looks like is that the State took -- the State took advantage of the fact that she was here –

[Habeas Counsel]: Right.

THE COURT: -- testifying and said, hey, you've looked at cuts before.

[Habeas Counsel]: Right.

RRHabeas81-82 (3-25-18). The State was intent to ensure that the jury rely on the Chief Medical Examiner's opinion to reject Villarreal's claim to have been cut before disarming Martinez and then stabbing Martinez with the same knife, and Villarreal's counsel was ineffective in failing to prepare for it. A chronology of the events leading to Stern's unobjected to and unchallenged expert opinion testimony:

First, Stern testified that a few days prior to her testimony the prosecutor showed her Dr. a picture of the wound and discussed her findings about the hand wound.

Second, a review of the record revealed that the state was well aware that Trial Counsel had failed to obtain a ruling on his discovery motion. During discussions before the Court *a day after jury selection* (August 16, 2011), *but before Stern's testimony*, the prosecutor expressed: "Judge, what we're contending is that Mr. Villarreal filed motions to the Court. He never urged them, he never got a ruling." 10RR11.

Trial counsel was required to prevent the state from ambushing Villarreal at trial, a duty amply recognized in Texas precedent. See *Washington v. State*, 856 S.W.2d 184, 187 (Tex. Crim. App. 1993) (*en banc*) ("Criminal defendants do not have a general right to discover evidence in the State's possession, but they have been granted limited discovery by Article 39.14 [which states that upon the defendant's motion, the trial court may order the State to disclose to

the defendant 'the name and address of each person the [State] may use at trial to present evidence under Rules 702, 703, and 705, Texas Rules of Evidence']"). Trial counsel failed to a ruling on his discovery motion before trial, specifically, the provision that required notice of any and all expert testimony the state intended to present at trial. [6] Had Mr. Villarreal obtained a ruling on his discovery motion, the State would have been required to disclose its intention to use opinion testimony by Dr. Stern's that discredited Mr. Villarreal's claim to have been cut by Martinez with the same blade with which he thereafter stabbed Martinez in self-defense.

Despite the lack of notice, trial counsel should still have objected to Stern's surprise testimony, but did nothing, thereby foregoing the right to request a continuance, under then well-established Texas precedent. *See Lindley v. State*, 635 S.W.2d 541, 544 (Tex. Crim. App. [panel op.] 1982) (providing that evidence may be inadmissible due to lack of notice when a "trial court grants [a] motion for discovery", but "[t]he failure to request a postponement or seek a continuance waives any error urged in an appeal on the basis of surprise.") (citing *Rodriguez v. State*, 597 S.W.2d 917 (Tex.Cr.App.1980)); *Barnes v. State*, 876 S.W.2d 316, 328 (Tex. Crim. App. 1994) (*en banc*) (*per curiam*) ("In the instant case, appellant objected but failed to move for a continuance in order to interview the witnesses or determine the matters about which they were to testify. Having failed to do so, he 'cannot now be heard to complain.'") *Youens v. State*, 742 S.W.2d 855, 860 (Tex. App.—Beaumont 1987, *pet. ref'd*) (stating that "any error in allowing that witness to testify over defendant's claim of surprise is made harmless by his failure to object

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[6] At the time before Mr. Villarreal's trial, the State was under no obligation to provide the expansive scope of discovery currently required under Tex. Crim. Pro. art. 39.14, known as the "Michael Morton Act," which was not yet law.

or move for continuance" and concluding that although the defendant objected on the basis of surprise, by failing to seek a continuance, the defendant "cannot now be heard to complain."); *Fernandez v. State*, No. 05-16-00355-CR, 2017 Tex. App. LEXIS 10338 (App. Nov. 2, 2017) (not designated for publication) ("Appellant did not object on the ground of surprise, and did not move for a continuance in order to interview [the state's witness] or determine the matters about which [the witness] would testify. Having failed to do so, appellant 'cannot now be heard to complain.'") (citing *Hubbard v. State*, 496 S.W.2d 924, at 926 (Tex. Crim. App. 1973); *Schneider v. State*, No. 13-12-00575-CR, 2013 Tex. App. LEXIS 6445, 2013 WL 2300995, at *2 (Tex. App.—Corpus Christi May 23, 2013, *no pet.*) (not designated for publication) (concluding that because Schneider "did not request a continuance to prepare for the fingerprint testimony[,] . . . any error by the trial court in allowing the testimony despite the lack of notice was waived"); *Delgado v. State*, No. 13-01-386-CR, 2003 Tex. App. LEXIS 7374, 2003 WL 22023466, at *13 (Tex. App.—Corpus Christi Aug. 28, 2003, *no pet.*) (not designated for publication) ("Assuming, without deciding, that the report [admitted at trial] was exculpatory and material, Delgado's failure to move for a continuance also waived any claim he was surprised by the report.").

During the March Habeas Hearing, Trial Counsel acknowledged that he did not obtain a ruling on his discovery motion. He also acknowledged that that Stern's opinion was wholly unexpected and that he would have preferred to have known of it ahead of time, yet refused to admit that he was "surprised" by Stern's testimony. Realizing and openly advising the Court months before that trial counsel had failed to obtain a ruling on his pretrial motions, the state was under no obligation to be chivalrous, and was not. At trial, upon hearing the prosecutor's efforts to extract an opinion about the cause of the cut on Mr. Villarreal's hand from Dr. Stern, trial

counsel should have immediately objected to the opinion, ask for a continuance to request a court-appointed expert, and then consult the matter of Stern's opinion with the expert. As appointed counsel, upon receiving notice from the State of Dr. Stern's opinion testimony, trial counsel would have then be duty-bound to request court-appointed funds to consult with his own expert with whom to review Dr. Stern's opinion, [7] and attempt to discredit her opinion about the cause of Mr. Villarreal's cut. But even a failure to timely object was not fatal to Villarreal's defense, under Texas law.

That is because trial counsel could still have salvaged an opportunity to contest her testimony by objecting to it as surprise testimony (with an instruction to disregard followed by a motion for a new trial) *via* late objection. While the general rule provides that an objection is timely if made at the earliest opportunity or as soon as the grounds for the objection become apparent, trial counsel could still have credibly argued that Dr. Stern's opinion was so furtively and surreptitiously presented as to have prevented him from timely objecting. Yet counsel, still, did nothing. *See Sandoval v. State*, 409 S.W.3d 259, 306 (Tex. App.—Austin 2013, *no pet.*) (citing *Pena v. State*, 353 S.W.3d 797, 807 (Tex. Crim. App. 2011)), a late objection may still preserve error if counsel "can show [a] legitimate reason to justify the delay." *Id.* (citing *Luna v. State*, 268 S.W.3d 594, 604 (Tex. Crim. App. 2008).

Trial Counsel's inaction cannot be justified as trial strategy, much less a reasonable one. By the time Stern's opinion testimony came to light at trial, trial counsel was aware that 1. Mr.

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[7] *See Ake*, 470 U.S. at 77 (1985) (noting that, while the State need not "purchase for the indigent defendant all the assistance that his wealthier counterparts might buy," it must provide him "the basic tools" to present his defense within our adversarial system)

Villarreal confessed to have stabbed Chris in self-defense, 2. Mr. Villarreal's confession would be, and was introduced into evidence, and 3. in the process of defending himself, Villarreal claimed to have cut his hand while disarming Martinez. Had Trial Counsel objected, the Trial Court could have granted relief. By failing to object, Trial Counsel failed to put the trial court on notice of the surprise testimony, leaving the trial court without recourse to grant any relief. *See Faust v. State*, 491 S.W.3d 733, 744 n.28 (Tex. Crim. App. 2015) (an objecting party must "let the trial judge know what he wants, why he thinks he is entitled to it, and to do so clearly enough for the judge to understand him at a time when the judge is in the proper position to do something about it...*This gives the trial judge and the opposing party an opportunity to correct the error.*") (citing *Lankston v. State*, 827 S.W.2d 907 (Tex. Crim. App. 1992) (emphasis added)).

Rather, bringing a knife to a gunfight, as it were, Trial Counsel tasked himself with cross-examining the county's Chief Medical Examiner on an expert matter that was well beyond the general understanding of even experienced trial counsel. Trial Counsel's decision to go toe to toe with Stern was an ill-conceived and ill-fated exercise in futility that had disastrous consequences. Despite his best efforts at flying solo in trying to discredit her opinion without the assistance of his own expert's assistance, Dr. Stern's damaging opinion remained unaffected, and its exposure to the jury gutted the Petitioner's self-defense theory.

2. *Expert Opinion Was Available To Counter Stern's Testimony*

Under Texas law, when challenging an attorney's failure to call a particular witness, an "applicant must show that [the witness] had been available to testify and that his testimony would have been of *some benefit* to the defense." *Ex parte Ramirez*, 280 S.W.3d 848, 853 (Tex.

Crim. App. 2007) (emphasis added). Petitioner's habeas counsel consulted with Dr. Randall Frost, board certified forensic pathologist and current Bexar County's Chief Medical Examiner since 2007 who would have been available to testify if contacted by the defense, and whose testimony would have blunted Sterns opinion. If called to testify, Dr. Frost would have disagreed with Dr. Stern that an opinion could be reached at all as to whether the hand wound was caused by the stabbing blade, given the poor quality / high pixilation of the image. As to his access to expert testimony, Trial Counsel not only testified that he did not consult with an expert in this case, but that in a career as a trial lawyer spanning 27 years, he'd consulted with experts "twice." This eliminates any notion that Trial Counsel's failure to object to Stern's testimony, his request for a continuance to review the basis of her opinion and to then seek his own consulting expert was even remotely trial strategy, much less a reasonable one. *See Winn v. State*, 871 S.W.2d 756 (Tex. App. – Corpus Christi 1993) (found counsel ineffective on direct appeal, among other reasons, for failing to seek out witnesses who could have impeached the State's physical evidence…his failure to preserve error, [and] his failure to object to inadmissible evidence…"). *Compare Jones v. State*, 500 S.W.3d 106, 116-17 (Tex. App.—Houston [1st Dist.] 2016, *no pet.*) (although defendant suggested "two categories of expert testimony would have assisted in his defense," he did not establish such experts were available or could have offered beneficial testimony); *Brown v. State*, 334 S.W.3d 789, 803 (Tex. App.—Tyler 2010, *pet. ref'd*) ("[T]he failure to request the appointment of an expert witness is not ineffective assistance in the absence of a showing that the expert would have testified in a manner that benefitted the defendant."); *Hawkins v. State*, 278 S.W.3d 396, 403 (Tex. App.—Eastland 2008, *no pet.*) (trial counsel not ineffective for not presenting DNA expert witness where it "ha[d] not been shown to

what [the] expert would have testified"); *Cate v. State*, 124 S.W.3d 922, 927 (Tex. App.—Amarillo 2004, *pet. ref'd*) (same); *Shields v. State*, No. 01-02-00339-CR, 2004 Tex. App. LEXIS 11720 (Tex. App. – Houston [1st Dist.] 2004) (unpublished) (In this case, however, there was no evidence presented at the motion for new trial hearing, or anywhere else in the record, about what type of expert testimony trial counsel should have procured or how hiring an expert would have impeached the expert testimony provided by the State. There is nothing in the record to show that trial counsel's decision not to call an independent expert witness was not a sound trial strategy.).

Without much difficulty, Dr. Frost reviewed the image of the hand wound, examined Dr. Stern's testimony, agreed to testify and did testify at the habeas hearing that, given the poor quality/high pixilation of the image, in his opinion as a board certified forensic pathologist serving as Chief Medical Examiner for Bexar County, it was not possible to render an opinion that excluded the homicide weapon as the cause of Mr. Villarreal's hand wounds.

3. Trial Counsel Changed His Defense Strategy Mid-Trial

It was clear from Villarreal's two recorded statements that he admitted stabbing Martinez in defense of himself, cutting his hand in the process of disarming Martinez before stabbing him. These statements were introduced into evidence *in lieu* of Villarreal's live testimony during the State's case in chief. This, was Villarreal's lifeline. Trial Counsel's failure to properly challenge Stern's testimony compelled him to slapdash resort to a mistaken identity defense, a maneuver that was not lost on the TCCA, when it considered the level of harm from the trial court's failure to instruct the jury with the presumption of reasonableness component of the self-defense instruction.

Notwithstanding the ample discretion afforded attorneys when electing a defense strategy at trial, Trial Counsel's election to pursue a mistaken identity defense, specifically, his feeble and late attempt at portraying Travis Sweet as the culprit to Villarreal's confessed, self-defense claim, an "I didn't do it, but if I did it was in self-defense" strategy, was doomed from its inception. *See Abraham v. Lee*, 2014 U.S. Dist. LEXIS 99639 (S.D.N.Y. July 17, 2014) (In addition, counsel chose a self-defense strategy and it would have been imprudent to undermine that strategy by presenting an alibi witness to the jury. Counsel is not required to present every nonfrivolous defense to a jury, but should "winnow out weaker arguments" and present a case that reflects this choice) (citing generally *Jones v. Barnes*, 463 U.S. 745 (1983); *Mathews v. United States*, 485 U.S. 58, 68 (1988) (Scalia, J., concurring) ("Presenting inconsistent defenses to a jury is a risky tactic..."). *State v. Munoz*, 233 Conn. 106, 114 n.5; 659 A.2d 683 (1995) ("Although the law permits, for reasons of policy, the assertion of inconsistent defenses, such as self-defense and alibi, and although lawyers and judges are accustomed to dealing with such defenses independently of each other, one must wonder about the effect on a thoughtful jury of the simultaneous claims that 'I did it in self-defense,' and 'I was not there at the time.'"). *See e.g. People v Moore*, 66 AD3d 707, 886 NYS2d 468 [2009] (where the defendant claimed that the complainant was injured as the result of her own reckless conduct, counsel's election not to also pursue a justification defense was not ineffective, since it avoided presenting to the jury two dramatically inconsistent defenses which could well have caused the jury to disbelieve the defendant altogether and reject both defenses).

During his habeas testimony, despite admitting that Stern's trial testimony as Chief Medical Examiner was unexpected and did considerable damage to Villarreal's self-defense

claim by effectively tagging Villarreal's account a lie, Trial Counsel averred that it was unnecessary to object to Stern's testimony and obtain a continuance because he felt that Mr. Villarreal's claim of self-defense, given immediately after his arrest, "was very credible." This position is self-defeating and contradictory. If, as claimed by Trial Counsel, Villarreal's self-defense claim was so credible as to survive its rejection by Stern, why would Trial Counsel then attempt to convince the jury that Travis Sweet stabbed Martinez? Trial Counsel's claims were further defused when he refused to acknowledge during his habeas testimony that he'd been surprised by the State, yet admitted that he'd not been noticed about Stern's testimony prior to her opinion, and that "honestly," he would have preferred to have learned about the State's plans to introduce her testimony beforehand. When asked whether he agreed that the preferable strategy is to cross-examine an expert with the assistance of your own expert, Trial Counsel responded, without more, that in nearly 27 years of defense litigation, he'd only consulted with two experts.

Trial Counsel's failure to object to Stern's surprise opinion testimony forced him to abandon his client's theory of defense, and to desperately seek a mistaken identity defense that not only had no chance of success, but that also destroyed the credibility of Villarreal's self-defense claims in his recorded statements.

4. Trial Counsel Failed to Advocate on Behalf of Villarreal In Closing Arguments During the Guilt-Innocence and Sentencing Phases of Trial

The right to effective assistance extends to closing arguments. *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Bell v. Cone*, 535 U.S. 685 at 701-702 (2002); *Herring v. New York*, 422 U.S. 853, 865 (1975). Counsel has wide latitude in deciding how best to represent a client,

and deference to counsel's tactical decisions in his closing presentation is particularly important because of the broad range of legitimate defense strategy at that stage. *Id.* at 5-6. Specifically, "[c]losing arguments should 'sharpen and clarify the issues for resolution by the trier of fact,'" (citing *Herring* at 862) but which issues to sharpen and how best to clarify them are questions with many reasonable answers. *Id.* at 6. Trial Counsel's explanations during Villarreal's habeas hearing fail to support his methods as reasonable trial strategy.

Trial Counsel did not just fail to advocate for Villarreal, he specifically abdicated from his role as Mr. Villarreal's lawyer during closing arguments at the guilt/innocence stage of trial. As the record amply illustrates, Trial Counsel expressly refused to argue for any result, failed to discuss the state's onerous "beyond a reasonable doubt" burden of proof, he did not promote in any way Mr. Villarreal's self-defense claim, and ultimately deferred the determination of his client's guilt to a higher power, by petitioning the jury during closing argument to engage in prayer so that they may receive God's guidance in reaching a "true" verdict - whatever the truth may be.[8]

Additionally, Mr. Villarreal's explanation of his role as limited to discovering "the truth," reveals a basic and consequently serious misrepresentation of his function before the jury as Mr.

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8 The Texas Disciplinary Rules of Professional Conduct provide:

> As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system." PREAMBLE: A LAWYER'S RESPONSIBILITIES 2. Moreover, "a lawyer should act with competence, commitment and dedication to the interest of the client and with zeal in advocacy upon the client's behalf." TEX. DISCIPLINARY R. PROF'L CONDUCT 1.01 cmt. 6. Thus, "[l]oyalty is an essential element in the lawyer's relationship to a client." TEX. DISCIPLINARY R. PROF'L CONDUCT 1.06 cmt. 1.

Villarreal's lawyer. It is not defense counsel's burden to have a jury find "the truth." As explained in the famous quote by Justice Byron White:

> Law enforcement officers have the obligation to convict the guilty and to make sure they do not convict the innocent. They must be dedicated to making the criminal trial a procedure for the ascertainment of the true facts surrounding the commission of the crime. (citation omitted) To this extent, our so-called adversary system is not adversary at all; nor should it be. But defense counsel has no comparable obligation to ascertain or present the truth. Our system assigns him a different mission. **He must be and is interested in preventing the conviction of the innocent, but, absent a voluntary plea of guilty, we also insist that he defend his client whether he is innocent or guilty. The State has the obligation to present the evidence. Defense counsel need present nothing, even if he knows what the truth is. He need not furnish any witnesses to the police, or reveal any confidences of his client, or furnish any other information to help the prosecution's case. If he can con-fuse a witness, even a truthful one, or make him appear at a disadvantage, unsure or indecisive, that will be his normal course. (citation omitted) Our interest in not convicting the innocent permits counsel to put the State to its proof, to put the State's case in the worst possible light, regardless of what he thinks or knows to be the truth. Undoubtedly there are some limits which defense counsel must observe (citation omitted) but more often than not, defense counsel will cross-examine a prosecution witness, and impeach him if he can, even if he thinks the witness is telling the truth, just as he will attempt to destroy a witness who he thinks is lying. In this respect, as part of our modified adversary system and as part of the duty imposed on the most honorable defense counsel, we countenance or require conduct which in many instances has little, if any, relation to the search for truth.**

United States v. Wade, 388 U.S. 218; 256-58 (1967)(J. White, concurring) (emphasis added). Trial Counsel's duty was to defend and to undermine the state's failure to meet its burden in seeking a conviction. Trial Counsel's advocacy was obviously guided by his faith, when he explained that it was not his role to ask for a specific verdict of not guilty, though it clearly was. Trial Counsel was tasked with reminding that the jury's oath was to follow the law, and not merely "the truth." Armed with a pair of statements from Villarreal and a jury instruction for self-defense, Trial Counsel not only failed to defend, but openly refused to even try.

But besides asking the jury to rely on God's answers to the jury's prayers for the truth, Mr. Villarreal's lawyer's constant references to religious sources, including the Bible, divorced the jurors from their obligation to follow the Court's instructions under Texas law, and into the intangible concept of prayer. The jury instructions directed the jury to presume Mr. Villarreal's innocence, to require the State to both prove its case in chief and to disprove Mr. Villarreal's claim of self-defense, beyond a reasonable doubt. Mr. Villarreal's trial attorney, however, did not argue any of these burdens or standards – and actually testified during his habeas rendition that he never does - but asked the jury to pray for the "truth," as determined through the filter of divine authority. Counsel's philosophy to not argue the law as instructed by the trial court, and to instead ask the jury to reach a verdict, whatever that may be, by praying to God for "the truth," whatever *that* may be, cannot be considered a reasonable trial strategy. In a converse situation, condemning a prosecutor's tactic of relying on Biblical authority to obtain the death penalty, Justice Anstead, of the Supreme Court of Florida, explained:

> This is precisely the sort of appeal to religious principles that we have repeatedly held to be improper. As we explained recently in [*People v. Sandoval*, [] 841 P.2d 862, 883-84 (1992), affirmed sub nom. *Victor v. Nebraska*, 511 U.S. 1 [] (1994)]: "What is objectionable is reliance on religious authority as supporting or opposing the death penalty. The penalty determination is to be made by reliance on the legal instructions given by the court, not by recourse to extraneous authority."
>
> . . . The primary vice in referring to the Bible and other religious authority is that such argument may "diminish the jury's sense of responsibility for its verdict and . . . imply that another, higher law should be applied in capital cases, displacing the law in the court's instructions."

Farina v. State, 937 So. 2d 612, 638 (Fla. 2002) (Anstead, J.)(dissenting in part)(citing *People v. Wash*, [] 861 P.2d 1107, 1135-36 (1993) (citations omitted)). Besides not arguing the law, or

Villarreal's self-defense theory, or for that matter failing to even argue for Villarreal's acquittal "[t]here was no curative instruction from the court at the time of the argument, and the final instructions to the jury did not effectively cure the error, either." *Romine v. Head*, 253 F.3d 1349, 1369 (11th Cir. 2001). While the court's instructions "did tell the jury that closing arguments were not evidence...that did not help because the problem with [defense counsel's] argument is not that it misstated the evidence, but that it misstated the law." *Id.*at 1369-70. "The court's instructions to the jury...stressed that the jurors were the judges of the law as well as the evidence. That did not help, either; instead, it may have hurt by leading some jurors to believe that they could substitute the Biblical law urged upon them by [defense counsel] for the law of [Texas]." [9] *Compare Fontenot v. State*, 1994 OK CR 42, at 59 (Court of Criminal Appeals of Oklahoma 1994) (Explaining that "[w]hile the prosecutor did specifically refer to biblical passages, he did not encourage the jury to follow biblical standards rather than the Court's instructions."). Counsel's arguments for reliance on religious authority preyed on the sensibilities of those who may have shared those religious beliefs, and conversely, alienated those who may

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[9] *Romine's* full quote:

> An on-the-spot curative instruction from the court can make a difference, or failing that, improper argument can sometimes be remedied by the final instructions to the jury. (citations omitted). There was no curative instruction from the court at the time of the argument, and the final instructions to the jury did not effectively cure the error, either. The court and both counsel did tell the jury that closing arguments were not evidence, but that did not help because the problem with this improper argument is not that it misstated the evidence, but that it misstated the law. The court's instructions to the jury, as well as both sides' arguments, stressed that the jurors were the judges of the law as well as the evidence. That did not help, either; instead, it may have hurt by leading some jurors to believe that they could substitute the Biblical law urged upon them by the prosecutor for the law of Georgia.

In *Romine*, the 11th Circuit Court of Appeals reversed the habeas petitioner's death sentence, and remanded the case for a new sentencing hearing.

not have espoused - or even rejected - his creed. Trial Counsel specifically directed the jury to rely on prayer, and "the truth," whatever it may be, to be discovered from that process. Mr. Villarreal's lawyer's refusal to argue the law as set out in the instructions, his refusal to advocate for Villarreal's self-defense theory and his failure to ask for a verdict of acquittal on the basis of that theory, and his requests for the jury to reach a verdict through the guidance of prayer to the almighty satisfies *Strickland's* first prong.

C. Prejudice

Had Trial Counsel requested a continuance to present expert testimony such like Dr. Frost's, which was available at the time, this would have caused the jury to reject or at least neutralize Dr. Stern's opinion about the cause of Villarreal's hand wounds, to the point that the jury's deliberations may have relied exclusively on the conflicted and drug-infused testimony by all of the state's witnesses, and Villarreal's self-defense account, a process that a Texas appellate court described as "hotly contested." The state's case was supported by eyewitnesses who gave at least two, and in one case three versions of the stabbing incident, with two of the witnesses admittedly high on drugs, and the third, not thinking right. There is no question that the testimony of the state's witnesses was vulnerable to credibility attacks. Conversely, the jury was also free to believe testimony by other state witnesses and Villarreal's self-defense account that Martinez removed his shirt in a clear sign of aggression and preparation to fight Villarreal, that Martinez provoked the fight, and that Villarreal disarmed Martinez and stabbed him in self-defense. All that was left was highly conflicted testimony from the states' witnesses, and Villarreal's own self-defense account. Trial counsel effectively nullified Villarreal's chances for an acquittal, when, in a desperate maneuver, he changed course and switched Villarreal's theory

of defense, to one of a mistaken identity, which lost all credibility before the jury. Trial counsel completed his ineffectiveness by wholly abandoning any semblance of advocacy during closing arguments in the guilt-innocence and sentencing phases of trial.

There is therefore a reasonable probability that, but for trial counsel's errors, the outcome of Villarreal's trial, at each stage, would have been different.

C. Conclusion

For the foregoing reasons, the Petitioner, Rene Daniel Villarreal respectfully prays that this Court grant certiorari, and that it reverse the judgment of the Texas Court of Criminal Appeals.

Respectfully submitted,

ANGELA MOORE
316 Martinez Street
San Antonio, Texas 78205
(361) 389-3329 - Office
(210) 800-9802 - Fax
angelamoorelaw@gmail.com

Requesting Appointment
In Forma Pauperis

BRIEF DATE: December 23, 2025.

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-95,667-01

EX PARTE RENE DANIEL VILLARREAL, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 9,529 IN THE 49TH DISTRICT COURT
FROM ZAPATA COUNTY**

Per curiam. **SCHENCK, P.J. filed a concurring opinion in which RICHARDSON, J. joined.**

ORDER

Applicant was convicted of murder and sentenced to ninety-nine years' imprisonment. The Fourth Court of Appeals found jury charge error and egregious harm, and reversed the conviction and remanded the case to the trial court for a new trial without considering the ineffective assistance of counsel grounds which were also raised at the time. *See Villarreal v. State*, 393 S.W.3d 867 (Tex. App.— San Antonio 2012), rev'd, 393 S.W.3d 867, No. PD-0332-13 (Tex. Crim. App. Feb. 4, 2015). The State petitioned for discretionary review, and the Court of Criminal Appeals found that the jury charge error did not egregiously harm the Applicant. That Court reinstated the conviction pending remand to the Fourth Court to consider the Applicant's remaining grounds, including his

ineffective assistance of counsel complaints. *Villarreal v. State*, 453 S.W.3d 429, 442 (Tex. Crim. App. 2015). The Fourth Court of Appeals then affirmed Applicant's conviction. *Villarreal v. State*, No. 04-11-00771-CR (Tex. App.—San Antonio Mar. 25, 2015). Applicant filed this application for a writ of habeas corpus in the county of conviction, and the district clerk forwarded it to this Court. *See* TEX. CODE CRIM. PROC. art. 11.07.

Applicant contends that trial counsel was ineffective for failing to obtain a ruling on his motion for discovery, impermissibly urging the jury to seek guidance from God in finding the truth, failing to advocate for Applicant with zeal and to argue the law in pursuit of a sudden passion finding, and constructively denying Applicant of his right to counsel. The trial court has determined that trial counsel's performance was deficient and that Applicant was prejudiced. The trial court recommends granting Applicant habeas relief.

However, based on our independent review of the entire record, this Court finds that Applicant has not met his burden to prove that he is entitled to relief. We deny relief.

Filed: September 24, 2025
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IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-95,667-01

EX PARTE RENE DANIEL VILLARREAL, Applicant

ON APPLICATION FOR A WRIT OF HABEAS CORPUS CAUSE NO. 9,529 IN THE 49TH DISTRICT COURT ZAPATA COUNTY

SCHENCK, P.J., filed a concurring opinion in which RICHARDSON, J., joined.

OPINION

While I agree with the Court's decision, I write separately to address the serious delays associated with the disposition of this matter and the continuing need to redress them in this and other like cases.

BACKGROUND

Applicant filed his first application for a writ of habeas corpus on July 14, 2016. The State was served on August 24, 2016. The State was required to answer

the application within fifteen days after it was received. TEX. CODE CRIM. PROC. art. 11.07, § 3(b).[1] Applicant then filed an amended application on August 30, 2017. Our record is silent as to whether answer was filed to either application. Nevertheless, within twenty days of the expiration of the State's time to answer the application, the trial court was required to determine whether the application contained allegations of controverted, previously unresolved facts material to the legality of the applicant's confinement. *Id.* § 3(c). It should have then entered an order (within twenty days[2] of the expiration of the time allowed for the State to reply) designating the issues of fact to be resolved. *Id.* § 3(d). The habeas court never issued such orders, and did not comply with any of the accompanying timelines.[3]

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[1] Texas Code of Criminal Procedure Article 11.07, § 3(b) was amended in 2021 to change fifteen days to thirty days. *See* Act of September 1, 2021, 87th Leg., R.S., ch. 2934, § 8.01, 2021 Tex. Sess. Law Serv. 934 (codified at TEX. CODE CRIM. PROC. art. 11.07, § 3(b)). At the time of Applicant's writ, the statute provided for fifteen days. *Id.*

[2] The statute does not supply authority to the trial court to extend the time limitations imposed by the statute, other than by timely entry of an order designating issues to be resolved. *McCree v. Hampton*, 824 S.W.2d 578, 579 (Tex. Crim. App. 1992).

[3] Because the trial court failed to issue an order designating any issue for reply, no further development or resolution of any issue followed. Without the timely entry of an order designating issues, Texas Code of Criminal Procedure Article 11.07 imposed a duty upon the clerk of the trial court to immediately transmit the record from the application for writ of habeas corpus to this Court, deeming the trial court's inaction a finding that no issues of fact require further resolution. TEX. CODE CRIM. PROC. ANN. art. 11.07, § 3(c).

Had the trial court filed a timely order designating issues, the trial court would have been further required to resolve any issues timely designated for resolution within 180 days from the date of receipt of the application by the State, and the district clerk would have then been required to forward the application to this Court on the 181st day from the date of receipt of the application by the State. TEX. R. APP. P. 73.5.

Instead, after Applicant amended his application to remind the habeas court of its existence, the court held two evidentiary hearings in early 2018. As no further action was forthcoming, Applicant then filed his third amended writ on December 17, 2018. Approximately *three years later*, in October 2021, the habeas court issued a one-page order recommending that this Court deny Applicant relief. The habeas record, however, was not forwarded to this Court.

In March 2022, Applicant filed a motion requesting findings of fact and conclusions of law, which the habeas court granted, signaling that some findings would be forthcoming. Nearly *two years later*, on February 16, 2024, the habeas court adopted Applicant's proposed findings of fact and conclusions of law. We now reject those findings.

DISCUSSION

While I ultimately agree that Applicant is not substantively entitled to relief, I am concerned with the lower court's nonchalance in disposing of this matter and that our decision here would be grossly untimely and unjust if a contrary result had been proper.

The habeas court not only disregarded several statutory deadlines pertaining to Applicant's filings but also discounted this State's constitutional demands and judicial canons. It appears to have simply adopted Applicant's findings of fact and conclusions of law approximately *eight years* after Applicant's first application for

a writ of habeas corpus was filed, *six years* after the court held evidentiary hearings, *two years* after Applicant filed a motion requesting such findings and conclusions, and *two and a half years* after the court had issued a one-page order denying relief that it neglected to forward.

This State's Constitution provides that the writ of habeas corpus is "a right" that "shall never be suspended," and one which shall be "speedy and effectual." TEX. CONST. art. I, § 12. It also places final and ultimate responsibility for these and other criminal matters in this Court and vests not just the "power to issue the writ of habeas corpus," but the further "power to issue such other writs as may be necessary to protect its jurisdiction or enforce its judgments." *Id.* art. V, § 5(c). The United States Supreme Court has recognized the duty of the judiciary to "safeguard . . . the fair administration of criminal justice," which includes "protect[ing] the processes of orderly trial, which is the supreme object of the lawyer's calling." *Offutt v. United States*, 348 U.S. 11, 13 (1954) (cleaned up). Likewise, "to perform its high function in the best way 'justice must satisfy the appearance of justice.'" *In re Murchison*, 349 U.S. 133, 136 (1955) (quoting *Offutt*, 348 U.S. at 14).

Accordingly, I believe this Court's reviewing power necessarily includes the obligation to undertake "judicial supervision of the administration of criminal justice." *See McNabb v. United States*, 318 U.S. 332, 340 (1943). This Court, the trial court in this case, and every other court in Texas belongs to the people of this

State and our Constitution assures meaningful access to them, *see* TEX. CONST. art. I, §§ 12, 13, including and especially those seeking to resort to the Great Writ. *See Ex parte Ramon Leroy Moore*, No. WR-87,971-01, slip op. at 2–3 (Tex. Crim. App. Feb. 26, 2025) (Schenck, P.J., concurring), *available at* https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=0ca1a6c4-4f00-4920-ade48a32d58aa26d&coa=coscca&DT=ORDER&MediaID=70aedd78-7f73-4f86-90e0-a2369a87fc80.

We failed here. Again. And, we have still failed to implement any structural reform to address the problem, whether it be in the rules or the personnel.

Judges ought to give meaning and purchase to the "speedy" writ (or trial) assurance by coordinating reassignment of dockets whereas necessary to mend obstacles to swift resolution. *Id.* This can include, for example, assigning a visiting judge to assist and report on the progress of the trial court, and, if necessary, acquitting ourselves of our unhappy but critical collective duty to make referrals under Article 5, § 1-a or Article 15, § 8. *Id.* (citing TEX. CODE JUD. CONDUCT, Canons 3A ("The judicial duties of a judge take precedence over all the judge's other activities."), 3B(9) ("A judge should dispose of all judicial matters promptly, efficiently and fairly."), 3D(1) ("A judge who receives information clearly establishing that another judge has [violated 3A, 3B(9)] should take appropriate action.")).

CONCLUSION

The Court's disposition of this application is proper, if untimely.

Filed: September 24, 2025

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