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Cause No. 877592-B

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EX PARTE	§	IN THE 177TH DISTRICT COURT
	§	OF
LINDA CARTY,	§	HARRIS COUNTY, TEXAS
APPLICANT		

FILED
Chris Daniel
District Clerk
Time: SEP 01 2016
By: Harris County, Texas
Deputy

FINDINGS OF FACT, CONCLUSIONS OF LAW

The Court, having considered the Applicant's application for writ of habeas corpus; the State's original answer; the evidence elicited during the writ evidentiary hearing conducted in Cause No. 877592-B; the affidavits and exhibits in Cause No. 877592-B; the court reporter's record from the trial in Cause No. 877592; and, the official court documents and records, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

procedural history

1. On July 18, 2001, Linda Carty, the Applicant, was indicted for the May 16, 2001 capital murder of complainant Joana Rodriguez in Cause No. 877592 (I C.R. at 28).

2. The Applicant's co-defendants, Chris Robinson, Gerald Anderson, and Carliss Williams were also indicted for capital murder in Cause Nos. 877593, 919665, and 904462, respectively.

3. On February 19, 2001, a jury found the Applicant guilty of capital murder, Cause No. 877592, in the 177th District Court of Harris County, Texas (I C.R. at 184).

4. The guilt/innocence charge included an instruction applying the law of parties and requiring a verdict of guilty on the capital murder charge if the jury found that the Applicant "acting alone or with Carliss "Twin" Williams and/or Gerald "Baby G" Anderson and/or Chris Robinson and/or other person(s) as a party to the offense . . . did then and there unlawfully, while in the course of committing or attempting to commit the

kidnapping of Joana Rodriguez, intentionally cause the death of Joana Rodriquez by asphyxiating Joana Rodriguez by an unknown manner or means . . . " (I C.R. at 177).

5. On February 21, 2002, pursuant to the jury's responses to the three special issues, the trial court assessed the Applicant's punishment at death by lethal injection (I C.R. at 209).

6. Connie Spence and Craig Goodhart prosecuted the instant case at the trial level while Jerry Guerinot and Wendi Akins Pastorini (hereinafter "Akins") represented the Applicant.

7. On May 23, 2002, a jury found co-defendant, Carliss Williams, guilty of the lesser offense of kidnapping in Cause No. 904462 and sentenced him to twenty (20) years imprisonment.

8. Co-defendant Chris Robinson plead guilty, pursuant to a presentence investigation report and no recommendation on punishment from the State, to a reduced charge of aggravated kidnapping in Cause No. 877593 before testifying in the primary case; Robinson was sentenced to forty-five (45) years imprisonment on November 22, 2002, after testifying in co-defendant Williams' trial.

9. Co-defendant Gerald Anderson plead guilty, pursuant to a presentence investigation report and no recommendation on punishment from the State, to the reduced charge of aggravated kidnapping and another charge of possession with intent to deliver a controlled substance. The trial court sentenced Anderson to life in both cases to run concurrently. *See AX 57, Punishment Hearing in Anderson v. State, Cause Nos. 882167 and 919665.*

10. On April 7, 2004, the Court of Criminal Appeals affirmed the Applicant's conviction. *Daffy v. State,* No. AP-74,295, 2004 WL 3093229 (Tex. Crim. App. April 7, 2004) (not designated for publication).

11. On August 6, 2003, Kurt Wentz filed an initial state habeas application, Cause No. 877592-A.

12. On May 28, 2004, Michael Goldberg and Maryanne Lyons with Baker Botts L.L.P. ("habeas counsel") filed a notice of appearance as co-counsel for the Applicant in Cause No. 877592-A, and, on March 17, 2005, Kurt Wentz withdrew from representing the Applicant. Habeas counsel then represented the Applicant throughout federal habeas proceedings and in the instant state writ proceedings, Cause No. 877592-A.

13. On March 2, 2005, the Court of Criminal Appeal denied relief on the Applicant's initial habeas application alleging sixteen grounds for relief. *Ex Parte Carty,* No. WR-61,055-01 (Tex. Crim. App. March 2, 2005).

14. Carty filed her federal petition for a writ of habeas corpus on February 24, 2006. On September 30, 2008, the United States District Court granted the State's motion for summary judgment, denied her motion for an evidentiary hearing, denied her federal habeas corpus petition, and dismissed the case with prejudice. *Carty v. Quarterman,* No. CIV.A 06-614, 2008 WL 8104283 (S.D. Tex. Sept. 30, 2008). The District Court certified only two issues for consideration by the Fifth Circuit—whether "(1) trial counsel should have informed her boyfriend/husband [Corona] of possible spousal immunity and (2) trial counsel should have presented more mitigating evidence at the punishment phase." *Carty v. Quarterman,* No. CIV.A 06-614, 2008 WL 8097280 at *2 (S.D. Tex. Dec. 16, 2008).

15. The Fifth Circuit found that "trial counsel performed objectively unreasonably by failing to interview Corona to determine if he could or would assert a marital privilege" and recognize that the state did not disagree. *Carty v. Thaler*, 583 F.3d 244, 259 (5th Cir. 2009). Despite this, the Fifth Circuit found that Carty was unable to make the requisite showing of *Strickland* prejudice, as Corona's testimony "provided nuance to the case" but was not necessary to prove capital murder, and affirmed the District Court's decision dismissing her writ. Id. at 262.

16. On January, 25th, 2010, Carty filed a petition for writ of certiorari in the US Supreme Court, which was denied on May 3, 2010. *Carty v. Thaler*, 559 U.S. 1106 (2010).

17. On September 10, 2014, the Applicant filed a subsequent state habeas application urging six grounds for relief; subsequently the Court of Criminal Appeals found that three of the Applicant's six claims satisfied the subsequent writ provisions of Section 5(a), TEX. CODE CRIM. PROC. Art. 11.071, and remanded the three claims to the trial court to consider. *Ex Parte Carty,* No. WR-61,055-02, 2015 WL 831586 (Tex. Crim. App. Feb. 25, 2015).

18. Based on Carty's post-application writ and the order of the Court of Criminal Appeals, on May 5, 2016, this court entered an Order designating the following issues to be resolved by an evidentiary hearing:

A. Whether Applicant's right to due process was violated when the State presented false and misleading testimony at trial, in violation of her rights to due process and due course of law under *Giglio* and *Napue.*

Specifically: 1. Did the State coerce witnesses Chris Robinson, Marvin Caston, Charles Mathis, and Gerald Anderson to submit false testimony?

B. Whether Applicant's right to due process and due course of law was violated when the State presented false and misleading testimony against her at trial, in violation of her rights under *Ex Parte Chabot* and *Ex Parte Chavez.*

Specifically: 1. Did the State coerce witnesses Chris Robinson, Marvin Caston, Charles Mathis, and Gerald Anderson to submit false testimony?

C. Whether Applicant's right to due process was violated by the State's failure to disclose impeachment and exculpatory evidence in violation of *Brady v. Maryland.*

Specifically: 1. Did the State withhold or misrepresent statements from Chris Robinson, Marvin Caston, Gerald Anderson, and Charles Mathis?

2. Did the State fail to disclose notes and recorded interviews with witnesses or potential witnesses?

3. Did the State fail to disclose preferential treatment to Marvin Caston in exchange for his testimony against the Applicant?

19. Following preliminary hearings addressing scheduling and discovery matters, the evidentiary hearing began on June 27, 2016 and concluded on July 5, 2016, with closing arguments and the submission of proposed findings of fact and conclusions of law, by both the Applicant and the State, on August 29, 2016. The evidentiary hearing included the testimony of 13 witnesses, the admission of 72 exhibits, the trial court's judicial notice of the trial transcripts of the Carty trial, the Carliss Williams trial, and the contents of Chris Robinson's PSI hearing, and the closing arguments of counsel for both Carty and the State.

Based on the evidence and argument of counsel, the Court hereby makes the following findings of fact and conclusions of law with regard to Applicant's claims.

20. The Applicant waived her appearance during the writ evidentiary hearing.

21. At the conclusion of a pre-trial suppression hearing, the trial court held that both the Applicant's statements to police were admissible; that she was not in custody during the first statement, and that she was in custody during the second statement but waived her rights (IV R.R. at 6-7) (IV R.R. at 118-9).

PRIMARY OFFENSE

22. At approximately 1:00 a.m. on May 16, 2001, three black males broke down the apartment door of complainant, Joana Rodriguez, where she was sleeping with her newborn son Ray and her husband Raymundo Cabrera; two of the men entered their bedroom, pointed guns at Cabrera, demanded money, bound Cabrera with duct tape and phone cord, covered his mouth and eyes, and beat him (XX R.R. at 29-39).

23. Cabrera heard someone say, "we are going to take the baby and the mother" and someone instruct the complainant to "take your baby and let's go," and Cabrera felt the complainant get off the bed and leave the room with the baby (XX R.R. at 39-40).

24. Cabrera's cousin, Rigoberto Cardenas, who was asleep in the ground floor living room of Cabrera's apartment when the men broke into the apartment, was bound with cords, struck in the head, and asked for money and drugs (XX R.R. at 54-9).

25. Cardenas heard a cell phone ring and heard one of the men say, "we are here inside" and "do you want it;" he also heard a man yelling "she" was outside and it was

time to leave; Cardenas then heard the baby crying and people coming down the apartment stairs before the men exited the apartment, leaving Cabrera and Cardenas who freed themselves and summoned help (XX R.R. at 60-3).

26. Florentino Martinez, Houston Police Department (HPD), interviewed apartment complex resident Florence Meyers and learned that the Applicant had just moved out of her apartment located across the sidewalk from the complainant's apartment; that Meyers saw the Applicant sitting in a small rental car with a baby seat in the car the day before; that the Applicant told Meyers she was going to have baby the next day; and, that Meyers did not believe that the Applicant was pregnant and thought that the whole thing sounded strange (XX R.R. at 104, 139-41, 151-5).

27. Subsequently, the Applicant was contacted and Officer Martinez met the Applicant and accompanied her to her apartment where she consented to a search of her almost-empty apartment and then accompanied officers to the HPD homicide division (XXI R.R. at 78-82, 100, 105-10, 114).

28. Drug Enforcement Administration ("DEA") agent Charles Mathis spoke to the Applicant while she was at HPD, and the Applicant said she may have made a mistake by loaning her daughter's car and a rental car to some individuals who she felt might be involved in the primary case abductions, and the Applicant offered to lead police to a location where the vehicles might be parked (XXI R.R. at 81-3, 110).

29. The Applicant directed police to a residence on Van Zandt Street where a small black Chevrolet belonging to the Applicant's daughter and the Applicant's rental car, a tan Pontiac Sunfire, were parked; a .38 caliber Charter Arms was found in the house, and there was a warm BBQ pit in the yard without food and also a can of Lysol (XXI R.R. at 84-5, 141-2,153-4).

30. Police found the complainant's infant son alive inside the Cavalier along with a child's car seat and a pacifier; the complainant's body was in the trunk of the Sunfire with duct tape around her legs and a plastic bag around her head (XXI R.R. at 124-5, 142-3, 154, 161).

31. Assistant medical examiner, Paul Shrode, testified that the complainant's cause of death was homicide suffocation with her significantly compromised airway caused by not only tape and plastic but also by body position;" that the complainant had been dead for at least twelve hours; that there was tape over the complainant's mouth, a plastic bag taped around her neck, and her hands and legs were bound with tape; that Shrode believed that the plastic bag was initially placed over the complainant's head, taped around the neck, and then ripped and the complainant was retape on her mouth and under her nose after the bag was ripped. (XXII R.R. 223, 237, 240-3, 247); *State's Trial Ex. 92).*

32. Dr. Shrode testified under cross-examination that any of the factors -- the bag, the tape obstructing the complainant's airways, and the positioning of the complainant's body in the car -- could all have caused the complainant's death (XXIII R.R. at 243).

33. Evidence collected from the Cavalier included a live .38 caliber round, a receipt from the Hampton Inn, a pair of life uniform medical scissors, a stethoscope, and name badge, a blue nurse's pin with a blue cord, and numerous baby items, including a diaper bag, a changing pad, a bottle holder, disposable diapers, a pacifier, infant clothing, disposable bottles, infant formula, Gerber washcloths, a hooded towel, and a baby stroller (XXI R.R. at 177-9).

34. Chris Robinson and Zebediah Comb were at the Van Zandt residence when police arrived and both men were arrested, gave statements to the police, and testified for the State regarding the primary offense (XXIII R.R. at 111).

35. Telephone records showed that calls were made to and from the Applicant's cell phone at the time of the primary offense to a phone used by Gerald Anderson; Anderson, and Carliss Williams were identified as the two men who participated in the offense, and they were arrested and charged with capital murder (XXI R.R. at 68-70).

36. Neither Gerald Anderson nor Carlos Williams, testified during the Applicant's trial; however, Jose Corona, Josie Anderson, Marvin Caston, Zebediah Comb, Denise Tillman, and Sherry Bancroft testified for the State concerning the events preceding the instant offense.

Jose Corona's Trial Testimony

37. Jose Corona testified that he separated from the Applicant and moved out of their apartment before the offense; that the Applicant told him she worked undercover for the government and her brother "Charlie" was her boss; and, that Corona never saw the Applicant work and never saw any money from her alleged employment (XX R.R. at 189-95, 206, 224-5).

38. Corona testified that the Applicant told him several times that she was pregnant and bought baby items; that the Applicant made excuses and never allowed Corona to accompany her to the hospital or doctor's appointments; that eventually the Applicant told Corona that she lost the babies when he questioned her about the supposed pregnancies; that Corona did not believe the Applicant was pregnant; and, that Corona never saw evidence that the Applicant was pregnant or had miscarried (XX R.R. at 191-3, 193, 200-3, 206-9).

39. Corona testified that he eventually grew tired of the Applicant's lies, including her lies about having babies, and decided to leave the Applicant; that when he told her in May, 2001 that he was leaving, the Applicant again told Corona that she was pregnant and asked him to stay with her if she had the baby; and, that Corona responded that he did not believe she was pregnant (XX R.R. 205-7).

40. Corona testified that the Applicant called him on May 15, 2001, and said she was having a baby boy the next day, and the Applicant again called on May 16th to tell him that the baby would arrive that day (XX R.R. at 208-9).

Josie Anderson's Trial Testimony

41. Josie Anderson ("Josie") testified that, before the complainant's murder, the Applicant made many references to her alleged pregnancies; that Josie never saw any babies, and the Applicant never mentioned having miscarriages; that the Applicant told Josie that she was pregnant on May 13, 2001, and would have the baby in twenty-four hours; and, that the Applicant also remarked several times that she needed the lady's baby (XXI R.R. at 18, 21).

42. Josie further testified that, on May 13, 2001, the Applicant asked Josie whether she knew of anyone who was interested in participating in a "lick" or kick-door robbery that she had set up where there was 200 pounds of marijuana and some cocaine in an apartment inhabited by a pregnant woman and her husband, and that Josie saw baby and medical items in the car that the Applicant was driving, including a baby seat, a diaper bag, infant formula, Pampers, baby food, baby clothes, a stethoscope, surgical scissors, and blue surgical scrubs (XXI R.R. at 206-14).

43. Josie further testified that she was present when the Applicant showed her boyfriend, Marvin Caston, and Chris Robinson the specific apartment where the robbery was to take place; that the Applicant mentioned cutting the baby out of its mother; that Josie heard the Applicant talk about taking the pregnant woman's baby because the woman had slept with the Applicant's husband; and, that ultimately, Josie did not participate in the primary offense (XXI R.R. at 218-9, 221-2).

Marvin Caston's Trial Testimony

44. Marvin Caston testified that the Applicant recruited people to participate in a lick at an apartment where there was supposed to be a large quantity of marijuana on May 13, 2001; that the Applicant said that she wanted to take a baby from a pregnant woman and planned to cut the baby out from its mother; that Caston had a subsequent conversation with the Applicant where the Applicant said that she wanted that specific baby because the woman had an affair with the Applicant's husband; that the Applicant further stated that she told her husband that she was pregnant even though she had a miscarriage; and, that Caston ultimately avoided the Applicant and did not participate in the primary offense (XXII R.R. at 61-4, 80).

Zebediah Comb's Trial Testimony

45. Zebediah Comb testified that, at the time of the primary offense, he was on house arrest for a federal case, wearing a monitor which prevented him from going

further than the street; that he first met the Applicant on the evening of Mother's Day when the Applicant arrived at the Van Zandt residence in her Pontiac with Josie Anderson and Caston and said she wanted to recruit people for a drug rip at her apartment complex; that the targets of the robbery were a pregnant woman and her husband who lived a few units down from the Applicant; that the Applicant stated that there was supposed to be about 200 pounds of marijuana at the apartment and proposed that the robbers could keep whatever drugs or money that they found in exchange for bringing the pregnant woman to the Applicant; and, that the Applicant commented that her husband was the father of the pregnant woman's child, and she would handle the rest of the arrangements once she got the woman (XXIII R.R. at 42-5, 53-8, 60).

46. Comb testified that the Applicant returned to the Van Zandt residence with Caston the following day, but they left because Chris Robinson was not there; that the Applicant came by the Van Zandt residence again on Tuesday looking for Robinson who was not there; that, at the Applicant's request, Comb called Robinson a couple of times who said he was busy and did not want anything to do with it; that the Applicant told Comb that the robbers would get 200 pounds of drugs in payment for the job; and, that the Applicant said she wanted the pregnant woman because the Applicant's husband was the father of the child (XXIII R.R. at 64-9).

47. Comb testified that the Applicant left the Van Zandt residence but returned later that evening; that Comb saw the Applicant talking with Robinson, Gerald Anderson and Carliss Williams about her proposed drug deal, saying that they would get 200 pounds of marijuana in exchange for bringing the pregnant woman to the Applicant; and, that the Applicant, Robinson, Gerald Anderson and Williams left the Van Zandt residence for the Applicant's apartment driving two cars, the Applicant's small gold sedan and a blue car, at around 1:00 a.m. (XXIII R.R. at 73-8).

48. Comb testified that the group returned about two hours later, and the Applicant remarked, "I got my baby" while carrying an infant in her arms; that Comb saw the complainant in the trunk of the Applicant's Pontiac and refused the Applicant's request to put the complainant in another car parked in the yard; that the men were angry at the Applicant because there were no drugs or money in the house; that the Applicant asked Comb to calm the men down, saying that she did not have any money but she had another lick for the men the next day; that Comb told the Applicant and the other men that they needed to get in their cars and leave, but the Applicant refused to drive her car with the woman in the trunk; and, that Comb then returned to the house and went to sleep (XXIII R.R. at 80-92).

49. Comb testified that Robinson was there when Comb awoke the next morning; that the Applicant arrived about twenty minutes later driving a black Chevrolet with the baby in the car; that the Applicant's Pontiac was still in the yard but it was closer to the BBQ pit; that the complainant was in the Pontiac's trunk, bound with tape and with a torn bag over her head; that the Applicant talked about disposing of the complainant's body and suggested they burn her body there; and, that the Applicant then left, saying

that she had to get money to extend the time on the Pontiac which was a rental car (XXIII R.R. at 93-100).

50. Comb testified that the Applicant returned one to two hours later with the baby and started talking about another drug deal; that Comb saw Robinson, the Applicant and Gerald Anderson putting together packets of fake and real money to use in ripping off a dope dealer; that the Applicant, Robinson, and the baby left the Van Zandt residence in the Applicant's black Chevrolet while Gerald Anderson and another man followed in a different car; that Robinson returned with the baby in the black Chevrolet about three hours later; that Robinson left the baby in the car with the air conditioning running; and, that Robinson used a towel and Lysol to wipe down the cars before the police arrived (XXIII R.R. at 101-9).

Denise Tillman's Trial Testimony

51. Denise Tillman, an employee at a Houston medical uniform store, testified that the Applicant visited the store on May 12, 2001, and bought a number of items, including a blue pen, a nurse's ID tag, a stethoscope, surgical scissors, and two scrub tops and scrub pants that were the common color used for Memorial hospitals (XXIII R.R. at 178-182, 184).

Sherry Bancroft's Trial Testimony

52. Sherry Bancroft, an employee at a Houston storage facility testified that, on May 9, 2001, the Applicant rented a storage unit, saying that she and her fiancé were having troubles and she was moving; that the Applicant also told Bancroft that she was pregnant, but Bancroft did not think the Applicant looked any different; that Bancroft also saw the Applicant on May 12 and 15, 2001, and the Applicant told Bancroft that she was in labor and expecting a baby boy that day; and, that the Applicant told Bancroft that the baby was at home with his father on May 15th, and left her storage unit with a blue baby blanket and two sets of clothing from the storage unit (XXI R.R. at 43-51).

GROUNDS A AND B – Claims under Giglio/Napue and Ex Parte Chabot/Chavez

53. The Court finds, based on the trial record and evidence presented during the instant habeas proceedings, that the Applicant fails to demonstrate that the prosecution threatened or coerced witnesses, including Chris Robinson, Marvin Caston, Charles Mathis, and Gerald Anderson, into testifying falsely during the Applicant's capital murder trial (IV W.H. at 212, 236-7).

Chris Robinson

54. HPD officer Novak talked to Robinson and took some notes before conducting a videotaped interview of him at around 3:00 a.m., on May 17, 2001, during which Robinson related details of the primary offense, including but not limited to, asserting that the Applicant manipulated him and two other men into robbing what they thought

was a dope house so that the Applicant could get a baby; that they kicked down the door of the apartment and hogtied the occupants; that, during the robbery, the Applicant called one of the other robber's cell phones and told him to get the package which Robinson assumed meant the baby; that the Applicant told Robinson and the others to kill the occupants of the apartment; that the Applicant took the baby while the woman was put into the trunk of a car, and they went to Robinson's grandmother's house; that the Applicant tried to kill the woman by suffocating her; and, that the Applicant said that the baby was her husband's child (IX W.H. at 38, 43); *AX 33 and 34, Novak's notes and transcript of Robinson's videotaped interview.*

55. Novak conducted a second interview of Robinson on the afternoon of May 17, 2001 which was audio-taped. *See AX 35, transcript of Robinson's audio-taped interview.*

56. The Court finds, based on the trial and writ hearing record, that Novak's knowledge regarding the primary case was very limited when he first interviewed Robinson; that Novak had no interaction with prosecutors Spence or Goodhart when he first interviewed Robinson; and, that prosecutors Spence and Goodhart did not speak to Robinson until after Novak had interviewed Robinson (VII W.H. at 130)(IX W.H. at 910).

Chris Robinson's Trial Testimony

57. Robinson testified that he was initially charged with capital murder for his role in the primary case, but he had plead guilty to the reduced offense of aggravated kidnapping pursuant to a pretrial sentence investigation report; that the State had nothing to do with punishment in his case; and, that neither prosecutor in the instant case threatened him or promised him anything in exchange for his testimony in the Applicant's capital murder trial (XXII R.R. at 136). (When Robinson testified at the Applicant's capital murder trial, he had one felony and six prior misdemeanor convictions. CXXII R.R. at 132.)

58. Robinson testified that he first met the Applicant on Mother's Day, May 13, 2001; that the Applicant, Josie Anderson and Marvin Caston were in a gold car with Florida plates when they stopped Robinson as he exited from his girlfriend's house; that Josie introduced Robinson to the Applicant who asked whether Robinson wanted to make some money; that the Applicant and Josie started discussing plans for a robbery of an apartment at the Applicant's complex where the Applicant said there was a lot of marijuana; that the Applicant drove the group over to see the complex, and they discussed items that they needed for the robbery, such as ski masks, duct tape and guns; and, that, after agreeing to meet again at midnight, the Applicant dropped Robinson and Caston at a residence on Van Zandt Street where Robinson's grandmother and halfbrother, Zebediah Comb, lived (XXII R.R. 13949).

59. Robinson testified that he retrieved his .38 caliber gun and met the Applicant, Josie Anderson, Caston, and two unknown armed men at the Van Zandt residence where they continued planning the robbery; that the Applicant had a mask made from panty hose while Josie and the Applicant produced three masks and two rolls of black duct tape; that the Applicant told the group that two men and a pregnant woman lived at the targeted apartment, and the plan was for Robinson and the other men to kill the males in the apartment while Josie and the Applicant grabbed the pregnant woman; and, that the Applicant said that her husband was the father of the pregnant woman's child, and she wanted to cut the baby from the pregnant woman (XXII R.R. at 151-61).

60. Robinson testified that the Applicant then suggested that the group see her apartment because its layout was similar to the apartment where the robbery was to take place; that the group proceeded to the Applicant's apartment with the Applicant and Josie in the Applicant's car, Caston and Robinson in a green Cadillac, and the other men in their car; that all six went into the Applicant's apartment which was empty except for a few boxes because the Applicant was moving; that the Applicant then had second thoughts about the robbery, and everyone left the Applicant's apartment in their respective vehicles; and, that Robinson never saw the two unknown men again (XXII R.R. at 153-8, 165).

61. Robinson testified that, on Monday, May 14, 2001, Robinson was walking to the store when the Applicant, Josie Anderson and Caston drove up in the Applicant's car with the Florida license plate wanting to know whether Robinson was ready to return to the apartment complex later that day, but Robinson was not interested (XXII R.R. at 168-9).

62. Robinson testified that, on Tuesday, May 15, 2001, at 10:00 a.m. or 11:00 a.m., Robinson's half-brother, Zebediah Comb, called to let him know that the Applicant was waiting for him at the Van Zandt residence; that Robinson told Comb he did not want to talk to the Applicant; that later that evening, Robinson and Carliss Williams went to the Van Zandt residence where they encountered the Applicant talking to Gerald Anderson; that, when asked whether he was going to participate in the robbery, Robinson stated that he did not have his gun; and, that there were further discussions regarding the robbery during which the Applicant said that they had to get the pregnant woman out of the house (XXII R.R. at 170-5).

63. Robinson testified that Carliss Williams took Robinson to retrieve his gun, and they returned to the Van Zandt residence; that the Applicant left the Van Zandt residence in her Florida car while the men followed five to ten minutes later in Gerald Anderson's car; that the men parked in back of the targeted apartment while the Applicant parked in front; and, that the three men waited in the car until the Applicant

called Gerald Anderson's cell phone about midnight or 12:30 a.m., to say that everything was alright in front of the apartment (XXII R.R. at 176-81).

64. Robinson testified that he and Williams' kicked in the door of the complainant's apartment and went upstairs to the bedroom where they found a man, woman, and baby; that Williams taped the man's mouth, hands, and legs with duct tape while Robinson pointed his gun at the man and demanded "mota" and "dinero"; that Robinson hit the man and searched the apartment where he saw Gerald Anderson on top of another man, taping him; that Robinson found money in a jacket; that he cut lamp and telephone cords and hog-tied both men; that a phone rang and Gerald Anderson told Robinson that the Applicant was on her way; that the Applicant was entering the apartment as Robinson was exiting it; that the Applicant asked whether they had taken care of the guys to which Robinson responded in the affirmative; that, by asking whether they had taken care of the guys, the Applicant was asking whether they had killed the men; and, that Gerald Anderson and Williams went upstairs while Robinson returned to the car parked behind the apartment (XXII R.R. at 181-203).

65. Robinson testified that he moved the car so that he saw the Applicant come around the corner, huddled over like she had both hands up under her; that Robinson knew that the Applicant had the baby; that Gerald Anderson and Williams brought the complainant out of the apartment and put her in the trunk of the car; and, that the men followed the Applicant to a storage lot where they transferred the complainant to the trunk of the Applicant's car (XXII R.R. at 204-11).

66. Robinson testified that, at around 1:30 a.m. or 2:00 a.m., on May 16, 2001, the three men returned to the Van Zandt residence where they found the Applicant standing outside her car holding the baby; that they then began to discuss what to do with the complainant; that Robinson wanted to release the complainant; that the Applicant wanted someone to tape up the Applicant and did not want to free the complainant because she had seen their faces; and, that the Applicant stood by the open trunk holding the baby while Williams taped the complainant's mouth, arms and legs and shut the car trunk (XXII R.R. at 212-6, 220-4, 238).

67. Robinson testified that the group then got into an argument which became so loud that Comb exited the residence and asked what was going on; that the men were mad and considered shooting the Applicant because they felt that she had lied about the money and drugs that were supposed to be in the apartment; that Robinson told Comb about the complainant and the baby, and Comb demanded that Robinson remove them from the yard; that Gerald Anderson, Williams and Robinson then left the residence in separate vehicles; and, that Robinson returned at around 3:30 a.m. or 4:00

a.m., to discover that the Applicant's car was pulled further into the yard next to a BBQ pit with the trunk open and the Applicant's body halfway into the car trunk (XXII R.R. at 212-6, 226-7, 232-3).

68. Robinson testified that he realized that the Applicant was doing something so he ran up and saw that there was a black bag over the complainant's head; that Robinson was unsuccessful in his effort to pull the bag up, and he ripped the bag from the complainant's head; that, when Robinson looked down, the complainant did not breathe or move; that Robison asked the Applicant "what the hell she was doing" and told the Applicant that she could not do anything to the complainant in his grandmother's yard; that the Applicant pretended to cry and responded that it was her husband's baby and she was taking it; and, at that moment, some other people drove into the yard, and Robinson shut the car trunk (XXII R.R. at 235-9).

69. Robinson testified that the Applicant refused to drive her car with the complainant's body in it; that Robinson took the Applicant and the baby to a Galleria area hotel; that Robinson stayed at the Applicant's hotel room for about fifteen to twenty minutes; that the Applicant gave the infant a bath and made a bed for the baby while Robinson was there; that Robinson asked the Applicant why she played them like that when all along she just wanted a baby; that the Applicant just looked at Robinson and responded that she would bring someone with her in the morning to pick up the car at the Van Zandt residence; and, that the Applicant also said that she would make everything right with another drug rip once she reached a man named "Flaco" (XXII R.R. at 244-6).

70. Robinson testified that he returned to the Van Zandt residence where he fell asleep in his car; that the Applicant arrived at the house in a black Chevrolet at around 9:00 a.m.; and, that the Applicant suggested various ways to dispose of the complainant's body, including burning her (XXII R.R. at 247-9, 257-8).

71. Robinson testified that Gerald Anderson then arrived and began discussing another drug rip with the Applicant; that Gerald Anderson and an unnamed man left in one car, and the Applicant, Robinson, and the infant left in the black Chevrolet; that Robinson and the Applicant were on their way to the Galleria area when a police detective called the Applicant and asked her to return to her apartment complex; that the Applicant parked her car by a mechanic's shop and told Robinson to wait in the car with the baby until she returned; that, after two hours, Robinson drove the black Chevrolet and the infant back to the Van Zandt residence where he left the infant in the car with the air conditioning running; that, before police arrived that evening, Robinson found a .32 caliber pistol in the glove compartment of one of the Applicant's cars; and,

that Robinson wiped the prints from the Pontiac Sunfire and the black Chevrolet using a bottle of Lysol (XXII R.R. at 250, 252, 255-6, 258-61).

Chris Robinson's Testimony in Carliss Williams' Trial

72. The Court finds that, on May 17, 2002, Robinson again testified for the State during co-defendant Carliss Williams' trial; that his testimony in Williams' trial was consistent with his earlier testimony in the Applicant's trial; and, that Robinson reiterated that neither prosecutor had threatened him or promised anything in return for his testimony (Williams Trial VII R.R. at 11-3).

73. The Court finds that, during Williams' trial, Robinson testified that the Applicant said that there were two men and a woman where she stayed who had cash and drugs; that the Applicant said that she would take care of the lady – that [Carty] would cut the baby out of the lady; that the Applicant said that the guys might have to kill the men in the apartment; that, when Robinson asked the Applicant what was so important about taking the lady, the Applicant said that the woman was sleeping with her husband and was pregnant with her husband's child; and, that the Applicant took Robinson, Josie Anderson, Caston, and two other men to her apartment so that they could get a picture of the other apartment where the complainant lived (Williams Trial VII R.R. at 17, 27, 32, 36, 44).

74. The Court finds that, during Williams' trial, Robinson testified that the Applicant parked in front of the apartment; that once the men were inside the complainant's apartment, the Applicant called Gerald Anderson and Robinson heard "Yeah, the lady and the baby" and "okay"; that Gerald Anderson told Robinson that the Applicant was on her way in; that the Applicant wanted them to kill everyone in the house; that Robinson saw the Applicant holding the baby when she exited the apartment, and Gerald Anderson had his gun on the complainant; that the men transferred the woman from the trunk of their car to the Applicant's car trunk; that the men were mad at the Applicant because they felt that she had played them, saying that there were drugs and money when all the Applicant wanted was the lady and the baby; that the Applicant's car was parked at the Van Zandt residence when the men arrived in their car, and the Applicant was just holding the baby; that the Applicant wanted the men to tape up the complainant because she did not want her moving around in the trunk; that the Applicant and Williams approached the car trunk, and the complainant looked up at the Applicant holding her baby; that Williams first taped the complainant's mouth and then her arms and legs before someone shut the car trunk; that Robinson told everyone that they had to leave, and he saw the other men and the Applicant get in their cars even though he did not see the Applicant leave; that, before Robinson left, the complainant was alive and did not have a bag over her head; that, when Robinson returned to the

Van Zandt residence at close to 3:00 a.m., the Applicant's car was pulled father back onto the property closer to the BBQ pit; that Robinson saw the Applicant in the trunk of her car, with one foot in the trunk and a bag over the complainant's head; that Robinson tore the bag open, but the complainant appeared lifeless and was not breathing; that the Applicant had said earlier that she could not let the complainant go because she knew her; and, that Robinson cussed the Applicant while the Applicant just held the baby (Williams Trial VII at 67, 80-1, 83, 87-90, 94-5, 98, 102, 104, 108-14, 116-8).

Chris Robinson and the instant habeas claim

75. The Court, based on evidence presented during the habeas proceedings, finds that the Applicant fails to show that Robinson was coerced by the prosecution into providing false and misleading testimony at the Applicant's trial based on the fact that, before the prosecution ever met with Robinson, he provided the police with numerous details regarding the primary offense details consistent with his subsequent testimony.

76. The Court finds that much of Robinson's testimony was consistent with and corroborated by other witnesses namely, Josie Anderson, Marvin Caston and Zebediah Comb who never recanted their trial testimony. (During the instant writ hearing, Caston stated that he tried to testify truthfully as best as he could during the Applicant's capital murder trial. (VI W.H. at 71, 80.)

77. The Court finds that, during the writ hearing, Robinson was unable to specify or articulate any portions of his trial testimony where he presented false testimony or where he felt threatened into testifying in a particular manner, including Robinson's response that "I just can't pinpoint exactly one different statement that would make it make it seem better than what it is" when questioned on the issue by the presiding judge (VII W.H. at 1267).

78. The Court finds that, during the writ hearing, Robinson acknowledged that he told the interviewer in the 2012 documentary that it was the Applicant [who killed the complainant] because everybody else had left; that Robinson confronted the Applicant at the Hampton Inn saying, "I told her that's what this is all about;" that Robinson had wanted to kill the Applicant; and, that Robinson would have saved the complainant's life if he had killed the Applicant (VII W.H. at 1189).

79. The Court finds unpersuasive the habeas claim that the prosecutors presented false testimony through Robinson during the Applicant's trial in light of Robinson's repeated testimony that neither prosecutor threatened him or promised him anything in exchange for his testimony, in light of the credible testimony of prosecutors Goodhart and Spence that neither colluded with Robinson to present false testimony, in light of much of Robinson's testimony being consistent with and corroborated by other witnesses, and in light of Robinson being unable to articulate or specify what testimony, if any, was false (XXII R.R. at 136) (Williams Trial VII R.R. at 113)(IV W.H. at 212,

2367)(V W.H. at 2201).

80. The Court finds the assertions contained in Robinson's 2014 affidavit suspect and unpersuasive given Robinson's admissions during the writ hearing that, while a statement in his habeas affidavit was not false, it was "stretched" and that he could not say whether he would have given habeas counsel an affidavit alleging coerced and false testimony if habeas counsel had questioned him about the issue in 2004 or 2005 (VII W.H. at 122, 1289).

Marvin Caston

81. During the Applicant's capital murder trial, Marvin Caston testified that prosecutor Goodhart had not promised him anything in exchange for Caston's testimony in the primary case, and Goodhart had not threatened Caston in any way since the day that they first met (XXII R.R. at 54).

82. The Court finds, based on the trial record, that Caston's trial testimony concerning the events leading up to the primary offense was consistent with and cumulative of the testimony presented by witnesses Josie Anderson and Zeb Comb who have not recanted their trial testimony.

83. The Court finds, based on the trial record, that trial counsel cross-examined Caston regarding the preciseness of his memory regarding the events preceding the primary offense, and Caston admitted that he did not remember dates and times, but he did remember what happened; accordingly, information regarding the accuracy of Caston's memory was presented at trial for the jury's consideration. (XXII R.R. at 112).

84. The Court finds that the Applicant fails to establish that the State coerced Caston into presenting false and misleading testimony during the Applicant's capital murder trial, based on Caston's trial testimony and his writ evidentiary hearing testimony that he tried to testify truthfully as best as he could during the Applicant's capital murder trial even though he was nervous and got a little confused about times and dates, but that the rest of his trial testimony was truthful (VI W.H. at 71, 80).

85. The Court finds unpersuasive the Applicant's habeas allegations in light of Caston's previous statements to prosecutor Reiss concerning the accuracy of his trial testimony and the details of the primary offense, including Caston's statements that he made only "small" mistakes while testifying during the Applicant's capital murder trial because he was nervous (VI W.H. at 79); that the Applicant said that she was going to cut the baby out herself (VI W.H. at 72, 74); that the Applicant showed Caston where the complainant lived (VI W.H. at 73); that the Applicant played a role in planning the drug lick (VI W.H. at 74-5); that the Applicant said that her husband was having an affair, and the Applicant was going to cut the baby from the bitch (VI W.H. at 74); that the Applicant said "I'm going to go get the chick, don't worry about the chick" (VI W.H. at

76-7); and, that the Applicant was going to give Caston, Gerald Anderson and Robinson drugs (VI W.H. at 76-7).

charlie mathis

86. During the pre-trial suppression hearing, Charlie Mathis, a twenty-eight year special agent for the DEA, testified for the State that he first became involved with the Applicant in the early 1990s when the Applicant worked as a DEA informant; that Mathis was the Applicant's primary case agent and he got to know the Applicant and her family over the years; that the Applicant called Mathis her "brother"; that the Applicant was not an active informant for the DEA at the time of the primary offense because she was on a 10-year deferred adjudication probation out of state court; that, on the afternoon of May 16, 2001, Mathis spoke to the Applicant regarding the primary offense at the request of Lt. Smith with HPD; and, that, after speaking with the Applicant, Mathis stayed at HPD for a long time but he refused HPD officers' offer to go along when they left homicide with the Applicant (IV R.R. at 88-97).

87. On cross-examination during the suppression hearing, Mathis testified that he implored the Applicant to tell police everything that she knew about the woman and the baby; that Mathis did not think that the Applicant was involved in the primary offense; and, that Mathis did not read the Applicant her *Miranda* rights (IV R.R. at 100-1).

88. During the Applicant's trial, Mathis testified that he had known the Applicant for eight to ten years; that the Applicant worked as an informant for Mathis and other law enforcement agencies; that DEA closed the Applicant out as an informant in 1995, and she was never reopened or paid by the DEA or HPD since 1994; and, that Mathis was the Applicant's main contact at the DEA. Mathis also testified regarding the nature of his relationship with the Applicant, including that she referred to Mathis as her "brother," and that Mathis did not socialize with the Applicant but was familiar with the Applicant's family and personal life (XXI R.R. at 91, 93-5, 97-9, 101). During the writ hearing, Mathis acknowledged that the State subpoenaed him to testify in the Applicant's trial. (VI W.H. at 72.)

89. Mathis testified, during the Applicant's trial, that the Applicant called him in 2000 and said that she was expecting a baby; that, in 2001, the Applicant told Mathis that she gave birth to a baby boy; that the Applicant again told him she was pregnant and expect to deliver shortly in January, 2001 but she and Jose Corona were having problems; that, at the Applicant's request, Mathis conducted a three-way call with the Applicant and Corona during which Mathis said it would be ridiculous for them to separate because of the Applicant's pregnancy; that Corona seemed confused by Mathis' comments and started laughing, saying "what baby"; and, that, before the primary offense, the

Applicant told Mathis that she was going to have a baby boy (XXI R.R. at 101, 103-5, 107).

90. Mathis testified that, on May 16, 2001, the Applicant called and asked Mathis to come talk to her because she had gone in with the police; that Lt. Smith with HPD also called Mathis and asked him to speak with the Applicant; that, when Mathis spoke to the Applicant at HPD, she told Mathis that she made a mistake by giving her cars to some people that she felt were involved in the kidnapping of the woman and baby, and she knew where the people were located; and, that Mathis stayed at HPD until the police left with the Applicant (XXI R.R. at 106-11).

91. On cross-examination, Mathis testified regarding the Applicant's work for DEA and his sentiment that he felt that the Applicant was incapable of committing the primary offense (XXI R.R. at 112, 114, and 119).

92. The Court finds that Mathis did not testify during the punishment phase of the Applicant's trial.

93. The Court finds that the Applicant fails to demonstrate that the State presented false and misleading evidence from witness Mathis at trial based on Mathis' writ hearing testimony that he testified truthfully and honestly during the Applicant's capital murder trial within the parameters of the questions posed to him during direct and cross-examination, and he was not going back on anything that he testified to during the Applicant's trial (VII W.H. at 21).

94. The Court finds unpersuasive Mathis' habeas assertions concerning alleged threats and/or coercion by the prosecution before or during trial based on his writ hearing testimony that he never thought to complain to a supervisor or anyone at HCDA that he was allegedly threatened or coerced by prosecutor Spence notwithstanding his lengthy law enforcement career (VII W.H. at 91).

95. The Court finds unpersuasive Mathis' habeas assertions concerning alleged threats and/or coercion by the prosecution based on his writ hearing testimony that he did not mention the prosecution's alleged threats in his 2005 habeas affidavit because he "didn't really even think about it" when habeas counsel interviewed him in 2005 (VII W.H. at 29).

96. The Court finds suspect and unpersuasive Mathis' assertions of threats/coercion by the prosecution based on the Applicant's lengthy delay in presenting such allegations, regardless of the fact that the Applicant was aware of Mathis as a potential witness and obtained his affidavit in 2005.

gerald anderson

97. The Court finds, based on the trial record, that Gerald Anderson did not testify during the Applicant's capital murder trial.

98. The Court finds, based on the record of Gerald Anderson's punishment hearing, that the same judge who presided over the Applicant's trial presided over the trial level proceedings in Anderson's case, and, in September, 2002, during jury selection on Anderson's capital murder case, Anderson decided to plead guilty to aggravated kidnapping and possession of a controlled substance, pursuant to a presentence investigation report and without the State's recommendation on punishment. *AX 57 at p. 7, 16-17, Anderson punishment hearing.*

99. On November 22, 2002, the trial court sentenced Anderson to consecutive life sentences. See *AX 57 at p. 20, Anderson's punishment hearing.*

100. Because Gerald Anderson did not testify during the Applicant's capital murder trial, the Court finds that the Applicant fails to demonstrate that the State presented false and misleading testimony from Anderson during the Applicant's capital murder trial.

101. The Court finds unpersuasive Anderson's habeas assertions that he was threatened and/or coerced by prosecutor Spence in light of Anderson's writ hearing testimony. that his attorney Brian Coyne was present when he spoke to the prosecution regarding the primary offense, and he did not complain to Coyne about any alleged threats until his testimony at his own punishment hearing. (VI W.H. at 37-9); *AX 57 at p. 20, Anderson's punishment hearing.*

GROUND C: BRADY

102. The State was operating under a misunderstanding of *Brady* at the time of the Carty trial.

103. At the time of the Carty trial, whether impeachment evidence constituted *Brady* evidence was determined on a "casebycase" basis and was resolved with a "judgment call" based on "gut instinct." (IV W.H. at 153-157.)

104. At the time of the Carty trial, the Harris County District Attorney's Office did not believe that impeachment or exculpatory evidence needed to be disclosed if the prosecutor did not find the testimony credible. (IV W.H. at 156, lines 26 (regarding whether to disclose prior inconsistent statements by a witness) ("*Q. So, in your mind in that instance there is a judgment call on your part about whether they're telling you the truth? A. In 2002, that was a judgment call. Today, it's not even a judgment call. It's automatic notification.*")

105. Spence herself decided the credibility and materiality of evidence. (V W.H. at 33, lines 12 (acknowledging that she would not turn over exculpatory evidence she did not feel was true: *"That's kind of why I'm a lawyer, is to make those judgments."*)

106. The State claims to have had an "open file" in the Carty case, available to defense counsel for review. (IV W.H. at 121.)

107. Spence did not include what the State considered work product in the "open file." (V W.H. at 23, 46.)

108. Prior to trial, the only statements (written, audio-taped or videotaped) the State provided to defense counsel were the statements of Carty. (VII W.H. pp. 149150.)

109. Other than the statements of Carty, the State did not disclose the contents or substance of any statements in its possession prior to the Carty trial. (VII W.H. pp. 149150.)

110. The State produced one witness statement each of Robinson, Comb, Caston, Josie Anderson, and Sherry Bancroft following or during each witness's direct examination. (XXI R.R., p. 60; XX11 R.R. Vol. 22, pp. 5, 25, 104;XXIII R.R., pp. 1314; XII WH.H., p. 150, line 17 p. 151, line 9)

111. The State did not produce numerous statements of individuals to defense counsel until required pursuant to PIA requests in connection with Carty's appeal: (VI W.H. pp. 109118; VII W.H., pp. 149151.) Most of those individuals did not testify at trial.

112. None of Robinson's statements were contained in the "open file." (VI W.H. p. 128, lines 16-20; *see also VI W.H.*, p. 134, line 23 - p. 135, line 2

113. None of Robinson's statements (or the content therein) were produced to defense counsel prior to the Carty trial. (VI W.H. at 153-154; VII W.H. pp. 151, 158, 161-163. XXIII R.R., p. 13; VII W.H. p. 149, line 17 - p. 150, line 16

114. The May 17, 2001 videotaped statement of Robinson was produced to defense counsel during the Carty trial following the direct examination of Robinson. (XXIII R.R. at 13-14.)

115. The only Robinson tape provided to defense counsel at any point was the May 17, 2001 videotape. *(XII W.R.at* 151, lines 10-25

116. Robinson's May 17, 2001 audio-taped statement was not provided to defense counsel prior to or during trial. (VI W.H. at p. 153, lines 922

117. The State also had a transcript of Robinson's May 17, 2001 audiotape that had been provided by the Houston Police Department that was not produced. (V W.H. at 100.)

118. Robinson's May 17, 2001 audio-taped statement (and its trnascription)contained possible exculpatory and impeachment evidence that was not contained in the video taped statement that was produced to defense counsel at the time of trial.

119. Robinson's August 16, 2001 audio-taped statement was not produced to defense counsel until September 2015, in response to PIA requests served during the appellate process. (VIII W.H. at 2021.)

120. Robinson's August 16, 2001 audio-taped statement is inaudible.

121. The State should have known that each of the prior statements of Robinson could be used to impeach him at trial.

122. The State failed to disclose that Robinson had previously provided two consistent statements that conflicted with and were inconsistent with what they represented to Carty's counsel would be Robinson's trial testimony (and what was, in fact, Robinson's trial testimony). (VI W.H. at 152154; VII W.H. at 149150.)

123. Carty's defense counsel was surprised by the contents of Robinson's videotaped statement that was produced during trial. (VI W.H. at 146, lines 1421

124. Carty's counsel was unaware that Robinson had previously provided two consistent statements that conflicted with and were inconsistent with what the State had represented would be Robinson's trial testimony (and what was, in fact, Robinson's trial testimony)

125. The State met with Caston on multiple occasions prior to the Carty trial. (VI W.H. at 56.)

126. In meetings with Spence and Goodhart, Caston was promised that he would not get prison time if Carty received the death penalty. (W.H. AX 59, Caston Aff. ¶ 8 ; Writ Ex. 9, Rosalind Caston Aff. ¶ 4

127. There is no evidence that the State disclosed to defense counsel the details of a deal with Marvin Caston. . (VI W.H. at 64; W.H. AX 59, Caston Aff. ¶ 6.)

128. Had the State disclosed the informaiton to Caston, defense counsel would have been able to impeach Comb with that information.

129. In his written statement, G. Anderson stated that Robinson brought Rodriguez and baby out and that Carty waited in the car. (W.H. AX 45.)

130. Had the G. Anderson statement been produced to defense counsel, they would have been able to impeach the testimony of Robinson either through G. Anderson or the police officers who took the statement.

131. The State failed to disclose oral statements from Mathis, which among other things include that Mathis told Spence:

a. That he did not believe Carty was a danger to society; (W.H. AX 77, Mathis Aff. ¶ 27.)

b. That he believed it would have been very difficult for Carty to persuade the men to do something as risky as stealing a lady and a baby; (Hearing Tr. AX 77, Mathis Aff. ¶ 2829.)

c. That Carty's mental issues regarding pregnancies explained her strange statements about babies; and (W.H. AX 77, Mathis Aff. ¶ 27.)

d.That Carty was not a violent person. *(W.H. AX 77, Mathis Aff. ¶ 30.)*

132. Spence advised the investigator for the defense that Mathis did not want to meet with them. (W.H. AX 76; W.H. AX 77, Mathis Aff. ¶ 18;

133. Had the State disclosed the information provided by Mathis to the prosecution regarding his knowledge of and opinion of Carty, the defense could have subpoenaed him to testify in the punishment phase of the trial.. (VI W.H. at 140141.)

134. Mathis knew Windi Akins and defense counsel Akins had a conversation with Mathis while the jury was deliberating on the guilt/innocence of Applicant. Akins told Mathis that the defense on the punishment phase really needed his help. Mathis told Akins that there was nothing he could do to help her.. (W.H. V-7 Pg 156-157; VII W.H. at 25..)

CONCLUSIONS OF LAW

No. 1. The credible evidence presented before this Court fails to show that the State knowingly used perjured testimony or allowed untrue testimony to go uncorrected at trial and fails to meet the standards of proof required under Giglio vs. U.S. 405 U.S. 150 (1972), and Napue vs. Illinois 360 U.S. 264 (1959), to show a denial of Applicant's rights to due process and due course of law.

No. 2. The credible evidence presented before the Court fails to show that the State presented false and misleading testimony at trial and fails to meet the standards of proof required under Ex Parte Chabot, 300 S.W.3d 762 (Texas Crim. Appeals 2009) and Ex Parte Chavez 371 S.W.3d 200 to show a denial of Appellant's rights to due process and due course of law.

No. 3. The Court finds that the State withheld or failed to disclose witnesses' statements and information that were exculpatory or could be used for impeachment purposes in violation of the obligations placed upon the State pursuant to Brady v. Maryland, 373, U.S. 83 (1963) and its progeny.

No. 4. In considering the Brady violations cumulatively, in consideration of the evidence, in light of the entire body of evidence presented, including the trial testimony, the Court finds there is no reasonable likelihood it could have affected judgments returned by the jury and does not meet the Brady materiality standard.

No. 5. The Applicant's writ of habeas corpus asserts that her claims meet the requirements of Section 5(a)(2) of Article 11.071 of the Texas Code of Criminal Procedure. The Court, based upon the credible evidence presented at this hearing and the trial testimony in the case, finds that Applicant fails to meet the requirements of Section 5(a)(2) of Article 11.071 of the Texas Code of Criminal Procedure.

Subsequent Habeas Ground

Because the Applicant's claim concerning an alleged deal between the State and Zeb Comb was not contained in the Applicant's second habeas petition, Cause No. 877592B, nor was the claim included in the grounds for relief that the Court of Criminal Appeals ordered to be resolved in its February 25th, 2015 remand order, the Applicant's claim concerning an alleged deal constitutes a subsequent application for writ of habeas corpus pursuant to Tex. Code Crim. Proc. Art. 11.071, and, as such, must be sent to the Court of Criminal Appeals to determine whether such claim meets the Section 5 exception requirements of subsequent claims which can be considered by the Court.

RECOMMENDATION

This Court recommends to the Court of Criminal Appeals that the claims asserted by the Applicant in her Subsequent Writ of Habeas Corpus be DENIED.

Signed this the 1st of September, 2016.

David Garner
Acting Judge
177th District Court
Harris County, Texas

97413 P2

Cause No. 877592-B

EX PARTE	§	IN THE 177TH DISTRICT COURT
	§	OF
LINDA CARTY, APPLICANT	§	HARRIS COUNTY, TEXAS

ORDER

THE CLERK IS HEREBY **ORDERED** to prepare a transcript of all papers in cause no. 877592-B and transmit same to the Court of Criminal Appeals, as provided by Article 11.071 of the Texas Code of Criminal Procedure. The transcript shall include certified copies of the following documents:

1. all of the applicant's pleadings filed in cause number 877592-B, including her application for writ of habeas corpus, affidavits and/or exhibits;

2. all of the State's pleadings filed in cause number 877592-B, including the State's Original Answer;

3. this Court's May 5, 2016 order designating issues in cause no. 877592-B;

4. this court's findings of fact, conclusions of law and order in cause no. 877592-B;

5. the State's Proposed Findings of Fact and Conclusions of Law submitted in cause no. 877592-B;

6. the applicant's Proposed Findings of Fact and Conclusions of Law, Brief on Legal Standards Applicable to Her Claims, and Brief in Support of Proposed Findings of Fact and Conclusions of Law submitted in cause no. 877592-B;

7. the court reporter's record of the writ evidentiary hearing conducted on June 27 through July 1 and July 5, 2016, in cause no. 877592-B, including the exhibits;

8. the court reporter's record of the arguments of counsel in cause no. 877592-B conducted on August 29, 2016;

9. the court reporter's record of the May 5, 2016 setting in cause no. 877592-B;

10. the court reporter's record of the June 6, 2016 setting in cause no. 877592-B;

11. the trial transcript in cause no. 904462, Carliss Williams v. State of Texas, in the 177th District Court of Harris County, Texas; and

11. the indictment, judgment, sentence, docket sheet, trial transcript, and appellate record in cause no. 877592, unless they have been previously forwarded to the Court of Criminal Appeals.

THE CLERK IS FURTHER **ORDERED** to send a copy of the court's findings of fact and conclusions of law, including its order, to the applicant's counsel: Michael S. Goldberg, Kevin M. Jordan and Katherine A. Brooker; Baker Botts L.L.P.; 910 Louisiana Street; Houston, Texas 77002 and to the State: Lynn Hardaway and Josh Reiss; Harris County District Attorney's Office; 1201 Franklin; Houston, Texas 77002-1901.

SIGNED this 1st day of September, 2016.

David Garner
Acting ~~Presiding~~ Judge
177th District Court
Harris County, Texas

CHRIS DANIEL
HARRIS COUNTY DISTRICT CLERK

September 14, 2016

DEVON ANDERSON
DISTRICT ATTORNEY
HARRIS COUNTY, TX

To Whom It May Concern:

Pursuant to Article 11.07 of the Texas Code of Criminal Procedure, please find enclosed copies of the documents indicated below concerning the Post Conviction Writ filed in cause number 877592-B in the 177th District Court.

☐ State's Original Answer Filed ,

☐ Affidavit ,

☐ Court Order Dated ,

☐ Respondent's Proposed Order Designating Issues and Order For Filing Affidavit.

☐ Respondent's Proposed Findings of Fact and Order ,

☒ Other

Sincerely,

Brenda McNeil, Deputy
Criminal Post Trial

Enclosure(s) – FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

CHRIS DANIEL
HARRIS COUNTY DISTRICT CLERK

September 14, 2016

MICHAEL S. GOLDBERG
ATTORNEY FOR APPLICANT
910 LOUISIANA STREET
HOUSTON, TX 77002

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CHRIS DANIEL
HARRIS COUNTY DISTRICT CLERK

September 14, 2016

KEVIN M. JORDAN
ATTORNEY FOR APPLICANT
910 LOUISIANA STREET
HOUSTON, TX 77002

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CHRIS DANIEL
HARRIS COUNTY DISTRICT CLERK

September 14, 2016

KATHERINE A. BROOKER
ATTORNEY FOR APPLICANT
910 LOUISIANA STREET
HOUSTON, TX 77002

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Criminal Post Trial

Enclosure(s) – FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.
Witness my official hand and seal of office this October 12, 2016

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Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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