WRIT CAUSE NO. WR-94,707-01
TRIAL COURT CAUSE NO. D-1-DC-91-5672-A

EX PARTE	§	**IN THE 331st DISTRICT COURT**
	§	
ALLEN ANDRE CAUSEY	§	**OF**
	§	
	§	**TRAVIS COUNTY, TEXAS**

ORDER ON APPLICANT'S MOTION TO WAIVE GROUND FIVE OF AMENDED 11.07 APPLICATION

Applicant's Motion to waive Ground Five of his Amended 11.07 Application is GRANTED.

SIGNED, ORDERED and DECREED on the 31st day of July, 2024.

Filed In The District Court
of Travis County, Texas
on 7/31/24
at 12:20 M.
Velva L. Price, District Clerk

Judge Chantal Eldridge
Presiding Judge, 331st District Court
Travis County, Texas

Filed In The District Court
of Travis County, Texas
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	§	**DISTRICT COURT OF**
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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION ON GROUND ONE

On this the 31st day of July, 2024, came on to be considered Ground One of the Application for Writ of Habeas Corpus in the above cause. Following due consideration of the trial and habeas filings of both parties, the trial and habeas exhibits entered by both parties, the stipulations of the parties, the trial record (including the Clerk's Record, twelve volumes of the original Reporter's Record, and two supplemental volumes of Reporter's Record), and the live testimony presented to the court on November 27, 2023, January 5, 2024, and March 28 and 29, 2024, the Court makes the following findings of fact and conclusions of law:

1. The active pleading before the Court is Applicant's First Amended Application for Writ of Habeas Corpus, filed February 23, 2023.

2. The Court hereby incorporates by reference the previous findings of fact and conclusions of law entered on Grounds Two, Three, and Four.

3. Applicant has waived Ground Five.

4. On his remaining ground, Applicant raises an actual innocence claim under *Herrera v. Collins*, 506 U.S. 390 (1993) and *Ex parte Elizondo*, 947 S.W.2d 202, 209 (Tex. Crim. App. 1996).

5. To establish he is entitled to relief, Applicant must show that 1) newly discovered evidence; 2) constitutes affirmative evidence of innocence; and 3) by clear and convincing evidence, no rational juror would have convicted him in light of the newly discovered evidence. *Ex parte Franklin*, 72 S.W.3d 671, 677 (Tex. Crim. App. 2002).

6. Newly discovered evidence clearly inculpates Kevin Harris in the murder of Anita Byington.

7. The parties have established beyond a reasonable doubt that Kevin Harris was, at minimum, a party to the murder of Anita Byington.

8. However, the parties have not established by clear and convincing evidence that Kevin Harris acted alone in the murder of Anita Byington.

9. Forensic pathology indicated Byington was beaten with both a concrete rain diverter and an item that appeared to be consistent with a belt buckle, suggesting multiple assailants.

10. The parties have established that one section of Applicant's confession was false—the portion where Applicant claimed to have moved Byington's car.

11. The parties have not established that Applicant's confession, in total, was false.

12. While the case against Applicant has significantly weakened over the course of habeas litigation, and disregarding his questionable confession, some inculpatory evidence against Applicant remains in the record.

13. Specifically, a resident of the apartment complex where Byington's body was found informed law enforcement investigators that they heard a woman's voice screaming for help, followed by two unintelligible male voices. State's H. Exh. 88 at 2.

14. Applicant acted suspiciously in the hours following the murder, including repeatedly driving slowly by the crime scene after law enforcement had responded, repeatedly "looking at the place where the body had been found" as he was driving by. R.R. 10:1148, 1151, 1155.

15. Applicant parked in the apartment complex lot, approached a crowd of neighbors, and, unprompted, volunteered: "I didn't kill her." R.R. 10:1152.

16. Applicant claimed to the group of neighbors that he found the body and called the police. R.R. 10:1152.

17. Another resident of the apartment complex was the initial 911 caller who found and reported Byington's body. R.R. 10:1152.

18. A neighbor described Applicant as acting nervous and strange when he was stopped by the group of neighbors. R.R. 10:1155.

19. At booking, Applicant was "very upset" and stated: "I was with him, but I didn't kill nobody." State's H. Exh. 44.

20. While the newly discovered evidence inculpates Kevin Harris, it does not constitute affirmative evidence of Applicant's innocence.

21. Applicant has not established by clear and convincing evidence that no rational juror would have convicted him in light of the newly discovered evidence.

22. Applicant has not met his burden of proof to establish actual innocence under *Herrera* and *Elizondo*.

23. Relief on Ground One should be denied.

On the basis of the above findings and conclusions, the Court hereby recommends that relief be **granted in part** (consistent with the Court's prior findings and recommendations on Grounds Two, Three, and Four) and **denied in part.**

The Court hereby ORDERS that the District Clerk of Travis County:

1. Prepare and transmit the record herein to the Court of Criminal Appeals.

2. Furnish a copy of the Court's Findings of Fact, Conclusions of Law, Recommendation, and Order to Applicant Allen Andre Causey, to Applicant's attorneys, and to the Travis County District Attorney's Office.

SIGNED AND ENTERED this 7/31/24.

Hon. Chantal Eldridge, Judge Presiding

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	§	**TRAVIS COUNTY, TEXAS**

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON GROUND THREE

On February 28, 2023, Applicant, Allen Andre Causey, through his attorneys Jessica S. Freud, Chase Baumgartner, and Mike Ware filed a First Amended Application for Writ of Habeas Corpus pursuant to Article 11.07 of the Texas Code of Criminal Procedure. After reviewing the First Amended Application for Writ of Habeas Corpus, and reviewing these first amended agreed proposed Findings of Fact and Conclusions of Law on Ground Three, jointly stipulated to by Applicant and the State, the Court ADOPTS and ENTERS the following Findings of Fact and Conclusions of Law as presented to the Court:

I) Procedural History of Case

This is Applicant's original application for writ of habeas corpus.[1]

Applicant, Allen Andre Causey, was convicted of the offense of murder on July 21, 1992, in the 331st District Court of Travis County, the Honorable Bob Perkins presiding. The jury assessed punishment at 50 years, rejecting the State's request for a life sentence. CR 136; 11 RR 23. Applicant's direct appeal was heard and denied by the Third Court of Appeals, sitting in Austin, Texas, on September 14, 1994. *Causey v. State*, No. 3-92-378 (Tex. App.—Austin, Sept. 14, 1994, pet. ref'd). The Court of Criminal Appeals refused his petition for discretionary review on January 25, 1995. The mandate was issued on March 13, 1995.

After serving 30 years of a 50-year sentence, Applicant was released on parole in October 2022. He remains confined by his conviction for purposes of Texas Code of Criminal Procedural Article 11.07.

II) Grounds Raised

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[1] To the extent laches could apply or the State could assert laches, the State waives any claim of laches in the interest of justice. *Ex parte Simmons*, No. WR-16,370-02, 2015 WL 6653232, at *5 (Tex. Crim. App. Oct. 28, 2015) (not designated for publication) (noting the State "graciously" urged the Court to grant Applicant's requested relief despite a twenty-two-year delay as the State's ability to respond was unimpaired).

On February 28, 2023, Applicant filed a First Amended Application for Writ of Habeas Corpus, raising five grounds of relief. Applicable here is Ground Three: Applicant's claim that the State sponsored Austin Police Department officers' (namely, Senior Sergeant Hector Polanco, Sergeant Michael Huckabay, and Sergeant Ruben Fuentes) materially false testimony in violation of Applicant's right of due process under *Ex parte Chabot*, 300 S.W.3d. 768 (Tex. Crim. App. 2009) and *Napue v. Illinois*, 360 U.S. 264 (1959).

On February 28, 2023, the Court entered an amended Order Designating Issues, designating that all five grounds in the amended application contained controverted, previously unresolved facts material to the legality of Applicant's confinement. Applicant's Ground Three claim, was designated as follows:

> The knowing or unknowing sponsorship of material false law enforcement testimony in violation of the Fourteenth Amendment and *Ex parte Chabot*, 300 S.W.3d 768 (Tex. Crim. App. 2009).

The Court RECOMMENDS RELIEF BE GRANTED on GROUND THREE and FINDS and CONCLUDES as follows:

III) Findings of Fact

The Court takes JUDICIAL NOTICE of the entire trial reporter's record (Volumes 1 through 12); two Supplemental Volumes dated May 29, 1992,

and June 30, 1992, the Clerk's Record in Cause Numbers 91-5672, and related D-1-DC-91-915672-A, containing both the trial filings and habeas filings; the habeas reporter's record and exhibit volume for hearings held on November 27, 2023, January 5, 2024, and March 28 and 29, 2024, including Parties Exhibit 1[2], all of the Parties' stipulations and briefing, and exhibits on the Court's Ground Two Findings of Facts and Conclusions of Law, and FINDS as follows:

a) Relevant Background Facts

1) On August 11, 1991, 21-year-old Anita Byington's badly beaten body was found on the ground at the Springcreek Apartments at 6407 Springdale Road in east Austin, Travis County, Texas. 6 RR 61–63, 80, 121. The State theorized she was bludgeoned with the 40-pound concrete rain diverter found next to her body. 6 RR 133–35; 7 RR 333; Parties' Joint Stip. at ¶ 4 (Mar. 24, 2023).

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[2] 1 HRR 4 (Nov. 27, 2023) (flash drive with exhibits from Brady Ground 4 Findings). These exhibits will be cited as Parties Ex. 1.X with X being the document's file number.

2) The night prior, Byington had been out at a Sixth Street bar with a group of five other people. Byington left the bar first and went to her car, and one member of the group, Kevin Harris, followed behind shortly after.

The group's plan was to meet back at one of their apartments, but Harris and Byington never arrived. 6 RR 23-24, 50, 87. The last time anyone saw Byington alive, she was with Harris in her gold Honda Accord in the parking lot near the bar. 6 RR 21-23, 49-52, 86-87, 92, 98; 7 RR 339. She was found bludgeoned to death the next morning, and Harris showed up to work with an injured arm. 6 RR 28-29, 51, 133.

3) Austin Police Department ("APD") Homicide Unit ("the Unit") officers Sergeants Polanco, Huckabay, Fuentes, and Bruce Boardman handled the investigation. 6 RR 156, 158, 160–61; 7 RR 331, 375; 10 RR 1121-22.

4) On August 12, 1991, the focus of the investigation turned to Applicant. He was taken in for questioning after Springcreek Apartment residents reported that the driver of a maroon vehicle rubbernecked past the scene of the crime—where the police and emergency personnel were working—and that it seemed suspicious. Officers located Applicant using the license plate of the car. 7 RR 344–49; 10 RR 1149-57.

5) After an approximately seven-hour interrogation, none of which was video or audio recorded, Applicant signed a police-typed written statement (hereinafter, "the Statement") just after 3 a.m. on August 13, 1991, which purported to admit to committing the murder with his

brother-in-law, Bobby Harrell. The Statement said that the murder occurred during a drug deal gone wrong, at which time Harrell and the victim were attempting to trade sex for drugs before the victim fled with the drugs and Applicant held her down while Harrell beat her to death with the concrete rain diverter. App. Ex. 1; 7 RR 442-44. The Statement further said that Applicant and Harrell then drove the victim's car to "1157 Salina," a nearby[2] apartment complex in east Austin where the police had already recovered the vehicle. App. Ex. 1; 7 RR 541-42.

6) Applicant and Harrell maintained their innocence from arrest to present day and consistently said police fabricated the inculpatory parts of the Statement and that Applicant signed it, despite not reading it due to his limited ability to read and exhaustion, because the officers told him that

the Statement said he had been read his rights and was not beaten. State H. Ex. 44[3]; 3 RR 59-60; 9 RR 929; Hr'g Tr. at 32, *State v. Bobby Harrell* (Aug.

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[2] The Marshall Apartments located at 1157 Salina Street is an apartment complex in east Austin "about four and a half miles southwest" of Springcreek Apartments, where Byington's body was discovered. 1 HRR 114-15 (Mar. 28, 2024).

[3] "State H. Exs." refers to exhibits offered by the State and admitted during Applicant's habeas evidentiary hearings.

22–23, 1991) (No. 91-3810).

7) Evidence connecting Applicant to this crime was the Statement, and a central issue at trial was whose version of the interrogation was truthful, APD's or Applicant's. 7 RR 444, 556-57 (Huckabay agreeing with the prosecutor that the jury will "just have to take [his] word for it since [he] didn't tape [the interrogation]"); 10 RR 1257 (Applicant's counsel closing argument that APD deliberately did not record the interrogation because when "you don't make a record you can't be impeached on it. Nobody can lay a glove on you. It's your word against their's [sic]"); Parties' Joint Stip. ¶ 4 (Mar. 24, 2023).[4]

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[4] In 2017, the Texas Legislature, acting on recommendations of the Tim Cole Commission, enacted article 2.23 of the Texas Code of Criminal Procedure requiring electronic recording of murder interrogations, beginning "at or before the time the person being interrogated enters the area of the place of detention in which the custodial interrogation will take place or received a warning described by Section 2(a), Article 38.22, whichever is earlier, and continues until the time the interrogation ceases."

b) Officers' Trial Testimony Relevant to this Claim

Sergeant Michael Huckabay

8) Michael Huckabay was an investigator in the homicide unit for four years at the time of his trial testimony and had been employed by the APD for 16 years. 7 RR 327.

9) Relevant here, Huckabay testified about (1) the interview of Harris that occurred with counsel present, and (2) the interrogation of Applicant. 7 RR 339-42, 352-56.

10) As to Harris, Huckabay testified that he determined that Harris's involvement was limited to taking Byington to east Austin and that he then "boogied" when things got bad. Huckabay testified that this information was "later confirmed" by "some other" information, which turned out to be the Statement. 7 RR 342, 365.

11) Huckabay testified that Applicant admitted his involvement and "basically rambled on about the story." 7 RR 506-08.

12) Huckabay testified that, after Fuentes typed the Statement, Fuentes asked Huckabay if the typed Statement "was basically what [Applicant] had told [Huckabay]." 7 RR 362.

13) As to Applicant's interrogation, Huckabay denied that any investigator told Applicant what to say or that any investigator gave information to Applicant that was "peculiar" or specific to the case. 7 RR 364-65.

14) Huckabay denied that Applicant "was told or would have known that Anita Byington's car had been recovered at the Marshall Apartments on Salina." 7 RR 567.

15) Huckabay denied that anything improper occurred regarding either supplying information to Applicant or forcing him to say something. 7 RR 610.

16) Huckabay denied using tactics such as threatening Applicant, specifically "[he didn't] recall ever doing anything other than. . . explaining to [Applicant] the nature of the incident and that [Huckabay] felt like he was involved, that. . . {Applicant] needed to go ahead and tell us about it." 7 RR 366, 531.

17) Huckabay testified that he would not willingly let Applicant sign the Statement if it "were false in any regard." 7 RR 526[5].

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[5] Q. Would you willingly have let him sign a false statement? A. No, I would not.

Senior Sergeant Hector Polanco

18) Hector Polanco had been employed with APD since November 3, 1976. He was suspended with pay for 30 days, beginning on September 2, 1992, just 43 days after the conclusion of Applicant's trial. State H. Ex. 87. According to his Disciplinary Suspension Memo, Polanco's civil-service suspension was for committing an act of aggravated perjury in connection with the murder to which John Salazar falsely confessed[7], for bringing discredit upon the Department due to acts of moral turpitude, and for failing to timely report incidents. State H. Ex. 87. Polanco's first weekend as supervisor of the Unit was August 11, 1991. 10 RR 1023. Polanco held that position for only "three or four months." 10 RR 1022.

19) Polanco testified that he was with Applicant "long enough to hear [Applicant] break down and cry and say that Bobby Harrell had killed the victim in this case." 10 RR 1066. Polanco testified that Statement was made "pretty quick," which he attributed to "[p]retty good investigative technique[s]." 10 RR 1066-67.

Q. If this statement were false in any regard would you let him sign it?
A. No, I would not.

7 Parties Exs. 1.7, 1.15 (Salazar interviews); Ex 1.41 (*State v. Jose Flores*, No .912,568 (299th District Court, Nov. 23-30, 1992)).

20) Polanco testified not only that he never threatened Applicant with the possibility of lethal injection, but also that he had never used that tactic during any interrogation. 10 RR 1069, 1104-05 ("I never used that. . . I never worked with anybody that I could even start to imagine that they would do that. I have worked with nothing but outstanding investigators in my career there").

21) Polanco denied ever threatening to arrange for Applicant to be sexually assaulted or have somebody "turn him out" in custody. 10 RR 1102. He specifically denied knowing the meaning of the phrase "turn you out" in such a context. 10 RR 1102, 1106 ("what is turned out? . . . I don't know anybody that would use that line of questioning").

22) Polanco denied that he or Huckabay, to his recollection, ever threatened Applicant with "life in prison." 10 RR 1101-02.

23) Polanco testified that in "over 16 years of service to this community, I've never seen a coerced confession or, as you put it, I never seen it." 10 RR 1039.

24) Polanco testified that "I've told the truth every time I've been on the stand." 10 RR 1041.

25) In response to a question about whether an accusation of aggravated perjury would give a law enforcement officer motive to testify falsely, Polanco testified that he had "never known anyone to lie." 10 RR 1108-09.

26) He further denied that "any Austin police officer [would] lie to protect another Austin police officer." 10 RR 1110.

Sergeant Ruben Fuentes

27) Ruben Fuentes was a sergeant investigator with APD and had been employed with that agency for over 12 years, two of which were spent in the Unit. 3 RR 85; 7 RR 374-75.

28) Fuentes testified that Applicant relayed the narrative in his own words as he typed the Statement. 7 RR 442 ("I typed out what he told me happened and that was basically it").

29) Fuentes denied that he or any investigator supplied Applicant with information or put words in Applicant's mouth regarding the Statement. 7 RR 379[8].

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8 Q: Did he have any problems relating events to you?
A: No.
Q: Was there anyone telling him what to say?
A: No, sir.
Q: Did you ever tell him what to say?

A: No, sir.

30) Fuentes testified that when the Statement was complete, he had Huckabay look over the Statement to check if there was anything "vital" or "significant" missing. 7 RR 378.

31) Fuentes read the entirety of the Statement into evidence, most significantly how Applicant moved Byington's vehicle with Harrell and how Harrell had wiped down the vehicle with a rag. 7 RR 384:3–15; *see also* 7 RR 380-84; 12 RR 31-33.

c) Newly discovered evidence proves officers' trial testimony is false.

32) This Court FINDS that Officer Polanco's trial testimony was false based on the following newly discovered evidence: (1) the Homicide Review Task Force records, including internal affairs records, witness interview transcripts, and reports and memoranda regarding six proven false confessions obtained by the Unit during the Polanco Era (Alex Briones, Tony Bell, John Salazar, Billy Gene Davis, Bruce Bowser, and Richard Osaze-Ediae cases) (Parties Ex. 1); (2) the testimony of Chris Ochoa regarding his false confession, marking the seventh false confession

Q: Did you ever, to use the expression, put words in his mouth in any way? A. No, sir.

obtained by the Unit during the Polanco Era (1 HRR 69-123 (Nov. 27, 2023); App. Supp. Ex. 52); (3) the testimony of Melissa Baker and Regina Echelmeyer (1 HRR 25-65 (Jan. 5, 2024)); (4) testimony of Joe Martinez (1 HRR 33-87 (Mar. 28, 2024)); and (5) the testimony of Dr. Richard Leo (1 HRR 124-216 (Nov. 27, 2023)).

Homicide Review Task Force

33) Parties Ex. 1 reveals the following were common practices within the Unit during "the Polanco Era,"[6] and included:

a. Coercive threats and intimidation, including but not limited to lethal injection, lifelong incarceration, and in-custody sexual assault (*see e.g.* Parties Ex. 1.1 at 13, 20, 23; Ex. 1.7 at 3-4, 34; Ex. 1.9 at 8; Ex. 1.33 at 4);

b. Supplying and scripting non-public details to give false

[6] For the purposes of this writ and with the benefit of hindsight, the "Polanco Era" began with the taking of the proven false confession of Chris Ochoa in November of 1988 and ended when Polanco was transferred out of the Unit following his interrogation of Briones in March of 1992. 1 HRR 75-77, 82-83 (Mar. 28, 2024); App. Supp. Ex. 52.

statements verisimilitude (*see e.g.* Parties Ex. 1.4 at 30-33; Ex. 1.7 at 14; Ex. 1.33 at 3);

c. Polanco's interrogation of suspects without other members of the Unit present to "prepare"[7] and "break"[8] suspects; and

d. Intentionally or strategically failing to audio or video record suspects' oral statements (*see e.g.* Parties Ex. 1.2 at 38-39; Ex. 1.3 at 4-5; Ex. 1.7 at 5).

34) During an Internal Affairs interview on March 30, 1992, three months before Applicant's trial, Huckabay confirmed the use of coercive tactics by Polanco, including physical violence ("I've never laid a hand on a prisoner. [Polanco] is different in the fact that I've seen him go there,") and coercive threats ("I mean you can mess with me all day but when you've got me and then you start telling me that if I don't do this then

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[7] Salazar: "[Polanco] told me that they refer to him as a *el diablo* ..... he told me that ah, he would talking to me and ah, trying to see if I was *prepared* to make a statement." Parties Ex. 1.7 at 5 (emphasis added).

[8] "Generally when [Polanco] interviews somebody he's in there by himself and when the *break* comes he's there by himself and then somebody else is instructed to go in and do the confession" Parties Ex. 1.1 at 22 (emphasis added).

my little boy is going to be harmed or my mother is going to be harmed, to me, that's not a very good tactic,"), as well as admitting that he used similar, albeit less obviously coercive, tactics, including invading someone's personal space ("I've got up in their face"), yelling and screaming ("I've yelled and I've screamed"), making displays of anger ("I've slammed my hand down on the table and I've kicked a trash can over"). Parties Ex. 1.1. at 20.

Testimony of Melissa Baker & Regina Echelmeyer.

35) The Court FINDS Baker's testimony RELEVANT, CREDIBLE, RELIABLE. 1 HRR 39-44, 48, 59-60 (Jan. 5, 2024).

36) The Court FINDS Echelmeyer's corroborating testimony RELEVANT, CREDIBLE, and RELIABLE.

37) Baker testified she was with Echelmeyer at Echelmeyer's east Austin home one night, in August 1991, when she was contacted by Harris, her then on-again-off-again boyfriend, who asked her to help him move Byington's car to a nearby apartment complex. Echelmeyer recalled the exact date—overnight from August 10 to the morning hours of August 11, 1991—because August 11, 1991, was her 18th birthday and her first birthday after the birth of her first child, making

it particularly memorable. Baker identified that the vehicle she helped move was Byington's gold Honda Accord. She recalled details of the location to where it was moved (e.g. near a dumpster and a purple-colored vehicle).

App. Exs. 20, 21, 23, 24; 1 HRR 25-65 (Jan. 5, 2024).

38) The Court FINDS Melissa Baker and corroborating witness Regina Echelmeyer proves the falsity of a significant portion of the Statement (i.e. the portion of how and to where Byington's vehicle was moved as described on page 3, paragraph 2).

39) Baker's testimony is further CONSISTENT with the handwritten note found in the District Attorney's Office file from Harris's 1999/2000 felony case, which indicated she was interviewed by a member of the district attorney's office regarding the night of Byington's murder and that she disclosed details of her encounter with Harris. App. Exs. 7, 20, 23, 24. Baker confirmed her work phone number and place of employment at the time were written on the note. 1 HRR 46 (Jan. 5, 2024); App. Ex. 7.

40) Baker's testimony is also consistent with the photos of where the car was recovered. State H. Exs. 25, 32; App. Ex. 21; 1 HRR 114-15 (Mar. 28,