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1 THE COURT: For the record, resuming in Writ
2 No. CR96-088C, Trial Court No. 96-088. Is the applicant ready
3 to proceed?

4 MR. LASSITER: Yes, Your Honor.

5 THE COURT: And State ready to proceed?

6 MR. WARREN: Yes, Your Honor.

7 THE COURT: All right. I think when we recessed
8 the last time, the Court had ordered the State's file to be
9 provided to Judge Haverkamp. I know she wanted to testify, but
10 I had told her we were going to wait for that until she had an
11 opportunity to review the Court's -- or the State's file. I
12 don't know if she's here. I don't know what the --

13 MR. LASSITER: She is, Your Honor.

14 THE COURT: -- the plan is, but --

15 MR. LASSITER: I'd like to put on one witness
16 before her.

17 THE COURT: I don't think it really matters, so
18 that's fine.

19 MR. LASSITER: Okay. Thank you, Judge. We
20 would call Philip Ray to the stand, and I will make the
21 Court -- Mr. Hagen was -- he was in the court a minute ago.
22 He's still under the Rule.

23 THE COURT: Okay. Come right up here, sir.

24 THE WITNESS: Lay this down here, Your Honor?

25 THE COURT: That's fine. Raise your right hand,

1 please.

2 (Witness sworn)

3 THE COURT: Thank you. Please be seated. You
4 may proceed.

5 MR. LASSITER: Thank you, Your Honor.

6 PHILIP RAY,

7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. LASSITER:

10 Q. Mr. Ray, if you would, state your name, spelling your
11 last name for the court reporter.

12 A. My name is Philip with one L. Ray, R-A-Y, is my last
13 name.

14 Q. And have you had the occasion during the course of
15 your career to work for the Cooke County District Attorney's
16 Office?

17 A. Yes, I did.

18 Q. When did you do so?

19 A. Not sure which month I started, but I started in
20 2003, and I was here through 2005, I believe. The last month I
21 was here was the first month of the second year of
22 Ms. Stormer's term.

23 Q. Would it be fair to say then then about two years of
24 your time in the Cooke County District Attorney's Office, you
25 served under then-District Attorney Janelle Haverkamp?

1 A. Yes.

2 Q. And to be fair, when I spoke to you about testifying,
3 you didn't have anything bad to say; in fact, you had a good
4 experience working for her?

5 A. That's correct. I described to you that I likened
6 her to the old coach that makes you run really hard and you
7 hate it until you're in the game and you see the other team's
8 tired and you're not. I learned a lot from Janelle Haverkamp.

9 Q. Speaking of the things that you learned, in relation
10 to this case, do you have and were you given knowledge of how
11 to comply with discovery requests by the defense lawyers?

12 A. Yes. So this was back before Michael Morton, and so
13 we were required to have -- we, in criminal law, required the
14 defense counsels to submit an application for discovery and ask
15 for different things. The judge would then rule on it. And
16 this was my first job here in Cooke County working on felony
17 cases, so --

18 Q. Would it be fair to say that you're familiar with how
19 Judge Woodlock would go about making his rulings and how now
20 Judge Haverkamp would have you as one of her Assistant District
21 Attorneys respond to that?

22 A. Yes.

23 MR. LASSITER: May I approach the witness, Your
24 Honor?

25 THE COURT: Yes.

1 Q. (By Mr. Lassiter) I'm showing you what is already in
2 evidence as Exhibit No. 27. This is the motion for favorable
3 evidence discovery filed by the defense attorney in this case.
4 Does this look familiar in terms of what Judge Woodlock would
5 do when ruling on cases?

6 A. Yes. This looks like exactly what we would do when I
7 was here, although I was not here at the time this case was
8 going on.

9 Q. And so what he would do is put a G or D next to the
10 different items?

11 A. Yes. So the judge would go line by line through the
12 different items, and whether it was a favorable evidence motion
13 or any other discovery motion, he would go line by line and
14 have us -- ask the prosecution, ask the defense for why it
15 needed to be granted or not, and then he would grant or deny
16 step by step all the way through.

17 Q. Got it. Thank you. And when you had something to
18 disclose -- I'm showing you what was marked as defense --
19 applicant's Exhibit No. 58 -- did you do what are -- what your
20 office called Compliance With Discovery motions?

21 A. Yes. We would file the State's Compliance with Order
22 for Discovery. In fact, I've probably done several hundred of
23 these in my time in the office.

24 Q. And what I've handed you there, does that look like
25 the same type of motion that you would file under then-District

1 Attorney Haverkamp's direction? Is this what you would do as
2 far as complying with discovery? Would you file these motions?

3 A. Yes. And the reason I asked when you and I talked to
4 look at my files was so that I could review exactly what we'd
5 done. And I reviewed six, seven trial files today before
6 testifying, and this is exactly the same form we used every
7 time.

8 Q. So before testifying today, in order to make sure
9 that your testimony was accurate, you went back through old
10 files that you were a part of and you were able to see that you
11 filed the same type of discovery motions whenever you made a
12 discovery compliance; whenever you gave discovery to defense,
13 you would file one of these motions?

14 A. Yes. In fact, it's the same form in every case. We
15 would just cut and paste, put the new cause number in, and
16 write the descriptions in every one.

17 Q. Judge Haverkamp, when she was testifying, stated that
18 oftentimes she would just hand the defense attorneys a file.
19 She actually stated it three different occasions that, you
20 know, when she was busy or in the courtroom or in the course
21 when she didn't have time, she would just hand the defense
22 attorney something. In your experience working for her, was
23 that something that you were allowed to do?

24 A. That was not something I was allowed to do, no.

25 Q. Is that a -- was that a common practice in the office

1 at your time?

2 A. No.

3 Q. Was it her specific instructions to you, if you were
4 to turn something over, you would do so with the State's
5 Compliance with Order for Discovery motion?

6 A. Yes. I would describe her as being extremely
7 meticulous, which is one of the things that I learned from her,
8 and she would require us to make sure we documented everything
9 so that when a defense attorney came to ask about something, we
10 were required to make them wait and fill everything out, and if
11 we weren't able to do a full compliance, then we'd draft a
12 letter and provide them a copy. But they were never given the
13 opportunity to make copies. We, as the Assistant District
14 Attorneys, had to make all the copies ourselves.

15 Q. And when you say "letter," I'm handing you
16 applicant's Exhibit No. 59. There are two letters in there.
17 Is that consistent with what you would do if you didn't file a
18 State's Compliance with Order for Discovery? It would be on
19 the letterhead of the District Attorney's Office, it would
20 state specifically what was being disclosed, and have the
21 defense attorney's signature acknowledging receipt?

22 A. Yes. And what you see here is the letter, and you
23 also see additional discovery. So if we had -- sometimes
24 discovery comes in, and we didn't get everything all at once
25 from the police station or from whatever department. And so as

1 you get more material in, you would then file a supplemental or
2 even a second supplemental, and you do this form or the letter.
3 Preferably that form because that's what Judge Woodlock
4 always --

5 Q. And when you're saying "that form," you mean the
6 State's Compliance with Order for Discovery?

7 A. I'm referring to Defendant's Exhibit No. 58.

8 Q. And in these, you also -- when you did the State's
9 compliance, you had a signature spot for the defendant each and
10 every time?

11 A. For the defense attorney.

12 Q. For the defense attorney. Excuse me. And the
13 defense attorney would actually have to sign these State's
14 Compliance with Orders acknowledging receipt of whatever
15 information you were turning over?

16 A. Yes.

17 Q. And that was at the direction of Judge Haverkamp, and
18 because she was so meticulous, she wanted to make sure that if
19 you did something, it was documented?

20 A. Yes. But I would also say it was because that's what
21 Judge Woodlock would require.

22 Q. Correct.

23 A. He was even more meticulous than she was. I would
24 say she was reasonable, and he was more so.

25 Q. Speaking of, you're familiar with Judge Haverkamp's

1 or then-District Attorney Haverkamp's note-taking procedures or
2 like tendencies, right? You would say she takes a little bit
3 of notes or a lot of notes?

4 A. I would say she took copious notes, yes.

5 Q. And when you say "took copious notes," that means she
6 takes a lot of notes when she's involved in a case, correct?

7 A. Yes.

8 Q. And in the cases that you reviewed, did you look
9 through to see if you had made notes, and were those notes
10 still in those files even from 2003 that you reviewed?

11 A. If I understand your question correctly, when I
12 reviewed my trial cases that I asked the District Attorney so
13 that I could review my work and refresh and make sure that I
14 was remembering correctly, my trial notes were in there. My
15 voir dire notes were in there. Even the goofy notes that Chris
16 Fostel and I used to pass back and forth were all in that box
17 and the file.

18 Q. So if I were to represent to you that in
19 Mr. Newberry's case, we went through not only his file but in a
20 co-defendant's file, Lilton Deon Moore, and we found virtually
21 no notes in either file, would that seem strange to you?

22 A. If that were the case, from when I was in the office,
23 it would seem very strange to me.

24 Q. Because after you were done with your notes, they
25 would go in the file, the District Attorney's file?

1 A. Yes.

2 Q. So when you say it would seem strange, that would
3 seem to indicate either somebody got rid of those notes or took
4 those notes out of those boxes because there would have been
5 more than likely copious notes, especially from a capital case?

6 A. I am very surprised by that. I don't want to guess
7 because that was before I was in the office, but it certainly
8 would not be consistent with the practices while I was in the
9 office.

10 Q. And were you -- or do you have knowledge of another
11 individual currently serving as a District Court judge in
12 Denton County who also served as a Assistant District Attorney
13 under Janelle Haverkamp, a District Judge by the name of Brent
14 Hill?

15 A. Yes. Brent was the first -- was the Assistant
16 District Attorney that, when he left the office and became a
17 defense attorney, that was the job that I interviewed for and
18 was given.

19 Q. And did you discuss with him the Compliance With
20 Discovery motions that you guys would have to file under the
21 direction of District Attorney Haverkamp?

22 A. Yes. So after you called me, the first call you and
23 I talked, I called Brent, Judge Hill, and said, I remember it
24 this way, is this how you remember it? Because I'm not sure
25 and I don't know if I want to testify if I'm not sure. And

1 Brent and I talked quite a bit about it, and he remembered
2 exactly as I remembered. And then I called you back and said I
3 wanted to see a file, my files, to make sure I'm remembering it
4 correctly. But he described it exactly as I remember and
5 exactly as I discovered what was in the files, those
6 compliances with discovery.

7 Q. Judge Hill would remember that Judge Haverkamp, then
8 District Attorney, would require you guys to file these
9 compliance motions showing what you complied with and that you
10 would do it in order to ensure that it is on the record, it is
11 documented that you would do something?

12 A. Yes. And in going through the files today, there
13 were other Compliance With Discovery motions that were filed by
14 not just me that were in those files. Mr. Fostel. There was
15 one from Mr. Zielinski from way back when.

16 MR. LASSITER: May I approach this witness
17 again, Your Honor?

18 THE COURT: Yes.

19 Q. (By Mr. Lassiter) Again, looking at Exhibit No. 27,
20 applicant's Exhibit No. 27, I want you to read this first
21 statement or the first numeral under number one, under Motion
22 for Disclosure of Favorable Evidence. And it states -- if you
23 would, just read that for the Court, that first one, number
24 one.

25 A. One, "Statements of any witness interviewed by the

1 prosecution who identified any other individual other than the
2 Defendant who fired a shot in this case or possessed a firearm
3 in this case."

4 Q. To you, does that seem to plainly indicate
5 "granted" --

6 A. Yes.

7 Q. -- by Judge Woodlock? And to you, does that seem to
8 plainly indicate that Judge Woodlock, because it's under the
9 title of motion for discovery of favorable evidence, believes
10 that if that evidence existed, that would be favorable that
11 needed to be disclosed to the defense; in other words,
12 exculpatory?

13 A. Yes. And when we would disclose statements, we would
14 take -- in fact, one of the cases we were looking at this
15 morning, you have the transcript of the statement, and you
16 would attach it to a response to either a letter -- although
17 the one up there was a filed Compliance With Discovery. And
18 we'd just attach the transcript and send it directly to them.

19 Q. So does that plainly indicate that the statements,
20 not the identification, but the statements themselves of any
21 witness who identified another individual as having possessed a
22 gun in this case had to be disclosed?

23 A. Yes. And I would expect that there would be either a
24 letter or a disclosure with the statement attached, especially
25 if it was a transcript statement.

1 Q. And if there wasn't and there's nothing in the record
2 to indicate that statements of those kinds were disclosed, can
3 you confidently state that that would not be consistent with
4 Judge Haverkamp or anybody in that office disclosing it? In
5 other words, that would not be consistent with the way that she
6 taught you to disclose things?

7 A. I would say it is not -- that would not be consistent
8 with how we were required to do it. Yes.

9 Q. Thank you very much.

10 MR. LASSITER: Pass the witness, Judge.

11 MR. WARREN: I just have a few questions.

12 THE COURT: Okay.

13 CROSS-EXAMINATION

14 BY MR. WARREN:

15 Q. Mr. Ray, what was the process for disclosing Brady
16 information? Was it the same process for disclosing other
17 information such as through the compliance motions?

18 A. Yes. As the Court knows, Brady evidence is a higher
19 level of requirement of making sure that is provided to the
20 defense, and so we would follow these procedures for exactly
21 that, and usually Brady evidence would be separated out from
22 the other discovery, specifically stated this may or may not be
23 exculpatory and provided or mitigating and provided to defense
24 counsel.

25 Q. So it was drilled into you that Brady evidence was

1 very important?

2 A. Well, it's not just for the office. It's because the
3 Supreme Court referred to Brady evidence because of the Supreme
4 Court case requiring us to do so. So, yes, very important.

5 Q. Mr. Ray, is everything today you testified to, is it
6 true and correct?

7 A. Yes.

8 Q. Okay. Would you like to add anything else?

9 A. This is very surreal. I know people throughout the
10 courtroom, from officers to college friends to attorneys on
11 both sides. I mean, Judge Haverkamp, to me "Janelle," was my
12 first felony boss, and she was wonderful at teaching. Hard and
13 disciplined, but really good at it, and the things that I
14 learned from her I've used throughout my career. I'm now board
15 certified, but I couldn't mention being board certified without
16 mentioning her, but then mentioning Cary Piel, my first mentor
17 at the DA's office in Denton. So to sit in a room and be on
18 the witness stand with so many people I didn't expect to see,
19 it's stunning.

20 Q. Thank you, Mr. Ray.

21 MR. WARREN: I have no further questions.

22 MR. LASSITER: Just briefly, Your Honor. May I
23 approach the witness again?

24 THE COURT: Yes.

25 REDIRECT EXAMINATION

1 BY MR. LASSITER:

2 Q. Talked about how you guys would disclose and say it
3 was a specific disclosure because it would list out what was
4 mitigating and would say it's potentially mitigating. Again,
5 showing you applicant's Exhibit No. 58. Is that a really good
6 example of how your office was supposed to disclose potentially
7 mitigating evidence?

8 A. So I'm looking at Defendant's Exhibit 58, which
9 starts with what appears to be a pagination of 160. And I'm
10 flipping back to State's Compliance with Order for Discovery,
11 and then the page on that is marked 217. What you have as
12 highlighted, "Possible mitigating evidence: (1.) Tara Engler
13 stated Deon Moore said 'my cousin is in jail serving my time.'
14 Michael Newberry told her 'my cousin shot a white guy - I'm not
15 getting caught in something my cousin did.'" That would be
16 exactly what I'm referring to, the kind of statement where you
17 make sure you set it out and put it in there. So it looks to
18 me like in this case, she's doing that. She's providing Brady
19 evidence, marked and clear.

20 Q. And this is how she taught you to go about doing
21 that?

22 A. It's the same form we've been talking about. It's
23 just specifically been changed from a regular discovery form to
24 a Brady discovery form. It's stating possible mitigating
25 evidence, so this is exactly the example of how we were

1 supposed to do it.

2 Q. And I've spoken to you about this case, and I told
3 you that this was a capital case in which the aggravating
4 element was robbery.

5 A. Yes.

6 Q. And I think I mentioned to you that over 46 times in
7 a grand jury transcript, the co-defendant specifically states
8 this was not a robbery, in some form or fashion. To you, that
9 would be exculpatory, right?

10 A. Yes.

11 Q. And you would expect it to be disclosed in this
12 fashion?

13 A. In that fashion, yes. But if it was a transcript,
14 I'd expect the transcript to be attached and filed.

15 Q. To be attached to it. Right. And would you also
16 expect if the co-defendant had a long, lengthy, violent
17 history, that would also have to be disclosed as exculpatory?

18 A. I'm sorry. You said the co-defendant had a long --

19 Q. If the co-defendant had a lengthy criminal history
20 and this is a violent incident in which the question is who did
21 it, that would be exculpatory information that would need to be
22 disclosed, in your opinion?

23 A. I don't know if it would be exculpatory. It might be
24 mitigating.

25 Q. And --

1 A. Brady's been clarified over the last 25 years that I
2 think modern day, absolutely. But 20 years ago, there were
3 many prosecutors that were struggling with what was and what
4 wasn't, and I think that that would borderline because if a
5 witness were to testify, it would be an absolute yes.

6 Q. And if something was borderline -- right into my next
7 question -- what did Janelle Haverkamp train your office to do?
8 Did she train you to submit it to the judge for in-camera
9 review?

10 A. Either that or turn it over because it's better to
11 turn it over than not.

12 Q. And for -- if another -- if in the grand jury
13 transcript, the co-defendant admitted to having the gun that
14 night, you agree that that also would be exculpatory,
15 especially under Judge Woodlock's order, requiring it to be
16 disclosed?

17 A. In order to answer that specifically, I need to know
18 what the time line was. Because if the co-defendant is saying
19 they had a gun at some point, then the "at some point" becomes
20 important.

21 Q. The "had the gun at the time right before the murder
22 happened."

23 A. I would expect that that would need to be turned
24 over, yes.

25 Q. Especially since Judge Woodlock actually ordered for

1 it to be turned over?

2 A. The order does state any statement that any person
3 saw that person with a gun, yes.

4 Q. Thank you very much.

5 MR. LASSITER: Nothing further.

6 MR. WARREN: No questions.

7 THE COURT: Any objection to the witness being
8 excused?

9 MR. LASSITER: No, Your Honor.

10 MR. WARREN: No objection.

11 THE COURT: You're excused. Thank you, sir.

12 THE WITNESS: Thank you, Your Honor.

13 MR. LASSITER: With that, Your Honor, I believe
14 now, if I'm reading the order of the Court correctly because I
15 got the transcript, we were to recall Judge Haverkamp as a
16 witness and revisit the questions that she was asked previously
17 now that she's had a chance to review the file.

18 THE COURT: No. I said she could testify in
19 narrative form after she had reviewed the file. If you read it
20 differently, I said it wrong, because I'm telling you what I
21 meant, and I think I was pretty clear about that. I'm not
22 saying you can't ask her questions again once she testifies,
23 but I'm saying I'm going to give her a chance, because she
24 asked for it last time very explicitly, and I told her I would
25 give it to her after she had a chance to review the State's

1 file.

2 MR. LASSITER: Understood, Your Honor. That
3 being the case, am I entitled to object or will the Court allow
4 me to object if she goes on to a narrative that is not relevant
5 to the claims at issue?

6 THE COURT: You can -- I'm not going to stop you
7 from objecting.

8 MR. LASSITER: Then with that, Your Honor, I
9 mean, I believe the Court is calling Ms. Haverkamp to give a
10 narrative, and so --

11 THE COURT: I'm not calling her as a witness.
12 She said she wanted to testify. I'm granting her the
13 opportunity to testify just as I had granted each and every one
14 of your witnesses the opportunity to testify.

15 MR. LASSITER: I understand, Your Honor.

16 THE COURT: So to make it clear, I am not
17 calling her as a witness.

18 MR. LASSITER: I understand, Your Honor. I am
19 not calling her again as a witness, but I can for the purposes
20 of allowing her to comply with the Court's ruling.

21 THE COURT: I'm just going to let her come up
22 here, and I'm granting her request that she made last week to
23 testify. So if somebody wants to get her, if that -- then we
24 can proceed in that fashion.

25 Come up here to the witness stand, please. You

1 were sworn in --

2 (Interruption)

3 THE COURT: You were sworn in last week. Last
4 week you requested an opportunity to testify. I ordered the
5 State's files provided to you and delayed your testimony, if
6 you still want to give it, until such time as you had an
7 opportunity to review the State's files. Do you still wish to
8 testify?

9 HON. JANELLE HAVERKAMP: Yes, Your Honor.

10 THE COURT: You may proceed.

11 HON. JANELLE HAVERKAMP: Okay. I'm sorry.
12 There's a -- one of the spirals that wasn't brought out, a
13 small white binder. Should be on the table. It has the grand
14 jury testimony in it. That should be it. Thank you.

15 Thank you, Your Honor, for the opportunity to
16 defend this conviction and sentence that was lawfully returned
17 by a Cooke County jury and to respond to the false and
18 misleading allegations that have been made against me as the
19 District Attorney who prosecuted this case.

20 Granville Hanks was a 62-year-old grandpa who
21 was murdered during the course of a robbery --

22 MR. LASSITER: I'm going to object to relevance.

23 THE COURT: Overruled.

24 Let me rule on the objection before you go on,
25 please.

1 HON. JANELLE HAVERKAMP: Okay. Sorry, Your
2 Honor.

3 THE COURT: Overruled.

4 HON. JANELLE HAVERKAMP: -- an attempted robbery
5 on May 28th, 1996. He was convicted of capital -- Newberry,
6 the applicant, was convicted of capital murder on July 11th of
7 1997 by, as I said, a Cooke County jury. The State did not
8 seek the death penalty, so his sentence was automatically life.

9 I need to correct Mr. Lassiter, and since the DA
10 adopted his writ, the DA. It was not life without parole.
11 Life without parole did not become the law until 2005. At that
12 time, life for capital murder meant 40 years. Mr. Newberry is
13 eligible for parole. His first eligibility --

14 MR. LASSITER: Again, Your Honor, relevance.

15 THE COURT: That, I'm going to sustain.

16 HON. JANELLE HAVERKAMP: On May 31st, 1996,
17 three days later, the co-defendant, Lilton Deon Moore, went to
18 the Gainesville Police Department and gave a statement to the
19 lead investigator, Ronnie Williams. Ronnie Williams also got
20 statements from other witnesses during the course of the
21 investigation. Six days later, on June 3rd, 1996, this
22 defendant, Newberry, the applicant, came to the Cooke County
23 Sheriff's Office and gave two statements to Investigator
24 Williams, both implicating himself in the capital murder.

25 MR. LASSITER: Again, Your Honor, relevance.

1 None of this goes to the claims.

2 THE COURT: You went through the background very
3 carefully and clearly. I'm going to give her the same chance.

4 MR. LASSITER: Judge, when she's doing her
5 narrative, if we could have her state this is to her personal
6 knowledge versus somebody else's knowledge.

7 THE COURT: I'm not going to tell her how to
8 testify.

9 HON. JANELLE HAVERKAMP: -- both implicating him
10 in the capital murder, and in the second statement, he admitted
11 to being the actual shooter. Newberry confessed to the crime.
12 This is something that Mr. Lassiter seems to completely ignore
13 in this writ. The transcripts of both of these statements were
14 given to the -- Newberry, the applicant's attorney, June 17th,
15 1996, days later. Audio tapes of these transcripts or these
16 confessions were provided to Mr. Morris January 30th, 1997.

17 I didn't document with a written Compliance With
18 Discovery signed by Mr. Morris that he was given the written
19 transcripts, but it was stipulated to by both parties during a
20 Motion to Suppress hearing on February 20th, 1997. So
21 obviously not all the discovery compliance was documented and
22 signed. The applicant, Mr. Newberry, after he was convicted --
23 well, no -- before he was convicted, filed a motion before the
24 trial court to suppress his confession. A hearing was held.
25 Investigator Williams and the defendant, Newberry, testified.

1 Judge Woodlock heard the evidence and denied the motion and
2 entered an order finding as to the admissibility and
3 voluntariness of the defendant's confession. Curiously
4 Mr. Lassiter does not bring these findings to this court's
5 attention. And, Your Honor, it's not in his writ, but I think
6 they are relevant. I have a copy for the Court --

7 THE COURT: You're going to have to mark it as
8 an exhibit.

9 HON. JANELLE HAVERKAMP: Okay.

10 THE COURT: Offer it and I'll hear his
11 objection.

12 (Discussion off the record)

13 HON. JANELLE HAVERKAMP: I have copies.

14 MR. LASSITER: May I approach, Judge?

15 THE COURT: He's probably going to want to look
16 at what's going in the Court's...

17 MR. LASSITER: Judge, just so I'm clear, this is
18 a witness still, correct?

19 THE COURT: Yes.

20 MR. LASSITER: Not a party?

21 THE COURT: Well, she happens to be both, but
22 she is testifying, so she is testifying in narrative form,
23 subject to cross-examination, subject to proper objection.

24 MR. LASSITER: Yes, Your Honor. I'm just making
25 sure because a witness cannot enter a piece of evidence.

1 THE COURT: Well, she's also a party, and she's
2 representing herself, and they can.

3 MR. LASSITER: I do not believe that to be the
4 case, and they state such in their amicus brief. So either she
5 is --

6 THE COURT: The amicus can't do that. She can.

7 MR. LASSITER: I'm just making the record clear.
8 The Court is allowing the witness to enter an exhibit. I'm
9 objecting as to relevance because it has zero relevance to the
10 claims at hand. The claims at hand are, did you turn over
11 exculpatory evidence, was the testimony false, and was John
12 Morris -- did he have a conflict of interest. Anything going
13 into an alleged confession, the circumstances surrounding that,
14 the Court's findings surrounding that, is not relevant to this
15 court's determination of whether or not exculpatory evidence
16 was turned over.

17 HON. JANELLE HAVERKAMP: Your Honor --

18 THE COURT: That is -- that is the --

19 HON. JANELLE HAVERKAMP: May I --

20 THE COURT: When I finish speaking, you can.

21 HON. JANELLE HAVERKAMP: I'm sorry, Your Honor.

22 THE COURT: That is my understanding of this
23 hearing. We are addressing the points in the application and
24 not whether this defendant is guilty of some -- of some crime.
25 This is not an actual innocence writ.

1 HON. JANELLE HAVERKAMP: But he's making the
2 argument that even if you don't find that, that he's saying
3 that the second part of that, Your Honor, the second part of
4 the writ, that if no rational jury could have found him guilty.
5 He also --

6 MR. LASSITER: That's not the standard that we
7 are citing.

8 THE COURT: Don't interrupt her, please. This
9 is nobody's first rodeo. You know the rules just as well as I
10 do, and I shouldn't have to be telling either one of you what
11 they are. I really shouldn't. So one at a time.

12 HON. JANELLE HAVERKAMP: Okay. Your Honor, if I
13 can find it, on 11.07, he's also made the argument that if the
14 current claims have -- could have been raised, he's saying that
15 they could not have been raised, and he also addresses
16 11.07(4)(a)(2) "by a preponderance of the evidence but for a
17 violation of the United States Constitution no rational juror
18 could have found the applicant guilty beyond a reasonable
19 doubt." That's why I bring it up, because he's saying but for
20 this evidence that he claims shouldn't have been brought in,
21 the jury could not have found him guilty. I'm saying even
22 taking everything he says as true, which it is not, we still
23 have this confession out there.

24 THE COURT: But I don't think he confessed to
25 any element of robbery, is the problem.

1 HON. JANELLE HAVERKAMP: Yes. Yes, he did.
2 He -- in his statement, yes, he did, Your Honor. He says, he
3 wouldn't come off the money, so I shot him.

4 THE COURT: And as I understood what that meant,
5 that meant he wanted to pay less for the drugs, so I shot him.

6 HON. JANELLE HAVERKAMP: No.

7 THE COURT: Okay. I'm not going to have a
8 debate with you --

9 HON. JANELLE HAVERKAMP: Okay. Yes, Your Honor.

10 THE COURT: -- or anyone else. What is your
11 response?

12 MR. LASSITER: Judge, it's not relevant. It
13 doesn't go to the claims at hand. In fact, when she's citing
14 to the standards, she's actually citing to the wrong standard.
15 We don't have to prove that a jury would not convict.

16 THE COURT: Well, is that in your writ? Because
17 if it's in your application, you may have raised it.

18 MR. LASSITER: We put specifically the standard,
19 and it's not whether or not a jury would not have convicted.
20 It is whether or not there is a reasonable likelihood based on
21 this new evidence it would have undermined the confidence in
22 the verdict.

23 THE COURT: I understand that that's the
24 standard for failure to provide exculpatory evidence. I
25 understand that. But she's saying it's in here, and I can't

1 remember every word in here. Sorry. I've read it more than
2 once, but I can't remember every word. So where in there is
3 what you say is in there?

4 HON. JANELLE HAVERKAMP: I also forgot to bring
5 his proposed application.

6 THE COURT: I'm not talking about his findings
7 of fact because those are proposed findings of fact. They're
8 not this court's findings of fact. So where is it in the
9 application?

10 HON. JANELLE HAVERKAMP: If I could get it.

11 THE COURT: I don't want to give you mine
12 because it's got notes all over it. A big part of me wants to
13 say you're fighting over things that the Court already knows,
14 that you have, in fact, included in testimony and in your
15 recitation of the procedural history of this case. I already
16 know there was a Motion to Suppress. I already know that Judge
17 Woodlock denied it and found that it was voluntary. So I think
18 we're spending a lot of time on nothing, so -- but you
19 objected, so I've got to rule on the objection.

20 MR. LASSITER: I also agree, and that's what
21 makes it not relevant.

22 THE COURT: She's trying to prove up something
23 in her way. I'm going to overrule the objection and admit
24 Respondent's Exhibit No. 1 for whatever value it has.

25 So you can move on.

1 HON. JANELLE HAVERKAMP: After he was convicted,
2 the case was appealed to the Court of Appeals, and it was
3 affirmed finding no error. The applicant filed his first
4 Application for Writ of Habeas Corpus on April 27th, 2005. All
5 Mr. Lassiter tells this court in his writ is that the Court of
6 Criminal Appeals denied the writ without written order on
7 August 31st, 2005. In what is a recurring theme throughout
8 this entire writ, Mr. Lassiter omits vital information.

9 Judge Woodlock held an evidentiary hearing on
10 the first Writ of Habeas Corpus. Mr. Newberry had hired an
11 attorney, R. Christopher Goldsmith, and Judge Woodlock at that
12 hearing allowed Mr. Newberry to testify, Newberry's father to
13 testify, and his attorney John Morris, because Mr. Newberry was
14 claiming that Judge Morris was an ineffective counsel.

15 Judge Morris testified that he didn't --
16 couldn't locate his file. He didn't remember the charge
17 against Mr. Newberry exactly, and he didn't remember if there
18 was anybody else in the car. And he didn't remember if the
19 co-defendant Moore had been charged with a crime in this case.

20 Newberry testified and gave yet another story of
21 the events, and he claimed that Investigator Williams beat on
22 the table, called him a liar, and told him he wasn't going to
23 leave until he admitted that he was the shooter. And, Your
24 Honor, the tapes are available for the Court to listen, and
25 they certainly don't reflect that.

1 Now the -- Judge Woodlock made written findings
2 on --

3 THE COURT: The exhibit's already been admitted
4 as to that, and all of this is on page 36 of the application.

5 HON. JANELLE HAVERKAMP: The order?

6 THE COURT: The order is Exhibit No. 23.

7 HON. JANELLE HAVERKAMP: Because I thought he
8 just said that --

9 THE COURT: He said that applicant's trial
10 counsel was not ineffective.

11 HON. JANELLE HAVERKAMP: Yes. But -- okay. But
12 he tells -- he tells the Court in his application that the
13 Court of Appeals -- well, in his proposed findings -- denied it
14 without written order, but they denied it without written order
15 based upon the findings of Judge Woodlock. They didn't just
16 dismiss it without a written order. They dismissed it based on
17 the findings that were made by Judge Woodlock. I guess you
18 don't want that. Okay.

19 THE COURT: I --

20 HON. JANELLE HAVERKAMP: Okay.

21 THE COURT: That's the way it works. I
22 understand.

23 HON. JANELLE HAVERKAMP: Okay. Okay. Then that
24 was in 2005. In -- on June 16th, 2008, Newberry filed a second
25 Application for Writ of Habeas Corpus, and all Mr. Lassiter

1 tells you is that the Court of Criminal Appeals dismissed the
2 writ as a subsequent writ without written order. He omits
3 intentionally that Judge Woodlock made findings and entered an
4 order on this second Application for Writ of Habeas Corpus in
5 which he found that Newberry fabricated evidence and knowingly
6 presented false evidence in support of this application; that
7 Mr. Newberry signed under penalty of perjury that the facts
8 stated in the application were true and correct. And he
9 forwarded that to the Court of Criminal Appeals, and then they
10 denied his writ.

11 And as Your Honor knows, I guess I don't need to
12 go into it, that subsequent Applications for Writ of Habeas
13 Corpus cannot be considered -- the Court cannot consider the
14 merits of or grant relief based on a subsequent application
15 unless the application contains sufficient specific facts
16 establishing that the current claims and issues have not been
17 and could not have been presented previously in a
18 previously-considered application because the factual basis for
19 the claim was unavailable on the date that the applicant filed
20 the previous application, or by a preponderance of the evidence
21 but for the violation of the United States Constitution no
22 rational jury could have found the applicant guilty.

23 Now they don't show any specific facts why these
24 claims and these affidavits could not have been brought in 2005
25 and 2008 or 1998, 1999, 2000. I was not the District Attorney

1 in 2005 and 2008. Mr. Lassiter and Mr. Warren, I don't believe
2 they were aware of the policy at that time frame because in
3 2006, both Mr. Lassiter and Mr. Warren were both working in the
4 Dallas DA's office.

5 Anyone -- whether or not there was an open
6 records file policy -- an open file policy, anyone at any time
7 could have certainly filed an open record -- an open file
8 policy -- anyone at any time could have certainly filed an open
9 records request whether or not there was an open file policy,
10 just like was done now. Such a request was done on
11 December 11th, 2020, by attorney Bret Ordiway of the Udashen
12 Law Firm. So an open request was done -- open records request
13 was done four years ago. Four years ago, a request was made,
14 but nothing was done for four years. And in that four years,
15 the District Attorney's Office never asked me one question
16 about this case.

17 And I might -- meant to say this earlier. Case
18 law supports the argument that if there's been a denial of a
19 previous writ application based on a frivolous application,
20 it's a barred further application, and cases where there has
21 been filings of forged or perjurious medical records, the
22 applicant was denied the right to file further applications.

23 Now -- so then further these so-called new
24 evidence witnesses, these close friends of Newberry, like
25 Sidney Perry, his affidavit says, Newberry is my little

1 brother. Well, Mr. Perry, first of all, I didn't call him as a
2 witness; John Morris did. Perry was such a good friend to
3 Newberry that he went to prison for him. You remember in the
4 record --

5 MR. LASSITER: Judge, I'm going to object,
6 unless she has some sort of personal knowledge to this.

7 HON. JANELLE HAVERKAMP: I absolutely do.

8 MR. LASSITER: If she has personal knowledge
9 that before this conviction happened, Sidney Perry went to
10 prison for him.

11 THE COURT: I don't think that was her
12 testimony. She just said he went to prison for him. She
13 didn't say before. I mean, I don't recall her saying before.

14 MR. LASSITER: Then it's not relevant, Judge.

15 HON. JANELLE HAVERKAMP: If I might.

16 THE COURT: What is the relevance?

17 HON. JANELLE HAVERKAMP: The relevancy is
18 Mr. Perry -- these four people have now done affidavits
19 changing their story. The affidavits themselves are highly
20 suspect. They don't give any indicia of credibility -- I mean,
21 of reliability. They don't say that they weren't coerced or
22 threatened. As a matter of fact, the relevance is, is that at
23 the end of our trial, Mr. Newberry threatened a witness, and
24 Sidney Perry, he said, smoke that old Cotton, and Sidney Perry
25 went out and shot up that witness's house where his grandmother

1 lived. He also threatened to kill me. He said, tell that
2 bitch Janelle to watch her ass because she's dead.

3 MR. LASSITER: Judge.

4 THE COURT: I've read that record. I've read
5 it. I know what it says. And we really need to keep to your
6 factual recitations concerning the allegations in the
7 application.

8 HON. JANELLE HAVERKAMP: I think the witnesses
9 that have given statements are quite aware that if they testify
10 against Mr. Newberry what could happen to them.

11 MR. LASSITER: Judge, that's utter speculation,
12 and she -- I believe that what --

13 THE COURT: Sustained.

14 HON. JANELLE HAVERKAMP: Okay. Again, as to the
15 affidavits, there's no indicia of reliability. There's no date
16 of birth. There's no address. There's no criminal history.
17 I'll say more about that. And as I was saying, in the present
18 case, there's no violation of the United States Constitution,
19 so even excluding the evidence that he complains about, there's
20 an overabundance of other evidence of his guilt. In addition
21 to his confession, I know Your Honor has read the transcript,
22 he brags to multiple witnesses about shooting the victim.
23 He --

24 MR. LASSITER: I don't want to object again,
25 Your Honor, but can I have a running objection to the narrative

1 regarding a confession as it doesn't address the claims?

2 THE COURT: I am having a hard time
3 understanding how him confessing to shooting him, if the only
4 evidence -- well, is relevant to was exculpatory evidence
5 provided or was it not, because that's really the issue.

6 HON. JANELLE HAVERKAMP: Well, what he's saying
7 is I didn't provide these witness statements, and that's what
8 these witness statements say. That's all they say. The
9 statements are incriminating, inculpatory, not exculpatory.
10 And he complains about Michael Moore's [sic] statement, and he
11 said the defendant said, I shot him and if I had a chance I'd
12 do it again. I mean, all -- the statements that he's
13 complaining about that I didn't provide are incriminating.
14 I'll move on.

15 MR. LASSITER: With respect, that's your
16 purview, that's your determination. I simply want to know if
17 she provided them.

18 HON. JANELLE HAVERKAMP: Okay. Okay. This --
19 I'll move on, Your Honor.

20 THE COURT: Okay.

21 HON. JANELLE HAVERKAMP: Okay. This case is --
22 was 28 years ago. I don't remember exactly what was documented
23 and what wasn't. As a DA for 12 years, I was certainly aware
24 of my duty under Brady and I conscientiously tried to follow
25 it. I had deep respect for Judge Woodlock, and I never

1 willfully withheld anything that I believed I was required to
2 turn over, and I tried to follow his instructions as I
3 interpreted them to be. Again, this happened 28 years ago.
4 Things in the DA's office back then are not like they are now.
5 I was the sole prosecutor. I was a one-man band. When this
6 case happened and when this discovery was in process and this
7 case was being tried, I had a lot going on. In August of that
8 year --

9 MR. LASSITER: May I approach, Your Honor?

10 THE COURT: I have another one here. Thank you.
11 I appreciate that.

12 MR. LASSITER: Didn't want you have to write on
13 the back.

14 THE COURT: I'm good.

15 HON. JANELLE HAVERKAMP: I will say I had an
16 excellent investigator. In August of that year, I tried a
17 murder case and got a life sentence in '96. In March of '97,
18 when all the discovery was going on, I tried a habitual
19 offender sexual assault case. The individual got life. In
20 April of that year, I tried a serial murderer who got life, and
21 he was a serial murderer and we had to coordinate with many
22 other jurisdictions because he left bodies in many other
23 jurisdictions. In May of that year, I tried an aggravated
24 assault with a deadly weapon. In June I had a jury trial on
25 competency. And then in July, we tried this capital murder

1 case. In April of that year, a two-year-old was found dead in
2 a motel, and she was the subject of a custody fight, and there
3 was an investigation into that death that my investigator and I
4 were deeply involved in. So I had a lot going on. I didn't
5 have any assistants, and so if discovery was provided that it
6 wasn't documented, could have happened.

7 Now his discovery rulings, they're saying I
8 didn't follow them. I guess I need to look at them. As far as
9 the grand jury testimony of Deon Moore, Newberry claims that I
10 didn't turn that over. And Mr. Lassiter says, well, the
11 Court's ruling exactly on that was -- as the Court knows, there
12 was a specific motion for the grand jury testimony filed by
13 Mr. Morris. The Court's ruling was granted if he testifies.
14 Mr. Lassiter makes the statement that I didn't call Mr. Moore
15 to the stand because that would have triggered my duty to
16 disclose the grand jury testimony, which I think the Court
17 understands is a ludicrous argument because Mr. Moore was a
18 party. I mean, he was indicted for the same capital murder.
19 He hadn't been tried yet. He had an attorney, and he was
20 awaiting trial. I would have loved to have called him, but the
21 law and his attorney would not have allowed me to. I would
22 have loved to have called Mr. Moore to the stand because his
23 grand jury testimony incriminated Mr. Newberry. It was not in
24 any way exculpatory. Again, let me be clear, if I could have
25 admitted that statement, I would have.

1 Moreover, Newberry, Mr. Morris, filed a Motion
2 to Suppress the co-defendant's statement, and that was granted.
3 So on the one hand, he asked for the grand jury testimony, and
4 then in another motion, Motion to Suppress co-defendant
5 statement, granted as to hearsay, Judge Woodlock. Judge
6 Woodlock was very good about writing his order down. And then
7 on another Motion for Discovery and Inspection of Evidence,
8 that's the November 14th, '96, motion that Judge wrote his
9 rulings beside each one, and there's some, I believe, 22
10 different items where he was asking for a number of things.
11 No. 19 said -- he's asking for copies of any statement of the
12 co-defendant Lilton Deon Moore. Denied. Judge Woodlock denied
13 that request. So there were conflicting rulings. So he denied
14 copying any statement of co-defendant Lilton Moore.

15 But the grand jury testimony that Mr. Lassiter
16 and Mr. Newberry claim is exculpatory, and they cite part of
17 it, Your Honor, but again, they don't cite -- they cut off in
18 mid sentence and don't give you the "Paul Harvey Rest of the
19 Story." So, Your Honor, I'd like to go through it.

20 THE COURT: I will tell you I've read it at
21 least twice, and I will read it again, but I'm not going to
22 stop you. I'm just telling you, I'm not relying upon anyone's
23 brief.

24 HON. JANELLE HAVERKAMP: Well, I'll just briefly
25 go -- look at my notes citing the page. Deon Moore said that

1 they had a gun, meaning the applicant Newberry and Doug Wilson.
2 They had it in the back seat. He said, Michael had the gun.
3 They said it was Michael's, but I don't know. It was just in
4 the back seat. He saw it when it fell out of the armrest.
5 Michael told me who he got it from, who he got the gun from.
6 And that he had the gun in the car and he knew that who he
7 bought the gun from because -- and that person told him he had
8 sold it to Newberry, and Newberry still owed him \$40 for it.
9 And he said he didn't -- he didn't bother -- Michael is always
10 going to carry a gun, so he always knew that Michael carried a
11 gun.

12 In my list of extraneous offenses, Your Honor,
13 that was provided to Mr. Moore -- I mean, to -- sorry -- to
14 the -- to the defense, my notice of intent to introduce other
15 offenses. Mr. Newberry was currently under indictment and had
16 appeared in court 10 days before this offense for unlawfully
17 carrying a weapon on school property. He was still under
18 indictment for that. And he -- that was March 7th, 1996. On
19 March 8, 1995, he was caught with a handgun at his residence,
20 and he was -- because he was on juvenile probation, these were
21 all --

22 MR. LASSITER: Again, Your Honor, relevance.

23 HON. JANELLE HAVERKAMP: Well, he points out
24 that I -- all the bad things he -- and he questioned me about
25 it last time, that I knew Deon Moore was such a bad guy and he

1 went through all my notes on Deon Moore, so I obviously knew
2 Deon Moore was the shooter or Deon Moore was the bad guy. But
3 I knew all of this about Newberry.

4 THE COURT: I think the questions about Deon
5 Moore's history was that that -- it's his position that that
6 also is exculpatory evidence that you should have provided, not
7 that he's the -- we're not here to decide who the shooter was
8 or who's more guilty. Only what was -- really what, if
9 anything, was -- you failed to provide. So I think his
10 criminal history is irrelevant. I'm going to sustain the
11 objection.

12 HON. JANELLE HAVERKAMP: And so back to the
13 grand jury testimony, he said Granville Hanks is a smoker. In
14 other words, he's a dope fiend. He smokes dope. He does admit
15 to playing with the gun, but he said Michael took the bullets
16 out of the gun because he was aware that Deon had actually
17 shot -- discharged a gun while they were in a car together
18 once. He says he gave the gun back to Newberry, but when --
19 and obviously when he gave it back, it was unloaded. He said
20 that up at -- with Mr. Hanks that Deon -- "Michael said, 'brace
21 yourself.'" And to him, "brace yourself" was another word for
22 robbery. It means that they were going to rob him. No bullets
23 in the gun when he gave it back to Michael. Michael took the
24 gun out of the car. He was talking about jacking some dope
25 fiends. Michael told him he shot him. "Brace yourself" means

1 robbery. He didn't know that he was going to shoot him, just
2 rob him. He heard Michael say, give me your money. Michael
3 bragged about it the next day, and he was laughing when he said
4 it. He was talking about how he earned his stripe. Michael
5 said -- I apologize, Your Honor -- he said, fuck him, that's
6 just one life less I have to worry about, and he was laughing.

7 Prior to going up to Granville, they were
8 talking about robbing some dope fiend. Newberry and Cotton
9 were talking about robbing people earlier. Michael had a
10 pistol charge a couple of weeks before that. He didn't have
11 the money to pay the bail bondsman off, so he had no choice but
12 to get in the dope gang. Michael needed the money that
13 night --

14 MR. LASSITER: Your Honor, with respect, she
15 seems to be trying to try the case again. None of this goes to
16 whether she provided. I believe she answered that question. I
17 think she's trying to go into whether or not it's exculpatory,
18 which she's already stated very clearly nothing in the grand
19 jury was exculpatory in her opinion. Just simply reading
20 portions of it, that's an argument.

21 THE COURT: Like I said, I've read it twice, and
22 I'm going to read it again, so I think your point is you
23 believe that there were, in fact, inculpatory or incriminating
24 statements.

25 HON. JANELLE HAVERKAMP: He -- Mr. Lassiter

1 argues that the grand jury testimony negates the elements of
2 robbery. He makes the argument, as does Sidney Perry, that
3 they didn't get any money so it's not robbery. Well, that is
4 not true under the law. You don't have to be a good robber.
5 You don't have to get money for it to be in the course of
6 committing a robbery or attempting to commit a robbery. And he
7 seems to argue that before you can be guilty of robbery, that
8 there has to be prior planning. They got out of the car --

9 MR. LASSITER: Your Honor, I have the same
10 objection. She's just trying to try the case. Again, if she
11 wants to justify why she didn't withhold it, we just need to
12 know if she did, and she's answered that. She's invading the
13 province of the Court.

14 THE COURT: Well, I think she can -- you argued
15 that it's exculpatory, and you made your arguments when you
16 presented your testimony. Now she's -- and that is something
17 that the Court has to take into consideration. Is it
18 exculpatory, is it not exculpatory. You argued it was. She
19 can argue that it's not. I'm going to -- I mean, I -- once
20 again, I'm going to make that decision, but because you did put
21 on testimony that it was exculpatory, I'm going to let her put
22 on her testimony that it's not if she wants to.

23 HON. JANELLE HAVERKAMP: Okay. Capital murder
24 is if you intentionally cause the death by shooting someone
25 with a firearm in the course of committing or attempting to

1 commit robbery. All of the other witnesses, they never got out
2 of the car. It's only Deon Moore and Newberry. And testimony
3 of those two, you know, he said brace yourself, which Deon
4 Moore meant I'm going to rob you, and the defendant himself
5 says, he wouldn't come off the money, so I shot him. You can
6 form the intent to commit theft in an instant. There doesn't
7 have to be prior planning or discussion. And the witness
8 statements that he talks about, like Deon Moore said if -- I
9 can't remember now which one it was -- that they did talk about
10 it and they all agreed, and if everybody wasn't on board, it
11 wasn't going to happen. Where did I put that? Excuse me.
12 Okay. Douglas Wilson, they said that was exculpatory, that I
13 didn't provide that and that was exculpatory. Defendant asked,
14 do I want to help him rob Hanks, take his money. No. Wait a
15 minute. That was Deon Moore. Never mind. Douglas Wilson.
16 Douglas Wilson's statement, they talked about, quote, jacking
17 him. Michael said he didn't have no money. Michael told him
18 he shot him and Michael hid the gun the next day telling
19 everybody he shot him, and he saw where he stashed the gun.
20 And Michael said he didn't -- the reason he did it, he didn't
21 want to be called a punk. He said he was BGs, busted for
22 stripes. That was the alleged exculpatory statement I didn't
23 provide. Deon Moore said Michael asked him, do I want to help
24 him rob Hanks, take his money.
25 Louie Ray Sheppard, he didn't say much. He

1 said he heard the gunshot, and they picked Michael up around
2 the corner. He was nervous. Michael said, somebody got shot,
3 a man got killed, but he didn't say who did it.

4 Sidney Perry said Michael tried to get him to
5 say that he was with him all night, provide an alibi. Michael
6 told him where the gun was. Okay. Erica Bradley just talks
7 about what Deon told her, that Michael did it and he can't
8 believe Michael tricked off their lives like that. Cassandra
9 Carr said Deon said Michael shot the guy. Told the man to give
10 him the money, and the man said he didn't have money, and
11 Michael put the gun to his neck and shot him.

12 And if I was going to hide anything, I mean, you
13 know, I heard that somebody said that Engler -- that Michael
14 said that his cousin was doing the time for him, and so, you
15 know, I gave that in discovery, that Engler said that Moore
16 said that the defendant was doing his time for him. And, you
17 know, I knew that was exculpatory and I provided that
18 statement.

19 So they talk about there's a discovery request
20 for -- there's two discovery requests that are similar. One
21 says, "Statements of any witnesses interviewed by the
22 prosecution who identified any other individual other than the
23 Defendant who fired a shot in this case or possessed a
24 firearm." And then there's a subsequent one that said -- got
25 carpal tunnel. I think it says copies -- copies of -- oh,

1 after direct examination by the prosecution, copies of any
2 statements or reports made by any of the prosecution witnesses.
3 So in response to the discovery request that said statements of
4 those who said anybody -- who said that someone else possessed
5 a firearm in this case, I said -- I think I said, "Witnesses
6 who identified any other individual other than defendant:
7 Louie Ray Sheppard and Douglas Wilson said Deon Moore had the
8 gun." I -- I did not -- obviously I probably should have put
9 Deon Moore's name there, but it was something that was always
10 known and openly discussed between me and Mr. Morris. It was
11 in the defendant's own statement that was given to Mr. Morris
12 on June 17th, 1996. I mean, it's like, you know -- I mean, it
13 was just commonly known. I mean, you know, I told you the sun
14 was coming up. I mean, he knew it, and it was in his
15 statement, and they were indicted as parties. On reflection
16 today, 28 years later, even though it was known, I should have
17 put Deon Moore there.

18 And, you know, Your Honor, they've had four
19 years to analyze thousands of pages and boxes of discovery. I
20 mean, boxes of files, which by the way, my office didn't finish
21 copying until Monday. And after it was over, Mr. Warren
22 brought some that he said were just found, and I haven't even
23 had a chance to go through it. They've had four years to
24 analyze and scrutinize and go line by line. They have three
25 attorneys in the DA's office, at least two attorneys over here.

1 God knows how many attorneys at the Udashen Law Firm and
2 assistants to go line by line by line and pick it apart and
3 find any little mistake. I should have put Deon Moore. It
4 certainly wasn't intentional. It certainly wasn't a secret
5 that Deon Moore possessed the gun, and it certainly wasn't news
6 to John Morris because -- I think I have it here. These were
7 certainly -- these were friends of the defendant. John Morris
8 talked to these defendants before I did and longer than I did.
9 That was brought up in his cross-examination. He talked to
10 Doug Wilson --

11 MR. LASSITER: Your Honor, if she's going to
12 bring up something regarding Mr. Morris or Judge Morris, Judge
13 Morris would be the appropriate person. This is not her
14 personal knowledge.

15 HON. JANELLE HAVERKAMP: It -- it's his bill
16 that he filed with the Court, and it's part of the trial
17 record.

18 MR. LASSITER: With respect, she has no personal
19 knowledge, which would make her the inappropriate party to be
20 talking about this.

21 THE COURT: I mean, if you're basing it on
22 bills, those are hearsay. If it's in this court's file, I can
23 look, but --

24 HON. JANELLE HAVERKAMP: It is.

25 THE COURT: -- I think you need to base your

1 testimony on personal knowledge. I agree.

2 HON. JANELLE HAVERKAMP: Well, it's also in
3 the -- his cross-examination of these witnesses, Your Honor, in
4 the trial transcript. He tells them, do you remember coming to
5 my office on or about June 26th. He talked to them, all these
6 witnesses, on June 26th, 1996.

7 THE COURT: Okay. Well, I'm -- I may read the
8 trial transcript before this is all said and done, so...

9 HON. JANELLE HAVERKAMP: Okay. Okay. So -- and
10 if you'll look on their statements, I didn't talk to them until
11 July. And as I said, all the witness statements are
12 inculpatory, not exculpatory. And it's -- I don't understand
13 the argument that now these witnesses -- we're to believe that
14 these individuals are now telling the truth, but everything
15 they said back then was a lie. Even if you believe that
16 they're now telling the truth, while this is certainly not new
17 evidence, they could have been given -- they could have been
18 asked to give statements back in 1998 or any time thereafter.
19 But even if you look at their new version of the facts, they
20 corroborate the important facts of the State's case. None of
21 them got out of the car. None of them actually saw the crime
22 being committed. It was only applicant and Deon Moore. Both
23 Perry and Sheppard still say -- state that applicant admitted
24 the man got shot, the man wouldn't come off the money. Both of
25 them still say that. They both still say the man wouldn't come

1 off any money. So according to the new affidavits, the
2 applicant was close enough to see -- to hear the conversation.
3 Even Doug Wilson says, the man got shot, I guess the man
4 wouldn't come off any money. Why would Wilson say that if
5 there wasn't discussion in the car about robbing or jacking?
6 Sidney Perry said he, Michael, never said who shot him, but I
7 would have thought for a second that he did. And the rest of
8 their statements are purely conjecture and speculation and
9 misstatements of the law.

10 Now as far as whether or not I handed statements
11 over after -- because I called Doug Wilson and Louie Ray
12 Shepheard. Mr. Morris called Sidney Perry; I didn't. And he
13 called Doug Wilson. And the record doesn't reflect that
14 Mr. Morris asked for their statement. I don't know if that's
15 because he already had them or he just forgot. And if he
16 forgot to ask for them, I might have forgot to give them. But
17 I would have thought that a board certified criminal lawyer
18 like John Morris would have asked for them, but the record's
19 silent on that. I don't -- I don't remember. I would
20 routinely make a copy of the statements to hand to the defense
21 attorney when they asked for them. We were in court sitting
22 right, you know, where they're sitting -- well, in a different
23 courtroom -- in front of Judge Woodlock. If he had asked for
24 the statement, I certainly would have turned it over, just like
25 I did when he asked for the police report. I wouldn't have

1 played keep-away with it in front of Judge Woodlock.

2 And finally his claim that I knew that Judge
3 Morris represents Deon Moore and therefore I had a duty to stop
4 his representation of the defendant. You've read the grand
5 jury testimony where Deon Moore very clearly tells me, when I'm
6 giving him the grand jury warnings that grand jury testimony is
7 secret, you cannot reveal what's talked about in grand jury to
8 anyone else, and Deon Moore says, I can tell my attorney, can't
9 I? And I said, you have an attorney? Who's your attorney? He
10 said, I have three attorneys. Keith Brown's my main attorney.
11 He's the only one I talk to. But I have two other attorneys
12 from Dallas. I don't know their names, but I have their card.
13 But he said, Keith Brown is my main attorney. He's the only
14 one I talk to.

15 So I most certainly did not know that John
16 Morris was his attorney. And if you look at the police
17 statement that he questioned me about, it doesn't say that Deon
18 Moore told him that John Morris was his attorney. To me, it
19 reads that Willie Hennesy said, Deon wants to come talk to you,
20 but he wants to talk to his attorney, John Morris, first. It
21 doesn't -- you know, and he assumes that after -- when he comes
22 in, he assumes that he's talked to his attorney and that, you
23 know, he's here to give a statement. And he makes a production
24 that I wrote, John Morris gave him permission to talk. When I
25 reviewed that statement, I was just recording what the

1 statement said, that John Morris. I wasn't confirming that I
2 knew John Morris was his attorney.

3 And, Your Honor, like I said, I did not
4 intentionally withhold any evidence that I believed to be
5 exculpatory. Thank you for the opportunity.

6 THE COURT: Do you have any questions?

7 MR. LASSITER: I do, Your Honor.

8 THE COURT: Okay.

9 MR. LASSITER: May I approach the well?

10 THE COURT: Yes.

11 CROSS-EXAMINATION

12 BY MR. LASSITER:

13 Q. Judge Haverkamp, you started this narrative that you
14 gave with a statement that if you look at the way in which you
15 disclosed the statements of Mr. Newberry to John Morris, you
16 said you did not do it with a document Compliance With
17 Discovery, you did it with a letter. Do you remember saying
18 that?

19 A. No. I don't think I said I did it with a letter.

20 Q. I could have the court reporter read that back. You
21 said it very specifically. It was at the very beginning.

22 THE COURT: Do you have another question?
23 Because she's answered that question.

24 MR. LASSITER: I asked if the court reporter
25 could read that back to her because it was very specific. She

1 said she did it in a letter and that's how she did it. She did
2 not do it with a document Compliance With Discovery.

3 THE COURT: It's going to take her a few minutes
4 to locate that, so if that's what you want to do, we'll take a
5 short break and let her locate it.

6 MR. LASSITER: I think it's important --

7 THE COURT: If it's there.

8 MR. LASSITER: I think it's very important. She
9 said it specifically. She said she did not do it except in by
10 letter form.

11 THE COURT: It's there if she said it. It's not
12 there if she didn't, so we'll let her look.

13 MR. LASSITER: Thank you, Your Honor.

14 THE COURT: Okay. You can step down for a few
15 minutes. Y'all can all take a 10-minute break, and if she's
16 got it by then, great. If she doesn't, we'll give her more
17 time.

18 (Off the record)

19 THE COURT: Resuming. I believe the court
20 reporter has had an opportunity to review her notes and has
21 found what you're asking for. Is that correct?

22 MR. LASSITER: Yes, Your Honor.

23 THE COURT: Okay. So we'll have the court
24 reporter read back what you had requested her to find.

25 THE REPORTER: "I didn't document with a written

1 Compliance With Discovery signed by Mr. Morris that he was
2 given the written transcripts, but it was stipulated to by both
3 parties during a Motion to Suppress hearing on February 20th,
4 1997. So obviously not all the discovery compliance was
5 documented and signed."

6 THE COURT: That didn't say anything about a
7 letter, which was your question.

8 MR. LASSITER: Judge, what she said is she did
9 not turn them over in a Compliance With Discovery.

10 THE COURT: You asked her if she did it in a
11 letter, and she said she didn't remember saying that. I
12 thought that's what she was looking up. That didn't say
13 anything about a letter, but it said what it said, so let's
14 move on.

15 MR. LASSITER: May I approach the witness, Your
16 Honor?

17 THE COURT: Yes.

18 MR. LASSITER: I'm going to offer exhibit
19 number -- applicant's Exhibit No. 62, tendering to opposing
20 counsel.

21 MR. ERLANDSON: No objection, Your Honor.

22 MR. LASSITER: Approach the Court?

23 THE COURT: Is this something that's already
24 been provided as an exhibit?

25 MR. LASSITER: No, Your Honor. This one is

1 separate.

2 THE COURT: It appears to be a record out of
3 this court's file in this case, and the Court will take
4 judicial notice of the file in this case, and so I'll admit
5 Exhibit 62.

6 MR. LASSITER: Thank you, Your Honor. May I
7 approach the witness?

8 THE COURT: Yes.

9 Q. (By Mr. Lassiter) So you stated on the record that
10 obviously things weren't given over in Compliance With
11 Discovery motions every time because you didn't file a
12 compliance motion when turning over the statements of the
13 defendant. But here we have a State's Compliance with Order
14 for Discovery in which you turned over the taped statements of
15 the defendant under a Compliance With Discovery.

16 A. I was talking about the statements that were turned
17 over June -- the transcripts that were --

18 MR. LASSITER: May I approach again, Your Honor?

19 THE COURT: Let her finish her answer. Yes.

20 HON. JANELLE HAVERKAMP: Copies of the
21 transcripts were previously provided. What I was indicating is
22 -- I saw this when I was reviewing -- is that when I provided
23 the transcripts to him on -- I forget when I said -- June 17th,
24 obviously I didn't do a separate State's Compliance with Order
25 for Discovery back in June 17th. That's what I was referring

1 to. I referred to them here, but back in June when I provided
2 the written transcripts, I didn't do one of these separate
3 State's Compliance with Order for Discovery. I referenced it
4 here, but back in June, I hadn't done one of these.

5 Q. (By Mr. Lassiter) And this is what we actually put
6 into evidence as applicant's Exhibit 59, which we questioned
7 you about the last time, and I illustrated the fact that you
8 had turned over things in statement form under a letterhead of
9 the District Attorney's Office.

10 A. I didn't remember that.

11 Q. But when you took the stand today, you went, well,
12 obviously that means I didn't turn it over the same way every
13 time because I didn't do a Compliance With Discovery, but you
14 did.

15 A. I didn't remember that. But it's not --

16 Q. But you literally just referenced it with a document
17 in your hand. You referenced that you did a Compliance With
18 Discovery on that very thing.

19 A. If I may answer the question.

20 THE COURT: Yes.

21 A. That is -- that is not a -- the normal Compliance
22 With Discovery, and I guess it's because we hadn't had the
23 discovery hearing yet.

24 Q. (By Mr. Lassiter) Judge Haverkamp, you were recused
25 in this case on December 30th by voluntary recusal in 2024,

1 correct?

2 A. I don't know the date, but I did voluntary recuse
3 myself.

4 Q. After being recused, did you take any action on
5 Michael Newberry's case under the authority of the District
6 Court judge?

7 A. I don't believe so.

8 Q. You don't believe so?

9 A. (No response)

10 Q. Did you use your office and your role as District
11 Court judge to request the disciplinary TDC file of Michael
12 Newberry after you had been recused?

13 A. No, sir, I did not.

14 MR. LASSITER: May I approach the witness, Your
15 Honor?

16 THE COURT: Yes.

17 MR. LASSITER: Tendering to opposing counsel
18 what we've marked as applicant's Exhibit No. 63. We'd offer it
19 for all purposes, Your Honor.

20 THE COURT: Why don't you show it to the
21 witness. Right now I don't have any idea what it is, and I
22 don't think you've established a predicate for it, so what is
23 the predicate?

24 MR. LASSITER: This is impeachment evidence,
25 Your Honor.

1 THE COURT: Okay. Then I think you need to show
2 it to her.

3 MR. LASSITER: May I approach the witness?

4 THE COURT: Yes.

5 Q. (By Mr. Lassiter) All right. Do you see what I've
6 marked here as Exhibit No. 63?

7 A. (Reading)

8 Q. Do you see this document?

9 A. I do.

10 Q. Okay. Does this document indicate that the sheriff's
11 department has been requested by their -- in this case, "my
12 District Court to get the Disciplinary file for Offender
13 Michael Newberry" and it has the date of January 31st, 2025,
14 which is after the date that you were recused?

15 A. I didn't request it, and District Court could refer
16 to anybody that is in the District Court. I did not request
17 it.

18 MR. LASSITER: Judge, we'd ask this to be
19 offered for all purposes.

20 HON. JANELLE HAVERKAMP: I can't authenticate
21 that.

22 MR. WARREN: No objection.

23 THE COURT: Let me look at it. I mean, I don't
24 know where you got it. I don't know how you got it. It's --
25 right now it's not authenticated in any way. I mean, it's just

1 a -- you haven't established any kind of predicate for it.

2 MR. LASSITER: May I respond, Your Honor?

3 THE COURT: Yes.

4 MR. LASSITER: When it is impeachment evidence,
5 we do not have to establish the same rules of predicate. What
6 we have to establish is something different than what the
7 witness is saying. This has a direct contradiction to what the
8 witness is saying because it says "my District Court," the
9 only --

10 THE COURT: Only if it's a legitimate record.
11 You haven't shown where you got it. You could have created
12 this as far as I know. I mean, I'm not saying you did, and I'm
13 not saying that. But I'm saying you have to establish a
14 predicate of where you got it. I don't know where you got it.

15 MR. LASSITER: I understand, Your Honor. And
16 the predicate is established in itself. It comes from email
17 from the Texas Department of Corrections. It has the emails of
18 the person requesting it from the sheriff's department. This
19 is something that we obtained from the District Attorney's
20 office, and they can testify as to where they got it, but when
21 it comes to impeachment evidence --

22 THE COURT: I disagree with you that you don't
23 have -- you could have created this. Again, I'm not saying you
24 did. But you've got to show -- if you want to use it to
25 impeach her when she says I didn't do this, you've got to show

1 somehow or another this is legitimate. I mean, that's just
2 basic, I believe, evidence rules, and you haven't shown any
3 predicate for this or authentication for it. I'll introduce it
4 for the record purposes only.

5 MR. LASSITER: And we will get back to
6 introducing the predicate that the Court requires with a
7 different witness, but for this one, I was trying to use it for
8 impeachment purposes.

9 THE COURT: Okay. I think you've accomplished
10 that if you can prove up its authenticity.

11 MR. LASSITER: Certainly, Judge.

12 Q. (By Mr. Lassiter) So what you are testifying to
13 today, Judge Haverkamp, is that you did not direct the Cooke
14 County Sheriff's Office or anyone in it to get the disciplinary
15 file of Michael Newberry?

16 A. That is correct.

17 Q. Did you direct or ask anybody to provide the
18 disciplinary files to any party other than government?

19 A. No.

20 Q. Do you have a copy of the disciplinary file?

21 A. I do.

22 Q. How did you receive it?

23 A. I received it from security.

24 Q. Okay. When you say "security," be specific. Who?

25 A. Courthouse security.

1 Q. Courthouse security. Who in courthouse security?

2 A. (No response)

3 Q. You are under oath, ma'am.

4 A. I'm well aware of that. Daniel --

5 Q. Who in courthouse security -- who?

6 A. Daniel Barthold.

7 Q. And is it your testimony that you did not direct him
8 to give you those records?

9 A. Correct.

10 Q. Is it your testimony that you did not direct those
11 records be given to any other party other than government
12 officials?

13 A. I haven't directed that those records be given to
14 anyone.

15 Q. Have you asked for them to be given to anyone?

16 A. No.

17 Q. Do you have any knowledge if those records were
18 provided to anyone other than a government official?

19 A. No. I think the concern was the courthouse security.

20 Q. So you believe that you were given those for
21 courthouse security purposes? Is that your testimony?

22 A. I think that was the concern was courthouse security.

23 Q. So is it your testimony that the sheriff's department
24 gave it to you for security purposes?

25 A. I said I think the concern was courthouse security.

1 Q. And for the purposes of this case, are you supposed
2 to take any action in this case as a member of the government,
3 or are you a witness?

4 A. I'm a witness. I did not take any action.

5 Q. And if you had been provided those for, as you call
6 it, security purposes, you do not believe it is then your
7 responsibility to provide it to Judge Gabriel as the acting
8 District Court judge for this case?

9 A. I did not provide it to Judge Gabriel.

10 Q. In preparation for your testimony today, did you meet
11 with and go over the file that was provided by the District
12 Attorney's Office with Mr. Hagen?

13 A. No, sir.

14 Q. Did you spend over two hours in that room right there
15 with Mr. Hagen going over the file that was provided?

16 A. No, sir.

17 Q. Is it your testimony that you were never in a room
18 with Mr. Hagen while you were under the -- under the direction
19 of the Rule?

20 A. Yes. He came up to review the file, and he briefly
21 stopped in. We didn't talk about the testimony.

22 Q. So you're saying that he was only in that room for a
23 few minutes?

24 A. I don't know how long he was in there. I'm saying we
25 didn't talk about the testimony.

1 Q. Do you know how long you were in there while he was
2 in there as well?

3 A. No. I didn't time it. It wasn't very long.

4 Q. Would the time period of two hours surprise you?

5 A. Absolutely. He went in that room and looked at the
6 file. I stayed in that room. I -- I don't know that I was
7 ever in that room when he was looking at the file. I never
8 went through the files while he went through the files.

9 Q. During the last hearing, which was February 11th
10 [sic] of 2025, when you were in this room over here, we could
11 hear you yelling to the tune that it was disruptive. Why were
12 you yelling?

13 A. I don't remember yelling.

14 Q. Did any member of court staff or any member of your
15 family go into that room and tell you what was going on during
16 the proceedings that caused you to yell?

17 A. No.

18 Q. After your recusal, which would happen in December of
19 2024, did you contact the Texas Rangers in a retaliatory effort
20 and ask them to open an investigation into the District
21 Attorney?

22 A. No. I contacted the Texas Rangers about Mr. John
23 Warren way prior to that because I believe that he has
24 committed the crime of misuse of public information for
25 something that happened back in June, and I had contacted them

1 previously.

2 Q. So you're saying that you contacted them in June of
3 2024 and not in January of 2025?

4 A. Oh, I've been in regular contact with them, and I
5 believe that he knows that, and that may be the reason for what
6 he's done.

7 Q. Were you in contact with them in January of 2025?

8 A. I'm sure that I was on a continuing basis.

9 Q. And did you discuss this case at all with them?

10 A. As part of the continuing investigation.

11 Q. So you discussed this case with the Texas Rangers?

12 A. Not -- not the testimony, but -- no, I haven't
13 discussed the details.

14 Q. Philip Ray was an attorney that worked for you,
15 correct?

16 A. Uh-huh. Yes, sir.

17 Q. He would be familiar with your practices because you
18 trained him, correct?

19 A. He did work for me.

20 Q. And did you provide him with instruction on how you
21 wanted him to do things while he worked for you?

22 A. To some extent, yes. I think when he worked for me,
23 I might have had other assistants also.

24 Q. Mr. Ray testified that you would take copious notes
25 during the course of representing the State of Texas on each

1 case. Does that sound about right?

2 A. Yes. I would take notes.

3 Q. And if there were no notes or very few in the boxes
4 for Michael Newberry and Deon Moore, who would have removed
5 those notes from those boxes?

6 A. I don't know because when I got the boxes, they were
7 in such disarray. I couldn't make heads or tails out of
8 anything.

9 Q. That wasn't my question, Judge. My question was, who
10 would have removed your notes from those boxes?

11 A. I don't know. Looked to me like the notes were still
12 in there, what you provided, looks like, because you gave me
13 copies of my notes.

14 Q. They were very limited. In fact, they were limited
15 to only a few pages. Where are the rest of the notes that you
16 took that should have gone into the boxes, the District
17 Attorney boxes, for Michael Newberry and Deon Moore? Where are
18 they?

19 A. I don't know.

20 Q. Did you destroy them?

21 A. I -- I don't know that when we closed out the files
22 that we kept all the notes.

23 Q. Is it possible that you destroyed the notes from
24 those boxes?

25 A. When we closed out files, we -- when the staff closed

1 out the files, they could have destroyed notes. I don't know.

2 Q. Mr. Ray was actually able to review boxes that had --
3 he was involved in, and in each of those boxes, not only did he
4 find his notes, he found his trial co-counsel's notes. He even
5 found the notes that they would pass to each other during the
6 trial. So your staff clearly would not have been directed to
7 destroy the notes. Why was your staff directed to destroy the
8 notes from Michael Newberry's case?

9 A. That's not what I said. I said I don't know what
10 happened to the notes.

11 Q. So they could have been destroyed by you or someone
12 else?

13 A. I'm not saying that. I'm saying I don't know.

14 Q. You said you were a one-man show. That's what you
15 said.

16 A. At that time. I got an assistant in October of 1997,
17 Roger White.

18 Q. So Mr. Newberry's case was already over by then, the
19 trial. Where would you have -- did you ever take the notes or
20 boxes home with you?

21 A. During trial I would take stuff home, yes.

22 Q. After the trial, did you ever take Mr. Newberry's
23 boxes home with you or Deon Moore's box home with you?

24 A. I don't believe so.

25 Q. When you were in court before testifying on this

1 case, you were given the instruction by Judge Gabriel to turn
2 over all of the documentation that you had in preparation --
3 that you looked at in preparation for your testimony. Do you
4 remember her giving you that order?

5 A. No. She told me to turn over what I reviewed.

6 Q. Do you remember giving -- her giving you that order?

7 A. What I reviewed, yes. What I had with me that I
8 reviewed, yes.

9 Q. Can you explain why you deliberately took something
10 out of the documents that you reviewed after being instructed
11 to turn it over? Why did you --

12 A. What did I take out?

13 Q. Say that?

14 A. No. I don't understand the question.

15 MR. LASSITER: May I approach the witness, Your
16 Honor?

17 THE COURT: Yes.

18 Q. (By Mr. Lassiter) This is a copy of some of the
19 things that we were given that you looked at in preparation for
20 your testimony that you initially provided to us but then
21 removed from the file. So this is just a portion of it. So
22 why did you remove this portion of the record that you had
23 reviewed in preparation for your testimony when the judge,
24 Judge Gabriel, specifically ordered you to turn it over to us?
25 Why did you deem it appropriate to remove something that you

1 had been ordered to turn over?

2 A. Because I didn't explain this very well to you.

3 Might I keep this?

4 Q. No, you may not.

5 THE COURT: She can answer the question, and
6 it's not your prerogative to tell her what she can and cannot
7 do, sir.

8 MR. LASSITER: I understand, Judge, but that's a
9 copy. That has my notes on it. I don't know why she wants to
10 keep it. I asked her a question. It's about that, but it
11 doesn't talk about the contents of it.

12 THE COURT: I just need the witness to answer
13 the question. If you need the question repeated, we'll have
14 the question repeated.

15 HON. JANELLE HAVERKAMP: Because, Your Honor,
16 that -- that, I didn't explain very well to you. That was --
17 my attorney had asked me to write down for him the history
18 between me and the District Attorney's Office to -- so he could
19 understand why I -- the District Attorney's Office has taken
20 the action that they have taken, why I believed that they had
21 just agreed to this writ without even talking to me about it,
22 and not allowing me to see the file. Those were notes that
23 were just meant for my attorney. They weren't meant to be made
24 public. What I think Your Honor needs to know is that the
25 District Attorney's Office has filed that that you ordered

1 copied just for them. They have taken that and filed it with
2 motions to recuse me on all criminal cases. That was not meant
3 to be public. I don't think you intended it to be public.

4 MR. LASSITER: Your Honor, I'll object
5 nonresponsive as to this portion of it.

6 THE COURT: I'll give you further opportunity to
7 testify once he gets finished asking you questions, but we do
8 need to confine it to the question asked. But I will say I did
9 not know that that was prepared for her attorney, but go ahead.

10 Q. (By Mr. Lassiter) So you testified multiple times
11 that you did not and do not believe that anything contained
12 within the grand jury transcript is exculpatory. Remember
13 saying that?

14 A. I do not believe the grand jury testimony was helpful
15 to Mr. Newberry.

16 Q. That wasn't my question, Judge. My question was, did
17 you testify today that the grand jury was not in any way
18 exculpatory? Did you testify to that? Were those your words?

19 A. I don't know my exact words, but I thought that it
20 wasn't helpful to Mr. Newberry, thought it was inculpatory.

21 Q. Now when you were testifying previously, my question
22 to you was, "And robbery is the aggravating element that you
23 were using to try and convict Michael Newberry of capital
24 murder, right?"

25 Your answer was "Yes."

1 My question, "So anything that tended to negate
2 that a robbery happened is by definition exculpatory because it
3 could have been used to disprove an element of the offense,
4 right?"

5 Your answer was "Yes."

6 Do you still stand by that answer that anything
7 that tends to negate that a robbery happened is exculpatory
8 because it disproves or tends to disprove an element of the
9 offense?

10 A. Negates robbery, yes.

11 Q. And having the opportunity to review the Court's file
12 that this court gave you, you had an opportunity to review the
13 grand jury transcript, correct?

14 A. I've reviewed the grand jury testimony.

15 Q. And now -- because last time you said it would
16 surprise you -- you were able to read that over 46 times, the
17 co-defendant indicated this was not a robbery.

18 A. That's incorrect.

19 Q. You will agree that the co-defendant, as you stated,
20 admitted to having a gun in this case?

21 A. What the co-defendant admitted is that Michael
22 Newberry had a gun. He admitted that he asked to see the gun
23 and that he played with the gun after Michael Newberry took the
24 bullets out, and that he handed the gun back to Newberry
25 without the bullets in it and that --

1 Q. So you would admit that you knew that Deon Moore
2 possessed the firearm in this case?

3 A. Correct.

4 Q. You knew that?

5 A. I did.

6 Q. And, in fact, you asked the Court to forgive you
7 essentially for saying Deon Moore should have been included in
8 the exculpatory or in the evidence that you turned over in
9 which you also list Deon Moore and Louie Ray Sheppard noting
10 that Deon had a gun?

11 A. I list who?

12 Q. Excuse me?

13 A. You said Deon Moore.

14 Q. Yeah. Douglas Wilson. Deon Moore, Douglas Wilson,
15 and Louie Ray Sheppard. You asked the Court for leniency
16 because you said you should have included Lilton Deon Moore in
17 that disclosure to John Morris?

18 A. I think that mischaracterizes my testimony. What I
19 said was I honestly never -- it never occurred to me to list
20 Deon Moore. They were -- they were indicted as co-defendants.
21 They were charged as parties. The fact that Deon Moore had
22 possessed the gun was -- didn't seem exculpatory.

23 MR. LASSITER: May I approach the witness, Your
24 Honor?

25 THE COURT: Yes.

1 Q. (By Mr. Lassiter) Judge Haverkamp, we've previously
2 gone over this. This was Exhibit 27, which is admitted. This
3 is the order and motion under a motion entitled Motion for
4 Disclosure of Favorable Evidence. And it states specifically
5 "Statements" -- not identification -- it says, "Statements of
6 any witnesses interviewed by the prosecution who identified any
7 other individual other than the Defendant who fired a shot in
8 this case or possessed a firearm in this case." And that was
9 granted by Judge Woodlock. Did I read that correctly?

10 A. I'm assuming. I didn't see it, but yes.

11 Q. You didn't see it when I read it right in front of
12 you?

13 A. No. You had your finger over it.

14 Q. Did you not read this very thing for the Court not 30
15 minutes ago? Did you not?

16 A. (No response)

17 MR. LASSITER: Judge, I asked her a question.

18 THE COURT: I think she is reviewing it, but --

19 HON. JANELLE HAVERKAMP: Yes.

20 THE COURT: Okay.

21 Q. (By Mr. Lassiter) Okay. And this is the same
22 statement that you told this court, hey, I'm sorry, I was
23 really busy, I had a lot of other cases going on; in fact,
24 these are the cases, they were so important, I may have forgot,
25 I should have included Deon Moore when responding to that item

1 in my disclosure. Did you not state that?

2 A. No. I don't believe that's how I stated it,
3 Counselor.

4 Q. You stated that you should have given Deon Moore in
5 your disclosure because you knew Deon Moore had told you he
6 possessed a weapon, right? That's what triggered you having to
7 disclose it because you knew --

8 A. In hindsight --

9 Q. -- had a weapon?

10 A. In hindsight, I probably should have put it down.

11 Q. And this statement doesn't say disclose the
12 identities; it says give the statements, does it not?

13 A. And if you'll look at Judge Woodlock --

14 MR. LASSITER: I'm going to object to
15 nonresponsive.

16 THE COURT: Sustained. It's really a yes-or-no
17 question.

18 Q. (By Mr. Lassiter) Does it say to give the
19 statements?

20 THE COURT: If she needs to see it again, bring
21 it back up here.

22 HON. JANELLE HAVERKAMP: It says, "Statements of
23 any witness interviewed." And then there's another one that
24 says copies of statements. I read that to mean give what they
25 say. If I read it incorrectly --

1 MR. LASSITER: May I approach the witness again?

2 HON. JANELLE HAVERKAMP: I know what it says.

3 Judge Morris --

4 Q. (By Mr. Lassiter) Apparently you have some
5 confusion, so let's read it together and make sure that
6 there is no --

7 A. We don't need to --

8 Q. -- confusion.

9 THE COURT: Just --

10 Q. (By Mr. Lassiter) It says -- and you tell me if I've
11 read this incorrectly -- "Statements of any witnesses
12 interviewed by the prosecution who identified any other
13 individual other than the Defendant who fired a shot in this
14 case or possessed a firearm in this case." Did I read that
15 correctly?

16 A. Yes, you did.

17 Q. Okay. So what you are saying is you chose to ignore
18 this judicial order because you wanted to interpret it
19 differently based on a different judicial order that was not
20 referring to whether or not you have to give it over but
21 whether or not you have to turn it over in relation to after
22 they testify. So you got confused. This judge was very clear
23 you are to give them over, the statements. This document is
24 clear, is it not?

25 A. I interpreted it to mean --

1 MR. LASSITER: I'm going to object to
2 nonresponsive.

3 Q. (By Mr. Lassiter) Is this document clear?

4 THE COURT: Would you like to give me a chance
5 to rule on your objection?

6 MR. LASSITER: Yes, Your Honor.

7 THE COURT: It's overruled, because your
8 question had about four questions that you put into one, and it
9 was responsive to one of those questions. So if you want to
10 refine your question so it includes only one, then perhaps I
11 can rule on your objections.

12 Q. (By Mr. Lassiter) Is the statement that I read to
13 you clear and unequivocal?

14 A. I interpreted it the way I answered it.

15 MR. LASSITER: Object to nonresponsive.

16 THE COURT: It's a yes-or-no question.

17 HON. JANELLE HAVERKAMP: Then my answer is no.

18 Q. (By Mr. Lassiter) Okay. Do you get to decide what
19 you get to turn over and what you don't if there is a conflict
20 that you believe exists?

21 A. If there's a conflict, I would have brought it up to
22 the judge.

23 Q. Did you bring it up to the judge?

24 A. No, because I didn't believe there was a conflict.

25 Q. When you were testifying during your narrative, you

1 stated very clearly there were conflicting rulings, did you
2 not?

3 A. Some -- yes.

4 Q. If there are conflicting rulings, then by definition
5 there is a conflict because you stated Judge Woodlock would
6 have ordered it turned over, and you also stated that you
7 believed he may not have because of a different request under
8 the grand jury transcript in which he denied that request. So
9 you said that there were conflicting rulings. So why are you
10 now saying in court to us that there is not a conflict when you
11 stated in your narrative that there is a conflict?

12 A. You're going to have to run that by me again.

13 Q. That's fair. All right. Did you state there were
14 conflicting rulings?

15 A. Maybe -- I don't remember actually.

16 Q. Okay. If you don't remember, you don't remember.
17 And you don't remember that from about an hour ago, and you say
18 that you don't remember whether or not you turned over the
19 grand jury transcript because it was 28 years ago. Is that
20 your testimony?

21 A. I don't remember if I turned over the grand jury
22 testimony. That's correct.

23 Q. Is it fair to state that you cannot state
24 affirmatively that you turned over the grand jury transcript?

25 A. That is correct.

1 Q. Is it your testimony that you cannot affirmatively
2 state that you turned over any of the other nine witness
3 statements that you possessed?

4 A. If it's -- I guess that's correct if the record
5 doesn't reflect it.

6 Q. You stated that the District Attorney's Office, John
7 Warren's office, has had this case for four years and done
8 nothing on it. Do you remember saying that?

9 A. No. I don't think I said he did nothing on it. I
10 said nothing was -- no motion was filed.

11 Q. Okay. So would it surprise you to learn that the
12 reason for that is because nobody realized that you hadn't
13 turned over these necessary exculpatory items until just about
14 six to eight months ago? Would that surprise you?

15 A. Yes. That would surprise me.

16 Q. Is there some reason why you're making claims that
17 you do not know are true?

18 A. Excuse me?

19 Q. Is there some reason that you are making claims that
20 you do not know are true?

21 A. Well, because -- I guess I don't know because I
22 wasn't allowed to see the file.

23 Q. So because you were not allowed to see the file is
24 your testimony that you're permitted to make claims that have
25 no basis in fact?

1 A. What I said was nothing was filed for four -- I
2 wasn't served with anything for four years. That is a true and
3 correct statement.

4 Q. Your statement was this was being looked at for four
5 years.

6 A. There was an open records request four years --
7 December of 2020.

8 Q. Do you know how the case progressed during those four
9 years?

10 A. No.

11 Q. So you made outlandish statements that you had no
12 proof of, no basis in fact.

13 A. I don't believe I'm the one making outlandish
14 statements.

15 Q. Did you in your -- I'm going to call it this
16 manifesto -- request for myself and the District Attorney's
17 Office to be sanctioned?

18 A. That was a note to my attorney. Yes, I did.

19 Q. And are you aware of the disciplinary rules for
20 requesting sanctions for attorneys?

21 A. That was a private note to my attorney that the DA's
22 office has chose to make public, and it was sent to every
23 attorney in -- on the list in the District Clerk's office.

24 MR. LASSITER: I'm going to object to
25 nonresponsive.

1 THE COURT: Sustained.

2 Q. (By Mr. Lassiter) Are you aware of the disciplinary
3 rules for making requests for sanctions against attorneys?

4 A. I didn't make a request. I sent a note to my
5 attorney that's something to be looked into.

6 MR. LASSITER: Again, I'm going to object to
7 nonresponsive.

8 THE COURT: The question is, are you aware of
9 the disciplinary rules? So, yes, it's nonresponsive.

10 HON. JANELLE HAVERKAMP: Yes.

11 Q. (By Mr. Lassiter) Could you please answer the
12 question?

13 A. Yes.

14 Q. So you are aware that you're not entitled to, without
15 committing an ethical violation, make a request for sanctions
16 without good cause?

17 A. Yes.

18 Q. And did you have any actual facts that I myself have
19 committed any act of misconduct other than reporting the facts
20 exactly as they are reflected in the record in this case?

21 A. I don't believe that you have done that, sir.

22 Q. And the reason that you don't believe I have done
23 that is because the record is not very clear?

24 A. I believe that you have made false allegations and
25 have misstated the record and have distorted the record.

1 Q. Have you reviewed the record in this case?

2 A. Yes, I have.

3 Q. Does it contain any evidence that you turned over the
4 statements that are the basis of the claim of failing to turn
5 over exculpatory evidence?

6 A. The grand jury testimony, no. The witness
7 statements, no.

8 Q. So there is no evidence that that claim was untrue.
9 Do you have any evidence whatsoever -- did you do any
10 investigation and go out to see if the testimony provided by
11 Detective Williams that claims that Deon Moore was an
12 eyewitness in the case -- did you do any investigation to see
13 whether or not that claim was true?

14 A. Did I do any investigation?

15 Q. Correct. Now that you had a chance to look at the
16 entire record, did you do any investigation to see if the claim
17 that Detective Williams made in trial that Deon Moore was an
18 eyewitness to this case when, in fact, he has said multiple
19 times to the opposite -- do you have any evidence that that
20 claim is untrue?

21 A. I did not do any independent investigation.
22 Detective Williams is 79 years old.

23 Q. Do you have any evidence that that claim is untrue?

24 A. I don't -- what is your question? Did I do any
25 investigation of what?

1 Q. Do you have any evidence that the claim that
2 Detective Williams made a false statement in the trial -- do
3 you have any evidence that claim is untrue?

4 A. I'm not aware that Detective Williams made any false
5 statements.

6 Q. Have you reviewed the writ in this case?

7 A. Yes, I have.

8 Q. Have you reviewed the basis and the claims that are
9 alleged in the writ?

10 A. Yes, I have.

11 Q. Have you reviewed the false testimony claims
12 specifically included in the writ?

13 A. Yes, I have.

14 Q. Were you aware that we make a claim that Detective
15 Williams gave false testimony by stating that Deon Moore was an
16 eyewitness to the murder? Did you read that portion?

17 A. Yes. I can vaguely recall that because I don't
18 believe --

19 Q. So --

20 A. -- that was what you focused on --

21 Q. You are aware of that?

22 A. Vaguely, but I don't think that's what you focused on
23 at the end --

24 Q. Do you have any evidence --

25 THE COURT: Let her finish her answer or object,

1 one or the other. You're just jumping right in the middle of
2 her answer continuously. So if you think she's being
3 nonresponsive, stand up and object, but don't just jump in the
4 middle of her answer, please.

5 MR. LASSITER: Sorry. I thought she had
6 finished.

7 Q. (By Mr. Lassiter) Do you have any evidence that John
8 Morris was not, in fact, Deon Moore's attorney?

9 A. Yes. Deon Moore's statement to me in grand jury.

10 Q. So do you believe that a person is not entitled to
11 switch attorneys?

12 A. No.

13 Q. Do you believe that it is possible for a person to
14 have one attorney in one month and a different attorney the
15 next month? Is that possible?

16 A. That's possible.

17 Q. And you said that Detective Williams is a credible
18 individual last time you testified, right?

19 A. Yes.

20 Q. And Detective Williams is the one that wrote John
21 Morris was Deon Moore's attorney, correct?

22 A. Incorrect.

23 MR. LASSITER: Approach the witness, Your Honor?

24 THE COURT: Yes.

25 Q. (By Mr. Lassiter) This was introduced as Exhibit

1 No. 6 in the applicant's writ. I'm going to read this out
2 loud. You tell me if I read it incorrectly. "Before I could
3 talk to him about the homicide, Lilton Deon Moore wanted to
4 talk to his attorney, John Morris. After Lilton Deon Moore
5 talked to his attorney, I then took a tape recorded statement
6 from him." Did I read that correctly?

7 A. You did read that portion correctly.

8 Q. This has been introduced as applicant's Exhibit
9 No. 60. In your handwriting, "John Morris let him talk." Did
10 I read that correctly?

11 A. You read that correctly. Would you like me to
12 explain?

13 THE COURT: You just need to answer his
14 questions. You'll have a chance to testify some more.

15 Q. (By Mr. Lassiter) So do you have any evidence that
16 that statement that I read from Detective Williams is untrue
17 other than a month later he had a different lawyer?

18 A. Yes. Because right above that statement -- if I
19 might see that exhibit again. Because right above that
20 statement, it says Willie Hennesy. I read that statement to be
21 that Willie Hennesy is the one that told Investigator Ronnie
22 Williams that Lilton Deon Moore wanted to talk, but he wanted
23 to talk to his attorney first before he talked to Ronnie
24 Williams, and his attorney was John Morris. Not that Deon
25 Moore said his attorney was John Morris, but that Willie

1 Hennesy said his attorney was John Morris. That's how I read
2 that exchange. And my note there saying "John Morris let him
3 talk," I wasn't confirming or saying that I knew John Morris
4 was his attorney. I was just making notes that that's what the
5 statement said. I was not confirming that I knew John Morris
6 was his attorney.

7 Q. So you've said something there that you were making
8 notes about what the statement said. Right?

9 A. Yes.

10 Q. However, did you notice that what you wrote is not
11 what the statement said?

12 A. Well, it's a summary.

13 Q. Is it?

14 A. In my opinion, yes.

15 Q. So going back to your opinions, this is the same
16 opinion that -- and the same mindset that you had when you
17 decided there was conflicting judicial orders, right? You were
18 in the same mindset when you decided?

19 A. No. I don't know how to answer that question.

20 Q. Let's read it together and decide whether or not your
21 reasoning makes any sense. Because the paragraph above it that
22 you claim indicates William Hennesy said it, it states,
23 "Sometime around 11:30 a.m. on 5-31-96, Willie Hennesy came to"
24 -- it says "ot" but that means "to" -- "the Police Department.
25 He told me he had someone out in the hall to talk to me. This

1 was Lilton Deon Moore. He told me that Lilton Deon Moore was
2 with Michael Newberry when he killed the guy. Before I could
3 talk to him about the homicide, Lilton Deon Moore wanted to
4 talk to his attorney, John Morris." It doesn't say Willie
5 Hennesy said Lilton Deon Moore wanted to talk to his lawyer.
6 It says, "Lilton Deon Moore wanted to talk to his attorney,"
7 does it not?

8 A. Yes. And who's telling that to Investigator
9 Williams? Willie Hennesy.

10 Q. Were you there?

11 A. No.

12 Q. Does it say Willie Hennesy said that to Detective
13 Williams?

14 A. No.

15 Q. Does it say Lilton Deon Moore wanted to talk to his
16 lawyer, his attorney?

17 A. Yes. But --

18 Q. So that indicates that Lilton Deon Moore was the one
19 talking to Detective Williams, and did Lilton Deon Moore
20 indicate who his attorney was?

21 A. No.

22 Q. Does it not state his attorney, John Morris?

23 THE COURT: You've been over this multiple
24 times. You have one interpretation; she has another. We're
25 not getting anywhere with that over and over.

1 Q. (By Mr. Lassiter) You stated that the further -- any
2 further writ should be denied based on your reading that there
3 is a fraudulent writ in 2008, right?

4 A. That's what Judge Woodlock found, yes.

5 Q. You cited a case in your manifesto --

6 A. I didn't -- I didn't shepardize that case, so I don't
7 know if it's still good law. I was just writing notes to my
8 attorney.

9 Q. Wait a minute. You just represented to this court
10 that this writ should be denied because it's a subsequent writ
11 because it was frivolous on the earlier writ, and you're saying
12 that you don't even know if that's good law, but you
13 promulgated that to the judge?

14 A. There is case law out there. I didn't have enough --
15 I took that specific reference out because I didn't have a
16 chance to shepardize that case, but there is case law that says
17 that.

18 Q. Well, I looked at the case, and I'll provide it to
19 the Court.

20 A. It was distinguished, yes. That's why I took it out.

21 Q. Because it states that if you have a subsequent writ
22 that establishes things or factual legal bases that were
23 unavailable, they can still do a subsequent writ, does it not?

24 A. That's a different point than that. The point I was
25 making is --

1 MR. LASSITER: May I approach?

2 A. -- if it's fraudulent.

3 THE COURT: Yes. But, I mean, I don't
4 understand why we're arguing law now. I know what the law is
5 on subsequent writs.

6 MR. LASSITER: If I may, Judge. The reason I'm
7 bringing these things up is not because I don't believe that
8 the record is clear. I believe that I'm making a showing of
9 the credibility of the witness. So I believe --

10 THE COURT: You've asked the question. I don't
11 know if you have a different question or a different point to
12 make on that, then make it. But I understand that, but I just
13 think we're ready to move on.

14 Q. (By Mr. Lassiter) Judge Haverkamp, you stated that
15 you don't remember what or wasn't turned over because you had a
16 lot going on. Do you remember saying that?

17 A. And the fact that it's been 28 years.

18 Q. Is it your belief that because you had a lot going
19 on, that justifies any failure to disclose Brady information?

20 A. Absolutely not.

21 Q. Would you agree with me that there is no absolution
22 for Brady information just because everybody knows Deon Moore
23 had a gun? You still have to and are required under law to
24 disclose it?

25 A. Yes. Yeah, I think they knew it. I mean, it was

1 disclosed.

2 MR. LASSITER: I'm going to object to
3 nonresponsive.

4 THE COURT: Re-ask your question.

5 Q. (By Mr. Lassiter) Do you believe that if you as an
6 attorney believe that the other side knows something, you are
7 not obligated to disclose Brady information?

8 A. No.

9 Q. So you would agree with me that you have an
10 obligation to disclose Brady information when you receive it;
11 when you know it is exculpatory, you have that obligation,
12 right?

13 A. Yes. If it's Brady material, yes.

14 Q. Whether or not you think the other person knows, you
15 are required under the law to disclose it?

16 A. Brady material, I'm required to disclose it.

17 Q. And your testimony in this case is you didn't
18 disclose it because you didn't believe it to be Brady material,
19 the grand jury transcript?

20 A. My testimony is I don't know if it was turned over,
21 but I did not believe that it was Brady material.

22 Q. And similarly you did not believe that any of the
23 witness statements were -- contained Brady information?

24 A. Correct. And I was ordered to turn over witness
25 statements after they testified. I called Douglas Moore, and I

1 can't recall one other witness, but --

2 Q. Did you turn over Douglas Moore and Louie Ray
3 Sheppard after they testified? You said you were ordered to.
4 Did you do that?

5 A. The record doesn't reflect. I don't know. Judge
6 Morris did not ask -- the record doesn't reflect that he asked
7 for them.

8 Q. Did you turn over those statements in relation to the
9 motion to disclose favorable information which required their
10 disclosure?

11 A. If they were favorable, which I didn't find any of
12 the statements favorable.

13 Q. So you did not believe that the statements -- or the
14 order by Judge Woodlock that statements were to be turned over
15 that identified another person as having the gun and you knew
16 of the statements of Deon Moore stated that, his grand jury --
17 Deon Moore's grand jury transcripts stated that, Douglas
18 Wilson's statement stated that, and Louie Ray Sheppard's
19 statements stated that, you did not believe that you had to
20 comply with that court order?

21 A. I believe I did comply with that order except for --

22 Q. So when were those statements disclosed?

23 A. I've answered that, that I believe I was complying.
24 And as I say, they were both indicted as parties. The fact
25 that -- you know, I argued to the jury and they were charged,

1 they could find Deon Moore was the shooter and still find
2 Mr. Newberry guilty as a party; they could find Mr. Newberry
3 was the shooter and find Deon Moore guilty as a party. I
4 didn't find the fact that Deon Moore might have possessed the
5 gun as exculpatory.

6 Q. But Judge Woodlock did, because he ordered it under a
7 motion to disclose favorable evidence, didn't he?

8 A. Well, he didn't decide what the favorable evidence
9 was.

10 Q. Is that your opinion, or did you ask him?

11 A. That's my opinion.

12 Q. Did you ever provide any of these documents to him in
13 camera?

14 A. Not that I recall.

15 Q. Did you, in fact, argue to the jury that Deon -- or
16 that Michael Newberry was the shooter because he was the only
17 one that knew the inner workings of that weapon?

18 A. No. I don't know that I said he was the only one. I
19 think I said he did know them. You know, my argument is a
20 reasonable deduction from the evidence.

21 MR. LASSITER: I'm going to object to
22 nonresponsive, Judge.

23 THE COURT: Sustained.

24 Q. (By Mr. Lassiter) In trial, Volume 8, page 41, "If
25 this man did not shoot that gun and it's Deon Moore's gun and

1 this man never fired it, how does this defendant know that this
2 gun does not have to be cocked and that this gun should be shot
3 or could be -- can be shot double action? How does this
4 defendant know it if he didn't shoot the gun? That's -- we
5 know how he knows it." That was your trial argument to the
6 jury. You knew that Deon Moore not only owned that gun but
7 knew the specifics of how it was supposed to be fired when you
8 made that statement to the jury, didn't you?

9 A. I did not know that Deon Moore owned that gun.

10 Q. You didn't know that Deon Moore owned the gun?

11 A. I did not know that he owned the gun. He denied it
12 in grand jury. And I didn't say that -- like you said, I did
13 not say that he was the only one that knew how to operate the
14 gun, but he did -- my statement there is correct, he did know
15 how to operate the gun.

16 Q. So you're saying Deon Moore knew how to operate the
17 gun too?

18 A. I don't remember that. I don't know -- I don't
19 remember if he did or not, but I knew this defendant did.

20 Q. In the grand jury transcript, your question, "How
21 does it load?"

22 Deon Moore's answer, "It loads. That's one of
23 them" --

24 Your question, "Revolvers?"

25 Answer, "You put it in like that."

1 Your question, "You have to put it in there
2 individually?"

3 His answer, "Uh-huh. It wasn't an automatic.
4 You don't have to pull the hammer back on a revolver. You just
5 shoot it."

6 A. So Deon Moore could have known how to operate it too,
7 but this defendant knew how to operate it too.

8 Q. But you knew that when you made a statement to the
9 jury?

10 A. What I said was he knew how to operate it. That is
11 absolutely correct.

12 Q. Do you remember in the grand jury when you asked him
13 When do you wear your handkerchief to signify or why do you
14 wear your handkerchief? Do you remember those questions and
15 answers?

16 A. Somewhat, yes.

17 Q. Do you remember that Deon Moore told you in answer to
18 your question of when you would put your handkerchief over your
19 face, he said, "A robbery or when you're going to jump
20 somebody."

21 And you said, "What do you mean jump?"

22 And he said, "Attack."

23 Do you remember that?

24 A. Somewhat, yes.

25 Q. And you don't believe -- and you knew that Deon Moore

1 put the bandana over his face in this case and Michael didn't?

2 A. Yes. And I had an argument for that in my closing.

3 Q. Certainly. But you didn't disclose this; you didn't
4 think that was exculpatory?

5 A. Again, they were acting as parties.

6 Q. So because they were acting as -- you believed they
7 were acting as parties, you decided not to disclose a clearly
8 exculpatory statement; is that your testimony?

9 A. I don't believe that's clearly exculpatory.

10 Q. So you do not believe that Deon Moore stating you
11 would only put a bandana over your face when you're about to
12 rob or attack somebody and he was the only one that did that in
13 this case -- you do not believe that was exculpatory?

14 A. In the context of the whole case, no, I do not.

15 Q. And are you supposed to consider exculpatory evidence
16 and whether it's supposed to be turned over in the context of
17 the whole case, or are you supposed to just simply turn it
18 over?

19 A. Supposed to turn over what I think is exculpatory.

20 Q. And if you have a question, what are you supposed to
21 do?

22 A. I would submit it in camera to the judge if I had a
23 question.

24 Q. And so you determined that this wasn't exculpatory in
25 consideration of your review of the entire case, but you didn't

1 give it to the judge?

2 A. I don't believe that I did. I don't recall.

3 Q. When Deon Moore told you that he believed the
4 shooting was an accident, you don't think that was exculpatory?

5 A. I don't remember him saying that.

6 Q. Your question in the grand jury, "Did Mr. Newberry
7 ever tell you that he shot Hanks because Hanks hit him?"

8 His answer, "Hit his hand. That's what he
9 said."

10 Your question, "Tell us exactly about that
11 conversation."

12 His answer, "He said -- I said, 'Man,' I said,
13 did you really shoot him?' You know what I'm saying? He said,
14 'Man, I don't know why I shot him because he hit my hand.'"

15 You didn't believe that to be exculpatory?

16 A. I took that to mean he hit his hand because he didn't
17 want to give him the money. I didn't --

18 Q. So again you made another interpretation; is that
19 right?

20 THE COURT: Again, you interrupted her answer.

21 HON. JANELLE HAVERKAMP: Well, in the context of
22 he said he wouldn't get off the money, he -- he was -- he was
23 wanting his money and he had the gun and he wouldn't get off
24 the money, and he hit his hand to get the gun away from him,
25 and so he shot him.

1 Q. (By Mr. Lassiter) So based on your interpretation of
2 the case, you decided that you would not turn it over because
3 in your opinion of how the theory of the case was, it wouldn't
4 be exculpatory to you?

5 A. I didn't think that was exculpatory.

6 Q. And when Deon Moore said that "Michael wouldn't do
7 anything unless you force him, unless it's a no-win situation
8 where there's another gang, he'll fight then, but other than
9 that, he isn't going to do anything" --

10 A. What page are you on?

11 Q. -- you don't believe that that's exculpatory?

12 A. What page are you on?

13 Q. I asked you a question.

14 THE COURT: And she asked you what page you're
15 on. It would be kind for you to tell her.

16 MR. LASSITER: It's on page 105.

17 Q. (By Mr. Lassiter) I will read it for you just in
18 case you're confused. "Because he ain't going to do" --

19 A. Would you let me get there?

20 Q. -- "unless you force him -- unless you're going down
21 in a no-win situation where there's another gang, you have to
22 know, he'll fight then. But other than that, he ain't going to
23 do nothing."

24 In your opinion, Judge Haverkamp, you did not
25 believe also that that was exculpatory?

1 A. Where are you?

2 THE COURT: Page 105.

3 HON. JANELLE HAVERKAMP: Okay. (Reading) "You
4 can't really believe what Michael says." "Didn't tell me
5 nothing" (reading). That that's exculpatory when he said you
6 can't believe what he says -- I don't know, you know -- "We
7 don't really believe him. You know what I'm saying? Because
8 he ain't going down -- ain't going to do nothing unless you
9 force him -- unless you're going down" --

10 MR. LASSITER: I'm going to object to
11 nonresponsive, Your Honor.

12 HON. JANELLE HAVERKAMP: Is that what you
13 want me -- is that the statement you're saying is exculpatory?

14 THE COURT: He asked you if that was exculpatory
15 in your opinion.

16 HON. JANELLE HAVERKAMP: No.

17 Q. (By Mr. Lassiter) In your statement that you
18 provided your attorney that you did in preparation for the last
19 hearing, you make several allegations this is all political
20 prosecution, right?

21 HON. JANELLE HAVERKAMP: Your Honor, that's the
22 subject of a motion to recuse me in every criminal case, so,
23 you know, I'm at a catch-22.

24 THE COURT: Honestly had I known that's what
25 that was, I would not have ordered her to give it to you. But

1 I wasn't told that that was something she wrote for her
2 attorney. She said it was her personal notes, so I thought she
3 reviewed it. And it doesn't matter. We are where we are right
4 now. But I don't know what that's got to do with the issues
5 before the Court. I don't think it's got anything to do with
6 the issues before the Court.

7 MR. LASSITER: Goes to credibility, Your Honor.

8 THE COURT: Well, I'm going to -- I don't think
9 it has -- you know, I understand. You have a really important
10 job here, and you're doing something that you passionately
11 believe in. But I'm going to judge her credibility. I know
12 what you're saying. You're not going to whip me up into some
13 sort of frenzy, and so you can really take it down about four
14 notches here because emotionally you're not going to get me to
15 do something. I'm going to do what the law dictates that I am
16 supposed to do without any emotion for anybody.

17 MR. LASSITER: I'm sorry, Your Honor, if I've
18 indicated anything otherwise.

19 THE COURT: Well, you've been rather aggressive,
20 which is more for a jury than it is for a judge. You're doing
21 your job. I understand that. And you're doing it well. But
22 I'm just saying, I don't want to take this there.

23 MR. LASSITER: We have nothing further for this
24 witness.

25 THE COURT: Do you have any other testimony that

1 you wish to offer?

2 HON. JANELLE HAVERKAMP: Oh, me?

3 THE COURT: Yes, ma'am.

4 HON. JANELLE HAVERKAMP: No.

5 THE COURT: Okay. You may step down then.

6 MR. LASSITER: Your Honor, I believe that closes
7 the evidence that we wish to present in this case.

8 THE COURT: And I assume the State doesn't wish
9 to offer anything else?

10 MR. WARREN: No, Your Honor.

11 THE COURT: Okay.

12 HON. JANELLE HAVERKAMP: Has Rick Hagen
13 testified?

14 THE COURT: He has not.

15 MR. LASSITER: Sorry. There's one more witness,
16 Judge. My apologies.

17 HON. JANELLE HAVERKAMP: Did they not intend to
18 call Rick Hagen?

19 THE COURT: I can't speak for them. There is
20 one more witness. I guess we're going to see who that is.

21 HON. JANELLE HAVERKAMP: Maybe I do have
22 something --

23 THE COURT: Okay.

24 HON. JANELLE HAVERKAMP: -- further to say.

25 THE COURT: Okay.

1 HON. JANELLE HAVERKAMP: They've filed that
2 contempt against me, and unlike a defendant, I have not been
3 allowed to be in the courtroom even though these accusations
4 have been made against me. I've not been allowed to confront
5 and cross-examine my accusers. And they put my -- called my
6 attorney as a witness as a ploy to keep him out of the
7 courtroom, and now they haven't called him as a witness. And I
8 haven't been able to talk to him since last Tuesday. This is
9 not a game to me.

10 THE COURT: Okay. The problem is you call
11 Mr. Hagen your attorney, but he filed an amicus brief. In his
12 amicus brief, he recognized that as an amicus attorney, he is
13 not a party to this. He can't -- I mean, he's -- you've
14 represented to the Court that he's kind of serving with two --
15 wearing two hats, one to represent you, which right now this is
16 not -- I know the allegations that they've made are against
17 you, but right now the Court's decision has nothing to do with
18 any kind of action being taken against you. That's all that
19 we're hearing right now. And he filed an amicus brief, so he's
20 not a party, and he's not really your attorney. So that's --
21 that's the -- the situation as I see it. If you want Mr. Hagen
22 to come in here and make some sort of argument -- other
23 argument, I guess he could, but, I mean --

24 HON. JANELLE HAVERKAMP: I'd like for him to be
25 able to present his amicus brief to the Court.

1 THE COURT: I've read his amicus brief. He
2 doesn't need to present it to the Court. I know what it says.
3 I've read it.

4 HON. JANELLE HAVERKAMP: I don't know if he has
5 anything else to offer because I haven't been able to talk to
6 him.

7 THE COURT: He doesn't have standing as he
8 admitted in his brief. So if you're not going to call
9 Mr. Hagen -- are you going to call Mr. Hagen?

10 MR. LASSITER: I don't believe so, Your Honor.
11 And that's based on the testimony that we received today
12 combined with the testimony received the last time.

13 THE COURT: Well, then is there any reason to
14 keep him under the Rule other than some sort of --

15 MR. LASSITER: Not as of right now, no.

16 THE COURT: Okay. Well, then you can talk to
17 him.

18 Call your next witness.

19 MR. LASSITER: Judge, may I approach the bench
20 for that Exhibit No. 62?

21 HON. JANELLE HAVERKAMP: Is Mr. Hagen excused
22 from the Rule then?

23 THE COURT: Yes.

24 HON. JANELLE HAVERKAMP: Am I free from the
25 Rule?

1 THE COURT: I don't think so.

2 MR. LASSITER: Your Honor, for the limited
3 purpose of establishing for the record where the email came
4 from and the predicate that the Court required or was looking
5 for, I would call Mr. Warren for the purposes of just
6 establishing this predicate.

7 THE COURT: Okay. Raise your right hand,
8 please.

9 (Witness sworn)

10 MR. LASSITER: May I approach the witness?

11 THE COURT: Yes.

12 JOHN WARREN,

13 having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. LASSITER:

16 Q. Mr. Warren, do you recognize that document?

17 A. Yes, I do.

18 Q. What is it?

19 A. This is an email that I received from TDCJ. It is an
20 email from Nathan Ervin to Sarah requesting the information on
21 Mr. Newberry, his disciplinary file.

22 Q. Do you know Mr. Ervin?

23 A. I do.

24 Q. Does he work for the sheriff's department?

25 A. He does.

1 Q. And is that his email?

2 A. Yes.

3 Q. And are you representing to the Court that there's
4 nothing in this document that has been changed, altered,
5 deviated at any -- in any form?

6 A. This is the email that TDCJ sent to me.

7 Q. You didn't create that?

8 A. I did not create this.

9 Q. Did I create that?

10 A. You did not create this.

11 Q. Okay. Do you believe it to be true and accurate?

12 A. I do.

13 Q. And is it a true and accurate reflection of what you
14 received?

15 A. Yes.

16 Q. And then did you pass that along to me?

17 A. Yes.

18 Q. And I have not altered it in any way?

19 A. No.

20 Q. And TDC, when you talked to them, confirmed that
21 this, in fact, was what they received as far as the request for
22 the disciplinary records?

23 A. Yes. I did a Freedom of Information Act request, and
24 they sent me this email along with the records that were
25 requested.

1 Q. Thank you very much.

2 MR. LASSITER: Judge, at this time, I believe
3 we've laid the proper predicate for this to be admitted, and I
4 have no further questions for this witness.

5 THE COURT: Okay. Being no objection, I'm going
6 to admit Exhibit 63.

7 You may step down, sir.

8 MR. LASSITER: With that, Judge, we would ask to
9 close evidence and move on to argument.

10 THE COURT: Okay. You may proceed. Just -- you
11 may proceed.

12 MR. LASSITER: Any instructions that you wish to
13 give me, Judge?

14 THE COURT: No.

15 MR. LASSITER: Judge, as I stated when we first
16 started this case, I made it clear that everything that I did,
17 I did based on what the record reflects. I did not insert my
18 personal anything into this. I did not ask anybody looking at
19 it to look at it with anything but a critical eye when they
20 looked at it because frankly I simply could not believe that
21 anything this important, these statements, these orders and
22 judicial orders, and conflicts of interest wouldn't have been
23 disclosed. It just baffled my mind that something like that
24 could happen in our justice system that is based on doing the
25 right thing. That is based on before and, in fact, making sure

1 because everyone that does it, everyone that takes the oath as
2 a prosecutor takes the oath to make sure justice is done, not
3 that a conviction is obtained.

4 From everything that we've heard from Judge
5 Haverkamp, everything seems to be of the same pattern is, the
6 ends justify the means. I believe he's guilty. I believe this
7 is the way things happened so I didn't have to do what I was
8 required to do. I believe that I got the right person. Why
9 are we even here? I believe there was a confession,
10 irrespective of whether or not that confession was coerced or
11 not, which was for a jury and the appellate court to determine.

12 That's why it's not part of this writ. This
13 writ is simply, was there exculpatory evidence? If there was,
14 was it disclosed? That's the first claim. It's actually quite
15 simple, and we look at a simple claim like that. It doesn't
16 have to be overly complicated. So if we're going to
17 overcomplicate things, we can go into the whys, which is why I
18 did not want that testimony to be present because it doesn't go
19 to the whether. It goes to the why she didn't disclose.

20 I understand that she's got a litany of reasons
21 as to why she believes she was entitled to not disclose it, but
22 that doesn't help when determining the writ. The writ is, did
23 you disclose it? And then the writ moves on to you to
24 determine, is this exculpatory? And if it is exculpatory, is
25 it then material? That's the process. The whys, which we

1 basically covered, that's for a separate hearing, because the
2 why doesn't matter if it's not exculpatory.

3 THE COURT: I believe she had the right to say
4 she didn't believe it was exculpatory. Whether you believe
5 that or not, I believe she had that right, and I -- that's why
6 I allowed the testimony. But I agree with you that the legal
7 analysis is just as you said it.

8 MR. LASSITER: Thank you, Judge. And I
9 understand, if I was a District Attorney and something happened
10 like this, I would want a chance to explain, but I understand
11 the process. And first we have to know, did you disclose it?
12 And the answer to that question is definitively it was not
13 disclosed. And the reason we know definitively it was not
14 disclosed is because we have first John Morris saying it wasn't
15 disclosed. Then we have the evidence of the compliance motions
16 showing it wasn't disclosed. Then we have Philip Ray showing
17 exactly how the pattern of conduct was supposed to be under her
18 direction, and it was always under a motion Compliance With
19 Discovery. Then we show her pattern of the way in which she
20 conducted herself in this trial in which she always filed the
21 Compliance With Discovery. Even when she did a letter, she
22 followed up with a Compliance With Discovery motion. And then
23 finally, you have Judge Haverkamp not denying that it wasn't
24 disclosed. Just saying, I don't remember. Well, that's not
25 good enough because the preponderance standard applies on

1 whether it was disclosed. So if you have nobody saying it was,
2 the record showing it wasn't, definitive statements in the
3 trial by John Morris asking questions, if you recall, showing
4 that he didn't have those statements, and then John Morris
5 definitively stating he didn't have them and he would have
6 changed his testimony or his trial strategy if he had had those
7 documents, we can definitively conclude by a preponderance of
8 the evidence that this information, the grand jury transcript
9 and all the statements within it and the statements of Douglas
10 Wilson, of Deon Moore, of Louie Ray Sheppard, of Sidney Perry,
11 of Cassandra Carr, of both Pezzattas, and of Erica Bradley, we
12 can definitively state they weren't turned over.

13 Now we know her explanations as to why she
14 doesn't believe they're exculpatory. Well, not going into what
15 on earth would make her believe that, but if you have over 46
16 times -- which I know this court has read the grand jury
17 transcript twice. Simply going through the first few pages,
18 you see the exculpatory information. It jumps right out at
19 you. If an element of the offense is robbery, then anything
20 that tends to negate it is, in fact, exculpatory. It doesn't
21 have to negate it completely. Anything that tends to negate it
22 because it could have been used as fodder for
23 cross-examination. They could have used it to introduce it to
24 the jury. They could have used it to figure out a different
25 defensive strategy. They could have used it to request for a

1 lesser offense, which John Morris did in Volume 8. "We would
2 request that the Court include the lesser-included offense of
3 murder on the basis that the evidence has shown that a jury
4 could rationally find the defendant guilty of murder and also
5 that because of the lack of proof of the completed robbery, a
6 jury could also rationally find that party to a murder was not
7 committed." That was denied. The reason it was denied is
8 because he had no proof that this wasn't a robbery. He simply
9 had cross-examination. Had he been provided with the
10 transcript by Deon Moore, he then could have asked for a
11 lesser-included instruction based on evidence that over 46
12 times the co-defendant said this was not a robbery. It simply
13 doesn't make any sense that any rational person would conclude
14 that that evidence that this isn't a robbery is not exculpatory
15 because it tends to negate an element of the offense, which
16 even Haverkamp admitted that anything that tends to negate the
17 element of the offense of robbery would then be exculpatory.

18 Then you have the fact that the statements
19 themselves were specifically ruled by Judge Woodlock to be
20 exculpatory. This is not me. This is Judge Woodlock. There
21 was a motion entitled Motion for Disclosure of Favorable
22 Evidence. It was under a Brady motion, and the first request
23 was statements -- not identities -- but statements of witnesses
24 who would identify any other person as having possessed a gun.
25 Judge Haverkamp said very clearly to you, hey, I should have

1 included Deon Moore's name in that disclosure. That also was
2 in our writ, very clearly arguing there is no basis for him not
3 being included. The fact that she responded and in compliance
4 with a discovery motion specifically saying these witnesses,
5 Douglas Wilson and Louie Ray Sheppard, identified another
6 person as having a gun, that person being Deon Moore, shows a
7 clear understanding of what Judge Woodlock ordered. It was not
8 a conflict when she made that disclosure. If there was a
9 conflict and she believed that that, in fact, was not ordered
10 because it was only ordered in the event those witnesses were
11 to testify, which was in a separate discovery motion and has no
12 bearing on that motion, makes no sense. If she thought that
13 there was a conflict, then there is an order saying turn it
14 over, and in her mind, another order saying don't, well, then
15 you ask the judge for clarification. That's what in-camera
16 review is for, and it would have been turned over, and this
17 whole thing could have been avoided. She chose not to do so.

18 We know that because nothing was submitted for
19 in-camera review, because if it was, it's in the record and
20 it's sealed, much like what you did with the rest of her
21 statement. You put it in the record, and it is sealed. That
22 is part of the record. It is not there; therefore, it did not
23 happen. And she made it very clear that she did not believe
24 anything in those statements were exculpatory, even though very
25 clearly Judge Woodlock ruled that they were. And when she says

1 in her disclosure, these are the identities of these people,
2 she is deliberately not complying with the judicial order. The
3 judicial order that she had read -- maybe she misread it and
4 maybe that's the explanation she should have given, I misread
5 it, but what it says very plainly is the statements of these
6 witnesses. The statements of these witnesses were not turned
7 over. We know that definitively for the same reasons that I've
8 already gone over. Morris's testimony, the record, she cannot
9 state that they were. In fact, she justifies consistently not
10 turning them over, so we know that they were not turned over.
11 We know that these things are exculpatory. I went over some of
12 them while the testimony was happening.

13 "While in the car, you were playing with the
14 gun?"

15 "Yes, I was playing with it." The statement
16 from Deon.

17 Going over, "How does it load?"

18 "It loads like one of them" -- going over he
19 knows the inner workings of the gun.

20 "I can't exactly say Michael shot him because I
21 didn't actually see Michael shoot him. I didn't see it, so I
22 can't be a hundred percent that he shot him." That in and of
23 itself is exculpatory.

24 "When would you put on your handkerchief?"

25 "A robbery. When you're going to do a robbery

1 or when you're going to jump somebody."

2 "Isn't it a fact that you took your blue
3 handkerchief" -- this is Haverkamp's questioning -- "and you
4 put it over your face?"

5 Deon Moore said, "Nope."

6 She asked, "You did not do that?"

7 "Nope."

8 "Okay. Let me give you some time to think about
9 that. You're positive about that?"

10 He said, "I had my blue handkerchief, but I
11 didn't put it over my face."

12 She asked, "Why would there be other people that
13 would say that? Why would other people say that you would do
14 that?" She knew that because she argued to the jury because
15 multiple witnesses had told her he put -- and he was the only
16 one that covered his face, and the reason he was covering his
17 face was to complete a robbery. So if another person is
18 admitting that the reason that they would cover themselves is
19 to commit a robbery or some sort of assault, that is
20 exculpatory because it indicates that's the person that's going
21 to do it, not Mr. Newberry.

22 When he says "I was there to do a drug deal" 46
23 times and that conflicts with his earlier testimony that he
24 gave in his statement -- keep in mind that these statements by
25 each one of these witnesses differs from everybody else's

1 statement. Each one of those statements has significant
2 differences in that they don't even agree on who was in the
3 car. These statements, if they had been given, which they were
4 ordered to do specifically by the judge and because they were
5 exculpatory, each of these could have been explored. Each of
6 these could have -- you could have used to then interview, ask
7 questions, investigate, and form a different theory of the
8 case.

9 You see, it's not just that they were
10 exculpatory. They were material. They were material because
11 it affected the way in which the defense attorney went about
12 his strategy. The law is very clear. You have first whether
13 it was turned over. We know it wasn't. Was it exculpatory?
14 We know that it was. And was it material? We know that it was
15 because the law says if the defense attorney would have changed
16 the defensive theory, that makes it material. And then when
17 they go on to state there's a reasonable probability it
18 undermines the confidence in the verdict. See, the confidence
19 in the verdict is undermined because he didn't get the
20 instruction for the lesser-included, which he should have
21 gotten because he would have had to prove that this wasn't a
22 robbery, or at least been able to make the colorable argument
23 that then Judge Woodlock would have been forced to grant
24 because there was, in fact, evidence it wasn't. But because he
25 did not have that information, he could not cross-examine

1 effectively Douglas Wilson, Louie Ray Sheppeard, Sidney Perry,
2 or call Deon Moore to the stand or call Erica Bradley or the
3 Pezzattas or Cassondra Carr. Any of these witnesses he could
4 have called. Or Ruby Renee --

5 THE COURT: He couldn't call Deon Moore.

6 MR. LASSITER: He could have called Deon Moore.
7 Now Deon Moore, if they had indicated that he would have taken
8 the Fifth, he could have then introduced the grand jury
9 transcript because it was statements made under oath that then
10 conflict with other information that the prosecution was
11 promulgating. It is direct contradicting evidence that is
12 admissible because it is under oath, the same as if you have an
13 unavailable witness or you have a dead witness. You can then
14 use certain statements that they make under oath, and in this
15 case, the prosecution was the one questioning them.

16 We talked about how this could have potentially
17 been explained as an accident. We were not given -- he was not
18 given that information. And then finally he's saying that
19 Michael would never do anything like this. That's Deon Moore
20 saying Michael would have to be forced. He would never do
21 anything like this. That is a definitive exculpatory statement
22 from the man who was with him, allegedly according to the
23 detective an eyewitness, but we know he was not.

24 We know based on the law that this evidence was
25 not only exculpatory but also material because, again,

1 exculpatory evidence is anything that disputes, disparages,
2 denies, or contradicts other evidence. It cannot be questioned
3 that if their evidence and theory of the case is this is a
4 robbery, that the grand jury testimony does not contradict
5 that.

6 Then you go to had the drug transaction evidence
7 been timely revealed, it is conceivable that the applicant, in
8 this case Michael Newberry, would have adopted a different
9 defense strategy. It's not only conceivable now; it's proven,
10 because that's what John Morris testified to this court. And
11 if John Morris has testified, had I known, I would have done
12 something different, it would have changed my defensive
13 strategy, there's no one to say that that's not true. That is,
14 in fact, the only evidence that the -- the best evidence that
15 we can have that the defensive strategy would have changed.
16 And the Court of Criminal Appeals has been very clear in that
17 limiting applicant's defense strategies by withholding
18 exculpatory evidence is an impermissible interference with a
19 defendant's trial preparation or presentation. It is
20 definitive.

21 Material. We must only show that the
22 undisclosed evidence is collectively, not singularly, but
23 collectively sufficient to undermine confidence in the verdict.
24 Defendant does not have to show that it would have resulted in
25 acquittal. Haverkamp's arguments that this is somehow you need

1 to look at the confession, you need to look at these other
2 things, that doesn't have any bearing because those things are
3 not at issue. It is simply -- when we look at materiality, it
4 is simply, does it undermine confidence in the verdict. The
5 question is whether in the suppressed evidence's absence he
6 received a fair trial resulting in a verdict worthy of
7 confidence. Clearly in this case, I don't think that there's a
8 single prosecutor on this planet that would not believe that
9 that needed to be turned over and was full, chocked full, of
10 Brady evidence. Every single one of them. And every single
11 one of them would have believed that that ruling by Judge
12 Woodlock was definitive and that it was to be turned over. And
13 the law is also very clear that a defense attorney is allowed
14 to rely on the prosecutor's honesty in following judicial
15 orders in formulating a defense theory. That is all written
16 down, cited very, very thoroughly in the brief.

17 We appreciate the Court allowed us the extra
18 time and pages to do so because we made sure we're not just
19 talking out of our hats here. These are things that are
20 clearly delineated by the law. It's not something that we
21 believe simply because we want it to be true. It's not like
22 Judge Haverkamp, well, I don't believe I have to do it, so I
23 didn't do it.

24 When it comes to exculpatory evidence as well,
25 there is a case that is very clear that says it is apparent

1 that undisclosed evidence of a co-defendant's violent acts is
2 favorable and material because it would have lent credibility
3 to the defendant's assertion that the defendant was a
4 triggerman and had coerced participation. That's in another
5 case, but it is definitive. Obviously it's not in this case,
6 but it is a definitive statement that reasonably effective
7 counsel could have tied it together with other information to
8 build a theory of motive, intent, and violent propensities.

9 Clearly we have the violent propensities from
10 Deon. His admission to doing drive-bys. His admissions to so
11 many robberies he can't remember them. Laughing in the face of
12 those robberies because he thought it was funny. A clear
13 criminal history. Losing a gun the week before so he needed a
14 gun. All of this makes the Court's, in my estimation, job not
15 simple by any means, but clear.

16 It is not an easy thing to hold that another
17 judge withheld exculpatory evidence. I understand that. It is
18 not an easy thing to do what we are asking you to do because of
19 the ramifications that come from that. But there is a
20 precedent for this type of behavior. That precedent was the
21 Michael Morton case. It is, in fact, eerily similar, except in
22 Michael Morton, the prosecution turned over to the Court in
23 camera certain documentary evidence but left out some of that.
24 The stuff that they left out was simply one statement from a
25 child that this person -- they saw a person that could have

1 because we have put in filings for this court, and I have them
2 for you if you'd like, the findings from the court of inquiry.

3 THE COURT: That's not what we're here to decide
4 in this particular proceeding.

5 MR. LASSITER: I bring it to the Court's
6 attention only because the factual allegations in that writ and
7 this writ are similar.

8 THE COURT: Okay.

9 MR. LASSITER: And so I believe it establishes a
10 very good precedent and the only one that I could find for a
11 case like this. But we do have ten pieces of exculpatory
12 evidence. Each one of them we have definitively explained for
13 the Court why each one of those statements was exculpatory.

14 For Douglas Wilson and Sidney Perry, they're
15 exculpatory because they identify somebody else as having the
16 gun, and then they conflict multiple times with multiple
17 statements. So their own statements conflict, and he was not
18 provided that for cross-examination. And then they indicate
19 different things happened. They indicate different things than
20 Erica Bradley, Cassondra Carr. All of these statements
21 combined don't paint a consistent picture. The consistent
22 picture is only painted when you combine all of those things so
23 that the defensive -- or the defense attorney can form an
24 appropriate strategy, which he wasn't entitled to do because he
25 wasn't given this information.

1 I believe that the record is clear. There was
2 withheld information. It was exculpatory, and it was material.
3 The reasons I've stated, the reasons that are on the record,
4 the testimony, and what we have illustrated for the Court in
5 the brief.

6 For false testimony, we have illustrated for the
7 Court exactly what was false and how it was false in the brief.
8 In the writ itself, it shows you why Douglas Wilson's
9 statements are different than what he is now saying happened,
10 and the reason that Douglas Wilson is so important is Douglas
11 Wilson had a basketball scholarship for Louisville. Back in
12 that day, Rick Pitino was the coach. It was a very famous
13 program. This is all in the record. And the amount of
14 coercion that happened prior to them asking him to go on the
15 record, that paints a consistent picture throughout what
16 happened in this case, because each of those people -- which
17 have been interviewed now, myself and the District Attorney's
18 Office have interviewed them -- we believe them to be credible
19 based on the evidence that we now have. Based on the evidence
20 that we have over what they say happened and what they were
21 forced to say, and, in fact, what Douglas Wilson told John
22 Morris at one point in time, but John Morris didn't have
23 anything to back that up because the District Attorney's Office
24 had hid it. It was within the statements that they had
25 according to Judge Haverkamp on the desk right there that could

1 have been easily just handed over.

2 The false testimony of Detective Williams is
3 definitive. It cannot be questioned. He states when
4 cross-examined by John Morris that Deon Moore was an eyewitness
5 and saw the shooting with his own eyes. We've illustrated that
6 for the Court. We've also illustrated the statement in the
7 grand jury that shows that that is not true.

8 Combined, when you look at all of those things,
9 that is what makes those false statements combined an issue.
10 Those false statements collectively show that there's a
11 problem, not only that they are false, but also that they meet
12 the standard for requiring a new trial.

13 The last thing we have is the conflict of
14 interest. I understand that nobody wants to admit to that.
15 But what we have here is much like it's definitive in the same
16 way it was definitive with whether or not the evidence was
17 disclosed. You see, we don't have anybody saying that Deon
18 Moore did not have John Morris as an attorney at that moment in
19 time. Because John Morris said, when I questioned him
20 specifically about it and it's in the record, I don't recall.
21 That was his testimony. That was his testimony to this court.
22 Even though he submitted an affidavit that was created by Rick
23 Hagen, that affidavit is not true. The only thing that is very
24 true about that affidavit is that there would have been an
25 actual conflict of interest because, remember, he stated in

1 that affidavit that his records had been shredded. I
2 illustrated for the Court that's not true. Before it was "I
3 don't know what happened to them. They may have been shredded.
4 They may not. I don't know." The fact of the matter is that
5 would have helped us, but it doesn't actually delineate from
6 why that would exist inside the police report. You see, inside
7 the police report it states very clearly not that William
8 Hennesy said Deon Moore had an attorney whose name was John
9 Morris. It was very clear, and both witnesses, Morris and
10 Haverkamp, said Detective Williams is credible. Both of them.
11 Well, if he is credible -- and I asked Haverkamp if Detective
12 Williams made a mistake in this case, and she said not to her
13 knowledge. So if that is true, then we must take Detective
14 Williams at his word that that is a true statement, that Lilton
15 Deon Moore asked for his attorney, he asked for John Morris
16 specifically, and then it says, after speaking with his
17 attorney, he got a statement.

18 Now why that matters is Judge Haverkamp tried to
19 explain her written -- handwritten notes that say "John Morris
20 let him talk." Now I understand that she now believes that
21 because he got an attorney later on at some further point a
22 month down the road, that seems to her to mean that he didn't
23 have an attorney -- or John Morris as an attorney then. But
24 when questioned, she had to admit she doesn't know. He could
25 have had a different attorney. It could have been John Morris.

1 And no one had any explanation for why that would be in the
2 police report unless it was true. And remember when I asked
3 John Morris, did you have a chance to review this? At first he
4 said, I can't remember. Then I showed him the record, read it
5 aloud. He had a chance to review it and read it. He admitted
6 that he had read it in the transcript, which he testified to he
7 admitted he had read it, and he was able to see that his name
8 was in it. And I asked him, you would have brought it to the
9 attention of the trial court if that was incorrect? And he
10 said, yes. He said definitively he would have brought it to
11 the attention of the trial court if it were true -- or if it
12 was false, but it wasn't. You see, he was the attorney.

13 Sorry if I got you confused a little bit there.

14 John Morris said he would have brought it to the
15 attention of the trial court if that statement that he was Deon
16 Moore's attorney was false. But he also should have brought it
17 to the trial court's attention because there was an actual
18 conflict of interest, which both Haverkamp and Morris
19 collectively agree with. There would be an actual conflict of
20 interest. There's no disagreement there.

21 But what's interesting is that Haverkamp says
22 she was just writing down what was written in the police
23 report, but that's not what she wrote down. You see, the
24 police report says he wanted to talk to his attorney, John
25 Morris. After speaking with his attorney, he gave a statement.

1 That doesn't say that. The notes from Judge Haverkamp in her
2 own handwriting are "John Morris let him talk." That is an
3 affirmative action. When an attorney allows a defendant or
4 client to speak, it is giving them advice to speak.

5 THE COURT: Isn't that just two things put
6 together that were in that other report, he wanted to talk to
7 his attorney, John Morris, before he talked, then he talked? I
8 mean, that -- that's --

9 MR. LASSITER: I would say you can derive that.

10 THE COURT: I think you can.

11 MR. LASSITER: But it is not the same thing.
12 And why that matters is because that is the only thing. You
13 see, in the police report, Judge, it says he wanted to talk to
14 his attorney, John Morris, and then it says, after speaking
15 with an attorney, he gave a statement. Nowhere in that police
16 report does it say that John Morris advised him to give a
17 statement, you see. It just says, after speaking with him.
18 Why that is so important is because it's 28 years later, and
19 this court is tasked with the fact-finding mission of
20 determining by a preponderance of the evidence what is true.
21 And the best evidence that we have that John Morris actually
22 did an affirmative action is that.

23 THE COURT: Well, you have him saying, I would
24 never, ever, ever, ever, ever advise a defendant to go talk to
25 the police. That's some evidence. You've got to admit.

1 That's evidence.

2 MR. LASSITER: That is evidence. But if you
3 will recall the context in which he said that, he said it in a
4 murder case, I never would have done that. You see, the
5 problem is how would he have known that this was a murder case
6 unless he talked to Deon Moore? And then if you look at it,
7 he's saying, I don't recall if I did or didn't, but what we can
8 say is that there is definitive proof that at least Haverkamp
9 believed he let him talk. Now whether that's derived from that
10 or not, that is not what the police report says. This is an
11 affirmative action that she says John Morris did. And if
12 there's no evidence to indicate --

13 THE COURT: How would she know that? How would
14 she know that? Other than from the police report.

15 MR. LASSITER: She talked to Detective Williams.
16 They worked closely together. They talked about the case. We
17 talked about that on the stand. They talked about what
18 happened on this case in preparation for it. So she would have
19 gotten information. Now it's convenient that nobody remembers
20 anything from 28 years ago, but when they don't, we have to go
21 by the record.

22 I don't know how many appeals that I have done
23 in which they said, this isn't supported by the record, this
24 isn't supported by the record, it needs to be supported by the
25 record. This is the record. Them saying "I don't remember" is

1 not a record. It's saying, I don't remember. There is no
2 explanation for them writing that down unless it was true.
3 There is simply no rational explanation. So whether she wants
4 to say, I got this from Detective Williams. Fine, you got it
5 from Detective Williams, but then Detective Williams was in the
6 room, and he understood what was being said, and he understood
7 what was being done which was give legal advice, and then that
8 legal advice was followed because he gave the statement.

9 Whereas anybody could try and argue in the
10 alternative, I'm asking the Court, where's the proof that what
11 I'm saying isn't true? There is none, because they don't
12 remember. They don't have any explanation for that being in
13 the record other than it being true. And if it was untrue,
14 then why wasn't it brought to the trial court's attention? If
15 you had been the trial court in this case and that had been
16 brought to your attention, I just can't imagine what you would
17 have done, but I'm pretty sure you would have shut the trial
18 down instantly in that moment to figure out what was going on
19 there, because that would have been a problem. If that would
20 have been a problem at the time of trial, then that's
21 definitively a problem now, because we don't just go off of
22 convenience because they can't remember.

23 This court is tasked with making a determination
24 of facts. The facts in this case are supported by the record
25 that John Morris was his lawyer. To what extent, we don't

1 know, but we know John Morris let him talk, which means he was
2 given information and provided advice, and that is the
3 establishment of a meeting of the minds, which is, he is his
4 lawyer. That is what was required under the law. And it's not
5 only required under the law, it's required under the ethical
6 rules as well. Everybody agrees you can't represent the
7 co-defendant, but if you will recall, one of the other reasons
8 John Morris believed that he was not the attorney is he said, I
9 couldn't have been because I was already Michael Newberry's
10 attorney. In the record, he says that. But he wasn't. You
11 see, he wasn't appointed to represent Michael Newberry until
12 June 10th of 1996. The statement written in Exhibit 6 and
13 Exhibit 58, that's from May 31st of 1996, 10 days prior. He
14 would not have had a conflict. He got it mixed up because he
15 believed he couldn't have. He needed to have a reason, but his
16 reason unfortunately doesn't make sense. The only person he
17 had a conflict with was representing Mr. Newberry. I don't
18 believe that there's been any credible evidence presented to
19 this court to the alternative. "I don't know" simply doesn't
20 cut it as we state and beyond a reasonable doubt. This is a
21 preponderance standard, and they've said "I don't know," but I
22 do. And not only that, Deon Moore knows, and he provided a
23 statement to this court as well. That statement is that
24 Michael Newberry did not have anything to do with this, he
25 didn't have anything to do with any robbery, he didn't have

1 anything to do with the drug deal, he didn't kill him, and John
2 Morris was his lawyer. And that was obtained recently. The
3 definitive evidence in this case proves John Morris was his
4 lawyer, and because of that, there is an actual conflict of
5 interest that exists.

6 I've gone into with the Court why the subsequent
7 writ bar does not apply. It doesn't apply from 2005 and it
8 doesn't apply from 2008 because all of this is newly-discovered
9 evidence --

10 THE COURT: You have explained that to me.

11 MR. LASSITER: -- obtained after the Michael
12 Morton Act. I don't ask for anything from this court other
13 than what the record supports, and the record supports it not
14 sort of, not maybe, but clearly. I'm not saying the Court's
15 job is easy, but I'm saying the decision should be clear.
16 Exculpatory evidence was withheld. It was material. There was
17 false testimony, and there was a conflict. The record
18 establishes each and every one of those things, and that is not
19 hyperbole. We're asking the Court to do the right thing only
20 under the law because the law is clear that Mr. Newberry should
21 get a new trial.

22 THE COURT: I am going to decide this under the
23 law, and I take that seriously. And I have read what I've had
24 the opportunity to read, but I certainly have not made the
25 final decision in this case. I haven't. And I will do it as

1 efficiently and as quickly as possible consistent with justice.

2 MR. LASSITER: Which I believe the State had a
3 closing argument as well.

4 THE COURT: Well, that's fine, but, I mean, I
5 don't know what you're going to say that they haven't already
6 said other than you're not going to try him again if it's
7 granted. So if you have an argument, if you've got something
8 different, I'm more than happy to listen.

9 MR. WARREN: Judge, I just wanted to say that we
10 didn't make this decision lightly. When Mr. Lassiter came to
11 our office to request the file, we gave it to him in compliance
12 with the law, and that was five months ago. And we started to
13 look at the file, each one of us, Austin, Eric, and I. I said
14 to them, I want to look at it individually and I want to come
15 together with our own opinions and our own thoughts. We looked
16 at the file for several months and we each came back together
17 and we each had the same thing, that exculpatory evidence was
18 withheld.

19 When Mr. Lassiter filed the writ, we read the
20 writ, and I said, we are going to look at the evidence, we are
21 going to look at the record, we are going to look at everything
22 again and make sure that we are doing the right thing. And
23 after we did our exhaustive due diligence again, we came back
24 with the same thought is that exculpatory evidence was withheld
25 and it was not turned over.

1 So we are not making this decision lightly at
2 all. This is a hard decision to make. It is a hard decision
3 to admit that someone who held your position once withheld
4 evidence and the defendant, the applicant, did not receive a
5 fair trial under the 14th Amendment of the Constitution, and we
6 are here -- I was told -- I spoke to many people about this and
7 asked them, am I doing the right thing? And I was told that if
8 you believe in the writ, you have an ethical duty to join the
9 writ. And I agreed with that statement. And, Judge, we are --
10 that is why we joined the writ is we are just trying to do the
11 right thing and make it right for Mr. Newberry.

12 THE COURT: I don't think either -- any of y'all
13 took this lightly. I think you're doing your job, and I
14 believe that you believe in what you're saying. But I have to
15 make my own independent decision, and just because y'all agree
16 does not relieve me from that responsibility. That is my job.
17 I've got to look through this. I've got to do my due
18 diligence, and I have to come up with my independent judgment
19 as to whether the proper burden of proof was met and -- and I'm
20 going to do that. And as I said before, I'm going to do it as
21 quickly as possible consistent with justice, but I'm not going
22 to cut corners, and I'm not going to jump to conclusions. I'm
23 going to make my own independent review of this carefully.

24 And I appreciate the fact that y'all have
25 provided the Court with proposed findings of fact and

1 conclusions of law, and, in fact, I'm going to ask y'all to
2 send that to Kristin in Word form so that if I decide I want to
3 use some of them, I will, but the findings of fact and
4 conclusions of law are going to be my findings of fact and
5 conclusions of law based upon the evidence that I've heard in
6 these two days. And so I don't know what else to tell you at
7 this point other than, as soon as I have done that, I will --
8 you will be the first to know, and I will give it as much time
9 as I possibly can given the other responsibilities that I have.
10 I don't anticipate it's going to be, you know, a lengthy period
11 of time, but it's not going to be next week either. You've had
12 months to look at this and put this together. I'm not saying
13 I'm going to take months, but I am going to take however much
14 time is required to make the best decision that I can possibly
15 make. So if you can -- do you have any problem furnishing that
16 to Kristin --

17 MR. LASSITER: No, Your Honor.

18 THE COURT: -- in Word form?

19 MR. LASSITER: I'll do it today.

20 THE COURT: Okay.

21 MR. LASSITER: We do have one last thing to
22 address. You asked --

23 THE COURT: If it's the bond thing?

24 MR. LASSITER: It is, Your Honor.

25 THE COURT: I've looked at 11.65, and I don't

1 read that to say -- and I've looked at case law as well, and I
2 don't read that to say that I can do that because I have not
3 made any findings of fact. I have not approved any findings of
4 fact, and I don't believe that I can grant that.

5 MR. LASSITER: Judge, if I may make a brief
6 argument just based on the plain language of the statute?

7 THE COURT: It's not going to change my mind.
8 If you want a bond, this is the court of -- I make findings of
9 fact and conclusions of law. The Court of Criminal Appeals
10 grants or denies the writ.

11 MR. LASSITER: I understand, Your Honor.

12 THE COURT: The end result. If you believe that
13 I'm wrong, I think you can go right now and ask them for a PR
14 bond. It's their case. All they can do is say no. But I have
15 looked at this and looked at this and looked at the case law,
16 and I don't -- however you read it is not how I read it.

17 MR. LASSITER: I can just -- I can give the
18 Court literally the orders from another writ in which this was
19 done under Walter Roy.

20 THE COURT: You know, and that's wonderful, and
21 people try to do that to me all the time, but just because some
22 other judge bought something, unless the Court of Criminal
23 Appeals said that that was appropriate, I'm not going to sign
24 off on something just because some other District Judge did it.
25 That's not -- to me, that's not precedent to me. That's not

1 binding. It's not controlling. It's nothing. It's a nothing
2 in my mind.

3 MR. LASSITER: I just -- could I make an
4 argument? It may not change your mind.

5 THE COURT: You can have less than five minutes
6 because I don't think it's going to change my mind.

7 MR. LASSITER: Fair enough, Judge. So the
8 article that you're referring to, Texas Code of Criminal
9 Procedure 11.65, it states under section B, "On making proposed
10 findings of fact and conclusions of law jointly stipulated" --
11 I think we can all agree that has been done. There are
12 proposed findings and conclusions jointly stipulated to by the
13 applicant and the State. The applicant and the State have both
14 submitted the proposed findings jointly stipulated. It says,
15 "or on approving proposed findings," which would be the Court,
16 "the convicting court may order the release of the applicant on
17 bond, subject to conditions imposed by the convicting court,
18 until the applicant is denied relief, remanded to custody, or
19 ordered released." I believe the plain language speaks for
20 itself. There have been proposed findings. They are jointly
21 stipulated to by the applicant and the State. Now the Court
22 can do it if it makes its own findings, but it can also do it
23 if the State and the applicant have joined and made
24 jointly-stipulated proposed findings, which has happened. This
25 does by the letter of the language give this court the

1 authority. Now if the Court doesn't want to do it, I
2 understand.

3 THE COURT: I understand --

4 MR. LASSITER: You have that authority by the
5 plain language.

6 THE COURT: I understand your argument. I
7 cannot find any case law on that other than that -- I mean, you
8 don't have any appellate case law that I know of. You have a
9 District Court who did it, correct?

10 MR. LASSITER: I can submit some case law, but I
11 believe the language speaks for itself --

12 THE COURT: I understand you read the language
13 the way you read the language. I'm telling you I'm not going
14 to do it. Just because y'all agree, even if I send findings of
15 fact to the Court of Criminal Appeals, findings of fact and
16 conclusions of law, I can find -- I can pull up ten cases where
17 even if I were to propose granting it where the Court of
18 Criminal Appeals has said huh-uh, not going to do it. I'm not
19 going to make that decision. I'm not going to grant it.

20 MR. LASSITER: I understand, Judge. I was just
21 making the argument as an attorney that what I believe that to
22 be the case, and if you wanted me to provide you a case, I can
23 certainly try and do so, if that is what the hang-up is. If
24 the hang-up is you're not going to do it, then I understand.

25 THE COURT: I have more than one hang-up, but

1 the bottom line is, if you convince me one hundred percent that
2 I could do it, I'm still not comfortable doing it, and I'm not
3 going to.

4 MR. LASSITER: So, understood, that being the
5 ruling of the Court.

6 THE COURT: Okay.

7 MR. LASSITER: Do you -- I guess then there's no
8 reason for him to be retained by Cooke County at this point?

9 THE COURT: I don't really see -- I think he
10 would probably have to go back there no matter what because I
11 will submit my findings of fact and conclusions of law to the
12 Court of Criminal Appeals, and then they will make the
13 decision, so I don't see any reason that he needs to remain
14 here.

15 MR. LASSITER: It was just if the Court wanted
16 additional evidence, which I think that's --

17 THE COURT: I think you have -- you have
18 submitted everything, and, you know, I've heard it all probably
19 multiple times, so I think I'm good. I just need -- I'm going
20 to make a legal decision. Not an emotional decision, not a
21 decision that's impacted by argument. I'm going to pore
22 through this and make a legal decision, and I'm going to do it
23 as quickly as I can.

24 MR. LASSITER: Thank you, Judge. That's all we
25 ask.

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THE COURT: Okay. Y'all are excused.
(Off the record)

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REPORTER'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF COOKE)

I, Holly S. Oakley, CSR, RMR, Official Court Reporter in and for the 235th District Court of Cooke County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

WITNESS MY OFFICIAL HAND this 20th day of February, 2025.

/s/ Holly S. Oakley
Holly S. Oakley, Texas CSR 7710
Expiration Date: 1/31/2027
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