

NO. D-1-DC-91-915672-A

EX PARTE

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IN THE 331ST JUDICIAL

DISTRICT COURT OF

ALLEN ANDRE CAUSEY

TRAVIS COUNTY, TEXAS

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
RECOMMENDATION ON GROUND ONE**

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

1. The active pleading before the Court is Applicant's First Amended Application for Writ of Habeas Corpus, filed February 23, 2023.
2. The Court hereby incorporates by reference the previous findings of fact and conclusions of law entered on Grounds Two, Three, and Four.
3. Applicant has waived Ground Five.
4. On his remaining ground, Applicant raises an actual innocence claim under *Herrera v. Collins*, 506 U.S. 390 (1993) and *Ex parte Elizondo*, 947 S.W.2d 202, 209 (Tex. Crim. App. 1996).
5. To establish he is entitled to relief, Applicant must show that 1) newly discovered evidence; 2) constitutes affirmative evidence of innocence; and 3) by clear and convincing evidence, no rational juror would have convicted him in light of the newly discovered evidence. *Ex parte Franklin*, 72 S.W.3d 671, 677 (Tex. Crim. App. 2002).
6. Newly discovered evidence clearly inculpatates Kevin Harris in the murder of Anita Byington.

7. The parties have established beyond a reasonable doubt that Kevin Harris was, at minimum, a party to the murder of Anita Byington.
8. However, the parties have not established by clear and convincing evidence that Kevin Harris acted alone in the murder of Anita Byington.
9. Forensic pathology indicated Byington was beaten with both a concrete rain diverter and an item that appeared to be consistent with a belt buckle, suggesting multiple assailants.
10. The parties have established that one section of Applicant's confession was false—the portion where Applicant claimed to have moved Byington's car.
11. The parties have not established that Applicant's confession, in total, was false.
12. While the case against Applicant has significantly weakened over the course of habeas litigation, and disregarding his questionable confession, some inculpatory evidence against Applicant remains in the record.
13. Specifically, a resident of the apartment complex where Byington's body was found informed law enforcement investigators that they heard a woman's voice screaming for help, followed by two unintelligible male voices. State's H. Exh. 88 at 2.
14. Applicant acted suspiciously in the hours following the murder, including repeatedly driving slowly by the crime scene after law enforcement had responded, repeatedly "looking at the place where the body had been found" as he was driving by. R.R. 10:1148, 1151, 1155.
15. Applicant parked in the apartment complex lot, approached a crowd of neighbors, and, unprompted, volunteered: "I didn't kill her." R.R. 10:1152.
16. Applicant claimed to the group of neighbors that he found the body and called the police. R.R. 10:1152.
17. Another resident of the apartment complex was the initial 911 caller who found and reported Byington's body. R.R. 10:1152.

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

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

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

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

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

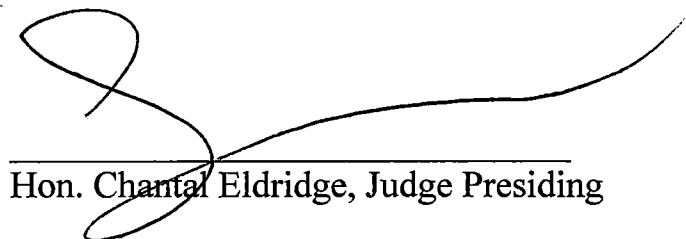
23. Relief on Ground One should be denied.

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

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

1. Prepare and transmit the record herein to the Court of Criminal Appeals.
2. Furnish a copy of the Court’s Findings of Fact, Conclusions of Law, Recommendation, and Order to Applicant Allen Andre Causey, to Applicant’s attorneys, and to the Travis County District Attorney’s Office.

SIGNED AND ENTERED this 7/31/24.



Hon. Chantal Eldridge, Judge Presiding