

EX PARTE § IN THE 182ND
FREDERICK JEFFERY, § DISTRICT COURT OF
Applicant § HARRIS COUNTY, TEXAS

**AGREED PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER**

The Court recommends habeas corpus relief be granted based on the presentation of false evidence by former Houston Police Department (“HPD”) Officer Gerald Goines (“Goines”). The State now believes Goines engaged in fictional drug buys and perjury to secure the applicant’s conviction. The presentation of false evidence concerns two pieces of evidence. First, Goines’ search warrant affidavit attesting to facts of a controlled buy at 2807 Nettleton Street where the applicant was arrested. Evidence developed post-conviction establishes the controlled buy was fictional and the warrant perjured. Second, Goines’ trial testimony regarding a statement the applicant purportedly made providing an affirmative link to the narcotics—specifically, ownership of a cell phone found at the scene. The State no longer believes this statement transpired.

In reaching this recommendation for relief, the Court has reviewed the following: the original and supplemental applications for writ of habeas corpus; the State’s writ exhibits; the reporter’s record from the applicant’s trial held April 11-12, 2018; and the clerk’s official records.

The Court requests that the Court of Criminal Appeals review the findings and conclusions on an expedited basis because the applicant is serving a twenty-five year sentence due to Goines’ fictional drug buy, perjured warrant affidavit, and false trial testimony.

Because the Court recommends relief based on false testimony, it does not reach the applicant’s ineffective assistance of counsel claim as it is unnecessary to resolve the instant matter. *See Ex Parte Colone*, No. WR-89,538-01, 2022 WL 613690, at *1, n. 2 (Tex. Crim. App. Mar. 2, 2022). Should the Court of Criminal Appeals desire findings on the ineffective assistance claim, this Court requests the matter be remanded for further proceedings.

FINDINGS OF FACT

1. The Court finds that the applicant, FREDERICK JEFFERY, is confined pursuant to a judgment and sentence in cause number 1528672 out of the 182nd District Court of Harris County, Texas, where a jury convicted the applicant of possession of 4-200 grams of a controlled substance in penalty group one. Two prior prison sentences enhanced the applicant's punishment. On April 12, 2018, the trial court sentenced the applicant to 25 years confinement in the Texas Department of Criminal Justice—Institutional Division. The applicant is currently incarcerated from this conviction.
2. The First Court of Appeals affirmed the applicant's conviction. *Jeffery v. State*, No. 01-18-00320-CR, 2019 WL 758323 (Tex. App.—Houston [1st Dist.] Feb. 21, 2019, pet. ref'd) (mem. op., not designated for publication). The mandate of affirmance issued on May 17, 2019.
3. The following is a concise summary of the trial evidence, based on the Court of Appeals' opinion:

HPD Officer Goines¹ determined that narcotics were being stored in, or sold from, a house located at 2807 Nettleton Street. On October 27, 2016, Goines, along with a raid team, traveled together in a van to execute a warrant to search the house. As the van approached the house, Goines, who was riding in the front passenger seat, saw the applicant and another man standing on the front porch. With his back turned to the street, the applicant was locking the burglar bars covering the front door. The officers exited the van and ordered the men to get down on the ground. Inside the house, the officers located on a table bags of pills that appeared to be narcotics. In the front yard, Goines saw a set of keys laying on the ground next to the applicant's hand. Goines determined that the keys opened the front door and burglar bars of the house. While under arrest, the applicant asked whether "he could have his phone with him." When Goines asked where the phone was, the applicant replied that it was on the table. Goines found the applicant's cell phone inside the house on the table next to the narcotics. An analyst concluded the pills tested positive for methamphetamine and weighed 4.7 grams.

¹The trial record and, therefore, the Court of Appeals opinion spell Goines "Goins."

See Jeffery, 2019 WL 758323, at *1-2.

Post-Conviction History

4. On March 8, 2019, in the primary case, the State provided notice to the applicant and his trial counsel that Goines was under criminal investigation. *See State's Writ Ex. N.* This notice was after the Court of Appeals issued its opinion, but prior to its mandate.
5. On October 4, 2019, the applicant filed his *pro se* application for writ of habeas corpus, which was served on the State on October 14, 2019. In his application, the applicant claims he received ineffective assistance of trial counsel, and Goines falsified government records and provided false evidence during the applicant's trial. *See Writ App.* at 8-20 (grounds 1 to 13).
6. On October 18, 2019, the State suggested that the applicant be appointed habeas counsel.
7. On October 21, 2019, the Court designated two issues: whether the applicant received ineffective assistance of trial counsel and whether the State presented false evidence/testimony by Goines.
8. On October 24, 2019, the Court appointed Patrick McCann to represent the applicant on habeas.
9. On April 8, 2021, the Harris County District Clerk's Office properly forwarded the habeas record to the Court of Criminal Appeals.
10. On June 9, 2021, the Court of Criminal Appeals remanded the application to this Court to complete its evidentiary investigation and make findings of fact and conclusions of law.
11. On September 1, 2021, the Court ordered Goines to file a responsive affidavit.
12. On January 7, 2022, in an affidavit, Goines invoked the Fifth Amendment in response to the questions contained in the Court's September 1, 2021 order for affidavit. *See Writ App. Supp.* at 23-24.

13. On March 10, 2022, the Court of Criminal Appeals sent a reminder letter about its previous remand order.
14. The habeas action was transferred from Judge Danilo Lacayo to Associate Judge Stacy Allen.
15. On April 26, 2022, the State filed disclosure notices regarding former officers Goines and Nadeem Ashraf.
16. On May 5, 2022, the Court signed the State's unopposed motion and order to release a cell phone (State's Trial Exhibit 22) to the Harris County District Attorney's Office for the purposes of a forensic examination.
17. On June 14, 2022, the applicant filed a supplemental application for writ of habeas corpus. *See* Writ App. Supp. at 8-10 (two supplemental grounds).
18. On June 28, 2022, the State filed disclosure notices regarding former officers Hodgie Armstrong and Oscar Pardo.

The Applicant's Claims on Habeas

19. In his writ application, the applicant claims he received ineffective assistance of trial counsel. *See* Writ App. at 8, 17; Writ App. Supp. at 8.
20. The applicant also claims Goines falsified government documents including police reports and the "application" for search warrant. *See* Writ App. at 12, 20.
21. The applicant claims Goines provided false testimony in trial, including testimony about the applicant's ownership of a cell phone linking the applicant to the drugs. *See* Writ App. at 12, 14, 17, 18, 20; Writ App. Supp. at 10.
22. The applicant asserts he "did not own, possess, request, and/or claim the cell phone as his property." *See* Writ App. at 14, 16, 20.
23. The applicant asserts cellular records for the phone were not linked to the applicant. *See* Writ App. at 14.
24. The applicant asserts he did not make any statements upon arrest. *See* Writ App. at 16, 20.

25. The applicant asserts the raid team officers were equipped with body-worn cameras and the officers altered, disposed of, and/or erased exculpatory camera footage. *See* Writ App. at 18.
26. The applicant asserts he did not own, possess, or control any alleged narcotics. *See* Writ App. at 19.

The Applicant's Trial

27. Judge Jeannine Barr presided over the applicant's jury trial, which was held April 11-12, 2018.
28. Attorney Steven Greenlee represented the applicant.
29. The State called three witnesses in the applicant's trial: 1) Sgt. Brent Batts; 2) Ofcr. Goines; and 3) Forensic Analyst Angelica Noyola.
30. Goines testified on April 11, 2018 (3 R.R. at 69-85) and April 12, 2018 (4 R.R. at 5-58).
31. Goines testified that he saw two males on the porch of 2807 Nettleton, one of whom was the applicant (3 R.R. at 78; 4 R.R. at 35, 53). Goines saw the applicant attempting to lock the burglar doors (3 R.R. at 78-80; 4 R.R. at 52).
32. Goines testified that, later, he saw keys on the ground and those keys came out of the applicant's hand (4 R.R. at 7, 9). Goines checked to confirm the keys actually unlocked the burglar door and house door (4 R.R. at 10; 4 R.R. at 39, 52). On direct, Goines testified the applicant was actually holding the keys (4 R.R. at 9-10). On cross, Goines testified he never saw the applicant throw the keys and he only saw the keys on the ground by the applicant's hand (4 R.R. at 36, 53-54). Goines testified he saw the applicant touching the keys only when the applicant was locking up (4 R.R. at 37-39).
33. Goines did not include in his report that the keys were on the ground next to the applicant or that the applicant threw the keys (4 R.R. at 41).
34. Batts testified that he saw two men on the porch, but did not see anyone locking the burglar doors and did not see the keys (3 R.R. at 29, 45-46, 49, 67).

35. Goines testified that the handcuffed applicant initiated a conversation with Goines, asking if he could have his cell phone (4 R.R. at 15, 22). When Goines asked him where the cell phone was, the applicant said it was on the table (4 R.R. at 15, 19, 22). The conversation was not recorded and no other officers heard it (4 R.R. at 20). The trial court did not suppress the applicant's statement because the applicant was not being interrogated (4 R.R. at 21).
36. Goines testified that he saw a cell phone on the table amongst drugs and tagged it into evidence (3 R.R. at 84-85; 4 R.R. at 11, 14, 21-22, 49-50). Goines wrote in his report that "officers" recovered the cell phone, but he meant himself (4 R.R. at 50). During trial, Goines pointed out the cell phone in Exhibit 14 (3 R.R. at 84-85). Goines agreed that some photos do not clearly show what is on the table, and it took a moment for Goines to testify about what he felt was the cell phone in the photo (4 R.R. at 45).
37. Batts testified that he took photos of the evidence on the table inside the house (3 R.R. at 36-38). Batts could not point out to the jury the cell phone in the photos he took (3 R.R. at 56-57).
38. State's Trial Exhibits 13 and 14 are photos of the table containing the drugs and, according to Goines, the cell phone (3 R.R. at 56-57, 84-85; 6 R.R. at 19-20).



39. State's Trial Exhibit 18 is the search warrant (3 R.R. at 75; 6 R.R. at 24-25).
40. State's Trial Exhibit 20 is a key ring with two keys (4 R.R. at 6-9; 6 R.R. at 26).
41. State's Trial Exhibit 22 is the cell phone (3 R.R. at 85; 4 R.R. at 11-13, 21-22; 6 R.R. at 27-29).

The Applicant's Codefendant

42. On October 27, 2016, Orville Jackson was standing next to the applicant when Goines' team executed the search warrant at 2807 Nettleton.
43. Jackson tossed a baggy of crack cocaine onto the grass. *See* State's Writ Ex. D at 15.
44. Jackson was charged with possession of less than a gram of cocaine in cause number 1528678.
45. Jackson was not charged with possessing the drugs inside the house.
46. The State provided Jackson notice about Goines on March 8, 2019, the same day notice was provided to the applicant. *See* State's Writ Ex. S.
47. Jackson's case was still pending at the time of the applicant's trial and at the time he was provided notice about Goines.
48. On September 22, 2020, Jackson's case was dismissed. *See* State's Writ Ex. T.

Goines' Credibility is Material

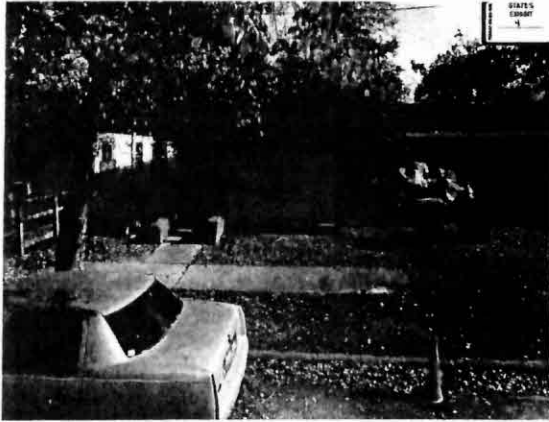
49. The Court finds that Goines' credibility is material to the applicant's underlying conviction.
50. The Court finds that Goines' credibility is material to the applicant's current habeas litigation.
51. Goines is the affiant on the search warrant affidavit.
52. Without the search warrant, the police had no legal authority to enter the house. *See* U.S. Const. amend. IV.

53. Goines is the only witness who can connect the applicant to the drugs that were found inside the house:
 - a. Only Goines saw the applicant locking the burglar bars.
 - b. Only Goines later saw the keys near the applicant's hand.
 - c. Only Goines fit the keys into the locks on the front door and burglar bars.
 - d. Only Goines heard the applicant claim ownership of the phone.
 - e. Only Goines testified that the phone was on the table where the drugs were located.
54. Both the applicant and Jackson were seen on the front porch of the house. The difference between charging the applicant and not Jackson with possession of the drugs inside the house is solely based on Goines' testimony.
55. In 2020 and 2021, the Court of Criminal Appeals accepted the district courts' recommended conclusions that Goines lied in official government documents in 2008 and during the trial, and it granted post-conviction relief to Otis and Steven Mallet accordingly. *See Ex Parte Otis Mallet*, Nos. WR-90,980-01 & WR-90,980-02, 2020 WL 3582438 (Tex. Crim. App. 2020) (not designated for publication); *Ex Parte Steven Mallet*, 620 S.W.3d 797 (Tex. Crim. App. 2021).
56. Four judges on the Court of Criminal Appeals determined that Goines has a propensity to be untruthful in his undercover drug assignments. *Ex Parte Otis Mallet*, 602 S.W.3d 922, 923 (Tex. Crim. App. 2020) (Richardson, J., concurring) ("The investigations into Goines showed his propensity to be untruthful in his undercover drug assignments."). They further determined that Goines testified falsely in a drug possession trial in 2008. *Id.*
57. When ordered to file a responsive affidavit in the applicant's instant habeas action, Goines invoked the Fifth Amendment and remained silent. *See* Writ App. Supp. at 23-24 (January 7, 2022 affidavit of Goines); *see also Ex Parte Otis Mallet*, 602 S.W.3d at 924 (Richardson, J., concurring) ("It is telling that Goines—the State's sole fact witness at trial and the only witness who said he saw a drug deal on the date of Applicant's arrest—refused to testify by asserting the Fifth Amendment at the hearing on Applicant's post-conviction writ when asked to explain facts pertinent to the underlying offense.").

2807 Nettleton Street: The Fictional Drug Buy and Perjured Warrant

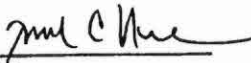
58. The applicant claims Goines falsified government documents including the “application” for search warrant. *See* Writ App. at 12, 20.
59. “C.I.” refers to a confidential informant.
60. HPD Narcotics Division C.I. Activity Sheet / Receipt for Funds Form will be referred to as “C.I. Funds Receipt Form.”
61. The search warrant of 2807 Nettleton was admitted in the applicant’s trial as State’s Exhibit 18 without objection (3 R.R. at 75; 6 R.R. at 24-25). *See also* State’s Writ Ex. C at 1-2.
62. According to HPD Incident Report 135833716 and the corresponding C.I. Funds Receipt Form, Goines claimed that C.I. #5696 purchased marijuana from 2807 Nettleton on October 23, 2016. *See* State’s Writ Ex. A at 4-5; State’s Writ Ex. B; *see also* State’s Writ Ex. J at 1-2.
63. According to HPD Incident Report 135833716, Officer Hodgie Armstrong was also present on October 23, 2016. *See* State’s Writ Ex. A at 4 (“officers met up with a confidential informant”).
64. In the corresponding affidavit for search warrant, Goines attested that a C.I. purchased marijuana from a man inside 2807 Nettleton on October 23, 2016. *See* State’s Writ Ex. C at 4 (#5).
65. Goines attested that this C.I. had provided assistance to officers on at least ten prior occasions that led to narcotic arrests and seizures and had proved to be “credible [sic] and reliable.” *See* State’s Writ Ex. C at 4 (#5).
66. According to HPD Incident Report 135833316 and the corresponding C.I. Funds Receipt Form, Goines claimed the same C.I. (C.I. #5696) purchased crack from 2811 Nettleton on October 24, 2016. *See* State’s Writ Ex. U at 4-5; State’s Writ Ex. V; *see also* State’s Writ Ex. J at 2.
67. 2811 Nettleton is next door to 2807 Nettleton. *See* State’s Writ Ex. C at 1 (“The numbers ‘2807’ are plainly visible on the residence. The residence next door (south) has the numbers ‘2811’ plainly displayed.”); *see also* State’s Trial

Ex. 4 (the white house is 2807 Nettleton and the blue house is 2811 Nettleton).



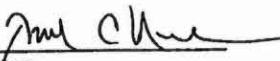
68. According to HPD Incident Report 135833316, the same second officer (Officer Armstrong) was also present on October 24, 2016. *See* State's Writ Ex. U at 4 ("officers would meet up with a confidential informant").
69. In the corresponding affidavit for search warrant, Goines attested that a C.I. purchased cocaine from a man inside 2811 Nettleton on October 24, 2016. *See* State's Writ Ex. W at 4 (#5).
70. Goines attested that this C.I. had provided assistance to officers on at least ten prior occasions that led to narcotic arrests and seizures and had proved to be "credible [sic] and reliable." *See* State's Writ Ex. W at 4-5 (#5).
71. On October 25, 2017 at 2:05pm, Judge Ronald Nicholas signed the search warrant for 2807 Nettleton. *See* State's Writ Ex. C at 2; State's Writ Ex. D at 7; 3 R.R. at 73-75; 6 R.R. at 24-25 (State's Trial Ex. 18).

Issued this the 25TH day of OCT, 2016, at 1:05 o'clock P. M., to
which witness my hand this day.


Houston,
Harris COUNTY, TEXAS

72. On October 25, 2017 at 2:05pm, Judge Ronald Nicholas also signed the search warrant for 2811 Nettleton. *See* State's Writ Ex. W at 2; State's Writ Ex. X at 7.

Issued this the 25TH day of OCT, 2016, at 1:05 o'clock P. M., to
which witness my hand this day.


Houston,
Harris COUNTY, TEXAS

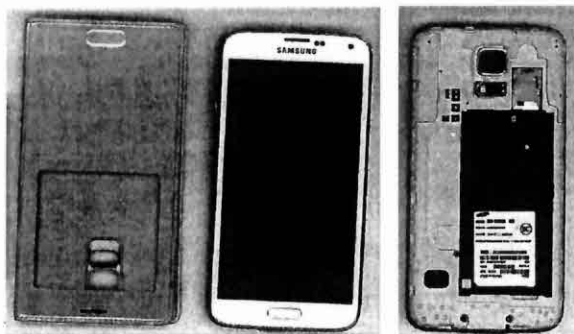
73. According to HPD Incident Report 137104516, Goines' team executed the search warrant at 2807 Nettleton on October 27, 2016 at 9:15 in the morning. *See State's Writ Ex. D at 1, 15; State's Writ Ex. I.*
74. According to Goines' testimony, Goines' team executed the search warrant at 2807 Nettleton "around 9:30" in the morning (4 R.R. at 58).
75. According to HPD Incident Report 137106316, Goines' team executed the search warrant at 2811 Nettleton on October 27, 2016 at 9:30 in the morning. *See State's Writ Ex. X at 1, 8; State's Writ Ex. I.*
76. According to the C.I. Funds Receipt Form related to the 2807 Nettleton search warrant execution, Goines paid C.I. #5696 on October 27, 2016 at 9:30 in the morning. *See State's Writ Ex. H; see also State's Writ Ex. J at 2.*
77. According to the C.I. Funds Receipt Form related to the 2811 Nettleton search warrant execution, Goines paid C.I. #5696 on October 27, 2016 at 5:00 in the evening. *See State's Writ Ex. Y; see also State's Writ Ex. J at 2.*
78. In a recorded interview with HPD on November 7, 2019, C.I. #5696 stated the following:
 - a. She did not make a buy at 2811 Nettleton.
 - b. She and Officer Goines started doing things "the wrong way" about three or four years prior to the interview. She would get paid for some buys she did not actually make.*See State's Writ Ex. Z (portion of the C.I.'s November 7, 2019 interview).*
79. According to the C.I.'s 2019 interview, she and Goines started doing things "the wrong way" in 2015 or 2016.
80. In the 2019 interview, the C.I. was not questioned about 2807 Nettleton specifically.
81. The trial prosecutor Ryan Carlyle Kent avers that, had he known at the time he was prosecuting the applicant the information revealed in the C.I.'s 2019 interview, he would have disclosed the information to opposing counsel and urged his supervisor to dismiss the case against the applicant. *See State's Writ Ex. R.* The Court finds Mr. Kent's affidavit and the statements therein

credible.

82. In a recorded interview with the Harris County District Attorney's Office on July 18, 2022, C.I. #5696 stated that she did not make a buy at 2807 Nettleton and has never made a buy on Nettleton Street. *See* State's Writ Ex. D at 30.
83. The Court finds that the applicant's arrest would not have occurred but for the perjured search warrant affidavit and resulting warrant.
84. The Court finds that Goines made a false, material statement in the affidavit for search warrant of 2807 Nettleton when he claimed the C.I. made a buy on October 23, 2016. *See Ex Parte Steven Mallet*, 620 S.W.3d at 798 (Tex. Crim. App. 2021) (Richardson, J., concurring) ("The State, trial court, and habeas court now agree, based on Goines's expense reports in this case and recently discovered dishonesty in other cases, that there is compelling evidence the drug transaction never occurred."); *see also De La Paz v. State*, 279 S.W.3d 336, 347 (Tex. Crim. App. 2009) (the doctrine of chances).
85. Based on Goines' false, sworn statement regarding the fictional drug buy, Judge Nicholas signed the search warrant for 2807 Nettleton.
86. The Court finds that Goines made a false, material statement in the affidavit for search warrant of 2811 Nettleton when he claimed the C.I. made a buy on October 24, 2016.
87. Based on Goines' false, sworn statement regarding the fictional drug buy, Judge Nicholas signed the search warrant for 2811 Nettleton.
88. The Court finds that Goines' statement in C.I. Funds Receipt Form that Goines paid the C.I. at 9:30am on October 27, 2016 is not credible.
89. The Court finds that the search warrant of 2807 Nettleton was material to the applicant's arrest, trial, and conviction.

The Perjured Testimony about the Phone Recovered from 2807 Nettleton

90. The applicant asserts Goines testified falsely that the applicant claimed ownership of the phone recovered from 2807 Nettleton. *See* Writ App. at 12, 14, 16-18, 20.
91. HPD Incident Report 137104516 documents the October 27, 2016 search warrant execution at 2807 Nettleton and the applicant's and codefendant's arrests. *See* State's Writ Ex. D.
92. HPD Incident Report 137104516 shows that one phone was recovered from 2807 Nettleton on October 27, 2016: "SAMSUN [sic] CELL PHONE / GOLD CASE," serial number R38F80KF66V. *See* State's Writ Ex. D at 2, 6; *see also* 3 R.R. at 85; 4 R.R. at 11, 22.
93. No other phone was mentioned in the report.
94. In the applicant's trial, the cell phone was admitted as State's Trial Exhibit 22 (3 R.R. at 85; 4 R.R. at 11-13, 21-22; 6 R.R. at 27-29). *See also* State's Writ Ex. D at 23.



95. In HPD Incident Report 137104516, Goines wrote "OFFICERS DID RECOVERED [sic] A CELL PHONE ON THE ABOVE TABLE, WHICH LATER WAS CLAIMED BY SUSPECT JEFFERY." *See* State's Writ Ex. D at 8.
96. In the report, there are no details about a conversation between Goines and the applicant.
97. Goines testified about the conversation 18 months later in the applicant's trial.

98. Goines testified that the applicant was handcuffed and under arrest during the conversation (4 R.R. at 16-18).
99. Goines testified, “Mr. Jeffery had requested to speak to the person in charge. I went out, spoke with him, informed him that he was going to jail for the narcotics that was found inside the house.... He then requested if he could have his phone with him. I asked him where was the phone. He said it was on the table.... I walked away and the phone was tagged into evidence.” 4 R.R. at 22 (in the jury’s presence); *see also* 4 R.R. at 14-15 (outside the jury’s presence).
100. Goines testified there is no body-worn camera footage of the conversation, and there were no other officers present (4 R.R. at 20).
101. According to the report, officers did not activate their body-worn cameras until transporting the suspects to the jail. *See* State’s Writ Ex. D at 15.
102. Officers Amador and Penrod transported the applicant and Jackson. *See* State’s Writ Ex. D at 15.
103. According to the Harris County District Attorney’s Office records, the State released the three body cam videos to Mr. Greenlee on November 23, 2017.

DATE

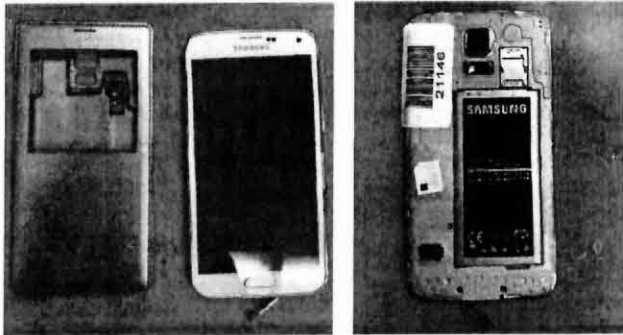
RELEASED ITEM DESCRIPTION

11/23/2017 TXHPD0000 137104516 BWC RudyAAmador 201610271003 VHC2007807 26552902
(DocumentID: 182798)
11/23/2017 TXHPD0000 137104516 BWC BrandonPenrod 201610270954 VHC2008525 17761462
(DocumentID: 182809)
11/23/2017 TXHPD0000 137104516 BWC BrandonPenrod 201610270959 VHC2008525 17761463
(DocumentID: 186490)

104. The applicant appears in all three body-worn camera videos:
TXHPD0000 137104516 BWC RudyAAmador 201610271003 VHC2007807
26552902 (“Amador BWC Video 26552902”);
TXHPD0000 137104516 BWC BrandonPenrod 201610270954 VHC2008525
17761462 (“Penrod BWC Video 17761462”); and
TXHPD0000 137104516 BWC BrandonPenrod 201610270959 VHC2008525
17761463 (“Penrod BWC Video 17761463”).

105. Penrod BWC Video 17761462 is 4 minutes and 42 seconds in length. The video shows the applicant in a red shirt, sitting in the back of a patrol car. At ~4:30, as seen in the reflection, an officer approaches the patrol car. A voice states “I got my camera pointing back that way. Do you want me to turn it off so you can talk?” An apparently-different voice responds “yeah, if you don’t mind.” *See State’s Writ Ex. E.*
106. Penrod BWC Video 17761463 is 20 minutes and 27 seconds in length. At ~0:29, an officer states “interview is over.” The video shows the applicant in a red shirt, sitting in the back of a patrol car. As seen in the reflection, an officer approaches the patrol car and says “you claimed that’s your phone right?” The applicant does not respond. An apparently-different officer says “this is your phone up here?” The applicant does not respond. Both officers say “okay.” The applicant’s codefendant Jackson is sitting next to the applicant. Jackson says “what’s up with the phone, man?” At ~0:50, Jackson says “that’s my phone right there on the dashboard right there.” At ~0:56, the applicant says “I ain’t got no motherfucking phone.” The applicant explains the phone number he gave the police (936-419-9510) belongs to his grandmother. Then, another officer gets into the vehicle, and the remaining video footage shows the two suspects being transported by the two officers. *See State’s Writ Ex. F.*
107. Amador BWC Video 26552902 is 18 minutes and 19 seconds in length. This video is from the second officer who transported the suspects; therefore, much of the audio is identical. However, the video is recorded from a different viewpoint. Also, the video began after Penrod BWC Video 17761463 began and concluded after Penrod BWC Video 17761463 concluded. *See State’s Writ Ex. G.*
108. Between May 6, 2022 and May 16, 2022, Harris County District Attorney’s Office Investigator N. Gates conducted a forensic analysis of the cell phone recovered from 2807 Nettleton (State’s Trial Exhibit 22) pursuant to this Court’s order. *See State’s Writ Ex. D at 28; State’s Writ Ex. O.*

109. Gates determined that the cell phone number was 832-988-3406. He was unable to gain access to the device's data. *See* State's Writ Ex. O at 2.



110. Unrelated HPD Incident Reports show that a woman named Bridgette Black claimed her phone number was 832-988-3406 on May 13, 2016 (months before the applicant's arrest) and on November 7, 2016 (less than two weeks after the applicant's arrest). *See* State's Writ Ex. P at 2; State's Writ Ex. Q at 2. There is no mention of the applicant or a connection between Ms. Black and the applicant.

111. None of the body-worn camera videos from 2807 Nettleton show the applicant claiming ownership of a phone.

112. The applicant did not state his phone number was 832-988-3406.

113. Penrod BWC Video 17761463 shows the applicant stating he does not have a phone. *See* State's Writ Ex. F at ~0:56-1:05.

114. Penrod BWC Video 17761463 shows Jackson claiming ownership of a phone. *See* State's Writ Ex. F at ~0:30-0:58.

115. One phone was recovered from 2807 Nettleton on October 27, 2016, and that same phone was admitted as State's Trial Exhibit 22 in the applicant's trial. *See* State's Writ Ex. D at 2, 6, 23; *see also* 3 R.R. at 85; 4 R.R. at 11-13, 21-22; 6 R.R. at 27-29).

116. There is no indication in the report or trial testimony that a second phone was recovered at the scene or tagged into evidence.

117. **The Court finds that Goines testified falsely that the applicant claimed ownership of the phone that was recovered from 2807 Nettleton and entered into evidence as State’s Trial Exhibit 22.** *See Ex Parte Chavez*, 371 S.W.3d 200, 208 (Tex. Crim. App. 2012) (when determining whether the testimony was false, “[t]he question is whether the testimony, taken as a whole, gives the jury a false impression”).
118. Based on Goines’ false testimony, the trial court denied the applicant’s motion to suppress and admitted evidence about the phone to the jury. *See* 4 R.R. at 21; *see also* State’s Writ Ex. K at 1.
119. Based on Goines’ false testimony, the State presented evidence to the jury that the applicant claimed ownership of a phone that was located on a table with illegal drugs. *See* 3 R.R. at 84-85; 4 R.R. at 11, 14, 21-22, 45, 49-50.
120. Based on Goines’ false testimony, the State argued to the jury that the applicant should be convicted of possessing illegal drugs because he owned the cell phone located near the drugs. *See* 4 R.R. at 99 (“[I]f this were a case where I were prosecuting the other man, the man who did not have the keys in his hand, the man who didn’t claim with his own words ownership of the cell phone that’s found -- yes, it’s not the clearest picture in the world, I’ll admit that full well.... And you’ll have all the time in the world back there, if you care to take it, to convince yourselves that the phone Mr. Jeffery claimed was his was, in fact, the phone that is in as close a proximity to those drugs as it could possibly be.”).
121. The record shows there is a reasonable likelihood that Goines’ false testimony affected the judgment of the jury. *See Ex Parte Chavez*, 371 S.W.3d 200, 208 (Tex. Crim. App. 2012); *see also* State’s Writ Ex. L; State’s Writ Ex. M.
122. **The Court finds that Goines’ false testimony was material to the applicant’s conviction.** *See Ex Parte Weinstein*, 421 S.W.3d 656, 665 (Tex. Crim. App. 2014); *Ex Parte Chavez*, 371 S.W.3d at 208 (“the record must show that the testimony was material, namely, that there is ‘a reasonable likelihood’ that the false testimony affected the judgment of the jury”).

CONCLUSIONS OF LAW

1. “In the interests of justice and judicial economy,” the Court declines to develop the record further regarding the applicant’s ineffective assistance of counsel claim. *See Ex Parte Colone*, No. WR-89,538-01, 2022 WL 613690, at *1, n. 2 (Tex. Crim. App. Mar. 2, 2022).
2. The applicant is entitled to relief based on false testimony. *See Ex Parte Weinstein*, 421 S.W.3d 656, 665 (Tex. Crim. App. 2014); *Ex Parte Chavez*, 371 S.W.3d 200, 208 (Tex. Crim. App. 2012).
3. “[I]he use of material false evidence to procure a conviction violates a defendant’s due-process rights under the Fifth and Fourteenth amendments to the United States Constitution.” *Ex parte De La Cruz*, 466 S.W.3d 855, 866 (Tex. Crim. App. 2015).
4. “The Due Process Cause of the Fourteenth Amendment can be violated when the State uses false testimony to obtain a conviction, regardless of whether it does so knowingly or unknowingly.” *Ex Parte Chavez*, 371 S.W.3d at 207-08 (citing *Ex Parte Robbins*, 360 S.W.3d 446, 459 (Tex.Crim.App.2011)).
5. The applicant has proven, by a preponderance of the evidence, that Goines swore to a perjured affidavit for search warrant with a material statement about a fictional drug buy, and Goines testified falsely in the applicant’s trial. *See Ex Parte Weinstein*, 421 S.W.3d at 665; *Ex Parte Chavez*, 371 S.W.3d at 208 (when determining whether the testimony was false, “[t]he question is whether the testimony, taken as a whole, gives the jury a false impression”); *see also Ex Parte Otis Mallet*, 602 S.W.3d at 925 (Richardson, J., concurring) (“Police misconduct is at the heart of this case. Applicant has proven that the sole witness to the crime is a police officer who willfully and knowingly perjured himself in order to secure Applicant’s conviction and then asserted the Fifth Amendment right not to testify in the writ hearing.”).
6. The applicant has proven that Goines’ false testimony was material. *See Ex Parte Chavez*, 371 S.W.3d at 208 (“the record must show that the testimony was material, namely, that there is ‘a reasonable likelihood’ that the false testimony affected the judgment of the jury”).

The evidence developed post-conviction reveals a pattern of deceit involving fictional drug buys, perjured search warrant affidavits, and false testimony to a jury. Confidence in the criminal justice system cannot tolerate such behavior. Accordingly, the Court recommends to the Texas Court of Criminal Appeals that habeas corpus relief be granted.

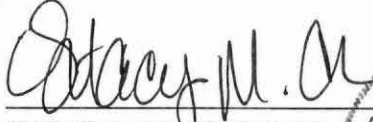
ORDER

THE CLERK is ORDERED to prepare a habeas record of all papers in cause number 1528672-A and transmit the record to the Court of Criminal Appeals as provided by Tex. Code Crim. Proc. art. 11.07 § 3 and Tex. R. App. Proc. § 73.4. The record shall include certified copies of the following documents:

1. the original and supplemental applications for writ of habeas corpus;
2. the State's writ exhibits;
3. the Court's orders;
4. the indictment, the jury charge and verdict; the judgment and sentence, and the docket sheets in cause number 1528672;
5. the court reporter's trial record in cause number 1528672;
6. the Agreed Proposed Findings of Fact and Conclusions of Law;
7. the Court's Findings of Fact and Conclusions of Law.

THE CLERK is further ORDERED to send a copy of this Order to the applicant's habeas counsel, Patrick F. McCann, 700 Louisiana, Ste. 3950, Houston, Texas 77002, writlawyer@outlook.com; and to counsel for the State, Joshua A. Reiss, Assistant District Attorney, Harris County District Attorney's Office, 500 Jefferson, 6th Floor, Houston, Texas 77002, reiss_josh@dao.hctx.net.

By the following signature, the Court adopts the Agreed Proposed Findings of Fact, Conclusions of Law, and Order in cause number 1528672-A.


JUDGE PRESIDING
HARRIS COUNTY, TEXAS

