

**Cause No. 1223792-B**

**EX PARTE** § **IN THE 232<sup>ND</sup> CRIMINAL**  
§ **DISTRICT COURT OF**  
**JAMES BOYD HARRIS** § **HARRIS COUNTY, TEXAS**

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

Pursuant to Article 11.07 of the Texas Code of Criminal Procedure, the Court hereby enters the following Findings of Fact & Conclusions of Law:

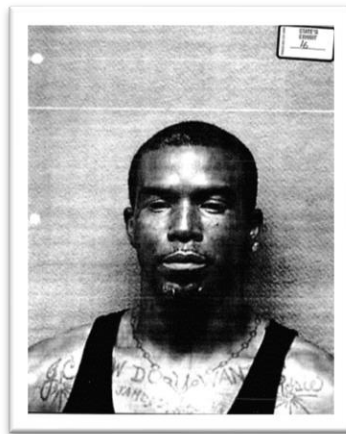
**FINDINGS OF FACT**

1. On April 9, 2010, a jury found Applicant guilty of the offense of Manufacturing/Delivering Cocaine over 400 grams. His punishment was assessed at confinement in the Texas Department of Criminal Justice-- Institutional Division for twenty-five years.
2. James Harris is currently on parole; therefore, under confinement due to this conviction.
3. In his amended writ application, Applicant raises the claim that he was denied due process of law by the unknowing use of false testimony, and that he is actually innocent based on newly discovered evidence.
4. The relevant **trial** testimony is:
  - a. The State called Houston Police Officers Chris Aranda (“Aranda”) and Emmanuel Pierson (“Pierson”) to testify at trial. (3RR 12, 90).

**Officer Chris Aranda**

- b. Officer Aranda and his partner, Pierson, were in the DRT – Differential Response Team – in 2009. (3RR 13). Their duties were to locate unsanitary yards, try to speak with the property owner, and remedy the situation. (3RR 13).
- c. On June 17, 2009, around 2:30 p.m., they were on duty near the 2300 block of Kirk Street, in Harris County, Texas. (3RR 14-15).

- d. They observed Lisa Evans (“Evans”) walking to an area they possibly knew was an area of illegal activity. (3RR 15-16). Pierson exited the patrol vehicle and followed Evans to the back of a house. (3RR 16).
- e. Aranda went to the front of the home to the right of the front door, approximately 10 yards away. (3RR 20-21, 50). Aranda then observed two males at the front door. (3RR 21). At trial he testified their physical descriptions were:
- i. Skinny black, male about 160, 5’9”-5’10”, and had tattoos on his chest. He wore blue shorts and a white tank top. (3RR 21, 23, 86).
  - ii. Heavier black, male. He wore red shorts, a white shirt, and a red cap. (3RR 25, 84, 86).
- f. Aranda testified the skinny male stepped outside the door first, then larger male. The three of them looked at one another for 10-15 seconds, and then the skinny male took off on foot, and the larger male went back into the house. (3RR 21, 24).
- g. Aranda identified State’s Exhibit 16, a booking photo of James Harris wearing a tank top, as the skinny male in the blue shorts and white tank top. (3RR 22-24).



- h. Aranda identified James Harris in court as the skinny male in the blue shorts and white tank top. (3RR 22).

- i. Aranda pursued the skinny male for approximately 25-30 yards, but he was unable to apprehend him. (3RR 26).
- j. The male in the red shorts also was not apprehended. (3RR26-27).
- k. Aranda observed a significant amount of marijuana, some crack cocaine, powdered cocaine, three weapons, and scales in the home. (3RR 28).
- l. Aranda spoke with Ronald Manning (“Manning”), the husband of Lisa Evans (“Evans”). (3RR 34-35). Manning was informed that his wife was going to be arrested for possession of all the narcotics in the home, so they needed his cooperation to find out who “stays” at the house. (3RR 35). Manning then got on his cell phone, and he began calling “people.” (3RR 35). Manning “eventually came up with a name,” and he informed Aranda the name of the individual was “Man.” (3RR 26).
- m. Aranda testified that “Man” is James Harris’s nickname. (3RR 36, 57).
- n. After the scene was cleared, Aranda took a statement from Evans, and Aranda testified that she provided him a description of James Harris. (3RR 26). The statement was typed by Aranda’s partner. (3RR 77).
- o. Aranda testified that Lisa Evans and Lashanda Cambric told him that “Man” is James Harris. (3RR 58).
- p. About “8 hours or so” later, Aranda viewed a photograph of James Harris, and identified him from the photo. (3RR 37). Aranda did not know when the photo of James Harris he observed was taken. (3RR 54).
- q. Aranda believes the suspect in the red shorts is Ernest Modeste, who was arrested the following day.<sup>1</sup> (3RR 58).

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<sup>1</sup> Ernest Modeste’s name is spelled several different ways in various places. For clarification purposes, in these agreed findings of fact and conclusions of law his last name is spelled “Modeste.”

- r. Based on witness statements, the phones recovered in the house belonged to “Man” and “E.” (3RR 57).
- s. Aranda was asked if he had “any question or doubt or hesitation in your mind that the photograph of James Harris that you viewed is the same person that you saw run out of that house that day?” To which Aranda responded, “There’s no doubt.” (3RR 37).
- t. Aranda is the only witness who observed the skinny male run out of the house. (3RR 54).
- u. Aranda’s identification of James Harris is the only thing that ties him to the property. (3RR 55).
- v. No photo spread with a photo of James Harris was shown to either Lisa Evans nor Lashanda Cambric. (3RR 74).
- w. Two vehicles were at the scene of the house. (3RR 59). Ernest Modeste was arrested in one of them the following day. (3RR 59).
- x. One vehicle, a Cadillac, was registered to Patricia Harris, James Harris’s sister. (3RR 60, 80-82). The other was a Dodge Charger registered to James Noble. (3RR 60).
- y. At the time of trial, Aranda did not know who James Noble was. (3RR 88).
- z. The familial relationship between Patricia Harris and James Harris indicated to Aranda that James Harris was at the house, and he drove the vehicle registered to her. (3RR 62).
- aa. Aranda identified Ernest Modeste as “resembling” the second male at the house, but he was unable to say “for sure” it was him. (3RR 83-84).

## Officer Emmanuel Pierson

- bb. Emmanuel Pierson (“Pierson”), is partners with Officer Chris Aranda. (3RR 91). He was on duty with Aranda on June 17, 2009. (3RR 92).
- cc. Pierson followed Lisa Evans to the back of the house, where he observed the back door to the house open. (3RR 96). He observed two black males in the kitchen. (3RR 97). The male closest to him was wearing a white muscle or “wife beater” shirt and blue shorts, and the other male was wearing a white t-shirt, red shorts, and a red cap. (3RR 98).
- dd. The male in the muscle shirt was thinner than the male in the red, and he had multiple tattoos on his chest and arms. (3RR 98).
- ee. Pierson was unable to identify James Harris’s face, but he testified that his body type and tattoos were similar to the person he observed. (3RR 98-99, 112-13).
- ff. Pierson briefly pursued the males through the home, but then stopped to detain Lisa Evans. (3RR 102).
- gg. While officers were processing the scene a female, identified as Lashanda Cambreck, came to the house and knocked on the front door. (3RR 107).
- hh. According to Pierson’s trial testimony, the phones in the house showed one number going to “E” and one going to “Man.” (3RR 120).
- ii. Pierson testified that they found out that “Man” was James Harris from “information on the street.” (3RR 120).
- jj. Lisa Evans was the first person to mention the name “Man.” (3RR 121). They then spoke with her boyfriend who made a phone call and said “yes, definitely” the man known as “Man” is James Harris. (3RR 121).

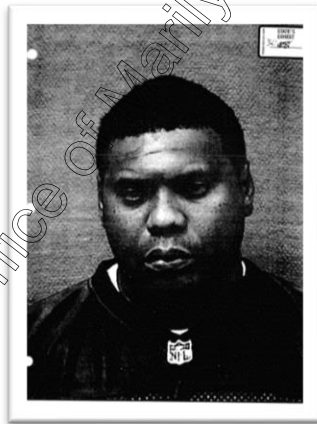
kk. Pierson typed the statements of Lisa Evans and Lashanda Cambrick, but they did not sign them because there was not a place to do so. (3RR 126-27, 129). He dictated the statements word for word. (3RR 127).

ll. Petitioner called Patricia Harris, Iris Williams, Lisa Evans, and Arbrae Hutchinson to testify at trial. (3RR 140, 142, 144, 162).

**Patricia Harris**

mm. Patricia Harris is Applicant's sister. (3RR 140). She purchased a Cadillac about four years prior to trial (3RR 140). About a year and a half prior to trial, she sold the vehicle to "Ernest," who she knows as "Big E." (3RR 140-41).

nn. In June of 2009, Ernest was driving the vehicle. (3RR 141). Patricia Harris identified State's Exhibit 30, a photo of Ernest Modeste as the Ernest she sold her vehicle to. (3RR 141).



oo. Patricia Harris was not cross-examined by the State. (3RR 142).

**Iris Williams**

pp. Iris Williams testified that she has lived at 2212 Kirk Street for 32 years. She knows James Harris because he used to live at 2213 Kirk Street about 12 years ago. (3RR 142-143).

**Lisa Evans**

- qq. Lisa Evans went to the house on Kirk Street to purchase crack cocaine. (3RR 15). She observed “Man” and another man in the house. (3RR 146). She purchases crack from “Man,” but she does not know his true name. (3RR 147).
- rr. “Man” is not James Harris. (3RR 146). James Harris was not one of the two men in the house. (3RR 146).
- ss. The other man she observed in the house was a big heavy-set guy, who goes by “E.” (3RR 146-47).
- tt. The State’s cross-examination of Evans was to impeach her with her prior criminal convictions, to point out that she was a drug-addict, who knew “Man” as her drug dealer, who she worked for on six occasions according to a statement the police typed for her. (3RR 152-54, 157).
- uu. In her description of “Man” to the police she described him as five foot ten, goatee, and many tattoos. (3RR 158).
- vv. She knows James Harris because she sees in him the neighborhood when he visits his children. (3RR 160-61).

**Arbrae Hutchinson**

- ww. Arbrae Hutchinson testified as an alibi witness for James Harris. (3RR 162). Hutchinson is the next-door neighbor of James Harris. (3RR 163). On June 17, 2009, they were doing chores around the house – cleaned grass off the fence, gave dogs worm medication, threw sulfur for fleas, washed cars, worked on the car breaks. (3RR 165-64). They also bar-be-que. (3RR 166).
- xx. Cross-examination of Hutchinson consisted of establishing Hutchinson and Harris were friends, and that Hutchinson had not come forward to law enforcement prior to the trial date to inform them of the alibi. (3RR 167-68).

5. The State's closing argument consisted of:
- a. The description of "a five foot ten black male, thin with a goatee, and tattoos on his chest" were given by the witnesses for "Man." (3RR 186).
  - b. "Man" is James Harris. (3RR 186). "Man" is the individual sitting in front of you right now. (3RR 186).
  - c. Aranda "is a hard-working member of the Houston Police Department. He's not up here making this up." (3RR 186). "He has no motive and no reason to lie." (3RR 187).
  - d. The defense witnesses are "all biased and they all have reasons to lie." (3RR 187).
  - e. It is a "pretty darn big coincidence that James Harris' sister's car is right outside that drug house." (3RR 187).
  - f. "Man" and "E" were both in that house. "E" is Ernest and "Man" is James Harris. Not complicated." (3RR 188).
  - g. James Harris owns a pit bull, and there was a pit bull in the house. (3RR 189).
  - h. "[E]verybody has the right to a fair trial." "James Harris has had that right." (3RR 189).
6. James Harris' conviction was appealed. The First Court of Appeals found the evidence legally and factually sufficient to support the jury's verdict. *See James Boyd Harris v. Texas*, 2011 WL 2089684 (Tex. App.--Houston [1st Dist.] May 19, 2011), *pet. ref'd*.
7. James Harris filed a *pro se* writ of habeas corpus under Code of Criminal Procedure, article 11.07 on March 20, 2012. He raised the following grounds:
- a. Ineffective assistance of counsel – "Harris attends that he has been denied affirming (sic) assistance of counsel. Performance so prejudicial that it deprived him of a fair trial."
  - b. No evidence to support conviction – "Credibility of evidence to establish other crimes or act is not a proper inquiry for trial court in ruling on exclusion of relevant evidence under unfair prejudice."



- c. Due process – “Appellant contends that the court of appeals premised it’s opinion on the witness testimony without regarding the evidence which would allow rational trier facts to find appellant not guilty.”
  - d. Misidentification – “An in-court identification is inadmissible when it has been tainted by an impermissibly-suggestive pre-trial photographic identification.”
8. James Harris is not an attorney.
  9. No attorney was appointed to assist James Harris with his writ application in 2012.
  10. No evidentiary hearing was held on the writ application, and the trial court adopted the State’s Findings of Fact and Conclusions of Law on May 18, 2012. The findings held, in relevant parts:
    - a. The Applicant’s allegation of ineffective assistance of counsel failed to state a claim that entitles him to relief.
    - b. The Applicant’s allegations challenging the sufficiency of the evidence do not state a claim for relief in habeas corpus.
    - c. The Applicant’s allegations that the trial court erred by excluding relevant evidence and allowing an in-court identification that was tainted by a pre-trial photo lineup should have been litigated and raised on direct appeal.
  11. The trial court recommended the writ application be dismissed or denied.
  12. On August 8, 2012, the Texas Court of Criminal Appeals denied, without written order, the application for writ of habeas corpus on the findings of the trial court without a hearing.
  13. At the time of the filing of the *pro se* “A writ,” the June 13, 2019, hearing had not yet occurred.
  14. During the June 13, 2019, hearing newly discovered evidence was developed regarding Aranda’s confidence in his identification of James Harris.
  15. After the filing of the “A writ,” newly discovered evidence was developed of the HPD Gang Tracker database, which includes identifiers of Orlando Noble. Specifically, tattoos similar to those of James Harris and the listing of a middle

name for Orlando Noble of “Mann.” (WRR 78, 83, 85; Defense Exhibit 7). The printout is dated June 7, 2013.

16. On October 11, 2012, James Harris filed a *pro se* “Motion for Forensic D.N.A. Testing of Items Containing Biological Material Pursuant to Code of Criminal Procedure art. 64.” On the same date, he filed a motion requesting the appointment of counsel to assist him in the motion.
17. The trial court granted his motion for the appointment of an attorney on October 15, 2012, and Celeste Blackburn was appointed for the purpose of a motion for forensic DNA testing.
18. On February 27, 2014, Celeste Blackburn filed a Motion for Forensic DNA Testing of Evidence Containing Biological Material that complied with the requirements of the Texas Code of Criminal Procedure.
19. The trial court signed an “Agreed Order for DNA Testing Pursuant to Tex. Code Crim. Proc. 64.03” on March 31, 2014. Over the course of the following years DNA testing was eventually completed in the case, with reports being issued on February 4, 2015; September 9, 2015; and October 26, 2016.
20. Josh Somers was the Harris County Assistant District Attorney in the trial of James Harris.
21. According to the February 4, 2015, lab report, the testing resulted in DNA profiles on two of the items submitted:
  - a. AMW-Blade 600 digital scale (State trial exhibit 21).
    - i. “The partial DNA profile is consistent with a mixture. The unknown profile can be compared to possible sources. James Boyd Harris and Josh Somers are each excluded as a contributor to the profile.”
  - b. Professional digital mini-scale model FXL-150 (State trial exhibit 24).
    - i. “The DNA profile is consistent with a mixture. The unknown profile can be compared to possible sources. James Boyd Harris and Josh Somers are each excluded as the contributor to the profile.”

22. The October 26, 2016, Texas Department of Public Safety DNA Laboratory Report, which reflects new DNA technology – STR PCR analysis, resulted in DNA profiles on three of the items submitted:

a. DNA extract from the swab of pink plastic baggie (State trial exhibit 21)

i. “The previously obtained partial DNA profile is interpreted as a mixture of two individuals. Based on the likelihood ratio results it is inconclusive whether Josh Somers or James Harris are contributors to this profile.”

b. DNA extract from swab of AMW-Blade 600 digital scale (State trial exhibit 21)

i. “The previously obtained DNA profile is interpreted as a mixture of two individuals. Josh Somers and James Harris are each excluded as a contributor to this profile.”

c. Professional digital mini-scale model FXL-150 (State trial exhibit 24).

i. “The previously obtained DNA profile is interpreted as a mixture of four individuals. Josh Somers and James Harris are each excluded as a contributor to this profile.”

23. Two SDIS CODIS Offender Reports have been issued regarding the DNA samples obtained from the testing. Specifically,

a. February 22, 2015 – Jeff Baschall Ellis on the swab-digital mini scale

b. January 11, 2016 – Charlotte Maxine Hill on the AMW-Blade scale swab

24. The Motion for Forensic DNA Testing of Evidence Containing Biological Material is currently still pending before this court.

25. Around January of 2009, the Harris County District Attorney’s Office created a Conviction Integrity Unit (“CIU”).

26. Around April of 2013, the CIU opened an investigation regarding James Harris’ case, pursuant to the request of James Harris’ family and his continued

assertion that he is innocent in this case. (WRR 7-8).<sup>2</sup> As part of their investigation, the CIU interviewed various individuals. They stated, in relevant portions, in their interviews:

- a. **Ernest Modeste** – “Man” is not James Harris. He denies being at the house at the time of the incident.
  - b. **Orlando Noble** - People call him “Man.” It is not his given name, rather, his mother called him “little man” when he was growing up. It was shortened to “Man” later. In 2009, James Harris drove a black Infinity. “E” drove a Cadillac, and Noble drove a Dodge Charger. He denies being at the house at the time of the incident.
27. James Harris has consistently maintained his innocence in this case since before his arrest, during his trial, and over the past 11 years.
28. Subsequently, on July 11, 2017, the trial court appointed Celeste Blackburn for purposes of representation of James Harris under the Texas Code of Criminal Procedure Chapter 11.
29. On October 11, 2018, Celeste Blackburn filed an application of a writ of habeas corpus seeking relief from final felony conviction under Code of Criminal Procedure, article 11.07. The “B Writ” contained the following grounds.
30. On June 13, 2019, a live hearing was held in the trial court on Applicant’s “B Writ.” (WRR 2-4).
31. The relevant **writ** hearing testimony is:

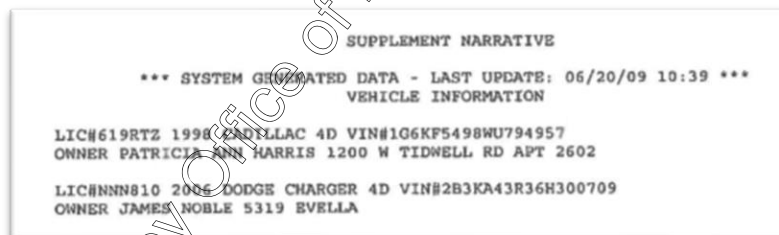
**Officer Christopher Aranda**

- a. Officer Christopher Aranda and his partner, Emmanuel Pierson, decided to see where Lisa Evans was going because she was in a narcotics area. (WRR 11-12).
- b. Pierson exited the vehicle and followed her behind a house. (WRR 12).
- c. Aranda observed two males come out of the front door of the house. (WRR 14). They had the following descriptions:

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<sup>2</sup> “WRR” designates the reporter’s record for the June 13, 2019, writ hearing.

- i. First Male Out – Black, about 5’10”, about 160 pounds; wearing a white tank top and blue shorts, with tattoos on him. (WRR 14-16).
  - ii. Second Male Out – Black, larger than then first male; heavy set
- d. The photograph he identified as the person he saw run out of the house first had what appears to be a rosary tattoo around his neck and other tattoos on his arms and chest. (WRR 16).
  - e. When the first male took off running, Aranda was not able to catch him because the male had such a large lead, of at least 10 yards. (WRR 19).
  - f. No links to James Harris were found in the house. (WRR 21).
  - g. Lisa Evans was under arrest for all of the narcotics found in the house. (WRR 22).
  - h. Two vehicles were found at the scene – a Cadillac and a Dodge Charger. (WRR 22). The Cadillac was registered to Patricia Harris, and the Dodge Charger was registered to James Noble. (WRR 22; Writ Exhibit 5, page 2.014).



- i. Another female arrived at the house during the police investigation, and she was placed under arrest. (WRR 23).
- j. Aranda first testified both the females told him James Harris lived there, and that “Man” was James Harris. (WRR 23-24).
- k. Aranda then refreshed his memory with the typed statements he took from the females, and recalled the females told him “Man” and “E” lived at the house. (WRR 24; Defense Exhibits 3, 4). Neither female specifically stated a name for “Man,” nor did either identify the person as James Harris.

**STATEMENT OF PERSON IN CUSTODY**

Date: 06/17/2009                      Time: 07:00:00 PM

Statement of Deshanda Cambric taken in Harris County, Texas.

Prior to making this statement I was warned by the Houston Police Department the person to whom this statement was made, that:

I have the right to remain silent and not make any statement at all and any statement I make may and probably will be used against me at my trial;

Any statement I make may be used as evidence against me in court;

I have the right to have a lawyer present to advise me prior to and during any questioning;


If I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and;

I have the right to terminate, or stop, this interview at any time;

Prior to and during the making of this statement I knowingly, intelligently and voluntarily waived, or gave up, the rights set out above and made the following voluntary statement:

My name is Deshanda Cambric. I am 29 years old. I was born in Harris County on \_\_\_\_\_ I last went to school at Kashmere HS and have a total of 10 years of formal education.

On 6/17/2009 I called "Man" (bright male with a mustache) to ask him for my money. I had bought him some clothing and was trying to collect my money. I know that "Man" has worked out of the house behind 2313A Kirk for at least four years. I know that "Man" sells "crack cocaine" out of the house. I have seen "Man" and "E" (bright male, heavyset) cook and sell dope out of the house for years. My father smokes "crack cocaine" and I recognize it from over 15 years of seeing it. I know that "Man" is at the house every day selling "crack cocaine". I had a "hook" of "crack cocaine" on my person that belonged to my uncle who told me to hold it for him while I went to the house. "Man" and "E" have both asked me to sell dope for them. They asked me a week ago to sell for them and told me that they could help me get on my feet.



**STATEMENT OF PERSON IN CUSTODY**

Date: 06/17/2009                      Time: 07:00:00 PM

Statement of Lisa Renee Evans taken in Harris County, Texas.

Prior to making this statement I was warned by the Houston Police Department the person to whom this statement was made, that:

I have the right to remain silent and not make any statement at all and any statement I make may and probably will be used against me at my trial;

Any statement I make may be used as evidence against me in court;

I have the right to have a lawyer present to advise me prior to and during any questioning;


If I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and;

I have the right to terminate, or stop, this interview at any time;

Prior to and during the making of this statement I knowingly, intelligently and voluntarily waived, or gave up, the rights set out above and made the following voluntary statement:

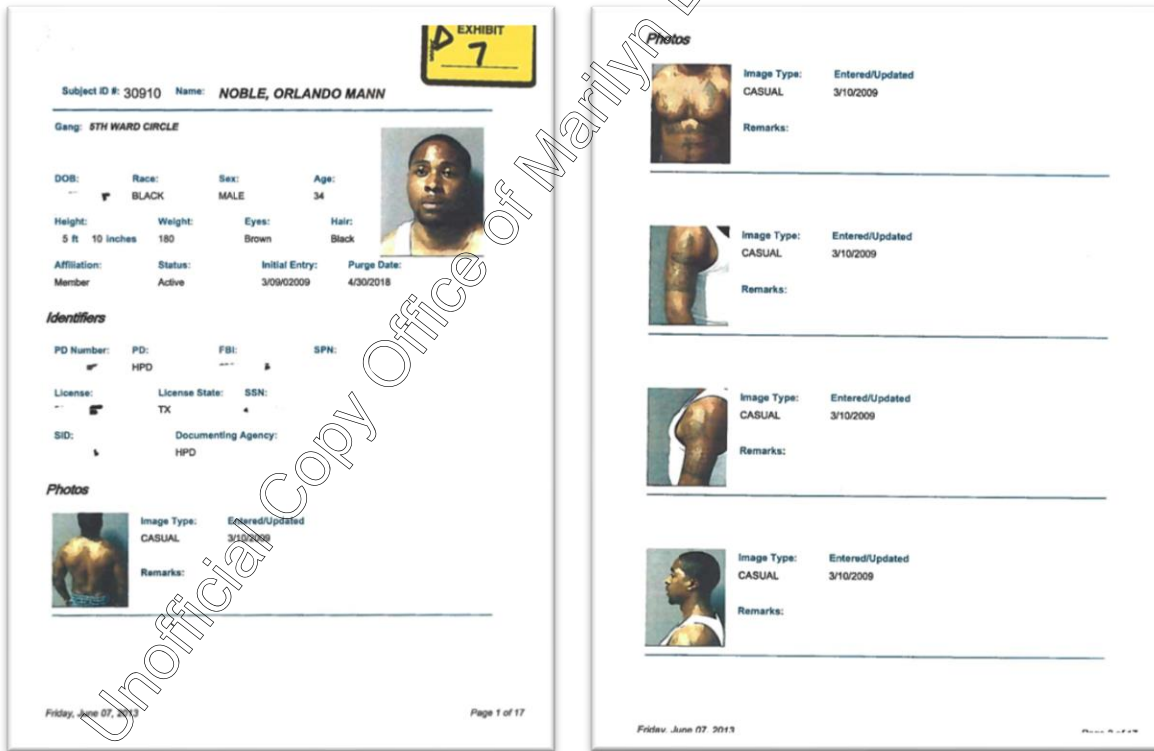
My name is Lisa Renee Evans. I am 43 years old. I was born in Harris County on \_\_\_\_\_. I last went to school at Phyllis Wheatley HS and have a total of 10 years of formal education.

I was in the neighborhood of 2313 Kirk street and was approached by "Man" who asked me to go to the store for him and return to the house behind 2313A. When I returned to the house I entered through the back door and saw "Man" (approx. 5'10, many tattoos) and another black male (white shirt, red shorts, red cap) standing in the kitchen in front of the sink. I noticed that they were cooking cocaine in the kitchen. I have known "Man" for six years and I know that he is a big dope dealer. I have bought "crack cocaine" from him over a hundred times. I know that "Man" does not live in the house but he uses the house to cook dope and distribute the dope to other dealers. I know that "Man" shot "Mike", one of his runners and they are heartless. For the past month I have worked for "Man" approx. 6 hours. "Man" uses me to watch the back door and direct customers to him who are looking for dope.



- l. Aranda then testified that Lisa Evans told him James Harris was "Man." (WRR 25-26). He eventually corrected his testimony to reflect that Lisa Evans's husband, Ronald Manning, was at the scene, and he is the individual who called an unknown individual, who stated "Man" was James Harris. (WRR 25-26).
- m. Aranda was unable to remember when either female told him that "Man" was James Harris. (WRR 27).
- n. Aranda acknowledged he testified at trial that both women told him James Harris was "Man," but he did not recall when it occurred, did not document it in his report, did not document it in their written statements; but rather, he documented in his report that it was the lead provided by Ronald Manning that led their investigation to James Harris. (WRR 28).
- o. Based on the testimony, this Court finds that Aranda's trial testimony that either woman – Lisa Evans or Cambrick – told him that James Harris was "Man" is not reliable.
- p. Based on the name provided to Aranda by an unknown individual to Ronald Manning, eight hours later, Aranda pulled up a photo of James Harris. (WRR 27). He believes he pulled the photo from the "Gang Tracker Database." (WRR 27).

- q. Aranda does not recall speaking with Josh Somers, the trial prosecutor on November 19, 2009, prior to the trial. He also does not recall telling Somers the following:
  - i. That he was 15 yards away at the time he observed the males;
  - ii. That he had viewed a photo of Orlando Noble, and he was not the person he saw. (WRR 29-30).
- r. Prior to the writ hearing, Aranda testified he did not remember being aware of the name Orlando Noble. (WRR 30).
  - i. “Orlando Mann Noble” is documented in the HPD Gang Database. (WRR 31; Defense Exhibit 7). He has the following physical descriptions: Black male; 5’10”; 180 pounds; a rosary tattoo that is similar to the individual Aranda identified, and tattoos on his arms and chest. (WRR 31-32; Defense Exhibit 7).



- ii. At the time of this case, Orlando Noble’s photo reflects the rosary tattoo; short haircut; goatee; black, male, same height, and same weight. (WRR 32-33; Defense Exhibit 7).

- s. Aranda testified that in observing the photo of James Harris and Orlando Mann Noble, he could see how one could misidentify one of them. (WRR 33).
- t. Aranda asserted that other than his identification of James Harris' photo, the information he gathered during his investigation made him believe he saw James Harris. (WRR 33).
- u. During his investigation he was unaware that:
- i. Orlando Noble was known by the street name of "Man;" (WRR 33-34)
  - ii. That Patricia Harris had sold her vehicle to "E;" (WRR 34)
  - iii. Of the height, weight, tattoos, and booking photos of Orlando Noble; (WRR 43)
  - iv. Orlando Noble and James Noble were brothers. (WRR 35-36, 44).
- v. Aranda acknowledged that the vehicle registered to James Noble could have belonged to Orlando Noble. (WRR 34).
- w. The fact that James Harris drove a black Infinity in 2009 was known and documented by the Houston Police Department. (Writ Exhibit 2, page 2.025; 2.037).
- x. The identification of tattoos in the photograph was part of Aranda's identification of James Harris. (WRR 37). He also acknowledged it would have been helpful to know about Orlando Noble's tattoos at the time. (WRR 37). But that "based on my investigation I still think *it's possible* he **could be** James Harris." (emphasis added)(WRR 37).
- y. Aranda acknowledged that it *could have been* Orlando Man Noble. (WRR 37). He also acknowledged that the person they were looking for is "Man." (WRR 37).
- z. The day of, but prior to the writ hearing, Aranda stated that he "**thought** he identified the right guy." (emphasis added)(WRR 39).



- aa. When questioned whether he was as sure in his identification of James Harris, he responded, “Like I said anything is possible. **Maybe I was mistaken.**” (emphasis added)(WRR 39).
- bb. Aranda testified that at the time of trial he believed the male to be James Harris; and upon questioning at the writ hearing, in response to the new information he did not have at the time of the trial, whether or not his identification was called into question he responded, “Beyond that the only thing I can say is anything is possible. Anything is possible.” (WRR 44).
- cc. Ronald Manning was actually at the scene because patrol officers went to a motel, picked him up, and brought him to the scene. (WRR 40). Manning is the individual who mentioned James Harris’ name. (WRR 41). Manning did not testify at trial, nor did the unidentified person he called.

**Joshua Somers**

32. Joshua Somers, the trial prosecutor, testified at the writ hearing. He has been a prosecutor since 2008 in various Texas counties. (WRR 46). His testimony, in relevant parts is:

- a. Somers was informed by James Harris’ attorneys that James Harris was not the individual known as “Man,” but, rather, it was an individual named Orlando Noble. (WRR 47).
- b. Somers believed this case to be a “true one witness case that hinged on Officer Aranda’s testimony and identification.” (WRR 48). Lisa Evans and Deshanda Cambric stated one of the individuals inside the house was “Man,” and then Ronald Manning provided James Harris as the true name of “Man.” (WRR 49).
- c. Somers was aware that while the case as pending James Harris made attempts to contact law enforcement to speak with them and explain that he was not the person known as “Man.” (WRR 50).
- d. During the pending case, James Harris’ attorneys brought Lisa Evans and Ronald Manning to court to speak with Somers to explain James Harris was not “Man,” and that “Man” was actually Orlando Noble. (WRR 51).

- e. Lisa Evans never wavered in her dealings with law enforcement or at trial that one of the individuals in the home was “Man.” (WRR 52). However, during the meeting where Evans and Manning informed Somers James Harris was not “Man,” he believed it significant that neither of them told the officers at the scene “Man” was not James Harris, or told them that “Man” was Orlando Noble. (WRR 52).
- f. According to Somers, he contacted Officer Lopez, a narcotics officer that worked with the DRT. (WRR 56). During these conversations, Lopez stated that the “word on the street was that “Man” was James Harris,” and that Aranda was confident in his identification. (WRR 57).
- g. According to Somers, at some point he requested Aranda to view a photo of “E” and Orlando Noble. (WRR 57). Somers believed that Aranda was unable to identify “E,” and he did not recognize Orlando Noble as the individual in the house. (WRR 57). Somers did not recall whether he showed a photo to Aranda, requested him to view one, or emailed one to him. (WRR 61, 64).
- h. Somers wrote notes reflecting that Aranda told him he viewed a photo of Orlando Noble, and Orlando Noble was not the individual. He also noted that Aranda told him Lisa Evans gave a written statement saying that “Man” was James Harris. (WRR 61-63).
- i. It is unknown which photo of Orlando Noble was viewed, if any. (WRR 65, 72).
- j. Somers was unaware at the time of trial that Officer Lopez swore in his probable cause statement that both Aranda and Pierson positively identified James Harris as being in the house. (WRR 65-66).

OFFICERS THEN MADE ENTRY INTO THE HOME AND CHECKED THE RESIDENCE FOR ANY OTHER PERSONS THAT COULD BE A DANGER TO THEIR SAFETY AND OBSERVED IN PLAIN VIEW A SHOT GUN AND RIFLE ON TOP OF THE COUCH IN THE LIVING ROOM. OFFICERS FURTHER FOUND A LARGE QUANTITY OF MARIJUANA IN PLAIN VIEW IN THE KITCHEN AREA. ALSO, THE WHITE SUBSTANCE FOUND WAS TESTED WITH A C-PACK AND CAME BACK POSITIVE FOR COCAINE. THE TOTAL AMOUNT OF COCAINE SEEN FROM PLAIN VIEW OUTSIDE THE HOME AND THEN RECOVERED WAS 598 GRAMS.

OFFICER PIERSON SPOKE TO A MAN AT THE SCENE IDENTIFIED AS RONALD EDWARD MANNINGS WHO STATED THAT THE MAN WHO LIVED AT 2300 KIRK WAS A JAMES BOYD HARRIS. OFFICER PIERSON THEN RAN THE NAME THROUGH TCIC/NCIC AND WAS ABLE TO PULL AN HPD BOOKING PHOTO FOR A JAMES BOYD HARRIS. OFFICER PIERSON AND OFFICER ARANDA REVIEWED THE BOOKING PHOTO AND EACH POSITIVELY IDENTIFIED JAMES BOYD HARRIS AS THE MAN THEY SAW EXIT THE HOME AFTER BEING SPOTTED WITH THE COCAINE.

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Sworn to and subscribed before me on July 11, 2009

Affiant: [Signature]

Assistant District Attorney: [Signature] BAR NO. 21009167  
OF HARRIS COUNTY, TEXAS.

COMPLAINT

EXHIBIT  
A 2

- k. Somers' notes reflect that he spoke with Aranda, who told him he viewed the males from about 15 yards away. (WRR 60-61, 64).
- l. During the trial, Somers remembers Aranda testifying he observed the males for 10 to 15 seconds. (WRR 113). Somers' recollection was that included the entire incident. (WRR 113). During the trial, the testimony was reenacted, and it was a wide-eyed officer looking at the jury for a "brief moment." (WRR 113). It was not a 10-15 second staring at a suspect. (WRR 115).
- m. As part of his trial preparation and investigation, Somers obtained "criminal history printouts, JIM's printouts" for various individuals involved in the case. (WRR 66). They are as follows:
  - i. Ernest Modeste & the Cadillac – printed because it was important that he was stopped by police in the vehicle that was registered to Patricia Harris day after the incident at the house. (WRR 67; Writ Exhibit 5, page 2.09).

SUPPLEMENT NARRATIVE

\*\*\* SYSTEM GENERATED DATA LAST UPDATE: 06/19/09 09:32 \*\*\*

OFFICER PIERSON (106935) SPOKE WITH OFFICER M. LOPEZ OF THE NARCOTICS DIVISION WHO TOLD THIS OFFICER TO TAG THE NARCOTICS EVIDENCE IN THIS CASE TO BE FINGERPRINTED AND THAT HE WOULD FOLLOW UP ON THE INVESTIGATION.

OFFICER PIERSON WAS ADVISED ON 06-18-2009 THAT OFFICERS OF THE DRY UNIT HAD ARRESTED A SUSPECT (ERNEST MORESTE) IN THE CADILLAC LIC#619RT2. THE OFFICER RECOGNIZED THAT THIS WAS THE CADILLAC THAT HAD BEEN PARKED AT THE DOPE HOUSE DURING THE ORIGINAL NARCOTICS INVESTIGATION. THE OFFICER STRONGLY SUSPECTS THAT ERNEST MORESTE IS SUSPECT "E". THIS SUSPECT WAS ARRESTED FOR NEW TRAFFIC AND OUTSTANDING MUNICIPAL WARRANTS.

- 1. Somers learned that on a later date the vehicle's title was transferred to Jason Modeste, the brother of Ernest Modeste. (WRR 69)(Defense Exhibit 11 & 12).
- ii. James Noble & Dodge Charger – printed because the Dodge Charger was registered to him, and he had the same last name as Orlando Noble. (WRR 72).
- n. At the time of trial, Somers did not have in his possession the HPD Gang Database printout of Orlando Mann Noble. (WRR 78, 83; Defense Exhibit 7). The printout in the State's file is dated June 7, 2013, which was after the trial. (WRR 79, 83). The document reflects the name Orlando Mann Noble. (WRR 83)(emphasis added). Had Somers

had this information at the time the case was pending the document would have been important to him. (WRR 83, 85).

- o. The JIMS printout for Orlando Mann Noble currently reflects the middle name of “Mann,” however, at the time of the trial it did not. (WRR 83-85).
- p. It would have been important to Somers to see a document in the HPD Database that reflected Orlando Noble’s middle name as “Mann.” (WRR 85).
- q. At the time Somers viewed a photo of Orlando Noble, he was wearing a shirt. (WRR85). The gang document he did not have access to at the time, shows a photo of Orlando Noble in a tank top and displays photos of his torso, arms, tattoos. (WRR 85; Defense Exhibit 7).
- r. Prior to trial Somers had concerns about the identification of James Harris, the process that was done, and was concerned there had not been a photo array conducted. (WRR 89). Because this was a “one witness case,” Somers made many attempts to confirm Aranda’s certainty in identification. (WRR 89-90).
- s. Knowing the middle name of Orlando Noble is reflected as “Mann,” seeing that Orlando Noble has similar tattoos and the same physical characteristics as James Harris, Somers would not have felt as comfortable arguing James Harris is “Man.” (WRR 90-94). Further, given the new information Somers would have requested an in-person meeting with Aranda prior to trial to review all the information. (WRR 95).
- t. James Harris was offered a plea bargain of 25 years, then 12 years, then 5 years, and then 2 years. (WRR 98). James Harris was facing a minimum sentence at trial of 25 years. (WRR 98). When James Harris rejected the 2-year offer, the case proceeded to trial because “unfortunately [you’re] going to have to try this case because to say it, to do otherwise would say we don’t believe our officer.” (WRR 99).
- u. When speaking with Aranda, he told Somers he was “positive,” and “a hundred percent sure.” (WRR 100).

- v. Somers' belief was that the vehicle registered to Patricia Harris was the "only other significant link in the case." Aranda's identification was by far the most important piece of evidence. (WRR 104).
  - w. Somers "cannot stress enough for the record, for the Court, for Mr. Harris and his attorney that this case was contingent on Officer Aranda's credibility and his identification and his certainty of James Harris as being one of the people he saw inside of that house." (WRR 109).
  - x. Had Somers shown Aranda photograph of Orlando Noble and Aranda told him that "maybe I was mistaken," he would have never prosecuted the case. (WRR 109). He would have dismissed the case, because it was the right thing to do, and what justice would require. (WRR 110). If Aranda had told him that, he would have gone against his supervisor or anyone else who told him to continue prosecuting the case. (WRR 110).
  - y. On the day of, but prior to the writ hearing, Aranda and Somers spoke briefly. (WRR 111). During that conversation Somers, asked "Are you Officer Aranda? You know you're the officer that identified James Harris." (WRR 111). Aranda responded, "Well, I think I did." (WRR 111).
  - z. Had Aranda stated "Well, I think I did" to Somers in prior to or during trial regarding his identification of James Harris, he would have never prosecuted this case, and he would have dismissed it instantly. (WRR 111). If it was stated during the trial, Somers would have dismissed it mid-trial. (WRR 111).
33. Based on the credible testimony and physical evidence, the trial court makes the following factual findings:
- a. There is newly discovered evidence that was not available at the time of Applicant's "A writ." Specifically,
    - i. Testimony and statements made by Officer Aranda regarding his identification of James Harris that are inconsistent with this trial testimony.
    - ii. The HPD Gang Tracker Database printout reflecting tattoos of Orlando Noble and a middle name of "Mann."

- b. James Harris is not “Man.”
- c. Identifying and arguing to the jury that James Harris is “Man,” was flatly and clearly incorrect.
- d. Orlando Noble has been called by the nickname of “Man” since he was a child.
- e. In 2009, James Harris and Orlando Noble had a similar body build, similar height and weight, similar haircuts, similar goatees, and similar tattoos. This includes a similar “rosary” type tattoo around their neck and chest.
- f. The females at the house both stated that the males in the house were “Man” and “E.” Neither of them identified James Harris as “Man,” and neither of them stated that James Harris was inside the house.
- g. James Harris became a suspect after the police went to a motel, brought Lisa Evans’s husband to the house, and informed him that his wife was going to be arrested for all the narcotics found in the house. He then made a phone call to an unidentified person who allegedly told him that “Man” was James Harris.
- h. There were two vehicles parked near the house. One was registered to Patricia Harris, and the other to James Noble. Patricia Harris is James Harris’ sister, and James Noble is Orlando Noble’s brother. Patricia Harris’ trial testimony that she sold her vehicle to Ernest Modeste is credible because Ernest Modeste was cited for driving the Cadillac the next day after the incident, and later the vehicle was registered to his brother, Jason Modeste.
- i. The credible evidence supports that Ernest Modeste, “E,” was driving the Cadillac registered to Patricia Harris, and Orlando Mann Noble was driving the Dodge Charger registered to his brother, James Noble.
- j. Aranda misidentified James Harris based on the physical similarities, including tattoos, between James Harris and Orlando Noble.
- k. Aranda’s identification of James Harris as “Man” was flatly incorrect.
- l. Aranda’s identification of James Harris is material to the conviction.

- m. When presented with information showing the misidentification, Aranda waived in his identification, and acknowledged he was maybe mistaken.
- n. Had Aranda acknowledged he may have been mistaken in his identification of James Harris, had the prosecutor had the gang printout reflecting Orlando Noble as having a middle name of "Mann," and had the information regarding the similarities between James Harris and Orlando Noble been known to the prosecutor at the time of trial, the case would have been dismissed.
- o. In light of the evidence presented in the writ hearing and the totality of the circumstances, Aranda's testimony at trial regarding his identification of James Harris is not reliable.
- p. The evidence presented during the writ hearing establishes by clear and convincing evidence that, despite the evidence of guilt that supports the conviction, no reasonable juror could have found James Harris guilty in light of the new evidence.
- q. The evidence of Aranda's statements made on the day of and during the writ hearing were not known to James Harris at the time of trial or the "A Writ."
- r. The evidence of Aranda's statements made on the day of and during the writ hearing could not have been known to James Harris even with the exercise of due diligence because the statements had not yet been made.
- s. The statements made by Aranda on the day of and during the writ hearing are affirmative evidence of Applicant's innocence.
- t. The evidence of the HPD Gang Tracker Database for Orlando Mann Noble was not known to James Harris at the time of trial or prior to the "A writ."
- u. The evidence of the HPD Gang Tracker Database for Orlando Mann Noble could not have been known to James Harris even with the exercise of due diligence because the information was not available to the prosecution or defense at the time of trial or prior to the "A writ."
- v. The evidence in the HPD Gang Tracker Database regarding Orlando Mann Noble is affirmative evidence of Applicant's innocence.

## CONCLUSIONS OF LAW

1. Due process is violated by the State's use of material false evidence to secure a conviction. *Giglio v. United States*, 405 U.S. 155 (1972). The Due Process Clause 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 Robbins*, 360 S.W.3d 446, 459 (Tex. Crim. App. 2011).
2. To prevail upon a post-conviction petition for writ of habeas corpus in a false evidence claim, the evidence must be both false and material. *Ex parte Weinstein*, 421 S.W.3d 656, 665 (Tex. Crim. App. 2014).
3. To evaluate falseness, the Court examines whether the testimony taken as a whole gave the jury a false impression. *Weinstein*, 421 S.W.3d at 666. Definitive or highly persuasive evidence introduced in a post-conviction habeas proceeding may show by a preponderance of the evidence that testimony used to obtain a conviction was false. *Ex parte De La Cruz*, 466 S.W.3d 855, 867 (Tex. Crim. App. 2015).
4. If the State unknowingly presented false evidence at trial, a habeas applicant must show by a preponderance of the evidence that the false evidence contributed to his conviction. *Ex parte Chabot*, 300 S.W.3d 768, 771 (Tex. Crim. App. 2009).
5. To succeed in an actual-innocence claim, the applicant must show by clear and convincing evidence that, despite the evidence of guilt that supports the conviction, no reasonable juror could have found the applicant guilty in light of the new evidence. *Ex parte Mayhugh*, 512 S.W.3d 285, 295 (Tex. Crim. App. 2016).
6. An applicant must prove that the evidence he relies on was not known to him at the time of trial and could not be known to him even with the exercise of due diligence. *Id.*
7. The newly discovered evidence must be affirmative evidence. *Id.* at 296.
8. Multiple pieces of newly discovered evidence can together make a meritorious case for relief. *Id.* at 295.
9. The totality of the new evidence of innocence must establish that a jury would not have found the applicant guilty in light of the new evidence when weighted against the old evidence establishing guilt. *Id.*



10. The State's evidence to link James Harris to the drugs in this case consisted of Aranda's identification of Applicant, and the presence of a vehicle registered to Patricia Harris parked near the house.
11. The hearsay statement from an unidentified person to Ronald Manning is insufficient to support an identification of James Harris linking him to the items found in the home.
12. The presence of a vehicle registered to Patricia Harris is insufficient to link James Harris to the items found in the home. Definitive and highly persuasive evidence was presented during the writ hearing that Patricia Harris's vehicle was being driven by Ernest Modeste, not James Harris, on June 17, 2009.
13. The State's trial theory was that James Harris was "Man." This theory was the primary focus of the State's closing argument. This trial theory was flatly incorrect.
14. Definitive and highly persuasive evidence was presented during the writ hearing that James Harris is not "Man," and he is not known by the nickname/"street name" of "Man."
15. Aranda's trial testimony, taken as a whole, was that there was "no doubt" he correctly identified James Harris as the individual known as "Man," who was inside the house.
16. Aranda's statements during the writ hearing and the day of the writ hearing are inconsistent with the trial testimony that he had "no doubt" in his identification.
17. Definitive and highly persuasive evidence was presented during the writ hearing that Aranda misidentified Orlando "Man" Noble as James Harris.
18. Definitive and highly persuasive evidence was presented during the writ hearing that in 2009 James Harris and Orlando Noble had the same physical characteristics, including similar tattoos.
19. The evidence, both testimony and physical evidence, admitted during the writ hearing established definitively and highly persuasively that Aranda is mistaken in his identification of Applicant. His identification of Applicant as "Man" and the individual who fled the house is flatly incorrect.
20. The identification of James Harris by Aranda at trial was material to the conviction of James Harris.

21. There is no evidence to demonstrate that the mistaken identity of Applicant as “Man” and as one of the two men in the house was intentional, or that the state knowingly used false evidence as to the identification of James Harris.
22. The State unknowingly presented false evidence at the trial.
23. Applicant has demonstrated by a preponderance of the evidence that the false evidence of Aranda’s identification of James Harris contributed to his conviction.
24. Applicant has demonstrated by a preponderance of the evidence that if the evidence presented during the writ hearing had been presented during the Applicant’s trial he would not have been convicted.
25. The identification of Applicant by Aranda is the only direct evidence of Applicant’s possession of the items found in the house on Kirk Street, and because the State predicated its theory of the case on the false identification testimony of Aranda, and new evidence demonstrates that Aranda was not as confident in his identification as he testified to at trial, the false evidence is material.
26. Applicant has presented affirmative new evidence that he is actually innocent in this case. Specifically, and in combination with:
  - a. Evidence of Orlando Mann Noble’s physical characteristics, tattoos, and personal identifiers being similar to James Harris, in the HPD Gang Tracker Database printout,
  - b. The HPD Gang Tracker Database printout reflecting a middle name of “Mann” for Orlando Noble,
  - c. Aranda’s statements and testimony on the day of the writ hearing regarding his identification of Applicant. Specifically, and in combination:
    - i. Aranda believes “it’s still *possible* he **could be** James Harris;” (WRR 37)(emphasis added)
    - ii. Aranda’s testimony that the male *could have been* Orlando Man Noble; (WRR 37)(emphasis added)
    - iii. Aranda’s statement prior to the hearing that he “**thought** he identified the right guy;” (WRR 39)(emphasis added)

- iv. Aranda's testimony that "**maybe I was mistaken**" when asked if he was sure in his identification of James Harris; and (WRR 39)(emphasis added)
  - v. Aranda's testimony that "anything is possible" regarding his identification of James Harris. (WRR 44).
27. James Harris has proven by clear and convincing evidence that, despite the evidence of guilt supporting his conviction, no reasonable juror could have found the applicant guilty in light of the new evidence.
28. Accordingly, this court recommends to the Texas Court of Criminal Appeals that relief be GRANTED in cause number 1223792-B.

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Honorable Josh Hill  
232<sup>nd</sup> District Court

Unofficial Copy Office of Marilyn Burgess District Clerk

**AGREED AS TO FORM AND SUBSTANCE:**



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