

FILED
IN THE OFFICE
OF THE DISTRICT CLERK

DEC 16 2002

AT 2:45 P.M. O'CLOCK
CELIA KUYKENDALL
LAMB COUNTY DISTRICT CLERK

Cause No. 3084-A

(The Clerk of the convicting court will fill this line.)

COURT OF CRIMINAL APPEALS OF TEXAS

APPLICATION FOR A WRIT OF HABEAS CORPUS

SEEKING RELIEF FROM FINAL FELONY CONVICTION

UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07

Jesus Esquivel Ramirez

12/20/48

NAME OF APPLICANT (Please print full name)

DATE OF BIRTH

Texas Department of Criminal Justice
Stiles Unit

TDCJ-ID #854249

PLACE OF CONFINEMENT

TDCJ-ID NUMBER

(1) What court entered the judgment of conviction you want relief from?

(Give the number and county of the court.)

154th District Court of Lamb County, Texas

(2) What was the cause number in the trial court? Case No. 3084

(3) What was the trial judge's name? Honorable Judge Felix Klein

(4) What was the date of judgment? May 7, 1998

(5) What was the length of sentence? Life in prison

(6) Who assessed punishment? (Check one) (a) Judge (); (b) Jury ()

(7) What offense or offenses were you were convicted of (all counts)?

Capital Murder

(8) What was your plea? (Check one)

(a) Not guilty (X)

(b) Guilty ()

(c) Nob Contendere ()

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

(9) Did you have a jury trial?(check one)

(a) Jury (X)

(b) Judge only ()

(10) Did you testify at the guilt/innocence phase of trial? Yes () No (X)

(11) Did you testify at the sentencing phase of trial? Yes () No (X)

(12) Did you appeal from the judgment of conviction? Yes (X) No ()

(13) If you did appeal, answer the following questions:

(a) Which court of appeals? The Court of Appeals for the Seventh District of Texas at Amarillo

(b) What was the cause Number? Appellate No. 07-98-00277-CR

(c) What was the decision? Affirmed the conviction

(d) What was the date of the decision? April 30, 2001

(e) Did you file a petition for discretionary review? Yes () No ()

(f) If your answer to (e) was "yes," answer the following questions:

(g) What was the cause number in the Court of Criminal Appeals?

01-1432

(h) What was the decision? Petition for Discretionary Review Refused

(i) What was the date of decision? October 3, 2001

(14) Have you previously filed an application for writ of habeas corpus under Article 11.07 for relief from this conviction?

Yes () No ()

(15) If your answer to (14) was "yes," answer the following questions:

(a) What was the Court of Criminal Appeals writ number? _____

(a) If your answer to (17) was "yes," answer the following questions:

What was the date of decision? _____

Why are you not satisfied with the decision? _____

(b) If your answer to (17) was "no," why have you not presented the claim to the time credit resolution system of the Texas Department of Criminal Justice--Institutional Division?

(18) State concisely every ground on which you claim that you are being unlawfully confined. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting the grounds.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. The grounds you may raise are not limited to those listed below. However, you should raise in this application all available grounds (relating to this conviction) on which you base your allegations that you are being unlawfully confined.

If you claim one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not simply check any of the grounds listed below.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(e) Conviction obtained by a violation of the privilege against self-incrimination.

(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(g) Conviction obtained by a violation of the protection against double jeopardy.

(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and empaneled.

(i) Denial of effective assistance of counsel.

(j) Denial of right of appeal.

(k) Denial of time credits on sentence.

(l) Improper revocation of parole or mandatory supervision.

(m) Illegal sentence.

(n) Invalid or defective indictment.

(o) No evidence or insufficient evidence.

(A) What is your Ground Number One: Jesus Ramirez is innocent and his continued incarceration violates the Due Process Clause of the Fourteenth Amendment. Newly discovered evidence establishes Mr. Ramirez's innocence, and the pervasive constitutional error at trial deprived the jury of critical evidence that would have proven his innocence.

What are the FACTS (tell your story briefly without citing cases or law): Several key pieces of newly discovered evidence - an alibi witness, the confessions of two other men, testimony from two witnesses placing these other men at the scene of the crime near the time of the murder with a motive for robbery, physical evidence connecting these men to the scene of the crime, new evidence showing that the State's supposed eyewitness was not at the scene of the crime near the time of the murder, and the testimony of two witnesses that the State's prison informant admitted to perjury - establish Mr. Ramirez's innocence. With respect to the alibi witness, this woman can establish that Mr. Sifuentes was leaving a bar in Lubbock at the time the murder and robbery occurred at the Jolly Roger convenience store in Littlefield, Texas, some 35 miles away. This woman saw Mr. Ramirez, and his co-defendant, Mr. Alberto Sifuentes, at the bar and told them goodnight when the bar closed around 2:00 a.m. Since the shooting occurred shortly before 2:08 a.m. (the time of the 911 call by Angie Cruz), it was impossible for Mr. Ramirez to have committed this crime. Neither the State nor defense counsel investigated or interviewed this witness.

Also, several witnesses, who were never interviewed by the police or defense counsel have identified two other men, brothers, as the men who robbed and murdered Angie Cruz. These men have bragged to others about robbing the Jolly Roger store and shooting the clerk. Unlike Mr. Ramirez and Mr. Sifuentes, these men match the description given by the victim of her assailants and the resulting APB sent out by law enforcement. Despite being identified by the police as suspects, the police ignored these men and did little to investigate them. While several pieces of physical evidence were collected at the scene, none of this evidence connected Mr. Ramirez and Mr. Sifuentes to the crime. There was no blood, no gun, no DNA or other trace

evidence connecting the defendants. Much of this evidence, however, was never compared to the two brothers. Physical evidence found at the scene - a gold Mariana necklace, however, connects these two brothers to the store. At the time of the murder, one of the brothers was dating a woman named Mariana. This woman and her sister have provided testimony that, on the night of the murder, these two men stopped by her sister's apartment near the Jolly Roger store looking for money. These women confirm that the men matched the victim's description of her assailants, corroborate the confession given to an independent witness by these two men, and provide evidence of a motive for robbery - the men were desperate for money to buy gas. None of this evidence was presented at trial.

Also, the State's key witness, Brenda Ayala, presented false testimony. The State contended throughout the trial that Brenda Ayala had seen Mr. Ramirez and Mr. Sifuentes in the Jolly Roger store at 2:00 a.m., just minutes before the robbery and murder. Post-conviction evidence has revealed, however, that Brenda Ayala was not at the Jolly Roger store at 2:00 a.m. Instead, she was there at approximately 12:30 a.m., over an hour and a half before the murder. This evidence was never presented to the jury.

Additionally, two other witnesses have provided evidence that the State's prison informant admitted to them that he had committed perjury and had lied when he testified that Mr. Ramirez had made incriminating statements to him. Further, a witness housed in the cell between the prison informant and Mr. Ramirez when Mr. Ramirez allegedly made incriminating statements testified after the Ramirez trial that he never heard Mr. Ramirez make any incriminating statements.

Given the information above, no reasonable juror would conclude that Mr. Ramirez was guilty. A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

(B) What is your Ground Number Two: Trial counsel rendered ineffective assistance of counsel by failing to locate and present alibi testimony

What are the FACTS (tell your story briefly without citing cases or law): Defense counsel failed to investigate, locate and interview a woman, or any other patrons, who were at the bar in Lubbock with Mr. Ramirez and Mr. Sifuentes at the same time that the murder occurred in Littlefield. This witness, Pauline Robles, had been referred to throughout the investigation, including in the witness statement of a woman who went to the bar with Mr. Ramirez and Mr. Sifuentes. The alibi witness could have testified that she saw Mr. Ramirez and Mr. Sifuentes at

the bar in Lubbock around 2:00 a.m., almost the exact time that the murder was committed miles away. The absence of testimony from this woman severely undermines confidence in the outcome of this case. The State's case was based upon the thinnest of circumstantial evidence. There were no eyewitnesses who placed the defendants at the Jolly Roger at the time of the murder and there was no physical evidence connecting them to the crime.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

(C) What is your Ground Number Three: Trial counsel rendered ineffective assistance of counsel by failing to investigate and present evidence showing that two other known suspects, Armando and Jerry Gonzales, committed this crime.

What are the FACTS (tell your story briefly without citing cases or law): Trial counsel failed to investigate and present evidence to the jury that two other suspects, who met the description given by the victim, were identified initially as suspects by the police and had bragged to others that they had committed this crime. Trial counsel failed to present evidence from Oscar Balderas, who could have testified that these men had provided detailed confessions to him that were consistent with the physical evidence found at the scene of the crime. Trial counsel also failed to present testimony from two witnesses, Lora and Mariana Casas, who placed these men near the scene of the crime minutes before the murder with a motive for robbery. These witnesses also confirm that the men matched the description given by the victim of her assailants. Additionally, trial counsel failed to present evidence that physical evidence found at the scene of the crime connected these men to the robbery and murder.

The failure to investigate and present any evidence concerning these other suspects severely prejudiced Mr. Sifuentes because the jury never learned that these men had confessed to the shooting, that witnesses placed them near the scene of the crime and desperate for money, that physical evidence connected them to the murder, and that the police had failed to investigate them.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

(D) What is your Ground Number Four: The State sponsored false and misleading testimony from its key eyewitness, Brenda Ayala.

What are the FACTS (tell your story briefly without citing cases or law): The centerpiece of the State's case was that Brenda Ayala saw Mr. Ramirez and Mr. Sifuentes in the Jolly Roger store just minutes before the murder. The State presented this story in its opening statement, through the testimony of Brenda Ayala and two police officers, and repeated this story as the heart of its closing argument to the jury. But, Brenda Ayala was not in the Jolly Roger at 2:00 a.m. She was there much earlier, just after 12:30 a.m. Ms. Ayala had gone to another convenience store in Littlefield, the Town and Country store, right before she went to the Jolly Roger. While there were no video surveillance tapes in the Jolly Roger, there were tapes from the Town and Country. These tapes revealed that Ms. Ayala was actually at the Town and Country (and then the Jolly Roger) at 12:34 a.m. - over 90 minutes before the murder.

The State knew that Brenda Ayala was not at the Jolly Roger at 2:00 a.m., as she testified at trial. From the beginning of the investigation, the State had access to the video tapes, and members of the State's team had in fact reviewed those videotapes, including the tape that showed Ms. Ayala in the Town and Country just after 12:30 a.m. Despite this, the State presented Ms. Ayala's false testimony at Mr. Ramirez's trial and made this evidence the cornerstone of its prosecution.

The State's use of this false testimony was reasonably likely to influence the jury. Ms Ayala was one of only two witnesses who in any way connected the defendants to the store. The State made Ayala's supposed identification of Mr. Ramirez and Mr. Sifuentes the heart of its case and throughout the trial misled the jury with the false impression that Ms. Ayala saw Mr. Sifuentes and Mr. Ramirez at the Jolly Roger shortly before the murder when she had not.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

ADDITIONAL CLAIMS ARE ATTACHED ON A SEPARATE PAGE

Wherefore, applicant prays that the Court grant applicant relief to which he may be entitled in this proceeding.

VERIFICATION

(Complete either the Oath Before Notary Public or the Inmate's Declaration)

Oath Before Notary Public

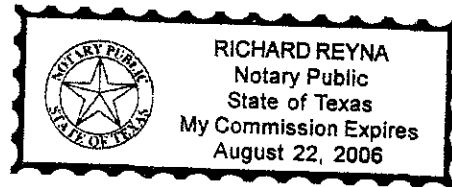
STATE OF TEXAS, COUNTY OF JEFFERSON

JESUS ESQUIVEL RAMIREZ, being first duly sworn, under oath, says:
that he is the applicant in this action and knows the content of the above application and
according to the applicant's belief, the foregoing allegations of the application are true.

Jesus Ramirez Esquivel
Signature of applicant

SUBSCRIBED AND SWORN TO BEFORE ME this 12TH day of DECEMBER.

Richard Reyna 2002
Notary Public



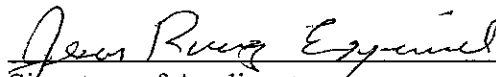
Inmate's Declaration

I, _____, _____
(inmate's name) (inmate's identifying number from
TDCJ or county jail)

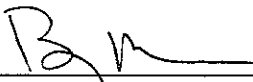
being presently incarcerated in _____,
(name of TDCJ unit or county jail)

declare under penalty of perjury that according to my belief the foregoing information and
allegations of the application are true and correct.

Signed on _____.
(Date)



Signature of Applicant



Signature of Attorney (if any)

Address of Attorney:

Barry F. McNeil
Haynes and Boone, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202
Phone: (214) 651-5000
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APPLICATION FOR A WRIT OF HABEAS CORPUS
SEEKING RELIEF FROM FINAL FELONY CONVICTION
UNDER CODE OF CRIMINAL PROCEDURE, ARTICLE 11.07
(continued)

ADDITIONAL GROUNDS FOR RELIEF

GROUND NUMBER FIVE: The State failed to disclose that Brenda Ayala was recorded on the Town and Country Store's video tapes at 12:30 a.m in violation of Mr. Ramirez's due process rights under the Fourteenth Amendment.

FACTUAL BASIS FOR CLAIM: The centerpiece of the State's case was that Brenda Ayala saw Mr. Sifuentes and Mr. Ramirez in the Jolly Roger store just minutes before the murder. The State presented this story in its opening statement, through the testimony of Brenda Ayala, and through its closing argument to the jury. But, Brenda Ayala was not in the Jolly Roger at 2:00 a.m. She was there much earlier, just after 12:30 a.m. Ms. Ayala had gone to another convenience store in Littlefield, the Town and Country store, right before she went to the Jolly Roger. While there were no video surveillance tapes in the Jolly Roger, there were tapes at the Town and Country. These tapes revealed that Ms. Ayala was really at the Town and Country and the Jolly Roger over 90 minutes before the murder.

The State knew that Brenda Ayala was not at the Jolly Roger at 2:00 a.m., as she testified at trial. From the beginning of the investigation, the State had access to the video tapes, and members of the State's team had in fact reviewed those videotapes. Despite this, the prosecution in Mr. Ramirez's case failed to disclose to defense counsel that Ms. Ayala had gone to the Town and Country store before directly going to the Jolly Roger store and that the video surveillance tapes from the Town and Country store showed Ms. Ayala in the store at 12:30 a.m., not around 2:00 a.m.

From the beginning of the investigation, the prosecution team possessed the evidence - the Town and Country videotape - which conclusively showed that their star eyewitness was not at the scene of the crime anytime near the murder. Further, the State's lead investigator, the District Attorney prosecuting this case, and the District Attorney's assistant all acknowledged that they reviewed the video surveillance tapes during the investigation. Despite possessing this critical evidence for almost two years before Mr. Ramirez's trial, the prosecution never disclosed this information to the defense.

The importance of Ms. Ayala's testimony cannot be overstated. She testified that she saw Mr. Ramirez and Mr. Sifuentes at the Jolly Roger store at 2:00 a.m. on the morning of August 6, 1996, just minutes before the murder. Ms. Ayala's testimony, and her testimony alone, placed Mr. Ramirez inside of the Jolly Roger store just before the murder. The evidence conclusively

showing that she was not even at the Jolly Roger store anytime near the murder would have destroyed the State's entire case.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER SIX: The State failed to disclose highly improper communications which tainted Brenda Ayala's in-court identification in violation of Mr. Ramirez's due process rights under the Fourteenth Amendment.

FACTUAL BASIS FOR CLAIM: The State also failed to disclose exculpatory evidence concerning improper and suggestive communications between the prosecution and the State's supposed eyewitness, Brenda Ayala. After Mr. Ramirez's trial, Ms. Ayala testified that before she attended the live lineups for Mr. Sifuentes and Mr. Ramirez, someone from the State told her who she was going to pick from the lineup.

Specifically, Ms. Ayala testified that before the lineups, she called the Lamb County District Attorney's office to see which of the defendants she was supposed to pick from the lineup. These conversations told Brenda Ayala two things - first, that the man she was supposed to pick was going to be in the lineup, and second, that she was supposed to pick out the man with the light skin (Jesus Ramirez), not the man she supposedly saw in the Jolly Roger store.

These communications with the State before the live lineup were highly suggestive and improper. The State's suppression of these communications violated Mr. Ramirez's right to due process of law under the Fourteenth Amendment. Had defense counsel known about these improper and suggestive communications, they could have suppressed the irreparably tainted and unreliable identification.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER SEVEN: The State failed to disclose Brenda Ayala's prior conviction in violation of Mr. Sifuentes's Due Process Rights under the Fourteenth Amendment.

FACTUAL BASIS FOR CLAIM: The State failed to disclose to defense counsel that Brenda Ayala had a prior conviction for issuance of a bad check. The suppression of this information deprived Mr. Ramirez of impeachment evidence against Ms. Ayala. While this crime is not a felony, it is a crime involving dishonesty. Further, one of the witnesses who cooperated with the State, Janie Ramirez, admitted after the trial that she was offered Crimestopper reward money for her assistance with the case. It is unclear whether any other witnesses were also offered reward money for their assistance. Ms. Ayala's charge for issuance of a bad check indicates that she was

experiencing financial difficulties during the time she cooperated with the State and testified. This information could have been used to impeach this witness's testimony.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER EIGHT: Trial counsel rendered ineffective assistance of counsel by failing to investigate and discover the Town and Country Videotapes showing the State's eyewitness, Brenda Ayala, presented false testimony.

FACTUAL BASIS FOR CLAIM: In an abundance of caution, Mr. Ramirez asserts that his trial attorneys rendered ineffective assistance of counsel for failing to exercise due diligence in discovering critical evidence - the Town and Country video tape - showing that the State's key witness presented false testimony. Counsel's failure to investigate and discover this material evidence constituted deficient performance that compromised the reliability of the verdict.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER NINE: The State failed to disclose that its prison informant, Joe Medrano, had four prior felony convictions and a pending federal revocation proceeding in violation of Mr. Ramirez's due process rights under the Fourteenth Amendment

FACTUAL BASIS FOR CLAIM: The State's suppression of Joe Medrano's four prior felony convictions and the pending federal revocation proceeding on one of those charges deprived Mr. Ramirez of important impeachment evidence that could have been used to demonstrate a motive to lie and to discredit Medrano's credibility, particularly in light of his self-serving testimony in which he attempted to minimize and deny a prior criminal record.

The prosecution's prison informant, Joe Medrano, had four serious felony convictions that were not disclosed to the defense. In 1989, Medrano pled guilty to a federal drug felony - possession with intent to distribute 230 kilograms of marijuana - and was sentenced by the federal district court in Corpus Christi to thirty-two months in prison. This conviction was never fully disclosed to the defense. Medrano also had three state felony convictions, which were unrelated to the federal drug charges, that were not disclosed to the defense. In March of 1991, Medrano pled guilty to three separate felonies: aggravated assault on a peace officer during a high speed chase, aggravated assault for assaulting a man at a party, and unauthorized use of a motor vehicle, and was sentenced to five years in state prison. Long before Medrano's testimony in the Ramirez case, the prosecution had learned of these charges. Yet, information concerning the existence, nature, and circumstances of the convictions was not disclosed to the defense.

The State clearly knew of all of these serious felony convictions and knew that Medrano was on federal supervised release and in the process of having his federal release revoked when he testified in the Ramirez trial. The State also knew from Medrano's 1996 letter to them that he was desperate to avoid going back to federal prison where he claimed he would be killed. Because defense counsel were never provided with this information, they had nothing with which to challenge Medrano's credibility and nothing to counter Medrano's own self-serving and misleading characterization of his criminal background. They also did not have key evidence - that Medrano was facing a revocation of his federal sentence - with which they could have shown Medrano had a clear motive to lie in Mr. Ramirez's case.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER TEN: The State failed to disclose that its prison informant, Joe Medrano, had previously cooperated with authorities when faced with prosecution in violation of Mr. Ramirez's due process rights under the Fourteenth Amendment.

FACTUAL BASIS FOR CLAIM: The State's suppression of Joe Medrano's history of cooperating with law enforcement authorities when faced with prosecution deprived Mr. Ramirez of important impeachment evidence that could have been used to discredit Medrano's credibility, particularly in light of the letter he wrote to prosecutors in 1996 detailing alleged threats to his life resulting from his past cooperation.

In Mr. Ramirez's case, the prosecution did not disclose that Medrano had a pattern of cooperation with authorities when faced with prosecution and jail time and specifically had provided substantial cooperation to federal authorities involving two separate drug distribution rings. In Medrano's federal felony drug case in Corpus Christi for possession with intent to distribute 230 kilograms of marijuana, he cooperated with authorities in that investigation and in return received a reduction in his prison sentence. Due to Medrano's "substantial cooperation," the government in his case recommended a downward departure in sentencing. In return for a reduced sentence, Medrano also cooperated with authorities in providing information in a separate federal heroin distribution investigation in El Paso.

In testimony provided *after the Ramirez trial*, Medrano admitted that he had provided cooperation to the government in his felony drug case in Corpus Christi. As a result of his cooperation with federal investigators, Medrano stated that he feared he would be killed and that a contract had been taken out on his life.

None of this information was disclosed to defense counsel for Mr. Ramirez. Rather, the prosecution elicited false and misleading testimony from Medrano about his prior dealings with law enforcement. Medrano's prior cooperation when faced with criminal charges and jail time was clearly relevant to his credibility and, if known by the defense, could have been used at Mr. Ramirez's trial. More importantly, his prior cooperation in the federal drug investigation and the

resulting threats to his life provided a clear motive to commit perjury in order to avoid going back to prison where Medrano stated, in his August 20, 1996 letter to prosecutors, he would be killed. Because this information was not disclosed to the defense, the jury never knew that this important witness for the State had an obvious and powerful motive to lie.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER ELEVEN: The State failed to disclose that its prison informant, Joe Medrano, had received an extremely favorable plea agreement and sentence in exchange for his testimony in violation of Mr. Ramirez's due process rights under the Fourteenth Amendment.

FACTUAL BASIS FOR CLAIM: The prosecution in this case suppressed the critical fact that Medrano had received an extremely favorable and lenient sentence in exchange for his testimony in Mr. Ramirez's case. The State refused to disclose to the defense that Medrano had received a favorable sentence on the pending charge of rape of a child in return for his testimony in Mr. Ramirez's trial. In fact, when specifically asked by defense counsel if such an agreement or deal existed, the special prosecutor for the State on the Medrano rape case, Matt Powell, denied that any such deal existed and never disclosed the deal to the defense.

Medrano was facing a serious felony charge - rape of a child - at the time of his cooperation in Mr. Ramirez's case. Given the heinous nature of the charge and given Medrano's significant and lengthy prior criminal history (four felony convictions), Medrano was certainly facing a substantial amount of time in prison. Yet, when Medrano pled guilty to raping a child - just days before his testimony in the Ramirez case - he received the minimum sentence available by law. Medrano was sentenced to five years of imprisonment with credit for 976 days that he had been detained, no fine, and no restitution. In all, Medrano was sentenced to 849 days (just over 2 years) of imprisonment for raping a child.

Despite defense counsel's *Brady* requests and despite specifically asking the prosecutor in the Medrano case whether any deal existed, the State did not provide defense counsel with any information concerning the existence, nature or terms of any plea agreement on Medrano's rape case that was in exchange for his testimony in Mr. Ramirez's case.

Post-conviction investigation has revealed that a very favorable deal existed and should have been explicitly disclosed to the defense. Billing records from Medrano's defense attorney at the time of his plea reveal that Medrano's plea and the extremely favorable sentence on the rape charge were contingent upon him providing testimony for the prosecution in Mr. Ramirez's case. The records show that during Mr. Ramirez's trial, and just one day before Medrano entered his guilty plea on the rape charge, Medrano and his attorney met for three hours with Matt Powell, the special prosecutor on the rape case and Greg Parrott, the lead investigator on the Ramirez case "regarding testimony in Ramirez and Sifuentes cases and plea arrangement."

The prosecution in Mr. Ramirez's case clearly knew of this very favorable plea arrangement and were required to disclose the specifics of the deal to the defense. The defense had a right to know about the existence of such a deal and the specifics of the plea agreement. This witness was one of only two witnesses who provided any incriminating evidence against Mr. Ramirez, and certainly, given Medrano's "evidence" - that Mr. Ramirez had supposedly made incriminating statements to him, Medrano's credibility was vital to the prosecution's case. By not disclosing this favorable plea agreement, defense counsel was left with nothing concrete with which to question one of the State's key witnesses about his credibility and obvious motive to lie. If the prosecution had disclosed this favorable evidence, the defense could have convinced the jury that Medrano was a long-time prison informant desperately trying to avoid a long prison sentence and that his testimony concerning Mr. Ramirez's supposed statements was completely unreliable.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER TWELVE: The State failed to disclose that its prison informant, Joe Medrano, had significant mental health problems in violation of Mr. Ramirez's due process rights under the Fourteenth Amendment.

FACTUAL BASIS FOR CLAIM: The State also suppressed material information concerning Joe Medrano's past psychiatric problems in violation of Mr. Ramirez's rights under the Fourteenth Amendment. The prosecution in Mr. Ramirez's case repeatedly refused to disclose exculpatory information about mental health problems and psychiatric treatment received by Medrano and resulting issues related to his competency.

The prosecution clearly knew of issues relating to Medrano's mental health and prior psychiatric treatment. While he was representing Medrano, prosecutor Scott Say moved for an appointment of a mental health specialist to examine Medrano. Despite Say's previous representations to the trial court about the need for a competency evaluation (when he was acting as Medrano's defense attorney), Say later misrepresented to the trial court in the Ramirez case that he was never concerned about Medrano's competency, that he only requested a court-appointed psychologist in order to develop "mitigation evidence," and that he was not aware of any history of mental illness for Medrano.

Post-conviction investigation, however, has revealed that Medrano has a history of significant mental health problems that should have been disclosed to the defense. Prior to his testimony in the Ramirez case, while he was in the federal prison system, Medrano received psychiatric treatment in Springfield, Missouri. In his letter to prosecutors Say and Yarbrough in 1996, Medrano also detailed alleged sexual and physical abuse and stated that he had been suicidal. In this letter, Medrano stated that because of his prior sexual abuse, he is afraid to go back to prison for fear of further abuse.

Additionally, recently obtained progress notes from the court-appointed psychologist in Medrano's rape case document that Medrano had received psychiatric treatment prior to 1997, had symptoms of "going crazy," had recounted physical and sexual abuse, had been diagnosed with manic depressive and post traumatic stress disorders, and had been untruthful and unremorseful regarding the rape charge. Since Dr. Baillie was working for Scott Say on Medrano's case, Mr. Say clearly would have known about Medrano's mental health history. Yet, Mr. Say, who became a prosecutor in Mr. Ramirez's case, never disclosed this information to the defense and, more egregiously, misrepresented to the trial court that one of the State's key witnesses had no prior mental health issues.

If this information had been disclosed to the defense, counsel could have impeached Medrano's testimony with evidence of his past psychiatric problems, including prior untruthfulness and his past sexual abuse which Medrano, himself, stated made him afraid of going back to prison. This evidence would clearly be relevant to Medrano's credibility and a motive to lie. Given the importance of Medrano's testimony to the prosecution's case and given that his testimony was completely uncorroborated, Medrano's history of mental health problems was material as impeachment evidence and should have been disclosed.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER THIRTEEN: The State sponsored false and misleading testimony from its prison informant, Joe Medrano.

FACTUAL BASIS FOR CLAIM: The prosecution failed to correct false testimony by Joe Medrano and created a materially false impression before the trial court and the jury. Joe Medrano, the State's prison informant, provided misleading and self-serving testimony concerning his prior criminal record and current probation status; he denied having worked with law enforcement in the past; and he provided misleading testimony concerning a plea agreement on a pending rape charge.

When asked about any prior convictions, Medrano testified that he pled guilty to "marijuana," because "I got caught with it." What Medrano (and the State) failed to disclose to defense counsel and to the jury is that Medrano had been convicted of much more than a simple marijuana possession. In 1989, Medrano pled guilty to a federal drug felony - possession with intent to distribute 230 kilograms of marijuana (just over 500 pounds) and was sentenced by the federal district court in Corpus Christi to thirty-two months in prison.

Moreover, Medrano testified falsely concerning his probation status - information that the State also failed to disclose. When asked if he was still on parole at the time of his testimony, Medrano testified that "it's on hold right now." This testimony is again misleading. The State clearly knew that Medrano was on federal supervised release and in the process of having his federal release revoked when he testified in Mr. Ramirez's trial. The prosecution, however, had

suppressed the fact that its key witness was facing a revocation of federal supervised release and had pleaded with the prosecution to help him stay out of the federal prison system. Because defense counsel were never provided this information, they did not have key evidence - that Medrano was facing a revocation of his federal sentence - with which they could have shown Medrano had a clear motive to lie. Instead, the prosecution presented misleading testimony to the jury that Medrano's probation was just "on hold."

The State also presented misleading testimony concerning the existence of a very favorable plea agreement on Medrano's pending charge for rape of a child. As discussed above, Medrano received just over 2 years in jail (out of a possible 99 years) for raping a child in return for his testimony in Mr. Ramirez's case. The State, however, denied to defense counsel that any such quid pro quo deal existed. Compounding matters, the State presented misleading and vague testimony from Medrano concerning his plea in the rape case. At trial, Medrano made vague references to some connection between him pleading guilty to a pending charge and his testimony in the Ramirez case. When asked if he pled guilty so "that you would go ahead and testify here today," Medrano only responded "Yeah, I guess - yes." This is hardly a full disclosure of a very favorable sentence on a rape charge being given in return for testimony. These ambiguous and non-committal statements did not relieve the prosecution of its duty to fully and specifically disclose the terms of the favorable treatment given nor did they provide the jury with a complete and correct picture of the facts surrounding Medrano's testimony.

Additionally, the prosecution sponsored misleading testimony concerning Medrano's history of prior cooperation with law enforcement authorities when faced with prosecution and prison time. When asked twice whether he had ever worked with law enforcement, Medrano denied any involvement and testified "No, never have." This testimony was clearly misleading - implying that Medrano had never previously cooperated with law enforcement. As discussed above, Medrano had a history of attempting to avoid prison time by providing cooperation to law enforcement.

The false and misleading testimony by Medrano, which was left uncorrected by the prosecution, clearly could have affected the judgment of the jury. Medrano was one of two key witnesses for the State that offered any incriminating evidence against Mr. Ramirez. Medrano's testimony - that Mr. Ramirez had supposedly made incriminating statements - was also wholly uncorroborated. Thus, the credibility of this witness - a prison informant - could not have been more important. The misleading testimony by Medrano went directly to issues of his credibility and to a clear motive to lie. Suppressing valuable impeachment evidence and then allowing Medrano to present misleading and false testimony concerning this very evidence violated Mr. Ramirez's due process rights and entitles him to a new trial.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER FOURTEEN: The cumulative effect of the State's misconduct concerning Joe Medrano rendered his testimony wholly unreliable and rendered the proceedings fundamentally unfair.

FACTUAL BASIS FOR CLAIM: The prosecution's actions concerning Joe Medrano deprived Mr. Ramirez of a fair trial. The State suppressed exculpatory evidence concerning Medrano, presented false testimony from him, and deliberately deceived the trial court and the jury during this case. The cumulative effect of the State's misconduct concerning this key witness violated Mr. Ramirez's right to due process of law.

The State's flagrant misconduct concerning its prison informant, Joe Medrano, had a devastating impact on Mr. Ramirez's right to a fundamentally fair trial under the Due Process Clause of the Fourteenth Amendment. If the prosecution had disclosed all of the above information that was suppressed, the defense could have vigorously attacked Medrano's credibility with evidence (1) that he was a career criminal who, when faced with prosecution and jail, routinely attempted to cooperate with law enforcement in an effort to avoid going to prison; (2) that his previous cooperation had led to threats on his life such that he was desperate to avoid going back to federal prison; (3) that he faced up to a ninety-nine year sentence on a charge of raping a child and received just over 2 years in jail in return for his favorable testimony in this case; and (4) that he suffered from significant psychiatric problems and had a history of lying.

The cumulative effect of suppressing this information cannot be overstated. The prosecution's case against Mr. Ramirez was based upon tenuous circumstantial evidence. Mr. Medrano was one of only two witnesses who provided any sort of direct evidence implicating Mr. Ramirez (the other being Brenda Ayala who it turns out was not the supposed eyewitness the State had claimed). If the prosecution had not engaged in deception of the court, the jury, and the defense, it would have been left without a case against Mr. Ramirez.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER FIFTEEN: Assistant District Attorney Scott Say should have been disqualified from prosecuting Mr. Ramirez.

FACTUAL BASIS FOR CLAIM: Assistant District Attorney Scott Say should not have been involved in the prosecution of Mr. Ramirez. Because of his previous representation of a key state witness, Joe Medrano, Mr. Say had conflicting duties to his former client (a duty to preserve client confidences) and to Mr. Ramirez (a duty to disclose exculpatory evidence). Mr. Say's decision to ignore the conflict and protect his former client, Mr. Medrano, deprived Mr. Ramirez of his Constitutional right to due process and a fair trial.

As Mr. Medrano's former attorney, Mr. Say owed his client a duty not to divulge client confidences to anyone, including Mr. Ramirez's trial counsel. Client confidences include both

privileged and unprivileged information. Thus, Mr. Say had an obligation to Mr. Medrano to protect all confidential facts learning during the representation, whether such facts were protected by the attorney-client privilege or not. Mr. Say's duty to Mr. Medrano is also unlimited in time. Mr. Say's office also had an absolute obligation under the United States Constitution to provide Mr. Ramirez with any exculpatory evidence regarding Mr. Medrano.

A multitude of exculpatory evidence concerning Mr. Medrano was never disclosed to defense counsel. Specifically, Mr. Say's office knew, but did not disclose to the defense (1) that Medrano had four serious felony convictions; (2) that Medrano was on federal supervised release and in the process of having this release revoked when he testified in Mr. Ramirez's case; (3) that he was a career criminal who, when faced with prosecution and jail, routinely attempted to cooperate with law enforcement in an effort to avoid going to prison; (4) that Medrano's previous cooperation had led to threats on his life, and thus during the Ramirez case he was desperate to avoid going back to federal prison; (5) that he faced nearly a life sentence on a charge of raping a child and received just over 2 years in jail in return for his testimony in this case; and (6) that he suffered from significant psychiatric problems and had a history of lying.

As Mr. Medrano's former lawyer, Mr. Say knew devastating facts about Medrano's untrustworthiness and his motive to lie. He had a duty to protect these client confidences. He also, though, had an absolute duty to disclose this information to the defense in Mr. Ramirez's case. Mr. Say is not allowed to decide which of the two conflicting duties he should follow.

Due to his continuing obligation to protect Mr. Medrano's confidences, Mr. Say's office should have been disqualified from Mr. Ramirez's case. Because the office was not disqualified from the prosecution of Mr. Ramirez, material *Brady* information was not disclosed, and Mr. Ramirez was deprived of his Constitutional right to due process and a fair trial.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER SIXTEEN: Trial counsel rendered ineffective assistance of counsel by failing to investigate and present testimony from Eli Mungia at trial.

FACTUAL BASIS FOR CLAIM: Trial counsel violated Mr. Ramirez's right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution by failing to investigate and present the testimony of Eli Mungia. Counsel's failure to properly investigate and present the testimony of Eli Mungia at Mr. Ramirez's trial constituted deficient performance that compromised the reliability of the verdict.

During trial, the State presented testimony from a prison informant, Joe Medrano, who had been housed in the same cell block as Mr. Ramirez in the Lubbock County jail. Mr. Medrano testified that, while incarcerated in Lubbock County, Mr. Ramirez confessed his involvement with the murder. Mr. Mungia was housed in the cell between Mr. Medrano and

Mr. Ramirez and throughout his testimony, Mr. Medrano repeatedly referred to Mr. Mungia as a witness who would corroborate his version of events - that Mr. Ramirez had supposedly made incriminating statements. Specifically, Medrano attempted to bolster his testimony by saying that another prison inmate, Eli Mungia, was a part of the alleged conversation with Mr. Ramirez and that Mungia had also heard Mr. Ramirez make the incriminating statements. Medrano told the jury that if Mr. Ramirez had made these statements, Eli Mungia would have heard them too. These repeated statements to the jury clearly put defense counsel on notice of the potential relevance and importance of Mr. Mungia's testimony.

Defense counsel knew that Mr. Mungia was in federal custody in Colorado, but did not interview or attempt to directly contact Mr. Mungia to learn of his knowledge of the supposed conversation. Moreover, defense counsel did not ask the court for a continuance to try and arrange to have him brought to Littlefield to testify. Had defense counsel interviewed Mr. Mungia and arranged for his testimony during trial, Mr. Mungia would have provided crucial testimony rebutting the claims of the State's prison informant, Joe Medrano. Mr. Mungia would have testified that the conversation between Mr. Medrano and Mr. Ramirez never took place. Specifically, Mungia has provided testimony that "the conversation never happened when I was there and I never heard it." Mungia also testified that he never heard Mr. Ramirez admit to anyone that he was at the Jolly Roger store at or near the time of the shooting.

Mr. Mungia's testimony would have directly contradicted and discredited Mr. Medrano. Given the tumultuous foundation on which the State based its case, defense counsel's failure to present Mr. Mungia at trial renders the verdict against Mr. Ramirez highly suspect.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER SEVENTEEN: Trial counsel rendered ineffective assistance of counsel by failing to investigate Joe Medrano's prior criminal history, prior cooperation, and mental health problems.

FACTUAL BASIS FOR CLAIM: In an abundance of caution, Mr. Ramirez asserts that his trial attorneys rendered ineffective assistance of counsel for failing to exercise due diligence in discovering Joe Medrano's prior criminal history, his prior cooperation with law enforcement and his prior psychiatric problems. Counsel's failure to investigate and discover this material evidence constituted deficient performance that compromised the reliability of the verdict.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER EIGHTEEN: The State sponsored false and misleading testimony regarding Mary Davila Wood's identification of the Jolly Roger store.

FACTUAL BASIS FOR CLAIM: The State violated Mr. Ramirez's right to due process by eliciting false and misleading testimony from its lead investigator, Greg Parrott, that the Jolly Roger store was the only store in the area with yellow lights and thus, it must have been the store that Mary Davila Wood had described in her testimony.

Mary Wood, the woman who was with Mr. Ramirez and Mr. Sifuentes on the night of the murder, testified at trial that she thought they had stopped at the Jolly Roger store on their way home from the bar in Lubbock. Her supposed identification of the store, however, was highly suspect. Mary Wood testified that she had drunk enormous amounts of alcohol that night and had in fact passed out on the way home from the bar. She somehow managed to remember, however, that at some point, she woke up in the car and saw "white lights and yellow lights." Wood testified that "I really thought we were still in Lubbock." However, after leading questions by the prosecution, Mary Wood testified that she "now" believed they had stopped at the Jolly Roger. Mary Wood's identification of the store was based entirely upon her drunken recollection of yellow lights and a brick-type building. She testified that she never saw a sign or the inside of a store. Mary Wood also admitted that she only thought they had stopped at the Jolly Roger store after being driven to the store by Texas Ranger Sal Abreo.

Despite Mary Wood's admissions that she had drunk an enormous amount of alcohol (the State estimated her blood alcohol level at .31 - three times the legal limit), that she had passed out on the way home from the bar, that she had only vague memories of a yellow light and a brick building, and that she only "remembered" the store after being taken there by a Texas Ranger, the State attempted to bolster Mary Wood's unreliable identification of the Jolly Roger store through the testimony of one of the State's lead investigators, Greg Parrott. After listening to Ms. Wood's testimony during the trial, Mr. Parrott attempted to corroborate Ms. Wood's identification of the Jolly Roger as the place with the yellow lights by testifying that the Jolly Roger was the only convenience store located on the route from the bar in Lubbock to Mary Wood's home in Sudan that had yellow lights. This testimony was false.

Greg Parrott knowingly presented false testimony that the Jolly Roger store was the only convenience store in the area that had yellow lights. The Friends Shell Convenience Store in Anton, Texas - a store located on Highway 84 directly on the route taken by Mary Wood that night - also had yellow lights on the exterior. The Friends store had yellow eaves on the exterior of the store. There are white fluorescent lights underneath the eaves. At night, these lights are a bright yellow, like the Jolly Roger store in Littlefield, Texas. The store is located directly on Highway 84 - the route taken by Mr. Ramirez, Mr. Sifuentes and Ms. Wood on the night in question, and the bright yellow lights are clearly visible from the highway. Thus, the Friend's store in Anton could have been the yellow lights that Mary Wood remembered seeing on her way home from the bar in Lubbock, and Greg Parrott's testimony to the contrary was false and misleading.

The State knew or should have known that their investigator's testimony was misleading. Greg Parrott testified at trial that he investigated all of the convenience stores from Lubbock to Sudan, including the Friends Shell Convenience Store in Anton, Texas. The yellow exterior lights at the Friends convenience store are easily visible from the highway. Anyone conducting even a rudimentary investigation into the existence of yellow exterior lights on convenience stores would have readily observed these yellow lights. Greg Parrott's testimony that he conducted a thorough investigation of all of the stores, specifically citing the Friends store in Anton, and that none of these stores had yellow exterior lighting was clearly misleading and a deliberate and improper attempt to bolster the highly suspect identification of the Jolly Roger store by Mary Wood.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER NINETEEN: Trial counsel rendered ineffective assistance of counsel by failing to investigate and present evidence showing that the Jolly Roger was not the only store that had yellow lights.

FACTUAL BASIS FOR CLAIM: Defense counsel failed to investigate and present conclusive evidence that the Jolly Roger store was not the only store on the route taken by Mr. Ramirez, Mr. Sifuentes, and Ms. Wood that had yellow lights. Counsel could have presented evidence that the Friends Convenience Store in Anton, Texas, a store directly on the highway from the bar in Lubbock to Mary Wood's home in Sudan, had bright yellow lights similar to those at the Jolly Roger store.

If defense counsel had presented this evidence, they could have shown the jury that the Friend's store in Anton could easily have been the yellow lights that Mary Wood remembered seeing on her way home from the bar in Lubbock - not the Jolly Roger store. Importantly, this evidence could have also been used to impeach Greg Parrott's false and misleading testimony that the Jolly Roger was the only store in the area with yellow lights. Because his misleading testimony went unchallenged, the jury was left with the mistaken impression that Mary Wood's identification of the Jolly Roger as the place where she thought they had stopped had some credibility, when in fact it had none.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER TWENTY: Trial counsel rendered ineffective assistance of counsel by failing to object to the hypnotically-refreshed testimony of Mary Davila Wood.

FACTUAL BASIS FOR CLAIM: Trial counsel violated Mr. Ramirez's right to effective assistance of counsel by failing to object to the hypnotically-refreshed testimony of Mary Davila Wood. The use of Mary Davila Wood's testimony violated Mr. Ramirez's Fourteenth Amendment Due Process right to a fair trial. Mary Wood's testimony should have been excluded from trial because it was irreparably tainted by an improper hypnosis session and lacked any reliability due to her extreme intoxication and memory loss.

First, the hypnotist used by the State was entirely beholden to law enforcement and the prosecution. He was not independent. Second, by having Mary Wood recite her recollection of the night in question before she was hypnotized, there is simply no way to know what portion of Wood's recovered memory is the result of cuing. Third, the presence of the State's two investigators at the hypnosis (which was conducted at the police office) rendered the hypnosis suggestive and coercive. Fourth, the hypnosis sought to recover Wood's memories from a night in which she was so intoxicated she admitted passing out. There was no memory to recover. Fifth, the hypnotist used improper induction and memory retrieval techniques, indicating to Wood which memories were important and which ones were not. Sixth, there is no evidence to corroborate Wood's hypnotically-refreshed testimony at trial that the three stopped at the Jolly Roger store. There is no physical evidence or eyewitnesses connecting them to the store, and her previous statements to police indicated that she did not remember stopping at the Jolly Roger. Seventh, there was subtle and overt cuing and suggestion of answers during the hypnotic session.

Trial counsel's failure to object to this highly unreliable and untrustworthy testimony falls below the threshold of objectively reasonable representation and severely prejudiced Mr. Ramirez.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER TWENTY-ONE: The State sponsored false testimony regarding Mary Helen Gallegos and Janie Ramirez.

FACTUAL BASIS FOR CLAIM: The State sponsored false testimony concerning the "tip" that first led police to Mr. Sifuentes and Mr. Ramirez. Two police officers testified that they began investigating Mr. Ramirez and Mr. Sifuentes after being contacted by Mary Helen Gallegos and Janie Ramirez who both claimed to be suspicious of Mr. Ramirez and Mr. Sifuentes. Specifically, Officer Ponce testified that Janie Ramirez had called Lieutenant Rick McDowell of the Littlefield Police Department to report Mr. Ramirez and Mr. Sifuentes as possible suspects. After receiving this call, the Littlefield officers took Ms. Gallegos to Muleshoe in order to investigate Mr. Sifuentes and Mr. Ramirez, whom the police had now classified as "two possible suspects," and to pick up a photograph of Mr. Sifuentes.

In Mary Helen Gallegos's testimony and in closing arguments, the prosecution stressed to the jury Ms. Gallegos's motivations in contacting the police, asking her questions to create the

impression that it was her suspicions of Mr. Sifuentes and Mr. Ramirez that led her to identify them as suspects and cooperate with police. After being asked whether she was worried that Mr. Sifuentes may have committed the murder, Mary Helen Gallegos stated that after she had heard of the description of the car and the assailants, she felt that it could have been Mr. Sifuentes. The prosecution also stressed to the jury in closing arguments that Mary Helen Gallegos contacted the Littlefield Police Department the day after the murder because she thought that Mr. Ramirez and Mr. Sifuentes had committed the murder.

The jury was thus left with the impression that Janie Ramirez and Mary Helen Gallegos had contacted the police on the day after the murder and that their suspicions that Mr. Sifuentes and Mr. Ramirez had committed this murder led them to make the supposed calls.

But this testimony to the jury was false and misleading. What the police officers and Mary Helen Gallegos failed to mention and what was never disclosed to the defense is that Janie Ramirez's first telephone call that morning was to a Crimestopper organization. She did not contact the Littlefield Police Department. Rather, it was the Crimestopper organization that sent the police to Janie and Mary Helen.

Also, Janie Ramirez admits that a Crimestopper organization offered her a reward of \$1,000 for her help with the case. Janie Ramirez also said that she was not sure if Mary Helen Gallegos had accepted any money from Crimestopper, implying that others, including Mary Helen, had been offered "reward" money for their cooperation. None of these facts were disclosed to the defense or presented to the jury.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER TWENTY-TWO: The State's suppression of evidence about monetary Crimestopper awards to witnesses deprived Mr. Ramirez of valuable impeachment evidence in violation of *Brady v. Maryland*.

FACTUAL BASIS FOR CLAIM: The State failed to disclose to defense counsel that Janie Ramirez contacted a Crimestopper organization, not the police, and that she was offered reward money for her help with the case. Despite the police officer's testimony at trial, Janie Ramirez did not call the police the day after the murder. She called a Crimestopper organization that was offering rewards for information in the case. It was the Crimestopper organization that sent the police to Janie Ramirez. Also, Janie Ramirez admits that Crimestopper offered her a reward of \$1,000 for her help with the case. None of these facts were disclosed to the defense.

Undoubtedly, Janie Ramirez and Mary Helen Gallegos's real motivation in contacting the police was to collect the crimestopper reward money - not because they had any concrete proof or suspicions that Mr. Ramirez and Mr. Sifuentes were involved with this crime. With the information on the reward money, the defense could have put Mary Helen Gallegos and the two

police officer's testimony in a very different light and significantly called into question the credibility of Mary Helen and Janie and their supposed suspicions. Because the State never disclosed the fact that these women had only called a Crimestopper organization - not the police - and had been offered reward money, this misleading testimony remained unchallenged.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER TWENTY-THREE: Trial counsel rendered ineffective assistance of counsel by failing to hire a guilt/innocence fact investigator.

FACTUAL BASIS FOR CLAIM: Trial counsel violated Mr. Ramirez's right to the effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution by failing to enlist the assistance of a qualified guilt/innocence investigator. The duty to investigate is fundamental to counsel's role as an advocate, and in this case, the duty to investigate included hiring a qualified and competent investigator - one who is licensed to conduct a fact investigation and fully develop all exculpatory evidence. Particularly in a trial like this one where the evidence was so thin, the effect of a failure to investigate can not be overstated. The prosecution's entire case was based on the most circumstantial of evidence. Mr. Ramirez needed an investigator who could locate and interview possible alibi witnesses and investigate other suspects. Because of defense counsel's failure to hire a qualified fact investigator, no one investigated or interviewed a crucial alibi witness. Further, no one investigated the many other leads on other suspects, including the two brothers who have confessed to this crime.

Rather than hiring an investigator who could work the factual insufficiencies of this case, counsel hired a mitigation specialist who focused on punishment - which was not even an issue in this case once the prosecution had withdrawn the death penalty. Counsel's failure to hire an investigator who was able to investigate, locate, and interview witnesses and develop facts that could have exonerated Mr. Ramirez violated his constitutional rights to effective assistance of counsel and severely prejudiced Mr. Ramirez's defense at trial.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER TWENTY-FOUR: Mr. Ramirez's Due Process Rights under the Fourteenth Amendment were violated by the trial court's failure to appoint a qualified guilt/innocence fact investigator.

FACTUAL BASIS FOR CLAIM: An indigent defendant has a right under the Fourteenth Amendment to an expert *qualified in a relevant field*. At trial, Vince Gonzalez, the appointed

defense "investigator" testified that he is a "mitigation specialist" whose job is to develop the social and family history of an accused for the purposes of mitigating punishment -- normally in death penalty cases. He is not a licensed investigator, and his role in the case was not as a fact investigator.

The State, however, did not seek the death penalty, so there was no need for any mitigation evidence. More importantly, Mr. Ramirez has consistently claimed factual innocence. Accordingly, he was entitled to a defense investigator with the qualifications to pursue his innocence investigation, including as explained more fully elsewhere, locating and interviewing witnesses, following-up on other suspects ignored by the police, investigating and locating documentary evidence of innocence, and developing other facts that could have exonerated Mr. Ramirez. The failure to appoint a fact investigator resulted in the failure to find an alibi witness, to develop evidence on two other suspects, and to develop compelling evidence contradicting the State's key witnesses. By failing to appoint a qualified guilt/innocence investigator, the Court denied Mr. Ramirez his right to an effective defense and a fair trial.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER TWENTY-FIVE: Mr. Ramirez is entitled to a new trial because the cumulative effect of prosecutorial misconduct rendered the proceedings fundamentally unfair.

FACTUAL BASIS FOR CLAIM: The court must undertake a cumulative assessment of the effect that the prosecution's misconduct had on the fundamental fairness of Mr. Ramirez's trial. Here, the State's misconduct during the investigation and prosecution of Mr. Ramirez's case had a devastating impact on his right to a fundamentally fair trial under the Due Process Clause of the Fourteenth Amendment. In this application, Mr. Ramirez has set out in detail the State's numerous acts of misconduct, including:

1. The knowing presentation of false testimony regarding its key witness, Brenda Ayala;
2. The failure to disclose key evidence in the case - the Town and Country video tapes showing Brenda Ayala was not at the scene of the crime near the time of the murder;
3. The suppression of a multitude of evidence regarding the State's prison informant, Joe Medrano, including suppressing prior felony convictions, prior cooperation with the state, prior mental health problems, and an extremely favorable deal on a rape charge in return for his testimony;
4. The presentation of false testimony regarding Joe Medrano and material misrepresentations to the trial court concerning this witness;
5. The knowing presentation of false testimony regarding Mary Davila Wood's supposed identification of the Jolly Roger store;

6. The knowing presentation of false testimony regarding a Crimestopper reward to a State witness; and
7. The suppression of evidence regarding the offering of Crimestopper money to witnesses

The cumulative effect of the State's misconduct cannot be overstated. State misconduct is much more likely to affect the outcome of the trial based upon circumstantial evidence than one in which there is direct evidence, untainted by State misconduct, linking a defendant to the crime. There is no question that Mr. Ramirez's conviction is based entirely on circumstantial evidence. If the prosecution had not engaged in this misconduct, it would have been left without a case against Mr. Ramirez.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER TWENTY-SIX: Mr. Ramirez is entitled to a new trial because the cumulative effect of the ineffectiveness of his defense counsel rendered the proceedings fundamentally unfair

FACTUAL BASIS FOR CLAIM: Defense counsel has made errors so serious that their deficient performance as a whole deprived Mr. Ramirez of a fair trial, and a new trial is warranted. Trial counsel's cumulative errors can render the result of a defendant's trial unreliable.

In this case, there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. First, had defense counsel conducted an adequate investigation, it would have presented to the jury testimony on an alibi witness, who could have established that the defendants were at the bar in Lubbock and not in Littlefield at the time of the murder. This testimony would have exonerated Mr. Ramirez. Second, trial counsel could have, with an adequate investigation, presented compelling evidence that two other men committed this crime, including evidence of their confessions, evidence that witnesses placed them near the scene of the crime at the time of murder desperate for money, evidence that they exactly matched the victim's description of her murderers, and evidence that physical evidence from the scene connected these men to the store. Third, had defense investigated Brenda Ayala's supposed identification and discovered the Town and Country convenience store surveillance tapes, the State would have been prevented from sponsoring false, but damaging, testimony to the jury about its most important witness in the case.

Had defense counsel done the above, the prosecution would have been left with virtually no evidence against the defendants and thus, there is more than a reasonable probability that the jury would have determined that the State failed to establish Mr. Ramirez's guilt beyond a reasonable doubt.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER TWENTY-SEVEN: Mr. Ramirez is entitled to a new trial because the cumulative effect of the State's misconduct and the ineffective conduct by his trial counsel rendered the proceedings fundamentally unfair.

FACTUAL BASIS FOR CLAIM: The cumulative effect of the State's misconduct in this case - sponsoring false testimony and suppressing highly exculpatory evidence - and the failures of defense counsel to cross-examine key witnesses, investigate, develop and present exculpatory evidence rendered Mr. Ramirez's trial fundamentally unfair and denied him of his due process rights under the Fourteenth Amendment.

If ever there was a case for the application of cumulative error principles, this is it. From the onset, the case against Mr. Ramirez was based entirely upon highly circumstantial and flawed evidence. Despite collecting physical evidence from the scene, none of it connects Mr. Ramirez to the crime. No eyewitness connects him to the store or the shooting. Given this void of any reliable evidence, the collective presence of serious errors by the defense and the misconduct by the State is devastating to one's confidence in the reliability of this verdict.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.

GROUND NUMBER TWENTY-EIGHT: All prior counsel were ineffective for failing to raise the issues presented in this petition at trial, in post-trial motions and on direct appeal.

FACTUAL BASIS FOR CLAIM: Prior counsels' failure to properly investigate and to make the objections and arguments raised throughout this Petition constitutes ineffective assistance of counsel in violation of Petitioner's rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

To the extent trial counsel failed to assert or adequately preserve any claims, either at trial, in post-verdict motions, counsel rendered ineffective assistance of counsel in violation of Petitioner's rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

To the extent that appellate counsel failed to assert or adequately preserve or litigate any of these claims on direct appeal, counsel rendered ineffective assistance of counsel in violation of Petitioner's rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

A more detailed factual summary and memorandum of law concerning this claim is attached and incorporated. Additionally, evidence supporting this claim is attached to the factual summary and memorandum of law. Please see the attached memorandum and evidence.