Ms. Elliot; the YSTR profile was the same as Mr. Dobson's DNA profile. (35 R. R. 191) A sample from the shoelaces matched the DNA profile mixture of 2 contributors. Mr. Dobson could not be excluded as a major contributor. (35 R. R. 192) An area on the computer power cord tested presumptive positive for blood. The DNA profile matched Mr. Dobson's DNA profile. A second area, on the middle of the power cord, tested presumptive positive for blood and also matched Mr. Dobson's DNA profile. (35 R. R. 194) The masking tape from Mr. Dobson's wrist tested presumptive positive for blood. Ms. Van Winkle tested the swab from Mr. Dobson's left wrist, but there was no DNA on it. (35 R. R. 195-196) The masking tape from Mr. Dobson's left ankle had no DNA on it. The swabs from Mr. Dobson's fingernail showed a partial male DNA profile that matched Mr. Dobson's DNA profile, there was one allele that did not originate from Mr. Nelson or Ms. Elliot. (35 R. R. 197-98) Mr. Nelson and Mr. Springs were excluded as being donors of any DNA on the piece of masking tape from Ms. Elliot. (35 R. R. 205)

Dr. Nizam Peerwani, medical examiner for the Tarrant County Medical Examiner's office, asked Dr. Gary Sisler to conduct the autopsy of Mr. Dobson. Dr. Peerwani was present for part of the autopsy. (36 R. R. 6, 11-12) He observed multiple blunt force traumatic injuries on Mr. Dobson. There were 21 injuries, 5 of which were injuries to his head. (36 R. R. 16) Mr. Dobson had defensive wounds from trying to defend himself from injuries to his vital organs. (36 R. R. 17) The

supporting Springs's alibi that he was with Duffer at the time of the crime, which likely occurred between 11:15 a.m. and 1:30 p.m. *See* Ex. 26 at NELSON 311; 35 R.R. 10-40. Duffer was Springs's girlfriend and the mother of his child, and McClain was Duffer's close friend. *See id.* at 13-16. Duffer stated that Springs came to her home in Venus, Texas, on the evening of Wednesday, March 2, 2011, to celebrate her birthday. According to Duffer, Springs and Duffer slept in till 11:00 a.m. on the morning of March 3, and Duffer left to collect McClain from school around 11:35 a.m., returning home afterward. *See id.* at 17-18. Duffer testified that at around 2:30 p.m., she, McClain, and another friend dropped Springs off at a gas station in Arlington, where Springs met up with Mr. Nelson. *See* 35 R.R. 18. McClain's testimony was similar, although she testified that Duffer picked her up at school earlier, between 11:00 a.m. and 11:15 a.m. *See id.* at 24–36. The State relied on these witnesses to establish that Springs was not in Arlington at the time of the murder. Defense counsel was not prepared for this testimony; they had interviewed neither Duffer nor McClain, *see* Ex. 2, and they failed to cross-examine either about bias. *See* 35 R.R. 25–29.

After the State presented its 38 witnesses, defense counsel called Mr. Nelson to testify as the defense's sole guilt-phase witness. 36 R.R. 55–87. According to Mr. Nelson, on March 3, 2011, he was with Springs and Jefferson at the NorthPointe Baptist Church. *Id.* at 69–76. Mr. Nelson testified that he knew Springs and Jefferson planned to rob the church, but that he did not know or intend that anyone would get hurt. *Id.* at 86–87. According to Mr. Nelson, he acted as a lookout during the robbery while Springs and Jefferson entered the church. *Id.* at 71, 109. After some time, Springs came to the door to let Mr. Nelson in, and Mr. Nelson saw what Springs and Jefferson had done to Mr. Dobson and Ms. Elliott. *Id.* at 72–73. Experts who testified for the State regarding DNA evidence from the scene confirmed that the lab did not find Mr. Nelson's

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DNA on the ligatures used to bind the victims.[3] Rather, consistent with Mr. Nelson's story, the only DNA evidence linking Mr. Nelson to the scene was DNA from the victims found on one of Mr. Nelson's shoes, which could have been transferred when Mr. Nelson entered the church. *See id.* at 109. In contrast, even though Springs exhibited signs of having been in an altercation, *see infra* 21-22, the police never collected the clothing he was wearing on the morning of March 3rd to test for blood or DNA. During closing arguments at the guilt phase, the State repeatedly emphasized that Mr. Nelson was a "lone assassin." *See* 37 R.R. 7–13, 31. Mr. Nelson was found guilty of capital murder as a party on October 8, 2012. *See* 2 C.R. 401.

3. The Sentencing Phase

As a condition of imposing the death penalty, Texas law requires a sentencing jury to unanimously answer "yes" or "no" to two standard special issues, and a third special issue in cases involving vicarious liability. First, the jury must answer whether there is a probability that the defendant will commit criminal acts of violence that would constitute a continuing threat to society (the "future dangerousness" issue). Tex. Code Crim. Proc. art. 37.071, § 2(b)(1). In capital cases involving vicarious liability, the second special issue requires the jury to determine if the defendant intended to cause death or anticipated a loss of life (the "parties" issue). *See id.* § 2(b)(2). The court asked Mr. Nelson's jury to answer this special issue because the involvement of additional perpetrators was a central question in the case. Finally, the jury must answer whether—taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant—there are sufficient mitigating circumstances to warrant a life sentence (the "mitigation" issue). *See id.* § 2(e). An absence of unanimity on any question precludes a death

[3] There was an "unidentified" DNA profile on four of the items used to bind the victims. *See* 43 R.R. 53-58. Jefferson's DNA was never collected or tested by the State.

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27.[10] The jury heard nothing about this fact, and did not see the photographs. The decision to forgo that evidentiary presentation cannot have been strategic; defense counsel simply failed to investigate the likely source of these injuries: the altercation with Mr. Dobson. Defense counsel never interviewed witnesses to ascertain the timing of the injuries or Springs's explanation, if any, for them. Springs told detectives he "got th[e] bruise from lying on his arm while in jail" and that the "extensive bruises and swelling" on his knuckles were "from beating his fists together ... as some sort of nervous fidget." *See* Ex. 26 at NELSON 315.

In contrast to Springs, Mr. Nelson had no injuries. Maria Esquivel, assistant manager at the Tetco/Chevron where Mr. Nelson purchased items on the afternoon of March 3, 2011, testified that mere hours after the incident Mr. Nelson appeared "clean," and that it did not look as though Mr. Nelson had been in a fight. 33 R.R. 171.[11] That Springs had substantial, visible injuries while Mr. Nelson had none is consistent with Mr. Nelson's testimony that Springs killed Mr. Dobson and assaulted Ms. Elliott while Mr. Nelson waited outside. Nothing reasonably explains defense counsel's failure to present this evidence other than a lack of preparation.

Third, defense counsel failed to adequately present evidence that Springs was in possession of valuable property of the victims: Mr. Dobson's iPhone and Ms. Elliott's car keys. The State stressed to the jury how important it was that Mr. Nelson had "all" of the victims' property:

> Consider why on earth two other people would commit a murder and give this Defendant everything. He walks away with everything. He walks away with the car. He walks away with the credit cards. He walks away with the GPS, the laptop and [*Mr. Dobson's*] *iPhone. He walks away with all of that. Why does he get everything if he did nothing?*

See 37 R.R. 9-10. The State's assertions were incorrect: Springs had both the iPhone and the car keys.[12] Defense counsel could have presented testimony from Ronika Austin to prove that it was *Springs*, not Mr. Nelson, who initially had Mr. Dobson's iPhone. *See* Ex. 26 at NELSON 316 (summary of Detective Blank's interview with Ronika Austin where she states "she did trade

[12] Moreover, while Mr. Nelson had the credit cards in his possession, the State admitted that both Springs and Jefferson intended to purchase items with the cards. *See* 37 R.R. 31.

Jefferson maintained he was in General Chemistry at the University of Texas, Arlington from 11:00 a.m. until 12:20 p.m. on the day of the murder. *See* Ex. 30 at NELSON 465. Defense counsel never confirmed the accuracy of this alibi. Although aware that a video recording could have proved whether Jefferson entered class on March 3, 2011, *see id.* at NELSON 464, defense counsel never subpoenaed the tape.[18] Defense counsel even had evidence that Jefferson lied about attending class that day. While Jefferson maintained he had a test on March 3, 2011, his professor stated that no test or quiz was given on that day. *See id.* Instead, the only evidence defense counsel attempted to present was to ask Bursey whether it looked like someone had forged Jefferson's signature on the sign-in sheet that day. *See* 35 R.R. 148-49. Bursey was not qualified as a handwriting expert, but defense counsel nevertheless attempted to elicit her testimony that Jefferson's signature was similar to another on the sheet. *Id.* The effort failed, because defense counsel should have conducted this investigation—with a handwriting expert—before Bursey's cross-examination, when her uninformed answer substantially weakened Mr. Nelson's case. The failure to investigate Jefferson's alibi, particularly in view of evidence that he was lying, constituted deficient performance.[19]

2. Defense Counsel Deficiently Failed to Explore, Prepare, and Develop Evidence That Mr. Holden's Death Was a Suicide.

At the sentencing phase, the jury heard evidence that, while Mr. Nelson was awaiting

[18] By the time Nelson's federal habeas counsel requested the tape, it had been destroyed. If defense counsel had sought the tape before trial, however, it would have been available. *See* Ex. 36 at NELSON 519-23.

[19] Defense counsel also failed to develop a theory, consistent with Mr. Nelson's testimony, that the unidentified male's DNA at the crime scene could have been Jefferson's. This failure is particularly egregious because defense counsel knew the DNA of an unidentified male was found on four separate items at the crime scene, including items used to bind the victims. *See* 43 R.R. 53-58. While defense counsel alluded to the fact that this DNA could have been Jefferson's during closing at the guilt phase, *see* 37 R.R. 18-19, their inadequate investigation meant that Jefferson's true role in the crime was undeveloped for the jury.