

represent Mr. Nelson. 1 C.R. 28-29. Over the course of their pretrial investigation, defense counsel failed to pursue evidence establishing that Mr. Nelson's role in the multi-party crime was substantially exaggerated: they did not follow up on leads or interview available witnesses who could have implicated Springs as the individual who caused the pastor's death, even as their client insisted that Springs was the assailant. Ex. 26 at NELSON 312-13. Defense counsel's records contain no indication that they even attempted to interview Springs, though Springs had Mr. Dobson's phone, Ms. Elliott's car keys, and extensive bruising consistent with a recent physical assault. See Itemized Bill for Bill Ray (Nov. 16, 2012), Ex. 2 at NELSON 3-15.

Defense counsel also did not interview Claude Jefferson, a third accomplice whom Mr. Nelson placed at the scene. Jefferson's alibi was that he was in class at the University of Texas, Arlington from 11:00 a.m. until 12:20 p.m. on the day of the murder. See State's Ex. No. 375, Records from the Univ. of Texas (July 31, 2012), Ex. 30 at NELSON 459-65. Jefferson falsely maintained he had a test that day, yet defense counsel never verified his alibi. See *id.* at NELSON 464-65. Defense counsel knew that a video recording could have established whether Jefferson entered class on March 3, 2011, *id.*, but never subpoenaed the tape.²

Before Mr. Nelson's trial, defense counsel conducted a rudimentary investigation into Mr. Nelson's background and mental health, by obtaining official documents; hiring Mary Burdette, a mitigation specialist, to interview individuals who knew Mr. Nelson; and retaining Dr. Antoinette McGarrah, a neuropsychologist, to evaluate him. Defense counsel obtained records from schools, hospitals, juvenile detention facilities, and criminal justice institutions, though it is unclear to what extent defense counsel reviewed these documents, since (as explained further below) virtually none were used at trial. See Ex. 2 at 3-15; 47 R.R. 7-8

² This recording has since been destroyed. See Email Chain from K. Black to Univ. of Texas at Arlington (Sept. 19, 2016), Ex. 36 at NELSON 519.

for the sentencing phase. A reasonable investigation involves more than mitigation; counsel must make “reasonable efforts to obtain and review material that counsel knows the prosecution will probably rely on as evidence of aggravation at the sentencing phase of trial.” *Rompilla*, 545 U.S. at 377 (emphasis added). Counsel may not truncate “their investigation of [a defendant’s] background after having acquired only rudimentary knowledge of his history from a narrow set of sources.” *Wiggins*, 539 U.S. at 524. The failure to effectively litigate sentencing issues is not a “strategic” or “tactical” decision if it is based on an unreasonably narrowed investigation and preparation. See *Wiggins*, 539 U.S. at 527; *Miller v. Dretke*, 420 F.3d 356, 366 (5th Cir. 2005); *Lewis v. Dretke*, 355 F.3d 364, 368 (5th Cir. 2003) (per curiam); *Lockett v. Anderson*, 230 F.3d 695, 711-14 (5th Cir. 2000). This rule—that decisions about sentencing-phase evidence are neither strategic nor tactical if they are the result of unreasonably narrowed preparation—includes the use of proper expert testimony. See *Caro v. Calderon*, 165 F.3d 1223, 1226-27 (9th Cir. 1999) (counsel was ineffective despite consulting four different experts because they were not the right experts).

1. Defense Counsel Deficiently Failed to Investigate, Prepare, and Develop a Case Built on Mr. Nelson’s Diminished Role in the Crime.

At both phases of trial, the State prosecuted and sought to have Mr. Nelson sentenced to death as the lone assailant. Defense counsel’s response to this theory was conjectural, not evidentiary, because counsel had unreasonably narrowed their pretrial investigation into the involvement of the other participants. This failure prevented the jury from considering evidence at sentencing showing that Mr. Nelson in fact had a diminished role in the incident.

The State immediately zeroed in on the importance of neutralizing a defense based on Mr. Nelson’s diminished role in a multi-party crime. During voir dire, the State systematically interrogated potential jurors about the parties special issue, their willingness to find Mr. Nelson

guilty for the act of another party, *e.g.*, 28 R.R. 172, and their willingness to impose the death penalty even if Mr. Nelson was not personally responsible for the assaults, *e.g.*, 21 R.R. 70-74. The State ultimately struck multiple jurors because of its doubts about their willingness to apply rules of vicarious criminal liability. *See, e.g.*, 31 R.R. 19-20.

In contrast, defense counsel did not reasonably investigate or prepare to litigate Mr. Nelson's limited role. Defense counsel failed to adequately investigate the roles of likely accomplices, leaving counsel unable to credibly dispute Mr. Nelson's status as a principal assailant. Defense counsel's failure to investigate, prepare, and present the "plausible alternative defensive theory" that Mr. Nelson was not the lone assailant and did not cause the death of the complainant was objectively unreasonable. *See Richards*, 566 F.3d at 568 (finding trial counsel's failure to present exculpatory evidence was "objectively unreasonable under prevailing professional norms . . ."); *see also id.* (quoting *Moore v. Johnson*, 194 F.3d 586, 611 (5th Cir. 1999) ("Counsel's decision to exclude exculpatory evidence . . . by precluding reliance upon a plausible alternative defensive theory that was supported by other evidence in the record, was professionally unreasonable.")). Defense counsel's failure to develop evidence on this issue was not a "strategic" decision, because they made the argument without a proper investigation. In closing, defense counsel alluded to the "lone assailant theory" at least 16 different times. *See, e.g.*, 37 R.R. 13 (Gordon: "And for the State to believe that he is the lone -- or try to convince you that [Mr. Nelson] is the lone actor doesn't make much sense."); *id.* at 20 (Ray: "This is not the lone assassin theory."). Defense counsel's rhetoric critical of the "lone assailant theory" only underscored their failure to present supportive evidence, leaving the jury with the (incorrect) impression that no such evidence existed. *Moore*, 194 F.3d at 604.

By failing to reasonably investigate accomplices, defense counsel foreclosed an argument

that Mr. Nelson's role and intent in the crime did not warrant a death sentence. For example, defense counsel should have discovered and investigated images showing that co-conspirator Springs had "extensive bruising and swelling on [the] knuckles of both hands" just days after the murder, reflecting that he had recently been in a violent altercation. *See* Ex. 26 at NELSON 315; *see also* Ex. 27. Or defense counsel could have undermined Jefferson's alibi by requesting a video to verify whether he was really in class the morning of the murder. *See* Ex. 30 at NELSON 464; *see also* Ex. 36 at NELSON 519-24. Because of defense counsel's failures, the jury was not presented with, among other things, evidence that Springs possessed stolen property from the crime scene, or that the co-conspirators' alibis were impossibly inconsistent.

- Defense counsel unreasonably narrowed its investigation into Anthony Springs's substantial involvement in the crime.

Mr. Nelson testified during the guilt phase that Springs was directly involved in the murder of Mr. Dobson and the assault of Ms. Elliott. *See* 36 R.R. 69-73. Yet defense counsel made no serious attempt to corroborate that account, presenting virtually no evidence of Springs's involvement.⁹ Springs's role should have been one of the most important issues at trial. Defense counsel could and should have prepared to undermine the State's theory that Mr. Nelson deserved death because he was the primary assailant.

First, police records and photographs reflected that Springs's hands and arm were extensively bruised just three days after the murder. *See* Ex. 26 at NELSON 315; *see also* Ex.

⁹ Defense counsel hinted that there is a gap where Springs's cell phone was silent between 10:18 p.m. on March 2, 2011 and 12:13 p.m. on March 3, 2011 (subtly suggesting Springs could have been at the church that day), *see* 59 R.R. 10-18. During the cross-examination of Detective Caleb Blank, defense counsel also established that Springs was in possession of Mr. Dobson's iPhone. However, on re-direct the State established that the police had never seen Springs in possession of Mr. Dobson's phone, and defense counsel did nothing to undermine this point (even though they could have called Ronika Austin, who would have testified that Springs gave her the iPhone, or presented Detective Blank's own report where Springs attested to possessing the iPhone). *See* Ex. 26 at NELSON 310-11; *see also infra* at 23-24.

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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.

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Springs a black G-1 cell phone for an iPhone”); *see also id.* at NELSON 307-08 (Cotter’s report to police of seeing Springs with the iPhone that “belonged to the dead Pastor”). And defense counsel never investigated Springs’s possession of Ms. Elliott’s car keys,¹³ which Springs had on him when he was arrested. Springs stated during his interview with the police that he received them from Brittany Bursey after Mr. Nelson left Bursey’s apartment, but defense counsel never interviewed Bursey to determine whether Springs’s account was accurate.¹⁴ *See* Springs Interview Video at 56:06-57:39 (Mar. 5, 2011), included as Disks 10 & 11 on State’s Memorialization of Delivery of Discovery, 1 C.R. 195.

Finally, defense counsel did not investigate and prepare to address the testimony of the alibi witnesses who furnished rickety stories about Springs’s whereabouts at the time the crime took place, *or even interview Springs himself*. Springs was arrested as the subject of the criminal complaint, but—for reasons still unknown—was not indicted¹⁵; defense counsel knew as much, since their investigator noted that Springs was “not indicted/alibi.” S.H.C.R. 155; Ex. 34 at NELSON 507. The alibi testimony for Springs was critical: it was used to exclude Springs from the scene and thus to establish Mr. Nelson as the lone assailant.¹⁶ Preparation for these

¹³ While this information emerged during the cross-examination of Detective Blank, *see* 34 R.R. 166-167, no evidence was proffered to support Mr. Nelson’s testimony that Springs was doling out property from the offense. *See* 36 R.R. 74.

¹⁴ During his police investigation, Detective Blank noted that Springs stated “he was offered a car by Mr. Nelson which he believed to be a Ford because that was the brand name on the keys. Springs said he threw the keys away soon after he was given them, but he could not provide us the exact location.” Ex. 26 at NELSON 311.

¹⁵ On December 13, 2016, Mr. Nelson filed a Motion for Leave of Court to Conduct Discovery regarding, among other things, the State’s records relating to its investigation of Springs and his participation in the crime. *See* Doc. 20.

¹⁶ As explained above, the State relied on the alibi testimony of Kelsey Duffer and Darrian McClain to establish that Springs was not in Arlington, TX, at the time of the murder and assault. *Supra* at 6. Defense counsel failed to verify—or even attempt to undermine—this testimony. Defense counsel never investigated whether Springs was really at Duffer’s house the night before the murder, as she claimed. Defense counsel never requested school records or pursued

witnesses' accounts, and for the Springs alibi generally, was necessary to raise reasonable doubt as to the State's theory that Mr. Nelson acted alone.¹⁷ Defense counsel's failure to attempt to interview Springs or any alibi witnesses was unreasonable.

- Defense counsel failed to adequately investigate Claude ("Twist") Jefferson's substantial involvement in the crime.

Mr. Nelson testified that *both* Springs and Jefferson were involved in—and directly perpetrated—the homicide and assault. *See* 36 R.R. 69-73. While defense counsel alluded to the fact that Jefferson was at the church on March 3, 2011, *see* 37 R.R. 11-20, defense counsel again failed to adequately investigate and prepare evidence to support these assertions. The only evidence put forth by Mr. Nelson's counsel regarding Jefferson's involvement was one exhibit (which was never admitted), *see* Ex. 28 at NELSON 332-95 (Def. Tr. Ex. 4, Claude Jefferson's AT&T phone records), and limited questions during the cross-examination of Brittany Bursey, Jefferson's aunt. The full record, however, shows that defense counsel should have prepared and raised arguments regarding Jefferson's involvement, and sought further investigation of inconsistencies related to Jefferson's alibi that he was in class at the time of the murder.

other sources to see if McClain attended school and was picked up the morning of March 3, 2011, by Duffer, as McClain testified. *See* 35 R.R. 35-37. Defense counsel also never raised the issue of bias. Duffer is the mother of Springs's child and McClain is her close friend, yet sources of bias were never raised before the jury on cross-examination.

¹⁷ Defense counsel also failed to call two witnesses, Morgan Cotter and Allison Cobb, who would have corroborated Mr. Nelson's version of the events. Cotter and Cobb stated during a police interview that they believed Springs and Mr. Nelson were involved in Mr. Dobson's death. While at a friend's apartment, a group including Cotter, Cobb, Springs, Mr. Nelson, and Bursey were watching television when the story of the NorthPointe Baptist Church murder came on. Ex. 26 at NELSON 307-08. According to Cobb and Cotter, both Springs and Mr. Nelson made inappropriate comments at that time. Springs also noted that he was trying to sell the iPhone "that belonged to the dead Pastor." *Id.* Cobb stated that, based on Springs's tone and phrasing, she did not think he was joking. Ex. 26 at NELSON 308. She later reported to defense counsel's mitigation specialist that she "believe[d] it is more likely that AG [Springs] did the killing because he's that kind of guy." M. Burdette Memorandum (Sept. 25, 2012), Ex. 32 at NELSON 496. Defense counsel failed to present any of this evidence to the jury.

Morgan is on probation for Robbery- 3 years probation. Judge Louis Sturns. Bruce Ashworth is counsel.

The two guys left to go "scope." They left with another guy who pulls up in a red Impala. AG has shotgun that he obtained from different apartment they traveled to. The girls went home.

Two days later (day of murder) Morgan and Allison were at Samuel's home around 9:00 p.m. (Allison has been living with Morgan as of late)

AG & Steven show up. Another girl was there who showed up in the red car as well

In Samuel's home on Park Row & Collins, Bellaire Apt #121. They are all on the couch. News about Pastor's murder comes on T.V., Morgan says, "That is terrible."

AG & Steven laugh! Allison said, "How come you laugh about that it could have been your Dad?" AG responds: "I don't give a damn, fuck" AG: "I'm trying to come up off this iPhone. The pastor that was killed today, I have his iPhone." Everyone got quiet. Sam said, "Don't talk about that in my house". AG said, "I am kidding. Jordan, the girl who was there, they get up and say they're going to get black and white, AG got up to leave as well. The two guys were on ecstasy

They spent the night at Samuel's, Morgan on the couch and Allison in bed with Samuel. At 4 a.m. someone was banging at the door. It was AG and he was alone. After Morgan lets him in, AG calls his mom and says, "I want to come home". She asks "Why?" He said "I have a lot on my mind". She says "Okay." He hangs up with her and waits for a ride. Morgan has fallen back asleep. He wakes her up to lock the door and he leaves. She sees text message from Steven. She texted: "Did you kill Pastor?" He replies: "No, I didn't rob him?"

Next day Samuel left to go to school to get books. While he was gone they called police. Morgan called her dad to get direct phone tip line to police and Morgan called

They told police about "Romeo", "Steven" and not about "AG"

Detective Lane Shimpagh

Rewards:	Oak Farms:	\$10,000.00
	Crime Stoppers:	\$250,000.00

Incident Report

ARLINGTON, TEXAS POLICE DEPARTMENT

11-12894
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Supplement No
0012

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Narrative

door and noticed it locked. Richards rang the doorbell, but received no answer. Richards could see into Elliott's office and noticed it was dark.

Richards went around to the back of the church and found the set of double doors were also locked. Richards looked into the windows of Dobson's office, but could not see anything other than the couch due to the tint on the windows. Richards knocked on the windows, but still did not receive a response. Richards waited at the church until 11:30 hours before leaving. Richards said she had heard through other church members that another individual, identified as Debra Jenkins, was at the church just prior to her arrival. Richards provided me with a phone number to another church member, Lea Cowart, who had Jenkins' cell phone number. This conversation was audio recorded.

I contacted Lea Cowart W/F 08-16-74, who said she had also spoken with Debra Jenkins about Jenkins' observations. Cowart provided me with another church member who had Jenkins' phone number as she did not have it herself. Cowart said she would try to locate it with other church members and provide it to me when located. This conversation was audio recorded.

Before I was able to contact Jenkins, I received a phone call from Detective Lopez in reference to the second interview with both Cotter and Cobb. Detective Lopez told me they admitted to withholding information to me earlier. They provided Detective Lopez with the names of the two suspects: Anthony Gregory Springs and Steven Nelson. Detective Lopez said both Cotter and Cobb agreed to meet with me at the Main Police Station in order to view photos of the two suspects as well as to provide a more accurate statement.

I began researching the two names provided to me in our computerized RMS database and located the most recent jail booking photo of Springs. As Nelson did not have a jail booking photo with our agency, I researched him in an online database, TDEX, and located a recent Dallas County Jail booking photo. I requested a copy of this photo through the Dallas Police Department's Fusion Unit. The photo was provided to me via e-mail. I printed out copies of both photos to be shown to Cotter and Cobb.

Detectives Lopez and Shingpaugh escorted Cotter and Cobb to the third floor of the Main Police Station where I met with them again. Both apologized to me for our last conversation and agreed to not leave anything out this time. At 16:13 hours, Detective Lopez and I escorted Cotter to the third floor interview room. I explained to Cotter our need to clarify her statement and she agreed to do so. This interview as well as Cobb's interview was recorded by both audio and visual means. Both interviews were later downloaded onto a DVD and booked in as evidence (item CLB-07).

Cotter told me she believes two of her friends, identified by Cotter as Anthony Gregory Springs aka "AG" H/M 18 yoa and Steven Nelson aka "Tank" or "Romeo" B/M 24 yoa, are responsible for the death of the Pastor (i.e. Dobson). Cotter knows both of these individuals from when they used to go to school together. Cotter provided me with accurate descriptions for the two males. Cotter viewed photos of both and positively identified them. Cotter added she knows Nelson and Springs to commit aggravated robberies together and said they were recently trying to rob people within the past couple of days in Irving.

Cotter explained she and Cobb were at a mutual friend's apartment, identified as Samuel McIntosh aka "Sun Dun", hanging out the night of the murder. Cotter received a phone call from the two asking her what she was doing. Cotter told them she was hanging out at "Sun Dun's" apartment and the two said they would come over. Springs and Nelson pulled up to the apartment with another female known to her as "Dex". The two immediately walked into the apartment and they all started talking/hanging out. Cotter said Nelson was wearing the jewelry and a green "Cookie Monster" shirt as previously described while Springs was wearing a white tank top and shorts. Cotter also remembered she saw Nelson with what looked like a brushed nickel and black colored handgun tucked into his waistband.

Later that evening, while watching television, a news story about the incident played before the group. Both Nelson and Springs began laughing and making inappropriate comments about Dobson's death. When confronted about this behavior by Cotter, both told her that they didn't care because they weren't related to the Pastor. Cotter told them they were acting disrespectful, but they didn't seem to care. Cotter then asked Springs what he would be doing later and was told by Springs he was trying to sell an iPhone. Cotter thought this was odd as she had never seen him with an iPhone before. Cotter asked him where he got the phone and was told by

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Narrative

Springs that it belonged to the dead Pastor. This upset both Cotter and Cobb.

After this revelation, Nelson and Springs left the residence with "Dax". Cotter said she spoke briefly with Nelson on the phone later that night, but felt too disturbed to talk at length with him. She said she asked him via text message if Nelson had really killed the Pastor to which he responded, "I didn't rob him." She pressed him on this issue, but he continued with the same response.

At approximately 04:00 hours, Springs returned to "Sun Dun's" apartment. He didn't stay long before calling his mother for a ride back to her house. He left soon thereafter. Cotter said they didn't discuss the issue any further.

At 17:00 hours, we interviewed Cobb in the same manner as Cotter. Cobb corroborated Cotter's new statement fully. Cobb said after the news story about the Pastor's death, Nelson and Springs started laughing. Soon after this news story, Cobb saw Springs with a black iPhone. Cobb told Springs he didn't have money for an iPhone and asked him where he got it. Springs told her the phone belonged to the Pastor. Cobb said from the tone of his voice and how he said that phrase, she didn't think he was joking. Soon after this statement was made, Springs, Nelson, and the female "Jordan" left the apartment.

Cobb viewed pictures of both Springs and Nelson and positively identified each from their respective jail booking photos. Cobb also knew the two to go out and commit robberies and burglaries together.

After both interviews were concluded, Cotter allowed me access into her Facebook account. Using her password and username, I entered onto her main page and was directed to Cotter's friends section. I searched for the name Steven Nelson and located him on her page. I printed a screen still with this discovery. Because the two are mutual friends, this allowed me access to Nelson's Facebook page. I printed off still copies of this main page as well as several recent photos of Nelson he had posted.

Finally, I had Cotter sign a Metro PCS consent form for her phone records. This was later faxed to Metro PCS. Both Cotter and Cobb were then escorted down to the front lobby and released without further.

Using the photos for each suspect from their respective jail booking entries, I created several six person photo lineups inclusive of each suspect for their respective lineup. The photos were varied in each lineup.

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starts 3-7-11 5:42:00 pm counter is the actual time.

5:42:51 pd enters.

5:44:34 mir

a lot o you know what im saying.

5:48:00 you were not in north arl? cell towers

5:51:00 any other stops in arl, before you met d? no just chevron at 460 and matlock.
at tire shop? 5:52:36, it was romeo/d.

* 5:55:30 lady said more than one person in church.

5:58:30 i don't know him from a sack of biscuits.

5:59:00 you left the tire shop and meeting d out yesterday... he says but
that not really relevant to what we were talking about yesterday.

6:00 I did end up w victims' keys. not at tire shop.

6:06 we don't want to know if you were there, we know you were there.
you can terminate interview.

i grew up in church 6:15:00

6:18:00 did you all drive by the church. no i drove by the church the next day.

i didnt give details, bc i was worried about murder.

d specifically invokes right to terminate 6:29:39

6:29:50, we are going to take you back to jail.

pd leave.

questions about filing cases. 6:35:50 det expls filing process.

crime scene anthony has bruises on his knuckles, but says it is from something else.

pl leaves 6:69:59

cssu in at 6:49:50, she takes photos.

end and they leave 7:01:25