

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.<sup>2</sup>

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

---

<sup>2</sup> 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.

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

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.<sup>9</sup> 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.

<sup>9</sup> 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.

21

27.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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

<sup>12</sup> 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.

23

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.<sup>17</sup> 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.

<sup>17</sup> 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.

24

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.<sup>18</sup> 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.<sup>19</sup>

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

<sup>18</sup> 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.

<sup>19</sup> 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.