IN THE 242ND DISTRICT COURT OF SWISHER COUNTY, TEXAS

and

IN THE COURT OF CRIMINAL APPEALS, AUSTIN, TEXAS

DENNIS M. ALLEN, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause No. B-3223-99-07-CR
JAMES R. BARROW, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause Nos. B-3232-99-07-CR B-3233-99-07-CR
LEROY BARROW, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause No. B-3240-99-07-CR

LANDIS BARROW, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause Nos. 37055-D Potter County
MANDIS. BARROW, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause Nos. 37056-D Potter County
TROY BENARD, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause Nos. B-3237-99-07-CR B-3359-99-07-CR

FREDDIE BROOKINS, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause No. B-3276-99-07-CR
MARILYN J. COOPER, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause No. B-3282-99-07-CR
ARMENU ERVIN, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause Nos. B-3283-99-07-CR B-3286-99-07-CR

MICHAEL FOWLER, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause No. B-3287-99-07-CR
JAYSON FRY, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause No. B-3288-99-07-CR
VICKIE FRY, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause No. B-3291-99-07-CR

WILLIE HALL, Applicant, v. STATE OF TEXAS, Respondent.	)	Related to Criminal Trial Cause No. B-3292-99-07-CR
CLEVELAND J. HENDERSON, Applicant, v. STATE OF TEXAS, Respondent.	)	Related to Criminal Trial Cause No. B-3299-99-07-CR
MANDRELL HENRY, Applicant, v. STATE OF TEXAS, Respondent.	)	Related to Criminal Trial Cause No. B-3301-99-07-CR

CHRISTOPHER JACKSON, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause Nos. B-3302-99-07-CR B-3303-99-07-CR B-3304-99-07-CR
DENISE KELLY, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause No. B-3248-99-07-CR
ETTA KELLY, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause No. B-3581-99-07-CR

CALVIN K. KLEIN, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause No. B-3281-99-07-CR
WILLIAM C. LOVE Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause Nos. B-3249-99-07-CR B-3250-99-07-CR B-3251-99-07-CR B-3252-99-07-CR B-3253-99-07-CR B-3254-99-07-CR B-3352-99-07-CR B-3354-99-07-CR
JOSEPH C. MARSHALL, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause No. B-3258-99-07-CR

LAURA A. MATA, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause No. B-3353-99-07-CR
VINCENT MCCRAY, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause No. B-3257-99-07-CR
JOE WELTON MOORE, Applicant, v. STATE OF TEXAS, Respondent.	Related to Criminal Trial Cause Nos. B-3306-99-07-CR B-3307-99-07-CR

DANIEL OLIVAREZ,	)	
Applicant,	)	Related to Criminal Trial Cause No. B-3265-99-07-CR
v.	)	
STATE OF TEXAS,	)	
Respondent.	)	

KENNETH R. POWELL,	)	
Applicant,	)	Related to Criminal Trial Cause Nos. B-3266-99-07-CR B-3267-99-07-CR
v.	)	
STATE OF TEXAS,	)	
Respondent.	)	

BENNY L. ROBINSON,	)	
Applicant,	)	Related to Criminal Trial Cause No. B-3272-99-07-CR
v.	)	
STATE OF TEXAS,	)	
Respondent.	)	

FINAYE SHELTON, Applicant, v. STATE OF TEXAS, Respondent.	)	Related to Criminal Trial Cause Nos. B-3278-99-07-CR B-3279-99-07-CR
DONALD SMITH, Applicant, v. STATE OF TEXAS, Respondent.	)	Related to Criminal Trial Cause Nos. B-3225-99-07-CR B-3230-99-07-CR
LAWANDA SMITH, Applicant, v. STATE OF TEXAS, Respondent.	)	Related to Criminal Trial Cause No. B-3308-99-07-CR

YOLANDA SMITH, Applicant, v. STATE OF TEXAS, Respondent.	)	Related to Criminal Trial Cause No. B-3313-99-07-CR
ROMONA L. STRICKLAND, Applicant, v. STATE OF TEXAS, Respondent.	)	Related to Criminal Trial Cause No. B-3315-99-07-CR
TIMOTHY TOWERY, Applicant, v. STATE OF TEXAS, Respondent.	)	Related to Criminal Trial Cause Nos. B-3317-99-07-CR B-3318-99-07-CR B-3319-99-07-CR

KAREEM WHITE,	)	
Applicant,	)	Related to Criminal Trial Cause Nos. B-3331-99-07-CR B-3332-99-07-CR B-3333-99-07-CR B-3334-99-07-CR B-3335-99-07-CR A-3217-99-06-CR
v.	)	
STATE OF TEXAS,	)	
Respondent.	)	

KIZZIE WHITE,	)	
Applicant,	)	Related to Criminal Trial Cause Nos. B-3327-99-07-CR B-3328-99-07-CR B-3329-99-07-CR B-3330-99-07-CR B-3336-99-07-CR B-3337-99-07-CR B-3338-99-07-CR
v.	)	
STATE OF TEXAS,	)	
Respondent.	)	

ALBERTA WILLIAMS,	)	
Applicant,	)	Related to Criminal Trial Cause Nos. 40978-A Potter County
v.	)	
STATE OF TEXAS,	)	
Respondent.	)	

JASON J. WILLIAMS,	)	
Applicant,	)	Related to Criminal Trial Cause Nos. B-3340-99-07-CR B-3341-99-07-CR B-3342-99-07-CR B-3356-99-07-CR
v.	)	
STATE OF TEXAS,	)	
Respondent.	)	

MICHELLE WILLIAMS,	)	
Applicant,	)	Related to Criminal Trial Cause No. B-3343-99-07-CR
v.	)	
STATE OF TEXAS,	)	
Respondent.	)	

JOINT STIPULATED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Thirty-eight individuals were convicted of narcotics charges based on the testimony of Thomas R. Coleman with no credible independent corroborating evidence. Each of these individuals whose convictions have become final (the "Applicants") have filed petitions for writs of habeas corpus.[1] The Applicants and the State of Texas hereby jointly submit the following stipulated proposed findings of fact and conclusions of law and respectfully request that those findings and conclusions be adopted by the Court.[2] The parties stipulate and the Court

[1] A list of the Applicants and their case numbers is attached hereto as Exhibit A.

[2] The Applicants and the State hereby agree that the filing of these Joint Stipulated Findings of Fact and Conclusions of Law shall not be construed as an admission of wrongdoing

concludes that the interests of justice demand that these findings of fact and conclusions of law apply to all Applicants.

Each of the Applicants was arrested and convicted as a result of purported drug purchases made by undercover agent Coleman. Coleman was the only State witness to allege that Applicants were involved in the purported drug sales. It is undisputed that Coleman's testimony was uncorroborated by any credible independent evidence and that without his testimony, the State could not have secured a conviction against any of the Applicants.

Applicants Brookins, Jackson, Moore, and Williams filed writs of habeas corpus challenging the constitutionality of their convictions and sentences. In separate Orders, the Court of Criminal Appeals ("CCA") found that each of these four Applicants had alleged facts, which if true, could entitle him to habeas corpus relief. Therefore, the CCA ordered that these Applicants be allowed to develop evidence in support of their claims. Moreover, the CCA ordered this Court to, among other things, make findings of fact and conclusions of law "which it deems relevant and appropriate to the disposition" of these Applicants' writs. Ex parte Brookins at 3, Court of Criminal Appeals Order, Nov. 6, 2002; Ex parte Jackson at 2, Court of Criminal Appeals Order, Sept. 25, 2002; Ex parte Moore at 2, Court of Criminal Appeals Order, Jan. 29, 2003; Ex parte Williams at 2, Court of Criminal Appeals Order, Sept. 25, 2002.

Pursuant to the Orders of the CCA, this Court held a joint evidentiary hearing beginning on March 17, 2003. During that week, Applicants Brookins, Jackson, Moore, and Williams called 14 witnesses to testify, including Coleman.[3]

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or liability by Swisher County, the District Attorney of Swisher County, or the Sheriff of Swisher County.

[3] After Coleman had testified for approximately one full day, the evidentiary hearing was recessed on March 21, 2003 (prior to the conclusion of Coleman's testimony) because the State concluded, based on Coleman's testimony to that point, that it would be appropriate to enter into

On or about April 1, 2003, the other Applicants filed petitions for writs of habeas corpus. The trial judges recused themselves from all habeas proceedings involving the Applicants and retired Justice Ron Chapman was assigned to make findings of fact and conclusions of law with respect to the habeas corpus petitions of all applicants.

Based on the testimony and other evidence adduced at the evidentiary hearing, the transcripts of all trials, plea colloquies and pre- and post-trial proceedings in the Applicants' cases, and the entire record herein, the Court finds, and habeas counsel for all Applicants and the State agree, that the following undisputed facts shall apply to all Applicants:

GLOBAL FINDINGS OF FACT
Applicable to All Applicants

1. Each Applicant was prosecuted solely on the basis of the allegations of Coleman. No credible independent evidence corroborating the testimony of Coleman was presented at any trial. Without Coleman's testimony, the State could not have secured a conviction against any of the Applicants.

2. Coleman's credibility was directly at issue in each of Applicant's cases.

3. At the time of the Applicants' trials and pleas, the State knew and/or reasonably should have known and did not disclose to defense counsel that Coleman has a reputation for dishonesty, for disobeying the law, and for abdicating his duties and responsibilities as a peace officer in multiple communities – including Cochran and Pecos Counties – where he lived and worked as a peace officer prior to working for Swisher County.

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and submit these Joint Proposed Findings of Fact and Conclusions of Law to the Court. Should the CCA decide not to grant post-conviction relief to all Applicants, the parties agree and the Court recommends that this matter should be remanded for further proceedings including, but not limited to, conclusion of Coleman's testimony and the remainder of the evidentiary hearing.

4. At the time of the Applicants' trials and pleas, the State knew and/or reasonably should have known and did not disclose to defense counsel that it is the opinion of numerous law enforcement officers and community leaders in communities where Coleman worked as a peace officer that Coleman is not honest, is not trustworthy, and should not be allowed to serve as a peace officer.

5. At the time of the Applicants' trials and pleas, the State knew and/or reasonably should have known and did not disclose to defense counsel that at least seven different members of law enforcement and six members of the communities where Coleman worked as a law enforcement officer would have testified at the time the Applicants were convicted that Coleman had a bad reputation for truth and veracity and/or a bad reputation for being peaceful and law abiding.

6. At the time of the Applicants' trials and pleas, the State knew and/or reasonably should have known and did not disclose to defense counsel that Coleman left significant bad debts in Cochran County which he obtained by abusing his official position as a peace officer to garner credit and failing to pay his debts, notwithstanding several promises that he would do so.

7. At the time of the Applicants' trials and pleas, the State knew and/or reasonably should have known and did not disclose to defense counsel that Coleman committed crimes of dishonesty in Cochran County, namely theft and abuse of official capacity, for which he was charged in May 1998 and arrested in August 1998, prior to the Applicants' trials and pleas. The arrest occurred during the middle of the undercover operation that led to the arrests and convictions of the Applicants.

8. At the time of the Applicants' trials and pleas, the State knew and/or reasonably should have known and did not disclose to defense counsel that the criminal charges against Coleman stemmed from the abuse of his position as a police officer on multiple occasions to convert to his personal use county gasoline reserved for police vehicles.

9. At the time of the Applicants' trials and pleas, the State knew and/or reasonably should have known that the primary witnesses against Coleman with respect to the crimes of dishonesty were the Chief Deputy Sheriff of Cochran County and the County Attorney for Cochran County.

10. At the time of the Applicants' trials and pleas, the State knew and/or reasonably should have known and did not disclose to defense counsel that the Cochran County criminal charges against Coleman were dismissed solely because Coleman agreed to the payment of criminal restitution not only for the full amount of the county gasoline theft, but also the other Cochran County debts, totaling close to $7,000, that Coleman had failed to pay.

11. At the time of the Applicants' trials and pleas, the State knew and/or reasonably should have known and did not disclose to defense counsel that Coleman deceived his superior officers by, among other things, failing to inform them that criminal charges for theft and abuse of official capacity had been filed against him during the time he was engaged in the undercover operation that led to the arrest and conviction of each of the Applicants.

12. As part of its background check on Coleman, the State learned and/or reasonably should have learned from Pecos and Cochran Counties that:

- According to the Chief Deputy of the Pecos County Sheriff's Department, Coleman was a "discipline problem" while a peace officer there.
- According to the Chief Deputy of the Pecos County Sheriff's Department, Coleman had "possible mental problems."

- Coleman had been accused of kidnapping his child.
- Coleman left significant bad debts in Pecos County.
- Coleman was not eligible for rehire as a law enforcement officer in Pecos and Cochran Counties as a result of his misconduct while employed as a law enforcement officer in those counties.
- According to a Texas Ranger, Coleman needed "constant supervision" as a law enforcement officer.
- Coleman had abandoned his duties and walked off previous law enforcement jobs without providing any notice to his supervisors.

13. Notwithstanding the facts set forth in ¶ 12 above, the State not only hired Coleman and permitted him to work essentially unsupervised in an undercover capacity, but attempted to bolster his testimony during the trials and other proceedings involving the Applicants by eliciting testimony from the prosecution team about the background investigation that was conducted prior to hiring Coleman. Yet the State did not disclose any of the negative information about Coleman that was discovered during that investigation.

14. Coleman is racially biased. He admitted to using the slur "nigger" in conversations with friends and family. He used racial slurs, including the slur "nigger," in front of his superior officers during the undercover operation that led to the arrest and conviction of each of the Applicants. Indeed, Coleman was counseled for implicating a disproportionate number of African Americans during the undercover investigation that led to the arrest and conviction of each of the Applicants. In addition, Coleman made racist remarks to another peace officer in a prior job. Coleman's racial bias and use of racial slurs was known to the prosecution team but not disclosed to any of the Applicants prior to their trials or the entry of their pleas.

15. Coleman made material errors and omissions in the undercover investigation leading to the arrests of the Applicants that undermined his credibility and the credibility of his purported investigation of the Applicants. Among other things, Coleman

falsified reports, misrepresented the nature and extent of his investigative work, and misidentified various defendants during his investigation. The State knew and/or reasonably should have known of these errors and omissions, but did not disclose them. Coleman's errors and omissions include, but are not limited to:

- Yolanda Smith was indicted for selling drugs to Coleman on February 14, 1998 when Coleman's time records reflect that he was off duty. See March 17-21, 2003 Hearing, Exhibit 88.
- Coleman's original incident report in the case of Romona Strickland incorrectly described her as "six months pregnant." Rather than file a supplemental report in accordance with proper police procedure, Coleman "scratched out" the incorrect description of Ms. Strickland to create the false and misleading impression that he had properly described and identified her as the individual that allegedly sold him drugs. A supplemental report would have alerted both Ms. Strickland and her counsel to the fact that the incident report had been altered. At the time of the alleged incident, Ms. Strickland was not pregnant.
- Coleman claimed he purchased drugs from Armenu Gerrod Ervin and Benny Lee Robinson on March 7, 1999 when his time records reflect that he was off duty. See March 17-21, 2003 Hearing, Exhibit 89; Coleman's Incident Report of Armenu Ervin, No. 99-0472 (Ex. 1)

16. The undisputed facts set forth in the findings above existed at the time each Applicant either was tried or entered a guilty plea, but were not disclosed to Applicant's counsel prior to the commencement of Applicant's trials or the entry of their pleas and therefore were not available for consideration by the Court or the juries at the time of those trials or the entry of those pleas. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

17. In addition to the District Attorney's office, the prosecution team in the Applicants' cases consisted of Coleman; Amarillo Police Department ("APD") Lieutenant Michael Amos, Commander of the Panhandle Regional Narcotics Trafficking Task Force (the

"Task Force"); APD Sergeant Jerry Massengill, Task Force Supervisor; Swisher County Sheriff Larry Stewart; and Swisher County Deputy Linda Swanson.

18. It is undisputed that members of the prosecution team knew and/or reasonably should have known the facts set forth in the findings above.

19. Coleman has repeatedly committed perjury as to material matters at Applicants' pre-trial hearings, trials, post-trial hearings, and in the present proceedings before this Court, with respect to, among other material matters, his prior arrest record and purported lack of knowledge of the criminal charges pending against him in Cochran County in 1998.[4]

20. Among the many specific examples of Coleman's perjured and misleading testimony in proceedings relating to the Applicants, including the instant habeas proceedings, are the following:

- In the trials of Applicants Christopher Jackson and William Love, Coleman testified that he did not have any criminal past or history notwithstanding the fact that he had been arrested for crimes of dishonesty – and paid full restitution with respect to theft – during the same undercover investigation that resulted in the arrests of those Applicants. See Jackson Trial Transcript at 98 (Jan. 11, 2000); Love Trial Transcript, Vol. 7, at 15 (Jan. 27, 2000).

- In the trial of Applicant William Love, Coleman testified that he left the law enforcement agencies he previously worked for "in good standing," notwithstanding the fact that he knew he was not eligible for rehire in either Cochran or Pecos County and that he abruptly left and was not in good standing in either county. See Love Trial Transcript, Vol. 7, at 18 (Jan. 27, 2000).

- In a February 2000 hearing related to an arrest based on Coleman's undercover operation, Coleman testified that he had never been arrested except for a traffic ticket as a youth. See Wafer Hearing Transcript at 67 (Feb. 11, 2000). In fact, it is undisputed that Coleman had been arrested in August 1998 by Swisher County Sheriff Larry Stewart in connection with the charges brought against him in Cochran County. When asked in the

[4] The transcripts of Applicants' pre-trial hearings, trials, and post-trial hearings are part of the record in these proceedings and are hereby incorporated by reference in these findings.

present hearing to reconcile this discrepancy, Coleman gave the wholly incredible explanation that he had did not understand the meaning of the term "arrest" when he testified in 2000 – even though he has been a law enforcement official since 1986. See Habeas Hearing Transcript, Vol. 5, at 83-84 (Mar. 21, 2003).

- In the pre-trial hearing of Applicant Joe Moore, Coleman misrepresented his arrest in Cochran County as merely a five-day, unfounded internal investigation, notwithstanding the fact that he had been arrested for and charged with theft and abuse of official capacity and paid full restitution in exchange for the dismissal of criminal charges that had been brought against him in May 1998. See Moore Pre-Trial Hearing Transcript at 33-34 (Dec. 13, 1999).

- In the probation revocation hearing of Mandis Barrow, Coleman testified that he had always been on active duty during his investigation and had never been relieved of duty, notwithstanding the undisputed fact that Coleman was relieved of duty from the time of his arrest until he made full restitution with respect to the theft and abuse of official capacity criminal charges pending against him in Cochran County. See Mandis Barrow Hearing Transcript at 48-49 (May 10, 2000).

- In the trials of Applicants Jason Williams and Freddie Brookins, Coleman misrepresented the reasons for abruptly leaving his law enforcement post in Cochran County in the middle of a shift. Coleman failed to disclose in his testimony that he was not eligible for rehire, that he had abused his official position to amass and default on significant debts, and that he was under investigation for theft. Instead, Coleman testified in the trial of Jason Williams that he resigned solely because the Cochran County Sheriff was a "crook" and in the trial of Freddie Brookins that he left because the Sheriff was using his office for personal gain by charging items for personal use to the county – the exact charge which Coleman paid full restitution to resolve – and that he had to leave to avoid a "black mark" on his career from association with that department. See Williams Trial Transcript at 145 (Jan. 13, 2000); Brookins Trial Transcript at 165 (Feb. 17, 2000).

- In the instant hearing, Coleman admitted that he perjured himself during the Applicants' proceedings with respect to when he first became aware of the charges for theft and abuse of official capacity pending against him in Cochran County. See Habeas Hearing Transcript, Vol. 5, at 58-60 (Mar. 21, 2003). Coleman falsely maintained at the evidentiary hearing that he did not know of the pending charges until August 7, 1998 – the date of his arrest – when, in fact, he contacted various officials in Cochran County with reference to the same accusations as early as November 1997; retained an attorney in May 1998 – the same month that the charges

against him were officially filed; and executed a Waiver of Arraignment on May 30, 1998 with respect to the same criminal charges.

- Similarly, Coleman falsely testified in the trial of Kareem White and the hearing on Kizzie White's Motion for a New Trial that he first became aware of the charges against him in August 1998. See Kareem White Trial Transcript, Vol. 7, at 150 (Sept. 6, 2000); Kizzie White Motion for a New Trial Transcript, Vol. 2, at 207 (June 27, 2000).

- In the trial of Applicant Kizzie White, Coleman testified outside of the presence of the jury that he had not been "physically" arrested on the theft and abuse of official capacity charges, notwithstanding the fact that Coleman admitted he was arrested on August 7, 1998. See Kizzie White Trial Transcript, Vol. 2 at 105 (Apr. 7, 2000).

- Coleman committed perjury in the instant proceeding with respect to whether or not he contacted TCLEOSE to report his arrest. Coleman initially testified, and confirmed in response to a second question, that he did not contact TCLEOSE after being arrested. See Habeas Hearing Transcript, Vol. 5, at 86 (Mar. 21, 2003). But after viewing a videotaped news interview of himself, during which he discussed a telephone call he supposedly made to TCLEOSE, Coleman changed his testimony and stated that he had, in fact, called TCLEOSE. See Habeas Hearing Transcript, Vol. 5, at 89 (Mar. 21, 2003).

21. Coleman's repeated instances of verifiably perjurious testimony render him entirely unbelievable under oath. Moreover, Coleman's tactic of utilizing his conveniently selective memory to answer "I don't know" or "I don't recall" when pressed for a specific answer, presumably to evade unfavorable truths or yet more inconsistent testimony, simply adds to his unreliability. Coleman – whose testimony in Applicants' trials and this proceeding was absolutely riddled with perjury and purposely evasive answers – is the most devious, non-responsive law enforcement witness this Court has witnessed in 25 years on the bench in Texas.

22. Additional examples of perjury committed by Coleman at the instant hearing include the following:

- Coleman lied in the instant proceeding when he denied that Sheriff Bruce Wilson of Pecos County had met with Coleman and played him an audiotape that contained a recording of Coleman's verbal abuse of two

women who were objecting to Coleman's harassment of their relative when Coleman worked as a law enforcement officer in Pecos County. Compare Habeas Hearing Transcript, Vol. 4, at 215-218 (Mar. 20, 2003), and Habeas Hearing Transcript, Vol. 5, at 28 (Mar. 20, 2003), with March 17-21, 2003 Hearing, Exhibit 72, ¶ 4, and Habeas Hearing Transcript, Vol. 1, at 86-88 (Mar. 17, 2003).

- Coleman repeatedly perjured himself in the instant proceeding by claiming that the Waiver of Arraignment (the "Waiver") he signed with respect to criminal charges in Cochran County on May 30, 1998, was "blank," notwithstanding the fact that his own signature wraps over the text of the Waiver, which conclusively proves that the document was not blank when he signed it. Moreover, his testimony concerning the waiver was wholly incredible, especially in light of his evasive answers to direct questions on the subject, his selective memory regarding what portions of the document were blank, and the letter sent by his attorney on June 1, 1998 referring to the charges and cause number in the Cochran County criminal case against Coleman. See Habeas Hearing Transcript, Vol. 5, at 59, 63-69 (Mar. 21, 2003); March 17-21, 2003 Hearing, Exhibits 5, 80.

- Coleman perjured himself in the instant proceeding when he denied that he made racist statements to Officer Sam Esparza. Compare Habeas Hearing Transcript, Vol. 5, at 111 (Mar. 21, 2003), with Habeas Hearing Transcript, Vol. 1, at 153-154 (Mar. 17, 2003), and March 17-21, 2003 Hearing, Exhibit 69, ¶ 8. Indeed, Coleman denied that he had made any racist statements to Officer Esparza while in their police "car," despite the facts Coleman was not asked any question about what happened in the car, and it had not been revealed to Coleman that Officer Esparza had testified that Coleman made racist statements to him in their police car. See Habeas Hearing Transcript, Vol. 5, at 112 (Mar. 21, 2003). Coleman's unsolicited reference to this previously unrevealed fact confirms that the incident described by Officer Esparza occurred and demonstrates that Coleman's testimony on this subject was dishonest.

- Coleman lied during the instant hearing when he denied that he was prejudiced toward people of African American heritage, notwithstanding his admissions in other portions of the proceeding that he used the slur "nigger" in his private life (to refer to African Americans) and in front of his superiors, was reprimanded for using that racial slur, and was counseled by Amos to stop targeting the African American community in his undercover work. Compare Habeas Hearing Transcript, Vol. 5, at 109-110 (Mar. 21, 2003), with March 17-21, 2003 Hearing, Exhibit 66, ¶ 10, and Habeas Hearing Transcript, Vol. 5, at 106, 108, 103 (Mar. 21, 2003).

- Coleman lied in the instant proceeding when he claimed he did not fail a class in Evidence and Investigations at Odessa College despite the entry of

an "F" on his transcript. <u>Compare</u> Habeas Hearing Transcript, Vol. 4, at 213 (Mar. 20, 2003), <u>with</u> March 17-21, 2003 Hearing, Exhibit 47.

- Coleman falsely claimed at the instant hearing that he would have told his superior officers on the Task Force about the criminal charges in Cochran County as soon as he knew of them. <u>See</u> Habeas Hearing Transcript, Vol. 5, at 55 (Mar. 21, 2003). However, Coleman knew about the charges well before his arrest – in fact, he contacted various officials in Cochran County with reference to the criminal accusations as early as November 1997, retained an attorney in May 1998 (the same month that the charges against him were officially filed), and executed the Waiver on May 30, 1998 with respect to the same criminal charges – and never told his superior officers about the charges prior to his arrest. <u>See</u> March 17-21, 2003 Hearing, Exhibits 43, 5; Habeas Hearing Transcript, Vol. 5, at 76-77 (Mar. 21, 2003).

- Coleman perjured himself at the instant hearing by claiming not to have converted to his personal use gasoline reserved for police vehicles while employed as a law enforcement officer in Cochran County. <u>See</u> Habeas Hearing Transcript, Vol. 5, at 34, 38, 53 (Mar. 21, 2003). Coleman's attempts to explain away the accusations were unbelievable and the Court finds that he did abuse his position as a peace officer to misappropriate gasoline from Cochran County. <u>See</u> March 17-21, 2003 Hearing, Exhibits 2, 38.

- Coleman falsely testified at the instant proceeding that he had not given false information to a superior officer during his career, notwithstanding the fact that he misled his superior officers at the time of his arrest in August of 1998 into believing that he had no knowledge of the charges against him in Cochran County despite the fact that he had known of the accusations since November 1997 and signed the Waiver and hired an attorney in May 1998. <u>Compare</u> Habeas Hearing Transcript, Vol. 4, at 194 (Mar. 20, 2003), <u>with</u> Habeas Hearing Transcript, Vol. 2, at 59 (Mar. 18, 2003), <u>and</u> Love Motion for a New Trial Hearing Transcript, Vol. 10, at 44-45 (Apr. 12, 2000), <u>and</u> Deposition of Larry Stewart at 78 (Jun. 28, 2001), <u>and</u> March 17-21, 2003 Hearing, Exhibits 43, 5, <u>and</u> Habeas Hearing Transcript, Vol. 5, at 76-77 (Mar. 21, 2003).

- In the instant hearing, Coleman stood by his fictitious story that he bought drugs from Tonya White despite the fact that the indictment against her was dismissed when she produced unrefuted evidence that she was in Oklahoma City at the date and time Coleman alleged the sale occurred and she passed a polygraph examination. <u>Compare</u> Habeas Hearing Transcript, Vol. 4, at 234-235 (Mar. 20, 2003), <u>with</u> March 17-21, 2003 Hearing, Exhibits 83, 84, 87.

- At the instant hearing, Coleman falsely claimed that during his employment interview he told Commander Amos that he left Cochran County because of the alleged misconduct of officers within that department. Commander Amos claimed in the same hearing that Coleman told him that Coleman left Cochran County because of personal problems with an ex-spouse and financial problems. Compare Habeas Hearing Transcript, Vol. 4, at 194-195 (Mar. 20, 2003), with Brookins Trial Transcript at 127, 199-200 (Feb. 17, 2000).

- Coleman falsely testified at the instant hearing that he left Pecos County only as a result of his divorce and conflict with an individual he accused of having an affair with his wife. See Habeas Hearing Transcript, Vol. 4, at 148-149 (Mar. 20, 2003). Coleman failed to reveal the truth – that he was about to be terminated by Sheriff Bruce Wilson had he not quit because, among other things, he had been caught lying by Wilson and a town meeting attended by more than one hundred people was held in City Hall to complain about Coleman's incompetent police work. See March 17-21, 2003 Hearing, Exhibit 72, ¶¶ 5, 4; Habeas Hearing Transcript, Vol. 1, at 108, 86-88, 82-83 (Mar. 17, 2003).

- Coleman testified at the instant hearing that he did not make misrepresentations to courts despite admitting at another point during the same hearing that he gave false testimony under oath. Compare Habeas Hearing Transcript, Vol. 5, at 65 (Mar. 21, 2003), with Habeas Hearing Transcript, Vol. 5, at 54, 58-60 (Mar. 21, 2003).

- During his testimony at the instant hearing, Coleman told irreconcilable stories about whether he notified his superior officers about the Cochran County charges prior to his arrest. At one point, Coleman claimed he might have told Stewart, Amos and Massengill about the charges related to his theft of the gas in Cochran County prior to his arrest, but at another point in the same hearing, Coleman claimed that he never did. Compare Habeas Hearing Transcript, Vol. 4, at 199-200 (Mar. 20, 2003), with Habeas Hearing Transcript, Vol. 5, at 54 (Mar. 21, 2003). Coleman also claimed in his deposition that he likely told Massengill and Stewart of the accusations before the arrest. See Deposition of Tom Coleman at 134 (Jun. 29, 2001). When being impeached at the hearing, Coleman claimed that the deposition testimony was "probably a mistake." Habeas Hearing Transcript, Vol. 5, at 54 (Mar. 21, 2003).

- Coleman made false accusations at the instant hearing that the Sheriff and Chief Deputy of Cochran County were engaged in misconduct that compelled Coleman, as a matter of principle, to resign his position as a deputy. See Habeas Hearing Transcript, Vol. 4, at 158-170 (Mar. 20, 2003). Coleman's resignation note to the Sheriff, written contemporaneously with his departure, includes only praise for those

individuals he now claimed in his testimony were engaged in misconduct that forced his departure, despite containing harsh words for others. See March 17-21, 2003 Hearing, Exhibit 53. Specifically, Coleman wrote to the Sheriff: "Your [sic] a pretty good person. I have enjoyed being your friend. I wish you well, and hope you can win the election in Nov. 1996." See March 17-21, 2003 Hearing, Exhibit 53. He wrote to the Chief Deputy: "Just hang in there, you will wake up one of these days, I have faith in you." See March 17-21, 2003 Hearing, Exhibit 53. Coleman's contemporaneous resignation note is more credible than his hearing testimony on this issue.

23. Misleading evidence as to material matters was presented by members of the prosecution team at Applicants' pre-trial hearings, trials, post-trial hearings, and by prosecution team witnesses in the present proceedings before this Court.

24. Among the many specific examples of misleading testimony by the prosecution team in proceedings relating to the Applicants, including the instant habeas proceedings, are the following:

- In the trial of William Love, Sergeant Massengill testified that he had received no "complaints that would have come out of any law enforcement agency" regarding Coleman, notwithstanding the many facts set forth above regarding Coleman's criminal arrest, misconduct, and ineligibility for rehire with the counties where he formerly worked as a law enforcement officer, and Massengill's indisputable knowledge that Coleman was arrested during the course of his undercover investigation based on a warrant issued by a Cochran County law enforcement agency. See Love Transcript, Vol. 7, at 131 (Jan. 27, 2000).

- In the trial of Kizzie White, Sergeant Massengill testified that the Task Force does not allow its officers to violate laws. See Kizzie White Transcript, Vol. 1, at 150-151 (Apr. 6, 2000). In fact, Coleman had a reputation among law enforcement officers with whom he had worked for not being law-abiding. Coleman also was arrested for theft and abuse of official capacity and made full restitution with respect to the theft. In addition, the prosecution team knew or reasonably should have known that Coleman violated laws by, among other things, possessing an illegal fully automatic firearm with an obliterated serial number, being delinquent in court ordered child support, and failing to report his arrest to TCLEOSE.

- In the trial of Kizzie White, District Attorney McEachern stated, concerning Coleman's credibility: "We brought forth the outstanding – in their – from their own testimony on cross-examination, the outstanding law enforcement officer of the year. Now, if you cannot believe that, that to me goes to the direct credibility. And that was brought by the Defense. I found it amazingly. The most outstanding law enforcement officer of the year. If you can't believe him, well, then, who can you believe?" Kizzie White Transcript, Vol. 2, at 100 (Apr. 7, 2000).

- While McEachern stated during Applicants' trials that he personally reviewed Coleman's credentials and participated in or was informed of the results of his background check, he denied any such participation in his deposition taken in connection with these habeas proceedings. Compare Williams Trial Transcript at 153, 183, 188 (Jan. 13, 2000) & Love Trial Transcript, Vol. 8 at 106 (Jan. 28, 2000) with Deposition of Terry McEachern at 86-89 (Mar. 3, 2003) (Ex. 2).

- In the trial of Jason Williams, Sergeant Massengill testified that he had no problems with Coleman, notwithstanding the undisputed facts that Coleman was arrested during his undercover investigation and subsequently suspended from active duty, and that Coleman was reprimanded for using racial slurs to describe African Americans. See Williams Trial Transcript at 175-176 (Jan. 13, 2000).

- Similarly, Sheriff Stewart testified in the trial of William Love that he never had any trouble with Coleman, notwithstanding the undisputed facts that Stewart himself arrested Coleman and removed him from active duty. Love Trial Transcript, Vol. 7, at 186 (Jan. 27, 2000).

- In the trial of Jason Williams, Lieutenant Amos testified that Coleman was "a real exceptional officer," notwithstanding, among other things, Coleman's arrest and suspension, targeting of African Americans and use of racial slurs, falsification of reports, and misidentifications. See Williams Transcript at 183 (Jan. 13, 2000).

- In the trial of Freddie Brookins, Sheriff Stewart testified that he did not remember any negative comments in Coleman's background check. See Brookins Transcript at 73-74 (Feb. 17, 2000). However, comments made in Coleman's background check included that Coleman had possible mental problems, was a discipline problem, needed constant supervision, was not eligible for rehire, and had been accused of kidnapping. Further, Stewart testified that he had not learned any negative information regarding Coleman since the background check, despite the fact that he himself arrested Coleman for a crime of moral turpitude and removed him from active duty. See Brookins Transcript at 73-74 (Feb. 17, 2000).

- In his testimony in William Love's motion for a new trial hearing, Sheriff Stewart stated that he mailed a copy of the bond and TRN form relating to Coleman's arrest to Cochran County. See Love Motion for a New Trial Transcript, Vol. 10, at 48 (Apr. 12, 2000). In fact, Stewart submitted an incomplete TRN to Cochran County which resulted in the concealment of Coleman's arrest from public knowledge by preventing its entry into TCIC/NCIC. Further, Stewart sealed Coleman's TCLEOSE file from public scrutiny. That file would have revealed substantial impeachment information on Coleman.

- In the pre-trial hearing of Christopher Jackson, McEachern testified with reference to criminal histories: "There won't – Police officers don't have any. Police officers don't have – you know, can't have a criminal record, so I don't see running them. But they don't have them. I'll make that representation." See Jackson Pre-Trial Transcript at 9-10 (Dec. 29, 1999) Similarly, in the pre-trial hearing of Joe Moore, McEachern insisted that police officers would not have criminal histories and that he would not provide criminal histories for police officers serving as witnesses. See Moore Pre-Trial Transcript at 5-6, 11-12 (Dec. 13, 1999). In fact, had the Swisher County Sheriff's Office provided Cochran County with the documentation required to report Coleman's arrest to DPS for placement in TCIC, an arrest for a crime of dishonesty allegedly committed in Coleman's capacity as a law enforcement officer would have shown on Coleman's record.

- In the pre-trial hearing of Joe Moore, McEachern repeatedly insisted that he had no favorable evidence to reveal in response to a Brady motion. See Moore Pre-Trial Transcript at 12, 14 (Dec.13, 1999). To the contrary, as set forth above, the State possessed, but failed to disclose, significant impeachment evidence concerning Coleman.

- In the trials of Kizzie White and Jason Williams, Sergeant Massengill gave inconsistent testimony about whether or not he surveilled Coleman during Coleman's investigation. See Kizzie White Trial Transcript, Vol. 1, at 208 (Apr. 6, 2000); Williams Trial Transcript at 177 (Jan. 13, 2000).

- In the trial of Freddie Brookins, Sheriff Stewart testified that he did not remember why Coleman left Cochran County. See Brookins Trial Transcript at 80 (Feb. 17, 2000). Stewart failed to mention that, as the State knew or reasonably should have known, Coleman was not eligible for rehire, had abused his official position to amass and default on significant debts, and was under investigation for theft at the time of his departure.

- In the trial of William Love, McEachern presented Coleman's NCIC and TCIC reports to the Court and stated that they "reflect[ed] absolutely nothing" and elicited testimony from Coleman that he had "nothing of a

crime of moral turpitude or a crime involving – or any crime, period, on [his] record" but neither revealed his knowledge of Coleman's arrest nor that the reason that no arrest for a crime of moral turpitude was shown on Coleman's reports was that Sheriff Stewart submitted an incomplete TRN to Cochran County which resulted in the concealment of Coleman's arrest from public knowledge by preventing its entry into TCIC and NCIC. See Love Trial Transcript, Vol. 6 at 255-225, Vol. 7 at 223 (Jan. 26-27, 2000).

- In the trial of Kareem White, Lieutenant Amos testified that Coleman followed the Task Force's procedures, notwithstanding the fact that Coleman claimed to make buys when not on duty, falsified offense reports, misidentified defendants, and failed to report a criminal charge against him to his supervisors. See Kareem White Trial Transcript, Vol. 7, at 30, 48 (Sept. 6, 2000).

- In the trial of Freddie Brookins, when Lieutenant Amos was asked whether Coleman's emotional stability was relevant to the decision to hire him, see Brookins Transcript at 126 (Feb. 17, 2000), Amos' response failed to reveal that Coleman's background check revealed that Coleman had, among other problems, "possible mental problems."

- In the hearing on William Love's Motion for a New Trial, McEachern stated that he did not know about Coleman's arrest until "[a]fter this case. And I had no knowledge of that prior to the trying of Mr. Love. And I would state that as an officer of the Court and offer that in the following – I guess in the form of a stipulation, or an affidavit. If it needs to be reduced to writing, I will be happy to sign that." Love Motion for a New Trial Transcript, Vol. 10, at 12-13 (Apr. 12, 2000). This testimony is directly contradictory to McEachern's affidavit and deposition testimony in this proceeding that he knew about Coleman's arrest before the grand jury met in July 1999. See McEachern Affidavit at 4-5 (Dec. 3, 2002) (Ex. 3); Deposition of Terry McEachern at 107 – 108 (Mar. 3, 2003) (Ex. 2).

25. The methods used by Sheriff Stewart and other members of the Swisher County Sheriff's office regarding the arrest and release on bond of Coleman on the Cochran County warrant were used to conceal it from public knowledge and possibly were in violation of the Texas Code of Criminal Procedure.

26. Other members of law enforcement who worked with and/or supervised Coleman – including Cochran County Sheriff Kenneth Burke, Cochran County Chief Deputy Raymond Weber, Cochran County Attorney J. Collier Adams, Pecos County Sheriff Bruce

Wilson, and Pecos County Chief Deputy Cliff Harris – possessed significant impeachment material relating to Coleman that was not disclosed by the State to the Applicants.

27. The Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") possessed significant impeachment material relating to Coleman that was not disclosed by the State to the Applicants. The procedures in place at TCLEOSE for documenting arrests and conviction records are lax and apparently without the oversight of any single law enforcement agency.

28. The vast majority, if not all, of the foregoing material was not revealed to any Applicant or his or her counsel. There is a substantial probability, if not an absolute certainty, that, had this information been revealed, the outcome in the Applicants' cases would have been different and that confidence in the cases would be substantially undermined. With respect to those Applicants that pled guilty, there is a substantial probability that, had this information been revealed, the Applicants would not have pled guilty at all.

29. The Court has no confidence in the outcome of the proceedings of any Applicant because of the substantial probability, based on the global and specific findings set forth herein, that each of the guilty pleas and trial verdicts are inaccurate and unreliable.

SPECIFIC FINDINGS OF FACT
Applicable to Individual Applicants

I. DENNIS M. ALLEN

1. On July 23, 1999, Dennis M. Allen, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on April 12, April 22 and May 12, 1999.

2. D'Layne Peeples was appointed to represent Mr. Allen.

3. On December 29, 1999, Ms. Peeples filed 16 pre-trial motions on Mr. Allen's behalf: seven Motions in Limine; Motion for a Change of Venue; Motion for Protection of Witness Statements and Other Evidence; Motion for Discovery and Inspection of Evidence; Motion Under Rule 404(b) Concerning Extraneous Acts; Motion for Discovery of Punishment; Motion to Compel Disclosure of the Existence and Substance of Promises of Immunity-Leniency or Preferred Treatment; Motion for the Production and Inspection of Grand Jury Transcript; Motion to File Additional Motions; and Motion for the Production and Inspection of Evidence and Information which May Lead to Evidence (the "Brady Motion"). In the Brady Motion, Mr. Allen's counsel specifically requested, inter alia, "all evidence which may lead to favorable evidence as to the issues of the Defendant's guilt of innocence and punishment, including ... [a]ny evidence that a witness called by the State during this trial has committed perjury [and] ... [a]ll exculpatory evidence and facts which are known or by the exercise of due diligence should be known by the prosecution." See Affidavit of D'Layne Peeples ("Peeples Affidavit") (Ex. 4)

4. No discovery was provided in response to the Brady Motion.

5. Despite testifying in the instant proceedings that the proper identification of suspects in police reports includes, among other things, "[h]air color, how long it is, . . . [t]he clothes they're wearing, the shoes they're wearing, if they have any rings, watches, necklaces,

anything, earrings, moles, scars, anything . . . [h]eight, weight," March 17-21, 2003 Hearing Transcript, vol. 4 at 181, Coleman's incident report #99-0665 (Ex. 5) described Mr. Allen generically as "BM" ("black male") "wearing a black coat" without any other descriptors or identifiers. Coleman's police report descriptions of other Applicants were similarly vague and contrary to standard police procedure.

6. Between December 1999 and February 2000, Mr. Allen and Ms. Peeples became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Mr. Allen learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Mr. Allen became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Mr. Allen likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

7. Mr. Allen entered a plea of guilty to avoid a longer sentence. The only reason that Mr. Allen considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Mr. Allen was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against him. Mr. Allen therefore accepted the State's plea offer.

8. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Allen.

9. Coleman's credibility was at the heart of the State's case against Mr. Allen.

10. Mr. Allen and Ms. Peeples are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

11. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Allen entered a guilty plea, but were never disclosed by the State to Mr. Allen or his counsel. See Affidavit of Dennis M. Allen ("Allen Affidavit") (Ex. 6); Peeples Affidavit (Ex. 4).

12. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

13. Mr. Allen would have not have waived his right to trial and entered a plea of guilty if he had known of this impeachment material. See Allen Affidavit (Ex. 6).

14. Ms. Peeples would not have advised Mr. Allen to enter a plea of guilty and would have recommended that he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Ms. Peeples nor Mr. Allen had the benefit of the use of this information at the time that Mr. Allen entered his plea. See Allen Affidavit (Ex. 6); Peeples Affidavit (Ex. 4).

15. Thus, Mr. Allen's plea of guilty was not knowing, intelligent or voluntary.

16. No reasonable juror would have found Mr. Allen guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Allen's plea.

II. JAMES R. BARROW[5]

[5] Although Mr. Barrow's case is still on direct appeal, the State has agreed that it should be addressed in these Findings of Fact and Conclusions of Law because, like the other Applicants, Mr. Barrow was convicted solely on the basis of Coleman's allegations, and because

1. On July 23, 1999, James Barrow, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on December 9, 1998.

2. Peter Clarke was appointed to represent Mr. Barrow.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. Despite testifying in the instant proceedings that the proper identification of suspects in police reports includes, among other things, "[h]air color, how long it is, . . . [t]he clothes they're wearing, the shoes they're wearing, if they have any rings, watches, necklaces, anything, earrings, moles, scars, anything . . . [h]eight, weight," March 17-21, 2003 Hearing Transcript, vol. 4 at 181, Coleman's incident report #98-1978 (Ex. 7) described James Barrow generically as "BM" ("black male") without any other descriptors or identifiers. Coleman's police report descriptions of other Applicants were similarly vague and contrary to standard police procedure.

5. Between December 1999 and February 2000, Mr. Barrow and Mr. Clarke became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Mr. Barrow learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Mr. Barrow became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Mr. Barrow likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

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undersigned counsel will file a petition for writ of habeas corpus on behalf of Mr. Barrow should his appeal be denied. Moreover, the State recommends that Mr. Barrow be granted relief on direct appeal or, if not, upon the filing of his habeas petition.

6. Mr. Barrow entered a plea of guilty to avoid a longer sentence. The only reason that Mr. Barrow considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Mr. Barrow was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against him. Mr. Barrow therefore accepted the State's plea offer.

7. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Barrow.

8. Coleman's credibility was at the heart of the State's case against Mr. Barrow.

9. Mr. Barrow and Mr. Clarke are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

10. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Barrow entered a guilty plea, but were never disclosed by the State to Mr. Barrow or his counsel. See Affidavit of James R. Barrow ("James Barrow Affidavit") (Ex. 8); Affidavit of Peter Clarke ("Clarke Affidavit") (Ex. 9).

11. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

12. Mr. Barrow would have not have waived his right to trial and entered a plea of guilty if he had known of this impeachment material. See James Barrow Affidavit (Ex. 8).

13. Based on the entire record in this matter, the Court finds that counsel would not have advised Mr. Barrow to enter a plea of guilty and would have recommended that he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Mr. Clarke nor Mr. Barrow had the benefit of the use of this information at the time that Mr. Barrow entered his plea. See James Barrow Affidavit (Ex. 8); Clarke Affidavit (Ex. 9).

14. Thus, Mr. Barrow's plea of guilty was not knowing, intelligent or voluntary.

15. No reasonable juror would have found Mr. Barrow guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Barrow's plea.

III. LANDIS BARROW [6]

1. On July 23, 1999, Landis C. Barrow, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on September 3 and December 2, 1998.

2. Mr. Barrow was on probation at the time of his arrest.

3. C.J. McElroy was appointed to represent Mr. Barrow.

4. No Brady material was provided to Ms. McElroy or Mr. Barrow.

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[6] Although the probation hearings of Landis Barrow and Mandis Barrow and the plea hearing of Alberta Williams were held in Potter County, the State has agreed that their cases should be addressed in these Findings of Fact and Conclusions of Law because their probation was revoked, or plea was accepted, in large part if not exclusively, on the basis of Coleman's allegations against them. As part of the agreement between the State and habeas counsel, the special prosecutors have agreed to provide these findings and conclusions to the relevant officials in Potter County and recommend that probation be reinstated to the extent it was revoked, or the plea vacated to the extent it was secured, on the basis of the Coleman allegations.

5. A hearing was held on January 13, 2000 to determine whether Mr. Barrow's probation should be revoked.

6. Coleman's testimony played a central role in the revocation of Mr. Barrow's probation. Mr. Barrow's Hearing on the Motion to Revoke was tainted by Coleman's testimony. Coleman's testimony appeared to play a central role in the judge's sentencing decision.

7. Coleman provided perjured, misleading, and unreliable testimony at Mr. Barrow's hearing. For example, Coleman repeatedly claimed that he knew that Mr. Barrow, and not his twin brother, physically transferred narcotics to him, see Landis Barrow Hearing Transcript at 9-15, 22 (Jan. 13, 2000), before finally admitting that he was unsure which twin had handed him the narcotics, see id. at 22, 24, 26. Moreover, Coleman testified in the probation revocation hearing of Mandis Barrow that he did not know which twin was which. See Mandis Barrow Hearing Transcript at 36-42, 45 (May 10, 2000).

8. Further, Coleman's offense report described Landis Barrow as wearing an earring when, in fact, as the hearing transcript reflects, Landis Barrow has no piercing mark in either ear. See Landis Barrow Hearing Transcript at 17-19, 57 (Jan. 13, 2000).

9. Mr. Barrow and Ms. McElroy are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

10. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Barrow's probation revocation hearing was held, but were never disclosed by the State to Mr. Barrow or his counsel.

11. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

12. Had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants, Ms. McElroy would have utilized those facts to Mr. Barrow's benefit at his hearing. Neither Ms. McElroy nor Mr. Barrow had the benefit of the use of this information at the time of Mr. Barrow's hearing.

13. It appears that Mr. Barrow's probation would not have been revoked had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Barrow's hearing.

IV. LEROY BARROW

1. On July 23, 1999, Leroy Barrow Jr., an African American male, was arrested and charged with allegedly selling narcotics to Coleman on October 1, 1998.

2. Thomas Hamilton was appointed to represent Mr. Barrow.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. Between December 1999 and February 2000, Mr. Barrow and Mr. Hamilton became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Mr. Barrow learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Mr. Barrow became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Mr. Barrow likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

5. Mr. Barrow entered a plea of guilty to avoid a longer sentence. The only reason that Mr. Barrow considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Mr. Barrow was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against him. Mr. Barrow therefore accepted the State's plea offer.

6. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Barrow.

7. Coleman's credibility was at the heart of the State's case against Mr. Barrow.

8. Mr. Barrow and Mr. Hamilton are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

9. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Barrow entered a guilty plea, but were never disclosed by the State to Mr. Barrow or his counsel. See Affidavit of Leroy Barrow, Jr. ("Leroy Barrow Affidavit") (Ex. 11); Affidavit of Thomas Hamilton ("Thomas Hamilton Affidavit") (Ex. 12).

10. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

11. Mr. Barrow would have not have waived his right to trial and entered a plea of guilty if he had known of this impeachment material. See Leroy Barrow Affidavit (Ex. 11).

12. Based on the entire record in this matter, the Court finds that counsel would not have advised Mr. Barrow to enter a plea of guilty and would have recommended that he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Mr. Hamilton nor Mr. Barrow had the benefit of the use of this information at the time that Mr. Barrow entered his plea. See Leroy Barrow Affidavit (Ex. 11); Thomas Hamilton Affidavit (Ex. 12).

13. Thus, Mr. Barrow's plea of guilty was not knowing, intelligent or voluntary.

14. No reasonable juror would have found Mr. Barrow guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Barrow's plea.

V. MANDIS BARROW

1. On July 23, 1999, Mandis C. Barrow, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on June 23 and September 3, 1998.

2. Mr. Barrow was on probation at the time of his arrest.

3. Walton Weaver was appointed to represent Mr. Barrow.

4. No Brady material was provided to Mr. Barrow or his counsel.

5. A hearing was held May 10, 2000 to determine whether Mr. Barrow's probation should be revoked.

6. Apart from minor technical violations such as failure to pay fees, Coleman's testimony provided the only basis for revoking Mr. Barrow's probation. Coleman's

testimony tainted Mr. Barrow's Motion to Revoke Hearing and appeared to play a central role in the judge's sentencing decision.

7. Coleman's credibility was at the heart of the State's case against Mr. Barrow.

8. Coleman provided perjured, misleading, and unreliable testimony at Mr. Barrow's hearing. For example, Coleman testified that he had always been on active duty during his investigation and had never been relieved of duty, notwithstanding the undisputed fact that Coleman was relieved of duty from the time of his arrest until he made full restitution with respect to the theft and abuse of official capacity criminal charges pending against him in Cochran County. See Mandis Barrow Hearing Transcript at 48-49 (May 10, 2000).

9. Coleman falsely maintained that he did not know of the pending charges until August 1998, when, in fact, he contacted various officials in Cochran County with reference to the same accusations as early as November 1997, retained an attorney in May 1998 (the same month that the charges against him were officially filed), and executed a Waiver of Arraignment on May 30, 1998 with respect to the same criminal charges. See Mandis Barrow Hearing Transcript at 54, 56-60 (May 10, 2000).

10. Mr. Barrow and Mr. Weaver are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

11. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Barrow's probation revocation hearing was held, but were never disclosed by the State to Mr. Barrow or his counsel.

12. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

13. Had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants, Mr. Weaver would have utilized those facts to Mr. Barrow's benefit at his hearing. Neither Mr. Weaver nor Mr. Barrow had the benefit of the use of this information at the time of Mr. Barrow's hearing.

14. It appears that Mr. Barrow's probation would not have been revoked had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Barrow's hearing.

VI. TROY BENARD

1. On July 23, 1999, Troy Benard, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on May 24 and June 14, 1999.

2. Kerry Piper was appointed to represent Mr. Benard.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. Between December 1999 and February 2000, Mr. Benard and Mr. Piper became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Mr. Benard learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Mr. Benard became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Mr. Benard likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

5. Mr. Benard entered a plea of guilty to avoid a longer sentence. The only reason that Mr. Benard considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Mr. Benard was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against him. Mr. Benard therefore accepted the State's plea offer.

6. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Benard.

7. Coleman's credibility was at the heart of the State's case against Mr. Benard.

8. Mr. Benard and Mr. Piper are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

9. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Benard entered a guilty plea, but were never disclosed by the State to Mr. Benard or his counsel. See Affidavit of Troy Benard ("Benard Affidavit") (Ex. 13).

10. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

11. Mr. Benard would have not have waived his right to trial and entered a plea of guilty if he had known of this impeachment material. See Benard Affidavit (Ex. 13).

12. Based on the entire record in this matter, the Court finds that counsel would not have advised Mr. Benard to enter a plea of guilty and would have recommended that

he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Mr. Piper nor Mr. Benard had the benefit of the use of this information at the time that Mr. Benard entered his plea. See Benard Affidavit (Ex. 13).

13. Thus, Mr. Benard's plea of guilty was not knowing, intelligent or voluntary.

14. No reasonable juror would have found Mr. Benard guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Benard's plea.

VII. FREDDIE BROOKINS

1. On July 23, 1999, Freddie Brookins, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on April 5, 1999.

2. Michael Hrin was appointed to represent Mr. Brookins.

3. No Brady material was provided to Mr. Brookins or his counsel.

4. Mr. Brookins went to trial on February 17, 2000.

5. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Brookins.

6. Coleman's credibility was at the heart of the State's case against Mr. Brookins.

7. Coleman provided perjured and misleading testimony at the trial of Mr. Brookins. For example, Coleman misrepresented the reasons for abruptly leaving his law enforcement post in Cochran County in the middle of a shift. Coleman failed to disclose in his testimony that he was not eligible for rehire, that he had abused his official position to amass and default on significant debts, and that he was under investigation for theft. Instead, Coleman

testified that he left because the Sheriff was using his office for personal gain by charging items for personal use to the county – the exact charge which Coleman paid full restitution to resolve – and that he had to leave to avoid a "black mark" on his career from association with that department. See Brookins Trial Transcript at 165 (Feb. 17, 2000).

8. The prosecution team gave misleading testimony at Mr. Brookins' trial. The prosecution team repeatedly misrepresented Coleman's background. For example, Sheriff Stewart testified that he did not remember any negative comments in Coleman's background check. See Brookins Transcript at 73-74 (Feb. 17, 2000). In fact, the background check was replete with negative comments. Those comments included comments reflecting that Coleman had possible mental problems, was a discipline problem, needed constant supervision, was not eligible for rehire, and had been accused of kidnapping.

9. Further, Stewart testified that he had not learned any negative information regarding Coleman since the background check, despite the fact that he himself arrested Coleman for a crime of moral turpitude and relieved him of active duty. See Brookins Transcript at 73-74 (Feb. 17, 2000).

10. Stewart also testified that he did not remember why Coleman left Cochran County. Brookins Trial Transcript at 80 (Feb. 17, 2000). Stewart failed to mention that, as the State knew or reasonably should have known, Coleman was not eligible for rehire, had abused his official position to amass and default on significant debts, and was under investigation for theft at the time of his departure.

11. Moreover, when Lieutenant Amos was asked whether Coleman's emotional stability was relevant to the decision to hire him, see Brookins Transcript at 126 (Feb.

17, 2000), Amos' response failed to reveal that Coleman's background check revealed that Coleman had, among other problems, "possible mental problems."

12. In addition, Sergeant Massengill and Stewart testified that Coleman properly followed their protocol and procedures, notwithstanding the disproportionate number of African Americans he implicated in his investigation (a fact indisputably known to the prosecution team), Coleman's use of racial slurs (another fact indisputably known to the prosecution team), Coleman's falsification of reports, misidentifications, and failure to report criminal charges against him. See Brookins Trial Transcript at 92-93, 106, 123 (Feb. 17, 2000).

13. Mr. Brookins and Mr. Hrin are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

14. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Brookins went to trial, but were never disclosed by the State to Mr. Brookins or his counsel. See Deposition of Michael Hrin dated Mar. 5, 2003 ("Hrin Deposition") at 45 (Ex. 14).

15. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

16. Mr. Hrin did not independently know of any of the impeachment material regarding Coleman, as set forth in the Global Findings of Fact. In his deposition, Mr. Hrin was asked to walk through any testimony elicited from the State's witnesses during Mr. Brookins's trial about Coleman's background. See Hrin Deposition, at 16-47 (Ex. 14). The transcript reveals that the Sheriff, on direct, opened the door to questions about Coleman's background when he responded to a question posed to him by the District Attorney, stating that he had found some

good as well as some marginal points in Coleman's background. See Brookins Trial Transcript at 69 (Feb. 17, 2000). When pressed to elaborate during cross-examination regarding what those marginal comments might have been, the Sheriff did not reveal any of the plethora of negative information that he knew regarding Coleman. See Hrin Deposition at 22-23 (Ex. 14). Due to the fact that Mr. Hrin had no knowledge about Coleman's background as set forth in the Global Findings of Fact and that the State had failed to disclose Brady information, Mr. Brookins' jury never heard any information that would tend to impeach Coleman.

17. Had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants, Mr. Hrin would have utilized this exculpatory evidence and impeachment material regarding Coleman to Mr. Brookins' benefit at his trial. Neither Mr. Hrin nor Mr. Brookins had the benefit of the use of this information at the time that Mr. Williams went to trial. See Hrin Dep. at 45 (Ex. 14).

18. No reasonable juror would have found Mr. Brookins guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Brookins' trial.

VIII. MARILYN J. COOPER

1. On July 23, 1999, Marilyn Cooper, an African American female, was arrested and charged with allegedly selling narcotics to Coleman on February 12, 1999.

2. Christian Pollard was appointed to represent Ms. Cooper.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. Between December 1999 and February 2000, Ms. Cooper and Mr. Pollard became aware that other individuals charged with selling narcotics to Coleman in Swisher

County went to trial. Ms. Cooper learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Ms. Cooper became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Ms. Cooper likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

5. Ms. Cooper entered a plea of guilty to avoid a longer sentence. The only reason that Ms. Cooper considered the State's plea offer was that she was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Ms. Cooper was considering whether to accept the plea offer made by the State, the State did not reveal to her or her defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against her. Ms. Cooper therefore accepted the State's plea offer.

6. Without Coleman's testimony, the State would not have been able to secure a conviction against Ms. Cooper.

7. Coleman's credibility was at the heart of the State's case against Ms. Cooper.

8. Ms. Cooper and Mr. Pollard are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

9. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Ms. Cooper entered a guilty plea, but were never disclosed by the State to Ms. Cooper or her counsel. <u>See</u> Affidavit of Marilyn Cooper ("Cooper Affidavit") (Ex. 15); Affidavit of Christian Pollard ("Pollard Affidavit") (Ex. 16).

10. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

11. Ms. Cooper would have not have waived her right to trial and entered a plea of guilty if she had known of this impeachment material. See Cooper Affidavit (Ex. 15).

12. Mr. Pollard would not have advised Ms. Cooper to enter a plea of guilty and would have recommended that she not waive her right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Mr. Pollard nor Ms. Cooper had the benefit of the use of this information at the time that Ms. Cooper entered her plea. See Cooper Affidavit (Ex. 15); Pollard Affidavit (Ex. 16).

13. Thus, Ms. Cooper's plea of guilty was not knowing, intelligent or voluntary.

14. No reasonable juror would have found Ms. Cooper guilty had she been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Ms. Cooper's plea.

IX. ARMENU GERROD ERVIN

1. On July 23, 1999, Armenu Gerrod Ervin, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on March 1 and May 3, 1999.

2. Ray Sanderson was appointed to represent Mr. Ervin.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. Despite testifying in the instant proceedings that the proper identification of suspects in police reports includes, among other things, "[h]air color, how long it is, . . . [t]he clothes they're wearing, the shoes they're wearing, if they have any rings, watches, necklaces,

anything, earrings, moles, scars, anything . . . [h]eight, weight," March 17-21, 2003 Hearing Transcript, vol. 4 at 181, Coleman's incident report #99-0433 (Ex. 17) described Mr. Ervin generically as "BM" ("black male") without any other descriptors or identifiers. Coleman's police report descriptions of other Applicants were similarly vague and contrary to standard police procedure.

5. Between December 1999 and February 2000, Mr. Ervin and Mr. Sanderson became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Mr. Ervin learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Mr. Ervin became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Mr. Ervin likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

6. Mr. Ervin entered a plea of guilty to avoid a longer sentence. The only reason that Mr. Ervin considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Mr. Ervin was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against him. Mr. Ervin therefore accepted the State's plea offer.

7. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Ervin.

8. Coleman's credibility was at the heart of the State's case against Mr. Ervin.

9. The State knew and/or reasonably should have known that Coleman's allegation that he purchased drugs from Mr. Ervin on March 7, 1999 was untrue, as Coleman was off duty on that date, according to the daily time records maintained by the Swisher County Sheriff's Department. See Coleman's Incident Report of Armenu Ervin, No. 99-0472 (Ex. 1).

10. Mr. Ervin and Mr. Sanderson are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants, as well as the time sheet discrepancy discussed above.

11. The facts set forth in the Global Findings of Fact Applicable to All Applicants, as well as the time sheet discrepancy, existed at the time Mr. Ervin entered a guilty plea, but were never disclosed by the State to Mr. Ervin or his counsel. See Affidavit of Armenu Ervin ("Ervin Affidavit") (Ex. 18); Affidavit of Ray Sanderson ("Sanderson Affidavit") (Ex. 19).

12. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

13. Mr. Ervin would have not have waived his right to trial and entered a plea of guilty if he had known of this impeachment material and/or the time sheet discrepancy. See Ervin Affidavit (Ex. 18).

14. Mr. Sanderson would not have advised Mr. Ervin to enter a plea of guilty and would have recommended that he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants or the time sheet discrepancy. Neither Mr. Sanderson nor Mr. Ervin had the benefit of the use of this information at the time that Mr. Ervin entered his plea. See Ervin Affidavit (Ex. 18); Sanderson Affidavit (Ex. 19).

15. Thus, Mr. Ervin's plea of guilty was not knowing, intelligent or voluntary.

16. No reasonable juror would have found Mr. Ervin guilty had he been able to present the significant impeachment evidence concerning Coleman or the time sheet discrepancy which were actually or constructively known to, but not disclosed by, the State prior to Mr. Ervin's plea.

X. MICHAEL FOWLER

1. On July 23, 1999, Michael Fowler, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on November 20, 1998.

2. Angela French was appointed to represent Mr. Fowler.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. Despite testifying in the instant proceedings that the proper identification of suspects in police reports includes, among other things, "[h]air color, how long it is, . . . [t]he clothes they're wearing, the shoes they're wearing, if they have any rings, watches, necklaces, anything, earrings, moles, scars, anything . . . [h]eight, weight," March 17-21, 2003 Hearing Transcript, vol. 4 at 181, Coleman's incident report #98-2304 (Ex. 20) described Mr. Fowler generically as "BM" ("black male") without any other descriptors or identifiers. Coleman's police report descriptions of other Applicants were similarly vague and contrary to standard police procedure.

5. Between December 1999 and February 2000, Mr. Fowler and Ms. French became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Mr. Fowler learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Mr. Fowler became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in

prison based on nothing more than the testimony of Coleman. Mr. Fowler likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

6. Mr. Fowler entered a plea of guilty to avoid a longer sentence. The only reason that Mr. Fowler considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Mr. Fowler was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against him. Mr. Fowler therefore accepted the State's plea offer.

7. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Fowler.

8. Coleman's credibility was at the heart of the State's case against Mr. Fowler.

9. Mr. Fowler and Ms. French are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

10. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Fowler entered a guilty plea, but were never disclosed by the State to Mr. Fowler or his counsel. See Affidavit of Michael Fowler ("Fowler Affidavit") (Ex. 21); Affidavit of Angela French ("French Affidavit") (Ex. 22).

11. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

12. Mr. Fowler would have not have waived his right to trial and entered a plea of guilty if he had known of this impeachment material. See Fowler Affidavit (Ex. 21).

13. Based on the entire record in this matter, the Court finds that counsel would not have advised Mr. Fowler to enter a plea of guilty and would have recommended that he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Ms. French nor Mr. Fowler had the benefit of the use of this information at the time that Mr. Fowler entered his plea. See Fowler Affidavit (Ex. 21); French Affidavit (Ex. 22).

14. Thus, Mr. Fowler's plea of guilty was not knowing, intelligent or voluntary.

15. No reasonable juror would have found Mr. Fowler guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Fowler's plea.

XI. JAYSON FRY

1. On July 23, 1999, Jayson Paul Fry, a half-Hispanic, half African American male, was arrested and charged with allegedly selling narcotics to Coleman on December 7, 1998, December 29, 1998, and January 8, 1999.

2. D'Layne Peeples was appointed to represent Mr. Fry.

3. Discovery was sought. On February 17, 2000, Ms. Peeples filed three motions captioned Motion for the Production and Inspection of Evidence and Information which may lead to Evidence (Brady v. Maryland, 7 U.S. 8, 10 L.Ed.2d 215, 8 S Ct. 1194), one for each of Mr. Fry's indictments (the "Brady Motions"). In the Brady motions, defense counsel sought the following: (a) criminal records, acts of misconduct and psychiatric history of all witnesses

testifying for the state; (b) evidence that a witness testifying for the state has committed perjury or any previous inconsistent testimony; (c) information concerning co-defendants and co-conspirators including prior criminal records, psychiatric records, extraneous offenses, pending criminal cases, all consideration or promises of consideration, and all statements concerning Mr. Fry's alleged offense(s); (d) the names and present locations of all witnesses to the alleged offense(s); (e) statements of witnesses obtained by the prosecution which would be favorable to Mr. Fry; (f) all business and governmental records, including laboratory reports, scientific tests, etc.; and (g) exculpatory evidence and facts known or by the exercise of due diligence should be known by the prosecution. See Fry Brady Motions (Feb. 7, 2000) (Ex. 23)

4. On March 3, 2000, the court granted the motions to the extent they requested material required to be disclosed under Brady.

5. Little discovery was provided. No Brady material was disclosed. Indeed, at a hearing on February 16, 2000, after McEachern represented to the Court that Ms. Peeples had any and all Brady material that was in his possession, the Court expressly asked McEachern if he had any "404(b)" information to give to Mr. Fry's counsel. McEachern responded, "I don't know of anything. Of course, all my witnesses are police officers. They don't have anything. I don't think there's anything." Jayson Fry Reporter's Record, 12-13 (Feb. 16, 2000).

6. Despite testifying in the instant proceedings that the proper identification of suspects in police reports includes, among other things, "[h]air color, how long it is, . . . [t]he clothes they're wearing, the shoes they're wearing, if they have any rings, watches, necklaces, anything, earrings, moles, scars, anything . . . [h]eight, weight," March 17-21, 2003 Hearing Transcript, vol. 4 at 181, Coleman's incident report #98-2397 (Ex. 24) described Mr. Fry generically as "BM" ("black male") without any other descriptors or identifiers. Coleman's

police report descriptions of other Applicants were similarly vague and contrary to standard police procedure.

7. Between December 1999 and February 2000, Mr. Fry and Ms. Peeples became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Mr. Fry learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Mr. Fry became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Mr. Fry likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

8. On March 22, 2000, Mr. Fry entered a plea of guilty to avoid a longer sentence. The only reason that Mr. Fry considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Mr. Fry was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against him. Mr. Fry therefore accepted the State's plea offer.

9. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Fry.

10. Coleman's credibility was at the heart of the State's case against Mr. Fry.

11. Mr. Fry and Ms. Peeples are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

12. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Fry entered a guilty plea, but were never disclosed by the State to Mr. Fry or his counsel. See Affidavit of Jayson Fry ("Jayson Fry Affidavit") (Ex. 25); Peeples Affidavit II (Ex. 26).

13. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

14. Mr. Fry would have not have waived his right to trial and entered a plea of guilty if he had known of this impeachment material. See Jayson Fry Affidavit (Ex. 25).

15. Ms. Peeples would not have advised Mr. Fry to enter a plea of guilty and would have recommended that he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Ms. Peeples nor Mr. Fry had the benefit of the use of this information at the time that Mr. Fry entered his plea. See Jayson Fry Affidavit (Ex. 25); Peeples Affidavit II (Ex. 26).

16. Thus, Mr. Fry's plea of guilty was not knowing, intelligent or voluntary.

17. No reasonable juror would have found Mr. Fry guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Fry's plea.

XII. VICKIE FRY

1. On July 23, 1999, Vickie Fry, a half Hispanic, half African American female, was arrested and charged with allegedly selling narcotics to Coleman on May 21, 1999.

2. Paul Holloway was appointed to represent Ms. Fry.

3. Little if any discovery, and no Brady material was provided.

4. Despite testifying in the instant proceedings that the proper identification of suspects in police reports includes, among other things, "[h]air color, how long it is, . . . [t]he clothes they're wearing, the shoes they're wearing, if they have any rings, watches, necklaces, anything, earrings, moles, scars, anything . . . [h]eight, weight," March 17-21, 2003 Hearing Transcript, vol. 4 at 181, Coleman's incident report #99-093, (Ex. 27) described Ms. Fry generically as "BF" ("black female") without any other descriptors or identifiers. Coleman's police report descriptions of other Applicants were similarly vague and contrary to standard police procedure.

5. Between December 1999 and February 2000, Ms. Fry and Mr. Holloway became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Ms. Fry learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Ms. Fry became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Ms. Fry likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

6. Ms. Fry entered a plea of nolo contendere to avoid a longer sentence. The only reason that Ms. Fry considered the State's plea offer was that she was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Ms. Fry was considering whether to accept the plea offer made by the State, the State did not reveal to her or her defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against her. Ms. Fry therefore accepted the State's plea offer.

7. Without Coleman's testimony, the State would not have been able to secure a conviction against Ms. Fry.

8. Coleman's credibility was at the heart of the State's case against Ms. Fry.

9. Ms. Fry and Mr. Holloway are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

10. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Ms. Fry entered her plea, but were never disclosed by the State to Ms. Fry or her counsel. See Affidavit of Vickie Fry ("Vickie Fry Affidavit") (Ex. 28); Affidavit of Paul Holloway ("Holloway Affidavit") (Ex. 29).

11. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

12. Ms. Fry would have not have waived her right to trial and entered a plea of nolo contendere if she had known of this impeachment material. See Vickie Fry Affidavit (Ex. 28).

13. Mr. Holloway would not have advised Ms. Fry to enter a plea of guilty and would have recommended that she not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Mr. Holloway nor Ms. Fry had the benefit of the use of this information at the time that Ms. Fry entered her plea. See Vickie Fry Affidavit (Ex. 28); Holloway Affidavit (Ex. 29).

14. Thus, Ms. Fry's plea of guilty was not knowing, intelligent or voluntary.

15. No reasonable juror would have found Ms. Fry guilty had she been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Ms. Fry's plea.

XIII. WILLIE HALL

1. On July 23, 1999, Willie Hall, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on August 5, August 20, September 21, September 28, October 14 and December 2, 1998.

2. Peter I. Clarke was appointed to represent Mr. Hall.

3. On January 13, 2000, Mr. Clarke filed ten pre-trial motions on Mr. Hall's behalf: Motion for Change of Venue, Motion for Witness List, Motion for In-Court Lineup, Motion to Inspect Physical Evidence, Motion for the Appointment of an Expert, Motion for Discovery of Punishment Evidence, Motion for Discovery, Election to Have Jury Assess Punishment, Defendant's Motion to Suppress In-Court ID of Defendant, and Motion for Production of Evidence Favorable to the Accused (the "Brady Motion"). In the Brady Motion, counsel for Hall specifically requested, inter alia, "[a]ny information which may tend to adversely affect the credibility of any person called as a witness by the State, including the arrest and/or conviction record of each State witness" and "copies of those items which contain evidence or information which is, or might be, favorable to Defendant either on the issue of guilt or innocence." (Brady Motion, Jan. 14, 2000, at 2.) (Ex. 30)

4. No discovery was provided in response to the Brady Motion.

5. Between December 1999 and February 2000, Mr. Hall and Mr. Clarke became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Mr. Hall learned that these individuals were convicted solely on Coleman's

word that he had sold them drugs. Mr. Hall became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Mr. Hall likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

6. Mr. Hall entered a plea of guilty to avoid a longer sentence. The only reason that Mr. Hall considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Mr. Hall was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against him. Mr. Hall therefore accepted the State's plea offer.

7. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Hall.

8. Coleman's credibility was at the heart of the State's case against Mr. Hall.

9. Mr. Hall and Mr. Clarke are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

10. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Hall entered a guilty plea, but were never disclosed by the State to Mr. Hall or his counsel. See Affidavit of Willie Hall ("Hall Affidavit") (Ex. 31); Affidavit of Peter Clarke ("Clarke Affidavit II") (Ex. 32).

11. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

12. Mr. Hall would have not have waived his right to trial and entered a plea of guilty if he had known of this impeachment material. See Hall Affidavit (Ex. 31).

13. Based on the entire record in this matter, the Court finds that counsel would not have advised Mr. Hall to enter a plea of guilty and would have recommended that he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Mr. Clarke nor Mr. Hall had the benefit of the use of this information at the time that Mr. Hall entered his plea. See Hall Affidavit (Ex. 31); Clarke Affidavit II (Ex. 32).

14. Thus, Mr. Hall's plea of guilty was not knowing, intelligent or voluntary.

15. No reasonable juror would have found Mr. Hall guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Hall's plea.

XIV. CLEVELAND J. HENDERSON

1. On July 23, 1999, Cleveland Joe Henderson, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on February 22, 1999.

2. L. Van Williamson was appointed to represent Mr. Henderson.

3. No Brady material was ever provided to Mr. Henderson or his counsel.

4. Between December 1999 and February 2000, Mr. Henderson and Mr. Williamson became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Mr. Henderson learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Mr. Henderson became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to

decades in prison based on nothing more than the testimony of Coleman. Mr. Henderson likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

5. On April 4, 2000, Mr. Henderson entered a plea of guilty to avoid a longer sentence. The only reason that Mr. Henderson considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Mr. Henderson was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against him. Mr. Henderson therefore accepted the State's plea offer.

6. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Henderson.

7. Coleman's credibility was at the heart of the State's case against Mr. Henderson.

7. Mr. Henderson and Mr. Williamson are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

8. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Henderson entered a guilty plea, but were never disclosed by the State to Mr. Henderson or his counsel. See Affidavit of Cleveland Henderson ("Henderson Affidavit") (Ex. 33); Affidavit of L. Van Williamson ("Williamson Affidavit") (Ex. 34).

9. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

10. Mr. Henderson would have not have waived his right to trial and entered a plea of guilty if he had known of this impeachment material. See Henderson Affidavit (Ex. 33).

11. Mr. Williamson would not have advised Mr. Henderson to enter a plea of guilty and would have recommended that he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Mr. Williamson nor Mr. Henderson had the benefit of the use of this information at the time that Mr. Henderson entered his plea. See Henderson Affidavit (Ex. 33); Williamson Affidavit (Ex. 34).

12. Thus, Mr. Henderson's plea of guilty was not knowing, intelligent or voluntary.

13. No reasonable juror would have found Mr. Henderson guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Henderson's plea.

XV. MANDRELL HENRY

1. On July 23, 1999, Mandrell Henry, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on July 21, 1998.

2. Brent Hamilton was appointed to represent Mr. Henry.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. In December 1999 and January 2000, Mr. Henry and Mr. Hamilton became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Mr. Henry learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Mr. Henry became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in

prison based on nothing more than the testimony of Coleman. Mr. Henry likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

5. Mr. Henry entered a plea of guilty to avoid a longer sentence. The only reason that Mr. Henry considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Mr. Henry was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against him. Mr. Henry therefore accepted the State's plea offer.

6. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Henry.

7. Coleman's credibility was at the heart of the State's case against Mr. Henry.

8. Mr. Henry and Mr. Hamilton are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

9. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Henry entered a guilty plea, but were never disclosed by the State to Mr. Henry or his counsel. See Affidavit of Mandrell Henry ("Henry Affidavit") (Ex. 35); Affidavit of Brent Hamilton ("Brent Hamilton Affidavit") (Ex. 36).

10. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

11. Mr. Henry would have not have waived his right to trial and entered a plea of guilty if he had known of this impeachment material. See Henry Affidavit (Ex. 35).

12. Mr. Hamilton would not have advised Mr. Henry to enter a plea of guilty and would have recommended that he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Mr. Hamilton only advised Mr. Henry to enter a plea of guilty because of the extraordinarily high sentences that individuals were receiving based on nothing more than Coleman's word. Neither Mr. Hamilton nor Mr. Henry had the benefit of the use of this information at the time that Mr. Henry entered his plea. See Henry Affidavit (Ex. 35); Brent Hamilton Affidavit (Ex. 36).

13. Thus, Mr. Henry's plea of guilty was not knowing, intelligent or voluntary.

14. No reasonable juror would have found Mr. Henry guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Henry's plea.

XVI. CHRISTOPHER E. JACKSON

1. On July 23, 1999, Christopher E. Jackson, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on May 12, May 19, and June 4, 1999.

2. Angela French was appointed to represent Mr. Jackson.

3. Prior to trial, Ms. French filed a Motion for Discovery (the "Discovery Motion").

4. In response to the Discovery Motion, the State provided Ms. French with only the indictments against Mr. Jackson, the police reports that recorded the offenses allegedly committed by Mr. Jackson, and reports of the weight of the substance purportedly sold by Mr.

Jackson to Coleman. The prosecution provided no exculpatory evidence, impeachment material concerning Coleman or other Brady material to Ms. French.

5. During Mr. Jackson's December 29, 1999 pre-trial hearing, McEachern asserted in open court that Ms. French had "a copy of [the State's] complete discovery," notwithstanding the fact that he failed to disclose any impeachment evidence relating to Coleman. See Jackson Pre-Trial Transcript at 8 (Dec. 29, 1999).

6. Moreover, McEachern insisted that "[p]olice officers don't have any" criminal histories. He stated, "Police officers don't have you know, can't have a criminal record, so I don't see running them. But they don't have them. I'll make that representation." See Jackson Pre-Trial Transcript at 9-10 (Dec. 19, 1999). In fact, McEachern had known for almost six months that Coleman was arrested for crimes of dishonesty allegedly committed while he worked as a law enforcement officer in Cochran County. See McEachern Affidavit at 4-5 (Dec. 3, 2002) (Ex. 3); Deposition of Terry McEachern at 107-08 (Mar. 3, 2003) (Ex. 2). Had Stewart or other members of the Swisher County Sheriff's Office provided Cochran County with the documentation required to report Coleman's arrest to DPS for placement in TCIC, that arrest would have shown up on Coleman's record.

7. Mr. Jackson went to trial on January 11, 2000.

8. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Jackson.

9. Coleman's credibility was at the heart of the State's case against Mr. Jackson.

10. Coleman provided perjured and misleading testimony at the trial of Mr. Jackson. For example, Coleman testified that he did not have any criminal past or history

notwithstanding the fact that he had been arrested for crimes of dishonesty – and paid full restitution with respect to the theft – during the same undercover investigation that resulted in the arrest of Mr. Jackson. See Jackson Trial Transcript at 98 (Jan. 11, 2000).

11. In an attempt to bolster the credibility of his procedures, Coleman also testified that he sometimes had a second officer cover him when he was purchasing drugs, despite the fact that no second officer ever corroborated any buy purportedly made by Coleman in Swisher County at any trial of any Applicant. See Jackson Trial Transcript at 102 (Jan. 11, 2000).

12. In addition to the misleading statements made by the State at the pre-trial hearing, the prosecution team gave misleading testimony at Mr. Jackson's trial. For example, Lieutenant Amos testified that Coleman had followed his instructions, despite the fact that Coleman purported to have purchased drugs while off-duty, falsified offense reports, misidentified defendants, and failed to report a pending criminal charge to his supervisors. See Jackson Trial Transcript at 79 (Jan. 11, 2000).

13. Sheriff Stewart's testimony that a background check had been run on Coleman left the jury with the false impression that Coleman's background was clean despite the fact that the background check yielded substantial negative information – including Coleman's possible mental problems, discipline problem, need for constant supervision, ineligibility for rehire, and kidnapping accusations – that was not disclosed to Ms. French or Mr. Jackson. See Jackson Trial Transcript at 82 (Jan. 11, 2000).

14. Mr. Jackson and Ms. French are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

15. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Jackson went to trial, but were never disclosed by the State to Mr. Jackson or his counsel. See Affidavit of Angela French ("French Affidavit II") (Ex. 37).

16. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

17. Had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants, Ms. French would have utilized this exculpatory evidence and impeachment material regarding Coleman to Mr. Jackson's benefit at his trial. Neither Ms. French nor Mr. Jackson had the benefit of the use of this information at the time that Mr. Jackson went to trial. See French Affidavit II (Ex. 37).

18. No reasonable juror would have found Mr. Jackson guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Jackson's trial.

XVII. DENISE KELLY

1. On July 23, 1999, Denise Kelly, an African American female, was arrested and charged with allegedly selling narcotics to Coleman on May 19, 1999.

2. Brent Hamilton was appointed to represent Ms. Kelly.

3. Discovery was sought from the prosecution, but little, if any, discovery was provided. The prosecution did not provide Mr. Hamilton with any Brady material.

4. Despite testifying in the instant proceedings that the proper identification of suspects in police reports includes, among other things, "[h]air color, how long it is, . . . [t]he clothes they're wearing, the shoes they're wearing, if they have any rings, watches, necklaces, anything, earrings, moles, scars, anything . . . [h]eight, weight," March 17-21, 2003 Hearing

Transcript, vol. 4 at 181, Coleman's incident report #99-0924, (Ex. 38) described Denise Kelly generically as "BF" ("black female") without any other descriptors or identifiers. Coleman's police report descriptions of other Applicants were similarly vague and contrary to standard police procedure.

5. Between December 1999 and February 2000, Ms. Kelly and Mr. Hamilton became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Ms. Kelly learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Ms. Kelly became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Ms. Kelly likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

6. On March 9, 2000, Ms. Kelly entered a plea of guilty to avoid a longer sentence. The only reason that Ms. Kelly considered the State's plea offer was that she was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Ms. Kelly was considering whether to accept the plea offer made by the State, the State did not reveal to her or her defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against her. Ms. Kelly therefore accepted the State's plea offer.

7. Without Coleman's testimony, the State would not have been able to secure a conviction against Ms. Kelly.

8. Coleman's credibility was at the heart of the State's case against Ms. Kelly.

9. Ms. Kelly and Mr. Hamilton are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

10. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Ms. Kelly entered a guilty plea, but were never disclosed by the State to Ms. Kelly or her counsel. See Affidavit of Denise Kelly ("Denise Kelly Affidavit") (Ex. 39); Affidavit of Brent Hamilton ("Brent Hamilton Affidavit II") (Ex. 40).

11. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

12. Ms. Kelly would have not have waived her right to trial and entered a plea of guilty if she had known of this impeachment material. See Denise Kelly Affidavit (Ex. 39).

13. Mr. Hamilton would not have advised Ms. Kelly to enter a plea of guilty and would have recommended that she not waive her right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Mr. Hamilton only advised Ms. Kelly to enter a plea of guilty because of the extraordinarily high sentences that individuals were receiving based on nothing more than Coleman's word. Neither Mr. Hamilton nor Ms. Kelly had the benefit of the use of this information at the time that Ms. Kelly entered her plea. See Denise Kelly Affidavit (Ex. 39); Brent Hamilton Affidavit II (Ex. 40).

14. Thus, Ms. Kelly's plea of guilty was not knowing, intelligent or voluntary.

15. No reasonable juror would have found Ms. Kelly guilty had she been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Ms. Kelly's plea.

XVIII. ETTA KELLY

1. In April 2000, Etta Kelly, an African American female, was arrested and charged with allegedly selling narcotics to Coleman on June 14, 1999.

2. Kregg Hukill was appointed to represent Ms. Kelly.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. Despite testifying in the instant proceedings that the proper identification of suspects in police reports includes, among other things, "[h]air color, how long it is, . . . [t]he clothes they're wearing, the shoes they're wearing, if they have any rings, watches, necklaces, anything, earrings, moles, scars, anything . . . [h]eight, weight," March 17-21, 2003 Hearing Transcript, vol. 4 at 181, Coleman's incident report #99-1105 (Ex. 41) described Ms. Kelly generically as "BF" ("black female") without any other descriptors or identifiers. Coleman's police report descriptions of other Applicants were similarly vague and contrary to standard police procedure.

5. Between December 1999 and February 2000, Ms. Kelly and Mr. Hukill became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Ms. Kelly learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Ms. Kelly became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Ms. Kelly likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

6. Ms. Kelly entered a plea of guilty to avoid a longer sentence. The only reason that Ms. Kelly considered the State's plea offer was that she was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of

Coleman's allegations. At the time Ms. Kelly was considering whether to accept the plea offer made by the State, the State did not reveal to her or her defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against her. Ms. Kelly therefore accepted the State's plea offer.

7. Without Coleman's testimony, the State would not have been able to secure a conviction against Ms. Kelly.

8. Coleman's credibility was at the heart of the State's case against Ms. Kelly.

9. Ms. Kelly and Mr. Hukill are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

10. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Ms. Kelly entered a guilty plea, but were never disclosed by the State to Ms. Kelly or her counsel. See Affidavit of Etta Kelly ("Etta Kelly Affidavit") (Ex. 42); Affidavit of Kregg Hukill ("Hukill Affidavit") (Ex. 43).

11. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

12. Ms. Kelly would have not have waived her right to trial and entered a plea of guilty if she had known of this impeachment material. See Etta Kelly Affidavit (Ex. 42).

13. Mr. Hukill would not have advised Ms. Kelly to enter a plea of guilty and would have recommended that she not waive her right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Mr. Hukill nor Ms.

Kelly had the benefit of the use of this information at the time that Ms. Kelly entered her plea. See Etta Kelly Affidavit (Ex. 42); Hukill Affidavit (Ex. 43).

14. Thus, Ms. Kelly's plea of guilty was not knowing, intelligent or voluntary.

15. No reasonable juror would have found Ms. Kelly guilty had she been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Ms. Kelly's plea.

XIX. CALVIN K. KLEIN

1. On July 23, 1999, Calvin Klein, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on June 16, 1998.

2. C.J. McElroy was appointed to represent Mr. Klein.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. In December 1999, Mr. Klein and Ms. McElroy became aware that Joe Welton Moore was convicted solely on Coleman's word that he had bought drugs from him. Mr. Klein became aware that Mr. Moore claimed that he was innocent but was nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Mr. Klein learned that the sentence imposed was in fact 90 years.

5. Mr. Klein entered a plea of guilty to avoid a longer sentence. The only reason that Mr. Klein considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like Joe Moore – on the basis of Coleman's allegations. At the time Mr. Klein was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel significant information about the credibility, bias, and

motive to lie of Coleman, the only witness against him. Mr. Klein therefore accepted the State's plea offer.

6. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Klein.

7. Coleman's credibility was at the heart of the State's case against Mr. Klein.

8. Mr. Klein and Ms. McElroy are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

9. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Klein entered a guilty plea, but were never disclosed by the State to Mr. Klein or his counsel. See Affidavit of Calvin Klein ("Klein Affidavit") (Ex. 44).

10. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

11. Mr. Klein would have not have waived his right to trial and entered a plea of guilty if he had known of this impeachment material. See Klein Affidavit (Ex. 44).

12. Ms. McElroy would not have advised Mr. Klein to enter a plea of guilty and would have recommended that he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Ms. McElroy nor Mr. Klein had the benefit of the use of this information at the time that Mr. Klein entered his plea. See Klein Affidavit (Ex. 44).

13. Thus, Mr. Klein's plea of guilty was not knowing, intelligent or voluntary.

14. No reasonable juror would have found Mr. Klein guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Klein's plea.

XX. WILLIAM LOVE [7]

1. On July 23, 1999, William Love, a white male, was arrested and charged with allegedly selling narcotics to Coleman on May 21, May 29, June 25, July 7, July 21, July 27, August 21, and September 3, 1998.

2. L. Van Williamson was appointed to represent Mr. Love.

3. Mr. Williamson filed many pre-trial motions on Mr. Love's behalf, including a Motion for Discovery of Exculpatory and Mitigating Evidence and a Motion for Discovery and Production and Inspection of Evidence. See William Love, Clerk's Record, Volume 1 at 14.

4. No discovery was provided in response to these motions.

5. Mr. Love went to trial on January 26, 2000.

6. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Love.

7. Coleman's credibility was at the heart of the State's case against Mr. Love.

8. Coleman provided perjured and misleading testimony at the trial of Mr. Love. For example, Coleman testified that he left the law enforcement agencies he previously worked for "in good standing," notwithstanding the fact that he knew he was not eligible for

[7] Although Mr. Love's case is still on direct appeal, the State has agreed that it should be addressed in these Findings of Fact and Conclusions of Law because, like the other Applicants, Mr. Love was convicted solely on the basis of Coleman's allegations, and because undersigned counsel will file a petition for writ of habeas corpus on behalf of Mr. Love should his appeal be denied. Moreover, the State recommends that Mr. Love be granted relief on direct appeal or, if not, upon the filing of his habeas petition.

rehire in either Cochran or Pecos County and that he abruptly left and was not in good standing in either county. See Love Trial Transcript, Vol. 7, at 18 (Jan. 27, 2000).

9. Moreover, Coleman testified that he did not have any criminal history notwithstanding the fact that he had been arrested for crimes of dishonesty – and paid full restitution with respect to the theft – during the same undercover investigation that resulted in the arrest of Mr. Love. See Love Trial Transcript, Vol. 7, at 15 (Jan. 27, 2000).

10. Coleman gave testimony inconsistent with prior sworn statements regarding who was with him when he first purportedly purchased narcotics from Mr. Love and who identified Mr. Love for him. See Love Trial Transcript, Vol. 6, at 140-144 (Jan. 26, 2000).

11. In an attempt to bolster his own credibility, Coleman testified that he had worked in narcotics for four years before January 2000, meaning that he had two years experience in narcotics before being hired by the Task Force and Swisher County, despite the fact that he could only cite one unsuccessful attempt at buying narcotics before joining the Task Force and despite testimony by other members of the prosecution team that he had no narcotics experience prior to his stint with the Task Force. See Love Trial Transcript, Vol. 6, at 120 (Jan. 26, 2000); Wafer Hearing Transcript at 56-58 (Feb. 11, 2000); Kizzie White Trial Transcript, Vol. 1, at 173 (Apr. 6, 2000) (Amos testifying).

12. Moreover, Coleman testified that if he made a third buy in a day, he put the drugs in his shirt and took notes on his stomach because "it's going to take a lot to get my clothes off," despite his repeated testimony that it was too dangerous to wear a wire because he might be strip searched. See Love Trial Transcript, Vol. 6, at 148-149 (Jan. 16, 2000); Moore Trial Transcript at 87 (Dec. 13, 1999); Jackson Trial Transcript at 63 (Jan. 11, 2000); Kareem White Trial Transcript, Vol. 7, at 132-132, 143 (Sep. 6, 2000).

13. The prosecution team gave misleading testimony at Mr. Love's trial. For example, Sergeant Massengill testified that he had received no "complaints that would have come out of any law enforcement agency" regarding Coleman, notwithstanding the many facts set forth above regarding Coleman's criminal arrest, misconduct and ineligibility for rehire with the counties where he formerly worked as a law enforcement officer and Massengill's indisputable knowledge that Coleman was arrested during the course of his undercover investigation based on a warrant issued by a Cochran County law enforcement agency. See Love Transcript, Vol. 7, at 131 (Jan. 27, 2000).

14. McEachern presented Coleman's NCIC and TCIC reports to the Court and stated that they "reflect[ed] absolutely nothing" and elicited testimony from Coleman that he had "nothing of a crime of moral turpitude or a crime involving – or any crime, period, on [his] record" but neither revealed his knowledge of Coleman's arrest nor that the reason that no arrest for a crime of moral turpitude was shown on Coleman's reports was that Sheriff Stewart submitted an incomplete TRN to Cochran County which resulted in the concealment of Coleman's arrest from public knowledge by preventing its entry into TCIC and NCIC. See Love Trial Transcript, Vol. 6 at 255-225, Vol. 7 at 223 (Jan. 26-27, 2000).

15. Sheriff Stewart testified that that he never had any trouble with Coleman, notwithstanding the undisputed facts that Stewart himself arrested Coleman and removed him from active duty. See Love Trial Transcript, Vol. 7, at 186 (Jan. 27, 2000).

16. While McEachern stated during Mr. Love's trial that he personally participated in Coleman's background check, he testified inconsistently at his deposition, denying any such participation in his deposition taken in connection with these habeas

proceedings. See Love Trial Transcript, Vol. 8, at 106 (Jan. 28, 2000); Deposition of Terry McEachern at 86-89 (Mar. 3, 2003) (Ex. 2).

17. Mr. Love and Mr. Williamson are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

18. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Love went to trial, but were never disclosed by the State to Mr. Love or his counsel. See Affidavit of L. Van Williamson ("Williamson Affidavit II") (Ex. 46).

19. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

20. Had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants, Mr. Williamson would have utilized this exculpatory evidence and impeachment material regarding Coleman to Mr. Love's benefit at his trial. Neither Mr. Williamson nor Mr. Love had the benefit of the use of this information at the time that Mr. Love went to trial. See Williamson Affidavit II (Ex. 46).

21. No reasonable juror would have found Mr. Love guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Love's trial.

22. A hearing regarding Mr. Love's Motion for a New Trial was held on April 12, 2000. At that hearing, McEachern, invoking his status as "an officer of the court," stated that he did not know about Coleman's arrest until "[a]fter this case. And I had no knowledge of that prior to the trying of Mr. Love. And I would state that as an officer of the Court and offer that in the following – I guess in the form of a stipulation, or an affidavit. If it needs to be reduced to

writing, I will be happy to sign that." Love Motion for a New Trial Transcript, Vol. 10, at 12-13 (Apr. 12, 2000). But that statement is inconsistent with McEachern's own sworn statement in both an affidavit and deposition taken in this proceeding that he knew about Coleman's arrest before the grand jury met in July 1999. See McEachern Affidavit (Dec. 3, 2002) (Ex. 3); Deposition of Terry McEachern at 107-08 (Mar. 3, 2003) (Ex. 2).

23. Sheriff Stewart testified that he mailed the TRN form to Cochran County after Coleman's arrest, when, in fact, he mailed an incomplete TRN form which prevented Coleman's arrest from appearing on TCIC/NCIC. See Love Motion for a New Trial Transcript, Vol. 10, at 48 (Apr. 12, 2000). This testimony is especially misleading in view of the fact that the State relied on Coleman's purportedly "clean" TCIC/NCIC arrest record during Mr. Love's trial. See Love Motion for a New Trial Transcript, Vol. 10, at 50-51 (Apr. 12, 2000).

24. As in most, if not all, other trials, the State also elicited testimony that Coleman had followed police protocol properly, notwithstanding the fact that Coleman purported to make buys while off duty, falsified offense reports, misidentified witnesses and failed to report a criminal charge against himself to his superiors. See Love Motion for a New Trial, Vol. 10, at 32 (Apr. 12, 2000).

XXI. JOSEPH C. MARSHALL

1. On July 23, 1999, Joseph Marshall, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on November 25, 1998.

2. Paul Holloway was appointed to represent Mr. Marshall.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. Between December 1999 and February 2000, Mr. Marshall and Mr. Holloway became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Mr. Marshall learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Mr. Marshall became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Mr. Marshall likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

5. Mr. Marshall entered a plea of guilty to avoid a longer sentence. The only reason that Mr. Marshall considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Mr. Marshall was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against him. Mr. Marshall therefore accepted the State's plea offer.

6. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Marshall.

7. Coleman's credibility was at the heart of the State's case against Mr. Marshall.

8. Mr. Marshall and Mr. Holloway are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

9. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Marshall entered a guilty plea, but were never disclosed by the

State to Mr. Marshall or his counsel. See Affidavit of Joseph C. Marshall ("Marshall Affidavit") (Ex. 47); Affidavit of Paul Holloway ("Holloway Affidavit II") (Ex. 48).

10. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

11. Mr. Marshall would have not have waived his right to trial and entered a plea of guilty if he had known of this impeachment material. See Marshall Affidavit (Ex. 47).

12. Mr. Holloway would not have advised Mr. Marshall to enter a plea of guilty and would have recommended that he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Mr. Holloway nor Mr. Marshall had the benefit of the use of this information at the time that Mr. Marshall entered his plea. See Marshall Affidavit (Ex. 47); Holloway Affidavit II (Ex. 48).

13. Thus, Mr. Marshall's plea of guilty was not knowing, intelligent or voluntary.

14. No reasonable juror would have found Mr. Marshall guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Marshall's plea.

XXII. LAURA A. MATA

1. On July 23, 1999, Laura Ann Mata, a Hispanic female, was arrested and charged with allegedly selling narcotics to Coleman on December 2, 1998.

2. Daniel Garcia was appointed to represent Ms. Mata.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. Despite testifying in the instant proceedings that the proper identification of suspects in police reports includes, among other things, "[h]air color, how long it is, . . . [t]he clothes they're wearing, the shoes they're wearing, if they have any rings, watches, necklaces, anything, earrings, moles, scars, anything . . . [h]eight, weight," March 17-21, 2003 Hearing Transcript, vol. 4 at 181, Coleman's incident report #98-2372 (Ex. 49) described Ms. Mata generically as "HF" ("Hispanic female") without any other descriptors or identifiers. Coleman's police report descriptions of other Applicants were similarly vague and contrary to standard police procedure.

5. Ms. Mata entered a plea of guilty because she lacked an alibi witness, and without one, it would have been her word against Coleman's. At the time Ms. Mata was considering whether to accept the plea offer made by the State, the State did not reveal to her or her defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against her. Ms. Mata therefore accepted the State's plea offer.

6. Without Coleman's testimony, the State would not have been able to secure a conviction against Ms. Mata.

7. Coleman's credibility was at the heart of the State's case against Ms. Mata.

8. Ms. Mata and Mr. Garcia are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

9. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Ms. Mata entered a guilty plea, but were never disclosed by the State to Ms. Mata or her counsel. <u>See</u> Affidavit of Laura Ann Mata ("Mata Affidavit") (Ex. 50).

10. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

11. Ms. Mata would have not have waived her right to trial and entered a plea of guilty if she had known of this impeachment material. See Mata Affidavit (Ex. 50).

12. Based on the entire record in this matter, the Court finds that counsel would not have advised Ms. Mata to enter a plea of guilty and would have recommended that she not waive her right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Mr. Garcia nor Ms. Mata had the benefit of the use of this information at the time that Ms. Mata entered her plea. See Mata Affidavit (Ex. 50).

13. Thus, Ms. Mata's plea of guilty was not knowing, intelligent or voluntary.

14. No reasonable juror would have found Ms. Mata guilty had she been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Ms. Mata's plea.

XXIII. VINCENT MCCRAY

1. On July 23, 1999, Vincent McCray, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on April 19 and June 4, 1999.

2. Ray Sanderson was appointed to represent Mr. McCray.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. Between December 1999 and February 2000, Mr. McCray and Mr. Sanderson became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Mr. McCray learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Mr. McCray became aware that these

defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Mr. McCray likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

5. Mr. McCray entered a plea of guilty to avoid a longer sentence. The only reason that Mr. McCray considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Mr. McCray was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against him. Mr. McCray therefore accepted the State's plea offer.

6. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. McCray.

7. Coleman's credibility was at the heart of the State's case against Mr. McCray.

8. Mr. McCray and Mr. Sanderson are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

9. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. McCray entered a guilty plea, but were never disclosed by the State to Mr. McCray or his counsel. See Affidavit of Vincent McCray ("McCray Affidavit") (Ex. 51); Affidavit of Ray Sanderson ("Sanderson Affidavit II") (Ex. 52).

10. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

11. Mr. McCray would have not have waived his right to trial and entered a plea of guilty if he had known of this impeachment material. See McCray Affidavit (Ex. 51).

12. Mr. Sanderson would not have advised Mr. McCray to enter a plea of guilty and would have recommended that he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Mr. Sanderson nor Mr. McCray had the benefit of the use of this information at the time that Mr. McCray entered his plea. See McCray Affidavit (Ex. 51); Sanderson Affidavit II (Ex. 52).

13. Thus, Mr. McCray's plea of guilty was not knowing, intelligent or voluntary.

14. No reasonable juror would have found Mr. McCray guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. McCray's plea.

XXIV. JOE WELTON MOORE

1. On July 23, 1999, Joe Welton Moore, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on August 24 and October 9, 1998.

2. Kregg Hukill was appointed to represent Mr. Moore.

3. Among the many pre-trial motions he filed, Mr. Hukill filed two motions which requested material required to be produced under Brady v. Maryland (the "Brady Motions") The first was a "Motion for Production of Evidence Favorable to the Accused," which requested generally all materials that would be discoverable under Brady. This motion was submitted to the court on October 28, 1999. Exhibit 2 of Deposition of Kregg Hukill ("Hukill Deposition"), dated Mar. 5, 2003 (Ex. 53). The second was a "Motion for Discovery"

which included a specific request for "The name, address and criminal arrest and/or conviction records, if any, of any witness who will testify for the State of Texas in this case" (emphasis added). The "Motion for Discovery" was filed on October 28, 1999. Exhibit 3 to Hukill Deposition (Ex. 53). Both of these motions were granted at the pre-trial conference which took place on December 13, 1999.

4. Yet no Brady material, including no material about Coleman's arrest, was provided in response to the Brady Motions.

5. During Mr. Moore's December 13, 1999 pre-trial hearing, in response to the Brady Motions – and on another occasion during the pre-trial hearing – McEachern insisted that he knew of no favorable evidence, notwithstanding the existence of the facts set forth in the Global Findings of Fact Applicable to All Applicants set forth above. See Moore Pre-Trial Transcript at 12, 14 (Dec. 13, 1999).

6. Further, McEachern asserted "I have provided him with all the discovery I have, Your Honor. I have provided him with a copy of my entire file." However, the State did not disclose the significant exculpatory and impeachment evidence set forth in the Global Findings of Fact Applicable to All Applicants. See Moore Pre-Trial Transcript at 5 (Dec. 13, 1999).

7. Moreover, McEachern stated that the witnesses against Mr. Moore were "going to be police officers, so they are not going to have a criminal history" and added "I'll provide criminal records if so ordered by the court on all witnesses except police officers." See Moore Pre-Trial Transcript at 5-6, 11-12 (Dec. 13, 1999). In fact, McEachern had known for almost six months that Coleman was arrested for crimes of dishonesty allegedly committed while he worked as a law enforcement officer in Cochran County. See McEachern Affidavit (Dec. 3,

2002) (Ex. 3); Deposition of Terry McEachern at 107-08 (Mar. 3, 2003) (Ex. 2). Had the Swisher County Sheriff's Office provided Cochran County with the documentation required to report Coleman's arrest to DPS for placement in TCIC, that arrest would have shown up on Coleman's record.

8. Further, Coleman testified falsely during Moore's pre-trial hearing when he misrepresented his arrest in Cochran County as merely a five-day, unfounded internal investigation, notwithstanding the fact that he had been arrested for and charged with theft and abuse of official capacity and paid full restitution in exchange for the dismissal of the criminal charges that had been brought against him in May 1998. See Moore Pre-Trial Hearing Transcript at 33-34 (Dec. 13, 1999).

9. Mr. Moore went to trial on December 15, 1999.

10. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Moore.

11. Coleman's credibility was at the heart of the State's case against Mr. Moore.

12. Coleman provided perjured and misleading testimony at the trial of Mr. Moore. Coleman admitted during Mr. Moore's trial that he had previously testified in a manner inconsistent with his testimony at Mr. Moore's trial. See Moore Trial Transcript at 168 (Dec. 15, 1999).

13. Mr. Moore and Mr. Hukill are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

14. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Moore went to trial, but were never disclosed by the State to Mr. Moore or his counsel.

15. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

16. Had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants, Mr. Hukill would have utilized this exculpatory evidence and impeachment material regarding Coleman to Mr. Moore's benefit at his trial. Neither Mr. Hukill nor Mr. Moore had the benefit of the use of this information at the time that Mr. Moore went to trial.

17. No reasonable juror would have found Mr. Moore guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Moore's trial.

XXV. DANIEL OLIVAREZ

1. On July 23, 1999, Daniel Guadalupe Olivarez, a Hispanic male, was arrested and charged with allegedly selling narcotics to Coleman on April 27, May 21 and July 15, 1998.

2. Paul Holloway was appointed to represent Mr. Olivarez.

3. Between December 1999 and February 2000, Mr. Olivarez and Mr. Holloway became aware that other individuals charged with selling narcotics to Coleman in Swisher County had gone to trial and were convicted solely on Coleman's word that he had sold them drugs. Mr. Olivarez became aware that while these defendants claimed that they were innocent, they were convicted and sentenced to decades in prison based on nothing more than the

testimony of Coleman. Mr. Olivarez likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

4. Mr. Olivarez entered a plea of no contest solely to avoid the type of lengthy sentence imposed in the other cases purportedly investigated by Coleman. The only reason that Mr. Olivarez considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the sole basis of Coleman's allegations. At the time Mr. Olivarez was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against him. Mr. Olivarez therefore accepted the State's plea offer without knowledge of this important information about Coleman.

5. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Olivarez.

6. Coleman's credibility was the heart of the State's case against Mr. Olivarez.

7. Mr. Olivarez and Mr. Holloway are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

8. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Olivarez entered a plea, but were never disclosed by the State to Mr. Olivarez or his counsel. See Affidavit of Daniel Olivarez ("Olivarez Affidavit") (Ex. 55); Affidavit of Paul Holloway ("Holloway Affidavit III") (Ex. 56).

9. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

10. Mr. Olivarez would have not have waived his right to trial and entered a plea of no contest if he had known of this impeachment material. See Olivarez Affidavit (Ex. 55).

11. Mr. Holloway would not have advised Mr. Olivarez to enter a plea of no contest and would have recommended that he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Mr. Holloway only advised Mr. Olivarez to enter a plea because of the extraordinarily high sentences that individuals were receiving based on nothing more than Coleman's word. Neither Mr. Holloway nor Mr. Olivarez had the benefit of the use of this information at the time that Mr. Olivarez entered his plea. See Olivarez Affidavit (Ex. 55); Holloway Affidavit III (Ex. 56).

12. Thus, Mr. Olivarez's plea of no contest was not knowing, intelligent or voluntary.

13. No reasonable juror would have found Mr. Olivarez guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Olivarez's plea.

XXVI. KENNETH R. POWELL

1. On July 23, 1999, Kenneth R. Powell, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on December 21, 1998 and January 4, 1999.

2. Brian Johnston was appointed to represent Mr. Powell.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. Despite testifying in the instant proceedings that the proper identification of suspects in police reports includes, among other things, "[h]air color, how long it is, . . . [t]he clothes they're wearing, the shoes they're wearing, if they have any rings, watches, necklaces, anything, earrings, moles, scars, anything . . . [h]eight, weight," March 17-21, 2003 Hearing Transcript, vol. 4 at 181, Coleman's incident report #98-2484 (Ex. 57) described Mr. Powell generically as "BM" ("black male") without any other descriptors or identifiers. Coleman's police report descriptions of other Applicants were similarly vague and contrary to standard police procedure.

5. Between December 1999 and February 2000, Mr. Powell and Mr. Johnston became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Mr. Powell learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Mr. Powell became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Mr. Powell likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

6. Mr. Powell entered a plea of guilty to avoid a longer sentence. The only reason that Mr. Powell considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Mr. Powell was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel significant information

about the credibility, bias, and motive to lie of Coleman, the only witness against him. Mr. Powell therefore accepted the State's plea offer.

7. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Powell.

8. Coleman's credibility was at the heart of the State's case against Mr. Powell.

9. Mr. Powell and Mr. Johnston are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

10. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Powell entered a guilty plea, but were never disclosed by the State to Mr. Powell or his counsel. See Affidavit of Kenneth R. Powell ("Powell Affidavit") (Ex. 58); Affidavit of Brian Johnston ("Johnston Affidavit") (Ex. 59).

11. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

12. Mr. Powell would have not have waived his right to trial and entered a plea of guilty if he had known of this impeachment material. See Powell Affidavit (Ex. 58).

13. Mr. Johnston would not have advised Mr. Powell to enter a plea of guilty and would have recommended that he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Mr. Johnston nor Mr. Powell had the benefit of the use of this information at the time that Mr. Powell entered his plea. See Powell Affidavit (Ex. 58); Johnston Affidavit (Ex. 59).

14. Thus, Mr. Powell's plea of guilty was not knowing, intelligent or voluntary.

15. No reasonable juror would have found Mr. Powell guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Powell's plea.

XXVII. BENNY L. ROBINSON

1. In July 1999, Benny Lee Robinson, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on March 7, 1999.

2. Michael Hrin was appointed to represent Mr. Robinson.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. Between December 1999 and February 2000, Mr. Robinson and Mr. Hrin became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Mr. Robinson learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Mr. Robinson became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Mr. Robinson likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

5. Mr. Robinson entered a plea of guilty to avoid a longer sentence. The only reason that Mr. Robinson even considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like other similarly situated defendants – based on nothing more than Coleman's allegations. At the time Mr. Robinson was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel

significant information about the credibility, bias, and motive to lie of Coleman, the only witness against him. Mr. Robinson therefore accepted the State's plea offer.

6. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Robinson.

7. Coleman's credibility was at the heart of the State's case against Mr. Robinson.

8. The State knew and/or reasonably should have known that Coleman's allegation that he purchased drugs from Mr. Robinson on March 7, 1999 was untrue, as Coleman was off duty on that date according to the daily time records maintained by the Swisher County Sheriff's Department. See March 17-21, 2003 Hearing, Exhibit 89.

9. Mr. Robinson and Mr. Hrin are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants, as well as the time sheet discrepancy described above.

10. The facts set forth in the Global Findings of Fact Applicable to All Applicants, as well as the time sheet discrepancy, existed at the time Mr. Robinson entered a guilty plea, but were never disclosed by the State to Mr. Robinson or his counsel. See Affidavit of Benny Lee Robinson ("Robinson Affidavit") (Ex. 60); Affidavit of Michael Hrin ("Hrin Affidavit") (Ex. 61).

11. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

12. Mr. Robinson would have not have waived his right to trial and entered a plea of guilty if he had known of this impeachment material and/or the time sheet discrepancy. See Robinson Affidavit (Ex. 60).

13. Mr. Hrin would not have advised Mr. Robinson to enter a plea of guilty and would have recommended that he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants or the time sheet discrepancy. Neither Mr. Hrin nor Mr. Robinson had the benefit of the use of this information at the time that Mr. Robinson entered his plea. See Robinson Affidavit (Ex. 60); Hrin Affidavit (Ex. 61).

14. Thus, Mr. Robinson's plea of guilty was not knowing, intelligent or voluntary.

15. No reasonable juror would have found Mr. Robinson guilty had he been able to present the significant impeachment evidence concerning Coleman or the time sheet discrepancy which were actually or constructively known to, but not disclosed by, the State prior to Mr. Robinson's plea.

XVIII. FINAYE SHELTON

1. On July 23, 1999, Finaye Shelton, an African American female, was arrested and charged with allegedly selling narcotics to Coleman on December 29, 1998.

2. Thomas Hamilton was appointed to represent Ms. Shelton.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. Despite testifying in the instant proceedings that the proper identification of suspects in police reports includes, among other things, "[h]air color, how long it is, . . . [t]he clothes they're wearing, the shoes they're wearing, if they have any rings, watches, necklaces, anything, earrings, moles, scars, anything . . . [h]eight, weight," March 17-21, 2003 Hearing Transcript, vol. 4 at 181, Coleman's incident report #98-2513 (Ex. 62) described Ms. Shelton

generically as “BF” (“black female”) without any other descriptors or identifiers. Coleman’s police report descriptions of other Applicants were similarly vague and contrary to standard police procedure.

5. Between December 1999 and February 2000, Ms. Shelton and Mr. Hamilton became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Ms. Shelton learned that these individuals were convicted solely on Coleman’s word that he had sold them drugs. Ms. Shelton became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Ms. Shelton likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

6. Ms. Shelton entered a plea of guilty to avoid a longer sentence. The only reason that Ms. Shelton considered the State’s plea offer was that she was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman’s allegations. At the time Ms. Shelton was considering whether to accept the plea offer made by the State, the State did not reveal to her or her defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against her. Ms. Shelton therefore accepted the State’s plea offer.

7. Without Coleman’s testimony, the State would not have been able to secure a conviction against Ms. Shelton.

8. Coleman’s credibility was at the heart of the State’s case against Ms. Shelton.

9. Ms. Shelton and Mr. Hamilton are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

10. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Ms. Shelton entered a guilty plea, but were never disclosed by the State to Ms. Shelton or her counsel. See Affidavit of Finaye Shelton ("Shelton Affidavit") (Ex. 63); Affidavit of Thomas Hamilton ("Thomas Hamilton Affidavit II") (Ex. 64).

11. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

12. Ms. Shelton would have not have waived her right to trial and entered a plea of guilty if she had known of this impeachment material. See Shelton Affidavit (Ex. 63).

13. Based on the entire record in this matter, the Court finds that counsel would not have advised Ms. Shelton to enter a plea of guilty and would have recommended that she not waive her right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Mr. Hamilton nor Ms. Shelton had the benefit of the use of this information at the time that Ms. Shelton entered her plea. See Shelton Affidavit (Ex. 63); Thomas Hamilton Affidavit II (Ex. 64).

14. Thus, Ms. Shelton's plea of guilty was not knowing, intelligent or voluntary.

15. No reasonable juror would have found Ms. Shelton guilty had she been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Ms. Shelton's plea.

XXIX. DONALD SMITH

A. Trial

1. On July 23, 1999, Donald Smith, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on June 29, July 7, September 21, November 3, November 11, November 23, and December 21, 1998.

2. Thomas Hamilton was appointed to represent Mr. Smith.

3. On February 2, 2000, Mr. Hamilton filed several pre-trial motions of Mr. Smith's behalf, including a Motion for Disclosure of all Evidence Favorable to the Defendant under Kyles v. Whitley (the "Brady Motion").

4. The court ordered McEachern to file, under seal, certain information that Mr. Hamilton sought on behalf of Mr. Smith. The only information that was disclosed to Mr. Smith and his counsel was limited information regarding the Task Force's background investigation on Coleman (but not including the negative comments elicited during the putative investigation) and the results of a limited random drug test performed by the Task Force.

5. Mr. Smith went to trial on one of his indictments on February 15, 2000.

6. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Smith.

7. Coleman's credibility was at the heart of the State's case against Mr. Smith.

8. Mr. Smith and Mr. Hamilton are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

9. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Smith went to trial, but were never disclosed by the State to

Mr. Smith or his counsel. See Affidavit of Donald W. Smith ("Donald Smith Affidavit") (Ex. 65); Affidavit of Thomas Hamilton ("Hamilton Affidavit III") (Ex. 66).

10. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

11. Had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants, Mr. Hamilton would have utilized this exculpatory evidence and impeachment material regarding Coleman to Mr. Smith's benefit at his trial. Neither Mr. Hamilton nor Mr. Smith had the benefit of the use of this information at the time that Mr. Smith went to trial. See Donald Smith Affidavit (Ex. 65); Thomas Hamilton Affidavit III (Ex. 66).

12. No reasonable juror would have found Mr. Smith guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Smith's trial.

B. Pleas

1. On February 16, 2000, as a result of the jury trial at which Coleman testified against Mr. Smith, Mr. Smith was convicted in Cause No. 3225 and received a two-year sentence.

2. On March 8, 2000, the State filed a Motion to Consolidate all of the remaining cases. The court granted that motion and consolidated Cause Nos. 3226, 3227, 3228, 3229, 3230, and 3231 into Cause No. B-3230-99-07-CR.

3. Between December 1999 and February 2000, Mr. Smith and Mr. Hamilton became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Mr. Smith learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Mr. Smith became aware that these defendants

claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Mr. Smith likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

4. Mr. Smith entered a plea of guilty to avoid a longer sentence. The only reason that Mr. Smith considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Mr. Smith was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against him. Mr. Smith therefore accepted the State's plea offer.

5. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Smith.

6. Coleman's credibility was at the heart of the State's case against Mr. Smith.

7. Mr. Smith and Mr. Hamilton are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

8. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Smith entered a guilty plea, but were never disclosed by the State to Mr. Smith or his counsel. See Donald Smith Affidavit (Ex. 65); Tom Thomas Hamilton Affidavit III (Ex. 66).

9. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

10. Mr. Smith would have not have waived his right to trial and entered a plea of guilty if he had known of this impeachment material. See Donald Smith Affidavit (Ex. 65).

11. Based on the entire record in this matter, the Court finds that counsel would not have advised Mr. Smith to enter a plea of guilty and would have recommended that he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. In fact, Mr. Hamilton advised Mr. Smith to enter a plea of guilty only because of the extraordinarily high sentences that individuals – including Mr. Smith himself – were receiving based on nothing more than Coleman's word. Neither Mr. Hamilton nor Mr. Smith had the benefit of the use of the information set forth above at the time that Mr. Smith entered his plea. See Donald Smith Affidavit (Ex. 65); Thomas Hamilton Affidavit III (Ex. 66).

12. Thus, Mr. Smith's plea of guilty was not knowing, intelligent or voluntary.

13. No reasonable juror would have found Mr. Smith guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Smith's plea.

XXX. LAWANDA SMITH

1. On July 23, 1999, Lawanda Smith, an African American female, was arrested and charged with allegedly selling narcotics to Coleman on November 3, 1998.

2. Peter Clarke was appointed to represent Ms. Smith.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. Despite testifying in the instant proceedings that the proper identification of suspects in police reports includes, among other things, "[h]air color, how long it is, . . . [t]he

clothes they're wearing, the shoes they're wearing, if they have any rings, watches, necklaces, anything, earrings, moles, scars, anything . . . [h]eight, weight," March 17-21, 2003 Hearing Transcript, vol. 4 at 181, Coleman's incident report #98-2057 (Ex. 67) described Ms. Smith generically as "BF" ("black female") without any other descriptors or identifiers. Coleman's police report descriptions of other Applicants were similarly vague and contrary to standard police procedure.

5. Between December 1999 and February 2000, Ms. Smith and Mr. Clarke became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Ms. Smith learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Ms. Smith became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Ms. Smith likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

6. Ms. Smith entered a plea of guilty to avoid a longer sentence. The only reason that Ms. Smith considered the State's plea offer was that she was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Ms. Smith was considering whether to accept the plea offer made by the State, the State did not reveal to her or her defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against her. Ms. Smith therefore accepted the State's plea offer.

7. Without Coleman's testimony, the State would not have been able to secure a conviction against Ms. Smith.

8. Coleman's credibility was at the heart of the State's case against Ms. Smith.

9. Ms. Smith and Mr. Clarke are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

10. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Ms. Smith entered a guilty plea, but were never disclosed by the State to Ms. Smith or her counsel. See Affidavit of Lawanda Smith ("Lawanda Smith Affidavit") (Ex. 68); Affidavit of Peter Clarke ("Clarke Affidavit III") (Ex. 69).

11. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

12. Ms. Smith would not have waived her right to trial and entered a plea of guilty if she had known of this impeachment material. See Lawanda Smith Affidavit (Ex. 68).

13. Based on the entire record in this matter, the Court finds that counsel would not have advised Ms. Smith to enter a plea of guilty and would have recommended that she not waive her right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Mr. Clarke nor Ms. Smith had the benefit of the use of this information at the time that Ms. Smith entered her plea. See Lawanda Smith Affidavit (Ex. 68); Clarke Affidavit III (Ex. 69).

14. Thus, Ms. Smith's plea of guilty was not knowing, intelligent or voluntary.

15. No reasonable juror would have found Ms. Smith guilty had she been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Ms. Smith's plea.

XXXI. YOLANDA SMITH

1. On July 23, 1999, Yolanda Smith, an African American female, was arrested and charged with allegedly selling narcotics to Coleman on February 14, 1998.

2. Paul Holloway was appointed to represent Ms. Smith.

3. Discovery was sought. On September 28, 1999, Mr. Holloway filed, among other motions, a Motion for Discovery and Inspection (the "Brady Motion").

4. The trial judge granted the Brady Motion. Yet minimal discovery was provided, and no Brady material was disclosed.

5. Between December 1999 and February 2000, Ms. Smith and Mr. Holloway became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Ms. Smith learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Ms. Smith became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Ms. Smith likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

6. Ms. Smith entered a plea of guilty to avoid a longer sentence. The only reason that Ms. Smith considered the State's plea offer was that she was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Ms. Smith was considering whether to accept the plea offer made by the State, the State did not reveal to her or her defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against her. Ms. Smith therefore accepted the State's plea offer.

7. Without Coleman's testimony, the State would not have been able to secure a conviction against Ms. Smith.

8. Coleman's credibility was at the heart of the State's case against Ms. Smith.

9. The State withheld evidence concerning Ms. Smith's actual innocence of the crime to which she pleaded guilty. In connection with discovery in the instant habeas proceedings, habeas counsel obtained copies of Coleman's official time sheets for the period relating to Ms. Smith's alleged offense. Those time sheets, verified by Sheriff Stewart and Coleman himself, establish that Coleman was off-duty on February 14, 1998, the date that Ms. Smith allegedly sold Coleman narcotics. See March 17-21, 2003 Hearing, Exhibit 88. The time sheets were not disclosed to Ms. Smith or her counsel prior to Ms. Smith's plea.

10. Ms. Smith and Mr. Holloway are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants, as well as the time sheet discrepancy discussed above.

11. The facts set forth in the Global Findings of Fact Applicable to All Applicants, as well as the time sheet discrepancy, existed at the time Ms. Smith entered a guilty plea, but were never disclosed by the State to Ms. Smith or her counsel. See Affidavit of Yolanda Smith ("Yolanda Smith Affidavit") (Ex. 70); Affidavit of Paul Holloway ("Holloway Affidavit IV") (Ex. 71).

12. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

13. Had Ms. Smith known that the State possessed time sheets probative of Ms. Smith's actual innocence, she would have not have waived her right to trial and entered a

plea of guilty. See Yolanda Smith Affidavit (Ex. 70). Had Ms. Smith known the facts set forth in the Global Findings of Fact Applicable to All Applicants, she would not have waived her right to trial and entered a plea of guilty. Id.

14. Mr. Holloway would not have advised Ms. Smith to enter a plea of guilty and would have recommended that she not waive her right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants and/or the time sheet discrepancy. Neither Mr. Holloway nor Ms. Smith had the benefit of the use of this information at the time that Ms. Smith entered her plea. See Yolanda Smith Affidavit (Ex. 70); Holloway Affidavit IV (Ex. 71).

16. Thus, Ms. Smith's plea of guilty was not knowing, intelligent or voluntary.

17. No reasonable juror would have found Ms. Smith guilty had she been able to present the significant impeachment evidence concerning Coleman or the time sheet discrepancy which were actually or constructively known to, but not disclosed by, the State prior to Ms. Smith's plea.

XXXII. ROMONA L. STRICKLAND

1. On July 23, 1999, Romona Strickland, an African-American female, was arrested and charged with allegedly selling narcotics to Coleman on February 12, 1999.

2. Eric Willard was appointed to represent Ms. Strickland.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. Between December 1999 and February 2000, Ms. Strickland and Mr. Willard became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Ms. Strickland learned that these individuals were convicted

solely on Coleman's word that he had sold them drugs. Ms. Strickland became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Ms. Strickland likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

5. Ms. Strickland entered a plea of guilty to avoid a longer sentence. The only reason that Ms. Strickland considered the State's plea offer was that she was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Ms. Strickland was considering whether to accept the plea offer made by the State, the State did not reveal to her or her defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against her. Ms. Strickland therefore accepted the State's plea offer.

6. Without Coleman's testimony, the State would not have been able to secure a conviction against Ms. Strickland.

7. Coleman's credibility was at the heart of the State's case against Ms. Strickland.

8. At the time that Ms. Strickland pled guilty, neither she nor her counsel received the original copy of her incident report, which incorrectly described her as "six months pregnant." Rather than file a supplemental report in accordance with proper police procedure, Coleman "scratched out" the incorrect description of Ms. Strickland to create the false and misleading impression that he had properly described and identified her as the individual that allegedly sold him drugs. A supplemental report would have alerted both Ms. Strickland and her counsel to the fact that the incident report had been altered. At the time of the alleged incident, Ms. Strickland was not pregnant. Coleman admitted in testimony given on March 20, 2003 that

his description of Ms. Strickland in the incident report was wrong. See March 17-21, 2003 Hearing, Exhibit 95.

9. Ms. Strickland and Mr. Willard are now aware of the facts, including the substantial impeachment material on Coleman set forth in the Global Findings of Fact Applicable to All Applicants, as well as Coleman's surreptitious alteration of her incident report.

10. The facts set forth in the Global Findings of Fact Applicable to All Applicants, as well as the alteration of the incident report, existed at the time Ms. Strickland entered a guilty plea, but were never disclosed by the State to Ms. Strickland or her counsel. See Affidavit of Romona Strickland ("Strickland Affidavit") (Ex. 72); Affidavit of Eric Willard ("Willard Affidavit") (Ex. 73).

11. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

12. Ms. Strickland would have not have waived her right to trial and entered a plea of guilty if she had known of this impeachment material and/or the alteration of her offense report. See Strickland Affidavit (Ex. 72)

13. Based on the entire record in this matter, the Court finds that counsel would not have advised Ms. Strickland to enter a plea of guilty and would have recommended that she not waive her right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants or the alteration of the incident report. Neither Mr. Willard nor Ms. Strickland had the benefit of the use of this information at the time that Ms. Strickland entered her plea. See Strickland Affidavit (Ex. 72); Willard Affidavit (Ex. 73).

14. Thus, Ms. Strickland's plea of guilty was not knowing, intelligent or voluntary.

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15. No reasonable juror would have found Ms. Strickland guilty had she been able to present the significant impeachment evidence concerning Coleman or the alteration of the incident report which were actually or constructively known to, but not disclosed by, the State prior to Ms. Strickland's plea.

XXXIII. TIMOTHY TOWERY

1. On July 23, 1999, Timothy Towery, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on October 14, October 24, November 9, November 23, November 30 and December 7, 1998.

2. Peter I. Clarke was appointed to represent Mr. Towery.

3. Discovery was sought. On January 6, 2000, Mr. Clarke sent a memorandum to McEachern, asking him to "furnish me with discovery **as soon as possible**" (emphasis in original).

4. Little if any discovery was provided; no Brady material was disclosed.

5. Despite testifying in the instant proceedings that the proper identification of suspects in police reports includes, among other things, "[h]air color, how long it is, . . . [t]he clothes they're wearing, the shoes they're wearing, if they have any rings, watches, necklaces, anything, earrings, moles, scars, anything . . . [h]eight, weight," March 17-21, 2003 Hearing Transcript, vol. 4 at 181, Coleman's incident report #98-2056 (Ex. 74) described Mr. Towery generically as "BM" ("black male") without any other descriptors or identifiers. Coleman's police report descriptions of other Applicants were similarly vague and contrary to standard police procedure.

6. Between December 1999 and January 2000, Mr. Towery and Mr. Clarke became aware that other individuals charged with selling narcotics to Coleman in Swisher

County went to trial. Mr. Towery learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Mr. Towery became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Mr. Towery likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

7. Mr. Towery entered a plea of guilty to avoid a longer sentence. The only reason that Mr. Towery even considered the State's plea offer was that he was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Mr. Towery was considering whether to accept the plea offer made by the State, the State did not reveal to him or his defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against him. Mr. Towery therefore accepted the State's plea offer.

8. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Towery.

9. Coleman's credibility was at the heart of the State's case against Mr. Towery.

10. Mr. Towery and Mr. Clarke are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

11. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. Towery entered a guilty plea, but were never disclosed by the State to Mr. Towery or his counsel. See Affidavit of Timothy Towery ("Towery Affidavit") (Ex. 75); Affidavit of Peter Clarke ("Clarke Affidavit IV") (Ex. 76).

12. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

13. Mr. Towery would have not have waived his right to trial and entered a plea of guilty if he had known of this impeachment material. See Towery Affidavit (Ex. 75).

14. Based on the entire record in this matter, the Court finds that counsel would not have advised Mr. Towery to enter a plea of guilty and would have recommended that he not waive his right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Mr. Clarke nor Mr. Towery had the benefit of the use of this information at the time that Mr. Towery entered his plea. See Towery Affidavit (Ex. 75); Clarke Affidavit IV (Ex. 76).

15. Thus, Mr. Towery's plea of guilty was not knowing, intelligent or voluntary.

16. No reasonable juror would have found Mr. Towery guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. Towery's plea.

XXXIV. KAREEM WHITE

1. On July 23, 1999, Kareem Abdul Jabbar White, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on July 15, September 28, November 23, and December 14, 1998.

2. Dwight McDonald was appointed to represent Mr. White.

3. Mr. McDonald filed many pre-trial motions on Mr. White's behalf, including a Motion for Disclosure of Impeaching Information Under Kyles vs. Whitley, Defendant's First Motion for Discovery and Inspection, Rule 404(b) Motion: Character

Evidence, and Motion to Discover Criminal Records of Witnesses. See Kareem White, Clerk's Record at 9-30.

4. No Brady material was provided in response to these motions.

5. Mr. White went to trial on September 6, 2000.

6. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. White.

7. Coleman's credibility was at the heart of the State's case against Mr. White.

8. Coleman provided perjured and misleading testimony at the trial of Mr. White. For example, Coleman provided false testimony that he did not know of the charges against him arising out of Cochran County until August 1998, notwithstanding the facts that he contacted various officials in Cochran County with reference to the same accusations as early as November 1997, retained an attorney in May 1998 – the same month that the charges against him were officially filed – and executed a Waiver of Arraignment on May 30, 1998 with respect to the same criminal charges. See Kareem White Trial Transcript, Vol. 7, at 150-151 (Sept. 6, 2000).

9. The prosecution team gave misleading testimony at Mr. White's trial. For example, Lieutenant Amos testified that Coleman followed the Task Force's procedures, notwithstanding the fact that Coleman claimed to make buys when not on duty, falsified offense reports, misidentified defendants, and failed to report a criminal charge against him to his supervisors. See Kareem White Trial Transcript, Vol. 8, at 30, 48 (Sept. 7, 2000).

10. Mr. White and Mr. McDonald are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

11. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. White went to trial, but were never disclosed by the State to Mr. White or his counsel. See Affidavit of Dwight McDonald ("McDonald Affidavit") (Ex. 77).

12. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

13. Had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants, Mr. McDonald would have utilized this exculpatory evidence and impeachment material regarding Coleman to Mr. White's benefit at his trial. Neither Mr. McDonald nor Mr. White had the benefit of the use of this information at the time that Mr. White went to trial. See McDonald Affidavit (Ex. 77).

14. No reasonable juror would have found Mr. White guilty had he been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Mr. White's trial.

XXXV. KIZZIE R. WHITE

1. On July 23, 1999, Kizzie R. White, an African American female, was arrested and charged with allegedly selling narcotics to Coleman on July 9, July 21, July 30, August 5, August 25, September 16, and September 24, 1998.

2. Ronald Spriggs was appointed to represent Ms. White.

3. Mr. Spriggs filed many pre-trial motions on Ms. White's behalf, including a Motion for Discovery of Exculpatory and Mitigating Evidence, and a Motion for Discovery.

4. No Brady material was provided in response to these motions.

5. Ms. White went to trial on April 6, 2000.

6. Without Coleman's testimony, the State would not have been able to secure a conviction against Ms. White.

7. Coleman's credibility was at the heart of the State's case against Ms. White.

8. Coleman provided perjured and misleading testimony at the trial of Ms. White. For example, Coleman testified that he had not been "physically" arrested on the theft and abuse of official capacity charges out of Cochran County, notwithstanding the fact that Coleman admitted in these proceedings that he was arrested on those charges on August 7, 1998. See Kizzie White Trial Transcript, Vol. 2, at 105 (Apr. 7, 2000).

9. Additionally, Coleman falsely testified that he paid his debts in Cochran County within one year, when, in fact, he paid the debts more than two years after he left Cochran County and only after he had been charged with crimes of dishonesty and as part of a formal agreement with the State to resolve those criminal charges. See Kizzie White Trial Transcript, Vol. 2, at 40 (Apr. 7, 2000).

10. The prosecution team gave misleading testimony at Ms. White's trial. For example, Sergeant Massengill testified that the Task Force does not allow its officers to violate laws. See Kizzie White Transcript, Vol. 1, at 150-151 (Apr. 6, 2000). In fact, Coleman had a reputation among law enforcement officers with whom he had worked for not being law abiding. He also was arrested for theft and abuse of official capacity and made full restitution with respect to the theft. In addition, the prosecution team knew or reasonably should have known that Coleman violated laws by, among other things, possessing an illegal fully automatic firearm with

an obliterated serial number, being delinquent in court ordered child support, and failing to report his arrest to TCLEOSE.

11. Lieutenant Amos testified that Coleman followed all guidelines set by the Task Force and that Amos and Masengill worked with Coleman closely to ensure he did not "step over any lines" and that "everything was done above board." Sergeant Massengill testified that Coleman followed all the ground rules of the Task Force. Neither Amos nor Massengill disclosed that Coleman claimed to make buys when he was off duty, falsified offense reports, misidentified defendants, and failed to report a criminal charge against him to his supervisors. See Kizzie White Trial Transcript, Vol. 1, at 151, 173-174, 199 (Apr. 6, 2000).

12. Stewart testified that that the Task Force checked Coleman's background and provided him with that information, but Stewart failed to disclose that Coleman's former supervisors had commented in his background check that Coleman had possible mental problems, was a discipline problem, needed constant supervision, was not eligible for rehire, and had been accused of kidnapping his child. See Kizzie White Trial Transcript, Vol. 1, at 189 (Apr. 6, 2000). Sheriff Stewart's testimony that a background check had been run on Coleman left the jury with the false impression that Coleman's background was clean despite the fact that the background check yielded substantial negative information that was not disclosed to Mr. Spriggs or Ms. White.

13. McEachern asked Lieutenant Amos whether one can be a Certified Peace Officer if one has been convicted of a felony or crime of moral turpitude without revealing that Coleman had, in fact, been arrested for such a crime during his investigation and that the dismissal of the charges was only a result of Coleman's payment of full restitution. See Kizzie White Trial Transcript, Vol. 1, at 150 (Apr. 6, 2000). In fact, had Stewart or other members of

the Swisher County Sheriff's Office provided Cochran County with the documentation required to report Coleman's arrest to DPS for placement in TCIC, an arrest for a crime of moral turpitude would have shown up on Coleman's record.

14. With respect to Coleman's credibility, McEachern stated: "We brought forth the outstanding – in their – from their own testimony on cross-examination, the outstanding law enforcement officer of the year. Now, now if you cannot believe that to me goes to the direct credibility. And that was brought by the defense. I found it amazingly. The most outstanding law enforcement officer of the year. If you can't believe him, well, then, who can you believe?" Kizzie White Transcript, Vol. 2, at 100 (Apr. 7, 2000).

15. Further, Sergeant Massengill provided testimony inconsistent with his testimony at the trial of Applicant Jason Williams about whether or not he surveilled Coleman during Coleman's investigation. See Kizzie White Trial Transcript, Vol. 1, at 208 (Apr. 6, 2000); Williams Trial Transcript at 177 (Jan. 13, 2000).

16. Ms. White and Mr. Spriggs are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

17. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Ms. White went to trial, but were never disclosed by the State to Ms. White or her counsel. See Affidavit of Ronald Spriggs ("Spriggs Affidavit") (Ex. 78).

18. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

19. Had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants, Mr. Spriggs would have utilized this exculpatory evidence and

impeachment material regarding Coleman to Ms. White's benefit at her trial. Neither Mr. Spriggs nor Ms. White had the benefit of the use of this information at the time that Ms. White went to trial. See Spriggs Affidavit (Ex. 78).

20. No reasonable juror would have found Ms. White guilty had she been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Ms. White's trial.

21. A hearing regarding Ms. White's Motion for a New Trial was held on June 27, 2000. At that hearing, McEachern stated that he knew Coleman was charged in Cochran County only because he saw documents to that effect in the courtroom – presumably after the trials started – despite the fact that McEachern has twice sworn under oath that he knew about the charges before the grand jury met in July 1999. See Kizzie White Motion for a New Trial Transcript, Vol. 2, at 190 (June 27, 2000); McEachern Affidavit (Dec. 3, 2002) (Ex. 3); McEachern Deposition Transcript at 107-108 (Mar. 3, 2003) (Ex. 2).

23. Further, the prosecution team stated that Coleman was always authorized to act as a deputy for Swisher County and that the Task Force did not have the authority to take Coleman out of an undercover operation, despite the clear record that Stewart, Amos, and Massengill agreed to relieve Coleman from his regular duties in August 1998 while the charges against him remained pending. Compare Kizzie White Motion for a New Trial Transcript, Vol 2. at 191, 192, 194 (June 27, 2000) with Habeas Hearing, Vol. 2, at 69, Vol. 3, at 94, Vol. 4, at 14 (March 17-21, 2003).

24. Coleman provided false testimony that he did not know of the charges against him in Cochran County until August 1998, notwithstanding the facts that he contacted various officials in Cochran County with reference to the same accusations as early as November

1997, retained an attorney in May 1998 – the same month that the charges against him were officially filed – and executed a Waiver of Arraignment on May 30, 1998 with respect to the same criminal charges. See Kizzie Motion for a New Trial Transcript, Vol. 2 at 207 (June 27, 2000).

25. McEachern stated that he provided Mr. Spriggs with a complete copy of his file, despite not revealing any of the substantial exculpatory and impeachment evidence set forth in the Global Findings of Fact Applicable to All Applicants. See Kizzie White Motion for a New Trial Transcript, Vol. 2, at 198 (June 27, 2000).

XXXVI. ALBERTA WILLIAMS

1. On July 23, 1999, Alberta Williams, an African American female, was arrested and charged with allegedly selling narcotics to Coleman on November 3, 1998.

2. Cynthia Barela was appointed to represent Ms. Williams.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. Between December 1999 and February 2000, Ms. Williams and Ms. Barela became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Ms. Williams learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Ms. Williams became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to decades in prison based on nothing more than the testimony of Coleman. Ms. Williams likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

5. Ms. Williams entered a plea of guilty to avoid a longer sentence. The only reason that Ms. Williams considered the State's plea offer was that she was afraid of the prospect

of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Ms. Williams was considering whether to accept the plea offer made by the State, the State did not reveal to her or her defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against her. Ms. Williams therefore accepted the State's plea offer.

6. Without Coleman's testimony, the State would not have been able to secure a conviction against Ms. Williams.

7. Coleman's credibility was at the heart of the State's case against Ms. Williams.

8. Ms. Williams and Ms. Barela are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

9. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Ms. Williams entered a guilty plea, but were never disclosed by the State to Ms. Williams or her counsel. See Affidavit of Alberta Williams ("Alberta Williams Affidavit") (Ex. 79).

10. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

11. Ms. Williams would have not have waived her right to trial and entered a plea of guilty if she had known of this impeachment material. See Alberta Williams Affidavit (Ex. 79).

12. Based on the entire record in this matter, the Court finds that counsel would not have advised Ms. Williams to enter a plea of guilty and would have recommended that

she not waive her right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Ms. Barela nor Ms. Williams had the benefit of the use of this information at the time that Ms. Williams entered her plea. See Alberta Williams Affidavit (Ex. 79).

13. Thus, Ms. Williams's plea of guilty was not knowing, intelligent or voluntary.

14. No reasonable juror would have found Ms. Williams guilty had she been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Ms. Williams's plea.

XXXVII. JASON J. WILLIAMS

1. On July 23, 1999, Jason J. Williams, an African American male, was arrested and charged with allegedly selling narcotics to Coleman on September 3, 1998, and April 19, April 22, and May 5, 1999.

2. Kregg Hukill was appointed to represent Mr. Williams.

3. In each of Mr. Williams' cases, Mr. Hukill filed a Discovery Motion, and a Motion for Production of Evidence Favorable to the Accused (the "Brady Motions"). Specifically, Mr. Hukill requested information favorable to his client, including, "any information which may tend adversely to affect the credibility of any person called as a witness by the State, including the arrest and/or conviction record of each State witness." See Jason Williams, Clerk's Record at 12-13 (emphasis added).

4. No Brady material was provided in response to these motions. See Kregg Hukill Deposition at 45 (Ex. 53).

5. Mr. Williams went to trial on January 13, 2000. Mr. Hukill did not have any independent knowledge of any information regarding Coleman's background when Mr. Williams' case went to trial. Id. at 14.

6. Without Coleman's testimony, the State would not have been able to secure a conviction against Mr. Williams.

7. Coleman's credibility was at the heart of the State's case against Mr. Williams.

8. Coleman provided perjured and misleading testimony at the trial of Mr. Williams. For example, Coleman misrepresented the reasons for abruptly leaving his law enforcement post in Cochran County in the middle of a shift. Coleman failed to disclose in his testimony that he was not eligible for rehire, that he had abused his official position to amass and default on significant debts, and that he was under investigation for theft. Instead, Coleman testified that he resigned solely because the Cochran County Sheriff was a "crook." See Williams Trial Transcript at 145 (Jan. 13, 2000). Additionally, when asked whether he had other sources of income during his tenure in Swisher County, Coleman did not reveal that he was purportedly given $7,000 by or through his mother in August 1998 in order to pay restitution to Cochran County. See Williams Trial Transcript at 144 (Jan. 13, 2000).

9. The prosecution team gave misleading testimony at Mr. Williams' trial. For example, while McEachern stated during Williams' trial that he personally reviewed Coleman's credentials and was informed of the results of his background check, he denied any such participation in his deposition taken in connection with these habeas proceedings. See Williams Trial Transcript at 153, 183, 188 (Jan. 13, 2000); Deposition of Terry McEachern at 86-89 (Mar. 3, 2003) (Ex. 2).

10. Moreover, Sergeant Massengill testified that he had no problems with Coleman, Lieutenant Amos testified that Coleman was "a real exceptional officer," and Sheriff Stewart testified that Coleman followed all required procedures, notwithstanding Coleman's arrest and suspension, targeting of African Americans and use of racial slurs, falsification of reports, and misidentifications. See Williams Trial Transcript at 175-176, 183, 189 (Jan. 13, 2000).

11. Further, Sergeant Massengill gave testimony inconsistent with that in a later trial regarding whether or not he surveilled Coleman during Coleman's investigation. See Williams Trial Transcript at 177 (Jan. 13, 2000); Kizzie White Trial Transcript, Vol. 1, at 208 (Apr. 6, 2000).

12. Mr. Williams and Mr. Hukill are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

13. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Mr. White went to trial, but were never disclosed by the State to Mr. Williams or his counsel. See Affidavit of Kregg Hukill ("Hukill Affidavit II") (Ex. 81).

14. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

15. Had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants, Mr. Hukill would have utilized this exculpatory evidence and impeachment material regarding Coleman to Mr. Williams' benefit at his trial. Neither Mr. Hukill nor Mr. Williams had the benefit of the use of this information at the time that Mr. Williams went to trial. See Hukill Affidavit II (Ex. 81).

16. No reasonable juror would have found Mr. Williams guilty had he been able to present the significant impeachment evidence concerning Coleman that was actually or constructively known to, but not disclosed by, the State prior to Mr. Williams' trial.

XXXVIII. MICHELLE WILLIAMS

1. On July 23, 1999, Michelle Williams, an African American female, was arrested and charged with allegedly selling narcotics to Coleman on November 9, 1998.

2. Christian Pollard was appointed to represent Ms. Williams.

3. Some standard discovery materials were provided, but no Brady material was disclosed.

4. Despite testifying in the instant proceedings that the proper identification of suspects in police reports includes, among other things, "[h]air color, how long it is, . . . [t]he clothes they're wearing, the shoes they're wearing, if they have any rings, watches, necklaces, anything, earrings, moles, scars, anything . . . [h]eight, weight," March 17-21, 2003 Hearing Transcript, vol. 4 at 181, Coleman's incident report #98-2211 (Ex. 82) described Ms. Williams generically as "BF" ("black female") without any other descriptors or identifiers. Coleman's police report descriptions of other Applicants were similarly vague and contrary to standard police procedure.

5. Between December 1999 and February 2000, Ms. Williams and Mr. Pollard became aware that other individuals charged with selling narcotics to Coleman in Swisher County went to trial. Ms. Williams learned that these individuals were convicted solely on Coleman's word that he had sold them drugs. Ms. Williams became aware that these defendants claimed that they were innocent but were nonetheless convicted and sentenced to

decades in prison based on nothing more than the testimony of Coleman. Ms. Williams likewise learned that the sentences imposed in those cases ranged from 20 to 90 years.

6. Ms. Williams entered a plea of guilty to avoid a longer sentence. The only reason that Ms. Williams considered the State's plea offer was that she was afraid of the prospect of serving decades in prison – like the other similarly situated defendants – on the basis of Coleman's allegations. At the time Ms. Williams was considering whether to accept the plea offer made by the State, the State did not reveal to her or her defense counsel significant information about the credibility, bias, and motive to lie of Coleman, the only witness against her. Ms. Williams therefore accepted the State's plea offer.

7. Without Coleman's testimony, the State would not have been able to secure a conviction against Ms. Williams.

8. Coleman's credibility was at the heart of the State's case against Ms. Williams.

9. Ms. Williams and Mr. Pollard are now aware of the facts, including the substantial impeachment material on Coleman, set forth in the Global Findings of Fact Applicable to All Applicants.

10. The facts set forth in the Global Findings of Fact Applicable to All Applicants existed at the time Ms. Williams entered a guilty plea, but were never disclosed by the State to Ms. Williams or her counsel. <u>See</u> Affidavit of Michelle Williams ("Michelle Williams Affidavit") (Ex. 83); Affidavit of Christian Pollard ("Pollard Affidavit II") (Ex. 84).

11. All of this information was material, exculpatory, and would have led to significant impeachment material relating to Coleman.

12. Ms. Williams would have not have waived her right to trial and entered a plea of guilty if she had known of this impeachment material. See Michelle Williams Affidavit (Ex. 83).

13. Mr. Pollard would not have advised Ms. Williams to enter a plea of guilty and would have recommended that she not waive her right to trial had the State disclosed the facts set forth in the Global Findings of Fact Applicable to All Applicants. Neither Mr. Pollard nor Ms. Williams had the benefit of the use of this information at the time that Ms. Williams entered her plea. See Michelle Williams Affidavit (Ex. 83); Pollard Affidavit II (Ex. 84).

14. Thus, Ms. Williams' plea of guilty was not knowing, intelligent or voluntary.

15. No reasonable juror would have found Ms. Williams guilty had she been able to present the significant impeachment evidence concerning Coleman which was actually or constructively known to, but not disclosed by, the State prior to Ms. Williams' plea.

CONCLUSIONS OF LAW
Applicable to All Applicants

Based on these undisputed facts, with the consent of all parties, in recognition that the State has agreed to the findings set forth above, and in the interests of justice, the Court reaches the following conclusions of law:

1. In Brady v. Maryland, the United States Supreme Court held that suppression by the State of material evidence favorable to the accused violates the requirements of due process guaranteed by the Fourteenth Amendment of the United States Constitution. 373 U.S. 83, 87 (1963).

2. The Texas legislature has specifically prohibited the suppression of such evidence in Article 2.01 of the Texas Code of Criminal Procedure. It provides that "[i]t shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done. They shall not suppress facts or secret witnesses capable of establishing the innocence of the accused." The Texas Court of Criminal Appeals likewise has held that such suppression also violates the due course of law rights provided in Article I, § 19 of the Texas Constitution. Ex parte Adams, 768 S.W.2d 281, 293 (Tex. Crim. App. 1989).

3. Article 2.01 of the Texas Code of Criminal Procedure, as interpreted by the Court of Criminal Appeals in Ex parte Lewis, 587 S.W.2d 697, 701 (Tex. Crim. App. 1979), requires the prosecution team to disclose exculpatory and impeachment evidence to a defendant prior to entry of a plea of guilty or nolo contendere. The non-disclosure of exculpatory or impeachment information prior to entry of a guilty plea is sufficient per se to negate the voluntary and intelligent nature of the guilty plea. Id. at 700-01.

4. The nondisclosure of critical facts about Coleman's reputation, reliability and credibility dictates that the Applicants' pleas of guilty and nolo contendere were not free and

voluntary. See Tex. Code Crim. P. Art. 26.13(b) (2002); see also Lewis, 587 S.W.2d at 702 (denial of due process prior to entry of a plea cannot be waived by that plea, but to the contrary, renders the plea involuntary as a matter of law). A defendant is entitled to a complete disclosure of the facts that he or she needs to consider to intelligently decide whether to plead guilty or proceed to trial. Those facts, including facts relating to the reputation, reliability and credibility of the sole State witness against the Applicants, were not disclosed to the Applicants here.

5. A guilty plea does not preclude a claim of actual innocence. Ex Parte Tuley, 2002 Tex. Crim. App. Lexis 239 (2002). Indeed, the Tuley court made clear that materially inconsistent statements by a complainant about an alleged offense can support an actual innocence claim of a defendant who has pled guilty, because – as the Tuley Court found by clear and convincing evidence – no rational jury would have convicted the defendant in light of the inconsistent statements.

6. To succeed on a post-conviction writ of habeas corpus, an Applicant claiming a Brady violation must prove by a preponderance of the evidence that (1) the State failed to disclose evidence; (2) the withheld evidence is favorable to the Applicant; and (3) the evidence is material – that is, there is a reasonable probability that had the evidence been disclosed, the outcome of the Applicant's trial would have been different. Kyles v. Whitley, 514 U.S. 419, 435 (1995); United States v. Bagley, 473 U.S. 667, 682 (1985); Thomas v. State, 841 S.W.2d 399, 402-03 (Tex. Crim. App. 1992).

7. The good faith of the prosecutor and the prosecution team is not relevant for Brady purposes. Ex parte Richardson, 70 S.W.3d 865, 870 (Tex. Crim. App. 2002).

8. It is well-established that actual knowledge of the prosecutor is not dispositive of the Brady inquiry; the focus instead is on the actual or constructive knowledge of

members of "'the 'prosecution team' which includes both investigative and prosecutorial personnel.'" Ex parte Adams, 768 S.W.2d at 291-92 (quoting United States v. Antone, 603 F.2d 566, 569 (5th Cir. 1979)) (emphasis added); Ex parte Richardson, 70 S.W.3d at 870 n.19; Ex parte Brandley, 781 S.W.2d 886, 892 n.7 (Tex. Crim. App. 1989); United States v. Auten, 632 F.2d 478, 481 (5th Cir. 1980); Freeman v. Georgia, 599 F.2d 65, 69 (5th Cir. 1979) ("[W]hen an investigating police officer willfully and intentionally conceals material information, regardless of his motivation and the otherwise proper conduct of the state attorney, the policeman's conduct must be imputed to the state as part of the prosecution team.").

9. The knowledge by a police officer, who is a member of the prosecution team, of evidence favorable to the accused is imputed to the State even if that knowledge is known only to the police officer. For example:

- In United States v. Antone, the government's principal witness had retained an attorney and testified at the defendant's trial that he had paid the attorney's fees with his own funds. However, the prosecutor later learned – after the defendant's conviction – that the attorney's fees were in fact paid by the State of Florida through an agent of the Florida Department of Criminal Law Enforcement (which, with the FBI, was participating in a joint investigative task force). The Fifth Circuit held that because the Florida agent was cooperating extensively with the federal agents, he was part of the "prosecution team," and thus, the Florida agent's knowledge that Florida was paying for the attorney's fees would be imputed to the prosecutor, and the prosecutor should have known that the witness had testified falsely. 603 F.2d at 570-71.

- In Ex parte Adams, the Court of Criminal Appeals, citing United States v. Antone, held that a police officer's knowledge of the prosecution witness's misidentification of the defendant in a lineup, and the officer's "coaching" of the witness, is imputed to the State even though the prosecutor had no knowledge of the misidentification. 768 S.W.2d at 292.

- In Ex parte Castellano, the Court of Criminal Appeals affirmed a habeas judge's finding that a police officer's knowledge of his own perjury as well as that of another key prosecution witness at defendant's trial would be imputed to the prosecution because the officer was a member of the prosecution team. 863 S.W.2d 476, 485 (Tex. Crim. App. 1993).

10. "Favorable" evidence "is any evidence that 'if disclosed and used effectively, . . . may make the difference between conviction and acquittal.'" Thomas, 841 S.W.2d at 404 (quoting Bagley, 473 U.S. at 676). It includes both exculpatory and impeachment evidence. Id. Exculpatory evidence "tends to justify, excuse or clear the defendant from alleged fault or guilt," id., whereas impeachment evidence "is offered 'to dispute, disparage, deny, or contradict.'" Id. Evidence that questions the credibility of a State's witness has consistently been held to be favorable evidence – either exculpatory or impeachment – under Brady. See Ex parte Richardson, 70 S.W.3d at 871 (concluding that a diary that led to testimony of witnesses who could offer opinion testimony on the credibility of the State's star witness was exculpatory and impeachment evidence); Thomas, 841 S.W.2d at 404 (holding that a witness's testimony that impeaches the credibility of the State's witnesses is favorable impeachment evidence).

11. The Supreme Court has made clear that the "reasonable probability" standard "is not a sufficiency of evidence test," Kyles, 514 U.S. at 434, and is satisfied "'by showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.'" Ex parte Richardson, 70 S.W.3d at 870 n.22 (quoting Kyles, 514 U.S. at 435)); Thomas, 841 S.W.2d at 403; DiLosa v. Cain, 279 F.3d 259, 264 (5th Cir. 2002).

12. In determining whether the withheld evidence is material – whether it "creates a probability sufficient to undermine the confidence in the outcome of the proceeding," Thomas, 841 S.W.2d at 404 – the Court of Criminal Appeals has instructed the reviewing court to examine the withheld evidence "in the context of the entire record . . . [and of] the overall strength of the State's case." Id. at 405. In addition, the Court of Criminal Appeals has

cautioned a habeas court to be especially sensitive to the post-hoc review of the materiality of the withheld evidence:

> [T]he reviewing court may consider directly any adverse effect that the prosecutor's [nondisclosure] might have had on the preparation or presentation of the defendant's case. The reviewing court should assess the possibility that such effect might have occurred in light of the totality of the circumstances and with an awareness of the difficulty of reconstructing in a post-trial proceeding the course that the defense and the trial would have taken had the defense not been misled by the prosecutor's [failure to disclose].

Id. at 405 (quoting Bagley, 473 U.S. at 683) (alternations in original; emphasis added); Ex parte Mitchell, 853 S.W.2d 1, 5-6 (Tex. Crim. App. 1993).

13. "When the 'reliability of a given witness may well be determinative of guilt or innocence,' nondisclosure of evidence affecting credibility" violates Brady. Giglio v. United States, 405 U.S. 150, 154 (1972) (quoting Napue v. Illinois, 360 U.S. 264, 269 (1959)); see also, East v. Johnson, 123 F.3d 235, 239 (5th Cir. 1997) (finding impeachment evidence material because in closing argument, the State "placed more reliance on [the witness's] testimony than any other item of evidence."); Ex parte Richardson, 70 S.W.3d at 873 (finding impeachment evidence material where witness's testimony was "critical" to prosecution's case).

14. Texas courts have recognized that "when an entire case revolves around the credibility of a single witness . . . no evidence is more important to the defense than testimony which impeaches the credibility of that single witness." Keeter v. State, 2003 WL 1787575, *6 (Tex. App. April 3, 2003) (no publication).

15. Additionally, nondisclosure of evidence concerning the reliability of the police investigation underlying the criminal charges also violates Brady. See Kyles, 514 U.S. at 446 (finding a violation of Brady where the prosecution withheld, inter alia, evidence the defense could have used to "attack[] the reliability of the investigation"); Lindsey v. King, 769 F.2d 1034,

1042-43 (5th Cir. 1985) (ordering a new trial because withheld Brady evidence "carried within it the potential . . . for the . . . discrediting, in some degree, of the police methods employed in assembling the case"); Bowen v. Maynard, 799 F.2d 593, 613 (10th Cir. 1986) (considering the defendant's discrediting of the caliber of the investigation in assessing a possible Brady violation).

16. The information set forth in the Findings of Fact was admissible at trial in these matters.

17. As an initial matter, under Rule 608(a), opinion and reputation evidence is admissible. Thus, the many law enforcement and other witnesses who testified during the instant habeas proceeding about Coleman's poor reputation for truth and veracity and poor reputation for being peaceful and law abiding would have been able to offer that same testimony at trials or other proceedings involving the Applicants. Accordingly, the State's failure to disclose information about those witnesses, and information that would have led to the discovery of those and other similar witnesses, was necessarily material.

18. Applicants also would have been entitled to introduce evidence that the State's witnesses engaged in specific acts of misconduct. Rule 608(b) generally prohibits evidence of specific acts to attack a witness's credibility. However, basic evidentiary and constitutional principles dictate that specific instances of misconduct are admissible for reasons other than to establish a witness's bad character, including (a) to establish bias, motive, or interest, and (b) to cure false impressions created at trial.

19. The Confrontation Clause, Texas Rules of Evidence 613(b), and Rule 404(b) permit defendants to use evidence of specific misconduct to show bias, motive, or interest. The Confrontation Clause of the Sixth Amendment guarantees the right of an accused in a

criminal prosecution "'to be confronted with the witnesses against him,'" Pointer v. Texas, 380 U.S. 400, 400-01(1965), and "[t]he practice of exposing a witness' motivation to testify against a defendant is a proper and important function of the constitutionally protected right of cross-examination." Hurd v. State, 725 S.W.2d 249, 252 (Tex. Crim. App. 1987) (internal quotation marks and citations omitted). See Davis v. Alaska, 415 U.S. 308, 316 (1974) ("The partiality of a witness is subject to exploration at trial, and is always relevant as discrediting the witness affecting the weight of his testimony.") (quotation omitted). Therefore, while a "[t]rial court maintains broad discretion to impose reasonable limits on cross-examination," Lopez v. State, 18 S.W.3d 220, 222 (Tex. Crim. App. 2000), "great latitude should be allowed the accused in showing any fact which would tend to establish ill feeling, bias, motive and animus upon the part of any witness testifying against him." Evans v. State, 519 S.W.2d 868, 871 (Tex. Crim. App. 1975) (emphasis added); see Carroll v. State, 916 S.W.2d 494, 497 (Tex. Crim. App. 1996) ("A defendant is entitled to pursue all avenues of cross-examination reasonably calculated to expose a motive, bias or interest for the witness to testify."); Davis, 415 U.S. at 318 ("The denial of the right of effective cross-examination … 'would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it.'") (quoting Brookhart v. Janis, 384 U.S. 1, 3 (1966)).

20. Texas Rules of Evidence 613(b) and 404(b) also permit defendants to introduce specific acts of misconduct to show bias, motive, or interest. "Historically, evidence of a witness's bias has been considered relevant, admissible, and discoverable," In re Doctor's Hosp. of Laredo, Ltd. P'ship, 2 S.W.3d 504, 506 (Tex. App. 1999), and Rule 613(b) codifies this rule by providing expressly that a defendant may examine a "witness concerning bias or interest." In fact, if a witness denies the specific conduct about which he is questioned, the prior act can be

proved through extrinsic evidence, including calling other witnesses to testify about the specific instance. See Tex. R. Evid.. 613(b); Santellan v. State, 939 S.W.2d 155, 168 (Tex. Crim. App. 1997), rev'd on other grounds, 271 F.3d 190 (5th Cir. 2001).

21. Likewise, Rule 404(b) permits defendants to introduce "[e]vidence of other crimes, wrongs or acts" committed by the State's witnesses. Evidence of prior acts "is not admissible to prove the character of a person in order to show action in conformity therewith." Tex. R. Evid. 404(b). But such evidence may "be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Id. Moreover, the Court of Criminal Appeals recently held that this exception, by its very language, applies to any "person," not just the accused. See Castaldo v. State, 78 S.W.3d 345, 349 (Tex. Crim. App. 2002).

22. "Evidence to show bias or interest of a witness in a cause covers a wide range and the field of external circumstances from which probable bias or interest may be inferred is infinite." Carroll, 916 S.W.2d at 497-98 (internal quotation marks and citations omitted) (emphasis in original). In addition, evidence admitted under the exceptions to Rule 608(b) is not limited to particular evidence or claims, but "encompasses all facts and circumstances, which when tested by human experience, tend to show that a witness may shade his testimony for the purpose of helping to establish one side of the cause only." Id. (emphasis in original). Therefore, a trial court should admit virtually any evidence that would tend to show bias, motive, or interest at trial. Id.

23. Included within the definition of admissible prior acts is evidence of conduct which demonstrates racial bias. It is well-established that "[r]acial bigotry is a prototypical form of bias" that is admissible at trial. Hurd, 725 S.W.2d at 253; see also generally

Davis, 415 U.S. at 316; Minor v. State, 476 S.W.2d 694 (Tex. Crim. App. 1972); Quinn v. Haynes, 234 F.3d 837 (4th Cir. 2000); United States v. Hernandez, 84 F.3d 931 (7th Cir. 1996); United States v. Bryant, 5 F.3d 474 (10th Cir. 1993); Olden v. Kentucky, 488 U.S. 227 (1988); United States v. Turner, 812 F.2d 1552 (11th Cir. 1987). In Hurd, for example, the trial court limited the defendant's cross-examination of a witness who was allegedly biased and instead required the defendant to prove the witness's bias through extrinsic testimony of others. The Court of Criminal Appeals reversed, holding that it was "reasonable to assume that the alleged racial bias of the [State's key] witness . . . could furnish him with a motive for favoring the State in his testimony." Id. at 253 n.1. Accordingly, the Court of Criminal Appeals held that the trial court erred by preventing the defendant from cross-examining the witness on specific instances of bigotry, which reflected the witness's propensity for prejudice against African Americans, his termination from employment because of violence against African Americans, and his problems with African American customers. Id. at 253.

24. Coleman's tainted law enforcement past also provided him with a powerful motive to fabricate allegations and testimony so that he could salvage his career. It is clear that when Coleman was hired for the Task Force position, he was on the brink of ineligibility for any law enforcement position. Thus, he needed to appear to perform well in the Task Force position – which, as the testimony at the evidentiary hearing made clear, meant claiming to have made a substantial number of undercover buys – to atone for his prior transgressions. Indeed, the State argued at the hearing (prior to entering this Stipulation) that Coleman's prior misconduct should be disregarded because Coleman "turned his life around" while working for the Task Force. The Court concludes not only that Coleman failed to turn his life around but, more importantly for these purposes, that he had a substantial incentive to lie to

make himself appear to be a better law enforcement officer than he really was. The Applicants should have been able to explore that motive by introducing the evidence contained in the Findings of Fact set forth above.

25. Likewise, financial need or benefit can also provide a motive to fabricate testimony or allegations and Applicants should have been able to explore that motive by introducing the evidence contained in the Findings of Fact set forth above. See, e.g., Shelby v. State, 819 S.W.2d 544 (Tex. Crim. App. 1991).

26. Accordingly, in the instant case, specific acts evidence would have been admissible at trial to demonstrate Coleman's bias, motive or interest.

27. Texas courts have held that a defendant has a Sixth Amendment right to introduce evidence to correct false or misleading testimony of a prosecution witness, including a character witness. See Saglimbeni v. State, No. 04-01-00501-CR, 2002 WL 31889226, at *4 (Tex. App. Dec. 31, 2002); Duren v. State, 87 S.W.3d 719, 730 (Tex. App. 2002). In Saglimbeni, for example, the Texas Court of Appeals considered whether a defendant may cross-examine a State's witness who has left a false impression regarding a particular subject during trial testimony. Recognizing the established rule permitting the prosecution to impeach, by introduction of extraneous evidence, defense witnesses in such cases, the court found no adequate basis for refusing to apply the principle equally to defendants. Indeed, consistent with the cross-examination rights in the Confrontation Clause of the Sixth Amendment, the court explained that "the right to cross-examination includes 'the right to impeach the witness with relevant evidence that might reflect bias, interest, prejudice, inconsistent statements, traits of character affecting credibility, or evidence that might go to any impairment or disability affecting the witness' credibility.'" Saglimbeni, 2002 WL 31889226, at *4 (citing Virts v. State, 739

S.W.2d 25, 29 (Tex. Crim. App. 1987)). Thus, if a witness for the State creates a false impression on direct examination, a defendant can introduce evidence of specific acts to rebut the witness's testimony. Wheeler v. State, 67 S.W.3d 879 (Tex. Crim. App. 2002).

28. Consistent with this rule, it has long been the law that "where the witness makes blanket statements concerning his exemplary conduct such as having never been arrested, charged or convicted of any offense, or having never been 'in trouble,' or purports to detail his convictions leaving the impression there are no others," the opposing party may refute such testimony despite the nature of the charge or its remoteness. Ochoa v. State, 481 S.W.2d 847, 850 (Tex. Crim. App. 1972) (citations omitted).

29. Numerous cases illustrate this point. For example, in Hoffman v. Texas, 514 S.W.2d 248 (Tex. Crim. App. 1974), the Court of Criminal Appeals held that the State could impeach a park ranger with prior complaints, after the park ranger had denied the State's question of whether he had ever been reprimanded for similar misconduct or ever had complaints filed against him. In this instance, specific acts were admissible "to prevent the false impression on the jury that the appellant had a good record for properly performing his duties as park ranger." Id. at 254.

30. Likewise, in Nelson v. State, 503 S.W.2d 543 (Tex. Crim. App. 1974), the defendant challenged on appeal the prosecution's inquiry into his prior arrests. The defendant argued that his answers to questions asked by defense counsel on direct did not effectively open the door to such an inquiry. Id. at 544. In his response to the questions—"Have you even been in trouble before?" and "Is that all of the trouble you have been in?"—the defendant answered only that he had been convicted of forgery and assault with a weapon. Id. On cross-examination, the prosecution introduced evidence that the defendant had been arrested on more than three

prior occasions. The court concluded that "having 'opened the door' to his 'troubles,' appellant is in no position to complain because the prosecutor entered with an attitude of curiosity." Id. at 545.

31. Moreover, in Bell v. State, 620 S.W.2d 116 (Tex. Crim. App. 1980), the Court of Criminal Appeals considered whether defense counsel's question to the defendant on direct—"Have you anything in your past that is of a criminal nature?"—effectively opened the door for the introduction of evidence by the prosecution of a prior arrest for possession of marijuana. The court rejected the lower court's position that the question was limited to final convictions for felonies or offenses involving moral turpitude. Id. at 126. The court held instead that the defendant's inaccurate answers did "open the door," and thus, that the prosecution was entitled to introduce evidence of the prior arrest.

32. Accordingly, in the instant case, specific acts evidence would have been admissible at trial to correct false or misleading testimony by prosecution witnesses.

33. The right to introduce evidence of prior acts also extends to false or misleading statements made by the prosecution during opening statements. See, e.g., Chandler v. State, No. 05-01-01663-CR, 2003 WL 681241 (Tex. App. Mar. 03, 2003); McDowell v. State, No. 05-02-00542-CR, 2002 WL 31570444 (Tex. App. Nov. 30, 2002); Powell v. State, 63 S.W.3d 435 (Tex. Crim. App. 2001).

34. A prosecutor's knowing and intentional use of perjured testimony to obtain a conviction violates a defendant's due process rights and denies him a fair trial. Mooney v. Holohan, 294 U.S. 103 (1935). This prohibition on the knowing and intentional use of perjured testimony includes the passive use of perjured testimony and requires a prosecutor to correct known inculpatory, perjured testimony. See e.g., Alcorta v. Texas, 355 U.S. 28 (1957);

Ex parte Adams, 768 S.W.2d 281. Moreover, a prosecutor's knowing failure to correct such testimony, even if it relates solely to the credibility of the witness, constitutes a violation of due process. See e.g., Napue v. Illinois, 360 U.S. 264 (1959); Ex parte Adams, 78 S.W.2d 281. The defendant need not show that the witness's specific factual assertions were technically incorrect or false. It is sufficient if the witness's testimony gives the trier of fact a false impression. Napue, 360 U.S. at 269; Alcorta, 355 U.S. at 32, Ramirez v. State, 96 S.W.3d 386, 394-395 (Tex. App. 2002).

35. The prosecution team knew or reasonably should have known, and the State did not disclose to the defense before trial or entry of plea, the material information contained in the Findings of Fact above.

36. The evidence contained in the Findings of Fact above was favorable to the Applicants.

37. The evidence contained in the Findings of Fact above was material in each of the Applicant's cases.

38. Based on the above, the Court concludes that the Brady doctrine was violated and that these cases should be remanded for a new trial.

39. The rights of the Applicants to due process, guaranteed to them by the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the due course provisions of Article I, Section 19 of the Texas Constitution, were violated and the convictions secured against them were unconstitutional. See, e.g., Ex parte Fierro, 934 S.W.2d 370 (Tex Crim. App. 1996); Ex parte Castellano, 863 S.W.2d 476 (Tex. Crim. App. 1993); Dugan v. State, 778 S.W.2d 465 (Tex. Crim. App. 1989); Ex parte Adams, 768 S.W.2d

281 (Tex. Crim. App. 1989); Giglio v. United States, 405 U.S. 150 (1972); Napue v. Illinois, 360 U.S. 264 (1959); Alcorta v. Texas, 355 U.S. 28 (1957); Mooney v. Holohan, 294 U.S. 103 (1935).

40. Moreover, the blatant perjury of Coleman in multiple proceedings relating to the Applicants' cases, including the instant habeas proceedings, so undermines the Court's confidence in the validity of the convictions entered in those cases that it would be a travesty of justice to permit the Applicants' convictions to stand.

41. The Court has no confidence in the outcome of the proceedings of any Applicant because of the substantial probability, based on the findings and conclusions set forth above, that each of the guilty pleas and trial verdicts are inaccurate and unreliable.

42.

Dated: May ________, 2003.

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<tr>
<td>Respectfully submitted,

____
John D. Nation, SBN 14819700
Roderique S. Hobson, Jr., SBN 09744900

Special Prosecutors
242nd District Attorney's Office
Hale and Swisher Counties, Texas
500 Broadway, Suite 300
Plainview, Texas 79072
(806) 296-2416</td>
<td>

____
Jeff Blackburn, SBN 02385400
George H. Kendall
Vanita Gupta
Counsel for Freddie Brookins
and
Jason Jerome Williams

____
Mitchell E. Zamoff
E. Desmond Hogan
Adam K. Levin
Lori J. Searcy
Jason C. Chipman
Jennifer I. Klar</td>
</tr>
</table>

	Tara Hammons *Counsel for Christopher Jackson* _______________________________ Joseph E. Killory, Jr. William E. White Anitra Cassas Mark M. Oh J. Winston King *Counsel for Joe Welton Moore*

IT IS SO ORDERED, this _____ day of May, 2003

BY THE COURT:

____
The Honorable Ron Chapman, Sitting by Assignment