

CAUSE NO. 07-CR-4048-E

EX PARTE

MAURICIO CELIS

§ IN THE 148TH DISTRICT COURT
§
§ OF
§
§ NUECES COUNTY, TEXAS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having examined the above-styled Application For Writ Of Habeas Corpus and exhibits attached thereto, the State's Answer, the Defendant's Reply to the State's Answer, the Motion To Quash The Indictment And Motion To Suppress The Badge As Having Been Obtained Upon A False Promise, and the entire record of the three day trial as compiled and sent to the Thirteenth Court of Appeals, and having conducted an evidentiary hearing on May 20, 2015, the Court makes the following findings of fact and/conclusions of law, finding and concluding the substance of each of the following paragraphs beyond a preponderance of the evidence finding counsel ineffective:

1. Defendant Celis was represented prior to trial and at all times during trial by J.A. "Tony" Canales, Jo Ellen Hewins and Hector Canales.
2. Prior to trial Defense counsel prepared a pretrial motion filed on March 23, 2010, entitled "Motion To Quash The Indictment And Motion To Suppress The Badge As Having Been Obtained Upon A False Promise" supported by three exhibits thereto (i.e., Exhibit A, B, and C). 2CR316-330 (also reflected at **Exhibit 2** to Defendant Celis's Writ Application).
3. This pretrial motion alleged that the indictment should be quashed or dismissed and/or the use of the badge suppressed based on Fourth and Fifth Amendment grounds. 2CR316-330.
4. This pretrial motion alleged that there had been an illegal seizure of Defendant Celis's Duval County Deputy Sheriff's badge, obtained as the result of an admitted promise made by

Captain Paul Rivera of the Nueces County Sheriff's Office to Larry Olivares, an agent of Defendant Celis's, that the case would be closed and no further action taken against Celis if he surrendered the badge he had displayed to Corpus Christi Police Officers on September 15, 2007. 2CR316-330.

5. This pretrial motion also alleged that the promise was not kept. 2CR316-330.

6. Trial counsel was ineffective and deficient in preparation of the pretrial motion because it did not identify or list any fruits of the alleged illegal seizure and did not expressly seek to suppress, as fruit of the poisonous tree, any fruits of the alleged illegal seizure. 1CR316-321.

7. After a hearing held on April 15, 2010, Judge Terrell overruled the motion, finding that Defendant Celis had no standing. 6RR239-241 (also reflected as Defendant's **Exhibit 2** introduced at the May 20, 2015 hearing on Defendant Celis's writ application).

8. The Court finds and concludes that a jury could have found Defendant Celis had standing to contest the seizure of his Duval County Deputy Sheriff's badge and it was ineffective assistance of counsel not to submit a 38.23 issue to the jury regarding same, especially considering that without the badge there was no case against the defendant, Judge Terrell commented in the record after overruling the suppression issue that counsel would have an opportunity to place the issue before the jury to determine, but ultimately did not do so, and there was no indication counsel abandoned this critically important and viable defense, especially considering the State's argument that Celis had no standing was weak.

9. The Court finds and concludes that a jury could have found Defendant Celis had a lawful possessory interest in the badge from May 14, 1997 through and including September 21, 2007, because:

(a) it was issued to him on May 14, 1997 by Duval County Sheriff Barrera,

11RR142; (b) he served at the pleasure of Duval County Sheriff Barrera, regardless of whether he was or was not licensed by TCLEOSE (i.e., Texas Commission on Law Enforcement Officer Standards and Education), 12RR96, 3RR561 (Paragraph 7 of the "Charge of the Court"); (c) it is uncontroverted that the badge was never requested to be returned by anyone employed by the Duval County Sheriff; (d) it is uncontroverted that Defendant Celis was never informed by anyone at TCLEOSE or at the Duval County Sheriff that his TCLEOSE certification had been terminated; (e) it is uncontroverted that as of September 21, 2007, Defendant Celis was still listed as a Duval County Reserve Deputy by the Duval County Sheriff; and (f) it was uncontested that on September 21, 2007, after the badge was seized from Defendant Celis's agent, Larry Olivares, by Captain Paul Rivera of the Nueces County Sheriff's office, Duval County Sheriff Barrera requested that it be returned to Defendant Celis, as reflected by **ST.EX.2** introduced at the trial and also attached as **Exhibit B** to Celis's motion to suppress.

10. The Court finds and concludes that a jury could have found there was a promise made by Captain Rivera to Larry Olivares on September 21, 2007 for the following reasons:

(a) Judge Terrell's statements on April 15, 2010, which reflect a belief that there was a promise and that but for his ruling finding no standing, Judge Terrell probably would have found a promise; and (b) the content of **Exhibit A** attached to Defendant Celis's motion to suppress (i.e., attached to **Exhibit 2** to the Writ Application, also located at 2RR324), which is a "Witness Statement" prepared by Captain Rivera on October 8, 2007, which reflects that Captain Rivera concluded his statement with the notation "[t]his case will be closed. No Action Taken," because this is consistent with a promise not to prosecute Defendant Celis.

11. The Court finds and concludes that a jury could have found that the badge was illegally seized from Defendant Celis's agent (Larry Olivares), who obtained it from Defendant Celis, after Captain Paul Rivera of the Nueces County Sheriff's office promised that the case would be closed and no further action would be taken if he returned the badge, as reflected by the last sentence of **Exhibit A** to Defendant Celis's March 23, 2010 "Motion To Quash The Indictment And Motion To Suppress The Badge As Having Been Obtained Upon A False Promise." 2CR316-330 (also reflected at **Exhibit 2** to Writ Application).

12. The Court finds and concludes that the State has not rebutted or attempted to rebut the testimony of Jo Ellen Hewins at the May 20, 2015, writ hearing that fruits of the initial illegal

seizure of the badge were introduced at trial, including **ST.EX. 2** to 7 and the testimony of Romeo Ramirez, Santiago Barrera, Jr., Bruno Valdez, Paul Rivera, Larry Olivares, and Timothy Braaten.

13. The Court finds and concludes that the affidavit of Jo Ellen Hewins, introduced as **Exhibit 1** at the May 20, 2015, writ hearing and her testimony at said hearing is truthful, candid and believable in all respects.

14. The Court finds and concludes that defense counsel's failure to do the following, none of which were strategic decisions, fell below prevailing professional norms and constitute ineffective, deficient performance which prejudiced the Defendant:

(a) to identify the direct and indirect "fruits" of the illegal seizure of the "badge" on September 21, 2007 in Defendant Celis's March 23, 2010 "Motion To Quash The Indictment And Motion To Suppress The Badge As Having Been Obtained Upon A False Promise," 2CR316-330 (also reflected at **Exhibit 2** to Writ Application);

(b) to move to suppress the direct and indirect "fruits" of the illegal seizure on September 21, 2007 in Defendant Celis's March 23, 2010 "Motion To Quash The Indictment And Motion To Suppress The Badge As Having Been Obtained Upon A False Promise," 2CR316-330 (also reflected at **Exhibit 2** to Writ Application);

(c) to object at trial to the State's introduction of **ST.EX. 2** to 7, as the fruits of the illegal seizure of the badge on September 21, 2007;

(d) to object at trial to testimony adduced by the State from Romeo Ramirez, Santiago Barrera, Jr., Bruno Valdez, Paul Rivera, Larry Olivares, and Timothy Braaten, all of whom testified regarding matters which Jo Ellen Hewins testified were the fruits of the initial, illegal seizure of the badge (**ST.EX.1**);

(e) to request a charge under Article 38.23 of the Texas Code of Criminal Procedure, particularly given Judge Terrell's comments on April 15, 2010 reflected at 6RR240, L.8-10 (also reflected as Defendant's **Exhibit 2** introduced at the May 20, 2015 hearing) and to have the jury determine whether the seizure was illegal and whether it could consider the evidence identified by Jo Ellen Hewins as the "fruits" in its jury determinations.

15. The Court finds and concludes that it is the State's burden to show that evidence is not the direct or indirect fruit of an illegal seizure or illegal search, or that the taint is attenuated, and

that the State did not and has not attempted to do so.

16. The Court finds and concludes that but for the ineffective and deficient conduct of defense counsel, as found above, there is a reasonable probability sufficient to undermine confidence in the outcome of the trial and appeal and that the result of the trial and the appeal would have been different but for that ineffective and deficient conduct which clearly prejudiced the Defendant.

17. The Court finds and concludes, by competent, believable evidence beyond a preponderance of the evidence, that a new trial should be granted due to defense counsel's ineffective, deficient and prejudicial performance.



The Honorable Guy Williams
Presiding Judge

Aug. 15, 2015