

Tarrant County District Clerk  
401 West Belknap Street  
Fort Worth, Texas 76196

Date: 12-30-19

Re: Habeas Corpus

Dear Sir/Madam,

Please find enclosed applicant's (Barton R. Gaines's) original and one copy (the copy is actually only the first page of the original because I am poor) of his application for writ of habeas corpus challenging his misdemeanor conviction of possession of marijuana under two ounces in cause number 0819607,, which resulted in conviction on 10-8-03. Also please find enclosed SASE.

Please bring the original (the application) to the attention of the court. And please date-stamp the copy plus write in the correct cause number if different from the original trial court cause number, and return (mail) the copy (i.e., of the original) to me in the SASE.

If any other questions or comments those can be addressed to me as well here:

Sincerely,

Barton R. Gaines, 1139507  
2661 FM 2054, Coffield  
Tenn. Colony, Tx 75884



No. 819607

EX PARTE

§  
§  
§  
§  
§

COUNTY CRIMINAL COURT

NUMBER EIGHT

BARTON R. GAINES

TARRANT COUNTY, TEXAS

APPLICATION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Barton R. Gaines, Applicant (hereinafter "Applicant") pro se in the above-styled and numbered cause, and pursuant to Article 4.07, 11.05, and 11.09 of the Texas Code of Criminal Procedure (hereinafter "CCP"), Section 25.0003 and 25.0004 of the Texas Government Code, and Article V, § 8 of the Texas Constitution, and moves the Court to grant a writ of habeas corpus in this cause. In support, Applicant shows the following:

I.

RESTRAINT

An applicant seeking habeas relief should allege with specificity the facts establishing his confinement--the details of his collateral consequences he suffers- lest his application be dismissed for lack of jurisdiction. Ex parte Harrington, 310 SW3d 452, 457-58 (CCA 5-26-10)(Cochran, J., unanimous)(the terms "confinement" and "restraint" encompass incarceration, release on bail, or bond, release on community supervision or parole, or any other restraint on personal liberty--citing State v. Collazo, 264 SW3d 121, 126-27 (CA1 2007, pet. ref'd)(confined because he was denied the opportunity to obtain a Texas peace officer license)).

Applicant is illegally restrained in his liberty by virtue of conviction in the above-numbered cause for violation of Sec-

FILED  
TARRANT COUNTY TEXAS  
2020 JAN -2 AM 10:08  
MARY LOUISE COLE  
COUNTY CLERK



tion 481.121 of the Health and Safety Code (hereinafter "H&SC"), in County Criminal Court, Number Eight, Tarrant County, Texas. Although Applicant dishcarged his sentence in said cause, he is still suffereing the collateral consequences of the conviction; specifically, this conviction is being used to set Applicant off for parole in another unrelated case (1 EX 5:37-44)(Exhibit 2). That is, Applicant's first time up for parole in this unrelated robbery case, he was given a 1-year set-off because of his excessive substance abuse history, among other things (Exhibit 2). This is his only conviction for possession of a contolled substance. Applicant is also suffering the collateral consequences of the erroneous arrest that gave rise to this conviction; Parole Interviewer, Harris, questioned Applicant as to the nature and extent of Haynie's injuries, despite the fact that Applicant had nothing to do with the assault<sup>41</sup> on Haynie (this conviction is preventing Applicant from expunging the erroneous arrest)(1 EX 5:37-44).

II.

JURISDICTION AND PROCEDURAL HISTORY

After a plea of guilty in this cause, the Court sentenced Applicant to six months time-served on October 8, 200<sup>3</sup>. Applicant didn't file a motion for new trial, or notice of appeal.

III.

PRIOR WRIT APPLICATION

There are no prior writ applications in this cause.

IV.

SUPPORTING RECORDS

A copy of the trial record in this cause number is filed in



the district clerk's office. These records are necessary to make and enter material findings of fact regarding the legality of the conviction and whether to grant relief.

V.

GROUND FOR RELIEF

Applicant's restraint is illegal, and his conviction invalid, in that he was denied effective assistance of counsel at trial in violation of the Sixth and Fourteenth Amendment to the United States Constitution and Article I, §§ 10 and 19 of the Texas Constitution.

A. FACTUAL SUMMARY

This prosecution arose out of an inventory search of Applicant's vehicle after police responding to a disturbance erroneously arrested Applicant for being a party to that disturbance (1 EX 2:24-4:31)(3 EX 3:21-43, 4:20-22 + 57-58, 5:38-41).

On August 18, 2001, officers Moore and Thetford were dispatched to a disturbance (3 EX 3:10-13). Upon Moore's arrival, Moore was advised that the suspect was getting into Applicant's vehicle (3 EX 3:13-15). Moore blocked the vehicle in its parking spot with his police car (3 EX 3:15-16). Despite being advised by witness Mendoza and victim Haynie that they didn't hear Applicant encourage Durham to assault Haynie--Mendoza said there were two other people with Durham (3 EX 3:47); Haynie apparently didn't even know that there was anybody else (Jason and Billy (1 EX2:37-43)) there or that they were cheering Durham on (3 EX 3:38-45)(<sup>(Thetford)</sup> who was telling Thetford this garbage, or did he just say it was Applicant since the other two suspects left?)--Moore and



Thetford went ahead and arrested Applicant and impounded Applicant's truck (3 EX 3:59-61). Apparently after Moore's and Thetford's supervisor reviewed the case, they (Stevens) realized their mistake and decided to abandon the injury charges, though nobody witnessed or said, according to their own police report, they heard Applicant encourage Durham to assault Haynie (3 EX 4:56-58). Instead, Bridges filed charges with the DA against Applicant for ~~the~~ possession of ~~the~~ marijuana (3 EX 4:23-24). The complaint was filed on September 21, 2001 (3 EX 4:7).

Bridges also apparently changed the car Haynie was driving, probably because it wasn't street legal, from some two door red car to some four door blue car (3 EX 2, 4:26)(1 EX 3:38-49).

Stevens also apparently went by Haynie's house where he had still not gone to the hospital--he refused medical attention at the scene of the incident, probably because he was drinking and driving (3 EX 3:63-64)--probably because he was still drunk and high on pain pills, following down all over the place (3 EX 4:37-42). Haynie had apparently been sitting up on Federal Disability for the past 20 years, to say the least (3 EX 4:61).

On the day of trial (10-8-03) the Court appointed Applicant Y. Leticia Sanchez Vigil to represent him (1 EX 5:11). Vigil advised Applicant that (1) Judge Coffee wouldn't grant a continuance to bench warrant Durham from TDCJ to corroborate Applicant that the marijuana was Durham's and that Applicant didn't know Durham stashed it in the console of Applicant's truck while the cops (Moore & Therford) were roughing Applicant up; (2) he couldn't, and Coffee wouldn't, suppress the marijuana because it was seized



incident to a lawful arrest; (3) even if the marijuana wasn't seized incident to a lawful arrest, i.e., the arrest for being a party to the injury was unlawful, that respondent would just come back and arrest Applicant for flipping Haynie off or for being intoxicated in public, thus, making the search and seizure incident to a lawful arrest again; and (4) if he fought it Coffee would stack the marijuana sentence on his robbery sentence so that he would have to parole the robbery sentence before he could begin the marijuana sentence (1 EX 5:14-29).

B. STANDARD OF REVIEW FOR INEFFECTIVE ASSISTANCE OF COUNSEL

Effective assistance of counsel is essential to a fair trial. See United States v. Cronin, 466 US 648 (1984). An accused's right to the effective assistance of counsel is derived from four sources; the Sixth Amendment, the Due Process Clause of the Fourteenth Amendment, the "right to be heard" provision of Article I, § 10 of the Texas Constitution, and the due course of law provision of Article I, § 19 of the Texas Constitution. See Ex parte Duffy, 607 SW2d 507, 514-15 (CCA 1980), overruled on other grounds, Hernandez v. State, 988 SW2d 770 (CCA 1999). See also Strickland v. Washington, 466 US 668 (1984); Hernandez v. State, 726 SW2d 53, 57 (CCA 1986)(adopting Strickland's two prong test.

Claims of ineffectiveness must overcome a strong presumption that counsel's representation was within the expansive range of reasonable performance, and demonstrate that the attorney's performance fell below prevailing professional norms. A "criminal defense lawyer must have a firm command of the facts as well



as governing law." Ex parte Welborn, 785 SW2d 391, 393 (CCA 1990). Counsel is presumed to have knowledge of legal principles that are neither novel or unsettled. Ex parte Davis, 866 SW2d 234 (CCA 1993).

Strickland also requires a showing that the defendant was prejudiced by counsel's errors or omissions. Within the meaning of effective assistance, prejudice does not mean that the verdict would have been different, or even that the error "more likely than not" altered the outcome. Strickland, 466 US at 693-94. All that is required is a "reasonable probability," defined as "a probability sufficient to undermine confidence in the outcome." Strickland, 466 US at 694.

The sufficiency of counsel's assistance is <sup>44</sup>gauged by the totality of the representation of the accused. See Ex parte Cruz, 739 SW2d 53, 58 (CCA 1987). See also Passmore v. State, 617 SW2d 682, 686 (CCA 1981). However, a single material omission can constitute ineffective assistance. See, e.g., Ex parte Felton, 815 SW2d 733 (CCA 1991)(failure to object to invalid conviction used to enhance punishment).

#### 1. COUNSEL DID NOT HAVE A FIRM COMMAND OF THE LAW

To successfully assert a claim that ineffective assistance of counsel invalidated a guilty plea, a defendant must establish (1) that counsel's advise was below the range of reasonable competence demanded of attorneys in a criminal cas<sup>e</sup> and (2) that, but for counsel's errors, the defendant would not have plead guilty and would have instead insisted on going to trial<sup>1</sup>. Hill v. Lockhart, 474 US 52 (1985).



Vigil's advise was bad: (1) the CCA has not hesitated to declare a judge abused his discretion where the denial of a continuance (i.e. to bench warrant Durham back to the county from TDCJ) has resulted in representation by counsel who is not prepared, Heiselbetz v. State, 906 SW2d 500, 511 (CCA 1995); (2) mere suspicion, inarticulate hunch, or good-faith perception, without more, is insufficient cause to arrest, including the arrest of Applicant, presumably, who was arrested by Moore and Thetford on an inarticulate hunch, no doubt, for encouraging Durham to assault Haynie, which was false, Jones v. State, 949 SW2d 509, 514 (CA2 1997, pet. ref'd); (3) even if respondent could somehow come back and arrest Applicant for violating either Texas Penal Code § 42.01(a)(1), disorderly conduct, or § 49.02(a), public intoxication, respondent only had two years from 8-18-01 to arrest Applicant, and as of then respondent was two months past-due, See CCP Art. 12.02; and (4) even if Coffee did stack it in the event of conviction, Applicant already discharged the sentence a year prior to while he was awaiting trial on the robbery case, Ex parte Wickware, 853 SW2d 571, 573 (CCA 1993).

The H&SC § 481.121(a) required respondent to prove beyond a reasonable doubt that Applicant knowingly and intentionally possessed a usable quantity of marijuana in the amount of two ounces or less. In re R.R., 420 SW3d 301, 303-04 (CA8 2013, no pet.). Respondent would've been hard pressed to convince most, if not all, of a jury to within a near certainty that Applicant knowingly and intentionally possessed a usable quantity of marijuana in the amount<sup>t</sup> of two ounces or less with (1) Durham swearing under



oath that he stashed the marijuana in<sup>v</sup>the console of Applicant's truck while the cops (Moore & Thetford) were roughing Applicant up, and (2) Applicant swearing under oath that he didn't know the marijuana was in<sup>v</sup>his truck or that Tony stashed it in his console (1 EX 4:24-31).

Applicant was arrested for encouraging Durham to assault Haynie (3 EX 3:38 + 60-61, 4:21 + 57-58). Neither Haynie nor Mendoza, however, nor anybody else for that matter, besides Thetford, of course, who was obviously not there, witnessed Applicant encourage Durham to assault Haynie (3 EX 3:38-39, 5:36-38). Instead, Thetford appeared to have deduced that for himself when he went on his four paragraph tirade or summary of what nobody told him (3 EX 3:14-45), or he at least just decided to foist that much on top of Applicant since the other two, Jason and Billy, were in Burger King hiding out and getting a Burger (1 EX 2:41-43 + 3:53-4:4)(3 EX 3:65-66 + 5:38-41). Good-faith perception, however, without more, is not probable cause. Jones, 949 SW2d at 514.

Although the statute of limitations was up on bringing charges against Applicant for allegedly flipping Haynie off or for allegedly being intoxicated, a convenient after thought/justification, the fact that respondent would've waited until after it found the marijuana to do so wouldn't have made the seizure any more legal. State v. Daugherty, 931 SW2d 268, 270 (CCA 1996)(the fact that the evidence could've been obtained lawfully does not negate the fact that the evidence was obtained unlawfully; under Art. 38.23 of the CCP the inquiry regarding the possible legal attainment of the evidence should never be reached once the unlawfulness



and its causal connection to the evidence have been established). In Dagherty, he was arrested in South Lake for driving with an invalid driver's license after the officer searched his vehicle and discovered evidence of the burglary. It was likewise suppressed because there is no inevitable discovery exception in Texas, according to his attorneys, Westfall and Kearney, and the CCA.

Lastly, by the time respondent moved to adjudicate the cause for conviction, Applicant had already discharged the maximum sentence almost two times over. So even if Coffee did stack the sentence on the end of his robbery sentence, the fact that he was in jail awaiting trial for both offenses, one of which had nothing to do with the other, Applicant's back time ate up any amount of time Coffee could've given Bart. Ex parte Wickware, 853 SW2d 571, 573 (CCA 1993)(when inmate is given stacked sentence and was simultaneously confined on more than one of those causes, pre-sentence credit under art. 42.02 applies to each of those sentences, and credit must be separately awarded, since sentences are sequentially executed). It was a nice scare tactic though. It worked.

The Court should therefore find and conclude that Vigil's advice was below the range of reasonable competence demanded of attorneys in criminal cases, i.e., because her advice was wrong, and that, but for counsel's errors, Applicant would not have plead guilty and would have instead insisted on going to trial.

PRAYER FOR RELIEF

WHEREFORE, Applicant respectfully requests that the Court:

1. Be fair and impartial;



2. Set the DA's career and tally of wins verses loses aside;
3. Issue a writ of habeas corpus vacating his unlawfully obtained conviction and sentence;
4. Grant a full and fair evidentiary hearing on all claims raised by this Application; and
5. Grant Applicant such other and further relief as may be just and proper.

Respectfully submitted,

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BARTON R. GAINES  
HH Coffield Unit  
TDCJ # 1139507  
2661 FM 2054  
Tenn. Colony, Tx. 75884  
Telephone # 903.928.2211\*

VERIFICATION

I, Barton R. Gaines, am the Applicant and being presently incarcerated in Anderson County, Texas, verify under penalty of perjury that, according to my belief, the facts stated in the above application are true and correct.

Signed this 30 day of December, 2019.

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BARTON R. GAINES

\*Per TDCJ Board Policy, BP-3.81, Sec. VII., if you want to talk to Gaines by telephone, please call the number ahead of time, ask to speak to the law library supervisor, Susan Mullinax, tell her and what it pertains, and she will help guide you through the process.



# List of Exhibits

- 1) Bart's affidavit
- 2) Parole Board's reason for setting Bart off
- 3) Ft. Worth PD Report
- 4) Picture 1
- 5) Picture 2
- 6) Picture 3
- 7) Picture 4
- 8) Picture 5
- 9) ~~Picture 6~~ Ex parte Beal, 2015 Tex. Crim App. Unpub. LEXIS 138



# Exhibit 1



STATE OF TEXAS

COUNTY OF ANDERSON

AFFIDAVIT

BARTON R. GAINES, appeared in person before me today and stated under penalty of perjury, in accordance with Title 6 of the Texas Civil Practice and Remedies Code, Chapter 132, and Title 28 of the United States Code, Section 1746:

I am BARTON R. GAINES. My date of birth is October 25, 1982. I have personal knowledge of the information herein, and I can personally attest to its accuracy.

Information was presented and filed against me on or about September 21, 2001, for possession of marijuana, two ounces or less. On October 8, 2003, based upon the advice of court appointed counsel, Y. Leticia Sanchez Vigil, I plead guilty to possession of marijuana, two ounces or less.

(8-18-01)

(Moving Job)

August 18, 2001, Jason A. Tucker and I did a small moving job for my stepdad, J. Corey Adams. Afterward, Corey gave me \$200. One Hundred Dollars was for me, since I drove the truck and ran the job, and \$80 was for Jason. I was supposed to break the \$100, give Jason \$80, and Corey back \$20. But I never got to it as will become apparent later on why.

(Beer)

After Jason and I left (Jason was living with me and my folks because he was helping me and Corey on the moving truck), we picked up his friend, Billy Hunt, and our friend, Tony A. Durham. Tony had a keg and we were going to get it filled for Jason's 18th birthday party.

(Majestic)

At first we were going to get the keg filled at Majestic Liquor Store off I-20 & I-35, but because Majestic didn't want to fill somebody else's keg, Majestic suggest we go to Two Bucks up the street off I-35 and Felix Street because they would not only probably fill it, but they would also give us free cups.

(Two Bucks)

So Tony came back out and we went up the street to Two Bucks. I exited I-35 for Felix (The picture attached to the application at Exhibit 4 provides a view of the exit ramp). I turned left over the bridge (The picture attached to the application at Exhibit 5 provides a view of this). I passed the south bound access road and



1. continued west down Felix Street until I came upon the entrance to  
2. the parking lot where I hung a right to enter it (The picture att-  
3. ached to the application at Exhibit 6 provides a view of this). As  
4. I was pulling into the parking lot surrounding the store, some guy  
5. (Robert Lee Haynie) came speeding across the parking lot and almost  
6. plowed right into me (The picture attached to the application at  
7. Exhibit 7 where the asterisk is provides a view of where we almost  
8. crashed; at the time all those curbs and parked cars weren't there,  
9. and were probably added to keep drunk patrons, probably like Haynie,  
10. leaving Two Bucks from hitting customers of Burger King and Two Bucks  
11. from hitting each other). I had to honk my horn to get his attention,  
12. or to let him know that I was there or to notice me.

13.  
14. (Haynie)

15. The car came to an abrupt stop, rocking back and forth like the shocks  
16. were out. Then the driver (Haynie) through an empty beer bottle at my  
17. brand new truck like it was my fault that he almost hit me. But it  
18. (the bottle) fell short and, in response, we (Tony) flipped him the  
19. bird and I pulled around him and up to the double doors in front of  
20. Two Bucks on the other end of the parking lot (The picture attached to  
21. the application at Exhibit 8 where the asterisk is provides a view of  
22. where I parked).

23.  
24. (Tony)

25.  
26. I parked thinking Tony was just going in to check on the keg, then  
27. they would come back with a dolly or something to get it to fill.  
28. Tony still had the \$100 bill that I gave him from when we stopped  
29. at Majestic. But to Tony, it wasn't over. He tore ass out of my  
30. truck to go try to catch that dude (Haynie) for throwing a beer  
31. bottle at my truck.

32.  
33. Tony's dad owned a junk yard, and Tony took pride in cars. First  
34. this guy (Haynie) almost hit my brand new truck with his hoopyty.  
35. Then, to top it off, he through an empty beer bottle at my truck  
36. like it was our fault he almost hit us.  
37. So Tony bailed up out of my truck and went to see if he could  
38. catch this guy (Haynie). I figured he (Haynie) was long gone  
39. (obviously he was not, and apparently the reason he was so mad was  
40. because his car died, and he probably had to jump it off for a  
41. quick run to the store for more beer, would be my guess). Jason  
42. and Billy who were in the back of my truck with the keg, got out  
43. to follow Tony. I sat in my truck in front of the store.

44.  
45. (\$100)

46.  
47. Next thing I knew was Tony, Jason, and Billy came walking back up  
48. to my truck talking about he (Tony) lost my money. Dumbfounded, I  
49. asked him where he thought he may have lost it, and I made him  
50. show me. Jason and Billy followed. It was somewhere behind the  
51. Burger King parking lot, which is now, according to the pictures,  
52. a Cesar's Taco (The picture attached to the application at Exhibit  
53. 6 is a good picture of where we were looking for my money).  
54.



-3-  
(Burger King)

While we were looking they kept talking about the cops, but I was like, for what? I wanted my money. After Billy and Jason broke off for Burger King (Now the Cesar's Taco), Tony and I went back to my truck. We didn't find it. But as we did, a cop car rushed over to block my truck in (the picture attached to the application at Exhibit 8 where the asterisk is is a good picture of where the cop car moved in to block my truck).

Then after that two more cops <sup>P</sup>appeared at my door and tried to rip it off the hinges, but the automatic locks prevented them from opening it until I unlocked it for them to see what they wanted.

(Unneccessary Force)

When I did that, they yanked it open, reached in and pulled me out by the back of my neck, then picked me up by my legs and hands, carried me a few feet away from my truck, then dropped me face first from about five feet up on my face onto the hot summer pavement. Then one of them drop-kicked me with his knee in my back, and the other stomped on my head, like I was trying to resist (which I assure you, I was not). Then they tried to break my arms by bending them in a way that they do not bend so that they could cuff me. Then they picked me up like a lunch box and chunked me in the back of their cop car.

(Cuffing Tony)

Next, they walk up to the passenger side of my truck and got Tony out all gentle like and turned him around to cuff him and walked him to another, different cop car.

(Search)

Next, one of the cops got in my truck to search it. I seen him motion to his partner with his fingers up to his lips like he was smoking a joint like he found some weed. Then the same red hoopty pulled up, and a guy (Haynie) got out, reached in his back seat, got some crutches out, then hobbled around the cop cars that Tony and I were in. Note in the police report attached to the application at Exhibit 3, page 2, Associated Objects, it says Haynie's car was a Blue four door Ford, and note on page 4 lines 26-27, where Bridges says he changed the vehicle and plate number, probably because the red hoopty (two door)(I remember Haynie flipping the front seat forward to reach in the back seat to get his crutches out) he was driving wasn't street legal and he had to jump it off so that he could ~~even~~ go up to the liquor store.

(Funny)

Lastly, before Tony and I were carted off to jail, I looked back to see Jason and Billy, amongst several other on-lookers in Burger



1. King looking out the big glass window laughing their asses off at  
2. my misfortune (the picture attached to the application at Exhibit  
3. 8 is a good birds eye view from where they were looking at me  
4. where the asterisk is).

5.  
6. (Jail)  
7.

8. At jail (Tarrant County) Tony and I were placed in a holding tank  
9. in the basement with several other men awaiting our turn to get booked  
10. in. It was there and then that I learned what happened.

11.  
12. (What Happened?)  
13.

14. Tony told me that when he got out and went around the corner of the  
15. store that that guy (Haynie) was stalled out still at the entrance/  
16. exit to the parking lot and that he pretty much went ape-shit on  
17. his car, but that the only contact that he had with the driver  
18. (Haynie) was when he (Haynie) threw open his door to get out. That  
19. he (Tony) big-chested him with his hand and pushed him in the chest  
20. back down into his seat.

21.  
22. (Tony apologized)  
23.

24. Tony told me that he was sorry for getting me in trouble, and that  
25. he would tell them (the cops) that I didn't have anything to do with  
26. it. I asked him about the "weed" that I was being booked in on, and  
27. ~~that~~ and I didn't have any damn weed in my truck. Tony told me that he  
28. was sorry for that too, and that he would tell them (the cops) that  
29. the weed was his too. That he slid it in my console when the cops  
30. yanked me out of my truck. Tony said that he would take responsib-  
31. ility for all of it.

32.  
33. (Aftermath)  
34.

35. (Bond)  
36.

37. It took us (me) three days to get booked in. Tony called his borther  
38. to bond him out and he got out before we (I) made it upstairs to the  
39. main part of the jail.

40.  
41. I bonded out about 4-days later. I heard from Billy's girlfriend,  
42. Jamie Nichols, that Jason found my money that I gave Tony to get the  
43. keg filled. But I never asked Jason. I did, however, have to pay  
44. ~~Jason~~ the money he owed him (Jason) because Jason recollected  
45. on that from Corey. Plus the FWPD pound charged me an arm and a  
46. leg to get my truck out. They didn't want to release it so they  
47. racked up storage fee. I also heard that Jason still had his  
48. birthday party. It was at Benbrook Lake.

49.  
50. (Legal Fees)  
51.

52. I wound up hiring Jason's lawyer, Ed. G. Jones, to represent me. He  
53. was in the process of getting the marijuana case cleared up (hence  
54. the follow up investigation on page 5 of the police report, lines



34-39) when I got picked up on a robbery case with Jason and one of his Latin King buddies (Daniel Aranda) about six months later.

(10-8-03)

(Conviction)

It wasn't until after I was back in the county on my appeal for the robbery case when the marijuana charge was resolved. The judge yanked me into court to account for the marijuana case, then court appointed Y. Leticia Sanchez Vigil to represent me in place of Ed. Ed. must have had a heads up because, despite being paid, he said he did all that he was going to do (I called my mom to call him). I was pretty much on my own from there on out. Leticia advised me to settle for time-served because: (1) a jury would never believe my uncorroborated, self-serving statements that the weed wasn't mine, and that I didn't know that it was in my truck; (2) trial was scheduled to start that day, and that the judge wouldn't waste the time or money to grant a continuance for her to go find Tony and bring him to court to tell the jury that it was his weed, and that I didn't know he stashed it in the console of my truck; (3) even if I was mistakenly arrested for being a party to the injury to the disabled, that the weed would have still been found because Thetford would've just arrested me for disorderly conduct (flipping Haynie off after he ~~threw~~ threw the bottle) or a DWI or PI; (4) even if the inventory search was invalid that the weed would've inevitably been discovered; (5) if I fought it the judge would stack the sentence onto the end of my robbery sentence so that when I discharged it that I would have to start the sentence on the weed conviction, in such probably event as that; and (6) the weed conviction wouldn't hurt me chances of making parole on the robbery case.

(Parole)

That was 10-8-03. On 7-25-19, about 16 years later, it is affecting my ability to make parole. In fact, at my parole hearing, the parole interviewer (Harris) not only asked me about the possession of the controlled substance case, but he also asked me about the assault on Haynie. But when I tried to go into it, he essentially cut me short to sum it up that the dude (Haynie) wasn't seriously hurt, which I responded, no, as far as I knew what Tony told me (I tried to get the injury arrest expunged in 2013, but because of the marijuana conviction, Sturns wouldn't expunge it, while the prosecutor vehemently objected).

(Declaration)

I, BARTON R. GAINES, TDCJ # 1139507, am presently incarcerated in the HH Coffield Unit in Anderson County, Texas. I declare and state under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge.

Dated: 12-30-19

\_\_\_\_\_  
BARTON R. GAINES



# Exhibit 2



PDKAR008AAPLCO

STATE OF TEXAS  
BOARD OF PARDONS AND PAROLES07/25/2019  
PAGE 1

## NOTICE OF PAROLE PANEL DECISION

NAME: GAINES, BARTON RAY

SID NUMBER: 06736464

TDCJ-ID NUMBER: 01139507

TDCJ-ID UNIT OF ASSIGNMENT: COFFIELD

HOUSING ASSIGNMENT: DORM P61C

BED: 024

SUBJECT: Decision Not to Grant Parole - NEXT REVIEW

After a review of your case, the Board of Pardons and Paroles decision is not to grant you parole and has set your next parole review date as 07/2020.

You have been denied parole for the reason(s) listed below:  
One or more components indicated in each paragraph listed below may apply, but only one is required.

- 2D. THE RECORD INDICATES THE INSTANT OFFENSE HAS ELEMENTS OF BRUTALITY, VIOLENCE, ASSAULTIVE BEHAVIOR, OR CONSCIOUS SELECTION OF VICTIM'S VULNERABILITY INDICATING A CONSCIOUS DISREGARD FOR THE LIVES, SAFETY, OR PROPERTY OF OTHERS, SUCH THAT THE OFFENDER POSES A CONTINUING THREAT TO PUBLIC SAFETY.
- 3D. THE RECORD INDICATES EXCESSIVE SUBSTANCE USE INVOLVEMENT.

The Institutional Division will monitor your treatment plan progress and will report your progress to the Board of Pardons and Paroles.

Should you have any questions regarding this notice you are to contact your unit Institutional Parole Office.

This Notice of the Parole Panel Action is your written detailed statement as required by Texas Government Code SECTION 508.1411.  
NEXT REVIEW  
CC: OFFENDER



# Exhibit 3





Logged in as Kamiean Jenkins (Records)

## Detail

r 01610335

08/18/2001 18:24:00

08112: Other Assaults: Adult White Male, Simple Assault, AM

22.04: INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR DISABLED

905: PARKING LOT-EATING ESTABLISHME

Closed by Arrest

## Detail:

01610335
C
8/18/2001
D48
24: FIGHT-GANG
1
Aug 18 2001 6:20PM
Aug 18 2001 6:24PM (Diff: 4 minutes)
Aug 18 2001 6:27PM (Diff: 3 minutes)
Aug 18 2001 11:08PM (Diff: 281 minutes)
911..BURGER KING PARKING LOT..4-5 UNK DESC MALES BEATING UP ELDERLY MALE..UNK WPNS..CALLER DISCONNECTED..AMB NTFD..NODS

## Locations:

Address	Apt	City, State	Phone	Role	Links
OWA		CROWLEY, TX		Arrested Persons Address 1	<a href="#">Map</a> <a href="#">Persons</a> <a href="#">Events</a> <a href="#">Objects</a>
DANIELS		CROWLEY, TX		Arrested Persons Address 2	<a href="#">Map</a> <a href="#">Persons</a> <a href="#">Events</a> <a href="#">Objects</a>
S VE ST		FORT WORTH, TX	(817)923-2996	Complainant's Home Address 1	<a href="#">Map</a> <a href="#">Persons</a> <a href="#">Events</a> <a href="#">Objects</a>
S IH RGER		FORT WORTH, TX	(817)924-3201	Offense Address 1	<a href="#">Map</a> <a href="#">Persons</a> <a href="#">Events</a> <a href="#">Objects</a>

	KING PK LT)				
01610335	4702 S IH 35W	FORT WORTH, TX	(817)924- 3201	Radio Call Address 1	<a href="#">Map</a> <a href="#">Persons</a> <a href="#">Events</a>
01610335	4700 S IH 35W	FORT WORTH, TX	(817)207- 9539	Witness Business Address 2	<a href="#">Map</a> <a href="#">Persons</a> <a href="#">Events</a>
01610335	1220 W VIRGIN	FORT WORTH, TX		Witness Home Address 1	<a href="#">Map</a> <a href="#">Persons</a> <a href="#">Events</a>
01610335	309 SHIRLEY DR	ALVAREDO, 76009, TX		Witness Home Address 2	<a href="#">Map</a> <a href="#">Persons</a> <a href="#">Events</a>

## Associated Persons:

ID	Name	DOB	Age	RES	Role	Links
6407507	HAYNIE, ROBERT LEE		65	W/U/M	Complainant 1	<a href="#">Events</a> <a href="#">Objects</a> <a href="#">Locations</a>
6028935	UNKNOWN, UNKNOWN UNKNOWN	12/31/9999	?	U/U/F	Radiocall Complainant 2	<a href="#">Events</a> <a href="#">Objects</a> <a href="#">Locations</a>
6407510	DURHAM, TONY UNKNOWN	11/6/1978	39	W/U/M	Arrested 1	<a href="#">Events</a> <a href="#">Objects</a> <a href="#">Locations</a>
6407511	GAINES, BURTON RAY		35	W/U/M	Arrested 2	<a href="#">Events</a> <a href="#">Objects</a> <a href="#">Locations</a>
6407508	MENDOZA, MARIA UNKNOWN		54	W/H/F	Witness 1	<a href="#">Events</a> <a href="#">Objects</a> <a href="#">Locations</a>
6407509	RUSSELL, STEVE UNKNOWN		44	W/U/M	Witness 2	<a href="#">Events</a> <a href="#">Objects</a> <a href="#">Locations</a>

## Associated Officers:

Name	Emp ID	Type	Years On Job	Department
BRIDGES, JOHNNA M	2888	ORP1	6	POLICE-SOD NARCOTICS
MOORE, ROBIN E	3117	ORP2	2	POLICE-TRAFFIC DIVISION
STEVENS, BRYAN K	2699	OINV	9	POLICE-NORTH DIVISION
STEVENS, BRYAN K	2699	ORP1	9	POLICE-NORTH DIVISION
THETFORD, ROBERT W	3139	ORP1	2	POLICE-N DIV NPD 2

## Associated Objects:

ID	Role	Desc	Links
01610335	Damaged Property	QUARTER PANEL; \$0 LEFT REAR GV; DAMAGED BY AP1 KICKED	<a href="#">Persons</a> <a href="#">Events</a>
	Confiscated Vehicle	2000 CHEV ; PU (GRAY) Tag: [REDACTED]	<a href="#">Persons</a> <a href="#">Events</a>
	General Vehicle	1994 FORD ; 4D (BLUE) Tag: [REDACTED] LP APPEARS CANCELLED & COMP NEEDS TO BE CONTACTED	<a href="#">Persons</a> <a href="#">Events</a>



REF POSS CORRECT LP

ADDITIONAL ASSIST OFFICER: PERMSOOKJIT, S 3208

ADDITIONAL COMPLAINANT INFORMATION/IDENTIFICATION:

COMP: COMP STATED HE IS 100 PER CENT DISABLED AND DRAWING

DISABILITY.

SSN: [REDACTED]

TXDL: [REDACTED]

ON SATURDAY, 081801, I, OFCR R L THETFORD, #3139, WORKING J216, WAS DISP ON A SIGNAL 24, GANG FIGHT AT 4702 SOUTH FRWY, BURGER KING PK LT. UPON ARRIVAL AT APPROX 1827 HRS, I MET W/OFCR MOORE, MY ASSIST WORKING J217, WHO ARRIVED SHORTLY BEFORE MYSELF. OFCR MOORE WAS ADVISED BY W1 THAT THE SUSPECTS INVOLVED IN THE FIGHT, WERE IN THE CV AND WERE PULLING OUT OF THE PARKING SPOT. OFCR MOORE WAS ABLE TO DETAIN THE AP'S IN THE CV AT THAT TIME.

I, OFCR THETFORD ARRIVED JUST AS OFCR MOORE WAS DETAINING THE AP AND PULLED THE CV FORWARD INTO A PARKING SPOT, SO IT WOULD NOT BE BLOCKING THE TRAFFIC FLOW IN THE PK LT AND ALSO LOCK THE VEH AS SOON AS I EXITED.

THE COMP, WHO IS ON DISABILITY, 49 YOA AND ALSO ON CRUTCHES, STATED THAT THE AP1 AND AP2, IN THE CV, WERE BEHIND HIM IN THE BURGER KING PK LT. THE COMP STOPPED TO LET THE CV GO AROUND HIM AND I/O GOING AROUND THE COMP, THE DRIVER, AP2, STOPPED THE CV DIRECTLY BEHIND THE COMP'S VEH, AND STARTED HONKING THE HORN, AND BOTH AP'S WERE AT THAT TIME GESTURING TO THE COMP W/THEIR MIDDLE FINGERS. THE COMP STATED AT THAT TIME THE RT FRONT PSGR, AP1, EXITED THE CV AND APPROACHED THE GV OF THE COMP, AND AP1, AT THAT TIME, KICKED THE GV LEFT REAR QUARTER PANEL, CAUSING A LARGE DENTS, AND THEN WENT TO THE OTHER SIDE OF THE GV AND KICK IT AS WELL, NOT LEAVING A DENT THAT THE OFCRS COULD SEE.

AP1 THEN RETURNED TO THE CV. THE COMP PULLED TO THE FAR END OF THE BURGER KING PK LT, AND EXITED THE GV TO CHECK AND SEE IF THE AP HAD DONE ANY DAMAGE. AT THIS TIME, AP1 THEN EXITED THE CV AGAIN, AND RAN UP HE COMP AND STRUCK THE COMP W/A CLOSED FIST IN THE COMP'S HEAD, CAUSING THE COMP TO FALL TO THE GROUND. THIS ALSO COAUSED THE COMP GREAT PAIN.

THE AP2 EXITED THE VEH AND BEGAN SHOUTING TO THE AP1, ENCOURAGING AP1 TO INJURE THE COMP FURTHER. THE AP1 THEN STARTED KICKING THE COMP IN THE MIDSECTION AND STOMACH AND STARTED STRIKING THE COMP ON THE BODY IN VARIOUS PLACES W/HIS FISTS. AT THAT TIME, AP1 BEGAN STOMPING ON THE COMP'S ALREADY INJURED KNEE.

BOTH AP'S RETURNED TO THE CV, AND LEFT THE COMP LAYING BESIDE THE GV AND THE AP'S PARKED THEIR CV AT THE 2 BUCKS LIQUOR STORE, WHERE W2 WAS WORKING.

W1 STATED THAT HE WAS AT THE DRIVE-THROUGH OF BURGER KING, AND STATED THAT SHE SAW 4 MALES IN THE CV, BUT ONLY SAW AP1 STRIKING THE COMP.

THE AP'S AT THAT TIME, WENT INTO THE TWO BUCKS LIQUOR STORE, AND PURCHASED A LARGE KEG OF BEER AND AT THAT TIME THE OFCRS ARRIVED. SEARCH INCIDENT TO ARREST AND INVENTORY OF THE CV. OFCR MOORE FOUND A GREEN LEAFY SUBSTANCE BELIEVED TO BE MARIJUANA IN THE CENTER CONSOLE. AP2 STATED THAT HE OWNED THE CV, AND OFCR MOORE OBSERVED THAT AP2 WAS THE DRIVER OF THE CV. THE GREEN LEAFY SUBSTANCE WAS WEIGHED AND HAD A WEIGHT OF 17 GRAMS, INCLUDING THE CLEAR PLASTIC BAG THAT THE GREEN LEAFY SUBSTANCE WAS PLACED IN, IN ORDER TO TRANSPORT AND MARK AS EVIDENCE. THE GREEN LEAFY SUBSTANCE WAS PLACED IN LOCKER #9, BY OFCR PERMSOOKJIT AND W/HIS INITIALS AND ID.

THE CV WAS PD PULLED TO 1301 E NORTHSIDE DR BY FW TOWING.

BOTH AP1 AND AP2 WERE ARRESTED FOR INJURY TO A DISABLED PERSON W/INTENT TO COMMIT BODILY INJURY, AND AP2 WAS ARRESTED ALSO ON A CHG OF POSSESSION OF MARIJUANA LESS THAN 2 OZ.

THE COMP WAS CHECKED BY MEDSTAR ON THE SCENE, AND WAS NOT TRANSPORTED BY MEDSTAR.

THE 2 OTHER INDIVIDUALS THAT WERE IN THE CV W/BOTH AP'S WERE NOT AT THE SCENE UPON OFCRS' ARRIVAL, AND WERE UNABLE TO BE LOCATED. THE

COMP WAS ABLE TO ID BOTH AP'S WHILE AT THE SCENE.

NO CSSU WAS NEEDED.

SGT. PHILLIPS

ENTERED BY L411

Supplement 1 (8/21/2001):

ON 08-20-01 DETECTIVE BRIDGES WAS ASSIGNED THIS OFFENSE FOR THE PURPOSE OF FOLLOW UP INVESTIGATION. ON 08-20-01 DETECTIVE BRIDGES RECEIVED THE LAB ANALYSIS OF THE DRUG EVIDENCE FROM FWPD CRIMINALS. HAAS ON LAB # 0105083 WHICH REVEALED THAT DRUG EXHIBIT #1 CONTAINS 9.07 GRAMS OF MARIJUANA. ON 08-21-01 DETECTIVE BRIDGES SPOKE WITH OFCR THETFORD WHO STATED THE FOLLOWING:

OFCR MOORE ARRIVED ON SCENE OF CALL BEFORE OFCR THETFORD AND HAD REMOVED AP2(GAINES) FROM THE CONFISCATED VEHICLE. OFCR THETFORD ARRIVED SOON AFTER AND OBSERVED THAT AP2 WAS SHOWING SIGNS OF IMPAIRMENT. OFCR THETFORD STATED THAT HE DID NOT SMELL ALCOHOL OR MARIJUANA BUT THAT THE AP2 APPEARED HIGH. AP2'S SPEECH WAS SLURRED AND HIS EYES WERE DROOPY. AP2 HAD COMMITTED DISORDERLY CONDUCT BY USING HIS MIDDLE FINGER TO GESTURE THE CP. AP2 WAS ARRESTED FOR BEING A PARTY TO THE INJURY TO THE DISABLED ENCOURAGING THE OFFENSE AND HAD COMMITTED THE BREACH OF PEACE -DISORDERLY CONDUCT. DETECTIVE BRIDGES WILL SUBMIT A CASE FILE TO THE DA'S OFFICE ON THE DEFENDANT FOR POSS OF MARIJ < 202. ON 08-21-01 I SPOKE WITH DETECTIVE STEVENS WHO STATED THAT HE WOULD NOT BE FILING THE INJURY TO DISABLED ON A DETECTIVE BRIDGES DID CORRECT THE CONFISCATED VEHICLE PLATE IN THIS SUPPLEMENT. RECOMMENDED STATUS IS CLOSED AND CLEARED BY ARREST, C FILED FOR THE NARCOTICS PORTION OF THIS ARREST. STATUS: CLOSED AND CLEARED BY ARREST, CASE FILED. SUPERVISOR: SGT KL WOODSON #2383.

Supplement 2 (8/21/2001):

ON 08-20-01, I WAS ASSIGNED THIS CASE LOG#95 FOR FOLLOWUP. I CONTACTED THE CP WHO ADVISED HE WAS SEVERELY INJURED AND HIS FAMILY WAS TAKING HIM TO THE HOSPITAL TO BE EXAMINED. I THEN COMPLETED A PHOTO LINE UP WITH AP1 AT POSITION NUMBER #2. I THEN MET WITH CP BUT HE WAS UNABLE TO MAKE A POSITIVE ID OF AP1. CP WAS IN VERY BAD CONDITION WHEN I MET WITH HIM AND WAS UNABLE TO WALK WITH HIS CRUTCHES WITHOUT MY ASSISTANCE. THE CP FELL INTO THE FLOOR WHILE TRYING TO SIT DOWN AND I HAD LIFT HIM INTO A CHAIR. I DID NO FURTHER INVESTIGATION AT THIS TIME. DUE TO THE CP'S CONDITION, I THEN CONTACTED WIT1 WHO ADVISED SHE WOULD BE ABLE TO MAKE AN ID OF AP1. SHE MADE AN APPT. TO MEET WITH ME ON 08-21-01. I THEN CONTACTED AP1 TO HAVE HIM COME TO THE SOUTH DIVISION CIU FOR A STATEMENT AND HE ADVISED HE WOULD HAVE TO CONTACT HIS ATTORNEY. HIS ATTORNEY THEN CALLED ME AND STATED HE DID WANT THE AP1 TO MEET WITH ME AND GIVE HIS STATEMENT AND HE WOULD HAVE AP1 CALL ME TO MAKE AN APPOINTMENT. AP1 DID NOT CALL ME ON THIS DATE. ON 08-21-01, AT 1045, WIT1 (MENDOZA) CAME TO THE SOUTH CIU OFFICE TO GIVE A DEPO. I SHOWED MENDOZA THE PHOTO LINE UP WITH AP1 AT POSITION #2, AND WITHOUT HESITATION SHE POINTED AT #2 AND SAID THIS IS THE GUY I ASKED HER IF SHE WAS POSITIVE AND SHE SAID, "ABSOLUTELY POSITIVE". SHE THEN GAVE ME A SWORN DEPO, WHICH WAS NOTARIZED BY THE OFFICE NOTARY LASHELE HARRIS. I WAS THEN CONTACTED BY DET BRIDGES WITH THE NARCOTICS UNIT, WHO ADVISED SHE HAD FILED A CASE AGAINST AP2 IN THIS CASE ON NARCOTICS CHARGES. SO I HAVE DETERMINED AT THIS TIME NOT TO FOLLOWUP ON CHARGES AGAINST AP2. HE ONLY HAD VERBAL ENGAGEMENT IN ASSAULT SO I FEEL THE CASE WOULD STAND AS CHARGED. I THEN MET WITH THE CP WHO WAS BACK AT HOME AND HE GAVE HIS STATEMENT TO ME. I HAND WROTE HIS STATEMENT, WHICH HE READ AND SIGNED AS BEING TRUE AND ACCURATE. THE CP HAS BEEN PERMANENTLY DISABLED FOR THE LAST 20 YEARS AND UNDER DOCTORS CARE DURING THAT TIME. HE AS HAD 6 SURGERIES ON THE INJURED LEG PRIOR TO THIS ASSAULT. HE WAS ASSESSED BY MEDICAL PERSONEL AT THE HOSPITAL AND IT WAS DETERMINED HIS LEG IS BROKEN AND WILL NEED SURGERY FOR REPAIR. CP STATED HE IS MAKING ARRANGEMENTS TO GO TO THE HOSPITAL TODAY TO BE ADMITTED FOR SURGERY. THE HOSPITAL WOULD NOT RELEASE ANY INFORMATION UNTIL THE CP IS ADMITTED. I THEN TOOK PHOTOS OF THE CP AND HIS INJURIES AND THE CRIME SCENE. AS OF 15 HRS 08-21-01, THE AP1 HAS NOT CONTACTED ME FOR A STATEMENT.



1 I AM GOING TO COMPLETE THE CASE PACKET AND FORWARD TO THE ADA FOR  
2 REVIEW. I RECOMMEND THIS CASE CLOSED BY ARREST.  
3 SGT WARE.

4  
5  
6 Supplement 3 (8/26/2001):  
7 ARREST CASE FILED ON: DURHAM, TONY  
8 CHARGE: ASSAULT DISABLED PERSON  
9 ARREST/BOOKING #: 282710  
10 ARREST DATE: 08/18/01  
11 OFFICER: THETFORD R L 3139  
12 INVESTIGATOR: STEVENS B K 2699  
13 REC STATUS: CLOSED BY ARREST  
14 SUPERVISOR: SGT WARE P E 1847

15  
16  
17 Supplement 4 (9/2/2001):  
18 ARREST CASE FILED ON: GAINES, BARTON  
19 CHARGE: POSS OF MARIJ UNDER 20Z  
20 ARREST/BOOKING #: 2082733  
21 ARREST DATE: 08/18/01  
22 OFFICER: THETFORD R L  
23 INVESTIGATOR: BRIDGES J M 2888  
24 REC STATUS: CLOSED BY ARREST  
25 SUPERVISOR: SGT PHILLIPS 2495

26  
27 Supplement 5 (9/17/2001):  
28 ON 08-23-01 DETECTIVE BRIDGES RECEIVED A REQUEST FOR ADDITIONAL  
29 INVESTIGATION FROM THE DA'S OFFICE. ON 09-17-01 DETECTIVE BRIDGES WAS  
30 ABLE TO SPEAK WITH OFCR THETFORD BY PHONE WHO STATED THAT DUE TO THE  
31 FACT THAT THE AP2 EYES WERE DROOPY AND HIS SPEECH WAS SLURRED HE  
32 BELIEVED THE AP TO BE "HIGH" FROM HIS EXPERIENCE AS AN OFFICER. AP2  
33 HAD STATED TO OFFICER THAT THE CONFISCATED VEHICLE BELONGED TO HIM AND  
34 IT DID REGISTER TO HIM HE BELIEVED THAT THE MARIJUANA IN THE CENTER  
35 CONSOLE BELONGED TO THE AP. OFCR THETFORD ALSO STATED THAT WHEN HE  
36 ARRIVED ON SCENE BOTH APS WERE ALREADY OUT OF THE VEHICLE AND THAT  
37 NO ONE STILL REMAINED IN THE VEHICLE. WITNESSES AND THE APS STATED  
38 THAT 2 OTHER PEOPLE HAD BEEN IN THE CAR BUT THAT THEY HAD LEFT AND  
39 WERE NOT INVOLVED WITH THE ASSAULT. THIS WAS THE ONLY INFORMATION OFCR  
40 THETFORD COULD PROVIDE.  
41 STATUS: CLOSED AND CLEARED BY ARREST, CASE FILED.  
42 SUPERVISOR: SGT KL WOODSON #2383.

08/18/2001 18:24:00

08/18/2001 18:24:00

GENE

08112: Other Assaults: Adult White Male, Simple Assault, AM

22.04: INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR DISABLED

Closed by Arrest

09/17/2001 14:14:00

[BACK](#) | [MAIN MENU](#) | [LOG OUT](#)

C

J213

B450

S

S

028976: BRIDGES, JOHNNA M

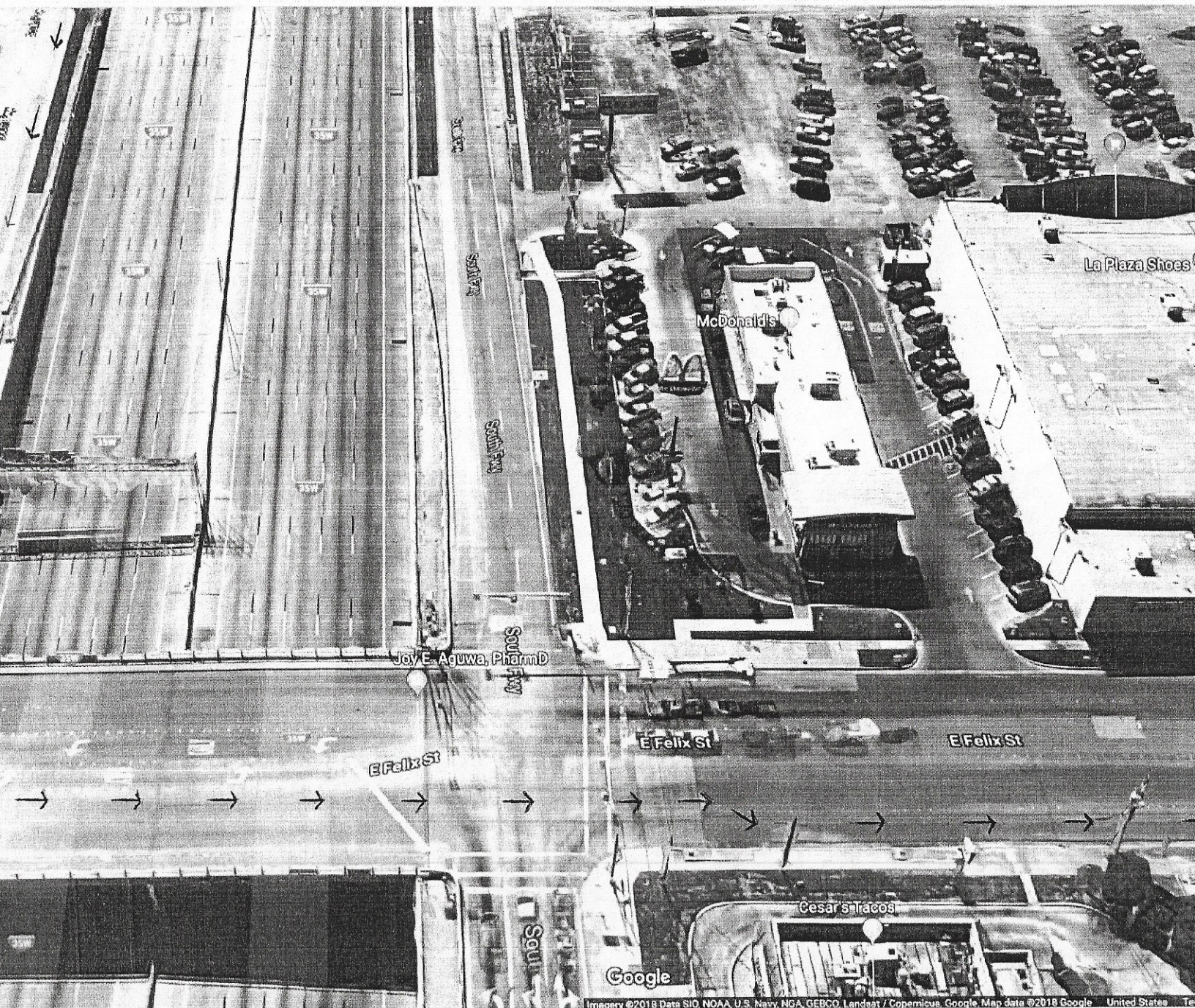
Code Date	09/17/2001 14:40:00
Arg/Fight?	Y
Premis	905: PARKING LOT-EATING ESTABLISHME
Gang_Designated	N



# Exhibit 4



Looking South

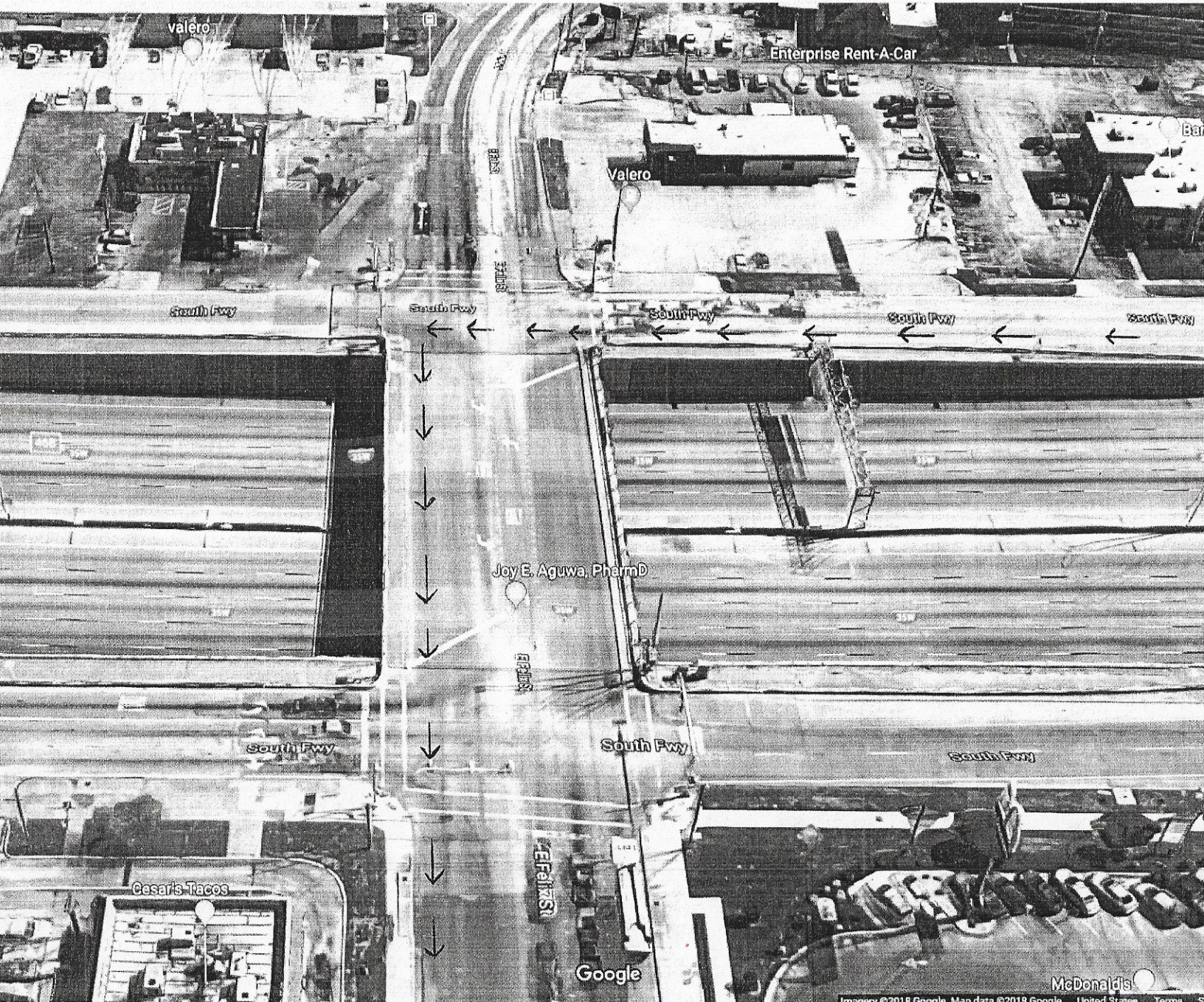




# Exhibit 5



Looking East





# Exhibit 6



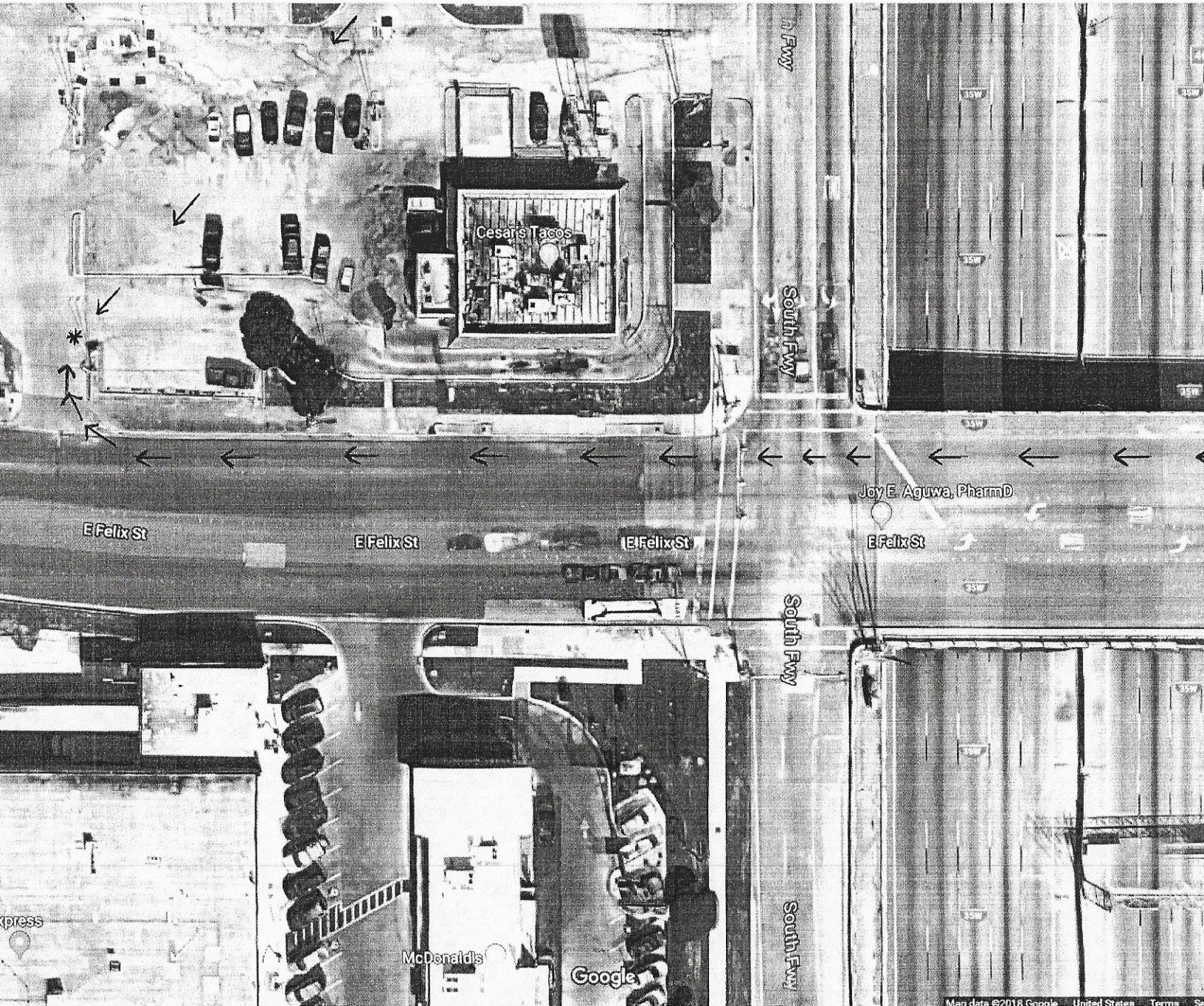




# Exhibit 7



Looking Straight Down

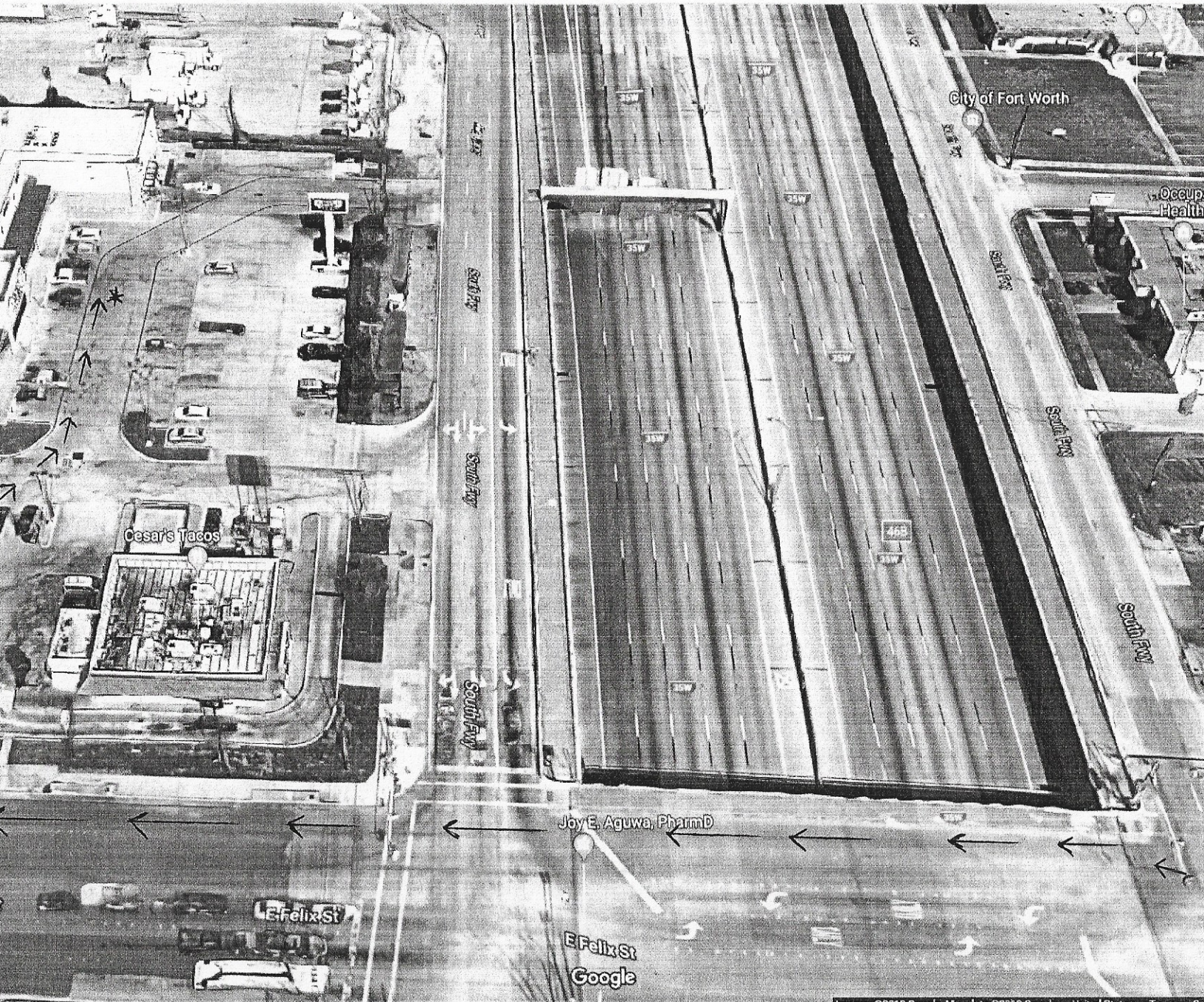




# Exhibit 8



Looking North





Court of Criminal Appeals of Texas.

EX PARTE Kenneth Wayne BEAL, Applicant

NO. WR-82,824-01

Delivered: February 25, 2015

ON APPLICATION FOR A WRIT OF HABEAS CORPUS, CAUSE NO. 1104057-A IN THE 248th DISTRICT COURT FROM HARRIS COUNTY

Attorneys and Law Firms

Nicolas Hughes, for Kenneth Wayne Beal.

OPINION

Per curiam.

\*1 Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court this application for a writ of habeas corpus. Ex parte Young, 418 S.W.2d 824, 826 (Tex.Crim. App.1967). Applicant was convicted of possession of cocaine in an amount of less than one gram, and was sentenced to seven months in state jail. He did not appeal his conviction.

Applicant contends that his plea was involuntary and that his conviction violates due process because several years after he entered his plea, the evidence in his case was tested and found not to contain any controlled substance or dangerous drug. Although Applicant has discharged his sentence in this case, he alleges that he is suffering continuing consequences as a result of this conviction. Those continuing consequences are sufficient to allow this Court to address his claims. Ex parte Harrington, 310 S.W.3d 452, 456-57 (Tex.Crim.App.2010).

The parties have entered agreed findings of fact and conclusions of law, and the trial court has determined that Applicant's decision to plead guilty in this case was not a voluntary and intelligent choice. Applicant is entitled to relief. Ex parte Mable, 443 S.W.3d 129 (Tex.Crim.App.2014).

Relief is granted. The judgment in Cause No. 1104057 in the 248<sup>th</sup> District Court of Harris County is set aside, and Applicant is remanded to the custody of the Sheriff of Harris County to answer the charges as set out in the indictment. The trial court shall issue any necessary bench warrant within 10 days after the mandate of this Court issues.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice—Correctional Institutions Division and Pardons and Paroles Division.