



**In The
Court of Appeals
Fifth District of Texas at Dallas**

**No. 05-11-00548-CR
No. 05-11-00549-CR
No. 05-11-00550-CR
No. 05-11-00551-CR**

THE STATE OF TEXAS, Appellant

V.

DIONTE MATTHEWS, Appellee

**On Appeal from the Criminal District Court No. 6
Dallas County, Texas
Trial Court Cause Nos. F07-51260-X, F07-73298-X, F08-51985-X, & F10-00641-X**

OPINION

Before Justices Morris, Moseley, and Myers
Opinion By Justice Morris

A jury convicted Dionte Matthews of capital murder. The trial court then revoked his community supervision in three other cases based on the capital murder conviction. About one month later, one of appellee's accomplices pleaded guilty to murder, offering testimony that contradicted testimony given by appellee's other accomplice during the capital murder trial. Afterward, the trial court granted appellee's first amended motion for new trial in the capital murder case and his second amended motions for new trial in the revocation cases. The State challenges the trial court's rulings alleging that the court erred in permitting appellee to amend his motion for new

trial in the capital murder case and that the evidence in all four cases was insufficient to justify the court's granting appellee's motions for new trial. We affirm the trial court's orders granting new trials in all four cases.

FACTUAL BACKGROUND

During appellee's trial for capital murder, his accomplice Steven Williams claimed that appellee and Brandon Foreman went to the door of the deceased and shot him as he waited for them in a car. Williams had already pleaded guilty to murder at the time but had rejected a plea offer from the State of twenty years and had not yet been sentenced. Williams admitted that the grievance against the deceased was his due to a debt the deceased owed Williams for the purchase of drugs. He also admitted his gun was used to shoot the deceased. He claimed, nevertheless, that Foreman and appellee had initiated the shooting of the deceased and that he had merely gone along with it. Foreman was called as a witness at appellee's trial, but he invoked his Fifth Amendment right not to testify.

Williams asserted that he had wanted the group to burglarize the deceased's apartment rather than to rob him. He admitted that he had lied to police on several occasions but asserted that he was telling the true version of events at appellee's trial. Williams stated that he had been questioned by a group of assistant district attorneys before appellee's trial to see if he would be a "viable" witness. He acknowledged that he had lied to the group at some points during the meeting. Defense counsel for appellee requested that the trial court review in camera any notes taken by the assistant district attorneys at the meeting to determine if they contained any exculpatory evidence. The trial court denied the request.

Other evidence adduced at trial showed that a black sock found in Foreman's car was linked to appellee's DNA and contained gunshot residue particles on the inside and outside. Williams

claimed that appellee had used a gun covered with a black sock during the offense. In a dumpster where Williams had claimed appellee and Foreman disposed of their weapons after the shooting, police found two black gloves that appeared to contain the DNA of Foreman and appellee. Williams had testified that he gave an old pair of his football gloves to Foreman before the offense. Williams's DNA was not found on the sock or the gloves.

In a written statement to police admitted at trial, appellee claimed he had been driving the car at the time he, Freeman, and Williams got to the deceased's apartment, where Williams said he was going to "hollar" [sic] at the deceased because he owed him money. According to appellee's statement, he ran from the car when he saw Williams shooting at the deceased and continued running away on foot for approximately forty-five minutes until his girlfriend picked him up. At trial, appellee's girlfriend denied being with appellee at that time and denied picking him up. Other witnesses to the shooting testified that there were two men at the deceased's door and a driver who helped the men escape. Police testimony also contradicted appellee's claim in his statement that he had fled through an empty backyard. An officer who accompanied appellee on the path he claimed he took in fleeing the scene testified that the backyard was actually crowded with items that would interfere with running through it, including an interior fence.

Appellee was convicted of capital murder and sentenced to life imprisonment without parole. Afterward, the trial court also revoked appellee's community supervision in the three other cases based upon appellee's commission of capital murder while he was on community supervision.

Not long after the revocations, however, Brandon Foreman's trial for murder began. Pleading guilty to the charge before the same trial court, Foreman, testifying for the first time, said that it had been he and Williams who shot the deceased at the apartment door and that appellee had been the driver, though he briefly attempted to leave Foreman and Williams at the scene. The trial court

accepted Foreman's guilty plea and, in accordance with his plea bargain with the State, sentenced him to thirty years' imprisonment.

Based on Foreman's testimony, appellee filed a second amended motion for new trial in the revocation cases alleging, in relevant part, that new trials should be granted based on newly discovered evidence that Williams had perjured himself at appellee's capital murder trial. The deadline for amending the first amended motion for new trial in the capital murder case had lapsed one day earlier and the State refused to agree to an additional amendment under appellate rule 21.4(b).¹ In his first amended motion, however, appellee had requested that the trial court grant a new trial "in the interest of justice."

Foreman testified at the hearing on appellee's motions for new trial, reaffirming his claims that he and Williams had been the shooters and appellee had been the driver of their getaway car. Foreman claimed that before the offense, appellee was aware that Foreman was going to help Williams get his money back from the deceased, but he did not know the plans Williams and Foreman had made. According to Foreman, appellee "freaked out" when Foreman pulled out a gun when they got to the deceased's apartment. Foreman testified that appellee tried to leave Williams and him at the scene of the shooting but appellee stopped the car when they flagged him down.

Following the hearing, the trial court granted appellee's second amended motions for new trial in the revocation cases and appellee's first amended motion for new trial in the capital murder case. In the revocation cases, the trial court concluded that appellee had been convicted, at least in part, on the perjured testimony of Williams and should be granted new "trials/revocation hearings" in the cases. In the capital murder case, the trial court concluded that appellee's "due process rights

¹ See *State v. Moore*, 225 S.W.3d 556, 570 (Tex. Crim. App. 2007) (holding, absent objection by the State, defendant may file untimely amendment of motion for new trial within trial court's seventy-five-day plenary jurisdiction following conviction and sentence).

were violated, he was denied a fair trial, and he is entitled to a new trial in the interest of justice.” The court further concluded that the “verdict and sentence in this case have resulted in a miscarriage of Justice; and the verdict is contrary to the law and the evidence.”

The trial judge issued extensive findings of facts in both of her decisions, remarking on the credibility of the witnesses at appellee’s capital murder trial and the other facts adduced at his trial and the various hearings over which the trial judge had presided involving both appellee’s cases and Foreman’s. In the findings for the capital murder case, the trial judge noted that she had, “from the beginning . . . not found Steven Williams to be a credible witness” and found Foreman to be a credible witness. In addition, the trial judge orally stated the following:

. . . [A]t this time I am going to grant [appellee’s] first Motion for New Trial on the capital murder case for several reasons. And one I am stating on the record is simply in the interest of justice.

. . .
This Court does not believe that the ends of justice have been attained in Dionte Matthews’ case due to the perjured testimony of the codefendant Steven Williams. That is not to say Dionte Matthews is an innocent man. It does go to say that there is a likelihood that he would have received a different result.

. . .
Like I said in my findings of fact, the draft, this is not an actual innocence case. But I will also note for the record the State did request at trial the lesser-included offense of murder, which they anticipated might be an option for the jury and might be an option for another jury at a future time, hopefully without perjured testimony.

Displeased with the trial court’s orders granting new trials, the State appeals.

DISCUSSION

In its first issue on appeal, the State contends that the trial court erred in granting appellee’s motion for new trial in the capital murder case because it based its ruling on Foreman’s guilty-plea testimony, thereby improperly permitting appellee to amend his first amended motion to include the additional and untimely complaint of newly discovered perjured testimony. A trial court has the

authority to grant a new trial in the interest of justice, and we review the decision to grant a motion for new trial only for an abuse of discretion. *See State v. Herndon*, 215 S.W.3d 901, 907 (Tex. Crim. App. 2007). Nevertheless, the trial court may not grant a motion for new trial in the interest of justice unless the first proceeding was not in accordance with the law. *See id.* The trial court must balance the defendant's "interest of justice" claim against the public's interest in the finality of judgments and against the harmless-error standards set out in rule of appellate procedure 44.2. *Id.* at 908. A trial court should deny a motion for new trial if the defendant's substantial rights were not affected. *See id.*

As held in *Herndon*,

... a trial court would not generally abuse its discretion in granting a motion for new trial if the defendant: (1) articulated a valid legal claim in his motion for new trial; (2) produced evidence or pointed to evidence in the trial record that substantiated his legal claim; and (3) showed prejudice to his substantial rights under the standards in Rule 44.2 of the Texas Rules of Appellate Procedure. The defendant need not establish reversible error as a matter of law before the trial court may exercise its discretion in granting a motion for new trial.

Id. at 909. A trial court's decision to grant a motion for new trial is presumed to be correct and the burden rests on the appellant to establish the contrary. *State v. Boyd*, 202 S.W.3d 393, 401–02 (Tex. App.—Dallas 2006, pet. ref'd). We must defer to the trial court's findings of facts regarding the credibility and demeanor of the witnesses, viewing the evidence in the light most favorable to the trial court's rulings. *See Gamboa v. State*, 296 S.W.3d 574, 584 (Tex. Crim. App. 2009).

In a criminal case, a trial court may take judicial notice of all its own records, including all judgments and convictions entered by it. *Turner v. State*, 733 S.W.2d 218, 221–22 (Tex. Crim. App. 1987). Here, in the capital murder case, the trial court had before it a motion for new trial premised, in part, on the "interest of justice." Appellee was unable to amend his first amended motion for new trial any further because Foreman's testimony did not become available until one day after appellee's

deadline for additional amendment had passed, and the State would not agree to permit appellee to amend the motion further. The trial court, however, had judicial notice of Foreman's testimony, from his guilty-plea hearing and from the hearing on appellee's motions for new trial in the revocation cases. Based on this testimony and the trial judge's observation of Williams during his testimony at the capital murder trial, the trial court explicitly found that Williams — the State's primary witness against appellee — was not a credible witness. And the trial court had already determined in the revocation cases that Williams had perjured himself. Appellee was the only one of the three accomplices who was convicted of capital murder, and his conviction for the greater offense was due, at least in part, to Williams's assertions to police and at trial about who had actually shot the deceased and who had merely been the driver during the offense.

Viewing the record in the light most favorable to the trial court's determination and deferring to the trial court's findings regarding witness credibility, we cannot say the trial court abused its discretion. Even without a specific allegation of perjured testimony in his motion for new trial, appellee had requested that the court grant the motion in the interest of justice. The trial court, "almost the only protection to the citizen against the illegal or oppressive verdicts of prejudiced, careless, or ignorant juries," had concluded appellee's due process rights had been violated and he had been denied a fair trial. *See Herndon*, 215 S.W.3d at 906. The court also found that the verdict and sentence had resulted in a miscarriage of justice and the verdict was contrary to the law and the evidence. These findings and conclusions certainly fall under the parameters of the interest of justice, which was a specific ground asserted in appellee's motion for new trial. Accordingly, we need not interpret the trial court's ruling in the case as an impermissible granting of the State's untimely motion to amend its first amended motion for new trial. Moreover, even errors that would not inevitably require reversal on appeal may constitute the basis for the granting of a new trial, if the

trial judge concludes that the proceeding has resulted in a miscarriage of justice. *Id.* at 907. In light of the trial court's findings, the court did not abuse its discretion in granting appellee's first amended motion for new trial in the capital murder case. We resolve the State's first issue in favor of appellee.

In its second issue, the State complains that the trial court abused its discretion in granting all four of appellee's motions for new trial because the rulings "are wholly unjustified by any reasonable view of the record as a whole because any such reasonable view reveals the insufficient nature of the evidence to justify such rulings." We determined in the previous issue that the trial court did not abuse its discretion in granting the first amended motion for new trial in the capital murder case in the interest of justice. For this reason, we confine our analysis in this issue to the court's rulings in the three revocation cases.

The trial court concluded in granting the second amended motions for new trial in the revocation cases that appellee had been convicted in the capital murder case "at least in part, on the perjured testimony of Steven Williams, a co-defendant/accomplice, concerning which co-defendants were at the victim's door at the time of this shooting." The State asserts that, under *Herndon*, the trial judge was not permitted to grant the motions for new trial merely because she believed appellee to be not guilty. *See id.* at 907.

In these cases, however, the trial judge did not merely form a hunch that Williams was lying in the capital murder case against appellee. Rather, she was presented with specific evidence of Williams's lies to police and to the assistant district attorneys. Moreover, at the time of Foreman's testimony at his guilty plea and the hearing on appellee's motion for new trial hearing, the trial court was confronted with having to decide whether Foreman or Williams was telling the truth about how the murder occurred. After observing both witnesses and weighing their credibility, the trial court specifically concluded that Williams had committed perjury in appellee's case — the only case among

the three co-defendants involving a charge of capital murder, rather than murder.

The State further contends that because the newly discovered evidence does not change appellee's guilt as a party to murder, at a minimum, it should not be used to justify the granting of new trials in the revocation cases because it would not change the outcome in those cases. A defendant is entitled to a new trial based on newly discovered evidence when the defendant shows (1) the newly discovered evidence was unknown or unavailable to the movant at the time of his trial; (2) the movant's failure to discover or obtain the evidence was not due to a lack of diligence; (3) the new evidence is admissible and not merely cumulative corroborative, collateral, or impeaching; and (4) the new evidence is probably true and will probably bring about a different result at another trial. *Lee v. State*, 186 S.W.3d 649, 659–60 (Tex. App.—Dallas 2006, pet. ref'd). In its motions to revoke appellee's deferred adjudication community supervision, the State's sole allegation was that appellee had "unlawfully, knowingly, and intentionally cause[d] the death of Cornell Keith Williams, by a deadly weapon, to-wit: a handgun." Appellee pleaded not true to the allegation in all three of the revocation cases. It is clear from the record that the trial court revoked appellee's community supervision in each of the revocation cases on the basis of the conviction in the previous capital murder trial. The State argues that because the evidence shows appellee is nonetheless at least a party to the murder of the deceased, the trial court would still have to revoke his community supervision and therefore, the new evidence would not bring about different results at a new revocation trial.

The record before us reveals that the trial judge did not necessarily believe that appellee was innocent of the charged capital murder but that he had been convicted of capital murder, at least in part, based on perjured testimony. The trial court having concluded that a miscarriage of justice had occurred in the capital murder case was entitled — as the judge of witness credibility both in the

motion for new trial hearing and the hearing on the revocations of appellee's community supervision — to determine that once the capital murder conviction was set aside to be tried again, the revocation cases would have to be re-tried as well to ensure that appellee's due process rights in the those cases were fully observed. Although the outcome of the revocation cases may be the same on retrial, the question before us is simply whether the trial court's decision was arbitrary or unreasonable. *Id.* at 658. Under the circumstances presented in these cases, which were thoughtfully considered by the trial court, the trial court's decision to grant new trials in the revocation cases was neither arbitrary nor unreasonable. We therefore resolve the State's second issue in favor of appellee.

We affirm the trial court's orders granting appellee's motions for new trial in all four cases.

JOSEPH B. MORRIS
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-11-00548-CR V.

DIONTE MATTHEWS, Appellee

Appeal from the Criminal District Court No. 6
of Dallas County, Texas. (Tr.Ct.No. F07-
51260-X).

Opinion delivered by Justice Morris, Justices
Moseley and Myers participating.

Based on the Court's opinion of this date, the order of the trial court granting appellee's second amended motion for new trial is **AFFIRMED**.

Judgment entered August 28, 2012.

/Joseph B. Morris/

JOSEPH B. MORRIS

JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-11-00549-CR V.

DIONTE MATTHEWS, Appellee

Appeal from the Criminal District Court No. 6
of Dallas County, Texas. (Tr.Ct.No. F07-
73298-X).

Opinion delivered by Justice Morris, Justices
Moseley and Myers participating.

Based on the Court's opinion of this date, the order of the trial court granting appellee's second amended motion for new trial is **AFFIRMED**.

Judgment entered August 28, 2012.

/Joseph B. Morris/

JOSEPH B. MORRIS

JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-11-00550-CR V.

DIONTE MATTHEWS, Appellee

Appeal from the Criminal District Court No. 6
of Dallas County, Texas. (Tr.Ct.No. F08-
51985-X).

Opinion delivered by Justice Morris, Justices
Moseley and Myers participating.

Based on the Court's opinion of this date, the order of the trial court granting appellee's second amended motion for new trial is **AFFIRMED**.

Judgment entered August 28, 2012.

/Joseph B. Morris/

JOSEPH B. MORRIS

JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

THE STATE OF TEXAS, Appellant

No. 05-11-00551-CR V.

DIONTE MATTHEWS, Appellee

Appeal from the Criminal District Court No. 6
of Dallas County, Texas. (Tr.Ct.No. F10-
00641-X).

Opinion delivered by Justice Morris, Justices
Moseley and Myers participating.

Based on the Court's opinion of this date, the order of the trial court granting appellee's first amended motion for new trial is **AFFIRMED**.

Judgment entered August 28, 2012.

/Joseph B. Morris/

JOSEPH B. MORRIS

JUSTICE