APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 19-50222

TERRY TRENTACOSTA,

Petitioner - Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent - Appellee

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:18-CV-892

(Filed Oct. 25, 2019)

Before HIGGINBOTHAM, SOUTHWICK, and WILLETT, Circuit Judges.

PER CURIAM:*

Terry Trentacosta, Texas prisoner # 1535182, was convicted by a jury of five counts of aggravated sexual

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

assault and two counts of indecency with a child and sentenced to a total of sixty years' imprisonment.[1] In January 2019, the district court dismissed Trentacosta's years-late 28 U.S.C. § 2254 petition as untimely and denied his subsequent Rule 59(e) motion to alter or amend the judgment. Trentacosta now seeks a certificate of appealability (COA) on the district court's refusal to toll the statute of limitations or hold an evidentiary hearing in light of his claim of actual innocence. Trentacosta contends that the district court should have tolled the limitations period and reached the merits of his underlying ineffective-assistance claim. He also seeks a COA on the district court's denial of his Rule 59(e) motion.

Actual innocence can serve as a gateway through which a petitioner may raise § 2254 claims despite the expiration of the limitations period.[2] However, actual-innocence claims require new, reliable evidence, such as "exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence."[3] The petitioner must "persuade[] the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt."[4]

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[1] *Trentacosta v. State*, No. 04-08-00805-CR, 2009 WL 2883024, at *1 (Tex. App. Sept. 9, 2009).

[2] *See McQuiggin v. Perkins*, 569 U.S. 383, 392–93 (2013).

[3] *Schlup v. Delo*, 513 U.S. 298, 324 (1995).

[4] *Id.* at 329.

Trentacosta's arguments in support of a COA are conclusory and unpersuasive. The affidavits he offers as "new evidence" attempt to impugn the victim's credibility and establish her motive to lie. Trentacosta does not explain how this purportedly new evidence could demonstrate that no reasonable juror would have convicted him. Especially given that the victim's testimony was corroborated by physical evidence,[5] reasonable jurists could not debate either the district court's actual-innocence determination or its denial of an evidentiary hearing.[6] Moreover, because Trentacosta's Rule 59(e) motion merely rehashed his conclusory assertion of entitlement to an evidentiary hearing on his claim of actual innocence, the district court did not err in denying it.

Trentacosta's motion for a COA is therefore denied, and the district court's denial of an evidentiary hearing is affirmed.[7]

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[5] *See Trentacosta*, 2009 WL 2883024, at *2.

[6] *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

[7] Because no COA requirement "exists for an appeal from the denial of an evidentiary hearing," we "construe [Trentacosta's] request for a COA on this issue as a direct appeal from the denial of an evidentiary hearing." *Norman v. Stephens*, 817 F.3d 226, 234 (5th Cir. 2016).

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

TERRY TRENTACOSTA,	§	
Petitioner,	§	
	§	
v.	§	**Civil No. SA-18-**
LORIE DAVIS, Director,	§	**CA-0892-FB**
Texas Department of	§	
Criminal Justice,	§	
Correctional Institutions	§	
Division,	§	
	§	
Respondent.	§	

MEMORANDUM OPINION AND ORDER

(Filed Jan. 17, 2019)

Before the court are *pro se* petitioner Terry Trentacosta's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1) and supplemental Memorandum in Support (ECF No. 2), as well as respondent's Answer (ECF No. 11) and petitioner's reply (ECF NO. 12) thereto.[1] Petitioner challenges the constitutionality of his 2008 state court conviction for aggravated sexual assault of a child and indecency with a child by sexual contact, arguing that his trial counsel

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[1] Petitioner has paid the applicable filing fee for this cause (ECF No. 1) and is represented by counsel in these proceedings.

was ineffective for numerous reasons[2] and that the evidence was legally insufficient to support each element of the charged offenses. In her Answer, respondent Davis contends petitioner's federal habeas petition should be dismissed with prejudice as time-barred.

For the reasons set forth below, petitioner's federal habeas corpus petition is indeed untimely and is dismissed with prejudice as barred by the one-year statute of limitations embodied in 28 U.S.C. § 2244(d)(1). Petitioner is also denied a certificate of appealability.

Background

In October 2008, petitioner was convicted of five counts of aggravated sexual assault of a child and two counts of indecency with a child by sexual contact, and was sentenced to forty years of imprisonment for each count of aggravated sexual assault and twenty years of imprisonment for both counts of indecency with a child. *State v. Trentacosta*, No. 2006-CR-6469 (399th Dist. Ct., Bexar Cnty., Tex. Oct. 7, 2008) (ECF No. 10-7 at 87-100). His convictions and sentences were affirmed on direct appeal, and the Texas Court of Criminal Appeals (TCCA) refused his petition for discretionary review (PDR) on June 28, 2010. *Trentacosta*

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[2] Specifically, petitioner faults counsel for failing to: (1) file a motion to suppress the results of the search on his residence; (2) file a motion to suppress the outcry statement of the victim in this case; (3) present available witnesses on his behalf; (4) allow petitioner to testify on his own behalf; (5) request funding for a DNA expert; (6) obtain cell phone records; and (7) subject the State's case to meaningful adversarial testing.

v. State, No. 04-08-00805-CR, 2009 WL 2883024 (Tex. App.—San Antonio, Sept. 9, 2009, pet. ref d) (ECF No. 9-7); *Trentacosta v. State*, No. PD-0010-10 (Tex. Crim. App.).

On February 8, 2012, Petitioner filed a motion for forensic DNA testing in the trial court pursuant to Chapter 64 of the Texas Code of Criminal Procedure. (ECF No. 9-20). This motion was denied on March 25, 2013. (ECF No. 9-24). Petitioner appealed the denial of the DNA motion to the Fourth Court of Appeals, who affirmed the trial court's decision in an unpublished opinion delivered February 19, 2014. *Trentacosta v. State*, No. 04-13-00287, 2014 WL 667534 (Tex. App.—San Antonio, Feb. 19, 2014, no pet) (ECF No. 9-30). Petitioner also sought mandamus relief from the Fourth Court of Appeals regarding the trial court's decision, but this request was denied April 3, 2013. *In re Trentacosta*, No. 04-13-00057, 2013 WL 1342468 (Tex. App.—San Antonio, Apr. 3, 2013) (ECF No. 9-26).

Thereafter, petitioner—now represented by current counsel—waited until September 30, 2017, to file a state habeas corpus application challenging the constitutionality of his state court. convictions and sentences, which was dismissed as noncompliant by the TCCA on January 10, 2018. *EX parte Trentacosta*, No. 87,874-01 (Tex. Crim. App.) (ECF Nos. 10-3, 10-4). Ten days later, counsel filed a second state habeas corpus application challenging the constitutionality of his state court convictions and sentences, which the TCCA denied without written order on July 18, 2018. *Ex parte Trentacosta*, No. 87,874-02 (Tex. Crim. App.) (ECF Nos.

10-5, 10-7). The instant federal habeas petition was later filed by counsel on August 29, 2018. (ECF No. 1).

Timeliness Analysis

Respondent contends petitioner's federal habeas petition is barred by the one-year limitation period of 28 U.S.C. § 2244(d). Under the AEDPA, a state prisoner has one year to file a federal petition for habeas corpus, starting, in this case, from "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review." 28 U.S.C. § 2244(d)(1)(A); *Palacios v. Stephens*, 723 F.3d 600, 604 (5th Cir. 2013). In this case, petitioner's conviction became final September 26, 2010, ninety days after the TCCA refused his PDR and when the time for filing a petition for writ of certiorari to the United States Supreme Court expired. *See* Sup. Ct. R. 13; *Ott v. Johnson*, 192 F.3d 510, 513 (5th Cir. 1999) ("§ 2244(d)(1)(A) . . . takes into account the time for filing a certiorari petition in determining the finality of a conviction on direct review"). As a result, the limitations period under § 2244(d) for filing a federal habeas petition challenging his underlying convictions expired a year later on September 26, 2011. Because petitioner did not file his § 2254 petition until August 29, 2018—almost seven years after the limitations period expired—his petition is barred by the one-year statute of limitations unless it is subject to either statutory or equitable tolling.

A. Statutory Tolling

Petitioner does not satisfy any of the statutory tolling provisions found under 28 U.S.C. § 2244(d)(1). There has been no showing of an impediment created by the state government that violated the Constitution or federal law which prevented petitioner from filing a timely petition. 28 U.S.C. § 2244(d)(1)(B). There has also been no showing of a newly recognized constitutional right upon which the petition is based, and there is no indication that the claims could not have been discovered earlier through the exercise of due diligence. 28 U.S.C. § 2244(d)(1)(C)-(D).

In addition, although § 2244(d)(2) provides that "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection," it does not toll the limitations period in this case either. As discussed previously, petitioner filed a post-conviction motion for forensic DNA testing in the trial court in February 2012, a motion that would normally toll the limitations period. *See Hutson v. Quarterman*, 508 F.3d 236, 240 (5th Cir. 2007) (holding that "a motion to test DNA evidence under Texas Code of Criminal Procedure article 64 constitutes 'other collateral review' and thus tolls AEDPA's one-year limitations period under 28 U.S.C. § 2244(d)(1)."). Because the motion was filed several months after the limitations period expired, however,

it does not toll the one-year limitations period.[3] *Scott v. Johnson*, 227 F.3d 260, 263 (5th Cir. 2000). Similarly, neither of petitioner's state habeas applications toll the one-year limitations period, as the first petition was not filed until September 30, 2017, six years after the limitations period expired.[4] *Id.*

B. Equitable Tolling

The Supreme Court has made clear that a federal habeas corpus petitioner may avail himself of the doctrine of equitable tolling "only if he shows (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *McQuiggin v. Perkins*, 569 U.S. 383, 391 (2013) (citing *Holland v. Florida*, 560 U.S. 631,

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[3] Petitioner also filed a petition for mandamus relief following the denial of his DNA motion. (ECF No. 9-26). Similar to petitioner's DNA motion, the mandamus petition was filed after the time for filing a federal petition under § 2244(d)(1) had lapsed. Even if it had been filed before the expiration of the limitations period, however, the mandamus petition would not toll the limitations under § 2244(d)(2) because it did not seek review of the underlying judgments and sentences. *See Moore v. Cain*, 298 F.3d 361, 367 (5th Cir. 2002) (finding a mandamus application did not toll the limitations period because it was not a "properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment.").

[4] Petitioner's first state application would not operate to toll the limitations period anyway because it was not properly filed. An improperly filed state habeas petition has no effect on the one-year time-bar. *See Artuz v. Bennett*, 531 U.S. 4, 8 (2000) ("[A]n application is 'properly filed' when its delivery and acceptance are in compliance with the applicable laws and rules governing filings.").

649 (2010)). However, equitable tolling is only available in cases presenting "rare and exceptional circumstances," *United States v. Riggs*, 314 F.3d 796, 799 (5th Cir. 2002), and is "not intended for those who sleep on their rights." *Manning v. Epps*, 688 F.3d 177, 183 (5th Cir. 2012).

Petitioner did not reply to respondent's assertion of the statute of limitations in this case, nor did his petition and supplemental memorandum provide this court with any valid reason to equitably toll the limitations period. Petitioner does not assert any extraordinary circumstance prevented him from filing earlier; instead, he contends he was not able to obtain affidavits supporting his claims until sometime in 2017, when he obtained enough financial assistance to afford an attorney to assist him. (ECF No. 1 at 14). However, the lack of representation, lack of legal training, ignorance of the law, and unfamiliarity with the legal process do not justify equitable tolling. *U.S. v. Petty*, 530 F. 3d 361, 365-66 (5th Cir. 2008); *see also Sutton v. Cain*, 722 F.3d 312, 316-17 (5th Cir. 2013) (a garden variety claim of excusable neglect does not warrant equitable tolling).

Moreover, petitioner fails to demonstrate that he has been pursuing his rights diligently. Although he claims his supporting evidence was not discovered until 2017, petitioner does not explain why his claims (or supporting evidence) could not have been discovered and presented at an earlier date. Because petitioner failed to assert any specific facts showing that he was prevented, despite the exercise of due diligence on his

part, from timely filing his federal habeas corpus petition in this court, his petition is untimely and barred by § 2244(d)(1).

C. Actual Innocence

Finally, petitioner briefly asserts his untimeliness should be excused because of the actual-innocence exception. In *McQuiggin*, 569 U.S. at 386, the Supreme Court held that a prisoner filing a first-time federal habeas petition could overcome the one-year statute of limitations in § 2244(d)(1) upon a showing of "actual innocence" under the standard set forth in *Schlup v. Delo*, 513 U.S. 298, 329 (1995). But "tenable actual-innocence gateway pleas are rare," and, under *Schlup*'s demanding standard, the gateway should open only when a petitioner presents new "evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error." *McQuiggin*, 569 U.S. at 386, 401 (*quoting Schlup*, 513 U.S. at 316). In other words, Petitioner is required to produce "*new* reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence"—sufficient to persuade the district court that "no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." *Schlup*, 513 U.S. at 324. Petitioner's conclusory assertions in this case fail to meet *Schlup*'s demanding standard. Consequently, the untimeliness of petitioner's federal habeas petition will be not

excused under the actual-innocence exception established in *McQuiggin*.

Conclusion

Based on the foregoing reasons, petitioner's § 2254 petition (ECF No. 1) is barred from federal habeas corpus relief by the statute of limitations set forth in 28 U.S.C. § 2244(d).

Accordingly, **IT IS HEREBY ORDERED** that:

1. Federal habeas corpus relief is **DENIED** and petitioner Terry Trentacosta's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1) is **DISMISSED WITH PREJUDICE** as time-barred;

2. Petitioner failed to make "a substantial showing of the denial of a federal right" and cannot make a substantial showing that this court's procedural rulings are incorrect as required by Fed. R. App. P. 22 for a certificate of appealability. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). Therefore, this court **DENIES** petitioner a certificate of appealability. *See* Rule 11(a) of the Rules Governing § 2254 Proceedings; and

3. All other remaining motions, if any, are **DENIED**, and this case is now **CLOSED**.

It is so **ORDERED.**

SIGNED this the 17th day of January, 2019.

/s/ _____
FRED BIERY
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

TERRY TRENTACOSTA,	§	
Petitioner,	§	
	§	
v.	§	**Civil No. SA-18-**
LORIE DAVIS, Director,	§	**CA-0892-FB**
Texas Department of	§	
Criminal Justice,	§	
Correctional Institutions	§	
Division,	§	
	§	
Respondent.	§	

JUDGMENT

(Filed Jan. 17, 2019)

The Court has considered the Judgment to be entered in the above-styled and number cause.

Pursuant to this court's Memorandum Opinion and Order of even date herewith, **IT IS HEREBY ORDERED, ADJUDGED** and **DECREED** that petitioner Terry Trentocosta's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (ECF No. 1) is **DISMISSED WITH PREJUDICE.** No Certificate of Appealability shall issue in this case. This case is now **CLOSED.**

It is so **ORDERED.**

SIGNED this the 17th day of January, 2019.

/s/ Fred Biery
FRED BIERY
UNITED STATES
DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

TERRY TRENTACOSTA,	§	
Petitioner,	§	
	§	
v.	§	**Civil No. SA-18-**
LORIE DAVIS, Director,	§	**CA-0892-FB**
Texas Department of	§	
Criminal Justice,	§	
Correctional Institutions	§	
Division,	§	
	§	
Respondent.	§	

ORDER

(Filed Feb. 7, 2019)

Before the court is petitioner Terry Trentacosta's Motion to Alter or Amend Judgment (ECF No. 15). On January 17, 2019, this Court dismissed petitioner's 28 U.S.C. § 2254 Habeas Corpus Petition with prejudice as untimely (ECF No. 13). Petitioner now seeks reconsideration of this ruling pursuant to Rule 59 of the Federal Rules of Civil Procedure, arguing the Court erred in refusing to apply the actual-innocence exception established in *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013).

The purpose of a Rule 59(e) motion is "to correct manifest errors of law or to present newly discovered

evidence." *Waltman v. Intl Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989). As such, to prevail on a Rule 59(e) motion, a petitioner must demonstrate the existence of: (1) an intervening change of controlling law; (2) the availability of new evidence; or (3) the need to correct a clear error or to prevent manifest injustice. *Waltman*, 875 F.2d at 473; *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986). Petitioner does not make this showing.

It is therefore **ORDERED** that petitioner's Rule 59(e) Motion to Alter or Amend the Judgment filed January 19, 2019 (ECF No. 15) is **DENIED**.

It is further **ORDERED** that a certificate of appealability is **DENIED**, as reasonable jurists could not debate the denial of the petitioner's Rule 59(e) motion on substantive or procedural grounds, nor find that the issues presented are adequate to deserve encouragement to proceed. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

It is so **ORDERED.**

SIGNED this the 7th day of February, 2019.

/s/ Fred Biery
FRED BIERY
UNITED STATES
DISTRICT JUDGE

APPENDIX D

AFFIDAVIT

STATE OF TEXAS §
SS:
COUNTY OF BEXAR §

The undersigned, of lawful age, being duly sworn, upon oath deposes and states;

I, Jo Anne Joslin, introduced Terry Trentacosta to the owner of the property at 213 West Legion Drive, Converse, Texas 78109, Bexar county. Said property was involved in a alleged crime, involving Amanda Worswick and Terry Trentacosta. The owner of the property Mr. and Mrs. Brouland agreed to rent to Terry Trentacosta after Mr. Les Brouland met with Terry Trentacosta at my place of employment at the time, The Sportsman, located in Converse, Texas, Bexar County. Terry Trentacosta and Les Brouland talked about said property, then they drove to it to let Terry Trentacosta do a walk thur. The property needed much work before someone could live in it. The sheetrock needed repairs, because someone vandalized a few walls, and the whole place need some paint. Everyone came to terms that the property would be rented to Terry Trentacosta, and Terry Trentacosta would make all the repairs and take responsibility of the property from that day forward. Talk was mentioned about a rent to own agreement, but the contract was never drawn up. On or About February 25th,2006, Lori Hackworth and her dauahters;Amanda Worswick, and Alyssa Worswick vacated ans abandoned said property

at 213 West Legion Drive Converse, Texas 72109, Bexar County. with this being said, that would leave Terry Trentacosta sole authority over said property at 213 West Legion Drive, Converse, Texas, Bexar County. Debra Worswick-Bianchi had no authority to let the Converse Police into the said residence while Terry Trentacosta was at work or other places. And Lori Hackworth relinquished any authority she might have had when she abandoned the property.

I, Jo Anne Joslin am able to swear and do swear, that all the facts stated and statements contained in this Affidavit are true and correct.

/s/ Jo Anne Joslin
JO ANNE JOSLIN

GIVEN under my hand and seal of office this 28th day of October 2013.

/s/ Joseph A. Guastella
NOTARY PUBLIC

[NOTARY STAMP]

AFFIDAVIT

THE STATE OF TEXAS	§	SWORN
COUNTY OF BEXAR	§	DECLARATION

BEFORE ME, Jo Ann Joslin the undersigned authority on this day personally appeared, Jo Anne Joslin, who after being duly sworn stated:

"I held in my possession two note books which were previously owned by Amanda Worswick, and they contained comments on fighting other girls; boys butts; and one had a list of ways to get rid of your step-dad. Also I had photos of the inside of 213 W. Legion, Converse Texas 78109, The house were the false accusations were to have taken place. I released the items to Terry Trentacosta, so he could pass them to his attorney Brent De La Paz, to aid the defense in proving his innocence. There was also a valentines card from Amanda Worswick to Terry Trentacosta. None of these items were presented to the trial court or jury, infact Brent De-La Paz never showed up to court either, only the attorney who was to pick out a winning jury. After Terry Trentacosta's conviction I've called Brent De La Paz to have him release said items to myself or to send to Terry Trentacosta. My phone calls were never returned and none of Terry Trentacosta's letters have ever been answeared either."

I, Jo Anne Joslin, declare under the penalty of perjury laws of both the United States of America, and the

State of texas, that the foregoing is true and correct to the best of my knowledge and belief.

/s/ Jo Anne Joslin
Jo Anne Joslin

101 Ave. G Apt. A
ADDRESS

Converse, Texas 78109
CITY STATE ZIP CODE

Subscribed and Sworn to
before me, the undersigned
authority, _____
On this 28th day, of October
2013,and to Certify which witness
my Hand and Seal of Office
[NOTARY STAMP]

_____
NOTARY PUBLIC, BEXAR CO. TX.

AFFIDAVIT

STATE OF OKLAHOMA)(
)(**SS:**
COUNTY OF COMANCHE)(

BEFORE ME, the undersigned authority, personally appeared, David Millspaugh, known to me who after being by me duly sworn on oath deposed and stated as follows:

My name is David Millspaugh, I am over the age of eighteen years and I am competent to make this sworn statement. Further, I state under oath that I have personal knowledge of the facts stated herein in this affidavit and that the same are based upon my personal knowledge and are true and correct to the best of my memory and recollection. I am making this affidavit for purposes of the criminal case of State of Texas vs. Terry Trentacosta, TDCJ-CID No. 1535182, who is incarcerated in the Texas prison system due to a conviction in cause number 2006-CR-6449 in the 399th Judicial District Court of Bexar County, Texas.

I have personally known Terry Trentacosta for over 20 years. Terry is a very thoughtful and caring person. During those 20+ years I have never heard Terry talk in a perverted way about children.

I spent considerable time with Terry and Lori, the mother of the alleged victim in cause 2006-CR-6449, in San Antonio, weeks at a

time. I saw the family environment of their home. It was routine: Terry would rise early and cook breakfast daily. He and his girlfriend Lori would then go to work. When the work-day ended, he would have the girls, Amanda and Alyssa, complete their homework as he would cook. He had the girls in bed early each night, around 8pm always.

Terry had a very positive relationship with the younger girl "Alyssa." The older girl, Amanda, was another story. Amanda did not like Terry at all. She did all she could to show it. She would unreasonably defy him at every turn. Amanda was the alleged victim in the criminal case, 2006-CR-6449. Terry and Lorry had Amanda on restriction often. At Terry's trial the prosecution painted the picture that Terry had a good relationship with Amanda, but that was not true. Terry and Amanda were like oil and water, they did not mix.

I was not surprised when Amanda pulled the rape card, that is, claiming that Terry had sexually assaulted or abused her. It was a good way for Amanda to get rid of Terry for good. Amanda had a friend who had recently done the same with her step dad. Their stories were probably the same and this was not even investigated.

Although I was not surprised that Amanda made that claim, I was surprised she would claim Terry came to her room in the middle of the night. The reason I say this is due to the fact the house had all the bedroom

doors within inches of each other. It would have been almost impossible for him to do that with her mother well within earshot. The whole scenario as alleged by Amanda was too much to swallow. You could have heard everything from one room to the other. My biggest problem with all of this is because Amanda's written statement changed to suit her agenda. The defense attorney neglected to bring up Amanda's character and reputation. She had been in trouble at school on numerous occasions. Amanda had been suspended for her fighting and lying more than once. Amanda also would not adhere to dress codes put in place by the school system, she liked dressing provocatively. Terry had his hands full with her.

Terry had been paying Mr. Brent De la Paz, Terry's original attorney, for about two and a half years before the trial. A week before trial, Terry was notified that his attorney of record could not show. Mr. Fernando Cortes, who had been hired only for jury selection was then to be Terry's trial attorney. Cortes wanted five thousand dollars immediately. He told Terry it was his life and if he wanted freedom, he would come up with the money.

I told Terry to wait and postpone the trial. He wanted it all over and risked it all on this new attorney. I watched the final day of the trial. Cortes was being coached by Terry on what to say. Cortes did not even know the alleged victim's name. I was appalled that the Judge did not stop the whole thing.

Terry was found guilty and the court broke for lunch. Attorney Cortes told me to get Terry as far away from that county as possible and to go to an Indian Reservation. Cortes said Terry's life was over. Cortes admitted to me that he did a poor job and said that he would be willing to help free Terry but he could never be contacted again after that day.

Terry's original attorney, Brent De la Paz, could not be contacted either. Both attorneys hung Terry out to dry. I'm shocked at the injustice due to negligence that took place.

Amanda cannot be trusted. Her story changed about the sexual assaults she claims took place. She alleged in the beginning that Terry had digital penetration with her 18 to 20 times. After it was proved she was a virgin, her story changed to oral sex.

Terry was sentenced to a total of 240 years.

It is clear from just this overview that something went way wrong. I was not even called to testify on behalf of Terry. In fact, nobody testified for the defense except Terry's mother, who is now deceased. I was present in the court room, in San Antonio, during the trail and willing to testify for the defense about the facts contained in this affidavit.

Terry should have been freed long ago. This case should never have gone to trial based on Amanda's contradictory stories. In

my opinion Amanda is not a credible person, not a truth teller.

FURTHER AFFIANT SAYETH NOT.

/s/ David Millspaugh
David Millspaugh,
Affiant

SUBSCRIBED AND SWORN to on this 7th day of Aug., 2017

/s/ Brandy Roberts
Notary Public

My Commission expires:
05/07/21 [NOTARY STAMP]

AFFIDAVIT OF KAREN ROGNE DECARLO

THE STATE OF FLORIDA &

COUNTY OF Sumter &

Affiant Karen Rogne DeCarlo, being first sworn on her oath and known to me, the undersigned Notary Public, deposes and says as follows: "My name is Karen Rogne DeCarlo. I am over the age of 21. I have personal knowledge of the facts stated in this affidavit, and I am competent to testify to these facts. This affidavit is being made for the benefit of Terry Trentacosta ("Terry"), who is imprisoned in the Texas prison system. Terry's prison number is 1535182. This affidavit concerns Terry Trentacosta's conviction in cause number 2006-CR-6449, in the 399th Judicial District Court of Bexar County, Texas. Terry Trentacosta is my maternal first cousin.

When I first met Lori Hackworth and her two daughters, Amanda and Alissa, Lori and Terry related to me that Terry had rescued Lori from an abusive husband/relationship during the 1990s while living in the same apartment complex in Converse, Texas. I was so proud of Terry for trying to help Lori and her girls. Terry lived with his mother and my maternal Aunt, Jo-Ann Joslin, who sadly died in September, 2014. Terry and Lori, along with the two girls, Amanda and Alissa, moved in together and attended family events through the years as a family. At first, Lori was very quiet and sweet, but blossomed over the years, and her girls loved our family and vice versa. I have a good memory

for past conversations between and among people, and the content of those conversations.

During 2007, when my husband was assigned to the United States Embassy in Pakistan, and had a follow-up assignment to Randolph Air Force Base in Texas, I moved to Texas after accepting a promotion from a Public Affairs Specialist with the 16th Services Squadron at Hurlburt Field, Florida to a contracting specialist/analyst at the NAF Purchasing Office with the Air Force Services Agency (world-wide headquarters) in San Antonio, Texas. Since my husband Matt DeCarlo was stationed in Pakistan for a year with the U.S. Air Force, I lived with my mother, Patricia Rogne, and step-father, Tom McLeod, at 8311 Athenian Street, Universal City, Texas 78148.

During the period of 2007 and 2008, I had several conversations with Terry and Lori regarding why Lori's oldest daughter, Amanda, was accusing Terry of inappropriate behavior. Both Lori and Terry related to me that Amanda was given the idea to so accuse Terry from a friend of hers at school so she could get rid of Terry. I asked Terry and Lori why as she seemed so happy with them, and they replied that Amanda was caught lying and was having behavioral problems as she grew older; and that Terry was discipling Amanda like a father-figure. They both said that Terry never did anything inappropriate to Amanda, and that Lori was secretly seeing Terry because she loved Terry, but that the District Attorney's Office at Bexar County, Texas and child protective services threatened to take her two daughters away from her if she did not testify

against Terry in criminal cause 2006-CR-6449, and stay away from Terry. Eventually, Lori stopped seeing Terry.

Although I did not attend the trial, my mother and aunt told me that they were told to leave the courtroom, on several occasions, and were unable to hear first-hand most of the testimony of witnesses. To my knowledge not one family member or friend of Terry's was called to testify at his trial. Myself and our family was shocked that Terry was indicted in the above cause, and convicted for an offense in which Lori's daughter, Amanda, was the complainant. It would be entirely out of character for Terry to do what he was charged with doing which involved Amanda. I was not interviewed by a defense counsel for Terry prior to his trial and not called to testify. I would have been willing to testify to the facts stated in this affidavit at an appropriate time at a trial.

/s/ Karen Rogen DeCarlo
KAREN ROGEN DECARLO
Affiant"
4049 Nostalgia Terrace,
The Villages, Florida 32163

Subscribed and sworn to before me, the undersigned Notary Public, on this 2nd day of August, 2017.

/s/ Gregory Gilbert
NOTARY PUBLIC

My Commission expires:
April 14, 2019 [NOTARY STAMP]

AFFIDAVIT OF HARRY J. BONNELL, M.D.

THE STATE OF _____

SS:

COUNTY OF _____

Affiant Harry J. Bonnell, M.C., deposes and says as follows: "My name is Harry J. Bonnell. I am over the age of 21, personally acquainted with the facts stated herein, and I am competent to testify to such facts. I am making this affidavit for purposes of the criminal case of Terry Trentacosta, prison number 1535182, who is imprisoned in the Texas prison system. This affidavit concerns matters involving Mr. Trentacosta's trial and conviction in criminal cause number 2006-CR-6449 in the 399th Judicial District Court of Bexar County, Texas.

I am a medical doctor, currently employed as a Forensic Pathologist licensed to practice medicine in the State of California. I attended Georgetown University Medical School and graduated from that program in 1979. I have taught at the University of Washington, Madigan Army Medical Center, King County Corrections Center, Uniformed Services University of Health Sciences, University of Cincinnati College of Medicine, and the School of Medicine at the University of California, San Diego

From 1999-2001 I was the Chief Deputy Medical Examiner for the Office of the Medical Examiner in San Diego, California. I have also served as Chief Deputy Coroner and Director of Forensic Pathology of Hamilton County, Ohio, staff Pathologist in the

Forensic Sciences Department at the Armed Forces Institute of Pathology, and Assistant Medical Examiner of King County, Washington. I have personally performed over 7000 autopsies and provided sworn testimony more than 900 times in the Superior Courts of twenty states, six federal court jurisdictions, and eight military courts. A true and correct copy of my curriculum vitae is attached as Exhibit A.

Based on my education, training and experience, and my review materials in the Terry Trentacosta case and material cited below, it is my opinion to a reasonable degree of medical certainty that:

a. Forensic science analysis of non-forensic medical articles relied upon by the Sexual Abuse Nurse Examiner at the trial of Terry Trentacosta has shown that analysis to be scientifically unreliable.

i. Genital Anatomy in Pregnant Adolescents: "Normal" does not mean "nothing happened." N. Kellogg M.D., Pediatrics 113. No. 1, January 2004. Copy attached as Exhibit B is wrongly referred to as proof that that genitalia return to a normal appearance after time even if there has been sexual assault or penetration. This ignores the known fact that pre-ejaculation fluid contains sperm so that ejaculation is not required and mobile sperm can enter through the cervix to impregnate the ovum within the uterus. It also falsely assumes there was any trauma to begin with or that the females were/were not willing partners.

ii. The Evaluation of Sexual Abuse in Children. N. Kellogg, M.D., Pediatrics 116 No. 2, August 2005, and noted as a revision of the previous policy in Edition 103 No. 1, in 1999. This article states that "the interpretation of physical findings continues to evolve as evidence-based research becomes available." The most serious flaw in this and other similar articles is that they address victims of sexual abuse as the same as victims of alleged sexual abuse with no independent confirmation that abuse ever occurred, i.e., there is no scientific "control" population. Attached as Exhibit C.

b. Subsequent forensic medical science research and reports disprove sexual abuse Nurse Examiner's testimony. Based on the article Updated Guidelines for the Medical Assessment and Care of Children Who May Have Been Sexually Abused, N. Kellogg and nine other child abuse experts, published in 2016 in the Journal of Pediatric and Adolescent Gynecology (29). Attached as Exhibit D. This article figured strongly in the appeal and exoneration of the so-called "San Antonio 4."

The title of the article amends previous articles by including "may have been sexually abused."

Table 3 of the article cites medical findings that were previously thought to indicate abuse but no longer do, fulfilling the 2005 admonition regarding evidence-based research's potential value.

The indications for urgent evaluation have changed in the interim.

The requirement for documentation and review have been strengthened.

The following paragraph is excerpted in its entirety for obvious reasons:

"While the child's history remains the most important piece of evidence in child sexual abuse evaluations, physical findings resulting from sexual abuse, when present, are important in the investigation and legal arenas. Examiners must critically evaluate findings in the context of the known medical literature. Many studies suggest that inexperienced examiners are far more influenced by the history than are more experienced examiners in assessing examination findings. Although it is not clear at what level of experience an examiner becomes an expert, it is certainly through training, clinical experience, knowledge of the current literature, continuing education, and engagement in review or oversight of cases. One study demonstrated that variability in interpretation of such findings appears to be linked to level of training, profession, experience and knowledge of literature.

I am not being reimbursed in any manner for rendering this opinion and am willing to provide testimony if required, hopefully with travel costs reimbursed."

/s/ Harry J. Bonnell, M.D.
HARRY J. BONNELL, M.D.,
Affiant

On this day personally appeared before me, the undersigned Notary Public, who, being duly sworn by me, stated on his oath that he has read the foregoing, and that it is true and correct.

Subscribed and sworn to before me, the undersigned Notary Public, on this 2nd day of August, 2017.

/s/ Leanne J. White
NOTARY PUBLIC [Leanne J. White for South Carolina]

My Commission Expires:

MY COMMISSION EXPIRES
20 JUNE 2018

[NOTARY STAMP]