

APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-11212

DONN DEVERAL MARTIN,

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 Northern District of Texas

Before DAVIS, STEWART, and OLDHAM, Circuit Judges.

PER CURIAM:

We remanded this case to the district court because it was unclear from the record whether the petitioner, a pro se prisoner, placed his notice of appeal in the prison mail system on or before October 22, 2020, the last day for filing the notice. The district court ordered the parties to file verified evidence they had to demonstrate when the notice of appeal was placed in the mail. In particular, the court ordered production of the prison mail logs or other records that would show delivery or the lack thereof of the notice of appeal to the prison mail room.

No. 19-11212

After reviewing the evidence, the district court found that the notice of appeal was placed in the mail on October 23, 2019. The court's findings are not clearly erroneous. When set by statute, the time limitation for filing a notice of appeal in a civil case is jurisdictional. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The lack of a timely notice mandates dismissal of the appeal. *United States v. Garcia-Machado*, 845 F. 2d 492, 493 (5th Cir. 1988). Accordingly, the appeal is DISMISSED for want of jurisdiction. All pending motions are denied as MOOT.



A True Copy
Certified order issued Apr 28, 2020

Tyler W. Cayer
Clerk, U.S. Court of Appeals, Fifth Circuit

APPENDIX B

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED	
IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION	
MAR 30 2020	
CLERK, U.S. DISTRICT COURT By _____ Deputy _____	

DONN DEVERAL MARTIN,

§

Petitioner,

§

VS.

§

NO. 4:19-CV-743-A

LORIE DAVIS, Director-TDCJ-ID,

§

Respondent.

§

§

FINDINGS OF FACT

On September 20, 2019, the court dismissed petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2254 as an unauthorized successive petition. (Mem. Op. & J., docs. 10 & 11.) The clerk of court received petitioner's notice of appeal for filing on November 1, 2019. (NOA, doc. 15.) On December 13, 2019, the United States Court of Appeals remanded the case to this court to make a determination as to whether petitioner delivered the notice of appeal to prison officials for mailing on or before October 21, 2019. (Order, doc. 19.) Toward that end, the court makes the following findings of fact:

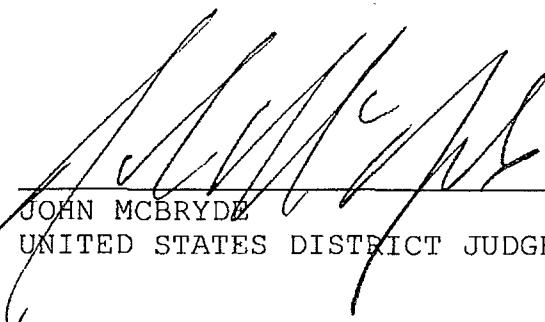
- (1) On September 20, 2019, this court dismissed petitioner's habeas-corpus petition under 28 U.S.C. § 2254 as an unauthorized successive petition. (Mem. Op. & J., docs. 10 & 11.)
- (2) Petitioner's notice of appeal was received and file-stamped by the district clerk on October 31, 2019. (NOA 1, doc. 15.)
- (3) Under Rule 4(a) of the Federal Rules of Appellate Procedure, a notice of appeal in a civil case must be filed with the district clerk "within 30 days after entry of the judgment or order appealed from." FED. R. APP. P. 4(a)(1)(A).

(4) Petitioner's notice of appeal was due on or before Monday, October 21, 2019.¹

(5) Petitioner delivered his notice of appeal to prison officials on October 23, 2019.² (Resp't's Resp. 1 & Attach., doc. 31.)

The clerk of court shall supplement the record on appeal with these findings, close the case, and return the case to the Fifth Circuit for further proceedings.

SIGNED March 30, 2020.



JOHN MCBRYDE
UNITED STATES DISTRICT JUDGE

¹October 20, 2019, was a Sunday.

²Petitioner provides documentation he asserts proves that his notice of appeal was mailed by the prison law library on October 17, 2019, "as per the policy used for inmates who are indigent." (Pe't'r Notice to the Court, doc. 22.) However, the prison mail logs reflect that his notice of appeal was received in the prison mailroom for mailing on October 23, 2019.

APPENDIX C

THE FIFTH CIRCUIT COURT OF APPEALS (5CCOA)
NEW ORLEANS, LA.

<u>DONN DEVERAL MARTIN,</u>	X
<u>PETITIONER-APPELLANT</u>	X
	X
v.	X
	<u>CAUSE NO. 19-11212</u>
	X
<u>LORIE DAVIS, DIRECTOR</u>	X
<u>TEXAS DEPARTMENT OF</u>	X
<u>CRIMINAL JUSTICE-INSTITUTIONAL DIVISION (DCJ-ID),</u>	X
<u>RESPONDENT, APPELLEE</u>	X

PETITION FOR A HEARING BEFORE A 3 JUDGE
PANEL CONSISTING OF DAVIS, STEWART AND OLDHAM

COMES NOW, Donn Deveral Martin, Petitioner in the above numbered and styled cause, proceeding pro se, informs pro se, assigned the DCJ-ID#01454022, currently wrongfully incarcerated at the W.P. Clements Unit (Clemmills, Tx.), requesting leave to file a petition for a hearing before a 3 judge panel consisting of Circuit judges Davis, Stewart and Oldham, seeking to set aside a disingenuous, conclusory ruling, made by Mr. Kyle W. Cayce, Clerk, of the 5CCOA. The following FACTS are offered in support of this petition:

FACT ONE. On September 20, 2019, Federal District

judge, Honorable John McBryde, of the Northern District - Ft. Worth Division, issued a DENIAL of Petitioners 28 U.S.C. § 2354 Petition For A Writ of Habeas Corpus, citing 28 U.S.C. § 2244 (b) (unauthorized successive petition), and totally ignoring the FACT that The Petition was based on a new law (Yank Science Law of 2013) and had NOTHING to do with previous 28 U.S.C. § 2354 Petitions, Petitioner filed!

FACT TWO. On October 18, 2019, Petitioner placed 2 letters in the Clermont Unit mail system for Indigent Inmates, by sending the 2 letters, in an Indigent Mail envelope (Ref. A.D. 14.04), addressed to the Law Library Supervisor, Mr. Holt. The 2 letters contained: Petitioner's Appeal of Judge McBryde's DENIAL; a Motion requesting a Certificate of Appealability (COA); a Brief in support of that Motion; and, a Motion to proceed in forma pauperis. Mail Box Rule applies! (F.R.A.P. 4 (c)(1))

FACT THREE. On October 21-22, Holt charged Petitioner for postage for the 2 letters, proving he had possession of the letters prior to October 21! Mail Box Rule applies! (F.R.A.P. 4 (c)(1))

FACT FOUR. Holt sent the 2 letters to the Clermont Mail room on or about October 23-24. Petitioner had complied with the deadline for filing his Appeal, and related documents within 30 days of Judge McBryde's DENIAL. Mail Box Rule applies! (F.R.A.P. 4 (c)(1))

FACT FIVE. On November 19, 2019, Judge McBryde GRANTED Petitioner's Motion to proceed in forma pauperis on appeal.

FACT SIX. On December 13, 2019, the 5CCOA filed an Order, requesting proof that Petitioner filed his Appeal on

or before, 10/21/2019.

FACT SEVEN. On December 27, 2019, Petitioner mailed Judge McBryde documentary evidence that Petitioner placed his Appeal, and related documents, in the Clements mail system, on the 18th of October, by using the Indigent mailing procedure as per the requirements of the Law Library. Mail Box Rule applies! (F.R.A.P. 4(c)(1)).

FACT EIGHT. On March 27, 2020, Ms. Sarah M. Hays, counsel for the Respondent, filed Clements Unit Mailroom Log Records that prove Mr. Holt, Law Library Supervisor, deposited Petitioner's 2 letters containing Petitioner's Appeal, and related documents, in the Clements Mailroom on October 23, 2019, as per the standard operating procedure for Indigent inmates. Petitioner DID NOT place the 2 letters in the Clements Unit mailroom on October 23, 2019, as stated by Ms. Jennifer Schuster, Mailroom Supervisor. Mr. Holt charged Petitioner postage for the 2 letters on 10/21-22/2019, proving that Petitioner filed his Appeal on or before 10/18/2019. Mail Box Rule applies (F.R.A.P. 4(c)(1)).

FACT NINE. On March 30, 2020, Judge McBryde, totally ignoring the documentary evidence that proves Petitioner deposited all the Appeal letters, on or about October 18, 2019, in the Clements Unit mail system using the Indigent mail process of the Law Library, issued a ruling that Petitioner sent his appeal to the Clements Mailroom on 10/23/2019 which would be

impossible, since Petitioner was indigent and did not have the postage to cover the 2 letters. That is why the Law Library Supervisor, Mr. Holt, charged Petitioner's Trust Fund Account on October 21-22, 2019, for the postage!

FACT TEN. On March 30, 2020, Judge McBryde noted, in a footnote of his ruling, that Petitioner sent documentary evidence to Judge McBryde's attention, that Petitioner proved he put his Appeal, and related documents, in the Clements Unit Mail system, using the Law Library's standard operating procedure for Indigent Inmates.

Mail Room Rule applies (FRAP. 4 (c) (3)).

FACT ELEVEN. Apparently, Judge McBryde, failed to include Petitioner's documentary evidence in Judge McBryde's March 30, 2020, ruling. The SC COA should order the filing of that critical evidence immediately.

FACT TWELVE. On April 28, 2020, Ms. Christina C. Rachal, Deputy Clerk, of the SC COA, with the approval of Ms. Lyle Cayce, Clerk of the SC COA, sent the alleged judgment, issued as the "mandate", for Cause No. 4-99-CV-743, without knowledge of Petitioner's documentary evidence Petitioner sent to Judge McBryde on December 27, 2019 (refer to FACT SEVEN above). The judgment did not have the signature of any of the SC COA judges.

FACT THIRTEEN. On May 07, 2020, Petitioner filed a request to Ms. Ann Murphy, Manager of Judge McBryde's Court, to send the documentary evidence Petitioner sent to Judge McBryde, to the attention of the SC COA judges.

CONCLUSION AND PRAYER

THEREFORE, the above premises considered, Petitioner requests the 3 panel judges, consider and review Petitioner's Appeal, and related documents, on the basis that they were filed timely, on or about October 18, 2019, using the Clements Unit Law Library's standard operating procedure for Indigent Inmates! Petitioner PRAYS the 3 judge panel will give Petitioner's Appeal a full and fair review and issue a just ruling.

Respectfully Submitted,

Donn D. Martin (1454022)
10WAD, Room 4; W.P. Clements Unit
9601 Hwy 591
Dumas, Tx. 79107-9606

INMATE'S DECLARATION

I, Donn D. Martin, do hereby DECLARE, under penalty of perjury, that the above FACTS, and statements, are true and accurate, to the best of my knowledge.

EXECUTED ON
05/13/2020

SIGNED Donn D. Martin

APPENDIX D

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

May 27, 2020

#1454022
Mr. Donn Deveral Martin
CID Clements Prison
9601 Spur 591
Amarillo, TX 79107-9606

No. 19-11212 Donn Martin v. Lorie Davis, Director
USDC No. 4:19-CV-743

Dear Mr. Martin,

We will take no action on your petition for a rehearing. The time for filing a petition for rehearing under FED. R. APP. P. 40 has expired. Any petition for rehearing would have been due within 14 days for the Court's order of April 28, 2020.

Sincerely,

LYLE W. CAYCE, Clerk
Claudia N. Farrington

By:
Claudia N. Farrington, Deputy Clerk
504-310-7706

APPENDIX E

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-11212

DONN DEVERAL MARTIN,

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 Northern District of Texas

Before DAVIS, STEWART, and OLDHAM, Circuit Judges.

PER CURIAM:

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). Pursuant to 28 U.S.C. § 2107(a) and Federal Rule of Appellate Procedure 4(a)(1)(A), the notice of appeal in a civil case must be filed within thirty days of entry of judgment.

In this habeas corpus case filed by a state prisoner, the final judgment was entered and certificate of appealability was denied on September 20, 2019. Therefore, the final day for filing a timely notice of appeal was Monday, October 21, 2019 because the thirtieth day was a Sunday. See Fed. R. App. P.

No. 19-11212

26(a)(1)(C). The cover letter accompanying petitioner's pro se notice of appeal is dated October 17, 2019 and the notice is stamped as filed on October 31, 2019.

A prisoner's pro se notice of appeal is timely filed if deposited in the institution's internal mail system on or before the last day for filing. *See* FED. R. APP. P. 4(c)(1). As it cannot be determined from the record in this case whether the petitioner delivered the notice of appeal to prison officials for mailing on or before October 21, 2019, the case must be remanded to the district court to make this determination. *See Thompson v. Montgomery*, 853 F.2d 287, 288 (5th Cir. 1988) (per curiam). Upon making this determination, the district court shall return the case to this court for further proceedings, or dismissal, as may be appropriate.

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

FEB 19 2020

CLERK, U.S. DISTRICT COURT

By _____

Deputy

DONN DEVERAL MARTIN,

§

§

Petitioner,

§

§

v.

§

No. 4:19-CV-743-A

§

LORIE DAVIS, Director-TDCJ-ID,

§

§

Respondent.

§

ORDER, NOTICE, AND INSTRUCTIONS TO PARTIES

You will take notice that a petition for a writ of habeas pursuant to 28 U.S.C. § 2254 was filed in the Amarillo division of the United States District Court for the Northern District of Texas, which was transferred to this Court on September 17, 2019. (Order, doc. 6.) The Court dismissed the petition without prejudice as a successive § 2254 petition on September 20, 2019. (Mem. Op. and Final J., docs. 10 & 11.) No service had issued upon respondent at that time. Petitioner appealed the Court's dismissal, and on December 13, 2019, the Fifth Circuit Court of Appeals remanded the case to the Court for determination of the date petitioner delivered his notice of appeal to prison officials for mailing. (Order, doc. 19.)

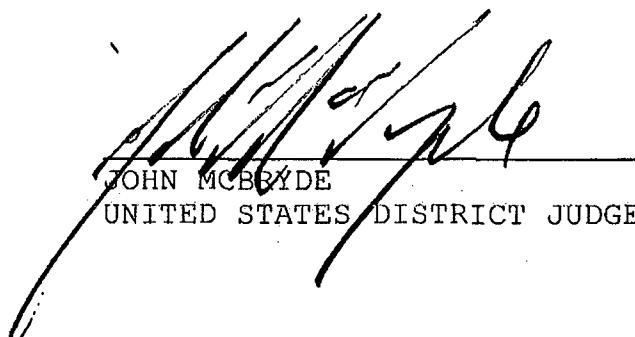
Toward that end, the Court issued an order on December 16, 2019, ordering the parties to provide verified evidence of facts regarding the date that petitioner actually deposited his notice of appeal in the prison mail system on or before 60 days after the entry of this Order. (Order, doc. 21.) Respondent did not respond within the time allowed. It has been brought to the Court's attention that respondent was not properly served with a copy of the petition or any orders in this habeas action.

It is therefore **ORDERED** that respondent file verified evidence of the facts regarding the date that petitioner deposited his notice of appeal in the prison mail system within 30 days. The court in particular invites verified proof of the prison mail logs or other records that may reflect the delivery or non-delivery of petitioner's notice of appeal to the prison mail room on or before October 21, 2019.

A copy of the petition, memorandum opinion, final judgment, and all orders shall be served on the Attorney General, counsel

for respondent, by electronic means.¹ N.D. Tex. L. Civ. R. 5.1(e). A copy of this order shall be mailed to petitioner.

SIGNED February 19, 2020.


JOHN McBRADY
UNITED STATES DISTRICT JUDGE

¹Based upon communication with the Texas Attorney General's Office, this Court will not serve copies directly upon respondent. Instead, copies shall be served electronically upon the Texas Attorney General and directed to the attention of Edward Marshall, Chief, Criminal Appeals Division, Office of the Attorney General of Texas, Austin, TX 78711-2548. See Fed. R. Civ. P. 5(b)(2)(E).

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED	NOV 19 2019
CLERK, U.S. DISTRICT COURT	
By _____ Deputy	

DONN DEVERAL MARTIN,

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Petitioner,

No. 4:19-CV-743-A

v.

LORIE DAVIS, Director,
Texas Department of Criminal
Justice, Correctional
Institutions Division,

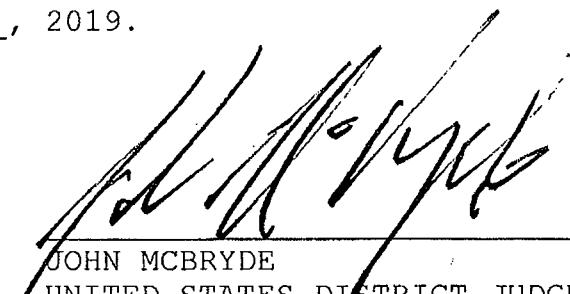
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Respondent.

ORDER GRANTING APPLICATION TO
PROCEED ON APPEAL IN FORMA PAUPERIS

Petitioner has appealed the court's September 20, 2019, Memorandum Opinion and Order and Final Judgment dismissing his habeas petition in this action as an unauthorized successive petition pursuant to 28 U.S.C. § 2244(b). (Op. & J., docs. 10-11.) Petitioner filed a motion to proceed *in forma pauperis* on appeal in the Fifth Circuit, which has been forwarded to this court for a ruling. (Ltr., doc. 17.) After review and consideration of petitioner's application to proceed *in forma pauperis* and supporting documentation received by the clerk of this court on September 23, 2019, the court ORDERS that the application to proceed *in forma pauperis* on appeal be, and is hereby, granted.

SIGNED November 19, 2019.


JOHN MCBRYDE
UNITED STATES DISTRICT JUDGE

OFFICE OF THE CLERK

U.S. FEDERAL DISTRICT COURT

RE CASE NO. 4:19-CV-00743-A

FEDERAL DISTRICT JUDGE JOHN MC BRYDE
NORTHERN DISTRICT OF TEXAS
NORTHERN DISTRICT-FT. WORTH DIVISION

501 WEST TENTH ST. - ROOM 310

FORT WORTH, TX. 76102

U.S. DISTRICT COURT	
NORTHERN DISTRICT OF TEXAS	
FILED	
JAN 2 2019	2019
CLERK, U.S. DISTRICT COURT	
By DECEMBER 27, 2019	
Deputy	

Dear Clerk of Court:

Please file the enclosed documents in Judge John McBryde's Court to validate the fact that my Appeal to the 5th Circuit Court of Appeals was filed on October 17, 2019, by the W.P. Clements Law Library (Director, Mr. Holt). Judge McBryde should be made aware of the fact that the W.P. Clements Law Library mailed my Appeal; a Brief in support of my Appeal; and a Motion to proceed in forma pauperis, as per the policy used for inmates who are indigent. The enclosed Janette Trust Fund "Statement of Account" shows that the Law Library mailed these documents on 10/17/2019 and charged me postage for the mailing. Moreover, my cover letter to the 5th Circuit Court of Appeals was submitted to the Law Library on October 17, 2019 as the enclosed document proves. Finally, the enclosed "Judge's Supply Request Form" proves that the Law Library mailed those documents to the 5th Circuit on 10/17/2019.

Sincerely,

Donald Steven Martin (454022)
Clements Unit, 9601 Spur 591
Carrizo, TX 79107-9606

APPENDIX I
Exhibits

APPENDIX E - EXHIBIT A1

Case 4:11-cv-00447-Y Document 2-1 Filed 06/27/11 Page 34 of 44 PageID 76

45

DET. MIKE
WEBER'S
TESTIMONY

NOT
TRUE!

PROVES WEBER
LIED AND
MANIPULATED THE
EVIDENCE
VERY
GOOD

1 (Open court)
2 Q. (By Ms. Varnell) Detective Weber, in
3 reviewing State's Exhibit No. 22 and having looked at
4 the photographs of the victim, an adult male, did you
5 find items in those photographs that are
6 consistent -- in the photographs of the victim, did
7 you find items that are consistent with what you saw
8 when you examined Donn Martin?

9 A. Yes, I did.

10 Q. Okay. Just briefly, can you go into some
11 of the things that you saw?

12 A. Body size and type, hand size is similar.
13 Specifically on the hand on the left middle finger,
14 the inside portion there are three either freckles or
15 moles that kind of appear to make a triangle on the
16 finger, and in comparing the two sets of pictures,
17 that compares to the left middle finger in the other
18 picture, the same pattern of freckles on the same
19 finger.

20 Q. And did you notice anything about the penis
21 itself in the pictures?

22 A. Yes.

23 Q. Was it circumcised?

24 A. Yes, it was.

25 Q. Was Mr. Martin's penis circumcised when you

Jana Kay Bravo, CSR
Deputy Official Court Reporter

1 22. (State's Exhibit No. 22 published)

2 Q. (By Ms. Varnell) Now, Detective Weber, did
3 you bring any other items with you today to court?

4 A. Yes, I did.

5 Q. In particular at some point did you obtain
6 a search warrant for DNA?

7 A. Yes, I did.

8 Q. And why did you do that?

9 A. I did that because on April 20th I was
10 informed by Connie Patton of the ME's office that
11 male DNA had been found in the victim's panties.

12 Q. And how did you go about doing that? How
13 do you go about obtaining DNA from somebody?

14 A. You obtain it with a buccal swab, and
15 basically we have sterile packaging that the swabs
16 come in. When we obtain it, we put on gloves. We
17 tear the packaging open. We remove the buccal swab,
18 which is basically, it looks like a long Q-tip. It's
19 a long wooden stick with, you know, gauze on the end,
20 and we swab the inside of the cheek.

21 Q. Did you perform that on Donn Martin?

22 A. I did not. He was in the medical wing. I
23 was present when it was performed.

24 Q. Did you -- and that was my next question.

Jana Kay Bravo, CSR
Deputy Official Court Reporter

EXCULPATORY

NO FORENSIC EVIDENCE THAT THE ALLEGED DNA CAME FROM SALIVA!

1 Did you see it done in your presence?

2 A. Yes, I did.

3 Q. What happened to that buccal swab after you
4 saw it swiped on the Defendant, inside of his cheek?

5 A. It was immediately placed back in the
6 packaging and released back to me.

7 Q. And then what did you do with that?

8 A. Sealed the packaging and released the
9 packaging as evidence to the Arlington Police
10 Department evidence room.

11 Q. Okay. And just briefly, you've mentioned
12 the Arlington Police Department evidence room. Tell
13 us about that place.

14 A. Well, obviously whenever we seize
15 something, we have to have a place to put it. So
16 what we do is we transport it back. We package the
17 item for safety purposes and to preserve evidence,
18 and then we will release it.

19 In this particular case, this was
20 released to one particular locker. Since it is DNA
21 evidence, there's nothing else in that locker but
22 that item of evidence. It's then logged into
23 evidence by evidence technicians.

24 Q. And at some point are you aware that it was
25 released to the medical examiner, Connie -- Connie

Both
Sexts
&
Parties

Exculpatory

1 examined it that day?

2 A. Yes, it was.

3 Q. And what about the coloring of the pubic
4 hair?

5 A. It appeared to match.

6 Q. Now, in the pictures with Sierra Scala, the
7 person in those images, I believe you stated had at
8 one point in one of the pictures some sort of
9 redness?

10 A. Yes, on the penis? Yes, near the base of
11 the penis near the body.

12 Q. Did it appear to be a permanent scar or
13 anything?

14 A. It was -- we couldn't -- from the picture
15 you couldn't tell if it was a recent injury or
16 permanent scar.

17 Q. And were you looking for that?

18 A. Yes, we were.

19 Q. Did you see that?

20 A. Not that we could tell, no.

21 MS. VARNELL: Your Honor, may I
22 publish the photos to the jury?

23 THE COURT: Yes, ma'am. You're
24 talking about State's 22?

25 MS. VARNELL: Yes, Your Honor, State's

Jana Kay Bravo, CSR
Deputy Official Court Reporter

Jana Kay Bravo, CSR
Deputy Official Court Reporter

PERPETRATOR
HAD A RED SPOT
ON HIS PENIS.
PETITIONER DID
NOT!

NOT!

25

EXHIBIT A2

1 A. Not that I recall, no, sir.
 2 Q. Okay. Is it standard procedure when you're
 3 arresting somebody, if they have personal belongings
 4 with them, to go ahead and take those into custody
 5 with them?
 6 A. Yes, depending on the department.
 7 Different departments have different procedures, and
 8 I can't say what their procedures are.
 9 Q. But you never asked them to make sure that
 10 those items were secured if he had items there at the
 11 hospital?
 12 A. I don't recall that, no, sir.
 13 Q. And then you never contacted them or asked
 14 them to look through the personal property, if any,
 15 that they had taken with them to see if that T-shirt
 16 was in that personal property?
 17 A. No, sir.
 18 Q. Now, you don't have any special training or
 19 expertise in comparing body parts, do you?
 20 A. No, sir.
 21 Q. So-- and who looked at these photos and
 22 compared with you?
 23 A. Me and -- I believe the comparison of the
 24 photos, just myself.
 25 Q. Okay. So you looked at it and you thought

1 some desk drawers and looking for things like zip
 2 drives and other computer type components?
 3 A. That's correct.
 4 Q. So that was an office area, was it not, the
 5 file cabinets?
 6 A. Yes, sir.
 7 Q. And lot of files?
 8 A. Yes, sir.
 9 Q. So you didn't take the time to search
 10 through any of those?
 11 A. Oh, yes, sir, we did. We searched the
 12 entire offices.
 13 Q. You searched the entire -- *NO SEARCH WARRANT*
 14 A. Yes.
 15 Q. You went through each file drawer and *NO CONSENT*
 16 looked through?
 17 A. As best we could. Again, we were doing *BY PETITIONER*
 18 this with the permission of the homeowner, so it's
 19 not like we're going to go in there and completely
 20 tear up the house and look. We did as best we could.
 21 Q. Okay. So did you also -- in the office
 22 area in the house itself, did you look through that
 23 desk also to make sure you hadn't missed anything?
 24 A. I don't recall if we did that or not on
 25 that trip down.

DET. MIKE WEBER
TESTIMONY
 Jana Kay Bravo, CSR
 Deputy Official Court Reporter

72

1 that there were similarities?
 2 A. That's right.
 3 Q. And you think that from looking at those
 4 photos and from -- I guess you were there when the
 5 photos of Donn's body were taken. You were present
 6 when that occurred, right?
 7 A. That's correct.
 8 Q. But you're not the one that took the
 9 photos?
 10 A. No, sir, I'm not.
 11 Q. But based on viewing those and viewing the
 12 other photos, it's your opinion that he's been
 13 circumcised?
 14 A. That's what it appears on the photos.
 15 Q. Well, you saw him --
 16 A. I'm sorry. That's what it appears in
 17 person, yes, sir.
 18 Q. When you went to Donn and Beverly Martin's
 19 house in Abilene, I guess it was the second time --
 20 was it the second? Did you go three times?
 21 A. Three times, yes, sir.
 22 Q. So was it the third time that you also
 23 acquired some zip drives and other hardware?
 24 A. Yes, sir. That was the third time.
 25 Q. And on that occasion you just looked at

1 Q. And when you searched the garage office,
 2 did you find anything of interest when you went
 3 through all those files?
 4 A. There was nothing of evidentiary value, no,
 5 sir.
 6 Q. With the panties that were taken into
 7 evidence on March the 6th, did anyone that you ever
 8 asked, Marina or Larry Scala, whether or not there
 9 were other panties that she had worn the night
 10 before, the day before?
 11 A. I did not, no, sir.
 12 MR. SAUER: I pass the witness, Your
 13 Honor.
 14 THE COURT: I think this might be an
 15 appropriate place for me to give the jury a morning
 16 recess.
 17 Ladies and gentlemen of the jury,
 18 please remember the admonition about not discussing
 19 the case. Don't allow anyone to discuss it in your
 20 presence. Please don't even discuss it with each
 21 other. I believe we'll be in recess for 20 minutes.
 22 (Recess from 10:21 a.m. to 10:36 a.m.)
 23 (Open court, Defendant present)
 24 THE COURT: Are both sides ready to
 25 have the jury back?

*AGAIN PROVES
 WEBER COMMITTED
 AGGRAVATED
 MURDER BECAUSE HE KILLED
 PETITIONER WAS NOT CIRCUMCISED
 CISED!!*
 Jana Kay Bravo, CSR
 Deputy Official Court Reporter

Jana Kay Bravo, CSR
 Deputy Official Court Reporter

EXHIBIT #3

PETITIONER'S
CROSS EXAMINA
TION BY ASST.
D.A. BILL VASSAR
WHO ATTEMPTS
TO BOLSTER
WEBSER'S
CREDIBILITY!

1 about.
2 Q. So let me see if I understand this right.
3 You're saying that she's not going to wipe her hands
4 like this. She's going to wipe her hands on the
5 inside of her panties?
6 A. You are not paying attention. She takes
7 her panties here. There is her panties. She takes
8 them up, up over here and pushes it down and takes
9 care of the bubbles. That's on the inside of the
10 panties.
11 Q. That's how your DNA would get there?
12 A. Well, it could -- I don't know how it got
13 there. I'm giving you as good an explanation as you
14 can come up with.
15 Q. Okay. So the explanation -- she wiped up
16 your DNA herself --
17 A. It also could have come from my hands.
18 Q. In her hands, okay. Your defense attorneys
19 have asked a lot of questions of witnesses about this
20 issue with the house or whatnot. Marina and Larry,
21 they pay the mortgage in that house, correct?
22 A. Well, they do most of the time.
23 Q. Would that be yes?
24 A. I'd say most of the time.
25 Q. They're not living there for free?

Jana Kay Bravo, CSR
Deputy Official Court Reporter

1 somebody to buy the same kind of camera you've got,
2 take pictures of a little girl and put them on your
3 computer. I mean, that takes some forethought,
4 doesn't it?

5 A. It takes someone who knows a lot about
6 cameras and computers.

7 Q. And it would also take some forethought to
8 try to find an older gentleman with the same type of
9 penis that you have, same type of hands you have, to
10 be in that picture, wouldn't it?

11 A. That's not accurate either, is it?

12 Q. Okay. Well, are you circumcised?

13 A. I am not.

14 Q. Okay. So in -- I'm not an expert or
15 anything, but what I understand is you're telling me
16 that when you are not -- are you telling me that when
17 you're not circumcised, you have skin that goes over
18 the head of your penis?

19 A. Always.

20 MR. VASSAR: Okay. May I approach the
21 witness?

22 THE COURT: Yes, sir.

23 Q. (By Mr. Vassar) Do you remember the police
24 coming to take pictures of you?

25 A. Yes, I do.

PROVES MARTIN
IS NOT CIRCUMCISED

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Deputy Official Court Reporter

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1 A. No, they're not.
2 Q. If something breaks down in the house, they
3 got to deal with it?
4 A. Well, it depends. I give them money to fix
5 it up.
6 Q. Right. They keep the house clean, right?
7 A. Yes, they do.
8 Q. I mean they're not living there for free on
9 your dime, are they?
10 A. No, they're not.
11 Q. Defense Counsel also asked you a lot of
12 questions about where these pictures came from. Is
13 it your testimony that Larry put these on your
14 computer?
15 A. I didn't say that, but someone did that
16 knows a lot about computers.
17 Q. Who do you think did it?
18 A. It's not my purpose, sir, my job to find
19 out. I don't know. I know it wasn't me.
20 Q. Do you think this is kind of a conspiracy
21 against you?
22 A. I'm not going to characterize it like that.
23 Q. What do you think it is?
24 A. I have no idea.
25 Q. I mean, that's kind of elaborate for

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Deputy Official Court Reporter

REMEMBER, VASSAR ORDERED THE
PHOTO SESSION IN THE FIRST PLACE!

1 Q. Do you remember the police coming
2 specifically to take pictures of your penis?

3 A. Yes, I do.

4 Q. Okay. I want to show you State's Exhibit
5 22, page nine. Is that your penis?
6 A. It is.

7 Q. Okay. I don't see any head going over --
8 or skin going over the entire part of the head there.

9 A. Detective Weber had me pull the skin back. ~~TRUE~~
10 He told me to pull it back and then grab the ~~glans~~
11 and extend the penis.

12 Q. Okay.

13 A. Never does the penis ever, ever not cover
14 the glans. That's a fact. Only when he told me to
15 push it back, and I now know why he did that, is to
16 make that similar to what he saw in the photo, but
17 still it was Weber who said I was circumcised. He
18 made it definite. AGGRAVATED PERTURB!

19 Q. So is he in on it? I mean, is he, you
20 know, against you?

21 A. I don't trust Weber as far as I can throw
22 this building.

23 Q. Okay. Is it fair to say -- is it fair to
24 say that when we look at State's Exhibit 9, I mean,
25 you don't have skin over your penis, do you?

REFER TO THE NEXT FOUR PAGES (86)

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Deputy Official Court Reporter

89) OF THIS CROSS-EXAMINATION TO SEE

(1) ABJECT PROSECUTORIAL MISCONDUCT

(2) OVERSACHING BY VASSAR.

APPENDIX I

1 "Here's some photos of your dad's hands. Can you
 2 identify these for us?" Oh, yeah, let me see. *EXHIBIT 131 TAP*
 3 Microscopically on here I think that looks like a
 4 little mole or a sunspot or this looks like a little
 5 scar. You know, that isn't the way to conduct a
 6 proper investigation.

7 Now, one thing that's very important
 8 are the dates of these photos. You have December the
 9 11th of '04, 12/16/04, January 8th of '04, April 18
 10 of -- January of '05, April the 18th, '05 and May the
 11 28th of '05. Except for the May the 28th, '05, Donn
 12 was either out of the country totally or passing
 13 through Miami.

14 And if you look at the trimesters and
 15 look at his duties, he was typically -- after classes
 16 were over, he had to stay on for graduation each of
 17 those semesters. And although the dates are close,
 18 but if you'll look at the dates in his passport and
 19 couple that with the trimesters and couple that with
 20 his explanation of where he was in the different
 21 travels he had, then you'll have at least four of
 22 those dates when he couldn't have been there when the
 23 photos were taken.

24 And even if you find there was only
 25 one of those dates that he wasn't there when the

1 doesn't wear those type of shorts. Because of his
 2 weightlifting when he's working out, he wears the
 3 elastic type, spandex type shorts so that, you know,
 4 it's easier to conduct his workouts with the lifting
 5 and stuff that he does.

6 And also in these photos, there are a
 7 couple of photos that show the individual's legs from
 8 upper thighs, and look at that and see if you can
 9 determine whether or not there's hair on those legs.
 10 Because if there's hair on those legs, then it's not
 11 Donn, okay? Because Donn at that period of time, as
 12 Beverly told you, he told you, in these power lifting
 13 tournaments, he would have had everything shaved and
 14 it wouldn't be him.

15 Also Detective Weber talked about in
 16 one of these photos -- and I don't know if the State
 17 included it in these exhibits. But Weber told you on
 18 one of them -- one of the ones, I think, with the
 19 child, there was a red spot on the upper portion of
 20 the shaft of the penis.

21 And then when you look at the
 22 photos -- if you look at the photos of Donn's body
 23 they took, there's no red spot. And that red spot in
 24 the photos, clear enough, I think it might be --
 25 determine whether or not you think that's a birthmark

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 Deputy Official Court Reporter

Jana Kay Bravo, CSR
 Deputy Official Court Reporter

1 photo was taken, then that tells you he's not the
 2 person in those photos. I would encourage you to
 3 look at the passport and then compare that with what
 4 he said about his duties as a professor down there.

5 The colorful shirt in the photographs,
 6 okay, we know that Donn had several T-shirts,
 7 colorful shirts, but not like the one in the
 8 photographs. Detective Weber went and searched the
 9 house. We know that when Donn left the hospital, he
 10 had on a white T-shirt and blue shorts. His sister
 11 told you that she picked up his belongings and other
 12 clothes there.

13 You know, he had been in the hospital
 14 for two or three weeks, and he didn't need any
 15 clothes there. And so, you know, was there a
 16 colorful shirt? Yeah, there were other shirts, but
 17 not the one in the photos. I mean, Donn certainly
 18 didn't have an opportunity to discard that or destroy
 19 it or get rid of it. You know, Beverly certainly
 20 wouldn't. She was looking for it, trying to help
 21 them. So that ought to tell you, you know, whose
 22 shirt is that?

23 Same thing with the green shorts. I
 24 don't even think Detective Weber even looked for any
 25 green shorts. But you heard from Donn that he

35

1 or not. And if it is, then it's not in there. Then
 2 that's not his penis.

3 And the final thing in that issue is
 4 the circumcision issue. And I think if you will look
 5 at the photos of the individual with the child, in
 6 those photos it appears that the individual is
 7 circumcised, and then if you look at the photos that
 8 the detectives took of Donn's body, then you see that
 9 sure enough, that -- they've taken these photos and
 10 they have his hands pulling back on the shaft of the
 11 penis exposing the head of his penis, and you can
 12 tell that that's happening from looking at the
 13 photos, and that would indicate that he is
 14 circumcised and that that wouldn't be the same penis
 15 as the penis in the photos with the child.

16 So I think what you have from all
 17 this, we talked in voir dire about how evidence of
 18 reasonable doubt can come from the evidence, it can
 19 arise from the evidence, but it can also arise from a
 20 lack of evidence. And I think what you have here are
 21 both of those situations where if you really look at
 22 this carefully and closely, it's not a perfect case.
 23 In fact, it really starts to fall apart because of
 24 all the little things that are in there that indicate
 25 that it is not Donn Martin.

Jana Kay Bravo, CSR
 Deputy Official Court Reporter

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 Deputy Official Court Reporter

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FAUSES DESES EIE

1 However, again, minor alleles were
2 also detected at three genetic locations which could
3 not have been contributed by either the victim,
4 Sierra Scala, or Donn Martin. And again, because
5 they were so minor and so few, I really can't make
6 any conclusion as to who could have contributed
7 those.

8 Q. Now, we met a few months ago, correct,
9 about this case?

10 A. Correct.

11 Q. And did I ask you to do some additional
12 testing just to be thorough and figure out what these
13 minor alleles are?

14 A. Yes.

15 Q. And what kind of additional testing did you
16 do?

17 A. The request was to go ahead and perform
18 testing on the mother and father just to see if it's
19 possible that those additional minor alleles were
20 coming from the parent.

21 Q. And what was your conclusion?

22 A. Again, because there were so few alleles,
23 if all of those minor alleles that I detected could
24 be explained by just one of the parents, I would have
25 made -- might have made some conclusion, but because

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Deputy Official Court Reporter

1 Q. And I know -- I don't know if you know the
2 answer to this question, but you say the total
3 population of southwestern Hispanics, Caucasian -- do
4 you know how many people we're talking about on that?

5 A. Well, this -- these numbers are based on a
6 national data base, so I'm not sure if I understand
7 the question.

8 Q. Are we talking like 100 people? Are we
9 talking like 100,000 people, the population?

10 A. Well, the population in question would be
11 the geographical area where the offense occurred, so
12 it would be the population, I guess, of Arlington.

13 Q. Right.

14 A. Which I don't know. What 300,000?
15 Somewhere around there.

16 Q. Okay. Were you able to make determination
17 on that .01 percent, besides Sierra, are we talking
18 about male or female DNA?

19 A. It would be all individuals.

20 Q. Okay. Okay. Could you make any
21 determination whether Larry Scala, Sierra's father,
22 was included in that .01 percent?

23 A. He -- of the two major contributors, Sierra
24 and that additional male that Mr. Martin is included,
25 he is excluded from that. He could not have been the

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Deputy Official Court Reporter

1 it wasn't like that, maybe one could have and the
2 other maybe could have been from the father, I just
3 couldn't make a conclusion. So just to be
4 conservative, I can't make any conclusion.

5 Q. Between 2T1 and 2T2, which one is the
6 stronger sample from your point of view?

7 A. The most complete data is from 2T2.

8 Q. And on 2T2 did you run some type of -- I
9 want to say, did you run some numbers on it?

10 A. Yes, I performed some statistics on the
11 mixture profile.

12 Q. And explain to the jury what the results of
13 those are.

14 A. Again, the way we handle these
15 statistically is we calculate the percent of the
16 population that could not have been a contributor,
17 okay? So it is expected that at least 99.99 percent
18 of the Caucasian, African/American and Southwestern
19 Hispanic populations can be excluded as possible
20 contributors to the mixture 2T2.

21 And what you have to realize is that
22 within the remaining .01 percent of the population
23 Mr. Martin and Sierra Scala, the victim, are both
24 included in that .01 percent that have the types
25 possible to contribute to the mixture.

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Deputy Official Court Reporter

1 contributor of that additional male DNA that
2 Mr. Martin is included, but I can't make any
3 conclusion about him regarding that very, very minor
4 component.

5 Q. But on the mixture, you got a big part
6 that's Sierra, correct?

7 A. Well, both she and the male contributor are
8 approaching equal concentrations.

9 Q. Okay. So you got a part that's her and you
10 have got a part that -- 15 out of 15 alleles match
11 the Defendant; is that correct?

12 A. He cannot be excluded.

13 Q. Cannot be excluded. I am sorry. And Larry
14 Scala, he is not in that major part?

15 A. No, he is not.

16 Q. Now, when you received these items that you
17 tested, the panties and the buccal swabs, did those
18 appear to be tampered with in any way?

19 A. They did not.

20 Q. And were you -- let me ask you this. When
21 you processed these DNA samples, do you have certain
22 controls in place to make sure you're doing
23 everything right?

24 A. We have a series of controls that we use.

25 Q. Would you explain that to the jury, please?

Jana Kay Bravo, CSR
Deputy Official Court Reporter

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APPENDIX I
EXHIBIT B2 (pg. 1)

CERTIFICATE OF ANALYSES

OFFICE OF CHIEF MEDICAL EXAMINER & FORENSIC LABORATORIES
200 Feliks Gwozdz Place
Fort Worth, Texas 76104
817-212-7026

NIZAM PEERWANI, M.D., DABFP
CHIEF MEDICAL EXAMINER

RONALD SINGER
CRIME LABORATORY DIRECTOR

FORENSIC BIOLOGY / DNA LABORATORY

NAME: Sierra Scala

OFFENSE: Sexual Assault

CRIME LAB NUMBER: 0603237

REQUESTED BY: Detective Mike Weber

DATES OF REQUEST: March 15th & April 26th 2006

Arlington P.D. Service No: 060016109

DATE OF COMPLETION: June 19, 2006

PRIORITY: 2

DATE OF REPORT: June 19, 2006

COMPLETED BY: Constance Patton

Received from the Tarrant County Medical Examiner Evidence Custodian on March 15, 2006:

1. Sealed Sexual Assault Evidence Collection Kit with sealed items:
 - 1.1 Buccal swabs
 - 1.2 Vulvar swabs "for saliva"
2. Panties in sealed sack

Received from the Tarrant County Medical Examiner Evidence Custodian on April 27, 2006:

3. Sealed envelope "MW15" "Martin, Don Deveral" with two swabs in a paper sleeve

Results

Neither spermatozoa nor prostatic antigen (P30), which are confirmatory tests for semen, were detected on the panties (2).

Human DNA was extracted and quantified from items:

	<u>Item</u>
Vulvar swab	1.2
Panties	2T1 & 2T2
Buccal swab – Sierra Scala	1.1
Buccal swab – Don Martin	3

Polymerase Chain Reaction (PCR) based testing was performed for fifteen Short Tandem Repeat (STR) genetic loci and Amelogenin (sex typing) using the Applied Biosystems AmpF ℓ STR \circledR Identifiler \circledR STR amplification kit for the genetic loci: D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S433, vWA, TPOX, D18S51, D5S818 and FGA.

Conclusions

Vulvar swab (1.2)

The female STR profile obtained is the same as the victim, Sierra Scala (1.1). No male DNA was detected.

Panties (2T1)

Male DNA and a mixture STR profile consistent with having originated from the victim, Sierra Scala (1.1) and at least one additional contributor was obtained for 2T1. Don Martin (3) cannot be excluded as a possible contributor to the mixture at twelve of the fifteen genetic loci examined. Results regarding Don Martin (3) as a possible contributor at genetic loci D13S317, D18S51 & FGA were inconclusive.

Additionally, minor alleles were also detected at TH01, D19S433, vWA & D5S818 which could not have originated from either Sierra Scala (1.1) or Don Martin (3) however no conclusion can be made regarding their source.

Panties (2T2)

Male DNA and a mixture STR profile consistent with having originated from the victim, Sierra Scala (1.1) and at least one additional contributor was obtained for 2T2. Alleles consistent with or the same as Don Martin (3) were detected at all of the genetic loci examined. However, minor alleles were also detected at genetic loci TH01, D19S433 & vWA which could not have originated from either Sierra Scala (1.1) or Don Martin. No conclusion can be made regarding the source of these alleles.

0603237
June 19, 2006
Page 3 of 3

EXHIBIT B2 (Pg. 3)

Statistical Data – Panties (2T2)

It is expected that at least 99.99% of the Caucasian, African-American & Southwestern Hispanic populations can be excluded as a possible contributor to the mixture 2T2.

Disposition of Evidence:

Biology / DNA freezer: remainder of 1.1, 1.2, 2T1, 2T2 & 3
Evidence custodian: 2 & empty packaging items 1 & 3

DNA ANALYST: Constance Patton

Constance Patton

APPROVED BY: Ronald L. Singer, M.S.

Ronald L. Singer

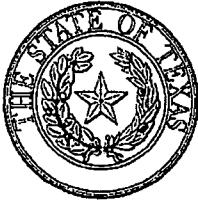
APPENDIX II
EXHIBIT A3

RESULTS FROM TESTING APPLICANT'S BUCCAL SWABS, AND
COMPARING THE RESULTS TO THE ALLEGED DNA, ALLEGEDLY
FOUND ON THE ALLEGED VICTIM'S UNDER GARMENT (2T1 AND 2T2),
USING A 15-PROBE, POLYMERASE CHAIN REACTION (PCR)

<u>STANDARD ALLELS TESTED</u>	<u>2T1</u>	<u>2T2</u>	<u>APPLICANT'S</u>
	<u>SPECIMEN</u>	<u>SPECIMEN</u>	<u>SWAB</u>
D8S1179			
D21S11			
D7S820			
CSF1PO			
D3S1358			
TH01	✓	✓	NOT PRESENT
D13S317	✓	✓	INCONCLUSIVE
D16S539			
D2S1338			NOT PRESENT
D19S433	✓	✓	NOT PRESENT
VWA	✓	✓	NOT PRESENT
TPOX			
D18S51	✓	✓	INCONCLUSIVE
D5S818	✓	✓	NOT PRESENT
FGA	✓	✓	INCONCLUSIVE

NOTES

1. ~~8/18~~, EITHER NOT PRESENT, OR INCONCLUSIVE, = SCIENTIFICALLY, NO MATCH!
2. PATTON LIED WHEN SHE TESTIFIED SHE GOT 15/15 ALLEL MATCHES WITH APPLICANT'S BUCCAL SWAB (SHE GOT ONLY ~~8/15~~ = SCIENTIFICALLY, NO MATCH.)
3. PATTON COMMITTED AGGRAVATED PERJURY AND FALSIFIED EVIDENCE!



TEXAS FORENSIC
SCIENCE COMMISSION
Justice Through Science

1700 North Congress Ave., Suite 445
Austin, Texas 78701

APPENDIX B - EXHIBIT B (pg. 1)

August 21, 2015

Members of the Texas Criminal Justice Community:

This letter provides notification to the community regarding an issue of potential concern to judges, criminal prosecutors, criminal defense lawyers, victims and defendants in the Texas criminal justice system. The concerns involve the interpretation of DNA results where multiple contributors may be present, commonly referred to as DNA mixture interpretation. The attached document details the origin and scope of the concerns.

While the Commission assesses the issues described in the attached document, we recommend any prosecutor, defendant or defense attorney with a currently pending case involving a DNA mixture in which the results could impact the conviction consider requesting confirmation that Combined Probability of Inclusion/Exclusion (referred to as "CPI" or "CPE") was calculated by the laboratory using current and proper mixture interpretation protocols. If the laboratory is unable to confirm the use of currently accepted protocols for the results provided, counsel should consider requesting a re-calculation of CPI/CPE.

The extent to which any closed criminal cases may require re-analysis will be a subject of Commission review and subsequent notification to the stakeholder community.

If you have any questions regarding these issues, please contact the Commission's general counsel, Lynn Garcia, at 512-936-0649 or lynn.garcia@fsc.texas.gov.

Sincerely,

Vincent J.M. Di Maio, MD
Presiding Officer

CERTIFICATE OF ANALYSES

OFFICE OF CHIEF MEDICAL EXAMINER & FORENSIC LABORATORIES

200 Feliks Gwozdz Place
Fort Worth, Texas 76104
817-920-5700 x8518 Fax: 817-920-5790

NIZAM PEERWANI, M.D., DABFP
CHIEF MEDICAL EXAMINER

SUSAN HOWE, PhD, FABFT
CRIME LABORATORY DIRECTOR

FORENSIC BIOLOGY / DNA LABORATORY
AMENDED REPORT

NAME: Sierra Scala

OFFENSE: Sexual Assault

CRIME LAB NUMBER: 0603237

REQUESTED BY: Steve Conder
Tarrant County District Attorney's Office

DATE OF REQUEST: May 10, 2017

Arlington P.D. Service No: 060016109

DATE OF COMPLETION: May 16, 2017

DATE OF June 19, 2006 AMENDED REPORT: May 21, 2017 **COMPLETED BY:** Constance Patton
Previous Report Dates: June 19, 2006 & May 15, 2007

*Contact information in header changed to reflect current contact numbers and crime lab director;
Serology results for item 2 (panties) amended to comply with current reporting requirements;
Addition of currently required serology limitation statements;
TH01 genetic locus typographical correction;
Mixture re-interpretation for items 2T1 & 2T2 using current TCME guidelines;
Addition of currently required qualitative statement for items 1.2 & 2;
Increased number of pages from 3 to 4;*

Received from the Tarrant County Medical Examiner Evidence Custodian on March 15, 2006:

1. Sealed Sexual Assault Evidence Collection Kit with sealed items:
 - 1.1 Buccal swabs
 - 1.2 Vulvar swabs "for saliva"
2. Panties in sealed sack

Received from the Tarrant County Medical Examiner Evidence Custodian on April 27, 2006:

3. Sealed envelope "MW15" "Martin, Don Deveral" with two swabs in a paper sleeve

Results

Stains fluorescing using an alternate light source (ALS) were observed on the inside crotch of the panties (2). Acid phosphatase activity, which may indicate the presence of semen, was not detected on two areas tested from the inside panties crotch. Additionally, neither prostatic antigen (p30) nor spermatozoa, both of which are components of semen, were detected on an area tested from the panties crotch.

A presumptive test for blood was negative on a stain tested from the inside panties crotch (2).

APPENDIX B - EXHIBIT B6 (pg.2)

0603237

Amended Report: May 21, 2017

Page 2 of 4

Limitations of Serological Testing

An alternate light source (ALS) is used as a screening tool to aid in the visualization of possible biological stains such as semen, vaginal secretions, saliva, and in some instances, blood. Other sources, including lotions, lubricants, bleach and other cleaning agents may also exhibit fluorescence using this visualization method. Additionally, fluorescence is based on many factors including the substrate and stain concentration; therefore, a result reported as stains not observed (i.e. non-fluorescence) may indicate the absence of biological material, or that biological material is present below the detection threshold of the examination.

Acid phosphatase is an enzyme typically present in semen in high concentrations but is not specific to male individuals or semen. Vaginal secretions as well as other body fluids may exhibit positive or weak positive acid phosphatase activity resulting in a positive or weak positive test result. The test for acid phosphatase activity is used as a presumptive assessment and a positive result should not be interpreted as confirmatory for the presence of semen. Additionally, a positive result is reported when acid phosphatase activity is present at or above a minimum threshold; therefore, a result reported as not detected may indicate the absence of acid phosphatase activity or activity present below the detection threshold of the test.

Although prostatic antigen (P30) is typically present in seminal fluid from sperm producing and vasectomized (azoospermic) males, a positive P30 test result could be attributed to other sources such as male urine, blood of men with prostatic carcinoma or post mortem samples. Additionally, adolescent girls and adult women with hormonal imbalances due to endocrine related conditions may also exhibit P30 activity. Although a strong indicator of semen, a positive P30 test result in the absence of the identification of spermatozoa should not be interpreted as confirmatory for the presence of semen. Additionally, a positive result is reported when P30 is present at or above a minimum concentration; therefore, a result reported as not detected may indicate the absence of p30 or the presence of p30 below the detection threshold of the test.

The identification of spermatozoa is considered confirmatory for the presence of semen.

A positive presumptive test result for blood should not be interpreted as confirmatory for the presence of human blood. Although sensitive, the presumptive test for blood is not specific and a positive test result could also be attributed to other sources such as non-human blood, some cleaning agents and some fruits and vegetables which contain plant peroxidases. Additionally, a positive result is reported when a chemical reaction occurs at or above a minimum threshold; therefore, a result reported as negative may indicate the absence of blood or the presence of blood below the detection threshold of the test.

Human DNA was extracted and quantified from items:

	<u>Item</u>
Vulvar swab	1.2
Panties	2T1 & 2T2
Buccal swab – Sierra Scala	1.1
Buccal swab – Don Martin	3

Polymerase Chain Reaction (PCR) based testing was performed for fifteen Short Tandem Repeat (STR) genetic loci and Amelogenin (sex typing) using the Applied Biosystems AmpF[®]STR[®] Identifier[®] STR amplification kit for the genetic loci: D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S539, D2S1338, D19S433, vWA, TPOX, D18S51, D5S818 and FGA.

0603237

Amended Report: May 21, 2017

Page 3 of 4

Conclusions

Vulvar swab (1.2)

The female STR profile obtained is the same as the victim, Sierra Scala (1.1). No male DNA was detected.

Panties (2T1)

The DNA profile obtained is a mixture consistent with originating from Sierra Scala (1.1) and at least two additional contributors, of which at least one is male. Due to the complexity of the mixture and the known biological relatedness of Sierra Scala (1.1) and Don Martin (3), no conclusions can be made regarding the sources of the non-victim component.

Alleles were detected at the genetic loci TH01, D19S433, vWA & D5S818 which could not have originated from either Sierra Scala (1.1) or Don Martin (3); however, no conclusion can be made regarding their source(s) due to the quantity and/or quality of human DNA.

Panties (2T2)

The DNA profile obtained is a mixture consistent with originating from Sierra Scala (1.1) and at least two additional contributors, of which at least one is male. Due to the complexity of the mixture and the known biological relatedness of Sierra Scala (1.1) and Don Martin (3), no conclusions can be made regarding the sources of the non-victim component.

Alleles were detected at the genetic loci TH01, D13S317, D2S1338, D19S433 & vWA which could not have originated from either Sierra Scala (1.1) or Don Martin (3); however, no conclusion can be made regarding their source(s) due to the quantity and/or quality of human DNA.

Because Sierra Scala's DNA is reasonably expected to be present on the vulvar swab & panties (items 1.2 & 2), no statistical calculations were performed regarding Sierra Scala.

Although not currently available at the Tarrant County Medical Examiner's Office, items 2T1 & 2T2 are candidates for re-amplification and mixture interpretation using probabilistic genotyping software.

APPENDIX I - EXHIBIT B6 (pg. 4)

0603237

Amended Report: May 21, 2017

Page 4 of 4

Disposition of Evidence:

Biology / DNA freezer: remainder of 1.1, 1.2, 2T1, 2T2 & 3
Evidence custodian: 2 & empty packaging items 1 & 3

This report contains the results, conclusions, and interpretations of the undersigned analyst

DNA ANALYST:

Constance Patton

Constance Patton, B.S.

DNA Technical Leader / Casework CODIS Administrator

clpatton@farrancounty.com

Administrative Reviewer:

Susan R. Howe

Susan R. Howe, PhD

Crime Laboratory Director

APPENDIX BEXHIBIT B(B)(6)

MS. CONSTANCE PATTON'S SECOND TEST RESULTS FROM A 15TH PROBE PCR DNA TEST OF DONNA MARTIN (DDM) AND SIERRA SCALAS (SS) BUCCAL SWABS, COMPARED TO THE ALLEGED STRAINS, ALLEGEDLY FOUND ON THE 2T1 AND 2T2 SWATHS FROM AN UNDERGARMENT.
STANDARD ALLELES TESTED 2T1SWATH 2T2SWATH DDM SWATH SS SWATH

<u>D851179</u>	✓	✓	✓	✓
<u>D21511</u>	✓	✓	✓	✓
<u>D75820</u>	✓	✓	✓	✓
<u>D351358</u>	✓	✓	✓	✓
<u>2T2SWATH CSF1PO</u>	✓	✓	✓	✓
✓ ✓ <u>T401</u>	✓	✓	NOT PRESENT	NOT PRESENT
✓ * <u>D135317</u>	(✓)	(✓)	* NOT PRESENT	* NOT PRESENT
<u>D165539</u>	✓	✓	✓	✓
✓ * <u>D251338</u>	✓	✓	* NOT PRESENT	* NOT PRESENT
✓ ✓ <u>D195433</u>	✓	✓	NOT PRESENT	NOT PRESENT
✓ ✓ <u>uWA</u>	✓	✓	NOT PRESENT	NOT PRESENT
<u>TPOX</u>	✓	✓	✓	✓
<u>D18551</u>	✓	✓	INCONCLUSIVE	INCONCLUSIVE
✓ ✓ <u>D55818</u>	✓	✓	NOT PRESENT	NOT PRESENT
<u>FGA</u>	✓	✓	INCONCLUSIVE	INCONCLUSIVE

NOTES

1. * = NEW CHANGES FROM PATTON'S 1ST TEST RESULTS = MORE PROOF THAT DDM IS NOT INCLUDED AS A POSSIBLE CONTRIBUTOR TO THE DNA MIXTURE.

2. 8/15 ARE EITHER NOT PRESENT IN DDM'S BUCCAL SWAB, OR THEY ARE INCONCLUSIVE (2/8).

3. PATTON, AT THE 4/12/18 HEARING, STATED THAT SHE COULDN'T INCLUDE DDM AS A POSSIBLE CONTRIBUTOR TO THE DNA MIXTURE.

4. THESE NEW RESULTS TOTALY EXONERATE DDM OF THESE CRIMES!

1 you're not going to take him home." It was -- he
2 needed five bypasses.

3 Q. Let me stop you right there if I can.

4 A. Sure.

5 Q. What was the date, according to those
6 records, that he goes in for his first -- I don't
7 know, the first time he goes and sees the doctor?

8 A. I think it was like 3/16.

9 Q. March 16th of 2006?

10 A. Yes, sir.

11 Q. Can you tell by looking at those records
12 the day that he actually had surgery? Was it a
13 couple days later?

14 A. Probably the 17th he -- it might have been
15 the 18th. I don't know.

16 Q. Let me ask you this. Is there a receipt in
17 there from the cardiastric (sic) center? Am I saying
18 that correctly? Heart doctor, surgery center?

19 A. Uh-huh. Yes.

20 Q. What's the date on that?

21 A. 3/20/06, and that was for his bypasses, so
22 3/20, 19, 18, 17th would be when he probably --
23 probably Friday the 17th.

24 Q. Okay. Thank you, ma'am.

25 A. Yep.

1 Q. Do you remember, were they Abilene police
2 officers, or did Arlington detectives come first?

3 A. Well, the Arlington detectives came first.

4 Q. Did Donn ever say anything to you about why
5 some officers were going to come talk to you?

6 A. Well, he was under investigation, so yeah,
7 I knew they were coming to talk to me.

8 Q. And when you said under investigation, I
9 mean, did you think drug charges, did he rob
10 somebody? What are we talking about?

11 A. There was a complaint filed about his
12 granddaughter, Sierra.

13 Q. And that's Sierra Scala?

14 A. Uh-huh.

15 Q. Is that a yes?

16 A. Yes.

17 Q. Did Detective Weber show up to your house
18 on the 23rd?

19 A. I think that was the date, yes.

20 Q. And did you invite him into your house?

21 A. I did.

22 Q. And did you agree to speak with him?

23 A. I did.

24 Q. Offer him some coffee?

25 A. I did.

APPENDIX I

Jana Kay Bravo, CSR
Deputy Official Court Reporter

Jana Kay Bravo, CSR
Deputy Official Court Reporter

EXHIBIT C#1

1 MR. VASSAR: At this time, Your Honor,
2 we offer State's Exhibit No. 40 into evidence and
3 tender to Defense Counsel.

4 MR. SAUER: No objection, Your Honor.
5 THE COURT: State's 40 will be

6 admitted.

7 (State's Exhibit No. 40 admitted.)

8 MR. VASSAR: Permission to publish to
9 the jury?

10 THE COURT: All right.

11 (State's Exhibit No. 40 published)

12 Q. (By Mr. Vassar) Now, Beverly, he goes to
13 the Doctor the first on the 16th. It looks like that
14 the dates for the surgery center is on March 20th,
15 2006, correct?

16 A. I think so.

17 Q. Okay.

18 A. And that's where I got that information at.

19 Q. Right. From those documents?

20 A. It's not from my memory.

21 Q. Right, I understand, ma'am. I want to talk
22 a little bit about March 23rd of 2006. At some point
23 after he had surgery did some police officers come to
see him?

24 A. Yes.

1 Q. Was he professional with you?

2 A. Yes.

3 Q. At some point did he ask to take a computer
4 from you?

5 A. Yes. Donn's computer.

6 Q. And where -- in the house where is Donn's
7 computer located?

8 A. Well, we call it an office, but it's down
9 by the stairs. It's a hallway kind of.

10 Q. Do you use that computer a lot?

11 A. No.

12 Q. If you wanted to, could you use that
13 computer?

14 A. Well, that's what I think, I could use that
15 computer because he used my computer upstairs, but my
16 ability to use computers is very minimal so --

17 Q. Well, so is mine. But if you wanted to, I
18 mean, could you have gotten on that computer?

19 A. Yes, I guess I could have.

20 Q. When we're talking about your house, do you
21 have authority to go everywhere in your house?

22 A. I do.

23 Q. You can go into any room, closet, office?
24 I mean, it's your house, you can go everywhere,
25 correct?

SHE DID NOT KNOW THE PASSWORD,

Jana Kay Bravo, CSR
Deputy Official Court Reporter

Jana Kay Bravo, CSR
Deputy Official Court Reporter

EXHIBIT I SO SHE HAD NO ACCESS TO THE
COMPUTER (SEE EXHIBIT D)

APPENDIX I

EXHIBIT C2

Consent to Search

Service No. 060016109

I Beverly Martin, after having been advised of my rights

not to have a search made of the computer(s) or other device(s) herein after described, without a search warrant or court order, and of my rights, to refuse to consent to such a search, and without any promises or compulsion of any kind, hereby authorize and give consent to Detective ^{M. WEBER #1600} JP Rogers #1396 of the Arlington Police Department, or their agents

or assigns, to conduct a full and complete search of my computers(s) or other device(s), located at 620 W. Division St, Arlington, Tarrant County, Texas. I further understand that removal from the aforementioned premise(s) is necessary to fully

conduct a search and the equipment will be taken to 620 W Division St Arlington, TX for examination. The officers are authorized by me to search any and all computer(s) or

devices including: hard disk drives, compact disks, floppy disks, magnetic tapes, magnetic, or optical media capable of storing information in an electronic, magnetic, or optical format. I voluntarily agree to provide my logon and password information so that the search may be conducted: logon: dontrtmw (MW = DET. MIKE WEBER; WAS NOT THE CORRECT PASSWORD) Password: _____

In addition, this information may include, but is not limited to: letters, correspondence, memoranda, journals, electronic mail, image files, database files, deleted files, partial files or information or data of any kind found or stored in the media or the computer.

Signed:

Beverly L Martin

Date and time: 3-23-06

Witnessed by:

Det. R. L. Jones

Equipment description: One Compaq-CPU (SER # MXK51007Z8)
(PRODUCT # PW502AA - ABA)

1. NO SEARCH WARRANT WAS OBTAINED.
2. NO CONSENT FROM DR. MARTIN (IN THE HOSPITAL RECOVERING FROM QUADRUPLE BYPASS SURGERY DONE ON 03/20/2006)
3. BEVERLY MARTIN DID NOT KNOW THE PASSWORD NOR DID SHE HAVE A "LOGON" (USERNAME) ASSIGNED.
4. BEVERLEY MARTIN DID NOT HAVE A LEGAL 3RD PARTY STANDING TO CONSENT TO THE WARRANTLESS SEARCH AND SEIZURE OF THIS COMPUTER.
5. THIS COMPUTER WAS PURCHASED IN NOVEMBER, 2005.

EXHIBIT

1 Pictures, DDM's personal pictures, DDM's personal
2 pictures.
3 A. No. It was 641. Okay. It was Iomega Data
4 from HDD\My Documents\My Pictures\DDMS personal
5 pictures, and the number two, then My Pictures, and
6 then the file.
7 Q. Now, are there other directories within
8 DDM's personal pictures that contain images?
9 A. Yes.
10 Q. What are the names of some of the other
11 directories that contain these images?
12 A. Iomega data from HDD\My Documents\My
13 Pictures\DDMS personal pictures\DDMS personal
14 pictures. Another path located with the same images
15 contained in Iomega data from HDD\My Documents\My
16 Pictures\DDMS personal pictures.
17 Q. Now, those directories -- well, there were
18 other directories as well, were there not?
19 A. Yes.
20 Q. In particular, the images on January the
21 8th, 2005?
22 A. Yes.
23 Q. What directory were those found in?
24 A. Iomega data from HDD\SAMD'04_12_18_02\SAMM
25 and MDM'05_01_12_01\DCIM\101MSDCF.

EXHIBIT C (#3)

Jana Kay Bravo, CSR
Deputy Official Court Reporter

MIKE WEAVER'S TESTIMONY

PROVES PASSWORD PROTECTED

166

**WITH AN EXCLUSIVE PASSWORD THAT
ONLY PETITIONER KNEW**

1 And incidentally with these images
2 taken on January 8th of 2005, generally particularly
3 the Sony Cybershot digital camera, it creates the
4 folders DCIM, and then generally a 101MS folder after
5 that that contained the images.
6 Q. So that directory was more than likely
7 copied into the user-created directory, right?
8 A. Yes.
9 Q. Okay. And all of these images were located
10 in a user directory -- user created directory named
11 Iomega data from HDD?
12 A. Yes.
13 Q. Now, that directory, on a computer do you
14 have different users?
15 A. There are -- there were different user
16 profiles present on the -- within the operating
17 system.
18 Q. How do you know that?
19 A. Well, what you can do is -- in this
20 particular operating system it's a Windows XP
21 operating system. With any Windows XP operating
22 System there's really -- just for general sake,
23 there's a folder entitled documents and settings.
24 Now, each Windows user or through a
25 created profile will appear in that documents and

A. There is preliminary information. At the
2 time of me sitting here to suggest yes, there was a
3 password on that profile. That has not been
4 completely verified.

5 Q. Do you have that information, though?
6 A. Yes.
7 Q. And when you look at that information, does
8 it tell you if there was a last log-on?
9 A. Yes.

10 Q. What's the date of the last log-on for that
11 Compaq user?

12 A. March 16th -- oh, I'm sorry. Yeah.
13 March 16th, 2006 at 12:51:21 a.m.

14 Q. That's just after midnight, right?
15 A. Yes.
16 Q. Very early in the morning just after
17 midnight on March 16th?

18 A. Yes.
19 Q. And what is the last password change on
20 that?

21 A. March 16th, 2006 at 12:51:13 a.m.
22 Q. So at or around the same time that someone
23 logged in as the Compaq owner the password was
24 changed?

25 A. Yes. **PROVES (1.) WIFE HAD NO
ACCESS TO COMPUTER; (2.) WIFE HAD NO**

**NOTE: PASS-
WORD PRO-
TECTED!**
**Jana Kay Bravo, CSR
Deputy Official Court Reporter**
LEGAL, 3RD PARTY STANDING TO CON-
SENT TO THE ILLEGAL SEARCH AND
SEIZURE OF PETITIONER'S COMPUTER;
(3.) PETITIONER HAD A LEGITIMATE, SUBJECTIVE,
"EXPECTATION OF PRIVACY" (4TH AMEND.)

Jana Kay Bravo, CSR
Deputy Official Court Reporter

EXHIBIT C 3.

APPENDIX I
EXHIBIT D1 (pg.1)



12/479 MEDICAL CO-PAY OWED:

.00

LOCATION: HS C1

02

BC

FEDERAL COURT FEE OWED:

.00

NAME: MARTIN, DONN DEVERAL

ACCOUNT

TEXAS COURT FEE/CHARGE OWED:

.00

DATE: 10/31/19 NUMBER: 01454022

INDIGENT SUP. OWED:

6.47 OTHER HOLD AMOUNT

.00

BEGINNING BALANCE:

.00

10/19	ITEM/DESCRIPTION	WITHDRAWALS	DEPOSITS	BALANCE
09	AB 000000 000142 POSTAGE (5TH CIRCUIT)	.00		.00
11	AB 000000 000055 POSTAGE (5TH CIRCUIT)	.00		.00
23	AB 000000 000450 POSTAGE (ATOR.GEN.-TEXAS)	.00		.00

NOTE: ON 10/19/2019, my account
WAS CHARGED POSTAGE BY THE
W.F. CLEMENTS LAW LIBRARY FOR
THE 3 LETTERS SENT TO THE 5TH
CIRCUIT CT. OF APPEALS AND TO
SARAH HARP (ASST. ATTORNEY GENERAL)
THIS PROVES I PUT MY APPEAL IN THE
CLEMENTS MAIL SYSTEM (INDIGENT
MAIL TO THE LAW LIBRARY) ON, OR
BEFORE 10/22/2019!

INMATE TRUST FUND ACCOUNTS ARE DEMAND ACCOUNTS. YOU WILL NOT EARN ANY INTEREST. YOU MAY WANT TO DEPOSIT EXCESS FUNDS IN A SAVINGS INSTITUTION OF YOUR CHOICE.

APPENDIX E
EXHIBIT D2 (pg. 2)

MR. HOLT: (PROOF THAT APPEAL WAS MAILED ON 10/17/2019)

1. I used 5 envelopes for the following:
 - a. Romny Martin at 533 Larkin, Abilene, Tx. 79605 (1 PAGE)
 - b. 2 envelopes to the 5th Cir. Ct. of Appeals; 600 S. Maestre Place; New Orleans, La. 70130 (10 PAGES in each envelope) (TOTAL = 20 PAGES) (MAILED 10/17/2019)
 - c. 1 envelope to Sarah Harp, Asst. Attorney General, P.O. Box 12548, Capital Station, Austin, Tx. 78711 (10 PAGES) (MAILED 10/17/2019)
 - d. 1 envelope to Director of Classification, P.O. Box 99, Huntsville, Tx. 77342-0099 (1 PAGE)
2. TOTAL ENVELOPES USED = 5; TOTAL PAGES = 32 (had to use notebook paper & are now out of)
3. The WRIT ENVELOPES ARE NEEDED FOR CASE NO. 19-cv-00743-A AS FOLLOWS:
 - a. ~~to~~ to Scott Harris, Clerk; U.S. Supreme Ct.; 1 First St., Washington, D.C. 20543 (28 PAGES)
 - b. Sarah Harp; Asst. Attorney General; P.O. Box 12548; Capital Station; Austin, Tx. 78711 (28 PAGES)

NOTE: (1) Court Date will be within 90 days of receiving the final ruling from the 5th Cir. Ct. of Appeals, expected 11/10/2019.
(2) These filings are Writs of Certiorari and are on prepared forms issued by the U.S. Supreme Ct. and consist of 28 pages each.

Regarding my Appeal

NOTE: This is further proof that the letters to the 5th Cir. Ct. of Appeal were mailed on or before 10/22/2019 and, therefore were timely filed!

APPENDIX I
EXHIBIT D3 (pg. 3)

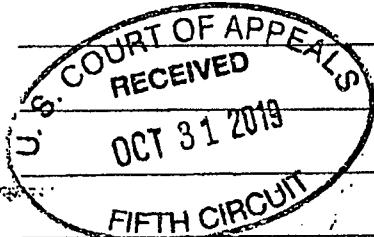
Mr. Lyle Cayce, Clerk

U. S. Court of Appeals - 5th Circuit (COA-5th Cir.)

600 P. St. N.W. Place

New Orleans, La. 70130-3408

(RE: Case No. 4:19-cv-00745)



October 17, 2019

Dear Mr. Cayce:

Please file the enclosed documents in the U. S. Court of Appeals - 5th Circuit for Case No. 4:19-cv-00745-A and send me a copy of this cover letter with a file date stamped on it.

I thank you for your assistance.

Sincerely,

ENCLOSURES:

1. Appeal of Denial of
28 U.S.C. §2254 Petition
for Writ of Habeas Corpus

Donna Deveral Martin
(DONNA DEVERAL MARTIN)

TDCJ-ID# 01454022

2. Motion for a Certificate
of Appealability (COA)

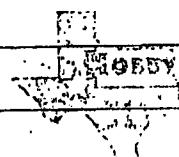
ECB-C-1028; W.P. Clement, Unit

9601 Spur 591

3. Brief supporting the COA

Amesillo, Th. 79107-9606

4. Motion to proceed in
forma pauperis.



APPENDIX II
EXHIBIT E (pg. 1)

CHRONOLOGY OF EVENTS

<u>DATE</u>	<u>EVENT</u>	<u>CAUSE NO.</u>
1. 08/13/2007	9 CONVICTIONS	1017612-A; 1017791-A; 1017792-A; 1017793-A; 1017794-A; 1017796-A; 10166504-A; 1066506-A; AND 1066507-A
2. 03/01/2008	FILED DIRECT APPEAL (2nd Ct. of Appeals)	SAME AS ABOVE
3. 11/06/2008	DIRECT APPEAL DENIED	"
4. 05/28/2009	FILED PDR	"
5. 06/16/2010	PDR REFUSED (COURT OF CRIMINAL APPEALS (CCA))	"
6. 01/20/2011	FILED ART. § 11.07 APPLICATIONS FOR A WRIT OF HABEAS CORPUS (9)	"
7. 01/20/2011	FILED A REQUEST FOR AN EVIDENTIARY HEARING	"
8. 02/16/2011	CCA DENIED THE APPLICATIONS	"
9. 03/10/2011	FILED OPPOSITION MOTION TO DENIAL	"
10. 03/16/2011	CCA "FILED" OPPOSITION MOTION	"
11. 06/29/2011	FILED 28 U.S.C. § 2254 PETITION FOR A WRIT OF HABEAS CORPUS	4:11-cv-4474
12. 06/29/2011	FILED REQUEST FOR AN EVIDENTIARY HEARING	"
13. 12/13/2011	FILED A MOTION FOR AN EXTENSION OF TIME	"
14. 03/30/2012	FEDERAL DISTRICT CT. DENIED PETITION	"

APPENDIX I
EXHIBIT E (Pg. 2)
CHRONOLOGY OF EVENTS (cont.) 2

DATE	EVENT	CAUSE NO.
15.06/07/2012	FILED AN APPEAL IN THE 5TH CIRCUIT COURT OF APPEALS (SCCOA)	12-10628
16.06/13/2012	FILED A MOTION FOR A COA (WITH BRIEF)	"
17.03/07/2013	SCCOA DENIED APPEAL AND COAMOTION	"
18.03/07/2013	FILED A PETITION FOR A WRIT OF CERTIORARI	12-9916
19.12/06/2013	THE SUPREME COURT OF THE UNITED STATES (SCOTUS) (1) GRANTED THE PETITION, (2) VACATED THE RULING OF THE SCCOA, AND REMANDED THE CASE BACK TO THE SCCOA, CITING MCQUIGGIN V. PERKINS, 569 U.S. 133 S.C.T. 1824 (2013)	"
20.04/16/2014	THE SCCOA REMANDED THE CASE BACK TO THE FED. DIST. CT. - NORTHERN DISTRICT - FORT WORTH DIVISION AND GRANTED A COA	"
21.04/29/2014	FED. DIST. CT. AGAIN DENIED THE PETITION ON THE SAME GROUNDS THAT THE SCOTUS VACATED ON 12/06/2013.	"
22.05/13/2014	FILED AN APPEAL IN THE SCCOA	"
23.07/29/2014	THE SCCOA DENIED THE APPEAL	"
24.09/10/2014	FILED 2ND PETITION FOR A WRIT OF CERTIORARI	15-6171
25.11/20/2015	PETITION DENIED (TIME BARRED)	"
26.12/24/2015	FILED A MOTION FOR REHEARING	"

APPENDIX I
EXHIBIT E (Pgs. 3)
CHRONOLOGY OF EVENTS (cont.) 3

DATE	EVENT	CAUSE NO.
27. 01/25/2016	REHEARING MOTION DENIED	15-6171
28. 02/15/2016	FILED ART. 511073 APPLICATIONS FOR A WRIT OF HABEAS CORPUS (9) THRU - 010749 ("JUNK SCIENCE") AND REQUEST FOR AN EVIDENTIARY HEARING	C-372-010741
29. 06/22/2016	CCA DENIED 8 OF 9 APPLICATIONS	"
30. 06/22/2016	CCA ORDERED A SPECIAL HEARING FOR CAUSE NO. 1017612/C-372-011035	1017612/C-372-011035
31. 04/12/2018	PATTON RECANTED HER LIES THAT LED TO PETITIONER'S CONVICTION ON CASE NO. 1017612 AT THE SPECIAL HEARING	"
32. 06/06/2018	JUDGE FILED HIS "FINDINGS OF FACTS" AND CONCLUSIONS OF LAW IN THE CCA AND ABUSED HIS DISCRETION	"
33. 06/06/2018	FILED A MOTION IN OPPOSITION TO JUDGE'S "FINDINGS" AND "CONCLUSIONS"	"
34. 09/12/2018	CCA DENIED PETITIONER'S APPLICATION	"
35. 12/10/2018	FILED 3RD. PETITION FOR A WRIT OF CERTIORARI IN THE SCOTUS	18-8706
36. 06/03/2019	THE SCOTUS DENIED THE PETITION (TIME BARRED)	
37. 09/10/2019	FILED AN H.B.C. #2254 PETITION FOR A - 4:19CV- WRIT OF HABEAS CORPUS IN THE AMA - 743/19- 1100 DIVISION OF THE NORTHERN DIST.	743/19- 11212
38. 09/17/2019	PETITION WAS TRANSFERRED TO THE FORT WORTH DIVISION - NORTHERN DIST. (JUDGE JOHN MCBRYDE)	"

APPENDIX I
EXHIBIT E (pg. 4)
CHRONOLOGY OF EVENTS (cont.) 4

DATE	EVENT	CAUSE NO.
39. 09/20/2019	MCBRYDE DENIED THE PETITION ON THE GROUNDS IT WAS "UNAUTHOR- IZED AND SECESSIVE."	4:19CV-7431 11212
40. 09/24/2019	MCBRYDE DENIED PETITIONER'S MOTION FOR A COA AND HIS MOTION TO PROCEED IN FORMA PAUPERIS	"
41. 10/17/2019	FILED (1) AN APPEAL OF MCBRYDE'S DENIAL; (2) A MOTION FOR A COA, (3) A BRIEF IN SUPPORT OF THE COA MOTION; AND, (4) A MOTION TO PROCEED IN FORMA PAUPERIS, IN THE SC COA.	12
42. 10/28/2019	FILED A REQUEST FOR AN EVIDENTIARY HEARING	"
43. 11/21/2019	MCBRYDE GRANTS THE MOTION TO PROCEED IN FORMA PAUPERIS	"
44. 12/13/2019	THE SC COA ORDERED MCBRYDE TO SUPPLY PROOF THAT PETITIONER MAILED HIS APPEAL, ETC., BY 10/22/2019	"
45. 12/16/2019	MCBRYDE SENT PETITIONER AN ORDER TO SUPPLY PROOF OF THE 10/22/2019 MAILING (ON OR BEFORE 10/22/2019)	"
46. 12/27/2019	MAILED MCBRYDE 2 DOCUMENTS THAT PROVE 10/18/2019 MAILING	4

APPENDIX I
 EXHIBIT E (pg. 5)
CHRONOLOGY OF EVENTS (cont.) 5

<u>DATE</u>	<u>EVENT</u>	<u>CAUSE NO.</u>
<u>47. 01/25/2020</u>	<u>RECEIVED SCCOA'S ORDER FROM 12/13/2019</u>	<u>4:19-cv-743/11212</u>
<u>48. 03/30/2020</u>	<u>McBRYDE MAILED HIS ORDER RESPONSE TO THE SCCOA</u>	<u>"</u>
<u>49. 04/28/2020</u>	<u>THE SCCOA MAILED THE COURT'S DENIAL ON THE GROUNDS THAT THE COURT "LACKED JURISDICTION" ON THE APPEAL EVEN THOUGH McBRYDE WITHHELD EVIDENCE THAT THE APPEAL WAS FILED TIMELY ON 10/18/2019!</u>	<u>"</u>
<u>50. 05/12/2020</u>	<u>FILED A PETITION FOR A REHEARING</u>	<u>"</u>
<u>51. 05/27/2020</u>	<u>THE SCCOA MAILED THE COURT'S DENIAL OF PETITIONER'S PETITION FOR A REHEARING</u>	<u>"</u>
<u>52. 06/05/2020</u>	<u>FILED A MOTION IN OPPOSITION TO THE SCCOA'S DENIAL OF PETITION FOR A REHEARING</u>	<u>"</u>
<u>53. 06/30/2020</u>	<u>FILED 4TH PETITION FOR A WRIT OF CERTIORARI</u>	

ALLEGATIONS PETITIONER CAN PROVE AT AN EVIDENTIARY HEARING

ALLEGATION ONE. Petitioner is NOT CIRCUMCISED; Perpetrator in the photos used to convict Petitioner on 8 of 9 counts, IS CIRCUMCISED! (See prosecutor's EXHIBIT 23, pg. 9 of Petitioner's testimony and APPENDIX I, EXHIBIT A3).

ALLEGATION TWO. The prosecution had Detective Mike Weber (Weber), pose Petitioner in a SIMULATED STATE OF CIRCUMCISION, take photos of the RETRACTED, UNCUT FORESKIN, then testify, under oath, that Petitioner is circumcised, using prosecutor's EXHIBIT 22, pg. 9. However, the photo clearly shows that the foreskin is UNCUT and there is NO circumcision scar! How can the Supreme Court of the United States allow this egregious act of aggravated perjury (and falsification of evidence) result in a conviction of an innocent man and not adhere to the Courts time honored precedents of "setting aside any conviction that is based on perjury?"

U.S. v. AGURS, 437 U.S. 97, 103 (1976); NAPUE v. ILLINOIS, 360 U.S.

264, 264 (1959); and MOONEY v. HOLohan, 294 U.S. 103, 112 (1935).

ALLEGATION THREE. Ms. Constance Patton, the State's DNA analyst committed aggravated perjury, when she testified that she got 15 out of 15 allele matches from a 15 probe PCR DNA test she ran on Petitioner's saliva swab and compared it to a swab of cloth taken from the alleged victim's panties. Her actual results showed only 7 out of 15 allele matches, which is insignificant according to the FBI Manual on DNA diagnostics, which require at least 12 matches to include a suspect as a possible contributor to a DNA mixture. Ms. Patton, on 04/12/2018,

ALLEGATIONS PETITIONER CAN PROVE AT AN EVIDENTIARY HEARING (cont.) 2

at a special hearing admitted that her data was wrong and that she could not conclude that Petitioner was included as a possible contributor to the DNA mixture! This "new evidence (1) exonerates Petitioner in Case No. 1017612-A, and, (2) allows Petitioner the basis for filing a 28 U.S.C. § 2254 Petition for a Writ of Habeas Corpus, and/or, a Petition for a Writ of Certiorari. (See APPENDIX I, EXHIBITS B1-B6).

ALLEGATION FOUR. Petitioner's rights under the 1st, 4th, 5th, 6th, 8th, and 14th AMENDMENTS of the U.S. Constitution were egregiously violated by the prosecution using (1) aggravated perjury by 3 key State witnesses (Weber, Patten, and Beverly Cunningham-Martin); (2) falsified evidence (Weber and Patten); (3) "junk Science" evidence (Patten); and, (4) illegally seized evidence (Weber and Cunningham-Martin). These violations justify Petitioner making a claim of Actual Innocence, as per McQuiggin v. Perkins, 569 U.S. 133 S.Ct. 1924 (2013), House v. Bell, 547 U.S. 518, 536-537 (2006), Black v. McDaniel, 529 U.S. 473, 485-487 (2000), McCleaky v. Zant, 499 U.S. 467, 484, 495 (1991), Murray v. Carrier, 477 U.S. 478 (1986), and, 28 U.S.C. § 2244 (b)(2)(B)(ii).

ALLEGATION FIVE. Petitioner's personal computer was password protected and nobody had access to or authority to use his computer. Petitioner's then wife, Beverly Cunningham, committed aggravated perjury when she testified at the suppression hearings and at Petitioner's trial, that she had mutual access to, and authority to use Petitioner's password protected computer, even

APPENDIX I
EXHIBIT F (pg. 3)

ALLEGATIONS PETITIONER CAN PROVE AT AN EVIDENTIARY HEARING (cont.) 3.

though she did not know the password and did not have a user name! (See APPENDIX I, EXHIBITS C1 and C2) She did not have third party standing to give her consent to the search and seizure of his computer by Detective Mike Weber on 03/23/2006. The search and seizure was illegal and violated Petitioner's rights under the 4th Amendment of the U.S. Constitution.

ALLEGATION SIX. Petitioner's trial counsel, Larry Sauer, was totally ineffective which strongly contributed to Petitioner's convictions. For example, Sauer failed to use the "Katz Rule" at the suppression hearing, or at Petitioner's trial. The "Katz Rule" states that if a defendant/citizen can document an "expectation of privacy" by a subjective, legitimate, society accepted, process, then he is protected by the 4th Amendment against any unrentless search and seizure. Katz v. U.S., 389 U.S. 347, 361 (1967). Many Circuit Courts of Appeals have ruled that using a password to protect a computer, gives a "legitimate, subjective, societally accepted" "expectation of privacy. U.S. v. Turner, 169 F.3d 84, 89 (1st Cir. 1999); Leventhal v. Knopak, 266 F.3d 64, 73-74 (2nd Cir. 2001); Trulock v. French, 275 F.3d 391, 403 (4th Cir. 2001); and, U.S. v. Glorria, 293 F.3d 670 (5th Cir. 2002).

ALLEGATION SEVEN. Townsend v. Sain, 372 U.S. 293 (1963); Demosthenea v. Boal, 110 S.Ct. 2223, 2225 (1990); and Nethery v. Collins, 933 F.2d 1157 (5th Cir. 1993) have supported Petitioner's requests (6) for a full and fair evidentiary hearing but, so far, no Court has allowed a hearing, fearing the FACT that Petitioner will prevail and win!

FILED

OCT 31 2019

APPENDIX I
EXHIBIT G

UNITED STATES COURT OF APPEALS - 5TH CIRCUIT

NEW ORLEANS, LA.

CLERK, U.S. DISTRICT COURT
By
Deputy

DONN DEVERAL MARTIN

CASE NO. 4:19-cv-00743-A

PETITIONER

COURT OF APPEALS
5TH CIRCUIT

NET 8/1/2019

LORIE DAVIS, DIRECTOR

TEXAS DEPARTMENT OF CRIMINAL JUSTICE - INSTITUTIONAL
DIVISION (DCI),

RESPONDENT

NOTICE OF APPEAL

United States District
Court for the Northern
District - Ft. Worth Division
(Texas)

Notice is hereby given that Petitioner, Donn Deveral Martin, in the above numbered and styled case, hereby appeals in the United States Court of Appeals for the 5th Circuit. (1) the denial of Petitioner's 28 U.S.C. § 2254 Petition For A Writ of Habeas Corpus by Judge John McBrady in the Federal District Court for the Northern District - Ft. Worth Division, entered in this action on the 20th day of September, 2019; (2) the denial of a Certificate of Appealability; and (3) the denial of Petitioner to proceed "in forma pauperis".

SIGNED, Donn Deveral Martin

APPENDIX A (pg. 1)

NO. 2

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

6/21/2017

MARTIN, DONN DEVERAL Tr. Ct. No. C-372-011037-1017794-CWR-75,347-20
The Court has dismissed without written order this subsequent application for a writ
of habeas corpus. TEX. CODE CRIM. PROC. Art. 11.07, Sec. 4(a)-(c).

Abel Acosta, Clerk

DONN DEVERAL MARTIN
CLEMENTS UNIT - TDC #1454022
9601 SPUR 591
AMARILLO, TX 79107-9608

理工部编 79103

Библиотека

No. 1

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

6/21/2017

MARTIN, DONN DEVERAL Tr. Ct. No. C-372-011036-1017793-CWR-75,347-19
The Court has dismissed without written order this subsequent application for a writ
of habeas corpus. TEX. CODE CRIM. PROC. Art. 11.07, Sec. 4(a)-(c)

Abel Acosta Clerk

DONN DEVERAL MARTIN
CLEMENTS UNIT - TDC #1454022
9601 SPUR 501
AMARILLO, TX 79107-9606

MIW168 79197

APPENDIX H (pg. 2)

No. 4

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

6/21/2017

MARTIN, DONN DEVERAL Tr. Ct. No. C-372-011039-1017791-CWR-75,347-22
The Court has dismissed without written order this subsequent application for a writ
of habeas corpus. TEX. CODE CRIM. PROC. Art. 11.07, Sec. 4(a)-(c).

Abel Acosta, Clerk

DONN DEVERAL MARTIN
CLEMENTS UNIT - TDC #1454022
9601 SPUR 591
AMARILLO, TX 79107-9606

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

INSTITUTIONAL RECORDS MANAGEMENT

No. 3

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

6/21/2017

MARTIN, DONN DEVERAL Tr. Ct. No. C-372-011038-1017796-CWR-75,347-21
The Court has dismissed without written order this subsequent application for a writ
of habeas corpus. TEX. CODE CRIM. PROC. Art. 11.07, Sec. 4(a)-(c).

Abel Acosta, Clerk

DONN DEVERAL MARTIN
CLEMENTS UNIT - TDC #1454022
9601 SPUR 591
AMARILLO, TX 79107-9606

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

INSTITUTIONAL RECORDS MANAGEMENT

APPENDIX H (pg. 3)

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

No. 5

6/21/2017

MARTIN, DONN DEVERAL Tr. Ct. No. C-372-011040-1017792-CWR-75,347-23
The Court has dismissed without written order this subsequent application for a writ
of habeas corpus. TEX. CODE CRIM. PROC. Art. 11.07, Sec. 4(a)-(c).

Abel Acosta, Clerk

DONN DEVERAL MARTIN
CLEMENTS UNIT - TDC #1454022
5004 CR 301
AMARILLO, TX 79107-9606

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OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

No 6

6/21/2017

6/21/2011 MARTIN, DONN DEVERAL Tr. Ct. No. C-372-011041-1000004 C-1
The Court has dismissed without written order this subsequent application for a writ
of habeas corpus. TEX. CODE CRIM. PROC. Art. 11.07, Sec. 4(a)-(c). Abel Acosta, Clerk

Abel Acosta, Clerk

DONN DEVERAL MARTIN
CLEMENTS UNIT - TDC #1454022
9601 SPUR 591
AMARILLO, TX 79107-9606

MINING 79107

APPENDIX H (pg-4)

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

No. 7

6/21/2017

MARTIN, DONN DEVERAL Tr. Ct. No. C-372-011042-1066506-CWR-75,347-25
The Court has dismissed without written order this subsequent application for a writ
of habeas corpus. TEX. CODE CRIM. PROC. Art. 11.07, Sec. 4(a)-(c).

Abel Acosta, Clerk

DONN DEVERAL MARTIN
CLEMENTS UNIT - TDC #1454022
PO BOX 12308
AMARILLO, TX 79107-9606

SEARCHED 7/9/07

INDEXED SERIALIZED FILED

No. 8

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

6/21/2017

MARTIN, DONN DEVERAL Tr. Ct. No. C-372-011043-1066507-CWR-75,347-26
The Court has dismissed without written order this subsequent application for a writ
of habeas corpus. TEX. CODE CRIM. PROC. Art. 11.07, Sec. 4(a)-(c).

Abel Acosta, Clerk

DONN DEVERAL MARTIN
CLEMENTS UNIT - TDC #1454022
9601 SPUR 591
AMARILLO, TX 79107-9606

SEARCHED 7/9/07

INDEXED SERIALIZED FILED