

APPENDIX

G

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUN 17 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RUBEN MORENO HERRERA,

Petitioner-Appellant,

v.

SECRETARY OF CORRECTIONS; et al.,

Respondents-Appellees.

No. 21-55314

D.C. No. 5:21-cv-00329-CJC-JPR
Central District of California,
Riverside

ORDER

Before: CANBY and LEE, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) is denied because appellant has not shown that “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

DENIED.

21-55314

Ruben Moreno Herrera, #AU5012
CVSP-Chuckawalla Valley State Prison
P.O. Box 2349
Blythe, CA 92226

APPENDIX

“H”

California Correctional Health Care Services

Patient Discharge Instructions

Name: HERRERA, RUBEN MORENO Current Date: 06/03/21 08:39:28

DOB: 06/09/73 CDCR: AU5012

Immunizations Provided:

Immunization(s) Given This Visit

Name	Date
SARS-CoV-2 (COVID-19) mRNA-1273 vaccine	04/21/21 10:59:00
SARS-CoV-2 (COVID-19) mRNA-1273 vaccine	03/24/21 08:27:00
hepatitis A-hepatitis B vaccine	08/05/20 09:19:00
hepatitis A-hepatitis B vaccine	03/08/20 07:35:00
hepatitis A-hepatitis B vaccine	02/07/20 10:50:00

Reason For Visit: 1:Suspected multiple sclerosis; 2:Closed fracture nasal bone; 3:High blood pressure; 4:Dyslipidemia; 5:Calcaneal spur right heel; Bilateral foot pain; Dry eye; High priority for 2019-nCoV vaccine; Hyperopia of both eyes with astigmatism and presbyopia; Weakness

Recommendations and arrangements for future care

Devices/Equipment:

Other: glasses. **Canes Permanent** Standard, High Priority - Within 14 Calendar Days

Canes Supply 03/30/21 13:18:00 PDT, Cane Tips, Do Not Dispense, Patient Already Has, Constant Indicator

Frames, Eyeglasses Permanent Other/Unknown, Routine - Within 90 Calendar Days

Frames, Eyeglasses Permanent Other/Unknown, Routine - Within 90 Calendar Days

Mobility Impaired Disability Vest Permanent High Priority - Within 14 Calendar Days

Reading Glasses Permanent Routine - Within 90 Calendar Days

Provider Comment:

MEDICATIONS:

During the course of your visit your medication list was updated with the most current information.

Continue taking these Medications:

lisinopril

- For High blood pressure: Take 1 tab (Total Dose = 10 mg), by mouth once a day on your own
- Start Date: March 28, 2021
- Take for: 360 day(s)

Comments: It is very important that you take or use this exactly as directed. Do not skip doses or discontinue unless directed by your doctor. Some non-prescription drugs may aggravate your condition. Read all labels carefully. If a warning appears, check with your doctor before taking. Do not take this drug if you are pregnant.

HERRERA, RUBEN MORENO has been given the following list of follow-up instructions, prescriptions, and patient education materials:

Follow-up Appointments

7362 Medical Routine Follow Up 20

06/03/21 8:40:00 PDT, *14 days, 06/03/21 23:59:00 PDT, 137.252.9.20.202104021316241243332116722#1.00, Requesting c-spine MRI, review MRI results from neurology, PT recommended by neurology

Consult to Physical Therapy (PT) Outpatient Eval and Treat

06/03/21 0:01:00 PDT, Routine Priority (46-90 days), heel pain right, 09/03/21 23:59:00 PDT

Follow Up LVN 10

02/10/21 0:01:00 PST, Other, 08/10/21 23:59:00 PDT, Fired by Discern Expert (BCC_DME_FOLLOW_UP) due to a "Temporary" 1845/7410 status.

Follow Up LVN 10

03/30/21 0:01:00 PDT, Other, 09/23/21 23:59:00 PDT, Fired by Discern Expert (BCC_DME_FOLLOW_UP) due to a "Temporary" 1845/7410 status.

Follow Up LVN 10

06/21/21 11:00:00 PDT, Tuberculosis Screen (Annual), 30 days, 06/30/21 23:59:00 PDT, ANNUAL TB SCREEN

NSG HCV 04/27/21 0:01:00 PDT, Care Management, 365 days, 04/27/22 23:58:59 PDT, Annual HCV Follow up

PCP Chronic Care 40

09/22/21 0:01:00 PDT, Other Reasons (No SUDT/MAT), Other - Special Instructions, 10/05/21 23:59:00 PDT, CCP

Chronos

1845/7410 (SOMS) 03/30/21 13:21:14 PDT, DPM, T, 7410 Expire Date 9/16/2021, GFNS, LBO, no jumping

7410 (SOMS) 12/16/20 10:00:53 PST, T, 7410 Expire Date 2/16/2021, LBO, No jumping

7410 (SOMS) 02/10/21 10:33:11 PST, T, 7410 Expire Date 8/3/2021, LBO, no jumping

DPC 01/17/19 14:41:22 PST, DPC 4

DPC 04/11/19 14:48:58 PDT, DPC 3

DPC 03/11/20 12:21:50 PDT, DPC 4

DPW= Full Time Wheelchair User Impacting Placement Placement

DPM=Mobility Impairment Impacting Placement Placement

DPH=Deaf/Hearing Impairment Impacting Placement

DPV=Blind/Vision Impairment Impacting Placement

GFLS= Ground Floor-Limited Stairs

LBO= Lower/Bottom Bunk Only

WCFT=Full Time Wheelchair User

TVWL=Transport Vehicle with Lift

ETM=Extra Time for Meals

WRN=No Rooftop Work

DPO= Intermittent Wheelchair User Impacting

DLT=Requires Level Terrain NOT Impacting

DNH=Hearing Impairment NOT Impacting Placement

BFWCO=Barrier Free Wheelchair

GFNS=Ground Floor-No Stairs

IAA=Inmate Attendant/Assistant

WCLT=Limited Wheelchair User

SC=Special Cuffing Needed,

UVX=UV Exposure Restrictions

DKD=Kidney Disease

UNST=Unrestricted

LR=Lifting Restriction- Unable to Lift more than 19 Pounds

DNM= Mobility Impairment (Lower Extremities) NOT Impacting Placement

Multiple Sclerosis

Multiple sclerosis (MS) is a disease of the central nervous system. It leads to the loss of the insulating covering of the nerves (*myelin sheath*) of your brain. When this happens, brain signals do not get sent properly or may not get sent at all. The age of onset of MS varies.

CAUSES

The cause of MS is unknown. However, it is more common in the northern United States than in the southern United States.

RISK FACTORS

There is a higher number of women with MS than men. MS is not an illness that is passed down to you from your family members (*inherited*). However, your risk of MS is higher if you have a relative with MS.

SIGNS AND SYMPTOMS

The symptoms of MS occur in episodes or attacks. These attacks may last weeks to months. There may be long periods of almost no symptoms between attacks. The symptoms of MS vary. This is because of the many different ways it affects the central nervous system. The main symptoms of MS include:

- Vision problems and eye pain.
- Numbness.
- Weakness.
- Inability to move your arms, hands, feet, or legs (*paralysis*).
- Balance problems.
- Tremors.

DIAGNOSIS

Your health care provider can diagnose MS with the help of imaging exams and lab tests. These may include specialized X-ray exams and spinal fluid tests. The best imaging exam to confirm a diagnosis of MS is an MRI.

TREATMENT

There is no known cure for MS, but there are medicines that can decrease the number and frequency of attacks. Steroids are often used for short-term relief. Physical and occupational therapy may also help. There are also many new alternative or complementary treatments available to help control the symptoms of MS. Ask your health care provider if any of these other options are right for you.

HOME CARE INSTRUCTIONS

- Take medicines as directed by your health care provider.
- Exercise as directed by your health care provider.

SEEK MEDICAL CARE IF:

You begin to feel depressed.

SEEK IMMEDIATE MEDICAL CARE IF:

- You develop paralysis.
- You have problems with bladder, bowel, or sexual function.
- You develop mental changes, such as forgetfulness or mood swings.
- You have a period of uncontrolled movements (*seizure*).

This information is not intended to replace advice given to you by your health care provider. Make sure you discuss any questions you have with your health care provider.

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Health Maintenance, Male

A healthy lifestyle and preventative care can promote health and wellness.

- Maintain regular health, dental, and eye exams.
- Eat a healthy diet. Foods like vegetables, fruits, whole grains, low-fat dairy products, and lean protein foods contain the nutrients you need and are low in calories. Decrease your intake of foods high in solid fats, added sugars, and salt. Get information about a proper diet from your health care provider, if necessary.
- Regular physical exercise is one of the most important things you can do for your health. Most adults should get at least 150 minutes of moderate-intensity exercise (any activity that increases your heart rate and causes you to sweat) each week. In addition, most adults need muscle-strengthening exercises on 2 or more days a week.
- Maintain a healthy weight. The body mass index (BMI) is a screening tool to identify possible weight problems. It provides an estimate of body fat based on height and weight. Your health care provider can find your BMI and can help you achieve or maintain a healthy weight. For males 20 years and older:
 - A BMI below 18.5 is considered underweight.
 - A BMI of 18.5 to 24.9 is normal.
 - A BMI of 25 to 29.9 is considered overweight.
 - A BMI of 30 and above is considered obese.
- Maintain normal blood lipids and cholesterol by exercising and minimizing your intake of saturated fat. Eat a balanced diet with plenty of fruits and vegetables. Blood tests for lipids and cholesterol should begin at age 20 and be repeated every 5 years. If your lipid or cholesterol levels are high, you are over age 50, or you are at high risk for heart disease, you may need your cholesterol levels checked more frequently. Ongoing high lipid and cholesterol levels should be treated with medicines if diet and exercise are not working.
- If you smoke, find out from your health care provider how to quit. If you do not use tobacco, **do not** start.
- Lung cancer screening is recommended for adults aged 55–80 years who are at high risk for developing lung cancer because of a history of smoking. A yearly low-dose CT scan of the lungs is recommended for people who have at least a 30-pack-year history of smoking and are current smokers or have quit within the past 15 years. A pack year of smoking is smoking an average of 1 pack of cigarettes a day for 1 year (for example, a 30-pack-year history of smoking could mean smoking 1 pack a day for 30 years or 2 packs a day for 15

years). Yearly screening should continue until the smoker has stopped smoking for at least 15 years. Yearly screening should be stopped for people who develop a health problem that would prevent them from having lung cancer treatment.

- If you choose to drink alcohol, **do not** have more than 2 drinks per day. One drink is considered to be 12 oz (360 mL) of beer, 5 oz (150 mL) of wine, or 1.5 oz (45 mL) of liquor.
- Avoid the use of street drugs. **Do not** share needles with anyone. Ask for help if you need support or instructions about stopping the use of drugs.
- High blood pressure causes heart disease and increases the risk of stroke. High blood pressure is more likely to develop in:
 - People who have blood pressure in the end of the normal range (100–139/85–89 mm Hg).
 - People who are overweight or obese.
 - People who are African American.
- If you are 18–39 years of age, have your blood pressure checked every 3–5 years. If you are 40 years of age or older, have your blood pressure checked every year. You should have your blood pressure measured twice—once when you are at a hospital or clinic, and once when you are not at a hospital or clinic. Record the average of the two measurements. To check your blood pressure when you are not at a hospital or clinic, you can use:
 - An automated blood pressure machine at a pharmacy.
 - A home blood pressure monitor.
- If you are 45–79 years old, ask your health care provider if you should take aspirin to prevent heart disease.
- Diabetes screening involves taking a blood sample to check your fasting blood sugar level. This should be done once every 3 years after age 45 if you are at a normal weight and without risk factors for diabetes. Testing should be considered at a younger age or be carried out more frequently if you are overweight and have at least 1 risk factor for diabetes.
- Colorectal cancer can be detected and often prevented. Most routine colorectal cancer screening begins at the age of 50 and continues through age 75. However, your health care provider may recommend screening at an earlier age if you have risk factors for colon cancer. On a yearly basis, your health care provider may provide home test kits to check for hidden blood in the stool. A small camera at the end of a tube may be used to directly examine the colon (*sigmoidoscopy* or *colonoscopy*) to detect the earliest forms of colorectal cancer. Talk to your health care provider about this at age 50 when routine screening begins. A direct exam of the colon should be repeated every 5–10 years through age 75, unless early forms of precancerous polyps or small growths are found.
- People who are at an increased risk for hepatitis B should be screened for this virus. You are considered at high risk for hepatitis B if:
 - You were born in a country where hepatitis B occurs often. Talk with your health care provider about which countries are considered high risk.
 - Your parents were born in a high-risk country and you have not received a shot to protect against hepatitis B (*hepatitis B vaccine*).
 - You have HIV or AIDS.
 - You use needles to inject street drugs.
 - You live with, or have sex with, someone who has hepatitis B.
 - You are a man who has sex with other men (MSM).
 - You get hemodialysis treatment.
 - You take certain medicines for conditions like cancer, organ transplantation, and autoimmune conditions.
- Hepatitis C blood testing is recommended for all people born from 1945 through 1965 and any individual

with known risk factors for hepatitis C.

- Healthy men should no longer receive prostate-specific antigen (PSA) blood tests as part of routine cancer screening. Talk to your health care provider about prostate cancer screening.
- Testicular cancer screening is not recommended for adolescents or adult males who have no symptoms. Screening includes self-exam, a health care provider exam, and other screening tests. Consult with your health care provider about any symptoms you have or any concerns you have about testicular cancer.
- Practice safe sex. Use condoms and avoid high-risk sexual practices to reduce the spread of sexually transmitted infections (STIs).
- You should be screened for STIs, including gonorrhea and chlamydia if:
 - You are sexually active and are younger than 24 years.
 - You are older than 24 years, and your health care provider tells you that you are at risk for this type of infection.
 - Your sexual activity has changed since you were last screened, and you are at an increased risk for chlamydia or gonorrhea. Ask your health care provider if you are at risk.
- If you are at risk of being infected with HIV, it is recommended that you take a prescription medicine daily to prevent HIV infection. This is called pre-exposure prophylaxis (PrEP). You are considered at risk if:
 - You are a man who has sex with other men (MSM).
 - You are a heterosexual man who is sexually active with multiple partners.
 - You take drugs by injection.
 - You are sexually active with a partner who has HIV.
 - Talk with your health care provider about whether you are at high risk of being infected with HIV. If you choose to begin PrEP, you should first be tested for HIV. You should then be tested every 3 months for as long as you are taking PrEP.
- Use sunscreen. Apply sunscreen liberally and repeatedly throughout the day. You should seek shade when your shadow is shorter than you. Protect yourself by wearing long sleeves, pants, a wide-brimmed hat, and sunglasses year round whenever you are outdoors.
- Tell your health care provider of new moles or changes in moles, especially if there is a change in shape or color. Also, tell your health care provider if a mole is larger than the size of a pencil eraser.
- A one-time screening for abdominal aortic aneurysm (AAA) and surgical repair of large AAAs by ultrasound is recommended for men aged 65–75 years who are current or former smokers.
- Stay current with your vaccines (*immunizations*).

This information is not intended to replace advice given to you by your health care provider. Make sure you discuss any questions you have with your health care provider.

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Name: HERRERA, RUBEN MORENO

CDCR: AU5012

NO INMATE HEAT PASS

The patient is currently not prescribed any heat medication.

DOB: 06/09/73

CDCR: AU5012

APPENDIX

J

said Boise State University's and the Idaho Innocence Project's Hampikian.

"Someone could be let out of prison or we could finally catch other rapists or murderers, but the problem is a lot of labs are working on writing new protocols for DNA transfer without protocols for looking back at old cases," said Hampikian. "It's not the priority to go back and look at mistakes. Most people do not want to go back and look at their mistakes."

As a potential solution, Hampikian says a \$25,000 reward should be given to any scientist who goes back and finds past mistakes pertaining to DNA transfer issues that could have impacted criminal cases, which results in a reversal of a wrongful conviction.

"But that's not how it is," he said. "Most labs are writing their protocol so that they are not encouraged to look back at old case files.... You've got to make amends and you've got to fix it."

As an ethical matter in the field of science, Hampikian said that he sees it as the duty of practitioners not only to make prospective changes in future behavior and conduct but also to look back and heal past wounds from scientific failures. Those failures often have real-world implications for those on the receiving end of the actions taken in the name of science—think wrongful convictions in the criminal justice domain or car accidents for faulty automobiles.

"It's not enough to say, 'Well, we've botched all of these other surgeries, and now we know how to do them,'" said Hampikian. "You have a duty to go back and fix them. Just like you can't say, 'Well, we know how this plague was spread, but we'll just let these people die, and now we're going to go wash our hands.' No, you've got to go back and give those people some medicine."

Speaking in terms of those hurt by bad science within the criminal justice system, Hampikian raised the rhetorical question: "So, what's the right medicine for people whose lives were destroyed [by bad DNA science]? What's the right medicine for them?"

Medicine, of course, cannot be prescribed until the doctor recognizes the issue as a problem requiring medication. In the criminal justice system and forensic science academia in America, alarmingly few even acknowledge that secondary DNA transfer is a problem, so there's virtually no effort being made to remedy past injustices or safeguard against future ones that will inevitably occur unless the issue of secondary DNA transfer is treated with the urgency it warrants. ■

Sources: fsigenetics.com, strbase.nist.gov, nature.com, onlinelibrary.wiley.com, criminallegalnews.org, ucl.ac.uk, parliament.uk, nap.edu, fsigenetics.com, nist.gov, web.archive.org, unthsc.edu,

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Prosecutors Working to Clear Wrongful Convictions With Mixed Results

by Bill Barton

BEFORE THE MURDER CHARGE AGAINST him was finally dropped, Richard Phillips had the decidedly dubious distinction of being locked up longer than any other eventually exonerated prisoner—he was incarcerated for 45 years, convicted of a crime he did not commit.

According to a report from the National Registry of Exonerations ("NRE"), Phillips was one of the 151 individuals exonerated in 2018. The report cited "professional exonerators": innocence organizations, independent or law school-affiliated nongovernmental groups, and Conviction Integrity Units ("CIU's") formed within prosecutors' offices. The Wayne County CIU, started in 2018 by prosecutor Kym Worthy, worked in concert with one of those innocence organizations and within months formally dismissed the case against Phillips.

When announcing the exoneration of Phillips, Worthy apologized. "The system failed him," she said. "Nothing that I can say will bring back years of his life spent in prison. Justice is truly being served today."

The Wayne County CIU is part of a national trend noted by the NRE. There are now 45 across the country, with eight new units coming into existence in 2018 alone.

The records of these units vary. "Where Wayne County had tremendous success in its first year—and is on track to surpass that first-year total—the registry report describes

a number of CIUs that have been in operation for at least five years and have yet to produce a single exoneration," according to *The Intercept's* coverage of the issue. "[T]he report argues that the structure of a CIU has a direct correlation to its success, including whether the unit has at least one full-time attorney assigned to it. Of 14 units formed prior to 2018 that lack a full-time attorney, just six have reported an exoneration; 19 of the 22 CIUs founded before 2018 that have a full-time attorney have been involved in at least one exoneration."

The attorneys general of Michigan and New Jersey have recently announced the formation of statewide CIUs.

Prosecutor Valerie Newman of Detroit's CIU told the website that while "anyone would feel bad" convicting an innocent individual, "a good prosecutor should be thinking about 'Is there something else? Is there something I could have done so that this wouldn't have happened?'" ■

Source: *theintercept.com*

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Forensic Science: Reliable and Valid?

by Jayson Hawkins

THE HEADLINES HAVE BECOME TOO familiar: DNA shows wrong person imprisoned for decades-old crime.

Over 300 people have been exonerated by DNA evidence, and that number will only continue to rise as more cases are scrutinized. That begs the question of what has led to so many miscarriages of justice. District attorneys, desperate for high conviction rates, constitute part of the problem, but in more than 40 percent of these cases, findings of guilt were based on faulty forensic evidence.

Forensic science has evolved steadily since law enforcement began using fingerprint analysis a century ago, yet, much like the evolution of our species, there have been missteps along the way. Take, for example, the questionable practice of forensic dentistry. In 1983, a Newport News, Virginia, man was murdered, and his wife was raped and bitten. The suspect was dressed as a sailor, and suspicions fell on the crew of an aircraft carrier docked nearby.

Dentists compared the teeth and dental records of those onboard to the victim's bite marks. Keith Harward was among those excluded as the source of the marks, but months later, he became a top suspect when his girlfriend complained that he bit her during an argument. Members of the American Board of Forensic Odontology then decided that dental molds of Harward's teeth actually did match bite marks on the rape victim.

One expert, Dr. Lowell Levine, informed the jury at Harward's subsequent trial of a "practical impossibility that someone else would have all these characteristics" in their bite.

Fast-forward to 2015 when the rape kit from the case was finally analyzed for DNA. It revealed the perpetrator had, indeed, been a sailor from the nearby naval vessel—but not Harward. The man it identified had committed several other crimes and died in prison. A year after this revelation, the Virginia Supreme Court exonerated Harward and released him from custody. He had served 33 years.

Forensic evidence can be a valuable tool

for prosecuting crimes when correctly applied. Federal Rule of Evidence 702 allows expert testimony in the courtroom if it "is based on sufficient facts or data" and "is the product of reliable principles and methods ... reliably applied ... to the facts of the case." This sounds fairly straightforward and often leads to accurate conclusions, though issues surround the word "reliable." The law intends it to encompass both reliability and validity, but these terms hold separate meanings in statistical science. The difference between them is more than mere semantics; some expert witnesses have manipulated the ambiguity to rob decades from innocent people's lives.

A process is referred to as *reliable* in statistical and scientific terminology if it provides consistent measurements or conclusions when correctly applied. Reliability can be gauged by standard deviation and other methods, which means it is not a yes-or-no proposition. A test that recorded low blood pressure for 19 out of 20 individuals with equivalent pressures would rate 95 percent reliable. Consistency, however, is not the same as accuracy; the test is still considered 95 percent reliable even if all 20 individuals actually had high blood pressure.

A process rates as *valid* to the extent it measures what it is supposed to measure. In the example above, only one out of 20 were accurately observed as having high blood pressure, which ranks validity of the test at a pitiful 5 percent. Common sense dictates the results of such a test be discarded as useless, but because the language of Federal Rule of Evidence 702 requires only "reliable principles and methods," an unscrupulous expert could lead a jury to an unfounded conclusion. The U.S. Supreme Court recognized this problem in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* 509 U.S. 579 (1993). The Court ruled testimony regarding "scientific knowledge" must be both consistent and valid to meet "a standard of evidentiary reliability," but that has not eliminated wrongful convictions based on faulty forensics.

The National Academy of Sciences ("NAS") issued a committee report to Congress in 2009 concerning forensics. It highlighted a significant lack of "scientific studies to determine validity" of "the interpretation of forensic evidence." In case the message wasn't clear enough, the committee called it "a serious problem" and suggested

any testimony on identity evidence include measures of validity.

Research lacking

SEVEN YEARS LATER, THE PRESIDENT'S COUNCIL of Advisors on Science and Technology ("PCAST") reported similar findings. It noted that while the validity of testing for DNA and latent fingerprints had been established, other methods of forensics lacked ample research to be considered proven.

Both the NAS and PCAST reports concentrated on validity, and the latter specified a difference between applying it to general identity procedures and particular cases. "Foundational validity" refers to the ability of an assessor to determine if two samples—one of which the source is known and the other not—have the same origin. A study of 169 latent fingerprint testers, for example, found the field foundationally valid, as the false-positive rate was only .15 percent and false-negative rate 7.5 percent. Still, PCAST stressed juries needed to be made aware that fingerprint analysis is not infallible; indeed, 85 percent of the testers in the study erred at least once, though none admitted to having ever done so in a real case.

"Validity as applied," on the other hand, means that in a specific case the examiner used the method correctly. The North Carolina Court of Appeals recently dismissed a case where a latent fingerprint examiner "failed to demonstrate that she applied the principles and methods to the facts of the case" when she could not say which parts of the prints she looked at or how long she spent on the comparison.

The bottom line is that, while forensic evidence is crucial to the investigation of many crimes, mistakes do happen. The Organization of Scientific Area Committees for Forensic Science was established in 2014 to set standards aimed at reducing such errors, but, as the PCAST report warned, much research remains to be done before disciplines like shoe prints, firearms, bloodstains, and other pattern analyses reach acceptable levels of reliability and validity. In the meantime, innocent people will likely continue to go to prison, and those falsely convicted will remain in prison for crimes they didn't commit.

Source: *significancemagazine.com*, *The Royal Statistical Society*

Roget's Thesaurus

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words listed alphabetically.
See page 45 for more information.

1 appeals under Federal Rule of Appellate Procedure 22. A
2 motion to reconsider a denial does not extend the time to
3 appeal.

4 (b) **Time to Appeal.** Federal Rule of Appellate
5 Procedure 4(a) governs the time to appeal an order
6 entered under these rules. A timely notice of appeal
7 must be filed even if the district court issues a
8 certificate of appealability.

9 Under 28 U.S.C. § 2253(c)(2), a certificate of appealability
10 may issue "only if the applicant has made a substantial showing
11 of the denial of a constitutional right." This means that

12 "reasonable jurists could debate whether (or, for that matter,
13 agree that) the petition should have been resolved in a different
14 manner or that the issues presented were "adequate to deserve
15 encouragement to proceed further."" Slack v. McDaniel, 529 U.S.
16 473, 484 (2000) (citation omitted).

17 Here, Petitioner hasn't made the necessary showing as to the
18 Court's jurisdiction over the Petition or the merits of its
19 claims.

20 Accordingly, a certificate of appealability is denied.

21
22 DATED: March 16, 2021


GORDON J. CARNEY
U.S. DISTRICT JUDGE

23
24 Presented by:

25 Jean Rosenbluth
26 U.S. Magistrate Judge
27
28

APPENDIX

M.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 13 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RUBEN MORENO HERRERA,

Petitioner-Appellant,

v.

SECRETARY OF CORRECTIONS; et al.,

Respondents-Appellees.

No. 21-55314

D.C. No. 5:21-cv-00329-CJC-JPR
Central District of California,
Riverside

ORDER

Before: M. SMITH and HURWITZ, Circuit Judges.

Appellant's "Objection" (Docket Entry No. 4) is construed as a motion for reconsideration, and is denied. *See* 9th Cir. R. 27-10.

Appellant's motion for appointment of counsel (Docket Entry No. 5) is denied.

No further filings will be entertained in this closed case.

21-55314

Ruben Moreno Herrera, #AU5012
CVSP-Chuckawalla Valley State Prison
P.O. Box 2349
Blythe, CA 92226

EXHIBIT

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Conclusion(s)

Item #	Sample Type	Spermatozoa	Male DNA	Proceed to DNA testing
Item 6 (LIMS #2-1-1-1)	Vaginal swab	Not Detected	Not Detected	No
Item 6 (LIMS #2-2-1-1)	Anal swab	Not Detected	Not Detected	No
Item 6 (LIMS #2-3-1-1)	External genital swab	Not Detected	Not Detected	No
Item 6 (LIMS #2-4-1-1)	Oral swab	---	Not Detected	No
Item 6 (LIMS #2-5-1-1)	Perioral swab	---	Inconclusive	No
Item 6 (LIMS #2-5-3-1)	Neck swab	---	Inconclusive	No
Item 6 (LIMS #2-5-5-1)	Right breast swab	---	Not Detected	No
Item 6 (LIMS #2-5-7-1)	Left breast swab	---	Not Detected	No
Item 6 (LIMS #2-5-9-1)	Right hand swab	---	Not Detected	No
Item 6 (LIMS #2-5-11-1)	Left hand swab	---	Not Detected	No

"---" = not tested

DNA profiles were obtained from the following reference samples:

Rosa Machado (LIMS #2-6-1-1)

Rubén Herrera (LIMS #1-1-1-1)

No additional items were submitted for DNA testing.

Due to the presence of high levels of total human DNA, these samples were not processed for STR analysis.

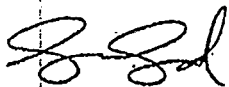
Additional analysis may be requested for the following items pending a new request:

Perioral swab (LIMS #2-5-1-1)

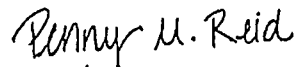
Neck swab (LIMS #2-5-3-1)

Disposition of Evidence

The remaining evidence was returned to FSC Property. DNA reference extracts were consumed during analysis.
DNA evidence extracts will be booked into Property.



Analyst: S. Sund #N4425 323-415-8844 2-3-14



Admin Review: P. Reid #N3158 2-10-14

LOS ANGELES POLICE DEPARTMENT
SCIENTIFIC INVESTIGATION DIVISION

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CUSTOMER SERVICE EVALUATION

You or your office recently utilized services provided by Scientific Investigation Division (SID) in the below referenced case. SID is continually striving to improve the quality of services provided to our customers. This evaluation has been designed as the instrument utilized to measure customer satisfaction levels and identify areas for service improvement. Please complete the form and please write any comments or suggestions in the space provided for this purpose on the form. If additional space is required, please continue on a blank sheet of paper and attach to this form.

1. Was the service you requested available?

YES NO Comment _____

2. Was this service provided in a timely manner?

YES NO Comment _____

3. Was the service provided in a courteous and professional manner?

YES NO Comment _____

4. Did the SID employee appear to possess the requisite technical knowledge and expertise?

YES NO Comment _____

5. Are you satisfied with the quality of the written reports (if applicable)?

YES NO Comment _____

6. In general, does SID provide the quality of service that you think it should?

YES NO Comment _____

Any additional comments or suggestions for improvement in service? _____

Survey completed by: _____

DR, Case or File #: 13-16-16996

Type of service: STRI

Location of occurrence: _____ Date of Occurrence: _____

SID employee involved: Sund N4425

SID Employee's section or unit: Serology/DNA

Date forwarded by SID: _____

Please Return Completed Survey to:

Commanding Officer Scientific Investigation Division (Stop #400-1800)
1800 Paseo Rancho Castilla
Los Angeles, CA 90032

[Handwritten signature]

Tech Review: E. Park #N4294 2-3-14

COPY

NO DNA
NO CHARGE
NO COMMITTED
NO SEXUAL ABUSE
NO CHILD ABUSE

Justine M. Esack

COPY

From:
To:
Subject:
Attachments:

ecamaras@da.lacounty.gov
Tuesday, June 17, 2014 4:41 PM
Justine M. Esack
Re: Herrera
pic32685.gif; CD Table.docx

Hi Justine,

The IO is unavailable to meet this week. Someone is bringing the case package to my office on Thursday. I did a table of all the CDs. Some of mine don't work. I checked the list I made with the acknowledgement of discovery forms in the file. There are two Rosa Machado interviews. I can't tell which one you are missing. Also, there was a CD you received called. "LAPD produced 12/2/13 5:56:39" I don't have a CD like that. I have no idea what that is.

Not sure which pages of the 5/1/10 police report you received. It's technically 8 pages. My guess is you don't have the confidentiality pages.

Do you have the medical reports for Rosa, defendant, Ruben Machado, and Denise Machado?

There are four scar reports. It's unclear to me if you have those.

police reports: 11/20/13, 11/22/13, 11/26/13, 11/27/13, 12/1/13, 12/2/13, 12/5/13, If you are missing some, let me know.

911 MDT printout when Valeria reported missing.

There's a letter dated 3/9/14 from Rosa Machado to the judge saying that she lied and wasn't sexually assaulted.

I will be faxing an SDT to CATS tomorrow to have Rosa's medical photos and SART exam sent to the court. IO will let me know how long transcripts will take. I should have an answer by Monday.

(See attached file: CD Table.docx)

Let me know what you're missing and I'll make copies for you for Monday, if not before.

thanks.

-e

"Justine M. Esack" ---06/17/2014 03:48:57 PM---"Justine M. Esack" <JEsack@pubdef.lacounty.gov>

"Justine M. Esack"

<JEsack@pubdef.lacounty.gov>

06/17/2014 03:48 PM

To: Elena Abramson (ecamaras@da.lacounty.gov),
<ecamaras@da.lacounty.gov>

cc

Subject: Herrera

Hi Elena,

on this case here's what I have: