No. 17-1093

IN THE

Supreme Court of the United States

RODNEY REED,

Petitioner,

—v.—

THE STATE OF TEXAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF CRIMINAL APPEALS OF TEXAS

BRIEF OF *AMICI CURIAE* TEXAS EXONEREES MICHAEL MORTON AND ANTHONY GRAVES, THE INNOCENCE NETWORK, AND JUSTICE 360 IN SUPPORT OF PETITIONER

RONALD F. WICK
COHEN & GRESSER LLP
2001 Pennsylvania Avenue, NW,
Suite 300
Washington, D.C. 20006
(202) 851-2070

CHRISTIAN R. EVERDELL
Counsel of Record
LUKE APPLING
SOPHIA SOEJUNG KIM
ANDREW J. PINKSTON
LAUREN J. SALAMON
COHEN & GRESSER LLP
800 Third Avenue
New York, New York 10022
(212) 957-7600
ceverdell@cohengresser.com

Attorneys for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE(S)

Cases

Statutes

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

Michael Morton's interest in this case is that he is an innocent man who was freed from a life sentence by post-conviction DNA testing of evidence that likely had been contaminated before testing. Mr. Morton was wrongfully convicted by a Texas court of the 1986 murder of his wife. He spent nearly 25 years in prison before he was exonerated in 2011 by DNA evidence that implicated another man. Mr. Morton's freedom today is the direct result of the DNA testing that the Texas Court of Criminal Appeals severely restricts in its decision below. Since his exoneration, Mr. Morton has traveled around the country advocating for laws designed to ensure transparency and fairness in criminal prosecutions. Among the laws he has supported is the Michael Morton Act, a Texas law enacted in 2014, which requires prosecutors to disclose exculpatory evidence to defense attorneys.

Anthony Charles Graves is the 138th exonerated death row inmate in the United States. Mr. Graves was wrongfully convicted of murdering a family of six people in 1992 in Somerville, Texas. Mr. Graves' conviction was based on the testimony of another man who confessed to the crime and named Mr. Graves as

---

[1] This brief is filed with the written consent of all parties. No counsel for a party authored any part of this brief, nor has such counsel, a party, or any other entity or individual aside from *amici curiae*, their members, and their counsel made a monetary contribution to fund the preparation or submission of this brief. The parties were given 10 days' notice of the filing of this brief.

an accomplice, but who later admitted that he had committed the crime on his own. Mr. Graves was incarcerated for 18 years before he was finally exonerated and released. In setting aside Mr. Graves' conviction and sentence, the U.S. Court of Appeals for the Fifth Circuit concluded that the prosecutor in Mr. Graves' case had failed to provide exculpatory evidence to the defense, including many contradictory statements by the actual killer. In 2016, the Texas Board of Disciplinary Appeals upheld a decision to disbar the prosecutor for concealing exculpatory evidence, presenting false testimony, and other misconduct during Mr. Graves' trial.

Like Mr. Reed, Mr. Graves was tried before Judge Harold R. Towslee of Texas' 335th Judicial District Court of Bastrop. Mr. Graves was represented at trial by the same court-appointed counsel, Calvin Garvey and Lydia Clay-Jackson, who represented Mr. Reed. And both cases involved the litigation of significant issues regarding prosecutorial suppression of evidence under *Brady v. Maryland*, 373 U.S. 83 (1963).

Since his exoneration, Mr. Graves has advocated for reforms to the criminal justice system. He has established the Anthony Graves Foundation, which is designed to promote fairness and bring about reform in the criminal justice system. The Foundation's Humane Investigation Project investigates prisoners' claims of actual innocence and works with attorneys and investigators to free the wrongfully convicted.

The Innocence Network is an association of independent organizations dedicated to providing

pro bono legal and/or investigative services to prisoners for whom evidence discovered post-conviction can provide conclusive proof of innocence. The 69 current members of the Innocence Network represent hundreds of people in prison with innocence claims in all 50 states, the District of Columbia, and Puerto Rico, as well as Australia, Argentina, Canada, Ireland, Israel, Italy, the Netherlands, New Zealand, the United Kingdom, and Taiwan.[2]

---

[2] The member organizations include the Actual Innocence Clinic at the University of Texas School of Law, After Innocence, Alaska Innocence Project, Arizona Justice Project, Boston College Innocence Project, California Innocence Project, Center on Wrongful Convictions, Committee for Public Counsel Services Innocence Program, Connecticut Innocence Project/Post-conviction Unit, Duke Center for Criminal Justice and Professional Responsibility, Exoneration Initiative, Exoneration Project, George C. Cochran Mississippi Innocence Project, Georgia Innocence Project, Griffith University Innocence Project, Hawai'i Innocence Project, Idaho Innocence Project, Illinois Innocence Project, Innocence Canada, Innocence & Justice Project at the University of New Mexico School of Law, Innocence Project Argentina, Innocence Project at University of Virginia School of Law, Innocence Project London, Innocence Project of Minnesota, Innocence Project New Orleans, Innocence Project New Zealand, Innocence Project Northwest, Innocence Project of Florida, Innocence Project of Iowa, Innocence Project of Texas, Irish Innocence Project at Griffith College, Italy Innocence Project, Justicia Reinvindicada (Puerto Rico Innocence Project), Kentucky Innocence Project, Knoops' Innocence Project (the Netherlands), Korey Wise Innocence Project at the University of Colorado Law School, Loyola Law School Project for the Innocent, Michigan Innocence Clinic, Mid-Atlantic Innocence Project, Midwest Innocence Project, Montana Innocence Project, Nebraska Innocence Project, New England Innocence Project, New York Law

The Innocence Network and its members are also dedicated to improving the accuracy and reliability of the criminal justice system in future cases. Drawing on the lessons from cases in which innocent persons were convicted, the Innocence Network advocates study and reform designed to enhance the truth-seeking functions of the criminal justice system to ensure that future wrongful convictions are prevented. Often, exonerating the innocent includes identifying those who actually committed crimes for which others were wrongfully convicted. Because wrongful convictions destroy lives and allow those who committed the crimes to remain free, the Innocence Network's objectives both serve as an important check on the awesome power of the state over criminal defendants and help ensure a safer and more just society.

School Post-Conviction Innocence Clinic, North Carolina Center on Actual Innocence, Northern California Innocence Project, Office of the Ohio Public Defender–Wrongful Conviction Project, Ohio Innocence Project, Oklahoma Innocence Project, Oregon Innocence Project, Osgoode Hall Innocence Project (Canada), Pennsylvania Innocence Project, Reinvestigation Project, Rocky Mountain Innocence Center, Sellenger Centre Criminal Justice Review Project (Australia), Taiwan Innocence Project, Thurgood Marshall School of Law Innocence Project, The Israeli Public Defender, University of Baltimore Innocence Project Clinic, University of British Columbia Innocence Project at the Allard School of Law (Canada), University of Miami Law Innocence Clinic, Wake Forest University Law School Innocence and Justice Clinic, West Virginia Innocence Project, Western Michigan University Cooley Law School Innocence Project, Wisconsin Innocence Project, Witness to Innocence, and Wrongful Conviction Clinic at Indiana University School of Law.

Justice 360 is a South Carolina non-profit organization working to reform policies and practices in capital proceedings. Its mission is to promote fairness, reliability, and transparency in the criminal justice system, with a focus on individuals facing the death penalty in South Carolina. Justice 360 provides direct legal representation to death row inmates at all levels of the appellate process, concentrating primarily on state post-conviction and federal *habeas corpus* proceedings, and it serves as a resource center for attorneys appointed on capital cases and *pro bono* attorneys who assist them. Justice 360 also participates in policy research and other joint projects with educational institutions, advocating for specific reforms aimed at addressing systemic flaws in the capital punishment process.

SUMMARY OF THE ARGUMENT

Recognizing the powerful role of modern forensic DNA testing in identifying perpetrators of crimes and exonerating the wrongfully convicted, all 50 states and the District of Columbia, as well as Congress, have enacted statutes providing for post-conviction DNA testing of evidence. The evidence involved frequently is decades old, and it often was not collected, examined, used at trial, or stored in a manner that contemplated the sensitivity of modern (or any) DNA testing methods that did not yet exist. Nevertheless, most courts have interpreted DNA testing statutes in accordance with their well-recognized purpose and have not allowed imperfections in the state's handling of

evidence to bar a convicted defendant's access to that evidence for DNA testing.

The Texas Court of Criminal Appeals ("CCA"), however, has thrown up precisely such a roadblock, interpreting the chain-of-custody provision of Texas's DNA testing statute in a manner that will arbitrarily and unconstitutionally deny testing in cases even where the testing is unquestionably capable of proving innocence. The due process issues raised by the petition for certiorari have a nationwide impact. In addition to Texas, there are 31 states and the District of Columbia whose post-conviction DNA testing statutes include similar chain-of-custody requirements.

Largely as a result of DNA testing statutes, at least 354 wrongfully convicted defendants have been exonerated based in whole or in part on DNA testing. A number of these innocent people would have been denied the testing that led to their freedom had the reasoning of the CCA decision below applied to their requests. If the CCA's decision is allowed to stand, it is a virtual certainty that many more innocent people will be deprived of the opportunity to obtain freedom and, in capital cases, their opportunity at life itself.

ARGUMENT

I. THE DECISION BELOW HAS IMPLICATIONS FOR INNOCENT PEOPLE WHO WERE WRONGFULLY CONVICTED IN MORE THAN HALF OF THE 50 STATES, WHOSE DNA TESTING STATUTES HAVE CHAIN-OF-CUSTODY REQUIREMENTS SIMILAR OR IDENTICAL TO THE TEXAS STATUTE.

The CCA's decision threatens the availability of post-conviction DNA testing in Texas by adding a stringent prerequisite, which appears nowhere in the statute, that precludes DNA testing of evidence based solely on a CCA-invented concept of "contamination" that would exclude any evidence that was stored in the same container as other evidence from the same crime. The CCA's rewriting of the Texas DNA testing statute has due process implications not only in Texas but also in states across the country with similar or identical chain-of-custody requirements, as courts in those states may follow the CCA's decision.

All fifty states and the federal government have post-conviction DNA testing statutes based on a model statute. *See* Appendix to Reed Petition at 431a-447a. Due in large part to those statutes, at least 354 individuals have been exonerated based in whole or in part on DNA evidence after having been wrongly convicted. *See* Innocence Project, *Featured Cases,* https://www.innocenceproject.org/all-cases/#exonerated-by-dna (last visited March 5, 2018).

In addition to the federal Innocence Protection Act of 2004, 18 U.S.C. § 3600, DNA testing statutes in 32 states, as well as the District of Columbia, contain a chain-of-custody requirement for the evidence to be tested. *See* Appendix A. Texas is one of those states. Specifically, Chapter 64 of the Texas Code of Criminal Procedure ("Chapter 64") incorporates a chain-of-custody provision that requires that the evidence not have been "substituted, tampered with, replaced, or altered":

> (a) A convicting court may order forensic DNA testing under this chapter only if: (1) the court finds that: (A) the evidence: (i) still exists and is in a condition making DNA testing possible; and (ii) has been subjected to a chain of custody sufficient to establish that it has not been *substituted, tampered with, replaced, or altered* in any material respect.

Tex. Code Crim. Proc. Ann. art. 64.03(a)(1)(A) (emphasis added).

Texas's chain-of-custody statute, like those in 23 other states and the District of Columbia, includes no requirement that the evidence not be "contaminated." And courts in a number of those states have expressly recognized that evidence can be tested under their statutes regardless of claims that the evidence might have been contaminated. *See, e.g., People v. Whalen*, C.A. No. 4-09-0563, 2011 WL 10468207, at *1-6 (Ill. App. Ct. Sept. 30, 2011) (ordering post-conviction DNA testing of pieces of evidence that were

"removed from their packages during defendant's trial and apparently used for courtroom demonstration" and "stored in a manner that subjected them to outside influences and contamination," because a "'mixed DNA sample' is accepted in the scientific community to reliably reveal the number of contributors to a DNA sample and major versus minor contributors"); *State v. Denny*, 368 Wis. 2d 363, 386 (Ct. App. Wis. 2017) (ordering post-conviction DNA testing despite "the possibility that any DNA has degraded [or] been cross-contaminated with DNA from other, probably innocent, contributors"), *reversed on other grounds*, *State v. Denny,* 373 Wis. 2d 390 (2017)); *State v. Nelson*, No. W2012-00741-CCA-R3-CD, 2014 WL 295833, at *6 (Tenn. Crim. App. Jan. 27, 2014) (reversing denial of post-conviction "touch DNA" testing of knife notwithstanding lower court's "speculation that the knife might not still be in testable condition because the State had made no specific effort to prevent its contamination (such as sealing it in a protective bag)"); *People v. Morris,* No. PA008503, Order Regarding Motion for DNA Testing, minute order 1 of 2 (Cal. Super. Ct., L.A. Cnty. April 17, 2014) (holding that "lack of contamination is not a statutory requirement" and "that DNA on the shell casing may be contaminated with the DNA of others does not establish substitution, tampering, or alteration") (App. B at 15a).

Eight state DNA testing statutes, as well as the federal Innocence Protection Act, do specifically mention contamination in their

chain-of-custody requirements.[3] Even courts interpreting these statutes, however, have permitted DNA testing of evidence that was not sealed or segregated or that may have been handled by multiple people after its collection. *See, e.g., U.S. v. Fasano*, 577 F.3d 572, 576-77 (5th Cir. 2009) (ordering testing under Innocence Protection Act of items of clothing that had been stored in a single paper bag notwithstanding possibility that "others handling the evidence might have left their DNA" because chain-of-custody requirement asks only "whether testing offers a reasonable possibility of securing sound DNA results from material for which the usual trial demands for chain of custody have been met"); *Carter v. State*, 2015 Ark. 57, at *6 (2015) (reversing denial of "touch DNA" testing of knife that arguably "could have been and was held by any number of people"). In short, even courts applying chain-of-custody requirements that mention "contamination" have not interpreted those requirements, as the CCA interpreted Chapter 64 below, to preclude DNA testing of evidence merely because the state handled the evidence in a way that might have allowed for the presence of DNA from post-collection sources.

---

[3] The federal Innocence Protection Act provides for testing only of evidence that "has been subject to a chain of custody and retained under conditions sufficient to ensure that the evidence has not been substituted, *contaminated*, tampered with, replaced, or altered in any respect material to the proposed DNA testing." 18 U.S.C. § 3600(a)(4) (emphasis added). The eight states that similarly mention "contamination" in their chain-of-custody requirements are Alaska, Arkansas, Delaware, Indiana, Montana, Ohio, South Dakota, and Wyoming. *See* Appendix A.

The CCA's decision below puts at risk future exonerations based on scientifically useful samples if there is a mere possibility that contamination during storage will result in the identification of DNA from even excludable sources who came into contact with the evidence after its collection. Due to the similarity of the statutes, the CCA's decision threatens exonerations not only in Texas but also in the other states with chain-of-custody requirements, as state courts tend to follow case law from other states when interpreting their own nearly identical post-conviction statutes. *See, e.g., State v. Pratt*, 287 Neb. 455, 470 (2014) (citing Chapter 64 and other state statutes in interpreting Nebraska's post-conviction DNA testing statute). The constitutionality of the CCA's interpretation of this language thus has wide-ranging implications for innocent people nationwide who have been wrongly convicted.

II. THE CCA'S DECISION WOULD PREVENT THE EXONERATION OF INNOCENT PEOPLE WHO WERE WRONGFULLY CONVICTED.

As DNA testing has become widely available, innocent people in prison across the country have been successful in seeking post-conviction testing of decades-old evidence through state and federal DNA testing statutes. In many cases, that evidence was collected and stored before DNA testing was widely available, so it is not uncommon for evidence to have been maintained in a manner that might have allowed for contamination. And in many cases, those

wrongfully convicted people have obtained DNA testing and been exonerated while the real criminal was identified and convicted. Under the CCA's decision below, if those innocent people sought DNA testing in Texas today, their requests would be denied and they would remain in prison or on death row.

Below are examples of defendants who were able to obtain DNA testing, and in many cases were exonerated, but likely would not have been if the CCA's "non-contamination" requirement had been applied.

A. Marcus Lyons

Marcus Lyons' 2006 exoneration by an Illinois court would not have been possible under the CCA's ruling. Mr. Lyons was convicted for a 1987 rape in which the assailant obtained entry into the victim's home by means of a ruse, then forced the victim to remove her robe, bra, and underpants before raping her. *Lyons v. Village of Woodbridge,* No. 08 C 5063, 2011 WL 2292299, at *1 (N.D. Ill. June 8, 2011). Immediately after the rape, the victim put on the same robe, bra, and underpants that she had been wearing. *Id.* She then disrobed, took a shower, and put on clean underwear and clothes before calling the police. *Id.* After the victim directed the police to the clothes she had been wearing prior to and immediately after the rape, the police collected those items and placed them in a single paper bag. *Id.* That paper bag was deposited into and stored in a property control locker. *Id.* at *2. Only the clean underwear worn by the victim after her shower was submitted to the crime lab, which found no traces of semen. *Id.* at *2-3. Mr.

Lyons was arrested and convicted largely on the basis of eyewitness testimony. *Id.*

In 2006, Mr. Lyons successfully obtained DNA testing for the first time of the clothing the victim had worn prior to and immediately after she was attacked. *Id.* at *4. The test results excluded Mr. Lyons. *Id.* Based on those results, the State's Attorney supported Mr. Lyons' motion to vacate his conviction as well as his petition for clemency based on innocence, which the Governor of Illinois granted. *Id.*

Like much of the evidence Mr. Reed seeks to test, the evidence that ultimately exonerated Mr. Lyons was commingled for years with several items of clothing contained in a single paper bag. Under the CCA's interpretation of Chapter 64, Mr. Lyons likely would never have been able to obtain the DNA testing that proved his innocence.

B. Juneal Dale Pratt

In 1975, Juneal Dale Pratt was convicted by a Nebraska court of robbery, rape, and sodomy based on eyewitness identification by the two victims. *Pratt*, 287 Neb. at 456-457. In 2004, Mr. Pratt moved for DNA testing of clothing worn by the victims at the time of the rape as well as clothing worn by Mr. Pratt the day he was apprehended. *Id.* at 458. All the retained items were stored together in a small cardboard box with exhibit stickers on them. *Id.*

The trial court granted Mr. Pratt's request for DNA testing, which was conducted on several stained areas of the victims' torn shirts that contained potential biological materials. *Id.* At

least one stain of biological material was from a male who was not Mr. Pratt. *Id*. at 459. However, the 2005 testing could not distinguish whether any DNA identified on the shirts came from semen cells or epithelial cells. *Id*.

In 2007, Mr. Pratt filed a motion to vacate and set aside his conviction based on the presence of an unidentified male's DNA on the shirts. *Id*. The district court denied Mr. Pratt's motion based on the testimony of the technologist who conducted the DNA testing, concluding that "[n]either of the shirts [was] handled or stored in a way likely to safeguard the integrity of any biological matter which may have been deposited on them at the time of the attacks… ." *Id*. at 460. The court concluded that the DNA test results were neither exonerating nor exculpatory because there was no evidence of semen on the shirts and the DNA material could have resulted from the simple handling of the shirts by multiple individuals, including jurors, the prosecutor, the defense lawyers, and the court reporters. *Id*. The Supreme Court of Nebraska affirmed the denial. *Id*.

In 2011, Mr. Pratt filed a second motion for DNA testing, alleging that new, more accurate testing techniques might lead to exonerating or exculpatory evidence. *Id*. at 461. In particular, an expert affidavit established that the new testing techniques could distinguish between semen and epithelial cells and lead to the identification of full profiles from the DNA on the shirts. *Id*. The district court denied the motion, reasoning that it had already determined that Mr. Pratt failed to satisfy the requirement in the

Nebraska DNA testing statute that "the biological material has been retained under circumstances likely to safeguard the integrity of its original physical composition." *Id*. at 462, citing Neb. Rev. Stat. § 29-4120(5). The court added that "[i]t is quite possible that the clothing has further deteriorated or been further handled in a manner to deposit still more unidentified DNA." *Id*.

On appeal, the Court of Appeals of Nebraska held that the trial court abused its discretion in denying Mr. Pratt's motion, and the Nebraska Supreme Court affirmed. The supreme court defined "integrity" of evidence as the absence of substituting, tampering, replacing, or altering of the evidence. *Id*. at 470. The court concluded that the fact that the shirts had been commingled in a cardboard box and handled by multiple individuals indicated that "extraneous DNA may have been added to the shirts, not necessarily that the integrity of the original physical composition of the relevant DNA has been somehow compromised." *Id*. The court also noted that "[i]f we were to interpret the physical integrity prong as demanding that the biological evidence was secured in a way likely to avoid accidental contamination with extraneous DNA from epithelial cells, then the express purposes of the [DNA Testing] Act would be undermined." *Id*. at 471.

In other words, the Nebraska Supreme Court interpreted the requirement of "integrity" in a manner consistent with the Texas legislature in its adoption of Chapter 64: evidence must not have been substituted, replaced, tampered with, or altered. Not only did

the court refuse to read a "non-contamination" requirement into the Nebraska statute, it expressly recognized that such a requirement, given the manner in which evidence was frequently stored in the pre-DNA testing era, would have "undermined" the express purposes of the DNA statute. The Nebraska Supreme Court's ruling stands in stark contrast to the CCA's imposition of the non-statutory "non-contamination requirement" below: If Mr. Pratt were to file his motion in Texas today, the CCA's decision below would mandate its denial.

C. Larry Youngblood

In 1985, Larry Youngblood was convicted by an Arizona court of child molestation, sexual assault, and kidnapping, and he was sentenced to ten and a half years in prison. National Registry of Exonerations, *Larry Youngblood*, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3774 (last visited March 5, 2018). Evidence from the crime included a rape kit and the victim's clothes, the latter of which were not refrigerated or frozen and were not tested at the time. *Arizona v. Youngblood,* 488 U.S. 51, 53 (1988). More than a year after the crime, and prior to Mr. Youngblood's trial, a police criminologist tested the victim's clothing for the first time, but the testing was inconclusive as to the assailant's identity. *Id.* at 54. Although a jury convicted Mr. Youngblood, the Arizona Court of Appeals reversed the conviction on the basis of expert testimony that timely performance of tests with properly preserved (*i.e.* refrigerated) samples from the victim's clothing could have produced

exculpatory results. *Id*. at 54-55. This Court ultimately granted a writ of certiorari and reversed the Arizona Court of Appeals' decision, allowing Mr. Youngblood's conviction to be reinstated due to a lack of evidence that the police had acted in bad faith. *Id*. at 58-59.

By 2000, DNA testing had sufficiently advanced to allow for testing of the degraded evidence. National Registry of Exonerations, *Larry Youngblood*, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3774 (last visited Feb. 25, 2018). At Mr. Youngblood's request, the evidence was tested and the results exonerated him of the crime. *Id*. Mr. Youngblood's conviction was vacated, the charges against him were dropped, and a year later a match of the DNA resulted in the conviction of the true criminal. *Id*.

Given the degraded state of the victim's clothing, it likely would have failed to meet the stringent standards set by the *Reed* court. Mr. Youngblood's exoneration and the true criminal's conviction were possible only because the degraded evidence was tested—testing that might never have occurred had the CCA's reasoning below been followed.

D. Quintin Orrin Morris

In 1994, Quintin Orrin Morris was sentenced by a California court to three consecutive life terms after being convicted of three counts of attempted murder. *Morris*, minute order 1 of 2 (App. B at 7a). In 2014, Mr. Morris filed a motion for "touch DNA" testing on shell casings collected from the crime scene over 20

years earlier. The prosecution, like the State here, argued that the evidence was not collected in a manner that would maintain the integrity of the shell casings and that the casings had likely been contaminated with DNA samples from investigators, court personnel, defense counsel, and the prosecutor. *Id.*, minute order 2 of 2 (App. B at 11a).

Unlike the CCA, however, the California court did not read a contamination element into California Penal Code Section 1405(F)(2), which is substantially similar to Chapter 64 and does not mention contamination. The court found that the shell casings "have been subject to a chain of custody sufficient to establish that they have not been substituted, tampered with, replaced or altered in any material aspect." *Id.* at 15a. The court held that "lack of contamination is not a statutory requirement" and that the fact "that DNA on the shell casing may be contaminated with the DNA of other does not establish substitution, tampering, or alteration." *Id.*

Mr. Morris would not have been able to obtain the DNA testing under the stringent standards set by the CCA below. The reason he was able to obtain testing, and Mr. Reed was not, is simple: the CCA, unlike the California court, imposed a requirement that has no statutory basis.

E. Donald Whalen

In 1991, Donald Whalen was convicted in Illinois of the first-degree murder of his father based on a bloody palmprint and shoeprints found at the crime scene, and he was sentenced to 60 years in prison. *Whalen*, 2011 WL 10468207, at *1. In 2003, Mr. Whalen filed a motion for DNA testing on blood swabs from various areas of the crime scene, hair found in the victim's hands and on a table near the body, blood on knives at the scene, and blood and hair samples from both defendant and the victim. *Id.* At the time of trial, bloodstains were removed from the knives, and the knives were then analyzed for latent prints. At trial, the knives were removed from their packages and used for courtroom demonstration. *Id.* at *5. After the trial, all of the knives were placed unsealed, and without individual packaging, in a box with other evidence from the case, which was stored in the court's evidence vault for 15 years. *Id.* at *1, 5.

In 2005, the trial court granted Mr. Whalen's motion for DNA testing of the blood samples taken at the crime scene, hair samples, and original blood samples taken from the five knives, but it denied Mr. Whalen's request for testing of the actual knives. *Id.* at *3. The court found that Mr. Whalen failed to meet the chain-of-custody requirement of Illinois' DNA testing statute, concluding that it was possible the knives were inadvertently "'altered' in a 'material respect,' due to the way they were stored." *Id.* In 2009, the trial court denied Mr. Whalen's request for reconsideration of its decision regarding the knives. *Id.* at *4.

An Illinois appellate court reversed and permitted DNA testing of the knives, recognizing that "it is possible the knives have been contaminated with the DNA of a person unrelated to the commission of the crime, but it is also possible a third person could be identified who committed the crime." *Id.* at *5. The appellate court acknowledged that Mr. Whalen's contention regarding the impact of possible contamination was "speculative," but it concluded that "it is also speculative to conclude without testing that the knives have been so contaminated they will yield only unreliable results." *Id.* at *6. The court concluded that "[s]cience may not always yield an answer, but it is a tool that ought to be used," and Mr. Whalen "deserves the opportunity to seek and find the answer." *Id.*

The parallels between Mr. Whalen's case and Mr. Reed's are striking. In both cases, evidence was commingled in a single box, with no protection taken to prevent contamination. In both cases, the DNA statutes contained a chain-of-custody requirement that required that the evidence had not been substituted, tampered with, replaced, or altered in any material respect. But in Mr. Whalen's case, the Illinois court refused to read a non-statutory "non-contamination" requirement into the statute, recognizing that the mere potential for contamination did not preclude the possibility of exculpatory test results. Had Mr. Whalen sought DNA testing of the knives in Texas after the CCA's decision below, his motion would have been denied and he would not have been given an

opportunity to establish an alternate perpetrator of the crime.

F. Marvin Lamont Anderson

In 1982, Marvin Lamont Anderson was convicted of rape in Virginia. Francis X. Clines, *DNA Clears Virginia Man of 1982 Assault*, N.Y. TIMES, Dec. 10, 2001, http://www.nytimes.com/2001/12/10/us/dna-clears-virginia-man-of-1982-assault.html. Mr. Anderson was initially singled out as a suspect because he was a black man with a white girlfriend. *Id.* When another man came forward six years later and confessed to the crime in open court, the judge disregarded the testimony and upheld Mr. Anderson's conviction. National Registry of Exonerations, *Marvin Anderson*, https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=2995 (last visited Feb. 27, 2018). Mr. Anderson continued to pursue exoneration but was stymied when he learned that the DNA evidence in his case had been destroyed. *Id.*

Nineteen years after the rape, an evidence swab was uncovered taped inside a notebook that belonged to the criminalist who had originally tested the evidence at the time of the trial. *Id.* The notebook also contained DNA evidence from numerous other crimes. *Id.* By this point, the rape swab had degraded to such a degree that only half of the usual number of genetic markers used to identify an individual were able to be determined. *Id.* Despite the degradation of the evidence and its storage in a notebook along with other evidence rather than in an individual sealed evidence bag, the remaining genetic markers were sufficient to prove what Mr.

Anderson had said from the beginning: he was innocent. On August 21, 2002, then-Virginia Governor Mark Warner fully pardoned Mr. Anderson.

Had Mr. Anderson sought DNA testing of the evidence in Texas after the CCA's holding below, his motion surely would have been denied, given the degradation of the evidence and the fact that it had not been stored in a manner designed to prevent contamination.

CONCLUSION

For the reasons set forth herein, Michael Morton, Anthony Charles Graves, the Innocence Network, and Justice 360 respectfully request that the Court grant the petition for a writ of certiorari.

Respectfully submitted,

CHRISTIAN R. EVERDELL
Counsel of Record
LUKE APPLING
SOPHIA SOEJUNG KIM
ANDREW J. PINKSTON
LAUREN J. SALAMON
COHEN & GRESSER LLP
800 Third Avenue
New York, New York 10022
(212) 957-7600
ceverdell@cohengresser.com

RONALD F. WICK
COHEN & GRESSER LLP
2001 Pennsylvania Avenue, NW,
Suite 300
Washington, D.C. 20006
(202) 851-2070

Attorneys for Amici Curiae

March 7, 2018

APPENDIX

APPENDIX A: Overview of Post-Conviction DNA Testing Statutes[1]

State	*Post-Conviction DNA Testing Statute Includes Chain-of-Custody?*	*Post-Conviction DNA Testing Statute Includes Non-Contamination?*
Alabama	✓	
Alaska	✓	✓
Arizona		
Arkansas	✓	✓
California	✓	
Colorado		
Connecticut		
Delaware	✓	✓
Florida	✓	
Georgia	✓	
Hawaii		
Idaho	✓	
Illinois	✓	
Indiana	✓	✓
Iowa	✓	
Kansas		
Kentucky		
Louisiana		
Maine	✓	
Maryland		
Massachusetts	✓	
Michigan		
Minnesota	✓	
Mississippi		
Missouri		

[1] Source: Appendix to Reed Petition at 431a-447a.

Montana	✓	✓
Nebraska		
Nevada		
New Hampshire	✓	
New Jersey	✓	
New Mexico		
New York		
North Carolina		
North Dakota	✓	
Ohio	✓	✓
Oklahoma	✓	
Oregon	✓	
Pennsylvania	✓	
Rhode Island		
South Carolina	✓	
South Dakota	✓	✓
Tennessee		
Texas	✓	
Utah	✓	
Vermont	✓	
Virginia	✓	
Washington		
West Virginia	✓	
Wisconsin	✓	
Wyoming	✓	✓
Washington, DC	✓	
Federal	✓	✓
Totals:	32 states, plus D.C., include chain of custody	8 states, plus D.C., include non-contamination

APPENDIX B

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

COURTHOUSE ADDRESS:

Clara Shortridge Foltz Criminal Justice Center
210 West Temple Street
Los Angeles, CA 90012

PLAINTIFF/PETITIONER:

QUINTIN MORRIS

CLERK'S CERTIFICATE OF MAILING
CCP, § 1013(a)

Cal. Rules of Court, rule 2(a)(1)

Reserved for Clerk's File Stamp

CONFORMED

LOS ANGELES SUPERIOR COURT

APRIL 17, 2014

SHERRI R. CARTER, CLERK

BY [Signature]

B. Perez, Deputy

CASE NUMBER:

PA008503-01

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

☐ Order Re: Hearing pursuant to SB 260

☐ Order Re: Amended Memorandum of Decision

☐ Order to Show Cause

☐ Order Re: Transfer Order

☐ Order for Informal Response

☐ Order Re: Motion to Seal Exhibits

☐ Copy of Petition for Writ of Habeas Corpus

X Order Re: Motion tor DNA Testing (1405 PC)

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

APRIL 17, 2014

DATED AND DEPOSITED

SHERRI R. CARTER, Executive Officer/Clerk

By: [Signature], Clerk

B. Perez

Office of the District Attorney
Forensic Science Section
Marguerite Rizzo, Deputy District Attorney
201 N. Figueroa St., Suite 1600
Los Angeles, CA 90012

Alissa Bjerkhoel
California Innocence Project
225 Cedar Street
San Diego, CA 92101

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

DATE PRINTED: 04/17/14

CASE NO. PA008503

THE PEOPLE OF THE STATE OF CALIFORNIA

vs.

DEFENDANT 01: QUINTIN ORRIN MORRIS

COUNT 01: 664-187(A) PC FEL

COUNT 02 : 664-187(A) PC FEL

COUNT 03: 664-187(A) PC FEL

ON 04/11/14 AT 200 PM IN CENTRAL DISTRICT DEPT 100

CASE CALLED FOR JUDICIAL ACTION

PARTIES: PAMELA R. ROGERS (JUDGE)

BLANCA PEREZ (CLERK)

NONE (REP) NONE (DDA)

DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL

NO LEGAL FILE–DUPLICATES FILE ONLY

ORDER RE: MOTION FOR DNA TESTING
(PENAL CODE§ 1405)

****IN CHAMBERS****

MOTION FOR POST-CONVICTION DNA TESTING BY QUINTIN MORRIS ("DEFENDANT"), REPRESENTED BY ALISSA BJERKHOEL, ESQ., OF THE CALIFORNIA INNOCENCE PROJECT. OPPOSITION FILED BY THE PEOPLE, REPRESENTED BY MARGUERITE RIZZO, DEPUTY DISTRICT ATTORNEY, OF THE OFFICE OF THE LOS ANGELES DISTRICT ATTORNEY. GRANTED.

THE COURT HAS READ AND CONSIDERED THE DEFENDANT'S MOTION FOR DNA TESTING UNDER PENAL CODE SECTION 1405 FILED ON APRIL 25, 2013, AS WELL AS THE PEOPLE'S OPPOSITION FILED ON FEBRUARY 10, 2014, AND DEFENDANT'S REPLY FILED ON MARCH 10, 2014.

FACTS. ON FEBRUARY 16, 1994, DEFENDANT WAS SENTENCED TO THREE CONSECUTIVE LIFE TERMS AFTER BEING CONVICTED BY A JURY OF THREE COUNTS OF ATTEMPTED MURDER. (CAL. PEN. CODE § 664/187.) HE IS CURRENTLY INCARCERATED AT FOLSOM STATE PRISON, LOCATED IN REPRESA, CALIFORNIA. DEFENDANT HAS CONSISTENTLY MAINTAINED HIS INNOCENCE OF THE SHOOTING. MOTION, P. 2. SHORTLY AFTER THE DEFENDANT'S CONVICTION HOWARD HOLT ADMITTED TO BEING THE REAL SHOOTER. MR. HOLT AND DEFENDANT'S CO-DEFENDANT BOTH FILED

DECLARATIONS THAT THE DEFENDANT WAS INNOCENT. THE DECLARATIONS FORMED THE BASIS OF DEFENDANT'S 1996 PETITION FOR WRIT OF HABEAS CORPUS WHICH WAS GRANTED BY THE TRIAL COURT AND THEN OVERTURNED BY THE COURT OF APPEAL ON AUGUST 4, 1998.

LAW. PENAL CODE SECTION 1405 ALLOWS A PERSON WHO WAS CONVICTED OF A FELONY AND IS CURRENTLY SERVING A TERM OF IMPRISONMENT TO MAKE A WRITTEN MOTION FOR THE PERFORMANCE OF FORENSIC DEOXYRIBONUCLEIC ACID (DNA) TESTING. THE STANDARD UPON WHICH THE COURT MUST GRANT SUCH A MOTION IS ENUMERATED UNDER PENAL CODE SECTION 1405(F). THE COURT MUST GRANT THE MOTION IF IT DETERMINES THAT ALL OF THE FOLLOWING CONDITIONS HAVE BEEN SATISFIED:

1) THE EVIDENCE TO BE TESTED IS AVAILABLE AND IN A CONDITION THAT WOULD PERMIT THE DNA TESTING REQUESTED IN THE MOTION;

2) THE EVIDENCE TO BE TESTED HAS BEEN SUBJECT TO A CHAIN OF CUSTODY;

3) THE IDENTITY OF THE PERPETRATOR OF THE CRIME WAS, OR SHOULD HAVE BEEN, A SIGNIFICANT ISSUE IN THE CASE;

4) THE CONVICTED PERSON HAS MADE A PRIMA FACIE SHOWING THAT THE EVIDENCE SOUGHT TO BE TESTED IS

MATERIAL TO THE ISSUE OF THE CONVICTED PERSON'S IDENTITY AS THE PERPETRATOR OF, OFF ACCOMPLICE TO, THE CRIME, SPECIAL CIRCUMSTANCE, OR ENHANCEMENT ALLEGATION THAT RESULTED IN THE CONVICTION OR SENTENCE;

5) THE REQUESTED DNA TESTING RESULTS WOULD RAISE A REASONABLE PROBABILITY THAT, IN LIGHT OF ALL THE EVIDENCE, THE CONVICTED PERSON'S VERDICT OR SENTENCE WOULD HAVE BEEN MORE FAVORABLE IF THE RESULTS OF DNA TESTING HAD BEEN AVAILABLE AT THE TIME OF THE CONVICTION.

6) THE EVIDENCE SOUGHT TO BE TESTED MEETS EITHER OF THE FOLLOWING CONDITIONS:

(A) THE EVIDENCE WAS NOT TESTED PREVIOUSLY.

(B) THE EVIDENCE WAS TESTED PREVIOUSLY, BUT THE REQUESTED DNA TEST WOULD PROVIDE RESULTS THAT ARE REASONABLY MORE DISCRIMINATING AND PROBATIVE OF THE IDENTITY OF THE PERPETRATOR OR ACCOMPLICE OR HAVE A REASONABLE PROBABILITY OF CONTRADICTING PRIOR TEST RESULTS.

7) THE TESTING REQUESTED EMPLOYS A METHOD GENERALLY ACCEPTED WITHIN THE RELEVANT SCIENTIFIC COMMUNITY.

8) THE MOTION IS NOT MADE SOLELY FOR THE PURPOSE OF DELAY.

DEFENDANT'S MOTION. DEFENDANT REQUESTS THAT DNA TESTING BE CONDUCTED ON SHELL CASINGS COLLECTED FROM THE CRIME SCENE. DEFENDANT CONTENDS THAT IF MR. HOLT'S DNA IS FOUND ON THESE ITEMS IT WOULD HAVE PRODUCED A REASONABLE DOUBT IN THE MINDS OF THE JURY AND RESULTED IN A MORE FAVORABLE OUTCOME FOR HIM. MR. HOLT HAS BEEN INCARCERATED SINCE 1993 AND HIS DNA WOULD BE IN THE COMBINED DNA INDEX SYSTEM (CODIS). (CAL PEN CODE § 296.1.) HE CONTENDS THAT THE IDENTITY OF THE PERPETRATOR WAS SIGNIFICANT ISSUE IN THE CASE BECAUSE THE PROSECUTION'S CASE IN CHIEF WAS BASED A SINGLE EYEWITNESS IDENTIFICATION. DEFENDANT MAINTAINS THAT THE VICTIM WAS MISTAKEN WHEN SHE IDENTIFIED HIM AT A SHOW-UP AND AT TRIAL. FURTHER, HE ARGUES THAT THE WITNESS COULD NOT HAVE SEEN THE FACE OF THE SHOOTER BECAUSE IT WAS DARK, THE PERPETRATOR WORE A MASK, AND THE PERPETRATOR STOOD 30 FEET AWAY FROM THE VICTIM. DEFENDANT ASSERTS THAT DNA TESTING ON THE SPENT SHELL CASING IS MATERIAL TO ESTABLISHING THE IDENTITY OF THE SHOOTER BECAUSE

IT COULD IDENTIFY MR. HOLT AS THE PERSON WHO LOADED THE GUN.

OPPOSITION. THE PEOPLE AGREED THAT IDENTITY WAS AN ISSUE IN THE CASE. THE PEOPLE, HOWEVER, ARGUE THAT THE DEFENDANT HAS NOT MET THE REQUIREMENTS SET FORTH IN SECTIONS 1405(F)(2),(4) AND (5).

OPPOSITION, P. 9. IN OPPOSING DEFENDANT'S MOTION, THE PEOPLE ARGUE THAT THE EVIDENCE TO BE TESTED HAS NOT BEEN SUBJECT TO A CHAIN OF CUSTODY SUFFICIENT TO ESTABLISH THAT HIT HAS NOT BEEN SUBSTITUTED, TAMPERED WITH OR REPLACED OF ALTERED IN ANY MATERIAL ASPECT. FURTHER, THE PEOPLE ARGUE THAT REQUESTED DNA TESTING RESULTS ARE NOT MATERIAL TO THE IDENTITY OF THE PERPETRATOR BECAUSE ANY RESULT WOULD BE IRRELEVANT TO DEFENDANT'S GUILT OR INNOCENCE, AND THAT EVEN IF THEY WERE

*DUE TO LIMITED SPACING, MINUTE ORDER CONTINUES AT 2:30 P.M.**

NEXT SCHEDULED EVENT:

04/11/14 230 PM JUDICIAL ACTION DIST CENTRAL DISTRICT DEPT 100

04/17/14

I HEREBY CERTIFY THIS TO BE A TRUE AND CORRECT COPY OF THE ELECTRONIC MINUTE ORDERON FILE IN THIS OFFICE AS OF THE ABOVE DATE.

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK OF SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

BY [Signature], DEPUTY

[Seal of Superior Court of Los Angeles County, California]

MINUTE ORDER

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE PRINTED: 04/17/14 CASE NO. PA008503

THE PEOPLE OF THE STATE OF CALIFORNIA

vs.

DEFENDANT 01: QUINTIN ORRIN MORRIS

COUNT 01: 664-187(A) PC FEL

COUNT 02: 664-187(A) PC FEL

COUNT 03: 664-187(A) PC FEL

ON 04/11/14 AT 230 PM IN CENTRAL DISTRICT DEPT 100

CASE CALLED FOR JUDICIAL ACTION

PARTIES: WILLIAM C. RYAN (JUDGE)
BLANCA PEREZ (CLERK)

NONE (REP) NONE (DDA)

DEFENDANT IS NOT PRESENT IN COURT, AND NOT REPRESENTED BY COUNSEL

***CONTINUATION FROM 2:00 P.M.

MATERIAL, THE REQUESTED DNA TESTING RESULTS DO NOT RAISE A REASONABLE PROBABILITY THAT THE TRIAL OUTCOME

WOULD HAVE BEEN MORE FAVORABLE TO DEFENDANT, GIVEN THE ADDITIONAL SUBSTANTIAL EVIDENCE OF HIS GUILT.

THE DEFENDANT SEEKS TO OBTAIN DNA TESTING ON SHELL CASING THROUGH A TECHNIQUE COMMONLY REFERRED TO AS "TOUCH DNA" TESTING. ALTHOUGH STANDARD DNA TESTING WAS AVAILABLE AT THE TIME OF DEFENDANT'S CONVICTION, TOUCH DNA TESTING WAS NOT. THE PEOPLE THUS ARGUE THAT THE EVIDENCE WAS NOT COLLECTED IN A MANNER THAT WOULD MAINTAIN THE INTEGRITY OF THE SHELL CASINGS FOR SUCH TESTING. THE PEOPLE ARGUE THAT THE CASINGS HAVE LIKELY BEEN CONTAMINATED WITH DNA SAMPLES FROM INVESTIGATORS, COURT PERSONNEL, DEFENSE COUNSEL AND THE PROSECUTOR. OPPOSITION 10-12.

FURTHER, THE PEOPLE ARGUE, THE VICTIM'S IDENTIFICATION OF THE DEFENDANT AS THE SHOOTER IS MORE CREDIBLE THAN HOWARD HOLT'S VERSION OF THE INCIDENT. EVEN IF THE DEFENDANT'S DNA WAS NOT PRESENT ON THE SHELL CASINGS, THAT EVIDENCE WOULD NOT EXCLUDE HIM AS THE SHOOTER. THUS, THE PEOPLE ARGUE THAT DNA TESTING RESULTS ARE NOT MATERIAL TO THE IDENTITY OF THE PERPETRATOR. OPPOSITION, PP.13. FINALLY, THE PEOPLE ARGUE THAT THE REQUESTED DNA TESTING RESULTS WOULD NOT RAISE A REASONABLE PROBABILITY THAT THE

TRIAL RESULTS WOULD HAVE BEEN MORE FAVORABLE TO THE DEFENDANT BECAUSE SUBSTANTIAL EVIDENCE SHOWS DEFENDANT'S GUILT.

ANALYSIS. THE EVIDENCE TO BE TESTED, THE SHELL CASINGS, HAVE BEEN SUBJECT TO A CHAIN OF CUSTODY SUFFICIENT TO ESTABLISH THAT THEY HAVE NOT BEEN SUBSTITUTED, TAMPERED WITH, REPLACED OR ALTERED IN ANY MATERIAL ASPECT. THE PEOPLE HAVE NOT ASSERTED ANY EVIDENCE TO SUGGEST THAT THE SHELL CASING CURRENTLY STORED AS EVIDENCE ARE NOT THE SHELL CASING THAT WERE ORIGINALLY OBTAINED FROM THE CRIME SCENE AND PRESENTED AT DEFENDANT'S TRIAL. THAT DNA ON THE SHELL CASINGS MAY BE CONTAMINATED WITH THE DNA OF OTHERS DOES NOT ESTABLISH SUBSTITUTION, TAMPERING OR ALTERATION. WHILE CONTAMINATION MAY BE RELEVANT IN LATER HABEAS PROCEEDINGS, LACK OF CONTAMINATION IS NOT A STATUTORY REQUIREMENT UNDER SECTION 1405 (F)(2). WHILE THE ABSENCE OF DEFENDANT'S DNA ON THE SHELL CASINGS WOULD NOT UNDERMINE DEFENDANT'S CONVICTION, THE PRESENCE OF MR. HOLT'S DNA, COUPLED WITH HIS CONFESSION, WOULD RAISE A REASONABLE PROBABILITY THAT THE VERDICT OR SENTENCE WOULD HAVE BEEN MORE FAVORABLE. THE MATERIALITY REQUIREMENT IN SECTION 1405 REQUIRES A LESSER SHOWING OF MATERIALITY BY A DEFENDANT. ONLY A PRIMA FACIE

SHOWING OF MATERIALITY IS REQUIRED BY SECTION 1405. "[T]HE MOVING DEFENDANT IS REQUIRED ONLY TO DEMONSTRATE THAT THE DNA TESTING HE OR SHE SEEKS WOULD BE RELEVANT TO THE ISSUE OF IDENTITY, RATHER THAN DISPOSITIVE OF IT. THAT IS, THE DEFENDANT IS NOT REQUIRED TO SHOW A FAVORABLE TEST WOULD CONCLUSIVELY ESTABLISH HIS OR HER INNOCENCE." (RICHARDSON V. SUPERIOR COURT (2008) 43 CAL. 4TH 1040, 1049.)

THE COURT CONCLUDES THAT DEFENDANT HAS MADE A SATISFACTORY SHOWING PURSUANT TO THE REQUIREMENTS OF PEN. CODE § 1405(F).

ORDER. THE PARTIES SHALL CONFER AND SUBMIT A STIPULATED PROPOSED ORDER FOR THE COURT'S APPROVAL DETAILING THE SPECIFIC EVIDENCE TO BE TESTED AND THE DNA TECHNOLOGY TO BE UTILIZED (PEN. CODE § 1405(G)(l)) AND SHALL DESIGNATE A LABORATORY TO CONDUCT THE TESTING (PEN. CODE § 1405(G)(2)). THE STIPULATED PROPOSED ORDER SHALL FURTHER INDICATE WHETHER THE DEFENDANT OR THE STATE SHALL BEAR THE COST OF TESTING (PEN. CODE § 1405(1)(1)) AND THE MANNER IN WHICH THE EVIDENCE SHALL BE TRANSPORTED TO THE LABORATORY. IF THE PARTIES CANNOT REACH CONSENSUS, THEY SHALL PROMPTLY NOTIFY THE COURT.

ACCORDINGLY HIS MOTION FOR POST-CONVICTION DNA TESTING IS GRANTED.

THE CLERK IS ORDERED TO SERVE A COPY OF THIS DECISION UPON THE CALIFORNIA INNOCENCE PROJECT AS COUNSEL FOR DEFENDANT, AND UPON THE DISTRICT ATTORNEY, FORENSIC SCIENCE SECTION, 201 N. FIGUEROA ST., SUITE 1600, LOS ANGELES, CA 90012.

THE ORDER IS SIGNED AND FILED THIS DATE.

A TRUE COPY OF THIS MINUTE ORDER IS SENT VIA U.S. MAIL TO THE FOLLOWING PARTIES:

OFFICE OF THE DISTRICT ATTORNEY
FORENSIC SCIENCE SECTION
MARGUERITE RIZZO,
DEPUTY DISTRICT ATTORNEY
201 N. FIGUEROA ST., SUITE 1600
LOS ANGELES, CA 90012

ALISSA BJERKHOEL
CALIFORNIA INNOCENCE PROJECT
225 CEDAR STREET
SAN DIEGO, CA 92101

NEXT SCHEDULED EVENT:

PROCEEDINGS TERMINATED

04/17/14

I HEREBY CERTIFY THIS TO BE A TRUE AND CORRECT COPY OF THE ELECTRONIC

MINUTE ORDER ON FILE IN THIS OFFICE AS OF THE ABOVE DATE.

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK OF SUPERIOR COURT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

BY [Signature], DEPUTY

[Seal of Superior Court of Los Angeles County, California]