

No. 25-5183

IN THE
Supreme Court of the United States

MANUEL JAVIER PEREZ,
Petitioner,

vs.

STATE OF TEXAS,
Respondent.

On Petition for Writ of Certiorari to the
Texas Court of Criminal Appeals

RESPONDENT'S APPENDIX

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October 14, 2011

Eleventh Court of Appeals
Sherry Williamson
Clerk

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VOLUME 4 of 10 VOLUMES

3 APPELLATE CASE NO. 11-11-00247-CR

4 TRIAL COURT CAUSE NO. CV37715

5

6 THE STATE OF TEXAS) IN THE DISTRICT COURT

7)

8)

9 VS.) 385TH JUDICIAL DISTRICT

10)

11)

12 MANUEL JAVIER PEREZ) MIDLAND COUNTY, TEXAS

13

14 *****

15

Proceedings of May 23, 2011

16

17 *****

18

On May 23, 2011, the following proceedings
came on to be heard in the above-entitled and numbered
cause before the Honorable Robin Malone Darr, Judge
Presiding, and a jury, held in Midland, Midland County,
Texas.

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Proceedings reported by computerized
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1 in Midland County, Texas?

2 A. Yes, sir.

3 Q. Okay. Could you please tell the jury -- let's
4 assume that I come to the Scottish Delight Motel, and I
03:28 5 want to rent a room. Could you tell the jury what kind
6 of form or document I have to fill out in order to get a
7 room?

8 A. Just a registration card.

9 Q. A registration card?

03:28 10 A. Yes, sir.

11 Q. Okay. And what normally do you -- what kind of
12 information do you want on the registration card for the
13 person to fill out?

14 A. Name and ID numbers, and just sign and date.

03:28 15 Q. Okay. And you assign him a room, is that
16 right?

17 A. Yeah.

18 Q. You give them a room number and keys, is that
19 right?

03:28 20 A. Yes, sir.

21 Q. Okay. Let me ask you this, Mr. Maharaj. I
22 have handed you State's Exhibit Number 1. Is that one
23 of the registration cards from your motel?

24 A. This card is my motel.

03:28 25 Q. From your motel?

1 A. Yes, sir.

2 Q. In fact, you personally handed it to me last
3 week, didn't you?

4 A. Yeah. We can give you this one.

03:29 5 Q. You gave me that last week, did you not?

6 A. Yes.

7 Q. Okay. And, Mr. Maharaj, when somebody
8 registers for a room, you keep that card, don't you?

9 MR. SPURGIN: Your Honor, I'm going to
03:29 10 object to the leading nature of these questions.

11 THE COURT: Sustained.

12 Q. (By Mr. Stallings) Do you keep those cards in
13 your business?

14 A. Yes, sir. We keep the card for my reports.

03:29 15 Q. And is the card filled out by the individual at
16 the time they rent the room?

17 A. Yes, sir.

18 Q. Are you -- so you -- are you the custodian of
19 that card? Do you keep those cards in your possession?

03:29 20 A. Yes, we keep the cards in our possession.

21 Q. Do you do that in the normal course of your
22 business?

23 A. Yes, sir.

24 Q. Okay. Sir, let me ask you this. What day --
03:29 25 the card that you have, State's Exhibit Number 1, what

1 day was it signed? What day does that go to?

2 A. 8-13-10.

3 Q. So that would be August 13, 2010, is that
4 right?

03:30 5 A. Yes, sir.

6 Q. And what room number was assigned on that card?

7 A. 116.

8 Q. Okay. And, Mr. Maharaj, is Room 116 an
9 upstairs room or a downstairs room?

03:30 10 A. Downstairs room.

11 Q. Are you familiar with that exact room?

12 A. The motel, backside and middle and downstairs.

13 Q. Okay. Where is the stairs located with respect
14 to that room?

03:30 15 A. The stairs is in-between and going up -- stairs
16 and downstairs, this room.

17 Q. Okay.

18 MR. STALLINGS: May I approach, your
19 Honor?

03:30 20 THE COURT: You may.

21 MR. STALLINGS: May I retrieve State's
22 Exhibit 1?

23 THE COURT: You may.

24 Q. (By Mr. Stallings) Thank you, Mr. Maharaj.

03:30 25 Mr. Spurgin may ask you some questions. Please answer

1 or answered again.

2 MR. STALLINGS: I will show the Court
3 before I -- I'm going to refer to this top half, your
4 Honor, from where it says, "Cash, 40," and up.

03:51 5 MR. SPURGIN: Excuse me. I'm going to
6 object again, your Honor. My other objection is that I
7 don't know anybody that's been designated as a
8 handwriting expert with respect to who the individual is
9 that signed this card. And I haven't seen a handwriting
03:51 10 expert --

11 MR. STALLINGS: Your Honor, I haven't
12 offered it. And I'm going to bring somebody to
13 specifically say whose handwriting that is, if I can
14 have five minutes. I'm going to do that with one of my
03:52 15 other witnesses.

16 THE COURT: Ask your --

17 MR. STALLINGS: And only then will I offer
18 it.

19 THE COURT: Ask your question.

03:52 20 MR. STALLINGS: Thank you.

21 Q. (By Mr. Stallings) Mr. Maharaj, the top half
22 of this card, is that your handwriting?

23 THE INTERPRETER: Okay. He is saying this
24 is not his. This two is his. And the room number and
03:52 25 the --

1 Q. So you put the room number on this card?

2 A. (No interpreter) Yes.

3 MR. STALLINGS: Thank you. I have no
4 other questions, your Honor.

03:52 5 THE COURT: Anything further, Mr. Spurgin?

6 MR. SPURGIN: No, your Honor.

7 THE COURT: You may step down.

8 Thank you very much.

9 MR. STALLINGS: Your Honor, may this
03:52 10 witness be excused?

11 THE COURT: Any objection?

12 MR. SPURGIN: I don't think -- no, your
13 Honor.

14 THE COURT: You are excused. You are free
03:52 15 to go.

16 (WITNESS EXCUSED)

17 THE COURT: Next witness?

18 MR. STALLINGS: Yes, your Honor. The
19 State will call Mercedes Morales.

03:52 20 Thank you, Mr. Maharaj.

21 THE COURT: Is that the victim in the
22 case?

23 MR. STALLINGS: Yes, ma'am.

24 THE COURT: Is that going to be fairly
03:53 25 lengthy?

October 14, 2011

Eleventh Court of Appeals
Sherry Williamson
Clerk

REPORTER'S RECORD

VOLUME 5 of 10 VOLUMES

3 APPELLATE CASE NO. 11-11-00247-CR

4 TRIAL COURT CAUSE NO. CV37715

5

6 THE STATE OF TEXAS) IN THE DISTRICT COURT

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8)

9 VS.) 385TH JUDICIAL DISTRICT

10)

11)

12 MANUEL JAVIER PEREZ) MIDLAND COUNTY, TEXAS

13

14 *****

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Proceedings of May 24, 2011

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17 *****

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On May 24, 2011, the following proceedings
came on to be heard in the above-entitled and numbered
cause before the Honorable Robin Malone Darr, Judge
Presiding, and a jury, held in Midland, Midland County,
Texas.

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1 Q. Ms. Brookings, from the results of your SANE
2 examination, including your direct observations, what
3 was your professional opinion in this case with respect
4 to whether or not your exam was consistent with sexual
09:39 5 assault?

6 A. My professional opinion is that the patient had
7 been sexually assaulted, based off of her history and my
8 exam findings.

9 MR. STALLINGS: Your Honor, may I approach
09:39 10 the witness for the purpose of handing her what has been
11 marked as State's Exhibits 2, 3, 7 and 6?

12 THE COURT: Yes.

13 MR. STALLINGS: And these have been made
14 available for examination by the Defense, your Honor.

09:39 15 Q. (By Mr. Stallings) Ms. Brookings, I'm going to
16 hand you what has been marked as State's Exhibits 2, 3,
17 6 and 7. And I'm going to ask you, if you would,
18 please, to take a minute and to look at those.

19 Do you need a pair of gloves?

09:39 20 A. I'm okay. Thank you.

21 Q. Okay. Take a look at those exhibits, and let
22 me know when you are ready to proceed.

23 (PAUSE)

24 Q. Let me ask you a couple of questions before we
09:40 25 go into those specifically.

1 presence?

2 A. You and I did.

3 Q. Let me ask you this. Did you have an
4 opportunity to swab Mercedes Morales' neck?

09:44 5 A. I did. I took a swab on each side of her neck.

6 Q. All right. Where else did you take a swab?

7 A. I took a swab right between her legs, on the
8 anterior, which is the front surface.

9 Q. Of --

09:44 10 A. Of the upper part of her legs right underneath
11 the vaginal area.

12 Q. Did you have an opportunity to swab her anal
13 cavity, or between her --

14 A. I did. That's part of the exam. We always do
09:44 15 vaginal swabs and we always do anal swabs. So that's
16 just part of the kit that gets processed. Even if I
17 were to not see anything that was evident, part of the
18 process of obtaining the samples within the kit are to
19 swab those areas. So, yes, sir, I did.

09:44 20 Q. Where else did you swab?

21 A. We also swabbed the mouth. We swab around the
22 teeth.

23 The dried body secretions that we talked
24 about on the neck, and in-between her legs, these are
09:44 25 only swabbed if you used the black light and you see

1 mentioned, was consistent with a mixture. Both Morales
2 and Perez could not be excluded.

3 The probability of selecting an unrelated
4 person at random who could be a contributor to this DNA
03:53 5 profile is approximately 1 in 827.8 million for
6 Caucasians, 1 in 618 million for Blacks, and 1 in 97.66
7 million for Hispanics.

8 Q. And you stated you can say with scientific
9 sample -- scientific certainty that the unknown sample
03:54 10 from the anal and thigh swabs came from the Defendant,
11 correct?

12 A. That is correct, yes.

13 Q. But you cannot -- can you say the same thing
14 for the neck swab?

03:54 15 A. No, I cannot. And the reason being is that on
16 the anal swab and the thigh swab, we are talking about a
17 single source DNA profile. That means DNA from one
18 person.

19 On the DNA profile from the neck, there is
03:54 20 DNA from more than one person. The victim and the
21 suspect appear to be present on that swab from the neck.

22 And so because we are talking about a
23 mixture, I cannot call either one of them the source.

24 Q. In your professional opinion, can the Defendant
03:54 25 be excluded as a contributor from the mixture?

1 that filter paper, with sterile water, and press the
2 swab onto that filter paper. I then apply my acid
3 phosphatase reagent.

4 If semen is present, I will see a bright
04:00 5 purple color change. And I did see that on the anal
6 swabs and the thigh swabs.

7 Q. So just so I understand your testimony, the
8 sample from the neck swab had no semen present
9 whatsoever?

04:01 10 A. It had no indications of this enzyme, acid
11 phosphatase. So, no, the screening test for semen was
12 negative on the neck.

13 Q. Do you have any idea what other types of bodily
14 contact could leave DNA in the amounts found on the neck
04:01 15 sample?

16 A. I did write in my notes what the SANE nurse had
17 written on the envelope in which that neck swab was
18 collected.

19 The neck swabs were item 1i.1 and 1i.2.
04:01 20 The note on the envelope says --

21 MR. SPURGIN: I object to the hearsay,
22 your Honor.

23 THE COURT: Sustained.

24 Q. (By Mr. McCarthy) Just based off your own
04:01 25 professional opinion, can you offer --

1 A. Many times where a SANE nurse collects certain
2 swabs will depend on what the victim says happened.

3 For example, if she says, "He bit me
4 here," or "kissed me here," or "He sucked this part of
5 my body," that part of the body might be swabbed for the
6 collection of DNA.

7 Usually the DNA we are looking for is from
8 saliva. We do not perform a test to specifically
9 determine if this saliva, because that test would
0 consume more of the sample. Instead, it is usually more
1 probative, or gives us more information, to take that
2 swab straight to DNA, than to determine if saliva is
3 present.

14 Q. Okay. Was there more of the Defendant's DNA or
04:02 15 Mercedes Morales's DNA on the neck swab?

16 A. The DNA profile that came from the neck swab
17 was consistent with a mixture. Sometimes we will have a
18 50/50 mixture. Sometimes we will have what's called a
19 major component, where it is mostly the victim and just
04:02 20 a little bit of the foreign person, the suspect.

21 In this case it appeared to be an almost
22 equal mixture.

23 Q. In your opinion, could casual contact with that
24 area of Ms. Morales's body cause that kind of mixing?

04:02 25 A. Casual contact can deposit foreign DNA on the

1 surface. But because this mixture was so balanced, so
2 even, what that was telling me, there was just as much
3 DNA there on her neck from the suspect as there was from
4 her.

04:03 5 Hold on a second.

6 MR. McCARTHY: May I have a moment, your
7 Honor?

8 (PAUSE)

9 MR. McCARTHY: Your Honor, at this time I
04:03 10 would offer State's Exhibit Number 2, 4 and 5 into
11 evidence.

12 (State's Exhibits 2, 4 & 5 offered)

13 MR. SPURGIN: We don't object, your Honor.

14 THE COURT: 2, 4 and 5 are admitted. For
04:03 15 the record, 2 is the SANE kit; 4 and 5 are buccal swabs.

16 MR. STALLINGS: That's correct, your
17 Honor.

18 (State's Exhibits 2, 4 & 5 received)

19 MR. McCARTHY: Pass the witness, your
04:04 20 Honor.

21 THE COURT: Mr. Spurgin.

22

23 CROSS-EXAMINATION

24 BY MR. SPURGIN:

04:04 25 Q. You are not here to tell us how these

October 14, 2011

Eleventh Court of Appeals
Sherry Williamson
Clerk

REPORTER'S RECORD

VOLUME 6 of 10 VOLUMES

3 APPELLATE CASE NO. 11-11-00247-CR

4 TRIAL COURT CAUSE NO. CV37715

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6 THE STATE OF TEXAS) IN THE DISTRICT COURT

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9 VS.) 385TH JUDICIAL DISTRICT

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12 MANUEL JAVIER PEREZ) MIDLAND COUNTY, TEXAS

13

14 *****

15

Proceedings of May 25, 2011

16

17 *****

18

On May 25, 2011, the following proceedings
came on to be heard in the above-entitled and numbered
cause before the Honorable Robin Malone Darr, Judge
Presiding, and a jury, held in Midland, Midland County,
Texas.

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Proceedings reported by computerized

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1 | **CROSS-EXAMINATION**

2 | BY MR. McCARTHY:

3 Q. Mr. Perez, my name is Michael McCarthy. I'm
4 an Assistant District Attorney with Midland County.

02:59 5 I'm going to be asking you a lot of
6 questions. I may tend to jump around from topic to
7 topic. So if there is anything you don't understand,
8 please let me know, so that way I can rephrase it into a
9 form that you do understand. Okay.

02:59 10 A. Okay.

11 Q. All right. Thank you. Mr. Perez, let's go
12 ahead and start off by talking a little bit about your
13 past.

14 Isn't it true that you have lied to the
02:59 15 police before?

16 A. Yes.

17 Q. And in point of fact, you were convicted in
18 1993 in Cause CR62696 of lying to the police?

19 MR. SPURGIN: Objection, your Honor. For
02:59 20 purposes of the record, I object pursuant to Rule 403 of
21 the Rules of evidence, 404 of the Rules of evidence and
22 405 of the Rules of Evidence.

23 | Thank you.

24 THE COURT: I overrule the objection. And
03:00 25 I will note for the record that I have balanced under

1 403, 404 and 405, and find that this line of questioning
2 is admissible.

3 MR. SPURGIN: And if it would be possible,
4 your Honor, as opposed to me objecting every time the
03:00 5 question is asked, if we can have an understanding that
6 I object to any and all of the questions involving any
7 of these six incidences with the police over the course
8 of many years.

9 THE COURT: You know, I know it makes its
03:00 10 burdensome on you and the Court. But I cannot do that,
11 because I don't know what he is going to ask.

12 MR. SPURGIN: Fair enough.

13 Q. (By Mr. McCarthy) I'll go ahead and reask the
14 question.

03:00 15 Isn't it true that in 1993, specifically
16 the 6th day of May, 1993, in Cause Number CR62696, in
17 the County Court at Law of Midland, Texas, you were
18 convicted of lying to the police then?

19 A. Lying to the police?

03:00 20 Q. Yes, of failure to identify.

21 A. Yes, failure to identify.

22 Q. And weren't you also convicted of failure to
23 identify in Cause Number 86984 --

24 MR. SPURGIN: Excuse me, your Honor. Same
03:01 25 objection, Rule 401, 402, 403, 404, 405.

1 THE COURT: Overruled.

2 Q. (By Mr. McCarthy) I'll restate it again.

3 Isn't it true you were convicted in Cause No. 86984 in
4 the County Court at Law of Midland, Texas, on the 10th
5 day of February, 2000, for failure to identify?

6 | A. Yes.

7 Q. And wasn't that failure to identify lying to
8 the police about your name?

9 | A. Yes.

03:01 10 Q. Okay. And weren't you convicted in Cause
11 Number 96582 in the County Court of Midland, Texas, in
12 2003, of failure to identify once again?

13 MR. SPURGIN: Excuse me, your Honor. If I
14 may object pursuant to Rule 402, 403, 404 and 405 of the
03:01 15 Rules of Evidence, and additionally that these aren't
16 crimes of moral turpitude.

03:02 20 Q. (By Mr. McCarthy) All right. Did you catch
21 the question, or do you need me to restate it?

22 A. The failure to identify?

23 Q. Yes, on May 23, 2003, in Cause No. 96582?

24 A. Yes. I don't know exactly the dates, it has
25 been so long. Can I see what --

1 Q. Sure. Let me go ahead and mark them as State's
2 Exhibits briefly. And I'll go ahead and give you a
3 chance to look at them.

4 A. Okay.

03:03 5 (PAUSE)

6 MR. McCARTHY: May I approach for the
7 purpose of presenting the witness with these exhibits?

8 THE COURT: You may.

9 Q. (By Mr. McCarthy) I'll give you a brief moment
03:03 10 to look over these before I go ahead and ask you any
11 more questions, Mr. Perez.

12 A. Okay.

13 MR. SPURGIN: May I see them as well?

14 MR. McCARTHY: Yes.

03:03 15 | (PAUSE)

16 MR. SPURGIN: Your Honor, additionally, if
17 I may -- I know the Court has ruled. But in addition to
18 the objections I have made, I would also argue that the
19 '93, '95 and 2000 allegations are too remote in time to
20 also have any probative value.

21 MR. McCARTHY: Your Honor, not when they
22 show a continuous pattern. Once again, the number of
23 these convictions demonstrates that it has been over and
24 over and over again on a pretty consistent basis.

03:05 25 THE COURT: Do you have any case law or

1 statutory law, Mr. Spurgin, that I should look at?

2 MR. SPURGIN: I was surprised that we are
3 doing it. I haven't yet, your Honor. If I come up with
4 some, I'll give it to the Court, and you can instruct
5 the jury otherwise during the course of the trial.

6 THE COURT: Okay. Mr. McCarthy.

7 MR. McCARTHY: May I approach once again
8 and retrieve the exhibits?

9 THE COURT: Yes.

03:05 10 MR. McCARTHY: Thank you, Mr. Perez.

11 May I continue, your Honor?

12 THE COURT: Yes, please do.

13 Q. (By Mr. McCarthy) All right. Mr. Perez, now
14 that you have had a chance to take a look at the
03:05 15 judgments -- the questions I'm asking you, regarding
16 Cause Numbers CR6296 -- or 696, CR86984 and CR96582,
17 judgments I have previously asked you about, are you
18 sure that those judgments pertain to you?

19 A. Yes, sir.

03:06 20 Q. Okay. Let me ask you, were you convicted of
21 failure to ID on August 25, 2005, in Cause
22 Number 103117, in the County Court at Law of Midland
23 County, Texas, of failure to ID by lying to police
24 officers?

03:06 25 MR. SPURGIN: Objection, your Honor,

1 pursuant to 402, 403, 404 and 405 of the Texas Rules of
2 Evidence, that these crimes are not crimes of moral
3 turpitude, and additionally, they are too remote to have
4 any probative value that outweighs the prejudicial
5 effect.

03:07 6 MR. McCARTHY: Your Honor, in light of the
7 new objection, I would like to respond that the Cause
8 Number I just mentioned occurred in 2005, and therefore
9 would not constitute being too remote.

03:07 10 THE COURT: Overruled.

11 Q. (By Mr. McCarthy) Do you need me to restate
12 the question, Mr. Perez?

13 A. No, sir.

14 Q. Were you convicted in that cause number?

03:07 15 A. I was convicted of saying another name, not of
16 lying to the police officer.

17 Q. Was the individual who you said the other name
18 to a police officer?

19 A. Yes. I said a different name, yes.

03:07 20 Q. So you failed to ID by lying to police
21 officers, is that correct?

22 A. I said a different name, yes, sir.

23 Q. And were you not indeed convicted in Cause
24 Number 112490, in the County Court at Law of Midland,
03:07 25 Texas, on the 27th day of October, 2006, of failing to

1 ID by lying to police officers about who you were?

2 MR. SPURGIN: Again, your Honor, for
3 purposes of the record, the Defense objects to pursuant
4 to Rule 402, 403, 404 and 405 of the Texas Rules of
03:07 5 Evidence, that these crimes are not crimes of moral
6 turpitude. And even though they are within -- well, if
7 they are even within five years, I would object on the
8 basis they are too remote in time.

9 THE COURT: Overruled.

03:08 10 Q. (By Mr. McCarthy) And last -- do you need me
11 to repeat that question again?

12 A. No.

13 Q. Were you indeed convicted in that cause number?

14 A. Yes.

03:08 15 Q. Okay. Were you also convicted in Cause Number
16 109253, in the County Court at Law of Midland, Texas, on
17 the 25th day of August, 2005, of failure to ID by lying
18 to the police about who you were?

19 A. Yes.

03:08 20 MR. SPURGIN: Same objection, your Honor,
21 under 402, 403, 404 and 405.

22 THE COURT: Overruled.

23 Q. (By Mr. McCarthy) So if I understand your
24 testimony correctly, Mr. Perez, you have been convicted
03:08 25 six separate times of lying to the police about who you

1 were?

2 A. Correct.

3 Q. What was the name you used each time you lied
4 to the police about who you were in each of those
03:08 5 causes?

6 A. Raymond.

7 Q. Was there a last name?

8 A. Flores.

9 Q. And who is that?

03:09 10 A. My brother-in-law.

11 Q. And why were you using your brother-in-law's
12 name, as opposed to using your own?

13 A. Because I had warrants for child support that
14 Melissa had always -- Melissa Mercedes' mom has always
03:09 15 got me for child support. And --

16 MR. McCARTHY: Your Honor, I object. The
17 witness has answered the question.

18 MR. SPURGIN: He asked the question. He
19 ought to be able to answer it.

03:09 20 THE COURT: Have you finished your answer?

21 THE WITNESS: No.

22 THE COURT: You may answer.

23 A. I had child support warrants. Most of those
24 failure to identify was because I had child support
03:09 25 warrants that Melissa would constantly go to the courts

1 if the Defense -- have you rested?

2 THE COURT: I'm sorry.

3 MR. STALLINGS: I just wanted to make
4 sure.

04:17 5 THE COURT: You are right.

6 MR. SPURGIN: Your Honor, the Defense
7 rests.

8 (DEFENDANT RESTS)

9 THE COURT: Mr. Stallings.

04:17 10 MR. STALLINGS: With that, your Honor, we
11 have one very brief rebuttal witness.

12 We will call Pritess Maharaj.

13 THE COURT: Pritess Maharaj.

14 (PAUSE)

15 THE COURT: Please stand and raise your
16 right hand.

17 (WITNESS SWORN)

18 THE COURT: You may have a seat around
19 here in the witness stand.

20

21 PRITESH MAHARAJ

22 having been first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. STALLINGS:

04:18 25 Q. Sir, would you please state your name for the

1 record? Spell it very slowly for the record, and
2 introduce yourself to this jury.

3 A. My name is Pritesh Maharaj, P-R-I-T-E-S-H,
4 M-A-H-A-R-A-J.

04:18 5 Q. Mr. Maharaj, you weren't expecting to testify
6 today, were you?

7 A. No.

8 Q. In fact, what were you doing before you came to
9 court today?

04:18 10 A. Plumbing.

11 Q. Okay. Where were you doing this plumbing?

12 A. At the hotel.

13 Q. Okay. Do you work at a hotel?

14 A. Yes.

04:18 15 Q. And would you please tell the jury what hotel
16 do you work at?

17 A. Scottish Delight.

18 Q. Is your father the manager, Loaknath Maharaj?

19 A. Yes.

20 Q. Did I say that right?

21 A. Yes.

22 Q. That's your dad?

23 A. Yeah, that's my dad.

04:18 24 Q. That's the person that you interpreted for the
25 other day?

1 A. Yes.

2 Q. Are you familiar with the procedures that are
3 used at the hotel?

4 A. Yes.

04:18 5 Q. In fact, do you ever run the front desk?

6 A. Yes.

7 Q. Okay. Let me ask you this, sir -- this
8 particular procedure.

9 Hypothetically, if I had rented a room,
04:19 10 and I went -- you gave me my key, and I went to the
11 room, and the key didn't work in the room, and I came
12 back and said, "Hey, Mr. Maharaj, my key doesn't work to
13 Room 116," what would you do?

14 A. I would go personally myself and recheck it
04:19 15 first, to make sure it doesn't work. Then what we do is
16 we fix the lock first, and then we rent them out.

17 But usually it's -- before we rent the
18 room -- if it is a daily room, we make sure that the
19 rooms are -- we check out the rooms. We make sure first
04:19 20 everything is working before we rent them out.

21 Q. Okay. But if my key didn't work, that would be
22 what you would do -- you would try to fix the lock, or
23 rekey it, or give me a new key?

24 A. Yes. We make a new key first, and just go
04:19 25 ahead and test it out, to see what's going on first,

1 before we change the room.

2 Q. Okay. Now let me ask you this. Let's assume
3 again, just for argument sake, that you couldn't -- just
4 for whatever reason, this lock was being stubborn, and
04:20 5 you couldn't fix it, and you had to put me in another
6 room. What would be the procedure when you put me in
7 this new room? Would I have to fill out any other kind
8 of card?

9 A. We fill them out again, brand-new cards.

04:20 10 Q. You fill out a brand-new card?

11 A. Yes, because of the IRS tax purposes. They
12 think that we rent them out when we rewrite it. So we
13 don't rewrite it.

14 Q. Okay. So again, if I had rented, let's say,
04:20 15 Room 105, and if for some reason I couldn't get in that
16 room, and you couldn't fix it, and you put me in Room
17 106, you would make me fill out a new card?

18 A. Yes.

19 Q. And what would you do with the original card
04:20 20 that I filled out?

21 A. Usually we just tear them off.

22 Q. You would do what?

23 A. We would just give it to the guest, or we tear
24 them off.

04:20 25 Q. So if you have the card, that means the room is

1 actually rented?

2 A. Yes.

3 Q. Okay. And are these keys that you use, are
4 these electronic key cards?

04:21 5 A. Yes.

6 Q. Okay. So you don't have to go in and change
7 the lock. You just basically have to --

8 A. Reprogram it, yes.

9 MR. STALLINGS: May I approach, your
10 Honor?

11 THE COURT: You may.

12 Q. (By Mr. Stallings) Sir, I'm going to hand you
13 first of all State's Exhibit Number 1, which has already
14 been admitted. And you have seen this before, have you
15 not?

16 A. Yes, uh-huh.

17 Q. Take a look at it. Hold on to it.

18 Would that be one of those rooms that you
19 call a day room?

04:21 20 A. Yes.

21 Q. Rented by the day?

22 A. By the day.

23 Q. And would that be one of the rooms that you
24 would check to make sure was in proper working order
04:21 25 before you ever rented it?

1 A. Yes.

2 Q. And the fact that you have that card, does that
3 mean that that room was actually rented to the
4 individual?

04:21 5 A. Yes.

6 Q. And if someone had said they couldn't get into
7 that room, this card would have been torn up or given
8 back to the guest?

9 A. Yes.

04:22 10 Q. And do you and your father and your mother
11 always do that?

12 A. Yes, we always do that. Because of security
13 reasons, the information shouldn't be given out.

14 Q. Okay. So you do it for privacy reasons?

04:22 15 A. Privacy reasons, yes.

16 Q. So the fact that you have that card means that
17 that room was rented out?

18 A. Yes.

19 Q. And you didn't have to put that person in
04:22 20 another room, right?

21 A. No.

22 Q. Okay. That person that rented that room got
23 that room?

24 A. Yes.

04:22 25 Q. Okay. And you were working that night, weren't

1 you?

2 A. Yes.

3 Q. You were working with your dad, is that right?

4 A. Yes.

04:22 5 Q. Now I want to show you what the State has
6 marked as State's Exhibit Number 9. Go ahead and take
7 that. And I'm going to ask you first of all, do you
8 recognize what State's Exhibit Number 9 is?

9 A. Yes.

04:22 10 Q. What is State's Exhibit Number 9?

11 A. It is to Room 208, rented to Roman -- sorry,
12 pardon me -- the name is Urkeep.

13 Q. Urquidi?

14 A. Yeah, Urquidi.

04:23 15 Q. Let me ask you, sir, is that one of the
16 cards -- earlier when you were on the stand, helping
17 your dad, I think the first day of this trial, I asked
18 you if you kept those cards in the normal course of your
19 business.

04:23 20 A. Yes.

21 Q. Are those cards filled out by the individual
22 that's renting the room, and your -- either you, your
23 mom or dad?

24 A. Yes.

04:23 25 Q. And are they filled out at the time when the

1 Q. It's been admitted. I'm going to turn it this
2 way -- I'm trying -- I'm trying to get those numbers in.

3 Okay. Now let me ask you this, sir. What
4 room is that room we are talking about?

04:26 5 A. 208.

6 Q. 208. And can you tell the Court, from looking
7 at State's Exhibit Number 9, when Room 208 was rented by
8 Mr. Urquidi?

9 A. 7-30 of '10.

04:26 10 Q. So he rented the room on July 30, 2010,
11 correct?

12 A. Right.

13 Q. Did he only stay one day?

14 A. No, he stayed for quite a bit of time.

04:26 15 Q. And let me ask you this, if I can. I will
16 touch it up here, so I don't get in your way.

17 What are all these numbers over here on
18 the side -- what would be on the right side of the card?

19 It says, as an example, 8-13-10 to
04:26 20 8-13-20, 8-20 to 8-27 -- what do those numbers
21 represent?

22 A. That's the weeks that he stayed. Every week he
23 comes and pays, so we write him down.

24 Q. So Mr. Urquidi -- if I understand you
04:27 25 correctly, right here where it says 8-13-10, Mr. Urquidi

1 was in Room 208?

2 A. Yes, sir.

3 Q. Okay.

4 A. He was there, yes.

04:27 5 MR. STALLINGS: May I retrieve the
6 exhibit, your Honor?

7 THE COURT: You may.

8 MR. STALLINGS: I'll pass the witness.

9 THE COURT: Any questions, Mr. Spurgin?

04:27 10 MR. SPURGIN: Just a few, your Honor.

11

12 CROSS-EXAMINATION

13 BY MR. SPURGIN:

14 Q. Mr. Maharaj, you guys charge -- are all your
04:27 15 rooms \$40 a night?

16 A. No, sir.

17 Q. Are some of them less, some of them more?

18 A. Some of them less, some of them more, yes.

19 Q. Would it be fair to say that a lot of your
04:27 20 clientele are folks a lot like, say, Manuel Perez, who
21 used to get a motel room to shack up with a girl?

22 A. No, sir --

23 MR. STALLINGS: Objection, your Honor.
24 Calls for speculation.

04:27 25 THE COURT: Overruled.

October 14, 2011

Eleventh Court of Appeals
Sherry Williamson
Clerk

REPORTER'S RECORD

VOLUME 7 of 10 VOLUMES

3 APPELLATE CASE NO. 11-11-00247-CR

4 TRIAL COURT CAUSE NO. CV37715

5

6 THE STATE OF TEXAS) IN THE DISTRICT COURT

7)

8)

9 VS.) 385TH JUDICIAL DISTRICT

10)

11)

12 MANUEL JAVIER PEREZ) MIDLAND COUNTY, TEXAS

13

14 *****

15

Proceedings of May 26, 2011

16

17 *****

18

On May 26, 2011, the following proceedings
came on to be heard in the above-entitled and numbered
cause before the Honorable Robin Malone Darr, Judge
Presiding, and a jury, held in Midland, Midland County,
Texas.

23

24

25

Proceedings reported by computerized
stenotype machine.

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22					
23					
24					
25					

1 anus.

2 Remember, Ms. Brookings' words. "Things
3 run downhill." I don't want you to get thrown off by
4 the fact that there wasn't any of the Defendant's DNA in
09:40 5 Mercedes' vagina.

6 And remember, Mercedes testified that she
7 didn't remember him ejaculating inside of her. So it
8 would be natural, if that is the case, to find his semen
9 other places than her vagina.

09:41 10 Now here is the real big evidence in this
11 case. And I saved it for last for a reason, because
12 this evidence is ironclad, and this evidence provides
13 the inescapable conclusion that this Defendant is
14 guilty. And that is the DNA.

09:41 15 We have had all sorts of credibility
16 accusations thrown out through this trial. I want you
17 to keep in mind one thing. DNA doesn't lie.

18 And you heard the test results, ladies and
19 gentlemen. That gentleman's DNA is on Mercedes' thigh
09:41 20 via semen. That gentleman's DNA is on Mercedes' anus
21 via semen. And that gentleman's DNA is on her neck via
22 an unknown substance.

23 I want you to keep in mind this when you
24 are listening to Mr. Spurgin. The DNA sample from her
09:41 25 neck was not semen. It wasn't.

1 Ladies and gentlemen of the jury, I would
2 heartily suggest to you that the DNA evidence in this
3 case isn't just proof beyond a reasonable doubt. It's
4 proof beyond all doubt. DNA doesn't lie.

09:42 5 One last thing in this Charge I want to
6 talk about here, and that is the verdict forms.

7 After considering all the evidence in this
8 case, I think your decision will be fairly easy. And
9 that decision should be to send a message to this man
09:42 10 and people like him, that our community expect fathers
11 to protect their daughters, and not terrorize and
12 traumatize them.

13 Our community will not stand for the kinds
14 of violent, heinous acts of defilement of the most
09:42 15 vulnerable members of our society, that this Defendant
16 has clearly and obviously committed.

17 I want you to send a message, ladies and
18 gentlemen, that our community will not stand idly by
19 while rapists and purveyors of incest damage the minds,
09:42 20 bodies and souls of the children they are responsible
21 for.

22 I ask you to send a message, ladies and
23 gentlemen of this jury to this man right here, Manuel
24 Javier Perez. And I ask you to find him guilty on all
25 counts.

EX PARTE**Application for Writ of Habeas Corpus**

From Midland County

MANUEL JAVIER PEREZ

(NAME OF APPLICANT)

385 CourtRECEIVED
COURT OF CRIMINAL APPEALS
12/4/2023
DEANA WILLIAMSON, CLERKTRIAL COURT WRIT NO. **CR37715-B****CLERK'S SUMMARY SHEET**

APPLICANT'S NAME (as reflected on the Judgment)

MANUEL JAVIER PEREZ

OFFENSE (as described on the Judgment)

**CT I- CT II: AGGRAVATED SEXUAL ASSAULT OF A CHILD
CT III: INDECENCY WITH A CHILD**PLEA: **NOT GUILTY**

CAUSE NO. (as reflected in Judgment)

CR37715

SENTENCE (as described on the Judgment)

CTI- CTII: 25 YEARS TDCJ CTIII: 5 YEARS TDCJ

TRIAL DATE: (date upon which sentence was imposed)

MAY 27, 2011

JUDGE'S NAME (Judge Presiding at Trial)

ROBIN MALONE DARR

APPEAL NO. (If applicable)

11-11-00247-CR

HEARING HELD (pertaining to the Application for Writ)

NO

FINDINGS & CONCLUSIONS FILED (pertaining to the Application for Writ)

NO

RECOMMENDATION (Trial Court's recommendation regarding Application)

N/A

JUDGE'S NAME (Judge presiding over habeas proceeding)

JAMES M. RUSH

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Case No. CR37715-B(The district clerk of the county of conviction will fill in this blank) Midland County, Texas
/s/ Darlene Rivera

**IN THE COURT OF CRIMINAL APPEALS OF TEXAS
APPLICATION FOR A WRIT OF HABEAS CORPUS
SEEKING RELIEF FROM FINAL FELONY CONVICTION
UNDER CODE OF CRIMINAL PROCEDURE ARTICLE 11.07**

NAME: Manuel Javier Perez

DATE OF BIRTH: August 31, 1968

PLACE OF CONFINEMENT: Alfred Hughes Unit

WARDEN: Gene Miller

TDCJ-CID NUMBER: 01720430 **SID NUMBER:** 03944075

(1) This application concerns (check all that apply):

<input checked="" type="checkbox"/> a conviction	<input type="checkbox"/> parole
<input checked="" type="checkbox"/> a sentence	<input type="checkbox"/> mandatory supervision
<input type="checkbox"/> time credit	<input type="checkbox"/> out-of-time appeal or petition for discretionary review

(2) What are the court number and county of the district court in which you were convicted?

385th District Court of Midland County, Texas

(3) What was the case number in the trial court? (Put only one case number here, even if it includes multiple counts. You must make a separate application on a separate form for other case numbers.)

CR37715

(4) What was the name of the trial judge?

Judge Robin Malone Darr

GROUND THREE:

The State committed a *Brady* violation when it failed to disclose material evidence that the DNA profile obtained from M.M.'s neck swab consisted of at least three individuals, along with failing to disclose the epithelial cell fractions from the anal and thigh swabs.

FACTS SUPPORTING GROUND THREE:

On March 15, 2021, which was shortly after Applicant learned information about Ralph Petty's conflict of interest, Applicant received a letter from the DNA Mixture Review Project that indicated that no DNA mixtures were involved in his case. Following receipt of this letter, Applicant filed a Public Information Act (PIA) Request with DPS, and DPS responded on October 18, 2021, with a packet that included emails between the trial prosecutors and Angela Garcia (DPS' DNA forensic scientist who testified at trial). The emails contained within this PIA response were not available to Applicant at the time of trial or when he filed his first writ application, and Applicant had no reason to suspect that the prosecutors were hiding anything from him at the time he filed that application in 2015. However, the Petty disclosure, in conjunction with the letter from the Texas DNA Mixture Review Project, created questions in his mind about the veracity of the DNA testing, prompting him to hire ask his then-attorney, John Hurley, to file a PIA request for his DNA file from DPS.

These emails revealed two important facts that were never disclosed to Applicant's defense attorneys prior to trial: (1) the DNA profile obtained from M.M.'s neck swab consisted of a mixture of at least three individuals, and (2) the epithelial cell fractions from the anal and thigh swabs were not reported. At trial, Garcia did not testify that the DNA profile from the neck swab consisted of a mixture of at least three individuals; instead, she testified that the DNA profile was consistent with Applicant and M.M.'s DNA without mentioning a potential third-party contributor. Moreover, Garcia did not testify about the epithelial cell fractions from the anal and thigh swabs.

Applicant has obtained an affidavit and report from a forensic scientist, George Schiro, Jr., who

believes that the undisclosed evidence of 3+ individuals on the neck swab, along with the undisclosed epithelial cell fractions, was favorable evidence that would have helped Applicant's defense theory.
Moreover, he believes that a disclosure of this favorable evidence would have led to defense counsel obtaining a defense expert to testify at trial to refute the conclusions of the State's DNA expert, Angela Garcia.

Further, upon receiving a report from a DNA expert, reasonable counsel would have then hired a SANE expert to review the SANE report in order to review whether the method of collecting the DNA evidence from M.M. Victoria Morton, a SANE expert, has reviewed the SANE testimony/report of Nurse Brookings from this case and found several problems. First, if semen had leaked from M.M.'s vagina to her anus, semen should still be detectable on vaginal swabs, which makes the defense's evidence-planting theory more probable. Further, Morton determined that Nurse Brookings' testimony was misleading when she stated that SANE nurses do not "try to collect" semen from inside the "vaginal area." Moreover, Morton found that Brookings provided misleading testimony about the injury to M.M.'s vaginal cavity, as this could have been self-inflicted instead of being caused by sexual intercourse. Importantly, Morton also disputes Nurse Brookings' testimony that "the patient had been sexually assaulted." According to Morton, "her expert testimony should have addressed the consistency between the patient's history and exam findings, rather than drawing conclusions about how injuries were caused or whether a sexual assault occurred." Lastly, Morton describes at least five instances in which Nurse Brookings' use of medical terms was inaccurate and confusing to the jury.

**WHEREFORE, I PRAY THAT THE COURT GRANT THE RELIEF TO WHICH
APPLICANT MAY BE ENTITLED IN THIS PROCEEDING.**

VERIFICATION

This application form *must be verified* in one of the following ways by either an applicant or a petitioner or it may be dismissed for noncompliance.

Applicants

In order to verify this application form, an applicant must sign one of the following:

- (1) the "Unsworn Declaration" for inmates (page 16) if applicant is an inmate; or
- (2) the "Unsworn Declaration" for non-inmates (page 17) if applicant is not an inmate; or
- (3) the "Oath Before a Notary Public" before a notary public (page 18).

Petitioners

If a petitioner, including an attorney, presents an application form on behalf of an applicant, the petitioner may verify the application form for the applicant. In order to verify this application form, a petitioner must sign one of the following:

- (1) the "Unsworn Declaration" for inmates (page 16) if petitioner is an inmate; or
- (2) the "Unsworn Declaration" for non-inmates (page 17) if petitioner is not an inmate; or
- (3) the "Oath Before a Notary Public" before a notary public (page 18).

In addition, *all petitioners*, including attorneys, presenting an application on behalf of an applicant must complete "Petitioner's Information" and sign "Petitioner's Statement" (page 19).

UNSWORN DECLARATION (INMATE)

My name is Manuel Javier Perez, my date of birth is August 31, 1968, and my inmate identifying number, if any, is TDCJ #01720430 and SID #03944075

I am presently incarcerated in the Alfred Hughes Unit of the Texas Department of Criminal Justice at Route 2, Box 4400, Gatesville, Texas, 76597. I declare under penalty of perjury that the contents of this application for a writ of habeas corpus and the facts stated in the application form are true and correct.

Executed on the 27 day of (Month) September (Year) 2023.

Signature of Declarant: Manuel Javier Perez

ATTACHMENT 5

PIA Response Letter

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001

512/424-2000

www.dps.texas.gov



STEVEN C. McCRAW
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October 18, 2021

Via FedEx (Tracking # 285045590414)

John M. Hurley
3337 Mitchell Road
Waco, TX 76708

Re: Freedom of Information Act, Title 5, U.S.C. §552 and Texas Public Information Act, Government Code
§552

Mr. Hurley,

The Texas Department of Public Safety received your above referenced Public Information Request on September 28, 2021. A copy of your request is enclosed for reference.

The information the Department located in response to your request is enclosed. These records are provided to you at no cost.

List of responsive records being released (for reference):

1. The case file associated with L5L-80868 with Personally Identifiable Information (PII) redacted
2. DNA records associated with this case are being withheld (see below)
3. See case file associated with L5L-80868
4. DNA records associated with this case are being withheld (see below)
5. DNA procedures and deviations in place at the time of analysis

Dev-SYS-DNA-02-04-2010-0625-2011-0603.pdf
Dev-SYS-DNA-02-04-2011-0331-2012-0615.pdf
Dev-SYS-DNA-02-06-2011-0331-2012-0615.pdf
Dev-SYS-DNA-02-07-2011-0331-2012-0615.pdf
Dev-SYS-DNA-02-08-2011-0222-2012-0615.pdf
Dev-SYS-DNA-05-08-2011-0211-2011-0615.pdf
Dev-SYS-DNA-05-08-2011-0222-2011-0615.pdf
Dev-SYS-DNA-05-10-2011-0331-2012-0615.pdf
Dev-SYS-DNA-06-01A-2011-0331-2012-0615.pdf
Dev-SYS-DNA-06-02-2011-0331-2012-0615.pdf

Dev-SYS-DNA-07A-01-2011-0331-2012-0615.pdf
Dev-SYS-DNA-07A-01A-2011-0331-2012-0615.pdf
Dev-SYS-DNA-07A-01B-2011-0331-2012-0615.pdf
Dev-SYS-DNA-07B-01-2011-0331-2014-0723.pdf
Dev-SYS-DNA-08-01-2011-0331-2012-0615.pdf
Dev-SYS-DNA-08-02-2011-0222-2012-0615.pdf
Dev-SYS-DNA-08-02A-2011-0222-2012-0615.pdf
Dev-SYS-DNA-08-03-2011-0211-2011-0615.pdf
Dev-SYS-DNA-08-03-2011-0222-2012-0627.pdf
Dev-SYS-LAB-DNA-11-2011-0331-2012-0615.pdf
DNA-Manual-2010-0607-2011-0119.pdf
DNA-Manual-2011-0119-2011-0615.pdf

The referenced request pertains to the result of forensic DNA analysis of a sample collected under Texas Government Code §411.146 and performed by a Department DNA laboratory in accordance with Department regulations.

Pursuant to Texas Government Code §411.153, “a DNA record stored in the DNA database is confidential and is not subject to disclosure under the public information law, Chapter 552.” A DNA record is defined as “the results of a forensic DNA analysis performed by a DNA laboratory,” including “a department crime laboratory facility that conducts forensic DNA analysis.”

In addition, the release provisions of Texas Government Code §411.147(c) are not applicable in this instance. This section states:

“The director may release a DNA sample, analysis, or record only:

- (1) to a criminal justice agency for criminal justice or law enforcement identification purposes;
- (2) for a judicial proceeding, if otherwise admissible under law;
- (3) for criminal defense purposes to a defendant, if related to the case in which the defendant is charged or released from custody under Article 17.47, Code of Criminal Procedure, or other court order; or
- (4) for another purpose:
 - (A) described in Section 411.143; or
 - (B) required under federal law as a condition for obtaining federal funding.”

Furthermore, pursuant to Texas Government Code §552.301, the Department has obtained a previous determination from the Texas Attorney General (OR2011-06624) which negates the need for the Department to request a ruling regarding disclosure of confidential DNA records.

Therefore, the requested records in points 2 and 4 of your request are being withheld from public disclosure at this time.

Please note, the Texas Department of Public Safety Crime Laboratory Service strives to follow all requirements for retention and destruction of state records under Texas Government Code, Chapter 441, Subchapter L. A list of all certified state agency records retention schedules, including the Texas Department of Public Safety, may be located on the Texas State Library and Archives Commission website at <https://www.tsl.texas.gov/slrn/state/schedules>. An extensive search was performed and all responsive records located in the possession of the Texas Department of Public Safety Crime Laboratory Service have been included in this response.

Please be advised that the Texas Public Information Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. See Texas Attorney General Open Records Decision Nos. 555 (1990) and 563 (1990).

If you have any questions regarding this request, please submit them in writing via facsimile to (512) 424-2869, via email to crimelabrecords@dps.texas.gov, or via mail or in person at our Austin offices located at 5800 Guadalupe Street.

Regards,

Texas DPS Crime Laboratory
5800 Guadalupe St.
Austin, TX 78752
crimelabrecords@dps.texas.gov