

- e. Memphis police arrested Jackson on **January 31, 1996**.
 - i. Once arrested, Jackson had his mug shot taken at the police department.
 - ii. His mug shot had his booking number and date of arrest (**1-31-96**) on it.
- f. Four days later, on February 3, 1996, Angela viewed 6 mug shots inside a Memphis police cruiser. Each mug shot had a booking number and date of arrest that could be easily seen and understood by Angela.
 - i. Angela picked mug shot #3 as the man who assaulted her on December 2, 1995.
 - ii. The date of arrest on mug shot #3 was **1-31-96**.
 - iii. Mug shot #3 was the only mug shot with the date of arrest as **1-31-96**.
 - iv. Mug shot #3 was Ricky Jackson's mug shot.
4. Shortly after her assault, a sexual assault nurse examined Angela and collected a rape kit along with her white shorts and pink underwear.
 - a. The nurse submitted the rape kit to the University of Tennessee for serology and DNA testing.
 - b. The nurse properly packaged and transferred her pink underwear to the Memphis Police Department.
 - c. The Memphis Police Department did not submit the pink underwear to a state or private forensic or DNA laboratory for testing purposes.
 - d. According to the record, Angela's pink underwear was properly packaged and stored at the Memphis Police Department from December 1995 until September 2010.
5. Pre-trial serology testing on Angela's rape kit identified a single sperm on the rectal smear slide.¹
 - a. No DNA tests were performed on the rectal smear slide due to insufficient biological evidence.²
 - b. Neither the State nor Jackson's defense attorney subjected Angela's underwear to pre-trial serology or DNA testing.
 - c. Y-STR testing was not available when the State prosecuted Jackson.
6. Since his arrest, Jackson has maintained his innocence.

¹ NT, Trial, at 176; Ex. 2.

² NT, at 178; Ex. 2 (DNA memo).

a. When Memphis police arrested him, for instance, he refused to sign a *Miranda* waiver form and wrote the following comment on the form: “I didn’t do this crime. I don’t know this victim. I would like to talk to an attorney as soon as possible.”³

b. At trial, Jackson testified on his own behalf and claimed his prosecution was one of “mistaken identity.”⁴

c. At his sentencing, he continued to proclaim his innocence.⁵

7. At trial, the State’s case was premised entirely on Angela’s identification. The reliability of her identification is suspect for a variety of reasons.

a. First, her identification is based on an extremely suggestive 6 person mug shot array.

i. As mentioned, each of the six mug shots had a date of arrest on it, and the only mug shot with 1-31-96 on it was mug shot #3 – Ricky Jackson’s mug shot.

ii. Angela knew Jackson was likely arrested on January 31, 1996 because the Memphis police told her on this date that they intended to arrest him ASAP.

b. Second, her assault occurred during the early morning hours while it was dark.

c. Third, the assailant accosted her with a gun.

d. Fourth, she was under tremendous stress and feared for her life during the assault.

e. Fifth, her assailant was a complete stranger.

f. And sixth, she did not actually identify Jackson until February 3, 1996 – nearly sixty days after her assault.

8. Due to the limitations of DNA technology at the time, Jackson couldn’t present contrary scientific evidence from Angela’s rape kit or underwear to prove his innocence and bolster his mistaken identity argument.

9. After being convicted, Jackson contacted the Innocence Project on December 5, 2000, which ultimately accepted his case on December 6, 2007 after obtaining and reviewing police reports, lab reports, and various pleadings.

10. The Innocence Project and Shelby County District Attorney’s Office conducted an exhaustive evidence search for Angela’s rape kit and pink underwear between January 2008 and July 2010 before the Innocence Project filed Jackson’s DNA testing motion in August 2010.⁶

³ Ex. 1.

⁴ NT, Trial, at 193-94.

⁵ NT, Sentencing Hrg., 08/26/96, at 8, 13.

⁶ Ex. 3.

a. In his DNA motion, Jackson asked to have the rape kit and pink underwear subjected to modern DNA testing.

b. When he filed his DNA motion, the rape kit and pink underwear had yet to be located.

c. On September 13, 2010, undersigned counsel (Cooley) received an email from Deputy District Attorney John Campbell informing him that the Memphis Police Department had located the pink underwear.

d. The rape kit has never been located and is presumed lost or destroyed.

e. On December 2, 2010, after the State consented to DNA testing, the parties entered a joint *Stipulated Order For DNA testing*.⁷

f. Pursuant to the *Stipulated Order*, the Shelby County Clerk's Office sent Angela's pink underwear to Cellmark Diagnostic (Cellmark) in Dallas, Texas.

g. On August 31, 2011, after performing Y-STR DNA testing, Cellmark reported that it had identified a **partial male DNA profile** on the waist band of Angela's underwear and that Jackson was **EXCLUDED** as a donor of the partial male DNA profile.⁸

11. Based on the newly-discovered exculpatory DNA evidence, Jackson submits his *Writ of Coram Nobis* pursuant to Tenn. Code Ann. § 40-26-105(a) and *Petition to Re-Open* pursuant to Tenn. Code Ann. § 40-30-117.

a. The exculpatory DNA results demonstrate that Jackson is actually innocent and that his trial may have resulted in a different judgment had these exculpatory DNA results been presented.

b. Likewise, the exculpatory DNA results demonstrate that Jackson's trial was fundamentally unfair under state and federal law and that he is entitled to a new trial because the Court can have no confidence in his conviction.

12. Jackson's petition is presented in good faith and premised on the following facts and points of authority.

II. Statement of Facts

A. The Offense

⁷ Ex. 4.

⁸ Ex. 15.

13. On December 2, 1995, at 1:15 am in the morning, a man approached Angela Boyd as she spoke on a payphone with her friend, Tameka Rhodes, and asked if she was interested in buying a gun. Angela ignored the man, eventually hung up with Rhodes, and started walking home with her ten-year-old nephew, Kenny Boyd.

14. The man followed Angela and Kenny, at which point Angela told Kenny to head home. Once Kenny left, the man grabbed Angela from behind, put a gun to her side, and threatened to kill her if she ran or shouted.

15. The man took Angela to the back of an abandoned house and told her to lie on the pavement on her back. He had her remove her white shorts, while he forcibly removed her pink underwear before sexually assaulting her anally and vaginally. The man also forced Angela to perform oral sex on him.

16. Before leaving the scene, the man took Angela's six rings, a beeper, and thirty-five dollars.

B. Angela's Interview With Sgt. Freeman Immediately After the Offense

17. Sergeant Charles Freeman of the Memphis Police Department was one of the officers assigned to investigate Angela's assault.

18. Sgt. Freeman spoke with Angela at 2:15 am – shortly after her assault. Sgt. Freeman memorialized his contemporaneous notes into a written report. In his report, he mentioned the following account of the assault:

She stated that once they got to the rear of the business he made her lay on the pavement on her back and *he pulled her... pink panties off*. The suspect then pulled his pants down and he was wearing unknown color boxer shorts. He then got on top of her and made her perform oral sex on him, and then had vaginal sex while she was still laying [sic] on her back.⁹

19. Thus, according to Sgt. Freeman's contemporaneous report, the assailant pulled Angela's pink underwear off.

20. Angela provided the following description of her assailant to Sgt. Freeman: 5'5", 170 lbs, African-American with a fade, a dark complexion, mustache, and four gold teeth, who wore a black sweater, aqua colored pants, and a black leather cap.

⁹ Ex.5 (emphasis added).

C. Angela's Sexual Assault Examination and Evidence Collected

21. Shortly after her interview with Sgt. Freeman, Memphis Police transported Angela to the Memphis Sexual Assault Resource Center (MSARC).

22. Elizabeth Thomas, a sexual assault nurse, examined Angela at 4 a.m. and collected a rape kit (i.e., vaginal, anal, and oral swabs), her pink underwear, and her clothing.¹⁰

23. Once collected, Thomas transferred custody of the rape kit swabs and smear slides to the University of Tennessee Cellular and Molecular Forensic Laboratory on December 5, 1995.¹¹

24. Thomas properly packaged and transferred Angela's pink underwear to the Memphis Police Department.

25. The Memphis Police Department did not submit Angela's pink underwear for pre-trial forensic or DNA testing.

26. There is no evidence in the record establishing, indicating, or suggesting that any member of the Memphis Police Department or MSARC, including Elizabeth Thomas, actually touched, handled, or manipulated Angela's pink underwear.

D. Angela's Viewing of The Mug Shot Books

27. On December 12, 1995, Angela viewed mug shot books at the Memphis Police Department, but did not identify her assailant.¹²

a. At trial, Angela testified she viewed eight mug shot books for approximately two hours.¹³

b. Sgt. Freeman, however, testified at trial that Angela only viewed two mug shot books.¹⁴ Each mug shot book, according to Sgt. Freeman, contained hundreds of pictures of African-Americans arrested, charged, or convicted in Memphis.¹⁵

c. At the time Angela viewed the mug shot books, Jackson was on parole for a 1991 aggravated robbery conviction from Memphis. Sgt. Freeman, however, didn't know whether Jackson's mug shot was in any of the mug shot books Angela reviewed.¹⁶

¹⁰ NT, Trial, at 158; Ex. 7.

¹¹ NT, Trial, at 159; Ex. 7.

¹² Ex. 6.

¹³ NT, Trial, at 132, 145.

¹⁴ NT, Trial, at 55.

¹⁵ *See id.*

¹⁶ *See id.* at 64, 67.

E. Angela's Identification of Jackson and His Subsequent Arrest

28. A suspect was not identified until January 30, 1996 – *two months* after Angela's assault.

29. According to Angela, around 4 p.m. on January 30, 1996, a man approached her from behind as she was walking and asked her a question. When she turned around to answer, and made eye contact with the man, she recognized the man as the person who assaulted her on December 2, 1995. She said the man turned and ran when he saw her.¹⁷

30. At the time, Angela was on her way to visit Ada Odom. After seeing the man whom she believed to be her assailant, Angela ran to Odom's house and told her that she had just seen her assailant.¹⁸

a. Odom said she knew the man and that his name was Ricky Jackson. She also knew where Jackson lived.¹⁹

b. Angela and Odom worked together and they were scheduled to work that day. Because Odom didn't have a phone in her apartment, the two drove to work, called the Memphis Police Department, and provided the police with Jackson's name and address.²⁰

31. Later that night, on January 30, 1996, Officer Kevin Lundy interviewed Angela and told her he'd stop by Jackson's apartment ASAP to arrest him.²¹

a. After interviewing Angela, Officer Lundy went to Jackson's apartment at 1117 North Seventh Avenue, and spoke with his mother:

Q: What did you tell his mother?

A: I just asked did he live there, did Ricky Jackson live there? And she said, yes. And I asked was he at home? And she said, no. And she said, she didn't know when to expect him. And I said, well when he comes in would you give me a call and she said, okay. I left my name and phone number and I left.²²

32. The next day, on January 31, 1996, Sgt. Robert Shemwell interviewed Angela and told her the Memphis Police intended to arrest Ricky Jackson ASAP.²³

¹⁷ Ex. 8.

¹⁸ NT, Trial, at 134-35.

¹⁹ *Id.* at 35-36.

²⁰ *Id.* at 37-38, 137.

²¹ *Id.* at 42-43.

²² NT, Trial, at 43. *see also id.* at 49; Exs. 9-10.

²³ Ex. 10.

33. That same day, on January 31st, Sgt. Shemwell went to Jackson's apartment, observed him walking into his apartment, and arrested him once he (Shemwell) entered the apartment.²⁴

a. Jackson was on the phone with the Memphis Police Fugitive Task Force when Sgt. Shemwell entered his apartment.²⁵

b. Jackson, who was on parole at the time for a robbery conviction, called the Fugitive Task Force in response to Officer Lundy's request to call him.²⁶

c. Once taken into custody, Jackson claimed his innocence by writing a brief note on the waiver-of-rights form asserting that he didn't know Angela Boyd and that he didn't assault her. *See* Ex. 1 ("I didn't do this crime. I didn't know this victim. I would like to talk to an attorney as soon as possible.").

d. Once at the Memphis Police Department, Jackson was booked and photographed. His booking photograph (or mug shot) had his **booking number** (#96-031065) and the **date of his arrest** (1-31-96) on the front.²⁷

34. On February 3, 1996, three days after Angela identified Jackson, Sgt. Freeman put together a 6-person mug shot array, traveled to Angela's apartment, and had her view the six mug shots in the front seat of his police cruiser.²⁸

a. Prior to putting together the 6 mug shots, Sgt. Freeman contacted the Memphis Police photo lab and obtained a copy of Jackson's mug shot taken on January 31, 1996.²⁹

b. Sgt. Freeman incorporated Jackson's mug shot into the 6-person mug shot array.

c. The five other mug shots came from the Memphis police mug shot books.³⁰

35. When Angela viewed the six mug shots, Jackson's mug shot had his **booking number** (#96-031065) and the **date of his arrest** (01-31-96) on the front it.³¹

a. The five other mug shots also had a **booking number** and **date of arrest** on the front.³²

²⁴ Exs. 9-10, 13.

²⁵ NT, Trial, at 191.

²⁶ *See id.*

²⁷ NT, Trial, at 68.

²⁸ NT, Trial, at 65, 138; Ex. 1. At trial, the six photographs from the photo-array were entered into evidence as State's Exhibit #5. *See* NT, Trial, at 59.

²⁹ NT, Trial, at 68.

³⁰ *Id.* at 64.

³¹ *Id.* at 68.

³² Ex. 11.

b. Below are the identifications numbers and dates of arrest (as well as the name of the person in the photograph) on each of the six mug shots Angela examined on February 3, 1996. The names, obviously, were not on the mug shots.

	<u>Identification #</u>	<u>Date of Arrest</u>	<u>Name</u>
1.	96018026	01-18-96	Clyde Praley Holt
2.	96019088	01-19-96	Terry Rufus Monger
3.	96031065	01-31-96	Ricky Jackson
4.	96029043	01-29-96	James Martin
5.	93019045	01-19-93	Renard Atkins
6.	95264056	01-19-96	Jimmy Parker

c. As mentioned, prior to examining the six mug shots, Sgt. Shemwell contacted Angela on January 31, 1996, and told her the Memphis Police intended to pick up Ricky Jackson ASAP.³³

d. Angela viewed the six mug shots one at a time.³⁴

e. When she viewed the six mug shots she identified mug shot #3 – or the only mug shot that had the date of arrest as 01-31-96.³⁵

f. Once she picked mug shot #3, Sgt. Freeman had Angela date the back of the mug shot with 2/3/96.³⁶

g. Sgt. Freeman then had Angela come to the Memphis Police Department to provide an audiotaped statement.³⁷ This was her first (and only) audiotaped statement.

h. Neither Sgt. Freeman nor anyone else from the Memphis Police Department obtained a statement or an identification from Kenny Boyd – Angela's ten-year-old nephew – prior to trial.

F. DNA Testing

36. In July 1996, the University of Tennessee Cellular and Molecular Forensic Laboratory examined the vaginal, rectal, and oral swabs and slides collected from Angela's sexual assault examination.³⁸

³³ Ex. 10.

³⁴ NT, Trial, at 145.

³⁵ Ex. 11; NT, Trial, at 138-39, 145-46.

³⁶ NT, Trial, at 139.

³⁷ See *id.* at 63; Ex. 12.

37. Forensic analyst, Kim Prince, identified a single sperm on Angela's rectal smear slide.³⁹ All other slides and smears tested negative for sperm and acid phosphatase.

38. Rebecca Joyner, a DNA analyst with the University of Tennessee, examined the rectal smear slide and concluded that there was "insufficient sperm present" to conduct DNA testing. *See* Ex. 2 ("There is insufficient sperm present in the evidence submitted... to continue with any routine or DNA/PCR comparison testing with a suspect.").⁴⁰

39. The State never subjected Angela's pink underwear – which the assailant forcibly removed – to any sort of serological or DNA testing.

G. Trial

40. Jackson pled not guilty and proceeded to trial.

41. At trial, the State's case rested entirely on Angela's out-of-court identification and Kenny's in-court identification of Jackson.

a. Angela said her assailant was a complete stranger.⁴¹

b. She also described how she feared for her life during the assault because her assailant had a gun.⁴²

c. Angela said the assailant only made her take off her white shorts – and not her panties – before she lied on the pavement.⁴³

d. Angela, confusingly, said she saw a man at a barber shop – a few weeks before January 30, 1996 – who looked "like the dude that raped" her.⁴⁴

i. Angela said her and Ada Odom were driving past the barber shop (on their way to work) when she saw the man.⁴⁵

ii. Angela, more confusingly, said she didn't call Sgt. Freeman because she and Odom were on their way to work.⁴⁶

³⁸ Ex. 2.

³⁹ *See id.*; NT, Trial, 175-76.

⁴⁰ NT, Trial, 178 ("[M]y supervisor, Rebecca Joiner, indicated that you could not do any testing on one sperm.").

⁴¹ *See id.* at 129.

⁴² *See id.* at 145.

⁴³ *See id.* at 122.

⁴⁴ *Id.* at 134, 144.

⁴⁵ *See id.* at 38, 134.

⁴⁶ *See id.*

iii. Even more confusingly, Angela also said she thought she saw her assailant at a corner store, named “Booger”, sometime before her January 30, 1996 encounter with Jackson.⁴⁷ Like the barber shop sighting, though, Angela didn’t contact the police when she saw this man.

e. Angela and Sgt. Freeman both explained how she viewed the 6 mug shots on February 3, 1996 and selected mug shot #3 – or the only mug shot that had the **date of arrest as 01/31/96.**⁴⁸

i. The State introduced the 6 mug shots into evidence as State’s Exhibit #5.⁴⁹

ii. Angela said she was “absolutely certain” Jackson was her assailant.⁵⁰

iii. Sgt. Freeman corroborated Angela’s testimony when he said she was “absolutely positive” of her identification and that she “had no doubt in her mind” – none “whatsoever.”⁵¹

42. Kenny Boyd, Angela’s nephew, also testified at trial.

a. The Memphis Police, as mentioned, did not take a statement from Kenny or have him view the 6 mug shots Angela viewed on February 3, 1996.

b. At the time of the offense, Kenny was ten years old.⁵²

c. Kenny didn’t witness Angela’s sexual assault, but he said he saw the man who approached her before she told him to walk home alone.

d. Kenny said he’d never seen the man before – he was a complete stranger.⁵³

e. Kenny identified Jackson as the man who approached Angela on December 2, 1995. He said he was “certain” of his identification.⁵⁴

f. The first time he saw Jackson – since December 2, 1995 supposedly – was the very day he testified on July 23, 1996.⁵⁵

g. Kenny said he was telling the truth because if he didn’t – God would strike him down:

⁴⁷ *Id.* at 143.

⁴⁸ *Id.* at 68-69, 138-39, 145-46.

⁴⁹ *Id.* at 59.

⁵⁰ *Id.* at 140.

⁵¹ *Id.* at 61.

⁵² *Id.* at 75.

⁵³ *Id.* at 90.

⁵⁴ *Id.* at 88, 95.

⁵⁵ *Id.* at 95.

Q: Now, you told the Judge and you told the jury... that if you tell the lie – you know what telling a lie is, don't you?

A: Yeah.

Q: That God will strike you down.

A: Yes, sir.⁵⁶

43. Jackson testified on his own behalf and claimed his innocence.⁵⁷

a. He also explained why he was on the phone with the Fugitive Task Force when Sgt. Shamwell came to his apartment on January 31, 1996:

Q: Do you want to tell us... why you called the fugitive squad?

A: Well, when he came in the house, the reason why I was calling when he came in the house, they asked for me and told them, yeah, I was Ricky Jackson and he said, who are you talking to? And I said, I am talking to the people downtown, I am trying to find out.... why in the hell y'all are looking for me... or do I have any warrants on me, or anything. And you know, that was that.

Q: But, did you know that someone had been to your house the day before?

A: Yes, my mom told me that the police had been by there and they had asked was I there and they left a number. I tried calling that same day, but they told me downtown that the people who came looking for me, you'll have to wait until they come back on, on that same shift, to find out why they was looking for me. You know, I didn't have no idea.⁵⁸

b. Jackson said his case was one of "mistaken" identity: "I am not doubting... that she was raped, or robbed, or anything... but I am saying that this is a mistaken identity, I wasn't the one. I wasn't the one."⁵⁹

c. During cross-examination, Jackson proclaimed his innocence again: "I'm not asking the jury to do anything... I'm just pleading my case. You have the wrong guy."⁶⁰

44. During closing arguments, the prosecutor acknowledged that the entire case came down to credibility: "[A]ll it comes down to is credibility. Whether or not you want to believe

⁵⁶ *Id.*

⁵⁷ *Id.* at 188-194.

⁵⁸ *Id.* at 191-92, 202

⁵⁹ *Id.* at 193-94.

⁶⁰ *Id.* at 196.

Ricky Jackson, or whether you want to believe the proof that the State of Tennessee presented to you.”⁶¹

45. The prosecutor spent much of his time explaining to the jury why Angela’s and Kenny’s identifications are reliable.

a. The prosecutor, for instance, emphasized that what Angela repeatedly told the police was truthful: “She told the police what had happened to her and she has always told the police what has happened to her and she’s never wavered, she never changed her mind, she never retracted one thing that she said.”⁶²

b. The prosecutor also argued that Angela’s identification was reliable because she could never forget the man’s face who raped her: “Do you think she will ever forget his face? Do you think she will ever forget the face of the man who treated her so cruel, so inhumanly, so sadistically? Do you think she’ll ever forget that face?”⁶³

c. The prosecutor disregarded Jackson’s misidentification argument by arguing that Jackson did not present any evidence suggesting or proving that Angela’s and Kenny’s identifications were incorrect:

[Ricky Jackson] wants you to think that... it’s a case of mistaken identity... You have not heard... one scintilla of proof that indicates that this is a case of mistaken identity. You’ve seen two people who have absolutely, positively identified this man as being a rapist and as being a robber. You have not heard anything that would suggest that they were mistaken... .

Ricky Jackson wants you to go back and guess him not guilty. Go back and speculate, well yeah, maybe they could be mistaken. He doesn’t have to prove anything. But, when he raised that issue, by God he has to support it. If he raised an issue that this is mistaken identity... it is incumbent upon him to provide you with something to believe that. He’s had an opportunity to do it. He didn’t do it, because he can’t do it.

...

You have heard nothing to indicate that they were wrong. You’ve heard nothing to indicate there was bias before them testifying to what they did. You heard nothing to indicate that their testimony has been impeached.⁶⁴

⁶¹ NT, Trial, at 206.

⁶² *Id.* at 122.

⁶³ *Id.*

⁶⁴ *Id.* at 217, 230.

d. The prosecutor also argued that Jackson presented “an incredible story” that the jury should disregard.⁶⁵

46. The jury convicted Jackson of aggravated rape and aggravated robbery.⁶⁶

H. Sentencing and Post-Trial Motions

47. At sentencing, Jackson testified and, like he did at trial, proclaimed his innocence. When trial counsel asked him if he wanted to make any comments before sentencing, Jackson said, “I still say right today that I don’t doubt that this girl wasn’t raped, or robbed, or anything and I do know if she was, or if she wasn’t, but if she was then I feel that I have remorse for that, but I still say, right today, I wasn’t the one that did it... .”⁶⁷

48. Likewise, when the prosecutor asked Jackson if he was continuing to claim his innocence, Jackson answered in the affirmative:

Q: And you’re telling the Court today that even though the jury has found you guilty of these crimes, you still refuse to accept responsibility for these crimes? You still say you didn’t do anything?

A: I still say that I wasn’t the one that did these crimes, sir.⁶⁸

49. At Jackson’s motion for a new trial hearing, held in September 1996, Jackson’s trial counsel moved for a judgment of acquittal and in the alternative a new trial. She also argued there was insufficient evidence to sustain Jackson’s conviction and that the jury’s verdict was contrary to law and the evidence.⁶⁹

a. In response to trial counsel’s request, the trial judge summarized – in a nutshell – the evidence against Jackson: “This... was *strictly an identification case*. This was where Mr. Jackson testified and denied that he was the person... But... there was [an] in Court identification by the victim and I believe – didn’t the young fellow also identify him[.]”⁷⁰

b. The trial judge acknowledged, like the prosecutor did during closing arguments, that the case came down to credibility: “[I]t really boiled down to a question of fact for the jury as to *whether or not they believed her identification*.”⁷¹

⁶⁵ *Id.* at 217.

⁶⁶ *Id.* at 233.

⁶⁷ NT, Sentencing Hrg., 08/26/96, at 8.

⁶⁸ *Id.* at 13.

⁶⁹ NT, New Trial Hrg, 09/16/96, at 7.

⁷⁰ *Id.* at 8 (emphasis added).

⁷¹ *Id.* (emphasis added).

c. The trial judge also said that, if the jury *believed* that Angela's and Kenny's identifications were reliable, their identifications were sufficient to make out the crimes of aggravated robbery and aggravate rape – even if their identifications weren't corroborated.⁷²

d. The trial judge sentenced Jackson to twenty-two years for the aggravated rape conviction and ten years for the aggravated robbery conviction – to be served concurrently.⁷³

I. Post-Conviction DNA Testing

50. After being convicted, Jackson contacted the Innocence Project on December 5, 2000, which ultimately accepted his case on December 6, 2007 after obtaining and reviewing police reports, lab reports, and various pleadings.

51. The Innocence Project and Shelby County District Attorney's Office conducted an exhaustive evidence search for Angela's rape kit and pink underwear between January 2008 and July 2010 before the Innocence Project filed Jackson's DNA testing motion, *see* Tenn. Code Ann. §40-30-301 *et seq.*, in August 2010.⁷⁴

a. In his DNA motion, Jackson asked to have the rape kit and pink underwear subjected to modern DNA testing.

b. When he filed his DNA motion, the rape kit and pink underwear had yet to be located.

c. The chain-of-custody and property receipt report regarding the pink underwear established that the Memphis Police Department took custody of the pink underwear shortly after Angela's assault.⁷⁵

d. On September 13, 2010, undersigned counsel (Cooley) received an email from Deputy District Attorney John Campbell informing him that the Memphis Police Department had located the pink underwear.

e. The rape kit has never been located and is presumed lost or destroyed.

52. On December 2, 2010, after the State consented to DNA testing, the parties entered a joint *Stipulated Order For DNA testing*.⁷⁶

a. The State did not challenge the pre- and post-trial chain-of-custody regarding Angela's pink underwear.

⁷² *Id.*

⁷³ NT, Sentencing Hrg., 08/26/96, at 39.

⁷⁴ Ex. 3.

⁷⁵ Ex.

⁷⁶ Ex. 4.

b. Likewise, when the State consented to DNA testing, the record was still void of any evidence establishing, indicating, or suggesting that any member of the Memphis Police Department or MSARC, including Elizabeth Thomas, actually touched, handled, or manipulated Angela's pink underwear prior to, during, or after Jackson's trial.

c. Pursuant to the *Stipulated Order*, the Shelby County Clerk's Office sent Angela's pink underwear to Cellmark in Dallas, Texas.

d. On August 31, 2011, after performing Y-STR DNA testing, Cellmark reported that it had identified a partial male DNA profile on the waist band of Angela's pink underwear and that Jackson was EXCLUDED as a donor of the partial male DNA profile.⁷⁷

53. Jackson's instant *coram nobis* petition and motion to re-open are based on the exculpatory DNA evidence.

a. Jackson would have filed his instant petition sooner, but no one (*i.e.*, the State, former defense counsel, the Court of Criminal Appeals, the trial court, the Shelby County Clerk's Office, or Jackson himself) had a copy of the trial transcripts.

b. On January 5, 2012, after exhaustively searching for the trial transcripts, undersigned counsel (Massey) entered an order requesting that the transcripts be reproduced and transcribed.

c. Undersigned counsel (Cooley) received the transcripts on February 20, 2012 and began digesting the transcripts immediately thereafter.

III. Arguments

A. Jackson Is Entitled To *Coram Nobis* Relief Because The Newly-Discovered DNA Exculpatory Evidence May Have Resulted In A Different Judgment Had it Been Introduced To His Jury

54. The writ of error *coram nobis* is available to convicted defendants in criminal cases. *See* Tenn. Code Ann. § 40-26-105(a).

55. Whether to grant or deny a petition for writ of error *coram nobis* rests within the trial court's sound discretion. *See State v. Vasques*, 221 S.W.3d 514, 527-28 (Tenn. 2007).

56. *Coram nobis* claims may be based on newly-discovered evidence.

⁷⁷ Ex. 15.

57. A prisoner is entitled to *coram nobis* relief if the Court determines that the newly-discovered evidence *may have* resulted in a different judgment had it been presented at petitioner's trial:

Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence *may have resulted in a different judgment*, had it been presented at the trial.

Tenn. Code Ann. § 40-26-105(b) (emphasis added).

58. Jackson satisfies this standard and is entitled to new trial.

1. The Assailant Pulled Down Angela's Underwear And The Chain of Custody Is Unbroken

59. The assailant pulled down Angela's pink underwear.

a. Sgt. Freeman's contemporaneous report, which summarized his interview of Angela immediately after her assault, clearly states that *the assailant* removed her pink underwear prior to assaulting her.⁷⁸

b. Angela's trial testimony corroborates Sgt. Freeman's report because she said the assailant made her take off her white shorts – but not her underwear.⁷⁹

60. The chain-of-custody regarding the pink underwear is unbroken – it was properly packaged and stored with the Memphis Police Department since MSARC turned them over to the department shortly after Angela's assault. *See State v. Dimery*, 2012 Tenn. Crim. App. LEXIS 36, at *25 (Jan. 20, 2012) (holding that “the party offering the evidence... must establish an unbroken chain of custody.”); *State v. Holbrooks*, 983 S.W.2d 697, 700 (Tenn. Crim. App. 1998) (same).

a. Moreover, “the identity of tangible evidence need not be proven beyond all possibility of doubt, and all possibility of tampering need not be excluded.” *Id.*, at *25. The requirement that a party establish a chain of custody before introducing such evidence is “to demonstrate that there has been no tampering, loss, substitution, or mistake with respect to the evidence.” *Id.* (citation omitted). The circumstances must establish a reasonable assurance of the identity of the evidence. *See, e.g., State v. Cannon*, 254 S.W.3d 287, 296 (Tenn. 2008); *State v.*

⁷⁸ Ex. 5.

⁷⁹ *See* NT, Trial, at 122.

Kilburn, 782 S.W.2d 199, 203 (Tenn. Crim. App. 1989). Moreover, the failure to call all of the witnesses who handled the evidence does not necessarily preclude its admission into evidence. See *State v. Johnson*, 673 S.W.2d 877, 881 (Tenn. Crim. App. 1984).

b. Furthermore, “[a]bsolute certainty of identification is not required.” *State v. Dimery*, 2012 Tenn. Crim. App. LEXIS 36, at *26; accord *State v. Kilpatrick*, 52 S.W.3d 81, 87 (Tenn. Crim. App. 2000).

c. Here, while it took more than two years to locate the pink underwear at the Memphis Police Department, there’s no evidence in the record demonstrating tampering, loss, substitution, or mistake with respect to the pink underwear. Likewise, there’s evidence in the record demonstrating that any member of the Memphis Police Department or MSARC actually touched or handled the pink underwear once Elizabeth Thomas carefully collected them from Angela in the early morning hours of December 2, 1995.

i. When the State consented to DNA testing, moreover, it did not make a chain-of-custody objection regarding the pink underwear.

ii. By consenting to testing, therefore, the State conceded that Jackson was entitled to DNA testing pursuant to the DNA Analysis Act. Pursuant to Tenn. Code Ann. § 40-30-304(2), before a prisoner may be awarded DNA testing, the evidence must be “in such a condition that DNA analysis may be conducted.” Here, if the State did *not* believe the pink underwear was “in such a condition that DNA analysis may be conducted,” it would not have consented to DNA testing – and would have litigated the issue before the Court.

2. The State’s Case Rested Entirely On Angela’s and Kenny’s Identification Both Which Have Serious Reliability Issues

61. The State’s case rested entirely on Angela’s out-of-court identification as well as Kenny’s in-court identification of Jackson. At the post-trial motions hearing, the trial judge acknowledged that Jackson’s conviction rested entirely on identification evidence: “This... was *strictly an identification case*. This was where Mr. Jackson testified and denied that he was the person... But... there was [an] in Court identification by the victim and I believe – didn’t the young fellow also identify him[.]”⁸⁰

62. Eyewitness misidentification is the most common reoccurring factor in wrongful convictions, having occurred in nearly 70% of the 289 DNA exonerations to date. See

⁸⁰ NT, New Trial Hrg., 9/16/96, at 8 (emphasis added).

www.innocenceproject.org (last visited March 8, 2011); *State v. Copeland*, 226 S.W.3d 287, 299 (Tenn. 2007).

63. The 6-person mug shot array Angela reviewed on February 3, 1996 was extremely suggestive.

a. To begin with, Angela knew Jackson was likely arrested on **January 31, 1996** because that was the day Sgt. Shemwell interviewed her and told her the Memphis Police were looking for Jackson and would arrest him once located.⁸¹

b. More importantly, when Angela viewed the 6 mug shots – each mug shot had a **booking number** and the **date of arrest** on the front of the mug shot. The only mug shot with the date of arrest as **01-31-96** was mug shot #3, Ricky Jackson’s mug shot.⁸²

c. A reasonable person in Angela’s position would have immediately assumed that mug shot #3 was Ricky Jackson based on the fact the mug shot had **01-31-96** on its front. The mug shot of Jackson, therefore, was extremely– if not unconstitutionally – suggestive.

d. Additionally, the officer who showed Angela the six mug shots, Sgt. Freeman, knew Jackson was the primary (and only) suspect – and that he had been arrested on January 31, 1996. This increased the likelihood that Sgt. Shemwell – consciously or unconsciously – directed Angela’s attention toward mug shot #3 – Jackson’s mug shot. *See* Gary L. Wells & Eric P. Seelau, *Eyewitness Identification: Psychological Research and Legal Policy on Line-ups*, 1 PSYCHOL. PUB. POL’Y & L. 765, 775-78 (1995); *United States v. Wade*, 388 U.S. 218, 229 (1967).⁸³ To combat this problem, Sgt. Shemwell should have used a double-blind line-up, in which the detective conducting the line-up does not know the primary suspect’s or arrestee’s identity. *See* Gary L. Wells & Elizabeth A. Olson, *Eyewitness Testimony*, 54 ANN. REV. PSYCHOL. 277, 289 (2003).⁸⁴

⁸¹ NT, Trial, at 45; Ex. 10

⁸² NT, Trial, at 68; Ex. 11.

⁸³ Experimental psychologists describe this as “investigator bias.” Investigator bias “is present when a line-up administrator knows the suspect’s identity and, as a result, intentionally or unintentionally sends cues to an eyewitness that unfairly enhance the likelihood that the witness will identify the suspect.” Mark R. Phillips et al., *Double-Blind Photoarray Administration as a Safeguard Against Investigator Bias*, 84 J. APPLIED PSYCH. 940, 941 (1999).

⁸⁴ The National Institute of Justice noted that a “double-blind” procedure “helps ensure not only that the case investigator does not unintentionally influence the witness but also that there can be no arguments later (e.g., at trial) that the witness’s selection or statements at the line-up were influenced by the case investigator.” NAT’L INST. OF JUST., *EYEWITNESS EVIDENCE: A TRAINER’S MANUAL FOR LAW ENFORCEMENT* 42 (2003).

64. Besides the newly-discovered exculpatory DNA evidence, there are several factors surrounding Angela's identification that raise significant reliability issues regarding her identification.

a. First, her assault occurred in the early morning hours of December 2, 1995 when it was still dark.

b. Second, her assailant wielded a weapon, *i.e.*, a firearm, during the assault, and the social science research has routinely found that the reliability of an identification decreases when the assailant accosts the victim with a weapon. *See* Nancy Mehrkens Steblay, *A Meta-Analytical Review of the Weapon Focus Effect*, 16 LAW & HUM. BEHAV. 413 (1992).

c. Third, because her assailant threatened to kill her she was under tremendous stress during her attack, and the social science research has continually found that the accuracy of an identification decreases when the victim is under significant stress. *See* Kenneth A. Deffenbacher et al., *A Meta-Analytic Review of the Effects of High Stress on Eyewitness Memory*, 28 LAW & HUM. BEHAV. 687 (2004).

d. Fourth, she did not actually identify Jackson until February 3, 1996 – nearly sixty days after her assault. The social science research, as well as the U.S. Supreme Court, has continually recognized that an identification's reliability decreases when the time between the victim's assault and her identification increases. *See Neil v. Biggers*, 409 U.S. 188, 199-200 (1972); *Manson v. Brathwaite*, 432 U.S. 98 (1977).

e. Fifth, she said her assailant was a complete stranger,⁸⁵ and, as the U.S. Supreme Court acknowledged years ago, "identification of strangers is proverbially untrustworthy." *See United States v. Wade*, 388 U.S. 218, 228 (1967).⁸⁶

65. Besides the newly-discovered exculpatory DNA evidence, there are several factors surrounding Kenny Boyd's identification that raise significant reliability issues regarding his in-court identification.

a. First, Kenny never viewed a 6-person mug shot array or physical line-up where he had to identify Ricky Jackson. Instead, his in-court identification of Jackson, which occurred

⁸⁵ NT, Trial, at 129.

⁸⁶ The "primary concern expressed in cases discussing the problems with eyewitness identification relates to a witness observing and subsequently identifying a stranger... The accuracy of identification testimony is nevertheless much higher when matching a visual observation of a suspect to an already existing memory, as opposed to the identification of a stranger, where all relevant features must be mentally recorded from scratch." *Moss v. Hofbauer*, 286 F.3d 851, 862 (6th Cir. 2002).

after Angela had identified Jackson as her assailant, represented the first time Kenny saw Jackson since (supposedly) the night of Angela's offense.

b. Second, Angela's initial identification of Jackson entirely taints Kenny's identification because it's now impossible to determine whether his in-court identification is based on his own recollection, which wasn't particularly good to begin with, or Angela's subsequent identifications of Jackson on January 30, 1996 and February 3, 1996.

c. Third, Kenny's recollection of that night, as mentioned, wasn't particularly good. Indeed, while he could remember in amazing detail what the assailant wore that night, he had no recollection of what Angela wore – even though he spent most of the night with her.⁸⁷ Likewise, he had no memory of what he wore that night.⁸⁸

d. Fourth, based on the fact Kenny never made an independent, out-of-court identification of Jackson, and that his in-court identification came several months after Angela identified Jackson, there is strong evidence that Angela's initial identification of Jackson significantly influenced Kenny's in-court identification and trial testimony. Young children and juveniles are inherently suspect to suggestion and misidentification, especially when the child is encouraged by adults. Indeed, the U.S. Supreme Court has repeatedly commented on the inherently suspect nature of child testimony and identifications. *See Kennedy v. Louisiana*, 128 S.Ct. 2641, 2663 (2008) (noting that child testimony is “subject to fabrication or exaggeration, or both.”); *Maryland v. Craig*, 497 U.S. 836, 868 (1990) (Scalia, J., dissenting); *Arizona v. Youngblood*, 488 U.S. 51, 72 n.8 (1988) (Blackmun, J., dissenting) (“Studies show that children are more likely to make mistaken identifications than are adults, especially when they have been encouraged by adults.”); *Coy v. Iowa*, 487 U.S. 1012, 1020 (1988).

3. Credibility and Believability Were the Critical Issues Before the Jury

66. Credibility and believability were the critical issues before the jury.

a. During closing arguments, the prosecutor acknowledged that the entire case came down to credibility: “[A]ll it comes down to is *credibility*. Whether or not you want to believe

⁸⁷ NT, Trial, at 100-101.

⁸⁸ *See id.*

Ricky Jackson, or whether you want to believe the proof that the State of Tennessee presented to you.”⁸⁹

b. During the post-trial motions hearing, the trial judge acknowledged, like the prosecutor did during closing arguments, that the case came down to credibility: “[I]t really boiled down to a question of fact for the jury as to *whether or not they believed her identification*.”⁹⁰

67. The prosecutor’s and trial judge’s assessment of the critical issue is consistent with the U.S. Supreme Court’s assessment. According to the U.S. Supreme Court, the “*only* duty of a jury in cases in which identification evidence has been admitted will often be to assess the reliability of that evidence.” *Watkins v. Sowders*, 449 U.S. 341, 347 (1981) (emphasis in original); *accord Perry v. New Hampshire*, 132 S.Ct. 716, 723 (2012) (holding that “state and federal statutes and rules ordinarily govern the admissibility of evidence, and juries are assigned the task of determining the reliability of the evidence presented at trial.”); *Kansas v. Ventris*, 556 U. S. 586, 594, n. (2009) (“Our legal system... is built on the premise that it is the province of the jury to weigh the credibility of competing witnesses.”).

a. At trial, Jackson’s trial attorney tried to diligently to expose, through cross-examination and argument, factors that called into question the reliability of Angela’s and Kenny’s identifications.⁹¹

b. Trial counsel, however, did not have contrary evidence, *see Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 596 (1993) (observing that “vigorous cross-examination, *presentation of contrary evidence*,... are the traditional and appropriate means of attacking shaky but admissible evidence.”) (emphasis added), particularly contrary DNA evidence, to persuade the jury that Angela’s and Kenny’s identifications “should be discounted as unworthy of credit.” *Perry v. New Hampshire*, 132 S.Ct. at 723; *see also Powers v. State*, 343 S.W.3d 36, 45 (Tenn. 2011) (acknowledging that DNA evidence represents “the gold standard of individualization in forensic science.”).

68. Had the jury been informed, however, that DNA testing identified a male DNA profile on the waistband of Angela’s pink underwear, and that Jackson was excluded as a potential contributor of the male DNA profile, these new facts *may have* not only altered the

⁸⁹ NT, Trial, at 206 (emphasis added).

⁹⁰ NT, New Trial Hrg., 9/16/96, at 8 (emphasis added).

⁹¹ *See* NT, Trial, at 96-102, 140-49, 150-51.

jury's reliability assessment with respect to their identifications, but also the jury's credibility assessment regarding Jackson's innocence claim. *See State v. Vasques*, 221 S.W.3d at 521 ("The credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted to the jury as the trier of fact.").

a. For instance, if Jackson was in fact the actual perpetrator who forcibly removed Angela's pink underwear, the jury could have reasonably expected to find Jackson's DNA on the waistband of her underwear. If Jackson did not contribute the male DNA profile on the waistband, however, a properly-instructed jury may (and could easily) have adhered to the following line of reasoning to acquit Jackson:

i. The exculpatory DNA profile came from the assailant because there is no evidence in the record establishing, indicating, or suggesting that any members of the Memphis Police Department or MSCAR touched, handled, or manipulated the waistband of the underwear.

ii. If the DNA profile came from the assailant, and Jackson is excluded as a potential contributor of the DNA profile, Jackson cannot be Angela's assailant.

iii. If Jackson is not the assailant, Angela's and Kenny's identifications must be incorrect.

iv. Based on these findings, a properly-instructed jury could easily and reasonably enter a judgment of acquittal in Jackson's favor believing 100% in his innocence.

b. A properly-instructed jury could also rely on a slightly different line of reasoning to reach a similar conclusion.

i. Angela's and Kenny's identifications have certain reliability issues, *e.g.*, timing of offense, weapons effect, stress effect, the time between the assault and the identification, and the unduly suggestive nature of both identifications. In the absence of exculpatory DNA evidence, however, these issues are inadequate to warrant an acquittal.

ii. In light of the exculpatory DNA evidence, however, the aforementioned reliability concerns obtain new meaning and significance, increasing the jury's belief that Angela's and Kenny's identifications are unreliable, that Jackson's innocence claim is credible, and that there's sufficient and reasonable doubt to acquit Jackson.

iii. Thus, because the State's case rests solely on Angela's and Kenny's identifications, the doubt generated by the exculpatory DNA evidence and problematic

identifications is adequate to warrant a judgment of acquittal, even if the jury is not 100% certain of Jackson's innocence.

iv. In other words, the newly-discovered exculpatory DNA evidence "may have resulted in a different judgment, had it been presented at [Jackson's] trial." Tenn. Code Ann. § 40-26-105(b); *State v. Vasques*, 221 S.W.3d at 527.

4. Jackson Diligently Pursued DNA Testing

69. Jackson diligently pursued post-conviction DNA testing. See *Mixon v. State*, 983 S.W.2d 661, 670 (Tenn. 1999) ("We construe the coram nobis statute of limitations consistent with the longstanding rule that persons seeking relief under the writ must exercise due diligence in presenting the claim.").

70. Jackson contacted the Innocence Project on December 5, 2000, and, after obtaining and reviewing documents and pleadings in his case, the Innocence Project officially accepted his case on December 6, 2007. The Innocence Project has a significant backlog of cases to review so it takes several years before it can determine whether it will officially accept a prisoner's case. The Tennessee Supreme Court recently recognized this reality when determining whether a prisoner diligently sought post-conviction DNA testing under the DNA Analysis Act. See *Powers v. State*, 343 S.W.3d at 59 ("[T]he petitioner is represented by the Innocence Project, an organization which receives over 3,000 applications seeking assistance each year, and 'at any given time' is evaluating between 6,000 and 8,000 potential cases. Based on the number of applications received by the Innocence Project, there may be a substantial delay between a petitioner's request for assistance and a decision by the Innocence Project as to whether the case should be accepted. In light of the demands placed upon the entity representing the petitioner, we find that the petitioner's delay in filing his petition for DNA analysis is justified.").

71. The Innocence Project and Shelby County District Attorney's Office conducted an exhaustive evidence search for Angela's rape kit and pink underwear between January 2008 and July 2010 before the Innocence Project filed Jackson's DNA testing motion in August 2010.⁹²

a. In his DNA motion, Jackson asked to have the rape kit and pink underwear subjected to DNA testing.

b. When he filed his DNA motion, the rape kit and pink underwear had yet to be located.

⁹² Ex. 3.

c. On September 13, 2010, undersigned counsel received an email from Deputy District Attorney John Campbell informing him that the Memphis Police Department had located the pink underwear.

d. The rape kit has never been located and is presumed lost or destroyed.

e. On December 2, 2010, after the State consented to DNA testing, the parties entered a joint *Stipulated Order For DNA testing*.⁹³

f. Pursuant to the *Stipulated Order*, the Shelby County Clerk's Office sent Angela's pink underwear to Cellmark.

g. On August 31, 2011, after performing Y-STR DNA testing, Cellmark reported that it had identified a partial male DNA profile on the waist band of Angela's underwear and that Jackson was EXCLUDED as a donor of the partial male DNA profile.⁹⁴

72. If the Court determines that Jackson did not diligently pursue post-conviction DNA testing, "[w]hen a petitioner seeks a writ of error *coram nobis* based on newly-discovered evidence of actual innocence, due process considerations may require tolling of the statute of limitations." *Workman v. State*, 41 S.W.3d 100, 101 (Tenn. 2001).

73. Because Jackson diligently pursued DNA testing and because the new exculpatory DNA results may have resulted in a different judgment, had they been presented at Jackson's trial, he is entitled to *coram nobis* relief, *i.e.*, the vacatur of his conviction and a new trial.

B. Jackson Is Entitled To Re-Open His Cases Because The New Exculpatory, Non-Match DNA Results Prove By Clear and Convincing Evidence That Jackson Is Actually Innocent

74. Section 40-30-117(a)(2) allows a petitioner to reopen his first post-conviction petition by claiming actual innocence based on new scientific evidence. *See Dellinger v. State*, 279 S.W.3d 282, 291 (Tenn. 2009).

75. The new exculpatory DNA evidence proves by clear and convincing evidence that Jackson is actually innocent of Angela Boyd's December 2, 1995 sexual assault. *See* Tenn. Code Ann. §§ 40-30-117(a)(2)&(4).

76. Jackson is entitled to relief, *i.e.*, a vacatur of his conviction and a declaration of innocence.

⁹³ Ex. 4.

⁹⁴ Ex. 15.

C. Jackson's State and Federal Constitutional Claims

1. In the Absence Of The Exculpatory, Non-Match DNA Results, Jackson Did Not Have A Meaningful Opportunity To Present A Complete Defense. U.S. Const. Amends. VI, XIV

77. The facts pled in all previous paragraphs are incorporated herein as if fully pled.

78. The exculpatory DNA results render Jackson's trial fundamentally unfair under the Sixth and Fourteenth Amendments. In the absence of exculpatory DNA results, Jackson did not have a meaningful opportunity to present a complete defense. *See* U.S. Const. Amends. VI, XIV.

79. Whether "rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006) (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)) (emphasis added). Jackson, consequently, had a constitutional right to present a complete defense against Angela's and Kenneth's identifications.

80. As the U.S. Supreme Court recently acknowledged, "The Constitution... protects a defendant against a conviction based on evidence of questionable reliability, not by prohibiting introduction of the evidence, but by affording the defendant *means to persuade the jury* that the evidence should be discounted as unworthy of credit." *Perry v. New Hampshire*, 132 S.Ct. at 723 (emphasis added). For instance, under the Sixth Amendment, defendants are afforded the right to counsel, *see Gideon v. Wainwright*, 372 U. S. 335, 343-345 (1963), the right to compulsory process, *see Taylor v. Illinois*, 484 U. S. 400, 408-409 (1988), and the right to confront and cross-examine witnesses. *See Bullcoming v. New Mexico*, 131 S.Ct. 2705, 2713-14 (2011); *Delaware v. Fensterer*, 474 U. S. 15, 18-20 (1985). In regards to "shaky" testimony, like eyewitness testimony, the Supreme Court in *Daubert* emphasized that "[v]igorous cross-examination, *presentation of contrary evidence*, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. at 596 (emphasis added); *accord Rock v. Arkansas*, 483 U.S. 44, 61 (1987). "Apart from these guarantees," however, "state and federal statutes and rules ordinarily govern the admissibility of evidence, and *juries are assigned the task of determining the reliability of the evidence presented at trial.*" *Perry v. New Hampshire*, 132 S.Ct. at 723.

81. Jackson exercised all three Sixth Amendment rights at his trial, particularly his rights to counsel and confrontation. Indeed, trial counsel cross-examined Angela and Kenneth in an attempt to expose certain factors that presumably impacted their memory and perception in such a way to prevent from accurately (or reliably) identifying Jackson as their assailant.

82. That Jackson was able to freely exercise his Sixth Amendment rights to counsel and confrontation, however, does not mean he had an opportunity to present a “complete defense” or that his trial was fundamentally fair under the Sixth and Fourteenth Amendments. Rather, the critical issue is whether Jackson had the requisite “contrary evidence,” *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. at 596, and technology to “persuade the jury,” either through argument or cross-examination, that Angela’s and Kenny’s identifications should be “discounted as unworthy of credit.” *Perry v. New Hampshire*, 132 S.Ct. at 723.

83. Jackson did not because he did not have access to the requisite “contrary evidence,” *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. at 596, namely, the exculpatory DNA results from Angela’s pink underwear. The prosecutor, moreover, took advantage of this fact when he emphasized to the jury that Jackson failed to present scientific evidence to prove his innocence or bolster his misidentification claim:

[Ricky Jackson] wants you to think that... it’s a case of mistaken identity... You have not heard... one scintilla of proof that indicates that this is a case of mistaken identity. You’ve seen two people who have absolutely, positively identified this man as being a rapist and as being a robber. You have not heard anything that would suggest that they were mistaken... .

Ricky Jackson wants you to go back and guess him not guilty. Go back and speculate, well yeah, maybe they could be mistaken. He doesn’t have to prove anything. But, when he raised that issue, by God he has to support it. If he raised an issue that this is mistaken identity... it is incumbent upon him to provide you with something to believe that. He’s had an opportunity to do it. He didn’t do it, because he can’t do it.

..

You have heard nothing to indicate that they were wrong. You’ve heard nothing to indicate there was bias before them testifying to what they did. You heard nothing to indicate that their testimony has been impeached.⁹⁵

84. Had Jackson had access to this contrary evidence (and technology), trial counsel’s confrontation and cross-examination of Angela and Kenny, as well as her closing arguments to

⁹⁵ *Id.* at 217, 230.

the jury, would have most certainly persuaded the jury to discount their identifications as untrustworthy, which in turn would have resulted in Jackson's acquittal. Thus, had Jackson had access to this contrary evidence and technology, there is a reasonable probability of a different outcome. In other words, in the absence of this contrary evidence, Jackson's conviction is worthy of no confidence because the new DNA results put the State's case in an entirely different light.

85. Jackson's case, in many ways, is analogous to the U.S. Supreme Court's *Brady* cases. In a typical *Brady*-type case, the State withholds (either purposefully or inadvertently) material evidence (either exculpatory or impeachment) that prejudices the defendant in one or several ways rendering his verdict worthy of no confidence. *See Smith v. Cain*, 132 S.Ct. 627 (2012) ("A reasonable probability does not mean that the defendant 'would more likely than not have received a different verdict with the evidence, 'only that the likelihood of a different result is great enough to 'undermine[] confidence in the outcome of the trial.'") (quoting *Kyles v. Whitley*, 514 U. S. 419, 434 (1995)). The primary prejudice in *Brady* cases stem from the defendant's inability to present a "complete" defense. In other words, although the defendant had effective trial counsel who compelled witnesses to testify on his behalf and cross-examined the State's witnesses, in the absence of the undisclosed evidence, the defendant's right to confrontation, cross-examination, and compulsory process were not "complete."

86. A prime example is from the U.S. Supreme Court's most recent *Brady* case in *Smith v. Cain*, 132 S.Ct. 627 (2012). In *Smith*, Louisiana charged Smith with killing five people during an armed robbery. At Smith's trial, a single witness, Larry Boatner, linked Smith to the crime. Boatner testified that "he was socializing at a friend's house when Smith and two other gunmen entered the home, demanded money and drugs, and shortly thereafter began shooting, resulting in the death of five of Boatner's friends." *Id.* at 629. At Smith's trial, Boatner identified Smith as the first gunman to come through the door. He claimed that he had been face to face with Smith during the initial moments of the robbery. No other witnesses and no physical evidence implicated Smith in the crime. *See id.* at 630 ("Boatner's testimony was the *only* evidence linking Smith to the crime.") (emphasis in original).

87. When Smith sought post-conviction relief, he obtained police files that were not disclosed prior to trial, including those of lead investigator John Ronquillo. Ronquillo's notes "contain[ed] statements by Boatner that conflict[ed] with his testimony identifying Smith as a

perpetrator.” *Id.* at 629. The “notes from the night of the murder state[d] that Boatner ‘could not... supply a description of the perpetrators other than [sic] they were black males.’” *Id.* Ronquillo also made a handwritten account of a conversation he had with Boatner five days after the crime, in which Boatner said he “could not ID anyone because [he] couldn’t see faces’ and ‘would not know them if [he] saw them.’” *Id.* And Ronquillo’s typewritten report of that conversation states that Boatner told Ronquillo he “could not identify any of the perpetrators of the murder.” *Id.*

88. Although Smith exercised his Sixth Amendment right to counsel, and his trial counsel confronted and cross-examined Boatner and Detective Ronquillo at trial, the Supreme Court nonetheless vacated his conviction, finding that the undisclosed reports undermined all confidence in Smith’s conviction. *See id.* at 631. The lack of confidence in Smith’s conviction, more importantly, is directly related to Smith’s inability to present a “complete” defense at trial. Indeed, had trial counsel had access to Ronquillo’s reports, his cross-examination of Boatner and Ronquillo would have significantly undermined their credibility and the State’s case, making it reasonably probable the jury would have acquitted Smith had it been privy to the undisclosed “contrary evidence.” *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. at 596. Similarly, the undisclosed reports may have led to additional witnesses that trial counsel could have compelled to testify under the Compulsory Process Clause – that would have undermined the State’s case even more. In other words, having access to the undisclosed, “contrary evidence” would have enabled Smith’s trial counsel to present a “complete” defense as envisioned by the Sixth and Fourteenth Amendments.

89. In the end, the U.S. Supreme Court articulated its rule in *Brady* not to deter prosecutorial misconduct, *cf. Stone v. Powell*, 428 U.S. 465, 484 (1976) (recognizing that the Fourth Amendment’s exclusionary rule is specifically aimed at deterring police misconduct, and not at enhancing the truth-seeking function of the trial),⁹⁶ but to ensure that a miscarriage of justice does not occur. *See United States v. Bagley*, 473 U.S. 667, 675 (1985); *California v. Trombetta*, 467 U.S. 479, 485 (1984). From the Supreme Court’s perspective, the best way to guarantee fair and accurate convictions is to make certain that criminal defendants have a

⁹⁶ The U.S. Supreme Court makes no distinction between bad faith and accidental discovery violations. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963). This reinforces the notion that the principle harm in *Brady* cases is not the malevolent or dishonest attitude of the State or law enforcement, but rather a defendant’s inability to have a meaningful opportunity to present a complete defense.

meaningful opportunity to present a “complete defense” and the only way to present a “complete” defense is to have full disclosure and access to all *material* facts and contrary evidence:

The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. *The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts.* The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts[.]

United States v. Nixon, 418 U.S. 683, 709 (1974) (emphasis added); accord *United States v. Nobles*, 422 U.S. 225, 230 (1975).

90. In Jackson’s case, we have an analogous situation. In *Smith*, the petitioner obtained newly-discovered evidence in post-conviction proceedings that the prosecution withheld prior to trial. Here, Jackson obtained newly-discovered evidence in post-conviction proceedings that was withheld from him, not because of prosecutorial wrongdoing, but because science did not advance quickly enough. The type of DNA testing used to reveal the male DNA profile on the waistband of the underwear, Y-STR testing, was not available at the time of Jackson’s trial and only became generally accepted and routinely used in the scientific community around 2002-2003.

91. Like the undisclosed, “contrary evidence” in *Smith* and other *Brady* cases, the new contrary DNA evidence demonstrates that Jackson did not have a meaningful opportunity to present a “complete defense” and that his conviction is worthy of no confidence because, at this point, it is based on a “partial... presentation of the facts.” *United States v. Nixon*, 418 U.S. at 709, and the new DNA results put the State’s case in an entirely different light.

92. Again, the U.S. Supreme Court’s comment in *Daubert*, that the “appropriate” way to attack “shaky but admissible evidence” is to present “contrary evidence,” 509 U.S. at 596, cannot be overemphasized. Here, the contrary (scientific) evidence needed to present a complete defense was not available until well after Jackson’s conviction. The new contrary (scientific) evidence, however, will finally allow Jackson to present a “complete” defense and meaningfully argue to a jury that Angela’s and Kenny’s identifications are worthy of no credit and that there is sufficient doubt to enter a judgment of acquittal in Jackson’s favor.

93. Likewise, had Jackson’s trial attorney had access to the exculpatory, non-match DNA results prior to trial, she could have moved to exclude Angela’s and Kenny’s identifications at a

pre-trial reliability hearing. Trial counsel could have argued that the exculpatory DNA results demonstrate that their identifications are unreliable and inadmissible under the Due Process Clause. *See Neil v. Biggers*, 409 U.S. 188, 198 (1972) (“It is the likelihood of a misidentification which violates a defendant’s right to due process... .”); *Manson v. Brathwaite*, 432 U.S. 98 (1977); *Simmons v. United States*, 390 U. S. 377 (1968).

94. The State will, for sure, advance various reasons why a reasonable and properly-instructed jury might discount the exculpatory male DNA profile from Angela’s pink underwear (e.g., the male DNA profile represents contamination, etc.). The State’s counter-arguments, though, merely leaves us to speculate as to whether the jury would believe Jackson’s position (i.e., the DNA must have come from the assailant because the assailant forcibly removed her underwear and there is no record evidence demonstrating that anyone from the Memphis Police Department or MSARC touched, handled, or manipulated the underwear prior to, during, or after Jackson’s trial) or the State’s position. In other words, the State’s contamination argument offers *a reason* that the jury *could disbelieve* Jackson’s position, but the Court can have no confidence that a jury would in fact do so for the simple reason that there is no record evidence supporting the State’s contamination argument; it’s pure speculation at this point.

95. Accordingly, Jackson is entitled to a new trial so he may present a “complete” defense and a jury of his peers can accurately assess – in light of the new contrary (scientific) evidence – the credibility and reliability of Angela’s and Kenny’s identifications as well as Jackson’s claim of innocence. *See Kansas v. Ventris*, 556 U. S. 586, 594, n. (2009) (“Our legal system... is built on the premise that it is the province of the jury to weigh the credibility of competing witnesses.”). As the U.S. Supreme Court stated a half-century ago: “The jury’s estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence[.]” *Napue v. Illinois*, 360 U.S. 264, 269 (1959).

96. Jackson is entitled to relief.

2. The New Exculpatory, Non-Match DNA Results Demonstrate that Jackson’s Conviction Is Premised On Unreliable Identification Evidence In Violation of His Due Process Rights. U.S. Const. Amends. VI, XIV

97. The facts pled in all previous paragraphs are incorporated herein as if fully pled.

98. Angela’s February 3, 1996 identification of Jackson was based on suggestive techniques and circumstances. *See supra*, ¶¶ 63 (a thru d)

99. There were also several factors that impacted the reliability of Angela's identification of Jackson. *See supra*, ¶¶ 64 (a thru e)

100. Kenny Boyd's in-court identification of Jackson was based on suggestive techniques and circumstances. *See supra*, ¶¶ 65 (a thru d).

101. There were also several factors that impacted the reliability of Kenneth's identification of Jackson. *See id.*

102. The exculpatory DNA results demonstrate that Angela's and Kenny's identifications are unreliable and inadmissible under the Due Process Clause. *See Neil v. Biggers*, 409 U.S. 188, 198 (1972); *Simmons v. United States*, 390 U. S. 377 (1968).

103. The introduction of their unreliable identifications rendered Jackson's entire trial fundamentally unfair. *See Manson v. Brathwaite*, 432 U.S. 98 (1977); *Dowling v. United States*, 493 U.S. 342, 352 (1990).

104. Jackson is entitled to relief.

3. The New Exculpatory, Non-Match DNA Results Demonstrate That The State of Tennessee Convicted And Innocent Person And His Continued Imprisonment Violates His Due Process and Eighth Amendment Rights. U.S. Const. Amends. VI, VIII, XIV

105. The newly-discovered DNA results establish that Jackson is actually innocent and that his continued confinement violates his due process rights and right to be free of cruel and unusual punishment. *See U.S. Cont. Amends. VI, XIII, XIV; Dellinger v. State*, 279 S.W.3d at 291.

106. Jackson is entitled to relief.

III. Conclusion and Prayer For Relief

107. WHEREFORE, Jackson respectfully requests the Court grant the following forms of relief:

- a. A timely hearing on his instant petition;
- b. An Order compelling the State to produce all documentation regarding the chain-of-custody regarding Angela Boyd's pink underwear. Jackson is not seeking an after-the-fact accounting regarding the underwear's whereabouts for the past sixteen years, but the contemporaneous chain-of-custody reports identifying who collected the underwear from MSARC, how the underwear were preserved, and where the underwear were stored over the last sixteen years;

c. If the State claims that persons (particularly males) other than the assailant touched or handled Angela's pink underwear, an Order compelling the State to not only adequately identify these people, but to also adequately identify the date when these people (or men) allegedly touched or handled the pink underwear and the reason(s) why he or they touched the actual waistband or underwear.

d. Access to the trial exhibits, particularly State's Exhibit #5 – the 6 mug shots that Angela Boyd reviewed on February 3, 1996.

Respectfully submitted this 12th day of March, 2012.

3/9/12 

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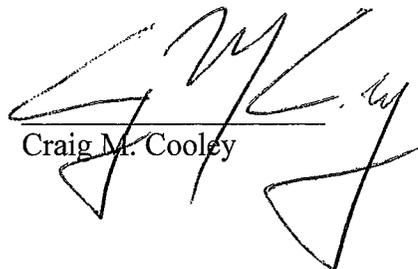
William D. Massey
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3074 East Street
Memphis, Tennessee 38128
Phone: (901) 384-4004

Attorneys for Petitioner

Date: March 12, 2012

Certificate of Service

Undersigned counsel sent a copy of the instant petition, via email and Fed-Ex, to John Campbell of the Shelby County District Attorney's Office on March 12, 2012.


Craig M. Cooley

Date: March 12, 2012

EXHIBIT 1

PLACE: 201 Poplar
DATE: 2-3-96
TIME: 12:10 pm

ADVICE-OF-RIGHTS

YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN BE USED AGAINST YOU IN A COURT OF LAW. YOU HAVE THE RIGHT TO HAVE AN ATTORNEY AND TO TALK TO AN ATTORNEY BEFORE ANY QUESTIONING AND TO HAVE AN ATTORNEY PRESENT DURING ANY QUESTIONING IF YOU WISH. IF YOU WANT AN ATTORNEY BUT CAN NOT AFFORD ONE, AN ATTORNEY WILL BE APPOINTED FOR YOU.

Q. Do you understand each of these rights I've explained to you?

A. yes

Q. Having these rights in mind, do you wish to talk to us now?

A. NO

I have read this statement of my rights, and I understand what my rights are.

Date: 2-3-96

Witness: [Signature]

Witness: [Signature]

Time: 12:10 pm

X [Signature]
(Signature)

I didn't do this crime
I don't know this victim.
I would like to talk to an
Attorney As soon As possible

EXHIBIT 2

University of Tennessee
Cellular and Molecular Forensics Laboratory
858 Madison Avenue
Memphis, Tennessee 38163
901-448-5405

7/5/96

Elizabeth Thomas, MSN
Memphis Sexual Assault Resource Center
1331 Union Avenue, Suite 1150
Memphis Tennessee 38104

Dear Ms. Thomas,

There is insufficient sperm present in the evidence submitted on the victim listed below to continue with any routine or DNA/PCR comparison testing with a suspect.

Victim: Angela Boyd FSL # 5728 MSARC# 95-1103

Should you have questions or comments, do not hesitate to contact me at 901-448-5405.

Thank you.

Sincerely,

Rebecca Joyner
Rebecca Joyner

FILED
FEB 26 1997
Clark of the Courts
Rec'd By _____

Exhibit
#19

to: Prince

7/23/96

CELLULAR AND MOLECULAR

FORENSICS LABORATORY

University of Tennessee
858 Madison Avenue
Memphis, Tennessee 38163
(901) 448-5405

Name: Angela Boyd
FSL: 5728
MSARC: 95-1103
R&I#: 951200337

Date of Accession 12/5/95
Date of Report 7/8/96
D.O.B. 10/19/78
Date of Assault 12/2/95
Date of Exam 12/2/95

* case was reopened on 6/27/96

Investigating Officer
Investigating Agency Memphis Police Department
Agency address Sex Crimes Division
201 Poplar, Room 1123
Memphis, TN

RESULTS: SPERMATOZOA IDENTIFIED

SAMPLE SOURCE	METHOD	RESULTS
vaginal slide	Sperm Search	NEGATIVE
vaginal swab	Acid phosphatase	NEGATIVE
	Sperm Search	NEGATIVE
cotton gauze pad	Acid phosphatase	NEGATIVE
	Sperm Search	NEGATIVE
rectal smear	Sperm Search	IDENTIFIED
rectal swab	Acid phosphatase	NEGATIVE
	Sperm Search	NEGATIVE
oral swab	Acid phosphatase	NEGATIVE
	Sperm Search	NEGATIVE

Kim Prince
Kim Prince
Forensic Technologist
Forensics Laboratory

Reviewed: BS

Date: 7.8.96

DUPLICATE

FILED
FEB 26 1997
Clerk of the Courts
Rec'd By _____

EXHIBIT 3

sperm on the rectal smear slide. Fourth, besides collecting the rape kit specimen, authorities also collected the underwear Boyd wore before and after her sexual assault. Fifth, Jackson's conviction is premised entirely on Boyd's identification of him. Simply put, this is a "classic" single perpetrator stranger rape case where the absence of Jackson's semen and sperm will prove his actual innocence.¹ In other words, if modern DNA tests identify an unknown male DNA profile from the rape kit specimen or Boyd's underwear, which is inconsistent with Jackson's DNA profile, such a result would not only undermine confidence in his conviction, it would conclusively establish his actual innocence. Moreover, it is irrelevant that there was "insufficient sperm present" to conduct DNA testing in 1996 because modern DNA tests require far less biological material to produce valid and interpretable DNA profiles than first and second generation DNA tests.

DNA testing is also warranted because, as mentioned, Jackson's conviction is premised solely on Boyd's identification of Jackson. As the Tennessee Court of Criminal Appeals acknowledged, "eyewitnesses... are often unreliable." *Hines v. State*, No. M2006-02447-CCA-R3-PC, at 4 (slip opinion) (Tenn. Crim. App., June 10, 2008). The DNA exonerations substantiate this claim because misidentifications played a role in nearly eighty-percent of the first 254 DNA exonerations. See www.innocenceproject.org (last visited June 4, 2010); accord *State v. Copeland*, 226 S.W.3d 287, 299 (Tenn. 2007) ("Studies have shown that erroneous identification accounted for as much as eighty-five

¹ E.g., *Commonwealth v. Brooks*, 875 A.2d 1141, 1147 (Pa. Super. 2005) ("This is not a rape-murder case where the absence of the defendant's semen could prove his innocence"); *People v. Travis*, 771 N.E.2d 489, 493 (Ill. App. Ct. 2002). ("Rokita... was the classic sole perpetrator case; if the DNA was not that of the defendant, the defendant did not commit the crime.").

percent of the convictions of those individuals later exonerated by DNA testing.”). Several factors increase the likelihood that Boyd may have misidentified Jackson as her assailant. First, Boyd and the assailant were strangers.² Second, the assailant brandished a weapon during the assault. Third, the sexual assault occurred during the late evening when it was dark. Fourth, Boyd’s identification of Jackson occurred more than sixty-days after her assault. And finally, the Memphis Police Department employed identification procedures which are known to increase the likelihood of a misidentification.

Jackson is not only entitled to DNA testing pursuant to Tenn. Code Ann. § 40-30-301 et. seq., he is also entitled to DNA testing pursuant to the National Institute of Justice’s (NIJ) post-conviction DNA testing guidelines. *See* NAT’L INST. JUST., U.S. DEP’T. OF JUST., POSTCONVICTION DNA TESTING: RECOMMENDATIONS FOR HANDLING REQUESTS (Sept.1999) (hereinafter *1999 NIJ Report*). As part of the report, the NIJ and Department of Justice identified five categories of cases where post-conviction DNA testing may be pursued. Category One cases are those cases most deserving of post-conviction DNA testing. In other words, Category One cases are “cases in which biological evidence was collected and still exists. If the evidence is subjected to DNA testing or retesting, exclusionary results will exonerate the petitioner.” *Id.* at 4. Because DNA testing in Category One cases can lead to findings of actual innocence, the report

² The “primary concern expressed in cases discussing the problems with eyewitness identification relates to a witness observing and subsequently identifying a stranger... The accuracy of identification testimony is nevertheless much higher when matching a visual observation of a suspect to an already existing memory, as opposed to the identification of a stranger, where all relevant features must be mentally recorded from scratch.” *Moss v. Hofbauer*, 286 F.3d 851, 862 (6th Cir. 2002); accord *United States v. Wade*, 388 U.S. 218, 228 (1967) (“The identification of strangers is proverbially untrustworthy.”).

emphasizes that “[t]hese are cases in which the prosecution should be willing to stipulate to the testing.” *Id.* at 35.

II. STATEMENT OF FACTS

A. THE OFFENSE

At approximately 10:30 pm, on December 2, 1995, Angela Boyd and her nephew, Kenneth, went to the corner store.³ Outside the store, Angela used a pay phone to call her friend. While talking to her friend, a man approached Boyd, introduced himself as Jimmy, and asked her if she would like to buy a gun from him. Boyd ignored the man, hung up the phone, and started walking home with Kenneth. When the man followed Boyd, she told Kenneth to go home. Once Kenneth left, the man grabbed her and put a gun to her side, and threatened to kill her if she ran or shouted.⁴ The man directed Boyd to walk behind an abandoned house where he stole six rings, a beeper, and \$35.00.⁵

After taking her property, the man took Boyd across the street and raped her behind the S & A Auto Parts store.⁶ The man forced Boyd to give him oral sex before he vaginally and anally penetrated her until he ejaculated.⁷ Before leaving the scene, the man threatened to kill her if she reported the incident. Once the man left, Angela went to her sister’s house and called the police.

³ NT, Trial, at 261-262.

⁴ *Id.* at 303-305.

⁵ *Id.* at 306-307, 309.

⁶ *Id.* at 310, 315.

⁷ *Id.* at 315.

B. SEXUAL ASSAULT EXAMINATION

Elizabeth Thomas of the Memphis Sexual Assault Resource Center examined Boyd and collected her clothing, underwear, and a rape kit, which included pubic hairs, a vaginal swab and slide, an oral swab, and a rectal swab and slide.⁸ During the examination, Boyd informed Thomas that she had not had intercourse in the last four days.⁹

C. JACKSON'S ARREST

Boyd told police she recognized her assailant as someone she may have seen at the Cedar Court Apartments. She said she would be able to identify him if his picture was "in the mug books."¹⁰ Boyd scheduled an appointment with detectives to view the mug books on December 5, 1995. Boyd missed the December 5, 1995 appointment and instead viewed the mug books on December 12, 1995. She did not recognize any of the men in the mug books as her assailant.¹¹

Nearly two months later, on February 1, 1995, Boyd was visiting a friend's apartment when she met Jackson. Jackson approached her and asked her a question.¹² Boyd claimed that when she turned around to answer Jackson's question, Jackson fled when he saw her face.¹³ When Jackson fled, Boyd ran to her friend's house and told her

⁸ Ex. 4.

⁹ Ex. 4.

¹⁰ Ex. 7.

¹¹ Ex. 7.

¹² Ex. 7.

¹³ Ex. 7.

that she'd just seen the man who assaulted her. Her friend recognized the man as Ricky Jackson. Boyd called the police and gave them Jackson's name and address.¹⁴

The next day, February 3, 1995, Sgt. Charles Freeman went to Boyd's house and showed her a six-person photo array. Jackson's photograph was incorporated into the array.¹⁵ Boyd identified Jackson's picture and said he was the man who assaulted her on December 2, 1995.¹⁶

Later that day, the police arrested Jackson and charged him with aggravated rape and aggravated robbery. Jackson proclaimed his innocence and requested an attorney.¹⁷ Moreover, the police did not recover Boyd's stolen jewelry and the firearm used during the assault on Jackson or at his mother's residence.

E. Forensic Testing

The Memphis police sent Boyd's rape kit to the University of Tennessee's Cellular and Molecular Forensics Laboratory. Kim Prince, a Forensic Technologist, examined the rape kit specimen for sperm. She identified sperm on the rectal smear slide, but the vaginal and oral swabs and slides tested negative for semen and sperm. On July 8, 1996, Prince issued a report detailing her findings.¹⁸

Prince sent the rape kit specimen, including the sperm stained rectal smear, to Rebecca Joyner, a DNA Analyst with the University of Tennessee's Cellular and

¹⁴ Ex. 7.

¹⁵ Ex. 3.

¹⁶ Ex. 7.

¹⁷ *Id.* at 441; Ex. 7.

¹⁸ Ex. 1.

Molecular Forensics Laboratory. Joyner examined the specimen, including the rectal smear, and concluded that there was “insufficient sperm present... to continue with any routine or DNA/PCR comparison testing with suspect.”¹⁹ Thus, no pre-trial DNA testing was ever performed.

There is no indication in the record of whether Prince or Joyner examined Boyd’s underwear for sperm or male DNA.

D. THE TRIAL

The State premised its entire case on Boyd’s and Kenneth’s identification of Jackson. While Kenneth conceded that he did not witness the assault, he said he saw the man approach Boyd as she was talking on the phone and that the man had the same gold teeth as Jackson.

Jackson’s trial counsel requested a continuance so he could have an independent forensic expert examine Boyd’s rape kit specimen and determine whether additional forensic tests or DNA tests could be performed. The trial judge denied the continuance.²⁰ In denying the continuance, the trial judge said: “It appears that without [the DNA testing]... the proof in the case is going to be identification by the alleged victim in the case.”²¹

Jackson testified that he was innocent and the victim of mistaken identity.²² He did not offer an alibi because he could not remember where he was during the early

¹⁹ Ex. 2.

²⁰ NT, Trial, at 11, 15.

²¹ *Id.* at 15.

²² *Id.* at 437.

morning hours of December 2, 1995.²³ Jackson also said that several men in the neighborhood had gold teeth like his.²⁴

The jury ultimately convicted Jackson of aggravated rape and aggravated robbery and the trial judge sentenced him to twenty-two years in prison.²⁵

III. ARGUMENTS

Jackson's DNA testing request must be evaluated under the Post-Conviction DNA Analysis Act of 2001 (Act). *See* Tenn. Code Ann. § 40-30-301 *et seq.*

The Act's purpose "is to correct a past mistake, which may have occurred based on mistaken identity or other error." *Haddox v. State*, No. M2003-00514-CCA-R3-PC, 2004 Tenn. Crim. App. LEXIS 991, at *15-16 (Nov. 10, 2004); *see also Brown v. State*, No. M2002-02427-CCA-R3-PC, 2003 Tenn. Crim. App. LEXIS 528, at *6 (June 13, 2003) (Tipton, J., concurring) (noting that the Tennessee legislature enacted the Act "because of the possibility that a person [may have] been wrongfully convicted or sentenced.").

Pursuant to the Act, a person convicted of certain enumerated crimes, *including aggravated rape*, may file a petition requesting DNA testing on any evidence in the possession or control of the prosecution, law enforcement, laboratory, or court that is related to the investigation or prosecution that resulted in the judgment of conviction and that may contain biological evidence. *See* Tenn. Code Ann. § 40-30-303. The Act also provides that petitioners may seek DNA testing at "any time." Tenn. Code Ann. § 40-30-

²³ *Id.* at 435 - 436.

²⁴ *Id.* at 437.

²⁵ *Id.* at 460 - 61.

303 (“[A] person convicted of and sentenced for... aggravated rape... may at any time, file a petition requesting the forensic DNA analysis... .”); accord *Griffin v. State*, 182 S.W.3d 795, 798 (Tenn. 2006).

Pursuant to Tenn. Code Ann. § 40-30-304, the trial judge *shall* order DNA testing if it finds that:

(1) A reasonable probability exists that the petitioner *would not have been prosecuted or convicted* if exculpatory results had been obtained through DNA analysis;

(2) The evidence is still in existence and in such a condition that DNA analysis may be conducted;

(3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis; and

(4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

If “the contents of a petition establish a prima facie case and, after any response by the state, the trial court determines all statutory prerequisites are present, a petitioner convicted of one of the statutorily enumerated crimes is entitled to DNA analysis.” *Buford v. State*, No. M2002-02180-CCA-R3-PC, 2003 Tenn. Crim. App. LEXIS 370, at *6 (April 24, 2003).

Jackson satisfies these requirements and is entitled to DNA testing.

A. THE EVIDENCE EXISTS AND IS IN SUCH CONDITION FOR DNA TESTING

Jackson seeks testing on the following items of evidence:

- Angela Boyd’s rape kit specimen, including the pubic hairs and vaginal, anal, and oral swabs, slides, and smears

- Angela Boyd's underwear collected by the Memphis Sexual Assault Resource Center on December 2, 1995.

According to the record and police reports, there is no indication that the evidence has been destroyed, lost, contaminated, or mishandled. Consequently, unless the State provides evidence indicating otherwise, it must be presumed that all of the evidence still exists, that it is in the State's custody, and that it is in a condition to be subjected to DNA testing.

To confirm (or invalidate) this presumption, Jackson requests that Court issue an order compelling the State to conduct a comprehensive and reasonable search for the aforementioned evidence. *See* Tenn. Code Ann. § 40-30-311, ("The court may, in its discretion, make such other orders as may be appropriate."). Jackson's evidence search request is also supported by Tenn. Code Ann. § 40-30-304(2), which requires the Court to determine whether the evidence still exists. *Id.* ("After notice to the prosecution and an opportunity to respond, the court shall order DNA analysis *if it finds. . .*") (emphasis added). In particular, the "task of the court reviewing a request for DNA analysis is to (1) examine the contents of the petition, (2) determine if the petition alleges a prima facie case for relief, (3) consider any response that the State may offer, and (4) determine if the statutory criteria are present." *Griffin v. State*, 2004 Tenn. Crim. App. LEXIS 624, at *9-10 (July 13, 2004); *accord Buford v. State*, 2003 Tenn. Crim. App. LEXIS 370, at *17 (Apr. 24, 2003). In determining whether the "statutory criteria are present," the Court is given "considerable latitude... in gathering the necessary information" to make this determination. *Buford v. State*, 2003 Tenn. Crim. App. LEXIS 370, at *17. More importantly, the Court must conscientiously exercise this "latitude" in order to develop

“substantial facts upon which to determine” whether a statutory criteria is satisfied or not. *Id.* Thus, the Court cannot summarily deny a petitioner’s DNA testing request by simply relying on the State’s blanket and unsworn assertions that the evidence do not exist.

In *Griffin v. State, supra*, the petitioner sought DNA testing pursuant to Tenn. Code Ann. § 40-30-301. In its response, the State moved to dismiss the request in part because it said the evidence no longer existed. Notably, the only evidence introduced by the State to support its claim was a “blanket, unsworn assertion” that the evidence did not exist. *See* 2004 Tenn. Crim. App. LEXIS 624, at *12. The trial judge summarily denied petitioner’s DNA testing request. On appeal, the Tennessee Court of Criminal Appeals (CCA) noted that the trial judge “had no facts, substantial or otherwise, upon which a determination could rest that biological specimen were no longer available.” *Id.* Instead, all the trial judge “had before it was a conflict in the pleadings about the existence of DNA evidence.” *Id.* More importantly, the CCA held that the State’s bare assertion was inadequate to premise a summary dismissal: “Because the state was seeking a summary dismissal of the petition, we regard the state’s obligation in responding to the petition *as requiring more than a blanket, unsworn assertion that no such evidence exists.*” *Id.* (emphasis added).²⁶ Similarly, the CCA held that if the State fails to provide a “sufficiently detailed” explanation as to how it concluded that the evidence did not exist, it is the trial judge’s “*obligation to make reasonable factual inquires before dismissing the petition.*” *Id.* (emphasis added). The CCA added:

We do not suggest that trial courts must or should conduct lengthy or protracted evidentiary hearings on the matter; we anticipate that trial

²⁶ Simply put, “the state’s general, unsworn assertion that no testable evidence exists is inadequate to sustain a summary dismissal of [a] petition for DNA analysis.” *Id.*

courts will exercise sound discretion to streamline the inquiry, for instance, *by placing the onus on the state to supply sufficient, reliable information.*

Id. (emphasis added).²⁷

B. THE EVIDENCE WAS NEVER PREVIOUSLY SUBJECTED TO DNA ANALYSIS

Boyd's rape kit specimen and her underwear have never been subjected to DNA testing.

While Rebecca Joyner of the University of Tennessee's Cellular and Molecular Forensics Laboratory examined the rape kit specimen, including the sperm-stained rectal smear, she ultimately decided not to subject the specimen to DNA testing because there was "insufficient sperm present... to continue with any routine or DNA/PCR comparison testing with suspect."²⁸

²⁷ The logic of the CCA's holding is best illustrated with an analogy regarding a supposedly mentally retarded capital defendant. If a capital defendant sought relief from execution by claiming he was mentally retarded, he or she could only succeed on their mental retardation claim if they presented sworn affidavits or testimony from mental health experts who, after examining the defendant, concluded that he or she is in fact mentally retarded. In short, a capital defendant cannot walk off of death row by simply making unsworn and unproven assertions about his alleged retardation. The same principle holds true for the State; it cannot prove evidence no longer exists simply by asserting: "The evidence no longer exists." As the CCA noted, the "onus" is on the State "to supply sufficient, reliable information" regarding the sought after evidence's alleged non-existence or destruction.

²⁸ Ex. 2. The rape kit specimen should be re-examined for semen and sperm, in the event that Prince and Joyner mistakenly overlooked any semen or sperm in their initial examinations. Indeed, one of the Innocence Project's recent exonerations – involving Ronald Taylor – proves this very point. At his 1994 rape trial, the State's serologist testified that she examined the bed sheet where the rape occurred and found no signs of semen. The alleged lack of semen prevented the Houston Crime Laboratory from pursuing DNA tests that would have exonerated Taylor prior to trial. However, when the Innocence Project accepted his case, and had the bed sheet re-examined by a private DNA laboratory, the laboratory identified a semen stain and developed a DNA profile that ultimately exonerated Taylor and identified Roosevelt Carroll – a twice convicted sex offender – as the actual assailant. *See Mike Tolson & Roma Khanna, Mix-up on DNA Deals HPD Lab Another Blow*, Hous. Chron., Oct. 4, 2007, at A1; Roma Khanna, *DNA Tests Point to a Sex Offender as Actual 1993 Rapist: Convicted in 2 Earlier Attacks, He Lived Just Blocks from the Man Who Paid for the Crime*, Hous. Chron., Oct. 5, 2007.

Joyner's 1997 conclusion, that there was insufficient biological material present to perform DNA testing, is irrelevant at this point because modern DNA tests are far more sensitive (i.e., the tests require a minuscule amount of biological material in order to produce a valid and interpretable DNA profile) than the DNA tests used during the mid to late 1990s. The three different types of modern DNA tests that Jackson can utilize to test Boyd's rape kit specimen and underwear are briefly discussed below.

1. SHORT TANDEM REPEAT (STR) TESTING

STR DNA testing offers several advantages not witnessed in the first generation of DNA tests, several of which will prove crucial in Jackson's case. First, it requires a minuscule amount of biological evidence. Second, it can be used on degraded samples. Third, it can be used to detect and decipher mixtures. Fourth, it can be used to detect masking so different profiles can be accurately revealed. And fifth, it is highly discriminatory.

Unlike first generation tandem repeat DNA tests, STRs are comprised of much smaller repeat units, from 2 to 7 bases (as compared to 8 to 80 in first generation

Similarly, in 1992, a Manhattan jury convicted Michael Mercer of a Harlem rooftop rape. Prior to trial, the State's serologist reported that the vaginal swabs tested negative for seminal fluid. When Mercer moved for DNA testing during the late 1990s, the post-conviction court denied his request due to the serologist's initial negative results. However, when a private DNA laboratory re-examined the swabs in 2003, using conventional serology techniques, it identified seminal material, which it subjected to STR testing. The DNA tests produced a full profile that exonerated Mercer and identified a convicted serial rapist as the true perpetrator. *See* Robert D. McFadden, *DNA Clears Rape Convict After 12 Years*, N.Y. TIMES, May 20, 2003.

Likewise, a New Jersey court vacated Larry Peterson's 1989 rape-murder conviction after DNA testing excluded him as a potential contributor of semen identified on the vaginal and oral swabs. Importantly, when the State's serologist examined the swabs in 1989, she did not detect semen. However, when the Innocence Project accepted Peterson's case and sent his evidence to a private DNA laboratory, the laboratory identified semen using conventional serology techniques. *See* Laura Mansnerus, *Citing DNA, Court Annuls Murder Conviction from 1989*, N.Y. Times, July 30, 2005.

technology), and the total size of an STR is smaller, usually less than 500 bases (as compared to a thousand or several thousand base pairs in first generation technology). See NAT'L INST. OF JUST., DEPT. OF JUST., FUTURE OF FORENSIC DNA TESTING: PREDICTIONS OF THE RESEARCH AND DEVELOPMENT WORKING GROUP 39-40 (2000) (hereinafter NIJ 2000 Report). The smaller number of base pairs means very small amounts of biological material, less than 1 nanogram (1 billionth of a gram), can be easily amplified (using polymerase chain reaction [PCR]) and accurately profiled. As one prominent DNA textbook explained:

Modern-day PCR methods, such as multiplex STR typing, are powerful because minuscule amounts of DNA can be measured by amplifying them to a level where they may be detected. Less than 1 ng of DNA can now be analyzed with multiplex PCR amplification of STR alleles compared to 100 ng or more that might have been required with RFLP only a few years ago.

JOHN M. BUTLER, FORENSIC DNA TYPING: BIOLOGY, TECHNOLOGY, AND GENETICS OF STR MARKERS 146 (2d 2005). Thus, the ability to utilize PCR is critical because "it permits a very tiny amount of DNA, such as would be found on a postage stamp, cigarette butt, or coffee cup, to be amplified to produce an amount large enough to be analyzed." *Id.* at 39 (emphasis added).

The shorter base pairs also make STR testing highly effective on degraded samples:

Fortunately, because STR loci can be amplified with fairly small product sizes, there is a greater chance for the STR primers to find some intact DNA strands for amplification. In addition, the narrow size range of STR alleles benefits analysis of degraded DNA samples because allele dropout via preferential amplification of the smaller allele is likely to occur since both alleles in a heterozygous individual are similar in size.

...

The potential for analysis of degraded DNA samples is an area where multiplex STR systems really shine over previously used DNA markers.

Butler, *supra*, at 146, 147. Because Jackson's case is fifteen-years old, STR testing will prove invaluable if any of the biological evidence is degraded.

STR testing can detect and decipher mixtures. Mixtures "arise when two or more individuals contribute to the sample being tested." Butler, *supra*, at 154. Prior to STR and PCR testing, detecting mixtures was "challenging." *Id.* However, as "detection technologies have become more sensitive with PCR sensitivity... the ability to see minor components in the DNA profile of mixed samples has improved dramatically over what was available with RFLP methods only a few years ago." *Id.* In particular, using "highly polymorphic STR markers with more possible alleles translates to a greater chance of seeing differences between the two components of a mixture." *Id.* at 155.

In all likelihood, the biological material on the rape kit specimen and Boyd's underwear represent a mixture of Boyd's DNA and the assailant's DNA. Consequently, STR testing will prove critical for Jackson's case.

STR testing can detect masking in a mixed stain. When two contributors to a mixed stain share one or more alleles, the alleles are "masked" and the contributing genotypes may not be easily decipherable. However, "by examining the STR profiles at other loci that have unshared alleles" a mixed sample "may be able to be dissected properly into its components." Butler, *supra*, at 157.

Mixtures and masking may be present in the vaginal swabs and the floorboard cuttings. As mentioned, initial serology tests identified sperm and semen on these items, but subsequent DQ-Alpha testing only identified Lofton's DNA profile. Consequently,

Lofton's vaginal secretions were not only mixed in with the semen and sperm, her secretions presumably masked (or overwhelmed) the assailant's male DNA.

Finally, STR testing is the most discriminatory DNA test. The statistical probability of an STR match between two unrelated persons in the Caucasian American population has been conservatively estimated at 1 in 575 trillion. *See* NIJ 2000 Report, *supra*, at 19. Thus, given the United States' population, an STR profile is "effectively unique." *Id.* at 25. As one federal appellate court recently commented:

As far as scientists have determined, DNA is the most reliable means of identifying individuals. There is an infinitesimal chance that any two individuals will share the same DNA profile unless they are identical twins. Thus, a DNA match between two samples excludes the rest of the population from suspicion to a near 100% certainty.

Banks v. United States, 490 F.3d 1178, 1188 (10th Cir. 2007).²⁹

2. Y-STR TESTING

Y-chromosome testing is valuable in forensic settings because it is found only in males. Males and females possess two sex chromosomes: males possess an X chromosome and a Y chromosome (X, Y), whereas females possess two X chromosomes (X, X). Because the vast majority of crimes where DNA evidence is usually abundant and probative (i.e., rapes) involve male perpetrators, Y-STR tests can prove invaluable and more beneficial than standard STR testing in certain situations.³⁰

²⁹ *Accord United States v. Boose*, 498 F.Supp.2d 887, 890-91 (N.D. Miss. 2007) (STR testing is "the most widely used by DNA labs... because it is capable of a high degree of accuracy, showing an overwhelmingly large probability that a suspect's DNA matches an evidence sample."); *United States v. Sczubelek*, 402 F.3d 175 (3rd Cir. 2005) (commenting that modern-day DNA technology has "greater precision" compared to the "traditional methods of identification").

³⁰ *See* Sudhir K. Sinha, Bruce Budowle, Ranajit Chakrabort, et al., *Utility of the Y-STR Typing Systems Y-Plex 6 and Y-Plex 5 in Forensic Casework and 11 Y-STR Haplotype Database for the Three Major Population Groups in the United States*, 49 J. FORENSIC SCI. 691 (2004);

For instance, Y-STR tests can produce interpretable results where standard STR testing is limited by the evidence, such as in mixture samples where high levels of female DNA may overwhelm or “mask” the minor amounts of male DNA. However, using Y-STR testing “can improve the chances of detecting low levels of the perpetrator’s DNA in a high background of the female victim’s DNA.” Butler, *supra*, at 203.³¹

In Jackson’s case, Y-STR testing will prove fruitful on the rape kit specimen and Boyd’s underwear, as Boyd’s DNA may have overwhelmed or masked the assailant’s DNA.

3. MINI-STR TESTING

The newest form of STR testing is mini-STR testing, which is premised on the same principles as STR and Y-STR (i.e., DNA tests which look for short tandem repeats). Mini-STR testing, however, works exceptionally well with “highly degraded DNA as well as very low amounts of DNA,” Butler, *supra*, at 148, because the PCR primers anneal closer to the repeat region than conventional STR kit primers. *See id.* At 150 (“[I]t is likely that miniSTRs will play a role in the future of degraded DNA analysis probably to help recover information that has been lost with larger loci from conventional [STR

Cassie Johnson, *Validation and Uses of a Y-Chromosome STR 10-Plex for Forensic and Paternity Laboratories*, 48 J. FORENSIC SCI. 6 (2003).

³¹ See also *Profile: Killer Instinct; Melinda Elkins works seven year to prove her husband’s innocence in murder of Judy Johnson and rape of Brooke Sutton*, Dateline NBC, Oct. 7, 2007 (discussing how Y-STR played a critical role Clarence Elkins’s exoneration); Chief Justice Thomas J. Moyer & Stephen P. Anway, *Biotechnology and the Bar: A Response to the Growing Divide Between Science and the Legal Environment*, 22 BERKELEY TECH. L.J. 671, 688 n.91 (2007) (discussing Clarence Elkins’s case and the importance of Y-STR testing).

testing].”³² Mini-STR testing also works well with items that may possess minute amounts of DNA.³³

C. JACKSON REQUESTS DNA TESTING TO PROVE HIS INNOCENCE, NOT TO UNREASONABLY DELAY THE ADMINISTRATION OF JUSTICE

Jackson seeks DNA testing for the sole purpose of proving his innocence. Moreover, because he is currently serving a twenty year prison sentence, Jackson’s instant request for DNA testing cannot, in any way, shape, or form, unreasonably delay the execution of his sentence or the administration of justice. *See Griffin v. State*, 182 S.W.3d 795, 800 (Tenn. 2006) (“[T]he Court of Criminal Appeals concluded that Griffin failed to demonstrate that his petition would ‘not unreasonably delay the execution of sentence or administration of justice.’ We are puzzled by this conclusion, especially in light of the fact that when Griffin filed the petition he had been serving his sentence and continues to do so.”).

D. THERE IS A REASONABLE PROBABILITY THAT JACKSON WOULD NOT HAVE BEEN PROSECUTED OR CONVICTED HAD PRE-TRIAL DNA TESTING PRODUCED EXCULPATORY RESULTS

Pursuant to § 40-30-304(1), Jackson must demonstrate that a “reasonable probability exists that the petitioner would not have been prosecuted *or* convicted if

³² *See also* Pablo Martin, Oscar Garcia, Cristina Albarran et al., *Application of Mini-STR Loci to Severely Degraded Casework Samples*, 1288 FORENSIC SCI. INT’L 522, 524 (2006) (“our data indicate that the mini-STR [tests] offer an effective tool for recovering information in degraded forensic samples that generated negative results or partial profiles with commercial STR kits.”); C. Romano, E. Di Luise, D. Di Martino et al., *A Novel Approach for Genotyping of LCN-DNA recovered from highly degraded samples*, 1288 FORENSIC SCI. INT’L 577 (2006).

³³ Rickey Johnson’s recent DNA exoneration involved mini-STR testing. Johnson spent 25 years in a Louisiana prison for a rape he did not commit. The mini-STR testing produced a DNA profile that Louisiana officials ultimately linked to John McNeal, who is serving life in prison for a rape committed in 1983 in the same apartment complex as the crime for which Johnson was convicted. *See* www.innocenceproject.org/Content/1120.php (last visited May 30, 2008).

exculpatory results had been obtained through DNA analysis.” Jackson satisfies this standard and is entitled to DNA testing.

Before the Court can resolve this issue, however, it must assume exculpatory results. *See Brown v. State*, No. M2002-02427-CCA-R3-PC, 2003 Tenn. Crim. App. LEXIS 528, at *6-7 (June 13, 2003) (Tipton, J., concurring); *accord Shuttle v. State*, No. E2003-00131-CCA-R3-PC, 2004 Tenn. Crim. App. LEXIS 80, *14 (Feb. 3, 2004) (“we must assume that DNA testing will reveal exculpatory evidence”). The “term ‘exculpatory results’ does not imply that the results of the contemplated DNA analysis must indicate with certainty that the petitioner is innocent of the crime in question.” *Haddox v. State*, No. M2003-00514-CCA-R3-PC, 2004 Tenn. Crim. App. LEXIS 991, at *16. Instead, as explained more thoroughly *infra*, exculpatory results simply mean results that undermine confidence in Jackson’s prosecution or conviction – i.e., results that put the case in such a whole new light that it is reasonably probable the State would not have prosecuted Jackson and that a jury would not have convicted him.

Section 40-30-304(4)’s “reasonable probability” standard is premised on the U.S. Supreme Court’s *Brady v. Maryland* and *Strickland v. Washington* line of cases dealing with discovery violations and ineffective assistance of counsel. *See State v. Workman*, 111 S.W.3d 10, 18 (Tenn. Crim. App.2002) (citing *United States v. Bagley*, 473 U.S. 667, 682 (1985) and *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). The “reasonable probability” standard has two unique features that are relevant to the present issue.

First, a petitioner is not required to demonstrate, by a preponderance of the evidence, that the exculpatory DNA results would have ultimately resulted in his acquittal. *See Kyles v. Whitley*, 514 U.S. 419, 434 (1995); *Nix v. Whiteside*, 475 U.S. 157,

175 (1986); *United States v. Bagley*, 473 U.S. 667, 685 (1985) (White, J., concurring in part and concurring in judgment). The critical question, therefore, “is *not* whether the defendant would more likely than not have received a different verdict with the [DNA] evidence, *but whether in its absence he received a fair trial*, understood as a trial resulting in a verdict worthy of confidence.” *Kyles v. Whitley*, 514 U.S. at 434 (emphasis added). Consequently, this showing is satisfied when exculpatory DNA results “undermine[] confidence in the outcome of the trial.” *Id.* (quoting *United States v. Bagley*, 473 U.S. at 678); accord *Alley v. State*, No. W2004-01179-CCA-R3-PD, 2004 Tenn. Crim. App. LEXIS 471, at *25-26 (Tenn. Crim. App., May 26, 2004) (a “‘reasonable probability’ of a different result exists when the evidence at issue... undermines confidence in the outcome of the prosecution.””).

Second, the “reasonable probability” standard “is not a sufficiency of evidence test.” *Kyles v. Whitley*, 514 U.S. at 434, 435 n.6 (“This rule is clear, and none of the *Brady* cases has ever suggested that sufficiency of evidence (or insufficiency) is the touchstone.”). Thus, the issue is *not* whether the State still has sufficient evidence to prosecute or convict the petitioner if DNA tests produce exculpatory results. Instead, the issue is whether “the favorable [DNA] evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.” *Id.* at 435.

Accordingly, at this stage of the proceedings, Jackson need not demonstrate that the proposed DNA testing would conclusively establish his actual innocence; instead, he need only identify testing results that would undermine confidence in his prosecution or conviction. Once identified, the Court must assume that one of these exculpatory outcomes will occur. See *Brown v. State*, No. M2002-02427-CCA-R3-PC, 2003 Tenn.

Crim. App. LEXIS 528, at *6-7 (June 13, 2003) (Tipton, J., concurring); *accord Shuttle v. State*, No. E2003-00131-CCA-R3-PC, 2004 Tenn. Crim. App. LEXIS 80, *14 (Feb. 3, 2004) (“we must assume that DNA testing will reveal exculpatory evidence”).

As mentioned, this is a “classic” single perpetrator stranger rape case where the absence of Jackson’s semen and sperm will prove his actual innocence.³⁴ In other words, if modern DNA tests identify an unknown male DNA profile from the rape kit specimen or Boyd’s underwear, which is inconsistent with Jackson’s DNA profile, such a result would not only undermine confidence in his conviction, it would conclusively establish his actual innocence.

Similarly, if DNA tests identify a foreign male DNA profile, which is inconsistent with Jackson’s DNA profile, and the unknown male DNA profile hits to a known or unknown offender once run through Tennessee’s DNA database, *see* Tenn. Code Ann. § 38-6-113, or the FBI’s DNA database (CODIS), such results would also undermine confidence in Jackson’s prosecution and conviction. Jackson’s DNA database argument is not speculative or aimed at identifying a “phantom defendant.” *Alley v. State*, 2004 Tenn. Crim. App. LEXIS 471, at *25-26. To the contrary, there have been countless DNA exonerations resulting from DNA database hits. Indeed, of the 254 DNA exonerations to date, the DNA evidence that exonerated the innocent prisoner also

³⁴ *E.g., Commonwealth v. Brooks*, 875 A.2d 1141, 1147 (Pa. Super. 2005) (“This is not a rape-murder case where the absence of the defendant’s semen could prove his innocence”); *People v. Travis*, 771 N.E.2d 489, 493 (Ill. App. Ct. 2002). (“*Rokita*... was the classic sole perpetrator case; if the DNA was not that of the defendant, the defendant did not commit the crime.”).

identified the true perpetrator in 108 cases once uploaded into a state or federal DNA database. See www.innocenceproject.org (last visited June 15, 2010).³⁵

Simply put, no reasonable and properly instructed juror would have convicted Jackson had they known that the male DNA identified on Boyd's rape kit specimen or underwear came from someone other than Jackson.³⁶ Moreover, no ethical prosecutor would prosecute an individual for a sexual offense when DNA tests on the semen and sperm recovered from the victim or the scene does not match the individual. In fact, there have been numerous cases recently where prosecutors dropped rape or rape-murder charges against a defendant after DNA tests on biological evidence collected from the

³⁵ Jackson is aware that, as currently interpreted by the Tennessee Court of Criminal Appeals (CCA), he may not rely on a DNA databank argument in order to obtain DNA testing under Tennessee's DNA Analysis Act (Act). See, e.g., *Alley v. State*, No. W2006-01179-CCA-R3-PD, 2006 WL 1703820, at *9 (Tenn. Crim. App., June 22, 2006) (*Alley II*); accord *Alley v. State*, No. W2004-01204-CCA-R3-PD, 2004 WL 1196095 (Tenn. Crim. App., at Jackson, May 26, 2004) (*Alley I*). Jackson believes, however, that the CCA's interpretation violates the fundamental principles of statutory construction and Jackson's federal constitutional rights. Indeed, pursuant to *District Attorney's Office v. Osborne*, 129 S.Ct. 2308 (2009), Jackson has a state-created liberty interest in developing scientific evidence of his actual innocence. His limited state-created liberty interest is afforded due process protection under the United States and Tennessee Constitutions, see U.S. CONST. AMEND. XIV, § 1; TENN. CONST., ART. 1, § 8, and cannot be arbitrarily abrogated. Moreover, when a state-created liberty interest is afforded to a prisoner, the State may, in certain circumstances, be required to provide subsidiary procedural rights that are essential to adequately vindicate the parent right. See *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458 (1981).

The CCA, Jackson believes, arbitrarily abrogated his state-created liberty interest of developing scientific evidence of his actual innocence when it interpreted the DNA Analysis Act to prevent him from accessing what may be, depending on the State's arguments and the Court's findings, the only DNA technology that can conclusively establish his actual innocence – i.e., a DNA databank. In other words, if the State argues that the unknown male DNA profile came from an unknown consensual sex partner (rather than the assailant), the true exculpatory nature of the unknown male DNA profile can be easily identified if it is run through or uploaded to a DNA databank, and the unknown male DNA profile hits to a known or unknown offender. Currently, however, this is not a viable option for Tennessee prisoners. Under this fact pattern, therefore, Tennessee prisoners cannot adequately vindicate their state-created liberty interest of developing evidence of their actual innocence unless they are provided a subsidiary procedural right, that being the right to have any unknown male DNA profiles uploaded into or run through a DNA databank.

³⁶ Importantly, the State cannot legitimately argue – with a straight face – that the unknown male DNA profile came from an unknown consensual sex partner because there is absolutely no evidence in the record to support this claim. Indeed, according to Boyd's rape examination report, she had not had consensual sex in at least four days prior to her assault. See Ex. 4.

victim or the scene excluded the defendant – even if the victim(s) identified the defendant as the assailant or the assailant made incriminating statements or confessed.³⁷

These cases not only demonstrate the significance of non-match DNA results in sexual offenses, they demonstrate the “special role” prosecutors play in the criminal justice system. *Strickler v. Greene*, 527 U.S. 263, 281 (1999); *Banks v. Dretke*, 540 U.S. 668, 696 (2005); *Judge v. State*, 539 S.W.2d 340, 345 (Tenn. Crim. App. 1976) (commenting on “the special regard in which the district attorney is held by the citizenry”).³⁸ The prosecutor’s “duty... [is] to do justice, not merely ‘win’ convictions.” ABA STDS. FOR CRIM. JUST.: PROSECUTION FUNCTION, Std. 3-3.4 (3rd ed. 1993) (commentary).³⁹ Thus, because prosecutors “must exercise sound discretion in the performance of his or her functions,” ABA STDS. FOR CRIM. JUST.: PROSECUTION FUNCTION, Std. 3-1.1(b) (3rd ed. 1993), and “refrain from improper methods calculated to produce a wrongful conviction[,]” *Berger v. United States*, 295 U.S. 78, 88 (1935); *accord State v. Smith*, 2000 Tenn. Crim. App. LEXIS 711, at *8 (Sept. 14, 2000), justice and logic dictate that where DNA results from a sexual offense do not match a suspect’s DNA, the most appropriate and just course of action is to dismiss the charges and free the

³⁷ Ex. 8.

³⁸ MODEL RULES OF PROF’L CONDUCT R. 3.8 cmt. (2004) (characterizing government officers as “minister[s] of justice”). As Tennessee Court of Criminal Appeals explained: The duty of a prosecutor is twofold. In one instance, the prosecutor is the guardian of the state’s interest. At the same time, the prosecutor is the protector of the rights of the accused. *Id.* At all times, the prosecutor’s goal remains, not that he or she shall win a case, but that justice shall be done. *State v. Haymon*, No. 02C01-9811-CC-06354, 1999 Tenn. Crim. App. LEXIS 652, at *9 (July 7, 1999); *accord State v. Spurlock*, 874 S.W.2d 602, 611 (Tenn. Crim. App. 1993).

³⁹ MODEL CODE OF PROF’L RESPONSIBILITY EC 7-13 (2004) (stating that the prosecutor’s “duty is to seek justice”).

suspect. See *United States v. Wade*, 388 U.S. 218, 256 (1967) (White, J., concurring and dissenting in part) (noting that prosecutors “have the obligation to convict the guilty and to make sure they do not convict the innocent.”).⁴⁰

IV. CONCLUSION AND RELIEF

This is a classic, single-perpetrator, stranger rape case where DNA testing can undermine confidence in Jackson’s prosecution and conviction, but also conclusively establish his innocence. Moreover, because Jackson identified several testing scenarios that can undermine confidence in his prosecution and conviction, the Court must assume that one of these exculpatory scenarios will occur, see *Brown v. State*, No. M2002-02427-CCA-R3-PC, 2003 Tenn. Crim. App. LEXIS 528, at *6-7 (June 13, 2003) (Tipton, J., concurring), and grant his request for DNA testing.

WHEREFORE, Jackson requests that the Court grant the following relief:

1. That the Court issue an Order, pursuant to § 40-30-311, compelling the State to thoroughly search the following offices, laboratories, and facilities (or any other facility, state or private, which may reasonably be expected to store physical evidence from a sexual assault case) in order to locate Angela Boyd’s rape kit specimen and her underwear, and to produce sworn affidavits identifying: (a) who

⁴⁰ If a zealous prosecutor pursued charges where the DNA results excluded the defendant, he or she runs the risk of jeopardizing their career, and worse yet, being disbarred for pursuing a case where objective science clearly trumped a witness’s or witnesses’ identification[s]. Perhaps the strongest case emphasizing this point is the Duke Lacrosse rape case, where Durham County, North Carolina District Attorney Mike Nifong pursued rape charges against several Duke Lacrosse players despite the fact DNA results excluded the players. See Robert P. Mosteller, *The Duke Lacrosse Case, Innocence, and False Identifications: A Fundamental Failure to “Do Justice,”* 76 FORDHAM L. REV. 1337 (2007) (discussing the case in detail). The North Carolina State Bar disbarred Mr. Nifong, in part, because he pursued charges against these players even though objective DNA evidence contradicted the victim’s statements. Moreover, in light of the DNA results, the North Carolina Attorney General’s Office declared all the players innocent because “[n]o... physical evidence... corroborated [the victim’s] testimony.” *Id.* at 1347 (citing the North Carolina Attorney General’s Office’s official report).

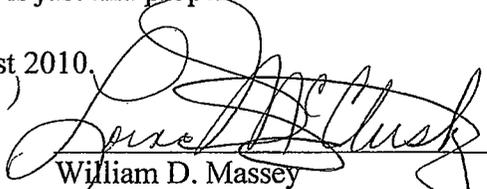
conducted the search; (b) when this person or persons conducted the search; (c) what agency did they search; (d) what locations, rooms, or areas of the agency did they search; and (e) what evidence they recovered – if any. At the very least, the following agencies must be comprehensively searched:

- a. Shelby County Clerk's Office
Property Room
201 Poplar Avenue, Room LL-81
Memphis, TN, 38103
- b. Memphis Sexual Assault Resource Center
2675 Union Extended
Memphis, TN 38112
- c. Memphis Police Department
Property Room
201 Poplar Avenue
Memphis, TN 38103

- 2. That the Court grant Jackson's request for DNA testing pursuant to § 40-30-304;
- 3. That the Court schedule a hearing on Jackson's instant motion; and
- 4. That the Court grant any other relief that is just and proper.

Respectfully submitted this 6th day of August 2010.

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EXHIBIT LIST

1. Serology Report, by Kim Prince - Forensic Technologist, University of Tennessee's Cellular and Molecular Forensic Laboratory, July 8, 1996
2. Fax from Rebecca Joyne - DNA Analyst, University of Tennessee's Cellular and Molecular Forensic Laboratory, to Elizabeth Thomas, Memphis Sexual Assault Resource Center, July 15, 1996
3. Memphis Police Department Photo Identification Form, R. & I. 951200337, Sgt. C. L. Freeman, February 3, 1996
4. Physical Examiner's Checklist, Case No. 1003, by Elizabeth Thomas, December 2, 1995
5. Forensic Evaluation of Alleged Sexual Assault, Case No. 1003, by Elizabeth Thomas, December 2, 1995
6. Evidence Collection Form, Record ID No. 960019050, Evidence Collected - Underwear/Panties
7. Memphis Police Department Police Reports
8. Suspects and Defendants Cleared By DNA Testing Prior to Trial

EXHIBIT 4

FILED

IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS
THE THIRTEENTH JUDICIAL DISTRICT
DIVISION VIII X

DEC -2 AM 11:34
REVA R. KEY, CLERK

RICKY JACKSON,
Petitioner,
vs.
STATE OF TENNESSEE,
Respondent.

Case No. 96-04155-56

STIPULATED ORDER FOR DNA
TESTING PURSUANT TO TENN. ANN.
CODE § 40-30-301

Presently before this Court is a *Stipulated Order for DNA Testing* submitted jointly by Petitioner, Ricky Jackson, and the State of Tennessee (State). Jackson and the State negotiated the *Stipulated Order for DNA Testing* in good faith. This Court, having examined the *Stipulated Order for DNA Testing*, GRANTS the requested DNA testing subject to the following conditions:

1. DNA testing shall be conducted on the following item of evidence relating to the abovementioned case number:
 - a. Angela Boyd's underwear/panties
 - b. Ms. Boyd's underwear/panties is currently in the State's custody.
2. Within fourteen days of entry of this Order, a representative of the Shelby County Clerk's Office shall properly package Angela Boyd's underwear/panties so it is not damaged or contaminated during transit. Once properly packaged, the representative shall Fed-Ex the items to Orchid Cellmark (Cellmark), 13988 Diplomat Drive, Suite 100, Dallas, Texas 75234. The shipping cost will be billed to the Innocence Project.

3. Upon receipt of Angela Body's underwear/panties, Cellmark shall inventory the items. Testing shall proceed in multiple stages:
- a. First, Cellmark shall test the underwear/panties to identify any male DNA that may be present. During testing, Cellmark shall consume no more of the item than is necessary to obtain a result. If Cellmark determines testing will consume the entire sample, Cellmark shall contact John Campbell, Assistant District Attorney, Shelby County District Attorney's Office, 201 Poplar Avenue, Third Floor, Memphis, Tennessee, 38103 (901) 545-5900, and Craig M. Cooley, Innocence Project Staff Attorney, 100 Fifth Avenue, 3rd Floor, New York, New York 10011, (212) 364-5341 (office), (212) 364-5361 (fax).
 - b. If testing produces a male DNA profile, Cellmark shall proceed with a second stage of testing. Specifically, Tennessee Department of Corrections (DOC) administrators at the West Tennessee State Penitentiary (where Jackson is incarcerated) shall collect reference samples (using buccal swabs) from Mr. Jackson. The DOC administrators shall properly package Jackson's reference samples and Fed-ex them to Cellmark (at the aforementioned address). Cellmark shall subject Jackson's reference samples to DNA testing.
 - c. Once DNA testing is complete, Cellmark shall publish its findings in a report that shall be faxed and mailed simultaneously to John Campbell and Craig M. Cooley at their respective addresses.
 - d. All extracts, cuttings, and evidence not consumed during testing shall be properly packaged by Cellmark and returned to the Shelby County Clerk's Office at 201 Poplar Avenue, Suite 401, Memphis, Tennessee 38103, (901)

545-5001. The Clerk's Office (and the State) shall preserve the evidence as long as Jackson remains incarcerated or under State supervision for his conviction in the instant case.

4. The Innocence Project shall pay for all the DNA testing. All bills relating to the packaging, shipping and testing of the evidence shall be forwarded to: The Innocence Project, Inc., Attn: Craig M. Cooley, Staff Attorney, 100 Fifth Avenue, 3rd Floor, New York, New York 10011.

ENTERED THIS 2nd DAY OF December 2010

Judge

By Interchange

/s/ Craig M. Cooley

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John Campbell
JOHN CAMPBELL
Shelby County District Attorney's Office
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Memphis, Tennessee 38103
(901) 545-5900

EXHIBIT 5

The victim, after being robbed, was taken to the rear of 1294 N. Thomas, where she was raped. This location is the S & A Auto Parts, and the rape took place on the paved parking lot, in the rear of the building. No physical evidence was found at this location.

Lt. D. M. Leggett, Car 107-A took Polaroid photograph of both the front and rear of 1294 N. Thomas, and a photograph of the front of 614 Life. These photographs were tagged in the property room by this writer under Receipt 95-0007842. Crime Scene was not called at either location.

DHS Contact:

MSARC#: Nurse/Clinician Elizabeth Thomas performed the examination of the victim at 3:50 A.M. She retained the victim's pink panties. Her report will be forwarded to Sex Crimes.

Uniform Officers On The Scene:

Lt.	D. M. Leggett	IBM 4831	Car 107-A
P/O	C. Maness	IBM 5600	Car 152-A
"	L. Acosta	IBM 0161	Car 142-A

Narrative:

Saturday, December 2, 1995, at 0146 hours, Lt. L. A. Godwin, Car 2301, advised the writer to meet the uniform officers on the scene of a criminal assault at Thomas and Weakley.

The writer arrived on the scene at 0205 hours, and met with the above listed officers along with the victim and her sister.

The writer spoke briefly with Officer Maness who advised the victim was on a pay phone at Firestone and Thomas, suspect approached her and her 10 year old nephew, and the victim send her nephew home. She further advised the victim was taken in the rear of 614 Life, robbed, and then forced her to 1294 Thomas, rear where he raped her on the parking lot. Officer Maness stated her call time was 0129 hours, and they were on the scene at 0132 hours, at the victim's home, 570 Weakley, where they had been dispatched.

0215 hurs, the writer spoke briefly with the victim who advised she left her home on 12-1-95, approximately 11:56 p.m., along with her 10 year old nephew, to use the pay phone at Thomas and Firestone. She advised she was on the phone talking to her friend Tameka Rhodes, F/B, 19, who lives in the apartments on Adams Street by the Juvenile Court, address unknown, phone, 529-9368, when she saw the suspect, who was with two unknown female blacks and another male black, come out of the lounge on North Thomas, just north of Life. The suspect came up to her by himself, asked her name and she told him her name was Lisa, and he told her his name was Jimmy. She stated he asked her did you want to buy a gun. She stated she hung up the phone and started to leave and the suspect started following her, and her nephew. She advised she told her nephew to go home and he left. When she got on Life Street, the suspect

grabbed her, put a gun, which he had in his right hand, to her right side, and took her to the rear of 614 Life, where he robbed her. She stated there is an alley in the rear of that location and an unknown male black was seen walking down the alley by her and the suspect, and the suspect told her "Don't say anything or I'll you." She stated after the male black was out of sight, the suspect still had the gun on her and forced her to go to the rear of 1294 N. Thomas. She stated that he was continually threatening, telling her he sold dope and that he was a gang member. He also told her that he could be reached at two numbers, J. J. 762-2334, or Jimmy at 527-8715. She stated once they got to the rear of the business he made her lay on the pavement on her back and he pulled her white shorts and pink panties off. The suspect then pulled his pants down and he was wearing unknown color boxer shorts. He then got on top of her and made her perform oral sex on him, and then had vaginal sex while she was still laying on her back. The suspect then made her roll over on her stomach where he had anal sex with her and climaxed. She stated the suspect then left and she went home and called the police.

Lt. Leggett advised that he had checked at both the robbery and rape scenes but did not find any physical evidence, however, he did take the aforementioned Polaroid photographs. Lt. Leggett advised that 614 Life is a vacant house, and the victim advised this also. The writer did not go to that location and the crime scene was not called to either.

0244 hours, the writer transported the victim, along with her sister Billie Jo Boyd, F/B, 33, D/O/B 11-28-63, 570 Weakley, Social Security 412-21-1954, unemployed, to the Rape Crisis Center. The sister did not witness any part of the offenses.

At the completion of the examination the writer transported the victim and her sister to their home at 570 Weakley, arrived at 0529 hours. Before leaving the writer did give the victim the telephone number for Sex Crimes and the R & I number and advised her to call on 12-2-95, at 10:00 a.m.

It should be noted that the nephew apparently did not witness any of the offenses but did see the male black suspect and can identify him. The nephew was not present at the scene and the writer has not interviewed him.
Sex Crimes Supplement

Submitted by: Sgt. C. L. Freeman, 2705, Car 1977

Victim: Angela Boyd, F/B 17, 570 Weakley

Suspect: Ricky Jackson, M/B 26, H/A 1117 N. Seventh

Date/Loc of Occurrence: 12/02/95, 614 Life Street, 1294 Thomas Street

Identify Suspect: Yes

Relation to Victim: Stranger

Record Check: Yes, R&I #00165340

Warrant Check: No

EXHIBIT 6

Weapon Used: Hand Gun

Witnesses: Kenny Clark, M/B 10, 570 Weakley

DHS Contact:

MSARC#: 1003

Narrative: 12/04/95, 8:00am, I received this case for follow up investigation. This case was assigned by Lt. Cox.

11:44am, I called and left a message with Ms. Joyce Ward the victim's cousin for her to have her to call me asap.

12/05/95

11:30am, The victim returned the writer's call. She advised she didn't know the suspect but she had seen him before in the Cedar Court Apts. She stated she would be able to identify him from looking in the mug books. I advised her to come in on 12/06/95, at 8:30am. She was given the address and room number.

12/06/95

8:30am, The victim didn't keep her appointment and didn't call the writer to reschedule another appointment.

12/12/95

10:00am, The victim came to the sex crimes office. She was allowed to look at the mug books with negative results. I advised her if she should see the suspect, to call police and point him out to them.

02/02/96

8:00am, I received an arrest ticket on the above listed suspect. The victim had located him and called police and they arrested him.

9:10am, Angela Boyd called the writer. She said she had seen the suspect on 02/01/96 when he walked up on her and asked her a question. She said he recognized her before she recognized him and he ran off. She advised her friend she was walking with knew the suspect and told her who he was after she told her he was the person who had raped her in December of 1995. She said she was sure the suspect was the person who rape and robbed her. I advised her I would get a photo spread together so I could show it to her.

02/03/96

10:50am, I went to 570 Weakly and showed the victim a photo spread of six (6) pictures and the victim did pick out the defendant's picture and positively identified him as the same person who had raped her on 12/02/95.

A taped statement was also taken from the victim.

12:10pm, The defendant was brought to the sex crimes office and after being advised of his rights the defendant wrote on the right's form that he didn't do this crime and he wanted to talk to his lawyer.

EXHIBIT 7

ADULT

FORENSIC EVALUATION OF ALLEGED SEXUAL ASSAULT

951200337 FREEMAN

Data Process 2 copies to Police Officer
1 copy to Clinic

Case# 1003

1. Identifying Information:

Name Angela Boyd
DOB 10/19/78 Age _____ Sex F Race AT

Alleged Assault:

Date: 12-2-95
Time: 12:30 am

Forensic Exam:

Date: 12-2-95
Time: 4:00 am

2. General Forensic Exam: (Describe trauma)

none

3. Forensic Genital and Anal Exam: (Describe trauma)

Slight bleeding from vulva. No anal tears noted.

4. Post Assault:

- Yes No
- Urination
 - Douche
 - Sponge bath
 - Bath/Shower
 - Defecation

5. Behavior type demonstrated during exam:

- Controlled Expressed Mixed
- quiet tearful
 - tense sobbing
 - fidgeting yelling
 - trembling loud
 - listless agitated
 - staring other _____

Responds to questions:

- briefly reluctantly readily

7. Summary of Evidence:

- Yes No
- Kit Collected
 - Pubic hair
 - Panties/Clothing
- Condition _____

Other _____

Physical/Genital exam done with:

- Yes No Yes No
- Direct visualization Colposcope exam
 - Bimanual exam Pics taken # _____
 - Speculum exam

6. Additional Observation or Remarks:

17yo AA female reports oral, manual + anal contact by unknown male, who attacked her outside & behind a building.

8. Testing: Sperm

	SEEN	MOTILE	NON-MOTILE	NOT SEEN	NOT DONE
Vaginal					
Oral					
Anal					

9. Instructions for Follow-up

- Yes No
- A. ORAL
 - B. WRITTEN
 - Agency brochures
 - Medical follow-up inst.

I hereby authorize use of this report, collected evidence and any other report incidental thereto by the Memphis Police Services and/or other Shelby County cooperating law enforcement agencies.

Person Examined Angela Boyd
 Parent or Guardian _____
 Date 12-2-95
 MRCC _____ DHS _____

Examining Clinician Elizabeth Freeman
 Police Officer _____
 R&I # 951200337
 CPT # _____

PHYSICAL EXAMINER'S CHECKLIST (FEMALE)

CASE # 1003

VICTIM'S NAME (print) Angela B... AGE 27 RACE AT

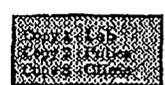
DATE/TIME OF ASSAULT 12-2-95 @ 12:30 AM

DATE/TIME OF EXAM 12-2-95 4:00 AM

- 1. Bloody external physical trauma excluding genitalia: Absent Present
Location(s) _____
- 2. Menstrual flow: Absent Present First day of last period spotting / get @ 3 days
- 3. Bloody genital trauma: Absent Internal External Vaginal Anal
- 4. Sperm: Not Seen Motile sperm seen Non-motile sperm seen Not Done
- 5. a. Douche after assault: Yes No Don't know
b. Bath, shower after assault: Yes No Don't know
c. Sponge bath after assault: Yes No Don't know
d. Urinated after assault: Yes No Don't know
e. Defecated after assault: Yes No Don't know
f. Condom used during assault: Yes No Don't know
g. Lubricant used during assault: Yes No Don't know
Name of lubricant _____
h. Foreign object used during assault: Yes No Don't know
Name of object(s) _____
- 6. a. Vaginal assault: Yes No Don't know
b. Last voluntary vaginal intercourse (within 4 days): Yes No Don't know
If less than 12 hours, time: _____ # of consensual partners in last 12 hours _____
- 7. a. Oral Assault: Yes No Don't know Rinsed mouth before exam
b. Last voluntary oral intercourse (within 4 days): Yes No Don't know
If less than 12 hours, time: _____ # of consensual partners in last 12 hours _____
- 8. a. Anal Assault: Yes No Don't know
b. Last voluntary anal intercourse (within 4 days): Yes No Don't know
If less than 12 hours, time: _____ # of consensual partners in last 12 hours _____
- 9. Emission of semen (victim's impression):
a. Vaginal: Yes No Don't know Intravaginal Extravaginal
b. Oral: Yes No Don't know
c. Anal: Yes No Don't know
d. Other area: Yes No Don't know Location(s) _____

Exhibit #16
TO: Elizabeth Thomas
7/23/96

- 10. Fingernails: Samples taken Yes No
- 11. Miscellaneous sample from (name site) _____ to be tested for (name body fluid) _____
- 12. Miscellaneous sample from (name site) _____ to be tested for (name body fluid) _____



FILED
FEB 26 1997
Clerk of the Courts

Deborah L. ...
Forensic Nurse Examiner's Signature

EXHIBIT 8

Victim/Age: Angela Boyd, 17, (New Address), 609 Huron Street

Location of Occurrence: 1294 Thomas

Day/Date/Time of Occurrence: Saturday, 12/02/96, 1:15am

Vehicle Used:

Crime Scene Processed: No, (Photographed)

MSARC #: 95-1003

DHS Contact:

Latent Prints:

Means of Defendant ID: Victim got a good enough look at the defendant to recognize him when she saw him again.

Defendant Statement: Defendant wrote on the rights form a brief statement of denial and he wanted to talk to an attorney.

Property Disposition: Forwarded To The State

Weapon Used: Handgun

Witnesses: Kenneth Boyd, H/A 609 Huron, 526-2918

Officers: F. L. Acosta, IBM #0161
R. M. Shemwell, IBM #8084
Sgt. H. J. Harris, IBM #3364
K. Lundy, IBM #4922

Probable Cause

On Saturday 12/02/95, at approximately 1:15am, the victim a female 17 was at Thomas and Firestone using the pay phone when the defendant came up to her and started a conversation and told her his name was "Jimmy". She said she hung up the telephone and started to leave when the defendant started following her and asked her if she wanted buy a gun. The victim advised she walked away from the defendant and the defendant put a gun on her and robbed her of her jewelry and took her to the rear of S & A Auto Parts at 1294 Thomas where he raped her and made her perform oral sex on him.

The victim was able to get a good enough look at the defendant so she could identify him if she saw him again. On 01/30/96, the victim was walking on Wells Street when the defendant got out of a car with some other males came up behind her and asked her if she knew somebody called "Bowleggs". The victim said when she turned around and saw the defendant she immediately recognized him as the same person who had raped and robbed her in December of 1995, and when he saw who she was he turn around and ran. The victim said a friend of her's she was with also saw the defendant and when she told her friend that the defendant was the person who had raped and robbed her in December, her friend told her his name and where he lived.

The victim called police and the suspect was arrested later and a

statement was taken from the victim and she was shown a photo spread where she also picked the defendant's picture and positively identified him as the same person responsible for raping and robbing her.

The defendant wrote a brief note on the rights form that he didn't know the victim and didn't commit the crime and he wanted to talk to an attorney.

Sex Crimes Supplement

Submitted by: Sgt. H. J. Harris, IBM 3364, Car 1616
Saturday, December 2, 1995 5:55 A.M.

Victim: Angela Dawn Boyd, F/B, 17, D/O/B 10-19-78, 570 Weakley, no home phone, can be reached 526-8415, 9th student, Manassas High, 938 Firestone, Social Security 412-31-7243.

Suspect not in Custody: Male Black, 22 to 23, dark complected, 5' 5", 170 lbs., mustache, fade hair cut with curl in top, 4 gold teeth upper front, wearing bluish colored pants, black sweater, waist length leather coat, black and white Fila tennis shoes. Told victim his name was Jimmy.

Date/Loc of Occurrence: 12-2-95, rear of 1294 N. Thomas.

Identify Suspect: Yes.

Relation to Victim: None

Property Taken: 1 yellow colored initial ring with T on it.
1 yellow colored nugget ring with unknown president's face on it.
1 yellow colored ring with a moon shaped white stone.
1 yellow colored ring with several white stones in a circle.
1 yellow colored nugget ring, man's type with large flat odd shaped designs.
1 yellow colored ring with two overlapping circles
1 yellow colored beeper, No. 223-9227
\$35.38 in cash
Bubble Gum, chap stick, and tissue paper

Record Check:

Warrant Check:

Weapon Used: Described as a .38 caliber, black with an approximate 6 inch barrel, and brown handle. Not recovered.

Witnesses: Kenny Clark, M/B, 10, D/O/B 9-28-85, 570 Weakley, no phone, nephew of victim.

Scene:

The first scene is 614 Life, which is a vacant house. The victim was robbed outside in the rear at this location. No physical evidence at this scene.

EXHIBIT 9

MEMPHIS POLICE DEPARTMENT

1. RECORD OF ARREST
 Date: 12-13-74
 Time: 11:17 AM
 Location of Arrest: 7th St
 Precinct: 7th Precinct

2. Name: JACOBS, J
 Age: 26
 Sex: M
 Race: W
 Height: 5-10
 Weight: 145
 Eyes: BRN
 Hair: BRN
 Scars: NONE

3. Date of Birth: 7-30-48
 Residence: 1117 N. 7th St
 License Number & State: TN

4. Vehicle Being Driven: 1965 Ford Mustang
 License Number & State: TN

5. Arresting Officer: SGT J. JACOBS
 Date of Arrest: 12-13-74

6. Charge and Court Action: Aggravated Rape
 Charge: Aggravated Rape
 Court Action: 39-13-502

7. Name: Angela Boyd
 Address: 570 Weckley Ave
 City: Memphis, TN
 State: TN

8. Date of Birth: 3-13-40
 Residence: 570 Weckley Ave
 License Number & State: TN

9. Vehicle Being Driven: 1965 Ford Mustang
 License Number & State: TN

10. Arresting Officer: SGT J. JACOBS
 Date of Arrest: 12-13-74

11. Charge and Court Action: Aggravated Robbery
 Charge: Aggravated Robbery
 Court Action: 39-13-403

12. Name: Angela Boyd
 Address: 570 Weckley Ave
 City: Memphis, TN
 State: TN

13. Date of Birth: 3-13-40
 Residence: 570 Weckley Ave
 License Number & State: TN

14. Vehicle Being Driven: 1965 Ford Mustang
 License Number & State: TN

15. Arresting Officer: SGT J. JACOBS
 Date of Arrest: 12-13-74

16. Charge and Court Action: Aggravated Rape
 Charge: Aggravated Rape
 Court Action: 39-13-502

17. Name: Angela Boyd
 Address: 570 Weckley Ave
 City: Memphis, TN
 State: TN

18. Date of Birth: 3-13-40
 Residence: 570 Weckley Ave
 License Number & State: TN

19. Vehicle Being Driven: 1965 Ford Mustang
 License Number & State: TN

20. Arresting Officer: SGT J. JACOBS
 Date of Arrest: 12-13-74

21. Charge and Court Action: Aggravated Robbery
 Charge: Aggravated Robbery
 Court Action: 39-13-403

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EXHIBIT 10

victim's family and herself to locate the suspect Ricky
 He advised that due to the possibility of injury to the
 The writer advised Lt. Hunt, Car 114, at the station.
 M. Stewart. She advised the writer she was positive this was the suspect.
 Ricky Jackson and he lives across the street parking at 1117
 he was off m/s that report her, her friend stated that
 his house at 1117 N. Seventh when she told her friend that
 and she advised that he recognized her too and ran towards
 she recognized him as the m/s that report and asked her
 had seen "Boulevard". When she turned and looked at him
 Jackson walked up from behind them and asked if they
 and were walking down N. Seventh when the suspect, Rick
 that she and a friend had come out of her apartment
 This date officer phoned Angela Boyd and she advised
 and while and told her that her name was Ricky Jackson
 her lives in the apartment on the corner of N. Seventh
 her he ran to her address at 1117 N. Seventh. A friend with
 951202 on North Seventh at table and when he saw
 saw the suspect, reportedly for taping and taking her
 spike with a m/s Angela Boyd when advised that she
 Dr. 162 D that he made a camp call to 570 weekly and
 On 960130 the writer was advised by officer K. Lundy,

Subject: Arrest on RAT 951200337

From: R.L. Stewart, 804 Car 115

To: Sgt. James & Robbery Bureau

DATE: 960131

NARRATIVE/MEMO

Page 1 of 2

Victim Jackson and the four other persons who were present at the time of the shooting.
N. Bennett, who advised the writer she was positive she was the woman who was
The writer advised Lt. Hunt, Sgt. Holt, and other officers of the situation.
He advised that due to the possibility of injury to the
victim's family and himself to locate the suspect Ricky
Jackson and other persons on the R&I for Rubyberg Squad

Page 2 of 2
NARRATIVE/MEMO
R&I 951200389
Jackson and other persons on the R&I for Rubyberg Squad
and Sgt. Dennis.
This date at 1815 hrs. officers observed a MIA entering the
house at 117 N. Street. He advised that he was Ricky Jackson
father and that he would see if Ricky was at home. Officers
Shanwell, Simms, and Reeves officer T. Mott entered the
house and a MIA on the telephone in the living room advised
that he was Ricky Jackson and that he was talking with the
Fugitive Squad on the phone to see if he had contacts on him
at that time. Officers observed the subject to have a thin
gold tooth in his upper mouth, dark complexion, feet bare
style, mustache, build as was reported at the time of the
occurrence. At that time officers placed Ricky Jackson
in custody and car 122 C, officers T. Smith, A. Strong were
called to transport the subject to jail.

EXHIBIT 11

MEMPHIS POLICE DEPARTMENT

PHOTO IDENTIFICATION FORM

R. & I. # 951200337

On Saturday, February, 3rd, 1996, at 10:50 AM, a group of (6)
Day Month Date Year Time how many
photographs, including pictures of listed suspect(s), were shown to the below-listed
victim(s) and/or witness(es) at 570 Weakly
Location

PHOTOGRAPHS SHOWN: MPD#: Yes X No _____ Others (Explain) _____

Identification#	Date of Photo	Name	Sex/ Race	Suspect		Color	Black & White
				Yes	No		
1. <u>96018026</u>	<u>01-18-96</u>	<u>Clyd Preley Holt</u>	<u>M/B</u>		<u>X</u>	<u>X</u>	
2. <u>96019088</u>	<u>01-19-96</u>	<u>Terry Rufus MONGER</u>	<u>M/B</u>		<u>X</u>	<u>X</u>	
3. <u>96031065</u>	<u>01-31-96</u>	<u>Ricky Jackson</u>	<u>M/B</u>	<u>X</u>		<u>X</u>	
4. <u>96029043</u>	<u>01-29-96</u>	<u>James Martin</u>	<u>M/B</u>		<u>X</u>	<u>X</u>	
5. <u>93019045</u>	<u>01-19-93</u>	<u>Renard Atkins</u>	<u>M/B</u>		<u>X</u>	<u>X</u>	
6. <u>95264056</u>	<u>01-19-96</u>	<u>Timmy Parker</u>	<u>M/B</u>		<u>X</u>	<u>X</u>	

The below-listed victim(s) and/or witness(es) viewed the above photographs with results as indicated:

Name	Address	Made Identification		Numbers Identified
		No	Yes	
1. <u>Angela Boyd</u>	<u>570 Weakly</u>	No	Yes <u>X</u>	<u>96031065</u>
2. _____	_____	No	Yes _____	_____
3. _____	_____	No	Yes _____	_____

OFFICER(S) SHOWING PHOTOGRAPHS:

Rank Sgt. Name C.L. Freeman IBM# 2705 Assignment Sex Crimes/Juv. Abuse
Rank _____ Name _____ IBM# _____ Assignment _____

All photographs, including the one(s) identified, signed and dated by the viewer(s), are hereto attached.

FILED
FEB 26 1997
Clark of the Courts
Rec'd By _____

Exhibit #4
TO: Freeman
initial

EXHIBIT 12

VICTIM STATEMENT

This is the statement of: ANGELA D. BOYD Age: 17 YEARS
DOB: 10/17/78 Sex: F Race: B Social Security #: 412-31-7243
Home Address: 570 Weakley Mphs, Tn 38107
Home Telephone: 526-8415 / 526-2918
Education: 11th grade at Booker T. Washington Occupation: 609 Huron, MT

Next of kin/emergency: Beatrice Boyd (mother) Telephone: same
Address: same Employed by: Oak Court Company

This statement is being taken at 570 Weakley, on February 3, 1996
at 10:55 am.

Statement made to: Sgt. C. Freeman, Car 1977
Typed by: Cassandra Boyd

This statement is relative to the Rape complaint of Angela Dawn
Boyd, which occurred at , on , and which is filed under MPD File
#951200337.

Q: Angela, on 12/2/95 did something happen to you where you had
to file a report with the Memphis Police Department?
A: Yes.

Q: What happen to you on this date?
A: Me and my nephew, "Stank" was coming from the payphone and
him and three more, it was one guy and two ladies they was
coming from the club. And he, the two girls and the man
came up to the payphone.

Q: Ok, right now just tell me what happened.
A: We was walking from the phone booth and he was following up
behind me....

Q: Who is he now?
A: Ricky Jackson... and he asked me did I want to buy a gun,
and I told him "naw", and he was constantly following
me....

Q: Let me ask you this, what did Ricky Jackson do to you?
A: He raped me.

Q: Where did he rape you at?
A: Behind S & A Auto Parts.

Q: Where is that located at?
A: On Thomas.

Q: Ok, did you know Ricky Jackson at this time?
A: No.

Q: How did you find out who he was?
A: A friend.

Q: What's your friend's name?
A: Ada Ola.

Q: When did she tell you who he, what his name was?
A: I forgot when it was, but I told her he was following me.

Q: How was it?
A: A friend.
Q: What's your friend's name?
A: Ada Ola.
Q: When did she tell you who he, what his name was?
A: I forgot when it was, but I told her he was following me.

Statement of , , 17 YEARS
February 14, 1996,

Page 2
R & I

Q: Was that this month or was it back in December?
A: This month.
Q: In February of '96?
A: It was in January.
Q: You said he was following you, where was he following you at?
A: Into them apartments across the street from his house.
Q: Where does he live?
A: 1117 N. Seventh St.
Q: You said back in December he raped you, when you say he raped you what did he do to you?
A: He uh, he had oral sex with me.....
Q: And what else?
A: And had me in my butt.
Q: Did he do anything else to you?
A: No.
Q: What did he put in your butt?
A: His penis.
Q: Did he make you perform oral sex on him or did he perform oral sex on you?
A: He performed oral sex on you?
Q: When he performed oral sex on you where did he put his mouth?
A: Naw, he did me, I mean he made me do him.
Q: What did he make you do to him?
A: Suck his penis.
Q: With your what?
A: Mouth.
Q: Did he ejaculate? What do it mean when you shake your head like that?
A: Uh what you mean?
Q: Did he "cum"?
A: Yes.
Q: He did. Did he "cum" in your mouth?
A: No.
Q: Where did he "cum" at?
A: My butt.
Q: Did you know Ricky Jackson at all?
A: NO.

Q: He did. Did he "cum" in your mouth?
A: No.
Q: Where did he "cum" at?
A: My butt.
Q: Did you know Ricky Jackson at all?
A: No.

Statement of [redacted] 17 YEARS
February 14, 1996,

Page 3
R & I

Q: Had you ever seen him in the neighborhood?
A: I thought I had seen his face at Butler's but I never did pay no attention to him.
Q: When did you see Ricky Jackson again?
A: About January 31st or 30th. That's the last time I seen him, I called the police...inaudible.....
Q: Where were you at when you saw him?
A: On Wells.
Q: And what happen?
A: I was going into the apartments and he was going behind me and going to say "Aah!" did I see somebody...when I turned around he recognized my face and broke out and ran.
Q: And what did you do at that time?
A: I told my friend that that was the one who raped me and she said "who Ricky?" and I told her "yeah". And she said "well he live right across the street", and she showed me where he live at.
Q: And your friend was walking with you?
A: She was coming way from round her mama house.
Q: But she saw Ricky running?
A: Yeah.
Q: And she knew him?
A: Yes.
Q: Told you where he live?
A: Yeah.
Q: And what did you do then?
A: Then I went on to work and that night when I got off work, when I got home I sunt the police to his house.
Q: Are you sure this is the same person that raped you back in December, the 2nd of 1995?
A: Yes.
Q: 100% positive?
A: Yes.
Q: Ok, now today is the 3rd of February and the time is 11:05 a.m., did I not come out here and show you a photospread and did you pick a picture out of the photospread?
A: Yes.
Q: Will you read the number off of the picture of the photospread?
A: 96031065.

Q: Ok, now today is the 3rd of February and the time is 11:05 a.m., did I not come out here and show you a photospread and did you pick a picture out of the photospread?
A: Yes.
Q: Will you read the number off of the picture of the photospread?
A: 96031065

Statement of , , 17 YEARS
February 14, 1996,

Page 4
R & I

Q: Is this the same person that you identified as the person who raped you on December 2nd?

A: Yes.

Q: Did you sign and date this picture?

A: Yes.

Q: Do you wish to prosecute this person?

A: Yes.

Q: Is there anything else you want to add to your statement?

A: No sir.

Q: At the time he raped you did anybody witness this?

A: My little nephew.

Q: What's his name?

A: Kenneth Boyd.

✓ Q: Did he get a good look at this person?

A: Yes, but he had his hair down.

✓ Q: Who had their hair down?

A: Ricky Jackson.

✓ Q: What do you mean?

A: He had a nouveau fade.

Q: What was it that made him stand out so that you noticed him and recognized him again when you saw him on January 30th?

A: His golds.

Q: Where is his golds located?

A: In his top mouth.

Q: Did you notice that on December 2nd?

A: Yes.

Q: What did he take from you when he, did he take anything from you?

A: Yes.

✓ Q: What did he take from you?

A: He took a Beeper, he took \$35, he took six (6) rings.

✓ Q: Did he have a gun?

A: Yes.

Q: Did you holler and scream and try to resist him on the 2nd of December when he raped you?

A: No.

✓ Q: Did he ever have vaginal sex with you?

A: What's that?

EXHIBIT 13

BOOKING NO. 96031065

Arrest Report for Incident #951200337

MAR 19 1996

Page: 1

Sex Crimes Bureau
Criminal Investigations Branch
Memphis Police Department

Y 8965

February 24, 1996

CHILD SEXUAL
ABUSE C.P.T. ARREST REPORT
Attn: P. Branham 951200337

CONFIDENTIAL

ATTY.
GEN.

On Tuesday, 01/31/96, at 18:05:00 RICKY JACKSON, B/M, 26, 07/29/69, of 1117 N SEVENTH, MEMPHIS, TN, was arrested at 1117 N Seventh by Police Officer Dale Simms, 7993, Uniform Patrol for the Robbery Bureau and was later charged with AGGRAVATED RAPE 39-13-502 and

AGGRAVATED ROBBERY 39-13-402. Social Security#: 414-04-0890. Booking#: 96031065.

Statement: oral written none

Incident #: 951200337

Victim(s): ANGELA BOYD, B/F, 570 WEAKLEY AV Memphis TN, (901) 526-8415, 17 DOB: 10/19/78

Property Taken: Ring, , Stolen, Not Recovered, Stln: \$75.00, Accum Recv: \$0.00
 Ring, , Stolen, Not Recovered, Stln: \$165.00, Accum Recv: \$0.00
 Ring, , Stolen, Not Recovered, Stln: \$65.00, Accum Recv: \$0.00
 Pager, Beeper, Stolen, Not Recovered, Stln: \$0.00, Accum Recv: \$0.00
 Cash, , Stolen, Not Recovered, Stln: \$35.00, Accum Recv: \$0.00

Location of Occurrence: 1294 THOMAS ST

Date of Occurrence: 01:15:00 12/02/95

Crime Scene Yes No

PROBABLE CAUSE

Probable Cause

On Saturday 12/02/95, at approximately 1:15am, the victim a female 17 was at Thomas and Firestone using the pay phone when the defendant came up to her and started a conversation and told her his name was "Jimmy". She said she hung up the telephone and started to leave when the defendant started following her and asked her if she wanted buy a gun. The victim advised she walked away from the defendant and the defendant put a gun on her and robbed her of her jewelry and took her to the rear of S & A Auto Parts at 1294 Thomas where he raped her and made her perform oral sex on him.

The victim was able to get a good enough look at the defendant so she could identify him if she saw him again. On 01/30/96, the victim was walking on Wells Street when the defendant got out of a car with some other males

951200337

EXHIBIT 14

Record ID Number: 960019050 .

Description:

=====
INVOLVEMENTS:

Type	Record #	Date	Description	Relationship
LW	951200337	06/12/96	Sex Offense	Incident
NM	H01202562	06/12/96	BOYD, ANGELA D	Victim
PR	214904	06/12/96	Underwear Panties	\$0 Tagged Property

Description:

Property & Evidence Header

Received Date: 06/12/96

Received Time: 10:24

Received By: Hampton 4340

Status: Active

Status Date: 06/12/96

Car #: 1977

Narcotics Money Receipt #:

Other Agency's # (R&I, etc.):

1st Notification Date:

1st Notification Clerk:

ABC FORM #:

Bureau: Sex Crimes

Charges:

Juvenile Charges (Y/N): N

EXHIBIT 15



Report of Laboratory Examination

August 31, 2011

Craig M. Cooley
The Innocence Project
40 Worth Street
Suite 701
New York, NY 10013

SUBJECT: Angela Boyd
SUSPECT: Ricky Jackson

ORCHID CELLMARK NO: FR10-0197
AGENCY CASE NO: 96-04155-56
ADD'L AGENCY NO: N/A

EXHIBITS

Client Item	OC Item	Received	Item Description	Screened	PCR
	FR10-0197-01.01	12/23/2010	Underwear:Angela Boyd	Y	Y
	FR10-0197-02.01	8/16/2011	Oral Swab - Ricky Jackson	N	Y
	FR10-0197-02.02	8/16/2011	Oral Swab - Ricky Jackson	N	N
	NOT EXAMINED	8/16/2011	Swab Carton:Oral - Ricky R. Jackson	N	N

SEROLOGY RESULTS

FR10-0197-01

Presumptive testing for semen was weakly positive on the underwear from Angela Boyd. Spermatozoa were not identified on the underwear from Angela Boyd. The p30 protein found in seminal fluid was not detected on the underwear from Angela Boyd.

RESULTS

DNA testing using the polymerase chain reaction (PCR) and the Yfiler™ Amplification Kit was performed on the indicated exhibit(s). The loci tested and the results obtained for each tested sample are listed in Table 1 (see attachment). Due to the paternal inheritance of the Y chromosome, all males from the same male lineage are expected to share the same Y-STR profile. Human specific DNA quantitation using the Quantifiler Human and Quantifiler-Y kits was performed on the hair from Angela Boyd's underwear (01.01.23). Human DNA was not detected above the system's detection threshold for this sample. Therefore, PCR testing was not performed on this sample.

CONCLUSIONS

FR10-0197-01.01.24

The partial Y-STR profile obtained from the outer waistband of the underwear from Angela Boyd is a possible mixture. Ricky Jackson (FR10-0197-02.01.1) is excluded as a contributor to this sample.

DISPOSITION

In the absence of specific instruction, evidence will be returned to the submitting agency by Federal Express or another appropriate carrier.

REVIEW

The results described in this report have been reviewed by the following individuals:

Analyst: Barbara L. Leal
Barbara L. Leal / DNA Analyst II

Technical
Reviewer: Huma Nasir
Huma Nasir / Team Leader

Procedures used in the analysis of this case adhere to the Quality Assurance Standards for Forensic DNA Testing Laboratories. Orchid Cellmark is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board and Forensic Quality Services-International. The results in this report relate only to the items tested.

cc: John Campbell
District Attorney General's Office
Shelby County Government
201 Poplar Avenue Ste. 301
Memphis, TN 38103

August 31, 2011



ORCHID
CELLMARK

Accredited by the American Society of Crime Laboratory Directors / Laboratory Accreditation Board
Dallas, TX

96-04155-56 |

FR10-0197

2 of 2



Report of Laboratory Examination

Orchid Cellmark- Dallas

8/31/2011

ORCHID CELLMARK NO: FR10-0197
AGENCY CASE NO: 96-04155-56
ADD'L AGENCY NO: N/A

Table 1 **Y-Filer**

Sample Name	DYS456	DYS389I	DYS390	DYS389II	DYS458	DYS19	DYS385a/ b	DYS393	DYS391	DYS439	DYS635	DYS392	Y GATA H4	DYS437	DYS438	DYS448
Underwear:Angela Boyd FR10-0197-01.01.24	16	13	NR	NR	17, 18	NR	11	13	11	NR	NR	NR	12	NR	NR	19
Ricky Jackson FR10-0197-02.01.1	16	13	21	32	16	15	16, 18	13	10	12	21	11	11	14	11	21

NR = No Result

The results listed in the table do not depict intensity differences. Only alleles exceeding validated analysis threshold are included in table.