No. WR-84,565-01

IN THE COURT OF CRIMINAL APPEALS

MEMORANDUM IN SUPPORT OF
MOTION FOR A PARTIAL RULING ON THE UNCONTESTED RECOMMENDATION TO VACATE KERRY MAX COOK'S CONVICTION, AN ORDER COMPELLING COMPLIANCE WITH THE COURT'S MAY 2019 ORDER SEEKING MISSING DOCUMENTS, AND FOR A RULING ON THE CONTESTED ACTUAL INNOCENCE CLAIM AFTER THE FULL RECORD IS RECEIVED

TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS:

COMES NOW, Petitioners Keith S. Hampton, Glenn Garber and Rebecca Freedman of the Exoneration Initiative, and Daniel Koffmann, of Quinn Emanuel Urquhart & Sullivan, LLP, *pro bono counsel* on behalf of Kerry Max Cook, Applicant in the above-styled and numbered cause, who move the Court for: (1) a prompt ruling adopting the recommendation of the district court (with the consent of the State) vacating Cook's rape and murder convictions; (2) an Order consistent with this Court's unfulfilled May 20, 2019 Order directing the Smith County Clerk to deliver missing parts of the record to the Court so it can finally, fully and fairly, consider the actual innocence claim before it; and 3) an Order of actual innocence with dismissal of the indictment.

PRELIMINARY STATEMENT

This Court (The Texas Court of Criminal Appeals, "CCA"), and indeed, the world, have borne witness for the past 45 years to one of the worst cases of police and prosecutorial

misconduct in American history: *State v. Cook*.[1] Despite overwhelming evidence *that Kerry Max Cook is innocent,* the ominous cloud of a capital murder and rape charge and the threat of execution still looms over him. Equally disturbing, this case has been solved and the true killer, James Mayfield has not been brought to justice due to the State's stubborn unwillingness to admit it made a mistake. (Mayfield has since passed away).

To be clear, DNA evidence has conclusively *excluded* Cook as the person who left semen on Edwards' underwear that she was wearing when she was murdered. Instead, that DNA has been irrefutably matched to Mayfield, proving once and for all, that it was Mayfield, and not Cook, who had sexual relations with Edwards on the night of her murder - and then lied about it, under oath, for decades, as the prosecution's star witness, while Cook languished on death row. When confronted with the DNA evidence in 2016, Mayfield finally admitted that he lied about his relationship with Edwards at the time. He also acknowledged that, prior to the murder, he had been confronted by a colleague who accused him of ordering for the university library a book - "The Sexual Criminal" – which contained graphic photographs of sexual mutilation nearly identical to what befell Edwards. Essentially, "The Sexual Criminal," which Mayfield admitted he looked at, was his how-to-guide for this grotesque and horrific crime.

The DNA evidence and Mayfield's coverup destroy Mayfield's credibility in claiming that he did not kill Edwards, which was crucial to the State's case against Cook. Thus, given the dubious case against Cook in the first place (discussed at length herein), it is no surprise that the State has conceded, and the district court has recommended, that Cook's conviction be vacated.

---

[1] David Hanners, "Clues Not Pursued in Slaying: Tyler Police Work 'Sloppily Done,'" Dallas Morning News, July 3, 1988; Evan Moore, "Justice under Fire: 'Win at all costs' is Smith County's rule, critics claim" Houston Chronicle, June 11, 2000; https://www.texasmonthly.com/tag/kerry-max-cook/ (compilation of articles about Cook's case in Texas Monthly; https://www.texasmonthly.com/articles/the-nature-of-innocence.

We therefore ask this Court to *adopt the recommendation of the district court and vacate the conviction, now*. Cook is 66 years old, and although out of prison, he remains in a purgatory of uncertainty in which he has unnecessarily suffered for his entire adult life. Delaying vacatur, consideration of which does not require the missing record, serves no purpose other than to cruelly string Cook along. Nearly six years have passed since the initiation of the appeal, and Cook is entitled to some modicum of justice.

Of course, ultimately, vacatur is not enough. The new evidence of innocence, which dovetails with other evidence implicating Mayfield and exculpating Cook, more than "clearly and convincingly" establishes that "no rational juror would convict" Cook of Edwards' murder. Unfortunately, consideration of the district court's fundamentally flawed recommendation to deny Cook's innocence claim *does require* transmittal and consideration by this Court of the entire record, including the missing evidence identified by this Court in its May 19, 2019 Order (attached as Exhibit, "Ex.," A).[2] And confoundingly, to date, this Court has been deprived of the opportunity to conduct a thorough factual analysis as a result of the Smith County Clerk's failure to comply with a May 2019 CCA Order requesting that missing and important evidence be transmitted to this Court. Nearly *three years have passed* since this Court requested the missing evidence, and nearly eight months since current counsel asked for compliance with the May 2019 Order when discovering it was unfulfilled (Hampton, July 28, 2021 Letter to CCA, Ex. B). We therefore urge this Court to issue another order compelling production of the missing evidence so that it can undertake the fulsome review of the record, which is long overdue.

[2] Due to the uncertain state of the record and for convenience to the Court, the materials relevant to this motion are attached as Exhibits, including some items referenced in this Court's May 2019 Order and not yet officially part of the CCA's record. In the ensuing days, we will provide the Court with a courtesy copy of all items requested in its May 2019 Order as it awaits transmittal of the official records from the Smith County Clerk.

When this Court fully and fairly reviews this case, we are confident that it will finally put a resounding end to this grotesque injustice. Concomitantly, it should reject the district court's myopic view of the evidence that is antithetical to the holistic, cumulative evidentiary analysis that an actual innocence claim demands, as well the misapplication of this Court's decisions discussing "unquestionable proof" in the context of reasonable doubt and "affirmative evidence" of innocence. (Hon. Jack Carter's July 25, 2016 Decision and Recommendation, Ex. C).

FACTUAL AND PROCEDURAL BACKGROUND

As this Court is aware, the tortuous history of this case spans more than four decades, three capital trials, three vacaturs, and more admissions of prosecutorial misconduct than seems possible in a single case. Indeed, the prosecutorial misconduct here was so widespread and disturbing that this Court almost barred the State from retrying Cook more than 16 years ago, fearing that he could not get a fair retrial. *Cook v. State*, 940 S.W.2d 623, 627 (Tex. App. 1996)("Prosecutorial and police misconduct has tainted this entire matter from the outset. Little confidence can be placed in the outcome of appellant's first two trials as a result, and the taint, it seems clear, persisted until the revelation of the State's misconduct in 1992."). Since then, this case has only gotten worse for the State. DNA evidence has confirmed what Cook has been saying all along: that Mayfield is the killer, and a liar. Other evidence which cripples the State's case has also come to light. Indeed, at every turn, the State's supposed evidence against Cook has proven to be false, wildly speculative, and grossly inflammatory. In contrast, the evidence of Cook's innocence has steadily mounted over the decades. It is now beyond "clear and convincing," based on any reasonable view of all the evidence, that the murder of Linda Jo Edwards was committed by James Mayfield and not Kerry Max Cook.

Through this motion, Cook comes before this Court, again, in the hopes of ending this life-long nightmare and finally obtaining justice.

I. THE BRUTAL MURDER OF LINDA JO EDWARDS AND COOK'S FIRST THREE TRIALS (1977-1996)[3]

Linda Jo Edwards was brutally murdered in her apartment on the night of June 9, 1977. The next morning, her roommate, Paula Rudolph, found Edwards on her back on the floor next to her bed, naked except for her blouse. She had been struck in the head with a statue (to such an extent that her face was badly disfigured), stabbed repeatedly, and her genital area was lacerated. A pair of jeans sat on the ironing board, and the iron was still on. The television in Edwards' room was on with the volume turned down. Edwards' bra had been cut in the front, and her underwear had been cut from her body and lay directly next to it. (Criminal Offense Report Prepared by Texas Ranger Stuart Dowell, June 13, 1977, Ex. E, [Missing][4]); *Cook v. State*, 940 S.W.2d 623, 625 (1996).

The obvious suspect was James Mayfield, who had been involved in a tumultuous extra-marital affair with Edwards that culminated in her attempting suicide, which exposed the affair and caused Mayfield to be fired. Rudolph reported seeing Mayfield, who she knew very well, standing in the doorway of Edwards' bedroom at the time of the murder (she would later change her identification to implicate Cook after seeing him several times in the courtroom). However, Mayfield swore that his affair with Edwards had been over, that he had not had sex with her in weeks, and that in fact, he considered her to be like a daughter to him. This lie about the affair and Mayfield's false claim that he was not involved in Edwards' murder were presumably

[3] Much of this section draws from Cook's Opening Brief to the Court of Criminal Appeals (filed after his third capital trial) by Attorney Paul Nugent, dated July 17, 1995, which quotes directly from the original record. The State has previously conceded that the facts set forth in that Brief are "accurately stated." *See Cook*, 940 S.W.2d at n.6. This is the last record before this Court. The brief is attached as Exhibit D.

[4] "Missing" indicates missing from the record per this Court's May 2019 Order.

accepted by law enforcement out of hand because of his stature as the University's Dean of Library Sciences and his attorney's relationship with local police officers.

No longer pursuing Mayfield, police developed a profile of the murder suspect: they were looking for a homosexual. Their investigation therefore focused on Cook, a neighbor of Edwards' who police falsely believed was a homosexual, and whose fingerprint had been found on the exterior of a sliding glass door to Edwards' apartment.[5] Cook maintained his innocence. His fingerprint had been left on the outside of the patio door several days prior to the murder when he met Ms. Edwards at the pool and she invited him back to her apartment. This was corroborated by other witnesses whose Grand Jury testimony was buried by the prosecution for decades. Indeed, despite a dearth of reliable evidence against Cook, the events of the next forty years made it very clear that the state would stop at nothing to convict him of Edwards' murder. This included advancing at three trials the repugnant and unsupportable argument that Cook's motive for the crime was his alleged homosexuality and/or perversion, which was not only false but also played on jurors' worst prejudices and virtually guaranteed that Cook would be convicted and sentenced to death.

A. The reversal of Cook's initial conviction and subsequent mistrial

Cook was tried, convicted of capital murder, and sentenced to death in Tyler, Texas, in June 1978. Later, it came to light that two key pieces of evidence relied on by the prosecution at trial – jailhouse informant Edward "Shyster" Jackson's testimony that Cook had confessed to him, and State fingerprint expert Doug Collard's testimony that Cook's fingerprint found on

[5] Cook was not the only person targeted on the basis of suspected homosexuality. On June 12, 1977, in the early days of the investigation, Jake Massey, a disgraced Smith County investigator who had been forced to surrender his credentials in 1972-1973 and should not have even been working the case, also targeted Paula Rudolph as a suspect using the police profile that the murderer was gay. (Bea Taylor audio tapes of interview, Ex. F1-2[Missing]), wherein Taylor is asked if Rudolph was known to be "strange," "different from other people," (F1) and a "lesbian [pronounced by Massey as lesbin])(F2)).

Edwards' apartment door was six to twelve hours old when he lifted it the morning after the murder – were false. What's more, both witnesses pointed to the prosecution as having procured their false testimony.

In recanting his testimony to the news media and a Texas Ranger, Jackson admitted that the jailhouse confession he had attributed to Cook at trial was a "total fabrication," induced by promises from the State to reduce Jackson's first-degree murder charge to involuntary manslaughter, for which he served just two years. (In his trial summation, the lead ADA falsely represented to the jury that he would "be yelling for [Jackson's] head right before this rail of justice just like I am on [Cook] and it will fall . . . I don't make deals with killers." (Ex. D, at 10–11).[6]

For his part, Collard admitted (in response to a complaint by the International Association for Identification) that he knew there was no scientific basis for his testimony placing a time frame on Cook's fingerprint, and the reason he had given that false testimony was because the Smith County District Attorney A.D. Clark, III pressured him to do so.[7] (Response to International Association for Identification, Captain George Douglas Collard, at 5-6, Ex. I).

---

[6] To lend credibility to Jackson's fabricated testimony, the prosecutor had shown him photos from the crime scene prior to his testimony, which enabled Jackson to include accurate crime scene details in Cook's supposed confession. (Partial Statement of Facts Pre-Trial hearing, November 25, 1992 at 7-8, Ex. G). Prosecutors also gave Jackson valium to help him pass a polygraph after he failed one (which was suppressed until 2012), exhibiting how easily polygraph results can be manipulated. (*Id.* at 58; Texas (Department of Public Safety Polygraph Reports, Edward Scott Jackson, October 6, 1977 and October 18, 1977, Ex. H1 and H2, respectively).

[7] Collard's perjury is particularly significant because it was why Cook became a suspect, since it rebutted the contention that Cook had innocently been in Edwards' apartment days before the crime, and he likely could not have been arrested or indicted without it. Further, when coupled with the coroner's testimony about Edwards' time of death, it enabled the false argument by the prosecutor that the print was left at the time of the crime and was the "killer's calling card." (Ex. D, at 21).

Cook was retried in Williamson County in December 1992. At Cook's second trial, Jackson refused to testify falsely again that Cook had confessed to him and the state was precluded from using Collard's false time-frame for Cook's fingerprint (which testimony he changed to a vague, but similarly false statement that Cook's print was "fresh."). (Ex. D, at 108-10). The jury deadlocked six to six.

B. The State's evidence and theory during the third trial

Cook's third trial took place in January and February 1994. The State's case consisted principally of: Rudolph's incredible testimony that it was Cook she saw in Edward's bedroom the night of the murder; Cook's fingerprint on the outside of the sliding glass door; testimony from Cook's acquaintances that he had identified the window of Edwards' room and stated he had seen someone in the window "playing with her boobs," but later claimed after the murder that he did not know her or anything about her apartment; and dubious testimony from a volunteer reserve deputy sheriff Robert Wickham that Cook confessed to him that he killed Edwards while Wickham was escorting him from jail to the courtroom in 1978 - which Wickham curiously failed to report for thirteen years, until after Jackson had recanted his false testimony about Cook's supposed confession and the State's case was disintegrating.

Although the State was precluded from explicitly advancing its disgusting and prejudicial argument that Cook's sexual ambivalence motivated the murder, the State dog-whistled to the jury about his purported homosexuality by admitting a transcript of Robert Hoehn's testimony at the 1978 trial, in which Hoehn, a gay man and former acquaintance of Cook who had since passed away, falsely claimed that he and Cook watched an explicit movie and had sexual relations on the night of the murder. (1994 Trial at 2785).[8] Hoehn's false testimony at the 1978

[8] Trial transcripts are identified by year and are not included in the Exhibits with this motion.

trial was not challenged by his grand jury testimony, which totally impeached it, because the prosecution suppressed that testimony until the eve of Cook's second trial.[9]

Cook was convicted again. In a move that shocks the conscience, the prosecution played for the jury during the penalty phase a graphic prison video of Cook being carried out on a stretcher bleeding profusely, in great agony and near death, after trying to cut off his penis and commit suicide as a result of having suffered repeated sexual assaults and mutilation at the hands of other inmates. This abuse was sparked by the outrageous police and prosecutorial misconduct which painted Cook as a homosexual killer and hater of women.[10] Regarding the video, prosecutors impudently argued, essentially from whole cloth, that it proved Cook's "perversion," and he was once again sentenced to death.

C. This Court's reversal of Cook's conviction after the Third Trial

This Court reversed, again. *Cook v. State*, 940 S.W.2d 623 (1996). It held that the State violated Cook's due process rights through the introduction of Hoehn's 1978 testimony to support its manufactured sexual perversion motive theory, since that testimony was

---

[9] Even then, the prosecution only provided the defense with a partial copy of the grand jury testimony. Although that disclosure did include Hoehn's admission that he had never had sex with Cook, it omitted the portion of his statement wherein he stated that Cook "wasn't paying any attention to [the movie]," thereby enabling the prosecution to falsely argue to the jury that the explicit content of the movie incited Cook to rape and murder Edwards. (Ex. D, at 15-17).

[10] Prosecutors argued that Cook had taken pieces of Edwards' lip and vagina as souvenirs which he carried away in her stocking that was "missing" from the crime scene, and that he later ate them. However, the autopsy report did not document any missing body parts, and the "missing" stocking was found by jurors stuffed into the pant leg of Edwards' jeans when they were examining the physical evidence during Cook's 1992 retrial (which ended in a hung jury). *Cook v. State*, 940 S.W.2d 623, 636-37 (Tex. Crim. App. 1996); Ex. D, at 25-27. Thus, like the rest of the prosecution's case, this theory proved to be nothing more than a disturbing fantasy floated by the state to inflame the jury. Nonetheless, these lies - and the never-ending, unjust nature of this case as a whole - have harmed Cook so deeply that he attempted suicide three times while on death row and continues to suffer from severe CPTSD. David Hanners, "Clues Not Pursued in Slaying: Tyler Police Work 'Sloppily Done,'" Dallas Morning News, July 3, 1988.

irreconcilable with his grand jury testimony which the prosecution suppressed, and his death meant that Cook could not investigate or confront him with the inconsistency.

The bulk of the Court's analysis centered on the history of prosecutorial misconduct in this case, the passage of time and unavailability of evidence, and whether it should prevent the State from retrying Cook for a fourth time. *Id.* Specifically, the Court considered—in addition to the false testimony from "Shyster" Jackson and Doug Collard and myriad other instances of concededly inexcusable misconduct—that the State failed to disclose grand jury testimony from at least three of its own witnesses who confirmed that Cook and Edwards knew each other, and she had invited him to her apartment several days before the murder. Critically, this suppressed evidence provided an innocent explanation for Cook's fingerprint on the outside of her apartment door and directly contradicted the state's false claim that they were strangers and thus Cook must have deposited the fingerprint during the murder. *Id*. at 626. The Court also noted that the State had suppressed a 1977 Tyler Police report where an officer described Mayfield's daughter Louella as a "pathological liar" – a pathological liar who was Mayfield's only alibi witness at the time of Cook's first trial. *Id.* at 625–26, 628.

Notwithstanding the State's abhorrent, decades-long pattern of misconduct, this Court decided, not without controversy, to allow the State to retry Cook for Edwards' murder. Judges Baird and Overstreet, concurring with the reversal and dissenting from the decision not to dismiss said:

> The State's misconduct in this case does not consist of an isolated incident or the doing of a police officer, but consists of the deliberate misconduct by members of the bar, representing the State, over a fourteen year period—from the initial discovery proceedings in 1977, through the first trial in 1978 and continuing with the concealment of the misconduct until 1992.

Id. at 633.

> [T]he most pernicious effect of the State's egregious misconduct is that by inhibiting the natural development of appellant's defense, the State permitted its own investigation to be less than thorough. In allowing itself to gain a conviction based on fraud, the State ignored its own duty to seek the truth and thereby weakened its own ability to obtain a verdict worthy of confidence.

Id. at 636.

> In suppressing evidence unfavorable to its theory of the case, the State undermined appellant's ability to defend himself and undermined its own ability to gain a verdict worthy of confidence. Against the background of an incriminating theory of events which is weakened at every turn by the State's complacency toward its truth-finding duty—a complacency facilitated in large part by the State's suppression of evidence contrary to its theory of the case—and the deprivation to appellant arising from the State's fourteen years of concealed misconduct, that misconduct can reasonably be taken to put the State's case in such a different light as to undermine confidence in the verdict.

Id.

II. REMAND FOR FOURTH TRIAL AND THE STATE'S ELEVENTH-HOUR CAPITULATION (1998–99)

Four days before the fourth trial was to begin, the State filed an emergency motion for a continuance, asserting that the Texas DPS Laboratory had discovered the presence of seminal fluid on Edwards' underwear worn on the night of her death. (State's Motion for Continuance, February 5, 1999, at 2, Ex J; Transcript of Hearing on Pretrial Motions, February 8, 1999, at 6-7, Ex. K). It maintained that DNA testing was "extremely important… to ensure the ends of justice…" and sought additional time to also conduct DNA testing on hair found on Edwards' buttocks, which it viewed as especially important in light of the "positive semen sample on the panties." (Ex. J at 15, 21; Ex. K at 21). Cook "enthusiastically endors[ed]" testing but opposed delay of trial. (Defendant's Response to Motion for Continuance, February 8, 1999, at 1, Ex. L). The testing occurred on an expedited basis during a 6-day delay of trial.

Despite having told the court that testing the semen was "essential to finding the truth," the State retreated from the DNA evidence. David Hanners, "Innocence Project," *Texas Monthly*, Mar. 5, 2012. Anxious to resolve the case with a guilty plea, it offered Cook a deal that would spare his life but add another ten years to his sentence. One hour after Cook rejected that offer, the State offered him a no-contest plea with time served. Explaining the shift, a prosecutor told the media that "early indications were that the [semen] stain would not be usable for DNA analysis" and, perplexingly, that "its location in the underwear suggests it may have been left at a time other than the attack." Pete Slover, "Cook pleads no contest, leave court a free man: Lesser Charge of murder averts 4th trial in '77 case," The Dallas Morning News, February 17, 1999. In addition, it was later learned that during this brief delay of trial, Mayfield inexplicably underwent a polygraph and continued to deny having sexual relations with Edwards on the day she was murdered. (Letter from Eric J. Holden to Buck Files, February 12, 1999, Ex. M).[11]

Cook struggled to accept any offer and the following statement was entered into the record:

> Mr. Cook did not murder Linda Jo Edwards. He is innocent. He has proclaimed that innocence from his prison cell for the past twenty-one years. He will not agree to any resolution of this case that requires an admission of guilt and/or a return to custody. Consequently, Mr. Cook rejects your offer that he plea 'no contest' in exchange for a forty-year sentence.

(Letter from Cheryl Wattley, Esq. to Smith County District Attorney's Office, February 16, 1999, Ex. N). However, having once been just 11 days away from execution for a crime he did not commit, and fearing that he might never be able to overcome the state's misconduct in this

[11]In his 2 015 Writ, Cook argued that the State knew of the exculpatory DNA evidence prior to the plea agreement and withheld it in order to coerce him to plead. This claim was dismissed as part of the deal to vacate the conviction and preserve the right to litigate the actual innocence claim.

case, and with the State having told his counsel that its new offer was strictly time-limited, Cook, although reluctant, was rationally unable to turn down a "no contest" plea that guaranteed his life and liberty and required no false admissions.

III. POST-CONVICTION DNA TESTING (1999-2015)

A. The State's Receipt Of A Lab Report On The Semen And Discontinuance Of Testing On The Hair

Although Cook's case was now resolved by virtue of his no-contest plea, the State instructed the DPS laboratory to continue with the DNA testing that precipitated the last-minute adjournment of trial. (Garland DPS File at 004, Ex. O). That testing revealed *that Kerry Max Cook was definitively excluded as the source of the DNA*. And, the stain contained characteristics shared by just 1 in 58.8 million Caucasian males, *including Mayfield*. *Id.* at 030-031. No analysis was performed on the hair found on Edwards' buttocks, which the State had admitted was critically important evidence, even though it had been submitted to the lab and was suitable for testing. *Id.* at 002, 040-043, 205. Instead, on May 20, 1999, a Tyler police officer took possession of the hair, along with other items of evidence. (State's Chain of Custody Report, April 27, 2012, at 066, Ex. P).

B. Enactment Of Chapter 64 And The State's Destruction Of Evidence

Soon after, the Texas Legislature unanimously enacted Chapter 64 of the Code of Criminal Procedure, providing a statutory vehicle through which convicted persons (including those convicted upon a plea of no contest) could seek to exonerate themselves through DNA testing of evidence in the State's possession. Tex. Code of Crim. Proc. Ann. Art. 64. To vindicate this right, Chapter 64 explicitly *bars* the State from altering or destroying any biological evidence suitable for DNA testing, without first giving the convicted person written notice and an opportunity to be heard. Tex. Code Crim. Proc. art. 38.43 (previously codified as

Art. 38.39). Chapter 64 became the law of Texas in April 2001.[12] On December 5, 2001, the permanent "disposal" of State exhibits from Cook's case was unilaterally "authorized," which meant that the hair obtained from Edwards' buttocks was destroyed. (Ex. N at 006).

C. DNA Testing Of Evidence The State Did Not Destroy Or Contaminate

On February 28, 2012, Cook filed a motion for post-conviction DNA testing under the new law. The court ordered testing of the remaining material recovered from the murder scene: Edwards' torn and semen-stained underwear; stains and a hair from her bra; swabs of apparent blood from the lid of a broken glass terrarium; and swabs that had been obtained from the murder weapon, including the knife used to kill Edwards.[13]

Using these state-of-the-art technologies, Cellmark *definitively excluded Cook from every single item* it could compare him to, including Edwards' underwear and a small trace of male DNA on the knife. (Cellmark Lab Reports, April 18, 2013, through March 4, 2015, Ex. Q).

Leaving no doubt, the DNA testing definitively established that *semen and skin cells on Edwards' underwear belonged to Mayfield.* In fact, the DNA profile shared by Mayfield and the male donor on the semen stain are shared by just 1 in 3.112 trillion and 1 in 10.07 billion unrelated Caucasians. *Id.* What those statistics mean, plainly, is that Mayfield is the *only person on Earth* who could have left that semen on Edwards' underwear.

Thus, the DNA match to Mayfield scientifically confirmed what has been glaringly obvious but ignored by the State for decades – that Mayfield was the culprit. Indeed, the body of evidence implicating Mayfield is overwhelming.

---

[12] In the 2016 decision, the district court seemed to accept the explanation that the hair was disposed of in the "ordinary course of business" without addressing the notice requirements under Tex. Code Crim. Proc. art. 38.43. (Ex. C, fn. 1).

[13] The knife and other items, though not destroyed, became contaminated because the former lead detective took them home as "souvenirs." *Id.* at 088-089.

IV. JAMES MAYFIELD KILLED LINDA JO EDWARDS

Mayfield was engaged in an illicit extramarital affair with Edwards. He was seen in her bedroom on the night she was killed. He was known to have an inability to control his temper. He had ordered and viewed a graphic book, "The Sexual Criminal," which depicted sexual mutilation virtually identical to what the killer did to Edwards. His strange behavior following her murder evinced a consciousness of guilt. And, despite his sworn testimony that he had not had sex with Edwards for weeks prior to her death, his semen was found on the underwear she was wearing when she was killed.

A. Mayfield's illicit sexual relationship with Edwards and motive to murder her

For approximately 18 months before her death, Edwards was involved in an extramarital affair with Mayfield, who was, until one week prior to Edwards's death, the Dean of Library Sciences at Texas Eastern University (now University of Texas at Tyler), where he had hired 21-year-old Edwards as a secretary in his division. At one point after Edwards separated from her own husband, Mayfield moved Edwards into his family home with his wife and daughter, on the pretense of providing her with temporary accommodation. He and Edwards continued their affair during this period, unbeknownst to Mayfield's family. (Ex. D, at 201).

The month prior to Edwards' murder was tumultuous. On May 14, 1977, Mayfield, without telling his wife and daughter, packed up and moved out of the family home and rented an apartment with Edwards in the Embarcadero apartment complex, the same building where she would be killed weeks later. Four days later, on May 19 (his wife's birthday), Mayfield changed his mind, told Edwards that he was ending their affair, and returned to his wife and the family home. He also filed court papers seeking a divorce from his wife on her birthday. *Id.*

The next day, May 20th, Edwards wrote a suicide note and consumed a dangerous quantity of pills. When Mayfield discovered her, he destroyed the suicide note and took her to

the hospital. (1992 Trial, at 222–23). Although Mayfield had gone to great lengths to keep their affair a secret, Edwards' suicide attempt quickly made it public. On June 6, 1977, at the insistence of the Texas Eastern University president, Mayfield resigned. (Ex. D, at 202). He openly blamed his former lover Linda Jo Edwards for destroying his career. *Id.* at 205.

Mayfield's birthday was two days after his forced resignation from the University, on June 8, 1977. He and Edwards saw each other at least four times that day. By then, she had moved in with her work colleague Paula Rudolph, who also lived in the Embarcadero apartments. *Id.* Although Mayfield's story evolved over time, he always maintained that since returning to his wife on May 19, *he never had sex with Edwards again* and only "necked" with her. (1994 Trial, at 1230).

The next day—the day Edwards was murdered—she had lunch with Mayfield. Turning a new leaf, she informed him that she had taken a job at a local bank and that she intended to date other men. Edwards recounted this conversation to her friends Andrew and Tamara Szarka that same evening at the Szarkas' home. Mr. Szarka was a faculty member at the University, where he had come to know both Edwards and Mayfield well, and he and his wife were neighbors of the Mayfields. Edwards told the Szarkas that Mayfield had become "very upset" when she told him she was going to start dating again. *Id.* at 2161.

B. Eyewitness testimony identifying Mayfield at the murder scene at the time of the murder

At approximately 9:30 that night, Edwards arrived back at the Embarcadero. She met up with friends at the tennis courts, including Orlando and Alma Padron. After tennis, the group had drinks at the Padrons' apartment. Both Mr. and Mrs. Padron testified that Edwards—who had stopped at the Mayfields' home earlier that evening before arriving at the Embarcadero—appeared "nervous and apprehensive." *Id.* at 2173.

Edwards left the Padrons' between 10:20 to 10:25. Arriving back at her apartment, she spoke briefly with her roommate, Paula Rudolph, who was leaving to meet a friend. *Id*. at 2176. When Rudolph returned to the apartment shortly after 12:30 a.m., she saw a man standing in the open doorway of Edwards' room. (There is, and has never been, any dispute that the man Rudolph saw was Edwards' killer.) Rudolph would tell the police the next day, and numerous other witnesses in the days that followed, that she immediately recognized the man she saw as James Mayfield, who until recently had been her supervisor at the University and her roommate's boyfriend. She told her coworker, Olene Harmed, repeatedly, "I thought it was Jim Mayfield," and she told the Embarcadero apartment manager that she was not afraid to see a man in the apartment that night, because she "knew him. It was Mayfield." *Id.* at 2572. She testified that she decided not to disturb the couple because it was a "delicate situation" and simply called out, "Don't worry, it's only me," and went to bed (even as she thought to herself, "That S.O.B., can't he leave her alone?"). (1994 Trial, 2588).

The next day, Rudolph gave police a detailed description of the killer's physique, hair, and clothing—one that perfectly matched James Mayfield. She reported (and would later testify) that the man was Caucasian with a golden tan; that his build was "sleek and slender;" that he wore white shorts; and that he had "silver" hair, which was cut in a "medium, touching-the-ears fashion." (Ex. D, at 203–04). As numerous witnesses attested, Mayfield, (a fitness buff and avid tennis and racquetball player) was trim and very fit; had a full head of silver-grey hair, cut in the exact same style that Rudolph described; and frequently wore white tennis shorts. By contrast, Cook looked nothing like the man Rudolph saw. In June 1977, Cook had extremely dark hair (described by some as "black," and by one witness as "brown like a Mexican"), which he wore long (to his shoulders). (1994 Trial, at 2746).

As noted above, by the time of Cook's trial in 1978, Rudolph had changed her story and claimed that she saw Cook, not Mayfield, inside her apartment. Her revised testimony was irreconcilable with her initial sworn testimony, and as the Honorable Sam Houston Clinton, Jr. observed, it was clear that "the prosecution and Rudolph fashioned her direct testimony" to avoid the obvious implications of an initial eyewitness account that "described Mayfield...almost perfectly." *Cook v. State*, 741 S.W.2d 928, 948-949 & 949 n.5 (Tex. Crim. App. 1987) (Clinton, J., dissenting).

C. Mayfield's voluble anger

James Mayfield had a violent and impulsive temperament. Close friends described him as "like a volcano" with a "terrible temper." (Affidavit of Wanda Joyce, November 19, 1991, Ex. R). He was verbally abusive to his wife and physically abusive to his son. *Id*. at 2. Both his adult son, Charles Finley, and his wife's best friend, Wanda Joyce, immediately suspected that Mayfield murdered Edwards when they heard about her death. (Statement of Pfc. Charles Finley, Ex. S) (informing authorities of Mayfield's "violent temper," expressing the view that Mayfield was capable of such a "hideous crime," and urging authorities to investigate Mayfield and ensure that his wife and daughter were not at risk of harm); (Ex. R at 1). His fellow Library employees at the University shared similar views. (Affidavit of Dana Gregory, 11/10/91, Ex. T) (recalling "common belief throughout the university that either Mayfield had committed the murder alone or that someone had helped him do it").

Mayfield was also emotionally abusive and manipulative toward Edwards. He urged her to lose a substantial amount of weight and otherwise change her appearance and style to fit his needs. He moved her into his house and surreptitiously carried on their illicit affair under his wife's nose. When he "left" his wife to be with Edwards, he changed his mind only a few days later because the 21-year-old Edwards was "too young for him" (he was 44 at the time), he

"didn't like apartment living," and his wife was a better cook than Edwards. (Affidavit of Peggy McGill, November 10, 1991, Ex. U; Affidavit of Olene Harned, November 7, 1991, Ex. V; Affidavit of Sophia Lenderman, November 9, 1991, Ex. W).

Even after "ending" the affair, Mayfield was possessive of Edwards. After John Spurgin, an academic colleague, sent her flowers and visited her in the hospital following her suicide attempt, Mayfield angrily confronted Spurgin and demanded to know what they had discussed and whether Spurgin had "kissed" Edwards. Mayfield's anger was so palpable that Spurgin felt compelled to purchase a gun to protect himself. (Ex. D, at 206; 1992 Trial, at 152).

Following her suicide attempt, Edwards became the target of Mayfield's rage as he blamed her for their affair becoming public, forcing him to resign from the university. Even on the day Edwards' body was discovered, as he sat in the parking lot of the Embarcadero with his former coworker Ann White, he vacillated between "crying" and "sudden[ly]" becoming visibly "angry" as he bitterly complained "that [Edwards] had ruined him, that she had cost him his job when she tried to commit suicide." *Id.* at 205.

D. Mayfield's graphic book of sexual mutilation

Mayfield purchased for the Texas Eastern library a book called *The Sexual Criminal—A Psychoanalytical Study*, by J. Paul De River. The book contains explicit depictions of human sexual mutilation from sex-related homicides, including ones eerily similar to the wounds on Edwards at the time of her death. Prior to Edwards' murder, Dr. Frederick Mears, a library employee and friend and tennis partner of Mayfield's, discovered that Mayfield had purchased the book without going through the usual approval process and he confronted Mayfield about the book. (Affidavit of Dr. Frederick G. Mears, September 8, 1991, Ex. X; 1992 Trial, at 96–100).

E. Mayfield's bizarre behavior following Edwards' murder

Mayfield acted like a murder suspect. On June 10, the day after the murder, a colleague caught him surreptitiously rifling through Edwards' desk calendar and belongings at the University. (Ex. S, at 1). Shortly thereafter, he told Dr. Mears that Paula Rudolph had identified him at the crime scene. (1992 Trial, at 102; see also Affidavit of Dr. Frederick Mears, July 10, 1988, at 3, Ex. Y). Mayfield asked Dr. Mears, who was known to have conducted research in deception and polygraph science at the University, how he could "beat" a polygraph test. *Id.* at 3; 1992 Trial, at 102.

And, according to Szarka, at a barbeque after Edward's murder, Mayfield exhibited a "poor me" attitude and mustered a "few sobs [that] just didn't ring true." (Szarka Affidavit, November 12, 1991, at 5, Ex. Z). Szarka recalled "thinking to [him]self how phony [Mayfield] seemed to be acting; that he was putting on an act for the public[.]" While Szarka cooked, Mayfield attempted to gaslight Szarka with a false memory of Mayfield's discomfort with blood:

> He told me that he could never do something that brutal to anyone. He pointed out to me how squeamish he got one time when he was watching me clean and filet a fish that I had caught and how he couldn't stand the sight of blood. I don't remember Jim being that way or saying that to me. I do remember how he was fascinated at the adeptness with which I used the large filet knife on the fish.

F. Mayfield's semen and skin cells were found on Edwards' underwear

And of course, as described in detail above, after Cook's no contest plea, DNA testing confirmed *beyond any dispute* that Mayfield had sex with Edwards the night she was killed and that he had lied about it.

V. THE 2016 LITIGATION THAT THE CURRENT WRIT IS BASED UPON

A. THE STATE'S CONSENT TO VACATE COOK'S CONVICTION AND THE DISTRICT COURT'S RECOMMENDATION TO VACATE

Based on the DNA results discovered in 2015, and a long record of deplorable prosecutorial misconduct, Cook petitioned for a writ of habeas corpus in the Smith County district court in 2016. Prior to the hearing on the writ, the State made Mayfield available to Cook's counsel for an interview. Facing the DNA evidence, Mayfield finally (39 years later) admitted to lying about his illicit affair with Edwards around the time she was killed. (Mayfield Recorded Interview, April 5, 2016, Ex. AA, Part 1 and 2 [Missing] and Transcript of Mayfield Interview, Ex. BB, passim); and admitted that Mears had confronted him with "The Sexual Criminal" book and he had viewed the book. (*Id.* pp. 97-99).

The writ raised a number of claims: 1) that Cook is actually innocent; 2) that newly discovered DNA evidence required vacatur of the no-contest plea and conviction; 3) that the State suppressed its knowledge that Mayfield was the semen donor prior to the no contest plea; 4) that the State violated due process by destroying a human hair found on Edward's buttocks before it could be tested; 5) that Mayfield's perjury violated due process; 6) that the State suppressed a taped interview of Bea Taylor, the assistant manager of the Embarcadero, which further undermined Paula Rudolph's credibility; 7) that Paula Rudolph unequivocally implicated Mayfield under questioning by prosecutors, which the State suppressed; and 8) that Rudolph's testimony that she had never identified Mayfield as the killer was therefore perjurious and violated Cook's due process rights.

On the eve of the hearing, the State offered Cook yet another deal aimed at salvaging a pound of flesh: (1) the State would consent to vacatur of the conviction that resulted from his no contest plea in 1999 on the premise that James Mayfield's perjury violated Cook's right to a fair

trial; (2) Cook would give up the State misconduct claims; and (3) the parties would litigate Cook's actual-innocence claim to the court on the briefs and without an evidentiary hearing.[14]

The Honorable Jack Carter, sitting for the 114th District Court of Texas, accepted the agreement. It found that Mayfield's perjury violated Cook's due process right to a fair trial (it "affected the decision to enter a no contest plea and the determination of Cook's guilt"); and the court recommended that the Court of Criminal Appeals vacate the conviction and order a new trial. (Ex. C, 176).

B. THE DISTRICT COURT'S DECISION DENYING COOK'S INNOCENCE CLAIM

The district court then denied Cook's actual innocence claim. In so doing, it analyzed the new pieces of exculpatory evidence in isolation, instead of in combination with each other and in light of the entire record. It failed to consider other reliable evidence that corroborated Cook's claim of innocence and Mayfield's guilt. And it applied an incorrect, and indeed insurmountable, burden of proof for Cook to prove his innocence. In discussing what it saw as the key exculpatory and inculpatory evidence, the court held that:

Exculpatory Evidence:

- Although the "DNA convincingly shows that James Mayfield had sexual relations with Linda Edwards… [and] it also excludes Cook as a depositor of the semen [,] That's all it does." The "new DNA evidence, excluding Cook and identifying Mayfield, certainly would" permit the "deduct[ion]" that Mayfield was the killer, however the "court does not find that it unquestionably proves that Cook is actually innocent," since the case was about who murdered Edwards and not who had sex with her. *Id.* at 178.

- Although Mayfield's "credibility… was very important and the state relied on it and argued to the jury that he was credible and believable," and Mayfield's lie about when he last had sex with Edwards would cause "the jury to conclude that this lie infected his testimony as a whole and that he was [an] incredible an

[14] The actual innocence presentation would later amount to just a 30-minute minute oral argument.

unbelievable witness [which, in turn] must lead a jury to conclude that the evidence is so weakened that it would not support a conviction of Cook," ultimately, "this evidence standing alone is not affirmative evidence of Cook's innocence and does not unquestionably establish it." *Id.* at 179.

- Mayfield's lies about having never seen *The Sexual Criminal* book with the graphic mutilation photos merely provided "a reasonable argument that "Mayfield planned Edward's murder," used the book to "stage" the crime scene "to appear that some sexually deviant person committed the murder, not a university professor who purportedly loved the victim," which, though it was "a valid argument" that could sway the jury, fell short of the "onerous test for actual innocence." *Id.*

Inculpatory Evidence

- Cook's fingerprint on the sliding glass door of Edward's apartment does "not prove his guilt" but given that he was a "relative stranger to Edwards… it is a very important circumstance and piece of inculpatory evidence." *Id.* at 180. (Notably, this analysis did not consider the corroborating witness testimony that Cook had been invited into Edwards' apartment several days before the crime, thus providing an innocent explanation for the fingerprint).

- While "Paula Rudolph's testimony is problematic… a jury could reasonably believe" it, despite that her certainty it was Cook she saw in Edward's bedroom was based on brief meeting with Cook in the courthouse basement *after* she saw him in the courtroom at the defense table. This latter fact was mere impeachment which was raised in the prior trial. (Notably, this analysis failed to mention that Rudolph had unequivocally identified Mayfield as the person in Edward's room when questioned by prosecutors, which refutes her claim she merely "thought" it was Mayfield and exposes her lie about not telling anyone that Mayfield was who she had seen. The court also divorced Rudolph's testimony from the new DNA evidence, Mayfield's lies, and the *Sexual Criminal* book because they "do not directly affect this testimony."). *Id.*

- Reserve deputy Robert Wickham's testimony that Smith spontaneously confessed to him, which he failed to report for 13 years, is testimony "that a reasonable jury could believe." *Id.*

In conclusion, the district court stated:

> [A] reasonable juror would not necessarily acquit Cook after hearing both the new exculpatory evidence and the previous evidence of guilt. The new exculpatory evidence does not unquestionably establish Cook's innocence; it is not rationally

> irreconcilable with the old inculpatory evidence. This court recommends that relief for the actual innocence claim be denied.

Id. at 181.

ARGUMENT

I. THIS COURT SHOULD ADOPT THE DISTRICT COURT'S RECOMMENDATION TO VACATE COOK'S CONVICTION AND IMMEDIATELY REORDER THE MISSING RECORD

Everyone agrees that vacatur of Cook's conviction is appropriate. The State has conceded as much because the evidence upon which its case rests is so unreliable that it calls into question the fundamental fairness of Cook's conviction. The lower court concurred and recommended that the CCA vacate on this basis.

Cook's conviction should therefore be vacated immediately. It has been too long. The record on Mayfield's perjury is fortified by indisputable DNA evidence and his admissions about matters central to the case. Cook has been tortured enough by the delay, and justice militates in favor of at least a temporary reprieve with a bifurcated ruling.

Unfortunately, without the full record in hand, the Court still has work to do on the actual innocence claim. Much of the critical evidence that lies at the heart of this claim never made it to the CCA because the Smith County Clerk continues to be in defiance of this Court's unambiguous order, issued *more than three years ago.* Although this evidence should be transmitted by the Smith County clerk, it is included herewith to avoid further delay and enable the fulsome analysis in which this Court must engage (and which the district court failed to employ) to fairly decide the actual innocence claim.

A. Missing Evidence and It's Relevance to the CCA's Actual Innocence Determination

The missing evidence is particularly germane to key errors underlying the district court's denial of the actual innocence claim.

For example, the Smith County Clerk has failed to transmit the demonstrative aid requested by this Court with the crime scene photos compared to photos in the *The Sexual Criminal* book *i.e.*, Mayfield's how-to-guide for the murder of Linda Jo Edwards. Without this evidence the Court cannot appreciate the chilling similarity between the wounds inflicted on Edwards and the wounds depicted in the book. (The Sexual Criminal and Crime Scene Photos Compared, Demonstrative Aid, Ex. CC [Missing]).

The Court requested but was not given the April 5th, 2016 recording of Mayfield's interview where he finally admits that he lied for 39 years about having sex with Edwards (self-servingly changing his story to claim for the first time, as an attempt to explain his DNA on the underwear she was wearing when she died, that he had sex with her the day *before* the murder) and acknowledges that he viewed *The Sexual Criminal* before the murder. (Mayfield Recorded Interview, April 5, 2016, Ex. AA [Missing]).

The Court does not have the grand jury testimony of Rodney and Randy Dykes that this Court called "highly exculpatory" in its 1996 decision. 940 S.W.2d at 626. Both swore that, Cook told them days before the murder that he met Edwards at the apartment pool and had been invited into her apartment. This evidence effectively neutralizes the fingerprint evidence on which the district court so heavily relied. (Rodney Dykes Grand Jury Testimony, Ex. DD; Randy Dykes Grand Jury Testimony, Ex. EE; Ex. D, at 98-100)(discussing Dykes and James Taylor Grand Jury Testimony)).

Missing from the record is James McCloskey's June 21, 2016 affidavit about his investigation of Robert Wickham, who belatedly claimed that Cook confessed to him. Specifically, it was learned from witnesses that Wickham was accused of theft and that he was a police officer "wanna be." This evidence further reduces the credibility of Wickham's delayed and dubious account, which the district court relied upon.[15] (James McCloskey Affidavit, June 21, 2016 re. Wickham, Ex. FF [Missing]).

Absent from the record, although requested, is a 1977 taped interview of Bea Taylor, the assistant manager of the Embarcadero apartment complex. (Bea Taylor Taped Interview, 1977, Ex. F) The interview indicates that Paula Rudolph was a recalcitrant witness who became a suspect and a target of Smith County's homophobic smear campaign. And it supports the conclusion that she was vulnerable to pressure to change her story to implicate Cook, out of self-preservation, when she knew all along it was Mayfield. In context with all the other police and prosecutorial misconduct in this case, this interview further diminished Rudolph's already beleaguered credibility. Given that she was a key witness, indeed the only eyewitness, the importance of this missing evidence cannot be overstated. Indeed, the district court placed great weight on Rudolph, finding that a jury "could" believe her identification of Cook. Whether a rational juror *would* believe her beyond a reasonable doubt, in light of the Taylor interview, among other things, is therefore a critical question.

[15] This new evidence is particularly impactful when considered in context. Wickham surfaced as a prosecution witness when the State was desperate – after the reversal, when the State lost the false Jackson jailhouse confession, lost Collard's false fingerprint time-frame testimony, and was precluded from advancing its "expert" angry homosexual motive case. It is also reminiscent of Jackson's perjurious and recanted testimony that Cook confessed to him.

When the record is viewed in its entirety, including the missing evidence, and is actually assessed cumulatively and under the correct legal standard, which the district court failed to do, Cook's innocence is undeniable.

B. The Lower Court was Wrong to Deny Cook Actual Innocence Claim

1. Applicable Standard of Proof

As an initial and overriding matter, the premise that this case presents just a regular actual innocence claim which should be governed by the clear and convincing standard (*i.e.* clear and convincing evidence that no rational juror could convict beyond a reasonable doubt) is a fallacy. In *Ex parte Elizondo*, 947 S.W.2d 202, 206 (Tex. Crim. App. 1996), the seminal case in Texas on actual innocence, this court set the bar exceedingly high for habeas applicants.

> [A]ny person who has once been finally convicted *in a fair trial* should not be permitted to wage, and we do not permit him to wage, a collateral attack on that conviction without making an exceedingly persuasive case that he is actually innocent.

Id. at 206 (emphasis supplied). *But Cook has never had a fair trial.* Thus logically, a different standard of proof should apply to him. And indeed, that is exactly what was found in *In re Davis*, No. CV409-130, 2010 WL 3385081 (S.D. Ga. Aug. 24, 2010), the only federal court to recognize the existence of a federal freestanding claim of actual innocence. Considering the applicable standard of proof, the court viewed it in light of the degree of confidence in the conviction. "The lowest degree of confidence in a jury verdict would presumably occur when the jury hears a *corrupted* body of evidence. Because the procedural protections in place to protect the innocent from conviction have been breached, confidence in the result of the trial is generally undermined." *Id.* at *45(emphasis supplied). Accordingly, a lower burden – that "it is *more likely than not* that no reasonable juror would have convicted him in the light of the new evidence" – should apply in a corrupted evidence case.

And there can be no real argument that Cook's is not such a case. Notably, in *Cook v. State*, 940 S.W.2d 623 (Tex. App. 1996), Judge Baird considered Cook's conviction after his third trial to be "unworthy of confidence" due to the egregious prosecutorial misconduct. *Id.* 636-39(Baird, J. concurring and dissenting; joined by Overstreet, J). That was in 1996. Given the new evidence of Cook's innocence and Mayfield's guilt (and perjury) unearthed in the 2016 litigation, confidence in the State's case against Cook has now fallen below zero and entered negative territory.

If any appellate Court is in a position to adjust its innocence standard to address an unfair trial and prosecution it is this Court. *Elizondo* was the forerunner in the nation on freestanding actual innocence, and the Court's holding on the standard of proof in that case was founded on the premise that the conviction was based on a *fair* trial. This case, perhaps like no other, directly tests this holding. Because of the inherently corrupt nature of this prosecution against Cook, the lower more-likely-than-not standard should be applied by this Court.

Moreover, two judges of this Court found in 1996 *it is not possible for Cook to receive a fair trial,* and others raised deep concerns. And that was 26 years ago. Now, more memories have faded and more witnesses have passed away, many of whom Cook was never afforded a meaningful opportunity to cross-examine, including Mayfield. And of course, the State's misconduct has tainted virtually every piece of evidence in this case and made a full and fair investigation - by either side - impossible. Thus, for this reason, in addition to Cook's innocence, and in accordance with Cook's due process right to a fair trial, the Court should dismiss this case. U.S. Const., Amends. VI and XIV; Texas Constitution, Arts. 10 and 19.[16]

[16] In *Cook v. Jones, et. al*., 99-cv-00015 (JH)(Memorandum Opinion, 1/29/99, Dkt. Entry 14), a federal writ of habeas corpus brought in the Eastern District of Texas, Tyler Division, Judge John Hannah denied dismissal of the prosecution on double jeopardy and due process grounds.

2. The Lower Court Failed to Properly Analyze Cook's Innocence Claim in Terms of Reasonable Doubt.

Even if the higher clear and convincing standard applies – a standard Cook meets – the district court misapplied it here by setting an even higher bar and finding that Cook was required to show that the exculpatory evidence "unquestionably proved" actual innocence without any regard to this phrase's meaning in terms of reasonable doubt. (Ex. C, at 178.).

The phrase "unquestionably proved" is raised in *Elizondo* and traces to *Schlup v. Delo*, 513 U.S. 298 (1995). In *Schlup,* the Supreme Court said that a "*Herrera*-type claim [freestanding actual innocence claim] is met where the habeas court is "convinced that [the] new facts unquestionably establish [the applicant's] innocence." *Ex parte Elizondo*, 947 S.W.2d 202, 209 (Tex. Crim. App. 1996) (citing *Schlup*, at 315-17). Interpreting this language, the *Elizondo* court said:

> the petitioner must show *by clear and convincing evidence* that no reasonable juror would have convicted him in light of the new evidence.
>
> In other words, we interpret the "unquestionably establish" language to mean the same thing as "clear and convincing."

Id. Elizondo explained it further in the context of reasonable doubt.

Notably though, after adopting the factual and procedural history laid out by this Court in *Cook v. State*, 940 S.W.2d 623, the Court stated:

> The Court notes that it is somewhat sympathetic to the Petitioner's situation in that he should not be forced to defend himself *ad infinitum* after the Smith County District Attorney's Office has repeatedly engaged in egregious acts of misconduct throughout the course of this matter.

Id. at 18.

Significantly, the focus of the writ was whether Cook could even receive a fair trial given the state's misconduct and the passage of time - 22 years after the crime. That was 13 years ago. It is now 45 years after the crime. If the fairness of a retrial was a close call in the late 1990's, we are clearly now past the point of no return.

> Consequently, if an applicant can prove by clear and convincing evidence to this Court, in the exercise of its habeas corpus jurisdiction, that a jury would acquit him based on his newly discovered evidence, he is entitled to relief.

Id.

As *Elizondo* makes clear, our legal system only understands guilt and innocence in terms of reasonable doubt. And juries are commonly instructed that "beyond a reasonable doubt" does *not* mean "beyond *any* doubt." Quite obviously, then, "unquestionable proof" is a term of art in this context and does not have its literal meaning -- that *any* question a juror may have about Cook's innocence, however unreasonable, is enough to defeat his actual innocence claim.

Unfortunately, it is apparent that the district court applied "unquestionable proof" in the literal sense unmoored from the concept of reasonable doubt and the proper "clear and convincing" standard. For instance, when discussing the force of the DNA evidence the court diminished the significance of Mayfield's semen in Edward's underwear because the jury would have to make the "deductive step" that he deposited it the night of the murder and was the murderer. But of course, deductive reasoning is what a logical and rational juror is supposed to do. That a logical inference is necessary, and that the semen would arguably need to be considered in context with the abundant other evidence pointing to Mayfield – including his lies about having sex with Edwards, his guilty behavior, and the Sexual Criminal book – in order for it to create a reasonable doubt about Cook's guilt are not reasons to hold that the DNA is insufficient. On the contrary, a rational, thinking juror *should* make inferences based on the evidence considered in context. Doing so here inexorably leads to a finding of reasonable doubt, notwithstanding any potentially lingering "question" about Cook's guilt.

Similarly, when addressing Paula Rudolph, the district court apparently believed that simply because a jury would *hear* Rudolph's in-court identification of Cook as Edwards' killer, this alone raised a "question" that would be enough to defeat the reasonable doubt created by

Cook's overwhelming exculpatory evidence. As Judge Clinton aptly found in his 1987 dissent, Rudolph was not credible because she initially described Mayfield, not Cook, and "every action demonstrated she thought it was Mayfield." While this alone is reasonable doubt, when viewed with all the other evidence pointing to Mayfield as the killer, it is reasonable-doubt-plus that no rational juror could deny.

3. The Lower Court's Piecemeal Assessment Of The Evidence Contravenes Established Law

On top of these fundamental errors, the kind of piecemeal analysis the lower court employed is improper in an actual innocence claim. To the contrary, Texas law requires a holistic review of the entirety of the evidence.

> [I]n evaluating a habeas claim that newly discovered or available evidence proves the applicant to be innocent of the crime for which he was convicted, our task is to assess the probable impact of the newly available evidence upon the persuasiveness of the State's case as a whole, we must necessarily weigh such exculpatory evidence against the evidence of guilt adduced at trial.

Ex parte Elizondo, 947 S.W.2d 202, 206 (Tex. Crim. App. 1996). This includes all the evidence, "old and new."[17] And, it is how federal courts treat claims of innocence, both freestanding and in the gateway context.

In *In Re Davis*, 2010 WL 3385081, *45 (S.D. Ga. 2010) a federal freestanding innocence case, the court "consider[ed] each piece of evidence individually, and then consider[ed] it holistically". In *House v. Bell*, 547 U.S. 518, 537–38 (2006) and *Schlup v. Delo*, 513 U.S. 298

[17] As Judge Cochran cogently explained:

> The "new" evidence which unquestionably establishes the applicant's innocence must be compared to the "old" inculpatory evidence that was offered at the original trial. That evidence was believed by the original jury which had found that the old evidence established the applicant's guilt beyond a reasonable doubt.

Ex parte Thompson, 153 S.W.3d 416, 426-27 (Tex.Crim.App. 2005)(Cochran, J., concurring).

(1995), gateway innocence cases, the United States Supreme Court made clear that a habeas court must consider all evidence—old and new, admissible and inadmissible—and make a probabilistic determination of what reasonable jurors would do based on the total record. Other state courts similarly require holistic evaluation of the entire record when considering freestanding actual innocence claims. *See Faulker v. State*, 227 A.3d 584, 610 (Md. 2020) (Maryland) (the court is required to examine the *cumulative* impact of newly discovered evidence); *Marble v. State*, 380 Mont. 366, 371 (2015) (Montana) (newly discovered evidence used in post-conviction innocence claims should be analyzed as "if proved and viewed in light of the evidence as a whole, [the evidence] would establish that the petitioner did not engage in the criminal conduct for which the petitioner was convicted"); *Miller v. Comm'r of Correction*, 242 Conn. 745, 791 (1997) (Connecticut) (court must take into account evidence produced in the original criminal trial and the new evidence and consider all of that evidence and the inferences drawn therefrom)*; State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. 2003) (Missouri) (the evidence supporting the conviction must be assessed in light of *all* of the evidence now available)(emphasis supplied); *People v. Bermudez*, 25 Misc.3d 1226(A)(N.Y. Sup. 2009) (New York) (employing a holistic analysis of the evidence).

In addition, a court evaluating actual innocence is not constrained by the rules of evidence and it should consider all information that is reliable, whether admissible at trial or not. *See Montoya v. Ulibarri*, 163 P.3d 476, 487 (2007) (New Mexico) (when examining a freestanding claim of actual innocence, the court "will examine the evidence presented and evaluate any reliable evidence...); *People v. Hamilton*, 115 A.D.3d 12 (2d Dept. 2014)("reliable evidence which was not presented at the trial"); *Schlup*, 513 U.S. at 324 (same).

Here, the district court considered each piece of evidence in isolation and dismissed it as incapable of establishing innocence on its own without regard to the inferences a reasonable juror would draw from the totality of the new evidence when weighed against the state's beleaguered case.

To say the DNA is of limited value because it only proved Mayfield had sex with Edwards, not that he killed her, is myopic and unsupportable in light of the entire record. In context, it destroyed him as a witness. (Ex. C, at 178). Of course, if Mayfield's denials of his own guilt were not believable and the State could not back the truthfulness of his assertion, Cook would have a field day blaming Mayfield at trial, and the accusation would be supported with an arsenal of evidence. For the same reason, the district court erred in considering Mayfield's lies about having sex with Edwards "standing alone" and marginalizing the significance of Mayfield's knowledge of the *Sexual Criminal* book without considering this compelling evidence in context of Mayfield's guilty behavior, the DNA evidence, and all of the evidence pointing to Mayfield which already existed in the record (not the least of which was Rudolph, the only eyewitness, observing him at the scene and saying it was him). This is antithetical to proper actual innocence review.

Having failed to consider the impact that the accumulation of the exculpatory evidence would have on a rational jury, the lower court missed the forest for the trees.

a. When combined with the other evidence, Mayfield's semen at the murder scene is compelling evidence of his guilt.

The lower court's conclusion might have made sense if forensic testing had identified *both* James Mayfield's *and* Kerry Cook's DNA at the scene. But it didn't. There was not even one iota of Cook's DNA at the scene. It is not remotely plausible that Cook could commit a "frenzied," sexually deviant, "lust murder," as the State has long contended, and fail to leave

behind any DNA. The only suspect whose DNA has been identified at the scene of Edwards' murder is James Mayfield's. He also had a motive, and Cook did not. And, at a retrial, the State could not even defend Mayfield's honor since he has admitted to decades of perjury.

The fact that James Mayfield lied for decades about having sex with Edwards shortly before her death is powerful evidence of his guilt, in context. It shatters the explanation he gave about the transformation of their relationship from a sexual one to that of father-daughter. It explains the wild mood swings that Ann White observed as they sat in the Embarcadero parking lot the day after the murder, where Mayfield vacillated between "crying" and "sudden[ly]" becoming visibly "angry" as he bitterly complained "that [Edwards] had ruined him, that she had cost him his job when she tried to commit suicide." 1992 Trial, at 205. And it exposes him as an unrepentant schemer making false statements that betray his consciousness of wrongdoing and illustrate his desperate efforts to evade the consequences of his sadistic crime.

Nor was Mayfield's credibility a collateral issue, as the lower court appeared to suggest. Rather, the State pinned its case against Cook on Mayfield's credibility, arguing on summation:

> I submit that after you saw Jim Mayfield testify, I submit you'll reach the conclusion that Jim Mayfield did not commit this crime. This is not a crime committed by Jim Mayfield. This is a crime committed by someone such as that defendant sitting right here.
>
> …
>
> I submit to you that Jim Mayfield is a credible witness. How difficult do you think it was for him to come in here, take this witness stand and sit and talk about what he had been doing with Linda Jo Edwards under all the questions he was asked? But he came in here and did it and you got to see him and I submit he is a credible witness and a believable witness.
>
> …
>
> And if you believe Jim Mayfield, if you believe Jim Mayfield and you find him credible and you don't believe Jim Mayfield committed this crime, which I submit to you the evidence clearly

> shows he did not, who does this come right back to? Kerry Max Cook.

(1992 Trial, 120-21).

Contrary to the District Court's conclusion, any rational juror would harbor skepticism about anything Mayfield said after he admitted to lying, over and over again, under oath, for decades, about the central issue of the timeline of his sexual relationship with Edwards. And, as the above excerpt demonstrates, that would be devastating to the state's case against Cook.

Mayfield's admitted lies also lend additional significance to his conversation with Dr. Frederick Mears, a professor who conducted research in deception and polygraph science, days after the murder, in which he asked Mears to tell him how he could 'beat' a lie detector test. (Mears Affidavit, 7/10/98, at. 15, Ex. W).

Considered in context, Dr. Mears declined to assist, and confronted Mayfield about having personally ordered "*The Sexual Criminal*," which "was made up almost exclusively of police photographs of the mutilated body parts of the victims" and had "no academic value." (*Id,* at 16). In response, Mayfield "looked worried and said, essentially, 'I have more books like that one, too.' [Dr. Mears] told him that he had better hire a lawyer." *Id.* at 16.

Adding to the mix of guilty behavior, Mayfield tried to gaslight his neighbor Szarka the day after Edward's murder at a barbeque with a false memory of Mayfield's fear of blood - which could not be further from the fascination Szarka actually remembered.

Mayfield's attempt to sow doubt about his ability to commit murder is all the more damning given his widespread reputation for violent anger. He was "like a volcano" with a "terrible temper." He verbally abused his wife and physically abused his son. *Id*. at 2. Both his adult son and his wife's best friend immediately suspected that Mayfield was responsible for

Edwards' murder. *Id;* Ex. R. There was a "common belief throughout the university that either Mayfield had committed the murder alone or that someone had helped him do it." (Ex. S).

Given all of the above, the only rational explanation for Mayfield's behavior is that he killed Linda Jo Edwards. Regardless of whether some of this evidence was excluded at Cook's trial(s), its reliability and probative value cannot now be denied given the DNA evidence and Mayfield's admission to perjury. This body of evidence is crucial to this Court's innocence analysis and should not have been ignored by the district court.

Nor does a single fingerprint left by Cook on the exterior of a door to Edwards' apartment alter the analysis notwithstanding the District Court's decision. Unlike Mayfield's DNA, Cook's fingerprint was not on her underwear. Unlike Mayfield's DNA, Cook's fingerprint was not in her bedroom. Cook's fingerprint was not on the murder weapon. And there was an obvious, innocent, corroborated explanation for his fingerprint: Edwards had invited him to her apartment several days earlier.

b. When combined with the other evidence, Mayfield's possession of *The Sexual Criminal* is compelling evidence of his guilt.

The lower court's conclusion that *The Sexual Criminal* merely "provide[s] a reasonable argument to the jury that Mayfield planned Edwards' murder, read a book so that he could stage it to appear that some sexually deviant person had committed this murder, not a university professor who purportedly loved the victim," (Ex. C, at 179) is misguided. It was apparently lost upon the district court that evidence someone *planned a murder* – which then occurred – of course gives rise to the inference that such person *committed the murder*. Indeed, what an unbelievable coincidence it would be for one person to plan a murder, just to have it fortuitously committed by another. Surely if such evidence existed against Cook, the prosecution would heavily rely on it.

Moreover, the court gave no consideration to the fact that Edwards' wounds and the seeming disarray of her bedroom eerily matched scenes depicted in the book. Specifically, the evidence from the crime scene suggests it was staged. There was no evidence of a struggle. (1994 Trial, at 332). Dr. Gonzales, who performed the autopsy, testified that although Edwards' head was lacerated, her skull was not fractured, and although the wounds to her back were deep, the wounds to her breast were superficial and inflicted *after* she died. *Id.* at 2010-2011. These observations suggest that the killer knocked her out (likely with the statue), stabbed her forcefully in the back, then turned her over and inflicted wounds to her face, neck, and breasts to give the *appearance* of a manic, frenzied attack. In doing so, the killer took a page right out of *The Sexual Criminal*. The author describes how stabs to the breast reflect a killer's "sadistic frenzy." Other similarities between the scene in Edwards' bedroom and *The Sexual Criminal* include the spread of her legs, (to show that the killer was a necrophiliac), and the stabs to the victim's back, (to illustrate the "love-hate element of the sadist"). (Ex. CC).

All told, Edwards' wounds and the arrangement of her body and her bedroom mirror six photos in *The Sexual Criminal*. Thus, Mayfield's possession and knowledge of the book is more than a coincidence - it is powerful circumstantial evidence of his guilt, especially considered in light of the DNA evidence, his lies about having sex with Edwards, and his guilty behavior following her murder. It is therefore hard to understand how the district court failed to comprehend the significance of the *Sexual Criminal* evidence in inculpating Mayfield and exonerating Cook.

c. When combined with the other evidence, Paula Rudolph's initial *statements* and testimony identifying Mayfield in the apartment at the time of the murder is additional compelling evidence of his guilt

Paula Rudolph's immediate recognition of James Mayfield in her apartment at 12:30 a.m. the night that Linda Jo Edwards was murdered is entitled to substantial weight under Texas law, which places value in the first person to whom a crime is related. *See, e.g.*, Tex. Code Crim. Pro. Art. 38.072. The first person with whom Rudolph discussed the murder with was Olene Harned, an employee at the Texas Eastern library, and in this earliest and freshest statement under the most reliable circumstances Rudolph related that it was James Mayfield she had seen. She further reiterated her identification of Mayfield in her grand jury testimony. *Cook v. State*, 741 S.W.2d 928, 948 (Tex. Crim. App. 1987) (Clinton, J., dissenting) (quoting 1977 record).

Expert testimony—which the lower court disregarded—supports the conclusion that Rudolph's initial assessment is more credible than her testimony at Cook's trial:

> By Rudolph's own account, both the physical features she observed (silver hair, medium hairstyle, tanned skin) and the context in which she viewed the suspect (in her own home, where Mayfield had been on several occasions as the victim's guest) led her to the conclusion that this was, in fact, Mayfield. So confident was Rudolph that even after unexpectedly seeing this man in her hallway in the middle of the night (at 12:30 a.m.), she called out, "Don't worry, it's only me," then proceeded to her usual bedtime routine and immediately went to sleep without difficulty. All of this indicates that Rudolph was not merely "assuming" the man she saw was Mayfield but was extremely confident at that time – based on what she personally observed – that it was him.

(Affidavit of Dr. Jennifer Dysart, May 29, 2016, at 15, Ex. GG.) Yet the district court only made a passing reference to this expert evidence with no consideration of its impact on Rudolph's credibility. (Ex. C, at 169).

As Judge Clinton appeared to recognize in 1987, Rudolph's trial testimony was a farce. 741 S.W.2d at 948–49 & n.5. It made no sense. She introduced the nebulous concept of a

"halo" shining around the killer's head, which the State seized upon to explain her prior identification of a person with silver hair. Yet she stuck to her statement that the man she saw had medium-length hair that went to the ears, when Cook undisputedly had hair down to his shoulders. As Dr. Dysart explains:

> By contrast [to Rudolph's initial accounts to Harned and in her grand jury testimony], her extremely belated "identification" of Cook – a stranger to her – occurred under highly suggestive and potentially contaminating circumstances; was based solely on factors (his standing "figure") that are shown to correlate strongly with misidentification of the innocent; and is further called into doubt by numerous discrepancies between Cook's actual appearance and the witness's initial, most reliable description of the perpetrator.

(Ex. GG, at 16.)

The lower court's conclusion that a rational juror would nonetheless credit Rudolph's trial testimony is unsupportable. Doing so would require disregarding (1) Rudolph's initial statement to Olene Harned identifying Mayfield, not Cook; (2) her prior sworn testimony identifying Mayfield, not Cook; (3) her trial testimony describing attributes of the person she saw that are consistent with Mayfield, not Cook; (4) the statutory presumption that her initial identifications are more reliable than her later one, and (5) the expert testimony establishing that her trial testimony relied on factors "that are shown to correlate strongly with misidentification," *see id.*

Under these circumstances, a rational juror could not rely upon Rudolph's trial testimony to overcome a reasonable doubt about Cook's guilt. And even assuming *arguendo* that one could, Rudolph's belated, suspect identification of Cook could never carry the day in light of all the other evidence including Mayfield's DNA, *The Sexual Criminal,* Mayfield's lies, and her own identification of Mayfield when the events in question were freshest in her mind.

d. When combined with the other evidence, Robert Wickham's testimony about Cook's confession is not credible

The circumstances surrounding former volunteer deputy Robert Wickham's testimony that Cook spontaneously confessed to him while being escorted to the courtroom in 1978 render it even less persuasive than Rudolph's feeble identification. Although this confession supposedly occurred during Cook's first trial, Wickham did not testify at that trial. For a whole 13 years since he supposedly received Cook's profane confession to the most notorious murder in the history of Smith County, Wickham—who was so gung-ho about law enforcement that he served as deputy sheriff for no pay—simply kept mum. He only came forward with his story in 1991, after "Shyster" Jackson had recanted his testimony about Cook making a jailhouse confession, after fingerprint expert Doug Collard's bogus testimony about the time frame of Cook's fingerprint was watered down, and after this Court precluded the State's "expert" self-hating homosexual case against Cook. How fortuitous for the prosecution then that Wickham should suddenly come forward when his testimony was so desperately needed to salvage the state's practically non-existent case. It also bears noting that at retrial, Wickham would also be subject to questioning about his past crime of deceit and his police "wanna be" mentality developed through the defense investigation in 2016. Considering all of the circumstances, and the overwhelming case against Mayfield, Wickham's testimony simply cannot overcome a reasonable doubt for *any* rational juror.

4. The lower court's unstated premise that evidence inculpating James Mayfield does not exculpate Kerry Max Cook is erroneous.

The lower court also appeared to distinguish between "affirmative evidence of [Cook's] innocence" and evidence of Mayfield's guilt, implicitly—and erroneously—suggesting that Cook could not prevail on his actual innocence claim through evidence implicating Mayfield.

This is illogical. If Mayfield killed Linda Jo Edwards, then Cook is innocent. Plain and simple. It doesn't get more "affirmative" than that.[18]

The trial record reflects the State's extensive efforts to erase any suspicion in the minds of the jurors that Mayfield may have killed his former lover. The State not only repeatedly proffered Mayfield as a trial witness, it vouched for his truthfulness and credibility of his testimony— and specifically his claims about the nature of his relationship with Edwards at the time of her death. For example, the State argued in its summation at Cook's 1994 trial that by June 1977, Mayfield's relationship with Edwards was nothing more than "nonsexual" and a father/daughter-like friendship." (1994 Trial, 1233, 2680). The State urged the jury to find nothing suspicious or significant about his visit to her apartment the day before her murder, nor the fact that she came to see him at his family's home on the night she was killed. *Id*. at 2680–82. The State tied its case even more directly to Mayfield's credibility, asserting that the murder occurred "a long time after their [sexual] relationship was over," which meant he had no motive

[18] In relegating the impact of the DNA evidence, the district court rested on the notion that Cook needed to but failed to advance "affirmative evidence of innocence." Citing *Bell v. State*, 90 S.W.3d 301, 306 (Tex. Crim. App. 2002)("The presence of another person's DNA at the crime scene will not, without more, constitute affirmative evidence of appellant's innocence.") (parenthetical quote in decision) (Ex. C, at 179, fn. 3). However, *Bell* was a case where the Appellant was seeking DNA testing and he made "only a bare assertion that the biological samples in question might belong to someone else." This is a far cry from DNA results which place another person's semen on a critical piece of evidence at the crime scene (the victim's underwear) in a rape and murder case and *exclude* the habeas petitioner, especially where the semen donor *lies* about having had sex with the victim, as Mayfield did here.

The district court also incorrectly draws from *Ex parte Franklin*, 72 S.W.3d 671 (Tex. Crim. App. 2002) for an "affirmative evidence of innocence" requirement that it finds Cook did not meet. *Id.* at 177. But that case refers to "trustworthy witness recantations…*exculpatory scientific evidence*, trustworthy eyewitness accounts, and critical physical evidence" as examples of affirmative evidence of innocence. *Id.* at 678, fn. 7 (emphasis added). DNA evidence that excludes a criminal defendant from critical crime scene evidence like the murder weapon, and that puts another person at the crime scene at or near the time of death, along with motive and an eyewitness also placing him there, is most certainly affirmative evidence of innocence.

to "plung[e] this butcher knife into the back of Linda Jo Edwards so far that it goes through and perforates [her] ribs." 1992 Trial, at 120-121. And of course, the state *had* to argue this. Because if Mayfield *did* have a motive to kill Edwards, or the jury had *any* reason to suspect him – such as his DNA, his lies and scheming, his possession of the *Sexual Criminal*, or Rudolph's recognition of him at the scene – it would be game over for the state, and everyone knew it.

The overwhelming evidence that Mayfield murdered Edwards necessarily demonstrates that Cook is innocent. Of course, it is not Cook's burden to prove beyond a reasonable doubt that Mayfield is the killer—either at trial or in supporting his actual innocence claim. (But if it were, Cook would be in good shape on this record). Rather, Cook must clearly and convincingly show that no reasonable juror would find him guilty beyond a reasonable doubt. *See Elizondo*, 947 S.W.2d 202, 206 (Tex. Crim. App. 1996). He has done that and more.

CONCLUSION

Cook humbly and respectfully requests that this Honorable Court, once and for all, set him free from his shackles to this horrible crime he did not commit, declare him actually innocent and dismiss the indictment. It is time to finally put an end to this 45-year nightmare.

Dated: April 19, 2022

Respectfully,

Keith S. Hampton
Keith S. Hampton
P.O. Box 66488
Austin, TX 78766

Glenn A. Garber & Rebecca E. Freedman
The Exoneration Initiative
233 Broadway, Suite 2370
New York, NY 10279

Daniel Koffmann
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010

EXHIBITS

A. CCA May 19, 2019 Order

B. Hampton, July 28, 2021 Letter to CCA

C. Hon. Jack Carter's July 25, 2016 Decision and Recommendation

D. Appellant's Opening Brief in CCA, July 17, 1995

E. Criminal Offense Report Prepared by Texas Ranger Stuart Dowell, June 13, 1977 [Missing]

F. Bea Taylor audio tapes (F1-2)

G. Partial Statement of Facts, Pretrial Hearing, November 25, 1992

H. Department of Public Safety Polygraph Reports, Edward Scott Jackson, October 6, 1977 (H1) and October 18, 1977 (H2)

I. Response to International Association for Identification, Captain George Douglas Collard

J. State's Motion for Continuance, February 5, 1999

K. Transcript of Hearing on Pretrial Motions, February 8, 1999

L. Defendant's Response to Motion for Continuance, February 8, 1999

M. Letter from Eric J. Holden to Buck Files, February 12, 1999

N. Letter from Cherly Wattley, Esq. to Smith County District Attorney's Office, February 16, 1999

O. Garland DPS File

P. State's Chain of Custody Report, April 27, 2012

Q. Cellmark Lab Reports, dated April 18, 2013 through March 4, 2015

R. Affidavit of Wanda Joyce, November 19, 1991

S. Statement of Pfc. Charles Finley

T. Affidavit of Dana Gregory, dated 11/10/91

U. Affidavit of Peggy McGill, November 10, 1991

V. Affidavit of Olene Harned, November 7, 1991

W. Affidavit of Sophia Lenderman, November 9, 1991

X. Affidavit of Dr. Frederick G. Mears, September 8, 1991

Y. Affidavit of Dr. Frederick G. Mears, July 10, 1988

Z. Szarka Affidavit, November 12, 1991

AA. Mayfield Recorded Interview, April 5, 2016 (Parts 1 and 2)

BB. Transcript of Mayfield Interview

CC. The Criminal Sexual and Crime Scene Photos Compared, Demonstrative Aid [Missing]

DD. Rodney Dykes Grand Jury Testimony [Missing]

EE. Randy Dykes Grand Jury Testimony [Missing]

FF. McCloskey Affidavit, June 21, 2016 re. Wickham [Missing]

GG. Affidavit of Dr. Jennifer Dysart, May 29, 2016