

5. On May 20, 2016, the defendant filed a second writ of habeas corpus, cause number 1288802-B, which was denied without written order on July 27, 2016.

Factual Background

6. The Court finds the following facts of the offense, as summarized by the First Court of Appeals:

“Around 11:45 p.m. on December 10, 2010, at Club Blur, a nightclub located in the Montrose area of Houston, four bouncers, two patrons of the club, and a bystander observed the complainant, Aaron Scheerhorn, run up to the door of the club in a panic. Scheerhorn was followed by a larger man who chased him up to the club. Scheerhorn screamed for help and opened up his shirt to show that he had been stabbed. As he tried to get inside the club, the assailant stabbed him again, chased him into an adjacent parking lot, and stabbed him several more times. After Scheerhorn collapsed, the assailant made eye contact with one of the witnesses and calmly left the scene. Scheerhorn later died from his injuries. Six out of the seven eyewitnesses identified appellant, both in a photo-array and in court, as the assailant.”

Grant v. State, 01-12-01173-CR, 2014 WL 1318885, at *1 (Tex. App.—Houston [1st Dist.] Apr. 1, 2014, pet. ref'd)

7. On December 12, 2010, Crime Stoppers of Houston received a tip indicating that an unknown black male, driving a white 2000-2002 Pontiac Grand Prix with a Texas temporary tag for the license plate “may possibly be the suspect in this case.” The anonymous caller also gave the vehicle information number of the car. The Crime Stoppers tip indicated that “the suspect and vehicle were seen in the same area where the crime occurred.”

8. On December 15, 2010, a Houston Police Department officer stopped the defendant for a traffic violation. The officer arrested the defendant for driving with a suspended license and, based on the Crime Stoppers of Houston tip, discovered that the defendant was wanted for questioning in connection with the complainant’s murder. After obtaining a warrant to search the defendant’s vehicle, the law enforcement officers discovered a wig, ski mask, Halloween mask,

and knife located in the vehicle's trunk. (None of the items in the trunk were ever determined to be associated with the complainant's murder.)¹

Pre-Trial DNA Results and DNA Testimony at Trial

9. In January 2011, the Houston Police Department Crime Laboratory's ("HPD Crime Lab") Biology Section conducted DNA analysis and comparison on items related to Houston Police Department incident number [REDACTED]. Among the items analyzed was Item 12.2.1.1 described as a "portion of swab from fingernail scrapings/clippings – right hand" of the complainant.

10. On July, 29, 2011, the HPD Crime Lab's Biology Section issued its laboratory report indicating its findings for Item 12.2.1.1. The lab found:

"A mixture of DNA from at least (2) individuals, at least one of whom is male, was obtained from this item. Aaron Scheerhoorn cannot be excluded as the contributor to the major component of this DNA mixture. The probability that a randomly chosen unrelated individual would be included as a possible contributor to the major component of this DNA mixture is approximately 1 in 490 billion for Caucasians, 1 in 10 trillion for African Americans, 1 in 43 billion for Southeast Hispanics, and 1 in 86 billion for Southwest Hispanics, (at the following STR loci: D8S1179, D7S820, CSF1PO, D3S1358, TH01, D16S539, D19S433, VWA, D5S818 and FGA. *No conclusions will be made regarding Lydell Grant as a possible contributor to this DNA mixture.*" (emphasis added)

HPD Crime Lab Biology Section Laboratory Report dated July 29, 2011.

11. On December 4, 2012, forensic DNA analyst Priscilla Hill testified that she conducted the HPD Crime Lab's DNA analysis on the fingernail scrapings/clippings from the complainant's right hand. (5 R.R. at 220, 253). When referring to the HPD Crime Lab's report which was admitted as State's Exhibit 54, Hill testified: "No conclusions will be made regarding Lydell Grant

¹ The defendant presented an alibi witness at trial who testified that he and the defendant spent a significant amount of time together on the night of the murder, and there were no gaps of time where the defendant disappeared. (6 R.R. at 117, 141, and 143-44).

as a possible contributor to this DNA mixture.” (5 R.R. at 254). Hill further testified that this “means that with a mixture now we’re dealing with a lot more information. And when I sit down and look at the mixture and compare it to Lydell, I was not able to make a clear determination if he was a contributing individual to that mixture. I could not make a conclusion.” (5 R.R. at 254).

The State asked Hill:

Q. So, in that circumstance, you could not exclude him from being a potential contributor to that DNA?

A. Correct.

(5 R.R. at 254).

12. On December 4, 2012, during cross-examination, forensic DNA analyst Priscilla Hill was asked by the defense:

Q: When we move to 12.2.1.1, which is a portion of the swab from the fingernail scrapings of—clippings of the right hand, we know that part of that mixture belongs to Aaron Scheerhorn because it’s from his hand, right?

A: He was a major contributor, yes.

Q: You can’t make any conclusions about the other contributor; is that right?

A: Correct.

Q: So, you can’t associate Lydell Grant with -- as being part of that mixture; is that correct?

A: Correct, I could not make any conclusions.

(5 R.R. at 256-257)

Chapter 64 Proceedings

13. On September 14, 2015, in cause number 1288802-A, the defendant filed a motion for post-conviction forensic DNA testing and defendant’s supporting affidavit.

14. On April 8, 2016, the Court appointed Bob Wicoff to represent the defendant for the purpose of post-conviction DNA testing. (Upon information and belief, Bob Wicoff has withdrawn from representing the defendant for the purpose of post-conviction DNA testing.)

15. On November 2, 2017, the State filed a Notice of State's Actions Pursuant to Article 64, Texas Code of Criminal Procedure.

16. On January 5, 2018, the Court appointed Brittany Carroll Lacayo to represent the defendant for the purpose of post-conviction DNA testing.

17. On February 1, 2018, the defendant filed a motion for the appointment of counsel pursuant to Article 64.01(c), Texas Code of Criminal Procedure.

18. On June 19, 2018, the defendant filed a Motion for Forensic DNA Testing Pursuant to Article 64.01, Texas Code of Criminal Procedure.

19. On June 6, 2019, the Court signed an Agreed Order for DNA Testing Pursuant to Tex. Code Crim. Proc. 64.03, a copy of which is attached hereto as Exhibit "A" and incorporated herein. The Court ordered that the DPS Crime Lab conduct DNA forensic testing on the following evidence related to Houston Police Department incident number [REDACTED]:

- a. Swab from lock area of knife
- b. Swabs from blade of knife
- c. Two buccal swabs (from Lydell Grant)
- d. DNA extracts from Item 9.1.2.1: Portion of swabs from handle of knife
- e. DNA extracts from Item 12.2.1.1: Portion of swab from fingernail scrapings/clippings – right hand
- f. Reagent blank control samples associated with fingernail scrapings/clippings – right hand
- g. Reagent blank control samples associated with DNA extracts from Item 9.1.2.1: Portion of swabs from handle of knife
- h. Blood stain card

20. The DPS Crime Lab examined the submitted evidence and issued the following reports: Supplemental Biology Laboratory Report dated July 12, 2019, a copy of which is attached hereto as Exhibit “B” and incorporated herein; and DNA Laboratory Report dated July 17, 2019, a copy of which is attached hereto as Exhibit “C” and incorporated herein.

DPS Post-Conviction DNA Testing Results

21. The DPS Crime Lab examined the submitted items for biological evidence and issued its Supplemental Biology Laboratory Report on July 12, 2019. The DPS Crime lab collected and prepared the following two items for DNA analysis:

- 07-01: Swab of knife handle (Item 62519-1)
- 07-02: Swab of right fingernail scrapings (Item 62519-2)

See Exhibit B.

22. Following the analysis and comparison of the submitted items, the DPS Crime Lab issued its DNA Laboratory Report on July 17, 2019, and determined that:

- A. The DNA profile identified on 07-02-AA: DNA extract from swab of right fingernail scrapings (Item 62519-2) is interpreted as a mixture of 2 individuals with Aaron Scheerhorn as an assumed contributor. Based on the likelihood ratio result, [defendant] *Lydell Grant is excluded as a contributor to this profile* (emphasis added).
- B. No DNA profiles were obtained from the following items:
 - 02-01-AA-01: DNA extract from swabs from knife blade (Item DAO3)
 - 02-02-AA-01: DNA extract from swab of lock area from knife (Item DAO4)
 - 07-01-AA: DNA extract from swab of knife handle (Item 62519-1)

See Exhibit C.

Cybergenetics DNA Analysis and CODIS Results

23. On or about February 26, 2019, the Houston Forensic Science Center (“HFSC”) provided the pre-trial DNA case file, including the raw data files from HPD Crime Lab’s analyses related to Houston Police Department incident number [REDACTED], to both the State and the defendant’s counsel.

24. On or about March 19, 2019, the defendant’s counsel provided HPD Crime Lab’s raw data from its 2011 analyses of the complainant’s right hand fingernail scrapings/clippings to Cybergenetics Corporation (“Cybergenetics”) located in Pittsburgh, Pennsylvania, for forensic analysis.

25. On or about March 29, 2019, Cybergenetics completed its TrueAllele® computer analysis of the DNA information from the raw data files and issued its “preliminary match statistics.” According to Cybergenetics’s analysis of the fingernail scrapings/clippings, complainant’s DNA was found on complainant’s fingernails, *defendant’s DNA was not found on [complainant] Scheerhoorn’s fingernails, and the DNA from an unknown person was found on [complainant] Scheerhoorn’s fingernails.*

26. On or about April 25, 2019, Cybergenetics prepared documentation for searching the TrueAllele®-inferred profile in the Combined DNA Index System (CODIS) and the defendant’s counsel provided that documentation to John Donahue, DNA Technical Leader, Beaufort County Sheriff’s Office Forensic Services Laboratory, Beaufort, South Carolina for upload into the CODIS system.

27. On or about May 7, 2019, during a search of the FBI’s National DNA Index System (NDIS), a “moderate match” occurred between the unknown profile provided by Cybergenetics and a known offender profile being stored in the Texas DPS CODIS database. John Donahue then

contacted Gary Molina, CODIS Program Manager, Texas Department of Public Safety, requesting to begin the match confirmation process.

28. On June 2, 2019, Shantel Kaster, Local CODIS Administrator, Texas Department of Public Safety, sent a “NDIS CODIS Offender Letter” to John Donahue. The letter confirmed that the moderate match between the specimen submitted by Cybergenetics and the offender CODIS sample was re-examined and verified against the original profile uploaded into the CODIS database.

Applicable Law and Authorities

29. Under Article 64.04 of the Texas Code of Criminal Procedure, the convicting court shall hold a hearing and make findings as to whether, had the results of testing under Article 64.03 and any comparison of a DNA profile under Article 64.035 been available during the trial of the offense, it is *reasonably probable* that the defendant would not have been convicted. TEX. CODE CRIM. PRO. art. 64.04 (emphasis added). It is the defendant’s burden to establish by a preponderance of the evidence that he would not have been convicted if exculpatory results had been obtained through DNA testing. TEX. CODE CRIM. PRO. art. 64.03(a)(2)(A). To satisfy his burden, the defendant must show that there is a “greater than a 50% chance that he would not have been convicted if DNA testing provided exculpatory results.” *Leal v. State*, 303 S.W.3d 292, 297 (Tex. Crim. App. 2009) (quoting *Prible v. State*, 245 S.W.3d 466, 467-68 (Tex. Crim. App. 2008)). Furthermore, a favorable DNA result must be the sort of evidence that would affirmatively cast doubt upon the validity of the inmate’s conviction; otherwise, DNA testing would simply “muddy the waters.” *Rivera v. State*, 89 S.W.3d 55, 59 (Tex. Crim. App. 2002); *See also Flores v. State*, 491 S.W.3d 6, 9 (Tex. App. – Houston [14th Dist.] March 8, 2016, pet. ref’d) (“A court considering whether DNA test results demonstrate a reasonable probability of acquittal should not

apply the actual innocence standard articulated in *Ex parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 1996). Instead, the court should determine whether the results would ‘cast affirmative doubt upon the validity of the inmate’s conviction.’” (citing *Raby v. State*, 2015 WL 1874540 at *6 (Tex. Crim. App. April 22, 2015)). “The bottom line in post-conviction DNA testing is this: Will this testing, if it shows that the biological material does not belong to the defendant, establish, by a preponderance of the evidence, that he did not commit the crime as either a principal or a party?” *Ex parte Gutierrez*, 337 S.W.3d 883, 900 (Tex. Crim. App. May 4, 2011).

DNA Testing and CODIS Results are Favorable

30. The defendant has established by a preponderance of the evidence that, had the results of the post-conviction DNA testing and the comparison of the DNA profile resulting in the CODIS match information been available during the trial of the instant offense, it is reasonably probable that he would not have been convicted.

31. The results of the post-conviction DNA testing, conducted pursuant to its order, along with the CODIS match information are favorable to the defendant.

ORDER

THE CLERK IS **ORDERED**, pursuant to TEX. CODE CRIM. PRO. art. 64.03(e), to send a copy of this Findings of Fact and Order to the Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001.

THE CLERK IS FURTHER **ORDERED** to send a copy of this Findings of Fact and Order to the defendant’s counsel, Brittany Carroll Lacayo, 212 Stratford Street, Houston, Texas 77006 and Michael Logan Ware, 300 Burnett Street, Suite 160, Fort Worth, Texas, 76102; and to the

State's counsel, Gerald Doyle and Randi Capone, Assistant District Attorneys, Harris County District Attorney's Office, 500 Jefferson, Suite 600, Houston, Texas 77002.

BY THE FOLLOWING SIGNATURE, THE COURT ADOPTS THE AGREED FINDINGS OF FACT IN CAUSE NUMBER 1288802.

SIGNED on this _____ day of _____, 2019.

PRESIDING JUDGE, 351st DISTRICT COURT
HARRIS COUNTY, TEXAS

APPROVED AS TO FORM AND SUBSTANCE:

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