

Cause No. 669340  
Writ No. \_\_\_\_\_

The State of Texas	§	
	§	Harris County, Texas
v.	§	208th Judicial District
	§	
Ronald Gene Taylor	§	

**MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR A WRIT OF  
HABEAS CORPUS PURSUANT TO Tex. Code Crim. Proc. Ann. Art. 11.07**

Ronald Gene Taylor respectfully submits this Memorandum of Law in Support of his Application for a Writ of Habeas Corpus Pursuant to Art. 11.07 of the Texas Code of Criminal Procedure. The factual and legal grounds for the writ are provided by the results of advanced DNA testing, unavailable at the time of Mr. Taylor’s 1995 trial, which has not only conclusively demonstrated his actual innocence of the crime, but has also identified the real perpetrator – a convicted offender who remains incarcerated for other crimes – of the rape for which Mr. Taylor was wrongfully convicted twelve years ago.

**PRELIMINARY STATEMENT AND SUMMARY OF GROUNDS FOR RELIEF**

On May 2, 1995, Mr. Taylor was found guilty of aggravated sexual assault and sentenced to sixty years imprisonment. This crime involved the sexual assault and rape of a thirty-nine year old woman in her home in the early morning hours of May 28, 1993. Mr. Taylor’s conviction rested almost entirely on the victim’s eyewitness identification. This identification, however, was based only upon her recollection of touching the perpetrator’s face in a dark room during the attack, and -- at most -- a subsequent three-second glimpse of the perpetrator, illuminated by street light coming through a window.

In 2007, by joint agreement between the Harris County District Attorney's Office and undersigned counsel for Mr. Taylor, advanced Short Tandem Repeat ("STR") DNA testing was conducted on evidence recovered from the scene of the crime for which Mr. Taylor was convicted. The testing has now yielded conclusive and wholly exculpatory results which establish Mr. Taylor's actual innocence and entitle him to immediate relief from his conviction.

On Friday, July 27, 2007, the ReliaGene DNA laboratory in New Orleans, Louisiana, issued a written report, confirming that the laboratory was able to locate semen and spermatozoa contained in a single stain on the fitted bed sheet collected from the crime scene. This stain yielded a single male DNA profile, which excluded Mr. Taylor as the source – providing powerful evidence that Mr. Taylor was not the perpetrator of this heinous crime. This male DNA profile was then run through the CODIS DNA database, and a "hit" to the DNA profile of a convicted offender in that databank was obtained. The individual identified through that DNA databank search is a man named Roosevelt Carroll – who, upon information and belief, lived less than a mile from the victim at the time of the crime, and is presently in the custody of the Texas Department of Criminal Justice and has a history of prior felony convictions, including sex offenses.

The State has also informed undersigned counsel that after the CODIS databank search identified Roosevelt Carroll as the source of the DNA on the bedsheet, HPD detectives spoke with the victim in the instant case, who confirmed (1) that she does not know, and had no prior relationship with, Roosevelt Carroll, and (2) that she did not have consensual sexual relations with any other man in the days and weeks preceding the assault. Accordingly, the new DNA evidence convincingly establishes both that Mr. Carroll is the perpetrator of the crime, and that Ronald Taylor is innocent.

Two other notable facts in the troubling history of this case were also revealed by the recent DNA testing and subsequent investigation. First, the ReliaGene Laboratory was able to obtain conclusive DNA results on the bedsheet even though the original analysis conducted by the Houston Police Department's crime laboratory yielded the conclusion that this very same stained area of the sheet was "negative" for semen and spermatozoa. This indicates that the HPD laboratory gravely erred in its serological analysis of the fitted bed sheet; indeed, had the semen stain been properly analyzed at that time, it could well have established Mr. Taylor's innocence at the outset of his case. Second, court records reveal that Roosevelt Taylor, the actual source of the spermatozoa on the bedsheet, was in the 1980s and 1990s known to law enforcement by the nickname "Chilli Chetter." In 1993, immediately after the rape (but before Mr. Taylor became a suspect), police were provided specific information by the victim's own daughter indicating that another man in the neighborhood named "Chili Charlie" may have been the perpetrator of the crime. HPD detectives maintained at Mr. Taylor's trial they had reliably eliminated "Chili Charlie" as a suspect; Mr. Taylor's trial attorney vigorously disputed that claim, contending that not enough had been done to investigate this lead and that the inculpatory evidence pointed far more strongly to "Chili Charlie" than to Mr. Taylor himself. Given these two highly similar reported nicknames, what is now known about the presence of Roosevelt Carroll's DNA on the bedsheet, and the fact that Carroll was also a neighbor of the victim's in 1993, it appears that the HPD may indeed have failed to adequately investigate evidence pointing to Carroll fourteen years ago.

For the reasons set forth above and herein, the new DNA test results undeniably provide clear and convincing evidence that, had this evidence been available during the original trial, no reasonable jury would have convicted Mr. Taylor, and thus entitle him to habeas relief from his

conviction based on newly discovered evidence of actual innocence. *See Ex Parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 1996).

## STATEMENT OF FACTS

### **I. The Crime**

At the time of the attack, the victim, Wilma A\_\_\_\_<sup>1</sup>, lived with three of her four children (TT 9)<sup>2</sup>. On May 27, 1993 at 10PM, the victim and her eldest daughter walked to a neighborhood bar, Lee Lounge, to talk and shoot pool (TT 13). While Ms. A\_\_\_\_ was at Lee Lounge, her mother, who lives across the street, came over to watch the other three children (TT 15). Ms. A\_\_\_\_ does not drink and did not consume any alcohol that evening (TT 14). She walked home from the bar with her friend, Yolanda, at around 1:00AM on May 28, 1993 (TT 15-16). Then Yolanda and the victim walked Ms. A\_\_\_\_'s mother to her own residence across the street, and after walking the victim home again, Yolanda left (TT 16). The victim then checked on her sleeping children and fixed herself something to eat (TT 17). She subsequently changed into a nightgown, bra, and underwear and watched television before falling asleep in her bedroom between 2:00 and 2:15 AM (TT 18; 39).

Later that night, the victim woke up to a man grabbing her throat and holding a knife against her neck (TT 40). Although Ms. A\_\_\_\_ tried, she was unable to push her attacker off (TT 40). As she continued to struggle with the perpetrator, she ran her hands over his face, mouth and head (TT 41). The attacker told her not to scream or else he would kill her (TT 41). With this threat, the victim succumbed to the perpetrator's instructions and helped him to pull

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<sup>1</sup> Although the victim's full name is listed in the trial transcripts, in the intent of preserving her privacy, she will be referred to here in abbreviated form.

<sup>2</sup> All references to "TT" refer to the transcript of Mr. Taylor's trial, dated April 27, 1995 through May 2, 1995.

down her underwear (TT 42). While still holding the knife to her throat, the perpetrator stood up, pulled down his pants and then straddled the victim (TT 98). At this point, the victim did not fight against the perpetrator because she feared for her life and the well-being of her children (TT 44). The perpetrator penetrated the victim's vagina with his penis for what Ms. A\_\_\_\_\_ said felt like ten minutes (TT 46).

During the attack, the room was dark, and the victim could only make out the shadow of her attacker (TT 45). Ms. A\_\_\_\_\_ acknowledged that she was unable to see the assailant's face, but testified that was able to feel the shape of his face and body, including his ears, nose, eyelids, neck, shoulder and mouth (TT 45-46). Ms. A\_\_\_\_\_ believed that the perpetrator ejaculated because she felt "all this stuff down my leg afterwards" (TT 49). When the perpetrator was finished, he told the victim not to move and fled the room (TT 50).

In her testimony at trial (although not in her original statement to the police), Ms. A\_\_\_\_\_ also stated that she caught a brief glimpse of the assailant on his way out of the house. As the assailant ran out of the bedroom, she testified, he bumped into the refrigerator, and the victim was able to get up and run to the door (TT 50). This allowed her to catch sight of her attacker for about three seconds, illuminated by a light beam shining into the house from the floodlights across the street (TT 50; 53). During this three-second period, she stated that she was able to see the perpetrator's skin color and face, and that he was wearing a white undershirt, tan pants and two tone tan boat or canvas shoes (TT 52-53).

As the perpetrator ran out of the house, the victim pulled up her underwear, chased after him with her pistol, and saw him running down the street. (TT 55; 103). Unable to catch up with the assailant, Ms. A\_\_\_\_\_ then returned inside of her house and checked on her children (TT 55).

She woke up her son but let her daughter continue to sleep on the couch (TT 55). The victim or her son called the police, who arrived about thirty-five or forty minutes later (TT 58).

At 4:54 AM, Officer Bruce K. Walter and his partner arrived at the crime scene (TT 133). After the police briefly interviewed the victim and assessed the situation, they escorted her to the Ben Taub Emergency Room (TT 59; 135). At the hospital, a rape kit was collected (TT 61). The victim did not urinate or wash herself before being examined at the hospital (TT 103). After the hospital examination, the police brought Ms. A\_\_\_\_\_ back to her house at approximately 10AM (TT 61). There is no indication from the trial transcript or available police reports that the victim, who lived alone with her children, had consensual sexual intercourse at any time in the days or weeks preceding the assault.

## **II. Investigation and Identification**

When the police arrived, the victim described the perpetrator as a black male, twenty to thirty years old, with a short black Afro and a moustache, wearing a white t-shirt and khaki work pants (TT 138). At this time, the victim informed the police that her coin purse was stolen with thirty-two dollars in it (TT 141).

From an assessment of the crime scene, the police ascertained that the perpetrator entered the house through a rear kitchen window (TT 139). The perpetrator was able to enter this window, which was slightly off of the ground, by pushing a shopping cart underneath the window and using it as a ladder to climb up and remove the screen<sup>3</sup> (TT 140). James R. Davis, a member of the crime scene unit, collected the removed window screen, which was found leaning against the house in the backyard (TT 162-163). There were no identifiable footprints in the backyard (TT 177).

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<sup>3</sup> A photograph of a Kroger's shopping cart being underneath the window was introduced at trial as State's Exhibit No. 5 (TT 166). A photograph of the window that was the point of entry was entered into evidence as State Exhibit No. 7 (TT 167).

The police also found the victim's bedroom to be ransacked -- clothes were hanging out of the dressers and items on top of the dressers were turned over (TT 142). Officer Bruce Walter observed that "towards the center of the bed there was a wet spot"<sup>4</sup> (TT 142). Mr. Davis took a picture of the bed sheet containing the wet spot and collected the sheet as evidence (TT 163).

On June 9, 1993, Ms. A\_\_\_\_ gave a statement to Officer Julie Hardin of the investigatory unit of the Houston Police Department (TT 211). This statement contained more details than were given initially, including that the perpetrator was 5'11" to 6' tall, had a medium build, a round face with ears that "stuck out a little," and a clean shaven face with hair bumps on the cheek. This statement, however, also did not mention anything about the perpetrator bumping into the refrigerator, which Ms. A\_\_\_\_ later said gave her the opportunity to see him for three seconds, or the fact that he was missing a tooth, which Ms. A\_\_\_\_ later said helped her to identify Mr. Taylor (TT 232- 233).

Using the victim's statement and analysis of the crime scene, Officer Hardin created a "profile" of the perpetrator (TT 200). The perpetrator was believed to be someone that lived in the victim's neighborhood and had previously committed an assault and burglary (TT 200-202). The police used this "profile" to generate a suspect – a man that was being held in the burglary and theft division for a crime in the same area as Ms. A\_\_\_\_'s home. (TT 216). However, when this suspect was put into a six person lineup, the victim did not identify him as her attacker (TT 216-217).

The police continued their investigation by pursuing another lead provided by a man known in the neighborhood as "Goldie" (TT 219). Goldie told the police that they were looking for "a black male who was rooming at a place near his house." (TT 220). Goldie lived only about

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<sup>4</sup> A picture of the stained bed sheet was entered into evidence at trial as State Exhibit No. 6 (TT 168).

seven blocks away from the victim's house (TT 220). The police went to the location of Goldie's residence and found "a small house in the back of the yard" (TT 221). In this rental unit, the police found Ronald G. Taylor, who Officer Hardin testified was a cousin of Goldie (TT 222). Mr. Taylor subsequently participated in a lineup at the police station, which was videotaped.

According to Officer Hardin, the police tried to reach Ms. A\_\_\_\_\_ to participate in the live line up at the police station, but were unable to reach her. (TT 224) Therefore, instead of postponing it, the police videotaped the line up and Officer Hardin presented the video to the victim in her home on July 8, 1993 (TT 224). Officer Hardin testified that the police decided to conduct the video lineup to be accommodating to the victim, who had to care for her disabled daughter (TT 267; 270)<sup>5</sup>. The police first tried to show the lineup in Ms. A\_\_\_\_\_ 's home on July 6, 1993 but the victim's video machine was not working properly (TT 263). When the machine was fixed, the police returned to the victim's home on July 8, 1993 and successfully showed her the video (TT 265). No counsel or other representative for the defendant was present, and the viewing of the videotape was not recorded or witnessed by anyone except Officer Hardin and the victim's children (TT 265-266). In addition, Officer Hardin testified that she was "very busy with the children" when Ms. A\_\_\_\_\_ was watching the video, and could not even say for sure how many times Ms. A\_\_\_\_\_ watched it (TT 271).

Ms. A\_\_\_\_\_ testified that she watched the videotape twice (TT 79). As Ms. A\_\_\_\_\_ examined the lineup the second time, she stated that she suddenly "remembered" that the perpetrator had a tooth missing, which she noticed when he forcibly kissed her (TT 232- 233). Ms. A\_\_\_\_\_ proceeded to identify Mr. Taylor from the videotape as the man she believed was her attacker (TT 225-226).

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<sup>5</sup> It should be noted that the victim came down to the police station for a previous live lineup that excluded the police's first suspect as the perpetrator.

Officer Hardin was unconcerned with the reliability of the new information provided for the first time during the videotaped lineup procedure. She testified at trial that it is common for victims to have an “ongoing remembrance of details” in any sexual assault case (TT 214). Indeed, Officer Hardin testified that she was “always discovering” new details about the case from sexual assault victims as her investigations proceeded, and that she had “never” had a case in her entire career in which a sexual assault victim did not “remember more” about the assault or the perpetrator after the initial statement was given. (TT 214, 237) In the instant case, Officer Hardin said she was aware that Ms. A\_\_\_ had initially been unable to describe any of the assailant’s facial features, but she “knew that, like in many instances, it would come out later” – an expectation, she testified, that was confirmed when the victim came forth with these additional details during the viewing of the videotaped lineup on July 8, 1993. (TT 252).

### **III. Forensics**

Maurita Carrejo, a serologist with the Houston Police Department Crime Laboratory, testified that she was provided with the fitted bed sheet, as well as the contents of the victim’s rape kit, nightgown and bra, for forensic analysis (TT 293-294). Ms. Carrejo testified that she analyzed each of these items for the presence of semen and spermatozoa, with “negative” results. (TT 294-95). (Ms. Carrejo did not specify which chemical tests she performed in this case, but testified generally about methods used by the laboratory to test for semen and spermatozoa, including microscopic examination of the items, and a test for the P-30 protein found in semen and which serves as a chemical indicator that semen is present) (TT 296). Upon obtaining these “negative” result, no further testing of any kind was conducted, including upon the stained bedsheet (TT 295).

Ms. Carrejo was asked by counsel for both parties at trial to explain the apparent absence of semen from these items of evidence. She initially agreed, in response to questioning by the State, that it was “not unusual in a sexual assault case for there to be no semen present,” which might, for example, be due to an absence of vaginal penetration or the fact that the assailant did not ejaculate. (TT 299). She also said that sperm cells might not be detectable if only pre-ejaculate was emitted. (TT 298-99) However, when asked on cross-examination whether -- as was reported in the instant case -- the presence of a “wet spot” on the bedsheet and the victim’s account of fluid running down her leg after the assault would lead to the conclusion that the assailant had, in fact, ejaculated and thus should indicate the presence of semen and spermatozoa, Ms. Carrejo testified that she did not “have enough facts to state an opinion about that.” (TT 301)

Prior to trial, Mr. Taylor, through his counsel, filed a written motion dated October 5, 1993, seeking DNA testing on evidence collected in the case, including, specifically, the victim’s clothing and bedsheets, which Mr. Taylor alleged “contained evidence of male semen.” The District Court granted the motion that day, and by written order directed the State to obtain hair, blood, and semen samples from Mr. Taylor for comparative analysis. Upon information and belief, however, after the HPD’s Maurita Carrejo concluded that no semen or spermatozoa were present on these items, no DNA testing (or testing of any kind) was performed.

Certain surfaces inside and outside of the victim’s home - including the window, which served as the point of entry, and the house door knobs - were dusted for fingerprints (TT 163; 171-172). According to the HPD officers, no interpretable fingerprints were found at the crime scene (TT 176).

#### **IV. Trial**

Without any forensic evidence to link Mr. Taylor to the crime scene or sexual assault, the prosecution's case rested almost entirely on the eyewitness testimony of the victim, who identified Mr. Taylor as her attacker in a video-lineup conducted at the victim's own home (TT 225-226). The only evidence offered in support of this identification was the original tip that the police received from a street man known as "Goldie," which led the police to identify Mr. Taylor as a possible suspect (TT 220).

The defense at trial was one of eyewitness misidentification (TT 309). The defense questioned the accuracy of the victim's identification by highlighting the fact that her original statement to Officer Hardin excluded important aspects of the attack and the description of perpetrator which were later testified to at trial, in what the defense asserted was an effort to make the identification appear more detailed and reliable than it actually was (TT 314). For example, the initial report did not mention that the perpetrator had bumped into the refrigerator, which the state concluded allowed the victim to see the assailant briefly in the reflected streetlight, or that he was missing a tooth (TT 252, 255).

In addition, the defense suggested that the video lineup was unfair because it was unnecessarily conducted in the victim's home, an uncontrolled environment that may have tainted the lineup, diminished the victim's ability to view Mr. Taylor's actual features, and influenced the victim to choose Mr. Taylor (TT 265- 267). The defense questioned Officer Hardin's explanation as to why the live lineup was not rescheduled when it was clear from the record that the victim could get to the police station and in fact had been there on numerous occasions including for the purpose of viewing a previous lineup containing another suspect (TT 269).

In further support of its misidentification theory, the defense suggested that the real perpetrator may have been another man in the neighborhood known by the name of “Chili Charlie.” Indeed, earlier that evening, the victim’s daughter saw “Chili Charlie” at the bar where she and her mother were playing pool, and she reported this information to the responding officers that evening; questioning by the defense (although excluded on hearsay grounds) indicated that the daughter also told investigators that “Chili Charlie” was wearing clothes that fit the victim’s description of the perpetrator (TT 261; *see also* TT 105). “Chili Charlie” also fit the police’s own “profile” of the attacker because he had been a suspect in another sexual assault case and lived in the neighborhood (TT 262-263). Detective Hardin testified that she investigated this lead, but reliably excluded him as a suspect. (TT 262, 279) The grounds for elimination, however, consisted only of second-hand information from the locals of a neighborhood bar who, Officer Hardin claimed, had informed her that “Chili Charlie” was over 50 years old -- and thus much older than the suspect's estimated age of twenty to thirty (TT 231; 262).

In closing arguments, the defense emphasized that it was not disputing that Ms. A\_\_\_ had been the victim of a brutal and traumatic rape, but emphasized her limited opportunity to view the assailant’s features and delayed recollection of key details, and further argued that the inculpatory evidence pointed far more strongly towards “Chili Charlie” than to Mr. Taylor himself. (TT 309-11, 317-19). The prosecution contended that the State had reliably excluded “Chili Charlie” as a suspect (TT 335-36), and further argued that neither the lack of detail in the victim’s initial physical description of the perpetrator, nor absence of semen on the forensic evidence tested by the HPD laboratory, should preclude a guilty verdict against Mr. Taylor:

[Defense] counsel wants you to believe or has implied to you that because of some detail that’s not in the [victim’s] statement, that you should reward the defendant

and find him not guilty. I would submit to you, folks, that if you do that, if you do that today, you're sending a message to every single juror that sits on any kind of rape case in this county that if for whatever reason a victim doesn't recall every specific detail, doesn't have a Xerox memory, that they should cut them loose.

Another thing, if you find him not guilty, folks, move over on the elevator, because he's going down with you....Move over because he's going down with you. You'll be sending a message to him and to other rapists like him that if they don't ejaculate on somebody, then you're going to be let go. You'll be found not guilty. Don't reward him for that.

(TT 338-39)

On May 2, 1995, the jury convicted Mr. Taylor of sexual assault and sentenced him to sixty years in prison. Since his conviction, Mr. Taylor has consistently maintained his innocence and – as he did at trial – has continued to seek DNA testing to prove his claims, including by securing the legal representation of undersigned co-counsel at the Innocence Project, Inc.

#### ARGUMENT

#### **Post Conviction DNA Testing Has Conclusively Excluded Mr. Taylor as the Source of Male DNA Deposited by the Perpetrator During the Sexual Assault of Ms. A \_\_\_\_ and Identified Another Convicted Offender as the Actual Perpetrator of the Crime, Establishing Mr. Taylor's Actual Innocence and Entitling Him to Relief**

In October 2006, following a request for a search for evidence in the case made by undersigned counsel at the Innocence Project, the Houston Police Department located various items of evidence -- including remnants of swabs and slides from the rape kit, the victim's clothing, and the fitted bed sheet -- in the HPD's property room. On or about May 2, 2007, with the consent of all parties, the recovered evidence was sent to ReliaGene (a fully accredited, private DNA laboratory in New Orleans, Louisiana, which since 1990 has produced interpretable genetic profiles of well over 400,000 forensic and biological samples)<sup>6</sup> for DNA testing and analysis. In an initial report on June 27, 2007, ReliaGene reported that there was no cotton swab

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<sup>6</sup> See ReliaGene.com, About Us.  
[http://www.reliagene.com/index.asp?content\\_id=corpinfo&menu\\_id=aboutus](http://www.reliagene.com/index.asp?content_id=corpinfo&menu_id=aboutus)

material remaining on the vaginal swab and no spermatozoa present the vaginal smears.

However, ReliaGene did detect a fully identifiable semen stain on the fitted bed sheet, containing spermatozoa. This sample was sufficient to yield a male DNA profile that could be compared to a reference sample from Mr. Taylor.

Utilizing STR-DNA testing technology, on July 27, 2007, ReliaGene reported that the single, male DNA profile from the sperm on the bedsheet conclusively excluded Mr. Taylor as the source. (A copy of the final laboratory report is attached to this memorandum as Exhibit A). Notably, ReliaGene also reported that the stained area of the bedsheet from which this DNA profile was obtained appears to have previously been marked “AP negative” by the HPD laboratory analyst(s) who examined and tested the sheet. “AP” is a well-known forensic abbreviation for acid phosphatase, a chemical indicator for the presence of semen. ReliaGene’s own testing, by contrast, was both positive for the presence of acid phosphatase and yielded a strong semen/spermatozoa DNA profile from this stained area. *See Exhibit A; see also* photograph of bedsheet, indicating previously-marked and tested areas, provided by ReliaGene (attached hereto as Exhibit B).

The male DNA profile from the “sperm fraction” of the stained sheet was then run through the CODIS DNA database, and a “hit” to the DNA profile of a convicted offender in that databank was obtained. The individual identified through that DNA databank search is a man named Roosevelt Carroll – who, upon information and belief, lived less than a mile from the victim at the time of the crime. According to information provided by the State to undersigned counsel, Carroll is presently in the custody of the Texas Department of Criminal Justice and has a history of prior felony convictions, including offenses requiring him to register as a sex offender.

In addition, public records reporting Mr. Carroll's criminal history reveal that he has been repeatedly identified by law enforcement as a man also known by the nickname of "Chilli-Chetter." (See Texas Department of Public Safety Offender Information, available at [www.westlaw.com](http://www.westlaw.com), and attached hereto as Exhibit C). This, of course, is a remarkably similar nickname to that of "Chili Charlie" -- the neighbor of the victim's originally identified by her own daughter to police as a suspect in the crime, and whom Mr. Taylor's counsel contended at trial was the likely true perpetrator. Moreover, although the HPD's Officer Hardin testified that she had reliably eliminated "Chili Charlie" as a suspect in 1993 after allegedly determining that he was in his 50s at the time and thus much older than the perpetrator, who was described by the victim as between 20 and 30 years old, these records indicate that Carroll's date of birth is actually January 11, 1964 -- which would have made him 29 years old at the time of the crime.

In addition, the Office of the District Attorney for Harris County has also informed undersigned counsel that after the CODIS databank search identified Roosevelt Carroll as the source of the DNA on the bedsheet, HPD detectives spoke with the victim in the instant case. In that interview, she confirmed (1) that she does not know, and had no prior relationship with, Carroll, and (2) that she did not have consensual sexual relations with any other man in the days and weeks preceding the assault.

Accordingly, the new DNA and investigative evidence provides overwhelming proof that Mr. Taylor was not the man who sexually assaulted Ms. A\_\_\_\_ on May 28, 1993. This is so notwithstanding the fact that Ms. A\_\_\_\_ identified Mr. Taylor at trial, and no doubt honestly believed that he was her attacker at that time. Social science research has repeatedly shown that despite its apparent force, eyewitness identification by the victim of a rape and/or sexual assault can be extraordinarily unreliable. Indeed, a number of studies have shown that the

very factors that jurors and courts consider to be strong signs of the reliability of an identification – including the degree of certainty expressed by the witness – often bear little relationship to its accuracy. *See, e.g.,* Amy Bradfield and Gary Wells, *The Perceived Validity of Eyewitness Identification Testimony: A Test of the Five Biggers Criteria*, 24 LAW & HUM. BEHAV. 581, 582 (2000); Amy Bradfield et al, *The Damaging Effect of Certainty and Identification Accuracy*, 87 J. APPLIED PSYCHOL. 112 (2002). This is especially true where the eyewitness is the victim of a traumatic crime. Here, it is also likely that the darkness of the room in which the rape occurred, coupled with the stress and violence of the attack, may have hindered Ms. Archer’s recollection of her attacker – thus leading to the misidentification of Mr. Taylor.

In 1996, shortly after Mr. Taylor’s conviction, the United States Department of Justice’s Office of Justice Programs and the National Institute of Justice released a report entitled Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial, detailing 28 cases that had already come to light in which individuals convicted of various crimes were later exonerated by DNA testing (See Nat’l Instit. Just., Off. Just. Programs, U.S. Dept. Just., Pub. No NCJ 161258(1996)). The report stated:

In the majority of these cases, given the absence of DNA evidence at trial, the eyewitness testimony was the most compelling evidence. Clearly, however, those eyewitness identifications were wrong.

(See Nat’l Instit. Just., Off. Just. Programs, U.S. Dept. Just., Pub. No NCJ 161258(1996)). *See also* Samuel R. Gross et al., Exonerations in the United States: 1989 Through 2003, 95 J. Crim. L. & Criminology 523 (2004) (finding, in a comprehensive study of post-conviction exonerations between 1989 and 2003, that almost 90% of wrongful convictions for rape were the result of mistaken eyewitness identification). Mr. Taylor’s case has now emerged as the latest in that tragic series of wrongful convictions based in whole or in part on eyewitness misidentification.

In summary, an array of newly discovered evidence establishes Ronald Gene Taylor's actual innocence of the rape for which he was convicted and remains imprisoned, including: (1) testimony by two officers who responded to the crime scene that a "wet spot" existed on the bedsheet where the rape occurred at that time, (2) DNA test results that conclusively exclude Mr. Taylor as the source of the single male DNA profile detected from semen and spermatozoa on that bedsheet, and (3) the State's subsequent investigation into the donor of that male DNA profile, revealing the source to be convicted offender Roosevelt Carroll, a man with whom the victim had no prior consensual relationship of any kind. This new evidence exculpating Mr. Taylor and pointing to another individual as the true perpetrator of the crime more than meets his burden of establishing, through clear and convincing evidence, that no reasonable juror would have convicted Mr. Taylor of rape in 1995 had the new evidence been presented at trial. Accordingly, he is entitled to relief from his conviction under Tex. Code. Crim. Pro. Art. 11.07. *See Elizondo*, 947 S.W.2d at 205-06; *see also Ex Parte Giles*, 2007 WL 1776009 (Tex. Crim. App. June 20, 2007) (granting habeas relief in rape case based on new DNA evidence and investigation which "indicates that it was another individual, and not Applicant, who committed this offense"); *Ex Parte Karage* 2005 WL 2374440 (Tex. Crim. App. Sept. 28, 2005) (same, after CODIS databank hit revealed source of semen and spermatozoa recovered from homicide victim to be a convicted offender with whom the victim had no prior relationship).

## CONCLUSION

For the reasons stated herein, Applicant respectfully requests that his Application for a Writ of Habeas Corpus be GRANTED.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I do hereby certify that I have hand-delivered a true and correct copy of the foregoing Memorandum of Law to the Harris County Assistant District Attorney Jack Roady, Harris County District Attorney's Office, Appellate Division, 1019 Congress Street, 15<sup>th</sup> Floor, Houston, Texas 77002, on this \_\_\_\_\_ day of October, 2007.

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