

THE STATE OF TEXAS

V.

LARRY CHARLES FULLER

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IN THE 203<sup>RD</sup> JUDICIAL

DISTRICT COURT

DALLAS COUNTY, TX

**MOTION FOR A FAVORABILITY FINDING  
PURSUANT TO TEX. CODE CRIM. PROC. ANN. ART. 64.04**

This is a case about mistaken eyewitness identification. A quarter of a century ago, a Dallas County jury found Larry Fuller guilty of aggravated rape after deliberating for only 35 minutes. A new technology, DNA testing, has proven his innocence, but the procedures which led to this mistaken identification are, in light of new social science evidence, conducive to producing error and continue to cry out for reform.

The victim, [REDACTED] was raped in her apartment 45 minutes before sunrise in an attack that lasted approximately 10 minutes. Other than the pre-dawn sky, the only source of light in the bedroom was the glow from her digital clock radio.

Ms. [REDACTED] testified that she had no doubt Mr. Fuller was the man who raped her. Police had shown her two photo arrays, the first of which included an old photograph of Mr. Fuller and produced no conclusive identification. Ms. [REDACTED] positively identified Mr. Fuller in the second photo array, despite the fact that his current photo showed he had a full beard, contrary to her original description. He was also the only person to appear in both arrays. Mr. Fuller's conviction was based primarily on this identification.

DNA testing has ultimately proven that Mr. Fuller is not the man who raped Ms. [REDACTED] and that his conviction was the result of an erroneous identification.

## I. The Crime

On the afternoon of April 25, 1981, [REDACTED] a thirty-seven-year-old white woman, went swimming at her condominium complex [REDACTED] in Dallas, Texas, where she lived alone. (T. 9-10, T. 12). She cleaned her apartment that night and went to bed at about 1:00 or 1:30am. On Sunday, April 26, she woke at 6:00am in her dark bedroom to a black man sitting on top of her. The assailant had broken into her home and armed himself with a butcher knife from her kitchen, which he held in his hand over her head. (T. 11-12, T. 25, T. 30). Ms. [REDACTED] was "terrified" and began to cry immediately. (T. 44-45). She told him "Please don't hurt me. Please don't hurt my brother." Ms. [REDACTED] brother was not actually at her home, but she hoped the statement would dissuade her attacker. Believing the assailant was going to kill her, she attempted to grab the knife. (T. 16-17). In the struggle, the assailant cut her thumb, both sides of her neck and her backside. Ms. [REDACTED] stopped struggling and the assailant vaginally raped her. (T. 18-19). The rape lasted a couple of minutes, and ended when he ejaculated. (T. 20, T. 95-96). The assailant got off the bed, went toward her dresser and asked whether she had any money. When Ms. [REDACTED] told him she did not, he took off running. (T. 21-22).

Officers Stallo and Whitsett responded to the scene just before 6:30am. (T. 78). They determined the assailant had entered Ms. [REDACTED] home by breaking the glass and unlocking her front window — a muddy footprint was discovered on the inside floor, right beside the window. (T. 29, T. 77). Officer Robert Atkins of the Identification Bureau, Physical Evidence Section, arrived, photographed the scene and processed the area for fingerprints. Ms. [REDACTED] told the responding officers what happened. (T. 42, T. 75).

No lights were on in the apartment throughout the attack, which began at 6:00am (the first day of daylight savings time), 45 minutes before sunrise, when "the sky was just barely

beginning to lighten.” (T. 21, T. 39, T. 41, T. 65, T. 108-09). The only lighting in the bedroom consisted of what Ms. ██████ described as “a little light” coming from a window to the right of her bed and light from the digital dial of a clock radio. (T. 21, T. 40-41).

According to Ms. ██████, she gave the responding officers the following description of the assailant: “black male, just kind of average build. . . I didn’t know his age, exactly. I thought somewhere in his twenties.” (T. 42). The initial police report listed the assailant as: “N/M/20, 5’7”, Black hair, Brown eyes, speech soft/polite/apologetic.” (Offense Incident Report, Officer Mark Stallo). The officers stayed with Ms. ██████ in her apartment for about an hour and a half, and then took her to Parkland Hospital. (T. 32, T. 79).

In the emergency room, doctors first stitched the laceration to Ms. ██████ hand, which had been “bleeding profusely.” The cuts to her neck, back and rear were superficial. (T. 33-34). Ms. ██████ then underwent a pelvic examination and evidence collection for a rape kit. (T. 93-94). Motile sperm were recovered on her vaginal swabs and slides. (T. 95-96). At about noon, police took Ms. ██████ home. (T. 35).

Officer Robert Gage was assigned to the case and met with Ms. ██████ later that day at her home. (T. 35). Ms. ██████ told him that the assailant did not use profanity and had a kind of short Afro, “he didn’t say a lot,” but that she “didn’t remember a heavy Negro dialect or anything.” (T. 42-43). When asked about his facial features, Ms. ██████ said “he had pretty regular features,” “he didn’t have a real wide nose” and “[h]e didn’t have real thick lips. He had more “regular features,” “a reasonably attractive face and she “didn’t remember any facial hair.” (T. 43, T. 50). Ms. ██████ reported that she “knew the assailant wasn’t real light-skinned,” but she “couldn’t tell whether he was “real dark-skinned.” (T. 50). She testified he was “medium height” and she had never seen him before. (T. 43, T. 52).

## II. The Identification

### A. Ms. [REDACTED] Did Not Positively Identify Mr. Fuller the First Time She Was Shown his Picture in a Photo Array

Ms. [REDACTED] did not look through mug books, nor did she assist in creating a composite of her assailant. Instead, on Tuesday, April 28, two days after the attack, Officer Gage came to Ms. [REDACTED] house and showed her a single photo array that included Larry Fuller and five other black males. (T. 37).

Mr. Fuller was thirty-two years old at the time and had no record of sex crimes. He had been attending Dallas Baptist College when he was drafted into the United States Army. (T. 188, T. 193). He served in Vietnam for two tours,<sup>1</sup> working as crew chief in transportation, performing maintenance for helicopters and also as a gunner for an assault helicopter company. (T. 193-94). He was shot down several times, received the Air Medal for taking care of his crew and was ultimately honorably discharged. (T. 194-95). After returning from service in September 1971, Mr. Fuller enrolled in the Dallas Art Institute and studied commercial and fine arts. (T. 195). According to his family, Mr. Fuller was “despondent after coming out of Vietnam” and they believed he exhibited signs of Agent Orange exposure. (T. 184, T. 188). In 1975, he robbed a convenience store; he pled guilty and the convenience store employee was a witness for Mr. Fuller at his sentencing, asking the judge for leniency. (T. 190-91). Mr. Fuller served three years of a ten-year sentence, was paroled in December 1978 and continued to pursue his art career. (T. 196). During these years, he also supported himself through work at The Suede Place shop, leveling asphalt at Industrial Magnets, driving and delivering cars for Freeman Oldsmobile, and doing warehouse labor for Doctor Pepper. (T. 198-200).

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<sup>1</sup> While he was initially drafted, he voluntarily stayed for a second tour, stating: “The second, I felt – I don’t know if to just express patriotism; but I felt that was an important thing, because I felt I was supposed to be fighting for a certain cause.” (T. 194).

It appears that Officer Gage put Mr. Fuller's photo in the array shown to Ms. [REDACTED] because of an incident that occurred three months earlier, in January. Another woman ("Jan. Victim") was similarly raped early in the morning in her home on Blackburn Street, just a few buildings down from Ms. [REDACTED]. About four hours after the attack on the Jan. Victim, Mr. Fuller – who lived about one mile away – was stopped in the area; according to police, he "matched the description." (Arrest Report, 81-4066). Police presented Mr. Fuller to the Jan. Victim in an identification procedure, after which he was immediately cleared and released.<sup>3</sup>

On April 28, Ms. [REDACTED] did not positively identify Mr. Fuller. Ms. [REDACTED] looked at the pictures that Officer Gage brought her for approximately ten minutes and "narrowed it down to one." (EH 26). She testified that "[t]he pictures were out on my coffee table, and I would pick up one picture at a time, at random and just look at it closely . . . just looking at the facial features. As I eliminated them, I pushed those pictures away. . . I narrowed it down to the picture of the defendant." (T. 47). She told Officer Gage "this looks a lot like the guy." (EH 26). Ms. [REDACTED] also saw a number on Mr. Fuller's picture, realized it was several years old and

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<sup>2</sup> In fact, prior to Ms. [REDACTED] attack, a couple of people in her condominium had been burglarized. (T. 61). In the similar January 19, 1981 incident, the victim, M.L., a twenty year-old white woman, returned to her residence at [REDACTED] Street at approximately 7:25am to find an armed intruder, who took her into the bedroom and raped her. Afterward, the assailant took something from her closet and then fled on foot. Similar to Ms. [REDACTED], M.L. described the assailant to police as "black male, 160, 5'05, black hair, brown eyes." However, M.L. refused to participate in a rape prosecution and was concerned only with pursuing the burglary. (Offense Incident Report, Pearson, 1/19/81, Service #0026091-M).

<sup>3</sup> After seeing "a line up of possible suspects," that victim "positively stated that it was none of the suspects (Investigative Supplement Report, Officer M. McCoy, 1/19/81, Investigative Supplement report, John E. Johnston, 2/20/81). Months later, the case was marked closed and cleared by exceptional arrest. According to a March 13, 1981 report, the offense was: "cleared by the below subject who gave a voluntary statement about this offense. The below subject described the events of this offense as the same as comp's account of offense. The below subject has been arrested and filed on Rape 2201 F/2<sup>nd</sup> on offense 29856M and arrest No # 81-14564. Comp advised reporting officer she did not want this offense made. This offense cleared by exceptional arrest of Larry James Johnson B/M/19 [REDACTED] [REDACTED]" (Investigative Supplement Report, 3/11/81).

asked if she could see a more current picture. (EH 27). At the conclusion of this initial identification procedure, Officer Gage issued a report recommending the investigation be “suspended.” Specifically, Officer Gage stated in his report: “Compl. was shown a photo line up with Larry Charles Fuller B/M/32 as suspect. Compl. was unsure of suspect at this time. This offense will be suspended pending further leads.” (emphasis added) (Investigative Supplement Report, 5/3/1981, Signed by R.L. Gage, attached as Exhibit A).

**B. Ms. ██████ Identified Mr. Fuller from a Second Array Even Though She Did Not See Any Facial Hair on Her Assailant and Mr. Fuller’s Photo – Taken Just One Week After the Crime – Showed That He Had a Distinctive Beard**

Nothing happened on the case until the following Sunday, May 3, when Ms. ██████ called Officer Gage to inquire about the investigation. (EH 28). Officer Gage told her that he didn’t have any new information, but that he planned to work on it that day. (EH 29, 48). He went to Mr. Fuller’s house, asked to take his photograph, and took three Polaroid pictures. (T. 113, T. 114). Officer Gage then went to Ms. ██████ home and showed her a second photo array, which included the current photograph of Mr. Fuller.

Mr. Fuller was the only person from the first array whose photo was repeated in the second array. (See Photo Array 1 & 2 attached as Exhibits B). The picture – taken that morning, exactly one week after Ms. ██████ attack – showed Mr. Fuller with a heavy and distinct beard on the lower portion of his face. Ms. ██████ became “upset because [she] didn’t remember any facial hair” on her attacker. (EH 32). Ms. ██████ stated, “. . . I looked at it, and I knew that was the face; but I couldn’t figure out why there was facial hair because I didn’t remember the facial hair.” (T. 68). She testified, “I looked at the picture again and I put my finger over the part, the hair, and then I could identify him.” (EH32). After she identified him, Officer Gage told her “he would try to arrest him.” (EH 32).

According to Ms. [REDACTED], Officer Gage told her "a lot of things" about the person whose photograph she identified.<sup>4</sup> (EH 33). Ms. [REDACTED] asked Officer Gage if Mr. Fuller was married and Officer Gage told her that he lived with his mother, father, wife and two children. (EH 37). Ms. [REDACTED] told him that she "couldn't believe anybody with parents and a wife and children would do something like that" and asked Officer Gage if Mr. Fuller had ever been in prison. (EH 37). Officer Gage told her that he was once convicted for armed robbery. (EH 38). Officer Gage borrowed Ms. [REDACTED] phone and, while she "was sitting right there . . . called a judge to see if he could come to his house and get a warrant signed." (EH 38-39). After Officer Gage arrested Mr. Fuller that same day, he called Ms. [REDACTED] to let her know. (EH 39, 61).

While Mr. Fuller was in custody awaiting trial, someone broke into Ms. [REDACTED] apartment during the day while she was at work. (T. 62). The individual came in through the kitchen window by prying off the screen and removing the plate glass, but nothing was taken. (T. 62).

### **III. The Trial**

Mr. Fuller was tried August 24 to August 25, 1981 in the 203rd Judicial District Court, Dallas County, Texas before Judge Hon. Marvin Blackburn Jr. sitting for Hon. Thomas B. Thorpe. The State's case consisted of Ms. [REDACTED] eyewitness identification and expert testimony regarding serological testing of semen from the rape kit.

#### **A. Victim's Testimony**

Ms. [REDACTED] identified Mr. Fuller in court and testified that there was no doubt in her mind that he was the person who broke into her apartment and raped her. (T. 14, T. 68). She testified

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<sup>4</sup> She stated after she identified the photo: "I wrote my name on the back of it and then when he opened up that folder to put that picture in there, I saw a stack of other pictures in there and I was surprised because then I looked and the picture that I identified on Tuesday, I didn't remember -- I didn't remember what he looked like and I looked at the one I identified on Sunday and then I could see that it was the same person." (EH 34). The photo from the prior array was on top with a clip on it." (EH 34).

that when he was on top of her she was looking at "his face and the knife." (T. 65). She testified, "Well, I just kept staring at his face, I think, and watching the knife, just to be sure he wasn't going to stab me. I think I kept staring at his face, just thinking that surely he would feel sympathetic towards me or feel sorry for me. I just kept watching his facial expressions." (T. 65).

Ms. [REDACTED] testified that when he got off the bed and went to her chest drawers, she got another look at him. (T. 21). She stated that there was "a little light" coming in from a window and: "I had the light from my clock radio, which is right next to the bed. It has a lighted dial, and it threw light onto his face." (T. 21). At trial, when asked if anything stood out about his face, she added "the creases in his cheek, and he had this kind of real intent look in his face and his brow was real furrowed." (T. 65). When Ms. [REDACTED] was confronted with the fact that Mr. Fuller had a distinctive beard and she did not see any facial hair on the assailant, she explained that the assailant "was just looking at me face on" so she could not tell whether he had facial hair. (T. 51). Officer Gage did not testify at trial. The State called only Mark Stallo, the responding officer, and Officer Atkins, who testified that he "didn't lift any comparable latent prints" at the scene; all of the lifts (from the front window, door facings in the house, the banister and the back door) were smudges. (T. 87).

#### **B. Expert Testimony**

The prosecution used serological testing to link Mr. Fuller to the biological evidence left by the rapist and to corroborate Ms. [REDACTED] identification. Dr. Bruce Carr testified that, after Ms. [REDACTED] was treated at Parkland Hospital for her hand on the morning of April 26, 1981, he performed a pelvic examination and collected specimens from her body, including a blood sample, vaginal swab and vaginal smear. (T. 92, T. 95-96). Dr. Carr testified that he

microscopically examined samples from Ms. [REDACTED] vagina and found "active motile sperm," in other words living sperm, which Dr. Carr testified was "evidence of recent sexual intercourse." (T. 96).

Benita Haywood, a forensic serologist at the Southwestern Institute of Forensic Sciences, testified on direct examination that she detected acid phosphatase, an enzyme present in high concentration in seminal fluid, in Ms. [REDACTED] vaginal swab and also identified sperm on the vaginal smear. (T. 99-100).

Ms. Haywood testified that blood typing of the evidence showed that Ms. [REDACTED] and Mr. Fuller were both non-secretors, meaning they do not secrete their blood type in body fluids. (T. 102-03). She also determined Ms. [REDACTED] to have Blood Group O and Mr. Fuller Blood Group AB.<sup>5</sup> Ordinarily, this finding would indicate that the semen source was an O secretor and Larry Fuller would have been excluded as the source.

However, Ms. Haywood testified that blood was also present in the vaginal sample, providing an explanation for the O antigen she found other than its having come from the semen source. (T. 102-03). Ms. Haywood testified that assuming the O antigen she detected was from Ms. [REDACTED] blood (and not from the semen), the individual who left the semen could have been a non-secretor. On direct examination, she testified that this would exclude eighty percent of the population (who are secretors) and include the remaining twenty percent of non-secretors, like Mr. Fuller. (T. 104).

Ms. Haywood did partially cure her misleading testimony on cross-examination, conceding that, in fact, the O antigen she detected in the vaginal sample could have come from

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<sup>5</sup> On April 27, 1981, Mr. Harwood received Ms. [REDACTED] rape kit from the Parkland Hospital OB-GYN emergency room. (T. 99). She also obtained a blood and saliva sample from Mr. Fuller and on July 30, 1981 obtained another blood and saliva sample from [REDACTED]. (T. 101).

the blood or the semen. (T. 106). It is important to note that if the O antigen came from the blood, the semen source could be a non-secretor (like Mr. Fuller and twenty percent of the population) or an O secretor (like forty percent of the African American population, but not Mr. Fuller). If the O antigen came from the semen, the assailant had to be a secretor (and Mr. Fuller would be excluded).

Based on the test results testified to by the State's expert, in actuality, no man could have been excluded as a potential semen source, because the O result matched the victim's own type. In other words, the expert's testimony misled the jury, giving the impression that Mr. Fuller was included as a potential semen source to the exclusion of others. The prosecution erroneously argued to the jury in closing: "The physical evidence shows that it's consistent with him being the person to the exclusion of eighty percent of the population." (T. 173).

### **C. Defense Case**

The defense introduced into evidence official records of the National Weather Service as well as official records of local climatologically data from the Fort Worth airport. The data showed that sunrise occurred on April 26, 1981 at 6:46 am – more than half hour after the attack – and that the sky cover was ranging from fog to haze during that day. (T. 108-09).

The defense also called Mr. Fuller's girlfriend, Veronica Daniels (T. 110-11) who lived with him in a house [REDACTED], along with her two young children ages two and four. (T. 111, T. 118). She testified that the night prior to Ms. [REDACTED] attack, she and Mr. Fuller had a cook out and didn't go to bed until about 1:30am. (T. 116). She remembered waking up around sunrise, between 6:30am and 7:00am, and hearing Mr. Fuller talking with their neighbor, Mrs. Ruby Black. (T. 124-25). The two were outside in the back yard and Mr. Fuller was still wearing his bathrobe. (T. 117, T. 125). Ms. Daniels went to the back and spoke with them for

about 10 or 15 minutes about getting a barbeque grill off Mrs. Black's back porch. (T. 125-26). Ms. Daniels testified that she believed that Mr. Fuller got up just before she did because their waterbed caused a commotion when a person got in or out of bed. (T. 136). Ms. Daniels testified that to her knowledge Mr. Fuller did not get up and leave between 1:30am and 7:00am. (T. 117). She further testified that they had sex during the early hours of Sunday morning, which she remembered because he wanted to do so before her children woke up. (T. 118). In rebuttal the State re-called Officer Stallo to show that Mr. Fuller lived about a mile and a quarter from where Ms. ██████ lived and the crime occurred. (T. 146).

#### **D. Closing**

In closing, the prosecution argued that the victim's identification and scientific evidence established Mr. Fuller's guilt: "[t]he doctor and the forensic serologist, Benita Haywood, told you that they found evidence pursuant to that rape examination that was consistent with recent sexual intercourse and with this defendant being the perpetrator of it." (T. 151). The prosecution continued that Ms. ██████: "identified him in that first lineup," she "picked him out of two photo lineups. . . then picked him out in an Examining Trial in May. She has never wavered in her identification." (T. 152, T. 169). Mr. Fuller's counsel argued that "any other black man could be sitting there right now." (T. 155). After only thirty-five minutes of deliberations, the jury reached a verdict, finding Mr. Fuller guilty of aggravated rape as charged in the indictment. (T. 174-75, T. 176).

#### **IV. Sentencing**

Mr. Fuller elected for the Court, rather than the jury, to assess punishment. In the punishment phase, Mr. Fuller's mother, his uncle (who raised him) and Mr. Fuller himself testified.

Lawrence L. Anderson, Mr. Fuller's uncle, worked for National Market Quotation Headquarters in New York and the Blue Ridge Publishing Company out of Memphis. (T. 182-83). He testified that he and Mr. Fuller's mother sent him to school most of his life to be an artist and that Mr. Fuller had done other odd jobs while pursuing his art career. (T. 183). Mr. Fuller never was in any trouble prior to the 1976 robbery incident. (T. 183). As a boy, he got good attendance awards, a medal from his Boy Scout Troup, and "grew up under a very healthy and intelligent environment." (T. 183-84). Mr. Anderson believed that Mr. Fuller was "despondent after coming out of Vietnam" and "that syndrome thing . . . just affected him." (T. 184).

Thelma Whaley testified that she also noticed changes in her son when he returned from Vietnam, that he had all the symptoms of Agent Orange exposure. (T. 188). She testified: "I would like to say that Larry is not a rapist. . .he is just not a rapist. . ." and asked the judge to be lenient. (T. 189-90).

Mr. Fuller took the stand, testifying: "I come here believing in the word of justice, justice with eyes, not justice that would be blind . . . I felt that I would receive a fair trial, or I felt that justice would be done; and I felt that me being innocent, it could be proven. I just felt beyond all shadows of any doubt, I could be excluded from the matter." (T. 197, T. 192-93).

The State asked the court to impose the maximum sentence, arguing that Mr. Fuller "cannot be rehabilitated, because the first step to being rehabilitated is to admit that you have made a mistake and that you need help. He has not done that. He will not do that, apparently." (T. 203-04). On September 10, 1981, the Court formally sentenced Mr. Fuller to fifty years imprisonment. (T. 205-06).

**V. Post-Conviction DNA Testing Excludes Mr. Fuller as the Source of the Sperm Left by the Rapist Demonstrating His Innocence of this Crime**

Mr. Fuller wrote to the Innocence Project in the mid 1990s. In 1999, after eighteen years in prison, Mr. Fuller was released on parole. He continued to avidly seek DNA testing to prove his innocence. After locating the biological evidence at Southwestern Institute of Forensic Sciences (SWIFS) in November 2000, the Innocence Project requested that the Dallas County District Attorney's Office consent to post-conviction DNA testing. The Office agreed to review Mr. Fuller's case, but after several months, in March 2001, refused to consent, stating that the legislature was considering a DNA statute, and the Office wanted to wait for the statutory criteria.

On August 14, 2001, the Innocence Project and local counsel Frank Jackson filed a motion for testing under Texas' then-new post-conviction DNA statute (Chapter 64 of the Code of Criminal Procedure). The State opposed testing. Nevertheless, after a hearing on August 15, 2002, Hon. Lana McDaniel ordered DNA analysis. On September 4, 2002, the Court directed testing to take place at the Department of Public Safety ("DPS"), the State's preferred laboratory.

Because only one slide remained from Ms. [REDACTED] rape kit and DPS indicated it was unable to perform the most sensitive DNA testing, the Innocence Project requested that the evidence be released for Y chromosome testing (Y-STR), and/or to a different laboratory with demonstrated success in obtaining results from minimal evidence; at the very least, for a portion of the slide to be preserved for additional testing. (See correspondence dated August 28, 2002, September 26, 2002, December 2, 2002, December 17, 2002, December 18, 2002, December 23, 2002, January 10, 2003, January 27, 2003). On February 21, 2003, the Court issued a modified order, instructing DPS to extract half of the biological material from the vaginal smear and to preserve the remainder of the biological material for possible future testing.

DPS completed testing in July 2003 and was unable to obtain the profile of the male DNA on the vaginal slide. (See July 2, 2003 DPS report stating that half of the semen stain on the vaginal smear was extracted; no DNA profile was obtained from the sperm fraction, and only a partial DNA profile [amelogenin only] was obtained from the epithelial cell fraction of the vaginal smear slide indicating a female source). In November 2004, the Innocence Project renewed its request to the District Attorney's Office to move forward with additional DNA analysis using the Y-STR system. On April 14, 2006, the District Attorney's Office finally agreed and the Court ordered Y-STR testing at Orchid Cellmark, a private laboratory.

Cellmark performed Y-STR testing on the vaginal slide and obtained the genetic profile of the sperm source.<sup>6</sup> Cellmark then tested Mr. Fuller's reference sample, as well as reference samples from Ms. [REDACTED] boyfriend and another prior sex partner. The results excluded both consensual sex partners, establishing that the male DNA on the slide indeed belongs to the man who raped Ms. [REDACTED]. Y-STR testing of Mr. Fuller's sample excluded him from the male DNA on the slide, scientifically demonstrating that he is not the assailant. (Cellmark Reports dated August 29, 2006 and October 27, 2006 as Exhibit C). Certainly, the DNA test results entitle Mr. Fuller to a finding, pursuant to, TEX. CODE CRIM. PROC. ANN. art. 64.04, that had the DNA results been available during the trial of the offense, it is reasonably probable that Mr. Fuller would not have been convicted.

### **Conclusion**

For the reasons stated herein, Movant requests the Court issue findings that it is reasonably probable Larry Fuller would not have been convicted if the DNA results had been available at trial.

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<sup>6</sup> Cellmark also performed conventional STR testing on the remaining slide material and a sample from Ms. [REDACTED], confirming that the vaginal slide belonged to Ms. [REDACTED]. (See Exhibit C Cellmark report dated September 27, 2006).

Respectfully Submitted

LARRY FULLER BY:

A large, dense scribble of black ink completely obscures the signature of Larry Fuller.

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**CERTIFICATE OF SERVICE**

I do hereby certify that I, Vanessa Potkin, have hand-delivered a true and correct copy of the foregoing Motion for a Favorability Finding to Dallas County Assistant District Attorney Amy Murphy on this 31st day of October, 2006.

A large, dense scribble of black ink completely obscures the signature of the certifier, Vanessa Potkin.