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October 21, 2019

The Honorable Governor Greg Abbott  
Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711-2428

**RE: REQUEST FOR REPRIEVE FOR RODNEY REED**  
**EXECUTION DATE: NOVEMBER 20, 2019**

To the Honorable Governor of the State of Texas Greg Abbott:

Rodney Reed, through his undersigned counsel, respectfully requests that you exercise your authority to grant a 30-day reprieve of Mr. Reed's pending November 20, 2019 execution and instruct the Board of Pardons and Paroles to investigate whether a commutation of Mr. Reed's death sentence should be granted in light of the grave doubt concerning his guilt.

In the decades since Mr. Reed's conviction and death sentence for the murder of Stacey Stites, newly discovered evidence has (1) contradicted and, in several key respects, affirmatively disproven, every aspect of the State's case against him, and (2) implicated Stites's fiancé, Jimmy Fennell, a local police officer who was initially the prime suspect in Ms. Stites's murder.

To date, Texas courts have refused to consider the unrebutted forensic evidence proving Mr. Reed did not commit the crime and also have denied access to DNA testing that can confirm Fennell's guilt. Appellate litigation is currently pending in the United States Supreme Court and the federal courts in Texas; but the State opposes even a brief stay of Mr. Reed's execution to provide the respective courts the opportunity to consider Mr. Reed's claims. Irrespective of the progress of Mr. Reed's current litigation, he has a unique, compelling, and exceptionally strong case for commutation pursuant to Article IV, § 11 of the Texas Constitution—he did not commit the crime for which he is sentenced to die.<sup>1</sup>

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<sup>1</sup> A commutation in light of grave doubt concerning guilt or innocence has precedent. Over the objection of the local district attorney and the Texas Attorney General, then Governor George W. Bush commuted the death sentence of Henry Lee Lucas based on evidence of his alibi that had been previously rejected in court. *See*

In addition to previous strong evidence exonerating Mr. Reed and implicating Mr. Fennell, three new witnesses (each of whom were affiliated with Mr. Fennell, not Mr. Reed) have come forward in just the past few weeks with more information inculcating Fennell in Ms. Stites' murder.

Most recently, former Bastrop County Sheriff's Officer Wayne Fletcher has come forward with chilling evidence that Fennell had motive to murder Stites because Fennell had learned of her affair with Reed. In a sworn affidavit, Fletcher recalls an incident about a month before the murder in which Fennell told him he believed that Ms. Stites was "fucking a nigger." See Exhibit 1 (Affidavit of Wayne Fletcher). Ms. Stites was white. Mr. Reed is black.

Especially in light of the new evidence that has continued to emerge, a reprieve will afford the Board of Pardons and Paroles the time it needs to fully investigate the voluminous record and compelling case and provide recommendations regarding commutation that are the product of a thorough and orderly process.

## **BACKGROUND<sup>2</sup>**

A search for Ms. Stites began when she failed to report for her shift at the HEB grocery store in Bastrop, Texas at 3:30 am on April 23, 1996. Fennell's truck, which Fennell testified Ms. Stites had taken to drive herself to work that morning, was found in a high school parking lot at 5:23 am. Her body was discovered lying face-up along an unpaved road that afternoon. Investigators focused on Fennell for months after the murder. He was aggressively interrogated and given two polygraphs in which he was found deceptive on questions relating to Ms. Stites's murder, after which he invoked his privilege against self-incrimination to avoid further questioning.

Mr. Reed was only connected to the crime nearly a year later because the small number of intact spermatozoa recovered from Ms. Stites's body matched his DNA. Mr. Reed has always maintained that he did not kill Ms. Stites and that the presence of his sperm was from consensual sex between him and Ms. Stites the day before her disappearance.

At trial, the State argued that Mr. Reed somehow intercepted Stites while she was en route to work, gained entry to the truck, sexually assaulted and strangled her (within a two hour window between 3:00 – 5:00 a.m.) without leaving fingerprints, hair, or other evidence in the truck, and

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<https://www.nytimes.com/1998/06/27/us/citing-facts-bush-spare-texas-inmate-on-death-row.html>. Mr. Reed seeks only commutation, and not a pardon, because he wishes to have his conviction overturned in court and to be vindicated at a fair trial in which a jury of his peers considers all of the evidence discussed in this letter.

<sup>2</sup> Facts discussed in this letter are based on evidence in the record of Mr. Reed's trial and post-conviction proceedings. Counsel for Mr. Reed will be reaching out to the Governor's counsel to provide documents and legal filings underlying the case.

then transported her body to the remote location where it was discovered that afternoon. This theory was premised almost entirely on: (1) scientifically invalid testimony from three forensic experts who maintained that Mr. Reed's sperm was from a sexual assault contemporaneous with the murder; and (2) testimony from Fennell that he and Stites spent a quiet evening at home together before she left for work in his truck at 3:00 am.

As will be discussed *infra*, the State's experts' testimony implicating Mr. Reed in a sexual assault contemporaneous with the murder been disproven, and even recanted, because the small amount of spermatozoa seen was more consistent with consensual intercourse the day before Ms. Stites's murder. Additional review by forensic pathologists places the time of Ms. Stites' murder before midnight, when Fennell testified the couple was home alone together. And there is additional reason to doubt Fennell's credibility, in that he later pleaded guilty to kidnapping and sex charges after he was indicted for kidnapping and raping a woman he encountered during a patrol as a Georgetown Police Officer, and then trying to cover up his crime.

### **MR. REED & MS. STITES'S AFFAIR**

Mr. Reed has explained that he and Ms. Stites were in a casual sexual relationship, and that they had sex in the early morning hours on April 22, 1996—over a day before she was reported missing.<sup>3</sup> A number of witnesses who knew about the relationship were presented by Mr. Reed's appointed attorneys at trial and in early habeas proceedings, but they were either ignored by the courts or discounted due to their relationship to Mr. Reed or other factors.

More recently, Mr. Reed has identified three additional credible witnesses who have no connection or motive to assist him. To date, these witnesses have not had an opportunity to testify in Mr. Reed's case and their accounts have not been contradicted by the State:

**Alicia Slater**, Ms. Stites's co-worker at the HEB, has given a statement that Ms. Stites confided in her that she "was not excited about getting married," that she "was sleeping with a black guy named Rodney and that she didn't know what her fiancé would do if he found out," and that "she had to be careful."

**Leroy Ybarra**, another co-worker at the HEB, observed Ms. Stites and Mr. Reed interacting at the grocery store where Ms. Ybarra and Ms. Stites worked. Based on their interaction, he believed the two were romantically involved.

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<sup>3</sup> Mr. Reed was first confronted about the murder after he was arrested on an unrelated drug charge and denied knowing Ms. Stites. He has since explained that he was surprised by the questions and made a quick and regrettable judgment not to get involved. Soon after his arrest, Mr. Reed's mother testified at a bail hearing that she knew of her son's relationship with Ms. Stites.

**Calvin “Buddy” Horton**, Ms. Stites’ cousin, recalled seeing Ms. Stites and a black man at a Dairy Queen in 1995. After Mr. Reed’s image was circulated in the media as the suspected murderer, Mr. Horton identified Mr. Reed as the man he saw with Ms. Stites.

### **THE INTACT SPERMATOZOA**

The State’s case against Mr. Reed hinges almost entirely on the premise that Mr. Reed semen was associated with a sexual assault contemporaneous with Ms. Stites’s murder. Trial prosecutors elicited testimony that sperm cannot remain intact in a woman’s body for more than 24-26 hours after sex. However, this testimony is contradicted by the accepted scientific literature and has been disavowed by the witnesses themselves or the agencies that employed them. In fact, spermatozoa can remain intact for at least 72 hours, and the number of intact spermatozoa seen in the samples from Ms. Stites would have been far more numerous if intercourse was contemporaneous with her death.

**Former Travis County Medical Examiner Roberto Bayardo, M.D.**—who conducted Ms. Stites’s autopsy—has recanted much of his trial testimony. Although Dr. Bayardo testified at Mr. Reed’s 1998 trial that Mr. Reed’s semen was left “quite recently,” he subsequently changed his opinion. In a sworn declaration, Dr. Bayardo states that his finding “very few” sperm indicated that Mr. Reed and Ms. Stites had sex “not less than 24 hours before her death.”

Dr. Bayardo has also more generally recanted any opinion he offered which linked Mr. Reed to a sexual assault and murder of Ms. Stites.

**Texas Department of Public Safety Crime Lab Director Brady Mills** wrote a letter to Mr. Reed’s counsel acknowledging “limitations” in Department of Public Safety Serologist Karen Blakely’s testimony at Mr. Reed’s trial. Citing a scientific study, Ms. Blakely testified that finding Mr. Reed’s intact spermatozoa meant that the sperm could not have been left more than 26 hours before her examination. This opinion essentially ruled out Mr. Reed’s defense that he and Ms. Stites had consensual sex in the days before her murder. (The State argued that since Ms. Stites’ whereabouts were accounted for most of the day before the murder, the only possible explanation for Mr. Reed’s sperm being in the victim’s body was that he had raped Stites at the time of her murder.)

Crime Lab Director Brady Mills’ letter acknowledges that data and related scientific literature support the 72-hour timeframe. He concedes that Blakely misstated the science and that the

paper she cited in her testimony actually confirms that finding a small number of Mr. Reed's intact sperm was consistent with his account.

**LabCorp Technical Leader Stephanie Sivak** has issued a report finding errors in the testimony of retained State's expert, LabCorp serologist Meghan Clement. Ms. Clement testified at Mr. Reed's trial that in her experience of over 10 years examining thousands of rape kits, she had never seen intact spermatozoa more than 24 hours old. LabCorp Technical Leader Sivak now admits that this testimony was in error and that Clement should not have bolstered her erroneous opinion by referencing her experience. In a separate affidavit, another LabCorp serologist, Purnima Bokka, M.S., states that studies have found intact spermatozoa on vaginal swabs taken 72-144 hours after intercourse—more than three times as long as the time period Ms. Clement testified to at Mr. Reed's trial.

#### **FORENSIC EVIDENCE DEMONSTRATING THAT MS. STITES WAS MURDERED AT A TIME MR. FENNEL CLAIMS THE TWO WERE ALONE TOGETHER**

Several leading forensic pathologists have reviewed the evidence and determined that Ms. Stites could not have been murdered while traveling to work between 3:00-5:00 a.m.—as the State alleged—and was likely killed hours earlier when she was alone in her apartment with Fennell. No expert for the State has contradicted these opinions. Indeed, the forensic pathologist at trial, Dr. Bayardo, has admitted that his trial testimony on time of death was unreliable.

Renowned forensic pathologist Michael Baden, M.D., has described the State's theory of Mr. Reed's guilt as both "medically and scientifically impossible." Dr. Baden noted that postmortem changes in Stites's body—including the manner in which blood settled in her face, neck and shoulder—indicate that her body was lying face down for at least 4-6 hours before it was laid face up on the side of an unpaved road. Further, post-mortem purge fluid was discovered in the truck. This fluid takes hours to develop in a body, indicating that Ms. Stites was dead for hours prior to being transported in Fennell's truck. Forensic pathologists Werner Spitz, M.D, and Leroy Riddick, M.D. have confirmed this analysis. Even though Dr. Baden testified to these opinions at a 2017 habeas hearing, the State has never contradicted these experts in the four years since their testimony was first filed in court.<sup>4</sup>

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<sup>4</sup> Additional evidence suggests Fennell murdered Ms. Stites and later dumped her body in an effort to make it look like she was abducted on the road. Retired NYPD Homicide Detective Sergeant Kevin Gannon has studied the crime scene evidence and describes signs that the scene was staged so that Ms. Stites's body would be found and identified. See (<https://theintercept.com/2015/02/15/knew-wrong-new-investigation-reveals-texas-may-execute-innocent-man-march-5/>).

Together, this evidence establishes that Ms. Stites was probably murdered before midnight on April 22, 1996—a time at which Fennell testified to the jury that he was at home with the victim.<sup>5</sup>

### **EVIDENCE OF MR. REED’S ALLEGED MISCONDUCT**

During Mr. Reed’s 1998 punishment phase trial, the State argued that Reed had committed prior acts of violence or sexual assault. Some of these allegations arose out of established romantic relationships, but others were presented as stranger attacks. Mr. Reed denies these accusations, but his overwhelmed trial attorneys, having already lost the guilt/innocence phase of the trial, did not mount a meaningful response during the penalty phase of Mr. Reed’s 1998 trial.

Refusing to acknowledge (1) the forensic evidence demonstrating the medical and scientific impossibility of Mr. Reed’s guilt, (2) the credible new witnesses confirming a relationship between Reed and Stites, and (3) the evidence implicating Fennell, the State frequently cites its punishment-phase evidence to support the conviction. But as a matter of law, evidence of unrelated and unadjudicated charges cannot be considered as evidence of Mr. Reed’s guilt of the Ms. Stites’ murder. Moreover, there is reason to doubt the State’s continued reliance on these accusations:

- Mr. Reed was never convicted of sexual assault. In fact, Mr. Reed was acquitted by a jury in the only incident presented by the State for which he was prosecuted.
- Mr. Reed has requested DNA testing using modern techniques on any physical evidence relating to these cases, even offering to pay for this DNA testing. To date, the Bastrop County District Attorney and the Texas Attorney General’s Office have refused, and such testing of legally irrelevant evidence is not anticipated under the DNA statute.
- The Attorney General has argued that one of the accusations involving an alleged carjacking in Bastrop County was similar to the Ms. Stites’ murder. However, the forensic evidence discussed above demonstrates that the State’s theory that Mr. Reed kidnapped Ms. Stites on her way to work is “medically and scientifically impossible.” There was no physical evidence implicating Mr. Reed in that crime, and the victim identified Mr. Reed from a photo lineup that was challenged at the punishment phase trial

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<sup>5</sup> Casting further suspicion, Fennell has given conflicting accounts of his whereabouts. At trial he testified that he and Ms. Stites spent a quiet evening together at home; but on April 23, 1996, he told his best friend, Bastrop Sherriff’s Officer Curtis Davis, that he had been out drinking that night and did not return home until late.

as suggestive. Witness misidentifications are the leading cause of wrongful convictions in Texas.<sup>6</sup>

To the extent any of these accusations of unrelated misconduct are considered relevant to a clemency determination, Fennell's history must also be taken into account. Fennell—who himself was actively pursued as a suspect and refused to cooperate in the murder investigation after failing two polygraphs—pled guilty to kidnapping a young woman he was dispatched to protect. His victim gave a corroborated account that Fennell raped her after placing a gun to her head, threatened to kill her if she told anyone, and then lied to cover it up. An investigation by the Texas Rangers confirmed a years-long pattern of misconduct by Mr. Fennell while on duty as a police officer, which included at least one other corroborated sexual assault and another reported attempt to coerce a young woman from a traffic stop to a remote location for sex.

### **OTHER EVIDENCE IMPLICATING FENNEL**

Fennell was a primary suspect in Ms. Stites's murder, even after he was excluded as the source of the semen found in her body. In addition to the forensic evidence showing that Ms. Stites was murdered at a time Fennell testified he was alone with Ms. Stites, significant other evidence points towards his guilt:

- Fennell's statements to investigating officers were riddled with inconsistencies, his actions around the time of the murder (like emptying his bank account) were suspicious, and he was found deceptive on two separate polygraphs when denying responsibility for the murder. When confronted with his deceptions, Fennell refused to cooperate further with the investigation and asserted his Fifth Amendment privilege against self-incrimination. Only after Mr. Reed was indicted did Fennell waive his rights and testify for the State.
- On the day of Ms. Stites' disappearance—before her body was found—Fennell told his best friend, Bastrop Sheriff's Officer Curtis Davis, that he had been out drinking the night before. This directly contradicted what he told police and later testified to—that he and Ms. Stites spent the entire evening home together. When confronted with Officer Davis' account at a hearing held in October 2017, Fennell again asserted his Fifth Amendment privilege against self-incrimination and refused to testify. Accordingly, Mr.

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<sup>6</sup> See <https://www.innocenceproject.org/wrongful-convictions-in-texas-caused-by-eyewitness-misidentification-and-overtuned-with-dna-testing/> (summarizing 24 Texas exonerations resulting from witness misidentification) (last visited Oct. 21, 2019).

Fennell has refused to explain why he gave inconsistent stories about his whereabouts and activities at the very time Ms. Stites was murdered.

- A fellow police officer Mary Blackwell heard Fennell brag at a law enforcement training class that he would strangle his girlfriend with a belt if he ever found out she was unfaithful. The same officer witnessed Fennell acting abusively towards Ms. Stites. Even though Ms. Blackwell testified at a prior *Brady* hearing in Bastrop County in 2006, Fennell did not testify to deny the account.
- A subsequent girlfriend of Fennell, Pamela Duncan, described him as extremely prejudiced toward African Americans, as well as controlling and abusive. While still a Giddings Police Officer, Fennell stalked her after she ended the relationship.
- In his short time as a Giddings Police Officer prior to Mr. Reed's trial, Fennell had already been the target of civil rights complaints alleging racism and violence. This included an incident in which Fennell was accused of chasing down a young Hispanic man and putting a gun to his head.

Fennell's propensity for sexual assault and violence was then confirmed after he pleaded guilty and was sentenced to ten years in prison based on charges arising out of a complaint by a young woman he kidnapped and sexually assaulted while he was on patrol as a Georgetown Police Officer. He then lied in an attempt to cover up his crimes. An investigation by the Texas Department of Public Safety revealed a pattern of allegations of sexual assault and misconduct against Fennell going back years.

#### NEW EVIDENCE SINCE EXECUTION DATE SET

Most recently, three new witnesses have provided statements explaining more instances of Fennell's disturbing behavior:

**An insurance salesperson** witnessed Fennell threaten to kill Ms. Stites when she offered the couple life insurance. The salesperson worked at a function hall where then-Officer Fennell worked security. The salesperson met Ms. Stites through Fennell and saw her at the hall on a few occasions. In November 1995, Ms. Stites agreed to apply for life insurance but noted, "I really don't know why I need life insurance since I'm so young." The insurance person distinctly remembers Fennell replying, "If I ever catch you messing around on me, I will kill you and no one will ever know it was me that killed you."



**Jim Clampit**, a former Lee County Sheriff's Office Deputy, witnessed Fennell looking over Ms. Stites's body at her funeral and heard him menacingly say something along the lines of "You got what you deserved." Fennell's behavior towards the corpse of his dead fiancé shocked Clampit, and the memory of such cold hostility has stayed with Clampit for 23 years.

Over the years, I have often thought about what Jimmy said at Ms. Stites's services. I am still shocked by it. Recently, after reading about Rodney Reed's case in the newspaper, I started thinking about what Jimmy said more and more...The more I thought about it, the more I knew I would not be able to live with myself if I did not come forward.

**Charles Wayne Fletcher**, another former colleague of Fennell's at the Bastrop County Sheriff's Office, was similarly disturbed when in March 1996 Fennell said, "that he believed Stacey was 'fucking a nigger.'" Mr. Fletcher was a friend to both Fennell and Ms. Stites, and was visiting them at the Rolling Oaks apartment complex when Fennell privately made this disclosure to him. Mr. Fletcher noticed a strain in the relationship on that visit, observing:

Jimmy and Stacey were short with each other and raised their voices in communicating when they spoke. Generally, I got the impression that they were not in a good place with their relationship because of how they talked to each other.

Mr. Fletcher too was bothered by Mr. Fennell's "odd, emotionless behavior" at Ms. Stites' funeral and burial services. "I was so disturbed by his behavior that it caused me to question whether he was involved in Stacey's death. I also chose to have no further interaction or communication with him." Because Mr. Fletcher's affidavit was obtained only recently and has yet to be filed in court, it is attached as *Exhibit 1*.

## CONCLUSION AND PRAYER

Mr. Reed did not sexually assault or murder Stacey Stites. Experts have called Mr. Reed's guilt "medically and scientifically impossible." And new and credible witnesses both confirm Reed's relationship with Stites and implicate Fennell in the murder. Nevertheless, Mr. Reed's November 20, 2019 execution date remains. If Mr. Reed is executed, it will be a miscarriage of justice that will cause irreparable damage both to Mr. Reed and to public confidence in the accuracy and fairness of the criminal justice system in Texas as a whole.<sup>7</sup>

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<sup>7</sup> Governor George W. Bush explained that his commutation of the death sentence based on grave doubt about guilt in Lucas was necessary so that "all Texans can continue to trust the integrity and fairness of our criminal justice system." See <https://www.nytimes.com/1998/06/27/us/citing-facts-bush-spare-texas-inmate-on-death-row.html>

Accordingly, Mr. Reed respectfully requests that you order a 30-day reprieve from the November 20<sup>th</sup> execution date and make a written request to the Board of Pardons and Paroles to investigate Mr. Reed's case and make a recommendation regarding a commutation. *See* Tex. Gov't Code § 508.050.

Respectfully submitted,

/s/ Bryce Benjet

BRYCE BENJET

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cc: Bryan Goertz, Bastrop County District Attorney

# Exhibit 1

**AFFIDAVIT OF CHARLES WAYNE FLETCHER**

THE STATE OF TEXAS           §  
  §  
COUNTY OF GUADALUPE       §

BEFORE ME, the undersigned authority, personally appeared Charles Wayne Fletcher, who, being duly sworn upon his oath according to law, said as follows:

1. My name is Charles Wayne Fletcher. I am over twenty-one years of age and am fully competent to make this Affidavit. I have personal knowledge of the facts set forth in this Affidavit, and they are true and correct.

2. I worked at the Bastrop County Sheriff's Office from 1992-1996, and I went by the name Wayne Fletcher. I handled several duties while at the Sheriff's Office. I was a jailer and also handled inmate transport. I was also a reserve patrolman with my peace officers' license. During some of my time with the agency, I worked directly with Jimmy Fennell ("Jimmy"). Jimmy and I were colleagues and friends and socialized together off the job sometimes.

3. I also knew Stacey Stites. I was friends with both she and Jimmy.

4. When they started dating in 1995, I spent some time with them. He and Stacey and my wife Etta (at the time), and I would go out to eat and bowl together occasionally. I believe that Stacey and Jimmy considered me to be a friend. They called me Fletch or Fletcher, for short.

5. After Jimmy and Stacey moved to Giddings, I saw them less. I noticed, however, that their relationship seemed to deteriorate. I remember visiting them once in March of 1996 in an apartment at Rolling Oaks Apartments on the west side of Giddings. I am almost certain it was March because the weather was nice. Jimmy and Stacey were short with each other and raised their voices in communicating when they spoke. Generally, I got the impression that they were not in a good place with their relationship because of how they talked to each other.

6. During that visit, Stacey said she was going to the pool at the complex. After Stacey left, I remember clearly that Jimmy said that he believed Stacey was "fucking a nigger." We were outside of the apartment building by the barbeque pit on the ground level preparing barbeque when he said it. He did not elaborate. He did not say specifically how he knew that or what made him believe it, but I remember he said those words because I was disturbed by them. I did not ask him about it. I did not know how to respond and did not want to pry into it. Although I have not shared this with many people, I have never forgotten his words.

7. I attended Stacey's funeral service. Before the funeral service, I remember Jimmy looked cold, empty, and emotionless to me. He could be quiet and stern anyway, but his behavior was so odd I could tell that something was definitely off. He behaved the same way at the funeral service. I believe others noticed it too, whether they said anything or not.

8. Jimmy and I drove together to Corpus Christi for the burial services, along with Jimmy's parents. During the drive and at the burial services, Jimmy's odd, emotionless behavior continued. I think I even asked his mother whether he was on medication. I was so disturbed by his behavior that it caused me to question whether he was involved in Stacey's death. I also chose to have no further interaction or communication with him.

9. In 1996, I left the Sheriff's Office. I changed careers and later left the area. I have never returned to law enforcement. I have not been outspoken about my experiences with Jimmy and Stacey because I still have family in the Bastrop area, and I do not want any negative action to come to them if it is perceived that I am going against local law enforcement.

10. I met my current wife, Dana, in 2009. Sometime after, I opened up to her about my experiences with Jimmy and Stacey, about the time when they lived in Bastrop, about their


relationship deteriorating when they lived in Giddings, about Jimmy saying he believed Stacey was 'fucking a nigger,' and about his behavior at the funeral and burial services.

11. She has encouraged me to share my experiences even though there could be some negative reaction.

Further Affiant sayeth not.

  
\_\_\_\_\_  
Charles Wayne Fletcher

Subscribed and sworn to before me this 11th day of October, 2019, to certify which witness my hand and official seal.

  
\_\_\_\_\_  
Notary Public in and for the State of Texas

