

**BEFORE THE GOVERNOR OF THE STATE OF TEXAS  
AND  
THE TEXAS BOARD OF PARDONS AND PAROLE**

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**RODNEY REED'S REQUEST FOR COMMUTATION  
OF SENTENCE, REQUEST FOR A REPRIEVE  
AND FOR A HEARING**

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**Mr. Reed's execution is scheduled for November 20, 2019**

BRYCE BENJET  
State Bar No. 24006829  
THE INNOCENCE PROJECT  
40 Worth St. Suite 701  
New York, New York 10013  
(212) 364-5340  
(212) 364-5341 (fax)

ANDREW F. MACRAE  
State Bar No. 00784510  
LEVATINO|PACE PLLC  
1101 S. Capital of Texas Highway  
Building K, Suite 125  
Austin, Texas 78746  
(512) 637-8565  
(512) 637-1583 (fax)

*Attorneys for Rodney Reed*

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To the Honorable Members of the Board of Pardons and Paroles:

Rodney Reed, TDCJ # 999271, through his undersigned counsel, respectfully requests that the Board of Pardons and Paroles recommend that the Governor of the State of Texas Greg Abbott grant a commutation of Mr. Reed's death sentence for the murder of Stacey Stites to a life sentence in light of the grave doubt concerning his guilt. A commutation of Mr. Reed's death sentence is necessary to ensure that Mr. Reed is not executed for a crime he did not commit. Mr. Reed further requests a reprieve of 120 days so that all of the evidence—including new information discovered in the past few weeks—can be fully investigated in an orderly manner to ensure a just and accurate result.

At Mr. Reed's 1998 capital murder trial in Bastrop, Texas, the State presented uncontested expert testimony that the presence of a small amount of Mr. Reed's semen collected from Ms. Stites' body was conclusive evidence that Mr. Reed sexually assaulted Ms. Stites contemporaneous with her murder. This forensic evidence entirely negated Mr. Reed's explanation presented at the trial that he and Ms. Stites were in a casual sexual relationship, and that the two had sex the day before her disappearance.

In the decades since Mr. Reed's conviction and death sentence, newly discovered evidence has (1) contradicted and, in all key respects, affirmatively disproven, every aspect of the State's expert-based case against Mr. Reed and (2) implicated Stites' fiancé, Jimmy Fennell, a local police officer who was initially the prime suspect in Ms. Stites' murder, and who later served ten years in prison for kidnapping and raping a woman while he was in uniform.

The strong evidence exonerating Mr. Reed and implicating Fennell continues to mount. Only this week, a former leader of the Aryan Brotherhood who served time with Fennell came forward with information that Fennell complained that his fiancée “had been sleeping around with a black man behind his back” and that he had to kill his “nigger loving fiancée.” Exhibit 1 (Affidavit of Arthur Snow). In past two days, undersigned counsel have confirmed that Snow and Fennell were both housed at the same prison during the relevant time period, and we are seeking to obtain additional documentation that will further corroborate Snow’s statement.

To date, Texas courts have refused to consider un rebutted forensic evidence proving Mr. Reed did not commit the crime and have also 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 Bastrop County District Attorney opposes even a brief stay of Mr. Reed’s execution to provide the courts the opportunity to consider Mr. Reed’s claims of constitutional violations and actual innocence in an orderly fashion. Irrespective of the pending litigation or its outcome, this is a unique, compelling, and exceptionally strong case for commutation pursuant to Article IV, § 11 of the Texas Constitution because Mr. Reed did not commit the crime for which he is sentenced to die.

Especially in light of the new evidence that has continued to emerge, a commutation to a life sentence is necessary to ensure that Mr. Reed is not executed in error. A commutation in light of grave doubt concerning guilt or innocence has precedent even where constitutional claims have been denied by courts. In commuting the death sentence of Henry Lee Lucas,

based on evidence of his alibi and false confessions that had been previously rejected in state and federal court, then Governor George W. Bush stated:

I feel a special obligation to make sure the State of Texas never executes a person for a crime they may not have committed. I take this action 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>. Mr. Reed asks only for commutation to a life sentence, 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 he now presents to this Board.

## **BACKGROUND**

### **A. Ms. Stites' Disappearance and Crime Scene Investigation**

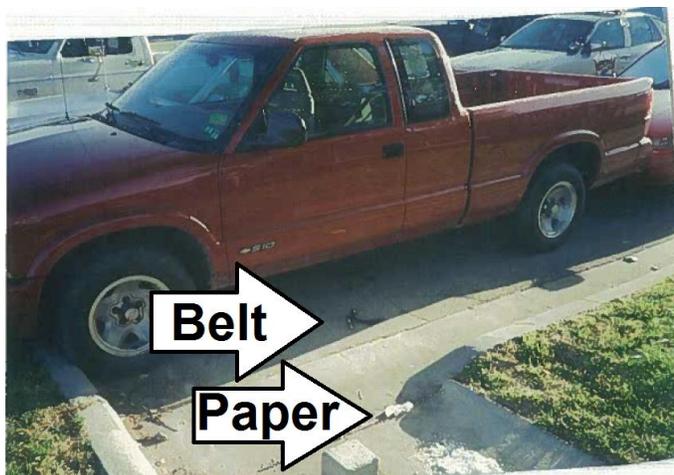
A search for Ms. Stites began only a few hours after she failed to report for her shift at the HEB grocery store in Bastrop, Texas at 3:30 am on April 23, 1996. Stites began working at the Bastrop H.E.B. in October, 1995 as a bagger and cashier, but later moved to a higher-paying position in the produce department. See *Ex parte Reed*, 271 S.W.3d 698, 702 (Tex. Crim. App. 2008). This new position required Stites to wake up between 2:45 and 2:50 a.m. to get ready and drive to work for her early morning shift. *Id.* Stites, while living with Fennell in the same Giddings apartment complex as her mother, had access to her mother's Ford Tempo but usually drove to work in Fennell's truck, a "red Chevrolet s-10 extended cab truck". *Id.*

The day before Stites' disappearance, she arrived home from work in the early afternoon and spent time in her mother Carol's apartment. *Id.* Fennell soon joined Stacey and Carol upon

returning home from work in Carol's Ford Tempo. *Id.* Fennell, while making plans for the next day with Stacey and Carol, insisted he would drive Stacey to work in the morning and pick her up after her shift to run errands together, declining Carol's offer to let him sleep in and drive him to Bastrop in the afternoon. *Id.* The remaining few hours in Ms. Stites' life were detailed entirely by Fennell without further corroboration.

Fennell provided that on April 22, 1996, he returned home from a baseball practice between 8:00 and 8:30 p.m. *Id.* at 702-703. Fennell testified that upon returning home he took a shower with Stites, but that the two did not engage in sexual activity because Ms. Stites was taking birth control pills and that "at this point in her prescription cycle, the vitamin pills she was taking allowed for a greater possibility of pregnancy." *Id.* at 703. Fennell testified that Stites went to sleep at approximately 9:00 p.m. that night while he stayed awake to watch the news on television. *State v. Rodney Reed*, TT Vol. 45, p. 82-83 (1998).

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 a.m. The truck was locked and the keys were missing. *See* Exhibit 2 (Police Report re: Truck). On the ground outside of the driver's side door was a portion of Ms. Stites' woven leather belt, and some papers including carbon check copies belonging to Jimmy Fennell's checkbook. *Id.*

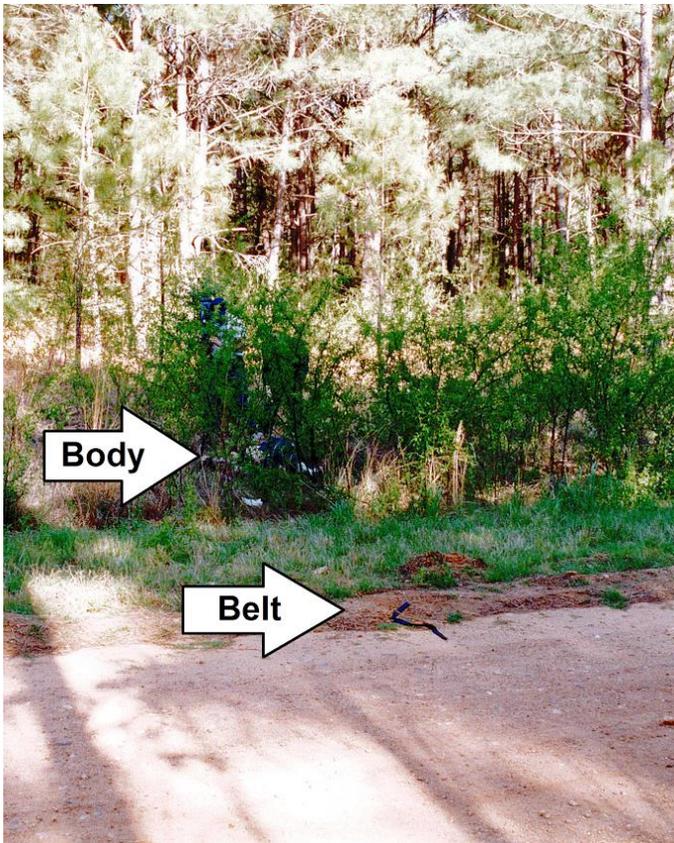


The driver's seat was reclined and the seatbelt still fastened. The passenger seat was described as "partially back in a slightly forward position." *Id.* Between the driver's and passenger's seats, officers found what was described as "some type of viscous fluid" in the "passenger floorboard and the transmission hump." Exhibit 3 (Notes of Investigation). Fingerprints were collected from the truck and items inside the truck; the only prints that could be identified belonged to Jimmy Fennell and Stacey Stites. TT Vol. 47:39. Rodney Reed was excluded as the source of all other identifiable prints. *See id.* at 43.

Just before 3:00 p.m. that afternoon, Stites' body was discovered lying face-up along Bluebonnet Drive, an unpaved road off FM 1141. Law enforcement from a variety of agencies quickly responded, and members of the Texas Department of Public Safety Crime Laboratory ("DPS") processed the scene. *Ex parte Reed*, 271 S.W.3d at 704. A piece of webbed belt lay on the road near Ms. Stites's body, which was later determined to match the piece found outside Fennell's truck, and which matched the red marks observed on Stites' neck.

Karen Blakely, a DPS criminalist, arrived at the scene at approximately 5:15 p.m. Blakely examined Stites's body at the scene and took vaginal swab samples. Blakely noted that although Stites was missing one shoe, her sock on that foot was clean. Blakely also noticed a large volume of mucus running from Stites' nose and mouth, and that Stites' H.E.B. name tag had been placed in the crook of her leg. A white T-shirt belonging to Fennell was found in the nearby brush. *Id.* The photographs below depict the body as it was found as well as the evidence on the roadway:





Karen Blakely returned to the DPS Crime Lab at approximately 11:00 p.m. on April 23, 1996, where she examined the vaginal swabs she had collected earlier that evening. Blakely discovered the presence of three intact spermatozoa. TT Vol. 56:33-34. In conducting Stites' autopsy at 1:50 p.m. the next day, after the body was refrigerated, Medical Examiner Dr. Roberto Bayardo also took vaginal swabs on which he also detected only a small amount of intact spermatazoa. *Ex parte Reed*, 271 S.W.3d at 706.

### **B. Investigation of Fennell**

Investigators focused on Fennell for months after the murder. "Even after Fennell provided a blood sample, which excluded him as the source of the semen collected from Stites'

body, the authorities continued to pursue him as a suspect.” *See* Report and Recommendation of United States Magistrate Judge Andrew W. Austin, *Reed v. Thaler*, No. A-02-CA-142 LY at \*4-5. Fennell 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.

Law Enforcement Officers conducted an in-depth investigation into Ms. Stites’ life and her relationship with Fennell. Officers spoke to a number of Ms. Stites’ friends and co-workers who often described her as friendly, outgoing, and a flirt. Exhibit 4 (Stites and Fennell Background Investigation Reports). Ms. Stites and her mother had moved to Smithville, Texas from Corpus Christi after Ms. Stites became pregnant at age 15. *See id.* She gave the baby up for adoption and completed high school. Mr. Fennell and Ms. Stites began dating while she was still in high school and Fennell was 22 years old and working as a Bastrop jailer. Fennell was with Ms. Stites at her high school graduation and considered the relationship to be “serious” within two or three weeks after they began dating in May of 1995. *See* TT Vol. 43:89; TT Vol. 45:62. Although Fennell characterized the relationship as “serious” as of June 1995, Police reports indicate that Ms. Stites did not initially share this view. Police reports indicated that Ms. Stites had an active social life and was dating several other men around this time. *See* Exhibit 4.

Ms. Stites’ relationship with Jimmy Fennell was described in law enforcement documents as strained. Jimmy Fennell was repeatedly described as jealous by Ms. Stites’ friends. Heather Flanagan, a friend of Ms. Stites’ from the HEB, shared with the Bastrop Police what Ms. Stites had told her about her relationship with Jimmy:

Jimmy was a jealous type person who didn't like her talking with other guys. They cancelled their wedding. Stacey never said why.

Exhibit 4. Another friend Tammy Hannath told the police that:

Jimmy Fennell got upset with Stacey when he found out she was going out with her friends. Thinks Jimmy even slit her tires. Jimmy wouldn't let her talk on the phone with her friends. Stacey always said she loved Jimmy. They would set wedding dates, then call it off.

Exhibit 4. Bastrop Sheriff's officers learned that Ms. Stites would have coffee on Wednesdays with a former co-worker Ronnie Reveal. Mr. Reveal saw Ms. Stites less than a week before her murder and related that:

She seemed down quite a bit and he asked her what was wrong. She told him that her and her boyfriend were having problems. *And also that the boyfriend had a violent temper.*

Exhibit 4 (emphasis added). A note in the investigation file of the Bastrop Sheriff's Office that appears to be from an interview with Stacey's mother likewise indicates that Ms. Stites and Fennell had argued the night of the murder and that Fennell was "Jealous of Everyone":

STACEY & JIMMIE ARGUED ON NITE  
BEFORE MURDER.  
JIMMIE HAD KEYS TO CAR -  
(JEALOUS OF EVERYONE)   
(5:15AM WAKENUP CRYING) TRUCK WAS GONE  
CALLED JIMMIE JUST BEFORE ~~6:45~~ (H/EB) 6:45  
LEFT FROM GIDDING 6:47AM  
HAD STACEY'S CAR KEYS TO MOTHER'S CAR -  
STACEY GOT CAR KEY FROM CAROL

Jimmy Fennell was interrogated by both Bastrop County Sheriff's Officers and Texas Ranger Sergeant Rocky Wardlow concerning his involvement in the murder. TT Vol. 45:110; TT Vol. 46:125. Fennell testified that there were multiple interrogations in which officers would yell, were verbally abusive, would play on his emotions, and offered leniency in exchange for a confession. *Id.* at 64-69. However, the contents of these interviews were not recorded in the police reports and no audio or videotape was made that could have captured any inculpatory statements made by Fennell.

These harsh interrogations were likely inspired by the fact that Fennell's account of the events leading up to Ms. Stites' murder was inconsistent and false, and his actions immediately following Ms. Stites' disappearance were suspicious. For example, Jimmy Fennell told police and later testified that he had not had sex with Stacey for several days because she was on the "green pill" on her birth control medication and that he had been told that there was a higher risk of pregnancy when taking these "vitamin" pills. *See* TT Vol. 45:83. Fennell confirmed that the information regarding the risk of pregnancy came to him "as a result of the prescription." *Id.* Merrill Lewen, M.D., a Houston area Board Certified OB/GYN has reviewed Jimmy's statement and testimony and concludes that it is false:

The statement made by Jimmy Fennell with regard to the risk of pregnancy while taking certain pills that he describes as "vitamins" is false. The "green pills" to which Mr. Fennell refers are placebo pills. Birth control pills generally contain three weeks worth of pills that contain hormones and one week of placebo pills; the pills to be taken each week can be different colors depending on the brand or manufacturer.

From my experience prescribing birth control to women since the 1990s, I am certain that nothing in any of the instructions accompanying birth control pills, or instructions from a patient's physician, would indicate a higher risk of pregnancy

during the placebo pill week. No physician would have told a patient this information or put such information in a prescription, as it is simply false.

In over twenty years of medical practice, I have never heard of a woman who thought that there was an added risk of pregnancy when taking the placebo portion of her birth control pills. I have also never heard of anyone referring to them as “vitamins”. I am aware of one manufacturer that adds iron to the placebo, but these pills are brown in color, not green.

Exhibit 5 (Affidavit of Merrill Lewen, M.D.) Fennell’s false statement regarding birth control could not have come from the instructions on the pills or from Stacey’s doctor as he indicated in his testimony at trial. Fennell’s statement could reasonably be construed as either (1) a fabrication by Fennell to cover up the fact that he and Stacey were not having sex or (2) a lie told by Stacey to Fennell in order to postpone his unwanted sexual advances.

Fennell also gave a false statement on the morning of Stacey’s disappearance about his truck. He told police officers on the morning of Stacey’s disappearance that he had filled the truck with gas the night before. *See* Exhibit 6 (Police Reports re: Gas Tank). It was only days later, and after police had discovered that the truck’s gas tank was only 1/8 to 1/4 full, that Fennell changed his story and said that the tank had been 1/4 full. *See id.* It would be extremely unlikely that Fennell as a police officer, knowing that his statements were important to a criminal investigation, would have mistaken whether he filled his truck with gas less than a day earlier. And the use of 3/4 of a tank of gas was not consistent with the State’s theory that Stacey was abducted in Bastrop and murdered and left in a location roughly 5 miles away.

There was also a significant inconsistency in the descriptions by Fennell and Carol Stites in describing Fennell’s plans for the morning of April 23, 1996. In a statement to police, Carol

Stites recalled that Fennell had been insistent on driving Stacey to work on the morning of April 23<sup>rd</sup>:

Jimmy said he was going to take Stacey to work the next morning because he wanted his truck. He said he was scheduled for court and needed his truck, that he didn't want to drive my car. Jimmy was supposed to go with Stacey when she got off to get insurance on her so she could drive his truck. Stacey and I both got on him because it was stupid for him to get up, drive her to work, drive back home, then drive back to Bastrop to pick her up. Jimmy just walked out of the apartment and Stacey said she would talk to me later and she left to go upstairs. I was under the impression that Jimmy was taking Stacey to work the next morning.

Exhibit 7 (Carol Stites Statements). In a handwritten statement Carol Stites further explains that she was upset by disagreement regarding whether Jimmy should drive Stacey to work, that it reminded her of Jimmy's poor manners the day before, and that she started to cry. Exhibit 7. Fennell's testimony was less than clear on the point. Having argued with Carol Stites and insisting he would drive Ms. Stites to work, Fennell explained himself at trial by claiming that he and Ms. Stites later decided she would go to work on her own in Fennell's truck. TT Vol. 45:83. This was a key point because what Fennell was "determined" to do on the afternoon of the 23<sup>rd</sup> was inconsistent with his own claimed alibi for the murder.

Perhaps Fennell's most suspicious action in the immediate aftermath of his fiancée's disappearance is found in his bank records. Soon after his truck has been located, and before Stacey was found, Jimmy Fennell withdrew all of the money in his bank account. *See* Exhibit 8 (BPD Chief Ronnie Duncan: "I was told that Jimmy closed out his account the morning his fiancé disappeared."). Although Fennell had been instructed to contact his bank about a missing checkbook, Fennell's decision to withdraw his savings rather than place a hold on the checks makes no sense unless he was preparing to flee.



*Id.* After learning that the polygraph again indicated deception, Jimmy Fennell asked for a lawyer and invoked his Fifth Amendment privilege against self-incrimination.

### **C. Reed Identified as Source of DNA and Convicted of Capital Murder**

The investigation of Jimmy Fennell ended, however, when DNA testing of evidence containing Rodney Reed's sperm collected in an unrelated investigation in which charges were dismissed was matched to the DNA profile obtained from the vaginal swabs collected from Stacey Stites. Mr. Reed was then arrested on unrelated drug charges and confronted about the murder of Stacey Stites. Surprised by this questioning, Mr. Reed denied knowing Ms. Stites and signed a written statement to that affect. *See* TT St. Ex. 91(a).

At trial, the State argued that Mr. Reed somehow intercepted Ms. 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 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. Mr. Reed's defense counsel did not call an expert to rebut the conclusions of Dr. Bayardo and other experts that linked Mr. Reed's semen to the murder and failed to meaningfully impeach Fennell. Mr. Reed was convicted of capital murder and sentenced to death.

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' 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: 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. A subsequent investigation revealed a pattern of similar misconduct going back years in which Fennell evaded detection. Fennell was recently released after serving ten years in prison for those crimes.

### **THE THREE INTACT SPERMATOZOA**

The State's case against Mr. Reed hinges almost entirely on the premise that Mr. Reed's semen was associated with a sexual assault contemporaneous with Ms. Stites' murder. Trial prosecutors elicited uncontradicted testimony that sperm cannot remain intact in a woman's body for more than 24-26 hours after sex. Because Fennell's testimony accounted for Ms. Stites over the prior 24 hours, there was no possible innocent explanation for Mr. Reed's DNA. This expert testimony was clearly important to the jury because the jury specifically asked about this evidence and the trial judge had Dr. Bayardo's testimony on the subject read back to the jury. However, this key testimony has no basis in 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 collected 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. Dr. Bayardo testified at Mr. Reed’s 1998 trial that Mr. Reed’s semen was left “quite recently,” and supported the State’s theory that Mr. Reed sexually assaulted Ms. Stites contemporaneous with her murder. He has now retracted that opinion. Dr. Bayardo now admits that the forensic evidence suggests consensual intercourse between Mr. Reed and Ms. Stites *more than 24* hours before her death—which is consistent with Mr. Reed’s account of his last meeting with Ms. Stites:

Ms. Blakely testified that spermatozoa can remain intact for no more than 24 hours. I question the qualification of these witnesses to offer this testimony, and in any event, they are incorrect. I am personally aware of medical literature finding that spermatozoa can remain intact in the vaginal cavity for days after death.

Exhibit 10 (Bayardo Dec. ¶ 4). Dr. Bayardo now states that the deposit of Mr. Reed’s semen was not “quite recent” to her death—as he testified at trial<sup>1</sup>—but was approximately a day before her death:

Accordingly in my professional opinion, the spermatozoa I found in Stites’s vaginal cavity could have been deposited days before her death. Further, the fact that I found “very few” (as stated in the autopsy report) spermatozoa in Ms. Stites’s vaginal cavity suggests that the spermatozoa was not deposited less than 24 hours before Ms. Stites’s death.

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<sup>1</sup> At trial, Bayardo testified that he determined the deposit of Mr. Reed’s semen in Ms. Stites occurred “quite recently” in proximity to the time of her death. *See* TT Vol. 48:122.

*Id.* Dr. Bayardo has also disclaimed any connection between Mr. Reed’s semen and the murder:

. . . the presence of spermatozoa in the vaginal cavity was not evidence of sexual assault. There was no indication that the spermatozoa were placed there in any fashion other than consensually.

Exhibit 10. In fact, Dr. Bayardo has retracted or modified most of what he told the jury at Mr. Reed’s trial:

Time of Death. At trial, I testified that I estimated the time of death as 3:00 a.m. on April 23, 1996. Estimates regarding time of death are just that – estimates – and the accuracy of the estimate is subject to various factors, as outlined by Dr. Riddick in paragraphs 10-13 of his April 14, 2006 affidavit. My estimate of time of death, again, was only an estimate, and should not have been used at trial as an accurate statement of when Ms. Stites died. (As I testified, I am unaware of how long it was between the time of death and the time her body was brought to the Travis County Medical Examiner’s office.) ***If the prosecuting attorneys had advised me that they intended to use my time of death estimate as a scientifically reliable opinion of when Ms. Stites died, I would have advised them not to do so. In my professional opinion, pinpointing a precise time of exactly when Ms. Stites died would have been, and remains, impossible.***

Survival of Sperm. At trial, I testified that the very few spermatozoa I found in Ms. Stites’s vaginal cavity had been deposited there “quite recently.” Ms. Blakely testified that spermatozoa can remain intact in the vaginal cavity for no more than 26 hours; and Ms. Clement testified that spermatozoa can remain intact for no more than 24 hours. I question the qualifications of these witnesses to offer this testimony, and in any event, they are incorrect. I am personally aware of medical literature finding that spermatozoa can remain intact in the vaginal cavity for days after death. Accordingly, in my professional opinion, the spermatozoa I found in Ms. Stites’s vaginal cavity could have been deposited days before her death. ***Further, the fact that I found “very few” (as stated in the autopsy report) spermatozoa in Ms. Stites’s vaginal cavity suggests that the spermatozoa was not deposited less than 24 hours before Ms. Stites’s death. If the prosecuting attorneys had advised me that they intended to present testimony that spermatozoa cannot remain intact in the vaginal cavity for more than 26 hours, and argue that Ms. Stites died within 24 hours of the spermatozoa being***

*deposited, I would have advised them that neither the testimony nor the argument was medically or scientifically supported.*

Sperm Not Found in Rectum. I reported in the autopsy report and testified at trial that rectal smears taken of Ms. Stites were negative for spermatozoa and seminal fluid. Upon direct examination, I did testify that under a microscope, the rectal smears showed what appeared to be the heads of spermatozoa. However, the smears were insufficient to conclude that spermatozoa were present in the rectum. Accordingly, I reported the smears as negative on the autopsy report. My trial testimony should not have been construed as suggesting that spermatozoa were indeed found in Ms. Stites's rectal cavity. *Had the prosecuting attorneys advised me that they intended to present my testimony as evidence that spermatozoa was found in Ms. Stites's rectal cavity, I would have informed them that that was incorrect.* An autopsy report is the result of scientifically valid, forensic pathology methods. Trial testimony is given in response to the questions asked. *Had I been asked at trial if spermatozoa and/or seminal fluid had been found in Ms. Stites's rectal cavity, I would have said that it had not, consistent with the autopsy report.*

Exhibit 10 (emphasis added). Contrary to the impression left on the jury, Dr. Bayardo now states that (1) his estimate of the time of death at approximately 3 a.m. was not reliable, (2) there is no evidence that Mr. Reed sexually assaulted Ms. Stites, and (3) the evidence actually corroborates Mr. Reed's statement that he and Ms. Stites had sex a day before her disappearance.

**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. *See* Exhibit 11 (DPS Crime Lab Letter re: Limitations). 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 now acknowledges on behalf of the Texas Department of Public Safety that data and related scientific literature relied on by Blakely actually show that intact spermatozoa can and do remain for up to 72-hours. *See* Exhibit 11 (Letter from DPS Crime Lab Director Brady Mills).

**LabCorp Technical Leader Stephanie Sivak and Serologist Purnima Bokka.** On January 11, 2018 Bode Cellmark Forensics (a subsidiary of LabCorp)<sup>2</sup> Technical Leader Stephanie Sivak issued a letter which described Ms. Clement's testimony cited above as "unsatisfactory" and as an "error". Exhibit 12 (LabCorp Correction Letter). Specifically, Technical Leader Sivak characterized the error in Ms. Clement's testimony as follows:

Error Type 2: The DNA/Forensic Biology Analyst cites the number of cases and/or samples worked in the lab as a predictive value to bolster the conclusion that the DNA profile belongs to a specific individual or . . . otherwise testifies beyond the scope of his/her experience."

Exhibit 12. An attached worksheet identified the specific testimony which the laboratory deemed in error:

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<sup>2</sup> At that time Bode Cellmark Forensics was a subsidiary of Labcorp which employed Ms. Clement for many years.

Correction Review Evaluation Form

<b>Case Information:</b>	
Case Number:	F9801744
Defendant(s):	Rodney Reed
Date of Review:	11/22/2017
<b>Review of Testimony:</b>	
Date of Testimony:	5/11/1998
Testifying Analyst:	Meghan Clement
Name of Prosecutor:	Mr. Charles Penick, Mr. Forrest Sanderson, & Ms. Lisa Tanner
Name of Defense:	Mr. Calvin Garvie & Ms. Lydia Clay-Jackson
Testimony Results (mark as appropriate):	
Unsatisfactory Statements:	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
If testimony contained Unsatisfactory Statements, cite each by Error type, page(s), and line number(s):	
Page 55, lines 13-21	With spermatozoa, the tails are very fragile and tend to break off, so after a short period of time they start losing their tails and then what you find is only the spermatozoa heads, from sexual assault cases. So that can be an indicator of how long the spermatozoa has been in a particular place before it is actually collected and detected.
Page 56, lines 8-16	In serology work, typically, sexual assault kits weren't even collected more than 24 hours after an encounter because the chances of finding sperm is so rare. Generally, finding intact sperm at more than probably about 20 hours, 20 to 24 hours, I don't ever recall finding intact sperm more than that, from the time of the sexual assault and from the time the collection was made.
Page 56, line 18, after asked to clarify above response: "And that was in over thousands of rape kits?"	Yes.

Approved By: 

Date: 1/11/2018

Exhibit 12 at 2. Moreover, LabCorp forensic serologist Purnima Bokka has confirmed that intact sperm may be found in the vaginal cavity up to 72 to 144 hours after intercourse. See Exhibit 12A (Affidavit of Punima Bokka, M.S.). Through Technical Leader Sivak's letter and Serologist Bokka's affidavit, LabCorp has directly repudiated Ms. Clement's testimony that (1) suggested that intact spermatozoa are not found 24

hours after intercourse and (2) cited her experience in examining “thousands” of rape kits to bolster her erroneous statement.<sup>3</sup>

The evidentiary picture today could not be more different from what was presented to the jury at trial. In 1998, the jury was told—without contradiction from the defense—that the presence of Mr. Reed’s semen was conclusive proof that he sexually assaulted Ms. Stites contemporaneous with her murder. This point was emphasized by the State in closing argument:

[DPS analyst Karen Blakely] took the vaginal swabs, and what did she find? At eleven o’clock that night she goes back to the lab, she puts them under the microscope and bingo, she finds three fully intact spermatozoa. At that point she knows what she’s got here. We all know what she’s got here. Because we know, from the credible evidence, that that doesn’t hang around for days on end. We know from the credible evidence that that tells you that that semen got in that girl’s body within 24 hours of that eleven o’clock moment. Which is when? On her way to work.

TT Vol. 56:33-34.<sup>4</sup>

No witness continues to assert this scientifically baseless theory. The opinions offered by the State at trial have been retracted and Dr. Bayardo now admits that the evidence actually

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<sup>3</sup> Ms. Clement has repeatedly declined to cooperate with Mr. Reed’s legal proceedings. LabCorp agreed to address Ms. Clement’s erroneous testimony only after Ms. Clement left the company. Now working as a consultant, Ms. Clement recently declined undersigned counsel’s request to retain her to review her testimony and the applicable serology literature. A deposition or hearing would be required to obtain her testimony.

<sup>4</sup> The State also relied on Dr. Bayardo’s expert testimony that he found rectal tares (“lacerations”) consistent with a sexual assault by Mr. Reed. TT Vol. 56:34-35. As with the State’s theory on intact spermatozoa, this has been retracted by Dr. Bayardo and unanimously debunked by three experienced forensic pathologists. See Exhibit 10 ¶6 (no evidence Reed’s sperm related to sexual assault); Exhibit 13 ¶ 8 (Dr. Spitz); Exhibit 14 ¶ 9 (Dr. Baden); Exhibit 15 ¶ 18-22 (Dr. Riddick).

corroborates Mr. Reed's account. *See* Exhibit 10. This is confirmed by the unanimous opinions of forensic pathologists Drs. Baden, Spitz, and Riddick who explain that there is no reliable evidence that Ms. Stites was sexually assaulted at all. *See* Exhibit 13 ¶ 8 (Dr. Spitz); Exhibit 14 ¶ 9 (Dr. Baden); Exhibit 15 ¶ 18-22 (Dr. Riddick).

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

Fennell testified at trial that he and Ms. Stites spent the night of April 22, 1996 together in their apartment. He told the jury that he was at home when Ms. Stites went to sleep around 9:00 p.m. and that he went to sleep about an hour later. Fennell claimed he was still sleeping when Ms. Stites left for work in his truck at approximately 3:00 a.m. in the morning.

Three of the nation's leading forensic pathologists, Drs. Spitz, Baden, and Riddick, now conclude that Ms. Stites was actually murdered before midnight on April 22, 1996 and that she was placed in the location and position where she was found at least 4 hours after the murder. This longer post-mortem interval, coupled with the fact that the body was moved at least 4 hours after death, makes the State's theory of Mr. Reed's guilt impossible. Drs. Spitz, Baden and Riddick likewise agree that there is no evidence of a sexual assault by Reed contemporaneous with death—a fact essential to sustaining the sufficiency of the evidence supporting the verdict against Reed. *See Reed v. State*, No. 73, 135 at 9. If Ms. Stites was murdered at a time that Jimmy Fennell testified that she was at home with him, and if there is no evidence that Mr. Reed sexually assaulted Ms. Stites, then it becomes clear that Jimmy Fennell and not Mr. Reed murdered Ms. Stites.

The forensic experts rely primarily on three key elements in determining the post-mortem interval: rigor mortis (stiffening of the muscles due to chemical alterations in the cells), livor mortis (pink to red discoloration of the skin due to blood settling in the vessels and later seeping into the skin), and signs of decomposition. *See Spitz and Fisher, Medicolegal Investigation of Death* 94 (4<sup>th</sup> Ed. 2006) (livor, rigor, and decomposition included in most common protocols used in postmortem timing). None of these factors were discussed in relation to the postmortem interval at Mr. Reed's trial.

### **1. Patterns of Postmortem Lividity Indicate that the Body was Moved 4-6 Hours After Death**

Drs. Spitz, Baden, and Riddick explain that the lividity seen on Ms. Stites' right shoulder, arm, and part of her face shows that Ms. Stites was left in a position in which these areas were lower (dependent) for at least 4 hours prior to the body being left in the position it was found. Exhibit 13 ¶2-3 (Dr. Spitz); Exhibit 14 ¶6 (Dr. Baden); Exhibit 15 ¶ 12-14 (Dr. Riddick). Dr. Riddick explains lividity in his affidavit:

Another significant factor in my opinion as to the post-mortem interval is my observation of the location and level of livor in the body. As discussed above, livor mortis (or lividity) is the pooling of the blood to the lowest part of the body, described by clinicians as a dependent area. Lividity that exceeds faint patches of discoloration generally develops after at least 2 hours, and takes several more hours to become fixed. Lividity is fixed when the blood congeals in the capillaries or diffuses into the extravascular tissues. Once lividity is fixed, it will not be displaced by compression and will not shift if the body is moved. If lividity is not fixed, the blood that has pooled in one area will shift to a new area once the body has been moved.

Exhibit 15 at ¶ 12. Areas of lividity often contain patches of white called "blanching" where compression of the skin has prevented the blood from pooling. *Id.* at ¶14. The photographs of Ms. Stites show lividity on her right arm, right shoulder and chest, and the side of her face—

areas that are not dependent in the position she was found. Areas of blanching can be seen on Ms. Stites' elbow. Dr. Spitz explains the relevance of this non-dependent lividity:

***The presence of lividity in these non-dependent areas makes it medically and scientifically impossible that Stites was killed between 3- 5 a.m. on the date in question.*** Stites could not have been both murdered *and* dumped between the hours of 3-5 a.m. on April 23, 1996 and remained undisturbed in that spot until her body was discovered at around 3 p.m. because the lividity observed in the non-dependent areas would have taken at least 4-5 hours to develop. It is impossible that Stites was murdered and left at the scene in the two-hour time frame asserted by the State at trial.

Exhibit 13 ¶3 (Dr. Spitz). Dr. Baden similarly concludes:

Lividity develops by the gravitational settling of red blood cells while still in blood vessels in the lower dependent portions of the body after death causing a maroon-type discoloration of the skin. The intensity and extent of the lividity present on Ms. Stites' body demonstrates that she would have lain face down after she was dead for more than four or five hours in order for this lividity to remain after she was turned over when she was placed on her back in the brush. This lividity demonstrates that Ms. Stites was dead before midnight on April 22<sup>nd</sup> when she was alone with Mr. Fennel

Exhibit 14, *see also* Exhibit 15 ¶14 (Dr. Riddick) (body in different position for at least 4-6 hours). The photographs below demonstrate this nondependent lividity with blanching on the elbow and on the fingertips:



*(note red discoloration on face, upper chest and arm with blanching on elbow area)*

## **2. Rigor Mortis Indicates Longer Post-Mortem Interval**

Drs. Spitz and Riddick also focus on the level of rigor mortis seen in the crime scene video, which shows a longer postmortem interval. Dr. Riddick explains:

If the post mortem interval had been roughly thirteen hours as estimated by Dr. Bayardo at the trial, rigor should have been intense and progressing to completion. The crime scene video contradicts this finding and indicates a much longer post-mortem interval. A body in complete rigor (which is generally achieved at roughly 12 hours under normal conditions and will be essentially unchanged at 13 hours) is stiff. Manipulation of an arm, a leg, or the head is difficult and will also result in moving the torso. The manipulation of the body demonstrated in the crime scene video, however, indicates that the limbs can be moved independently, thus indicating that rigor was no longer at its height and was passing. . . . In short, during the examination of the body between 5:15 p.m. and around 8:22 p.m. when the crime scene video ends, the body appears in many instances to be easily manipulated and at times the arms appear limp indicating that rigor has waned.

Based on the lessening of rigor demonstrated in the crime scene video, I estimate that the post mortem interval is significantly longer than the 13 hours estimated at trial. The level of rigor demonstrated in the crime scene video is more consistent with a post-mortem interval of 16-20 hours from the first documentation of the body at 5:15 p.m.

My estimate of the post-mortem interval takes into account environmental factors that can affect the speed at which rigor develops. According to the National Weather Service, the temperature in the neighboring city of Elgin ranged from a low of 50 to a high of 75 degrees Fahrenheit on April 23, 1996. Although the National Weather Service indicated sixteen hundredths (.16) of an inch of precipitation on that day in Elgin, the videotape shows dry conditions at the crime scene. Further, the body appears to be shaded by small trees and brush. These are normal conditions, which would not affect the routine progress of rigor.

Exhibit 15 ¶ 10-11 (Dr. Riddick). Dr. Spitz also explains that the manipulation of the body in the crime scene video demonstrates “passing” rigor consistent with a longer post-mortem interval:

Dr. Bayardo describes "slight residual" rigor at autopsy conducted at 1:30 p.m. on April 24, 1996, after the body was refrigerated since approximately 11 p.m. on April 23rd. Rigor is seen on the crime scene video, but the arms are easily placed down from above Stites's head as she is put into a body bag before sundown on April 23, 1996. This movement of the arms shows passing rigor. Likewise, "slight residual rigor" after refrigeration at the ME's office is consistent with passing rigor, at the time the body is filmed in the video.

Rigor is markedly temperature-dependent. In warm weather rigor mortis progresses faster, in cool weather it progresses more slowly. The average temperature on April 23rd was in the mid-60s. Taking this temperature into consideration, passing rigor, as depicted in the video, is consistent with death of about 20-24 hours prior to the video—a period of 15 hours as estimated by Dr. Bayardo would not allow for such movement, without having broken the rigidity.

Exhibit 13 ¶ 4-5 (Dr. Spitz).

**3. Evidence of Decomposition Demonstrates a Longer Postmortem Interval and Shows that Ms. Stites was Moved in the Truck Several Hours After Her Death**

Dr. Spitz points out evidence of decomposition that is inconsistent with the time of death advanced by the State at trial:

My review shows evidence of decomposition that is not consistent with a time of death at 3 a.m. on April 23, 1996. The body is described as having green discoloration, which can be seen in the video. The appearance of the breasts after the bra is removed shows gas formation. The abdomen does not appear flat. There is skin slippage in several places. What is described at autopsy as post mortem burns in the face, breasts, and other areas is also likely skin slippage, in which the top layer of skin has dried. What has been described as petechiae in the scalp are none other than small torn blood vessels in the process of reflection of the scalp. Brown fluid running from the mouth and nose, across the right cheek is decomposition fluid and is not described in the autopsy report. Internal organs also show evidence of decomposition-what Dr. Bayardo describes as congestion in lungs is actually decomposition. The heart is flabby and the blood is liquid after liquefaction which is part of the decomposition process. Brain swelling is also part of decomposition. This amount of decomposition supports a post-mortem interval of about 20 to 24 hours before the film and photographs.

Exhibit 13 ¶ 7 (Dr. Spitz).<sup>5</sup> Dr. Baden explains the importance of the viscous fluid on the floor of the truck in determining the time of death:

Examination of the truck showed that the driver's seat was reclined back and the passenger seat was in a slightly forward position. "Some type of viscous fluid" was found on the passenger-side floorboard. This is not pulmonary edema fluid from Ms. Stites as interpreted by the prosecution. Pulmonary edema fluid is thin and frothy and would also have been present in and around her mouth and nose, and was not. Pulmonary edema fluid is not viscous. This is typical post-mortem purge fluid that flowed from her nose and mouth as her body began to decompose and showed other decomposition changes, such as skin slippage and green discoloration of skin, which were also described at the scene and autopsy. It would have taken more than four hours after her death for this purge fluid to develop. It could not have developed in less than 2-1/2 hours if she were alive at 3:00 a.m. when she got into the truck. This finding also demonstrates that she had been dead for a number of hours, before

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<sup>5</sup> The photography and video were taken between approximately 5:15 and 8:15 p.m. See Exhibit 15 ¶ 8 (Dr. Riddick).

midnight, when she was placed in the passenger seat.

Exhibit 14 ¶7 (Dr. Baden).

**4. The State's Evidence that Reed's Sperm was Associated with a Sexual Assault is False.**

Drs. Spitz, Baden, and Riddick all confirm that there is no evidence of a sexual assault, and that the evidence presented by the State's experts to that effect was false. The primary proponent of the State's theory, Dr. Bayardo, has recanted his opinion that Mr. Reed's semen has any connection to Ms. Stites' murder. *See* Exhibit 10 ¶ 5-6. A valid analysis of the forensic evidence also contradicts the testimony of Texas Department of Public Safety Criminologist Karen Blakeley and Labcorp Serologist Meghan Clement that intact sperm would not be found more than 24-26 hours after intercourse, and that finding any intact sperm on swabs taken between 7-8 p.m. on April 23<sup>rd</sup> would rule out Reed's account of consensual sex between midnight and 3 a.m. on April 22<sup>nd</sup>. Dr. Spitz explains:

Very few sperm were found on autopsy smears, and the crime scene investigator found only 3 intact spermatozoa. If the victim was sexually assaulted between 3-5 a.m., there would be more sperm found on slides. A normal sperm count is considered to be 15 million spermatozoa per milliliter. The amount of sperm found on the slides is more consistent with a longer interval between intercourse and the time the sample was collected. As I explain in my book, intact spermatozoa can be found in the vagina up to 72 hours after coitus.<sup>6</sup>

Exhibit 13 ¶ 6 (Dr. Spitz); *see also* Exhibit 14 ¶ 8 (Dr. Baden) ("The few sperm seen are entirely consistent with consensual intercourse that Mr. Reed said occurred between midnight and 3:00 a.m. on April 22, 1996."); Exhibit 15 ¶ 17 (Dr. Riddick). The doctors also rebut the State's evidence of anal rape. Exhibit 13 ¶ 8 (Dr. Spitz) (anus and rectum

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<sup>6</sup> *Spitz and Fisher* at 1262.

normal); Exhibit 15 ¶ 18-21 (Dr. Riddick); Exhibit 14 ¶ 9 (Dr. Baden) (dilation of anus normal and no evidence on photographs of lacerations).

Additional evidence demonstrates that the body was moved to the location and the crime scene staged by Fennell so that Ms. Stites would be quickly discovered and identified. As part of a thorough review of the case, retired NYPD Homicide Detective Sergeant Kevin Gannon reached the following conclusions:

In addition to the forensic evidence which indicates that the murder took place while Jimmy and Stacey were at home together, a number of other factors raise suspicion that Jimmy Fennell was the murderer:

- The seatbelt of the truck was fastened as if the last driver had been sitting on top of the seat belt. It is common for police officers to sit on top of a fastened seat belt in their vehicle. Officers do this because they are often called upon to quickly exit their vehicles in an emergency. A seatbelt can impede a fast exit, so it is buckled to keep it out of the way and stop warning signal in the car. My experience is confirmed by statistics released by the California Commission on Police Officer Standards and Training indicating that roughly half of all police officers do not wear seatbelts.
- Stacey's fingernails are closely cut in a manner that I would not expect from a nineteen year old woman only a few weeks before her wedding. Strangulation involves a close struggle that provides the victim an opportunity to scratch her attacker and leave his DNA under her fingernails. In 1996, a police officer would be familiar with the fact that fingernail scrapings are taken during autopsy, and it is unlikely that a lay person would know to cut the fingernails of a victim to avoid detection.
- Certain aspects of the crime scene appear to have been staged in a manner that does not conform to a kidnapping/murder by a stranger. First, the placement of Stacey's name tag between her legs is direct evidence of a staged crime scene. The location of the two halves of Stacey's belt also does not comport with a kidnapping murder by a stranger seeking to evade detection. It is unlikely if not impossible that Stacey's woven leather belt broke while it was used as a ligature. The force necessary to break a leather belt would have caused greater injury to her neck than was reported at autopsy. It is far more likely in my opinion that the belt was separated after the murder. One half of the belt was left at the side of the road in a position pointing towards the body. Especially where it was alleged that the murderer used the victim's shirt to wipe

fingerprints from the truck at the scene, it is not plausible that the same person would have left the belt in this location unless he wanted the body to be quickly found. The same is true for the portion of the belt left outside the truck at the Bastrop High School. A murderer who had the forethought to wipe his fingerprints and lock the door of the truck would not leave such obvious evidence in plain view accidentally.

Exhibit 16 (Det. Sgt. Gannon).

Although the State has fought against Mr. Reed's ability to present the medical evidence discussed above for years, and Dr. Baden testified to these opinions at a 2017 habeas hearing, *the State has never contradicted these experts since their testimony was first filed in court in 2015*. Together, this evidence establishes that (1) Ms. Stites was not sexually assaulted by Mr. Reed and (2) she was murdered before midnight on April 22, 1996—a time when Fennell testified to the jury that he was at home alone with the victim.

### **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>7</sup> See Exhibit 17 (Affidavit of Rodney Reed). Although he denied knowing Ms. Stites when surprised by police after he was arrested on unrelated charges, Mr. Reed immediately told his attorney about the relationship. See Exhibit 18 (Affidavit of Jimmie Brown). At a bail hearing, Mr. Reed's mother testified that she knew Mr. Reed was seeing Ms.

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<sup>7</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. Long before his trial, Mr. Reed's mother testified at a bail hearing that she knew of her son's relationship with Ms. Stites. Exhibit 19.

Stites. Exhibit 19 (Sandra Reed Testimony Excerpt). 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.

In her opening statement, Mr. Reed's counsel Lydia Clay-Jackson argued that the defense would show that Rodney Reed and Stacey Stites were involved in a "secret affair." TT Vol. 42: 69. Julia Estes testified that she had seen Rodney and Stacey Stites talking together at the HEB. TT Vol. 51: 136. Iris Lindley also testified that while she was sitting on the front porch at Mr. Reed's mother's home, a woman Ms. Lindley identified as Stacey Stites came by asking for Rodney. TT Vol. 53: 92. Lindley testified that she presumed they were dating. TT Vol. 53: 98. However, both witnesses were impeached by the State, and their testimony could not be credited where the State's forensic experts told the jury that the presence of Mr. Reed semen meant that he must be the murderer. In state habeas proceedings, additional witnesses were found who also knew of Mr. Reed's relationship with Ms. Stites, but they were also discredited based on their criminal history or close affiliation to the Reed family. *See Reed v. Thaler*, No. A-02-CA-142 LY, 2012 WL 2254217, at \*14 (W.D. Tex. June 15, 2012) ("many of those claiming they had seen Reed and Stites together were Reed's cousins or parents, and many had criminal felony or misdemeanor convictions for charges involving dishonesty, such as theft."). Federal courts previously rejected Mr. Reed's claims of actual innocence citing the absence of credible witnesses of the relationship who were not affiliated with Mr. Reed:

. . . the DNA evidence and evidence suggesting rape was plainly the primary evidence relied upon by the State to prove Reed's guilt. Thus, persuasive evidence that Reed and

Stites had consensual sex days before the murder would have clearly undermined the State's evidence. Further, given the evidence that Fennell was racially prejudiced, evidence of an interracial affair between Stites and Reed would also have provided a credible motive for Fennell to kill Stites.

*Id.*, 2012 WL 2254217, at \*14.

More recently, Mr. Reed has identified three credible witnesses with knowledge of his relationship with Ms. Stites 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:** In November 2014, Alicia Slater, formerly Griesemer, contacted Mr. Reed's defense team on her own volition. *See* Exhibit 20 (Affidavit of Alicia Slater). She felt "morally compelled to tell someone" that she was aware of a sexual relationship between her former co-worker Ms. Stites and Mr. Reed. *Id.* In 1995 and 1996, Mrs. Slater was employed part time at the H.E.B. She and Ms. Stites were friends and would often take lunch together:

On one occasion when Ms. Stites and I were eating together in the break room, she talked to me about her relationship with her boyfriend. She was talking about her engagement ring and that she was not excited about getting married. She told me 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. She commented that she had to be careful.

Exhibit 20 ¶ 4. Although she has known this information for some time, Slater has not disclosed it because she "thought it was common knowledge" and did not want get involved:<sup>8</sup>

Although I had heard that Mr. Reed was convicted of the murder, I didn't really follow the case . . . I thought that the relationship between Mr. Reed and Ms. Stites was common knowledge, that everyone knew. I remember that in 2003, a friend from Bastrop brought up the case and said that she heard I knew Stacey. I did not

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<sup>8</sup> *Id.*, ¶ 7

tell her anything about what I knew. At the time, I had just moved to California, had just gotten married, and had started a new job. I thought that if I said something, that I would have to come back to testify in Bastrop, so I kept the information secret.

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When I saw that Mr. Reed actually had an execution date, I realized that it was now or never. I didn't track the case and didn't realize the importance of what Ms. Stites had told me until that time. When I read about the case on the internet, I learned that an important issue was whether Ms. Stites and Mr. Reed were in a consensual relationship. Based on this, it became clear that what Ms. Stites told me could make a difference. I felt morally compelled to tell someone that Ms. Stites had told me herself that she was sleeping with Mr. Reed.

Exhibit 20 ¶¶ 7, 9 (Affidavit of Alicia Slater).

**Lee Roy Ybarra:** In January 2015, Lee Roy Ybarra also submitted an affidavit to attest to a relationship that he saw between Mr. Reed and Ms. Stites—information he says he would have gladly told to police in 1996 had they contacted him. *See* Exhibit 21 (Affidavit of Le Roy Ybarra).

Mr. Ybarra also worked at the H.E.B. in Bastrop with Ms. Stites in 1996; on numerous occasions he saw Ms. Stites and “a young black man” he later identified as Mr. Reed from news articles after her death.<sup>9</sup> He remembers Mr. Reed's face well because “sometimes they were close enough that [Mr. Ybarra] got a very good look at him.”<sup>10</sup>

Based on his direct observation during the numerous occasions he saw Mr. Reed and Ms. Stites together, Mr. Ybarra confirms they had an intimate, positive relationship. He noticed her “demeanor would change” when Mr. Reed came around and she was “happy to see him and

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<sup>9</sup> *Id.*, ¶ 3.

<sup>10</sup> *Id.*, ¶ 4.

would be in a good mood.”<sup>11</sup> The nature of Mr. Reed’s and Ms. Stites’ encounters were happy and romantic.<sup>12</sup> Ms. Stites’ behavior around her fiancé stands in stark contrast. Mr. Ybarra observes:

I knew Ms. Stites was engaged to a police officer at the same time she was seeing [Mr. Reed], and I recall that the few times that Stacey’s fiancé entered the store to visit her, she would become a nervous wreck. I know that there were times Ms. Stites would deliberately hide so that she didn’t have to talk to him. I just thought it was a strange relationship.

Exhibit 21 ¶5. Mr. Ybarra has not come forward before now because he did not realize the import of his testimony around the time of Ms. Stites’ murder investigation, and he has not followed the case since.

At the time of Mr. Reed’s trial or prior to his trial no one from the prosecution or defense team contacted me. If anyone had asked, I would have gladly told them what I knew about Ms. Stites and Mr. Reed.

Exhibit 21 ¶5, 8 (Affidavit of Le Roy Ybarra).

**Calvin “Buddy” Horton:** The affidavit of Calvin “Buddy” Horton is attached hereto as Exhibit 22 (Affidavit of Calvin “Buddy” Horton). In his affidavit, Mr. Horton states that he is the cousin of Stacey Stites and helped Ms. Stites and her mother move their belongings when she was 16 from Corpus Christi to their eventual home in Bastrop.

Mr. Horton explains that Ms. Stites’ move was prompted by her pregnancy and her mother’s concern that she was developing bad habits while living in Corpus Christi. In particular, Ms. Stites’ mother was concerned that she was too young to be dating and associating

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<sup>11</sup> *Id.*, ¶ 3.

<sup>12</sup> *Id.*

with men. Mr. Horton's parents initially hosted Ms. Stites and her mother at their home. However, Ms. Stites and her mother later moved out after Mr. Horton's parents became uncomfortable with Ms. Stites' behavior:

I understood from speaking with my parents that Stacey's mother was concerned that Stacey had begun dating and associating with men at an early age—including black men—that Stacey had gotten pregnant, and that her mother decided to move after Stacey's pregnancy. My father told me that Carol was concerned about the influences in Stacey's environment in Corpus Christi and wanted to leave.

Stacey and Carol lived with my parents for approximately two months, but within that time, my mom and father informed me that some of Stacey's traits from Corpus Christi resurfaced. According to them, she would continue to see men, was disobedient and would leave the house at-will. Because of this, my dad asked my mom and wife to seek out more suitable housing for them. Eventually my wife and my mother found a home in Smithville for Carol and Stacey to live. As I had done before, I helped Stacey and her mother move. This time I moved their belongings from the storage facility to the Smithville home, where they stayed until they moved to Bastrop.

Exhibit 22 ¶¶ 3 and 4.

Mr. Horton states that in October or November of 1995, he saw Ms. Stites leaving a Bastrop Dairy Queen with a black man. He called out to Ms. Stites, but the two ignored him and continued on to their vehicle:

As I pulled into the Dairy Queen in the Ford pickup I was driving at the time, with my children inside, I remember seeing Stacey coming out of the Dairy Queen with a black man. I hollered her name to get her attention as I drove in, but she did not respond. I know they heard me because both Stacey and the black man looked directly at me, but neither came toward me. I have a rather loud voice; I easily project and rarely have a difficult time being heard.

Seeing Stacey with a black man did not surprise me because I remembered what my parents told me about her dating and associating with black men. Stacey, however, was shocked; she seemed embarrassed when she saw us and she quickly left with the black man without introducing me. Stacey and the black man got into a darker colored car that Stacey was driving, and they drove off without speaking to me or my children. I told my father of this incident, but to me it was not a big deal at the time because I had been told that Stacey associated with black men.

Exhibit 22 ¶¶ 6 and 7. After Ms. Stites' death, Mr. Horton saw pictures of Mr. Reed in the media. After seeing these pictures, he identified Mr. Reed as the man accompanying Ms. Stites at that Bastrop Dairy Queen in 1995:

Sometime after Stacey's death I remember seeing pictures of Rodney Reed on the news and in the newspaper after he became a suspect in the death of my cousin. Rodney Reed is the same man I saw with Stacey at the Dairy Queen in 1995. I understand that the appeals courts have previously said that there were no credible witnesses that would testify as to having seen Rodney and Stacey together. I would have testified to my experience at the Dairy Queen in 1995 at trial, but no one ever approached me to do so. Since then, I have told other members of my family and would have told law enforcement and prosecutors the same had they interviewed me.

Exhibit 22 ¶ 8.

**Charles Wayne Fletcher:** The recent statement by former Bastrop Sheriff's Officer

Charles Wayne Fletcher likewise demonstrates even Fennell's knowledge of the relationship:

... 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.

Exhibit 23 (Affidavit of Charles Wayne Fletcher).

**Arthur Snow:** Arthur Snow encountered Fennell while the two were serving time at the Stevenson unit. Mr. Snow describes how Fennell sought protection from the Aryan Brotherhood and then bragged that he "had to kill my nigger-loving fiancé":

In about 2010, a white man named Jimmy Fennell ("Jimmy") approached me at the Stevenson Unit wanting the protection of the Aryan Brotherhood. Jimmy said he needed protection from the blacks and Mexicans at the prison. At the time, I didn't know anything about Jimmy. All I knew was that I had seen Jimmy around the prison and observed that he

seemed out of his element. So, I cut a deal with Jimmy that he would pay the Aryan Brotherhood out of his commissary, and in exchange we would keep the blacks and Mexicans off of him and protect him from violence.

Jimmy and I were never really friends, but we occasionally made conversation. One conversation stands out very clearly in my mind. Jimmy and I were in the rec yard at the Stevenson Unit walking around the track and talking. He was talking about his ex-fiancé with a lot of hatred and resentment. Jimmy said his fiancé had been sleeping around with a black man behind his back. By the way Jimmy spoke about this experience, I could tell that it deeply angered him. Toward the end of the conversation Jimmy said confidently, "I had to kill my nigger-loving fiancé." My impression was that Jimmy felt safe, even proud, sharing this information with me because I was a member of the Aryan Brotherhood. I think Jimmy assumed that his confession would impress me and earn him credibility with the Aryan Brotherhood.

As I recall, people didn't really bother Jimmy anymore once they knew he was under our protection. However, one day a new inmate came onto the unit who said he knew Jimmy from time he spent in Williamson County. I do not recall this man's name, but the new inmate said that Jimmy was a former cop who had been convicted of raping a woman in his custody. I wanted to verify this, so I asked a guard at the prison to look Jimmy up and tell me who he was and what he was in for. After looking Jimmy up, the guard confirmed Jimmy's history.

After the news spread around the prison that Jimmy was a cop, and that he was a rapist, the Aryan Brotherhood couldn't protect Jimmy anymore. Then, Jimmy accused the Aryan Brotherhood of extorting him. Because the guards saw me as one of the leaders of the gang, Jimmy's accusations landed on me. As a result, I was ultimately moved to the Connally Unit where they send a lot of gang members.

Exhibit 1.

Snow and Fletcher's account that Fennell knew of Ms. Stites' relationship with a black man is important corroboration of Mr. Reed's statement that Mr. Fennell confronted him not long before the murder, and Mr. Fennell had motive to kill Ms. Stites. *See* Exhibit 17.

In contrast to the witnesses previously rejected by the courts, Slater, Ybarra, Horton, Fletcher, and Snow have no connection to Mr. Reed, and their motivation in coming forward with evidence of the relationship cannot be attributed to incentives or bias.

### **OTHER EVIDENCE IMPLICATING FENNEL**

Fennell was a primary suspect in Ms. Stites' 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. In the years since Mr. Reed's conviction, even more evidence has come to light implicating Fennell in the murder.

#### **A. Fennell's Inconsistent Statement to Curtis Davis Regarding Alibi**

Fennell told police and later testified that he and Ms. Stites were together in their apartment from around 8:00 p.m. on April 22, 1996 until the next morning when Ms. Stites left for work. On the day of Ms. Stites' disappearance—before her body was found—Fennell told his best friend, Bastrop Sheriff's Officer Curtis Davis, something entirely different. Officer Davis

recounted what Fennell told him that day during an interview with CNN. He later affirmed the content of that interview under oath as his sworn testimony. That testimony included following description of what Fennell said:

He blamed himself for allowing her to drive to work that morning because he said that he had actually been driving her to work; that he can keep the truck. . . . I remember him making comments about he should have got up out of bed and drove her to . . . drove her to work that morning.

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The night before, based on what he told me, uh, they- him and a couple of the other police officers, I believe, that were part of a little league coaching group uh, had consumed a bit of alcohol. Uh, I won't say they were drunk 'cause that's not what he said, but they drank a few beers after practice and uh, those beers were consumed in and around his vehicle. . . .

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Plus his whole reasoning for necessarily not coming straight back home was Stacey was asleep. She would go to bed at 9:00, 8:00, 9:00 at night in order to get ready for the shift the next morning. So he didn't want to disturb her. . . . And so that was part of the other reason why he said he didn't come home, you know, uh, earlier than he did.

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Yeah, uh, and basically the reason why he didn't get up the next morning whether it was because of uh, her wanting to allow him to sleep further because she knew that he'd had a few beers the night before or he slept in because he had a few beers the night before. Whatever the decision was made, ultimately she drove herself to work that morning.

Exhibit 24 (Excerpt of Curtis Davis Interview).

What Fennell told Davis simply cannot be squared with what Fennell 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.

Fennell has refused to explain why he gave inconsistent stories about his whereabouts and activities at the precise time period that the forensic evidence shows that Ms. Stites was murdered.

### **B. Evidence Fennell Was Abusive Towards Ms. Stites and Threatened to Kill Her**

Mr. Fennell articulated his motive and plan to murder Ms. Stites in a conversation with a fellow law enforcement officer. At a police training, Mr. Fennell told a classmate who later rose to the rank of Sergeant in a Texas law enforcement agency, Mary Blackwell,<sup>13</sup> that he would kill his girlfriend if he ever caught her cheating. Ms. Blackwell recounted attending a police training in which Mr. Fennell was also a student. She explained that Mr. Fennell made a disturbing statement while discussing crime scene investigation:

After this conversation completed itself, Captain Whitley had us take a break. And during this break period is when I would re-write my notes for class, and Jimmy Fennell was having a conversation with another classmate that sat near him. . . . And he made a comment that if he ever found that his girlfriend was cheating on him that he would strangle her.

And I looked over my shoulder at him and said, “Well, if you do that they’ll find four fingerprints all over her throat.” And he said, “That’s where you don’t know shit, Best.<sup>14</sup> I’ll strangle her with a belt.”

<sup>2nd</sup> Habeas RR Vol. 92-93. Ms. Blackwell also described an incident in which she briefly spoke to Ms. Stites when she came to the training to pick Mr. Fennell up. *See id.* at 97. Ms. Blackwell

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<sup>13</sup> At the time of her testimony in March 2006, Ms. Blackwell had been a police officer for nine and a half years, supervised seven officers at the Northlake College Police, and had been an instructor at the Cedar Valley Police Academy. <sup>2nd</sup> Habeas RR Vol. 3:87-88.

<sup>14</sup> At the time Ms. Blackwell’s last name was Best. <sup>2nd</sup> Habeas RR Vol 3: 115.

testified that Mr. Fennell yelled at her, “Best, quit talking to my girlfriend. What are you talking to my girlfriend for?” *Id.* at 97-98. She then saw Mr. Fennell have a hostile exchange with Ms. Stites:

Q. In the truck . . . what did you see?

A. I saw Jimmy Fennell turn his complete body around facing Stacey - - well, I didn’t know it was Stacey at the time, but his girlfriend - - and he was just - - his whole facial - - from the side I could see he was just yelling at her . . . just like all over her. Now, I couldn’t hear anything but just seeing it physically.

*Id.* at 99. Mr. Fennell’s motive is even clearer when the above-mentioned conduct is considered along with the evidence of Ms. Stites’ relationship with Mr. Reed discussed *supra*. Importantly, Fennell never testified at the hearing in 2006 to deny this account.

Another witness, Richard Scroggins, has recounted witnessing another example of Fennell’s violent temper towards Stacey:

He was standing near a smaller model pick-up truck darker in color. I remember he was completely red in the face, yelling and calling her obscene and vulgar names. Repeatedly, as he would yell, he would start to walk toward the truck as though he was finished, but overcome with anger, he would drift back towards her and continue his tirade. At one point, I visibly saw his fist shaking toward her. At another point he called her a “cheating, lying cunt.” He also called her a “slut” and a “whore” during this encounter. The young lady merely stood there as he screamed at her, with her arms folded, a purse in one hand.

Several times, I heard the young lady try to calm him down by saying, “Can we please not do this here. This is where I work. Let’s talk about this when we get home.” It was to no avail. He was completely out of control and consumed with rage.

Exhibit 25 (Affidavit of Richard Scroggins).

This behavior was consistent with Fennell's abuse of other romantic partners. Pamela Duncan, who dated Mr. Fennell during the time between Ms. Stites' murder and Mr. Reed's trial, described Mr. Fennell as "extremely possessive and jealous" during their relationship.

Exhibit 26 ¶ 4 (Affidavit of Pam Duncan). Mr. Fennell would threaten men who flirted with Ms. Duncan at the store where she worked and was an abusive partner:

He was very verbally hostile to me, called me some really unpleasant, mean names (describing me, my parents, and the fact that I had kids at a younger age), and would scream at me in public. He didn't like me going out with my friends. Or doing anything apart from him.

*Id.* ¶ 6. Mr. Fennell's hostility toward people of color also drove a wedge between him and Ms.

Duncan:

Jimmy was extremely prejudiced. Before we started dating, I used to get my hair cut by a black woman. After we started dating, he wouldn't let me go to her any more, because her salon was "across the tracks" and "white women don't go there." At one point I was considering hiring a black woman to work at the store, and Jimmy got really angry. He told me everything he thought about black people (he didn't say "black people"; he used the N-word)-that they were all bad, all on drugs, all crooks-and why I shouldn't hire her. I ended up hiring her and that was a big problem between us for a couple of months.

*Id.* ¶ 7. After Ms. Duncan's romantic relationship with Mr. Fennell ended, things got even worse:

I broke up with Jimmy in September of 1997. Jimmy stalked me for months after that-until he left Giddings altogether. He would drive by my house, night after night, and shine a spotlight into the house. It got so bad that I finally put tin foil up in my windows, to reflect the light. He would stand outside my house at night, screaming at me, calling me a "bitch" and other obscenities. He would come by

my job at the Circle K, and just sit parked out front, with the headlights shining into the store. He would stay there, sitting in his car and watching me, for anywhere from two minutes to two hours. If the parking lot got crowded, he would leave, then come back when it emptied out again. Once he came into the store and wouldn't let me out of the office-we had to call the police to get someone to escort him out, so I could leave. He would hassle any guy I tried to date until it scared them away. For instance, I dated one guy who delivered beer in town. After we started dating, Jimmy started pulling him over and giving him tickets. He got so many tickets he couldn't keep his job anymore.

What Jimmy did after I broke up with him really scared me. It made me feel like I knew what he was capable of, and that made me afraid for me and my kids. It made my parents afraid for my safety. The fact that he was a police officer made it that much more difficult. I felt like I was being constantly harassed and threatened, and there was nowhere to go. I finally filed a report with the police, and another officer came by and told me they would make sure he left me alone. A friend of mine later went down to the police station looking for the report I filed, and they couldn't find it. Things got better after I filed the report, and the officer came and talked to me, but the harassment didn't stop altogether until Jimmy moved away from Giddings.

Id. ¶¶ 8-9.

Consistent with his pattern of abusing his prior girlfriends Stacy Stites and Pam Duncan, the Williamson County Sheriff's Office documented an instance of physical abuse by Mr. Fennell against his wife Aida Fennell. Specifically, a co-worker and friend of Mrs. Fennell advised the Williamson County Sheriff's Office of the following:

On Tuesday 11-13-07 I, Detective J. W. Knutson #10041, received information that the wife of Fennell, Aida Solano Fennell, previously worked at the juvenile justice center. I contacted M. Loney who coordinates the law enforcement work at the JJC and asked if he knew the time frame that she worked there. I was informed that she quit during 2004 but while she worked her it had been rumored that her husband, Jimmy Fennell, and another employee at the JJC, Keith Tubbs, got into a verbal argument on the phone about Aida. I contacted Tubbs . . . . He advised me that he did know Aida and did work with her at JJC. He advised that

they were friends but worked on different shifts. I asked about the incident where he and Jimmy Fennell had an argument and he advised that Jimmy has called and questioned him about calling his house which Tubbs says he did not do. He further advised me that Jimmy began to ask if Aida was seeing someone at the JJC. During the conversation it was brought up that Aida has previously shown up at work with bruises on her face and claimed it was a result of being hit in the face by a phone when Jimmy became upset with her and threw a phone at her. Tubbs advised that Aida was nervous about Jimmy because he was jealous and has a temper and expressed concern about the death of his former fiancé in Giddings.

Exhibit 27 (Police Report re: Aida Fennell).

### **C. Fennell's Pattern of Violence and Sexual Assault as a Police Officer**

#### **iii. *The October 26, 2007 Rape.***

Through an indictment filed on December 4, 2007, the State of Texas charged Mr. Fennell with aggravated sexual assault with a deadly weapon, aggravated kidnapping, improper sexual activity with a person in custody, and official oppression.<sup>15</sup> A search warrant affidavit signed by a Williamson County Sheriff's Officer states that the victim of the sexual assault reported the following:

Ms. Smith<sup>16</sup> told Affiant that the Georgetown Police Department had sent officers to a scene at an apartment complex in Georgetown where she was fighting with her boyfriend, and that while the officers were there an officer had put her in his patrol car. Ms. Smith's boyfriend was arrested and taken from the location, and an "Officer Fennell" had taken her from the apartment complex in his patrol car. Prior to being taken from the scene, Ms. Smith has been vomiting due to intoxication. Ms. Smith was handcuffed and allowed to ride in the front seat of the patrol car. Ms. Smith believed that the officer was going to take her to a hotel so that she would have a place to stay, since the people she had been staying with

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<sup>15</sup> See Indictment, *State v. Fennell*, 07-1752-K368 (Williamson Co., 368<sup>th</sup> Dist. Ct., December 4, 2007).

<sup>16</sup> The name Smith was used as pseudonym.

were friends of her boyfriend and would not answer the door at the apartment complex. “Officer Fennell” drove her to a location which she believed to be a park, stopped the patrol unit, and got her out of the car. Fennell unhandcuffed her and asked her to dance for him outside of his patrol unit, then had her place her hands on the trunk of his patrol unit, pulled down her pants, and penetrated her vaginally from behind with his penis. The defendant asked her if she liked it, she said no and asked him to stop, and he did not. When the officer was finished, he drove her back to the original apartment complex and dropped her off. The victim immediately reported the sexual assault by calling 911.

The victim has been shown a photo spread with a picture of Jimmy Fennell, Jr., in it and positively identified Fennell as the police officer who sexually assaulted her.<sup>17</sup>

The affidavit also states that the victim’s report was corroborated by a review of dispatch logs and an examination of the patrol car driven by Mr. Fennell.<sup>18</sup> This review showed that Mr. Fennell was “unaccounted for from just after midnight until 1:52 a.m.,” and that “processing of the patrol car vehicle has shown the victim’s prints on the trunk, which is consistent with the location where the victim reported the sexual assault occurred in relation to the vehicle.”<sup>19</sup> Physical evidence was also taken from the victim in the course of a sexual assault nurse examiner’s SANE examination, performed on the same day as the assault.<sup>20</sup>

A redacted police report that has been released by the Georgetown Police Department further describes the incident:

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<sup>17</sup> Exhibit 28 at 3 (Fennell Warrant Affidavit).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

On 10/26/2007 I heard Sgt. Fennell requesting another Officer to [REDACTED] Water's Edge. Upon arriving, I made contact with Sgt. Fennell who advised that [REDACTED] was accusing him of sexually assaulting her, and asked me to talk with her and find out what was going on. I had assisted Officer Morris on a previous call of disturbance involving [REDACTED] (see Officer Morris report 07-43903). I observed Officer Sanford attempting to talk with [REDACTED] observed that [REDACTED] was on her cell phone and walking up the stairs. I could hear [REDACTED] screaming and yelling that she had been raped.<sup>21</sup>

According to the date and time specified in this document, the victim's report of rape took place immediately after Mr. Fennell released her from his custody.<sup>22</sup> Fennell pleaded guilty to this offense and served ten years in prison.

**iv. March 12, 2007 Rape of B.A.<sup>23</sup>**

In its investigation of Jimmy Fennell for the rape of Amanda Smith, the Williamson County Sheriff's Department uncovered another rape perpetrated by Mr. Fennell. As detailed in the Supplemental report attached, on March 12, 2007, Jimmy Fennell arrested B.A., strip searched her at the Georgetown Police Department in front of two other male officers, and then drove her to a park in the middle of the night and raped her. *See* Exhibit 30 (Williamson County Supplemental Report re: B.A.). Mr. Fennell, apparently unaware of the morally and legally repugnant nature of his conduct, frequently phoned B.A. for months afterward, essentially asking her out on dates. *See id.*

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<sup>21</sup> Exhibit 29 (Georgetown Police Report #7043913)

<sup>22</sup> *Id.*

<sup>23</sup> Initials have been used to protect the privacy of this victim of sexual assault.

v. *Sexual Misconduct Reported by Travis County Sheriff's Office.*

In the early morning hours of June 9, 2004, Mr. Fennell pulled over a woman and informed her that she had been stopped because she had a “crooked license plate.”<sup>24</sup> This woman worked as a dancer at an Austin strip club. Mr. Fennell told the woman that her license and registration were expired, and asked if she would remove her clothes and dance for him.<sup>25</sup> Mr. Fennell asked the woman to go with him to a secluded location nearby stating, “Its not like I’m going to rape you or anything.”<sup>26</sup> The woman managed to extricate herself from the situation by telling Mr. Fennell that she knew the wife of the Williamson County Sheriff. She then drove to Travis County where she told a Travis County Sheriff’s Officer what happened.<sup>27</sup> The reporting officer took a detailed statement from the woman who was described as shaking when she told the story.<sup>28</sup> This information was conveyed to the Georgetown Police Department, but apparently the case was closed.<sup>29</sup>

vi. *August 11, 2007 Misconduct Regarding Kelly Ramos.*

The Williamson County Sheriff’s Department also documented what appears to be an unconsummated incident in which Mr. Fennell had yet again arranged to abuse his status as a police officer to sexually assault a woman. Specifically, Ms. Ramos recounted the following:

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<sup>24</sup> Exhibit 31 (Travis County Incident Report No. 040011957)

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

Kelly advised that she was then directed to go toward some bushes off the side of the road where Amy could not hear her talking with the officer. Kelly advised she was wearing a low cut spaghetti strap shirt which showed cleavage. She advised that the officer got very close to her, within a foot of her, and backed her against the bushes. She advised that she was told that the officer had found methamphetamines in her car and he could take her to jail and have her kids taken away from her. She advised that while he was talking he continued to look at her breasts in a provocative manner. This encounter in the bushes lasted approximately 10 minutes. During the conversation Kelly stated that the officer continually attempted to get closer to her and she would lean further back. She advised that the officer was holding her ID and cell phone. She further advised that he had already run her name through dispatch and heard her returns come over the radio and he knew of her criminal background and it appeared to her that he was trying to use that against her. She stated that the officer told her that she was not going to go to jail but they needed to discuss the situation further and he would be by her apartment at around 0300 hrs and her boyfriend better not be at home and her kids better be asleep. The officer continued to stare at her breasts and make her uncomfortable. I asked Kelly what she thought was going to happen when he came to her house and she advised that she believed he wanted to have sex with her and was using the fact that he could take her to jail to get her to consent. She advised that she had no drugs in her car and believes he planted them.

Exhibit 32 (Ramos Police Report).

**vii. *Threat to Sexually Assault Mary Ann Bone.***

Another disturbing incident reported by the Williamson County Sheriff's Department involved a threat to a woman made when Mr. Fennell was called to her home, presumably on a criminal matter. Specifically, Ms. Bone asked Mr. Fennell how she could avoid CPS taking her kids away. *See* Exhibit 33 (Bone Police Report). Mr. Fennell replied by asking if he "could bend her over the couch and "fuck" her." *Id.*

**viii. *Disturbing Behavior with Jamie Bolin.***

The Williamson County Sheriff's department reported another incident in which Mr. Fennell again crossed the line by using his work as a police officer to pressure some personal or sexual relationship with persons accused of a crime. In this case, Mr. Fennell responded to a domestic disturbance call in which he asked Ms. Bolin's boyfriend to leave the residence for the night. *See Exhibit 34 (Bolin Police Report)*. Mr. Fennell told Bolin that she needed another boyfriend and made other personal remarks. *See id.* Mr. Fennell informed Bolin that she had an outstanding warrant, but that he was the supervisor and that the decision whether she would go to jail was made by him. *See id.* He then asked if he could return later in the evening.

Mr. Fennell returned about an hour later, without the other officers who had responded to the call. Ms. Bolin reported that Mr. Fennell had no apparent purpose for his visit and began asking "personal questions about what she did for fun and whether she had ever considered dating older men." *See id.*

Additionally, 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 that took place only two months before the murder in which Fennell was accused of chasing down, beating, and putting a gun to the head of a young Hispanic man and then attempting to cover it up with a false report. *Exhibit 35 (Civil Rights Complaint)*

## NEW EVIDENCE IMPLICATING FENNEL SINCE EXECUTION DATE SET

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

**An insurance salesperson**<sup>30</sup> 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." Exhibit 36 (Affidavit of Insurance Salesperson).

**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.

Exhibit 37 (Affidavit of Jim Clampit).

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<sup>30</sup> Because Mr. Fennell is currently at large, the Salesperson has asked to remain anonymous. However, the Salesperson has been interviewed by the State who knows the Salesperson's identity.

**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 apartment complex where they lived 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." Exhibit 23 (Affidavit of Charles Wayne Fletcher).

**Arthur Snow**, a former leader of the Aryan Brotherhood at the Stevenson Unit where both Fennell and Snow were housed, recalls that Fennell boasted of murdering Ms. Stites:

He was talking about his ex-fiancé with a lot of hatred and resentment. Jimmy said his fiancé had been sleeping around with a black man behind his back. By the way Jimmy spoke about this experience, I could tell that it deeply angered him. Toward the end of the conversation Jimmy said confidently, "I had to kill my nigger-loving fiancé." My impression was that Jimmy felt safe, even proud, sharing this information with me because I was a member of the Aryan Brotherhood. I think Jimmy assumed that his confession would impress me and earn him credibility with the Aryan Brotherhood.

Exhibit 1. At a minimum, a reprieve is necessary to fully investigate these new witnesses whose statements have never been considered by any court.

## EVIDENCE OF MR. REED'S ALLEGED PRIOR BAD ACTS

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 accusations of sexual assault leveled at the punishment phase of Mr. Reed's trial—*but Mr. Reed was not convicted of any of these allegations and was actually acquitted in the only matter actually prosecuted.*

Some of these allegations arose out of established romantic relationships between Mr. Reed and other white women, 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. 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 any of these alleged sexual assaults and the accusations were never fully investigated by Reed's attorneys. In fact, Mr. Reed was acquitted by a jury in the only accusation 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 as suggestive. Witness misidentifications are the leading cause of wrongful convictions in Texas.<sup>31</sup>

To the extent any of these accusations of unrelated misconduct are considered relevant to this request for commutation, 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 and raping a young woman he was dispatched as a police officer 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.

#### **MEMBERS OF THE STITES FAMILY SUPPORT THIS REQUEST**

Although there is no indication that Ms. Stites’, Carol Stites, or Ms. Stites’ half-sisters favor clemency, a significant number of Ms. Stites’ family supports Mr. Reed’s application for clemency. These include Kay Hart, Ray Horton, Sherry Everitt, Judy Mitchell, Heather Campbell Stobbs, Calvin “Buddy” Horton, Tina Curtiss, John Leston, Brenda Campbell, Ryan

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<sup>31</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).

Stobbs, Arica Wiederhold, Mandie Wiederhold, and Linda Campbell. Their support is expressed in their letters contained in Exhibit 38. These letters include the following statements:

**Kay Hart**, a cousin of Ms. Stites, who was previously on staff at the Office of the Governor of Texas, wrote in her 2015 letter:

I and other members of my family do not believe that justice has been served for Stacey. It is our belief that Rodney Reed did not murder Stacey and that the real killer has never faced prosecution for his crime. I recognize that our stand is unusual, but the circumstances of this case and my firm belief that an innocent man is about to be put to death compel me to express my concern that the judicial system has failed to execute justice in this case...

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Stacey and her mother Carol Stites lived with my parents Ray and Janice Horton in Rosanky, Texas during her high school years... Shortly after the discovery of her body, my father told me that he believed that Stacey was having an affair and that her fiancé, Jimmy Fennell, killed her in retaliation. This statement was made well before Rodney Reed was arrested and well before Jimmy Fennell pled guilty to kidnapping and sexual misconduct in an unrelated incident...

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Stacey's memory will not be served if an innocent man is executed for this crime.

Exhibit 38.

**Charles Ray Horton**, Ms. Stites' uncle with whom she and Carol Stites lived for two months, wrote in his letter that the execution of Mr. Reed will only cause the family more pain:

Stacey was my niece and I knew her very well. It is important to me that justice be done for her murder, but I do not believe that Rodney Reed is guilty and I believe that her murderer has yet to face prosecution for this terrible crime...

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When Stacey was 16 years old, my sister Carol asked that I allow Stacey to live with me and my wife Janice Horton, who is now deceased, in Rosansky, Texas. At that time Carol

and Stacey were living in Corpus Christi and Carol hoped to get Stacey away from influences in her environment that her mother thought were harmful to Stacey. She lived with us for approximately two months until we were able to find suitable housing for the two of them in Smithville. After that Stacey and her mother were in our house daily for over a year. It was Janice's and my desire to provide a positive atmosphere for Stacey, where she could thrive and grow into the beautiful young woman God created her to be. Sadly, she never got the chance.

While I realize that Rodney Reed's story about having an ongoing relationship with Stacey is very upsetting to my sister Carol and her other daughters, his story is consistent with the young woman that I knew. I believe that Jimmy Fennell murdered Stacey in retaliation for her relationship with Mr. Reed and have believed that he was the responsible party since the time of the murder. Stacey did not deserve what happened to her and Mr. Reed does not deserve to be executed for his relationship with her.

\*\*\*

I hope that granting Mr. Reed clemency might someday lead to his exoneration and the prosecution of the one responsible for the brutal murder of my niece.

Exhibit 38.

### **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 Ms. 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>32</sup>

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<sup>32</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 the Board of Pardons and Paroles investigate Mr. Reed's case and make a recommendation that the Governor commute Mr. Reed's death sentence to a life sentence to avert the substantial risk of executing a man who did not commit the crime. If necessary, the Board should grant a reprieve of no less than 120 days in order to fully investigate this miscarriage of justice.

Respectfully submitted,

/s/ Bryce Benjet  
BRYCE BENJET  
THE INNOCENCE PROJECT  
40 Worth St. Suite 701  
New York, New York 10013  
(212) 364-5340  
(212) 364-5341 (fax)

ANDREW F. MACRAE  
LEVATINO|PACE PLLC  
1101 S. Capital of Texas Highway  
Building K, Suite 125  
Austin, Texas 78746  
(512) 637-8565  
(512) 637-1583 (fax)

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