

DISTRICT COURT OF APPEAL
FOURTH DISTRICT
STATE OF FLORIDA

ERNESTO BEHRENS,
APPELLANT,

DCA CASE NO: 4D17-1848

v

L.T. CASE NO: 98-5739 CF10A.

STATE OF FLORIDA,
APPELLEE.

PROVIDED TO
MARTIN CORRECTIONAL INSTITUTION
ON 12/19/17
FOR MAILING
EB.

APPELLANT'S MOTION TO VOLUNTARILY DISMISS
THE PENDING APPEAL WITHOUT PREJUDICE
FOR APPELLANT TO REFILE IN THE LOWER
COURT A NEW MOTION CLAIMING NEWLY
DISCOVERED EVIDENCE THAT HAS COME
TO LIGHT WHILE THIS APPEAL HAS BEEN
PENDING.

COMES NOW APPELLANT ERNESTO BEHRENS, AND SE,
HEREBY FILES THIS MOTION TO VOLUNTARILY DISMISS
WITHOUT PREJUDICE. AS GROUNDS THEREOF, APPELLANT
STATES AS FOLLOWS:

1. ON JUNE 5, 2017, APPELLANT FILED HIS "NOTICE OF APPEAL".
2. ON AUGUST 29, 2017, THIS HONORABLE COURT ISSUED A "SHOW CAUSE ORDER" REQUESTING THE STATE TO RESPOND.
3. ON SEPTEMBER 18, 2017, THE STATE FILED A MOTION FOR EXTENSION OF TIME WHICH WAS GRANTED BY THIS COURT ON SEPTEMBER 25, 2017, WHICH EXTENDED SIXTY (60) DAYS FROM THE DATE OF THE COURT'S ORDER.

4. ON DECEMBER 4, 2017, THIS COURT ISSUED A SECOND ORDER FOR THE STATE TO RESPOND WITHIN TEN (10) DAYS.

5. ON DECEMBER 13, 2017, THE STATE FILED IT'S RESPONSE WHICH STATES: " TO 10/10/17 ORDER"

6. APPELLANT CANNOT UNDERSTAND AT ALL THE STATE'S RESPONSE.

7. NEVERTHELESS, APPELLANT RESPECTFULLY MOTIONS TO VOLUNTARILY DISMISS THIS PENDING APPEAL WITHOUT PREJUDICE FOR APPELLANT TO REFILE IN THE LOWER COURT NEWLY DISCOVERED EVIDENCE CLAIMS THAT HAVE COME TO LIGHT DURING THE PENDENCY OF THIS APPEAL.

8. ON THE OTHER HAND, ON JULY 3, 2017, APPELLANT RECEIVED A CORRESPONDENCE FROM THE BSO CRIME LABORATORY, INDICATING THAT: "THIS IS AN RFLP CASE; NOT A CASE WHERE CPE CALCULATIONS WERE PERFORMED". (SEE EXHIBIT ATTACHED).

9. BASED ON THE RESPONSE RECEIVED ABOVE THIS VOLUNTARILY DISMISSAL IS REQUESTED IN GOOD FAITH AND IN THE BEST INTEREST OF JUDICIAL ECONOMY.

WHEREFORE, APPELLANT PRAYS THIS HONORABLE COURT GRANTS THIS MOTION TO VOLUNTARILY DISMISS WITHOUT PREJUDICE TO REFILE A NEW MOTION CONTAINING SEVERAL CLAIMS ALLEGING NEWLY DISCOVERED EVIDENCE AT THE CIRCUIT COURT LEVEL.

RESPECTFULLY SUBMITTED

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ERNESTO BEHRENS, PRO SE.

Oath

UNDER PENALTIES OF PERJURY, I CERTIFY THAT I UNDERSTAND THE CONTENTS OF THIS MOTION, THAT THE FACTS CONTAINED IN THIS MOTION ARE TRUE AND CORRECT, AND THAT I HAVE A REASONABLE BELIEF THAT THE MOTION IS TIMELY FILED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE FORGOING MOTION HAS BEEN FURNISHED TO: OFFICE OF THE ATTORNEY GENERAL AT 1515 N. FLAGLER AVE., SUITE 900, WEST PALM BEACH, FLORIDA. 33401, ATTENTION: JAMES JOSEPH CARNEY, ASSISTANT ATTORNEY GENERAL, BY U.S. MAIL THIS 19th DAY OF DECEMBER 2017.



ERNESTO BETREMS, PRO SE
DC #732564 (A11040)
MARTIN CORRECTIONAL INSTITUTION
1150 SW. ALAPATTAH ROAD
INDIAN TOWN, FL. 34956

June 16, 2017

To: Broward County Sheriff's Office Crime Laboratory
P.O. Box 9507
Broward County Courthouse
Fort Lauderdale, Florida 33301

PROVIDED TO
MARTIN CORRECTIONAL INSTITUTION
ON 06/22/2017 (KA)
FOR MAILING
EM

Attn: Record Custodian

Re: Defendant, Ernesto Behrens Victim, Denise Wood All DNA physical evidence handled and tested by laboratory technician, Donna Marchese and or DNA consultant, Dr. Martin Tracey; lab number: 95-9186F-Agency number: 1619-95-05 (Plantation Police Department Detective: Steven Geller); Criminal case number: 98-5739CF10A

Dear Record Custodian,

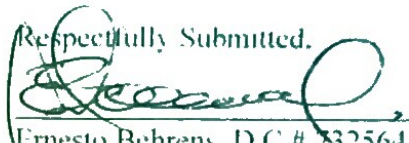
Please accept this letter as my public record request pursuant to § 119.07, Fla. Stat. (2016), requesting to purchase one copy of any and all documents, records and specifically any and all DNA testing logs showing mixture of samples or the use of the statistic known as the combined probability of inclusion (CPI) to calculate statistical significance of occurrence of genetic profiles when allelic dropout is known and or suspected to have occurred and or performed in this case by laboratory technician Donna Marchese and or DNA consultant, Dr. Martin Tracey

I am also requesting to know if the cuttings from the victim's green fitted sheet identified by Ms. Donna Marchese as spots # 1, 3 and 4, which contain DNA, as well as the 10 to 15 hairs found on the victim's green top sheet, are currently in the custody and control of your laboratory/freezer? Or has it been given back to any other agency? In sum, my DNA consultant, Ms. Tiffany Roy, needs to review any and all documents, records, calculations, autoradiograms and results obtained in relation to this case

Should any records be withheld on a claim of exception or privilege, please identify each record and provide all reasons and authorities relied on in support to each claim. However, if the

requested evidence (spots # 1, 3 and 4, as well as the 10 to 15 hairs requested) are not in your custody or control, please identify each of the records requesting evidence that is not in your custody or control and all reasons for its unavailability.

Should you have any questions or concerns with this record request please advise me at your earliest convenience. Please advise me also of the total number of copies responsive to this request, the total cost for your research and purchase of the record and the person or entity to remit payment to at my address provided below

Respectfully Submitted,

Ernesto Behrens D.C. # 732564
Martin Correctional Institution
1150 S.W. Allapattah Road
Indiantown, Florida 34956

cc. Tiffany Roy, DNA Consultant

From: [Duncan, George](#)
To: [Edwards, Diana](#)
Cc: [Koval, Roman](#)
Subject: 9186F
Date: Monday, July 03, 2017 11:01:03 AM

Here is the particulars for the public records request of Mr. Ernesto Behrens

- >This is an RFLP case; NOT a case where CPI calculation were performed
- >We have searched our freezers for any cutting we may have had but cannot find any which means we did not save cuttings and gave it all back to the Plantation Pd which occurred on 6-29-2000
- >We do not have nor do we keep records for the State Witness; Dr. Martin Tracey

George Duncan