

**IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

STATE OF FLORIDA,
Plaintiff,

V.

ERNESTO BEHRENS,
Defendant.

Case No: 98-5739 CF10A
Judge: Andrew Siegel

**SECOND AMENDED
MOTION FOR POST-CONVICTION RELIEF**

COMES NOW, the Defendant, Ernesto Behrens, *pro se*, hereby files this Second Amended Motion for Post-Conviction Relief pursuant to Florida Rule of Criminal Procedure 3.850(b)(1), on the grounds of “newly discovered evidence” and respectfully requests this Honorable Court to vacate and set aside the conviction and sentence entered in this case. In support thereof the Defendant states as follows:

STATEMENT OF THE CASE

1. On March 27, 1998, the State filed a criminal information against the Defendant charging him with Count 1, armed sexual battery and Count 2, burglary of a dwelling with a battery.
2. On September 14, 2000, the jury found the Defendant guilty as charged in the information (No lesser included offenses were given to the jury).
3. On November 13, 2000 the Defendant was sentenced to served two (2) concurrent life terms in the Florida Department of Corrections.
4. The judgment of conviction and sentence was entered in the 17th Judicial Circuit Court in and for Broward County, Florida. The Honorable Judge Alfred Horowitz, presided.

5. The State was represented by Assistant State Attorney, Dennis Siegel.

6. The Defendant was represented by Private Attorneys, Tyrone Terrel and Andrea Shellowitz.

7. The Defendant's conviction and sentences were appealed to the Fourth District Court of Appeals. See: *Case No 4D-4484* On October 30, 2002 the Appellate Court entered an order affirming the Defendant's judgment and sentence with an opinion. See: *Behrens v State*, 830 So.2d 190 (Fla. 4th DCA 2002). "The Mandate" was issued on December 17, 2002.

8. The Defendant's conviction was based exclusively on DNA evidence listed by the State in its "Discovery" submission.

9. The Defendant has filed multiple prior post-conviction motions.

10. On or about January 25, 2018 the Defendant timely filed his original motion for post-conviction relief pursuant to Florida Criminal Procedure Rule 3.850(b)(1), "newly discovered evidence."

11. On February 5, 2018, this Honorable Court issued its Show Cause Order requesting a "State Response."

12. On April 4, 2018, the State motioned the Court for a sixty (60) days extension of time to file their "Response."

13. On April 4, 2018, the Court granted the State's request for additional time to file their "Response."

14. On June 7, 2018, the State again motioned the Court for an additional sixty (60) days extension to file their "Response."

15. On June 7, 2018, the Court granted the State's request for additional time to file their "Response."

16. On July 19, 2018, the Defendant received via U.S. Mail, a sworn affidavit from Siru Andelin, the Defendant's former fiancée. The affidavit reveals additional new evidence that could not have been discovered through due diligence and is likely to produce an acquittal at trial. This affidavit was the reason for the "Amended Motion"

17. On August 14, 2018, this Honorable Court issued a second "Show Cause Order" requesting the State to file a "Response" to the Defendant's motion within ninety (90) days from the date of the Court's Order.

18. On November 17, 2018, the State moved the Court for extension of time to file its "Response"

19. On November 27, 2018, this Court granted the State's "Motion for Extension of Time". This Court granted additional sixty (60) days, making the State's "Response" due on January 27, 2019.

20. On February 11, 2019, the Defendant filed a "Motion for Leave to file a Second Amended Motion for Post-Conviction Relief" due to newly discovered evidence obtained from BSO Crime Lab.

21. As to the date of the filing of this "Second Amended Motion for Post-Conviction Relief" the Court has not rule yet on the Defendant's above motion filed on February 11, 2019

This motion for post-conviction relief follows:

TIMELINESS

Although Rule 3.850 motions must be filed within two years of the date that the judgment and sentence become final, claims of newly discovered evidence fall within the exceptions of this time limitations. *Doby v State*, 23 So.3d 589 (Fla. 2nd DCA 2009); Florida Rules of Criminal Procedure 3.850(b)(1). A claim of newly discovered evidence must be filed within two years from the date the evidence could have been discovered with the exercise of due diligence. *Blake v State*, 152 So.3d 66,68 (Fla. 2nd DCA 2014)

RELEVANT STATEMENT OF FACTS

(i). SPECIFIC FACTS RELATING TO THE CHARGE.

In the early morning hours of May 12, 1995, the victim, [REDACTED] arrived home from work, removed the black and white print dress she was wearing, laid the dress on the floor besides her bed, and went to sleep nude. Around 4:30 a.m. the assailant entered the victim's apartment by crawling through the downstairs kitchen window leaving footprints and finger and palm prints at the point of entry. Once inside, the assailant went upstairs to the victim's bedroom where he stood at her bedroom door and shined a flashlight into her eyes to awaken her. During the the assailant told the victim to cover her face and head with her pillow but, she was able to glimpse the features of her assailant and to hear his voice. The victim believed her assailant was armed with a sharp objects.

While on top of the victim, the assailant forced his penis into the victim's mouth, forced her to masturbate him, forced her to masturbate herself, and then ejaculated upon her left thigh. After ejaculating, the assailant wiped off his semen using the victim's black and white print dress, which he picked up from the floor. The assailant then got dressed and fled down the stairs and exited through the same window he came in. Following the attack, the victim told the police that her assailant was young, in his 20's, five-foot seven, 160 pounds, wearing short hair, with a slight Hispanic accent, and circumcised. The victim was immediately transported to the Sexual Assault Treatment Center where a rape evidence kit was utilized and turned over to the Plantation Police Department (PPD). The rape kit was then entered into property as evidence. PPD, Crime Scene Investigator (CSI), Marjorie Hanlon, (hereinafter) Hanlon responded to the crime scene. Trial testimony revealed that Hanlon collected a green fitted sheet, and a green top

sheet, a green pillowcase, a multicolored comforter, a black and white print dress, three shoe impression casts, four latent shoe impressions and eleven (11) fingerprint and palm print cards. (T.T. 527).

The evidence was collected and bagged individually and then turned over to the Broward Sheriff's Office (BSO) Crime Lab for DNA testing. The record, per Hanlon's testimony, indicates that of the eleven (11) finger and palm prints, the shoe casts and other prints, none matched the Defendant

(ii) TESTIMONY WHICH LINKED THE DEFENDANT TO THE CRIME.

1. Relevant parts of Donna Marchese's June 28, 2000 deposition linking the defendant to the crime. Defense attorney Andrea Shelowitz asking the questions:

Q. The first items that were submitted to the lab, could you tell me what those were?

A. The rape kit was submitted to the lab originally, That was the first thing, followed by the black and white print dress

Q. Did anybody ever tell you that they wanted that checked immediately?

A. What happened with this case when it came back into the lab in 1995, on a case with unknown suspect, policy of the lab is to only look at the rape kit. If a suspect, was generated in the future then if the rape kit had been negative or if they seemed it necessary then clothing, bedding, anything additional would be submitted to the laboratory That's why originally we only got the rape kit

..

Q. The first thing that came in was the kit, the second was the dress?

A. Yes

Q. How do you know that?

A. I'm looking at the dates of submittal

Q. All right. And what is the next thing that came in?

A. The dress and the comforter, pillowcase, top sheet and fitted sheet all came in at the same time.

Q. Do you know why the black and white dress wasn't put on the same property sheet as the fitted sheet, top sheet and comforter, pillowcase?

A. No, I don't.

Q. How do you know you got this at the same time?

A. They were signed into the laboratory on the same date.

Q. What date was that?

A. The 18th of May, 1995.

Q. What time were those all submitted?

A. The evidence tech signed for them at 11:40.

Q. For all those items that you just mentioned?

A. Yes.

Q. After the evidence was collected what is the first thing that you tested?

A. I tested the rape kit, that was, like I said, the first thing that had come into the laboratory.

Q. What did that tell you?

A. The results were negative on the kit.

Q. Okay. And the next time you go to test something is when?

A. On the 13th of June, 1995, I looked at the black and white print dress and the green top sheet.

Q. Why did you look at the top sheet?

A. What had happened is originally, let me just make sure of the dates here, originally I was not going to look at the sheets or the dress, and again, because of policy, I was asked to look at them. Off the top of my head, I believe it was by Margie Hanlon.

Q. Do you know if it was Geller or Hanlon?

A. I believe it was at the request of Margie Hanlon, which might have been through Geller, I don't remember at this point, I'm sorry They asked me to take a look, they were under the suspicion, or thought that there might be a sexual predator or a serial rapist in Plantation, and they had asked me to look at it And if it was positive, they asked me to get it into the database and/or search the database

Q. Okay. So you tested the top sheet and the dress?

A. Correct.

Q. What was the result of that, First of all?

A. They were both negative.

Q. And you actually tested the dress more than one way to try to find seminal fluid, correct?

A. Correct. What I did, I looked at it with the visible eye, and then I went ahead and I lasered it and it gave me negative results. I do have in my notes that it was a difficult print.

Q. But you didn't find anything on the top sheet or dress?

A. Correct.

Q. In addition to looking for fluids are you looking for hairs and fibers as well, trace evidence?

A. I don't actually look for them, but what we do is the evidence is worked over white paper or brown paper, and if anything is on the paper after the analysis I will go ahead and package them up and put them back with the evidence.

...

Q. Did you ever question in this case that something else should have been tested in this point?

A. No. I just kind of tested what they asked me for.

Q. When was the next time that you do a test?

A. The 18th of September, 1995, that is when I looked at the green fitted sheet.

Q. Why were you looking at the fitted sheet now?

A. Upon request.

...

Q. And when you went to test the fitted sheet you did so because, again, somebody called, do you know who called this time?

A. No, I don't.

Q. But it was definitely not on your own decision that you did this?

A. No.

Q. And since that time where had this greensheet been?

A. It had gone back to Plantation P.D. and then it was returned to us, the sheet only.

Q. The fitted sheet?

A. It says, "sheet only," it doesn't say which one but--

Q. When was that returned to Plantation?

A. 6/21/95 it was returned to Plantation, and on 6/30/95 it came back, and again, I don't know. It says, "sheet only," I am assuming that the sheet only that came back the second time would be the fitted sheet as that was the one I looked at the second time.

Q. Why would this go back to Plantation?

A. Once I took a look at at the sheet and I deemed the top sheet was negative there was no need for me to hold it any longer.

Q. What about the fitted sheet, why was that returned?

A. When it came to the lab it says sheet

Q. So it doesn't distinguish what sheet it is?

A. No, it doesn't distinguish, but, again I have to make the assumption it's the top sheet because that is the sheet I analyzed. So when it was negative it went back, and then they resubmitted the fitted sheet to me for analysis and that came back on the 30th of June.

Q. When did the fitted sheet go back to Plantation before you tested it? Because I believe originally you told me everything was submitted to you, and we went over those dates. Does the fitted sheet go back to Plantation and back to you?

A. I might have been in error until I looked, I'm sorry. It looks as if only the sheet came in on the 18th of May, and then I analyzed it on the 13th of June, so that went back on the 21st of June. The other sheet comes back in on the 30th of June, but I don't analyze that until September.

Q. That fitted sheet that came in, does that stay at your lab the whole time or does that go back to Plantation?

A. No, that goes back to Plantation in October.

Q. In October?

A. Yes.

Q. Okay. Let's backup, you tested it in September?

A. Correct.

Q. So from the time it was submitted to you it stays at BSO the whole time until you test it?

A. Yes, it remains in the evidence vault.

Q. So in September you get a call, someone says test the fitted sheet....

..

Q. When you opened up the sheet can you describe the stains that you saw?

A. The sheet was green in color, a light green in color, the stains that I saw have a whitish yellowish tinge to them

Q. How many stains were there?

A. Off the top of my head I don't know, I did test four, there were more than four

Q. Did you see a rather large stain on it in the center of the sheet?

A. There was a large stain, I do not know if it was directly in the center of the sheet but it definitely wasn't around the edges. Yes, there was a large stain.

...

Q. Okay. And when you say it was seminal fluid did you see any spermatozoa?

A. When I did a shake out on it afterwards, yes, I did.

Q. How many did you see?

A. I didn't do a count.

Q. Although you didn't count on it, were there thousands that you saw?

A. No. We never see thousands, specially when you're looking at a dried stain, and the reason for that is what happens when the seminal fluid dries the tails of the sperm cells get entwined in the fiber. When I do what is called a "shake out," which is an attempt to remove those tangled up sperms from the actual fiber, a lot of times we only see heads as opposed to the intact spermatozoa. Like I said, I didn't grade them but I did find sperm cells.

...

Q. After those four stains did you do any further testing on the sheet?

A. No, I did not.

..

Q. And then after you did that and you put everything into the freezer, what's your next step?

A. Actually shortly after that what I did is I obtained the samples from the freezer and I went ahead and I did the DNA analysis on them.

Q. What were the results of that analysis?

A. On the green sheet, spot Number 1, like I mentioned before on the male fraction I did get a profile, when I compared that profile to the victim, Denise Wood, it did not match. Which told me it was a foreign profile and then what I did is I searched the local database. I searched the local database to see if I could make any kind of a match or hit.

..

Q. Did anything come up?

A. When I did the search on the stain from the green sheet it did make a match to another case, yes, it did.

Q. Okay. And what case was that?

A. There was a Coral Springs sexual battery, lab Number 10892D, as in dog.

Q. When did you do that comparison?

A. The search was done on the 4th of January, 1996.

Q. Okay. After that what do you do with those results?

A. I generated a report that basically said that the profile from the green sheet matched a profile from a previous case.

Q. Okay. And when is the next time you receive anything or any instructions on this case?

A. On the 16th of June 1997 I have received oral swabs from Mr Behrens.

Q. Okay. What was told you about those swabs, was it a transmittal or did somebody call you?

A. No. I spoke with Detective Geller on that. Again, I don't have a word for word conversation of what we spoke about, but he had told me that he had a good reason to believe that Ernesto Behrens was involved with this case, and he asked me to go ahead and do a DNA analysis on it and do a comparison.

...

Q. What technique did you use?

A. The R.F L P.

Q. What were the results of your test?

A. The profile from Ernesto Behrens did match the profile from the green sheet and I believe it was a vaginal swabs from the previous case. I believe it was a vaginal swab, it doesn't indicate here but I could easily check that.

Q. As far as our case goes, the one we're here on, you're saying that you had a match between the swab and the evidence found from the sheet?

A. Correct.

...

(See: June 28, 2000 Deposition of Donna Marchese pages 1 to 45).

2. DNA consultant, Dr. Martin Tracey testified at trial on behalf of the State. He stated that based upon the serology and DNA testing results obtained by Marchese, as stated above, the odds of someone other than the Defendant having committed the crime were 1 in 14 billion

(See: T.T. pg.1050).

The Assistant State Attorney, Dennis Siegel, summed up these odds in closing arguments by saying that no one else in the world could have committed the crime and emphasized that "science does not lie"!

(iii) RELIABILITY OF LAW ENFORCEMENT'S DNA EVIDENCE CHAIN OF CUSTODY.

1. THE EVIDENCE COLLECTED BY HANLON AT THE CRIME SCENE ON MAY 12, 1995 AT 5:00 AM WAS NOT LOGGED INTO THE PPD EVIDENCE ROOM UNTIL MAY 15, 1995 AT 11:15 AM. (See: Exhibit A).

a. Hanlon's relevant trial testimony:

Ms. Hanlon testified at trial that all the evidence collected at the crime scene in this case, remained in a locker within her CSI van which was parked outside her personal home for 3 ½ days, before she delivered it to the PPD evidence room.¹

2. THE GREEN FITTED SHEET WAS NOT LOGGED INTO THE BSO CRIME LAB EVIDENCE VAULT ON JUNE 30, 1995, AS TESTIFIED BY DONNA MARCHESE DURING HER TRIAL TESTIMONY AND AS SHOWN ON THE CHAIN OF CUSTODY PROPERTY RECEIPT.

What follows is Donna Marchese's overall conflicting, contradicting, and impeached trial testimony while attempting to establish a reliable evidence chain of custody.

a. Direct-examination by Assistant State Attorney, Dennis Siegel:

Q. Okay. When did you first get involved in testing the evidence from Plantation Police Department?

A. May I refer to my notes?

Q. Sure.

A. On the 16th of May, 1995, I did my first analysis on some of the evidence.

Q. Okay. And what evidence did you analyze at that time?

A. I analyzed the evidence that was obtained in the SATC Kit or the Sexual Assault Treatment Center Kit.

...

Q. And when did you begin that analysis?

A. On the 13th of June, 1995

¹ However, the trial transcripts instead, reflects her testimony in relation to this evidence, as being placed in a locker at her office for 3 ½ days, not inside her CSI van. Nevertheless, the Defendant must accept this factual mistake as reflected by the trial transcripts, even though it is mistaken

Q. Okay The items that you tested on June or began the testing on June 13th, could you tell us what they are?

A. A black and white print dress and a green top sheet

Q. Okay. Where had those items been when you obtained them for testing?

A. They were in the laboratory in the evidence vault

Q. And what is the evidence vault?

A. I'm trying to remember where we were at that time. I believe we were in the new lab. The evidence vault is a secure room within the Laboratory that, with the exception of the two evidence technicians and I believe the lab director, access is unlimited-- I'm sorry-- unauthorized to anyone else

Q. And is it temperature controlled?

A. Yes, it is.

Q. Okay. How did you go about getting those evidence items out of the laboratory vault?

A. I had to go and get one of the evidence technicians and have him let me in. And actually, he pulled the evidence and actually handed it to me physically.

...

Q. Ms. Marchese, after you finished examining the sheet, the rape kit, that stuff, what do you do with the items?

A. If there was ever any positive or evidentiary items, I would take cuttings and put them in the freezer.

Q. Those that were all negative for your examination, what did you do with them?

A. They went back to the Plantation Police Department.

...

Q. Now, at a later time, did you examine another piece of evidence in this case?

A. Yes, I did.

Q. What piece of evidence did you examine at a later time?

A. It was a green fitted bed sheet.

Q. Okay. What date did you start the examination of that?

A. On September 18th, 1995

...

Q. Where did you get the fitted sheet from?

A. It was brought to the laboratory by an M, it looks like, Kernan from the Plantation Police Department and put into the evidence vault until I did the analysis on it.

Q. Okay. So they brought it into the vault and you received it from the vault?

A. Correct

...

b. Cross-examination by Defense Attorney, Ty Terrell:

Q. Do you remember what date you received that fired sheet?

A. The fitted sheet came into the laboratory on the 30th of June. I did not do anything analysis--of 1995.

Q. Okay.

A. I did not look at it until the 18th of September, 1995.

Q. You just testified that it came in -- the fitted sheet came in on the 30th of June of 1995; correct?

A. Yes. And can you tell the ladies and gentlemen of the jury when the other evidence came in: The pillowcase, the top sheet, the rape kit?

A. The rape kit--the rape kit came in on the 15th of May--

Q. Okay.

A. --1995. Originally, the only thing that came in was the --well, I am sorry. I was looking at this property sheet -- would be the flat sheet. And that was the 18th of May, 1995.

Q. Okay.

A. The black and white print dress also came on the 18th of May, 1995.

Q. Okay. So would you agree that by the 18th of May, 1995, you received all the evidence but for this fitted sheet?

A. Yes. The fitted sheet did not come into the laboratory until the 30th of June. That's correct.

Q. And that's some -- 40 days later, correct?

A. That was--yes. That was upon request though by myself.

Q. Okay. And even though it came in in June of 1995, you didn't test it, did you?

A. Not at that time, no.

Q. You had no instructions to test it, did you?

A. No. Originally, they had asked -- or maybe I should back up. It's a policy of the laboratory that when a case comes in of a sexual battery nature and a suspect is not listed, that only the rape kit or SATC Kit is analyzed. And that was standard policy.

In this case, they put in a special request for me to analyze additional evidence. And originally, the black and white dress and the top sheet came in and I did that. Then they put another request. I'm sorry. I asked them to bring me the other sheet and that's what they did and I ended up testing that one also.

..

Q. So you received it in June, 1995. You don't test it, do you?

A. In June? No, I do not.

Q. Okay. In fact it sits for another four months; correct?

A. Three months. Yes.

Q. Okay. So you take the sheet out in September, three months later, four months after the incident or five and you do a visual inspection of it; correct?

A. That's correct.

Q. And you notice several stains on this sheet, don't you?

A. Yes, I do.

Q. And is it your testimony that you don't remember a kind of a big yellowish stain right in the middle of the sheet?

A. I don't know if I made mention of that or not.

Q. Well, to your knowledge, do you ever remember seeing a yellowish stain in the middle of that seat--sheet?

A. The one we just pulled out a little while ago, I believe there was a fairly good size stain, if that's the sheet you're talking about.

Q. Ms. Marchese, is that the first time you saw that stain?

A. I mean, I don't--I'm sorry. I don't really remember that exact--I mean, I've seen the sheet several times. But as far as independent recollection of every stain on it, I don't have that. I'm sorry.

Q. You and I have looked at that sheet together, have we no--

A. Yes.

Q. --in the past?

A. Yes, we have.

Q. And it was never brought to your attention about the big stain in the middle is that your testimony?

A. No. You might have brought it to my attention.

...

c. Redirect-examination by Assistant State Attorney, Dennis Siegel:

Q. Let's go back over something, when the lab received the fitted sheet.

A. Okay.

Q. Do you have--do you have any property receipts that contain all of the bedding in this case?

A. Yes, I do.

Q. What does that property receipt reflect as to when all the bedding--all the bedding came into the Broward Sheriff's Office Crime Lab?

A. All the bedding did not come into the Sheriff's Office Crime Lab. Originally, the sheet came in. And then afterwards, the fitted sheet came in. The other pieces did not come into the laboratory.

Q. Which other pieces?

A. I'm sorry. The comforter and a pillowcase.

Q. Okay. But the two sheets themselves--

A. Yes.

Q. --when did the two sheets come into the Laboratory?

A. The top sheet came in on the 18th of May, 1995. And then the fitted sheet came in on the 30th of June, 1995.

Q. You gave a deposition in this case, did you not?

A. Yes, I did.

Q. On June 28, 2000?

A. I believe that was the date; yes.

Q. Okay. I ask you to just read pages 15 and 16 of your deposition. Actually, page 15 and to line 14 on page 16

..

Q. Did you refer to the fitted sheet being re-submitted on June 30th?

A. Originally, I had; yes. And then when I looked at the property receipt again, I stated that--I'm assuming that the sheet only --that it came back the second time would be the fitted sheet because that's the one I looked at the second time.

Q. Okay. But you said it had been re-submitted to be looked at the second time; correct?

A. Correct.

Q. Re-submitted means it had been submitted initially, correct?

A. Yes.

Q. Do you know whether that fitted sheet had come in the first time the sheets came in on May 18th?

A. When I looked at the property receipt, it only says sheet and that came in on the 18th of May

Q. Okay. But then back, on June 30th, what terminology is used for what's submitted that time?

A. Sheet only.

Q. Okay. So they used the same term, sheet; correct?

A. Correct.

Q. So how do you know that the fitted sheet didn't come in on May 18th when it says sheet?

...

A. When the sheet came in on the 18th of May, according to my notes in June, there was only one sheet. I wouldn't have looked at one without the other if they had both come in, so-- On the 21st of June, that particular sheet goes back to the agency. And then on the 30th of June, a sheet comes back. Well, I would have to make the assumption it wasn't the same sheet. I've already analyzed that one. So that is when the fitted sheet came in. So the top sheet came in. The top sheet went back. The fitted sheet came in.

Q. So a lot of the testimony then about what sheet came in at which time is based on assumptions?

...

Q. You said --you used the term assumed several times. Is it your testimony now about when the sheet came in, that--you used the terminology assumption to mean which sheet came in at which time, is assumption?

A. I make that assumption but I also based it on what I analyzed. Again I--I can't imagine why, if both sheets came in, I wouldn't analyze them both at the same time That would have certainly been more productive, more time--consuming. So again, it is an assumption but I'm assuming that the flat sheet came in. Once I did the analysis, it went back. It was negative. They sent me the fitted sheet to do the analysis on.

...

(See: T.T. pages 878 to 1009).

As it is clearly shown by the BSO Crime Lab's Response to the Defendant's Public Records Request dated January 2019, (See: Exhibit B), The June 30, 1995 BSO Crime Lab "Cases per Agency - All Case Types Log" (See. Exhibit C), unambiguously depicts that only two cases were submitted from PPD to the BSO Crime Lab on that date. Furthermore, this log depicts also that only those two cases were ultimately logged into the BSO Crime Lab evidence vault on June 30, 1995 The logs clearly demonstrate that no fitted sheet relating to this case was ever logged into the BSO Crime Lab evidence vault on June 30, 1995, as testified by Marchese at her deposition and during her impeached trial testimony.

Therefore, the chain of custody of the fitted sheet has not been established as reliable, and, there is no way to know where this fitted sheet, containing the sole inculpatory DNA stain in this case, was located between June 30, 1995, when it arrived at BSO Crime Lab and October 18, 1995, when it was returned to the PPD. Hence, there is a great concern now because the fitted sheet tested by Marchese on September 18, 1995, was not in the same condition as it was when it was collected from the crime scene by Hanlon on May 12, 1995. Thus, a great probability of tampering with the sole inculpatory evidence in this case is evident [See: argument on Probability of planting/tampering with DNA evidence at the BSO Crime Lab subsection (iv)].

3. THE GREEN FITTED SHEET WAS NOT LOGGED INTO THE BSO CRIME LAB EVIDENCE VAULT ON FEBRUARY 1, 2000 AS SHOWN ON THE PPD CHAIN OF CUSTODY PROPERTY RECEIPT.

As it is clearly shown again by the BSO Crime Lab Response on the Defendant's Public Records Request dated February 2019, (See. Exhibit D), the February 1, 2000 BSO Crime Lab "Cases per Agency - All Case Types Log" (See: Exhibit E), unambiguously depicts that only three cases were submitted from the PPD to the BSO Crime Lab on that date. Furthermore, this log also depicts that only those three cases were ultimately logged into the BSO Crime Lab evidence vault on February 1, 2000. Thus, no fitted sheet relating to this case was ever logged into the BSO Crime Lab evidence vault on February 1, 2000 as shown on the PPD chain of custody property receipt just received from the BSO Crime Lab.

Therefore, the chain of custody of the fitted sheet has been again broken, and there is no way to know where this fitted sheet, containing the sole inculpatory DNA stain in this case, was located between February 1, 2000, when it arrived at BSO Crime Lab and June 29, 2000, when it was returned back to the PPD. Hence, there is even a greater concern now because the fitted sheet had already being analyzed and DNA tested on September 18, 1995, where DNA technician Donna Marchese conducted the Restriction Fragment Length Polymorphism (RFLP) methodology testing on it. She then arrived at the conclusion that the fitted sheet stain #1 tested positive for the presence of seminal fluid. She conducted her DNA testing on it and was able to obtain a DNA profile from the sperm cell she pulled out from the fibers of the fitted sheet. Thus, there was no reason why any new RFLP DNA test needed to be done on the fitted sheet six (6) months before this case went to trial. And even worse is the fact that whatever test was conducted on February 2, 2000, was never disclosed to the Defendant prior to trial. In fact, the Defendant never knew of the existence of this new PCR DNA testing because it was never introduced at trial.

Donna Marchese's testimony at trial during defense attorney's cross-examination has become equally unreliable, as to the fact that she testified that no further analysis or DNA testings were performed on the fitted sheet. (See. T.T. pages 991 to 993). Specifically, that no

Polymerase Chain Reaction (PCR) DNA testing was ever conducted on the fitted sheet by BSO Crime Lab because the Lab did not conduct such a sophisticated test before 1999.

So, are the new results obtained exculpatory in any way, shape or form? Or were they inconclusive? This new information obtained from the BSO Crime Lab on February 2019 does amount to newly discovered evidence [[See: argument on combined newly discovered evidence, subsection (viii) *infra*]]

(iv) PROBABILITY OF PLANTING/TAMPERING WITH DNA EVIDENCE AT BSO LAB.

On March 10, 2017, the State responded to the Defendant's "Motion to Compel The State To Disclose The Existence, Location, And Availability Of The Physical Evidence Collected In This Case, Which Are Indispensable For DNA Testing". Within all the documents received from the State, five (5) pages have never before been disclosed to the Defendant. This information revealed to the Defendant the amazing fact that the victim's DNA profile was not found on the green fitted sheet. (See: Exhibit F) The Defendant was dumbfounded by this new information because he and his attorneys were led to believe that based on Ms. Wood's multiple testimonies, where she stated that she slept nude and alone for over two weeks on the sheets, where the alleged stain containing DNA was found, the DNA sampling within this case, should have contained without a doubt, a mixture of DNA which should have revealed traces of her own DNA profile.

It is unimaginable for the victim's fitted sheet not to have contained at minimum, a mixture of DNA revealing her own profile. Therefore, the following scenario should be explored:

Was the genetic material on the victim's green fitted sheet degraded or contaminated to the point where it contains no readable DNA profile?

Ms. Hanlon testified that on the day she collected the evidence, she individually packed each piece of evidence in bags and then she delivered it to the PPD where the evidence remained in a locker at her office. This office was a temperature controlled environment. However, this evidence was not logged into the Police Station's evidence room but until May 15, 1995, at 11:15 a.m., 3 ½ days later!

Nevertheless, based on Hanlon's testimony, the collected evidence at that point in time, was not recklessly exposed to contamination and/or degradation. Because it was maintained

individually packed, in a locker, at Ms Hanlon's office--an air conditioned area within the Police Station.

Ms. Marchese on the other hand, gave conflicting testimonies at her deposition and during trial as to the sole inculpatory evidence in this case. The Assistant State Attorney ultimately impeached her during trial as to when the fitted sheet arrived at the BSO Crime Lab. After a great effort in attempting to establish a reliable chain of custody on the fitted sheet. Marchese concluded, saying that the fitted sheet was not submitted to the Crime Lab but until June 30, 1995, after she requested it. However, the recently disclosed log obtained from the BSO Crime Lab Administrative Coordinator Diana Edwards, unambiguously depicts that on June 30, 1995, only three cases were received from PPD and logged into the BSO Crime Lab evidence vault, but none of them was related to this case. Thus, because there is no way to demonstrate where the fitted sheet was located between June 30, 1995 and October 18, 1995, and because the fitted sheet was not in the same condition when Marchese conducted her analysis on it, as to when it was collected by Ms. Hanlon, the probability exists that this evidence suffered a significant amount of degradation or contamination while outside the BSO Crime Lab evidence vault. Nonetheless, had degradation and/or contamination occurred to the point where the victim's DNA profile was not present on her own sheet, no other person's DNA profile would have been found. Put another way, degradation would not only have affected the victim's DNA profile but all DNA profiles on the bed sheet -- the victim's as well as the suspected assailant's. Hence, there is only one way the Defendant's non-degraded DNA could have been present in the sheet introduced at trial: it was planted there.

Was the victim's green fitted sheet tampered with while in possession of law enforcement personnel?

The evidence chain of custody violations raised in this motion brings into question the reliability of this sole inculpatory evidence and the credibility of law enforcement officer's behavior, which is contrary to any police evidence handling protocol in the country. Consequently, these violations cause one to wonder if it is the same bed sheet? Could it have been misplaced or switched or altered in any way, shape or form? The high probability of evidence tampering is supported by the fact that: 1) it is inconceivable for the victim to sleep nude on a sheet, unwashed for over two (2) weeks, and be void of any trace of her own DNA profile; 2) there is no legal nor logical explanation as to why the fitted sheet was submitted to the BSO Crime Lab on June 30, 1995, as shown in the chain of custody property receipt from PPD but, it was never logged into the Lab's evidence vault as required by BSO Crime Lab Internal protocol; 3) Ms. Andelin did not consent for her green bed sheets to be retrieved from her dirty laundry in Las Vegas, Nevada, which contained her own DNA as well as the Defendant's DNA (See: Exhibit G); 4) the fitted sheet was definitely not in the same conditions when Marchese analyzed it, as it was when Hanlon collected it. Hence, the only way the Defendant's non-degraded DNA could have been present on the sheet introduced at trial: it was planted there, or in the alternative, it is the same sheet retrieved from Ms. Andelin and the Defendant's apartment in Las Vegas, Nevada.

Were the BSO Crime Lab DNA analysis practices incorrect in this case?

The American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD)-lab report, issued on April 12, 2016, succinctly answers this question. See *Infra* The undeniable fact remains unanswered. Why would the BSO Crime Lab test totally exclude the presence of the victim's DNA profile and only reveals the Defendant's non-degraded DNA profile on her green fitted sheet? The only way the Defendant's DNA profile could be present on the fitted sheet introduced at trial, is that it was either planted there or in the alternative, it is the same sheet retrieved from Ms. Andelin and the Defendant's apartment in Las Vegas, Nevada

Was the genetic material allegedly found on the victim's green fitted sheet planted at the BSO Crime Lab?

Donna Marchese worked on the Defendant's 1993 case as a DNA technician as well. The vaginal swabs she collected in that case were kept in the BSO Crime Lab freezer. In 1995 when the case in the instant matter came into the lab it too was assigned to Marchese. As required by BSO Crime Lab protocols she requested the rape kit only to be brought to the lab for analysis. The chain of custody property receipt for the rape kit clearly indicates when it was collected (May 12, 1995 at 8:30 a.m.), logged into the PPD evidence room (May 12, 1995 at 10:30 a.m.), transported to and logged into the BSO Crime Lab evidence vault for analysis (May 15, 1995 at 11:15 a.m.) analyzed by DNA technician Marchese (May 16, 1995) and ultimately returned back to the PPD (May 18, 1995 at 12:00 p.m.). (See: Exhibit H). This rape kit of course, came back with negative results for the presence of seminal fluids, and as required by BSO Crime Lab protocols, should have been the last item to be tested at that time. Additionally, it is worth mentioning that this rape kit was also adequately logged into the BSO Crime Lab evidence vault as clearly shown by its "Cases per Agency-All Case Types Log". (See: Exhibit I).

Nevertheless, Marchese clearly stated at her deposition, as well as during her testimony in trial, that "they" placed a special request to conduct additional testing on some of the other evidence collected in this case. Then it was submitted to her on June 18, 1995, the black and white print dress and the top sheet. At that time she conducted the necessary testing which came back with negative results for the presence of seminal fluid on both of these items as well. Marchese stated at her deposition, in reference to a call she had received that, "I believe it was at the request of Margie Hanlon, which might have been through Geller, I do not remember at this point, I am sorry. They asked me to take a look, they were under suspicions, or thought that there might be a sexual predator or serial rapist in Plantation, and they had asked me to look at it. And if it was positive, they asked me to get it into the database and/or search the database."

Marchese's testimony at trial and while being impeached by Assistant State Attorney, Dennis Siegel, was that: "the fitted sheet only" was requested from the PPD and logged into the BSO Crime Lab evidence vault on June 30, 1995, for the purposes of being analyzed. However, newly discovered evidence in the form of Public Records Request obtained from the BSO Crime Lab, with no doubt, reveals that this fitted sheet left the PPD premises on that date and it was never logged into their evidence vault as testified by Marchese. This alone brings into question the reliability of the lab, the technician, and the fitted sheet itself. Specifically, because there is no way to prove where this evidence was located between June 30, 1995 and October 18, 1995,

the date it was returned back to the PPD. There is no doubt that when this fitted sheet was transported by itself to the BSO Crime Lab, on June 30, 1995 and February 1, 2000, this fitted sheet disappeared for over 100 days on each occasion. In support to the unaccountability of this sole inculpatory evidence, and the high probability of tampering with this evidence is the indisputable fact that the fitted sheet collected and photographed by Hanlon on May 12, 1995, did not contain the large yellow stain that Marchese testified she saw on September 18, 1995, four months after the alleged crime. This fact of course, is supported also by Ms. Wood's trial testimony describing the lack of stains on her sheets, because they were new sheets. (See: T.T. pages 629 to 634).

On the other hand, at a pretrial Arthur hearing, Marchese stated that "when using my microscope I was able to find one spermatozoa cell, that was entwined into the fiber of the fitted sheet" (See: Exhibit J). Then during trial she testified that the sperm cell yielded six feet of genetic material. She claimed that she obtained a sufficient amount of DNA material to conduct the RFLP DNA testing in this case. (See: T.T. 885, 886, 919, 924 and 973). However, according to Anthony D. Winston, Associate Technical Director of Forensic Identity Testing of LabCorp, this is scientifically impossible. To that end, during a post conviction proceeding, the Defendant obtained an affidavit from Winston where he concluded, in part that: "based on the DNA quantity requirements for RFLP and PCR analysis it is my opinion that it is not scientifically possible to obtain reliable results from one single spermatozoa cell using traditional published methodology" (See: Exhibit K). Apparently, science dictates that in order to conduct an RFLP test using sperm cells, the scientist must have at a minimum 200 individual sperm cells. Thus, this scientific conclusion from LabCorp is in sharp contrast with those produced by the BSO Crime Lab technician, Donna Marchese at trial.

Notably, Marchese had the Defendant's seminal fluid available at the BSO Crime Lab freezer since 1993. She was the same lab technician who worked on both the 1993 and the 1995 cases. Therefore, Marchese's findings, analysis and test results obtained at the BSO Crime Lab, in the instant case, are suspicious, that is, she was unable to find any DNA material on each one of the multiple pieces of evidence that came to the lab (rape kit, dress, pillowcase, comforter and top sheet), and yet, Marchese on the last standing piece of evidence available in this case--the fitted sheet, although unable also to find the victim's own DNA profile, alleged to be able to detect, at first glance, and on her first randomly picked spot, the one sperm cell that she linked to the Defendant.

Remarkably, the genetic markers obtained from the single sperm cell turned out to be identical to the genetic markers obtained by Marchese from sperm collected at one of her earlier 1993 unsolved case for which the Defendant was exonerated after trial in 1999. The fact that two of her own DNA test results just happened to be identical, is no small coincidence. The two lab reports held side by side are identical. The unlikelihood of two separate sperm samples registering identical genetic markers confirmed that the sperm belonged to one donor. (See: Exhibit L).

However, it is not scientifically logical to conclude that a DNA technician could find an exact match between the 5 loci of the profile collected from vaginal swabs in the 1993 case and the profile found on a fitted sheet in 1995, where the evidence in the instant matter had been misplaced, mishandled, and exposed to degradation and/or contamination. Furthermore, it should be noted that DNA Lab technician Donna Marchese, is the only technician in the nation that has obtained a DNA match of the Defendant. The Defendant's DNA, after being in the national DNA

database for over twenty years, has never been found to match any other crime scene. As such, the record establishes itself that BSO Crime Lab technician, Donna Marchese is the only person who could have planted the DNA evidence on the fitted sheet, while working at the BSO Crime Lab.

(v) IDENTIFICATION OF THE DEFENDANT IS A DISPUTED ISSUE IN THIS CASE.

The victim in this case, Denise Wood, testified at trial that she could not identify the Defendant as the assailant. On the morning of the alleged crime, the victim reported to law enforcement officers that her assailant was in his early 20's, between five foot seven and five foot eight inches tall, stocky at about 160 lbs., wearing short hair and with a slight Hispanic accent. Significantly, the victim reported that her assailant was circumcised (While the prosecutor tried to downplay the significance of this crucial identification feature, the fact remains that the victim was clearly aware of the difference between circumcised and uncircumcised penises, because she had recently dated men who were uncircumcised). The victim was forced to masturbate, bring to erection and perform oral sex on the assailant. In 1995 the Defendant was 31-years old, five foot ten inches tall, about 180-lbs wearing long hair, a very strong Hispanic accent and most significantly, he was not circumcised. Moreover, all fingerprints, palm prints, shoe castings and other prints collected at the entry and exit points did not match that of the Defendant. Clearly, all doubts extended to the Defendant by the apparent lack of direct inculpatory evidence was cast aside at trial by the damaging impact of Marchese's DNA test results obtained from the green fitted sheet and the DNA consultant, Dr. Tracey's corroboration.

(vi) UNREFUTED DEFENSE PRESENTED AT TRIAL

Although the Defendant did not testify, he maintained his innocence throughout trial. The Defendant had surgery four days before the victim in this case was assaulted. At trial, the Defense presented the testimony of the Defendant's physician, Dr. Durand, who testified that it would have been physically impossible for the Defendant to commit the crime without causing stitches to tear, and without causing further trauma to injuries he received as the result of his surgery. (See: Exhibit M). The Defendant also presented the testimony of Paula Turgeon, who

told the jury that he was in bed rest, with her, and under pain medication at her house, 20-miles away from the crime scene, at the time the crime was being committed. (See. T.T. 1149, 1150, 1151).

The defense asserted also that the State had less DNA oral swabs from the Defendant than they claimed to have had. The State claimed to have four (4). The Defendant's position was that they could only had two because only two were taken in 1995 by the Miami-Dade Metropolitan Police Department and no other DNA was ever swabbed or taken from him at any other time thereafter. (See. T.T. 988-989). Therefore, the defense asserted that the State's claim, that they had four oral swabs available at the time of trial, was false. The defense alleged probable tampering with the DNA evidence. This remains unrefuted. The mysterious appearance of additional swabs was never clarified and, when argued on appeal, the appellate court explained it away as a mistake and affirmed with a written opinion. (See: *Behrens v State*, 830 So.2d 190 (Fla. 4th DCA 2002))

(vii) THE DEFENDANT IS INNOCENT

From the outset the Defendant has maintained his innocence and has continued to do so for the past 22-years. He has never met the victim, let alone committed any crime against her. The Defendant exercised his constitutional right to a trial by a jury of his peers. Since being found guilty, the Defendant has argued his case by filing numerous motions to no avail. It seems that no one wants to believe the truth that an innocent man has been found guilty and sentenced to die in prison due to "tampered with/planted" DNA evidence.

The Defendant humbly pleads to be allowed to uncover and present the truth. He is not looking for favor or an undeserved windfall to come his way, but instead is crying out and praying for justice.

(viii) OTHER RELEVANT FACTS OF MISCONDUCT THROUGHOUT THIS CASE.

a. Detective Steven Geller's professional misconduct.

On October 10, 1997, the Defendant was arrested in Clark County, Las Vegas, Nevada. A few days later, this Detective from the PPD in Broward County, Florida, and Detective Clements from the Metro Police Department (MPD) in Clark County, Las Vegas, Nevada, took the

Defendant for a special interview outside the county jail. In route to the interview, both of the detectives seriously beat the Defendant while attempting to force a confession in which the Defendant maintained his innocence. The Defendant's left side rib was fractured and caused internal bleeding. This incident was immediately reported to the jail's medical personnel who treated the Defendant. (See: County Jail's medical records). The Defendant also filed a 1983 civil complaint against both detectives. (See: Lawsuit filed in Clark County, Las Vegas, Nevada in 1997).

b. Assistant State Attorney, Dennis Siegel's professional misconduct.

On March 27, 1998, the Defendant was formally charged with the instant case² The charging information was sworn by and prosecuted at trial by Mr. Siegel. He charged the Defendant with one count that had been expired by the statute of limitations and one count--carrying a life sentence, that was never supported by the victim's allegations. After the Defendant complained and contested the veracity of the sworn allegations made by Mr. Siegel, the Defendant filed a motion to dismiss those two counts based on the lack of evidence supporting those two charges. The court and Mr. Siegel agreed with the Defendant that neither the evidence nor the victim's under oath statements supported such charges. Both charges were ultimately dismissed and an "Amended Information" was filed. The Defendant filed a Florida Bar complaint against Mr. Siegel for committing perjury during an official proceeding. The Florida Bar eventually dismissed the complaint. The Defendant moved the Court to recuse Mr. Siegel from the case but the Court denied the motion. The Defendant then motioned for the State Attorney for Miami-Dade and Palm Beach Counties to prosecute Mr. Siegel, but both offices refused to "prosecute a prosecutor". (See: Case Number: 98-5739CF10A Online Docket).

After trial, on April 23, 2001, the Defendant hired a private investigator, Cary Kultau, to look into the circumstances that led to his conviction for a crime he did not commit. The investigator discovered the existence of Ms. Glidewell's non inculpatory DNA report. (See: Exhibit N). Ms. Glidewell, a DNA technician at the Palm Beach Crime Lab, employed what the general scientific community, as well as Florida courts, consider to be a more sophisticated DNA test, called PCR test. However, Mr. Siegel withheld Ms. Glidewell's non inculpatory report in the 1993 case because it would have destroyed the reliability of the test performed by Marchese in this case. The Defendant was ultimately found guilty in this case due exclusively to the DNA evidence and testimony that supported the flawed DNA results presented at trial.

c. BSO Crime Lab DNA technician, Donna Marchese's professional misconduct.

Through newly discovered evidence recently obtained, it has been revealed to the Defendant that DNA lab technician Donna Marchese on two occasions received the fitted sheet but did not

² This Assistant State Attorney simultaneously charged and prosecuted for additional cases in Broward County before this case went to trial. In two of the cases the Defendant was exonerated before the jury considered the cases. On the other two cases, the jury acquitted the Defendant. Notably, in Case Number 94-6152, the jury acquitted the Defendant based on the existing evidence of tampering and planting fingerprints evidence by the Coral Springs latent fingerprint expert, Joel Geller. (See: Online Case Number 94-6152)

log it in the Lab's evidence vault as required by the lab's protocol. However, more importantly is the fact that Ms. Marchese was not truthful during her deposition and trial testimony. First, about whether the fitted sheet really got into the BSO Crime Lab at the same time as the rest of the other evidence did. Of course, it is obvious now, that contrary to her testimony at trial, all the evidence was sent to the lab together on May 18, 1995, as she originally testified at her deposition. Then when all of the evidence tested negative for the presence of seminal fluid, it was all returned back to the PPD on June 21, 1995. So it was not until she received the call from Detective Geller asking her to take a look at the fitted sheet, because they were under suspicions, or thought that there might be a sexual predator or serial rapist in Plantation, and he asked her to look at it. And if it was positive, they asked her to get it into the database and/or search the database, that she requested for that fitted sheet to be re-submitted to her on June 30, 1995 for further analysis. ***This is the time frame the Defendant had come to conclude that the planting of the evidence took place.*** Second, it was the fact that although she knew that she had performed a PCR DNA test on February 2, 2000, she never revealed it to the defense.

After the intense questioning of Marchese during the December 17, 1999 bond hearing, in relation to the DNA evidence and the different DNA testing methodologies available, Marchese decided to conduct an additional PCR DNA testing on the fitted sheet already tested back in September 18, 1995. This new PCR testing took place at the BSO Crime Lab on February 2, 2000 as indicated on a Plantation Police Department chain of custody property receipt that had never before been disclosed to the defense. (See: Exhibit O). This new testing took place six months before this trial was conducted. However, it has been just recently discovered that although this sole fitted sheet was delivered to the BSO Crime Lab on February 1, 2000 and DNA analysis was conducted on February 2, 2000, the test results were never disclosed to the defense, and at this point there is no explanation as to why this new test was conducted or who ordered this test to be conducted, or if the results of this testing was inculpatory, exculpatory or just inconclusive? But most importantly of all, why was not the defense made aware of the existence of such testing and why was not the result of this test introduced at trial? Nonetheless, it has been recently revealed by the BSO Crime Lab Administrative Coordinator Diana Edwards, that this evidence was never logged into their evidence vault. Therefore, indicating again a violation in the chain of custody of this fitted sheet, and the probability of tampering with this sole inculpatory piece of evidence.

Remarkably, on June 28, 2000, the Defendant's attorneys took the deposition of Ms. Marchese in this case. Although she was directly questioned about having conducted a newer or more sophisticated testing on the evidence of this case, she never revealed to the defense that a new testing was conducted by her on February 2, 2000, six months before this trial took place. (See: subsection iv supra).

d. BSO Crime Lab professional misconduct, mishandling and tampering with drugs evidence.

In 2014, another scandal at the BSO Crime Lab was made public. Two top staff members resigned, and an internal affairs investigation took place. Problems were found in everything from street-level drugs busts to large scale proves of heavy movers. The coming factor, all the drugs landed on the desk of forensic chemist Kelly McDonald. On March 2014 Ongley and

McDonald's former supervisor, Randy Hillard, resigned and McDonald was also terminated from her job soon thereafter due to the tampering with the evidence

e. BSO Crime Lab professional misconduct, mishandling and tampering with DNA evidence.

On October 27, 2016, the Defendant received a notice from the office of the State Attorney regarding the probability that the BSO Crime Lab analysis practices were incorrect. (See: Exhibit P). This led to the Defendant's discovery of the ASCLD's findings. After contacting DNA consultant, Tiffany Roy, the Defendant was informed that while she reviewed DNA from a knife handle, in an unrelated case, she realized that the BSO Crime Lab had erroneously called it conclusive, in violation of ASCLD rules. Roy emailed the directors of ASCLD about that issue and several others, noting that the BSO Crime Lab analysis seemed to be skewing the process by using samples from suspects to determine which portions of DNA evidence to analyze. "I am certain a great many cases have been affected by this," she wrote to the group.

In the aforementioned unrelated case, Dr. Tracey's work was central to Roy's concerns because he had reviewed the DNA from the knife but he was quick to defend his work and the BSO Crime Lab. In a letter to its director, he and other FIU professors who served as Crime Lab consultants wrote that its protocols were carefully designed and validated. They added that Roy's allegations were baseless and, because she was working for the defense suspect. "It appears to us that the allegations are an overt act by the defense to invalidate years of consistent and quality work," said the December 2015 letter signed by FIU's Dr. Tracey, McElfresh and Bruce McCord, each of whom had served as a consultant to the BSO Crime Lab. In April 2016, ASCLD agreed with Roy. And a June appeal by the BSO Crime Lab yielded the same results. Then by July, the BSO Crime Lab was still standing by its methods but agreed to stop processing complex DNA.

The ASCLD-LAB confirmed many of Roy's suspicions and wrote that multiple BSO Crime Lab analysis practices were incorrect. Among other claims, the BSO Crime Lab procedures had "the potential to not fully recognize the genotypes of all potential contributors and the potential to overstate the statistical significance of occurrence of the Evidentiary profile," the report said. In other words, the BSO Crime Lab could have been using incorrect or incomplete DNA to charge defendants of crimes. At issue, in that case, was DNA evidence based on complex samples require a complicated analysis to determine which portion of the DNA belongs to which person. When the DNA is miniscule or degraded, pieces can be missing or seem to exist where they do not. Because so much of that evidence is up to interpretation the science can be one more subjective and different experts often arrive at varying conclusions. That subjectivity led ASCLD in 2010 to issue new thresholds for interpreting DNA and calculating the odds that a particular person left DNA at a crime scene. As a result of the investigation ASCLD found problems with how the BSO Crime Lab was interpreting complex samples, which contains DNA from more than one person. With its accreditation threatened, the BSO Crime Lab last July ceased reporting those complex samples and instead began sending them to outside experts.

f. BSO Crime Lab DNA consultant, Dr. Martin Tracey's professional misconduct.

On or about June 15, 2017, the Defendant received a copy of a New Times' article dated May 3, 2017, which led to the instant claim. Said article revealed that on December 24, 2016, BSO Crime Lab consultant, Dr. Martin Tracey, was suspended from his teaching job at FIU amid accusations of bias, racism and sexism. Some students alleged Dr. Tracey made sexist jokes, others claimed he said he should hate Cubans because his ex-wife was Cuban. Those allegations triggered a separate investigation by the school's equal opportunity office, which concluded last year that the professor " frequently made offensive comments and jokes pertaining to sex and nationality," violating University policy.

However, the University said that it was particularly concerned by Dr. Tracey's regular comments about drones and planting DNA evidence. On exam nights, Tracey would often send emails about drones going to students' homes to make sure they were in bed by 10:00 p.m. "the new drones will take an almost unnoticeable skin biopsy which will give me enough of your skin to place at that crime scene of my choice," he wrote occasionally. FIU found this reference inappropriate as well. On a later date, FIU terminated Dr. Tracey from his job at the University.

In 2017, Chief Assistant State Attorney Jeff Marcus, pointed to a ruling in a police shooting case, in which the judge refused to allow the defense attorneys to introduce the FIU investigation or to question Dr. Tracey about his alleged racial biases. "The defense is trying to portray Dr. Tracey as a racist when in fact no racial biases have been substantiated," Judge Paul Backman wrote in his order. But the judge did add one note: his decision would have been different, he said, if the defendant were Cuban.

g. Las Vegas Metropolitan Police Department professional misconduct, mishandling and tampering with DNA evidence.

On October 10, 1997, the Defendant was arrested in Las Vegas, Nevada. As part of their arrest investigation they went to the Defendant's apartment for a routine search of the residence. At the apartment they found Siru Andelin, the Defendant's former fiancée. While at the apartment, they requested permission from Ms. Andelin to take multiple pieces of evidence including personal articles of clothing, jewelry, etc. All the property belonging to Ms. Andelin was returned back to her few days later. However, a set of light green bed sheets from the dirty laundry were secretly and without permission retrieved. These sheets were of course, never returned. There is a high presumption that the sheets were retrieved in bad faith. Because they were not obtained in the same manner as the rest of the evidence was seized. Of course, these sheets without doubt would contain the Defendant's DNA in addition to Ms. Andelin's DNA. It becomes a very sensible subject in this case because the very single inculpatory evidence in this case is a stain of semen found on a green fitted sheet that has been highly contested, with a broken chain of custody and great probabilities to have been tampered with. It was a clear professional misconduct from the Las Vegas Metropolitan Police Department to obtain a piece of evidence containing bodily fluids without first obtaining the required authorization from Ms. Andelin.

In sum, because of the ongoing cumulative professional misconduct from each one of the individuals and entities involved in this case; the reckless disregard in following proper procedures; and the non-compliance by State's representatives, as well as in the interest of justice, a thorough investigation on the DNA evidence in this case is necessary.

ARGUMENT

IN LIGHT OF THE COMBINED NEWLY DISCOVERED EVIDENCE
HEREIN, WHICH COULD NOT HAVE BEEN DISCOVERED
THROUGH DUE DILIGENCE, THE DEFENDANT WOULD PROBABLY
BE ACQUITTED ON RETRIAL PURSUANT TO *JONES*

Standard Of Review.

The Florida Supreme Court has outlined two requirements needed to receive relief based on newly discovered evidence. First, the asserted facts "must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known them by the use of diligence " *Hallman v State*, 371 So. 2d at 485. Second, "the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial." *Jones v State*, 591 So 2d 911, 915 (Fla. 1991).

Introduction.

The Defendant has been serving over twenty two-years in Florida State Prison for a crime of which he was falsely accused, a crime of which manipulated evidence containing DNA was presented at trial to obtain his conviction. The Defendant did not commit burglary with a battery nor did he sexually batter Denise Wood as alleged at trial. The Defendant has been incriminated through manipulated evidence as the donor of a single stain of semen allegedly found on a fitted sheet collected at this 1995 crime scene. However, this very same fitted sheet, depicts multiple breaks in its chain of custody, extreme high probabilities of being tampered with and contains questionable biological evidence that was utilized at trial by the State to secure his wrongful conviction.

State's Pertinent Opening Statement.

At trial in 2000, the State informed the jury in their opening statement that the fitted sheet collected at the crime scene contained the Defendant's seminal fluid. The State stated in pertinent part:

"As you are going to learn from the evidence in this case, the scientific evidence and science, DNA and other supporting evidence, that the person that broke into her house and sexually assaulted her is that Defendant right there... Meanwhile, the bedding that was taken off her bed was taken over from -- by Plantation Police Department to the BSO Crime Laboratory. And that bedding is examined by one of the DNA scientists that work in the crime laboratory, a woman named Donna Marchese, and Ms. Marchese did the analysis.

And you are going to hear that she found semen on that fitted sheet... So she takes that semen and she does the DNA analysis of it and she extracts a DNA -- a genetic profile from the the DNA that's -- in the semen that's on the sheet, the DNA profile of the person that left the semen there... And you are going to hear that the genetic profile from the swabs that were taken from this Defendant's mouth match the genetic profile from the DNA on Denise Wood's sheets -- sheet. You are going to hear that this well accepted and generally recognized means of scientific testing, this forensic DNA analysis, established that they matched, the DNA profiles matched.

And you also are going to hear from professors, people with Phds and population genetics, that the probability of finding another person in the population who is not related to the Defendant, who has the same genetic profile as that found on the sheet is one in more than five billion... You are going to hear some other evidence that corroborates that D -- the DNA match.

The scientific evidence, that doesn't lie. People can lie. The scientific evidence doesn't lie. It's going to prove to you and has proven that this Defendant is guilty of invading Ms. Wood home... And that he is guilty of the burglary with a battery, the armed sexual battery, that he is been charged with."

(See: T.T. 429, 436 - 440).

Victim's Colloquy At Trial In Reference To The Lack Of Stains On Her Fitted Sheet.

Q. You mentioned, I think on direct examination, that you had just washed your sheets two weeks before?

A. Yes.

Q. And this -- that there were no stains on your sheet?

A. Correct.

Q. Now, I've got to do this again. The best of your knowledge and your testimony today is that there would be no stains on that sheet correct?

A. Correct.

Q. I am going to show you State's Exhibit 8. Do you recognize what I'm unfolding here?

A. Yes. It's my beasheet.

Q. Ma'am, do you see any stains?

MR. SEGAL: I'll object. This is five- five and a quarter years later. That thing has been repeatedly handled and this is its current condition as opposed to the way it was on the day this occurred.

THE COURT: May I see you sidebar.

MR. TERRELL Judge yes

(WHEREUPON, the following sidebar discussion was commenced)

MR. TERRELL: Judge, if the state is suggesting the stains may have been placed since it was taken into evidence, we'll take that as a stipulation

THE COURT I don't know

MR. SEGAL He's just referring to exact condition. There are holes torn in it, cut into the sheet. If he's suggesting that the current state of the sheet, after being handled repeatedly by his client -- maybe not client but the detectives repeatedly in order to show it to him, defense attorneys, for the DNA testing that was on there, I'll object in light of the way it was handled. Nobody is saying it was placed but the possibility in repeated handling and laying around and for five years, something has happened over time.

MR. TERRELL Judge, I believe the state brought that in through Detective Hanlon. Is this the same condition minus the cut holes and she said. Yes. It's in the, same exact condition as that night.

THE COURT I think Detective Hanlon did testify along those lines. And the fact that it's five years ago is going to the weight that the jury is going to ascribe to the testimony. I'm going to overrule the objection.

(WHEREUPON the sidebar discussion was concluded)

BY MR. TERRELL

Q. Ma'am, do you see any stains on this bedsheet now?

A. Yes, I do.

Q. Okay You see this big stain right here, this yellow stain right in the middle of the bed?

A. Yes.

Q. Okay. Was that there the night of the incident?

A. I don't know.

Q. You don't know?

A. No.

Q. Okay But your earlier testimony was that there was no stains. Would you definitely agree that there's a huge stain in the middle?

A. I thought you were talking about semen stains.

MR. SEGAL: Is he talking about before she was sexually assaulted or after?

THE COURT Sustain the question- objection. Restate your question.

BY MR. TERRELL:

Q. Were there any stains on your sheet the night of the incident?

MR. SEGAL. Objection, your honor. He didn't clarify anything. Is he talking before or after?

MR. TERRELL: Judge, I don't know what was on her bed before the incident.

THE COURT. Start before the alleged incident.

BY MR. TERRELL:

Q. Before the incident, was there any stains on your bed?

A. Those are not and they were not at the time new sheets. There could have been stains at this point, I cannot say what stains that were definitely there or were not.

Q. So you wouldn't remember if there are stains all over your sheet there? You wouldn't remember?

A. I would like to think that, no, there weren't.

Q. And you just agreed that there is stains right here, this big yellow spot?

A. Yes, there is.

Q. And you see spots -- do you see spots here?

A. Yes.

Q. Do you see spots here?

A. Yes

Q. Were those stains there?

MR. SEGAL. Objection. objection. When?

THE COURT. Restate the question.

MR. TERRELL: That's enough. Thanks.

BY MR. TERRELL:

Q. Is it fair to say then, based on your testimony, that you don't remember any stains of any type being on your sheet the night of the incident?

A. I don't remember what stains would have been there.

Q. You mentioned that you had just washed your sheets two weeks beforehand?

A. Right.

Q. Do You know what the date was you did it?

A. Excuse me?

Q. Did you write that down?

A. No.

Q. How, five years late, do you know that it was two weeks before this incident that you washed it?

A. It was never affirm two weeks It was always about two weeks

Q. So routinely, every two weeks you'd wash your sheets?

A. Well, now I do it about once every week, give or take a few days

Q. Okay. One second, judge Ms. Wood, look at Ernesto Behrens. Can you say that's the person that was in your house on May 12th, 1995?

A. No, I can't

MR. TERRELL: Thank you very much... "

(See: T.T. pages 629 to 634).

Misleading Testimony At Trial.

Ultimately the jury was told by BSO Crime Lab DNA technician Donna Marchese that: 1.) the victim's fitted sheet arrived at the BSO Crime Lab and was logged into the evidence vault on June 30, 1995; 2.) she retrieved the fitted sheet from the evidence vault on September 18, 1995 to conduct the analysis on it; 3.) the sperm cell in spot #1 found on the victim's fitted sheet matched the Defendant's DNA profile; and 4.) she never performed any other DNA testing on the fitted sheet after September 18, 1995.

As to BSO Crime Lab consultant Dr. Martin Tracey, he stated that based upon the serology and DNA testing results obtained by Marchese, the odds of someone other than the Defendant having committed the crime were one in fourteen billion.

State's Pertinent Closing Argument.

The following is an excerpt from the State's closing argument:

"The issue in this case becomes, is the defendant the person who committed the crimes. The answer is, he most certainly is. The primary edifice in this case that tells us that that defendant is the person who committed this crime against Denise Wood the person who terrorized Denise Wood is the DNA evidence.

You heard uncontradicted from Donna Marchese who's worked in the Sheriff's office Crime Laboratory for about 18 years total, about nine years doing DNA testing. She's tested thousands and thousands of evidence sample. And you heard from Dr. Martin Tracey, Professor of Florida International University, he was going around the country testifying about DNA and DNA analysis, who has written papers, who's reviewed papers, goes to conferences, all of that.

They all testified uncontradicted that this RFLP DNA testing technique that was used back in 1995, in 1997, by the Crime Lab, is generally accepted, well-recognized, legitimate scientific testing of evidence.

And it was also uncontradicted from Ms Marchese and Professor Tracey that the DNA that was extracted from the fitted sheet, that hole in the fitted sheet, matched the DNA profile of the defendant's swabs. They both testified on the autoradiogram of the two different samples And they matched. They're in the same location, a visual match. They matched. That is uncontradicted. Then Dr. Tracey testified, again uncontradicted, without even a challenge when Mr. Terrell cross-examined him Remember, I think Mr Terrell asked him two questions. He didn't ask at all about the population statistics that he came up with. He testified again uncontradicted with his expertise, that the odds of anyone else having the same DNA profile that

was found on the sheet and in the defendant's swab, ranges from one in 14 billion for a Caucasian population, one in 40 billion for the Minnesota population, one in 45 billion for the Southeast Hispanic population, one in 80 billion for the Southwest Hispanic population and one in 152 billion for an African American population. So the most conservative you could be, to look at it in the light most favorable to the defendant, the chance that somebody else, pulled at random from the population, who would have the same DNA profile as was found in the DNA testing, is one in 14 billion.

One in 14 billion that anybody else pulled from the population would have the same genetic profile. What's the population of the earth? Five, six billion people, something like that. It is virtually impossible in fact, totally impossible to find any other person on this earth, on this planet who on May 12th, 1995, who had the same DNA profile as the defendant and the DNA profile found on the sheet, much less another male with an Hispanic accent of described age in Broward county. Furthermore, the DNA evidence doesn't lie. It's a scientific test. It doesn't have biases in there. It doesn't have motives. It doesn't have reasons to fabricate. It's just a scientific test. It is a well recognized and accepted scientific test which was reviewed and analyzed by knowledgeable, experienced people: Donna Marchese and Professor Martin Tracey.

Ms. Marchese and Professor Tracey have no motive whatsoever to fabricate anything they said. What else supports the DNA evidence? What other evidence is there that supports that? That in and of itself would be enough. One in, at best, 14 billion people have that DNA profile.

Denise Wood said the man terrorized her had a Hispanic accent.. ”

(See: T.T. 1126 -1229).

Post-Conviction Proceeding.

Sixteen years-ago the Defendant moved that this Court authorize the release of all the evidence introduced at trial which contained DNA for the purpose of DNA testing, but the Court denied this request under Fla. Rule Crim. P. 3.853 by order dated August 31, 2004. The Defendant appealed the court's order and the Fourth District Court of Appeal per curiam affirmed. See Case No: 4D04-4156.

Combine Newly Discovered Evidence.

a. The Defendant could not have previously discovered this evidence through due diligence.

The April 12, 2016, ASCLD report revealed, in part, that multiple BSO Crime Lab analysis practices were incorrect and that the Lab mishandled, misinterpreted, and miscalculated samples that contain DNA from more than one person.

The May 31, 2017, New Times' article revealed, in part, that BSO Crime Lab consultant, Dr. Tracey, was suspended from his teaching job at the FIU amid accusations of bias, racism, sexism and making regular comments about using drones to plant DNA evidence. It also revealed that Dr. Tracey's work was central to independent DNA consultant Tiffany Roy's concerns because he had reviewed DNA from a knife, on an unrelated case, that was erroneously found to be conclusive by BSO Crime Lab when it was actually inconclusive under the ASCLD rules and protocols.

The July 9, 2018, sworn affidavit from Siru Andelin revealed, in part, that the green bed sheets that were in the couple's dirty laundry hamper with some of the Defendant's clothing on the day of his arrest, vanished after the Las Vegas law enforcement officers finished searching their apartment. Ms. Andelin never gave any consent for them to be removed from the apartment nor were they ever returned back to her. These bed sheets more likely than not, contained the Defendant and Ms. Andelin's DNA, or at the very least, a mixture of it.

The January and February 2019, BSO Crime Lab reports generated in response to the Defendant's Public Record Requests revealed, in part, that this sole inculpatory evidence was never logged into the BSO Crime Lab evidence vault as testified multiple times by Donna Marchese during her pre-trial deposition and in her trial testimony. Both of these unaccounted terms, from June 30, 1995 to October 18, 1995 and from February 1, 2000 to June 29, 2000--which exceeded 100 days each, violated this sole inculpatory evidence chain of custody. Thus, inevitably raising the great probability that this evidence has been tampered with. First, where this fitted sheet, at the time of Marchese's analysis, was not in the same condition as it was when it was collected from the victim's residence. Second, when an additional PCR DNA testing was secretly conducted on this fitted sheet (Item #4) by Marchese on February 2, 2000, six months before this trial took place

Nevertheless, this analysis and DNA testing was never revealed to the defense throughout the State's Discovery obligations nor its results ever introduced at trial. Had this PCR testing result been revealed to the defense, the Defendant would have been able to argue to the jury the unreasonable and highly prejudicial odds presented by the prosecution that the odds of the DNA sample matching anyone other than the Defendant was 1 in 14,000,000,000 utilizing the RFLP

DNA testing, rather than 1 in 469,000 when utilizing the PCR DNA testing on the Defendant's profile. In other words, 13 and ½ billion less than the odds presented to the jury. (See: Exhibit Q the odds calculated by LabCorp in 2001, utilizing the Defendant's PCR DNA profile generated by the PBSO Crime Lab DNA technician, Ms. Glidewell)

b. The newly discovered evidence is likely to produce an acquittal in a new trial for the Defendant.

In addition to alleging that newly discovered evidence could not have previously been discovered through due diligence, the combination of the newly discovered evidence above-mentioned is “ of such a nature that it would probably produce an acquittal on retrial”

Jones, supra

This above combination of newly discovered evidence is direct evidence that would have contributed to reasonable doubt of the Defendant's guilt. Further, it would also impeach the testimony of both of the State DNA experts, Ms. Marchese and Dr Tracey, as well as the Lab protocols and procedures.

The Defendant's newly discovered evidence in combination with the totality of the existing evidence of:

1. unrefuted trial testimony of medical and alibi witnesses;
2. the undeniable exculpatory evidence presented throughout the victim's testimony as to her own identification of her assailant,
3. the CSI technician's inability to tie the physical evidence collected at the crime scene to the Defendant; and
4. the proof of tampering with the DNA evidence that the defense had alleged at trial, without doubt, would have produced a different outcome in this case.

Furthermore, the Defendant could not have previously discovered the above-mentioned evidence through due diligence but until all the above facts finally became public.

The Defendant's DNA allegedly found on the fitted sheet was the sole scientific building block upon which the State's entire case was founded. The jury convicted the Defendant because

the State presented persuasive DNA expert testimony coming from DNA lab technician Donna Marchese on behalf of the BSO Crime Lab. This technician through false testimony, disruption of the evidence chain of custody, and manipulation of the fitted sheet containing DNA, was able to persuade the jury beyond a reasonable doubt, specially, utilizing testimony of an extremely well recognized DNA consultant in the field of population and statistics, Dr. Martin Tracey, did corroborate technician Marchese's analysis and DNA testing procedures. However, the newly discovered evidence argued herein reveals now, 20-years later, that those experts as well as the BSO Crime Lab, all lacked professional integrity. This of course, is relevant to the way they found, transported, logged in, handled, analyzed and tested the fitted sheet, and, calculated the statistical significance of the DNA found on it, which the State relied on to charge and convict the Defendant.

New Relevant Facts.

We now know that the jury was misled to believe, and mistakenly believed, that the sole inculpatory evidence in this case was properly handled and that the DNA experts who testified at trial had the required professional integrity that was expected of them. That is, that the inculpatory evidence chain of custody was properly established; that there was no probable tampering with the fitted sheet; and that the DNA testing, analysis and calculations performed by the State's experts were within the ASCLD Lab required protocol and procedures. If the jury would have heard in rebuttal the information concerning the newly combined discovered evidence, although it does not establish the Defendant's innocence, it undermines the outcome of the Defendant's original trial and would have created reasonable doubt and the jury would have acquitted.³

³ In *Jones v State*, 591 So 2d 911 (Fla 1991), the Florida Supreme Court held that successive Rule 3 850 motions could be premised upon newly discovered evidence of innocence. To establish an entitlement to relief, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial. Id at 591 So 2d at 915 (emphasis in original). Given the facts of the instant case, and the arguments of the state regarding burglary and sexual battery, weighed against the conclusive new chain of custody violation and probable tampering with the fitted sheet, creates reasonable doubt that the defendant in fact burglarized and sexually battered the victim. Thus, an acquittal on retrial in light of the newly discovered manipulated evidence containing DNA is most probable. The newly discovered evidence in this case reveals, in pertinent part, that 1) the BSO Crime Lab mishandled and misinterpreted samples that contain DNA from more than one person, 2) multiple BSO Crime Lab analysis procedures were incorrect, 3) BSO Crime Lab consultant, Dr. Tracey lacked professional integrity and has been accused of bias, racism, and sexism, 4) Dr. Tracey made comments about planting DNA evidence utilizing drones at

Thus, the faulty fitted sheet trial testimony and the planted/tampered with DNA evidence herein led all courts previously reviewing this case and the jurors to conclude that the Defendant sexually battered the victim. Further, this enabled the State to discredit the defense's medical testimony, alibi witness and tampering with the DNA evidence defense presented at trial. Because the new combined evidence was not available at the time of trial, the Defendant focused his entire "tampering with DNA evidence" defense on the oral swabs collected by Miami-Dade Metropolitan Police Department, instead of directly attacking the collection of evidence by PPD and LVPD; the BSO Crime Lab and its DNA experts' lack of integrity; and their faulty analysis practices and procedures.

Hypothetical Scenario.

Simply stated, the Defendant should be afforded a new trial because of the following hypothetical scenario: go back to the time of trial, and say that the State has presented all of its evidence, including the testimony from Donna Marchese, the BSO Crime Lab serological expert and Dr. Martin Tracey, the BSO Crime Lab DNA consultant who did all the population and statistical calculations, showing that the Defendant's DNA extracted from the oral swabs from the Miami-Dade Metropolitan Police Department Crime Lab, matches one in fourteen billion the single stain of semen found on the fitted sheet introduced at trial. Now the State rests.

Before the defense opens their case, a report magically comes into the courtroom and it is delivered to defense counsel's desk: it is the combined newly discovered evidence herein discussed creating reasonable doubt as to How? Why? When? Where? And who found the single stain of semen recovered from the fitted sheet presented at trial? Should counsel use this report and this newly discovered evidence in its defense? Absolutely. Might it make a difference

the crime scene of his choice, 5) Dr Tracey corroborated DNA evidence that BSO Crime Lab erroneously determined to be conclusive when according to ASCLD's rules and protocols should have been inconclusive, 6) Dr Tracey was fired from his job of over thirty years due to his unethical egregious behavior, 7) BSO Crime Lab technician Marchese manipulated and tampered with the fitted sheet containing DNA, obtaining results otherwise impossible to get, 8) a new PCR DNA analysis performed on the fitted sheet by Marchese on February 2, 2000, never revealed to the defense, 9) the BSO Crime Lab DNA Unit was under investigation and forced to cease from conducting any CPI testing, and 10) the LVPD, PPD and BSO Crime Lab had tampered with/planted evidence in this case

in the case? Absolutely! The combination of the newly discovered evidence completely places in doubt all of the State's scientific and serological evidence presented by the State in advancing their theory of guilt

Continuing with the hypothetical scenario, after the defense presents this combined newly discovered evidence to the jury, which includes in pertinent part: violations of the sole inculpatory evidence chain of custody, probable tampering with such evidence, and the BSO Crime Lab and its DNA experts' lack of professional integrity, and of course, it is accepted, it is time then for closing arguments. The State stands slowly, and sheepishly attempts to convince the jury notwithstanding the new facts revealed by defense counsel's report, and says: "science does not lie" and asked the jury to disregard the Defendant's defense theory by stating in pertinent part: the Defendant is guilty of burglary and sexual battery because DNA testing by the experts you heard testifying, confirms it! Now the jury ponders, thinks back on the different testimonies presented during trial, and is then reminded by defense counsel in closing argument of the non-refutable exculpatory fingerprints, palm prints and shoe casting evidence excluding the Defendant as the perpetrator who came into the victim's apartment through the kitchen window. Equally emphasized is the unrefuted fact that the Defendant underwent surgery four days before this crime was committed, making him physically incapable of committing the crime alleged, and the jury is reminded also of the unrefuted alibi witness testimony that has been presented to them emphasising the fact that the Defendant could not have been in two different places at the same time. Regarding the victim's own testimony, defense counsel reminds the jury that she identified her assailant as being circumcised, and that she never identified the Defendant as her assailant. As a matter of fact, the Defendant is not circumcised. Last, but not least, defense counsel attacks the sole and single inculpatory evidence in this case, that is, the fitted sheet, and chronologically reminds the jury How? Why? When Where? And who found the single stain of semen on the fitted sheet presented at trial? In other words, how was this fitted sheet handled, transported and logged into the evidence vaults; why was this fitted sheet unaccounted for over 100 days at a time on two different occurrences; where was this fitted sheet kept; when it changed its appearance depicting stains that were not there at the time it was photographed and collected; and who is Donna Marchese? She is the very same lab technician

who conducted the Defendant's 1993 case, where seminal fluid was recovered and stored in the BSO Crime Lab freezer. She is the lab technician who requested and sent back the inculpatory evidence without following lab protocols. She is the lab technician who could not find the victim's DNA profile on the fitted sheet which the victim slept on for over two weeks. But however, she was able to extract the Defendant's DNA profile on her first randomly spotted stain. She is the only lab technician in the nation that had been able to match the Defendant's DNA in two of her own unsolved cases.

Hypothetically, how would the jury vote? Could 6 people agree after hearing about the combined newly discovered evidence that the Defendant is guilty beyond a reasonable doubt of burglary and sexual battery, considering that the State placed before them completely misleading scientific evidence and a 100% circumstantial evidence? Would those 6 people even reach a verdict after hearing the newly discovered evidence involving such lack of professional integrity by the crime lab and its DNA experts? Would it make a difference to the jury that the State's theory of the case is now implausible and impossible due to the evident lack of State's experts credibility?

Consequently, the jury was deceived and the Defendant's conviction was secured through the use of manipulated evidence containing biological fluids, and the persuasive DNA experts' testimony presented to them, including the astronomical odds of one in fourteen billion possibilities of finding another randomly selected person that would match the DNA found on the fitted sheet. However, the State never proved under any standard of proof, that the Defendant was the person who entered into the victim's home and ultimately sexually battered her. Had a reasonable jury known of the combined newly discovered evidence herein presented, they would have concluded in a circumstantial evidence case like this one, that because it was physically impossible to place the Defendant at the crime scene, there was instead, a high reasonable probability that the crime lab technician tampered with, planted on, and manipulated the sole inculpatory fitted sheet, as it is well reflected on the face of the record.

THE LEGAL STANDARD FOR A NEWLY DISCOVERY EVIDENCE IS LARGELY
CONSISTENT THROUGHOUT THE NATION AND IS CONSISTENT WITH THE
FLORIDA STANDARD FOUND IN *JONES, SUPRA*

Circumstantial Evidence.

In the case at bar, there obviously was never an in-court identification of the Defendant by the victim. Moreover, the State's evidence against the Defendant was entirely circumstantial. Other than the misleading scientific evidence, the State had no physical evidence linking the Defendant to the crime. As such, the newly discovered evidence in the Defendant's case is even more significant and meaningful when weighed against the circumstantial evidence produced at trial. Thus, this Court should find that the newly discovered evidence would be significant enough to create reasonable doubt which could secure an acquittal. And perhaps most importantly, at trial the lab technician did not testify that all the semen on the victim's fitted sheet matched that of the defendant's DNA. Rather, the lab technician testified that although three of the stains randomly selected from the fitted sheet tested positive for semen, only spot # 1 produced a DNA profile which matched the Defendant's DNA.

Misleading Scientific Evidence.

The message was delivered and the jury was persuaded by misleading scientific evidence presented through two experts from the BSO Crime Lab. Due to scientific limitations and the inability of knowing at the time the State's crime lab and expert's lack of professional integrity, and personal reputation, the defense was precluded from casting doubt on the State's seemingly powerful evidence, testing procedures and its expert's testimony. One thing is absolutely crystal clear: the Defendant received a fundamentally flawed and unfair trial. Due process and fundamental notions of fairness and justice require that the Defendant be afforded a new trial and an opportunity to present the combined newly discovered evidence to a jury; alternatively, the Defendant should be afforded a new trial where the State is precluded from relying on the false scientific evidence that was presented at his original trial.

No Additional Incriminating Evidence.

The State cannot argue in good faith that the newly discovered evidence is insignificant because standing alone it is meaningless, and because of other purported evidence pointing to the Defendant's guilt. This argument would be flawed because at trial, the State could not present any other incriminating evidence in advancing their theory of guilt. Therefore, the newly discovered evidence as a whole does not stand alone as evidence of innocence. The new evidence acts to rebut the State's theory that the Defendant is guilty. As such, the newly discovered evidence discredits the State's evidence and theory further, as well as corroborates the Defendant's tampering with the DNA evidence defense presented at trial.

Reasonable Doubt.

Given the State's high burden of proof in a criminal case, a jury on retrial need not be convinced that the Defendant is innocent in order to find him not guilty. All a jury needs is one reasonable doubt as to his guilt. For example, the State argued that the Defendant's DNA profile was generated from one of the three semen stains found on the victim's fitted sheet (the same fitted sheet that was introduced into evidence with two additional non-DNA significance; and the same fitted sheet in which Marchese could not find the victim's own DNA profile, or a mixture of DNA containing her profile). The State then presented misleading arguments advancing the theory that the Defendant was the only person in the whole world that could have deposited the semen on that sheet due to the fact that his DNA was a matching 1 in 14 billion.

However, newly discovered evidence has proven the State's theory wrong, therefore reasonable doubt resonates and a jury would now acquit. *But the legal standard under Jones does not require the certainty of an acquittal in light of newly discovered evidence, only the probability of an acquittal.* Jones does not even require that an acquittal be more likely than not in light of newly discovered evidence.

At trial, the Defendant's theory of defense was that the Defendant had been operated four days before the commission of this crime, and therefore it was physically impossible for him to have committed the crime while he was still wearing stitches and bandages; Additionally, as testified by his alibi witness, the Defendant was with her, in her bed, twenty miles away from the

crime scene. Thus, the Defendant could not have been at two different places at the same time. Based on the above unrefuted facts, the State planted or tampered with the DNA evidence in this case. These combined defenses presented at trial are corroborated by the newly discovered evidence and is additional evidence that creates reasonable doubt in this case.

The lasting image impressed upon the jury was that the Defendant burglarized and sexually battered the victim as evidenced by the fitted sheet containing his DNA. The newly discovered evidence completely casts doubt on the reliability of the outcome of the original trial. The weight to be afforded the newly discovered evidence must be analyzed in the context of the powerful and misleading evidence presented at trial, not in a circumstantial biological vacuum.

The Jones' Analysis.

Under *Jones*, the Court is required to conduct an analysis of the weight of the newly discovered evidence as compared to the weight of the evidence introduced at trial. As the newly discovered evidence is considered in conjunction with the evidence presented at trial, the Court is to evaluate whether the evidence is of such a nature that it would probably produce an acquittal on retrial. See *Jones v State*, 709 So. 2d 512 (Fla. 1998) at 521, citing *Jones v State*, 591 So. 2d 911 (Fla. 1991).

Jones does not authorize the analysis to include speculation into possible strategic changes that might be made by the State in a retrial setting in light of newly discovered evidence. It requires that the newly discovered evidence be evaluated and compared to the evidence which was previously presented at the original trial. The State's burglary/sexual battery theory has been conclusively disputed by the newly discovered evidence. In light of this, a jury would now acquit the defendant considering the evidence presented, the State's arguments to the jury, the circumstantial nature of the case presented, and the new evidence rebutting the State's case theory.

The State's Case Theory.

The state argued that the perpetrator gained entry into the apartment through the kitchen window, confronted the victim in her bedroom, assaulted her and deposited semen on her left

thigh, wiped off the semen with the victim's black and white print dress, then left the premises. Newly discovered evidence shows that the Defendant did not sexually batter the victim. Logically, it follows that under the State's theory of the case, the Defendant was not the perpetrator of the burglary either

The state continued to present their case theory that the Defendant burglarized and sexually battered the victim. After the admission of the fitted sheet, the State immediately began to question Donna Marchese, the crime lab technician, about the biological evidence in the case:

Q. At the time that you looked at the sheet, did you have any containers of the defendant's semen anywhere in the location?

A. No, I did not.

Q. Did you even know the defendant's connection to this case in September, 1995, when you did the testing?

A. No, I did not.

(See: T.T. pg 910)

The juxtaposition of this questioning had the powerful effect of misleading the jury to believe that the Defendant committed the crimes. We now know that this theory is incorrect since the Defendant's seminal fluid was stored in the BSO Crime Lab freezer since October 1993, when Marchese conducted her DNA testing on the prior case. The Defendant should be afforded a new trial where the state is barred from presenting a case based on misleading evidence. Had the jury been informed of the newly discovered evidence by the defense, they would have acquitted the Defendant.

The *Jones*' Requirements.

Jones provides us with guidance and factors to consider in the analysis of newly discovered evidence. The *Jones* requirements are as follows: two requirements must be met in order for a conviction to be set aside on the basis of newly discovered evidence. First, in order to be considered newly discovered, the evidence must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that the defendant or his counsel could not have known [of it] by the use of diligence. See *Torres-Arboleda v Dugger*, 636 So. 2d 1321,

1324-25 (Fla. 1994). Second, the newly discovered evidence must be of such nature that it would probably produce an acquittal on retrial. *Jones*, 591 So. 2d at 911, 915.

The Trial Court's Burden.

To reach this conclusion the trial court is required to consider *all* newly discovered evidence which would be admissible at trial and then evaluate the weight of both the newly discovered evidence and the evidence which was introduced at trial. *Id.* at 916. (Emphasis added).

In considering the second prong, the trial court should initially consider whether the evidence would have been admissible at trial or whether there would have been any evidentiary bars to its admissibility. [citations omitted]. Once this is determined, an evaluation of the weight to be accorded the evidence includes whether the evidence goes to the merits of the case or whether it constitutes impeachment evidence. [citation omitted]. The trial court should also determine whether the evidence is cumulative to other evidence in the case. [citations omitted]. The trial court should further consider the materiality and relevance of the evidence and any inconsistencies in the newly discovered evidence [*Jones v State*, 709 So. 2d 512, 521 (Fla 1998)].⁴

⁴ The outcome of this case has been gravely undermined by the new evidence. The materiality of the newly discovered evidence can be appreciated through a *Brady*-type or *Strickland*-type analysis. The *Jones* standard regarding materiality is comparable to the *Brady* standard and *Strickland* standard. Materiality is established, and post-conviction relief is required, once the reviewing court concludes that there exists a reasonable probability that had the [withheld] evidence been disclosed to the defense, the result of the proceeding would have been different. *United States v Bagley*, 473 U.S. 667 at 680 (1985). By analogy and tracking the same materiality standard that is found in *Jones*, if there exists a reasonable probability that had the [newly discovered evidence] been [available] to the defense, the result of the proceeding would have been different, materiality is established. Materiality of the newly discovered evidence in the case at hand therefore has been established by virtue of the misleading fitted sheet containing DNA evidence having been such a focus at the 2000 trial. Continuing with the analogy, it is crucial to be aware that it is not the defendant's burden to show the nondisclosure [or newly discovered evidence] [more likely than not altered [or would alter] the outcome of the case. *Strickland v Washington*, 466 U.S. 674 at 693 (1984). See *Barkauskas v Lane*, 878 F.2d 1031, 1034 (7th Cir. 1989) (evidence is material where it could have pushed the jury over the edge in the region of reasonable doubt). The Supreme Court specifically rejected the more likely than not standard in favor of a showing of reasonable probability. A reasonable probability is one that undermines the confidence in the outcome. *Jean v Rice*, 945 F.2d 82 (4th Cir. 1991). Such a probability exists in the case at bar where the newly discovered evidence tends to prove that the Defendant did not burglarize or sexually batter the victim as the state argued at trial. The Defendant need not show that more likely than not the jury would acquit on retrial. The Defendant need only show that the confidence in the outcome of his trial has been undermined by the new evidence, and this is apparent in light of the very damaging and convincing misleading evidence presented at trial.

The first prong of *Jones* regarding the newly discovered DNA evidence is obviously satisfied and warrants no discussion. Using the above factors to evaluate the second prong of *Jones*, that is, whether the newly discovered evidence is of such nature that it would probably produce an acquittal on retrial, the case at bar meets all criteria.

The newly discovered evidence would have been admissible at trial had it been available, and there existed no evidentiary bars to its admissibility. As far as the weight to be accorded to the new evidence, this extremely powerful combined evidence goes directly to the merits of the case, not merely to impeachment. At trial, the jury was persuaded beyond a reasonable doubt by the misleading scientific testimony attached to the biological evidence found on the fitted sheet which informed that there was one in fourteen billion chances that the DNA that was found at the scene of the crime, did not belong to the Defendant [BSO Crime Lab consultant Dr. Tracey testified as to the population statistics attached to this case].

Now, 20-years later, new detrimental facts about the BSO Crime Lab and its experts' professional integrity have come to light, providing information previously unheard, that confirms with virtually 100% certainty that the defense theory utilized during trial: that the State tampered with the DNA evidence presented at trial was correct, this analyzing Court should accord the newly discovered evidence absolute and overwhelming weight.

Continuing to consider the *Jones* factors, the newly discovered evidence in the case at bar is not at all cumulative in nature to anything presented at trial. To the contrary, it destroys and discredits all of the cumulative, prejudicial, and false evidence that was argued by the State at trial. As such, it is definitely material, relevant and indisputable. If there ever was a case that met the *Jones* standard on all points, this is the one.

In sum, the State's manipulated and faulty DNA evidence was perhaps the smoking gun in the false prosecution in their circumstantial case against the Defendant. Without this evidence, the State's strongest piece of evidence was that the Defendant has a Hispanic accent. Without the faulty DNA evidence and the powerful, misleading and corroborating testimony from respected experts from the BSO Crime Laboratory, questions remain unanswered, reasonable doubt resonates, and the Defendant is acquitted. At the original trial, if the defense would have been able to present the newly discovered evidence herein presented to the jury in rebuttal of the

testimony from the BSO Crime Lab experts in this case, the Defendant would have been acquitted. The newly discovered evidence standing alone in this case warrants a new trial.

This Court should accept the proposition that there is indeed a probability that the newly discovered evidence would result in an acquittal on retrial, and grant the Defendant a new trial.

CONCLUSION

A rational juror evaluating the newly discovered evidence, in tandem with the evidence at trial, will probably have reasonable doubt as to the Defendant's guilt. Thus, applying the standard of "probable acquittal" that governs newly discovered evidence claims, this Court should grant the Defendant a new trial free of the manipulated DNA evidence that misled the jury and had previously yielded a conviction. The DNA evidence presented in this case simply cannot be confidently relied upon as to the basis for the Defendant's conviction and sentence of life in prison.

A HEARING IS REQUIRED

The Defendant has asserted a facially sufficient claim that this newly discovered evidence could not have been previously discovered through due diligence. Additionally, the newly discovered evidence creates a likelihood that the verdict and sentence would be altered. Moreover, this Court may not summarily deny this motion unless the claims are conclusively refuted by the record. *McLin v State*, 827 So.2d 956 (Fla. 2002) The Defendant should be afforded an evidentiary hearing wherein appointed counsel and his *pro bono* Forensic DNA consultant, Tiffany Roy, can complete the following:

Specifically determine:

1. Why the victim's DNA profile is absent from the green fitted sheet.
2. Why a complex DNA mixture does not exist on the fitted sheet.
3. That the DNA evidence on the fitted sheet is degraded/contaminated.
4. That the fitted sheet has been tampered with.
5. Whether Ms. Siru Andelin's DNA profile is present on the fitted sheet presented at trial.

6. Why was not the DNA analysis results obtained on February 2, 2000 ever disclosed to the defense? Were they exculpatory or inconclusive in nature?

Compel, through appointed counsel, BSO Crime Lab DNA work product including but not limited to issue subpoenas for:

1. The analyst case file,
2. The electropherograms (or equivalent) from the testing;
3. All printouts and worksheets from the serology testing (finding of body fluids);
4. All DNA testing process;
5. Any calculations made by Broward Sheriff's Office analyst to convey a frequency of the DNA profile obtained from the evidence;
6. Include language regarding sample consumption or documenting the presence and availability of sample remaining for testing in every report made;
7. Recording and reporting (in writing) all inquiries, efforts and contacts made by law enforcement personnel regarding this case,
8. How many cases did Ms. Marchese actually test utilizing the RFLP methodology between October 1993 and October 1997?;
9. How many of those cases Ms. Marchese tested, resulted in a "Local Match" hit obtained by the computer? As it happened in the instant case, where DNA obtained from a Plantation's case (Wood) allegedly matched a prior Coral Springs' case (Ahladis);
10. All PCR DNA testing results obtained from the analysis performed on February 2, 2000 by Marchese.

This Court needs to determine also the credibility of Ms. Andelin's sworn assertions and what type of impact it would have on the mind of jurors in a trial. Accordingly, the Defendant is entitled to a hearing on this motion.

REQUEST FOR
APPOINTMENT OF COUNSEL

In *Graham v. State*, 372 So. 2d 1363 (Fla. 1979), the court recognized that although there is no absolute right to counsel in post-conviction relief proceedings, the post-conviction court must determine the need for counsel and resolve any doubt in favor of the appointment of counsel for the Defendant. The court stated:

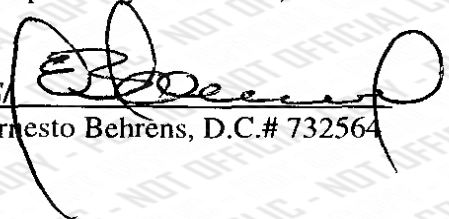
"The question in each proceeding of this nature before this Court should be whether, under the circumstances, the assistance of counsel is essential to accomplish a fair and thorough presentation of the petitioner's claims. Of course, doubts should be resolved in favor of the indigent petitioner when a question of the need for counsel is presented. Each case must be decided in light of the Fifth Amendment due process requirements. The adversary nature of the proceeding, its complexity, the need for an Evidentiary hearing, or the need for substantial legal research are all important elements which may require the appointment of counsel. This appointment authority is discretionary, with any doubts being resolved in favor of an indigent defendant." Id. at 1365-1366.

Because an Evidentiary hearing is necessary and will involve complex scientific evidence, due process requires the appointment of counsel.

RELIEF SOUGHT

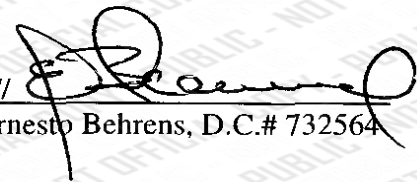
The Defendant Ernesto Behrens, respectfully requests this Honorable Court grant all relief to which the Defendant may be entitled to in this proceeding including but not limited to: an evidentiary hearing with appointment of counsel, an order vacating the judgment and sentence in this matter; and such other and further relief as the court deems just and proper.

Respectfully Submitted,

/s/ 
Ernesto Behrens, D.C.# 732564

UNNOTARIZED OATH

UNDER PENALTIES OF PERJURY and pursuant to Rule 3.850(n), I declare that I have read the forgoing "Second Amended Motion for Post-Conviction Relief, I understand English and the motion's content, the motion is filed in good faith with a reasonable belief that it is timely filed, has potential merit, does not duplicate previous motions that have been disposed of by the court and all facts contained in it are true and correct.

/s/ 
Ernesto Behrens, D.C.# 732564

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Second Amended Motion for Post-Conviction Relief" has been mailed to this Court and forwarded to the following listed below on this the 10 day of April, 2019.

State Attorney Michael J. Satz
State Attorney's Office
201 S E 6th Street
Fort Lauderdale, Florida 33301.

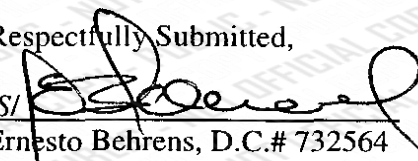
Respectfully Submitted,
/s/ 
Ernesto Behrens, D.C.# 732564
Martin Correctional Institution
1150 SW Allapattah Rd.
Indiantown, FL 34956

Exhibit A

(NOTE: BOX 2 (CONTAINS CONTAINER #1 only)

POLICE DEPARTMENT
PLANTATION, FLORIDA

PROPERTY RECEIPT

☐ Trial Evidence ☐ Safekeeping ☐ Found Property ☒ Lab Evidence (Attach Memo) ☐ Recovered Property

2 CASE NO 1699505	3. DATE - TIME RECEIVED 5/17/95 0900	4 BIN NO (P33) (B3)	5 TYPE OF CASE Sexual Battery 9/186F
----------------------	---	------------------------	---

6 ADDRESS WHERE PROPERTY IMPOUNDED (GIVE EXACT LOCATION WHERE FOUND)
[REDACTED]

7 FOUND BY
M. Aulon [REDACTED]

8 SUSPECT(S) (GIVE FULL NAME) RACE/SEX DOB ARRESTED YES ☐ NO ☐ NTA YES ☐ NO ☐ CITATIONS YES ☐ NO ☐ PENDING ☐

9 VICTIM
Denise Wood [REDACTED]

10 OWNER'S NAME
Same As #9 [REDACTED]

11 ITEM NO	12 QTY	13 DESCRIPTION
1	1	Multicolored Envelope - folded inward Envelope
2	1	Pillow Case - *removed inside out *
3	1	Top Sheet - Green - folded inward Envelope
4	1	Fitted Sheet Green folded inward Envelope

[REDACTED] Sheet ret to PD 12-18-95
10:30 K. Amabile
* Refer to [REDACTED] →

14 SPECIAL INSTRUCTIONS
☐ PROCESS FOR FINGERPRINTS
☐ DESTRUCTION PURPOSE ONLY
☒ OTHER (Specify) Check for semen hairs and for [REDACTED]
☐ RELEASE UPON PROOF OF OWNERSHIP

15 I hereby acknowledge that the above list represents all property taken from my possession and that I have received a copy of this receipt
18 I hereby acknowledge that the above list represents all property impounded by me in the official performance of my duty as a Police Officer.

S. Geller & S. Geller / Discovery / 12/1/99
Redwood / Redwood / Ret to P. 12/1/99 0900 1300
Signature (X) _____
Division [REDACTED] PL # 8820
Impounding Officer Signature x [REDACTED]
Print Name MARGORIE HANSON

17. RECEIVED BY K. Amabile	Signature K. Amabile	REASON Evid	DATE AND TIME RECEIVED 5-15-95 11:15
RECEIVED BY Sheet K. Amabile	*. Amabile	REASON to + BSO Lab	DATE AND TIME RECEIVED 5-18-95 11:15
RECEIVED BY J. Kattel		REASON IS	DATE AND TIME RECEIVED 5/18/95 1140
RECEIVED BY [REDACTED]		REASON Analysis	DATE AND TIME RECEIVED 6-13-95
RECEIVED BY K. Amabile		REASON ret. to P.D.	DATE AND TIME RECEIVED 6-21-95 11:50
RECEIVED BY SHEET ONLY M. KERNAN	M. Kernan	REASON DOT LAB	DATE AND TIME RECEIVED 6-30-95 11:50
18 FINAL DISPOSITION J. Kattel		AUTHORITY [REDACTED]	DATE AND TIME OF DISPOSITION 6/30/95 1230

REL. TO Y	FIASON	DT	
Item #4 K. Amabile	tot Lab	2-1-00	11:30
Item #4 K. Amabile	Lab #4	2/1/00	1156
Item #4 K. Amabile	tot Lab	6-29-00	0900
Donna J. Moush	don	6-29-00	CA35
STEVE GELTER	Return to PRD	6-29-00	1350

=1,2,3

RECEIVED BY	REASON	DATE	TIME
K Amabile	+ BSO Lab	6-28-00	0900
Donna / M...ese	Lab	6-28-00	0930
Steve Cailler	Return to PPD	6-29-00	1350

Exhibit B

Please find attached copies of property receipts for this case

b. Each piece of evidence obtained from the Evidence Vault by Donna Marchese on June 13, 1995, for the purposes of analyzing it for DNA;

No such records exist

c. Each piece of evidence that was returned from your Evidence Vault to the Plantation Police Department on June 21, 1995;

No such records exist

d. Each piece of evidence that arrived at your Laboratory from Plantation Police Department on June 30, 1995.

There were two evidence submissions from Planation PD on June30, 1995. These were both drug cases. Enclosed is a computer printout reflecting these submissions. The Crime Lab is unable to produce copies of the actual evidence submissions because these records have met the statutorily required public records retention period and are no longer available.

Your request has been completed and referenced documents will be available for download through the public portal.

If you have any questions or need additional information, please feel free to contact my office at 9548316427

Sincerely,

Diana Edwards

Admin Coordinator

Please note that Florida has a broad public records law, and that all correspondence sent to me via email may be subject to disclosure.

How are we doing? Please provide us with your feedback <https://www.surveymonkey.com/t/bsocrimelab>



Sheriff Scott Israel

☒ On 12/29/2018 5:23:32 PM, Broward County Sheriff Crime Lab wrote:

Dear Franziska Kaltenbach:

Thank you for your interest in public records of Broward County Crime Lab. Your request has been received and is being processed. Your request was received in this office on 12/29/2018 and given the reference number R000293-122918 for tracking purposes.

Records Requested: Attn: Diana M. Edwards, Administrative Coordinator Crime Laboratory.

Re: Ernesto Behrens, Case # 98-5739-CF-10-A; Lab # 9186F; Offense # 1619-95-05

Dear Ms. Edwards,

Please accept this letter as my public record request pursuant to §119.07, Fla. Stat. (2018), requesting to purchase one copy of the following documents in relation to this case:

- 1) I am requesting a copy of Donna Marchese's Internal Affairs File, and the reasons for her not currently working with BSO Crime Lab;
- 2) I am requesting a copy of the BSO Crime Lab's internal Evidence Vault log showing:
 - a. Each piece of evidence related to this case, that arrived at your Laboratory from Plantation Police Department on May 18, 1995;
 - b. Each piece of evidence obtained from the Evidence Vault by Donna Marchesse on June 13, 1995, for the purposes of analyzing it for DNA;
 - c. Each piece of evidence that was returned from your Evidence Vault to the Plantation Police Department on June 21, 1995;
 - d. Each piece of evidence that arrived at your Laboratory from Plantation Police Department on June 30, 1995.

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

Sincerely,

Franziska Kaltenbach.

Your request will be forwarded to the relevant department(s) to locate the information you seek and to determine the volume and any costs associated with satisfying your request. You will be contacted about the availability and/or provided with copies of the records in question.

You can monitor the progress of your request at the link below and you'll receive an email when your request has been completed.

Broward County Sheriff's Office Crime Lab

To monitor the progress or update this request please log into the [BCSO Crime Lab Public Records Center](#).

Exhibit C

Broward Country Crime Laboratory

Cases Per Agency - All Case Types

Cases submitted between 06/30/1995 and 06/30/1995

<u>Agency Id</u>	<u>Agency Name</u>	<u># Of Cases</u>
CS	Coral Springs Police Department	5
LL	BSO District 04 (Lauderdale Lakes)	4
BS	Broward Sheriff's Office	4
PP	Pembroke Pines Police Department	4
HW	Hollywood Police Department	3
PB	Pompano Beach Police Department	3
PL	Plantation Police Department	2
PK	BSO District 01 (Pembroke Park)	1
DR	BSO District 10 (Deerfield)	1
BS01	BSO District 01 (South Broward)	1
BS08	BSO District 8 - West Broward	1
BSJS	BSO Judicial Services	1
CK	Coconut Creek Public Safety Dept	1

Total of All Case Types : 31

Exhibit D

☐ On 2/7/2019 7:56:23 AM, Broward County Sheriff Crime Lab wrote:

RE PUBLIC RECORDS REQUEST of January 14, 2019 , Reference # R000307-011419

Good Morning Ms Kaltenbach.

Your request mentioned the following items.

The Broward County Crime Laboratory Cases per Agency--All Cases Type" Cases Submitted Between February 1, 2000 and February 1, 2000, depicting each piece of evidence that arrived at your Laboratory from Plantation Police Department on that date

Attached for download is the Cases Per Agency for 02/01/2000 There were three cases submitted,

- 00-2363 (Drug)
- 00-2350 (Latent Prints)
- 00-2349 (Latent Prints)

The documents requested are not available The Crime Laboratory governs itself by the State of Florida General Records Schedule for Law Enforcement Agencies The documents requested exceed the retention period

GENERAL RECORDS SCHEDULE GS2 FOR LAW ENFORCEMENT, CORRECTIONAL FACILITIES AND DISTRICT MEDICAL EXAMINERS. CRIMINAL INVESTIGATIVE RECORDS: FIRST DEGREE FELONY. Item # 125.

Each piece of evidence that was returned from your Evidence Vault to the Plantation Police Department on June 29, 2000.

No such record exists

Which type of analysis was conducted on the green fitted sheet (item # 4) and what type of DNA methodology was employed on it while analyzing it on February 2, 2000

Please be advised that the Public Records Act (PRA) does not require an agency to answer questions about its operations Rather, the PRA allows any person to inspect, or request copies of, records in the possession of an agency upon payment of costs associated with such inspection of copying

Please let me know if you require any additional information

Sincerely,

Diana Edwards

Admin Coordinator

Please note that Florida has a broad public records law, and that all correspondence sent to me via email may be subject to disclosure

How are we doing? Please provide us with your feedback <https://www.surveymonkey.com/l/bsocrimelab>



🔙 On 2/7/2019 12:55:11 AM, Franziska Kaltenbach wrote:

TO: "Broward County Sheriff Crime Lab"[browardcountysoc@mycusthelp.net]

Dear Ms. Edwards,

Thanking you again for your response. I do understand that you are not able to provide me with the DNA related records I requested, based on Flat. Stat. 943.325(14) (2018). Nevertheless, as my last request to you concerning Ernesto's case. Please, provide me with:

-- The Broward County Crime Laboratory Cases per Agency--All Cases Type-- Cases Submitted Between February 1, 2000 and February 1, 2000, depicting each piece of evidence that arrived at your Laboratory from Plantation Police Department on that date.

Each piece of evidence that was returned from your Evidence Vault to the Plantation Police Department on June 29, 2000.

Which type of analysis was conducted on the green fitted sheet (item # 4) and what type of DNA methodology was employed on it while analyzing it on February 2, 2000.

Ms. Edwards, consider this as my last request. I am concluding my research and investigation. I really thank you for your patience and for your assistance in this important matter.

Gratefully,

Franziska Kaltenbach.

On Wed, Feb 6, 2019, 1:05 PM Broward County Sheriff Crime Lab

✉ On 2/6/2019 1:05:11 PM, Broward County Sheriff Crime Lab wrote

RE: PUBLIC RECORDS REQUEST of January 14, 2019, Reference # R000307-011419

Dear Franziska Kaltenbach,

The Broward County Sheriff Crime Lab received a public records request from you on January 14, 2019. Your request mentioned:

Please accept this letter as being my second Public Records Request pursuant to §119.07, Fla. Stat. (2018). Ernesto's DNA consultant, Tiffany Roy, just requested to see and review the following necessary additional evidence in possession of the BSO Crime Laboratory (DNA Unit), in order to effectively assist him in this case:

Exhibit E

Broward Country Crime Laboratory

Cases Per Agency - All Case Types

Cases submitted between 02/01/2000 and 02/01/2000

<u>Agency Id</u>	<u>Agency Name</u>	<u># Of Cases</u>
BS	Broward Sheriff's Office	18
BS01	BSO District 01 (South Broward)	14
BS11	BSO District 11 (Pompano Beach)	13
CS	Coral Springs Police Department	10
DV	Davie Police Department	10
OP	Oakland Park Police Department	9
PP	Pembroke Pines Police Department	8
LL	BSO District 04 (Lauderdale Lakes)	5
BS05	BSO District 05 (Central Broward)	4
PL	Plantation Police Department	3
DR	BSO District 10 (Deerfield)	3
HW	Hollywood Police Department	3
TM	BSO District 07 (Tamarac)	3
CC	Cooper City Police Department	2
DN	BSO District 02 (Dania Beach)	1
BS08	BSO District 8 - West Broward	1
BS03	BSO District 03 (Int'l Airport)	1
FH	Florida Highway Patrol (Ft Laud)	1
OAG	Office of the Attorney General	1

Total of All Case Types : 110

Exhibit F



CR_VS2012

disclosed N/S

MICHAEL J. SATZ
STATE ATTORNEY
 SEVENTEENTH JUDICIAL CIRCUIT OF FLORIDA
 BROWARD COUNTY COURTHOUSE
 201 SE SIXTH STREET, SUITE 660 A, FORT LAUDERDALE, FL 33301-3360
PUBLIC RECORDS REQUEST

Contact Mrs. Seltzer at (954) 831-7228 / SSeltzer@sao17.state.fl.us

Requestor : **LUYSTER, ESQ. V. JULIA**
 Company :
 Address : **1205 N. FEDERAL HIGHWAY**
 City, State, Zip **LAKE WORTH, FL - 33460**
 Email : **JULIA@LUYSTERLAW.COM**

Request Reference #: **8089**
 Phone :
 Fax :
 Date : **3/10/2017**

Pursuant to Chapter 119, Florida Statutes, request is made for	
Request Type: COPIES	Record Type: Public Records Request
Defendant: BEHRENS, ERNESTO	CtNum: 98005739CF10A
Description : the documents listed in the Motion to Compel and Addendum	
<p>YOU ARE ADVISED that the State Attorney's Office is not the custodian of the official court records. The records you have requested are only those in the custody of the State Attorney, subject to all legal exceptions and/or redactions. For a copy of the complete and official record and/certified copies, contact the office of Howard Forman, Clerk of the Court, 17th Judicial Circuit of Florida, at (954) 831-6565</p>	

(For SAO use only)

Letter acknowledging request sent by _____	Date _____
Active Discovery provided by _____	Date _____
Reviewed/Redacted by _____	Date _____
Approved/Disapproved by SSA <i>Luscar Seltzer</i>	Date 3-10-17
File unable to be located by Unit _____	Date _____

See Notes/Exemptions/Redactions indicated below

Request Withdrawn--Date _____
 SAO record was destroyed per §119.021(2)(d),
 SAO has no record as requested _____

Notes/Exemptions from Public Record Disclosure (For Reviewing ASA use only)

- | | |
|--|--|
| <ul style="list-style-type: none"> <input type="checkbox"/> Active internal affairs investigation => exempt, §112 533, FS, §655.057(1)(a), FS <input type="checkbox"/> Attorney notes=> confidential and exempt, Lopez v State 696 So. 2d 725 (Fla. 1997), Arbelaez v State, 775 So 2d 909 (Fla.2000) <input type="checkbox"/> Confession by Defendant on active cases=> exempt, §119 071(2)(e), FS <input type="checkbox"/> Bank account numbers, debit, charge and credit account numbers and social security numbers=> exempt, §215.322(6)1, FS, §119 071(5)(a)(b), FS, §655 057, FS; §655.059, FS <input type="checkbox"/> Biometric ID information=>exempt, §119 071(5)(g), FS <input type="checkbox"/> information revealing id of Confidential Informant or confidential source=> exempt, §119 071(2)(f), FS <input type="checkbox"/> Defendant not entitled to free copy of file => Roesch v State, 633 So 2d 1 (Fla. 1993) <input type="checkbox"/> Criminal History Data=> exempt, §943.0525, FS <input type="checkbox"/> Department of Corrections Records & Investigations=> exempt, §945.10, FS <input type="checkbox"/> Autopsy Photographs=> exempt, §406.135(1), FS <input type="checkbox"/> E.M.S. Reports=> exempt, §395.51, FS <input type="checkbox"/> Home Addresses, etc., of current or former prosecutors, law enforcement personnel, firefighters, judges and code inspectors=> exempt, §119 071(4)(d)1, FS <input type="checkbox"/> Traffic Crash Report exempt for 60 days after report is filed=>exempt, §316 066(5)(a), FS <input type="checkbox"/> Videotaped statement of minor victim of sexual battery=>exempt, §119 071(2)a, FS <input type="checkbox"/> DL and DMV records=>exempt, §119 071(2), FS <input type="checkbox"/> Other exemptions=> _____ <input type="checkbox"/> Photo/video/audio recording that depicts or records the killing of a human being=>exempt, F S 406 136 <input type="checkbox"/> Security video/surveillance=>exempt 281 301, F S and/or F S 119 071(3)(a) | <ul style="list-style-type: none"> <input type="checkbox"/> Mental Health records => exempt, §394 4615(1), FS, §456 057, FS <input type="checkbox"/> On active, pending cases, information not disclosed to defense in discovery=> exempt, Satz v Blankenship, 407 So 2d 396 (Fla. 4DCA 1981); Tribune Co. v Public Records, 493 So 2d 480 (Fla. 2nd DCA, 1986) <input type="checkbox"/> Personal assets of crime victim=> exempt, §119 071(2)(i), FS <input checked="" type="checkbox"/> Personal victim information in cases of sexual offense, child abuse, lewd & lascivious offenses=> exempt, §119 071(2)(h), FS; §794 024 <input type="checkbox"/> Medical Records=> exempt, §395 3025(4), FS, §395 3025(8), FS, §456 057, FS <input type="checkbox"/> PSI, PTL, pre-plea, post-sentence investigative records=> exempt, §945 10(1)(b), FS <input type="checkbox"/> Reports of abuse of vulnerable adult=> exempt, §415 107, FS <input type="checkbox"/> Department of Children & Families Reports of child abuse=> exempt, §39 0132(4)(a), FS, §39.202, FS <input type="checkbox"/> School records=> exempt, §1002.22, FS <input type="checkbox"/> Photograph of victim of sexual offense=> exempt, §119 071(2)(h) <input type="checkbox"/> Active criminal intelligence and investigative information=> exempt, §119 071(2)(e), FS <input type="checkbox"/> Identity of caller requesting or reporting "911" emergency=>exempt, §365 171(15), FS <input type="checkbox"/> Juvenile Records=>exempt, §983 04, FS <input type="checkbox"/> Drivers License digital imaging=> exempt, §322 142(4), FS <input type="checkbox"/> Telecommunications records=>exempt, §119 071(5)(d) <input type="checkbox"/> Pharmacy Records=>exempt, §465 017(2) <input type="checkbox"/> Federal Tax Information=>exempt- 26 USC 1603 |
|--|--|

BSO CRIME LABORATORY/DNA UNIT/FINAL ZING

SAMPLE	D1S7	D2S44	D4S139	D10S28	D5S110	D7Z2
K562	4505 4343	2105 1784	6442 3431	1748 1178	3711 2916	2746
Green Sheet 1 ♂	7876 3172	2105 2655	7144 3358	4019 2752	4337 2144	2736
Green Sheet 1 ♀	—	—	—	—	—	—
Green Sheet 3 ♂	—	—	—	—	—	—
Green Sheet 3 ♀	—	—	—	—	—	—
Green Sheet 4 ♂	—	—	—	—	—	—
Green Sheet 4 ♀	—	—	—	—	—	—
- V	6905 5770	3278 1928	9335 5105	2088 1047	2147 1956	2750
PS 95-118	9074 4340	3117 1730	8107 4307	1895 1592	3778 3064	2750
2178 E	2498 119/96					287
Enclon. Polymers	7104 3140	2544 2653	7621 3333	3985 2722	4317 2155	2752
2178 E	2498 119/96					287

MEMBRANE # 95-10-151

CASE # 91816F

CLDNA 9(3/94)

BSO CRIME LABORATORY/DNA UNIT
YIELD GEL DATA

LANE	SAMPLE	ng DNA/LANE	ng DNA/SAMPLE	DNA SPECIALIST
CATHODAL ORIGIN				DATE 3/29/95
1	BLANK		LOT #	POWER SUPPLY P-1
2	STANDARD	500 ng	FL9000+	TANK VOLTAGE 200 VOLTS
3	STANDARD	250 ng	CC3	TIME ON 3:45
4	STANDARD	125 ng	CC4	TIME OFF 4:00
5	STANDARD	63 ng	CC5	
6	STANDARD	31 ng	CC6	
7	STANDARD	15 ng	CC7	
8	9186F Green 107		x8	SLP 1 lane
9	Green 107		x8	
10	Green 307		x8	
11	Green 307		x8	
12	Green 407		x8	
13	Green 407		x8	
14	Deaf 611		x8	
15	7595-118		x8	
16			x8	
17			x8	
18			x8	
19			x8	
20			x8	
21			x8	
22			x8	
23			x8	
24			x8	
25	BLANK			
MIDDLE ORIGIN				
26	BLANK			
27			x8	
28			x8	
29			x8	
30			x8	
31			x8	
32			x8	
33			x8	
34			x8	
35			x8	
36			x8	
37			x8	
38			x8	
39			x8	
40			x8	
41			x8	
42			x8	
43			x8	
44			x8	
45			x8	
46			x8	
47			x8	
48			x8	
49			x8	

BSL CRIME LABORATORY \ DNA UNI
DIGESTION OF BODY FLUID STAIN WITH HAE III

Case # : 9186F DNA Specialist : J. J. J. DATE: 3 Oct 95

Digestion Control Lot Number : DMTC01 Source: BRL

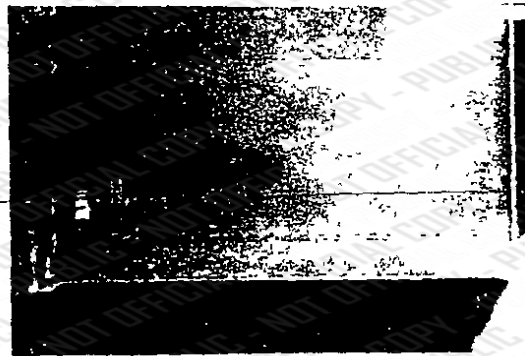
REAGENT	VOL(ul)	LOT#
TE-4	189	10-10-95
SPERMIDINE	9.6	1-27-96
HAE III BUFFER	25	EJA403
HAE III ENZYME	1	SOURCE BRL LOT # EJA402
AMMONIUM ACETATE	83	1-18-96
ABSOLUTE RGT. ALCOHOL	666	952110-36
70 % REAGENT ALCOHOL	1000	2-8-96
TE -4	16	10-10-95
TIME		START: 4:30P END: 10:00A

DATE			
SAMPLES			
REAGENT	VOL(ul)	REDIGEST/LOT	REDIGEST/LOT
TE-4	212		
SPERMIDINE (OPTIONAL)	9.6		
HAE III BUFFER	25		
HAE III ENZYME	1		
AMMONIUM ACETATE	83		
ABSOLUTE RGT. ALCOHOL	666		
70 % REAGENT ALCOHOL	500		
TE-4	16		
TIME		START: END:	START: END:

TEST GEL PREPARATION

DNA SAMPLES	2ul	XXXXXXXXXXXXXXXXXXXX	REDIGEST	REDIGEST
LOADING SOL.	2ul	10-27-95		
AGAROSE	1.0 gm	90K8053		
GEL/TANK BUFFER	100mLs	3-13-96		
EtBr	10ul	11-2-95		

	SAMPLE	LOT #	SOURCE	DATE 4/10/95
1				ANALYST J. K. K.
2	VISUAL MARKER	3-5-96	Powder	CASE#S
3	DIGEST CONTROL	INTCOI	TEL	9166F
4	TEST GEL CONTROL	EEACOI	TEL	
5				
6	9166F Green not 1 27			
7				Tank voltage 200 volts
8	Green not 1 27			Time on 2:37
9	Green not 3 27			Time off 2:50
10	Green not 5 27			
11	Green not 4 27			
12	Green not 4 27			
13	DIWODI			
14	75 GS-118			
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25	BLANK			
	MIDDLE ORIGIN			
26	BLANK			
27	VISUAL MARKER			
	LOT#			
28				
29				
30				
31				
32				
33				
34				
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49				
50				



PSO CRIME LABORATORY/DNA UNIT
ANALYTICAL GEL DATA

CASE # 9186 F DNA SPECIALIST Jpm DATE 10-4-15 TIME ON 5:05 P
POWER SUPPLY 2-1 TRAY # 6-7 GEL LENGTH 12 X 20 CM TIME OFF 9:15
VOLTAGE(GEL) 30 VOLTS MEMBRANE # 95-10-151

SIZING	LANE	SAMPLE	VOL (ul)	SOURCE
	1	VISUAL/LOT EBE101	10ul	↑
1	2	SIZE MARKER/LOT EDN001003	10ul	BRK
2	3	CELL LINE/LOT 25C09 EE2001	10ul	↓
3	4	9186 F Green stain 1 ♂	10ul	
4	5	9186 F Green stain 1 ♀	10ul	
5	6	SIZE MARKER	10ul	
6	7	9186 F Green stain 3 ♂	10ul	
7	8	9186 F Green stain 3 ♀	10ul	
8	9			
9	10	9186 F DRUG WOOD	10ul	
10	11	SIZE MARKER	10ul	
11	12	TS 95-118	10ul	
12	13	9186 F Green stain 4 ♂	10ul	
13	14	9186 F Green stain 4 ♀	10ul	
14	15			
15	16	SIZE MARKER	10ul	
	17	BLANK		

WITNESS: kn

GEL PREPARATION		
REAGENT	VOLUME	LOT NUMBER
LOADING SOLUTION	4.0ul	10 87.95
AGAROSE	2.0 GRAM	EEA001
GEL/TANK BUFFER	200 ml	313-916
PLACE RANDOM SAMPLES BETWEEN LANES 11 & 16		



Exhibit G

AFFIDAVIT OF SIRU ANDELIN

STATE OF FLORIDA
COUNTY OF BROWARD.

BEFORE ME, the undersigned authority, personally came and appeared Siru Andelin, who after being duly sworn, did depose and say:

1. I am Siru Andelin. I am a resident of the State of Florida and am over the age of eighteen and am sui juris.
2. On October 10, 1997 when Ernesto Behrens was arrested by Las Vegas Metropolitan Police Department in Clark County, I was his fiancée.
3. Although I am not usually able to recollect circumstances that happened so many years ago, I do have a specific recollection of Ernesto's day of arrest because of the traumatic experience I lived that day.
4. I have also become more clear of the facts of Ernesto's case after reading his story which I found at www.helpdna.org.
5. I am the person who was at the apartment when the law enforcement officers came in to collect our personal belongings.
6. On that day, the officers ordered me to remain in the TV room and not to enter the bedroom while they were searching it. So, I remained outside the bedroom until they left.
7. Multiple male and female officers made crazy comments about Ernesto and compared him with "Ted Bundy" emphasizing that he was a very dangerous person with double personality.
8. After the law enforcement officers left our apartment, I was very

USA

nervous and disturbed. Later I noticed that the light green bed sheets that were on our dirty laundry hamper with some of Ernesto's clothing did vanish. I never gave any consent or permission for those items to be removed from our apartment nor were they returned to me on a later day.

9. Few weeks ago, after reading Ernesto's story in the internet, I became to understand the circumstances of his case. Specifically, since I have not seeing him in the last 21 years.

10. Understanding at this time, that the sole evidence pointing to Ernesto's guilt is a spot of semen found on a light green fitted sheet, like the one we had on the day of his arrest, and realizing now that our light green sheets were the set of sheets that vanished from our apartment in October 1997 plus further taking into consideration the fact that the victim's DNA was not found on the green bed sheets presented at trial, although she slept nude on those sheets for over 2 weeks.

I am left with the strong belief that the light green bed sheets presented in Ernesto's trial as the only incriminating evidence of this case, are the very same sheets collected at our apartment in Las Vegas, Nevada back in 1997. Thus, if those sheets contained Ernesto's DNA, they must also contain mine.

11. For all the above-stated reasons, I am willing to submit my DNA to Ernesto's DNA consultant, Ms. Tiffany Roy, in order to conduct a new DNA testing on those sheets in order to find out if those sheets contain any trace of my DNA profile, or if the hairs found on those sheets can be identified as being my hairs. This way being able to establish that the light green sheets vanished from our apartment in Las Vegas, Nevada, are the same light green bed sheets presented at Ernesto's trial.

(s)

Siru Andelin.

SWORN AND SUBSCRIBED before me, on this 1 day of July, 2018, in the city and county aforesaid, by Siru Andelin, personally know to me, who did swear under oath that the above affidavit is true and correct to the best of her knowledge and belief.

(s)

Notary Public.

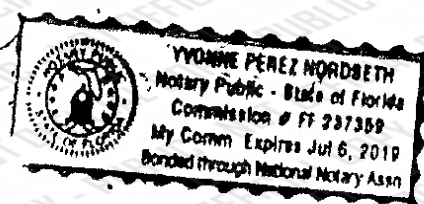


Exhibit H

POLICE DEPARTMENT
PLANTATION, FLORIDA

PROPERTY RECEIPT

☒ Trial Evidence ☐ Safekeeping ☐ Found Property ☒ Lab Evidence (Attach Memo) ☐ Recovered Property

933 63
9186F

2 CASE NO 1619-115-05	3 DATE - TIME RECEIVED 051295-0830	4 BIN NO P110	5 TYPE OF CASE Sexual Battery
6 ADDRESS WHERE PROPERTY IMPOUNDED (GIVE EXACT LOCATION WHERE FOUND) 1216 SE 1 Ave Ft. Lauderdale			
7 FOUND BY Same as undersigned	ADDRESS	CITY	STATE TEL #
8 SUSPECT(S) (GIVE FULL NAME) UK	RACE/SEX	DOB	ARRESTED <input type="checkbox"/> YES <input type="checkbox"/> NO NTA <input type="checkbox"/> YES <input type="checkbox"/> NO CITATIONS <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> PENDING
9 VICTIM Denise Louise Wood	ADDRESS	CITY	STATE TEL #
10 OWNER'S NAME State of Florida	ADDRESS	CITY	STATE TEL #

11 ITEM NO	12 QTY	13 DESCRIPTION
1	1	Rape kit
<div style="background-color: black; width: 100%; height: 50px; margin-bottom: 10px;"></div> <div style="text-align: right;">Last Item</div>		

14 SPECIAL INSTRUCTIONS *Dredwood Redwood Reto Prop 121199 1300* ☒ OTHER (Specify) _____
☐ PROCESS FOR FINGERPRINTS
☐ DESTRUCTION PURPOSE ONLY ☐ RELEASE UPON PROOF OF OWNERSHIP

15 I hereby acknowledge that the above list represents all property taken from my possession and that I have received a copy of this receipt
 16 I hereby acknowledge that the above list represents all property impounded by me in the official performance of my duty as a Police Officer

Signature *[Signature]*

Division CID PL # 8601
 Impounding Officer Signature *[Signature]*
 Print Name Brian Hager

17 RECEIVED BY (Print Name)	Signature	REASON	DATE AND TIME RECEIVED
<i>[Signature]</i>	<i>[Signature]</i>	EVID	5-12-95 1300
RECEIVED BY <i>[Signature]</i>	<i>[Signature]</i>	TO LAB	5-12-95 1015
RECEIVED BY <i>[Signature]</i>	<i>[Signature]</i>	LD	5/15/95 1100
RECEIVED BY <i>[Signature]</i>	<i>[Signature]</i>	Analysis	5/16/95
RECEIVED BY <i>[Signature]</i>	<i>[Signature]</i>	ret to PD	5-18-95 12:00
RECEIVED BY <i>[Signature]</i>	<i>[Signature]</i>	Disco. 014	12/1/99 0900
18 FINAL DISPOSITION		AUTHORITY	DATE AND TIME OF DISPOSITION

WHITE - ORIGINAL • GREEN - PROPERTY ROOM • YELLOW - PROPERTY ROOM • PINK - RECORDS • GOLD - PERSON PROPERTY

NAME	REASON	DATE	TIME
R. Amabile	to + BSO Lab	6-28-00	0900
Donna F. Marchese	Lab	6-28-00	0930
Steve Geller	Return to PPD	6-29-00	1350

Handwritten signatures and initials, including a large signature that appears to be "J. [unclear]" and several other initials and marks.

Exhibit I

R000307-011419 - Public Records Request

Message History (14)

☑ On 2/26/2019 1:07:59 PM, Broward County Sheriff Crime Lab wrote.

Subject: BCSO Crime Lab Public Records Request :: R000307-011419

Body:

RE PUBLIC RECORDS REQUEST of January 14, 2019 . Reference # R000307-011419

Dear Franziska Kaltenbach,

The Broward County Sheriff Crime Lab received a public information request from you on January 14, 2019. Your request mentioned

Could you tell me if any of those five (5) cases involved BSO LAB Number: 9186F or PPD Case Number: 1619-95-05 ?

Yes, that case was submitted on that day.

If you have any questions or need additional information, please feel free to contact my office at 9548316427

Sincerely,

Diana Edwards

Admin Coordinator

Please note that Florida has a broad public records law, and that all correspondence sent to me via email may be subject to disclosure

How are we doing? Please provide us with your feedback <https://www.surveymonkey.com/r/bsocrimelab>



↩ On 2/26/2019 12:08:23 PM, Franziska Kaltenbach wrote:

TO: "Broward County Sheriff Crime Lab"[browardcountysoc@mycusthelp.net]

Okay Ms. Edwards, I understand. I am submitting a separate request on that topic.

However, on the one you responded depicting the cases logged into your Lab on May 15, 1995. Could you tell me if any of those five (5) cases involved BSO LAB Number: 9186F or PPD Case Number: 1619-95-05 ?

Thank you!

Franziska Kaltenbach.

On Tue, Feb 26, 2019, 7:06 AM Broward County Sheriff Crime Lab

✉ On 2/26/2019 7:06 09 AM, Broward County Sheriff Crime Lab wrote:

Subject: BCSO Crime Lab Public Records Request :: R000307-011419

Body:

RE PUBLIC RECORDS REQUEST of January 14, 2019 Reference # R000307-011419

Dear Franziska Kaltenbach,

The Broward County Sheriff Crime Lab received a public information request from you on January 14, 2019. Your request mentioned

"Based on your response and my complicated schedule. Ms. Edwards, I would like to make a formal request to either have an appointment to go to your Lab and inspect the requested analysis associated with any (PCR or RFLP) DNA testing conducted on this case on February 2, 2000 (Which I could do on February 28, 2019, between 9:00 and 10:00 a.m, if possible) or in fact, it would be a lot more convenient for me to just be informed of the associated costs attached to having copies of the these requested records, so that I can immediately submit payment."

This request has been marked closed, please submit this as a separate request and I will forward it to BSO Legal for review.

Additionally, I would need also the Broward County Crime Laboratory "Cases per Agency--All Cases Type" Cases Submitted Between May 15, 1995 and May 15, 1995, depicting each piece of evidence that arrived at your Laboratory from Plantation Police Department on that date. has been marked closed, please submit this question on a separate request and I will forward it to BSO Legal for review.

Your request has been completed and the document is available for download through the public portal.

This request is now considered completed and closed, any additional requests should be submitted on a separate request.

Sincerely,

Diana Edwards

Admin Coordinator

Please note that Florida has a broad public records law, and that all correspondence sent to me via email may be subject to disclosure

How are we doing? Please provide us with your feedback <https://www.surveymonkey.com/r/bsocrimelab>



↩ On 2/25/2019 9:06:46 PM, Franziska Kaltenbach wrote:

TO: "Broward County Sheriff Crime Lab"[browardcountysoc@mycusthelp.net]

February 25, 2019

RE: PUBLIC RECORDS REQUEST of January 14, 2019., Reference # R000307-011419.

Exhibit J

SWORN AFFIDAVIT

**Mr. Ernesto Behrens-732564 [G-1110U]
Calhoun Correctional Institution
19562 S.E. Institution Drive
Blountstown, Florida 32424**

TO: The Seventeenth Judicial Circuit Court In And For Broward County, Florida

REF.: STATE OF FLORIDA v. ERNESTO BEHRENS CASE NO.: 98-5739 CF10A

To The Honorable Court,

This sworn affidavit is being submitted in conjunction with the instant DNA Post Conviction Motion in support of and to notify this Honorable Court of such material witnesses are willing to corroborate via testimonial statement [s] as to the specific facts therein the instant (DNA) motion.

1. On December 17, 1999 an "Arthur" hearing was held where the Honorable Judge: Ronald J. Rostchild presided over, this specific hearing.

2. During this "Arthur" hearing there were several key individual [s] present, and they are listed as follows: State Attorney- Mr. Dennis Siegel, State's Expert Witness- Serologist- Ms. Donna Marchese, Honorable Court's Bailiff- (Male), Defense Attorney-Mr. Ty Terrel and Ms. Andrea Shelowitz, and the defendant- Mr. Ernesto Behrens.

3. During such review of the specific evidence that the State of Florida intended to present at trial. There was a conversation that ensued between the State's Expert Witness Ms. Donna Marchese and the defense concerning a specific exhibit, a spot cut from the" victim's fitted sheet."

4. Ms. Donna Marchese, Serologist, made the following statement:

"While using my microscope I was able to find one (1) spermatozoa cell, that was entwined into the fiber of the fitted sheet". She further stated the she pulled the cell from the fabric, and performed a (RFLP) DNA testing. That resulted into a match of this defendant's DNA make-up.

5. In preparation of my post-trial DNA motion I have been able to obtained sworn statement [s] from the DNA/ Forensic Community. That has stated it is scientifically impossible to conduct a (RFLP) DNA testing with a single spermatozoa cell. Indicating apparent variance to the State's Expert witness testimony' resulting into "questionable" evidence in this instant case.

6. Hereafter, I contacted Mr. Ty Terrel, my trial attorney on September 5, 2003 round about [1:40 p.m.] by phone, inquiring as to his recollection of the 12-17-99 "Arthur" hearing. Upon him affirming that he recall such proceeding, I further inquired as to his specific recollection of the State of Florida's Expert Witness specific testimony pertaining to the spermatozoa cell that was allegedly a "match" to my (DNA) make-up?

7. Mr. Ty Terrel, quoted back to me via this phone call essentially verbatim as to Ms. Donna Marchese previous testimony, however, Mr. Terrel used words and phrases during our call such as i.e.:

"I clearly remember talking about testing one (1) single spermatozoa cell, and how it the (cell) was intertwined within the fabric of the sheet and her using a microscope to pull the cell from... But, as to Ms. Marchese exact words that she used during the latter portion of her statement then...I (Mr. Terrel) cannot remember."

8. Also, see attached correspondence dated October 6, 2003, where Mr. Terrel has stated the following:

"Ernesto, I clearly remember talking about testing one (1) single spermatozoa cell, and how it the (cell) was intertwined within the fabric of the sheet..."

9. The defendant now states to this Honorable Court that based upon such holding and whereas the defendant continuously asserts his innocent to this specific crime. Not to exclude that the (DNA) community as a whole does not agree with the particularities proffered by the State of Florida's Expert Witness pertaining to the facts of such procedural tested. See attached sworn affidavit.

9. Also, whereas Mr. Ty Terrel and Ms. Andrea Shelowitz, Attorneys-at-Law, located at 1801 S. Perimeter Road Suite 180, Fort Lauderdale, Florida 33309. Will proffer their individual and professional recollection ... of the State of Florida's Expert testimony if this court requires it.

10. This sworn affidavit is being submitted to this Honorable Court in good faith and to provide the court such opportunity to subpoena the defendant's witnesses if so required.

Respectfully Submitted


Ernesto Behrens, #732564

NOTARY

Before, me the undersigned authority, this day personally appeared, Ernesto Behren
Who first being duly sworn, stated that he is the individual that has provided the information
herein, and such facts are true. Thereby, certifying that the forgoing has been thoroughly read and
having personal knowledge of the facts herein are true and correct.

/s/ Ernesto Behren

Sworn to and subscribed before me this 22nd day of October 2003.

/s/ Thomas M. Woodham

My Commission Expires: 9-9-07

Notary No.: DD248679

Notary Public, State of FLORIDA

Type of identification used? Personally known _____, or produced identification ✓

Department of Corrections
Inmate I



Thomas M. Woodham
Commission #DD248679
Expires: Sep 09, 2007
Bonded Thru
Atlantic Bonding Co., Inc.



SHELOWITZ, SHELOWITZ & TERRELL, P.A.

1801 SOUTH PERIMETER ROAD, SUITE 180 • FORT LAUDERDALE, FLORIDA 33309

TELEPHONE 954.489.2204 • FAX 954.489.0637
WWW.SSTLAWOFFICE.COM

MARC A. SHELOWITZ*
ANDREA SHELOWITZ
TY TERRELL
DONALD GEUN
ANDREW M. COFFEY
*Admitted to New York Bar

October 6, 2003

Ernesto J. Behrens
D.C. # 732564
Mailing No.: G110U
Caihoun Correctional Institution
19562 S.E. Institution Drive
Blountstown, Florida 32424

Dear Ernesto:

I am in receipt of your letter wherein you are requesting an affidavit from me regarding statements from Donna Marchese regarding spermatozoa and DNA testing. First of all, I have reviewed the statute you speak of (3.853) and feel you do have a viable claim for relief under that statute. Although I intend to help you where I can, I don't see where you need an affidavit from me in order to proceed forward with the post conviction relief.

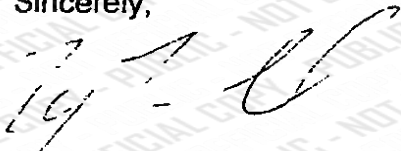
As for the affidavit, I am very uncomfortable signing an affidavit that could end up in the Supreme Court which details a conversation that I may have had with Donna Machese in 1999 when I simply don't remember the "verbatim" words she used during one of our many conversations. Ernesto, I clearly remember her talking about testing one single Spermatozoa and how it was intertwined within the fabric of the sheet, but I do not remember exactly what words she used and the rest of our conversation on the issue. I spoke with Donna Marchese several times and we spoke about DNA testing several times while viewing the sheet, both in and out of court. I can not positively remember if I first saw the sheets in court the day of the Arthur Hearing or if it was in the jail while they were being shown to you. I spent a lot of time on your case including meetings with experts, viewing the physical evidence, taking many trips to the jail, and a

week of trial and I just can not remember the specific time and place and words used when Donna Marchese was talking about the single spermatozoa.

I don't mean to be an obstacle in your quest for freedom, and I will help where I can, but the exact content of an affidavit that you want me to produce, I just can't do. On the other hand, if you want an affidavit with the information contained in this letter, I will be happy to provide you with that. Think it over and let me know if you still want an affidavit or some alternative assistance.

I am sorry this correspondence does not meet with your expectations.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyrone A. Terrell", with a stylized flourish at the end.

Tyrone A. Terrell, Esquire

Exhibit K

September 11, 2003

EBN, INC.
MRS. HOLDER, CEO
P.O. BOX 1562
POMPANO BEACH, FLORIDA 33061
PHONE NO.: (954) 786-8619

LAB CORP, LABORATORY CORPORATION OF AMERICA
MRS. EISENBERG, PH.D
P. O. BOX 13973
1912 ALEXANDER DRIVE
RESEARCH TRIANGLE PARK, NORTH CAROLINA 27709

REF.: ON BEHALF OF MR. ERNESTO BEHRENS # 0-732564
CASE NO.: 98-5739 CF10A

SUBJ.: SWORN AFFIDAVIT / UNIVERSAL INQUIRY AS TO THE DNA PROCEDURES
/ CLARIFICATION AS TO THE DIFFERENCE IN (RFLP) DNA TESTING, AND (PCR)
DNA TESTING.

MRS. Eisenberg,

As per our recent phone conference, whereby you spoke with Mr. Behrens and myself; this correspondence is forwarded to you by EBN, INC. EBN, will be the mediator and responsible for all current and future financial requirements between Lab Corp and Mr. Behrens, holding Mr. Behrens's interest in this matter.

SUMMARY

Mr. Behrens is currently incarcerated in the State of Florida on a crime of which he is claiming his complete innocence. The State of Florida proffered in support of Mr. Behrens's conviction alleged positive DNA results derived from partial tangible evidence collected from the crime scene. Mr. Behrens did not object to the DNA evidence presented by the State of Florida, including their DNA expert's testimony. Due to defense counsel insufficiency during trial

Mr. Behrens only option now is to file a DNA Post Conviction Motion (3.853), requesting the court to grant a new DNA testing per the new (PCR) test, on the actual evidence submitted at trial; as well as the evidence collected by the State of Florida but not tested for DNA.

FACTS

In the case **STATE of Florida v. Ernesto Behrens**, case no.: 98-5739 CF10A, the defendant was formally charged with Armed Sexual Battery and Burglary of a Dwelling with a Battery on March 27, 1998. The defendant did proceed to trial and was found guilty by a jury in 2000. The State of Florida proffered to the court as evidence positive DNA results from partial evidence collected from the crime scene.

However, in Mr. Behrens's DNA Post Conviction Motion that he intends to present to the Florida 's Court as support for granting a new DNA testing on all of the evidence, with the sophisticated (PCR) test. Mr. Behrens's strategy is to illuminate the gross conflict and inconsistency as to the State's Expert Witness' Testimony and the DNA community, which transpired during a pre-trial hearing on the evidence that the State plans to proffer at trial and the evidence actually presented at trial.

The State's Expert Witness, (Broward County Crime Lab Tech), asserted that she received the victim's fitted sheets in the crime lab. During her examination for seminal fluid, she located four spots, which were assigned numeric numbers (i.e., spot-1, spot-2, spot-3 and spot-4). The State's expert witness asserted that (spot-1, spot-3 and spot-4) tested positive for seminal fluid, whereas, (spot-2) had a negative result. This witness additionally asserted that during such examination she discovered "hairs" on the victim's sheet and "dry-spots" on the victim's comforter, but did not perform any type of DNA testing on these specific items.

The expert further testified that upon a thorough examination of (spot-3 and spot-4), that she was unable to discover any DNA material on those pieces of evidence.¹ Concerning (spot-1) she stated (verbatim):

"While using my microscope I was able to find one (1) spermatozoa cell that was entwined into the fiber of the fitted sheet". She further asserted that she pulled the cell from the fabric, and performed a (RFLP) DNA testing that resulted into a match of Mr. Behrens's DNA make-up. During this testimony she explains to the jury that, **"if you were to take a single piece of DNA from a single cell and stretch it out, it would be approximately (6) feet long. Which is really kind of hard to imagine, but the body has a wonderful way of twisting and compacting it to make it fit into each and every one of our cells."**

Mrs. Eisenberg in accordance to our (9-11-03) phone conference and such clear-cut information shared during this call. Defining, spermatozoa cells and the difference in (RFLP) DNA testing as opposed to (PCR) DNA testing, also articulating the required weight and amount of cells that are needed to perform a reliable DNA test, ect...it is now imperative that I acquire the riches of your knowledge per our phone conference in a sworn written affidavit format. It has

¹ It is note worthy to point out that the State's (DNA) experts stated that spot-1 is approximately a "dime" in dimensional size, spot-3 is approximately "five" times bigger than spot-1, and spot-4 is approximately "ten" times bigger than spot-1. In spite of the exceeding dimensional size of spot-3 and spot-4, she was unable to find any (DNA) material thereon these specific spots.

become apparent that your expert statements; being highly recognizable in the DNA community, and the State of Florida's expert's testimony, have some sharp inconsistencies. Thus, resounding a prior statement quoted herein, Mr. Behrens's strategy is to illuminate the gross conflict and inconsistency as to the State's expert witness testimony in opposed to the overall DNA community.

CONCLUSION

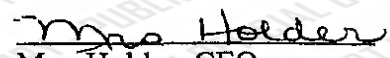
Considering the facts of this case at hand, the State of Florida by way of their expert witness presented to the trial court to support their theory, the results from a (RFLP) test using a single spermatozoa cell to produce an alleged positive DNA match of Mr. Behrens's DNA. We now inform you that Mr. Behrens is serving a life sentence in the Florida State Prison based solely from the (RFLP) test results and the State's Expert testimony, which by the way was not corroborated by any other DNA testing or expert testimony. We must mention herein that the investigation resulted into absolutely no independent evidence, i.e. (fingerprints, palm prints, foot casting nor victim' or witnesses identification). But most importantly there is an unrefuted alibi witness for Mr. Behrens, not to exclude that there were no DNA tests performed on the remaining evidence within the State of Florida possession i.e. ("hairs and dry-spots") found on the victim's sheets and comforter.

In holding Mr. Behrens interests, he has authorized us to voice on his behalf that he only seeks justice in this matter. He has continued to claim such innocence and will not relinquish in this fight to regain his freedom. Please, if you hold any additional comments or suggestions surrounding the DNA community that meet the facts of this case; that have not been covered herein, and you are of the opinion that such information would be fruitful to Mr. Behrens in his endeavor, we ask that you would freely share this such information.

Please place your answers and complete responses on a separate sheet, labeling this sheet answers and respond in numerical order, and then place these documents in the following order.

- Our cover letter detailing the facts and summary of this case should be first.
- Our questions should be second.
- This corporation's answers and detail responses to the requested questions should be third.
- Finally the signed certificate of service and the signed sworn oath making this document authentic should be fourth and the last sheet herein.

Sincerely


Mrs. Holder, CEO
EBN, INC.
P.O. Box 1562
Pompano Beach, Florida 33061
(954) 786-8619

SWORN AFFIDAVIT

**FROM: LAB CORP, LABORATORY CORPORATION OF AMERICA
MRS. EISENBERG, PH.D
P. O. BOX 13973
1912 ALEXANDER DRIVE
RESEARCH TRIANGLE PARK, NORTH CAROLINA 27709**

**TO: IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY, FLORIDA**

REF.: STATE OF FLORIDA v. ERNESTO BEHRENS CASE NO.: 98-5739 CF10A

To Whom It May Concerns:

The following questions have been presented to us for explicit answers by Mr. Ernesto Behrens, therefore, based on Lab Corp's exclusive pride and mission statement, we answer the following questions in their entirety.

1. Would it be scientifically possible and reliable to conduct a (RFLP) DNA testing and a (PCR) DNA testing using one single spermatozoa cell? Yes or No, Please explain your answer.
2. What is the size of one spermatozoa cell?
3. What is the nanogram or picogram weight of one spermatozoa cell?
4. What is the minimum amount of spermatozoa cell [s] required to perform a reliable scientific test using (RFLP) and (PCR)? Please explain your answer.
5. Is there a minimum required size of DNA sample[s] needed to perform a (RFLP) DNA test versus a (PCR) DNA test? Yes or No, Please explain your answer.
6. Upon a normal, healthy male ejaculation, approximately how many spermatozoa cells are released?
7. Based upon the DNA protocol community is it possible to recheck/retest evidence that has been (RFLP) tested, with the new (PCR) test? Please explain your answer.
8. When viewing (RFLP) or (PCR) DNA forms of tests individually, the National Resource Council recommends the use of which test when the forensic evidence is old, small, and partially degraded? Please explain your answer.
9. Is it possible to extract DNA from human hair? Yes or No

10. What is the specific type of DNA test that must be used when the evidence is human hair? Please explain your answer.

11. Is the (PCR) test a more sophisticated test in opposed to the (RFLP) test? Yes or No, Please explain your answer.

12. Would it be safe to say that this company recommends that all evidence collected from the crime scene be DNA tested, and not just partial evidence? Please explain your answer.

Based on the articulate facts therein the cover letter attached to this questionnaire it would be wise and parallel to this corporation recommendation to perform a (PCR) DNA test on the remaining untested evidence, to corroborate the reliability of the previous?



Laboratory Corporation of America® Holdings
P.O. Box 13973
1912 Alexander Drive
Research Triangle Park, North Carolina 27709
Telephone: 800-533-0567
Fax: 919-361-7737

September 30, 2003

ENB, INC.
2740 NE 47 Street
Lighthouse Point, FL 33064
Attn: Mrs. Holder

RE: Mr. Ernesto Behrens #0-732564
Case No.: 98-5739 CF10A
FS Lab #F03-4525

Dear Mrs. Holder:

Pursuant to your request for answers to the questions that you provided, I am providing the following responses:

1. Based on the DNA quantity requirements for RFLP and PCR analysis it is my opinion that it is not scientifically possible to obtain reliable results from one single spermatozoa cell using traditional published methodologies.
2. The human sperm cell consists of a head 0.005 by .003 mm and a tail .05 mm long.
3. The weight of a spermatozoa cell is not a determining fact in RFLP or PCR analysis.
4. The minimum amount of spermatozoa required for RFLP and PCR analysis would depend on the quantity of DNA in each sperm cell. The average amount of DNA in a single sperm cell is approximately 3.5 pg.
5. The average minimum amount of DNA required for RFLP is approximately 50 ng and the average minimum amount of DNA required for PCR is approximately .1 ng. It is possible to get results from samples with less DNA than the suggested amounts of DNA depending on the quality of the DNA.
6. The average amount of seminal fluid in a normal healthy male ejaculation is 2.5 to 3.5 ml containing 200 to 300 million sperm cells.

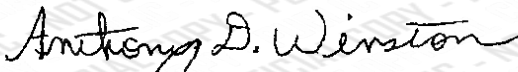
7. If there is enough evidence remaining, you can retest the evidence with PCR using excepted protocols.
8. Do to the lower DNA quantity and quality requirements associated with PCR analysis PCR would be the best method of analysis for old, small and partially degraded samples. Few labs if any are still using RFLP methods.
9. Yes it is possible to extract DNA from human hair.
10. There are two types of PCR methodologies that can be used for hair analysis. If the hair has an intact root it can be tested using **nuclear** DNA methods, if there is not a root present on the hair **mitochondrial** DNA method must be used.
11. No I would not say that PCR testing is more sophisticated than RFLP. They are simply two different types of methodologies used in forensic identity testing. RFLP is an older method of analysis requiring higher quality and quantity of DNA than the PCR method. PCR produces results in days vs. RFLP, which takes months.
12. LabCorp can not suggest to a client that all evidence collected from a crime scene be tested. The type and number samples tested would depend on the particular circumstances involved with that particular case.

Advancements in DNA testing technology have made it possible to obtain results from evidence that in the pass yielded none. Due to the lower DNA quantity and quality requirements for PCR analysis evidence previously analyzed using RFLP yielding no results may now yield results using PCR technology.

Once a case has been accepted for testing the details of that particular case will be reviewed at that time. It is not the policy of LabCorp to suggest to clients what samples they should submit for testing.

Should you need additional information or have any questions, please give me a call at 1-800-533-0567 ext. 3209.

Sincerely,



Anthony D. Winston
Associate Technical Director
Forensic Identity Testing



CERTIFICATE OF SERVICE

I, Anthony D. Winston, the preparer of the answers herein, certify that a copy of this entire document has been placed in Lab Corp's file and the original signed and sworn copy has been placed in the United States Postal Service possession to be delivered to the following individuals:

Mrs. Holder, in the interest State of Florida v. Ernesto Behrens, Case No.: 98-5739CF10A
EBN, INC.
P.O. Box 1592
Pompano Beach, Florida 33061
(954) 786-8619

on this, 1 day of October 2003.

/s/ Anthony D. Winston
Anthony D. Winston
Print Name
LAB CORP, I. D. No.: NA
P. O. BOX 13973
1912 ALEXANDER DRIVE
RESEARCH TRIANGLE PARK,
NORTH CAROLINA 27709

NOTARY

Before me the undersigned authority, this day personally appeared,
Anthony D. Winston, Associate Technical Director
NAME Title I.D. No.

Who first being duly sworn, states that he or she is the individual that provided the answers and responses outlined on the answers sheet[s]. Based on the facts and summary provided in the cover letter from EBN INC, in the interest of Mr. Ernesto Behrens, case no.: 98-5739-CF10A. Thereby, certifying that the answers and responses have been thoroughly read and having personal/professional knowledge of the forgoing herein are true and correct.

/s/ Anthony D. Winston

Sworn to and subscribed before me this 1st day of October 2003.

/s/ Julie A. Hnat
Julie A. Hnat
Notary Public, State of North Carolina

My Commission Expires: Oct 31, 2004
Notary No.: _____

Type of identification used? Personally known X, or produced identification _____

Exhibit L

Local Match Results Report

Date: Jan-04-1996 Time: 12:21

Target ID: 09186F/GREENSHEET1

Laboratory: FL0060000

Specimen Type:

Target Profile:

D1S7:	7876,	3172,	N/A,	N/A	Moderate Stringency
D2S44:	2905,	2655,	N/A,	N/A	Moderate Stringency
D4S139:	7744,	3358,	N/A,	N/A	Moderate Stringency
D10S28:	4019,	2732,	N/A,	N/A	Moderate Stringency
D5S110:	4307,	2144,	N/A,	N/A	Moderate Stringency

Match Window in Effect:

Above 10000 BP: 8.0%

Between 10000 BP and 2000 BP: 3.0%

Below 2000 BP: 3.0%

Target profile searched against 977 Casework profiles.

Target profile searched against 0 Offender profiles.

Target profile searched against 0 Population profiles.

Match Summary:

5 Loci Candidates:	1
4 Loci Candidates:	0
3 Loci Candidates:	0
2 Loci Candidates:	0
1 Locus Candidates:	0

Total Candidates: 1

Match Details:

Specimen ID: 1571

Laboratory: FL0060000

Local Specimen ID: 10892D05/Q-MALE

D1S7:

1 7888 (T1, 0.2%)
2 3157 (T2, 0.5%)

D2S44:

1 2867 (T1, 1.3%)
2 2677 (T2, 0.8%)

D4S139:

1 7625 (T1, 1.6%)
2 3363 (T2, 0.1%)

D10S28:

1 3990 (T1, 0.7%)
2 2718 (T2, 0.5%)

D5S110:

1 4284 (T1, 0.5%)
2 2130 (T2, 0.7%)

Local Match Results Report

Date: Jan-08-1996 Time: 17:25

Target ID: 9186F/
Laboratory: FL0060000
Specimen Type:

Target Profile:

D1S7:	6965,	5770,	N/A,	N/A	Moderate Stringency
D2S44:	3078,	1720,	N/A,	N/A	Moderate Stringency
D4S139:	9235,	5105,	N/A,	N/A	Moderate Stringency
D10S28:	2088,	1047,	N/A,	N/A	Moderate Stringency
D5S110:	2147,	1956,	N/A,	N/A	Moderate Stringency

Match Window in Effect:

Above 10000 BP: 8.0%
Between 10000 BP and 2000 BP: 3.0%
Below 2000 BP: 3.0%

Target profile searched against 995 Casework profiles.
Target profile searched against 0 Offender profiles.
Target profile searched against 0 Population profiles.

Match Summary:

5 Loci Candidates:	0
4 Loci Candidates:	0
3 Loci Candidates:	0
2 Loci Candidates:	0
1 Locus Candidates:	0
Total Candidates:	0

Match Details:

LDIS SPECIMEN REPORT **January 8, 1996 3:44:42 PM** **LOCAL CASEWORK INDEX**

SPECIMEN INFORMATION

Local Specimen Number: 09186F06A/V-

Universal Specimen Number: 4054

Specimen Laboratory	Received Date	Assign To	Contract Laboratory	Specimen Category	Tissue Type	Population Group	Population Description	Cntry Cldtd	State Cldtd	Dnr Sex	LDIS Entered By/Date	SDIS Entered By/Date
FL006000		DJF	FL006000	FORENSIC, UNKNOWN	BLOOD	UNKNOWN		XX	XX	U	DJF 01/08/96	AD05

SIZING INFORMATION

Locus	Probe	Technology	Gel No	Assign To	Tissue Form	Ladder	Enzyme	Autorad No	Entrd By	Entrd Date	Submit By	Submit Date	Lane No	Allele No	Mol Wt or VALUE
D5S110	LH1	FBI RFLP	482	DJF	STAIN	B2	HAE III	2288	DJF	01/08/96	AD05		9	1	2147
														2	1956
D4S139	PH30	FBI RFLP	482	DJF	STAIN	B2	HAE III	2289	DJF	01/08/96	AD05		9	1	9235
														2	5105
D2S44	YNH24	FBI RFLP	482	DJF	STAIN	B2	HAE III	2290	DJF	01/08/96	AD05		9	1	3078
														2	1938
D1S7	MS1	FBI RFLP	482	DJF	STAIN	B2	HAE III	2291	DJF	01/08/96	AD05		9	1	6965
														2	5770
D10S28	TBQ7	FBI RFLP	482	DJF	STAIN	B2	HAE III	2292	DJF	01/08/96	AD05		9	1	2088
														2	1047

LDIS SPECIMEN REPORT

January 8, 1996 3:44:42 PM
LOCAL CASEWORK INDEX

SPECIMEN INFORMATION

Local Specimen Number: 09186F09B/M-GREENSHEET1

Universal Specimen Number: 4049

Specimen Laboratory	Received Date	Assign To	Contract Laboratory	Specimen Category	Tissue Type	Population Group	Population Description	Cntry Cnctd	State Cnctd	Dnr Sex	LDIS Entered By/Date	SDIS Entered By/Date
FL006000		DJF	FL006000	FORENSIC, UNKNOWN	SPERM	UNKNOWN		XX	XX	U	DJF 01/08/96	DJF 01/08/96

SIZING INFORMATION

Locus	Probe	Technology	Gel No	Assign To	Tissue Form	Ladder	Enzyme	Automatd No	Entrd By	Entrd Date	Submit By	Submit Date	Lane No	Allele No	Mol Wt or VALUE
D5S110	LH1	FBI RFLP	482	DJF	STAIN	B2	HAE III	2288	DJF	01/08/96	DJF	01/08/96	3	1	4307
													2	2	2144
D4S139	PH30	FBI RFLP	482	DJF	STAIN	B2	HAE III	2289	DJF	01/08/96	DJF	01/08/96	3	1	7744
													2	2	3358
D2S44	YNH24	FBI RFLP	482	DJF	STAIN	B2	HAE III	2290	DJF	01/08/96	DJF	01/08/96	3	1	2905
													2	2	2655
D1S7	MS1	FBI RFLP	482	DJF	STAIN	B2	HAE III	2291	DJF	01/08/96	DJF	01/08/96	3	1	7876
													2	2	3172
D10S28	TBQ7	FBI RFLP	482	DJF	STAIN	B2	HAE III	2292	DJF	01/08/96	DJF	01/08/96	3	1	4019
													2	2	2732

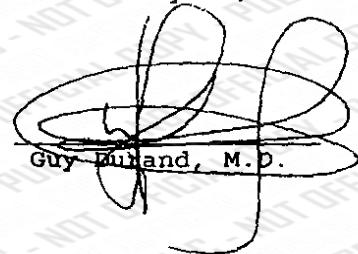
Exhibit M

COUNTY OF BROWARD)

I, Guy Durand, M.D., affirmatively state that:

- 1) I am a physician duly licensed by the State of Florida with an established practice in the City of Plantation, Florida.
- 2) I have been the defendant Ernesto Behrens' personal physician since July 1988.
- 3) On May 08, 1995 said Mr. Behrens underwent excision of two growths from his torso, one from the front and another one from the back. Photocopy of the pathology report is hereto attached.
- 4) The involvement of both the front and the back and the extent of the dissection required the prescription of the painkiller Darvocet N-100 in the quantity of 10 as photocopy of the original script shows.
- 5) In the post-operative period, from May 08, 1995 to May 15, 1995, Mr. Behrens has had a wound check and dressing change every other day, as it is the routine in my practice.
- 6) Two weeks after the surgery there was also a follow-up visit when no abnormality was observed.
- 7) During that post-operative period, Mr. Behrens' whole torso was routinely visualized.
- 8) During those visits (wound checks and dressing changes) there was no disruption of the sutures or any other sign or wound abnormality that would indicate physical stress or trauma that could have resulted from exertion, violent physical contacts or struggle. That would have been against my postoperative instructions.
- 9) In my professional opinion anyone of such circumstances should and would have undoubtedly adversely affected the incision sites to the point of showing signs of trauma or dehiscence that would be manifest to me.
- 10) In conclusion Mr. Behrens was not likely to have been involved in any strenuous activity during the period extending from May 08, 1995 to May 25, 1995.

Affiant further sayeth not.

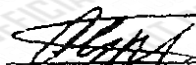


Guy Durand, M.D.

Sworn this 31st Day of March, 1999

Before me, personally appeared, Dr Guy Durand whose identity is known to me by his State of Florida driving license No. D653-280-40-098-0 and who, under oath, acknowledges that his signature appears above

Sworn to and subscribed before me this 31st day of March, 1999


Alvin Mitchener
Notary Public

My Commission expires:



FINAL REPORT

Date Received: 05/09/95
Date Reported: 05/11/95

Doctor:

GUY DURAND, M.D.
8251 WEST BROWARD BLVD.
PLANTATION, FL 33324

Unit#:

Patient: BEHRENS, ERNESTO

Age: 30

CLINICAL HISTORY/SPECIMEN LOCATION:

Inclusion cysts back.


GROSS DESCRIPTION:

Specimen designated back. Submitted are two white grey tan to brown irregularly shaped soft cystic appearing, tissue fragments that measure up to 1.5 cm. Representative sections submitted. bt/em


DIAGNOSIS:

Back, biopsy:
INFUNDIBULAR CYST, BENIGN.

This is to certify that this document is a true copy of the original



ALVIN C. MITCHENER
COMMISSION # CC 488607
EXPIRES JUL 17, 1999
BONDED THRU
ATLANTIC SURETY CO., INC



Ramon E. Gallego, M.D.

OFFICE VISIT BY APPOINTMENT
NAME Ernest Beltrami
ADDRESS _____ DATE 05/08/19
Rx Darvocet 100
7 94-60 Jan
+ 10

Indicate Drug Expiration Date on Label

☐ Label

Refill _____ times PRN _____ NR _____

To insure brand name dispensing, prescriber must write "Medically Necessary" on the prescription.

06/27/89

04704700210

This is to certify that this document is
a true copy of the archive copy

Alvin C. Mitchener



ALVIN C. MITCHENER
COMMISSION # CC 488607
EXPIRES JUL 17, 1999
BONDED THRU
AT & T BANKING CO., INC.

NAME / ADDRESS / PHONE NUMBER		PHONE NUMBER
ADDRESS		SHEET NUMBER
DATE / PROBLEMS (Number and Brief Description)	FINDINGS (S = Subjective; O = Objective)	TESTS ORDERED and/or PLANNED
5/6/95	<p>Rt is bare for removal lump left part a posterior lobe</p> <p>Procedure: (pt in supine position) The left paravertebral area prepped & draped & Betadine in sterile drapes. A 3.5 cm incision was made following skin crease over an area corresponding to the X or XI rib in the left upper quadrant. Direction was rotated down the (the subcutaneous in blunt dissection by spreading & breaking the subcutaneous.</p> <p>The pericapsular tissue was grasped & two mosquito clamps and incised. That allowed identification of a pinkish gray, 2 cm irregularly shaped nodules. The capsule was grossed & a baby ball with sharp minor dissection to get water free from surrounding tissue and. Obtained the incision and excised "in toto".</p> <p>Sub/grossed & X/O the category. The capsule & 1/2 Krypton & sterile dressing applied.</p> <p>It was noted to be an ovalish epigynum prepped & draped in similar fashion. Direction a closure was identical. 10 staples sutured wound for epifurcation in the area. Band from subcutaneous slightly left of midline. Pt to be in supine position with blood line was unimportant. At 4:00 PM 5-6-95 to 10</p> <p>Wound in 2 days. Hand to keep wound dry and clean</p>	<p>S. J. [Signature]</p>

TYPEWRITTEN TRANSCRIPTION FROM EXCERPTS OF MR. ERNESTO BEHRENS' MEDICAL RECORD PERTAINING TO THE 05/08/95 EXCISION BIOPSY OF INCLUSION CYSTS FROM HIS TORSO (05/08 to 05/15/95). (Done for the sake of legibility).

Behrens, Ernesto

05/08/95:

"Pt is here for removal lumps left post and anterior torso.

Procedure: C ("cum" = with) Pt. in supine position the left para-vertebral area was prepped and draped c (with) Betadine and sterile drapes. A 3.5 cm incision was made following a skin crease over an area corresponding to the X or XI rib in the left upper back. Dissection was carried down thru the subcutaneous in blunt fashion by spreading c (with) a baby Metzenbaum.

The peri-capsular tissue was grasped c (with) two mosquito clamps and incised. That allowed identification of a pinkish gray 2 cm irregularly shaped nodule.

The capsule was grasped c (with) a baby Allis. C (with) sharp scissors dissection the cyst freed from surrounding tissue and delivered thru incision and excised "in toto".

Sub/q (subcutaneous) closed c (with) 4/0 chr (chromic) catgut. Skin closure c (with) 5/0 Nylon & sterile dressing applied.

Pt. was asked to turn over and the epigastrium prepped & draped in similar fashion. Dissection and closure were identical. A 1cm plus cyst was removed from epigastrium in an area 15 cm above the umbilicus slightly to left of midline. Pt. tolerated procedures well. Blood loss was insignificant.

Rx. Darvocet 1 (one) q (every) 4-6° (° = hours) prn (as needed) # 10.

Will see in two days. Advised to keep wound dry and clean".

(Writing in right-hand "TESTS ORDERED and/or PLANED" column reads: "biopsy pathology cysts x 2")

(SIGNATURE)

05/10/95.

S. no complaint, took his med. (Erasure) C/o (complains of) not being able to shower

O: Wounds clean & dry - Nad ("nothing abnormal detected")

A (assessment). S/P (status post) 2 days removal inclusion cysts.

P (plan) Encouraged to be patient. Bulky dressing removed. Coverlet (dressing) applied p (after) cleansing c (with) betadine. Will see again on Friday

(SIGNATURE)

05/12/95:

S= Status quo. No complaint.

O= wound clean & dry – No drainage.

A: S/P (*status post*) 4 days removal cysts from back & epigastrium.

P: wounds cleansed c (*with*) betadine & DSD (*dry sterile dressing*) applied. – Will have to change dressing on his own over weekend. Pt was given coverlet pads for dressing change. Was advised to shower c (*with*) dressing on and to change same p (*after*) shower.

Will remove stitches on Monday.

(SIGNATURE)

05/15/95:

Wound clean & dry – Skin sutures removed – Steri-strip applied p (*with*) Benzoin spray. Pt advised to let them fall on their own.

RTO (*return to office*) in 2 wks.

(SIGNATURE)



Exhibit N

AFFIDAVIT OF CARY M. KULTAU

**State of Florida vs. Ernesto Behrens
98-5739CF10A**

Cary M. Kultau, who after being duly sworn according to law states:

- ◆ I am currently a Florida licensed Private Investigator for 13 years. I have prior certified Florida law enforcement experience of 15 years, most of which I served as a crime against person/homicide detective
- ◆ Lengthy investigation resulted in obtaining Detective Steven Geller affidavit to arrest Ernesto Behrens dated May 13, 1997. In this document Detective Geller outlines in detail the DNA evidentiary link of victims, Renee Ahladis and Denise Wood separate cases
Exhibit A attached
- ◆ On October 05, 2000 (post verdict/Denise Woods case) I was requested to document all related DNA tests and the amount of DNA swabs pertaining to Ernesto Behrens I contacted both the Palm Beach County and Dade County Crime laboratories
- ◆ Palm Beach County Sheriff's Laboratory responded timely and disclosed new evidence. An upgraded DNA test had been conducted comparing victim Renee Ahladis' evidence with Ernesto Behrens DNA standard The result was negative, although a prior DNA laboratory test in Broward County produced positive results
Exhibit B attached
- ◆ I know that the attorneys defending Mr. Behrens in the Renee Ahladis and Denise Wood cases were not provided with this newly discovered negative DNA test performed by Palm Beach County Laboratory

I

- ♦ I personally met with attorney Ty Terrell (defended Ernesto Behrens in the Denise Wood case). Terrell reviewed the new evidence and confirmed that the state of Florida never provided this information during the process of discovery. If Terrell knew this, preparing for the trial and the actual trial would have changed in many ways.
- ♦ In my professional opinion if this newly discovered evidence was known to the defense this would have altered the case preparation and trial strategy to a great extent. In addition, this new evidence is exculpatory in nature and creates reasonable doubt.
- ♦ I took considerable time and efforts contacting Dade County crime laboratory regarding the original DNA standard taken from Ernesto Behrens. A response via fax was received from the laboratory supervisor, Willard "Bud" Stuver, reflecting the only documentation was a property receipt that reads one (1) oral swab specimen of Ernesto Behrens was impounded. Mr. Stuver wrote that the Dade laboratory currently possessed two (2) swabs of the original four (4) specimens. This in fact is not consistent and has no basis compared with the property receipt. My efforts to locate any other Dade County "Behrens" documentation was negative
Exhibit C attached

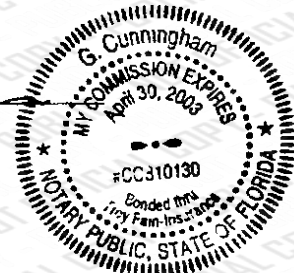
**STATE OF FLORIDA
COUNTY OF BROWARD**

Cary M. Kultau
Affiant

Sworn to and subscribed before me on this 23rd day of April, 2001, by Cary M. Kultau

G. Cunningham
Notary Public

G. Cunningham



Docket No. _____ Page _____

IN THE COUNTY/CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

ERNESTO JOSE BEHRENS

H/M DOB 11/10/64

Defendant.

97-0083-AF-104
AFFIDAVIT TO ARREST

BEFORE ME, Judge of the Circuit Court in and for Broward County, personally came Detective Steven Geller, who, after being duly sworn, deposes and says that on the 12th day of May, A.D. 1995, in the County and State aforesaid, one Ernesto Jose Behrens did then and there unlawfully:

Victim #1: On September 12th, 1994, the Coral Springs Police Department investigated an armed residential burglary, documented under case number 94-6152, which occurred at 11885 Royal Palm Blvd., Coral Springs, Broward County, Florida. In response to an AFIS hit, on October 25th, 1996, Coral Springs Latent Examiner Joel Geller positively matched latent fingerprints found at the crime scene to Defendant Ernesto Behrens.

Victim #2: On October 21st, 1993 the Coral Springs Police Department investigated an Armed Residential Burglary and Sexual Battery which occurred at 8105 N.W. 27 Street, Apartment 2, Coral Springs, Broward County, Florida. This case had remained unsolved until the latent fingerprint identification of Ernesto Behrens in the previous offense. The suspect description matched that of Ernesto Behrens, so Coral Springs Detective Barbara Haydu prepared a photo lineup, incorporating a picture of Ernesto Behrens. The lineup was shown to the victim, Renee Ahladiis, and without any hesitation and with great emotion, she positively identified Ernesto Behrens as the person who illegally entered her apartment and who committed the offense of Sexual Battery.

On April 21st, 1997 Detective Haydu secured a warrant to arrest Ernesto Behrens for violating Florida State Statute 810.02(2), Burglary, and Florida State Statute 794.011(3), Sexual Battery.

Victim #3: On May 12, 1995, at approximately 0430 hours, the defendant illegally entered the victim's apartment located at 750 N.W. 91 Terrace, Plantation, Broward County, Florida. Entrance into the apartment was gained by the defendant via the kitchen window. Once

Behrens, Ernesto

page 1 of 3 pages

97-0083-AF

(A)

AFFIDAVIT TO ARREST
State v. ERNESTO JOSE BEHRENS

Docket No. _____ Page _____

inside, the defendant went into victim Denise Wood's bedroom where she was sleeping. He shined a flashlight in her face and when she began to awake, used the light to conceal his identity. The defendant told the victim to place a pillow over her face so she could not see him. The victim reported that she had submitted to his demand out of fear that the defendant would cause her physical harm. The defendant disrobed, climbed on top of the victim and told her to "feel this". At that point, the victim felt what she believed to be a knife on her stomach.

The defendant advised the victim that she was to "jerk" him off and at that point grabbed the victim's hand and placed it on his penis. After being forced to commit that act, the defendant climbed on top of the victim's upper torso and told her to "blow" him until he ejaculated. The defendant then forced his penis into the victim's mouth against her will committing the act of sexual battery. Next, the defendant told the victim to turn over on to her stomach at which time he began to rub her buttocks. A short time later the defendant had the victim turn over on her back. The defendant ordered the victim to expose her vagina and to engage in manual masturbation while the defendant watched.

The victim reported that while she was being forced to touch herself, the defendant ejaculated upon her thigh. The defendant picked up an article of clothing owned by the victim and wiped the semen from the victim's thigh using the clothing article. The clothing article was thrown by the suspect on the floor and was later collected as evidence by this agency. The defendant told the victim to count to 500 before she removed the pillow from her face. The victim reported hearing the defendant dress and leave the room. The victim immediately contacted this agency via 911 to report the incident. Subsequently, the victim was transported to the Sexual Assault Treatment Center where a rape evidence kit was utilized and turned over to this agency. The kit was entered into property as evidence.

Victim Denise Wood advised that she did not appear to know the suspect. She did not give him permission at any time to enter her apartment, or perform any of the acts that he committed upon her.

A crime laboratory analysis report from the Broward County Sheriff's Office indicated an identical DNA match from semen collected in the Coral Springs case involving victim #2 Renee Ahladiis and the positive identification of Ernesto Behrens, to the unsolved Plantation

The offense(s) set forth in the foregoing Affidavit is/are contrary to the statute(s) in such case made and provided, and against the peace and dignity of the State of Florida.

Sworn to and subscribed before me)
this _____ day of _____)
A.D. 19____)

Affiant

JUDGE, CIRCUIT COURT

(Seal)

page 2 of 3 pages

Behrens Ernesto

97-0083-AF

AFFIDAVIT TO ARREST
State v. ERNESTO JOSE BEHRENS

Docket No. _____ Page _____

case, number 1619-95-05, involving an Armed Burglary and Sexual Battery of victim #3 Denise Wood. In both cases the suspect's semen was collected from the crime scenes and submitted to the Broward County Sheriff's Office Crime Laboratory for analysis.

From this concluding Crime Lab report, probable cause has been developed to believe that the suspect who committed the criminal violation of sexual battery in the Plantation case is the same suspect who committed the sexual battery in the Coral Springs case. Crime lab results indicated that the semen tested provided an identical DNA match to each other.

In addition to an identical DNA match in both cases the suspect operated in a manner so unique and so similar that the offenses were more than likely committed by the same person. For example, both victims described the suspect as a Hispanic male with a slight Spanish accent. Also, in both cases the suspect was armed with a screwdriver or knife, and he placed a pillow over the face of his victims in an effort to conceal his identity. All of the victims were women residing in an apartment complex, and although no accomplice was ever heard or observed, the suspect led the victims to believe that he was not alone. Upon completion of the Sexual Battery, in the Plantation case the suspect demanded that the victim count to 500 before removing the pillow which had been placed over her face. In the Coral Springs case, the suspect ordered the victim to remain in a closet for five (5) minutes. These delays were to afford the suspect ample time to escape.

Therefore, your affiant believes that Probable Cause exists for the arrest of Ernesto Behrens: (1) DNA matches are identical in the case of victim #2 Ahladiis and the Plantation Sexual Battery case of victim #3 Denise Wood, and that (2) victim #2 Ahladiis was able to positively identify the suspect as Ernesto Behrens, and that (3) Ernesto Behrens fingerprints were positively matched to victim #1 another case involving a sexual deviant act.

It should be noted that when Ernesto Behrens is taken into custody a DNA sample from his person will be requested through a court order.

BROWARD COUNTY, FLORIDA
I certify this document to be a true
and correct copy of the original.
WITNESS MY HAND AND SEAL
5/13/97
ROBERT L. SUTHERLAND, Clerk
D.C.

The offense(s) set forth in the foregoing Affidavit is/are contrary to the statutes of the State of Florida, and provided, and against the peace and dignity of the State of Florida.

Sworn to and subscribed before me)
this 13 day of March)
A.D. 19 97)

JUDGE, CIRCUIT COURT

RICHARD D. EADE

page 3

of 3 pages

Affiant

97-0083-AF

RICHARD L. TANTON
LABORATORY DIRECTOR

*** CRIME LABORATORY REPORT ***

SECTION: SEROLOGY

INVEST. AGENCY: BSO CASE NUM: 108920 AGENT: DET. GELLES
INVEST. AGENCY: CASE NUM: AGENT:
INVEST. AGENCY: CASE NUM: AGENT:
INVEST. AGENCY: CASE NUM: AGENT:
INVEST. AGENCY: CASE NUM: AGENT:
DATE SUBMITTED: 10/14/97 ANALYSIS COMPLETE: 12/22/97

*** PRINCIPALS ***

SUSPECT/VICTIM	LAST NAME	FIRST NAME	MI	SI	DOB	RACE	SEX
VICTIM	AHLADIS	RENEE					
SUSPECT	BEHRENS	ERNESTO			11/10/64		

*** EVIDENCE ***

ITEM NO.	QTY	DESCRIPTION
PR #1	1	SEALED PAPER BAG CONTAINING:
1-1	2	VAGINAL SWABS IN A SEALED ENVELOPE
1-2	1	BLOOD STANDARD FROM "RENEE AHLADIS" IN A SEALED ENVELOPE
PR #2		
2-1	2	DNA SWABS FROM ERNESTO BEHRENS IN A SEALED ENVELOPE

*** RESULTS ***

SEROLOGY/DNA RESULTS

1. DNA FROM ERNESTO BEHRENS STANDARD (2-1) WAS ANALYZED FOR 10 GENETIC MARKERS INCLUDING: AMELOGENIN, DQA1, LDIP, CYFA, KRGG, D7S8, GC, CSF1PO, TPOR, AND TH01 (SEE ATTACHED DATA SHEET).
2. NO DNA RESULTS WERE OBTAINED FROM THE SPERM ON THE VAGINAL SWAB (1-1 SP). DNA WAS RECOVERED FROM RENEE AHLADIS' BLOOD STANDARD (1-2) AND THE NONSPERM FRACTION OF THE VAGINAL SWAB (1-1 NS).

Desha E. Glendon
DESHA E. GLENDON
SENIOR FORENSIC SCIENTIST

DATE 10/28/97

(B)

DNA DATA SHEET

PBSO LAB NUMBER: 97-11152
 PAGE: 2
 ANALYST: Dobra E. Gildewell ✓




DNA PROFILE

DNA PROFILE											
* X2-1	ERNESTO BEHRENS	2, 4, 1	BB	AB	AB	AA	AC	10, 12	10, 11	NR	MALE

NOTES

NR > No Results (negative/inconclusive)

(B)

DATE TIME RECORDED 2/2/50 10:15		PROPERTY BUREAU LOCATION CODE			
OTHER DEPT. CASE NO.		OTHER DEPT. PROPERTY LOCATION AND INVENTORY NO.			
ADDRESS WHERE PROPERTY RECORDED (Give exact location where property was located)				TYPE OF CASE	
520 NW 74 Terr.				Murder	
DISCOVERED BY (Name)		ADDRESS		CITY	
Det. A. Moore		MAD		St. Louis	
<input type="checkbox"/> OWNER <input type="checkbox"/> WITN		ADDRESS		STATE	
				TEL.	
<input type="checkbox"/> SUBJECT <input type="checkbox"/> SUSPECT		RACE		SEX	
		DOB		INCARCERATED	
				<input type="checkbox"/> YES <input type="checkbox"/> NO	
				WARRANT	
				<input type="checkbox"/> YES <input type="checkbox"/> NO	
<input type="checkbox"/> STOLEN PROPERTY		<input type="checkbox"/> TRIAL EVIDENCE		<input type="checkbox"/> MICROC. DE PROBATE	
<input type="checkbox"/> LOST/FOUND PROPERTY		<input checked="" type="checkbox"/> LAB EVIDENCE		<input type="checkbox"/> OTHER AGENCY	
				<input type="checkbox"/> SECURITY STORAGE	
				<input type="checkbox"/> OTHER (SPECIFY)	
ITEM NO.	QUANTITY	DESCRIPTION (Article - Brand - Model - Serial No. - Size - Color - Gender - Barrel - Denote currency by denomination)			PROPERTY BUREAU ONLY
1	1	Black Evidence Bag containing Oral Swab Specimen of Ernest Beulens was DND 11-10-48			
<div style="position: relative; width: 100%; height: 100%;"> 232 AD </div>					
LAST ITEM					
I HEREBY ACKNOWLEDGE THAT THE ABOVE LIST REPRESENTS ALL PROPERTY TAKEN FROM MY POSSESSION AND THAT I HAVE RECEIVED A COPY OF THIS RECEIPT			I HEREBY ACKNOWLEDGE THAT THE ABOVE LIST REPRESENTS ALL PROPERTY RECORDED BY ME IN THE OFFICIAL PERFORMANCE OF DUTY AS A DEPUTY SHERIFF / LAW ENFORCEMENT OFFICER		
					
AGENT AND SHERIFF			DISTRICT		

Miami, Florida
USA



FAX COVER SHEET

☐ Confidential requires immediate pick up

TO: MR. CARY M. KULTAU

PHONE: (954) 429-9194

FAX: (954) 429-0426

FROM: MR. WILLARD "BOB" STOVER, Supervisor - Forensic Biology Section

PHONE: (305) 471-3034

FAX: (305) 471-3478

SUBJECT: PROPERTY RECEIPT OF ORAL SWAB SPECIMEN

TWO (2) Pages, including Cover Sheet

REMARKS: REGARDING YOUR FAX DATED 10/06/2000, THE ONLY DOCUMENTATION

REGARDING SWABS FROM MR. ERNEST BENHENS IS A PROPERTY RECEIPT SHOWING
TRANSMITTAL OF THESE SWABS FROM THE IMPOUNDING OFFICER TO THE LABORATORY.

THE MIAMI-DADE POLICE DEPARTMENT CRIME LABORATORY BUREAU IS PRESENTLY IN
POSSESSION OF TWO OF THE ORIGINAL FOUR SWABS SUBMITTED WITH THAT RECEIPT.

A COPY OF THAT RECEIPT ACCOMPANIES THIS FAX.

The information contained in this facsimile message is **CONFIDENTIAL** information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly **PROHIBITED** and will be considered as a serious interference in our confidential business relationships. Additionally, unauthorized dissemination of this confidential information subjects you to criminal and civil penalties. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

C

Exhibit O

Item 1	K. Amabile	REASON - 1	2-1-00	11:30
	Shene	Lab #4	2/1/00	11:56
	Steve Geller	Return to PRD	6:29.00	1350

Exhibit P

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA

Plaintiff

v.

ERNESTO BENRENS

Defendant

CASE NO:
JUDGE

98005739CF10A
ANDREW GIBOEL

NOTICE PURSUANT TO RULE 3.220(b)(4)

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, pursuant to Rule 3.220(b)(4), Florida Rules of Criminal Procedure, submits the following information which is in the State's possession or control which may fall within the purview of Brady v. Maryland and/or Rule 3.220(b)(4):

→ Please be advised that on April 12, 2016, the Broward Sheriff's Office (BSO) DNA Crime Laboratory was advised by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board that there was, "(I) inappropriate 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." We have been advised that CPI calculations were only used by the BSO DNA Crime Lab in complex DNA mixture cases. Comments regarding this matter may be found at <http://www.sao17.state.fl.us/BSODNA/ABCLD.pdf>

This notice is being sent to you because our records indicate that you were a party to this case and that we have been DNA evidence tested by the Broward Sheriff's Office DNA Laboratory. If there was DNA evidence in your case, there has not been a determination whether the CPI calculations were utilized or whether the evidence is relevant in your particular case. This matter is being brought to your attention because the DNA population genetic calculations may have been inaccurately tabulated. Please contact your attorney to further discuss this information. ←

I HEREBY CERTIFY that a true copy hereof has been furnished electronically// U.S. Mail/Hand-Delivery/Fax this 27th day of October, 2016, to counsel for the defense:

cc: Defendant

Harold Daley, Esquire, 901 N Gadsden St, Tallahassee, FL 32301-6313
SCH 732564, Martin C.I., 1150 S.W. Allapattah Road, Indiantown, Florida 34956

MICHAEL J SATZ
State Attorney

By:

Pascale Achille
PASCALE ACHILLE, ESQ.
Assistant State Attorney
FL Bar 013403
201 S.E. 6th Street
Unit SBU
Ft. Lauderdale, FL 33301
Service Email: CourtDocs@sao17.state.fl.us

45338054

Exhibit Q

DNA DATA SHEET

PBSO LAB NUMBER:	97-11152
PAGE:	2
ANALYST:	Debra E. Gildewell

DNA PROFILE											
EXHIBIT	SOURCE	2, 4, 1	BB	AB	AB	AA	AC	10, 12	10, 11	NR	MALE
X2-1	ERNESTO BEHRENS										

NOTES:

NR = No Results (negative/inconclusive)

1912 Alexander Drive
Research Triangle Park, North Carolina 27709

Telephone: 800-533-0567
Fax: 919-361-7797

CERTIFICATE OF ANALYSIS

October 8, 2001

Dr. Guy Durand, M.D.
1670 NW 93rd Avenue
Plantation, FL 33322

FS Lab #: F01-3385

Dear Dr. Durand,

Pursuant to your request to consult on the above referenced case please find the following conclusions.

* Based on the DNA profile provided via fax, The probability of randomly selecting an unrelated individual with a DNA profile that matches the profile provided at the genetic systems analyzed is approximately:

- 1 in 2,220,000 for the African American population.
- 1 in 469,000 for the Caucasian population.
- 1 in 454,000 for the Southeastern Hispanic population.
- 1 in 829,000 for the Southwestern Hispanic population.

If you have any additional questions, feel free to call me at the number listed above, ext 3393.

Sincerely,

Marcia Eisenberg

Marcia Eisenberg, Ph.D.
AVP and Senior Director, Forensic Identity Testing

Shawn M. Weiss

Shawn M. Weiss, B.S.
Associate Technical Director, Forensic Identity Testing

ERNESTO BEHRENS DC#732564
MARTIN CORRECTIONAL INSTITUTION
1150 SW ALLAPATTAH RD.
INDIANTOWN, FL 34956

		Retail
P	US POSTAGE PAID	
	\$7.85	Origin 33063 04/10/19 1176400433-07
PRIORITY MAIL 1-Day®		
		1 Lb 5.40 Oz 1005
EXPECTED DELIVERY DAY: 04/11/19		
SHIP TO:		C010
201 SE 6TH ST FORT LAUDERDALE FL 33301-3303		
USPS TRACKING NUMBER		
		
9505 5144 0116 9100 4005 20		

CLERK OF THE COURT
MAIN COURTHOUSE BROWARD COUNTY
201 SE 6TH STREET
FORT LAUDERDALE, FLORIDA, 33301

Handwritten signature

**Overnight
Priority**

PRIORITY ★ MAIL ★	TRACKED ★ ★ ★ INSURED ★
	
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Label 107R, July 2013	