

In the 174th Judicial District Court of Harris County, Texas

Preston Hughes III, Movant

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MOTION FOR DNA TESTING

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**THIS IS A CAPITAL CASE**

Execution: November 15, 2012

November 12, 2012

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**DEFENDANT PRESTON HUGHES, III  
PRO SE MOTION FOR DNA TESTING**

Pursuant to Texas Code of Criminal Procedures Article 64.03, Defendant Preston Hughes, III ("Mr. Hughes"), an indigent prisoner confined on Death Row at the Polunsky Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, respectfully moves for DNA testing of certain items of forensic evidence, as set forth more fully below.

Mr. Hughes submits this motion pro se only for the purpose of proving his innocence. Mr. Hughes has already demonstrated that he has no intention of seeking relief merely for the purpose of delaying his execution.

Mr. Hughes has, for example, opposed his own attorney's efforts to delay the execution by challenging the drug protocol now used in Texas. Mr. McCann filed those delaying motions despite Mr. Hughes' clear wishes that Mr. McCann not do so. Mr. Hughes has unequivocally demonstrated his objection and resistance to such delaying efforts by refusing to sign the *en forma pauperis* Mr. McCann desired for the federal filing of his delaying motion. Mr. McCann responded by asking the 127th Judicial District Court to declare Mr. Hughes *non compos mentis* because Mr. Hughes dare resist him on the delaying issue and on other issues.

Mr. Hughes' singular objective is, and always has been, to establish his innocence. Because Mr. McCann refused to ever petition this Court based on Mr. Hughes' innocence, Mr. Hughes unsuccessfully attempted to have Mr. McCann replaced. Because Mr. McCann then intimated to the country and to this Court that he held some secret compelling evidence of Mr. Hughes' guilt, Mr. Hughes dismissed Mr. McCann as his attorney: once in a letter mailed to Mr. McCann, Ms. Carmen Roe, and this Court on October 24, 2012; again with an affirmation letter mailed to Mr. McCann, Ms. Carmen Roe, and this Court on October 30, 2012. [Ex. 16]

Mr. McCann effectively acknowledges he has been dismissed by asking the 127th Judicial District Court to allow him to proceed as Mr. Hughes' "next friend". Mr. McCann now asks the courts to help him proceed with his effort to unnecessarily delay the execution by challenging the drug protocol. Mr. McCann does so without Mr. Hughes' consent and despite Mr. Hughes' abundantly clear wishes that Mr. McCann not do so.

Mr. McCann continues to prevent Mr. Hughes' from seeking relief based on his innocence. Despite Mr. Hughes' abundantly clear wishes that he not do so, Mr. McCann recently submitted yet another unworthy application to this Court for a Writ of Habeas Corpus. In that application, Mr. McCann not only failed to argue that Mr. Hughes is innocent, Mr. McCann attempted to plant suspicion in the mind of this Court by alluding to a fictional eyewitness that McCann created out of whole cloth.

By submitting that application, Mr. McCann undermined Mr. Hughes' chances of succeed with his own pro se application in which he demonstrated his innocence. Mr. Hughes now fears that Mr. McCann will similarly attempt to disrupt this pro se motion for DNA testing.

Mr. Hughes has proved by his words and his actions that he has dismissed his attorney and that wishes to proceed pro se. Mr. Hughes requests this Court deem moot any motions submitted by Mr. McCann purportedly on Mr. Hughes' behalf. Mr. Hughes requests that this court accept this motion as the sole and true motion for DNA testing of evidence in Mr. Hughes' case.

### **I. Mr. Hughes' Case Urgently Calls for DNA Testing.**

For more two and a half decades, Mr. Hughes has consistently maintained that he did not kill fifteen-year-old Shandra Charles and her three-year-old cousin Marcell Taylor. His case urgently calls for DNA testing, for the following reasons:

Mr. Hughes is within days of execution. He is scheduled to be executed on November 15, 2012.

DNA testing technology was unavailable in 1989, the year of Mr. Hughes' conviction.

The State's maintained at trial that semen was found on the vaginal swab taken from victim Shandra Charles. [Tr. 19:445-446, 19:501] The State maintained also that only her murderer could have deposited that semen. [Tr. 18:14, 21:43, 19:419-422, 21:46-47, 21:50-51] Mr. Hughes agrees. Stunningly, the male DNA from that vaginal swab has never been compared against Mr. Hughes' DNA.

There is a viable alternate suspect in the case. That suspect is Mr. Douglas Swanson. [Tr. 19:549-550, 19:561-562, 19:569-570, 19:614-627]. Mr. Swanson is now serving twelve life sentences plus 20 years for a series of violent crimes committed three years after the murders of Shandra Charles and Marcell Taylor. Six of the life sentences are for aggravated robbery with a deadly weapon, each offense committed on a different day. Three of the life sentences are for aggravated sexual assault, each offense committed on a different day. One of those charges of aggravated sexual assault involved the use of a deadly weapon. [Ref. 1] An eyewitness at Mr. Hughes' trial testified that she saw three individuals walking to the field that was the crime scene shortly before the murders. She described the adult male as matching the general description of Douglas Swanson and having a unique identifying characteristic that further suggested she saw Douglas Swanson. She described the other two individuals as consistent with Shandra Charles and Marcell Taylor. [19:614-627] Recently, during an in-person interview, Mr. Swanson revealed even further evidence of his guilt. [Ex. 1]

In 2005, an independent investigator, Michael Bromwich, was contracted by the City of Houston and the Houston Police Department to investigate the scandal at the HPD crime lab. Mr. Bromwich and his team identified Mr. Hughes' case as

one of those having "major issues" associated with the forensic evidence and testimony. [Ref. 4:ExD:4]

In the 2007 final report prepared by Mr. Bromwich and his team, Criminologist James Bolding was identified as a "central figure" in the scandal. [Ref. 4:8] The report described Mr. Bolding's work as the sloppiest of all the technicians in the serology section, though Mr. Bolding was the supervisor of that section.

[Ref 4:85] The report argued that Mr. Bolding had committed "outright scientific fraud and perjury" of the "most pernicious kind to secure convictions rather than to do justice." The report made clear that such practices "undermine confidence in the integrity of the criminal justice system." [Ref. 4:2, 68, 94, 104]

The same James Bolding so discredited by Mr. Bromwich's team conducted the serology testing and provided the expert forensic testimony at Mr. Hughes' trial. [Tr. 19:432-467]

Mr. Bromwich and his team made five recommendations regarding Mr. Hughes and the other cases they identified as having "major issues." In summary, they recommended that Mr. Hughes and the others each be assigned a special master to have his case re-investigated from beginning to end. More to the point, they recommended that, should the special master determine DNA testing might be probative, Harris County and the City of Houston arrange for the testing at no cost to the prisoner. [Ref. 4:ExecSum:11-12]

Evidence discovered just this year casts severe doubt on all the physical and testimonial evidence presented against Mr. Hughes during his trial. [Ref. 2, 3] That evidence includes proof that James Bolding withheld exculpatory evidence and fabricated inculpatory evidence to help secure Mr. Hughes' conviction. [Ref. 5]

The Texas Legislature's decision in 2001 to create a vehicle for wrongfully convicted prisoners to seek post-conviction DNA testing reflects its view that

reliable verdicts are indispensable to the integrity of the criminal justice system. Substantial doubts have been raised about Mr. Hughes' guilt by Mr. Bromwich's independent investigation [Ref 4], Mr. Bromwich has thoroughly detailed sloppy work, fraud, and perjury that casts doubt on the integrity of the criminal justice system in general at that time, and in Mr. Hughes' case specifically. An even more recent independent investigation casts even more doubt on the integrity of Mr. Hughes conviction [Ref. 2, 3, 5], and by Mr. Swanson's recently revealed further evidence of his own guilt. [Ex. 1]

With all that doubt, the most basic DNA testing imaginable, that of comparing the killer's DNA against Mr. Hughes' DNA, still has not been performed.

The integrity of the Texas justice system demands that Mr. Hughes be granted that most basic and probative of all DNA testing before he is executed for a conviction that is now in serious doubt.

**A. Even the Evidence Presented at Trial Left Troubling Questions About Whether Mr. Hughes Could Have Committed the Murders.**

Mr. Hughes was convicted of murdering an acquaintance, fifteen-year-old Shandra Charles, and her three-year-old cousin, Marcell Taylor. The murders took place in a dark, overgrown field in west Houston, Texas on September 26, 1988. [Tr. 18:14]

**1. Doubts regarding the dying declaration**

Mr. Hughes was convicted based in part on a purported dying declaration provided by Shandra Charles to Sgt. Don Hamilton of the Houston Police Department (HPD). Sgt. Hamilton testified that she identified her attacker as "Preston" and said "He tried to rape me." [Tr. 18:15, 43] Several HPD officers testified that based on that name they confronted Mr. Preston Hughes at his apartment within hours of the dying declaration. [Tr. 18:48-49, 74, 76-78, 19:386-388]

Based on the trial testimony alone, there are many reasons to doubt that Shandra Charles was alive, much less conscious, when she purportedly provided Sgt. Hamilton a dying declaration.

Only one of the two officers first on the scene testified. That was Officer Vincent Cook. Officer Cook did not describe Shandra Charles as being conscious, though he did examine her closely enough in the dark to testify she was breathing. Though he described her as laying face down, he testified he could see her chest rising up and down. [Tr. 18:25-26] Though he could see blood around her neck and on the ground beneath her, neither he nor his partner rendered any first aid.

Instead, Officer Cook and his partner continued along the trail until they came across the body of Marcell Taylor. [Tr. 18:25] Officer Cook testified that the young boy was dead when they discovered him. He examined the body carefully enough in the dark to determine that the young boy was no longer breathing. [Tr. 18:25]. Nonetheless, in that triage situation where Shandra Charles was purportedly alive and Marcell Taylor was admittedly dead, Officer Cook rendered emergency first aid to Marcell Taylor [Tr. 18:27] though no one ever rendered any first aid to Shandra Charles.

Similarly, Sgt. Hamilton reported no effort to render first aid to Shandra Charles. Though he described her chest wound as "bleeding pretty seriously" [Tr. 18:40], and though he described her neck wound as "bleeding rather profusely" [Tr. 18:41], and though he described "a puddle of blood on the ground where she was lying" [Tr. 18:40], and though he believed she was seriously injured [Tr. 18:41], he made no effort to apply pressure to her wounds or to otherwise staunch the bleeding or to render any sort of first aid. Instead, he testified that he interviewed her [Tr. 18:42], that she spoke to him with only "a little difficulty" [Tr. 18:41], that she spoke in complete sentences [Tr. 18:43], and that she spoke to him as clearly as he was speaking in the courtroom [Tr. 18:40-41].

Similarly, Sgt. Hamilton made no mention that Shandra Charles attempted to stop the bleeding from her neck or chest wound herself, that she even put her hand over her chest wound or over her neck wound. Sgt. Hamilton testified that he examined her "to see what exactly the wounds were and to see if she had any additional injuries". [Tr. 18:41] He testified that he could see her chest wound was "bleeding pretty seriously". [Tr. 18:40] He testified that he could see her neck wound was "bleeding rather profusely". [Tr. 18:41]. He never testified, however, that Shandra Charles made any effort to cover her own wounds.

Given that none of the officers at the crime scene rendered any first aid to Shandra Charles, and given that in a triage situation they rendered first aid to a victim they deemed already dead, it is likely that Shandra Charles was already dead as well, and deemed less likely to benefit from resuscitation efforts.

Furthermore, Sgt. Hamilton's description of Shandra Charles' behavior, composure, and abilities are inconsistent with common perceptions of how a seriously wounded victim would behave in such circumstance.

Since Sgt. Hamilton's testimony of a dying declaration was uncorroborated by any other witness on the scene, and since no one rendered any first aid to her though they did to Marcell Taylor, and since Sgt. Hamilton's description of Shandra's behavior and composure is at odds with common perception, the jury had reason to doubt Sgt. Hamilton's testimony.

## **2. Doubts regarding the blood testing**

Mr. Hughes was convicted based in part based on blood detected on his clothing and his knife. That testing was conducted by HPD Criminologist James Bolding, the same James Bolding whose work was described by independent investigator Michael Bromwich as sloppy, fraudulent, and perjurious. [Ref. 4:2, 68, 85, 94, 104]

Mr. Bolding testified that he conducted blood screening tests a week earlier on Mr. Hughes' blue jeans and one of Mr. Hughes' blue work shirts, and that the testing gave "a positive reaction for the presence of blood." [Tr. 19:447-450]

Mr. Bolding conducted the blood screening test on the knife, while sitting in the witness box, with the jury present. [Tr. 19:450-451]

Based on the trial testimony alone, there are many reasons to doubt that there was any blood whatsoever on Mr. Hughes' clothing or his knife. According to the testimony, Mr. Hughes must have been standing within arm's length of the victims if he used his knife to inflict the "deep and serious" wounds that resulted in "copious bleeding" and the "spurting" of blood. [Tr. 18:270-272, 19:506] Yet no blood was apparent on any of Mr. Hughes' clothing. [Tr. 19:457] No blood was apparent on Mr. Hughes' knife or its associated sheath. [Tr. 19:458] Furthermore, the HPD found no evidence that Mr. Hughes had attempted to clean any blood from his person or from any item.[Tr. 18:269-270]

Mr. Bolding also testified that the blood screening tests were inconclusive. [Tr. 19:457] He testified that the presence of various substances could result in false positives. He identified the following substances as possible alternatives to blood: vegetable peroxides, such as found in radishes, carrots, and beets; bodily fluids that cause an enzymatic fluorescence, such as "intestinal contents or those things that are associated with it." [Tr. 19:455-456]

Even though the jury had no way of knowing that Mr. Bolding would soon be uncovered as a witness willing to perjure himself and commit fraud on the court in order to secure a conviction, the jury nonetheless had plenty of reason to doubt his testimony.

### **3. Doubts regarding the victim's eyeglasses**

Mr. Hughes was convicted based in part based on a claim by the HPD that discovered Shandra Charles' eyeglasses wedged between the cushions of Mr.

Hughes' couch. Sgt. Dennis Gafford testified that he noticed the eyeglasses, but thought little of them, when he was inside Mr. Hughes' apartment asking Mr. Hughes downtown for questioning. [Tr. 18:90-92] Sgt. Ferguson testified that he and his partner discovered the glasses when they searched Mr. Hughes' apartment, with his voluntary consent, later that morning. [Tr. 18:249] Sgt. Ferguson testified also that he had the couch and the eyeglasses photographed from afar and from up close. [Tr. 18:253-254]

Sgt. Gafford's claim that he casually noticed the eyeglasses as he was first confronting Mr. Hughes in his apartment was contradicted by his fellow HPD officer, Sgt. Don Hamilton. Sgt. Hamilton was with Sgt. Gafford at the time Sgt. Gafford claimed to have noticed the eyeglasses. Sgt. Hamilton testified that the "apartment was dark; and if I wanted to look around, I couldn't see anything anyway." [Tr. 18:63] Sgt. Hamilton testified further that when he escorted Mr. Hughes to his bedroom so that Mr. Hughes could dress for the trip downtown, Sgt. Gafford remained in the living room "in the dark." [Tr. 18:64]

Sgt. Gafford's claim was also contradicted by his fellow HPD officer, Sgt. DA Ferguson, the officer who purportedly found the eyeglasses. Sgt. Ferguson, testified that someone standing where Sgt. Gafford claimed to have been standing could not have seen the eyeglasses because of how the glasses were wedged between the cushions. [Tr. 18:268-269] Sgt. Ferguson testified that one would have instead needed to stand directly in front of the couch or look directly from above the eyeglasses to have seen them. [Tr. 18:269]

Sgt. Ferguson conceded that the eyeglasses were "tucked down" between the cushions and that they were not sticking up above the cushions. [Tr. 18:267] The photographs of the couch and eyeglasses were admitted as evidence. [Tr. 18:251] The photographs show that temples of the eyeglasses were extended. [Ex. 3] (The temples are arms that extend along the side of the head and above the ears. When the eyeglasses are closed, the temples are visible directly behind the lenses. When

the glasses are open, the temples extend rearward, and are not visible directly behind the lenses.) The evidence available to the jury was that the eyeglasses were tucked down between the cushions, with their temples extended, and tucked so far down that the eyeglasses did not stick up above the cushions. This is not an arrangement one would expect to find eyeglasses that were inadvertently left on the couch, or that inadvertently fell on the couch. This is an arrangement one would expect to find if the eyeglasses had been forcibly inserted between the cushions of the couch with the intention of securing them in the awkward and unlikely position in which they were found.

The jury had good reason to doubt that Sgt. Gafford was truthful when he testified that he had incidentally noticed the glasses before they were officially discovered. The jury also had good reason to suspect that those glasses were intentionally inserted between the cushions of Mr. Hughes' couch for the purpose of photographing them there.

#### **4. Doubts regarding the confessions**

Though Mr. Hughes confessed twice, those confessions are far more exculpatory than they are evidence of his guilt. The two confessions reveal that Mr. Hughes had no knowledge of the crime, the wounds, or the crime scene.

According to each confession, Mr. Hughes purportedly stabbed Shandra Charles as many as ten times. "I swung the knife six, eight, probably ten times." [Tr. 18:239] "I then pulled my knife and stabbed at her six or eight or ten times." [Tr. 18:345]

Shandra Charles, however, was stabbed only twice: once to the left chest, front to rear; once to the left side of the neck; front to rear. The knife transected her left common carotid artery and her left jugular vein. That wound was the fatal wound. [Tr. 19:492-493]

One might attempt to reconcile the confessions with the medical evidence by noting that, in his confession, Mr. Hughes claimed only that he swung the knife probably ten times, not that he stabbed her probably ten times; he may have missed most times. That argument is contrary to the evidence as well. Shandra Charles was not killed by a wild swing that just happened to transect both her carotid artery and her jugular vein. She was killed by a clean insertion of a knife that traveled directly from front to rear in such fashion as to guarantee her rapid demise. Given that her "arteries and veins were severed the same as on the child, Marcell Taylor" [Tr. 19:492], it is beyond reason they were both killed in the same precise fashion by someone swinging aimlessly, landing only a fraction of the swings, and landing those with great precision.

The confessions suffer not only when they are compared against the physical evidence, they suffer when compared against one another. In the first confession, Mr. Hughes made no mention whatsoever of young Marcell Taylor, much less that he stabbed him. In the second confession, Mr. Hughes added an improbable claim that he inadvertently stabbed Marcell Taylor only by accident when Marcell ran between Mr. Hughes and Ms. Charles while Mr. Hughes was swinging wildly at her. [Tr. 18:345]

The very existence of the undeniably false first confession demonstrates that, whatever the circumstances of Mr. Hughes' interrogation, those circumstances prompted him to sign a false confession.

Moreover, the second confession is just as clearly false as the first. Not only does it include the same impossible claim about how frequently the attacker stabbed Shandra Charles, it introduces yet another major contradiction with the evidence from the crime scene. In the second confession, Shandra Charles and Marcell Taylor each had their carotids cut when they were in close proximity to one another. The two of them, however, were found 20 feet apart. [Tr. 18:72] If their carotids had been severed while standing one behind the other, as the second

confession demands, then the blood spurting from the carotid wounds would soak the trail between them. Though HPD officers described the pool of blood beneath Shandra Charles [Tr. 18:26, 40], not one of them mentioned any blood between the two victims. Also, the crime scene photos introduced as evidence show no blood on the trail between them.

### **5. The alternate suspect**

There was substantial evidence presented at trial that someone other than Mr. Hughes committed the crime. Identified only as Doug at trial, Douglas Swanson might be the real murderer. That is a distinct possibility that the prosecution failed even to consider, much less investigate or disprove.

Witness Sylvia Woods knew both Mr. Hughes and Doug. She testified that the two shared similar physical characteristics, but that Doug had a habit of wearing a white towel around his neck. She testified that no one had seen Doug since the murder. [Tr. 19:549-550, 561-562]

Witness Detria Woods also knew both Mr. Hughes and Doug. She testified that the two shared similar physical characteristics, but that Doug had a habit of wearing a white towel around his neck because he sweated a lot. [Tr. 19:569-570]

Witness Rosalynd Calhoun knew neither Mr. Hughes nor Douglas Swanson. She testified that on the night of the murders she was driving into the Fuddrucker's parking lot when she noticed three people walking into the field in which the murders would soon take place. They attracted her attention because the young adult male had something white around his neck. She presumed it was a neck brace but conceded it could have been a towel. She saw the person only from a distance of about 150 feet, and that she could have identified the facial features had she been closer. She testified that the black male with something white around his neck was in the company of two other individuals: a young black woman fitting the general description of Shandra Charles and a young black child fitting

the general description of Marcell Taylor. She testified that the young woman and the young child were dressed in a fashion consistent with Shandra Charles and Marcell Taylor. She testified specifically that the young woman was not wearing a dress. She testified that the three were but 12 feet from the beginning of the trail through the field when she saw them. [Tr. 19:615-628.]

## **6. Summary of doubtful trial evidence**

The jury's guilty verdict does not erase the fact that substantial evidence presented at trial cast doubt on each argument of Mr. Hughes' guilt. Even in the absence of all the new evidence that has come to light, there was substantial reason to doubt that Mr. Hughes committed the murders. Had the jury been aware that the semen on the vaginal swab taken from Shandra Charles belonged to someone other than Mr. Hughes, there is little doubt that they would have not voted him guilty beyond a reasonable doubt. If the jury found out that semen had been deposited by Douglas Swanson, there is virtually no doubt they would have acquitted Mr. Hughes of the charges.

### **B. The Evidence Developed Since Trial Shows that Mr. Hughes Was Not the Real Killer.**

It has been twenty-three years since Mr. Hughes was convicted and sentenced to death for the murders of Shandra Charles and Marcell Taylor. In that time, new evidence has been developed showing that Mr. Hughes did not commit the murders. New evidence also contributes to the likelihood that it was Douglas Swanson who did kill Shandra Charles and Marcell Taylor.

#### **1. Shandra Charles was dead or unconscious at the time Sgt. Hamilton claimed to have taken her dying declaration.**

Evidence developed just this year proves that Shandra Charles could not have been alive when at the time Sgt. Hamilton claimed she had provided him with a dying declaration identifying someone named "Preston" as her attacker.

The autopsy report for Shandra Charles reveals that her left common carotid artery had been transected. [Ex. 4:4] That means both of the large vessels on the left side of her neck that were transporting blood to and away from her brain were cut through and through. Assistant Medical Examiner Robert Jordan, when testifying regarding the autopsy reports, repeatedly and properly described Shandra's carotid artery as having been severed. [Tr. 19:492, 512]

The carotid is a major artery arising directly from the aortic arch. Without immediate medical attention, bleeding from arterial injuries is voluminous and swift. [Tr. 19:506] There is no doubt that Shandra Charles bled profusely, and not just from her neck wound. Sgt. Hamilton testified that her chest wound was "bleeding pretty seriously". [Tr. 18:40] He testified that her neck wound was "bleeding rather profusely". [Tr. 18:41] Although Charles was lying on a permeable surface of dirt and weeds, rather than on a sidewalk or hard flooring, Sgt. Hamilton still noted that there was a "puddle of blood on the ground where she was lying". [Tr. 18:40] The crime scene photos reveal an elongated bloodstain extending from the weeds on one side of the trail, soaking the entire width of the trail, and ending somewhere in the weeds on the other side of the trail. [Ex. 4]

Dr. Robert Lloyd White is currently the Deputy Medical Examiner for Tarrant County. He was previously the Chief Medical Examiner for Neuces County. In an affidavit recently prepared for Mr. Hughes on October 22, 2012 [Ex. 5], Dr. White explains that:

[I]t is neither anatomically nor physiologically possible that Ms. Charles could've been conscious for more than 30-60 seconds given the expected rate of blood loss when a common carotid artery is cut. The electric activity in the brain simply stops after even a short interruption in blood flow. ... [I]t is simply not medically feasible that this young woman ... could have spoken to the officers as they claimed.

Studies conducted long ago on sheep support Dr. White's opinion that loss of consciousness is rapid after the loss of even one carotid artery. Sheep, as it turns

out, provide a good analogue for studying the consequence of losing one carotid artery. Adult sheep coincidentally have nearly the same blood volume and cardiac output as did Shandra Charles. [Ref. 6] In one study, sheep were subjected to controlled testing to determine how long they maintained brain function after having one or both of their carotid arteries and jugular veins severed. [Ref. 7]

On average, severing both carotid arteries plus jugular veins took 14 sec to induce a loss of brain responsiveness, whereas severing only one carotid artery plus one jugular vein took 70 sec.

Shandra Charles suffered one severed carotid artery and one severed jugular vein, just as those sheep who maintained brain function for only 70 seconds. Since sheep are a good analogue for humans, the study provides compelling evidence that Shandra Charles could not have remained conscious much longer than a minute, thereby substantiation Dr. White's expert opinion that she could have remained conscious no longer than 60 seconds.

Law enforcement officers have long known that a violent suspect can be quickly subdued by depriving his brain of blood. [Ref. 8]

The "choke holds" known as shime-waza used in the sport of judo have been taught and used by law enforcement officers to subdue violent suspects. ... If the carotid artery hold is properly applied, unconsciousness occurs in approximately 10 seconds (8-14 seconds).

The referenced article, while not directly applicable to cases in which one carotid artery is compromised, further substantiates that sheep provide a good analogue for humans when studying the effect of severed carotids, specifically when both carotids are compromised. A sheep loses brain function in 14 seconds after losing all fresh arterial blood to the brain; a human lapses into unconsciousness in 10 seconds after losing all fresh arterial blood to the brain.

On rare occasion, the speed at which a severed carotid incapacitates the victim has been reasonably well established. Reference 9 describes the case of a mother

who let out a yell just before inadvertently falling on a broken wine glass. The glass transected her left common carotid artery, an injury quite like that of Shandra Charles. The woman's daughter heard the yell and immediately rushed downstairs only to find her mother lying incapacitated on a bloody floor. The mother was declared dead minutes later. The daughter was confident that she arrived within 20 seconds of hearing her mother yell.

Reference 10 describes a case in which the left carotid and vertebral arteries were severed and the victim was able to maintain physical activity for only 10 seconds.

The medical and scientific evidence is therefore overwhelming that Shandra Charles could not have maintained consciousness much more than 60 seconds after being stabbed. She certainly died soon after. Sgt. Hamilton, however, encountered her no less than 13 minutes after her carotid artery and jugular vein had been severed. Her body was discovered sometime before 11:30 PM. [Ex. 6:22, Tr. 19:496] Sgt. Hamilton arrived on scene at 11:43 PM. [Ex. 6:24] There is no conceivable chance that Shandra Charles was alive, much less conscious, when Sgt. Hamilton arrived.

In addition to the overpowering medical and scientific evidence that Shandra Charles was certainly dead or unconscious when Sgt. Hamilton arrived on the scene, Mr. Hughes points to the HPD's own police report that she was unconscious. Sgt. Hamilton was not the first officer on the scene. He was no better than third or fourth. Patrol Officers Vincent Cook and C. J. Becker were the first officers on the scene. In their police report, they reported that Shandra Charles was already unconscious when they came upon her. Officer Becker did not testify at Mr. Hughes trial. Officer Cook did testify but did not mention that Shandra Charles was unconscious when they discovered her.

Sgt. Hamilton nonetheless testified that Shandra Charles provided him with a dying declaration identifying her attacker as Preston. [Tr. 18:42] That testimony,

in light of the evidence that Shandra Charles was unconscious to a medical certainty, and reported so by the HPD itself, demonstrates the lengths to which the State was willing to go to convict Mr. Hughes.

## **2. There was no blood on Mr. Hughes' clothes.**

James Bolding testified that he had found blood on Mr. Hughes' blue jeans and on one of his two blue work shirts the HPD recovered from his apartment. At the time he conducted the testing and provided his testimony, Mr. Bolding was the supervisor of the serology section of the HPD crime lab. [Tr. 19:432-433]

By 2007, the independent investigators commissioned by the City of Houston and the HPD had determined that neither Mr. Bolding's work as a criminologist nor his testimony as a sworn witness was to be trusted. [Ref. 4:8, 68, 85, 94, 104]

In 2012, an independent review of Mr. Hughes' case, revealed that Mr. Bolding withheld critical exculpatory evidence of Mr. Hughes' innocence, that there was no blood on Mr. Hughes' clothing, though Mr. Bolding testified to the contrary.

Both Shandra Charles and Marcell Taylor were stabbed in the same precise fashion. Each was stabbed once in the left side of the chest and once in the left side of the neck. The knife in each case entered from the front and, in Mr. Taylor's case, exited in the rear. In each case, the knife compromised both the left common carotid artery and the left jugular vein. Marcell Taylor's carotid artery and jugular vein were perforated. Shandra Charles' carotid artery was transected.

[Ex. 4:4, Ex. 5:4]

As is well known and as testified to in court, arterial injuries spurt copious amounts of blood. [Tr. 19:506] There is no doubt that Shandra Charles bled profusely, and not just from her neck wound. Sgt. Hamilton testified that her chest wound was "bleeding pretty seriously". [Tr. 18:40] He testified that her neck wound was "bleeding rather profusely". [Tr. 18:41] He noted that there was a "puddle of blood on the ground where she was lying". [Tr. 18:40] That is an understatement. The crime scene photos reveal an elongated bloodstain extending

from the weeds on one side of the trail, soaking the entire width of the trail, and ending somewhere in the weeds on the other side of the trail. [Ex. 4]

Given the bloody nature of the crime, it is a near certainty that the attacker ended up with blood on his clothing and his person. Dr. Lloyd White made the point in a 2001 affidavit he prepared for Mr. Hughes. [Ex. 5]

Based on more than thirty years experience as a medical expert in death investigation, it is my opinion that, barring intervening action such as changing clothes and bathing, it would be atypical and unusual for an assailant to inflict multiple, ultimately fatal, stab and cut wounds, including injuries of major arteries in the neck, upon two individuals during the course of the same attack without having some blood on his own clothing or body surface. The absence of such blood, either readily visible or detectable by standard forensic techniques, suggests an exquisite attention to procedural detail inconsistent with the known history and abilities of the alleged assailant, in the circumstances in which the bodies were found and with the injuries documented at autopsy. Even surgeons, creating wounds in highly controlled conditions, virtually always get blood somewhere on their gowns, shoes and/or head coverings.

During his cross examination, Assistant Medical Examiner Robert Jordan acknowledged that he could not avoid getting blood on his gown, gloves, mask, and hat during surgery, in spite of the far more calm and controlled situation under which surgery takes place. [Tr. 19:514-515]

Not surprisingly then, the crime lab noted that blood was apparent on Shandra Charles' clothing. [Ex. 2] Similarly, though the crime lab did not examine Marcell Taylor's clothing, the crime scene photos are unambiguous. Marcell Taylor's clothing was soaked in blood.

No blood was apparent, however, on Mr. Hughes' clothing. No blood is visible on any of the photos taken by the HPD of Mr. Hughes' clothing. Also, on the same form in which Mr. Bolding noted that there was blood apparent on Ms. Charles' clothing, he made no similar mention of blood apparent on Mr. Hughes' clothing. [Ex. 2]

The HPD checked Mr. Hughes' apartment for any evidence that he had attempted to wash blood from his person, from his clothes, and/or from his knife and sheath. The HPD found no such evidence. [Tr. 18:269 L15]

No one disputes that Mr. Hughes' clothing had no blood apparent on it.

In short, no blood was apparent on Mr. Hughes' clothing and no evidence existed that Mr. Hughes had recently cleaned those clothes for any reason, much less to clean them of blood. Blood, however, would be expected if he had just recently stabbed two victims in such bloody fashion.

James Bolding began testing Mr. Hughes' clothes just four days before he was to testify. Mr. Bolding tested only the blue jeans and one of the two work shirts. He subjected those two items of clothing to three separate and distinct tests for blood: a non-specific screening test and two blood-specific confirmatory tests. [Ex. 2]

The screening test involved adding a catalytic reagent to the sample to identify possible areas of blood. Catalytic reagents change color or glow when they come in contact with blood or with a wide variety of other substances. It is not clear which catalytic reagent Mr. Bolding used. The serology lab usually relied on phenolphthalein. [Ref. 4:70]. The test summary page indicates he used either phenolphthalein or o-tolidine. [Ex. 2] Mr. Bolding, however, testified that he applied a "fluorescent reagent that reacts only in dark". [Tr. 19:452] Two possible fluorescent reagents are luminol and fluorescein.

All catalytic reagents that react to blood also react to similar (but not necessarily identical) lists of organic and inorganic substances. The composite list of foods that may trigger a false positive includes, but is hardly limited to: apples, asparagus, avocado, broccoli, cabbage, carrots, celery, corn, cucumbers, garlic, green beans, lettuce, onions, potatoes, radishes, spinach, and tomatoes. The list of inorganic items that may trigger a false positive includes, but is not limited to: bleach (some types), cigarette ash and smoke, enamel paint, furniture polish,

iodine, and rust. [References 11, 12, 13, 14] Mr. Hughes smoked. [Tr. 18:108, Ref. 6:11]

The catalytic screening test on Mr. Hughes' clothing returned positive for blood, or cigarette ash, or cigarette smoke, or one of the many other items that react similarly. Mr. Bolding indicated a positive reaction by entering the letters "Pos" in the appropriate box. According to the legend at the upper left of the form, "Pos" indicates a positive reaction. [Ex. 2]

Because catalytic screening tests are non-specific, they are frequently (and properly) followed with more complex, more time-consuming, more expensive, more blood-specific confirmatory testing. The screening test on Mr. Hughes' clothing was therefore followed by a confirmatory test, one then commonly in use known as the Takayama test. That blood-specific confirmatory test returned negative for blood. To be clear, the test that could determine blood to the exclusion of all other substances found no blood. Mr. Bolding, indicated so by placing a minus sign in the appropriate box. According to the legend at the upper left of the form, a minus sign indicates a negative reaction. [Ex. 2]

The third test to which Mr. Hughes' jeans and shirts were subjected was an anti-human test. In that test, a positive result indicates the presence of not just blood, but of human blood specifically. A negative result indicates the absence of human blood. Mr. Bolding indicated a negative reaction (no human blood) by placing the letters "Neg" in the appropriate box. According to the legend at the upper left of the form, "Neg" indicated a negative result, just as the minus sign indicated a negative result for the Takayama test. [Ex. 2]

In summary, Mr. Hughes' clothing was subjected to not just one, but two separate and independent blood-specific confirmatory tests. Both of the tests returned negative for blood. There simply was no blood on Mr. Hughes' clothing; none was apparent and none was detected by either of two blood-specific tests. Neither the defense nor the jury, however, would ever learn that the two independent confirmatory tests failed to detect blood on Mr. Hughes' clothing.

James Bolding withheld both the paper work and the testimony from Mr. Hughes and the jury.

Somehow, under the guise of science, the Mr. Bolding managed to transform exculpatory evidence of no blood on Mr. Hughes clothes into inculpatory evidence of blood on Mr. Hughes' clothes. Mr. Bolding's behavior demonstrated how far the State was willing to go to secure Mr. Hughes' conviction.

### **3. There was no blood on Mr. Hughes' knife.**

James Bolding tested Mr. Hughes' knife for blood as he sat in the witness box in front of the jury. [Tr. 19:450-451] At the time he conducted this highly unorthodox and highly unprofessional testing, he was the supervisor of the serology section of the HPD crime lab. [Tr. 19:432-433]

By 2007, the independent investigators commissioned by the City of Houston and the HPD had determined that neither Mr. Bolding's work as a criminologist nor his testimony as a sworn witness was to be trusted. [Ref. 4:8, 68, 85, 94, 104]

In 2012, an independent review of Mr. Hughes' case revealed that Mr. Bolding's testing of the knife was nothing more than a cheap magic trick designed to deceive the jury that he, Criminalist Bolding, had just dramatically discovered blood on Mr. Hughes' knife.

The knife in question was secured from Mr. Hughes' apartment on the day after the murders, sometime before 2:58 AM on September 27, 1988. No blood was apparent on the knife. [Tr. 18:270 L14]

For the next seven months, the knife remained in the HPD property room. Just four days prior to the beginning of testimony at Mr. Hughes' trial, the knife was transferred to the serology section of the HPD Crime Lab and received by James Bolding. [Ex. 6:37]

The next day, Mr. Bolding filled out a form identifying the evidence that was to be tested for blood. The knife was not among the items to be tested. [Ex. 2]

The knife would not be tested until the day after trial testimony began. That was the day James Bolding was scheduled to testify. Mr. Bolding, in fact, tested the knife in the midst of the trial, while he was sitting in the witness box in the presence of the jury. [Tr. 19:443]

Mr. Bolding intended to perform a cheap magic trick in the guise of a blood screening test. A blood screening test consists of applying one of several different chemical reagents to a test sample. If the reagent comes into contact with even a slight trace of blood, it will change color or it will glow, depending on the reagent used.

While simple and inexpensive, blood screening tests are non-specific. The reagents respond to a long list of substances other than blood. Screening tests are therefore typically used when blood is not apparent to help identify regions worthy of more difficult, more expensive, blood-specific confirmatory testing.

The reagent selected by Mr. Bolding was o-tolidine, also known as orthotolidine. [Tr. 19:452 L15] Mr. Bolding knew or should have known that the o-tolidine would change color whether or not there was blood on the knife. O-tolidine reacts to rust as it reacts to blood, and Mr. Hughes' knife was rusty.

Mr. Hughes described his knife as rusty in his first confession, and that confession was read into the court record. [Tr. 18:238] A photograph of the knife taken at Mr. Hughes' apartment confirms the blade was rusty. No one has ever disputed that Mr. Hughes' knife had rust on it.

As early as 1825, investigators were worried about rust returning false positives during tests for blood. [Ref. 14:74] The table below shows that use of orthotolidine on a rusty test sample will result in a false positive. [Ref. 15:19]

**False Positives**

	TMB	Phenolphthalein	Leucomalachite Green	Orthotolidine
Vegetables	✓			✓
Fruits	✓			✓
Horseradish	✓	✓	✓	✓
Rust	✓			✓

Interestingly, the table shows also that phenolphthalein will not result in a false positive when used on a sample contaminated with rust. Mr. Bolding could just as easily chosen to conduct the courtroom testing with phenolphthalein. According to the table, that would not have resulted in a false positive.

In fact, during the investigation into the crime lab corruption, the independent investigators mentioned that the crime lab "typically would screen suspected bloodstains by applying a color test using the chemical phenolphthalein."

[Ref. 4:70]

Mr. Bolding, nevertheless, elected to use o-tolidine as the reagent for the test, and thereby insured that the test would return positive, as it in fact did. The prosecutor then elicited testimony from Mr. Bolding that blood had been detected on the knife. [Tr. 19:451]

Defense counsel attempted to blunt the adverse outcome of the surprise testing by eliciting testimony that other substances might have caused the reaction. Mr. Bolding agreed and listed "radishes, carrots, and beets" as examples of such substances. Mr. Bolding could have and certainly should have then informed the jury that rust would also result in false positives. He chose not to do so.

[Tr. 19:455]

It is obvious that James Bolding staged the testing to ensure that a false positive reaction would occur. The evidence of that nefarious scheme is:

- Mr. Bolding elected to use o-tolidine as the reagent, even though it would provide a false positive in the presence of rust. According to the independent investigators, the use of o-tolidine was at least a bit unusual, since the serology lab usually used phenolphthalein. [Ref. 4:70]. Phenolphthalein would not have resulted in a false positive. [Ref. 15:19]
- When asked a specific question about which substances would cause a false positive, James Bolding elected not to include rust as one of the substances. He instead mentioned "radishes, carrots, and beets." [Tr. 19:455] He

thereby demonstrated his knowledge of substances which cause false positives, but he excluded rust.

- The testing on the knife was delayed even longer than the testing of Mr. Hughes' clothing. The delay was intentional, since the knife was not listed with the other items to be tested the week prior to trial. [Ex. 2] By delaying the testing until James Bolding's testimony, any blood-specific confirmatory test would never be performed on the knife. James Bolding's test results would never be challenged.

Somehow, under the guise of science, the Mr. Bolding managed to transform exculpatory evidence of no blood apparent on the knife into inculpatory evidence of blood on the knife. The Mr. Bolding did so without any valid screening test, without any confirmatory test, without any trustworthy test at all. Mr. Bolding's behavior demonstrated how far the State was willing to go to secure Mr. Hughes' conviction.

#### **4. The victim's eyeglasses were planted in Mr. Hughes' apartment.**

Mr. Hughes was convicted based in part based on a claim by the HPD that discovered Shandra Charles' eyeglasses wedged between the cushions of Mr. Hughes' couch. A recent review of Mr. Hughes' case by an independent investigator is still ongoing. That investigator has recently discovered compelling evidence that the HPD planted those glasses between the cushions of Mr. Hughes' couch. [Ref. 16]

The HPD claims they searched Mr. Hughes' apartment one time and one time only, beginning at 9:15 AM. The 2012 independent investigator discovered that the HPD:

- searched Mr. Hughes' apartment twice;
- seized items from Mr. Hughes' apartment during the first search;
- turned those items into the property room at 2:58 AM;

- then later removed those items from the property locker;
- returned those items to the Mr. Hughes' apartment;
- planted those items in Mr. Hughes' apartment; and
- photographed those items in Mr. Hughes' apartment as if they had just discovered them there.

It was during this re-creation of the first search, that Shandra Charles' eyeglasses first appeared between the cushions of Mr. Hughes' couch.

The HPD seized at least nine items from Mr. Hughes' apartment. Those items were one pair of blue jeans, two blue work shirts, one maroon pullover shirt, two tennis shoes, a wrist watch, a knife and its sheath. According to the property invoice prepared by CSU Officer F.L. Hale, those items were turned into the property room at 2:58 AM. [Ex. 7]

The upper left corner of that invoice is presented below. It shows that Mr. Hughes' property was received at 2:58 AM.

BOOK	PAGE	LINE		
			CASE NO.	89-4590 JB
11-832-12			788 158 88	
DATE		DIVISION	TYPE OF OFFENSE	
9/27/88		HOMICIDE	CAPITAL MURDER	
TIME 2:58am				
DEFENDANT: NAME, ADDRESS, CITY				
PRESTON CRAIG HUGHES 2310 CRESCENT PARK 138A				

Since Mr. Hughes' property was turned into the HPD property room at 2:58 AM, the HPD must have searched his house prior to 2:58 AM.

Photographs taken by HPD CSU Officer F. L. Hale provide additional compelling evidence that the HPD searched Mr. Hughes' apartment twice. One photograph, an exterior shot taken at night, shows the stairway and landing leading to Mr. Hughes' apartment door. [Ex. 8] Another photograph shows sunlight coming through and around translucent curtains. [Ex. 8] Officer Hale's

photographic record preserved compelling evidence that Mr. Hughes' apartment was searched twice, once when it was dark outside, and once when it was light outside.

A missing bed sheet provides even more evidence that the HPD search Mr. Hughes' apartment twice. Mr. Hughes' bed sheet is missing from the photographs taken during the daylight search. [Ex. 8] The bed sheet was apparently seized during the first search, but not checked into the property room along with Mr. Hughes' other items.

In Section I (A)(3) of this motion, we demonstrated that evidence presented at Mr. Hughes' trial revealed that:

- property manager Joe Casler provided the HPD, at their request, a copy of the master keys that would allow the HPD to surreptitiously enter Mr. Hughes' apartment, and
- the eyeglasses had to have been forcibly inserted between the cushions of Mr. Hughes' couch.

When that evidence introduced at trial is coupled with the recently developed evidence that the HPD searched Mr. Hughes' apartment twice, it becomes unavoidable that the HPD did indeed plant Shandra Charles' glasses between the cushions of Mr. Hughes' couch.

Such behavior further demonstrates how far the State was willing to go to convict Mr. Hughes.

#### **5. Mr. Hughes' knife could not have inflicted the wounds.**

Mr. Hughes' knife was presented to the jury as if it were the murder weapon. Mr. Bolding conducted a fraudulent blood screening test on that knife in front of the jury to convince them that Mr. Hughes was guilty because his knife had blood on it.

Just this year, in 2012, an independent review of Mr. Hughes' case revealed that Mr. Bolding's testing of the knife was nothing more than a cheap magic trick

designed to deceive the jury that he, Criminalist Bolding, had just dramatically discovered blood on Mr. Hughes' knife. [Ref. 17, 18]

Human tissue has alignment patterns equivalent to grain patterns in wood. In humans, these patterns are referred to as Langer lines. The concept of Langer lines was first detailed in 1861 by Austrian anatomist Karl Langer. [Ref. 19:19] The Langer lines and their significance have long been understood by surgeons, since surgical cuts are usually made in the direction of Langer lines to minimize scarring. [Ref. 19:20]

With respect to Shandra Charles and Marcell Taylor, consider the comparative widths of the neck wounds to the chest wounds. Each neck wound was 1/8" wide. The chest wounds were 3 to 4 times as wide. Marcell Taylor's chest wound gaped to 3/8". Shandra Charles' stab wound gaped to 1/2". [Ex. 9:4, Ex. 10:4] The neck wounds were much thinner because they were nearly parallel to the Langer lines. The chest wounds were much thicker because they were nearly perpendicular to the Langer lines.

When a blade is inserted into the body parallel to the Langer lines, as it was in the case of Shandra Charles and Marcell Taylor, the wound approximates the cross section of the blade. The cross section of their neck wounds therefore revealed critical details about the cross section of the blade. [Ref. 19:49]

One of the most significant determinations that must be made, along with width, thickness and length of the blade, is whether the blade was single- or double-edged or serrated. If the victim has been stabbed with a single edge blade, they will have an acute angle at one end of the stab wound, with the other end being blunted or squared off.

[I]f the stab wound runs parallel to Langer's lines, then one end will have an acute angle and the other will be blunted or squared off. In this particular case the width of the of the blunt end of the stab wound will represent to a substantive degree the width of the non-cutting edge of the knife.

According the autopsy reports, none of the stab wounds had a blunt edge. [Ex. 9:4, Ex. 10:4] This fact is unenlightening with respect to the chest wounds, since those wounds were nearly perpendicular to the Langer lines. The lack of any

blunt edge is, however, of particular interest with respect to the neck wounds. As noted previously, the neck wounds were nearly parallel with the Langer lines. The wound cross section therefore preserved the blade cross section.

As noted in the autopsy reports, none of the wounds had a blunt end. The blade of the murder weapon, therefore, had no blunt edge.

Mr. Hughes' knife had a single-edged blade. It had one sharp edge and one blunt edge. [Tr. 19:494] Mr. Hughes' knife, therefore, could not be the murder weapon.

Mr. Hughes' knife is not excluded as the murder weapon only by the blunt edge of the blade, it is excluded as well by the width. The blade of Mr. Hughes' knife was 1 inch wide. [Tr. 19:494]

Shandra Charles neck wound was 1 1/8" inch wide, and Marcell's neck wound was 1" wide. [Ex. 9:4, Ex. 10:4] At first blush, it would seem that the wound widths are consistent with the blade width. That would be true only if a human neck presented a flat surface and if the blade entered perpendicular to the surface. Necks, however, are more approximately circular; they have a circumference approximately three times their width. For any quarter section of the neck, say the left front quarter, the arc length of the section is therefore approximately 1.5 times the width of the section. Any knife inserted into the front quarter section of a neck, passing from front to rear, will leave a wound having a width approximately 1.5 times the width of the blade. This geometric phenomenon is portrayed in graphic fashion in Reference 18.

Based on a two-dimensional recreation of Mr. Hughes' blade inserted into each of the victims' neck wounds, it is clear that Mr. Hughes' knife is too wide to have created the neck wounds. It is too wide by a factor of approximately 1.6.[Ref 18]

Similarly, the maximum blade width of the actual murder weapon can be approximated from the two-dimensional recreations. The murder weapon had a blade approximately 5/8" wide. [Ref 18]

In summary, evidence developed only this year proves that Mr. Hughes' knife cannot be the murder weapon. Its blade has a blunt edge and is too wide by a factor of 1.6. However, as will be described soon, a knife belonging to Douglas Swanson at the time of the murders was completely consistent with the wounds suffered by each of the two victims.

**6. The confessions are falsified by the new evidence regarding the knife.**

As already detailed in I (A)(4) of this motion, evidence presented at Mr. Hughes trial cast substantial doubt on the reliability of his confessions.

In 2012, an independent review of Mr. Hughes' case revealed that Mr. Hughes had no knowledge of the weapon used in the attack. As just detailed in section I (B)(6) above, Mr. Hughes' knife could not have been the murder weapon. The murder weapon must have had a double-edged blade; Mr. Hughes' knife had a single-edged blade. The murder weapon must have be approximately 5/8" wide. Mr. Hughes knife was 1.6 times that wide.

Each confession, however, describes Mr. Hughes' knife as the murder weapon. From the first confession: [Tr. 18:238-239]

The knife is an army knife with brown handles, a rusty blade, and it's about five or six inches long. I carry it in a gray sheath on the right side of my belt. When I felt someone touch me, I turned to my left and threw a block with my left arm and just started sticking with the knife. It was dark and I couldn't tell who was there. When I swung the first time, it hit. But I didn't know if went in or nothing. After I struck the first two times, I saw that it was Shandra. I was fucked up and I just got scared and kept sticking. I swung the knife six, eight, probably ten times, and then just took off running toward my apartment. ... I went back into the apartment and that's when I took the knife off my belt and put it in my closet. I put it in a box in the bedroom closet on the floor. The box is a brown cardboard box with clothes in it and the knife is stuck down on the side. The closet is in a bedroom to the right as you go toward the back of the apartment, the bedroom with the twin bed in it.

From the second confession: [Tr. 18:344-345]

I had my knife in a sheath on the right side of my pants on my belt. I then pulled my knife and stabbed at her six or eight or ten times. I'm not sure. I just started stabbing. I'm not sure how many times I stabbed her. As I was stabbing her, the little boy looked up at me and started crying. He then ran in between us and I stabbed him. I don't know how many times I stabbed him. I stopped and looked at Shawn and she was looking at me. I then put the knife in my sheath and ran home. When I got home, I looked at the knife to see if there was any blood on it. I did not see any, and put it in a box in the closet. [Tr. 18:344-345]

Those two excerpts contain the material portion of the two confessions, and each excerpt is contradicted by the evidence of the wounds, the evidence from the crime scene, and now by the recent revelations regarding the actual murder weapon. The confessions are exculpatory in the sense that they reveal Mr. Hughes had no knowledge of the crime or the murder weapon.

The knife used to stab Shandra Charles and Marcell Taylor was not the one Mr. Hughes purportedly used. Mr. Hughes purportedly placed that knife, and its sheath, in a cardboard box in a bedroom closet. The police recovered that knife and sheath from the cardboard box just as described by Mr. Hughes. The knife, however, had a 1" wide blade with a blunt edge and could therefore not be the murder weapon.

Both Shandra Charles and Marcell Taylor were stabbed in identical fashion, from front to rear, nearly horizontally, once to the chest and once to the neck. Neither was killed by someone just swinging a knife, missing most of the time, and creating parallel sets of wounds by chance.

Shandra Charles and Marcell Taylor were stabbed some distance apart from one another. They were not stabbed as the small boy ran between Shandra Charles and her attacker.

Even based on evidence only available at trial, the jurors had plenty of reason to suspect that Mr. Hughes' confessions were false. The recent discoveries

regarding the actual murder weapon lay to rest any residual doubt about the veracity of Mr. Hughes' confessions. Both were false and demonstrably so.

**8. Douglas Swanson provided additional evidence that he is the actual murderer.**

As already detailed in Section I (A)(5) of this motion, there was substantial evidence presented at trial that Douglas Swanson might be the real murderer. Two witnesses described Douglas Swanson as exhibiting the unique behavior of frequently wearing a white towel around his neck. A third witness testified she saw a person matching Douglas Swanson's general description and wearing something white around his neck walking into the soon-to-be crime scene in the company of a young woman and a small child.

Witnesses testified also that Douglas Swanson disappeared after the trial.

In 1991, less than three years after the murder of Shandra Charles and Marcell Taylor, Douglas Swanson engaged in a violent crime spree that that resulted twelve life sentences plus 20 years. Six of the life sentences are for aggravated robbery with a deadly weapon, each offense committed on a different day. Three of the life sentences are for aggravated sexual assault, each offense committed on a different day. One of those charges of aggravated sexual assault involved the use of a deadly weapon. [Ref. 1]

Given that the State established at trial that Shandra Charles was a victim of aggravated sexual assault and then murdered with an obviously deadly weapon, Douglas Swanson's criminal behavior is consistent with the behavior of the person who attacked Shandra Charles and her young cousin Marcell Taylor.

As part of a continuing review of Mr. Hughes' case, Ward Larkin of Houston, Texas visited Douglas Swanson at his place of confinement in the Robertson Unit in Abilene, Texas. During a long conversation through security glass, Swanson talked of his life in Houston around the time of the murders, his friendship with

Shandra Charles, and his practicing of martial arts. As part of that discussion, the subject of his knife came up. Though Douglas Swanson had no way of knowing that the murder weapon had only recently been proven to have a double-edged blade 5/8" wide, Swanson described his knife as a butterfly stiletto knife having a double-edge blade approximately 5" long and 1/2 wide. [Ex. 1]

Not only was Douglas Swanson probably seen walking to the murder scene in the company of both Shandra Charles and Marcell Taylor, Douglas Swanson has since exhibited sexually abusive, violent behavior against women under the threat of a deadly weapon. Douglas Swanson has also unwittingly admitted to ownership, at the time of the murders, of a knife perfectly matching the weapon just identified as part on an ongoing review of Mr. Hughes' case.

### **C. Previous DNA Testing.**

Mr. Hughes is aware that previous DNA testing was conducted at least on one pair of his blue jeans in 2003. Through no fault of his own, Mr. Hughes has only limited knowledge of that testing.

Though the report was dated January 21, 2003, Mr. Hughes' post conviction attorney, Patrick F. McCann, would share with him only Mr. McCann's observation that the results "were not helpful." Mr. Hughes did not receive a copy of the report until recently, September 10, 2012. He received that copy only after numerous requests over many years. Mr. Hughes has since dismissed Mr. McCann for this and other gross failures, and presents this motion pro se.

Mr. Hughes presents herein the results of that test as fully and accurately as he can without legal or technical assistance. The court order for the release of the testing (4:01-CV-4073) is included as Exhibit 11. The test report, to the extent available to Mr. Hughes, is included as Exhibit 12. Mr. Hughes summary of the testing is based entirely on those two documents.

On January 24, 2002, Judge Hoyt of the US District Court (Southern District, Houston Division) ordered the following items be made available for DNA testing. [Ex. 11]

- a pair of blue jeans, belonging to Mr. Hughes;
- a maroon shirt, belonging to Mr. Hughes;
- two blue work shirts, belonging to Mr. Hughes;
- a knife and associated sheath, belonging to Mr. Hughes;
- a pair of shorts, belonging to the female victim Shandra Charles;
- a vaginal swab, from the female victim Shandra Charles.

That court order was presumably issued in response to a motion submitted by Patrick McCann, recently dismissed as Mr. Hughes' counsel. The list of items Mr. McCann planned to have tested is disturbing both by what it includes and by what it excludes.

It made no sense to include any of Mr. Hughes' clothes. If Mr. Hughes' clothes tested negative for the victim's DNA, that result would not be considered probative. During Mr. Hughes' trial, the State's witness from the Medical Examiner's Office testified that it was possible that the person who severed Shandra Charles' carotid and jugular, who perforated Marcell Taylor's carotid and jugular, and who stabbed each of them in the chest, would not necessarily have any blood on his person or his clothing. [Tr. 19:513] While Mr. Hughes finds such testimony to be unreasonable, the State presented that argument to the jury and the jury convicted Mr. Hughes based in part on it.

It is therefore extremely unlikely that the State or the courts would accept a negative result on Mr. Hughes' clothing as compelling evidence of his innocence. Submitting his clothing for testing, on the other hand, exposed him to the possibility that the clothing had been carelessly or intentionally contaminated with either of the victims' DNA. Given the compelling evidence that the police and the crime lab invented Shandra Charles' dying declaration, conducted a fraudulent

blood screening test on Mr. Hughes' knife, withheld exculpatory lab reports, and planted Shandra Charles' eyeglasses in his apartment, such a possibility of careless or intentional contamination should have been of substantial concern to Mr. McCann.

While it was both useless and foolish for Mr. McCann to include Mr. Hughes' clothing in the list of items to be tested, it is incomprehensible that he did not include the victims' fingernail clippings. Clippings from both victims were collected during the two autopsies. The police reports make clear that the HPD had those clippings in their possession. [Ref. 6:38] If either victim had scratched the assailant, DNA testing of the fingernail clippings would have excluded Mr. Hughes, since he killed neither of the victims and had no scratches on him. The testing could have, on the other hand, identified Douglas Swanson or some other person as the actual murderer.

Similarly, there were other items recovered from the crime scene that could have preserved and presented DNA evidence of the actual murderer. Those items include: [Ex. 6:1, 2, 4, 5, 17, 18, 21, 37, 41]

- a Busch beer can, described as "fresh" by the police;
- a purse strap used as a belt by Shandra Charles, located far from her body.
- a finger ring engraved with the name Avon;
- a plastic bag found wrapped around one foot of victim Taylor.

The report from the DNA test lab, Cellmark Diagnostics, reveals that only three items were tested. Those items were described in the report as: [Ex. 12]

- Item #E: Pair of pants in a plastic bag labeled "... pair of blue jeans ..."
- Tissue block labeled "88-6084"
- Tissue block labeled "88-6085"

The pants were Mr. Hughes' blue jeans. Tissue block 88-6084 came from the autopsy of Marcell Taylor. Tissue block 88-6085 came from the autopsy of Shandra Charles. [Ex. 12]

It is unclear which other items were received and tested by Cellmark, since the report did not specify. The report did include a note indicating that some other items were in fact tested, but the results were deemed insufficiently reliable for interpretation. The note read: [Ex. 12]

In addition to the profiles obtained to the items referenced in this report, weak results were observed. The results may be due to the presence of DNA from more than one individual or to technical artifacts, and were therefore not interpreted.

Certainly the most critical item ordered to be tested, but not reported, was the vaginal swab. According to the lab report, the vaginal swab tested positive for semen. According to the State, that semen belonged to the murderer.

At trial, State's witness Evelyn Brown identified herself as Shandra Charles' best friend. Witness Brown testified that she believed Shandra Charles was a virgin, that Shandra Charles never mentioned having had sex with a boy. [Tr. 19: 419] Defense witnesses Sylvia Woods and Detria Woods were also friends of Shandra Charles. Each testified that Shandra Charles had explicitly told them she was a virgin. [Tr. 19:560, 582]

Furthermore, witness Brown testified that she had been in the company of Shandra Charles continuously between the close of school on Friday afternoon until the two of them separated at 9:30 PM on Sunday night. Witness Brown testified that during that entire period of more than three full days, Shandra Charles did not have sex with any boys. [Tr. 19:419:422]

Since Shandra Charles was murdered sometime prior to 11:30 PM on that Monday night, the State argued that only Shandra's murderer could be responsible for the semen found on her vaginal swab.

Had the vaginal swab been tested for male DNA, and had that DNA been compared against that of Mr. Hughes, Mr. Hughes would free today rather than facing execution in a few days.

That vaginal swab, however, was never tested, or if tested never interpreted. Even more significantly, no biologic sample from Mr. Hughes was delivered to the lab for comparison. It makes no sense whatsoever to move that the US District Court order that the vaginal swab be released for testing, then not have an exemplar sample of Mr. Hughes' DNA to exclude (or include) him as the contributor of the semen. Yet that is what Mr. Hughes' attorney, Patrick F. McCann, apparently did.

Prior to finally receiving the written report, Mr. Hughes had been informed only that the test results were "not helpful." Now that Mr. Hughes finally has the test results in hand, he understands that that the lab reported that Shandra Charles' DNA was detected on Mr. Hughes' pants. That result can only indicate accidental or intentional contamination.

There was no blood apparent on Mr. Hughes' jeans. [Ex. 2] The Cellmark lab personnel therefore performed a presumptive test for blood to indicate where they might test for blood. [Ex. 12] The presumptive test was positive [Ex. 12], but that test did not prove there was any blood to be tested. Presumptive tests return positive not only for blood, but for all sorts of household products such as vegetables. The presumptive test nonetheless gave the Cellmark personnel some idea where to test for possible DNA.

From the conclusion of the Cellmark report: [Ex. 12]

The data indicate that DNA from more than one individual was obtained from the pair of blue jeans. The DNA obtained from the sample contains DNA from a male and DNA from a female. The primary DNA profile obtained from this sample is consistent with the types obtained from the tissue block labeled "88-6085" ... The donor of the tissue block labeled "88-6084" is excluded as a contributor of the DNA obtained from this sample."

In other words, Cellmark found Shandra Charles' DNA on Mr. Hughes jeans. The result is suspicious on its face. The result would suggest that someone could stab Shandra Charles in the neck and in the chest, leave no visible evidence of blood on his clothing, but leave an invisible trace detectable only by sophisticated DNA analysis. The result would further suggest that the same person could also stab Marcell Taylor in the neck and in the chest, and inflict additional slash wounds to the chest and arm, yet not leave even a trace of blood detectable by DNA testing. The circumstances of such blood spatter are virtually impossible.

The HPD crime lab had already conducted presumptive tests on Mr. Hughes' blue jeans. The presumptive test returned positive, indicating blood or one of the many other common items that respond to the presumptive test they used. The presumptive testing was followed by two different and independent blood-specific confirmatory tests, neither of which detected blood. [Ex. 2]

Furthermore, the crime lab literally cut from the jeans those areas that returned positive to the non-specific blood screening test. [Tr. 19:447-448] The jeans delivered to Cellmark, therefore consisted only of material that had not returned positive to blood-screening tests when tested earlier.

Because no blood could be detected on the jeans by either of two blood-specific screening tests, and because Cellmark's blood screening test found blood where an earlier blood screening test did not, it is therefore certain that any blood found on Mr. Hughes' clothing must have been transferred there sometime after April 28, 1989, the date that the HPD crime lab conducted their testing.

But there are still more reasons to be suspicious of the DNA result.

Sgt. Hamilton, who provided the false testimony about Shandra Charles' dying declaration, testified that he (Sgt. Hamilton) had blood on his clothing [Tr. 18:61], and that Sgt. Hamilton followed Mr. Hughes into his bedroom as Mr. Hughes put on clothes for his trip downtown for questioning. [Tr. 18:63] When Mr. Hughes

left, his jeans remained behind him, unsecured, on his floor, in close proximity to the untrustworthy Sgt. Hamilton.

Furthermore, the blue jeans had already been surreptitiously and improperly removed from the proper chain of custody and control, and had been so removed for illicit purpose. As detailed in Section I (B)(4) of this motion, those blue jeans had been improperly removed from the property room for the purpose of staging them again in Mr. Hughes' apartment for the purpose of photography. The HPD thereby demonstrated their willingness to intentionally contaminate a crime scene, and they did so (at least in part) with the very jeans that mysteriously tested positive for Shandra's DNA after testing negative for blood by the HPD crime lab.

Furthermore, those blue jeans were stored in a cardboard box, during and after trial, along with the other exhibits. Recently, as part on an ongoing review of Mr. Hughes' case, Ward Larkin of Houston examined the contents of that box, under proper supervision. Mr. Larkin discovered that Shandra Charles' bloody shorts were stored in the box without being enclosed in any form of protective container. [Ex. 13] Given the extremely suspicious appearance of invisible blood DNA on Mr. Hughes' jeans, and given the insecure conditions under which those jeans were maintained, the test results from the 2003 testing are meaningless.

## **II. Mr. Hughes Satisfies All the Requirements Under Article 64 for DNA Testing.**

Mr. Hughes satisfies each and all of the statutory conditions for obtaining DNA testing under Chapter 64, as follows.

### **A. Article 64.03(a)(1)(A)(i) - DNA evidence still exists and is in a condition making DNA testing possible.**

During his trial testimony, Assistant Medical Examiner Robert Jordan testified that at least a portion of the vaginal swab was examined for P30, acid phosphatase, and found to be positive. [Tr. 19:501] The positive result for P30 indicated that semen, and therefore male DNA, was present on the vaginal swab of Shandra Charles. [Tr. 19:501]. Dr. Jordan testified also that the testing of the vaginal swab took place within the medical examiner's own toxicology lab. [Tr. 19:503] That container holding that swab was admitted as State's Exhibit 22 [Tr. 19:505]. That exhibit was described as a "carrier bag with a container labeled 'P-30' and 'Inhibition' with Case No. ML88-6085, corresponding to the autopsy on LaShandra Charles." [Tr. 19:502] As a trial exhibit, that evidence was to be preserved and subjected to proper chain of control until the case is finally closed. Because the container was enclosed in a carrier bag by a member of the Medical Examiner's Office, it has been properly preserved in a condition making DNA testing possible.

On April 24, 1989, James Bolding took possession of at least 1/2 of a vaginal swab taken from Shandra Charles during her autopsy. [Ex. 6:34] On April 25, 1989, he subjected at least 1/2 of the vaginal swab to an "Anti-P-30 Test". [Ex. 2] He described the test sample as "Vaginal Swab Cotton Tip 1/2 Swab" [Ex. 2] He reported the test as positive. [Ex. 2] He testified that the testing indicated the presence of semen [Tr. 19:446], and therefore indicated the presence of male DNA.

Either the ME's vaginal swab sample or Mr. Bolding's swab sample still exists and has been properly preserved, as evidenced by its inclusion in the items to be tested by in 2003 by Cellmark. [Ex. 12, 13]

Dr. Jordan testified that vaginal, oral, and rectal swabs were taken during the autopsies. [Tr. 19:502] On July 29, 1989, after Mr. Hughes conviction, HPD Officer Keith H. Webb retrieved from the medical examiner's office the following items: 2 containers of swabs, one set of slides, and two containers of fingernails. [Ex. 6:38] At least one container of swabs almost certainly includes the oral and/or rectal swabs taken from Shandra Charles during her autopsy. One of the slides may include a vaginal smear taken from Shandra Charles at the time of her autopsy, since the HPD had requested such a slide be prepared. [Ex. 14] Since the State established that Shandra Charles was sexually assaulted, and since both Shandra Charles and Marcell Taylor may have scratched the attacker, the oral swab, the rectal swab, the vaginal smear, and the fingernails may contain the DNA of the actual murderer. Those items are now in the control and custody of the Houston Police Department.

In addition to the biological evidence collected during autopsy, four other items that may contain the murderer's DNA still exist in a condition worthy of DNA testing.

On February 28, 2001, U.S. District Court Judge Hoyt ordered that all evidence in Mr. Hughes case be preserved. [Tr. 6:40] Since that date, the HPD police reports establish that a Busch beer can and a white strap still exist. May 4, 2007, Sgt. Woods of the HPD obtained the beer can and the white strap from the Harris County District Attorney's office, re-tagged them, and thereby maintained a proper chain of control and custody of those items. [Tr. 6:41] The Busch beer can was found between the two victims and deemed fresh by CSU Officer F.L. Hale. [Ex. 6:17, 22] The white strap was a purse strap used as a belt by Shandra Charles. Crime scene photos show the white strap was found near the body of Marcell

Taylor. It was removed from Shandra Charles' pants and may have been used to restrain Marcell Taylor. The beer can and the white strap are likely to still preserve samples of the murderer's DNA.

In addition to the beer can and the white strap, Sgt. Woods also recovered and re-tagged a white plastic bag. Crime scene photos show that a white plastic bag was wrapped around Marcell Taylor's left ankle. That white plastic bag may have been used to restrain him. That white plastic bag could therefore still preserve samples of the murderer's DNA.

In addition to the items recovered and re-tagged from the DA's office, CSU Officer Hale secured from the crime scene a silver ring inscribed with the name "Avon". [Ex. 6:21] That ring, which has been maintained in the custody and control of the HPD, was discovered near Marcell's body and may preserve samples of the murderer's DNA.

**B. Article 64.03(a)(1)(A)(ii) - The DNA evidence has been subjected to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced or altered in any material respect.**

A container holding a portion of the vaginal swab was admitted as State's Exhibit 22. [Tr. 19:505] That exhibit was described as a "carrier bag with a container labeled 'P-30' and 'Inhibition' with Case No. ML88-6085, corresponding to the autopsy on LaShandra Charles." [Tr. 19:502] As a trial exhibit, that evidence has been subjected to a proper chain of custody sufficient to establish that it has not been substituted, tampered with, replaced or altered in any material respect.

On April 25, 1989, James Bolding tested at least 1/2 of a vaginal swab taken from Shandra Charles during her autopsy, and established that the portion he tested contained semen. [Tr. 19:446] Either the ME's vaginal swab sample or Mr. Bolding's swab sample still exists and has been properly preserved, as evidenced by its inclusion in the items to be tested by in 2003 by Cellmark. [Ex. 12, 13]

The HPD recovered swabs, slides, and fingernails from the Medical Examiner's Office on July 29, 1989 and has since been responsible for the custody and control. [Ex. 6:38]

After an order to preserve all evidence in Mr. Hughes' case [Ex. 6:40], the HPD recovered and re-tagged the Busch beer can, the white shoulder strap, and a white plastic bag. The HPD has since been responsible for the custody and control of those items.

CSU Officer Hale secured from the crime scene a silver ring inscribed with the name "Avon". [Ex. 6:21] That ring has been maintained in the custody and control of the HPD ever since.

**C. Article 64.03(a)(1)(B) - The identity of the actual culprit has been and particularly now is an issue.**

There has never been any dispute that "identity was or is an issue" in Mr. Hughes' case. The defense raised on Mr. Hughes' behalf was that he did not commit the murders but Douglas Swanson certainly may have.

**D. Article 64.03(a)(2)(A) - Mr. Hughes establishes by a preponderance of the evidence that he would not have been convicted if exculpatory results had been obtained through DNA testing.**

Art. 64.03(a)(2)(A) requires that "the convicted person establish by a preponderance of the evidence that . . . the person would not have been convicted if exculpatory results had been obtained through DNA testing ..." The Court of Criminal Appeals has interpreted this provision as follows:

The legislative history of Chapter 64 makes it very clear that the Legislature intended the foregoing language from Article 64.03(a)(2)(A) to mean a reasonable probability exists that exculpatory DNA results will prove a convicted person's innocence. This does not, as some opponents of Chapter 64 suggest, require convicted persons to prove their innocence before a convicting court may order DNA testing under Article 64.03. It merely requires convicted persons to show a reasonable probability exists that exculpatory DNA tests would prove their innocence.

*Kutzner v. State*, 75 S.W.3d 427, 438-39 (Tex. Crim. App. 2002).

Part I (A) of this motion demonstrates that Mr. Hughes' jurors had good reason to doubt every line of evidence used to convict him. Had Mr. Hughes' jurors been aware of the exculpatory DNA evidence sought by this motion, it is more likely than not that they would have acquitted him.

Part I (B) of this motion demonstrates that new, compelling evidence of Mr. Hughes' innocence has been discovered and developed since Mr. Hughes' trial. Any jury hearing the new evidence and the exculpatory DNA evidence sought by this motion would be exceptionally likely to acquit Mr. Hughes of the crimes.

Sections I (A)(1) and I (A)(2) are incorporated in their entirety herein. The DNA evidence requested by the motion is summarized below.

Especially disturbing in this case is the fact the DNA of the actual murderer has never been compared against Mr. Hughes' DNA. That evidence, if tested, could -- and, Mr. Hughes adamantly maintains, *would* -- establish his innocence. At a minimum, together with the other evidence discussed above, it would certainly create a "reasonable probability" that Hughes is innocent -- the standard established by the CCA for relief under the statute.

Mr. Hughes asks for DNA testing of eleven items:

1. the vaginal swab taken from Shandra Charles at the time of her autopsy;
2. The vaginal smear taken from Shandra Charles at the time of her autopsy;
3. the oral swab taken from Shandra Charles at the time of her autopsy;
4. the rectal swab taken from Shandra Charles at the time of her autopsy;
5. the fingernail clippings taken from Shandra Charles at the time of her autopsy;
6. the fingernail clippings scrapings taken from Marcell Taylor at the time of his autopsy;
7. the Busch beer can located at the crime scene between the two victims;

8. the purse strap that Shandra Charles used as a belt but found near Marcell Taylor's body;
9. the silver ring with the inscription "Avon" located near Marcell Taylor's body;
10. the white plastic bag found wrapped around the ankle of Marcell Taylor.

Below, Mr Hughes explains why DNA testing of these items will very likely produce relevant results that resolve the question of Mr. Hughes' guilt or innocence.

The vaginal swab apparently consists of two half swabs, one or both of which have been washed into a solution. By vaginal swab, Mr. Hughes hereafter refers to both or either half swabs and both or either solutions.

Testing the vaginal swab could yield absolutely definitive results of Mr. Hughes' guilt or innocence. The State established during Mr. Hughes' trial that (1) semen was detected on that swab [Tr. 19445-446, 501] and (2) only the murderer could be the contributor of that semen. [Tr. 18:14, 21:43, 19:419-422, 21:46-47, 21:50-51] The failure to test the male DNA from the vaginal swab against Mr. Hughes' DNA is inexplicable, particularly in light of the independent investigator's recommendation that the Harris County and the City of Houston arrange for and pay for such testing in Mr. Hughes' case. [Ref. 4:ExecSum:11-12]

Similarly, the vaginal smear taken from Shandra Charles at the time of her autopsy could identify her murderer just as easily as the vaginal swab.

Similarly, the testing of the oral and anal swabs taken from Shandra Charles at the time of her autopsy could identify her murderer, since the State established at Mr. Hughes' trial that Shandra Charles' had been sexually assaulted.

The Busch beer can located between the two victims was described as "fresh" by CSU Officer F.L Hale. [Ex. 6:17, 22] Despite the litter and debris in the field [Ex. 6:4], the Busch beer can stood out so conspicuously that Officer Hale took secured it as evidence to the exclusion of all other litter items in the field. The

Busch beer can could contain DNA from the murderer's hand or fingers, from his lips, mouth, or saliva.

The white strap found near the body of Marcell Taylor turned out to be a purse strap that Shandra Charles wore as a belt. [Ex. 6:5] Given that her shorts were pulled part way down [Tr. 18:41-42], and given that the State established she was sexually assaulted [Tr. 18:14, 21:43, 19:419-422, 21:46-47, 21:50-51], the attacker may have forcefully yanked the strap/belt from her shorts. Furthermore, the strap may have been used to bind Marcell Taylor in some fashion while the attacker dealt with Shandra Charles. The attacker probably handled the strap in some fashion and thereby left his DNA on that it.

A silver ring was located near the body of Marcell Taylor. That ring was inscribed with the name Avon. [Ex. 6:21] The DNA from that item, coupled with the inscribed name, could lead to the identification of the murderer.

Finally, the crime scene photos show a white plastic bag was wrapped around Marcell's left ankle, as if it had been used to restrain him. The HPD does not mention securing this obviously evidentiary item. In May 2007, however, Sgt. Woods of the HPD was tasked with re-tagging evidence from Mr. Hughes' case that was still being stored in the Harris County District Attorney's Office. Sgt. Woods recovered one cardboard box with five items. One of those items was an envelope containing a white plastic bag. That bag could contain the DNA of the person who wrapped it around Marcell Taylor's leg.

Exonerating test results on all or a combination of these items could prove Mr. Hughes' innocence. There are numerous different ways in which the results of DNA testing on these never-tested items of evidence could conclusively prove Mr. Hughes' longstanding claim of actual innocence. For all these reasons, the Court should conclude that Mr. Hughes has met the requirements of Article 64.03(a)(2)(A).

**E. Article 64.03(a)(2)(B) - Mr. Hughes establishes by a preponderance of the evidence that the request for the proposed DNA testing is not made to unreasonably delay the execution of sentence or administration of justice.**

Mr. Hughes has already demonstrated that he has no intention of seeking relief merely for the purpose of delaying his execution. Mr. Hughes has, for example, opposed his own attorney's efforts to delay the execution by challenging the drug protocol now used in Texas. Mr. McCann filed those motions despite Mr. Hughes' clear wishes that Mr. McCann not do so. Mr. Hughes unequivocally demonstrated his objection and resistance by refusing to sign the *en forma pauperis* Mr. McCann desired for his federal filing of the delaying motion. Mr. McCann responded by asking the 127th Judicial District Court to declare Mr. Hughes *non compos mentis* because Mr. Hughes resists him on the delaying issue and other issues.

Mr. Hughes' singular objective is, and always has been, to establish his innocence. Because Mr. McCann refused to petition this Court for a Writ of Habeas Corpus based on Mr. Hughes' innocence, Mr. Hughes attempted to have Mr. McCann replaced. Because Mr. McCann intimated to the country and to this Court that he held some secret compelling evidence of Mr. Hughes' guilt, Mr. Hughes dismissed Mr. McCann as his attorney. [Ex. 16]

Mr. McCann effectively acknowledges he has been dismissed by asking the 127th Judicial District Court to allow him to proceed as Mr. Hughes' "next friend". Mr. McCann wants to proceed with his effort to delay the execution by challenging the drug protocol. Mr. McCann again does so without Mr. Hughes consent and despite Mr. Hughes express wishes. Mr. McCann now asks the courts help him defy even Mr. Hughes' desire that the execution not be unreasonably delayed.

Mr. Hughes has proved by his words and his actions that his only motivation for this pursuing the DNA testing is to prove his innocence. There is no doubt that should this motion be granted, the execution would have to be delayed. Any delay, however, would only be brief. Such delay would not be unreasonable under the

terms of Chapter 64, given the public's interest in ensuring that an innocent man is not executed.

### **III. Conclusion**

As Mr. Hughes has detailed herein that, even at the time of his trial, there was substantial reason to doubt his guilt and substantial reason to believe that Douglas Swanson did. Since the trial, additional evidence has come to light casting even more doubt on the evidence used to convict Mr. Hughes. Also, Douglas Swanson has further implicated himself through his behavior and his words.

Though his words and actions, Mr. Hughes opposed Mr. McCann's efforts to delay his execution rather than prove his innocence. So insistent is Mr. Hughes on pursuing only avenues of relief based on his innocence that he dismissed Mr. McCann as his attorney for failing to do so.

DNA testing could resolve all doubt of Mr. Hughes' guilt or innocence. Mr. Hughes therefore moves for DNA testing for that reason and that reason only. The present motion for DNA testing under Article 64.03 should therefore be granted without delay.

Respectfully submitted on November 12, 2012

/s/ Preston Hughes, iii

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## **LIST OF EXHIBITS**

1. Larkin Affidavit Regarding Douglas Swanson's Knife
2. HPD Crime Lab Summary Sheet
3. Photographs of Shandra Charles' Eyeglasses
4. Photographs of Trail at Crime Scene
5. White Affidavit Regarding Time of Consciousness after Severed Carotid
6. HPD Police Reports
7. HPD Property Invoice
8. Photographs of Mr. Hughes' Apartment
9. Report of Shandra Charles' Autopsy
10. Report of Marcell Taylor's Autopsy
11. Order for DNA Testing
12. Report of Cellmark DNA Testing
13. Larkin Affidavit Regarding Shandra Charles Shorts
14. HPD Request for Testing by Medical Examiner's Office