

CAUSE NO. 9407130

THE STATE OF TEXAS

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IN THE 248TH DISTRICT
COURT

VS.

IN AND FOR

CHARLES DOUGLAS RABY

HARRIS COUNTY, TEXAS

AFFIDAVIT OF CHARLES D. RABY

County of Polk §

State of Texas §

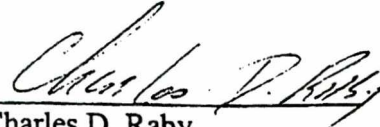
My name is Charles D. Raby. I am a resident of Polk County, Texas. I am over the age of eighteen and I am competent to make this affidavit. All the facts stated here are within my personal knowledge.

1. I am seeking DNA testing of physical evidence collected in my capital case pursuant to Article 64.01 of the Texas Code of Criminal Procedure. I am not asking for this testing because I want to unreasonably delay my execution. I want this DNA testing to be performed because I want the truth to come out.
2. At the time of my trial, I was not even aware that DNA testing existed. I certainly did not know what DNA testing techniques were available, or what those techniques could show. I did not know of any chance that the Court might pay for DNA testing if my lawyers requested it. My lawyers did not tell me anything about DNA testing. They certainly did not tell me that there was a possibility that the attacker's DNA might have been left on various objects at the crime scene and that DNA testing could identify whose DNA that was. If they had told me that DNA tests could be performed on the fingernail clippings, nightshirt, panties or hair, I would have asked my lawyers to try to have that evidence tested, to show that my DNA was not present, but someone else's was. But no DNA testing was performed in my case.
3. Identity was an issue at my trial. For instance, the prosecutor called witnesses who claimed to see me in Ms. Franklin's neighborhood that afternoon, and he also tried to show that I had a motive to kill Ms. Franklin. My lawyers tried to cross-examine some of that evidence. Identity is still the issue now. I have no memory of seeing Ms. Franklin on the day that she was killed. I had a lot to drink that night, and late in the evening after I headed out of Ms. Franklin's neighborhood to my mother's house, I must have passed out, because I woke up by the side of the highway. But I don't believe that I attacked her, and I never had anything against her. I don't think my attorneys at trial ever learned that

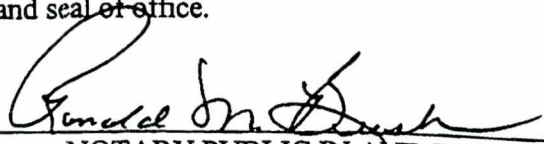
I don't remember committing this crime, because they never asked. It did not come out at trial. Although my trial attorneys did not make identity as much of an issue as they should have, identity is an issue now because I don't believe that I killed Ms. Franklin, and my innocence is one of the grounds for my federal habeas petition.

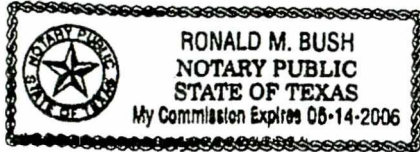
4. When I was arrested, I had just taken a handful of Tylenol 3 pills with codeine - probably between five and eight pills. I got them from my girlfriend, Merry's purse just before the police arrived. I was feeling intoxicated on the pills by the time I got to the station. Once I got there, during interrogation, I kept falling asleep. Then later on during the interrogation, as the pills wore off, I felt really agitated. That never came out at my suppression hearing.
5. While I was being arrested, I asked a police officer for a lawyer. A few other police officers heard this. The officer said, "We will talk about all of that later. We are fixing to go downtown right now." I told one of my trial lawyers about this, but it never came up at my suppression hearing.
6. In the car on the way to the police station, I wanted to know where the police officers were taking Merry. The police officer who was driving told me that they might charge Merry with aiding and abetting, but probably they would just take her home. Sometime during my interrogation at the police station, I found out that the police had taken Merry and her six-week old baby to the station. I wanted to see Merry and make sure that she was all right. I was worried she was going to be charged. At one point the officer interrogating me said that Merry broke the law by not telling the police where I was. He said that she could get in some trouble. He didn't say "aiding and abetting," but I understood what he was talking about. The officer also said that if Merry were arrested, they could hold on to her baby there in the child ward. I was afraid her baby would end up in foster care like I did. I kept saying, "I want to see her," but I was not allowed to see Merry until I signed a statement. I just agreed to what the officer was saying that I did, and he typed out a statement that I signed but never read.
7. On top of worrying about Merry if I didn't confess to something, I didn't understand that I was about to get charged with capital murder. I thought I was facing eight to ten years in prison at most - I knew people who served that amount of time for killing a person. Also, I figured that if I didn't cooperate with them, then I was going to get a longer sentence or the judge would hold it against me somehow.
8. At trial, the prosecutor tried to show that a hair that was found in Ms. Franklin's and was not mine had an innocent explanation. A witness matched it to Ms. Franklin's grandson by comparing the hairs under a microscope. I believe that if this hair were DNA-tested, it would not match Ms. Franklin's grandson or me, because the hair belongs to the true attacker.
9. At trial, the prosecutor showed the jury a pair of panties with bloodstains that was found at the crime scene. I believe that if this pair of panties were DNA-tested, the bloodstains

Under the pain and penalty of perjury, I swear that the above is true and correct to the best of my knowledge. I give this statement of my own free will.


Charles D. Raby

SWORN TO and SUBSCRIBED before me on this the 14th day of October, 2002, to certify which witness hereof my hand and seal of office.


NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS



My Commission Expires: 5-14-2006

would reveal DNA in addition to Ms. Franklin's that is not mine.

10. The prosecutor introduced into evidence Ms. Franklin's fingernail clippings. I believe that DNA testing of these would reveal DNA in addition to Ms. Franklin's that is not mine.
11. At trial, the prosecutor had access to the nightshirt that Ms. Franklin was wearing when she was killed, but he did not introduce it into evidence. I believe that DNA testing of this bloodstained nightshirt would reveal DNA in addition to Ms. Franklin's that is not mine.
12. If the Court grants my motion for DNA testing, I do not believe that my DNA will not be found on any of the physical evidence. The State has never argued that more than one person attacked and killed Ms. Franklin, and there has never been any evidence of that. If the tests find someone else's DNA on this evidence, it will prove once and for all that I never killed or assaulted Ms. Franklin.

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My name is Charles D. Raby. I am a resident of Polk County, Texas. I am over the age of eighteen and I am competent to make this affidavit. All the facts stated here are within my personal knowledge.

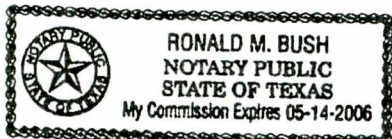
1. This affidavit is attached is a true and correct copy of the First Amended Petition for a Writ of Habeas Corpus that was filed in my case in the United States District Court in the Southern District of Texas. The statements of fact in that petition, to the extent that they are not within the public domain, and to the extent that they have not been attested to by other individuals, are within my personal knowledge.

Under the pain and penalty of perjury, I swear that the above is true and correct to the best of my knowledge. I give this statement of my own free will.


Charles D. Raby

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