

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM AIKEN COUNTY
Court of Common Pleas

S.C. Supreme Court

D. Garrison Hill, Circuit Court Judge

Case No. 2004-CP-02-1520

Ernest Pressley, #289489,

Respondent,

v.

State of South Carolina,

Petitioner.

APPENDIX

Volume 3 of 3

South Carolina Commission on Indigent
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1 decision as to whether somebody should be appointed.

2 And I understand that what I'm saying to you is
3 ultimately it may cost money, but in each individual
4 case, the judge has got to make a decision, number
5 one, is it needed, and, number two, is it going to
6 deny that person a fair trial if they don't have it?
7 I don't think anybody would leave here saying that a
8 jury would have wanted to hear what Doctor Ostrowski
9 had to say and would have wanted to know what that
10 little girl's mental status was. Those are issues I
11 can't say would have changed the result, but
12 certainly they possibly could have changed the
13 result, likely could have changed the result, that's
14 the standard.

15 I don't know if I've answered your question,
16 but I think when you say fingerprint, that's
17 particularly important because that is on the
18 forefront right now.

19 **THE COURT:** I think I read in the Wall Street
20 Journal, which may not be the most significant
21 repository of science or law, but that the
22 fingerprint evidence has been under attack.

23 All right. Well, the transcript's 364 pages.
24 I happened to have only read a portion of it. I'm
25 going to read the entire transcript. And in the

1 meantime, I just would ask both sides to submit
2 proposed orders and you can just e-mail them to
3 Mr. Eubose up here and he'll be glad to give you his
4 e-mail address. And if you can e-mail it to me in
5 Word format, we don't have the capability to convert
6 Word Perfect, I know that sometimes it's used in law
7 firms, but if you could do that by March 15th, I
8 will consider that and, hopefully, will have had
9 time to read the transcript by then and make a
10 decision.

11 I don't know if I'll be able to actually get an
12 order out by March 15th because -- we'll say March
13 14th and I'll need time to review the proposed
14 orders, of course, so it's probably going to take 30
15 days to make a decision. But I appreciate your fine
16 presentations.

17 And, Mr. Anderson, appreciate your testimony
18 and understand the position you're in, sir.

19 And thank you very much. The hearing's
20 adjourned.

21
22
23 END OF PROCEEDINGS
24
25

C E R T I F I C A T E

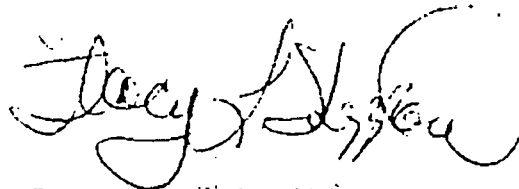
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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Civil Court for Aiken County, South Carolina, on the 26th of February, 2008.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 6, 2008

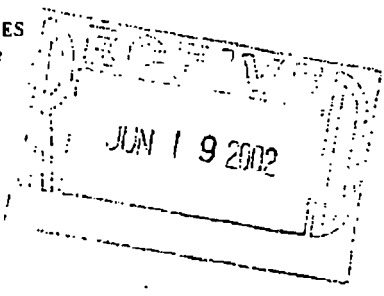


Stacy L. Sheppard
Circuit Court Reporter

BRB 205041486-7

SOUTH CAROLINA LAW ENFORCEMENT DIVISION FORENSIC SERVICES LABORATORY REPORT

JIM HODGES
GOVERNOR



ROBERT M. STEWART
CHIEF

Department of Forensic
DNA Analysis
June 14, 2002
SLED Lab No.: L01-8434
Your Case No.: 0100105
Incident Date: 7/13/01
(S) Pressley, Earnest
(V) H.] P.]

CAPTAIN DWAYNE DERRICK
BURNETTOWN POLICE DEPARTMENT
PO BOX 994
BATH, SC 29816

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

DNA ANALYSIS

ITEMS ANALYZED:

- 1.4 Blood standard from P.] H.]
- 2.1 Blood standard from Earnest Pressley
- 1.7 Vaginal swabs
- 1.10 Suspected semen swab

EXAMINATIONS

DNA profiles were developed from all items above using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in Table 1 and Table 2.



Page 2 of 3
 SLED LAB NO.: L01-8434
 June 14, 2002

RESULTS

The DNA profile developed from the semen found on item 1.7 matches Earnest Pressley. The probability of randomly selecting an unrelated individual having a DNA profile matching item 1.7 is 1 in 139.

The DNA profile developed from item 1.10 is a mixture. P. H. and Earnest Pressley can not be excluded as donors to this mixture. The probability of randomly selecting an unrelated individual who would contribute to this mixture is 1 in 3,500.

Table 1 - Profiler Plus

Items	DJS1358	VWA	FGA	D8S1179	D21S11	D18S51	D5S818	D13S317	D7S820	Amelogenin
<u>H.</u> <u>P.</u> (item 1.4)	16,17	15,17	20,26	12,14	27,31	12,16	8,12	9,12	10	X
Earnest Pressley (item 2.1)	15,17	16,17	21,25	12,14	29,30	15,16	8,13	13	12	XY
1.7f	16,17	15,17	20,26	12,14	27,31	12,16	8,12	9,12	10	X
1.7m	15,16,17	15,16, 17	20,(21) (25),26	12,14	27,(29), 30,31	12,16	8,12, (13)	9,12	10	XY
1.10f	16,17	15,17	20,26	12,14	27,31	12,16	8,12	9,12	10	X
1.10m	15,16,17	15,16, 17	20,(25) 26	12,14	27,(29), 30,31	12,(15) 16	8,12, (13)	9,12,13	10	XY

() = rfu between 75 and 149
 Bold = major contributor



Page 3 of 3
 SLED LAB NO.: L01-8434
 June 14, 2002

Table 2 - Cofiler

Items	D1S11358	D16S539	TH01	TPOX	CSF1PO	D7S820	Amelogenin
H. P. (item 1.4)	16.17	9.13	8.9.3	6.9	8.11	10	X
Earnest Pressley (item 2.1)	15.17	9.11	7	9.10	10,12	12	XY
1.7f	16.17	9.13	8.9.3	6.9	8.11	10	X
1.7m	15,16,17	9, (11), 13	7, 8, 9.3	6, 9, 10	8, (10), 11, (12)	10	XY
1.10f	16.17	9.13	8.9.3	6.9	8.11	10	X
1.10m	15,16,17	9, (11), 13	7, 8, 9.3	6, 9, 10	8, 10, 11, (12)	10, 12	XY

() = rfu between 75 and 149
 Bold = major contributor

These examinations were conducted by S/A Lilly S Gallman, Forensic DNA Analyst, South Carolina Law Enforcement Division.

Lilly S Gallman
 S/A Lilly S Gallman
 Senior Agent

6-14-02
 Date

cc: Aiken County Solicitor's office

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.



Statistics Report

Database: F:\Quadbase\Codis\POPDATA\FBI\ISTR
 Case Type: Forensic Single Sample
 Specimen ID: 01-8434-1.7m
 DNA Analyst: GALLMAN, LILLY
 Date: June 14, 2002
 Page: 1

Probe	Allele +/-			CAU	Allele Frequency		
	Allele	Minimum	Maximum		BLK	SEH	
FGA	21			1.7350E-01	1.2500E-01	1.3610E-01	
FGA	25			6.8900E-02	1.0000E-01	1.1260E-01	
CSF1PO	10			2.5370E-01	2.7140E-01	2.5420E-01	
CSF1PO	12			3.2510E-01	3.0000E-01	3.5630E-01	
AMELOGENIN	X			0	0	0	
AMELOGENIN	Y			0	0	0	

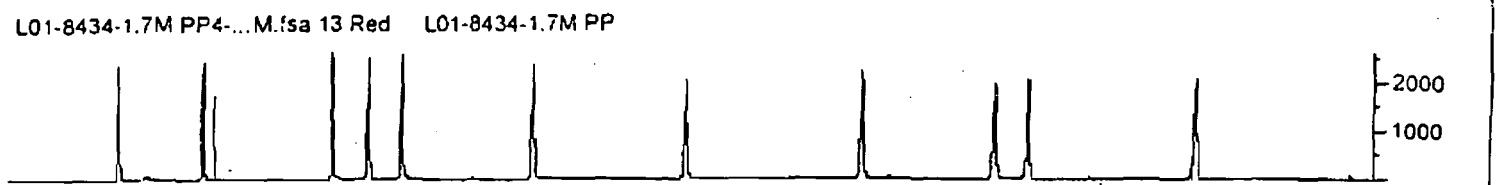
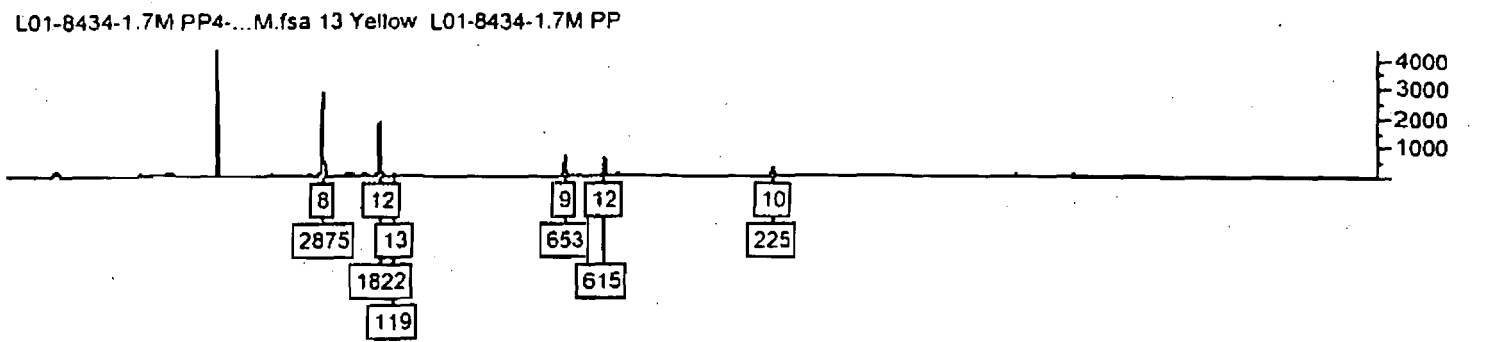
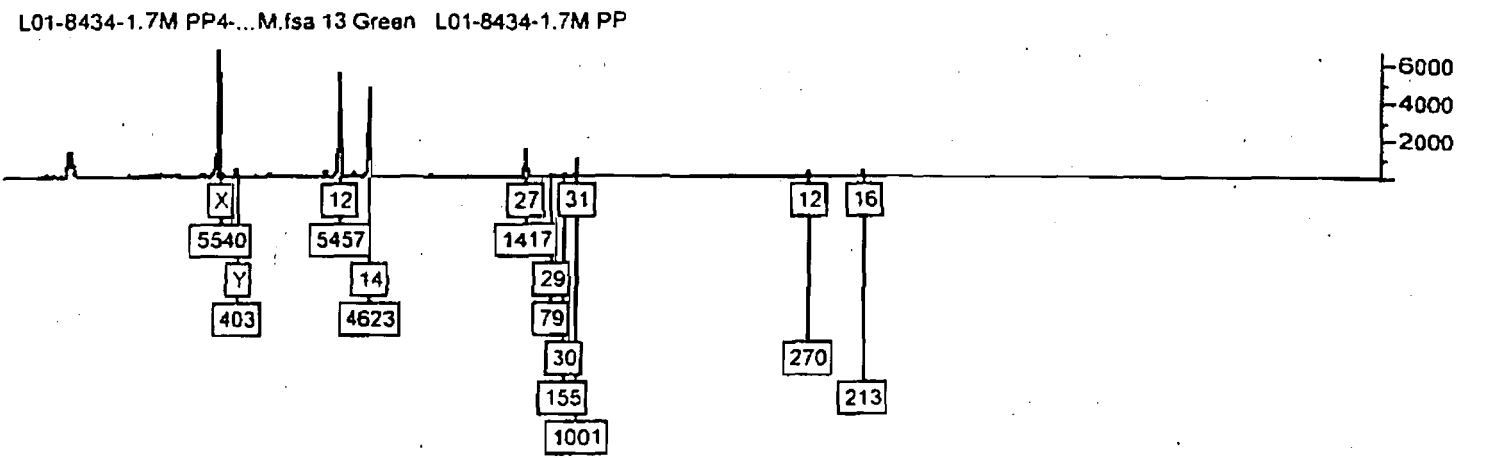
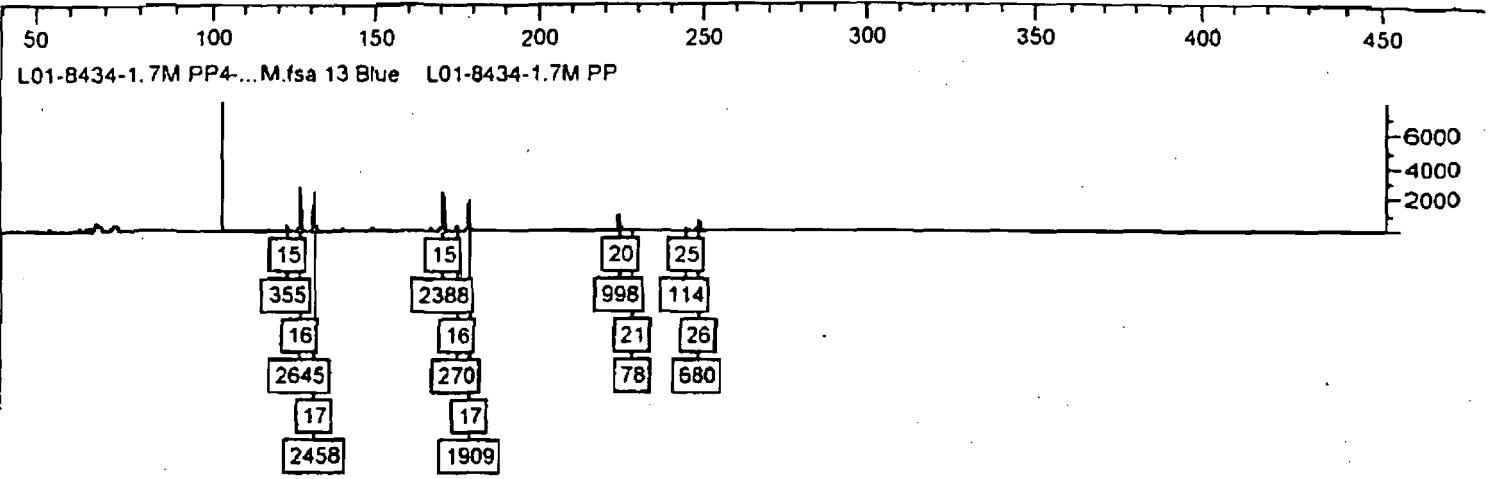
SWH

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1.3790E-01
2.5360E-01
3.9230E-01
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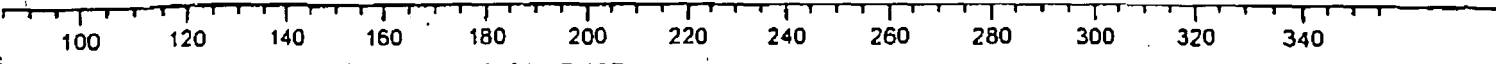
NRC 96 Formula used

CAU frequency = 1 in 2.535E+02
 BLK frequency = 1 in 2.456E+02
 SEH frequency = 1 in 1.801E+02
 SWH frequency = 1 in 1.396E+02

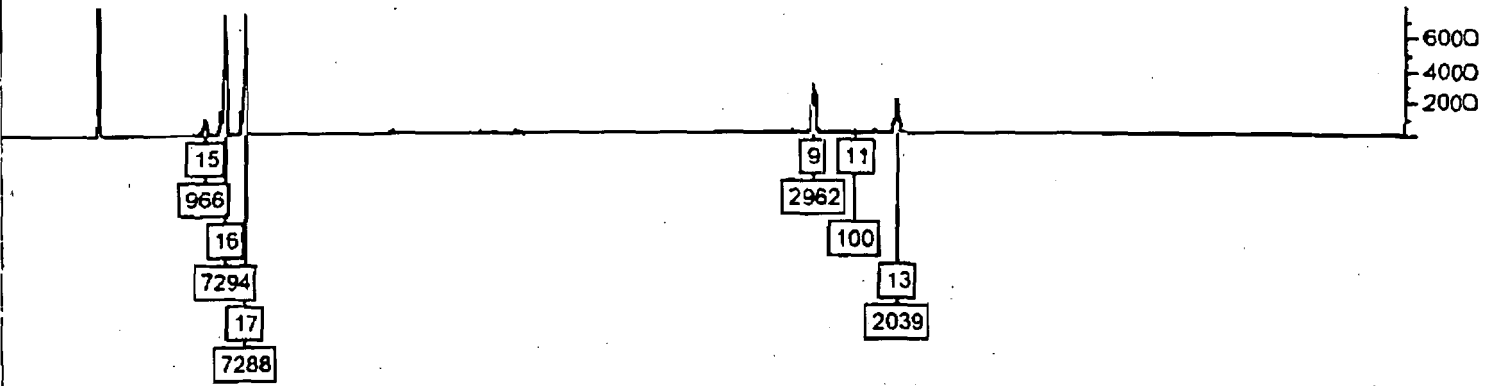
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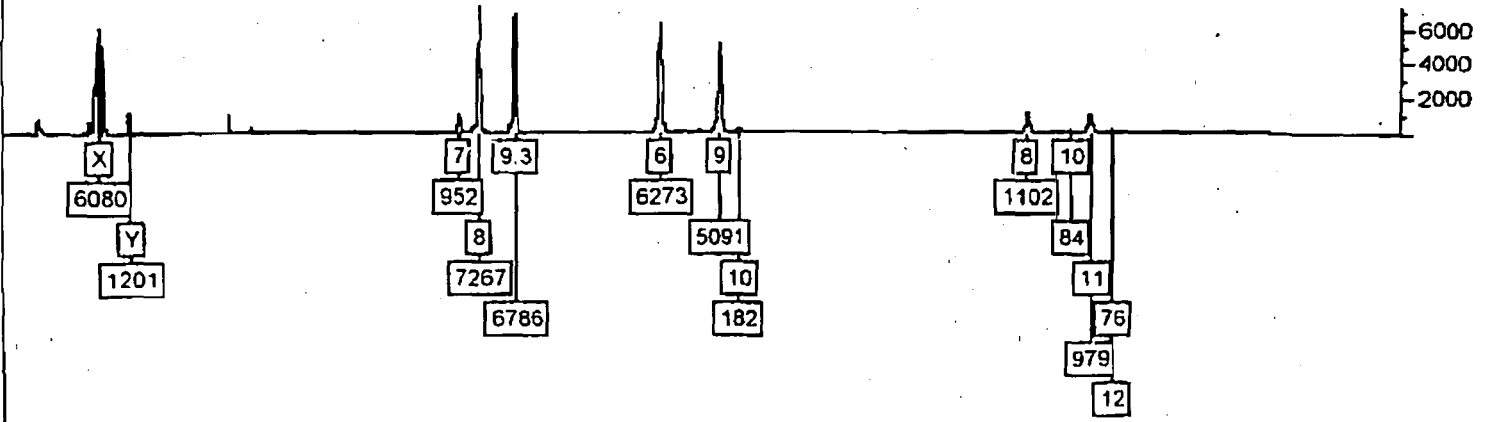
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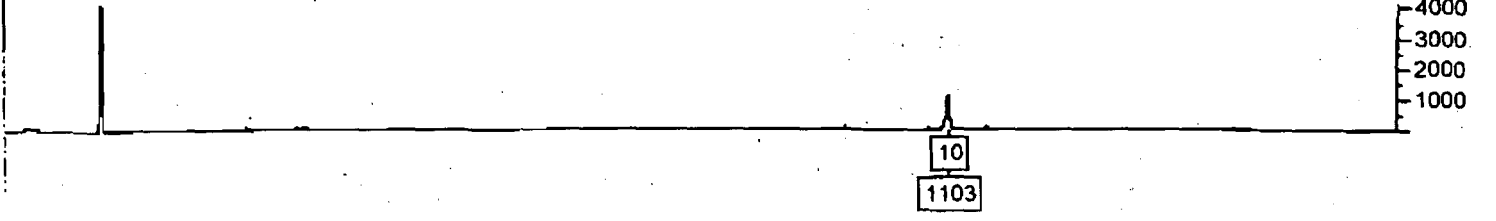
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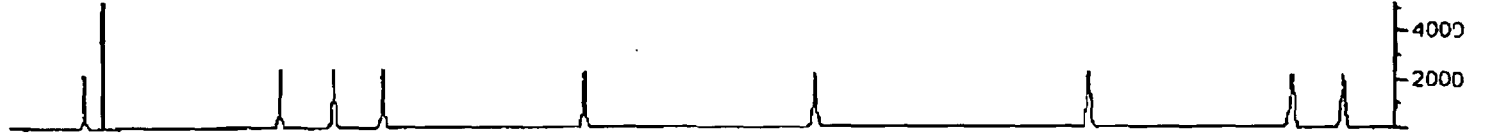
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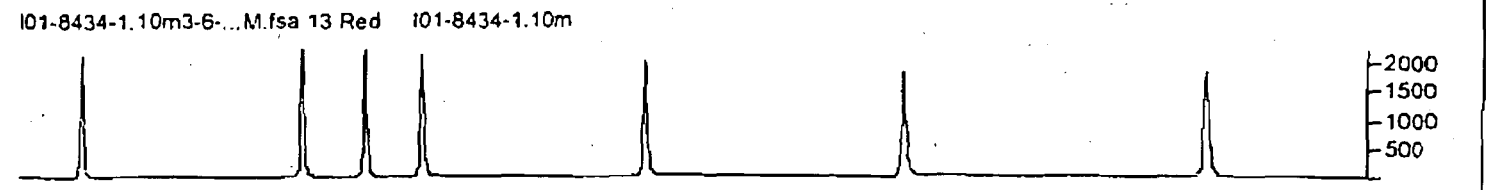
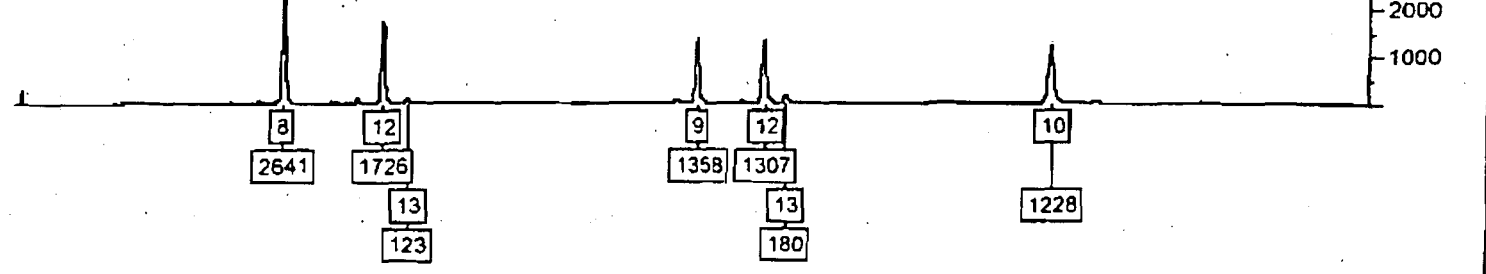
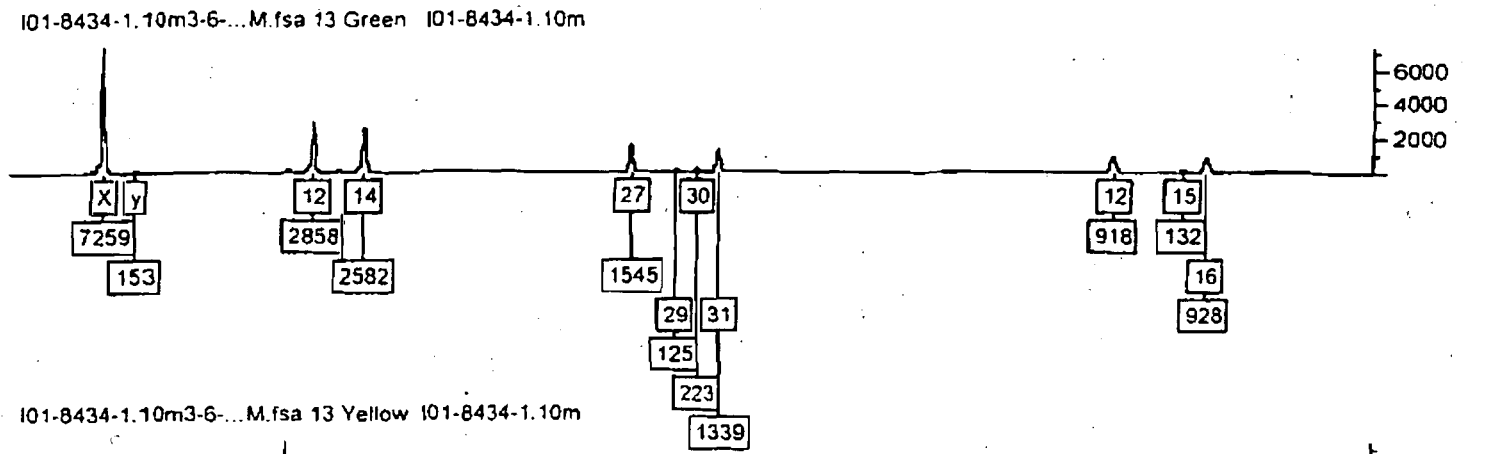
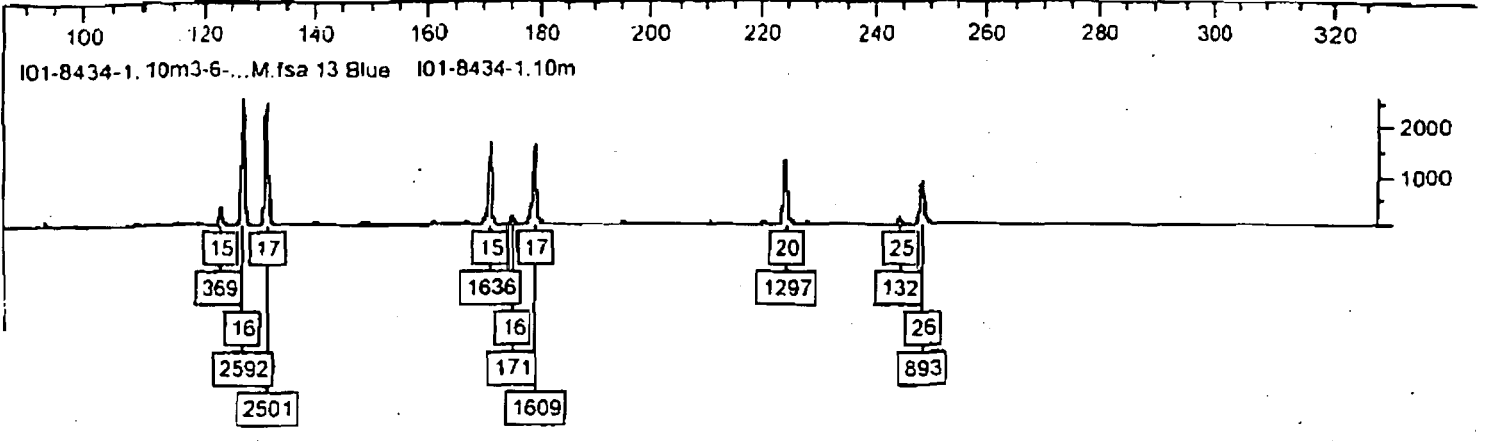
L01-8434-1.7MCF4-2...M.fsa 40 Yellow L01-8434-1.7MCF



L01-8434-1.7MCF4-2...M.fsa 40 Red L01-8434-1.7MCF

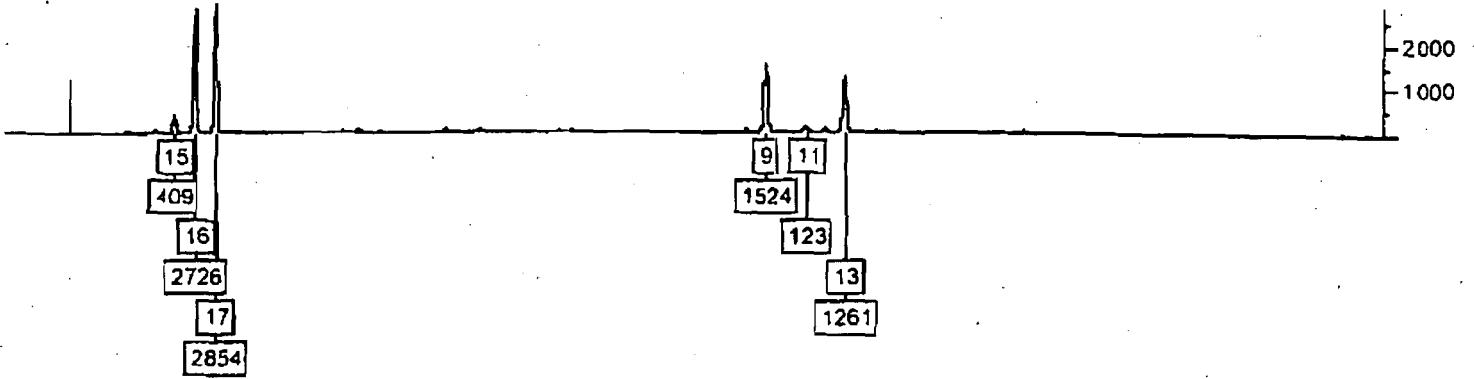


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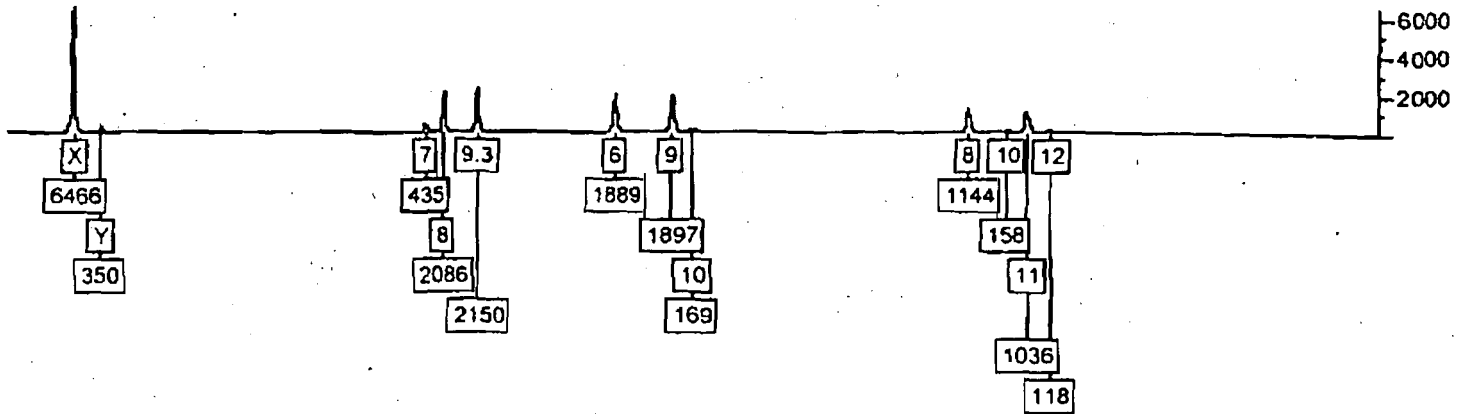


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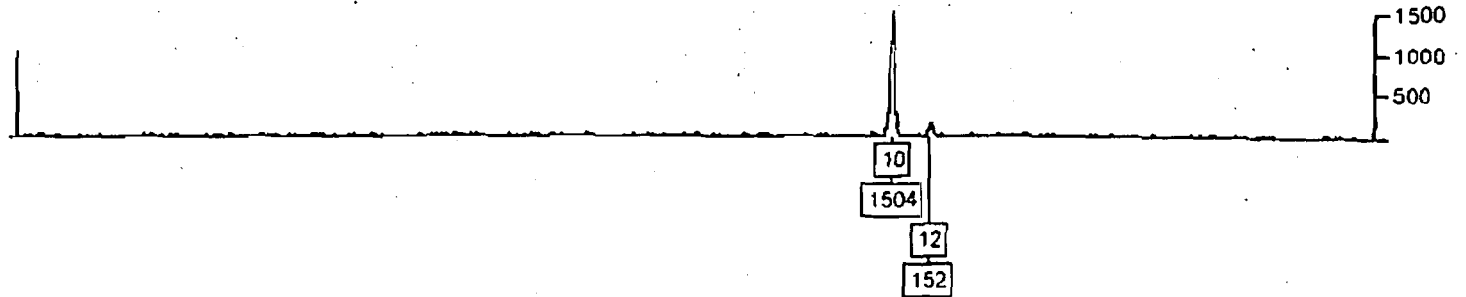
100 120 140 160 180 200 220 240 260 280 300 320 340 360
I01-8434-1.10m cf3...M.fsa 15 Blue I01-8434-1.10m cf



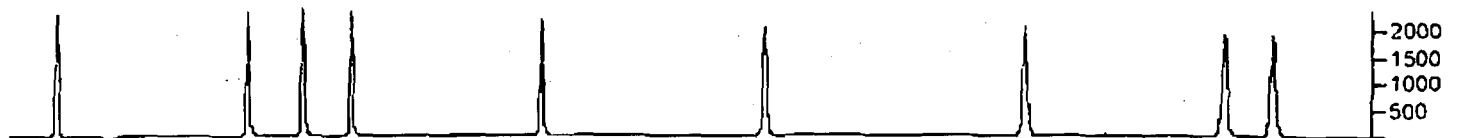
I01-8434-1.10m cf3...M.fsa 15 Green I01-8434-1.10m cf



I01-8434-1.10m cf3...M.fsa 15 Yellow I01-8434-1.10m cf



I01-8434-1.10m cf3...M.fsa 15 Red I01-8434-1.10m cf



3948

Statistics Report

Database: F:\Quadbase\Codis\POPDATA\FBI\ISTR

Case Type: Forensic Mixture

Specimen ID: 01-8434-1.10m

DNA Analyst: GALLMAN, LILLY

Date: June 14, 2002

Page: 1

Probe	Allele +/-		CAU	Allele Frequency		
	Allele	Minimum		Maximum	BLK	SEH
D3S 1358	15			2.4630E-01	2.9050E-01	3.5340E-01
D3S 1358	16			2.3150E-01	3.0710E-01	2.4610E-01
D3S 1358	17			2.1180E-01	2.0000E-01	1.6230E-01
VWA	15			1.1220E-01	2.3610E-01	1.0000E-01
VWA	16			2.0150E-01	2.6940E-01	2.6880E-01
VWA	17			2.6280E-01	1.8330E-01	3.0420E-01
D8S 1179	12			1.4540E-01	1.0830E-01	1.0730E-01
D8S 1179	14			2.0150E-01	3.3330E-01	2.1200E-01
D13S 317	9			7.6500E-02	2.7900E-02	1.1460E-01
D13S 317	12			3.0870E-01	4.8320E-01	2.2920E-01
D13S 317	13			1.0970E-01	1.2570E-01	1.0830E-01
D7S 820	10			2.9060E-01	3.2380E-01	2.6670E-01
D7S 820	12			1.4040E-01	9.0500E-02	1.8750E-01
TPOX	6			1.2300E-02	8.6100E-02	1.0400E-02
TPOX	9			1.2320E-01	1.8180E-01	8.3300E-02
TPOX	10			3.7000E-02	9.3300E-02	6.2500E-02
TH01	7			1.7240E-01	4.4050E-01	2.5210E-01
TH01	8			1.2560E-01	1.8570E-01	1.0420E-01
TH01	9,3			3.0540E-01	1.0480E-01	2.3540E-01
AMELOGENIN	X			0	0	0
AMELOGENIN	Y			0	0	0

SWH

4.2580E-01
2.6560E-01
1.2680E-01
7.6400E-02
3.5960E-01
2.2170E-01
1.2070E-01
2.4630E-01
2.1920E-01
2.1680E-01
1.3790E-01
3.0620E-01
1.9140E-01
1.2000E-02
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3.3730E-01
8.1300E-02
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The Mixture Formula used.

Statistics Report

Database: F:\Quadbase\Codis\POPDATA\FBI\STR
Case Type: Forensic Mixture
Specimen ID: 01-8434-1.10m
DNA Analyst: GALLMAN, LILLY
Date: June 14, 2002
Page: 2

CAU frequency = 1 in 1.067E+05
BLK frequency = 1 in 3.501E+03
SEH frequency = 1 in 1.036E+05
SWH frequency = 1 in 1.156E+05

3500

Law Offices

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Paige Weeks Johnson
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FACSIMILE COVER SHEET

DATE: 2/7/08

FAX NUMBER: 803-734-4113

ATTENTION: Lance Booger

COMPANY: _____

FROM: PAIGE WEEKS JOHNSON/KATE
e-mail katesteiner@bellsouth.net

TO BE FAXED ONLY

A page facsimile transmission follows this cover sheet. If you do not receive the number of pages indicated, please contact our office at 803-649-5338.

COMMENTS: Order granting expert
Order for additional funds

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
ERNEST PRESSLEY, #269489)
Applicant,)
STATE OF SOUTH CAROLINA)
Respondent.)

IN THE COURT OF COMMON PLEAS
MAY 22 2006
SECOND JUDICIAL CIRCUIT
[Signature]
CCCP & A, Aiken County, SC
ORDER GRANTING A FURTHER
MOTION FOR APPOINTMENT OF
DNA EXPERT FOR PCR TRIAL

Case No. 04-CP-02-1520
Re: 2002-GS-02-340

PROCEDURAL BACKGROUND

This is a post-conviction relief matter. The applicant was tried and convicted in the Aiken County Court of General Sessions of criminal sexual conduct with a minor in the second degree on December 13, 2002. He was sentenced to twenty (20) years.

He filed a timely application for post-conviction relief, and the Court appointed attorneys to represent him in that matter. Based upon the attorneys' review of the entire record, a lengthy interview with the applicant and communication with trial counsel, they determined that the application for post-conviction relief should be amended in two particulars.

First, the applicant was denied the effective assistance of trial counsel, because trial counsel failed to retain or move for the appointment of a DNA expert. The applicant asserts that a DNA expert could have assisted the defense by testifying for the defense regarding DNA evidence and/or by serving as a consultant to assist with the cross-examination of the State's DNA expert.

Second, the applicant was denied effective assistance of counsel, because trial counsel did not move to have the alleged victim examined by an independent examiner. The applicant asserts that the alleged victim was a minor child who had been found to be incompetent to stand trial in a separate matter in June, 2002, just five (5) months prior to the trial in this case.

DAE
#1

Regarding the first particular, the Applicant requested the appointment of a DNA expert to testify at the PCR trial concerning the Applicant's assertion that a DNA expert should have been used for his trial.

HEARING FOR MOTION FOR APPOINTMENT

On February 9, 2006, a hearing was held regarding the Applicant's motion for appointment of a DNA expert for the PCR hearing. James E. Whittle, Jr. and Paige Weeks Johnson represented the applicant. Paula S. Magargie represented the State.

Both parties were fully heard on the issue of the Defendant's request for the appointment of a DNA expert for his PCR trial. The Court did not hear arguments concerning the appellant's allegations of ineffective assistance of counsel. Both parties were instructed to submit proposed orders regarding the appointment of a DNA expert for the PCR trial.

ISSUE

Is the appointment of a DNA expert for the Applicant's PCR hearing reasonable and necessary, and should said expert be appointed?

FINDING

This Court finds that it must hear and evaluate expert testimony at the PCR hearing in order to determine if there is a reasonable probability that the testimony of a DNA expert at trial would have changed the outcome of the trial. To deny the applicant's request for the appointment of a DNA expert at the PCR trial is to leave the Court to "merely speculate" as to whether there was prejudice by the absence of a DNA expert at trial.

XE
#2

LAW

The State argued that Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991) is controlling. However, in Frasier, "DNA and secretion analyses did not implicate the petitioner." (Page 573) To the contrary, in this case, the State's DNA expert's testimony implicated the applicant. For that reason, the applicant asserts that his trial counsel was deficient in failing to procure an expert witness to challenge the State's DNA expert witness.

Trial attorney P. Andrew Anderson made an attempt to cross-examine the State's DNA expert regarding how she determined that the applicant's DNA was a match to the DNA found on the victim. Mr. Anderson discussed with the Court the probabilities to which the DNA expert would testify. (Tr. P. 219, line 12 - p. 235, line 11) Regarding the State's DNA expert, the Court inquired, "Of what? Somebody had better explain this to me or she's not going to be able to testify." (Tr. P. 235, line 11)

The Court's concern with the expert's testimony was also evident when the Court said, "She hasn't explained how the individual components of the DNA profile either matched or did not match" (Tr. P. 231, line 14) Again, the Trial Judge said, "I've heard DNA testimony before but quite honestly I've never heard it done like this. And that's not a criticism. That's just a statement of fact." (Tr p. 231, line 20)

Certainly, the Trial Judge had concerns about the State's DNA expert. The record reveals that the State's DNA expert was arguably inarticulate, confusing and prejudicial. However, the State's DNA expert is the only expert testimony in the record. The applicant's argument that a DNA expert for the defense could have testified on behalf of the defendant or could have assisted the trial attorney with explanations to the Court and with cross-examination of the State's DNA expert certainly has probative value.

DxE
#3

The defense requests a DNA expert for the PCR trial to determine whether there is a reasonable probability that such testimony or assistance would have changed the outcome of the trial. The defense also requests the appointment of a DNA expert to identify prevailing professional norms regarding DNA and the accuracy of the State DNA expert's testimony at trial.

This Court finds that the applicant has a Constitutional right to an effective attorney, and the argument in support of his request for a DNA expert at the PCR trial has probative value.

LAW REGARDING PCR JUDGE'S APPOINTMENT OF EXPERTS

Frasier states, "This Court will affirm the PCR judge's findings on appeal if there is **any evidence of probative value** to uphold the PCR judge's findings." (Page 573) (Emphasis added)

Dempsey v. State, 363 S.C. 265, 610 S.E.2d 812 (2005) further clarifies this issue. Mr. Dempsey asserted that his trial counsel was ineffective for failing to offer expert testimony on sexual abuse to rebut the state's expert testimony. However, Mr. Dempsey did not have an expert to testify at the PCR hearing about the consequences or prejudice to him by not having had a trial expert. Thus, the Court ruled, "Because Dempsey failed to have an expert on child sexual abuse testify at the PCR hearing, we hold that any finding of prejudice is merely speculative." (Page 815)

The Court went on to rule, "Second, we find that counsel's decision not to call an expert witness to rebut the state's expert witness was a legitimate trial strategy." Whether the decision not to have a DNA expert at trial and, if that is the case, whether that was legitimate trial strategy are not before the Court at this motion hearing but are issues for the PCR trial.

AE
#4

02 07 00 10.21 1900

Therefore, in light of the applicant's request, if this Court does not have the benefit of a DNA expert's testimony, the Court will be left to speculate and thus will not be able to properly rule on the issues in the application for post-conviction relief.

CONCLUSION

Based upon the arguments of counsel, the record in this matter, the issues raised in the applicant's post-conviction relief application and the law of this State, this Court finds that the appointment of a DNA expert for the applicant's PCR trial is reasonable, necessary and should be granted.

DR. RONALD S. OSTROWSKI

The applicants' attorneys specifically moved that Dr. Ronald S. Ostrowski be appointed as the DNA expert to review the record and relevant information and to testify at the PCR hearing. This Court has carefully reviewed Dr. Ostrowski's curriculum vitae and finds that Dr. Ostrowski has an extensive educational background. He has been qualified as an expert witness or a consultant in many cases in South Carolina and has testified in many other states in the United States. After careful consideration of Dr. Ostrowski's appointment, this Court finds that Dr. Ronald S. Ostrowski is a reasonable and appropriate person to be appointed as the applicant's DNA expert for the PCR trial.

FINDING OF INDIGENCY

This Court finds that this applicant is indigent such that this appointment is made pursuant to South Carolina Code of Laws Ann. §17-30-50(B).

XAE
#5

AUTHORIZATION FOR PAYMENT

This Court finds that payment to Dr. Ostrowski should be made by the Office of Indigent Defense and may not initially exceed \$1,500.00. He should not charge more than \$185.00 per hour. In so finding, this Court acknowledges that Dr. Ostrowski's time for services rendered and for travel should be considered in his fee awarded by this Court. Further payment for services rendered by Dr. Ostrowski may be permitted pursuant to South Carolina Code of Laws Ann. §17-30-50(C) upon the submission of additional forms and upon the issuance of a subsequent Order of this Court authorizing additional funding and making specific findings thereabout.

ISSUES HELD IN ABEYANCE

The issues of whether the applicant was denied the effective assistance of counsel, because the alleged victim was not examined by an independent examiner and/or because a DNA expert was not appointed or hired for trial shall be held in abeyance until the PCR hearing is held.

CONCLUSIONS OF LAW

Therefore, based upon the findings in this order and the applicable law, this Court concludes that it has jurisdiction over the parties and the subject matter in this case such that the relief sought may be granted.

THEREFORE, IT IS ORDERED, the applicant's motion for the appointment of a DNA expert for the PCR trial is granted.

IT IS FURTHER ORDERED, Dr. Ronald S. Ostrowski is appointed as the DNA expert for the applicant's PCR trial in this matter.

AE
#6

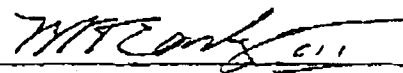
IT IS FURTHER ORDERED, the applicant, Ernest Pressley, is indigent such this appointment is made pursuant to South Carolina Code of Laws Ann. §17-30-50(B).

IT IS FURTHER ORDERED payment to Dr. Ronald S. Ostrowski shall be made by the Office of Indigent Defense at the rate of \$185.00 per hour and may not initially exceed \$1,500.00.

IT IS FURTHER ORDERED payment to Dr. Ostrowski in excess of this initial \$1,500.00 may be permitted pursuant to South Carolina Code of Laws Ann. §17-30-50(C) as set forth herein.

IT IS FURTHER ORDERED the issues in the applicant's post-conviction relief application are held in abeyance pending the PCR trial in this matter.

AND IT IS SO ORDERED.


DOYET A. EARLY, III
CIRCUIT COURT JUDGE
SECOND JUDICIAL CIRCUIT

May
~~March~~ 19, 2006
Aiken, South Carolina
Bomberg

STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)
)
 ERNEST PRESSLEY, #289489,)
 Petitioner,)
)
 v.)
)
 STATE OF SOUTH CAROLINA,)
 Defendant)
)

IN THE COURT OF COMMON PLEAS
 SECOND JUDICIAL CIRCUIT

MOTION TO ^{STATE OF SOUTH CAROLINA} ~~AUTHORIZE~~
 ADDITIONAL ~~FEES~~ ^{FEES} ~~FOR~~ ^{FOR}
 AN EXPERT 1. The Clerk of Court of Common Pleas and General Sessions for the County of Aiken, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

GCT 8 1 2006

Case No. 04-CP-02-1520

RE: 2002-GS-02-230

Liz Holland
 C.C.P. & G.A., Aiken County, S.C.

Barbara Rizzo
 Deputy Clerk

The Petitioner, by and through his attorney, now moves this Court for an Order authorizing additional funding for his expert, Ronald S. Ostrowski, Ph.D. This motion is made pursuant to the South Carolina Code of Laws Ann. § 17-3-50 (C) which allows for payment in excess of the limit set by the Court if it is necessary to provide compensation adequate to insure effective assistance of counsel and if it is appropriate because the services provided were reasonably and necessarily incurred.

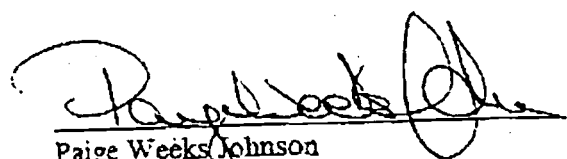
By Order dated May 19, 2006, signed by the Honorable Doyet A. Early, III the Court ordered the appointment of Dr. Ronald S. Ostrowski as the DNA expert for the applicant's PCR trial and authorized his payment at a rate of \$185.00 per hour not to exceed \$1,500.00. As of August 26, 2006 billing for Dr. Ostrowski totaled \$1,803.75. It is anticipated that an additional \$1,500.00 will be incurred for counsel for the Petitioner to travel to the expert to discuss DNA profiling and the evidence in the case and to prepare for trial and cross examination. The expert anticipates another \$2,000.00 will be needed beyond the additional \$1,500.00 if he testifies in Court, which counsel anticipates will be necessary.

Your Petitioner respectfully requests that this Court approve an expert fee not to exceed an

additional \$3,500.00 in order to secure the expert's preparation and testimony for trial. The appointed expert has provided an explanation of the time spent to date and a basis for the anticipated time needed to present the evidence to the Court. That information is attached to this motion and your Petitioner is informed and believes that the additional funds are reasonable, necessary and appropriate.

JOHNSON, JOHNSON, WHITTLE
& SNELGROVE, ATTORNEYS, P.A.

October 31, 2006



Paige Weeks Johnson
Attorney for Petitioner
P. O. Box 2619
Aiken, SC 29802-2619
Phone: 803-649-5338
Fax: 803-641-4517

PROFESSIONAL CONSULTING SERVICES

6948 Shade Tree Lane
Sherrills Ford, NC 28673

August 28, 2006

Paige Johnson, Esq.
P.O. Box 2619
117 Pendleton Street NW
Aiken, SC 29802-2619

RE: SC v. Pressley - AFFIDAVIT

Dear Ms. Johnson:

I am writing in response to your Aug. 24, 2006 letter. I am responding to several issues raised in your letter.

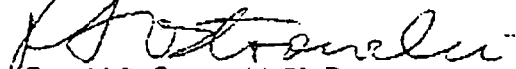
1) "The testifying as a physician" issue - I am a Ph.D. and not an M.D. so this should not apply to us. My Doctorate is in Molecular Genetics and my Master's degree is in Population Genetics. These are the two Genetics subspecialties that are applied in forensic DNA profiling.

2) I have enclosed an updated copy of my curriculum vitae.

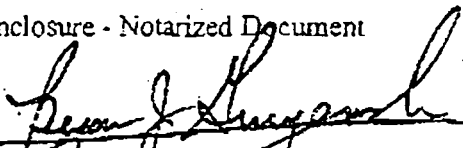
3) My hourly rate \$185. I charge for time only, including travel time. You will not be charged for fax, overnight mailing, long distance telephone, administrative assistance, etc. I have enclosed a copy of my contemporary record of time to date for the above-referenced case. Please note that my fee thus far is \$1,803.75. I anticipate that an additional \$1,500.00 would cover such items as communications with you, a meeting to explain DNA profiling and the evidence in this case, and preparation of cross examination questions. If you also require my assistance in court, I anticipate that an additional \$2,000 would be charged beyond the \$1,500.

If you have any questions, please do not hesitate to contact me. I look forward to meeting with you at our earliest convenience.

Sincerely,


Ronald S. Ostrowski, Ph.D.

Enclosure - Notarized Document


Bryan J. Stuyvesant
Commissioner 11/4/2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
ERNEST PRESSLEY, #289489,)
Petitioner,)
)
V.)
)
STATE OF SOUTH CAROLINA,)
Defendant)
_____)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CERTIFICATE OF MAILING

Case No. 04-CP-02-1520
RE: 2002-GS-02-230

I, Paige Weeks Johnson, Attorney for Petitioner, do hereby certify that I have served the Motion to Authorize Additional Funding for an Expert on the hereinafter named, by regular mail, postage prepaid, upon the person(s) named below, at the address(es) given:

South Carolina Attorney General's Office
Att: Paula Magargle
P. O. Box 11549
Columbia, SC 29211-1549

All in accordance with Sections 15-19-930 and 15-9-990, Code of Laws of South Carolina 1976, as amended, Rule 17 SCRPC and other applicable provisions of law.

Johnson, Johnson, Whittle &
Snelgrove, Attorneys P.A.

BY: 
Paige Weeks Johnson

October 31 2006

CURRICULUM VITAE 2008

Ronald S. Ostrowski

EDUCATION:

Wright Junior College, Chicago, Illinois A.A. 1964
 Northern Illinois University, DeKalb, Illinois B.S. 1966
 Northern Illinois University, DeKalb, Illinois M.S. (Population Genetics) 1968
 Graduate Teaching Assistantship 1967-68
 University of Notre Dame, Notre Dame, Indiana Ph.D. (Developmental/Molecular Genetics) 1971
 Graduate Teaching Assistantship 1968-69
 Graduate Research Assistant 1969-70
 NASA Fellowship 1970-71

PERSONAL:

Date of Birth: March 3, 1939 Place of Birth: Chicago, IL

PROFESSIONAL EXPERIENCE:Academic

University of North Carolina at Charlotte
 Assistant Professor of Biology 1971-1977
 Associate Professor of Biology 1977-2005 (retired)
 Editor and Publisher, NC Medical Genetics Newsletter 1983-2000
 Roosevelt University, Chicago, IL
 Visiting Professor 1988-1990
 Davidson College, Davidson, NC
 Visiting Professor 1993-1994

Administrative:

Acting Chairman of Biology Department 1975
 (During Chairman's extended leave of absence)
 Assistant to the Vice Chancellor for Academic Affairs, 1976-1980
 Director of the Evening Program 1976-1980
 Acting Director of the Graduate Studies Program
 (During Director's extended absence) 1977, 1979
 Deputy Director/Geneticist, Association for Sickle Cell Disease, (ASCD), Charlotte, NC 1980-82
 Director of ASCD Hemoglobinopathies Laboratory 1980-1991
 Director of the Honors Research Program, 1994 - 1997
 NC Academy of Science, Board of Directors, 1995 - 1997
 Association for Sickle Cell Disease, Board of Directors, 2002-2005

Consulting Activities

March of Dimes 1975-1977
 Planned Parenthood Board of Directors 1974-1981
 Charlotte Police Department 1973
 Association for Sickle Cell Disease 1974-1991
 American Society for Psycho-Prophylaxis in Obstetrics 1975-1979
 Wheat, First Securities, Inc., Charlotte, NC 1978
 Barber Scotia College Genetics Program 1981
 Boone, Young, and Associates, Inc., New York, New York 1980-1981
 International Sister Cities Program. Traveled to Port-Au-Prince, Haiti and did a needs assessment for a Sickle Cell Anemia Program. 1980.
 Charlotte Discovery Place 1980-1988
 Oral/Facial/Cranial Genetics Team, Charlotte Rehabilitation Hospital 1984-1988

Physician Education in Hemoglobinopathies Conference Planning Committee (Duke University) 1984
 Muscular Dystrophy Clinic, Charlotte Rehabilitation Hospital 1984-1988
 Genetics Clinic CMC 1975-1995
 Forensic DNA Profiling 1993-present

EXPERT WITNESS / CONSULTANT

MURDER

- NC v. Fisher, 1992
 NC v. White, 1992
 NC v. Howell, 1993
 NC v. Torres, 1993
 NC v. Brickhouse, 1993
 NC v. Richardson, 1993
 U.S. v. Salameh et al., 1994
 SC v. Mollada, 1994
 MO v. Link, 1994
 OH v. McGuire, 1994
 NC v. Hartsell, 1994
 NC v. Wallace, 1994
 NC v. Wallace, 1994
 IL v. Reinbold, 1994
 NC v. Dickens, 1995
 NC v. Trull, 1995
 VA v. Barnabei, 1995
 Kreutzer v. MO, 1995
 SC v. Rosemond, 1995
 SC v. J. Simmons, 1995
 NC v. Parker, 1996
 NC v. Abercrombie, 1996
 NC v. Hamilton, 1996
 KY v. Kriegeaum, 1996
 KY v. McKianey, 1996
 IL v. Bull, 1996
 SC v. Wright, 1996
 KY v. Mullins, 1996
 VA v. R.R. Jones, 1996
 U.S. v. Duke, 1996
 SC v. Duke, 1996
 MO v. Morrow, 1996
 SC v. Anderson, 1996
 SC v. Kinloch, 1996
 VA v. Brown, 1996
 IL v. Taylor, 1996
 SC v. Wright, 1996
 MO v. Taylor, 1996
 KY v. Coffey, 1996
 SC v. Brewer, 1996
 PA v. Dillon, 1996
 KY v. Dalton, 1996
 Franklin v. Moore (SC), 1996
 Holmes v. Moore (SC), 1997
 FL v. Olsen, 1997
 FL v. Ortiz, 1997
 KY v. Foley, 1997
 NC v. Underwood, 1997
 KY v. Aucott, 1997
 VA v. King, 1997
 SC v. Gay, 1997
 Cronell v. SC, 1998
 U.S. v. Childs, 1998
 MO v. J. Thomas, 1998
 MO v. Davis, 1999
 SC v. T. Wright, 1999
 OK v. Welch, 1999
 FL v. Schumaker, 1999
 KY v. Graham, 1999
 NC v. Crabtree, 1999
 NC v. Clowers, 1999
 NC v. J.L. Smith, 1999
 MA v. Bly, 1999
 MO v. Daniels, 1999
 SC v. Laux, 1999
 SC v. Ramsey, 1999
 SC v. Frederick, 1999
 SC v. Bridental, 1999
 NC v. May, 1999
 FL v. Morris, 1999
 SC v. Robertson, 1999
 MA v. Perkins, 1999
 SC v. Irick, 1999
 SC v. Simmons, 1999
 NC v. Machins, 1999
 SC v. Gourdine, 1999
 GA v. Burris, 1999
 VA v. Bryant, 1999
 NC v. Lippard, 2000
 SC v. Quattlebaum, 2000
 MA v. Page, 2000
 MA v. Stallings, 2000
 FL v. Chavers, 2000
 NC v. Bennett, 2000
 NC v. Rogers, 2000
 SC v. Hollis, 2000
 SC v. Miller, 2000
 NC v. Temoney, 2000
 SC v. Ervin, 2000
 FL v. McPherson, 2000
 MO v. Hendrix, 2000
 SC v. Simmons, 2000
 GA v. Adams, 2001
 Reed v. Catoe (SC), 2001
 U.S. v. Arce Montes, 2001
 NC v. Talib, 2001
 NC v. R.A. Jackson, 2001
 MO v. Bess, 2001
 MO v. Barnes, 2001
 U.S. v. Jackson, 2001
 NC v. Lippard, 2001
 SC v. Holmes, 2001
 SC v. Pringle, 2001
 Mann v. TN, 2001
 GA v. Tye, 2002
 SC v. Pollen, 2002
 SC v. Walden, 2002
 MO v. Farris, 2002
 SC v. Bowman, 2002
 MO v. Mayes, 2002
 NC v. Graham, 2002
 MA v. Dagley, 2002
 SC v. Walden, 2002
 MO v. Farris, 2002
 U.S. v. Coleman, 2002
 SC v. Bowman, 2002
 MO v. Clark, 2003
 Reid v. SC, 2003
 NC v. Duke, 2003
 GA v. McQuarter, 2003
 NC v. Edwards, 2004
 NC v. T. White, 2004
 NC v. McHone, 2004
 KY v. Meeks, 2004
 NC v. McLean, 2004
 GA v. Denny, 2004
 NC v. Mote, 2004
 U.S. v. Fulks, 2004
 OK v. Anderson, 2004
 NC v. Goode, 2004
 SC v. Hixon, 2004
 SC v. Sanders, 2004
 SC v. Cope, 2004
 SC v. Ervins, 2004
 GA v. Quedens, 2004
 SC v. Brown, 2004
 NC v. Hyatt, 2005
 NC v. Hamilton, 2005
 NC v. Street, 2005
 FL v. Frederick, 2005
 SC v. Allan, 2005
 NC v. Hyatt, 2005
 OK v. Anderson, 2005
 OK v. Kidwell, 2005
 NC v. McLean, 2005

NC v. Granger. 2005
 SC v. Williams. 2005
 SC v. Radwell. 2006
 FL v. Eaglin. 2006
 Brisbon v. SC, 2006
 SC v. Goodwin, 2006
 SC v. Hickson, 2006
 NC v. Lane. 2006
 SC v. Evins, 2006
 SC v. Brown, 2006
 SC v. Goodwin, 2006
 NC v. Hill, 2006
 Chapman v. NC, 2006
 NC v. Tadesse, 2006
 SC v. Vick. 2006
 FL v. Lugo, 2007
 SC v. G.K. Johnson, 2007
 SC v. J. Davis, 2007
 FL v. Twilegar, 2007
 SC v. W. Bell, 2007
 NC v. Fagan, 2007
 SC v. Starnes, 2007
 NC v. Bryson, 2007

SEXUAL ASSAULT
 NC v. J.J. Jones, 1993
 NC v. Lewis, 1993
 LA v. Christy, 1994
 AL v. J. Smith, 1994
 NC v. J.N. Jones, 1994
 NC v. Davis, 1994
 NC v. McConico, 1994
 NC v. Fowler, 1994
 MO v. Vehlewald, 1994
 SC v. Pooler, 1994
 SC v. Eubanks, 1994
 AL v. Reed, 1995
 IL v. Franklin, 1995
 SC v. Ortega, 1995
 IL v. Taylor, 1995
 SC v. Thompson, 1995
 NC v. Bado, 1995
 NC v. Suddreth, 1995
 NC v. Clark-Pearson, 1995
 SC v. B. Smith, 1995
 FL v. Gibson, 1995
 SC v. J.D. Simmons, 1995
 MO v. Doriety, 1995
 SC v. Tucker, 1995
 NC v. Washington, 1996
 NC v. Foster, 1996
 SC v. Osborne, 1996
 FL v. R.O. Simmons, 1996
 NC v. Bado, 1995
 NC v. Suddreth, 1995
 NC v. Clark-Pearson, 1996
 SC v. B. Simmons, 1996
 SC v. Smith, 1996
 SC v. Rosemond, 1996

VA v. King, 1996
 MO v. Piles, 1996
 MO v. Franklin, 1996
 SC v. Stanley, 1996
 NC v. Edgeworth, 1997
 SC v. Goodwin, 1997
 MO v. M. Smith, 1997
 MO v. Carvin, 1997
 FL v. M. Campbell, 1997
 FL v. Tolver, 1997
 SC v. Singleton, 1997
 USAF v. Braga, 1997
 SC v. Terry, 1997
 FL v. Adams, 1997
 MO v. Rodriquiz, 1997
 SC v. J.O. Reed, 1997
 SC v. Ash, 1997
 SC v. Brannon, 1997
 SC v. Cook, 1997
 FL v. Hamilton, 1997
 FL v. Taylor, 1997
 KY v. Askins, 1997
 SC v. Foxworth, 1997
 SC v. Proctor, 1998
 SC v. Proctor, 1998
 SC v. Dycus, 1998
 FL v. Soria, 1998
 GA v. Dickerson, 1998
 VA v. Perry, 1998
 SC v. Simpson, 1998
 SC v. Rand, 1998
 SC v. Veldell, 1998
 VA v. Gianelli, 1998
 NC v. Andreasen, 1999
 SC v. Gary, 1999
 KY v. Fleischman, 1999
 SC v. Green, 1999
 SC v. Jeffcoat, 1999
 NC v. Holt, 1999
 SC v. Simpson, 1999
 SC v. Johnson, 1999
 NC v. Johnson, 1999
 SC v. Robinson, 1999
 SC v. McCord, 1999
 NC v. Reid, 1999
 FL v. Corbett, 1999
 FL v. Soria, 1999
 SC v. Fields, 2000
 MA v. Miles, 2000
 VA v. Hill, 2000
 NC v. Yearwood, 2000
 OK v. Andrews, 2000
 NC v. Barkley, 2000
 GA v. Brandon, 2000
 NC v. Sitton, 2000
 NC v. Sadoff, 2000
 SC v. Petty, 2000
 NC v. Pearson, 2000

FL v. McCann, 2000
 U.S. v. Vines, 2000
 MO v. Johnson, 2001
 SC v. Dickson, 2001
 MA v. Santoro, 2001
 SC v. D. Thompson, 2001
 SC v. Robinson, 2001
 FL v. Jefferson, 2001
 MO v. Cook, 2001
 Barnes v. SC, 2001
 SC v. Hernandez, 2001
 NC v. Sherrill, 2001
 SC v. Heywood, 2001
 SC v. McKinney, 2001
 SC v. D.J. Jackson, 2001
 SC v. Rouse, 2001
 MO v. Wright, 2001
 FL v. Hindenach, 2001
 MO v. Caldwell, 2001
 VA v. Cooper, 2001
 SC v. Haywood, 2002
 SC v. Toney, 2002
 MO v. J. Jefferson, 2002
 SC v. Rand, 2002
 SC v. A. Williams, 2002
 MO v. Wright, 2002
 FL v. Jefferson, 2002
 SC v. J. L. Williams, 2002
 Barnes v. SC, 2002
 NC v. Watts, 2002
 Aiken v. SC, 2002
 NC v. Williams, 2002
 SC v. A. Williams, 2002
 MO v. J. Jefferson, 2002
 MO v. M. Wright, 2002
 FL v. R. Jefferson, 2002
 Williams v. SC, 2002
 SC v. J. Bell, 2003
 SC v. Gosnell, 2003
 SC v. Riser, 2003
 VA v. Howard, 2003
 VA v. Morrison, 2003
 NC v. Gray, 2003
 NC v. Graham, 2003
 NC v. Bell, 2003
 NC v. Prince, 2003
 NC v. Roberson, 2003
 VA v. Howard, 2003
 GA v. Simpkins, 2004
 SC v. Mance, 2004
 NC v. Floyd, 2004
 KY v. Pentecost, 2004
 NC v. Benson, 2004
 NC v. Gray, 2004
 NC v. Morton, 2004
 NC v. Watson, 2004
 NC v. Jones, 2004
 SC v. Gaynor, 2004
 FL v. Simmons, 2005

GA v. Prather, 2005
 NC v. McConnell, 2005
 Carter v. SC, 2005
 NC v. Garcia, 2005
 NC v. Hernandez, 2005
 NC v. Chavis, 2005
 NC v. Reed, 2005
 NC v. McEwen, 2005
 FL v. Simmons, 2005
 MA v. Scott, 2005
 NC v. Jones, 2005
 SC v. Reed, 2005
 FL v. Oliver, 2005
 SC v. Thomas, 2005
 SC v. Finklea, 2005
 VA v. Bonilla, 2005
 NC v. Watson, 2005
 SC v. Woods, 2006
 NC v. Pettis, 2006
 SC v. Nesbitt, 2006
 NC v. Elliott, 2006
 NC v. Cooper, 2006
 NC v. Kelley, 2006
 Barnes v. SLED et al., 2006
 NC v. Hengstenberg, 2006
 U.S. v. Dominquez, 2006
 NC v. Johnson, 2006
 NC v. Gilliam, 2006
 NC v. Nunn, 2006
 NC v. Hamilton, 2006
 MA v. Betances, 2006
 SC v. Lee, 2006
 SC v. Orr, 2006
 NC v. Jackson, 2006
 SC v. Davis, 2007
 MA v. Crouse, 2007
 SC v. Byers, 2007
 NC v. Sexton, 2007
 MA v. Middleton, 2007
 SC v. Timmons, 2007
 SC v. T. Brown, 2007
 SC v. Hinson, 2007
 SC v. N. Johnson, 2007
 NC v. T.R. Pulley, 2007
 VA v. Rattley, 2007
 IL v. Carlock, 2007

SC v. Winch, 2007
 NC v. Peeler, 2007
 NC v. Crenshaw, 2007
 NC v. Clovis, 2007
 NC v. McAllister, 2007
 NC v. R.D. Williams, 2007
 NC v. D.L. Sanders, 2007
 SC v. Filyaw, 2007
 NC v. Stewart, 2007
 NC v. Hudson, 2007
 IL v. Thompson, 2007
 IL v. J. Kelly, 2007
 IL v. Corey Coleman, 2007
 IL v. K. Johnson, 2007
 IL v. D. Wilson, 2007
 IL v. Carter, 2007
 IL v. McCormick, 2007

INCEST

NC v. Page, 2006

PATERNITY

OH v. Dreger, 1993
 Langner v. Acton et al., 1994
 (Birmingham, AL)
 Johnson v. Irey, 1995 (Mansfield, OH)
 McCall v. Waters, 1999 (Rocky Mount,
 NC)

KIDNAPPING

U.S. v. Washington, 2006

LARCENY

VA v. Fountain, 1996
 SC v. Washington, 1996
 MO v. Witte, 1998
 MA v. Redding, 1999
 FL v. Arnold, 2000
 MA v. Redding, 2000

ASSAULT

MO v. Hills, 1997
 PA v. Osborne, 1997
 SC v. Taylor, 2000
 SC v. Canty, 2006
 SC v. Caldwell, 2007

ATTEMPTED MURDER

FL v. Leslie, 1998
 FL v. Bruce, 2004

DISHONEST CONDUCT

FL Bar V. Senton, 2003

BURGLARY

FL v. Fisher, 2001
 SC v. Reed, 2005
 SC v. Heyward, 2006
 SC v. Parsons, 2006
 SC v. Jenkins, 2006
 SC v. Fields, 2006
 SC v. Artis, 2006
 SC v. Ashe, 2007

ATTEMPTED ROBBERY

VA v. Mayfield, 2005

GUN POSSESSION

U.S. v. Weaver, 2007
 US. v. McGowan, 2007

DRUG TRAFFICING

FL v. Gordon, 2003

ROBBERY

FL v. Roberts, 2001
 U.S. v. Mays, 2002
 SC v. Doyle, 2002
 FL v. Gibson, 2002
 SC v. S. Coleman, 2002
 FL v. M. Lamb, 2003
 SC v. Brown, 2004
 NC v. McFarland, 2007
 IL v. Garfield, 2007

BANK ROBBERY

U.S. v. Miller, 2005
 U.S. v. Whitaker, 2005
 U.S. v. Perkins, 2005
 U.S. v. Palmer, 2005
 U.S. v. Green, 2005

Continuing Education Courses Taught:

- "Forensic DNA Evidence", Advanced Criminal Practice II, Kennesaw State Continuing Education. Atlanta, Georgia. 1994.
 "Basics of DNA Profiling", Board of Continuing Education of the N.C. State Bar Association. Wrightsville Beach, NC. 1995.
 "Medical Applications of DNA Technology", Southeastern Regional Genetics Group. Charlotte, NC. 1995.
 "DNA Profiling", Organized Program for Future Workshops, Missouri Public Defenders. St. Louis, MO. 1996.
 "DNA", 7th Annual Defense Investigators Conference, Institute of Government, UNC Chapel Hill, NC. 1996.
 "DNA Evidence", Cook County Public Defender, Chicago, IL. 1996.
 "DNA for Dummies", SC Public Defender Conference, Cherry Gove, NC. 1996.
 "DNA Workshop Series", MO Public Defenders System, Kansas City, MO. 1996.

"Skillfully Handling Scientific Evidence and Expert Witnesses at Trial", National Legal Aid and Defender Assoc., Orlando, FL. 1997.

"Forensic DNA Profiling", Association of Genetic Technologists, Charlotte, N.C. 1997

"New Developments in DNA Technologies", SC Public Defenders Conference, Folly Beach, SC 1998

"DNA Profiling: Yesterday, Today and Tomorrow", Missouri Public Defenders, Lake of the Ozarks, MO 2000

"Developments in DNA Technologies", SC Public Defenders Conference, Litchfield Beach, SC 2000

"DNA: Science and Technology", Missouri Public Defenders, Lake of the Ozarks, MO, 2001.

"DNA in 30 Minutes", South Carolina Bar, Columbia, SC, 2001.

"Visualizing DNA," NC Public Defenders Conference, Wilmington, NC 2003.

"BioInformatics: Paternity Indices," Forensic BioInformatics Services Annual Meeting, Dayton, OH 2003.

"Understanding Forensic DNA Profiling"—Academy of Trial Lawyers, Raleigh, NC, 2004.

"Making DNA Understandable To Jurors"—Forensic Bioinformatics Conference, Dayton, OH, 2004.

"Educating the Jury"—Ninth Annual Federal Public Defenders' Meeting, Key Largo, FL. 2006.

"Forensic DNA Profiling"—Public Defender Conference, Charleston, SC, 2006.

PUBLICATIONS AND RESEARCH:

Ostrowski, R. S., 1968. Competition of the white locus alleles w and w^2 of Drosophila melanogaster in a homozygous background. M.S. thesis.

Bennett, J. and Ostrowski, R.S., 1969. An improved inexpensive plastic population cage. Drosophila Information Service 44:126.

Bender, H.A., Barr, H.J. and Ostrowski, R.S., 1971. Asynchronous DNA synthesis in a duplicated chromosomal region of Drosophila melanogaster. NATURE. 231:217.

Ostrowski, R.S. and Bender, H.A., 1971. Nucleic acid synthesis in a duplicated chromosomal region of Drosophila melanogaster. Proc. Reg. Devel. Biol. Conf., Elmhurst College, Elmhurst, Illinois (Abstract) p.11.

Ostrowski, R. S., 1971. Nucleic acid synthesis in a duplicated chromosomal region, Dp (1:f) AM, of Drosophila melanogaster, Ph.D. Dissertation.

Ostrowski, R.S. and Bender, H.A., 1972. Dosage compensation in a duplicated chromosome region of Drosophila melanogaster. Genetics (supplement) 71:S45.

Ostrowski, R.S., and Phillips, B.T., 1974. Occurrence of Drosophila male X-chromosome enlargement in the absence of dosage compensation. Genetics (supplement) 77:S50.

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Talley, E. and R. Ostrowski, 1980. Phenylketonuria. The American Society for Psycho-Prophylaxis in Obstetrics 7:12.

Talley, E. (R. Ostrowski), 1982. Genetic Independence of Hemoglobin and Haptoglobin in a Black Population: An Electrophoretic Study. CANCAS 28:100.

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Johnson, D.L. (R. Ostrowski), 1983. A Study of the Mitotic Indices of Pregnant and Nonpregnant Women. CANCAS 29:70.

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- Ostrowski, R.S., F. Grass, J. Norton, R. Krishna and M. Steger, 1993. Evaluation of X chromosomal mosaicism by fluorescent in situ hybridization in women who have recurrent spontaneous pregnancy losses. (abstract) *American Journal of Human Genetics* 53, #3:587.
- Ostrowski, R.S., F. Grass and J. Jellema, 1993. An investigation of the Fragile X site as it relates to chromosome overlap in cultured human white blood cells. (abstract) *Proceedings of American Cytogenetics Conference* 31:34.
- Steger, M. and R.S. Ostrowski, 1994. Investigation of maternal nondisjunction in spontaneous aborters using fluorescent in situ hybridization. *CANCAS* 40:4.
- Ostrowski, R.S. 1994. PCR, DQ α and polymarkers: a new generation of forensic DNA profiling. *Trialbriefs* 26, #4:24.
- Ostrowski, R., J. Hisley and K. Pfister-Laukaitus, 1994. Respiratory distress syndrome caused by phenocopy and mode of delivery in pregnancies complicated by diabetes mellitus. (abstract) *American Journal of Human Genetics* 55, #3:2226.
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- Grass, F., R.S. Ostrowski, J. Norton, R. Krishna, S. Jenkins and M. Steger, 1995. Mosaicism for X-chromosomal aneuploidy in women who experience recurrent pregnancy loss evaluated by fluorescence in situ hybridization. (abstract) *Cytogenetics and Cell Genetics* 69:118.
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- Grass, F.S., J. Norton, R. Krishna, G.B. Mullis and R.S. Ostrowski. 1996. Interphase cytogenic analysis of low-level X chromosome aneuploidy in recurrent spontaneous abortion. (abstract) *American Journal of Human Genetics* 59, #4:656.
- Ostrowski, R.S., F.S. Grass, C.A. Brown and S.P. Nakano. 1997. Possible forensic implications for a Turner Syndrome female possessing a ring chromosome composed of both X and Y derived material. (abstract) *Cambridge Healthtech Institutes Second Annual Conference*.
- Pliner, J., R. S. Ostrowski, C. Brown and K. McKinney. 2000. Associations of known gene variations in the alpha adducin and beta-2 adrenergic receptor genes with essential hypertension using polymerase chain reaction oligonucleotide ligation allele detection. (abstract) *Journal of the E. Mitchell Scientific Society* 116, #3:277
- Grass, F. S., C. Dickerson, T. Loeb, J. Phillips and R. S. Ostrowski. 2000. Mosaic triploidy in CVS and amniocentesis with normal outcome. (abstract) 36th American Cytogenetics Conference, 20.
- Grass, F., C. Brown, P. Backeljauw, J. Gazak, A. Lucas, C. Brasington, S. Nakano, R. Ostrowski and E. Spence. 2000. A Novel Ring Chromosome composed of both X and Y derived material in a girl with features of Turner Syndrome. *American Journal of Medical Genetics* 93:343
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- Perez, R., R. S. Ostrowski 2003. Determination of the minimal number of nuclei needed using fluorescence in situ hybridization (FISH) to detect amplified human epidermal growth factor receptor-2 (HER-2) in breast tumor cells. *Journal of North Carolina Academy of Science*. 119, #2:81.

PAPERS PRESENTED

- "Competition of the White Locus Alleles w and w^+ of *Drosophila melanogaster* in a Homozygous Background." A.I.B.S. annual meeting, 1968. University of Wisconsin, Madison, Wisconsin.
- "Nucleic Acid Synthesis in a Duplicated Chromosomal Region of *Drosophila melanogaster*". Midwest Regional Developmental Biology Conference. 1971. Elmhurst College, Elmhurst, Illinois.
- Chairman and discussion leader of the Cytogenetics section. Fifteenth *Drosophila* Research Conference, 1973. North Illinois University, Dekalb, Illinois.
- "DNA synthesis in salivary gland chromosomes of *Coelopa frigida*". Forty-fifth annual meeting of the Genetics Society of America, 1976. University of Utah, Salt Lake City, Utah.
- "Cellular Development *Coelopa frigida* (Diptera): A Study using Liquid Scintillation Techniques". Fortieth Annual Meeting of the Association of Southeastern Biologists, 1979. University of Tennessee - Chattanooga, Chattanooga, Tennessee.
- "Model State Genetic Disease Program", National Sickle Cell Management Workshop, 1980. Charlotte, North Carolina
- "Genetic Counseling with Emphasis on Non-Paternity Situations". (Workshop). National Conference Comprehensive Sickle Cell Centers and Screening and Education Clinics. 1980. Pittsburgh, Pennsylvania.

- "Genetic Independence of Hemoglobin and Haptoglobin in a Black Population: An Electrophoretic Study" - National Conference Comprehensive Sickle Cell Centers and Screening and Education Clinics - Hilton Head Island, SC. 1981.
- "Genetic Engineering" - North Carolina Cytologist's Annual Meeting - Charlotte, NC. 1982.
- "Genetic Independence of Hemoglobin and Haptoglobin in a Black Population: An Electrophoretic Study". (Talley, E.S.) North Carolina Academy of Science Annual Meeting 1982. UNC-Wilmington.
- "A Study of the Mitotic Indices in Peripheral Blood Lymphocytes of Pregnant and Nonpregnant Women. (Johnson, D.L.) North Carolina Academy of Science Annual Meeting. 1983. UNC-Chapel Hill.
- "A Search for a Correlation Between Mothers with Elevated Hemoglobin A₁ levels and the Birth of Small for gestational Age Babies. (Floyd, R.A.) North Carolina Academy of Science Annual Meeting. 1983. UNC-Chapel Hill.
- Hemoglobinopathies: "old and new techniques". Grand rounds. Charlotte Memorial Hospital, Charlotte, NC. 1985.
- "An investigation of overlapping chromosomes in cultured white blood cells" (Bahr, K.L.) North Carolina Academy of Science Annual meeting. 1986 E.C.U. Greenville, NC.
- "An investigation of overlapping chromosomes in cultured WBC's from retinoblastoma patients" (Bundy, S.A.) North Carolina Academy of Science Annual meeting. 1987. N. C. State University.
- "An investigation of the Fragile-X site as it relates to chromosome overlap in cultured human white blood cells (Grass, F.S. and Lovett-Jellema, J.) American Cytogenetics Conference. 1993 Port Ludlow, WA.
- "Evaluation of X chromosomal mosaicism by fluorescent in situ hybridization in women who have recurrent spontaneous pregnancy losses." (Grass F., Norton J., Kishna, R. and Steger M.) American Society of Human Genetics Annual meeting. 1993. New Orleans, LA.
- "Studies in Fragile X." (Panther, R.) Annual Research Conference. OB/GYN, Carolinas Medical Center. 1993.
- "Evaluation of X chromosomal mosaicism by Fluorescence in situ hybridization in women who have recurrent spontaneous pregnancy losses." (Grass, F.) Pediatrics, Carolinas Medical Center. 1993.
- "Investigation of maternal nondisjunction in spontaneous aborters using fluorescence in situ hybridization." (Steger, S.M.) North Carolina Academy of Science Annual Meeting. 1994. Davidson College, Davidson NC.
- "Mosaicism for X chromosomal aneuploidy in women who experience recurrent pregnancy loss evaluated by fluorescence in situ hybridization." (Grass F., Norton J., Krishna R., Jenkins S., and Steger M.) American Cytogenetics Conference. 1994. Wintergreen Resort, VA.
- "Forensic DNA Profiling: An Impact on Health Care Delivery." UNCC Academy of Health Issues, Dilemmas in Health Care Lecture Series. 1994. University of North Carolina Charlotte, Charlotte, NC.
- "DNA sequencing: computer simulation as a compliment to laboratory techniques." (Jenkins S. and Steck T.) North Carolina Academy of Science Annual meeting. 1994. Davidson College. Davidson, NC.
- "A Search for Chromosome 15 Deletion (Prader-Willi Syndrome) in the General Population Using High Resolution Chromosomes and Fluorescent In Situ Hybridization." (C. Dunbar) Merck Lecture Series, 1994. Davidson College, Davidson, NC.
- "Interphase cytogenic analysis of low-level X chromosome aneuploidy in recurrent spontaneous abortion." (F.S. Grass) American Society of Human Genetics Annual Meeting. 1996. San Francisco, CA.
- "Possible Forensic Implications for a Turner Syndrome female possessing a ring chromosome composed of both X and Y derived material." (F.S.Grass, C.A. Brown and S.P. Nakano) Cambridge Healthtech Institutes 2nd annual conference. DNA Forensics Science. Evidence, and Future Prospects. 1997. McLean, VA.
- "Associations of known gene variations in the alpha adducin and beta-2 adrenergic receptor genes with essential hypertension using polymerase chain reaction oligonucleotide ligation allele detection." (J. Pliner, C. Brown and K. McKinney). North Carolina Academy of Science Annual Meeting. 2000. NC State University. Raleigh, NC.
- "Mosaic triploidy in CVS and amniocentesis with normal outcome." (F. S. Grass, C. Dickerson, T. Loeb and J. Phipps) 36th American Cytogenetics Conference. 2000 Galveston, TX.
- "Triploid mosaicism in CVS and amniocyte cultures with normal postnatal outcome." (F.S. Grass, T. Loeb, C. Dickerson, J. Phipps, and R.S. Ostrowski), Third European Cytogenetics Conference. 2001. Paris, France.
- "Determination of the minimal number of nuclei needed using fluorescence in situ hybridization (FISH) to detect amplified human epidermal growth factor receptor-2 (HER-2) in breast tumor cells." (R. Perez, R. S. Ostrowski), North Carolina Academy of Science Annual Meeting. 2003. UNC Wilmington, Wilmington, NC.
- "Not Guilty Verdicts in Two DNA Trials" (R.S. Ostrowski) Clucago conference/21st Century. 2004. Chicago, Illinois. Present

UNIVERSITY RESEARCH ACTIVITY

Collaboration with Carolinas Medical Center. Techniques include Polymerase Chain Reaction (PCR), Southern Blotting, DNA sequencing and profiling, and Fluorescent In Situ Hybridization

FUNDED RESEARCH:

- Dosage Compensation: A Study of X Chromosome Hyperactivity in *Drosophila melanogaster*. UNCC Foundation. 1973.
- Cytological and Developmental Studies of the Salivary Gland Chromosomes in the Kelp Fly *Coelopa frigida*. UNCC Foundation. 1975.
- A Search for an Asynchronously Replicating Chromosomes in *Coelopa frigida*: An Autoradiographic Study. North Carolina Science and Technology Committee. 1975-77.
- Comparison of Hemoglobin-Haptoglobin Types as They Relate to Stress. Urban Institute Grant. 1980.
- Frequency of Chromosomal Association in Down's Syndrome and Families. (Levine, M.) John Yarborough Memorial Grant. 1981.
- A Search for a Correlation Between Haptoglobin and Hemoglobin Genotypes: An Electrophoretic Study (Talley, E.) John Yarborough Memorial Grant. 1981.
- Genetic Independence of Hemoglobin and Haptoglobin in a Black Population. UNCC Foundation. 1982.
- Supernumerary Chromosomes: A Scanning Electron Microscope Study. UNCC Foundation. 1984.
- "Breast Stimulation to Augment labor: An Investigation of Oxytocin and Prostaglandin F₂ alpha levels in Ten Women Receiving Breast Stimulation". UNC School of Medicine. 1984.
- Improved Molecular Diagnosis of FRA-X disease. Charlotte-Mecklenburg Health Services Foundation, Inc., 1992.
- Investigation of Parental Nondisjunction on Spontaneous Aborters Using Fluorescence in Situ Hybridization. UNCC Foundation, 1992.
- Evaluation of X-chromosomal mosaicism by Fluorescent in situ hybridization in women who have recurrent pregnancy losses. Charlotte-Mecklenburg Health Services Foundation, 1993.
- A Search for Chromosome 15 Deletion (Prader-Willi Syndrome) in the General Population Using High Resolution Chromosomes and Fluorescent In Situ Hybridization. Merck Scholar Research Grant, 1994.
- Introduction of Hands On Biotechnology Across the Undergraduate Curriculum. NC Biotechnology Center, 1994.
- Evaluation of X-chromosomal mosaicism by Fluorescent in situ hybridization in women who have recurrent pregnancy losses. Charlotte-Mecklenburg Health Services Foundation, 1994.
- Associations of gene variations with essential hypertension using polymerase chain reaction oligonucleotide ligation technique. Beta Beta Beta Biological Society. (J. Pliner) 1999.

HONORS AND AWARDS:

- Outstanding Educators in America-1975
- American Men and Women in Science 1976
- Who's Who in the South and Southwest 1977
- International Who's Who in Education 1977
- Readers Digest National Foundation Technical Assistance Award (received for Port-au Prince, Haiti program) 1981
- Certificate of Appreciation-City of Charlotte for Haiti Sister City Program 1981
- John Bowley Derieux Research Award (Talley, E.) 1982
- Directory of Distinguished Americans 1982
- Who's Who in Frontiers of Science and Technology 1982
- Men of Achievement 1983
- John Bowley Derieux Research Award (Johnson, D.L.) 1983
- John Bowley Derieux Research Award (Floyd, R.A.) 1983
- Certification, Hemoglobinopathies laboratory detection techniques. (C.D.C., Atlanta, GA) 1983
- John Bowley Derieux Research Award (Bahr, K.L.) 1986
- John Bowley Derieux Research Award (Bundy, S.A.) 1987
- John Bowley Derieux Research Award (Steger, S.M.) 1994
- Sigma Xi Research Award (Steger S.M.) 1994
- Honorary member, Golden Key National Honor Society, 1995
- Tri Beta, Faculty Member of the Year, 1996
- Finalist, NationsBank Award for Excellence in Teaching, 1997
- John Bowley Derieux Award (Pliner, J.) 2000
- John Bowley Derieux Award (Perez, R.) 2003
- Health Services Research Academy Best Student Paper Undergraduate (Perez, R.) 2003

PROFESSIONAL AFFILIATIONS:

American Society for Human Genetics
American Academy of Forensic Science
North Carolina Academy of Science
North Carolina Medical Genetics Association
 Editor and Publisher NCMGA Newsletter
 Chairman, Professional Liaison and Education Committee
Genetics Society of America
Sigma Xi
Smithsonian Institute
Audubon Society
American Society for Psycho-Prophylaxis in Obstetrics
American Association for the Advancement of Science
Association of Southeastern Biologists
National Sickle Cell Federation - Board of Science Advisor

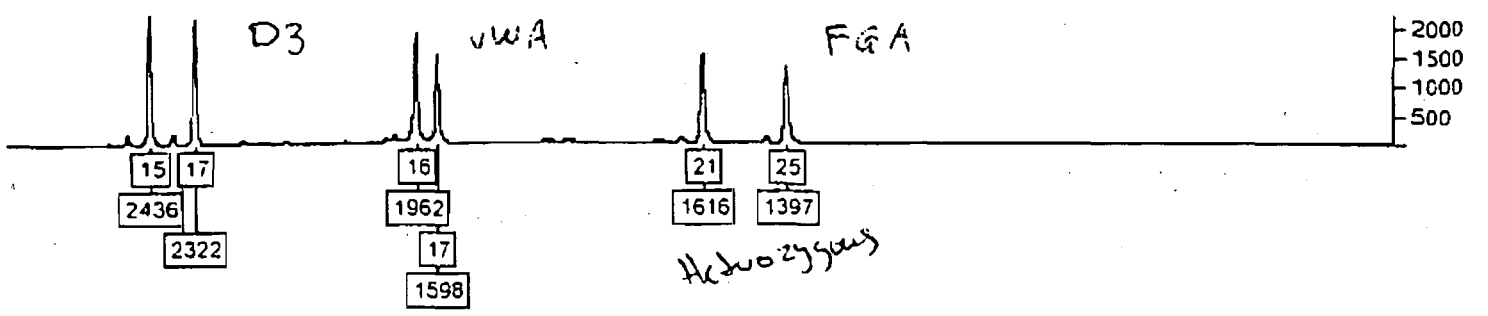
CURRICULUM DEVELOPMENTCourses Developed and Taught:

Cytogenetics
Developmental Genetics Seminar
Behavioral Genetics Seminar
Medical Genetics
Genetic Engineering
Population Genetics
Human Heredity and Diversity
Graduate Genetics Seminar
Developmental Biology
Human Genetics
Cell and Molecular Biology
DNA Profiling

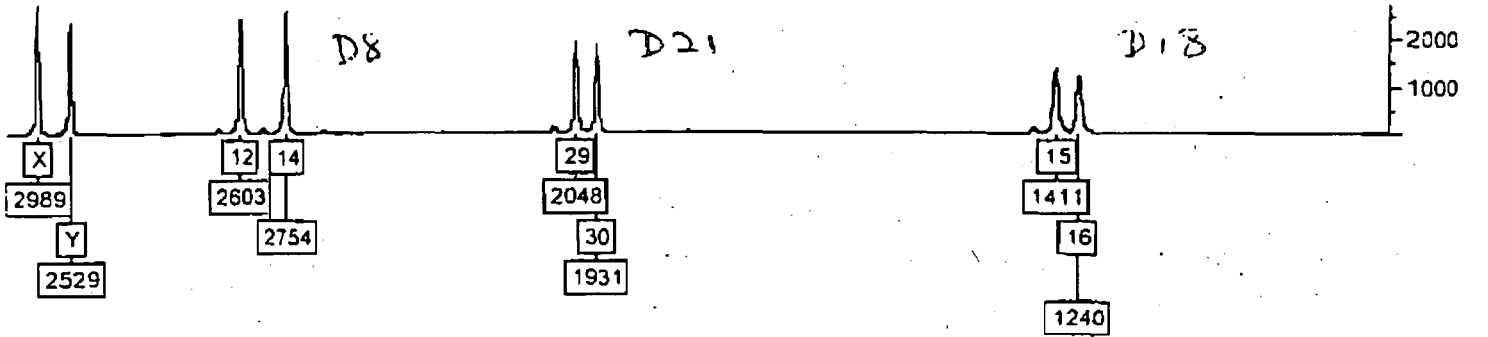
Additional Courses Taught

Principles of Genetics (lecture and laboratory)
Introduction to Biology (lecture and laboratory)
Anatomy and Physiology Laboratory
Animal Biology Laboratory
Cellular/Molecular Biology (lecture and laboratory)

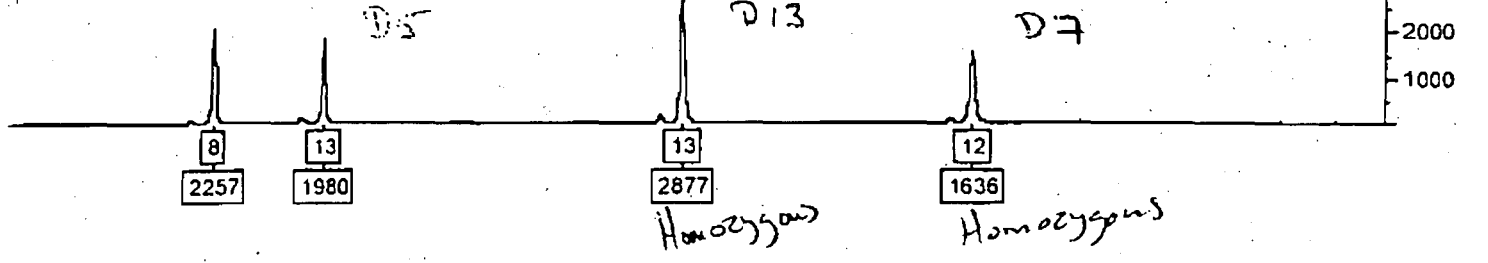
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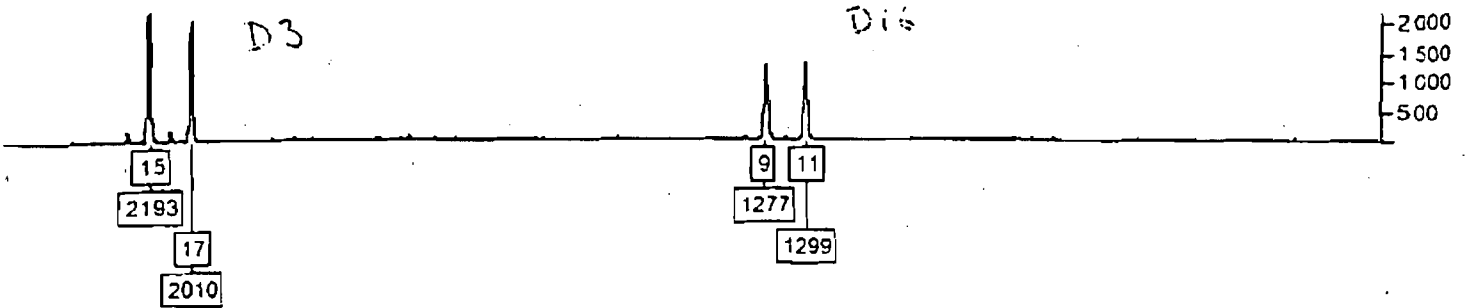
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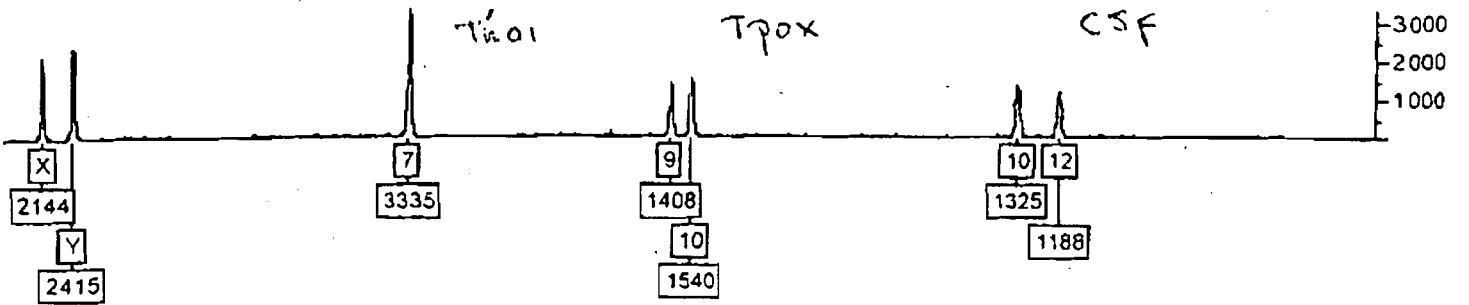


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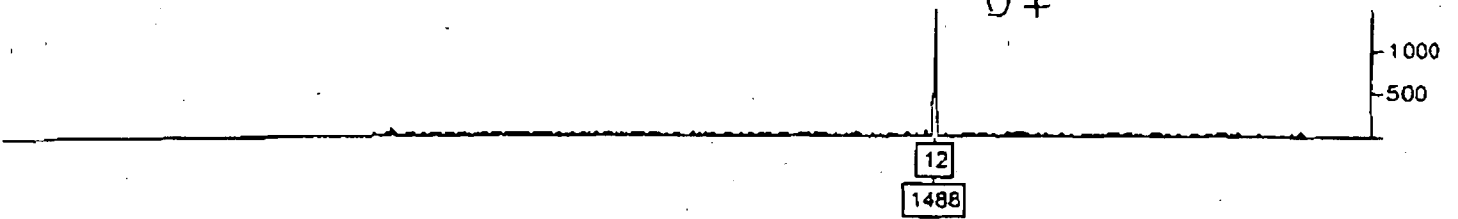
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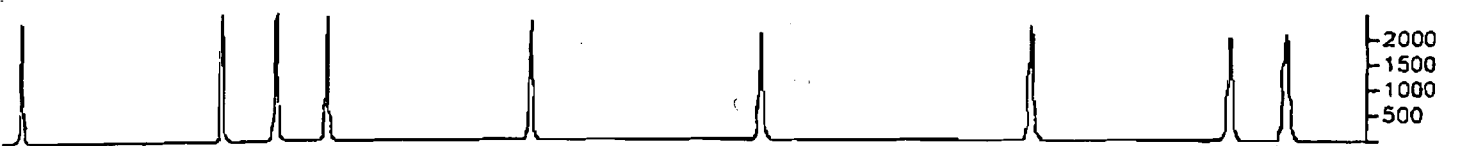
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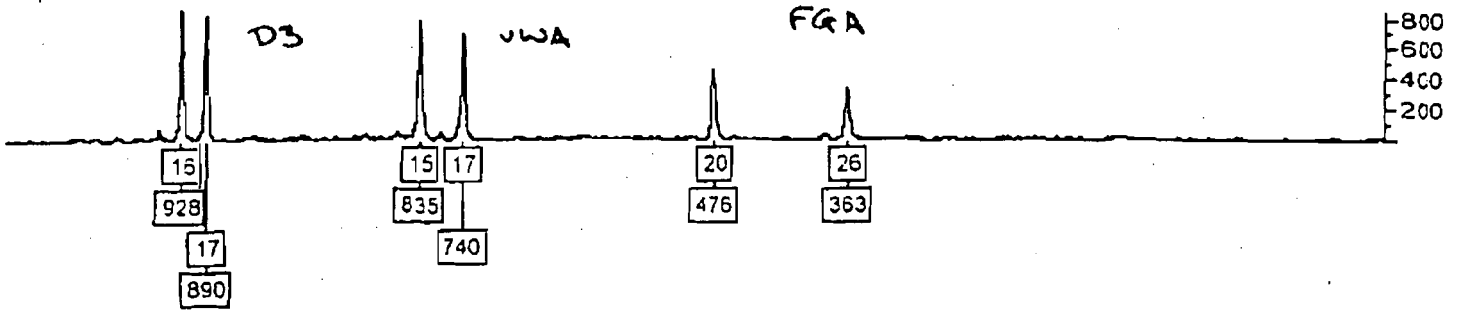
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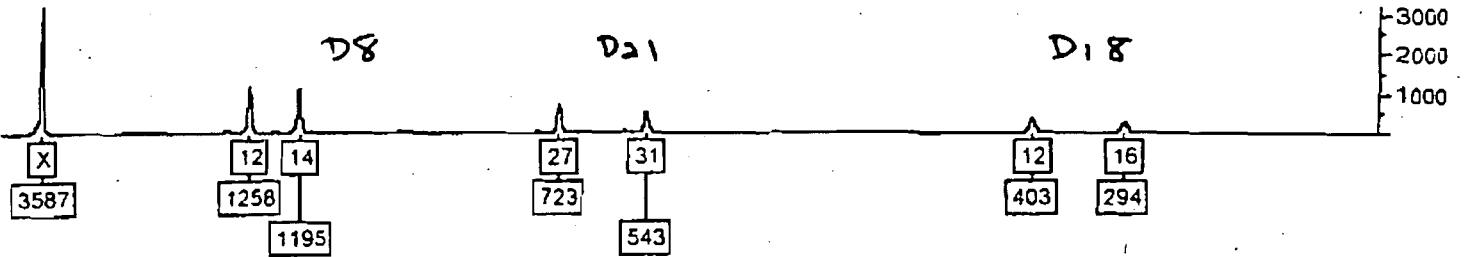
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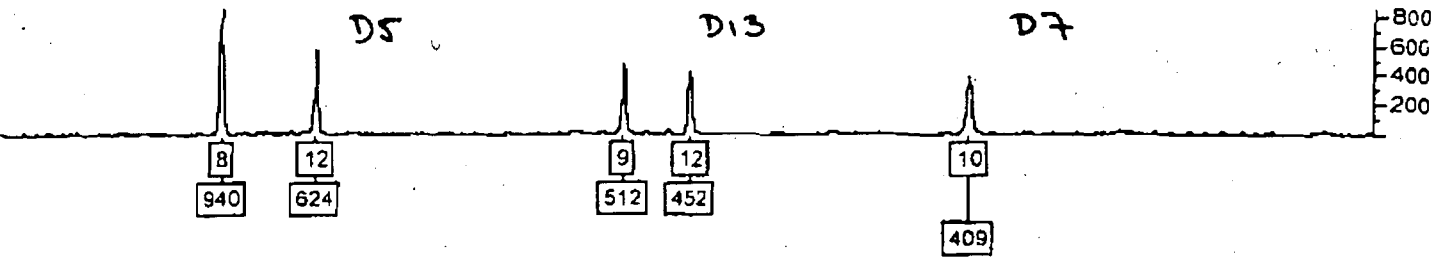
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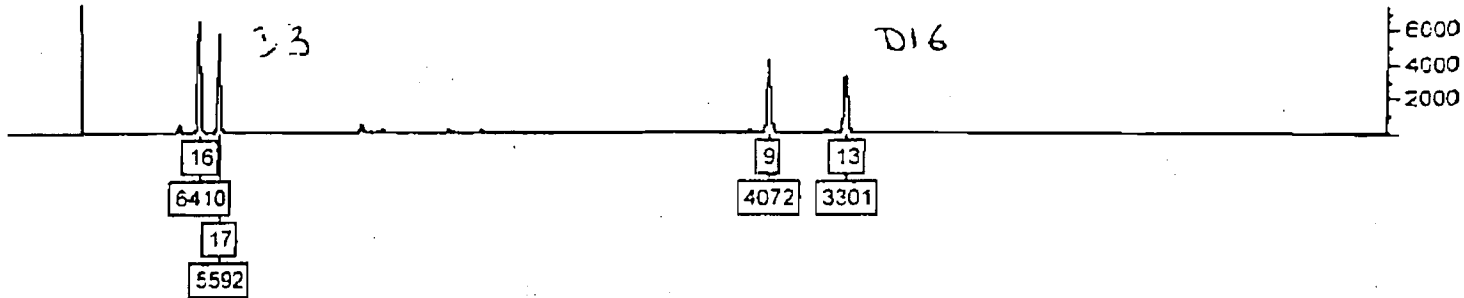


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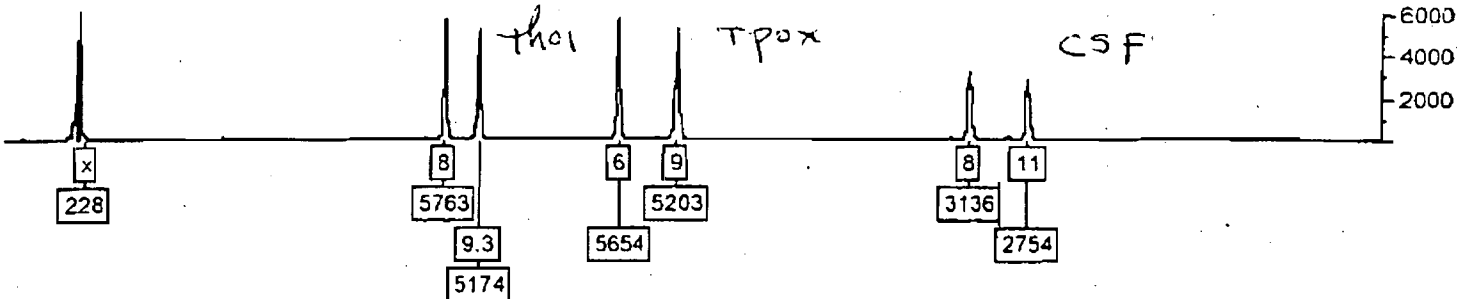
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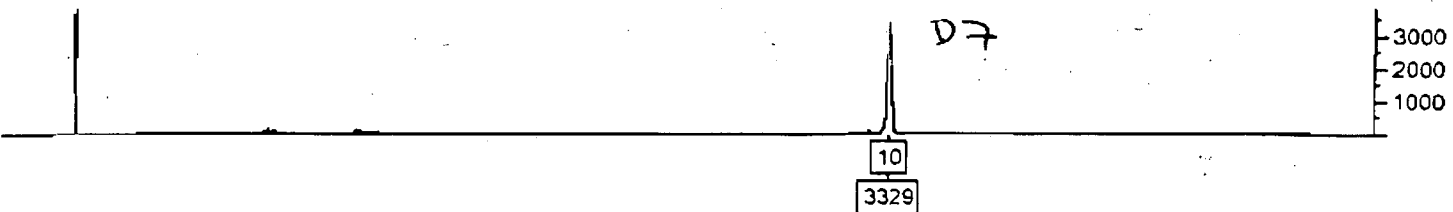
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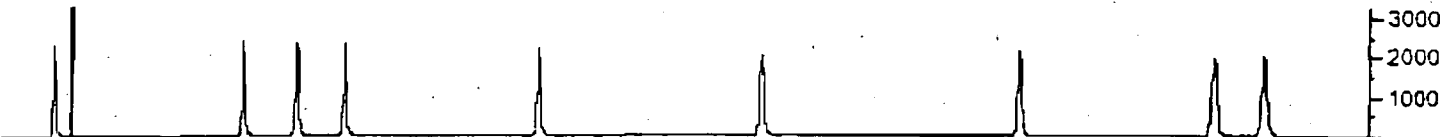
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pull up

*Vic known -
Coflex*

36/85

Re: to A. Anderson
12/3/02

OFFICE OF THE SOLICITOR

SECOND JUDICIAL CIRCUIT

109 PARK AVENUE, SE

POST OFFICE DRAWER 3368

AIKEN, SOUTH CAROLINA 29802

PHONE (803) 642-1557

FAX (803) 642-7530

FACSIMILE COMMUNICATION

TO: Andy Anderson

FROM: Brenda Brisbin

DATE: 12/3/02

NUMBER OF PAGES: 5

RE: Ernest Pressley (P. H.)

MESSAGE: Andy,

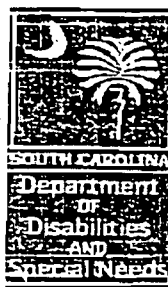
This is P.'s DDEN evaluation from March & April
of this year. She had juvenile charges (DVI involving her
mother) dismissed due to incompetence to stand trial. I don't
anticipate any problem with her competence to testify.

Brenda Brisbin

BARBARA R. MORGAN, Solicitor



Stanley J. Butkus, Ph.D.
 State Director
 Robert W. Barfield
 Deputy State Director
 Administration
 Brent H. Koyle, Ph.D.
 Deputy State Director
 Services and Support



3440 Harden Street Ext (29203)
 PO Box 4706, Columbia, South Carolina 29240
 V/TTY: 803/898-9600, FAX: 803/898-9653
 Toll Free: 888/DSN-INFO
 Home Page: www.state.sc.us/dasn/

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 I. Lewis Stephens
 Lyssa Harv
 Isaac B. Dickson,
 Ronald Forre

FORENSIC EVALUATION

Name: P. H. Gender: Female
 Address: 243 Glenwood Dr., Warrentonville, SC 29851 Race: African-American
 Date of Evaluation: 3-28-02 and 4-16-02 Date of Birth:
 Place of Evaluation: DDSN Midlands Facility Age: 15 years
 Columbia, SC
 Examiners: Theresa E. Baker, Psy.D. - Lead Examiner
 Phil Cornelius, Ph.D. - Secondary Examiner
 Charge(s): Criminal Domestic Violence

Purpose of Evaluation:

This evaluation was conducted pursuant to an order dated 1-24-2002, by the Honorable David Sawyer, Jr., Presiding Judge of the Second Judicial Circuit Family Court. The order stated that P. H. be evaluated to determine her competency to stand trial, criminal responsibility for her actions on or about 1-23-2002, and if found criminally responsible, her capacity to conform her actions to the requirements of the law.

Limits of Confidentiality:

Before the interview started, Ms. H. was advised of the purpose of the evaluation, and that the results and content of the evaluation would be communicated to her defense counsel, the prosecution, and the court. In addition, she was informed of the possibility that the examiner(s) might be called to testify regarding the content and results of the evaluation.

Summary of Evaluation Results:

Presence of Mental Retardation:	YES, by history
Competent to Stand Trial:	NO
Criminal Responsibility:	N/A
Capacity to Conform:	N/A

COASTAL REGION
 Field Office - Phone: 843/891-1100
 2095 Jamison Rd., Summerville, SC 29485
 Coastal Center - Phone: 843/875-5750

MIDLANDS REGION
 Field Office - Phone: 803/895-7410
 4301 Ferrum Road, Columbia, SC 29207
 Midlands Center - Phone: 803/891-7100

PEE DEE REGION
 Field Office - Phone: 843/664-1177
 PO Box 8266, Florence, SC 29502-0266
 Pee Dee Center - Phone: 843/664-2400
 Sareezy Center - Phone: 843/631-4100

PIEDMONT REGION
 Field Office - Phone: 803/731-3100
 PO Box 338, Clinton, SC 29315
 Wilkes Center - Phone: 804/633-3535

Ms. P. H.
Forensic Evaluation

June 13, 2002
pg. 2 of 4

Evaluation Procedures:

Ms. H. was interviewed for approximately 1½ hours on 3-28-02, by the undersigned. Phil Cornelius, Ph.D., secondary examiner, was also present. Ms. H.'s DDSN service coordinator, Ms. Sholanda Surrey was interviewed, as well as Ms. H.'s mother. On 4-16-02 she was evaluated by Steve Von Hollen, M.A., for the purpose of reassessing her intellectual and adaptive ability. In addition, the following records and documents were reviewed:

SC Vocational Rehab Disability Evaluation dated 9-23-1999
Aiken County Disability Board Single Plan dated 1-15-02
Multiple Police Reports, School Records, Court Documents multiple dates
WS Hall Psychiatric Hospital Forensic Evaluation dated 12-31-1999

Relevant History:

Ms. H. is a 16-year-old female who has a long history of verbal and physical aggression towards others. She has previously been diagnosed with ADHD, Oppositional Defiant Disorder, Depressive Symptoms, and Mild Mental Retardation. She receives services from Aiken-Barnwell Mental Health and is prescribed Tegretol, Remeron, and Risperdal for symptoms of these disorders. In addition, she receives multiple services from the Aiken County Disability Board. Ms. H. has been in special education classes since the 3rd or 4th grade (records conflict on dates) and recently was removed from Midland Valley High School and placed on Alternative Homebound placement due to aggressive, threatening behavior. Ms. H. lives at home with her mother (who also appears to be of low intellectual ability) and her 13-year-old sister. Since the time of this initial evaluation Ms. H. has been quite physically ill and she was also recently treated at a local Aiken County hospital after a serious suicide attempt in which she ingested multiple medications. Ms. H. is a young lady who suffers from serious emotional and behavioral problems.

Behavioral Observations/Mental Status Examination:

Ms. H. was dressed appropriately for the weather and the situation. Her hygiene and grooming were good. Upon introduction to this examiner she quietly sat down at the table. She presented herself as interested in the purpose of the examination and was very cooperative with the interview process as long as the discussion was not about her legal situation. Eye contact was good, facial expressions were responsive. Sensory systems appeared intact, and no unusual mannerisms or agitation were noted. She was oriented to the year, day of the week, current city, and state. Her speech was clear and understandable. Her thought processes were coherent and logical. Remote and recent memory appeared to be intact. Her concentration and attention skills were noted, however, to be impaired. She was able to spell her first name forward but not backward. She incorrectly reported the number of days in a week, but correctly named all seven days when asked. She stated that there are 24 months in a year. She was however, able to read and obey a simple sentence. She was also able to write a simple sentence and to copy a complex geometric design without error. She demonstrated simplistic, but adequate abstraction ability. She stated that *don't judge a book by its cover* means, "You can't judge somebody by the way they look." She identified the similarity between *apple-banana* as, "Fruits," and *bus-bicycle* as, "Both got wheels." She displayed a range of affect that was appropriate and broad. She reported that her mood was "Bad and Sleepy," but that her usual mood was "Going shopping for clothes, jewelry, and cameras." She denied previous suicide attempts or delusions and no evidence to the contrary was noted. She reported that she hears voices calling her name and when asked if she sees things that others don't see she replied "no, except I see the spirits of the dead people walking around my house." The examiners noted no evidence of visual or auditory hallucinations during either evaluation session.

Ms. [P.] [B.]
Forensic Evaluation

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Ms. [B.] was very cooperative and verbal during this evaluation when not specifically discussing her legal situation. When reporting her current medications to the examiners she offered "I last took the Albuterol 2 weeks ago because of a kidney infection from not drinkin' enough water." She also stated that she goes to "counseling every week at mental health...I'm comin' a long way...I had to fight the part of me that gets out of control."

No evidence of malingered cognitive ability was noted. In fact, she performed in a manner superior to that reported in previous evaluations, however, as previously noted she did appear to malingere or exaggerate deficits in understanding her legal charges.

Psychological Test Results:

Wechsler Intelligence Scale for Children - Revised

Full Scale IQ: 52 (9-23-99)

Full Scale IQ: 57 (10-22-99)

Vineland Adaptive Behavior Scale (9-3-1996)

Composite: Reported as *MILD* deficits

Competency to Proceed/Criminal Responsibility/Capacity to Conform Procedure:

Ms. [P.] [B.] denied having an appreciation of the charges against her. When asked about the title of her charges, she initially stated that she didn't know but later reported, "Hittin' my Momma." She stated, however that she believes "It's already over." She denied that this charge was serious reporting only that "The worst thing about it was being in foster care and at Carolina Children's home because they treat them like dogs in there."

She denied any understanding of the range and nature of possible penalties if she were to be found guilty. Again, she only stated, "It's over." She also denied any understanding of the adversarial nature of the legal process. She denied knowing the role of her defense attorney, the judge, or the solicitor. She stated "I sit in the courtroom but I don't understand what they are talking about...I don't know who to go with so I just sit by myself." Ms. [B.] did not demonstrate the capacity to disclose to her attorney pertinent facts surrounding the alleged offense. When asked why she was arrested she stated, "I don't know."

Interestingly, however, Ms. [B.] began to discuss with the examiners her brother's current legal situation at DJJ and the charges against him at this time. During this spontaneous verbalization she clearly demonstrated an understanding of his charges, possible penalties, the seriousness of this situation, and possible outcomes.

Conclusion:

Ms. [P.] [B.] has been formally diagnosed with Mild mental retardation. However, during this evaluation she demonstrated cognitive and intellectual abilities that are superior to what would be expected of an individual with mental retardation. Given her previous history of oppositional and defiant behavior the examiners are of the opinion that her previous low scores were the result of poor effort. An attempt was made to retest her intellectual ability however on the date the examination was scheduled she was physically ill and although the testing proceeded the scores are invalid and will not be reported. Additionally, since that time Ms. [B.] has remained physically ill and she has had a serious suicide attempt, again making it impossible to obtain a valid estimation of her true cognitive ability.

In an effort to prevent further delay of this report we base our opinions as stated below on her previous diagnosis of mild mental retardation and her performance during this evaluation - although we do believe this is a gross under-estimation of her true ability.

Ms. P. H.
Forensic Evaluation

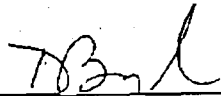
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Ms. H. has been diagnosed with mild mental retardation and appears incompetent to proceed to trial at this time.

No opinion is offered regarding criminal responsibility or capacity to conform.

Recommendation:

It is strongly recommended that a follow-up evaluation of Ms. H. s intellectual and adaptive ability be obtained as soon as she is emotionally stable and physically recovered from her illness. Should the Court desire, it may also be possible at that time to re-evaluate her competency to stand trial.



Theresa E. Baker, Psy.D.
State-Level Psychological Examiner
SC License # 000785
SCDDSN Central Office

Date signed: 6-13-02

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
 ERNEST PRESSLEY, #289489,)
 Applicant.)
 v.)
 STATE OF SOUTH CAROLINA,)
 Respondent)

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that this is a true and correct copy of original documents which have been filed in my office.

JUL 07 2008
 C.A. No. 2004-CP-02-1520
 Indictment: 2002-GS-02-340
 C.C.C.P. & G.S., Aiken County, S.C.
 ORDER (PCR) 1-7-2008
 Deputy Clerk
 9:30
 Deputy Clerk

Date of Hearing:	February 26, 2008
Counsel for Applicant:	Paige Weeks Johnson and James E. Whittle, Jr.,
Counsel for the Respondent:	Lance S. Boozer, Assistant Attorney General
Court Reporter:	Stacy L. Sheppard

I. PROCEDURAL HISTORY

The Applicant, Ernest Pressley (Pressley), is presently confined at the Broad River Correctional Institute of the South Carolina Department of Corrections pursuant to Orders of Commitment of the Clerk of Court for Aiken County. The Applicant was indicted in March 2002 for criminal sexual conduct with a minor in the second degree (2002-GS-02-340). A jury trial was held during the week of December 9, 2002, during which Mr. Pressley was represented by his retained counsel, P. Andrew Anderson, Esquire.

On July 12, 2001, the victim, who was 15 at the time of the incident, and her sister [S.] (then age 12) arrived at Mr. Pressley's trailer home to spend the night. Mr. Pressley's wife is victim's godmother, and victim often babysat for the Pressley children, who were 9 and 12.

At trial, victim testified that she, [S.] and Mr. Pressley's children were playing outside after they arrived, but Mr. Pressley called them inside "early." Pressley's wife had left for work, and would not return until 6:00 a.m. According to victim, Pressley told her to sleep on the

couch in the den, but that all the other children were to sleep in a back bedroom. After everyone went to bed, victim testified that Pressley came out of his bedroom naked, and said "don't tell nobody and he took off my britches" and raped her. Victim stated "she was on the couch hollerin' and screaming for somebody to help me." After the attack, victim went to wake her sister, to no avail. When Pressley's wife arrived, victim immediately told her about what happened.

Victim further testified she had never had sex before, although she had broken up with her boyfriend around the time of the incident because he demanded sex. Victim further revealed that several weeks after the accident she overdosed on pills, and often has flashbacks about this episode.

During cross examination by Pressley's counsel, victim admitted that she never told police that Pressley told her not to tell anyone. She further acknowledged that she initially told police that the attack occurred around 6:00 p.m., and that she was "getting mixed up" about whether she had the boyfriend before or after the incident.

The State next called victim's sister, [S.] [] related that Pressley had been drinking that night. The next morning, victim was crying and shaking, stating she had been "raped." [S.] then went next door to her godmother's mother's house, and called her own mother. The police then arrived, and took the victim to the hospital.

[S.] stated that while she did not hear her sister screaming during the night, her sister later told her that Pressley had held his hand over her mouth. [S.] further testified that she and Pressley's daughter went to sleep in the "front room" at first, but Pressley later told them to go to the back. Pressley "made" victim sleep on the couch although she did not want to; according to [S.] because Pressley had been drinking "and since [victim] is mentally disabled, he won."

Dr. Steven Grant, the emergency room physician who examined victim, found bruising in

the area immediately behind her vaginal opening "consistent with recent forcible sexual assault." The examination further revealed the presence of blood in her vagina, cervix, shorts, and on a sanitary napkin. Dr. Grant further procured a swab of suspected semen. He opined that the bruising would have taken anywhere from several to 24 hours to appear, depending on the extent of force used. On cross examination, Dr. Grant conceded the bleeding may have been from victim's menstrual cycle, and that it was impossible to say whether the bleeding had begun before or after the sexual assault.

Dwayne Derrick, who at the time was a captain in the Burnetown police department, told the jury he took several Mirandized statements from Mr. Pressley. Mr. Pressley's version—which remained consistent—was that he was awakened around 2:00 a.m. by the noise of the den television. He realized victim was still on the den couch, so he told her to go to bed. Derrick admitted victim told him that the assault happened at 6:00 "nighttime." Derrick's report noted that victim was "mentally slow and was a special student," and that she had "changed her story."

The State's key witness was Lilly S. Gallman, a SLED forensic analyst. The trial judge qualified Gallman as an expert in forensic DNA analysis without objection, although Pressley's counsel did voir dire Agent Gallman and noted an objection to any attempt to have her qualified as an expert on DNA statistics.

Gallman testified she had been presented samples of semen procured from a vaginal swab of victim (item 1.7) and a "suspected semen swab" (item 1.10). She then tested and developed a DNA profile from the known DNA samples of both the victim and Pressley. Gallman prefaced her findings by stating "everyone's DNA is unique except for identical twins who will have the same DNA," a phrase she repeated during her testimony.

Gallman then stated that her testing revealed a "match" between Pressley's DNA and that

found on the vaginal swab and the suspected semen swab. Ms. Brisbin, the assistant solicitor, then began asking about statistics, whereupon Pressley's counsel objected. A colloquy then ensued outside the jury's presence between the court, Ms. Brisbin, and Pressley's counsel, which included extensive proffered testimony from Agent Gallman.

Gallman's proffered testimony is disjointed, and frequently veers into technical jargon disconnected from any context. Judge Keesley, understandably frustrated by Gallman's lack of clarity, contemplated refusing to let her further testify. Ultimately, however, he permitted her to continue, noting the State was not seeking to elicit statistical frequency evidence from her, although "the defense may wish to. It is up to them."

When the jury returned, Gallman concluded her direct examination by declaring that the semen found on the vaginal swab and the suspected semen swab both "match the DNA profile of Ernest Pressley."

On cross examination, Gallman admitted she did not know the location from which the "suspected semen swab" was taken. She further was allowed to elaborate that nothing in her analysis would allow her to exclude Pressley as a suspect, a statement she emphatically repeated several times.

Pressley's counsel elicited from Gallman that the statistical frequency for the vaginal swab sample was 1 in 139. In other words, as Gallman explained, the chances of finding a random unrelated male who matched Pressley's DNA at this genetic location would be 1 in 139. When asked about the frequency of the suspected semen swab, Gallman testified it would be 1 in 3500.

On redirect, Gallman again underlined that "nothing" in her analysis excluded Pressley as a donor. She closed her testimony by again flatly declaring that "the DNA that came from the semen in the vaginal swab matched the DNA from the blood of this Defendant."

Pressley took the stand in his own defense, and denied his guilt. On cross examination, he acknowledged that while he was the only male (other than his 9 year old son) at his home that night, he did not know who may have been around victim during the day. He could not, however, explain how semen "matching" his DNA got into victim's vagina.

The jury returned a verdict of guilty. Judge Keesley sentenced Pressley to 20 years.

Applicant filed a timely Notice of Intent to Appeal. Pursuant to Anders v. California, 386 U.S. 738 (1967), appellate Counsel for Pressley attached to the Final Brief a Petition to be Relieved as Counsel, stating she had reviewed the record and concluded Pressley's appeal was without legal merit sufficient to warrant a new trial. Pressley did not file a separate pro se response. Thereafter, the South Carolina Court of Appeals dismissed the appeal pursuant to Anders and granted counsel's Petition to be Relieved.

Pressley timely filed an Application for Post Conviction Relief on November 22, 2004. Attorneys were assigned to represent him and they filed an Amended Petition. Their review of the record showed a need for the services of a DNA expert.

On February 8, 2006 a hearing was held regarding Applicant's Motion for Appointment of a DNA Expert for purposes of reviewing the record and testifying at the PCR hearing. By a May 22, 2006 order, the Honorable Doyet A. Early III granted Applicant's motion and appointed Dr. Ronald S. Ostrowski as a DNA expert for the Applicant's PCR hearing. The Court also approved payment to Dr. Ostrowski at the rate of \$185.00 per hour with an initial cap of \$1,500.00. On November 3, 2006 Judge Early ordered the cap for Dr. Ostrowski's expert fee not exceed \$5,000.00 and maintained the hourly rate of \$185.00 per hour.

II. PCR ALLEGATIONS

Applicant filed his initial application for post-conviction relief on November 22, 2004.

alleging his trial counsel was ineffective in not moving before the Trial Court to suppress the blood test and video, and in not objecting to the reasonable doubt charge.

The attorneys for Applicant amended the Application on January 18, 2006 to withdraw the original allegations of ineffective assistance of counsel and to add the following grounds:

1. Applicant was denied the effective assistance of counsel guaranteed by the 6th and 14th Amendments to the United States Constitution and South Carolina law because counsel failed to retain a DNA expert to assist counsel either in the trial as an expert or as a consultant to allow him to properly cross-examine the State's DNA expert and properly refute the testimony of the DNA expert.
2. Applicant was denied the effective assistance of counsel guaranteed by the 6th and 14th Amendments to the United States Constitution and South Carolina law because trial counsel did not move to have the alleged victim examined by an independent examiner due to the fact that the alleged victim was a minor child who had been found to be incompetent to stand trial in a separate matter based upon an evaluation performed in June, 2002, just six (6) months before to the trial in this case.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Standard of Review for Ineffective Assistance of Counsel Claims

For an Applicant to be granted PCR as a result of ineffective assistance of counsel, he must show his counsel failed to render reasonably effective assistance under prevailing professional norms and he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). To prove prejudice, the Applicant must show that but for counsel's errors, there is a reasonable probability that the result of the trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability

is a probability sufficient to undermine confidence in the outcome of the trial. Fove v. State, 335 S.C. 586, 518 S.E. 2d 265 (1999) (emphasis added). For the reasons that follow, the Court finds that trial counsel was ineffective.

B. DNA Issue

Due to its nearly infallible accuracy, DNA is the most powerful forensic evidence heard in courtrooms. It has for some time been admissible as proper expert evidence in our state. State v. Ford, 301 S.C. 485, 392 S.E.2d 781 (1990). As Pressley's trial counsel testified at the PCR hearing, Agent Gallman's DNA testimony "killed us" at trial. Nine witnesses testified at Pressley's trial; yet of the 272 pages of trial testimony, Ms. Gallman's testimony consumed nearly 90 pages, or 33%.

A close examination of the record reveals that Gallman emphasized the following points to the jury:

- That everyone's DNA is unique except identical twins, "who will have the same DNA."
- That Pressley's DNA "matched" the semen found on a swab from victim's vagina (item 1.7) as well as a "suspected semen swab." (item 1.10)
- That nothing in her expert testing excluded Pressley as a suspect.

At the PCR hearing, applicant presented testimony of Dr. Ostrowski, who was qualified as an expert in genetics and DNA testing. Dr. Ostrowski has over three decades of experience as a geneticist as well as being involved in over 400 cases where DNA evidence was used. At the hearing, Dr. Ostrowski provided a clear and understandable explanation of the DNA testing process. He testified that there was no challenge to several molecular or population genetics

issues.

As Dr. Ostrowski pointed out, Gallman's statement about identical twins was "at best misleading" and "simply not so in a forensic situation." While it is true that only identical twins share the same entire DNA, many people share identical strands among some of their DNA. DNA is found in chromosomes located in the nuclei of most cells. It is estimated that there are a million billion cells in the human body. See Saks, et. al. Annotated Reference Manual on Scientific Evidence at 491-492 (2d Ed. 2008). The DNA in the 23 chromosomes in each cell contains over three billion base pairs. Id. Although no two human beings except identical twins have the same sequence of base pairs, about 99.9% are identical between any two human beings. Id. The similarity of the shared sequences account for our common human characteristics such as arms, fingers, legs, toes, and other physical attributes; the minute variation found in the remaining 0.1% is what makes each human genetically unique (except, again, for identical twins).

Because most forensic analysis—including that introduced at trial here—analyzes only a small portion of an individual's DNA, Gallman's unchallenged and inaccurate statement allowed the jury to infer that Pressley is the only human being who has the type of DNA found in the tested samples. The power of this unchecked inference gained almost overwhelming force when it merged with Gallman's similarly one-sided opinion that Pressley's DNA was a "match" for semen found in victim's vagina, and that "nothing" excluded Pressley as a suspect.

Dr. Ostrowski's highly credible and compelling testimony demonstrated that Gallman's opinion that nothing "excluded" Pressley as a suspect was simply wrong in several fundamentally important respects. To fully understand this vital point, it is important to establish some context.

A DNA profile is essentially a list of alleles (genetic markers) found at various locations (loci) within the human genome. See generally, Thompson, et al., "Evaluating Forensic DNA

Evidence: Essential Elements of a Competent Defense Review." Champion (April 2003). The alleles found at each location are identified by numbers. At each location, a person typically has two alleles, one inherited from each parent. However, it is possible that at a given location a person inherited the same allele from both parents. In such case, the person's genes are said to be "homozygous" and only one numbered allele is reported on the test for that location.

An allele is a short fragment of DNA that appears as a STR (short tandem repeat). STRs are places in one's DNA where the genetic code repeats itself. The number of repetitions varies among individuals; consequently, the length of the STRs correspondingly varies.

The SLED DNA report used in Pressley's trial and at the post-conviction hearing notes that the DNA profiles were developed "using a Short Tandem Repeat (STR) PCR DNA analysis." Under the heading "Results," the analysis summary is set forth in two tables. Testifying from the report, Gallman opined that Pressley could not be excluded at any of the fifteen gene loci tested. Even a cursory review of the first gene location on Table 1—D3S1358—discloses the flaws in Gallman's heretofore undisputed analysis. At this gene location, victim's known alleles are 16 and 17, while Pressley's are 15 and 17. The DNA profile from the semen found on item 1.7 (the vaginal swab sample) is 15, 16, and 17. Based on the law of genetics as explained by Dr. Ostrowski, there are several explanations for this profile. The first is the one Gallman proposed: that the semen "matches" Pressley's because it contains both his alleles (15, 17) as well as victim's (16, 17). The second interpretation is that the contributors to item 1.7 are victim (16, 17) and a suspect whose alleles at this loci are 15 and 15 (i.e., homozygous). A third interpretation is that the contributors to item 1.7 are victim (16, 17) and a suspect whose alleles at this loci are 15 and 16. As Dr. Ostrowski vividly explained, both the second and third interpretations exclude Pressley as a suspect, and both are as equally valid as Gallman's sole interpretation.

At the PCR hearing, the State was unable to dispute that these alternative interpretations were logically and scientifically valid. And, as Dr. Ostrowski observed, alternative interpretations that exculpate Pressley can be reached at almost every gene location Gallman reviewed. Accordingly, Gallman's broad opinion testimony—that nothing in her analysis excluded Pressley as a suspect—is not only scientifically unsupportable, the evidence actually shows that Pressley can be excluded much more often than he can be included.

As if that were not sufficiently disturbing, a close study of the SLED report discloses that at gene location D135317 on Table 1, Pressley can be excluded altogether as a contributor to item 1.7. This is so because victim's known alleles at this location are 9 and 12 and Pressley's is 13. Yet, the semen found from the vaginal swab at this location is 9 and 12. Therefore, one interpretation is that the real perpetrator either has alleles (1) 9 and 12, just like victim, (2) homozygous 9, or (3) homozygous 12.

Likewise, at gene location D75820, victim's known allele is 10, while Pressley's is 12. The semen found on the "suspected semen swab" (item 1.10) taken from victim is 10 at this location. Therefore, a valid interpretation is that the real perpetrator has allele 10 homozygous. Because Pressley's allele 12 does not appear as a contributor at this locus, another valid interpretation is that he can be ruled out as a suspect.

Although Gallman's selective interpretation method went unchallenged at trial, she did acknowledge that she could only use two loci to run the statistical frequency of the DNA "match," because at all other locations Pressley and victim "shared" an allele. Gallman likened the alleles to "cars," and told the jury:

Q: ...Did the 13 sites of—from the suspect kit line up with the 13 sites of the semen sample?

A: Yes.

Q: And what does that mean?

A: That means that the semen that was found on the vaginal swab matched Mr. Pressley.

Q: In all 13 sites?

A: Yes. There was nothing there to exclude him as being the donor.

Q: Okay. And the reason you only limited your statistics to the two out of thirteen sites was what?

A: Those were the two sites that I was able to totally able to separate them. For example, if Ms. Pressley [sic] has 16 cars and 17 cars one from her mother and one from her father and Mr. Pressley has 15 cars and 17 cars, that means that both of them have 17 cars. So that could not be used in the statistics.

T. at 288-289. Therefore, Gallman ran the statistical frequency at loci FGA and CSF1PO, which appear on the tables as follows:

<u>Items</u>	<u>FGA</u>	<u>CSF1PO</u>
H. P. (item 1.4)	20, 26	8, 11
Earnest Pressley (item 2.1)	21, 25	10, 12
1.7f	20, 26	8, 11
1.7m	20, (21) (25), 26	8, (10), 11, (12)
1.10f	20, 26	8, 11
1.10m	20, (25) 26	8, 10, 11, (12)

...
()= RFU between 75 and 149.

Gallman's decision that she could only use these 2 loci on which to base her statistics is problematic on several levels. First, by making this decision she effectively contradicts her earlier opinion that nothing excluded Pressley as a suspect at any of the loci. Pressley's trial counsel, however, did not recognize this and failed to bring it to the jury's attention. Second, Gallman overlooks the fact that for item 1.10m at locus FGA, only 3 alleles show up, and only one

of the three matches Pressley. Third, even though Pressley's DNA profile is a match for item 1.7m at these two loci, Gallman neglected to explain that the match was subject to an important qualification. As shown in the table, several of Pressley's alleles at these loci are placed in parentheses, denoting that the "RFU" for them is between 75 and 149. "RFU" is a value for how much DNA was found by the computer software at a specific location. Gallman never told the jury, however, that SLED's own policies require that RFU values between 75 and 149 are to be interpreted "with caution."

As Dr. Ostrowski advised, SLED's protocol states in Section 5.3.1.1 "**Allele Peaks:** validation studies have indicated that the level of stochastic effects significantly increases at or below the 150 RFU level. As a result of these studies, alleles occurring in the 75-149 RFU range are interpreted with caution." "Stochastic" is defined as "relating to or characterized by conjecture; conjectural." The American Heritage Dictionary of the English Language (4th Ed. 2000). In statistics, "stochastic" is something that contains a random variable. Id. As Dr. Ostrowski explained, it is "a fancy word for things that can go wrong," and the SLED protocol is recognizing that the chance that things can go wrong in DNA testing "significantly increases" when the RFU falls below 150.¹ Gallman used these low-RFU alleles to reach her conclusion even though her own protocol stated these levels should be used "with caution". The jury was not told this.

Furthermore, the SLED report states "the probability of randomly selecting an unrelated individual having a DNA profile matching 1.7 is 1 in 139." This probability indicates that over 10,000 people in South Carolina alone would match this evidence. It would not make Pressley the

¹ The RFUs for the alleles Gallman linked to Pressley were well below 149. At locus FGA, for instance, the values were 78 for allele 21, and 114 for allele 25.

only possible contributor. Additionally, this probability is for an "unrelated individual", that is, there is even a greater chance that a male relative of Mr. Pressley would match the evidence. None of his male relatives were tested, nor was victim's boyfriend. The jury was never told this.

The jury was thus left with the following from the only DNA expert to testify in Pressley's trial:

- an inaccurate expert opinion that "nothing" excluded Pressley as a suspect, when in actuality scientific fact proved the contrary.
- a misleadingly overbroad expert opinion that Pressley's DNA was a "match," underscored by a similarly sweeping statement that only identical twins share the same DNA.²
- an expert opinion on the statistical frequency of the match that failed to disclose that due to the low RFU values involved, the governing protocol required that any results be interpreted "with caution" due to the significantly increased risk and random effect inherent in such low values.

It appears very probable that the State's DNA expert testimony weighed heavily in the jury's decision since there were no witnesses to the alleged act and the testimony of the victim was inconsistent. Therefore, the inability of trial counsel to contradict the State's DNA expert

² Many states hold that an expert's opinion that a suspect's DNA was a "match" is inadmissible without supporting statistical frequency evidence. See, e.g., People v. Coy, 243 Mich. App. 283, 620 N.W.2d 888 (Ct. App. 2000); State v. Cauthron, 120 Wash.2d 879, 846 P.2d 502, 516 (1993); State v. Vandebogart, 136 N.H. 365, 616 A.2d 483, 494 (1992) (evidence of match not admissible if not accompanied by scientifically reliable population frequency estimate); Commonwealth v. Lanigan, 413 Mass. 154, 596 N.E.2d 311 (1992) (match evidence "cannot be admitted without appropriate statistical support"); People v. Barney, 10 Cal.Rptr.2d 731 (1992). These courts recognize what scientists have long urged: that due to the similarity of most human DNA, a bare statement that one's DNA "matches" is meaningless. As one federal court has remarked, "[w]ithout the probability assessment, the jury does not know what to make of the fact that the [DNA] patterns match: the jury does not know whether the patterns are common as pictures with two eyes, or as unique as the Mona Lisa." United States v. Yee, 134 F.R.D. 161, 181 (N.D. Ohio 1991). Gallman's testimony here demonstrates that the prejudicial impact of such opinion testimony without any statistical context vastly outweighs its probative value. And while Pressley's trial counsel did ultimately elicit the statistical frequency from Gallman, as discussed above it was never disclosed to the jury that due to the low RFU values used, the statistical frequency is deemed by SLED to be essentially less reliable.

testimony prejudiced Mr. Pressley. Applicant has shown that there was a reasonable probability that the result at trial would have been different if the jury had heard testimony contradictory to that presented by the State's DNA expert.

Trial counsel was ineffective in that he failed to obtain a DNA expert for trial. Prevailing professional norms warranted that defense counsel would have consulted with a DNA expert in order to assist him in proper cross examination of the State's DNA expert, or called an expert at trial to refute and discredit the testimony of the DNA expert.³

Neither the trial Judge nor the trial lawyers nor the jury had the ability to know that the testimony was misleading and constituted a skewed view of the DNA forensic evidence. The jury was never provided the information enabling them to know that people other than Mr. Pressley could have been a match. Trial counsel testified he felt that no one understood the testimony of the State's DNA expert. The skilled and experienced trial Judge remarked exasperatedly, during the in camera hearing, "Somebody better explain this to me or she is not going to be able to testify." T. 235, l. 11. However, as the transcript shows, she was able to state clearly that Mr. Pressley's DNA was a match with the perpetrator's. This uncontradicted testimony prejudiced Mr. Pressley and "undermines confidence in the outcome of the trial". Foye v. State, supra.

Relying on Frasier v. State, 306 S.C. 158, 410 S.E. 2d 572 (1991), the State contends that Pressley's trial counsel was not ineffective because he vigorously cross-examined Gallman. It appears from the record that Pressley's trial counsel questioning of Gallman was designed to demonstrate that her conclusion depended largely on the results of analysis by computer software programs. He was depending on the jury being skeptical of scientific evidence such as DNA, and

³ The court acknowledges that Pressley's retained trial counsel testified that, due to limited private funds, he was "hamstrung" in obtaining expert services.

he was able to show the testing process was fraught with the risk of human error. For example he brought out that the computer "crashed" at one point, that the naked human eye cannot "see" the genes, and that the initial test of the vaginal swab was unsuccessful.

Counsel's cross-examination of Gallman was at times probing, and did allow the jury the option of discrediting the State's DNA evidence on the grounds that it was subjective. Nevertheless, it overlooked certain objective facts about DNA evidence, and allowed the State's version to be presented without contradiction.

This is not the "vigorous" cross examination contemplated by Frasier. Moreover, Frasier is readily distinguishable. In Frasier, the Supreme Court found the trial counsel was not ineffective by failing to procure an expert witness to challenge the DNA evidence, as counsel had "vigorously cross-examined the State's DNA experts and attacked the accuracy of the evidence." Frasier, 470 S.E.2d at 573. It is important to note, however, that the DNA evidence admitted at Frasier's trial did not implicate him, but did implicate his co-defendant. Id. Under such circumstances, it is understandable why the supreme court would hold Frasier's trial counsel did not need to hire an expert witness to combat evidence that did not incriminate him.

Under the specific circumstances here, the cross examination of Gallman was not an adequate substitute for a defense expert. Even if the questioning impaired Gallman's credibility and made the jury skeptical of the DNA evidence, the jury was not offered the option of alternative explanations for the sole expert opinion that a "match" existed, even though such options could have been elicited by a more informed cross examination or through an expert called by the defense. Because the victim's testimony was somewhat inconsistent, the DNA evidence was critical to the State's case. It was therefore unreasonable to rely on a cross examination wholly dependent upon the jury's supposed aversion to science, particularly when alternative explanations

of the science would have benefitted the defense theory.

Trial counsel's failure to obtain a DNA expert for consultation or to testify at trial rose to the level of deficient performance that prejudiced the Applicant. Considering all of the evidence of record, there is a reasonable probability that, but for this error, the result of the proceeding would have been different.⁴

C. Victim's Competence

Trial counsel was also ineffective in not moving the Court to have the victim evaluated for competency by an independent medical expert. Victim was a minor child who had only recently been found incompetent to stand trial in a juvenile case. This was based upon an evaluation performed in June of 2002, just six (6) months prior to the trial in this case. By Order dated January 24, 2002 the Honorable C. David Sawyer, Jr. of the Family Court ordered that victim be evaluated by the Department of Disabilities and Special Needs (DDSN) to determine if she was competent to stand trial for an alleged CDV against her mother on January 23, 2002, and to determine her capacity to conform her actions to the requirements of the law. The evaluation was held on March 28, 2002 and April 16, 2002. Her full scale IQ was found to be 52 and also 57. By forensic evaluation dated June 13, 2002, she was found to be incompetent to proceed with trial at that time.

Not only did the forensic evaluation find victim incompetent and mildly mentally retarded, it noted she "suffers from serious emotional and behavioral problems...she reported that she hears voices calling her name and when asked if she see things that others don't see she replied 'no, except I see the spirits of the dead people walking around my house'."

⁴ Unlike the situation addressed in Lorenzen v. State, 376 S.C. 521, 657 S.E.2d 771 (2008), here the need for expert testimony was concretely demonstrated at the PCR hearing.

On December 13, 2002, six (6) months later, she testified as the alleged victim in the case against Mr. Pressley. At no time did trial counsel advise the Court of this evaluation nor did he challenge her competency to testify or request a psychological examination.

In Re Michael H., 602 S.E. 2d 729 (2004) held that a trial Court has authority to order a child victim in a sexual assault case to submit to a psychological examination but only on a showing of compelling need. Trial counsel testified that he believed he was aware of In Re Michael H. Therefore, he could have argued to the Court that there was a compelling need to verify that the victim, who was the only witness to the alleged act, was competent to testify. The four factors set forth in In Re Michael H. that must be used by the trial Judge in weighing the Defendant's need for the examination against the victim's privacy could easily have been met.

If the victim had been found to be incompetent to testify there is a reasonable probability that the result of the trial could have been different. This is especially true since there were no other eyewitnesses, and the DNA evidence was equivocal. Trial counsel was ineffective in his representation by not filing a motion to have the victim examined as to her competency to testify.

Trial counsel testified that he decided as a trial strategy to not make an issue of the alleged victim's competency. However, he admitted that if she had been found incompetent to testify he doesn't know how the State would have proceeded since there were no other witnesses to the alleged act.

While it is a common trial strategy to avoid sharp impeachment of child victim witnesses in front of the jury, a decision to not seek a mental evaluation of a victim witness cannot be deemed valid "strategy." For if the victim is found incompetent to testify, the State's case is crippled. On the other hand, if the victim is found competent, the defense has lost nothing. The jury, of course, would never learn about the evaluation.

At any rate, under the circumstances here, regardless of the competency issue trial counsel should have sought to ensure the jury knew that victim had previously been declared incompetent to participate in a judicial proceeding, and suffered from visual and auditory hallucinations.

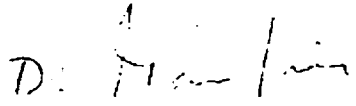
IV. CONCLUSION

Pressley has met his burden on showing the errors committed undermine confidence in the results of his trial. Rompilla v. Beard, 126 S.Ct. 2456 (2005). Because his trial cannot be relied upon as producing a just verdict, his petition for post-conviction relief must be, and hereby is, GRANTED.

THEREFORE, IT IS ORDERED that post-conviction relief is granted on the issue of ineffective assistance of counsel. The remaining allegations are without merit and are dismissed.

IT IS FURTHER ORDERED that the conviction herein is vacated and the Applicant is granted a new trial. The Applicant is remanded to the custody of the Department of Corrections pending further order of the Court.

Greenville, SC
July 2, 2008



D. Garrison Hill
Circuit Judge

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2004-CP-02-1520
MC # 26,386 /JR#
State of S.C.

Ernest Pressley
PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order. (~~Formal order to follow~~)
 Statement of Judgment by the Court:

Dated at _____, South Carolina, this _____ day of _____, 20____.

PRESIDING JUDGE

This judgment was entered on the 7 day of July, 2008 and a copy mailed first class this 7 day of July, 2008 to attorneys of record or to parties (when appearing pro se) as follows:

Paige Johnson

Attorney General
Sol.
General Sessions

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
CLERK OF COURT

[Signature]
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT

At a Court of General Sessions, convened on March 4, 2002, the Grand Jurors of Aiken County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR-SECOND DEGREE

That EARNEST PRESSLEY did in Aiken County on or about July 12, 2001, commit the crime of Criminal Sexual Conduct With A Minor In The Second Degree, in that the Defendant did commit a sexual battery, to wit: sexual intercourse upon P. A. H. a minor who was fifteen (15) years of age at the time of the incident, and the Defendant is older than the victim. All in violation of §16-3-655 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BARBARA R. MORGAN, SOLICITOR

WITNESSES

Dwayne Derrick, B.P.D.

FILED

NOV 05 2002

John H. ...
CLERK & G.S.

James Thompson
Deputy Clerk

(5)

ARREST WARRANT NUMBER

G720293

ACTION OF GRAND JURY

True Bill

Alan R. ...

Foreperson of Grand Jury
Date: February 28, 2002

VERDICT

Guilty

Joseph D. ... 12/13/2002

Foreperson of Petit Jury
Date: 12/13/02

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

MARCH 4, TERM 2002

THE STATE

vs.

EARNEST PRESSLEY

Indictment for

**CRIMINAL SEXUAL CONDUCT
WITH MINOR-SECOND DEGREE**

SC Code: 16-3-655(3)

CDR Code: 397

Class FEL-C(V)

WITNESSES

Dwayne Derrick, B.P.D.

FILED

NOV 05 2002

John Bostland
CLERK & G.S.

James Thompson
Deputy Clerk

5

ARREST WARRANT NUMBER

G720293

ACTION OF GRAND JURY

True Bill

William R. [Signature]

Foreperson of Grand Jury
Date: February 28, 2002

VERDICT

Guilty

Joseph D. Lewis 12/13/2002

Foreperson of Petit Jury
Date: 12/13/02

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

MARCH 4, TERM 2002

THE STATE

vs.

EARNEST PRESSLEY

Indictment for

**CRIMINAL SEXUAL CONDUCT
WITH MINOR-SECOND DEGREE**

SC Code: 16-3-655(3)

CDR Code: 397

Class FEL-C(V)

ARREST WARRANT

G-720293

STATE OF SOUTH CAROLINA

County/ Municipality of AIKEN COUNTY

THE STATE 01-00105 against

EARNEST PRESSLEY

Address: 308 Graniteville SC 29829
Phone: SSN:
Sex: M Race: B Height: 5 7 Weight: 145
Dt. State: DL #:
DOB: 4/09/66 Agency ORI #:
Prosecuting Agency: BURNETTOWN
Prosecuting Officer: DWAYNE DERRICK
Offense: CRIMINAL SEXUAL CONDUCT WITH MINORS Offense Code: 0397
Code/Ordinance Sec. 16-3-655(3)

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant EARNEST PRESSLEY on 11-30-01

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

GRANITEVILLE MAGISTRATE COURT 50 CANAL STREET, SUITE 14 GRANITEVILLE SC 29829

STATE OF SOUTH CAROLINA

County/ Municipality of AIKEN COUNTY

AFFIDAVIT

Form Approved by S.C. Attorney General July 26, 1990 SCCA 318

Personally appeared before me the affiant DWAYNE DERRICK who being duly sworn deposes and says that defendant EARNEST PRESSLEY did within this county and state on 7/12/01 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of) in the following particulars:

DESCRIPTION OF OFFENSE: CRIMINAL SEXUAL CONDUCT WITH MINORS 16-3-655(3)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

UPON INFORMATION AND BELIEF ON 7-12-01 AT 398 DUNCAN ROAD, GRANITEVILLE, AIKEN COUNTY, SC, THE DEFENDANT, EARNEST PRESSLEY, DID ENGAGE IN SEXUAL BATTERY WITH VICTIM, P. A. H. WHO IS FIFTEEN YEARS OF AGE. THIS HAPPENING BY SEXUAL INTERCOURSE THAT WAS NON-CONSENTUAL. THIS ADDRESS BEING LOCATED IN THE TOWN LIMITS OF BURNETTOWN, SC AND BEING IN VIOLATION OF SECTIONS 16-3-655(3) OF THE SC CODE OF LAWS, AS AMENDED.

Sworn to and subscribed before me on 11/27/01 Signature of Issuing Judge Charles T. Carter (L.S.)

Signature of Affiant Affiant's Address PO BOX 994 BATH Affiant's Telephone 803 592-2676

FILED

DEC 1 2 2001

STATE OF SOUTH CAROLINA

County/ Municipality of AIKEN COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 7/12/01 defendant EARNEST PRESSLEY did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of) as set forth below.

DESCRIPTION OF OFFENSE: CRIMINAL SEXUAL CONDUCT WITH MINORS 16-3-655(3)

Now therefore you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge Charles T. Carter (L.S.) Judge Code: 921

Judge's Address 50 CANAL STREET, SUITE 14 GRANITEVILLE SC 29829 Judge's Telephone 803 663-6634

Issuing Court: X Magistrate Municipal Circuit

ORIGINAL

566

BAIL set by

Judge: Williams

on 12-1-01

Type and Amount: 15,000

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 12/06/04
 OMCOMITA RELEASE DATE SCREEN C023981
 SCDC# > 289489 LOC: BROAD RIVER
 PRESSLEY, ERNEST - SCDC CLASSIFICATION...: VIOLENT

SEXUAL REGISTRY...: Y
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL PREDATOR...: PENDING
 DNA STATUS...: COMPLETED
 TOTAL SENTENCE...: 020-00-000 CONSECUTIVE SENTENCE ...: N
 CURRENT SENTENCE: 020-00-000 CURRENT SENT START DATE: 12/06/2002
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 12/02/2019 CURRENT EWC ..: 3 F 5
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ...: 000171 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 CURRENT OR PRIOR SEX CONDUCT CONVICT
 TOTAL EXTRA EARNED CREDITS ..: 000
 TOTAL SERVICE TIME EARNED ...: 000720

PFKEYS: 5: HISTORY OF DATE CHANGES

4.0

1 Sess-1 167.7.50.33

TNET1141

3/11

CLASSIFICATION SUMMARY REPORT DATED 12/06/04

C023991

SCDC# 200187 PRESSLEY, ERNEST -
OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE
INSTITUTION ...: BROAD RIVER CORR. INST.
SECURITY/CHST.: 3 MINIMUM IN
TOT INCARC SENT....: 20 YRS 0 MOS 0 DYS
CENTRAL MONITORING.: YES
MED CLASS: 1 NO MED PROB/NO WORK RESTRICT
MENTAL CLASS: MMH (NO MENTAL HEALTH TRF
CURRENT PROGRAM...: NO CURRENT PROGRAM
AGE...: 38

FBI# 220106JRI

DDRM.....: C0130B
PROJ MAXOUT DATE: 12/02/2019
PROJ PAROLE DATE: 00/00/0000
EUC LDR...: WARDKEEPER ASSISTANT
EDUC PGH.: NO CURR EDUC PROGRAM
EUC LEVEL: 3FS FEC LEVEL:
ASSIGNMENT...: WARD HELPER

PREVIOUS NUMBERS:
00252877

CURRENT OFFENSES: SENTENCE YRS MOS DYS COUNTY SENTENCE START V/HU CAT INDICT
CRIM SEX COND./MINOR(2N 20 0 0 AIKEN 12/06/2002 U 4 02GS02-340

PRIOR COMMITMENTS OVER 90 DAYS:
04/18/98 *FRAUD INSUFF FUNDS CHECK 0 YRS 6 MOS 0 DYS

DETAINEES (HOLD, WANTED, NOTIFY):
NO DETAINEES

ESCAPES:
12/12/02 OTHER ESCAPE RELATED CODE NOT IN TABLE

CRIMINAL CHARGES:
NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:
NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:
NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:
06/29/04 BROAD RIVER INCARCERATED RETURN FROM COURT
06/29/04 AIKEN CO ABSENT WITH LEAVE (A TO COURT
01/15/03 BROAD RIVER INCARCERATED ADMINISTRATIVE
12/16/02 KIRKLAND INCARCERATED NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:
JOB START END TERMINATION JOB
DESCRIPTION DATE DATE REASON LVL
WARDKEEPER ASSISTANT 01/16/03 00/00/00 3FS

HISTORY OF EARNED EDUCATION CREDITS:
EEC START END TERMINATION
DESCRIPTION DATE DATE REASON

NO SCHOOL ASSIGNMENTS
***** END OF REPORT *****