

**No. 1983031**

THE STATE OF TEXAS	§	IN THE 468th DISTRICT COURT	
	§		§
VS.	§	OF	
	§		§
SEBASTIAN BRUNO	§	HARRIS COUNTY, TEXAS	

**MOTION FOR FORENSIC DNA TESTING**

SEBASTIAN BRUNO, hereafter referred to as Petitioner, pursuant to TEX. CODE CRIM. PROC. ANN., art. 64.01, *et. seq.*, moves that this Court order forensic testing of evidence containing biological material, and shows:

I.

Petitioner's Unsworn Declaration, executed pursuant to TEX. CIV. PRAC. & REM. CODE, section 132.001(e), is attached. Such declaration contains statements of fact in support of this motion. *See* TEX. CODE CRIM. PROC. ANN., art. 64.01(a-1).

II.

The Petitioner was convicted, following a jury trial in January of 2017, of the offense of capital murder. He was sentenced to life without parole.

III.

The Petitioner requests forensic DNA testing of evidence containing biological material that was secured in relation to the offense that is the basis of this conviction and was in the possession of the state during the trial of the offense, but:

- 1) was not previously subjected to DNA testing [art. 64.01(b)(1)]; or

2) although previously subjected to DNA testing, can be subjected to testing with newer testing techniques that provide a reasonable likelihood of results that are more accurate and probative than the results of the previous test [art. 64.01(b)(2)].

#### IV.

The Petitioner is entitled to forensic DNA testing under article 64.03 of the Code of Criminal Procedure (“Requirements: Testing”) if he establishes the following:

1) the evidence still exists, is in a condition making DNA testing possible and has been subjected to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced or altered in any material respect [art. 64.03(a)(1)(A)(i-ii)]; and

2) there is a reasonable likelihood that the evidence contains biological material suitable for DNA testing [art. 64.03(a)(1)(B)]; and

3) identity was or is an issue in the case [art. 64.03(a)(1)(C)].

Finally, the Petitioner must establish, by a preponderance of the evidence that he would not have been convicted if exculpatory results had been obtained through DNA testing, and that his request for DNA testing is not made for purposes of delay. [art. 64.03(a)(2)(A-B)].

#### IV.

#### **Items not previously subjected to DNA testing**

The Petitioner moves that the Court order forensic DNA testing of the following items of evidence, which were not previously subjected to DNA testing:

1. **Rectal, oral and breast swabs from sexual assault kit (Lab nos. 04-02, 04-03 and 04-04).** These items were not tested pre-trial;
2. **Any swabs taken of the interior or exterior of the sliding glass door of Complainant's apartment, as well as from any other entryways to the apartment;**
3. **Any swabs taken from the bed frame or from any sections of bedding, as well as any trace evidence recovered from the bedding or bedroom of Complainant's apartment.**
4. **Any swabs taken from light switches in the Complainant's apartment;**
5. **The blindfold worn by the Complainant;**
6. **Any swabs taken from the washing machine in the Complainant's apartment, including the knob and the lid of the machine, as well as any swabs taken from all bleach, detergent or other containers in the area surrounding the washing machine.**

V.

**Items previously subjected to DNA testing, but which can be subjected to testing with newer, more accurate testing techniques**

The Petitioner also moves that the Court order forensic DNA testing of the following items of evidence, which were previously tested, but which can be subjected to testing with newer techniques that provide a reasonable likelihood of results that are more accurate and probative than the results of the previous test [art. 64.01(b)(2)]:

1. **Complainant's fingernail clippings from sexual assault kit (Lab no. 04-05).**

The lab reported a two-person mixture, concluded that the Complainant could not be

excluded, and made no conclusions regarding the Petitioner. Newer testing techniques, such as STRmix, could provide more accurate results than the DNA testing done pre-trial, and could reveal DNA profiles not currently known.

2. **Ligature (Lab no. 01-01).** The lab reported a two-person mixture, concluded that the Petitioner could not be excluded, and using the Combined Probability of Inclusion (C.P.I.) calculation method, arrived at a statistic of 1 in 835. Because C.P.I. calculations have come under some scrutiny in the forensic community, and given the relatively low statistic reached by the lab, newer DNA testing techniques, such as STRmix, could provide more accurate results than the DNA testing done pre-trial.

3. **Cuttings from light grey sweatshirt (Lab no. 03-01).** The lab reported a three-person mixture, but was unable to provide any statistic because it was a low-level mixture. STRmix is better able to provide probative results on low-level mixtures.

## VI.

Identity was an issue in this case. TEX. CODE CRIM. PROC. ANN., art. 64.03(a)(1)(C). Additionally, the Petitioner would not have been convicted if exculpatory results on the above items of evidence had been obtained through DNA testing. TEX. CODE CRIM. PROC. ANN., 64.03(a)(2)(A).

## VII.

The Petitioner requests that, pursuant to TEX. CODE CRIM. PROC. ANN., art. 64.02, within sixty (60) days of the service of this motion upon the State, the State either deliver the evidence which may be subjected to forensic DNA testing to this

court, along with a description of the condition of the evidence, or in the alternative, explain in writing why the State cannot deliver the evidence to the court.

WHEREFORE, PREMISES CONSIDERED, the Petitioner prays that the biological evidence specified above be subjected to forensic DNA testing, that such test results be made available to the Petitioner through the undersigned, and that this Court hold a hearing and make a finding as to whether, had the results been available during the trial of this offense, it is reasonably probable that the Petitioner would not have been convicted. TEX. CODE CRIM. PROC. ANN., art. 64.04.

Respectfully submitted,

/s/ Bob Wicoff

Bob Wicoff  
Assistant Public Defender  
1310 Prairie, 9<sup>th</sup> floor  
Houston Texas 77002  
(713) 274-6781  
SBT No. 21422700  
bob.wicoff@pdo.hctx.net

Attorney for Petitioner,

### **Certificate of Service**

The undersigned counsel certifies that on June 1, 2020, a copy of the foregoing was emailed to counsel for the state (through efiletexas.gov) at the following address:

Gavin Ellis  
Assistant District Attorney  
Ellis\_Gavin@dao.hctx.net

/s/ Bob Wicoff  
Bob Wicoff

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SEBASTIAN BRUNO	§	HARRIS COUNTY, TEXAS

**UNSWORN DECLARATION OF SEBASTIAN BRUNO**

My name is Sebastian Bruno. I was the defendant in cause number 1983031, where I was convicted of capital murder and sentenced to life without parole. In my trial, it was alleged that in March of 2015, I murdered Maria Murphy.

I did not murder Maria Murphy, nor was I involved in any way in her murder. I do not know who killed her. I request that evidence that was secured in relation to her murder and which is in possession of the state, as described in the foregoing motion, be subjected to forensic DNA testing, to prove that I was not the person who murdered Maria Murphy.

My name is Sebastian Bruno, my date of birth is May 28, 1994, and my inmate identifying number is 21622700. I am presently incarcerated in the Kyle Unit of the Texas Department of Criminal Justice-Institutional Division, in Kyle, Hays County, Texas, 78640. I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 4<sup>th</sup> day of August, 2020.

*Sebastian Bruno*  
Sebastian Bruno

THE STATE OF TEXAS	§	IN THE 468th DISTRICT COURT
	§	
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	§	
SEBASTIAN BRUNO	§	HARRIS COUNTY, TEXAS

**ORDER GRANTING POSTCONVICTION DNA TESTING UNDER  
TEXAS CODE OF CRIMINAL PROCEDURE ARTICLE 64.03**

This Court **GRANTS** Defendant's request for post-conviction DNA testing of the following items of evidence:

1. **Rectal, oral and breast swabs from sexual assault kit (Lab nos. 04-02, 04-03 and 04-04);**
2. **Any swabs taken of the interior or exterior of the sliding glass door of Complainant's apartment, as well as from any other entryways to the apartment;**
3. **Any swabs taken from the bed frame or from any sections of bedding, as well as any trace evidence recovered from the bedding or bedroom of Complainant's apartment.**
4. **Any swabs taken from light switches in the Complainant's apartment;**
5. **The blindfold worn by the Complainant;**
6. **Any swabs taken from the washing machine in the Complainant's apartment, including the knob and the lid of the machine, as well as any**

**swabs taken from all bleach, detergent or other containers in the area surrounding the washing machine.**

- 7. Complainant's fingernail clippings from sexual assault kit (Lab no. 04-05).**
- 8. Ligature (Lab no. 01-01);**
- 9. Cuttings from light grey sweatshirt (Lab no. 03-01).**

The DNA testing will be conducted at the Harris County Institute of Forensic Sciences in Houston, Texas 77001.

The Court further orders that within 30 (thirty) days of entry of this order, a representative of the Harris County District Attorney's Office shall package and collect the evidence from the Harris County Sheriff's Office Property Room and hand deliver it to the Harris County Institute of Forensic Sciences in Houston, Texas 77001, along with a copy of this Order.

The Court further orders that Defendant Sebastian Bruno (TDCJ # 21622700) be delivered to the Harris County Jail, where an agent of the Harris County District Attorney's Office and a member of the Harris County Jail's medical staff shall collect a buccal swab from Defendant, as well as a photograph and fingerprint card for identification purposes; the State shall properly package and send, via Federal Express overnight delivery or hand delivery by the State's representative, the reference sample from Defendant to the Harris County Institute of Forensic Sciences.

The Court further orders the following:



1. The DNA testing shall be conducted in a timely and efficient manner under reasonable conditions designed to protect the integrity of the evidence and the testing process. The DNA testing must employ a scientific method sufficiently reliable and relevant to be admissible under Rule 702, Texas Rules of Evidence;
2. The Harris County Institute of Forensic Sciences shall immediately provide to this Court the written results of all testing and, if requested, all data related to the testing required for an evaluation of the testing results. The Court further orders the laboratory to send copies of said results and data to the following persons:

Gavin Ellis  
Assistant District Attorney  
1201 Franklin, 6<sup>th</sup> floor  
Houston, Texas 77002  
Ellis\_gavin@dao.hctx.net

Bob Wicoff  
Assistant Public Defender  
1310 Prairie, 9<sup>th</sup> floor  
Houston, Texas 77002  
bob.wicoff@pdo.hctx.net

Sebastian Bruno  
TDCJ # 21622700  
Kyle Unit  
Kyle, Texas 78640

The Clerk shall send a copy of this order to:

Gavin Ellis  
Assistant District Attorney  
1201 Franklin, 6<sup>th</sup> floor  
Houston, Texas 77002  
Ellis\_gavin@dao.hctx.net

Bob Wicoff  
Assistant Public Defender  
1310 Prairie, 9<sup>th</sup> floor  
Houston, Texas 77002  
bob.wicoff@pdo.hctx.net

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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Judge Presiding  
468<sup>th</sup> District Court