

**IN THE CIRCUIT COURT OF THE 10<sup>TH</sup>  
JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR POLK COUNTY**

**CRIMINAL DIVISION  
CASE NO. CF01-3262**

**THE STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**NELSON SERRANO,**

**Defendant/Petitioner.**

---

**DEFENDANT SERRANO'S  
MOTION TO FILE THIRD AMENDMENT TO  
MOTION FOR POST-CONVICTION RELIEF**

The Defendant, NELSON SERRANO, respectfully moves this Court for leave to file the attached Third Amendment to his Motion for Post-Conviction Relief pursuant to Rule 3.851(f)(4) of the Florida Rules of Criminal Procedure and states as follows:

1. Attached to the instant Motion is Mr. Serrano's "Third Amendment to Motion for Post-Conviction Relief" which is also being filed contemporaneously with the filing of this motion.

2. Florida Rule of Criminal Procedure 3.851(f)(4) provides in pertinent part:

A motion filed under this rule may be amended up to 30 days prior to the evidentiary hearing upon motion and good cause shown.

3. The evidentiary hearing is presently scheduled to begin on May 12, 2014. Thus, the instant motion to amend is timely filed under Rule 3.851(f)(4).

4. In Ground II, subclaim 10 of Mr. Serrano's Motion for Post-Conviction Relief, pages 57-58, Mr. Serrano argued, *inter alia*, that trial counsel were ineffective in failing to file a pre-trial motion requesting STR DNA testing of the plastic glove (and the cuttings and DNA extracted therefrom) presumably left by the perpetrator of the crimes herein and found on the floor under or beside the left side of Diane Patisso's body and a comparison of the DNA profile obtained therefrom to the DNA profiles in the Combined DNA Index System ("CODIS").

5. Significantly, in his Motion for Post-Conviction Relief, page 58, footnote 20, Mr. Serrano explained as follows:

This Court has not yet ruled on Mr. Serrano's pending "Motion for Post-Conviction DNA Testing and Comparisons." Mr. Serrano will be requesting leave to amend his Rule 3.851 Motion after the results of that testing and those comparisons is obtained.

6. Mr. Serrano's Third Amendment to his Motion for Post-Conviction Relief expands on his claim that trial counsel were ineffective in failing to file a pre-trial motion requesting STR DNA testing of the plastic glove (and the cuttings and

DNA extracted therefrom) presumably left by the perpetrator of the crimes herein and found on the floor under or beside the left side of Diane Patisso's body. The limitations period for filing motions for post-conviction relief does not preclude the enlargement of issues raised in a timely-filed first motion for postconviction relief through the filing of an amendment to such a motion. *Rogers v. State*, 782 So.2d 373, 376 n. 7 (Fla. 2001); *Aguilar v. State*, 756 So.2d 257, 258 (Fla. 3d DCA 2000); *Bulley v. State*, 857 So.2d 237, 239-40 (Fla. 2d DCA 2003); *Rivet v. State*, 618 So.2d 377, 378-79 (Fla. 5<sup>th</sup> DCA 1993); *Graham v. State*, 846 So.2d 617 (Fla. 2d DCA 2003); *Rozier v. State*, 603 So.2d 120, 121 (Fla. 5<sup>th</sup> DCA 1992). The law has a liberal policy of allowing defendants who file motions for post-conviction relief the freedom to amend their pleadings. This liberal policy stems from Florida Rule of Civil Procedure 1.190(e) which provides:

At any time ***in furtherance of justice***, upon such terms as may be just, the court may permit any process, proceeding, pleading or record to be amended or material supplemental matter to be set forth in an amended or supplemental pleading. ***At every stage of the action the court must disregard any error or defect in the proceedings which does not affect the substantial rights of the parties.***

(emphasis added). *See Rozier*, 603 So.2d at 121 (recognizing that Rule 1.190(e) applies to amendments to motions for post-conviction relief); *Boyd v. State*, 801

So.2d 116, 117 (Fla. 4<sup>th</sup> DCA 2001) (same). *See also Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000)(acknowledging that post-conviction cases are quasi-civil in nature).

7. Both before and after Mr. Serrano filed his Motion for Post-Conviction Relief, he attempted to obtain DNA testing of the plastic glove presumably left by the perpetrator of the crimes herein and found on the floor under Diane Patisso's body.

8. More specifically, on October 29, 2012, Mr. Serrano filed a "Motion for Post-Conviction DNA Testing and Comparisons" ("DNA Motion") in this Court pursuant to Rule 3.853 of the Florida Rules of Criminal Procedure, Section 925.11 of the Florida Statutes and the Due Process Clause of the federal and state constitutions. In the motion, Mr. Serrano sought STR DNA testing of, *inter alia*, the plastic disposable glove (and the cuttings and DNA extracted therefrom) presumably left by the perpetrator of the crimes and found on the floor under the left side of the body of Diane Patisso.

9. On November 15, 2012, this Court entered an Order to Show Cause directing the State to file a response thereto. On December 10, 2012, the State filed its "Response to the Court's Order to Show Cause" in which the State opposed Mr. Serrano's DNA Motion. On January 15, 2013, Mr. Serrano filed a "Reply Memorandum in Support of His Motion for Post-Conviction DNA Testing and Comparisons."

10. On January 18, 2013, this Court entered an Order granting Mr. Serrano's DNA Motion in part and requiring the State to (1) have the plastic glove re-examined for DNA using STR DNA technology and (2) compare the DNA on the glove to Mr. Serrano's DNA and the Combined DNA Index System ("CODIS").

11. On April 17, 2013, FDLE Crime Lab Analyst Robyn Ragsdale wrote a laboratory report containing the results of the STR DNA testing of the glove. *See* Exhibit 2. The report provides, in pertinent part, that one of the samples from the glove that she used for STR DNA analysis produced a major profile that matches one of the victims, George Patisso. This means that George Patisso's DNA is on the glove. *See* Exhibit 3 at 3. DNA expert Nancy Peterson has told undersigned counsel that Mr. Patisso's DNA could have been placed on the glove either by Mr. Patisso touching or wearing the glove or by someone touching Mr. Patisso while wearing the glove. If the perpetrator touched Mr. Patisso while wearing the glove, blood or skin cells from Mr. Patisso could then have been transferred to the glove during the touching.

12. In the April 17, 2013 FDLE report of Ms. Ragsdale, she noted that she did not compare the DNA on the glove to Mr. Serrano because the State failed to provide her with buccal swabs from Mr. Serrano in order to obtain his DNA profile. She also noted in that report that (1) she did not conduct STR DNA testing on the lab

cuttings from the glove that were made by former FDLE Crime Laboratory Analyst Ted Yeshion in 1998, and (2) she did not conduct STR DNA testing on PCR extracts from the glove which were obtained by Mr. Yeshion in 1998.

13. Upon undersigned counsel Roy Black's receipt of the FDLE's April 17, 2013 laboratory report, he contacted Assistant State Attorney John Aguero seeking to have the FDLE conduct STR DNA testing of the 1998 lab cuttings and PCR extract from the glove as this Court had ordered in its January 18, 2013 Order. However, the prosecutor refused to do so. Subsequently, undersigned counsel and the prosecutor had a brief hearing before this Court during which this Court ordered the prosecutor to comply with its January 18, 2013 Order by having the FDLE conduct STR DNA testing on the 1998 lab cuttings and 1998 PCR extract from the glove and compare any of those results to the victims and Mr. Serrano.

14. Thereafter, on June 28, 2013, FDLE Crime Lab Analyst Robyn Ragsdale wrote a report regarding the STR DNA analysis she performed on the lab cuttings and PCR extract from the glove that had been obtained by Mr. Yeshion in 1998. That report provides that those lab cuttings "were not suitable for STR DNA analysis" and that the DNA data from the PCR extracts from the glove were "not interpretable." In that FDLE laboratory report, Ms. Ragsdale further noted that she compared a complete DNA profile of Mr. Serrano to the DNA profiles obtained from the glove.

She concluded that “[n]o determinations can be made regarding the possible contribution of Nelson Serrano ... to the mixed DNA profiles obtained from the plastic glove from scene....”

15. Upon receipt of the June 28, 2013 FDLE laboratory report, undersigned counsel provided it to DNA expert Nancy Peterson. After reviewing the FDLE’s April 17 and June 28, 2013 laboratory reports concerning the STR DNA analysis, Ms. Peterson informed undersigned counsel that the reports contained limited information about the samples used for the STR DNA testing and that she needed to know the details of the procedures used to obtain the DNA results from the DNA samples taken from the plastic glove which would be available in the bench notes used by the analysts who conducted the DNA analysis of the glove.

16. Accordingly, on or about September 19, 2013, Mr. Serrano filed a “Motion for Discovery Necessary to Ensure Compliance with this Court’s January 18, 2013 Order Granting in Part Defendant’s ‘Motion for Post-Conviction DNA Testing and Comparisons’” in which he moved for entry of an Order requiring the State to produce to him the bench notes used by the FDLE laboratory analysts who performed the DNA testing on the glove, the cuttings from the glove and the DNA extracts from the glove. On September 20, 2013, this Court held a status conference at which the State told the Court that it did not object to the granting of that motion.

17. On or about September 27, 2013, the State mailed to undersigned counsel the bench notes of its FDLE laboratory analysts who performed the DNA testing on the glove, its 1998 cuttings and its 1998 PCR extract. Subsequently, undersigned counsel provided those bench notes to DNA expert Nancy Peterson to review. After reviewing these bench notes, Ms. Peterson reported to undersigned counsel that the DNA bench notes show that there is DNA on the glove of a third party who is not Mr. Serrano or any of the victims. She further explained that the bench notes reveal that there were two methods used by the FDLE to get DNA from the outside of the glove. First, the FDLE swabbed all of the fingers of the glove and tested the DNA obtained during that swabbing. Second, the FDLE took two dampened swabs and wiped them across the entire hand area on the outside of the glove and tested those swabs. *DNA of the same third party who was not Nelson Serrano or any of the victims appeared when both methods were used.* Thus, the DNA of the third party was both on the fingers and on the hand portion of the outside of the glove. Ms. Peterson also reported that the bench notes show that none of the DNA obtained from the glove has been tied to Mr. Serrano.

18. As a result of this newly-discovered DNA evidence which Mr. Serrano has sought since before he filed his Motion for Post-Conviction Relief, Mr. Serrano must now amend his Motion for Post-Conviction Relief.




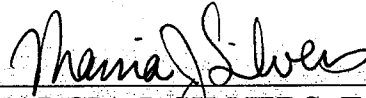
19. Finally, it is “one of the most important dictates of due process that proceedings involving criminal charges, and especially the death penalty, must both be and appear to be fundamentally fair.” *Steinhorst v. State*, 636 So.2d 498, 500-01 (Fla. 1994). Every possible safeguard must be in place to ensure that the conviction is a safe one: “[D]eath is a different kind of punishment from any other which may be imposed in this country ... From the point of view of the defendant, it is different in both its severity and its finality. From the point of society, the action of the sovereign in taking the life of one of its citizens also differs dramatically from any other legitimate State action. It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion.” *Beck v. Alabama*, 447 U.S. 625, 637-38 (1980).

20. Accordingly, for all of the foregoing reasons, Mr. Serrano requests that this Court enter an Order granting this Motion.

Respectfully submitted,



 ROY BLACK, ESQ.  
Florida Bar No. 126088  
Black, Srebnick, Kornspan & Stumpf, P.A.  
201 S. Biscayne Boulevard, Suite 1300  
Miami, Florida 33131  
Telephone: 305/371-6421  
[Rblack@royblack.com](mailto:Rblack@royblack.com)



MARCIA J. SILVERS, ESQ.

Florida Bar No. 342459

Marcia J. Silvers, P.A.

40 Northwest 3<sup>rd</sup> Street, Penthouse One

Miami, Florida 33128

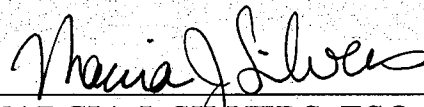
Telephone: 305/774-1545

[marcia@marciasilvers.com](mailto:marcia@marciasilvers.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email on this 20<sup>th</sup> day of February 2014 to John Aguero and Victoria Avalon, Assistant State Attorneys, at [jaguero@sao10.com](mailto:jaguero@sao10.com) and [vavalon@sao10.com](mailto:vavalon@sao10.com) and to Stephen D. Ake, Assistant Attorney General, at [capapp@myfloridalegal.com](mailto:capapp@myfloridalegal.com) and [stephen.ake@myfloridalegal.com](mailto:stephen.ake@myfloridalegal.com).

BY:



MARCIA J. SILVERS, ESQ.

**IN THE CIRCUIT COURT OF THE 10<sup>TH</sup>  
JUDICIAL CIRCUIT OF FLORIDA,  
IN AND FOR POLK COUNTY**

**CRIMINAL DIVISION  
CASE NO. CF01-3262**

**THE STATE OF FLORIDA,**

**Plaintiff,**

**v.**

**NELSON SERRANO,**

**Defendant/Petitioner.**

---

**THIRD AMENDMENT TO MOTION FOR POST-CONVICTION RELIEF**

The Defendant, NELSON SERRANO, respectfully files this Third Amendment to his Motion for Post-Conviction Relief filed herein pursuant to Rule 3.851 of the Florida Rules of Criminal Procedure and states as follows:

**GROUND X  
THE NEWLY DISCOVERED DNA EVIDENCE  
CREATES A REASONABLE DOUBT ABOUT  
MR. SERRANO'S GUILT. ACCORDINGLY,  
MR. SERRANO'S CONVICTION AND  
SENTENCE MUST BE VACATED.**

**THE FACTS**

**Preliminary Statement**

In 2006, Mr. Serrano was convicted by a jury of four counts of capital murder and, thereafter, he was sentenced to death. The case against him was entirely

circumstantial. He made no confession despite a police interrogation. Indeed, from his initial questioning by the police throughout his trial and up to the present day, Mr. Serrano has maintained that he is innocent of these crimes. No murder weapon was ever found. The State's extensive scientific analysis of the rental car he allegedly drove and the crime scene revealed a notable absence of the kind of incriminating evidence that one would expect to find had Mr. Serrano, in fact, committed four close-range and bloody murders.

On October 29, 2012, Mr. Serrano moved under Florida Rule of Criminal Procedure 3.853 for post-conviction forensic STR DNA testing of, *inter alia*, a plastic disposable glove presumably left by the perpetrator of the crimes and found on the floor under the left side of Diane Patisso's body. The State opposed the motion. However, after a careful review of the voluminous trial record, this Court, by Order dated January 18, 2013, granted the requested STR DNA testing of the glove. *See* Exhibit 1 attached hereto. In this Court's Order, the Court concluded that "[d]ue to the circumstances surrounding the murder scene, a very plausible argument could be made that the plastic glove found under Diane Patisso's body was worn by the murderer and inadvertently left behind." *See* Exhibit 1 at 2. This Court ruled in that Order that Mr. Serrano had met his burden of proving that a DNA test which yielded biological DNA material from a third party other than Mr. Serrano or the victims on the glove would create "a reasonable probability that this movant would have been

acquitted ... if the DNA evidence had been admitted at trial.” See Exhibit 1 at 2 (quoting from *Knighthen v. State*, 829 So.2d 249 (Fla. 2d DCA 2002).

Mr. Serrano now has the very exculpatory DNA test results previously contemplated by this Court. More specifically, the STR DNA testing recently conducted by the FDLE on the glove yielded DNA from a third party other than Mr. Serrano or the victims. In addition, none of the DNA found on the glove during the STR DNA testing has been tied to Mr. Serrano.

As we will explain below, the FDLE’s reports about this testing omitted the material fact that there is DNA from a person other than Mr. Serrano or the victims on the glove. However, once this Court granted Mr. Serrano’s motion for the State to produce the case notes (known as “bench notes”) of the FDLE’s DNA analysts concerning the DNA testing of the glove, Mr. Serrano’s DNA expert, Nancy Peterson, reviewed them and informed undersigned counsel of this important result of the STR DNA testing.

The new DNA evidence clearly entitles Mr. Serrano to relief since (1) this new evidence “weakens the case against [Mr. Serrano] so as to give rise to a reasonable doubt as to his culpability” which is all that is required to vacate his conviction. *Swafford v. State*, 125 So.3d 760, 767 (Fla. 2013)(quoting *Jones v. State*, 709 So.2d 512, 526 (Fla. 1998)), (2) it shows that Mr. Serrano is actually innocent of the crimes herein, and (3) it shows that Mr. Serrano’s trial attorneys were ineffective because

they failed to file a motion for STR DNA testing of the glove at the time of his trial and, accordingly, they failed to present the results of that testing at the trial.

**Post-Conviction Efforts to Obtain DNA  
Testing and the Results of that Testing**

On October 29, 2012, Mr. Serrano filed a “Motion for Post-Conviction DNA Testing and Comparisons” (“DNA Motion”) in this Court pursuant to Rule 3.853 of the Florida Rules of Criminal Procedure, Section 925.11 of the Florida Statutes and the Due Process Clause of the federal and state constitutions. In the motion, Mr. Serrano sought STR DNA testing of, *inter alia*, the plastic disposable glove (and the cuttings and DNA extracted therefrom) presumably left by the perpetrator of the crimes and found on the floor under the left side of the body of Diane Patisso.

On November 15, 2012, this Court entered an Order to Show Cause directing the State to file a response thereto. On December 10, 2012, the State filed its “Response to the Court’s Order to Show Cause” in which the State opposed Mr. Serrano’s DNA Motion. On January 15, 2013, Mr. Serrano filed a “Reply Memorandum in Support of His Motion for Post-Conviction DNA Testing and Comparisons.”

On January 18, 2013, this Court entered an Order granting Mr. Serrano’s DNA Motion in part and requiring the State to (1) have the plastic glove re-examined for DNA using STR DNA technology and (2) compare the DNA on the glove to Mr. Serrano’s DNA and the Combined DNA Index System (“CODIS”). *See* Exhibit 1.

On April 17, 2013, FDLE Crime Lab Analyst Robyn Ragsdale wrote a laboratory report containing the results of the STR DNA testing of the glove. *See* Exhibit 2. The report provides, in pertinent part, that one of the samples from the glove that she used for STR DNA analysis produced a major profile that matches one of the victims, George Patisso. This means that George Patisso's DNA is on the glove. *See* Exhibit 3 at 3. DNA expert Nancy Peterson has told undersigned counsel that Mr. Patisso's DNA could have been placed on the glove either by Mr. Patisso touching or wearing the glove or by someone touching Mr. Patisso while wearing the glove. If the perpetrator touched Mr. Patisso while wearing the glove, blood or skin cells from Mr. Patisso could then have been transferred to the glove during the touching.

In the April 17, 2013 FDLE report of Ms. Ragsdale, she noted that she did not compare the DNA on the glove to Mr. Serrano because the State did not provide her with buccal swabs from Mr. Serrano in order to obtain his DNA profile. She also noted in that report that (1) she did not conduct STR DNA testing on the lab cuttings from the glove that were made by former FDLE Crime Laboratory Analyst Ted Yeshion in 1998, and (2) she did not conduct STR DNA testing on PCR extracts from the glove which were obtained by Mr. Yeshion in 1998.

Upon undersigned counsel Roy Black's receipt of the FDLE's April 17, 2013 laboratory report, he contacted Assistant State Attorney John Aguero seeking to have

the FDLE conduct STR DNA testing of the 1998 lab cuttings and PCR extract from the glove as this Court had ordered in its January 18, 2013 Order. However, the prosecutor refused to do so. Subsequently, undersigned counsel and the prosecutor had a brief hearing before this Court during which this Court ordered the prosecutor to comply with its January 18, 2013 Order by having the FDLE conduct STR DNA testing on the 1998 lab cuttings and 1998 PCR extract from the glove and compare any of those results to the victims and Mr. Serrano.

Thereafter, on June 28, 2013, FDLE Crime Lab Analyst Robyn Ragsdale wrote a report regarding the STR DNA analysis she performed on the lab cuttings and PCR extract from the glove that had been obtained by Mr. Yeshion in 1998. That report provides that those lab cuttings “were not suitable for STR DNA analysis” and that the DNA data from the PCR extracts from the glove were “not interpretable.” *See* Exhibit 4. In that FDLE laboratory report, Ms. Ragsdale further noted that she compared a complete DNA profile of Mr. Serrano to the DNA profiles obtained from the glove. She concluded that “[n]o determinations can be made regarding the possible contribution of Nelson Serrano ... to the mixed DNA profiles obtained from the plastic glove from scene....” *See* Exhibit 4 at 2.

Upon receipt of the June 28, 2013 FDLE laboratory report, undersigned counsel provided it to DNA expert Nancy Peterson. After reviewing the FDLE’s April 17 and June 28, 2013 laboratory reports concerning the STR DNA analysis, Ms.



Peterson informed undersigned counsel that the reports contained limited information about the samples used for the STR DNA testing and that she needed to know the details of the procedures used to obtain the DNA results from the DNA samples taken from the plastic glove which would be available in the bench notes used by the analysts who conducted the DNA analysis of the glove.

Accordingly, on or about September 19, 2013, Mr. Serrano filed a “Motion for Discovery Necessary to Ensure Compliance with this Court’s January 18, 2013 Order Granting in Part Defendant’s ‘Motion for Post-Conviction DNA Testing and Comparisons’” in which he moved for entry of an Order requiring the State to produce to him the bench notes used by the FDLE laboratory analysts who performed the DNA testing on the glove, the cuttings from the glove and the DNA extracts from the glove. On September 20, 2013, this Court held a status conference at which the State told the Court that it did not object to the granting of that motion.

Subsequently, the State produced to undersigned counsel the bench notes of its FDLE laboratory analysts who performed the DNA testing on the glove, its 1998 cuttings and its 1998 PCR extract. Undersigned counsel then gave those bench notes to DNA expert Nancy Peterson to review. After reviewing these bench notes, Ms. Peterson reported to undersigned counsel that the DNA bench notes show that there is DNA on the glove of a third party who is not Mr. Serrano or any of the victims. She further explained that the bench notes reveal that there were two methods used

by the FDLE to get DNA from the outside of the glove. First, the FDLE swabbed all of the fingers of the glove and tested the DNA obtained during that swabbing. Second, the FDLE took two dampened swabs and wiped them across the entire hand area on the outside of the glove and tested those swabs. *DNA of the same third party who was not Nelson Serrano or any of the victims appeared when both methods were used.* Thus, the DNA of the third party was both on the fingers and on the hand portion of the outside of the glove. Ms. Peterson also reported that the bench notes show that none of the DNA obtained from the glove has been tied to Mr. Serrano. Ms. Peterson's expert report dated January 22, 2014 is attached hereto as Exhibit 3.

### THE LAW

The newly discovered DNA evidence creates a reasonable doubt about Mr. Serrano's guilt. Accordingly, Mr. Serrano's conviction and sentence must be vacated.

In order to obtain relief based on newly discovered evidence, a defendant must demonstrate new facts that were "unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that defendant or his counsel could not have known of them by the use of diligence," and that, if considered by the jury, are "of such a nature that it would probably produce an acquittal on retrial." *Jones v. State*, 591 So.2d at 911, 915-16 (Fla.1991). In making this determination, the Court "will necessarily have to evaluate the weight of both the newly discovered evidence and the evidence which was introduced at the trial." *Jones*, 591 So.2d at 916. As the

Supreme Court of Florida explained, a defendant satisfies the *Jones* standard when the newly discovered evidence “weakens the case against [the defendant] so as to give rise to a reasonable doubt as to his culpability.” *Swafford*, 125 So.3d 760, 767 (Fla. 2013) (citations omitted). New evidence need not make the defendant’s acquittal a certainty. *See Spaziano v. State*, 660 So.2d 1363, 1365 (Fla. 1995)(*Jones* “broadened the test to allow a new trial when evidence would ‘probably’ affect the verdict rather than requiring that it must ‘conclusively’ affect the verdict”); *see also Robinson v. State*, 707 So.2d 688 (Fla. 1997)(*Jones* is satisfied where newly discovered evidence “substantially undermine[s] confidence in the outcome of prior proceedings”)(internal citations omitted). In other words, to grant Mr. Serrano’s motion, this Court must find only that a jury hearing the results of the DNA testing would probably harbor a reasonable doubt about Mr. Serrano’s guilt.

The newly obtained results of the STR DNA testing in this case easily satisfy this test. DNA results on a probative piece of evidence with a nexus to the crime usually outweigh all other forms of evidence. According to the United States Supreme Court in *District Attorney’s Office for Third Judicial Dist. v. Osborne*, 179 S. Ct. 2308, 2316 (2009), “Modern DNA testing can provide powerful new evidence unlike anything known before.” In *Hayes v. State*, 660 So.2d 257, 262 (Fla. 1995), the Florida Supreme Court stated, “the probative power of DNA typing can be so great that it can outweigh all other evidence in a trial.” Florida courts have even

gone so far as to state that “[t]he probative power of DNA evidence in a criminal trial is the equivalent of the 1,000 pound behemoth in the wrestling match. It outweighs all other challengers.” *Frederic v. State*, 770 So.2d 719, 721 (Fla. 4<sup>th</sup> DCA 2000).

This Court need not determine the probative value of the new DNA evidence on a “blank slate.” The weight a jury would afford such evidence was already determined by this Court when, after reviewing the trial record, this Court concluded in its January 18, 2013 Order that “the defendant has met his burden” of showing that a DNA test which yielded DNA material on the glove from a third party other than Mr. Serrano or the victims would create “a reasonable probability that [Mr. Serrano] would have been acquitted ... if the DNA evidence had been admitted at trial.” Exhibit 1 at 2 (quoting from *Knighen v. State*, 829 So.2d 249 (Fla. 2d DCA 2002)). In so concluding, this Court noted that “[d]ue to the circumstances surrounding the murder scene, a very plausible argument could be made that the plastic glove found under Diane Patisso’s body was worn by the murderer and inadvertently left behind.” Exhibit 1 at 2. This Court also pointed out that the State itself had previously attempted to obtain identifiable DNA from the glove. *Id.* In addition, this Court noted that *Montez v. State*, 86 So.3d 1243 (Fla. 2d DCA 2012) is a case involving circumstantial evidence “as is involved in Mr. Serrano’s case” and there, the Court commented that in a “case involving largely circumstantial evidence” it is difficult to imagine that the existence of another person’s DNA on an important piece of

evidence (there, a nylon stocking tied around the victim's neck) would create some reasonable doubt in the minds of the jurors about the defendant's guilt. Exhibit 1 at 2.

Notably, the FDLE's April 17, 2013 Report (Exhibit 2) provides that one of the DNA samples from the glove has a major DNA profile that matches one of the victims, George Patisso. As previously explained, according to DNA expert Nancy Peterson, this means that Mr. Patisso's DNA is on the glove and that Mr. Patisso's DNA could have been placed on the glove by either Mr. Patisso touching or wearing the glove (which makes no sense) or by someone touching Mr. Patisso while wearing the glove which could have caused Mr. Patisso's blood or skin cells to have been transferred to the glove during the touching. ***Significantly, the perpetrator removed a gold chain from Mr. Patisso's neck.*** Thus, the STR DNA testing results strongly support the conclusion that the perpetrator wore this glove.

Furthermore, the police who investigated this case relied upon the glove as belonging to the perpetrator when they wrote in a report, "Scene suggest [sic] event was planned ***evidenced by the use of gloves***, one of which was found underneath the body of female victim, Diane Patisso." *See Exhibit 5 (emphasis added).* The fact that the State itself introduced evidence about the glove and the DNA testing of it at the trial also shows its clear probative value.

It is undisputed that the glove was not left there by the EMTs who responded to the scene, it would have not have been used at Erie/Garment and it was different from those contained in the Erie/Garment first aid kit. Clearly, as the police themselves noted in their report attached hereto as Exhibit 5, the only plausible explanation as to why the plastic disposable glove would be under Diane Patisso's is because the perpetrator wore plastic disposable gloves in an attempt to avoid leaving fingerprints and one of them slipped off the perpetrator's hand.

FDLE Agent Tommy Ray, the lead detective in this case, testified in his pre-trial deposition that his analysis of the evidence showed that the shooter had very close contact with Diane Patisso. As stated by Agent Ray in that deposition:

My opinion is that Nelson [Serrano] had already killed all the men in the business, you know, Frank and George and George. Diane walked in while he was removing a gun he probably left in that ceiling tile, and that gun was probably a 32. He chased her down, shot her in the doorway there, she's trying to leave, with the 32. To make sure he had taken care of business, as he's leaving, using the same gun that he had shot the three guys with, he comes back, props her up, and shoots her a second time in the back of the head. That's my opinion.

An excerpt of this deposition of Agent Ray is attached hereby as Exhibit 6.

Furthermore, Agent Tommy Ray narrated a re-enactment of the crime for the television show, "The Investigators," in which he stated that, upon seeing Diane Patisso, the shooter "chases her down with a .32 and you can tell because there was

hair in her hand where he must have caught her and grabbed her by the back of the hair because she reaches back and in her own hand is her hair so he shoots her with a .32.” (A CD of this re-enactment excerpted from “The Investigators” and narrated by Agent Ray is attached hereto as Exhibit 7.) If Diana Patisso reached back as the shooter grabbed her hair, her hand likely came into contact with that of the perpetrator and caused his glove to fall off his hand and drop to the floor as she fell backwards. The perpetrator probably would not have noticed that the glove fell off because it is the type of disposable glove that fits very loosely on a hand. *See* Exhibit 8 attached hereto, a photograph of the glove.

The new evidence of a third party’s DNA on both the fingers and the hand area of the glove gives rise to a reasonable doubt as to Mr. Serrano’s guilt in this entirely circumstantial case because it is highly likely that the perpetrator wore the glove to prevent leaving fingerprint evidence and the State’s consistent theory at the jury trial was that Mr. Serrano acted alone and obtained the second gun from the ceiling of his former Erie/Garment office. The State theorized that Mr. Serrano had to travel from Atlanta to Bartow and back to Atlanta in one day to commit the murders because he alone was the murderer. The State argued at the trial that only Mr. Serrano committed the crimes because only he had a motive to do so. The prosecutor and the police witnesses dismissed any notion of any other motive such as robbery although

the Erie/Garment offices were ransacked and the jewelry of the male victims was stolen.

Any rational jury which both considered the new evidence of a third party's DNA on the fingers and hand area of the glove and scrutinized the State's theory of the case that Mr. Serrano was the sole perpetrator of the homicides would be left with a host of unanswered questions which would give rise to a reasonable doubt. Furthermore, the new DNA test results were not known to the trial court, Mr. Serrano, nor his counsel at the time of trial and they could not have been known to them through due diligence.

Mr. Serrano's newly discovered evidence claim is timely filed. The time period for filing a motion for post-conviction relief based upon newly discovered DNA testing results in a capital case begins to run on the date on which the DNA test results are provided to the Court and to the parties. *See Fla.R.Crim.P. 3.851(d)(2)(A)*.

Accordingly, for all of the foregoing reasons, the favorable results of the court-ordered STR DNA testing constitute newly discovered evidence under *Jones* and its progeny mandating a new trial.



**GROUND XI**  
**THE NEWLY DISCOVERED DNA EVIDENCE**  
**MANDATES A NEW TRIAL BASED UPON**  
**MR. SERRANO'S ACTUAL INNOCENCE**  
**OF THE CRIMES FOR WHICH HE WAS**  
**WRONGFULLY CONVICTED AND**  
**SENTENCED TO DEATH.**

“[C]oncern about the injustice that results from the conviction of an innocent person has long been at the core of our criminal justice system.” *Schlup v. Delo*, 513 U.S. 298, 325 (1985). That is because “the central purpose of any system of criminal justice” is not just “to convict the guilty,” but to “free the innocent.” *Herrera v. Collins*, 506 U.S. 390, 398 (1993). For this reason, in *Herrera*, 506 U.S. at 417, the United States Supreme Court assumed that, “in a capital case, a truly persuasive demonstration of actual innocence made after the trial would render the execution of a defendant unconstitutional and warrant federal relief if there were no state avenue open to process such a claim.”

In *House v. Bell*, 547 U.S. 518 (2006), the United States Supreme Court granted relief in its first-ever case involving DNA evidence and a claim of actual innocence. That Court granted a Tennessee death row inmate, Paul House, extraordinary leave to pass through the actual innocence “gateway” and pursue his federal habeas corpus petition after weighing three categories of newly-discovered evidence against the trial record: (1) DNA test results showing that the murder victim’s husband, not Mr. House, was the source of a semen stain on the murder

victim's nightgown; (2) evidence challenging the State's claim that traces of the victim's blood found on Mr. House's jeans were deposited by the State's own neglect or deliberate misconduct, rather than during the murder; and (3) evidence in the form of belated witness testimony which House argued cast suspicion on the victim's husband as the true killer. House's new evidence satisfied the test for an actual innocence gateway claim even though the United States Supreme Court emphasized that his was not a case of conclusive exoneration.

Indeed, in *House*, the incriminating facts were not insubstantial. For example, the victim's daughter identified Mr. House's "deep" and distinctive voice as similar to that of the man she overheard lure the victim from her home that night; in addition, House gave police a false alibi for that night, and arrived home with suspicious bruises and scratches on his body. Furthermore, DNA evidence showed that the victim's blood was present on House's blue jeans.

House argued that new evidence showed that blood from the four tubes taken at the victims' autopsy had been so badly mishandled by the State that portions could well have been inadvertently spilled or even deliberately planted on his jeans. The United States Supreme Court agreed that this new evidence revealed poor evidence control by the State. That Court held that the evidence of the victim's blood on House's blue jeans - the most damning forensic evidence a State could present in a homicide case - was nonetheless wholly overcome by the new evidence of the poor

evidence control of the victim's blood which undermined the probative value of the blood evidence.

House's evidence pointing to the victim's husband as an alternate suspect was vigorously challenged by the State, yet found sufficient even though it was of the sort (belated witness testimony) routinely disfavored by the courts. Here, by contrast, Mr. Serrano's evidence of third party culpability comes directly from the State's own DNA lab testing and its reliability and admissibility is beyond dispute.

In *House*, although the new evidence at issue did not satisfy a "freestanding innocence" claim due to the unique facts of that case, the Court held that House "has cast considerable doubt on his guilt sufficient to satisfy the 'actual innocence' gateway standard." 547 U.S. at 555.<sup>1</sup> *House* is a powerful reminder from the nation's highest court that "reasonable doubt" is not just a catchphrase; it is at the core of the protection that our justice system affords.

Based upon all of the facts presented herein concerning the results of the STR DNA testing, the imprisonment of Mr. Serrano, an innocent man, violates due process of law and the protection against cruel and unusual punishment embodied in the federal and state constitutions.

---

<sup>1</sup>*See also McQuiggen v. Perkins*, \_\_ U.S. \_\_, 133 S.Ct.1924 (2013) (holding that, where a prisoner made a showing of actual innocence, such a showing provided a gateway for federal habeas review despite the fact that the prisoner's habeas petition was filed a decade after the statute of limitations for federal habeas claims).

**AMENDMENT TO GROUND II, SUBCLAIM 10:  
TRIAL COUNSEL WERE INEFFECTIVE IN FAILING TO  
FILE A PRE-TRIAL MOTION REQUESTING STR DNA  
TESTING OF THE PLASTIC GLOVE (AND THE  
CUTTINGS AND DNA EXTRACTED THEREFROM)  
PRESUMABLY LEFT BY THE PERPETRATOR  
OF THE CRIMES HEREIN AND FOUND ON THE  
FLOOR UNDER OR BESIDE THE LEFT SIDE  
OF DIANE PATISSO'S BODY**

In Mr. Serrano's Motion for Post-Conviction Relief filed herein on November 12, 2012, pages 57-58, he asserted, *inter alia*, that trial counsel were ineffective in failing to file a pretrial motion requesting STR DNA testing of the plastic glove (and the cuttings and DNA extracted therefrom) presumably left by the perpetrator of the crimes herein and found on the floor under or beside the left side of Diane Patisso's body. He further asserted that the STR DNA testing would have identified the perpetrator of the homicides for which Mr. Serrano stands convicted and would have shown that Mr. Serrano is innocent of these homicides. Mr. Serrano hereby amends Ground II, Subclaim 10 by asserting all of the foregoing facts set forth herein concerning the results of recent STR DNA testing of that glove, including that there is DNA on the glove of a third party who is not Nelson Serrano or any of the victims and that the DNA on the glove has not been tied to Mr. Serrano. Mr. Serrano additionally claims and asserts as follows:

Trial counsel were ineffective in failing to investigate and present at the trial DNA testing results showing that there is DNA on the glove found under Diane

Patisso of a person who is not Nelson Serrano or any of the victims and that none of the DNA on that glove has been tied to Mr. Serrano. If Mr. Serrano's trial counsel had filed a motion requesting STR DNA testing of that glove, investigated and presented the above-described evidence that there is DNA on the glove of a third party who is not Mr. Serrano or any of the victims and that none of the DNA on the glove has been tied to Mr. Serrano, this would have been powerful evidence to refute the State's theory of prosecution which was that Mr. Serrano alone committed the murders. Notably, Theodore Yeshion, a FDLE DNA expert, testified as a prosecution witness at Mr. Serrano's trial that, at the time of the trial in this case, DNA science had developed to such a degree that it was possible that STR DNA testing could obtain a DNA profile from the DNA on the glove. Although the glove must have been left at the crime scene by the perpetrator, trial counsel never sought to retest the glove utilizing this new STR DNA testing.

Trial counsels' performance was constitutionally inadequate and not reflective of reasonable trial strategy. The Florida Supreme Court has recently held that trial counsel "ha[s] a professional obligation to investigate any potential impeaching or exculpatory evidence that may have assisted [the accused's] defense." *State v. Fitzpatrick*, 118 So.3d 737, 753 (Fla. 2013). In *Fitzpatrick*, the Florida Supreme Court also emphasized that "an essential prerequisite to counsel's presentation of an intelligent and knowledgeable defense is the requirement that counsel consult,

investigate and prepare for trial.” *Id.* When trial counsel fails to engage in a reasonable investigation of potential exculpatory evidence, his subsequent decisions do not enjoy deference. *Strickland v. Washington*, 466 U.S. 668, 690-91 (1984); *Fitzpatrick, supra*; *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003); *Henry v. State*, 862 So.679, 685 (Fla. 2003)(“A reasonable strategic decision is based on informed judgment.”).


For all of the foregoing reasons, trial counsels’ performance with respect to the glove evidence was deficient and, as a result, confidence in the verdict is undermined. A new trial, therefore, is required. *See Strickland*, 466 U.S. at 694 (the prejudice prong of the ineffectiveness test is satisfied where defense counsel’s deficient performance “undermine[s] confidence in the outcome”).

### **CONCLUSION**


Mr. Serrano has made a sufficient showing for post-conviction relief based on the cumulative errors in his trial and sentencing. Mr. Serrano respectfully requests that this Court vacate his convictions and sentence of death and order a new trial and sentencing. Additionally, Mr. Serrano respectfully requests an evidentiary hearing on all matters set forth in this motion.

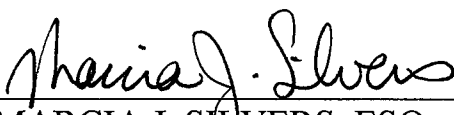
**OATH**

Under penalties of perjury, I declare that I have read the foregoing Third Amendment to my Motion for Post-Conviction Relief and that the facts stated in it are true.

  
\_\_\_\_\_  
NELSON SERRANO

Respectfully submitted,

*for*   
\_\_\_\_\_  
ROY BLACK, ESQ.  
Florida Bar No. 126088  
Black, Srebnick, Kornspan & Stumpf, P.A.  
201 S. Biscayne Boulevard, Suite 1300  
Miami, Florida 33131  
Telephone: 305/371-6421  
[Rblack@royblack.com](mailto:Rblack@royblack.com)

  
\_\_\_\_\_  
MARCIA J. SILVERS, ESQ.  
Florida Bar No. 342459  
Marcia J. Silvers, P.A.  
40 Northwest 3<sup>rd</sup> Street, Penthouse One  
Miami, Florida 33128  
Telephone: 305/774-1545  
[marcia@marciasilvers.com](mailto:marcia@marciasilvers.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email on this 20<sup>th</sup> day of February 2014 to John Aguero and Victoria Avalon, Assistant State Attorneys, at jaguero@sao10.com and vavalon@sao10.com and to Stephen D. Ake, Assistant Attorney General, at capapp@myfloridalegal.com and stephen.ake@myfloridalegal.com.

BY: Marcia J. Silvers  
MARCIA J. SILVERS, ESQ.



**EXHIBIT 1**

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT,  
IN AND FOR POLK COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO. CF01-003262-XX

NELSON IVAN SERRANO,

Defendant.

---

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION  
FOR POST CONVICTION DNA TESTING AND COMPARISONS**

The above captioned matter has come before the Court upon the Defendant's Motion for Post Conviction DNA Testing and Comparisons, filed on October 26, 2012, and the Court, after reviewing said Motion, entered an Order to Show Cause, dated November 15, 2012, directing the State to file a Response. The State filed a Response dated December 10, 2012. Thereafter, the Defendant filed a Reply Memorandum dated January 11, 2013.

The Court has reviewed the Defendant's underlying Motion, the State's Response, the Defendant's Reply, and has researched the cases cited by counsel.

The underlying facts in this case are thoroughly laid out in the Defendant's initial Motion and the State's Response and are therefore not repeated here.

Pursuant to Florida Statutes §925.11 and Florida Rules of Criminal Procedure 3.853, the Defendant is seeking to have this Court Order further DNA analysis and comparisons on two items, a plastic glove recovered at the murder scene from under the body of deceased victim, Diane Patisso, and a cigarette butt found on the ground outside the building in which the murders occurred.

Both items have been retained in evidence and are available for testing.

In regard to the plastic glove, in February 1998, the State attempted to retrieve DNA evidence from the interior of the glove. The FDLE report indicates that, "no interpretable DNA result was obtained from the analysis of Exhibit 1 (plastic glove)." See Exhibit 8 to the Defendant's initial Motion for Post Conviction DNA Testing and Comparisons.

The Defendant contends that the FDLE Analyst, Theodore D. Yeshion, performed a PCR DNA testing on the sample extracted from the glove. The Defendant further points out that new DNA technology called STR DNA testing now exists which is far superior to the earlier PCR DNA testing procedure and may very well lead to some DNA results which were not previously obtained.

Due to the circumstances surrounding the murder scene, a very plausible argument could be made that the plastic glove found under Diane Patisso's body was worn by the murderer and inadvertently left behind. Attempts were previously made by the State to determine if there was any identifiable DNA retrievable from the interior of the glove and, under the then prevailing PCR DNA testing, there was no interpretable DNA results. The Defendant now just wants what was previously done to be redone using the more sophisticated STR DNA testing procedure.

In *Knighten v. State*, 829 So.2d 249 (Fla. 2<sup>d</sup> DCA 2002), the Second District Court of Appeal addressed Rule 3.853 and stated:

"The rule states only that the movant must allege how the DNA will 'exonerate' him. It does not define 'exonerate' or provide a standard to be applied. Once a Motion has met this threshold requirement, the rule then requires the Trial Court to determine 'whether there is a reasonable probability that the movant would have been acquitted...if the DNA evidence had been admitted at trial.'" (At page 251)

In *Montez v. State*, 86 So.3d 1243 (Fla. 2<sup>d</sup> DCA 2012), the Second District Court of Appeal addressed a case involving largely circumstantial evidence (as is involved in Mr. Serrano's case). The Court specifically commented:

"In this case involving largely circumstantial evidence, it is difficult to imagine that the existence of another person's DNA on the murder weapon (there, a nylon stocking found around the victim's neck) would not have created some reasonable doubt in the minds of the jurors about Mr. Montez's guilt." (At page 1245)

In regard to the plastic glove, the defendant has met his burden under Florida Statutes §925.11 and Florida Rules of Criminal Procedure 3.853 to have the plastic glove re-examined for DNA and compared to Mr. Serrano's DNA and the Combined DNA Index System (CODIS).

In regard to the cigarette butt found outside the building in which the murders occurred, the Defendant has failed to establish how the DNA testing or comparison would exonerate him of the crime. More specifically, the cigarette butt was found in an area accessible by scores of

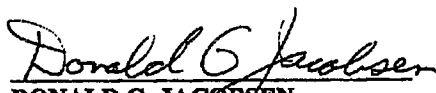
people and the presence of some person's DNA, other than the Defendant, on the cigarette butt would not exonerate the Defendant. See, e.g., *Gore v. State*, 32 So.3d 614 (Fla. 2010).

Based on the above, it is

**ORDERED AND ADJUDGED** that the Defendant's Motion for Post Conviction DNA Testing and Comparisons should be, and the same is hereby, **GRANTED** in regard to further testing for retrievable DNA from the plastic glove, along with the requested comparisons to be done on the DNA, if any, recovered. However, the Motion in regard to the DNA testing and comparisons on the cigarette butt should be, and the same is hereby, **DENIED**. It is further

**ORDERED AND ADJUDGED** that the State deliver the glove and cuttings from the glove to the FDLE DNA testing facility with the request from this Court that they expedite the testing and comparisons to be done. An appeal may be taken by any adversely affected party within 30 days from the date of this Order.

**DONE AND ORDERED** in Chambers at Bartow, Polk County, Florida, this 18<sup>th</sup> day of January 2013.

  
**DONALD G. JACOBSEN**  
Circuit Judge

Copies furnished to:

John Agüero, ASA

Victoria Avalon, ASA

Roy Black, Esq.  
201 S. Biscayne Blvd., Suite 1300  
Miami, FL 33131

Marcia J. Silvers, Esq.  
40 Northwest 3<sup>rd</sup> St., Penthouse One  
Miami, Florida 33128

Stephen D. Ake, AAG  
Concourse Center 4  
3507 E. Frontage Road, Suite 200  
Tampa, Florida 33607-7013

**EXHIBIT 2**

# FDLE

Florida Department of  
Law Enforcement

Gerald M. Bailey  
Commissioner

Tampa Bay Regional Operations Center  
4211 North Lois Avenue  
Tampa, Florida 33614  
1-800-226-1140  
www.fdle.state.fl.us

Rick Scott, Governor  
Pam Bondi, Attorney General  
Jeff Atwater, Chief Financial Officer  
Adam Putnam, Commissioner of Agriculture

## LABORATORY REPORT

April 17, 2013

**TO:** Chief Joseph Hall  
Bartow Police Department  
450 North Broadway Avenue  
Bartow, FL 33830-0000

**FDLE NUMBER:** 000097308376  
**SUBMISSION:** 38 and 39  
**AGENCY NUMBER:** 971216564

**ATTN:** Sgt. David Brooks

SUBPOENAS PERTAINING TO THIS CASE  
SHOULD REFER TO THE FDLE NUMBER.

**VICTIM(S):** GEORGE A PATISSO  
DIANE PATISSO  
FRANK DOSSO  
GEORGE GONSALVES



Robyn Ragsdale  
Senior Crime Laboratory Analyst  
Biology Section

**SUBJECT(S):** NELSON I SERRANO

**OFFENSE(S):** Death Investigation  
Polk County  
12/3/1997

### REFERENCE:

This report references evidence submitted to the Florida Department of Law Enforcement on February 21, 2013 by S. Perry and on March 04, 2013 by S. Perry. This report may contain conclusions, opinions, and/or interpretations made by the author. This report is cross-referenced to the Florida Department of Law Enforcement Report dated December 12, 2002 issued by Lara K. Bahnweg.

### EVIDENCE:

FDLE Item#	Agency Exhibit#	Description
135	20	lab cuttings from scene glove and subway glove
137	171	plastic glove from scene (previously examined by FDLE and the FBI)

### RESULTS:

Samples from the plastic glove from scene (Exhibit 171) were collected in an attempt to determine the possible wearer of this exhibit.

STR DNA analysis was performed on samples from the plastic glove from scene (Exhibit 171; sample A, sample B, sample C-E) utilizing the AmpFISTR Identifier Plus PCR Amplification Kit.

The mixed DNA profile obtained from the plastic glove from scene (Exhibit 171, sample A) demonstrated the



Page 1 of 2

Service • Integrity • Respect • Quality

FDLE NUMBER: 000097308376 Submissions: 38 and 39

RUR

presence of a mixture of at least three individuals. A partial DNA profile for the major contributor could be determined. A DNA profile for the minor contributors could not be determined. The partial major DNA profile matches the DNA profile from George Patisso (Exhibit 13). No determinations can be made regarding the possible contribution of Diane Patisso (Exhibit 10), Frank Dosso (Exhibit 11), or George Gonsalves (Exhibit 12) to this mixture.

For seven loci, the frequency of occurrence of the major DNA profile obtained from the plastic glove from scene (Exhibit 171, sample A) is approximately 1 in 150 million.

The mixed DNA profile obtained from the plastic glove from scene (Exhibit 171, sample B) demonstrated the presence of at least three individuals. Due to the complexity of the mixture, the data obtained is insufficient for inclusion purposes, but may be suitable for exclusionary purposes. No determinations can be made regarding the possible contribution of Diane Patisso (Exhibit 10), Frank Dosso (Exhibit 11), George Gonsalves (Exhibit 12) or George Patisso (Exhibit 13) to this mixture.

The mixed DNA profile obtained from the plastic glove from scene (Exhibit 171, sample C-E) demonstrated the presence of a mixture of at least two individuals. Due to the limited nature of the DNA results in the mixture, this data is insufficient for inclusion purposes but may be suitable for exclusionary purposes. No determinations can be made regarding the possible contribution of Diane Patisso (Exhibit 10), Frank Dosso (Exhibit 11), George Gonsalves (Exhibit 12) or George Patisso (Exhibit 13) to this mixture.

STR DNA analysis was not performed on the lab cuttings from scene glove and subway glove (Exhibit 20).

**REMARKS:**

The information from the above listed exhibits did not meet the criteria to be entered into CODIS.

It is requested that buccal swabs from Nelson Serrano (and any other subjects) be submitted for DNA analysis.

The above reported frequencies were calculated following the recommendations of the National Research Council (NRCII) utilizing a validated statistical database (JFS 48(4):908-911). These numbers are an estimation for which a deviation of approximately  $\pm 10$ -fold may exist. The results of the amelogenin locus were not used in the statistical calculations.

The submitted evidence is available for retrieval or return at the earliest opportunity. This evidence includes collected samples and DNA extracts. It is recommended that all DNA extracts be stored frozen.

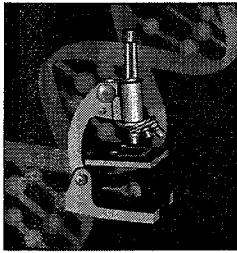
Abbreviations that may appear in this report are: CODIS *Combined DNA Index System*; DNA *deoxyribonucleic acid*; PCR *Polymerase Chain Reaction*; STR *short tandem repeat*; Y-STR *male specific short tandem repeat*; FBI *Federal Bureau of Investigation*; and JFS *Journal of Forensic Sciences*.

Questions regarding this report should be addressed to: robynragdale@fdle.state.fl.us.

**EXHIBIT 3**



## FORENSIC BIOLOGY CONSULTANTS, LLC



Nancy Whitney Peterson  
Forensic Biologist/DNA Expert

e-mail: [forbio01@earthlink.net](mailto:forbio01@earthlink.net)

109 Larkwood Drive, Suite A  
Sanford, Fl. 32771  
USA

Land line: 407-322-7468  
Cell phone: 407-902-9204

### Report: January 22, 2014

This report references the reviews of the analysis of the biological data in the case of the State of Florida v Nelson Serrano (CF01-3262).

I was retained in this case on October 12, 2012 by Marcia J. Silvers, P.A. to review the DNA reports produced by analysts from the Florida Department of Law Enforcement – Tampa Bay Regional Operational Center.

#### October 12, 2012

I received two laboratory reports and a trial transcript about the analysis performed by Theodore E. Yeshion, a Senior Crime Lab Analyst at the Tampa laboratory. I reviewed this information on October 13, 2012.

#### Report dated Dec. 17, 1997 (Reference Submission 001: received in the lab on 12/10/1997)

1. The evidence was collected at the scene of a homicide which occurred on Dec. 03, 1997
2. The victims are Diane Patisso, George A. Patisso, Frank Dosso and George E. Gonsalve
3. The evidence submitted for biological testing was the following:
  - a. #1 Plastic glove
  - b. #23 2 swabs “containing suspected blood” collected at forensic marker #1
  - c. #24 2 cigarette butts (A&B) “collected from outside the S.E. door in the parking lot”
4. Results: Item #23 was found to contain blood. All 4 items were saved for DNA analysis  
A request was made for blood standards to be submitted for comparison purposes

#### Report dated Feb. 17, 1998 (Reference Sub. 001 and Sub 009: 009 received on 12/19/1997)

1. Sub 009 contained the blood standards from the victims, blood standards from Nicole Dosso and Felice Dosso and items of clothing from the victims (#5 – #9).
2. No examinations were performed on the clothing or on the blood standards from Nicole Dosso and Felice Dosso.
3. DNA typing was performed on the remaining items. The DNA typing performed is called AmpliType PM & DQA1, the first PCR based forensic DNA typing system. The results are:
  - Item #1: Glove = no interpretable results
  - Item #23: Bloodstain from marker #1 = DNA match to George Patisso
  - Item #24A: Cigarette butt = no interpretable results
  - Item #24B: Cigarette butt = DNA profile was developed, but no match to any of the victims

Trial transcript from Sept. 2006:

Ted Yeshion described the results in his testimony. He removed cuttings from 3 areas of the plastic glove and then combined them before testing them. He was not able to get interpretable results, however he testified that additional testing using STR DNA analysis possibly could give a DNA profile for comparison purposes.

October 14, 2012

I spoke with Marcia Silvers and told her that it would be possible to obtain DNA profiles from additional testing on the glove and on the cigarette butts using STR DNA testing which is more sensitive than the testing done in 1998. This STR DNA testing is more likely to produce data which can then be compared to the victims and any defendants in this case. The glove and the cigarette butts do contain skin cells, based on the results of the DNA testing done by Ted Yeshion in 1998. This testing was available in the Tampa Crime Lab in 2002, prior to the trial in 2006.

October 25, 2012

I reviewed an affidavit requesting the additional testing for the STR DNA, had it notarized and returned it to Marcia Silvers.

May 17, 2013

I received an STR DNA report produced by Robyn Ragsdale on April 17, 2013. The report contained the results of the STR DNA testing on samples from the glove. DNA comparisons were made to the DNA profiles from the victims. There was no standard from Nelson Serrano; however, a buccal standard was requested.

July 25 and 26, 2013

I received an STR DNA report produced by Robyn Ragsdale on June 28, 2013. The report is a summary of the results of the STR testing.

I have reviewed the FDLE Laboratory reports dated April 17, 2013 and June 28, 2013 written by Robyn Ragsdale, Senior Crime Laboratory Analyst in the Biology Unit at the Tampa Bay Regional Operations Center. These reports summarize the STR DNA testing performed on cuttings (samples) taken from a plastic glove found at the crime scene and some DNA extracts produced by Theodore Yeshion in 1998.

1. The report dated April 17, 2013 written by Robyn Ragsdale describes the data she obtained from samples she used for STR DNA analysis. One of these samples (#171-A) produced a mixed DNA profile from at least 3 individuals. This mixture contained one partial "major" profile and 2 possible "minor" contributors. A major profile means that one of the individuals leaving DNA on this glove left more DNA than the other two individuals; therefore allowing the DNA analyst to see a clear profile pattern. A "partial" profile is one that does not give results at all the possible STR DNA types; however, there is enough to be able to make comparisons with the data. This partial major profile can be used to determine who may have left some of the DNA on the sample and who can be eliminated as a possible donor to the major profile.
2. Sample #171-A has a major profile that matches George Patisso. This means that Mr. Patisso's DNA is on the glove.

October 5 to 7, 2013

I received the bench notes from the FDLE laboratory. I reviewed the notes from Oct. 5 to Oct 7<sup>th</sup>, 2013. There were complete files from Theodore Yeshion (1997 and 1998) with 5 reports. The notes indicated that there was no visible blood on the plastic glove from the crime scene. This result indicates that the DNA removed from the gloves is from skin cells present on the glove.

There was a complete file containing examinations performed by Senior Crime Laboratory Analyst Robyn Ragsdale from the FDLE Tampa laboratory. She produced 2 reports; April 17, 2013 and June 28, 2013. The samples from the plastic gloves were obtained by swabbing separate areas using 2 swabs per area.

- a. #171-A: Swabbing of the fingers of the glove from side A (outside of glove)
- b. #171-B: Swabbing of the hand area of the glove from side A (outside of glove)
- c. #171-C: Swabbing of the fingers of the glove from side B (inside of the glove, fingerprint powder)
- d. #171-D: Swabbing of the hand area of the glove from side B (inside of the glove, fingerprint powder)
- e. #171-E: Dry swab used to swab the entire side B (1 dry swab)

The swabbings from #171-C, -D, -E were combined into one sample for STR DNA amplification and analysis.

I was able to examine the electropherograms produced during the STR DNA testing of the plastic glove found at the crime scene. The results are as follows:

#171-A: Swabbing of the fingers from the outside of the glove: This sample produced a mixed DNA profile for at least 3 individuals. There is at least one male donor to this profile. A partial major profile from one contributor can be determined. This profile matches the DNA profile of George Patisso, one of the victims. The remaining minor alleles cannot be attributed to a specific individual; however, there are foreign alleles present that did not come from any of the victims or from Nelson Serrano. This means that these individuals are excluded as being the donors of these alleles. The foreign alleles are seen at 4 loci in the mixture. The loci are D8S1179 (allele 8), CSF1PO (allele 13), D13S317 (allele 10) and D18S51 (allele 18). This data can be used for exclusionary purposes when compared to additional STR DNA profiles.

#171-B: Swabbing of the hand area on the outside of the glove: This sample produced a mixed DNA profile for at least 3 individuals. There is at least one male donor to this profile. There is no major profile seen in this mixture. The alleles cannot be attributed to a specific individual; however, there are foreign alleles present that did not come from any of the victims or from Nelson Serrano. This means that these individuals are excluded as being the donors of these alleles. The foreign alleles are seen at 3 loci in the mixture. The loci are D8S1179 (allele 8 and allele 15), CSF1PO (allele 13), and D13S317 (allele 10). This data can be used for exclusionary purposes when compared to additional STR DNA profiles.

Note: The foreign alleles seen in these 2 samples are the same on both the samples; with the exception of the D8S1179 (allele 15) on the hand area. This indicates that these foreign alleles are not from random drop-in, but are from an unknown individual.

#171-C, -D, -E: Combined sample from inside the glove: This sample produced a partial profile which is a mixture of 2 to 3 individuals, at least one of which is a male. The data from this sample is insufficient for comparison purposes. In my opinion the data cannot be used to include or exclude any individual.

**EXHIBIT 4**

# FDLE

Florida Department of  
Law Enforcement

Gerald M. Bailey  
Commissioner

Tampa Bay Regional Operations Center  
4211 North Lois Avenue  
Tampa, Florida 33614  
1-800-226-1140  
www.fdle.state.fl.us

Rick Scott, Governor  
Pam Bondi, Attorney General  
Jeff Atwater, Chief Financial Officer  
Adam Putnam, Commissioner of Agriculture

## LABORATORY REPORT

June 28, 2013

**TO:** Chief Joseph Hall  
Bartow Police Department  
450 North Broadway Avenue  
Bartow, FL 33830-0000

**FDLE NUMBER:** 000097308376  
**SUBMISSION:** 38, 41 and 42  
**AGENCY NUMBER:** 971216564

**ATTN:** Stacey Perry

**VICTIM(S):** DIANE PATISSO  
FRANK DOSSO  
GEORGE GONSALVES  
GEORGE PATISSO

**SUBJECT(S):** NELSON SERRANO

**OFFENSE(S):** Death Investigation  
Polk County  
12/3/1997

SUBPOENAS PERTAINING TO THIS CASE  
SHOULD REFER TO THE FDLE NUMBER.

*R. Ragsdale*  
Robyn Ragsdale  
Senior Crime Laboratory Analyst  
Biology Section

### REFERENCE:

This report references evidence submitted to the Florida Department of Law Enforcement on February 21, 2013 by S. Perry, on May 13, 2013 by S. Perry and on June 17, 2013 by S. Perry. This report may contain conclusions, opinions, and/or interpretations made by the author. This report is cross-referenced to the Florida Department of Law Enforcement report dated February 17, 1998 issued by Theodore Yeshion and to the report dated April 17, 2013 issued by Robyn Ragsdale.

### EVIDENCE:

FDLE Item#	Agency Exhibit#	Description
135	20	lab cuttings from scene glove and subway glove from FBI (for apparent microanalysis/composition)
139	209	PCR extracts from glove (containing DNA cuttings)
140	300	buccal swabs from Nelson Serrano

### RESULTS:

The lab cuttings from scene glove and subway glove from FBI (for apparent microanalysis/composition). (Exhibit: 20) were not suitable for STR DNA analysis.

STR DNA analysis was performed on samples from the PCR extracts from glove (containing DNA cuttings)



FDLE NUMBER: 000097308376 Submissions: 38, 41 and 42

UR

(Exhibit 209) and the buccal-swabs from Nelson Serrano (Exhibit 300) utilizing the AmpF/STR Identifier Plus PCR Amplification Kit.

Due to the limited nature of the DNA results obtained from the PCR extracts from glove (containing DNA cuttings) (Exhibit 209), this data is not interpretable.

A complete DNA profile was obtained from the buccal swabs from Nelson Serrano (Exhibit 300).

No determinations can be made regarding the possible contribution of Nelson Serrano (Exhibit 300) to the mixed DNA profiles obtained from the plastic glove from scene (Exhibit 171, samples A, B and C-E).

**REMARKS:**

The information obtained from buccal swabs from Nelson Serrano (Exhibit 300) did not meet the criteria needed to be entered into CODIS.

The submitted evidence is available for retrieval or return at the earliest opportunity. This evidence includes DNA extracts. It is recommended that all DNA extracts be stored frozen.

Abbreviations that may appear in this report are: CODIS *Combined DNA Index System*; DNA *deoxyribonucleic acid*; PCR *Polymerase Chain Reaction*; STR *short tandem repeat*; Y-STR *male specific short tandem repeat*; FBI *Federal Bureau of Investigation*; and JFS *Journal of Forensic Sciences*.

Questions regarding this report should be addressed to: robynragdale@fdle.state.fl.us.

**EXHIBIT 5**

**FLORIDA DEPARTMENT OF LAW ENFORCEMENT  
INVESTIGATIVE REPORT**

This report is the result of investigative activity into the December 3, 1997 quadruple workplace homicide in Bartow, Florida.

On December 5, 1997, Polk County State Attorney Investigator Chuck Zoeller contacted Special Agent (SA) Wayne Porter requesting profile assistance regarding the aforementioned investigation. Service would be provided upon SA Porter's return from annual leave in Detroit on December 6, 1997. Violent Crime Squad Supervisor Richard Pyles was aware of the request and recommended the Florida Department of Law Enforcement's (FDLE) crime scene video of the mass killing be reviewed prior to responding.

ON December 6, 1997, at approximately 1:30PM, SA Porter arrived back into the Tampa Bay area and immediately reviewed the video previously mentioned and available media articles. SA Tommy Ray advised SA Porter that he had recently been assigned to assist Bartow Police with any requested resources. A briefing with SA Ray and investigators had been scheduled for 3:30PM at the Bartow Police Department.

Upon arrival, SA Porter was provided all available information to date. Several crime scene Polaroid photos were presented for examination, along with a trauma chart denoting the gunshot and laceration injuries sustained by the four victims. Following the briefing case detective, Steve Parker, took SAs Ray and Porter to the crime scene located at 1500 and 1520 Centennial Road in Bartow. These addresses belong to ERIE MANUFACTURING, INC. and GARMENT CONVEYOR SYSTEMS, INC., respectively. A walk-through was provided into the secured scene.

The following were observations SA Porter derived from known information:

The shootings happened sometime between 5:30PM and 7:30PM at the above named family-owned business which is located in an industrial park on County Road 555, about one-half mile south of State Road 60 in Bartow. Killed were GEORGE E. GONSALVES, age 68; FRANK DOSSO, age 35; GEORGE PATISSO, age 28; DIANE PATISSO, age 26, all of Winter Haven, Florida. GONSALVES was the co-owner of the business. DOSSO was the son of another co-owner, FELICE DOSSO. The third co-owner is NELSON SERRANO. There are approximately twenty-five employees.

Office:	Tampa	Author:	Review
Date(s) of Activity:	12/05/97	Wayne Porter	Author <u>WJP</u>
Date Dictated:	12/11/97		Case Agt <u>SPB</u>
Date Word Processed:	12/15/97		SAS <u>SPB</u>
Word Processed By:	md		
Case Number:	LA-01-0005	Serial#:	2
		Document:	1A N

**THIS REPORT IS INTENDED ONLY FOR THE USE OF THE AGENCY TO WHICH IT WAS DISSEMINATED AND MAY CONTAIN INFORMATION THAT IS EITHER PRIVILEGED OR CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. ITS CONTENTS ARE NOT TO BE DISTRIBUTED OUTSIDE YOUR AGENCY.**

NS0071794



FLORIDA DEPARTMENT OF LAW ENFORCEMENT  
INVESTIGATIVE REPORT

DIANE PATISSO, an assistant state attorney, who handled misdemeanor cases, had gone to the business to pick up her husband, GEORGE PATISSO.

At least two firearms were utilized in the homicides firing a total of twelve shots. Spent casings suggest the offender(s) used a .22 caliber automatic and a .32/ .380 automatic. The only spent casing not from a .22 cal was located near the female victim in front of the business. Scene suggest event was planned evidenced by the use of gloves, one of which was found underneath the body of female victim, DIANE PATISSO. Only items thus far believed to be missing was a business ledger. This establishment is not known for keeping ~~cash~~ on-site; however, it was noted that some electronic valuables were throughout the offices and were not taken. The three male victims were killed away from the business entrance in a small two desk office. No evidence of struggle was noted within the office, however, a defense wound to FRANK DOSSO was noted in medical examiner documentation.

Investigative strategy was discussed along with lead prioritization.

Efforts are underway to have crime scene photos developed and ballistic examination initiated prior to SA Porter's departure on December 8, 1997, for the Federal Bureau of Investigation's (FBI) Behavioral Science Unit in Quantico, VA. The purpose of this consultation is to specifically address issues of multiple offenders, staging and personality assessments.

Completed VICAP forms were turned over to the VICAP Section at Quantico. A duplicate report will also be made under case TM 58-0003 for purpose of capturing profiling statistics.

Case Number: LA-01-0005	Serial#: 2	Documt-1A: N
-------------------------	------------	--------------

Page 2

This confidential document is the property of FDLE.  
Its contents are not to be distributed outside of your agency.

NS0071795

297

NS0105052

FLORIDA DEPARTMENT OF ENFORCEMENT  
INVESTIGATIVE REPORT

SUBJECT DATA

PERSONS:

GONSALVES, GEORGE E. AIRS #/ 606945  
W/M DOB/ 03/12/28  
REM/ HOMICIDE VICTIM

PATISSO, DIANE AIRS #/ 606949  
W/F DOB/ 05/11/69  
HT/ 508 WT/ 135  
REM/ HOMICIDE VICTIM

PATISSO, GEORGE AIRS #/ 606947  
W/M DOB/ 12/06/70  
REM/ HOMICIDE VICTIM

DOSSO, FRANK AIRS #/ 606948  
W/M DOB/ 07/25/62  
HT/ 509 WT/ 240  
REM/ HOMICIDE VICTIM

BUSINESS:

ERIE MANUFACTURING, INC. AIRS #/ 608274  
LKA/ 1500 CENTENNIAL ROAD  
BARTOW, FL

GARMENT CONVEYOR SYSTEMS, INC. AIRS #/ 608565  
LKA/ 1520 CENTENNIAL ROAD  
BARTOW, FL

Case Number: LA-01-0005 Serial#: 2 Documt-1A: N

Page 3

This confidential document is the property of FDLE.  
Its contents are not to be distributed outside of your agency.

NS0071796

**EXHIBIT 6**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL  
CIRCUIT OF FLORIDA, IN AND FOR POLK COUNTY

**COPY**

STATE OF FLORIDA,  
Plaintiff,  
vs.  
NELSON SERRANO,  
Defendant.

CASE NO.: CF01-03262-A-XX

DEPOSITION OF TOMMY LEE RAY

FOR THE PLAINTIFF: JOHN K. AGUERO, Esquire  
PAUL R. WALLACE, Esquire  
Assistant State Attorney  
Post Office Box 9000-SA  
Bartow, Florida 33831-9000

FOR THE DEFENDANT: J. CHENEY MASON, Esquire  
390 N. Orange Avenue, Suite 2100  
Orlando, Florida 32801

ROBERT NORGARD, Esquire  
Post Office Box 811  
Bartow, Florida 33831

DATE: JUNE 17, 2004  
Commencing at 1:40 p.m.

REPORTED BY: TAMMY KELLEY, RPR  
Registered Professional Reporter  
Notary Public

COKER COURT REPORTING, INC.  
Post Office Box 803  
Bartow, Florida 33831-0803  
(863) 533-1170

NS0044878

Filed Polk County Clerk of Court 2013-01-15 15:37

656

1           A     My opinion is that Nelson had already killed  
2 all the men in the business, you know, Frank and George  
3 and George. Diane walked in while he was up removing a  
4 gun he probably left in that ceiling tile, and that gun  
5 was probably a 32. He chased her down, shot her in the  
6 doorway there, she's trying to leave, with the 32. To  
7 make sure he had taken care of business, as he's leaving,  
8 using the same gun that he had shot the three guys with,  
9 he comes back, props her up, and shoots her a second time  
10 in the back of the head. That's my opinion.

11           Q     With what?

12           A     With the 22.

13           Q     So do the forensics establish that all of the  
14 victims were shot with a 22?

15           A     Yes, sir, the same gun.

16           Q     And in addition to that, were any of them  
17 also shot with a 32?

18           A     Only Diane.

19           Q     Okay. Would I be correct in assuming that  
20 expended projectiles had been recovered from the  
21 corpses of these victims?

22           A     Yes, sir.

23           Q     Were they usable for ballistic comparisons?

24           A     Yes, sir, best I recall.

25           Q     And, likewise, from the different areas

COKER COURT REPORTING, INC.  
Post Office Box 803  
Bartow, Florida 33831-0803  
(863)533-1170

NS0044901

Filed Polk County Clerk of Court 2013-01-15 15:37

657

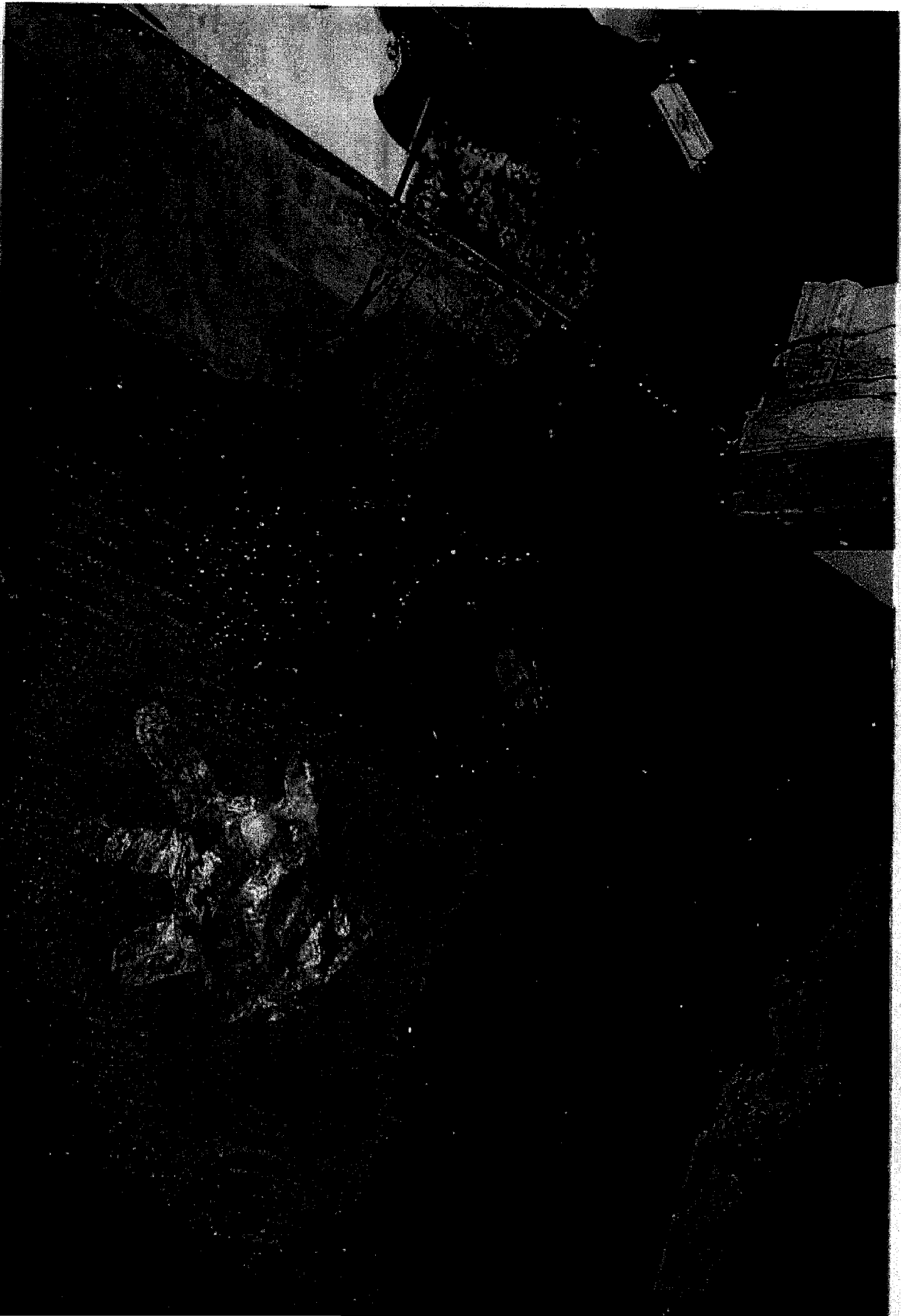
NS0105412

**EXHIBIT 7**

Exhibit 7 which is a CD of an excerpt from "The Investigators" narrated by Agent Ray will be provided under separate cover.

**EXHIBIT 8**





NS0064913