


DNA FILE

2001 - 2003

Law Offices of  
**WILLIAM TODD HUGHEY**  
ATTORNEY AND COUNSELOR AT LAW  
125 Centre Street  
(Across from Bank America-Oak Cliff)  
Dallas, TX 75208  
Ph: (214) 942-9800  
Fax: (214) 942-5600

Copy sent  
2/23/01  


February 16, 2001

FILED  
CHARLES BACARISSE  
DISTRICT CLERK  
HARRIS COUNTY, TEXAS  
01 FEB 22 PM 12: 14

BY MAIL PROCEEDING FORWARDED

**Via Certified Mail No. 7099 3220 0000 4157 6034**  
Mr. Charles Bacarisse  
Harris County District Clerk's Office  
1201 Franklin, 7th Floor  
Houston, Texas 77002

Re: Cause No. 526,673  
*State of Texas vs. Shirley Ann Southerland*

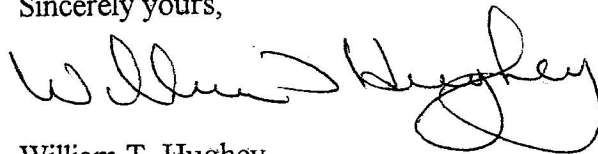
Dear Mr. Bacarisse:

With reference to the above-styled and -numbered cause, enclosed please find the original and one copy of *Defendant's Motion for New Trial/Leave for DNA Testing (Newly Discovered/Newly-Available Evidence)*. Please file the original amongst the papers of this cause and return a conformed copy in the enclosed self-addressed envelope.

By copy of this letter, same is hereby forwarded to opposing counsel.

Thank you for your assistance and should you have any questions, please do not hesitate to call.

Sincerely yours,



William T. Hughey

WTH:lmaf  
enc.

cc: Mr. Charles A. Rosenthal, Jr.  
Harris County D.A.'s Office  
1201 Franklin, Suite 600  
Houston, TX 77002  
**Via Certified Mail No. 7099 3220 0000 4157 6027**

14/2/992

CAUSE NO. 526,673

STATE OF TEXAS

§  
§  
§  
§  
§

IN THE 180TH JUDICIAL

VS.

DISTRICT COURT OF

SHIRLEY ANN SOUTHERLAND

HARRIS COUNTY, TX

FILED IN DISTRICT COURT OF HARRIS COUNTY TEXAS  
01 FEB 22 1999  
BY MAIL PROCESSING CENTER

**DEFENDANT'S MOTION FOR NEW TRIAL/LEAVE FOR DNA TESTING**  
**(NEWLY-DISCOVERED/NEWLY-AVAILABLE EVIDENCE)**

Now Comes, Defendant **SHIRLEY ANN SOUTHERLAND** through Counsel William T. Hughey and submits the above entitled Motion pursuant to Texas Code of Criminal Procedure Art. 40.03 Et al, as constituted and then in effect for offenses committed before September 1, 1993.<sup>1</sup> In keeping with same, outlined below is the "Procedural Background" of case and the basis for "Defendant's Motion for New Trial/Leave for DNA Testing" based on Newly-discovered/Newly-available evidence."<sup>2</sup>

**Procedural Background**

1. **SHIRLEY ANN SOUTHERLAND** was indicted for the Felony Offense of Murder alleged

---

<sup>1</sup>Effective Sept. 1, 1993 Arts 40.01 to 40.11 under Chapter 40 entitled New Trials was Repealed by the Texas Rules of Appellate Procedure in keeping with the same the following caveat was provided: SB1067 Sec. 11.04, Acts of the 73rd Legislature, Regular Session, 1993, provides: "(a) A change in law made by this article applies only to a new trial for an offense committed on or after the effective date of this article. For purposes of this section, an offense is committed before the effective date if any element of the offense occurs before the effective date.

(b) A new trial for an offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

<sup>2</sup>Etter v. State 629 S.W.2d 839 (Court of appeals of Texas, Houston (14 Dist.) 1982) at 841 "The Court of Criminal Appeals has long recognized that newly-available evidence is the same as newly-discovered evidence."

to have occurred on February 19, 1989.

2. **SHIRLEY SOUTHERLAND** entered a Plea of Not Guilty and proceeded to a Jury Trial on the merits on March 15, 1990 with Trial Counsel Ken Goode.
3. **SHIRLEY SOUTHERLAND** was found guilty on March 16, 1990 and sentenced by the Jury to Life Confinement in the Texas Department of corrections and assessed a fine of \$10,000.
4. **SHIRLEY SOUTHERLAND** gave timely Notice of Appeal to the 14th Court of Appeals wherein the Jury Verdict as to Guilt/Punishment was affirmed on February 28, 1991.
5. **SHIRLEY SOUTHERLAND** subsequent in 1994 filed an Application for Writ of Habeas Corpus alleging specifically her trial Counsel was ineffective for failing to utilize a statement by Judy Frazier. Ms. Frazier gave a statement as to being a witness to a murder and possessed a blood stained windbreaker. Knowledge not known to Defendant at the time of Trial.

## **BASIS FOR NEW TRIAL**

### **Part I**

1. It is the contention of **SHIRLEY ANN SOUTHERLAND** that there currently exist evidence to wit: a blood stained windbreaker worn by Judy Frazier, which constitutes "Newly-discovered/Newly-available evidence" when viewed and developed in the context as outlined in the subsequent sections.
2. The applicable factors for determining whether to grant a new Trial on Newly Discovered

Evidence under Art. 40.03 as applied in the case at hand prior to September 1, 1993 were

- 1). The newly discovered evidence was unknown or unavailable to the Movant at the time of trial;
  - 2). The Movant's failure to discover or obtain the evidence was not due to a lack of diligence;
  - 3). The new evidence is admissible and is not merely cumulative, corroborative, collateral, or impeaching; and
  - 4). The new evidence is probably true and will probably bring about a different result on another trial.<sup>3</sup>
3. Counsel would tendered to the Court that as to item (1) that the potential evidence that is sought to be tendered in this matter has not been fully developed beyond a rudimentary Blood Typing but not subjected to DNA Testing. In keeping with same, Counsel incorporates his Affidavit attached hereto concerning his investigation as to the case at hand and the affidavit of Ben Hale as to his readiness to fund the DNA testing by Gene Screen.. In connection with same, Counsel would request of the Court a bifurcating of the pending Motion with the issuance of appropriate Orders by the Honorable Court to obtain portions of the windbreak and any Autopsy related items suitable for DNA Testing including clothing of the deceased still maintained and in the alternative orders to obtain other suitable testable items beyond those requested if indeed the items sought for comparison to the windbreaker do not exist.

## Part II

Subject to a positive finding under the request in Part I, the Defendant would tender that:

---

<sup>3</sup>Eddlemon v. State, 591 S.W.2d 847 (Tex. Crim.App.1979) at page 849.

1. The Newly-Discovered Evidence was unknown or unavailable to **SHIRLEY SOUTHERLAND** at the time of Trial because DNA was never performed on the windbreaker, a point that is arguably attributed to the infant and novel nature of the process in 1990 and the fact that it was in its early stages of use in criminal matters nationally and in Texas as reflected in a summation on DNA outlined in Roberson v. State, 16 S.W. 3d 156 (Tex.App. -Austin 2000).<sup>4</sup>
2. **SHIRLEY SOUTHERLAND**'s failure to discover or obtain the evidence was not due to a lack of diligence as outlined in the attached Affidavit of Shirley SOUTHERLAND which is incorporated herein by reference.
3. Subject to a positive finding in Part I of this Motion, counsel for **SHIRLEY SOUTHERLAND** tenders to the Court the DNA findings are admissible under

---

<sup>4</sup>Roberson at page 165 states DNA identification is generally admissible in most American jurisdictions. See Paul C. Giannelli, *The DNA Story: An Alternative View*, 88 J.Crim. L. & Criminology 380, 380-81 (1997) (reviewing Harlan Levy, *An the Blood Cried Out* (1996)); Thomas J. Fleming, *Annotation: Admissibility of DNA Evidence*, 84 A.L.R. 4th 313, 335 (1991). The first reported case in which DNA evidence was held admissible was *Andrews v. State*, 533 So. 2d (Fla. Dist. Ct. App. 1988). "No other scientific technique has gained such widespread acceptance so quickly"; and "no other technique has been as potentially valuable to the criminal justice system." Giannelli, 88 J.Crim. L. & Criminology at 381-82. DNA evidence has been called the "single greatest advance in the 'search for the truth'...since the advent of cross-examination." *People v. Wesley*, 533 N.Y.S.2d 643, 644 (N.Y. Sup. Ct. 1988), *aff'd*, 589 N.Y.S.2d 197 (N.Y. App. Div.1992).

DNA evidence has certainly been held admissible in Texas. See *Kelly v. State*, 824 S.W.2d 568, 573 (Tex. Crim. App. 1992). Even prior to *Kelly*, DNA evidence was found admissible. See *Mandujano v. State*, 799 S.W. 2d 318, 321-22 (Tex. App.-Houston [1st Dist.] 1990, no pet.); *Glover v. State*, 787 S.W.2d 544, 547 (Tex. App.-Dallas 1990), *aff'd*, 825 S.W.2d 127, 128 (Tex. Crim.App. 1992) (citing *Kelly*).

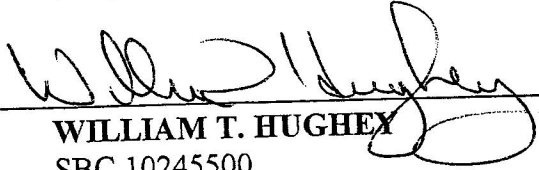
current Texas Caselaw pursuant to the earlier Roberson v. State, referenced under Part I, item 1 herein. Additionally, the Exculpatory Statements of Judy Frazier would also be admissible.

4. **SHIRLEY SOUTHERLAND** tenders that the incorporation of the evidence sought under item 3 will probably bring about a different result in retrial BASED on the DNA result and Frazier's testimony.

**WHEREFORE PREMISE CONSIDERED, SHIRLEY SOUTHERLAND**, Defendant through Counsel request that upon hearing that the Court bifurcate the matter in the manner requested and afford Defendant the opportunity to (1) obtain DNA Testing of windbreaker and other comparable items (2) grant Motion for New Trial after incorporation of positive DNA Test result and a fully hearing on the merits of the Defendant's Motion for New Trial as contained in Part II of Defendant's Motion for New Trial.

Respectfully submitted,  
LAW OFFICE OF WILLIAM T. HUGHEY  
125 Centre Street  
Dallas, TX 75208  
Phone: (214) 942-9800  
Fax: (214) 942-5600

By: \_\_\_\_\_

  
**WILLIAM T. HUGHEY**  
SBC 10245500

**CERTIFICATE OF SERVICE**

This is to certify that I have forwarded a true and correct copy of the foregoing Motion via U.S. Mail Certified, Return Receipt Requested to the Harris County District Attorney's Office, Houston, TX on this 16<sup>th</sup> day of February, 2001.

  
**WILLIAM T. HUGHEY**



**AFFIDAVIT**

STATE OF TEXAS           §  
                                      §§  
COUNTY OF \_\_\_\_\_ §

My name is **SHIRLEY SOUTHERLAND** and I am the Defendant in the Motion for New Trial, in the 1989 case styled the State of Texas v. Shirley Southerland, a Murder case in which I was found guilty by a Jury on March 16, 1990 and sentenced to Life Confinement in the Texas Department of correction. As to all points in time in this case I have maintained that I was not Guilty of the alleged offense. In keeping with this position, I Appealed the Jury's verdict in this matter and subsequently filed a Writ of Habeas Corpus questioning the actions of my Trial Counsel in defending me in the original trial of my case.

As to the latter point, I raised a question in 1994 concerning a decision made by my Trial Attorney not to use testimony for a witness Judy Frazier who apparently had stated that she was a witness to the murder I was convicted of and who had on her person at the time of her arrest a "Blood Stained" windbreaker. As to the windbreaker, the item has never been tested for DNA purposes to ascertain if the blood was indeed that of the victim in my alleged Murder case. Concerning DNA Testing, I would represent to the Court that at the time of my trial and for an extended period thereafter, I did not have knowledge of the concept of DNA Testing nor the power of such testing as an evidentiary tool in criminal matter. As my awareness of DNA matured, I was not financially able to independently pursue the matter based on my indigent status as a prisoner nor did I have family members with the financial means to undertake action in this area. I, however, eventually was able to secure the assistance of Mr. D. Benjamin Hale to finance and explore the issue

of DNA. My position at all times have been that I am not guilty and that with the means that were available to me, I have diligently worked to explore and develop all avenues that will support my innocence in this matter. In closing, my Motion for New Trial is made for the purpose to ascertain an order from the Honorable Court for DNA Testing of the windbreaker of Judy Frazier, the cost of the testing to be borne by Mr. Ben Hale who has agreed to pay for the test. It is my closing position that the evidence raised by my Motion for New Trial was not tested for DNA nor was the delay in acquiring said testing due to a lack of diligence by myself. Additionally, the evidence is admissible and is not merely cumulative, corroborative, collateral or impeaching and it would probably bring about a difference result in a New Trial.

Further, Affiant sayeth not.

*Shirley Sutherland*  
SHIRLEY SUTHERLAND

SUBSCRIBED AND SWORN TO before me on this 23 day of January, 2001 to certify which witness my seal and hand of office.

*Asenat Washington*  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS



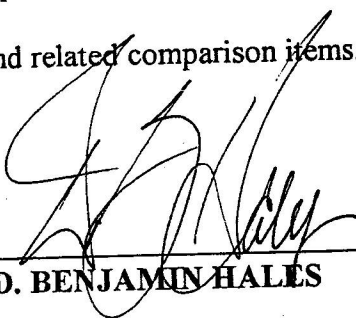
PRINTED NAME OF NOTARY  
MY COMMISSION EXPIRES: \_\_\_\_\_

**AFFIDAVIT**

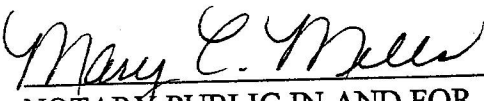
STATE OF TEXAS           §  
                                          §§  
COUNTY OF HARRIS       §

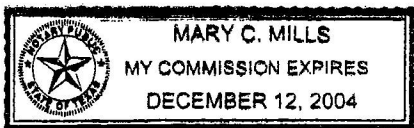
My name is D. BENJAMIN HALES and I am a friend of Shirley Sutherland. I have attempted to assist Shirley in efforts to establish her innocence in the murder case she is currently incarcerated on. In keeping with this objective, I will pay all necessary expenses associated with the DNA Testing of the windbreaker of Judy Frazier and any related samples for comparison. I have already contacted Mrs. Judy Floyd who is employed by Genescreen, a DNA Testing facility in Dallas, Texas who has agreed to perform all necessary testing upon the Court's entry of an order for testing of the "Blood Stained" windbreaker of Judy Frazier and related comparison items.

Further, Affiant sayeth not.

  
\_\_\_\_\_  
D. BENJAMIN HALES

SUBSCRIBED AND SWORN TO before me on this 23<sup>rd</sup> day of January, 2001, to certify which witness my hand and seal of office.

  
\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS



MARY C. MILLS  
\_\_\_\_\_  
PRINTED NAME OF NOTARY  
MY COMMISSION EXPIRES: 12/12/04

GeneScreen, Inc.  
2600 Stemmons, STE 133  
Dallas, Texas 75207

Phone 214-631-8152  
Fax 214-634-3322

## Judith I. Floyd

### Education

University of Texas at Arlington

University of Texas at Dallas

Texas Tech College

Bachelors Degree of Science in Molecular Biology

Overall GPA 3.8, Major Study GPA 3.9

Honors: Natural Science and Mathematics Dean's List

Eligible for graduation as magna cum laude

### Professional experience

Forensic Laboratory Supervisor, Forensic Department.

GeneScreen, Inc., Dallas, Texas (9/91-Present)

Associate Scientist, Forensic Department.

GeneScreen, Inc., Dallas, Texas (9/89-9/91)

- RFLP analysis
- DQA1, PM, DQ Beta analysis
- STR analysis
- AMPFLP analysis
- Forensic report writing
- More than 170 appearances as expert witness
- Data basing of felon specimens

Laboratory Technician, Molecular Biology

Genetics Department, Wadley Research Institute, Dallas, Texas (8/86-9/89)

- DNA sequencing
- Protein assays
- Inductions (Yeast and E. coli)
- HPLC
- Ligations
- Transformations (Yeast and E. coli)
- Tissue culture
- Competent Cell Preps
- DNA synthesis
- Oligonucleotide purification
- Plasmid preps
- Plasmid construction

Laboratory Technician, Molecular Biology, Department of Biology  
University of Texas at Dallas, Richardson, Texas (9/85-8/86)

- Plasmid preps
- Isolation of various cellular components
- Ras gene research

**Additional  
professional activities**

**Guest Speaker/Instructor**

American Academy of Forensic Science  
Southwestern Working Group on DNA Analysis Methods  
Vines High School  
Trinity Academy  
Tri-City Police Academy  
Carrollton Police Department  
Waco Police Department  
University of Texas at Austin  
Armstrong Middle School  
Texas District and County Attorney's Association  
Regional Offices Jack in the Box Corporation  
University of Mogi das Cruzes, SP Brazil, Center for the Investigation of  
Sexual Crimes

**Additional Training**

Forensic RFLP training course. Lifecodes Corporation.

A 2-week lab and lecture course on RFLP analysis of forensic samples.  
Valhalla, New York. October, 1989.

HLA DQ Alpha Forensic DNA Amplification & Typing Workshop.

Cetus Corporation. A one week lab and lecture course on DQ Alpha analysis  
Forensic Samples. Richmond, California. April 1991.

Supplemental Amplitype Course. Cetus Corporation. June 7-11, 1992.

DNA Typing with STR's Workshop. Promega Corporation. Madison, Wisconsin  
February 27-28, 1995.

North Carolina Summer Institute of Statistical Genetics, 1997.

SWGAM/DPS Statistical Workshop, 1999.

A Brief History and Corporate Overview of GeneScreen, Inc.

Founded in 1987, GeneScreen, Inc., a wholly owned subsidiary of Orchid Biosciences, Inc., and its 130 employees provide reference laboratory services specializing in the most informative state-of-the-art DNA identity testing available anywhere. GeneScreen has typed and reported results on well over a million individual specimens since its founding. The company provides national coverage through its facilities located in Dallas, Texas, Dayton, Ohio, and Sacramento, California and has conducted over 500,000 DNA Identity typings in the last two years alone. GeneScreen's forensic laboratory is located at the corporate headquarters in Dallas and serves clients nationwide. The Dallas facility encompasses approximately 19,000 square feet and is expanding as new assays are developed and utilized. Since its inception in 1989, the Forensics Unit has provided testing in over 3000 criminal cases, as well as providing DNA database services for approximately 16,000 samples for the States of Arkansas, Colorado, Kansas, South Dakota and Wisconsin. To date, GeneScreen has completed CODIS projects for three states. GeneScreen is currently conducting offender profiling for two states with others pending. GeneScreen is also involved in analyzing an estimated 15,000 no-suspect sexual assault cases for the New York City Police Department Crime Laboratory.

With well over 1200 customers nationwide, GeneScreen has become a leader in DNA testing and the implementation of new technologies. Our laboratory offers full-service DNA testing to a diverse client group within the forensic community. GeneScreen offers Perkin-Elmer AmpF/STR Profiler and Cofiler and the Promega PowerPlex 1.1 and 2.1 STR typing products for both casework and database profiling. The forensic unit at GeneScreen is currently evaluating the Promega PowerPlex 16 STR

typing product for forensic case work and is involved in two national studies directed toward validation of this product for CODIS profiling and acceptance by NDIS. GeneScreen began offering mitochondrial DNA analysis in January 2000 and has a growing client base for these services. All methodologies utilized in identity testing undergo extensive validation testing and optimization to insure testing quality.

Throughout its facilities, GeneScreen has implemented rigorous measures to ensure that its laboratories meet all industry criteria and qualifications for services offered. The laboratories are inspected and accredited by the American Association of Blood Banks (AABB), and have met the requirements of the Department of Health and Human Services Clinical Laboratory Improvement Act (CLIA). The Forensics Unit participates in College of American Pathologists (CAP) and Cellmark external proficiency testing programs as recommended by the National DNA Advisory Board and the Scientific Working Group on DNA Analysis Methods (formerly TWGDAM). The Forensics Unit is accredited by the National Forensic Sciences Testing Center (NFSTC) and is presently pursuing certification by the American Society of Crime Laboratory Directors (ASCLD).

#### Organization of the Forensic Laboratories at GeneScreen

The Forensic Unit at GeneScreen is comprised of a criminal casework laboratory and a CODIS laboratory. These operations pursue different work goals and are physically separated. Each laboratory has its own staff and each is organized in a fashion similar to that seen in state-operated crime laboratories doing DNA analysis. As stated previously, all staff members undergo proficiency testing as recommended by ASCLD and are fully trained.

Staff members in the criminal casework laboratory are primarily involved in DNA analysis of criminal cases submitted by various jurisdictions across the United States. These staff members also provide expert witness services in support of cases analyzed at GeneScreen. Because GeneScreen is a private company, our testing and expert witness services are available to both the defense and prosecution. This laboratory offers STR and mitochondrial DNA analysis. Along with the Scientific Director, the supervisory staff of this laboratory have oversight for the individuals that operate the CODIS laboratory.

CODIS staff members are involved exclusively in the analysis of offender exemplars submitted by state crime laboratories for database profiling. No criminal casework is done in the CODIS laboratory. Members of the CODIS lab come to the operation after first working in one of GeneScreen's other identity testing areas. We use this process as an employee screening mechanism and as a training ground for promising technicians. There is a second intensive period of training within the forensic lab before these staff members are considered proficient to work CODIS samples. Proficiency testing is included as part of this process.

**AFFIDAVIT**

**STATE OF TEXAS**           §  
                                      §§  
**COUNTY OF DALLAS**       §

Before Me, the undersigned authority, on this day personally appeared **WILLIAM TODD HUGHEY** who being by me duly sworn on his oath deposed and said:

"My name is **WILLIAM TODD HUGHEY**. I am over 18 years of age, have never been declared of unsound mind, nor convicted of a felony or misdemeanor involving moral turpitude. I am able to otherwise make the following true statements based on my personal knowledge to wit:

I am a Licensed Attorney in the State of Texas and have been for 13 years. I was retained by Mr. D. Benjamin Hales to examine the case of Ms. Shirley Southerland. As to said investigation, I was able to ascertain that apparently, there was a statement given by Judy Frazier, an alleged witness to the murder. Said statement being of an exculpatory nature to the Defendant. The statement referenced a blood stained windbreaker which is the crux of the Motion for New Trial in this matter.

Based on my review of the file, it appears that the blood stained windbreaker was never examined by means of DNA. As a practicing Attorney, I am personally aware of the Criminal investigative merits of DNA, and its evolution during the last decade. In conjunction with this, I am aware based on a previous matter wherein I was personally involved with a DNA Issue in a Capital Murder proceeding that the entity known as Genescene has conducted DNA Testing on behalf of the Dallas County District Attorney office and that entity is capable of doing such testing in the case at hand as reflected by the overview of the entity of the resume of Judy Floyd which is attached hereto and incorporated herein by reference.



Further, Affiant sayeth not.

William T. Hughey  
WILLIAM T. HUGHEY

SUBSCRIBED AND SWORN TO BEFORE ME on this 15<sup>th</sup> day of February

to certify which witness my hand and seal of office.

Diane M. Lockman  
NOTARY PUBLIC IN AND FOR THE  
STATE OF TEXAS



DIANE M. LOCKMAN  
PRINTED NAME OF NOTARY  
MY COMMISSION EXPIRES: 11-26-2001

**WILLIAM TODD HUGHEY**

Attorney & Counselor at Law

December 11, 2001

Mr. Charles Bacarisse  
Harris County District Clerk's Office  
1201 Franklin, 7th Flr.  
Houston, Texas 77002

FILED  
CHARLES BACARISSE  
DISTRICT CLERK  
HARRIS COUNTY, TEXAS  
01 DEC 14 AM 11:51  
BY MAIL

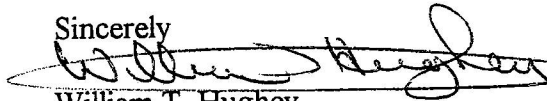
Re: Cause No: 526,673  
State of Texas vs. Shirley Ann Southerland

Dear MR. Bacarisse:

Please file the enclosed Defendant's *Chapter 64 Motion for Forensic DNA Testing*, in the above referenced case. Please return a filed marked copy of the Motion to the undersigned in the enclosed self addressed/stamped envelope.

If there are any questions please do not hesitate to call.

Sincerely



William T. Hughey

Cc: Mrs. Roe Wilson  
Asst. D.A. Harris Co.  
1201 Franklin, Suite 600  
Houston, TX 77002

**William T. Hughey, Attorney**

125 Centre Street ♦ Dallas, Texas 75208-6615 ♦ 214-942-9800 ♦ 214-942-5600 (fax)  
hughey@msn.com

526 673  
CAUSE NO. ~~526,573~~

TX  
BY MAIL

01 DEC 14 AM 11:55  
HARRIS COUNTY, TEXAS  
DISTRICT CLERK  
CHARLES BACARISS  
FILED

STATE OF TEXAS § IN THE 180TH JUDICIAL  
VS. § DISTRICT COURT OF  
SHIRLEY ANN SOUTHERLAND § HARRIS COUNTY, TX.

1/19/01


**DEFENDANT'S CHAPTER 64 MOTION FOR FORENSIC DNA TESTING**

NOW COMES, Defendant **Shirley Ann Southland** through Counsel **William T. Hughey** and files the above captioned Motion pursuant to Chapter 64 of the Texas Code of Criminal Procedure. In keeping with same the Defendant would show that:

1. Defendant meets to requirement for an Order to be entered by this Honorable Court for Forensic Testing uder Chapter 64 of the Texas Code of Criminal Procedure and
2. That subsequent to the enactment of Chapter 64 of the Texas Code of Criminal Procedure, the Defendant had previously filed a Motion on February 23, 2001, seeking DNA Testing. As to said Motion Defendant incorporates by reference herein said Motion with all attachments to be considered as part of Defendant's Chapter 64 Motion for Forensic DNA Testing.

**Wherefore** **Premise** considered Defendants pray that said Motion be set for hearing before this Honorable Court and that upon conducting said hearing; this Honorable enters all Orders necessary to effectuate a Forensic DNA Testing of the Windbreaker of Judy Frazier currently in the possession of the Harris County Sheriff Department under Case # 89-1190 (Shawnte Dewan Collins)

Respectfully submitted,  
**WILLIAM T. HUGHEY**  
125 Centre  
Dallas, Texas 75208  
Phone: (214) 942-9800  
Fax: (214) 942-5600

By:   
**WILLIAM T. HUGHEY/SBC#10245500**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing **Chapter 64 Motion for Forensic DNA Testing**, has been mailed to Assistant District Attorney Roe Wilson , Houston, Texas on this 11<sup>th</sup> day of December, 2001.

  
**WILLIAM T. HUGHEY**

Cause No. 526673

The State of Texas  
v.

Shirley Ann Satherland

a/k/a \_\_\_\_\_

In the 180<sup>th</sup> District Court of Harris, County Texas

APPLICATION FOR SUBPOENA *Quere Testum*

The defendant makes this application for issuance of subpoena to the person(s) listed below. The testimony of this / these person(s) is believed to be material to the defense in the case on trial.

Custodian of Property Records  
for Harris County Sheriff's  
Department Specifically Record  
log and on sign IN & out  
Sheet case # 89-1190  
In re: Shawnte D. Collins

Return on \_\_\_\_\_ at 8:45 a.m.

**F I L E**  
**CHARLES BACAN**  
District Clerk  
**DEC 14 2001**  
Time: 10:20  
Harris County, Tex  
De

Contact the DEFENSE attorney upon receipt using the following information:

Name: \_\_\_\_\_ LOTT J. BROOKS III \_\_\_\_\_  
Texas Bar Card #: \_\_\_\_\_ 1314 TEXAS #1710 \_\_\_\_\_  
Address: \_\_\_\_\_ HOUSTON, TEXAS 77002 \_\_\_\_\_  
Telephone #: \_\_\_\_\_ BAR 03070750 \_\_\_\_\_  
Fax #: \_\_\_\_\_ PHONE 713-223-0301 \_\_\_\_\_  
E-mail address: \_\_\_\_\_





**CONCLUSION OF LAW**

1. The Court, based on its finding that the applicant failed to meet the requirements of 64.03 (a)(2), **DENIES** the applicant's request for DNA testing in cause no. 573963.

**ORDER**

THE CLERK IS **ORDERED** to send a copy of the Court's finding of facts denying DNA testing in cause no. 526673 and the instant order to the applicant's counsel: William Todd Hughey; 125 Centre; Dallas, Tx 75208 and to the State: Roe Wilson; 1201 Franklin, Suite 600; Houston, Texas 77002.

THE CLERK IS FURTHER **ORDERED**, pursuant to TEX. CODE CRIM. PROC. art. 64.03 (e), to send a copy of the Court's finding of facts denying DNA testing in cause no. 526673 and the instant order to the Department of Public Safety; 10110 Northwest Freeway; Houston, Tx 77092-8679.

BY THE FOLLOWING SIGNATURE, THE COURT ADOPTS THE STATE'S PROPOSED FINDINGS IN CAUSE NO. 526673.

SIGNED the 19<sup>TH</sup> day of December, 2001.

---

DEBBIE STRICKLIN  
Presiding Judge  
180<sup>TH</sup> District Court





(B) that the request for the proposed DNA testing is not made to unreasonably delay the execution of sentence or the administration of justice.

**II.**

The applicant, Shirley Southerland, was indicted and convicted of the murder of Shawntee Collins. On March 16, 1990, a jury found the applicant guilty and assessed punishment at life imprisonment. During the applicant's trial, evidence was presented from several witnesses that the applicant threatened to kill the complainant on the night of the offense for sleeping with her husband (R. II - 135-41, 185)(R. III - 238). Soon after the offense, several witnesses heard the applicant admit that she killed the complainant and that she had taken out the "trash" and "got that bitch" (R. II - 147, 150, 198)(R. III - 237-8, 258).

**III.**

The applicant requests DNA testing of autopsy evidence and any blood found on the windbreaker of Judy Frazier, an unindicted person who gave the following conflicting statements to the police after she was arrested for public intoxication on the evening of the offense:

(a) that she fell over a dead body behind a building; (b) that the blood on her clothing was from an old gunshot wound; (c) that she did not know the complainant; (d) that she did know the complainant; (e) that she was with an Hispanic male when he shot the complainant and forced Frazier to dump the complainant's body in a barrel; (f) that an Hispanic male and unknown female gave her a ride; they drank beer and did drugs; the Hispanic male shot the female and forced Frazier to load the body into the car and then in some kind of can; and, (g) that she met the complainant a week before the offense and the complainant and an Hispanic male gave her a ride; they went to a house where they had group sex, did drugs, and the male shot the complainant and forced Frazier to help him put the body in a can.

F  
C  
C  
C  
C  
I  
C  
C  
H

**IV.**

According to Robert Reynolds, Harris County Medical Examiner's Office, there is no existing autopsy evidence in cause no. 526673 (lab no. 89-1190). On March 18, 2001, the records of the Harris County Sheriff's Office show the existence of a windbreaker in cause no. 526673.

Regardless of whether Judy Frazier witnessed the offense or whether she had any involvement in the offense, the presence or absence of the complainant's blood on the windbreaker would not create a reasonable probability that the applicant would not have been prosecuted or convicted if such results had been obtained through DNA testing.

Shirley Southerland, the convicted person in the above-styled case, has failed to meet the requirements of TEX. CODE CRIM. PROC. art. 64.03. THEREFORE, the State respectfully requests that the Court deny DNA testing of the windbreaker in cause no. 526673.

Service has been accomplished by hand-delivery a true and correct copy of this instrument to:

Mr. William Hughey  
Attorney at Law  
125 Centre Street  
Dallas, Texas 75208

SIGNED this 9<sup>TH</sup> day of November, 2001.

Respectfully submitted,



ROE WILSON  
Assistant District Attorney  
1201 Franklin, Ste. 600  
Houston, Texas 77002  
(713) 755-6657  
(713) 755-5809  
TBC No. 14500600

V3563 P0229



**CONCLUSION OF LAW**

1. The Court, based on its finding that the applicant failed to meet the requirements of 64.03 (a)(2), **DENIES** the applicant's request for DNA testing in cause no. 573963.

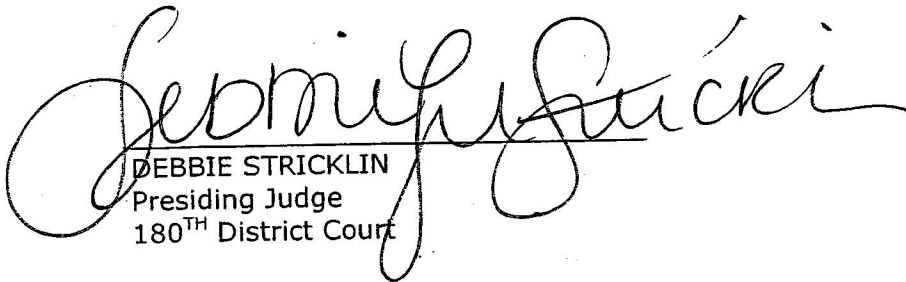
**ORDER**

THE CLERK IS **ORDERED** to send a copy of the Court's finding of facts denying DNA testing in cause no. 526673 and the instant order to the applicant's counsel: William Todd Hughey; 125 Centre; Dallas, Tx 75208 and to the State: Roe Wilson; 1201 Franklin, Suite 600; Houston, Texas 77002.

THE CLERK IS FURTHER **ORDERED**, pursuant to TEX. CODE CRIM. PROC. art. 64.03 (e), to send a copy of the Court's finding of facts denying DNA testing in cause no. 526673 and the instant order to the Department of Public Safety; 10110 Northwest Freeway; Houston, Tx 77092-8679.

BY THE FOLLOWING SIGNATURE, THE COURT ADOPTS THE STATE'S PROPOSED FINDINGS IN CAUSE NO. 526673.

SIGNED the 11<sup>th</sup> day of January, 2002.

  
DEBBIE STRICKLIN  
Presiding Judge  
180<sup>TH</sup> District Court

**RECORDER'S MEMORANDUM.**  
This instrument is of poor quality and not satisfactory for photographic recordation; and/or alterations were present at the time of filming.

19701 COCCA

**WILLIAM TODD HUGHEY**

Attorney & Counselor at Law

January 16, 2002

fill

Via Cert. Mail: 7001 0360 0001 5246 9141

Hon. Debbie Stricklin  
Judge of the 180th Judicial District Court  
1201 Franklin  
Houston, Texas 77002

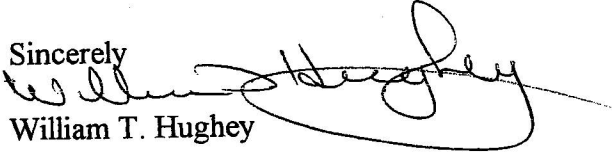
Re: Cause No: 526,673

State of Texas vs. Shirley Ann Southerland

Hon. Judge Stricklin

Please file the enclosed Defendant's *Proposed Findings of Fact and Order Granting DNA Testing*, in the above referenced case. If there are any questions or corrections please do not hesitate to have you coordinator or clerk to contact the undersigned.

Sincerely

  
William T. Hughey

Cc: Mrs. Roe Wilson  
Asst. D.A. Harris Co.  
1201 Franklin, Suite 600  
Houston, TX 77002

**William T. Hughey, Attorney**

125 Centre Street ♦ Dallas, Texas 75208-6615 ♦ 214-942-9800 ♦ 214-942-5600 (fax)  
hughey@msn.com

CAUSE NO. 526,673

STATE OF TEXAS

VS.

SHIRLEY ANN SOUTHERLAND

§  
§  
§  
§  
§

IN THE 180TH JUDICIAL

DISTRICT COURT OF

HARRIS COUNTY, TX

**DEFENDANT'S PROPOSED FINDINGS OF FACT**  
**AND ORDER GRANTING**  
**DNA TESTING**

Having considered the applicant's motion requesting DNA testing of evidence and the State's motion requesting that DNA testing be denied in the above-styled case, the Court makes the following findings of facts:

**FINDINGS OF FACT**

1. The Court finds that records of the Harris County Sheriff's Office show that , as of March 18, 2001, there is a windbreaker in cause no. 526673 that is still in the possession of the Harris County Sheriff's Office in the cause. 526673 that dates back to 1989.
2. The Court finds that the presence of the complainant's blood on Judy Frazier's windbreak in cause no. 526673 would raise a reasonable probability that the Applicant would not have convicted if exculpatory results had been obtained through DNA testing.
3. The Court finds that the proposed DNA testing is not made to unreasonably delay the execution of sentence or administration of justice.
4. The Identity was an issue to the extend that a review of the Trial Record reflects that the Applicant testified at Trial to not committing the offence.
5. The Court finds that the applicant has met the requirements of TEX. CODE CRIM. PROC. art. 64.03 (a)(1) and(2), concerning her burden of proof .

**CONCLUSION OF LAW**

1. The Court, based on its finding that the that the Applicant has met the requirements of TEX. CODE CRIM. PROC. art. 64.03 (a) (1) and (2), **GRANTS** the Applicant's request for DNA testing in cause no. 573963.

Signed this \_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_

By: \_\_\_\_\_  
DEBBIE STRICKLIN Presiding Judge  
180th District Court Harris County Texas

CAUSE NO. 526,673

STATE OF TEXAS

VS.

SHIRLEY ANN SOUTHERLAND

§  
§  
§  
§  
§

IN THE 180TH JUDICIAL

DISTRICT COURT OF

HARRIS COUNTY, TX

ORDER

**THE CLERK IS ORDERED** to send a copy of the Court's finding of facts Granting DNA testing in cause no. 526673 and the instant order to the Applicant's Counsel: William Todd Hughey; 125 Centre; Dallas, TX 75208 and to the State Counsel: Roe Wilson; 1201 Franklin, Suite 600; Houston, TX 77002

**THE CLERK IS FURTHER ORDERED**, pursuant to TEX. CODE CRIM. PROC. art. 64.03 (e), to send a copy of the Court's finding of facts Granting DNA testing in cause no. 526673 and the instant order to the Department of Public Safety; 10110 Northwest Freeway; Houston, TX 77092-8679 ,

**IT IS FURTHER ORDERED**, that the Harris County Sheriff's Office within \_\_\_ days of the signing of this order turnover to the Department of Public Safety the Windbreak in cause no. 526673 for DNA testing.

**IT IS FURTHER ORDERED** , that the Department of Public Safety shall conduct DNA testing of the Windbreaker and sample and return the findings to the Court within \_\_\_ days of the completing of the DNA testing.

Signed this \_\_\_ day of \_\_\_\_\_ 200\_\_

By: \_\_\_\_\_

DEBBIE STRICKLIN Presiding Judge  
180th District Court Harris County Texas



file

Law Offices of  
**WILLIAM TODD HUGHEY**

ATTORNEY AND COUNSELOR AT LAW

125 Centre Street  
(Across from Bank America-Oak Cliff)  
Dallas, TX 75208  
Ph: (214) 942-9800  
Fax: (214) 942-5600

March 11, 2002

*Via Certified Mail No. 7001 0360 0001 5246 7666*  
Mr. Charles Bacarisse  
Harris County District Clerk's Office  
1201 Franklin, 7th Floor  
Houston, Texas 77002

**FILED**  
**CHARLES BACARISSE**  
District Clerk  
**MAR 20 2002**  
Times  
Harris County, Texas  
By \_\_\_\_\_ Deputy

Re: Cause No. 526,673  
*State of Texas vs. Shirley Ann Southerland*

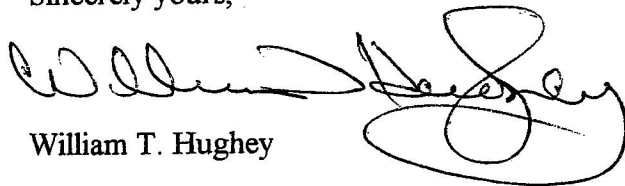
Dear Mr. Bacarisse:

With reference to the above-styled and -numbered cause, enclosed please find the original and Three copies of **Applicant's Notice of Appeal and Motion to Deem Notice Timely Filed**. Please file the original amongst the papers of this cause and return a conformed copy in the enclosed self-addressed envelope.

By copy of this letter, same is hereby forwarded to opposing counsel.

Thank you for your assistance and should you have any questions, please do not hesitate to call.

Sincerely yours,

  
William T. Hughey

enc.

cc: Mrs. Roe Wilson  
Harris County D.A.'s Office  
1201 Franklin, Suite 600  
Houston, TX 77002

CAUSE NO. 526,673

STATE OF TEXAS

§  
§  
§  
§  
§

IN THE 180TH JUDICIAL

VS.

DISTRICT COURT OF

SHIRLEY ANN SOUTHERLAND

HARRIS COUNTY, TX

**APPLICANT'S NOTICE OF APPEAL AND MOTION TO DEEM NOTICE TIMELY FILED**

Now Comes, Applicant **SHIRLEY ANN SOUTHERLAND** through Counsel William T. Hughey and gives this Notice of Appeal of the Trial's court Order dated January 11,2002, Denying Applicant's Request for DNA Testing.

In keeping with the above the Applicant also request that the Court of Appeals deem this Notice as being timely filed and in support of this request incorporates the Affidavit/ Exhibit of William T. Hughey ,attached hereto which reflects that due to error of the District Clerk Office, Applicant did not receive notice of the Denial her of her Application for DNA Testing until February 28,2002. As to this request it is Applicant's desire to pursue this Appeal and that the granting of this request does not create any undue delayt or harm upon the State.

Wherefore premise considered the Applicant prays that her request be granted in all parts.

Respectfully submitted,

LAW OFFICE OF WILLIAM T. HUGHEY  
125 Centre Street  
Dallas, TX 75208  
Phone: (214) 942-9800  
Fax: (214) 942-5600

By:   
**WILLIAM T. HUGHEY**  
SBC 10245500

**F I L E D**  
**CHARLES BACARDI**  
Deputy Clerk  
MAR 20 2002  
Time: \_\_\_\_\_  
By \_\_\_\_\_  
Harris County, Texas  
Deputy

**CERTIFICATE OF SERVICE**

This is to certify that I have forwarded a true and correct copy of the foregoing Motion via U.S. Mail to Roe Wilson Assistant Harris County District Attorney, Houston, TX on this 11<sup>th</sup> day of March , 2002.

  
WILLIAM T. HUGHEY

STATE OF TEXAS

§  
§  
§

COUNTY OF DALLAS

**AFFIDAVIT OF WILLIAM T. HUGHEY**

Before Me, the undersigned authority, on this day personally appeared **William T. Hughey** who being by me duly sworn on her oath deposed and said:

"My name is **William T. Hughey**, I am over 18 years of age, have never been declared of unsound mind, nor convicted of a felony or misdemeanor involving moral turpitude. I am able to otherwise make the following true statements based on my personal knowledge to wit:


I am the Attorney of record for Shirley Ann Southerland the Applicant requesting DNA Testing in Cause Number 526673. As to said Application on December 19, 2001, I traveled from my Office in Dallas, Texas and appeared in open Court before the Honorable Debbie Stricklin Judge of the 180th District Court, Houston, Harris County Texas. At said appearance a hearing was conducted on the Southerland Application for DNA Testing. The Court took the matter under consideration and agreed to review the Statement of Fact from the underlying Trial. Subsequent to this date after not receiving a decision from the Court at a point 60 days after the December 19, 2001, Hearing I contacted the Counsel for the State of Texas, Mrs. Roe Wilson who reviewed her file and indicated that she also did not have any thing in her file that reflected a Ruling from the Court.

In keeping with the above Mrs. Wilson stated that she would have an intern in her office to go and review the Court's File. I eventually received a call from Mrs. Wilson and was informed that the case file had been sent back to storage and that she would have the file retrieved and contact me with her finding. On March 1, 2002, Mrs. Wilson Faxed to my office Exhibit "A" the Court's Ruling denying Applicant's request for DNA Testing. The Ruling was dated January 11, 2002. The Ruling

reflects in an Order Paragraph on page two (2) that the Clerk was to send a copy of the Court's "finding of Facts denying DNA testing in cause no. 526673 and the instant order to the applicant's counsel: William Todd Hughey; 125 Centre; Dallas, TX 75208 and the State: Roe Wilson; 1201 Franklin, Suite 600; Houston, Texas 77002." As to said order applicant's counsel address is 125 Centre ; Dallas, TX 75208, however it is clear that the Clerk did not comply with said order and the failure to do so has dictated Applicant's Request that her Notice of Appeal Deemed Timely filed.


As to this request the granting of same with not create any undue delay or harm to the State and the granting of this will assure that justice is done as Applicant seeks to pursue her right and to Appeal the Trial Court's Ruling Denying her request for DNA testing in cause no. 573963.

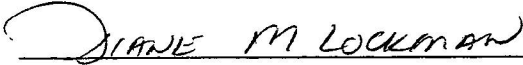
Further, Affiant saith not.

  
WILLIAM T. HUGHEY

SUBSCRIBED AND SWORN to before me on the 11<sup>th</sup> day of March, 2002 , to certify which witness my hand and seal of office.



  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

  
PRINTED NAME OF NOTARY  
COMMISSION EXPIRES: 11-26-2005

**WILLIAM TODD HUGHEY**

Attorney & Counselor at Law

April 8, 2002

Via Cert. Mail: 7001 0360 0001 5246 7673

Kathleen Powers Court Reporter  
The 180th Judicial District Court  
1201 Franklin  
Houston, Texas 77002

**Re: Cause No: 526,673**  
**State of Texas vs. Shirley Ann Southerland**

Dear Mrs. Powers

Please file the enclosed a copy of Defendant's Notice of Appeal filed in the above matter. In keeping with same please either phone me at the number below or mail to me at the address below the cost of the Statement of Fact with Exhibits for the DNA Hearing in this matter conducted on or about December 19, 2001.

**Phone Number:** 1-800-748-1414  
**Address:** William T. Hughey  
4510 Lords Landing #505  
Upper Marlboro, Maryland 20772

Upon receipt of your fee the funds will be forwarded to your attention.

Sincerely

William T. Hughey

Cc: Mrs. Roe Wilson  
Asst. D.A. Harris Co.  
1201 Franklin, Suite 600  
Houston, TX 77002

**William T. Hughey, Attorney**  
125 Centre Street ♦ Dallas, Texas 75208-6615 ♦ 214-942-9800 ♦ 214-942-5600 (fax)  
hughey@msn.com

*File  
copy  
8-2002*

0070109888

**WILLIAM TODD HUGHEY**

Attorney & Counselor at Law

April 12, 2002

Via Cert. Mail: 7001 0360 0001 5246 7604

Mr. Charles Bacarisse  
Harris County District Clerk  
1201 Franklin  
Houston, Texas 77002

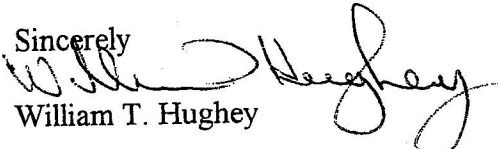
**Re: Cause No: 526,673 (Designation of Appeal Record)  
State of Texas vs. Shirley Ann Southerland**

Dear Mr. Bacarisse

Please find enclosed Defendant Shirley Ann Southerland Designation of Record in the above.  
Mail a filed marked copy to the undersigned in the self address envelope herein.

Please provide the undersigned with notice upon completion.  
Thanks in advance for you assistance in this matter

Sincerely

  
William T. Hughey

Cc: Mrs. Roe Wilson  
Asst. D.A. Harris County  
1201 Franklin, Suite 600  
Houston, TX 77002

**William T. Hughey, Attorney**

125 Centre Street ♦ Dallas, Texas 75208-6615 ♦ 214-942-9800 ♦ 214-942-5600 (fax)  
hugheyaw@msn.com

BY MAIL PREPARED BY  
02 APR 16 PM 12:35  
CHARLES BACARISSE  
HARRIS COUNTY CLERK  
HARRIS COUNTY, TEXAS

STATE OF TEXAS

VS.

SHIRLEY SOUTHERLAND

§  
§  
§  
§  
§

IN THE 180th DISTRICT  
JUDICIAL COURT OF

HARRIS COUNTY TEXAS

FILED  
CLERK  
CHARLES  
DISTRICT CLERK  
HARRIS COUNTY, TEXAS  
20 APR 16 PM 12:00

BY MAIL PROCESSING DEPUTY

DESIGNATION OF RECORD ON APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

The Defendant, in the above styled and numbered cause and pursuant to Article 40.09(2) of the Texas code of Criminal Procedure, files this Designation of Record on Appeal, and requests that the Clerk of this Court make and prepare as a part of the record in the appeal in this cause true copies of the following matters:

1. All pleadings filed by the Defendant and by the State of Texas relating to DNA TESTING and any and all rulings of the Court thereon; (*Pleadings should cover first DNA related Filing, filed marked received in District Clerk's Office February 23, 2001*)
2. All docket entries made by the Trial Court;
3. The transcript of DNA Hearing

Defendant further requests that all the above items be assembled under one cover to thereby constitute the record on appeal; that the pages of said record be numbered consecutively; that there be an index prepared by the Clerk showing each document incident in the record; and that, further, this record designation be included as a part of the record for all of which Defendant prays. Defendant further prays for a hearing for approval of the record.

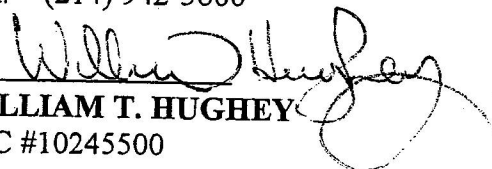
199



**WHEREFORE, PREMISES CONSIDERED**, the Defendant prays that the Clerk of this Court make and prepare as a part of the record of appeal of this cause copies of all the matters stipulated above and made same a part of the record in the appeal of this cause.

Respectfully submitted,

**LAW OFFICE OF WILLIAM T. HUGHEY**  
Attorney and Counselors at Law  
125 Centre  
Dallas, Texas 75208  
Phone: (214) 942-9800  
Fax: (214) 942-5600

By:   
**WILLIAM T. HUGHEY**  
SBC #10245500

**CERTIFICATE OF SERVICE**

I certify that I have forwarded a true and correct copy of the foregoing Designation of Record on Appeal to District Attorney's Office, Harris County, Texas on this 12<sup>th</sup> day of April, 2002.

  
**WILLIAM T. HUGHEY**

**WILLIAM TODD HUGHEY**

Attorney & Counselor at Law

April 23, 2002

Via Cert Mail No: 7001 0360 5246 7727 & 7001 0360 5246 7734

Clerk of The First  
Court of Appeals  
1307 San Jacinto, 10 th Flr.  
Houston, TX 77002

Clerk of The Fourteenth  
Court of Appeals  
1307 San Jacinto, 11th Flr.  
Houston, Tx 77002

Re: *DNA Hearing Appeal, State v. Southerland*  
*Tr. Crt No. 526,673, 180th District Court*  
*Harris Co., Texas*

Dear Clerk

A request hereby made by the Defendant in the above style matter for a status of the Appeal filed by the Defendant. On March 20, 2002, the Defendant's Appeal in the above matter was filed mark by the District Clerk's Office in Harris County. As this filing as of the date of this letter the undersigned has not received any notice form the Court of Appeals as to this filing. On this note the present letter directed to the respective Court of Appeals addressed above has been prepared to ascertain if the District Clerk given notice to either of the respective Courts of Defendant's filing a copy of which is attached hereto as exhibit A.

In keeping with the above if the matter is pending in your Court will you provide the undersigned with the assigned Case Number to aid in preparation of the Docketing Statement and other necessary needs of the Appeal Court. In conjunction with this would you please direct all communication to the undersigned at the following address:

**William T. Hughey**  
**4510 Lords Landing #505**  
**Upper Marlboro, Md. 20772**

I can also be reached by phone at 1-800-748-1414. Thanks in advance for you time and effort in replying to this request.

Sincerely

William T. Hughey

**William T. Hughey, Attorney**

125 Centre Street ♦ Dallas, Texas 75208-6615 ♦ 214-942-9800 ♦ 214-942-5600 (fax)  
hughey@msn.com

V3836P02671

2-10-02

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1.  Addressee's Address
- 2.  Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Clerk of The 14th  
Court of Appeals  
1307 San Jacinto, 11th  
Houston, TX 77002

4a. Article Number

7001 0360 0001 5246 77

4b. Service Type

- Registered  Certified
- Express Mail  Insured
- Return Receipt for Merchandise  COD

7. Date of Delivery

4-26-02

5. Received By: (Print Name)

[Signature]

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Addressee or Agent)

[Signature]

PS Form 3811, December 1994

Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1.  Addressee's Address
- 2.  Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Clerk of The 1st  
Court of Appeals  
1307 San Jacinto, 10th  
Houston, TX 77002

4a. Article Number

7001 0360 0001 5246 772

4b. Service Type

- Registered  Certified
- Express Mail  Insured
- Return Receipt for Merchandise  COD

7. Date of Delivery

4-26-02

Received By: (Print Name)

[Signature]

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Addressee or Agent)

[Signature]

PS Form 3811, December 1994

Domestic Return Rec

**WILLIAM TODD HUGHEY**

Attorney & Counselor at Law

May 1, 2002

Mrs. Shirley Southerland #555516  
1500 State School Rd.  
Gatesville, Tx 76598

Re: DNA Appeal

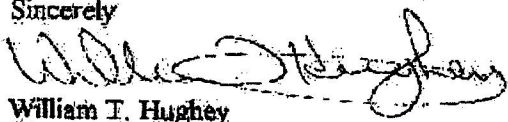
Dear Mrs. Southerland

First as always I hope all is well with you. I am writing to give you a brief update on the pending Appeal. Currently there is not much to report, as usual the Houston Court and District Clerk's Office appear to be this big hole that things drop off into and disappear. On this point I was forced recently to write letters to the two Houston Courts of Appeal to seek a status on the Appeal ;since I had not received any information from either of the Court.

As to the above the Court of Appeals knowledge is based on the receipt of the Appeal Notice form the District Clerk's Office. In reading the attached letter you will note that I provided the information to both Courts of Appeal and I am currently waiting their reply. Upon the receipt of the reply I will be back in contact with you.

If you have any questions please do not hesitate to write.

Sincerely

  
William T. Hughey

Cc: Mr. Ben Hale  
Moisture Technology Corporation  
2180 North Loop West, Suite 530  
Houston, TX 77018-8003

**William T. Hughey, Attorney**

125 Centre Street ♦ Dallas, Texas 75208-6616 ♦ 214-942-9800 ♦ 214-942-5600 (fax)  
hugheylaw@men.com

# WILLIAM TODD HUGHEY

Attorney & Counselor at Law

June 12, 2002

*Via Cert. Mail* 7001 0360 0001 5246 7765

Mr. Charles Bacarisse  
Harris County District Clerk  
1201 Franklin, 7th Floor  
Houston, TX 77002

Re: Cause No. 526,673  
State v. Southerland  
Status of Appeal

Dear Mr. Bacarisse

I am writing to ascertain the status of the above Appeal. The Appeal as reflected by *Attachment 1* was filed with your office on March 20, 2002. Subsequent to this point on April 12, 2002, a Designation of Record was also forwarded to your office concerning this matter per *Attachment 2*. In the interim in light of no reply from your office concerning the Appeal *Attachment 3*, was forwarded to the First and Fourteenth Courts of Appeals in Houston.


As to the above I have some deep concerns on the location and status of the Appeal in light no reply from your office or the Court of Appeal. I guess at this point, I should interject that I have also not heard from the Court Reporter in this matter who was sent a letter on April 8, 2002, requesting the Statement of fact for the December 19, 2001, DNA Hearing, per *Attachment 4*.

In light of this major communication breakdown above it is essential that you provide me with a status on the Appeal to wit:

1. Is the Appeal still in your office?
2. Status of the Clerk's Record.
3. When was Appeal transmitted to Court of Appeals?
4. What Court of Appeals was it transmitted too.

Obviously you are aware that these are basis questions that must be answered to fully protect the rights of my client Mrs. Southerland. On this note I look forward to your timely reply.

Sincerely

  
William T. Hughey

**William T. Hughey, Attorney**

125 Centre Street ♦ Dallas, Texas 75208-6615 ♦ 214-942-9800 ♦ 214-942-5600 (fax)  
hughey@msn.com

A-21

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- 1.  Addressee's Address
- 2.  Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Mr. Charles Bacarisse  
Harris County District Clerk  
1201 Franklin, 7th Floor  
Houston, TX 77002

1a. Article Number

7001 0360 0001 5246 77

4b. Service Type

- Registered  Certified
- Express Mail  Insured
- Return Receipt for Merchandise  COD

7. Date of Delivery

JUN 14 2002

5. Received By: (Print Name)

Ray Medellin

8. Addressee's Address (Only if requested and fee is paid)

6. Signature: (Addressee or Agent)

X

**WILLIAM TODD HUGHEY**

Attorney & Counselor at Law

June 12, 2002

Mrs. Shirley Southerland #555516  
1500 State School Rd.  
Gatesville, Tx 76598

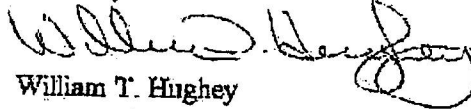
Re: DNA Appeal Status Letter

Dear Mrs. Southerland

Just a short follow up to my May 12, 2002, letter; still no news on the whereabouts of the Appeal. The two Courts of Appeals have not gotten back to me and at this point I believe the documents are still with the Harris County District Clerk's Office. The letter with attachment enclosed herein hopefully will provide notice to every one of the apparent breakdown.

If I do not receive some type of validation with 21 days of this letter receipt by the District Clerk, I will have to look at other extraordinary avenues to resolve this matter. In closing this is the first time during my fifteen plus years of practice that I have run into this madness. \*

Sincerely

  
William T. Hughey

Cc: Mr. Ben Hale  
Moisture Technology Corporation  
2180 North Loop West, Suite 530  
Houston, TX 77018-8003

**William T. Hughey, Attorney**

125 Centre Street ♦ Dallas, Texas 75208-8815 ♦ 214-942-9800 ♦ 214-942-5600 (fax)  
hugheyfaw@msn.com

CAUSE NO. 526,673

STATE OF TEXAS

VS.

SHIRLEY ANN SOUTHERLAND

§  
§  
§  
§  
§

FILED  
RISE  
BAC  
CLERK  
CHARLES B. CLERK  
DISTRICT CLERK  
HARRIS COUNTY, TX  
JUN 14 11:32  
THE 180TH JUDICIAL  
DISTRICT COURT OF  
HARRIS COUNTY, TX

APPLICANT'S NOTICE OF APPEAL AND MOTION TO DEEM NOTICE TIMELY FILED

Now Comes, Applicant **SHIRLEY ANN SOUTHERLAND** through Counsel William T. Hughey and gives this Notice of Appeal of the Trial's court Order dated January 11, 2002, Denying Applicant's Request for DNA Testing.

In keeping with the above the Applicant also request that the Court of Appeals deem this Notice as being timely filed and in support of this request incorporates the Affidavit/ Exhibit of William T. Hughey, attached hereto which reflects that due to error of the District Clerk Office, Applicant did not receive notice of the Denial her of her Application for DNA Testing until February 28, 2002. As to this request it is Applicant's desire to pursue this Appeal and that the granting of this request does not create any undue delay or harm upon the State.

Wherefore premise considered the Applicant prays that her request be granted in all parts.

Respectfully submitted,

ORIGINAL RECEIVED IN  
DISTRICT CLERK'S OFFICE

LAW OFFICE OF WILLIAM T. HUGHEY

125 Centre Street

Dallas, TX 75208

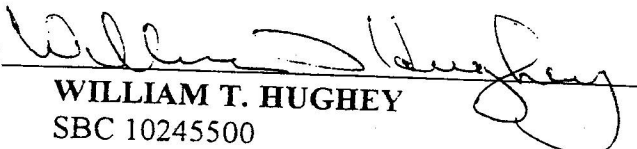
Phone: (214) 942-9800

Fax: (214) 942-5600

DATE

DEPUTY

By:

  
WILLIAM T. HUGHEY

SBC 10245500



**WILLIAM TODD HUGHEY**

Attorney & Counselor at Law

August 12, 2002

Cert. Mail No.: 7001 0360 0001 5246 9158

Clerk of the First[1st District]  
Court of Appeals  
1307 San Jacinto, 10th Flr.  
Houston, TX 77002

FILED  
CHARLES BACARISSE  
DISTRICT CLERK  
HARRIS COUNTY, TEXAS

02 AUG 15 PM 1:55

BY MAIL PROCESSING DEPT

**Re: PETITION FOR WRIT OF MANDAMUS  
( SHIRLEY ANN SOUTHERLAND)**

Dear Clerk

Enclosed for filing are the Original and five copies of the above referenced document. Please file accordingly and returned a filed marked copy in the enclosed envelope to the undersigned. If there is any associated fee please call the undersigned at 1-800-748-1414 and advise as to said amount.

Sincerely

WTH

William T. Hughey

Cc: Cert. Mail: 7001 0360 0001 5246 9165

Mr. Charles Bacarisse  
Harris County District Clerk  
1201 Franklin, 7th Flr.  
Houston, TX 77002

Cert. Mail: 7001 0360 0001 5246 9172

Mrs. Roe Wilson Esq.  
Asst. D.A. Harris County  
1201 Franklin, Ste. 600  
Houston, TX 77002

Mrs. Shirley Ann Southerland  
TDC# 555516  
1500 State School Rd  
Gatesville, TX 76598

**William T. Hughey, Attorney**

125 Centre Street ♦ Dallas, Texas 75208-6615 ♦ 214-942-9800 ♦ 214-942-5600 (fax)  
hugheyaw@msn.com

**COURT OF APPEALS NUMBER**

\_\_\_\_\_  
**TRIAL COURT NUMBERS**  
**526,673**

FILED  
CHARLES BACARISSE  
DISTRICT CLERK  
HARRIS COUNTY, TEXAS

02 AUG 15 PM 1:55

BY MAIL ROOM CLERK  
JACKSON'S DEPT

**In re: SHIRLEY ANN SOUTHERLAND** §  
**Realtor** §  
  
§  
**versus** §  
  
§  
**CHARLES BACATISSE** §  
**DISTRICT CLERK HARRIS COUNTY** §  
**RESPONDENT** §

**IN THE COURT OF**  
**APPEALS [1st District]**

**SITTING AT HOUSTON, TX**  
**TEXAS**

---

---

**REALTOR'S VERIFIED PETITION FOR**  
**WRIT OF MANDAMUS**

---

---

**Submitted by**  
**WILLIAM T. HUGHEY**  
**125 CENTRE**  
**Dallas, Texas 75208**  
**Phone: (214) 942-9800**  
**Fax: (214) 942-5600**

CERTIFICATE OF INTERESTED PERSONS

Pursuant to the Texas Rules of Appellant Procedure, Rule, 52.3 below is a complete list of all parties so that members of the Court may at once determine whether they are disqualified to serve or should recuse themselves from participating in the decision of the case.

Realtor

Shirley Ann Southerland  
TDC#: 555516  
1500 State School Rd.  
Gatesville, TX 76598

Respondent

Mr. Charles Bacarisse  
Harris County District  
Clerk  
1201 Franklin, 7th Flr.  
Houston, TX 77002

Attorney for Realtor

William T. Hughey Esq.  
125 Centre  
Dallas, TX 75208

Attorney for State

Mrs. Roe Wilson Esq.  
Asst. D.A. Harris County  
1201 Franklin, Suite 600  
Houston, TX 77002

Judge

Hon. Debbie Stricklin  
Presiding Judge  
180th District Court  
Harris County Texas  
1201 Franklin  
Houston, TX 75208

# TABLE OF CONTENTS

	PAGES
CERTIFICATE OF INTERESTED PARTIES.....	ii
TABLE OF CONTENT.....	iii
TABLE OF CITATIONS, AUTHORITIES AND STATUTES.....	iv
STATEMENT OF CASE.....	1-2
RESPONDENT'S ACTIONS FROM WHICH REALTOR SEEKS RELIEF.....	2
STATEMENT OF JURISDICTION.....	3
ISSUES PRESENTED.....	3
STATEMENT OF FACTS.....	3-5
ARGUMENT.....	5
CONCLUSION AND PRAYER.....	6
VERIFICATION.....	7
CERTIFICATE OF SERVICE.....	8
APPENDIX.....	9

TABLE OF CITATIONS  
AUTHORITIES, AND STATUS

CASES	PAGES
<u><i>In Re Michael W. Washington,</i></u> 7 S.W.3d 181 (Tex.App-Houston[1st Dist] 1999).....	5,6
<b>STATUTES</b>	
TEX.R.CRIM.P. Chapter 64.....	1,3
TEX.R.APP.P 25.2 (a) (b) (c) et.al.....	3

**In re: SHIRLEY ANN SOUTHERLAND §  
Realtor §**

**versus §**

**CHARLES BACATISSE §  
DISTRICT CLERK HARRIS COUNTY §  
RESPONDENT §**

**IN THE COURT OF  
APPEALS [1st District]**

**SITTING AT HOUSTON, TX  
TEXAS**

**REALTOR'S VERIFIED PETITION FOR WRIT OF MANDAMUS**

TO THE HONORABLE JUSTICES OF THE COURT OF APPEALS:

COMES NOW, Shirley Ann Southerland hereinafter referred to as Realtor, and respectfully submits this her brief in support of her Writ of Mandamus against the Respondent Charles Bacarisse Harris County District Clerk.

I.

**STATEMENT OF THE CASE**

Realtor Shirley Ann Southerland on February 23, 2001, filed with the Respondent office a Motion seeking DNA Testing. The Motion filing date was prior to the implementation of the Chapter 64 DNA Testing Statute thus on December 11, 2001, the Realtor filed a second Motion which incorporated the previous filed DNA Motion and adopted by reference Chapter 64 of the Texas Code of Criminal Procedure. Realtor Motion for DNA Testing was heard on December 19, 2001, by the Hon. Debbie Stricklin ,Judge of the 180th District

Court in and for Harris County Texas. On January 11, 2002, the Hon. Judge Strcklin entered a ruling Denying Realtor's Motion for DNA Testing said ruling was filed with the Respondent with an order to forward a copy of said ruling to the Realtor and to Counsel for the State of Texas. The Respondent fail to comply with the order, the failure did not come to the attention of Realtor's Counsel and Counsel for the State of Texas until approximately February 28, 2002. Realtor filed a *Notice of Appeal and Motion to Deem Notice Timely Filed*, with the Respondent with a file mark date of March 20, 2002. A Designation of Record on Appeal was also filed with Respondent in April 2002. As of the filing of this Writ for Mandamus the Respondent has failed to forward Realtor's Appeal to The Court of Appeal pursuant to the Texas Rules of Appellate Procedure.

## II.

### RESPONDENT'S ACTIONS FROM WHICH REALTOR SEEKS RELIEF

Respondent although properly served with Realtor's Notice of Appeal and Designation of Record on Appeal:

1. *Respondent has fail to forward Realtor's Notice to Appeal to the Proper Court of Appeals as required by the Texas Rules of Appellate Procedure.*
2. *Respondent has fail to prepare the Clerk's Record and other necessary documents for transmittal to the proper Court of Appeals as required by the Texas Rules of Appellate Procedure.*

III.

STATEMENT OF JURISDICTION

This Honorable Courts Jurisdiction of the matter is pursuant to Texas Rules of Appellate Procedure 25.2 (a) (b) and ( c ).

IV.

ISSUES PRESENTED

1. Respondent has fail to forward Realtor's Notice to Appeal to the Proper Court of Appeals as required by the Texas Rules of Appellate Procedures, and should be compelled to comply with The Texas Rules of Appellate Procedure.
2. Respondent has fail to prepare the Clerk's Record and other necessary documents for transmittal to the proper Court of Appeals as required by the Texas Rules of Appellate Procedures and should be compelled to with Texas Rules of Appellate Procedure.

V.

STATEMENT OF FACT

Realtor Shirley Ann Southerland on February 23, 2001, filed with the Respondent office a Motion seeking DNA Testing. (Appx. 1). The Motion filing date was prior to the implementation of the Chapter 64 DNA Testing statute thus on December 11, 2001, the Realtor filed a second Motion which incorporated the previous filed



DNA Motion and adopted reference to Chapter 64 of the Texas Code of Criminal Procedure. (Appx. 2)

In keeping with the above Realtor Motion for DNA Testing was heard on December 19, 2001, by the Hon. Debbie Stricklin, Judge of the 180th District Court in and for Harris County Texas. A ruling was not entered on the date of the hearing but instead the Court took the matter under advisement. On January 11, 2002, the Trial Court rendered a ruling Denying Realtor's Motion for DNA Testing, said ruling was filed with the Respondent with an order to forward a copies of the ruling to the Realtor and to Counsel for the State of Texas. (Appx.3) As to the directives outlined in the order the Respondent fail to comply a failure that did not come to the attention of Realtor's Counsel and Counsel for the State of Texas until approximately February 28, 2002.

As a result of the above omissions of the Respondent Realtor's Counsel on March 20, 2002, filed with Respondent's Office a *Notice of Appeal and Motion to Deem Notice Timely Filed*. (Appx.4) Realtor Counsel also filed with Respondent in April 2002, a *Designation of Record on Appeal*. (Appx.5) In light of the obvious delay and lack of action by the Respondent the Realtor sought a status on the matter from the Honorable Courts of Appeal in April 2002, and a further follow up was made to the Respondent in June 2002. (Appx.6,7) Concerning all matter as outlined as of the date of this filing Realtor has received no notice, information or other communications that the Respondent has complied with the dictates

of Texas Rules of Appellate Procedure by forwarding Realtor's Notice of Appeal and other Paper too either of the Courts of Appeals sitting in Houston with jurisdiction over the pending matter.

## VI.

### ARGUMENT

The Realtor would tender to the Honorable that based on the filling of the Notice of Appeal in the case at hand that the Court has Jurisdiction to issue a Writ of Mandamus. (Appx 1) Realtor's position is buttressed by this Honorable Court previous holding in In Re Michael W. Washington, 7 S.W.3d 181 (Tex.App-Houston[1st Dist] 1999). In Washington, a case similar to the case at hand to wit, Realtor had filed a Notice of Appeal and the Harris County District Clerk fail to process said Appeal of Appeal and forward accordingly to the appropriate Court of Appeal in keeping with the Texas Rules of Appellate Procedure. In Washington, the Honorable Court predicated Jurisdiction based the filing of the Realtor's Notice of Appeal, citing several cases. (Washington at page 182) In keeping with the establishment of Jurisdiction the Honorable Court held that:

Realtor has no other adequate remedy. The forwarding of a notice of appeal to the appropriate court of appeals by the clerk is a mandatory, ministerial duty. We therefore conditionally grant

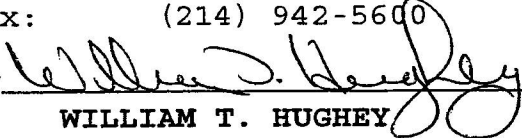
the Writ. We assume that Charles Bacarisse, the Harris County District Clerk, will forward the notice of appeal to the appropriate court of appeals, in accordance with the Texas Rules of Appellate Procedure. If not, mandamus will issue. (Washington at page 183)

#### CONCLUSION

WHEREFORE PREMISE CONSIDERED, Realtor prays that upon review by this Honorable Court, that the Court issue appropriate Orders or Writs compelling the District Clerk to forward Realtor Notice of Appeal to the appropriate Court of Appeals and to comply with all other duties assigned to the Harris County District Clerk under the Texas Rules of Appellate Procedure relating to the Notice of Appeal filed by the Realtor. Realtor seeks any and all other relief she may be entitled too including Attorney Fees for bring this Writ.

Respectfully submitted,  
LAW OFFICE OF WILLIAM T. HUGHEY  
125 Centre  
Dallas, Texas 75208  
Phone: (214) 942-9800  
Fax: (214) 942-5600

By

  
WILLIAM T. HUGHEY

SBC #10245500

VERIFICATION

BEFORE ME, the undersigned on this day personally appeared WILLIAM T. HUGHEY, known to me, who, upon being duly sworn by me, stated upon his oath the following:

"My name is WILLIAM T. Hughey, I am the Counselor for the Realtor, the above entitled and numbered cause. I am competent to attest to the following. All the facts and allegations contained in Realtor's Petition for Writ of Mandamus are true and correct and the items contained in Appendix attached hereto are true and correct copy of documents filed and are mailed to the parties addressed therein.

William T. Hughey  
WILLIAM T. HUGHEY

SIGNED AND SWORN TO BEFORE ME, the undersigned Notary Public, on this 12 day of August, 2002.



Karen Wolman  
NOTARY PUBLIC IN AND FOR THE  
STATE OF MARYLAND

Karen Wolman  
PRINTED NAME OF NOTARY  
MY COMMISSION EXPIRES: 11-12-03

CERTIFICATE OF SERVICE

I, WILLIAM T. HUGHEY, certify that I have forwarded via U.S. Mail Certified, a true and correct copy of the foregoing Verified Petition for Writ of Mandamus to:

Mr. Charles Bacarisse

Harris County District Clerk

1201 Franklin, 7th Flr.

Houston, TX 77002

and

Mrs. Roe Wilson Esq.

Asst. D.A. Harris County

1201 Franklin, Suite 600

Houston, TX 77002

on this 12<sup>th</sup> day of August, 2002.



WILLIAM T. HUGHEY

APPENDIX

---

---

	PAGES
I. DEFENDANT'S MOTION FOR NEW TRIAL/DNA TESTING (Attachment Omitted).....	A1-6
II. DEFENDANT'S CHAPTER 64 MOTION FOR FORENSIC DNA TESTING.....	A7-8
III. STATE'S PROPOSED FINDING OF FACT AND ORDER DENYING DNA TESTING.....	A9-10
IV. APPLICANT NOTICE OF APPEAL AND MOTION TO DEEM NOTICE TIMELY FILED.....	A11-16
V. DESIGNATION OF RECORD ON APPEAL.....	A17-18
VI. REALTOR'S 4-23-2002 APPEAL STATUS LETTER AND GREEN CARD TO COURTS OF APPEALS.....	A19-20
VII. REALTOR'S 6-12-2002 APPEAL STATUS LETTER AND GREEN CARD TO RESPONDENT.....	A21-22

ORIGINAL RECEIVED IN  
DISTRICT CLERK'S OFFICE

FEB 23 2001

DATE

CAUSE NO. 526,673

STATE OF TEXAS

VS.

SHIRLEY ANN SOUTHERLAND

§  
§  
§  
§  
§

IN THE 180TH JUDICIAL

DISTRICT COURT OF

HARRIS COUNTY, TEXAS

01 FEB 22 PM 12:00  
BY MAIL PROFESSIONAL DEPUTY  
mis...  
L.L.

DEFENDANT'S MOTION FOR NEW TRIAL/LEAVE FOR DNA TESTING  
(NEWLY-DISCOVERED/NEWLY-AVAILABLE EVIDENCE)

Now Comes, Defendant SHIRLEY ANN SOUTHERLAND through Counsel William T. Hughey and submits the above entitled Motion pursuant to Texas Code of Criminal Procedure Art. 40.03 Et al, as constituted and then in effect for offenses committed before September 1, 1993.<sup>1</sup> In keeping with same, outlined below is the "Procedural Background" of case and the basis for "Defendant's Motion for New Trial/Leave for DNA Testing" based on Newly-discovered/Newly-available evidence."<sup>2</sup>

**Procedural Background**

1. SHIRLEY ANN SOUTHERLAND was indicted for the Felony Offense of Murder alleged

<sup>1</sup>Effective Sept. 1, 1993 Arts 40.01 to 40.11 under Chapter 40 entitled New Trials was Repealed by the Texas Rules of Appellate Procedure in keeping with the same the following caveat was provided: SB1067 Sec. 11.04, Acts of the 73rd Legislature, Regular Session, 1993, provides: "(a) A change in law made by this article applies only to a new trial for an offense committed on or after the effective date of this article. For purposes of this section, an offense is committed before the effective date if any element of the offense occurs before the effective date.

(b) A new trial for an offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose."

<sup>2</sup>Etter v. State 629 S.W.2d 839 (Court of appeals of Texas, Houston (14 Dist.) 1982) at 841 "The Court of Criminal Appeals has long recognized that newly-available evidence is the same as newly-discovered evidence."

DEFENDANT'S MOTION FOR NEW TRIAL/LEAVE FOR DNA TESTING  
C:\WP51\FORMS2000\SUTHERLAND.MOT

A-1

RECEIVED FEB 23 2001

to have occurred on February 19, 1989.

2. **SHIRLEY SOUTHERLAND** entered a Plea of Not Guilty and proceeded to a Jury Trial on the merits on March 15, 1990 with Trial Counsel Ken Goode.
3. **SHIRLEY SOUTHERLAND** was found guilty on March 16, 1990 and sentenced by the Jury to Life Confinement in the Texas Department of corrections and assessed a fine of \$10,000.
4. **SHIRLEY SOUTHERLAND** gave timely Notice of Appeal to the 14th Court of Appeals wherein the Jury Verdict as to Guilt/Punishment was affirmed on February 28, 1991.
5. **SHIRLEY SOUTHERLAND** subsequent in 1994 filed an Application for Writ of Habeas Corpus alleging specifically her trial Counsel was ineffective for failing to utilize a statement by Judy Frazier. Ms. Frazier gave a statement as to being a witness to a murder and possessed a blood stained windbreaker. Knowledge not known to Defendant at the time of Trial.

## **BASIS FOR NEW TRIAL**

### **Part I**

1. It is the contention of **SHIRLEY ANN SOUTHERLAND** that there currently exist evidence to wit: a blood stained windbreaker worn by Judy Frazier, which constitutes "Newly-discovered/Newly-available evidence" when viewed and developed in the context as outlined in the subsequent sections.
2. The applicable factors for determining whether to grant a new Trial on Newly Discovered

Evidence under Art. 40.03 as applied in the case at hand prior to September 1, 1993 were

**DEFENDANT'S MOTION FOR NEW TRIAL/LEAVE FOR DNA TESTING**  
C:\WP51\FORMS2000\SUTHERLAND.MOT

A-2



- 1). The newly discovered evidence was unknown or unavailable to the Movant at the time of trial;
  - 2). The Movant's failure to discover or obtain the evidence was not due to a lack of diligence;
  - 3). The new evidence is admissible and is not merely cumulative, corroborative, collateral, or impeaching; and
  - 4). The new evidence is probably true and will probably bring about a different result on another trial.<sup>3</sup>
3. Counsel would tendered to the Court that as to item (1) that the potential evidence that is sought to be tendered in this matter has not been fully developed beyond a rudimentary Blood Typing but not subjected to DNA Testing. In keeping with same, Counsel incorporates his Affidavit attached hereto concerning his investigation as to the case at hand and the affidavit of Ben Hale as to his readiness to fund the DNA testing by Gene Screen.. In connection with same, Counsel would request of the Court a bifurcating of the pending Motion with the issuance of appropriate Orders by the Honorable Court to obtain portions of the windbreak and any Autopsy related items suitable for DNA Testing including clothing of the deceased still maintained and in the alternative orders to obtain other suitable testable items beyond those requested if indeed the items sought for comparison to the windbreaker do not exist.

## Part II

Subject to a positive finding under the request in Part I, the Defendant would tender that:

---

<sup>3</sup>Eddlemon v. State, 591 S.W.2d 847 (Tex. Crim.App.1979) at page 849.

1. The Newly-Discovered Evidence was unknown or unavailable to **SHIRLEY SOUTHERLAND** at the time of Trial because DNA was never performed on the windbreaker, a point that is arguably attributed to the infant and novel nature of the process in 1990 and the fact that it was in its early stages of use in criminal matters nationally and in Texas as reflected in a summation on DNA outlined in Roberson v. State, 16 S.W. 3d 156 (Tex.App. -Austin 2000).<sup>4</sup>
2. **SHIRLEY SOUTHERLAND**'s failure to discover or obtain the evidence was not due to a lack of diligence as outlined in the attached Affidavit of Shirley SOUTHERLAND which is incorporated herein by reference.
3. Subject to a positive finding in Part I of this Motion, counsel for **SHIRLEY SOUTHERLAND** tenders to the Court the DNA findings are admissible under

---

<sup>4</sup>Roberson at page 165 states DNA identification is generally admissible in most American jurisdictions. See Paul C. Giannelli, *The DNA Story: An Alternative View*, 88 J.Crim. L. & Criminology 380, 380-81 (1997) (reviewing Harlan Levy, *An the Blood Cried Out* (1996)); Thomas J. Fleming, *Annotation: Admissibility of DNA Evidence*, 84 A.L.R. 4th 313, 335 (1991). The first reported case in which DNA evidence was held admissible was *Andrews v. State*, 533 So. 2d (Fla. Dist. Ct. App. 1988). "No other scientific technique has gained such widespread acceptance so quickly"; and "no other technique has been as potentially valuable to the criminal justice system." Giannelli, 88 J.Crim. L. & Criminology at 381-82. DNA evidence has been called the "single greatest advance in the 'search for the truth'...since the advent of cross-examination." *People v. Wesley*, 533 N.Y.S.2d 643, 644 (N.Y. Sup. Ct. 1988), *aff'd*, 589 N.Y.S.2d 197 (N.Y. App. Div.1992).

DNA evidence has certainly been held admissible in Texas. See *Kelly v. State*, 824 S.W.2d 568, 573 (Tex. Crim. App. 1992). Even prior to *Kelly*, DNA evidence was found admissible. See *Mandujano v. State*, 799 S.W. 2d 318, 321-22 (Tex. App.-Houston [1st Dist.] 1990, no pet.); *Glover v. State*, 787 S.W.2d 544, 547 (Tex. App.-Dallas 1990), *aff'd*, 825 S.W.2d 127, 128 (Tex. Crim.App. 1992) (citing *Kelly*).

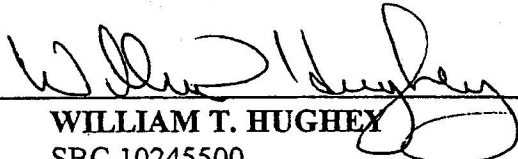
current Texas Caselaw pursuant to the earlier Roberson v. State, referenced under Part I, item 1 herein. Additionally, the Exculpatory Statements of Judy Frazier would also be admissible.

4. **SHIRLEY SOUTHERLAND** tenders that the incorporation of the evidence sought under item 3 will probably bring about a different result in retrial BASED on the DNA result and Frazier's testimony.

**WHEREFORE PREMISE CONSIDERED, SHIRLEY SOUTHERLAND**, Defendant through Counsel request that upon hearing that the Court bifurcate the matter in the manner requested and afford Defendant the opportunity to (1) obtain DNA Testing of windbreaker and other comparable items (2) grant Motion for New Trial after incorporation of positive DNA Test result and a fully hearing on the merits of the Defendant's Motion for New Trial as contained in Part II of Defendant's Motion for New Trial.

Respectfully submitted,  
LAW OFFICE OF WILLIAM T. HUGHEY  
125 Centre Street  
Dallas, TX 75208  
Phone: (214) 942-9800  
Fax: (214) 942-5600

By: \_\_\_\_\_

  
**WILLIAM T. HUGHEY**  
SBC 10245500

**CERTIFICATE OF SERVICE**

This is to certify that I have forwarded a true and correct copy of the foregoing Motion via U.S. Mail Certified, Return Receipt Requested to the Harris County District Attorney's Office, Houston, TX on this 16<sup>th</sup> day of February, 2001.

  
WILLIAM T. HUGHEY

CAUSE NO. 526,573

STATE OF TEXAS § IN THE 180TH JUDICIAL  
VS. § DISTRICT COURT OF  
SHIRLEY ANN SOUTHERLAND § HARRIS COUNTY, TX.

---

DEFENDANT'S CHAPTER 64 MOTION FOR  
FORENSIC DNA TESTING

---

NOW COMES, Defendant Shirley Ann Southland through Counsel William T. Hughey and files the above captioned Motion pursuant to Chapter 64 of the Texas Code of Criminal Procedure. In keeping with same the Defendant would show that:

1. Defendant meets to requirement for an Order to be entered by this Honorable Court for Forensic Testing uder Chapter 64 of the Texas Code of Criminal Procedure and
2. That subsequent to the enactment of Chapter 64 of the Texas Code of Criminal Procedure, the Defendant had previously filed a Motion on February 23, 2001, seeking DNA Testing. As to said Motion Defendant incorporates by reference herein said Motion with all attachments to be considered as part of Defendant's Chapter 64 Motion for Forensic DNA Testing.

Wherefore **Premise** considered Defendants pray that said Motion be set for hearing before this Honorable Court and that upon conducting said hearing; this Honorable enters all Orders necessary to effectuate a Forensic DNA Testing of the Windbreaker of Judy Frazier currently in the possession of the Harris County Sheriff Department under Case # 89-1190 (Shawnte Dewan Collins)

139m 993 ✓

Cause No. 526673

STATE OF TEXAS	§	IN THE 180 <sup>TH</sup> DISTRICT COURT
V.	§	OF
SHIRLEY ANN SOUTHERLAND, Applicant	§	HARRIS COUNTY, TEXAS

**STATE'S PROPOSED FINDINGS OF FACT AND ORDER DENYING DNA TESTING**

Having considered the applicant's motion requesting DNA testing of evidence and the State's motion requesting that DNA testing be denied in the above-styled case, the Court makes the following findings of fact:

**FINDINGS OF FACT**

1. The Court finds that records of the Harris County Medical Examiner's Office reflect that there is no autopsy evidence in cause no. 526673 (lab no. 89-1190).
2. The Court finds that the records of the Harris County Sheriff's Office show that, as of March 18, 2001, there is a windbreaker in cause no. 526673. See State's Exhibit A, affidavit of Deputy Michael Gonzales.
3. The Court finds that the presence or absence of the complainant's blood on Judy Frazier's windbreaker would not exculpate the applicant.
4. The Court finds that the applicant fails to show by a preponderance of the evidence that a reasonable probability exists that the applicant would not have been prosecuted or convicted if the complainant's blood were found on Frazier's windbreaker through DNA testing.
5. The Court finds that the applicant fails to meet the requirement of Tex. CODE CRIM. PROC. art. 64.03 (a)(2), concerning her burden of proof.

V3563 P0226

**CONCLUSION OF LAW**

1. The Court, based on its finding that the applicant failed to meet the requirements of 64.03 (a)(2), **DENIES** the applicant's request for DNA testing in cause no. 573963.

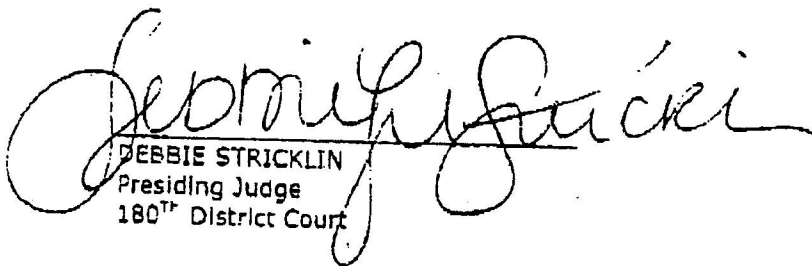
**ORDER**

THE CLERK IS **ORDERED** to send a copy of the Court's finding of facts denying DNA testing in cause no. 526673 and the instant order to the applicant's counsel: William Todd Hughey; 125 Centre; Dallas, Tx 75208 and to the State: Roe Wilson; 1201 Franklin, Suite 600; Houston, Texas 77002.

THE CLERK IS **FURTHER ORDERED**, pursuant to TEX. CODE CRIM. PROC. art. 64.03 (e), to send a copy of the Court's finding of facts denying DNA testing in cause no. 526673 and the instant order to the Department of Public Safety; 10110 Northwest Freeway; Houston, Tx 77092-8679.

BY THE FOLLOWING SIGNATURE, THE COURT ADOPTS THE STATE'S PROPOSED FINDINGS IN CAUSE NO. 526673.

SIGNED the 11<sup>th</sup> day of January, 2002.

  
DEBBIE STRICKLIN  
Presiding Judge  
180<sup>th</sup> District Court

RECORDER'S MEMORANDUM.  
This instrument is of poor quality  
and not satisfactory for photographic  
recording; and/or alterations were  
present at the time of filming

V3563 P0227

CAUSE NO. 526,673

STATE OF TEXAS

VS.

SHIRLEY ANN SOUTHERLAND

§  
§  
§  
§  
§

IN THE 180TH JUDICIAL

DISTRICT COURT OF

HARRIS COUNTY, TX

APPLICANT'S NOTICE OF APPEAL AND MOTION TO DEEM NOTICE TIMELY FILED

Now Comes, Applicant **SHIRLEY ANN SOUTHERLAND** through Counsel William T. Hughey and gives this Notice of Appeal of the Trial's court Order dated January 11, 2002, Denying Applicant's Request for DNA Testing.

In keeping with the above the Applicant also request that the Court of Appeals deem this Notice as being timely filed and in support of this request incorporates the Affidavit/ Exhibit of William T. Hughey, attached hereto which reflects that due to error of the District Clerk Office, Applicant did not receive notice of the Denial her of her Application for DNA Testing until February 28, 2002. As to this request it is Applicant's desire to pursue this Appeal and that the granting of this request does not create any undue delay or harm upon the State.

Wherefore premise considered the Applicant prays that her request be granted in all parts.

Respectfully submitted,

ORIGINAL RECEIVED IN  
DISTRICT CLERK'S OFFICE

MAR 27 2002

DATE

DEPUTY

LAW OFFICE OF WILLIAM T. HUGHEY

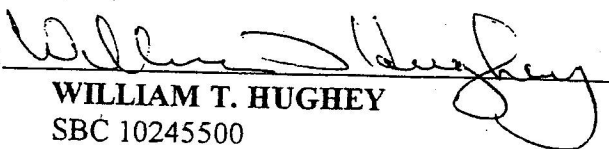
125 Centre Street

Dallas, TX 75208

Phone: (214) 942-9800

Fax: (214) 942-5600

By:

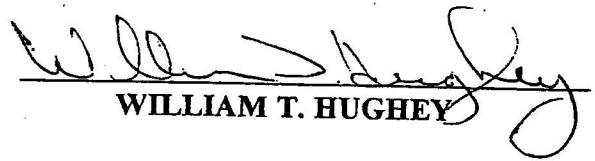
  
WILLIAM T. HUGHEY

SBC 10245500



**CERTIFICATE OF SERVICE**

This is to certify that I have forwarded a true and correct copy of the foregoing Motion via U.S. Mail to Roe Wilson Assistant Harris County District Attorney, Houston, TX on this 11<sup>th</sup> day of March , 2002.

  
WILLIAM T. HUGHEY

STATE OF TEXAS

§

COUNTY OF DALLAS

§

§

**AFFIDAVIT OF WILLIAM T. HUGHEY**

Before Me, the undersigned authority, on this day personally appeared **William T. Hughey** who being by me duly sworn on her oath deposed and said:

"My name is **William T. Hughey**, I am over 18 years of age, have never been declared of unsound mind, nor convicted of a felony or misdemeanor involving moral turpitude. I am able to otherwise make the following true statements based on my personal knowledge to wit:

I am the Attorney of record for Shirley Ann Southerland the Applicant requesting DNA Testing in Cause Number 526673. As to said Application on December 19, 2001, I traveled form my Office in Dallas ,Texas and appeared in open Court before the Honorable Debbie Stricklin Judge of the 180th District Court, Houston , Harris County Texas. At said appearance a hearing was conducted on the Southerland Application for DNA Testing. The Court took the matter under consideration and agreed to review the Statement of Fact from the underlying Trial . Subsequent to this date after not receiving a decision form the Court at a point 60 days after the December 19,2001, Hearing I contacted the Counsel for the State of Texas, Mrs. Roe Wilson who reviewed her file and indicated that she also did not have any thing in her file that reflected a Ruling from the Court.

In keeping with the above Mrs. Wilson stated that she would have an intern in her office to go and review the Court's File . I eventually received a call from Mrs. Wilson and was informed that the case file had been sent back to storage and that she would have the file retrieved and contact me with her finding. On March 1, 2002, Mrs. Wilson Faxed to my office Exhibit "A" the Court's Ruling denying Applicant's request for DNA Testing. The Ruling was dated January 11,2002. The Ruling

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Clerk of The 14th  
Court of Appeals  
1307 San Jacinto, 14th  
Houston, TX 77002

4a. Article Number  
7001 0360 0001 5246 77

4b. Service Type

Registered  Certified

Express Mail  Insured

Return Receipt for Merchandise  COD

7. Date of Delivery  
4-26-02

5. Received By: (Print Name)

*[Signature]*

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Addressee or Agent)

*[Signature]*

PS Form 3811, December 1994

Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Clerk of The 1st  
Court of Appeals  
1307 San Jacinto, 10th  
Houston, TX 77002

4a. Article Number  
7001 0360 0001 5246 772

4b. Service Type

Registered  Certified

Express Mail  Insured

Return Receipt for Merchandise  COD

7. Date of Delivery  
4-26-02

Received By: (Print Name)

*[Signature]*

8. Addressee's Address (Only if requested and fee is paid)

Signature (Addressee or Agent)

*[Signature]*

PS Form 3811, December 1994

Domestic Return Receipt

Order issued September 5, 2002



**F I L E D**

**CHARLES BACARISSE**  
District Clerk

SEP 9 2002

Time: \_\_\_\_\_  
Harris County, Texas

By \_\_\_\_\_  
Deputy

In The  
**Court of Appeals**  
For The  
**First District of Texas**

\_\_\_\_\_  
NO. 01-02-00868-CV  
\_\_\_\_\_

**IN RE SHIRLEY ANN SOUTHERLAND, Relator**

\_\_\_\_\_  
**Original Proceeding on Petition for Writ of Mandamus**  
\_\_\_\_\_

**ORDER**

On August 15, 2002, relator filed in this Court a petition for writ of mandamus, requesting that this Court compel respondent Charles Bacarisse, District Clerk for Harris County, to forward to the appropriate court of appeals her notice of appeal from the trial court's denial of her motion for DNA testing in cause number 526673.

The Court requests a response to relator's petition from the Harris County District Attorney on or before October 7, 2002. See *TEX. R. APP. P. 52.4*. Any

additional record is also due no later than October 7, 2002. *See* TEX. R. APP. P. 52.7.

It is so **ORDERED**.

**PER CURIAM**

Do not publish. TEX. R. APP. P. 47.

CAUSE NO. 526,673

STATE OF TEXAS

VS.

SHIRLEY ANN SOUTHERLAND

§  
§  
§  
§  
§

IN THE 180TH JUDICIAL

DISTRICT COURT OF

HARRIS COUNTY, TX

**DEFENDANT'S PROPOSED FINDINGS OF FACT**  
**AND ORDER GRANTING**  
**DNA TESTING**

Having considered the applicant's motion requesting DNA testing of evidence and the State's motion requesting that DNA testing be denied in the above-styled case, the Court makes the following findings of facts:

**FINDINGS OF FACT**

1. The Court finds that records of the Harris County Sheriff's Office show that , as of March 18, 2001, there is a windbreaker in cause no. 526673 that is still in the possession of the Harris County Sheriff's Office in the cause. 526673 that dates back to 1989.
2. The Court finds that the presence of the complainant's blood on Judy Frazier's windbreak in cause no. 526673 would raise a reasonable probability that the Applicant would not have convicted if exculpatory results had been obtained through DNA testing.
3. The Court finds that the proposed DNA testing is not made to unreasonably delay the execution of sentence or administration of justice.
4. The Identity was an issue to the extend that a review of the Trial Record reflects that the Applicant testified at Trial to not committing the offence.
5. The Court finds that the applicant has met the requirements of TEX. CODE CRIM. PROC. art. 64.03 (a)(1) and(2), concerning her burden of proof .

**CONCLUSION OF LAW**

1. The Court, based on its finding that the that the Applicant has met the requirements of TEX. CODE CRIM. PROC. art. 64.03 (a) (1) and (2), **GRANTS** the Applicant's request for DNA testing in cause no. 573963.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_\_

By: \_\_\_\_\_  
DEBBIE STRICKLIN Presiding Judge  
180th District Court Harris County Texas

**"EVIDENCE RECORDS AFFIDAVIT"**

Cause # 526673

STATE OF TEXAS )(

COUNTY OF HARRIS )(

My name is ~~X~~ MICHAEL G. LOUZALES

I am employed as the property and/or evidence records custodian for the  
HARRIS COUNTY SHERIFFS' OFFICE (HCSO)

My address and telephone number are 601 LOCKWOOD - HOUSTON, TX  
713-967-5709

In my capacity as property and/or evidence records custodian I have care and  
custody of those records for HCSO

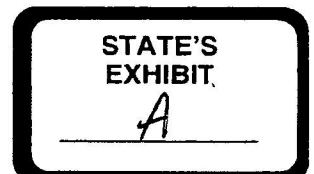
and I certify that the following reflects the status of property and/or evidence  
related to HCSO offense report # 89-044959  
dated 2-19-89:

(please select and complete the proper category)

(A) \_\_\_\_\_ According to the records of \_\_\_\_\_  
the evidence in offense report # \_\_\_\_\_ was destroyed on  
\_\_\_\_\_.

(B) \_\_\_\_\_ The records of the \_\_\_\_\_  
do not reflect that property and/or evidence from offense report # \_\_\_\_\_  
is in the Possession of the \_\_\_\_\_.

(continued on page 2)





(C) ✓ According to the records of the HC50

the following property and/or evidence from offense report # 89-044959

is in the custody of the HC50:

- 1) RED BUDWEISER PLASTIC CONTAINER
- 1) BROWN BOOTS
- 1) BLUE JEANS
- 1) WHITE BLOUSE
- 1) WHITE JACKET
- 1) GREY PURSE
- 1) Budweiser 12 pack CARTON
- 1) HOT DOG PACKAGE
- 1) PROJECTILE

(D) \_\_\_\_\_ The records of the \_\_\_\_\_ reflect  
that the following items were checked out of the Property Room / Lab on the  
following dates by the following entities and have not been returned:

---

---

---

---

---

---

---

---

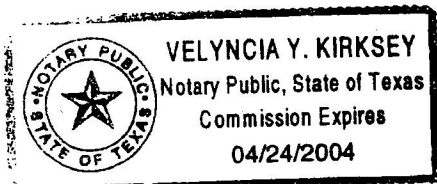
---

---

“I have completed and read the above affidavit and have found it to be true and correct to the best of m knowledge.”

SIGNED: *Marcus G. [Signature]*  
NAME

SWORN TO AND SUBSCRIBED before me the undersigned authority on this  
the 11<sup>th</sup> day of February, 2001



*[Signature]*  
NOTARY PUBLIC FOR HARRIS COUNTY,  
TEXAS

CAUSE NO. 526,673

STATE OF TEXAS

VS.

SHIRLEY ANN SOUTHERLAND

§  
§  
§  
§  
§

IN THE 180TH JUDICIAL

DISTRICT COURT OF

HARRIS COUNTY, TX

ORDER

**THE CLERK IS ORDERED** to send a copy of the Court's finding of facts Granting DNA testing in cause no. 526673 and the instant ordered to the Applicant's Counsel: William Todd Hughey; 125 Centre; Dallas, TX 75208 and to the State Counsel: Roe Wilson; 1201 Franklin, Suite 600; Houston, TX 77002

**THE CLERK IS FURTHER ORDERED**, pursuant to TEX. CODE CRIM. PROC. art. 64.03 (e), to send a copy of the Court's finding of facts Granting DNA testing in cause no. 526673 and the instant order to the Department of Public Safety; 10110 Northwest Freeway; Houston, TX 77092-8679 ,

**IT IS FURTHER ORDERED**, that the Harris County Sheriff's Office within \_\_\_ days of the signing of this order turnover to the Department of Public Safety the Windbreak in cause no. 526673 for DNA testing.

**IT IS FURTHER ORDERED** , that the Department of Public Safety shall conduct DNA testing of the Windbreaker and sample and return the findings to the Court within \_\_\_\_\_ days of the completing of the DNA testing.

Signed this \_\_\_ day of \_\_\_\_\_ 200\_\_

By: \_\_\_\_\_

DEBBIE STRICKLIN Presiding Judge  
180th District Court Harris County Texas



**CHARLES BACARISSE**  
HARRIS COUNTY DISTRICT CLERK

Direct Dial Line:  
(713) 755-5738

September 20, 2002

WILLIAM HUGHEY  
ATTORNEY OF RECORD  
125 CENTRE STREET  
DALLAS, TEXAS 75208-6615

Defendant's Name: SHIRLEY ANN SOUTHERLAND aka SHIRLEY ANNETTE STOKLEY aka  
SHIRLEY ANNETTE MARTIN

Cause No: 526673

Court: 180TH DISTRICT COURT

Please note the following appeal updates on the above mentioned cause:

**Notice of Appeal Filed Date:**

**Sentence Imposed Date:**

**Court of Appeals Assignment:** Fourteenth Court of Appeals

**Appeal Attorney of Record:**

**Motion for New Trial Filed:**

**State's Notice of Appeal (Judgment & Sentence) filed:**

**State's Notice of Appeal (Motion) filed date:**                      **Ruling made:**

**Defendant's Notice of Appeal on Motion filed date:** 3-20-02 **Ruling Made:** 1-11-02 MOTION FOR  
DNA TESTING DENIED

**Notice of Appeal on Writ of Habeas Corpus filed:**                      **Ruling Made:**

Sincerely,

A handwritten signature in cursive script, appearing to read "P. Gibson".

P. Gibson  
Criminal Post Trial Deputy

CC: Mr. Charles Rosenthal, Jr.  
Asst. District Attorney  
Appellate Division  
Harris County, Texas

This is your notice to inform any and all substitute reporters in this cause.

13/989  
988

STATE OF TEXAS

§

IN THE 180th District Court

VS.

§

Shirley Ann Southerland

OF HARRIS COUNTY TEXAS

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared Joline Ehler who, being duly sworn deposed as follows.

My name is Joline Ehler. I am a Deputy District Clerk employee assigned as a Deputy Court Clerk of the Criminal Courts Division for the District Clerk's Office.

In the above-mentioned case, the notice of appeal was filed on March 20, 2002. The appeal was not turned in to the appellate division for processing until September 20, 2002.

The Notice of Appeal was filed with the clerk of the court and subsequently, the original notice of appeal was misplaced. After procuring satisfactory documents, the notice of appeal has been processed.



Joline Ehler,  
DEPUTY COURT CLERK

SWORN TO AND SUBSCRIBED before me on the 20<sup>th</sup> day of September, 2002.



Anna Hollon, Supervisor  
Criminal District Courts

No. 01-02-00868-CV  
In the Court of Appeals for the  
First District of Texas, at Houston

—◆—  
Arising out of Cause No. 526,673  
In the District Court for the ~~180th~~  
Judicial District, Harris County, Texas  
—◆—

**F I L E D**

CHARLES BACARISSE  
District Clerk

OCT 14 2002

Time: \_\_\_\_\_  
Harris County, Texas

By \_\_\_\_\_  
Deputy

**IN RE**  
**SHIRLEY ANN SOUTHERLAND,**  
*Relator.*

—◆—  
**STATE'S RESPONSE TO**  
**PETITION FOR WRIT OF MANDAMUS**  
—◆—

**TO THE HONORABLE JUSTICES OF THE COURT OF APPEALS:**

COMES NOW THE STATE OF TEXAS, by the undersigned assistant district attorney, and offers this response to the above-captioned petition for writ of mandamus. The State would respectfully show the Court the following:

1. The records of the Harris County District Clerk indicate that: (a) the relator was convicted of the offense of murder in Cause No. 526,673 in the 180th District Court, Harris County, Texas, on March 16, 1990; (b) the relator filed a motion for post-conviction DNA testing of physical evidence, pursuant to Chapter 64 of the Texas Code of Criminal Procedure, on December 14, 2001; (c) the motion for DNA testing was denied by the 180th

District Court on January 11, 2002; and (d) the relator filed an untimely notice of appeal in the office of the district clerk on March 20, 2002.

2. On August 15, 2002, the relator filed a petition for writ of mandamus in this Court, complaining that the district clerk had failed to prepare and transmit to a court of appeals a clerk's record for use in appealing the denial of DNA testing, pursuant to TEX. CODE CRIM. PROC. ANN. art. 64.05 (Vernon Supp. 2002). On September 5, 2002, this Court requested that the Harris County District Attorney respond to that petition.

3. On or about September 20, 2002, the district clerk notified the Court of Appeals for the Fourteenth District that the relator's appeal from the order denying DNA testing had been randomly assigned to that Court. The relator's appeal is currently pending in that Court under case number 14-02-00986-CR.

4. The records of the district clerk indicate that the clerk's record was due to be filed in the Court of Appeals on or before March 12, 2002, but no clerk's record has yet been prepared. The district attorney has notified both the district clerk's office and the clerk of the Court of Appeals for the Fourteenth District that the clerk's record is long overdue.

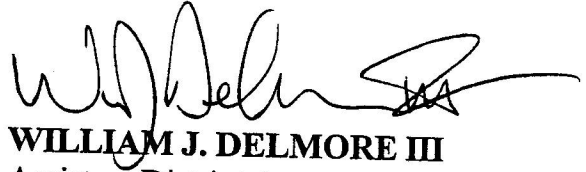
5. Upon the filing of the clerk's record in the Court of Appeals for the Fourteenth District, the district attorney anticipates filing a motion to dismiss the appeal for want of jurisdiction, on grounds that the notice of appeal was not timely filed.

6. While this Court did have jurisdiction to determine whether it has jurisdiction over the relator's appeal, and to issue any writ of mandamus necessary to enforce its jurisdiction, *see In re Washington*, 7 S.W.3d 181, 182 (Tex. App.—Houston [1st Dist.] 1999, orig.

proceeding), it does not otherwise possess jurisdiction to issue writs of mandamus against the district clerk. *Id.* Since it is now apparent that the appeal from the denial of DNA testing has been assigned to the Court of Appeals for the Fourteenth District, it is respectfully suggested that this Court lacks any jurisdiction to issue the requested writ of mandamus.

**THEREFORE**, it is respectfully suggested that the relator's petition for writ of mandamus be denied for want of jurisdiction.

Respectfully submitted,



**WILLIAM J. DELMORE III**

Assistant District Attorney

Harris County, Texas

1201 Franklin, Suite 600

Houston, Texas 77002

(713) 755-5826

FAX (713) 755-5809

T.B.C. No. 05732400



**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing instrument has been mailed to counsel for the relator at the following address, on the date of the filing of the original with the Clerk of this Court:

Mr. William T. Hughey  
Attorney at Law  
125 Centre  
Dallas, TX 75208



**WILLIAM J. DELMORE III**  
Assistant District Attorney  
Harris County, Texas  
1201 Franklin, Suite 600  
Houston, Texas 77002  
(713) 755-5826  
FAX (713) 755-5809  
T.B.C. No. 05732400

October 7, 2002

Opinion issued November 27, 2002



**F I L E D**

**CHARLES BACARIESE**  
District Clerk

**DEC 2 2002**

Time: \_\_\_\_\_  
Harris County, Texas

By \_\_\_\_\_  
Deputy

In The  
**Court of Appeals**  
For The  
**First District of Texas**

NO. 01-02-01152-CR

**SHIRLEY ANN SOUTHERLAND, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

---

---

On Appeal from the 180th District Court  
Harris County, Texas  
Trial Court Cause No. 526673

---

---

**MEMORANDUM OPINION**

We are without jurisdiction to entertain this appeal from the denial of forensic DNA testing. *See* TEX. CODE CRIM. PROC. ANN. art. 64.05 (Vernon Supp. 2003). The trial judge signed the order denying DNA testing on January 11, 2002.

13/9/86

The deadline for filing notice of appeal was therefore Monday, February 11, 2002, because the thirtieth day after sentencing fell on a weekend. TEX. R. APP. P. 4.1(a), 26.2(a)(1). On March 20, 2002, 37 days after the deadline, appellant's counsel filed "Applicant's Notice of Appeal and Motion to Deem Notice Timely Filed."

"A court of appeals may grant an extension of time to file notice of appeal if the notice is filed within 15 days after the last day allowed and, within the same period, a motion is filed in the court of appeals reasonably explaining the need for the extension of time." *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996); *Douglas v. State*, 987 S.W.2d 605, 605-06 (Tex. App.—Houston [1st Dist.] 1999, no pet.); see TEX. R. APP. P. 26.2, 26.3. When a notice of appeal, but no motion for extension of time, is filed within the 15-day period, the court of appeals lacks jurisdiction to dispose of the purported appeal in any manner other than by dismissing it for lack of jurisdiction. *Olivo*, at 523.

In the present case, neither the notice of appeal nor a motion for extension of time was timely filed. We are therefore without jurisdiction over this appeal.

The appeal is dismissed for lack of jurisdiction.

All pending motions are **denied as moot**.

It is so **ORDERED**.

**PER CURIAM**

Panel consists of Justices Nuchia, Jennings, and Radack.

Do not publish. TEX. R. APP. P. 47.

# **WILLIAM TODD HUGHEY**

Attorney & Counselor at Law

December 2, 2002

Mrs. Shirley Southerland  
#555516  
1500 State School Rd,  
Gatesville, TX. 76598

Re: Appeal Opinion

Dear Mrs. Southerland

Enclosed is a copy of the Court of Appeals Opinion on the DNA Appeal. The Court of Appeals Dismissed the Appeal based on a Lack of Jurisdiction because the *Notice of Appeal* and the *Motion for Extension of Time*, allegedly were not Timely Filed. I must say the Appeals Court's logic is a bit off point because it fails to take into consideration that the two benchmark dates listed below are dates which expired before we received any Notice the DNA Motion had been Denied, that date being March 1, 2002.


### **Benchmark Dates**

1. **February 11, 2002**, the filing deadline for the Notice of Appeal based on the 180th Order Denying DNA Testing which was signed on January 11, 2002 and
2. **February 26, 2002**, which would have been the last date to file an Extension for Time to file a Late Notice of Appeal, (15 days after February 11, 2002)

The fact of the matter is that the Harris County District Clerk's failure to timely give Notice of the January 11, 2002, Denial Order signed by the Judge of the 180th ; made our efforts to comply with the above dates totally impossible. At this point I can only say that this case has more twist and turns than a "Party of Drunk Rattle Snakes". At this juncture I will began work on a FDR to The Criminal Court of Appeals in Austin, Texas, to see if they will address this Opinion that fails to give any consideration to what appears to be a series of malicious acts and actions by the Harris County District Clerk's Office concerning your case.

In closing I know that this is not the best of news for the Holiday Season, however, I wish you a Merry Christmas and I will continue the battle.

Sincerely

  
William T. Hughey

**William T. Hughey, Attorney**

126 Centre Street → Dallas, Texas 75208-8615 → 214-942-8800 → 214-942-5600 (fax)  
hughey@msn.com

Opinion issued November 27, 2002

**F I L E D**

**CHARLES BACARISSE**  
District Clerk

AUG - 9 2003

Time: \_\_\_\_\_  
Harris County, Texas  
By \_\_\_\_\_  
Deputy



In The  
**Court of Appeals**  
For The  
**First District of Texas**

NO. 01-02-01152-CR

SHIRLEY ANN SOUTHERLAND, Appellant

V.

THE STATE OF TEXAS, Appellee

---

---

On Appeal from the 180th District Court  
Harris County, Texas  
Trial Court Cause No. 526673

---

---

**MEMORANDUM OPINION**

We are without jurisdiction to entertain this appeal from the denial of forensic DNA testing. *See* TEX. CODE CRIM. PROC. ANN. art. 64.05 (Vernon Supp. 2003). The trial judge signed the order denying DNA testing on January 11, 2002.

3/982

The deadline for filing notice of appeal was therefore Monday, February 11, 2002, because the thirtieth day after sentencing fell on a weekend. TEX. R. APP. P. 4.1(a), 26.2(a)(1). On March 20, 2002, 37 days after the deadline, appellant's counsel filed "Applicant's Notice of Appeal and Motion to Deem Notice Timely Filed."

"A court of appeals may grant an extension of time to file notice of appeal if the notice is filed within 15 days after the last day allowed and, within the same period, a motion is filed in the court of appeals reasonably explaining the need for the extension of time." *Olivo v. State*, 918 S.W.2d 519, 522 (Tex. Crim. App. 1996); *Douglas v. State*, 987 S.W.2d 605, 605-06 (Tex. App.—Houston [1st Dist.] 1999, no pet.); see TEX. R. APP. P. 26.2, 26.3. When a notice of appeal, but no motion for extension of time, is filed within the 15-day period, the court of appeals lacks jurisdiction to dispose of the purported appeal in any manner other than by dismissing it for lack of jurisdiction. *Olivo*, at 523.

In the present case, neither the notice of appeal nor a motion for extension of time was timely filed. We are therefore without jurisdiction over this appeal.

The appeal is dismissed for lack of jurisdiction.

All pending motions are **denied as moot**.

It is so **ORDERED**.

**PER CURIAM**

Panel consists of Justices Nuchia, Jennings, and Radack.

Do not publish. TEX. R. APP. P. 47.



Order Issued January 24, 2003



In The  
**Court of Appeals**  
For The  
**First District of Texas**

---

NO. 01-02-01152-CR

---

**SOUTHERLAND, SHIRLEY ANNETTE, Appellant**  
V.  
**THE STATE OF TEXAS, Appellee**

---

**On Appeal from 180th District Court**  
**Harris County, Texas**  
**Trial Court Cause No. 526673**

---

**ORDER**

This Court's mandate dated December 12, 2002, is hereby **WITHDRAWN**. All persons to whom copies of the mandate were directed to are ordered to return the mandate to this Court, and all proceedings issued pursuant to such mandate are ordered quashed.

It is so **ORDERED**.

**PER CURIAM**

Do not publish. Tex. R. App. P. 47.2(b)

1983

**F I L E D**

**CHARLES BACARISSE**  
District Clerk

AUG -9 2003

Time: \_\_\_\_\_  
Harris County, Texas

By \_\_\_\_\_  
Deputy



**Court of Appeals**  
**First District of Texas**  
**MANDATE**

**TO THE 180TH DISTRICT COURT OF HARRIS COUNTY, GREETINGS:**

Before our Court of Appeals for the First District of Texas, on November 27, 2002, the cause upon appeal to revise or reverse your judgment between

SHIRLEY ANN SOUTHERLAND,  
APPELLANT

Appeal from the 180th District Court of Harris County, Texas. (Tr. Ct. No. 526673). Panel consists of Justices Nuchia, Jennings, and Radack.

NO. 01-02-01152-CR V.

THE STATE OF TEXAS, APPELLEE

~~was determined;~~ and therein our said Court made its order in these words:

"The cause heard today by the Court is an appeal from the judgment signed by the court below on January 11, 2002. After inspecting the record of the court below, it is the opinion of this Court that it has no jurisdiction over the appeal. It is therefore **CONSIDERED, ADJUDGED, and ORDERED** that the appeal herein be, and the same hereby is, **dismissed**.

It is further **ORDERED** that this decision be certified below for observance.

Judgment rendered by panel consisting of Justices Nuchia, Jennings, and Radack."

**WHEREFORE, WE COMMAND YOU** to observe the order of our said Court of Appeals for the First District of Texas in this behalf, and in all things have it duly recognized, obeyed, and executed.

12/981

44271 P0361

WITNESS the HON. SHERRY RADACK, Chief Justice of our Court of Appeals, with the Seal thereof affixed, at the City of Houston, on this date, AUG 04 2003.

MARGIE THOMPSON, CLERK

By

*Margie Thompson*

CHIEF DEPUTY

04271 P1362

THE STATE OF TEXAS

*STB 2/13/98*

NO. 052667301010

VS.

IN THE 180 DISTRICT COURT

SOUTHERLAND, SHIRLEY ANNETTE M  
STOKLEY, SHIRLEY A  
SOUTHERLAND, SHIRLEY ANNETTE M  
MARTIN, SHIRLEY ANNETTE

OF HARRIS COUNTY, T E X A S

CAUSE NUMBER: 052667301010

OFFENSE: MURDER

DATE SENTENCED: 03/16/90

*TDC* TDC: *LPR*  
SPN.: 00324430

SID.: TX01520453

DOB: 11/03/48

RACE: W

SEX: F

CELL:

HOLD:

TO THE SHERIFF OF HARRIS COUNTY - GREETINGS:

YOU WILL DELIVER TO THE DIRECTOR OF THE DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION OF THE STATE OF TEXAS OR HIS AUTHORIZED AGENT, THE ABOVE NAMED PRISONER IN YOUR OFFICIAL CUSTODY, HAVING BEEN SENTENCED TO THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION AND ARE DIRECTED TO ATTACH TO THE COMMITMENT PAPERS A STATEMENT ASSESSING THE DEFENDANT'S CONDUCT WHILE IN JAIL.

NOTE: *MANDATE DISMISSAL*

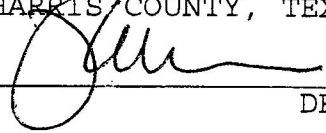
AND THIS WILL BE YOUR AUTHORITY FOR SO DOING.

HEREIN FAIL NOT, BUT OF THIS WRIT THEN AND THERE MAKE DUE RETURN, SHOWING HOW YOU HAVE EXECUTED THE SAME. IF NOT EXECUTED WITHIN 90 DAYS FROM DATE HEREOF, YOU SHALL NOTIFY SAID COURT, IN WRITING, THE CAUSE OF FAILURE AND WHAT EFFORTS HAVE BEEN MADE TO EXECUTE SAME.

WITNESS MY SIGNATURE AND SEAL OF OFFICE,  
ON THIS THE 19TH DAY OF SEPTEMBER A.D. 2003

CHARLES BACARISSE  
DISTRICT CLERK, HARRIS COUNTY, TEXAS

BY \_\_\_\_\_



DEPUTY

INITIATING DEPUTY:  
EHLER, JOLINE KAY  
SNU: 997

SHERIFF'S RETURN

RECEIVED THIS WRIT ON THE 19 DAY OF SEPTEMBER A.D. 2003 AND I EXECUTED THE SAME ON THE 23 DAY OF SEPTEMBER A.D. 2003 BY DELIVERING THE BODY OF THE WITHIN-NAMED PERSON TO THE DIRECTOR OF THE TEXAS DEPARTMENT OF THE CORRECTIONS.

**MAILED JUDGEMENT**

AND

TOMMY THOMAS  
SHERIFF OF HARRIS COUNTY, TEXAS SENTENCED TO TDC

DATE: 01/17/92

BY *[Signature]* DEPUTY