

CAUSE NO. F86-98639-Y

THE STATE OF TEXAS

v.

CLAY REED CHABOT

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IN THE CRIMINAL DISTRICT
COURT NUMBER SEVEN
DALLAS COUNTY, TEXAS

FILED
2010 NOV 12 PM 4:20
GARY F. HARRIS
DISTRICT CLERK
DALLAS CO. TEXAS

**DEFENDANT'S MOTION TO DISMISS THE INDICTMENT,
TO EXCLUDE EVIDENCE AND FOR JURY INSTRUCTIONS**

Now comes undersigned counsel for Defendant Clay Chabot, and pursuant to the 5th, 6th, 8th and 14th Amendments to the United States Constitution, Article 1, sections 3, 10, 13 & 19 of the Texas Constitution, and moves the Court for an Order requiring the State (i) to dismiss the indictment, and in the alternative, (ii) to exclude certain testimony and other evidence relating to the lost physical evidence, and (iii) to give an appropriate jury instruction; and for cause therefore would respectfully show as follows.

Defendant Clay Reed Chabot spent twenty-four years in Texas prisons for the rape and murder of Galua Crosby as the result of the State's proffer, at his 1986 trial, of perjured testimony from the supposedly peaceful man who has now been convicted of that crime as the result of conclusive DNA evidence. The State intends to retry Mr. Chabot. Remarkably, the State has lost five pieces of physical evidence crucial to Mr. Chabot's defense: the alleged murder weapon; the other weapon found at the scene; the expended cartridge case recovered at the scene of the murder; the "peaceful" man's blood-stained shirt; and swabs of blood from the gun. Any retrial of Mr. Chabot without

the evidence would be fundamentally unfair and deprive Mr. Chabot of his federal due process rights and Texas constitutional due course of law rights.

PRELIMINARY STATEMENT

Mr. Chabot was wrongfully convicted in 1986 of murdering Galua Crosby. The critical evidence at Mr. Chabot's trial – in fact, “the only direct evidence that [Mr. Chabot] sexually assaulted and killed Crosby,” in the words of the Court of Criminal Appeals—Ex Parte Chabot, 300 S.W.3d 768, 772 (Tex. Crim. App. 2009) – was the testimony of Gerald Pabst, who testified that Mr. Chabot raped and murdered Ms. Crosby while Pabst was in another room. Mr. Chabot testified, in his own defense, that he was not even present at the time; but the jury believed Pabst, aided in doing so by the testimony of “another state witness who characterized Pabst as a non-violent person who would never hurt a woman.” Id. Mr. Chabot was sentenced to life in prison; having provided the State with the needed testimony, Pabst was released shortly after Mr. Chabot's conviction.

Fortunately for Mr. Chabot, biological evidence in the form of vaginal slides taken from Ms. Crosby's body belatedly provided the evidence – when subjected to DNA testing unavailable in 1986 – that Pabst perjured himself, and was not, indeed, in another room: rather, he was actually guilty of raping Ms. Crosby. Unfortunately for Mr. Chabot, the State failed to preserve other crucial physical evidence, including Pabst's blood-soaked shirt, the .25-caliber pistol that was the supposed murder weapon, the other .25-caliber pistol found at the crime scene, the expended cartridge case recovered at the scene of the murder, and swabs of blood taken from the alleged murder weapon. Indeed, the State did not even follow its own written procedures regarding storage, handling, and

disposition of this evidence. Thus, it will be impossible for Mr. Chabot to apply modern scientific techniques to such evidence in his defense: (i) DNA testing, to prove that the blood on Pabst's shirt was either Ms. Crosby's, the result of being shot at close range, or Pabst's, drawn during Ms. Crosby's struggle to resist her rape and murder; (ii) DNA testing, to prove that the blood on the gun (either from the gun itself, or the swabs) was Pabst's or that of another unknown accomplice; and (iii) ballistics reanalysis, to negate the State's claim that the gun belonging to Mr. Chabot's wife was the murder weapon.¹ Nor can the State claim that it could not have foreseen the prejudice to Mr. Chabot from the loss of this physical evidence, given that ADA Warder's own notes from the 1986 trial, which were subsequently produced pursuant to an open records policy, reveal that she knew Pabst's bloody shirt to be a significant "problem" for the State's case against Mr. Chabot from the outset.

The State is now seeking to re-indict Mr. Chabot on charges of capital murder. It is entirely conceivable that – but Mr. Chabot cannot know whether – the State intends to again proffer testimony from Pabst, a perjurer and adjudicated murderer, to place Mr. Chabot at the crime scene; to contend that Chabot's wife's gun was the murder weapon; and to proffer ballistics evidence, based on the recollections and notes of analysts who last examined these items more than two decades ago.

¹ In light of the State's failure to preserve the gun and the cartridge and the flaws in the 1986 analysis performed by the State's experts, it is highly unlikely that the State will be able to offer admissible opinion testimony that the gun belonging to Mr. Chabot's wife was the murder weapon. *See Motion in Limine to Exclude Scientific Testimony as to Firearms* (filed contemporaneously herewith).

Accordingly, Defendant needs the assistance of the Court in obtaining a trial that is as fair as remains possible in light of the State's gross negligence (if not reckless disregard) in dealing with the physical evidence, and its subsequent intransigence, in the form of:

1. An order dismissing the indictment;
2. An order *in limine* precluding the State from introducing ballistics evidence, including any references to the 1986 ballistics analyses it conducted;
3. An order *in limine* precluding the State from introducing that portion of Mr. Chabot's statement to the police involving his supposed loan of the .25 automatic to Pabst;
4. An instruction informing the jury that the shirt worn by Gerald Pabst on the day of the murder was stained with blood; the State had the duty to preserve the shirt; the State failed to do so; as a result of the State's failure, it is impossible for Mr. Chabot's attorneys to perform DNA testing – which was not available in 1986 – to determine the source of the blood, as they did in determining (and identifying Pabst, and excluding Mr. Chabot) as the source of the semen; and that the jurors should presume and accept as true that the result of such testing would have been favorable to Mr. Chabot and unfavorable to the State's case: specifically that the blood on Pabst's shirt was that of Galua Crosby;
5. An instruction to the jury that there was blood found on the gun, and that swabs were taken from the gun; the State had the duty to preserve the gun and the swabs; the State failed to do so; as a result of the State's failure, it is impossible for Mr. Chabot's attorneys to perform DNA testing – which was not available in 1986 – to

determine the source of the blood, as they did in determining (and identifying Pabst, and excluding Mr. Chabot) as the source of the semen; and that the jurors should presume and accept as true that the result of such testing would have been favorable to Mr. Chabot's defense: specifically, that the blood belonged to Pabst.

FACTS

At Mr. Chabot's 1986 trial, Pabst testified that he and Mr. Chabot went together to the home of Galua Crosby and her common-law husband, Douglas Graham, seeking "money or some collateral" because Graham had sold Mr. Chabot bad drugs. Chabot Trial Transcript ("Tr.") at Vol. 4, p. 27, State v. Chabot, No. F-86-98639-UP (Oct. 17, 1986). Pabst further testified that when they arrived at the house, Ms. Crosby was home alone, id. at 31; that Mr. Chabot pushed his way into the house, and after arguing with Ms. Crosby for 20 minutes, pulled out his gun, id. at 31, 37; that Mr. Chabot ordered Pabst to tie up Ms. Crosby's legs in the bedroom while Mr. Chabot tied up her hands, id. at 42-44; that Mr. Chabot ordered Pabst to take apart a television set in another part of the house, id. at 47; and that while Pabst was in the other room, he heard Ms. Crosby yell "no" and then heard two gun shots. Id. at 49-50. Pabst also denied sexually assaulting and murdering Ms. Crosby. Ms. Crosby died in her bedroom, after having been raped and shot three times. Id. at Vol. 2, p. 117-119; Vol. 4, p. 115.

At the trial, the State offered two guns – both of them .25 caliber Raven MP-25 pistols – for admission into evidence. One of the pistols was found at Ms. Crosby's home at the time her body was discovered. The other, which belonged to Mr. Chabot's wife ("Chabot's Gun"), was voluntarily given by Mr. Chabot to the Garland police after Mr. Chabot, who knew that Pabst had gone to the Crosby/Graham home, saw

news reports about the murder on television. Dr. Irving Stone, a forensic expert called by the State, testified that a cartridge test-fired from the Chabot Gun bore similar microscopic markings to the cartridge recovered at the murder scene and that, in his opinion, the Chabot Gun was the only weapon in the entire world from which the crime-scene cartridge could have been fired. Id. at Vol. 3, p. 180:14-20.

The State offered no other physical evidence connecting Mr. Chabot to the crime. Dr. Stone testified on cross-examination that there were a number of head hairs and pubic hairs found at the crime scene, but the analyst who examined those hairs concluded that none of them belonged to Mr. Chabot. Id. at Vol. 3, p. 163:14-19. There was also a small amount of apparent blood found on the clip of the Chabot Gun, but – given the difficulties in obtaining interpretable forensic results from such small samples in the pre-DNA era – the laboratory’s tests to determine the source of the blood were all “inconclusive.” Id. at 185-86.

On the other hand, there was testimony that Pabst had bruises and scrapes – and there was visible blood on Pabst’s shirt. ADA Warder recorded in her pretrial notes that “Blood on Gerald’s Clothes” was one of the “Potential Problems” in the case against Mr. Chabot. Ex. A.² The blood swabs taken from the supposed murder weapon, along with both .25 raven pistols, the bloody shirt were stored, and the other evidence, in the crime lab at the Southwestern Institute of Forensic Sciences at Dallas (“SWIFS”).

On October 17, 1986, Mr. Chabot was found guilty of capital murder, sentenced to life in prison, and fined \$10,000. Two days later, the State – undoubtedly

² ADA Warder’s notes were produced in January 2010 pursuant to the state record law, Tex. Govt. Code Ann. 522.001 to 552.353.

grateful for Pabst's invaluable assistance in convicting Mr. Chabot, and consistent with the undisclosed plea deal they had struck before the case went to the jury – allowed Pabst to plead guilty to misdemeanor theft. He was sentenced to time served and released.

On December 10, 2003, Mr. Chabot moved for DNA testing to demonstrate his innocence. The District Court granted Mr. Chabot's motion over the State's objection. DNA testing of vaginal slides from the victim showed that Pabst's testimony was a complete fabrication, and proved that the State's star witness had not, as he claimed, been cowering in fear in the next room, but had raped Ms. Crosby just prior to her death. Based on this new evidence, the Court of Criminal Appeals held that the 2007 DNA test results proved that Pabst perjured himself. Chabot, 300 S.W.3d 768. The Court concluded that since "Pabst was the State's primary witness whose testimony was critical to the State's case," and the jurors were required to find Pabst's testimony true to convict Chabot, it violated Mr. Chabot's due process rights to allow the conviction to stand. Id. at 771. The Court ordered that Mr. Chabot receive a new trial. Id. Pabst was subsequently arrested, tried, found guilty of murdering Ms. Crosby, and sentenced to life in prison.

The State now intends to retry Mr. Chabot for murder, apparently on a theory that Pabst and Mr. Chabot acted as partners. The problem for Mr. Chabot – and for the concepts of fairness and due process – is that crucial physical exculpatory evidence that once existed has been lost by the State: the .25 caliber Raven MO-25 pistol that allegedly was the murder weapon; the cartridge recovered at the murder scene; Pabst's bloody shirt, which, again, the prosecutor acknowledged at the time of the

original trial was a “Potential Problem” in prosecuting Mr. Chabot; the other .25 caliber Raven found at the crime scene; and the swabs of the blood that were taken from the gun.

Such loss is particularly unfair and prejudicial because, in the almost quarter-century since Mr. Chabot’s 1986 trial, new techniques have been developed that would materially aid Mr. Chabot’s defense if the physical evidence had not been lost. Re-analysis of Mr. Chabot’s gun and the cartridge recovered at the murder scene could negate the State’s expert’s earlier conclusion that it was the murder weapon. The same kind of DNA testing that resulted in Mr. Chabot’s retrial, available today but not available in 1986, could prove that the blood on Pabst’s shirt belonged to Ms. Crosby, putting Pabst rather than Mr. Chabot in close range when Ms. Crosby was shot and providing additional evidence in support of Chabot’s innocence. If the blood on the gun matched Pabst’s (who not only had bruises, but also scratches that the perjurer tried to suggest were cuts from unhooking the television (Tr. at Vol. 4, p. 47-48)), that would also be highly exculpatory evidence for Mr. Chabot – literally placing the murder weapon in Pabst’s bloody hand. No such testing is possible, however, because the State failed in its obligation, and ignored its own procedures to preserve and track evidence. Indeed, the State’s records apparently do not even show whether this evidence was lost or destroyed.

Under the circumstances, it would be manifestly unfair – and a violation of Mr. Chabot’s federal due process rights and his Texas constitutional due course of law rights – to allow the State to proceed to trial without the imposition of substantial court-ordered protections for Mr. Chabot. The indictment should be dismissed in its entirety because a re-trial of Mr. Chabot under these circumstances would be fundamentally unfair. In the alternative, the State should be precluded from introducing ballistics

evidence, including the results of the ballistics tests on the Chabot Gun and cartridge recovered at the murder scene, or even commenting on the subject. The portion of Mr. Chabot's statement that indicates that Pabst took Chabot's wife's gun to the victim's home the morning of her murder should be excluded from evidence given Mr. Chabot's inability – due to the State's conduct – to demonstrate that another gun may have killed Ms. Crosby. The jury should be informed of Mr. Pabst's bloody shirt and instructed as to the permissible inferences to be drawn from its disposition by the State.

I. TRYING MR. CHABOT WHEN THE STATE FAILED TO PRESERVE CRITICAL EVIDENCE VIOLATES HIS FEDERAL DUE PROCESS RIGHTS

A. Federal Standard

The U.S. Supreme Court has held that the Government is constitutionally required to preserve “evidence that might be expected to play a significant role in the suspect's defense.” California v. Trombetta, 467 U.S. 479, 488 (1984). “Evidence meets this ‘standard of constitutional materiality’ if it possessed an exculpatory value that was apparent before evidence was destroyed, and if the defendant would be unable to obtain comparable evidence by other reasonably available means.” United States v. Binker, 795 F.2d 1218, 1230 (5th Cir. 1986).

The Supreme Court extended Trombetta in Youngblood, a case where a 10-year old boy was molested and sodomized. He was taken to the hospital where a physician used a swab from a “sexual assault kit” to collect semen samples from the boy's rectum. The police collected the boy's clothing, but they failed to refrigerate it. Tests were performed on the rectum samples, but there was not enough semen present to

identify the assailant. At trial, the State presented evidence that the boy identified the defendant as the assailant, but presented no evidence from the assault kit or the clothing in its case in chief. The defendant's principal defense at trial was that the boy had erred in identifying him as the perpetrator, and that he would have been exonerated by the tests on the clothing if it had been refrigerated. Arizona v. Youngblood, 488 U.S. 51, 54 (1988). The Supreme Court noted that the semen was only potentially useful, in that "no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant" and held that "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." Youngblood, 488 U.S. at 57-58.

Since Youngblood, the standard for establishing a due process violation based on the failure to preserve evidence is as follows: if the State fails to preserve materially exculpatory evidence, there is a *per se* due process violation; but if the evidence is potentially useful, there is a due process violation if evidence was lost or destroyed in bad faith. See Bower v. Quarterman, 497 F.3d 459, 476 (5th Cir. 2007) ("impermissibly withheld evidence must be either (1) material and exculpatory *or* (2) only potentially useful, in combination with a showing of bad faith on the part of the government.") (emphasis added); United States v. Moore, 452 F.3d 382, 388 (5th Cir. 2006) (same); see also Sheehy v. Quarterman, 2007 WL 667153, at *2 (W.D. Tex. Feb. 28, 2007) (same).

B. Analysis of Federal Due Process Claim

1. Pabst's T-Shirt Was Materially Exculpatory

Mr. Chabot's due process rights would be violated if the State prosecutes him, and he is unable to present materially exculpatory evidence in his defense because the State lost or destroyed the evidence. The analysis turns on whether the State was aware of the exculpatory nature of the evidence before it was destroyed and whether Mr. Chabot could obtain comparable evidence by other means. See Anderson v. State, 1994 WL 157173, at *6 (Tex. App. Dallas Apr. 28, 1994) ("The duty to preserve evidence is limited to evidence with an exculpatory value that was apparent before the evidence was destroyed and is such that the defendant would not be able to obtain comparable evidence by other means."). Here, Mr. Chabot's due process rights are violated because the bloody shirt is materially exculpatory and Mr. Chabot cannot obtain comparable evidence by other means.

The exculpatory nature of Pabst's bloody shirt was apparent to the State long before it was lost. ADA Warder, the attorney who prosecuted Mr. Chabot in 1986, wrote in her pretrial notes that "Blood on Gerald's Clothes" was one of the "Potential Problems" in the case against Mr. Chabot. Ex. A. The "Potential Problem" that the State undoubtedly recognized was that the blood on Pabst's shirt supported a theory that Pabst committed the murder, not Mr. Chabot.

There is also no question that the lost shirt was material because Mr. Chabot would not be able to obtain comparable evidence about Pabst's bloody involvement by other means. Compare King v. State, 798 So. 2d 1258, 1262-63 (Miss. 2001) (where the police failed to preserve a bloody shirt in a homicide case, the court found that the "exculpatory nature of the evidence was apparent before it was allowed to spoil;" but only because the defendant was "able to use other physical

evidence to support his version of the events, namely the paper towels that had blood on them” there was no due process violation).

The State’s loss of the materially exculpatory evidence denies Mr. Chabot his constitutional right to a fair trial. Not only can he not present the shirt as evidence at trial to show that Pabst committed the murder, but he also cannot obtain DNA testing – which already has identified Pabst as the rapist – on the blood to prove that the blood on the shirt belonged to Ms. Crosby.

In 1986, the State found a way to circumvent the “Potential Problem” that the physical evidence pointed to Pabst by allowing Pabst to present what turned out to be false testimony, sending Mr. Chabot to prison for life for a murder he did not commit. It would be fundamentally unfair for the State now to retry Mr. Chabot, after the State lost the evidence, which, as described more fully below, it was obligated to maintain – and especially, where the State here knew that it was exculpatory; and there was no other physical evidence pointing to Mr. Chabot whatsoever.³

2. Pabst’s Tee Shirt, the Guns, the Cartridge, and the Blood Swabs Were Potentially Useful

Assuming arguendo that the lost bloody shirt is not materially exculpatory (though it was), there is no question here that the lost bloody shirt, as well as the swabs of blood from the gun, and the guns and cartridge, were at least potentially useful. If

³ According to a report produced by SWIFS on December 9, 2002, all of the evidence that the State retrieved from the crime lab, including all of the ballistics evidence, is missing. See Ex. B (indicating that Items 1-10, 12-17, 44-49 were released to the Garland Police department on June 26, 1986 and not returned). The State cannot even demonstrate that the evidence was inadvertently destroyed, as it apparently lacks any record of its custody or disposition during the last twenty-four years.

Pabst's bloody shirt were available for testing, Mr. Chabot could use DNA testing to prove that the blood on Mr. Pabst's shirt belonged to Ms. Crosby, undermining the state's theory that Mr. Chabot participated in the murder. If swabs of blood that were taken from the gun were available for testing, Mr. Chabot could use DNA testing to prove that it was Pabst's blood, thus confirming that Pabst was the shooter, or that it was the blood of another accomplice of Pabst's.

The loss of the bloody shirt and the blood swabs is particularly disconcerting here, because the DNA evidence that was not lost (from the rape kit) proved that the State's main witness committed perjury and was actually the one who raped Ms. Crosby. While Mr. Chabot served 24 years in jail for a murder he did not commit, Pabst's murder indictment was dismissed, and he was free from custody for two decades longer as a result of his undisclosed plea agreement with the State.

The loss of the guns and cartridge likewise is extremely prejudicial to Mr. Chabot because, at this point, the only physical evidence that the State can put forth to even arguably connect Mr. Chabot to the murder is the gun and cartridge. At the time of Mr. Chabot's trial, Dr. Stone, the ballistics expert, testified that the gun used to kill Ms. Crosby was Chabot's gun. As set forth in the *Motion in Limine to Exclude Scientific Testimony as to Firearms* (filed contemporaneously herewith), there is ample scientific evidence that Dr. Stone's analysis was flawed and does not satisfy the basic threshold for admissibility of opinion testimony – much less establish that Chabot's gun was the murder weapon. Because the gun has been lost, however, independent re-analysis of the evidence cannot be performed. As a result, the jury will be asked to credit the unsupported opinion testimony of two State witnesses, regarding an analysis they

conducted more than 24 years ago on two weapons of the exact same make and model and a single spent cartridge that can no longer be found.

Mr. Chabot's inability to meaningfully cross-examine or otherwise challenge these experts also raises issues under the Confrontation Clause. In United States v. Smallwood, 2010 WL 4168823, at * 10 (W.D. Ky. Oct. 12, 2010), an expert took photographs of knife markings, which provided the basis for her to identify the knife that made the markings. When the defense cross-examined her about the photographs, she stated that the photograph in question was "not a great photograph, which is why it's difficult to see from here." Id. Relying on Melendez-Diaz v. Massachusetts, 129 S. Ct. 2527, 2536 (2009), the Court held that "the match determination was effectively insulated from any meaningful cross-examination by the inability to produce photographs representative of what an examiner sees under the actual comparison microscope" and should be excluded. Smallwood, 2010 WL 4168823, at *10. If the existence of inadequate photographs that do not permit an objective, independent scrutiny of the basis for a toolmark examination in Smallwood rendered the admission of the expert's opinion unconstitutional, then surely the fact that the State here now has no physical or documentary evidence of any kind that permits examination of the bases for its experts' conclusions in the instant case is, *a fortiori*, grounds for exclusion as well.

3. Loss of the Evidence Makes Trial Fundamentally Unfair

In this case, the lost evidence is so critical to Mr. Chabot's defense that trying him without it would be fundamentally unfair. As explained by Justice Stevens in his concurrence in Youngblood, "there may well be cases in which the defendant is unable to prove that the State acted in bad faith but in which the loss or destruction of

evidence is nonetheless so critical to the defense as to make a criminal trial fundamentally unfair.” 488 U.S. at 61. This is such a case.

As demonstrated below, the facts here are so different from the facts in Youngblood that it requires a different result.

First, in Youngblood, the defendant argued that he may have been completely exonerated by tests on the clothing if it had been refrigerated. The defendant was unable to conduct any tests on the evidence and rested his entire defense on the hypothetical of “what if” he could test the evidence. This case is not Youngblood. Here, the testing of biological evidence that had not been lost has already proved exculpatory – excluding Mr. Chabot as the source of biological evidence the State previously attributed to him, and simultaneously inculcating the State’s former chief witness as the source of that evidence.

Second, in Youngblood, the victim identified the appellant as the perpetrator of the crime. But here, there is no credible witness who can testify that Mr. Chabot was the perpetrator of the crime. The only witness who identified Mr. Chabot as responsible for the murder was Pabst. We now know that Pabst was the one who raped the victim and perjured himself when he testified under oath that he was in the other room while Mr. Chabot was committing the crime. Pabst was originally a suspect in the case and was rewarded for his “cooperation” by receiving a deal from prosecutors that allowed him to walk free within days of Mr. Chabot’s conviction.

Third, in Youngblood, the State did not introduce any evidence of the assault kit or the bloody clothes in its case in chief. But here, the State’s only evidence (aside from Pabst’s perjured testimony) arguably connecting Mr. Chabot to the crime is

the opinion of the State's experts that the Chabot Gun was the murder weapon. In light of the State's breach of its duty to retain the evidence, however, it would be "fundamentally unfair" to allow the State to retry Mr. Chabot using the expert's twenty-four year old ballistics report, even though Mr. Chabot cannot now conduct his own tests on those items or confront the experts with errors in their prior analyses. *Id.* at 67. That is especially the case because the Chabot Gun itself had blood on it – but the State has lost the swabs, as well: if in fact the Chabot Gun was the murder weapon, DNA tests on the blood could have placed it in Pabst's bloody hand.

Other courts, relying on Justice Stevens' Youngblood concurring opinion, have similarly found due process violations without bad faith on the part of the government, because the lost evidence was so critical to the defense as to make a criminal trial fundamentally unfair. *See, e.g., Ex parte Gingo*, 605 So. 2d 1237, 1240 (Ala. 1992) (affirming order suppressing evidence of the results of tests on hazardous waste that was destroyed when defendants "were indicted solely because of the tests done on the samples" and there "there is no evidence available to refute the test results" on the grounds that admitting evidence would make trial fundamentally unfair); State v. Osakalumi, 461 S.E.2d 504 (W.Va. 1995) (reversing conviction for murder on the basis that the State failed to preserve a bloodied couch on which the victim was allegedly shot and in which the police found the bullet, hair, and bone fragments). Similarly, the lost evidence – the bloody shirt, the swabs, the guns, and the cartridge – is so critical to Mr. Chabot's defense that putting him on trial for murder without evidence that is critical to his defense would be fundamentally unfair.

4. Loss of Evidence Amounts to Bad Faith

If, in the alternative, this Court requires that Mr. Chabot show bad faith on the part of the police, Mr. Chabot has more than enough evidence to overcome this burden. To show bad faith, a movant must assert that the police had “knowledge of the exculpatory value of the evidence at the time it was lost or destroyed.” Youngblood, 488 U.S. at 56 n.*. With respect to the bloody shirt, Mr. Chabot can assert bad faith because the State knew that it was a potential problem when the State lost the evidence – indeed, it memorialized such knowledge in the prosecutor’s notes, describing it as a “Potential Problem” for the State at trial. With respect to the bloody shirt, the swabs of blood, the guns, and cartridge, Mr. Chabot plainly shows bad faith based on the State’s utter disregard of its obligations to maintain and preserve the evidence.

a. State Lost Bloody Shirt in Bad Faith

The State’s own characterization of the bloody shirt as a “Potential Problem” for its case shows that the State had knowledge of the exculpatory value of the evidence as far back as 1986, which was certainly before the evidence was lost or destroyed. This is enough to meet the standard of bad faith described in Youngblood. Therefore, retrying Mr. Chabot would deprive him of his due process rights because, due to the State’s bad faith, Mr. Chabot is unable to conduct forensic testing that could yield still further, and even more conclusive, exculpatory evidence.

b. Failure to Safeguard Evidence Amounts to Bad Faith

Courts also have found bad faith for purposes of the Due Process Clause where there was a “complete and utter failure to safeguard evidence relevant to a crime and arrest.” State v. Durnwald, 837 N.E.2d 1234, 1242 (Ohio Ct. App. (2005)). In

Durnwald, the Court found that when evidence of a videotape that documented the defendant performing a field sobriety test was erased, which was contrary to the Highway Patrol's own regulations regarding the preservation of evidence, the officer's testimony regarding any evidence that may have been recorded was suppressed. The Court held, "the failure to protect and preserve the videotape under these circumstances encompasses more than mere negligence or an error of judgment. In our view, such a continuing cavalier attitude toward the preservation of DUI videotape evidence rises to the level of bad faith." Id.

Similar to Durnwald, the facts here establish that the State completely and utterly disregarded its obligation to preserve evidence, including the bloody shirt, the swabs, the guns and the cartridge. General Order 84-97 regarding the Police Property Room ("General Order"), dated September 1990, imposed on the State an obligation to retain evidence for a trial "until a final disposition is reached in the case." Ex. C. Although the General Order does not define final disposition, the definition is quite logical and practical – given the years that often pass before habeas petitions are filed and granted, and new trials conducted – and is included in a section entitled, "recommended addition" and is instructive. It means "[w]hen a suspect(s) has been charged with the offense and a time period equal to the longest term of imprisonment or term of probation administered to the suspect(s) has expired." Ex. D at 3.⁴ The State thus had an obligation

⁴ Final Disposition is not defined in the September 1990 Policy Property Room procedures. However, the version dated May 10, 2004, includes the 1990 recommended addition defining final disposition as, "[w]hen a suspect(s) has been charged with the offense and a time period equal to the longest term of imprisonment or term of probation administered to the suspect(s) has expired." Ex. E at 4 of 9.

here to preserve the evidence against Mr. Chabot because he was sentenced to life in prison; moreover, he had challenges to his conviction pending in state and/or federal court for most of the twenty-four years he was incarcerated.

Regardless of whether the State's policies and procedures permitted the State to dispose of the evidence, the State nonetheless further demonstrated a cavalier attitude toward the evidence by failing to follow proper procedures to discard the evidence. The General Order required that "no evidence shall be released, sold or destroyed from the property room without verification in writing by the arresting / investigating officer" Ex. C at I-6-3 (emphasis in original). The State has not provided any written documentation regarding the release, sale or destruction of any of the evidence, including the shirt, the swabs, the guns, or the cartridge.

With respect to Chabot's gun, the fact that the State cannot account for its disappearance is even more problematic, because property clerks in Garland were permitted to dispose of guns only if the gun: (1) was returned to its lawful owner; (2) destroyed subject to court order; (3) sold by auction; or (4) used by the police department itself. Ex. C at I-6-3-5. And each of these events required written documentation, such as a letter to/from the investigating officer regarding whether the gun could be destroyed, a memorandum from the property room clerk designating the gun for auction, or a notice by the Police Director approving the director or in a court order stating that the gun could be destroyed or used by the police department. Id. There is no written documentation accounting for what happened to the gun here.

Mr. Chabot has repeatedly requested documentation on what happened to the missing evidence: On April 26, 2010, prior counsel for Mr. Chabot met with the

Assistant District Attorneys to ask about what appeared to be missing documents in the State's file, including documents concerning the disposition of or State's efforts to locate the bloodstained shirt, guns, cartridge, and swabs. The State has yet to provide any of the missing documentation. On October 12, 2010, Mr. Chabot moved this Court to produce the Garland Police Department file, which should have included documents relating to the missing evidence. Ex. F. On October 29, 2010, the Court ordered that the State produce "within seven (7) days" "any and all documents in the possession of the [Garland Police] Department pertaining to the custody destruction, transfer, loss or other disposition of all items of physical evidence collected or received by the Department in this matter, including but not limited to: firearms, forensic evidence, trace evidence photographs, and personal property." Id. Additionally, on November 4, 2010, counsel sent a letter to the District Attorney's Office regarding discovery matters, in which the defense again renewed its request for documents relating to the missing evidence.

The Garland Police Department still has not produced any documents responsive to the Court's October 29, 2010 Order. Nor has the District Attorney's office provided any evidence or documentation showing what efforts they have even made to search for these items. In a Dallas News Article published on October 20, 2007, shortly after the exclusionary DNA testing on Ms. Crosby's vaginal slides was obtained, prosecutors confirmed that the ballistics evidence was missing and that they were "still searching for it." Ex. G. It is more than three years later, Mr. Chabot's case is set for trial in less than a month, and no further information has been provided as to the search or its results. Thus, two very simple questions that are critical to Mr. Chabot's defense remain unanswered: where is the evidence, and what happened to it?

Here, the State's failure to provide information on what happened to the evidence is sufficient to establish bad faith. See State v. McGrone, 798 So. 2d 519, 523 (Miss. 2001) (where defense counsel subpoenaed police officers for two separate hearings, but the officers never appeared, the court held, "[w]here the State's actions absolutely prevent a defendant in a criminal case from presenting proof on [the issue of bad faith], we will consider the requirement of bad faith to have been proven").

The State's knowledge of the problematic nature of the evidence, combined with the systematic disregard of the State's duty to protect evidence in its possession or even to follow its own procedures for discarding evidence (especially combined with the State's inability to provide any information on what happened to the evidence) amounts to nothing less than bad faith on the part of the State.

C. Relief Under Federal Due Process Clause

1. The Indictment Must Be Dismissed Because Mr. Chabot Cannot Have a Fair Trial Without the Missing Evidence

"[W]hen evidence has been destroyed in violation of the Constitution, the court must choose between barring further prosecution or suppressing . . . the State's most probative evidence." Trombetta, 467 U.S. at 487. "[T]he decision to either suppress the government's secondary evidence describing the destroyed material or dismiss the indictment turns on the prejudice that resulted to the defendant at trial." United States v. Bohl, 25 F.3d 904, 914 (10th Cir. 1994) (remanding with direction to dismiss indictment where defendants "offered credible evidence both that their own tests [on destroyed evidence] might have produced exculpatory evidence and that the government's testing methodology was flawed"); Robles v. State, 1999 WL 812295, at

*4, 6 (Tex. App. Oct. 7, 1999) (noting that “[r]etrial is often insufficient to cure the error. Even at new trial, the defendant still will not have the benefit of the missing evidence” and remanding to trial court judge “who, after hearing evidence of the circumstances of the destruction of the recording . . . will determine if the appellant can get a fair trial”).

For all the reasons stated above, the indictment should be dismissed because a criminal trial of Mr. Chabot after the State lost Pabst’s bloody shirt, the swabs of blood from the gun, the guns themselves, and the cartridge would be fundamentally unfair and would deprive him of his due process rights under the United States Constitution. While the loss of each one of these pieces of evidence results in a due process violation in and of itself, “there can be no doubt that the cumulative effect of the . . . procedure, judged by the totality of the circumstances, resulted in a deprivation of applicant’s right to due process of law.” Ex parte Brandley, 781 S.W.2d 886, 894 (Tex. Crim. App. 1989) (finding a denial of due process under Youngblood without a finding a bad faith where the State’s investigative procedure “undoubtedly injected false testimony into the first trial,” and there was a “lack of direct evidence” because the State lost evidence while the case was on direct appeal and “no tests can now be performed on these items.”).

Any trial of Mr. Chabot would be fundamentally unfair under the circumstances here, where Mr. Chabot’s conviction was overturned based on DNA evidence that revealed that the State’s star witness against Mr. Chabot perjured himself in exchange for a plea deal, combined with the fact that the State has lost the bloody shirt, the swabs, and the guns, all of which would have been critical pieces of his defense. The State’s “outrage of [Ms. Crosby’s] murder . . . cannot justify the subversion of justice”

that would take place by prosecuting Mr. Chabot while depriving him of the ability to put on a full and fair defense. Id.

2. Ballistics Testimony Must Be Excluded

Solely in the alternative, if the State prosecutes Mr. Chabot despite having lost the bloody shirt, the swabs, the guns and the cartridge, the Court should exclude from the jury's consideration any ballistics testimony derived from tests conducted on the missing items more than a quarter century ago, and exclude any mention of the ballistics, including any references in Mr. Chabot's statement to, or testimony by any other witness regarding, the weapon in question. Without the guns or cartridge, Mr. Chabot is unable to conduct a re-analysis of the evidence in 2010 that could demonstrate that his wife's gun was not the murder weapon, and will not have a fair opportunity to cross-examine the State's experts. Just as in Ex parte Gingo, 605 So. 2d 1237, 1240 (Ala. 1992), it would be fundamentally unfair for the State to present evidence of the results of ballistics tests on the gun when "there is no evidence available to refute the test results." 605 So. 2d at 1240. Therefore, the Court should exclude any testimony relating to the gun or any other ballistics evidence.

II. TRYING MR. CHABOT WHEN THE STATE HAS LOST CRITICAL EVIDENCE VIOLATES HIS TEXAS STATE DUE COURSE OF LAW RIGHTS

A. Analysis of Texas Due Course of Law

The Texas Constitution provides that "[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised except by the due course of law of the land." Tex. Const. art. I, § 19. The majority of Texas courts hold that the Texas Constitution offers the same protections as

the Federal Constitution and evaluate State due process claim using the standard outlined in Youngblood. Sharpe v. State, 2008 WL 963130, at *5 (Tex. App. Dallas Apr. 10, 2008); see, e.g., McGee v. State, 210 S.W.3d 702, 705 (Tex. App. 2006) (applying federal due process standards to due course of law challenge involving State’s destruction of evidence).

But the Waco Court of Appeals – after discussing at length the number of convictions overturned in Texas (and Dallas specifically) based on DNA evidence – held that the Texas due course law provides greater protections than the federal due process law. Pena v. State, 226 S.W.3d 634, 651 (Tex. App. 2007), rev’d on other grounds, 285 S.W.3d 459, 465 (Tex. Crim. App. 2009) (holding due course of law claim was not properly preserved for appellate review). The Court noted that “[s]ince 1989 [when Youngblood was decided] . . . the ‘import’ of evidence containing biological material . . . has been magnified substantially.” Id. at 647. In Texas alone, “twenty-six men have been exonerated by post-conviction DNA testing . . . as of February 2007.” Id. at 648.⁵ Indeed, the Pena Court explained that the “Texas experience in the last decade and the national experience of the last two decades reinforces the concerns expressed by . . . twelve states which have determined that the Youngblood standard is not adequate to address the loss or destruction of potentially exculpatory evidence.” Id. at 651.

To address those concerns, and consistent with Justice Stevens’ concurring opinion in Youngblood, the Pena court adopted the following balancing test to determine whether due course rights have been violated by the State’s failure to preserve potentially

⁵ The Pena court noted: “[i]ronically, Larry Youngblood is one of those who has been exonerated” based on DNA evidence. Id. at 647.

useful evidence: “(1) would the evidence have been subject to discovery or disclosure; (2) if so, did the state have a duty to preserve the evidence; and (3) if there was a duty to preserve, was that duty breached, and what consequences should flow from the breach.” Id. at 651 (citing Deberry v. State, 457 A.2d 744, 750 (Del. 1983)).

The Court of Criminal Appeals has not yet spoken on the validity of Pena, but other Texas Courts have applied both Youngblood and Pena analyses to determine whether an individual’s due process rights have been violated by the failure of the State to preserve potentially useful evidence. See, e.g., Martinez v. State, 2008 WL 2515876, at *9, (Tex. App. Jan. 24, 2008) (“Without adopting the holding in Pena, we will apply the court’s analysis due to the possibility the Court of Criminal Appeals may decide to adopt the Pena [reasoning]”).

Applying the Pena balancing test, Mr. Chabot would be denied his due course rights under the Texas Constitution, because of the State’s loss of evidence in disregard of its own duty to preserve same.

1. The Evidence Would Have Been Subject to Discovery or Disclosure

There is no question that the evidence would have been subject to discovery or disclosure. The State used the gun and cartridge in its case in chief in the 1986 trial, and if the State had not lost them, Mr. Chabot would be allowed to conduct his own tests on the gun today (and could have adduced expert testimony, based on examination of the gun under contemporary methods of analysis). Indeed, when Mr. Chabot filed a motion for DNA testing shortly after the enactment of Ch. 64 in 2002, he specifically sought testing on the blood from these items in order to prove that Pabst was

not only the perjurer and rapist, but also the murderer. The court granted this portion of the motion as well, but could only order the State to transfer these bloodstained items to the DNA laboratory if and when they were located in the future.

2. The State Did Have a Duty to Preserve the Evidence, and the Duty Was Breached

As discussed in detail above, the State had a duty to preserve the evidence until the case reached a “final resolution.” Mr. Chabot’s case had not reached a final resolution under any circumstances – under the definition provided by the General Order or by the plain meaning of the term – and therefore, the State should have preserved the evidence. Not only did the State neglect its duty to preserve the evidence, but it also disregarded its obligation to keep a written record of what happened to the evidence, if it did not preserve it. See Point I(B)(4)(b). There is no question that the second element of the Pena balancing test is met.

3. What Consequences Should Flow from the Breach

The Pena Court balanced the following factors to determine what consequences should flow from the breach: (a) the degree of negligence; (b) the importance of the lost evidence; and (c) the sufficiency of other evidence. Pena, 226 S.W.3d at 654.

Degree of negligence: The State lost all five pieces of evidence and has not been able to account for what happened to any of it. At a minimum, such actions are grossly negligent or reckless.

Importance of the lost evidence: The lost evidence is of paramount importance. If Mr. Chabot had the gun and the cartridge, he would be able to conduct his

own ballistics test, which could prove that his wife's gun was not used to murder Ms. Crosby. If Mr. Chabot had the bloody shirt, he could present it to the jury to demonstrate Pabst's guilt. If Mr. Chabot had that bloody shirt and the blood swabs from the gun, he could conduct DNA testing that would prove that the blood on the shirt belonged either to Pabst or Ms. Crosby. If Mr. Chabot had the swabs, DNA testing could prove either that Chabot's gun was not used at the crime scene, or that Pabst was the one who used the gun to murder the victim himself.

Sufficiency of other evidence: There is no other evidence available to Mr. Chabot that would have the same, or even remotely comparable, evidentiary value. In fact, aside from the now missing gun that Mr. Chabot voluntarily turned over to the police, there is no physical evidence connecting Mr. Chabot to the crime scene. To the contrary, the DNA testing that was done proved both that Mr. Chabot did not rape Ms. Crosby, and that the state's key witness, who provided the "only direct evidence that the applicant sexually assaulted and killed Crosby," was lying. Chabot, 300 S.W.3d at 772.

B. Relief Under Texas Due Course of Law Provision

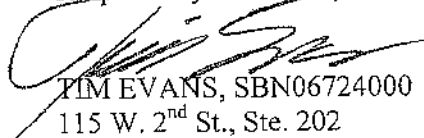
Under the Pena analysis, Mr. Chabot had a right to conduct his own testing on the gun and the cartridge, Pabst's bloody shirt, and the swabs. With respect to the consequences, because the State lost and cannot explain the reason(s) for the loss of all of such evidence, all of which was important and none of which can be replaced by other any other evidence, Mr. Chabot is entitled to relief, including dismissal of the indictment, suppression of the ballistics evidence, or an instruction to the jury, as described in detail above. Without relief, Mr. Chabot will be deprived of his due course of law rights by the State's destruction of the evidence.

WHEREFORE, in light of the foregoing, Defendant respectfully requests that this Court:

- A. Grant the Motion;
- B. Enter an order dismissing the indictment;
- C. Enter an order *in limine* precluding the State from introducing ballistics evidence, or commenting on the 1986 ballistics test;
- D. Enter an order *in limine* precluding the State from introducing that portion of Mr. Chabot's statement to the police involving his supposed loan of the .25 automatic to Pabst, or testimony by any other witness regarding this weapon;
- E. Instruct the jury that the shirt worn by Gerald Pabst on the day of the murder was spattered with blood; the State had the duty to preserve the shirt; the State failed to do so; as a result of the State's failure, it is impossible for Mr. Chabot's attorneys (i) to present that shirt to the jury, or (ii) to perform DNA testing – which was not available in 1986 – to determine the source of the blood; and that the jurors should presume and accept as true that the result of such testing would have been favorable to Mr. Chabot and unfavorable to the State's case: specifically that the blood on Pabst's shirt was that of Galua Crosby;
- F. Instruct the jury that there was blood found on the gun and swabs were taken from the gun; the State had the duty to preserve the gun (and the cartridge) and the swabs; the State failed to do so; as a result of the State's failure, it is impossible for Mr. Chabot's attorneys to perform DNA testing – which was not available in 1986 – to determine the

source of the blood; that it is impossible for Mr. Chabot's expert to analyze the gun and the cartridge, either to provide affirmative proof or to challenge the State's proffer; and that the jurors should presume and accept as true that the result of such testing would have been favorable to Mr. Chabot's defense: specifically, that the blood belonged to Pabst.

~~Respectfully submitted,~~

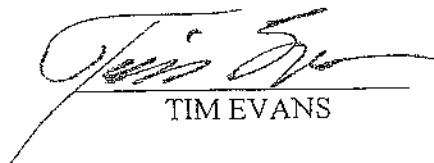

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ATTORNEYS FOR DEFENDANT
CLAY REED CHABOT

CERTIFICATE OF SERVICE

I hereby certify that on the 12 day of November, 2010, a true and correct copy of the above and foregoing Defendant's Motion to Dismiss the Indictment, to Exclude Evidence, and For Jury Instructions was hand delivered to the Dallas County District Attorney's Office, Frank Crowley Courts Building, 133 N. Industrial Blvd., LB-19, Dallas, Texas 75207-4399.


TIM EVANS

EXHIBIT

A

50 to 100 mllage 1266
Rogen-jailmate heard part of conversation

5-3-86 arrest date
Salva Crosby victim
Doug Graham - boyfriend
Pabst, Jerry - brother-in-law

4-29-86 - 6:30pm found body
Tuesday evening

murder occurred on Tuesday morning
3 shots head
tied, age
Chevrolet Impala 4 door dark top

May 2 Chabot told Graham
Pabst had suspect vehicle described
at offense.
25 automatic pistol - Chabot let Pabst
borrow

left at 6:30 am, returned 2:00 pm
gave gun to him.
He sent Pabst to Graham residence on
Tue. at 6:30 to do him a favor

Sgt Sgt 8

Rusty Everett vacant skipped
6485 Merry Meadow 221 D Tulcazo
Pat ad Robert Finifter Vacant

6485 Merry Meadow 123 D 3K skipped
Donna Pabst - husband for drugs

6485 Merry Meadow 1266
Sandy Pabst
Charlie Rowan
1206 Riffon
vacant

Dawn Cutler
Tom Pasquelone
Stan Glasky
Jernell

1266 Morahan
just moved in
Arrest
jail
Place 29

Rusty
vacant
skipped
1266
1266
1266

moved out
2 or 3
months

1 BK source
296
11/76

Potential Problems ^{Paula Va stems}
 Ashtray - cigarettes ^{Daily - Cools}
 Do Pabst or Chaiat smoke - ^{Stay - Marlboro} Gerald
 Windows - open ^{don't know about Gerald} Yes.
 Rip off:
 foreign hairs - ^{don't think Pabst smokes}
^{Chaiat may smoke -}

blood on Gerald's clothes -

property of ^{W. H. ...} T. Fitzpatrick
 he delivered Pabst's cloth
 to the ...

Possible Pub. Intox Conviction
 Ash tabula, Lake County
 either Ohio or N.Y.

Call Ed ~~Eds~~ will have Cim Rec
 forms?

EXHIBIT

B



SOUTHWESTERN
INSTITUTE OF FORENSIC SCIENCES
AT DALLAS
5230 Medical Center Drive
Dallas, Texas 75235

Criminal Investigation Laboratory
Forensic Biology Unit

December 9, 2002

Investigating Agency:	A.D.A. Bryan Rutherford Dallas County District Attorney's Office Appellate Division 133 N. Industrial, LB 19 Dallas, Texas 75207	Laboratory #:	86P0999
		DCME #:	1389-86
		Cause #:	F86-98639-UP
		Agency #:	919745/86-955 (Garland P.D.)
		Complainant:	[REDACTED]
		Defendant:	Clay Reed Chabot
		Offense:	Capital Murder

This report is in response to your inquiry regarding the location of biological evidence arising from a request for post-conviction DNA testing.

Note regarding the numbering of items: Due to an administrative error in 1986, evidence items 42-49 were incorrectly numbered 41-48 at the time of submittal. This error was subsequently corrected. However, the trace evidence report dated May 30, 1986 identified evidence using the original uncorrected numbering assignments. Similarly, the original uncorrected numbering assignments were also used in the labeling of the trace evidence storage envelopes and microscope slides. For the sake of clarity, any located evidence sample that was labeled with the original uncorrected numbering assignment is indicated in this report with an asterisk.

EVIDENCE:

Submitted by L. Mockey and D. Wheatley on May 1, 1986:

- | | |
|---|------------------------------|
| 1. 25 caliber Raven MP-25 pistol, s/n 1060708 | 9. Loose hair from right leg |
| 2. Comforter | 10. Loose hair from left leg |
| 3. Comforter | 12. Towel |
| 4. Rug | 13. Towel |
| 5. Bed sheet, 2 pillowcases & mattress pad | 14. Screwdriver |
| 6. Pillow | 15. Paper towel |
| 7. Pillow | 17. Socks |
| 8. Loose hair from left leg | |

Submitted by J. Weiner, M.D., on May 2, 1986:

21. Hairs & fibers from legs
22. Hairs & fibers from buttocks
27. Two pillows and pillowcases
28. Robe & belt

Analyst Initials MDWS

100-1
12/10/02

29. Vaginal swab (2)
30. Vaginal smear (2)
31. Blood sample - Gault S. Crosby
32. Anal swab (2)
33. Anal smear (4)
34. Oral swab
35. Oral smear
36. Pubic hair combings
37. Pubic hair standard
38. Head hair standard
39. Right hand fingernail clippings
40. Left hand fingernail clippings

Submitted by M.R. Roberts on May 5, 1986:

41. 25 caliber Raven MP-25 pistol, s/n 1040496

Submitted by William T. Fitzpatrick on May 6, 1986:

42. Trousers, shirt & belt of suspect (designated item 41* in the trace evidence, and in the trace evidence report dated May 30, 1986)
43. T-shirt of suspect (designated item 42* in the trace evidence, and in the trace evidence report dated May 30, 1986)

Submitted by D.P. Wheatley on May 8, 1986:

44. Head hairs - G. E. Pabst (designated item 43* in the trace evidence, and in the trace evidence report dated May 30, 1986)
45. Pubic hairs - G. E. Pabst (designated item 44* in the trace evidence, and in the trace evidence report dated May 30, 1986)
46. Leg hairs - G.E. Pabst (designated item 45* in the trace evidence, and in the trace evidence report dated May 30, 1986)
47. Pubic hairs - C.R. Chabot (designated item 46* in the trace evidence, and in the trace evidence report dated May 30, 1986)
48. Head hairs - C.R. Chabot (designated item 47* in the trace evidence, and trace in the evidence report dated May 30, 1986)
49. Head hairs - Doug Graham (designated item 48* in the trace evidence, and in the trace evidence report dated May 30, 1986)

Submitted by D.P. Wheatley on October 14, 1986:

50. Pubic hairs - Doug Graham

Analyst Initials. DP DW

RESULTS:

Body fluid stain evidence

A stored portion of a bed sheet (item 5) was located in our storage area. This stored portion was a control area designated 5-C1. A vial for a corresponding stained test area designated 5-T1 was also located; however, no fabric was present in the vial. Our records indicate that 5-T1 was released in 1990 (see below). A microscope slide prepared from a semen stain on item 5 bed sheet was also located.

Item 30 (vaginal smear) was located in our evidence storage area.

Trace evidence

Microscope slides containing mounted hairs corresponding to the following items were located in our evidence storage area:

2. Comforter - 1 slide
3. Comforter - 1 slide
4. Rug - 1 slide
5. Bed sheet, 2 pillowcases & mattress pad - 4 slides
6. Pillow - 2 slides
9. Loose hair - right leg - 1 slide
17. Socks - 1 slide
22. Hair & fiber - buttocks - 1 slide
27. Pillows & pillowcases - 1 slide
28. Robe & belt - 1 slide
37. Pubic hair standard - 3 slides
38. Head hair standard - 4 slides
- 44*. Pubic hairs - G.E. Pabst - 3 slides
- 46*. Pubic hairs - C.L. Chabot - 3 slides
- 47*. Head hairs - C.L. Chabot - 6 slides
- 48*. Head hairs - Doug Graham - 3 slides
50. Pubic hairs - Doug Graham - 2 slides

Trace evidence storage envelopes were located for the following items. The contents of these envelopes were not inventoried.

2. Comforter
3. Comforter
4. Rug
5. Bed sheet, 2 pillowcases & mattress pad
7. Pillow

Analyst Initials

DP

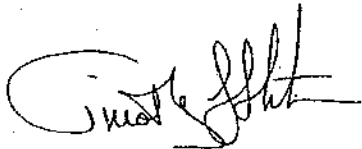
- 13. Towel
- 17. Socks
- 21. Hair & fiber from legs
- 22. Hair & fiber from buttocks
- 27. Pillows & pillowcases
- 28. Robe & belt
- 36. Pubic hair combings
- 37. Pubic hair standard
- 38. Head hair standard
- 39. Fingernail clippings - left hand
- 40. Fingernail clipping - right hand
- 41*. Trousers, shirt & belt of suspect
- 50. Pubic hairs - Doug Graham
- No number. An envelope labeled "T-shirt"

DISPOSITION OF EVIDENCE:

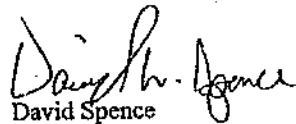
Items 1-10, 12-17, and 44-49 were released to the Garland Police department on June 26, 1986.

Items 18-20 were released to the Court on October 15, 1986.

Test area 5-T1 was released to Julie Patrick on January 23, 1990.

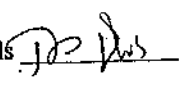


Timothy J. Sliter, Ph.D.
Senior Forensic Biologist
Direct Line: 214-920-5834
Fax: 214-920-5813



David Spence
Senior Trace Evidence Examiner
Direct line: 214-920-5880
Fax: 214-920-5813

cc: DCME # 1389-86 (JW)
Garland Police Department (service no. 86-955)
Lori Ordiway, Dallas County District Attorney's Office, Appellate Division

Analyst Initials 

EXHIBIT

C

GENERAL ORDER 84-97

I-6

ISSUED: August 1984

REVISED: September 1990

POLICE PROPERTY ROOM

97-1 PURPOSE. This General Order is published in order to establish guidelines for operation of the Police Department property room.

97-2 ASSIGNMENT AND RESPONSIBILITY. The Property Room Supervisor shall be in charge of property room operations and is responsible for the proper intake, control, storage, and release/disposal of all property confiscated, appropriated, seized or otherwise taken into custody by officers of this department. (This order would also include property placed in the police property room by any other authorized person). The responsibility of property storage is assigned to the Investigation Division in the Department Chain-of-Command.

97-3 DEFINITIONS OF PROPERTY. For the purpose of this general order, property is defined as follows:

- a. Property - the personal possession of an individual or company.
 1. Recovered stolen property - items that were acquired as a result of a commission of an offense.
 2. Abandoned or found property - items that have been discarded and the ownership is uncertain.
 3. Personal property - items seized and taken into custody for safe-keeping for which the owner is usually known.
- b. Evidence - physical items (that may or may not require some form of scientific analysis) that may be used in a court of law to prove guilt or innocence.
 1. Instruments used in the commission of a crime, such as burglar tools, murder weapons, forged documents, etc.
 2. Results of a crime, such as bloodstains, broken glass, etc.
 3. Contraband items, the possession of which is illegal or prohibited.

97-4 INTAKE OF PROPERTY. All types of property taken into custody by Garland Police Officers will be immediately placed in the property storage cage located in the basement of the police building. Items placed in custody must be logged showing the date and time, the officer's name and badge number, and the call for service number. The articles will be described on an "inventory of recovered property" form (COG 72-66) and the form shall be attached to the property. (If the property may be released, this shall be noted on the inventory form and to whom it may be released.) Items such as money, jewelry, and narcotics must be placed in the lock box or boxes. Items such as forged checks and credit cards will be placed in the forgery box located in the property storage cage. All firearms must be unloaded before storing. Ice and water must be emptied from all coolers before placement in the property cage. Flammable and combustible materials shall not be stored in the property cage and will not be accepted at the property room.

The property room technician shall be responsible to re-inventory all property placed in this storage cage as soon as possible and transport it to the property storage building located at 1640 Commerce Street, Garland, Texas. Any item of property left in the cage area not properly tagged or identified completely will not be placed in the property building or accepted for storage. The property room technician is directed to leave any untagged/unidentified or improperly tagged item of property in the cage area and contact the officer who left the property and advise him/her to return to the cage and tag the item of property in an appropriate manner. After a period of forty-eight (48) hours, if the person has not returned to complete the property identification, the property technician is to contact the Investigation Division Assistant Director or Commander, who shall take immediate steps to contact that person responsible for leaving the property improperly tagged. (Revised July 1988)

97-5 PROPERTY STORAGE. The property technician will assign a tag number and storage location to articles to be stored in the property room. Perishable items and alcoholic beverages will be photographed and destroyed and the photograph retained as evidence. The full description of each article will be entered into the computerized property system, using NCIC guidelines for entry. The computer will automatically check the acquired articles through NCIC/TCIC for a match with property that is stolen. The property technician will check all returns and forward those showing a possible match with stolen property to the appropriate investigator.

97.6 JOB PROCEDURE ESTABLISHED. A written job procedure has been published to outline property room storage procedure, checking out evidence for court, release or disposal of property, and other required duties.

97-7 OFFENSE/INFORMATION REPORTS REQUIRED. All property left for storage in the police property room must relate to a police offense report or information report. No property will be

entered or stored in the police property room without being documented on a police department arrest, offense or information report. Property held for "Safekeeping" will be accepted as long as an information report is made giving name, address and phone number of owner of property for appropriate release/disposal.

97-8 RELEASE OF PROPERTY. Recovered stolen property, found property, and personal property will be released to the appropriate owner as soon as practical and possible. Before property is released from the police property room, some proof of ownership of the property must be furnished. Generally, the complainant on an offense report showing identification (as the complainant) is sufficient to receive any offense reported items recovered and in the property room. It is noted that most people do not carry on their person receipts of purchase of household goods, tools, T.V.'s, etc. If the complainant has reported the items, and the property items match the offense report, identification of the complainant or owner is sufficient to release the property.

Any person desiring to pick up property which belongs to another person must furnish a written notarized statement giving permission for release of property. The written notice will be retained by the police department after release, including the full identification (name, race, sex, age, date of birth, address, phone number and driver's license/social security number) of the person receiving the property for another.

In the event lost or found property is in the property room and a person can accurately describe the item to the property technician sufficient to establish proof of ownership, that item can be released. Marked items from the police "Operation Identification" program is sufficient for identification of ownership of items.

97-9 RELEASE/DISPOSITION OF EVIDENCE. Property which is evidence for a trial will be retained until a final disposition is reached in the case. Contraband items, illegal drugs, and narcotics, clubs, illegal knives, etc. will be kept and destroyed after all criminal cases are disposed of by the courts. (An exception to this policy could be recovery of large amounts of stock of a drug store burglary which could be photographed and returned to the business in order that the merchandise could be legally accounted for and sold properly). (General Order 78-74, I-5).

Continued storage of evidence in the police property room will be permitted if items are under current investigation by officers or investigators and the property is thought to be stolen, contraband or illegally obtained by a suspect. The storage of these items is to be on a limited basis until the officer or investigator can determine if such property is stolen, contraband or illegally obtained.

Upon receipt of final disposition in a case involving evidence, the property technician will check to see that all cases originating from that same call for service have a final

disposition. If so, the property technician will take the following action depending on the type of property involved:

- a. On cases filed by Investigations Division personnel, direct a memorandum to the investigator who filed the case requesting a decision on the disposition of the evidence.
- b. On cases filed by Patrol Division personnel where the evidence is contraband or is of no real value, destroy the items.
- c. On cases filed by Patrol Division personnel where the evidence has some value, direct a memorandum to the investigator who filed the case requesting the name and address of the owner of the articles.

After the arresting officer or investigator determines the case is disposed of, and there is no need to keep the evidence, he/she will forward a memorandum to the property technician indicating name and address of owner of specific items and/or approve sales of items for which owners are unknown.

Prior to the listing of property for auction, a sincere effort shall be initiated to attempt to find and release that property to its rightful owner. A registered letter, return receipt requested, will be mailed to the last known owner/complainant of any property giving that individual a period of thirty (30) days to claim said property or it will be sold at auction to the highest bidder (or in accordance with the Purchasing Department rules).

Letters to complainant/owners will be mailed in an attempt to dispose of property as follows:

- a. All property with an approximate value of \$25 or more - send registered mail - return receipt requested.
- b. All property with an approximate value less than \$25, send letter through first class mail noting date mailed to last known owner or complainant.

No evidence shall be released, sold or destroyed from the property room without verification in writing by the arresting/investigating officer that any case regarding that property is properly disposed of by the applicable court of law.

97-10 DESTRUCTION OF PROPERTY. All property held which is not proper for release (such as illegal narcotics and drugs, illegal clubs, knives, handmade weapons), "junk" items (such as torn-up radios, records, broken glass, or any other worthless evidence or items), shall be destroyed after all criminal cases are disposed of by the courts and there is no way to determine the owner of such property. All firearms which are small, inexpensive types (also known as "Saturday Night Specials") will be destroyed after a court order is obtained for destruction. Under no circumstances will any contraband materials be released

to any person. (Said materials could be used in a Police Academy Training Class or in-service training if approved by the Director of Police Services.) The property technician shall destroy all items as listed in a proper method (burning or burying at landfill). (Revised June 1988)

97-11 AUCTIONS OF PROPERTY. All property/evidence which is held by the police department (other than illegal or contraband) and cannot be traced to an owner, shall be auctioned at City Auction following rules for sale or disposal as outlined by the City of Garland Purchasing Department. The Property Room Technician shall be responsible to prepare all property to be sold at the auction (tagging, inventory and listing, and transporting to Salvage Surplus Center). A job procedure has been published to outline this procedure. If the conditions have been met to release the property for auction, the property may be converted to departmental use. The property room will maintain an inventory of items to be used in reversals. Property appropriated from auction for reversals or to be used intradepartmentally must be approved by the division supervisor or his designee. When the designated use is completed, the appropriated property must be returned to the property room. The Property Room will maintain a record of property checked out for departmental use including proof of authorization for such use. (Revised January 1990)

The officer or employee to whom property is checked out is responsible for the return of the property. If a change of assignment or other personnel change occurs and the property is left in the prior assignment, it is the responsibility of the person to whom the property is checked out to notify the property technician of the change. The property technician must also be notified if the property is damaged, lost, converted to evidence in a criminal transaction, or other similar occurrences. (Added September 1990)

97-12 EXCEPTIONS TO DIRECTIVE.

- a. No firearms (pistol, shotgun, handgun, rifle, etc.) will be sold at any auction unless specifically approved by the Investigation Division Assistant Director and the Director of Police Services. When an appropriate number (15 to 20) of firearms are accumulated in the property room, and no owner can be located for these firearms (and cases are properly disposed of by the court), the property room supervisor shall direct a written memorandum to the purchasing department via Chain of Command, requesting a sale of these weapons. The weapons will be listed by make, type, caliber, general description and date of impoundment (if known) and officer placing firearm in the property room. The list, if approved for sale by the police director, may be forwarded to the purchasing department to send out bids for the purchase of firearms. Bids for sale of handguns shall be sent to Firearms Dealers, who are licensed to sell such weapons, including books regulated by the

Alcohol/Tobacco/Firearms, United States Treasury
Department. (Revised January 1990)

At the discretion of the Director of Police Services, rifles and shotguns can be sold by sealed bid or by regular auction through established City Purchasing Department procedures. Normally, these kinds of firearms will be sold at auction, unless the types or kinds of weapons are antique, special collector or unusual firearms, which could produce more revenue for the City by sealed bid procedure to reputable gun dealers. (Revised June 1988)

At the discretion of the Director of Police Services, the legal office can prepare a court order giving the Garland Police Department possession of any firearms confiscated, found or otherwise in police custody that have not been identified as having a proper owner. These firearms will be used in training at the police range or issued to various officers as approved by the Department Director and Quartermaster. Any firearms transferred from the property room to ownership by the police department shall be treated as department property and logged as such with the department property clerk in the Records Unit.

- b. No item of jewelry (rings, watches, necklace, earrings, etc.) silver, gold, silver servings, gold or silver knives, forks, spoons, (often called silverware or dinnerware) or any item names of precious metal or coin collections, will be sold at a routine police auction. All such materials will be kept in the police property room and be sold by the City of Garland. Prior to the sale of this material, an appraisal should be conducted to consider the true worth of such material, and then sold by bids to established gold or jewelry dealers. (Revised June 1988) (Revised January 1990)
- c. When the released property is U.S. currency or coins and the owner is not known or does not claim the property, the money will be deposited monthly in the general fund through the Records Unit's daily cash report. A copy of the deposit will be forwarded to the Director of Purchasing. (Revised January 1990)
- d. Bicycles acquired as found property will be auctioned 30 days after receipt in the property room. If the owner can not be located prior to the auction, a list of the bicycles will be submitted to the lieutenant over thefts to be rechecked through NCIC/TCIC. (Added December 1988)

97-13 **AUDIT OF PROPERTY ROOM.** At least once per year (and more often if directed), an audit (inventory) of the police property room will be conducted by the Internal Affairs/Inspection Office or a person designated by the Director of Police Services. The results of the inventory shall be documented and forwarded to the Director of Police Services and the Assistant Director in the Investigation Division.

Discrepancies noted will be corrected as soon as possible and practical. (Revised June 1988)

97-14 MISSING, DAMAGED OR EVIDENCE TAMPERING OF POLICE PROPERTY ROOM ITEMS. At any time, when property is discovered missing, damaged or tampered with in the property room, a memorandum will be forwarded immediately to the Director of Police Services via the Chain of Command requesting an investigation by the Internal Affairs Unit. This procedure will be initiated immediately and the area where the item was damaged or tampered with will be preserved for the investigation.

97-15 REMOVAL OF PROPERTY FROM POLICE PROPERTY ROOM. All property in police custody stored in the police property room shall only be removed by authorized personnel and by established procedure. No person shall be admitted access to remove any property except by written procedure.

97-16 PROPERTY ROOM CLOSINGS. In the event the property room is closed and evidence is needed for court, items need to be stored, and/or other necessary reasons for entry occur, the property room technician will be contacted for entry. If the property room technician is unavailable, the property room supervisor will be called. (Revised June 1988) (Revised January 1990)

97-17 AUTHORIZED PERSONNEL IN PROPERTY ROOM. Only assigned personnel are authorized personnel to enter the property room for duty purposes. All other police personnel who may be in the property room will refrain from "looking around," tampering with stored items, not pick up items to examine property unless it is necessary in an investigation, or refrain from walking through the property room without good reason. No personnel will ever remove property from the property room for any reason except as authorized by procedure. No person shall ever order, request, suggest or otherwise attempt to have property room personnel avoid written procedure to check out property in the property room, (department property which may be stored in the property room is not applicable to this procedure; for example-a desk assigned to a unit could be stored without entry on the log book).

97-18 PRIOR ORDERS. From and after the effective date of issuance of this order, it shall be in full force and shall govern the operations of this department with regard to its subject matter. Former orders, policies, directives and memoranda relating to the subject matter are hereby specifically revoked and they shall be of no force and effect from and after the date of issuance of this order.

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Jesse Jesse C. Youngblood
Director of Police Services

Index as: Property
 Found Property
 Court Evidence
 Storage of Property
 Narcotics Storage
 Confiscated Property

EXHIBIT

D

I-6-
GENERAL ORDER 84-97

I-6

ISSUED: August 1984

REVISED: September 1990

POLICE PROPERTY ROOM

97-1 PURPOSE. This General Order is published in order to establish guidelines for operation of the Police Department property room.

97-2 ASSIGNMENT AND RESPONSIBILITY. The Property Room Supervisor shall be in charge of property room operations and is responsible for the proper intake, control, storage, and release/disposal of all property confiscated, appropriated, seized or otherwise taken into custody by officers of this department. (This order would also include property placed in the police property room by any other authorized person). The responsibility of property storage is assigned to the Investigation Division in the Department Chain-of-Command.

97-3 DEFINITIONS OF PROPERTY. For the purpose of this general order, property is defined as follows:

- a. Property - the personal possession of an individual or company.
 1. Recovered stolen property - items that were acquired as a result of a commission of an offense.
 2. Abandoned or found property - items that have been discarded and the ownership is uncertain.
 3. Personal property - items seized and taken into custody for safe-keeping for which the owner is usually known.
- b. Evidence - physical items (that may or may not require some form of scientific analysis) that may be used in a court of law to prove guilt or innocence.
 1. Instruments used in the commission of a crime, such as burglar tools, murder weapons, forged documents, etc.
 2. Results of a crime, such as bloodstains, broken glass, etc.
 3. Contraband items, the possession of which is illegal or prohibited.

97-4 INTAKE OF PROPERTY. All types of property taken into custody by Garland Police Officers will be immediately placed in the property storage cage located in the basement of the police building. Items placed in custody must be logged showing the date and time, the officer's name and badge number, and the call for

service number. The articles will be described on an "inventory of recovered property" form (COG 72-66) and the form shall be attached to the property. (If the property may be released, this shall be noted on the inventory form and to whom it may be released.) Items such as money, jewelry, and narcotics must be placed in the lock box or boxes. Items such as forged checks and credit cards will be placed in the forgery box located in the property storage cage. All firearms must be unloaded before storing. Ice and water must be emptied from all coolers before placement in the property cage. Flammable and combustible materials shall not be stored in the property cage and will not be accepted at the property room.

The property room technician shall be responsible to re-inventory all property placed in this storage cage as soon as possible and transport it to the property storage building located at 1640 Commerce Street, Garland, Texas. Any item of property left in the cage area not properly tagged or identified completely will not be placed in the property building or accepted for storage. The property room technician is directed to leave any untagged/unidentified or improperly tagged item of property in the cage area and contact the officer who left the property and advise him/her to return to the cage and tag the item of property in an appropriate manner. After a period of forty-eight (48) hours, if the person has not returned to complete the property identification, the property technician is to contact the Investigation Division Assistant Director or Commander, who shall take immediate steps to contact that person responsible for leaving the property improperly tagged. (Revised July 1988)

97-5 PROPERTY STORAGE. The property technician will assign a tag number and storage location to articles to be stored in the property room. Perishable items and alcoholic beverages will be photographed and destroyed and the photograph retained as evidence. The full description of each article will be entered into the computerized property system, using NCIC guidelines for entry. The computer will automatically check the acquired articles through NCIC/TCIC for a match with property that is stolen. The property technician will check all returns and forward those showing a possible match with stolen property to the appropriate investigator.

97.6 JOB PROCEDURE ESTABLISHED. A written job procedure has been published to outline property room storage procedure, checking out evidence for court, release or disposal of property, and other required duties.

97-7 OFFENSE/INFORMATION REPORTS REQUIRED. All property left for storage in the police property room must relate to a police offense report or information report. No property will be entered or stored in the police property room without being documented on a police department arrest, offense or information report. Property held for "Safekeeping" will be accepted as long as an information report is made giving name, address and phone number of owner of property for appropriate release/disposal.

97-8 RELEASE OF PROPERTY. Recovered stolen property, found property, and personal property will be released to the appropriate owner as soon as practical and possible. Before property is released from the police property room, some proof of ownership of the property must be furnished. Generally, the complainant on an offense report showing identification (as the complainant) is sufficient to receive any offense reported items recovered and in the property room. It is noted that most people do not carry on their person receipts of purchase of household goods, tools, T.V.'s, etc. If the complainant has reported the items, and the property items match the offense report, identification of the complainant or owner is sufficient to release the property.

Any person desiring to pick up property which belongs to another person must furnish a written notarized statement giving permission for release of property. The written notice will be retained by the police department after release, including the full identification (name, race, sex, age, date of birth, address, phone number and driver's license/social security number) of the person receiving the property for another.

In the event lost or found property is in the property room and a person can accurately describe the item to the property technician sufficient to establish proof of ownership, that item can be released. Marked items from the police "Operation Identification" program is sufficient for identification of ownership of items.

97-9 RELEASE/DISPOSITION OF EVIDENCE. Property which is evidence for a trial will be retained until a final disposition is reached in the case. Contraband items, illegal drugs, and narcotics, clubs, illegal knives, etc. will be kept and destroyed after all criminal cases are disposed of by the courts. (An exception to this policy could be recovery of large amounts of stock of a drug store burglary which could be photographed and returned to the business in order that the merchandise could be legally accounted for and sold properly). (General Order 78-74, I-5).

Continued storage of evidence in the police property room will be permitted if items are under current investigation by officers or investigators and the property is thought to be stolen, contraband or illegally obtained by a suspect. The storage of these items is to be on a limited basis until the officer or investigator can determine if such property is stolen, contraband or illegally obtained.

(Recommended addition to General Order 84-97 (97-9) Release/Disposition of Evidence)

Physical evidence which tends to associate a suspect(s) to a particular crime scene, a criminal act or is physical evidence of such a critical nature to proving the elements of the offense, will not be destroyed in felony cases, except upon FINAL DISPOSITION which will be defined as:

1. When no suspect has been charged with the offense and the statute of limitations, as defined by Chapter 12, Texas Code of Criminal Procedure, associated with that offense has expired; or
2. When a suspect(s) has been charged with the offense and a time period equal to the longest term of imprisonment or term of probation administered to the suspect(s) has expired.
3. Verdicts of NOT GUILTY or NO-BILLS are not final dispositions and evidence should be held as outlined by the statute of limitations.

Any requests for destruction of such evidence will be made to the investigator/officer who filed the case or the unit supervisor responsible for the case if the investigator/officer is no longer available.

Upon receipt of final disposition in a case involving evidence, the property technician will check to see that all cases originating from that same call for

service have a final disposition. If so, the property technician will take the following action depending on the type of property involved:

a. On cases filed by Investigations Division personnel, direct a memorandum to the investigator who filed the case requesting a decision on the disposition of the evidence.

b. On cases filed by Patrol Division personnel where the evidence is contraband or is of no real value, destroy the items.

c. On cases filed by Patrol Division personnel where the evidence has some value, direct a memorandum to the investigator who filed the case requesting the name and address of the owner of the articles.

After the arresting officer or investigator determines the case is disposed of, and there is no need to keep the evidence, he/she will forward a memorandum to the property technician indicating name and address of owner of specific items and/or approve sales of items for which owners are unknown.

Prior to the listing of property for auction, a sincere effort shall be initiated to attempt to find and release that property to its rightful owner. A registered letter, return receipt requested, will be mailed to the last known owner/complainant of any property giving that individual a period of thirty (30) days to claim said property or it will be sold at auction to the highest bidder (or in accordance with the Purchasing Department rules).

Letters to complainant/owners will be mailed in an attempt to dispose of property as follows:

a. All property with an approximate value of \$25 or more - send registered mail - return receipt requested.

b. All property with an approximate value less than \$25, send letter through first class mail noting date mailed to last known owner or complainant.

No evidence shall be released, sold or destroyed from the property room without verification in writing by the arresting/investigating officer that any case regarding that property is properly disposed of by the applicable court of law.

97-10 DESTRUCTION OF PROPERTY. All property held which is not proper for release (such as illegal narcotics and drugs, illegal clubs, knives, handmade weapons), "junk" items (such as torn-up radios, records, broken glass, or any other worthless evidence or items), shall be destroyed after all criminal cases are disposed of by the courts and there is no way to determine the owner of such property. All firearms which are small, inexpensive types (also known as "Saturday Night Specials") will be destroyed after a court order is obtained for destruction. Under no circumstances will any contraband materials be released to any person. (Said materials could be used in a Police Academy Training Class or in-service training if approved by the Director of Police Services.) The property technician shall destroy all items as listed in a proper method (burning or burying at landfill). (Revised June 1988)

97-11 AUCTIONS OF PROPERTY. All property/evidence which is held by the police department (other than illegal or contraband) and cannot be traced to an owner, shall be auctioned at City Auction following rules for sale or disposal as outlined by the City of Garland Purchasing Department. The Property Room Technician shall be responsible to prepare all property to be sold at the

auction (tagging, inventory and listing, and transporting to Salvage Surplus Center). A job procedure has been published to outline this procedure. If the conditions have been met to release the property for auction, the property may be converted to departmental use. The property room will maintain an inventory of items to be used in reversals. Property appropriated from auction for reversals or to be used intradepartmental, must be approved by the division supervisor or his designee. When the designated use is completed, the appropriated property must be returned to the property room. The Property Room will maintain a record of property checked out for departmental use including proof of authorization for such use. (Revised January 1990)

The officer or employee to whom property is checked out is responsible for the return of the property. If a change of assignment or other personnel change occurs and the property is left in the prior assignment, it is the responsibility of the person to whom the property is checked out to notify the property technician of the change. The property technician must also be notified if the property is damaged, lost, converted to evidence in a criminal transaction, or other similar occurrences. (Added September 1990)

97-12 EXCEPTIONS TO DIRECTIVE.

a. No firearms (pistol, shotgun, handgun, rifle, etc.) will be sold at any auction unless specifically approved by the Investigation Division Assistant Director and the Director of Police Services. When an appropriate number (15 to 20) of firearms are accumulated in the property room, and no owner can be located for these firearms (and cases are properly disposed of by the court), the property room supervisor shall direct a written memorandum to the purchasing department via Chain of Command, requesting a sale of these weapons. The weapons will be listed by make, type, caliber, general description and date of impoundment (if known) and officer placing firearm in the property room. The list, if approved for sale by the police director, may be forwarded to the purchasing department to send out bids for the purchase of firearms. Bids for sale of handguns shall be sent to Firearms Dealers, who are licensed to sell such weapons, including books regulated by the Alcohol/Tobacco/Firearms, United States Treasury Department. (Revised January 1990)

At the discretion of the Director of Police Services, rifles and shotguns can be sold by sealed bid or by regular auction through established City Purchasing Department procedures. Normally, these kinds of firearms will be sold at auction, unless the types or kinds of weapons are antique, special collector or unusual firearms, which could produce more revenue for the City by sealed bid procedure to reputable gun dealers. (Revised June 1988)

At the discretion of the Director of Police Services, the legal office can prepare a court order giving the Garland Police Department possession of any firearms confiscated, found or otherwise in police custody that have not been identified as having a proper owner. These firearms will be used in training at the police range or issued to various officers as approved by the Department Director and Quartermaster. Any firearms transferred from the property room to ownership by the police department shall be treated as department property and logged as such with the department property clerk in the Records Unit.

b. No item of jewelry (rings, watches, necklace, earrings, etc.) silver, gold, silver servings, gold or silver knives, forks, spoons, (often called silverware or dinnerware) or any item names of precious metal or coin collections, will be sold at a routine police auction. All such materials will be kept in the police property room and be sold by the City of Garland. Prior

to the sale of this material, an appraisal should be conducted to consider the true worth of such material, and then sold by bids to established gold or jewelry dealers. (Revised June 1988) (Revised January 1990)

c. When the released property is U.S. currency or coins and the owner is not known or does not claim the property, the money will be deposited monthly in the general fund through the Records Unit's daily cash report. A copy of the deposit will be forwarded to the Director of Purchasing. (Revised January 1990)

d. Bicycles acquired as found property will be auctioned 30 days after receipt in the property room. If the owner can not be located prior to the auction, a list of the bicycles will be submitted to the lieutenant over thefts to be rechecked through NCIC/TCIC. (Added December 1988)

97-13 AUDIT OF PROPERTY ROOM. At least once per year (and more often if directed), an audit (inventory) of the police property room will be conducted by the Internal Affairs/Inspection Office or a person designated by the Director of Police Services. The results of the inventory shall be documented and forwarded to the Director of Police Services and the Assistant Director in the Investigation Division. Discrepancies noted will be corrected as soon as possible and practical. (Revised June 1988)

97-14 MISSING, DAMAGED OR EVIDENCE TAMPERING OF POLICE PROPERTY ROOM ITEMS. At any time, when property is discovered missing, damaged or tampered with in the property room, a memorandum will be forwarded immediately to the Director of Police Services via the Chain of Command requesting an investigation by the Internal Affairs Unit. This procedure will be initiated immediately and the area where the item was damaged or tampered with will be preserved for the investigation.

97-15 REMOVAL OF PROPERTY FROM POLICE PROPERTY ROOM. All property in police custody stored in the police property room shall only be removed by authorized personnel and by established procedure. No person shall be admitted access to remove any property except by written procedure.

97-16 PROPERTY ROOM CLOSINGS. In the event the property room is closed and evidence is needed for court, items need to be stored, and/or other necessary reasons for entry occur, the property room technician will be contacted for entry. If the property room technician is unavailable, the property room supervisor will be called. (Revised June 1988) (Revised January 1990)

97-17 AUTHORIZED PERSONNEL IN PROPERTY ROOM. Only assigned personnel are authorized personnel to enter the property room for duty purposes. All other police personnel who may be in the property room will refrain from "looking around," tampering with stored items, not pick up items to examine property unless it is necessary in an investigation, or refrain from walking through the property room without good reason. No personnel will ever remove property from the property room for any reason except as authorized by procedure. No person shall ever order, request, suggest or otherwise attempt to have property room personnel avoid written procedure to check out property in the property room, (department property which may be stored in the property room is not applicable to this procedure; for example—a desk assigned to a unit could be stored without entry on the log book).

97-18 PRIOR ORDERS. From and after the effective date of issuance of this order, it shall be in full force and shall govern the operations of this department with regard to its subject matter. Former orders, policies, directives and memoranda relating to the subject matter are hereby specifically revoked and

they shall be of no force and effect from and after the date of issuance of this order.

Jesse C. Youngblood
Director of Police Services

Index as: Property
Found Property
Court Evidence
Storage of Property
Narcotics Storage
Confiscated Property

EXHIBIT

E

POLICE PROPERTY ROOM

General Order # 55.01
Issued: August, 1984
Revised: May 10, 2004

I. PURPOSE: This order establishes guidelines for operation of the Police Department property room.

II. ASSIGNMENT AND RESPONSIBILITY:

The Property Room Supervisor shall be in charge of property room operations and is responsible for the proper intake, control, storage, release/disposal of all property confiscated, appropriated, seized or otherwise taken into custody by any authorized personnel of this department. The responsibility of property storage is assigned to the Support Services Division.

III. DEFINITIONS OF PROPERTY:

For the purpose of this general order, property is defined as follows:

- A. Property - the personal possession of an individual or company.
1. Recovered stolen property - items that were acquired as a result of a commission of an offense.
 2. Abandoned or found property - items that have been discarded and the ownership is uncertain.
 3. Personal property - items seized and taken into custody for safekeeping for which the owner is usually known.
- B. Evidence - physical items that may or may not require some form of scientific analysis that may be used in a court of law to prove guilt or innocence.
1. Instruments used in the commission of a crime, such as burglar tools, murder weapons, forged documents, etc.
 2. Results of a crime, such as bloodstains, broken glass, etc.
 3. Contraband items, the possession of which is illegal or prohibited.

IV. INTAKE OF PROPERTY:

All types of property taken into custody by Garland Police Officers and members will be immediately placed in the property storage room located on the first floor of the police building or if necessary, transported directly to the Police Property Room before the Officer/Member completes his/her tour of duty. If it is not reasonably possible for the concerned Officer/Member to

place the property within the property storage room before completing his/her tour of duty, the Officer/Member shall immediately inform his/her supervisor. Under no circumstances will Officers/Members be authorized to store temporarily or otherwise any item of seized property in their lockers, vehicles, desks, homes or anywhere else that is not secure or would interrupt the chain of custody. Items placed in custody must be logged showing the date and time, the officer's name and badge number, and the Report and Event Number. The articles will be described on an "inventory of recovered property" form and the form shall be attached to the property. (If the property may be released, this shall be noted on the inventory form and to whom it may be released.) Items such as money, jewelry, and narcotics must be placed in the locked lockers. Any Inventory of Recovered Property sheet associated with money categorized as physical evidence must be checked "Do Not Deposit." Additionally, narcotics must be placed in a sealed and tamper proof container. Items such as forged checks and credit cards will be placed in the forgery lockers located in the property storage room. All firearms must be unloaded, have the clip or magazine removed and if possible have a plastic tie inserted through the barrel, breach, and cylinder or in some other manner so as to make the weapon inoperable before storing. Knives and other cutting edge weapons and objects shall be stored with the blades secured so as to reduce the possibility of accidental injury. Ice and water must be emptied from all coolers before placement in the property room. Flammable and combustible materials shall not be stored in the property room and will not be accepted at the Police Property Room.

Note: If the submitting Officer/Member reasonably believes that any item of property may bear trace or other evidence he/she should first contact Forensics Unit personnel for proper processing before storing the item.

The property room technician shall be responsible to re-inventory all property placed in this storage room as soon as possible and transport it to the Police Property Room located at 1640 Commerce Street, Garland, Texas. Any item of property left in the storage room not properly tagged or identified completely will not be transported to the Police Property Room or accepted for storage. The property room technician is directed to leave any untagged/unidentified or improperly tagged item of property in the storage room and contact the Police Property Room Supervisor who will contact either the concerned officer or officer's supervisor to arrange for proper marking of the property in question

V. PROPERTY STORAGE:

The property technician will assign a tag number and storage location to articles to be stored in the property room. Perishable items and alcoholic beverages will be photographed and destroyed and the photograph retained as evidence. The full description of each article will be entered into the computerized property system, using NCIC guidelines for entry.

The computer will automatically check the acquired articles through NCIC/TCIC for a match with property that is stolen. The property technician will check all returns and forward those showing a possible match with stolen property to the appropriate investigator.

VI. JOB PROCEDURES AND STANDARD OPERATING PROCEDURES ESTABLISHED:

Written job and standard operating procedures are established and kept at the property room outlining a property room storage procedure, checking out evidence for court, release or disposal of property, and other required duties.

VII. INCIDENT/ARREST/INFORMATION REPORTS REQUIRED:

All property left for storage in the police property room must relate to a police Incident and/or arrest report or information report. No property will be entered or stored in the police property room without being documented on a police department arrest, incident or information report. Property held for "Safekeeping" will be accepted as long as an information report is made giving name, address and phone number of owner of property for appropriate release/disposal.

All reports made relating to property seized or received must detail the circumstances by which the items came into the agency's possession and must describe each item of property obtained.

VIII. RELEASE OF PROPERTY:

Recovered stolen property, found property, and personal property will be released to the appropriate owner as soon as practical and if possible within one hundred eighty (180) days after all legal requirements have been satisfied. Before property is released from the police property room, some proof of ownership of the property must be furnished. Generally, the complainant on an offense report showing identification (as the complainant) is sufficient to receive any offense reported items recovered and in the property room. It is noted that most people do not carry on their person receipts of purchase of household goods, tools, TVs, etc. If the complainant has reported the items, and the property items match the offense report, identification of the complainant or owner is sufficient to release the property.

Any person desiring to pick up property that belongs to another person must furnish a written notarized statement giving permission for release of property. The written notice will be retained by the police department after release, including the full identification (name, race, sex, age, date of birth, address, phone number and driver's license/social security number) of the person receiving the property for another.

In the event lost or found property is in the property room and a person can accurately describe the item to the property technician sufficient to establish proof of ownership, that item can be released. Marked items from the police "Operation Identification" program is sufficient for identification of ownership of items.

IX. RELEASE/DISPOSITION OF EVIDENCE:

Property which is evidence for a trial will be retained until a final disposition is

Police Property Room

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reached in the case. Contraband items, illegal drugs, and narcotics, clubs, illegal knives, etc. will be kept and destroyed upon authorization of the Police Property Room Supervisor after all criminal cases are disposed of by the courts. (An exception to this policy could be recovery of large amounts of stock of a drug store burglary, which could be photographed and returned to the business in order that the merchandise could be legally accounted for and sold properly.) Continued storage of evidence in the police property room will be permitted if items are under current investigation by officers or investigators and the property is thought to be stolen, contraband or is illegally obtained by a suspect. The storage of these items is to be on a limited basis until the officer or investigator can determine if such property is stolen, contraband or illegally obtained. Physical evidence which tends to associate a suspect(s) to a particular crime scene, a criminal act or is physical evidence of such a critical nature to proving the elements of the offense, will not be destroyed in felony cases, except upon FINAL DISPOSITION which will be defined as:

- A. When no suspect has been charged with the offense and the statute of limitations, as defined by Chapter 12, Texas Code of Criminal Procedure, associated with that offense has expired; or
- B. When a suspect(s) has been charged with the offense and a time period equal to the longest term of imprisonment or term of probation administered to the suspect(s) has expired.
- C. Verdicts of NOT GUILTY or NO-BILLS are not final dispositions and evidence should be held as outlined by the statute of limitations.

Any requests for destruction of such evidence will be made to the Police Property Room Supervisor who will coordinate with the investigator/officer who filed the case or the unit supervisor responsible for the case if the investigator/officer is no longer available.

Upon receipt of final disposition in a case involving evidence, the property technician will check to see that all cases originating from that same call for service have a final disposition. If so, the property technician and the Police Property Room Supervisor will proceed as defined in Police Property Room SOP 55.17 entitled "Evidence & Property Case Dispositions."

Prior to the listing of property for auction, a sincere effort shall be initiated to attempt to find and release that property to its rightful owner. A registered letter, return receipt requested, will be mailed to the last known owner/complainant of any property giving that individual a period of ninety (90) days to claim said property or it will be sold at auction to the highest bidder or in accordance with the Purchasing Department rules or otherwise disposed of.

X. **DESTRUCTION OF PROPERTY:**

All property held which is not proper for release (such as illegal narcotics and drugs, illegal clubs, knives, handmade weapons), junk items (such as torn-up radios, records, broken glass, or any other worthless evidence or items) shall be destroyed after all criminal cases are disposed of by the courts and there is no way to determine the owner of such property. All firearms will be destroyed

after a court order is obtained for destruction. Under no circumstances will any contraband materials be released to any person. (Said materials could be used in a Police Academy Training Class or in-service training if approved by the Chief of Police Services.) The property technician shall destroy all items listed as defined in Police Property Room SOP 55.23 entitled "Methods & Procedure for Destruction & Disposal."

XI. AUCTIONS OF PROPERTY:

All property/evidence which is held by the police department (other than illegal or contraband) and cannot be traced to an owner shall be auctioned at City Auction following rules for sale or disposal as outlined by the City of Garland Purchasing Department. The Property Room Technician shall be responsible for preparing all property to be sold at the auction (tagging, inventory and listing, and transporting to Salvage Surplus Center). There is a job procedure outlining this procedure. If the conditions have been met to release the property for auction, the property may be converted to departmental use. The property room will maintain an inventory of items to be used in reversals. Property appropriated from auction for reversals or to be used interdepartmentally must be approved by the division supervisor or his designee. When the designated use is completed, the appropriated property must be returned to the property room. The Property Room will maintain a record of property checked out for departmental use including proof of authorization for such use.

The officer or employee to whom property is checked out is responsible for the return of the property. If a change of assignment or other personnel change occurs and the property is left in the prior assignment, it is the responsibility of the person to whom the property is checked out

to notify the property technician of the change. The property technician must also be notified if the property is damaged, lost, converted to evidence in a criminal transaction, or other similar occurrences.

XII. EXCEPTIONS TO DIRECTIVE:

- A. No firearms (pistol, shotgun, handgun, rifle, etc.) will be sold at any auction. When an appropriate number of firearms are accumulated in the property room, and no owner can be located for these firearms (and cases are properly disposed of by the court), the property room supervisor shall direct a written memorandum to the Judge to obtain a court order for destruction of these weapons.

At the discretion of the Chief of Police, the legal office can prepare a court order giving the Garland Police Department possession of any firearms confiscated, found or otherwise in police custody that have not been identified as having a proper owner. These firearms will be used in training at the police range or issued to various officers as approved by the Chief of Police and rangemaster. Any firearms transferred from

the property room to ownership by the police department shall be treated as department property and logged as such with the department property clerk in the Records Unit.

B. **RELEASE OF FIREARMS:** No firearm will be release to the public, unless upon Order of the Court, without the expressed written permission of the Police Property Room Supervisor and only upon completion of all requirements as defined in Police Property Room SOP 55.19 entitled "Release & Disposition of Firearms."

C. No item of jewelry (rings, watches, necklace, earrings, etc.) silver, gold, silver servings, gold or silver knives, forks, spoons, (often called silverware or dinnerware) or any item of precious metal or coin collections will be sold at a routine police auction. All such materials will be kept in the police property room and be sold by the City of Garland.

Prior to the sale of this material, an appraisal should be conducted to consider the true worth of such material and then sold by bids to established gold or jewelry dealers.

D. When the released property is U.S. currency or coins and the owner is not known or does not claim the property, the money shall, in coordination with the COG Finance Department be deposited in the unclaimed cash account.

E. **Bicycles:** If classified as "Found Property" and the owner is known, a certified letter shall be sent to the last known address of the owner advising him/her that the bicycle must be picked up within ninety (90) days of the date reflected on the letter and if not picked up, the bicycle will be disposed of in a lawful manner. All pertinent information as to the location of the Police Property Room, its business hours, telephone numbers, etc., shall be included within the notification letter. If after the 90 days expire and the owner has not picked up the bicycle, it may be donated to a lawfully recognized charity if its fair market value is less than \$500 or sent to the City of Garland auction. If the fair market value of the bicycle is \$500 or more, it shall be sent to the City of Garland auction

In cases where the bicycle is classified as "Found Property but the owner is unknown, it shall be held for a period of thirty (30) days after which it may be donated to a lawfully recognized charity if its fair market value is less than \$500 or sent to the City of Garland auction. If its fair market value is \$500 or more, it shall be sent to the City of Garland auction.

XIII. AUDIT OF PROPERTY ROOM:

At least once per year (and more often if directed), an audit (inventory) of the police property room will be conducted by the Internal Affairs/Inspection Office or a person designated by the Chief of Police. The results of the inventory shall be documented and forwarded to the Chief of Police and the Assistant Chief of Police of the Criminal Investigation Division. Discrepancies noted will be corrected as soon as possible and practical.

Additionally, the Chief of Police may, at his discretion, appoint personnel to conduct unannounced inspections of the Police Property Room. At the conclusion of the inspection, the appointee shall submit a written report to the Chief of Police delineating the results of the inspection.

At least twice annually, the Police Property Room Supervisor shall conduct an on site inspection of the Police Property Room to assure the adherence to procedures. The results of that inspection shall be placed in writing, signed by the Police Property Room Supervisor and directed to the Chief of Police. Any violations of procedures, breaches of security, etc., shall be included within the report and in each case, the Police Property Room Supervisor shall indicate what reformative or corrective actions are being taken to address any identified problems.

Upon re-assignment or transfer of the Police Property Room Supervisor, the Chief of Police shall cause an inventory of the Police Property Room to occur. The inventory shall be conducted by the newly assigned Property Room Supervisor and one (1) other designee as determined by the Chief of Police. At the conclusion of the inventory, the newly assigned Property Room Supervisor shall submit a written report to the Chief of Police delineating the results of the inventory.

Note: Any inventory conducted shall be sufficient to ensure the integrity of the system and the accountability of the property. A sufficient number of property records should be carefully reviewed with respect to property documentation and accountability. The purpose of the standard is to ensure the integrity of the system, not to require the accounting of every item of property. Any audit should be a random sample of property held to satisfy the auditor(s) that policies and procedures are being followed.

XIV. MISSING, DAMAGED OR EVIDENCE TAMPERING OF POLICE PROPERTY ROOM ITEMS:

At any time when property is discovered missing, damaged or tampered with in the property room, a memorandum will be forwarded immediately to the Chief of Police via the Chain of Command requesting an investigation by the Internal Affairs Unit. This procedure will be initiated immediately and the area where the item was damaged or tampered with will be preserved for the investigation.

XV. REMOVAL OF PROPERTY FROM POLICE PROPERTY ROOM:

All property in police custody stored in the police property room shall only be removed by authorized personnel and by established procedure. No person shall be admitted access to remove any property except by written procedure.

XVI. PROPERTY ROOM CLOSINGS:

In the event the property room is closed and evidence is needed for court, items need to be stored, and/or other necessary reasons for entry occur, the property room supervisor will be contacted for entry. If the property room supervisor is unavailable, the Program Manager will be called.

XVII. AUTHORIZED PERSONNEL IN PROPERTY ROOM:

Only assigned personnel are authorized to enter the property room for duty purposes. All other police personnel who may be in the property room will refrain from looking around, tampering with stored items, picking up items to examine property unless it is necessary in an investigation, or refrain from walking through the property room without good reason. No personnel will ever remove property from the property room for any reason except as authorized by procedure. No person shall ever order, request, suggest or otherwise attempt to have property room personnel avoid written procedure to check out property in the property room, (department property which may be stored in the property room is not applicable to this procedure. For example - a desk assigned to a unit could be stored without entry on the log book).

All personnel not actually assigned to the Police Property Room who enter any of the secure areas of the Property Room (i.e. the Warehouse, Narcotics Vault, exterior storage cages, etc., shall first sign into the area on the written logs provided. Upon leaving the secure areas they shall sign out. While physically within the secure areas, they shall be continuously escorted by Police Property Room personnel.

Police Property Room personnel who intend on visiting the Property Room during other than normal working hours must first notify the Police Property Room Supervisor. If the Property Room Supervisor is unavailable, the concerned employee shall make the Property Room Supervisor aware of the extra-duty hour visit as soon as reasonably possible. Upon arrival at the Police Property Room during other than normal working hours, the concerned employee must sign in on the log provided and upon leaving must sign out.

XVIII. PRIOR ORDERS:

From and after the effective date of issuance of this order, it shall be in full force and shall govern the operations of this department with regard to its subject matter. Former orders, policies, directives and memoranda relating to the subject matter are hereby specifically revoked and they shall be of no force and effect from and after the date of issuance of this order.

M. L. Bates
Chief of Police

Index as: Confiscated Property
Court Evidence
Found Property
Narcotics Storage
Property
Release of Property

12/31/2009 12:58 9724854801
Police Property Room

GARLAND POLICE DEPT

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Storage of Property

EXHIBIT

F

CAUSE NO. F86-98639-UPV

THE STATE OF TEXAS

IN THE CRIMINAL DISTRICT

VS.

COURT NUMBER 7

CLAY REED CHABOT

DALLAS COUNTY, TEXAS

FILED
OCT 12 PM 3:19
GARY S. LARKIN
DISTRICT CLERK
DALLAS CO. TEXAS
DEPUTY

MOTION TO PRODUCE RECORDS

Comes now Defendant CLAY REED CHABOT, through his attorney, Tim Evans, and files this this Motion to Produce Records and would show the following:

Defendant case is specially set for trial on December 6, 2010.

On or about April 29, 1986, the Garland Police Department began an investigation of the homicide, sexual assault and other offenses committed against Galua Crosby (DOB 3/7/58) (Garland PD Offense# J01A0007) on or about April 29, 1986, this investigation generated offense reports and other reports; notes, including handwritten notes, log book entries, and file memoranda; correspondence, including but not limited to letters, faxes, telephone messages, and emails; photographs, photomicrographs, audiotape recordings, and video recordings; and other documents generated or received in this matter by individuals currently or formerly employed by the Garland Police Department or its agents.

Further, physical evidence was collected by the Garland Police Department including, but not limited to: firearms, forensic evidence, trace evidence, photographs and personal property.

Examination of this evidence and the documents referenced above is essential to the defense of the accusation made by the State of Texas against Defendant Chabot.

Wherefore, Defendant Chabot respectfully requests the Court to order the Garland Police Department to produce all documents in the possession of the Department pertaining to the

MOTION TO PRODUCE RECORDS

custody destruction, transfer, loss or other disposition of all items of physical evidence collected or received by the Department in this matter, including but not limited to: firearms, forensic evidence, trace evidence, photographs and personal property to Defendant's attorney within 14 days of this order.

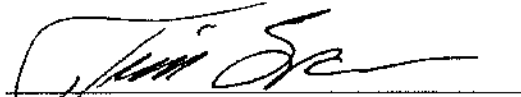
Respectfully submitted,



TIM EVANS, SBN06724000
115 W. 2nd St., Ste. 202
Fort Worth, TX 76102
817/332-3822
817/332-2763(fax)
ATTORNEY FOR DEFENDANT
CLAY REED CHABOT

CERTIFICATE OF CONFERENCE

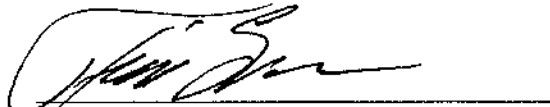
On October 12, 2010, I attempted a telephone conference with Mike Ware but Mr. Ware was unavailable. I will notify the Court after I have heard from Mr. Ware.



TIM EVANS

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2010, a true and correct copy of the above and foregoing Defendant's Motion to Produce Records was hand delivered to the Dallas County District Attorney's Office, Frank Crowley Courts Building, 133 N. Industrial Blvd., LB-19, Dallas, Texas 75207-4399.



TIM EVANS

MOTION TO PRODUCE RECORDS

OK

NO. F86-98639-Y

THE STATE OF TEXAS

§

IN THE CRIMINAL

V.

§

DISTRICT COURT NO. 7

CLAY R. CHABOT

§

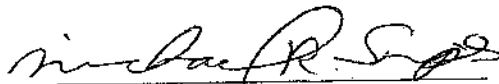
DALLAS COUNTY, TX

ORDER TO PRODUCE RECORDS

It is hereby ordered that, within seven (7) days of this order, The Garland Police Department shall produce the following to counsel for the Defendant:

1. A complete copy of its case file regarding the homicide, sexual assault and other offenses committed against Galua Crosby (DOB 3/7/58) (Garland PD Offense # J01A007) on or about April 29, 1986, including all offense reports and other reports; notes, including handwritten notes, log book entries, and file memoranda; correspondence, including but not limited to letters, faxes, telephone messages, and emails; photographs, photomicrographs, audiotape recordings, and video recordings; and any other documents generated or received in this matter by any individuals currently or formerly employed by the Garland Police Department or its agents.
2. Any and all documents in the possession of the Department pertaining to the custody, destruction, transfer, or other disposition of all items of physical evidence collected or received by the Department in this matter, including but not limited to: firearms, forensic evidence, trace evidence, photographs, and personal property.

SIGNED this the 29 day of October, 2010.



JUDGE MIKE SNIPES
CRIMINAL DISTRICT COURT NO. 7
DALLAS COUNTY, TEXAS

EXHIBIT

G



[Comments](#) | Recommended 

Evidence in 1986 case gone

Dallas County: Prosecutors say they'll seek new murder trial despite missing items

12:00 AM CDT on Saturday, October 20, 2007

By JENNIFER EMILY / The Dallas Morning News
jemily@dallasnews.com

Prosecutors said Friday that they intend to retry Clay Chabot for the 1986 slaying of Galua Crosby, even though DNA evidence shows that he did not rape her.

But prosecutors now face a daunting obstacle: The evidence used at his original trial -- including the murder weapon and a bloody shirt -- is missing.

Defense attorney and former Dallas County prosecutor Robert Montserrat, who is not involved in the case, said he believes it is unlikely that a jury would convict Mr. Chabot.

"They just can't throw mud up against the wall and see if it sticks," Mr. Montserrat said of prosecutors. "It's a very difficult case to see how a jury would believe it beyond a reasonable doubt."

But Terri Moore, first assistant Dallas County district attorney, said she believes the case is winnable, despite the missing evidence.

"It makes this a little more odd, a little more difficult. But I think we will be able to explain that to a jury," Ms. Moore said.

Mr. Chabot was found guilty in 1986 after his brother-in-law, Gerald Pabst, testified that Mr. Chabot raped and killed Ms. Crosby at her Garland home. She was shot in the head three times.

Results from DNA tests, which were not available at trial, show that Mr. Pabst -- not Mr. Chabot -- raped Ms. Crosby. Mr. Pabst was arrested in Ohio in July and charged with capital murder and is awaiting trial.

Judge Lana Myers said Friday that Mr. Chabot's conviction should be tossed because of Mr. Pabst's perjured testimony during the trial. But the Texas Court of Criminal Appeals must approve throwing out the murder conviction for a new trial to begin. A bond hearing for Mr. Chabot that began Friday will continue next week. He remains jailed.

It is unclear what happened to the evidence from Mr. Chabot's trial, and the district attorney's office is still searching for it. The gun was in the custody of the Dallas County Sheriff's Department, and other items were kept by Garland police, the county records center and the district clerk, Ms. Moore said.

During the trial, Mr. Pabst testified that he was ordered at gunpoint to help tie up Ms. Crosby. Although

originally indicted for murder, after Mr. Chabot's trial, Mr. Pabst was sentenced to 30 days in jail for stealing Ms. Crosby's radio.

At the original trial, the state alleged that Mr. Chabot killed Ms. Crosby because her boyfriend sold Mr. Chabot bad drugs. The boyfriend testified at trial that he offered to buy back the drugs and that Mr. Chabot refused.

Despite the DNA evidence, Dallas County prosecutor Mike Ware, who oversees conviction integrity, said he does not believe Mr. Chabot is innocent and probably worked with Mr. Pabst.

"It doesn't mean Mr. Chabot was not the shooter and an active participant," Mr. Ware said. "We don't believe he is actually innocent."

But Mr. Chabot's attorneys say that their client is innocent and that the missing evidence, if found, would prove their assertion.

"Our perspective is that there is no evidence against Mr. Chabot because he is innocent," said his attorney Vanessa Potkin of the Innocence Project, a nonprofit legal organization that seeks to exonerate wrongly convicted people through DNA evidence. "If that's missing, then it hinders his ability to put on a defense."

Ms. Potkin said finding the shirt, which belonged to Mr. Pabst, would show that the blood belonged to Ms. Crosby.

"Finding the victim's blood on Pabst's shirt would provide even further evidence that [the state's theory that both men participated in the murder] just isn't credible," Ms. Potkin said.

If the evidence is not found and Mr. Chabot is retried, it would not be the first time the district attorney's office prosecuted a case without evidence.

In August, a Dallas County jury sentenced a man to life in prison for a 1992 murder in a case in which the evidence was thrown away by Garland police. Authorities never had the murder weapon. The evidence consisted of a mask and threatening phone calls police and witnesses said were made by the defendant. In that case, the granddaughter of the victim witnessed the shooting by masked men.

Susan Campbell, the sister-in-law of Ms. Crosby, said her family still believes Mr. Chabot is guilty.

"We just want to make sure people understand he was convicted of murder. He was not convicted of rape," said Ms. Campbell, who attended Friday's hearing. "The DNA has nothing to do with the murder."

Mr. Chabot's brother, Mark Chabot, who lives near Cleveland and attended Friday's proceedings, said he was disappointed that his brother wasn't released on bond Friday.

"But the family is happy he's getting a new trial," he said. "We've always felt he was innocent."