

**STATE OF MAINE
CUMBERLAND, ss.**

**SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO. CUM-16-544**

**STATE OF MAINE,
Appellee**

v.

**FOSTER BATES,
Appellant**

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET

BRIEF OF APPELLEE

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STATEMENT OF THE ISSUES

- I. **The post-conviction court did not commit clear error or abuse its discretion in finding that Bates had failed to prove by clear and convincing evidence that his new DNA evidence, when considered with all the other evidence in the case, old and new, would make it probable that a different verdict would result upon a new trial.**

- II. **The post-conviction court did not commit clear error or abuse its discretion in excluding non-DNA related evidence.**

SUMMARY OF ARGUMENT

1. The post-conviction court did not commit clear error or abuse its discretion in finding that Bates had failed to prove by clear and convincing evidence that his new DNA evidence, when considered with all the other evidence in the case, old and new, would make it probable that a different verdict would result upon a new trial. While Bates's independent less-discriminating Y-STR testing discovered male DNA found on a sock stuffed in the victim's mouth during the murder, its probative value was low because it was consistent with the victim's infant son. The fact that Bates's semen was found in the victim's vagina and genitals during the autopsy – and that he repeatedly denied that he had ever had sex with her – is much more important

evidence. Even with this new evidence, therefore, it is highly likely that a retrial would result in the same verdict.

2. The post-conviction court did not commit clear error or abuse its discretion in excluding non-DNA related evidence from Amanda Indigo, a visitor of a neighbor of the victim who belatedly claimed to have seen Bates leaving the victim's apartment on the night of the murder while the victim was still alive, because it was not relevant to the identity of the source of the DNA on the sock. Indigo's testimony was incredible given that she admitted that she had been drinking that night and said nothing about what she had seen for over twenty years, even though Bates's trial for the murder of Tammy Dickson was highly-publicized in the Cumberland County area more than a decade ago. Even if the post-conviction court were to have considered Indigo's testimony credible, it was sheer speculation that the proffered testimony was relevant to "the new DNA results and their impact on identifying the perpetrator."

STATEMENT OF THE CASE

The Procedural History and Statement of Facts sections of the State's direct appeal brief (CUM-02-568) are attached to this brief as an addendum. This Court affirmed the defendant Foster Bates's ("Bates") judgment of

conviction on May 8, 2003. *State v. Bates*, 2003 ME 67, 822 A.2d 1129. On August 29, 2003, Bates filed a petition for post-conviction review, pursuant to 15 M.R.S. §§ 2121 *et. seq.*, which the Superior Court denied on September 5, 2007. *Bates v. State*, CR-03-1998. This Court denied Bates's application for a certificate of probable cause on September 11, 2008. *Bates v. State*, CUM-07-575.

On January 10, 2005, Bates filed a motion for the preservation of evidence for the purposes of DNA analysis pursuant to 15 M.R.S. § 2138(2). (App. 10). On March 25, 2008, the Superior Court (*Crowley, J.*) issued an order granting in full Bates's motion to subject certain evidence for DNA testing pursuant to 15 M.R.S. § 2138(4-A). (App. 11). None of the results of the testing conducted pursuant to that order supported Bates's new trial claim.

When that testing was completed, by agreement of the parties, Bates had independent DNA tests conducted by Bode Technology, a lab in Virginia. (App. 54-66). With the exception of some Y-STR tests (*i.e.*, DNA taken from the Y male chromosome) conducted on two portions of a green sock that had been stuffed into the victim's mouth at the time of the murder/rape, Bates agrees that none of his independent test results supported his new trial claim. Indeed, the Bode Lab agreed with the Maine State Police Crime Laboratory

that Bates could not be excluded as the source of the semen found in the victim's vagina and genitals during the autopsy (and did find that Anthony Dickson, the victim's ex-husband, and others could be excluded). (App. 57).

On February 24, 2014, Bates filed a motion for new trial pursuant to 15 M.R.S. § 2138. (App. 12, 29-66). On March 14, 2014, the State filed a response to the motion. (App. 12, 74-92). On June 13, 2016, the Superior Court (*Cole, C.J.*) held a non-testimonial hearing on the motion, at which Bates made an offer of proof regarding some non-DNA related evidence. (App. 14). On September 21, 2016, Bates submitted a supplemental memorandum regarding his offer of proof. (App. 14, 93-98). On October 3, 2016, the State submitted a response to Bates's supplemental memorandum. (App. 14, 99-101). On November 14, 2016, the Court issued an order denying the motion for new trial. (App. 14, 18-26). On November 23, 2016, Bates filed a notice of appeal. (App. 14).

ARGUMENT

- I. The post-conviction court did not commit clear error or abuse its discretion in finding that Bates had failed to prove by clear and convincing evidence that his new DNA evidence, when considered with all the other evidence in the case, old and new, would make it probable that a different verdict would result upon a new trial.**

Bates claims the post-conviction court committed clear error or abused its discretion in finding that Bates had failed to prove by clear and convincing evidence that his new DNA evidence, when considered with all the other evidence in the case, old and new, would make it probable that a different verdict would result upon a new trial. More specifically, Bates argues that Y-STR results from his independent DNA testing¹ constitute “clear and convincing evidence” suggesting that a different verdict would probably result if a new trial were granted.² (Brief of Appellant at 19-24). This Court will

¹ Bode Technology determined that Bates and others could be excluded from a mixture of DNA from three people found on the exterior surface of a sock (that had been stuffed in the victim’s mouth during the murder) and from a mixture of DNA from two people found on the interior toe region of the sock, and that Anthony Dickson, the victim’s ex-husband and the father of their infant child, could not be so excluded as one of the sources of the DNA mixture from the exterior surface of the sock. (App. 54-66). At trial, Bates suggested that the victim’s boyfriend Willie Quinn was the primary alternative suspect.

² Bates suggests that the State misstated the evidence when it referred to the DNA on the sock as epithelial rather than DNA from blood. (Brief of Appellant at 23 n.5). He has a point, but he makes the same mistake as the State. The State assumed below that the DNA found on the sock was epithelial since nothing in the Bode reports indicated that the Y-STR

review the Superior Court's factual findings on Bates's motion for a new trial for clear error. *State v. Cookson*, 2003 ME 136, ¶ 28, 837 A.2d 101, *cert. denied*, 543 U.S. 852 (2004). The Court will review the Superior Court's interpretation of the post-conviction DNA analysis statute *de novo*. *State v. Donovan*, 2004 ME 81, ¶ 12, 853 A.2d 772. "When a court has reached findings that are supported by the record and has interpreted and applied the statute properly, the court's ultimate decision whether to grant a new trial is reviewed for an abuse of discretion." *State v. Reese*, 2013 ME 10, ¶ 22, 60 A.3d 1277, 1282 (*quoting Cookson*, 2003 ME 136, ¶ 28, 837 A.2d 101).

A. The Statute

The statute governing the standards for granting a new trial following the completion of post-conviction DNA testing, 15 M.R.S. § 2138(10)(C),³ provides in relevant part:

10. Standard for granting new trial; court's findings; new trial granted or denied. If the results of the DNA testing under this

results Bates relies on came from a stain such as blood or semen. Bates did not correct the State's assumption in any of his pleadings below. Moreover, throughout Bates's brief, he refers to the source of the Y-STR DNA as blood, when a careful review of the Bode reports shows only that the lab found blood on the sock, not that the source of the Y-STR DNA sample was drawn from that blood. (App. 54-66).

³ Bates does not assert that paragraphs A or B of sub-section 2138(10) are applicable in this case.

section show that the person is not the source of the evidence, the person authorized in section 2137 must show by clear and convincing evidence that:

* * *

C. All of the prerequisites for obtaining a new trial based on newly discovered evidence are met as follows: ⁴

(1) The DNA test results, when considered with all the other evidence in the case, old and new, admitted in the hearing conducted under this section on behalf of the person would make it probable that a different verdict would result upon a new trial;

(2) The proffered DNA test results have been discovered by the person since the trial;

(3) The proffered DNA test results could not have been obtained by the person prior to trial by the exercise of due diligence;

(4) The DNA test results and other evidence admitted at the hearing conducted under this section on behalf of the person are material to the issue as to who is responsible for the crime for which the person was convicted; and

(5) The DNA test results and other evidence admitted at the hearing conducted under this section on behalf of the person are not merely cumulative or impeaching, unless it is clear that such impeachment would have resulted in a different verdict.

The court shall state its findings of fact on the record or make written findings of fact supporting its decision to grant or deny the person authorized in section 2137 a new trial under this section. If the court finds that the person authorized in section

⁴ The State conceded below that Bates met his burden with regard to sub-paragraphs 2 through 5 of section 2138(10)(C).

2137 has met the evidentiary burden of paragraph A, the court shall grant a new trial.

For purposes of this subsection, “all the other evidence in the case, old and new,” means the evidence admitted at trial; evidence admitted in any hearing on a motion for new trial pursuant to Rule 33 of the Maine Rules of Criminal Procedure; evidence admitted at any collateral proceeding, state or federal; evidence admitted at the hearing conducted under this section relevant to the DNA testing and analysis conducted on the sample; and evidence relevant to the identity of the source of the DNA sample.

B. Discussion

This Court should affirm the Superior Court’s denial of the motion for new trial as Bates failed to carry his burden of proving by clear and convincing evidence that the results of the independent DNA testing he ordered, when considered with all the other evidence in the case, old and new, would make it probable that a different verdict would result upon a new trial.

The trial evidence identified in the Statement of Facts (attached as an addendum to this brief), when viewed in the light most favorable to the State, rationally supported the jury’s conclusion that the State had proven beyond a reasonable doubt that it was Bates who caused Tammy Dickson's death. In particular, the following evidence was highly probative of Bates's culpability:

- Bates's DNA was found in sperm cells found in swabs of Tammy Dickson's vagina and genitals during the autopsy;

- Bates repeatedly told the police, both at the time that Tammy's body was discovered, and at the time of his arrest, that he had never had sex with Tammy, and that he had been home with his wife on the night of the murder;
- Bates told his coworker, Janice Leigh, that he had been in Tammy's apartment the night of her death;
- Bates told his babysitter, Robin Wayland, the morning after the murder that he had "gone out" the night before;
- Bates told his former wife, Christy Bates, not to talk to the police, and she initially told the police that Bates had been home with her on the night of the murder after he returned from his basketball game at 10:00 p.m. She testified at trial, however, that Bates was not home from 10:00 p.m. to 3:00 a.m. on the night of the murder;
- Wanda Fowler reported that Tammy Dickson had told her that, one month before the murder, Bates had come into Tammy's unlocked apartment in the middle of the night while she was sleeping, sitting beside her and stroking her hair, and she had asked Bates to leave; and
- Wanda and Robyn Wayland reported that one week before the murder Tammy had run into the bathroom at Robyn's apartment when Bates came to pick up his son, and that Tammy had stayed there until Bates left, saying when she came out that Bates "freaked her out" and that he "gave her the creeps."

The only new evidence Bates identified in the post-conviction court to support his motion are Y-STR results from independent DNA tests conducted by Bode Technology showing that he and others can be excluded from a

mixture of DNA from three people found on the exterior surface of the sock and from a mixture of DNA from two people found on the interior toe region of the sock, and that Anthony Dickson, the victim's ex-husband and the father of their infant child, could not be so excluded as one of the sources of the DNA mixture from the exterior surface of the sock. (App. 47-48). Bates's own tests, however, confirm that he was the source of the semen found in the victim's vagina and genitals during the autopsy, probably the most damning evidence introduced against Bates at trial – especially when coupled with his decade-long denial that he had ever had any sexual relations with the victim. (App. 57; Exhibit E, page 4, ¶ 5). Indeed, it was not until his trial that Bates admitted that he did, in fact, have sexual relations with the victim, although he claimed that the relations were consensual. By its guilty verdict, the jury – which had the ability to observe Bates while testifying – implicitly found beyond a reasonable doubt that Bates had committed perjury.

Bates also ignores that the test results on the green sock that allegedly inculcate the victim's ex-husband (along with several other unknown males) come from Y-STR tests, which are much less discriminating than the autosomal PCR test used by the Maine State Police Crime Laboratory to

confirm that Bates was the source of the semen found in swabs of the victim's vagina and genitals:

Autosomal chromosomes are those not involved in determining a person's gender, and STRs on these chromosomes are called autosomal STRs. Other STRs used for forensic purposes are called Y-STRs, which are derived solely from the male sex-determining Y chromosome. Profiles based on autosomal STRs provide far stronger statistical power than profiles based on Y-STRs, because autosomal DNA is randomly exchanged between matched pairs of chromosomes in the process of making egg and sperm cells. That's how, with billions of humans on the planet, no two people who are not identical twins are exactly alike. Profiles based on Y-STRs are statistically weaker because only males have a Y chromosome and all males get theirs from their fathers, so all males in any paternal line have nearly identical Y chromosomes.

STR Analysis, National Institute of Justice Journal, No. 267 (Mar. 3, 2011), (National Institute of Justice website, visited Mar. 11, 2014). Even Bates's Bode Technology report indicates that "[t]he Y chromosome is inherited paternally. A Y-STR match cannot exclude paternal relatives." (App. 58; Exhibit E, p.5, n.7). Significantly, while the victim and her ex-husband had been divorced for over a year and lived apart, their infant son – who would have inherited his father's Y chromosome – lived with his mother in the apartment at the time of the murder/rape. It is much more likely that whatever Y chromosome found in DNA on the sock came from the son, rather than from the father.

Moreover, the jury was well aware that the victim had had multiple sexual partners, as their semen was found on a blanket covering the victim's body and on a nearby t-shirt. *See* Trial Testimony of DNA analyst Jennifer McCorrison (now Sabean), William Quinn, Christopher Gray, Scott Harmon. The jury presumably considered the fact that Bates's semen was found in swabs of the victim's vagina and genitals during the autopsy – and that he repeatedly denied that he had ever had sex with her – to be much more important evidence.

If a new jury were to learn about the Y-STR test results on the sock, it would also be informed about the seemingly rational explanation for its presence, *i.e.*, that it likely came from the victim's infant son. Even with this new evidence, therefore, it is highly likely that it would reach the same conclusion as the original jury. Accordingly, the Superior Court did not clearly err or abuse its discretion in finding that Bates did not carry his burden of establishing by clear and convincing evidence that it is probable that a different verdict would result after a new trial with this Y-STR evidence.

II. The post-conviction court did not commit clear error or abuse its discretion in excluding non-DNA related evidence.

Bates finally argues that the post-conviction court committed clear error or abused its discretion in excluding non-DNA related evidence that he claims was relevant to the identity of the source of the DNA on the sock.⁵ (Brief of Appellant at 9-19). This Court will review the post-conviction court's decision to exclude evidence for an abuse of discretion, and its determination of relevance for clear error. *State v. Adams*, 2015 ME 30, ¶ 11, 113 A.3d 583. This Court will review the Superior Court's interpretation of the post-conviction DNA analysis statute de novo. *State v. Donovan*, 2004 ME 81, ¶ 12, 853 A.2d 772.

⁵ Bates also argues that the post-conviction court erred because he claims the court did not review either the trial transcripts or his Bode Technology Y-STR test results. (Brief of Appellant at 11-15, 18-19). With regard to the trial transcripts, as the moving party, Bates was responsible for ensuring that those transcripts were part of the record, and he failed to do so. *State v. King*, 2015 ME 1, ¶ 4, 114 A.3d 64 (The appellant bears the burden of persuasion on appeal and is responsible for providing the reviewing court with a record that is sufficient to allow fair consideration of the issues presented). Nevertheless, it is apparent from the order that the post-conviction court did consider the trial evidence when rendering its decision. (App. 18-19, 25). With regard to the Bode test results, again the court's order reflects that the results were considered. (App. 24, "...in this case, the DNA was found on a sock found in the victim's mouth."). To the extent that the court's order showed confusion on this point (App. 25, "... there are no new results from the sock because it was not tested,") it was incumbent on Bates to file a motion for clarification/reconsideration below. *State v. Powell*, 591 A.2d 1306, 1308 n. 4 (Me. 1991)(in absence of request for findings of fact, the Law Court assumes the trial court made all findings necessary to support its ruling below). He failed to do so.

The statute governing what evidence the court can consider in a post-conviction DNA motion for new trial, 15 M.R.S. § 2138(10), provides in relevant part:

For purposes of this subsection, “all the other evidence in the case, old and new,” means the evidence admitted at trial; evidence admitted in any hearing on a motion for new trial pursuant to Rule 33 of the Maine Rules of Criminal Procedure; evidence admitted at any collateral proceeding, state or federal; evidence admitted at the hearing conducted under this section relevant to the DNA testing and analysis conducted on the sample; and evidence relevant to the identity of the source of the DNA sample.

The Law Court recently interpreted this provision in *State v. Dechaine*, 2015 ME 88, 121 A.3d 76:

In other words, evidence admitted at the trial or in any prior collateral proceeding concerning, inter alia, the time of the victim’s death, alternative suspects, or the defendant’s confessions must be considered by the court in deciding a motion for a new trial based on new DNA analysis.

The “hearing conducted under [section 2138],” on the other hand, allows the court to consider only two kinds of *new* evidence—that “relevant to the DNA testing and analysis conducted on the sample,” and that “relevant to the identity of the source of the DNA sample.” 15 M.R.S. § 2138(10)(C). The statute says nothing about reopening or supplementing the evidence introduced in prior proceedings; rather, it allows the admission of DNA-related evidence that could not have been known at those prior proceedings, namely the new DNA results and their impact on identifying the perpetrator.

Id. at ¶¶ 38-39, 121 A.3d at 96.

At the June 2016 hearing in this matter, Bates made an offer of proof consisting of the testimony of Amanda Bridges, aka Amanda Indigo, who claimed to have witnessed Bates leaving the victim's apartment – with the victim still alive – while Indigo was visiting a neighbor of the victim on the night of the murder in February 1994.⁶ (App. 94-95). In the State's view, Indigo's testimony was highly suspect given that she admitted that she had been drinking that night and said nothing about what she had seen for over twenty years, even though Bates's trial for the murder of Tammy Dickson was highly-publicized in the Cumberland County area more than a decade ago. Even if the post-conviction court were to have considered the proffered testimony credible, it was sheer speculation that the testimony was relevant to "the new DNA results and their impact on identifying the perpetrator."

⁶ Bates also claims on appeal that the post-conviction court erred by excluding so-called admissions of guilt from a man named Michael Bridges, mentioned in Bates's post-conviction counsel's affidavit (App. 70-72). (Brief of Appellant at 15-16). Bates, however, never called Melody Higgins, Crystal Bridges, or Michael Bridges as witnesses as part of their offer of proof during the June 2016 hearing. Moreover, Michael Bridges was interviewed by the Maine State Police when this information came to light in December 2014. (App. 52-53). He denied making the statements attributed to him by Melody and Crystal, denied knowing Tammy Dickson (the victim), and denied that he had ever been in her apartment. Bridges also voluntarily submitted a DNA sample during the interview. Analysis of that sample by the Maine State Police Crime Laboratory excluded Bridges as a potential donor for all the DNA profiles obtained in testing at the lab. (App. 50-51).

Rather, the only new evidence that the post-conviction court could properly consider under the statute was the YSTR test result from the green sock. The State already explained in the previous argument why the post-conviction court correctly determined that result did not meet the high burden of clear and convincing evidence sufficient to warrant the granting of a new trial.

CONCLUSION

For all the foregoing reasons, this Court should affirm the post-conviction justice's order denying Bates's post-conviction DNA motion for new trial.

Respectfully submitted,

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DATED: May 31, 2017



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CERTIFICATE OF SERVICE

I, Donald W. Macomber, Assistant Attorney General, certify that I have mailed two copies of the foregoing "BRIEF OF THE APPELLEE" to Bates's attorney of record, Rory McNamara, Esq.

DATED: May 31, 2017



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ADDENDUM

***State v. Bates*, CUM-02-568, Brief of Appellee,
Procedural History and Statement of Facts**

PROCEDURAL HISTORY

On August 10, 2001, the Cumberland County Grand Jury returned an indictment charging the defendant, Foster Bates, with the February 17, 1994 intentional or knowing murder (Count I) and gross sexual assault (Count II) of Tammy Dickson, in violation of 17-A M.R.S.A. § 201(1)(A) (1983) and 17-A M.R.S.A. § 253(1)(A) (Supp. 1993)(Class A) respectively. *State of Maine v. Foster Bates*, Superior Court at Cumberland County, Docket No. CR-01-1160; (App.1, 13).⁷ A warrant was issued for his arrest. (App. 1). Maine State Police detectives arrested Bates in Massachusetts, and he was subsequently returned to Maine on August 16, 2001. (App. 1). At his arraignment that same date, Bates pled not guilty to the charges. (App. 2).

The parties submitted a number of pretrial motions, but none with any relevance to this appeal. On July 15, 2002, a jury was selected for Bates's trial. (Jury Selection Transcript at pages 30-383, hereinafter "(JST.30-383)"). On July 16, 2002, the jury began receiving evidence. (App. 6; Trial Transcript, Volume I, page 19, hereinafter "(TT.I.19)"). On July 22, 2002, the jury found

⁷ Citations to the Appendix submitted by the Appellant shall be in parentheses as follows: "(App.)."

Bates guilty of murder and gross sexual assault as charged. (App. 7; TT.IV.880).

On September 6, 2002, the Superior Court (Crowley, J.) adjudged Bates guilty as charged. (App. 7). The Court then imposed a term of life imprisonment in the custody of the Department of Corrections on the murder count, and a concurrent thirty (30) year term of imprisonment on the gross sexual assault count as the sentences. (App. 7-8, 11-12; Sentencing Transcript at page 82, hereinafter "(ST.82).").

On September 18, 2002, Bates filed a notice of appeal pursuant to M.R.App.P. 2(a)(1) and 15 M.R.S.A. § 2115 (Supp. 2002). *State of Maine v. Foster Bates*, CUM-02-568; (App. 8). On September 18, 2002, Bates also filed an application for leave to appeal sentence pursuant to M.R.Crim.P. 40 and 15 M.R.S.A. § 2151 (Supp. 2002). *State of Maine v. Foster Bates*, SRP-02-572; (App. 8). On October 29, 2002, the Sentence Review Panel granted the application.

STATEMENT OF FACTS

In February 1994, the victim, Tammy Dickson, lived in an apartment complex in South Portland called Cortland Courts with her 18-month old son, Marcus. (T.I.22, 201). She had an on-again, off-again relationship with her

boyfriend, Willie Quinn. (T.I.195, 221). At that time they were in an "off-again" phase. (T.I.195-196, 222). Around Valentine's Day, Tammy sought a reconciliation with Willie, but he rebuffed her attempts. (T.I.196, 222-223).

Tammy would routinely spend her mornings drinking coffee and watching soap operas with several of her apartment-complex neighbors -- Melissa Harrington, Wanda Fowler, and Robin Wayland. (T.I.201; II.414, 439-440). One night in January 1994 (about one month before Tammy's death), Wanda Fowler awoke to the sound of someone pounding on the door of her apartment in the middle of the night. (T.II.419). When Wanda opened the door, Tammy, who was shaking and scared, was standing there with her baby in her arms. (T.II.419-420). She told Wanda that she had awoken in her apartment (which she routinely left unlocked) to find another downstairs neighbor, the defendant Foster Bates, sitting beside her and stroking her hair. (T.I.202; II.420-421). Tammy said that Bates had been telling her that he wanted her to hold him. (T.II.421). She told Wanda that she asked Bates to leave, and eventually he did. (T.II.421).

Several weeks after that (about one week before her death), Tammy was with her friends at Robyn Wayland's apartment. (T.II.423, 445-446). Suddenly, Tammy ran into the bathroom and said, "I'm not here; you haven't

seen me." (T.II.423, 446). Moments later, Foster Bates entered the apartment to pick up his son, whom Wayland was babysitting at the time. (T.II.423, 446). After Bates left, Tammy came out of the bathroom and said, "He freaks me out," and that Bates, "gave her the creeps." (T.II.424, 446).

On February 17, 1994, Tammy had coffee with her friends as usual. (T.II.415, 440). She didn't stay very long, however, because she was packing to move to Old Orchard Beach that weekend. (T.II.415, 440). Robyn Wayland told Tammy that she would help her pack later that day. (T.II.440-441). At approximately 7:30 or 8:00 p.m., Robyn noticed that the lights were on and the curtains were open in Tammy's apartment. (T.II.441-443).

Sometime that night, Scott Harmon, who was visiting his friend Melissa Rollins's apartment, which shared an adjoining wall with Tammy Dickson's apartment, heard loud noises coming from Tammy's apartment. (T.III.667-669). The noises, which lasted for 15 to 25 minutes, sounded like someone was being thrown against the wall. (T.III.669).

The next morning, February 18, 1994, Tammy did not join her friends for coffee, which was unusual. (T.I.203). Several of them went up to the third floor to check on her during the day. (T.I.203, 204). They found the door locked and her curtains drawn, both of which were also unusual. (T.I.192,

204). Although Tammy's car was in the driveway, she did not answer the door. (T.I.203, 204). Again the following day, February 19, 1994, Tammy did not come down for coffee. (T.I.205). Tammy still did not answer the door when her friends came to check on her. (T.I.192, 206). Her door remained locked, her curtains were still drawn, and her car was still in the driveway. (T.I.192).

On Sunday, February 20, 1994, when they still had not heard from or seen Tammy, her friends became worried. (T.I.192). Melissa Harrington contacted Tammy's ex-boyfriend Willie Quinn, because she knew that he had a key to Tammy's apartment. (T.I.205-207). That night, Willie came over to Melissa's apartment. (T.I.207, 225). He went upstairs to Tammy's apartment and unlocked the door. (T.I.207, 225). When he turned on the light, he discovered Tammy's dead body under a blanket on the living room floor. (T.I.225-226). Willie was so startled by what he saw he almost fell down the stairs. (T.I.207, 226). He appeared to be in a state of shock and couldn't speak as he stood again in Melissa's apartment. (T.I.208). She could tell from his face that something was wrong so she went upstairs to Tammy's apartment herself. (T.I.208). When she got there, an awful smell was coming from the apartment. (T.I.208). She pushed open the door, and saw Tammy's dead body.

(T.I.208). Melissa went downstairs and knocked on Wanda Fowler's door.

(T.I.208). After telling Wanda that Tammy was dead, Wanda told Melissa to call 911, which she did. (T.I.209).

At approximately 8:45 p.m., South Portland Police Officer Kevin Battle arrived at the scene. (T.I.72). After speaking to Melissa and Willie, the officer went to Tammy's apartment. (T.I.72). He went over to the body and lifted the blanket. (T.I.73). He saw that Tammy had been tied up and she was already starting to decompose. (T.I.73). After checking the apartment to see if anyone else was there,⁸ the officer notified his superiors and secured the scene until the Maine State Police arrived. (T.I.73-74).

At approximately 3:00 a.m. on Monday, February 21, 1994, Detectives Brian Bachelder and Craig Handley of the Maine State Police, and Doctor Yorkey, a local medical examiner, arrived to process the scene and to examine the body. (T.I.89, 93). They saw that Tammy, who was clad only in a t-shirt, was laying face down with her head turned to the left. (T.I.94). Her hands and feet were bound together behind her back with three different bindings. (T.I.94). Someone had stuffed a sock into Tammy's mouth, and wrapped a belt,

⁸ The officer actually discovered Tammy's infant son in the apartment, but the jury was not informed of this fact. (T.I.9-10).

pillowcase, and one other item around her head. (T.I.94). The detectives examined Tammy's body for trace evidence and fingerprints, then her body was removed for transport to Augusta for an autopsy. (T.I.92, 95, 102).

Later that same date, former Deputy Chief Medical Examiner Kristin Sweeney performed the autopsy. (T.II.293). She detected postmortem changes, e.g., pronounced livor mortis, in Tammy's body that suggested that she had been dead for several days. (T.II.325). The doctor also observed that the bindings around Tammy's hands and feet were loose enough so they could just be slipped off without having to cut them. (T.II.295). After noticing that the ligature marks on Tammy's wrists and ankles were faint and colorless, Doctor Sweeney opined that the ligatures were put on after she had been killed. (T.II.311, 320). After taking the sock out of Tammy's mouth, the doctor saw injuries to the tongue and inside of the mouth that led her to conclude that the sock had been placed there before Tammy's death. (T.II.329-330).

During the remainder of her external examination, the doctor found multiple fresh abrasions on Tammy's forehead, arms, elbows, knees, and shins that were consistent with the appearance of rug burns. (T.II.302, 306-319, 322). Doctor Sweeney also saw multiple petechial hemorrhages in Tammy's eyes, suggesting an asphyxial component to her death. (T.II.301-302). The

doctor's internal examination confirmed this suggestion -- she observed a 1 1/2" band of deep purple hemorrhage circling Tammy's neck muscles, the same width as the belt found around her head. (T.II.326-327). Based on her observations, Doctor Sweeney concluded that the cause of Tammy's death was asphyxia due to either manual or ligature strangulation. (T.II.331).

Before completing her examination, the doctor utilized a sexual assault kit to swab Tammy's mouth, vagina, anus, and genitalia. (T.II.335-336). She preserved the swabs on glass smear slides, allowed them to dry, then took the swabs and slides to be placed in evidence at the crime laboratory. (T.II.337). Doctor Sweeney also combed Tammy's pubic hairs, and obtained blood and saliva samples, which also were brought to the crime laboratory. (T.II.336, 338).

Meanwhile, back at the scene, detectives from the Maine State Police interviewed Tammy's neighbors, including Foster Bates. (T.II.345-346). During an interview on the morning of the 21st, Bates claimed that on the previous Thursday (the night of the murder), he had come home from a basketball game at 10:00 p.m., and was home with his wife the rest of the night. (T.II.346). He claimed not to know Tammy Dickson very well, and that he had not seen her for a week or so before her death. (T.II.347).

Initially, Bates's wife, Christy, supported her husband's story -- she told the police that he had come home from the basketball game on the 16th at approximately 10:00 p.m., and that he was home for the night after that. (T.II.409). In actuality, Christy Bates knew that her then husband had come home from the game at 10, then almost immediately left the house until approximately 3:00 a.m. on February 17th. (T.II.399-400). On the morning of the 17th, Bates called Robin Wayland, to tell her that he didn't need her to babysit his son that day because he had "gone out" the night before and he wouldn't be going to school that day. (T.III.590).

On a night after Tammy had been murdered, Christy Bates went to Foster Bates's workplace, a local Irving gas station, and told him that the police had been back to question her, and she wanted to know what was going on. (T.III.605). Bates told Christy not to talk to the police, and that they didn't have any evidence and were just fishing. (T.III.606). After Christy left, Bates told his coworker, Janice Leigh, that he had been in Tammy's apartment the night of the murder after his basketball game. (T.III.606). He said that the police thought he was having an affair with Tammy, but that if he was no one would know because Tammy was dead and he wasn't telling. (T.III.607).

During a February 26, 1994 interview at the South Portland Police Department, Bates told the police that he had not walked into Tammy's apartment in the middle of the night as had been claimed by Tammy's friends. (T.II.349; State's Exhibit 32). He repeated that he hadn't seen Tammy for a week before her death. (T.II.349; State's Exhibit 32). He specifically denied ever having sex with Tammy. (T.II.349; State's Exhibit 32).

The swabs and smears obtained by Dr. Sweeney at the autopsy were examined, and some sperm cells were detected. (T.II.349, 456). The police then obtained blood samples from men that Tammy Dickson knew, including among others her ex-husband, Tony Dickson, her ex-boyfriend, Willie Quinn, and Foster Bates.⁹ (T.II.349-350). These samples, along with Tammy Dickson's blood sample, and some vaginal swabs were sent to the FBI Crime Laboratory in Washington, D.C. for analysis. (T.II.454-456). The FBI, utilizing the older and less exact RFLP method of testing, developed genetic profiles from these samples, and the results were inconclusive. (T.II.454-456). The FBI could exclude everybody but Foster Bates and Tammy Dickson as the source of the

⁹ Although the jury was not informed of this fact, the Court can take judicial notice that Foster Bates's blood sample was obtained with a search warrant.

DNA on the vaginal swabs, but the tests could not positively declare a match. (T.II.454-456).

The case remained unsolved for years. In June 1996, the State Police re-interviewed Willie Quinn, and accused him of committing the murder because he had said that Tammy had a sock in her mouth, which the police didn't think anyone but the killer would have known. (T.II.351, 353-354). After some intense questioning, Quinn stated, as had been suggested by the police, that if he had killed Tammy it would have been during an alcoholic blackout and he just didn't remember that he had done it. (T.II.359, 375, 386-387).

In 1997, Detective Pat Lehan, who had been the primary investigating officer, retired. (T.II.344; III.618). The investigation was reassigned to Detective Angela Blodgett. (T.III.609). After familiarizing herself with the file, she asked Maine State Police Crime Laboratory staff if there was any further testing that could be done on the samples from the case. (T.II.491-492; III.609-610). In 1997, the Crime Laboratory had opened its own DNA section, which used the more modern and precise PCR method of analysis. (T.II.463). DNA analyst Jennifer (Hamel) McCorrison examined the smears and slides that were in the file. (T.II.467, 476-477). She observed that sperm cells were still present. (T.II.468-469, 477). Genetic profiles were developed from the blood

samples that had been retained at the crime laboratory since 1994, as well as from the genital swabs and vaginal smears. (T.II.468, 469, 477). On one of the genital swab profiles, Ms. McCorrison established a twelve-locus match with the profiles of both Foster Bates and Tammy Dickson. (T.II.469, 471, 474). The probability of someone other than Foster Bates being the source of the male DNA from the genital swab profile was 21.6 quadrillion to 1, i.e., identity. (T.II.474-476). On one of the vaginal smear slide profiles, Ms. McCorrison again established a match with the profiles of Tammy Dickson and Foster Bates (this time an eight-locus match). (T.II.477, 479). The probability that someone other than Foster Bates was the source of the male DNA found in the vaginal smear was 12.2 billion to 1. (T.II.479). Willie Quinn, however, was positively excluded as the source of any of the unknown DNA detected in the swabs and smears taken from Tammy Dickson's body. (T.II.471, 477-478).

Armed with this new development, Detective Blodgett began focusing on Bates as a suspect. (T.III.610). When she reinterviewed Christy Bates, who had since divorced Foster Bates, she learned that Christy had been lying for her husband and that he had not been home with her as she had earlier claimed. (T.III.620).

In August 2001, the case was presented to the Cumberland County Grand Jury and an indictment was returned charging Bates with murder and gross sexual assault. (App. 1; T.III.611). A warrant was issued for Bates's arrest. (App. 1; T.III.611). On August 13, 2001, Detective Blodgett and Detective Scott Harakles went to Massachusetts to arrest and interview Bates. (T.III.610-611). After giving Bates *Miranda* warnings, the detectives informed him that he was under arrest for the murder and rape of Tammy Dickson. (T.III.616; State's Exhibit 36). Bates denied killing Tammy, blaming the charges on his ex-wife changing her story. (T.III.616; State's Exhibit 36). Even when told that his DNA had been found inside Tammy's vagina, Bates continued to adamantly deny that he had ever had sex with Tammy. (T.III.616; State's Exhibit 36). On August 16, 2001, Bates was returned to Maine for trial. (App. 1).

For the first time at his July 2002 trial, Bates changed his story. (T.III.684). He told the jury that he and Tammy had been having an ongoing affair since the October before her death. (T.III.696-698). He claimed that he and Tammy had last had sex on Wednesday, February 16, 1994, more than 24 hours before her death. (T.III.701-703). He continued to claim that he had come home from his basketball game on the night of the murder at 10:00 p.m.

(T.III.710). He admitted, however, that he had gone upstairs to Tammy's apartment -- and found the lights off and the door locked -- before returning to his own apartment. (T.III.711-712).

He claimed that he lied to Detective Lehan in 1994 about having sex with Tammy because he was still married. (T.III.724-726). He claimed that he lied to Detective Blodgett in 2001 about having sex with Tammy because the detective already had her mind made up. (T.III.733-741). Bates denied murdering and raping Tammy. (T.III.684).