



## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

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DATE	COMM	ACTION
3/9/23	SM	Favorable
3/14/23	JU	Favorable
	ACJ	
	AP	

March 9, 2023

The Honorable Kathleen Passidomo  
President, The Florida Senate  
Suite 409, The Capitol  
Tallahassee, Florida 32399-1100

Re: **SB 62** – Senator Grall  
**HB 6005** – Representative Duggan  
Relief of Robert Earl DuBoise by the State of Florida

### SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$1.85 MILLION TO BE APPROPRIATED FROM THE GENERAL REVENUE FUND TO THE DEPARTMENT OF FINANCIAL SERVICES, AND A WAIVER OF TUITION AND FEES FOR UP TO 120 HOURS OF INSTRUCTION, TO COMPENSATE ROBERT EARL DUBOISE FOR 37 YEARS OF WRONGFUL INCARCERATION.

#### FINDINGS OF FACT:

#### **General Overview of the Crime**

On August 18, 1983, the victim left work sometime after 9:05 p.m. The victim was walking and declined a ride home by two individuals known to her. The victim was not seen again until her body was found the next morning behind a dentist office. The body was naked, other than a tube top pulled over the breasts. The victim suffered severe trauma to the head, face and neck.<sup>1</sup>

The Tampa Police Department responded, secured the scene, and collected evidence, including several 2x4s

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<sup>1</sup> Conviction Review Unit Fact Finding, p. 3, (September 9, 2020).

(suspected to be the murder weapon), clothing, a wallet, a purse, moldings from potential knee and shoe impressions, and fingerprints from a nearby air conditioning unit. The crime scene indicated a struggle, and the autopsy determined the cause of death was blunt force trauma to the head.<sup>2</sup>

The medical examiner, Dr. Miller, discovered what he believed to be a bite mark on the victim's left cheek, and contacted Dr. Powell, a local dentist who worked with the medical examiner's office. Photographs were taken and Dr. Miller excised the bite mark away from the victim's face and attempted to preserve it in a formaldehyde solution. Other evidence was collected, including a rape kit, fluids from the vaginal and anal cavities, hair samples, nail clippings, photographs and clothing.<sup>3</sup>

The police focused in on the bite mark and contacted Dr. Richard Souviron, a forensic odontologist. At the time, Dr. Souviron was considered an expert on bite mark evidence and had testified in several criminal cases, including the case against Ted Bundy. Dr. Souviron requested the police to obtain beeswax impressions from any suspects. Detectives Saladino and Burke may have obtained as many as 100 separate moldings from male suspects/persons of interest that lived or frequented the area.<sup>4</sup>

A clerk at a gas station near the area the victim was found stated Robert DuBoise, Victor DuBoise and Raymond Garcia caused problems in the area. This statement is what led the police to Robert DuBoise, who voluntarily gave Detective Saladino a beeswax impression of his teeth. Dr. Souviron informed the police that Robert DuBoise is who inflicted the bite mark on the victim, and Robert was arrested.<sup>5</sup>

Robert DuBoise was tried and convicted of First Degree Felony Murder and Attempted Sexual Battery.<sup>6</sup> During the trial, the state entered evidence by three witnesses who provided inculpatory evidence against Mr. DuBoise. These witnesses included Claude Butler (an inmate who claimed Mr.

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 1.

DuBoise made incriminating statements), and Joan Suarez and Jack Andruskiewicz (acquaintances who claimed Mr. DuBoise stated he was wanted for murder).<sup>7</sup> The state also presented expert evidence that Mr. DuBoise was the person who inflicted the bite mark on the victim.<sup>8</sup>

### **Conviction Review Unit Findings and Recommendation**

Teresa Hall, the Supervising Attorney of the Conviction Review Unit (CRU) for the Office of the State Attorney in the 13<sup>th</sup> Judicial Circuit in Florida,<sup>9</sup> conducted the review of Mr. DuBoise's conviction. A CRU is an independent entity within the Office of the State Attorney that reviews convictions to determine if the conviction was wrongfully obtained. This review occurs after the CRU is prompted by a petition or request for review.<sup>10</sup>

Attorney Hall received a comprehensive petition and memorandum of law regarding Mr. DuBoise's case from Susan Friedman, an attorney with the Innocence Project, representing Mr. DuBoise. Through the petition, attorney Hall became aware of the bite mark evidence leading to Mr. DuBoise's conviction, and testified that she was already familiar with the unreliability of bite mark evidence as a single source identifier. This prompted further review of Mr. DuBoise's case.<sup>11</sup>

The CRU reviewed the entire file on Mr. DuBoise's case, including the postconviction motions.<sup>12</sup>

The CRU found that:

- 1) DNA evidence refutes that Robert DuBoise was the perpetrator. Further, the presumptive positive is linked to person X., who had no connection to Robert DuBoise, Victor DuBoise or Raymond Garcia.
- 2) The bite mark evidence presented to the jury is unreliable and faulty. Per experts consulted by both the State Attorney's Office and the Innocence Project, the

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<sup>7</sup> *Id.* at 4.

<sup>8</sup> Conviction Review Unit Fact Finding, p. 36, (September 9, 2020).

<sup>9</sup> Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 17:14-17:26.

<sup>10</sup> *Id.* at 17:35-18:01.

<sup>11</sup> *Id.* at 30:30-31:31.

<sup>12</sup> *Id.* at 31:31-32:30.

marks left on the [victim's] face were not bite marks at all.

- 3) Claude Butler's testimony is not credible for the following reasons:
  - His significant connection to law enforcement.
  - Inconsistencies through his statements to police, prosecution, defense at trial, and to the CRU.
  - His incentive to cooperate due to facing life sentences on his pending charges.
  - Discrepancies on whether Claude Butler was given a polygraph examination.
  - There was significant benefit provided to Claude Butler by the State Attorney's Office filing a Motion to Mitigate Claude Butler's sentence to time served and that this motion was filed within 2 months of the conclusion of Mr. DuBoise's trial.
- 4) If a trial were to occur today, there would not be credible evidence to prove Mr. Robert DuBoise committed the crimes charged and there would be clear and convincing evidence he is innocent of the charges against him.<sup>13, 14</sup>

Attorney Hall's recommendation was that Mr. DuBoise's conviction be vacated and the charges be nolle prosequi.<sup>15</sup>

### **Bite Mark Evidence**

The pathologist thought one of the marks on the victim's left cheek was a bite mark. The detectives "honed in" on what the pathologist, and later dentist, thought was a bite mark. Law enforcement decided to canvass the area for every known man that frequented the neighborhood, collecting over 100 bite mark impressions "from anybody that would give it to them." Mr. DuBoise voluntarily gave his bite mark impression. All impressions were done in bees wax.<sup>16</sup>

Law enforcement sent some of the dental impressions to

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<sup>13</sup> Conviction Review Unit Fact Finding, p. 48-49, (September 9, 2020).

<sup>14</sup> Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 1:08:54-1:09:50.

<sup>15</sup> *Id.* at 27:35-27:45, and 1:09:50-1:09:58.

<sup>16</sup> *Id.* at 34:33-36:08; Testimony of Robert DuBoise at 2:46:15-2:46:35.

Dr. Richard Souviron, the forensic odontologist, who concluded that Mr. DuBoise was the person who inflicted the injury to the victim's cheek. Based on this evidence, law enforcement arrested Mr. DuBoise.<sup>17</sup> At trial, Dr. Souviron "went above and beyond what should have been testified to," when he testified that he was 100 percent certain and convinced that Mr. DuBoise left the bite mark on the victim.<sup>18</sup>

As part of attorney Hall's review of the case, she attempted to contact Dr. Souviron 10 times via email, business phone, personal phone and home phone and never received a response.<sup>19</sup>

Attorney Hall contacted and consulted with Dr. Freeman, an expert in forensic odontology. Dr. Freeman was sent the case information, including photographs of the murder weapon and the injury to the victim's cheek. Dr. Freeman determined the mark was not a human bite mark.<sup>20</sup>

Dr. Freeman is a forensic odontologist and an expert in the state of Florida.<sup>21</sup> In 2019, the American Board of Forensic Odontology (ABFO) rewrote their guidelines and standards for bite marks.<sup>22</sup> This change in guidelines followed multiple reports and studies indicating the inaccuracies of bite mark evidence. One report by the National Academy of Sciences (NAS) contained a damaging review of bite mark evidence, finding there was no evidence supporting the accuracy of bite mark evidence, and experts "diverged wildly," in their evaluations of the same bite mark.<sup>23</sup>

The premise of bite mark evidence was: (1) that teeth are individual to a person, similar to DNA or fingerprints; (2) skin is an accurate recording medium; and (3) people of similar education and backgrounds would come to similar conclusions when looking at that evidence.<sup>24</sup> Bite mark evidence is problematic because it has never been proven that teeth are individual to a person. In fact, studies have

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<sup>17</sup> Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 36:04-36:45.

<sup>18</sup> *Id.* at 40:18-40:40.

<sup>19</sup> *Id.* at 49:20-49:35.

<sup>20</sup> *Id.* at 49:50-51:27.

<sup>21</sup> Special Master Hearing (March 1, 2021), Testimony of Dr. Freeman at 1:15:08-1:15:26.

<sup>22</sup> *Id.* at 1:18:08-1:19:00.

<sup>23</sup> *Id.* at 1:28:15-1:46:10.

<sup>24</sup> *Id.* at 1:24:00-1:24:44.

shown when looking at the side of teeth observed in bite mark evidence, many teeth can be compared and look similar to others. Further, it has never been proven that skin is an accurate recording medium. When evaluating bite mark evidence you are viewing a bruise on the skin, not an actual indentation. There are no studies to show that everyone bruises the same way, and skin looks different in different positions.<sup>25</sup>

Forensic odontologists were originally permitted to testify to individualization, which means an expert could look at an injury and determine not only who inflicted that injury, but determine that the person was the only individual who could make that injury.<sup>26</sup> Current guidelines are such that a forensic odontologist *may not* testify that a specific individual inflicted a bite.<sup>27</sup>

Dr. Freeman first reviewed the transcripts of the case to determine whether or not Dr. Souviron followed current or past ABFO guidelines. The evidence originally collected included low quality photos, and a portion of skin excised from the victim. While there is controversy regarding collecting bite mark evidence by excising an area of skin, there were procedures for doing so that were not followed in this case. The way in which the skin was excised in Mr. DuBoise's case distorted the injury and caused shrinkage. The injury was also preserved in formaldehyde which was not recommended and causes distortion. The way in which the injury was excised and preserved was not consistent with collection and preservation standards in place at the time of the crime.<sup>28</sup>

Similarly, proper methods for taking dental impressions were not followed in Mr. DuBoise's case. The officers were not trained in taking impressions nor did they use quality materials. Law enforcement used beeswax to take dental impressions, then "pour[ed] up" each side in dental plaster. This is not an acceptable method to record an impression. The wax deforms in a way dental impression material does not. The analysis on Mr. DuBoise case was done based on the dental impressions in beeswax taken by law enforcement.<sup>29</sup>

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<sup>25</sup> *Id.* at 1:46:24-1:49:45.

<sup>26</sup> *Id.* at 1:25:09-1:25:39.

<sup>27</sup> *Id.* at 1:46:05-1:46:20.

<sup>28</sup> *Id.* at 1:49:50-1:53:47.

<sup>29</sup> *Id.* at 1:53:50-1:59:31.

Once the dental plaster had set in Mr. DuBoise's dental impression, it was sent to Dr. Souviron.<sup>30</sup> Dr. Souviron's interpretation of the evidence evolved and became increasingly more conclusive. Dr. Souviron's conclusion based on the resected tissue analysis was originally that the person who made this injury was likely missing an upper tooth. Mr. DuBoise had no missing teeth at the time of the impression. After being presented with Mr. DuBoise's dental impression, Dr.'s Souviron abandoned the missing tooth theory.<sup>31</sup> Dr. Souviron concluded early in the case that he could not exclude Mr. DuBoise. Later he stated that Mr. DuBoise was consistent with the injury. He then stated that Mr. DuBoise's dentition matched to a reasonable degree of certainty. Finally, Dr. Souviron concluded at trial, that Mr. DuBoise did inflict the injury on the victim in this case.<sup>32</sup> While this testimony was permissible at the time, *a forensic odontologist is no longer permitted to make this conclusion, and individualization is no longer permitted per the current ABFO standards and guidelines.*<sup>33</sup>

Dr. Freeman reviewed the photographs of the injury in Mr. DuBoise's case and concluded that the injury to the victim's cheek was not a bite mark. The average lower dentition of a human is approximately 32 millimeters from canine to canine. In this case, the injury on the victim's face was 45 millimeters. Additionally, the injury that had been excised had visible distortion. Dr. Freeman further testified that Dr. Souviron's analysis was "wrong" and that his conclusions were "far-field of having any scientific validity."<sup>34</sup>

### **Physical Evidence Excluding Mr. DuBoise**

The medical examiner collected evidence at the autopsy, including the excised skin of the left cheek containing the alleged bite mark, hair samples, oral, anal, and vaginal smear slides, fingernail clippings, and the victim's blood type. The oral, anal, and vaginal smear slides collected are the same as

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<sup>30</sup> *Id.* at 1:59:40-2:00:15.

<sup>31</sup> *Id.* at 2:01:04-2:04:35.

<sup>32</sup> *Id.* at 2:07:38-2:09:29.

<sup>33</sup> *Id.* at 2:09:50-2:10:21.

<sup>34</sup> *Id.* at 2:11:19-2:13:50.

the type of slides collected in a rape kit today.<sup>35</sup> At the time of the crime in 1983, DNA testing was not available.<sup>36</sup>

Law enforcement collected fingerprints, 2x4s suspected to be the murder weapon, and hair from the crime scene.<sup>37</sup> All evidence collected at the scene, including the fingerprints and hair, excluded Mr. DuBoise.<sup>38</sup>

Throughout Attorney Hall's review of Mr. DuBoise's case, it was determined that the medical examiner's office had oral, anal, and vaginal smear slides collected from the victim at the time of the autopsy. The slides were sent to a lab in California for testing.<sup>39</sup>

Nancy Wilson, a Forensic DNA Analyst with Forensic Analytical Crime Lab in California, was contacted to review the DNA slides found in the medical examiner's possession in Mr. DuBoise's case. Wilson's responsibilities include examining and documenting evidence. Wilson performs any necessary testing, including DNA testing, and provides interpretation for the results. Wilson has been recognized as an expert in Florida.<sup>40</sup>

Wilson received the evidence in this case in August 2020, tested the oral, anal, and vaginal smear slides, and completed her report in September 2020. Wilson observed sperm on the vaginal smear slide and anal smear slide. Wilson concluded there was one major male contributor (76% of the DNA), one minor male contributor (5% of the DNA), and the victim (19% of the DNA) on the vaginal smear slide, and a small amount of sperm DNA from one contributor on the anal smear slide. There was no male DNA on the oral smear slide. Wilson received a DNA reference sample from Mr. DuBoise and was able to compare and exclude him as a possible contributor.<sup>41</sup>

Once Wilson completed her report, it was submitted to CODIS.<sup>42</sup> Mr. DuBoise was excluded as a match from all the

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<sup>35</sup> Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 37:01-37:55.

<sup>36</sup> *Id.* at 34:20-34:30; Testimony of Nancy Wilson at 2:22:41-2:22:57.

<sup>37</sup> Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 37:55-38:45.

<sup>38</sup> *Id.* at 39:31-39:58 and 51:50-1:00:04.

<sup>39</sup> *Id.* at 53:50-57:15.

<sup>40</sup> Special Master Hearing (March 1, 2021), Testimony of Nancy Wilson at 2:15:26-2:22:23.

<sup>41</sup> *Id.* at 1:26:58-2:38:48; see also Forensic Analytical Crime Lab, *Laboratory Report* (September 2, 2020).

<sup>42</sup> CODIS is the Combined DNA Index System and is the generic term used to describe the FBI's program of support for criminal justice DNA databases as well as the software used to run these databases.



evidence tested in this case, and there was a positive match to the major contributor of the DNA. At the time of the Special Master hearing the name of the individual whose DNA matched the sample retrieved from the victim was not released because there was an ongoing investigation. There is no connection between Mr. DuBoise and the person who was a DNA match.<sup>43, 44</sup> During 2022, the State Attorney's Office for the Thirteenth Judicial Circuit publicly identified two individuals whose DNA match the DNA found on the rape kit of the victim. These two individuals are currently incarcerated on life sentences for a similar crime that occurred near the time of the rape and murder for which Mr. DuBoise was convicted. Additionally, these two individuals are connected to other similar crimes in the Tampa Bay area.<sup>45</sup>

### **Witnesses**

#### *Claude Butler*

Witness Claude Butler had no independent knowledge of the crime. Butler testified that he shared a jail cell with Mr. DuBoise, and that Mr. DuBoise told him that Mr. DuBoise, his brother Victor DuBoise, and Raymond Garcia abducted the victim, raped her, and killed her. Butler further testified that Mr. DuBoise stated all he had done "is had sex with the woman," and he did not know anyone was going to kill the victim. Butler testified Raymond Garcia actually committed the murder. Butler testified to details about the crime could have been found in the arrest report.<sup>46</sup>

Attorney Hall interviewed Butler as part of her investigation and Butler's recall of what Mr. DuBoise told him was inconsistent with his trial testimony. Butler had previously provided information on other crimes during the same time period to a detective with the Tampa Police Department. Prior to Mr. DuBoise's trial, Butler was charged with several punishable by life felonies. At the time of sentencing, Butler received a 5-year sentence. After the conviction of Mr. DuBoise, the state attorney who tried Mr. DuBoise's case filed a State motion to modify and mitigate Butler's sentence. Butler was sentenced to time served. He served

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<sup>43</sup> Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 53:50-57:15.

<sup>44</sup> Special Master Hearing (March 1, 2021), Testimony of Nancy Wilson at 2:38:48-2:42:00.

<sup>45</sup> See, Innocence Project of Florida, Inc. *Status Update of Claimant Since 2022 Legislative Session* (2023).

<sup>46</sup> Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 41:29-42:26.

approximately 18 months incarceration on multiple punishable by life felonies.<sup>47</sup>

Jack Audruskiewicz

Witness Jack Audruskiewicz had no independent knowledge of the crime. Audruskiewicz testified that he spoke with Mr. DuBoise at a party two days to a week before Mr. DuBoise's arrest. He further testified that Mr. DuBoise stated he was wanted for murder.<sup>48</sup>

Joan Suarez

Witness Joan Suarez had no independent knowledge of the crime. Suarez testified that she frequented the same bar as Mr. DuBoise and they were friends. She further testified that Mr. DuBoise had scratches to his back, and that Mr. DuBoise made comments that he had "done something bad," and "was wanted." Suarez could not remember dates, exact conversations, and admitted to having a traumatic brain injury. Suarez's trial testimony was inconsistent with the deposition she had given prior to trial.<sup>49</sup>

**Sentencing and Post-Conviction**

Mr. DuBoise was arrested on October 22, 1983.<sup>50</sup> The jury returned a guilty verdict on First Degree Felony Murder and Attempted Sexual Battery on March 7, 1985.<sup>51</sup>

The jury did not recommend the death penalty, but the court overrode the jury's decision and sentenced Mr. DuBoise to death on March 7, 1985.<sup>52</sup> During Mr. DuBoise's direct appeal the Florida Supreme Court found that the trial court made a sentencing error, and overturned Mr. DuBoise's death sentence. The sentence of death was commuted to a life sentence on June 23, 1988.<sup>53</sup>

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<sup>47</sup> *Id.* at 1:00:50-1:03:49.

<sup>48</sup> *Id.* at 45:52-43:48.

<sup>49</sup> *Id.* at 43:55-45:09.

<sup>50</sup> Special Master Hearing (March 1, 2021), Testimony of Robert DuBoise at 2:46:40-2:47:26.

<sup>51</sup> Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 45:10-45:30.

<sup>52</sup> State v. Robert E. DuBoise, *Order Granting Joint Motion to Modify Sentence*, (August 27, 2020) (Case No.83CF12669)

<sup>53</sup> *Id.*; See also, Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 45:30-46:11.

Mr. DuBoise filed a postconviction motion requesting to test the DNA collected in the case. At the hearing on this postconviction motion it was determined that the evidence entered at trial had been destroyed by the Clerk's office in 1990 and the hair samples were not suitable for DNA testing.<sup>54</sup> Attorney Hall later determined that the medical examiner's office stored DNA slides in Mr. DuBoise's case, and these were tested during the CRU's investigation.<sup>55</sup>

In 2020, due to Covid-19, no prison inmates were able to be transported to Hillsborough County jail for the purpose of a hearing. Because of this, and upon receiving the DNA results excluding Mr. DuBoise, attorney Hall elected to file a motion to modify Mr. DuBoise's sentence so he may be released. Mr. DuBoise's sentence was commuted to time served, and Mr. DuBoise was released.<sup>56</sup> The court ordered that Mr. DuBoise's sentence be modified as follows:

- Count 1: Modified to 36 years in the Department of Corrections.
- Count 2: Modified to 15 years in the Department of Corrections.
- Counts 1 and 2 were to run concurrently.
- Mr. DuBoise was given 503 days of original jail credit, as well as all credit for prison time served.
- All fines associated with the case were waived.<sup>57</sup>

Once Mr. DuBoise was released the hearing on postconviction relief to vacate his sentence was held.<sup>58</sup>

In the State's response to the postconviction motion seeking vacatur, the State agreed that the convictions should be vacated.<sup>59</sup> **On September 14<sup>th</sup>, 2020, the court granted Mr. DuBoise's motion to vacate his conviction, finding there was no credible evidence that Mr. DuBoise committed the**

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<sup>54</sup> Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 46:20- 47:30.

<sup>55</sup> *Id.* at 53:50-57:15.

<sup>56</sup> *State v. Robert E. DuBoise, Order Granting Joint Motion to Modify Sentence*, (August 27, 2020) (Case No.83CF12669); *See also*, Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 1:04:30-1:05:15.

<sup>57</sup> *State v. Robert E. DuBoise, Order Granting Joint Motion to Modify Sentence*, (August 27, 2020) (Case No.83CF12669)

<sup>58</sup> Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 1:05:40-1:08:54.

<sup>59</sup> *State v. Robert E. DuBoise, State's Response to Defendant's Motion for Postconviction Relief and to Vacate Judgment and Sentence Pursuit to Fla. R. Crim P. 3.850* (September, 2020) (Case No.83CF12669).

***crime and further found that he was innocent by clear and convincing evidence.***<sup>60</sup>

**LITIGATION HISTORY:**

Mr. DuBoise convicted of First Degree Felony Murder and Attempted Sexual Battery on March 7, 1985,<sup>61</sup> And sentenced Mr. DuBoise to death on March 7, 1985.<sup>62</sup>

The sentence of death was commuted to a life sentence on June 23, 1988.<sup>63</sup>

Mr. DuBoise filed a postconviction motion requesting to test the DNA collected in the case, which was initially denied. The DNA was later tested during the CRU's investigation.<sup>64</sup>

In 2020, based on the DNA results, attorney Hall filed a motion to modify Mr. DuBoise's sentence so that he may be released. Mr. DuBoise's sentence was commuted to time served, and Mr. DuBoise was released.<sup>65</sup> Once Mr. DuBoise was released, the hearing on postconviction relief to vacate his sentence was held.<sup>66</sup>

On September 14<sup>th</sup>, 2020, the court vacated Mr. DuBoise's conviction, finding there was no credible evidence that Mr. DuBoise committed the crime and further found that he was innocent by clear and convincing evidence.<sup>67</sup>

On October 4, 2021, Mr. DuBoise, through private counsel, filed a federal civil rights action against the City of Tampa and several employees of the Tampa Police Department. The federal District Court denied the defendants' motion to dismiss and the case is currently pending in the discovery phase.<sup>68</sup>

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<sup>60</sup> *State v. Robert E. DuBoise, Order Vacating Defendant's Judgment and Sentences* (September 14th, 2020) (Case No.83CF12669); *see also*, Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 1:11:00-1:11:59.

<sup>61</sup> Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 45:10-45:30.

<sup>62</sup> *State v. Robert E. DuBoise, Order Granting Joint Motion to Modify Sentence*, (August 27, 2020) (Case No.83CF12669)

<sup>63</sup> *Id.*; *See also*, Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 45:30-46:11.

<sup>64</sup> *Id.* at 53:50-57:15.

<sup>65</sup> *State v. Robert E. DuBoise, Order Granting Joint Motion to Modify Sentence*, (August 27, 2020) (Case No.83CF12669); *See also*, Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 1:04:30-1:05:15.

<sup>66</sup> Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 1:05:40-1:08:54.

<sup>67</sup> *State v. Robert E. DuBoise, Order Vacating Defendant's Judgment and Sentences* (September 14th, 2020) (Case No.83CF12669); *see also*, Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 1:11:00-1:11:59.

<sup>68</sup> *See*, Innocence Project of Florida, Inc. *Status Update of Claimant Since 2022 Legislative Session* (2023).

CONCLUSIONS OF LAW:

**Standard of Proof in Wrongful Incarceration Compensation Claims**

The appropriate standard of proof applied in a wrongful incarceration claim bill is whether there is *clear and convincing evidence* that the claimant committed neither the act nor the offense that served as the basis for the conviction and that the petitioner did not aid, abet, or act as an accomplice.

Generally, the standard of proof in the claim bill process is preponderance of the evidence. However, in 2008, the Legislature established a clear and convincing standard of proof for wrongful incarceration claims under ch. 961, F.S. While the Legislature is not bound to the statutory requirements of ch. 961, F.S., precedent<sup>69</sup> and equitability suggest that the applicable standard of proof in a wrongful incarceration claim bill should be consistent with these statutory requirements. There have been two wrongful incarceration claim bills that have passed since the enactment of ch. 961, F.S. Both of these bills have utilized a clear and convincing standard.<sup>70</sup> Additionally, a person who is barred from receiving compensation under ch. 961, F.S., due to prior felony convictions may only be compensated for a wrongful conviction through an act of grace by the Legislature. Applying a lower standard of proof to those barred from statutory relief creates an inequitable result.

Clear and convincing evidence is “evidence making the truth of the facts asserted ‘highly probable.’”<sup>71</sup> A clear and convincing standard “is a greater burden than preponderance of the evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials.”<sup>72</sup> Florida jury instructions provide that clear and convincing evidence is “evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm

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<sup>69</sup> Senate Special Master Report Re: CS/SB 2 (2012)(November 1, 2011)(recommending relief regarding Mr. William Dillon’s wrongful incarceration claim); Senate Special Master Report Re: SB 28 (2020)(January 23, 2020)(recommending relief regarding Mr. Clifford Williams’ wrongful incarceration claim).

<sup>70</sup> *Id.*

<sup>71</sup> *Slomowitz v. Walker*, 429 So. 2d 797, 799 (4th DCA 1983).

<sup>72</sup> Bryan A. Garner, *Black’s Law Dictionary* (2006).

belief or conviction, without hesitation, about the matter in issue.”<sup>73</sup>

### **Compensation for Wrongful Incarceration Compensation Claims**

Chapter 961, F.S., provides compensation for wrongful incarceration calculated at a rate of \$50,000 for each year of wrongful incarceration, which is prorated as necessary.<sup>74</sup> Additionally, a petitioner may receive a waiver of tuition and fees for up to 120 hours of instruction at a career center, Florida College System Institution, or any state university;<sup>75</sup> the amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person;<sup>76</sup> and the amount of reasonable attorney’s fees and expenses incurred by the wrongfully incarcerated person.<sup>77</sup> The total amount awarded may not exceed \$2 million.<sup>78</sup>

Similar to the standard of proof, the Legislature is not bound by the statutory requirements of ch. 961, F.S., but precedent and equitability suggest these requirements be applied.

### **Conclusion Based upon Findings of Fact and Clear and Convincing Evidence**

The DNA evidence demonstrates Mr. DuBoise was not the perpetrator. The oral, anal, and vaginal smear slides contained DNA obtained from the victim’s body. This evidence was only recently discovered and examined through the CRU’s investigation into Mr. DuBoise’s case. Mr. DuBoise’s DNA was compared and excluded as a match to the DNA found on each of the smear slides. Not only was Mr. DuBoise excluded as a match, a match to the DNA was found after the DNA was submitted to CODIS. While the name of the match was unknown to the public at the time of the hearing, there was an ongoing investigation and the person has no connection to Mr. DuBoise, Victor DuBoise, or Raymond Garcia.

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<sup>73</sup> Standard Jury Instructions-Civil (No. 405.4).

<sup>74</sup> Section 961.06(1)(a), F.S.

<sup>75</sup> Section 961.06(1)(b), F.S.

<sup>76</sup> Section 961.06(1)(c), F.S.

<sup>77</sup> Section 961.06(1)(d), F.S.

<sup>78</sup> Section 961.06(1), F.S.

Further, all other evidence collected at the scene and presented at trial excluded Mr. DuBoise.

The bite mark evidence presented at trial is unreliable and inaccurate. The injury to the victim's cheek was not a bite mark, and was much larger than a human bite mark. The analysis and conclusions made by Dr. Souviron are inconsistent with current standards regarding bite mark evidence. Dr. Souviron first theorized that the biter was missing an upper tooth. When presented with Mr. DuBoise's dental impression, Dr. Souviron abandoned this theory. Dr. Souviron ultimately testified that Mr. DuBoise was the biter. This testimony would not be permitted by the ABFO standards today. Further, the process used to document and preserve the bite mark was faulty. The bite mark was excised and preserved in formaldehyde which caused distortion and shrinkage. Similarly, the process to collect dental impressions was also faulty. Beeswax was used, which does not take a proper impression and may distort when dental plaster is poured in. The dental impressions were taken by law enforcement and not by trained professionals.

The witnesses providing testimony against Mr. DuBoise were not credible. Claude Butler had no independent knowledge of the crime, and received a significant benefit by the assistant state attorney mitigating his sentence to time served. Similarly, witnesses Jack Audrusckiewicz and Joan Suarez had no independent knowledge of the crime. Their testimony lacked substance, was inconsistent and not credible.

The materials presented did not include any substantiated evidence with regard to Mr. DuBoise being involved in the crime. Therefore, given the evidence provided during the claim bill process, which included:

- Testimony from Teresa Hall, the Supervising Attorney of the CRU for the Office of the State Attorney in the 13<sup>th</sup> Judicial Circuit in Florida;
- Testimony from Dr. Adam Freeman, a forensic odontologist.
- Testimony from Nancy Wilson, a Forensic DNA Analyst with Forensic Analytical Crime Lab in California;
- Testimony from Robert Earl DuBoise;
- CRU Fact Finding Report;

- Defendant's Motion for Postconviction Relief and to Vacate Judgment and Sentence Pursuant to Fla. R. Crim P. 3.850;
- State's Response to Defendant's Motion for Postconviction Relief and to Vacate Judgment and Sentence Pursuant to Fla. R. Crim. P. 3.850;
- Order Vacating Defendant's Judgment and Sentences (September 14, 2020);
- Forensic Analytical Crime Laboratory Reports;
- Sworn Affidavit of Dr. Adam Freeman, Board Certified Forensic Odontologist;
- Supplemental Exhibit, DuBoise Priors;
- Supplemental Exhibit, Is it a Human Bitemark Table; and
- Supplemental Exhibit, State v. Robert DuBoise, 83-CF-12669, Agreed Order to Modify Sentence,

the undersigned finds the claimant has demonstrated actual innocence by clear and convincing evidence.

The claimant was wrongfully incarcerated for 37 years.<sup>79</sup> The amount of \$1,850,000, calculated at the rate of \$50,000 per year is reasonable.

ATTORNEY FEES:

This bill does not allocate any funds for attorney or lobbying fees. Additionally, the claimant's attorney's submitted a Statement on Payment for Attorney and Lobbying Services, stating the claimant had retained attorney Seth Miller of the Innocence Project of Florida, to represent him during the Special Master portion of the Claim Bill Process. The claimant has retained attorneys Mark Delegal and Larry Sellers to perform legislative advocacy regarding passage of the claim bill. None of the aforementioned individuals are receiving any form of payment or compensation, and all representation is *pro bono*.<sup>80</sup>

RECOMMENDATIONS:

Based upon the evidence submitted prior to and during the special master hearing, the undersigned finds the claimant has demonstrated actual innocence by clear and convincing

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<sup>79</sup> Mr. DuBoise was arrested on October 22, 1983 and released from the Department of Corrections on August 27, 2020. Mr. DuBoise spent 36 years, 10 months and 5 days wrongfully incarcerated.

<sup>80</sup> See, Innocence Project of Florida, Inc. *Statement on Payment for Attorney and Lobbying Services* (2023).



evidence. There is clear and convincing evidence that the claimant committed neither the act nor the offense that served as the basis for the conviction and that the petitioner did not aid, abet, or act as an accomplice, and the relief sought is reasonable. Based upon the foregoing, the undersigned recommends SB 62 be reported FAVORABLY.

Respectfully submitted,

Amanda Stokes

Senate Special Master

cc: Secretary of the Senate