



One Fabulous Skyline

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⚖ Vol. 11, No. 36, September 15, 2003

Case Name: *In re The State of Texas v. Hon. Bonnie Rangel*

- OFFENSE: Mandamus
- COUNTY: El Paso
- C/A CASE No. 08-03-0004-CR
- DATE OF OPINION: August 28, 2003
- DISPOSITION: Relief Granted
- TRIAL COURT: 171st D/C; Hon. Bonnie Rangel
- LAWYERS: Jaime Esparza (State); Hon. Bonnie Rangel *Pro Se*; Clara Hernandez (Public Defender for William Gray); Elaine Hengen (City of El Paso)

Ed Note: In 1991, the real party in interest, William Dean Gray, was convicted of aggravated sexual assault, and given 99 years. In 2002, Gray filed DNA request in the trial court, and that court instructed State officials to determine the whereabouts of any possible evidence, primarily, a knife, the rape kit, victims clothing, etc. Numerous present and former Police Department employees indicated that the items of evidence could no longer be found, and that perhaps these files were destroyed in 1996 as normal Police Department policies. Appellant's counsel filed a motion with the trial court, asking that the defendant's representatives be given the opportunity to search the police files for the evidence and the trial court granted the motion. The District Attorney's Office has filed *Mandamus/Prohibition* request with Court Of Appeals to prevent this search of Police Department evidence rooms.

⚖ **560.01 Extraordinary Proceedings / Availability of Extraordinary Writs (Mandamus - Search of Police Records)** -- Court of Appeals initially concludes that *Relator* has no remedy to prevent search, other than mandamus, thus merits must be reviewed; on merits, Court reviews Chapter 64, the DNA statute, and interprets the statute to mean that if the Police Department cannot locate the property for possible testing, that is the end of the matter, which occurred here, and that trial court has no additional *inherent* authority to order further searches, thus mandamus relief granted, and trial court instructed to withdraw its order.

Comments: ([Roy Greenwood](#)) here was substantial evidence presented by the Police Department's efforts to find these evidentiary items, apparently in good faith. However, even assuming perfect good faith and diligence in the search, the *Readers* are advised that ***extreme creativity***, and often ***substantial luck*** is required in such searches for evidence. For example –

In one of this writer's cases, two separate police departments, the laboratory, and the District Attorney's Office informed us that the evidence could not be located, where the original samples were never admitted into evidence before the jury. However, as a matter of ***sheer luck***, the *present* court reporter indicated that the conclusion of the trial, about 10 years ago, the prosecutor had given the court reporter all of the evidentiary matters exhibits for "safekeeping," even though they were not admitted into the trial evidence. As a result of the court reporter's coming forward, I now have substantial evidence of DNA clearing one of

my clients. I have never heard of a court reporter accepting the responsibility for scientific evidence not offered/admitted at trial.

Mr. Schulman also had a similar circumstance, where in 1994, all of the trial and police officials indicated they could not locate the rape kit for post-conviction DNA testing. Mr. Schulman obtained a "order of preservation" of the evidence (just in case), and the case *lay dormant* for nearly 3 years. Out of the blue, a DPS laboratory technician called Schulman to inform him that the DNA rape kit had been located, while cleaning out DPS laboratory "freezer." The evidence was tested, resulting in the release of Schulman's client and a pardon from the Governor. So, weird things happen to items of physical evidence forgotten about for years.

My question is -- What happens in a couple of years, when some party stumbles upon the evidence sought by this Appellant now, and proper notification is made? Does Appellant get another shot at DNA testing, or does this proceeding prevent him from doing so under *res judicata* principles? As Mr. Schulman did in his case, counsel here should obtain an order of preservation from the trial court and then have the order served on every law enforcement laboratory in the area, *just in case*.