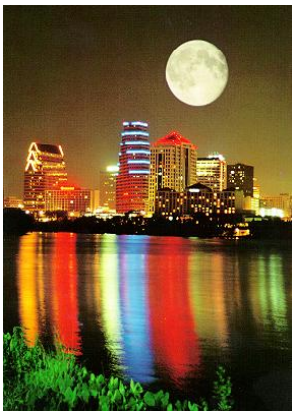

One Fabulous Skyline

TIBA TEXAS INDEPENDENT BAR ASSOCIATION

1801 East 51st Street, Suite 365-474
Austin, Texas 78723
Tel. 512-354-7823
Fax: 512-532-6282

Web Site: www.texindbar.org

Vol. 27, No. 33 --- September 2, 2019

Case Name: ***Ex parte Maurice Edwards***

- **NATURE OF CASE**: Pre-Trial *Habeas Corpus*
- **COUNTY**: Harris
- **C/A CASE No**. 01-19-00100-CR
- **DATE OF OPINION**: August 27, 2019 **OPINION**: Justice Countiss
- **DISPOSITION**: Trial Court Reversed
- **TRIAL COURT**: 209th D/C; Hon. Brian Warren
- **LAWYERS**: Charles Hinton (Defense); Dan McCrory & Tiffany Larsen (State)

(**Background Facts**): The "police report" in this case demonstrates that, on May 2, 2003, the complainant, reported that she had been sexually assaulted by "Maurice," whose last name or telephone number she did not know, although she had "gone out with [him] a few times." Officer B.K. Foley "ran the license plate [number] of [Maurice's] vehicle," which two witnesses at the scene had given to him. The information he received from "running the license plate [number]" indicated that "there was a city warrant on the vehicle for a Maurice Edwards." The warrant provided a date of birth (11-13-77), along with a Texas driver's license number. On May 16, 2003, L.D. Officer Garretson reviewed "[the] complainant's sexual assault examination forensic report forms for [submission] to the HPD crime lab for DNA analysis and comparison purposes." A November 7, 2013 supplement to the offense report reflects that laboratory testing "in association with a request for outsourced -- DNA analysis" was completed. A February 5, 2014, supplement to the offense report shows that a laboratory analysis "in association with a request for CODIS analysis" was completed. On April 13, 2014, HPD Officer J. Lewis supplemented the offense report to state that, on March 13, 2014, he had received the case "for further investigation regarding a CODIS match confirmation." HPD Officer N. Vo updated the offense report on August 22, 2017. He stated that he had interviewed the complainant, who "positively identified [Appellant] through [a] photo[graphic] array even though the [sexual assault] happened 13 years ago." He further stated that the Harris County District Attorney's Office had "advised that charges for aggravated sexual assault were accepted" and a search

warrant for buccal swabs from Maurice, who "[was] currently in jail for another charge," would be obtained. On September 20, 2017, Officer Vo obtained two buccal swabs from Appellant and submitted them for DNA analysis and comparison "to the male DNA that was found in the complainant's sexual assault kit." In a November 1, 2017 supplement to the offense report, Vo noted that the laboratory results from the buccal swabs were still pending. "However, the case [had] been thoroughly investigated" and charges had been filed.

63 Challenges to Prosecution / Statute of Limitations: On November 16, 2017, a Harris County Grand Jury issued a true bill of indictment, accusing Appellant of committing the felony offense of aggravated sexual assault on or about May 2, 2003. Appellant filed a verified application for a writ of *habeas corpus* asserting that his confinement and restraint were illegal because the statute of limitations barred prosecution for the alleged offense in violation of the Sixth Amendment to the United States Constitution, Article I section 10 of the Texas Constitution, and Article 12.01, C.Cr.P. The trial court held a hearing on Appellant's application. Appellant offered, and the trial court admitted into evidence without objection, a copy of the complaint, the indictment, Article 12.01, C.Cr.P., and a Houston Police Department ("HPD") offense report. The parties "stipulated to the facts that [were] in the offense report" for the purposes of the hearing. Relator sought "dismissal of the charge as being outside the statute of limitations." No other evidence was offered or admitted at the hearing, and no witnesses testified. In response to Appellant's *habeas* application, the State argued that, under Texas Code of Criminal Procedure article 12.01(1)(C)(i), no statute of limitations applied to the instant case because biological matter was collected during the investigation and subjected to forensic DNA testing, and the testing results "[did] not match [the complainant] or any other person whose identity [was] readily ascertained." According to the State, the crux of the issue "boil[ed] down to the proper definition of 'readily ascertained'" and Appellant "was absolutely ascertainable" but was not "readily ascertained," as the statute required for no statute of limitations to apply. The State asserted that it "did not have the link to [Appellant] based on his DNA until 2014," and "[w]ithout a DNA profile being obtained from the testing of the [sexual assault] kit, a suspect, under the law, has not been readily ascertained." In other words, Appellant was not "readily ascertained to a point where the State believed that it had gathered enough evidence sufficient to prove [its] case beyond a reasonable doubt until the CODIS hit and the subsequent identification of [Appellant] out of [the photographic array] by the complainant, which did not occur until 2017." At the end of the hearing, the trial court stated that Appellant "was known at the time." But also that "'ascertainable' . . . means a little bit more than reasonable suspicion"; and "without [the complainant's] cooperation" and "putting [Appellant] in a photo spread," the HPD officers were not "able to ascertain [Appellant] at the time" and he was not "readily ascertainable at the time." The trial court denied Appellant's application for a writ of *habeas corpus*.

Holding: Generally, the statute of limitations for the offense of aggravated sexual assault of an adult is ten years from the date of the commission of the offense. *** But there is no statute of limitations if "during the investigation of the offense biological matter is collected and subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained." *** Article 12.01(1)(C)(i) does not

impose "a duty on the State to look for a match" or a temporal limit on the investigation. *** Nevertheless, each of the three prongs set forth in article 12.01(1)(C)(i) must be met for there to be no limitations period for the offense. *** [Appellant] asserts that the evidence presented at the *habeas* hearing did not include forensic DNA testing results or reports to show that the biological matter collected and tested did not match any person whose identity was readily ascertained as article 12.01(1)(C)(i) requires. *** Specifically, Appellant asserts that the record does not include any "CODIS type evidence" or "Crime Lab analysis report." The State responds that "the forensic DNA testing results show[ed] that the biological material collected did not match the [complainant] or any other person whose identity is readily ascertained, in this case [Appellant]." *** Evidence showing the assignment of the case for further investigation "regarding a CODIS match confirmation" and a request to analyze Appellant's buccal swabs for comparison to "the male DNA that was found in the complainant's sexual assault kit" does not constitute evidence of forensic DNA testing results to show that the biological matter collected in the complainant's "sexual assault kit" did or did not match a person whose identity is not readily ascertained. *** We note that, in the trial court, the parties focused on the meaning of "readily ascertained" and the trial court concluded that Appellant was not "readily ascertainable at the time." The statute requires forensic DNA testing results that "show that the matter does not match the victim or any other person whose identity is readily ascertained," not "readily ascertainable." *** However, we need not determine in the instant case whether and when Appellant's identity was "readily ascertained" because there is no statutorily required evidence of forensic DNA testing results. *** Accordingly, we hold that the trial court erred in denying Appellant's application for a writ of *habeas corpus*.

(**David A. Schulman**) Article 12.01(1)(C)(i) may not impose "a duty on the State to look for a match" or a temporal limit on the investigation, but ***Barker v. Wingo***, 407 US 514 (1972), and its progeny certainly do. The "Combined DNA Index System"("CODIS") became available to State law enforcement agencies about 5 years before the instant sexual assault and 15 years before the State's CODIS request was made -- AND --- another 3½ years elapsed before the State did anything with the CODIS "hit" that was returned in February of 2014. Appellant's complaint wasn't about the denial of a speedy trial, but perhaps it should have been.