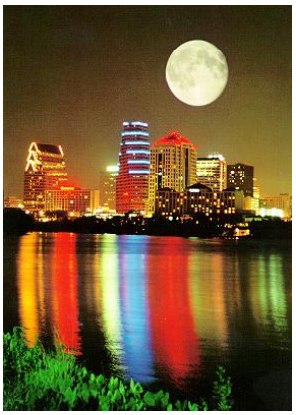

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Vol. 28, No. 32; August 10, 2020

TIBA's Case of the Week

First Court of Appeals (Houston)

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 4, 2020 **OPINION**: Justice Julie Countiss
- **DISPOSITION**: Trial Court Reversed
- **TRIAL COURT**: 209th D/C; Hon. Brian Warren
- **LAWYERS**: Charles Hinton (Defense); Dan McCrory & Tiffany Larsen (State)

Ed Note: The opinion of August 27, 2019 (see Vol. 27, No. 33; 09/02/2019) is withdrawn.

(**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 were filed.

63 Challenges to Prosecution / Statute of Limitations: After he was indicted, 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 felony 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 for the felony offense of aggravated sexual assault if it is established that during the investigation of the offense biological matter was collected and subjected to forensic DNA testing and the testing results show that the matter did not match the victim or any other person whose identity was readily ascertained [see Article 12.01(1)(C)(i), C.Cr.P.]. *** 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 State's investigation. *** Nevertheless, for Article 12.01(1)(C)(i)'s exception to the general ten-year statute of limitations to apply, each of the three prongs set forth in Article 12.01(1)(C)(i) must be met. *** Thus, it must be established that: (1) during the investigation of a sexual assault, biological matter was collected, (2) the biological matter was subjected to forensic DNA testing, and (3) the forensic DNA testing results showed that the matter did not match the victim or any other person whose identity was readily ascertained. *** Appellant does not dispute that the first and second prongs of Texas Code of Criminal Procedure Article 12.01(1)(C)(i) are met. Instead, our focus is on the third prong -- whether the forensic DNA testing results showed that the biological matter collected did not match the victim or any other person whose identity was readily ascertained. *** Appellant asserts that the evidence presented at the hearing on his *habeas* application did not include forensic DNA testing results showing that the biological matter collected did not match the victim or any other person whose identity was readily ascertained, which is necessary to trigger Article 12.01(1)(C)'s exception to the generally applicable ten-year statute of limitations. *** 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 not match a person whose identity was not readily ascertained. In fact, any laboratory results from the buccal swabs were still pending at the time of the hearing. *** Because the record does not establish that: (1) during the investigation of a sexual assault, biological matter was collected, (2) the biological matter was subjected to forensic DNA testing, *and (3) the forensic DNA testing results showed that the matter did not match the victim or any other person whose identity was readily ascertained*, we conclude that Texas Code of Criminal Procedure Article 12.01(1)(C)(i)'s exception to the general ten-year statute of limitations does not apply to appellant's case. *** Accordingly, we hold that the trial court erred in denying appellant's
requested *habeas* relief.

([John G. Jasuta]) This is a PDR waiting to happen. We'll see if the "strict constructionists" on the Court stand up but I suspect they will be out of the office when this case is decided.

In general, the Court's perceived thought is that sloppy police work and failure to comply with statutory requirements are no reasons to hold for a defendant.

(**David A. Schulman**) I'm not sure if this fiasco isn't simply the result of some sloppy work. In any event, the Court of Appeals is correct as to how it interprets the statute.

Ed Note: The Court of Appeals rejected the State's claim that Appellant did not preserve his claim