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RACHELL REPORT

This report is a chronology of events regarding the investigation, arrest, conviction and exoneration of Mr. Richardo Rachell, Cause No. 928275

INITIAL RESPONSE TO COMPLAINT

Sunday, **October 20, 2002**, the eight year old Complainant was observed running down Griggs Road, waving his hands in the air and crying. An eighty-two year old man stopped and came to his aid. That gentleman took the Complainant to a Wyatt's Cafeteria, where two women assisted in getting the child to his residence that evening. The Complainant was in a state of intense emotional distress; a witness stated he was almost "convulsive". He did not convey to them that he had been sexually assaulted. He just stated that a man had a knife and was trying to kill him. He did not give a description of the assailant.

The citizens brought the Complainant home and patrol officers were called to the Complainant's residence. He informed the patrol officers that a man had tried to kill him. The details he gave officers that night was that he was offered ten dollars to pick up trash and the man took him on the man's bicycle. The location where he was abducted was the 3700 block of Southlawn. Those first officers did speak with the Complainant's six year old friend who was with him just before the suspect took the Complainant on his bike. The six year old also conveyed that the Complainant was offered ten dollars to pick up trash and was on a bicycle. The only description of the suspect in the offense report is that he was an unknown black male, age 30.

The next morning, on **October 21, 2002**, the mother of the Complainant kept her son home. She drove her older son to school and when she was returning, she saw an individual whom she believed was the suspect. She returned to her house, gathered two friends and the Complainant, and began looking for the suspect. She located him walking down the street in the neighborhood.

She asked her son if this person was the attacker; he replied affirmatively. She followed the suspect to his mother's home and the police were called. Patrol officers arrived and find the mother in a verbal confrontation with Rachell. Rachell was placed in the back of the patrol car and the patrol officer pulled the Complainant aside and asked him if Rachell is the person who kidnapped him. The Complainant stated that he was the person. The Complainant told this officer, M. Wilson, that Rachell had taken him to a vacant house, pulled down his pants, and held him by the waist from behind. An adult female interviewed by the officer states she did not see the abduction, but observed the defendant in the area around the time of the Complainant's "disappearance". Officer Wilson calls DA Intake; ADA James Alston declined to accept charges and requested further investigation. Rachell is released.

The officer continued the investigation and found a vacant new home on Foster Street; there was forced entry, muddy footprints leading to the second floor bedroom, which the officer states corroborated the Complainant's rendition of events. Additionally, officer observed bicycle tracks in the yard next door.

HPD JUVENILE DIVISION TAKES OVER THE INVESTIGATION

Later that day on **October 21, 2002**, L. Clemons of HPD Juvenile Sex Crimes is assigned the case. She contacts the Complainant's mother and makes arrangements to take the child to the Children's Assessment Center, (CAC).

The Complainant is interviewed by a CAC forensic interviewer and discloses the sexual assault. For the first time, documented, he describes his attacker. He stated that he is a bright-skinned black man with a messed up eye and no teeth. He stated that the man's face got messed up because he was looking in people's windows and someone shot him. When asked how he knows this, he responded that is what people say in the neighborhood. He stated that the suspect had a scarf in his mouth, had blue pants, a tee shirt, and had dark sunglasses on. He tells the interviewer that he had seen Rachell in the neighborhood once before, when Rachell was throwing rocks at some boys.

After the interview on October 21, 2002, the Complainant is given a sexual assault exam by RN Deborah Parks. She performs a sexual assault examination kit and delivers it to HPD Officer L. Clemons, who tags the kit into the HPD property room.

Officer Clemons interviewed the Complainant's mother. She tells Clemons of the incident that had occurred earlier that day and how she followed the Defendant to his mother's residence and her son identified Rachell. The offense report does not state the basis of the Mother's initial conclusion that the Defendant was the same person who had attacked her son. Clemons calls Patrol Officer Wilson and confirms the incident that had occurred that morning. Officer Wilson informs Clemons that the Complainant positively identified Rachell.

Mother advises Clemons that she saved the clothes he was wearing and put them in a bag. She stated that the underwear had a “**yellowish cream substance**” in the seat and this disturbed her. Clemons transports the rape kit and the clothes to the HPD property room on **October 21, 2002**.

The next day, **October 22, 2002**, Officer Clemons enters a supplemental report requesting analysis by the Houston Crime Lab for fluid and fiber evidence of the sexual assault kit and clothes.

PRESENTATION OF CASE TO THE DISTRICT ATTORNEY’S OFFICE

October 22, 2002, Officer Clemons calls the District Attorney’s Office and speaks with Assistant District Attorney C. Serna. After Officer Clemons briefs her regarding the facts of the case and the investigation, she authorizes the charge of Aggravated Sexual Assault of a Child on Mr. Rachell. On October 23, 2002, Officer Clemons comes to the Harris County District Attorney’s Office and presents in person the facts of the case to Assistant District Attorney R. Freyer. Charges are accepted and filed through the Intake Division.

Defendant’s criminal history reflected three arrests: Possession of Marijuana and Trespass of a Habitation, both misdemeanors; and a felony conviction for Burglary of a Habitation in which he pleaded guilty and was sentenced to six years in the penitentiary, he was paroled in 1985.

ARREST OF RACHELL, DNA SAMPLE AND STATEMENT OBTAINED

October 24, 2002, Mr. Rachell was arrested at his residence and Officer Clemons requested a voluntary sample of Mr. Rachell’s DNA. After Mr. Rachell consented and a sample of his DNA was obtained, Officer Clemons delivered the sample to the Houston Police Department property room. Officer Clemons conducted an audio recorded interview of Rachell wherein he denies assaulting the Complainant and states the Complainant and his family are lying.

No DNA COMPARISON PERFORMED

The Complainant’s clothing, the swab obtained from the Complainant and buccal swab obtained from Rachell remained in the property room until March 11, 2008. The HPD Crime Lab performed no tests.

It should be noted that the DNA Lab was embroiled in controversy during the investigative period of this case and was closed **December, 2002**.

HPD FOLLOWUP INVESTIGATION

December 12, 2002, Officer Clemons along with Officer E. Rodriguez traveled to the Complainant's school and showed him a photo spread, from which he identified Mr. Rachell as the person who sexually assaulted him. In addition, they presented the photo spread to the Complainant's friend who was present before the abduction, and he also positively identifies Mr. Rachell.

LACK OF REQUEST OF DNA COMPARISON BY PROSECUTORS

Joanne Musick, a prosecutor in the 185th District Court was assigned the Rachell case. She presented the case to a Grand Jury and Rachell was indicted **January 30, 2003**. Although there are references in the offense report to the existence of forensic evidence to be compared, there was no request that it be analyzed.

After Mrs. Musick left the Office, **April 25, 2003**, Jimmy Ortiz was assigned the Rachell case and he was the prosecutor, who tried the case to a jury in **June, 2003**. There are notes in the file to indicate that he was aware that a sample of the Defendant's DNA had been obtained; however, he did not request tests be performed to compare that sample to the rape kit and the clothes of the Complainant.

LACK OF REQUEST FOR DNA COMPARISON BY DEFENSE COUNSEL

Ron Hayes was appointed to represent Mr. Rachell on **October 28, 2002** by the 185th District Court. He was the only defense attorney on the case and represented Mr. Rachell through the jury verdict in the case. At no time did he request that his client's DNA be compared to the rape kit or the clothes obtained from the Complainant.

Mr. Hayes, during the trial, examined witnesses regarding the Defendant's buccal swab and the child's clothing and he elicited testimony to the effect that there were no forensic tests conducted. He also presented this lack of testing to the jury during closing argument.

JURY TRIAL OF RICARDO RACHELL

The mother of the Complainant testified at the trial. She was asked, how she thought Rachell was the person who attacked her son. She stated it was based on the description that her son had given her the night before. That description was: blue pants, blue jeans, blue shirt, dark sunglasses, black shoes, and a towel in his mouth. She did not mention the deformed face. She acknowledged that when she saw the Defendant on the Monday morning she was not sure it was

he, so she went home and picked up the Complainant and when he said that Rachell was the one, she knew it was he.

According to the trial transcript, the Complainant positively identified Mr. Rachell in the courtroom as his attacker. During direct examination he stated that Mr. Rachell had on dark sunglasses. Defense Counsel asked him during cross examination if he noticed anything unusual about the Defendant as he sat that day in the courtroom. The Complainant's response was his haircut, and neglected to mention his eye.

The six year old friend testified and identified the Defendant in court. He offered that the suspect had an eye patch and a rag around his face as if it was a mask.

Officer Clemons was not called to testify by the State. The defense called her to the stand but did not ask about the rape kit or the clothes that she collected from the Complainant's mother.

During Closing Arguments, Defense Counsel argued to the jury that there was underwear that could have been tested and was not.

On **June 3, 2003**, A Jury convicted Mr. Rachell and assessed his punishment at forty years in prison.

DIRECT APPEAL

Shawna Reagin was appointed to represent Rachell on appeal. The brief was filed, **January 9, 2004**. The conviction was affirmed, **September 30, 2004**.

PRO SE HABEAS CORPUS

Mr. Rachell filed his Petition for Writ of Habeas Corpus, **September 11, 2005**. It was denied, **November 7, 2007**.

LETTER FROM RACHELL

On **September 21, 2007** HPD E. Y. Rodriguez received a letter from Mr. Rachell stating that the person who committed the crime for which he was convicted was the "Yellowstone Park Serial Rapist," Andrew Wayne Hawthorne. Lt. Staney reviewed the case and acknowledged a similar *modus operandi* but distinguished the facts of Rachell's case from that of Hawthorne. He determined there is untested forensic evidence and requested DNA comparison.

POST CONVICTION ACTIVITY

Mr. Rachell filed a *Pro Se* Chapter 64 request in the 185th District Court asking for DNA testing. Judge Brown appointed Deborah Summers on **April 19, 2007** to represent Mr. Rachell in the Chapter 64 request.

Sally Ring, an assistant district attorney, handled the Chapter 64 request for the Post Convictions Writs Division. Mrs. Ring reviewed the State's file, and on **December 14, 2007**, Mrs. Ring documents in the file that she called Lori Wilson at the HPD Crime Lab and informed her to not do any testing because the Chapter 64 request was still pending. (Chapter 64 of the Code of Criminal Procedure mandates that any testing be done at DPS or an independent lab ordered by the Judge.) At this point, preservation of the DNA evidence so it could be tested by an independent lab was a consideration.

Defense attorney Summers failed to file a Chapter 64 motion that would begin the process that would result in the testing of biological evidence; therefore Assistant District Attorney Ring proceeded to obtain affidavits from the Harris County District Clerk's Office, the HPD Property Room, and the HPD Crime Lab: Ring filed a motion in the 185th District Court on March 10, 2008 requesting that the trial court find that Mr. Rachell met the requirements of Chapter 64 and the trial court order DNA testing in the case. Evidence was sent to DPS testing on **March 11, 2008**. Ring requested that Mr. Rachell be bench warranted from TDCJ-ID so that a fresh buccal swab could be taken.

DPS issued a report on **October 28, 2008** stating that the DNA of the Defendant did not match the evidence collected in this case. Mark Donnelly, who replaced Sally Ring in Writs, requested that Mr. Rachell be bench warranted so that the District Attorney's Office could agree to a personal bond releasing Mr. Rachell from custody while a Writ was prepared and filed that would lead to the case being dismissed. Ms. Summers also requested that a bench warrant be issued.

December 12, 2008 DPS Lab reports that the DNA evidence identified Andrew Wayne Hawthorne as the Complainant's attacker.

ANDREW WAYNE HAWTHORNE

Andrew Wayne Hawthorne, in unrelated cases, was investigated by HPD Juvenile Sex Crimes. He committed the sexual assault of boys in the same area of town and the method of luring the boys included the same MO. He approached the boys on a bicycle and offered them money for chores, then took them to a secluded area, and then anally raped them.

November 16, 2002, an eight year old boy was sexually assaulted in the same area as the Complainant in the Rachell case. **November 20, 2002**, the eight year old victim is interviewed by a forensic interviewer at the Children's Assessment Center. In the forensic interview, the eight year old boy stated that an African American male came up to him on a bicycle with a basket, offered him fifteen dollars to pick up newspapers, pulled out a knife, took him to a vacant apartment, had him lay on a dirty floor, and sexually assaulted him. In addition, he stated that the Defendant had on "shades, and he took them off and he saw his eyes." **October 23, 2003**, HPD Juvenile Sex Crimes identified this case, via crime analysis, as the same MO as other sexual assaults against children in the southeast part of Houston. The case is then assigned to one officer who would be responsible for all of the cases. That officer was E. Rodriguez, who filed three files charges against Hawthorne.

Andrew Wayne Hawthorne pleaded guilty **April 8, 2004** to all three cases and received 60 years in prison.

Hawthorne was interviewed at the Hughes Unit in Amarillo, Texas, **January 13, 2009**, by Harris County District Attorney investigators, Dennis Field and Donald Wine. The investigators obtained a written confession from Hawthorne that he was the assailant in the crime for which Rachell was convicted. A buccal swab was obtained and tested; it was a match for the forensic evidence in Complainant's case.

The Harris County District Attorney's Office filed Aggravated Sexual Assault Against a Child charges against Hawthorne, **February 24, 2009**; the victim being the Complainant in the Rachell case.

SUMMARY

- A child was lured, abducted and sexually assaulted. The child victim and his younger friend identified Mr. Rachell as the perpetrator; an adult witness identified him as being in the area near the time of the abduction.
- The details of the offense were corroborated by the police: The newly constructed, uninhabited home was located, there was a break-in and entry and on the second floor muddy footprints and cigarette ashes were found as well as bicycle tracks next door. Forensic evidence was recovered from the victim and his clothing.
- The attacker was described as a "bright" skinned black man who wore blue jeans, sun glasses and rode a bicycle. All non-criminal justice witness are African-American.

- Mr. Rachell was a felon, who was previously convicted of the offenses of burglary of a habitation and trespass. He rode a bicycle in the neighborhood and it was rumored that his facial deformity was the result of being shot while window peeping; he was as cruelly taunted as, “Tricky Ricky”.
- The forensic evidence was collected and tagged in the Houston Police Department Property Room, where it remained for several years.
- The Houston Police Department DNA Lab was closed **December 13, 2002 and did not reopen until May 11, 2005.**
- Mr. Rachell was indicted **January 30, 2003.**
- Mr. Rachell’s trial defense attorney never requested testing of the forensic evidence.
- Mr. Rachell’s Chapter 64 appellate lawyer failed to file a motion requesting testing of the forensic evidence.
- The Office of District Attorney did not request testing until it received Mr. Rachell’s *pro se* Chapter 64 request.

CONCLUSION

- The wrongful conviction of Ricardo Rachell and the length of his incarceration was the result of a series of unfortunate events, blunders and omissions. There was a cascading, system-wide breakdown.
- The closure of the Houston Police Department’s DNA Crime Lab was the most egregious system failure. This lab was closed from **December 2002** until **May 11, 2005**. It is a probability that had the lab been open and operating correctly, someone would have requested testing of the forensic evidence. The only facilities available to test were either private labs or the one at the Texas Department of Public Safety. It should be noted that the DPS Lab was so back-logged it took over **seven months** to test the Rachell biological evidence and prepare a report.
- The Harris County Office of District Attorney at this period of time had no policy requiring testing of forensic evidence before trial. Prosecutors did not request testing; a consideration

may have been the delay that would have been occasioned in seeking a laboratory and the time it would have taken to test.

- Mr. Rachell's trial attorney made no request for DNA testing. Trial delay for testing would not have been a defense consideration. This attorney claims he was unaware of forensic evidence, even though it was notated in the offense reports. The defense attorney acknowledged that the state's file was open to him to read. At the time relevant to the Rachell case, District Attorney's Office did not provide offense reports to defense counsel.
- Rachell's Chapter 64 lawyer did not prepare and file the requisite motion requesting testing, this prolonged Rachell's imprisonment almost a year.
- The responding police officers did not document a description of the Complainant's assailant; this omission may have contributed to the mis-identification of Rachell.
- The officer who secured the forensic evidence requested testing, tagged the evidence in the property room, but there was no follow through with procedures to ensure testing. However, considering the deplorable conditions and incompetence in the lab, it may have ironically been beneficial to Rachell.
- Juvenile Sex Crime investigators did not discern a pattern in attacks on children virtually identical to the victim in the Rachell case, the first of which occurred less than a month after Rachell's arrest. Eventually, crime analysis determined the pattern and Hawthorne was arrested and successfully prosecuted; but no one took a second look at Rachell's file.

Today, The Houston Police Department has one of the most sophisticated crime analysis programs in the nation; and its DNA Lab is operational; and The Harris County District Attorney Office provides offense reports, test results and other documents to defense counsel; and The Harris County District Attorney Office policy now is to have biological evidence tested before trial.