

IN THE FIRST JUDICIAL DISTRICT, CADDO PARISH, LOUISIANA

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GLENN FORD,	:	
	:	
Petitioner,	:	
	:	Docket No. 126,005, Section 4
v.	:	
	:	
BURL CAIN,	:	August [x], 2007
	:	
Respondent.	:	
-----	X	

**MOTION FOR LEAVE TO FILE BRIEF OF THE INNOCENCE
NETWORK AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER
GLENN FORD AND HIS POST-CONVICTION RELIEF**

NOW INTO COURT:

Amicus Curiae, the Innocence Network (“the Network”), through undersigned counsel, respectfully submits this Motion for Leave to File Brief of the Innocence Network as *Amicus Curiae* in Support of Petitioner Glenn Ford and his Post-Conviction Relief, and for cause state as follows:

1. The Innocence Network is an association of nonprofit legal clinics and criminal justice resource centers affiliated with the Innocence Project, which was founded at the Benjamin N. Cardozo School of Law in 1992. Nationwide, the Network includes more than 30 affiliated Innocence Projects, each of which provides *pro bono* legal services to indigent prisoners for whom evidence discovered post conviction can provide proof of innocence. The Network pioneered the post-conviction DNA litigation model that has to date exonerated over 200 innocent persons, serving as counsel in the majority of these cases. As perhaps the nation’s leading authority on wrongful convictions, the Network and its founders, Barry Scheck and Peter Neufeld (both of whom are members of New York State’s Commission on Forensic Science, charged with regulating all state and local crime laboratories) are regularly consulted by officials at the state, local, and federal levels.

2. Over the past two decades, the Innocence Network has helped introduce DNA evidence into American courtrooms and has changed our criminal justice system forever. In more than one third of the 200 exonerations by the Innocence Network, the misapplication of forensic disciplines (other than DNA) or erroneous evidence has played a role in convicting the innocent. In these cases, forensic scientists and prosecutors presented fraudulent, exaggerated, or

otherwise tainted evidence to the judge or jury, which led to the wrongful conviction. See, e.g., Innocence Project, Facts on Post-Conviction DNA Exonerations, at <http://www.innocenceproject.org/Content/351.php> (Listing cases). This work has given *Amicus* a particularly strong interest in ensuring that criminal convictions are premised upon valid and accurate forensic science – an interest that is directly implicated by Petitioner Glenn Ford’s claims.

3. The proposed *Amicus* Brief raises issues of fact and law that might otherwise escape the court’s attention and concerns whether the Petitioner’s (“Mr. Ford”) conviction was in part based on flawed expert testimony and evidence that ran counter to the weight of contemporary scientific evidence, the best practices of forensic experts, and dictates of due process under the Louisiana and United States constitutions. While this Honorable Court was assisted by the expert testimony of Dr. LeRoy Riddick, William Bailey, and Lee Singer during Mr. Ford’s post-conviction hearings, the Innocence Network further addresses four areas of forensic science that are not reliable enough to rest a capital conviction. This evidence may otherwise escape the Court’s attention.

4. As a non-profit dedicated to the exoneration of the wrongfully convicted throughout the United States for the last decade, the Innocence Network has a particular interest in cases where questionable scientific evidence is used to secure wrongful convictions. Because no DNA evidence exists to “prove” Mr. Ford’s actual innocence, the Innocence Network respectfully urges this Court to consider the unreliable and erroneous evidence used to convict Mr. Ford when deciding his petition for post-conviction relief.

WHEREFORE, *Amicus Curiae* the Innocence Network respectfully suggests that its views in the accompanying *Amicus Curiae* brief will assist the Court in deciding the issues before it and requests that this Court permit the filing of the Network’s *Amicus Curiae* brief.

August x, 2007

Respectfully submitted,

Of Counsel
Oleg Kobelev
Michael D. Mann
Vikeena Bonett
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
(212) 839-5300

David Park
Bar # 28973
INNOCENCE NETWORK NEW ORLEANS
636 Baronne Street
New Orleans, LA 70113
(504) 522-4766

Counsel for Amicus Curiae the Innocence Network

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**BRIEF SUBMITTED ON BEHALF OF THE INNOCENCE NETWORK
AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER GLENN FORD**

Respectfully submitted,

David Park
Bar # 28973
INNOCENCE PROJECT NEW ORLEANS
636 Baronne Street
New Orleans, LA 70113
(504) 522-4766

Of Counsel:

Oleg Kobelev
Michael D. Mann
Vikeena Bonett
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
(212) 839-5300

Counsel for Amicus Curiae the Innocence Network

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST OF *AMICUS CURIAE* vi

PRELIMINARY STATEMENT vi

STATEMENT OF FACTS viii

ARGUMENT 1

I. THE ADMISSION OF ERRONEOUS SCIENTIFIC TESTIMONY IN MR. FORD’S TRIAL VIOLATED HIS CONSTITUTIONAL RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS 1

II. THIS COURT MUST GRANT POST-CONVICTION RELIEF WHEN A FAIR-MINDED JURY CONSIDERING ONLY RELIABLE SCIENTIFIC EVIDENCE WOULD PROBABLY REACH A DIFFERENT VERDICT AT A NEW TRIAL 3

A. Testimony Regarding The Handedness Of The Gunman Lacked *Any* Scientific Foundation, Was Highly Prejudicial And Should Never Have Been Permitted By The Court Or Considered By The Jury 4

B. The Gunshot Residue Test Administered To Mr. Ford Was Far Too Unreliable To Uphold His Conviction 5

C. Determining Time of Death Is An Inexact Science And Cannot Be Conclusively Established In Mr. Ford’s Case..... 8

D. The Latent Fingerprint Testimony By Specialist Sgt. Lockwood Failed To Comply With Standard Protocol In His Field And Lacked Any Scientific Foundation 11

CONCLUSION 17

TABLE OF AUTHORITIES

U.S. SUPREME COURT DECISIONS

Beck v. Alabama, 447 U.S. 625 (1980)1

Caldwell v. Mississippi, 472 U.S. 320 (1985)1

Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993).....2, 6

Gardner v. Florida, 430 U.S. 349 (1977)1

Payne v. Tennessee, 501 U.S. 808 (1991)1

United States v. Scheffer, 523 U.S. 303 (1998)1

Woodson v. North Carolina, 428 U.S. 280 (1976)1

FEDERAL COURT DECISIONS

Barnard v. Henderson, 514 F.2d 744 (5th Cir. 1975)16

Ege v. Yukins, No. 05-2078, 2007 WL 1191911 (6th Cir. Apr. 24, 2007)2, 6

Helton v. Singletary, 85 F. Supp. 2d 1323 (S.D. Fla. 1999)11

Kirkpatrick v. Whitley, 992 F.2d 491 (5th Cir. 1993)3

Kollar v. Smith, 04 Civ. 10175, 2005 WL 1653883 (S.D.N.Y. July 12, 2005).....11

Lucas v. Johnson, 132 F.3d 1069 (5th Cir. 1998)4

Rector v. Johnson, 120 F.3d 551 (5th Cir. 1997).....11

United States v. Addison, 498 F.2d 741 (D.C. Cir. 1974) viii, 1

United States v. Baller, 519 F.2d 463 (4th Cir. 1975) viii, 1

United States v. Davis, 220 F. Supp. 2d, 548 (S.D.W.V. 2002).....4

United States v. Nabors, 707 F.2d 1294 (11th Cir. 1983)16

LOUISIANA COURT DECISIONS

State v. Birdsong, 422 So. 2d 1135 (La. 1982)1

State v. Bright, 98-398 (La. 4/11/00); 776 So. 2d 113.....3

State v. Chism, 436 So. 2d 464 (La. 1983)3

State v. Ford, 489 So. 2d 1250 (La. 1986) vi, vii

State v. Foret, 628 So. 2d 1116 (La. 1993)2

State v. Hammons, 597 So. 2d 990 (La. 1992)3

State v. Knapper, 555 So. 2d 1335 (La. 1990).....3

State v. Loyd, 459 So. 2d 498 (La. 1984)3

State v. Martin, 458 So. 2d 454 (La. 1984).....3

<u>State v. Prudholm</u> , 446 So. 2d 729 (La. 1984).....	3
<u>State v. Quatrevingt</u> , 93-1644 (La. 2/28/96); 670 So. 2d 19.....	17
<u>State v. Seals</u> , 95-305 (La. 11/25/96); 684 So. 2d 368	3
<u>State v. Stephens</u> , 00-2472 (La. 3/16/01); 782 So. 2d 56	16
<u>State v. Talbot</u> , 408 So. 2d 861 (La. 1981)	3
<u>State v. Wheeler</u> , 416 So. 2d 78 (La. 1982)	17
<u>State v. Williams</u> , 392 So. 2d 619 (La. 1980)	3
<u>State v. Free</u> , 493 So. 2d 781 (La. App. 2d Cir. 1986)	17
<u>Williams v. General Motors Corp.</u> , 93-0287 (La. App. 4th Cir. 2/11/94); 639 So. 2d 27.....	2
<u>Young v. Logue</u> , 94-0585 (La. App. 4th Cir. 5/16/95); 660 So. 2d 3.....	2

OTHER STATE COURT DECISIONS

<u>Commonwealth v. Bolduc</u> , 411 N.E.2d 483 (Mass. 1980)	10
<u>Ex Parte Moody</u> , 684 So. 2d 114 (Ala. 1996).....	10
<u>Landrigan v. Celotex Corp.</u> , 605 A.2d 1079 (N.J. 1992).....	5
<u>New Jersey v. Michael Behn</u> , 868 A.2d 329 (N.J. Super. Ct. App. Div. 2005)	4
<u>Ragland v. Kentucky</u> , 191 S.W.3d 569 (Ky. 2006)	4
<u>State v. Konechny</u> , 3 P.3d 535 (Idaho App. 2000)	5
<u>State v. Moua</u> , K5-05-7335 (Dist. Ct. Anoka, Minn., July 7, 2006).....	8
<u>Williamson v. Reynolds</u> , 904 F. Supp. 1529 (E.D. Okla. 1995).....	4

CONSTITUTIONS

<u>U.S. Const.</u>	2, 3
<u>La. Const.</u>	2, 3

MISCELLANEOUS

La. C. Cr. R. art. 905.8	3
La. R. Evid. 702	12
2-19 <u>Scientific Evidence</u> § 19-8 (2005).....	10, 11
IV <u>Wharton’s Criminal Procedure</u> § 599	3
John F. Burton, <u>Fallacies in the Signs of Death</u> , 19 J. Forensic Sci. 529 (1974).....	10
Julie Bykowicz, <u>FBI Lab Scraps Gunfire Residue</u> , Balt. Sun, May 26, 2006, at A1	9
Robert Epstein, <u>Fingerprints Meet Daubert: The Myth of Fingerprint Science Is Revealed</u> , 75 S. Cal. L. Rev. 605 (2002)	15

Lubor Fojtásek & Tomáš Kmjec, <u>Time periods of GSR particles deposition after discharge-final results</u> , 153 <i>Forensic Sci. Int'l.</i> 132 (2005).....	9
Ford Post Hearing Memorandum.....	viii
Samuel R. Gross, et al., <u>Exonerations in the United States 1989 Through 2003</u> , 95 <i>J. Crim. L. & Criminology</i> 523 (2005).....	4
C.A. Grove, et al., <u>Evaluation of SEM Potential in the Examination of Shotgun and Rifle Firing Pin Impressions</u> , 19 <i>J. Forensic Sci.</i> 441 (1974)	8
Stephanie Hanes, <u>Convictions tied to controversial gun-residue test</u> , <i>Balt. Sun</i> , 23, 2005, at B1	9
Marshall Houts, <u>Time of Death: Still the Dark Ages of Proof</u> , 10 <i>Trauma</i> 7 (Aug. 1968)	10
Randolph N. Jonakait, <u>Forensic Science: The Need for Regulation</u> , 4 <i>Harv. J. L. & Tech.</i> 109 (1991).....	2
Tamara F. Lawson, <u>Can Fingerprints Lie? Re-Weighing Fingerprint Evidence in Criminal Jury Trials</u> , 31 <i>Am. J. Crim. L.</i> 1 (2003)	14, 15
Michael Mann, <u>The CSI Effect: Better Jurors Through Television and Science?</u> , 24 <i>Buff. Pub. Int. L. J.</i> 211, 235 (2006)	1
M. Nethercott and W. C. Thompson, <u>Lessons from Baltimore's GSR Debacle</u> , <i>The Champion</i> , June 2005, at 36	9
Joe Nickell & John F. Fischer, <u>Crime Scene: Methods of Forensic Detection</u> (1999).....	15
Jessica Snyder Sachs, <u>Corpse: Nature, Forensics, and the Struggle to Pinpoint Time of Death</u> (2001).....	12, 13
Katherine Schwinghammer, <u>How "The Gold Standard Of Evidence" Could Be Worth Its Weight</u> , 32 <i>Am. J. Crim. L.</i> 265, 271 (2005)	14, 15
Jessica M. Sombat, Note, <u>Latent Justice: Daubert's Impact on the Evaluation of Fingerprint Identification Testimony</u> , 70 <i>Fordham L. Rev.</i> 2819 (2002).....	14, 15
Carlo Torre, et al., <u>Brake Lining: A Source of Non-GSR particles Containing Lead, Barium and Antimony</u> , 47 <i>J. Forensic Sci.</i> 494 (2002).....	8
<u>Two Grand Juries Investigate Office of Late Caddo Coroner</u> , <i>Baton Rouge Advocate</i> , Oct. 14, 2006, at 8.....	vii
Seth Wiard, <u>Ballistics As Applied to Police Science</u> , 1 <i>Am. J. of Police Sci.</i> 538 (1930).....	5
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Arie Zeichner & Nadav Levin, <u>Casework Experience of GSR Detection in Israel, on Samples from hands, Hair, and Clothing Using an Autosearch SEM/EDX system</u> , 40 <i>J. Forensic Sci.</i> 1082 (1995)	9
Innocence Project, <u>Facts on Post-Conviction DNA Exonerations</u> , at http://www.innocenceproject.org/Content/351.php	vi, 2
Federal Bureau of Investigation, <u>Taking Legible Fingerprints</u> , at http://www.fbi.gov/hq/cjisd/takingfps.html	16

INTEREST OF AMICUS CURIAE

The Innocence Network, Inc. (“the Network”), is an association of nonprofit legal clinics and criminal justice resource centers affiliated with the Innocence Project, which was founded at the Benjamin N. Cardozo School of Law in 1992. Nationwide, the Network includes more than 30 affiliated Innocence Projects, each of which provides *pro bono* legal services to indigent prisoners for whom evidence discovered post conviction can provide proof of innocence. The Network pioneered the post-conviction DNA litigation model that has to date exonerated over 200 innocent persons, serving as counsel in the majority of these cases. Countless innocent persons have been vindicated in total, allowing the authorities to pursue the true perpetrators. As perhaps the nation’s leading authority on wrongful convictions, the Network and its founders, Barry Scheck and Peter Neufeld (both of whom are members of New York State’s Commission on Forensic Science, charged with regulating all state and local crime laboratories) are regularly consulted by officials at the state, local, and federal levels.

The advent of forensic DNA testing and the use of such testing to review criminal convictions conclusively proves that our system convicts innocent people and that wrongful convictions are not isolated or even rare events. DNA testing has opened a window into wrongful convictions so that we may study the causes of this injustice and recommend practices to minimize the chance of its occurrence. *Amicus* have a particularly strong interest in cases where, as here, trial courts have admitted forensic testimony and conclusions that have yet to be validated by data and research and are merely assertions or intuitions cloaked in scientific expressions, which have resulted in a conviction. The Innocence Network contends that this type of “expert” testimony has no place in any case, let alone in one for capital murder.

PRELIMINARY STATEMENT

To date there have been over 200 wrongly convicted Americans exonerated by DNA evidence. In more than *one third* of the exonerations, the misapplication of forensic disciplines (other than DNA) played a role in convicting the innocent. In these cases, forensic scientists and prosecutors presented fraudulent, exaggerated, or otherwise tainted evidence to the judge or jury which led to the wrongful conviction. See, e.g., Facts on Post-Conviction DNA Exonerations, Innocence Project, available at <http://www.innocenceproject.org/Content/351.php> (listing cases).

As acknowledged by the Supreme Court of Louisiana, the State's evidence against Mr. Ford was entirely "based upon circumstantial evidence." See State v. Ford, 489 So.2d 1250, 1254 (La. 1986). The Court also described the evidence against Mr. Ford as "not overwhelming" and stated that "serious questions" were raised on appeal regarding the State's case. See id. at 1254, 1257. In dissent, Justice Calogero even went further, questioning whether a reasonable juror could even convict on the basis of the evidence presented. See id. at 1268 (Calogero, J. dissenting). *Amicus* agree and believe a reasonable and fair minded jury would not have convicted Mr. Ford. The State's case consisted of forensic evidence presented by three expert witnesses: coroner George McCormick, ballistics expert Pat Wojtkiewicz, and fingerprint analyst Joe Lockwood. Taken together, this testimony tended to suggest both that Mr. Ford was present when Mr. Rozeman was murdered and that Ford, and not either of two other suspects with extensive criminal histories, was the shooter. As set forth in this *Amicus* Brief, the Innocence Network identifies and focuses on three areas where the scientific testimony put forward by the State was grossly untrustworthy, clearly erroneous and should never have been presented to a jury.

First, Dr. George McCormick, a self-described "public witness" and county coroner, who never examined the body of the victim in this case, delivered unsupported opinions on two crucial issues relied upon by the Louisiana Supreme Court in affirming Glenn Ford's conviction: the gunman's dominant hand, and the victim's time of death. See Ford, 489 So.2d at 1257 ("[t]he evidence tends to *prove* that Mr. Rozeman died between 11:30 a.m. and 1:30 p.m. . . . [and] . . . that his killer *was* left handed.") (emphasis added). Specifically, Dr. McCormick's speculation regarding the dominant hand of the murderer suggested that Mr. Ford, and not one the two other suspects, was the shooter in this case, while the time of death calculus was crucial in challenging Mr. Ford's alibi. The former opinion was never explained or substantiated and the latter rested on a dubious proposition: that time of death can be determined by only one factor and that all contradictory evidence (even from competing medical personnel) should be disregarded by the jury.¹

¹ Unfortunately, this is not the first case where Dr. George McCormick's professional performance has come into question. In September 2005, the Caddo Parish District Attorney's Office initiated an investigation into the procedures employed by McCormick in performing his duties as parish coroner. Through that investigation, the District Attorney adduced evidence that his work fell *grossly* below the standard of care necessary to maintain scientific reliability and that he regularly allowed unqualified assistants to perform autopsies. See Two Grand Juries Investigate Office of Late Caddo Coroner, Baton Rouge Advocate, Oct. 14, 2006, at 8.

Second, the State presented the testimony of gunshot residue (“GSR”) expert, Pat Wojtkiewicz. Mr. Wojtkiewicz testified that Mr. Ford had gunshot residue on his hands, tending to suggest that he may have been the shooter in this case. However, what Mr. Wojtkiewicz failed to mention is that GSR analysis can be inaccurate if collected many hours after the discharge of a firearm, especially where the gunshot residue could have come from another source (such as a police station). Not only was this evidence never subjected to the adversarial process, but Wojtkiewicz collected only *one* unique particle from Mr. Ford, and experts agree that an accurate GSR analysis simply cannot be made without finding multiple particles.

Third, and finally, the State used an unqualified fingerprint expert who tragically failed to adhere to standard practice in the field (even at the time of trial), to claim that a print found at the scene likely belonged to Mr. Ford and not the two other suspects with long criminal histories or for that matter anyone else at all. Police Sergeant Joe Lockwood failed to follow standard protocol for the analysis and the preservation of the latent prints. Yet, based on what he was able to discern of the fingerprint, it would have been impossible for him to make a correct identification, irrespective of the fact that Lockwood destroyed the print, denying Mr. Ford the opportunity to have his own experts conduct an examination at the time of trial or even today.

In fact, much of the evidence used to convict Mr. Ford of capital murder could have, and should have been challenged at trial. Because of the ineffectiveness of trial counsel, as detailed in Mr. Ford’s Post-Hearing Memorandum, however, it was not challenged. See generally Ford Mem. at 10-62. There can be no doubt that purported scientific evidence holds great weight with juries, see, e.g., United States v. Baller, 519 F.2d 463, 466 (4th Cir. 1975) (“an opinion that claims a scientific basis is apt to carry undue weight with the trier of fact”); United States v. Addison, 498 F.2d 741, 744 (D.C. Cir. 1974) (“scientific proof may . . . assume a posture of mystic infallibility in the eyes of the jury or laymen”). In the instant case, the State was able to secure a conviction on the basis of junk science masked as expert scientific facts.

For the foregoing reasons, *Amicus* prays this Court grant Glenn Ford’s petition for post-conviction relief. Allowing his conviction to stand, based on nothing more than circumstantial evidence cloaked in science, would be a complete and unconscionable miscarriage of justice.

STATEMENT OF FACTS

For purposes of this *Amicus* filing, we adopt the facts and Procedural History set forth in Petitioner’s brief.

ARGUMENT

I. THE ADMISSION OF ERRONEOUS SCIENTIFIC TESTIMONY IN MR. FORD'S TRIAL VIOLATED HIS CONSTITUTIONAL RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS

The Due Process Clause of the Fourteenth Amendment provides a defendant the right to a fundamentally fair proceeding. See Payne v. Tennessee, 501 U.S. 808, 825 (1991). The requirement of fundamental fairness encompasses a requirement of rationality so that the prosecution may not present the jury with inaccurate or misleading evidence. See United States v. Scheffer, 523 U.S. 303, 308 (1998); Caldwell v. Mississippi, 472 U.S. 320, 340 (1985). This is particularly so in the death penalty context because, as the Louisiana Supreme Court has recognized, “death is a different kind of punishment.” See State v. Birdsong, 422 So. 2d 1135, 1139, n.8 (La. 1982) (citing Beck v. Alabama, 447 U.S. 625 (1980)). Appropriately, before death may be imposed, the State must assure scrupulously fair procedures aimed at protecting the “interest in reliability.” Gardner v. Florida, 430 U.S. 349, 359 (1977); see also Woodson v. North Carolina, 428 U.S. 280, 305 (1976) (“[T]he penalty of death is qualitatively different from a sentence of imprisonment, however long Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.”). The Supreme Court’s interest in “reliability” has not been satisfied in Mr. Ford’s case.

As fully discussed in Part II infra, the scientific evidence presented at Mr. Ford’s trial was too unreliable to form the basis for a conviction, especially one for capital murder. Time and time again, the Innocence Network has seen scientific testimony garner great deference from juries and judges alike, and this case is unquestionably no different. See, e.g., Baller, 519 F.2d at 466 (“an opinion that claims a scientific basis is apt to carry undue weight with the trier of fact”); Addison, 498 F.2d at 744 (“scientific proof may . . . assume a posture of mystic infallibility in the eyes of the jury or laymen”); Michael Mann, The CSI Effect: Better Jurors Through Television and Science?, 24 Buff. Pub. Int. L. J. 211, 235 (2006) (discussing today’s unfortunate legal atmosphere where “the use of science, DNA in particular, is required to fix an injustice.”). Accordingly, if expert testimony is to be relied upon in convicting guilty defendants in Louisiana, the evidence must be credible and rest on a sound empirical foundation. As one commentator put it, “[j]ustice and liberty often depend on the reliability of forensic [scientists]” and therefore it is incumbent upon forensic practitioners that their testimony be objective, truthful and a product of reliable and valid scientific methodologies and techniques. See Randolph N. Jonakait, Forensic Science: The Need for Regulation, 4 Harv. J. L. & Tech. 109, 109 (1991).

Reliability is what is missing from Mr. Ford's conviction. No jury should have heard the State's "scientific" evidence for many reasons, but perhaps for no better reason than it failed to meet the threshold of reliability established by the U.S. Supreme Court in Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993). Adopted by the Supreme Court of Louisiana, the Daubert test "set[s] forth a means for determining reliability of expert scientific testimony and answered many questions as to proper standards for admissibility of expert testimony." State v. Foret, 628 So.2d 1116, 1121 (La. 1993).² Accordingly, in order to ensure "reliability," a judge must act as a buffer and gatekeeper between the jury and the expert witness, protecting the defendant from the "the inability of jurors . . . [to] distinguish[] between good and bad science." Williams v. General Motors Corp., 93-0287 (La. App. 4th Cir. 02/11/94); 639 So.2d 275, 287.

In both theory and practice, the adversarial process is designed to mitigate the presentation of unreliable scientific evidence used to convict the accused. See Daubert, 509 U.S. at 583. However, it is all too common that trial counsel, including Mr. Ford's, simply lack the experience, knowledge, and resources to effectively challenge the evidence presented by the State. By their own admission, Mr. Ford's lawyers were not even aware that they could secure funding from the court for defense experts. Their inexperience was even more apparent when they failed to investigate the possibility of retaining experts, even though they understood that independent experts would be crucial to a serious defense. Mr. Ford's ineffective assistance of counsel claims have considerable merit, as trial counsel allowed highly prejudicial and un rebutted "expert" testimony, which allowed the State to circumvent its heavy burden of proof by presenting misleading and erroneous forensic testimony under the banner of science. See, e.g., Ege v. Yukins, No. 05-2078, 2007 WL 1191911, at *10-11 (6th Cir. Apr. 24, 2007) (noting that when scientific testimony consists of wild speculation and is not exposed as such during trial, the defendant's due process rights are violated).

Where a case, like Mr. Ford's, is based entirely upon circumstantial evidence, Louisiana courts require that every reasonable hypothesis of innocence be excluded. State v. Bright, 98-398, p. 11 (La. 4/11/00); 776 So. 2d 1134, 1141; State v. Seals, 95-305, p. 6 (La. 11/25/96); 684 So. 2d 368, 374, cert. denied, 520 U.S. 1199 (1997); State v. Martin, 458 So.2d 454, 462 (La. 1984); State v. Chism, 436 So.2d 464, 470 (La. 1983). Every reasonable hypothesis can not be excluded here, as the State was able to secure a conviction by relying on misleading and erroneous expert opinions, which are fully set forth in Part II infra. Because Mr. Ford was convicted on the basis of what was questionable science at best, he

² Although Daubert and Foret were decided a decade after Mr. Ford's trial, both control his post-conviction petition, as procedural rules of law are applied retroactively. See Young v. Logue, 94-0585 (La. App. 4th Cir. 5/16/95); 660 So.2d 32, 50 (retroactively applying Daubert/Foret analysis).

has been denied a fair trial pursuant to the Louisiana Constitution and the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, and this Court should accordingly grant him a new trial.

II. THIS COURT MUST GRANT POST-CONVICTION RELIEF WHEN A FAIR-MINDED JURY CONSIDERING ONLY RELIABLE SCIENTIFIC EVIDENCE WOULD PROBABLY REACH A DIFFERENT VERDICT AT A NEW TRIAL

Trial courts understandably have a tremendous responsibility to serve as the gatekeeper, protecting the accused from inaccurate and flawed expert testimony at their trial. Simply stated, in far too many cases throughout the United States, trial courts have failed in this respect, and allowed juries to convict innocent men and women for crimes of which they are actually innocent. Such miscarriages of justice are indefensible and are why the Louisiana Supreme Court requires a court to grant a new trial whenever “the evidence is of such a nature that it would probably have produced a different verdict.”³ State v. Hammons, 597 So. 2d 990, 994 (La. 1992) (citing State v. Knapper, 555 So. 2d 1335 (La. 1990)); State v. Prudholm, 446 So. 2d 729 (La. 1984); State v. Talbot, 408 So. 2d 861 (La. 1981); IV Wharton’s Criminal Procedure § 599 (Charles E. Torcia ed., 1976). In the case of Mr. Ford, without question, a jury informed of expert testimony from Dr. Riddick and Messrs. Bailey and Mr. Singer, all of whom testified at Mr. Ford’s post-conviction proceeding to challenge the scientific evidence presented during the guilt phase of Mr. Ford’s capital murder trial, would more probably than not, find that the prosecution failed to meet its burden to prove Glenn Ford’s guilt beyond a reasonable doubt. Accordingly, the Innocence Network believes that post-conviction relief is particularly warranted when the erroneous admission of evidence, set forth herein, played a “crucial, critical, and highly significant” role in a trial. See Lucas v. Johnson, 132 F.3d 1069, 1079 (5th Cir. 1998) (“Habeas relief is warranted only when the erroneous admission played a ‘crucial, critical [and] highly significant’ role in the trial.” (citation omitted)).

In the context of Mr. Ford’s case, there are several areas where the State purportedly had convincing forensic evidence. Yet in fact, the opposite was true, as the State’s evidence was anything but reliable and in some cases had no scientific foundation at all. Although no DNA evidence exists to exonerate Mr. Ford, it is of important note that most exonerations occur without any DNA evidence at all.⁴ In this *amicus* brief, we hope to address the alleged scientific evidence used at trial – “evidence” which is as poor as any other evidence the Innocence Network has seen debunked in other exonerations⁵ –

³ Because this is a death penalty case, the question is even narrower: whether the science in this case would have had an impact on any single juror’s vote at the punishment phase? In Louisiana, the voice of a single juror voting for life, would sustain a life sentence. See e.g., La. C. Cr. R. art. 905.8 (“If the jury is unable to unanimously agree on a determination, the court shall impose a sentence of life imprisonment.”); State v. Loyd, 459 So. 2d 498, 503 (La. 1984); State v. Williams, 392 So. 2d 619, 635 (La. 1980); Kirkpatrick v. Whitley, 992 F. 2d 491, 497 (5th Cir. 1993) (noting that the unanimity requirement gives the vote of a single juror ultimate authority to ensure the imposition of a life sentence).

⁴ In a study of the 340 exonerations which occurred in the United States from 1989 through 2003, 144 were exonerated by DNA evidence and 196 were exonerated by other means. See Samuel R. Gross, et al., Exonerations in the United States 1989 Through 2003, 95 J. Crim. L. & Criminology 523, 523-24 (2005).

⁵ See, e.g., Williamson v. Reynolds, 904 F. Supp. 1529, 1555-56 (E.D. Okla. 1995) (reversing a defendant’s death sentence in

and why Mr. Ford's conviction should be overturned. Simply stated, the combination of lawyers without defense experience, and experts without expertise, was enough to convince a jury to convict *any* innocent person, irrespective of the truth. For the following reasons we ask this Court to grant Mr. Ford's Petition for Post-Conviction Relief.

A. Testimony Regarding The Handedness Of The Gunman Lacked Any Scientific Foundation, Was Highly Prejudicial And Should Never Have Been Permitted By The Court Or Considered By The Jury.

The case against Glenn Ford ran the gamut from very unreliable scientific testimony to evidence that simply has no scientific foundation at all. Determining a gunman's handedness is evidence which falls into the latter category, as it is evidence with no scientific foundation whatsoever. In fact, after an exhaustive search by *Amici*, we have been unable to find any reputable scientific study to support this type of evidence. Yet, in Dr. McCormick's testimony against Mr. Ford, he was permitted to state – as a matter of “common sense” – that it was more probable than not that the victim was killed by a left-handed gunman. (R. at 2109.) He concluded that “the bullet entrance [was] on the right side of the deceased's head. His head [was] inclined toward his right shoulder . . . [which makes] . . . the left side of his head more accessible to the left-hand gun.” (R. at 2108.) McCormick further offered the jury, with no objection by counsel, the trajectory of the bullet and the supposed end position of the body and used these hypotheses to support his claim that the gunman was, in fact, left-handed. (R. at 2108.) McCormick testified that, “the bullet trajectory angles slightly downwards toward the eye, which is, again, consistent with the gun being held against the man's head. So that the angle would be from above his ear, down below his eye, in that direction.” (R. at 2109.) While this Court is likely aware that Dr. George McCormick was a “self-validating expert who presented unsubstantiated personal beliefs,” see, e.g., State v. Konechny, 3 P.3d 535, 542 (Idaho App. 2000) (quoting Landrigan v. Celotex Corp., 605 A.2d 1079, 1084 (N.J. 1992)), the facts of a recent investigation into the practices of Dr. McCormick are further evidence of just how far McCormick, a self-styled public witness, would go.

In Mr. Ford's case, Dr. McCormick's testimony was noticeably missing any reference to scientific research and/or literature supporting this remarkable “handedness” opinion. In fact, such research was glaringly lacking, because no such literature or research exists. Upon review of Dr. McCormick's trial testimony, Dr. Riddick, a board certified forensic pathologist, further stated to this

part because of the admission of hair comparison evidence, which was found to be “scientifically unreliable”); Ragland v. Kentucky, 191 S.W.3d 569, 580 (Ky. 2006) (ordering a new trial for the defendant because the prosecution had used comparative bullet lead analysis (CBLA), of which the accuracy and reliability had since been questioned by experts); New Jersey v. Behn, 868 A.2d 329, 346 (N.J. Super. Ct. App. Div. 2005) (ordering a new trial for a defendant when CBLA evidence used at his trial had since been questioned as unreliable, and noting that “the integrity of the criminal justice system is ill-served by allowing a conviction based on evidence of this quality, whether described as false, unproven or unreliable, to stand.”); United States v. Davis, 220 F. Supp. 2d 548, 554 (S.D.W.V. 2002) (excluding handwriting expert's testimony for lack of an explanation of the standards, noting that “[i]f courts allow the admission of long-relied upon but ultimately unproven analysis, they may unwittingly perpetuate and legitimate junk science.”).

Court that “to his knowledge there is no research that goes to determining the handedness of a gunman.” (Post Conv. Pr. 11/17/2004 at 11.) Dr. Riddick further testified that “most forensic pathologists that [he knew] of [would] not testify about the handedness of a gunman, because of the many variables affecting a bullet’s trajectory⁶, and the dynamics of a body’s movement when it is struck by a bullet.” (Post Conv. Pr. 11/17/2004 at 8-10, 12.) Not surprisingly, at Mr. Ford’s trial Dr. McCormick failed to mention or address *any* variables or the victim’s possible body movement in his testimony. Instead, he offered an impressionable jury his testimony under a veil of scientific reliability stating that the shooter was left-handed because “his being left handed would fit the scenario better.” (R. at 2110.)

Scientific knowledge “implies a grounding in the methods and procedures of science,” thus “proposed testimony must be supported by appropriate validation -- i.e. ‘good grounds’, based on what is known.” Daubert, 509 U.S. at 590. It is clear that none of McCormick’s testimony regarding handedness had any basis whatsoever in scientific research or methods and it should never have been treated as such. However, to add insult to inaccuracy, Dr. McCormick *never* even saw or examined the final position of the victim’s body for himself.⁷ In fact, the first time he even visited the crime scene was nearly a year after the crime occurred. (Post Conv. Pr. 11/17/2004 at 8.) Accordingly, because there was absolutely no foundation for the testimony offered on the handedness of the gunman, and no support for such testimony in any scientific discipline, this Court should grant Mr. Ford’s petition for post-conviction relief, as it is highly probable that but for this testimony the jurors would have been left with reasonable doubt as to Mr. Ford’s guilt.

B. The Gunshot Residue Test Administered To Mr. Ford Was Far Too Unreliable To Uphold His Conviction.

Of particular concern to *Amici* is that the scientific community lacks any generally accepted standard for interpreting what conclusions can be drawn from gun shot residue (GSR) analysis in cases like Mr. Ford’s.⁸ During the prosecution’s case, ballistics expert Pat Wojtkiewicz testified that

⁶“Exterior ballistics comprises all of the physical phases the projectile or bullet passes through in its flight from muzzle to target or final point of impact. Influencing factors of the bullet’s flight are: atmospheric friction, causing retardation of velocity; gravity, causing a fall of the bullet toward the earth; and rotational velocity or spin, controlled by the pitch or twist of the rifling, which has a direct influence on accuracy (causing “drift”), the initial velocity of the projectile itself, its shape, sectional density, etc.” Seth Wiard, Ballistics As Applied to Police Science, 1 Am. J. of Police Sci. 538, 538 (1930).

⁷ In a somewhat analogous circumstance, the U.S. Court of Appeals for the Sixth Circuit found a violation of the defendant’s due process rights when bitemark evidence was admitted against her at trial. See Ege, 2007 WL 1191911, at * 10-11. An expert had testified that an alleged bitemark found on the victim’s face was consistent with the defendant’s bite mark and that the odds of the bitemark belonging to anyone else other than the defendant were 1 in 3.5 million. Id. at 9. The expert, like Dr. McCormick at Mr. Ford’s trial, provided no scientific basis for the probability stated, nor did he address any specific points about the bitemark that led him to this conclusion. The court held that because the expert failed to lay any foundation for his assertions, his testimony was improperly admitted and was substantially prejudicial to the defendant and the outcome of the trial. Id. at 9-11. Accordingly, this Court should grant Mr. Ford’s petition for a similar reason: there was and still is absolutely no basis for this evidence offered at trial and Mr. Ford’s due process rights were violated as he was undeniably prejudiced by its admission.

⁸ Gun Shot Residue (“GSR”) test analyzes elemental particles found on the alleged shooter’s hands and body using Scanning Elector Microscopy technique (“SEM”) to determine elemental composition and number of collected particles. The analysts look for particles containing antimony, barium and lead, the three components of gunshot residue. Particles containing lead,

using a Scanning Electron Microscopy (“SEM”), he found one particle unique to gunshot residue and eight particles that were “characteristic” of gunshot residue on Mr. Ford’s left hand. (See R. at 1842-62.) We know today from both science and law enforcement communities, that such testing is highly unreliable and often wrong. In Mr. Ford’s case, the GSR sample was taken from his hands at the Identification Division of the Police Station on the morning of November 6th – some 12-14 hours after the police were called on the scene. (See R. at 1281-82; 1729-33.) In the course of his somewhat confused testimony,⁹ Mr. Wojtkiewicz stated twice that after examining four different samples his conclusion was that “gunshot residue was present on [defendant’s] hands.” (R. at 1858-62.) The Innocence Network believes that Wojtkiewicz’s GSR analysis, his conclusions, and his methodologies were unreliable at the time of his testimony and since then have been further discredited.

In a hearing before this Court, Ronald Singer, who is the past president of the American Academy of Forensic Science, offered compelling first-hand testimony that was sharply critical of the reliability of the GSR testimony offered at Mr. Ford’s trial. (Post Con. Pr. 03/09/2004 at 19-20). From the outset of his hearing testimony, Mr. Singer criticized the importance of “characteristic particles” in Wojtkiewicz’s analysis, pointing to the fact that there was only *one* unique gunshot residue particle collected from Mr. Ford’s hand, as well as the timing of the residue collection, some 12 to 14 hours after the alleged commission of the crime. (Id. at 25-27.)

In his testimony, Mr. Singer first disputed the significance of “characteristic” particles pointing to research which found that certain chemical mixtures of lead, barium and antimony, which were previously considered characteristic of unique GSR particles, can also be found in an automobile’s brake lining, as well as in road debris, and even in the atmosphere of heavily traveled areas. (Post Conv. Pr. 03/09/2004 at 21); see also Carlo Torre, et al., Brake Lining: A Source of Non-GSR particles Containing Lead, Barium and Antimony, 47 J. Forensic Sci. 494, 494-504 (2002) (discussing studies that have found road debris and other automotive materials to have similar characteristics as gunshot residue). If nothing more, his testimony casts serious doubt on whether gunshot residue particles can be characterized as unique at all. While Mr. Singer noted that an element of subjectivity must be involved

antimony and barium, or sometimes only antimony and barium may be described as unique, whereas particles containing only one of the chemical elements are called characteristic. Recently serious questions have been raised whether these characterizations are accurate. See infra pp. 7-9. Based on the results, the analyst makes a judgment about whether the chemical composition and number of particles indicates the presence of gunshot residue. See e.g., S. Basu, Formation of Gunshot Residues, 27 J. Forensic Sci. 72, 72-91 (1981); G. M. Wolten, et al., Particle Analysis for the Detection of Gunshot Residue: I. Scanning Electron Microscopy/Energy Dispersive X-ray Characterization of Hand Deposits from Firing, 24 J. of Forensic Sci., 409, 409-22 (1979).

⁹ “My conclusion in this case was that gunshot residue was present. On sample number two, Stub 2, which was from the – it was taken from what was described to me as the left hand inside. I’m [sic] not sure exactly where it came from, except for possibly the left-hand. I did find a unique particle on there [sic], containing the elements of barium, antimony and lead. And if that – combination of metals is considered unique for gunshot residue . . . I wouldn’t describe it as a large number of particles. I found one particle characteristic . . . the right hand It indicates that gunshot residue was present on that individual’s hands.” (R. at 1842-62.)

when evaluating the significance of unique particles in a tested sample (Post Conv. Pr. 3/9/2004 at 24), other experts go much further, asserting that analysts “arbitrarily” choose a certain number of points of similarity for identification, because *no consensus exists to dictate a number*. See C.A. Grove, et al., Evaluation of SEM Potential in the Examination of Shotgun and Rifle Firing Pin Impressions, 19 J. Forensic Sci. 441, 442 (1974). Most recently, a Minnesota state court recognized this great concern within the scientific community and, in turn, suppressed all of the state’s GSR evidence, finding that “significant questions exist in the scientific community” about the reliability of gunshot residue analysis and in particular, “how many particles are required for there to be a positive test.” State v. Moua, K5-05-7335, at 16 (Dist. Ct. Anoka, Minn., July 7, 2006). In Moua, the GSR expert used SEM analysis, but could only identify one unique particle and two characteristic particles on the defendant’s hand. Id. at 5-8.

Perhaps what should be equally troubling to this Court is the timing of the collection. In his testimony, Mr. Singer explained that the reason experts do not take GSR samples 12 to 14 hours after a shooting – as was done in Mr. Ford’s case – is because there is a “very real possibility” of a secondary transfer. (Post Conv. Pr. 3/9/2004 at 27.) GSR particles lie on the surface of wherever they are deposited, and *any* movement at all can dislodge them from their original location. Accordingly, “after six hours . . . the probability that any residues that are found on [a suspect’s] hand . . . has diminished to the point where it is no longer of any scientific value.” (Post Conv. Pr. 3/9/2004 at 25.) Mr. Singer also stated that in Mr. Ford’s case the likelihood of secondary transfer was even greater because the GSR sample had been taken inside of a police station – a location full of ambient gunshot residue because of the presence of guns and police officers who have been firing guns. Mr. Singer particularly noted that “the probability that secondary transfer can occur within [a police station] environment . . . goes without saying.” (Post Conv. Pr. 3/9/2004 at 33.) Such concerns have also been well documented elsewhere. See, e.g., Arie Zeichner & Nadav Levin, Casework Experience of GSR Detection in Israel, on Samples from Hands, Hair, and Clothing Using an Autosearch SEM/EDX System, 40 J. Forensic Sci. 1082, 1082-85 (1995) (discussing potential dangers of secondary transfer). Researchers in the Czech Republic have found “unique” GSR particles just two meters away from a shooter and up to eight minutes after a shot was fired, which suggests that someone entering a crime scene after a shooting could have more particles on them than a shooter who runs away immediately. Lubor Fojtásek & Tomáš Kmjec, Time periods of GSR particles deposition after discharge-final results, 153 Forensic Sci. Int’l. 132, 132-35 (2005). The unreliability of GSR samples is of great concern to the Innocence Network, particularly when the scientific community is at odds as to its reliability.

To place the GSR debate in better context, the dangers of secondary transfer gained considerable notoriety following a 2001 report published by the Baltimore Sun, which exposed an internal study by the Baltimore City Police Department that revealed high contamination of background GSR particles in areas of police stations where suspects and witnesses were processed for the GSR collection. See Stephanie Hanes, Convictions tied to controversial gun-residue test, Balt. Sun, Jan. 23, 2005, at B1. The study found “unique” GSR particles and many more “associated” GSR particles in the air or on surfaces at virtually every police station sampled. Following further studies the Baltimore Police Department discontinued performing GSR testing altogether. Shortly thereafter, following a closed-door summit in June of 2005, the Federal Bureau of Investigation (“FBI”) decided to abandon its own practice of analyzing gunshot residue. See Julie Bykowicz, FBI Lab Scraps Gunfire Residue, Balt. Sun, May 26, 2006, at A1. Yet, even prior to its decision to discontinue GSR testing, the FBI required a finding of at least *three* unique particles before an association could be made. M. Nethercott and W. C. Thompson, Lessons from Baltimore’s GSR Debacle, The Champion, June 2005, at 36. In Mr. Ford’s case only *one* unique particle was found. Accordingly, the Innocence Network believes the GSR analysis conducted by Mr. Wojtkiewicz was unreliable, and simply put, he should never have been able to offer testimony that gunshot residue was present on the hands of Mr. Ford when he had found only one unique particle 12-14 hours after the shooting given the risk of secondary transfer. The deficiencies of Wojtkiewicz’s analysis are aptly demonstrated by the testimony of Mr. Singer during the Post-Conviction Proceeding, scientific studies, publications, court rulings, and mounting evidence nationwide about the lack of reliability in GSR methodologies.

To make matters worse, the accuracy of Pat Wojtkiewicz’s testimony was never even questioned or disputed during Mr. Ford’s trial because of counsel’s failure to obtain independent experts to rebut such testimony in violation of Mr. Ford’s due process rights. See, e.g., Commonwealth v. Bolduc, 411 N.E. 2d 483, 485-86 (Mass. 1980) (defendant needed qualified and independent ballisticsian to testify about gunpowder residue test performed on his jacket; negative results would have supported defense that defendant was not a shooter); Ex Parte Moody, 684 So. 2d 114, 119-20 (Ala. 1996) (holding that the Sixth Amendment right to counsel includes access to expert witnesses when appropriate). The admission of the unchallenged testimony of Pat Wojtkiewicz, erroneously suggesting that Mr. Ford might well have been the shooter of Mr. Rozeman, rendered Mr. Ford’s trial fundamentally unfair. Therefore, because such evidence should not have been admitted or at least should have been tested by the adversarial process, Mr. Ford’s petition should be granted.

C. Determining Time Of Death Is An Inexact Science And Cannot be Conclusively Established In Mr. Ford’s Case.

Determining time of death is an inexact science even when performed by the best trained and most experienced pathologists. See Time of Death, 2-19 Scientific Evidence § 19-8 (2005) (citing Marshall Houts, Time of Death: Still the Dark Ages of Proof, 10 *Trauma* 7 (Aug. 1968)). In fact, the estimate becomes progressively less reliable as the time frame between death and the autopsy – the “postmortem interval” – increases. Id. To determine time of death, forensic pathologists often use three tests which include: livor mortis, rigor mortis and algor mortis, see John F. Burton, Fallacies in the Signs of Death, 19 *J. Forensic Sci.* 529, 530 (1974), with no method being sufficiently reliable on its own to come to a conclusion as to time of death. See Scientific Evidence, supra p. 10, at § 19-8. Nevertheless, as this Court is well aware, testimony regarding Rozeman’s time of death was injected into Mr. Ford’s trial to undercut his alibi defense.

Mr. Rozeman’s body was found by paramedics at approximately 3:30 p.m. (See R. at 1527.) At Mr. Ford’s trial, Dr. McCormick offered “expert” testimony that the victim had been dead longer than an hour and probably two or more hours when paramedics found the body, “consistent with the time the defendant was at the scene of the crime.” (R. at 2110.) Dr. McCormick conceded he had not examined the body himself, (R. at 2119), but purported to base his conclusion on the fact that a witness had reported rigidity in the wrist of Rozeman when he was found and that the body felt cool to the touch. (R. at 2112.) This testimony was crucial for the State’s case because it rebutted Mr. Ford’s claim that he had left the scene of the crime prior to the murder.

Dr. McCormick’s assertion that Rozeman had been dead two hours or more might have been helpful to the State’s case, but we do not and cannot have any idea whether it is “consistent with the time the defendant was at the scene of the crime,” (R. at 2110), as his testimony simply has no scientific basis. First, in the typical case, only a gross estimate of time of death can be ventured. See Scientific Evidence, supra p. 10, at § 19-8. As courts have noted, when experts speak to time of death they speak in a range of hours, not in a single two-hour increment as McCormick did, because such estimates are inherently inexact. See, e.g., Rector v. Johnson, 120 F.3d 551, 556 (5th Cir. 1997) (commenting that the science of determining time-of-death is inexact and that the Medical Examiner’s estimation of death was therefore a wide range of hours); Helton v. Singletary, 85 F. Supp. 2d 1323 (S.D. Fla. 1999) (“Time of death is a vastly inexact science when it is reliant on outside factors [W]hen one is talking about time-of-death, one is talking about a range of hours.”), rev’d on other grounds, 259 F.3d 1310 (11th Cir. 2001); Kollar v. Smith, 04 Civ. 10175, 2005 WL 1653883, at *4 (S.D.N.Y. July 12, 2005) (noting that the Medical Examiner admitted that time-of-death determination was an inexact science and that his “margin of error” was as much as twelve or fifteen hours”).

In Mr. Ford's case, Dr. McCormick purported to base his opinion on the rigor mortis in the victim's wrist. What is troubling to the Innocence Network is that rigor mortis can occur as early as within fifteen minutes after death or as late as six hours after death. See Scientific Evidence, *supra* p. 10, at §19-8(a). Moreover, algor mortis – the cooling of the body after death – can be affected by a variety of factors including the state of ventilation of the body, the victim's temperature at time of death, and whether the victim had lost a lot of blood. See id. These factors all come into play in this case as Mr. Rozeman was lying near an open window, (R. at 1201), suffered from poor health, (R. at 1195), and had lost a great deal of blood. (R. 1527); see also Jessica Snyder Sachs, Corpse: Nature, Forensics, and the Struggle to Pinpoint Time of Death 6 (2001) (“Age, body size, health, manner of death, ambient temperature, air movement, even something as ineffable as the agony of a victim's final moments has been found to skew the body's postmortem changes beyond predictability”). Nevertheless, without addressing any of these factors, Dr. McCormick felt confident enough to assert with full certainty that Rozeman had been dead for two hours or more because of the alleged presence of rigor mortis and an unverified temperature of the body.

Even more troubling is the fact that Dr. McCormick never examined Mr. Rozeman's body. (R. at 2119.) In fact, his opinion on time of death rested *entirely* on his review of photographs, the autopsy report, and facts as reported by an individual who did observe the body. Specifically, Louis Traylor, an employee of the Shreveport Fire Department, with no experience whatsoever in handling dead bodies, had testified that “the body was beginning to stiffen up” and felt cool. (R. at 1532.) Precisely how cool the body felt is unknown and can never be known. For the purposes of expert testimony, Mr. Traylor's testimony was nothing more than that of a layperson. He was in no way qualified to offer an expert opinion on a body's temperature. Nowhere in the record does it suggest that he has experience handling dead bodies. His testimony, while earnest, did not establish any baseline of forensic knowledge to judge a murder victim's body temperature. And even if (for argument's sake only) it did, Dr. McCormick could not have relied on his statements to determine time of death. Louisiana Rule of Evidence 702 counsels that an expert may only testify in the form of an opinion if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. La. R. Evid. 702. Accordingly, to offer a highly specific time estimate of Mr. Rozeman's death, on the basis of Mr. Traylor's lay testimony that Rozeman's body was rigid and seemed cool to the touch, is manifestly inappropriate. Dr. McCormick simply did not have enough facts at his disposal to offer any estimate of time of death, let alone one so detailed that he could narrow the time frame of death conveniently outside

of Mr. Ford's alibi time line. Given Mr. Traylor's inexperience with dead bodies, McCormick had no way to ascertain scientifically whether the temperature readings were accurate.

Indeed, Dr. McCormick willfully disregarded much of the evidence presented at trial that did not conform with the State's theory of the crime. Dr. Braswell, unlike Mr. Traylor, was a licensed physician who arrived at the scene an hour after the body was found. (See R. at 1346.) Dr. Braswell testified that there was *no* body stiffening at 4:30 p.m. when he examined the body. (R. 2168.) Braswell also noted that the body was actually *warm*. (R. at 2169.) These facts ignored by Dr. McCormick in his rush to challenge Mr. Ford's alibi undermined the basis of McCormick's conclusion that Mr. Rozeman must have been dead for at least two hours because of the onset of rigor mortis and the cooling of the body.

Another major flaw in McCormick's testimony was that Patrolman Ricky Skaggs, one of the first individuals on the scene, testified that Mr. Rozeman was still bleeding when he was found. (R. at 1316.) The Innocence Network believes this is significant, because when a person dies, circulation decreases and blood will coagulate. See Sachs, supra p. 11, at 36. This did not happen here and suggests that Mr. Rozeman died relatively recently, another factor McCormick neglected to take into account or discuss with the jury. In fact, the Innocence Network believes that no responsible pathologist would deign a guess as to time of death when the evidence was so unclear and where he did not personally examine the body. Yet, contrary to the dictates of science, Dr. McCormick offered highly specific testimony to discredit Mr. Ford's alibi, even though his estimate was too specific given the nature of the field and was based on a highly selective view of the evidence. This is the kind of evidence that should never have been used to convict a person, the type of unreliable musings that time and time again prove wrong after DNA evidence is used to clear the wrongly convicted. Accordingly, had this evidence been excluded, there is at least a reasonable probability that the jury verdict would be different.

D. The Latent Fingerprint Testimony By Specialist Sgt. Lockwood Failed To Comply With Standard Protocol In His Field And Lacked Any Scientific Foundation.

As stated above, a major challenge for the State in prosecuting Mr. Ford was proving that Ford, not Henry or Jake Robinson, shot the victim.¹⁰ The only evidence the State introduced on this point and the only evidence that even ties Mr. Ford to the location of the crime, was the testimony of Sergeant Billy Lockwood – an “expert” who had never before been qualified as an expert prior to Mr. Ford's capital murder trial. Lockwood was not a member of the International Association of Identification

¹⁰ As indicated in Mr. Ford's petition, Mr. Ford has stated on numerous occasions that he was not present at the scene of the crime and that the Robinsons killed the victim. See Ford Br. at 6. In addition, a police report suggests that Jake Robinson possessed the murder weapon after the murder and that Henry Robinson hid the weapon under a mattress in the home of a relative before ultimately retrieving it. Id. at 62-64.

Examiners and had little educational background beyond high school. (See R. at 1767.) This was problematic because of the highly subjective nature of fingerprint analysis, where “the validity of the analysis is uniquely connected to the specific knowledge, ability, and experience of the individual examiner who conducted the analysis.” See Tamara F. Lawson, Can Fingerprints Lie? Re-Weighing Fingerprint Evidence in Criminal Jury Trials, 31 Am. J. Crim. L. 1, 46 (2003); see also Jessica M. Sombat, Note, Latent Justice: Daubert’s Impact on the Evaluation of Fingerprint Identification Testimony, 70 Fordham L. Rev. 2819, 2820 (2002) (“The careful work of the individuals who employ [fingerprint] methodologies is critical to the conclusion reached”). However, putting his inexperience aside, what truly discredits Sgt. Lockwood is his “expert” opinion based on flawed methodology and techniques that not only produced unreliable results, but also prevented subsequent testing by better-trained experts.

At trial Lockwood testified that he was able to lift a single latent print from the end of a paper bag left at the scene of the crime, ostensibly used to grasp the gun that killed the victim. (See R. 1772-74.) Mr. Lockwood developed the print by tearing the bag and applying a ninhydrin chemical to it. (See id. 1762.) He testified that the latent print contained a “whorl” type pattern and that Mr. Ford had such a pattern, whereas the Robinson brothers did not. (Id. 1763.) He was not able to conclusively state whether Mr. Ford left the fingerprint, (id. at 1175), because he conducted no analysis other than determining that the latent print at the scene was a whorl. Standard practice dictates that fingerprint examiners look for points in common between a latent print and a sample from a suspect by comparing “ridge” characteristics. See Lawson, supra p. 13, at 11. Mr. Lockwood not only failed to look for “ridge” details in the latent print, but he did not even categorize the alleged “whorl” found according to any of its subcategories: plain, central pocket, double loop, and accidental. See Sombat, supra p. 13, at 2828. This was critical because if the whorl was a “double loop whorl” or “accidental whorl”, Mr. Ford could *not* have left the print. (See Post Conv. Pr. 5/3/2005 at 30.)

Latent prints are deposited by bodily oil or sweat onto a surface. See Katherine Schwinghammer, How “The Gold Standard Of Evidence” Could Be Worth Its Weight, 32 Am. J. Crim. L. 265, 271 (2005). Generally latent prints are much more difficult to identify than “plastic fingerprints” – those left in soft material such as wax or dust, as well as “visible fingerprints” – those left in colored substances such as blood or ink. See Joe Nickell & John F. Fischer, Crime Scene: Methods of Forensic Detection 114 (1999). This is because latent prints are often smudged and are usually just a fragment of a full print. In fact, the Department of Justice has suggested that the average size of a latent fingerprint is one-fifth of a full fingerprint. See Robert Epstein, Fingerprints Meet Daubert: The Myth of Fingerprint Science Is Revealed, 75 S. Cal. L. Rev. 605, 607 (2002).

To examine latent prints, fingerprint examiners usually powder a surface and then dust the powder off to differentiate the fingerprint image from its background. See Sombat, supra p. 13, at 2831. An investigator will then photograph the resulting imaging and the powdered image will be lifted onto paper using clear tape. Id. On occasions, such as when a latent print is on a porous surface, a chemical may be used. (Post Conv. Pr. 5/3/2005 at 33); see also Lawson, supra p. 13, at 11.

This standard procedure is in striking contrast to the methodology employed by Lockwood. As discussed at Mr. Ford's post-conviction hearing, Lockwood used the chemical ninhydrin on the paper bag, even though it is well-established that ninhydrin destroys a latent fingerprint over time. (Post Conv. Pr. 5/3/2005 at 24-25). He then failed to preserve the latent print by means of photography as has long been standard practice in the field. (Post Conv. Pr. 5/3/2005 at 25); see also Sombat, supra p. 13, at 2831 (noting that photography has been used since the early part of the 20th Century); Schwinghammer, supra p. 14, at 272 ("after a latent fingerprint is detected it will be recorded"). Moreover, he never marked on the bag he found at the scene exactly where the latent print was supposed to have appeared and failed to prepare a written report on his findings altogether. (Post Conv. Pr. 5/3/2005 at 31.) In fact, Mr. Lockwood did not even document his findings in his *own* notes. (Id. at 8.) This level of carelessness certainly casts a shadow of doubt over his prejudicial testimony.

To make matters worse, because Lockwood applied the destructive agent ninhydrin to the latent print, failed to take photographs of the print, and never sealed the print in plastic, (Post Conv. Pr. 5/3/2005 at 33), a proper analysis could not have been subsequently undertaken on the latent print by Mr. Ford's trial counsel, appellate counsel, or even post-conviction counsel. Irrespective of whether preservation of the latent print would have helped exculpate Mr. Ford in this proceeding, it is undeniable that his due process rights were violated because Lockwood's incompetence made it impossible for an expert of Mr. Ford's choosing to examine a critical piece of evidence used against him during the guilt phase of his trial. See Barnard v. Henderson, 514 F.2d 744, 746 (5th Cir. 1975) ("Fundamental fairness is violated when a criminal on trial for his liberty is denied the opportunity to have an expert of his choosing . . . examine a piece of critical evidence whose nature is subject to varying expert opinion");¹¹ see also United States v. Nabors, 707 F.2d 1294, 1296 (11th Cir. 1983) (noting that testimony on the nature of a material should be excluded on due process grounds where an examination may have been favorable and material to the defense and the defendant could not have examined the material due to inadvertent

¹¹ In Barnard, the police department failed to make a murder bullet available to a defense expert for examination. 514 F.2d at 746. Nevertheless, a ballistics expert testified that the murder bullet came from a pistol that had been in the defendant's possession. The Fifth Circuit found a denial of due process for a defendant not able to conduct his own examination of this critical evidence, because a defense expert would have been able to challenge the identification testimony of the State's expert. Id. In Mr. Ford's case, not only was no examination conducted but no examination could have been conducted because of the actions of Sgt. Lockwood.

destruction); State v. Stephens, 00-2472, p. 1-2 (La. 3/16/01); 782 So.2d 562, 564 (holding that fundamental fairness is violated when a criminal defendant is denied an opportunity to have experts of his choosing examine a piece of critical evidence whose nature is subject to varying expert opinion).

Accordingly, the Innocence Network believes Mr. Lockwood's actual identification of the latent print left at the scene is highly suspect, not only for his lack of expertise and failure to follow standard procedures but because of the nature of the latent print itself. As testimony during Mr. Ford's post conviction hearing revealed, Lockwood had not even seen the center of the "whorl" when he made the identification of the latent fingerprint. (Post Conv. Pr. 5/3/2005 at 9.) As explained to this Court by William Bailey, an expert with twenty-nine years experience in fingerprint analysis and member of the Tarrant County Medical Examiner's Office, without the center of the whorl there would not be enough detail to make a clear identification. (Post Conv. Pr. 5/3/2005 at 29); see also Federal Bureau of Investigation, Taking Legible Fingerprints, at <http://www.fbi.gov/hq/cjisd/takingfps.html> (noting that what differentiates a loop from a whorl is the presence of a core in the former). There is a strong likelihood, therefore, that Lockwood mischaracterized another pattern, such as a loop, as a whorl. (Post Conv. Pr. 5/3/2005 at 29.) Since Lockwood had not seen the center of the print, he could not know whether there was a core, meaning that Lockwood's identification of the partial print taken from the grocery bag found at the scene as a "whorl type pattern" was nothing more than a convenient guess. Nevertheless, Lockwood provided crucial testimony that Jake and Henry Robinson – Mr. Ford's alleged accomplices – were not the source of the latent print and testimony that Mr. Ford could have been. (R. at 1773.) Therefore, because the fingerprint evidence is unreliable, taken cumulatively with the other scientific evidence used to convict Mr. Ford, the Innocence Network believes Mr. Ford's motion for post-conviction relief should be granted as a reasonable jury would more likely than not have come to a different conclusion.

CONCLUSION

When experts attempt to testify on the basis of methods that are not accepted by other experts in that field, courts have an obligation as gatekeepers to refuse to hear the evidence. See, e.g., State v. Quatrevingt, 93-1644, p. 15 (La. 2/28/96); 670 So.2d 197, 206 (holding that while DNA profiling in general is admissible, identifying DNA through Band Shifting Correction is not); State v. Free, 493 So.2d 781, 787 (La. App. 2d Cir. 1986) (holding that testimony on the basis of spectrographic analysis should not have been admitted because experts failed to consider how many phrases could not be matched); see also State v. Wheeler, 416 So.2d 78, 82 (La. 1982) (noting that jurors place great trust in experts – particularly police officers – when they testify at trial and therefore admission of improper testimony affects a “substantial right”). Unfortunately, the jury in Mr. Ford’s case was allowed to consider the entirely baseless and unreliable testimony from purported experts who cut corners and at times made up their science as they went along. It is questionable science such as this that we learn years later has been used to convict innocent persons. Accordingly, the Innocence Network respectfully requests that Mr. Ford’s petition be granted because his constitutional rights were violated when he was convicted using unreliable and plainly erroneous scientific evidence. For the reasons set forth, *Amicus Curiae* pray this Court grants Glenn Ford’s petition for post-conviction relief.

Respectfully submitted,

David Park
Bar # 28973
INNOCENCE NETWORK NEW ORLEANS
636 Baronne Street
New Orleans, LA 70113
(504) 522-4766

Of Counsel:

Oleg Kobelev
Michael D. Mann
Vikeena Bonett
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
(212) 839-5300

Counsel for Amicus Curiae the Innocence Network
[Month], [Date], 2007

VERIFICATION

STATE OF LOUISIANA
PARISH OF CADDO

BEFORE ME, the undersigned authority, Notary Public, duly commissioned and qualified in and for the aforementioned Parish and State, personally came and appeared

DAVID PARK

who, after being duly sworn, did depose and state that:

He is an Attorney for the Amicus Curiae, Innocence Network, in these proceedings and that the Motion of the Innocence Network for Leave to File a Brief as *Amicus Curiae* in Support of Petitioner have been mailed to the persons listed below on this th day of , 2007; and that all of the facts and allegations contained therein are true and correct to the best of his information, knowledge, and belief.

The respondent judges, parties to this proceeding, and their counsel are as follows:

HON. RAMONA EMANUEL
Judge – 1st Judicial District Court
Caddo Parish Courthouse
501 Texas Street, Section 4, Division B
Shreveport, Louisiana 71101-5401

HON. GARY LOFTIN
Caddo Parish Clerk of Court
501 Texas Street, Room 103
Shreveport, Louisiana 71101-5401

CATHERINE ESTOPINAL
Caddo Parish District Attorney’s Office
501 Texas Street
Shreveport, Louisiana 71101
Attorney for Respondent

DEBORAH ELLIS
700 Saint Paul Building
Six West Fifth Street
St. Paul, Minnesota 55102
Attorney for Petitioner

David Park

SWORN TO AND SUBSCRIBED before me,

this _____ day of _____, 2007

at New Orleans, Louisiana

NOTARY PUBLIC