



to a post-conviction writ of habeas corpus” where Applicant can attempt to relitigate a claim at a different time. *See id.* at 545-46.

In Isaac’s August 22, 2019 affidavit, he claims the following:

- he saw Applicant socially on occasion from time of offense until January when Applicant turned himself in (Exhibit FF at #12);
- he took care of Applicant’s dogs while Applicant was in jail (Exhibit FF at #13);
- he spoke with Applicant’s father while Applicant was in jail (Exhibit FF at #16);
- he spoke with Applicant after Applicant was released from jail (Exhibit FF at #21);
- he spoke with Applicant’s attorneys during the pendency of the case while avoiding calls from the police or other investigators (Exhibit FF at #22);
- he agreed to appear for Applicant’s case if Applicant’s attorney’s subpoenaed him (Exhibit FF at #22); and
- he spoke with Applicant “repeatedly” where Applicant urged him to tell the truth to anyone representing the State (Exhibit FF at #25).<sup>1</sup>

These statements by Isaac show that he was in contact with Applicant, his father, and Applicant’s attorney throughout the pendency of the case,

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<sup>1</sup> Applicant claims that the “state has now disclosed additional newly discovered evidence” referring to Isaac’s affidavit. Exhibit FF shows that the State turned over the affidavit the day it was received and that Isaac planned to mail a copy of the affidavit to Applicant’s trial attorney. Additionally, Applicant was in possession of a similar affidavit Isaac provided to Applicant on May 23, 2019 (Exhibit GG).

even agreeing to appear if subpoenaed (Exhibit FF). Thus, even if Isaac's August affidavit is found to be credible when compared with his other statements to police and what this Court found in regards to his unavailability as a witness, Applicant could have known of the contents of the affidavit with due diligence considering Applicant and his attorney were in contact with Isaac while Isaac avoided any contact with the State. *See Brown*, 205 S.W.3d at 545.

In Applicant's Colorado filing, he stated that Isaac provided Applicant an affidavit on May 23, 2019 (Exhibit GG). That affidavit was attached to the Colorado filing (Exhibit GG). In Isaac's May 23, 2019 affidavit, he also stated that he would occasionally see Applicant socially and take care of Applicant's pets after September 2018, and that he would invoke the 5th Amendment at trial (Exhibit GG). Isaac further stated that he was aware of the State's subpoena and avoided service (Exhibit GG).

Further, in an email sent by Applicant's trial attorney, Dominick Marsala, to Detective Bearden of the Denton Police Department on November 14, 2018, Mr. Marsala asks Detective Bearden to contact Isaac through Mr. Marsala (Exhibit ZZ [Email from Marsala to Bearden]). Mr. Marsala also suggests that Isaac fears retaliation from

Oak Point Police Department, which Isaac did not mention in either affidavit (Exhibits FF, GG, ZZ). Mr. Marsala appeared to be in contact with Isaac as Mr. Marsala informs Detective Bearden that Mr. Marsala will contact Isaac about Isaac meeting with Detective Bearden (Exhibit ZZ).

Applicant cannot rely on Isaac's affidavits as part of his actual innocence claim because with due diligence the facts were available at the time of his plea. *See Brown*, 205 S.W.3d at 545. Applicant cannot claim that the outcome of trial would have been different now when he could have been aware of the contents of Isaac's affidavits with due diligence. *See id.* at 545-46.

***Isaac's affidavits are not affirmative evidence of innocence.***

Applicant's actual innocence claim in relation to Isaac's affidavits is a *Herrera*-type claim based on newly discovered evidence. *See Ex parte Franklin*, 72 S.W.3d 671, 677-78 (Tex. Crim. App. 2002). Thus, Applicant must show that the evidence presented constitutes affirmative evidence of his innocence. *See id.* Once affirmative evidence is provided, it must be determined whether no reasonable juror would have convicted Applicant in light of the newly discovered evidence. *See id.*

Even if Isaac's affidavits were new evidence, Applicant's claims fail because Isaac's affidavits contain no affirmative evidence of Applicant's innocence (Exhibits FF, GG). *See id.* Isaac's affidavits state that he would claim the 5th Amendment if questioned about the night of the offense and that he was not coerced into avoiding the State (Exhibits FF, GG). This is evidence that he did not want to testify and did not want to speak to the State, but does not provide affirmative evidence that unquestionably shows that Applicant is innocent. *See id.*

***Isaac's affidavits are not a recantation, and even if they were recantations, they do not meet the reliability standards of a recantation.***

Post-conviction claims involving recantations "should not be accepted without close scrutiny nor, generally, without strong corroboration by independent evidence." *Ex parte Mayhugh*, 512 S.W.3d 285, 296 (Tex. Crim. App. 2016). "To support a finding of actual innocence, a recantation must be direct, specific and certain." *Mayhugh*, 512 S.W.3d at 296; *see Brown*, 205 S.W.3d at 547; *Franklin*, 72 S.W.3d at 678.

In *Franklin*, there was a recantation that did not directly bear on the defendant's guilt and instead only showed that the witness recanted

a statement that she had never had sexual relations with anyone other than the defendant. *See Ex parte Chaney*, 563 S.W.3d 239, 279 (Tex. Crim. App. 2018) (Keller concur); *Franklin*, 72 S.W.3d 671. The Court of Criminal Appeals found that such a “recantation” only collaterally affected the accusations against the defendant and were not sufficient to establish actual innocence. *See Chaney*, 563 S.W.3d at 279; *Franklin*, 72 S.W.3d 671.

Isaac’s affidavits do not recant anything that he said to police regarding the offense (Exhibits FF, GG). The affidavits do not do this directly, with specificity, or with certainty (Exhibits FF, GG). *See Mayhugh*, 512 S.W.3d at 296; *see also Brown*, 205 S.W.3d at 547; *Franklin*, 72 S.W.3d at 678.

***Isaac’s affidavit does not unquestionably establish Applicant’s innocence.***

Even if Isaac’s affidavits were considered new evidence, this Court would have to determine whether the claimed “new” evidence, when balanced against the “old” inculpatory evidence, unquestionably establishes Applicant’s innocence. *See Brown*, 205 S.W.3d at 546. Isaac’s affidavits do not unquestionably establish Applicant’s innocence, as Isaac does not deny any of this statements that incriminated Applicant

(Exhibits FF, GG). *See id.* “[I]n an appropriate case the principles of comity and finality ‘must yield to the imperative of correcting a fundamentally unjust incarceration,’” but this is not such a case. *See Franklin*, 72 S.W.3d at 678, quoting *Engle v. Isaac*, 456 U.S. 107, 135 (1981).

Applicant states that the State “highlighted [Isaac]’s out-of-court statements and Applicant’s alleged forfeiture by wrong doing” in the State’s answer.<sup>2</sup> While the State argued how that evidence showed Applicant’s guilt, the State also highlighted a good deal of other evidence showing Applicant’s guilt in the State’s answer and supplemental answer, including:

- Applicant’s judicial confession;
- inconsistencies in Applicant’s statements to law enforcement;
- inconsistencies in Applicant’s filing with the Colorado Supreme Court;
- surveillance camera footage from a neighbor that shows no evidence of the burglary of Applicant’s vehicle at the time Applicant claimed his vehicle was burglarized;
- the brick supposedly used in the claimed burglary was from Applicant’s backyard; and

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<sup>2</sup> This Court’s forfeiture by wrongdoing finding is not alleged, as this Court did indeed hold that there was a forfeiture by wrongdoing (Exhibits Y, Z).





















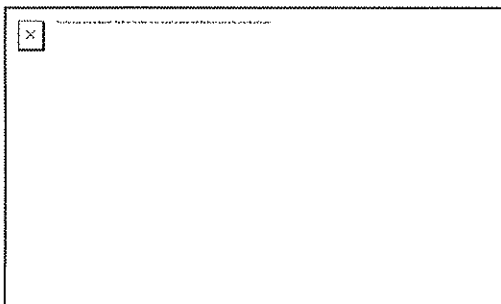








Attached is the info for Det. Bearden.



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**THE MARSALA LAW GROUP**

phone: 940-382-1976

fax: 469-453-3031

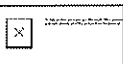
site: [marsalalawgroup.com](http://marsalalawgroup.com)

address: 1417 E. McKinney St. Suite 110, Denton, TX 76209



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Confidential

Page 2

10/10/2018

After careful examination of the charts produced it is my professional opinion that you have NO DECEPTION INDICATED on this examination.

Post Test Interview: None necessary.

Sincerely,

*Dianne Robinson*

Dianne Robinson  
Texas License #880

## RESUME

**Ronda Dianne  
Decker Robinson**

LaCosta Data Services, Inc. (owner and polygraph examiner—founded in 1988)

- 15455 Dallas Parkway, Sixth Floor, Addison, TX, 75001
- 1901 Central Drive, Suite 315, Bedford, Texas

TX Polygraph License # 880 (Since 1988)—Also licensed in Illinois, Indiana and South Carolina (Previously licensed in Tennessee—1984)

(972) 735-9569, (877) 735-9569—Toll free, (972) 608-9821—Fax

Website [www.dontlie.com](http://www.dontlie.com)

### **Work Experience**

2006-Present—President LaCosta Data Services, Inc.

- Testing for Law firms (Criminal issues)
- Testing for various law enforcement agencies—Forest Hill Police Department, Forest Hill Fire Department, Garland Police Department, Haltom City Police Department\*, White Settlement Police Department, Benbrook Police Department, Kennedale Fire Department, Frisco Police Department\* and Denton County Sheriff's Department\*—pre-employment, internal affairs and criminal testing
- Testing for various judges/probation and parole departments
- Testing for companies (EPPA)
- Testing for companies (Pre employment for security and armored car companies\*)
- Sex Offender Testing—See JPCOT List (Texas Department of Health website)—testing for sex offenders in Dallas, Denton, Tarrant and other counties throughout the State Of Texas
- Approved provider for Tarrant County Sex Offender testing (Referral contract)\*
- Approved contract provider for Texas Department of Criminal Justice subsidy polygraphs for sex offenders
- Polygraph Examiner for the nationally syndicated Jenny Jones Show in Chicago 2001 through 2003—appeared on screen approximately 30 times per year—Also appeared on the Larry Elder Show—Los Angeles—
- Polygraph consulting/Singapore Ministry of Defense
- Polygraph instrument and paper sales—Central and South America and Asia (In past partnership with Ronald Decker, former deputy director Department of Defense Polygraph Institute and past president of the American Polygraph Association)

1988-2006—Vice-President LaCosta Data Services, Inc.  
Addison, TX

1986-1988—Vice-President-Aarowsmith & Associates—Arlington, TX

1986-Texas Industrial Security, Polygraph Examiner-Ft. Worth, TX



**Education**

University of Houston Downtown Polygraph School—1984—School was supervised by Shirley Sturm, past president of the APA—  
BS, Business Management, Jacksonville State University—1982

- American Polygraph Association seminars since 1985 –last attended 2015 seminar
  - Texas Association of Polygraph Examiners seminars since 1986-last attended April 2016 seminar
  - National Polygraph Association –last attended seminar January 2018
- Advanced Interrogation Interview Kinesic Technique—1986

**Associations**

Texas Association of Polygraph Examiners (Past Membership Chair),  
American Polygraph Association (Grievance Committee 1992)  
American Association of Police Polygraphists

\*Indicates past work or contract work





Victim -  
Jason Vandyke -  
part of what he  
reported stolen  
during "false Report  
to Police Officer" case



EX PARTE

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IN COUNTY CRIMINAL

COURT NO. 5

JASON VAN DYKE

DENTON COUNTY, TEXAS

AFFIDAVIT

Before me, the undersigned authority, personally appeared Sheila Bowles, after being duly sworn, did depose and say the following:

“My name is Sheila Bowles and I currently work in the Intake Division of the Denton County District Attorney’s Office, handling Felony cases including the offense of Theft of a Firearm. I was assigned Corey Momot’s Theft of a Firearm case in which the victim was Jason Van Dyke.

The evidence showed that Momot was found in possession of a firearm when a search warrant was executed in relation to an aggravated assault investigation related to a drive-by shooting. The firearm was one of the firearms Van Dyke claimed was stolen during Van Dyke’s false report case. Momot admitted he thought the gun was stolen but that he bought it from a friend of a friend. I sent the case to grand jury because the evidence showed Momot was in possession of

a firearm he knew was stolen, which met the elements of Theft of a Firearm.

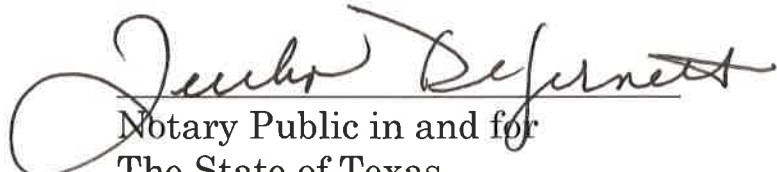
What I knew about the case was in the case files and I did not independently know any facts not in the case files.”



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Sheila Bowles  
Denton County Courts Building  
1450 E. McKinney St.  
Denton, Texas 76209

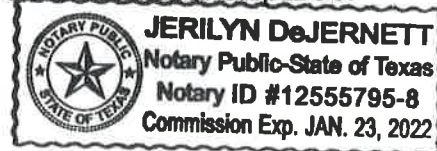
SUBSCRIBED AND SWORN TO before me, this 4th day of December 2019.



---

Notary Public in and for  
The State of Texas

My Commission expires:







**CR-2018-07544-E-WHC-1**

**EX PARTE**

§  
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§  
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**IN COUNTY CRIMINAL**

**COURT NO. 5**

**JASON VAN DYKE**

**DENTON COUNTY, TEXAS**

**AFFIDAVIT**

Before me, the undersigned authority, personally appeared Lauren Marshall, after being duly sworn, did depose and say the following:

“My name is Lauren Marshall and I currently work in the Felony Division of the Denton County District Attorney’s Office in the 362nd District Court. This year, I assisted in the prosecution of Corey Momot in cause number F19-625-362. Momot was indicted for the offense of Theft of a Firearm and the complaining witness was Jason Van Dyke.

I was assigned the case after it was indicted by the Grand Jury. I reviewed the case and provided discovery to the defense on May 28, 2019, as noted on the case file. The evidence showed that Momot was in possession of Jason Van Dyke’s firearm. Jason Van Dyke had reported the firearm as stolen. The evidence also showed that Momot was aware that

the firearm was stolen. I brought the case to the attention of my division chief, Michael Moore, because Jason Van Dyke was the complaining witness. I received approval from him to offer a misdemeanor as part of a plea bargain agreement. The decision to offer a misdemeanor was made because the complaining witness in the felony Theft of a Firearm case was Jason Van Dyke and we did not want to sponsor Jason Van Dyke as a witness.

I do not remember who suggested that we plea Momot to the specific misdemeanor offense of burglary of a motor vehicle. That suggestion would have been made by my court chief, Paul Hiemke; Momet's attorney Dan Kossman; or myself. However, I believe that Mr. Kossman did request that we not plea Momet to a theft charge. We agreed to plea Momot to the misdemeanor offense of burglary of a motor vehicle and I amended the indictment because burglary of a motor vehicle is not a true lesser offense of theft of a firearm.

This case was resolved by reducing the charge from a felony to a misdemeanor by a plea bargain agreement. What I knew about the case was in the case file and I did not independently know any facts not in the case file. The

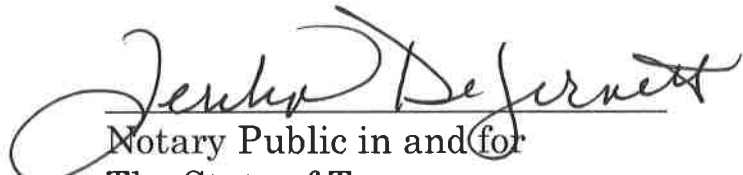
disposition of this case was not due to any realization or any knowledge that Momot burglarized Van Dyke's vehicle. The plea agreement was reached in order to dispose of Momot's case considering the complaining witness in the case pleaded to making a false report to a police officer."



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Lauren Marshall  
Denton County Courts Building  
1450 E. McKinney St.  
Denton, Texas 76209

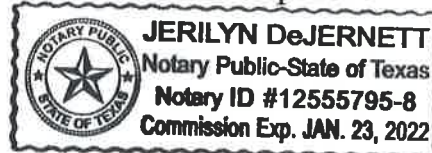
SUBSCRIBED AND SWORN TO before me, this 5th day of December, 2019.



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Notary Public in and for  
The State of Texas

My Commission expires:





Case Number

Defendant's

MOMOT, COREY DEONTA  
THEFT OF FIREARM

DL#

Offense/Causa No.

F19-625-362

E-FILE

Date of offense:		9-28-18		Co-defendants & companion cases		Probation expires:	
Date case filed:		12-17-18		Court:		DWI video number:	
Referring agency:		OPD - Bearden		Magistrate		Restitution checked: ___/___/___	
Date of Arrest		Bond		Date		Settings & Actions	
Bond		Bonding company		Date		Settings & Actions	
Investigator		1/10/19		No Felony Priors		Disposition	
Prosecutor		Stella Discovers for Dan Kossman - (M)		Date		Method	
Case Atty/Telephone/App't				Date		Sentencing	
Examining Trial				Date		Sent.	
Grand Jury				Witness to sentencing		P Hamke P Kossman V Isaacks	

**WAS**

Form # CDF-1

MOMOT, COREY DEONTA  
THEFT OF FIREARM

M O M

Scott-Merriman, Inc. 1-800-648-7022



CR-2018-07544-E-WHC-1

EX PARTE	§	IN COUNTY CRIMINAL
	§	
	§	COURT NO. 5
	§	
JASON VAN DYKE	§	DENTON COUNTY, TEXAS

AFFIDAVIT

Before me, the undersigned authority, personally appeared Paul Hiemke, after being duly sworn, did depose and say the following:

“My name is Paul Hiemke and I currently work in the Felony Division of the Denton County District Attorney’s Office as chief of the court in the 362nd District Court. This year, I prosecuted Corey Momot in cause number F19-625-362. Momot was indicted for the offense of Theft of a Firearm, and the victim was Jason Van Dyke. Lauren Marshall handled the intake of the case into our court. The evidence showed that Momot was in possession of Jason Van Dyke’s firearm. We knew this case would be a plea deal because of the issue of sponsoring Van Dyke as a witness when he had pleaded to making a false report to a police officer.

At the announcement for Momot’s case in May, the State offered a plea bargain of 2 years deferred adjudication on a class A misdemeanor theft. The defense attorney, Daniel Kossmann, asked if Momot could plea to burglary of a

motor vehicle. The State agreed to that charge and amended the indictment. Typically, I would not have gone down on the months after the deal was agreed to, but when Mr. Kossman requested 18 months instead of 2 years, I agreed because of the problem of sponsoring Van Dyke as a witness.

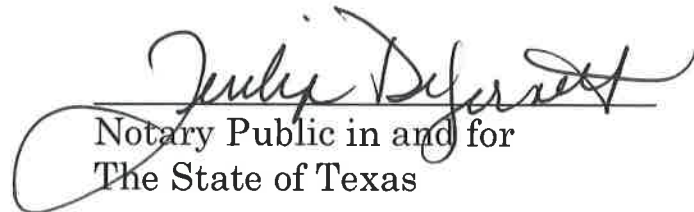
The disposition of this case was not due to any realization or any knowledge that Momot burglarized Van Dyke's vehicle, but instead a plea agreement in order to dispose of Momot's case considering the credibility of the victim in the case."



---

Paul Hiemke  
Denton County Courts Building  
1450 E. McKinney St.  
Denton, Texas 76209

SUBSCRIBED AND SWORN TO before me, this 5th day of December 2019.



Notary Public in and for  
The State of Texas

My Commission expires:

