

CHAPTER 64 MOTIONS AND HEARINGS

ROBERT O. DAWSON CONFERENCE ON CRIMINAL APPEALS

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OVERVIEW

- What should be in your motion.
- What the court and State should do in response.
- What the court must find before testing is ordered.
- What the court must do after the results are returned.
- What some of your options are on appeal.
- Hypotheticals

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ARTICLE 64.01 MOTION FOR FORENSIC DNA TESTING OF EVIDENCE

- Your motion should include:
 - A sworn allegation that evidence exists
 - is in the possession of the State, and
 - there's a reasonable likelihood that the evidence contains "biological material."
- You should also include an affidavit from the convicted person, swearing to what is basically in the motion itself.

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ARTICLE 64.01 MOTION FOR FORENSIC DNA TESTING OF EVIDENCE

- This evidence can be something that was
 - not previously tested,
 - something that was previously tested but there are newer testing techniques available, or
 - something tested at a lab that has now been found to be engaged in faulty testing practices at the time of the original testing.

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ARTICLE 64.01 "BIOLOGICAL MATERIAL"

- An item that is in possession of the State and that contains:
 - Blood, semen, hair, saliva, skin tissue or cells, fingernail scrapings, bone, bodily fluids, or other identifiable biological evidence that may be suitable for forensic DNA testing.
 - This includes the contents of a sexual assault evidence collection kit.
- Items within this definition are now defined as biological material *per se*.
- The movant must still show reasonable likelihood of biological material in the case of other items not specifically listed, like clothing.

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ARTICLE 64.02 NOTICE TO THE STATE

- Article 64.02 requires that the convicting court shall, on receipt of the motion, provide a copy to the attorney representing the State.
- The attorney for the State must then take one of the following actions in response no later than the 60th day after the date the motion is served:
 - 1) deliver the evidence to the court, along with a description of the condition of the evidence;
or
 - 2) explain in writing to the court why the State cannot deliver the evidence to the court.

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