

1 THE ESTATE OF TOMMY MORRISON
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5 *Plaintiff, Personal Representative and
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8 **UNITED STATES FEDERAL COURT**

9 **IN AND FOR THE DISTRICT OF NEVADA - SOUTHERN DIVISION**

10 ESTATE FOR TOMMY MORRISON) Case No.: 2:14-cv-01207-RFB-BNW
Administratrix, Personal Representative,) Judge: Hon. Richard F. Boulware, II
11 Patricia Harding Morrison,)
12) **MORRISON’S REPLY BRIEF**
Plaintiff,) **IN SUPPORT OF MOTION**
13) **FOR DNA / HIV TESTING**
vs.) **ON NEWLY DISCOVERED**
14) **PRESERVED TISSUE BELONGING**
Quest Diagnostics Incorporated; John) **TO TOMMY MORRISON**
15 Hiatt; Dr. Margaret Goodman; Nevada) **AND IN REPLY**
16 State Athletic Commission; Marc Ratner,) **TO DEFENDANTS’**
17 Defendants.) **DOCKETS #326 & #327**
18)
19) **- Trial By Jury Demanded -**

20 **MORRISON’S REPLY BRIEF IN SUPPORT OF MOTION FOR DNA/HIV**
21 **TESTING ON NEWLY DISCOVERED PRESERVED TISSUE**
22 **BELONGING TO TOMMY MORRISON**

23 Plaintiff MORRISON for the Estate of Tommy Morrison respectfully requests that the
24 Court order **DNA/HIV Testing on newly discovered preserved tissue belonging to**
25 **TOMMY MORRISON.**

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Memorandum of Points and Authority

➤ **INTRODUCTION:**

1. Defendants seek to block DNA/HIV testing:

Defendants QUEST DIAGNOSTICS, JOHN HIATT, NEVADA STATE ATHLETIC COMMISSION, DR.MARGARET GOODMAN and MARC RATNER **seek to block DNA/HIV testing**, which as a matter of science (biological evidence), coupled with the undisputed TIMELINE of facts uncovered in this case (*see* dkt#325), could demonstrate TOMMY MORRISON’S innocence of HIV/AIDS and identify Defendants’ 20 years or more of continued fraudulent misrepresentation, negligence, and continuing fraudulent concealment as outlined in MORRISON’S pleadings.

2. Both MORRISON and Defendants seek closure in this case:

Given the nature of Defendants’ conviction, the newly discovered preserved tissue belonging to TOMMY could be the most important evidence to be tested. Testing which Defendants can now perform to actually isolate and photo image the HIV virus itself and all the components of an HIV viral particle, and HIV infection, that Defendants claim to have repeatedly tested for, and diagnosed and treated.

3. Defendants are not in possession of this newly discovered preserved tissue belonging to Tommy Morrison:

The Defendants’ major argument in their opposition is that the Court need not consider MORRISON’S motion because “*Quest Diagnostics has no “preserved tissue” belonging to Tommy Morrison in its possession*”. Dkt#327.Page.3:11-12. Their argument fails as they try and mislead the Court. MORRISON never stated nor asserted at any time

1 that the preserved tissue belonging to Tommy Morrison is in the possession of “Quest
2 Diagnostics.”

3 **4. Defendants wish the Court to sanction MORRISON:**

4 Defendants’ secondary argument in their opposition is that “...such a specimen does
5 not exist. Morrison’s failure to perform ANY investigation of the facts or legal basis for her
6 motions is sanctionable.” Dkt#327. Page.3:27-28. Their argument fails again. MORRISON
7 performed an “investigation”. The outcome of the “investigation” can be read in

8 **EXHIBIT.X.**

9 **5. Preserved Tissue belonging to Tommy Morrison Exists:**

10 MORRISON, in support of this motion for DNA/HIV testing, includes **EXHIBIT.X.**
11 which is composed of communication with the facility that has the preserved tissue
12 belonging to Tommy Morrison. This tissue belongs to TOMMY, and therefore belongs to the
13 Estate of Tommy Morrison, and the Estate has a right to request DNA/HIV testing of this
14 tissue.
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16 **6. Defendants wish the Court to sanction MORRISON again:**

17 **In Docket# 327:** Defendants **QUEST** and **HIATT** in opposing the DNA/HIV
18 testing, rely on 7 pages (*out of 9*) dedicated to a *Countermotion for a prefiling order* and to
19 ensure MORRISON is silenced and sanctioned as a *vexatious litigant*, which have no
20 bearing on the Estate’s Motion for DNA/HIV testing. Defendants however, did not dispute
21 the updated **TIMELINE** in MORRISON’S dkt#325 because the new facts were provided by
22 the Defendants themselves. MORRISON was not vexatious in her filing. This Court
23 reminded MORRISON that “*a movant must not repeat arguments already presented*
24 *unless (and only to the extent) necessary to explain controlling, intervening law or to*
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1 *argue new facts.*” ECF No.324.p.2:22-24. MORRISON believes docket#325 complies with
2 the Court’s reminder. More can be read below on the change in controlling law in this case.

3 **7. Defendants never alleged Mr. Morrison had HIV in 1996:**

4 **In Docket# 326:** Defendants NSAC, RATNER, GOODMAN aka “State Defendants”
5 in their opposition to DNA/HIV testing, opine “*Moreover, the State Defendants never*
6 *alleged that Mr. Morrison had HIV in February 1996.*” Dkt#326.p.2:28;3:25. and offer no
7 explanation as to why, without jurisdiction to do so, they indefinitely, immediately,
8 worldwide, medically suspended TOMMY when “Negative HIV tests” were not part of the
9 Legislative licensing laws. Defendants even *opened the door* to a 2010 application that
10 TOMMY had attempted to submit to be licensed to fight in Nevada. Specific medicals were
11 sent to the NSAC, but the check signed by MORRISON for the application was never cashed
12 by the NSAC. GOODMAN’S media reporting and radio interviews on TOMMY being infected
13 with the HIV virus since February 10th, 1996, still circulated the Boxing world and any
14 attempt at a comeback was intentionally destroyed. Even Tony Holden’s first-hand
15 knowledge of having been told by Defendant RATNER that TOMMY failed his medicals and
16 that TOMMY had HIV...can be seen worldwide on **ESPN30FOR30**. Oddly no mention of
17 NSAC’s **lifting** of TOMMY’S 1996 immediate, indefinite, worldwide, *medical* suspension,
18 was ever mentioned in 2010 by anyone at the NSAC? Oddly no mention between 1996 and
19 August,2020, of: “*Moreover, the State Defendants never alleged that Mr. Morrison had*
20 *HIV in February 1996.*”
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22 **8. Defendants’ opposition to DNA/HIV testing relies on the Courts**

23 **MSJ Court Order of 2016:**

24 Defendants’ repeated reliance on this Court’s Order, the Appellate Court Order and
25 the US Supreme Court’s order is exactly what this Court needs to set aside because neither
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1 did the Judges/Justices in Nevada, Court of Appeals, nor U.S. Supreme Court assess the
2 effect that exculpatory DNA/HIV testing results would have had on Defendants'
3 "overwhelming" evidence. Defendants' "overwhelming evidence" is **now** overwhelming
4 evidence of continuous deceit and deception including the re-writing of Legislative laws to
5 suit their agenda. Indeed, it is no shock that prior opinions from these Courts convicted
6 TOMMY based on the entirety of the false, fraudulent, misleading evidence presented by
7 Defendants and their aggressive defense counsels. The *current* OPINION & ORDER,
8 dkt#277, filed 10/24/2016, is now **replete** with genuine issues of material fact and a change
9 in controlling law.

11 **9. The prior Court's decision is now *contrary* to a controlling change**
12 **in law and genuine issues of material fact exist:**

13 There has been an intervening change in the law. **The controlling Law governing**
14 **this case is now NAC 467.027**. An intervening change in the law creates an exception to
15 the doctrines of collateral estoppel and res judicata. The amendment, alteration,
16 modification or any authoritative interpretation of any law or regulation in this case has
17 been issued by the Nevada State Attorney's Office on February 25, 2020. NRS.469.1005;
18 NRS.467.100(2); NRS.467.1005; NRS.467.100(3); NAC.467.027(3); and NAC.467.027(3)(b)
19 are no longer the "controlling laws" in this case. This case would normally be ripe for
20 reopening and for a trial by jury, but Defendants have threatened MORRISON with sanctions
21 should such a request be made again.

22 **10. Defendants oppose DNA/HIV testing because this case was closed**
23 **because it was time-barred:**

24 Most importantly, the actual discovery of the facts constituting fraud or mistake in
25 this case did not occur until **after** the normal statute of limitations period expired,
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1 **creating delayed accrual**, where the statute of limitations runs from the date/ year on
2 which Defendants actually confessed for the **first time** to: **1.** never having diagnosed
3 TOMMY with HIV using the Elisa or Western Blot blood tests on February 10th, 1996; **2)**
4 never having indefinitely, worldwide medically suspended TOMMY from his career on
5 February 10th, 1996; **3)** that the Legislative Laws that they used and accused TOMMY of
6 having violated never actually existed in 1996; **4)** that the tests Defendants used did not
7 detect nor diagnose the HIV VIRUS; and **5)** that the tests Defendants used also react
8 positive when someone **does not** even have HIV. Defendants could have confessed to all of
9 this in 1996, and even prior to TOMMY's death, but chose to further fraudulently conceal all
10 this not only from TOMMY during his lifetime, but also from his family and fans from 1996
11 to present day, **and** from the highest court in the nation throughout the entire lawsuit
12 between 2014 and 2020. The undisputed, updated TIMELINE in dkt#325 details the
13 date/year of Defendants' confessions. **In Defendants' opposition they ignore the**
14 **relevant changes to this case** that would have led to a **dramatically different**
15 **outcome** in TOMMY'S life, and even in this case.

16
17 **11. Defendants argue that doctrines of collateral estoppel and res**
18 **judicata bar the testing sought in MORRISON'S Motion:**

19 Defendants are wrong. The doctrines do not apply. Controlling facts and legal
20 principles have changed significantly in this case. As a result of the conduct of Defense
21 Counsels and Defendants, MORRISON did not have an adequate opportunity to obtain a full
22 and fair adjudication and the Opinion & Order of the Court resulted in manifest injustice for
23 TOMMY and his Estate. There is a clear and convincing need for a new determination of the
24 issue and by utilizing the remarkable advancements in DNA/HIV testing technologies the
25 ability to get useful results is favored under the **DNA Act**. Courts in other states have stated
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1 repeatedly that former adjudication should not be applied if ‘controlling facts and legal
2 principles have changed significantly.’ In *Bowen ex rel Doe v. Arnold*, the Tennessee
3 Supreme Court recognized Section 28 of the Restatement (Second) of Judgments provides
4 “considerable discretion” for re-litigation where “a new determination is warranted in order
5 to take account of an intervening change in the applicable legal context or otherwise to avoid
6 inequitable administration of laws.”

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8 **12. Defendants’ position that DNA/HIV testing is incapable of yielding**
9 **evidence of TOMMY’S innocence is simply wrong:**

10 DNA/HIV testing has the same capacity here to yield conclusive evidence that
11 TOMMY is innocent. The testing can be performed in 60 days and with an order for testing
12 in early September will yield results by November. DNA testing has experienced significant
13 technological advances in the last 15 years, which allows a forensic examination of even
14 degraded or low-level DNA samples.

15 Scientific validity of TOMMY having HIV AIDS using clinical laboratory reports and
16 testing performed by QUEST and its subsidiaries, was based solely on the word of
17 Defendants’ lab witnesses which is unacceptable under *Daubert*.

18 Moreover, there were no actual blood-stained Western Blot test strips to review and
19 were all either destroyed or concealed despite the testimony of: **“Quest Diagnostics**
20 **denies that it has concealed any information, evidence, or facts from this**
21 **Court.”** *Page.4.4. Defendants Quest Diagnostics Incorporated’s Supplemental Responses*
22 *to Requests For Admissions. Answers to Request for Admission #5. Signed under Oath by*
23 *Attorney Faye D.Caldwell March 17th, 2016.*

1 **14. Defendants claim: “Tommy Morrison was repeatedly tested for,**
2 **and diagnosed and treated for HIV, from 1996 until his death in 2013.”:**
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4 Moreover, the Defendants’ arguments fail when the nature of the summary judgment
5 evidence at issue is considered and calls into question: if **A:** QUEST’s blood tests cannot
6 detect the HIV virus, and **B:** antibodies are not infectious, and **C:** QUEST’s lab reports do
7 not medically determine impairment with HIV, and **D:** the undisputed compelling evidence
8 “**already filed and on the record**” shows an antemortem and postmortem with no viral
9 particles, no abnormalities, no infection/no budding retroviruses, nor virus in the lungs,
10 blood, sputum, sperm, CSF, nor macrophages, and negative for AIDS diseases.

11 Defendants’ “clinical laboratory reports” are inadmissible as evidence under *Daubert*.
12 **False positive** test results affected TOMMY’S life, liberty, and pursuit of happiness, and
13 now his Legacy and the lives, liberty and pursuit of happiness of the members of TOMMY’S
14 Estate. Like-wise the defendants do not dispute, because they cannot, that plants and
15 animals will also test positive on the testing they used on TOMMY, especially humans that
16 suffer oxidative stress disorders.

17 February 10th, 1996 was the centre-piece of the Defendants’ theory of guilt imposed
18 on TOMMY for having HIV and **they did not stop** at TOMMY’S death on September 01st,
19 2013. It is Defendants’ position that only a negative test result could prove that someone did
20 not have HIV, until this case was brought to their attention that **false positives do exist**.
21 (Covid-19 testing requires someone to *test positive for antibodies and negative for the*
22 *VIRUS.*) (QUEST does not test for the HIV VIRUS nor the COVID-19 VIRUS.)

23 Defendants’ “overwhelming evidence” is of blood testing that produces **false**
24 **positives**. It should be noted, again, (and sworn under oath by TOMMY’S two previous
25 wives, and TONY HOLDEN) that not one of the physicians between 1996 and 2012 did
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1 additional testing to determine whether TOMMY’S reaction to QUEST’S testing was due to
2 literally one or more conditions out of a list of 100 that render false positives. Peer reviewed
3 scientific articles uncovered and presented by MORRISON to the Court is overwhelming
4 evidence of Defendants’ **lies by omission.**

5 **15. Defendants Oppose DNA/HIV testing because MORRISON has no**
6 **First Hand Knowledge of the events between 1996 and 2009:**

7 Defendants’ oppositions do not even dispute that they cannot provide any affidavits
8 from any infectious disease physician, nor any physician, of a diagnosis of the HIV nor AIDS
9 in TOMMY between 1996 and 2009, and not even 2009 and 2013. Additional discovery
10 could resolve the factual issues that now exist surrounding the source of **any** diagnosis of
11 HIV AIDS ever made in TOMMY by any reputable and qualified infectious disease
12 physician, virologist, scientist or pathologist of which none of the Defendants, nor defense
13 counsels, nor Tony Holden (TOMMY’S ex-promoter), nor Dawn Freeman and nor Dawn
14 Brady (TOMMY’S ex-wives), qualify for any such position of medical authority to make a
15 determination of an HIV diagnosis in TOMMY at any stage of their relationship with him.
16 MORRISON received her knowledge of no HIV and no AIDS in TOMMY from reputable
17 physicians, pathologists, and scientists in the field of virology for over 30 years in HIV,
18 AIDS, Ebola, and now COVID-19.

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20 ➤ **ARGUMENT**

21 **DNA/HIV TESTING: this Court has sufficient information to grant the**
22 **Estate’s Motion on the pleadings:**

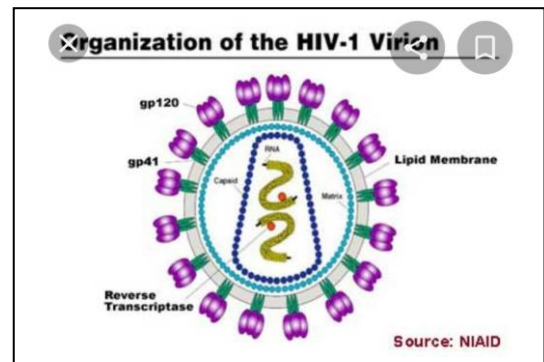
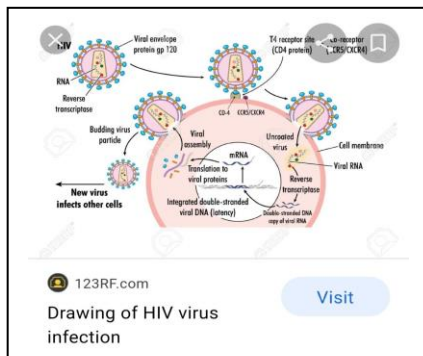
23 **16.** The DNA ACT made clear that DNA evidence is so compelling that even
24 “overwhelming evidence” presented against the Estate is insufficient grounds to deny a
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petition under the DNA Act. Defendants’ “overwhelming evidence” being solely “clinical laboratory reports” authored by the Defendants themselves.

17. Defendants, nor MORRISON waived any right to seek DNA/HIV testing on any discovered tissue belonging to TOMMY. The DNA Act does not contain a waiver provision. MORRISON is not barred by waiver from seeking DNA/HIV testing on TOMMY’S tissue.

18. This Motion is not motivated by delay. Defendants argue that the testing comes too late, but the DNA Act requires that an application for testing be made for the purpose of demonstrating innocence and not to unreasonably delay the administration of justice. Moreover, the DNA Act does not contain a limitations period. A petitioner “may **at any time**, file a petition requesting the forensic DNA analysis of any evidence...” “notwithstanding ...any other provision of law governing post-conviction relief to the contrary.”

19. **DNA/HIV testing:** Documentation shall contain sufficient information to allow a peer to evaluate case notes and interpret the data. Analytical documentation should include procedures, standards, blanks, observations, test results, and supporting documentation including charts, graphs, and spectra generated during the analysis. Only proteins specific to HIV AIDS and the RETROVIRUS/HIV will be isolated, purified, and photo imaged. The complete testing will be video recorded to present in the Court of law.



1 **CONCLUSION**

2 False legislative laws and screening tests now known to have been nonspecific,
3 causing false positives, and **presumptive** as positive for the HIV virus have been entered in
4 as evidence by Defendants. TOMMY MORRISON’S association of guilt by HIV AIDS must
5 be exonerated.

6 For the foregoing reasons, and because **NO SPECIFIC RETROVIRUS HAS**
7 **BEEN IDENTIFIED by the Defendants,** the Court is respectfully requested to order
8 DNA HIV testing on the newly discovered preserved tissue belonging to TOMMY to
9 specifically identify the **retrovirus (HIV)**, and its specific proteins/antibodies, that
10 TOMMY was accused and convicted of having between 1996 and 2013 , by the Defendants.

11 **FALSE POSITIVES = FALSE JUSTICE.**

12 This shall be MORRISON’S, and the Estate of Tommy Morrison’s, final attempt to
13 exonerate TOMMY for the days and nights he was forced to suffer discrimination,
14 defamation, loss of pursuit of life, liberty and happiness, and the right to compete and fulfill
15 his multi-million-dollar contract as a professional heavyweight boxer.

16 Tommy Morrison was wrongly convicted of testing positive for HIV AIDS.
17 MORRISON and the Estate of Tommy Morrison respectfully requests that TOMMY’S own
18 DNA be tested for HIV AIDS on newly discovered preserved tissue belonging to Tommy
19 Morrison.
20

21 DATED: AUGUST ____, 2020

Respectfully submitted by:

22 _____
23 Patricia Harding Morrison,
24 Plaintiff, Pro Se and
25 Personal representative, and
26 Administratrix
For the Estate of Tommy Morrison