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Travis County District Attorney Margaret Moore announced today that she filed a motion to dismiss the cases against Frances and Daniel Keller. The dismissals were granted by Judge Cliff Brown, 147th District Court. Moore stated that, after an extensive review of the record and the law, she made the motion, pursuant to the Tim Cole Act, on the grounds that no credible evidence exists that inculpates the defendants and that she, the state's attorney, believes that the defendants are actually innocent of the crime for which each was sentenced. Moore noted that the term "actual innocence" is a term of art defined by case law and requires an assessment of the evidence used at trial.

Moore stated: "In making this very difficult decision, I personally read the trial and post-conviction transcripts and viewed the evidence introduced at trial. I take seriously my responsibility under Texas law to see that justice is done. Given the current state of the law on actual innocence and the evidence remaining in this case, I believe this to be a just outcome."

The Kellers were released from incarceration in late 2013 on appeal bond pending resolution of a writ of habeas corpus by the Court of Criminal Appeals. The Kellers applied for the writ after the medical doctor who examined the child complainant recanted his trial testimony regarding the existence of physical injuries to the child. The trial court, after hearing the doctor's testimony in a hearing conducted in August, 2013, found the doctor's testimony to be false and material and recommended the relief. The writ was granted on May 20, 2015.

"Without that physical corroboration," Moore said, "and because the victim no longer recalls any of the events of which the Kellers are accused, the cases are not prosecutable and must be dismissed. Moreover, because that medical corroboration was critical to the state's case at trial, it is my conclusion that I am obligated under the provisions of the Act to make this motion."

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