



substantial evidence of manual strangulation prompted the forensic pathologist to collect scrapings from Shelia's fingernails. Furthermore, Shelia's blouse and bra had been pushed up, exposing her breasts, but her pants were completely on and buttoned, meaning the BPD found no evidence (*e.g.*, no ripped clothing, no semen, and no sperm) the perpetrator had tried to sexually assault Shelia. Additionally, before leaving the scene, the perpetrator wrapped an afghan, taken from the nearby couch, around Shelia's head. Lastly, based on statements from Shelia's friends and family, the BPD believed Shelia had a large amount of cash in her white purse on December 20, 1990. When the BPD located the white purse, though, it contained no money. Nothing else, though, was taken from Shelia's apartment.

The Commonwealth believes John Brookins murdered Shelia and a jury convicted him in July 1992 for her murder which brought with it a life sentence with no possibility of parole. The Commonwealth premised its case against Mr. Brookins on circumstantial fingerprint evidence: an FBI fingerprint examiner said she matched a latent print from the bathroom toilet seat, a latent print from the telephone receiver, and a latent print from the remote control to Mr. Brookins. However, despite the wealth of blood evidence at the scene, and the fact blood would have likely transferred to the perpetrator's person or clothing, Mr. Brookins's clothing tested negative for human blood and the Commonwealth presented no eyewitnesses who saw blood on him or his clothing the night of December 20, 1990.

Furthermore, although Shelia was reportedly missing a large amount of cash from her white purse, the BPD found no evidence Mr. Brookins had suddenly come into an influx of cash near the time of Shelia's murder. Moreover, for the last three decades the Commonwealth has been unable to identify a legitimate motive as to why Mr. Brookins would murder Shelia so violently and with so much rage, especially when the scene presented with no evidence suggesting that Shelia's death was a rape-murder. Yes, Mr. Brookins had known Shelia and her daughter, Sharon, for several years, but

Mr. Brookins had only recently been released from a Pennsylvania prison on December 8, 1990 after serving a two-year sentence for a drug conviction, and he had no reason to murder Shelia, particularly in the brutal way she was murdered.<sup>1</sup>

Whoever murdered Shelia knew her and was beyond angry with her for the following reasons:

*First*, Shelia's death was not your run-of-the-mill stabbing murder; it was overkill. The perpetrator used blunt force trauma, manual strangulation, and a pair of scissors to inflict numerous, *unnecessary* wounds. If the perpetrator simply wanted to rob Shelia, there were a myriad of ways to commit a straight-up robbery that did not involve and/or require actual physical harm to Shelia. That did not happen here. Rather, the perpetrator extended his or her time at the scene by inflicting numerous wounds to Shelia *after* she had obviously been incapacitated either from the blunt force trauma, manual strangulation, or the multiple stab wounds to the brain and chest. For some reason, though, the perpetrator felt compelled to inflict these *unnecessary* wounds, even though doing so increased his or her risk of being apprehended because it increased the amount of time he or she remained at the scene. These facts strongly suggest the perpetrator knew Shelia and was quite angry with her for some reason.

*Second*, if this was a straight-up robbery, the fact the perpetrator killed Shelia strongly suggests Shelia knew the perpetrator. For instance, if the perpetrator was a stranger who had learned from the streets that Shelia kept a bundle of cash in her purse, he or she would not have felt compelled to

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<sup>1</sup> At trial, the Commonwealth suggested Shelia was angry at Sharon and Mr. Brookins because Sharon had run up a \$200 phone bill speaking to Mr. Brookins from prison a few months before his release in early December 1990. The Commonwealth also suggested Shelia had demanded the \$200 from Mr. Brookins – and that this money dispute between the two was, perhaps, the reason Mr. Brookins murdered Shelia. NT, Trial, 7/8/1992, pp. 109-110; NT, Trial, 7/9/1992, pp. 97-99. Thus, according to the Commonwealth, Mr. Brookins murdered Shelia because she wanted \$200 from him for the phone bill. With all due respect to the Commonwealth, this so-called motive does not explain the rage used to kill Shelia. Moreover, if Mr. Brookins never paid Shelia the \$200, she had no legal recourse to make him pay any money for the phone bill, meaning Mr. Brookins could have easily ignored Shelia's requests, meaning he had no real motive to kill her. However, as explained *infra*, Sharon, Shelia's daughter, had every reason to kill Shelia and had a documented history of physically and verbally assaulting Shelia when Shelia refused to give her money for food or drugs.

murder Shelia based on Shelia's unfamiliarity with her or him. Put differently, there were a myriad of ways to commit a straight-up robbery that did not involve murdering Shelia.

*Third*, the way the perpetrator murdered Shelia was extremely personal. Manual strangulation, blunt trauma, and stabbing are classic forms of personalized murders, *i.e.*, murders where the perpetrator much encroach on the victim's personal space to commit the murder. Personalized murders generally involve a personal or familial relationship between the victim and perpetrator.

*Fourth*, the BPD found no signs of forced entry, meaning Shelia presumably knew the perpetrator and let him or her into her apartment. The lack of forced entry also strongly suggests the perpetrator was unarmed when he or she entered, meaning the perpetrator presumably did not go to and enter Shelia's apartment with the intent of robbing her. Instead, the perpetrator went to Shelia's for another reason.

*Fifth*, after brutally killing Shelia with numerous unnecessary wounds, the perpetrator felt the need to cover Shelia's face with an afghan. This fact, perhaps more than any other, strongly suggests the perpetrator had a close personal relationship with Shelia. Again, if this was just a run-of-the-mill robbery-murder, why the need to cover Shelia's face with an afghan, when doing so simply increased the amount of time the perpetrator had to spend at the scene, which increased the risk of being apprehended.

*Sixth*, the weapons used by the perpetrator were ones of *opportunity*, meaning the perpetrator used objects inside the scene as weapons, *e.g.*, the trophy and the scissors, meaning the perpetrator went to Shelia's apartment unarmed, meaning the perpetrator presumably entered Shelia's apartment with no desire to rob Shelia because the great majority of robbers use a weapon to help facilitate the robbery. If the perpetrator entered Shelia's apartment with no desire to rob her, something obviously had to have happened between Shelia and the perpetrator because the perpetrator felt the need to bludgeon Shelia with a marble trophy base, manually strangle her with such force to fracture her hyoid

bone, and stab her with such force to penetrate her skull twice and rib cage three times with a pair of scissors. The opportunistic weapons, therefore, strongly suggests Shelia and the perpetrator had some sort of disagreement, and the fact the only thing missing from Shelia's apartment was the large amount of cash in her white purse, strongly suggests the disagreement may have been over the cash in Shelia's purse.

Immediately after Shelia's murder and before Mr. Brookins's trial, each of these facts pointed away from Mr. Brookins, *by a wide margin*, and directly at one person who had the motive, means, and opportunity to murder Shelia: Sharon Ginsberg's – Shelia's daughter.

*First*, Sharon was a prostitute and “crack head” with a proclivity for violence at the time of Shelia's murder who, according to her roommate at the time, was strung out on crack the days leading up to Shelia's murder.

*Second*, multiple people described several instances where Sharon had violently attacked Shelia and others when she had not received what she wanted, particularly money for drugs. Multiple people, in fact, described how Sharon had routinely terrorized and threatened Shelia when she had refused to give her money for drugs.

*Third*, the FBI identified three of Sharon's fingerprints on the metal door jam the BPD had recovered near the front door of Shelia's apartment.<sup>2</sup>

*Fourth*, one of Shelia's best friends, Agnes Wilkie, told the BPD and the District Attorney's Office (“DAO”) how Shelia had been withholding \$50.00 a month from Sharon's welfare check, and saving this money so Sharon would have spending money in Florida when they, *i.e.*, Shelia and Sharon, flew to Florida with Shelia's son, Barry, after the 1990 holidays. Wilkie also explained how Sharon had repeatedly argued with Shelia regarding this money in the weeks and days leading up to Shelia's murder.

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<sup>2</sup> Rpp. 21 to 23.

*Fifth*, multiple witnesses came forward after the murder and (1) reported seeing Sharon at the Lakeview Manner Apartments (“LVM”) on the night of December 20, 1990 with blood on her hands, (2) reported that Sharon had outright confessed to murdering Shelia, or (3) reported that Sharon had made incriminating statements with the clear inference being she had, in fact, murdered Shelia over a money dispute. For instance, Tammy Stroman said Sharon had asked her for a ride to the LVM the night of December 20, 1990. Sharon told Stroman she needed a ride to Shelia’s apartment to “get some money.” Stroman agreed and drove her to the LVM, dropping her off around dusk. An hour or so later, Stroman said she and her boyfriend, Michael, saw Sharon walking along Venice Ashby. They pulled alongside Sharon and asked if she wanted a ride. Sharon said yes and entered Stroman’s car again. Once inside, Stroman asked Sharon if she had got the money “she wanted” from her mother. Sharon said, “Yes, I got the money.” Stroman saw the wad of cash Sharon had and said it was “an inch to an inch and half thick” and comprised of “fifties and twenties.”<sup>3</sup>

Sandy Wilson said she saw Sharon at the LVM around dusk on December 20, 1990, and that a “hysterical” Sharon had blood on her hands.<sup>4</sup> Cathy Rollins corroborated Wilson’s account. Rollins also saw an “extremely nervous” Sharon “pacing back and forth” at the LVM around dusk on December 20, 1990, and she also saw blood on Sharon’s hands.<sup>5</sup>

Patricia Johnson, moreover, said Sharon had come to her apartment on December 21, 1990, around 4:30 a.m., more than fifteen hours before Barry Ginsberg had discovered Shelia’s body, and asked if she (Johnson) had seen Mr. Brookins because she (Sharon) had just learned her mother had been murdered.<sup>6</sup> Likewise, Melinda Hallock said that in spring of 1991, Sharon had told her, “[M]y

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<sup>3</sup> NT, Trial, 7/14/1992, pp. 74-77.

<sup>4</sup> NT, Trial, 7/14/1992, pp. 23-37, 58.

<sup>5</sup> Rpp. 92-93.

<sup>6</sup> NT, Trial, 7/14/1992, p. 112.

mom, I really fucked her up. And I will fuck you up too.”<sup>7</sup> Pamela Holdren was with Hallock during this encounter and heard Sharon admit to “fucking up” her mother.<sup>8</sup>

Despite the substantial evidence strongly suggesting Sharon had brutally murdered Shelia in a fit of rage over a money dispute to fuel her out-of-control drug addiction, the BPD and DAO disregarded these objective incriminating facts and pursued a circumstantial case against Mr. Brookins based on three fingerprints lifted from Shelia’s apartment. This three-decade old murder mystery, however, can be conclusively solved with modern DNA testing because the BPD collected a wealth of evidence that can identify the perpetrator’s DNA and prove, once and for all, Mr. Brookins’s long proclaimed innocence. Put differently, “there is no question that the development of additional evidence — evidence that can be easily obtained by DNA testing — will add to the reliability of the reconstruction of the events of that tragic day.” *Commonwealth v. Conway*, 14 A.3d 101, 112 (Pa. Super. 2011).

The BPD collected over fifty items of evidence from the scene, including (1) a pair of scissors under the coffee table near Shelia’s body, (2) the metal trophy (gold in color) that attached to the marble base, (3) the marble trophy base (used to bludgeoned Shelia), (4) Shelia’s living room carpet, (5) multiple bloodstained tiles from Shelia’s apartment, and (6) the living room sofa cushions that had been strewn about the scene near Shelia’s body.<sup>9</sup> Due to the frequency and ferocity with which the perpetrator struck Shelia with the marble trophy base and stabbed her with at least one pair of scissors, modern DNA testing can identify the perpetrator’s DNA on the scissors embedded in Shelia’s chest and the metal trophy. If DNA testing identifies Sharon’s DNA on one or both items, this would prove Mr. Brookins’s actual innocence. Put differently, if Sharon’s DNA is on the scissors and/or the trophy, it is more likely than not that no reasonable juror on Mr. Brookins’s jury would have found

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<sup>7</sup> NT, Trial, 7/14/1992, p. 123.

<sup>8</sup> NT, Trial, 7/14/1992, p. 154.

<sup>9</sup> Rpp. 7-13, 15.

him guilty beyond a reasonable doubt. *Commonwealth v. Conway*, 14 A.3d at 109 (quoting and relying on the “actual innocence” standard articulated in *Schlup v. Delo*, 513 U.S. 298, 327 (1995)).

Likewise, the forensic pathologist who performed Shelia’s autopsy, Dr. Fillinger, collected the (1) scissors embedded in Shelia’s chest, (2) the afghan, (3) Shelia’s blouse, (4) Shelia’s shirt, (5) Shelia’s bra, and (6) scrapings from Shelia’s ten fingernails.<sup>10</sup> The perpetrator stabbed Shelia with the scissors, pushed up her blouse, shirt, and bra, and manually strangled her. If DNA testing identifies Sharon’s DNA on one, two, three, four, five, and/or all six items, this would prove Mr. Brookins’s actual innocence.

Likewise, the FBI collected numerous hairs and hair fragments from Shelia’s shirt, sweater, the afghan, the sofa cushions, and the carpet, fourteen of which the FBI characterized as being Negroid hair fragments. The FBI, though, never associated these hair fragments with Mr. Brookins. Moreover, Sharon Ginsberg is mixed race, *i.e.*, Caucasian and black. At trial, the FBI hair examiner claimed he had excluded Sharon as a possible contributor of these Negroid hair fragments, but admitted he had never compared Sharon’s hair samples to the numerous non-Negroid hairs and hair fragments collected from the above items because he had returned these non-Negroid hairs and hair fragments to the BPD before the BPD had sent him Sharon’s hair samples. If DNA testing links Sharon to some or all these non-Negroid hairs and hair fragments, particularly those recovered from Shelia’s clothing and the afghan, this would prove Mr. Brookins’s actual innocence.

Furthermore, the BPD seized Shelia’s white purse, *i.e.*, the purse friends and family believed Shelia kept a large sum of cash in.<sup>11</sup> If DNA testing identifies Sharon’s DNA on the white purse, this would prove Mr. Brookins’s actual innocence.

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<sup>10</sup> Rpp. 5-6.

<sup>11</sup> Rp. 80.

Lastly, shortly after Shelia's murder, Paul Cottman, Sharon's boyfriend at the time of Shelia's murder, found a pair of red gloves under the passenger seat of his car. Cottman believed Sharon had used these gloves to murder Shelia and had planted them in his car to frame him. The BPD collected the red gloves.<sup>12</sup> If DNA testing identifies Shelia's blood on the gloves and Sharon's DNA on the inner part of the glove, *i.e.*, wearer DNA, this would prove Mr. Brookins's actual innocence.

In the end, Mr. Brookins is entitled to post-conviction DNA testing because he identifies the evidence he wishes to test, the BPD collected the evidence in connection with Shelia's murder investigation, the DAO used this evidence in its prosecution of Mr. Brookins, and Mr. Brookins articulates multiple actual innocence theories based on modern DNA testing. The easiest innocence theory being a redundancy theory – which the Superior Court recognized as a legitimate innocence theory in *Conway. Commonwealth v. Conway*, 14 A.3d at 110. Mr. Brookins's case is factually congruent with *Conway*,<sup>13</sup> where Robert Conway obtained DNA testing for a 1986 stabbing murder based, in part, on a redundancy theory. Here, if Sharon's DNA is on, *inter alia*, the scissors embedded into Shelia's chest, the metal trophy, and Shelia's clothing, and mixed in with Shelia's fingernail scrapings, this redundant result would prove Mr. Brookins's actual innocence.

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<sup>12</sup> Rpp. 16-20.

<sup>13</sup> Counsel (Cooley) was lead counsel in *Conway*, and argued it before the Superior Court, having represented Mr. Conway for several years while working with the New York Innocence Project.

**SHARON GINSBERG'S DRUG ADDICTION AND PROCLIVITY  
TO VIOLENTLY ATTACK PEOPLE, ESPECIALLY SHARON**

Before Mr. Brookins's trial, the BPD, DAO, and trial counsel interviewed numerous witnesses who described, in detail, Sharon's out-of-control drug habit at the time of Shelia's murder and her proclivity to react violently when she did not get what she wanted, particularly when she wanted money from Shelia or someone else to buy drugs. These witnesses, notably, were those closest to Shelia and who knew the true dynamics of Shelia's relationship with Sharon.

**A. Barry Ginsberg**

The BPD interviewed Barry Ginsberg, Shelia's son and Sharon's half-brother, on December 21, 1990. In his statement, Barry described Sharon as "a drug abuser" and said Shelia and Sharon had frequent "fights... over money."<sup>14</sup> The BPD re-interviewed Barry on January 9, 1991,<sup>15</sup> where he identified Agnes Wilkie as a close friend of Shelia's. The BPD report summarized Barry's description of a violent argument between Sharon and Shelia that had occurred Christmas of 1988:

Barry related that two Christmas[es] ago there was a police report that he and Sharon had gotten into an argument. During the course of the argument Sharon pulled a knife, which was a weapon of opportunity, and she went after Barry with the knife. Barry stated that he had to wrestle with Sharon to get the knife off of her. He also stated that there was another incident where he and one of his friends came to his mother's apartment where Sharon began to act out and that she went into the parking lot of Lakeview Manor and proceeded to break out the windows in not only his vehicle but his friend's vehicle.<sup>16</sup>

Barry also said he "believe[d]" Sharon had been "addicted" to drugs for "fourteen years" and was now using "crack" and "cocaine" as her "substance of choice." Barry said Sharon received "psychological" and "substance abuse" treatment, but once she completed her treatment programs, she always returned to Shelia's and "ask[ed] for money" and/or "took food" from Shelia's house.

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<sup>14</sup> Rp. 40.

<sup>15</sup> Rpp. 41-43.

<sup>16</sup> Rpp. 41-43.

In November 1990, a month before Shelia's murder, Barry said Shelia had called him and told him she and Sharon had a "violent argument," but Barry could not recall what prompted the argument. Barry also said he had purchased airline tickets for Shelia and Sharon so they could travel back with him to Florida after the 1990 holidays. He had purchased the tickets primarily for Sharon, so "he could get her away from the drug influence and so she could get into a rehab and straighten her life out[.]" Shelia, however, argued against taking Sharon to Florida. Shelia told Barry that she had told Sharon "she had... better get a job because" she and Barry were not going to give her spending money in Florida.<sup>17</sup>

In May 1990, Barry sent a Mother's Day card to Shelia, but the message inside the card focused on Sharon's drug abuse and destructive decision-making:

Dear mom,

Please give Sharon this letter & check read it to hear [sic] and cash her check for her. I know it is tough for you to court order her into treatment but, you have to no matter what. She has a disease that is progressive and if she doesn't get help she'll die or get arrested after loosing housing, welfare, and Ricky. I love her to [sic] much to see any of that happen to her and I'll do what ever it takes to prevent it. Of course she will hat you she hates herself more. I hope you have a great Mother' Day. Here is some... pictures from when you were here.

With love always

Barry G. xoxo<sup>18</sup>

## **B. Agnes Wilkie**

Barry, as mentioned, identified Wilkie as one of Shelia's closest friends. Defense investigators interviewed Wilkie multiple times before trial. In a June 3, 1992 interview, Wilkie said, "Sharon was the worst daughter a mother could have."<sup>19</sup> Wilkie said Shelia had repeatedly told her that Sharon had

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<sup>17</sup> Rpp. 41-43.

<sup>18</sup> Rpp. 81-82.

<sup>19</sup> Rpp. 49-51.

frequently stole food and money from her (Shelia). Wilkie also said, “All her life Sharon was violent and out of control” and that Shelia “had [Sharon] committed for taking dope.” Wilkie also said, “We [the LVM residents] all thought it was Sharon who killed her mother.”

In early December 1990, before Shelia and Sharon’s Florida trip with Barry, Shelia told Wilkie she had been withholding money from Sharon’s welfare checks and saving this money for their Florida trip so Sharon would have spending money. This, however, angered Sharon greatly, prompting her to repeatedly ask Shelia for the money so she could buy “dope.” Wilkie said Shelia and Sharon frequently “fought over” this money. Wilkie also said Shelia had received additional money the week of her murder because she “got paid” on Tuesday, December 18, 1990, which was the last day Wilkie spoke with Shelia.

In a June 4, 1992 interview, Wilkie said, “Sharon and Shelia had real fights. They hit each other. Sharon had a temper.” Wilkie added, “When Sharon demanded her money back that Shelia was keeping for her trip to Florida, I told Shelia to give it back to her, they fought about the money. Sharon wanted it back.” Wilkie also said she “heard” Sharon worked as a prostitute and often met men at the BPT.<sup>20</sup>

In a post-conviction interview on October 15, 2001, Wilkie explained how she had told ADA Diane Gibbons about Sharon’s violence toward Shelia. Wilkie said ADA Gibbons interviewed her in trial counsel’s presence at the courthouse during Mr. Brookins’s trial. When Wilkie told ADA Gibbons “how violent Sharon Ginsberg was toward her mother,” ADA Gibbons said, “Sharon [isn’t] on trial here, John is on trial,” and “became very intimidating.”<sup>21</sup> Wilkie also reiterated, “[N]o one believed that John Brookins murdered Shelia.” Instead, “everyone believes it was Sharon” and that Sharon had murdered her over the money Shelia was withholding from her for their Florida trip.

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<sup>20</sup> Rpp. 52-53.

<sup>21</sup> Rpp. 54-57.

Wilkie also said that, in the months leading up to her murder, Shelia had told her she “had become more and more frightened of Sharon and was in fear of her safety” because “Sharon had gotten out of control from her drug addiction.” Wilkie said Shelia could “no longer handle” her drug addiction and violence. Wilkie also said Shelia, at one point, had wanted to move in with her because she was “afraid” of Sharon. Wilkie said she did not want Sharon in her home because of her violence towards Shelia and drug addiction. Wilkie said Shelia once spent two nights with her because she was “afraid” Sharon would go to her apartment and ask her for money.

### **C. Roy Jennings**

Jennings was another close friend of Shelia’s who lived upstairs from her. The BPD interviewed Jennings on December 21, 1990. When detectives asked if Shelia had “problems with anyone, which might result in violence,” Roy mentioned one person: Sharon. He said Sharon went to Shelia’s apartment “several times a week” for money. Jennings explained how Sharon had come to Shelia’s apartment on Sunday, December 16, 1990 and argued with her “over money.” Shelia told Sharon she “wasn’t going to sponge off” her and Barry in Florida. Jennings said he had told Shelia “not to trust” Sharon because of her drug use and the fact she had stolen things from her in the past.<sup>22</sup>

### **D. Paul Cottman**

Cottman dated Sharon at the time of Shelia’s murder. The BPD interviewed Cottman on March 20, 1991, where he described Sharon’s actions on December 21, 1990.<sup>23</sup> Cottman went to Sharon’s residence (1713 Foster Avenue, Bristol, PA) at 12:30 p.m. on December 21, 1990 and found Sharon on the living room couch sleeping. He woke her up and they watched soap operas until 3:00 p.m., at which point Sharon had what Cottman called a “crack-attack” and demanded money from Cottman so she could buy crack. When Cottman refused, she said, “Fucking dick, you won’t give me

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<sup>22</sup> Rpp. 44-46.

<sup>23</sup> Rpp. 17-20.

the money.” Cottman said Sharon took a shower and left a 5:30 p.m. to go to Shelia’s house to get the money.

In a June 13, 1992 interview, Cottman said, “I saw [Sharon] hit her mom when we first went out about the second month of 1990... Her mom wouldn’t give her meat out of her mom’s freezer.”<sup>24</sup>

In a March 10, 2001 interview, Cottman reiterated he first witnessed Sharon’s violence toward Shelia early on in their relationship.<sup>25</sup> He said the “first time” he saw Sharon “strike” Shelia was during a dinner at Shelia’s apartment. Sharon had asked Shelia for money, Shelia said no, and Sharon “pushed and punched” Shelia until he intervened and stopped Sharon from “striking” Shelia. Cottman said Sharon “had a violent and destructive temper” and described a situation where Sharon and his wife, Lorraine, got into “an exchange of violent words,” and after the argument, Sharon “took a lawn mower blade” and “attempted to stab” Lorraine. Cottman said Sharon had “constantly threatened” and “harassed” Lorraine.

After he broke up with Sharon, she “constantly terrorized” him, *e.g.*, she routinely came to his and Lorraine’s matrimonial home “in the middle of the night” and “whistled” for him, and when he refused to respond, she threw “glass bottles” at his car. Cottman also described an incident where, after getting into an argument with Sharon, Sharon had a “Jamaican male friend stab [him] in the face with a knife ring.” He said Sharon “stood by and laughed.” Cottman said police frequently arrested Sharon for prostitution, but someone “mysteriously” bailed her out of jail every time.

#### **E. Daniel Lyden**

In a January 15, 1992 interview, Lyden said he had known Sharon since she was nine.<sup>26</sup> He was living with Sharon (1713 Foster Circle, Bristol, PA) at the time of Shelia’s murder. Lyden said Sharon “was a prostitute and coke/crack user and dealer” – who “often” had more than twelve

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<sup>24</sup> Rpp. 83-86.

<sup>25</sup> Rpp. 63-66.

<sup>26</sup> Rpp. 67-74.

“visitors” a day. In days leading up to Shelia’s murder, Lyden said Sharon “was strung out on drugs and had not slept in three days.” Lyden said, “Sharon was constantly high on drugs and she had a very bad temper.” He also said Sharon was “very violent” and “would kill if she was high” because “she just didn’t give a shit.” Lyden described an incident where Sharon went “after a neighbor with a piece of pipe” and another incident where Sharon “went after a guy inspecting the house with a knife.”

On December 21, 1990, Lyden said Sharon had left the house in the late afternoon and had told him she was going to Shelia’s house to “pick up some money that she had left with [Shelia] the day before.” He said Sharon “often” went to Shelia’s house and stole meat, groceries, and money. Lyden knew Shelia quite well and said she never left money “laying around” her apartment “for fear” Sharon would steal it. On December 21, 1990, when Paul Cottman and BPD officers had told Sharon about Shelia’s murder, Lyden said Sharon “acted like she was upset,” but she “didn’t shed a tear.” Lyden said, “I think [Sharon] killed [Shelia] and so do a lot of other people.”

#### **F. Betty and Domenic Marucci**

Sharon has a son named Ricky. Sharon lost or gave up custody of Ricky multiple times before Shelia’s murder. Betty and Domenic Marucci frequently served as Ricky’s foster parents during these times. The BPD interviewed the Marcuccis on January 2, 1991.<sup>27</sup> During the interview, the Maruccis described how they had frequently seen and interacted with Sharon when she was high or strung out.

In a June 3, 1992 interview, Betty again explained how Sharon had repeatedly lost custody of Ricky because of her drug abuse. Beth, though, said she was “surprised” the BPD had not arrested Sharon for Shelia’s murder. She also said Shelia “would never open up her door to anyone unless she knew them.”<sup>28</sup> She said Sharon always went to Shelia’s to borrow money, ask for food, or use Shelia’s car and that she “always” stole from Shelia.

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<sup>27</sup> Rpp. 87-89.

<sup>28</sup> Rpp. 90-91.

In a July 17, 2002 interview, Betty said Sharon's son, Ricky, had come to live with her and her husband in the spring of 1985, after Sharon had struck Ricky in the back of the head with an iron, causing permanent blindness in one eye. Ricky was three at the time.<sup>29</sup> Betty said Shelia had called her on December 19, 1990, the day before the murder, and told her Barry's holiday visit. Shelia told Betty she wanted to have a nice Christmas, not like past Christmases where Sharon got drunk and high and caused trouble for everyone, ruining the holidays. Betty also said she was "well aware" of Sharon's "severe drug problem" and that she had been arrested "several times" for prostitution. Betty was also aware of the "physical abuse" Sharon inflicted on Ricky. Likewise, Betty said Shelia had repeatedly told her how Sharon knew when her (Shelia's) "checks" arrived each month, and that Sharon always went to her (Shelia's) house on these days and demanded money from her. When Shelia refused to give her money, Sharon always became "violent towards" her.

On December 21, 1990, the day Barry found Shelia's body, Betty said Detective Al Eastlack and another BPD officer came to her home, told her about Shelia's murder, and said they suspected Sharon would attempt to kidnap Ricky. Betty said it was apparent the BPD viewed Sharon as "the primary suspect" in Shelia's murder. A day or two before Shelia's funeral, Betty said the BPD had called and told her she could take Ricky to the funeral, but the BPD feared Sharon might kidnap Ricky at the funeral. The officer who had called, though, reassured Betty not to worry because the BPD would have plenty of plain-clothed officers at the funeral.

Once the BPD had notified Betty of Shelia's murder, she "immediately" suspected Sharon "because of her violent history." After Mr. Brookins's trial, Betty "heard" Sharon had become an "informant" for Detective Al Eastlack, that the two were "having an affair," and that both moved to Florida after the trial.

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<sup>29</sup> Rpp. 101-102.

## **G. Marjorie Kaplan**

Kaplan worked as a “barmaid” at the BPT. The BPD interviewed her on March 20, 1991 and March 22, 1991.<sup>30</sup> Kaplan said Sharon was prostituting at the BPT. Kaplan said she was afraid of Sharon “because of her quickness to violence.” Kaplan said Sharon had frequently talked about the violence she had committed against others, like throwing an ax through some woman’s window. Kaplan described Sharon as someone who could “quickly” turn off and on her emotions, but that many of her emotions were exaggerated and false. Kaplan also said Sharon had frequently asked her for money under the guise she needed money for her son Ricky, but Kaplan did not realize Sharon had lost custody of Ricky. When Kaplan learned Sharon had hoodwinked her, she “confronted” Sharon and told her she would no longer give her money.

On the day of Shelia’s viewing, Kaplan said she spoke with Sharon at the BPT, who said “a lot of people” had accused her (Sharon) of killing Shelia. During this same conversation, Kaplan asked Sharon “about the murder,” and Sharon replied that “the police” had a “prime suspect” and that the “prime suspect” was Shelia’s “boyfriend.”

In a July 7, 1992 interview, Kaplan said she frequently heard Sharon say she “wanted to kill somebody or hurt somebody.”<sup>31</sup> Kaplan also said Sharon was a crack addict and “hooker” who “solicit[ed]” men outside the BPT.

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<sup>30</sup> Rpp. 58-60.

<sup>31</sup> Rpp. 61-62.

**SHARON GINSBERG'S ADMISSIONS, INCRIMINATING STATEMENTS, AND  
INCRIMINATING WHEREABOUTS ON DECEMBER 20, 1990**

According to several people, Sharon admitted to murdering Shelia or made statements clearly suggesting she had murdered Shelia. Likewise, other people placed Sharon at LVM at or near the time of Shelia's murder on Thursday, December 20, 1990.

**A. Tammy Stroman**

Stroman testified on Mr. Brookins's behalf at trial. She said on December 20, 1990, around dusk, she picked up Sharon at the corner of Lloyd and Venice Ashby. Sharon said she needed a ride to Shelia's house to "get some money." Stroman drove Sharon to LVM. An hour or so later, Stroman said she and her boyfriend, Michael, saw Sharon walking along Venice Ashby. They pulled alongside her and asked if she wanted a ride. Sharon said yes and entered Stroman's car again. Once inside, Stroman asked if she had got the money "she wanted" from her mother. Sharon said, "Yes, I got the money." Stroman saw the wad of cash Sharon had and said it was "an inch to an inch and half thick" and comprised of "fifties and twenties."<sup>32</sup>

**B. Sandy Wilson**

Wilson testified at Mr. Brookins's trial. Wilson said she was at LVM around dusk on December 20, 1990 smoking cocaine with Tony (LNU) - a white Italian man - in front of one of the LVM buildings to the right.<sup>33</sup> She said it was not "completely dark yet" or "dark dark," but it was "fairly dark."<sup>34</sup> Her and Tony had been at LVM for ten minutes when she saw Sharon "running around the building coming from the left side of the building with blood on her hands."<sup>35</sup> She got a "good look" at Sharon's hands and she definitely saw blood on them. She described the blood as

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<sup>32</sup> NT, Trial, 7/14/1992, pp. 74-77.

<sup>33</sup> NT, Trial, 7/14/1992, pp. 23-24, 26.

<sup>34</sup> NT, Trial, 7/14/1992, pp. 25, 28.

<sup>35</sup> NT, Trial, 7/14/1992, pp. 25, 28.

“partially dry” with some “still... wet.”<sup>36</sup> She said it looked like Sharon has wiped her bloody hands on her pants.<sup>37</sup> When Sharon approached her and Tony, Wilson told her, “You better hope you haven’t done anything or you’re going up shit’s creek without a paddle.” To which Sharon replied, “Oh, fuck you.”<sup>38</sup> Wilson described Sharon as “hysterical” because she kept holding her hands up to her face.<sup>39</sup> Wilson said she and Tony left LVM shortly thereafter. After learning of Shelia’s murder, Wilson said she had a conversation with Sharon where she asked her why she had killed “her mother.” Sharon replied, “I wanted to get high... [and] that bitch needed to die.”<sup>40</sup>

### **C. Cathy Rollins**

Trial counsel learned of Rollins and had her brought to trial to testify, but he never called her as a defense witness. In a December 12, 2002 interview, Rollins described what she would have testified to had trial counsel called her as a witness.<sup>41</sup> According to Rollins, she went to LVM the night of December 20, 1990. When she parked and exited her car, she saw Sharon “standing under a tree with a few other people,” Sandy Wilson being one and a white man being another. Rollins did not know the white man. Rollins went into one of the LVM apartments for five to ten minutes, and when she exited, she approached Sharon and the others who were near the tree. Rollins described Sharon as “extremely nervous” because she was “pacing back and forth,” “cursing,” and “shouting obscenities.”

Sharon asked her for a ride, but the other people, including Sandy Wilson, shook their heads “no,” meaning they did not want Rollins giving Sharon a ride based on how she was acting. Rollins eventually looked at Sharon’s hands and saw what she believed to be dried blood on her hands and shirt. Rollins said it was not a lot of blood, but said it looked as if Sharon has tried wiping the blood

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<sup>36</sup> NT, Trial, 7/14/1992, p. 32.

<sup>37</sup> NT, Trial, 7/14/1992, p. 32.

<sup>38</sup> NT, Trial, 7/14/1992, pp. 32, 37.

<sup>39</sup> NT, Trial, 7/14/1992, p. 30.

<sup>40</sup> NT, Trial, 7/14/1992, p. 10.

<sup>41</sup> Rpp. 92-93.

off her hands. Rollins asked Sharon why she had blood on her hands. Sharon said she had cut herself pushing her crack pipe. Sandy Wilson again told Rollins not to give Sharon a ride. Rollins ultimately did not give Sharon a ride when she left LVM. Once Rollins learned of Shelia's murder a few days later, she immediately recalled the blood on Sharon's hands and realized Sharon was very likely the person who had murdered Shelia.

#### **D. Florence Barrole**

Through investigation, trial counsel learned of Barrole and an incident that occurred between Barrole and Sharon in late December 1990 – after Shelia's murder. According to Barrole, she, Lisa Crotta, and Tammy Stroman went to a “speak easy” in “the Terrace.” As they exited the speak easy, they ran into an “angry” Sharon, who told them someone had sold her “fake crack.” So angry was she, Sharon said, “I could kill that bitch [*i.e.*, the woman who had sold her the fake crack] and if I could kill my own mother, I'd [*sic*] could kill that bitch.”<sup>42</sup>

#### **E. Melinda Hallock and Pamela Holder**

##### **1. Melinda Hallock**

Through investigation, trial counsel learned of Hallock and an incident that occurred between Hallock, Pamela Holdren, and Sharon at the BPT in the spring of 1991 – after Shelia's murder. According to Hallock, on the night in question, Sharon had seen her (Hallock) in the BPT parking lot while walking across the parking lot from 7-11. Sharon “was hollering,” “screaming,” and “pointing her finger” at Hallock as she accused her “of something.” As Sharon walked closer to her, Holder intervened and pushed Sharon “up against the wall and said, “Look, sister... stop it or calm down.” This prompted Sharon to repeatedly say, “My mom, I really fucked her up. And I will fuck you up to [*sic*].”<sup>43</sup> At trial, Hallock said, “I know what she was talking about. She was talking about the murder

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<sup>42</sup> NT, Trial, 7/14/1992, p. 178.

<sup>43</sup> NT, Trial, 7/14/1992, p. 123.

of her mother.”<sup>44</sup> Holder eventually let Sharon go, and she stormed off. Holder then turned to Hallock and said, “Did you hear what she said to me? She just said that she killed her mom.”<sup>45</sup>

## **2. Pamela Holder**

Holder also testified at Mr. Brookins’s trial and mimicked Hallock’s account of the BPT incident with Sharon. Holder worked as a BPT “dancer.” When she arrived at the BPT the night of the incident, Hallock had approached her and said, “[Sharon] is going to stab me.”<sup>46</sup> At this point, Holder approached Sharon and said, “What’s your problem?” Sharon replied, “I am going to fuck Mindy up.” Hallock went by Mindy. Sharon then said, “I am going to fucking stab her,” and said either “I stabbed my fucken grandmother” or “I stabbed my damn mother” and “I’ll stab her, too.” Holder was certain she clearly heard Sharon say, at least once, “I stabbed my mother and I’ll stab her, too.” She also heard Sharon say, “I fucken killed her and I put her down.”<sup>47</sup>

Holder added, “[Sharon] was so mad at Mindy because Mindy went to [Sharon’s] boyfriend’s house and was partying with them, getting high, and she thought that Mindy wanted her boyfriend and she wanted to stab Mindy and she was serious.”<sup>48</sup> At the very end of her direct-examination, Holder said, “[F]or the record[,] when I do swear on the Bible, I am telling the truth, everything I’m saying. I’m not lying.”<sup>49</sup>

## **F. Patricia Johnson**

Through investigation, trial counsel learned of Johnson and an incident that occurred during the early morning hours of December 21, 1990 – well before Barry Ginsberg had discovered Shelia’s body. In December 1990, Johnson lived with her son, daughter, and boyfriend, Tony Jackson, at 2110 Foster Avenue Circle in Bristol. Tony Jackson and Mr. Brookins are first cousins, so Johnson knew

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<sup>44</sup> NT, Trial, 7/14/1992, p. 123.

<sup>45</sup> NT, Trial, 7/14/1992, p. 124.

<sup>46</sup> NT, Trial, 7/14/1992, p. 153.

<sup>47</sup> NT, Trial, 7/14/1992, pp. 153-154.

<sup>48</sup> NT, Trial, 7/14/1992, p. 154.

<sup>49</sup> NT, Trial, 7/14/1992, p. 155.

Mr. Brookins. She also knew Sharon. Johnson said she worked from 3:30 p.m. (on December 20, 1990) until 12:30 a.m. (on December 21, 1990).

After work, Johnson returned home, arriving at approximately 1:00 a.m. on December 21, 1990. Once home, she and Tony talked about their Christmas plans before retiring for the night. However, between 4:30 and 4:40 a.m., someone knocking on their front door woke them. It was Sharon. Tony answered the door and asked Sharon why she was knocking on his door so early in the morning. Sharon replied, "Have you seen Johnny?" Tony replied, "No. Why? And what are you doing here this time of morning?" Sharon replied, "Well, my mother's been murdered. She was stabbed in the chest with a pair of scissors."<sup>50</sup> This was some fifteen hours before Barry Ginsberg found Shelia's body at 7:15 p.m. on December 21, 1990.

## **G. Pamela Simmers**

### **1. November 24, 1991 statement**

On November 24, 1991, a Bucks County Jail ("BCJ") inmate named Pamela Simmers wrote and filed an "Inmate Request Form," wherein she described a conversation she had had with Sharon at the BCJ during the fall of 1991.<sup>51</sup> In her request, Simmers said, "I need to find out how to get ahold of a lawyer of an inmate name[d] John Brookins." Simmers then wrote a "girl" named "Sharon" had told her that she had "kill[ed] her mother" by "stabbing" her because "she wanted money for drugs." Simmers also wrote, "[Sharon] kept saying I can't believe what I did."

### **2. December 16, 1991 statement**

In a December 16, 1991 interview, Simmers said her conversation with Sharon had occurred in the BCJ dayroom when Sharon was French braiding her hair.<sup>52</sup> While French braiding her hair, Simmers said Sharon began "sobbing." When Simmers asked her what was wrong, Sharon said, "I

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<sup>50</sup> NT, Trial, 7/14/1992, pp. 111-112.

<sup>51</sup> Rpp. 103.

<sup>52</sup> Rpp. 104-105.

can't believe I did it." When Simmers asked what she had done, Sharon replied, "I killed my mother." Simmers initially believed Sharon's mother had died of natural causes and that Sharon simply believed she had something to do with her mother's passing. When Simmers said, "I know how you fell," Sharon replied, "No, I really killed my mother." When Simmers replied, "What do you mean?" Sharon said, "I stabbed my mother with a pair of scissors," and then said, "I needed money for drugs." Sharon then said, "I kept stabbing her, I can't believe I did that."

Once Sharon had calmed down, Simmers asked her how she had "got caught." Sharon said a friend had helped her move the body and had called the police, but in doing so her friend's fingerprints had "got on the phone." When their time in the dayroom was over, and both were ready to walk back to their cells, Sharon said, "They probably can't pin it on me."

### **SHARON GINSBERG'S STATEMENTS TO THE BPD**

#### **A. December 24, 1990**

On December 24, 1990, the BPD interviewed Sharon, who said she was home (1713 Foster Circle) with Daniel Lyden at approximately 2:00 p.m. on (Thursday) December 20, 1990. At some point that afternoon, she smoked a joint and went to the BPT. At approximately 9:30 p.m., she said she called Shelia from the BPT. Sharon told the BPD it did not "sound as if" Shelia was drinking when they talked. Shelia allegedly told Sharon she was going to Ft. Dix the next day (Friday – December 21, 1991) with Roy Jennings. Shelia also allegedly told Sharon she was watching T.V. and was in for the night. Sharon mentioned nothing about discussing Barry's arrival with Shelia. After speaking with Shelia, Sharon said she had a few more drinks and went home where she arrived at approximately 1:00 a.m. (December 21, 1990).<sup>53</sup> Sharon mentioned nothing about hitchhiking back home, then hitchhiking back to the BPT for more drinks, and then hitchhiking back home once more that night.

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<sup>53</sup> Rpp. 94-95.

Sharon said she woke up at 5:00 p.m. on December 21, 1990 and walked to Shelia's apartment. When she arrived, she said Shelia's apartment door was locked and Shelia's car was not in the LVM parking lot. Sharon said she went to Shelia's to retrieve \$50.00 "of her money" Shelia was "holding" for her. Sharon said Shelia's apartment was dark and quiet and she did not hear a radio or T.V. on inside the apartment.

**B. April 19, 1991**

The BPD re-interviewed Sharon on April 19, 1991.<sup>54</sup> At the outset, Sharon repeatedly asked if the BPD had "found anything" inside Shelia's apartment. When detectives asked what she was referring to, Sharon said she had "heard" the BPD found hairs at the scene. When asked to explain her whereabouts on (Thursday) December 20, 1990, Sharon again placed herself at the BPT making a call to Sharon between 9:30 p.m. and 10:00 p.m. This time, though, she said she had called Shelia to see when Barry was arriving the next day (December 21, 1990). She also said Shelia had asked her to come to her apartment the next day, before 6:00 p.m., so they could ready the apartment for Barry's arrival. Shelia also allegedly told her she was going to Ft. Dix the next day with Roy Jennings. After finishing her call with Shelia, Sharon said she ordered and ate two ham and cheese sandwiches at the BPT, before "thumbing" a ride home around midnight. She said her "boyfriend," Paul Cottman, was at her house when she arrived home. Sharon stayed at home for ninety minutes or so before "thumbing" a ride back to the BPT at 1:30 a.m. (December 21, 1990) Sharon said she spoke with Bonnie, a barmaid, until 2:00 a.m., when she "thumbed" another ride back to her house, where she stayed the remainder of the night.

On December 21, 1990, Sharon said she awoke before 5:00 p.m. because she said she had walked to Shelia's apartment that afternoon, arriving between 5:00 p.m. and 5:30 p.m. She said Paul Cottman was at her house when she left to walk to Shelia's. Unlike her first statement, where she said

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<sup>54</sup> Rpp. 96-98.

she did not see Shelia's car in the LVM parking lot, this time Sharon said she saw Shelia's car in the parking lot. She said she did not see any lights on inside, nor hear or see a T.V. playing. She said she knocked on Shelia's front door, but no one answered. Unlike her first statement, where she said the door was locked, Sharon hedged this time and said she "halfheartedly tried the door and thought it was locked."

Assuming Shelia was somewhere in the LVM, because her car was in the parking lot, Sharon said she went upstairs to (presumably) talk with Roy Jennings. Unfortunately, counsel is missing page three of Sharon's April 19, 1991 statement. Page four of the statement mentioned something about Sharon refusing to take home a pair of scissors Shelia had bought for her because she (Sharon) did not want her son, Ricky, to play with scissors.

### **C. June 15, 1991**

The BPD arrested Sharon on drug charges on June 15, 1991. Once detained, Sharon gave a statement from her living room at 1713 Foster Avenue Circle.<sup>55</sup> She told the BPD she had overheard Mr. Brookins confess to Rodney Simmons – on May 15, 1991 – that he had murdered Shelia and did not how to tell her about the murder. According to Sharon, after the BPD had interviewed her and Mr. Brookins on May 15, 1991, she and Mr. Brookins were at her house later that night. At some point that night, Sharon had left her house, but returned sometime thereafter. Upon her return, as she approached the house, she claimed to have heard Mr. Brookins talking with Rodney Simmons while they (Brookins and Simmons) sat in the living room. Sharon "stood outside the window and listened" while Mr. Brookins "told" Simmons "he had killed" Shelia and did not know how to tell her (Sharon) about it. Sharon also claimed that Mr. Brookins had told Simmons he believed he had "lost his hair pick" at the scene during the murder. Sharon claimed she "confronted" Mr. Brookins that night, "right after she heard it." When she "confronted" Mr. Brookins, she allegedly told him "she

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<sup>55</sup> Rpp. 99-100.

was going to the cops to tell them what he'd said." Once confronted, Sharon claimed Mr. Brookins "threatened to hurt her real bad if she told the police," before he and Simmons left the house.

While giving her statement, Sharon told the BPD she had "just seen" Mr. Brookins drive by her house in a red Camaro and look at her through the window. Sharon "appeared... extremely upset and afraid" and told the BPD Mr. Brookins was "going to kill her for talking to the police." She also told the BPD Mr. Brookins had "beaten her on several occasions." The BPD stopped the red Camaro immediately thereafter, but Mr. Brookins "was not in it."

The Commonwealth never presented Sharon or Rodney Simmons at trial to substantiate Sharon's claim that Mr. Brookins confessed to Shelia's murder.

### **THE PHYSICAL EVIDENCE AND THE PRE-TRIAL FORENSIC TESTING**

Barry Ginsberg flew into Philadelphia airport on December 21, 1990, landing around 6:30 p.m., at which point he called Shelia, but got no answer. He picked up his rental car, drove to Shelia's apartment, and arrived at 7:15 p.m., finding the front door closed but unlocked. He found Shelia in the living room on the floor between the sofa and coffee table. An afghan, which had been draped over the couch's backrest, had been wrapped around Shelia's head.<sup>56</sup> Barry ran from Shelia's apartment and into Paul Davis's apartment to report his finding. Davis went to Shelia's apartment and saw Shelia's blouse and bra had been pushed up, her head covered with the afghan, and a pair of scissors embedded in her chest.<sup>57</sup> The BPD arrived at the scene at 7:32 p.m. Over the next two days, the BPD collected over fifty items of evidence from Shelia's apartment.

#### **A. Shelia's Overkill – Dr. Fillinger's Findings/Testimony**

Dr. Halbert Fillinger performed Shelia's autopsy and noted sixteen significant external injuries and eight significant internal injuries. He noted Shelia's blouse and bra had been pulled up, exposing

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<sup>56</sup> NT, Trial, 7/2/1992, pp. 40-48.

<sup>57</sup> NT, Trial, 7/2/1992 pp. 69-71.

her breasts. The blouse had two tears in the left front and one tear in the middle front.<sup>58</sup> He also identified multiple blunt trauma injuries to Shelia's head and face, two stab wounds to the right side of her head, and three substantial stab wounds to her chest.<sup>59</sup> The force with which the perpetrator stabbed Shelia was considerable because the scissors penetrated Shelia's ribs and breastbone, puncturing her heart and liver. Also, the scissors in Shelia's chest were embedded down to the handle suggesting the perpetrator used tremendous force when plummeting the scissors into her chest one last time.<sup>60</sup> Lastly, Dr. Fillinger determined Shelia had been manually strangled as well because her hyoid bone had been fractured.<sup>61</sup>

### **B. The Hair Evidence – Chester Blithe's Hair Findings/Testimony**

Blithe identified two Negroid hair "fragments" on the two left sofa cushions (S-12, S-13) collected from Shelia's apartment and three Negroid hair "fragments" on the two middle sofa cushions (S-14, S-15).<sup>62</sup> Blithe identified one Negroid hair "fragment" on Shelia's pants (A-1),<sup>63</sup> two Negroid hair "fragments" on Shelia's shirt (A-2), one Negroid hair "fragment" on Shelia's sweater (A-8), two Negroid hair "fragments" on the afghan (A-9), one Negroid hair "fragment" on the two sheets used to transport Shelia's body from the scene (A-7, A-8),<sup>64</sup> and one Negroid hair "fragment" on the carpet (X-3) collected from Shelia's apartment.<sup>65</sup> Blithe said none of these Negroid hair "fragments" were "suitable" for comparison, meaning he did not associate them to Mr. Brookins.<sup>66</sup>

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<sup>58</sup> NT, Trial, 7/8/1992, pp. 6-8.

<sup>59</sup> NT, Trial, 7/8/1992, pp. 15-16, 34-40.

<sup>60</sup> NT, Trial, 7/8/1992, pp. 25-27, 44-49.

<sup>61</sup> NT, Trial, 7/8/1992, pp. 50-53.

<sup>62</sup> NT, Trial, 7/7/1992, pp. 52, 53. The S-\_\_\_ numbers correspond to the BPD's December 21, 1990 property receipt – which is attached at Rpp. 7-13. These items were collected from the scene.

<sup>63</sup> The A-\_\_\_ numbers correspond to the BPD's December 22, 1990 property receipt – which is attached at Rpp. 5-6. These items were collected during Shelia's autopsy.

<sup>64</sup> NT, Trial, 7/7/1992, pp.53-54, 54-55, 55-56, 60-61.

<sup>65</sup> NT, Trial, 7/7/1992, pp. 47-48.

<sup>66</sup> NT, Trial, 7/7/1992, p. 67.

On cross-examination, Blithe conceded that once the FBI had learned the BPD's primary suspect was black, Blithe narrowed his focus to seeking out and identifying only those hairs or hair fragments that exhibited Negroid characteristics, meaning he consciously disregarded hairs and hair fragments exhibiting mixed race characteristics – like Sharon's. For instance, Blithe admitted he had “found several types of hairs” on the sofa cushions (S-10 through S-15), but only reported on and testified about the Negroid hair “fragments.”<sup>67</sup> Blithe's June 10, 1992 report reinforces this point. In this report, Blithe wrote: “Hairs of Negroid racial origin which are not suitable for significant comparison purposes were found among the debris from Q11, Q12, Q15, Q16, Q62 through Q65 and Q67.”<sup>68</sup> Q11 is Shelia's pants (A-1), Q12 is Shelia's shirt (A-2), Q15 is the sheet the BPD used to transport Shelia's body from the scene (A-7), Q-16 is Shelia's sweater (A-8), Q62 through Q65 are the sofa cushions (S-12, S-13, S-14, S-15), and Q67 is 10 x 10 carpet (X-3).<sup>69</sup> Blithe's June 6, 1992 report mentioned nothing about the “several” non-Negroid hairs or hair fragments removed from these items.

Blithe also conceded he had collected as many as twenty non-Negroid hairs and hair fragments from the carpet, but only reported on and testified about the one Negroid hair “fragment.”<sup>70</sup> Furthermore, Blithe admitted he had returned all non-Negroid hairs and hair fragments – removed from Shelia's clothing (A-1, A-2, A-3, A-4, A-8), the afghan (A-9), the white sheets (A-6, A7), the carpet (X-3), and the sofa cushions (S-10 through S-15) – to the BPD before the FBI had received, and he had examined, Sharon's hair samples. Thus, Blithe never compared Sharon's hair samples with the numerous non-Negroid hairs and hair fragments recovered from these items of evidence.<sup>71</sup>

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<sup>67</sup> NT, Trial, 7/7/1992, pp. 64-65.

<sup>68</sup> Rpp. 31-33.

<sup>69</sup> Rpp. 7-13, 25-29.

<sup>70</sup> NT, Trial, 7/7/1992, p. 63.

<sup>71</sup> NT, Trial, 7/7/1992, pp. 65, 66, 69.

Blithe “examined” Sharon’s head hair samples and said they exhibited “mixed racial” characteristics, meaning they contained both Caucasian and Negroid characteristics.<sup>72</sup> Although Blithe did not compare Sharon’s head hair samples to the fourteen unknown Negroid hair “fragments,” Blithe opined Sharon “was not the contributor” of these Negroid “fragments.” When the prosecutor asked him how he came to this conclusion without comparatively assessing Sharon’s head hairs with the unknown Negroid hair “fragments,” Blithe said:

The hairs that I examined, that I identified as being from an individual of the black race, were clearly hairs from an individual of the black race; there was no apparent racial admixtures in those hairs. The hairs from Sharon Ginsberg did exhibit racial admixture. In my opinion, Sharon Ginsberg was not the contributor of those hair fragments that I identified as come from an individual of the black race.<sup>73</sup>

Lastly, Blithe attempted to date-stamp the Negroid hair “fragments” recovered from Shelia’s clothing, by opining that these hair “fragments” reflected “recent contact.”<sup>74</sup> His reason being: transfer generally requires contact, meaning if a Negroid hair “fragment” was recovered from Shelia’s body, this probably meant she had come in contact with a black person shortly before her murder. Blithe’s reason/assumption, though, fails to consider the fact the Negroid hair “fragments” could have been on the sofa cushions and/or carpet for quite some time and that they could have easily transferred to Shelia’s clothing on December 20, 1990 if she sat on the couch that day or bent over and picked something up from the carpet.

### **C. The Blood Evidence – Richard Reem’s Blood Findings/Testimony**

The BPD did not submit a sample of Sharon’s blood to the FBI. Reem, therefore, did not know Sharon’s blood type to determine if it was consistent with any of the blood recovered from the scene. Furthermore, Dr. Fillinger obtained a blood sample from Shelia (X-2), which the BPD

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<sup>72</sup> NT, Trial, 7/7/1992, p. 58.

<sup>73</sup> NT, Trial, 7/7/1992, p. 58

<sup>74</sup> NT, Trial, 7/7/1992, pp. 71-72.

submitted to the FBI. When Reem tested X-2, though, he learned it was too degraded to run the three enzyme tests the FBI used to type a person's blood, *i.e.*, the PGM test, the haptoglobin test, and the Gc test.<sup>75</sup> Unable to perform these three tests, Reem, instead, tested a blood sample from Shelia's shirt (A-2), and *assumed* the stain on the shirt had to be from Shelia because she was wearing the shirt.

When the prosecutor asked him to "explain" why he had made this assumption, Reem said:

Because the item was on [Shelia], therefore it had to be her blood, and there was no indication that there was another person bleeding to interfere with the analysis. Therefore, if I could get a conclusive reading on this particular item, then I would know the blood type of that individual.<sup>76</sup>

After running the three enzyme tests on the blood sample from Shelia's shirt (A-2), Reem said he "found" Shelia's blood type to be: PGM 1-2+, haptoglobin type 2, and Gc type 1F-1S.<sup>77</sup>

Reem said the blood on Shelia's underwear (A-3), her sweater (A-8), and the scissors embedded in her chest was "consistent with" the blood identified on Shelia's shirt (A-2).<sup>78</sup> Reem also identified human blood – "consistent with" the blood identified on Shelia's shirt (A-2) – on the two right sofa cushions (S-10, S-11), one of the middle sofa cushions (S-14), and the carpet (X-3).<sup>79</sup>

Reem did not test the blood on the afghan (A-9) because he assumed all the blood on it had to be from Shelia.<sup>80</sup> Reem found no blood on the marble trophy base (S-4), the metal trophy top that was attached to the marble base before the attack (S-3), or the interior and exterior door knobs (S-1, S-1A).<sup>81</sup> Reem did not examine Shelia's fingernail scrapings (A-12) for the presence of blood.<sup>82</sup>

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<sup>75</sup> NT, Trial, 7/7/1992, p. 84.

<sup>76</sup> NT, Trial, 7/7/1992, p. 87.

<sup>77</sup> NT, Trial, 7/7/1992, p. 88.

<sup>78</sup> NT, Trial, 7/7/1992, pp. 89-90, 91.

<sup>79</sup> NT, Trial, 7/7/1992, pp. 99, 101, 102.

<sup>80</sup> NT, Trial, 7/7/1992, p. 91.

<sup>81</sup> NT, Trial, 7/7/1992, p. 91-92.

<sup>82</sup> NT, Trial, 7/7/1992, p. 93.

Lastly, the following items tested negative for semen: Shelia's underwear (A-3),<sup>83</sup> the sofa cushions (S-10 through S-15), the carpet (X-3), and the door jam (S-9).<sup>84</sup>

#### **D. The Fingerprint Evidence – Marciane Fossett's Fingerprint Findings/Testimony**

Marciane Fossett testified and said she identified Mr. Brookins's fingerprints on (1) the underside of the bathroom toilet seat (right middle), (2) the telephone receiver's handgrip (left thumb), and (3) in blood on the backside of the remote control (right index).<sup>85</sup>

Fossett, however, also identified three of Sharon's fingerprints on the door jam (S-9) the BPD had collected near the front door of Shelia's apartment.<sup>86</sup>

#### **JOHN BROOKINS'S TESTIMONY REGARDING WHAT HE SAW ON DECEMBER 20, 1990**

The BPD spoke with Mr. Brookins three times before trial: April 2, 1991, May 15, 1991, and June 14, 1991. None of these interviews, however, were audio or video recorded, meaning the BPD was free to make any claims it wished regarding these interviews. On June 15, 1991, the BPD filed a criminal complaint against Mr. Brookins charging him with Shelia's murder, which resulted in his arrest on June 19, 1991. Once arrested and *Mirandized*, the BPD interviewed Mr. Brookins again, and again it did not record the interview. According to the BPD, Mr. Brookins gave inconsistent statements each time it had interviewed him – and he never claimed to have seen Sharon murdering Shelia.

At trial, based on trial counsel's advice, Mr. Brookins did not testify.

During his PCRA proceedings, though, Mr. Brookins provided an eyewitness account of what he saw on December 20, 1990 when he went to Shelia's apartment to meet Sharon. On June 15, 2011,

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<sup>83</sup> NT, Trial, 7/7/1992, p. 90.

<sup>84</sup> NT, Trial, 7/7/1992, pp. 99, 101, 102, 106-107.

<sup>85</sup> NT, Trial, 7/6/1992, pp. 21-26, 104-105, 107; NT, Trial, 7/7/1992, pp. 155-163, 163-164, 164-171.

<sup>86</sup> NT, Trial, 7/7/1992, pp. 151-152.

during Mr. Brookins's PCRA hearing, Mr. Brookins handed the PCRA court statements he had prepared with what he presented as his eyewitness account of the scene. He reported that upon entering Sheila's apartment on December 20, 1990, where he was expecting to meet Sharon, he found Sharon screaming and standing over Shelia, who had an afghan wrapped around her head. He reported that he pushed Sharon away and touched Sheila's wounds. He turned down the loud television and picked up the telephone but decided against calling the police, during which time Sharon fled the apartment.<sup>87</sup>

## **ARGUMENTS**

### **A. Introduction**

In 2002, the Pennsylvania legislature enacted 42 Pa. C.S. § 9543.1, which “permits an inmate to seek DNA testing of evidence used to convict him where such testing may establish” his “actual innocence.” *Commonwealth v. Heilman*, 867 A.2d 542 (Pa. Super. 2005). Under § 9543.1, a petitioner “may... at any time” request DNA testing if he or she seeks testing “on specific evidence that is related to the investigation or prosecution that resulted in the judgment of conviction.” 42 Pa. C.S. § 9543.1(a)(1). When reviewing a petitioner's DNA testing request, a PCRA court must “liberally interpret” § 9543.1 “in favor of the class of citizens who were intended to directly benefit therefrom, namely, those wrongly convicted of a crime.” *Commonwealth v. Conway*, 14 A.3d at 113. To qualify for testing, petitioners must satisfy § 9543.1's prerequisites. *Commonwealth v. Smith*, 889 A.2d 582, 583 (Pa. Super. 2005). Mr. Brookins satisfies § 9543.1's prerequisites and is entitled to DNA testing so he can conclusively prove his long-proclaimed innocence.

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<sup>87</sup> NT, PCRA Hrg., 6/15/2011, pp. 36-48.

## **B. The DNA Testing Statute's Requirements**

### **1. The perpetrator's identity was at issue**

The perpetrator's identity must have been "at issue" at the petitioner's trial. 42 Pa. C.S. § 9543.1(c)(3)(1). Mr. Brookins satisfies this requirement. At trial, both parties presented evidence implicating and identifying two different people as Shelia's murderer. The Commonwealth believed Mr. Brookins had murdered Shelia based on the circumstantial fingerprint evidence, but presented no evidence or explanation as to why Mr. Brookins wanted Shelia dead – and why he felt the need to murder her in such a horrific fashion. Mr. Brookins, on the other hand, believed Sharon had murdered Shelia based on the testimony of several witnesses who said Sharon had outright confessed to murdering her mother or made incriminating statements suggesting she had, in fact, murdered her mother over a money dispute. Also, Mr. Brookins presented motive evidence, namely that Sharon was a strung-out drug addict who needed money, and when Shelia had refused to give her money for drugs, Sharon beat, strangled, and stabbed her to death in a drug-induced rage killing.

### **2. Evidence to be tested**

Mr. Brookins must "specify the evidence to be tested[.]" 42 Pa. C.S. § 9543.1(c)(1)(i). Mr. Brookins seeks testing on the following items of evidence "related to" the "investigation" of Shelia's murder and his "prosecution[.]" 42 Pa. C.S. § 9543.1(a)(2):

<b><u>BPD Receipt #</u></b>	<b><u>Description</u></b>	<b><u>Trial Exhibit</u></b>
A-1	Shelia's pants	
A-2	Shelia's shirt	
A-4	Shelia's bra	
A-8	Shelia's sweater	C-61 <sup>88</sup>
A-6	White sheet used to transport Shelia's body	

<sup>88</sup> Shelia's sweater was introduced into evidence on July 8, 1992. NT, Trial, 7/8/1992, p. 139.

A-7	White sheet used to transport Shelia's body	
A-11	Scissor embedded in Shelia's chest	Entered as C-39 <sup>89</sup>
A-12	Shelia's 10 fingernail scrapes <sup>90</sup>	
S-2	Scissors recovered under coffee table	
S-3	Metal trophy piece	Entered as C-41 <sup>91</sup>
S-4	Marble trophy base <sup>92</sup>	Entered as C-42 <sup>93</sup>
X-2	Shelia's blood sample <sup>94</sup>	
X-3	Carpet (10' x 10')	
X-4	Scaping from ceiling chase	
X-9	Blood residue from scrapings of bloodstain on floor <sup>95</sup>	
-	Gloves seized from Paul Cottman's car <sup>96</sup>	
-	Shelia's white purse <sup>97</sup>	C-36 <sup>98</sup>
-	All the non-Negroid hairs or hair fragments Chester Blithe removed from Shelia's clothing, the white sheets, the carpet, and sofa cushions <sup>99</sup>	
-	Sharon's hair samples <sup>100</sup>	

<sup>89</sup> The scissors were admitted into evidence on July 7, 1992. NT, Trial, 7/7/1992, pp. 18-19.

<sup>90</sup> Dr. Fillinger collected these items during Shelia's autopsy and the BPD labeled the items A-1 through A-12. Rpp. 5-6.

<sup>91</sup> The top of the trophy was admitted into evidence on July 7, 1992. NT, Trial, 7/7/1992, p. 27.

<sup>92</sup> The BPD collected these items from the scene on December 21, 1990 and labeled the items S-1 through S-45. Rpp. 7-13.

<sup>93</sup> The marble based was admitted into evidence on July 7, 1992. NT, Trial, 7/7/1992, p. 28.

<sup>94</sup> Dr. Fillinger collected a sample of Shelia's blood during the autopsy, and he gave this sample to Analytic Bio-Chemistries Inc. ("ABC"). The BPD collected Shelia's blood sample on January 16, 1991 from ABC and labeled it X-2. Rp. 14.

<sup>95</sup> The BPD collected the carpet, ceiling chase scaping, and floor scaping from the scene on January 7, 1991. Rp. 15.

<sup>96</sup> The BPD collected these gloves on March 20, 1991 but did not provide a property receipt number for them. Rpp. 16-20.

<sup>97</sup> The BPD collected the pursue on December 22, 1990 from the scene but did not provide a property receipt number for it. Rp. 80.

<sup>98</sup> The white purse was entered into evidence on July 6, 1992. NT, Trial, 7/6/1992, pp. 184-185.

<sup>99</sup> Blithe testified he collected over twenty non-Negroid hairs and hair fragments from these items of evidence and that he returned them to the BPD. NT, Trial, 7/7/1992, pp. 63-65.

<sup>100</sup> Blithe testified the BPD had collected Sharon's hair samples and submitted them to the FBI. NT, Trial, 7/7/1992, p. 58. Blithe returned Sharon's hair samples to the BPD. Although chain of custody reports may exit for Sharon's hair samples, counsel has no chain of custody reports regarding Sharon's hair samples.

### **3. Evidence is available for testing**

The evidence must be “available for testing.” 42 Pa. C.S. § 9543.1(a)(2). Mr. Brookins and counsel have a good faith belief all the evidence is still in the Commonwealth’s or Court’s possession and “available for testing.” The evidence admitted at trial is, presumably, still in the Clerk of Court’s possession. To be sure, Mr. Brookins and counsel respectfully request the Court to enter an order requiring the DAO to search for the evidence and to provide the Court and counsel with a memorandum explaining its search efforts and identifying what evidence, if any, is currently in the BPD’s or the Court’s possession. 42 Pa. C.S. § 9543.1(b)(2)(“the Commonwealth and Court shall take the steps reasonably necessary to ensure that any remaining biological material in the possession of the Commonwealth or the Court is preserved pending completion of the proceedings under this section”).

### **4. The evidence Mr. Brookins seeks to test has not been subjected to DNA testing**

The was evidence not subjected to DNA testing before trial “because the technology for testing was not in existence at the time[.]” 42 Pa. C.S. § 9543.1(a)(2).

### **5. There is a “reasonable possibility” DNA testing would produce “exculpatory” evidence establishing Mr. Brookins’s “actual innocence”**

Mr. Brookins must prove it is “reasonably possible” DNA testing can produce “exculpatory evidence” establishing his “actual innocence.” 42 Pa. C.S. § 9543.1(c)(3)(ii)(A). Actual innocence means the “exculpatory” DNA results must make it “more likely than not that,” had Mr. Brookins possessed the exculpatory DNA results at trial, “no reasonable juror would have found him guilty beyond a reasonable doubt.” *Commonwealth v. Conway*, 14 A.3d at 109 (quoting *Schlup v. Delo*, 513 U.S. at 327). Thus, this standard requires a reviewing court “to make a probabilistic determination about what reasonable, properly instructed jurors would do.” *Id.*; accord *In re Payne*, 129 A.3d 546, 556 (Pa. Super. 2015).

The Court must deny the petitioner’s DNA testing motion when there is “no reasonable possibility” DNA testing could produce exculpatory results establishing the petitioner’s actual innocence.” 42 Pa. C.S. § 9543.1(d)(2)(i). The Superior Court said this about the phrase “no reasonable possibility”:

We must emphatically state that, with respect to the burden on a Section 9543.1 petitioner, “no reasonable probability” does not mean, “no likely probability.” It should go without saying that the most likely result of Section 9543.1 DNA testing will corroborate a petitioner’s guilt, confirm it outright, or simply fail to cast significant doubt on the verdict. However, the very purpose of Section 9543.1 must be to afford a petitioner the opportunity to demonstrate the unlikely. The threshold question is, therefore, not the likelihood of proof of innocence, but whether it is within the realm of reason that some result(s) could prove innocence.

*In re Payne*, 129 A.3d at 563.

Importantly, the DNA testing statute requires the Court to “assume” exculpatory results. 42 Pa. C.S. § 9543.1(c)(3)(ii); *In re Payne*, 129 A.3d at 561. Thus, the Court must start with the assumption DNA testing *will* identify Sharon’s DNA on the abovementioned items of evidence. It must then ask whether it is “more likely than not that,” had Mr. Brookins’s jury been presented with DNA evidence linking Sharon to, *inter alia*, the scissors, the trophy, Shelia’s clothing and fingernail scrapings, and the afghan, “no reasonable juror would have found him guilty beyond a reasonable doubt.” “It is not difficult to imagine” how redundant results linking Sharon to two or more items of evidence would “deal a devastating blow to the soundness of the jury’s verdict in this case[.]” *In re Payne*, 129 A.3d at 562.

In short, if Sharon’s DNA is identified on multiple items of evidence, particularly the scissors, the trophy, Shelia’s clothing, the afghan, and Shelia’s fingernail scrapings, it is more likely than not that no juror on Mr. Brookins’s jury would have convicted him of Shelia’s murder. This is true because

the Commonwealth's theory was that Mr. Brookins – *and no one else* – brutally murdered Shelia.<sup>101</sup> In other words, the Commonwealth cannot shift narratives, and argue Sharon *and* Mr. Brookins conspired to murder Shelia, if DNA testing identifies Sharon's DNA on multiple items of probative evidence.

**6. The different DNA tests that can produce exculpatory results establishing Mr. Brookins's actual innocence**

The different types of DNA testing that can prove Mr. Brookins's long-proclaimed innocence are briefly discussed.

**a. Short tandem repeat (STR) techniques**

Conventional STR and mini-STR tests focus on autosomal DNA markers. Autosomes are non-sex chromosomes. The genetic markers on autosomes *are shuffled* with each generation because half of an individual's genetic information comes from his or her father and the half comes from his or her mother.<sup>102</sup> Thus, these tests are far more discriminatory than lineage marker DNA tests, *see infra*, because the genetic markers are *shuffled* with each generation thereby creating distinctive – *individualistic* – genetic profiles for each person.

**(1). Conventional STR testing**

STR testing offers several advantages over first generation DNA tests. *First*, it requires a minuscule amount of biological evidence. *Second*, it can be used on degraded samples. *Third*, it can be used to detect and decipher mixtures. *Fourth*, it can be used to detect masking so different profiles can be properly differentiated and identified. *Fifth*, it is highly discriminatory. *United States v. Boose*, 498 F.Supp.2d 887, 890-891 (N.D. Miss. 2007) (STR testing is “the most widely used by DNA labs... because it is

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<sup>101</sup> The prosecutor, ADA Diane Gibbons, made this perfectly clear during opening arguments when she repeatedly told jurors the evidence would show, beyond a reasonable doubt, Mr. Brookins – and only he – brutally murdered Shelia on December 20, 1990. NT, Trial, 7/2/1992, pp. 20-21, 26-28.

<sup>102</sup> BUTLER, FORENSIC DNA TYPING: BIOLOGY, TECHNOLOGY, AND GENETICS OF STR MARKERS 201-03 (2d ed. 2005).

capable of a high degree of accuracy, showing an overwhelmingly large probability that a suspect's DNA matches an evidence sample.”).

Unlike first generation tandem repeat DNA tests, STR sections are comprised of much smaller repeat units, from 2 to 7 bases, as compared with 8 to 80 in earlier tests, and the total size of an STR is smaller, usually less than 500 bases, as compared with several thousand base pairs found in earlier tests.<sup>103</sup> The smaller number of base pairs means very small amounts of biological evidence – less than 1 nanogram (1 billionth of a gram) – can be easily amplified (using polymerase chain reaction (PCR)) and accurately profiled. As one prominent DNA textbook explains:

Modern-day PCR methods, such as multiplex STR typing, are powerful because minuscule amounts of DNA can be measured by amplifying them to a level where they may be detected. Less than 1 ng of DNA can now be analyzed with multiplex PCR amplification of STR alleles compared to 100 ng or more that might have been required [with earlier tests] only a few years ago.<sup>104</sup>

The ability to utilize PCR is critical because “it permits a very tiny amount of DNA, such as would be found on a postage stamp, cigarette butt, or coffee cup, to be amplified to produce an amount large enough to be analyzed.”<sup>105</sup> Consequently, Mr. Brookins can use STR testing to test such items as the scissors embedded in Shelia's chest, the metal trophy, and Shelia's clothing because only a miniscule amount of DNA is needed to develop an exculpatory or incriminating STR profile.

The shorter base pairs also make STR testing highly effective on degraded samples:

Fortunately, because STR loci can be amplified with fairly small product sizes, there is a greater chance for the STR primers to find some intact DNA strands for amplification. In addition, the narrow size range of STR alleles benefits analysis of degraded DNA samples . . . The potential for analysis of degraded DNA samples is an area where multiplex STR systems really shine over previously used DNA markers.<sup>106</sup>

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<sup>103</sup> NAT'L INST. OF JUST., DEP'T OF JUST., THE FUTURE OF FORENSIC DNA TESTING 39-40 (Nov. 2000).

<sup>104</sup> Butler, *supra*, p. 146.

<sup>105</sup> *Id.*, p. 39.

<sup>106</sup> *Id.*, pp.146, 147.

Because Mr. Brookins's case is nearly thirty years old, STR testing will prove invaluable if any of the evidence has degraded, like Shelia's blood sample (X-2).

STR testing can detect and decipher mixtures. Mixtures arise when two or more individuals contributed biological material to the sample being tested. Prior to STR and PCR testing, detecting mixtures was challenging.<sup>107</sup> However, as "detection technologies have become more sensitive with PCR sensitivity... the ability to see minor components in the DNA profile of mixed samples has improved dramatically over what was available with [earlier] methods[.]"<sup>108</sup> In particular, using "highly polymorphic STR markers with more possible alleles translates to a greater chance of seeing differences between the two components of a mixture."<sup>109</sup>

STR testing can detect masking in a mixed sample. When two contributors to a mixed stain share one or more alleles, the alleles are "masked," and the contributing genotypes may not be easily decipherable. However, "by examining the STR profiles at other loci that have unshared alleles," a mixed sample "may be able to be dissected properly into its components."<sup>110</sup> This may prove valuable in Mr. Brookins's case, particularly for Shelia's fingernail scrapings.

Shelia was bludgeoned, stabbed, and manually strangled. Based on logic and psychology, the perpetrator most likely attempted to manually strangle Shelia first because the marble trophy base and substantial stab wounds would have, most likely, quickly incapacitated her, minimizing or eliminating the need to gain control over her by manually strangling her. In other words, Shelia was likely coherent and defending herself when the perpetrator manually strangled her. When being strangled, be it manual or ligature strangulation, the immediate human reaction is to remove whatever is blocking the

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<sup>107</sup> COMM. ON DNA TECH. IN FORENSIC SCI., NAT'L RESEARCH COUNCIL, DNA TECHNOLOGY IN FORENSIC SCIENCE 158 (1992) ("Conventional serology is further limited, in that analysis of mixed-fluid stains in which two or more contributors are involved can mask an individual donor.").

<sup>108</sup> *Id.*, p. 156.

<sup>109</sup> *Id.*, p. 155.

<sup>110</sup> *Id.*, p. 157.

person's airways, being it another's hands or a rope, so he or she can breathe and survive. Here, the perpetrator manually strangled Shelia, meaning the perpetrator used his or her hands, meaning Shelia very likely scratched and clawed at the perpetrator's hands, meaning it is reasonably possible the perpetrator's skin cells transferred to Shelia's fingernails and is now mixed in with Shelia's fingernail scrapings. With fingernail scrapings, though, the victim's DNA can either mask or mix with the perpetrator's DNA making identification difficult. However, STR testing alleviates these masking and mixture concerns.

Finally, STR testing is the most discriminatory DNA test. For instance, the statistical probability of an STR match between two unrelated persons in the Caucasian American population has been conservatively estimated at 1 in 575 trillion.<sup>111</sup> Thus, given the population of the United States, an STR profile is "effectively unique."<sup>112</sup> As the Tenth Circuit Court of Appeals recognized:

As far as scientists have determined, DNA is the most reliable means of identifying individuals. There is an infinitesimal chance that any two individuals will share the same DNA profile unless they are identical twins. Thus, a DNA match between two samples excludes the rest of the population from suspicion to a near 100% certainty.

*Banks v. United States*, 490 F.3d 1178, 1188 (10th Cir. 2007).

## (2). Mini-STR testing

The newest form of STR testing is mini-STR testing, which is premised on the same principles as STR, *i.e.*, DNA tests which look for short tandem repeats. Mini-STR testing, however, works incredibly well with "highly degraded DNA as well as very low amounts of DNA,"<sup>113</sup> because the PCR primers anneal closer to the repeat region than conventional STR primers.<sup>114</sup> Mini-STR testing may

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<sup>111</sup> NIJ 2000 Report, *supra*, at 19.

<sup>112</sup> *Id.*, p. 25.

<sup>113</sup> Butler, *supra*, p. 148.

<sup>114</sup> *Id.*, p. 150 ("[I]t is likely that miniSTRs will play a role in the future of degraded DNA analysis probably to help recover information that has been lost with larger loci from conventional [STR testing]."); P. Grubweiser et al., *A new "mini-STR Multiplex" Displaying Reduced Amplicon Lengths for the Analysis of Degraded DNA*, 120 INT'L. J. LEGAL MED. 115 (2006); Pablo Martin, Oscar Garcia, Cristina Albarran et al., *Application of Mini-STR Loci to Severely Degraded Casework Samples*, 1288 FORENSIC SCI. INT'L 522, 524 (2006) ("[O]ur data indicate that the mini-STR [tests] offer an effective tool for recovering

prove beneficial in Mr. Brookins’s case because the case is nearly thirty years old and degradation may be an issue.

**(3). Low copy number DNA testing: touch, trace, or handler DNA**

In 1997, a scientific journal “reported that DNA profiles could be generated from touched objects. This opened up possibilities and led to the collection of DNA from a wider range of exhibits (including: tools, clothing, knives, vehicles, firearms, food, bedding, condoms, lip cosmetics, wallets, [jewelry], glass, skin, paper, cables, windows, doors, and stones).”<sup>115</sup> “[T]ouched objects provide a wide scope for revealing [an] offender’s DNA profile.”<sup>116</sup> Although referring to a single term such as “touch DNA,” “trace DNA,” or “handler DNA,” may be “a misleading simplification of a series of complex processes,” these terms can be appropriate “when referring to the collection of minute biological samples at [a] crime scene or the process of collecting and extracting the tiny amounts of material within the sample in the forensic laboratory.” *Id.*

Touch, trace, or handler DNA refers to either “very limited and/or invisible biological samples” or amounts of DNA that are less than a defined threshold limit. *State v. Small*, 184 A.3d 816, 825 n.1 ( Conn. App. 2018) (the “term ‘touch DNA’ refers to a type of DNA sample wherein an individual deposits DNA on an object by handling it.”); *Richardson v. State*, 2015 Tex. App. LEXIS 8389, at \*14 (Tex. App. Aug. 11, 2015) (“There was ‘handler DNA’ on the knife, which is DNA left by touching the handle of an item. This sample had a partial DNA profile that matched [the defendant’s] profile.”). More importantly, the likelihood of identifying touch, trace, or handler DNA increases when the person handling, gripping, or holding the object is doing with significant force. *State*

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information in degraded forensic samples that generated negative results or partial profiles with commercial STR kits.”); C. Romano, E. Di Luise, D. Di Martino et al., *A Novel Approach for Genotyping of LCN-DNA recovered from highly degraded samples*, 1288 FORENSIC SCI. INT’L 577 (2006).

<sup>115</sup> Oorschot, Ballantyne, & Mitchell, *Forensic Trace DNA: A Review*, 1:14 INVESTIGATIVE GENETICS 1, 2 (2010) (Forensic Trace DNA) (citing van Oorschot & Jones, *DNA Fingerprints from Fingerprints*, 387 NATURE 767 (June 1997)).

<sup>116</sup> Forensic Trace DNA, *supra*, p. 2.

*v. Perry*, 2015 Tenn. Crim. App. LEXIS 529, at \*14 (Crim. App. July 7, 2015) (“Touch DNA is left on an object that has been touched or gripped with force.”).<sup>117</sup>

The touch DNA testing performed by most DNA laboratories utilizes the same STR testing performed by DNA analysts for the last 10 to 15 years. There are, however, alternate methods of detecting DNA from a smaller number of cells ranging from 15 to 30 diploid cells. This is known as Low Copy Number (“LCN”) testing and utilizes “enhanced” techniques for obtaining DNA profiles. Typically, STR testing is known to require approximately 70 to 150 cells to produce a DNA profile.<sup>118</sup> LCN could very likely be quite probative in Mr. Brookins’s case, particularly for the scissors, trophy, and Shelia’s clothing.<sup>119</sup>

#### **b. Lineage Marker DNA Tests – Mitochondrial DNA Testing**

STR testing focuses on the non-sex chromosomes that are repeatedly shuffled from generation to generation. Mitochondrial DNA (mtDNA), on the other hand, represents lineage markers, which are passed down from generation-to-generation without changing (except for mutational events).<sup>120</sup> Paternal lineages can be traced with Y chromosome markers (Y-STRs), while maternal lineages can be

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<sup>117</sup> Forensic Trace DNA, *supra*, p. 3.

<sup>118</sup> Minor, *Touch DNA: From the Crime Scene to the Crime Laboratory*, [www.forensicmag.com](http://www.forensicmag.com), April 12, 2013, at [www.forensicmag.com/article/2013/04/touch-dna-crime-scene-crime-laboratory](http://www.forensicmag.com/article/2013/04/touch-dna-crime-scene-crime-laboratory).

<sup>119</sup> *Santana v. Capra*, 284 F. Supp. 3d 525, 535 (S.D.N.Y. 2018) (State lab identified “touch DNA” on the handles of three different knives used in a stabbing death that matched defendant’s DNA profile); *State v. Sims*, 2019 S.C. App. LEXIS 25, at \*12 (Feb. 27, 2019) (State lab identified “touch DNA” on one side of knife handle that matched victim’s DNA profile, which supported defendant’s theory that the victim accosted him with a knife); *State v. Small*, 184 A.3d 816, 825 (Conn. App. 2018) (State lab identified “touch DNA” on Swiffer mop handle that matched defendant’s DNA profile); *Jeffries v. State*, 222 So. 3d 538, 543 (Fla. 2017) (State lab obtained “handler DNA” from a pair of scissors recovered from the defendant’s bedroom); *Commonwealth v. Jones*, 2016 Pa. Dist. & Cnty. Dec. LEXIS 1125, at \*9 (Mar. 10, 2016) (Pennsylvania State Police lab identified “touch DNA” on knife handle that matched defendant’s DNA profile); *Commonwealth v. Clark*, 472 Mass. 120, 132 n.13, 34 N.E.3d 1, 13 n.13 (Mass. 2015) (“Although the focus of Clark’s § 3 motion is DNA analysis of potential blood evidence on the knife handle, we recognize the possibility that DNA from skin cells, so-called ‘touch DNA’ or ‘trace DNA,’ may be present on the [knife] handle and could have the potential to yield material evidence regarding the perpetrator of the underlying crimes.”); *Richardson v. State*, 2015 Tex. App. LEXIS 8389, at \*14 (Aug. 11, 2015) (State lab identified “handler DNA” on knife handle that matched defendant’s DNA); *State v. Perry*, 2015 Tenn. Crim. App. LEXIS 529, at \*14 (July 7, 2015) (State lab identified “touch DNA” from knife handle that matched defendant’s DNA).

<sup>120</sup> Butler, *supra*, pp. 201-203.

traced with mtDNA sequence information. Although not as discriminatory as autosomal STR tests, Y-STR and mtDNA still “have an important role to play in forensic investigations.”<sup>121</sup>

STR testing requires nuclear DNA (nDNA) or DNA from the chromosome’s nucleus.<sup>122</sup> Mitochondrial tests, however, focus on the cell’s mitochondria, *i.e.*, the energy-producing organelles residing in the cell’s cytoplasm located outside the cell’s nucleus.<sup>123</sup> Unlike the nucleus, where there can only be one per cell, there are several hundred mitochondria per cell. However, like the nucleus, mitochondria contain their own DNA, which differs from nDNA, and which is inherited from the individual’s *mother*.

Compared with traditional nDNA testing, mtDNA testing offers three primary benefits. *First*, its structure and cell location makes mtDNA more stable, enabling investigators or defense attorneys to test old or degraded samples.<sup>124</sup> *Second*, mtDNA is available in larger quantities per cell, enabling the testing of smaller samples.<sup>125</sup> *Third*, and perhaps most importantly, mtDNA can be extracted from samples in which nDNA cannot, specifically bone fragments and *hair shafts*.<sup>126</sup> mtDNA’s primary limitation is that, unlike nDNA, maternal relatives share identical copies of mtDNA, so mtDNA is not a unique identifier.

mtDNA may prove critical in Mr. Brookins case. *First*, because his case is nearly thirty years old, degradation may be an issue. *Second*, mtDNA can be used on the numerous non-Negroid hairs

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<sup>121</sup> *Id.*, p. 201.

<sup>122</sup> Butler, *supra*, p. 17.

<sup>123</sup> NIJ 2000 Report, *supra*, p. 46.

<sup>124</sup> Butler, *supra*, p. 242 (noting it is “this amplified number of mtDNA molecules in each cell that enables greater success (relative to nuclear DNA markers) with biological samples that may have been damaged”); Alice R. Isenberg, *Forensic Mitochondrial DNA Analysis: A Different Crime-Solving Tool*, 71 FBI L. ENFORCEMENT BULL. 8, at 16 (2002) (noting that mtDNA’s location in the cell and its circular structure “protect[] it from deterioration”); Charlotte J. Word, *The Future of DNA Testing and Law Enforcement*, 67 BROOK. L. REV. 249, 251 (2001) (reporting mtDNA’s use in post-conviction cases and other cases in which samples are very old).

<sup>125</sup> NIJ 2000 Report, *supra*, p. 48; *State v. Council*, 515 S.E.2d 508, 516 & n.12 (S.C. 1999).

<sup>126</sup> Butler, *supra*, p. 241; *United States v. Coleman*, 202 F.Supp.2d 962, 965 (E.D. Mo. 2002) (observing that bone and hair shafts can be tested for mtDNA). Mitochondrial DNA is also universally accepted by courts. *United States v. Chase*, 2005 WL 757259, at \*3, \*5 (D.C. Super., Jan. 10, 2005); *United States v. Coleman*, 202 F.Supp.2d 962 (E.D. Mo. 2002); *State v. Council*, 515 S.E.2d 508 (S.C. 1999).

and hair fragments Chester Blithe recovered from Shelia's clothing, the afghan, the sofa cushions, and the carpet.

### **REQUEST FOR POST-CONVICTION DISCOVERY**

Mr. Brookins respectfully requests the Court to enter an order requiring the DAO to provide current counsel with a copy of all the discovery it had turned over to trial counsel before and during Mr. Brookins's 1992 trial. While current counsel has, obviously, obtained various investigative reports, evidence collection reports, property receipts, evidence submission reports, and laboratory reports from the BPD and FBI, they have a good faith belief they are still missing BPD and FBI reports regarding the investigation and the evidence collection, submission, and testing processes.

Also, counsel respectfully requests the Court to enter an order requiring the DAO to provide current counsel with color copies of the 100 (4" by 6") photographs ADA Diane Gibbons turned over to trial counsel on June 17, 1992. In her letter to trial counsel, ADA Gibbons wrote:

Enclosed are the photographs (4" x 6") you requested of the blood print (1), victim's apartment interior (45) and the autopsy (45). On Tuesday, June 16, 1992, I gave Kevin Hand my enlarged photographs of those items for your use while your copies were being made. I need those photographs returned to me as soon as possible.<sup>127</sup>

A PCRA petitioner may receive discovery pursuant to Pa.R.Crim.P. 902(E)(1) if the discovery he requests "may arguably support one or more of [his] PCRA theories." *Commonwealth v. Frey*, 41 A.3d 605, 613 (Pa. Super. 2012). Mr. Brookins's primary "theory," at this point, is that DNA testing will prove his actual innocence. The requested discovery, therefore, "may arguably" support this "theory" because it will afford current counsel a fair and meaningful opportunity to thoroughly review the scene, the autopsy, and the evidence collection, submission, and testing processes to effectively and accurately determine whether they have identified all items of evidence that can possibly produce "exculpatory" DNA results demonstrating Mr. Brookins's actual innocence.

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<sup>127</sup> Rpp. 36.

## CONCLUSION

WHEREFORE, Mr. Brookins requests the following relief:

1. An order requiring the DAO to conduct an evidence search and to provide the Court with a memorandum detailing its search efforts and identifying what items of evidence are in the BPD's and/or Court's possession;
2. An order requiring the DAO to provide counsel with a copy of all the discovery the DAO had turned over to trial counsel before and during Mr. Brookins's 1992 trial;
3. An order requiring the DAO to provide counsel with color copies of the 100 photographs it had turned over to trial counsel on June 17, 1992;
4. An order requiring the BPD and the Clerk's Office not to destroy any evidence in its possession in connection with Shelia Ginsberg's murder investigation and Mr. Brookins's prosecution for said murder;
5. If the parties cannot come to an agreement regarding the validity of Mr. Brookins's *Post-Conviction DNA Testing Motion*, an order granting Mr. Brookins a hearing on his motion; and
6. Any other relief the Court deems necessary and just to ensure Mr. Brookins can meaningfully and effectively vindicate his state and federal rights under the post-conviction DNA testing statute.

Respectfully submitted this the \_\_\_\_ day of \_\_\_\_\_, 2019.

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