

IN THE
SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

No. _____ E.D. ALLOC. DKT. 200

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COMMONWEALTH OF PENNSYLVANIA

NOV 18 2007
SUPREME COURT
EASTERN DISTRICT

V.

ANTHONY WRIGHT
PETITIONER

PETITION FOR ALLOWANCE OF APPEAL

PETITION FOR ALLOWANCE OF APPEAL FROM THE ORDER OF THE SUPERIOR COURT DATED OCTOBER 17, 2007, AT NO. 1383 EDA 2006, AFFIRMING THE DENIAL OF PCRA RELIEF BY THE HONORABLE D. WEBSTER KEOGH, ENTERED APRIL 20, 2006, NOVEMBER TERM, 1991, BILL NO. 3158-3168, 2/2, (CP 51-CR-1131582-1991).

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OTHER AUTHORITIES

BUTLER, JOHN M., FORENSIC DNA TYPING: BIOLOGY, TECHNOLOGY, AND STR DNA TESTING (2d ed. 2005).....	17
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I. STATEMENT OF JURISDICTION

Jurisdiction for this Appeal is provided for at 42 Pa. C.S.A. §742(a), relating to allowance of appeal from final Orders of the Superior and Commonwealth Courts.

Pursuant to 42 Pa. C.S. §726, relating to extraordinary jurisdiction, the scope of review is plenary as it involves an issue or issues of immediate public importance.

II. ORDER OR OTHER DETERMINATION IN QUESTION

Under appeal is the Order by the Superior Court, the Honorable Joyce, Panella, and Popovich, entered on October 17, 2007, affirming an Order entered by the Honorable D. Webster Keogh on April 24, 2006, in the Court of Common Pleas, Philadelphia County, Criminal Trial Division, November Term 1991, Nos. 3158-3168, denying appellant's petition for DNA testing pursuant to 42 Pa.C.S.A. § 9543.1. The Judges who authored the Superior Court Opinion are Panella and Popovich, sitting as the Superior Court panel (J.A24020/07).

III. STANDARD OF REVIEW FOR THE INTERMEDIATE COURT

The proper standard and scope are as follows:

An abuse of discretion standard governs the Superior Court's review of the propriety of a grant or denial of a petition for post-conviction DNA testing. *Commonwealth v. Stock*, 679 A.2d 760, 762 (Pa. 1996)

The scope of review when examining a PCRA Court's grant or denial of relief is limited to determining whether the Court's findings are supported by the record and otherwise free of legal error. *E.g.*, *Commonwealth v. Allen*, 732 A.2d 582, 586 (Pa. 1999); 42 Pa.C.S.A. § 9543.

The PCRA provision directly at issue is 42 Pa. C.S.A. § 9543.1(c)(3); this section requires a petitioner seeking DNA testing to:

- (3) present a prima facie case demonstrating that the:
 - (i) identity of or the participation in the crime by the perpetrator was at issue in the proceedings that resulted in the applicant's conviction and sentencing; and
 - (ii) DNA testing of the specific evidence, assuming exculpatory results, would establish:
 - (A) the applicant's actual innocence of the offense for which the applicant was convicted[.]

IV. QUESTION PRESENTED

Did not the Superior Court err by holding that a petitioner filing a DNA petition pursuant to 42 Pa.C.S.A. § 9543.1 is precluded from obtaining DNA testing because he gave a knowing and voluntary confession?

Answered in the affirmative by the Superior and Commonwealth Courts.

V. STATEMENT OF CASE

A. PROCEDURAL HISTORY

Petitioner, Anthony Wright, is presently before this Honorable Court seeking allowance to appeal the Superior Court's opinion affirming the Common Pleas Court's decision to deny Mr. Wright's motion for DNA testing pursuant to 42 Pa.C.S.A. § 9543.1. *See Commonwealth v. Wright*, —A.2d—, 2007 WL 3013674 (Pa. Super., Oct. 17, 2007).

Mr. Wright seeks DNA testing to establish his actual innocence regarding his June 1993 convictions for first-degree murder, rape, burglary, robbery, and possession of an instrument of crime. The Commonwealth prosecuted Mr. Wright's case as a capital case. The Honorable Eugene H. Clark, Jr. presided over his trial. After conviction, Judge Clark held a penalty hearing to determine if Mr. Wright should be sentenced to death. At his penalty hearing, the jury could not agree on a penalty. Accordingly, pursuant to 42 Pa. C.S.A. §9711(c), Judge Clark sentenced Mr. Wright to a mandatory life sentence.

Following post-trial motions, which Judge Clark denied, he re-imposed the life sentence for the murder conviction, and imposed lesser sentences for the remaining offenses. On August 14, 1995, the Superior Court affirmed Mr. Wright's conviction and sentences. *See Commonwealth v. Wright*, 668 A.2d 1200 (Pa. Super. 1995) (Table). This Court denied Mr. Wright's petition for allowance. Attorney Bernard Siegel represented Mr. Wright at trial and on direct appeal.

On August 13, 1996 Mr. Wright filed a *pro se* PCRA motion. The motion did not raise any DNA issues. Court-appointed PCRA counsel submitted a "no-merit" letter pursuant to *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988) (*en banc*) and *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988). The PCRA Court accepted counsel's findings and dismissed the PCRA

petition. On September 1, 1999, the Superior Court affirmed the dismissal, *Commonwealth v. Wright*, 747 A.2d 423 (Pa. Super. Ct. 1999) (Table), and this Court denied allowance for appeal on February 24, 2000. *Commonwealth v. Wright*, 751 A.2d 190 (Pa. 2000) (Table).

On July 16, 2005, current counsel, working *pro bono* and with the Innocence Project, filed a motion pursuant to 42 Pa. C.S.A. § 9543.1 on Mr. Wright's behalf seeking DNA testing on the following items: (a) the blood and semen-stained jeans allegedly recovered from Mr. Wright's bedroom; (b) the bloodstained sweatshirt allegedly recovered from Mr. Wright's bedroom; (c) the knife used to murder the victim; (d) the oral, vaginal, and rectal swabs collected during the autopsy; and (e) the blood and semen-stained bed sheet recovered from the crime scene. On November 17, 2005, the PCRA court granted Colin Starger's *pro hac vice* motion so he could serve as Mr. Wright's co-counsel; Mr. Starger is an Innocence Project staff attorney.¹

On December 20, 2005, the Commonwealth responded to Mr. Wright's request for DNA testing. On January 25, 2006, counsel replied to the Commonwealth's response, and on the same date presented oral arguments before the Honorable D. Webster Keogh. On April 20, 2006, Judge Keogh denied Mr. Wright's motion. Judge Keogh's Order is attached hereto as Exhibit 1. Mr. Wright filed a timely notice of appeal to the Pennsylvania Superior Court. On October 17, 2007, the Superior Court affirmed Judge Keogh's dismissal. The Superior Court panel consisted of the Honorable Joyce, the Honorable Panella, and the Honorable Popovich. The Superior Court's opinion is attached hereto as Exhibit 2. This timely petition for allowance followed.

B. FACTUAL HISTORY

¹Mr. Starger is no longer an Innocence Project Staff Attorney; his new Innocence Project Staff Attorney is undersigned counsel—Craig M. Cooley.

1. Louise Talley’s Rape and Murder: Collection of Forensic Evidence from Crime Scene and Autopsy

On October 19, 1991, police found the body of 77-year-old Louise Talley in an upstairs bedroom of her Philadelphia home; she was bloody and naked, with clothing scattered underneath her. (N.T. 5/26/93, at 55-56, 61; 6/7/93, at 95). She had been raped and murdered, with the cause of death being multiple stab wounds (10) and blunt force injuries. (N.T. 6/2/93, at 114). Investigators recovered a bloodstained metal knife from the scene. (N.T. 5/26/93, at 108-109). The ten stab wounds were consistent with having been made with the bloodstained knife (N.T. 6/2/93, at 125). The Commonwealth argued the knife was in fact the murder weapon (N.T. 6/7/93, at 81-83).

Investigators recovered a stained sheet from Ms. Talley’s bed. (N.T. 5/26/93, at 110). The sheet tested positive for the presence of semen, and the seminal stains on the sheet contained spermatozoa. (N.T. 6/3/93, at 31). At the time of the murder, Ms. Talley lived alone. (N.T. 5/26/93, at 48). The Commonwealth argued that the seminal stains proved Mr. Wright raped Ms. Talley before he murdered her. (N.T. 6/7/93, at 95). The medical examiner who performed the autopsy also recovered rape kit samples, including swabs from Ms. Talley’s mouth, rectum, and vagina (“rape kit swabs”). (N.T. 6/2/93, at 126). At the time, the swabs tested negative for the presence of acid phosphatase, a presumptive indicator for the presence of semen. (*Id.* at 127-28). In his DNA petition, Mr. Wright sought DNA testing of the knife, semen-stained sheet, and rape-kit swabs.

2. How Mr. Wright Became a Suspect; Collection of Additional Forensic Evidence

On October 19, 1991, a man named John Wilson approached police officers—standing outside the crime scene—and told them “that he had heard that Tony Wright was the person responsible for the killing of Ms. Talley.” (N.T. 5/26/93, at 83-84). According to Sergeant Burke, Mr. Wilson

further informed him that Mr. Wright “might be on Bott Street staying with a guy by the name of either St. Ives or St. James.” (*Id.* at 84). The investigation led police to a Roland St. James (a.k.a. “Roland S. James”). Police officers apprehended Mr. James and transported him to police headquarters. (*Id.* at 85). After interrogating him, police released Mr. James once he implicated Mr. Wright in Ms. Talley’s murder. (*Id.* at 85-86). On the same day, the police also interrogated Mr. James’s roommate, John “Buddy” Richardson; again, police released Mr. Richardson after he implicated Mr. Wright in Ms. Talley’s murder. (N.T. 6/1/93, at 150-51).

On October 20, 1991, Detective Manuel Santiago located Mr. Wright at his residence—i.e., his mother’s home at 1905 Brunner Street. (N.T. 6/2/93, at 14-15). Mr. Wright voluntarily accompanied Detective Santiago to police headquarters, where Detective Santiago interrogated him in Detective Martin Delvin’s presence. (*Id.* at 18). According to Detective Santiago, Mr. Wright confessed to Ms. Talley’s rape and murder. (*Id.* at 35-39). Detective Devlin wrote a nineteen-page confession, which Mr. Wright signed. Neither Detective Santiago nor Detective Devlin video or audio taped Mr. Wright’s interrogation and confession. (*Id.* at 31-32, 39).

The written confession referred to a black sweatshirt with a Chicago Bulls logo, a pair of blue suede jeans, and a pair of black Fila sneakers as the clothes Mr. Wright wore when he raped and murdered Ms. Talley. (*Id.* at 38). Based on this information, Detective Frank Jastrezemski obtained a search warrant for 1905 Brunner Street. (N.T. 6/2/93, at 93-94). Police searched 1905 Brunner Street and recovered a black Chicago Bulls sweatshirt, black Fila sneakers, and a pair of blue suede jeans. (*Id.* at 96).

Forensic examination revealed the presence of human blood on the sweatshirt and jeans. (N.T. 6/3/93, at 33). In addition, the jeans’ zipper had a seminal stain with spermatozoa present.

(*Id.*). Early generation HLA DQ Alpha (“DQ Alpha”)² DNA typing of the blood on the sweatshirt and jeans was found to be consistent with Ms. Talley’s blood. (*Id.* at 70-71). Forensic analysts did not utilize this rudimentary DNA test on the seminal stain because seminal stains had been “troublesome” for the laboratory. (*Id.* at 76). Although excluded as the donor of “A” antigens identified in the seminal stain, the Commonwealth argued that the “A” antigen came from Ms. Talley, and that the semen stain represented a mixture of fluids from Mr. Wright and Ms. Talley. (*Id.* at 34-35, 85). Indeed, during closing arguments, the Commonwealth argued that the semen stain on the jeans unequivocally proved Mr. Wright raped and murdered Ms. Talley. (N.T. 6/7/93, at 87-88). In addition to the abovementioned items, Mr. Wright also sought DNA testing of the sweatshirt and blue jeans in his DNA petition.

3. Trial Evidence

The Commonwealth premised its case against Mr. Wright on four things: (1) his signed confession; (2) testimony from co-defendants Roland S. James and John “Buddy” Richardson; (3) two eyewitnesses—Gregg Alston and Shawn Nixon—who placed Mr. Wright near the crime scene; and (4) rudimentary DNA tests which linked the clothes allegedly recovered from Mr. Smith’s home to the crime scene.

As detailed above, on October 20, 1993, Mr. Wright signed a confession he did not write; the Commonwealth read the confession into the record. (N.T. 6/2/93, at 34-39). The confession described a scenario wherein Mr. Wright accompanied Mr. Richardson to Ms. Talley’s house in

² DQ Alpha was the very earliest form of modern polymerase-chain-reaction (“PCR”) based DNA testing. DQ Alpha testing compared “alleles” (variations) at a single locus. Individuals inherit one allele from each parent, and so two alleles are present at a given DNA locus. While DQ Alpha testing compared alleles at a single locus, modern Short Tandem Repeat (“STR”) testing examines alleles at 13 different loci. Thus, STR testing is exponentially more powerful at differentiating between individuals based on a DNA profile. It should be noted that, throughout the trial transcript, the early generation test is referred to as DX alpha testing.

order to rob her for drug money. (*Id.* at 36). Mr. Richardson acted as a lookout as Mr. Wright raped and murdered Ms. Talley. (*Id.*). Mr. Richardson and Mr. Wright then returned to Mr. Richardson's house where they joined Roland S. James and a man named Earl. (*Id.* at 36-37). Mr. James, Mr. Richardson, and Mr. Wright then returned to Ms. Talley's residence and stole two televisions, a clock radio, and some change from her purse. (*Id.* at 37-38). Finally, the trio took all of this stolen property to Mr. James's house. (*Id.* at 38).

Mr. James admitted he had Ms. Talley's T.V. and radio at his 3978 Bott Street residence. (N.T. 6/1/93, at 5, 16, 21-22). However, he contradicted the confession wherein he helped to steal these items directly from Ms. Talley's house with Mr. Richardson after Mr. Wright raped and murdered her. Instead, Mr. James stated that Mr. Wright and Earl brought the T.V. and radio to his house, which Mr. James used as a crack den and place of prostitution. (*Id.* at 16, 33-38). According to Mr. James, Mr. Wright and Earl dropped off the T.V. and radio after an evening walk near Ms. Talley's house, which ended with Mr. James leaving the scene without actually seeing Mr. Wright enter Ms. Talley's residence. (*Id.* at 28, 51). As indicated above, Mr. James implicated Mr. Wright after police interrogated him. (*Id.* at 25).

Mr. Richardson, the then-roommate of Mr. James, presented testimony that contradicted both the confession and Mr. James's testimony. (N.T. 6/1/93, at 141). In his version, Mr. Richardson randomly encountered Mr. Wright on the night of October 18, 1991 at an intersection near Ms. Talley's house. (*Id.* at 142-43). Mr. Wright asked Mr. Richardson to act as a lookout while he entered Ms. Wright's house, but Mr. Richardson refused and left the scene. (*Id.* at 144-45). Mr. Richardson testified he did not see Mr. James with Mr. Wright near Ms. Talley's house, or to going back to the house to steal the televisions. Mr. Richardson testified, however, that he saw two

televisions—presumably those stolen from Ms. Talley’s residence—at Mr. James’s house the next morning. (*Id.* at 147). Like Mr. James, Mr. Richardson testified he did not see Mr. Wright enter Ms. Talley’s residence. (*Id.* at 167). He also admitted he used his house as a crack haven and place of prostitution, and that he implicated Mr. Wright only after police interrogated him. (*Id.* at 150-51, 155).

Two eyewitnesses placed Mr. Wright near Ms. Talley’s residence with another man; the witnesses, however, differed on who the other man had been. Gregg Alston testified that at 10 p.m. on October 18, 1991, he was sitting on the corner of Kerbaugh Street and Nice Street and saw Mr. Wright repeatedly “pacing up and down the street” with “that guy named Buddy.” (N.T. 6/1/93, at 79-81). According to Mr. Alston, Mr. Wright went into Ms. Talley’s house while Mr. Richardson stood outside. (*Id.* at 82). Shawn Nixon also testified to being on the corner of Kerbaugh Street and Nice Street in a group with Mr. Alston. He recalled seeing Mr. Wright enter Ms. Talley’s house, but insisted he was with Earl rather than Mr. Richardson. (N.T. 6/2/93, at 74-76). Unlike Mr. Alston’s memory of Mr. Richardson acting as a lookout, Mr. Nixon said that Earl left the scene rather than act as a lookout. (*Id.* at 77).

The Commonwealth could not link Mr. Wright to Ms. Talley’s murder with the physical evidence collected from her residence—including the bloodstained knife, the blood and semen stained bed sheet, and the rape-kit swabs. In particular, DQ Alpha tests on the knife blade and bed sheet only revealed human blood consistent with Ms. Talley’s blood. Thus, to link Mr. Wright to Ms. Talley’s murder, the Commonwealth relied on the evidence allegedly recovered from his residence; namely, the jeans and sweatshirt. (*Id.* at 72). According to criminalist Louis Brenner, the genetic profile of the blood found on the jeans and sweatshirt was consistent with Ms. Talley’s profile—a

profile, according to criminalist Brenner, which only occurred in 1.4% of the black population. (*Id.* at 73).

Criminalist Brenner performed rudimentary DNA testing on the blood evidence. He failed, however, to subject the vital semen stains—recovered from Ms. Talley’s bed sheet and the jeans allegedly recovered from Mr. Wright’s residence—to the same DNA tests. Criminalist Brenner explained that this shortcoming was due to a technical limitation—i.e., the then-current technique of obtaining DNA from seminal material was “troublesome” for his lab and did not produce consistent results. (N.T. 6/3/93, at 75-76).³ Similarly, criminalist Brenner failed to subject the rape-kit swabs or knife handle to DNA tests.

Mr. Smith asserted his innocence at trial and presented an alibi defense. Mr. Wright unequivocally repudiated his confession and testified that detectives physically and psychologically coerced it from him. (N. T. 6/3/93 at 158-59). He further said detectives did not permit him to read the confession *they wrote* before he signed it, and that he signed it under duress. (*Id.* at 159-60). Mr. Wright denied knowing Roland S. James or Buddy Richardson. (*Id.* at 146-47). According to Mr. Wright, on the evening of October 18, 1991, he proceeded from his construction job to his home, and went to a club called N.A. later that night. (*Id.* at 153-54). He stayed at the club until around 4 a.m., went home and fell asleep, and then went shopping the next morning. (*Id.* at 154-55).

Mr. Wright testified he did not own the clothes the police allegedly recovered from his bedroom. (*Id.* at 164). Mr. Wright’s mother corroborated his claim; she said the police only removed her son’s work uniform, a white jumpsuit, and pictures from the wall and that her son did not own the clothes allegedly recovered from his bedroom. (N.T. 6/3/93, at 128-30).

³Modern STR DNA suffers from no such technical problem; STR testing is routinely performed on semen stains—particularly old and degraded stains.

VI. STATEMENT OF REASONS FOR ALLOWING THE APPEAL

This appeal should be allowed for special and important reasons. The Superior Court erred by holding that Mr. Wright should be denied DNA testing due to his confession. Although there is a confession, found by the suppression court to be admissible, Mr. Wright vigorously contested its veracity and accuracy at trial, and throughout his petition. At trial, the Commonwealth premised its case upon the confession and rudimentary DNA tests; it stressed the fact that the semen-stained bed sheets provided powerful evidence that Ms. Talley had been raped prior to being murdered. However, no testing was ever performed on the semen-stained sheets, because DNA testing was in its infancy at the time of Mr. Wright's trial. On the other hand, Mr. Wright proclaimed his innocence, presented an alibi defense, and unequivocally repudiated his confession, claiming it was obtained through physical coercion.

As a statutory matter, the Superior Court's opinion is wrong. Mr. Wright satisfied the statute's requirements, averring that exculpatory testing results would prove innocence. The Superior Court, without textual support, perceived a statutory bar against testing in cases where petitioners knowingly and voluntarily confessed. To reach this determination, it conflated the legal determination of a statement's admissibility, with a factual one, the statement's probative, evidentiary value—i.e., its reliability and truthfulness. Thus, it restricted testing on grounds that have little to do with DNA testing's power to produce exculpatory results. As exonerations within this very Commonwealth have repeatedly shown, DNA testing can prove innocence, notwithstanding confessions.

More to the point, as Mr. Wright's petition fits comfortably within the text of 42 Pa.C.S.A.

§ 9543.1, the General Assembly clearly intended for testing in cases such as his. The General Assembly enacted the statute immediately after Bruce Godschalk's DNA exoneration; remarkably, the primary evidence used to convict Mr. Godschalk was his false confession. Finally, the Superior Court's opinion will lead to unjust results—petitioners who can establish their actual innocence will be barred from doing so, thereby increasing the likelihood innocent people will languish in prison.

As a constitutional matter, the Superior Court's opinion is arbitrary and fundamentally unfair. First, the Superior Court arbitrarily incorporated a bar not intended by the General Assembly, thereby denying Mr. Wright his statutorily created "liberty interest." Second, the Superior Court has interpreted 42 Pa.C.S.A. § 9543.1 to permit DNA testing where a petitioner's conviction is premised on eyewitness identification. The same reasons why courts permit DNA testing in identification cases equally apply to confession cases.

As a matter of policy, the Superior Court's decision is inconsistent with several state statutes and court opinions which permit DNA testing even when a petitioner confessed or pled guilty.

The Superior Court's opinion should be reversed, so that Mr. Wright may seek the DNA testing afforded by the statute to prove his long proclaimed actual innocence.

VII. REASONS FOR ALLOWING APPEAL

More than forty years ago, Justice Goldberg wrote: “We have learned the lesson of history, ancient and modern, that a system of criminal law enforcement which comes to depend on the confession will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation.” *Escobedo v. Illinois*, 378 U.S. 478, 488-89 (1964). The question presented in this case not only confronts the issue Justice Goldberg described, it presents a pressing issue concerning the administration of justice in the Commonwealth of Pennsylvania: whether 42 Pa.C.S.A. § 9543.1 bars DNA testing where the petitioner confessed to the offense for which he seeks DNA testing.

A. The Superior Court Committed Legal Error When it Denied Mr. Wright’s Petition for Post-Conviction DNA Testing Pursuant to 42 Pa.C.S.A. § 9543.1

1. Mr. Wright Satisfied 42 Pa.C.S.A. § 9543.1's Requirements

Mr. Wright should be granted DNA testing because he satisfied 42 Pa.C.S.A. § 9543.1's requirements.

As the Superior Court correctly noted, Mr. Wright’s “motion for post-conviction DNA testing must be evaluated under 42 Pa.Cons.Stat. Ann. § 9543.1.” *Commonwealth v. Wright*, —A.2d—, 20007 WL 3013674, at *2 (Pa. Super., Oct. 17, 2007). Pursuant to the statute, a petitioner must:

- (1)(i) specify the evidence to be tested;
- (ii) state that the petitioner consents to provide samples of bodily fluid for use in the DNA testing; and
- (iii) acknowledge that the applicant understands that, if the motion is granted, any

data obtained from any DNA samples or test results may be entered into law enforcement databases, may be used in the investigation of other crimes and may be used as evidence against the applicant in other cases.

- (2)(I) assert the applicant's actual innocence of the offence for which the applicant was convicted; and . . .
- (3) present a *prima facie* case demonstrating that the:
 - (i) identity of or the participation in the crime by the perpetrator was at issue in the proceedings that resulted in the applicant's conviction and sentencing; and
 - (ii) DNA testing of the specific evidence, assuming exculpatory results, would establish:
 - (A) the applicant's actual innocence of the offense for which the applicant was convicted.

42 Pa. C.S.A. § 9543.1(c). If a petitioner satisfies these requirements, the court "shall order" DNA testing if it determines that the:

- (ii) evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been altered in any material respect; and
- (iii) motion is made in a timely manner and for the purpose of demonstrating the applicant's actual innocence and not to delay the execution of sentence or administration of justice.

42 Pa. C.S.A. § 9543.1 (d)(1). The Court may only refuse to order DNA testing if it determines that "there is no reasonable possibility that the testing would produce exculpatory evidence that would establish the [petitioner's] actual innocence of the offense for which [he] was convicted." 42 Pa. C.S.A. § 9543.1 (d)(2)(i).

Mr. Wright's petition satisfies these requirements. Ex. 3. Mr. Wright identified the evidence he wished to test; this included the jeans allegedly recovered from his bedroom, the sweatshirt allegedly recovered from his bedroom, the knife used to murder Ms. Talley, the rape kit swabs, and

the bed sheet. *Id.* at 13. In his verification, Mr. Wright consented to provide biological samples for DNA testing, acknowledged that any data obtained from his biological samples may be used to investigate other offenses, and asserted his actual innocence. *Id.* at 14. Similarly, Mr. Wright established that the DNA technology he wished to employ—STR DNA testing—did not exist when the Commonwealth prosecuted him in 1993. *Id.* at 23-24. While the Commonwealth subjected certain items of evidence to DQ-Alpha DNA testing, such testing is unsophisticated compared to STR DNA TESTING. *See* JOHN M. BUTLER, FORENSIC DNA TYPING: BIOLOGY, TECHNOLOGY, AND GENETICS OF STR MARKERS 146 (2d 2005). Mr. Wright also demonstrated that the evidence has been subjected to a proper chain of custody. *Id.* at 24.

Significantly, Mr. Wright established that the identity of Ms. Talley’s assailant was an open question at trial. At trial, Mr. Wright repudiated his confession, proclaimed his innocence, and presented an alibi defense. *Id.* at 14 (citing N.T. 6/3/93, at 152-54). *E.g.*, *Commonwealth v. Williams*, 899 A.2d 1060, 1063 (Pa. 2006) (an alibi defense “by its nature” places the assailant’s identity at issue); *Commonwealth v. Roxberry*, 602 A.2d 826, 827 (Pa. 1992).⁴ Mr. Wright also explained why the informant testimony, eyewitness testimony, and his confession did not negate the identity issue. Ex. 3, at 15-21. Furthermore, Mr. Wright identified several scenarios where exculpatory results would establish his innocence. *Id.* at 21-23. For instance, he explained that STR DNA testing on the rape-kit swabs, bed sheet, knife, or blue jeans could result in isolating: (1) a male profile on one of the items inculpatory Roland James or Buddy Richardson as the rapist or murderer; (2) a male profile

⁴Several cases—which pre-date Pennsylvania’s DNA testing statute—support the notion that DNA testing should be granted where the petitioner’s identity was an issue at trial and exculpatory DNA results could definitively establish the perpetrator’s identity. *E.g.*, *Commonwealth v. Robinson*, 682 A.2d 831, 836-37 (Pa. Super. 1996); *Commonwealth v. Reese*, 663 A.2d 206, 208-09 (Pa. Super. 1995); *Commonwealth v. Brison*, 618 A.2d 420, 425 (Pa. Super. 1992).

on one of the items resulting in a DNA database “cold hit” to a convicted murderer or rapist;⁵ or (3) a redundant male profile found on two or more items of evidence.⁶ Under each scenario, Mr. Wright’s actual innocence would be established. *Id.* at 24.⁷ Put simply, had the Superior Court conducted the appropriate analysis, it *could not* have determined that “there is not a reasonable possibility that the testing would produce exculpatory evidence that would establish [Mr. Wright’s] actual innocence of the offense for which he was convicted.” 42 Pa. C.S.A. §9543.1(d)(2)(i).

2. The Superior Court Arbitrarily Conflated a Legal Determination with a Factual Determination of Whether DNA Evidence Can Establish Mr. Wright’s Actual Innocence.

Section 9543.1 mandates that courts must make a *factual* determination of whether exculpatory DNA results would establish a petitioner’s actual innocence before they grant or deny a petitioner’s testing request. This is a fact-intensive inquiry which requires courts to evaluate each item of evidence and determine—individually and collectively—whether exculpatory results would establish actual innocence. The Superior Court failed to conduct a factual determination; instead, it premised its entire analysis on a tangential and irrelevant legal determination—i.e., the admissibility

⁵DNA database “cold hit” cases occur quite frequently. *E.g.*, NAT’L INST. OF JUST., DEP’T OF JUST., USING DNA TO SOLVE COLD CASES (2002) (listing several cases where DNA database “cold hits” solved an unsolved violent crime). As such, it is reasonable to assume a “cold hit” could occur and establish Mr. Wright’s actual innocence.

⁶Indeed, redundant DNA results led to Nicholas Yarris’s exoneration. *See infra* (discussing Mr. Yarris’s death row DNA exoneration in more detail).

⁷A scenario where DNA showed that semen from the jeans *allegedly* recovered from Mr. Wright’s residence actually came from Buddy Richardson or Roland James would support Mr. Wright’s actual innocence claim and his claim that the clothes did not belong to him. Certainly, finding an informant’s DNA on the murder weapon or rape kit swabs would also establish Mr. Wright’s actual innocence. The Superior Court committed legal error when it ignored these exculpatory results demonstrating third party guilt. *E.g.*, *House v. Bell*, 126 S.Ct. 2064 (2006) (DNA evidence implicating a third-party played crucial role in demonstrating that petitioner established actual innocence to overcome state procedural default rules); *Holmes v. South Carolina*, 547 U.S. 319 (2006) (reversing murder conviction on direct appeal where evidence of third party guilt was excluded because of the strength of the State’s case).

of a knowingly and voluntary confession. In particular, it interpreted the statute to bar DNA testing in “fully litigated” confession cases. The Superior Court’s analysis misconstrued the analytical process mandated by the statute and DNA’s ability to impact critical factual determinations such as whether a petitioner is actually innocent.

a. The Superior Court’s Decision

Nowhere in its opinion does the Superior Court state DNA testing cannot establish Mr. Wright’s innocence. More importantly, the Superior Court did not—and indeed, in light of the DNA exonerations, could not—hold that DNA testing could not destroy the probative impact of Mr. Wright’s confession. Rather than apply section 9543.1’s *factual* inquiry, the Superior Court based its opinion solely on the *legal* determination regarding the admissibility of Mr. Wright’s confession:

For the reasons set forth below, we find that Wright’s confession to the murder, rape, and robbery of the victim has been finally litigated, found not to be coerced, and was knowingly and voluntarily given: as such, pursuant to *Commonwealth v. Young*, 873 A.2d 720 (Pa. Super. 2005), *appeal denied*, 568 Pa. 739, 891 A.2d 733 (2005), Wright cannot assert his actual innocence in this PCRA proceeding.

Commonwealth v. Wright, —A.2d—, 20007 WL 3013674, at *1 (Pa. Super., Oct. 17, 2007).

The Superior Court took great pains to chronicle the litigation regarding the admissibility of Mr. Wright’s confession:

Prior to trial, on March 17, 1992, Wright filed a motion to suppress the statement he had given to the police. On December 16, 1992, following a suppression hearing, the trial court found that Wright’s confession was knowing and voluntary, and therefore denied Wright’s motion, thus allowing Wright’s detailed confession given to police to be admitted into evidence at trial.

On June 8, 1993, following a jury trial, Wright was convicted of first-degree murder, burglary, rape, robbery, and possession of an instrument of crime. Thereafter, on January 31, 1994, the trial court sentenced Wright to life imprisonment for his conviction of murder in the first degree. Wright filed a timely direct appeal, which did not raise any issue with respect to the denial of his suppression motion, and this

