IN THE COURT OF COMMON PLEAS
OF NORTHAMPTON COUNTY
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA Plaintiff-Respondent	)	
v.	)	CP No. 267 May Term. 1974
DANIEL WILLIAMS Defendant-Petitioner	)	

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR POST CONVICTION DNA TESTING PURSUANT TO 42 Pa. C.S.A. § 9543.1

Petitioner, Daniel Williams, hereby submits his Memorandum of Law in Support of Motion for Post Conviction DNA Testing Pursuant to 42 Pa. C.S.A. § 9543.1. The motion is presented in good faith and premised on the following facts and points of authority.

Respectfully submitted this ___ day of November 2008.

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I. Introduction

Petitioner Daniel Williams is serving a life-sentence for the December 12, 1973 rape-murder of eight-year-old Tina Anderson. *See Commonwealth v. Williams*, 383 A.2d 503 (Pa. 1978). Williams claims he is innocent of this crime and seeks DNA testing pursuant to 42 Pa. C.S.A. § 9543.1 to prove his innocence. He is entitled to DNA testing because exculpatory results will prove his actual innocence. *See* 42 Pa. C.S.A. §§ 9543.1 (c)(3)(ii)(A-B).

According to the trial testimony, Williams was a "family friend" who had known Tina's mother, Thelma Anderson, for approximately a year; she used to date his friend—Sam Strickland. At approximately 5:45 pm on December 11, 1973, Williams stopped by the Andersons' residence to see if Thelma had seen Strickland and if she'd like to go to the movies that night. While at the Andersons, he gave Tina a quarter, which she used to buy a 7-UP at the local store. Tina left at approximately 6:10 pm and went to the neighbor's residence. Williams left shortly thereafter. Thelma subsequently learned that Tina never reached the neighbor's residence.

At 8:30 pm, Williams returned to the Andersons' residence with his wife. He introduced his wife to Thelma and told her that he could not take her to the movies as planned. During this conversation, he made no mention of having Tina with him in his vehicle earlier that evening. At about 10:30 pm that evening, Thelma reported Tina missing. Despite an intensive search, police did not locate her that night. The next day, December 12, 1973, a City of Allentown employee found Tina's body at 1:15 pm in a stream behind the Western Electric Plant in Allentown, Pennsylvania. Her body was

partially submerged in the shallow stream and a large rock had been placed on her chest in an apparent attempt to prevent the body from floating to the surface.

The autopsy revealed semen and sperm in her mouth, vagina, and rectum and lacerations to her anus and vagina, as well as injuries to her mouth. The pathologist determined that there had been penile entry in her mouth, vagina, and rectum and concluded that she died from asphyxiation, caused either by: penile choking; suffocation resulting from another person's pubic or lower abdominal regions covering her face; or suffocation resulting from another person's body on her chest.

The police did not have a suspect for more than a week. Williams became the prime suspect on December 20, 1973 when Officer Raymond Snyder of the Bethlehem Police Department recalled a traffic citation he issued to Williams on December 11, 1973. At 6:20 pm, on December 11, 1973, Officer Snyder stopped Williams's vehicle on Stefko Boulevard in Bethlehem for a traffic light violation. When he approached his vehicle, he observed a passenger in the right front seat and recorded the number "two" in the "occupant" square on the citation. He later described the passenger as a young female child wearing clothing that matched the clothing Tina was wearing when she left her residence.

Detectives approached Williams when they learned of Officer Snyder's arrest. Williams cooperated and agreed to speak with detectives at the police station. During questioning, Williams denied that Tina (or anyone for that matter) was in his vehicle when Officer Snyder stopped him. He also denied kidnapping and murdering Tina, agreed to take a polygraph test, consented to having his vehicle search, and voluntarily

gave detectives several hair samples. Simply put, Williams repeatedly proclaimed his innocence.

Despite the "thin" circumstantial evidence, police arrested and charged Williams with Tina's kidnapping and murder.[1] Williams pled not guilty and went to trial. At trial, the Commonwealth argued: (1) that Williams kidnapped Tina immediately after he left the Andersons' residence; (2) that he raped and murdered her shortly after 6:30 pm; (3) that he did not have time to dump her body that night so he placed it in the trunk of his vehicle before he picked up his wife and went back to the Andersons at 8:30 pm; (4) that he went to work the next day (December 12, 1973) with her body still in his trunk; and (5) that he left work that day around noon and dumped her body in the stream behind the Western Electric Plant before he went to the Andersons to help search for Tina.

The "Commonwealth's case was based primarily upon circumstantial evidence." *Commonwealth v. Williams*, 383 A.2d 503, 505 n.2 (Pa. 1978). The circumstantial evidence consisted of: (1) the Andersons' inconsistent timelines; (2) Officer Snyder's uncertain testimony; (3) subjective and unreliable hair and fiber evidence; and (4) an untrustworthy jailhouse informant. Officer Snyder testified that he could not definitely say whether the person in Williams's vehicle was in fact a young girl: "I couldn't positively say it was a girl. It just appeared to be a young girl." Furthermore, a Pennsylvania State Police criminalist determined that a hair found in Williams's vehicle came from the same source as a hair found on Tina's thigh and elbow. He also recovered fibers from the trunk of Williams's vehicle that matched fibers found on Tina's clothing.

[1] Captain Wager even acknowledged, at this point in the investigation, that the "*evidence was still too thin*" to arrest Williams for homicide and that detectives "would have to turn him loose, unless" they decided to file "abduction charges" based on Officer Snyder's testimony. Ex. 19.

Finally, Charles LaFever, Williamson's cellmate at Northampton County Prison testified that on or about March 10, 1974, apparently during an altercation, Williams said to him: "I killed one. I can kill another."

Williams testified and proclaimed his innocence. He acknowledged that Officer Snyder stopped him shortly after he left the Andersons, but denied having Tina (or anyone) in his vehicle. After Officer Snyder cited him, he stopped at a bar near his house in Allentown and then went home. Once home, he showered, got dressed, and ate. He and his wife then stopped by the Andersons around 8:30 pm. After they left the Anderson, they went to a shoe store, to Lane's Department Store, and then home—where they both stayed the remainder of the night

The jury convicted Williams of first-degree murder, rape, kidnapping, and deviate sexual intercourse and the trial judge sentenced him to life in prison.

Williams's case is a quintessential case where DNA testing can prove—beyond all doubt—a person's innocence. It represents the "classic" single-perpetrator rape-murder where the absence of the defendant's semen and sperm will prove his actual innocence.[2] The Commonwealth argued that Williams—*and only he*—kidnapped Tina and deposited his semen and sperm in her mouth, rectum, and vagina when he orally, anally, and vaginally raped and sodimized her. At the time, the Commonwealth could not conclusively prove that the biological evidence came from Williams because DNA

[2] *E.g., Commonwealth v. Brooks*, 875 A.2d 1141, 1147 (Pa. Super. 2005) ("This is not a rape-murder case where the absence of the defendant's semen could prove his innocence"); *People v. Travis*, 771 N.E.2d 489, 493 (Ill. App. Ct. 2002). ("*Rokita*… was the classic sole perpetrator case; if the DNA was not that of the defendant, the defendant did not commit the crime.").

technology was not available. However, DNA technology is now available and can determine whether Williams was the source of the biological evidence.

Additionally, there are several problems with the Commonwealth's case that can be resolved with DNA testing. First, the Commonwealth's time-line of events is not as clear-cut as it would have us believe. In particular, Tina's mother and siblings initially told the police that Tina did not leave the house to go to the neighbors until shortly *after* 7:00 pm. If this is true, Tina could *not* have been the alleged second "occupant" in Williams's vehicle when Officer Snyder stopped him on at *6:20 pm*. Her family members changed their testimony after detectives informed them that their time-line conflicted with Officer Snyder's citation.

Second, Williams's conviction is premised on Officer Snyder's speculative testimony that the second "occupant" in Williams's vehicle was an eight-year-old African-American girl. Office Snyder's testimony is speculative because he did not see the individual's face, nor did he interact or talk with this individual. Likewise, he did not memorialize this person's description, characteristics, or clothing in his citation. Instead, he only revealed this information after he learned that Tina had been kidnapped and murdered. At trial, as noted, he was not even sure whether the person he allegedly saw was a little boy or girl.

Third, Williams's conviction is based on jailhouse informant testimony—an inherently unreliable form of evidence.[3] As noted, Charles LaFever, Williams's former

[3] Indeed, in more than 15% of the DNA exonerations, an informant or jailhouse snitch testified against the exoneree. In most, if not all, of these cases, the informant or jailhouse snitch had a compelling motivation to testify (falsely) against the exoneree—i.e., to obtain leniency for a crime he or she committed or to place blame on someone else for a crime he or she committed. Often times the informant or snitch received a benefit from the State in exchange for his or her

cellmate at Northhampton County Prison, testified that on March 10, 1973 he had "heated" exchange with Williams, wherein Williams allegedly threatened him by saying: "I killed one. I can kill another." LaFever's claim must be viewed through a cautious lens because there is substantial evidence indicating that the Commonwealth compensated him for his testimony and never disclosed this fact to Williams.[4]

Simply put, when the Commonwealth prosecuted Williams in 1974 it could not conclusively resolve many of these questions with scientific technology or certainty. However, "[a]s technology develops, the potential for... [forensic] evidence to provide conclusive results on any number of questions… increase[s]." *Arizona v. Youngblood*, 488 U.S. 51, 70 (1988) (Blackmun, J., dissenting). Thanks to scientific advancements over the last three decades, Williams can now use DNA technology to resolve these issues and conclusively prove his actual innocence.

Williams is entitled to DNA testing pursuant to 42 Pa. C.S.A. § 9543.1 because: (1) exculpatory results will prove his actual innocence; (2) he identifies what evidence he wishes to test; (3) he consents to providing a DNA sample that the Commonwealth can use to investigate other offenses; (4) the assailant's identity was at issue during his trial; and (5) STR, Y-STR, and mini-STR testing was not available when the Commonwealth prosecuted him in 1974.

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testimony. The State, however, repeatedly failed to inform the exoneree that the informant or snitch received such a benefit. Lastly, their testimony was quite often one of the primary pillars that buttressed the State's case against the exoneree d. Without his or her testimony, it is likely the State's could not have prosecuted the exoneree. *See* www.innocenceproject.org/understand/Snitches-Informants.php (last visited September 13, 2008).

[4] *See infra* (discussing, in more detail, LeFever's favorable treatment).

II. Statement of Facts

Five facts are clearly established regarding the events of December 11, 1973: (1) Williams arrived at Thelma Anderson's residence at 5:45 pm; (2) Williams left shortly thereafter at 6:10 pm once he and Thelma made arrangements to go to the movies later that night; (3) Tina Anderson, Thelma's eight-year-old daughter, left their residence that night never to be seen alive again; (4) Williams came back to the Andersons' residence at 8:30 pm and informed Thelma that he could not go to the movies as planned; and (5) Thelma contacted the police at 10:30 pm to report Tina missing.

A critical issue surrounding Williams's case is when Tina left their residence. Namely, did she leave her residence prior to 6:15 pm or did she leave shortly after 7:00 pm. If she left at 7:00 pm, this disproves the Commonwealth's claim that the person that Officer Snyder allegedly saw in Williams's vehicle—*at 6:20 pm*—was Tina. Conversely, if she left shortly before Williams departed—at 6:10 pm—this supports the Commonwealth's claim that the person Officer Snyder allegedly saw in Williams's vehicle could possibly have been Tina.

The initial police reports and trial testimony, however, contradict one another regarding this critical issue. For instance, several of Tina's family members said that she left shortly *after* 7:00 pm. However, they changed their timeline once the police approached them and suggested that their timelines were wrong in light of the information in Officer Snyder's citation.

A. Tina Anderson Goes Missing—Initial Statements to the Police

1. Thelma Anderson's First Statement

On December 12, 1973, Detective Gyorek interviewed Thelma Anderson. She told him that she was absolutely certain Tina left *after* 7:00 pm:

> Tina definitely according to Mrs. Anderson did not leave till 1900 Hours, 11 Dec. 73. She was only gone for a few minutes and came back with a soda, a 7-Up, which she put in the refrigerator. She sang some Christmas Carols to her Mother and [at] approximately 1920 hours, she asked to go visit the Mitchell's, which she often did. Her mother told her she could, but to be back at 2100 hours.[5]

2. <u>Ira Anderson's First Statement</u>

On December 12, 1973, Officer Lamana and Detective McFadden interviewed Tina's brother, Ira Anderson. Ira also said that Tina left shortly *after* 7:00 pm:

> Ira stated that he had last seen his sister alive at approximately 1915 hours. He said that earlier, about 1850 hours, while he was inside Miller's Store, Tina came in to buy a bottle of 7-UP soda. They both left the store together and went directly home. Ira went upstairs to the bathroom and returned downstairs within a few minutes. He claims that Tina was in the living room singing Christmas Carols for ther [sic] Mother. He said that Tina later left the house to go to the Mitchell home… to watch television. He said that she visited the Mitchell's on almost a daily basis.[6]

3. <u>Thelma Anderson's Second Statement</u>

On December 13, 1973, Detective McFadden re-interviewed Thelma. She reiterated that Tina left shortly *after* 7:00 pm to go to the Mitchell's residence:

> Mrs. Anderson… said that Tina came home from school [at] about 1525 Hours and went out for about five (5) minutes. On her return, she went to her sisters room until Mrs. Anderson and Tina came downstairs about 1630 hours, and watched T.V.
>
> They ate supper at 1810 hours.
>
> At about 1900 Hours, Tina went to the store for a soda. She was gone about five (5) minutes, and came back with a 7 UP, and put it in the

[5] Ex. 10.
[6] Ex. 10.

refrigerator. Tina then went through a Christmas Carol scene she was having at school.

At about 1920 Hours, she said she was going to the Mitchell's. Her mother told her to be home by 2130 Hours.

When Tina did not come home at 2130 Hours, Mrs. Anderson told Ira to go for her. Ira didn't go, so she sent Rene.[7]

B. Tina Anderson's Body Is Discovered and the Autopsy Results

1. Discovery

On December 12, 1973, at approximately 1:15 pm, Elwood Vogel discovered Tina's body in a stream behind the Western Electric Plant in Allentown, Pennsylvania. Her body was partially submerged in the shallow stream and a large rock had been placed on her chest in an attempt to prevent the body from floating to the surface.[8]

2. Autopsy Results

Medical personnel transported Tina's body to Sacred Heart Hospital in Allentown, where Dr. Isidore Mihalakis performed the autopsy and collected vaginal, rectal, and oral fluids and smears, which tested positive for semen and sperm.[9] Dr. Mihalakis identified lacerations in her anus and vagina, as well as injuries to her mouth and concluded that there had been penile entry in her mouth, vagina, and rectum. Based on these findings, he concluded that Tina likely died as a result of asphyxiation, which was caused by either penile choking; suffocation resulting from another person's pubic or

[7] Ex. 13.

[8] NT at 121-38.

[9] Ex. 4.

lower abdominal regions covering her face; or suffocation resulting from another person's body on her chest.[10]

C. Daniel Williams Enters Into the Picture

1. Daniel Williams Becomes a Suspect

Detective McFadden first identified Williams as a suspect on December 18, 1973 after he reviewed Officer Lamana's December 17, 1973 report, wherein Ira told Officer Lamana that Williams was in the Andersons' residence before Tina left and that he (Williams) left shortly after Tina left.[11] After reading Officer Lamana's report, Detective McFadden reviewed the Bethlehem Police Department (BPD) arrest records to see if the BDP had ever arrested or cited Williams so he could obtain his date of birth for an NCIC inquiry.[12] During his review, he uncovered a traffic citation issued to Williams on December 11, 1973 at 6:20 pm by Officer Snyder.[13] Notably, Officer Snyder recorded the number "two" in the "occupant" square on the citation.[14] Officer Snyder, however, did not describe the "occupant" by race, gender, or clothing.

When Detective McFadden contacted him, Officer Snyder said that the other occupant in Williams's vehicle was a "young black female" sitting in the "right front seat."[15] Officer Snyder recalled that "the girl had red plaid slacks" and that she was

[10] NT, Trial, 351-90.

[11] Ex. 16.

[12] Ex. 17.

[13] Ex. 17. Officer Snyder cited Williams for a "red light violation." Ex. 3.

[14] Ex. 3.

[15] Ex. 18.

"holding and fooling around with" a "brown and white tossle cap." He also recalled that she looked to be about his daughter's age—i.e., eight-years-old. He subsequently viewed the clothing Tina was wearing when her body was found and said that her "slacks" and "tossle cap appeared to be the same" as the ones he saw on the girl in Williams's vehicle.[16]

2. Daniel Williams's Arrest

On December 21, 1973, at approximately 5 pm, detectives located Williams at his Allentown residence and asked if he would come to the detective bureau for questioning. Williams agreed and the detectives transported him to the Allentown detective bureau for questioning. Williams acknowledged that he knew the Andersons and that he was at their residence on December 11, 1973. He also acknowledged that Officer Snyder cited him on December 11, 1973 at 6:20 pm. He denied, however, that Tina (or anyone else) was with him when Officer Snyder stopped him. Williams ultimately agreed to take a polygraph test, which he supposedly failed.[17] He also "consented to a full examination of his car" and provided head, mustache, and pubic hair samples "willingly, and without any hesitation."[18] Williams denied abducting, raping, and murdering Tina.

At this point, detectives contacted Captain Wagner and informed him about the circumstantial evidence against Williams. Captain Wager said that the "*evidence was still too thin*" to arrest him for homicide and that the detectives "would have to turn him

[16] *Id.*

[17] Ex. 19. The police and the Commonwealth, however, never shared the "actual" results with Williams or defense counsel.

[18] *Id.*

loose, unless" they decided to file "abduction charges" based on Officer Snyder's testimony.[19] Detectives ultimately arrested Williams on abduction rather than homicide charges and transported him to Northhampton County Prison after he was arraigned before Alderman Gombosi.[20]

D. The Andersons' Timeline Changes

1. Thelma Anderson

As detectives questioned Williams on December 21, 1973, other officers seized Thelma and brought her to the detective bureau "for questioning, in regards to her time elements."[21] When confronted with Officer Snyder's citation, "she admitted she could be wrong about [her] time[line]."[22] She said that Rena, one of her three daughters, said that she "would know [the] exact time Tina left the house, because she saw her leave."[23]

On April 2, 1974, the Commonwealth deposed Thelma regarding the timeline of events on December 11, 1973. According to her *new* timeline, she said she last saw Tina alive shortly before 6:10 when she (Tina) left to go to the Mitchell's residence.[24] She said Williams left a "minute or two" after Tina left and returned (with his wife) at 8:30 pm to inform her that he could not take her to the movies.[25] Williams left shortly

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[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] Ex. 26, at 3.

[25] *Id.* at 4-5.

thereafter and that was the last time she saw him that night. She called the police at 10:30 pm to report Tina missing.[26] She said he returned the next day (December 12, 1973) at 1:40 pm and asked her: "Is it true what I hear about Tina?"[27] He subsequently took Andrew and Rena with him and searched for Tina.

2. Ira Anderson

On April 2, 1974, the Commonwealth deposed Ira regarding the timeline of events on December 11, 1973. He provided an account similar to Thelma's. On December 11, 1973, he came home shortly before 6 pm. He said Williams was there when he arrived home. He said his mother and Tina came downstairs and that his mother asked somebody to turn the T.V. to "King of Kings." Tina asked her mother for a quarter, which she used to buy a 7-UP at the store with Ira. When Tina and Ira returned home, Tina got permission to go to the Mitchell's house and left. At this point, he said Williams asked his mother if she wanted to go to the movies. When she agreed, Williams said he would go home and change and then come back and pick her up. He left (shortly after Tina left) and returned around 8:30 pm (with his wife) and told his mother they could not go to the movies as planned.[28]

3. Rena Anderson

On April 2, 1974, the Commonwealth deposed Rena regarding the time line of events on December 11, 1973. She provided the same timeline as Thelma and Ira.[29]

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[26] *Id*. at 5-6.

[27] *Id*. at 6-7.

[28] *Id*. at 23-24.

[29] *Id*. at 11-19.

C. Trial

Williams went to trial in September 1974.

1. Commonwealth's Case

As the Pennsylvania Supreme Court noted, "the Commonwealth's case was based primarily upon circumstantial evidence." *Commonwealth v. Williams*, 383 A.2d 503, 505 n.2 (Pa. 1978).[30] Indeed, the Commonwealth premised its case on: (1) the Anderson family's altered timeline of events; (2) Officer Snyder's uncertain testimony; (3) subjective and unreliable hair and fiber evidence; and (4) an untrustworthy jailhouse informant.

a. The Andersons' Time Line of Events

Thelma and Renee Anderson offered the same timeline of events as they did in their April 2, 1974 depositions—i.e., Tina left shortly before 6:10 pm and Williams left shortly thereafter.[31]

b. Officer Snyder's Testimony

While Officer Snyder testified that he saw a young African-American girl in the front seat of Williams's vehicle, he could not definitely state whether the person was in fact a young girl. He testified: "I couldn't positively say it was a girl. It just appeared to be a young girl."[32]

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[30] The Commonwealth was well aware that its case was based on thin circumstantial evidence. This awareness is clearly reflected in the Commonwealth's closing arguments, where it spends a great deal of time explaining to the jury why its "circumstantial evidence" is "just as good as any other kind of evidence[.]" NT at 602, 603-604.

[31] NT at 43-55 (Thelma Anderson), 265-77 (Renee Anderson).

[32] NT at 107.

c. Hair and Fiber Evidence

The Commonwealth introduced the hair and fiber evidence through Thomas Jensen—a criminalist with the Pennsylvania State Police (PSP) Crime Laboratory. In regards to the hair evidence, Jensen examined a hair recovered from Tina's right thigh and a hair he recovered from Williams's vehicle.[33] He said both hairs were "similar in all characteristics" and that they "most likely" came "from a common source."[34] The prosecutor hammered home the hair evidence during his closing summation, arguing that it established a link between Tina and Williams's vehicle:

> [A]t the autopsy, Dr. Mihalakis… found a red hair on the body of the decedent after he undressed her and after he took off the plaid pants that she was wearing. Later, when he obtained the defendant's car, he vacuumed it. He tested it on various other ways and he found a hair on the seatbelt on the driver's side of the car, a red hair. Now, nobody is contending… that that hair belonged to anybody unnecessarily involved in this case… the only reason we present it for you is for the conclusion which I consider inescapable, that at one point, this girl had her clothes off in that car and the hair—similar hair to the one that was eventually found in Williams' front seat adhere to her leg.[35]

The prosecutor continued:

> The criminalist testified that according to the way that hair is made… they matched, that they matched in color. That they were similar in length and in the various other ways he described, the medulla and the cortex and so forth, and he described the color and then he gave it as his opinion that those hairs had a common source. *He said they came from the same head of red hair*.[36]

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[33] NT at 318. Jensen recovered the hair from the retracted seat belt on the right side of the drivers seat.

[34] *Id*. at 320.

[35] *Id*. at 611-12.

[36] *Id*. at 612 (emphasis added).

The prosecutor added:

> The samples are going to go out into the jury room with you and you will have not only the expert's opinion as to the result of his tests and the reasons upon which he based his opinion, but you will be able to see the hairs themselves and I don't think it takes an expert and it doesn't take a microscope. All you're going to have to do is look at these strands of hair to determine in your own mind, without the air of Mr. Jensen or any other expert, *that these strands of hair came from the same head* and we ask you to draw the conclusion from that that this girl was undressed in the car.[37]

Jensen also examined fibers recovered from Tina's clothing and fibers recovered from the trunk of Williams's vehicle. He found the fibers "very similar" and concluded that it was "very probable that the fibers from the trunk of the car came either from [Tina's] slacks or from another pair of slacks cut from the same cloth."[38] The prosecutor emphasized the significance of the fiber evidence during his closing summation, arguing that it established another link between Tina and Williams's vehicle:

> To substantiate the theory that after she died, he put her body in the trunk because he didn't have time to hide it, the Commonwealth, through Mr. Jensen, had produced testimony that fibers that came from these pants… He told you what the colors were and he described whether they were good matches. In some cases, excellent… Those fibers were embedded in the mat of the trunk of Mr. Williams's car.[39]

(1) <u>Hair Identification's Unreliability</u>

There is a strong possibility Jensen erred when he concluded that the hairs originated from a "common source." First, hair identification evidence is subjective and unreliable. Second, Jensen's testimony, lack of training, education, and proper use of accepted scientific protocols rendered his results suspect.

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[37] *Id.* at 612-13 (emphasis added).

[38] *Id.* at 335, 337-38.

[39] *Id.* at 614.

Hair identification is notoriously unreliable. The "few available studies" support this fact,[40] as do numerous wrongful convictions where misidentified hair evidence played a critical role in an innocent person being unjustly convicted.[41] Chief Justice

[40] As one federal judge noted: "[T]his court has found an apparent scarcity of scientific studies regarding the reliability of hair comparison testing. The few available studies reviewed by this court tend to point to the method's unreliability." *Williamson v. Reynolds*, 904 F.Supp. 1529, 1556 (E.D. Okla. 1995). For instance, consider the recent study by Max M. Houck and Bruce Budowle. Houck is a former supervising examiner for the FBI laboratory who left in 2001 and joined the faculty of West Virginia University in their forensic science program. Budowle is still with the FBI Laboratory. Their study dealt with an analysis of 170 hair comparisons done at the FBI laboratory between 1996 and 2000. In each case a questioned hair sample from a real case had been visually compared to a hair sample from a known human source to try to determine whether they were sufficiently similar that they might have come from the same source. Subsequently, the same samples were subjected to mitochondrial DNA testing. The authors stated that the study's purpose was to "use mtDNA results to assess the performance of microscopic analyses." Perhaps the most central question in such a study concerns how often a questioned hair actually comes from the known source when the human examiner declares that they are "associated," that is, consistent in visual characteristics. Of the seventy-eight hairs in the set which had thus been declared "associated" for which DNA analysis was successfully done, nine (11.5%) were excluded as coming from the same source by mtDNA analysis. *See* Max M. Houck & Bruce Budowle, *Correlation of Microscopic and Mitochondrial DNA Hair Comparisons*, 47 J. FORENSIC SCI. 964 (2002); see also Stephanie L. Smith & Charles A. Linch, *A Review of Major Factors Contributing to Errors in Human Hair Association by Microscopy*, 20 AM. J. FORENSIC MED. & PATHOLOGY 269 (1999) (discussing two incorrect inclusion cases).

Likewise, consider the Law Enforcement Assistance Administration's (LEAA) Laboratory Proficiency Testing Program from the late 1970s. In response to studies indicating a high percentage of error in forensic analysis, the LEAA sponsored its own Laboratory Proficiency Testing Program. Between 235 and 240 crime laboratories participated in the program, which compared crime laboratory reports with analytical laboratory findings on different types of evidence, including hair. Overall, crime laboratories performed the weakest in the area of hair identification, as error rates were as high as 67% on individual samples, and the majority of the crime laboratories incorrectly analyzed 4 out of 5 hair samples. Such an accuracy level was below chance. *See* Edward J. Imwinkelried, *Forensic Hair Analysis: The Case Against the Underemployment of Scientific Evidence*, 39 Wash. & Lee L. Rev. 41, 44 (1982) (describing the LEAA study and its results).

[41] For example, the "hair evidence that supposedly linked" Michael Blair to a 7-year-old girl's murder "has been disproved by DNA testing that was not available during Mr. Blair's 1994 trial." Wendy Hundley & Tiara M. Ellis, *DA Evidence Doesn't Link Blair to Girl's Death*, DALLAS MORNING NEWS, May 24, 2008, at 1A. Due to new DNA results, prosecutors agreed to vacate his conviction *and death sentence* because "no other credible forensic evidence connects him to the crime." *Id. See also* Craig M. Cooley & Gabriel S. Oberfield, *Increasing Forensic Evidence's Reliability and Minimizing Wrongful Convictions: Applying Daubert Isn't the Only Problem*, 43 TULSA L. REV. 285, 301-09 (2007) (discussing several DNA exonerations involving hair misidentification); *See also* www.innocenceproject.org/causes/ (twenty-one out of one-

Fletcher of the Georgia Supreme Court acknowledged this reality when he wrote: "[H]air misidentification has caused more wrongful convictions than any other individualization science." *Crawford v. State*, 597 S.E.2d 403 (Ga. 2004) (C.J., Fletcher, dissenting) (citation omitted). Hair identification unreliable because it lacks adequate standards and is thus highly subjective. The forensic science community has yet to articulate adequate standards to determine when in fact two or more hairs share or may share a common origin.[42] Thus, a conclusion that two or more hairs share or may share a "common origin" is premised on an examiner's subjective experience.[43] Moreover, the high-degree

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hundred-and-thirty wrongful convictions were initially supported by faulty hair identifications); NATIONAL INSTITUTE OF JUSTICE, CONVICTED BY JURIES, EXONERATED BY SCIENCE: CASE STUDIES IN THE USE OF DNA EVIDENCE TO ESTABLISH INNOCENCE AFTER TRIAL (1996) (out of twenty-eight erroneous convictions, six had hair comparison testimony supporting the original conviction).

[42] "There is an apparent lack of consensus among hair examiners about the number of characteristics, and it has been suggested that there is a need for more accurate definitions of hair features in microscopic hair examination." *Williamson v. Reynolds*, 904 F.Supp. 1529, 1554 n.11 (E.D. Okla. 1995). For instance, one forensic science treatise states the following: "Under no circumstances… can an association to a single source be established by one or two characteristics. Rather, if two samples have originated from one individual, there must always be *sufficient agreement* on several other characteristics that have no *fundamental dissimilarities*. An association does not rest, therefore, merely on a similar combination of identifying traits… but also on a coexistent lack of *basic divergences* between the questioned and standard hairs." Richard E. Bisbing, *The Forensic Identification and Association of Human Hair, in* 1 FORENSIC SCIENCE HANDBOOK 408 (2d 2002) (emphasis added). As noted by the italicized words, the problem with this statement is that it fails to define or quantify "sufficient agreement," "fundamental dissimilarities," and "basic divergences." Consequently, these terms can and do mean different things to different examiners.

[43] "Since the evaluation of hair evidence remains subjective, the weight the examiner gives to the presence or absence of a particular characteristic depends upon the examiner's subjective opinion. Consequently, any conclusion regarding whether a particular hair sample came from a certain individual depends upon the value judgment and expertise of the examiner." *Williamson v. Reynolds*, 904 F. Supp. at 1556.

of subjectivity significantly increases the likelihood that subconscious biases will adversely impact the examiner's conclusion(s).[44]

Jensen offered misleading and scientifically indefensible testimony, as well. For example, his claim that he can determine whether two hairs in fact share a "common origin" is grossly misleading, as it implies that hair examiners can *individualize* a hair or set of hairs to a particular person. It is "well-established," however, "that microscopic analysis (as opposed to DNA analysis) of hair samples cannot establish an identical match or provide any type of positive identification." *Crawford v. State*, 597 S.E.2d 403, 406 (Ga. 2004) (C.J., Fletcher, dissenting).[45] Furthermore, his quasi-statistical claim that the two hairs "likely" came from a "common source" has no foundation in science, as well. While "probability standards for fingerprint and [DNA] evidence have been

[44] Subjective techniques, such as hair identification, are prone to subconscious observer effects that can easily taint the most impartial examiner's identification. *See* D. Michael Risinger et al., *The Daubert/Kumho Implications of Observer Effects in Forensic Science: Hidden Problems of Expectation and Suggestion*, 90 CAL. L. REV. 1 (2002). A federal judge even recognized that the "conventional method [for hair identification] is subject to unintentional bias among hair examiners." *Williamson v. Reynolds*, 904 F.Supp. at 1557; *see also* Paul L. Kirk & Charles R. Kingston, *Evidence Evaluations and Problems in General Criminalistics*, 9 J. FORENSIC SCI. 434, 435 (1964) ("Subjective opinions, however well based in personal experience, are still subject to several factors such as… a mental bias of which its possessor may be totally unaware.").

[45] *See, e.g.*, *Scott v. State*, 581 So.2d 887, 892 (Fla. 1991) ("it is important to recognize that hair comparisons do not constitute a basis for positive personal identification"); *State v. Faircloth*, 394 S.E.2d 198, 202 (N.C. App. 1990) ("Unlike fingerprints, however, comparative microscopy of hair is not accepted as reliable evidence to positively identify a person"); *State v. Butler*, 24 S.W.3d 21 (Mo. App. 2000), *rev'd on other grounds*, 108 S.W.3d 18 (2003) ("As [the expert] acknowledged in her testimony, and as the authoritative articles confirm, there is no scientific basis for testifying that a hair comes from a particular individual").

established and recognized by the courts, no such standards exist for human hair identification." *Williamson v. Reynolds*, 904 F. Supp. at 1556.[46]

Jensen's testing procedures also increased the likelihood of error. To begin with, he knew that one of the hairs he examined came from Williams's vehicle and that the detectives desperately needed forensic evidence to link Tina to his vehicle in order to bolster their "thin" case against him—i.e., the detectives made him aware of their desired outcome. Thus, when Jensen performed his (highly subjective) hair examination, he knew the detectives' desired outcome—i.e., the hair recovered from Tina and the hair recovered from Williams's vehicle came from a "common source." This is the archetypal situation where subconscious biases or "examiner bias" can and will influence (to a defendant's detriment) an examiner's interpretation and ultimate conclusions.[47] Additionally, Jensen failed to have his results "blindly" reviewed by another examiner in order to validate his conclusions. This, too, significantly undermines confidence in his results.[48]

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[46] *See also* Peer Review Report: Montana v. Jimmy Ray Bromgard, at www.innocenceproject.org/docs/bromgard_print_version1.html ("there is not - and never was - a well established probability theory for hair comparison.").

[47] To fall prey to such unconscious effects, examiners must generally (a) confront an ambiguous stimulus capable of producing varying interpretations and (b) be made aware (directly or indirectly) of an expected or desired outcome. *See* ULRIC NEISSER, COGNITION AND REALITY: PRINCIPLES AND IMPLICATIONS OF COGNITIVE PSYCHOLOGY 43-45 (1976). Thus, "examiner bias" is the "tendency to resolve ambiguous stimuli in a manner consistent with expectations." William C. Thompson, *DNA Evidence in the O.J. Simpson Trial*, 67 U. COLO. L. REV. 827, 845 (1996); Larry S. Miller, *Procedural Bias in Forensic Science Examinations of Human Hair*, 11 LAW & HUM. BEHAV. 157, 158 (1987).

[48] As the U.S. Supreme Court noted: "[S]ubmission to the scrutiny of the scientific community is a component of 'good science,' in part because it increases the likelihood that substantive flaws in methodology will be detected." *Daubert v. Merrell Dow Pharmaceutical*, 509 U.S. 579, 593 (1993).

Finally, Jensen's training and experience (or lack thereof) also calls into question the validity of his results. Indeed, he had no "formal" training or education in hair identification; his experience consisted of two-and-a-half years of "on-the-job" training, which at that point consisted of only *twenty* cases where he actually examined hair evidence.[49] Likewise, this was the *first* case where he testified to his results at trial.[50] Thus, because hair identification is entirely premised on the examiner's experience and expertise, his lack of experience increases the likelihood that his results are invalid.

d. Charles LeFever's Jailhouse Testimony

LeFever was (for a short period) Williams's cellmate at Northhampton County Prison while Williams was awaiting trial.[51] According to LeFever, Williams allegedly made the following statement to him on March 10, 1974: "I killed one. I can kill another."[52] LeFever had been in the Northhampton County Prison for approximately three months (for two separate burglary and auto theft offenses) when Williams supposedly made this statement to him and was awaiting disposition of his cases.[53] He had yet to plead guilty or be officially sentenced.

LeFever's testimony must be viewed with great caution and skepticism because he had a clear motive to fabricate incriminating evidence against Williams—i.e., he wanted out of prison sooner than later. While the Commonwealth denied "formally"

[49] NT at 301-03.

[50] *Id.*

[51] NT at 257.

[52] *Id.* at 258.

[53] *Id.* at 256, 258-59.

compensating LeFever for his testimony, when one closely reviews the sequence of events, the strong inference is that the Commonwealth "informally" compensated him for testifying against Williams. On April 16, 1974, LeFever ultimately pled guilty to the two burglary and auto theft charges. On the same day, the trial judge sentenced him to "not less than four months and not more than twenty-four months."[54] Remarkably, the Commonwealth released LeFever from prison **EIGHT** days later on April 24, 1974. Consequently, he served the bare minimum sentence of four months for two burglary and auto theft offenses.[55]

(1) Source of Wrongful Convictions

The Supreme Court has expressed grave concerns and doubts about the reliability of snitch testimony. *See Banks v. Dretke*, 540 U.S. 668, 701-02 (2004) ("This Court has long recognized the 'serious questions of credibility' informers pose."). The "use of informers, accessories, accomplices, false friends, or any of the other betrayals which are 'dirty business' may raise serious questions of credibility." *On Lee v. United States*, 343 U.S. 747, 757 (1952); *United States v. Bernal-Obeso*, 989 F.2d 331, 334 (9th Cir. 1993) ("the use of informants to investigate and prosecute persons engaged in clandestine criminal activity is *fraught with peril*.") (emphasis added).[56] Criminals "caught in our system understand they can mitigate their own problems with the law by becoming a

[54] *Id*. at 260.

[55] *Id.*

[56] Alexandra Natapoff, *Snitching: The Institutional and Communal Consequences*, 73 U. CIN. L. REV. 645 (2004) ("Characterized by secrecy, unfettered law enforcement discretion, and informal negotiations with criminal suspects, the informant institution both embodies and exacerbates some of the most problematic features of the criminal justice process.").

witness against someone else. Some of these informants will stop at nothing to maneuver themselves into a position where they have something to sell." *United States v. Bernal-Obeso*, 989 F.2d at 334.[57] Thus, our "judicial history is speckled with cases where informants falsely pointed the finger of guilt at suspects and defendants, creating the risk of sending innocent persons to prison." *Id*.[58] Indeed, "the risk" discussed by the Ninth Circuit in 1993, has become "the reality" here in 2008, as perjured informant testimony has played a role in more than 15% of the 220 DNA exonerations. *See* www.innocenceproject.org (last visited September 9, 2008).[59] Pennsylvania informants,

[57] Courts disfavor snitch testimony because there is a substantial risk that snitches have incentive to testify untruthfully in exchange for leniency or payment. Jailhouse snitches may use "false information as barter or currency to obtain leniency in her own case, a process which, given the nature of criminal informants, suggests a motive to manufacture evidence." *Plascencia v. Alameida*, 467 F.3d 1190, 1199 (9th Cir. 2006). Payment to jailhouse snitches can "provide an incentive to [such] witnesses to come forward and lie simply for the purpose of receiving the payment… [B]ecause of the vulnerability of such contingent-payment arrangements to corruption, they may be approved only rarely and under the highest scrutiny." *United States v. Levenite*, 277 F.3d 454, 462 (4th Cir. 2002). The danger of perjury by jailhouse snitches "generated by dangling such a plump carrot before a critical witness is why [the Fifth Circuit] requires rigorous safeguards to protect the integrity and accuracy of the jury's fact-finding." *United States v. Villafranca*, 260 F.3d 374, 380 (5th Cir. 2001).

[58] *See also Northern Mariana Islands v. Bowie*, 243 F.3d 1109, 1123 (9th Cir. 2001) ("Never has it been more true than it is now that a criminal charged with a serious crime understands that a fast and easy way out of trouble with the law is not only to have the best lawyer money can buy or the court can appoint, but to cut a deal at someone else's expense and to purchase leniency from the government by offering testimony in return for immunity, or in return for reduced incarceration.").

[59] *See also* JIM DWYER ET AL., ACTUAL INNOCENCE: WHEN JUSTICE GOES WRONG AND HOW TO MAKE IT RIGHT 361 (2001) (noting that, out of the first 74 DNA exonerations, 19% of the convictions involved "informants/snitches"); Samuel R. Gross et al., *Exonerations in the United States: 1989 Through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 543-44 (2004) (noting that, out of 340 exonerations, at least 97 cases involved perjury by a "jailhouse snitch" or another witness who stood to gain from the false testimony). According to Northwestern University Law School's Center on Wrongful Convictions, 45.9 percent of documented wrongful capital convictions have been traced to false informant testimony, making snitches the leading cause of wrongful convictions in U.S. capital cases. *See* Rob Warden, *The Snitch System: How Snitch Testimony Sent Randy Steidl and Other Innocent Americans to Death Row*, Center on Wrongful Convictions, Northwestern University School of Law, 2004, available at www.law.northwestern.edu/wrongfulconvictions.

in particular, have played roles in four (of the nine) DNA exonerations in Pennsylvania: Bruce Godschalk; Drew Whitely; Bruce Nelson; and Nicholas Yarris.

In 1982, a Delaware County jury convicted Nicholas Yarris of murder, rape, and abduction based on biological evidence, eyewitness testimony, a confession, and *testimony from a jailhouse informant*. The jury sentenced him to death. *See Commonwealth v. Yarris*, 549 A.2d 513, 520 (Pa. 1988). In 1989, he became one of Pennsylvania's first death row inmates to request post-conviction DNA testing to prove his innocence. He finally received testing in 2003 on multiple items of evidence, including fingernail scrapings from the victim. The results excluded Yarris and inculpated another offender, ultimately leading to his exoneration in 2003. *See Yarris v. County of Delaware*, 465 F.3d 129 (3rd Cir. 2006).

In 1987, a Montgomery County jury convicted Bruce Godschalk of two counts of forcible rape and two counts of burglary. The prosecution relied on the second victim's identification, Godschalk's confession, *testimony of a jailhouse informant* who claimed Godschalk made incriminating statements to him, and semen evidence collected from both cases. In 2001, a federal court awarded Godschalk DNA testing, *see Godschalk v. Montgomery County DA's Office*, 177 F.Supp.2d 366 (E.D. Pa. 2001), which ultimately proved his innocence and led to his freedom. *See* www.innocenceproject.org/Content/154.php.

In 1981, an Allegheny County jury convicted Bruce Nelson of murder, rape, and kidnapping. At trial, the only evidence offered against Nelson was the original suspect's, Terrence Moore, statement implicating him. *See Nelson v. Fulcomer*, 911 F.2d 928, 930

(3rd Cir. 1990) ("At trial, virtually all of the evidence offered against Nelson was supplied by Moore").[60] The physical evidence, however, implicated Moore:

> According to expert testimony at trial, Moore's fingerprints were found on Donovan's purse and on her parking garage ticket. Forensic examination of the victim revealed saliva on her breast and bra that was consistent with Moore's blood type. Saliva on a cigarette butt found at the crime scene was also consistent with Moore's blood type, and hairs found in several different places on the victim and her garments matched Moore's type of hair. *Nelson's fingerprints were not found at the scene and all of the saliva and hair samples found on the victim were inconsistent with Nelson's characteristics*.

Id. at 930 (emphasis added). In 1990, the Third Circuit Court of Appeals reversed Nelson's conviction on a Fifth Amendment violation. *See id*. On remand, the prosecution obtained DNA testing to prepare for Nelson's new trial. The DNA tests excluded Nelson as the assailant, ultimately leading to his exoneration on August 28, 1991. *See* NAT'L INST. OF JUST., DEPT. OF JUST., CONVICTED BY JURIES, EXONERATED BY SCIENCE: CASE STUDIES IN THE USE OF DNA EVIDENCE TO ESTABLISH INNOCENCE AFTER TRIAL 67 (1996).

In 1989, an Allegheny County jury convicted Drew Whitley of second-degree murder. At trial, prosecutors relied on eyewitness testimony, forensic evidence (i.e., hair and blood evidence), *and testimony from a death row inmate* who said Whitley confessed while they were incarcerated together at the State Correctional Institution in Pittsburgh.

[60] According to Nelson, "Moore stole a van and drove to a parking garage in the hopes of committing a theft. When Corrine Donovan walked into the garage, Nelson accosted her and forced her back to the van. Nelson then raped Donovan and encouraged Moore to do the same. Moore refused at first but then followed suit. After Moore finished, Nelson climbed on top of Donovan again. When Moore next looked over, Nelson had a knife in his hand and was strangling Donovan with a piece of cloth. After Nelson stopped choking Donovan, the two left her body on the floor of the garage and fled. Moore abandoned the stolen van the following morning." *Id*. at 930.

In 2006, DNA tests on hairs recovered from the assailant's nylon stocking mask excluded Whitley and ultimately led to his exoneration on May 1, 2006. *See* www.innocenceproject.org/Content/292.php.

2. Daniel Williams's Case

Williams testified on his behalf and denied kidnapping and murdering Tina. He admitted that Officer Snyder stopped and cited him for a traffic light violation, but he denied having anyone in his vehicle.[61] After Officer Snyder cited him, Williams went to a local bar near his residence in Allentown and had a beer.[62] Once he finished his beer he went home where he arrived around 7:00 pm.[63] While at home, he got a bath, ate, and spoke with his wife about what they intended to do that night. He told his wife that he was going back to the Andersons' residence, but she told him she needed to go shopping and that he needed to take her. Thus, Williams and his wife left their residence shortly after 8:00 pm and traveled to the Andersons so Williams could tell Thelma that he could not take her to the movies as planned. They arrived at the Andersons at 8:30 pm and spoke with Thelma for five to ten minutes before they left.[64] Once they left, they went to a shoe store, to Lane's Department Store, and then home—where they both stayed the remainder of the night.[65]

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[61] NT at 420-21.

[62] *Id*. at 424.

[63] *Id*.

[64] *Id*. at 428.

[65] *Id*. at 429.

3. Verdict and Sentence

The jury convicted Williams of first-degree murder, rape, kidnapping, and deviate sexual intercourse.[66] The trial judge sentenced him to life in prison.

III. Arguments

In 2002, the Pennsylvania legislature enacted 42 Pa.C.S.A. § 9543.1 that "permits an inmate to seek DNA testing of evidence used to convict him where such testing may establish his innocence of the crime(s) of conviction." *Commonwealth v. Heilman*, 867 A.2d 542 (Pa. Super. 2005); *Commonwealth v. McLaughlin*, 835 A.2d at 750. To qualify for testing, petitioners must satisfy § 9543.1's prerequisites. *See Commonwealth v. Smith*, 889 A.2d 582, 583 (Pa. Super. 2005). Williams satisfies these prerequisites and is entitled to DNA testing.

A. Williams Can Specify the Evidence He Wants Tested and Demonstrate How Exculpatory Results Would Establish His Innocence

Pursuant to 42 Pa. C.S.A. § 9543.1(c)(1)(I) and (c)(3)(ii)(A), Williams must identify the evidence to be tested and establish how exculpatory results would prove his innocence. *See Commonwealth v. Smith*, 889 A.2d 582 (Pa. Super. 2005). Williams satisfies these requirements.

1. Evidence to Be Tested and How the Testing of the Evidence Can Prove His Actual Innocence

a. Fluid Aspirations Collected from Tina's Mouth and Vagina

During the autopsy, Dr. Mihalakis collected fluid (aspirations) from Tina's mouth, vagina, and rectum.[67] Once collected, he "froze" the fluids and tested them the

[66] *Id*. at 692.

next day (December 13, 1973) for acid phosphotase (AP). He identified abnormal levels of AP in her mouth, vagina, and rectum, and concluded that the assailant deposited semen into these orifices.[68] Williams wants to test the remaining samples of these fluids.

b. Vaginal, Oral, and Rectal Smears

During the autopsy, Dr. Mihalakis also collected 9 smear slides (or smears) from Tina's vagina (2 slides), mouth (3 slides), and rectum (4 slides).[69] He "identified sperm in the mouth and the vagina."[70] Williams wants to test the 9 smear slides (or smears).

c. Tina Anderson's Clothing

Dr. Mihalakis collected Tina's clothing and transferred them to Detective James Beltz of the Allentown Police Department on December 13, 1973.[71] Her clothing consisted of her white hooded synthetic fur coat, brown turtleneck sweater, plaid slacks, *panties*, knee socks, and the *blanket* that her body was transported in when she was taken to the morgue.[72] Detectives Beltz and James McCarty transported her clothing to the Pennsylvania State Police Crime Laboratory (PSP lab) and where they transferred the

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[67] NT at 356; Ex. 4.

[68] *Id*. at 357. Acid phosphotase "is the most commonly employed test used for the presumptive identification of semen." Edwin L. Jones, Jr., *The Identification of Semen and Other Body Fluids, in* 2 FORENSIC SCIENCE HANDBOOK 331 (2d ed. 2005; Richard Saferstein ed.).

[69] NT at 356-58; Ex. 4a.

[70] *Id*. at 357.

[71] Ex. 5.

[72] NT at 291.

evidence to PSP criminalist Thomas Jensen.[73] Williams wants to test her clothing, particularly her panties and the blanket.

d. Hairs Recovered from Tina's Elbow and Thigh

Dr. Mihalakis collected two hairs from Tina's body during the autopsy (one from her thigh and one from her elbow), which he transferred to Detectives McCarty and Beltz.[74] Detective Beltz labeled the hair evidence at the detective division then he and Detective McCarty transported them to the PSP lab where they transferred them to Jensen.[75] Williams wants to test these two hairs, as they could have come from the assailant.

e. Hair Recovered From Williams's Vehicle

The PSP lab received Williams's vehicle on December 22, 1973.[76] Jensen visually inspected and vacuumed the vehicle on December 26, 1973 in order to uncover potential trace evidence.[77] During his inspection, he identified and removed a hair that "was adhering to the retracted seat belt on the right side of the driver's seat."[78] As mentioned, Jensen said that this hair and the hairs recovered from Tina's elbow and thigh "likely" came from the same source. Williams wants to test this hair to prove that this hair and the hairs from Tina are not from the same source.

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[73] *Id*. at 293.

[74] *Id*. at 285-90.

[75] *Id*.

[76] *Id*. at 313.

[77] *Id*. at 317.

[78] *Id*. at 318.

2. Establishing Actual Innocence

To qualify for DNA testing, Williams must prove that the envisioned DNA tests would establish his actual innocence. The actual innocence threshold is a cumulative assessment. This can be inferred from the statute's mandate that the Court must assume exculpatory *result**s*** for the *evidence* to be tested. *See* 42 Pa. C.S.A. § 9543.1(c)(3)(ii) ("DNA testing of the specific *evidence, assuming exculpatory results*, would establish… the applicant's actual innocence of the offense for which the applicant was convicted") (emphasis added); *Commonwealth v. Smith*, 889 A.2d 582, 583 (Pa. Super. 2005). Thus, Williams must show and the Court must assume that the results of *all* the DNA *tests*, considered collectively, will establish his actual innocence.

Actual innocence "means factual innocence, not mere legal insufficiency[.]" *Commonwealth v. Williams*, 936 A.2d 12, 25 (Pa. 2007) (citations and quotations omitted); *accord Bousley v. United States*, 523 U.S. 614, 623-24 (1998). The Pennsylvania courts, however, have not delineated what "actual innocence" means as it relates to 42 Pa. C.S.A. § 9543.1. The U.S. Supreme Court, on the other hand, has articulated three different actual innocence standards for different situations. While all three represent significantly high standards, exculpatory DNA results will satisfy each standard.

In *Schlup v. Delo*, 513 U.S. 298 (1996), the Court held that a federal court may consider a federal habeas petitioner's defaulted claims if the petitioner produces newly discovered evidence that makes it "more likely than not that no reasonable juror would have found [him] guilty beyond a reasonable doubt." *Id. at 327*; *accord House v. Bell*,

126 S.Ct. 2064, 2076-77 (2006). While the *Schulp* standard is "demanding and permits review only in the 'extraordinary' case," it "does not require absolute certainty about the petitioner's guilt or innocence." *Id*. Moreover, because a *Schlup* "claim involves evidence the trial jury did not have before it, the inquiry requires the... court to assess how reasonable jurors would react to the overall, newly supplemented record." *Id*. at 2078.

In *Sawyer v. Whitley*, 505 U.S. 333 (1992), the Court held that to prove that a capital prisoner is "actually innocent" of the death penalty, he "must show by clear and convincing evidence that, but for a constitutional error, no reasonable juror would have found the petitioner eligible for the death penalty under the applicable state law." *Id.* at 336. The "clear and convincing" standard makes the *Sawyer* standard more demanding than the *Schulp* standard.

Finally, in *Herrera v. Collins*, 506 U.S. 390 (1993), the Supreme Court assumed, without deciding, that "a truly persuasive demonstration of 'actual innocence' made after trial would... warrant federal habeas relief if there were no state avenue open to process such a claim." 506 U.S. at 417. The "threshold showing for such an assumed right would necessarily be *extraordinarily high*," the Supreme Court explained, and the petitioner's evidence there fell "far short of that which would have to be made in order to trigger the sort of constitutional claim which we have assumed, *arguendo*, to exist." *Id*. at 417 (emphasis added).

a. Exculpatory Results Will Prove Williams's Actual Innocence

The evidence Williams seeks to test is directly related to the Tina's rape-murder. The Commonwealth repeatedly argued that the semen and sperm recovered from Tina's mouth, vagina, and rectum came from Williams—and *only* Williams. There is no evidence in the record that remotely suggests a second or multiple perpetrators. Simply put, then, this case represents the "classic" single-perpetrator rape-murder where the absence of the defendant's semen and sperm will prove his actual innocence. *See Commonwealth v. Brooks*, 875 A.2d 1141, 1147 (Pa. Super. 2005) ("This is not a rape-murder case where the absence of the defendant's semen could prove his innocence"); *In re Braxton*, 258 F.3d 250, 254 (4th Cir. 2001) ("because the prosecution's theory of the case at trial was that a lone assailant murdered and sodomized Van Hart, it is reasonable to infer that the person whose seminal fluid was recovered from Van Hart's anus is her killer."); *People v. Travis*, 771 N.E.2d 489, 493 (Ill. App. Ct. 2002). ("*Rokita*… was the classic sole perpetrator case; if the DNA was not that of the defendant, the defendant did not commit the crime.").

Consequently, if DNA tests establish that the semen and sperm did not come from Williams, this would conclusively establish his actual innocence beyond all doubt. Stated differently, *no reasonable juror* would convict a defendant of rape-murder where the biological evidence collected from a non-sexually active, eight-year-old victim did not match the defendant's genetic profile. Moreover, no ethical or reasonable prosecutor would prosecute an arrestee for a sexual offense where DNA tests on the semen and sperm recovered from the victim or the scene did not match the arrestee's DNA profile.

Indeed, there have been numerous cases recently where prosecutors dropped rape or rape-murder charges against a defendant after DNA tests on biological evidence collected from the victim or the scene excluded the defendant—even if the victim(s) identified the defendant as the assailant or the assailant made incriminating statements or confessed.[79]

These cases not only demonstrate the significance of non-match DNA results in sexual offenses, they demonstrate the "special role" prosecutors play in the criminal justice system. *Strickler v. Greene*, 527 U.S. 263, 281 (1999); *Banks v. Dretke*, 540 U.S. 668, 696 (2005); *Commonwealth v. Cherry*, 378 A.2d 800, 803 (Pa. 1977) (in "advocating the cause for this Commonwealth, prosecutors are to seek justice, not only convictions.").[80] The prosecutor's "duty… [is] to do justice, not merely 'win' convictions." ABA STDS. FOR CRIM. JUST.: PROSECUTION FUNCTION, Std. 3-3.4 (3rd ed. 1993) (commentary).[81] As a result, a prosecutor must "refrain from prosecuting a charge that [he or she] knows is not supported by probable cause." PENNSYLVANIA DISCIPLINARY RULES OF PROF'L CONDUCT, Rule 3.8(a); *accord* ABA MODEL RULES OF PROF'L CONDUCT, Rule 3.8(a). Thus, because prosecutors "must exercise sound discretion in the performance of his or her functions," ABA STDS. FOR CRIM. JUST.: PROSECUTION FUNCTION, Std. 3-1.1(b) (3rd ed. 1993), and "refrain from improper methods calculated to produce a wrongful conviction[,]" *Berger v. United States*, 295 U.S. 78, 88 (1935), justice and logic dictate that where DNA results from a sexual

[79] Ex. 27.

[80] MODEL RULES OF PROF'L CONDUCT R. 3.8 cmt. (2004) (characterizing government officers as "minister[s] of justice").

[81] MODEL CODE OF PROF'L RESPONSIBILITY EC 7-13 (2004) (stating that the prosecutor's "duty is to seek justice").

offense do not match a suspect's DNA, the most appropriate and just course of action is to dismiss the charges and free the suspect. *See United States v. Wade*, 388 U.S. 218, 256 (1967) (White, J., concurring and dissenting in part) (noting that prosecutors "have the obligation to convict the guilty and to make sure they do not convict the innocent.").[82]

If STR testing produces an identifiable profile–that excludes Williams–the profile can be "entered into the FBI's Combined DNA Index System ("CODIS"), a massive, centrally managed database including DNA profiles from federal, state, and territorial DNA collection programs, as well as profiles drawn from crime-scene evidence, unidentified remains, and genetic samples voluntarily provided by relatives of missing persons." *United States v. Weikert*, 504 F.3d 1, 4, (1st Cir. 2007); *Banks v. United States*, 490 F.3d 1178, 1181 (10th Cir. 2007); 42 U.S.C. § 14132(a). CODIS "allows State and local forensics laboratories to exchange and compare DNA profiles electronically in an attempt to link evidence from crime scenes for which there are no suspects to DNA

[82] However, if a zealous prosecutor pursued charges where the DNA results excluded the defendant, he or she runs the risk of jeopardizing their career, and worse yet, being disbarred for pursuing a case where objective science clearly trumped a witness's or witnesses' identification[s]. Perhaps the strongest case emphasizing this point is the Duke Lacrosse rape case, where Durham County, North Carolina District Attorney Mike Nifong pursued rape charges against several Duke Lacrosse players despite the fact DNA results excluded the players. *See* Robert P. Mosteller, *The Duke Lacrosse Case, Innocence, and False Identifications: A Fundamental Failure to "Do Justice*," 76 FORDHAM L. REV. 1337 (2007) (discussing the case in detail). The North Carolina State Bar disbarred Mr. Nifong, in part, because he pursued charges against these players even though objective DNA evidence contradicted the victim's statements. Moreover, in light of the DNA results, the North Carolina Attorney General's Office declared all the players innocent because "[n]o… physical evidence… corroborated [the victim's] testimony." *Id*. at 1347 (citing the North Carolina Attorney General's Office's official report). The Attorney General's Office concluded, "[b]ased on the significant inconsistencies between the evidence and the various accounts given by the accusing witness, the Attorney General and his prosecutors determined that the three individuals were innocent of the criminal charges… ." *Id*. (citing the North Carolina Attorney General's Office's official report).

samples of convicted offenders on file in the system." H.R. Rep. 106-900(I), at 8 (2000).[83] As one court noted:

> CODIS can be used in two different ways. First, law enforcement can match one forensic crime scene sample to another forensic crime scene sample, thereby allowing officers to connect unsolved crimes through a common perpetrator. Second, and of perhaps greater significance, CODIS enables officials to match evidence obtained at the scene of a crime to a particular offender's profile.

United States v. Kincaid, 379 F.3d 813, 819 (9th Cir. 2004).

As of June 2008, CODIS contained more than 6,031,000 profiles of individual offenders and over 225,400 profiles derived from crime scene evidence and other sources. *See* Federal Bureau of Investigation, National DNA Index System Statistics, available at http://www.fbi.gov/hq/lab/codis/clickmap.htm (last visited September 20, 2008). As of June 2008, CODIS has produced over 71,500 hits assisting in more than 71,800 investigations. *Id*. With respect to Pennsylvania, CODIS contains over 181,011 samples from Pennsylvania offenders, which have aided 2,186 investigations. *See* http://www.fbi.gov/hq/lab/codis/stats.htm#Pennsylvania (last visited September 17, 2008). As the First Circuit Court of Appeals explained:

> CODIS is a valuable law enforcement tool. It may be used to match evidence found at one crime scene with evidence found at another crime scene, revealing a common perpetrator. It also may be used to match evidence from the scene of a crime to a particular offender's profile. These attributes allow the FBI to investigate crimes more efficiently and

[83] DNA database systems that use CODIS contain two main criminal indexes and a missing persons index. When a DNA profile is obtained and entered into CODIS's forensic (crime scene) index, "the database software searches thousands of convicted offender DNA profiles (contained in the offender index) of individuals convicted of offenses such as rape and murder." NAT'L INST. OF JUST., DEP'T OF JUST., USING DNA TO SOLVE COLD CASES (July 2002), *available at*, www.ncjrs.gov/txtfiles1/nij/194197.txt. Similar to the Automated Fingerprint Identification System (AFIS), CODIS "generates investigative leads in cases where biological evidence is recovered from the crime scene. Matches made among profiles in the Forensic Index can link crime scenes together; possibly identifying serial offenders." U.S. DEP'T OF JUST., FEDERAL BUREAU OF INVEST., CODIS: COMBINED DNA INDEX SYSTEM BROCHURE, at http://www.fbi.gov/hq/lab/codis/brochure.pdf (last visited Sept. 17, 2008).

> more accurately, both by identifying offenders and by eliminating innocent suspects.

United States v. Weikert, 504 F.3d at 4.[84] Identifying the actual culprit will prevent future wrongful convictions, as well. *See United States v. Amerson*, 483 F.3d 73, 87 (2d Cir. 2007) ("The greater accuracy and speed with which CODIS allows the government to apprehend and convict those guilty of crimes has, as we have seen, an equally important corollary—its use in exonerating innocent people criminally suspected, convicted, or charged.").[85]

B. The Evidence Williams Seeks to Test Was Not Subjected to DNA Testing Because the Technology Did Not Exist at the Time

Before the Court may grant DNA testing, it must determine that the petitioner could not have sought the testing prior to trial because the DNA technology was not available. *See* 42 Pa.C.S.A. § 9543.1(a)(2). Williams satisfies this requirement because *no form of DNA testing* was available in 1974 when the Commonwealth prosecuted him.[86]

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[84] *See, e.g.*, 146 Cong. Rec. H8572-01, H8575 (daily ed. Oct. 2, 2000) (statement of Rep. Canady) ("The purpose of [CODIS] is to match DNA samples from crime scenes where there are no suspects with the DNA of convicted offenders. Clearly, the more samples we have in the system, the greater the likelihood we will come up with matches and solve cases."); *id. at* H8576 (statement of Rep. Scott) (explaining that the Justice For All Act of 2004 and CODIS will "save lives by allowing apprehension and detention of dangerous individuals while eliminating the prospects that innocent individuals would be wrongly held for crimes that they did not commit"); H.R Rep. No. 108-711, at 2 (2004) ("[T]he Justice For All Act of 2004… seeks to ensure that the true offender is caught and convicted for the crime.").

[85] *See* House Rep. No. 106-900(I), at *10 ("Promptly identifying the actual perpetrator of a crime through DNA matching exonerates any other persons who might wrongfully be suspected, accused, or convicted of the crime.").

[86] *See* JOHN M. BUTLER, FORENSIC DNA TYPING: BIOLOGY, TECHNOLOGY, AND GENETICS OF STR MARKERS (2d 2005); NAT'L INST. OF JUST., DEPT. OF JUST., FUTURE OF FORENSIC DNA TESTING: PREDICTIONS OF THE RESEARCH AND DEVELOPMENT WORKING

C. The Assailant's Identity Was at Issue during Williams's Trial

To obtain DNA testing, the assailant's identity had to be at issue during the trial. *See* § 9543.1(c)(3)(1). Williams satisfied this requirement when he testified and proclaimed his innocence.

D. The Chain of Custody Regarding the Items Sought to Be Tested Is Sufficient to Establish that the Items Have Not Been Altered in Any Material Respect

The Court may only grant a petitioner's DNA testing request if the "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." 42 Pa.C.S.A. § 9543.1(d)(1)(ii). Williams satisfies this criterion.

Chain of custody "is an indirect method of proving the identity and integrity of evidence by showing its continuous whereabouts." *Commonwealth v. Briggs*, 2005 WL 4309071 (Common Pleas Ct., Bradford Co., Oct. 12, 2005); *accord Commonwealth v. Hudson*, 414 A.2d 1381 (Pa. 1980). Like the Commonwealth, Williams is not required to establish "the sanctity of the evidence beyond a moral certainty." *Commonwealth v. Bennett*, 827 A.2d 469, 481 (Pa. Super. 2003) ("It is well settled that the Commonwealth 'does not have to establish the sanctity of its exhibits beyond a moral certainty.'") (quoting *Commonwealth v. Miller*, 371 A.2d 1362, 1365 (Pa. Super. 1977)). Similarly, like the Commonwealth, Williams is not required to identify "every person who came into contact with evidence, nor must every possibility of tampering be eliminated; it is sufficient that evidence, direct or circumstantial, establishes a reasonable inference that

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GROUP 17-19 (2000); 2 PAUL C. GIANNELLI & EDWARD J. IMWINKELRIED, SCIENCE EVIDENCE ch. 18 (3d ed. 1999) (discussing admissibility of DNA evidence).

identity and condition of the exhibit remained unimpaired" until delivered to its current place of storage. *Commonwealth v. Williams*, 565 A.2d 160, 171 (Pa. Super. 1989); *Commonwealth v. Pedano*, 405 A.2d 525 (Pa. Super. 1979). Finally, "physical evidence may be properly admitted [and/or subjected to post-conviction DNA testing] despite gaps in testimony regarding its custody." *Commonwealth v. Hudson*, 414 A.2d 1381, 1387 (Pa. 1980).[87]

1. Items of Evidence

a. Fluid Aspirations and Smear Collected from Tina's Mouth, Anus, and Vagina

The last known location of the fluid aspirations and smears (or smear slides) was Sacred Heart Memorial Hospital in Allentown, Pennsylvania. This evidence, however, would still be considered in the Commonwealth's custody because Dr. Isidore Mihalskis served as the Northhampton County coroner when he conducted his autopsy.

b. Tina's Clothing and the Hairs Recovered From Tina and Williams's Vehicle

On December 13, 1973, Allentown detectives transported Tina's clothing and the hairs to the PSP lab. Jensen examined the clothing and the hairs, all of which the Commonwealth *introduced at trial* as Commonwealth Exhibits 8 (Tina's clothing), 9 (hair found on Tina's thigh), and 10 (hair found on Tina's elbow).[88]

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[87] Williams contends that he need only present a *prima facie* case regarding chain of custody because he is in no position to adequately track who and what agencies possessed the blood samples and rape kit. As the Illinois Appellate Court aptly stated: "It asks too much to require petitioning defendant in these cases to plead and prove proper chain of custody at the outset, for the evidence at issue will undoubtedly have been in the safekeeping of the State, not the defendant." *People v. Price*, 801 N.E.2d 1187, 1199 (Ill. App. Ct. 2003) (citations omitted).

[88] NT at 295, 350.

2. Search Efforts Thus Far

The Innocence Project (IP) has made a good faith effort to search for and locate the aforementioned evidence. On May 2, 2006, Sara Colb (a Cardozo law student) contacted the Bethlehem Police Department (BPD) and requested that it search its property room for the aforementioned evidence.[89] On June 21, 2006, the BPD responded and stated that it searched the property room and its computer database but met with negative results.[90]

Similarly, on June 6, 2006, Rebecca Susman (another Cardozo law student) called Sacred Heart Hospital to determine whether it still possessed the fluid aspirations and smears collected from Tina Anderson. On June 13, 2006, Dr. James M. Chiadis faxed a memo to the IP stating that the hospital did not possess the evidence and that "under the guidelines of the College of American Pathologists the retention period for slides/blocks and reports is ten years."[91] On June 13, 2006, the IP followed-up with Dr. Chiadis and asked that he forward any destruction of evidence documents to the IP regarding the evidence.[92] On June 26, 2006, Dr. Chiadis responded with another letter that stated: "After a thorough search for slides/blocks on the above mentioned patient, no records have been found."[93]

[89] Ex. 28.

[90] Ex. 29.

[91] Ex. 30.

[92] Ex. 31.

[93] Ex. 32.

Finally, the PSP laboratory will not disclose any information to the IP without a court order.

3. Request for an Evidence Search

When the aforementioned evidence was last accounted for, it was in the Commonwealth's custody. Moreover, there is nothing in the record suggesting that the evidence was destroyed or lost. Indeed, Sacred Heart Hospital, the Allentown Police Department (APD), the Bethlehem Police Department (BPD), and the Pennsylvania State Police (PSP) have not produced a single document demonstrating that they destroyed the sought-after evidence. Thus, Williams requests that the Court issue an order compelling the Commonwealth to do two things: (1) produce the destruction of evidence documentation that indicates when the Commonwealth destroyed the evidence; and (2) if the Commonwealth cannot produce this documentation, it must conduct a comprehensive search for the sought-after evidence at Sacred Heart Hospital, the APD, BPD, and the PSP or any other agencies and/or facilities that might reasonably be expected to be housing the sought-after evidence.

Pennsylvania's DNA testing statute not only gives the Court the authority to compel a comprehensive search, the Court—itself—is obligated to ensure that the sought-after evidence is located and properly preserved. For instance, once Williams files his motion, "the Commonwealth and *the 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 the completion of the proceedings under this section." 42 Pa.C.S.A. § 9543.1(b)(2) (emphasis added). Thus, if the Commonwealth and the Court

must take "reasonable" steps to properly preserve the evidence, this necessarily implies that the Commonwealth and the Court must comprehensively search for the sought-after evidence. Indeed, if such a search is not conducted and the evidence is not located, then how can the Commonwealth and Court reasonably expect to properly preserve the evidence?

The Innocence Project's experience litigating hundreds of post-conviction DNA access cases over the last fifteen years has led us to the firm conclusion that absent conclusive proof of destruction of each and every item of potential DNA evidence in a case, one or more such items—fully capable of resolving, beyond any doubt, the petitioner's guilt or innocence—may still be in State custody. This conclusion has been the direct result of our experience in numerous cases in which evidence that has been reported as "lost" or "destroyed" has later been discovered intact after a more diligent search. Indeed, when such evidence has in fact been destroyed, there will usually be specific documentation of the destruction of every item, even if the evidence was destroyed in bulk. If there is not, one simply cannot have confidence that the evidence is truly "gone."

Evidence has been ultimately located in such places as the back of a storage closet, the trial judge's locker, and between the wall and a prosecutor's desk. In addition, sometimes evidence is labeled under the victim's name rather than the defendant's name, or is simply misfiled within or among other unrelated case evidence boxes, but is eventually discovered when a truly diligent search is performed. In other cases—after evidence was located in the original storage location—it became clear that prior searches

by officials were half-hearted or perhaps not performed at all. A few of the many specific examples of such discoveries are set forth in Exhibit 33.[94]

E. Williams Consents to Providing a Sample of His Bodily Fluid and Acknowledges that it Will Be Entered into a Law Enforcement Database Where it May Be Used to Investigate Other Offenses

Pursuant to 42 Pa.C.S.A. § 9543.1(c)(1)(i)-(ii), Williams consents to providing a sample of his bodily fluids and acknowledges that genetic information obtained from his samples may be used to investigate other offenses.

F. Williams Asserts His Innocence and Filed His Motion So He Can Conclusively Establish His Innocence

Pursuant to 42 Pa.C.S.A. § 9543.1(d)(1)(iii), Williams's DNA testing petition is timely filed, and done so for the sole purpose of establishing his long proclaimed innocence rather than "delay[ing] the execution of sentence or administration of justice." His motion is timely, as well, because the "PCRA's one-year time bar does not apply to motions for the performance of forensic DNA testing under Section 9543.1." *Commonwealth v. Brooks*, 875 A.2d 1141, 1146 (Pa. Super. 2005); *Commonwealth v. Heilman*, 867 A.2d 542 (Pa. Super. 2005); *Williams v. Erie County_Dist. Attorney's Office*, 848 A.2d at 971; *Commonwealth v. McLaughlin*, 835 A.2d at 750.

IV. Conclusion and Requested Relief

Williams's case represents the classic rape-murder where DNA testing can prove his actual innocence. Indeed, if DNA tests on the fluid aspirations, smears, and Tina's clothing produce a male DNA profile that is inconsistent with Williams's DNA profile

[94] Williams's request for a comprehensive search is also supported by a developing body of case law in other jurisdictions. *See Moore v. Commonwealth*, NO:79-CR-976 (Jefferson Cir. Ct., Sept. 4, 2007); *Arey v. State*, 929 A.2d 501 (Md. Ct. App. 2007); *Blake v. State*, 909 A.2d 1020, 1024-25 (Md. Ct. App. 2006); *People v. Pitts*, 4 N.Y.3d 303 (2005).

such results would establish his innocence beyond all doubt. Moreover, there are several shortcomings and questions regarding Williams's case that DNA testing can now conclusively answer—the primary one being whether the Commonwealth convicted an innocent person more than three decades ago.

WHEREFORE, Williams requests the following relief:

1. An Order compelling the Commonwealth to conduct an adequate and reasonable search of Commonwealth and private facilities that might reasonably be expected to be housing the sought-after evidence;
2. An Order compelling the Commonwealth to properly preserve any of the sought-after evidence if it is discovered during the course of the Commonwealth's comprehensive search. The Order shall require the Commonwealth to properly preserve the evidence until his state and federal post-conviction proceedings are considered final under federal law;
3. A Scheduling Order mandating the Commonwealth to timely respond to Williams's motion within 60 days;
4. A hearing on the instant motion;
5. An Order compelling the Pennsylvania State Police Crime Laboratory to disclose all documentation and evidence regarding Williams's case;
6. An Order releasing the sought-after evidence to an accredited DNA laboratory that is agreed upon by the Commonwealth and undersigned counsel;
7. Any other Order that the Court deems necessary to adequately protect Williams's state and federal constitutional rights.

Respectfully submitted,

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Exhibits

1. Post-Conviction Relief Court's Opinion

2. Pennsylvania Supreme Court's Opinion Affirming Conviction and Sentence, Decided January 26, 1978

3. Commonwealth of Pennsylvania, Traffic Citation, 03-028646, December 11, 1973

4. Department of Pathology, Sacred Heart Hospital, Medico-legal Investigation Report, December 12, 1973

4a. Department of Pathology, Sacred Heart Hospital, Medico-legal Investigation Report, December 12, 1973

5. Department of Pathology, Sacred Heart Hospital, Receipt for Evidence, December 13, 1974

6. Sacred Heart Hospital, Autopsy Report, December 12, 1973

7. Pennsylvania State Police Crime Laboratory, Laboratory Report (B73-2030), December 19, 1973

8. Pennsylvania State Police Crime Laboratory, Request for Laboratory Analysis, December 17, 1973

9. Bethlehem Police Department, Supplementary Police Report, December 12, 1973

10. Bethlehem Police Department, Supplementary Police Report, December 12, 1973

11. Bethlehem Police Department, Supplementary Police Report, December 13, 1973

12. Bethlehem Police Department, Supplementary Police Report, December 13, 1973

13. Bethlehem Police Department, Supplementary Police Report, December 13, 1973

14. Bethlehem Police Department, Supplementary Police Report, December 14, 1973

15. Bethlehem Police Department, Supplementary Police Report, December 17, 1973

16. Bethlehem Police Department, Supplementary Police Report, December 17, 1973

17. Bethlehem Police Department, Supplementary Police Report, December 20, 1973

18. Bethlehem Police Department, Supplementary Police Report, December 21, 1973

19. Bethlehem Police Department, Supplementary Police Report, December 12, 1973

20. Bethlehem Police Department, Supplementary Police Report, December 23, 1973

21. Bethlehem Police Department, Supplementary Police Report, March 26, 1974

22. Allentown Police Department, Supplement Report, December 14, 1973

23. Allentown Police Department, Supplement Report, December 21, 1973

24. Daniel Williams's Consent Authorization Form to Search His Vehicle, December 21, 1973

25. Pennsylvania State Police Crime Laboratory, Laboratory Report (B73-2059), December 19, 1973

26. Commonwealth v. Williams, Statements of Thelma Anderson, Rena Anderson, Andrew Anderson, Ira Anderson, and Maurice Anderson, taken on April 2, 1974

27. Cases Where Prosecutors Dropped Charges After DNA Results Excluded the Individual Who Was Initially Charged and Arrested with a Sexual Offense

28. Letter to Lt. Michael J. Reszek of the Bethlehem Police Department, from Sara Colb of the Innocence Project, May 2, 2006

29. Letter to Rebecca Sussman of the Innocence Project, from Lt. Michael J. Reszek of the Bethlehem Police Department, June 21, 2006

30. Letter to Rebecca Sussman of the Innocence Project, from Dr. James M. Chiadis, Director of Laboratories—Sacred Heart Hospital, June 13, 2006

31. Letter to Dr. James M. Chiadis, Director of Laboratories—Sacred Heart Hospital, from Rebecca Sussman of the Innocence Project, June 13, 2006

32. Letter to Rebecca Sussman of the Innocence Project, from Dr. James M. Chiadis, Director of Laboratories—Sacred Heart Hospital, June 26, 2006

33. Vanessa Potkin's Affidavit