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**IN THE PHILADELPHIA COUNTY COURT OF COMMON PLEAS
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
Respondent,	:	
	:	
v.	:	No. CP-51-CR-0306311-2002
	:	
JERMAINE J. WEEKS a/k/a	:	
TERMAINE J. HICKS	:	
	:	
Petitioner.	:	

**SECOND AMENDED PETITION FOR POST-CONVICTION RELIEF
PURSUANT TO 42 Pa. C.S. § 9541 et seq.**

TO THE HONORABLE JUDGE TRACY BRANDEIS-ROMAN, PRESIDING IN THE
COURT OF COMMON PLEAS CRIMINAL TRIAL DIVISION FOR THE COUNTY OF
PHILADELPHIA:

Petitioner Joseph Termaine Hicks¹ (“Mr. Hicks” or “Petitioner”), through his attorneys, files this *Second Amended Petition for Post-Conviction Relief Pursuant to 42 Pa. C.S. § 9541 et seq.* Mr. Hicks seeks vacatur of his conviction, and in support thereof represents:

INTRODUCTION

1. This case involves the unjustified police shooting of an unarmed black man who had committed no crime, the cover-up of which resulted in the criminal prosecution and nineteen-year wrongful imprisonment of the victim of the shooting.

2. In November 2001, Petitioner Joseph Termaine Hicks came to the aid of a woman being raped in a dark alley in South Philadelphia. When the police arrived at the alley, they impulsively misread the scene and erroneously took Mr. Hicks for the assailant. Mr. Hicks was facing away from the officers, with his hand in his pocket, getting his cell phone to call 911 to get help for the victim, when police shot him three times from behind. Realizing that Mr. Hicks was unarmed and did not match the assailant’s description, the officers fabricated a narrative to cover up their misconduct. The officer who shot Mr. Hicks falsely claimed that when he got to the scene he saw Mr. Hicks attacking the victim and that Mr. Hicks then lunged at him with a gun. However, there was no lunge—Mr. Hicks was shot in the back—and the gun police falsely attributed to Mr. Hicks turned out to be a ‘throw-down’ weapon actually registered to another Philadelphia police officer. The unarmed Mr. Hicks was falsely arrested for the assault of the victim who he had attempted to help. The woman did not identify Mr. Hicks as her attacker. Based on the word of the officer who shot him in the back, Mr. Hicks was prosecuted and ultimately convicted for a crime that he did not commit.

¹ Throughout the course of litigation, Petitioner has been referred to as Jermaine J. Weeks. His name is Termaine J. Hicks, but other legal documents refer to him as Joseph J. Hicks and Jermaine J. Hicks.

3. Mr. Hicks took the stand at trial protesting his innocence and continued to do so at his sentencing. As the judge sentenced him to twenty-five years, Mr. Hicks responded, “an innocent man can’t sit in jail for long.” (N.T. 2/27/03, 56). But that was nearly two decades ago. Mr. Hicks has refused to “accept responsibility,” which would be necessary for a chance at earlier release. In 2015 he continued to assert his innocence at his parole proceedings knowing this would inevitably lead to the recommendation that he serve every day of his 25-year maximum sentence in prison. Mr. Hicks has avidly sought access to any type of forensic analysis that could help establish the identity of the assailant, exclude him from being that person, or otherwise demonstrate his factual innocence.

4. Recent examinations by two independent forensic pathology experts, the defense’s expert (Dr. Michael Baden, the former Chief Medical Examiner for the City of New York and a nationally known pathologist) and the Commonwealth’s expert (Dr. Sam Gulino, the Chief Medical Examiner for the City of Philadelphia), have revealed that Officer Martin Vinson of the Philadelphia Police Department testified falsely at trial when he testified that he shot Mr. Hicks only after Mr. Hicks lunged towards him. To the contrary, the opinion of two experts corroborate Mr. Hicks’ trial testimony that the police shot Mr. Hicks in his back.

5. The new forensic evidence establishes that Mr. Hicks was facing away from Officer Vinson when Officer Vinson shot him. Officer Vinson shot Mr. Hicks three times from behind: in the middle of his back near his spine, in his lower back/at the top of his buttocks, and in the back of his right arm.

6. Post-conviction DNA testing also provides unprecedented forensic support for the defense’s theory that bloodstains, which the Commonwealth argued at trial supported their theory of guilt, in actuality were the result of blood transference.

7. Surveillance photography—which the Commonwealth asserted was unavailable at the time of trial due to the incompatibility of available playback equipment—captured the beginning of the attack and demonstrated that the man who pulled the victim into the corridor and attacked her was wearing a gray hooded sweatshirt with the hood pulled up over his head. The footage is objective evidence further establishing that Mr. Hicks was not the assailant, as he did not have on a gray hooded sweatshirt on when he was shot at the scene, nor was a gray hooded sweatshirt recovered from the surrounding area.

8. The recently discovered forensic pathology, the DNA evidence, and the surveillance photography capturing the assailant wearing clothing that Mr. Hicks did not have on when shot warrant the vacatur of Mr. Hicks' conviction. Mr. Hicks is factually innocent of the crime for which he has been incarcerated for over nineteen years, and a conviction based on false testimony cannot stand.

PRIOR COUNSEL

9. D. Louis Nicholson and Walter G. Philips represented Mr. Hicks at trial. Mr. Nicholson represented Mr. Hicks on his post-trial motions and on direct appeal.

10. Mr. Hicks filed his first Post-Conviction Relief Act ("PCRA") petition *pro se*, and court-appointed attorney Barbara A. Mason filed an amended petition.

11. Ms. Mason also represented Mr. Hicks on his appeal of the PCRA dismissal.

PROCEDURAL HISTORY

12. On November 8, 2002, Mr. Hicks was convicted after a jury trial of rape, aggravated assault, possession of an instrument of crime, and terroristic threats. On February 27, 2003, this Court sentenced Mr. Hicks to an aggregate term of 12 ½ to 25 years in prison.

Mr. Hicks is currently incarcerated at Pennsylvania State Correctional Institution Phoenix, 1200 Mokychie Drive, Collegeville, PA 19426.

13. Mr. Hicks has consistently maintained his innocence and avidly sought to obtain relief from his wrongful conviction and sentence:

a. Post-Trial Motions: On December 12, 2002, Mr. Hicks filed a Motion for Judgment of Acquittal, Arrest of Judgment, or New Trial. On January 6, 2003, the motion was re-filed as a Motion for Extraordinary Relief in the Form of Judgment of Acquittal, Arrest of Judgment or New Trial. This motion was based on surveillance footage from the crime scene which was not made available to the defense until after trial. The Court denied the motion on February 27, 2003.

b. Direct Appeal: On March 21, 2003, Mr. Hicks filed a timely appeal of both his judgment of sentence and the denial of his Motion for Extraordinary Relief. On January 31, 2005, the Superior Court denied the appeal on all grounds and affirmed the judgment of sentence. Mr. Hicks filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court on March 2, 2005. The Court declined review on December 28, 2005.

c. PCRA Petition: On April 20, 2006, Mr. Hicks filed a *pro se* PCRA petition alleging ineffectiveness of trial counsel. Court-appointed counsel filed an amended petition on March 23, 2007, which was denied on September 21, 2007. Mr. Hicks filed a timely notice of appeal, and on April 23, 2009, the dismissal was affirmed. Mr. Hicks filed a Petition for

Allowance of Appeal in the Pennsylvania Supreme Court on May 28, 2009, which the Court rejected as untimely.

d. Nunc Pro Tunc Appeal: On June 5, 2009, Mr. Hicks filed a Petition for Leave to File Petition for Allowance of Appeal, *Nunc Pro Tunc*, to the Pennsylvania Supreme Court. The Court denied that request on August 10, 2009.

e. Writ of Habeas Corpus: Mr. Hicks filed a federal habeas petition on September 10, 2009. On March 31, 2010, the Magistrate Judge issued a recommendation, approved by the district judge, that the petition be dismissed.

f. DNA Testing Orders: Mr. Hicks first contacted the Innocence Project for assistance two years after his conviction, and his case was accepted in 2011. Mr. Hicks sought access to exhaustive post-conviction DNA testing of the evidence to demonstrate his factual innocence. Mr. Hicks filed a Motion for Post-Conviction DNA Testing on November 16, 2015. After several hearings before this Court, this Court ordered DNA testing in this matter on February 3, 2017. That order was vacated on March 3, 2017 and a second order for testing was entered the same day. Initial testing in this matter began in early April 2017. The favorable results served as the basis of Petitioner's first PCRA petition in the instant matter.

STATEMENT OF FACTS

W.L. is Attacked by a Man in a Gray Hoodie

14. Shortly before 5:00 a.m. on November 27, 2001, W.L. was walking down Mifflin Street on her way to work at Dunkin Donuts in South Philadelphia. (N.T. 11/01/02, 14-15).

15. As she walked down 15th Street, a man grabbed her from behind and pointed a gun at her. (N.T. 11/01/02, 15-16, 34-35).

16. W.L. fell down to the ground and the assailant dragged her into the loading dock area at the back of St. Agnes Hospital. W.L. screamed for help as the man dragged, punched and beat her repeatedly in the head and face with his fist and the gun. (N.T. 11/01/02, 16-18, 35-37). W.L. recounted the man “beat me until I couldn’t scream anymore” (P.H. 03/05/02, 11) The man pulled down her pants and started to sexually assault her. (N.T. 11/01/02, 27).

17. W.L. later reported that she never saw the man’s face because it was dark, and she was confused and terrified. (N.T. 11/01/02, 17-20 36-40).

18. Several neighbors heard W.L.’s screams and called the police.

19. Justin Votta, who lived across the street from the loading area, on the third floor of 1902 S. 15th Street, and his girlfriend, Megan Nelson, heard W.L. screaming for help. (N.T. 10/31/02, 110, 166). Votta went to his window and called 911 at 5:01 a.m. As he was on the phone, Votta described seeing the assailant, a man in a gray hooded sweatshirt and a black jacket, dragging W.L. behind St. Agnes Hospital. (N.T. 10/31/02, 111-12, 130).

20. Votta could not see the perpetrator’s face because it was obscured by the hood that was up, covering the man’s head. (N.T. 10/31/02, 129-30).

21. Joe Christinzio lived on the first floor of 1910 S. 15th Street, also across from the hospital. He heard screams, and saw a man picking a woman off the ground and bringing her into the loading dock area. Christinzio called 911. (N.T. 10/31/02, 148-150, 160).

Mr. Hicks Hears W.L.'s Screams and Attempts to Help

22. Mr. Hicks was returning home from the store when he also heard W.L.'s screams for help.

23. Mr. Hicks was twenty-six years old at the time, and had joint custody of his five-year-old son. Mr. Hicks lived in the neighborhood, on Broad and Snyder, just a few blocks from where W.L.'s attack occurred and a few buildings down from a Popeyes franchise where he was employed as an assistant manager and where his seventeen-year-old brother also worked. The restaurant was located next door to the Dunkin Donuts where W.L. was employed. (N.T. 11/07/02, 7-13).

24. On November 26th, after their evening shift at Popeyes ended, Mr. Hicks and his younger brother watched movies at Mr. Hicks' apartment. At around 4:30 a.m., Mr. Hicks walked his brother to the bus stop, and then he went to buy cigars before going home. (N.T. 11/07/02, 14-15). Mr. Hicks went to Rite Aid, then Walgreens and finally to the A-Plus Mini Market on 17th Street and Passyunk Avenue where he was finally able to find the brand he was looking for. (N.T. 11/07/02, 15-16, 22-23). As he was walking down Snyder Avenue on his way home, Mr. Hicks heard screams, first after he passed 16th Street, and then again when he got to 15th Street. (N.T. 11/07/02, 24).

25. Mr. Hicks looked up the street and saw a man standing on the corner of 15th Street and Mifflin. (N.T. 11/07/02, 24). When the woman's screams got louder and he could see

that the man was “just standing on th[e] corner,” Mr. Hicks started walking up 15th Street. (N.T. 11/01/02, 28-29).

26. When Mr. Hicks crossed Passyunk, the man started looking in Mr. Hicks’ direction and said something that he could not make out. A few seconds later, Mr. Hicks heard the man “holler something else” and saw him leave the area, walking away down Mifflin. (N.T. 11/07/02, 28-31).

27. A second man—wearing a dark jacket and a gray hoodie—came running from the back of St. Agnes Hospital; he ran up 15th Street and also turned and fled in the same direction on Mifflin. (N.T. 11/07/02, 30-31).

28. Mr. Hicks reached the back of the hospital and saw it was the receiving area; he looked where the man had just run from and saw a white tennis shoe on the ground, not too far from a dumpster. Walking closer, he saw the silhouette of a person, W.L., on the ground. (N.T. 11/07/02, 31-33). W.L.’s face was covered in blood and her pants were below her knees. (N.T. 11/07/02, 33).

29. Mr. Hicks asked W.L. whether she was okay, but she did not respond. He nudged her with his foot, and she did not move.

30. Mr. Hicks began reaching for his cell phone, which was in his right jacket pocket, to call for help. At that point, he heard an officer say, “Freeze. Get your hands up.” (N.T. 11/07/02, 33).

Mr. Hicks has Consistently Maintained he was Shot in the Back

31. Responding to the radio calls of a rape in progress behind St. Agnes Hospital, with the description of the perpetrator being a male in a gray hooded sweatshirt and black jacket, several Philadelphia Police Department officers arrived at the scene in quick succession and

encountered Mr. Hicks in the dark corridor where W.L. had been attacked. (N.T. 11/01/02, 167-68).

32. Officers Martin Vinson and Dennis Zungolo were first to respond. At 5:06 a.m., they informed dispatch that they were on location. They parked their car near the emergency entrance at the front of St. Agnes hospital, and went around back to the loading dock. (N.T. 11/01/02, 79-83; N.T. 11/06/02, 221-22).

33. The officers ordered Mr. Hicks to "Get your hands up. Don't move." (N.T. 11/07/02, 89).

34. Mr. Hicks testified that he was startled by the officers. He turned, looked down at W.L., who sat up, and he looked back at the officers, explaining "I was trying to help her. I was getting ready to call you all." The officers ordered him to "Get your hands up. Don't move." (N.T. 11/07/02, 89-90).

35. Mr. Hicks had his back to the officers. His hand was still on his cell phone inside his jacket pocket. He let it go and was in the motion of taking his hand from his pocket, but before he could, he heard shots. (N.T. 11/07/02, 33, 92-93).

36. Police shot Mr. Hicks three times from behind. (N.T. 11/07/02, 34). Mr. Hicks fell to his knees and then onto his face, chipping his front tooth when his face hit the ground. (N.T. 11/07/02, 40, 41-43).

37. According to Mr. Hicks, Officer Vinson patted him down and said something like "Damn." Officer Vinson started crying and kept patting Mr. Hicks down. (N.T. 11/07/02, 40, 100).

38. Officer Vinson "went over the air" to report that he discharged his weapon. (N.T. 11/1/02, 90). Officer Vinson told dispatch: "*I tried to get the [] male to uh, you know put his*

hands where I could see them and he was reaching for something and I couldn't see it.” (N.T. 11/01/02, 144).

39. In response, the instruction was conveyed, “Command, have him uh, just standby and wait for the sergeant, that’s all he needs to say.” (N.T. 11/01/02, 164).

40. To cover up for shooting an unarmed man in the back, officers falsely attributed a gun to Mr. Hicks, and lied about the circumstances of the shooting.

Police Produce a Gun they Claim to Retrieve from Mr. Hicks’ Jacket Pocket

41. Officer Robert Ellis—who responded to the scene with his partner Officer Duane Watson—claimed to recover a gun from Mr. Hicks’ jacket pocket after the shooting.² According to Officer Ellis, after he arrived on the scene, Officer Vinson stated, “Get the gun, get the gun. It should be in his pocket.” (N.T. 11/04/02, 77-78).

42. Officer Ellis produced a .38 caliber Taurus that he asserted he obtained from Mr. Hicks’ jacket pocket. (N.T. 11/04/02, 78).

43. The totality of the evidence now on record makes clear that Officer Ellis’ testimony about searching Mr. Hicks and recovering a gun from his jacket pocket immediately after the shooting was false.

44. The gun attributed to Mr. Hicks was registered to an active Philadelphia Police Department officer, Valerie Brown. Officer Brown bought the gun twelve years earlier from Corporal C. Anthony Santner, a retired PPD officer. (N.T. 11/05/02, 133-35). Officer Brown maintained the gun as her off-duty weapon, which she kept stored in a closet in her basement. She testified she had “no idea” how the gun may have been taken from her house and had never reported it missing. (N.T. 11/05/02, 119-20, 138-140).

² According to Ellis, when he got there, Mr. Hicks was on the floor and his eyes were “closing and opening.” (N.T. 11/04/02, 82).

45. There was no connection between Officer Brown and Mr. Hicks. Mr. Hicks denied ever possessing the gun.

46. The weapon Officer Ellis claimed to retrieve from inside of Mr. Hick's right jacket pocket had wet blood on the grip and on the barrel; there was blood "all over the gun," and Officer Ellis' hands were bloody from touching the gun. (N.T. 11/04/02, at 98-99, 101).

47. The crime scene was marked by extensive bleeding, with W.L. having lacerations from being beaten, and Mr. Hicks being shot. Officers tended to W.L., who was bleeding and on the ground nearby Mr. Hicks, and removed her from the scene while officers searched Mr. Hicks and administered aid. Ultimately, both Mr. Hicks and W.L. were taken to Jefferson hospital, where Mr. Hicks underwent emergency surgery for his three bullet wounds,³ and W.L. was treated for lacerations to her head and face and underwent a rape examination. (N.T. 11/01/02, 18; N.T. 11/07/02, 122).

48. The fact that the gun Officer Ellis claimed to retrieve from Mr. Hicks' pocket was indisputably "bloody," which the Commonwealth asserted was the result of W.L. being beaten with the gun (N.T. 11/07/02, 262), cannot be reconciled with Officer Ellis' claim that he "found" the gun in Mr. Hicks' jacket pocket; if a wet, bloody gun had been placed in Mr. Hicks' jacket pocket, blood would have inevitably transferred from the gun to the cloth interior of Mr. Hicks' jacket.⁴ (N.T. 11/05/02, 46-49, 52-53).

49. However, there was no blood in Mr. Hicks' jacket pocket.

³ One bullet was removed from his chest. This bullet entered the back of Mr. Hicks' right arm, exited the front and went into his side. Two other bullet fragments were collected at the hospital.

⁴ At the time of trial, the Commonwealth's analysts testified that the lab did not perform an examination to specifically determine whether there was any blood inside of Mr. Hicks' right jacket pocket where the gun was allegedly found (N.T. 11/06/02, 46-47, 110-11), but that it would have been noted if observed. Recent examination of the jacket's pockets has confirmed no visible blood staining on the inside pockets.

50. In light of the physical evidence, Officer Vinson's account that Mr. Hicks pulled a gun out of his jacket pocket and then, after being shot three times, placed the gun back in his pocket, and Officer Ellis' claim that he retrieved the gun from Mr. Hicks' pocket, is thus utterly implausible.

51. This is not the first instance where Officer Ellis planted evidence on an innocent man. While unknown to the jury who convicted Mr. Hicks, in 1998, another Philadelphia man was initially convicted of federal gun charges, but subsequently acquitted at a re-trial when the defense presented evidence that Officer Ellis planted ballistics and falsely attributed guns to the accused that he did not in fact possess.⁵

52. In Mr. Hicks' case, Officer Zungolo testified that he never saw Mr. Hicks with a gun, although he "felt that there could have been a gun," and that he and Officer Vinson did not know with certainty that there was a gun until Officer Robert Ellis arrived at the scene and said "Gun" (N.T. 11/06/02, 168).

⁵ *US v. Mortimer*, Court of Appeals, Third Circuit (Case No. 97-2058) (acquitted, July 1999). There Officer Ellis claimed that he found two guns on the accused after pulling him over during a traffic stop. Ellis claimed that a physical struggle between the two ensued, during which Ellis knocked a gun out of Mortimer's hand onto the street. Ellis also claimed he found a second gun in the defendant's waistband. Yet, a former PPD firearms examiner and Ballistics Unit supervisor testified at Mortimer's retrial that the appearance of the gun was inconsistent with Ellis' account. In addition, Ellis claimed to have found a bullet in Mortimer's pocket. However, Ellis' initial report did not account for the bullet purportedly in Mortimer's pocket. Ellis originally signed a property receipt stating that he recovered 15 bullets from the magazine, which did not align with the actual number of bullets recovered. Mortimer was acquitted at retrial. Notably, there is scant documentation of Officer Watson's involvement in the investigation here even though he was Ellis' partner, arrived with him at the scene within minutes of when Ellis purportedly found the weapon. Watson also has a history of fabricating evidence/charges. Earlier this year, on February 25, 2020, Watson was arrested for perjury, after he arrested five individuals for drug transactions during a raid on a Southwest Philadelphia deli, and while an officer for the Narcotics Strike Force. Watson's account was contradicted by video surveillance leading to dismissal of charges and his own prosecution for perjury. (Samantha Melamed, *Lawyers claim a record of lies taints testimony from entire Philly Police Narcotics Bureau*, PHILADELPHIA INQUIRER, (June 24, 2020), <https://www.inquirer.com/news/philadelphia-police-narcotics-confidential-informants-testifying-evidence-20200624.html>).

53. By the time Officer Vinson spoke to Internal Affairs on May 21, 2002, his story had changed, from his first account to dispatch that Mr. Hicks “*was reaching for something and I couldn’t see it,*” (N.T. 11/01/02, 144) (emphasis added), to claiming that he shot Mr. Hicks when Mr. Hicks “pulled a gun out and pointed the barrel at me.” (N.T. 11/01/02, 142).

54. Property receipts confirm that Mr. Hicks did in fact have a cell phone, which he has consistently maintained he was reaching for when Officer Vinson shot him. (N.T. 11/06/02 181-182; 11/04/02, 138-140).

The Assailant Had on a Gray, Hooded Sweatshirt; Mr. Hicks Did Not

55. When police arrived at the scene, they were looking for an assailant in a gray hooded sweatshirt. This description had been provided to police by eyewitness Justin Votta as he watched the assailant—wearing a gray hooded sweatshirt, with the hood up obscuring the man’s face—dragging W.L into the alley. (N.T. 10/31/02, 111-12, 129-130).

56. Unlike the description provided by Votta, Mr. Hicks was not wearing a hooded sweatshirt when he was shot. Mr. Hicks had no hood on any of his clothing, nor was he wearing a hat. (N.T. 11/06/02, 42; N.T. 11/07/02, 17).

57. No hoodie or hat was recovered from Mr. Hicks at the hospital, nor were any found at the crime scene, which was thoroughly processed by crime scene unit officers who scoured the scene for all relevant evidence down to miniscule grains of bullet fragments. (N.T. 11/04/02, 132, 156-157, 186; N.T. 11/05/02, 14, 30; N.T. 11/06/02, 41).

58. Detective Mark Webb of the Special Victim’s Unit, who led the investigation, along with Detective James Campbell, confirmed that all of the clothes Mr. Hicks was wearing when he arrived at Jefferson Hospital immediately after the shooting were placed on a PPD property receipt the day of the crime. (N.T. 11/04/02, 128).

59. The police property receipts confirmed that at the time of the shooting Mr. Hicks had on a black leather jacket, a red and black polo shirt, white t-shirt, gray sweatpants, yellow boxers, white socks, and Timberland boots. (N.T. 11/04/02, 132-134, 156-157; N.T. 11/07/02, 17).

The Trial

60. Mr. Hicks' trial began on October 31, 2002 and ended on November 8, 2002.

61. W.L. never identified Mr. Hicks as the man who attacked her.

62. In the absence of an identification by the victim, the prosecution relied significantly on Officer Vinson's testimony that when he got to the scene, he saw Mr. Hicks assaulting the victim, and that he shot Mr. Hicks because Mr. Hicks pointed a gun at Officer Vinson and lunged at him with the weapon. (N.T. 11/01/02, 83-90).

The Commonwealth's Case

63. Through a Cantonese interpreter, W.L. recounted what she could recall about her attack, testifying that she was terrified and "confused" and that she did not see the assailant's face at any point. (N.T. 11/01/02, 17-20, 28, 38).

64. She testified she was grabbed from behind, beat in the face and that it was too dark and she was too scared to see the assailant's face.⁶ (N.T. 11/01/02, 28) ("I didn't see his face"); (N.T. 11/01/02, 39) ("it was dark around, so I couldn't see anything"); (N.T. 11/01/02, 17) ("didn't see anything" because "I was scared.").

65. W.L. incurred significant injuries to her face and head from the beating, testifying "he was punching me in my face and head" and "he kept on hitting me until I was weak." (N.T.

6 (P.H. 3/5/02, 21) ("he was grabbing me from behind."); (P.H. 3/5/02, 22-23) ("I couldn't see anything clearly because he was beating me and it was not bright outside"); (P.H. 3/5/02, 27) ("...it was dark outside. I couldn't even tell how his face was like"); (P.H. 3/5/02, 28) ("He pulled me into a small alley. It was dark in there. I couldn't see anything").

11/01/02, 17). W.L. incurred trauma to her head, suffering from “continuous headaches” after she left the hospital. (N.T. 11/01/02, 28-29, 36).

66. W.L. also did not see what happened at the time of the shooting. W.L. testified she “was scared,” “confused” and “thought [she] was going to die.” (N.T. 11/01/02, 28, 36).

67. By the time of the preliminary hearing and trial (*i.e.*, after the officers had already filed reports providing their own, false version of events), W.L. testified that she believed that the assailant was still on top of her when police arrived at the scene. (N.T. 11/01/02, 39). She testified she thought police arrived when the man stopped raping her because when the attack ended, “there were spotlights, and there were cars around.” (N.T. 11/01/02, 16).

68. The defense argued that W.L. was mistaken because of her extreme fear, confusion and injuries.

69. The Commonwealth called 16 police officers to testify; absent from the Commonwealth’s case in chief were the partners of Officer Vinson and Officer Ellis, the Commonwealth’s two key witnesses. Officer Vinson’s partner, Officer Zungolo, was the sole witness other than Officer Vinson to the shooting. The Commonwealth also did not call Officer Duane Watson, the partner of Officer Ellis who had arrived at the scene with Officer Ellis when he purportedly found the gun on Mr. Hicks. Watson’s involvement is not detailed in any reports, nor in any trial testimony.

70. Officer Vinson testified that as he entered the loading dock area behind the hospital, he heard a faint moan and a muffled male voice saying, “shut up.” But Officer Zungolo, who was right behind him, and was called as a witness by the defense, did not testify to hearing any noises on their approach. (N.T. 11/01/02, 82-83, 120; N.T. 11/06/02, 153-154).

71. Officer Vinson claimed he walked over to the small corridor behind the dumpster, saw a silhouette of two people on the ground, and turned his flashlight on: he saw a female laying on the ground and a male lying on top of her, both with their pants down. (N.T. 11/01/02, 83).

72. Officers Vinson and Zungolo both testified that they ordered Mr. Hicks to “get up” off of the victim several times. Both officers testified to seeing Mr. Hicks stand up and pull up his pants. Officer Vinson went further in his testimony, stating that he actually saw Mr. Hicks “pulling his penis out of her vagina.” (N.T. 11/01/02, 84; N.T. 11/06/02, 153).

73. Officer Vinson testified that after Mr. Hicks bent down and pulled up his pants, Officer Vinson ordered him to “put [his] hands up” and to turn around to face the officers, but then redirected him to put his hands up against the wall. (N.T. 11/01/02, 84).

74. According to Officer Vinson, Mr. Hicks looked around. Officer Vinson tried to “gain hand control of his hand,” but Mr. Hicks took his right hand and slapped Officer Vinson’s hand down. Officer Vinson backed up, then tripped and fell into Officer Zungolo’s arms, who caught him and pushed him back up. (N.T. 11/01/02, 86).

75. According to Officer Vinson, Mr. Hicks was turning and backing away when Officer Vinson said repeatedly, “Put your hands where I can see them.” (N.T. 11/01/02, 86). By the second or third time, Officer Vinson testified he drew his weapon and pointed it at Mr. Hicks. Officer Vinson told Mr. Hicks to put his hands up again.

76. Officer Vinson testified that Mr. Hicks “lunge[d] around. I could see off the light a gun coming around toward me.” (N.T. 11/01/02, 87). Officer Vinson testified that Mr. Hicks was “almost” “fully facing” him when he shot Mr. Hicks twice. According to Officer Vinson,

Mr. Hicks stepped back and was raising the gun at him again when Officer Vinson shot him for the third time. (N.T. 11/01/02, 87-89).

77. Officer Vinson reiterated at various points in his testimony that he shot Mr. Hicks because Mr. Hicks was “just about directly facing” him and Mr. Hicks had pointed a gun at him. (N.T. 11/01/02, 149-150).

78. According to Officer Vinson, after Mr. Hicks was shot three times, he slouched over and put the gun he had pointed at Officer Vinson back in his jacket pocket. (N.T. 11/01/02, 89-90). He then backed up into the rear of the alley before collapsing to the ground. (N.T. 11/01/02, 89-90, 154-56).

79. Like Officer Vinson, Officer Zungolo also provided different accounts between the initial investigation and trial about what Mr. Hicks did prior to Officer Vinson shooting him. Officer Zungolo initially told investigators that Officer Vinson fired his gun because Mr. Hicks had his hand in the pocket of his jacket and the officers feared that Mr. Hicks was about to pull a gun out. (N.T. 11/06/02, 197; 1/28/02 PPD Internal Investigations Division, Statement of Dennis Zungolo, 3).

80. At trial, Officer Zungolo testified that Officer Vinson shot Mr. Hicks after Mr. Hicks thrust his arm out of his jacket pocket. (N.T. 11/06/02, 159-60). Officer Zungolo testified that because Officer Vinson was in front of him, he did not see Mr. Hicks’ hand and what—if anything—he may have been holding. (N.T. 11/06/02, 159-61).

81. The testimony of other officers and civilian witnesses contradicted the accounts given by Officers Vinson and Zungolo that when they got to the scene, just before Officer Vinson shot him, Mr. Hicks was on top of the victim, and they issued verbal commands for him to get off of her.

82. Officer Brian Smith was the only other witness to testify that he heard such a command; however, he made no mention of this prior to trial, neither in any report nor his statement to the Special Victims Unit, wherein he stated only that he heard the officers order Mr. Hicks to remove his hands from his pockets.⁷ (N.T. 11/1/02, 45-46, 55-57; 11/27/01 Philadelphia Police Department Special Victims Unit Investigation Interview Record, attached to PCRA as Ex. O).

83. Officer Michael Youse and his partner, Officer Frank Holmes, arrived at the scene moments after Officers Vinson and Zungolo. Officer Youse testified he saw Mr. Hicks standing over the victim. (N.T. 11/04/02, 31). Officers Youse and Holmes testified to hearing only “let me see your hands,” and the three gunshots that followed. (N.T. 11/4/02, 34, 40, 52).

84. This was consistent with the civilian witnesses: Justin Votta similarly reported hearing the officers only say “Freeze” and “Put up your hands, put up your hands” before he heard the shots fired. (N.T. 10/31/02, 120, 135-136). Megan Nelson similarly reported in her initial statement: “The cop asked him to show his hands about two or three times then I heard about two or three shots.” (1/28/02 PPD Investigation Report, Statement of Megan Nelson, 2).

85. At trial, the Commonwealth used the results of DQ Alpha DNA testing performed on blood stains on Mr. Hicks’ pants leg and waistband to argue that the blood stains were a result of Mr. Hicks beating the victim with the gun and then handling his clothing. (N.T. 11/04/02, 177; N.T. 11/06/02, 5-16, 82, 106-08, 131-33). Blood from the barrel of the gun⁸ was consistent with W.L. (N.T. 11/06/02, 86, 136). Blood consistent with W.L was also found near the

⁷ Officer Brian Smith also testified at trial that Mr. Hicks was wearing a gray hoodie when he got to the scene; however no other officer made such a claim. Nor was Smith’s claim supported by evidence chain of custody documents.

⁸ The gun itself was destroyed on April 15, 2008 by court order. (10/17/12 City of Philadelphia Evidence Search Memo).

waistband of Mr. Hicks' boxer shorts and on the right leg of Mr. Hicks' sweatpants. (N.T. 11/06/02, 83-88, 135-36).

86. Robert Dillard, an DNA analyst from the Philadelphia Crime Laboratory testified that, "without question," blood from W.L. could have innocently transferred onto Mr. Hicks' clothes *after* he was shot, as Mr. Hicks was lying in the alley where W.L. lay profusely bleeding, which was only a few feet wide. (N.T. 11/06/02, 119, 191-92). Dillard further testified there was no way of knowing how the blood came into contact with Mr. Hicks' clothing because it was possible that (1) Mr. Hicks fell onto the ground where W.L.'s blood was, or (2) a responding officer touched W.L. before tending to the wounded Mr. Hicks. (N.T. 11/06/02, 119-23).

87. Officer Ellis' testimony established how easily Officer Ellis himself could have transferred W.L.'s blood onto Mr. Hicks' clothing while he was searching him and taking him into custody.

88. Officer Ellis testified there was blood "all over the gun," and *after* he noticed he had blood on his hands, he continued "to search [Mr. Hicks] to see if he had any other weapons." (N.T. 11/4/02 98-102) ("What I did was close this gun back up, and I secured it right in my waistband. As I'm looking at the gun, I could see the blood now. It's all over the gun, but I already had my hands on it because I took it off this male. Once I had that done and secured it, we continued to search this male to see if he had any other weapons.")

89. This "second search" for weapons, wherein Office Ellis patted Mr. Hicks down, occurred while Officer Ellis admittedly had W.L.'s blood on his hands, and accounts for her blood on Mr. Hicks' clothing.

90. After Officer Vinson shot Hicks, and as Officer Vinson called in the shooting, Officer Youse testified he went and assisted W.L., who was pulling up her pants and putting on

her shoe. Officer Youse stated that he took the victim, who was bloody, and “pulled her out of there” and handed her over to the officer who took her to the hospital. (N.T. 11/04/02, 35-37).

91. According to Officer Youse, he then started to “secur[e] the scene.” (N.T. 11/04/02, 38). Officer Youse was right by where Mr. Hicks was shot, and that, at that time, according to Officers Ellis and Zungolo, they were searching Mr. Hicks for weapons. (N.T. 11/06/02, 165-66; N.T. 11/04/78).

92. Officer Zungolo testified that after Mr. Hicks was shot and had fallen to the ground, he and Officer Ellis crouched down in front of Mr. Hicks’ feet, lifted up Mr. Hicks’ shirt, and began to administer first aid. Officer Ellis was searching Mr. Hicks while Officer Zungolo was trying to apply pressure. (N.T. 11/6/02 at 163-165). Ultimately Officer Zungolo testified that he and another officer, who he could not name, helped carry Mr. Hicks to the medic. (N.T. 11/6/02,171).

Mr. Hicks’ Defense

93. Mr. Hicks testified that he arrived at the scene after the attacker had already fled, that he approached the victim to check on her and was reaching for his cell phone to call for help when police arrived. He maintained that at no point did he attack her, and he did not have a gun. (N.T. 11/07/02, 14-44, 59).

94. The defense argued Mr. Hicks came upon the scene of the crime at the wrong time and he was shot as a result of a misunderstanding in which officers mistook his hand in his right jacket pocket as a threatening gesture. Counsel also argued that police officers fabricated a false story about recovering a gun from Mr. Hicks after they shot him in the back and realized he was unarmed—pointing to the fact that the gun’s registered owner was a Philadelphia police officer,

as well as other stark inconsistencies in the officers' accounts of the incident. (N.T. 11/07/02, 195-96, 202-07).

95. While the defense argued that Mr. Hicks was shot in the back, the defense did not present forensic evidence regarding the directionality of the bullets. A stipulation was read into the record from Dr. Murray Cohen, the emergency room doctor at Jefferson Hospital who operated on Mr. Hicks, that it was "beyond his expertise" to determine whether the gunshot wounds entered the back or front of Mr. Hicks' body. (N.T. 11/7/02, 121).

96. Trial counsel argued that the victim's recollection that the perpetrator was still assaulting her when police arrived was unreliable due to her extreme fear, confusion and injuries. (N.T. 11/07/02, 141).

97. The defense also argued Mr. Hicks did not fit the description of the perpetrator, who a civilian witness described as wearing a gray hooded sweatshirt which, as previously noted, was never found on Mr. Hicks or at the scene—supporting the conclusion that the real assailant, still wearing that gray hoodie, fled the scene shortly before Mr. Hicks and the police arrived. (N.T. 10/31/02, 111-12; N.T. 11/07/02, 184).

98. On November 8, 2002, the jury convicted Mr. Hicks of rape, aggravated assault, possession of an instrument of crime, and terroristic threats.

After Trial the Commonwealth Provides the Defense with Surveillance Footage Confirming the Assailant Wore a Gray Hooded Sweatshirt

99. Mr. Hicks was not sentenced until February 27, 2003, as the Court considered post-conviction motions; specifically, a Motion for Extraordinary Relief in the Form of Judgment of Acquittal, Arrest of Judgment, or New Trial. This was based on the production of the

surveillance camera footage, which captured the receiving area of the hospital and the beginning of W.L.'s attack.

100. The jury that convicted Mr. Hicks never saw surveillance tape from the loading dock behind St. Agnes hospital, which captured the beginning of the attack and provided objective evidence corroborating the contemporaneous account of eyewitness Justin Votta, who reported to 911 that the man who attacked the victim was wearing a gray hooded sweatshirt, clothing that Mr. Hicks was not wearing when he was shot. The video showed a man in a hooded sweatshirt, with the hood up over his head, dragging the victim behind the hospital. (N.T. 02/07/2003, 8-9).

101. The surveillance tapes were viewed by Detectives Webb and Campbell at the hospital *the day of the crime*. However, a legible copy of the video was not provided to Mr. Hicks' counsel until more than one year later and significantly *after Mr. Hicks' trial was over*. The Commonwealth attributed the delay to a purported insurmountable incompatibility of the tape with available video playback equipment. (N.T. 11/05/02, 61-63; 02/05/2003, 61-63).

102. The surveillance footage was important because the jury may well have resolved the discrepancy between Votta's eyewitness description of the assailant's clothing and Mr. Hicks' appearance—a discrepancy which exculpated Mr. Hicks—by discounting Votta's report of what the assailant was wearing.

103. The surveillance video also provided an explanation—one unknown to the defense and never heard by the jury—for why the victim believed the attack was still happening when police arrived at the scene. W.L. had testified this belief was based on the fact that the attack stopped when “there were spotlights, and there were cars around.” (N.T. 11/01/02, 16, 39).

104. The surveillance video showed that, during the attack, three minutes after the perpetrator dragged W.L. into the alley, a white delivery van with its rear lights and headlights illuminated pulled into the loading dock area where W.L. was being attacked. The van stayed parked for over 2 minutes, with its lights illuminated the entire time, and then left just before Mr. Hicks arrived and police shot Mr. Hicks. (N.T. 02/07/2003, 8-9, 14-15).

105. Although the surveillance video explained the victim's confusion and clearly depicted a man in a hoodie dragging W.L. into the alley,⁹ the Court denied Mr. Hicks' post-trial motion. On February 27, 2003, Mr. Hicks was sentenced to 12 ½ to 25 years in prison.

Post-Conviction DNA Testing of W.L.'s Clothing

106. On November 16, 2015, Mr. Hicks filed a Petition for Post-Conviction DNA Testing seeking access to exhaustive DNA testing of the crime scene evidence to support his claim of factual innocence. The Court granted that Petition on March 3, 2017, and testing was performed by both the Philadelphia Crime Laboratory and a private DNA laboratory. Testing of the crime scene evidence—including W.L.'s pants, underwear, vagina and cervical swabs, and Mr. Hicks' sweatpants—as well as all relevant reference and elimination samples was completed on August 20, 2019.

107. Mr. Hicks' initial PCRA in this matter was based on testing of the inside and outside waistband of W.L.'s underwear and the waistband of her pants, which identified male DNA. Mr. Hicks sought this targeted testing given that the perpetrator violently pulled W.L.'s underwear and pants down during the attack, and advances in DNA technology since trial made it possible to detect small amounts of "touch" DNA left behind in this fashion by an assailant.

⁹ The video was a compilation of still photos taken every several seconds and provided only a partial view of the crime scene. (N.T. 02/07/2003, 7-8). The camera angle was aimed only at the driveway entrance at the rear of the hospital and did not extend wide enough to capture the full area behind the hospital, including the alleyway where the W.L. was found.

108. Multiple rounds of DNA testing were performed on W.L.'s underwear and pants in an effort to identify DNA left behind by the assailant during the attack when he pulled the W.L.'s clothing off, using both conventional STR DNA testing and Y-STR testing, a form of the STR test that targets male DNA.

109. With regard to testing of the inside and outside waistband of W.L.'s underwear, the Philadelphia Crime Laboratory's Y-STR male-specific DNA testing showed a result "consistent with originating from at least one male individual." The genetic marker of a male (at the DYS438 locus) was detected on the waistband of W.L.'s underwear, and Mr. Hicks was conclusively excluded. (12/5/2017 City of Philadelphia DNA Laboratory Report, attached to PCRA as Ex. O).

110. A further comparison, however, showed that W.L.'s husband also shared this genetic marker. Thus, the foreign DNA on W.L.'s underwear may be attributable to him, or the assailant. DNA testing of the waistband of W.L.'s pants yielded similar results.

111. Importantly, DNA testing was also performed on a stain on W.L.'s pants on the top leg, below the front pocket, which had tested presumptively positive for blood at the time of trial. The DNA testing showed male DNA belonging to Mr. Hicks.

112. These results—from DNA testing of the presumptive blood stain from W.L.'s pants—provide scientific support for what the defense had hypothesized at trial: that blood was transferred onto Mr. Hicks's clothing through the officers' handling or other contamination either at the scene or after the evidence was collected.

113. Because Mr. Hicks was not bleeding *until after* he was shot by the police, the presence of Mr. Hicks' blood on W.L.'s pants demonstrates that blood was transferred between

Mr. Hicks and the victim's clothing, unrelated to the crime, *after police arrived on the scene and shot Mr. Hicks.*

114. Demonstrating that the transfer of blood occurred at the scene is significant. At trial, the presence of W.L.'s blood on the "inside front upper panel" of Mr. Hicks' boxers and the outside front leg of Mr. Hicks' sweatpants was powerful—and the only—physical evidence to support Officer Vinson's testimony that he saw Mr. Hicks attacking W.L. when he arrived at the scene. The Commonwealth's theory was that the blood transferred from the gun, which was used to beat W.L., to Mr. Hicks' clothing when he pulled up his pants. Officer Ellis' account of searching Mr. Hicks with W.L.'s blood on his hands, and PPD DNA analyst Dillard's acknowledgment that "without question" the officers could have transferred blood from W.L. to Mr. Hicks' clothing with their hands, established at trial that innocent transfer was possible. But the recent DNA tests take blood transfer at the scene from the realm of possibility to established fact; they demonstrate that transfer or contamination did in fact occur on the evidence in this case.

115. The recent DNA test results thus provide scientific corroboration for the defense's argument that W.L.'s blood came to be on Mr. Hicks' clothing through transfer after police shot Mr. Hicks, and not as the result of any direct contact between Mr. Hicks and W.L. or the gun, effectively eliminating the only physical evidence at trial that remotely supported Officer Vinson's account.

The Newly Discovered Forensic Pathology Analyses

116. In addition to the DNA results, the issue of what Mr. Hicks was doing when police shot him—which was a disputed and significant issue at trial—has finally been resolved through review of Mr. Hicks' medical records and examination of his clothing by two

independent medical examiners, including—significantly—the Medical Examiner for the City of Philadelphia. (Affidavit of Dr. Michael Baden TKDATE, attached hereto as Exhibit A, and Consultation Report of Dr. Sam P. Gulino, Addendum #2, 12/20/19, attached hereto as Exhibit B). No expert forensic analysis related to the directionality of the gunshots has ever been previously conducted, despite Mr. Hicks’ best efforts on direct appeal to obtain this critical evidence.

117. Officer Vinson testified that he shot Mr. Hicks three times while Mr. Hicks was facing and lunging at him.

118. The Commonwealth could not contest that the bullet removed from Mr. Hicks’ chest during emergency surgery entered his body from behind (going into the back of Mr. Hicks’ right arm, exiting his arm, and entering his side) but it theorized through testimony from ballistics expert Carl Rone that this bullet could have struck the building, fragmented and ricocheted.

119. In his first amended petition, Mr. Hicks asserted claims based on the expert review and opinion of Dr. Michael Baden. Dr. Baden is Board-certified in Anatomic Pathology, Clinical Pathology and Forensic Pathology, a former Chief Medical Examiner of New York City, and a former Co-Director of the Medical-Legal Investigations Unit of the New York State Police. Dr. Baden concluded, based on his review of Mr. Hicks’ available medical records, that all three hollow point bullets fired by Officer Vinson struck Mr. Hicks in the back close to his spine, the left buttock, and the rear right side of his upper arm. (Exhibit A).

120. After Mr. Hicks filed his first amended petition containing Dr. Baden’s findings, PCRA Unit attorneys for the Commonwealth submitted Mr. Hicks’ medical records to the Chief Medical Examiner for the City of Philadelphia, Dr. Sam Gulino. Dr. Gulino initially issued a

report concluding that, based on Mr. Hicks' remaining medical records alone, a determination could not be made regarding the directionality of the two remaining bullets, *i.e.*, whether one entered the midportion of the back and exited the abdomen, and whether the other entered the buttock and exited the groin, or vice versa. This report served, *inter alia*, as the basis of the Commonwealth's motion to dismiss Mr. Hicks' petition, which the Commonwealth has since withdrawn.

121. Subsequent to that filing, Petitioner's counsel requested that Dr. Gulino consider additional evidence the Commonwealth's attorneys had not provided to him—specifically, that Dr. Gulino examine the clothing evidence worn by Mr. Hicks during the shooting. Dr. Gulino concluded that examination in December 2019.

122. Dr. Gulino issued a report on December 20, 2019, which contained his findings that *all three bullets entered Mr. Hicks' body from behind* (See Exhibit B).

123. After reviewing the additional evidence, Dr. Gulino concluded: "My opinions regarding the gunshot wound to the right arm [] are unchanged." But significantly, Dr. Gulino stated, "Whereas the medical records and radiographs were inconclusive regarding the directionality of the remaining wounds... the clothing provides evidence that: a) The entrance wounds were *in the left midportion of the back and left buttock*, and b) These two bullets *exited the front of the body* (the upper abdomen and the left groin, per the medical records). . . ." (emphasis added) (See Exhibit B).

124. Thus, not one but *two* experts—including one who began his review at the Commonwealth's request—*now agree that Mr. Hicks was shot by police three times from behind*, while his back was to the officers, as he has long attested.

125. The recently obtained expert opinions establish that the officers' account of the shooting was untrue, and that Officer Vinson falsely testified at Mr. Hicks criminal trial, which resulted in his conviction. Mr. Hicks was not pointing a gun and lunging at officers when he was shot. He was an innocent bystander attempting to aid a rape victim. And he has paid an unspeakably heavy price for the responding officers' impulsive—and perjurious—actions for over 19 years.

ARGUMENT

I. MR. HICKS IS INNOCENT OF THE RAPE OF W.L. AND IS ENTITLED TO VACATUR OF HIS CONVICTION AND A NEW TRIAL

A. Mr. Hicks' Petition is Timely

126. Mr. Hicks' conviction and sentence resulted from “[t]he unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced” and state and federal constitutional violations that “so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.” 42 Pa. C.S. §9543 (a)(2)(i) & (vi).

127. The PCRA statute requires that any petition “be filed within one year of the date the judgment becomes final unless the petition alleges and the petitioner proves” one of three exceptions. 42 Pa. C. S. § 9545(b)(1)(i)-(iii).

128. Two of the exceptions to the one-year filing deadline are applicable here in that: “(i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States” and “(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence.” 42 Pa. C. S. § 9545(b)(1)(i) & (ii).

129. 42 Pa. C.S. § 9545(b)(2) further requires that any petition invoking an exception provided shall be filed within one year of the date that the claim could have been presented. Mr. Hicks's original Petition for Post-Conviction Relief pursuant to 42 Pa. C.S.A. § 9543, based on the results of DNA testing, was originally filed on April 30, 2018. The DNA results were conveyed to counsel on March 1, 2018, by email from the Philadelphia Crime Laboratory. On September 14, 2018, this court granted Mr. Hicks a continuance to December 14, 2018 to file this Amended Petition for Post-Conviction Relief pursuant to additional DNA testing and investigation. The instant filing, based on Dr. Gulino's conclusions, which the Commonwealth made available to counsel for Mr. Hicks on December 20, 2019, is within the one-year requirement.

130. Mr. Hicks' Second Amended PCRA alleges previously unknown facts which could not have been ascertained by the exercise of due diligence. The relief sought through this petition is based, in part, on modern forensic DNA testing results obtained through state-of-the-art STR testing conducted by the Philadelphia Laboratory, which established that blood transfer did in fact occur. While the defense argued, based on the bloody nature of the crime scene, transfer was entirely possible and explained the presence of W.L.'s blood on Mr. Hicks' clothing—the only physical proof to corroborate the officers' account that Mr. Hicks was on top of the victim when they arrived, not, as he maintained, standing near her—the jury rejected the defense's transfer argument in the absence of compelling DNA evidence that now exists and supports this conclusion (*i.e.*, that blood transfer did occur between items at the scene, *after* police shot Mr. Hicks).

131. The instant PCRA is also based on the opinion of the Commonwealth's own expert—the Medical Examiner for the City of Philadelphia, Dr. Sam Gulino—*whose opinion has*

caused the Commonwealth to concede critical facts which at trial were in dispute: that Mr. Hicks was shot in the back, and Officer Vinson's sworn trial testimony was false. (N.T. 11/1/02, 87). ("when [Mr. Hicks] was almost *to where he was fully facing me*, I discharged two shots.") (emphasis added).

132. At trial and in his earlier post-conviction litigation, Mr. Hicks had no ability to access the expert opinion of the Chief Medical Examiner for the City of Philadelphia. This new evidence resulted when Dr. Gulino's review and opinion was sought by the Commonwealth. Thus, while Dr. Gulino's opinion is based on medical records and clothing evidence that was available at the time of trial, the instant PCRA is based on the expert report of the pathologist whom the Commonwealth sought out as its expert. Petitioner had no access to the Chief Medical Examiner for the City of Philadelphia until last year when the Commonwealth requested he review this case. *See Commonwealth v. Padillas*, 2010 PA Super 108, ¶ 17, 997 A.2d 356, 364 (2010) (noting due diligence requires that defendant act "reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and facts known to [him]"). Even if Mr. Hicks had been able to access a defense expert post-conviction, which he could not, *see infra*, such opinion would have been different in nature in that the Commonwealth's expert opinion has resulted in the Commonwealth conceding the issue in dispute.

133. Mr. Hicks has sought since trial to access a defense expert to review the medical and physical evidence to establish he was shot in the back. As noted, the expert the defense sought to call at trial, the emergency room doctor who performed surgery on Mr. Hicks, averred he was unqualified to render such an opinion. Mr. Hicks (who is indigent) sought funding to retain an expert qualified to make such a determination. This request was denied by the courts, as were his claims of ineffective assistance of counsel for his trial counsel's failure to do so. The

court ruled Mr. Hicks “has not established the existence of an expert who could provide the medical testimony he desires,” and found Mr. Hicks could not show that he was prejudiced by the absence of this expert testimony because “when police encountered defendant they witnessed him on top of the victim” and “the gun taken from defendant, and the pants and underwear he was wearing at the time of the incidence were stained with the victim’s blood.” *Commonwealth of Pennsylvania v. Jermaine J. Weeks*, No. 2831 EDA 2007, Superior Court of Pennsylvania, Philadelphia District (2008). Thus, Officer Vinson’s and Officer Ellis’ false testimony regarding the shooting and recovery of the gun have been relied upon to deny Mr. Hicks access to an expert to demonstrate through forensic evidence that Officer Vinson testified falsely.¹⁰ The failure to raise the instant false-evidence claim previously was the result of interference by government officials with the presentation of the claim. 42 Pa. C.S. § 9545(b)(1)(i); *see also Commonwealth v. Davis*, 2014 PA Super 34, 86 A.3d 883, 890–91 (2014) (finding Appellant has proven the applicability of the governmental interference exception under section 9545(b)(1)(i) where conviction is based on false testimony).

134. Thus Mr. Hicks’ has demonstrated both the interference by government officials and exercise of due diligence to establish this petition has been timely filed. See § 9545(b)(1)(i) & (ii).

B. Mr. Hicks Satisfies the Requirements for A New Trial and His Conviction Should be Vacated Pursuant to § 9543(a)(2)(i) & (vi)

135. The new forensic pathology evidence demonstrates that Mr. Hicks’ conviction and sentence resulted from “violation[s] of the Constitution of this Commonwealth or the

¹⁰ Moreover, Officer Brian Smith falsely testified that Mr. Hicks was wearing a gray hoodie when he got to the scene; while no other officer claimed this to be the case (including even Officer Vinson who shot Mr. Hicks), and evidence chain of custody documents proved otherwise, Officer Smith’s testimony has been repeatedly cited by courts in recounting the facts of the case when denying relief.

Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.” 42 Pa. C.S.A. § 9543(a)(2)(i).

136. Mr. Hicks is also entitled to relief based on the “unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced” based on the opinion of the Chief Medical Examiner for the City of Philadelphia, the new DNA evidence, and the hospital’s surveillance video establishing the assailant’s appearance did not match Mr. Hicks. 42 Pa. C.S.A. § 9543(a)(2)(vi).

a. Mr. Hicks’ Conviction was Obtained Through Use of False Testimony Entitling Him to Relief Under 42 Pa. C.S.A. § 9543(a)(2)(i)

137. The U.S. Supreme Court has held that “a conviction obtained through use of false evidence, known to be such by representatives of the State,” violates a defendant’s due process rights under the Fourteenth Amendment. *Napue v. Illinois*, 360 U.S. 264, 269 (1959); *Giglio v. U.S.*, 405 U.S. 150 at 153 (“deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice”) (quoting *Mooney v. Holohan*, 294 U.S. 103, 112 (1935)) (internal quotations omitted). “[T]he well-established rule” is that “a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.” *U.S. v. Bagley*, 473 U.S. 667, 678-79 (1985) (quoting *U.S. v. Agurs*, 427 U.S. 97, 103 (1976)); *see also Bedingfield*, 260 S.W.3d at 809 (“RCr 10.02 establishes that the granting of a new trial is warranted in circumstances wherein a defendant was somehow prevented from having a fair trial, or if otherwise required in the interests of

justice.”); *Haskell v. Superintendent Greene SCI*, 866 F.3d 139, 145–46 (3d Cir. 2017). A conviction must be set aside even if the false testimony goes only to a witness’s credibility rather than the defendant’s guilt. *Napue*, 360 U.S. at 270, 79 S.Ct. 1173.

138. To establish a *Napue* violation, a convicted person must show that (1) the challenged testimony was actually false or created a false impression; (2) the prosecution knew or should have known that the testimony was false or created a false impression; and (3) the false testimony was material. *See Napue*, 360 U.S. at 269-72; *Agurs*, 427 U.S. at 103; *Hayes v. Brown*, 399 F.3d 972, 984 (9th Cir. 2005) (*en banc*); *Hamric v. Bailey*, 386 F.2d 390, 394 (4th Cir. 1967); *see also Foley v. Parker*, 488 F.3d 377, 391-92 (6th Cir. 2007). All three elements are satisfied here.

139. Officer Vinson’s testimony regarding the shooting was false. Mr. Hicks, who only had a cell phone in his pocket when he was shot, has maintained he was unarmed, *never* posed a threat to the officers and was *facing away*, with his back to the officers, when he was shot. At trial, Officer Vinson testified he saw Mr. Hicks with a gun “coming around towards me.” (N.T. 11/01/02, 87, 102). Officer Vinson testified he then shot Mr. Hicks twice when he was almost “fully facing me” and a third time when Mr. Hicks allegedly raised the gun and pointed it at him again. (N.T. 11/01/02, 87-89, 102). Officer Vinson further testified that after he called in the shooting, he “pulled up [Mr. Hicks’] shirt, and . . . could see that he had two bullet wounds *in his chest* . . .” (N.T. 11/01/02, 102) (emphasis added). The undisputed forensic pathology expert opinions establish, directly refuting Officer Vinson’s trial testimony, that Officer Vinson fired all three bullets into the back of Mr. Hicks’ body while Mr. Hicks was facing away from him.

140. Even if trial prosecutors did not know or should not have known that Officer Vinson's testimony was false, Officer Vinson knew it was false. For the purpose of a *Napue* claim, "knowledge" is not limited to the prosecutors presenting the case; rather, the knowledge of persons "acting on the government's behalf in the case" is imputed to the Commonwealth. See *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). The U.S. Supreme Court has "ma[d]e perfectly clear that the constitutional prohibition on the 'knowing' use of perjured testimony applies when any of the State's representatives would know the testimony was false." *Jackson v. Brown*, 513 F.3d 1057, 1075 (9th Cir. 2008) (emphasis in original); see also *Giglio*, 405 U.S. at 150-54 (finding *Napue* violation where prosecuting attorney lacked personal knowledge of perjury); *Boyd v. French*, 147 F.3d 319, 329 (4th Cir. 1998) ("[K]nowingly false or misleading testimony by a law enforcement officer is imputed to the prosecution."); *Limone v. Condon*, 372 F.3d 39, 47-48 (1st Cir. 2004) (duty extends to State and its agents); *United States v. Antone*, 603 F.2d 566, 569 (5th Cir. 1979) ("In considering use of perjured testimony this Court has declined to draw a distinction between different agencies under the same government, focusing instead upon the 'prosecution team' which includes both investigative and prosecutorial personnel"). Thus, knowledge is imputed here because Officer Vinson knew his testimony was false.

141. To establish the final element of a *Napue* claim, Mr. Hicks must show that Officer Vinson's false testimony was material. It is well-established that false testimony is material if there is "any reasonable likelihood" that it "could have affected the judgment of the jury." *Bagley*, 473 U.S. at 678 (quoting *Agurs*, 427 U.S. at 103) ("a conviction obtained by the knowing use of perjured testimony is fundamentally unfair"); *Giglio*, 405 U.S. at 154 ("A new

trial is required[,] if ‘the false testimony *could* . . . in *any* reasonable likelihood have affected the judgment of the jury.’”) (quoting *Napue*, 360 U.S. at 271) (emphasis added).¹¹

142. The *Napue* materiality standard is not a sufficiency of the evidence test. It is even lower than the “reasonable probability of a different outcome” standard for newly discovered evidence. This is because the knowing use of false evidence involves “a corruption of the truth-seeking function of the trial process.” *Agurs*, 427 U.S. at 104. The fundamental question is whether the defendant received a fair trial, “understood as a trial resulting in a verdict worthy of confidence.” *Kyles*, 514 U.S. at 434. There can be no question that here, in light of the officer’s false testimony, he did not.

143. Mr. Hicks has always maintained that in response to W.L.’s screams for help, he walked in the direction of the attack, saw a man flee from the alley and was shot by police shortly after he arrived at the scene, as he had his hand in his pocket attempting to get his cell phone to notify police and his back was to officers.

144. There is more than “a reasonable likelihood” that Officer Vinson’s false testimony “could have affected the judgment of the jury.” Officer Vinson’s testimony regarding what happened at the time of the shooting and immediately before was critical to the Commonwealth’s case.

145. W.L. never identified Mr. Hicks as the man who attacked her, and Officer Vinson’s testimony—that he saw Mr. Hicks attacking the victim when he arrived at the scene—was the Commonwealth’s only direct evidence that Mr. Hicks was the attacker, as opposed to an innocent bystander who came to the victim’s aid and was shot as he was standing next to the

¹¹ Several courts have concluded that, “if it is established that the government knowingly permitted the introduction of false testimony[,], reversal is virtually automatic.” *Hayes v. Brown*, 399 F.3d 972, 978 (9th Cir. 2005) (*en banc*) (quoting *U.S. v. Wallach*, 935 F.2d 445, 456 (2d Cir. 1991 (internal quotations and citation omitted))).

victim as Mr. Hicks has always maintained. Officer Vinson's testimony was tantamount to a conviction.

146. Given Officer Vinson's willingness—in order to justify his use of deadly force—to lie in his testimony about what Mr. Hicks was doing *at the time* Officer Vinson shot him, there can be no confidence in Officer Vinson's testimony as to what Mr. Hicks was allegedly doing *immediately before* Officer Vinson shot him. Officer Vinson's testimony lacks credibility; it is untrustworthy, self-serving and simply untrue.

147. Had the jury been aware that Officer Vinson lied in his testimony about the shooting, falsely testifying that Mr. Hicks was “lunging” at him and threatening him in order to cover up for having shot him three times in the back of his body, the jury likely would have concluded that Officer Vinson also lied about seeing Mr. Hicks in the act of assaulting the victim, in order to cover up for his shooting. *See Ex Parte Chabot*, 300 S.W.3d 768, 770-72 (Tex. Crim. App. 2009) (granting habeas relief where DNA test results proved that testimony by witness who provided the only evidence that directly placed defendant at crime scene was false).

148. No reliable adjudication of guilt or innocence could have taken place under these circumstances. The courts of this Commonwealth have held that Pennsylvania's courts must act to correct error when a miscarriage of justice occurs. A petitioner meets this standard “if he demonstrates that either the proceedings which resulted in his conviction were so unfair that a miscarriage of justice occurred which no civilized society could tolerate, or that he was innocent of the crimes charged.” *Commonwealth v. Morales*, 701 A.2d 516, 520-21 (Pa. 1997).

b. Mr. Hicks Satisfies the Requirements for A New Trial Pursuant to § 9543(a)(2)(vi)

149. Based on the exculpatory DNA test results and the new forensic pathology findings, Mr. Hicks is entitled to post-conviction relief pursuant to 42 Pa. C.S. § 9543. A new

trial is warranted where, as here, a convicted person shows by a preponderance of the evidence that evidence discovered after trial (1) could not have been obtained prior to trial by exercising reasonable diligence; (2) is not merely corroborative or cumulative; (3) will not be used solely to impeach a witness's credibility; and (4) would likely result in a different verdict.

Commonwealth v. Castro, 625 Pa. 582, 93 A.3d 818, 821 n. 7 (2014) (citation omitted);

Commonwealth v. Griffin, 2016 PA Super 81, 137 A.3d 605, 608 (2016), appeal denied sub nom. *Commonwealth v. Griffin*, 638 Pa. 525, 157 A.3d 476 (2016). All these factors are met.

150. *The new evidence could not have been obtained prior to trial by exercising reasonable diligence.* Mr. Hicks did not have access to the favorable pathology expert report by the Chief Medical Examiner for the City of Philadelphia. This opinion only became available in 2019 after the Commonwealth engaged the City's pathologist in a review of the evidence. Prior to this time Mr. Hicks sought unsuccessfully to obtain a defense expert opinion on this issue. *See Commonwealth v. Padillas*, 2010 PA Super 108, ¶ 17, 997 A.2d 356, 364 (2010) (noting due diligence requires that defendant act "reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and facts known to [him].")

151. In addition, the new STR DNA testing of W.L.'s clothing—which establishes that blood transfer occurred after the shooting, thereby establishing a non-crime explanation for the presence of W.L.'s blood on Mr. Hicks' clothing—was not available at trial. While the Philadelphia crime laboratory performed some DNA analysis utilizing the DQ Alpha test at trial, unlike modern STR testing, this test was not sufficiently discriminating for source attribution, and the Philadelphia Crime laboratory did not perform any DNA testing on the stain on W.L.'s pants that was presumptively positive for blood.

152. Finally, the Commonwealth did not provide a copy of the hospital surveillance video to defense until after the trial had concluded, purportedly due to insurmountably incompatible equipment. The surveillance video confirmed the man who dragged W.L. into the alley and attacked her was wearing a gray hooded sweatshirt, which Mr. Hicks was not wearing when shot by police at the scene.

153. *The after-discovered evidence is not merely corroborative or cumulative and not used solely to impeach credibility.* The forensic pathology and DNA provide unparalleled proof scientifically establishing two facts which at trial were supported only with Mr. Hicks' testimony and the arguments of defense counsel: that Mr. Hicks was shot in the back of his body demonstrating that the officer who shot him lied about the circumstances of the shooting, and blood transfer occurred at the scene providing an innocent explanation for the otherwise inculpatory presence of W.L.'s blood on Mr. Hicks clothing.

154. Additionally, Mr. Hicks was not found wearing a gray hoodie, which at trial would have been a highly exculpatory fact if the jury believed that the assailant was indeed wearing a hoodie. In convicting Mr. Hicks, the jury very well may have resolved the discrepancy between Mr. Hicks' appearance and the testimony of eyewitness Votta (who called 911 and testified the assailant *was* wearing a gray hoodie)—especially as W.L. testified she did not see the assailant and could not recall exactly what the assailant was wearing—by discounting Votta's testimony as to what the assailant was wearing. The surveillance tape thus was critical in establishing that the assailant was, in fact, wearing a gray hooded sweatshirt when he attacked W.L., thereby excluding Mr. Hicks from being that person.

155. *The new evidence would likely result in a different verdict at trial.* Had the jury been aware of the new evidence there is no question this "likely" would have resulted in a

different verdict at trial. Mr. Hicks was convicted because officers testified that when they got to the scene, they saw Mr. Hicks assaulting W.L., that they shot him as he lunged at officers with a gun, and their account was seemingly corroborated by powerful physical evidence: the presence of W.L.'s blood on Mr. Hick's clothing. The new forensic evidence—the expert pathology opinion, the DNA, and surveillance video—constitute objective scientific evidence that completely undermines the officers' trial testimony and obliterates the Commonwealth's physical evidence. A jury hearing this new evidence would very well reject the Commonwealth's proofs: knowing the police lied about the shooting, knowing the blood was transferred between clothing at the scene and knowing the assailant's appearance was irreconcilably different than that of Mr. Hicks. The new evidence provides powerful proof for what Mr. Hicks has long maintained: he came to aid the victim; he was not the assailant, who was wearing a gray hooded sweatshirt and left the scene as he arrived; he was standing near the victim when police arrived at the scene, and even though he did not threaten them, the police shot him three times in the back; after shooting him and realizing he was unarmed, police falsely attributed a gun, which in fact belonged to a Philadelphia police officer, to him.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, based on the foregoing, Mr. Hicks respectfully requests that his requested relief be granted and his conviction vacated.

Respectfully submitted,

/s/ Vanessa Potkin

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**IN THE PHILADELPHIA COUNTY COURT OF COMMON PLEAS
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
Respondent,	:	
	:	
v.	:	No. CP-51-CR-0306311-2002
	:	
JERMAINE J. WEEKS a/k/a	:	
TERMAINE J. HICKS	:	
	:	
Petitioner.	:	

PROOF OF SERVICE

Vanessa Potkin, Esq., hereby states and avers that she is counsel for the petitioner in the above-captioned matter and that on 12-8-2020 she served a copy of the Second Amended Petition for Post-Conviction Relief Pursuant to 42 Pa. C.S. § 9541 *et seq.* that is being filed on behalf of the petitioner in the above-captioned matter by USPS and electronic mail on:

Patricia Cummings
Conviction Integrity Unit
3 South Penn Square
Philadelphia, PA 19107
(215) 686-5708
Patricia.Cummings@Phila.gov

Date: December 8, 2020

EXHIBIT A

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
TRIAL DIVISION – CRIMINAL SECTION**

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
Plaintiff-Respondent,	:	
	:	
v.	:	Nos. CP-51-CR-0306311-2002
	:	
JOSEPH TREMAINE HICKS	:	
a/k/a JERMAINE WEEKS,	:	
	:	
Defendant-Petitioner.	:	

AFFIDAVIT OF DR. MICHAEL BADEN

DR. MICHAEL BADEN affirms under penalty of perjury that the following is true and correct:

1. I am a physician licensed to practice medicine in New York State, and Board-certified in Anatomic Pathology, Clinical Pathology and Forensic Pathology.
2. I trained in internal medicine and pathology at Bellevue Hospital Medical Center in New York City where I was an intern, resident and Chief Resident.
3. I am a former Chief Medical Examiner of New York City and former Co-Director of the Medico-legal Investigations Unit of the New York State Police. I have been a forensic pathologist and medical examiner for more than fifty years.
4. I have also served as President of the Society of Medial Jurisprudence and Vice-President of the American Academy of Forensic Science. My *curriculum vitae* is attached hereto as **Exhibit A**.
5. I have reviewed Thomas Jefferson University Hospital ("Jefferson Hospital") records of the admission of Mr. Tremaine Hicks on November 27, 2001.

6. Mr. Hicks, who was 27 years old, was admitted to Jefferson Hospital's Emergency Department for multiple gunshot wounds. He was still conscious and he immediately underwent an exploratory laparotomy of his abdomen to repair gunshot perforations of his liver and small intestines.

7. The hospital diagnosed that Mr. Hicks had suffered three gunshot wounds of his back and side, none from the front:

a. one bullet that entered and exited through the posterior area of his right upper arm and re-entered his right lateral chest and right lung;

b. one bullet that entered his mid-back just to the right of the midline, proceeded from back to front through the abdomen and liver and was recovered from behind the anterior right chest wall; and

c. one bullet that entered the left buttock and continued through the iliac bone and pelvis to the sacral bone.

8. These trajectories are confirmed in the hospital records by diagrams and written descriptions.

9. The bullet that entered the right lung was not removed on that admission. Bullet fragments were identified in X-rays of the right upper arm, pelvis and abdomen.

10. The bullet perforation in the midback was described as a "round wound" which is typical for an entrance wound.

11. It is my opinion, on the basis of my training and experience as a medical examiner, and after reviewing the above materials, that Mr. Hicks was struck by three bullets to his mid-back, his left buttock and the right side of his upper arm and chest.

12. On January 6, 2019, I reviewed 22 X-rays of Mr. Hicks' chest, abdomen and pelvis taken on December 31, 2001 and January 7, 2002, while he was at Graterford Prison in Pennsylvania. They show bullet fragments that are still present in his right lung, in the posterior spine and pelvis, further confirming the trajectories of the three entrance bullet wounds. There is no evidence of any bullet injury to the front of his body.

I declare under penalty of perjury that the foregoing is true and correct.


Michael M. Baden, M.D.

Dated: 24 January 2019

State of New York }
 }
County of New York }

The foregoing documents was acknowledged before me this 24th day of January 2019 by Michael M. Baden who personally appeared who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument.

Subscribed and sworn to before me
this 24th day of January 2019


Linda Kenney Baden, Esq.

LINDA KENNEY BADEN, ESQ.
Notary Public, State of New York
Registration #02KE6312986
Qualified In New York County
Commission Expires Oct. 14, 2022

EXHIBIT A to Dr. Baden's Affidavit

Michael M. Baden, M.D.

Dr. Michael Baden is the former Chief Medical Examiner of New York City and past Co-Director of the New York State Police Medico-Legal Investigations Unit. He received a B.S. Degree from the City College of New York and an M.D. Degree from New York University School of Medicine. He trained in internal medicine and pathology at Bellevue Hospital Medical Center where he was intern, resident and Chief Resident. He has been a medical examiner for forty-five years and has performed more than 20,000 autopsies. He has held professorial teaching appointments at Albert Einstein Medical School, Albany Medical College, New York University School of Medicine, New York Law School and John Jay College of Criminal Justice. He has been a consultant to the Federal Bureau of Investigation, Veteran's Administration, Bureau of Alcohol, Tobacco and Firearm's, Drug Enforcement Agency and the United States Department of Justice.

He was Chairman of the Forensic Pathology Panel of the U.S. Congress Select Committee on Assassinations that re-investigated the deaths of President John F. Kennedy and Dr. Martin Luther King, Jr. in the 1970s. He was the forensic pathologist member of a team of U.S. forensic scientists asked by the Russian government to examine the newly found remains of Tsar Nicholas II, Alexandra and the Romanov family in Siberia in the 1990s. He has been an expert in multiple Iraq-related court martials in the United States and Camp Liberty, Baghdad. He has also been an expert in the investigations concerning Medgar Evers, John Belushi, Yankee Manager Billy Martin, Marlon Brando's son Christian Brando, O.J. Simpson, Jayson Williams, Kobe Bryant, Robert Blake, and Las Vegas hotel owner Ted Binion. He has investigated deaths in Poland, Croatia, Serbia, Israel, the Gaza Strip and the West Bank, Monaco, Panama, England, Canada, Zimbabwe and other countries for human rights groups and private attorneys. He has taught homicide courses for police, judges, attorneys and physicians in most of the 50 states as well as in China, Taiwan, Kuwait, Australia, France, Italy, Ecuador, Puerto Rico, Columbia and other countries. He has been a member of the board of directors of a number of drug abuse and alcohol abuse treatment programs where he attempts to apply what he has learned from the dead at the autopsy table to the betterment of the living.

Dr. Baden has also served as President of the Society of Medical Jurisprudence and Vice President of the American Academy of Forensic Science. He was the host of the HBO "Autopsy" series for thirteen years, which demonstrated how the various forensic sciences assist in solving crimes and was a consultant for the "Crossing Jordan" television series. He has been author or co-author of more than 80 professional articles and books on aspects of forensic medicine and two popular non-fiction books "Unnatural Death, Confessions of a Medical Examiner" and "Dead Reckoning, the New Science of Catching Killers." He is also the author, with his wife, attorney Linda Kenney Baden, of two recent forensic thrillers, "Remains Silent" and "Skeleton Justice." He is the Forensic Science Contributor for FOX News Channel and is a reviewer for the New England Journal of Medicine.

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CURRICULUM VITAE

EDUCATION

- The City College of New York (1955) B.S. Degree
- New York University School of Medicine (1959) M.D. Degree

POST-GRADUATE TRAINING

1959-1960	Intern, First (Columbia) Medical Division, Bellevue Hospital
1960-1961	Resident, First (Columbia) Medical Division, Bellevue Hospital
1961-1963	Resident, Pathology, Bellevue Hospital
1963-1964	Chief Resident, Pathology, Bellevue Hospital

LICENSURE

- New York State Medical License (1960)
- Diplomate, National Board of Medical Examiner's (1960)
- Diplomate, American Board of Pathology:
 - Anatomic Pathology (1965)
 - Clinical Pathology (1966)
 - Forensic Pathology (1966)

PROFESSIONAL POSITIONS

1985-2011	Director, Medicolegal Investigations Unit, New York State Police
1961-1985	Office of Chief Medical Examiner, New York City; Chief Medical Examiner (1978-1979)
1981-1983	Deputy Chief Medical Examiner, Suffolk County, New York; Director of Laboratories, Suffolk County, New York

TEACHING APPOINTMENTS

1961-1989	New York University School of Medicine, Associate Professor, Forensic Medicine
1975-2001	Visiting Professor of Pathology, Albert Einstein School of Medicine
1975-1988	Adjunct Professor of Law, New York Law School
1975-1978	Lecturer in Pathology, College of Physicians and Surgeons of Columbia University
1986, 1989	Visiting Professor, John Jay College of Criminal Justice
1965-1978	Assist Visiting Pathologist, Bellevue Hospital, New York
2002	Adjunct Lecturer, The Cyril H. Wecht Institute of Forensic Science and Law, Duquesne University School of Law
2002	Distinguished Professor/Adjunct Lecturer, Henry C. Lee Institute, University of New Haven (Connecticut)

GOVERNMENTAL APPOINTMENTS

1977-1979	Chairman, Forensic Pathology Panel, United States Congress, Select Committee on Assassinations, Investigations into the deaths of President John F. Kennedy and Dr. Martin Luther King
1973-Present	Member, New York State Correction Medical Review Board
2015-Present	Member, New York State Justice Center for the Protection of People with Special Needs
1976-2014	Member, New York State Mental Hygiene Medical Review Board (<i>renamed</i> Justice Center for the Protection of People with Special Needs in 2015)
1983-1986	Member, National Crime Information Center, Committee on Missing Children, United States Department of Justice (F.B.I.)
1971-1975	Special Forensic Pathology Consultant, New York State Organized Crime Task Force (investigation of deaths at Attica Prison)
1974-2006	Director and/or Moderator, Annual Northeastern Seminar in Forensic Medicine, Colby College, Maine
1973-1987	Lecturer, Drug Enforcement Administration, Drug Law Enforcement Training School, United States Department of Justice

PROFESSIONAL ORGANIZATIONS

1966-Present	American Academy of Forensic Sciences; Fellow Vice President and Program Chairman (1982-1983)
1965-Present	The Society of Medical Jurisprudence; Fellow, President (1981-1985)
1966-Present	College of American Pathologist; Fellow, Chairman, Toxicology Subcommittee (1972-1974)
1971-1975	College of American Pathologists Foundation; Forensic Pathology Seminar Faculty
1973-1976	American Board of Pathology; Forensic Pathology Board Test Committee (1973-1976)
1966-1986	American Society of Clinical Pathologist; Fellow Member, Drug Abuse Task Force (1973-1977)
1965-1978	New York State Medical Society; Chairman, Section of Medicolegal and Workers' Compensation Matters (1972)
1965-Present	Medical Society of the County of New York
1969-1978	National Association of Medical Examiner's
1965-Present	American Medical Association

HONORS

- The City College of New York: Senior Class President; Editor-in-Chief of The Campus (newspaper); Phi Beta Kappa
- Honor Legion, New York City Police Department, 1969
- College of American Pathologists, Certificate of Appreciation (Chairman, Toxicology Resource Committee, 1972-1975)
- American Academy of Forensic Sciences, Award of Merit, 1974 and 1983
- Drug Enforcement Administration, United States Department of Justice, Certificate of Appreciation, 1982
- New Jersey Narcotic Enforcement Officers Association, Certificate of Appreciation, 1977
- Fire Department of the City of New York, Certificate of Appreciation, 1978

- New York State Bar Association, Certificate of Appreciation, 1980
- New York City Health and Hospitals Corporation, Certificate of Appreciation for participation in development of emergency facilities for Emergency Medical Services for the City of New York, 1980
- New York University, Great Teacher, 1980
- First Fellow in Forensic Science of the University of New Haven, Henry C. Lee Institute, (Connecticut), 2002

PROFESSIONAL PUBLICATIONS AND PRESENTATIONS

1. M. Helpern and M. Baden; Editors: Atlas of Legal Medicine by Tomio Watanabe, Lippincott, 1968
2. D. Louria, M. Baden, et al.: The Dangerous Drug Problem. New York Medicine, 22:3, May 1966
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7. M. Baden: The Diagnosis of Narcotism at Autopsy, Proceedings of the American Academy of Forensic Sciences (Chicago); February 1968
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9. C. Cherubin, M. Baden, et al.: Infective Endocarditis in Narcotic Addicts. Ann. Int. Med., 69:1091, 1968.
10. M. Baden: Pathologic Aspects of Drug Abuse, Proceedings of the Committee on Problems of Drug Dependence, National Academy of Sciences, National Research Council, 1969.
11. W. Matusiak, L. Dal Cortivo and M. Baden: Analytical Problems on a Narcotic Addiction Laboratory, Proceedings of the American Academy of Forensic Sciences (Chicago), February 1969

12. M. Baden, P. Hushins and M. Helpern: The Laboratory for Addictive Drugs of the Office of Chief Medical Examiner of New York City, Proceedings of the International Conference on Poison Control (New York City), June 1969
13. M. Baden, S. Hofstetter and T. Smith: Patterns of Suicide in New York City, Proceedings of the Fifth International Meeting of Forensic Sciences (Toronto), June 1969
14. R.W. Richter and M. Baden: Neurological Aspects of Heroin Addiction, Proceedings of the Ninth International Congress of Neurology (New York City), September 1969
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16. M. Baden: Of Drugs and Urine, Editorial, Medical Tribune
17. M. Baden: Methadone-Related Deaths in New York City, Proceedings of the Second National Conference on Methadone Treatment (New York City), October 1969. Int. J. Addictions.
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81. M. Baden, M. Roach: *Dead Reckoning, The New Science of Catching Killers*, Simon & Schuster, New York 2001
82. M. Baden: The Role of the Medical Examiner and Coroner in the Investigation of Terrorism in Forensic Aspects of Chemical and Biological Terrorism, Lawyers & Judges Publishing Company, Inc., Tuscon, Arizona 2004.
83. M. Baden, L. Kenney Baden: "Remains Silent," Alfred A. Knopf, August 2005.
84. M. Baden: Preface in *Forensic Nursing* by Virginia A. Lynch. Elsevier/Mosby, St. Louis, Missouri 2006.
85. M. Baden: Exhumation in Spitz and Fisher's *Medicolegal Investigation of Death*, 4th Edition, Charles C. Thomas, Springfield, Illinois 2006.
86. M. Baden: *Encyclopedia of Legal Medicine*, Book Review, *New England Journal of Medicine*, 2006.
87. M. Baden, L. Kenney Baden: *Scientific Evidence in Civil and Criminal Cases*, 5th Edition, Contributor, Foundation Press, 2007.
88. M. Baden, L. Kenney Baden: "Skeleton Justice," Alfred A. Knopf, June 2009.

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LECTURES

- Speaker, "Mass Disasters and Medical Legal Cases," Wayne State University, Dearborn, Michigan, May 2018
- Co-Chairman, Bring Your Own Slides, American Academy of Forensic Sciences, February, 2018
- Speaker and Panelist, Pioneers of Forensic Science, The Cyril H. Wecht Institute of Forensic Science and Law, Pittsburgh, Pennsylvania, June 1-2, 2017
- Speaker, "Drug Related Death" and "Death Harvester," Medicolegal Investigation of Death, Wayne State University, Dearborn, Michigan, May 4, 2017
- Keynote Speaker, On the Front Line: New Frontiers in Forensics, Crime and Security, New York City, April 4, 2017
- Speaker, National Medical Services speaker series, "Forensic Pathology for Toxicologists," March 2, 2017
- Speaker, New York State Bar Association, "Forensic Pathology Perspectives on Questioned Diagnoses," February 28, 2017
- Co-Chairman, Bring Your Own Slides, American Academy of Forensic Sciences, February 15, 2017
- Lecturer, Henry F. Williams Seminar, "Medgar Evers Case," Albany, New York, September 20, 2016
- Kentucky Funeral Director's Annual Meeting, "Determining Cause of Death," Louisville, Kentucky, June 30, 2016
- Mississippi Coroner's Conference, "Death Investigation," Biloxi, Mississippi, June 23, 2016
- Medicolegal Investigation of Death, Wayne State University, "Controversies in Medicolegal Cases," Dearborn, Michigan, April 28, 2016
- Keynote Speaker, Forensic Nursing Conference, Drexel University, Philadelphia, PA, April 16, 2016
- American Academy of Forensic Sciences, Co-Chairman, Bring Your Own Slides, February 26, 2016
- American Academy of Forensic Sciences, "Good Cop, Bad Cop," February 25, 2016

- Speaker, New York State Bar Association Fall Program on Forensics, "Time of Death," November 14, 2015
- Lecturer, Henry F. Williams Seminar, "Medgar Evers Case," Albany, New York, October 5, 2015
- Speaker, Markel Symposium, "Medical Examiner's Perspective in Police Shooting Incidents," West Haven, Connecticut, October 20, 2015
- NACDL/National Forensic College, "Special Problems in Forensic Pathology: Discovery, Time of Death Determinations and Cognitive Bias," Benjamin N Cardozo School of Law Cordozo Law School, New York, New York, June 8, 2015
- Medicolegal Investigation of Death, Wayne State University, "Asphyxial Deaths: Chokeholds, Sleeperholds and Back Pressure," Dearborn, Michigan, May 20, 2015
- "Confessions of a Medical Examiner," The Lotus Club, New York, New York, May 11, 2015
- Medicolegal Investigation of Death, "Asphyxial Deaths: Chokeholds, Sleeperholds and Back Pressure," Wayne State University, Dearborn, Michigan, April 30, 2015
- American Academy of Forensic Science, "Prosecution Expert for Death in a Bathtub - Drew Peterson case," February 17, 2015
- American Academy of Forensic Sciences, Co-Chairman, Bring Your Own Slides, February 17-21, 2014
- American Academy of Forensic Sciences, "Plausible Deniability The Ethics of Inconsistent Consistency," February 17-21, 2014
- Keynote Speaker, Baruch Biomedical Society, New York, New York, October 17, 2013
- Speaker, Markle Symposium, "Medical Examiner Perspective on the Death of JFK," October 15, 2013
- Speaker, NAMFCU Annual Training, "Use of a Medical Examiner in a Nursing Home," Mobile, Alabama, October 7, 2013
- Speaker, Northeastern Association of Forensic Scientists, Cromwell, "Medical Evidence in the JFK Assassination," Connecticut, September 27, 2013
- Lecturer, Henry F. Williams Seminar, "Cold Cases with Dr. Baden," New York State Police, September 24, 2013
- "Use of a Medical Examiner in a Nursing Home Death Investigation," Resident Abuse Training Program, Virginia Beach, Virginia, June 6, 2013
- "Medicolegal Investigation of Death, "Investigating the Scene of Mass Disasters: What to Look for with Fire, Explosion or Terrorist Attack," Wayne State University, Dearborn, Michigan, May 1-3, 2012

- Children's Law Topical Conference, "When 'Abuse' is Not Abuse," Albany, New York, April 19, 2013
- "Determining Cause of Death," Making Sense of Science VI: Forensic Science and the Law, NACDL & CACJ's 6th Annual Conference, Las Vegas, Nevada April 5-6, 2013
- American Academy of Forensic Science, Panelist, "150 Years — Does Time Bring Agreement? The H.L. Hunley, the R.M.S. Titanic, and the Assassination of John F. Kennedy," Washington, D.C., February 17-24, 2013
- American Academy of Forensic Sciences, Co-Chairman, Bring Your Own Slides, February 17-24, 2013
- Speaker, Corrections and Youth Services Association Annual Meeting, Saratoga Springs, New York, October 31, 2012
- Lecturer, 21st Annual Arnold Markle Symposium, "Sexually Related Homicides," October 9, 2012
- Lecturer, Henry F. Williams Seminar, New York State Police, "Forensic Pathology," September 18-19, 2012
- Society of Professional Investigators, "Current Status of the Forensic Sciences," New York, New York, September 12, 2012
- Speaker, New York State Police Sexual Abuse Seminar, Albany, New York, May 21, 2012
- "Medicolegal Investigation of Death, "Problems in Forensic Pathology," Wayne State University, Dearborn, Michigan, May 1-3, 2012
- 2012 NASDEA Spring Conference, "Drug Deaths: Homicide v. Overdose," The Roosevelt Hotel, New York City, NY, April 24, 2012
- Concord Seminars for the Dental and Medical Professions, "Forensic Odontology," Manchester, New Hampshire and Bangor, Maine, April 20-21, 2011
- Emory School of Medicine, Grand Rounds, "Forensic Pathology: The Good, The Bad, The Ugly," Atlanta, Georgia, March 3, 2012
- Major Case Squad of Greater St. Louis Annual Retraining Conference, "Forensic Pathology," St. Louis, Missouri, March 4-5, 2012
- American Academy of Forensic Sciences, "Conflicting and Misleading Testimony in the Forensic Pathology Community," February 19-25, 2012
- American Academy of Forensic Sciences, Co-Chairman, Bring Your Own Slides, February 19-25, 2012
- Lecturer, 20th Annual Arnold Markle Symposium, "Investigation of Sex Crime: Forensic Investigation of Sexual Assault, Serial Offenders, and Sexual Abuse," October 10, 2011

- Lecturer, Henry F. Williams Seminar, New York State Police, "Forensic Pathology," September 18-21, 2011
 - Speaker, Annual Investigation for Identification, New Orleans, Louisiana, August 25-26, 2011
 - Lenox Hill Hospital, Medical Grand Rounds, "Controversies in Forensic Medicine," New York City, March 11, 2011
 - Valley Forge Dental Conference, Keynote Speaker, "Justice Through Science," Valley Forge, Pennsylvania, March 4, 2011
 - American Academy of Forensic Sciences, Communications in Forensics, "In My Experience ..." February 21, 2011
 - American Academy of Forensic Sciences, A Multidisciplinary Look into Forensic Science: Perspectives, Views and Experiences, "Forensic Pathology Perspectives," February 22, 2011
 - American Academy of Forensic Sciences, Co-Chairman, Bring Your Own Slides, February 23, 2011
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- Lecturer, "CSI: Dartmouth," University of Massachusetts/Dartmouth Law School, Dartmouth, Massachusetts, November 18, 2010
 - Guest Forensic Lecturer (4 lectures), Transatlantic Crossing of the Queen Elizabeth II, November 1-8, 2010
 - Lecturer, Henry F. Williams Seminar, New York State Police, "Forensic Pathology," September 27-30, 2010
 - Speaker, 13th Annual Investigation for Identification, New Orleans, Louisiana, "A History of Forensic Science from Cain and Abel Through Katrina," August 27-28, 2010
 - Speaker, Brigham & Women's 2010 Master Clinician Section, August 1, 2010
 - Speaker, "Post-Mortem with Dr. Michael Baden," Kentucky Funeral Director's Association, Louisville, Kentucky, June 30, 2010
 - Speaker, Northeast College and Universities Security Association, 57th Annual Conference, Skidmore College, Saratoga Springs, New York, June 28, 2010
 - Speaker, 13th Annual Investigation for Identification, New Orleans, Louisiana, "A History of Forensic Science from Cain and Abel Through Katrina," August 27-28, 2010
 - Speaker, Brigham & Women's 2010 Master Clinician Section, August 1, 2010
 - Speaker, "Post-Mortem with Dr. Michael Baden," Kentucky Funeral Director's Association, Louisville, Kentucky, June 30, 2010

- Speaker, Northeast College and Universities Security Association, 57th Annual Conference, Skidmore College, Saratoga Springs, New York, June 28, 2010
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 - Lecturer, New York Prosecutor's Training Institute, Westchester, New York, June 8, 2010
 - SELETS 14th Annual Law Enforcement Training Seminar, Lawrenceburg, Tennessee, June 1, 2010
 - New York State Police Sex Offense Seminar, "The Forensic Sciences," Albany, New York, May 24-28-2010
 - Society of Professional Investigator's Meeting, New York City, May 20, 2010
 - Wayne State University, Medicolegal Investigation of Death, "Exhumation and Time of Death," and "Fire, Explosion and Mass Casualty," April 21-22, 2010
 - Oswego University, "History of Forensic Science," March 25, 2010
 - American Academy of Forensic Sciences, "Bring Your Own Slides," Seattle, Washington, February 22-26, 2010
- 2010 Forensic Seminar for Capital Defense Attorneys, DePaul University College of Law, February 18-19, 2010
- CSI Symposium, Norwich University, "Forensic Pathology," January 29, 2010
- NYSP Child Physical Abuse and Neglect Seminar, November 18, 2009
- New York Council of Defense Lawyers, Rye, New York, November 7, 2009
- FBI/IT Exchange Conference, Keynote Speaker, Seattle, Washington, September 20-21, 2009
- Henry F. Williams Seminar, New York State Police, "Forensic Pathology and Child Deaths," Albany, New York, September 14-17, 2009
- New York State Funeral Director's Association, Saratoga, New York, September 1, 2009
- Cabell Sheriff's Department, West Virginia (Marshall University in Huntington, West Virginia), August 25, 2009
- NCSTL Conference, Tampa, Florida, May 20-21, 2009
- Wayne State University, Medicolegal Investigation of Death, "Exhumation and Time of Death," and "Forensic Questions: The Experts Answer," with Werner Spitz, M.D., Dearborn, Michigan, April 22-24, 2009
- Bronx High School of Science, March 11, 2009

- American Academy of Forensic Sciences, "Bring Your Own Slides," Denver, Colorado, February 16-21, 2009
- American Academy of Forensic Sciences, "New Investigative Techniques and Scientific Advancement for Forensic Scientists in the Future," Denver, Colorado, February 16-21, 2009
- South Carolina Funeral Director's Association, "Post Mortem with Dr. Michael Baden," Columbia, South Carolina, February 4, 2009
- CSI Symposium, "Forensic Pathology," Norwich, Connecticut, January 29-30, 2009
- New York State CASA DNA Initiative Conference, Albany, New York, January 28, 2009
- Medicolegal Investigation of Death Conference, "Exhumation and Time of Death," Las Vegas, Nevada, January 5-6, 2009
- Mattapoisett (Massachusetts) Police Department, Forensic lecture, November 25, 2008
- George Mason University, "Sexually Violent Crime: the Body as Evidence," November 10-11, 2008
- Hofstra University, "An Evening of Crime and Wine," October 29, 2008
- New Jersey State Funeral Director's Association, "Post Mortem with Dr. Michael Baden," September 17, 2008
- SPIAA 57th Annual Retraining Conference, July 23, 2008
- NY Cops Foundation Annual Dinner Gala, Keynote Speaker, June 2, 2008
- New York State Police Sex Offense Seminar "The Forensic Sciences," May 2008
- Keynote Speaker, National Council of Investigation & Security Services annual meeting, May 2, 2008
- Medicolegal Investigation of Death Conference, Wayne State University, "Terrorism," April 23, 2008
- Medicolegal Investigation of Death Conference, Wayne State University, "Exhumation and Time of Death," April 23, 2008
- 17th Annual Arnold Markle Symposium, Connecticut State Police, March 23-24, 2008
- "Forensic Pathology and Living/Injured Victims," Academy for BCI Basic School (NYSP), March 11, 2008
- Lecturer, New Jersey Chapter of Int'l Assn of Arson Investigators, March 5, 2008

- American Academy of Forensic Sciences, Young Forensic Scientists Forum "Death is My Teacher," February 19, 2008
- American Academy of Forensic Sciences, "Healthcare Serial Killer Workshop," February 19, 2008
- American Academy of Forensic Sciences, "Significant Achievements and Contributions by Forensic Scientists to the International Community," February 19, 2008
- Medicolegal Investigation of Death Conference, "Postmortem Changes & Time of Death," and "Forensic Questions: The Experts Answer," Las Vegas, Nevada, December 4-6, 2007
- 33rd Annual Arson Seminar, NYS Fire Academy, "The Role of the Forensic Pathologist in Fire Investigation," November 7, 2007
- 12th Annual Investigation for Identification Educational Conference, Pensacola, Florida, October 19-20, 2007
- Penn State University, Forensic Sciences Seminar, September 24, 2007
- Col. Henry F. Williams Homicide Seminar, "Forensic Pathology," September 17-20, 2007
- Harvard Medical School, Intensive Review of Internal Medicine Course, "CSI Meets IRIM – The New Science of Catching Killers," Boston, Massachusetts, July 2007
- Arizona Judicial Conference: Forensic Pathology, 2007
- New York State Police Sex Offense Seminar "The Forensic Sciences," May 2007
- Smithsonian Associates, "Murder Investigation with Forensics: The Good, the Bad, and the Ugly," May 2007
- Medicolegal Investigation of Death Conference, "Death Investigation" and "Fire, Explosions and Terrorism," April 24-26, 2007
- Louisiana Judicial College, "CSI Effect," April 19-20, 2007
- 16th Annual Arnold Markle Symposium 2007, "Parents who Kill: Muchaussen's by Proxy," April 9, 2007
- Harvard Medical School "Brigham Master Clinician: Update in Medicine," "The Forensic Sciences: From Cain and Abel to JFK to OJ Simpson," March 29, 2007
- American Academy of Forensic Sciences, "Bring Your Own Slides," February 21, 2007
- American Academy of Forensic Sciences, "Police Use of Force: Where is the Line and When is it Crossed" February 22, 2007

- Medicolegal Investigation of Death Homicide Conference, "Asphyxias, Serial Murders and Sexual Assaults," "Death Investigations: Fire, Explosions and Terrorism," Las Vegas, Nevada, November 29-30, 2006
- American College of Trust and Estate Counsel, Westin Providence, Rhode Island, October 12, 2006
- Col. Henry F. Williams Homicide Seminar, "Forensic Pathology," September 19-21, 2006
- 57th Annual Harvard Associates in Police Science Conference, Vermont Criminal Justice Training Council, Burlington, Vermont, June 27, 2006
- SEAK National Expert Witness, "The Role of the Expert Witness: from the Expert's Perspective," Cape Cod, Massachusetts, June 23, 2006
- Mississippi Coroner's Association, Vicksburg, Mississippi, June 15, 2006
- Monmouth University, "Time of Death Determination" and "Electrocution, Explosives, and Fire-Related Deaths," Oceanport, New Jersey, June 13, 2006
- SELETS Homicide Conference, Lawrenceburg, Tennessee, June 7-8, 2006
- NYSP Sex Crimes Seminar "The Forensic Sciences," May 22, 2006
- Fermilab National Accelerator Laboratory, Colloquium, "How Long Has Grandpa Been Dead and Other Forensic Mysteries," Chicago, Illinois, May 17, 2006
- AtlantiCare Regional Medical Center, New Jersey, Keynote Speaker, 8th Annual Trauma Symposium, "Forensic Sciences, Trauma & Mass Disasters," May 2, 2006
- Medicolegal Investigation of Death Homicide Conference: "The Asphyxias, Serial Murders and Sexual Assaults," Detroit, Michigan, April 26-28, 2006
- Albany, New York, Area Association of Certified Fraud Examiners, keynote speaker, March 30, 2006
- American Academy of Forensic Sciences, "Victims & Defendants: Clinical Aspects of Their Death," February 21, 2006
- American Academy of Forensic Sciences, "The Role of the Forensic Scientist in the Investigation of Police-Related Deaths - A Current Dilemma," February 22, 2006
- American Academy of Forensic Sciences, "'Shaken Baby Syndrome: Medical Myth or Medical Fact?" February 24, 2006
- Clinical Forensic Nursing, Veterans Administration, Phoenix, Arizona, Impacting Patient Care Delivery, Quality Management and Investigations in Healthcare Settings, January 23, 2006

- Advanced Practical Homicide Seminar, "Modes of Death Involving Firearms, Knives, Blunt Force and Child Abuse," November 8-9, 2005
- Monmouth University, Oceanport, New Jersey, "Determining Time of Death" and "Fire-related Death and Electrocution and Explosions," June, 2005
- New York State Police, Sex Offense Seminar, "The Forensic Sciences," May 23, 2005
- New York State Association of County Coroners & Medical Examiners, "Violence Among Children," April 30-May 1, 2005
- Medicolegal Investigation of Death Conference, "Serial Killers, Autoerotic Asphyxias, Sexual Assault or Accident," and "Death by Fire and Explosion," Wayne State University, School of Medicine, April 20-22, 2005
- College of Mt. Saint Vincent, Department of Nursing, "Unraveling the Mystery of the Nurse Investigator," April 14, 2005.
- The National Clearinghouse for Science, Technology and the Law at Stetson University College of Law, "Forensic Pathology on Both Sides of the Pond," April 4, 2005
- Markle Symposium, Connecticut State Police Homicide Conference, Foxwoods Lodge, Connecticut, March 27-28, 2005
- The Learning Annex, "Revealing the Mysteries of Forensic Science," March 10, 2005
- American Academy of Forensic Sciences, "Complex Forensic Science Issues on Highly Controversial Cases," February 21-26, 2005
- Quinnipiac University, Law and Forensic Sciences, Hamden, Connecticut, February 5, 2005
- Duquesne University, The Cyril H. Wecht Institute of Forensic Science and Law, "Tracking Terrorism in the 21st Century," October 21-23, 2004
- Greater Cincinnati Regional Arson and Fire Investigators Seminar, "The Death Detective," October 14, 2004
- Col. Henry F. Williams Homicide Seminar, "Forensic Pathology," October 5, 2004
- Associated Licensed Detectives of New York State, Keynote speaker, October 1, 2004
- Nebraska Institute of Forensic Sciences, "Crime & Death Scene Reconstruction: Utilizing Bloodstain Pattern Analysis," September 15-17, 2004
- Southeast Law Enforcement Seminar, "Fascinating Cases of Death," June 9, 2004
- Florida Coastal School of Law, "Role of Forensic Pathology in Criminal and Civil Litigation," Jacksonville, Florida, May 7, 2004

- Wayne State University, "Medicolegal Investigation of Death," Dearborn, Michigan, April 21-23, 2004
- The Three Sleuths (with Drs. Cyril Wecht and Henry Lee), The Rio Suite, Hotel & Casino, Las Vegas, Nevada, April 17, 2004
- Annual SleuthFest Meeting, Exhumation Session, "Famous Cases," March 20, 2004
- 44th Annual American College of Legal Medicine, "The Role of the Forensic Pathologist in Medical Malpractice Cases," Las Vegas, Nevada, March 5-7, 2004
- Stetson University College of Law, "The Complete History of Murder and Science in One Hour," Gulfport, Florida, January 29, 2004
- Quinnipiac Law School, Law and Forensic Science, January 24, 2004
- The City University of New York, Graduate School and University Center, "Forensic Series," December 2, 2003
- Testified before the United States Senate Committee on the Judiciary Department of Justice Oversight: "Funding Forensic Sciences, DNA and Beyond" 2003
- Duquesne University, National Symposium on the 40th Anniversary of the JFK Assassination, "Solving the Great American Murder Mystery," November 20-23, 2003
- Smithsonian Associates, Educational and Cultural Programs, "Murder, Mystery and the New Forensics," November 1, 2003
- Association of Inspectors General, John Jay College of Criminal Justice, "Non-Traditional OIG Investigations," October 17, 2003
- Colorado Association of Sex Crimes Investigator's Annual Conference, Snowmass, Colorado, August 20-22, 2003
- 31st Annual Florida Medical Examiner Educational Conference, F.A.M.E. 2003, "The History of Forensic Science from Cain & Abel to O.J. Simpson," Ponte Vedra Beach, Florida, August 6-8, 2003
- Washington County Prosecutors Office, "Dead Man Talking: Forensic Science and Homicide Investigation," May 5 and 6, 2003
- Medicolegal Investigation of Death, Wayne State University, "Adult Sexual Assault & The Asphyxias" and "Child Sexual Assault/Abuse Myths Dearborn, Michigan, April 2-4, 2003
- New York State Trial Lawyer's Association, Wrongful Death Seminar, "Using Medical Science to Prove the Cause of Death and Conscious Pain and Suffering," March 25, 2003
- DNA Symposium, The State College of Pennsylvania, "The Role of the Forensic Pathologist regarding DNA Evidence: From Autopsy to Courtroom," March 2003

- American Academy of Forensic Sciences, "Overview of the Legal Issues Concerning the Discovery and Investigation and Prosecution of the Abuse of Elderly Patients in Healthcare Facilities and the Homicide of All Patients in Various Medical Treatment Facilities," Chicago, Illinois, February 17-22, 2003
- American Academy of Forensic Sciences, "Presentation of Specific Cases through the Initial Contact by Prosecutors Concerning Suspected Criminal Deaths through the Exhumation and the Trial" Chicago, Illinois, February 17-22, 2003
- 1st Eastern Analytical Symposium & Exposition, Somerset, New Jersey, November 18-21, 2002
- Utah County Police Officer's Workshop, November 2002
- 10th Annual Investigation for Identification Educational Conference, "New Concepts in Forensic Pathology," Pensacola, Florida, September 20-21, 2002
- Singapore Government Ministry of Health Services Administration, Centre for Forensic Medicine, August 17-31, 2002
- State of New York, Office of the Attorney General, Medicaid Fraud Control Unit, 2002 Training Conference, June 10-13, 2002, Lake Placid, New York
- Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, International Postblast Investigation Class, May 8, 2002, Brunswick, Georgia
- American Academy of Forensic Sciences, Addressing Social and Legal Issues Associated with Police Involved Shooting Incidents Through Forensic Investigation & Shooting Scene Reconstruction, February 11-15, 2002, Atlanta, Georgia
- American Academy of Forensic Sciences, Bring Your Own Slides, February 11-15, 2002, Atlanta, Georgia
- The UMKC School of Law, The History of Murder Investigation and Forensic Science, University of Missouri, Kansas City, January 24, 2002
- DNA and the Law: Reining in the Revolution, "The Role of the Forensic Pathologist in DNA Use: From Autopsy to Courtroom," Duquesne University, November 30, 2001, Pittsburgh, Pennsylvania
- New Technologies and the Proof of Guilt & Innocence, Court TV, October 25, 2001
- 2001 Ohio Attorney General's Conference on Law Enforcement, Plenary Speaker, October 11, 2001
- The Second European-American Intensive Course in Clinical and Forensic Genetics, September 3-14, 2001, Dubrovnik, Croatia

- Forensic Nursing Clinical Update, "Death Investigation, Adverse Patient Events and Evidence Collection in the Hospital Setting," August 27 and 28, 2001, Phoenix, Arizona
- Harvard Associates In Police Science, Keynote Speaker, August 20-23, 2001, 52nd Annual Conference, Annapolis, Maryland
- The Boston Strangler Case: A High Tech Hearing on the Murder of Mary Sullivan, August 4, 2001, American Bar Association Annual Meeting, Chicago, Illinois
- Emerging Technologies in Forensic Investigation, June 1-3, 2001, Nova Southeastern University, Fort Lauderdale, Florida
- The Forensic Investigation of Child Abuse and Neglect, May 30, 2001, The Family Partnership Center
- Making Communities Safer, May 21-22, 2001, New York State Alliance of Sex Offender Service Providers, Sixth Annual Training Conference, Albany, New York
- Practical Homicide and Medicolegal Death Investigation, April 9-11, 2001, Beaumont, Texas
- Police Liability in New York, May 2, 2001, Albany, New York
- Symposium on Forensic Medicine, Kuwait Institute for Medical Specialization, January 27-29, 2001, Kuwait
- Forensic Science and the Law, October 27-28, 2000, Duquesne University, Pittsburgh, Pennsylvania
- 8th Annual Investigation for Identification Educational Conference, Speaker, September 22-23, 2000, Pensacola Beach, Florida
- Advanced Practical Homicide Investigation, September 11-15, 2000, Southern Law Enforcement Foundation, Irving, Texas
- Vision 2000: Together We Can, Funeral Service Conference of the Northwest, August 27-29, 2000, Coeur d'Alene Resort, Idaho
- Mississippi Attorney General Prosecutor's Annual Training Conference, April 26-28, 2000, Gulfport, Mississippi
- Forensic Crime Scene Analysis Training, April 28, 2000, Union County Police Chief's Association, Cranford, New Jersey
- At the Heart of the Matter: The Medicolegal Aspects of Organ and Tissue Donation, May 4, 2000, New York Organ Donor Network, Poughkeepsie, New York
- NYSBA Criminal Justice Section Spring Meeting, May 19-21, 2000, The Ethics of Scientific Evidence, Chautauqua, New York

- 2000 Dodge Seminar, March 20-23, 2000, Clearwater Beach, Florida
- Medicolegal Investigation of Death, March 16 and 17, 2000, Wayne State University School of Medicine and Michigan State Police

EXHIBIT B

ADDENDUM #2

Items of clothing were received from the Philadelphia District Attorney's Office in a black plastic bag that has been tied shut and labeled with property number 2355987, date of receipt 12/2/2001, and the name "Jermaine Weeks."

Within the outer bag is another black plastic bag and six paper bags containing the following:

- The plastic bag contains a torn paper bag in which is a black leather jacket
- The six paper bags contain:
 - Black and red striped, long-sleeve shirt
 - White short-sleeve t-shirt
 - Yellow boxer shorts
 - Gray sweatpants
 - Two white socks
 - Two tan boots


Findings:

1. The jacket and two shirts have been cut, presumably by medical personnel.
2. Defects consistent with sampling sites with adjacent lettering, presumably taken by the crime lab, are noted in several of the articles of clothing.
3. The jacket and both shirts contain defects in the back part of the right sleeve consistent with a gunshot entrance wound corresponding to the wound discussed in paragraph #2 of my earlier report.
4. The jacket and both shirts contain defects in the left mid-back consistent with the wound to the back discussed in paragraph #3 of my earlier report.
5. The jacket contains a defect in the left lower back, and the boxers contain a defect in the left back part of the waistband. These are consistent with the wound to the buttock discussed in paragraph #4 of my earlier report. No corresponding defect is identified in the sweatpants.
6. None of these items of clothing (jacket, shirts, boxers, or sweatpants) contain clear defects related to bullets in their front portions.
7. No soot or gunpowder is seen on the items of clothing.

Opinions:

1. My opinions regarding the gunshot wound to the right arm (i.e., that discussed in paragraph #2) are unchanged.
2. Whereas the medical records and radiographs were inconclusive regarding the directionality of the remaining wounds (i.e., those discussed in paragraphs #3 and #4), the clothing provides evidence that:
 - a. The entrance wounds were in the left midportion of the back and left buttock.
 - b. These two bullets exited the front of the body (the upper abdomen and the left groin, per the medical records) but did not exit the clothing.
 - c. These bullets were, therefore, likely located when the clothing was removed by medical personnel. This would explain why only the bullet surgically removed from the chest was labeled with an anatomical site and the other two were not.

The above opinions are stated to a reasonable degree of medical and scientific certainty.

 20/Dec/19

Sam P. Gulino, M. D.
Chief Medical Examiner

(End of Addendum #2 to Consultation Report)