

IN THE PHILADELPHIA COUNTY COURT OF COMMON PLEAS
CRIMINAL DIVISION

Commonwealth of Pennsylvania,	:	
	:	
Respondent,	:	
	:	CP-51-CR-0532781-1992
v.	:	
	:	
Walter Ogrod,	:	
	:	
Petitioner.	:	

JOINT STIPULATIONS OF FACT OF PETITIONER WALTER OGROD
AND RESPONDENT COMMONWEALTH OF PENNSYLVANIA

LAWRENCE S. KRASNER, the District Attorney of Philadelphia County, by his assistants, Patricia Cummings and Carrie Wood, Assistant District Attorneys, and Petitioner Walter Ogrod, by and through his *pro bono* attorneys, James Rollins, Robert McDonnell, Andrew Gallo, as well as Samuel Angell, Tracy Ulstad and Loren Stewart, jointly move this Court to adopt and accept the following stipulations of fact derived from the record and the post-conviction investigation in this case.¹

¹ These stipulations of fact are submitted by the Commonwealth and are being filed as joint stipulations by agreement of the Parties as evidenced by the signature of Ogrod's counsel and counsel for the District Attorney. "A stipulation is a declaration that the fact agreed upon is proven." *Commonwealth v. Rizzuto*, 777 A.2d 1068, 1088 (Pa. 2001), *abrogated on other grounds by Commonwealth v. Freeman*, 827 A.2d 385 (Pa. 2012). "Parties may by stipulation resolve questions of fact or limit the issues, and, if the stipulations do not affect the jurisdiction of the court or the due order of the business and convenience of the court they become the law of the case." *Id.* at 73 (quoting *Parsonese v. Midland National Ins. Co.*, 550 Pa. 423, 706 A.2d 814, 815 (Pa. 1998) (citations omitted in original), *abrogated on other grounds by Sveen v. Melin*, 138 S. Ct. 1815 (2018)).

CRIMINAL INVESTIGATION INTO JULY 12, 1988 CRIME (1988-1990)

The Discovery of Barbara Jean Horn's Body

1. On July 12, 1988 at 5:30 p.m., four-year-old Barbara Jean Horn (Barbara Jean) was discovered by a neighbor dead inside a cardboard television box (box) found on the curb, next to metal trash cans, in front of 1409 St. Vincent Street, Philadelphia—less than 1,000 feet from her home.

2. Barbara Jean had open head wounds and bruises on her head, back, and shoulders. Her body was naked, wet and partially covered by a plastic garbage bag.

3. Police, the medical examiner, and the criminalistics laboratory collected biological matter from the box and the plastic bag that partially covered Barbara Jean's body.

4. Barbara Jean's stepfather, John Fahy, was interviewed and he told police that he last saw her alive at the Fahy residence, 7245 Rutland Street, around 3:00 p.m. that same afternoon.

5. Fahy told police went to the home of two of Barbara Jean's friends—Anthony Adair and Charlie Green, Jr.—looking for Barbara Jean.

6. Anthony Adair's father told Fahy that Barbara Jean had been by earlier looking for Anthony, but that Fahy should check Charlie Jr.'s house because Charlie Jr. had also stopped by looking for Anthony.

7. When Fahy checked Charlie, Jr.'s house, his mother, Linda Green said she saw Barbara Jean around 2:00 p.m. but had not seen her since.

8. Raymond O'Brien told police that Barbara Jean stopped by his house around 2:30 p.m. to see if his daughter Megan was home, but left because Megan wasn't home.

9. At least five different eyewitnesses, David Schectman, Michael Massi, and Christopher Kochan (the testifying eyewitnesses); and Lorraine Schectman and Peter Vargas (non-

testifying eyewitnesses), told police they saw a man carrying and/or dragging the box through the neighborhood late on the afternoon of the murder.

10. The testifying eyewitnesses described the man with the box as follows: ²

- White, 5'8"-5'9" tall, 25-30 years old, slightly tanned, dark blonde or dirty blonde hair, medium build, and wearing khaki shorts (David Schectman).
- White, 5'6"-5'8", medium build, hair "on darker side" and close to head, "30ish," darker complexion like "someone who had been out in the sun," and could not describe clothing (Michael Massi).
- White, brown hair, 5'8" tall, and low 30's in age (Christian Kochan).

11. The non-testifying eyewitnesses described the man with the box as follows: ³

- White, 5'7"-5'8" tall, 20-25 years old, average build, tan but not dark tan, "light brown/dirty blond/wavy hair" and beige long pants (Lorraine Schectman).
- White, 5'9"-6' tall, 165-175 pounds, average build, brownish/blond hair, medium complexion, and blue jeans.⁴ The man had a slight moustache and was smoking a cigarette (Peter Vargas).

² These descriptions were given by these witnesses during their first interviews on July 12 or 13, 1988.

³ These descriptions were given by these witness during their first interviews on July 12 or 13, 1988.

⁴ Mr. Vargas was not interviewed until December 1, 1989. Mr. Vargas recalled seeing the man when he returned from lunch that day, which would have been around 2:00 or 2:30. All the other witnesses indicated they saw the man somewhere between 3:30 p.m. and 5:30 p.m.

12. None of the testifying eyewitnesses indicated that they saw any blood on the man carrying the box.

13. At the time of the murder, Walter Ogrod lived at 7244 Rutland Street, directly across the street from the Fahy residence.⁵

14. The Ogrod residence was a small row home consisting of two floors and a basement, measuring a total of 1088 square feet.

15. Ogrod shared his residence with Hal Vahey and four members of the Green family: Charles and Linda Green and their children Ingrid and Charlie, Jr.

16. On the night of the murder, Officer Robert Patrick spoke with Linda Green and she told him that Fahy came to their residence at 3:00 p.m. looking for Barbara Jean.

17. As part of a neighborhood survey, Officer Harmon interviewed Linda and Ingrid Green the day after the murder - Ingrid said she went to Jardel (the pool) at 1:00 p.m. with her little brother and Linda told Officer Harmon that she saw Barbara Jean standing alone across the street around 2:00 p.m.

18. Ogrod was interviewed by Officer Shields in a separate neighborhood canvas during which Ogrod told police that, at 3:30 p.m. on the day of the murder, Fahy knocked on the door of the Ogrod residence and asked if he or others in the house had seen his daughter.⁶

19. Based on descriptions provided by the Schectmans, police artists drew a sketch of the suspect and posted it widely throughout the neighborhood.

⁵ At the time of the murder, Ogrod was 23 years old. Police did not record Ogrod's height and weight at that time but, at the time of his arrest approximately four years later, he was 6'1" tall, and weighed 220 pounds.

⁶ Although this neighborhood canvas note is undated, based on other neighborhood canvas notes, this likely occurred "earlier in the week" from November 10, 1989.

20. David Schectman subsequently made an in-person identification of Ross Felice, who lived nearby at 7061 Castor Avenue, as the man he had seen with the box.

21. David Schectman also made a photo identification of another person – Raymond Sheehan.

22. Kochan, despite telling police that he probably would not recognize the man with the box if he saw him again, was shown two separate photo arrays on two separate dates. Ultimately, Kochan “pointed” to a total of 4 photographs from the two separate photo arrays.⁷

23. Not one of the eyewitnesses (testifying or non-testifying) ever identified Ogrod as the man carrying the box.⁸

24. The day after the murder, Philadelphia Assistant Medical Examiner Paul Hoyer conducted an autopsy in which he identified bruises on Barbara Jean’s back and lacerations and bruises to her head.

25. During the autopsy, fingernail scrapings, oral, rectal, and vaginal swabs, as well as the wash used to clean Barbara Jean’s body (and any material collected by the wash) were collected and preserved.

26. In his autopsy report, Dr. Hoyer opined that the child had been killed between 3:30 and 4:30 p.m. on July 12, 1988 and he determined the cause of death was cerebral injuries, which

⁷ When re-interviewed again years later, Kochan told Devlin and Worrell he never identified anyone.

⁸ Significantly, no witness ever reported seeing Barbara Jean enter the Ogrod residence on the day of the murder and none of the residents in the Ogrod home reported seeing or hearing any signs of a struggle in the basement on that date. In fact, police never found any incriminating physical evidence in the Ogrod home and still to this day, there exists no forensic evidence linking Ogrod to Barbara Jean’s murder.

he defined as scalp lacerations and contusions, subarachnoid hemorrhage, focal superficial brain lacerations and contusions, and mild brain swelling.

27. Sergeant Robert Snyder, who took notes during Dr. Hoyer's autopsy on July 13, 1988 noted the following:

- Autopsy disclosed five (5) blunt injuries to the head causing four (4) lacerations.
- Two (2) to back of the head
- Two (2) to left side of the head.
- NO SKULL FRACTURE
- Cause of death Cerebral Injuries (HEAD INJURIES)
- Manner of Death Homicide.
- Bruise to left shoulder consistent with the head injuries.
- NO SEXUAL ABUSE
- NO OLD INJURIES
- Post mortem ant bites.
- Weapon: Probably a 2x2 or 2 x 4. Something lighter then [sic] a baseball bat or tire iron.

28. Police were eventually able to trace the box to a Hitachi television purchased on February 10, 1984, by Joseph Ward, who lived at 7208 Rutland Street, the same block as Barbara Jean.

29. On July 21, 1988, homicide detectives obtained a search warrant for the Ward home and executed it on that same day.⁹

30. The break in tracing the box to the Ward home led Detectives to focus on Wesley Ward – the adult son of Ruth and Joseph Ward who lived at home with his parents and happened to be at home when the search warrant was executed.

31. During the search, police learned that during the week of Barbara Jean's murder, Ruth and Joseph Ward were at the seashore and Wesley, an unemployed Temple University night student, was the only one at the house (other than the Ward's cat).¹⁰

32. Police collected a number of items from the Ward home and took photographs.

33. Police also investigated Ross Felice and conducted lengthy surveillance of him.

Neither Felice nor Ward were ever arrested.

⁹ The items identified in the search warrant were: Barbara Jean's hair, blood, body tissue and fluids, fingerprints, clothing (pink shorts, pink top with horizontal stripes with spaghetti straps, panties; any and all animal hairs; any blunt instrument; any bloody clothing or rags; receipts and/or warrant card for Hitachi TV serial # S3L-043096; proof of residence of Wesley Ward; any writings of Wesley Ward; any photos of small child; news clippings of this incident or incidents of this nature; photos or sketches.

¹⁰ During its investigation, the CIU was puzzled by a piece of evidence collected from the box (that inexplicably went missing in between the first and second trial) which supposedly was a single sperm head. Reports of this single sperm head led to wide speculation as to the exact sexual nature of the crime and ADA Casey made it an issue during the first trial. The puzzle, however, was likely solved when Dr. Hood informed the CIU that, when he and others at the medical examiner's office collectively assisted Dr. Mirchandani in preparing for his trial testimony in this case, he and several other people in his office disagreed with the crime lab's conclusion that the evidence was a single sperm head found in what the lab believed was vomit inside the box. Dr. Hood and others at the medical examiner's office actually concluded that the evidence was likely cat urine. Then, in a separate conversation, ADA Rubino told the CIU that the medical examiner informed her that the crime lab report likely reflected cat urine so she decided not to make an issue of the "sperm on the slide" during the second trial. Finally, it is interesting to note that if the evidence collected was cat urine, it came from the box from the Ward home where the family pet was a cat.

The Sensational Nature of the Crime Results in Significant Media Coverage

34. A tip line was set up, requesting any and all information pertaining to the unsolved murder and hundreds of people called in with information and the names of possible suspects—including a number of people who identified Felice as looking like the composite sketch.

35. The tip line and the composite sketch were eventually announced on the national television show “Unsolved Mysteries” at the end of episode 8, season 1 in 1989.¹¹

36. Even prior to this national effort, there was widespread local coverage of Barbara Jean’s murder and the “man with the box.”¹²

37. The Daily News and the Inquirer carried 6 days of articles about the case following the discovery of Barbara Jean’s body.

38. Many of the early articles in July of 1988 included interviews of terrified residents – most likely because neighbors and police speculated that the perpetrator was a local resident.

¹¹ Sergeant Arthur Durant appeared on the show and told viewers that Barbara Jean, while her mother was at work, was out in front of her house playing around 3:00 p.m. on July 12, 1988. When her father went out to check on her, he could not find her. Her father became frantic and started searching the area for her, checked with the neighbors, and called police. Police arrived. Eventually, Durant said, Barbara Jean’s body was found stuffed inside a cardboard box (a photograph of the television box flashed on the screen) approximately two blocks from her home. Durant said Barbara Jean had been bludgeoned to death. When asked what clues he had as to the identity of the killer, Durant responded that four eyewitnesses observed a man at St. Vincent and Castor carrying a cardboard box. Durant said the man has been described as approximately 25-30 years old, white male, 5’8”, 180 pounds, sandy brown hair with a little bit of blond in front, at the time he was wearing a white t-shirt and cutoff jeans (a picture of the composite sketch appeared on the screen as Durant recited the description). Durant said the man was carrying a cardboard box that previously contained a 13” Hitachi television set (a close up of the side of the box appeared on the screen as Durant discussed the box).

¹² Although current access to local television coverage and its particular content is limited, access to print coverage from that time frame is still fairly robust with respect to the Daily News and the Inquirer.

39. Detective Francis Miller told reporters that more than 400 leads were being investigated by police and they had teams of 10-12 men in the field every day and Detective J.D. Fischer told reporters the whole department would be getting involved in the investigation. Police eventually received over 1,000 calls about the composite.

40. The Inquirer continued with coverage into August, September, October, and November of 1988.

41. In 1989, the Inquirer continued coverage in January, April, May, September, and December; the Daily News's coverage continued in April and November 1989.

42. In 1990, the Inquirer and the Daily News published yet another article in January.

43. Local accounts of the crime and the possible perpetrator of the crime were detailed and varied.¹³

44. After January 1990, the print media coverage went cold until Ogrod's arrest in April 1992.

¹³The Daily News and Inquirer print media coverage from July 1988 to January 1990 contained many varied details such as: Barbara Jean was last seen playing with her toys around 2:00 p.m. or 3:30 p.m.; Fahy reported her missing around 3:30 p.m and she was barefoot; Barbara Jean was found naked, under a dark, plastic trash bag-stuffed inside a cardboard television box that had originally contained a 13-inch Hitachi television set; police and sanitation workers were searching trash and sewers looking trying to locate Barbara Jean's missing clothes; some articles described her clothing specifically as pink shorts and a yellow and peach tank top with horizontal stripes medical examiner sources and investigators spoke with news outlets, telling them that they could not find outward signs that Barbara Jean had been sexually assaulted and there were no signs of a struggle; the autopsy determined that Barbara Jean died from blows to head; and the murder weapon had been a blunt object and her body had been washed off before it was placed in the box; and police disclosed they were looking for a man seen walking in the area of Castor Avenue and St. Vincent avenue carrying a box.

45. The tip line and the media coverage never led to any evidence or person that implicated Ogrod in the crime.

An Investigating Grand Jury is Commenced to Assist Police

46. The District Attorney's Office (DAO) assisted the police by submitting the case to an investigating grand jury on approximately November 24, 1989.¹⁴

47. Most of the evidence presented to the investigating grand jury focused on the two previously identified suspects. One suspect presented evidence that he was at work at the time of the murder and the other suspect said he had a class scheduled during the time frame of the murder (detectives, however, were unable to confirm he attended class that day).

48. The last witnesses were called to the investigating grand jury in this matter at the end of July 1990. However, no presentment was issued and no arrests were made.

49. The murder of Barbara Jean Horn became a cold case.

THE 1992 COLD CASE INVESTIGATION AND THE DEVLIN CONFESSION

50. In 1991-1992, there was a Special Investigations Unit within the homicide unit of the Philadelphia Police Department ("SIU") consisting of three squads lead by three different sergeants: Sergeant Laurence Nodiff, Sergeant Ray Barlow, and Sergeant Robert Snyder. All three Sergeants reported to Lieutenant Joseph Washlick and Detectives Marty Devlin and Paul Worrell reported to Sergeant Nodiff.

51. In early 1992, nearly four years after Barbara Jean's death, Sergeant Nodiff assigned Devlin and Worrell to reinvestigate the unsolved murder of Barbara Jean.

¹⁴ An order to unseal the investigating grand jury transcripts and exhibits was signed on January 25, 2019 by the presiding grand jury judge.

52. Sergeant Nodiff, Devlin and Worrell reviewed the case file (including all of the interviews, the grand jury notes and activity sheets), spoke to the investigators that initially had the investigation, went back to the neighborhood and “knocked on every single door in the neighborhood” doing neighborhood surveys and re-interviewed people who had been interviewed during the original, investigation.

53. The homicide file also included the report from the crime lab dated September 8, 1988, which stated that blood and vomit were identified in the box Barbara Jean was found in, and spermatozoa was located in one area where vomit was detected.

54. Coincidentally, Sergeant Snyder, was the assigned Sergeant on a prior, separate investigation into a homicide that occurred in the basement of the Ogrod residence – the facts of which are illuminating.

55. On July 31, 1986, two years before Barbara Jean’s murder, three men entered the Ogrod residence during the night through the front door, went to the basement where they knew Ogrod’s brother Greg slept, and attacked Greg and his 16-year old girlfriend, Maureen Dunne—stabbing and clubbing them.

56. Dunne died from a stab wound to her heart and Greg survived.

57. Dunne was the daughter of Philadelphia Police Department Detective William Dunne, a 26-year veteran of the force (which probably explains why the Dunne case generated significant media coverage).

58. Richard Hackett was later prosecuted and convicted of the Dunne murder. Hackett lived in the Ogrod home starting in the spring of 1986 and Ogrod worked for Hackett. *Com. v. Hackett*, 534 Pa. 210, 215, 627 A.2d 719, 721 (1993); *Com. v. Hackett*, 626 Pa. 567, 571, 99 A.3d 11, 13 (2014).

59. At the time of the attack, Ogrod was at home, asleep upstairs on the second floor of the house and was awoken by his brother's screams from the basement. Ogrod saw a man run down the street and called 911. Then, once Ogrod got to the basement and discovered that Dunne had been stabbed, he called 911 again. Although Ogrod was interviewed by homicide detectives, he was never called as a witness to testify at Hackett's trial.

60. The police homicide file relating to the Dunne murder contained pictures of the basement of the Ogrod residence, including at least one picture showing a weight machine and its lateral pull-down weight bar.

61. The lateral pull-down weight bar pictured in the Dunne homicide photograph ultimately became central to the Commonwealth's case against Ogrod—specifically being identified in the Devlin Confession referenced below and at both Ogrod trials as the purported murder weapon.

62. April 5, 1992, in response to inquiries from Devlin and Worrell, Ogrod voluntarily appeared at the Philadelphia Police Administration Building (the Roundhouse) on a Sunday at 1:30 p.m., without an attorney, to be interviewed ostensibly as a witness.

63. At the time he voluntarily reported to the Roundhouse, Ogrod had been awake for nearly 30 hours, having just completed an all-night, 18-hour shift driving a bakery delivery truck over a 300-mile route.

64. Devlin and Worrell initially conducted an unrecorded "interview" in one of the interrogation rooms in the homicide division at the Roundhouse – and according to testimony from

both of them, no aspect of the interview was recorded in any manner except for the statement written entirely by Devlin and signed by Ogrod (the Devlin Confession).¹⁵

65. Despite the lack of a recording, both detectives asserted in their respective testimony that the statement is a verbatim hand-written transcription of Ogrod's confession to the murder of Barbara Jean. Sept. 7, 1993, N.T. 87 (Devlin);¹⁶ Oct. 25, 1993, N.T. 342 (Worrell).¹⁷

66. The Devlin Confession describes a scenario in which Ogrod and Barbara Jean are standing alone in the dining room of the Ogrod residence when Ogrod "got the idea" to ask her to come down to the basement. Ogrod then asks Barbara Jean if she would like to play doctor, she says yes, and Ogrod proceeds to take her one-piece outfit off. Ogrod says he stroked Barbara Jean's shoulders and back, and then he pulled down his pants and kneeled on the ground. The Devlin Confession records Ogrod as saying he then held onto Barbara Jean "real tight" and rubbed his penis against her leg.

67. According to the Devlin Confession, Ogrod then tried to push Barbara Jean's face towards his penis and she immediately "started to scream," at which point Ogrod held her head,

¹⁵ Devlin testified that the interrogation lasted approximately 6 hours, from 5:45 p.m. until 11:45 p.m in sharp contrast to Ogrod's testimony during the first jury trial that the interrogation started around 5:00 p.m., and lasted until 7:00 a.m. the following morning.

¹⁶ "Q. Now, when you get to the narrative between page 8 and page 12, is this a verbatim statement of what Mr. Ogrod said? A. It is, sir." Devlin also testified that he would formulate a question in his mind, write it down and then ask the question and write down Ogrod's response. Oct. 3, 1996, N.T. 48. If Detective Worrell asked a question, Devlin would write down the question as Worrell was asking it. Sept. 7, 1993, N.T. 28. Devlin testified that the questions he and Worrell asked were exactly as they appear in the document. Sept. 7, 1993, N.T. 28.

¹⁷ "Everything that was said pertaining to [Ogrod's] recitation, what happened regarding the murder of Barbara Jean Horn, is on there (referring to the statement). The things that are missing from that statement, there were words like 'stop, slow down,' from him it was 'give me time, I am trying to get this right. I am sorry. Give me time.'"

hit the top and back of her head, at least four times, maybe more, and Barbara Jean did not move after that.

68. The statement reads that Ogrod initially said that he hit Barbara Jean with a pipe - but then, unprompted per the Devlin Confession, Ogrod says it might have been the lateral pull-down bar from his weight set.

69. The Devlin Confession goes on to state that because Barbara Jean was bleeding, Ogrod placed a cloth over her head, brought her over to the large sink next to the washer and dryer and washed her off. Ogrod, however, could not remember if he simply held her head under the faucet or put her in the large sink to clean her off.

70. As the Devlin confession continues it reads that Ogrod then left Barbara Jean in the large sink, went out the back door of the basement to get to the garage, and opened the garage door, and retrieved a blue trash bag.¹⁸ Ogrod then went back to the basement, covered Barbara Jean in the trash bag, carried her into the garage, covered her in clothes, closed the garage door and walked toward St. Vincent Street in search of something to put her in, ultimately grabbing a box in back of the house near the corner. After finding the box, Ogrod then walked back to the house, put Barbara Jean in the box, put the trash bag on top of her, and closed the box. (approximate location of the Ogrod home and the Ward home is highlighted by the blue arrows in the photograph below).

¹⁸ There was no door connecting the basement to the garage in the rowhouse, so Ogrod would have had to go outside to get to the garage.



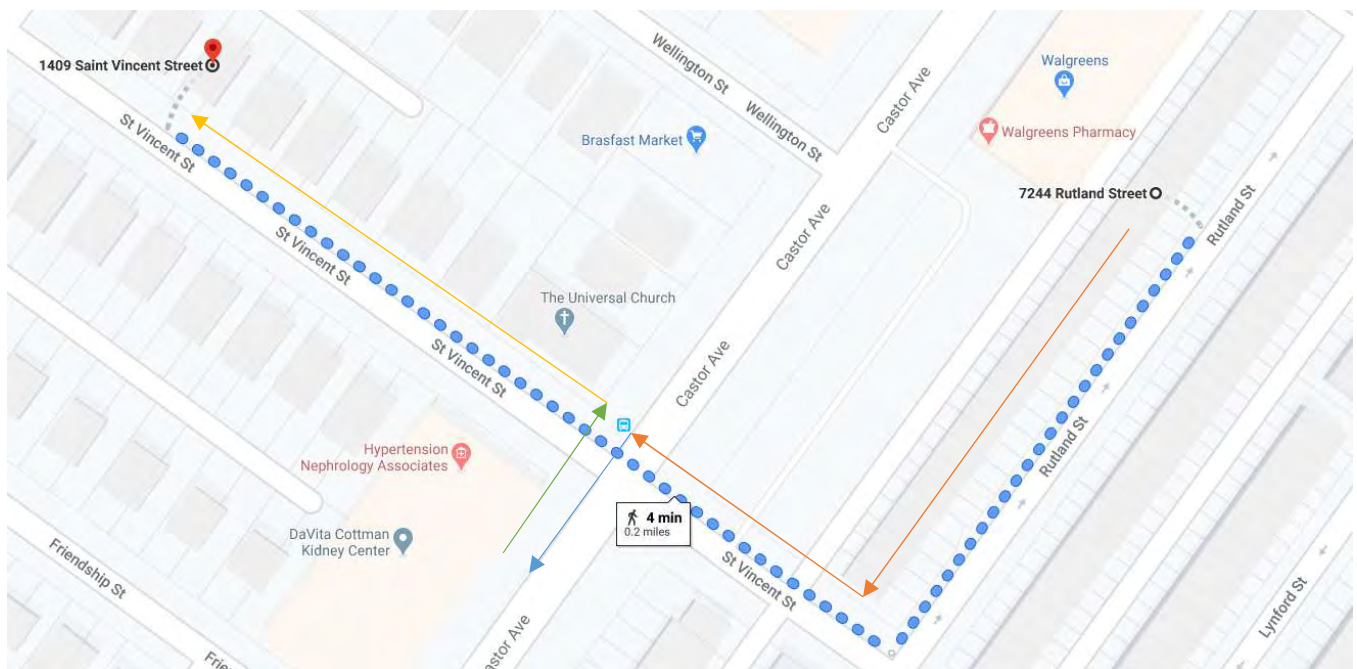
71. According to the Devlin Confession, Ogrod was initially going to put the box out but then realized the trash had already been picked up that day. Ogrod said there were people near the dumpster next to his driveway (implying it's a dumpster inside the Kutner Buick).



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¹⁹ Both photographs were taken by Marvin Jenkins on July 21, 1988.

72. The Devlin Confession next reads as if Ogrod walked up to and then turned right onto St. Vincent and then walked across Castor Avenue – however, there were people at the bus stop by the church (orange arrows above and below). So Ogrod went back to the other side of St. Vincent where the Kutner Buick (office) is located and walked a couple of steps down Castor, but then decided Castor was too busy (blue arrow). So, Ogrod then walked back (on Castor), crossing over St. Vincent again (green arrow). At this point, Ogrod says he puts the box down because it was getting heavy. Ogrod says he then picks it back up, walks a little further, and puts it down by some trash cans (yellow arrow).



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²⁰ This is created in present day by google maps, so the Walgreens, Hypertension Nephrology Associates, and Kidney Center were not there in 1988. The location of the houses, the Church, and the bus stop has not changed. The Kutner Buick Office (where Michael Massi was working that day) was on the corner of Castor and St. Vincent where the Hypertension Nephrology Associates was located. Per the picture on page 15, the used car building of Kutner was generally where Walgreen's is located.

73. Prompted by a question from Devlin and Worrell about the location of Barbara Jean's clothes, the Devlin Confession records Ogrod's response as saying he stashed her clothes in an air vent or in the crawl space on the top of the basement wall.

74. Per the Devlin Confession, Ogrod also said, in response to questions about whether Barbara Jean was bleeding, Barbara Jean had been lying on a rug (noting there were little throw rugs all over the floor) and bled onto the rug; so Ogrod cleaned up the blood, rolled up the rug and threw it out. Responding to another question, Ogrod said he doesn't think he ever removed the clothes from there.

75. According to the Devlin Confession, Ogrod said he could not recall if ejaculated; that he did not see anyone else in the house when it happened; he did not remember talking to anyone while carrying the box; and the weight bar was 2-2.5 feet long and bent down at both ends.

76. At the conclusion of the Devlin Confession, Ogrod identified the box and Barbara Jean in photos Devlin and Worrell showed him; denied knowing Ward; said that Barbara Jean came to the door twice on the day of the murder, but he could not recall if he answered the door both times.

77. The Devlin Confession does not contain any information claiming that Ogrod washed himself or changed his clothes after the violent altercation and prior to leaving his home with the box.

78. Between 7:15 and 7:45 a.m. on April 6, 1992, Ogrod called Peter Blust, an attorney that Ogrod knew through a mutual acquaintance. Sept. 8, 1993, N.T. 129.

79. During that call, Ogrod was "highly excited" and told Blust the police were telling him that he killed a little girl in the neighborhood, that they knew he did it, and they told him he just had a mental block about it. Sept. 8, 1993, N.T. 129-131.

80. Blust asked Ogrod why he didn't call Blust and Ogrod replied that he wanted to call, but the police said that they would make an appointment with his lawyer, and in the meantime they were going to arrest Ogrod and put him in general population – and when this hit the news, “they would kill him in general population.”

THE FIRST JURY TRIAL

The Hearing to Suppress the Devlin Confession

81. Before his first jury trial, Ogrod moved to suppress the Devlin Confession, claiming that it was involuntary and coerced.

82. During that hearing, Blust and Howard Serotta, Ogrod's landlord of his apartment in Glenside where he lived at the time of his interrogation and arrest, testified.

83. Serotta was called as a witness because on April 1, 1992 police contacted Serotta and told him they wanted to talk to Ogrod about “something that had happened in the past.”

84. During that contact, police asked Serotta if Ogrod was working, how long Ogrod had lived in the Glenside apartment, how well Serotta knew Ogrod, and various questions about Ogrod's “general living habits.”

85. Significantly, police also asked Serotta if Ogrod had any weightlifting equipment, which Serotta found strange at the time.

86. Ogrod's trial attorney also called Ogrod's psychiatrist, Dr. Gamine as a witness in the motion to suppress.

87. Ogrod was Dr. Gamine's patient from 1976 until 1990. Dr. Gamine said he was not an expert in false confessions, but noted that they did happen. Dr. Gamine talked about his treatment and Ogrod's limited ability to cope with stress (how this manifested with Ogrod's discharge from the army), working with Ogrod to deal with being teased at school, the ongoing

mental health issues with Ogrod's step-mother, and how Ogrod was suggestible and could be manipulated.

88. Dr. Gamine, however, did not do any diagnostic testing on Ogrod since he was a treating psychiatrist and there was no clinical reason to test Ogrod during the time Ogrod was his patient.

89. Dr. Gamine also discussed implanted memories, but recognized its novelty when he stated that it was "just starting to be written about and was not yet accepted in the field."

90. The suppression motion was denied, and the case proceeded to trial in the fall of 1993.

The Evidence Introduced During the First Jury Trial

91. The lead trial prosecutor for the Commonwealth was Assistant District Attorney (ADA) Joseph Casey.

92. Ogrod was represented by Mark Greenberg.

93. Opening statements began on October 21, 1993.

94. During the first jury trial, Ogrod testified in his own defense and described his account of what occurred during the interrogation that led to the Devlin Confession.

95. According to his testimony, the interrogation tactics utilized by Devlin and Worrell included confronting him with pictures of Barbara Jean's body in the box, accusing him of having committed the murder, and, when he insisted he had nothing to do with it, repeatedly telling him that he was mentally blocking any memory of the murder and they were only trying to help him remember it.

96. Ogrod testified that during the interrogation, Devlin closed the door and blocked him when he attempted to leave the interrogation room.

97. Ogrod also testified that he was never given the opportunity to make a telephone call despite multiple requests during the course of the interrogation.

98. Other than the Devlin Confession, which was contested by Ogrod's testimony, no other evidence directly linking Ogrod to the murder was presented.

99. Closing arguments ended the day on November 1, 1993 and the jury was charged on November 2, 1993.

100. On November 4, 1993 around 2:25 p.m., after multiple days of deliberation, the jury returned with a unanimous verdict of not guilty and marked the verdict slip accordingly.

101. However, as the jury foreman was about to read the verdict aloud, one juror stated in open court that he did not agree with the verdict so the judge immediately declared a mistrial

The Trial and Mistrial Reignite Already Sensational Media Coverage

102. Both the trial itself and the chaos surrounding the mistrial resulted in wall-to-wall media coverage. Although current access to local television coverage and its particular contents is limited, access to print coverage from that time frame is still fairly robust with respect to the Daily News and the Inquirer.

103. The Daily News coverage began on October 15 and 16, 1993, and then continued daily from October 22 to November 6, 1993, with additional articles in November and December 1993. The Inquirer also had daily coverage from October 22 to November 6, 1993, with additional articles in November and December 1993.

104. The daily media coverage detailed the witness testimony, so it necessarily included many aspects of the facts of the case.²¹

105. Per the media coverage, testimony at trial contained the first evidence of rape and at least one news article reported that the semen found in the box could only come from the child's mouth.

THE SECOND JURY TRIAL

106. The lead prosecutor was ADA Judith Rubino.

107. As Ogrod retained the same counsel for the second trial, discovery prior to the second trial was limited to: (1) Letter to Joe Casey from Jay Wolchansky; (2) Letter to Lynne

²¹ Media reports included detailed facts that had already been reported as well as facts that were either unknown or new to the community. Some examples are detailed below: Barbara Jean was John Fahy's step-daughter. Walter Ogrod lived in a house he inherited from his father after he died, which was across the street from Barbara Jean's home on Rutland Street. In July 1986, Maureen Dunne, the daughter of a retired police officer, was stabbed in that basement of Ogrod's house by four men trying to kill Greg, Ogrod's older brother. Worrell testified that Walter confessed in detail to the crime. Ogrod said he invited Barbara Jean into the basement. When she got down there, Ogrod asked if she wanted to play doctor and she said yes, so Ogrod started taking her clothes off. [Ogrod confessed that he] pulled his pants down to his ankles and knelt down. The child resisted and started screaming when he then tried to force the child to perform fellatio on him. Some articles simply said Ogrod allegedly told detectives that he tried to sexually molest or sexually assault Barbara Jean in the basement. Ogrod purportedly told detectives, "I don't know what happened to me then, I just went crazy." Almost every article about the trial included the allegation that Ogrod killed Barbara Jean with the metal weight bar. Ogrod's confession also stated he then washed Barbara Jean off in the basement sink, walked out to an alley behind his house and found an empty television carton behind a neighbor's home. He brought the box back and put her body in the box. Ogrod then started "looking for a place to dump the box." He walked to nearby St. Vincent Street, rejecting several other locations because too many people were around. Michael Massi testified that he saw a man carrying a TV box that day and watched him put it down briefly, "as if he was carrying something heavy and had to catch his breath." The box was eventually left in front of a house on St. Vincent Street.

Abraham from Jay Wolchansky; (3) Statement from Jay Wolchansky (3-20-95); and (4) Statement of John Hall (1-6-95).

108. On January 29, 1996, Ogrod's counsel requested criminal extracts for Wolchansky and Hall and he inquired as to whether Hall or Wolchansky received consideration in connection with their testimony in Ogrod's case or any other case. Exhibit C.

109. There is no formal, responsive discovery letter from ADA Rubino to Greenberg regarding Hall and Wolchansky. However, Greenberg cross-examined Wolchansky on his criminal history and Wolchansky denied he was given a deal in his pending cases.

110. Defense investigators and Greenberg himself attempted to track down cases in which either Hall or Wolchansky had been a witness for the Commonwealth. The limited findings of the defense investigation demonstrate that the Commonwealth did not disclose Hall's prior cooperation in multiple cases in both Philadelphia and other neighboring jurisdictions.

111. Sometime around August 14, 1996, Greenberg learned that both Hall and Wolchansky were witnesses in the Dickson case from Ogrod himself—again indicating no disclosure from the Commonwealth.²²

²² Investigation memos in Greenberg's file indicated that investigators he hired obtained criminal histories for both Hall and Wolchansky, looked into the Bucks, Chester, and Montgomery County court records for cases where Hall and Wolchansky were either defendants or witnesses, subpoenaed the Wolchansky's quarter session files for CP-9502-0573, CP-9501-0357, and CP-9408-0378, and attempted to get the sentencing judge to sign an order for the release of Wolchansky's Pre-Sentencing Investigation (PSI) in these cases but the Judge would not do so without speaking to the Judge overseeing Ogrod (no records indicate that the defense ever received any of Wolchansky's PSIs). On August 14, 1996, Greenberg reached out to Harry Seay (defense counsel for David Dickson). Greenberg's letter to Seay indicated he learned that Hall and Wolchansky testified against Dickson from Ogrod and requests any information Seay had on either informant. A short note indicates Greenberg spoke with Seay. On August 21, 1996, defense investigators located leniency letters to a sentencing judge in Buck's County on behalf of

112. Ogrod's second jury trial began in the fall of 1996.

113. During the second trial, the Commonwealth called three of the eyewitnesses that saw the man carrying the box on the date of the murder – Massi, Kochan and David Schectman.

114. Consistent with their earlier statements and testimony, none of the eyewitnesses identified Ogrod as the man they saw carrying the box containing Barbara Jean's body.

115. Even though he did not participate in the autopsy, Dr. Haresh Mirchandani, Philadelphia's Chief Medical Examiner at that time, testified to the autopsy results.

116. Dr. Mirchandani's testimony was based upon his review of the records of the autopsy performed by Dr. Hoyer.

117. Dr. Mirchandani testified that the blows to Barbara Jean's head were the cause of death and that the weight bar was consistent with what could have caused those injuries.

118. Dr. Lucy Rorke, a forensic neuropathologist retained by the Commonwealth, examined the victim's brain, and testified similarly that as a result of blows to the head, the victim's brain swelled, the diffuse axonal injuries indicated significant force was used, and that the head injuries were consistent with having been caused by an object like the weight bar or a tire iron.²³

119. In the second trial, Dr. Rorke steered clear of opining about a cause of death just like she did in the first trial. ADA Rubino asked Dr. Rorke if she was able to determine, from the damage to the brain, what actually caused Barbara Jean to die. Dr. Rorke never answered this question. Instead, Dr. Rorke responded by discussing the fact that she identified brain swelling

John Hall. On August 22, 1996, defense investigators located a lengthy record for Hall in Montgomery County and "glowing letters" to the Judge regarding Hall's past informant activities for sentencing.

²³ Dr. Rorke was not involved in determining the dimensions of the object.

and diffuse axonal injuries caused by significant force applied to the child's head. ADA Rubino then asked Dr. Rorke if she saw any indication of possible suffocation, a hand over the child's mouth, or anything of that nature. Dr. Rorke responded no.²⁴

120. Dr. Rorke then opined that the injuries to Barbara Jean's brain occurred within a half an hour or an hour before her death.

121. When asked by ADA Rubino what would be observed if suffocation occurred, Dr. Rorke told jurors, if there was prolonged (defined as 15-20 minutes) suffocation, you might see a change of color intensity in gray matter of brain to a darker color (from a decrease of oxygen in the blood, and increase of carbon dioxide). However, if a hand was held over the child's mouth for short period of time to stop her from screaming, then one would not see any changes in the brain.

122. Then contrary to ADA Rubino's trial notes and what the science tells us now, Dr. Rorke essentially repeated that asphyxia/suffocation did not occur when she concluded the only cause of the damage she saw to Barbara Jean's brain was traumatic injury.

123. Meanwhile, Sergeant Snyder's contemporaneous notes from Dr. Hoyer's autopsy, located in the DAO trial file yet never introduced at trial, indicate that the weapon used to inflict the head injuries was "probably a 2x2 or a 2x4. Something lighter than a baseball bat or tire iron."

124. The only significant new evidence offered by the Commonwealth at the second jury trial was the testimony of Jay Wolchansky (who testified under the alias Jason Banachowski).

²⁴ At the first trial, Dr. Rorke did not discuss asphyxia or suffocation at all. In the first trial, Dr. Rorke told jurors that the brain was subjected to a considerable amount of force and suffered damage to her brain as a consequence of that force. Dr. Rorke testified that Barbara Jean did not die immediately because she was able to see cellular changes. Dr. Rorke also indicated that the head trauma suffered by Barbara Jean could cause a feeling of nausea and vomiting.

125. Wolchansky testified that while he was in prison with Ogrod between the first and second jury trials, Ogrod confessed to him (Wolchansky Confession).

126. The Commonwealth also elicited testimony from Wolchansky that Ogrod told him he had threatened his own mother after she accused him of committing the murder.

127. Unlike in the first trial, Ogrod did not testify at the second trial.

128. In her closing arguments, ADA Rubino argued that Wolchansky had no deal with the Commonwealth in exchange for his testimony, the only way Wolchansky could have gotten information about the crime was from Ogrod, and that Ogrod had admitted his guilt to his mother.

129. When the case was sent to the jury for deliberation in the second trial, the only evidence the jury had linking Ogrod to the murder was the Devlin Confession and the Wolchansky Confession.

130. Ogrod was convicted of first-degree murder and attempted involuntary deviate sexual intercourse and was sentenced to death.

POSTCONVICTION LITIGATION

131. On June 8, 2005, after his direct appeals were affirmed and became final, Ogrod filed a *Pro Se* Petition seeking relief under the Post Conviction Relief Act (PCRA).

132. Among other things, this PCRA filing along with subsequent filings raised claims of actual innocence, *Brady/Napue* violations and ineffective assistance of counsel pertaining to the Devlin and Wolchansky Confessions (the only evidence linking Ogrod to the crime).²⁵

²⁵ The PCRA filings raised ineffective assistance of counsel for failure to call an expert to rebut testimony that the weight bar was the murder weapon, that Barbara Jean's head wounds would have bled profusely, and for failing to introduce evidence that Ogrod's mother believed in his innocence. The *Brady* violations claim the Commonwealth failed to disclose Hall and

133. On March 2, 2007, Ogrod filed his initial motion for discovery in connection with the PCRA proceedings, including a request for DNA testing of available forensic evidence.

134. Then, over the course of several years, Ogrod and the PCRA Unit of the DAO engaged in pre-petition discovery and related litigation.

135. On June 24, 2011, Ogrod filed a counseled Amended PCRA Petition.

136. On April 4, 2013, the Commonwealth filed a Motion to Dismiss the Amended Petition.

137. Ogrod filed his second Motion for Discovery on June 11, 2013, including a renewed request for DNA testing.

138. In 2014, the Commonwealth agreed to DNA testing of biological matter from the homes of initial police suspects Ward and Felice, but opposed DNA testing of any evidence obtained from the victim or the autopsy.

139. The evidence from the alternate suspects' homes was analyzed – some of the evidence was too degraded and/or contaminated to be meaningfully tested and the evidence suitable for testing that yielded a DNA profile was not a match to the victim.

140. The counseled Amended PCRA Petition was amended and supplemented twice – the First Amendment and Supplement to Amended PCRA Petition was filed on October 21, 2014 and the Second Amendment and Supplement was filed on December 3, 2016.

141. In 2017, the Commonwealth agreed to an evidentiary hearing as to the following three claims of ineffective assistance of counsel: (i) trial counsel's ineffectiveness for failing to

Wolchansky's prior cooperation, including their joint cooperation in the prosecution of David Dickson and the Commonwealth failed to uncover and disclose Wolchansky and Hall's fabrication of Ogrod's confession.

retain expert assistance from a medical examiner to refute Dr. Mirchandani's testimony regarding the murder weapon used during the crime; (ii) trial counsel's ineffectiveness for failing to offer appropriate and relevant evidence to prove the defendant's "confession" was involuntary; and (iii) trial counsel's ineffectiveness for failing to investigate and proffer appropriate and relevant mitigation evidence during the penalty phase of trial.

THE CIU INVESTIGATION

The Initial CIU File Review and Ogrod's Requests for Further DNA Testing

142. In February 2018, pursuant to a request from Ogrod's counsel, Ogrod's case was transferred to the Conviction Integrity Unit of the District Attorney's office (the "CIU") for review and investigation of his actual innocence claim.

143. In October 2018, the CIU and Ogrod's counsel agreed to conduct further DNA testing of all relevant and available evidence.

144. The parties also entered into a Discovery and Cooperation Agreement which allowed Ogrod's counsel to review, for the first time, the Commonwealth's files for Ogrod's case, Commonwealth v. Richard Hackett, et al. CP-51-CR-0933912-198, and the files for a number of other cases involving jailhouse informants, Hall and Wolchansky (Commonwealth v. Jean Claude Pierre Hill, CP-51-CR-0438891-1991; Commonwealth v. David Dickson, CP-51-CR-0732711-1993; Commonwealth v. Herbert Haak and Richard Wise, CP-51-CR-1205942-1995; Commonwealth v. Tremayne Smith, CP-51-CR-700151-1994); Commonwealth v. Jay Wolchansky, CP-51-CR-205731-1995 and CP-51-CR-0103571-1995).

145. Ogrod's Counsel's review of these files uncovered additional previously undisclosed, exculpatory documents.

146. The CIU also independently reviewed the files and provided a number of documents to Ogrod's counsel that constitute *Brady* evidence.

147. In an effort to determine whether further DNA testing could be conducted, the CIU conducted a search and inventory of all biological matter collected by the police.

148. Once the biological evidence was located and identified, Bode Technology was hired to assess whether that evidence was suitable for DNA testing and to perform the tests.

149. Bode Technology determined that the only DNA evidence suitable for testing was a sample of wash recovered from the autopsy table after Barbara Jean's autopsy.

150. The wash produced a full male DNA profile suitable for comparison.

151. The CIU then collected a buccal swab reference sample from Ogrod on June 4, 2019.

152. Bode Technology subsequently reported that Ogrod was excluded as a contributor to the DNA profile produced by the wash.²⁶

153. The profile was uploaded to local, state and national DNA databases (CODIS) between October 10, 2019 and November 19, 2019. On November 19, 2019, the Philadelphia Police Department's Office of Forensic Sciences reported to the parties there had been no hits at the State or National level; but the sample would be continually searched and any associations would be reported appropriately.

154. As of the date of this stipulation, there have been no hits to the DNA profile uploaded to CODIS.

²⁶ A DNA sample was also obtained from Dr. Hoyer, who performed the autopsy. Hoyer was also excluded.

155. As a result of the CIU investigation, all physical evidence obtained in relation to the murder of Barbara Jean has now been subjected to DNA testing and law enforcement now has the DNA profile of an unknown male whose DNA was found in the body wash from Barbara Jean's autopsy.

The CIU and Ogrod's Counsel Retain Experts to Review Cause of Death and "Murder Weapon"

156. In 2018, the CIU retained Dr. Ljubisa J. Dragovic, an expert in both forensic pathology and forensic neuropathology, and Kirk L. Thibault, Ph.D., a biomechanical engineer and expert in human injury biomechanics, to evaluate the case, including evidence from the post-mortem examination of Barbara Jean regarding the cause of death and the murder weapon.

157. Dr. Dragovic reviewed the primary evidence, the autopsy reports and photographs, before reviewing any of the testimony or expert reports developed during the PCRA proceedings.

Cause of Death Likely Asphyxia

158. Upon completing his review, Dr. Dragovic's opinion is, to a reasonable degree of medical certainty, that the conclusions reached by Drs. Hoyer and Mirchandani that Barbara Jean died from cerebral injuries are not supported by medical science.

159. According to Dr. Dragovic, Barbara Jean's death was caused by something other than a head injury.

160. The CIU also interviewed Dr. Ian Hood, an expert who had previously been retained by the PCRA Unit for the sole purpose of evaluating whether the weight bar could be the "murder" weapon.

161. After determining that Dr. Hood had not previously been provided with sufficient information, the CIU requested that Dr. Hood consider additional information and then review the entire case instead of the narrow question that had been posed to him.

162. After reviewing additional information and meeting with the CIU, Dr. Hood told the CIU that the head injuries were not the cause of Barbara Jean's death. Dr. Hood stated that the cause was likely asphyxia, which would not necessarily produce medical findings, but would explain why Barbara Jean's brain was heavier than it was supposed to be at the time of autopsy.

163. Dr. Dragovic noted in his report that the next step in the autopsy should have been to consider asphyxia by smothering or asphyxia by drowning through a meticulous gross microscopic examination of Barbara Jean's respiratory system. However, the tissue slides taken at autopsy in this case cannot be located²⁷ for Dr. Dragovic's review and the autopsy report failed to include a microscopic evaluation of the lung tissue. As a result, a formal conclusion of asphyxia could not be included in Dr. Dragovic's report.

Weapon That Caused Lacerations to Barbara Jean's Head is Not the Weight Bar

164. Dr. Dragovic concluded that the lack of damage to the skull and brain, coupled with the narrow nature of the resulting wound margins on the scalp, indicate that the object used to cause the "tears/cuts" in the victim's scalp was "rather light in weight and relatively thin in profile."

165. Dr. Hood agreed with Dr. Dragovic that the weapon that caused the head lacerations on Barbara Jean had to be something narrow, likely with sharp edges.²⁸

²⁷ The tissue slides as well as the rape kit slides in this case have likely been destroyed. The Philadelphia Medical Examiner's Office had conducted a thorough search for these slides, as has the Office of Forensic Science, and the slides cannot be located.

²⁸ While Dr. Hood agreed that the metal "hook" on the weight bar (part in the middle of the bar used to attach it to the weight machine) was narrow with sharp edges, Dr. Hood stated that, in order to avoid fracturing the skull, the person would have to control the bar sufficiently enough to create enough force to lacerate the 0.25 inches of the scalp but immediately stop the movement of the bar after moving those 0.25 inches to avoid fracturing the skull. As we know

166. Dr. Thibault also examined the available evidence, including a weight bar that was of the same make and model as the weight bar in the Ogrod basement.

167. Dr. Thibault concluded, based upon his review of the post-mortem findings, that Barbara Jean's injuries were not compatible with being struck by the weight bar as described in the Devlin Confession, particularly in the absence of skull fractures and underlying focal brain injuries.

168. Accordingly, Dr. Thibault also disagrees with the conclusions of the Commonwealth's trial witnesses as to the possibility that the weight bar caused the injuries to Barbara Jean's head.

169. On June 15, 2017, Dr. Hoyer provided a sworn statement to Ogrod's counsel in which he stated that, due to the lack of any fractures to the victim's skull, it is unlikely that the weight bar was the murder weapon. He also believes that the head wounds would have bled profusely.

170. Counsel for Ogrod also obtained a report from Dr. Marcella Fierro, the Retired Chief Medical Examiner of the Commonwealth of Virginia and a past president of the National Association of Medical Examiners, also concluded that the weight bar did not cause the injuries to Barbara Jean's back and head and the cuts to her scalp would have bled profusely.

Bruises on Barbara Jean's Shoulders and Back Are "Hickeys"

171. Dr. Dragovic concluded that the three, similarly shaped bruises on Barbara Jean's shoulders and back are "hickeys."

from Dr. Rorke's testimony regarding the moderate to severe degree of diffuse axonal injury and Dr. Thibault's report regarding the amount of force necessary to create that degree of injury, that control was absent in the swing of the person that hit Barbara Jean.

172. Dr. Hood agreed that they could be hickeys, but they were likely inflicted by a large adult due to their size.

173. Dr. Thibault concluded that the weight bar was not biomechanically compatible with these bruises due to the lack of fracture to the scapulae.

174. In sum, the Commonwealth's trial theory, the Devlin Confession and the Wolchansky Confession, each of which rest on the notion that Barbara Jean died from trauma to the head inflicted by the weight bar, are not supported by the medical findings or the available science.

Post-conviction Witness Interviews

175. The CIU, in conjunction with defense counsel, interviewed Serrotta, David Schectman, Kochan, Ingrid Green, Linda Green, Charlie Green, Jr., Mindy and Raymond O'Brien, Heather Wolchansky, and Phyllis Hall. Several of these witnesses revealed new evidence regarding the unreliability of the Devlin Confession which is detailed throughout these stipulations.

176. The CIU, in conjunction with defense counsel, attempted to interview Steven Begelman but was unsuccessful.²⁹ Independently, the CIU (for the case of Willie Veasy and other

²⁹ Steven Begelman filed a civil lawsuit in the Philadelphia Court of Common Pleas against the City of Philadelphia and then Sergeant Nodiff, Devlin and Worrell for their conduct during their arrest, detention, and interrogation of him on November 19, 1991 in connection to the murder of Barbara Jean. The complaint alleged that Sergeant Nodiff, Devlin, and Worrell arrested Begelman at Penn Treaty Middle School, his place of employment, and transported him to the Police Administration Building ("PAB"). Upon arrival, he was interrogated by either Devlin or Worrell for a period of hours. The statement taken in the course of this interrogation was reduced to writing and Begelman was ordered to sign it. Devlin and Worrell then told Begelman that, in order to be released, he had to pass a polygraph test. The complaint stated that Begelman was then taken to the basement of PAB and held for approximately three hours. During that time,

cases) attempted to interview both Martin Devlin and Paul Worrell. Both refused to speak to the CIU and informed the CIU they were represented by the City Law Department. Subsequently, a Fraternal Order of Police (FOP) newsletter included a segment notifying its members that the CIU attempted to interview retired detectives.³⁰

177. The CIU also separately interviewed Margaret Kruse, ADA Judy Rubino, Mark Greenberg, Dr. Ian Hood, Dr. Bruce Wright, Dr. Paul Hoyer, Sharon Fahy, and Barbara Palumba.

178. Petitioner's defense team, along with the CIU, spoke to members of the Green family who recounted similar abusive tactics being utilized when Devlin and other detectives questioned them during the reinvestigation of the Barbara Jean murder, particularly following Ogrod's arrest.

179. During the CIU interview of Serotta, Serotta had limited recollection of his trial testimony, yet he vividly recalled finding it strange that police never came to search Ogrod's apartment in Glenside.

two polygraph tests were administered concerning the murder. At the end, the complaint states Begelman was accused of lying, was told he failed the test, and was berated because he was a teacher. Begelman was then returned to the homicide division where he was held in a locked interrogation room for approximately two and a half hours. During this period of time, Begelman alleged he was again interrogated by either Devlin or Worrell, who again accused him of lying regarding the murder, and was interrogated regarding his having "molested four kids at Elwyn." Devlin and Worrell also accused him of lying about his prior criminal record and about Elwyn. They demanded Begelman return at a later date for yet another polygraph examination. During the interrogation, Devlin and Worrell also accused him of being a "pervert," questioned him regarding his sexual activities, his sexual partners, and other subjects relating to sex. Begelman says he was then taken from the homicide division to another location where he was fingerprinted and photographed. A copy of the handwritten interview of Begelman was provided to Greenberg in discovery, but it reflects a different version of events. Begelman lost his civil suit against the city and the detectives following a trial.

³⁰ The newsletter segment advised members if anyone, even if they are from the District Attorney's Office, attempted to interview them about new or old convictions that they should demand an attorney and a FOP representative.

New Evidence Demonstrates The Devlin Confession is Unreliable

180. Unbeknownst to Ogrod at the time of trial, the similar interrogation tactics used on him were also used on the Fahy's.

181. In March 1992, the Fahy's retained an attorney who sent a letter to ADA Casey requesting that detectives contact the Fahy's through him because of their treatment by Nodiff, Devlin, and Worrell:

First of all, they were upset about the treatment that they received from Larry Nodiff, Marty Devlin and Paul Worrell. Apparently, the Fahys were invited to go to the PAB and were led to believe that they were to be updated regarding the progress of the investigation. Instead, they were detained for over four hours during which time Sharon was given a polygraph examination and accused by Det. Devlin of withholding information that her husband had killed their daughter.

182. In the CIU interview of Ingrid Green (with defense counsel), Ingrid stated that her mother and father (Linda Green and Charles Green, Sr.) were home all day and would have seen or heard something – particularly because the house was small and the stairs to the basement were loud and creaky. Linda said that she would have heard Barbara Jean if she had been screaming in the basement, but couldn't be certain because the air conditioner in the kitchen was noisy.³¹

183. Ingrid also said that Greg's car had been firebombed years earlier and the burned-out car was out back, so no one went in or out the basement door.

184. Ingrid also said that she would frequently go down to the basement to do laundry after Barbara Jean was murdered. Ingrid said she never saw blood.

185. In the CIU and defense counsel interview of Linda Luterman (Green) and Charles Green, Jr., they also agreed that no fresh blood, was visible in the basement after the murder, nor

³¹ The Dunne file reveals that Ogrod heard screams from the basement in his second-floor bedroom.

where there any signs of a struggle. Linda was in the basement every day to do laundry, and she saw no fresh blood or signs of a struggle there after the day Barbara Jean was killed. Nothing in the basement had been disturbed.

186. Linda also stated that there were no rugs in the basement at the time of Barbara Jean's murder. Linda recalled that at some point there had been a throw rug on the basement floor, but agreed with Charlie that it had been placed there after the murder, when a friend named Tommy moved into the basement.³²

187. On the afternoon of the murder Linda had been in the kitchen preparing a roast for dinner and her husband "Sarge" was asleep in the living room after taking some medication for pain.

188. Linda never saw Ogrod with Barbara Jean, a box or a plastic trash bag on the day of the murder nor did she ever see Ogrod enter the kitchen (where the plastic trash bags were kept) on the afternoon of the murder.

189. Knowing many of the facts of the Devlin Confession are demonstrably false, Ogrod's counsel retained James Trainum, a retired Washington, DC homicide detective, to review this case.

190. Trainum concluded that the circumstances surrounding the Devlin Confession are similar to circumstances in known false confession cases in several respects, including the use of elements of the highly-coercive "Reid Technique" for interrogations.

³² The Green interviews support the June 6, 2011 sworn statement of Harold Vahey, another occupant of the Ogrod home, where he stated that he also did not see any fresh blood or signs of a struggle in the basement after Barbara Jean's murder.

191. Trainum concluded that “anyone assessing this case should have grave concerns about the validity and reliability” of the Devlin Confession.

192. Counsel for Ogrod also obtained reports from psychologists Dr. Bruce Frumkin, Dr. Frank Dattilio and Dr. Neil Blumberg, each of whom examined Ogrod and concluded that he was highly suggestable and maintained a personality that is prone to manipulation and undue persuasion by others. Dr. Frumkin administered the Gudjonsson Suggestibility Scales test to Ogrod, which concluded that he is more suggestive than 95% of the population and has a strong tendency to yield to misleading or false information.

193. As part of the CIU’s investigation of the Devlin Confession, the CIU consulted Dr. Christian Meissner and Colonel Steven Kleinman, two experts in interviewing techniques and false confessions and asked them to conduct an assessment of the reliability of the Devlin Confession to specifically determine the extent to which the statement (a) provided any new information unknown to investigators at the time of the interview that was later corroborated by further investigation, (b) contained information known to investigators that, given the use of accusatorial approaches and suggestive/leading questions, could constitute contamination, and (c) included information that was inconsistent with known facts in the case.

194. In a report submitted to the CIU, Dr. Meissner and Colonel Kleinman concluded Ogrod’s statement “failed to include any novel information about the crime, nor did he provide any information in his statement that would have demonstrated unique, guilty knowledge of the crime outside of information already known to police and/or the public via media coverage of the incident.”

195. More specifically, many of the details included in Ogrod's statement were already known to police at the time of his interrogation – such as Barbara Jean being hit in the head, her body washed and then wrapped in a trash bag and left in a box in a vicinity near her home.

196. In contrast to what was publicly known about the crime, Ogrod's statement also included information that was inconsistent with the available evidence, including such details as (a) the clothing worn by the victim (one-piece vs. two-piece), (b) the lack of any forensic evidence indicating the presence of blood or body fluids in the basement, (c) the absence of any throw rugs in the basement at the time of the incident, (d) that the back door to the garage could not be opened at the time of the incident, and (e) that the weight bar used to strike the victim was inconsistent with the type of wound indicated by the autopsy and subsequent expert review of that autopsy.

197. Given the available scientific understanding of (a) the interrogation techniques and situational factors that can lead an innocent person to provide a false confession, (b) the particular vulnerabilities of certain individuals who are more susceptible to interrogation, and (c) the lack of indicia of reliability in the statement provided by Ogrod, the ultimate conclusion provided in the written expert report is that the Devlin Confession was not only unreliable but almost certainly coerced.

New Evidence Demonstrates The Wolchansky Confession is Unreliable

198. In an effort to assess the collusion between Hall and Wolchansky and the jailhouse informant testimony used against Ogrod at trial, the CIU consulted with Professor Alexandra Natapoff, a legal expert in the use and abuse of jailhouse informants.

199. After consultation with Professor Natapoff and review of relevant information, the CIU has concluded there are significant red flags present in this case regarding the inherent unreliability of the Wolchansky confession.

200. More specifically, there is substantial evidence that Hall and Wolchansky colluded in order to bolster the credibility and to enhance the value of their cooperation to the government.

201. As a result of the inherent and demonstrated risks of collusion, unreliability, and perverse incentives, Wolchansky's testimony should be viewed with presumptive skepticism.

202. Said skepticism is particularly important because, as described more fully below, Hall and Wolchansky presented the same or similar evidence in Ogrod's case and, as noted by Professor Natapoff, that is a red flag for unreliability.

Hall Was An "Experienced Informant" Who Colluded With Wolchansky

203. The Wolchansky Confession was fabricated by John Hall, a notorious jailhouse cooperator known as the "Monsignor" due to his long track record of purportedly obtaining jailhouse confessions, disclosing those confessions, and using his cooperation in these cases in order to obtain leniency in his own criminal cases.

204. Hall is deceased so the CIU was unable to interview Hall. However, the CIU did interview his wife, Phyllis Hall.

205. The CIU also obtained hundreds of letters written by Hall to Phyllis while he was incarcerated and Phyllis verified that the handwriting in the letters is Hall's.

206. Phyllis helped Hall gather newspaper articles and, at one point she assisted Hall in his "snitch scheme" by writing to Ogrod pretending to be a stripper that wanted to befriend him. She did this to get Hall additional information about Ogrod (Hall's letter indicates that the articles

Phyllis gathered did not have enough details about the case, so Hall pursued getting additional details about the case from Ogrod).

207. Hall's "snitch scheme" as reported by Phyllis is corroborated by pages of notes taken by Hall dated December 22-29, 1994.

208. Hall's handwritten letters to his wife Phyllis describe (i) how he compiled information in order to fabricate the Wolchansky Confession, (ii) that he used the information he compiled on Ogrod first, before he gave the information to Wolchansky; (iii) he encouraged Wolchansky to go ahead on the Dickson³³ case, but Wolchansky "blew it,"; (iii) Hall learned Wolchansky "blew the case" when Wolchansky got transferred to Bucks County at Hall's direction and immediately wrote to ADA Roger King; and (iv) he had previously fed other jailhouse informants information in another criminal case.

209. Hall's letters to his wife Phyllis also claim that because of his and Wolchansky's assistance and cooperation in the Ogrod case "Everybody made out."

210. Before he died, Hall provided a sworn statement to defense counsel he was the individual who provided Wolchansky with all of the details of the Wolchansky Confession.

211. The CIU has reviewed information that independently corroborates Hall's sworn statement referenced above.

The Collusion Produced Similar "Confessions" Which Are Demonstrably False

212. The CIU did a thorough comparison of each fact contained in Wolchansky's testimony with his prior letters as well as Hall's letters and statements about the Ogrod confession. In addition, the CIU identified whether a fact offered by Wolchansky or Hall was available via the

³³ The Dickson case is discussed in more detail on pages 50-52 *infra*. As noted on page 27, it was also one of the DAO files that the CIU made available for review to Ogrod, through counsel.

media coverage of the first trial. The comparison was performed by populating a chart with the following categories of information:

Jay Wolchansky Trial 2 Testimony, 10/4/96	In Wolchansky Letter	Changes from Letters to Testimony of JW	John Hall Statement 1/6/95 and Letter to Frumer	Addition/Subtraction of Facts by JH and JW	Source of Contamination: Media Coverage of Crime	Comparison to Known Facts
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213. This comparison revealed a striking similarity between Hall and Wolchansky's stories. In fact, they were exactly the same in many respects. In addition, most of facts of the crime itself were contained in media coverage.

214. To illustrate, both Hall's letter and Wolchansky's testimony state that Ogrod planned Barbara Jean's abduction and intended to use an electrical cord to strangle her, but when it was missing he used the weight bar.

215. Both said Ogrod confessed guilt to his mother.

216. Not surprisingly, based on the contents of his letters to Phyllis, Hall provides additional, smaller details about each fact in his letter, however, both of their narratives are essentially the same – and, as noted by Professor Natapoff, this, by itself, is a red flag for unreliability.

217. A review of the central facts used in both the Wolchansky Confession and in Hall's statement regarding Ogrod's purported confession are demonstrably false.

218. Of great import is that both Hall and Wolchansky claimed Ogrod confessed to killing Barbara Jean with the weight bar. According to Wolchansky, Ogrod became enraged, grabbed the weight bar and hit Barbara Jean in the head. Meanwhile, Hall said Ogrod confessed to smashing her skull in. Both accounts of the crime are similar in their facts and in their falsity.

219. In addition, Phyllis, stated that Hall told her he fabricated the details of the Wolchansky Confession and provided those details to Wolchansky.

220. Based on the comparison of their statements to each other, the known facts of how Barbara Jean died, and Hall's letters to Phyllis, Phyllis's statement is credible.

**PREVIOUSLY SUPPRESSED EVIDENCE DISCLOSED DURING CIU
INVESTIGATION**

Suppressed Evidence Demonstrates Devlin Confession Is False

221. Based on the trial preparation notes of ADA Rubino, Dr. Rorke also concluded that Barbara Jean died from asphyxia and not the injuries to her head:

Asphyxiation
Skull damage
Shook her to rotate brain
Concussions & lacerations
Probably smothered her

34

222. Although Dr. Rorke testified for the Commonwealth in both trials, ADA Casey and ADA Rubino never asked her to opine on cause of death so she managed to steer clear of offering her medical opinion that Barbara Jean died from asphyxia. In 2019, as part of the CIU's effort to locate slides and photos documenting the original autopsy in this case, the CIU reached out to Dr.

³⁴ The CIU emailed these notes to ADA Rubino. ADA Rubino confirmed that these are her notes and they were likely made while she was preparing Dr. Rorke to testify.

Rorke, who is now retired, regarding whether she would have taken photographs of Barbara Jean's brain in this case. In order to refresh Dr. Rorke's recollection of the case, the CIU provided her copies of both of her original reports. After reviewing the reports, Dr. Rorke informed the CIU that "it is unlikely that I would have taken any photographs of the brain as the abnormalities [sic] on gross examination were not too exciting." That statement is contradictory to the testimony she gave in both trials.

223. Detective Edward Rocks' type-written description of the Ogrod basement in the Dunne homicide file indicates that the inside, wood door from the basement to Ogrod's driveway was nailed shut and the top slide lock secured. There was also an outer wood door. There was no indication of locks or nails, but he noted that a large transmission was pushed up against the outer wood door.³⁵ This contradicts the Devlin Confession, which states that Ogrod entered and exited the basement on the date of the murder through this basement door. Although the photograph of the weight set, including the weight bar, was disclosed prior to trial, the detective's type-written notes were not disclosed.³⁶ Instead, the notes were recently disclosed to Ogrod's counsel during the recent CIU investigation.

Suppressed Evidence Showing Ogrod was Susceptible to Coercive Interrogation Tactics

224. An undated five-page document found in the Ogrod DAO trial file entitled "Supplemental Investigation of Walter J. Ogrod" recounts nine interviews conducted by the

³⁵ Detective Rocks crime scene report supports the June 6, 2011 sworn statement of Harold Vahey, another occupant of the Ogrod home, where he stated that, at the time of Barbara Jean Horn's murder, the basement door of the Ogrod residence was blocked by a heavy car or truck transmission and other junk to keep people from breaking in.

³⁶ The photographs of the basement taken in the Dunne homicide do not depict what is described in the detective's detailed scene notes.

Commonwealth of Ogrod's former teachers at Ashbourne School, with the stated purpose of developing a "personality profile" of Ogrod.

225. These nine interviews characterize Ogrod as a complacent, socially inadequate youngster who followed the lead of others, was unable to make decisions for himself, and would do anything to please others.

226. According to the five-page document, those who interacted with Ogrod on a daily basis during his school years told interviewing police that he was "not a troublemaker," but rather "a very passive individual" who "would do anything to be accepted by his peers."

227. During the various interviews, former teachers described Ogrod as:

- "a socially emotionally disturbed student,"
- "a follower who was not able to make his own decisions,"
- "a follower who often kept to himself and who only got in trouble passively by being in the wrong place at the wrong time,"
- "a very sad individual who felt ostracized by the other students and could be persuaded by them to do anything,"
- "a follower who kept to himself and stayed out of trouble,"
- "a square type of kid who got teased a lot and wanted to be liked by the tougher boys in school," and
- someone who "would go out of his way to make other people happy."

228. These interviews were not disclosed to Ogrod or his counsel prior to either of his trials.

Devlin and Worrell's History of Coercing False Statements

229. Recent disclosures from the CIU reveal that Devlin and Worrell have a history of engaging in improper and coercive interrogation techniques that have resulted in the reversals/vacatur of several convictions.

230. The Devlin Confession bears striking similarities – in length, structure, and specificity – to other purported confessions taken by Devlin and/or Worrell that were later found to be either unreliable and/or false.

Anthony Wright

231. In 1993, the same year as Ogrod's first jury trial, Anthony Wright was convicted of the rape and murder of Louise Talley.

232. Key to the conviction was Wright's purported "confession" as written by Devlin and Detective Manuel Santiago.

233. In 2014, after DNA evidence from the crime implicated another man, Ronnie Byrd, the Philadelphia DAO agreed to vacate Wright's conviction, but elected to retry him.

234. During both of Wright's trials, Wright testified about the circumstances surrounding the alleged "confession," stating that Devlin and Santiago physically and mentally abused him, forcing him to sign a confession that was not true.

235. During Wright's second jury trial, Devlin denied mistreating Wright and maintained that he had transcribed Wright's confession verbatim by hand -- the same assertion that he made with respect to the Devlin Confession in Ogrod's case.

236. Devlin testified that, as Wright spoke, he never asked Wright to slow down so he could keep up, however, when asked to demonstrate how he accomplished this feat with the confession being read aloud to him, Devlin was unable to replicate this handwritten transcription in the courtroom.

237. Wright was acquitted at his second jury trial on August 22, 2016.

238. Following his acquittal, Wright brought suit against the City of Philadelphia and several detectives (including Devlin) for civil rights violations under 42 U.S.C. § 1983.

239. Through the course of the litigation in Wright's civil case, and another involving Shaurn Thomas, allegations regarding a pattern and practice of eliciting false statements by Devlin and Worrell came to light.

Shaurn Thomas

240. In *Commonwealth v. Shaurn Thomas*, the police investigation of the murder of Domingo Martinez, for which Thomas was charged, occurred in 1990-1993 (before Ogrod's first jury trial).

241. Thomas was ultimately exonerated based on the suppression of exculpatory evidence in his case.

242. During his federal civil rights lawsuit, key Commonwealth witness John Stallworth provided a declaration describing his interrogation by Devlin and Worrell that led to him giving a statement implicating himself and others, including Thomas, in Martinez's murder.

243. In a deposition in the federal civil rights lawsuit, Stallworth testified that the detectives physically abused him and provided him with facts about the case that he used in his inculpatory statement.

Carl Tonez

244. *Commonwealth v. Carl Tonez* was a case tried in 1991 (before both of Ogrod's trials in this matter).

245. The *Tonez* case also involved an interrogation and confession obtained by Devlin and Worrell where the defendant claimed that the confession was false.

246. At trial, Tonez testified that he repeatedly told detectives he had no involvement in the murder of Jose Figueroa, about which he was being questioned.

247. Tonez also testified that the detectives used physical force and that he thought they would beat him to death.

248. Tonez ultimately signed his name backwards on one page of his “confession” to indicate he was forced to sign (and in the purported confession Tonez also named Ed Williams as having committed the murder with him even though Williams had an alibi).

Jack Combs

249. In *Commonwealth v. Jack Combs*, the police investigated the deaths of Roy Sheppard and Christian Bradley in 1990 (also before Ogrod’s first jury trial).

250. Witnesses initially told Devlin that they saw a man shoot another man and then turn the gun on himself to commit suicide.

251. In their second statements to Devlin, however, these same witnesses said that Combs took the gun and shot a second man.

252. Two of the witnesses, young girls at the time, testified that Devlin threatened them with time at the Youth Study Center or jail time if they did not change their statements to say that Combs had committed a murder.

253. Ogrod’s counsel obtained affidavits from four witnesses from the Combs case during the pendency of these PCRA proceedings: Robert Berrian, Quiana Mosley, Atiya Nelson, and Dana Williams (all describing how they were questioned by Devlin outside the presence of their parents and subjected to physically and psychologically coercive tactics in an effort to get them to back off their initial police statements regarding the murder of Roy Sheppard).

Willie Veasy

254. In *Commonwealth v. Willie Veasy*, police investigated a January 24, 1992, shooting involving Efrain Gonzalez (who survived) and John Lewis (who did not).

255. On June 9, 1992 (prior to Ogrod's first jury trial), Devlin and Worrell interrogated Willie Veasy.

256. The interrogation was not recorded, and Devlin wrote the questions and answers in the statement himself by hand just like the Devlin Confession in this case.

257. In the statement (that Veasy moved to suppress during his trial), Veasy confessed to being present at the crime scene and shooting at two "Puerto Rican-looking" guys.

258. However, during trial, Veasy presented evidence showing that he was working at a Houlihan's restaurant in Jenkintown, at least a twenty-minute drive from the crime scene, on the night of the crime.

259. On October 9, 2019, Mr. Veasy's conviction was vacated in light of the evidence of Mr. Veasy's innocence and the Commonwealth *nolle prossed* the case.

260. Ogrod had no evidence Devlin and Worrell engaged in a pattern and practice of using coercive techniques to obtain confessions and incriminating statements so Ogrod could not, and did not, present any other evidence of other false confessions/statements elicited by Devlin and Worrell.

Suppressed Evidence that Wolchansky Suffered from Serious Mental Illness

261. During the second jury trial, trial, defense counsel questioned Wolchansky about his mental health, but Wolchansky falsely denied having mental health problems.

262. The Commonwealth took no action to correct Wolchansky's testimony.

263. Documents in the Commonwealth's possession at the time of trial, which were not disclosed to trial counsel, could have been used to effectively impeach Wolchansky and show his testimony to be untruthful.

264. Recently uncovered documents show that Wolchansky's mental health problems were persistent, severe, and at times psychosis-inducing.

265. The documents establish that Wolchansky's ability to perceive and truthfully and accurately recount information was compromised.

266. In Ogrod's DAO trial file, a handwritten note authored by ADA Rubino stated that, in 1989, "Jason Banachowski"³⁷ was taking "Medication – Melaril"—an antipsychotic drug widely used at the time to treat schizophrenia and psychosis—and was suffering from "paranoia – hearing voices from cocaine."

267. The following documents were also found in other DAO files in the Commonwealth's possession³⁸ and were not disclosed to Ogrod's his trial counsel:

- A Mental Health Evaluation for Wolchansky dated July 26, 1989, diagnosing him with Mixed Personality Disorder with Borderline and Anti-Social Features, primary and severe substance dependence problems, and possibly a Bipolar or Cyclothymic Disorder, which was difficult to assess given his lengthy poly-substance dependence.
- A document entitled Intake Health Information for PPS Staff, dated December 20, 1994, documenting Wolchansky's self-report that he had "a history of serious mental illness" and/or "received outpatient or inpatient mental health treatment" and recommending him for mental health placement.
- A handwritten letter from "[Assistant District Attorney] Lynn" Nichols to "Will" [Kushto] dated October 14, 1994 requesting that Wolchansky's case be "specially assigned" because the defendant would be presenting "a bogus mental health defense (i.e. schizophrenia)" and the public defender representing Wolchansky would be presenting "medical records and a doctor to testify that [Wolchansky] is being treated for schizophrenia."
- A memorandum dated January 27, 1995 from ADA Wilfred B. Kushto to ADA Kendall Zylstra specially assigning ADA Zylstra to prosecute *Commonwealth v. Jay Wolchansky* (CP-9408-0378) and asking him to inquire about an insanity defense, to subpoena

³⁷ Wolchansky's alias.

³⁸ The DAO files for *Commonwealth v. Jay Wolchansky*, CP-51-CR-205731-1995 and CP-51-CR-0103571-1995 were located in the DAO's boxes in the David Dickson case where Wolchansky testified in the first trial.

Wolchansky's *crimen falsi* quarter session files, and to review the law on diminished capacity.

- A Presentence Report for Wolchansky dated April 24, 1995 listing his extensive history of *crimen falsi* convictions beginning at fourteen years of age, his mental health history and his history of abusing drugs and alcohol.

Suppressed Evidence that Hall Was an Unreliable Jailhouse Informant Who Colluded With Wolchansky In Cases of Ogrod and Dickson

268. The Philadelphia DAO and District Attorneys' Offices in surrounding counties used Hall as a "cooperator" in twelve separate homicide cases spanning from 1983 to 1997, including nine homicide prosecutions in Philadelphia County.

269. The DAO files recently reviewed by the CIU and Ogrod's counsel contain documents showing the DAO was aware of Hall's involvement in all of these cases at the time he was involved in the prosecution of Ogrod.

270. Handwritten notes found in the DAO box for the prosecution of Herbert Haak and Richard Wise³⁹ set forth a list of eight cases in which Hall served as a cooperating witness for the prosecution:

- Com. v. Allen, Cohen, Hinton, Rice & Turner — Nov. 1976 – Buck County, Conviction Invol. Deviate Sex. Int., Consp.
- Com. v. ? (Daniel Favaroso is victim) — Sept. 1979. Bucks County Invol. Dev. Sex. Int.
- Com. v. Feflie — Dec. 1987. Northampton County Robbery (Bank)
- Com. v. Jerick, Valez, VonStuden — Mar. 1988. Northampton County Armed Escape, Conspiracy
- Com. v. [Ernest] Privolos — Jan. 1990. Montgomery County, Murder, Robbery.
- State v. Dirago Ferrante — Apr. 1991. Attorney General N.J. Murder, Kidnap
- Com. v. [David] Dickson — Nov. 1995. Phila County Murder, Robbery
- Com. V [Thomas] Deblase — April 1993. Mont Co. Conviction Murder (only testified at suppression, not trial)

³⁹ ADA Rubino was the trial prosecutor.

271. In the DAO boxes for Jean Claude Hill,⁴⁰ two pages of handwritten notes labeled “John Hall,” state under the heading “6 times go’t [sic] wit,” with a notation on the side “All guilty,” list the same first six cases as the note from the DAO boxes in Haak and Wise, *supra*:

- Bucks Co — 1976 — sex [illegible] rape
- Bucks Co—1979—[illegible] rape
- Northampton Co—’87—Serial Bank Robber
- Northampton Co—’87—4 people shotgun in jail
- Mont. Co—Jan ’90—murder.
 - Incident Oct ’86
 - C v. Ernest Privolos
- Bucks Co—Burlington Co. NJ
 - State Attorney General.
 - State v Michael Dirago
 - April ’91

272. Under the heading “Homicide Phila Police” this same document lists:

- C v. Michael Myers & Joe Myers, ’86 ADA Carolyn Short
- Oct. 1983 — C v. Irwin Fester — Barbara Christie, 3rd degree plea
- [illegible] 1983 — C v. Anthony Bells — Phila 1st degree murder

273. Under the heading “Phila Non-Homicide” these notes document that information from Hall allowed for the arrest of David Frattaic for auto theft in December of 1982 by Detective Ed Gaugin from the Major Crimes Auto Squad and an FBI agent. *Id.*

274. In addition to the cases listed in these notes, Hall also provided information and/or testified in the cases of Raymond Martorano in Philadelphia County, Herbert Haak and Richard Wise in Philadelphia County, Michael (Richard) Dirago in Bucks County, Tremayne Smith in Philadelphia County, and Jean Claude Pierre Hill in Philadelphia County. Most all of the cases in which Hall attempted to provide information were high profile cases, well covered by the media.

⁴⁰ Jean Claude Hill was arrested in April of 1991 and was sentenced in December 1992.

275. Jean Claude Hill was a high-profile case that generated media coverage around the crime and arrest in April 1991.

276. Hall, through his attorney, reached out to Lynne Abraham in August 1991, with proof of his cooperation in Dirago and Privilos.

277. Evidently, Abraham did not respond to Hall's attorney so law enforcement from the Dirago case reached out to assigned ADA Mark McGovern on Hall's behalf stating he has information in the Hill case.

278. At the same time, Hall provided a letter to ADA McGovern, the prosecutor assigned to the Hill case, stating Hill confessed to Hall that he was faking mental illness and the crime was racially motivated.

279. Hall, however, was never called to testify during the Hill trial.

280. Then, during the Hill sentencing hearing in December 1992, ADA Mark McGovern agreed that Hill was mentally ill and Hill was committed to the state hospital.

281. In a 1997 article in the Daily News about Hall, ADA McGovern is quoted as stating that he "felt that [John Hall] was patently incredible." ADA McGovern reportedly told the paper he believed at the time that Hall had fabricated his conversations with Hill.

282. In June 1994, in the case of Tremayne Smith, the defendant was arrested for shaking a child to death. Hall provided the purported confession of the defendant to detectives.

283. ADA Carol Sweeney, the trial prosecutor in the Smith case, sent the Hall Confession to the medical examiner to ask for assistance in evaluating the veracity of the information provided by Hall.

284. ADA Sweeney's file contains a page of handwritten notes entitled "John Hall – errors." In the notes, ADA Sweeney lists out facts from the purported confession obtained by Hall

in blue, and then lists in red the correct facts. The notes vividly demonstrate that Hall's statement was riddled with errors. Most notably, Hall said Smith confessed that he slammed the victim into the crib just before the child's mother came in the room. Yet, ADA Sweeney notes there was no crib and, according to the medical examiner, the purported confession was not consistent with the medical evidence.

285. Smith entered a plea to third degree in exchange for a sentence of 3 ½ to 12 years on March 16, 1995. Despite this, Detective Brennan (who was a frequent contact of Hall's in the Philadelphia Police Department along with Detective Haugh) discussed Hall's cooperation in Smith as well as in the Haak and Wise case to a Bucks County judge during Hall's March 27, 1996 sentencing hearing.

286. In *Commonwealth v. Dickson*, both Hall and Wolchansky served as joint "cooperators" - Wolchansky testified at the first Dickson and Hall testified during the second Dickson trial.

287. The first Dickson trial ended with a hung jury after Wolchansky testified that Dickson confessed to manual strangulation and the medical examiner testified the perpetrator used a cord or a wire.⁴¹

288. Hall, and not Wolchansky, then testified at the retrial where the medical examiner added manual strangulation to his opinion (in addition to being strangled by a cord or a wire) and Dickson was convicted. Hall stated in a letter to his wife, "Jay testified against Dickson in a prior trial with this sneaker freak, not before I did at the same trial. It was a prior trial that ended in

⁴¹ Greenberg became aware that Wolchansky had testified in the Dickson trial through speaking to Ogrod, not through a disclosure from the DAO. Additionally, Greenberg attempted to reach out to Dickson's defense counsel for additional information. No response or responsive information appears in Greenberg's file.

mistrial. Then they brought me in for the second trial.”

289. The timeline of Hall and Wolchansky’s collusion and cooperation with authorities is lengthy and complex. As a result, the timeline is set out in chart form and attached as Exhibit A.

290. An August 7, 1996 letter from Wolchansky to Hall, indicates that Hall and Wolchansky kept in touch on the status of Ogrod and Dickson. It also indicates that Hall and Wolchansky were communicating to each other through Phyllis and Wolchansky’s daughter Heather. On August 19, 1996, Wolchansky was interviewed about Ogrod and then testified in Ogrod’s trial on October 4, 1996.

291. None of this information was provided to trial counsel or presented to the jury that convicted and sentenced Ogrod to death.

Suppressed Evidence that Ogrod’s Mother Believed He Was Innocent

292. At the time of Ogrod’s trials, the Commonwealth was in possession of documents showing Ogrod’s mother, Olga Ogrod, believed her son was innocent.

293. The DAO’s file for Ogrod’s case contained a letter from the Deputy General Counsel for the Governor to the Philadelphia DAO, including materials Olga Ogrod submitted to the Governor’s Office in September 1992 (a little over a year prior to her death), proclaiming her son’s innocence, explaining his mental infirmities and the mistreatment he suffered at the hands of interrogating detectives, and pleading for his release.

294. The file also included a second letter from ADA Casey to the Governor’s counsel, acknowledging receipt of these materials.

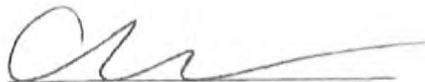
295. Ogrod’s mother died on December 22, 1993, before Ogrod’s second trial.

STIPULATED AND AGREED BY:


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EXHIBIT A

John Hall and Jay Wolchansky Timeline of Collusion and Cooperation in Dickson and Ogrod

Document/Information	Date
Conviction of highly publicized case of Raymond Martorano and Albert Daidone reversed (ADA Joseph Casey assigned); Com. v. Martorano, 420 Pa. Super. 638, 610 A.2d 66 (1992)	2/24/1992
Walter Ogrod interrogation/confession in murder of Barbara Jean Horn	4/5/1992
Walter Ogrod lodged in Philadelphia Jail – PHSW	4/7/1992 to 8/13/1993
David Dickson in Philadelphia Jail	6/10/1993
David Dickson moved to A block, cell 130	8/12/1993
Walter Ogrod moved to A block, cell 152	8/13/1993-8/26/1995
David Dickson moved to cell 110 in A block	9/12/1993
Walter Ogrod – first trial (extensive news coverage)	10/21/1993 to 11/4/1993
David Dickson moved around A block	1/6/1994 to 1/22/1994
David Dickson moved to cell 111 in A block	1/22/1994 to 3/28/1995
John Hall arrived in Philadelphia Jail to C block	7/1/1994
John Hall moved from C block to A block, cell 124	7/3/1994 to 7/5/1994
John Hall moved from A block to PHSW	7/5/1994-8/9/1994
Letter from John Hall to Phyllis Hall re retaining Marc Frumer	7/20/1994
Letter from John Hall to Detectives Brennan and Haugh re Tremayne Smith	7/22/1994
Letter from John Hall to Phyllis Hall re Frumer meeting with people that liked what Hall is selling	7/27/1994
Letter from John Hall to Marc Frumer describing Raymond Martorano and Dirado	7/29/1994
Letter from John Hall to Phyllis Hall re 8/2/1994 as date for proffer (talking to state which may lead to feds)	7/29/1994
Letter from ADA Joseph Casey to Marc Frumer re: John Hall (proffer letter)	8/1/1994 *signed 8/2/1994
John Hall Statement re: Martorano to Hom. Det. John Main re murder of James McCullough (Hall interviewed at Summer Lane residence; Phyllis currently incarcerated because of “Home Alone” incident)	8/3/1994
John Hall Statement re: Martorano re: murder of Steven Bouras and Jeannette Currio and Mr. and Mrs. William Long (cards of Dennis Dusak, Patricia Brennan/Jack Haugh)	8/4/1994
John Hall transferred from PHSW to A block	8/9/1994 to 8/12/1994
John Hall transferred to Bucks County Jail	8/12/1994 to 12/15/1994
John Hall arrives in A Block, Cell 131 (likely protective custody)	12/15/1994
Jay Wolchansky arrives in Philadelphia jail	12/20/1994
Philadelphia Prisons Segregation Order re: Jay Wolchansky b/c assaulted by several unknown inmates and bed set on fire	12/26/1994
Jay Wolchansky Transferred to A Block, Cell 144 (Protective Custody)	12/26/1994

John Hall and Jay Wolchansky Timeline of Collusion and Cooperation in Dickson and Ogrod

John Hall Handwritten Notes re: Walter Ogrod – multiple pages of notes re Walter’s life and the case	12/22/1994-12/29/1994
John Hall has a discussion with ADA Joseph Casey in an “unrelated” matter (Matorono) when Casey asked Hall with whom he had contact at the prison. Hall says Casey brings up Ogrod. Hall told extensive story. Did not want to give statement to police until he cleared it with his attorney (Frumer)	12/27/1994
John Hall Communication to Marc Frumer re Ogrod confession	1/5/1995
John Hall Interview Statement re: Ogrod to Detectives Haugh/Brennan	1/6/1995
Letter from Jay Wolchansky to ADA Joseph Casey re: Ogrod	1/23/1995
Marc Frumer enters appearance for Jay Wolchansky in 94-11-0917 ¹	2/9/1995
Letter from Jay Wolchansky to Lynne Abraham re Ogrod (note: signed by JW on 3/20/1995 –during interview)	2/17/1995
Report of Inmate Misconduct	2/21/1995
Finding of Disciplinary Board re: Fight between Dickson and Inmate L. Thomas, of which John Hall and Jay Wolchansky were witnesses	2/22/1995
Frumer Notice of Appearance filed for Wolchansky.	3/8/1995
Marc Frumer enters notice of appearance in Jay Wolchansky case no. 9502-0573	3/9/1995
Jay Wolchansky Letter to ADA Roger King Re: David Dickson	3/11/1995
Marc Frumer files – Petition to Reconsider Sentence of John Hall in 2 Mont Co cases and Petition for Parole in 3 different Mont Co cases cites cooperation in a number of cases, including Ogrod.	3/16/1995
Jay Wolchansky Interview Statement – Dickson Case (interviewed at homicide by Detectives Miller and Walsh): JW says he is in protective custody; says he testified for Dickson in a misconduct hearing; says Dickson confessed the details of the crime to him in mid-February.	3/16/1995
John Hall moved to cell 122 in A block	3/19/1995-3/31/1995
Jay Wolchansky Interview Statement – Ogrod Case (interviewed at PAB by Det. Gross)	3/20/1995
Jay Wolchansky Plea Agreement (Frumer)	3/22/1995
ADA Roger King files motion for protective order for JW’s letter and interview (which are attached as Exhibits A and B).	3/23/1995
David Dickson moved to different Philadelphia jail facility (PICC)	3/28/1995 to 7/7/1997
John Hall released from Philadelphia jail	3/31/1995
Letter from Marc Frumer to Judge Keogh re: Retainer Agreement with Jay Wolchansky. <i>See</i> MC 9412-1913.	5/1/1995
Jay Wolchansky transferred to Bucks County	5/8/1995-4/11/1996

¹ Jay Wolchansky was represented by the public defender in all of his prior cases.

John Hall and Jay Wolchansky Timeline of Collusion and Cooperation in Dickson and Ograd

Wolchansky testifies in David Dickson's first trial (says manual strangulation – ME testified perpetrator used cord or wire)	5/16/1995
Mistrial declared in Dickson's first trial	5/30/1995
CW v. Wolchansky – MC 9407-2457 (sentencing)	3/22/1995
CW v. Wolchansky – MC 9411-0917(sentencing)	6/8/1995
CW v. Wolchansky – MC 9412-1913(sentencing)	6/8/1995
Walter Ograd moved to a different Philadelphia Jail facility (PICC)	8/26/1995-10/9/1996
John Hall Letter to ADA Roger King re: Dickson (JH says he is coming forward because he heard that Dickson has not yet been found guilty and Hall believes he is guilty)	10/12/1995
John Hall Interview Statement re: Dickson (Detectives Luby and Cross)	10/19/1995
ADA Roger King files protective order for JH's letter and interview (attached as exhibits to motion and order)	10/20/1995
Sign-In Sheet to Unspecified Area (likely the prison library. Inmates often used the prison library to call their attorneys per Philadelphia Prison counsel). 11/1/1995: Hall (1:40PM) and Wolchansky (9:30AM) sign in 11/2/1995: John Hall (1:40-3:55PM) and Jay Wolchansky (2:45PM) sign in 11/6/1995: John Hall and Jay Wolchansky both sign in at 2:40PM. Hall is the only one that signs out (3:48PM) 11/20/1995: John Hall and Jay Wolchansky sign in right after one another on sign in sheet. Both omit time of sign in. 11/22/1995: John Hall and Jay Wolchansky sign in right after one another on sign in sheet. Hall signs in at 2:20PM and Wolchansky omits time of sign in. 11/27/1995: Only Jay Wolchansky signed in at 2:30PM 11/27/1995: Only Jay Wolchansky signed in at 2:30PM	11/1/1995-12/4/1995
Court Appearance Order for John Hall, CP 93-07-2700	11/8/1995
Fax from Marc Frumer to Judith Rubino re: His Representing John Hall	11/29/1995
David Dickson convicted	12/2/1995
NT <i>Commonwealth v. Hall</i> , Bucks County Court of Common Pleas (Hall's attorney is Marc Frumer; Hall was found slumped in parked but running stolen car; Hall was also in possession of stolen prescription drugs). Frumer offers letters from: (1) ADA Bruce Kester of Montgomery re CW v Thomas DeBlase where Hall testified (Det. Edmond Justice also appeared at the hearing for Hall and spoke to the prosecutor earlier); (2) Police Chief Thomas Mills from Bristol Township; (3) ADA, now Justice, David A. Keightly from Montgomery County, and (4) Charles Joey Grant, former chief of homicide in Philadelphia County.	3/27/1996

John Hall and Jay Wolchansky Timeline of Collusion and Cooperation in Dickson and Ogrod

Present in court from the Philadelphia Homicide Unit are Det. Francis Miller, Det. Joseph Walsh, Det. Dennis Dusak, and Det. Patricia Brennan State Trooper Hines from Bristol Township, Hall assisted through Thomas Mills with the arrest of four defendants in narcotics sales between October 1995 and February 1996	
Letter from Jay Wolchansky to John Hall discussing status of Dickson and Ogrod cases	8/7/1996
Order Releasing Jay Wolchansky to Philadelphia Homicide Detectives for Interview	8/19/1996
John Hall back in Philadelphia jail	9/13/1996
Wolchansky testifies in Ogrod	10/4/1996
Ogrod Found Guilty in Second Trial	10/8/1996
Mailed Envelope from John Hall to Judith Rubino Contents: <ul style="list-style-type: none"> • Letter from John Hall to Judith Rubino dated 10/28/1996 • Letter from Bruce Castor, Deputy DA, to Dean Arthur Esq. re: John Hall testifying in <i>Comm. v. Thomas DeBlase</i> dated 5/24/1993 	10/29/1996
Ogrod sentenced to death	11/8/1996
Petition to Reconsider Sentence filed by Attorney Marc Frumer on behalf of John Hall in the Montgomery County case nos. 0582-94 and 6345-93 (citing cooperation in Ogrod)	11/25/1996
Post-verdict motions in Ogrod (handled by ADA Rubino for the Commonwealth)	12/20/1999-5/25/2000