

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

<b>DEWEY AMOS JONES</b>	:	
<b>c/o</b>	:	
<b>The Law Office of Michele L. Berry, LLC</b>	:	<b>Case No.</b>
<b>Michele Berry Godsey</b>	:	
<b>3584 Mooney Ave.</b>	:	
<b>Cincinnati, OH 45208</b>	:	
	:	
<b>Plaintiff,</b>	:	<b><u>COMPLAINT FOR DECLARATION OF</u></b>
<b>v.</b>	:	<b><u>PLAINTIFF AS “WRONGFULLY</u></b>
	:	<b><u>IMPRISONED INDIVIDUAL” UNDER</u></b>
<b>STATE OF OHIO</b>	:	<b><u>ORC § 2743.48 AND § 2305.02</u></b>
<b>c/o</b>	:	
<b>Sherri Bevan Walsh</b>	:	
<b>Summit County Prosecutor</b>	:	
<b>53 University Ave. #6</b>	:	
<b>Akron, OH 44308</b>	:	
	:	
<b>c/o</b>	:	
<b>Dave Yost</b>	:	
<b>Ohio Attorney General</b>	:	
<b>30 East Broad St.</b>	:	
<b>Columbus, OH 43215</b>	:	
	:	
<b>Defendant.</b>	:	
	:	

Plaintiff Dewey Amos Jones, by and through counsel, brings this declaratory judgment action seeking an order declaring him a “wrongfully imprisoned individual” pursuant to ORC § 2743.48. This court has exclusive jurisdiction to make such a determination under ORC § 2305.02.

**Introduction**

1. Plaintiff Dewey Jones spent nearly nineteen (19) years in prison for a murder he did not commit.

2. On November 22, 1994, Plaintiff Dewey Jones was indicted for the murder of Neal Rankin.
3. On February 28, 1995, Plaintiff Jones was falsely convicted of the murder of Neal Rankin, which had occurred two years before. Plaintiff Jones was sentenced to life in prison for this crime.
4. Throughout his criminal prosecution and to this day, Plaintiff Jones truthfully maintained that he had absolutely nothing to do with Mr. Rankin's murder.
5. Plaintiff Jones brings this action pursuant to ORC §2743.48 and §2305.02 seeking to be declared a "wrongfully imprisoned individual" under ORC §2743.48 and §2305.02.
6. A determination that Plaintiff Dewey Jones is a "wrongfully imprisoned individual" under ORC §2743.48 and §2305.02 will allow him to proceed for monetary relief in the Court of Claims.

### **Jurisdiction**

7. This Court has exclusive jurisdiction over this state law claim pursuant to ORC §2743.48 and §2305.02, because these provisions require a Plaintiff to bring his action to be declared a "wrongfully imprisoned individual" in the County that brought the underlying criminal charges before proceeding to the Court of Claims for monetary damages.

### **The Murder**

8. On February 14, 1993, Neal Rankin was found dead in his home from two gunshot wounds to the head. Mr. Rankin's house was ransacked and police believed that the killing took place during the course of a robbery.

9. The murder was investigated by officers from the Akron Police Department who also testified at Plaintiff Jones' trial.

**Undisclosed evidence and manipulation concerning potential eyewitnesses**

10. Although there were no eyewitnesses to the murder itself, the actual criminal may have been seen around the time murder by a neighbor named Robert Strittmatter.
11. Robert Strittmatter lived across the street from Neal Rankin and testified that he saw someone leaving Neal Rankin's home the night of the murder.
12. Strittmatter recognized Plaintiff Jones and could easily identify him by sight. Yet Strittmatter did not identify Plaintiff Jones as the man he had seen leaving Neal Rankin's home on the night of the murder. Instead Strittmatter reported that he saw a man he had never seen before leaving Rankin's house.
13. On February 14, 1993, police asked Robert Strittmatter to identify the person he saw from a photo lineup. Strittmatter identified someone who was not Plaintiff Jones.
14. On December 11, 1993, police again asked Strittmatter to identify the person he saw from a photo lineup. The photo array included Plaintiff Jones' picture, but Strittmatter still identified someone else from the photo array and not Plaintiff Jones. Strittmatter noted that he had seen Plaintiff Jones previously but Plaintiff Jones was not the person he saw the night of the murder.
15. On February 23, 1994, Strittmatter repeated what he had told police on December 11, 1993.
16. Eventually, Strittmatter identified Plaintiff Jones from a photograph. At trial, Strittmatter testified that "according to the pictures I was shows and what the

- police officers told me, yes, I am sure it was him.” See *State v. Jones*, 2013-Ohio-2986 at Paragraph 13 (Ninth Appellate District; July 10, 2013; Case No. CA 26568).
17. Law enforcement destroyed the first photo lineup Strittmatter viewed on the first day of the investigation from which Strittmatter identified an individual other than Plaintiff Jones.
  18. That very first photo array would have allowed Plaintiff Jones to demonstrate to the jury that he did not look like the person initially selected by Strittmatter. The suppression and eventual destruction of this material, exculpatory evidence prejudiced Jones’ defense at trial in violation of the *Brady* Rule and Jones’ rights to a fair trial under the United States Constitution or the Ohio Constitution.
  19. The victim Neal Rankin’s car was stolen the night of the murder and abandoned 3 miles away. When the car was recovered on February 14, 1993, police spoke to a person named Charles Hughey who stated that he saw someone exiting the car about 4 days earlier.
  20. Hughey was shown the same photo array first shown to Strittmatter. Hughey identified an individual other than Plaintiff Jones as the person he had seen near Rankin’s car a few days before.
  21. Hughey’s stepson Michal Fisher also reported seeing a man near Mr. Rankin’s car. Independently of Hughey, Fisher identified the same man from the photo array as Hughey had identified. This man was not Plaintiff Jones.

22. Ten months later when police re-interviewed Hughey and Fisher, Fisher maintained that the initial person he identified was the person he was near Rankin's stolen car.
23. Hughey, however, told an entirely different story. Whereas in his first interview with police, Hughey claimed that he had not paid much attention to the man near Rankin's stolen car and that he saw this man 4 days before the police interview on February 14, 1993, Hughey now claimed that he confronted this individual and that he saw the person on both February 13 and February 14, 1993 and not 4 days before. Now, with an entirely different story, Hughey identified Plaintiff Jones' photo.
24. Law enforcement destroyed the first photo lineup Hughey viewed on the very first day of the investigation in which Hughey identified someone other than Plaintiff Jones.
25. Law enforcement never disclosed the tactics used to get Hughey to change his story from the first day of the investigation to the version he told ten months later during the re-interview.
26. Notably, all three potential witnesses (Strittmatter, Hughey, and Fisher) described the man they saw on or around February 13, 1993 as clean-shaven.
27. On February 14, 1993, Plaintiff Jones voluntarily spoke to law enforcement about Neal Rankin's death.
28. On this day, February 14, 1993, law enforcement photographed Plaintiff Jones. In that photo, Plaintiff Jones had a mustache and full beard and could not have been confused with a clean-shaven perpetrator.

29. However, two months later, Plaintiff Jones shaved his beard and mustache.
30. In April 1993, law enforcement took another polaroid photo of Plaintiff Jones, this time depicting him without facial hair.
31. Although the February 1993 photo accurately depicted Plaintiff Jones' appearance at the time of the murder, law enforcement officers used Plaintiff Jones' clean-shaven photo from April 1993 in all subsequent photo arrays or single photo show-ups and falsely claimed that it was the photograph that had been taken in February 1993.
32. Law enforcement destroyed, concealed, or otherwise failed to disclose the initial photo of Plaintiff Jones, from February 1994, that accurately depicted Plaintiff Jones' appearance on the night of the murder.
33. Furthermore, law enforcement never disclosed the fact that the photograph of Plaintiff Jones that was used in photo arrays and that was eventually selected by Strittmatter and Hughey and used against Plaintiff at trial, was different from the photo of Plaintiff that had originally been taken around the time of the murder.
34. The nondisclosure and suppression of this material exculpatory evidence concerning the eyewitness identification evidence described in Paragraphs 10-33 in this Complaint and fully incorporated herein prejudiced Plaintiff Jones' defense at trial in violation of the *Brady* Rule and Jones' rights to a fair trial under the United States Constitution or the Ohio Constitution. Had the evidence been disclosed and presented to a jury a reasonable likelihood exists that the outcome of Plaintiff Jones' trial would have been different.

### Undisclosed Benefits to Willie Caton

35. The testimony of jailhouse snitch, Willie Caton, was a large piece of the State's flawed case against Plaintiff Jones. At trial, Caton falsely testified that while he and Plaintiff Jones were in jail together, Plaintiff Jones confessed to Rankin's murder.
36. Caton's testimony was totally false. Plaintiff Jones had nothing to do with the Rankin murder, and he never confessed to Caton or anyone else.
37. Moreover, Caton claimed that Plaintiff Jones said that a gun the police had recovered prior to his (Jones') trial was not the murder weapon. This claim about the gun is demonstrably false as subsequent (post-conviction) testing conclusively proved that the gun was indeed the gun used in the murder; Plaintiff Jones had no connection to that gun, which was recovered from another individual. As noted by the Ninth District Court of Appeals, "ballistics testing completed after the original trial established that the gun found in Billy Simpson's car was the gun from which the shots that killed Mr. Rankin were fired. DNA obtained from blood found on the gun confirmed these results." *See State v. Jones*, 2013-Ohio-2986; 9th Dist. Case No. C.A. 26568 at Footnote 1.
38. Law enforcement knew that Caton's testimony regarding the gun was false, even at the time of Jones' trial, because law enforcement was involved in recovering the murder weapon. And through their investigation, they learned who possessed that gun at the time of the murder. Nonetheless, law enforcement withheld and suppressed exculpatory information related to the murder weapon (including the identity of the person who possessed the gun at the time of the murder). The

- suppression, and eventual destruction, of this material exculpatory evidence prejudiced Plaintiff Jones' defense at trial in violation of the *Brady* Rule and Jones' rights to a fair trial under the United States Constitution or the Ohio Constitution. Had the evidence been disclosed and presented to a jury a reasonable likelihood exists that the outcome of Plaintiff Jones' trial would have been different.
39. Law enforcement also knew that Caton's testimony about the gun and about Plaintiff Jones' supposed "confession" was false and bargained for by the promise of reduced charges and help from Akron police officers in his then-pending and future criminal cases.
40. Caton was a life-long criminal who enjoyed numerous undisclosed benefits as a result of his cooperation in Plaintiff Jones' prosecution.
41. At the time law enforcement approached Caton in the Summit County Jail in 1994, Caton regularly provided "snitch" testimony for the Akron Police Department and in particular for at least one of the Akron Police Officers working on the Rankin murder-- Officer McFarland.
42. In Plaintiff Jones' case, as in many others before it, Akron police officers provided Caton with undisclosed benefits in exchange for his false testimony. In past cases, these benefits included parole advocacy and recommendations for lenient or reduced sentences.
43. Caton, who had previously been convicted of aggravated burglary, breaking and entering, receiving stolen property, and multiple parole violations, was awaiting



- sentencing on another burglary charge when he falsely claimed that Plaintiff Jones had confessed to the Rankin murder.
44. Shortly after providing Akron police officers with Plaintiff Jones' alleged "confession," Caton received a very lenient sentence of only 3 years of probation (3-15 years suspended sentence) for the burglary conviction.
45. Akron Police Officers concealed from Plaintiff Jones' defense counsel both Caton's past relationship with the Akron Police Department as a jailhouse informant and the particular benefits that Caton was provided in exchange for this testimony against Plaintiff Jones.
46. By failing to disclose this critical, material information about Caton, the Akron police officers prevented Plaintiff Jones from discrediting Caton's testimony at trial, which would have exculpated Jones.
47. The Akron police officers also withheld other material information about Caton's testimony that Plaintiff Jones' counsel could have used to impeach his testimony:
- a. The Akron police officers never disclosed why Akron police approached Caton regarding the Rankin homicide;
  - b. The Akron police officers never disclosed letters that Caton wrote to Officer McFarland in which Caton negotiated and arranged the deal by which he would offer false testimony in exchanged for preferential treatment from Officer McFarland and/or Officer Parke;
  - c. The Akron police officers never disclosed that Caton was close friends with Charles Hughey, the witness who unaccountably eventually

identified Plaintiff Jones despite initially identifying another man as the person he saw near Rankin's car.

48. The nondisclosure and suppression of this material, exculpatory evidence concerning Caton prejudiced Plaintiff Jones' defense at trial in violation of the *Brady* Rule and his rights to a fair trial under the United States Constitution or the Ohio Constitution.
49. This nondisclosure of material, exculpatory evidence concerning Caton is reasonably likely to have changed the outcome of Jones' trial if disclosed in violation of the *Brady* Rule and Jones' rights to a fair trial under the United States Constitution or the Ohio Constitution.
50. In sum, the nondisclosure and suppression of this material exculpatory evidence concerning Willie Caton, described in Paragraphs 35-47 in this Complaint and fully incorporated herein, prejudiced Plaintiff Jones' defense at trial in violation of the *Brady* Rule and Jones' rights to a fair trial under the United States Constitution or the Ohio Constitution. Had the evidence been disclosed and presented to a jury a reasonable likelihood exists that the outcome of Plaintiff Jones' trial would have been different.

#### **Additional Undisclosed Exculpatory Evidence**

51. Additionally, the Akron police officers involved in the Rankin homicide investigation failed to disclose the existence of a bloody handprint that was found on Neal Rankin's door or any forensic testing performed on that handprint. That forensic testing was exculpatory and would have aided Plaintiff Jones' defense by helping to identify the actual perpetrator. This material, exculpatory withheld

- forensic evidence would have aided Jones' defense and is reasonably likely to have changed the outcome of his trial had it been disclosed.
52. The Akron police officers involved in the Rankin homicide investigation also failed to disclose material, exculpatory audio recorded witness interviews in which witnesses identified people other than Plaintiff Jones as the perpetrator of the Rankin murder. Evidence pointing to alternative suspects might have exculpated Mr. Jones or provided valuable information with which to impeach prosecution witnesses, but law enforcement withheld these recordings from Jones' defense counsel. These recordings would have aided Jones' defense and are reasonably likely to have changed the outcome of his trial had it been disclosed.
53. Likewise, the Akron police officers involved in the Rankin homicide investigation also withheld other material, exculpatory audio recordings of Willie Caton and other key witnesses. These recordings would have aided Jones' defense and are reasonably likely to have changed the outcome of his trial had they been disclosed.
54. The Akron police officers involved in the Rankin homicide investigation also withheld the information used to indict Gary Rusu, a man initially indicted in the Rankin murder, but for whom the charges were later dropped. Information pointing to Rusu could have aided in Jones' defense and is reasonably likely to have changed the outcome of Jones' trial.
55. Additionally, the Akron police officers involved in the Rankin homicide failed to disclose: a handwritten note by Gary Rusu deemed to be "very incriminating"; and a series of letters between Akron Police Officer McFarland and Gary Rusu in

- which Officer McFarland attempted to persuade Rusu into providing false statements incriminating Plaintiff Jones. In these letters Officer McFarland offered to testify on Rusu's behalf at parole hearings and "to do anything I can to help you." Law enforcement withheld these material, exculpatory letters from Jones' defense counsel, so Jones was never able to present them to a jury. However, if Plaintiff Jones he had been able to do so, there is a reasonable likelihood that Jones' trial would have had a different outcome.
56. The nondisclosure and suppression of this material exculpatory evidence described in Paragraphs 51-55 in this Complaint and fully incorporated herein prejudiced Plaintiff Jones' defense at trial in violation of the *Brady* Rule and Jones' rights to a fair trial under the United States Constitution or the Ohio Constitution. Had the evidence been disclosed and presented to a jury a reasonable likelihood exists that the outcome of Plaintiff Jones' trial would have been different.
57. The undisclosed evidence described in Paragraphs 10-33, 35-47, and 51-55 of this Complaint and fully incorporated herein, was material, exculpatory, and reasonably likely to have changed the outcome of Jones' trial for the murder of Neal Rankin had it been disclosed to Jones' defense and available to present to the jury.
58. The suppression, destruction, or non-disclosure of evidence described in Paragraphs 10-33, 35-47, and 51-55 of this Complaint and fully incorporated herein constituted violations of the *Brady* Rule, which violated Plaintiff Jones' rights to a fair trial under the United States Constitution or the Ohio Constitution.

These *Brady* violations coupled with exculpatory post-conviction DNA test results, resulted in Jones' release from physical confinement in a state correctional institution.

59. During Plaintiff Jones' imprisonment, for the reasons described in Paragraphs 10-33, 35-47, and 51-55 of this Complaint and fully incorporated herein, an error in procedure was discovered that occurred prior to sentencing that involved violations of the *Brady* Rule, which violated Jones' rights to a fair trial under the United States Constitution or the Ohio Constitution. These *Brady* violations coupled with exculpatory post-conviction DNA test results, resulted in Jones' release from physical confinement in a state correctional institution.

**Post-Conviction DNA Evidence Proves Plaintiff Jones' Innocence**

60. On April 29, 2010, the Summit County Court of Common Pleas granted post-conviction DNA testing holding that such testing was unavailable at the time of trial and that results could be "outcome determinative."

61. In 2011, DNA test results were obtained from several pieces of physical evidence related to the murder of Neal Rankin including: (1) a rope that was tied to one of Rankin's wrists; (2) the wrist area of the long-sleeved shirt that Rankin was wearing when he was killed; (3) a clasp knife found at the murder scene; (4) the barrel of a gun recovered from the car of a man named Billy Simpson; (5) the magazine from the same weapon; and (6) fingernail clippings taken from Neal Rankin.

62. Plaintiff Jones was excluded from DNA samples taken from the rope, the knife, the shirt, the fingernail clippings, and the murder weapon (gun).

63. In sum, the DNA testing obtained in 2011 indicated for every sample taken from the crime scene evidence that yielded a result other than “inconclusive,” Plaintiff Jones was excluded as a source of the DNA.

64. The Summit County Court of Common Pleas concluded that:

“The absence of both Mr. Jones’ and Mr. Rusu’s DNA on the newly tested evidence calls into question the State’s entire theory of the case. The State pursued this case believing both Mr. Jones and Mr. Rusu were among those present and were actors in the events causing Mr. Rankin’s death. DNA evidence has failed to identify either man as having been present in the house.

This failure also undermines the testimony of State’s witness, Willie Caton. Mr. Caton testified Mr. Jones confessed to him that Mr. Jones and Mr. Rusu went to Mr. Rankin’s house to rob him and when things “got out of hand,” Mr. Jones shot Mr. Rankin. Every piece of conclusive DNA excludes Mr. Jones and Mr. Rusu from the evidence tested. The DNA does not support, and in some instances, works directly against, the testimony of Mr. Caton.

This shortcoming exacerbates the difficulties with Mr. Caton’s testimony itself. As Defendant (Jones) documents with some detail, Mr. Caton developed a long history of providing informant testimony for Akron police both before and after testifying in this trial. This body of testimony seems, at least superficially, to have resulted in some leniency or advocacy on Mr. Caton’s behalf from the police department. This newly discovered evidence calls into question the credibility and reliability of Mr. Caton’s testimony, and combined with the absence of any DNA supporting his testimony, requires this Court to grant the motion for a new trial.

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The Court finds this history, coupled with the DNA evidence, raises sufficient questions to justify a new trial. *See State v. Dewey Jones III*, Case No. CR 1994 06 1409 C (Summit County Court of Common Pleas); Judgment Entry, July 9, 2012.

65. The Ninth District Court of Appeals concluded that:

“The DNA evidence is relevant to the reliability of Willie Caton’s testimony that Jones confessed to the murder. Similarly, the test results related to the gun found in Billy Simpson’s car confirm subsequent

ballistics tests that established it as the murder weapon and bear on the reliability of Caton's testimony in that respect. Viewing the DNA testing results in the context of the evidence at trial, therefore, there is a substantial probability that were Mr. Jones tried again, a different outcome would result." *See State v. Jones*, 2013-Ohio-2986 at Paragraph 21; Case No. CA 26568 (Ninth District Court of Appeals; July 10, 2013).

66. On January 30, 2014, the State of Ohio filed a motion to dismiss all charges against Plaintiff Jones for the homicide of Neal Rankin, and all charges were subsequently dismissed.

**Plaintiff Jones satisfies the elements of a "Wrongfully Imprisoned Individual"  
Pursuant to ORC §2743.48**

67. Plaintiff Dewey Jones was charged with aggravated murder in violation of the Ohio Revised Code, by an indictment or information; the violation charged was an aggravated felony in violation of the Ohio Revised Code. *See State of Ohio v. Dewey Jones III*, Case No. CR 1994-06-1409-C (Summit County).

68. Plaintiff Jones was found guilty of at a jury trial, but did not plead guilty to, the charge of aggravated murder. The offense of which he was found guilty was an aggravated felony.

69. Plaintiff Jones was sentenced to life imprisonment in a state correctional institution for the aggravated murder conviction.

70. Pursuant to his arrest, conviction, and sentence, Plaintiff Jones was incarcerated in a state correctional institution from February 1995 to December 2013.

71. Plaintiff Jones' conviction for aggravated murder was vacated, dismissed, or reversed on appeal.

72. More specifically, Plaintiff Jones' aggravated murder conviction was vacated by this court on July 9, 2012 based on newly conducted DNA testing that excluded

- Jones from all conclusive results from the crime scene evidence which was tested, including the murder weapon. The court's decision to vacate Jones' conviction was based on this DNA evidence coupled with consideration of how the DNA evidence and undisclosed evidence concerning Willie Caton undermined the State's theory of the case. *See State v. Jones*, Case No. 1994-06-1409-C (Summit County). And the Ninth District Court of Appeals order affirmed the trial court's order. *See State v. Jones*, 2013-Ohio-2986; 9th Dist. Case No. C.A. 26568.
73. No criminal proceeding is pending against Plaintiff Jones for any act(s) associated with the aggravated murder conviction.
74. The prosecuting attorney in the case, within one year after the date of the vacating, dismissal, or reversal of Jones' aggravated murder conviction, had not sought any further appeal of right or upon leave or court.
75. The prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation, within one year after the date of the vacating, dismissal, or reversal of Jones' aggravated murder conviction, has not brought a criminal proceeding against Plaintiff Jones for any act associated with the aggravated murder conviction.
76. Within one year of the date the Summit County Court of Common pleas vacated Jones' aggravated murder conviction, the prosecuting attorney had not sought any further appeal of right or upon leave of court.
77. Within one year of the date the Ninth District Court of Appeals affirmed the Summit County Court of Appeals' decision vacating Plaintiff Jones' aggravated



- murder conviction, the prosecuting attorney had not sought any further appeal of right or upon leave of court.
78. Within one year of the date the State of Ohio dismissed all charges against Plaintiff Jones for the homicide of Neal Rankin, the prosecuting attorney had not sought any further appeal of right or upon leave of court.
79. Within one year of the date the Summit County Court of Common Pleas vacated Plaintiff Jones' aggravated murder conviction, the prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation had not brought a criminal proceeding against Plaintiff Jones for any act associated with the aggravated murder.
80. Within one year of the date the Ninth District Court of Appeals affirmed the Summit County Court of Appeals' decision vacating Plaintiff Jones' aggravated murder conviction, the prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation had not brought a criminal proceeding against Plaintiff Jones for any act associated with the aggravated murder.
81. Within one year of the date the State of Ohio dismissed all charges against Plaintiff Jones for the homicide of Neal Rankin, the prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation had not brought a criminal proceeding against Plaintiff Jones for any act associated with the aggravated murder.
82. Subsequent to sentencing or during or subsequent to imprisonment, an error in procedure was discovered that occurred prior to, during, or after sentencing, that

- involved one or more violations of the *Brady* Rule, which violated Plaintiff Jones' rights to a fair trial under the Ohio Constitution or the United States Constitution, and that resulted in Plaintiff Jones' release from physical confinement in a state correctional institution. These violations of the *Brady* Rule are based on the undisclosed, suppressed, concealed, or destroyed evidence described in Paragraphs 10-33, 35-47, and 51-55 of this Complaint, fully incorporated herein by reference.
83. The undisclosed, suppressed, concealed, or destroyed evidence described in Paragraphs 10-33, 35-47, and 51-55 of this Complaint, fully incorporated herein by reference, constitutes material, exculpatory evidence which if disclosed to Plaintiff Jones' defense counsel and presented to the jury deciding Jones' guilt for the Rankin murder, is reasonably likely to have resulted in a different outcome of Jones' trial for the murder of Mr. Rankin.
84. The Summit County Court of Common Pleas and the Ninth District Court of Appeals determined that evidence undermining the credibility and testimony of State witness Willie Caton, including the exculpatory DNA results coupled with the undisclosed evidence concerning Caton's lengthy history of cooperating with the Akron police department (in this case specifically for his testimony against Plaintiff Jones in Jones' criminal trial) in exchange for leniency, undermined the State's entire theory of the case, which ultimately warranted Plaintiff Jones' conviction to be vacated and a new trial granted. It was on this basis that Plaintiff Jones was released from physical confinement in a state correctional institution.

85. Additionally, Plaintiff Dewey Jones is completely innocent of the murder of Neal Rankin as demonstrated by Jones' exclusion from all conclusive DNA test results from the crime scene evidence that was tested, including the murder weapon coupled with no legitimate evidence pointing to his guilt. All potential eyewitnesses initially identified another individual and state witness Willie Caton has been wholly undermined by the DNA test results and his history of cooperating with the Akron Police Department in exchange for leniency.

**WHEREFORE**, Plaintiff Dewey Jones requests that a declaratory judgment be entered in his favor, declaring as follows:

- A. Plaintiff Dewey Jones was charged with aggravated murder in violation of the Ohio Revised Code by an indictment or information and the violation charged was an aggravated felony in violation of the Ohio Revised Code. *See State of Ohio v. Dewey Jones III*, Case No. CR 1994-06-1409-C (Summit County).
- B. Plaintiff Jones was found guilty of at a jury trial, but did not plead guilty to, the charge of aggravated murder. The offense of which he was found guilty was an aggravated felony.
- C. Plaintiff Jones was sentenced for the aggravated murder conviction to life imprisonment to be served in a state correctional institution.
- D. Pursuant to his arrest, conviction, and sentence, Plaintiff Jones was incarcerated in a state correctional institution from February 1995 to December 2013.
- E. Plaintiff Jones' conviction for aggravated murder was vacated, dismissed, or reversed on appeal.

- F. More specifically, Plaintiff Jones' aggravated murder conviction was vacated by this court on July 9, 2012 based on newly conducted DNA testing that excluded Jones from all conclusive results from the crime scene evidence which was tested, including the murder weapon. The court's decision to vacate Jones' conviction was based on this DNA evidence coupled with consideration of how the DNA evidence and undisclosed evidence concerning Willie Caton undermined the State's theory of the case. *See State v. Jones*, Case No. 1994-06-1409-C (Summit County). And the Ninth District Court of Appeals order affirmed the trial court's order. *See State v. Jones*, 2013-Ohio-2986; 9th Dist. Case No. C.A. 26568.
- G. No criminal proceeding is pending against Plaintiff Jones for any act(s) associated with the aggravated murder of Neal Rankin.
- H. The Prosecuting Attorney has no further appeals to pursue in this case, and more than one year has passed since Plaintiff Jones' aggravated murder conviction was vacated.
- I. The Prosecuting Attorney has not brought a criminal proceeding against Plaintiff Jones for any act associated with the charge at issue in this case, and more than one year has passed since Plaintiff Jones' aggravated murder conviction was vacated.
- J. The prosecuting attorney in the case, within one year after the date of the vacating, dismissal, or reversal of Jones' aggravated murder conviction, had not sought any further appeal of right or upon leave or court.

- K. The prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation, within one year after the date of the vacating, dismissal, or reversal of Jones' aggravated murder conviction, has not brought a criminal proceeding against Plaintiff Jones for any act associated with the aggravated murder conviction.
- L. Within one year of the date the Summit County Court of Common pleas vacated Jones' aggravated murder conviction, the prosecuting attorney had not sought any further appeal of right or upon leave of court.
- M. Within one year of the date the Ninth District Court of Appeals affirmed the Summit County Court of Appeals' decision vacating Plaintiff Jones' aggravated murder conviction, the prosecuting attorney had not sought any further appeal of right or upon leave of court.
- N. Within one year of the date the State of Ohio dismissed all charges against Plaintiff Jones for the homicide of Neal Rankin, the prosecuting attorney had not sought any further appeal of right or upon leave of court.
- O. Within one year of the date the Summit County Court of Common Pleas vacated Plaintiff Jones' aggravated murder conviction, the prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation had not brought a criminal proceeding against Plaintiff Jones for any act associated with the aggravated murder.
- P. Within one year of the date the Ninth District Court of Appeals affirmed the Summit County Court of Appeals' decision vacating Plaintiff Jones' aggravated murder conviction, the prosecuting attorney, city director of law,

village solicitor, or other chief legal officer of a municipal corporation had not brought a criminal proceeding against Plaintiff Jones for any act associated with the aggravated murder.

- Q. Within one year of the date the State of Ohio dismissed all charges against Plaintiff Jones for the homicide of Neal Rankin, the prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation had not brought a criminal proceeding against Plaintiff Jones for any act associated with the aggravated murder.
- R. Subsequent to sentencing or during or subsequent to imprisonment, an error in procedure was discovered that occurred prior to, during, or after sentencing, that involved one or more violations of the *Brady* Rule, which violated Plaintiff Jones' rights to a fair trial under the Ohio Constitution or the United States Constitution, and that resulted in Plaintiff Jones' release from physical confinement in a state correctional institution. The violation(s) of the *Brady* Rule are based on the undisclosed, suppressed, concealed, or destroyed evidence described in Paragraphs 10-33, 35-47, and 51-55 of this Complaint fully incorporated herein by reference.
- S. The undisclosed, suppressed, concealed, or destroyed evidence described in Paragraphs 10-33, 35-47, and 51-55 of this Complaint, fully incorporated herein by reference, constitutes material, exculpatory evidence which if disclosed to Plaintiff Jones' defense counsel and presented to the jury deciding Jones' guilt for the Rankin murder, is reasonably likely to have resulted in a different outcome of Jones' trial for the murder of Mr. Rankin.

- T. The Summit County Court of Common Pleas and the Ninth District Court of Appeals determined that evidence undermining the credibility and testimony of State witness Willie Caton, including the exculpatory DNA results coupled with the undisclosed evidence concerning Caton's lengthy history of cooperating with the Akron police department (in this case specifically for his testimony against Plaintiff Jones in Jones' criminal trial) in exchange for leniency, undermined the State's entire theory of the case, which ultimately warranted Plaintiff Jones' conviction to be vacated and a new trial granted. It was on this basis that Plaintiff Jones was released from physical confinement in a state correctional institution.
- U. Additionally, Plaintiff Dewey Jones is completely innocent of the murder of Neal Rankin as demonstrated by Jones' exclusion from all conclusive DNA test results from the crime scene evidence that was tested, including the murder weapon, coupled with no legitimate evidence pointing to his guilt. All potential eyewitnesses initially identified another individual and state witness Willie Caton has been wholly undermined by the DNA test results and his history of cooperating with the Akron Police Department in exchange for leniency.
- V. Plaintiff Dewey Jones is a "wrongfully imprisoned individual" for the aggravated murder charge for which he was found guilty and incarcerated in a state correctional institution, as well as for any acts associated with this charge.

W. He is entitled to commence a civil action for damages against the State of Ohio in the Court of Claims as set forth in ORC § 2743.48.

Respectfully submitted,

/s/Michele L. Berry

Michele L. Berry (0081939)

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IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

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STATE OF OHIO

Plaintiff,

v.

DEWEY JONES, III,

Defendant

SUMMIT COUNTY  
CLERK OF COURTS

CASE NO: CR 1994 06 1409 C

JUDGE ROWLANDS

JUDGMENT ENTRY

This matter comes before the Court on Dewey Jones' motion for a new trial. Upon consideration, this motion is well taken and is granted.

The Defendant argues for a new trial on two grounds – new evidence which could not reasonably have been discovered and produced at trial under Crim.R. 33(A)(6), and prosecutorial misconduct under Crim.R. 33(A)(2). In granting DNA testing on April 29, 2010, Judge Cosgrove held that such testing was unavailable at the time of trial, and that the results of such testing could be “outcome determinative.” Consistent with that ruling, those DNA test results are newly discovered evidence which could not have been discovered at trial.

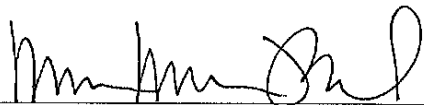
The absence of both Mr. Jones' and Mr. Rusu's DNA on the newly tested evidence calls into question the State's entire theory of the case. The State pursued this case believing both Mr. Jones and Mr. Rusu were among those present and were actors in the events causing Mr. Rankin's death. DNA evidence has failed to identify either man as having been present in the house.

This failure also undermines the testimony of the State's witness, Willie Caton. Mr. Caton testified Mr. Jones confessed to him that Mr. Jones and Mr. Rusu went to Mr. Rankin's house to rob him and when things “got out of hand,” Mr. Jones shot Mr. Rankin. Every piece of

conclusive DNA excludes Mr. Jones and Mr. Rusu from the evidence tested. The DNA does not support, and in some instances, works directly against, the testimony of Mr. Caton.

This shortcoming exacerbates the difficulties with Mr. Caton's testimony itself. As Defendant documents with some detail, Mr. Caton developed a long history of providing informant testimony for Akron police both before and after testifying in this trial. This body of testimony seems, at least superficially, to have resulted in some leniency or advocacy on Mr. Caton's behalf from the police department. This newly discovered evidence calls into question the credibility and reliability of Mr. Caton's testimony, and combined with the absence of any DNA supporting his testimony, requires this Court to grant the motion for a new trial.

In finding Mr. Caton's history relevant to his credibility, this Court offers no opinion on the actions of the State in the original trial, or its reliance on the testimony of Mr. Caton. The Court only finds this history, coupled with the DNA evidence, raises sufficient question to justify a new trial. Because there are grounds for a new trial based on newly discovered evidence, this Court does not reach the question of prosecutorial misconduct.



JUDGE MARY MARGARET ROWLANDS

cc: Assistant Attorney General Micah R. Ault  
Attorney Carrie Wood

[Cite as *State v Jones*, 2013-Ohio-2986.]

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF SUMMIT    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.     26568

Appellant

v.

DEWEY JONES, III

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.    CR 1994 06 1409 C

Appellee

DECISION AND JOURNAL ENTRY

Dated: July 10, 2013

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MOORE, Presiding Judge.

{¶1} The State of Ohio appeals the order of the Summit County Court of Common Pleas that granted Dewey Amos Jones' motion for a new trial. This Court affirms.

I.

{¶2} On February 13, 1993, someone entered the home of seventy-one-year-old Neal Rankin and, during the course of a robbery, shot him twice in the head at close range. Police found no signs of forced entry, so the investigation focused on Mr. Rankin's circle of younger acquaintances who often received money from him. Mr. Jones and his wife were known to frequent Mr. Rankin's home, and suspicion soon turned in their direction. Along with a third person, Gary Rusu, the Joneses were indicted on charges of aggravated murder. Soon, the charges against Mrs. Jones and Mr. Rusu were dismissed, leaving Mr. Jones as the only defendant.

{¶3} At trial, one of Mr. Rankin's neighbors testified that he had seen someone leaving Mr. Rankin's house on the evening of the murder and that he had identified Mr. Jones from a photographic array some months after the crime. The same witness, however, also identified two other people from photo arrays at different times. A jailhouse informant testified that Mr. Jones confessed the crime to him, but no physical evidence linked Mr. Jones to the murder. In 1995, a jury found him guilty of aggravated murder, and the trial court sentenced him to life in prison. Mr. Jones appealed, and this Court affirmed his conviction. *State v. Jones*, 9th Dist. Summit No. 17213, 1996 WL 37725 (Jan. 31, 2006).

{¶4} In 2008, Mr. Jones moved the trial court for DNA testing under R.C. 2953.73. On April 29, 2010, the trial court granted the motion, concluding that although DNA testing was not possible when he was tried given the quality of the samples, advances in technology by 2010 permitted DNA profiles to be obtained from "very small, degraded, or compromised samples." The trial court observed that "depending on whether the results of the DNA evidence yield the existence of a different perpetrator at the scene, in particular one of the individuals initially picked out of photo arrays by witnesses, there is a strong probability that a reasonable factfinder could find that [Mr. Jones] was not the killer of Neal Rankin." Once the DNA test results were obtained excluding him as a contributor, Mr. Jones moved for a new trial. The trial court granted his motion on July 9, 2012, noting that the test results "call[ed] into question the State's entire theory of the case" and "undermine[d] the testimony of the State's witness, Willie Caton" because "[t]he DNA does not support, and in some instances, works directly against, the testimony of Mr. Caton."

{¶5} The State moved for leave to appeal the decision. This Court allowed the appeal, and the State has presented one assignment of error.

## II.

**ASSIGNMENT OF ERROR**

THE TRIAL COURT ERRED BY GRANTING DEWEY JONES, III A NEW TRIAL PURSUANT TO CRIM.R. 33(A)(6).

{¶6} The State's assignment of error argues that the trial court erred by granting Mr. Jones' motion for a new trial because, according to the State, there is not a strong probability that the new evidence would change the result of the trial. We disagree.

{¶7} Under Crim.R. 33(A)(6), a trial court may grant a motion for a new trial "[w]hen new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at the trial." A new trial is justified when the newly discovered evidence "(1) discloses a strong probability that it will change the result if a new trial is granted, (2) has been discovered since the trial, (3) is such as could not in the exercise of due diligence have been discovered before the trial, (4) is material to the issues, (5) is not merely cumulative to former evidence, and (6) does not merely impeach or contradict the former evidence." *State v. Brown*, 9th Dist. Summit No. 26309, 2012-Ohio-5049, ¶ 3, quoting *State v. Petro*, 148 Ohio St. 505 (1947) syllabus. With respect to the last requirement, this Court has observed that the emphasis must be on the substantial probability of a different result and that, within that framework, newly discovered evidence that impeaches or contradicts the evidence at trial can be considered under Crim.R. 33(A)(6). *Brown* at ¶ 4.

{¶8} We review an order granting a motion for a new trial on the basis of newly discovered evidence for an abuse of the trial court's discretion. *State v. Williams*, 43 Ohio St.2d 88 (1975), paragraph two of the syllabus. Although Mr. Jones moved for a new trial based on several items of newly discovered evidence, the trial court's analysis focused on the substantial

probability that newly obtained DNA testing would lead to a different result at trial. We will, therefore, limit our consideration to the newly obtained DNA evidence as well.

{¶9} Our analysis begins with the evidence that was presented at trial. There was no physical evidence that linked Mr. Jones to the crime, and the evidence presented by the State consisted of witness identifications from photographic arrays and the testimony of a jail informant.

{¶10} According to the Summit County Coroner, Mr. Rankin died as a result of two gunshot wounds to the back of his head that were inflicted at very close range, either of which would have been fatal. The Coroner estimated that Mr. Rankin died between 4:00 p.m. and 8:00 p.m. on February 13, 1993. Police found Mr. Rankin's home in disarray and concluded that although there was no evidence of forced entry, Mr. Rankin had been killed during the course of a robbery.

{¶11} At the time of his death, Mr. Rankin was seventy-one years old. His daughter, Ellen Mary Davis, testified that despite his age, Mr. Rankin befriended many people who were significantly younger and often gave them large amounts of money. Ms. Davis knew Mr. Jones to be among her father's younger acquaintances, and she testified at trial that her father had told her once that he was afraid of Mr. Jones. Ms. Davis testified that she was out of town when her father died, and that while she made her preparations to leave, her father asked if she would give him her gun and his checkbook. Ms. Davis did not take his comment seriously.

{¶12} Charles Hughey, who lived in Mr. Rankin's neighborhood, testified that he and his fiance's son saw a man walking back and forth and getting into and out of a car during the afternoon of February 13th. Mr. Hughey, who had never seen the man before, was concerned by his behavior. Mr. Hughey testified that he confronted the man face-to-face out of concern for an

elderly neighbor. Mr. Hughey identified Mr. Jones from a photo array as the man he saw, but only after selecting another man, Larry Hayes, first. Although his fiancé's son did not testify, Mr. Hughey stated that the youth also selected Larry Hayes from the photo array. Neither placed the individual that they saw at Mr. Rankin's home.

{¶13} Robert and Carrie Strittmatter lived across the street from Mr. Rankin's Independence Avenue home. On the night of the murder around 6:00 p.m., the Strittmatters were preparing to celebrate their anniversary at a local restaurant. Mrs. Strittmatter testified that around 6:20 p.m., she heard a car "flying out of [Mr. Rankin's] driveway." Mr. Strittmatter testified that he saw someone coming out of Mr. Rankin's house. Although Mr. Strittmatter testified that he recognized Mr. Jones as a frequent visitor at Mr. Rankin's house, he could not identify Mr. Jones to the police as the person that he saw. Consequently, Police asked Mr. Strittmatter to identify the person he saw from photo arrays on three or four separate occasions. On the first occasion, just after the murder, he "picked out one gentleman that looked like the gentleman that [he had seen] come out of the house." That person was not Mr. Jones. Nine months later, in December 1993, Mr. Strittmatter selected a man named Billy Wilson from another photo array. Mr. Strittmatter recalled, "I think I said if he was clean-cut and shaved and everything, that it could have been him." In February 1994, Mr. Strittmatter made the same statement about Billy Wilson again. Finally, in May 1994, Mr. Strittmatter identified Mr. Jones from a photograph. Mr. Strittmatter testified that "[a]ccording to the pictures I was shown and what the police officers told me, yes, I am sure it was him."

{¶14} The only testimony at trial that directly implicated Mr. Jones in the murder came from William Grant Caton, who was incarcerated with Mr. Jones in the Summit County Jail. According to Mr. Caton, he talked to Mr. Jones about the murder twice. He testified that on the

first occasion, Mr. Jones told him that a gun found in a car belonging to a man named Billy Simpson was not the murder weapon, and that the actual murder weapon would never be found.<sup>1</sup> According to Mr. Caton, Mr. Jones later told him that he shot Mr. Rankin during a robbery when “things got out of hand.” On cross-examination, Mr. Caton acknowledged that he hoped to obtain a community control sentence, help finding employment, and the ability to see his children as a result of his cooperation in the prosecution of Mr. Jones.

{¶15} In 2011, DNA testing results were obtained from seven pieces of physical evidence related to the murder of Neal Rankin: (1) a rope that was tied to one of his wrists, (2) a cigarette butt found at the murder scene, (3) the wrist area of the long-sleeved shirt that Mr. Rankin was wearing when he was killed, (4) a clasp knife found at the murder scene, (5) the barrel of the gun recovered from Billy Simpson’s car, (6) the magazine from the same weapon, and (7) fingernail clippings taken from Mr. Rankin. None of the conclusive results implicate Mr. Jones.

{¶16} With respect to the rope, the testing of a first swab identified a mixture of DNA from a major and minor contributor. The profile of the major contributor is consistent with Mr. Rankin. Mr. Jones can be excluded as minor contributor. With respect to a second swab of the rope, testing yielded a partial DNA profile that identified a mixture of three or more contributors, but was inconclusive with regard to Mr. Rankin and Mr. Jones. A third swab of the rope also generated a partial profile and identified a mixture of three or more contributors. The major profile identified in that test is consistent with Mr. Rankin. The test result was inconclusive with regard to Mr. Jones.

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<sup>1</sup> Although not the basis for the trial court’s decision to grant Mr. Jones a new trial, we note that ballistics testing completed after the original trial established that the gun found in Billy Simpson’s car was the gun from which the shots that killed Mr. Rankin were fired. As discussed below, DNA obtained from blood found on the gun confirmed these results.



{¶17} With respect to the clasp knife, DNA testing identified a major and minor contributor. The profile of the major contributor is consistent with Mr. Rankin. Mr. Jones can be excluded as minor contributor. A second sample of the knife yielded inconclusive results because it contained insufficient DNA. No DNA was obtained from the handle of the knife.

{¶18} With respect to the shirt, two samples were tested. In the first, the profile of the major contributor is consistent with Mr. Rankin, and Mr. Jones can be excluded as minor contributor. Regarding the second, a mixture of DNA contributed by three or more individuals was identified. Mr. Rankin cannot be excluded as a contributor to the mixture, but Mr. Jones can be excluded.

{¶19} With respect to the fingernail clippings, the only result was consistent with Mr. Rankin's DNA.

{¶20} With respect to the murder weapon, DNA testing of the handle and barrel of the gun identified a mixture of DNA contributed by three or more individuals. Mr. Rankin cannot be excluded as a contributor, but Mr. Jones can be excluded. Regarding the magazine of the gun, both Mr. Rankin and Mr. Jones can be excluded as contributors to the mixture of DNA identified. Testing of the trigger yielded a partial DNA profile containing a mixture of two or more individuals, but the results were inconclusive.

{¶21} Reduced to the simplest possible terms, the DNA testing obtained in 2011 indicated that for every sample taken from the crime scene evidence that yielded a result other than "inconclusive," Mr. Jones can be excluded as the source of the DNA. At a minimum, as the trial court concluded, the DNA evidence is relevant to the reliability of Mr. Caton's testimony that Mr. Jones confessed to the murder. Similarly, the test results related to blood found on the gun found in Billy Simpson's car confirm subsequent ballistics tests that established it as the

murder weapon and bear on the reliability of Mr. Caton's testimony in that respect. Viewing the DNA testing results in the context of the evidence at trial, therefore, there is a substantial probability that were Mr. Jones tried again, a different outcome would result. The trial court did not abuse its discretion by granting Mr. Jones' motion for a new trial.

{¶22} The State's assignment of error is overruled.

III.

{¶23} The State's assignment of error is overruled, and the order of the Summit County Court of Common Pleas that granted Mr. Jones' motion for a new trial is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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CARLA MOORE  
FOR THE COURT

CARR, J.  
HENSAL, J.  
CONCUR

APPEARANCES:

MIKE DeWINE, Ohio Attorney General, and MICAH R. AULT, Assistant Attorney General, for Appellant.

CARRIE WOOD, Attorney at Law, and MARK GODSEY, Attorney at Law, for Appellee.