

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

	:	
KEVIN SIEHL,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	No. 18-<u>cv-77</u>
	:	
CITY OF JOHNSTOWN; CAMBRIA	:	JURY TRIAL DEMANDED
COUNTY; DAVID TULOWITZKI; DANIEL	:	
LOVETTE; MERRILL BRANT; SCOTT	:	
ERMLICK; ANGELO CANCELLIERE;	:	
LAWRENCE WAGNER,	:	
	:	
Defendants.	:	
	:	

COMPLAINT

I. PRELIMINARY STATEMENT

1. This matter concerns the extraordinary misconduct of law enforcement officers from multiple agencies—the City of Johnstown Police Department, the Pennsylvania State Police, and the Cambria County District Attorney’s Office—that caused the wrongful conviction and incarceration of plaintiff Kevin Siehl for a murder he did not commit. As a result of their actions, Mr. Siehl, an innocent man, spent 25 years in prison.

2. On July 14, 1991, Mr. Siehl’s wife, Christine Siehl, was found dead in the bathtub of her Johnstown apartment. The homicide investigation conducted by the defendant police officers and prosecutors focused immediately on Mr. Siehl. All the while, the defendants ignored investigative leads pointing to the guilt of other suspects, including a suspect known to have previously threatened to kill Christine Siehl.

3. During the course of that investigation, the defendants engaged in a pervasive pattern of misconduct aimed at proving Mr. Siehl’s guilt. Their unlawful actions occurred at

every stage of the investigation and prosecution. They issued reports falsely alleging that key pieces of forensic evidence proved Mr. Siehl committed the crime. They fabricated statements purporting to show that Mr. Siehl was with his wife at the time she was killed. They willfully failed to submit evidence for DNA testing which would have proven Mr. Siehl's innocence. They invaded Mr. Siehl's privileged relationship with his defense team to obtain confidential information which they then used in support of the prosecution. And, in the middle of Mr. Siehl's murder trial, they conducted forensic testing which produced results corroborating Mr. Siehl's defense, yet they intentionally withheld that information from Mr. Siehl and his counsel.

4. On May 16, 1992, due to the defendants' unconstitutional actions, a jury convicted Mr. Siehl for the murder of Christine Siehl. After 24 years of post-trial litigation, a direct appeal, and multiple post-conviction challenges, on July 14, 2016, Mr. Siehl's conviction was vacated. On October 13, 2016, the Commonwealth announced it would no longer prosecute Mr. Siehl, and the charges against him were dismissed. In the wake of that dismissal, the current Cambria County District Attorney assured the public that no one who was involved with Mr. Siehl's prosecution was working with the office any longer.

5. The defendants who were involved with that prosecution caused Mr. Siehl substantial and significant damages. Through his two-and-a-half decade incarceration he suffered physical pain and suffering, emotional trauma, and the deprivation of his liberty and enjoyment of life. Mr. Siehl brings this action asserting civil rights claims under 42 U.S.C. § 1983 and supplemental state law claims under Pennsylvania law seeking compensation for these harms and losses.

II. JURISDICTION

6. This Court has jurisdiction over the subject matter of this Complaint under 42 U.S.C. § 1983 and 28 U.S.C. §§ 1331, 1343(a)(3), 1343(a)(4), and 1367(a).

III. PARTIES

7. Plaintiff Kevin Siehl, aged 62, was at all times relevant to this Complaint a resident of Johnstown, Pennsylvania.

8. Defendant City of Johnstown is a municipality in the Commonwealth of Pennsylvania and owns, operates, manages, directs and controls the Johnstown Police Department, which, at all relevant times, employed defendants Cancelliere and Wagner.

9. Defendant Cambria County is a county in the Commonwealth of Pennsylvania with supervisory and financial authority over the Cambria County District Attorney's Office and policymaking authority regarding countywide funding for forensic testing in criminal investigations.

10. David Tulowitzki was, at all times relevant to this Complaint, an Assistant District Attorney in the Cambria County District Attorney's Office. He is sued in his individual capacity. He is now a Judge on the Cambria County Court of Common Pleas.

11. Daniel Lovette was, at all times relevant to this Complaint, an Assistant District Attorney in the Cambria County District Attorney's Office. He is sued in his individual capacity.

12. Merrill Brant was, at all times relevant to this Complaint, a Pennsylvania State Police trooper. He is sued in his individual capacity.

13. Scott Ermlick was, at all times relevant to this Complaint, a Pennsylvania State Police forensic scientist supervisor. He is sued in his individual capacity.

14. Angelo Cancelliere was, at all times relevant to this Complaint, a sergeant in the Johnstown Police Department. He is sued in his individual capacity.

15. Lawrence Wagner was, at all times relevant to this Complaint, an investigator in the Johnstown Police Department. He is sued in his individual capacity.

16. At all times relevant to this Complaint, the defendants acted in concert and conspiracy and were jointly and severally responsible for the harms caused to plaintiff.

17. At all times relevant to this Complaint, all defendants acted under color of state law.

IV. FACTS

A. **The Murder Of Christine Siehl And Defendants' Immediate Focus On Mr. Siehl**

18. On the evening of July 14, 1991, the landlord of the property at 412 Park Avenue in Johnstown, Pennsylvania received a report from a tenant that water was leaking out of Apartment A in that building.

19. The landlord went to the apartment and heard the bathroom shower running. Upon entering the bathroom, the landlord discovered 29-year-old Christine Siehl, dead, in the bathtub with the showerhead spraying water over her body.

20. Johnstown police were summoned to the apartment. On arrival, they found that Christine Siehl had been stabbed numerous times.

21. Defendants Sergeant Angelo Cancelliere and Investigator Lawrence Wagner were assigned to investigate the homicide.

22. Defendants Cancelliere and Wagner arrived at the apartment soon after the death was reported. They observed that the bathroom showed signs of a violent struggle, with glass from a broken mirror and kitty litter strewn about the floor and in the bathtub. There was also a

large amount of blood on the floor, smeared on the wall, and spattered in other areas, including the bathroom doorframe.

23. From her position in the bathtub, defendants Cancelliere and Wagner believed that Christine Siehl had been placed in the bathtub after she was killed and that the showerhead had been adjusted to spray water onto her body.

24. In light of their expectation that forensic evidence would be discovered in the apartment, including latent fingerprints and blood left by the killer, defendants Cancelliere and Wagner requested that the Pennsylvania State Police send personnel to process the crime scene.

25. The next day, July 15, 1991, defendant Merrill Brant, a Pennsylvania State Police trooper, arrived to process the scene.

26. Defendant Brant recovered a single latent fingerprint on the showerhead.

27. Defendant Brant also took numerous samples of blood from the bathroom and collected other items which appeared to have blood on them, including a towel.

28. Within hours of the discovery of Christine Siehl's body, and before any forensic testing could be completed, defendants Cancelliere and Wagner decided to focus their investigation on plaintiff Kevin Siehl.

29. Mr. Siehl and Christine Siehl were married. They were not living in the same home, as Mr. Siehl lived in his parents' nearby house. However, they frequently spent time together and intended to move in to a shared apartment during the summer of 1991.

30. Defendants Cancelliere and Wagner relied on the fact that Mr. Siehl and Christine Siehl had verbal arguments, which sometime led to physical altercations and which were reported to police, to make Mr. Siehl their prime suspect.

31. Defendants Cancelliere and Wagner were aware of at least two other suspects: Frank Wills, a man who had been in a relationship with Christine Siehl while she was married to Mr. Siehl, and Robert “Bobby” Prebahalla, Mr. Siehl’s nephew, who was known to have stated that he would kill Christine Siehl if she ever hurt Mr. Siehl. Yet defendants Cancelliere and Wagner did little, if any, investigation of these suspects and sought to build a case against Mr. Siehl regardless of the actual facts.

32. Despite their knowledge of these facts concerning other suspects, defendants Cancelliere and Wagner informed all other agents participating in the investigation, including all other defendants, of their belief that Mr. Siehl was the person who murdered Christine Siehl.

33. In the immediate wake of Christine Siehl’s murder, the defendants jointly agreed to seek out evidence which they could use to prosecute Mr. Siehl for the murder.

**B. Fabricated Forensic Evidence – The Latent Fingerprint
And The “Deterioration” Theory**

34. On July 17, 1991, three days after Christine Siehl was found dead, defendant Brant compared the latent print he lifted from the showerhead in Christine Siehl’s apartment with a rolled ink fingerprint card from Mr. Siehl.

35. In a report dated July 23, 1991, defendant Brant stated his conclusion that the latent print found on the showerhead was a match to Kevin Siehl’s thumbprint.

36. After he issued his report claiming that the latent fingerprint left on the showerhead belonged to Mr. Siehl, defendant Brant informed investigating officers and prosecutors, including defendants Cancelliere, Wagner, Tulowitzki, and Lovette of his purported belief that the fingerprint had not started to deteriorate at the time it was discovered so that it must have been left within the previous 24 to 36 hours.

37. This information was false. As confirmed by expert analysis secured by Mr. Siehl's counsel in post-conviction proceedings, there is no scientific support for the proposition that the lack of deterioration shows that a latent print is of recent origin. To the contrary, latent prints left on certain surfaces, like the chrome showerhead at the murder scene, can be identified months after they have been deposited without indications of deterioration.

38. Defendant Brant intentionally provided this false information to investigating officers and prosecutors in an effort to corroborate the prosecution's theory of the case that Mr. Siehl adjusted the showerhead to spray water on Christine Siehl after she was killed and, also, to undermine an entirely innocent reason for the print's presence in that Mr. Siehl may have used the shower on previous occasions before the day of the murder.

39. Alternatively, defendant Brant reached this conclusion by recklessly disregarding generally accepted fingerprint analysis standards in order to provide an opinion corroborating the investigating officers' and prosecutors' beliefs of Mr. Siehl's guilt.

40. Further, as confirmed by expert analysis secured by Mr. Siehl's counsel in post-conviction proceedings, the latent print found on the showerhead was, in fact, not a match to Mr. Siehl's thumbprint, and no reasonable expert conducting analysis consistent with standards applicable in 1991 would have concluded to the contrary.

41. Defendant Brant's false conclusion concerning the fingerprint match was made intentionally, or was the result of defendant Brant's reckless disregard of generally accepted fingerprint analysis standards, in order to provide an opinion corroborating the investigating officers' and prosecutors' beliefs of Mr. Siehl's guilt.

C. Fabricated Forensic Evidence – The Blood Spatter

42. All evidence recovered from Christine Siehl's apartment was provided to the Pennsylvania State Police Greensburg Regional Laboratory.

43. Defendant Scott Ermlick, a forensic scientist supervisor in the Laboratory, evaluated the evidence through visual inspection and chemical analysis.

44. Two of the samples reviewed by defendant Ermlick, labeled "Item 21" and "Item 22," were small, thin bloodstains found on the bathroom doorframe.

45. Items 21 and 22 were found on the doorframe with a nearly perfect parallel left-to-right configuration.

46. On August 6, 1991, defendant Ermlick issued a report stating that "Item 22" matched Mr. Siehl's blood and that "Item 21" matched the blood of Christine Siehl.

47. Defendant Ermlick's references supported the theory that the killer was injured during the repeated stabbing of Christine Siehl. The conclusion that Mr. Siehl's blood was found in the same location as Christine Siehl's blood thus corroborated the prosecution's theory that Mr. Siehl was the murderer.

48. Defendant Ermlick's conclusion was false and fabricated. As confirmed by expert analysis regarding blood spatter patterns presented by Mr. Siehl's counsel in post-conviction proceedings, it would be highly unlikely that two bloodstains found in parallel configuration, as were Items 21 and 22, would have come from two different people.

49. Defendant Ermlick intentionally provided this false information to investigating officers and prosecutors, even before DNA testing could have been conducted in an effort to corroborate the then accepted theory of the case. Alternatively, defendant Ermlick reached this

conclusion by recklessly disregarding generally accepted blood analysis standards in order to provide opinions supporting investigating officers' and prosecutors' beliefs of Mr. Siehl's guilt.

D. Fabricated Forensic Evidence – The Tennis Shoes

50. On the evening of July 14, 1991, after defendants Cancelliere and Wagner had already developed their belief that Mr. Siehl was the murderer, defendant Cancelliere and Johnstown Police Chief Linda Weaver went to Mr. Siehl's parents' home to interview him.

51. Defendants Cancelliere and Wagner reported that another Johnstown police officer present during the interview observed what appeared to be blood on the right L.A. Gear tennis shoe Mr. Siehl was wearing.

52. On July 26, 1991, based on defendant Brant's false report concerning the latent fingerprint found on the showerhead, defendants Cancelliere and Wagner secured and executed a search warrant at Mr. Siehl's parents' home.

53. During the search, the officers seized, among other things, the L.A. Gear tennis shoes Mr. Siehl had been wearing at the time of the July 14 interview.

54. After the execution of the search warrant, defendants Cancelliere and Wagner conducted an additional interview of Mr. Siehl in which they asked Mr. Siehl if there was any reason for his blood to be in Christine Siehl's apartment. According to a report authored by defendants Cancelliere and Wagner, Mr. Siehl responded that in the week before Christine Siehl's death, he had scraped his right ankle while walking up the steps to her apartment and that this scrape caused a brush burn and some bleeding.

55. The L.A. Gear tennis shoes recovered in the July 26 search were submitted to defendant Ermlick for testing.

56. Defendant Ermlick's August 6, 1991 report concerning his laboratory analysis stated that the "tennis shoes" were found to be "presumptively positive" for blood. The report stated that there was an insufficient quantity to determine the characteristics of the blood or to individualize the stain.

57. Defendant Ermlick's reference to the "presumptively positive" presence of blood was intended to give the false impression that both of Mr. Siehl's tennis shoes were stained with blood to provide corroboration for the investigating officers' theory that Mr. Siehl killed Christine Siehl.

58. Defendant Ermlick's August 6, 1991 report suggesting that there was blood on both of Mr. Siehl's tennis shoes was inconsistent with defendant Ermlick's contemporaneous lab notes. Those notes stated that Mr. Siehl's right shoe was "unremarkable" and that the left shoe had a "stain" that was a "very light smear in the heel area." The notes stated that a "hematest" was positive but noted that the species of blood could not be determined.

59. Defendant Ermlick's lab notes were not disclosed to the defense at the time of trial and Mr. Siehl and his counsel did not learn of the inconsistency between the lab notes and the August 6, 1991 report until twenty years after Mr. Siehl's conviction, when the notes were obtained pursuant to a court-authorized subpoena issued by his post-conviction counsel.¹

60. Defendant Ermlick's August 6, 1991 report conveyed to investigating officers and prosecutors false information suggesting that both of Mr. Siehl's shoes were stained with blood in an intentional effort to support the prosecution's case theory. Alternatively, defendant Ermlick conveyed this information with reckless disregard for the false impression it created.

¹ Defendant Ermlick's later mid-trial evaluation of the shoes, which was, likewise, never disclosed to Mr. Siehl and his counsel, produced even more inconsistent information. *See infra* ¶¶ 109-113.

E. The Failure To Seek DNA Testing

61. By July 1991, law enforcement agencies throughout the United States knew that DNA testing of biological material found in criminal investigations could provide conclusive evidence of guilt or innocence in a criminal case.

62. Despite this knowledge, defendant Cambria County, with deliberate indifference to the likelihood that persons suspected of criminal offenses could be exonerated from criminal responsibility by such testing, failed to establish policies, practices, or protocols concerning DNA testing of biological evidence found in criminal investigations. Defendant Cambria County also failed to establish guidelines as to which governmental entity within the County would pay for such testing in a criminal investigation.

63. The evidence recovered in Christine Siehl's apartment included an abundance of biological material which investigating officers believed contained the murderer's blood and which could have been submitted for DNA testing. On August 1, 1991, defendant Ermlick, before he issued his final report, told defendant Wagner that he believed Mr. Siehl's blood was in a sample taken from the bathroom door frame, *see supra* ¶¶ 42-49, and on a towel. Defendant Ermlick suggested to defendant Wagner that some of the samples should be sent to a laboratory for DNA testing, at a cost of about \$2,250.00.

64. Notwithstanding the need for accurate testing of these blood samples and the availability of DNA analysis, as a result of the lack of policies and protocols regarding DNA testing in the County, the District Attorney's Office and the Johnstown Police Department, with deliberate indifference to the rights of Mr. Siehl, failed to ensure that DNA testing would be undertaken.

65. To the contrary, during the time period in which the Johnstown Police Department, the Cambria County District Attorney's Office, and the Cambria County Coroner's Office failed to approve payment for the necessary DNA testing, defendant Ermlick deliberately and recklessly consumed all of the blood samples in his non-DNA testing.

66. The failure to arrange for DNA testing was proximately caused (a) by the failure of Cambria County, with deliberate indifference, to establish policies, practices, protocols, and/or guidelines concerning, among other things, the preservation of biological material for DNA testing and arrangements to pay for DNA testing, and (b) by defendant Ermlick's intentional and/or reckless practices in carrying out blood group testing without ensuring the preservation of sufficient evidence for submission to a DNA laboratory.

67. Had investigating officers conducted or arranged for DNA testing, that testing could have exonerated Mr. Siehl as none of his blood or other biological material was present in an area that would show that he was the murderer. Further, that testing could have provided evidence as to the identity of the real killer.

F. Fabricated Reports Aimed At Disproving Mr. Siehl's Truthful Alibi

68. On July 25, 1991, defendant Wagner spoke to a witness who was present in the apartment next to Christine Siehl's apartment on the night of July 12-13, 1991.

69. The witness informed defendant Wagner that she heard a loud commotion coming from Christine Siehl's apartment, which lasted for about ten to fifteen minutes at approximately 1:30 a.m. on July 13.

70. Based on this information, investigating officers and prosecutors believed that Christine Siehl was murdered at approximately 1:30 a.m. on July 13, 1991.

71. When defendant Cancelliere and other officers interviewed Mr. Siehl on July 14, 1991, hours after Christine Siehl's body was located, they asked Mr. Siehl about his whereabouts over the previous several days.

72. Mr. Siehl informed defendant Cancelliere and the other officers that he had picked Christine Siehl up from work at approximately 10:30 p.m. on July 12, 1991, that they had gone to two different bars together, and that Christine Siehl dropped him off at his parents' home.

73. Mr. Siehl told defendant Cancelliere and other officers that he could not be certain as to what time he arrived home, but he estimated that it was some time after 1:00 a.m. and well before 2:00 a.m.

74. Mr. Siehl told defendant Cancelliere and other officers that he was certain Christine Siehl dropped him off at his parents' home well before 2:00 a.m., because he knew that she intended to meet with Frank Wills at another bar before that bar's 2:00 a.m. last call.

75. Defendant Cancelliere and the other officers who heard Mr. Siehl's account knew that Mr. Siehl's parents could have corroborated the account, but they made no effort to interview them.

76. Instead of investigating Mr. Siehl's statements, defendants Cancelliere and Wagner prepared a report detailing their interview with Mr. Siehl and stating that Mr. Siehl informed them that he had been with Christine Siehl until 2:00 a.m. or 3:00 a.m. on July 13, 1991.

77. This statement was false. Mr. Siehl never told defendants Cancelliere and Wagner, or any other investigating officer, that he had been with Christine Siehl until 2:00 a.m. or 3:00 a.m.

78. Defendants Cancelliere and Wagner intentionally provided this false information in order to corroborate their false belief that Mr. Siehl killed Christine Siehl at 1:30 a.m.

79. In January 1992, four months after they decided to arrest Mr. Siehl, defendants Cancelliere and Wagner interviewed Mr. Siehl's father, Alonzo Siehl, who provided his recollection that Mr. Siehl was in his home at or around 1:00 a.m. on July 13, 1991, and that he did not leave again that night.

80. This alibi evidence—that Mr. Siehl was in his home at the time investigating officers believe Christine Siehl was murdered—was later corroborated by the family's next-door neighbor, Freddie Cooper, who reported that he observed Mr. Siehl arrive and enter the home at approximately 1:00 a.m.

81. Even upon receiving this truthful alibi evidence, defendants Cancelliere and Wagner falsely maintained that Mr. Siehl stated that he was with Christine Siehl until between 2:00 a.m. and 3:00 a.m. and that his presence with her showed that he was the killer.

G. The Failure To Consider Other Suspects

82. Investigating officers were aware of at least two other suspects who had a motive to kill Christine Siehl: Frank Wills, a man whom Christine Siehl dated while married to Mr. Siehl, and Robert "Bobby" Prebahalla, Mr. Siehl's nephew who was known to strongly dislike Christine Siehl, and who had threatened to kill her if she did anything to hurt Mr. Siehl.

83. On July 14, 1991, the day Christine Siehl's body was found, investigating officers received a report that Mr. Prebahalla called his girlfriend and told her that he and unnamed others would be charged with murder and that she should say that Mr. Prebahalla had been in Pittsburgh.

84. On July 19, 1991, defendants Cancelliere and Wagner brought Mr. Prebahalla to Johnstown police headquarters. As they noted in a later written report, Mr. Prebahalla was “extremely nervous.” His hands were “trembling” and he had “very shakey [*sic*] speech.” He said to the officers, “Am I going to jail.” He also said “I don’t want to go to jail,” and “I knew this was going to happen.”

85. Throughout the course of their investigation, investigating officers asked Mr. Prebahalla on several occasions to submit to a polygraph examination. On at least two occasions, on August 28, 1991, and on November 21, 1991, Mr. Prebahalla agreed to participate in a polygraph examination, but, on both dates, he refused the examination at the last moment.

86. Despite evidence strongly suggestive of Mr. Prebahalla’s guilt in the murder of Christine Siehl, the defendant officers and prosecutors improperly excluded him as a suspect and maintained their theory that Mr. Siehl was responsible for the murder.

H. Mr. Siehl’s Arrest And The Initiation Of A Capital Prosecution

87. Throughout the investigation of Christine Siehl’s murder in July and early August 1991, defendants Cancelliere, Wagner, Brant, and Ermlick communicated among themselves and with prosecutors, including defendant Assistant District Attorneys Tulowitzki and Lovette, the knowingly false allegations that the fingerprint on the showerhead was left close in time to its discovery and matched Mr. Siehl, that Mr. Siehl’s blood was found in the sample taken from the bathroom doorframe, that blood was found on Mr. Siehl’s tennis shoes, and that Mr. Siehl admitted to being with Christine Siehl until after the time when investigating officers believed the murder occurred, as a basis to charge Mr. Siehl with the murder of Christine Siehl.

88. On August 30, 1991, defendants Cancelliere and Wagner swore out an affidavit of probable cause in support of a warrant to arrest Mr. Siehl for the murder. The affidavit cited as

facts supporting probable cause the physical evidence obtained at the crime scene by defendant Brant, laboratory analysis described in defendant Ermlick's report, and statements from witnesses and Mr. Siehl. Defendants Cancelliere and Wagner knew or recklessly disregarded the fact that each of these allegations was false and/or fabricated during the course of the investigation.

89. There was no probable cause to support the charges against Mr. Siehl.

90. Defendants Cancelliere, Wagner, Brant, and Ermlick acted in concert and conspiracy and maliciously to initiate a baseless prosecution against Mr. Siehl by relying on knowingly or recklessly falsified and fabricated evidence.

91. A warrant for Mr. Siehl's arrest on murder charges was issued on August 30, 1991, and Mr. Siehl was formally charged with the crime.

92. Thereafter, on October 1, 1991, the defendant prosecutors, defendants Tulowitzki and Lovette, informed Mr. Siehl's defense counsel that they would seek the death penalty for Mr. Siehl.

I. The Invasion Of Mr. Siehl's Privileged Attorney-Client Relationship

93. As Mr. Siehl and his defense attorneys from the Cambria County Public Defender's Office prepared to defend against the murder charges in a capital trial, the attorneys sought permission from the court to retain a forensic scientist for expert consultation concerning the forensic evidence in the case.

94. The court authorized the defense to retain an expert, W. Stewart Bennett, thus making him part of Mr. Siehl's defense team.

95. Defense counsel requested the prosecution to turn over certain items of evidence so that Bennett could conduct an independent forensic examination.

96. At a pretrial hearing, the trial court ordered that the prosecution allow Bennett to examine the evidence, but permitted, over a defense objection, a representative of the prosecution to be present throughout Bennett's examination so as to preserve the chain of custody. The court expressly instructed that the representative of the prosecution was not to be "looking over the [expert's] shoulder" in any manner that would interfere with the expert's independent investigation for the defense.

97. Defendant Brant was selected to observe the examination.

98. Defendants Tulowitzki, Lovette, Cancelliere, Wagner, and Ermlick conspired with defendant Brant to use the opportunity to observe Bennett's examination to seek out privileged and confidential information, all in violation of the court's order to the contrary.

99. Alternatively, defendants Tulowitzki and Lovette failed to instruct defendant Brant that he should not observe Bennett's examination, thereby failing to prevent defendant Brant from violating the court's order precluding interference with an independent investigation for the defense.

100. Throughout the three-day examination of evidence, which was conducted in Bennett's small home laboratory between March 18, 1992 and March 20, 1992, Brant violated the court order by closely observing Bennett's forensic testing and analysis, paying especially close attention to Bennett's examination of the L.A. Gear tennis shoes taken during the search of Mr. Siehl's parents' home.

101. Following the examination, Bennett informed Mr. Siehl's defense counsel that his examination of the tennis shoes supported the prosecution's theory that Mr. Siehl murdered Christine Siehl.

102. Bennett's conclusions in this regard were proven to be false. In fact, there was no incriminating evidence on the shoes. To the contrary, as explained below, *infra* ¶¶ 109-113, there was evidence on the shoes which fully corroborated Mr. Siehl's account to police on July 26, 1991, that he had wounded his ankle in the week before Christine Siehl's body was discovered.

103. Despite Bennett's incorrect conclusions, the fact that Brant closely observed his investigation, as the defendants jointly planned he would do, resulted in a serious infringement of Mr. Siehl's privileged relationship with his counsel and their consulting expert.

104. After improperly observing Bennett's evaluation of the tennis shoes in violation of the trial court's order, defendant Brant prepared typewritten notes, which he shared with defendants Tulowitzki and Lovette, stating: "I know and I feel sure that Stewart Bennett will answer honestly that he found some incriminating evidence on the tennis shoe."

105. In pre-trial proceedings, Mr. Siehl's defense lawyers stated that they intended to present Bennett's testimony on specific and limited subject matters which had been presented in a report that was provided to the prosecution, and which, given Bennett's erroneous findings, did not include reference to the tennis shoes. The defense requested that the trial court preclude the prosecution from cross-examining Bennett about any findings not referenced in his written report or addressed on direct examination.

106. Based on their belief that Bennett would state that he found incriminating evidence on the tennis shoes, information they gained through defendant Brant's unlawful invasion of Mr. Siehl's defense team's work product, all in violation of the trial court's order, defendants Tulowitzki and Lovette opposed this request and stated that the prosecution intended to conduct a thorough cross examination of Bennett, addressing all of his findings.

107. The trial court denied the defense motion and therefore the defense did not present Bennett at trial.

108. Mr. Siehl was thus denied the right to present expert testimony critical to the defense in a case that turned on forensic evidence—the fingerprint, the blood spatter, and the presumptive blood on the tennis shoes. The unlawful actions of the defendants in piercing the defense camp, invading privileged relationships, and illegally obtaining defense material and evidence caused overwhelming prejudice to Mr. Siehl’s ability to defend himself at trial.

J. The Mid-Trial Forensic Testing And Suppression Of Exculpatory Evidence

109. In pretrial proceedings, in response to requests by Mr. Siehl’s counsel, the trial court ordered the trial prosecutors, defendants Tulowitzki and Lovette, to disclose to the defense reports and results from forensic testing performed on evidence related to the prosecution.

110. Further, defendants Tulowitzki and Lovette were obligated under the U.S. and Pennsylvania Constitutions and the Pennsylvania Rules of Criminal Procedure to disclose such evidence, and any exculpatory or impeaching evidence to the defense.

111. On May 11, 1992, the first day of testimony in Mr. Siehl’s capital murder trial, defendants Tulowitzki and Lovette directed defendant Ermlick to conduct additional examination and testing of the L.A. Gear tennis shoes.

112. Defendant Ermlick did so the same day, and he prepared detailed written lab notes of the examination. In those notes, he made no mention of any blood on the left tennis shoe. The notes stated only that there was a presumptive bloodstain on the right shoe, which appeared to be “from the inside out.”

113. These findings were highly significant:

- a. First, the finding of a blood stain “from the inside out” directly corroborated Mr. Siehl’s statement to police that he had wounded his right ankle in the week before Christine Siehl’s body was located and that that this injury caused bleeding. Additionally, a bloodstain “from the inside out” would not have been caused by exposure to blood at the scene of the murder. Any such blood would have resulted in a stain “from the outside in.”
- b. Second, defendant Ermlick’s finding of a stain on the right shoe, but not the left shoe, was inconsistent with his lab notes from the previous examination in July and August of 1991. His notes from the earlier examination stated that the left shoe had a “very light smear” in the heel area and that the right shoe was “unremarkable.” These strikingly inconsistent findings over two different examinations provided good reason to seriously question defendant Ermlick’s qualifications as a forensic examiner and to doubt the credibility of his findings as to all of the forensic evidence in the case.

114. Defendant Ermlick’s findings of May 11, 1992 were shared that same day with investigating officers and the trial prosecutors, including defendants Tulowitzki and Lovette.

115. As of May 11, 1992, these defendants knew that defendant Ermlick’s examination resulted in evidence that corroborated Mr. Siehl’s statement to police, undermined the prosecution theory, and raised questions about the quality and credibility of the investigation that preceded Mr. Siehl’s arrest. In sum, these defendants were in possession of highly exculpatory evidence for the defense.

116. Defendants Tulowitzki and Lovette, with full knowledge of the significance and importance of defendant Ermlick's findings, directed defendant Ermlick not to prepare any formal report, all in an effort to conceal and suppress evidence favorable to the defense.

117. Following this direction, defendant Ermlick made a handwritten note for his file stating that no formal report of the examination was required.

118. Defendants Tulowitzki and Lovette intentionally withheld information about defendant Ermlick's findings from Mr. Siehl and his counsel. They did so knowing that their actions violated the trial court's orders requiring the production to the defense of all forensic testing findings.

119. As a result of the decision to suppress this evidence, Mr. Siehl and his counsel received neither the lab notes underlying the August 6, 1991 report nor the lab notes from the May 11, 1992 examination. Those notes were withheld from Mr. Siehl and his counsel until more than twenty years later when his post-conviction counsel obtained them pursuant to a court-authorized subpoena.

120. On the second day of trial, the day after defendant Ermlick performed an additional examination of the tennis shoes, defendants Tulowitzki and Lovette called defendant Ermlick to the stand, at which time he testified consistently with his formal report from August 6, 1991 that there was a stain on the shoes which was presumptively positive for blood.

121. Without access to defendant Ermlick's highly inconsistent lab notes, Mr. Siehl and his counsel had no ability to challenge defendant Ermlick's testimony.

122. During defendant Ermlick's testimony, the trial judge asked defendants Tulowitzki and Lovette whether any additional testing or examinations had been conducted on the shoes.

123. Defendant Tulowitzki falsely informed the trial judge that no additional testing had been conducted, and defendant Lovette failed to correct defendant Tulowitzki's false statement.

124. Defendants Tulowitzki and Lovette intentionally violated the trial court's order requiring disclosure of the results of forensic testing so as to deprive Mr. Siehl's defense of information that would undermine the prosecution theory of the case.

K. Mr. Siehl's Conviction And Challenges To That Conviction

125. Throughout the trial and at closing argument, defendants Tulowitzki and Lovette emphasized that the forensic evidence, especially the fingerprint and the bloodstains on the doorframe, proved Mr. Siehl's guilt beyond a reasonable doubt.

126. On May 16, 1992, the jury convicted Mr. Siehl of first-degree murder. After a penalty hearing, the jury unanimously decided that Mr. Siehl should be sentenced to life imprisonment.

127. Following the verdict, Mr. Siehl engaged in persistent efforts to undo his conviction, including post-trial motions, a direct appeal, and post-conviction collateral attacks.

128. Throughout that litigation, it remained clear that the forensic evidence referenced above was the critical evidence leading to Mr. Siehl's conviction.

129. The U.S. Court of Appeals for the Third Circuit stated in a 2009 decision reversing a denial of Mr. Siehl's habeas corpus petition that:

The forensic evidence core of the Commonwealth's case was such that the failure to challenge it would likely lead the jury to conclude not just that Siehl had on some occasion been in the bathroom, but also that (1) he had been in the victim's bathroom within 24 hours of the discovery of the fingerprint; (2) he had stood outside and beside the tub and directed the showerhead toward the place where the victim's body was found lying in the tub; (3) during his violent struggle with the victim in the bathroom,

his blood and hers spattered together on the bathroom doorframe; and (4) none of the 20 items in the bathroom that tested positive for blood was consistent with the blood of the two other suspects.

Siehl v. Grace, 561 F.3d 189, 196 (3d Cir. 2009).

130. The Third Circuit's 2009 decision resulted in a remand to the district court for further proceedings on Mr. Siehl's claims that, among other things, Mr. Siehl's lawyers had failed to properly secure expert testimony which would have conclusively proven that the latent print found on the shower head did not match Mr. Siehl's fingerprints and that the blood spatter evidence located on the bathroom door frame did not contain Mr. Siehl's blood.

131. While in litigation on those claims, in November 2012, Mr. Siehl's post-conviction lawyers learned through court-ordered discovery for the first time in the then-21-year history of the case that defendant Ermlick had conducted additional testing on the L.A. Gear tennis shoes in the middle of the trial.

132. Thereafter, following a hearing and the court-authorized issuance of a subpoena to the Pennsylvania State Police, in late 2012, Mr. Siehl's post-conviction lawyers received for the first time the laboratory notes concerning defendant Ermlick's July-August 1991 testing and May 1992 testing.

133. Those notes provided conclusive evidence that the prosecution's reliance on alleged bloodstains on the L.A. Gear tennis shoes was baseless as outlined above. *See supra* ¶¶ 112-113.

134. This evidence and the highly suspect manner in which it was produced also provided a substantial basis to attack the credibility of all other forensic conclusions reached by prosecution witnesses in the case, including, most significantly, conclusions regarding the blood spatter and fingerprint attributed to Mr. Siehl.

135. Based on this newly discovered evidence, Mr. Siehl's post-conviction lawyers filed a second petition under the Post Conviction Relief Act in state court.

136. After a hearing, on July 14, 2016, the court granted the petition and vacated Mr. Siehl's conviction.

137. On October 13, 2016, after the Pennsylvania Attorney General's office conducted a thorough investigation, it announced that it would not prosecute Mr. Siehl, and the charges against him were dismissed.

L. Mr. Siehl's Damages

138. At all times relevant to this Complaint, the conduct of defendants Tulowitzki, Lovette, Brant, Ermlick, Cancelliere, and Wagner was in willful, reckless and callous disregard of Mr. Siehl's rights under federal and state law.

139. The unlawful conduct of these defendants caused Mr. Siehl to be improperly arrested, prosecuted, imprisoned, unfairly tried, wrongfully convicted, and forced to serve more than 25 years in prison for a crime he did not commit

140. As a direct and proximate result of defendants' actions and omissions, Mr. Siehl sustained injuries and damages, including loss of his freedom for more than twenty-five years, loss of the most productive years of his adult life, pain and suffering, mental anguish, emotional distress, indignities, degradation, permanent loss of natural psychological development, and restrictions on all forms of personal freedom including but not limited to diet, sleep, personal contact, educational opportunity, vocational opportunity, athletic opportunity, personal fulfillment, sexual activity, family relations, reading, television, movies, travel, enjoyment, and freedom of speech and expression.

141. As a direct and proximate result of defendants' actions and omissions, Mr. Siehl was deprived of his familial relationships, including raising his two children, who were in their 40s by the time he was released from prison, and participating in the lives of his grandchildren, who were adults by the time of his release from prison.

142. As a direct and proximate result of defendants' actions and omissions, Mr. Siehl sustained economic injuries and damages, including loss of income and loss of career opportunities, as he was incarcerated during the most productive years of his adult life.

143. As a direct and proximate result of defendants' actions and omissions, Mr. Siehl sustained physical injuries and damages, including physical pain and suffering, personal injuries, physical illness, and inadequate medical care.

V. CAUSES OF ACTION

COUNT I

Plaintiff v. Defendants Brant, Ermlick, Cancelliere, and Wagner Malicious Prosecution

144. Defendants Brant, Ermlick, Cancelliere, and Wagner caused the initiation of a prosecution against Mr. Siehl without probable cause and with malice. The criminal charges they caused to issue against Mr. Siehl were terminated favorably to Mr. Siehl. These defendants, therefore, subjected Mr. Siehl to a malicious prosecution in violation of the Fourth and/or Fourteenth Amendments to the U.S. Constitution.

COUNT II

Plaintiff v. Defendants Brant, Ermlick, Cancelliere, and Wagner Fabrication Of Evidence

145. Defendants Brant, Ermlick, Cancelliere, and Wagner fabricated evidence in support of a prosecution against Mr. Siehl, including falsely claiming that an incriminating fingerprint had been left within a short time of its discovery and was Mr. Siehl's, falsely

claiming that Mr. Siehl's blood was found at the scene of the murder of Christine Siehl, falsely claiming that Mr. Siehl's L.A. Gear tennis shoes showed evidence of blood from the murder scene, and falsely claiming that Mr. Siehl stated that he was with Christine Siehl at the time she was believed to have been murdered. The fabrication of this evidence caused Mr. Siehl's wrongful conviction and, therefore, violated his right to a fair trial and due process of law under the Fourteenth Amendment to the U.S. Constitution.

COUNT III

**Plaintiff v. Defendants Tulowitzki, Lovette, Brant, Ermlick, Cancelliere, and Wagner
Violation Of *Brady v. Maryland***

146. Defendants Tulowitzki, Lovette, Brant, Ermlick, Cancelliere, and Wagner, by failing to disclose to Mr. Siehl and his counsel their knowledge that the evidence described above was fabricated and by failing to disclose evidence critical to impeachment, including defendant Ermlick's laboratory notes, withheld material exculpatory evidence in violation of Mr. Siehl's right to due process of law under the Fourteenth Amendment to the U.S. Constitution as interpreted in *Brady v. Maryland* and its progeny.

147. Defendants Tulowitzki and Lovette committed these acts in violation of court orders mandating disclosure of all evidence obtained from forensic testing and therefore were acting in an administrative and/or investigatory capacity.

COUNT IV

**Plaintiff v. Defendants Tulowitzki, Lovette, Brant, Ermlick, Cancelliere, and Wagner
Violation Of Right to Counsel And Right To A Fair Trial**

148. Defendants Tulowitzki, Lovette, Brant, Ermlick, Cancelliere, and Wagner, by acting jointly to interfere with the confidential and privileged attorney-client relationship attaching to the work of a defense expert retained for consultation and testimony at trial, violated

Mr. Siehl's right to a fair trial and counsel under the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution.

149. Defendants Tulowitzki and Lovette committed these acts in violation of court orders precluding interference with the defense expert's evaluation of forensic evidence and therefore were acting in an administrative and/or investigatory capacity.

COUNT V
Plaintiff v. Defendant Ermlick
Violation Of Right To A Fair Trial

150. Defendant Ermlick intentionally and/or recklessly expended all forensic evidence which could have been used for DNA testing knowing that doing so would preclude Mr. Siehl from obtaining evidence which would have exonerated him and, as such, deprived Mr. Siehl of a fair trial in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution.

COUNT VI
Plaintiff v. Defendant City of Johnstown
Monell Claim – Failure To Train, Supervise, And Discipline

151. Defendant City of Johnstown failed to properly train, supervise and/or discipline defendants Cancelliere and Wagner with regard to proper police investigative practices, including:

- a. Police responsibility to initiate prosecutions only upon a finding of probable cause;
- b. Police responsibility not to fabricate evidence against a criminal suspect;
- c. Police responsibility to disclose to the defense material exculpatory and impeachment evidence;

- d. Police responsibility not to interfere with a criminal defendant's privileged and confidential relationship with counsel and members of the defense team; and
- e. Police responsibility not to prematurely eliminate consideration of suspects in a criminal investigation.

152. Defendant City of Johnstown was deliberately indifferent to the fact that its failure to train, supervise, and discipline defendants Cancelliere and Wagner regarding the above would lead to unconstitutional conduct as in this case, and, as such, caused the above-described violations of Mr. Siehl's constitutional rights.

COUNT VII
Plaintiff v. Defendant Cambria County
Monell Claim – Failure to Implement DNA Policies, Practices, and Procedures

153. Defendant Cambria County, despite its knowledge that DNA testing was a necessary component of criminal investigations, failed to establish policies, practices, and procedures ensuring proper testing and financing for such testing. Defendant Cambria County was deliberately indifferent to the fact that its failure to establish such policies, practices, and procedures would lead to constitutional violations as in this case, and, as such, caused the above-described violations of Mr. Siehl's constitutional rights.

COUNT VIII
Plaintiff v. Defendants Brant, Ermlick, Cancelliere, and Wagner
Supplemental Claim – Malicious Prosecution

154. Defendants Brant, Ermlick, Cancelliere, and Wagner, as described above, caused the malicious prosecution of Mr. Siehl, and, as such, committed the tort of malicious prosecution under the laws of the Commonwealth of Pennsylvania.

WHEREFORE, plaintiff Kevin Siehl respectfully requests:

- A. Compensatory damages as to all defendants;
- B. Punitive damages as to defendants Tulowitzki, Lovette, Brant, Ermlick, Cancelliere, and Wagner;
- C. Reasonable attorneys' fees and costs;
- D. Such other and further relief as may appear just and appropriate.

Plaintiff hereby demands a jury trial.

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* *Pro Hac Vice* applications pending