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throughout the basement, including a significant amount on a couch cushion in the basement. Unidentified fingerprints, moreover, were found on a coffee carafe placed in the rafters of the basement; law enforcement believed the carafe was used by the perpetrator to transport water into the barrel in which Brown's body was submerged. *People v. Prante*, 147 Ill. App. 3d 1039, 1042 (5th Dist. 1986); Ex. 5 (Department of Law Enforcement, Division of Support Services, Forensic Report and Corresponding Handwritten Notes, July 11, 1978 ("7/11/78 Forensic Report")); Ex. 6 (Post Mortem Examination by Dr. Harry Parks, June 21, 1978, and Supplemental Report re: Examination by Chief Skinner, July 7, 1978 ("Post Mortem Report")); Ex. 7 (Federal Bureau of Investigation, Report of the Latent Fingerprint Section, July 20, 1981 ("Fingerprint Report")); T. 201, 228, 408, 506-08.¹

Four years after the murder, John Prante—an honorably-discharged Navy veteran with no significant criminal history—was arrested for this offense. His arrest arose after the effectuation of a pre-conceived, high-profile media campaign that included the exhumation of Brown's body, the announcement that law enforcement was closing in on a suspect and an arrest was imminent, the public disclosure that Brown's shoulder had a bite mark, and the subsequent and immediate surveillance of Prante. T. 946-49. Following this media campaign, a number of individuals came forward for the first time, alleging that four years prior Prante had made a number of previously unreported inculpatory statements or admissions in the days immediately following the offense. These witness statements—when coupled with two forensic odontologists' conclusions that marks on Brown's shoulder identified in black-and-white photos were consistent with Prante's

¹ Citations to the trial record refer to the consecutively paginated pages 1-1113, and will be referenced as "T. _." Proceedings from trial dates July 5, 1983 – July 9, 1983 were renumbered starting from page 1. Citations to proceedings from those dates will be cited as "T. 7/5/83-7/9/83 at _." Transcripts from other proceedings that are renumbered starting from page 1 will note the date of the proceeding and be cited as "T. [date] at _."

dental impressions (a claim now completely discredited by new science)—led to Prante’s arrest. Prante’s subsequent conviction rested on this evidence, as well as allegations that he made inconsistent statements over a four-year period about his whereabouts on the day of the crime.

Prante adamantly protested his innocence during pre-arrest questioning by police, as well as during taped conversations with a police informant. During his 1983 trial, Prante asserted his innocence during his own testimony, as well as during his allocution at his death penalty sentencing hearing. During his more than three-decade-long ongoing incarceration in the Illinois Department of Corrections, Prante has continued to maintain his complete and total innocence of any crimes directed against Karla Brown. T. 600-44, 1069; T. 9/27/83 at 71-72.

With this Motion, Prante seeks to develop evidence to prove his long-standing claims of innocence. In particular, pursuant to Illinois’ post-conviction forensic testing statute, 725 ILCS 5/116-3, Prante seeks DNA and fingerprint testing of the crucial crime scene evidence recovered in, on, or around Brown’s body, or on instruments the State identified as used in the commission of the offense. This includes advanced DNA testing and the potential use of the Combined DNA Index System (CODIS) to identify the donor of any male DNA on (1) the victim’s rape kit (including on the semen recovered) and her fingernail scrapings; (2) blood on the couch cushion (which prior reports indicate may include a mixture of two blood types); and (3) various items obviously handled by the perpetrator, including the socks and wiring that bound the victim and the tampon removed from her body. The sworn affidavit of DNA expert Huma Nasir indicates that all of this testing is viable.² Ex. 1 (Affidavit of Huma Nasir (“Nasir Affidavit”). Finally, Prante seeks fingerprint testing and the use of the Integrated Automated Fingerprint

² Prante reserves the right to seek additional DNA testing on other pieces of evidence, including, but not limited to, items of evidence identified in “Category 2” of DNA expert Huma Nasir’s affidavit. (Ex. 1 at ¶¶ 35-38).

Identification System (IAFIS) to attempt to identify the source of the unknown fingerprint on the coffee carafe that law enforcement has long believed was used by the perpetrator to transfer water to the barrel in which Brown was submerged.

Prante's requests easily satisfy the requirements of section 116-3 in-and-of-themselves. Forensic testing, moreover, is particularly important in this case given that advancements in the scientific study of both bite marks and memory over the last three decades significantly undermine the evidence used to support Prante's conviction. *See* Ex. 4 at 87 (President's Council of Advisors on Science and Technology, *Report to the President: Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods* (Extracted Portion Related to Bite Mark Evidence), September 2016 ("PCAST Report"))³ (finding that "bitemark analysis does not meet the scientific standards for foundational validity, and is far from meeting such standards. To the contrary, available scientific evidence strongly suggests that examiners *cannot consistently agree on whether an injury is a human bitemark and cannot identify the source of bitemark with reasonable accuracy.*") (emphasis added); Ex. 2 at ¶ 11 (Affidavit of Dr. Iain Pretty ("Pretty Affidavit")) (describing lack of "evidence to support the fact that forensic dentists can even agree on what a bitemark is—never mind the more advanced proposal that this pattern may actually be linked to someone") (emphasis in original); Ex. 3 at 11 (Affidavit of Dr. Nancy Franklin ("Franklin Affidavit")) (reviewing scientific literature and case materials and concluding that "the witness evidence in *People v Prante* was subject to a range of sources of potential distortion that could bring about strong agreement among witnesses, regardless of accuracy").

³ The bite mark portion of this report is included as Exhibit 4 to this Petition. The full report is available at https://www.whitehouse.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf.

Ultimately, given that undersigned attorneys will pay all costs associated with the forensic testing requests in this case, Prante respectfully requests that this Court grant this Motion.

FACTUAL AND PROCEDURAL HISTORY

A. The Crime Scene, Recovery of Physical Evidence, and Initial Forensic Examination

Karla Brown and her boyfriend, Mark Fair, moved into a new home at 979 Acton, Wood River, Illinois, on or around June 1978; T. 397; *Prante*, 147 Ill. App. 3d at 1041. Paul Main, a friend of Defendant John Prante, occupied the home next door at 989 Acton. *Prante*, 147 Ill. App. 3d at 1042. During the evening of Tuesday, June 20, 1978, Fair and some friends moved some items from Fair's previous home to the new home on Acton. T. 398-99. After the move, the friends stayed around with Fair and Brown, eating food and drinking some beer. T. 399. They left that evening. *Id.*

The next morning, June 21, 1978, Fair left for work at approximately 7:45 a.m., and Brown was alone in the home. T. 400. The house was in order when he left. T. 400-01. Brown spoke with her friend, Jamie Hale, on the phone at approximately 9:30 a.m., and then to another friend, Debra Davis, at around 10:00 a.m. *Prante*, 147 Ill. App. 3d at 1042-43. Thereafter, Mark Fair's mother, Helen Fair, called Brown back after missing a call from her around 9 a.m.; Brown and Helen spoke before this call was interrupted when Brown told Helen Fair that she would call her back because someone was at the door. *Id.* at 1043. This was the last known time anyone spoke to or saw Brown alive. Subsequent phone calls to Brown's home later that day went unanswered, and when Debra Davis stopped by Brown's home sometime after 11:00 a.m., no one answered the door, even though Brown's van was at the house. *Id.*

At approximately 5:30 p.m., Mark Fair and his friend, Thomas Fiegenbaum, arrived back at the home, where they ultimately discovered Brown's body in the basement. Her head and shoulders were immersed in water in a large metal lard can that Fair and Brown had used to store winter clothes. *Id.* at 1041-42. Her hands were tied behind her back with a white extension cord, and her body was bent over the barrel at the waist. *Id.* at 1042. Brown was wearing a heavy sweater that she never wore during the summer months; the sweater was buttoned at the top. Two men's socks were tied around her neck. *Id.* The socks belonged to Mark Fair and had been kept in a dresser drawer in the bedroom upstairs. *Id.*

Brown's face and neck were badly battered. She had two large lacerations on her face, her jaw was fractured, and there were several bruises on her throat indicative of strangulation. T. 503. Dr. Harry Parks, the pathologist who conducted the autopsy shortly after the body was discovered, concluded that Brown died via strangulation and that Brown's facial injuries were the result of a blunt object. These facial injuries occurred contemporaneous with her death, which Dr. Parks estimated was around or sometime before 11:45 a.m. that day. T. 506-08. Dr. Park did not identify any of Brown's injuries as human bite marks.

Brown's body was nude from the waist down. T. 408. Her blue jeans were at her feet. T.162, 213. Brown had been menstruating at the time of her death, T. 7/5/83-7/9/83 at 28, and a bloody tampon was on a coffee table next to the couch, near two cigarettes in an ashtray. *Prante*, 147 Ill. App. 3d at 1042; T. 201.

The blood on the tampon was Type A,⁴ matching Brown's blood type. T. 377. The two cigarettes also showed "Type A group specific substance." Ex. 5 (7/11/78 Forensic Report). There were also several hairs recovered from the victim's body, including hairs in each of the

⁴ Approximately 40% of Caucasians have Type A blood. See American Red Cross, Blood Types, available at <http://www.redcrossblood.org/learn-about-blood/blood-types>.

victim's hands and hairs on her stomach. *Id.* No forensic testing was conducted on the hairs on Brown's stomach or in her left hand; the hair in her right hand was determined to be animal hair. *Id.*

A cushion on the couch had a large stain of blood which showed Types A and O group substances. *Id.*; T. 183. Like Brown, Defendant John Prante, who was arrested four years later, has Type A blood.

The same coffee pot that had been in the coffee maker at the time Mark Fair left for work in the morning was discovered in the rafters of the basement. T. 167-68, 227-28, 400-01. Police eventually recovered two fingerprints from that coffee pot and compared the prints to over thirty individuals, including Brown, Fair, several police officers involved in the investigation, and Prante. All were excluded. Ex. 7 (Fingerprint Report). The donor of those prints has never been identified.

Other items of physical evidence were also recovered. Pathologist Dr. Parks took swabs of the victim's vagina and, according to a report written by Wood River Chief of Police Ralph Skinner, Dr. Parks recovered "a small amount of sperm indicating there was sexual intercourse within the past 12 hours, but that the sperm appeared to be fresh." Ex. 6 (Post Mortem Report). There was insufficient sample at the time to conduct any further testing.

Although Dr. Parks did not conclude with certainty that the crime involved sexual assault, he indicated that "it could have been rape if the victim allowed the sex act due to the subject's physical stature." *Id.* Dr. Parks suggested the small amount of sperm could have been from "[p]re-ejaculation, removal of penis before ejaculation, [or from] someone who just recently had a vasectomy." *Id.*

Pathologist Dr. Mary Case, who the State retained four years later to conduct a second autopsy of Brown's exhumed body, concluded more firmly that "it was a sexual assault, that [Brown] was sexually assaulted in the course of all the other things that were done to her." T. 7/5/83-7/9/83 at 28. Asked why she felt that way, Dr. Case noted that the female victim was partially undressed, her clothes and tampon were removed, and she was "killed in a manner in which close body contact was made."⁵ *Id.*

Fingernail scrapings were also recovered from both Brown's left and right hands, but both provided insufficient sample for analysis. Ex. 5 (7/11/78 Forensic Report).

B. Subsequent Law Enforcement Investigation and State's Case

1. Investigation: Summer 1978 – Summer 1980

In the two years following the offense, police investigated and spoke to many witnesses. In the days following the murder, six-year-old Eric Moses, and his grandma Edna Moses, reported that on June 21, 1978, at approximately 10:45 a.m., they pulled into Brown's driveway on their way to Eric's dentist appointment in order to turn around, and Eric saw a man and a woman talking. T. 327-28, 338-39. Although Eric "didn't see them very good," he described the man as wearing a white t-shirt and blue jeans. T. 330. Eric went on to say he saw the girl "sort of got mad at [the man]." T. 331. Edna also described the man as wearing a white t-shirt, although, in response to the State's question, agreed it "could ... have been sort of a light yellow t-shirt or off color white." T. 340-41.⁶

⁵ Dr. Case also concluded that the victim died of drowning, not strangulation. T. 7/5/83-7/9/83 at 29-30.

⁶ Prosecutor Don Weber co-authored a book related to this case. The "Foreword" of the book describes it as follows: "This is a factual account of a brutal murder and the long investigation that followed, accurately and painstakingly recounted using the official transcripts, records, and documents, and the carefully reported memories of the people who knew the case inside and out."

Paul Main's aunt, Edna Vancil, who was also a neighbor of Brown's, testified that she remembered seeing John Prante at Main's house between 9:30 and 10:00 a.m. on June 21, 1978. T. 347. Main lived next door to Brown. T. 346. Prante had driven Main's sister, Elizabeth Westbrook, over to Vancil's home in his red Volkswagen. T. 347. According to Vancil, Main and Prante sat on the front porch drinking beer and smoking pot until 11:00 a.m., at which point they "disappeared" for an hour. T. 348-49. They were back on the porch at noon, where they stayed until about 3:00 p.m. T. 349-50. Vancil spoke to the police the day of the murder and did not tell them any of this information. T. 353. Indeed, she never reported this information to anyone until she received a subpoena to testify five years later. *Id.* Despite claiming in opening statements that Elizabeth Westbrook would testify to corroborate Vancil's statement, the State ended up not calling Westbrook to testify. T. 19-20, 29, 541.

Police also spoke to Paul Main and John Prante during the initial stages of the investigation. According to statements Prante made to police in the days and weeks after the murder, Main, Prante, and perhaps others were hanging out on Main's porch the evening before Brown's body was found. *Prante*, 147 Ill. App. 3d at 1052. John Scroggins testified he was with Main and Prante, and Prante was driving a red Volkswagen that day. T. 428. Scroggins knew Brown from school; according to Scroggins, he introduced Prante to Brown that day. T. 427, 429. Scroggins testified that Prante later kept bringing up Brown and commenting on her looks. T. 432-33, 439.

During Prante's initial conversations with police, Prante also said that he stopped by Main's house on the morning Brown's body was discovered to ask Main if he wanted to fill out

All of the events are true." See Don Weber & Charles Bosworth Jr., *Silent Witness: The Karla Brown Murder Case*, Foreword (1993) (hereinafter "Silent Witness").

According to this book, Edna Moses was hypnotized prior to her trial testimony. See *id.* at 254.

some employment applications with him. Main was unavailable, so Prante went himself. Prante was uncertain about whether he returned to Main's house that day, but he informed police that he first learned of Brown's murder that evening at Harold Pollard's house. *Prante*, 147 Ill. App. 3d at 1052. Employment records largely corroborated Prante's testimony that he filled out job applications that day. *Id.* at 1043-44. During the first weeks of the investigation, Prante also was given a polygraph, where it was determined that he was being "truthful." Ex. 8 (Department of Law Enforcement, Division of Support Services, Supplemental Report re: Polygraph Examination, October 12, 1978).

In the months that followed, according to newspaper accounts, law enforcement had focused their investigation, at least in part, on Joseph Milazzo, a Wood River man who had convictions related to two separate burglaries and attacks on Wood River women. Ex. 9 (*Man held in attempted rape in Wood River*, The Alton Telegraph, July 24, 1978; Paul R. Gale, *Home invasions, rapes stump Wood River police*, The Alton Telegraph, Aug. 5, 1978). A cellmate of Milazzo's later testified that upon seeing news of the Karla Brown case on the television, Milazzo admitted he killed her. T. 7/5/83-7/9/83 at 170. Milazzo, however, was never arrested for this crime.

2. Investigation: Summer 1980 – Spring 1982

In the summer of 1980, crime scene technician Alva Busch met with Dr. Homer Campbell, a forensic odontologist at the University of New Mexico, to speak with him about some new image enhancement technology. T. 473-74; T. 7/5/83-7/9/83 at 35-36. After this meeting, Dr. Campbell received and reviewed a black-and-white photo of the victim's body taken at the crime scene and identified a purported bite mark on the victim's right collarbone.

Prante, 147 Ill. App. 3d at 1044. During the two years prior, no one involved in the investigation had said anything about a bite mark on the victim's body. *Id.*

Over the next two years, no arrests were made. However, the investigation turned in the spring of 1982 when local investigators drove to the FBI Academy in Washington, D.C., and consulted with a criminal profiler named John Douglas. Upon arrival, the FBI profiler examined crime scene photos and asked a few basic questions. *Silent Witness* at 137. Douglas then spoke, mostly uninterrupted, for a lengthy period of time, describing in detail what he believed were the characteristics of the killer. *Id.* at 137-46. Douglas's profile of this killer was so detailed that he even concluded the likely color and make of the car ("an old red or orange Volkswagon or a Datsun, a car like that") the killer was currently driving. *Id.* at 141. The investigators left this meeting believing "the field of suspects had been reduced scientifically" to only two people: Paul Main or John Prante. *Id.* at 147.⁷

3. Investigation: Late Spring 1982

At the suggestion of Douglas, an investigative plan was hatched to coordinate an exhumation of Brown's body with the fourth anniversary of her murder, alongside a high-profile media campaign. Prosecutor Don Weber was the primary spokesman for this media campaign, and, at the advice of Douglas, he confidently and publicly asserted that law enforcement was closing in on a suspect and an arrest was imminent. *Prante*, 147 Ill. App. 3d at 1044. Further, information about the purported existence of bite marks on the victim was leaked to the media. *Id.*; T. 946. *See also, e.g.*, Ex. 10 (Charles Bosworth, Jr., *Bite Mark On Body May Point To Killer*, St. Louis Post-Dispatch, May 1982) (published newspaper account predating Prante's arrest describing (in the first paragraph) Prosecutor Weber as indicating a "bite mark on the collarbone

⁷ Prosecutor Weber's book renames Paul Main as "Dwayne Conway."

of a woman strangled four years ago may be the evidence that will identify her killer”); *see also* Ex. 3 at 5 (Franklin Affidavit) (citing multiple articles and explaining that “there is no objective record of the witnesses reporting Prante’s reference to bite marks until after a mark found on the victim was publicized by news media in the summer of 1982”). While the town of Wood River was saturated with media reports about this four-year-old murder, law enforcement put Prante under surveillance.

In the days following the media blitz, witnesses came forward reporting incriminating statements Prante supposedly made in the days after the murder, four years prior. The first to come forward was Vickie White. On June 1, 1982, Vickie told police that within three days of Brown’s murder, she was at the home of Spencer and Roxanne Bond. T. 525, 548. Both of the Bonds were present, as was Vickie’s now ex-husband, Mark White. T. 549. Prante came over and started talking about Karla Brown. According to Vickie, Prante told them he had been in Brown’s basement, saw her body in a curled up position, and that she had teeth marks on her shoulder; Vickie further stated, however, that Prante said Brown was “all right when he left.” T. 550-51, 553. In particular, White testified that Prante gestured to his shoulder when describing the bite mark. T. 550. Prante also supposedly said that he and Paul Main had to get their stories straight and get out of state. T. 552.

After speaking to Vickie, the police spoke to Mark White and husband and wife Roxanne and Spencer Bond later in the day on June 1, 1982. T. 527-30. Roxanne remembered the described get-together at the Bonds only “very barely,” had no idea when it actually happened, and did not testify to anything of substance Prante purportedly said during that time. T. 560-61. Mark White testified that he only remembered Prante saying he had been over at Brown’s house and was supposed to go over again later, that Prante said he had to get out of town, and that he

was going to be questioned by the police. T. 563-65. Mark testified he saw Prante gesture to his shoulder while talking to Bond, but he did not know what they were discussing. T. 566-67.

Spencer Bond apparently remembered the most detail. He testified that Prante said he had been at Karla's house around 2:00-3:00 p.m. the afternoon of her death and "was supposed to go back and see her because he might have a possible date with her." T. 572. Prante then said she was in a "curled position stuck in a pail of water down in the basement," that she had been bitten on her left shoulder, and that she had been tied up. T. 572-74. Bond testified Prante gestured to his left shoulder when indicating the location of the bite marks. T. 573. Spencer Bond also recalled Prante talking about Brown several times before that evening, and that Prante also said he and Paul Main had to get their stories straight. T. 575. All of the witnesses testified the conversation happened on different days—Spencer originally told the police it happened 7-10 days after the murder, T. 581, later changing it to the Friday after Brown was killed⁸ "at the latest" and maybe even the same day of the murder. T. 580. Vickie White said she "was pretty sure it was a Friday," T. 549, whereas Mark White said he was "sure" it was a Saturday. T. 563.

After reporting this information to the police, Spencer Bond agreed to surreptitiously record conversations with Prante. T. 578. He did so twice—first, a day later, on June 2, 1982, and then a second time two days after that on June 4, 1982; only the June 2, 1982 recording was admitted into evidence at Prante's trial. Bond confronted Prante on those surreptitious recordings. He specifically told Prante that Bond remembered Prante admitting previously that he knew Brown before she was murdered and that Prante previously said he was over at her house that day. Prante denied saying either of these things. T. 616-18, 622. When Prante realized Bond was accusing him of the murder, he adamantly asserted his innocence. T. 622.

⁸ Brown's body was discovered on a Wednesday, and the State has always maintained she was killed that day.

To the extent that Prante previously said to Bond that he had to get out of town, Prante explained that it was because he was “deal’in [drugs]” and had nothing to do with Brown’s murder. *Id.* Prante did say on the recording that four years later he did recall being with Paul Main on his porch when the cops showed up at Brown’s house. T. 623. On the recording, Prante also apologized for previously making a pass at Bond’s wife. T. 639-40.

Two days after this eavesdrop, on June 4, 1982, Prante consented to go with the police to get his dental impressions taken. T. 647. According to Officer Richard White, on the drive over, Prante told them he remembered the Brown murder because he was at Paul Main’s house, sitting on the front porch when the police arrived. T. 647-48. Prante told Officer White he had seen Brown in the yard that day. T. 648. Prante also asked Officer White if Spencer Bond was working for the police. *Id.* Prante then told Officer White he had never killed anyone and was innocent. T. 649.

Later that evening, Bond wore an eavesdropping device again when he went to Prante’s home. T. 662. They spoke for nearly two hours; again, Prante protested his innocence and denied any involvement in the murder, stating he was at Paul Main’s house that day. T. 664, 670. Prante also told Bond that he had spoken to Prosecutor Don Weber earlier that day: Weber told Prante that Joe Seitz—a man who had a history of beating women and sticking their heads in toilets—was the chief suspect. T. 669. Bond, again, confronted Prante about previously making passes at his wife. T. 671.

In the days that followed, the State’s now-discredited odontology experts—Drs. Homer Campbell and Lowell Levine⁹—concluded that the bite marks previously identified in the black-

⁹ In the decades since Prante’s trial, both of these forensic dentists and their techniques have contributed to *four* wrongful convictions and indictments, out of the more than two dozen known to have been obtained by bite mark evidence more generally. *See* Ex. 15 (The Innocence Project,

and-white photograph of Brown's body were consistent with the spacing of Prante's teeth.

Prante, 147 Ill. App. 3d at 1051. They also concluded that the bite marks were inconsistent with dental impressions taken from Paul Main, Joe Seitz, and Joe Milazzo. *Id.* at 1051, 1058. The State later elicited the testimony of Prante's dentist, Dr. Ronald Mullen, who testified that the

List of Wrongful Bite Mark Convictions and Indictments). Keith Harward, for example, was convicted of a rape and murder based largely on the testimony of Dr. Levine that Harward's dentition matched bite marks on one of the victims. Harward was exonerated and freed after 33 years prison in April 2016, when DNA testing conclusively proved his innocence. See Erik Eckholm, *Virginia Inmate Freed After DNA Tests Refute Bite-Mark Evidence*, NY Times, April 8, 2016, available at http://www.nytimes.com/2016/04/09/us/virginia-inmate-freed-after-dna-tests-refute-bite-mark-evidence.html?_r=0. Dr. Levine told news reporters that he was "upset and quite disturbed at the result, given that the case produced wide agreement among examiners who had access to more information than is often available. 'This case should persuade all my colleagues to agree with the need for more scientific research and investigation,'" Levine said." See Spencer Hsu, *Va. exoneration underscores mounting challenges to bite-mark evidence*, Wash. Post, April 8, 2016, available at https://www.washingtonpost.com/local/public-safety/va-exoneration-underscores-to-mounting-challenges-to-bite-mark-evidence/2016/04/08/55bbfe98-fd9a-11e5-886f-a037dba38301_story.html?utm_term=.f6a1475f1a1f

Dr. Levine also contributed to the wrongful arrest of Edmund Burke. Burke was arrested in 1998 for the murder of a 75-year-old woman; a police dog had led officers to Burke's home. Dr. Levine matched Burke's teeth to a bite mark on the victim to a "reasonable degree of scientific certainty." Another board-certified dentist then confirmed the match. After Burke had spent 41 days in jail, DNA taken from the mark excluded him; ultimately this DNA was matched through the FBI's Combined DNA Index System ("CODIS") to an already incarcerated offender. See Radley Balko, *How the Flawed 'Science' of Bite Mark Analysis Has Sent Innocent People to Prison*, Wash. Post, Feb. 13, 2015, available at <https://www.washingtonpost.com/news/the-watch/wp/2015/02/13/how-the-flawed-science-of-bite-mark-analysis-has-sent-innocent-people-to-jail/>.

Dr. Campbell's conclusions, too, have contributed to wrongful convictions. His testimony ostensibly matching Joe Sidney Williams to a bite mark on the victim of a rape and murder led to the convictions of both Williams and his codefendant, Calvin Washington. See Innocence Project, *Know the Cases: Calvin Washington*, <http://www.innocenceproject.org/cases/calvin-washington/>; Michael Hall, *The Murders at the Lake*, Texas Monthly, April 2014, available at <http://www.texasmonthly.com/story/investigating-the-lake-waco-murders?fullpage=1>. Later DNA tests excluded both Washington and Williams from semen found inside the victim; this semen instead matched to one of the police's initial suspects, who went on to commit a similar crime shortly after the first victim was killed. See National Registry of Exonerations, *Joe Sidney Williams*, available at <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3748>.

spacing of Prante's teeth was very rare, occurring in less than one percent of his patients. *Id* at 1051.

Prante was arrested on June 8, 1982. T. 653. Upon his arrest, Prante informed the arresting officers that he believed that he erred when he told Prosecutor Weber days before that he had been at Paul Main's house on the day of the murder: Prante had spoken to Paul Main in the interim, and Prante stated that he now believed that he was only there the day before, and was not at Main's house the afternoon of the murder. T. 655, 657.

Prante's arrest—and the allegation that his teeth impressions were supposedly consistent with the purported bite mark on Brown's shoulder—were covered throughout the media. Ex. 3 at 5-6; Ex. 11 (Selected Media Articles Cited by Dr. Franklin). Several weeks later, on July 22, 1982, Harold Pollard was interviewed for the first time. Pollard testified that Prante came over the evening of Brown's murder wearing a yellow "Big Bamboo" t-shirt and driving a red square-back Volkswagen. T. 738-40. Prante told Pollard that he just left Main's house and that the girl next door had been killed. T. 740. Prante supposedly told Pollard that he got a glimpse of the girl by looking over the police's shoulder, and that the victim's body was found curled up on the floor with her hands tied behind her back. *Id.* Pollard also claimed that Prante had been talking about Brown earlier, making crude sexual comments about her. T. 743. Pollard voluntarily entered drug treatment therapy six months after his statements to police. T. 942.

A week later, Susan Lutz told the police that she had sex with Prante 12-15 times. T. 730. She claimed, on one instance in 1981 or 1982, she became pregnant, which caused Prante to push and grab her in anger. *Id.* In another instance, after they had sex, Lutz claimed that Prante whispered in her ear that he had killed a woman. T. 731. When she later asked him about it,

Prante said he couldn't talk about it because he "would lose [his] freedom." *Id.* Lutz also claimed that on a couple occasions Prante bit her on the neck. T. 732.

C. Defense Case

Prante called seventeen witnesses in his defense. *Prante*, 147 Ill. App. 3d at 1054. A number of witnesses testified to Prante's calm, quiet, and kind character. T. 7/5/83-7/9/83 at 198-225. Several other witnesses testified that Prante did not drive or have access to a red Volkswagen until well after June 21, 1978. T. 7/5/83-7/9/83 at 187, 191-92.

Prante presented three experts to address the purported bite marks. Pediatric dentist Dr. Donald Eugene Ore was qualified as an expert in photography, and he testified that the black-and-white photo used by the State's experts both to conclude that there was a bite mark and to compare to standards was flawed. The photo had no reference to scale and the enlargement may have caused distortion. T. 7/5/83-7/9/83 at 240-42. Forensic odontologists Drs. Edward J. Pavlik¹⁰ and Norman Sperber both testified that, given the black-and-white photograph, the angle of the photograph, and the lack of scale and possible distortion in the photo, they had no idea whether the marks on Brown's neck were bite marks at all and certainly could not make reliable comparisons to standards. *Prante*, 147 Ill. App. 3d at 1055. They also expressed concern that pulling at the victim's skin could have distorted whatever mark it was, and explained that the fact that the mark was in a straight line made it less likely to be a bite mark. *Id.* When asked on cross-examination to assume it was a bite mark, they did agree that Prante could have made it, although Dr. Pavlik added that Joe Seitz could also have done so. *Id.* No defense witness questioned the scientific validity or reliability of bite mark analysis as a forensic technique.

¹⁰ Dr. Pavlik's surname is misspelled in the trial transcripts as "Pavlec."

Prante testified in his own defense. He knew nothing about the crime and was entirely innocent. T. 886. Prante testified that his memory of the events surrounding Karla Brown's murder were influenced by what he had read, heard, and come to believe recently. T. 843. He did believe he was at Paul Main's house the day before the murder and that John Scroggins arrived as well. T. 845. He recalled Scroggins speaking to Brown, but Prante did not. T. 845, 910, 932-33.

As far as the next day, Prante found it very difficult to remember any details. He read the "discovery" and "previous statements," and while some things "click[ed]" in his memory, other things did not. T. 846. Prante testified that "things came together in this last year" and his memory had "improved over the last year when [he] started seeing all of that sort of stuff and things started clicking back into place." T. 846, 904. Prante testified that he believed that he did go to Paul Main's that morning, but left shortly after to go fill out job applications. T. 846-49. He thought he may have come back later in the day. T. 849. He would have been driving a blue Volkswagen, as he did not have the red Volkswagen until October 1978. T. 847, 860-61. He was not wearing, nor did he own, a yellow "Big Bamboo" t-shirt. T. 847-48, 884.

As far as going back to Main's house later in the day, Prante "keep[s] having this feeling that [he] was there all day; that [he] stayed the entire day; that it just keeps coming to mind." T. 850. He explained that "people have been telling [him] a lot of different things." *Id.* At the time of his testimony, Prante had a memory of the police arriving. T. 851. Prante then said "[i]t keeps feeling right to say" that he left Main's house thereafter and went to Harold Pollard's. T. 853. Thereafter, Paul showed up and explained more about the situation at Brown's house. *Id.* But Prante "believe[d]" the first time he actually learned about Brown's death was at Spencer Bond's

house in the days or weeks that followed. T. 854-55. Bond was joking about the murder, and, indeed, Bond brought up the murder several times during that month period. T. 855.

Prante explained he did not leave town until 1980, or two years after the murder, when he went to Louisiana for a few months. T. 859, 863. Around this time period, the only discussion he had about the Brown murder occurred when he was back in town and hanging out at Spencer Bond's house, when Paul Main came over. T. 865. Main reported that the police just took his teeth impressions, and he was nervous about it. Main then explained he was nervous because his and Prante's statements were conflicted and they hadn't gotten their stories "straight." T. 866.

Prante did not think about the case much until May or June 1982, when it started surfacing in the media again and Spencer Bond re-surfaced in his life and started asking him questions. T. 866-67. Prante hadn't seen Bond for two years due to a falling out related to Bond's wife. T. 867-68. After Bond twice accused him in early June of committing the crime, Prante started talking to a number of people about the case because he was "downright paranoid" about it. T. 870-71. At the urging of Bond, he even called Prosecutor Weber in hopes of trying to clear himself—Weber seemed far more focused on Paul Main as a suspect. T. 873.

After the conversation with Weber, Prante went to see Main. Prante acknowledged he may have used the phrase "get [their] stories straight" when speaking with Main, but he simply meant that they needed to clarify with each other about where they were on the days surrounding the offense. T. 875. Prante stated his belief that it was during this conversation with Main that he really started to believe that he was at Main's house on the day of Brown's murder because he remembered the police arriving. T. 875-76. Prante acknowledged he told the police something different in 1978, but explained that it must have been due to memory problems and confusion. T. 901.

As far as the witnesses who claimed Prante made inculpatory statements, Prante denied ever making the statements described by Susan Lutz or ever biting her. T. 879, 929-31. Prante denied making any of the statements Pollard attributed to him. T. 922-24. He further denied ever saying anything to the Bonds or the Whites that they attributed to him. T. 925-28. Prante testified it was Spencer Bond who continually brought up Brown's murder—not him. T. 925.

D. Closing Arguments

The State argued to the jury that Prante killed Brown sometime between 11:00 a.m. and noon on Wednesday, June 21, 1978. It argued that Prante returned to Main's house around 10:00 a.m. after dropping off his job applications that morning, and it was Prante and Brown whom six-year-old Eric Moses saw speaking that morning. Thereafter, Prante got into Brown's home, killed her, and left. After realizing that Brown's boyfriend was not coming home for lunch, Prante then returned sometime in the afternoon to stage and clean up the scene. T. 1009-1027, 1036-39. As evidence of Prante's guilt, the State relied on Prante's own inconsistent statements over the five-year period about his whereabouts on the day of the murder, inculpatory statements reported by various witnesses, and the bite mark testimony. T. 1028-51, 1072-77. The State also told the jury it could "convict based on the teeth marks," because it could "[c]ouple the teeth marks testimony with the fact that one percent of the population is going to have teeth like his, and you have other evidence that points to John Prante as the killer and eliminates other people . . ." T. 1049. The State argued that Prante killed Brown after going into a rage because he didn't get invited to the party the night before. T. 1078.

Defense counsel argued that Prante "is innocent. He did not commit this crime." T. 1069. He argued the witnesses reporting Prante's supposed inculpatory statements were unreliable, noting, for example, that all the witnesses who claim that Prante told them Brown had a bite

mark indicated it was on the left shoulder, and the purported bite mark was on the right side of the body. T. 1054-55. Defense counsel also noted that any claim that Prante said Brown's body was "curled up" or on the floor was plainly wrong, as Brown's body was found in a can. T. 1054-55, 1060-61. Counsel argued their statements were not reliable after facts, including the purported bite mark, were publicized in the media. T. 1061.

E. Verdict, Sentencing, Appeal, and Prior Collateral Pleadings

After more than six hours of deliberation, the jury found Prante guilty of murder. T. 1108. During the death penalty qualification hearing that followed, the State argued that Prante was death eligible because he committed the murder in the course of committing attempted rape. Pointing to the couch cushion with blood on it, Brown's body being naked from the waist down with her pants next to her body, the perpetrator's removal of Brown's tampon, the evidence that the perpetrator undressed and re-dressed Brown, and Dr. Case's "uncontradicted opinion this was obviously a sexual assault," the State argued the evidence "clearly indicates a sexual assault and a substantial step towards that substantial assault." T. 7/18/83 at 14. The court agreed with the State that Brown was killed in the course of another felony, "being burglary, with intent to commit attempt rape." T. 7/18/83 at 19. The court therefore found Prante death eligible. *Id.* At the ensuing sentencing hearing, the State again argued that the crime "was obviously done in the course of a rape." T. 9/27/83 at 40.

Given a chance to allocate, Prante, again, maintained his innocence. He asked for his life to be spared so that he would "have the time to prove [his] innocence" and would "not have to give [his] life for the guilt of another person." T. 9/27/83 at 71-72. The court sentenced Prante to 75 years in prison. T. 9/27/83 at 75.

Prante raised three issues on direct appeal, including a claim that the evidence was insufficient to prove him guilty beyond a reasonable doubt. *Prante*, 147 Ill. App. 3d 1039. The appellate court affirmed. *Id.*

In 1993, before the passage of 725 ILCS 5/116-3, Prante requested DNA testing on the blood on the couch cushion through the filing of a petition for post-conviction relief, pursuant to 725 ILCS 5/122-1 *et seq.* T. 8/31/93 at 2. The State moved to dismiss the petition, arguing it was untimely. T. 8/31/93 at 2-3. A brief hearing was held on the issue of timeliness, and Prante testified that he had not previously filed a timely petition because he knew “it’s a one shot deal. I put it in. It [] gets thrown out for a technicality, I’m out. I can’t prove my innocence then.” T. 8/31/93 at 15.

The court granted the State’s motion and dismissed the petition on timeliness grounds alone. T. 8/31/93 at 18-22. The court did not comment on the substantive merits of the DNA testing request. T. 8/31/93 at 23.

F. New Expert Reports in Support of Instant Forensic Testing Motion

In support of the instant Motion, Petitioner has attached three expert affidavits. DNA expert Huma Nasir has examined the forensic testimony and reports related to this case and has concluded that it is “clear to [her] that there are many items recovered from this crime scene that are ripe for DNA testing and analysis. Using updated and advanced DNA technology that was not available at the time of trial has the potential to identify DNA left on a variety of crime scene evidence.” Ex. 1 at ¶ 15 (Nasir Affidavit). Expert Nasir described a variety of techniques that could be used to identify DNA profiles, and notes that it may be possible to develop a profile that could be uploaded to the CODIS databank of offenders to identify the source. All of the items that Expert Nasir indicates should be “prioritized” for testing are requested in this Motion. *Id.* at

¶¶ 22-34. DNA expert Nasir concludes her nine-page affidavit by saying that if “this homicide occurred today, all of the testing I describe in here—and indeed likely more—would be conducted by law enforcement in an attempt to identify the donor of any DNA.” *Id.* at ¶ 40.

Two additional affidavits focus on the flawed scientific underpinnings of the evidence used to convict Prante more than three decades ago. Dr. Iain Pretty, an expert forensic odontologist, has submitted an affidavit describing the significant shifts in the understanding of the scientific community about bite marks. Ex. 2 (Pretty Affidavit). Dr. Pretty’s affidavit describes the findings of the National Academy of Sciences, the Texas Forensic Science Commission, and, most recently, the President’s Council of Advisors on Science and Technology, which have all concluded that bite mark evidence is invalid and unreliable. *Id.* at ¶¶ 6-16. As the Texas Forensic Science Commission stated, “there is no scientific basis for stating that a particular patterned injury can be associated to an individual’s dentition,” nor is there any “scientific basis for assigning probability or statistical weight to an association, regardless of whether such probability or weight is expressed numerically.” *Id.* at ¶ 10. It is not merely the ability of a forensic dentist to identify a “biter” that has been discredited in the last three decades, but also the ability of a forensic dentist to identify a bite mark *at all*. Dr. Pretty’s own research, detailed in his affidavit, demonstrates that “even board-certified forensic dentists cannot reliably answer the threshold inquiry in bitemark analysis: whether the injury at issue is or is not a bitemark.” *Id.* at ¶ 23. As Dr. Pretty explains, there is simply no “evidence to support the fact that forensic dentists can even agree on what a bitemark is – never mind the more advanced proposal that this pattern may actually be linked to someone.” *Id.* at ¶ 11 (bold in original).

Cognition, memory, and false memory expert Dr. Nancy Franklin has also submitted an affidavit. Ex. 3 (Franklin Affidavit). Dr. Franklin details the “scientific findings that demonstrate

shortcomings and biases in human perception, attention, memory, and judgment” that bear on the reliability of the witnesses who testified to memories of conversations they ostensibly had with Prante four years prior, shortly after the murder. *Id.* at 2. Dr. Franklin’s affidavit details nearly a century of research that demonstrates that “[h]uman memory is inherently vulnerable and follows sharp losses with time,” particularly memory for language and gesture. *Id.* at 3. As Dr. Franklin explains, memory is vulnerable to post-event influences, including later acquired information, and that accordingly “it is easy to mistakenly believe that a detail encountered later had been part of the original memory.” *Id.* at 5.

In this case in particular, Dr. Franklin explains that “[t]here are ample opportunities for source errors and significant memory distortions in the Prante case, given witnesses’ likely exposure to the media, to police interviewers, and to each other.” *Id.* “Social contagion,” for instance, especially given the close relationships between the witnesses, “could have influenced witnesses’ memories during the investigation and prosecution, and, importantly, it could have also retroactively influenced Bond’s and others’ memories for the original discussion [with Prante].” *Id.* at 6. The media blitz also may have influenced witness memory: Dr. Franklin writes that “the news media posed a serious risk for suggestibility effects in *Prante*.” *Id.* at 7. And just as the media may have influenced and shaped witness memory, so too could the police have done so, even inadvertently, as “people can be influenced by officers who have knowledge of claims previously made by other witnesses.” *Id.* at 8. Dr. Franklin’s affidavit also describes other sources of potential memory error, including the ways that prior beliefs may distort later memories and how hindsight bias can make people feel very confident of false memories. *Id.* As Dr. Franklin concludes, “[t]he circumstances of Prante are particularly concerning. They allow for erroneous details to be introduced, in part through suggestive media reports, and then to be

propagated through layers of co-witnesses, media, and police.” *Id.* at 11. This is a particularly important finding when the “fact” of Prante’s early knowledge of a bite mark may no longer be treated as a fact at all.

These expert reports, when considered with the trial (and public) record and other exhibits attached to this pleading, clearly demonstrate Prante’s entitlement to DNA testing.

ARGUMENT

John Prante is entitled to the requested post-conviction forensic testing because he satisfies all aspects of 725 ILCS 5/116-3.

A. Legal Standard

A petitioner’s post-conviction forensic testing motion is governed by 725 ILCS 5/116-3, which provides, in relevant part, as follows:

- (a) A defendant may make a motion before the trial court that entered the judgment of conviction in his or her case for the performance of fingerprint, Integrated Ballistic Identification System, or forensic DNA testing, including comparison analysis of genetic marker groupings of the evidence collected by criminal justice agencies pursuant to the alleged offense, to those of the defendant, to those of other forensic evidence, and to those maintained under subsection (f) of Section 5-4-3 of the Unified Code of Corrections, on evidence that was secured in relation to the trial or guilty plea which resulted in his or her conviction, and:
 - (1) was not subject to the testing which is now requested at the time of trial; or
 - (2) although previously subjected to testing, can be subjected to additional testing utilizing a method that was not scientifically available at the time of trial that provides a reasonable likelihood of more probative results. Reasonable notice of the motion shall be served upon the State.
- (b) The defendant must present a prima facie case that:
 - (1) identity was the issue in the trial or guilty plea which resulted in his or her conviction; and
 - (2) the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect.

- (c) The trial court shall allow the testing under reasonable conditions designed to protect the State's interests in the integrity of the evidence and the testing process upon a determination that:
- (1) the result of the testing has the scientific potential to produce new, noncumulative evidence
 - (i) materially relevant to the defendant's assertion of actual innocence when the defendant's conviction was the result of a trial, even though the results may not completely exonerate the defendant, or
 - (ii) that would raise a reasonable probability that the defendant would have been acquitted if the results of the evidence to be tested had been available prior to the defendant's guilty plea and the petitioner had proceeded to trial instead of pleading guilty, even though the results may not completely exonerate the defendant; and
 - (2) the testing requested employs a scientific method generally accepted within the relevant scientific community.
- (d) If evidence previously tested pursuant to this Section reveals an unknown fingerprint from the crime scene that does not match the defendant or the victim, the order of the Court shall direct the prosecuting authority to request the Illinois State Police Bureau of Forensic Science to submit the unknown fingerprint evidence into the FBI's Integrated Automated Fingerprint Identification System (AIFIS) for identification.

B. The evidence sought to be tested was secured in relation to Prante's trial, was not subject to the testing which is now requested, and would employ testing methods that are generally accepted within the scientific community.
Section 116-3(a)(1), (c)(2), (d).

Prante seeks DNA testing on the following items of evidence, all of which were collected by law enforcement, and most of which were marked and admitted as evidence at Prante's trial.

- (1) The victim's rape kit. Medical examiner Dr. Harry Parks testified that he took swabs from the victim's vagina. His microscopic evaluation of the swabs showed the presence of small numbers of sperm. T. 531-14. A supplemental report on July 7, 1978, indicated that the "sperm appeared to be fresh" and that there was likely "sexual intercourse within the past 12 hours." Ex. 6 (Post Mortem Report).

- (2) The victim's fingernail scrapings. In initially processing the scene, crime scene technician Alva Busch took fingernail scrapings from the right and left hand of the victim. T. 214-15. They were packaged, marked, and admitted at trial as exhibits 26 and 27, respectively. Testing revealed a microscopic amount of material recovered from the right hand fingernail scrapings, but it was an insufficient amount for further forensic evaluation in 1978. T. 384-85, 391.
- (3) The bloody couch cushion. Testimony indicated that there was a "considerable amount" of blood on a couch cushion in the basement. T. 183. This cushion was collected by technician Busch, marked, and admitted at trial as Exhibit 24. T. 215-16, 391. Samples were cut and evaluated in 1978, and testing revealed human blood—"Types A and O group specific substances found." Ex. 5 (7/11/78 Forensic Report).
- (4) Two socks around victim's neck. Technician Busch collected the two socks tied around the victim's neck. T. 159, 193. They were marked and admitted at Prante's trial as Exhibit 18. T. 390. There was Type A human blood found on at least one of the socks. Ex. 5 (7/11/78 Forensic Report).
- (5) Wiring used to bind the victim. Technician Busch removed and collected the wiring used to bind the victim. T. 160. It was marked and admitted at Prante's trial as Exhibits 19-20. T. 390.
- (6) The victim's tampon. Technician Busch collected and packaged a used tampon sitting on a coffee table. T. 195-96. The tampon was marked and admitted at Prante's trial as Exhibit 1. T. 196, 388. Forensic examination in 1978 revealed Type A human blood on the tampon. T. 377.

Prante requests autosomal polymerase chain reaction (PCR) Short Tandem-Repeat (STR) DNA analysis and testing, or Y-STR DNA testing on all of these items of evidence. Ex. 1 (Nasir Affidavit). Any full or partial profiles should be compared to any relevant profiles developed from eligible standards in the custody of law enforcement in relation to this case. Further, any eligible profiles that satisfy state and federal regulations should be uploaded into CODIS—the federal DNA databank. Neither STR DNA testing, Y-STR DNA testing, nor the CODIS databank was available at the time of Prante’s 1983 trial. *See People v. Rokita*, 316 Ill. App. 3d 292, 299 (5th Dist. 2000) (noting that PCR STR DNA testing was not available in 1994); *People v. Barker*, 403 Ill. App. 3d 515, 525 (1st Dist. 2010) (citing Brandon L. Garret[t], *Claiming Innocence*, 92 Minn. L. Rev. 1629, 1658-59 (2008) (noting that STR testing was not widely adopted until the mid to late 1990s and Y-STR analysis was not adopted until the early 2000s)); FBI, *Frequently Asked Questions on CODIS and NDIS*,¹¹ (explaining that the National DNA Index System was implemented in October 1998); Lisa Calandro, Dennis J. Reeder, Karen Cormier, *Evolution of DNA Evidence for Crime Solving—A Judicial and Legislative History*, Jan. 6, 2005¹² (explaining that forensic DNA testing was not used in a criminal trial until 1986 in England). STR and Y-STR DNA testing are both generally accepted in the scientific community. *Barker*, 403 Ill. App. 3d at 525; *Rokita*, 316 Ill. App. 3d at 300.

Prante seeks additional analysis of the two latent fingerprint lifts from a coffee carafe recovered from the rafters of the basement. The coffee pot was recovered by technician Busch, who then lifted latent prints off of the pot. The pot and latent prints were marked and admitted into evidence as Exhibits 42, with the lifts designated 42a and 42b. Two of those latent prints

¹¹ <https://www.fbi.gov/services/laboratory/biometric-analysis/codis/codis-and-ndis-fact-sheet>

¹² <http://www.forensicmag.com/article/2005/01/evolution-dna-evidence-crime-solving-judicial-and-legislative-history>

were analyzed by the FBI and compared to the victim's fingerprints, as well as those from twenty-eight other people (including John Prante). All of them were excluded. T. 167-69, 228; Ex. 7 (Fingerprint Report).

Prante seeks to submit the previously-lifted prints into IAFIS—"the national, computerized system for storing, comparing, and exchanging fingerprint data in a digital format"—as contemplated by 725 ILCS 5/116-3(d); IAFIS did not exist until July 1999, or sixteen years after Prante's trial. FBI, *Privacy Impact Assessment Integrated Automated Fingerprint Identification System National Security Enhancements*.¹³ Fingerprint examination and testing remains generally accepted in the scientific community. *See People v. Mitchell*, 2011 IL App (1st) 083143, ¶ 31 (rejecting the need for a *Frye* hearing for the admissibility of fingerprint testing and analysis).

C. Prante has established a prima facie case that identity was an issue at his trial and the evidence was subject to a proper chain of custody.
Section 116-3(b)(1), (2).

Prante went to trial, he took the stand and testified he was innocent, and his counsel argued to the jury that Prante "is innocent. He did not commit this crime." T. 1069. Even following his conviction, prior to the determination of whether he would be sentenced to death, Prante stood before the court in his allocution and maintained his innocence. T. 9/27/83 at 71-72 ("I pray that you will have mercy upon me so that I may have the time to prove my innocence. I pray that I will not have to give my life for the guilt of another person."). The identity of the perpetrator, thereby, was the key issue at his trial. *See People v. Bailey*, 386 Ill. App. 3d 68, 74 (1st Dist. 2008) (explaining that where defense counsel argued the "[defendant] was not there," identity was the "central issue at trial").

¹³ <https://www.fbi.gov/services/records-management/foipa/privacy-impact-assessments/iafis>

Prante also establishes a prima facie case of chain of custody. The couch cushion, the two socks around the victim's neck, the wiring used to bind the victim, and the tampon were all admitted as evidence at trial, T. 388-94, 991-93, and therefore presumptively remain in the custody of the circuit court clerk. *See People v. Johnson*, 205 Ill. 2d 381, 394 (2002) (explaining that a post-conviction petitioner meets his burden of establishing a prima facie case of chain of custody under this provision by asserting that the real evidence was admitted at trial). The fingernail scrapings were admitted at trial, T. 391, but not sent to the jury, T. 993, and the rape kit and the swabs with semen therefrom were recovered by medical examiner Harry Parks after Brown's death. Ex. 6 (Post Mortem Report). That evidence has presumptively been in the continuous possession of law enforcement and remains intact. *See People v. Sanchez*, 363 Ill. App. 3d 470, 478 (2d Dist. 2006); *see also* 725 ILCS 5/116-4(b) (requiring that the circuit court clerk or a law enforcement agency retain evidence in a murder case at least until the completion of a convicted defendant's sentence).

The latent print recovered from the coffee pot appears to have been sent to the Federal Bureau of Investigations on June 19, 1981, and returned to the Wood River Police Department on July 20, 1981. Ex. 7 (Fingerprint Report). It has presumptively remained in the custody of law enforcement since then.¹⁴

¹⁴ To the extent the Court has concerns about the chain of custody, Prante requests limited discovery on this question, which the court can and should order. *See People v. Travis*, 329 Ill. App. 3d 280, 285 (4th Dist. 2002) (noting that “[i]t asks too much to require petitioning defendant in these cases to plead and prove proper chain of custody at the outset, for the evidence at issue will undoubtedly have been within the safekeeping of the State, not the defendant. A trial court may allow limited discovery in an appropriate case.”).

D. The result of the requested testing has the scientific potential to produce new, noncumulative evidence that would significantly advance Prante's claim of actual innocence.
Section 116-3(c)(1).

A petition must show that the potential results of the requested DNA testing have the “potential to produce new, noncumulative evidence materially relevant to the defendant’s assertion of actual innocence.” 725 ILCS 5/116-3(c)(1)(i). In considering whether a petitioner meets this burden, the court need not determine whether the requested testing, standing alone, would exonerate the petitioner; rather, the requested testing must merely have the potential to “significantly advance” the petitioner’s claim of actual innocence. *People v. Stoecker*, 2014 IL 115756, ¶ 33. This analysis requires an examination of all of the evidence the petitioner seeks to test as well as the evidence introduced at trial. *Id.* If the forensic testing requested could conceivably exonerate the defendant, testing must be granted even if the Court otherwise believes the State had a strong case. *People v. Price*, 345 Ill. App. 3d 129, 134 (2d Dist. 2003); *People v. Perez*, 2016 IL App (3d) 130784, ¶ 35. In other words, “[i]f testing is otherwise warranted, it should be authorized, no matter how slight the chance that it will, in fact, yield a favorable result.” *Price*, 345 Ill. App. 3d at 134 (quoting *Anderson v. State*, 831 A.2d 858, 867 (Del. 2003)). *Accord Perez*, 2016 IL App (3d) 130784, at ¶ 35. *See also People v. Rozo*, 2012 IL App (2d) 100308, ¶ 19 (citing *People v. Barrow*, 2011 IL App (3d) 100086, ¶ 27 (explaining that “the strength of the State’s evidence is not a hurdle that the defendant must overcome to meet the requirements of the statute”)).

At the outset, given the scope of the forensic request herein, Petitioner’s request easily satisfies this burden. Petitioner does not just request a single forensic test but rather testing on multiple pieces of crime scene evidence, including a rape kit, fingernail scrapings, a potential mixture of blood on a couch cushion, and a number of items the State alleges were handled by

the victim (including an unidentified fingerprint on a coffee pot the State alleges was used to transport water by the perpetrator). As far as the DNA testing requests on these items, DNA expert Huma Nasir has specifically commented that the category of items requested here have a “likelihood of obtaining usable DNA profiles.” Ex. 1 at ¶ 22 (Nasir Affidavit).

There is a scientific potential that all of these items could develop profiles that could be matched to the *same* alternative suspect through the CODIS and AFIS databases. Accordingly, the semen from the rape kit, male DNA from the victim’s fingernail scrapings, male DNA from blood on the couch cushion, and male DNA on multiple items of evidence that were handled by the perpetrator to bind the victim all could match to the same individual identified in retesting of the fingerprint on the coffee pot. Of course, were that person not John Prante, that would be overwhelming evidence of Prante’s innocence and the guilt of that individual.¹⁵ Expert Nasir herself recognizes the possibility of these so-called “redundant hits.” Ex. 1 at ¶ 21 (Nasir Affidavit).

Even standing alone, however, each of the individual requests within this Motion have the potential to significantly advance Prante’s claim of actual innocence. Each request is discussed in turn.

1. The sexual assault kit

The State was committed to the theory that Karla Brown was sexually assaulted contemporaneous with her murder. Medical examiner Dr. Harry Parks noted “fresh” sperm likely

¹⁵ At the time of this filing, the Innocence Project has identified 347 post-conviction DNA exonerations. See <http://www.innocenceproject.org/#causes>. Of the first 250 DNA exonerations nationally, forty-five percent of the time DNA identified the real culprit. See University of Virginia Law School, *Exoneration*, available at http://www.law.virginia.edu/html/librarysite/garrett_exoneration.htm (documenting data collected by Law Professor Brandon Garrett and his book “Convicting the Innocent,” Harvard U. Press 2011).

deposited within 12 hours of the autopsy. Ex. 6 (Post Mortem Report). A supplemental report written by the Chief of Police explained that the small amount of sperm and the lack of damage to the vaginal area did not foreclose rape, noting that “the victim [could have] allowed the sex act due to the subject’s physical stature if he was a big person and she was afraid of him.” *Id.* The State then retained a second medical examiner, Dr. Mary Case, who performed a second autopsy of the victim’s exhumed body: the State elicited testimony from Dr. Case during trial that “it was a sexual assault, that [Brown] was sexually assaulted in the course of all the other things that were done to her.” T. 7/5/83-7/9/83 at 28. Dr. Campbell and Dr. Levine also testified that bite marks were generally seen in “sexual cases, both homosexual and heterosexual.” T. 7/5/83-7/9/83 at 50 (Dr. Campbell); T. 7/5/83-7/9/83 at 109 (Dr. Levine: “[W]e find bite mark evidence generally in certain categories of cases. One involves sexual activity around the time of death.”). At the penalty phase of the trial, the State persuaded the judge that the aggravating factor of attempted rape was present, and argued that the crime “was obviously done in the course of a rape.” T. 7/18/83 at 14-19; T. 9/27/83 at 40.

Since sexual assault was the crux of the State’s case, the results of DNA testing to the rape kit are material to the State’s theory of the case and Prante’s conviction. Modern DNA testing technology has the ability to detect DNA from even the small amounts of sperm, and expert Nasir stated that “it is very likely that [] testing would produce an autosomal DNA profile that could be both compared against reference samples (like Defendant John Prante) and checked against the CODIS database.” Ex. 1 at ¶ 25 (Nasir Affidavit). This exact type of DNA testing has exonerated scores of individuals across the country of their convictions of murders in the course of a sexual assault. *See e.g.*, National Registry of Exonerations, *Harold*

*Richardson*¹⁶ (documenting the exoneration of the Englewood Four of their convictions for sexual assault and murder based on the results of DNA testing of sperm and a female victim's rape kit); National Registry of Exonerations, *James Harden*¹⁷ (documenting the exoneration of the Dixmoor Five of their convictions for sexual assault and murder based on the results of DNA testing of sperm and a female victim's rape kit); National Registry of Exonerations, *Jamie Lee Peterson*¹⁸ (documenting exoneration of Jamie Lee Peterson of his conviction for sexual assault and murder based on the results of DNA testing of sperm and a female victim's rape kit).

2. The fingernail scrapings

The victim in this case was badly battered, with two large lacerations on her face, a fractured jaw, and several bruises on her throat indicative of strangulation. T. 503. These injuries were contemporaneous with her death. T. 506-08. Pathologist Dr. Case testified that the victim was "killed in a manner in which close body contact was made." T. 7/5/83-7/9/83 at 28. And the crime scene itself—the basement of the victim's home—was in a state of disarray, with blood splatter throughout. *Prante*, 147 Ill. App. 3d at 1042; T. 201, 228, 408, 506-08. The State put on evidence that the victim was a "fighter" and would have fought back against any assault. T. 297 (Jamie Hale testifying that Karla "definitely would have put up a fight"); T. 302 (Debbie Davis testifying that Karla and she had discussed that if she were ever confronted, Karla "said she would fight"); T. 414 (Karla's boyfriend Mark Fair testifying that Karla "would have fought. She would have fought and tried to get away.").

In cases of an assault of a female victim with evidence of a struggle, DNA testing of fingernail scrapings of the victim is highly relevant. *See Rozo*, 2012 IL App (2d) 100308, ¶19

¹⁶ <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3847>

¹⁷ <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3838>

¹⁸ <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4500>

(relying on the evidence of a violent struggle in ordering DNA testing while stating that “[i]f DNA found under [the victim]’s fingernails were found not to be a match to defendant’s, such evidence would certainly advance defendant’s claim of actual innocence. . . . This evidence clearly is the type of evidence that should be tested under section 116-3.”) There is already evidence that some microscopic amounts of material was recovered from the right hand scrapings of the victim. Ex. 1 at ¶ 27 (Nasir Affidavit). DNA expert Nasir indicated that modern technology has the potential to develop a usable profile from this material. *Id.* at ¶ 28.

Exhibit 12 to this Motion (*List of Fingernail Exonerations*) details eleven examples of individuals being exonerated based on exclusionary male DNA recovered underneath the fingernails of female victims. Needless to say, Prante, too, should be permitted to conduct this type of DNA testing, as it may significantly advance his claim of innocence.

3. Blood stain on the couch

There was a significant amount of blood on a cushion on the couch in the basement that contained both Types A and O blood group substances. Ex. 5 (7/11/78 Forensic Report). An affidavit from serologist Dennis Aubuchon in this record indicates that this blood stain could consist either of only Type A blood, or that it could also be a mixture of Type A and Type O blood. Ex. 1 at ¶ 31 (Nasir Affidavit). Both the victim Karla Brown and Prante have Type A blood. *Id.*

If there is Type O blood present at the crime scene, it belongs to an unidentified person. The stain can be tested to determine whether there is a mixture of blood. Needless to say, if there is an unknown person’s DNA mixed with the victim’s blood—and DNA excludes Prante as the donor of this blood—it would significantly advance his claim of innocence and that unknown person’s guilt. *Id.* at ¶ 32.

4. Items handled by the perpetrator in the course of the offense: Socks binding victim, wiring, and tampon

The victim was bound with wiring and a sock wrapped around her neck. Her bloody tampon was removed during the course of the offense. Obviously, the perpetrator handled these items.

DNA expert Nasir explains in detail the process a DNA analyst would go through in seeking to identify the presence of male DNA from items. She describes swabbing or scraping these items, followed by a process of quantifying the material to determine whether male DNA is present. Ex. 1 at ¶ 34 (Nasir Affidavit). If male DNA is identified, autosomal DNA testing could be used to identify the source of that male DNA. Just like the sexual assault kit and fingernail scrapings, were any male DNA to exclude Prante—let alone were it to identify another source—it would significantly advance his claim of innocence.

5. Re-examination of previously-lifted latent fingerprints from coffee pot.

The victim's boyfriend testified that when he left for work in the morning, the coffee pot was in the coffee maker. T. 400-01. Upon processing the scene, however, this same coffee pot was found in the rafters of the basement, and at least two usable prints were found on that coffee pot. T. 167-68, 227-28. The State itself stated in opening arguments that “[w]e know the killer touched the coffee pot.” T. 28. The State tried desperately to identify to whom those unidentified fingerprints belonged, asking the FBI to compare them to no fewer than 30 individuals. Ex. 7 (Fingerprint Report). The State was never able to identify the source. Prosecutor Weber, eventually, just threw his arms up in the air, arguing in his book that sometimes there are just unsolved mysteries. *Silent Witness* at 265. The State eventually just told the jury that it believed

the fingerprint just belonged to unknown friend of Karla or that her boyfriend left the print at some unknown time. T. 28.¹⁹

The AFIS database, however, now offers a renewed opportunity to identify the source of the unidentified fingerprints. If the unknown fingerprint does not match a friend of Karla or her boyfriend—but rather someone who would never have otherwise been in their home (let alone touched their coffee pot)—it would support Prante’s argument that this unknown man was the perpetrator and significantly advance Prante’s claim of innocence.

This type of fingerprint re-examination has also led to post-conviction relief in multiple cases. In Illinois, James Newsome was sentenced to life in prison for the murder of a grocery store clerk, despite the fact that fingerprints on a can the perpetrator handled excluded him. Nine years after his conviction, Newsome was exonerated when the prints were retested, run through AFIS, and identified a convicted murderer. *See National Registry of Exonerations, James Newsome.*²⁰ The convictions of Charles Johnson, Larod Styles, and Lashawn Ezell of Cook County have been vacated based on the post-conviction testing of fingerprints at a crime scene that were found to be unrelated to the defendants. *See also Kirkland & Ellis LLP Press Release, Cook County prosecutors agree to new trial for Kirkland pro bono client convicted in connection with 1995 double murder, July 11, 2016*²¹ (describing the overturning of the double murder convictions of Johnson, Ezell, and Styles two decades after their arrests based on AFIS hits from latent prints recovered in 1995).

¹⁹ It is unclear from the record why law enforcement never compared the fingerprint to Mark Fair, and if it did, the comparison not reflected in the records in the current possession of counsel.

²⁰ <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3504>

²¹ <https://www.kirkland.com/sitecontent.cfm?contentID=230&itemId=12292>

E. Requests in context of the case

Ultimately, case law makes clear that the strength of the State's case is not a factor in the consideration of a 116-3 petition, *see Rozo*, 2012 IL App (2d) 100308, ¶19, and Prante is plainly entitled to testing regardless of the apparent strength of the evidence against him. This Court should be aware, however, that the evidence upon which this conviction rested—the claimed existence of a bite mark, purportedly discovered from a black-and-white photograph two years after the crime and which supposedly matched Prante; and alleged statements attributed to Prante largely about that mark—has basically evaporated over the last three decades. While this evidence might have been compelling to the jury that convicted Prante, today the statements of expert affiants Pretty and Franklin, along with the science underlying them, demonstrate this key evidence is no longer the dispositive proof of guilt it once appeared to be.

1. The bite mark evidence has been completely discredited

Simply put, there is no scientific reason to believe the injury on Karla Brown was even a bite mark at all, much less that it could be linked in any way to Prante. Though at the time of Prante's trial "the use of bitemark evidence was a well-accepted forensic technique, generally understood by its practitioners and by the scientific community to be valid and reliable," in the intervening decades that "understanding has shifted significantly . . . as a result of new research and through the impartial review of the technique by a number of scientific bodies, as well as a growing number of wrongful convictions based on bitemark evidence." Ex. 2 at ¶ 4 (Pretty Affidavit). In fact, over two dozen people have been wrongfully convicted or indicted on the basis of bite mark evidence, including Illinois man Bennie Starks, and *four* who were convicted or indicted based on the testimony of the dentists in this case. *See* Ex. 15 (*List of Wrongful Bite*

Mark Convictions and Indictments); *supra* fn. 9 (describing the wrongful convictions and indictments obtained through use of Dr. Levine's and Dr. Campbell's bite mark comparisons).

Scientific bodies have taken note of these wrongful convictions, as well as the research done by Dr. Pretty and others. The National Academy of Sciences ("NAS"), Ex. 2 at ¶¶ 6-7 (Pretty Affidavit), the Texas Forensic Science Commission ("TFSC"), *id.* at ¶¶ 8-11, and the President's Council of Advisors on Science and Technology ("PCAST"), *id.* at ¶¶ 12-15, have all examined bite mark evidence and found it to be completely without any basis in science. *See infra*. The unanimous conclusions of these bodies mean not merely that the testimony proffered by the two forensic odontologists, Drs. Levine and Campbell, and by Prante's then-dentist, Dr. Mullen, would be less credible, but indeed that it could no longer offered at all. *Cf. Starks v. City of Waukegan*, 123 F. Supp. 3d 1036, 1052 (N.D. Ill. 2015) (finding it "doubtful that 'expert' bite mark analysis would pass muster under Federal Rule of Evidence 702 in a case tried in federal court," because FRE 702(c) requires that "expert testimony be 'the product of reliable principles and methods'").

Most critically for this case, the supposed scientific basis for the ability of forensic dentists to even identify a patterned injury as a bite mark in the first instance has vanished since Prante's trial. As Dr. Pretty explained in his affidavit, he and Dr. Adam Freeman, the current president of the American Board of Forensic Odontology ("ABFO," forensic dentistry's only board-certifying entity),²² examined the validity and reliability of the first and most basic step in bite mark analysis. Ex. 2 at ¶¶ 17-19 (Pretty Affidavit). Their 2009 study, *Construct Validity*

²² Both Dr. Levine and Dr. Campbell were members of the ABFO at the time of Prante's trial. T. 7/5/83-7/9/83 at 100, 103 (Dr. Levine); T. 7/5/83-7/9/83 at 39 (Dr. Campbell). Dr. Levine remains a member; Dr. Campbell is now deceased. *See ABFO Diplomate Information, Revised 9-29-2015*, available at <http://www.abfo.org/wp-content/uploads/2013/02/ABFO-Diplomate-Information-revised-9-29-2015.pdf>.

Bitemark Assessments Using the ABFO Bitemark Decision Tree (“Construct Validity Study”), did not examine whether the injuries were, in fact, bite marks, but instead looked at “whether there was consensus between experienced experts viewing the same data, as bitemark matching relies on subjective analysis and not quantifiable data.” *Id.* at ¶ 19. As Dr. Pretty explained, “[t]he first stage in assessing the validity of a method is to determine if, given the same evidence, examiners of similar training and experience—in this case those who have passed the ABFO exam—reach the same conclusions (reliability).” *Id.* at ¶ 20.

Accordingly, Dr. Freeman and Dr. Pretty showed photographs of 100 patterned injuries, drawn from real case work, to ABFO board-certified Diplomates; “[t]hirty-eight Diplomates completed all 100 questions, resulting in nearly 4,000 individual decisions.” *Id.* These Diplomates were then asked “three basic questions concerning (1) whether there was sufficient evidence to render an opinion as to whether the patterned injury is a human bitemark; (2) whether the mark is a human bitemark, suggestive of a human bitemark, or not a human bitemark; and (3) whether distinct features (arches and toothmarks) were identifiable.” Ex. 4 at 84-85 (PCAST Report). But even at the level of the first question, “the results were shockingly poor, and determinations were wildly inconsistent across forensic odontologists on the vast majority of marks.” Ex. 2 at ¶ 21 (Pretty Affidavit). There was unanimous agreement on this question in only four of the 100 cases, and there was concurrence of 90 percent or more in only 20. Moreover,

[b]y the time the analysts completed question two—whether the photographed mark is indeed a human bite—there remained only 16 of 100 cases in which 90 percent or more of the analysts were still in agreement. And there were only 38 cases in which at least 75 percent were still in agreement. By the time the analysts finished question three—whether the bitemark has distinct, identifiable arches and individual tooth marks—they were significantly fractionalized on nearly all the cases. Of the initial 100, there remained just 8 case studies in which at least 90 percent of the analysts were still in agreement.

Id. This extremely poor performance “demonstrates that even board-certified forensic dentists cannot reliably answer the threshold inquiry in bitemark analysis: whether the injury at issue is or is not a bitemark.” *Id.* at ¶ 23.

The Construct Validity Study, though shocking, is not the only evidence of this fundamental inability to reliably and consistently identify injuries as bite marks. An Australian study that examined similar questions concluded its “qualitative data plainly verifie[d] the fact that there is a wide range of opinion expressed over even the most basic assumption in bitemark analysis: that of the origin of the mark itself”; the study’s authors ultimately found that this “inconsistency indicates a fundamental flaw in the methodology of bitemark analysis and should lead to concerns regarding the reliability of any conclusions reached about matching such a bitemark to a dentition.” Ex. 16 at 670-71 (Mark Page et al., *Expert Interpretation of Bitemark Injuries—A Contemporary Study*, 58(3) J. Forensic Sci., 664 (May 2013)); *see also* Ex. 4 at 84 (PCAST Report) (noting Page study found “wide variability among [bite mark] practitioners in their conclusions about the origin, circumstance, and characteristics of the patterned injury for all six images”).

Given these failures at the most basic levels, it is no surprise that forensic dentists fare even worse when they attempt to move beyond identifying an injury as a bite mark, and, as here, attempt to associate it to an individual. Virtually every attempt by forensic odontologists to prove their claims has instead demonstrated a “disturbingly high false-positive error rate” in bite mark comparisons. *See* Ex. 17 at S107 (C. Michael Bowers, *Problem-Based Analysis of Bitemark Misidentifications: The Role of DNA*, 159S Forensic Sci. Int’l S104 (2006)). For example, a 2006 review written by a forensic odontologist detailed the following findings:

- a 1975 study found that bite mark examiners made “[i]ncorrect identification[s] of . . . bites” on pig skin 24% of the time even when the bites were made “under ideal laboratory conditions” and 91% of the time when the bites were photographed 24 hours after being made;
- a 1999 American Board of Forensic Odontology Bitemark Workshop in which “ABFO diplomats attempted to match four bitemarks to seven dental models” resulted in 63.5% false positives;
- a 2001 study of “bites made in pig skin” resulted in between 11.9% and 22.0% “false positive identifications . . . for various groups of forensic odontologists.”

Id. at S106.

In sum, there is “little, if any, scientifically valid data to support the accuracy of bite mark comparison, and the data that does exist is damning.” *Starks*, 123 F. Supp. 3d at 1051. For this reason, every neutral scientific body to consider bite mark evidence has found it entirely lacking, including the National Academy of Sciences (“NAS”), an organization made up of the nation’s most accomplished scientists “charged [by an Act of Congress] with providing independent, objective advice to the nation on matters related to science and technology,”²³ which concluded that in its groundbreaking report on forensics that both “[t]he uniqueness of the human dentition has not been scientifically established,” and that “[t]he ability of the dentition, if unique, to transfer a unique pattern to human skin and the ability of the skin to maintain that uniqueness has not been scientifically established.” Ex. 13 at 175 (National Academy of Sciences, Committee on Identifying the Needs of the Forensic Sciences Community, *Strengthening Forensic Science in the United States: a Path Forward* (Extracted Portion Related to Bite Mark Evidence) (2009) (“NAS Report”).

²³ See National Academy of Sciences, *Mission*, available at <http://www.nasonline.org/about-nas/mission/>.

Two other prestigious scientific bodies have recently examined bite mark evidence and its supposed support, and both have reached the same conclusion: bite mark comparisons are “clearly scientifically unreliable” at present. Ex. 4 at 87 (PCAST Report). The first of these examinations was conducted by the Texas Forensic Science Commission (“TFSC” or “Commission”), a scientific body operating under a statutory mandate to, *inter alia*, assess the “integrity and reliability” of forensic science in Texas.²⁴ The Commission recently undertook a six-month-long study focused exclusively on bite mark evidence, during which it conducted a robust literature review, as well as took testimony on bite mark evidence from the ABFO “and its members, as well as other interested forensic odontologists and criminal justice stakeholders.” Ex. 14 at 8 (Texas Forensic Science Commission, *Forensic Bitemark Comparison Complaint Filed by National Innocence Project on Behalf of Steven Mark Chaney- Final Report, Finalized at Quarterly Meeting, April 12, 2016* (“TFSC Report”)).

At the end of this exhaustive study, the Commission concluded that “the overwhelming majority of existing research does not support the contention that bitemark comparison can be performed reliably and accurately from examiner to examiner due to the subjective nature of the analysis.” *Id.* at 12. As it stated, “there is no scientific basis for stating that a particular patterned injury can be associated to an individual’s dentition . . . [and] no scientific basis for assigning probability or statistical weight to an association, regardless of whether such probability or weight is expressed numerically (e.g., 1 in a million) or using some form of verbal scale (e.g., highly likely/unlikely).” *Id.* at 11-12. The Commission found the “inability of ABFO Diplomates to agree on the threshold question of whether a patterned injury constitutes a human bitemark,”

²⁴ See Tex. Crim. Proc. Code Ann. § art. 38.01 Sec. 4 (b-1)(1) (empowering the Texas Forensic Science Commission to report on the “observations of the commission regarding the integrity and reliability of the forensic analysis conducted”).

evidenced by the Construct Validity Study and described *supra*, to be particularly concerning. *Id.* at 13. In light of these findings, the Commission ultimately “recommend[ed] that bitemark comparison not be admitted in criminal cases in Texas unless and until” foundational research to validate bite marks was done. *Id.* at 15-16. The Commission is also undertaking a review of all convictions obtained through bite mark evidence in Texas. *Id.* at 16.

The President’s Council of Advisors on Science and Technology (“PCAST”), which “is an advisory group of the Nation’s leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies,” Ex. 4 at iv (PCAST Report), came to similarly damning conclusions in a report issued earlier this year. Like the NAS before it, PCAST undertook a review of multiple forensic disciplines, which included an “extensive literature review” of varying disciplines and testimony from across the forensic community. *Id.* at x. For its part, PCAST found that what little research has been done on bite marks “cast[s] serious doubt on the fundamental premises of the field,” including the distinctiveness of the dentition and the ability of human skin to reliably record that distinctiveness. *Id.* at 83. Notably, PCAST found that research demonstrated that random dentition “matches occurred vastly more often than expected under the theoretical model,” and, most critically, that “skin has been shown to be an *unreliable medium* for recording the precise pattern of teeth.” *Id.* at 84 (emphasis added).

PCAST found, moreover, that “[e]mpirical research suggests that forensic odontologists do not consistently agree even on whether an injury is a human bitemark at all.” *Id.* at 84; *see also* Ex. 2 at ¶ 22 (Pretty Affidavit) (“As both the TFSC and PCAST have found, the Construct Validity Study raised new and fundamental doubts regarding not only the use of bitemarks to

identify the particular person alleged to have inflicted a bitemark, but indeed whether bitemarks can be reliably identified as such at all. The unreliability of bitemark analysis exposed by the Construct Validity Study is highly significant and exposes fundamental problems with this forensic technique substantially beyond those already revealed by the conclusions of the NAS Report.”). For these reasons, PCAST ultimately concluded that “bitemark analysis does not meet the scientific standards for foundational validity, and is far from meeting such standards. To the contrary, available scientific evidence strongly suggests that examiners cannot consistently agree on whether an injury is a human bitemark and cannot identify the source of [a] bitemark with reasonable accuracy.” Ex. 4 at 87 (PCAST Report).

The conclusions of the NAS, the TFSC, and PCAST, when taken together with the research that supports them, make very plain that the bite mark evidence offered against Prante at trial would no longer be admissible. All three dentists testified in ways that are simply no longer supported by science. As noted, Dr. Campbell and Dr. Levine’s purportedly “scientific” identification of the injury as a bite mark has been completely undermined. *See, e.g.*, T. 976-77 (Dr. Campbell: “Q. ... Do you have an opinion to a reasonable degree of dental certainty whether or not there are human bite marks on the body of Karla Brown in her neck and shoulder area? A. Yes, sir, I do. Q. And what is that opinion? A. There are definitely human bite marks there. Q. Is there any doubt at all that you have that there are human bite marks there? A. No, sir.”); T. 7/5/83-7/9/83 at 116-17 (Dr. Levine: “Q. Do you have an opinion to a reasonable degree of dental certainty as to whether or not there are human bite marks in that photograph? A. Yes, sir. Q. And what is that opinion? A. There are.”). As the new science demonstrates, there is no foundation for such conclusions. *See* Ex. 4 at 87 (PCAST Report); Ex. 14 at 12-13 (TFSC Report); Ex. 2 at ¶¶ 17-21 (Pretty Affidavit). As these unreliable and unscientific conclusions not

only set the foundation for the rest of the testimony offered by the forensic dentists, but also for the testimony of lay witnesses regarding the mark, *see infra*, this new science alone renders Prante's conviction highly questionable.

As baseless as those conclusions were, there is even less scientific basis for Dr. Levine's and Dr. Campbell's testimony that Prante's "teeth could have made the bite marks, period." T. 7/5/83-7/9/83 at 78 (Dr. Campbell); T. 7/5/83-7/9/83 at 122 (Dr. Levine: "These teeth [i.e., Prante's] could have caused that injury pattern."). Dr. Levine went even further, suggesting to the jury that, if only Main and Prante could be suspects, Dr. Levine "would have to say [the mark] had to be left by Mr. Prante." T. 7/5/83-7/9/83 at 137. But, as Dr. Pretty describes and as the foregoing demonstrates, there is no evidence to "support the fact that forensic dentists can even agree on what a bitemark is – never mind the more advanced proposal that this pattern may actually be linked to someone." Ex. 2 at ¶ 11 (Pretty Affidavit) (emphasis in original); Ex. 14 at 11-12 (TFSC Report) ("[T]here is no scientific basis for stating that a particular patterned injury can be associated to an individual's dentition."); Ex. 4 at 87 (PCAST Report) ("Few empirical studies have been undertaken to study the ability of examiners to accurately identify the source of a bitemark. Among those studies that have been undertaken, the observed false positive rates were so high that the method is clearly scientifically unreliable at present.").

Indeed, the support Dr. Levine and Dr. Campbell provided to the jury for their "inclusion" of Prante has been entirely discredited by new science (an inclusion, that as discussed *infra*, Prosecutor Weber stretched to identify Prante to a degree of mathematical certainty). For example, both Dr. Levine and Dr. Campbell testified that teeth were unique. *E.g.*, T. 7/5/83-7/9/83 at 79 (Dr. Campbell: "Everybody's dentition is individual"); T. 7/5/83-7/9/83 at 131 (Dr. Levine: "Can separate sets, in other words, different persons leave identical bite marks?

They could not.”). But as PCAST noted, new research demonstrates that there *are* random matches between dentitions, and that they “occurred vastly more often than expected under the [previously accepted] theoretical model.” Ex. 4 at 84 (PCAST Report).

Likewise, both Dr. Levine and Dr. Campbell testified that skin was a “[v]ery excellent” medium for recording bite marks. T. 7/5/83-7/9/83 at 76 (Dr. Campbell); *id.* (Dr. Campbell: “Anybody that's had much experience with bite mark injuries considers [skin] to be an excellent reproducer of tooth characteristics.”); T. 7/5/83-7/9/83 at 130 (Dr. Levine: “[W]e have found that skin can capture the unique and individual characteristics of the teeth with, you know, excellent fidelity”). But this notion, too, has been debunked. Today, “skin has been shown to be an unreliable medium for recording the precise pattern of teeth.” *See* Ex. 4 at 84 (PCAST Report) (noting that the studies which took place “under idealized conditions” still showed significant distortion and that “[s]uch distortion is further complicated in the context of criminal cases, where biting often occurs during struggles, in which skin may be stretched and contorted at the time a bitemark is created”). Thus even these key supports for bite mark analysis have now been invalidated.

The lack of any basis for these conclusions is more stark when read against the testimony of Dr. Ronald Mullen, a general dentist who testified that the spacing of Prante’s teeth occurred in less than one percent of his patients. T. 7/5/83-7/9/83 at 140. Prosecutor Don Weber capitalized on this testimony in his closing argument when he told the jury it could “[c]ouple the teeth marks testimony with the fact that one percent of the population is going to have teeth like his, and you have other evidence that points to John Prante as the killer and eliminates other people” and, in so doing, could “convict based on the teeth marks.” T. 1049. But this testimony, and Weber’s accompanying argument, is completely scientifically indefensible, as there is “no

scientific basis for assigning probability or statistical weight to an association, regardless of whether such probability or weight is expressed numerically (e.g., 1 in a million) or using some form of verbal scale (e.g., highly likely/unlikely)." Ex. 14 at 12 (TFSC Report); *see also* Ex. 13 at 174 (NAS Report) (even if a suspect is included as a potential biter, "there is no established science indicating what percentage of the population or subgroup of the population could" make a particular bite mark). As Dr. Pretty explains, without "empirical population data. . . the probative value of any match cannot be determined, as there is no way of knowing how many potential other 'matches' might exist In other words, it is not possible to know if 1 in 10 people might also 'match' a suspected bitemark, or 1 in 10 million." Ex. 2 at ¶ 7 (Pretty Affidavit). Thus, this testimony, too, has now been revealed to be not only baseless, but false.

In sum, the bite mark evidence offered against Prante at trial could no longer be offered, either to identify the injury as a bite mark (and thus prove the state's claims that he knew of this injury in advance of the police) or to link him to it as a potential biter at any level.

2. Memory science now undermines many of the alleged inculpatory witness statements.

The bite mark evidence was significant to Prante's conviction in a number of ways. In addition to ostensibly identifying him as the likely biter based on the pattern itself, it was also used to corroborate the reports by numerous of witnesses claiming that Prante knew of the injury prior to the police. But, as Dr. Nancy Franklin describes in her affidavit, robust science developed over nearly a century teaches that these memories of long-ago conversations with Prante—which today are no longer corroborated by physical proof—could be completely wrong and yet still feel very real to those who ostensibly lived them.

As an initial matter, Dr. Franklin explains that "human memory does not behave like an electronic recording device. Instead, it is generally incomplete and subject to error," fading over

time. Ex. 3 at 3 (Franklin Affidavit). That is especially so where, as here, the inculpatory witness evidence against Prante “hinges largely on memory for specific elements of a conversation that had transpired years earlier.” *Id.* at 3. Verbatim information in particular is lost very quickly and cannot be recovered even when witnesses learn of new facts (like the identification of Brown’s injury as a bite mark) that would make previous memories more relevant; thus “[t]he scientific findings concerning memory for language would predict memory for these details to be poor or nonexistent.” *Id.* at 3-4.

The same is true of memory for gesture, like the kind testified to by White and Bond, as it has even higher rates of error and suggestibility than memory for language. *Id.* at 4. Moreover, the “discrepancies in detail” between the various witness statements regarding the gesture and between those statements and the physical evidence “are consistent with memories derived from suggestion and subject to losses even of the suggested post-event details.” *Id.*

The memory science described by Dr. Franklin does not just give reason to doubt the memories and reports of these witnesses, but also affirmatively explains a number of ways in which they might have come to testify as they did, and indeed, might have to come to believe what they appear to have believed. The overarching factor at play here is that “[m]emory is vulnerable to post-event influences.” *Id.* The act of remembering is itself a “reconstructive process, based on details that can be recovered at the time of retrieval (some of which may be in error), combined with knowledge, expectations, goals, and additional information to which one has been exposed in the interim.” *Id.* This reconstructive process can result in tainted memories.

One area of post-event memory taint of particular concern here is “post-event input from other sources.” *Id.* at 5. As Dr. Franklin explains, people may be exposed to information post-dating a particular event and yet “mistakenly believe that [this] detail encountered later had been

part of the original memory.” *Id.* Here, witnesses were exposed to media and police interviewers, as well as each other, which all provide “ample opportunities” both for witnesses exposed to information that they hadn’t known before and to forget where they learned such information. *Id.* at 5. For example, “there is no objective record of the witnesses reporting Prante’s reference to bite marks until after a mark found on the victim was publicized by news media in the summer of 1982.” *Id.* (citing contemporary news articles); *see also* Ex. 11 (Selected Media). The “media saturation of the public” that the prosecution undertook at the behest of the FBI profiler “created considerable opportunity for the details [regarding the bite mark] to be incorporated into witnesses’ memories and for witnesses to misattribute their beliefs to the 1978 discussion.” *Id.* at 5. And that this media blitz focused on the bite mark may have had particular significance, as research shows that “[w]itnesses who learn of forensic evidence against a suspect become more likely to implicate that suspect.” *Id.* at 7.

Likewise, the fact that there were multiple witnesses, many of whom were spouses or close friends, could also have created “co-witness contagion.” *Id.* at 6. This could occur both through direct discussions between witnesses (which are common), but also through indirect means such as the media, which reported on witnesses statements, *id.* at 5-6 , as well as by police, *id.* at 8 (police effects “can be responsible, at least in part, for what appears to be impressive agreement among co-witnesses”). These “circumstances would challenge individuals’ ability to accurately identify the source of specific details or their credibility.” *Id.* at 6.

Dr. Franklin further explains that hindsight bias may have also played a role in witness memory in this case. “[M]emory errors . . . are often accompanied by a confident sense of having always known [a] detail to be true,” and accordingly, “witnesses are poor gauges of the history of their own memories.” *Id.* at 8-9. In fact, people often feel *more* confident of their memories as

time passes, despite the scientific reality that those memories are actually fading. *Id.* at 10.

Factors such as repetition, feedback (from police or others), and post-event information can all increase this confidence without a corresponding increase in accuracy. *Id.* at 10-11. In Dr. Franklin's view "[s]tatements made by witnesses concerning Prante's words and gestures would be at particular risk of inaccuracies." *Id.* at 9. Moreover, the significant delay between these conversations and their first being reported to the police "rendered any memory that did exist vulnerable to significant loss and distortion," especially in light of all of the suggestive information to which witnesses were exposed. *Id.*

In light of this well-known research on suggestibility effects, Dr. Franklin ultimately concluded that

[t]he circumstances of Prante are particularly concerning. They allow for erroneous details to be introduced, in part through suggestive media reports, and then to be propagated through layers of co-witnesses, media, and police. In addition, the local media coverage of the case provided extraordinary opportunities for re-exposure to these details. . . . In the context of memory for specific details that, four years after the fact, is weak or non-existent, my assessment is that the witness evidence in *People v Prante* was subject to a range of sources of potential distortion that could bring about strong agreement among witnesses, regardless of accuracy.

Id. at 11.

These findings, especially read in conjunction with the changes in bite mark science, represent an incredible shift in the strength of the state's case against Prante. In short, scientific research has undone what may have appeared to jurors to have been a strong circumstantial case coupled with objective physical proof.

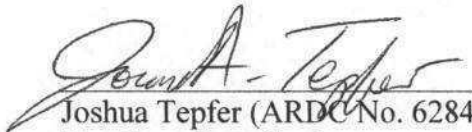
Ultimately, Prante is not asking to vacate his conviction at this time but merely for the opportunity to potentially develop physical evidence—and highly relevant evidence at that—of his innocence. Needless to say, Madison County is not immune to wrongful conviction and,

indeed, has had an individual exonerated based on post-conviction DNA testing. *See National Registry of Exonerations, David A. Gray.*²⁵

Where the key evidence of Prante's guilt has either been significantly eroded or completely discredited by new science, this Court should grant this Motion. Where Petitioner's counsel will pay all expenses associated with the testing, there is no reason to deny this request.

CONCLUSION

For the reasons stated, Prante respectfully requests that this Court grant his Motion in its entirety, and order DNA and fingerprint testing on the items of evidence he identifies herein.



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²⁵ <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3255>

IN THE CIRCUIT COURT OF MADISON COUNTY, ILLINOIS
THIRD JUDICIAL CIRCUIT

PEOPLE OF THE STATE OF)
ILLINOIS,)
Plaintiff-Respondent,) No. 82-CF-381
v.)
JOHN PRANTE,)
Petitioner-Defendant.)

EXHIBITS TO FORENSIC TESTING MOTION

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