



*Ramona Francesconi Rogers*  
ASHLAND COUNTY PROSECUTING ATTORNEY

110 COTTAGE ST., 3RD FLOOR • ASHLAND, OH 44805 • 419.289.8857 • FAX: 419.281.3865

August 9, 2010

Hon. Ted Strickland  
Governor, State of Ohio  
Riffe Center, 30<sup>th</sup> Floor  
77 South High Street  
Columbus, Ohio 43215-6108

Hon. Richard Cordray  
Attorney General, State of Ohio  
30 East Broad Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215

Re: *Arthur Swanson*

Gentlemen:

I am in receipt of your unexpected letter to me dated August 3, 2010, regarding DNA testing in *State v. Arthur Swanson*, wherein you discuss at length the conclusions that you and defense counsel for Mr. Swanson have reached in the Ashland County case. As Prosecuting Attorney for Ashland County, I would have very much appreciated the opportunity to be part of those one-sided meetings but since I was not afforded that courtesy, I will take this opportunity to explain to you why my answer to your request is a conditional no and under what circumstances I would be open to further conversation on this matter.

Having served in the capacity as an Assistant Prosecuting Attorney or Prosecutor for over 25 years, I am able to wholeheartedly assure you that I readily avail myself of any and all testing that "has the genuine and real potential to clarify the guilt, innocence or identity of a person suspected or convicted of a crime." This I would do without the need for politically motivated sermons from two candidates who will appear on the ballot in less than 60 days and without attempted bullying by a newspaper on a joint crusade with Ohio Innocence Project. Your willingness to substitute your judgments for those of seven experienced and committed Prosecutors belies the "tremendous respect" which you state you have for our work. Apparently you are so presumptuous as to believe you have greater legal knowledge and commitment to justice than myself, two different trial Judges, three Court of Appeals Judges and the Ohio Supreme Court – all of whom have found that DNA testing in this case would not be outcome determinative. Your letter, with minor changes, was basically a form letter to all the other Prosecutors and it fails to set forth any factual support for your conclusory statement that testing may be "dispositive."

You are correct that my office has maintained custody of the cigarette butt. The last time I can conclusively speak about the hair was in 1999 when it was in the custody of BCI. The hairs may or may not be in the Sheriff's Office file, although there is no chain of evidence or explanation how an envelope which may or may not contain the hairs might have arrived back from BCI to the Sheriff's Office. Neither Swanson nor the State chose to test the evidence even though the Defendant was made aware of its availability for testing early on in this case through discovery. (See attached exhibits marked 1, 2, 3 and 4). Neither the State nor the Defendant chose to have the items tested. It was not until 2002 that the Defendant first requested DNA testing, although his case had already gone through the first round of appeals.

As is clear by your letter, you are either ill informed or have intentionally omitted the fact that the Defendant asked for DNA testing not twice, but four times and was refused the testing by the Courts on all four occasions. The trial Court's denial of the DNA request was reviewed by the Fifth District Court of Appeals in *State v. Swanson*, Case No. 05-COA-113 (2005). On appeal, Swanson argued in support of his application that if his DNA was not on the cigarette butt that he would not be convicted of the offenses. The Court of Appeals rejected the Defendant's argument:

If DNA testing on the cigarette butt excluded appellant from any connection to the cigarette found near the scene of the crime, one could not conclude that appellant was not at the scene or did not commit said crimes. Instead, it would simply establish that the appellant did not smoke the cigarette that was found at the scene of the crime.

...

In the case sub judice, in order for the trial court to find that DNA evidence, on the cigarette butt, was outcome determinative, it would have to disregard all the identification evidence provided at trial by the victims and witnesses. A review of the record establishes that this evidence was substantial and therefore, the trial court did not abuse its discretion when the court determined that DNA testing would not be outcome determinative.

The Supreme Court affirmed the decision of the Court of Appeals. *State v. Swanson* (2007), 113 Ohio St. 3d 171.

Even pursuant to the newest law, effective July 6, 2010, there is no legal basis for re-opening this matter. As you know, Arthur Swanson, a career criminal, died in 2006. At the time of his death, there were no applications pending for DNA testing nor are there any currently pending. Despite law which the legislature has enacted, you conclude that the fact that Swanson is deceased "should not preclude DNA testing". The law says differently. As a Prosecutor, my job is to follow the law and abide by the Constitution. If you do not care for the most recently passed legislation I am sure you have the means to effectuate change in the law. Hopefully, Prosecutors will be invited to those discussions instead of just your offices, defense counsel and the Innocence Project.

In your letter, you argue that Mr. Keim is "publicly supportive" of a DNA test. I have no evidence of that before me. However, in 2008, the Columbus Dispatch reported that Keim and his family "hope for a test" and that Mr. Keim said, "If he's guilty, then we will know once and for all. If he is innocent, then they should clear him." Mr. Keim was obviously given false information that the DNA test would prove the guilt or innocence of Swanson. I do not believe that to be true, nor do the trial court, Court of Appeals, or Supreme Court Judges who have reviewed the issue. Had such a panacea existed, this office would have readily utilized it during the investigative stages of this case.

Moreover, as you know I cannot ethically or legally prosecute a criminal case governed by the wishes of victims. I represent the State of Ohio in criminal cases and am obligated to evaluate the facts available to me and follow the law as applied to the facts. Regardless of how Mr. Keim has now responded to misleading information regarding a request in a closed criminal case which has no basis at law, I can review for you his testimony and those of others at trial.

Benny Keim, the son of Elias and Sara Keim, testified during the trial that on November 25, 1998, the day before Thanksgiving, he had gotten up at 5:30 a.m. After breakfast, Benny went outside to hitch up the horses. Benny testified that while he was outside he saw a car come up the driveway and stop at the house. He stated that after he hitched the horses to the wagon he came around by the house and had to stop to wait for the car to leave. Benny Keim testified that it was a long gray car with louvers in front of the front door and that the back window was almost straight up and down. (See copy of photograph of car, attached as 5). Benny testified that he saw a black man run out of the door with a small parcel in his hand and get into the car. The photograph of Swanson's vehicle, taken by the Ashland County Sheriff's Department, was identified by Benny as the car that had been at their home the day of the robbery. Benny described the man as wearing a black hat and black leather jacket. Benny was able to identify the hat and jacket recovered at Swanson's residence by the Ashland County Sheriff's Department as the items Swanson was wearing the morning of November 25<sup>th</sup>. Benny went on to state that the man got in his car, took off and turned east out of the driveway towards Route 545 going towards Mansfield.

Elias Keim testified that he lived with his wife and sixteen-year-old son, Ben, and that on November 25, 1998, he finished his breakfast at approximately quarter after seven and that he did some reading and other matters for about fifteen minutes after that. He further testified that his wife saw a car pull into their drive and a black male approach and she wanted him to answer the door. Mr. Keim walked out to the kitchen into the washhouse and opened the inside door. Mr. Keim testified that he opened the inside door and asked the man what he needed and the man asked if they had any eggs to sell. He testified that he did not invite Swanson into his home and that Swanson was standing outside of the house when Mr. Keim went inside to check on the eggs. When Mr. Keim went back into the washroom to get the eggs, Swanson was standing inside his residence. Mr. Keim testified that he felt very uneasy about Swanson being in the washroom. After Mr. Keim set the eggs on the kettle in the washroom, Swanson took two steps forward and pretending to pick up an egg, in the next instance had his arm locked around Keim's neck. Mr. Keim testified that Swanson choked him and pulled him tight against his breast and that it felt like a raging animal on his back. Swanson told Mr. Keim he wanted all the money they had in the house. Mrs. Keim was in the kitchen and had not heard what was taking place before she saw Swanson choking Mr. Keim in the kitchen. When Mrs. Keim attempted to pull Swanson off of Mr. Keim, Swanson threatened to kill him if she didn't back off. Mr. Keim told his wife Swanson wanted money and to get their money. His wife retrieved his billfold and took out the bills, which came to about \$60 or \$70, and handed them to Swanson. Mr. Keim's wife then ran over and grabbed a little desk drawer that contained loose change. After Swanson ran out of the house, Mr. Keim stated that he and his wife went outside to see if they could get his license number. Mr. Keim testified that Swanson was driving a long, heavy gray car. Keim identified the picture of the car taken by the detectives as the one that was in his drive. Mr. Keim identified the jacket and the hat that the detectives recovered from the search of Swanson's residence as the hat and jacket that the person who robbed them wore. He described the person as black, blacker than average Negro, medium height and a slender build and weight with high cheek bones. Mr. Keim testified that he was able to pick out the person who robbed him from a photograph array shown to him by Det. Staley. Mr. Keim further told the jury that someone had given him a picture from an article about Swanson in the Mansfield News Journal and the instant he saw it a chill went up his spine because it was the man who robbed them. Mr. Keim also identified Swanson in court as the person who robbed them.

Jeffrey Workman testified that he was a construction worker who had worked with Arthur Swanson. Mr. Workman testified that in December of 1998 he called in a tip to the Ashland County Sheriff's Department regarding the robbery of the Amish. Mr. Workman stated that he named Swanson as a suspect because Swanson had previously suggested robbing the Amish in the summer of 1998.

Don Maxey, an auto mechanic instructor at Madison High School, told the jury that he was on Charles Road, near the Richland and Ashland County border, running a trap line around 7:30 a.m. on November 25, 1998. Maxey testified that a person in a silver or gray Chrysler car stopped and asked him for directions to an Amish farm because the man wanted to buy some eggs. Mr. Maxey identified the vehicle in the photograph taken by the Ashland County Sheriff's Department of the car titled to Swanson's mother as the same vehicle that stopped that morning. Mr. Maxey went on to identify Swanson sitting in the courtroom as the man who stopped to ask for directions on the morning of November 25, 1998. He testified that he had previously picked Swanson out of the photographic lineup. Mr. Maxey went on to state that when he saw Swanson in person he could guarantee that it was the same person he had seen.

Mr. Lonnie Scott testified that he had also previously worked with Swanson in 1998. Mr. Scott testified that Swanson told him that he wanted to rob the Amish because it would be easy with them not having telephones and that they would not report the crime. Mr. Scott further testified that Swanson had asked him to be the driver to rob the Amish and Swanson did not want to use his own vehicle.

Swanson's alibi witness, Mr. Timothy Woods, initially stated that he saw Swanson between 8 and 8:30 a.m. on the morning of November 25, 1998. However, on cross-examination, Mr. Woods conceded that Swanson came to his house on Thanksgiving Day about 8:00 and not the day before. Mr. Woods stated that he was not off on a Wednesday and that Swanson came to his house on a holiday.

Maebell Owens, Swanson's mother, testified on cross-examination that Swanson had been driving her car on November 25, 1998. Mrs. Owens identified the photograph of the vehicle taken by the Ashland County Sheriff's Department as her car.

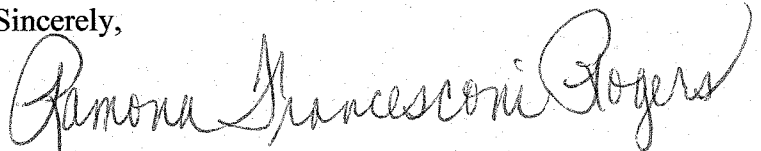
Mr. Swanson, previously convicted of nine felonies, including an unarmed robbery, chose not to testify during the trial.

Given the above facts, I do not for a moment believe that DNA testing would be outcome determinative in this closed case. More importantly, two different trial courts agree with me, as has the Court of Appeals and the Ohio Supreme Court.

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August 9, 2010

Justice has been served. Arthur Swanson was guilty and properly convicted by a jury of Abduction, Aggravated Burglary, and Robbery. Therefore, unless you are in possession of information or evidence which I do not have, I will not voluntarily consent to DNA testing in this case. In the alternative, if you – not a staff member, not defense counsel or newspaper reporters, but you individually – want to certify to me that you have read the entire transcript in this case, reviewed the physical evidence, read the Court of Appeals briefs and the appellate decision and then care to meet with me to explain how you feel the testing would be outcome determinative, I will entertain further discussions with you on the subject. I would insist that if we have that discussion it be devoid of political posturing which has no place in the criminal justice system.

Sincerely,

A handwritten signature in cursive script that reads "Ramona Francesconi Rogers". The signature is written in black ink and is positioned above the typed name.

RAMONA FRANCESCONI ROGERS  
Ashland County Prosecuting Attorney

rfr:lmz  
Enclosures

IN THE COURT OF COMMON PLEAS OF ASHLAND COUNTY, OHIO

STATE OF OHIO,

Case No. 98-CRI-07745

Plaintiff,

vs.

DISCOVERY

ARTHUR L. SWANSON,

(Exhibits A - H)

Defendant.

**I. Statement of Defendant or Co-Defendant:**

1. A summary of oral statements made by Arthur Swanson to Det. David Martin of the Ashland County Sheriff's Office is attached hereto and marked Exhibit A.

**II. Defendant's Prior Record**

1. The Defendant has the following convictions stemming from incidents in Richland County:
  - a) Unarmed Robbery (date of disposition – March 27, 1965);
  - b) Breaking and Entering (date of disposition – June, 1969);
  - c) Aggravated Trafficking (Case No. 82CR82);
  - d) Petty Theft (date of disposition – December 10, 1983);
  - e) Trafficking in Marijuana – three counts – (Case No. 84CR52);
  - f) Aggravated Trafficking (Case No. 86CR294);
  - g) Aiding and Abetting Forgery (Case No. 95CR496A)

**III. Documents and Tangible Objects:**

1. Miscellaneous photographs are available for your inspection at the Ashland County Prosecutor's Office. (Photocopies are attached hereto and collectively marked Exhibit B.)
2. A copy of a drawing of an insignia seen on a motor vehicle as identified by the witness Elias Keim is attached hereto and marked Exhibit C.
3. One (1) composite drawing is attached hereto and marked Exhibit D.
4. A copy of one (1) photo lineup is attached hereto and marked Exhibit E.
5. A copy of a Search Warrant and Return of Search Warrant is attached hereto and collectively marked Exhibit F. (The three (3) items listed on the Return of Search Warrant are available for your inspection at the Ashland County Sheriff's Office.)

6. The following items are available for your inspection at the Bureau of Criminal Identification and Investigation:

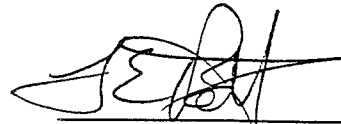
- a) one (1) cigarette butt;
- b) one (1) wooden drawer.

**IV. Reports of Tests and Examinations:**

1. Copies of two (2) Bureau of Criminal Identification and Investigation Laboratory Reports are attached hereto and separately marked Exhibits G and H.

**V. Witnesses Names and Addresses:**

1. Capt. Roger Martin, Ashland County Sheriff's Office, 110 Cottage Street, Ashland, Ohio 44805
2. Det. Larry Martin, Ashland County Sheriff's Office, 110 Cottage Street, Ashland, Ohio 44805
3. Det. Ed Staley, Ashland County Sheriff's Office, 110 Cottage Street, Ashland, Ohio 44805
4. Det. David Martin, Ashland County Sheriff's Office, 110 Cottage Street, Ashland, Ohio 44805
5. Capt. Carl Richert, Ashland County Sheriff's Office, 110 Cottage Street, Ashland, Ohio 44805
6. Miriam Rhodes, 1481 Twp. Rd. 1008, Ashland, Ohio 44805
7. Joe Dietz, c/o Bureau of Criminal Identification and Investigation, 3333 Brecksville Road, Richfield, Ohio
8. Mabell Owens, 97 West 5<sup>th</sup> Street, Mansfield, Ohio
9. Donald Maxey, 2448 Emma Lane, Mansfield, Ohio
10. Lonnie Scott, 155 Ford Road, Mansfield, Ohio
11. Alfred Bello, 16800 Lakeshore Drive, Cleveland, Ohio
12. Elias Keim, 1488 Twp. Rd. 1008, Ashland, Ohio 44805
13. Sara Keim, 1488 Twp. Rd. 1008, Ashland, Ohio 44805
14. Benny Keim, 1488 Twp. Rd. 1008, Ashland, Ohio 44805
15. Sgt. Matt Mayer, Richland County Sheriff's Office, Mansfield, Ohio
16. Lovina Yoder, 4635 McNall Road, Mansfield, Ohio
17. Ura and Johnny Yoder, 1060 Twp. Rd. 1443, Ashland, Ohio



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TIMOTHY E. POTTS

#0068147

Assistant Prosecuting Attorney

IN THE COURT OF COMMON PLEAS OF ASHLAND COUNTY, OHIO

STATE OF OHIO,

Case No. 98-CRI-07745

Plaintiff,

vs.

DISCOVERY CERTIFICATION

ARTHUR L. SWANSON,

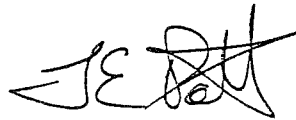
Defendant.

Exhibits A - H

99 FEB - 9 PM 12:46  
JUDICIAL CLERK  
CLERK OF COURTS  
ASHLAND CO. OHIO

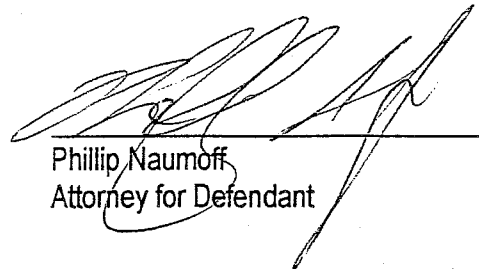
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I hereby certify that Discovery in the above-captioned case has been delivered to Phillip Naumoff, Attorney for Arthur L. Swanson, this 4<sup>th</sup> day of February, 1999.



TIMOTHY E. POTTS  
#0068147  
Assistant Prosecuting Attorney

I hereby certify that Discovery in the above-captioned case has been received from the State of Ohio this 9<sup>th</sup> day of FEBRUARY, 1999.



Phillip Naumoff  
Attorney for Defendant



Attorney General  
Betty D. Montgomery

BCI-30 (Rev. 2-98)

Bureau of Criminal Identification and Investigation

Laboratory Report

To: Sheriff Larry E. Overholt 98-35137  
Ashland County Sheriff Office  
110 Cottage St. BCI Lab Number:  
Ashland, Ohio 44805  
ATTN: Det. Staley Analysis Date: 12/23/98

Re: Robbery  
Subject: B/M Agency No.:  
Victim: Elias Keim CS039803----

**FINDINGS:**

Serological examination of the cigarette butt (Item #1) indicated the presence of amylase, a component of saliva.

The cigarette butt (Item #1) is being retained. DNA comparison may be performed when blood standards from Elias Keim and the suspect are submitted.

*Cynthia M. Shannon*  
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Cynthia M. Shannon  
Forensic Scientist

CMS/cn  
T-122398  
cc: S/A Joe Dietz (BCI)

Please address inquiries to the office indicated, using the BCI case number.

<input type="checkbox"/> BCI & I - Bowling Green Office P.O. Box 928 Bowling Green, OH 43402 Phone: (419) 353-5603	<input type="checkbox"/> BCI & I - London Office P.O. Box 365 London, Ohio 43140 Phone: (614) 466-8204	<input type="checkbox"/> BCI & I - Richfield Office P.O. Box 336 3333 Brecksville Road Richfield, Ohio 44286 Phone: (330) 659-4600	<input type="checkbox"/> BCI & I - Cambridge Office 60788 Southgate Rd. Byesville, Ohio 43723 Phone: (740) 439-3655
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Attorney General  
Betty D. Montgomery

BCI-30 (Rev. 2-98)

Bureau of Criminal Identification and Investigation

Laboratory Report

To: Sheriff Larry E. Overholt 98-35137  
Ashland County Sheriff Office BCI Lab Number:  
110 Cottage St.  
Ashland, Ohio 44805  
ATTN: Det. Staley Analysis Date: 12/08/98

Re: Robbery Agency No.:  
Subject: B/M  
Victim: Elias Keim

**RESULTS:**

Examination of the tapings from the floor (item 3) revealed the presence of several Caucasian hairs, and one Negroid hair. Comparisons may be performed upon submission of head hair standards from the subject.

Donna L. Rose  
Forensic Scientist

DLR/cn  
T-121098

Please address inquiries to the office indicated, using the BCI case number.

<input type="checkbox"/> BCI & I - Bowling Green Office P.O. Box 928 Bowling Green, OH 43402 Phone: (419) 353-5603	<input type="checkbox"/> BCI & I - London Office P.O. Box 365 London, Ohio 43140 Phone: (614) 466-8204	<input type="checkbox"/> BCI & I - Richfield Office P.O. Box 336 3333 Brecksville Road Richfield, Ohio 44286 Phone: (330) 659-4600	<input type="checkbox"/> BCI & I - Cambridge Office 60788 Southgate Rd. Byesville, Ohio 43723 Phone: (740) 439-3655
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