



QUATTRONE CENTER

for the Fair Administration of Justice

REPORT OF THE BALTIMORE EVENT REVIEW TEAM

ON

STATE OF
MARYLAND V.
MALCOLM J. BRYANT

===== NOVEMBER 2018 =====

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INTRODUCTION

The Baltimore Event Review Team (BERT) is a voluntary collaboration among the Baltimore City State's Attorney's Office (SAO), the Baltimore Police Department (BPD), the Maryland Office of the Public Defender in Baltimore City (OPD), and the University of Baltimore Innocence Project (UBIP), a collaborative effort of the Office of the Public Defender and the University of Baltimore School of Law, coordinated by the Quattrone Center for the Fair Administration of Justice at the University of Pennsylvania Law School.¹ The BERT is dedicated to promoting a culture of learning from error across all of the participating agencies.

In 1999, Malcolm J. Bryant was convicted of the murder of Ms. Toni Bullock and sentenced to life in prison. In 2015, after 16 years in prison, a DNA test conclusively proved Mr. Bryant's innocence of the crime for which he was convicted. While it is a given that no system is perfect, and errors will occur, the members of the Baltimore Event Review Team (BERT) came together to learn from this unfortunate and unwanted injustice to Mr. Bryant, and design improvements to the Baltimore criminal justice system that will reduce the likelihood of such inaccurate convictions occurring in the future.

To accomplish this goal, the Quattrone Center led BERT through a thorough review of the case, using principles of sentinel event reviews and root cause analysis (RCA) to conduct a "just culture event review." A "just culture" is one "that recognizes that competent professionals make mistakes and acknowledges that even competent professionals will develop unhealthy norms (e.g., shortcuts, 'routine rule violations'), but has zero tolerance for reckless behavior."² Thus, **the BERT review was designed to understand the events that occurred in the Malcolm Bryant case, from investigation through exoneration, and to generate precise recommendations with the goal of preventing the mistakes that occurred in that case from happening again. Our goal was not to punish or find blame with any individual or agency, but solely to understand how our system could ultimately convict Malcolm Bryant and then conclude that the conviction was in error based on the specifics of this case and its subsequent appeal.**

While obviously an incorrect conviction is evidence of imperfections in our criminal justice system that are worthy of close review and improvement, it is important to acknowledge that from the perspective of procedural justice, the decision to review this case and learn from errors is a victory for Baltimore's criminal justice system. Most jurisdictions assume that justice has been satisfied by the exoneration, rather than extending justice to the City of Baltimore and its citizens by continuing to understand where and why the Bryant case deviated from the norm and led to an unwanted and inaccurate outcome. The efforts of all who worked on the case and this review should be commended.

At the same time, it is apparent to each of the participants that Mr. Bryant's saga is a "never event" that cannot be permitted in a legitimate system of criminal justice. Mr. Bryant's freedom

¹ The Circuit Court for Baltimore City was invited, but chose not to participate in this event review.

² Agency for Healthcare Research & Quality Glossary, available at http://psnet.ahrq.gov/popup_glossary.aspx?name=justculture.

was secured and his innocence realized too late, and only after the persistent efforts of Mr. Bryant, dedicated counsel, and the willingness of the Baltimore State's Attorney's Office (SAO) Conviction Integrity Unit (CIU) to re-investigate the case. What's more, the safety of the community was compromised, as Ms. Bullock's actual assailant was never identified or captured and may remain at large today.

The *Bryant* case presents a learning opportunity for each of the individuals and agencies that participated in the investigation, adjudication, and post-conviction process. What modifications in behavior, decision-making, supervision, information flow, and environment might have permitted the system to refrain from identifying Mr. Bryant as the perpetrator and improperly incarcerating him for close to twenty years? How can each agency modify its practices to empower its employees to achieve a more accurate result in the next homicide investigation? While some of these factors have been modified since the time of the murder, the review made clear that many of the same or similar systemic issues remain.

As often happens in criminal justice, our feedback loops reveal themselves slowly. As often happens in complex systems, Mr. Bryant's inaccurate conviction was the result of many contributing factors from each of the participating agencies, rather than one large error by a single actor. The *Bryant* investigation and prosecution occurred almost twenty years ago. While the length of time that has elapsed since the events of the case imposed certain limitations on the scope of our review (e.g., missing documents, unavailable interviewees, weakened memories), it also conferred certain advantages (e.g., greater openness due to limited concern about political fallout and/or civil liability). As a result, the age of the case did not prevent it from being a useful case, confirming that a delayed multi-stakeholder event review can yield valuable and novel insights into improving the criminal justice system.

A case narrative follows, as well as a set of contributing factors that combined to enable the inaccurate conviction, and a list of proposed modifications to the Baltimore criminal justice system that are designed to prevent errors like those that occurred in the Malcolm Bryant case from occurring again in the future.

Witnesses and other individuals who have not previously been identified in public records are identified by alias initials to protect their identities.

CONTRIBUTING FACTORS AND RECOMMENDATIONS

In May, 2016, the Baltimore SAO agreed that Malcolm Bryant should be granted a new trial; the Circuit Court of Baltimore City did so and the State dismissed all charges that had been filed against him in connection with the murder of Ms. Bullock. In December 2016, the stakeholders listed above formed the BERT and selected Mr. Bryant's case for its first Just Culture Event Review.

Our analysis of the case revealed a substantial number of contributing factors that combined to cause the inaccurate conviction of Bryant. These factors occurred during three phases (Figures 1-3 in the appendix): (1) The Investigational Phase, with contributing factors including inaccurate witness identifications, inadequate documentation, and issues with the manner of investigating alternative suspects; (2) The Discovery Phase, with contributing factors relating to disclosure between BPD and SAO, and SAO and OPD; and (3) The Post-Conviction Phase, with contributing factors relating to the timeline for release of the forensic evidence for testing, and cooperation between SAO and UBIP.

Acronyms: State's Attorney's Office (SAO); Baltimore Police Department (BPD); Office of Public Defender (OPD); Univ. of Baltimore Innocence Project (UBIP)

<u>Contributing Factors</u>	<u>Recommendations</u>	<u>Implicated Stakeholders</u>	<u>Page</u>
1. The development of Mr. Bryant as a suspect led to an inaccurate eyewitness identification of Mr. Bryant by Ms. Powell that was accepted as accurate by BPD, SAO, and the jury.	<i>(1) BPD investigators should routinize a composite sketch procedure, using it only in limited circumstances and with a trained artist, video record the process and make public the protocol it develops for composite sketches.</i>	BPD	
	<i>(2) BPD should continue to update its photo array procedures to conform to scientifically supported "best practices."</i>	BPD, SAO	
	<i>(3) BPD Investigators should be trained on the various common types of system variables (e.g., police procedures) or estimator variables (e.g., environmental or witness conditions) that may limit the accuracy of an eyewitness identification.</i>	BPD	
		BPD, SAO, OPD	

	<p><i>(3)(a) Appropriate individuals for the BPD, the SAO, and defense counsel should observe the scene of the crime at a time when the conditions are as similar as possible to the conditions as they were at the time the crime was committed, to be fully conversant about estimator variables that may have existed at the time of the crime.</i></p> <p><i>(3)(b) BPD Investigators should obtain statements from key witnesses as soon as possible after the alleged offense, to reduce the likelihood of memory contamination, or environmental or witness conditions that might affect the accuracy of the statements.</i></p>	BPD	
<p>2. The BPD investigative file lacks expected documentation that could have assisted in identifying the inaccurate conviction.</p>	<p><i>(4) BPD should operationalize the creation of written daily investigation summaries, including dates and times when activity did and did not occur, as well as communications between investigators, including records of text messages between investigators that are happening in real time.</i></p> <p><i>(4)(a) Supervisors should require that investigators provide a chronological summary of investigative activities.</i></p> <p><i>(4)(b) The SAO should have real-time access to these summaries through a shared electronic records system, and should receive alerts with an easily accessible audit trail when modifications to the case file are made at any time.</i></p> <p><i>(5) BPD should document all conversations with potential witnesses and suspects and when practicable, these conversations should also be recorded by audio or video and</i></p>	<p>BPD</p> <p>BPD</p> <p>BPD, SAO</p> <p>BPD, SAO</p>	

	<i>shared with the SAO for independent review.</i>		
3. The BPD investigation following the eyewitness identification neither identified the actual perpetrator nor ruled out Malcolm Bryant, and was accepted by SAO.	<i>(6) BPD Investigators should receive training on cognitive interviewing techniques, including education about confirmation bias and other implicit biases that may influence investigational conclusions.</i>	BPD	
	<i>(6)(a) When interviewing witnesses or suspects, investigators should carefully avoid asking questions that introduce non-public facts to the interviewee or that require the interviewee to adopt specific language or a specific answer.</i>	BPD	
	<i>(6)(b) Investigators should use all information at their disposal to probe and ensure the accuracy of potential suspects' statements.</i>	BPD	
	<i>(7) When charging stranger on stranger, single eyewitness identification cases, the BPD and SAO should ensure that corroborating evidence supporting the identification exists.</i>	BPD, SAO	
	<i>(7)(a) The SAO should carefully evaluate the witness and any colorable alibi put forward by the defendant, even if the information is discovered or advanced after charging or later in the adjudication process.</i>	SAO	
	<i>(7)(b) Prior to charging, BPD should comply with rules of discovery, providing full disclosure of all potential evidence and investigatory material, including potentially exculpatory information, to SAO.</i>	BPD, SAO	

	<i>(12) OPD should enlist a team of investigators to assist with investigations in homicide cases and to follow up on leads relating to possible alibis.</i>	OPD	
7. SAO objects to release of forensic evidence for testing.	<i>(13) The SAO should continue its creation and refinement of conviction integrity procedures to allow for detailed review of claims of actual innocence. These procedures and protocols should continue to allow for review by different personnel within the office and should clarify the relationship between the CIP and regular handling of post-conviction matters.</i>	SAO	
	<i>(13)(a) SAO personnel involved in review of claims of actual innocence should be trained about confirmation bias when conducting the internal reviews.</i>	SAO	
	<i>(13)(b) All claims of innocence involving DNA should come to the CIP and procedures should account for the challenges that come with cases involving forensic evidence, including accessing the evidence.</i>	SAO	
	<i>(13)(c) Although it has only dealt with homicides to date, CIP should clarify, to the extent possible, how the nature of the charges impacts decision timeline.</i>	SAO	
	<i>(14) BPD and SAO should establish procedures and protocols for communications relating to the release of physical evidence upon request by parties other than detectives or BPD and for after a court order and these procedures should address any concerns about</i>	BPD, SAO	

	<p><i>the chain of custody or safety of the evidence.</i></p> <p><i>(15) The Baltimore courts should oversee compliance with court orders involving the release of physical evidence for post-trial testing by issuing a scheduling order for which the parties would have deadlines by which the testing must be completed.</i></p>	SAO, OPD, UBIP, COURTS	
<p>8. Much of the forensic evidence that ultimately exonerated Mr. Bryant was not released for years after the crime was committed, despite being in the possession of law enforcement agencies.</p>	<p><i>(16) The Baltimore courts should continue the practice that refrains from placing actual innocence claims on the collateral docket so that they can be adjudicated in a timely fashion.</i></p> <p><i>(17) Educate judges, SAO, defense counsel, and other personnel on the capabilities of forensic technology, why release of certain types of evidence is necessary for the efficient disposition of actual innocence claims, and how the BPD lab's release of evidence has to comply with existing federal and state regulations.</i></p> <p><i>(18) CIP and the BPD lab should establish protocols to clarify the prioritization of cases for review and the protocols should ensure that post-conviction cases where testing is dispositive of innocence receive very high priority.</i></p>	<p>COURTS</p> <p>SAO, OPD, UBIP, COURTS</p> <p>BPD, SAO</p>	

The Bryant case has been written about extensively, in litigation and in the media, in great detail and with great skill. What follows is a brief narrative history of the case, and a discussion of the contributing factors leading to the errors in this case, along with recommendations proposed by the BERT to prevent their recurrence. The identification and description of these factors, as well as the recommendations that accompany them, are the consensus product all the BERT participants, who sought to develop mutually agreeable best practices that were practicable in Baltimore and further the common goal of all the stakeholders in the system – accuracy and integrity of the criminal justice process.

CASE NARRATIVE³

On November 20th, around 8:30 PM, Ms. Bullock was walking from a convenience store to her house with her friend Ms. Tyeisha Powell. As Ms. Bullock and Ms. Powell walked near 1300 Harford Road, they were confronted by a male, who grabbed and steered them toward 1300 North Central Avenue. The women were assaulted during the walk and after Ms. Powell fled the scene Ms. Bullock was killed. Later that night, Ms. Powell met with detectives, gave an initial description, and a composite sketch was created the next day. The initial description provided by Ms. Powell mentioned a black male, approximately 5'10", around 20-25 years old, wearing a black jacket, red t-shirt, dark jeans. It did not mention his hair.

Over the next few weeks, the BPD investigated the case, receiving numerous tips from named and anonymous informants. BPD case files indicate that investigators interviewed some individuals named in the tips; they also show that these leads were assessed against the composite sketch as well as other descriptive details provided by Ms. Powell.

As part of the investigation, on November 30th, detectives sent clothing items obtained from the scene of the crime to the BPD Trace Analysis Unit for forensic testing. Around the same time, the BPD Homicide Division received a tip from an inmate incarcerated for an unrelated crime, claiming knowledge about the perpetrator of Ms. Bullock's murder. A second individual identified Mr. Bryant as someone who appeared similar to the composite. The informant stated that he had seen Mr. Bryant in a holding pen in the Central Booking & Intake Facility in Baltimore City. Mr. Bryant had been held after his arrest as the driver of a car that had been reported stolen.

On December 1, 1998, BPD detectives met with Ms. Powell again and took a formal recorded statement from her about what had happened. Detectives presented a six-picture photo array ("six-pack") to Powell and she identified Mr. Bryant as the killer. In this statement, Ms. Powell mentioned for the first time that the individual had "bushy hair," "facial hair, a beard, and a mustache," and "chincky" (sic) eyes. Detectives prepared an arrest warrant for Mr. Bryant after Ms. Powell's identification and statement.

BPD detectives interviewed Mr. Bryant on December 2, 1998, recording two statements. In the first, Mr. Bryant provided his whereabouts from approximately 6PM through midnight on the night of November 20. He provided details about who was with him, explained that a cut above his eye had been caused by a fight at the Twilight Club that night, and described his clothing on the evening in question: an orange shirt and a beige sweater. In the second recording, Mr. Bryant mentioned additional individuals that were with him, and provided additional specifics about the fight at the Twilight Club and the resulting trip he took to Mercy Hospital for medical treatment. Investigators asked Bryant about his hairstyle at the time of the murder and that Bryant had stated that his "sister put them [corn rows] in on Thursday."

On December 3, 1998, BPD received an anonymous tip through Metro Crime Stoppers that a man, "SS" was the perpetrator of Ms. Bullock's murder. This was the second tip providing SS's

³ A visual timeline is available as an appendix at the end of the report.

name to BPD, as a prison inmate within the prison had identified SS as the perpetrator on November 30th. Detectives interviewed the reporting inmate on December 10, and investigated the claims with, among others, SS's probation officer.

On December 21, 1998, detectives spoke with Mr. Bryant's mother BC. BC corroborated Mr. Bryant's statement regarding his clothes at the time of the murder (a cream-colored sweater) and stated that he did not have a cut before heading out from the house on the evening in question. She also mentioned that Bryant had been with his brother at a restaurant at approximately 7:30 PM, verifiable from a waitress who was a family friend.

The investigation continued into late December, as investigators began to acquire information about SS. SS and his girlfriend were interviewed by the BPD in early January; not long after, the BPD's file suggests that SS was ruled out as a possible suspect.

Additional information gathered by the SAO and BPD provided circumstantial support for Mr. Bryant's alibi. On January 12, 1999, the ASA assigned to the case sent a memo to detectives. GY, one of the individuals named by Bryant in his recorded statement, had spoken to another ASA in the SAO, stating that he had been with Mr. Bryant at the Twilight Club the night of the murder and that Mr. Bryant had corn rows in his hair at that time.

From mid-January 1999 through July 1999, BPD disclosed documents and evidence from its investigation to SAO. These disclosures were piecemeal and incomplete, resulting in several requests from the assigned ASA for additional documentation and records. SAO disclosure to the Office of the Public Defender (OPD) was similar, with OPD requesting additional information as well. OPD had been assigned to the case following the indictment of Malcolm Bryant for murder and related charges.

On May 14, 1999, Bryant provided investigators with a sample of his blood to compare to the clothing evidence from the scene of the crime. These results were sent to SAO on June 10, 1999. This was also the first time – a full six months after investigators interviewed SS – that SAO saw the statements of SS and his girlfriend, which was the first investigative information that related to the investigation of SS as an alternative suspect.

Mr. Bryant's trial began on August 2, 1999, and he was convicted of the murder of Ms. Bullock and sentenced to life in prison. He maintained his innocence throughout the trial. His conviction was based in large part on Ms. Powell's eyewitness identification, including statements that the perpetrator was "two or three" inches taller than Ms. Powell's height of 5'3 ½ and that another (third) friend had been with her and Ms. Bullock (the first time this had ever been mentioned). The State emphasized that Ms. Powell believed Malcolm Bryant to be similar to the composite image she had been involved in creating. A representative from the Trace Analysis Unit testified about the DNA lab report indicating that traces of Ms. Bullock's blood were found on her umbrella but no traces of Mr. Bryant's DNA were present on the umbrella. The same analyst also explained that blood on Ms. Bullock's fingernails had been first tested for the presence of human blood and that serological testing had consumed the sample and eliminated the possibility of DNA testing. While there was nothing in the report linking Mr. Bryant to the crime scene, the

report could not conclusively exclude him as the perpetrator. Multiple defense witnesses testified to Bryant's corn rows at the time as well as his whereabouts.

Mr. Bryant ultimately enlisted the assistance of the University of Baltimore Innocence Project (UBIP) in 2005. UBIP's first motion for release of evidence to conduct DNA analysis was on July 11, 2008. One month later, SAO formally opposed the release of evidence, though it made informal contact with UBIP to seek a mutually acceptable path forward. Those negotiations were unfruitful, and on May 11, 2009, Judge Gale Rasin partially granted Mr. Bryant's motion, ordering the BPD lab to release half of the fingernails (originally labeled consumed back in 1999 due to testing capabilities at the time, but now capable of being tested) to the Bode Technology Group, a private lab capable of conducting DNA testing, for testing by September 23, 2009.

It took almost two full months (until July 6, 2009) for BPD to provide one packet of halved fingernail clippings to Bode. Complicating matters further, SAO alerted the court on Sept. 23, 2009 that "unforeseen federal regulatory requirements involving outsourcing of DNA samples to Bode" would delay completion of the testing.

On November 16, 2009, UBIP requested a hearing concerning the release of the rest of the fingernail samples after learning from Bode that additional testing could be done if Bode was in possession of 100% of the remaining samples, instead of the portion it currently possessed. SAO opposed this motion out of concern that the remaining samples would be consumed or lost. Nearly four months later, on March 8, 2010, Judge Rasin ordered Bode to reassess whether it needed *all of the samples*, despite the fact that UBIP and Bode had stated they did during the November motion. The order stated that if Bode could not complete the desired testing based on the halved fingernails, BPD had to send the remaining components of the fingernails to Bode.

On April 29, 2010, almost two years after the first motion for testing, Bode and BPD agreed that the halved samples were insufficient, and that BPD would send the remaining fingernail pieces to Bode. By July 2, 2010, the remaining evidence had not been sent despite an email conversation that included representatives of UBIP, SAO, and BPD, causing UBIP to send Judge Rasin a request for enforcement of her March 8th, 2010 order. Judge Rasin issued that order on July 6, 2010, and on July 16, 2010, Bode received the second batch of fingernail clippings. Bode sent results to UBIP later that summer and suggested to UBIP that a blood sample from Mr. Bryant be taken in order to compare to the Y-STR profile created from the fingernail clippings. UBIP and SAO agreed to this in January 2011 and Mr. Bryant's blood sample was sent to Bode in February 2011.

On March 15, 2011, Bode reported that a comparison of Bryant's blood with the Y-STR profile created from the blood on the fingernails excluded Bryant as a source of the DNA from Ms. Powell's fingernails. UBIP filed for a new trial, and motioned for the release of clothing evidence that contained blood as well. Judge Rasin denied the motion for a new trial on August 25, 2011, finding that the DNA testing was not dispositive of innocence under existing legal standards, and did not rule on the release of evidence part of the motion. UBIP contacted SAO in Sept. 2011 regarding the release of the clothing. After discussions between the parties, Judge Rasin ordered the release of "swabs and stains" from the clothing to Bode on Nov. 10, 2011. Bode received some of this evidence in January 2012, but did not receive all of the available

clothing. It took well over a year for Bode to conduct the testing of the materials it received. By April 2013, Bode had tested the samples and stains, but had concluded that it needed the clothing in its entirety to ensure that all desired testing could be accomplished.

It took another year before Judge Charles Peters ordered the release of the clothing in its entirety on June 20, 2014. Bode received it in Sept. 2014 and conducted testing through Oct. 2015. The final pieces of evidence did not come to Bode until over six years after the initial request. On Oct. 12, 2015, Bode's testing of the clothing revealed a full, male, DNA profile that matched the profile from the fingernail clippings and was conclusively inconsistent with Mr. Bryant's DNA. UBIP sent a letter to SAO on Nov. 4, 2015, sharing the results and filed a petition for a new trial based on the DNA evidence.

SAO withdrew charges against Mr. Bryant in May 2016.

Malcolm Bryant was released from prison on May 11, 2016, after spending close to seventeen years incarcerated for a crime that he did not commit. Mr. Bryant died in early 2017.

FACTORS CONTRIBUTING TO ERROR: INVESTIGATION PHASE

Contributing Factor 1: The development of Mr. Bryant as a suspect led to an inaccurate eyewitness identification of Mr. Bryant by Ms. Powell that was accepted as accurate by BPD, SAO, and the jury.

Ms. Powell's inaccurate eyewitness identification of Mr. Bryant as the perpetrator of the assault and its acceptance by the BPD were the initial errors contributing to Mr. Bryant's conviction. While Ms. Powell's identification appeared credible, and never wavered, it was inaccurate, and the inaccuracy was not detected by the BPD, the SAO, the Public Defender, the Court, or the jury.

Ms. Powell's inaccurate identification was facilitated by Mr. Bryant's presence in a photo array presented to Ms. Powell. His inclusion in the photo array was due to a tip from an informant who matched Mr. Bryant to a composite sketch generated by Ms. Powell's initial description of the perpetrator. All of these contributing factors should be evaluated to improve the ability of witnesses and police investigators to enhance eyewitness identifications.

- **Recommendation 1:** BPD Investigators should routinize a composite sketch procedure, using it only in limited circumstances and with a trained artist, video record the process and make public the protocol it develops for composite sketches.

BPD's investigation of the murder of Ms. Bullock relied substantially on a composite sketch created from Ms. Powell's verbal description of the perpetrator. Ms. Powell's initial description after the crime described a black male, approximately 5'10" tall, 20-25 years old, wearing a black jacket, red t-shirt, and dark jeans. While our review determined that the sketch was computer-generated, the procedures surrounding the composite sketch were not documented in the BPD file and the details of Ms. Powell's descriptions to the sketch artist were not recorded. While Ms. Powell's initial description did not mention the perpetrator's hairstyle, the composite sketch included a hairstyle for the perpetrator. It is unclear whether the BPD or SAO probed any differences between the initial description and what appeared in the composite. The sketch generated multiple anonymous tips about the perpetrator that were then utilized in the BPD investigation. Most notably, an individual who had been in a holding cell with Mr. Bryant at the jail saw the sketch after his release and told BPD that it reminded him of Mr. Bryant.

Current BPD practices are governed by Document ID: 10781-1, effective January 19, 2018, a technical manual for the Forensic Facial Imaging Unit. This document recognizes a potential utility for composite images, but suggests that they be used as a "supplement to other forms of physical evidence." The manual outlines procedures for creating the composite image, including sketch and computer software tools to allow features to correspond to the descriptions provided by the witness. It recommends the use of cognitive interviewing techniques to glean information from the witness' memory, provides information to the interviewer about common difficulties with certain types of witnesses that might impact accuracy, and recommends utilizing additional sources to supplement witness descriptions (e.g., security cameras). It also recommends that the interviewer and artist be familiar with other investigative information from the case, including

crime reports and information held by the detective. Statements made by the witness should be recorded on a set of forms.

While composite sketches are a recognized tool of law enforcement and have been for decades, we are aware of no validated scientific data supporting the utility of composite sketches in criminal investigation. Supporting data is anecdotal at best. As this case illustrates, composite sketches are capable of creating confusion as well as clarity, and their accuracy is limited by both the descriptive capabilities of the witness (as limited by all of the same concerns we have in a standard eyewitness identification) and the additional complexity of the expressive capabilities of the artist. As such, they should be disfavored unless other investigative options are available, and should not form the basis of any arrest warrant without additional independent physical evidence linking the individual identified to the crime.

- **Recommendation 2:** BPD should continue to update its photo array procedures to conform to scientifically supported “best practices.”

Scientific studies show that memories are sharper when closer in time to the event in question, but eleven days passed before BPD took a formal statement from Ms. Powell. When finally taken, the statement described “bushy hair, facial hair, a beard, and a mustache” and the perpetrator’s eyes as slanted.

Shortly after the statement, BPD administered a “six-pack” photo array to Ms. Powell. Our review suggests that Bryant was included in the photo array due to a tip by an individual who was detained at the same time as Bryant, though the individual was released before Ms. Powell’s affirmative identification of Mr. Bryant in the photo array. That individual notified BPD after being released from custody. The BPD file on Mr. Bryant’s case does not describe the procedures used by BPD investigators to create the six-pack photo array, although the forms utilized conformed to procedures in effect at the time. The procedure then in effect, General Order 10-86, differs from today’s well-established “best practices” for the creation and administration of a photo array, designed to minimize the risk of an inaccurate identification.⁴ BPD detectives did take the commendable step of modifying Mr. Bryant’s photo to reduce the likely impact of the bandage above his eye, a feature that may have otherwise caused his photo to stand out among the other photos.

Today, the Maryland Code⁵ sets a baseline standard for identification procedures. BPD protocols established in 2013 require double blind, sequential presentation of photo arrays and require that the administration of the array include scripted instructions, a blind administrator, and at least six photos compiled in ways intended to reduce the risk of misidentification or bias. It also contains directions for situations involving sub-optimal conditions for these procedures, such as the lack of independent administrators.

The BERT discussed whether to recommend incorporating confidence statements into current policies and practices. Confidence statements, statements of the identifying witness about their

⁴ For example, General Order 10-86 allowed for presentation of the photo array in a “six-pack”, rather than sequential presentation, and did not require blind procedures.

⁵ MARYLAND CODE, PUBLIC SAFETY, §3-506.1 (effective April 14, 2015).

level of confidence in their own accuracy taken at the time of the identification, have been shown to correlate with the accuracy of the identification when taken contemporaneously with the first identification. The Department of Justice recommends that administrators “ask the witness to state in his or her own words how confident he or she is in the identification.”⁶

The BERT could not reach unanimous agreement as to the propriety and utility of confidence statements before or after administration of the photo array. The BERT also could not agree on whether the Maryland Code mentioned above legally required confidence statements.⁷ One practical concern involved whether offering the witness the opportunity to provide a confidence statement would unintentionally taint the photo array process itself, regardless of whether it was done covertly or overtly, or before or after the presentation of the array. To our knowledge, there are no studies that have exclusively examined this particular concern. Additionally, concerns were raised that asking witnesses to provide confidence statements might unintentionally hamper cooperation by witnesses in the future. The BERT resolved that the current practice of videotaping photo array procedures provides investigators, SAO, and OPD relevant information relating to the witness’ confidence.

Regarding documenting eyewitness identification procedures, BPD already video records, as a matter of practice, these procedures in homicide cases and is working toward extending this practice to other violent crimes. Notably, §3-506.1 allows video recording to exempt BPD from written documentation of the procedures. Given this administrative convenience and the relative inexpensiveness of recording and uploading video files using current technology, extending video recording to all serious crimes seems achievable without substantial burden to BPD.

- **Recommendation 3:** BPD Investigators should be trained on the various common types of system variables (e.g., police procedures) or estimator variables (e.g., environmental or witness conditions) that may limit the accuracy of an eyewitness identification.
 - **Recommendation 3(a):** Appropriate individuals for the BPD, the SAO, and defense counsel should observe the scene of the crime at a time when the conditions are as similar as possible to the conditions as they were at the time the crime was

⁶ Sally Q. Yates, MEMORANDUM FOR HEADS OF DEPARTMENT LAW ENFORCEMENT COMPONENTS ALL DEPARTMENT PROSECUTORS, 8.2 (January 6, 2017).

⁷ *Id.* The Court Rules state that “the administrator shall document in writing all identification statements made by the eyewitness.” *Id.* at §3-506.1(b)(4). “Identification statement” is defined by the statute as “a documented statement that is sought by the administrator when an identification is made...(i) from the eyewitness; (ii) in the own words of the eyewitness, describing the eyewitness’ confidence level that the person identified is the perpetrator of the crime; (iii) given at the time of the viewing by the eyewitness during the identification procedure; and (iv) given before the eyewitness is given feedback.” *Id.* at §3-506.1(a)(9)(i-iv). The statute requires a “written record” that includes “the signed identification statement of the eyewitness.” *Id.* at §3-506.1(f)(1)(ii). While the statute defines “identification statement” as containing a “confidence level” in the witness’s own words, the statute does not clearly and affirmatively state that investigators are required to ask the witness for a confidence statement in cases where none is initially provided by the witness. Additionally, §3-506, titled “Policy Regarding Eyewitness Identifications Required,” states: “On or before December 1, 2007, each law enforcement agency in the State shall adopt written policies relating to eyewitness identification that comply with the United States Department of Justice standards on obtaining accurate eyewitness identification,” standards which do suggest that confidence statements should be taken. The BERT could not agree on the meaning of these provisions.

committed, to be fully conversant about estimator variables that may have existed at the time of the crime.

- **Recommendation 3(b):** BPD Investigators should obtain statements from key witnesses as soon as possible after the alleged offense, to reduce the likelihood of memory contamination, or environmental or witness conditions that might affect the accuracy of the statements.

It is important to realize the difficulties faced by Ms. Powell in identifying her assailant. She and Ms. Bullock encountered the perpetrator for only a few minutes on a rainy evening in the dark. While the perpetrator was facing them at one point in the interaction, all three individuals were moving. Ms. Powell initially described a twenty to twenty-five year old black male, approximately 5'10", wearing a black jacket, red t-shirt, and dark jeans. She did not mention his hair style. The BPD created a composite sketch from this description that was disseminated to major media networks via CrimeStoppers.

Ms. Powell's second description, preceding the administration of the photo array, mentioned a hairstyle, facial hair, and slanted eyes. Had BPD investigators detected the differences in these descriptions or considered them in light of the conditions at the time of the crime, they may have made different decisions about administration of the photo array, whether to include Bryant, and whether to administer a second photo array including SS.

Contributing Factor 2: The BPD investigative file lacks expected documentation that could have assisted in identifying the inaccurate conviction.

- **Recommendation 4:** BPD should operationalize the creation of written daily investigation summaries, including dates and times when activity did and did not occur, as well as communications between investigators, including records of text messages between investigators that are happening in real time.
 - **Recommendation 4(a):** Supervisors should require that investigators provide a chronological summary of investigative activities.
 - **Recommendation 4(b):** The SAO should have real-time access to these summaries through a shared electronic records system, and should receive alerts with an easily accessible audit trail when modifications to the case file are made at any time.

The documentation in the Bryant case file maintained by the BPD lacked a great deal of documentation typically included in a homicide investigation file. While this does not automatically mean that the investigation was not thorough or careful, a lack of detail in documentation can sometimes reflect a lack of detail in the actual underlying investigation.

A detailed file is useful not just to the officers conducting the investigation. It is useful also to all those who support the investigating officer(s) and help to evaluate the investigation and its conclusions, including Homicide Sergeants and Lieutenants, Assistant State's Attorneys, defense attorneys, and others. A complete case file is essential to enable these downstream actors to serve as independent and objective reviewers of an investigation that could easily become

affected by implicit or explicit biases. A complete file also assists prosecutors and defense attorneys identify potential errors that may have gone unnoticed at the time of the original investigation.

As provided to the BERT for review, the BPD file is inadequate to permit anyone, either at the time of the investigation or now, to fully understand the logical process that caused BPD investigators to conclude that Mr. Bryant was the perpetrator of the crime. For example:

- BPD's file does not contain an organizational system and clarity in the relationship between investigators, a chain of command;
- A systematic approach to following up on leads is lacking;
- The procedures surrounding the creation of the composite sketch were not included in the file, and it is unclear whether formalized procedures existed at the time;
- After the creation of the composite sketch, BPD received numerous leads about possible suspects. Investigators spoke with some, but not all of those individuals, and almost never took statements or detailed notes;⁸
- The file does not provide a rationale for why many potential suspects were eliminated from consideration, something that would have helped a supervisor or others identify investigation gaps, and perhaps identify the true perpetrator;
- The procedure for the photo array presented to Ms. Powell does not appear in the file; and
- There is minimal documentation of communications between supervisors, officers and detectives throughout the investigation.
- There is minimal documentation regarding follow-up regarding elements of Mr. Bryant's alibi.

Currently, BPD and SAO's Evidence Review Unit share crime lab reports via a digital shared drive. SAO does not have access to BPD's investigative notes, however, which impairs SAO's ability to review evidence. Providing SAO with access to these records would allow for full, complete disclosure from BPD to SAO prior to a suspect's arraignment. It is important that this records management system provide all standard IT requirements for criminal justice agencies, including (but not limited to) secure, role-based access to files to all individuals within the BPD and SAO who are related to a specific case, and automatically keep an audit trail log of file access, upload/download/copying, etc. This system would also provide a record of each document sent to defense counsel by the SAO. All documents would be made available to the SAO by the BPD unless specifically withheld, in which case a reason would have to be included in the file, provided by an authorized decision-maker.

Without this information, a careful supervisor within the BPD, or a screening attorney within the SAO, would lack the informational detail necessary to credibly agree or disagree with the conclusion that Mr. Bryant was the perpetrator, allowing Ms. Powell's inaccurate identification to continue forward into the adjudication phase.

⁸ One exception involves KI, who implicated SSKI was in prison at the time.

- ***Recommendation 5:** BPD should document all conversations with potential witnesses and suspects and when practicable, these conversations should also be recorded by audio or video and shared with the SAO for independent review.*

SAO has reported that in homicide cases ASAs can watch statements live via video feed and send information to investigators in real time. This is a productive use of technology and should be expanded to other areas as technology and bandwidth permit. However, there are times when BPD proceeds without SAO observation due to resource and time constraints, or other demands on SAO time. At minimum, these conversations should be recorded to allow for review by SAO.

Contributing Factor 3: The BPD investigation following the eyewitness identification neither identified the actual perpetrator nor ruled out Malcolm Bryant, and was accepted by SAO.

- **Recommendation 6:** BPD Investigators should receive training on cognitive interviewing techniques, including education about confirmation bias and other implicit biases that may influence investigational conclusions.
 - **Recommendation 6(a):** When interviewing witnesses or suspects, investigators should carefully avoid asking questions that introduce non-public facts to the interviewee or that require the interviewee to adopt specific language or a specific answer.
 - **Recommendation 6(b):** Investigators should use all information at their disposal to probe and ensure the accuracy of potential suspects' statements.
- **Recommendation 7:** When charging stranger on stranger, single eyewitness identification cases, the BPD and SAO should ensure that corroborating evidence supporting the identification exists.
 - **Recommendation 7(a):** The SAO should carefully evaluate the witness and any colorable alibi put forward by the defendant, even if the information is discovered or advanced after charging or later in the adjudication process.
 - **Recommendation 7(b):** Prior to charging, BPD should comply with rules of discovery, providing full disclosure of all potential evidence and investigatory material, including potentially exculpatory information, to SAO.

Two areas of concern during the investigative phase involve BPD's investigation of another suspect, SS, and BPD's investigation of Mr. Bryant's alibi. BPD's questioning of SS and his girlfriend, which occurred more than a month after Powell had identified Bryant in the photo array and close to three weeks after BPD first learned about SS. after Mr. Bryant's arrest, consisted mainly of leading questions that clearly showed the desired direction of the interviewing officer. These questions, coming from an experienced interviewer, were seemingly designed to prevent SS from providing information that might have contradicted the then-current

investigational conclusions. Moreover, when SS made statements that had been contradicted by others, the investigators did not confront SS with the conflicting statements.⁹

BPD's contact with SS did lead to the creation of a photo array that included SS as a suspect. For unknown reasons, however, that array was never shown to Ms. Powell, a missed opportunity that might have altered Ms. Powell's inaccurate identification of Mr. Bryant.

The other area of concern was BPD's investigation of Mr. Bryant's alibi. BPD took two statements from Mr. Bryant. In each statement, Mr. Bryant offered several details relating to his ultimate alibi: that he was in a different place with different people, wearing different clothes, and that he had a different hair style at the time. Some of these details were corroborated by his mother and other third parties.¹⁰ Despite this, BPD's file does not indicate any attempt to confirm or refute his alibi, including attempting to speak with *all* of the parties that Bryant mentioned that could confirm or deny key details. It is unclear whether investigators visited places where Bryant claimed to be: a restaurant before the time of the homicide, the Twilight Club a few hours after the homicide, a convenience store, and a hospital for treatment of a cut that he claimed occurred after a fight at the Twilight Club.

- **Recommendation 8:** The BPD lab and SAO should agree upon and publish protocols that enable direct communication between ASAs and the BPD lab to facilitate efficient decisions on additional DNA testing in homicide cases, and to clarify the roles of ASAs and detectives in terms of initiating testing post-arrest.

One challenge to BPD investigators in 1998 was scientific in nature. While Mr. Bryant was exonerated based upon DNA evidence in 2016, the technique used to exonerate him was not available to BPD lab personnel in 1998. Forensic testing capabilities in 1998 were quite limited, and did not allow for a DNA analysis by present day standards.

To add complexity to the challenge, BPD's lab specialists decided in 1999 to test material from underneath Ms. Bullock's fingernails to determine whether it was blood, thereby rendering further DNA testing by the Maryland State Police impossible due to the small sample size of the remaining material. This was a case of the BPD lab following their protocol to a fault, since a then-existing State Police lab policy authorized DNA testing on materials only after the material had been conclusively determined to be human.¹¹ Thus, the prerequisite test to determine that the material was of human origin prevented the test that had potential value to the investigation.

⁹ The leading questions related to SS's clothing, hair style, and facial features. While SS denied owning a black puffy jacket, detectives did not ask him about his father's statement that he had seen SS wearing a black puffy jacket only days before.

¹⁰ BC communicated to BPD that Bryant was with his brother at a restaurant in Towson from 7-7:30, a fact that could be verified by SP, a waitress at the restaurant. She also stated that she saw Bryant between 11:00 – 11:30 PM, he was wearing a "cream" sweater, did not have a cut above his eye, and that he had been drinking. Additionally, as stated previously, GY told an ASA that he was with Bryant at the Twilight Zone and that Bryant had corn rows.

¹¹ According to Heather McKiernan, Director of The Center for Forensic Science Research & Education, and a subject-matter expert enlisted by the Quattrone Center as part of this review, testing the material for human properties first was probably in conformity with protocols at the time. What is unclear, however, is *why* the state lab did not have exceptions to that protocol.

Our review determined that the current BPD lab is accredited by ANAB for DNA testing. BPD laboratory practice is to test all material suspected of containing DNA upon initiation by detectives working on the case. The BPD lab does not accept requests from other agencies for testing. In the event that SAO and a detective disagree about whether specific testing is desirable, the lab defers to supervisors in the relevant departments to resolve the dispute. This process should be formalized to clarify the relationship between SAO and the BPD lab regarding DNA testing.

DISCOVERY AND EVIDENTIARY FACTORS

Contributing Factor 4: Discovery information sent from BPD to SAO was incomplete.

Contributing Factor 5: Discovery information sent from SAO to Defense was incomplete.

- **Recommendation 9:** The BPD and SAO should have a shared electronic records management system for all cases; the electronic records should include information from the BPD forensic lab.
 - **Recommendation 9(a):** At a minimum, this records management system should provide secure, role-based access to files to all individuals within the BPD and SAO who are related to a specific case, should automatically keep an audit trail log of file access, upload/download/copying, etc., and should also identify documents sent to defense counsel by the SAO.
 - **Recommendation 9(b):** All documents should be made available to the SAO by the BPD unless specifically withheld, in which case a reason would have to be included in the file, provided by an authorized decision-maker.
- **Recommendation 10:** SAO and OPD should each create and maintain clear policies and protocols for tracking discovery that include an oversight function that is appropriately staffed to ensure the success of the role.

The transmission of discovery information between BPD and SAO and SAO and Defense counsel occurred piecemeal, and was disorganized and lengthy.

There was no set timetable for disclosure between BPD and SAO. BPD sent items sporadically, even after specific requests from SAO. Information relating to forensics, the investigation into SS, and other alibi details were not shared with SAO until several months into the discovery process.¹² During discovery, SAO had to communicate through BPD to obtain information relating to forensics. Disclosure between BPD and SAO occurred via regular mail, contributing to delay. Additionally, SAO tracking of BPD disclosures across all criminal cases was entirely the responsibility of one homicide attorney.

Additionally, there was no set timetable for discovery disclosure between SAO and OPD. SAO disclosure to OPD, in terms of timeliness and completeness, mirrored its own experience with receiving information from the BPD. The late transmission of information between BPD and SAO relating to SS, forensics, and alibi details meant that OPD did not receive the same information until shortly before trial, and thus could not conduct a suitable investigation to prove or disprove Mr. Bryant's guilt. SAO disclosure to OPD did not occur electronically, and SAO protocols for tracking disclosure—in terms of its contents and timeliness—were the

¹² For example, the interviews with SS and his girlfriend occurred in January 1999, after charges had been initiated against Bryant. SAO did not receive this information until June 1999. The trial occurred in August 1999. A similar timeline exists for the forensic analyses conducted by the BPD and state labs.

responsibility of the attorney assigned the matter.

OPD's ability to supplement disclosure and discovery was affected by its own resource constraints, which caused it to depend on the family and friends of Bryant. Like SAO, OPD gave full responsibility over tracking disclosure to the assigned PD.

SAO has already instituted periodic checks relating to discovery for homicide cases, although SAO does not have an office-wide policy that guides "how" disclosure is to occur to defense counsel. At the time of this review, OPD represented that it was in the process of revising protocols for supervision of attorneys representing defendants in homicide cases. These protocols should include guidelines for tracking discovery between SAO and OPD.

Contributing Factor 6: Defense counsel did not persuade SAO or the jury to accept Malcolm Bryant's alibi as true.

- **Recommendation 11:** OPD should create procedures and protocols for supervisory and independent review of trial preparation by trial attorneys for quality assurance.
- **Recommendation 12:** OPD should enlist a team of investigators to assist with investigations in homicide cases and to follow up on leads relating to possible alibis.

Defense counsel was not able to persuade several decision-makers, including the jury, that the various components of Bryant's alibi cast convincing doubt on his guilt. Some of the actions of defense counsel at trial were affected by the resource constraints of the OPD and counsel's over-reliance on the contributions of Bryant's friends and family—a single attorney with limited investigative staff could not adequately explore the details relating to places in Bryant's alibi. Those deficiencies also inhibited defense counsel from persuading SAO that Bryant was not involved. To defense counsel's credit, at trial OPD focused on Bryant's appearance, for which it had a lot of testimony. But OPD did not project both Bryant's whereabouts and appearance as inconsistent with the state's theory of the case. And the witnesses that did testify to Bryant's different appearance were cross-examined at length by the prosecution.¹³

Another difficulty for the OPD involved the capabilities of the forensic analysis that was conducted in advance of trial. A comprehensive DNA analysis was not possible and the forensic report submitted into evidence did not *totally* rule out Bryant. That reality, plus Powell's confident identification during her testimony and rehabilitation post-cross examination inhibited defense counsel from persuading SAO or the jury that Bryant's alibi was true.

¹³ SAO attorneys emphasized the unlikelihood that Bryant's friends would be able to pinpoint the exact date that Bryant's hair changed whereas defense counsel emphasized that a noticeable change in hair style is the type of detail that would stick in someone's memory, especially someone close to the defendant.

POST-CONVICTION FACTORS

Contributing Factor 7: SAO objects to release of forensic evidence for testing.

- **Recommendation 13:** The SAO should continue its creation and refinement of conviction integrity procedures to allow for detailed review of claims of actual innocence. These procedures and protocols should continue to allow for review by different personnel within the office and should clarify the relationship between the CIP and regular handling of post-conviction matters.
 - **Recommendation 13(a):** SAO personnel involved in review of claims of actual innocence should be trained about confirmation bias when conducting the internal reviews.
 - **Recommendation 13(b):** All claims of innocence involving DNA should come to the CIP and procedures should account for the challenges that come with cases involving forensic evidence, including accessing the evidence.
 - **Recommendation 13(c):** Although it has only dealt with homicides to date, CIP should clarify, to the extent possible, how the nature of the charges impacts decision timeline.
- **Recommendation 14:** BPD and SAO should establish procedures and protocols for communications relating to the release of physical evidence upon request by parties other than detectives or BPD and for after a court order and these procedures should address any concerns about the chain of custody or safety of the evidence.
- **Recommendation 15:** The Baltimore courts should oversee compliance with court orders involving the release of physical evidence for post-trial testing by issuing a scheduling order for which the parties would have deadlines by which the testing must be completed.

From 2000 until May 2016, Mr. Bryant steadfastly maintained his innocence. He filed numerous petitions for review of this conviction and requests for the release of evidence in his case that were suitable for additional forensic testing. These requests were met with numerous objections by the SAO. There were several factors that informed the SAO's position. First, the Post-Conviction DNA Testing Act did not provide a reliable, clear, or proven framework for decision-making by the SAO, and as a relatively new and untested statute, there was not a body of judicial decisions to assist in that process.

During the early years of the appellate process, SAO policy was that the Assistant State's Attorney who handled a case at the trial court level would also handle post-conviction matters for the case. The risk of a confirmation bias on the part of the trial attorney who obtained a conviction in the murder of Ms. Bullock seems clear. Whether or not such a bias existed, the SAO during this time exhibited a lack of enthusiasm for conducting additional DNA testing.

Over time, the SAO went through multiple reorganizations, with different SAO attorneys handling different aspects of Mr. Bryant's appeals. After 2006, SAO and UBIP negotiations about the release of evidence broke down on several occasions.

Once UBIP successfully obtained a court order to conduct additional testing in 2009, additional administrative challenges appeared. Both SAO and the BPD lab lacked procedures for responding to court orders requiring the release of evidence. In the absence of clear guidance, each department claimed that it was the other's responsibility to take the lead on how the evidence would be released, with the result that no one conducted the actual step of doing the testing ordered by the court.

Fourth, SAO and the BPD lab were risk averse regarding the release of evidence, again due to lack of experience with the Post-Conviction DNA Testing statute, the absence of internal procedures and protocols, and due to some external factors-like previous bad experiences with the loss of forensic evidence.¹⁴ As a relatively new statute, case law had not yet developed, leaving a void in legal guidance and complicating the SAO's approach in the post-conviction context. SAO therefore defaulted to an adversarial approach that prioritized defending the conviction based on technical legal grounds.

Finally, once the court orders were obtained, the request for testing simply went in to an existing testing queue, receiving no prioritization or "rush" testing in any way. Neither SAO nor BPD attempted to accelerate the release of evidence on the basis that it had been ordered for production by a court, or that it could be dispositive evidence in freeing a potentially innocent man from a wrongful incarceration. UBIP had to make multiple additional requests for documentation and testing *after* the court had issued an order before SAO and the BPD lab complied. During these instances, SAO's internal organization did not have a process for extensive supervisory review of decision-making regarding the release of evidence, both before and after court orders.

Contributing Factor 8: Much of the forensic evidence that ultimately exonerated Mr. Bryant was not released for years after the crime was committed, despite being in the possession of law enforcement agencies.

- ***Recommendation 16:*** *The Baltimore courts should continue the practice that refrains from placing actual innocence claims on the collateral docket so that they can be adjudicated in a timely fashion.*
- ***Recommendation 17:*** *Educate judges, SAO, defense counsel, and other personnel on the capabilities of forensic technology, why release of certain types of evidence is necessary for the efficient disposition of actual innocence claims, and how the BPD lab's release of evidence has to comply with existing federal and state regulations.*

¹⁴ One interviewee referenced a hurricane event in the early 2000s that had led to the destruction of loads of forensic evidence for hundreds of cases.

- ***Recommendation 18:*** *CIP and the BPD lab should establish protocols to clarify the prioritization of cases for review and the protocols should ensure that post-conviction cases where testing is dispositive of innocence receive very high priority.*

As mentioned in the previous section, SAO maintained persistent objections to the full release of the available forensic evidence and negotiations between SAO and UBIP were unproductive in generating additional testing (for the most part). But the SAO's decisions are not the entire reason for delay in the release of the evidence.

While the Bryant case was in post-conviction litigation about the releasing of evidence, the Baltimore courts were overloaded with post-conviction matters. This affected scheduling. Additionally, actual innocence claims had a difficult time getting onto the docket. Finally, once the parties were in court, the courts misunderstood the need for full release of the evidence, despite UBIP's attempts to persuade them otherwise.¹⁵ UBIP enlisted forensic experts in an attempt to educate the court on why certain types of samples were necessary for certain types of testing. Despite the availability of this expertise, the court decided to issue partial release orders and, at times, refrained from hearing about the need for full release. In a particularly significant move, the court denied Bryant's first motion for a new trial, which also contained a request for the release of additional evidence. In denying the motion for a new trial, the court did not address the outstanding evidentiary testing issues. Neither UBIP nor SAO acted promptly following this lack of decision by the court and when they did act, negotiations broke down, requiring another return to court.

Other external factors contributed to the delay in testing and the obtaining of results. UBIP had limited resources. While it was able to enlist forensic specialists to help with testing, the expertise came at a cost and was not always immediately available. Protocols for the release of evidence to these experts also had to be coordinated with existing federal regulations regarding the custody and testing of evidence.¹⁶ And even after the court ordered release of the evidence, the lack of protocols between SAO and the BPD lab contributed to delay.¹⁷ SAO and the BPD determined which portions of swabs and stains from clothing were released in one instance, which forensic specialists ultimately deemed insufficient. Approximately two years later, the courts ordered release of the entire articles of clothing. Our review determined that a lack of protocols for communication between SAO and the BPD lab persists in the post-conviction context, but that both SAO and the lab are open to negotiating these procedures.

¹⁵ For example, almost a year after the court ordered the partial release of fingernail samples, the same court ordered that the forensic specialists "reassess" whether the full sample was necessary to test the fingernails. That issue had already been discussed a year earlier.

¹⁶ After the court had ordered partial release of fingernail samples and testing by Sept. 2009, the SAO notified the court in Sept. 2009 that "unforeseen federal regulatory requirements involving outsourcing of DNA samples to Bode" would delay the completion of the testing. Similar issues remain today; all of the stakeholders involved in this review should educate themselves about these requirements to allow for careful tailoring of orders when presenting to the court and for clear communications with the BPD lab.

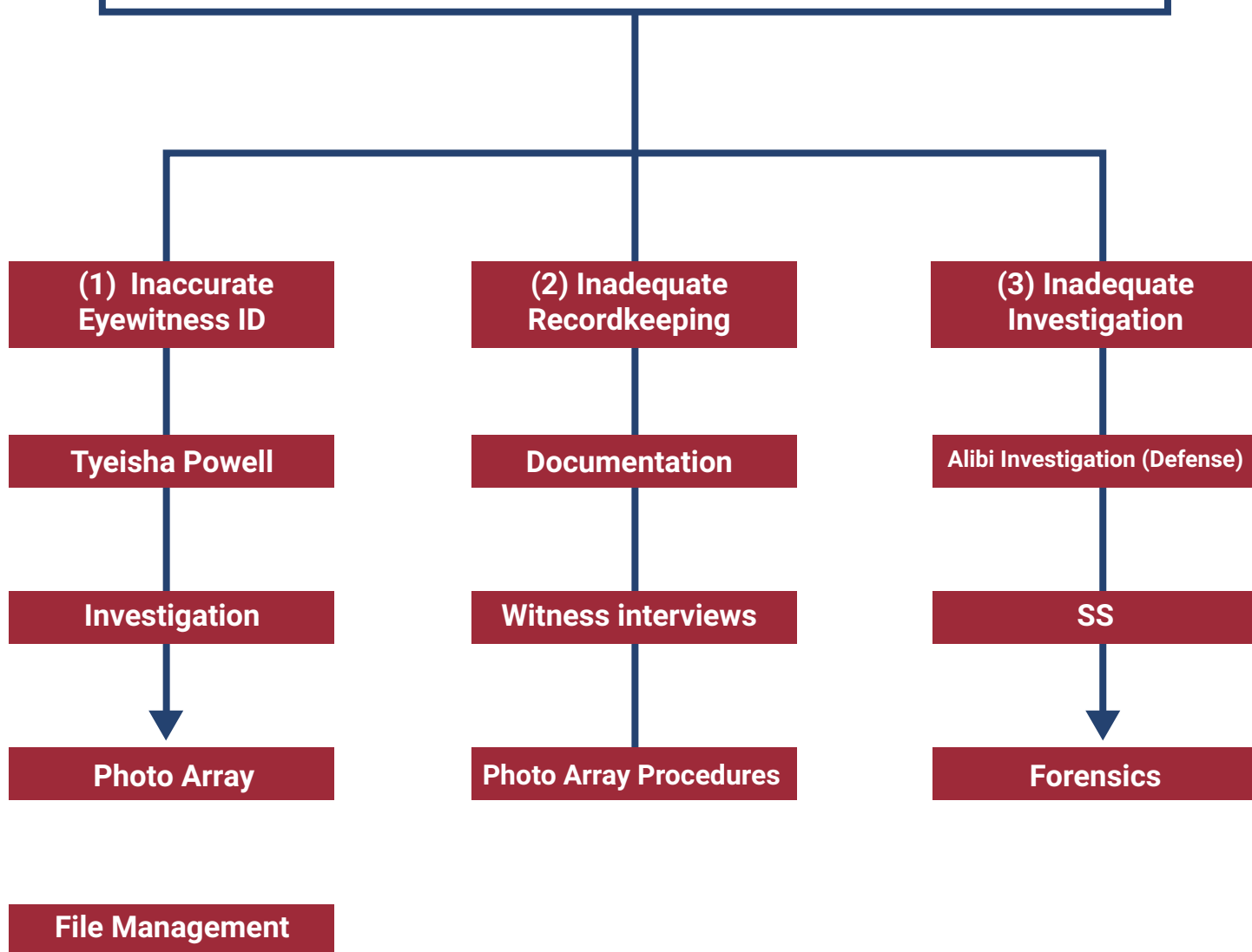
¹⁷ Two months after the reassessment ordered by the court that was referenced in footnote 9, the court ordered full release of the fingernail samples. But it took another three months—and another court order—for the SAO and BPD lab to comply.

Furthermore, forensic testing capabilities were developing in real time, which meant that the nature of the available testing at any given time lent itself to a step by step process. The timing of the release of the evidence did not always align with the availability of the forensic specialists.¹⁸

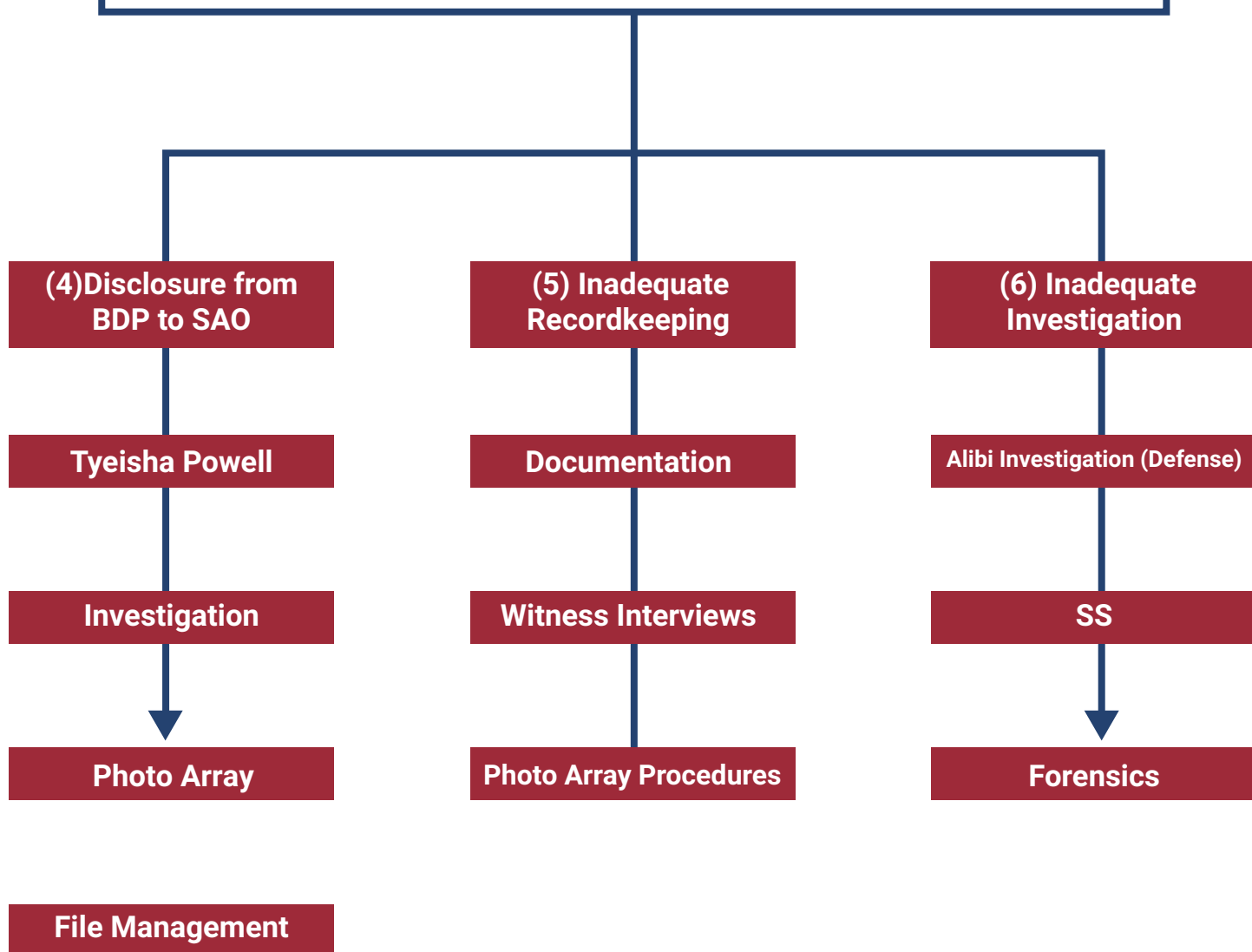
¹⁸ After receiving the entire fingernail samples, it was several months before the forensic specialists were able to obtain a YSTR profile.

APPENDICES

Investigation Issues



Discovery & Evidentiary Issues



Post-Conviction Phase Issues

**(7) SAO objection to
release of physical
evidence**

**(8) Delay in Release
of Physical Evidence**

TIMELINE

<u>Date & Time</u>	<u>Event</u>	<u>Relevant Information</u>
November 20, 1998	Approx 8:30 PM: Murder of Ms. Bullock; assault/attempted robbery of Tyeisha Powell; scene analyzed	Powell's initial description to Officer Stefanelli mentions black jacket, red t-shirt, and dark jeans; also mentions 5'10, black male, approx. 20-25 years old.
	Ms. Powell meets with Detective J.T. Brown and they create composite sketch	2 composites created, 1 is fully bald (SS was bald to middle of head).
	Officer Lind gives jewelry to ECU and clothing to Det. Ritz	
	Officer Cynthia Lum Report	Encountered DY, who saw the victim fall to the ground and a black male, 5'10", 150 lbs, run from the victim. DY's boyfriend, SK, brought her to window; SK could not be located.
November 21, 1998	Approx. 12:30 AM: Criminal Investigation Bureau (CIB) receives physical evidence from Franklin Sanders	Bloody leaf, umbrella, bag with suspect's blood, popcorn bag, screwdriver
	5:47 AM: Donta Smith (arguably Bryant??) logged into Mercy Hospital ER for "cut over eye"	Hospital records show 123/64 blood pressure.

	Approx. 2:30 PM: Det. Ritz requests retention and examination of blood and fingernails by Trace Analysis Unit; Bullock fingerprinted.	Retention confirmed by note on November 23, 1998
	Patrol Officer Cynthia Lum alerts Homicide that she arrested a suspect for a sex offense earlier in the year that looks like composite; Sgt. Lehman speaks with Lum about possible sex offenders, including Damon Day	BPD investigates and eliminates subject
	Homicide Division publishes flyer with composite sketch of suspect	Flyer describes suspect as "black male in his mid 20's, med. Brown skin, med. Build, 5-10 to 5'11, med length bush hair style, slight beard, wearing a red tee shirt, blue jeans and a dark colored waist length puff styled jacket"; cash reward up to \$2000
	At 11:15 PM: William Schultz contacts Homicide Unit and says composite sketch looks like man named "Marcel"	
November 23, 1998	Leads received about seven individuals looking like the composite.	BPD investigates two of the leads and decides the individuals look nothing like composite; status of other leads unknown.
November 24, 1998	Patrol Officer J. Hicks brings a suspect to Homicide Division; talks to Sgt. Lehman	BPD determines he looks nothing like composite

	Two leads with descriptions and speculating about names come from anonymous callers.	Status of follow up unknown.
	11:45 PM: stolen Nissan vehicle (first reported Nov. 9 th , 1998) found and driver and passenger arrested	Malcolm Jackson (Bryant) and another man, BC are arrested, cigar with suspected marijuana found on BC's person
November 25, 1998	A woman calls Homicide and says composite looks like her student.	BPD eliminates the student. <u><i>Note: No mention yet of Bryant as suspect. Per notes, five suspects have been developed at this point.</i></u>
	Another man is detained for questioning but ruled out as suspect.	
	Detectives Michael Johnson and Irvin Bradley conduct Operation Bearclaw, focused in the area of 1300 Harford Road, and interview 28 people.	

	Sgt. Ernest Anderson receives anonymous phone call stating that the composite drawing is someone named "Dean"	Sgt. Anderson's note states that "this man is known to be nuts by people in the neighborhood, meaning he is avoided by people because of his violent actions."
	SS FTAs for unrelated case, bench warrant issued	
November 27, 1998	BPD detains BF.	BF was a homeless black male approximately 5'11 and 166 lbs; notes indicate that BF stated he was at the "Baltimore Rescue Mission" at the time of the crime.
November 30, 1998	Det. Ritz retrieves clothing items from Chief Medical Examiner's office and sends to the Trace Analysis Unit	Verger states at trial that he tested the orange T-shirt, but nothing else. Trace Analysis/Biology Unit Form says clothes were "analyzed."
Late November 1998	KI contacts Homicide Division	Claims to have knowledge of murder, passed to him from an individual who admitted killing Bullock; KI wants reduction of his sentence

December 1, 1998, 12:20-12:45 PM	Det. Ritz interviews Ms. Powell and she identifies Malcolm Bryant in six-person photo array, administered by Detective Ritz	Powell describes assault; gives following description: 5-10/5-11, "bushy hair," "light, like my complexion, brown skin," and "facial hair, a beard, and a mustache." Powell also states that he appeared to be in his mid-20s, medium build, and he was wearing a black puff jacket with a red t-shirt and some blue jeans. She also mentions "chincky" (slanted a little) eyes. Ritz asks if he could have been wearing an orange shirt and she says no. <u>Notes: Bryant is wearing black shirt. Det. Ritz admits "altering" Bryant's photo to blacken out bandage.</u>
	Detective Ritz submits application for initiation of charges, relying heavily on photo identification from photo array	
	Memo from State's Attorney to Det. Ritz	Notifying him of assignment of case to Vickie Wash and to advise of when an arrest has been made

	<p>Approx. 7:40 PM: Malcolm Bryant interviewed; after first recording, he does another short recording at 9PM</p>	<p>In first recording, Bryant says he was at EX's house around 9PM after being on Gulf Street at someone else's house (starting at 6PM), and before that he was at shopping center referenced in the second interview. Says he drove with vehicle from Nissan dealer. Gives two different stories for eye injury and says SK, EX, and others were at the bar with him. Mentions that some of these individuals can vouch for his whereabouts at the house. Also gives detail about whereabouts at Eastpoint Mall and says a relative can vouch for his presence there.</p> <p>References wearing orange shirt, beige sweater (left at the club) and only owning Army fatigue jacket. In second recording, Bryant says he was with several people shopping at the time of the murder, and then went to EX's house around 10 PM, and then to a club called Twilight Zone. While at club, he was in a fight that caused him to go to Mercy Hospital.</p> <p>*There is a note after the transcript about "sister put them [corn rows] in on Thursday."</p>
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	Malcolm Jackson (Bryant) arrested for homicide and charged; Det. Ritz keeps orange t-shirt	
December 3, 1998	Peter Swar (ASA) asks Det. Ritz for sketch	Whomever took message says no until Ritz gives approval
	Anonymous tip comes through Metro Crime Stoppers that mentions 26-year old black male named "Bo Peep"	Information sheet mentions short hair, 5'3 – 5'6, known to carry a knife and living in the area, and features match sketch
December 4, 1998	Detective Ritz requests that Trace Analysis Unit retain envelope containing hair samples from Bullock, as well as orange t-shirt	
	State's Attorney, Homicide Division Memo to Det. Ritz	Requesting basically all police files
December 11, 1998	Detective Ritz questions KI	KI mentions SS ("Bo Peep") as killer based on conversations he had with him about a week after the murder
December 13, 1998	KI sends letter to Lt. Ben Lieu claiming connection between murder of HX and Bullock.	
December 16, 1998	Det. Ritz's notes suggest conversation with probation officer Linda Taylor	Mentions three positive tests for SS for cocaine since July 1998

December 21, 1998	BC, Bryant's mother, meets with Detective Ritz	BC shares information with Ritz about Bryant's alibi: saw him between 11-11:30, he had been drinking and smoking, was wearing "mint, greenish, gray, cream sweater," and no cut above eye at that time; BC also mentions that son was with his brother at Real Thing Restaurant (Towson) from 7-7:30, which can be verified by SP, a waitress.
	State's Attorney subpoenas hospital records from Mercy Medical Health Center relating to "Donta Smith"	
December 23, 1998	Detective Ritz and Detective Cliff Macer visit supposed residence of SS.	No one was home and after several hours of surveillance, detectives leave
December 29, 1998	Detective Ritz requests archives information on SS from the Custodian of Records, including the visitor's list	
	SS's father tells Det. Ritz that he saw SS in a black puffy jacketed on Dec. 27, 1998	
December 30, 1998	Stolen auto and unauthorized use of a vehicle charges against Malcolm Jackson are nolle prossed	

January 6, 1999	SS taken into custody and interviewed by Det. Ritz and Det. Lehmann; ultimately eliminated as suspect	SS states that he “cuts (shaves) his hair close”; Ritz asks him if he’s ever grown a “quarter inch bush or half inch bush”; Ritz also mentions that the suspect was wearing a jacket before asking him whether he owns one
	Ritz and Lehmann also interview SS’s girlfriend	The girlfriend corroborates SS’s claims about hair and jacket
January 7, 1999	Mobile Unit Technician tries to retrieve physical evidence from SS’s residence but is unsuccessful	Document is nearly illegible
January 12, 1999	Memo from Vickie Wash to Det. Ritz regarding Bryant’s alibi and appearance	GY tells Marion Erlich (Asst. State’s Attorney) that he was with Bryant at the Twilight Zone on the night of the murder and that he had corn rows in his hair
January 25, 1999	Letter from Vickie Wash to Det. Ritz	References police file and asks for several documents relating to the investigation.
March 3, 1999	Disclosure by State’s Attorney to Rogers	
March 25, 1999	Supplemental disclosure by State’s Attorney	Additional witness: ET
March 31, 1999	Rogers requests additional	

	discovery	
April 2, 1999	Dave Mabrey writes note to Vickie Wash asking what the public knew prior to Hale's phone call; someone writes note about TX, uncle of Ms. Powell, mentioning perpetrator had blue pants and a blue jacket	
April 7, 1999	Supplemental disclosure by State's Attorney to Rogers	Witness NC (victim's sister); better copies of run sheets; nine pages of offense reports
April 15, 1999	Rogers files omnibus pre-trial discovery motion	
April 16, 1999	Rogers sends ASA Mabrey letter	Raising discovery questions: (1) what is the composite drawing based on? (2) was the composite drawing computer generated or done by an artist? (3) what is the status of the finger nail clippings analysis; (4) what is the exact location of the crime scene and was any forensic evidence recovered?
April 26, 1999	Rogers sends letter to MT requesting she contact him to discuss case; sends same to several other witnesses.	
May 14, 1999	Bryant gives blood sample	Det. Ritz requests blood sample be tested with blood samples from crime scene and blood sample from victim
May 20, 1999	SN taken to Homicide Department	
June 10, 1999	Supplemental Disclosure by	

	State's Attorney that includes statements relating to investigation of SS, the trace analysis report from Verger, and other notes.	
June 22, 1999	Larry Rogers sends letter to KI (in prison) indicating his intention to call him as a witness	
July 13, 1999 – July 27, 1999	ASA Mabry provides supplemental discovery	Det. Ritz notes and forensic testing information; Powell's identification of Bryant at arraignment; Powell's contact information
July 29, 1999	MT gives taped statement to Det. Ritz	
August 2, 1999	Trial	<p>Officers and Powell testify; SAO exhibits include crime scene photos, lab report, photo ID by Powell, composite sketch, statements of Powell; Powell says height was "two or three" higher than her height of 5'3 ½</p> <p>Powell testifies to being with another friend (first mention of friend at all)</p> <p>Ritz testifies to having interviewed SS <i>before</i> the photo ID of Bryant, which was not true</p> <p>DNA lab report from Braunstein (forensic chemist) indicates that Bullock's DNA was on the umbrella but Bryant's was definitely not, and no determination was made</p>

		<p>about the blood on the leaf; also, Verger testifies that nail clippings were tested, but destroyed as a result of the process, which was not entirely true; Verger testifies to having only received an orange T-shirt (no other clothes)</p> <p>Multiple defense witnesses testify that Bryant had cornrows in his hair, not the “bush” referred to by Powell; witnesses also testify to his whereabouts</p> <p>SAO witness from TAU of BPD lab testifies that no additional DNA tests could occur with existing evidence</p>
September 9, 1999	Motion for New Trial denied	
September 20, 1999	Bryant files Notice of Appeal to the Court of Special Appeals	
October 22, 1999	Bryant files application for review of sentence	
April 12, 2000	Application for review of sentence denied	
December 8, 2000	Court of Special Appeals denies petition for writ of certiorari	
August 13, 2001	Bryant files Petition for Post Conviction Relief	Based on ineffective assistance of trial and appellate counsel
November 13, 2002	Petition for Post Conviction Relief denied	
December 16, 2002	Larry Polen files Application for Leave to Appeal	

March 20, 2003	Application for appeal of denial of post-conviction relief denied by Court of Special Appeals	
January 31, 2006	Innocence Project requests records from BPD under MPIA	
July 11, 2008	Bryant files Motion for Release of Evidence to Conduct DNA Analysis	
August 6, 2008	SAO opposes release of evidence	
October 2, 2008	ASA Holback emails Nethercott to say she thinks they can work out evidentiary testing request	
May 11, 2009	Motion for Release of Evidence partially granted; Judge Rasin orders testing of fingernails be completed by September 23 rd , 2009	Bloody fingernails ultimately tested by The Bode Technology Group, revealing the presence of a partial male DNA profile that does not belong to Bryant
July 6, 2009	Bode receives one packet of fingernail clippings, halved	
July 8, 2009	Bode Technology Review Request Form	For fingernail clippings
July 10, 2009	Application for Leave to Appeal is stricken for timeliness	
September 21, 2009	ASA Holback sends letter to J. Rasin stating that "unforeseen federal regulatory requirements involving outsourcing of DNA samples to Bode" will delay completion of testing	
September 23, 2009	Judge Gale E. Rasin signs consent order for forensic DNA testing	For fingernail clippings, black leather jacket, blue denim vest, black t-shirt, blue jeans, and Timberland boots

October 12, 2009	Bode email to UBIP that fingernail samples have been inventoried	
November 16, 2009	Innocence Project requests hearing for release of rest of fingernail sample, which SAO opposes	
March 8, 2010	Judge Rasin orders that Bode reassess capabilities of testing fingernails; if DNA is insufficient, BPD must send remaining fingernails	
April 29, 2010	Bode and BPD agree that half samples are insufficient and notify Nethercott	
May 11, 2010	BPD email from Rana Santos to Esworthy stating fingernail clippings should be sent via Fed Ex soon	
June 25, 2010	Email from Esworthy to ASA Holback referencing March 8 th order and release of fingernail clippings	
June 25, 2010	Email from Esworthy to ASA Holback stating that additional fingernail clippings had not been sent to Bode; threatens to go to court for enforcement	
July 2, 2010	Letter from Innocence Project to Judge Rasin asking for enforcement of March 8 th order due to non-compliance by SAO	
July 6, 2010	Court order requiring ASA Holback to comply with 5 th paragraph of March 8, 2010 order	

July 16, 2010	Bode receives second batch of fingernail clippings	
July 23, 2010	Bode emails Justin Esworthy about some fingernail clipping results	
Nov. 16, 2010	Emails between Justin Esworthy (Univ. of Baltimore) and Sharon Holback (ASA) regarding obtaining reference sample to compare to Bode YSTR profile from fingernails	
January 5, 2011	Innocence and SAO agree and request court order sample of Bryant's blood sent to Bode	
January 10, 2011	Bode Report with additional Y-STR results	
February 1, 2011	Bode receives Bryant's blood sample	
March 15, 2011	Bode Technology Report excludes Bryant as source of male DNA	Testing reveals partial Y-STR profile with rare identifier that does not match Bryant
April 1, 2011	Bryant files Motion for Relief for new trial based on fingernail clippings testing	SAO has not responded as of May 5, 2011
August 25, 2011	Judge Gale Rasin denies motion for new trial	
Sept. 23, 2011	Nethercott emails Leedy to ask if stains/swabs from clothing can be sent to Bode	
Oct. 3, 2011 & Nov. 1, 2011	Nethercott letter to Judge Rasin that parties can't agree about nature of what is to be released	

	after BPD determined additional items might be useful	
Nov. 9, 2011	Letter from Nethercott to Judge Rasin that references agreed upon order for further testing (stains/swabs)	
Nov. 10, 2011	Order from Judge Rasin requiring swabs and stains are turned over to Bode	
Nov. 14, 2011	Judge Rasin sends letter referencing order for forensic DNA testing	
January 17, 2012	Bode receives portions of stains from clothing for testing (but not clothing itself)	
May 5, 2012	Bode sends email to Nethercott with some preliminary results of testing from stains	
June 18, 2012	Bode emails that it has tested stain from pants	
August 3, 2012	Bode emails that it has tested stains/swabs from victim's clothing	More testing done in summer and fall
November 28, 2012	Innocence Project requests documents from State's Attorney under Maryland Public Information Act (MPIA)	
April 17, 2013	Nethercott emails Bode to check on status of testing and samples	
January 7, 2014 & January 21, 2014	Innocence Project requests hearing on release of additional items for testing	
February 24, 2014	UBIP files supplementary petition for DNA testing of victim's clothing	

June 20, 2014	Judge Charles Peters orders clothing items be sent for testing	
Sept. 16, 2014	Bode receives victim's vest, black shirt, and tan boots for testing	
October 12, 2015	Bode sends results from testing of victim's clothing	DNA reveals full male DNA match to the partial sample found on the nail clipping, which was inconsistent with Bryant's DNA
November 4, 2015	Michele Nethercott sends letter to Michael Leedy (Asst. State's Attorney) with final report from the Bode Technology Group	
December 22, 2015	Innocence Project files petition for New Trial based on DNA evidence	
Spring 2016	SA Mosby drops charges	
Winter 2017	Bryant dies	

STAKEHOLDER PARTICIPANTS

Baltimore City State's Attorney's Office

- Marilyn Mosby, State's Attorney
- Jan Bledsoe, Deputy State's Attorney for Criminal Intelligence
- Lauren Lipscomb, Assistant State's Attorney - Chief, Conviction Integrity Unit

Maryland Office of the Public Defender

- Janine Meckler, Assistant Public Defender

University of Baltimore Innocence Project Clinic

- Michelle Nethercott, Director

Baltimore City Police Department

- Major Christophe A. Jones
- Joseph McCann