

AFFIDAVIT OF ROBIN BERKMAN

1. My name is Robin Berkman. I was born on March 8, 1992. I have lived my entire life at 412 East Broadway, Apartment 2D, Town of Wilmington, in the County of Dover. I live in the apartment with my mother Ann and my half-sibling Kelly Connolly, who is now 15 years old. I have not seen or heard from my father for many years and do not know his current whereabouts. While I attended Wilmington High School, I did not receive a high school diploma. I received my GED in 2015 while in prison.
2. Prior to my conviction in 2012, I served as the primary caregiver for Kelly because our mother worked nights in a nearby factory. I had very few friends and spent a great deal of my time watching television, particularly police shows such as Law and Order, Criminal Minds, etc. I always wanted to be a detective, but without a high school diploma, I was unable to pursue my dream.
3. In 2011, there were a series of convenience store robberies in Dover County, particularly in the Town of Wilmington. One of those convenience store robberies, on December 17, 2011, occurred just a few blocks from our apartment. There was extensive coverage of the robberies in the local papers, including the Wilmington Gazette and the Wilmington Post-Dispatch. I read many articles and tried to get whatever information I could about these robberies.
4. I recall that the December 17 robbery was more violent than the other robberies, as the convenience store owner was seriously injured.
5. I also recall that I was running some errands in the nearby Village of Briarcliff at the approximate time of the December 17 robbery. Briarcliff is no more than ten minutes from my apartment in Wilmington. I learned of the robbery the following morning when I read about it in the local newspapers. Those newspapers included quotes from Detective Leslie Smith, who was identified as the lead investigator from the Dover County Sheriff's Department ("DCSD").
6. On February 3, 2012, I was surprised to receive a telephone call from Detective Smith. Although I did not know Detective Smith, I was familiar with other detectives in the DCSD. In 2008, when I was 16, I got into some trouble for tagging local buildings in Wilmington. I

used neon colored spray paint to paint my name on buildings. I was caught and ended up in the County's Youth Court. I had to perform 250 hours of community service, which mainly consisted of cleaning the buildings I had tagged. Only later did I recall that one of those buildings was next door to the convenience store robbed in December 2011.

7. Detective Smith inquired about visiting my apartment to talk about the December 17 robbery. Even though I had no involvement with the robbery, I was happy to talk to Detective Smith. Since I spent most of my time watching Kelly, I had very little contact with adults, so I looked forward to speaking with Detective Smith.
8. When Detective Smith arrived at my apartment on February 6, 2012, Kelly was home. Detective Smith claimed to be investigating the December 17 convenience store robbery. I told the detective that I had nothing to do with the robbery and that I was in the Village of Briarcliff when the robbery occurred. Detective Smith told me that a .45 caliber weapon had been used, and that jewelry worn by the convenience store owner had been taken. Detective Smith asked that I “keep my eyes and ears open” and to let Detective Smith know if I came up with any information regarding the robbery. Detective Smith purported to be very interested in solving the case because the convenience store robberies were frightening the community. Detective Smith gave me a personal business card that bore Detective Smith's cell phone number. Detective Smith told me to call at any time if I had information, and that any such information I could provide could be of great significance.
9. Later that evening after my mom returned from work, I told her about Detective Smith's visit. My mother told me that if I had any information to share with the DCSD, I should do so. I told my mother that at that time I didn't have any additional information except what was given to me by Detective Smith. My mother told me to be careful and that I should avoid getting into any trouble.
10. Over the next few weeks, I looked for information regarding the December 17 convenience store robbery. I read everything I could about the robbery. I even went to the convenience store a few times to see what, if anything, I could learn. I would call Detective Smith and let the Detective know what information I had come up with. On some occasions I would drive to the DCSD offices and ask to see Detective Smith. On some of those occasions, I would

speak with the Detective directly, and on other occasions, I would leave a message that I had stopped by. I don't know if any of the information I gave to Detective Smith was helpful. I remember mentioning how the convenience store looked secure and I wondered how the robbers could have entered. As was always the case, Detective Smith thanked me for the information. During all of my interactions with Detective Smith, either on the phone or in person at the DCSD offices, I never admitted having any role in December 17 robbery. The information that I provided to the Detective was information that I had learned from the news or from my visits to the convenience store after the December 17 robbery. I did not have any personal knowledge about the robbery, and in fact, did not even know where I could get such information.

11. During one of my visits to the DCSD offices, Detective Smith asked if I would provide a DNA sample. The Detective explained that providing a sample would allow the DCSD to rule me out as a suspect. Detective Smith said that once I was ruled out as a suspect I could become "even more involved" with the investigation. Because I knew that I was not involved in the December 17 robbery and I very much wanted to help out Detective Smith, I agreed to a DNA sample. A cotton swab was put into my mouth and, as explained by the technician, my DNA would be matched against any DNA that was found at the crime scene. It is my understanding that my DNA was not found at the crime scene.
12. A few weeks later Detective Smith asked if I would be willing to undergo a polygraph examination. From watching police shows, I knew that the polygraph or lie detector is not admissible in court. Detective Smith explained that the polygraph examination would further rule me out as a suspect. When I mentioned that the Detective had said the same thing about the DNA test, Detective Smith told me that if I wanted to assist in the investigation, it was necessary that I take the polygraph examination. I understood that if I did not take the polygraph examination I could no longer help Detective Smith with the investigation. Because I wanted to help in any way I could, I agreed to the polygraph examination. I did not tell my mother about this development.
13. On the day of the polygraph examination, Kelly and I went to DCSD headquarters. We were met by Detective Smith, who told us that we would be driven to a nearby New York State

Police barracks where the polygraph examination would be administered. Detective Smith and another officer from the DCSD drove Kelly and me to the police barracks.

14. At the barracks we were met by the polygraph examiner, Sam Perkins. Perkins explained the purpose of the polygraph examination and how the test would be administered. I was told that I would be in a room with Perkins, and that Perkins would ask me a series of questions to which I was supposed to respond. I was asked to review and sign some forms, which I did. I told Perkins that I was doing this to help the police so that I could continue to help with the investigation. I also told Perkins that I had no involvement in the December 17 robbery.
15. I now understand that Kelly and Detective Smith were watching and listening to the polygraph examination from another room. In the polygraph examination room, I was hooked up to a machine and then the polygraph examiner, Sam Perkins, began questioning me. As the questioning proceeded, I became very nervous and stressed out. Other than three cups of coffee, I had nothing to eat that day prior to the examination. Perkins asked me about the December 17 robbery and injuries sustained by the convenience store owner. Perkins also asked me if I had any idea how the robbers had gotten into the convenience store. Since I thought that Perkins was just asking for my opinion, I may have said something about avoiding the security system. As the questioning continued, I began to cry and told Perkins that I was sorry about what had happened to the convenience store owner. I became more and more stressed out and began sobbing uncontrollably. While I repeatedly said to Perkins that I was sorry for what had happened, I never said I was involved with the robbery or the shooting of the convenience store owner. I do not recall Perkins saying that I was a liar. At some point during the polygraph examination, Detective Smith entered the room to comfort me. The Detective told me that everything would be okay as long as I told the truth and that I would be able to go home to my mom and Kelly. I kept repeating that I was sorry for what had happened.
16. Detective Smith placed me under arrest and charged me with robbery and attempted murder. I was subsequently indicted by a Dover County Grand Jury and after trial was convicted on all charges. The judge gave me nine years, plus five years post-release supervision.

17. I have always denied any involvement in the December 17 robbery. I continued to proclaim my innocence following my arrest to my court-appointed attorney, at trial and during my unsuccessful appeals. Despite my protests of innocence, I was convicted and sentenced to a lengthy prison term. While in prison, I learned about the Actual Innocence Association (“AIA”). I wrote to the AIA and also had people I knew, including my mom, Kelly, and others, write to the AIA to look into my case. Time passed and ultimately I was advised that the AIA had reviewed my file. I was interviewed by an AIA representative and told him that I was not involved in the December 17 robbery. I learned from the AIA representative that an individual by the name of Robin Carmichael may have been involved in the December 17 robbery. I do not know Robin Carmichael and have never met this individual. As the AIA investigation proceeded, I learned that the Dover County District Attorney also had commenced an investigation, which eventually caused my judgment of conviction to be vacated on the ground of my actual innocence.
18. I am now seeking damages from the County of Dover for malicious prosecution in connection with my arrest and conviction for the December 17 robbery. All I wanted to do was help Detective Smith and the DCSD. Instead, I became another victim of the December 17 robbery and lost years of my life because of the County's actions.

Dated: October 6, 2016

I affirm the veracity of the foregoing statement.

Robin Berkman

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