SUMMARY OF ARGUMENT

John Ewing was charged with rape in four cases where Detective William Eskridge of the Washtenaw County Sheriff's Department orchestrated the procedures that resulted in the identification of Ewing.

Through post-conviction discovery, FOIA requests, and discovery in the district court, Ewing has discovered 26 new items of evidence, including exculpatory police reports deliberately not turned over by Eskridge, police reports that identified other suspects or witnesses that were never disclosed to defense counsel, evidence that Eskridge lied about his investigation of Ewing, and evidence that Eskridge altered a composite sketch of the rape suspect in the Culhane case to resemble Ewing. This newly discovered evidence, all of which was withheld from Ewing before he went to trial, coupled with the known evidence that the identification of Ewing as a rape suspect by the rape victims was the result of police suggestions to the victims (whose faces were covered during their rapes) that influenced their identification of Ewing, supports Ewing's defense that he was mistakenly identified as the rapist of Julie Culhane. The newly discovered items of evidence also support Ewing's pretrial attempts, which failed in the absence of these newly discovered items of evidence, to suppress identification testimony because the identifications of Ewing were the result of suggestive tactics on the part of Eskridge.

Ewing's challenges to this conviction in state court has resulted only in hearings on his sentence; no state court judge in this csae permitted Ewing to present this withheld evidence at a hearing.

Two jurors who convicted Ewing of the Culhane rape have executed affidavits that they would have acquitted Ewing had they known of the withheld evidence. The identification evidence against Ewing was flimsy at best; although Ewing was convicted of rape in this case based on the testimony of the victim and another rape victim, he was acquitted of another rape based on the identification testimony of the same two witnesses.

Ewing was convicted before DNA testing was available. Now, when, as part of his post-conviction efforts to clear his name, he has sought the physical evidence, including semen samples taken from Culhane and her clothing, to submit to DNA testing to clear him from these charges, law enforcement officers claim that all the physical evidence has been lost or destroyed, without any paper trail or credible explanation for the loss or destruction. Records show that some of the physical evidence in the custody of the Washtenaw County Sheriff's Department was destroyed precisely when Ewing first requested it for DNA testing, and could only have been destroyed if Eskridge authorized its destruction.

The destruction of all the evidence in all the cases against Ewing, even though he was vigorously challenging his conviction in state court, gives rise to a