

MR. KENNETH COLVIN, JR. (#192744)

\*\*\*LEGAL DOCUMENTS INDEX\*\*\*

(231 PAGES OF DOCUMENTS)

1. Wanted Posters and Composite Sketch Reports (6 pages), Pages 1-6;
2. Grand Rapids Press News Articles of case (5 pgs.), pgs. 7-11;
3. Defense's Opening Statement Transcripts (10 pgs. (P. 299 to 308), pgs. 12-21;
4. Defense's Closing Argument Transcripts (16 pgs. (P. 720 to 735); pgs. 22-37;
5. T.V. News Network Response Letters (2 pgs.), pgs. 38-39;
6. My Grand Rapids Press Letter and Response Letter (12 pgs.), pgs. 40-51;
7. My Letter to "Hurricane" Carter (6 pgs.), pgs. 52-57;
8. Response Letters from Wrongful Conviction Organizations and Government Agencies (11 pgs.), pgs. 58-68;
9. My Letters to Governor Rick Snyder & Attorney General Bill Schuette (2 pgs.), pgs. 69-70;
10. Application for Pardon and Response Letters from Governor (8 pgs.), pgs. 71-78;
11. Requests for Grand Rapids Police Files (F.O.I.A.) and response (6 pgs.), pgs. 79-84;
12. Ex-Trial Attorney's Letters, Complaint response, & Civil Suit Against Attorney (5 pgs.), pgs. 85-89;
13. Carl Powell, Trent Chambliss, Fair Street Report, Kenney Carter & Charles Robinson's Reports (14 pgs.), pgs. 90-103;
14. Michigan State Police Complaint & Response Letter; Forensic Reports (14 pgs.), pgs. 104-117;
15. Trial Transcript Testimony from Det. James Grable (P. 581; 588-589); Det. S. M. Burritt (P. 552 & 560); Det. Bullock (P. 538; 547-548) & Det. Crum (P. 563; 577) (9 pgs.), pgs. 118-125B;
16. Innocence Denied Article about man freed after 12 years of excluded evidence (1 pg.), pg. 126;
17. Altered Preliminary Examination Transcript testimony of Jackie Smith & Judge Jane Markey and My Affidavit of Actual Statements Made by Ms. Smith & Judge Markey (P. 1; 2; 46 & 102) (5 pgs.), 127-131;
18. My Letter to Judge Robert A. Benson regarding my Preliminary Examination Transcripts being altered & requesting that it be corrected (3 pgs.), pgs. 132-134;
19. Legal Documents regarding my attempt to correct my transcripts (24 pgs.), pgs. 135-158;
20. People v. Gray, 69 Mich. App. 685 (1976); Ferensic v. Birkett, 501 F.3d 469 (6th cir. 2007) & U.S. v. Brownlee, 454 F.3d 131 (3rd cir. 2006) (each case related to unreliable identification & "illegally" privately preparing witness for line up) (6 pgs.), pgs. 159-164;
21. History of Judge Jane E. Markey & Detroit Free Press article with Curt Benson (Markey's husband & Judge Benson's son) (2 pgs.), pgs. 165-166;
22. My Preliminary Examinary Transcript regarding me not being placed in line up (P. 29) (1 pg.), pg. 167;

MR. KENNETH COLVIN, JR. (#192744)  
\*\*\*LEGAL DOCUMENTS INDEX (CONTINUED)\*\*\*

23. Brother's Trial Transcripts of Det. Grable revealing the fact that they had nothing supporting that I had ever been to Grand Rapids (P. 72; 78-79) (3 pgs.), pgs. 168-170;
24. Willie Meadows, Calvin L. Jones & Carolyn Glasper's Investigative Notes revealing that Terron Johnson/Thames Hawkins committed case & Fingerprint Comparison Request with Johnson & Hawkins (and others) as suspects (9 pgs.), pgs. 171-179;
25. Witness (13 year old girl) who seen robbers leave drughouse (4 pgs.), pgs. 180-183;
26. Jackie Smith & Arron Williams Identifying other suspects (Chris Taylor & John Hawkins) (4 pgs.), pgs. 184-187;
27. Photo line-up with Terron Johnson/Thames Hawkins/Everette Taylor & Aaron Williams' identifying Thames Hawkins & another suspect during line-up; & Final Call Article of Thames Hawkins' death (7 pgs.), pgs. 188-194;
28. Op-ed article about false confessions; articles regarding Claude McCollum, Tony Wright & George Stinney wrongly convicted & each made false confession (10 pgs.), pgs. 195-204;
29. My trial transcript when Judge Benson didn't want to include my brother's statement after Det. Gary Crum testified falsely in what occurred in my brother's interrogation which produced the false statement (P. 638) (2 pgs.), pgs. 205-206;
30. Brother's hearing transcripts allowing his statement despite the fact he asked for an attorney (P. 56 to 58); & Det. Rex Marks' trial testimony admitting that Det. Crum did in fact tell my brother about Det. Crum's friend who cooperated with the police about killing someone and was released from prison after 10 years of incarceration (P. 147; 180 to 183) (8 pgs.), pgs. 207-214;
31. Op-ed article regarding mistaken identification & response letter from Yale Law School regarding my inquiry about the op-ed article (2 pgs.), pgs. 215-216;
32. Jet Magazine article about Wrongful Conviction of African American (1 pg.), pg. 217;
33. Newsome v. McCabe, 319 F.3d 301 (7th cir. 2003) revealing the science in witnesses identifying alleged suspects & police manipulating the identification (4 pgs.), pgs. 218-221;
34. Det. Grable's request for medical records & response from EMS stating that they did not have any record of Chris Smith receiving treatment for an alleged gunshot wound he claimed he received during the crime (2 pgs.), pgs. 222-223;
35. Terry Coger's/Kevin Coger's Investigative Interview Report (Res gestae witnesses) (2 pgs.), pgs. 224-225;
36. Doug J. Tjapkes' letter (Humanity for Prisoners) acknowledging Kent County's "sorry reputation" (1 pg.), pg. 226;
37. Tavis Smiley's letter & rejection for books that he sent me (2 pgs.), pgs. 227-228;
38. Dr. Henry L. Gates, Jr.'s letter (1 pg.), pg. 229;
39. Star Parker's Invoice sending me her book (1 pg.), pg. 230.

TOTAL PAGES: 231



# WANTED

GRAND RAPIDS POLICE DEPARTMENT



\*\*\*ORIS SMITH'S COMPOSITE DESCRIPTION OF SUSPECT  
STATED ONLY HAD A MINUTE TO SEE SUSPECT & WAS CRYING & COVERING FACE\*\*\*

WANTED FOR: Double Homicide

DATE: 6-24-94

INCIDENT NO.: 94-59379

LOCATION: 844 Neland SE

TIME: 1300 hrs

**DESCRIPTION:** B/M approx. 20 yrs old. Tall, thin build, skinny face with nappy short hair. Suspect was wearing a white sweatshirt, khaki pants, and black shoes. Weapon was .22 chrome pistol.

FOR FURTHER INFORMATION CONTACT: Det. Grable

PREPARED BY: KSH 652

**SUPPLEMENTAL CRIME SCENE REPORT  
GRAND RAPIDS POLICE DEPARTMENT**

Incident No. 94   59379	Technician / Badge Hatch / 652	Date Report 6-26-94	Time Report 1557
Location 333 Monroe NW		Incident Type Homicides/PU	
Incident Address 844 Neland SE		Incident Date 6-24-94	District B8
Object of Offense see original		Requested / Badge Grable /	
Point of Entry NA		Other Agency / Incident Peculiarities Chris Smith	
Method of Entry			

<b>LATENT PRINTS</b>	Processed for Latents Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Latents Recovered Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Eliminations Obtained Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
----------------------	--	--	--

Name	Name	Name
------	------	------

<b>PHOTOGRAPHS</b>	B&W No. <input checked="" type="checkbox"/>	No. Rolls	Size	Color No. <input checked="" type="checkbox"/>	No. Rolls	Size	Polaroid No. <input checked="" type="checkbox"/>	No. Pics.	Type	Video Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
--------------------	--	-----------	------	--	-----------	------	---	-----------	------	--

<b>TRACE EVIDENCE</b>	Blood Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Paint Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Shoe Prints Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Hairs or Fibers Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Glass Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
-----------------------	--	--	--	--	--

COMPOSITE Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	SKETCH Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Other	Evidence Disposition
--	---	-------	----------------------

**Narrative**

With the assistance of **C. Smith**, CST completed a composite of suspect described as B/M approx. 20 yrs old. Tall, thin build, skinny face with nappy short hair. Suspect was wearing a white sweatshirt khaki pants and black shoes. Weapon was a .22 chrome pistol.

Comphotofit numbers used were: F-329, E-396, N-354, M-373, C-343. Composite was filed under No. 9459379K.



# WANTED

GRAND RAPIDS POLICE DEPARTMENT



\*\*\*JACQUE SMITH'S COMPOSITE DESCRIPTION OF SUSPECT  
STATED ONLY HAD 20 SECONDS TO SEE SUSPECT\*\*\*

WANTED FOR: Double Homicide

DATE: 6-24-94

INCIDENT NO.: 94-59379

LOCATION: 844 Neland SE

TIME: 1300 hrs

**DESCRIPTION:** B/M approx. 18-19 yrs old. Tall, thin build, with dark complexion. Suspect was wearing a white shirt and khaki pants. Weapon was a small handgun.

FOR FURTHER INFORMATION CONTACT: Det. Grable

PREPARED BY: KSH 652

3





# WANTED

GRAND RAPIDS POLICE DEPARTMENT

\*\*\*MR. ARRON WILLIAMS' COMPOSITE DESCRIPTION OF SUSPECT  
STATED ONLY HAD 4 to 5 SECONDS TO SEE SUSPECT\*\*\*



WANTED FOR: ASSAULT W/I MURDER

DATE: 06/24/94

INCIDENT NO.: 94-59379

LOCATION: 844 NELAND SE

TIME:

**DESCRIPTION:**

B/M, 19-20 YRS, 6'1"-6'2", 160-170 LBS, SLIM BUILD,  
WEARING WHITE SHIRT AND BLUE PANTS

FOR FURTHER INFORMATION CONTACT: DET. GRABLE TX 3816 PREPARED BY: KC 657

**SUPPLEMENTAL CRIME SCENE REPORT  
GRAND RAPIDS POLICE DEPARTMENT**

Incident No. 94 / 59379		Technician / Badge Curtiss / 657		Date Report 06/27/94		Time Report 1430	
Location 333 Monroe Ave. NW				Incident Type DEATH/HOMICIDE/F.U./COMPOSITE			
Incident Address 844 Neland SE				Incident Date		District B08	Requested / Badge Grable / 189
Object of Offense See original				Other Agency / Incident Peculiarities			
Point of Entry				Method of Entry			
<b>LATENT PRINTS</b>		Processed for Latents Yes <input type="checkbox"/> No <input type="checkbox"/>		Latents Recovered Yes <input type="checkbox"/> No <input type="checkbox"/>		Eliminations Obtained Yes <input type="checkbox"/> No <input type="checkbox"/>	
Name		Name		Name		Name	
<b>PHOTOGRAPHS</b>		B&W No. <input type="checkbox"/>	No. Rolls	Size	Color No. <input type="checkbox"/>	No. Rolls	Size
		No. <input type="checkbox"/>			No. <input type="checkbox"/>		
		Polaroid No. <input type="checkbox"/>	No. Pics.	Type	Video Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>TRACE EVIDENCE</b>		BLOOD Yes <input type="checkbox"/> No <input type="checkbox"/>	PAINT Yes <input type="checkbox"/> No <input type="checkbox"/>	SHOE PRINTS Yes <input type="checkbox"/> No <input type="checkbox"/>	HAIRS OR FIBERS Yes <input type="checkbox"/> No <input type="checkbox"/>	GLASS Yes <input type="checkbox"/> No <input type="checkbox"/>	
<b>COMPOSITE</b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		<b>SKETCH</b> Yes <input type="checkbox"/> No <input type="checkbox"/>		Other		Evidence Disposition	

**Narrative**

CST Curtiss completed a composite sketch with the assistance of Aaron Williams B/M. The following characteristics were used: F301, E390, N320, M317, C321. Fifteen copies of the completed composite were TOT Det. Grable. One copy is maintained in the Crime Scene Jacket.



June 25, 1994

# Gunmen enter home kill two, wound three



► *Police say no arrests have been made in what appeared to be a robbery attempt.*

By Doug Guthrie  
The Grand Rapids Press

Two men armed with semiautomatic pistols invaded a Southeast Side home Friday afternoon and gunned down five people, killing a man and a woman.

Grand Rapids police said the youthful suspects knocked at the front door of a two-story duplex at 844 Neland Ave. SE, and were let inside because the occupants said they thought they were relatives. Once inside, the strangers said their intention was robbery.

"I don't get it," said a woman watching detectives work in the rain after the shooting. "I know these people and they didn't have jobs. They drove beat-up old cars and they didn't have no money. So why would someone want to rob them?"

The dead were identified as Cassandra Tillman, 20, of 552 Pleasant St. SE, and Kenneth Smith, about 30, of 844 Neland

Ave. SE.  
No one has been arrested.  
Grand Rapids Police Lt. James Farris  
see SHOOTING, A

6-25-94

## SHOOTING *Neighbors gather at church to rally*

CONTINUED FROM A1

said one robber kept Tillman and Kenneth Smith at gunpoint downstairs while his accomplice went upstairs to confront Jacqueline Smith, 29, Aaron Williams, 36, and Christopher Smith, 20, all of the Neland address.

The bandits, who entered the house about 12:29 p.m., were inside for an undetermined amount of time before the gunman upstairs opened fire. The second gunman downstairs then shot Tillman and Kenneth Smith, said Farris.

Tillman, shot several times, including at least once in the back, died at Saint Mary's Hospital. She was pronounced dead at 1:12 p.m.

"They worked real hard to save her and couldn't," said Saint Mary's spokeswoman Trisha Spaulding.

Kenneth Smith was shot in the chest and died in the emergency room at Blodgett Memorial Medical Center, according to hospital spokesman Bruce Rossman.

Williams, Christopher Smith and Jacqueline Smith were treated at Blodgett for bullet wounds to their extremities. None of their injuries

was considered life-threatening, said Rossman.

Williams and Jacqueline Smith also suffered cuts while making their escape with their 3-year-old son from an upstairs window.

"I heard probably six shots and I looked out my window," said neighbor Terry Cogger. "I didn't see anything at first, then I saw a man and woman climbing out that window up over the porch."

Cogger said the man appeared to be clutching a child bundled in his arms as he made his way out the window.

"He was yelling that somebody's been shot. I think he may have been saying a name, too, but I couldn't make it out," said Cogger, who said called police.

Williams and Jacqueline Smith jumped from the porch roof and ran for help at a house around the corner, at 1046 Prince St. SE, said police.

Numerous spent shell casings were found by investigators inside the Neland home. A single casing was found in the street and slightly to the north, the direction the suspects apparently fled after the shooting.

Neighbors said residents of the duplex had lived there about six months.

"We all keep to ourselves in this neighborhood, but they were kind of noisy," said one neighbor.

"They'd drink and party out there all night," said another, pointing to a table with shade umbrella and chairs on a small patch of lawn beside the front porch.

The suspects were described as black males, 17 to 20 years of age. One wore a cream-colored shirt, black shorts and carried a black backpack. The other wore a white shirt and black jogging pants.

Late Friday evening at Nehemiah Church, just a few blocks from the murder scene, about 60 area residents and church members held a rally to encourage "a sense of hope" in the neighborhood.

"This is in response to all the killings, not just this one," the Rev. Rory Marshall said of the rally, which actually had been planned long before Friday's shootings. "We're just sick and tired of the community acting like it's powerless."

Reporter Rick Wilann contributed to this report.

Grand Rapids Press - June 26, 1994

# 2 gunmen demanded drugs, cash

▶ A witness says one man put a gun to his head, a police report on the attack shows.

By Roland Wilkerson  
The Grand Rapids Press

A pair of gunmen being sought in a chilling double murder on the city's Southeast Side reportedly demanded drugs and money from the occupants before opening fire, according to a police report on the attack released Saturday.

Reports on the Friday killings being investigated by the Grand Rapids police include a statement taken from a witness who said one of the assailants put a gun to his head and wanted to know where he kept "the money" and "the dope." Moments later, the two men who'd barged into the duplex at 844 Neland Ave. SE in broad daylight started shooting.

Police Sgt. Larry Nyquist said that while drugs may have played a part in the attack, nothing had been ruled out at this point. When it comes to suspects, he said, no arrests had been made and "We don't have any names."

The attack came only hours before nearby residents readied a pre-emptive strike to save their inner-city streets from crime in a gathering billed as a "street party for Jesus."

Late into an otherwise dreary night, more than 150 members of Nehemiah Church and residents near the corner of Eastern Avenue and Franklin Street held a rally to sing an energetic message of hope to their neighborhood. It also served as an invitation to gang members and drug deal-

see SLAYINGS, A23

danced and sang... rapists, two... b-26-94

## SLAYINGS Gunmen barged in, demanding drugs

CONTINUED FROM A1

ers, delivered on their own turf, to join in the gospel.

For at least two people, however, the plea did not come soon enough. Killed in the Friday afternoon attack were Cassandra Tillman, 20, of 552 Pleasant St. SE and Kenneth Smith, about 30, of 844 Neland. Both died from their injuries after being shot in the downstairs of the homes.

The suspects, ages 17 to 20, entered the home about 12:30 p.m. Friday, with one gunman confronting occupants downstairs, and the other going to the upstairs of the home. Aaron Williams and Jacqueline Smith, who escaped from the stairs with their 3-year-old son, were treated for non-life-threatening

ing bullet wounds.

On Saturday, neighbors living near the home shuddered over the events that played out there only the day before.

"There's just all kinds of stuff going on around here," said Lisa Reynolds, a next-door neighbor and friend of the people living in the home.

She characterized the dwelling as a friendly "party house," where people gathered to drink, play cards and listen to music.

Reynolds said she spent the evening before at the home watching videos. When she heard the gunshot Friday, she chalked it up to pre-fourth of July revelry, until ambulances came screaming up to the home. "I didn't stay here last night, I was pretty scared," she

said.

By late Saturday morning, though, she was back home cooking breakfast while her children played on the front porch. "This is where I live," she explained.

Another neighbor, who asked not to be named, took a different view of the home, saying the block club complained to police that drugs were being sold there.

"It doesn't really take a brain to realize what kind of house that was," said the resident, who asked not to be identified out of fear of reprisals. "People would park, run in for a few seconds and run out. Everyone knew what was going on in that house."

Reporter Rick Wilson contributed to this report.

# Suspect in double-murder gets day in court Tuesday

► **Kenneth Colvin Jr. and his brother are accused of multiple shootings in June.**

The Grand Rapids Press 9/11/94

A Detroit man who police say shot and wounded three people while his brother killed two others during a June drug-related robbery on Grand Rapids' Southeast Side is scheduled to appear in court Tuesday on six felony charges.

Kenneth Colvin Jr., 26, of Detroit, is charged with two counts of murder, three counts of assault with intent to commit murder and one of armed robbery, all stemming from the June 24 shootout at 844 Neland Ave. SE.

Although police say they do not believe Kenneth Colvin Jr. fired the fatal shots, prosecutors charged him with murder because the killings occurred while he was allegedly participating in other felony offenses.

His brother, 19-year-old Kelley Colvin, has already been charged with two counts of felony murder, and is scheduled to go to trial in October.

Police say they believe the brothers came to Grand Rapids from Detroit to sell drugs. If convicted, they face mandatory life in prison with-

out possibility of parole. Kenneth Colvin Jr. was arrested in Detroit following a two-month search.

He was arrested by a state fugitive task force, said Grand Rapids Police Chief William Hegarty.

He was arraigned on the six felony charges Sept. 1, and has been held without bond in the Kent County Jail pending Tuesday's preliminary hearing in Grand Rapids District Court.

Cassandra Tillman, 20, and Kenneth Smith, 30, died of multiple gunshot wounds suffered in the shooting, the city's first double homicide in more than six years.

Kelley Colvin admitted to shooting the pair when he and a second man — identified as his brother — went to the house to demand money and drugs, police say. Kelley Colvin told police he opened fire when the victims disobeyed his directive and moved, police said earlier.

Authorities say Kenneth Colvin Jr. was upstairs when he opened fire on three people about the same time Tillman and Smith were being shot.

The three, Jacqueline Smith, 29, Aaron Williams, 36, and Christopher Smith, 20, all of the Neland address, were treated at Blodgett Memorial Medical Center for bullet wounds. None of the injuries were life threatening.

SEPTEMBER 11, 1994

SEPTEMBER 14, 1994

9/14/94

## Parolee faces lineup in shooting deaths

► *The man's younger brother is charged in the incident that left two people dead. Another three were allegedly wounded by the older man.*

The Grand Rapids Press

A Detroit man on parole for armed robbery is slated to appear in a Kent County Jail lineup before the three victims of a June drug-related shooting that also left two others dead in a Neland Avenue SE home.

Grand Rapids police say they hope the lineup will bolster their case against Kenneth Colvin Jr., 26, who is charged with two counts of felony murder, three counts of assault with intent to commit mur-

der and one of armed robbery, all stemming from the June 24 shootout at 844 Neland.

Judge Jane Markey on Tuesday adjourned Colvin's preliminary hearing in Grand Rapids Circuit Court for two weeks to give police time to conduct the lineup.

Although police say they do not believe Colvin fired the fatal shots, prosecutors charged him with murder because the killings occurred while he was allegedly participating in other felony offenses.

His brother, 19-year-old Kelley Colvin, has already been charged with two counts of felony murder, and is scheduled to go to trial in October.

Kent County Forensic Pathologist Dr. Stephen Cohle on Tuesday testified during a hearing that the two murder victims died of multiple gunshots to the back.

Cassandra Tillman, 20, was shot five times and Kenneth Smith, 30, was shot twice, he testified during Colvin's hearing.

Authorities say Kenneth Colvin Jr. was upstairs when he opened fire on three people about the same time Tillman and Smith were being shot.

The three, Jacqueline Smith, 29, Aaron Williams, 36, and Christopher Smith, 20, all of the Neland address, were treated at Blodgett Memorial Medical Center for bullet wounds. None of the injuries were life threatening.

Kelley Colvin admitted to shooting the pair when he and a second man — identified as his brother — went to the house to demand money and drugs, police say. Kelley Colvin told police he opened fire when the victims disobeyed his directive and moved, police said earlier.

Kenneth Colvin Jr. was sentenced in March 1988 to 3 to 15 years in prison for armed and unarmed robbery in Detroit, and was paroled in July 1992, according to the state Department of Corrections.

# 2nd brother ordered to stand trial for murder

► The two Detroit men allegedly killed two people and wounded three others while trying to steal drugs and cash.

By John Hogan  
The Grand Rapids Press



Kenneth Colvin Jr.

who was shot in the arm and hip before she jumped from a second story window to safety.

The alleged gunman, 26-year-old Kenneth Colvin Jr., also shot Smith's brother in a stairwell and her boyfriend through a closed bedroom door before he and a second gunman fled with cash and marijuana, according to testimony.

Police say the second gunman is Colvin's younger brother, Kelley, 19.

Between them, they killed two people and wounded three others during a robbery that netted about \$400 and an ounce of marijuana, according to testimony. The pair came to Grand Rapids from Detroit to deal drugs, according to police and court records.

"They believed they were robbing a house where drugs were being sold," said Kent County Assistant Prosecutor Kevin Bramble. "It appeared they were out to kill everyone."

Grand Rapids Press - September 29, 1994 - B-1

## COLVIN

Witnesses testify about surprise attack

CONTINUED FROM B1

ther sleeping or watching television.

Jacqueline Smith, 29, said she first thought the gunfire was the sound of her daughter's balloons being popped downstairs. And even when she faced the gunman on the steps, she did not realize she had just been shot in the arm.

"When I seen him still shooting, I said, 'This is no joke,'" Smith testified. "That's when I broke and run."

Smith was also struck in the hip before she was able to jump out the bedroom window. She hit her forehead on a metal pipe on the way down, leaving her with a scar above her left eye.

Her boyfriend, 36-year-old Aaron Williams, used his feet to hold the bedroom door closed as bullets penetrated the wood, passing just inches from the couple's 2½-year-old daughter. "He shot through the door and caught me right there," Williams said, pointing to his right arm. "I grabbed my daughter, jumped out the window and ran down the block."

The third shooting victim, 20-year-old Christopher Smith, testified that when he saw the gunmen and heard one announce, "This is a stick-up," he thought it was a joke.

When he realized what was happening, Smith said, he attempted to flee but was grabbed around the waist by Kenneth Colvin Jr., who then pressed a handgun into his side and fired, Smith testified.

"I was on the stairs, screaming," testified Smith, who suffered a grazing wound to his arm.

Under cross-examination from defense attorney Judy Ostrander, Christopher Smith admitted he dealt marijuana from the house but said he did not know the gunmen.

He said he tossed between \$300 and \$400 on the steps when Kenneth Colvin Jr. returned from the upstairs apartment. "He picked up the money and waited for his partner," Smith said.

The pair put the cash, their guns and marijuana taken from the apartment into a backpack. Kenneth wiped the doorknob free of fingerprints, and they walked out, according to testimony.

Kelley Colvin was arrested in late July after police received several tips linking him to the shootings. Kenneth Colvin Jr. was arrested in Detroit, and he was arraigned Sept. 1.

Kenneth Colvin Jr.'s preliminary hearing began Sept. 13, but was adjourned until after he appeared in a jail line-up for the three wounded victims. The trio positively identified him as the gunman.

"I would never, ever forget his face," Jacqueline Smith testified. "How could this man and his brother do this to his own people without no reason?"

Grand Rapids District Judge Jane Markey on Wednesday ordered Kenneth Colvin Jr. to stand trial on several charges, including felony murder and assault with intent to commit murder, for the June 24 shooting at 844 Neland SE.

Although authorities say Kenneth Colvin Jr. did not kill the two people in the downstairs apartment, he was charged with felony murder because the killings occurred while he was participating in other felony offenses.

Kelley Colvin, 19, in August was ordered to stand trial for the slayings. Police say he repeatedly shot Cassandra Tillman, 20, and Kenneth Smith, 30, in the back when the two disobeyed his directive and moved. A third man in the room was not injured.

The shootings occurred about 11 a.m. on a rainy, overcast day as the victims were ei-

see COLVIN, B2



# NEWS RELEASE

## GRAND RAPIDS POLICE DEPARTMENT

APPROVED:

Lieutenant James Farris

FOR FURTHER INFORMATION:  
Community Affairs Unit  
456-3124

FOR RELEASE: June 24, 1994

At approximately 12:29 P.M. today, the Grand Rapids Police Department responded to 844 Neland Avenue SE on a reported shooting. Upon arrival, officers found five (5) gunshot victims from the address:

1. Kenneth Smith, approximately 30 years old, 844 Neland Avenue SE
2. Cassandra Tillman, 20 years old, of 552 Pleasant Street SE
3. Jacqueline Smith, 29 years old, of 844 Neland Avenue SE
4. Aaron Williams, 36 years old, of 844 Neland Avenue SE
5. Christopher Smith, 20 years old, of 844 Neland Avenue SE

Mr. Kenneth Smith suffered a gunshot wound to the chest and was taken to Blodgett Hospital where he expired. Ms. Cassandra Tillman suffered a gunshot wound to the back and was transported to Saint Mary's Hospital where she also died. Jacqueline Smith and Aaron Williams were each shot in the arm and taken to Blodgett Hospital where they are listed in good condition and expected to be released later today. Mr. Christopher Smith suffered a superficial wound to the arm.

The victims apparently answered a knock at the door when two (2) Black male suspects armed with semi-automatic type handguns entered demanding money. Suspect #1 went upstairs in the dwelling while suspect #2 remained downstairs. Suspect #1 shot victims Jacqueline Smith, Aaron Williams, and Christopher Smith. Jacqueline Smith, Aaron Williams and their three (3) year old child fled through an upstairs window of the residence. Christopher Smith fled through the rear door of the residence. Suspect #2 shot victims Kenneth Smith and Cassandra Tillman. There was one (1) other occupant who was unharmed. The suspect(s) were described as:

1. A Black male, seventeen to twenty (17-20) years old, wearing a cream-colored shirt, black shorts, white shoes, and carried a black back pack.
2. A Black male, Seventeen to twenty (17-20) years old, wearing black jogging pants, white shirt, and white shoes.

The Grand Rapids Police Department Major Case Team is investigating the incident. Anyone with information regarding this incident is asked to call the Grand Rapids Police Department at 456-3404 or Silent Observer at 774-2345.

1 MR. LIQUIGLI: May it please the Court,  
2 Mr. Bramble, ladies and gentlemen of the jury.

3 This indeed was a gruesome killing, and  
4 two people are now dead because of the actions of  
5 Kelley Colvin. But the prosecutor doesn't have to  
6 prove what Kelley Colvin did. He has to prove what  
7 Kenneth Colvin did.

8 Kenneth Colvin is the gentleman sitting  
9 right here at the defense table, and you are going  
10 to see that that proof is not beyond a reasonable  
11 doubt.

12 Now, this is the time in my opening  
13 statement that I usually talk about physical  
14 evidence. I like to get that out of the way first,  
15 because there's usually a lot of physical evidence  
16 linking the defendant to the crime, and I like to  
17 dispel any of that physical evidence right away.

18 I'm at a loss here, because there isn't  
19 any physical evidence. This is an eyewitness case,  
20 pure and simple. There are no fingerprints. There  
21 are no bootprints outside the window where they  
22 broke in in a burglary. There's no burglar's  
23 tools. There's no hairs or fibers. There's no  
24 blood to analyze DNA. There's no body fluids.  
25 There's none of that.

1                   There's no photographs of hidden cameras  
2                   filming the burglary in progress. There's no  
3                   tape-recordings. There's no tire tracks. There's  
4                   not one piece of physical evidence -- and, by the  
5                   way, there's not a gun, at least not one that's  
6                   alleged to have been used by Kenny Colvin.

7                   None of these things exist in this case,  
8                   not one shred of evidence, physical evidence,  
9                   something you could touch, something you could hold  
10                  on to, that puts my client at 844 Neland.

11                  As the prosecutor said, that's one of  
12                  the things that he's going to have to prove beyond a  
13                  reasonable doubt. He says that Ken Colvin  
14                  participated in this robbery. They're going to have  
15                  to prove that. They're going to prove that or try  
16                  to prove it through eyewitness identification.

17                  Now, during the voir dire I already  
18                  touched upon the fact that people make mistakes when  
19                  they think they see somebody.

20                  The prosecutor would like you to believe  
21                  that face-to-face, eyewitness testimony is as  
22                  reliable as can be. It's going to be burned into  
23                  your memory that, "This is what happened and I will  
24                  never forget this."

25                  He's also going to ask you to believe

1 that by picking a person out of a lineup, that that  
2 is as reliable as can be, and it's without fault  
3 because it couldn't possibly be wrong.

4 Well, you're going to hear testimony  
5 from a Dr. Alexander Daniel Yarmey. Dr. Yarmey is a  
6 professor of psychology at the University of  
7 Guelph. He's also the author of a book, a book  
8 specifically geared towards police work, and in that  
9 book he writes extensively on eyewitness  
10 identification.

11 He's an expert in that field, and he's  
12 going to testify for you.

13 He's going to tell you that eyewitness  
14 identifications and eyewitness testimony is among  
15 the most unreliable, believe it or no, the most  
16 unreliable types of testimony that could be used in  
17 convicting an individual.

18 Courts have recognized this. The United  
19 States Supreme Court has recognized it. The  
20 Michigan Supreme Court has recognized it, and he'll  
21 tell you that, too. It's the most unreliable type  
22 of testimony you could possibly get. And why is  
23 that?

24 Well, memory has several components to  
25 it. One is the ability to observe what's going on



1 at the time you're making an observation. If guns  
2 are going off, you're making split-second  
3 observations. You're stressful. There's violence  
4 going on around you. People are being killed.

5 You are not of the mind to stand there  
6 and say, "Let me just take a moment to see what this  
7 fellow looks like and see if I can find any  
8 distinguishing characteristics so that I could  
9 describe him to the police later."

10 You're understandably finding the  
11 fastest way out of there to get away from bullets.  
12 You're not sitting there saying, "Let me think what  
13 this person looks like."

14 Also, alcohol and marijuana have a big  
15 factor to play in your ability to remember things,  
16 short-term memory and long-term memory.

17 I think you're going to come to the  
18 conclusion, after hearing the testimony, that some,  
19 if not all, of the people in this house were smoking  
20 marijuana or had been smoking shortly before then or  
21 had been drinking.

22 Additionally, the retention period is  
23 very important, and Dr. Yarmey will testify as to  
24 that, also. How much time has passed since you're  
25 being asked to, from the event to the time you're

1 being asked to remember something, has it been a  
2 long time or a short time.

3 And we discussed in voir dire, you all  
4 agreed that your memory is better immediately after  
5 the event or only a short time after the event.

6 The lineup in this particular case that  
7 Mr. Kenny Colvin participated in was two or three  
8 months after the event. Other pieces of evidence  
9 and other descriptions occurred immediately after  
10 the event, the day of the event, or one or two days  
11 after.

12 Let's talk about the witnesses that  
13 Mr. Bramble mentioned.

14 We have John Earl Smith. John Earl  
15 Smith is confronted by Kelley Colvin, gun placed to  
16 his head, screaming going on. He sees his brother's  
17 terrified face and two people get shot. He  
18 identifies Kelley Colvin without any problem.

19 What does he say about Kenny Colvin --  
20 well, first he says Kelley Colvin is six-foot tall,  
21 because he's only an inch taller than him. What  
22 does he say about Kenny Colvin? He says this, by  
23 the way, the day of the crime: He says Kenny Colvin  
24 is much shorter, despite the fact that Kenny is  
25 six-foot-five and Kelley is six foot.

1 I think the description on the day of  
2 the event, shortly thereafter, is much more  
3 accurate.

4 Likewise, the three people that  
5 identified Mr. Kenny Colvin -- I have to keep on  
6 thinking to put "Kenny" in front of his name --

7 Mr. Kenny Colvin gave descriptions to the police the  
8 day of the event or shortly thereafter.

9 Arron Williams describes him as 19 to 20  
10 years old, six-one to six-two, 160 pounds, and  
11 Mr. Williams was good enough and certain enough  
12 about his description of the person and his memory  
13 of the person to draw or have a composite drawing  
14 made.

15 That is the composite drawing that  
16 Mr. Arron Williams made of the defendant  
17 (indicating). That will be introduced into  
18 evidence, and as you can see, it looks nothing like  
19 the defendant, two days after.

20 Likewise, two other composite drawings  
21 made by eyewitnesses at the time of the event look  
22 nothing like the defendant.

23 You'll also notice they don't look  
24 anything like each other, either. Three different  
25 pictures, none of them look like this man, and yet

1 two months later there's a lineup and, lo and  
2 behold, Kenny Colvin is picked out of the lineup.  
3 How does that happen? How does that occur?

4 Well, the witnesses will admit and they  
5 have admitted that they have talked to each other  
6 regarding the identity of this second man. They've  
7 talked to each other at great length. Two of their  
8 family members, or a family member and a good  
9 friend, have been killed. Naturally, this is going  
10 to be the topic of discussion for many months to  
11 come. I'm certain they're still not done talking  
12 about this.

13 This was a tragic event, but yet they  
14 start talking and they start influencing each  
15 other.

16 You remember how the judge said about  
17 the weather. You come to conclusions. We don't  
18 talk in facts. We don't say, "Well, he had puffy  
19 lips and his cheekbones were high," and so on and so  
20 forth. They started talking conclusions, and that's  
21 how -- and that's what Dr. Yarmey will tell you, how  
22 conversations of that nature will influence people.

23 And that's how three people could draw  
24 three different pictures, none of which look like  
25 the defendant, who now come to name the defendant as

1 the person, the second person involved in this  
2 crime.

3 Also, I'd like you to look and listen to  
4 all of their testimony as it relates to specific  
5 facts, how things happened. You're going to hear  
6 differences between the day of the event, how one  
7 witness says something happened. Two days later,  
8 two weeks later, the stories are going to change,  
9 and that's because the stories aren't certain.  
10 They're not certain what happened. They're trying  
11 to remember, but they're remembering different  
12 things at different times.

13 And again, it goes back to memory, how  
14 good was your opportunity to remember something at  
15 the time it happened.

16 I say, ladies and gentlemen, that at the  
17 time these events were occurring, this was chaos.  
18 It had to work its way up to chaos to be as good as  
19 chaos. People are dying around these people.  
20 Gunshots are being fired, and the ability to  
21 remember is not consistent, for all intents and  
22 purposes.

23 Again, everyone at the scene close to  
24 the time of the event described this man as 18 to 19  
25 years old, 19 to 20, and the latest is 20 years

1 old. The defendant here was 26 at the time, 27  
2 years old now, obviously a big discrepancy.

3 There are other discrepancies, who left  
4 the house first, who came back into the house first,  
5 how much money they got, when they got the money,  
6 how much marijuana they got.

7 The games were being played on whether  
8 or not this was a drug house or not, and you'll see  
9 as time goes on, finally, it was admitted that this  
10 was a drug house. That drugs were being sold. That  
11 there was a scale. That there was a safe. That  
12 beepers were being used. Those things will finally  
13 come out.

14 And marijuana was flushed down the  
15 toilet by one of the people that got shot, who had  
16 enough common sense to go find his marijuana and  
17 flush it down the toilet. But he didn't tell the  
18 police that until later.

19 So I want you to pay attention to all  
20 those things, and really judge the credibility of  
21 these witnesses, not that I think they're  
22 purposefully lying here, but I don't think they know  
23 exactly what happened on that day, and I don't think  
24 they had a good opportunity to remember what  
25 happened on that day.

1 I think if you're critical of their  
2 testimony and you listen to their testimony closely,  
3 you'll see that it wasn't Kenny Colvin that was with  
4 his brother that day, but that it was someone else.

5 And I think you're going to find that  
6 the prosecutor has not proven his case beyond a  
7 reasonable doubt, and you'll come to the only  
8 conclusion that you can, that of not guilty.

9 Thank you.

10 THE COURT: Okay, thank you,  
11 Mr. Liquigli.

12 We'll adjourn now, ladies and  
13 gentlemen. We'll start -- as you know, tomorrow you  
14 have a day off, and we will start on the 17th, which  
15 is Wednesday, at 8:30.

16 When you come in in the morning  
17 you'll -- today you'll sign out over there. Your  
18 cards will be there. Wednesday they will be in the  
19 jury room, but you still have to check in in the  
20 morning, as you know, to get your parking tickets  
21 stamped, and then you'll get the jury badge that  
22 will get you in through the side door.

23 So you're free to leave. Just leave  
24 your notes there. We'll pick them up and lock them  
25 up, and we'll see everybody at 8:30 on Wednesday

1 ladies and gentlemen of the jury.

2 I would like to thank you all for sitting  
3 here for four or five days as you've had to endure our  
4 presentation of evidence here.

5 This is going to be my last opportunity to  
6 talk to you. There's a reason for that. The  
7 prosecutor's going to have another opportunity to come  
8 up and comment on what I have to say. The reason for  
9 that is because he bears the burden of proof in this  
10 matter. He must prove to you beyond a reasonable  
11 doubt the charges that are alleged.

12 So he gets that second chance, that second  
13 bite at the apple to comment on what I say, and that's  
14 the fair way we do things in this country, and that's  
15 because he has that burden that we do that.

16 Now, you're going to be called upon to  
17 answer one question and one question only in this  
18 case: Did the prosecutor live up to that burden. Did  
19 he prove to you beyond a reasonable doubt that Ken  
20 Colvin was at 844 Neland and participated in this.  
21 And the judge is going to tell you all the elements of  
22 the crime. And, basically, the one question is, did  
23 he prove it beyond a reasonable doubt.

24 Well, we typically look at the evidence  
25 against the defendant and talk about that evidence.



1 And as I told you in my opening statement, there was  
2 going to be absolutely no physical evidence that  
3 points to Kenneth Colvin. There's a gun. It's never  
4 alleged that gun was in Kenneth Colvin's hands.  
5 There's bullets. There's no proof Kenneth Colvin shot  
6 those bullets.

7 Detectives Grable and Crum have introduced  
8 absolutely no evidence that shows Kenneth Colvin was  
9 there. We have IBO technicians, people who gathered  
10 physical evidence, who I asked, each and every one of  
11 them, whether or not any of the evidence, all the  
12 bullet casings and particles and pieces of bullets,  
13 whether any of that pointed to Ken Colvin. Their  
14 answer unanimously was no, it didn't, none of it.

15 We had Officer Boone come in and testify  
16 that he picked up a gun off some third party who got  
17 the gun, second or third hand, and in no way testified  
18 that it came from either Kelley or Kenny Colvin.  
19 There's no connection there, absolutely none.

20 We had two fellows from the Michigan State  
21 Police who were just superb testifiers. They told you  
22 everything you possibly wanted to know about the  
23 bullets and about the gun and about marks that bullets  
24 make as they go through the barrel and about marks on  
25 bullet casings, so on and so forth.

1           When it came right down to it, when it  
2 came to the big question, does any of this implicate  
3 Kenneth Colvin, you all remember the answer. It was  
4 no. They admitted, none of it implicates Kenneth  
5 Colvin.

6           We had two doctors testify that people  
7 died here. There's no doubt two people met with an  
8 ugly, gruesome death. That no matter who they are,  
9 drug dealers, girlfriends of drug dealers or anyone  
10 else, no one, no one should meet that sort of death.  
11 That is absolute, and no one could argue with that.

12           And I think everyone here feels for those  
13 people. However, the doctors told you nothing else.  
14 They told you nothing about who did this crime, who  
15 murdered these people. They specifically said that  
16 none of the evidence that they testified to pointed to  
17 Ken Colvin.

18           There was only one piece of evidence that  
19 I found particularly interesting from the doctors, and  
20 we'll get to that in a minute when we talk about  
21 credibility.

22           So right now we have absolutely not one  
23 piece of physical evidence, not one witness who could  
24 say, "Here it is, this is a thing you could touch that  
25 ties Kenny Colvin to this crime."

1           The prosecutor has produced eyewitnesses,  
2 and the prosecutor would have you believe that, number  
3 one, these are very credible people. That they are to  
4 be believed and they should be believed, according to  
5 him, and that they're very reliable people and that  
6 their testimony is reliable.

7           Well, ladies and gentlemen, I submit to  
8 you that the only person that said anything credible  
9 was Chris, when he said he was a drug dealer and he  
10 was smoking marijuana. These are the only two things  
11 that he said that have any credibility whatsoever. He  
12 admitted to doing things wrong. And there's a concept  
13 in the law that says people wouldn't admit to doing  
14 things wrong unless it were true.

15           That's a credibility issue. You wouldn't  
16 go around admitting something that was illegal unless  
17 it was true. You don't admit to things, crimes you  
18 haven't done.

19           He admits to dealing drugs out of the  
20 house, and that he had smoked a dime bag of  
21 marijuana. He's had three to five marijuana  
22 cigarettes. Who did he say he smoked it with?  
23 Everyone in the house, the whole family, everyone  
24 upstairs, "my sister," were just a few of the terms  
25 that he used to describe who he smoked this marijuana

1 with.

2           Everybody else in the house, "I didn't  
3 smoke marijuana." Maybe they were smoking marijuana  
4 downstairs. Everyone said Ken Smith did not smoke  
5 marijuana. Everyone said Ken Smith did not drink any  
6 alcohol that day.

7           Well, we come back to Dr. Cohle. The one  
8 interesting thing he said throughout this whole trial  
9 other than two people died was that Ken Smith had both  
10 cannabinoid intoxication and ethyl alcohol  
11 intoxication. In fact, so much ethyl alcohol  
12 intoxication that he was over .10, the legal limit to  
13 drive an automobile in this state.

14           Everyone that you heard from, every  
15 eyewitness lied about it: "No, Ken wasn't smoking."  
16 I don't mean to talk badly about someone who's  
17 deceased. He smoked marijuana and he drank alcohol  
18 that morning. No reason to be killed, I'm not saying  
19 that. View it in relation to what everyone else said  
20 about him that day. They're hedging. They're trying  
21 to hide something from you.

22           They all lied to the police when they  
23 said, "No, we weren't smoking marijuana." John Earl  
24 Smith says he took two puffs of a marijuana cigarette  
25 and then put it down.

1                   First of all, you didn't hear any of these  
2 IBO technicians say that they found a half a marijuana  
3 cigarette or a marijuana cigarette with just a couple  
4 of puffs taken from it. Don't you think that would  
5 have been a nice corroborating piece of evidence to  
6 bolster up John Earl Smith's testimony, to show that  
7 he'd only had those two puffs? Kind of makes me think  
8 of President Clinton when he said, "Well, yeah, I  
9 smoked marijuana when I was in college, but I really  
10 didn't inhale." It's kind of implausible, don't you  
11 think?

12                   Plus, you have Chris Smith saying, "Yeah,  
13 we all split three to five joints." I'd like you to  
14 take those things into account when you judge the  
15 credibility of these people.

16                   Also, I'd like you to take the marijuana  
17 smoking into account when you judge their  
18 reliability.

19                   Now, the prosecutor would have you believe  
20 that all Dr. Yarmey is is some sort of hired gun who  
21 comes in and testifies for the defense on any occasion  
22 he can and makes a ton of money doing it. Well,  
23 Dr. Yarmey testified that he was the author of this  
24 book, "Understanding Police and Police Work." He also  
25 testified that he's a consultant to the United States

1 Justice Department; that he's a consultant to police  
2 agencies in Toronto and the surrounding area.

3 I seriously doubt he goes into these  
4 agencies and tries to inform them how not to identify  
5 people. These agencies do not hire him because he's a  
6 defense hired gun and only comes in and testifies for  
7 the defense.

8 He's a professor, he's an educator, wasn't  
9 being paid by the defendant. He certainly wasn't  
10 being paid by me. He was being paid by Kent County, I  
11 guess, in a way, by all of us, to come in here and to  
12 educate you about some issues regarding eyewitness  
13 identification.

14 I submit to you that he is an independent  
15 person who has no stake in the outcome of this case,  
16 and testified as well as he could to try to educate  
17 you in those regards.

18 Now, there were some things that he  
19 testified to that I think are noteworthy. The  
20 prosecutor would have you only think that some things  
21 are noteworthy. I'd like to point out a couple of the  
22 other things.

23 Exposure time. You heard people say in  
24 this case that -- excuse me. You heard people say in  
25 this case that this took anywhere from five to eight

1 minutes. You heard people say that they had 30  
2 seconds standing face-to-face with this person before  
3 anything else happened. You heard Chris Smith say he  
4 walked all the way down the stairs to a man who  
5 supposedly intended to come in, shoot up the house,  
6 rob everybody in it, and take all the drugs and money  
7 out of the house.

8 Yet that man stood there, locked the door,  
9 Chris Smith came strolling down the stairs thinking  
10 nothing's happening in his marijuana-intoxicated  
11 state, came down the stairs, la-di-da, nothing's  
12 happening. The man still stood there, didn't do a  
13 thing. He walked around the corner and then saw  
14 someone else with a gun to his brother's head.

15 In the meantime, the guy at the door did  
16 nothing, just stood there. Does that sound reasonable  
17 to you, ladies and gentlemen? You're there to shoot  
18 up the place. You're there to rob marijuana. You  
19 know it's a drug house. You're just going to stand  
20 there and wait for somebody to say, "Gee, we're being  
21 robbed"? I don't think so.

22 I think that's an exaggeration of time.  
23 Just like Dr. Yarmey said, it's an exaggeration of  
24 what happened in the time that it took for this to  
25 happen. Dr. Yarmey said things are exaggerated

1 between five and eight times as long as they really  
2 happen.

3 He also said that he suspects that the use  
4 of marijuana might exaggerate that even more, and as  
5 we all know from Chris, the one person that would  
6 admit it, everyone in the house was smoking marijuana.

7 Let's look at the observation conditions.  
8 Chris said the stairway was not lit, hard to see, very  
9 stressful situation. Jackie upstairs said the hallway  
10 wasn't lit. She said the bathroom light was on, but  
11 the bathroom light was behind the defendant. When  
12 questioned on that, she all of a sudden remembered,  
13 oh, yeah, there was a light shining in from the other  
14 room.

15 She never mentioned that before that.  
16 When asked what the lighting was, she said the  
17 bathroom light was on. When challenged, she came up  
18 with this additional light.

19 The prosecutor mentioned stress. There's  
20 stress in every aspect of life. I'm a little stressed  
21 right now. I'm giving a closing argument. You're a  
22 little stressed. You're going to have to pay  
23 attention here. You're paying attention at a certain  
24 level of stress. You're awake. There's stressors all  
25 the time.



1           You heard the doctor say that a certain  
2 amount of stress is good for memory and gathering  
3 information and the retention of information.  
4 However, you also heard him say it falls off at a  
5 certain point, when things become too stressed.

6           I'd submit to you that being shot at is  
7 that point where you're going to fall off that scale  
8 and you're not going to be paying attention to  
9 anything but getting yourself out of there, out of  
10 harm's way as soon as possible. As a matter of fact,  
11 you heard people testify that Chris Smith turned and  
12 ran. He was going to get up those steps as quick as  
13 he possibly could, and he had one thing in mind and  
14 one thing only: To save himself. To get up those  
15 stairs and behind a locked door and get away from this  
16 guy who had a gun, once he finally realized something  
17 was going on.

18           Well, I don't think he was thinking to  
19 himself: Did this guy have big eyes? Did he have a  
20 mustache? Geez, what color was his hair? He didn't  
21 ask himself all those questions. He didn't take the  
22 time, as Dr. Yarmey said, under optimum conditions  
23 where you would sit and ponder a face and say, "I'm  
24 looking at a brunette," or someone with brown hair or  
25 big eyes or big ears.

1           He didn't have that time. He turned and  
2 ran, just like he should have.

3           Also, Jackie, up in the hallway, you don't  
4 really think she stood there and said to herself,  
5 "Gee, I'm going to have to identify this guy in a  
6 couple of months. I'd better, you know, take a  
7 picture of him in my mind and remember what he looks  
8 like." She didn't say that. She got shot in the arm  
9 the second he came popping up the stairs. That's what  
10 she said, "He came popping up the stairs, shot me in  
11 the arm. I looked at my arm, it was bubbling up."

12           I don't know what other people would do if  
13 their arm, the flesh in their arm was bubbling up, but  
14 I think that'd be a pretty stressful situation and I'd  
15 be wanting to turn and run.

16           Yet she says she stood there, I think one  
17 of her estimates was 30 seconds looking at this  
18 person, staring him face-to-face. And again, she  
19 would have you believe that this person after shooting  
20 her in the arm, after hearing gunshots downstairs,  
21 would then stand there calmly, "I've shot you in the  
22 arm, what would you like to do next," and wait 30  
23 seconds for her to make a move. Doesn't sound  
24 likely.

25           What sounds more accurate is that as soon

1 as she realized she was shot, she turn and ran. And,  
2 in fact, in some accounts she said he was running her  
3 down.

4 Well, it's kind of inconsistent if they're  
5 standing there and staring face-to-face or he was  
6 running her down. Which sounds more reasonable to  
7 you?

8 Then she says she ran into the bedroom,  
9 and now Arron Williams picks it up. He says he ran to  
10 the door and looked out the door for a full four to  
11 five seconds and looked at this man, who was  
12 supposedly running Jackie Smith down.

13 Now, that hallway the picture isn't up  
14 there right now, but that hallway did not look big  
15 enough for anybody, even someone with my short leg  
16 span, to be running for four to five seconds and not  
17 cover that space, through the door, and probably  
18 through the window. So there were no four to five  
19 seconds to look at this man. This is all happening  
20 lickety-split. Shots are being fired. There's no  
21 opportunity to observe.

22 They're all high. They're all under ←  
23 stress. They're all viewing this under lousy, at  
24 best, observation conditions.

25 How do we know that? At some point they

1 draw composite pictures, and you all heard them admit  
2 and you heard the doctor say that retention is best  
3 closer to an event than it is far away. I think all  
4 of you admitted that in voir dire. You remember  
5 things better the day after it happens than three  
6 months after it happens.

7 Well, ladies and gentlemen, these are the  
8 three pictures they drew after the event  
9 happened -- well, not drew, I'm sorry. I was  
10 corrected on that once before and I'll correct myself  
11 on it this time. They did not draw these pictures.  
12 They described these individuals to a police officer,  
13 who then put the pictures together and came up with  
14 these pictures.

15 But they all had to say to the officer,  
16 "Yeah, that's the guy that did it," or else the  
17 officer wouldn't have made these lovely wanted posters  
18 that alert the community to who they're looking for in  
19 this case.

20 Now, I submit to you, ladies and  
21 gentlemen, that at the time that their memory was  
22 best, that is what they came up with. They don't look  
23 anything like the defendant. They don't look anything  
24 like each other. The prosecutor was going to get up  
25 and show them to you, but probably thought better of

1 it because they don't look anything like each other.  
2 They don't look anything like this man.

3 Yet that's what they came up with from the  
4 events that happened that day.

5 Now, you heard Dr. Yarmey say the passage  
6 of time affects memory, and also post-event  
7 inferences. Now, I'm sure these people talked to each  
8 other. I'm sure they talked about the event. You  
9 don't have a brother killed and another lady killed in  
10 your house and then never talk about it again.

11 During this two-month period from the time  
12 they drew these pictures to the time they picked out  
13 this lineup, something happened, something strange  
14 happened. They somehow put all these three pictures  
15 together and came up being able to pick out the one  
16 guy who had the biggest eyes in the lineup. Well,  
17 they're talking about big eyes, they're talking about  
18 big eyes, and now they pick somebody out of the lineup  
19 who has big eyes.

20 I submit to you, ladies and gentlemen,  
21 that these are an indication of what they saw on the  
22 day of the event, and what they've finally produced in  
23 a lineup is not what they saw on the day of the  
24 event.

25 The judge is going to give you certain

1 instructions on identification. He's going to tell  
2 you what the law is with regard to an identification.  
3 One of those instructions is that you can consider  
4 whether or not a witness gave a description that does  
5 not agree with an in-court identification.

6 I submit to you, ladies and gentlemen,  
7 that these pictures are what that instruction was  
8 written for. That is the purpose of that  
9 instruction. These pictures are identifications of  
10 the person that their memory best served them at that  
11 time.

12 One thing, one last thing I'd like to ask  
13 you to do is to not be lulled into a situation where  
14 you're finding guilt by association. Just because you  
15 would pick a friend to go to the movies and maybe a  
16 robber might pick a friend to do a robbery with, that  
17 is not proof that Kenny Colvin was there. The fact  
18 that his brother may or may not have confessed to this  
19 crime is not proof that Kenny Colvin was there.

20 You have heard absolutely no proof  
21 whatsoever that Ken Colvin was there, other than these  
22 three eyewitnesses who said that these three pictures  
23 looked like the person that committed this crime.

24 I think if you look at these three  
25 pictures -- here are the exhibits. You're able to

1 take them back into the jury room. If you look at  
2 those pictures, you look at what the defendant looks  
3 like, you can find nothing but reasonable doubt in  
4 this case.

5 I'm sure you will find that. I'm sure  
6 you'll come back with a verdict of not guilty.

7 Thank you.

8 MR. BRAMBLE: May I proceed, your Honor?

9 THE COURT: Yes, Mr. Bramble, please.

10 MR. BRAMBLE: Thank you.

11 Despite the fact that defense counsel  
12 attempts to in some way -- he says I'm not trying to  
13 make any comments on people's life-styles, I'm not  
14 trying to make any comment on whether a person ingests  
15 alcohol or marijuana. I submit to you that is not  
16 true. It's pretty easy to stand up here and trash a  
17 person when they can't come up here and speak for  
18 themselves. It's pretty easy to trash a person when  
19 they're dead.

20 No one in that home denied that there was  
21 marijuana being sold out of the home. No one denied  
22 that they used it if they used it. Chris Smith spoke  
23 of it. John Earl Smith spoke of it. Jacquelyn Smith  
24 was probably the most candid of them all. She says,  
25 "I didn't have time to do it yet. I was still caring



CBS NEWS  
524 WEST 57 STREET  
NEW YORK, NEW YORK 10019-2088  
(212) 975-4321

Mr. Kenneth Colvin  
Prisoner's No. 192744  
Marquette Branch Prison (MBP)  
P.O. Box 779  
Marquette, Michigan 49855  
July 9, 1998

Dear Mr. Colvin:

On behalf of *Public Eye with Bryant Gumbel*, I would like to thank you for your suggestions and story ideas for our show. It is gratifying to learn of your interest in this CBS News series.

We are always looking for interesting story ideas, and our audience can often times be the best source we have for finding them. Our goal is to report on stories that can provide insight and best inform our viewers. We appreciate your taking the time to submit an idea.

The *Public Eye* staff gave your letter careful consideration, but decided not to report on this matter at the present time. This does not indicate that the subject is unimportant or uninteresting. *Public Eye* is faced with the enormously difficult task of choosing a few topics each week from among hundreds that could be covered. Nevertheless, we sincerely appreciate your bringing this matter to our attention.

Whatever subjects *Public Eye* explores in the future, we hope you will find this CBS News broadcast informative and thought provoking.

Cordially,

Amy Younggren  
Public Eye with Bryant Gumbel





*Primestime*

February 10, 1998

Dear Viewer:

Thank you for your interest in ABC News *PrimeTIME* Live.

Should we need additional information with regard to your subject, we will be in touch with you at that time.

Very Truly Yours,

*PrimeTIME* Live

DEAR VIEWER:

Thank you for submitting your story idea to *Dateline* NBC. We have ~~carefully~~ considered your idea and we regret to inform you that we will not be pursuing it at this time.

We receive hundreds of suggestions, but unfortunately, we can air only a few each week. Your idea will be kept on file, however, and it may inform or inspire a future *Dateline* segment.

We always appreciate hearing from our viewers and welcome your informative suggestions. Thank you for taking the time to write.

*Dateline* NBC



KENNETH COLVIN #192744  
MARQUETTE BRANCH PRISON  
PO BOX 779  
MARQUETTE, MI 49855

5 IA

PO BOX

A-34

MARQUETTE BRANCH PRISON  
1960 U.S. 41 South  
Marquette, Michigan 49855-9131

December 5, 2007

\*\*\*MY GRAND RAPIDS PRESS LETTER & RESPONSE LETTER (12 pages)\*\*\*

The Grand Rapids Press  
c/o Mr. Pat Shellenbarger  
Staff Writer of The Grand Rapids Press  
155 Michigan Street, S.W.  
Grand Rapids, Michigan 49503

Re: writing in regards to my wrongful criminal conviction.

First, I would like to thank you sincerely, in advance, in taking the time out, presumably, out of your very busy work schedule, to read my letter and reviewing the enclosed documents.

My reason for writing you and the Grand Rapids Press today, I am presently living through a continuous absolute nightmare. My brother and I are victims in a wrongful conviction ordeal.

For over the last thirteen frustrating long years, I have been continuously fighting this extremely long wearisome and excruciating legal battle in proving our innocence. I have been corresponding and sending letters (along with documents) to numerous wrongful conviction organizations, including the Muskegon based organization called, "Innocent!". After receiving my letter back in 2006, Mr. Douglas J. Tjepkes, President of Innocent! kindly sent me an enormously informative and encouraging letter, along with several brochures and wrongful conviction web-sites that had aided me in my struggle in proving our innocence. In one of the organization's brochures, I had discovered your name and a positive endorsement you had made of the organization and its over zealous work in obtaining the freedom of the late Maurice Carter. I additionally read some of your articles in the Grand Rapids Press as well. So, I thought it would be extremely beneficial to us (my brother and I) if I had written you, and explained our current dilemma.

You may have noticed that I have enclosed with this letter, several documents, including a letter from Mr. Tjepkes, dated April 19, 2007. There are eighteen documents (thirty-eight pages in all) which are considerably related to our criminal case. As you now read through this letter, I will explain to you the relevancy of each document enclosed. Please, Mr. Shellenbarger, be patient with me, as I explain my nightmare.

Mr. Shellenbarger, my case involves a drughouse robbery that had occurred in Grand Rapids, Michigan on June 24, 1994. During the robbery, two people were killed and

three others were shot.

The eyewitnesses against me stated that they were high on marijuana. At the time the incident had occurred, the eyewitnesses testified that the area in which the shooting had taken place, was dark. At the time the shooter was shooting at them, they only had seconds to see the shooter (the first eyewitness testified that she only had seconds to see the shooter, the second witness testified that he only glanced and had four to five seconds to see the shooter, and the third witness testified that he was crying and kept covering his face). In fact, the first witness during the preliminary examination testified that the detective came out and "privately" showed my photo to them before I was placed in a line-up to be identified, but when I had received my preliminary examination transcripts, the woman's testimony and the judge's question to the witness were changed.

Mr. Schellenberger, it started here: The Grand Rapids Police Department arrested my brother on an unrelated case in Grand Rapids back in July of 1994. The case he was originally arrested for was later discovered to be a self-defense case, and the charges were dismissed on justifiable homicide. While my brother was in jail, I was contacted by an alleged unknown jail-house informant. NOTE: I had later discovered this information about the unknown informant from a police tip sheet.

The detectives had placed my brother in a line-up, where one eyewitness -who was high on drugs- had identified him as one of the gunmen. The detectives had later interrogated my brother for three hours -in which only thirty minutes of the entire interrogation was recorded, and during the recording of the end of the interrogation, my brother made a totally false confession that implicated me as the second gunman. It was later revealed during my brother's suppression hearing (Walker hearing) that one detective had made in-direct promises to him for his cooperation. The detective told him that he could see his new born son outside of the prison walls, and see his graduate from high school. The detective told my brother about a friend of the detective who was a preacher, who had been involved in a murder (he had killed his father's secretary, because she discovered that he was embezzling money from his father's firm), and by him cooperating with police, he was sentenced to twenty years, but was released from prison only after serving ten years. In fact, during my brother's hearing and trial, one of the detectives that interrogated my brother agreed that the story was told in hopes that he would cooperate and confess to the crime.

My brother testified at his trial that the confession was false, and he only made the statement because the detectives told him that he would receive twenty years like the preacher, he would be able to get out of prison and see his son again, and that he had feared that he and his son would be killed if he had revealed the individuals who were involved in the incident. NOTE: My brother was nineteen years-old at the time the interrogation took place, and his son was his first new born. Additionally, my brother testified that he requested for his attorney several times, but they refused his request.

From my brother's statement, I became the focus of the investigation. The Grand Rapids Police Department obtained a photo of me from the Detroit Police Department -since I had never been to Grand Rapids and they did not have a photo of me. NOTE: My brother and I are from Detroit. In January of 1994, my brother was arrested in Grand Rapids after the police discovered drugs, over \$12,000.00 in cash, his Rolex watch (and other expensive jewelry), and a gun on his person. My brother

has only been known by police -and others- as being a drug dealer, and he has never been involved in robberies, ever. I was convicted of robbery back in 1988 (I had robbed a couple of Detroit fast food restaurants in Detroit, but I was using drugs, and when I was on parole, I had maintained steady employment, and I was not using drugs, period. I have my parole file to prove it as well.).

Once my brother was officially charged, dated July 29, 1994, and the detectives received my photo from Detroit, the detectives sent a letter to me, in Detroit, dated August 5, 1994, stating that my name came up in a case that they were investigating, and they wanted me to come a line-up August 11, 1994, or they would have an official photo-drop in which my photo would be included. The photo-drop was held, and on August 31, 1994, I was arrested in Detroit and taken to Grand Rapids by two Grand Rapids' detectives.

During the interrogation, one of the detectives told us that he knew that I did not kill anyone downstairs of the drughouse, but he wanted to let us know that I was identified by the three people who were shot upstairs. He also stated during the tape recording of the interrogation, "I'm just looking at the photos of the witnesses." (NOTE: During my interrogation August 27, 1994, and at that time, allegedly, only one eyewitness was shown my photo during an official photo-drop on August 11, 1994. I was not actually placed in a corporeal line-up, until, September 21, 1994 -in which all three eyewitnesses allegedly picked me out of the line-up without hesitation. So, how is it, according to the detective, by August 31, 1994, I was identified by all three eyewitnesses, when according to his testimony at trial, that only one eyewitness was shown my photo during the August 11, 1994 photo-drop? The only way this could have occurred, is the detective showed my photo to the eyewitnesses, before he had sent me the letter dated August 5, 1994. Also, remember, as I had told you before, one of the eyewitnesses testified that she saw the same detective come out and showed my photo to them -and this was the first part of August of 1994, but her testimony was changed in the transcripts.)

Mr. Shellenbarger, our conviction was based only on misidentification, and my brother's false statement. (NOTE: During my interrogation, I had explained to the detectives that I was at home in Detroit -and my brother was there, and I have never been to Grand Rapids in my life.)

My brother was tried by jury first, and in January of 1995, he was convicted by jury and sentenced to two counts of natural life without the possibility of parole for felony murder, one count of life for armed robbery and two years for felony fire-arm in the commission of a felony.

In May of 1995, I went to trial, and was later convicted and sentenced to two counts of natural life without the possibility of parole for felony murder, three counts of paroleable life for armed robbery and two years for felony fire-arm. (NOTE: The trial judge wrongfully allowed the prosecution to use as evidence against me my brother's "poorly recanted" false confession that he made to the detectives -without informing the jury that my brother recanted the statement, and the detectives made in-direct promises to him.)

The prosecution's theory was my brother and I had went into the drughouse to rob it of money and drugs. He stated that my brother went downstairs, killed two people,

took drugs, and a bag, and I had went upstairs and shot three people. Mis-identification was our defense.

During my trial stage, I had requested from my attorney a copy of my client file, because I had excellent reasons to believe that they were not being honest with me and competently representing me as true criminal trial attorney should. And not surprising, I discovered that they were not.

I discovered only after making numerous request -and filing two complaints with the Michigan Attorney Grievance Commission- that the trial attorney had completely "sabotaged" both of our cases. In July of 1998, after our direct appeals were exhausted, I received my client file, and once I had reviewed it, I had discovered several documents and information that were obviously exculpatory information, that would had not effectively challenged the eyewitnesses' identification testimony, but also created an obvious viable defense -with strong credibility- that would had definitely proved our innocence, and found us not guilty. The first of numerous documents that I had discovered were:

1. Two of the three eyewitnesses who had identified me as the shooter, had been interviewed by the police as witnesses, just days after the incident occurred.

Mr. Aaron Williams, who stated that he only had glanced at the shooter, called the police dated June 26, 1994, just two days after the incident, and stated that he seen the guy who shot him, and he had given the person's name -which was Mr. Christopher L. Taylor. (See Document 3)

Next, on July 8, 1994, two weeks after the incident, Mr. Williams went to an official photo-drop and identified two other suspects -one suspect, Mr. Thames Hawkins, was being investigated by the detectives after two county jail informants (Mr. Willie Meadows (See Document 9) & Mr. Calvin L. Jones (See Document 10)) told them that Mr. Ferron Johnson told them that he and another person had committed the robbery on Ireland. (See Documents 4). Mr. Williams stated during that photo-drop that he was near certain that Mr. Hawkins was the person that shot him. Mr. Williams had identified three different individuals, before he identified me as the shooter. I have enclosed the WANTED POSTER that Mr. Williams had assisted in putting together of the description of the person who shot him. (See Documents 2) (NOTE: Both of the suspects, Mr. Johnson and Mr. Hawkins are now deceased. I had discovered recently that Mr. Johnson was killed during a 1995/96 drughouse robbery that he was involved in, and Mr. Hawkins had died in May/June of 2003, at the Kent County Jail, during intake. It was stated during the investigation that both of these gentlemen were involved in those types of robberies.)

2. Ms. Jacqueline Smith, the second eyewitness, who testified that she had less than twenty seconds to see the shooter (and testified during Preliminary Exams that the detective came out and privately shown my photo to them) had identified a suspect, Mr. John Hawkins, and stated that he was too short, but looked a lot like the guy who shot her. (See Document 5).

I have enclosed Ms. Smith's WANTED POSTER. (See Documents 5)

3. The third eyewitness, Mr. Christopher Smith, who testified that he was shot in the arm, at point blank range, was in fact not shot all, pursuant to the hospital report that the detectives received stating that they did not have any recorded of him receiving medical treatment. (NOTE: Mr. Smith testified at trial that he seen the shooter when he had shot him in the arm. I do have a copy of the

medical request.) I have enclosed Mr. Smith's WANTED POSTER. (See Document 7)

4. I had discovered the enclosed report from Paralegal Services of Michigan, Inc., dated May 15, 1995, and a GRPD Investigative Interview Note of the thirteen year-old girl who gave the detectives the description of the two gunmen just minutes after the incident had occurred. The investigator tried to have the young girl testify to what she saw, but her mother refused, stating that the GRPD's chief of police promised her that they would not be involved in this case. (See Document 3)

(NOTE: At the time this crime was committed, I was 26 years-old, standing 5'4", and I can not grow a goatee, period. My brother was 19 years-old, standing 6', and he can not grow a goatee.)

5. I discovered GRPD Investigative Interview notes of Mr. Willie Meadows and Mr. Calvin L. Jones (who were both informants) who were residing in the county jail, heard Mr. Terron Johnson tell Mr. Jones (Mr. Meadows overheard the conversation) that he and another guy had committed the Island drughouse robbery/homicide, and he described exactly what had happened and the exact type

6. I discovered a document - Motion to Enforce Police Witness - that the trial attorney had prepared, but had not file with the trial court, requesting that a tech officer, who aided in drawing the three composite drawings (WANTED POSTERS) and obtaining the descriptions from the eyewitnesses of the gunmen, be subpoenaed to testify about receiving the eyewitnesses' description of the gunmen. The composite drawing descriptions that the eyewitnesses gave of the shooter were a black male, between the ages of 17 to 20. The composite drawings -which the trial attorney presented to the jury- did not look like me, or each other. (See Documents 3, 5 & 7, and read defense attorney's opening statement, transcript pages: 304/305).

None of my trial attorneys, or appellant attorney tell me that this information existed, and they had refused to give me a copy of the file, despite the fact, I had tried to obtain the client's (discovery) file for over four years. The trial attorney, Mr. Michael Liquigli in May of 1998, after my Appeal of Right had been exhausted, he sent me a letter stating that I must send him a \$150.00 before he would send me a copy of the file (a file of documents that he had received for free).

If you will please read the enclosed transcripts of Mr. Liquigli's Opening Statement, you will see his defense strategy that he presented, including hiring an expert witness, Dr. Alexander Daniel Yarny (which cost the State \$3000.00) to testify on our behalf. (See Transcript pages: 301/305) With this in mind, I could not understand why Mr. Liquigli decided not to present as evidence of the fact that the eyewitnesses had identified other suspects, just days after the incident, and other evidence that I had presented in this letter. You must admit, that does not make any sense. Also, when you read the transcripts, you will notice that he does not make any reference to this evidence. Why?  
(See Transcripts pages: 150/159, 299 through 309 (13 pages)).

With the problems that I was having in trying to obtain a copy of my client file, I tried to obtain a copy of the police case file -vis F.O.I.A.- from the Grand Rapids Police Department's Records Office -which I had problems with them, until I had filed a complaint to former State Senator, Honorable Jackie Vaughn, III and

explained to him that the department was refusing to release a copy of the police files to my mother. I had finally received the FOIA request dated March of 1999, and I then discovered that the department had withheld information that I did not see in the attorney's client file.

1. The murder weapon (handgun, .38 superauto, that was found on 4 teen in Grand Rapids) that was involved in the robbery/homicide was also involved in another shooting dated June 6, 1994 -just a week and an half before the incident took place that we have been convicted of. The detective had questioned Mr. Trent Chambliss and Mr. Carl D. Powell (suspects) who were involved in the June 6, 1994 Fair Street shooting, and they told the detective that a friend of theirs had possession of both a .32 auto and .38 superauto handguns (these were the same type weapons that were used in the Meland Street case, the case that we are convicted of. (See Documents 16, 17 & 18)) but he claimed that he was robbed of the weapons, "late" June 18, 25 or 26, 1994. (See Documents 14 & 15). NOTE: The case that we have been convicted of happened June 24, 1994. So, it would be totally impossible for my brother and I to had committed the robbery/homicide if we did not have possession of the weapons. The detectives and the prosecutor knew this as well -and this was why they did not show any of the individuals who had the weapons, and the individuals did not show up.

I had filed a complaint with the Michigan State Police Department and its Forensic Science Division, dated August 17, 2001, explicitly explaining how two of their employees concealed the fact, during testimony at both of our trials, that they had discovered that the recovered .38 superauto handgun, and possibly, the .32 auto casings found in both the Fair and Meland Streets shooting were used by the same weapons. (See Documents 12, 13, 16, 17 & 18) On September 27, 2001, Dr. John A. Junala, responded to my complaint, stating that the prosecutor was aware that the handguns were involved in both shootings. (See Document 13) If you will review the MSP Forensic reports of the casings, bullets and gun (.38 superauto) (Document 17 -Lab Report: 32188-94 & Supplement dated: 06/27/94; 07/08/94 & 08/04/94) of the Meland case, you will see that they never presented the cross-reference to the Fair Street case. But in the Fair Street case (Document 18 -Lab Report: 32190-94 & Supplement dated 05/27/94 & 08/08/94) the cross-reference of both cases are listed. This information was withheld.

2. During my trial, the detectives testified falsely when they claimed to only discovered a .38 superauto handgun (the murder weapon) in Grand Rapids, but I had discovered notes in which they had found two other .38 superauto handguns in Grand Rapids during the investigation. Additionally, the detectives testified that someone had purchased from a hardware store in Grand Rapids, bullets for both weapons, just a couple days before the robbery. But I had discovered in the file a note that stated some bullets were brought on June 17, 1994, in a hardware store in Grand Rapids.

3. I had discovered a GFD Investigative Interview notes of Ms. Carolyn Glasper dated June 28, 1994. (See Document 11) In the notes, she told the detective that she seen both Mr. Johnson and Mr. Thomas Hawkins acting very strange, pacing the floor, and kicking things. She later discovered that Mr. Thomas Hawkins had shot someone on Meland Street. (NOTE: The detectives had both Mr. Thomas Hawkins and Mr. Terron Johnson as their prime suspects, and in fact, arrested Mr. Johnson on June 24, 1994, on unrelated charges, and the police had confiscated \$200.00 from Mr. Johnson. It was alleged, during testimony by Mr. Chris Smith, that \$400.00 was taken from him during the robbery.)

There is extremely a lot more information and documents that I had discovered in both files, but I believe both the police and my ex-trial attorney are withholding more information that would help our case, and ultimately proving our innocence. My problem now, I do not have an investigator and an attorney in order to effectively prove our innocence. You must agree, from the evidence (documents) that I have included with this letter, my brother and I was absolutely "framed" - in every definition of the word.

I know you may not believe it, but I have substantial reasons to believe that several individuals, including certain judges and attorneys in Grand Rapids are involved in this massive cover-up. Back in 2000, I had filed a civil suit against trial attorney Mr. Liquigli (Kenneth Colvin, Jr. V. Michael A. Liquigli, Case No.: 00-07089-NM) for: 1. Legal Malpractice, 2. Fraud (Silent Fraud & Fiduciary Duties), and 3. Fraud Concealment of the Claim, and the suit was wrongfully dismissed by W. David Scott, Circuit Judge of Kent County. The judge refused to give me any type of hearing, and his rulings were extremely bias towards me. In his ruling he stated;

"The court has reviewed the motion for summary disposition filed by defendant because Mr. Colvin is unavailable.

We have read the brief filed on behalf of Mr. Liquigli. We have read Mr. Colvin's handwritten brief. It is very difficult to know the nature of Mr. Colvin's claim. Having read it with great care and having examined his amended complaint, it appears, first, that it is not yet borne upon Mr. Colvin that his claim for malpractice has been summarily dismissed because his second complaint, his amended complaint again claims that he is suing for malpractice. It is also extremely difficult to understand what the nature of the fraud that he is claiming actually is.

The best that I can do is to conclude that Mr. Colvin is claiming that Mr. Liquigli defrauded him because Mr. Liquigli didn't tell him that he was committing malpractice. Read it in any way that I can, I cannot find any statement of fact which is consistent with the requirements of law that claims for fraud be specifically stated, so that it is possible to determine what factual basis the plaintiff has for the claim.

Under the circumstances the motion for summary disposition relative to the fraud claim, which is the only remaining claim is granted pursuant to MCR 2.116(C)(8) and (10)."

The judge concluded the ruling by stating:

"Plaintiff now seeks delayed leave to appeal the trial court's complained-of order. In response, defendant states that plaintiff's appeal is without merit. Therefore, defendant respectfully requests that the court peremptorily affirm the Kent County Circuit Court's ruling and, finding that, deny plaintiff's delayed request for leave to appeal."

In that suit that I had filed against Mr. Liquigli, it was clear, he had withheld the exculpatory/impeachment evidence (he failed to tell us that the information existed, even after I had requested a complete copy of the file), which was fraud (silent fraud and fraudulent concealment of the claim (fiduciary duties)) and he committed legal malpractice, because he presented the defense of misidentification, yet he failed to present to the jury the obvious evidence that would had been very supportive to the case. Mr. Liquigli knew he had committed malpractice by failing



to present the evidence (and tell us that the information existed and he decided not to use it in my defense). Therefore, it was silent fraud, because he had a fiduciary duty, as my attorney, to not only inform us that the evidence existed, but also, allow us an opportunity to decide if the evidence should, or should not be presented to the jury.

So, in fact, I had stated a claim against Mr. Liquigli. But the court had wrongfully dismissed the claims.

In regards to my criminal appeals, I was wrongfully denied there as well.

The United States District Court -Grand Rapids, under Honorable Robert Holmes Bell had denied my writ of Habeas Corpus petition, and refused to accept the Certificate of Appealability on my strongest claims, including, ineffective assistance of trial and appellate counsel, prosecutorial misconduct (withholding exculpatory evidence and etc.), reviewing/correcting my preliminary examination transcript (correcting the record of Ms. Smith's testimony, former District Court Judge, Ms. Jane Markey's question that she asked Ms. Smith before Ms. Smith changed her story. NOTE: I tried to have the transcripts corrected dozens of times at the court level, but former District Court Judge, Mr. Benson would not allow me to have the record corrected. I had filed a civil suit, after Judge Benson denied the motion, in hopes that the federal court will order that the transcripts be corrected, and it was denied. (KENNETH COLVIN, JR. V. 61ST DISTRICT COURT, Case No. 1:93-cv-119, Hon. Benjamin F. Gibson) I then filed a complaint Michigan Supreme Court, State Court Administrative Office/ Michigan Court Reporting/Recording Board of Review on the court recorder, Ms. Phyllis Carr (complaint file: 95-35), but the Board dismissed the complaint because as Mr. F. A. Lindsey stated:

"Jurisdictional boundaries and the fact that the reporter is deceased renders the Board's jurisdiction moot. We are closing our file on this complaint."

and etc.

First, the identification issue and the trial attorney failing to inform us that the identification of other suspects existed, and the total failure to present the evidence to the jury. The magistrate judge stated the fact that the eyewitnesses had identified me as the shooter, the jury would not consider the evidence of the witnesses identifying other suspects just days after the incident. The trial attorney questioned the jury during voir dire if they all agreed that a person's memory is better closer to an event than, further away. And all jury members agreed that it is much better closer to the event.

The fact the attorney presented as evidence the eyewitnesses' composite drawings (WANTED POSTERS) did not look like me, or each other, the fact they were high on marijuana, at the time they were being shot at, it was very dark, they were running for their lives, and they were scared for their lives, it only make sense for the attorney to present evidence to the fact that Mr. Williams and Ms. Smith had identified others as the shooter. In JAMISON V. COLLINS, 201 F.3d 339 (5th cir. 2002) the court held: "Suppression of positive identification of different suspects by eyewitness to aggravated murder disadvantaged defendant in conducting his defense, and thus, such evidence was material for purpose of his Brady claim." Also, in BROWN V. US, 1st cir., No. 03-2001 (3/23/05) the court held: "The withheld exculpatory evidence -the fact eyewitnesses had identified other people as bank

robbers- two men were sent to prison for some others' robbery." Now, if it is a Brady violation to withhold evidence, like other suspects being identified by eyewitnesses, why isn't it ineffective assistance of counsel when the attorney does not present the evidence to the jury, and let them decide? The evidence would not have hurt the defense, as the magistrate suggested, but in fact, helped.

Second, Mr. Chris Smith, who claimed he was shot at point blank range, and this was how he seen the shooter. I discovered (and presented the document to the court) through a medical request by Detective Grable that Mr. Smith did not receive and medical treatment for his alleged gunshot wound. The magistrate judge claimed that it was not ineffective that the attorney decided not to present the fact that Mr. Smith did not seek any medical attention for his point blank gunshot wound. The judge believed it would have hurt the case as it would have had the jury revisit the injury and the deaths of the two victims. This evidence would have shown that Mr. Smith was not shot, and thus, tainting his identification testimony. Both in *SHI V. LIVESAY*, 970 F.2d 1575 (5th Cir. 1992) and *LUCKER V. PAELSRNIE*, 191 F.3d 747 (9th Cir. 1999) explicitly states it is ineffective assistance of counsel when he failed to present evidence (medical records) that is exculpatory in a case. The jury would not have believed Mr. Smith's testimony about identifying the shooter, especially after discovering that he lied about being shot. (NOTE: Mr. Smith called the 911 dispatch just seconds after the incident, but when I had received a copy of the tape recording (the GRPD, under FOIA, did not send a copy of the 911 transcripts), Mr. Smith's call was not on the recording.

Three, in regards to the 13 year-old girl, who was a res gestae witness who seen the shooters leave the drughouse just after she heard the shots. She gave a description of the shooters, and stated she seen them before. In *HARRIS V. REED*, 894 F.2d 871 (7th Cir. 1990), the court stated it was ineffective for a trial attorney to fail to call eyewitnesses who saw another man run from the scene of shooting. The magistrate totally ignored the issue about the 13 year-old girl. And stated that Mr. Jones' testimony (not commenting on Mr. Meadow's statement) would have been inadmissible hearsay evidence.

Four, the altering of the Preliminary Examination transcripts in which Ms. Smith stated that Detective Grable came to them and showed them some photos and my photo was in there. The judge stated: "Petitioner has never explained how the testimony at the preliminary examination, even if it were as he remembered it, was exculpatory or even helpful to his defense." Mr. Shullenbarger, I had explicitly explained to everyone who would listen, that this is the "best evidence" to prove my innocence and the fact that the eyewitnesses were shown my photo before I was placed in a photo-drop and line-up. This explains how three individuals were able to identify me as the shooter.

Five, in regards to the withheld evidence by the State: the interview notes of Mr. Chambliss, Mr. Powell, and Ms. Glasper, and the forensic results of the .33 superauto being involved in the Fair Street shooting. The magistrate judge said: "Next, petitioner states that forensic lab reports on the firearms were not produced. Defense counsel cross-examined the fire-arms experts without difficulty and clearly had access to these documents. Nothing supports petitioner's assertion that reports were improperly withheld." \*\*\* "Petitioner complains that he has not received interview statements from various individuals, but then attaches to his petition copies of police interview notes. Again, petitioner's argument that records

were not produced is frivolous and supported." As you can see, the judge just "brushed-off" the Brady violations and the fact that there were individuals, Mr. Powell and Mr. Chambliss, who explicitly stated that they were aware of the guns and their being in their possession, and the fact that the State withheld this fact, and fact it was discovered that the guns were involved in another shooting. He claims that I said that I had not received the interview notes. I had explicitly explained in my petition that I had an attorney FOIA my police file, because the Grand Rapids Police refused to release the file to me or my mother, and I had filed a complaint to a state senator, who had written both my mother and myself, explicitly explaining that the police were wrong in denying my mother the FOIA request, and once the attorney received the documents and sent them to me, this is when I discovered the withheld exculpatory documents. I also included the letters from the police denying my mother's and my FOIA request, the letters from the state senator, the letters from the attorney making the FOIA request, receiving the request, and then, sending the documents to me.

As you can see, from the Magistrate judge's opinion, I was literally "jacked" out of my case, my attorney, my attorney's lawyer, a lawyer can even petition to an evidentiary hearing, especially knowing the fact that I was denied a hearing from the trial court, and through the state appeal process. In *EARP V. BROWN*, 431 F.3d 1158 (9th cir. 2005) the court stated: "A petitioner on federal habeas corpus is entitled to an evidentiary hearing where the petitioner establishes a 'colorable' claim for relief, and where the petitioner has never been accorded a state or federal hearing on his claim." <sup>300</sup> "In sum, an evidentiary hearing is required under the AEDPA -and an appellate court will remand for a hearing if the district court rules without granting one -'where the petitioner establishes a colorable claim for relief and has never been accorded a state or federal hearing on his claim". *EARP*, supra, at 1167. In *TAYLOR V MANDOK*, 365 F.3d 992, 1001 (9th cir. 2004) states: "...On the other hand, no AEDPA deference is due where the state has made an 'unreasonable' determination of the facts; and: 'where a state court makes evidentiary findings without holding a hearing and giving petitioner an opportunity to present evidence, such findings clearly results in an 'unreasonable determination' of the facts."

I should had received a hearing in federal court, but as you can see, I was denied. In fact, I had explicitly requested hearings, from the trial court level through the state appellate proceedings, and I was denied. I explained that I have never received a hearing, despite the fact I had filed motions requesting for hearings, with the supporting documents.

As I had explained to you, politics played a serious role in both of our petitions being "wrongfully" denied. That is why I am totally against this "one-shot/one-kill" appeal process in habeas corpus writs. In a Texas death row prisoner's case, *MILLER-EL V. BRETCH*, 125 S.Ct. 2317 (2005), Miller-El had fought one issue for eighteen years, and went to several courts, including the United States Supreme Court (twice), before someone acknowledged that a constitutional error had been violated. 18 years!!! One issue!!!

Mr. Seidenbarger, I believe my trial judge, his daughter in law (who currently work in the State Court of Appeals), and others important individuals did not want our case to see the "light" of day, because it is quite obvious, that this

would reveal what African Americans -and others have been suspecting for years, that Kent County's courthouse with its criminal (in)-justice system has been literally, and systematically "railroading" and "framing" African Americans. Our case, is in fact, a classic textbook case of a railroad/frame-up ordeal.

Our case was heavily publicized in the media, including the Grand Rapids Press. In fact, there were articles published in your newspaper that reported the emotional protest of citizens in that neighborhood, in which the crime (as well as other cases) had taken place, demanding that the local government agencies put a stop to the continuous crimes that were occurring.

Additionally, it was a general cycle election year, and Judge Jane Markey was in the election for the Michigan Court of Appeal's bench. So, I definitely believed that her election bid played an enormously significant role in our situation as well.

I have realized years ago, that I need a strong force behind me, in order to prevail against the ones who were responsible in wrongfully convicting my brother and myself. I need powerful people. I acknowledge that my former trial judge, Pearson, and his family, are a tremendous amount of influence in the State's legal community. I mean his former trial court reporter, Rebecca L. Russo, currently sits on the Michigan Supreme Court's State Court Administrative Office/ Michigan Court Reporting/Recording Board of Review.

I have written a manuscript (book) about my ordeal with this case, because it is very upsetting to me that I have documented evidence to prove my innocence, and the courts denied it, just to bury it.

In fact, I tried to get the Innocence Project to represent us, and that group denied assisting us. I later discovered that the trial judge, his son, and his daughter-in-law has a connection with the school (Cooley Law School) in which the Innocence Project is located.

I would like for the Grand Rapids Press to investigate our case, because we are innocent. We would deeply appreciate the newspaper assistance.

In closing, I really want to thank you for taking the time out to read my letter, and thank you for taking my letter into consideration.

Sincerely,



Kenneth Colvin, Jr.  
(9744)

PS: I will deeply appreciate it very much, once you are finished with the enclosed documents, I would deeply appreciate it very much if you could send it back. Thank you, again!!!

\*\*\*RESPONSE LETTER FROM GRAND RAPIDS PRESS\*\*\*

December 17, 2007

Kenneth Colvin Jr. (192744)  
Marquette Branch Prison  
1960 US 41 South  
Marquette, MI 49855-9131

Dear Mr. Colvin,

I have reviewed the materials you sent me and, as you requested, am returning them. I am afraid I will be unable to write about your case, but I wish you luck.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pat Shellenbarger', written over the printed name.

Pat Shellenbarger

ALGER MAXIMUM CORRECTIONAL FACILITY  
P.O. BOX 600  
Marisong, Michigan 49862-0600

\*\*\*MY LETTER TO "HURRICANE" CARTER (6 pages)\*\*\*

July 15, 2007

ASSOCIATION IN DEFENSE OF THE WRONGLY  
CONVICTED (AIDWYC)  
85 King Street, Suite 318  
Toronto, Ontario M5C 1G3 Canada

ATTN: Rubin "Hurricane" Carter

Dear Mr. Carter:

RE: Writing to obtain legal assistance on my brother and I wrongful criminal conviction.

I am writing you in regards to obtaining legal assistance on my wrongful conviction.

Mr. Carter, for the last twelve long frustrating years, I have been fighting for my life and trying to prove my innocence. My brother and I have been wrongfully convicted by a historically totally corrupted criminal justice system out of Kent County -Grand Rapids. A justice system who has been involved in altering transcripts of critical exculpatory testimony from a prosecution's eyewitness, deliberately withholding and concealing exculpatory evidence (both the prosecution and our attorneys were guilty of it), defense attorney -trial and appellate- who sabotaged our defense and who were clandestinely working with, not only the prosecutor, but also the judges in our case, and the list goes on and on. And I have documented proof of it.

Mr. Carter, my case involves a drug house robbery that had occurred in Grand Rapids, Michigan on June 24, 1994. During the robbery, two people were killed and three others were shot.

The three eyewitnesses against me stated that they were high on marijuana. At the time the incident had occurred, the eyewitnesses testified the area in which the shooting took place was dark, at the time the shooter was shooting at them they only had seconds to see the shooter (the first eyewitness testified that she only had less than twenty seconds to see the shooter, the second witness testified that he only glanced and had four to five seconds to see the shooter, and the third witness testified that he was crying and kept covering his face). In fact, the first witness during the preliminary examination testified that the detective came out and "privately" showed my photo to them before I was placed in a line-up to be identified, but when I had received my preliminary examination transcripts, the woman's and the judge's testimony had been altered from what was actually said during the exam.

Mr. Carter, it all started here: The Grand Rapids Police Department arrested my brother on an unrelated case in Grand Rapids back in July of 1994. The case he was originally arrested for was later discovered to be a self-defense case, and the charges were dismissed on justifiable homicide. While my brother was

incarcerated in the Kent County Jail, his name came up in this present case by an alleged unknown jail-house informant. NOTE: I had later discovered this information about the unknown informant from a police tip sheet.

The detectives had placed my brother in a line-up where one eyewitness -whom was high on drugs- had identified him as one of the gunmen. The detectives had later interrogated my brother for over three hours -in which only thirty minutes of the entire interrogation was recorded, and during the recording of the end of the interrogation, my brother made a totally false confession that implicated me as the second gunman. It was later revealed during my brother's suppression hearing (Walker Hearing) that the detective had made in-direct promises to him for his cooperation. The detective told him that he could see his new born son outside of the prison walls, and see him graduate from high school. The detective told my brother about a friend of the detective who was a preacher, who had been involved in a murder (he had killed his father's secretary, because she discovered that he was embezzling money from his father's firm), and by his cooperating with police, he was sentenced to twenty years, but was released from prison after serving ten years. In fact, during my brother's hearing and trial, one of the detectives that interrogated my brother agreed that the story was told in hopes that he would cooperate and confess to the crime.

My brother testified at his trial that the confession was false, and he only made the statement because the detectives told him that he would receive twenty years like the preacher, he would be able to get out of prison and see his son again, and that he had feared that he and his son would be killed if he had revealed the individuals who were involved in the incident. NOTE: My brother was nineteen year-old at the time the interrogation took place, and his son was his first born. Additionally, my brother testified that he requested for his attorney several times, but they refused his request.

From my brother's statement, I became the focus of the investigation. The Grand Rapids Police Department obtained a photo of me from the Detroit Police Department -since I had never been to Grand Rapids and they did not have a photo of me. NOTE: My brother and I are from Detroit. In January of 1994, my brother was arrested in Grand Rapids after police discovered drugs, over \$12,000 in cash, his Rolex watch (and other expensive jewelry), and a gun on his person. My brother has only been known by police -and others- as being a narcotic dealer, and he has never been involved in robberies ever. I was convicted of robbery back in 1988 (I had robbed a couple Detroit fast food restaurants, but I was using drugs, and when I was on parole, I had maintained steady employment, and I was not using drugs, period. I have my parole file to prove it as well.) Once my brother was officially charged dated July 29, 1994, and the detectives received my photo from Detroit, the detectives sent a letter to me, in Detroit, dated August 5, 1994, stating that my name came up in a case that they were investigating, and they wanted me to come to a line-up dated August 11, 1994, or they would have an official photo-drop in which my photo would be included. The photo-drop was held, and on August 31, 1994, I was arrested in Detroit and taken to Grand Rapids by two Grand Rapids' detectives.

During the interrogation, one of the detectives told me that he knew that I did not kill anyone downstairs of the doghouse, but he wanted to let me know that I was identified by the three people who were shot upstairs. He also stated during the tape recording of the interrogation, "It's like I had told you before you were identified by people in the house." (NOTE: The interrogation occurred August 31, 1994, and at that time, allegedly only one eyewitness was shown my photo during the official photo-drop on August 11, 1994. I was not actually placed in a corporeal line-up until September 21, 1994 -in which all three eyewitnesses allegedly picked

me out of the line-up without hesitation. So, how is it, according to the detective, by August 31, 1994, I was identified by all three eyewitnesses, when according to his records and testimony at trial, that only one eyewitness was shown my photo during the August 11, 1994 photo-drop? The only way this could have occurred, if the detective showed my photo to the eyewitnesses, before he had sent me the letter dated August 5, 1994. Also remember, as I had explained earlier in this letter, one of the eyewitnesses testified that the same detective came out and showed my photo to them -and this was the first part of August 1994, but her testimony was changed in the transcripts.)

So, our conviction is based only on misidentification, and my brother's false statement. (NOTE: During my interrogation, I had explained to the detectives that I was at home in Detroit -and my brother was there, and I had never been to Grand Rapids in my life.)

My brother went to trial first, and in January of 1995, he was convicted by jury and sentenced to two counts of natural life without the possibility of parole for felony murder, one count of life for armed robbery and two years for felony fire-arm in the commission of a felony.

In May of 1995, I had went to trial, and I was later convicted and sentenced to two counts of natural life without the possibility of parole for felony murder, three counts of paroleable life for assault with the intent to murder, one count of paroleable life for armed robbery and two years for felony fire-arm. (NOTE: The trial judge wrongfully allowed the prosecution to use as evidence against me, my brother's "poorly redacted" false statement that he made to the detectives -without informing the jury that my brother recanted the statement, and the detectives made in-direct promises to him.)

The prosecution's theory was that my brother and I had went into the drug house to rob it of money and drugs. He stated that my brother went downstairs, killed two people, took drugs, and a bag, and I had went upstairs and shot three people. Mis-identification was our defense.

During my trial stage, I had requested from my attorneys a copy of my client file, because I had excellent reasons to believe that they were not being honest with me and competently representing me as true criminal trial attorneys should. And not surprising, I discovered that they were not.

I discovered only after making countless request -and filing two complaints with the Michigan Attorney Grievance Commission- that the trial attorneys had completely "sabotaged" my brother's and my case. In July of 1998, after our direct appeals were exhausted, I received my client file, and once I had received it, I had discovered several documents and information that were obviously exculpatory information, that would had not only effectively challenged the eyewitnesses' identification testimony, but also created an obvious viable defense -with strong credibility- that would had definitely proved our innocence, and found us not guilty. The first of numerous documents that I had discovered was: 1. Two of three eyewitnesses who identified me as the shooter, had in fact identified other suspects as the gunman, just days after the incident occurred. The eyewitness who stated that he only had glanced at the shooter, called the police dated June 26, 1994, just two days after the incident, and stated that he has seen the guy who shot him and he gave the person name. Next, on July 8, 1994, two weeks after the incident this same eyewitness went to an official photo-drop, and identified two other suspects -one suspect the detectives were investigating after two county jail



informants told police that his friend told them that he and the suspect that the eyewitness picked out the photo-drop and stated, according to the detective, "States he is near certain this is the person who shot him", had committed the robbery. So, this eyewitness identified three different suspects as his shooter, before he identified me as the snooter.

2. The second eyewitness (she is the witness whom testified that the detective privately showed my photo to them) had identified a suspect on the street that the police was questioning dated June 28, 1994, and she stated the suspect was too short, but looked "a lot like the shooter."

3. I had discovered that the third eyewitness, whom testified that he was shot in the arm, at point blank range did not receive any medical treatment for his alleged gunshot wound. The emergency medical services' record office stated in a document requesting by the detectives that the witness did not receive any medical treatment and they did not have any medical records that he had. (NOTE: In his testimony, he claimed that this was how he had seen the shooter -when he was shot.)

4. I had discovered a report from the paralegal service and the police interview notes of the thirteen year-old girl, who was a red gasket witness to the incident. She stated she heard the gunshots and seen the two gunmen leave the drug house. She stated that she knew them, but she did not know where they lived. She told the detective that they were locals, and drove a black jeep and green Cadillac. The description she gave of the suspects were both being between the ages of 17 to 20, both having wavy heads, one being 5'6" and the other being 6' with a goatee. (NOTE: At the time this crime was committed, I was 26 years-old, standing 6'4", and I can not grow a goatee, period. My brother was 19 years-old, standing 6', and he can not grow a goatee.)

5. I discovered documents -Police Interview Notes- in which two informants who were residing in the county jail heard a suspect tell one of the two informants that he and another guy had committed the robbery/homicide, and the suspect described exactly what happened and the exact type firearms that were used. (NOTE: The friend of the suspect whom stated that he and that friend committed the robbery was in fact, the same guy that one of the eyewitnesses picked out an official photo-drop dated July 8, 1994, and stated that he was near certain that he was the one who shot him. It has been stated in several reports that the two suspects had a known reputation in committing these type of robberies. Additionally, the two suspects had fit the eyewitnesses' and the 13 years-old girl's description of the gunman.)

6. I discovered a document -Motion to Enforce Police Witness- that the trial attorney had prepared, but did not file with the trial court requesting that a tech officer be subpoena to testify in regards to drawing the three composite drawings (wanted pictures [posters]) and taking the descriptions from the eyewitnesses of the gunman that shot them. The composite drawing descriptions that the eyewitnesses gave of the shooter were a black male, between the ages of 17 to 20. The composite drawings -which the attorney pointed out to the jury- did not look like me, or each other.

The attorneys did not tell us that this information existed, and they had refused to give us a copy of this file.

With the progress that I was having in trying to obtain a copy of my client file, I tried to get a copy of the police file -via P.O.I.A.- from the Grand Rapids Police Department's Records Office -which I had programs with them, until I had filed a complaint to State Senator, Honorable Jackie Vaughn, III and explained to him that the Department was refusing to release a copy of the police files to my mother.

I had finally received the FOIA request dated March of 1999, and I then discovered that the department had withheld information that I did not see in the attorney's client file.

1. The murder weapon (handgun) that was involved in the robbery/homicide was also involved in another shooting dated June 6, 1994 -just a week and an half before the incident took place that I have been convicted of. The detective had questioned two witness (suspects) who were involved in the June 6, 1994 shooting, and they told the detective that a friend of theirs had possession of both a .32 auto and .38 superauto handguns (these were the same type weapons that were used in the case that I have been convicted of), but explained that the friend told them that he was robbed of these dated June 25 or 26, 1994. (NOTE: The case that I have been convicted of happened June 24, 1994. So, it would be totally impossible for my brother and I to had committed the robbery/homicide if we did not have possession of the weapons. The detectives knew this as well. Also, they knew that we did not know the individuals who had the weapons.)

2. During my trial, the detectives testified falsely when they claimed to only had discovered a .38 superauto handgun (the murder weapon) in Grand Rapids, but I had discovered notes in which they had found two other .38 superauto handguns in Grand Rapids during the investigation.

Additionally, the detectives testified that someone had purchased from a hardware store in Grand Rapids bullets for both weapons, just a couple days before the robbery. But I had discovered in the file a note that stated some bullets were brought on June 17, 1994, in a hardware store in Grand Rapids.

3. The detectives had an informant from the Department's Vice Squad that told them during an interview that just minutes after the drug house was robbed, she seen those same two guys (the individual who told the informants in the county jail that he and his friend had robbed the drug house, and the individual that was picked out the July 3, 1994 photo-drop by one of the eyewitnesses) acting strange, picking and kidding things, and she later discovered that they had shot someone during a drug house robbery on the same street the incident that I have been convicted of happened. (NOTE: The detectives had these individuals as their prime suspects, and in fact, arrested the one who told the county jail informants that he committed the crime the same day the incident happened on unrelated charges. During the arrest, the police confiscated \$200.00 from him. It was alleged during testimony of one the eyewitnesses that about \$400.00 was taken from him during the robbery.)

There is extremely a lot more information and documents that I had discovered in both files, but I believe both the police and my attorney are withholding more information that would help my case and prove my brother and my innocence. My problem right now is, I do not have an investigator and an attorney in order to properly prove our innocence. My brother and I have been "framed" in this highly publicized case.

I have written everyone, from law schools to major prominent news television and newspaper organizations, but I have not received any assistance. I have written the state attorney generals and Janet Reno, when she was the United States Attorney General, but I have not received any assistance. As you may know, wrongfully convicted prisoners have very limited sources in Michigan for assistance, and the Cooley Law School's Innocence Project only take cases that involves DNA type evidence -our case does not have. Our case does not have physical evidence, period. So, I do not have any other places to turn to.

Could you please take our case. We just simply need an investigator to inspect

the police file, find and question a few witnesses, and review my preliminary examination audio tape, and attorneys to represent us in court. That is it. I know it cost money, but we are indigent. I would deeply appreciate it very much if you would please respond to my letter.

Currently, I have been writing a manuscript (book) about my ordeal and the fact that I was framed of a case that I did not commit. I would like to have it published as well. I was hoping with the book it could shed light on my situation. I also want to put up a website where I can post all the documents and transcripts in order to show the viewer of the actual falsehoods and concealment of evidence -all at the hands of the state (police, prosecutor and defense attorneys).

Thank you for taking the time out to read my letter, and I want to thank you for taking my letter into consideration.

Sincerely,

Kenneth Calvin, Jr.  
(#192744)

SENATOR JACKIE VAUGHN III  
ASSOCIATE PRESIDENT PRO TEM OF THE SENATE  
STATE CAPITOL  
LANSING, MICHIGAN 48213  
DETROIT AREA (313) 961-1794  
LANSING OFFICE (313) 373-7918  
LANSING RESIDENCE (313) 487-8638  
LANSING FAX (313) 373-3227  
TOLL FREE (811) 373-8843



MEMBER, APPROPRIATIONS COMMITTEE  
MEMBER, APPROPRIATIONS SUBCOMMITTEE  
ON COMMUNITY COLLEGES  
MEMBER, APPROPRIATIONS SUBCOMMITTEE  
ON CORRECTIONS  
MEMBER, APPROPRIATIONS SUBCOMMITTEE  
ON CIVIL POLICE AND MILITARY AFFAIRS

## THE SENATE

\*\*\*RESPONSE LETTERS REGARDING MY WONDERFUL CONVICTION (11 pages)\*\*\*

September 18, 1998

Mr. Kenneth Colvin, Jr. #192744  
Baraga Maximum Correctional Facility  
301 Wadaga Road  
Baraga, Michigan 49908

Dear Mr. Colvin:

I have reviewed the information you submitted to my office and have enclosed your original documents for your records. I have informed top officials regarding your concerns and if I am notified of any information regarding your case, I will contact you.

It is unclear to me if you have spoken with your attorney regarding possible appeal procedures, if not, please do so. Thank you very much for writing. I wish you well in this matter.

Warmly,

SENATOR JACKIE VAUGHN III  
Associate President of the Michigan Senate  
Chairperson, Martin Luther King, Jr. Commission

JV:kew



STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



JOE D. SUTTON  
*Deputy Attorney General*

P.O. BOX 30218  
LANSING, MICHIGAN 48909

**FRANK J. KELLEY**  
ATTORNEY GENERAL

September 15, 1998

Mr. Kenneth Colvin, Jr. #192744  
Baraga Maximum Correctional Facility  
301 Wadaga Road  
Baraga, MI 49908

Dear Mr. Colvin:

Attorney General Kelley has asked that I reply to your recent letter requesting assistance in the defense of a criminal case. I must advise you that the courts view this office as part of the prosecution and as such do not allow us to provide assistance to defendants in criminal cases.

I must therefore advise that you work with your defense attorneys as well as with the office of the prosecutor handling the matter. Should you need assistance in securing appellate counsel or investigative services, you should request assistance from the circuit court which has the authority to appoint attorneys and investigators to indigent defendants at county expense. You may also wish to contact the State Appellate Defender's Office at 645 Griswold, Suite 3300, Detroit, Michigan 48226.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Ianni", written over a horizontal line.

Robert Ianni  
Assistant in Charge  
Criminal Division  
517-334-6010

RI:cla

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



STANLEY D. STEINBORN  
*Deputy Attorney General*

P.O. Box 30218  
LANSING, MICHIGAN 48909

**FRANK J. KELLEY**  
ATTORNEY GENERAL

August 2, 1996

Kenneth Colven #192744  
Marquette Branch Prison  
P.O. Box 779  
Marquette, MI 49855

Dear Mr Colven:

Attorney General Kelley has asked that I reply to your recent letter requesting assistance in the defense of a criminal case. I must advise you that the courts view this office as part of the prosecution and as such do not allow us to provide assistance to defendants in criminal cases.

I must therefore advise that you work with your defense attorneys as well as with the office of the prosecutor handling the matter. Should you need assistance in securing appellate counsel or investigative services, you should request assistance from the circuit court which has the authority to appoint attorneys and investigators to indigent defendants at county expense. You may also wish to contact the State Appellate Defender's Office at 1200 Sixth Street, Detroit, Michigan 48226.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert Ianni", with a horizontal line extending to the right.

Robert Ianni  
Assistant in Charge  
Criminal Division  
517-334-6010

RI:dev

MICHIGAN DEPARTMENT OF CORRECTIONS  
**DISBURSEMENT AUTHORIZATION (Prisoner)**

4835-2893 3/90  
 CAR-893

Prisoners write clearly - illegible forms will not be processed

Date: 11-18  
 Lock Number: 11-18

1 - 6                                      7 - 11                                      14 - 26

108744                                      Cover                                      \_\_\_\_\_

Prisoner Number                      Prisoner's Last Name - Print Clearly                      (Prisoner Leave Blank)

Pay To: LMF - Prisoner

Address: \_\_\_\_\_

Cost/Amount  
 \$ \_\_\_\_\_

Reason/Description: (If to relative identify relationship) Prisoner - Michigan State Prisoner # 108744  
at Michigan State Prison  
Michigan State Prison  
Michigan State Prison

Prisoner's Signature: [Signature]                                      Total \$ \_\_\_\_\_

DO NOT WRITE BELOW THIS LINE

R.U.M. or Authorized Agent \_\_\_\_\_ Date \_\_\_\_\_  
 Deputy Warden or Authorized Agent \_\_\_\_\_ Date \_\_\_\_\_  
 Warden or Authorized Agent \_\_\_\_\_ Date \_\_\_\_\_

Code	Encumbered Amount	Actual Expense	Doc. Number
27 - 28	\$ _____	\$ _____	55 - 59
40 - 46	\$ _____	\$ _____	

DISTRIBUTION: White - Prisoner Accounting; Canary - Prisoner; Pink - Counselor

MICHIGAN DEPARTMENT OF CORRECTIONS  
**DISBURSEMENT AUTHORIZATION (Prisoner)**

4835-2893 3/90  
 CAR-893

Prisoners write clearly - illegible forms will not be processed

Date: Nov 9, 1999  
 Lock Number: A-217

1 - 6                                      7 - 11                                      14 - 26

108744                                      Cover                                      \_\_\_\_\_

Prisoner Number                      Prisoner's Last Name - Print Clearly                      (Prisoner Leave Blank)

Pay To: LMF

Address: \_\_\_\_\_

Cost/Amount  
 \$ .38

Reason/Description: (If to relative identify relationship) Prisoner - Michigan State Prisoner # 108744  
at Michigan State Prison  
Michigan State Prison  
Michigan State Prison

Prisoner's Signature: [Signature]                                      Total \$ .38

DO NOT WRITE BELOW THIS LINE

R.U.M. or Authorized Agent \_\_\_\_\_ Date \_\_\_\_\_  
 Deputy Warden or Authorized Agent \_\_\_\_\_ Date \_\_\_\_\_  
 Warden or Authorized Agent \_\_\_\_\_ Date \_\_\_\_\_

Code	Encumbered Amount	Actual Expense	Doc. Number
27 - 28	\$ _____	\$ _____	55 - 59
40 - 46	\$ _____	\$ _____	
			<u>61</u>



U.S. Department of Justice

Civil Rights Division

DLP:DCR:fmm  
DJ 144-37-0

Washington, DC 20530

February 15, 1996

Mr. Kenneth Colvin, Jr.  
Number 192744  
4000 Cooper Street  
Jackson, Mississippi 49201

Dear Mr. Colvin:

This is in reply to your correspondence to the Department.  
We apologize for the delay of this response.

The matter you mentioned in your letter is one within the  
jurisdiction of the courts or the state. This Department has no  
authority to take any action in this matter.

Sincerely,

Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division

By: *Diane C. Roberts*

Diane C. Roberts  
Civil Rights Division



*Detroit Branch . . .* **NATIONAL ASSOCIATION FOR THE  
ADVANCEMENT OF COLORED PEOPLE**



REVEREND WENDELL ANTHONY  
*President*

ATTY. JOHN E. JOHNSON, JR.  
*Executive Director*

November 4, 1998

Kenneth Colvin Jr. #192744  
Baraga Maximum Correctional Facility  
301 Wadaga Road  
Baraga, MI 49908

Dear Mr. Colvin:

This letter is in response to your complaint filed with us on October 15, 1998.

Please know that your issue is very important to us, However our agency does not have the resources to investigate your claim. We recommend that you file an appeal by contacting Michigan Appellate Court at (313) 256-9833.

Thank you for contacting us.

Sincerely,

Maryann Lee  
Deputy Director

65



# Centurion Ministries

---

221 Witherspoon Street • Princeton, New Jersey 08542 • [www.centurionministries.org](http://www.centurionministries.org)

May 12, 2009

Mr. Kenneth Colvin, Jr. #192744  
Baraga Max. Corr. Facility  
13924 Wadaga Road  
Baraga, MI 49908-9204

Dear Mr. Colvin:

As I said in my letter of 1/13/09, we are sorry that our organization has not been able to develop sufficient facts and evidence to assist you in your efforts to prove your innocence, and we are, of course, happy to oblige your request with return of the enclosed documents which you had sent to us.

We hope your quest for justice is successful through whatever other resources you may be able to access, and we wish you well in that on-going effort.

Sincerely,

Carol Kent

64

## Center on Wrongful Convictions

LAWRENCE C. MARSHALL, Legal Director

ROB WARDEN, Executive Director



June 18, 2003

Kenneth Colvin Jr, 192744  
Ionia Maximum Correctional Facility  
1576 West Bluewater Highway  
Ionia, MI 48846

Dear Mr. Colvin

We have received your letter.

Unfortunately, due to limited resources, we are not able to give your case a thorough review. However, you may wish to contact the innocence project locate in the state of Michigan:

Thomas M. Cooley Law School Innocence Project  
200 South Capital Avenue  
Lansing, MI 48901

We wish you well in your quest for justice.

Sincerely,

Jennifer Linzer  
Associate Director

A handwritten signature in cursive script, appearing to read 'Jennifer Linzer'.

JL/nll

**M** **Michigan Law**  
UNIVERSITY OF MICHIGAN LAW SCHOOL  
**MICHIGAN INNOCENCE CLINIC**

BRIDGET MCCORMACK  
DAVID A. MORAN

1029 Legal Research Bldg.  
625 South State Street  
Ann Arbor, Michigan 48109-1215  
734.763.9353  
Fax: 734.764.8242

October 14, 2010

Mr. Kenneth Colvin, Jr.  
192744  
Ionia Maximum Correctional Facility  
1576 W. Bluewater Hwy.  
Ionia, MI 48846

Dear Mr. Colvin:

Thank you for submitting a questionnaire to the Michigan Innocence Clinic at the University of Michigan Law School. I regret to inform you that, after carefully reviewing your questionnaire, we have concluded that your case does not meet the criteria for use in the clinic.

We will therefore not be able to take your case or provide you with any legal assistance.

I wish you the very best as you pursue your case.

Sincerely,



David A. Moran

THE UNIVERSITY OF MICHIGAN  
LAW SCHOOL  
MICHIGAN CLINICAL LAW PROGRAM

363 Legal Research Building  
Ann Arbor, Michigan 48109-1215  
(734) 763-4319 Fax: (734) 764-4702  
mclp@umich.edu

October 12, 1998

Mr. Kenneth Colvin-#192744  
Baraga Maximum Correctional Fac.  
301 Wadaga Road  
Baraga, Michigan 49908

Dear Mr. Colvin:

I writing in reply to your letter that was referred to the Michigan Clinical Law Program by Dean Lehman.

While the clinical program does provide some advice and representation to prisoners in some civil litigation, we are unable to offer assistance to prisoners in criminal appellate proceedings except in very unusual circumstances.

I would suggest that you contact the State Appellate Defenders Offices, Suite 3300, Penobscot Building, 645 Griswold, Detroit, Michigan 48226. They might be able to help or refer you.

Good luck to you in the future.

Sincerely,

MICHIGAN CLINICAL LAW PROGRAM



Andrea D. Lyon  
Assistant Clinical Law Professor

cp

67



School of Law  
Office of the Dean

September 28, 1998

Mr. Kenneth Colvin, Jr.  
#192744  
Baraga Maximum Correctional Facility  
301 Wadaga Road  
Baraga, Michigan 49908

Dear Mr. Colvin:

I am in receipt of your September 19, 1998 letter concerning your particular case. Please be advised that we do not have any classes at the school that undertake the type of assistance that you requested in your letter. I am sorry that we could not be of more help to you.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Stephen A. Mazurak".

Stephen A. Mazurak  
Dean

SAM:kas

68

MR. KENNETH COLVIN, JR. (#102744)  
IONIA CORRECTIONAL FACILITY  
1576 West Bluewater Highway  
Ionia, Michigan 48846-8594

September 12, 2011

STATE OF MICHIGAN EXECUTIVE OFFICE  
C/O Honorable Rick Snyder, Governor  
George W. Romney Building  
111 South Capitol Avenue  
Lansing, Michigan 48933

RE: Writing in regards to information about prisoners who are wrongly convicted.

Dear honorable Governor Snyder:

I am writing you in regards to some information that I and some others are aware of about you and Michigan Attorney General, Bill Schuette are in the process of reviewing prisoners' convictions who have been wrongly convicted.

I have been incarcerated for over 17 years for a crime/case that both Kelley Colvin, Sr. (#241930) and I are absolutely innocent of. My brother and I have been convicted of a homicide/robbery case that had occurred in the City of Grand Rapids on June 24, 1994. The case involved a robbery of a drughouse which ended with two individuals being killed and three others being shot. The problem with our case, as I have declared in both applications for Pardons that I had filed in June 2007 and again in June of 2010, massive exculpatory evidence was wrongfully withheld from us during our criminal trial stage, which if we had assist to the evidence to present at trial, both my brother and I would had unequivocally been exonerated by our juries. The most crucial evidence that was withheld from us, were documents in which the Grand Rapids Police Department had discovered that a group of individuals had possession of the handguns that were used in the robbery/homicide the day the crime was committed—individuals that my brother and I did not know and they do not know us, and the fact that my preliminary examination transcripts had been altered of testimony of a victim eyewitness who testified to the fact that a detective "privately" shows my photo to them before I was placed in a line up to be identified. **NOTE:** Please review my Applications for Pardon that I had submitted to the Office of the Parole and Pardon Board.

From my understanding, I heard that you and Mr. Schuette are requesting investigations from the United States Justice Department regarding Michigan prisoners' wrongly conviction cases. And if this is in fact true Sir, I am asking you to please take our case into consideration, because my brother and I are victims in being wrongly convicted. Thank you for taking this letter into consideration.

Sincerely,

Kenneth Colvin, Jr.

CC: Filed.

69

MR. KENNETH COLVIN, JR. (#192744)  
IONIA CORRECTIONAL FACILITY  
1576 West Bluewater Highway  
Ionia, Michigan 48945-4394

September 12, 2011

MICHIGAN ATTORNEY GENERAL OFFICE  
C/O Bill Schuette, Attorney General  
525 West Ottawa Street, Suite 4th Floor  
P.O. BOX 30217  
Lansing, Michigan 48909

RE: Writing in regards to information about prisoners who are wrongly convicted.

Dear Attorney General Schuette:

I am writing you in regards to some information that I had become aware of about you and Michigan Governor, Rick Snyder are in the process of reviewing prisoners' convictions who have been wrongly convicted.

I have been incarcerated for over 17 years for a crime/case that both Kelley Colvin, Sr. (#241930) and I are absolutely innocent of. My brother and I have been convicted of a homicide/robbery case that had occurred in the City of Grand Rapids on June 24, 1994. The case involved a robbery of a drughouse which ended with two individuals being killed and three others being shot. The problem with our case, as I had declared in both Applications for Pardons that I had filed in June 2007, and again in June of 2010, massive exculpatory evidence was wrongfully withheld from us during our criminal trial stage, which if we had access to the evidence to present at trial, both my brother and I would had unequivocally been exonerated by our juries. The most crucial evidence that was withheld from us, were documents in which the Grand Rapids Police Department had discovered that a group of individuals had possession of the handguns that were used in the robbery/homicide the day the crime was committed—individuals, that my brother and I did not know and they do not know us, and the fact that my preliminary examination transcripts had been altered of testimony of a victim eyewitness who testified to the fact that a detective "privately" shown my photo to them before I was placed in a line up to be identified. NOTE: Please review my Applications for Pardon that I had submitted to the Office of the Parole and Pardon Board.

From my understanding, I heard that you and Governor Snyder are requesting investigations from the United States Justice Department regarding Michigan prisoners' wrongly conviction cases. And if this is in fact true Sir, I am asking you to please take our case into consideration, because my brother and I are victims in being wrongly convicted. Thank you for taking this letter into consideration.

Sincerely,

Kenneth Colvin, Jr.

CC: Filed.



MICHIGAN DEPARTMENT OF CORRECTIONS  
OFFICE OF THE PAROLE BOARD

**APPLICATION FOR PARDON OR COMMUTATION OF SENTENCE**

I hereby petition, as provided by law, for a pardon or commutation of sentence for the following conviction(s) in the State of Michigan and submit the following information in support of this petition:

1. Name: MR. KENNETH COLVIN, JR. Number: 192744 Location: ALGER MAX. CORR. FACILITY  
Date of Birth: March 12, 1968 U.S. Citizen? YES

2. Michigan conviction(s) for which you are requesting a pardon or commutation of sentence:

<u>CRIME TITLE AND TYPE</u>	<u>DATE</u>	<u>COURT AND LOCATION</u>	<u>JUDGE</u>	<u>SENTENCE</u>
1. Robbery Armed	6/24/94	17TH JUDICIAL CIR. KENT COUNTY	BENSON	LIFE
2. ASLT TO MURDER (3 CTS)	SAME	SAME	SAME	LIFE
3. MURDER 1ST DEG. (2 CTS)	SAME	SAME	SAME	SAME
4. POS FIREARM FEL.	SAME	SAME	SAME	2-YRS
*****				

3. Briefly describe the circumstances of the crime(s) for which you are requesting a pardon:

On June 24, 1994, in the City of Grand Rapids, Michigan, there occurred a drughouse robbery in which two individuals were killed and three others were shot.

4. Provide a brief statement explaining why are you requesting a pardon or commutation:

I have been wrongfully convicted, and I am absolutely innocent of the crime. I did not have any direct or indirect involvement in the crime -my brother nor I. The following exculpatory evidence was withheld from my brother and I both by our trial and appellate attorneys, and the State (Grand Rapids Police Department and Kent County Prosecutor's Office):

EVIDENCE WITHHELD BY DEFENSE ATTORNEYS

1. Documents where victim eyewitness Mr. Aaron Williams had identified three different suspects just days after the crime was committed. On June 26, 1994, he first identified Mr. Christopher Leon Taylor as the person who shot him. He stated: "He looks just like the guy who shot me". See Exhibit 1 "Informant Tip Sheet & Identification Sheet of Mr. Taylor".

On July 8, 1994, during a photo-drop line of suspects Thames Hawkins, Tarron Johnson, and Everette Taylor, Mr. Williams identified Thames Hawkins as near certain that Mr. Hawkins was the person who shot him, and he also identified another person that look like the shooter. See Exhibit 2 "Note of in the results of the July 8, 1994 photo drop, two photo drop results cards

of Mr. Williams & Photo drops Thames Hawkins and Everette Taylor".

2. Document where victim eyewitness Ms. Jacqueline Smith had identified a different suspect just four days after the crime was committed. On June 28, 1994, she identified Mr. John Hawkins as the shooter. She stated according to Officer Beckett that Mr. Hawkins was too short but looked a lot like the guy. See Exhibit 3 "Report by Officer Beckett dated June 28, 1994".

3. Documents of witnesses after the fact who had over heard Mr. Terron Johnson said that he and another individual committed the crime that I am convicted of. Both Mr. Willie Meadows and Calvin Lamont Jones, explained to detectives during a conversation that occurred on June 26, 1994, just two days after the incident. that Johnson told them that he and a person named "Skeeter" committed the crime, and he described what had occurred, and the weapons that were used. See Exhibits 4 & 5 "Investigative Interview Form by Willie Meadows dated July 1, 1994 & Calvin Lamont Jones dated July 5, 1994".

4. Documents of eyewitness whom actually seen the gunmen leave the drughouse immediately after hearing the shooting. She gave the description of the men as being six feet, skinny built, with a bald head, moustache and goatee, and the second man being shorter, about five feet, four inches, thick built with bald head. NOTE: My brother and I have never worn goatees, and can not grow goatees, period. And our heights are six feet (brother) and six feet, five inches (myself)

The second document is from a Paralegal Services of Western Michigan, Inc. It was stated on May 15, 1995, that a person went out to the eyewitness' home in order to have them testify on my behalf, and it was reported that the mother of the eyewitness refused. See Exhibits 6 & 7 "Investigative Interview Form dated June 24, 1994 & Note from Paralegal Services of Western Michigan, Inc. dated May 15, 1994".

The above information was never revealed to my brother or myself by our trial attorneys or appellate attorneys, and it was never told to us that the information was not going to be used in our trials. I tried to obtain a copy of the client file for the first four years of my case, and both the trial attorney, Michael A. Liquigli, and appellate attorney, Paul E. Bennett had continuously denied me a copy of the file, and with the case of Bennett, he refused to obtain a copy of the file so I could properly file a supplement brief to the Michigan Court of Appeals. I only received the file, after I had filed a complaint, twice with the Michigan Attorney Grievance Commission explaining that Liquigli refused to give me the file, or stating that I must give him a \$150 deposit before he would release the file to me. See Exhibits 8 & 9 "Letters from Michigan Attorney Grievance Commission dated June 5, 1998 & Mr. Liquigli dated July 20, 1998".

Additionally, I discovered information in which Mr. Christopher Smith never medical treatment for his alleged point blank gunshot wound. On June 26, 1994, Grand Rapids Police Department detective made a request from Blodgett Hospital for complete medical records of all victims, including Mr. Smith, and it was reported by the hospital that Mr. Smith did not receive any medical treatment. NOTE: Mr. Smith testified that he had seen the shooter as the shooter shot him point blank in the arm.

INFORMATION WITHHELD BY STATE:

1. Document (Investigative Interview Form) from the Grand Rapids Police Department in which Ms. Carolyn Glasper (vica informant) told detectives that on June 24, 1994, she seen Terron Johnson and Thomas Hawkins come up to the house where she was at, and later discovered that they were involved in a shooting on Neland -this is the same street in which the crime happened that I have been convicted of. See Exhibit 10 "Investigative Interview Form of Carolyn Glasper dated June 28, 1994".

2. Document (Investigative Interview Form) from the Grand Rapids Police Department in which Mr. Carl Demetris Powell told detectives during an interview dated July 5, 1994, that a friend of his had possession of the guns (.38 super auto and .32 auto handguns, the same guns that were involved in the case that I have been convicted of) but claimed friends told him that they were robbed of them on June 25 or 26, 1994. Mr. Powell and some of his friends were involved in an altercation that had turned into a shooting incident dated June 6, 1994. During the initial investigation, the police had discovered casing at the scene which were tested by the Michigan State Police Forensic Science Division, and later discovered that the casing that were fired from the Neland case (the case that I have been convicted of), and the casing found at Fair Street incident (Mr. Powell's case) were fired from the same guns. Forensic Specialists, Mr. Burritt and Mr. Bullock who had conducted the test discovered that the .38 super auto handgun, and possibly the .32 auto casing that were found at both scenes were fired from the same guns. See Exhibits 11, 12 & 13 "Investigative Interview Form of Carl Demetris Powell dated July 5, 1994 [3 pages], MSP Forensic Laboratory Report Lab No. 32188-94, dated June 29, 1994 [2 pages], July 14, 1994 [2 pages] & August 4, 1994 [1 page], & Lab No. 32190-94 dated June 29, 1994 [2 pages] & August 8, 1994 [1 page]".

NOTE: I had filed a complaint with the Michigan State Police requesting an Internal Affairs investigation in regards to Mr. James J. Bullock and Mr. Stuart M. Burritt completely failing to reveal the fact during my trial that they discovered after testing the recovered .38 super auto handgun that was found on a young man in Grand Rapids that it was actually involved in another shooting just days before the crime was committed that I had been convicted of. See Exhibits 14 & 15 "My Complaint to Michigan State Police Director, Colonel Micheal D. Robinson dated August 17, 2001 [3 pages] & Letter from Michigan State Police Forensic Science Division Director, John A. Juhala, Ph.D dated September 27, 2001". This evidence in the fact that they discovered the guns were involved in two incidents just days apart, would had led to the information of Mr. Powell and the fact that he revealed to Detective James Grable that his friends had possession on the guns, in fact the same day that the crime was committed that my brother and I are convicted of. This information was concealed by not only the prosecutor and detectives, but by the forensic team as well. In the Lab Reports -Laboratory No.: 32190-94 dated June 29, 1994, Burritt revealed the test results and explicitly stated that the three casing that was found in Mr. Powell's incident was discovered to have been fired from the same .38 super auto handgun that the six casing that were found in the case that I have been convicted of -he found the same with the .32 auto handgun as well.

Burritt revealed this fact in the Lab report of 32190-94, but not in lab report of 32188-94, and he had conducted the test the same day, and at the same time -June 27, 1994; 09:24 AM. Moreover, this is the case after the .38 super auto gun was recovered and test. He revealed the fact that the gun had been fired and it match, but he failed to revealed that fact in the lab report 32188-94. See Laboratory Report Nos. 32188-94 dated August 8, 1994, and Lab Report 32190-94, dated August 8, 1994. This information was in fact exculpatory and support the fact that my brother and I did not committed the crime that wa are convicted of, and the evidence

in the fact that Mr. Powell and his friends had possession of the weapons, in fact the same day the robbery/homicide was committed supported our innocence. The State never product Mr. Powell or any of his friends that he said who had possession of the weapons during both of our separate trials in order to prove to the jury that my brother and I not only did not have any possession of the handguns that were used in the robbery/homicide, that we did not know them and they did not know us as well.

The documents that I had stated that was withheld by the State was in fact discovered in the Grand Rapids Police Department -Freedom of Information request, that was obtained by attorney Mr. Daniel E. Manville after he had sent the F.O.I.A. formal request to the department requesting the information. See Exhibits 16 & 17 "Daniel E. Manville's Letter to GRPD FOIA Coordinator dated September 8, 1998 & GRPD 'FOIA' Letter Dated September 17, 1994". By us having problems trying to obtain my client file from the trial and appellate attorneys in order to review and submit information in my Supplement Brief that I had filed to the Michigan Court of Appeals during my Appeal by Right, my mother and I tried to get a copy of the FOIA file, but we were denied. So, I sent a complaint to Michigan State Senator, Honorable Jackie Vaughn, III and explained the fact that the GRPD were violating law stating that my mother could not request for a copy of the file under FOIA. Senator Vaughn responded both to my mother and I, and explained that the GRPD were incorrect, that my mother was certainly entitled to the FOIA request. See Exhibits 18, 19, & 20 "Letter from GRPD to my mother dated December 10, 1997, Letters from Senator Jackie Vaughn, III addressed to my mother and myself, both dated August 10, 1998". The State had and continue to conceal exculpatory information from the case.

#### THE ALTERING OF PRELIMINARY EXAMINATION TRANSCRIPTS

The case that I have been convicted of is based solely on the identification of three victim eyewitnesses who all testified to only having seconds to see the gunman as he was shooting at them. They all stated that the area in which the shooting occurred was very dark, they were smoking marijuana, things were happening so fast, and they were scared to death as they ran for their lives. There was not any physical evidence that place my brother or I to this case, period. See Exhibit 21 "My Trial Transcript of Opening Statement made by my trial attorney, Mr. Liquigli dated May 15, 1995 [13 Pages]". There were composite drawings put together by the help of the three eyewitnesses of the person they said look like the individual who had shot them. The composite drawings were turned into Wanted Posters and distributed throughout the community. See Exhibits 22, 23 & 24 "Supplement Crime Scene Report GRPD with WANTED POSTER Composite Drawings from the three eyewitnesses".

The composite drawings of the individuals do not look like each other or me, and the ages, facial features do not resemble as well. The shooters were between the ages of 17 to 20, and I was 26 years old at the time this case was committed -and I did not look like a teenager, period.

On September 28, 1994, during questioning at my preliminary examination, victim eyewitness, Ms. Jacqueline Smith testified that Detective Grable had showed my photo to them before I was placed in a line-up. She was asked were she ever shown any photographs of possible suspects, and she replied, "Yes, once. I can't remember the date. But he came and he—Detective Grable came and showed us some pictures and yes, he was in it." At that time, the presiding judge, Jane Markey asked Ms. Smith and quote: "You're sure, you don't mean no?" And Ms. Smith responded, "I mean no." But when I had received my transcripts of the preliminary examination, I had immediately discovered that the testimony of Ms. Smith and Judge Markey's

statement to Ms. Smith was changed from what was originally stated. I had filed complaints to the Michigan Supreme Court -State Court Administrative Office (Michigan Court Reporting/Recording Board of Review Complaint File #95-05), Michigan Supreme Court's Chief Justice -at the time- James H. Brickley, State Board of Ethics, State Attorney General Office (3 times), United States Attorney General, Janet Reno, and a host of others requesting an investigation and the correction of the transcript.

Additionally, I had filed a complaint in the United States District Court (COLVIN V. 61st District Court, Case No. 1:95-cv-119) and written United States District Court Chief Judge, Benjamin F. Gibson about the altering of the transcripts as well. See Exhibits 25 & 26 "Letter from Chief Judge Benjamin F. Gibson dated January 30, 1995 & COLVIN V. 61ST DISTRICT COURT, 1:95-cv-119 MEMORANDUM OPINION AND ORDER OF DISMISSAL".

For over 13 years, I have been requesting everyone from State Attorney General Office to the Governors Office to investigate my wrongful conviction, including obtaining the audio tape of the preliminary examination in which Ms. Smith testified to the fact that Detective Grable "illegally" privately showing my photo to the victim eyewitnesses the first part of August 1994, before I was placed in a corporeal line up dated September 20, 1994. In PEOPLE V. GRAY, 69 MICH. APP. 685; 245 N.W.2d 165 (1976) states: "Police officer should not be allowed to prepare witness for line-up by privately showing witness pictures of accused." In McLOUTH STEEL CORP. V. A.E. ANDERSON CONSTR., 48 MICH. APP. 424; 210 NW2d 448 (1978) it states: "Under no circumstances, should a court recorder delete from the record that which actually took place", and in MCL 600.8635(1); Public Acts 1986-No. 308 600.8635 the statute states: "A verbatim record must be taken of the preliminary examination and reduce to writing verbatim". Everyone refuses to listen to the audio tape and correct the transcripts.

I am innocent, and I continue to maintain my innocence for over 13 years. I have been framed by the State, and the State Attorney General Office refuses to formally investigate my case, despite the fact I have written them on numerous occasions explaining my continuous nightmare. In fact, I have written major television news documentary networks, talk shows, wrongful conviction organization, and still a multitude of other trying to get someone to hear my story and help me obtain my freedom, as well. As I had explained before, I have never been to Grand Rapids in my life. My name came up during the Grand Rapids Police's investigation by my brother who made a false statement -that he reacted, implicated me and himself as the culprits, and the detectives obtain my photo from the Detroit Police Department -which was the end of July and the first part of August 1994. During pretrial arguments, the prosecutor stated, "The police at the time of Kelley Colvin's making of the statement have no idea who the second gunman is, and it isn't until they provide-- until Kelley Colvin provides a statement that they begin to focus on him [me]."

Therefore, I am requesting a pardon based on actual innocent and wrongful conviction.

5. Provide a brief statement explaining why you should be granted a pardon or commutation:

I should be granted the pardon, because I am actually innocent and I have been wrongfully convicted. If the State Attorney General Office would conduct an investigation, including reviewing the preliminary examination audio tape and correct my transcripts, investigate why would the Grand Rapids Chief of Police would tell a material res gestae witness that she does not have to testify in a criminal trial, investigate why would the State conceal the fact about

the handguns being involved and in the possession of individuals, who acknowledge that they had possession of the weapons in fact the day the crime that I have been convicted of was committed, and other issues of concern. My brother and I are innocent men and we have been "framed" in every legal definition of the word.

6. What are your home and job placement plans in the event you are released?

I am planning to reside with my mother and stepfather. In regards to employment, I am planning to work, as I always has done continuously throughout my life, including the day I was arrested when I was employed at a mass video production company called, Technicolor, located in Westland, Michigan. My long term goals are starting a mass media content internet company, write and published books and periodicals, start a Michigan based organization for the wrongfully convicted and successfully complete and obtain my Business Administration degree. If you would review my parole file, you will see that I had maintained work, including attending classes at Wayne County Community College-Detroit Downtown Campus.

NOTE: If this Application is not signed by the applicant personally, it is signed by \_\_\_\_\_, for the following reason: \_\_\_\_\_  
Submitted by: \_\_\_\_\_ Date: \_\_\_\_\_

NOTARY:

On this \_\_\_\_\_ day of \_\_\_\_\_, the petitioner, Mr. Kenneth Colvin, Jr. personally appeared before me, known to me to be the person who signed the foregoing petition, and who made an oath that he or she had read the foregoing application by him/her subscribed and knew the contents thereof to be true of his/her own knowledge, except those matters therein stated to be on information or belief, and as to those matters he/she believes to be true.

Date: 6-21-07

  
Kenneth Colvin, Jr. (#192744)

KEITH M. CASTELL  
Notary Public

ALGER MI  
County State

My Commission Expires on 4-9-2013

KEITH M. CASTELL  
NOTARY PUBLIC, STATE OF  
COUNTY OF ALGER  
MY COMMISSION EXPIRES Apr 9, 2013  
ACTING IN COUNTY OF ALGER



STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

JENNIFER M. GRANHOLM  
GOVERNOR

JOHN D. CHERRY, JR.  
L.T. GOVERNOR

June 2, 2008

\*\*\*RESPONSE LETTERS FROM GOVERNORS DENYING MY PARDON REQUESTS (2 pages)\*\*\*

Mr. Kenneth Colvin #192744  
Marquette Correctional Facility  
1960 U.S. Highway 41 South  
Marquette , MI 49855

Dear Mr. Colvin:

The Parole Board has completed its review of your self initiated Application for Pardon or Commutation of Sentence and forwarded its determination to the Governor. Based on the Parole Board's recommendation, the Governor has denied your application.

Sincerely yours,

S. Sonneborn  
Deputy Legal Counsel

c: Parole Board

OLC:SS:tf

77



STATE OF MICHIGAN  
EXECUTIVE OFFICE  
LANSING

RICK SNYDER  
GOVERNOR

BRIAN CALLEY  
LT. GOVERNOR

January 31, 2011

Mr. Kenneth Colvin, #192744  
Ionia Maximum Correctional Facility  
1576 W. Bluewater Highway  
Ionia, Michigan 48846

Re: Request for Pardon or Commutation of Sentence

Dear Mr. Colvin:

The Governor is in receipt of the recommendation from the Michigan Parole and Commutation Board regarding your request for a pardon or commutation of sentence. Based on that recommendation, the Governor has denied your request at this time. Please be advised that you may reapply within two years from the date of receipt of your last application.

Sincerely,

Elizabeth Clement  
Deputy Legal Counsel

cc: Parole and Commutation Board

78





October 30, 1997

\*\*\*RESPONSES REGARDING MY MOTHER & I REQUESTS FOR THE POLICE FILES (6 pages)\*\*\*

Kenneth Colvin #192744  
Marquette Branch Prison  
P.O. Box 779  
Marquette, MI 49855

RE: Freedom of Information Act Request


Dear Mr. Colvin:

The Grand Rapids Police Department has received your request for certain records and has processed it under the provisions of the Michigan Freedom of Information Act, P.A. 442 of 1976.

MCL 15.232 Section 2(a) of the Freedom of Information Act, as amended by Public Act 131 of 1994, defines those eligible to receive information as "an individual, corporation, partnership, firm, organization, or association, except that person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility." (emphasis added)

Since you are incarcerated in a State Prison, you are ineligible to receive information through the Freedom of Information Act. Your request, therefore, is denied. Please refer any responses to FOIA #97-430.

Sincerely,

  
Sergeant Charles Doezema  
Supervisor  
General Support Services Bureau

Approved:

 MAB  
William G. Hegarty  
Chief of Police

ML/mw

79



December 10, 1997

Mrs. Martha Childs  
~~11111 1111111111~~  
Detroit, MI 48224

RE: Freedom of Information Act Request

Dear Mrs. Childs:

The Grand Rapids Police Department has received your request for certain records and has processed it under the provisions of the Michigan Freedom of Information Act, P.A. 442 of 1976.

MCL 15.232 Section 2(a) of the Freedom of Information Act, as amended by Public Act 131 of 1994, defines those eligible to receive information as "an individual, corporation, partnership, firm, organization, or association, except that person does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility." (emphasis added)

Neither does the police department allow a third party request to circumvent the clear legislative intent of the Act. Since Kenneth Colvin is currently serving a sentence in a state prison, he is not eligible to receive documents under the Freedom of Information Act. Your request, therefore, is denied. Please refer any responses to FOIA #97-482.

Sincerely,

Sergeant Charles Doezema  
Supervisor  
General Support Services Bureau

Approved:

William G. Hegarty  
Chief of Police

ML/mw

80



September 17, 1998

Daniel E. Manville  
Attorney At Law  
212 Huron St., Ste. 200  
Ann Arbor, MI 48104

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear Mr. Manville:

The Grand Rapids Police Department has received your request for certain information and has processed it under provisions of the Michigan Freedom of Information Act (P.A. 442 of 1976). That request was for documents concerning Kenneth Colvin and homicide 94-59379.

A search of department files disclosed two hundred ninety two (292) pages of documents and sixty four (64) photographs relevant to your request. Upon receipt of your check made payable to the Grand Rapids Police Department in the amount of \$144.25 we will forward the documents and photos.

Please refer all responses to FOIA # 98-228.

Sincerely,

Sergeant Charles Doezema  
Supervisor  
General Support Services Bureau

Approved:

Henry P. Dolan  
Chief of Police

ML/mw  
Enclosure

81

SENATOR JACKIE VAUGHN III  
ASSOCIATE PRESIDENT PRO TEM OF THE SENATE  
STATE CAPITOL  
LANSING, MICHIGAN 48913  
DETROIT AREA (313) 861-7794  
LANSING OFFICE (517) 373-7914  
LANSING RESIDENCE (517) 487-5538  
LANSING FAX (517) 373-8227  
TDD (517) 373-2542



MEMBER, APPROPRIATIONS COMMITTEE  
MEMBER, APPROPRIATIONS SUBCOMMITTEE  
ON COMMUNITY COLLEGES  
MEMBER, APPROPRIATIONS SUBCOMMITTEE  
ON CORRECTIONS  
MEMBER, APPROPRIATIONS SUBCOMMITTEE  
ON STATE POLICE AND MILITARY AFFAIRS

## THE SENATE

August 10, 1998

Mrs. Martha Colvin

~~REDACTED~~  
Detroit, Michigan 48224

Dear Mrs. Colvin:

I am writing in regards to a letter I received from your son, Mr. Kenneth Colvin, Jr. regarding the difficulties you have encountered in attempting to obtain Kenneth's records from the Grand Rapids Police Department. I have contacted top officials at the State Police FOIA office, and they have informed me that you *are certainly* entitled to your son's records.

I advise that you again contact the Grand Rapids Police Department and attempt to settle this matter amicably. However, if there is not a satisfactory conclusion reached, I suggest that you personally contact the State Police FOIA office at (517) 322-5511 and speak with Officer Dave Fadewa. He will be more than willing to assist you in this very important matter.

I hope this information is helpful to you in resolving this matter and obtaining Kenneth's records. Please let me know if I can be of further assistance to you.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Jackie Vaughn III".

Senator Jackie Vaughn III  
Associate President Pro Tem of the Michigan Senate  
Chairperson, Michigan Martin Luther King, Jr. Commission

JV/nrb

82

SENATOR JACKIE VAUGHN III  
ASSOCIATE PRESIDENT PRO TEM OF THE SENATE  
STATE CAPITOL  
LANSING, MICHIGAN 48913  
DETROIT AREA (313) 661-7794  
LANSING OFFICE (313) 373-7918  
LANSING RESIDENCE (313) 487-5208  
LANSING FAX (313) 373-5207  
TOLL (313) 373-8940



MEMBER, APPROPRIATIONS COMMITTEE  
MEMBER, APPROPRIATIONS SUBCOMMITTEE  
ON COMMUNITY COLLEGES  
MEMBER, APPROPRIATIONS SUBCOMMITTEE  
ON CORRECTIONS  
MEMBER, APPROPRIATIONS SUBCOMMITTEE  
ON STATE POLICE AND MILITARY AFFAIRS

## THE SENATE

August 10, 1998

Mr. Kenneth Colvin, Jr. #192744  
Marquette Branch Prison  
P.O. Box 779  
Marquette, Michigan 49855

Dear Mr. Colvin:

I am writing in response to your letter regarding the Grand Rapids Police Department's failure to provide your mother with your police file. I have contacted the State Police (FOIA) Officer Dave Fadewa, who informed me that your mother is permitted access to your police records under FOIA. Although some materials may be exempt from her request, she is nonetheless permitted access to your police files.

I suggest that you advise your mother to contact the Grand Rapids Police Department and appeal their decision regarding this matter. If she cannot resolve this matter in a satisfactory manner with the Grand Rapids Police Department, she should contact the State Police FOIA office at (517) 322-5511.

I hope this information is helpful to you, and I thank you for writing. Please remember the importance of maintaining good citizenship at your facility, and I wish you the best of luck in all your endeavors.

Sincerely,

Senator Jackie Vaughn III  
Associate President Pro Tem of the Michigan Senate  
Chairperson, Michigan Martin Luther King, Jr. Commission

JV/nrb

85

**BRUCE A. BARTON, P.C.**

Attorney  
414 S. Jackson Street  
Jackson, Michigan 49201

Bruce A. Barton

Tel: (517) 780-0800

September 1, 1998

Mr. Kenneth Colvin, Jr. #192744  
Baraga Maximum Correctional Facility  
301 Wadaga Road  
Baraga, Michigan 49908

Re: Police Reports  
FOIA #97-482

Dear Mr. Colvin:

Thank you for your letter of August 23. Unfortunately, because of other commitments, I am unable to take your case at this time.

I would suggest that your mother or some other party should again request that reports, this time pointing out both the opinion of the State Police FOIA Office and that the legislature could have and should have included family members in the 1994 Amendment if they wished to do so.

In my opinion, the legislative intent was not to exclude prisoner from obtaining their own records. Too many injustices have been done in the name of law enforcement to permit suppression of investigative information, but there needed to be a limit in prisoner requests.

I do not mean to imply that Grand Rapids has been guilty of such suppression I don't know that, but that jurisdiction must admit that it has occurred at least elsewhere. Refusal to release official documents by implying legislative intent not expressed in the language of the statute appears to be at least suspect. Regardless of her intent, a parent does not suffer the disabilities of her son or daughter who is convicted of a criminal offense.

I am forwarding a copy of this letter to Grand Rapids Police Chief Hegarty with the suggestion that he consult Corporation Counsel. In the event that Grand Rapids decides to make this a test case, you or your mother might contact the State Appellate Defender Office in Detroit for possible recommendation of an attorney. As you know, the statute provides payment of attorney fees, sometimes even if the requesting party is even partly successful.

Yours truly,

  
Bruce A. Barton

BAB/kf

cc Chief Hegarty  
SADO  
w/enclosures

84

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

\*\*\*MY CIVIL SUIT THAT I FILED AGAINST TRIAL ATTORNEY FOR WITHHOLDING EXCULPATORY EVIDENCE & LETTERS FROM TRIAL ATTORNEY ATTEMPTING TO CHARGE ME A \$150,00 TO OBTAIN MY CRIMINAL CLIENT FILE & ATTORNEY GRIEVANCE COMMISSION RESPONSE

KENNETH COLVIN, JR., TO MY CLAIM (5 pages)\*\*\*

Plaintiff,

vs

CASE NO. 00-07089-NM

MICHAEL A. LIQUIGLI of LAW  
OFFICES OF HAEHNEL, PHELAN  
& LIQUIGLI,

Defendants.

---

**ORDER**

At a session of this Court held on the 8 day of December, 2000,  
at the Hall of Justice, Kent County, Grand Rapids, Michigan.

This matter having come before the Court, oral argument having been waived,  
and the Court being fully advised in the premises;

IT IS ORDERED that pursuant to MCR 2.116(C)(7), **Count I (Malpractice)**  
of Defendant's Motion for Summary Disposition is **granted**; and

IT IS FURTHER ORDERED that pursuant to MCR 2.116(C)(8), **Count II**  
**(Fraud)** of Defendant's Motion for summary Disposition is **denied** without prejudice

and Plaintiff has 28 days from this date to amend Count II pursuant to MCR  
2.116(I)(5).

DAVID SOET  
H. David Soet, Circuit Judge

86



# HAEHNEL, PHELAN & LIQUIGLI

Attorneys at Law

Craig W. Haehnel  
Freeman M. Haehnel  
Lawrence J. Phelan  
Michael A. Liquigli  
\*Also admitted in Ohio

200 N. Division Avenue  
Grand Rapids, Michigan 49503  
(616) 454-3834 • (616) 458-6878  
Fax: (616) 459-4909

Darrin E. Hetfield  
Of Counsel:  
James M. Catchick

May 14, 1998  
**ATTORNEY MAIL**

Mr. Kenneth Colvin Jr. #192744  
Marquette Branch Prison  
P O Box 779  
Marquette MI 49855

*Re: People v Kenneth Colvin  
Case No. 94-2732-FC*

Dear Mr. Colvin:

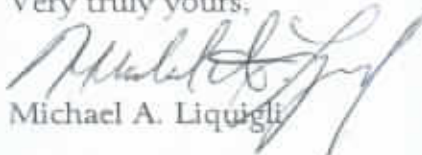
Thank you for your letter which I received on May 7, 1998.

First, let me address your asking me to forward copies of documents over two (2) years ago. You will recall that you had asked me to send copies of documents to your mother. I in fact did send those documents that you requested to your mother, however, they were returned "No Such Number". I also copied the letter to your mother to you at Jackson Prison. That was the last time I had heard from you.

Second, I would be more than happy to forward copies of your file to you. However, you should be aware that there are over 2,000 documents that need to be copied. At .07¢ per copy, it will cost me over \$150 to copy your file. Therefore, if you would like copies of your entire file, I will need for you to deposit \$150 with my office for said copies.

Please let my office know what your intentions are regarding copies of your file. Thank you for you cooperation in this matter.

Very truly yours,

  
Michael A. Liquigli

MAL:kaw

67

# HAEHNEL, PHELAN & LIQUIGLI

Attorneys at Law

Craig W. Hachnel  
Freeman M. Hachnel  
Lawrence J. Phelan  
Michael A. Liquigli  
\*Also admitted in Ohio

200 N. Division Avenue  
Grand Rapids, Michigan 49503  
(616) 454-3834 • (616) 458-6878  
Fax: (616) 459-4909

Darrin E. Hetfield  
Of Counsel:  
James M. Catchick

July 20, 1998  
**ATTORNEY MAIL**

Mr. Kenneth Colvin #192744  
Marquette Branch Prison  
P O Box 779  
Marquette MI 49855

*Re: People v Kenneth Colvin  
Case No. 94-2732-FC*

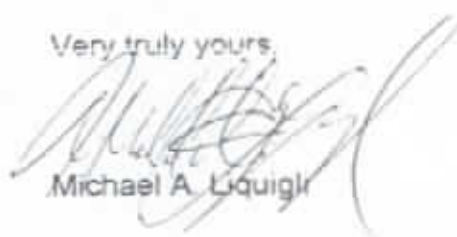
Dear Mr. Colvin:

Enclosed please find the "ORIGINAL" of your entire file that you requested I forward to you. This file is being mailed to you under three (3) separate packages with letter being inserted in package #1.

I am requesting that you hereby date and sign the Receipt of File below and return it to me in the pre-addressed stamped envelope that I have provided. This acknowledges that you have received your entire file, releasing this office of the contents as we have mailed you the original file.

Thank you for your cooperation and the best of luck to you in your future endeavors

Very truly yours,



Michael A. Liquigli

MAL:kaw  
Enc.  
Original of entire file 3 separate packages

---

## RECEIPT OF FILE

I, Kenneth Colvin, Jr., am in receipt of the original of my entire file in Kent County Circuit Court, Case No. 94-2732-FC, in which Michael Liquigli was my defense attorney.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Kenneth Colvin, Jr.

MEMBERS  
BRIAN D. VINCENT  
CHAIRPERSON  
THOMAS A. HALLIN  
VICE-CHAIRPERSON  
ROBERT W. McBROOM  
SECRETARY  
DEBORAH L. MIELA  
STEVEN D. DUNNINGS  
MARY J. FLEMING  
MATTHEW A. SEWARD  
RICHARD E. ZUCKERMAN  
JAMES M. BULLOCK, M.D.

State of Michigan  
Attorney Grievance Commission

SUITE 266, MARQUETTE BUILDING  
243 WEST CONGRESS  
DETROIT, MICHIGAN 48226-3259  
TELEPHONE (313) 961-8585  
TELEFAX (313) 961-9819

June 5, 1998

PHILIP J. THOMAS  
GRIEVANCE ADMINISTRATOR  
ROBERT E. EDICK  
DEPUTY ADMINISTRATOR  
CYNTHIA C. BULLINGTON  
ASSISTANT DEPUTY ADMINISTRATOR  
ASSOCIATE COUNSEL  
SUSAN E. GILLOOLY  
RICHARD L. CUNNINGHAM  
DONALD D. CAMPBELL  
WENDY A. NEELEY  
RUTHANN STEVENS  
STEPHEN P. VELLA  
PATRICK K. McGLINN  
DARRYL W. EASON  
KEIRA BOERTZEL-SMITH  
FRANCES A. ROSINSKI  
MARY S. HICKEY

PERSONAL AND CONFIDENTIAL

Michael Liquigli  
Attorney at Law  
200 N. Division  
Grand Rapids, MI 49503

RE: Kenneth Colvin, Jr. as to Michael Liquigli  
File No. 0215/96

Dear Mr. Liquigli:

We received a letter from Kenneth Colvin, Jr., regarding his efforts to obtain his client file from you. Mr. Colvin also forwarded us a copy of your letter of May 14, 1998, which requests a \$150 deposit as a condition of returning the file. I am writing this letter to ask that you reconsider your position.

You are obligated to return the original of the client's file upon request (Informal Ethics Opinions CI-722 and CI-1200). To the extent you want to retain a copy it would be at your expense (CI-845). In the absence of an agreement for the client to pay for the file copies, a lawyer may not ethically charge the client for copying the file (CI-926).

In the event you are required to ship the file to Mr. Colvin, I believe you could require him to pay shipping charges in advance. Please let me know at your earliest convenience whether you are willing to resolve the dispute in this fashion.

Very truly yours,

*Robert E. Edick*

Robert E. Edick  
Deputy Administrator

REE/lw  
cc: Kenneth Colvin, Jr. ✓

89

INVESTIGATIVE INTERVIEW FORM

Page 1

NAME: CARL DEMETRIS POWELL

CASE: \_\_\_\_\_ NUMBER: \_\_\_\_\_

OFFICER(S): \*\*\*INDIVIDUALS WHO HAD POSSESSION OF HANDGUN(S) THE DAY THE CRIME MY BROTHER AND I ARE CONVICTED OF BUT EVIDENCE WAS WITHHELD BY POLICE/PROSECUTOR (7 pages)\*\*\*

DATE OF INTERVIEW: 7-5-94 TIME: 1123 LOCATION: KICCF

INITIAL INTERVIEW: YES  NO  1158- READ RIGHTS READ: YES  NO

PERSONAL INFORMATION ON SUBJECT: (to be completed on initial interview)

RACE/SEX: B/m D.O.B. 1-4-74

ADDRESS: 305 EASTERN AVE SE #3 HOME PHONE: 774-9124

EMPLOYER: TC BUSINESS PHONE: \_\_\_\_\_

OTHER INFO. (specify): \_\_\_\_\_

SIGNIFICANCE OF THIS PERSON'S INVOLVEMENT WITH CASE: WIT

KARU, TRANT, ERIC

TAMIKA BIGHAM<sup>23</sup> - 305 EASTERN SE

INTERVIEW NOTES

DON - MARSHANE - CUTLASS<sup>BROWN</sup> } STOLE

KEITH MILLER - TYNONE RICHMONDSON

GUNS STOLEN FROM ERIC'S HOUSE  
6-25-95 or 6-26-94

DON TOLD CARL THEY WERE STOLEN  
2 GUYS SAWED OFF 3 GUNS  
TOOK MOUTH & GUNS -

90

*Carl Powell*

NAME: CARL POWELL

CASE: \_\_\_\_\_ NUMBER: \_\_\_\_\_

OFFICER(S): \_\_\_\_\_

DATE OF INTERVIEW: 7-5 TIME: 1204 LOCATION: KCCP

INITIAL INTERVIEW: YES X NO \_\_\_\_\_ RIGHTS READ: YES X NO \_\_\_\_\_

PERSONAL INFORMATION ON SUBJECT: (to be completed on initial interview)

RACE/SEX: B/M D.O.B. 1-4-74

ADDRESS: 305 EASTMAN SE #3 HOME PHONE: 774-9124

EMPLOYER: \_\_\_\_\_ BUSINESS PHONE: \_\_\_\_\_

OTHER INFO. (specify): \_\_\_\_\_

SIGNIFICANCE OF THIS PERSON'S INVOLVEMENT WITH CASE: \_\_\_\_\_

*BLUE OLDS IN FRONT of house  
Cory is  
Cory Williams  
Lyon St.*  
INTERVIEW NOTES

CARL BELIEVES THAT KAHN TOOK MARNER HOME. KAHN DISTURBED CARL, CARL WAS IN A ROOM WITH HIS GIRLFRIEND TAMARCO BIGHAM, KAHN TOLD CARL THAT MARNER'S EX-BOYFRIEND WAS GOING TO JUMP ON HER OR WAS JUMPING ON HER. CARL AND FRIENDS WENT BACK. CARL, KAHN, TRANT + ERIC, (IN CARL'S CAR) DON MARSHONE, (IN BROWN CUTASS) KEITH MUSA, + TYRONE RICHARDSON, AND COREY WILLIAMS (IN KEITH'S GREY SW) - CARL HAD A .32 AUTO HE HAD GOTTEN THIS GUN FROM DON'S APT. 343 PROSPECT/WEAUTHY #5 - DON LIVES THERE WITH ERIC. - THIS WAS THE ONLY GUN IN CARL'S CAR. - THE CAR ~~WAS~~ <sup>ACROSS THE STREET FROM</sup> HIS WAS THE BROWN CUTASS. MARSHONE WAS DRIVING

\*  
 THIS CAR. DON WAS THE DRIVER - MARSHONE  
 HAD THE 38 AUTO AT THE HOUSE ON FAIR  
 CARL SAW MARSHONE SHOOTING THE GUN ON  
 FAIR. CARL HAS SEEN THIS GUN AT  
 ERIC + DON'S HOUSE MANY TIMES, IT  
 IS A 38 AUTO WITH SILVER ON THE  
 TOP, BLACK AND A BROWN HANDS. - AFTER  
 THE SHOTS WERE FIRED THEY WENT HOME  
 RETURNING TO THE HOUSE ON EASTERN WERE  
 CARL, KAHN, TRANT, ERIC, MARSH, MARSHONE + DON,  
 KEITH, TYRONE, + CONRY. - THEY DIDN'T ALL  
 COME TOGETHER - THEY SPOKE UP. DON  
 + MARSHONE SHOWED UP A LITTLE LATER  
 THEY HAD BROUGHT THE GUN HOME.

- CARL STATES HE GOT THE 32 AUTO  
 FROM DON + ERIC AT A FEW DAYS BEFORE  
 THE INCIDENT ON FAIR ST. A FEW DAYS  
 LATER HE RETURNED THE GUN TO THE APT.  
 HE LEFT IT THERE - CARL STATES HE  
 HAD THE GUN BECAUSE HE HAD TROUBLE WITH  
 A GUY IN THE NEIGHBORHOOD - HE HAS NO  
 REAL EXPLANATION AS TO WHY HE RETURNED  
 IT. - THE SUN AFTER THE SAT THAT THE APT  
 ON PROSPECT WAS BROKEN INTO EITHER 6-25 OR 6-28  
 HE THEN STATES HE'S SURE THAT HE WENT TO DETROIT  
 THE SUN AFTER THE BREAK IN AND WENT TO  
 CT IN DETROIT. HE STATES HE HAD TO GO

INVESTIGATIVE INTERVIEW FORM

NAME: Carl Powell

CASE: \_\_\_\_\_ NUMBER: \_\_\_\_\_

OFFICER(S): \_\_\_\_\_

DATE OF INTERVIEW: 7-5-94 TIME: 1204 LOCATION: KCPA

INITIAL INTERVIEW: YES X NO \_\_\_\_\_ RIGHTS READ: YES X NO \_\_\_\_\_

PERSONAL INFORMATION ON SUBJECT: (to be completed on initial interview)

RACE/SEX: B/M D.O.B. 1-4-74

ADDRESS: \_\_\_\_\_ HOME PHONE: \_\_\_\_\_

EMPLOYER: \_\_\_\_\_ BUSINESS PHONE: \_\_\_\_\_

OTHER INFO. (specify): \_\_\_\_\_

SIGNIFICANCE OF THIS PERSON'S INVOLVEMENT WITH CASE: \_\_\_\_\_

INTERVIEW NOTES

TO CT IN DETROIT, SON CT EVALUATION - BACK TICKETS  
 SOS - DRIVERS LIC. LOTH + HOWARD IN DETROIT  
 SUITE 101 RM - CARL STATES HE WAS  
TOLD BY DON ON THE PHONE ON THE MORNING  
OF THE SAT 6-18, ~~1994~~ THAT 2 GUYS  
BROKE IN w/ SAWS & SHOTGUNS AND STOLE  
MONEY, THE 2 GUYS, AND JEWELRY - DOWNTOWN  
HIM THAT TIGHT WAS THERE WHEN THE ROBBERY  
APPEARED AND HE FLED OUT THE WINDOW - EARL WAS  
IN DETROIT PICKING UP A CAR A BLK <sup>BUICK</sup> ~~REAR~~ -  
DOESN'T KNOW WHOSE WAS WITH DON AT HIS APT.  
WHEN HE WAS ROBBED,

*Carl Powell*

**CONSTITUTIONAL RIGHTS**

- 1. YOU HAVE THE RIGHT TO REMAIN SILENT.
- 2. ANYTHING YOU SAY CAN BE USED AGAINST YOU IN A COURT OF LAW.
- 3. YOU HAVE THE RIGHT TO THE PRESENCE OF A LAWYER BEFORE AND DURING ANY QUESTIONING.
- 4. IF YOU WISH A LAWYER AND CANNOT AFFORD ONE THE COURT WILL APPOINT ONE BEFORE ANY QUESTIONING.

**WAIVER**

I HAVE BEEN ADVISED OF AND UNDERSTAND EACH OF THE ABOVE CONSTITUTIONAL RIGHTS AND I AM WILLING TO ANSWER QUESTIONS.

DATED THIS 5<sup>TH</sup> DAY OF July, 1995 AT 1158 (A.M./P.M.)

NAME: CARL DEMETRIUS POWELL

SIGNATURE: [Signature]

WITNESS: [Signature] BADGE NO. 189  
(OFFICER READING RIGHTS)

WITNESS: [Signature] BADGE NO. 148

94



**INVESTIGATIVE INTERVIEW FORM**

NAME: TRENT CHAMBLISS

CASE: \_\_\_\_\_ NUMBER: \_\_\_\_\_

OFFICER(S): \_\_\_\_\_

DATE OF INTERVIEW: 7-5-94 TIME: 1311 LOCATION: ACCF

INITIAL INTERVIEW: YES X NO \_\_\_\_\_ RIGHTS READ: YES \_\_\_\_\_ NO X

**PERSONAL INFORMATION ON SUBJECT: (to be completed on initial interview)**

RACE/SEX: Bm D.O.B. 5-20-70

ADDRESS: 2741 CASTLE BLUFFE<sup>#301</sup> HOME PHONE: — <sup>DACS</sup> 270-9748

EMPLOYER: F+M PROTECTION BUSINESS PHONE: \_\_\_\_\_

OTHER INFO. (specify): \_\_\_\_\_

SIGNIFICANCE OF THIS PERSON'S INVOLVEMENT WITH CASE: \_\_\_\_\_

**INTERVIEW NOTES**

TRENT STATES HE REMEMBERS AN INCIDENT WHICH KAHN ~~SAID~~ HAD PROBLEMS WITH HIS COALFRIEND. TRENT WENT WITH CARL + KAHN AND SOME OTHER PEOPLE. THERE WERE SHOTS FIRED BUT TRENT DOESN'T KNOW WHO FIRED THEM. TRENT STATES HE THINKS DON + ERIC WERE THERE BUT HE DOESN'T KNOW WHERE OR IN WHICH CARS. TRENT STATES HE WAS NOT PRESENT BUT KNOWS THAT DON SAID HE WAS ROBBED BY 2 GUYS AT HIS APT. DON TOLD HIM ABOUT THE ROBBERY. HE STATES HE DOESN'T KNOW WHO WAS WITH DON. HE SAID IT HAPPENED EITHER 6-18 OR 6-25

Incident No. <b>9A 152338</b>	Technician / Badge <b>Garrison</b>	<b>1659</b>	Date Report <b>6-6-94</b>	Time Report <b>2256</b>
Location <b>134 Fair SE</b>		Incident Type <b>Assault / Shots Fired</b>		
Incident Address <b>128 Fair SE</b>		Incident Date <b>Same</b>	District <b>D-2</b>	Requested / Badge <b>Kooyer 1275</b>
Object of Offense <b>Cartridge cases in street</b>		Other Agency / Incident Peculiarities <b>.38 Super (3); .32 Auto (7)</b>		
Point of Entry <b>NA</b>		Method of Entry		

LATENT PRINTS	Processed for Latents Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Latents Recovered Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Eliminations Obtained Yes <input type="checkbox"/> No <input type="checkbox"/>
Name	Name	Name	Name

PHOTOGRAPHS	B&W No. <input type="checkbox"/>	No. Rolls	Size	Color No. <input type="checkbox"/>	No. Rolls	Size	Polaroid No. <input type="checkbox"/>	No. Pics.	Type	Video Yes <input type="checkbox"/> No <input type="checkbox"/>
					<b>One</b>	<b>35mm</b>				

TRACE EVIDENCE	Blood Yes <input type="checkbox"/> No <input type="checkbox"/>	Paint Yes <input type="checkbox"/> No <input type="checkbox"/>	Shoe Prints Yes <input type="checkbox"/> No <input type="checkbox"/>	Hairs or Fibers Yes <input type="checkbox"/> No <input type="checkbox"/>	Glass Yes <input type="checkbox"/> No <input type="checkbox"/>
----------------	---	---	---	---	---

COMPOSITE Yes <input type="checkbox"/> No <input type="checkbox"/>	SKETCH Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Other <b>Cartridge cases</b>	Evidence Disposition <b>PMU</b>
---	---	---------------------------------	------------------------------------

Narrative  
**CST searched, photographed, and measured the roadway north of 128 & 134 Fair SE with special attention to the position and location of three W-W brand .38 Super cartridge cases and seven WIN brand .32 Auto cartridge cases. No other ammunition components or defects were found. The items yielded no usable latents.**

96

# GENERAL INCIDENT REPORT

GRAND RAPIDS POLICE

INVESTIGATIVE

41

UNIT NO. 1-274334	REPORTING OFFICER/ID BOONE	TIME AND DATE REPORTED 072 2345 / 07-31-24	INCIDENT OCCURRENCE BETWEEN	DATE	TIME
INCIDENT TYPE T.W. PERSON			INCIDENT ADDRESS DELAWARE / LAFAYETTE, SE		
NAME		DOB	SEX	AGE	HOME ADDRESS/PLACE OF EMPLOYMENT & HOME PHONE
CARTER, KENNY		05-16-79	M	45	16 906 LAFAYETTE, SE
					17
JENSON, CHARLES		05-15-60	M	64	833 LAFAYETTE, SE
					NOT
CARTER, KENNY		06-19-56	M	68	906 LAFAYETTE, SE
					NOT
POINT OF ENTRY		METHOD OF ENTRY		INCIDENT REQUARITIES	

**\*\*\*INDIVIDUALS WHO WERE IN POSSESSION OF THE MURDER WEAPON (7 pages)\*\*\***

R/O'S WERE WORKING THE AREA OF HIGHLAND/LAFAYETTE FOR V.C.S.A AND WEAPON VIOLATIONS. R/O'S WERE WORKING IN FULL UNIFORM AND WERE DRIVING A FULLY MARKED POLICE CRUISER.

R/O'S WERE STOPPED AT THE STOP SIGN AT S/B LAFAYETTE AV. AND DELAWARE ST., SE. WHEN WE OBSERVED TWO B/M'S STANDING IN THE ROADWAY APPROX. 50 YDS. TO THE WEST OF US. ONE OF THE B/M'S IDENTIFIED AS KENNY CARTER WAS MAKING A MOTION IN THE FRONT WAISTBAND AS IF HE WAS TUCKING SOMETHING IN. KENNY BEGAN WALKING E.B TOWARDS US AND R/O'S TURNED W/B ONTO DELAWARE ST.

R/O'S APPROACHED KENNY AND INITIATED A CITIZEN CONTACT WITH HIM AND HE VERBALLY CONSENTED TO A SEARCH OF HIS PERSON. WHEN R/O ASKED KENNY IF HE HAD ANY GUNS OR DRUGS ON HIS PERSON HE REPLIED "YEAH." R/O ASKED HIM WHAT HE MEANT BY "YEAH" AND HE TOLD US HE HAD A GUN IN HIS WAISTBAND. R/O PLACED KENNY IN HANDCUFFS AND OFFICER SINNEMA REMOVED A SEMI-AUTO HANDGUN FROM HIS WAISTBAND.

AFTER PLACING KENNY IN OUR CRUISER HE SAID HE CARRIED THE GUN BECAUSE HE WAS SHOT AT. HE ALSO TOLD US THAT HE STOLE THE GUN FROM "LANCE" (UNK. LAST NAME), WHO IS FROM DETROIT.

97

PAGE	OF	ORIGINAL <input type="checkbox"/>	FOLLOW UP <input type="checkbox"/>	STOLEN <b>S</b>	RECOVERED <b>S</b>
1		ORIGINAL	REPORT REVIEWED BY	NAME	CLASS
4-60001		16	8-1		

GRAND RAPIDS POLICE

INVESTIGATIVE

1-074334	REPORTING OFFICER/BADGE BOONE	TIME AND DATE REPORTED 07-31-94	INCIDENT OCCURRENCE BETWEEN	DATE	TIME	DATE
INCIDENT TYPE C C.W. PERSON			INCIDENT ADDRESS DELAWARE LAFAYETTE, SE			DIST CO
NAME		#2	AGE OF D.O.E. INVOLVEMENT	A	ARREST IN TIME/DATE	HOME ADDRESS/PLACE OF EMPLOYMENT & HOURS
1		10		11 13	14 15	16
				12	17	18 19
20		21		22		23
CALLED IN AS IP <input type="checkbox"/> JO <input type="checkbox"/> O <input type="checkbox"/>		IN PROGRESS ON ARRIVAL Y <input type="checkbox"/> N <input type="checkbox"/>		NON-VICTIM CITIZEN HELP Y <input type="checkbox"/> N <input type="checkbox"/>		AGE FOR 18 OFFICERS Y <input type="checkbox"/> N <input type="checkbox"/>
POINT OF ENTRY		METHOD OF ENTRY		LIGHTING STREET		INCIDENT PECULIARITIES
				SCENE		TYPE OF PREMISES

R/O'S RADIOED TO OFFICERS COOPER AND MCWATTERS AND THEY CONDUCTED A CITIZEN CONTACT WITH THE B/M THAT KENNY HAD BEEN TALKING TO WHEN R/O'S FIRST OBSERVED HIM. MR. ROBINSON WAS SUBSEQUENTLY ARRESTED FOR FALSE INFO. AND TWO OUTSTANDING WARRANTS. SEE ONFS 94-74349 AND 94-74350 FOR THOSE REPORTS.

R/O'S INFORMED KENNY'S FATHER, KENNY CARTER SR., OF THE CHARGES ON KENNY JR. HE WAS TRANSPORTED TO K.C.C.F. WHERE HE WAS FINGERPRINTED AND THEN WAS LODGED AT JUVENILE DETENTION.

THE GUN WAS TAGGED AS EVIDENCE BY OFFICER SINNEMA. THE ARREST WAS VERBALLY APPROVED BY SGT. SAVAGE WHO WAS AT THE SCENE. THE WEAPON DIDN'T HAVE A ROUND IN THE CHAMBER, HOWEVER, THE CLIP WAS LOADED WITH BOTH .380 CAL. AMMO. (TWO ON TOP) AND SUPER .38 CAL. AMMO.

DESCRIPTION OF GUN: COT GOV'T. MODEL PISTOL CAL. .38 SUPER, SERIAL #A21388.

98

TRANS. KJD 0310 HOURS 08-01-94

ORIGINAL <input type="checkbox"/>		FOLLOW-UP <input type="checkbox"/>		STOLEN <b>S</b>		RECOVERED <b>S</b>	
OTHER OFFICER		36 BADGE		REPORT REVIEWED BY		BADGE	
FOLLOW-UP SERVED TO		SECTION		FOLLOW-UP WORK REVIEWED BY		DATE	

**INVESTIGATIVE INTERVIEW FORM**

NAME: Kenneth Carter

CASE: CCW NUMBER: 94-74334

OFFICER(S): Hertel

DATE OF INTERVIEW: 8-1-94 TIME: 1500 LOCATION: KCCH

INITIAL INTERVIEW: YES  NO  RIGHTS READ: YES  NO

**PERSONAL INFORMATION ON SUBJECT: (to be completed on initial interview)**

RACE/SEX: BM D.O.B. 6-16-79 (15)

ADDRESS: 1001 Bemis St. SE HOME PHONE: 454-2937

EMPLOYER: Wwestbridge 9th BUSINESS PHONE: \_\_\_\_\_

OTHER INFO. (specify): Can read and write

SIGNIFICANCE OF THIS PERSON'S INVOLVEMENT WITH CASE: \_\_\_\_\_

Suspect

**INTERVIEW NOTES**

CARTER HAS KNOWN LANCE, (ROBINSON) SINCE THE BEGINNING OF SUMMER. A COUPLE WEEKS AGO, SOMEONE WAS SHOOTING AT JEMEL BOWMAN. CARTER HANGS OUT WITH BOWMAN AND LAST NIGHT WAS APPROACHED BY SOME SUBJECTS WHO SHOT THEIR GUNS IN HIS GENERAL DIRECTION.

AFTER BEING SHOT AT, CARTER WENT TO LANCES HOUSE ON LAFAYETTE AND SPOKE TO HIM. THE PREVIOUS SAT., ROBINSON HAD SHOWN CARTER A GUN. CARTER KNEW WHERE ROBINSON HIDE THE GUN. (UNDER BOX SPRINGS).

ROBINSON LEFT THE ROOM WHERE THE GUN WAS AND CARTER TOOK THE GUN AND PUT IT IN HIS WAISTBAND. THE GUN WAS UNDER HIS T-SHIRT, ANOTHER SHIRT, A COAT, ANOTHER LIGHTER COAT. CARTER WALKED OUT OF THE HOUSE WITH THE GUN, WITHOUT THE PERMISSION OF ROBINSON.

CARTER WALKED DOWN THE STREET AND THE POLICE STOPPED HIM. CARTER STATED HE DID NOT HAVE THE GUN OUT BUT WAS ADJUSTING IT IN HIS WAISTBAND.

ROBINSON HAD BEEN FOLLOWING CARTER AT THE TIME AND ROBINSON APPROACHED THE PATROL CAR, CARTER WAS SEATED IN. CARTER TOLD ROBINSON HE WAS ARRESTED BECAUSE OF THE GUN. CARTER WAS UNDER THE IMPRESSION THAT ROBINSON THEN KNEW THAT CARTER HAD TAKEN HIS GUN.

CARTER STATED THAT THE FIRST TIME HE SAW THE GUN WAS THAT SAT. NIGHT. ROBINSON WOULD NOT TELL CARTER WHY HE HAD THE GUN, NOR WHERE HE GOT IT FROM.

100

SUBMITTED BY: \_\_\_\_\_

*D. G.*



9-28-94

To: Mr. Charles Robinson;

The polygraph test that we talked about has now been rescheduled for Friday Oct 7th at 1pm. I will pick you up at your home at 1230 pm. If you have any questions feel free to call me at the office. Thank you again for your cooperation.

A handwritten signature in black ink, appearing to read "J. Grable", with a long horizontal line extending to the right.

Det. James L. Grable  
TX: 456-3452

THIS WAS THE 2ND POLYGRAPH THAT WAS SCHEDULED FOR ROBINSON - HE AGAIN FAILED TO SHOW UP - THE 1ST ONE WAS SCHEDULED FOR 9-26-94

101

GRAND RAPIDS POLICE DEPARTMENT  
STATEMENT FORM

INCIDENT #: 94-059379  
DATE: 08-19-94  
TIME: 1525H  
DETECTIVE: MARKS #053

VICTIM:       
COMPLAINANT:       
WITNESS: X  
SUSPECT:     

NAME: C. Trinder Robinson D.O.B.: 8-15-69  
ADDRESS: 462 Umatilla S.E. CITY: Grand Rapids  
HOME PHONE #: (616) 243-4779 or 451-9533 WORK PHONE #:       
EMPLOYER: G.M. Kelly Temp HOURS: 3-12

It started like this I was at my Aunt Maxine house just kidding <sup>talkin'</sup> and stuff when my paper went off and I told my aunt I was going to use the phone as I went to leave. K.C. <sup>(Kenny Garton)</sup> was walking down Lafayette and I walked with him we talked along the way so I stopped at the pay phone ~~and~~ <sup>and</sup> to ~~stop~~ <sup>talk</sup> on the phone. I seen the police ride down the street and didn't think nothing of it. So Kenny decide he would leave so I ~~and~~ <sup>said</sup> peruse and I ~~could~~ <sup>could</sup> continue and talk and Kenny was gone down Lafayette street towards Delaware. As I was about to get off the phone another police car came down travelling east turn on Lafayette so I walked across the street not thinking so as I came to my house I decided not to go in instead I decided to go visit a friend so I kept walking down Lafayette as I grew near Lafayette and Delaware I seen the police at the corner of Lafayette and Delaware so I kept walking toward them and looking to see what they had and I seen it was K.C. <sup>Kenny</sup> so I walked up to the police car and asked hi what was up and asked him would he like me to get his room card and he said no. Then the police officers asked me do I know him and I said hey a little someth. Then the officer told me to move away from the car so I did 102



and ~~went~~ <sup>went</sup> to my friend's house on Delaware  
 street inside the screen porch when the police  
 car pulled up and the <sup>two</sup> officers got out of the car  
 and asked me can they talk ~~to~~ <sup>to</sup> me so I  
 said yes. So I was off the porch and the officer  
 asked me do I know kit, said I said yes next  
 thing I know the officer grabbed me by the back  
 of my pants and pushed me towards the car  
 and said I have the gun I said I don't - what are  
 you talking gun it it look like a god, a gun  
 he said something but I don't remember

So the officers put me in a jail pack and  
 asked me what name. But my house is 3 bench  
 warranty I gave the officers with a lot. ~~was~~  
 do he asked the people who house I was at  
 and they said house and the officer asked how old  
 and they said they don't know so the officer asked  
 were do I live and I told them 833 1/2  
 so <sup>we</sup> went around there and one of the officers  
 went up to my house and asked the what <sup>was</sup>  
 my name and the told him wrong name ~~to~~  
 so we got in my ~~to~~ drive way for a good long  
 and been playing the guessing game what's my name  
 so the officers got tired playing and said were  
 taking you to jail or as we were I decided  
 to ~~the~~ tell them my really name. And after  
 running a check it was like I said 3 bench for  
 and that's that.

The End to a <sup>Crazy</sup> Night  
 Charles J. Robinson

TONIA MAXIMUM CORRECTIONAL FACILITY  
1576 BLUEWATER HIGHWAY  
TONIA, MICHIGAN 48846

\*\*\*MY COMPLAINT AGAINST THE MICHIGAN STATE POLICE WHO DISCOVERED THE MURDER WEAPON  
BEING IN INVOLVED IN ANOTHER SHOOTING IF REVEALED WOULD HAD DISCOVERED CARL POWELL/TRENT  
CHAMBLISS & THEIR POSSESSION OF HANDGUN(S) (4 pgs.)\*\*\*

DATE: August 17, 2001

MICHIGAN DEPARTMENT OF STATE POLICE

C/O Colonel Michael D. Robinson, Director  
714 South Harrison Road  
East Lansing, Michigan 48823

RE: Filing a complaint against Mr. James J. Bullock and Mr. Stuart M. Burritt request-  
ing that Internal Affairs investigate this matter.

Dear Director Robinson:

I am writing you in regards to a matter I feel that need to be investigated by  
Internal Affairs of the Michigan State Police involving two of your Forensic Science  
Division employees, Mr. James J. Bullock and Mr. Stuart M. Burritt.

The matter involves the officers failing to disclose very important information  
to the jury in regards to a firearm (.38 Super Auto. Handgun) being involved in a sh-  
ooting incident independently of the one that I have been convicted of.

On June 24, 1994, A drug house on Neland Avenue in Grand Rapids, Michigan was rob-  
bed for money and drugs. During the robbery, five people were shot (two people were  
killed and three were wounded). There were casings and bullets found at the scene.

The casings and bullets were later discovered to have been fired from a .32 auto.  
caliber handgun and a .38 super auto. caliber handgun. A .38 super auto. caliber hand-  
gun was later found and tested. After the testing of the handgun, Mr. Burritt and Mr.  
Bullock discovered that the .38 super auto. handgun was not only involved in the Neland  
Avenue robbery/murder incident but it was also involved in the Fair Street shooting  
incident on June 6, 1994.

The reason why this information was so important is, there were some individuals  
who were involved in the Fair Street shooting that stated they had possession of the  
handguns and in fact, the same day the Neland Avenue incident had occurred. See:  
Interview Form of Mr. Carl Powell.

Even though the Detectives of the Grand Rapids Police Department and the prosecutor  
who was trying the case concealed this information, Mr. Burritt and Mr. Bullock had an  
independent affirmative duty to disclose this information to the jury. In fact, during  
my trial, the prosecutor had asked Mr. Burritt some questions in regards to the weapon  
.38 super auto. handgun being tested.

The Prosecutor stated: O. The items you've described in detail, the weapon, have  
they been altered or changed in any way?

104

Mr. Burritt stated: A. No, they have not.

Q. Is that basically the extent of your analysis of the items submitted under that case number and that case?

A. No, Sir.

Q. What additionally did you do?

A. In addition to that, the six fired cartridge cases were compared to the test firings from the firearms here.

Q. Okay, what did that reveal?

A. That revealed that the six fired cartridge cases, that being the .38 super auto, were identified as also having been fired in this firearm.

Q. Anything else that you did?

A. No, Sir.

(SEE TRANSCRIPT PAGE 560)

But in fact, Mr. Burritt did. He also tested some casings that were found in the Fair Street shooting incident to the firearms and discovered that the casings were fired from the same weapon.

Then, during the jury trial, the prosecutor had questioned Mr. Bullock about testing the bullets and casings to a particular handgun.

Q. Did you examine these items in relationship to any particular firearm?

Mr. Bullock stated: A. I personally examined a .32 automatic handgun, a Colt and did a comparison between that Colt handgun with the .32 automatic bullets that I examined, and I could not link that handgun up with these bullets, the .32 caliber bullets.

Q. Do you have what's called an Open Shooting File?

A. Yes, I do.

\*\*\*

Q. Did you do any examination or try to link the .38 caliber

super autos to any particular weapon?

A. I personally did not. I placed three items in the open shooting file, and then Sergeant Durrith later did a comparison when a gun was obtained and submitted, and he did a comparison of those items from the opening shooting file. (SEE TRANSCRIPT PAGES 47-48)

Now, Mr. Bullock testified that he did test a .38 auto Colt handgun and it did not match the bullets from the Nelson Avenue incident. They could of easily testified to the fact that the .38 super auto handgun was involved in another shooting especially, after they had brought up to the jury about the "Opening Shooting File", that the forensic laboratory has at the department.

Also, I had discovered a "NOTE" made out by a detective of the Grand Rapids Police Department which stated:

"Bullock- State Police- not clearance from homicide.  
Davis .32 S&W - .38 super Colt - clear" (SEE NOTE)

So, there were two other handguns tested and was later discovered not to have been the handguns involved in the Nelson Avenue incident, but this was not brought to the attention of the jury and this should have.

Mr. Bullock and Mr. Durrith are required by law to "TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH" (SEE PEOPLE V MCGILLEN #1, 392 N.W. 231, 254 (1974)) and not to tell half-truths or withhold information especially, to help serve the prosecution.

I would like to know why this information was withheld and not disclosed by the State Police employees as required by law.

I have reviewed the trial transcript of Mr. Bullock's and Mr. Durrith's testimony (PAGES 538 thru 561), the Note that stated a Davis .32 auto and .38 super Colt handguns at being firearms from homicide, investigative interview form of Mr. Carl Powell (3 PAGES), note from Officer Garrison dated 6-6-94 about casings found in street of Fair Street and laboratory reports of the .38 super auto handgun-Colt, casings found at the Nelson Avenue incident (LAB. NO. 32193-94) and the Fair Street incident (LAB. NO. 32190-94) (PAGES 1-3).

I would like this matter investigated.

Thank you for taking this complaint into consideration.

Sincerely,  
  
KENNETH LEVIN, JR.  
(192744)



JOHN ENGLER, GOVERNOR  
**DEPARTMENT OF STATE POLICE**  
COL. MICHAEL D. ROBINSON, DIRECTOR

**FORENSIC SCIENCE DIVISION**  
7320 N. CANAL ROAD  
LANSING, MICHIGAN 48913  
PHONE: (313) 323-6100

September 27, 2001

Mr. Kenneth Colvin, Jr. #192744  
Ionia Maximum Correctional Facility  
1576 Bluewater Highway  
Ionia, MI 48846

Re: THE PEOPLE OF THE STATE OF MICHIGAN -V- KENNETH COLVIN, JR.

Dear Mr. Colvin:  
Your letter to Col. Michael Robinson has been forwarded to me for investigation and response.

I find your allegations to be without foundation or merit. **All laboratory reports authored by Lieutenants Burritt and Bullock clearly cross-referenced the secondary shooting case. The prosecutor was aware of the information contained in the relevant laboratory reports. No questions were asked of either officer during trial regarding a secondary or related case. All questions asked were answered truthfully and without bias. Any attempt by the officers to interject information relating to another case into the trial testimony, independent of questions by your attorney, would have been grounds for a mistrial.**

If you believe the prosecutor withheld information relevant to your case, you should consult an attorney for advice as to your course of action.

Yours truly,

JOHN A. JUHALA, Ph.D.  
Director  
Forensic Science Division

**\*\*\*NOTE: FOR MR. BULLOCK/MR. BURRITT NOT TO REVEAL THE FACT THAT THEY DISCOVERED THE MURDER WEAPON BEING INVOLVED IN ANOTHER SHOOTING IS CLEARLY EVIDENT THAT THE PROSECUTION INSTRUCTED THEM NOT TO INTERJECT THE INFORMATION (WHICH WAS "ILLEGAL").\*\*\***



BULLOCC - STATE POLICE - NOT FIREARM FRONTIER -

DAVIS .32 SEMI-AUTOMATIC

.38 S&W Colt - LLAMA

MICHIGAN DEPARTMENT OF  
STATE POLICE  
FORENSIC SCIENCE DIVISION  
GRAND RAPIDS LABORATORY  
720 FULLER AVE. NE  
GRAND RAPIDS, MICHIGAN 49503  
(616)242-6650  
FAX (616)242-6682

Open Shooting 12/29/94

LABORATORY REPORT



Laboratory No.: 32188-94  
Received By : Locker Number 509  
Delivered By : JIM GRABLE  
Agency : Grand Rapids Police Dept.  
Agency No. : 94-59379

Record No. : 9402897  
Date Received : 06-27-94  
Time Received : 09:24 AM  
File Class : 0900-1  
Date Completed: 06-29-94

Nature of Offense: **\*\*\*BULLET CASING RESULTS FROM THE CASE I HAVE BEEN CONVICTED OF (9 ISS.)\*\***  
**Murder/Nonnegligent Manslaughter**  
Victim:  
KENNY SMITH  
CASSANDRA TILLMAN

ABOVE ITEMS RECEIVED BY:  
SIGNED: [Signature]  
AGENCY: GRPD  
DATE: 1-3-95 [Signature]

Evidence Received: (This case was removed from laboratory evidence locker no. 509 by S.M. Burritt on 6-27-94 at 11:00 a.m.)

- 1 - Manila evidence envelope (sealed) enclosing:
  - 1 - Manila coin envelope (sealed) enclosing: (H)
    - 1 - 32 automatic caliber Magtech Recreational Product fired cartridge case. (item #F-1)
  - 1 - Manila coin envelope (sealed) enclosing: (I)
    - 1 - 32 automatic caliber Magtech Recreational Product fired cartridge case. (item #F-2)
  - 1 - Manila coin envelope (sealed) enclosing: (J)
    - 1 - 32 automatic caliber Magtech Recreational Product fired cartridge case. (item #F-3)
  - 1 - Manila coin envelope (sealed) enclosing: (K)
    - 1 - 32 automatic caliber Winchester fired cartridge case. (item #F-4)
  - 1 - Manila coin envelope (sealed) enclosing: (L)
    - 1 - 32 automatic caliber Magtech Recreational Product fired cartridge case. (item #F-5)
  - 1 - Manila coin envelope (sealed) enclosing: (M)
    - 1 - 32 automatic caliber Magtech Recreational Product fired cartridge case. (item #F-6)
  - 1 - Manila evidence envelope (sealed) enclosing:
    - 1 - Manila coin envelope (sealed) enclosing: (A)
      - 1 - 38 Super automatic caliber Winchester fired cartridge case. (item #F-7)
    - 1 - Manila coin envelope (sealed) enclosing: (B)
      - 1 - 38 Super automatic caliber Winchester fired cartridge case. (item #F-8)

Public Act 35 of 1994 requires: "The investigating officer of each criminal case being adjudicated shall advise the prosecuting attorney if a forensic test has been conducted in the case."

Evidence Received Continued:

- 1 - Manila coin envelope (sealed) enclosing: (C)
  - 1 - 38 Super automatic caliber Winchester fired cartridge case.  
(item #F-9)
- 1 - Manila coin envelope (sealed) enclosing: (E)
  - 1 - 38 Super automatic caliber Winchester fired cartridge case.  
(item #F-10)
- 1 - Manila coin envelope (sealed) enclosing: (F)
  - 1 - 38 Super automatic caliber Winchester fired cartridge case.  
(item #F-11)
- 1 - Manila coin envelope (sealed) enclosing: (G)
  - 1 - 38 Super automatic caliber Winchester fired cartridge case.  
(item #F-12)


Results:

Items #F-1 through #F-6, the six 32 automatic caliber fired cartridge cases, could have been fired in the same firearm.

Items #F-7 through #F-12, the six 38 Super automatic caliber fired cartridge cases, are identified as having been fired in the same firearm.

Disposition of Evidence:

The above listed evidence was placed into the Open Shooting File and can be returned to the submitting agency on 12/29/94.



S. Michael Burritt  
Specialist (D/Sgt)  
Firearms, Tool Marks and Explosives Subunit

SMB/cnr

\*\*\*MR. BURRITT/MR. BULLOCK FAILED TO CITE THE FACT THAT THEY DISCOVERED THAT THE SPENT BULLET CASING IN MR. CARL POWELL'S "FAIR STREET" SHOOTING MATCHED THE SHOOTING THAT MY BROTHER & I ARE CONVICTED OF (SEE: LABORATORY REPORT NO.: 32190-94 & HOW IN THOSE REPORTS THIS REPORT RESULTS ARE CITED)\*\*\*



MICHIGAN DEPARTMENT OF  
STATE POLICE

FORENSIC SCIENCE DIVISION

GRAND RAPIDS LABORATORY  
720 FULLER AVE. W  
GRAND RAPIDS, MICHIGAN 49503  
(616)242-6650  
FAX (616)242-6682

F22 F24 0-47  
ABOVE ITEMS RECEIVED BY:  
SIGNED: [Signature]  
AGENCY: GRPD  
DATE: 1-3-95

LABORATORY REPORT

\*\*\*LAB RESULTS OF CASING IN MY CASE\*\*\*

Laboratory No.: 32188-94 Supp.  
Received By : Locker Number 525  
Delivered By : JAMES GRABLE  
Agency : Grand Rapids Police Dept.  
Agency No. : 94-59379

Record No. : 9403121  
Date Received : 07-08-94  
Time Received : 2:54 PM  
File Class : 0900-1  
Date Completed: 07-14-94

Nature of Offense:

Murder/Nonnegligent Manslaughter

Victim:

KENNETH SMITH  
CASSANDRA TILLMAN

OPEN SHOOTING FILE - 1-21-95  
ABOVE ITEMS RECEIVED BY:  
SIGNED: [Signature]  
AGENCY: GRPD  
DATE: 1-3-95

Evidence Received: (Removed from locker #525 on 7/11/94 at 7:30 a.m. by James Bullock)

- 1 - Evidence envelope (sealed) containing:
  - 3 - Manila envelopes (sealed) each containing:
    - 1 - Fired metal jacketed lead bullets (Items #F13-F15).
- 1 - Evidence envelope (sealed) containing:
  - 1 - Manila envelope (tape sealed) containing:
    - 1 - Fired metal jacketed lead bullet (Item #F16).
- 1 - Manila envelope (tape sealed) containing:
  - 1 - Fired metal jacketed lead bullet (Item #F17).
- 1 - Manila envelope (tape sealed) containing:
  - 1 - Metal jacket fragment from a fired bullet (Item #F18).
- 1 - Manila envelope (tape sealed) containing:
  - 1 - Metal jacket fragment from fired bullet (Item #F19).
- 1 - Manila envelope (tape sealed) containing:
  - 1 - Portion of lead (Item #F20).
- 1 - Evidence envelope (sealed) containing:
  - 3 - Glass specimen slides (Items #F21A-F21C).
- 1 - .32 auto caliber Colt, semiautomatic pistol, serial number 226112 (Item #F22). (NOTE: right side handgrip absent)
- 1 - Evidence envelope (sealed) containing:
  - 1 - Box magazine (Item #F23) containing:
    - 8 - .32 auto caliber "W-W" cartridges (Item #F23A-F23H).
  - 1 - .32 auto caliber "W-W" cartridge (Item #F24).

Results:

The four (4) fired bullets Items #F13-F16 are identified as having been fired from the same firearm. Items #F13-F16 are consistent with being .38 super automatic caliber fired metal jacketed bullets having the rifling

Results: (Con't)

specifications of six (6) lands and grooves with a left hand twist. These specifications are characteristic of Colt handguns, however no suspected firearm should be overlooked.

Items #F17 & #F19 are identified as having been fired from the same firearm. Items #F18 and #F19 appear to be fragments from the same bullet. These items are consistent with being .32 auto caliber fired bullets exhibiting the rifling specifications of six (6) lands and grooves with a left hand twist. These specifications are characteristic of DAVIS handguns, however no suspected firarm should be overlooked.

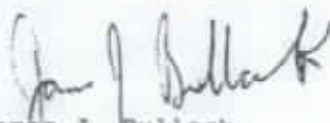
Test shots taken from the .32 caliber Colt firearm Item #F22 could not be associated with the previously submitted .32 auto caliber fired cartridge cases (Items #F1-F6) or the above bullets.

Examination of the glass specimen slides (Items #F21A-F21C) revealed a particle of smokeless gunpowder on #F21C.

Disposition of Evidence:

Items #F13-F21 were placed in the OPEN SHOOTING FILE this date.

Items #F-22-F24 were placed on shelf I-2, vault #6, for the submitting agency to pick up.



James J. Bullock  
Laboratory Specialist (D/Lt)  
Firearms, Tool Marks, and Explosives Subunit

JJB/jms

\*\*\*MR. BULLOCK/MR. HERRITT FAILED TO CITE THE FACT THAT THEY DISCOVERED THAT THE SPENT BULLET CASINGS IN MR. CARL POWELL'S "FAIR STREET" SHOOTING MATCHED THE SHOOTING THAT MY BROTHER & I ARE CONVICTED OF (SEE: LABORATORY REPORT NO.: 32190-94 & HOW IN THESE REPORTS THIS REPORT RESULTS ARE CITED)\*\*\*

112

MICHIGAN DEPARTMENT OF  
STATE POLICE  
FORENSIC SCIENCE DIVISION

GRAND RAPIDS LABORATORY  
720 PULLER AVE. NE  
GRAND RAPIDS, MICHIGAN 49503  
(616)242-6650  
FAX (616)242-6602

LABORATORY REPORT

\*\*\*LAB RESULTS OF MURDER WEAPON FOR MY CASE\*\*\*



Laboratory No.: 32188-94 Supp.  
Received By : Locker Number 509  
Delivered By : JAMES GRABLE  
Agency : Grand Rapids Police Dept.  
Agency No. : 94-59379

Record No. : 9403602  
Date Received : 08-04-94  
Time Received : 3:08 PM  
File Class : 0900-1  
Date Completed: 08-08-94

Nature of Offense:

Murder/Nonnegligent Manslaughter

Evidence Received: (Removed from locker #509 on 8-05-94 at 8:00 a.m. by  
S. M. Burritt)

- 1 - Manila evidence envelope, (sealed), enclosing:  
1 - 38 Super automatic caliber Colt, Government model, semiautomatic  
pistol, serial number A21888.  
1 - Empty cartridge magazine.  
2 - 38 Super automatic caliber Winchester cartridges. (FMJ)  
4 - 380 automatic caliber Remington cartridges. (FMJ)

Results:

Items #F-7 through #F-12, the six cartridges cases, are identified as having  
been fired in the recovered 38 Super automatic caliber Colt Pistol, serial  
number A21888.

Items #F-13 through #F-16, the four fired bullets, are identified as having  
been fired in the recovered 38 Super automatic caliber Colt pistol, serial  
number A21888.

Disposition of Evidence:

The evidence is being held at the Grand Rapids Laboratory on shelf I-4,  
vault #6, for the submitting agency to pick up.

\*\*\*NOTE: REPORT AFTER RECEIVING MURDER WEAPON FROM MR. KENNEY CARTER DISCOVERED RECOVERED GUN  
WAS USED IN THE CASE THAT I AM CONVICTED OF BUT  
FAILED TO CITE THE DISCOVERY IN MR. POWELL'S SHOOTING.\*\*\*

*S. Michael Burritt*

S. Michael Burritt  
Specialist (D/Sgt)  
Firearms, Tool Marks, and Explosives Subunit

SIGNED *[Signature]*  
AGENCY GRPO  
DATE 9-1-94

SMB/jms

113

STATE POLICE  
FORENSIC SCIENCE DIVISION

GRAND RAPIDS LABORATORY  
720 FULLER AVE. NE  
GRAND RAPIDS, MICHIGAN 49503  
(616) 242-6650  
FAX (616) 242-6682

LABORATORY REPORT

\*\*\*MR. CARL POWELL/FAIR STREET SHOOTING RESULTS\*\*\*



Laboratory No.: 32190-94  
Received By : Locker Number 509  
Delivered By : JIM GRABLE  
Agency : Grand Rapids Police Dept.  
Agency No. : 94-52338

Record No. : 9402900  
Date Received : 06-27-94  
Time Received : 09:24 AM  
File Class : 1300-1  
Date Completed: 06-29-94

Nature of Offense:

ABOVE ITEMS RECEIVED BY

SIGNED [Signature]

AGENCY GRPD

DATE 9-1-94

Non-Aggravated Assaults

Evidence Received: (This case was removed from laboratory evidence locker no. 509 by S.M. Burritt on 6-27-94 at 11:00 a.m.)

- 1 - Manila evidence envelope (sealed) enclosing:
  - 1 - Manila envelope (sealed) enclosing:
    - 1 - 38 Super automatic caliber Winchester fired cartridge case. (item #Q-1)
    - 1 - 38 Super automatic caliber Winchester fired cartridge case. (item #Q-2)
    - 1 - 38 Super automatic caliber Winchester fired cartridge case. (item #Q-3)
  - 1 - Manila envelope (sealed) enclosing:
    - 1 - 32 automatic caliber Winchester fired cartridge case. (item #Q-5)
    - 1 - 32 automatic caliber Winchester fired cartridge case. (item #Q-6)
    - 1 - 32 automatic caliber Winchester fired cartridge case. (item #Q-7)
    - 1 - 32 automatic caliber Winchester fired cartridge case. (item #Q-8)
    - 1 - 32 automatic caliber Winchester fired cartridge case. (item #Q-9)
    - 1 - 32 automatic caliber Winchester fired cartridge case. (item #Q-10)

Results:

Items #Q-1 through #Q-3, the three 38 Super automatic caliber fired cartridge cases, are identified as having been fired in the same firearm.

\* Items #Q-1 through #Q-3 are identified as having been fired in the same firearm as items #F-7 through #F-12 submitted on MSP laboratory case number 32188-94. \*

\*\*\*NOTE: MR. BURRITT/MR. BULLOCK EXPLICITLY CITES THE DISCOVERY OF THE CASINGS BEING FIRED FROM THE SAME HANDGUN THAT WAS USED IN THE CASE THAT I HAVE BEEN CONVICTED OF, BUT FAILED TO CITE THESE RESULTS IN LABORATORY REPORT 32188-94.\*\*\*

114

Public Act 35 of 1994 requires: "The investigating officer of each criminal case being adjudicated shall advise the prosecuting attorney if a forensic test has been conducted in the case."

Results Continued:

Items #Q-5 through #Q-10, the six 32 automatic caliber fired cartridge cases, could have been fired in the same firearm.

Items #Q-5 through #Q-10 could have been fired in the same firearm as items #F-1 through #F-6 submitted on MSP laboratory case number 32188-94.

Disposition of Evidence:

The evidence is being held at the Grand Rapids Laboratory on shelf I-4, vault #6, for the submitting agency to pick up.



S. Michael Burritt  
Specialist (D/Sgt)  
Firearms, Tool Marks and Explosives Subunit

SMB/cmr

115

MICHIGAN DEPARTMENT OF  
STATE POLICE  
FORENSIC SCIENCE DIVISION

GRAND RAPIDS LABORATORY  
720 FULLER AVE. NE  
GRAND RAPIDS, MICHIGAN 49503  
(616)242-6650  
FAX (616)242-6682

LABORATORY REPORT

\*\*\*MR. CARL POWELL/PAIR STREET MURDER WEAPON RESULTS\*\*\*



Laboratory No.: 32190-94 Supp.  
Received By : S. Michael Burritt  
Delivered By : James Grable  
Agency : Grand Rapids Police Dept.  
Agency No. : 94-52338

Record No. : 9403649  
Date Received : 08-08-94  
Time Received : 12:39 PM  
File Class : 1300-1  
Date Completed: 08-08-94

Nature of Offense:

Non-Aggravated Assaults

Evidence Received: (This case was removed from laboratory evidence vault #6,  
drawer I-4, on 8-8-94)

- 1 - 38 Super automatic caliber Winchester fired cartridge case (item #Q-1).
- 1 - 38 Super automatic caliber Winchester fired cartridge case (item #Q-2).
- 1 - 38 Super automatic caliber Winchester fired cartridge case (item #Q-3).

Results:

Items #Q-1 through #Q-3, the three 38 Super automatic caliber cartridge cases, are identified as having been fired in the 38 Super automatic caliber Colt pistol, serial number A21888, submitted on MSP laboratory number 32188-94.

Disposition of Evidence:

The evidence is being held at the Grand Rapids Laboratory on drawer I-4, vault #6, for the submitting agency to pick up.

S. Michael Burritt  
Specialist (D/Sgt)  
Firearms, Tool Marks and Explosives Subunit

SMB/cmr

\*\*\*NOTE: MR. BULLOCK/MR. BURRITT EXPLICITLY CITES THE DISCOVERY OF THE MURDER WEAPON & CASINGS BEING FIRED FROM THE SAME HANDGUN THAT WAS USED IN THE CASE I HAVE BEEN CONVICTED OF, BUT FAILED TO CITE THIS RESULT IN LABORATORY REPORT 32188-94, DESPITE THE FACT BOTH REPORTS WERE DONE ON THE SAME DATE: 08/08/94 AT 12:39 PM FOR THIS REPORT & 3:08 PM ON 32188-94 REPORT \*\*\*

ABOVE ITEMS RECEIVED BY:  
SIGNED [Signature]  
AGENCY GRPD  
DATE 9-1-94

116

MICHIGAN DEPARTMENT OF  
STATE POLICE  
FORENSIC SCIENCE DIVISION

GRAND RAPIDS LABORATORY  
720 FULLER AVE. NE  
GRAND RAPIDS, MICHIGAN 49503  
(616) 242-6430  
FAX (616) 242-6682

LABORATORY REPORT



Laboratory No.: 32187-94  
Received By : Locker Number 509  
Delivered By : JIM GRABLE  
Agency : Grand Rapids Police Dept.  
Agency No. : 94-56193

Record No. : 9402896  
Date Received : 06-27-94  
Time Received : 09:20 AM  
File Class : 1300-2  
Date Completed: 06-30-94

Nature of Offense:

Aggravated Assault

ABOVE ITEMS RECEIVED BY

SIGNED

AGENCY GRPD

DATE 9-1-94

Evidence Received: (This case was removed from laboratory evidence locker no. 509 by S.M. Burritt on 6-27-94 at 11:00 a.m.)

- 1 - Brown paper bag (sealed) enclosing:
  - 1 - Plastic specimen container (sealed) containing:
    - 1 - Metallic fragment. (item #F-1)
  - 1 - Plastic specimen container (sealed) containing:
    - 1 - Metallic fragment. (item #F-2)
- 1 - Manila evidence envelope (sealed) enclosing:
  - 1 - Manila coin envelope (sealed) enclosing:
    - 1 - Portion of a fired metal jacket. (item #F-3)

Results:

Item #F-3 is characteristic of the remnants of a fired metal jacketed bullet. Class rifling specifications suggest the following possible calibers; 357 magnum, 38 special, 380 automatic and 9mm. Due to mutilation, no further classification is possible. Therefore, no suspect firearm in the above listed calibers should be overlooked.

Items #F-1 and #F-2, the two metallic fragments, they lack both individual and class characteristics necessary for classification purposes. Both items could not be associated with item #F-3.

Disposition of Evidence:

The evidence is being held at the Grand Rapids Laboratory on shelf I-4, vault #6, for the submitting agency to pick up.

S. Michael Burritt  
Specialist (D/Sgt)  
Firearms, Tool Marks and Explosives Subunit

SMB/cmr

117

\*\*\*DETECTIVE GRABLE'S FALSE TESTIMONY CLAIMING HE FAILED TO TRACE TO MURDER WEAPON  
BACK, WHEN HE IN FACT TRACED IT TO MR. CARL POWELL/TRENT CHAMBLISS WHO HAD  
THE MURDER WEAPON THE DAY THE CRIME  
WAS COMMITTED. (pgs. 588-89)\*\*\*

1 Q Do you agree with that?

2 A No.

3 MR. BRAMBLE: I have nothing further.

4 THE COURT: Do you want to pursue the  
5 last answer at all?

6 MR. LIQUIGLI: No, that's fine.

7 THE COURT: Okay, you can step down,  
8 Officer Crum.

9 MR. BRAMBLE: Your Honor, at this time  
10 the State would call Detective James Grable.

11 THE COURT: Okay.

12 **OFFICER JAMES GRABLE,**

13 re-called by the People at 11:30 a.m., previously  
14 sworn, testified:

15 THE COURT: You can be seated, Officer.  
16 As you know, you were sworn earlier in this trial  
17 so, you're still under oath. Do you understand  
18 that?

19 THE WITNESS: Yes, sir.

20 THE COURT: You can be seated. Remember  
21 you're still under oath.

22 **REDIRECT EXAMINATION**

23 **BY MR. BRAMBLE:**

24 Q Detective, you've already described that you have  
25 been assigned to this case and you're a member of



1                   During that time, as a patrol officer I  
2 was also a field training officer, training new  
3 recruits as they came in, and in 1991 I returned to  
4 the detective unit.

5 Q   During this time period did you come in contact with  
6 a lot of weapons?

7 A   Yes, I have.

8 Q   You've heard a weapon described as a .38 caliber  
9 super auto lemon squeeze?

10 A   Yes, I have.

11 Q   In all your time you've spent, be it in the Major  
12 Case Team, as a road officer, airport, whatever, how  
13 many weapons have you come into contact like this  
14 weapon?

15 A   This is the second time I've come in contact with  
16 a .38 super auto.

17 Q   In how many years?

18 A   Including my military time before that, since I have  
19 been -- probably in my life, this is the second one  
20 that I've come into contact with.

21 Q   In your opinion, is it uncommon for people who  
22 commit a crime involving a weapon to pass that  
23 weapon on to distance themselves from it?

24 A   Weapons are traded on the street on a daily basis.

25 This is the second time in a homicide that I've come

1 up with a weapon from someone else that was traded  
2 off within days of the homicide.

3 Q You heard Mr. Liquigli's questions to  
4 Detective Crum. Were there efforts made to trace  
5 proposed Exhibit 11?

6 A Yes, there were.

7 Q Were you able to trace it all the way back?

8 A The person who had that weapon, I don't know if I'm,  
9 I think it would be hearsay for me to say, other  
10 than I did try and I was not able to get past the  
11 person he said he got it from.

12 Q Needless to say, you need some cooperation in order  
13 to do that?

14 A That's correct, yes.

15 Q Did you have contact with the defendant, Kenneth  
16 Colvin?

17 A Yes, I did.

18 Q Where did this contact occur?

19 A This occurred initially -- he was arrested in  
20 Detroit, and I went to Detroit to pick him up there  
21 with Officer Crum.

22 Q Did you bring him back here?

23 A Yes, we did.

24 Q Did you make an attempt to sit down and talk to the  
25 defendant, Kenneth Colvin?

\*\*\*MR. BURRITT'S TESTIMONY FALSELY CLAIMING HE NEVER DID ANYTHING ELSE WITH THE MURDER WEAPON WHEN HE IN FACT DISCOVERED THAT IT WAS INVOLVED IN MR. POWELL/FAIR STREET SHOOTING.\*\*\*

**STUART M. BURRITT, (pg. 560)**

1  
2 called by the People at 10:13 a.m. and sworn by the  
3 Court, testified:

4 **DIRECT EXAMINATION**

5 **BY MR. BRAMBLE:**

6 Q You are employed, sir?

7 A Yes, sir, I am.

8 Q Where, please?

9 A I'm employed by the Michigan Department of State  
10 Police, at the forensic crime laboratory located in  
11 Grand Rapids.

12 Q And what are your duties and responsibilities, what  
13 do you do there, please?

14 A My primary function at the laboratory is as a  
15 firearms, tool markings, and explosives examiner.

16 Q Can you describe what that involves?

17 A With respect to firearms identification work, my  
18 primary responsibilities are to examine fired  
19 bullets, fired cartridge cases, fired shotgun  
20 shells, and the components that come from shot  
21 shells for the purpose of classification and  
22 subsequent identification with a specific firearm.

23 In addition to that, I'm also required  
24 to raise serial numbers on firearms that have  
25 obliterated serial numbers. I'm also involved in

1 Q Is he your supervisor?

2 A Yes, he is.

3 Q The items you've described in detail, the weapon,  
4 have they been altered or changed in any way?

5 A No, they have not.

6 Q Is that basically the extent of your analysis of the  
7 items submitted under that case number and that  
8 case?

9 A No, sir.

10 Q What additionally did you do?

11 A In addition to that, the six fired cartridge cases  
12 were compared to the test firings from the firearm  
13 here.

14 Q Okay, what did that reveal?

15 A That revealed that the six fired cartridge cases,  
16 that being the .38 super auto, were identified as  
17 also having been fired in this firearm.

18 Q Anything else that you did?

19 A No, sir.

20 MR. BRAMBLE: I have nothing further.

21 THE COURT: Mr. Liquigli?

22 MR. LIQUIGLI: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MR. LIQUIGLI:

25 Q Sergeant, using all of your experience -- you said

\*\*\*MR. BULLOCK'S TESTIMONY FAILING TO REVEAL THE FACT THAT THE MURDER WEAPON WAS  
DISCOVERED TO HAD BEEN USED IN MR. POWELL/FAIR STREET SHOOTING. (pgs. 547-64)\*\*\*

1 MR. BRAMBLE: Your Honor, at this time  
2 the State would call James Bullock.

3 **JAMES BULLOCK,**  
4 called by the People at 9:57 a.m. and sworn by the  
5 Court, testified:

6 **DIRECT EXAMINATION**

7 **BY MR. BRAMBLE:**

8 Q Mr. Bullock, are you employed?

9 A Yes, sir.

10 Q Where are you employed?

11 A I'm a detective lieutenant laboratory specialist  
12 with the Michigan State Police. I'm currently  
13 assigned to the Grand Rapids Regional Crime  
14 Laboratory.

15 Q How long have you been employed in that capacity?

16 A I have been with the Michigan State Police eighteen  
17 years.

18 Q In that eighteen years, what have you done with the  
19 Michigan State Police Crime Lab?

20 A Well, the last sixteen years I have been assigned to  
21 the firearms and explosives unit in the crime lab.  
22 So my primary responsibility is as a firearms  
23 examiner.

24 I'm currently the unit supervisor of the  
25 firearms unit at the Grand Rapids Crime Lab.

1 Q I'm not that familiar with weapons, but what would  
2 cause items like this to be left in an area where a  
3 gun's been fired?

4 A There's two basic types of handguns. There's a  
5 revolver and there's semiautomatic firearms. The  
6 caliber that we're dealing with here, the .32  
7 automatic caliber and a .38 super automatic caliber,  
8 are designed to be fired in semiautomatic handguns.

9 Semiautomatic handguns, if you have a  
10 magazine that self-loads upon pulling the trigger so  
11 a new cartridge comes into the chamber. To do that  
12 process, these fired cartridges are being ejected  
13 automatically from the firearm and thrown out, so  
14 they would be thrown out on the floor when you  
15 discharged a semiautomatic, unlike a revolver, where  
16 the cartridge case would stay in the cylinder until  
17 they're manually ejected.

18 Q Did you examine these items in relationship to any  
19 particular firearm?

20 A I personally examined a .32 automatic handgun, a  
21 Colt, and did a comparison between that Colt handgun  
22 with the .32 automatic bullets that I examined, and  
23 I could not link that handgun up with these bullets,  
24 the .32 caliber bullets.

25 Q Do you have what's called an open shooting file?

1 A Yes, I do.

2 Q What is that?

3 A An open shooting file is a section in our firearms  
4 unit that contains bullets that are collected by  
5 agencies from crime scenes that they don't have a  
6 suspect firearm. And we place -- we classify the  
7 bullets, give the investigator what kind of handgun  
8 could have fired those bullets, and we place them in  
9 our open shooting file.

10 In that manner, any time we get a gun  
11 from another agency that may be in West Michigan  
12 that just happens to stop a car and they obtain a  
13 gun, they could submit that gun to us, we can take a  
14 test shot from that handgun, and we would  
15 automatically compare it to the cases on open  
16 shootings, in our open shooting file that matches  
17 that caliber and those specifications.

18 Q Did you do any examination or try to link the .38  
19 caliber super autos to any particular weapon?

20 A I personally did not. I placed those items in the  
21 open shooting file, and then Sergeant Burritt later  
22 did a comparison when a gun was obtained and  
23 submitted, and he did a comparison on those items  
24 from the open shooting file.

25 Q Are those the ones you referred to as being his

three to five years we'll have a brand-new courthouse, which won't do you people much good right now, but we're trying to get something done for you. But I don't want to take bets that we'll get it done before the trial's over.

Mr. Bramble?

MR. BRAMBLE: Your Honor, at this time the State would call Detective Gary Crum.

**DETECTIVE GARY CRUM,**

called by the People at 10:32 a.m. and sworn by the Court, testified:

**DIRECT EXAMINATION**

BY MR. BRAMBLE:

Q You are employed, sir?  
A Yes, I am.  
Q Where are you employed?  
A City of Grand Rapids Police Department.  
Q How long have you been employed with the City of Grand Rapids as a police officer?  
A About six years.  
Q And how many years as a patrol officer?  
A About fourteen, fifteen years.  
Q You're currently assign to what position?  
A Detective unit, Major Case Team.  
Q What are your responsibilities, what do you do on

101

REBECCA L. RUSCO, CSR, RPR, CW - OFFICIAL COURT REPORTER.

A That's correct.  
Q You don't know the tracing of this gun, do you, who sold it to who?  
A No, I don't.  
Q So you don't know how the person that was found with this gun came into possession of it, do you?  
A No, I did not get involved in that portion of, as far as tracing the gun back.  
Q And it wasn't traced back, was it?  
A I don't have any firsthand knowledge on what was done as far as tracing it back.  
Q You are one of the two detectives in charge of this case, aren't you?  
A Yes, Detective Grable is the one that actually handled the weapon and did the background on that. As what he came up with, I'm not sure.  
Q How much time would you say you talked to Mr. Colvin, Kelley Colvin, prior to looking on the tape?  
A By looking at the transcript that was passed out, I could give you a pretty accurate -- I know it's, when we went in, the Miranda warnings were read to him at 3:14 p.m., which would be very close to the very beginning of any talk with him.  
Q That's 1708 hours?

101

REBECCA L. RUSCO, CSR, RPR, CW - OFFICIAL COURT REPORTER.

\*\*\*DETECTIVE CRUM TESTIFIED FALSELY CLAIMING THAT HE WASN'T AWARE IF MURDER WEAPON (HANDGUN) WAS TRACED BACK WHEN IN FACT, AS OF SEPTEMBER 1, 1994, HE WAS AWARE, AFTER STUDYING THE MICHIGAN STATE POLICE FORENSIC REPORTS (LABORATORY REPORT NUMBERS: 32190-94 (DATED: 06/27/1994, PAGES: 114-15) AND 32190-94 (DATED: 08/08/1994), THAT IT WAS REVEALED IN THESE REPORTS THAT THE MURDER WEAPON WAS INVOLVED IN THE NELAND STREET SHOOTING (THE CASE THAT I AM CONVICTED OF) AND THE FAIR STREET SHOOTING (THE POWELL/CHAMBLESS GROUP, PAGES 90-96).\*\*\*

**\*\*\*NOTICE\*\*\***

THE DOCUMENTS PRESENTED IN PAGES 90 THROUGH 125B IS IN FACT THE "SMOKING GUN" OF MY CASE IN PROVING THAT BOTH THE GRAND RAPIDS POLICE DEPARTMENT AND THE MICHIGAN STATE POLICE DEPARTMENT, ALONG WITH THE KENT COUNTY PROSECUTOR'S OFFICE HAD CONCEALED EXCULPATORY EVIDENCE THAT MURDER WEAPON (HANDGUN) THAT WAS USED IN BOTH THE NELAND AND FAIR STREET CASES, WERE IN FACT DISCOVERED DURING THEIR INVESTIGATION, THAT THE POWELL/CHAMBLESS GROUP (WHO WERE INVOLVED IN THE FAIR STREET SHOOTING, DATED 06/06/1994) HAD POSSESSION OF THE MURDER WEAPON THE DAY THE NELAND STREET SHOOTING WAS COMMITTED (JUNE 24, 1994). THE DISCOVERY IN THAT THE FACT THAT THE HANDGUN(S) WERE INVOLVED IN BOTH STREET SHOOTING WERE DELIBERATELY WITHHELD FROM MY CASE AND FROM THE STATE GOVERNMENT WITNESSES'S TESTIMONY. IN FACT, DURING THE REDIRECT EXAMINATION OF DETECTIVE GRABLE'S TRIAL TESTIMONY (PAGES 118-120), THE PROSECUTOR HAD DETECTIVE GRABLE COMMIT DELIBERATE PERJURY BY HAVING HIM TESTIFY FALSELY THAT HE WAS UNABLE TO TRACE THE MURDER WEAPON BACK, WHEN IN FACT HE HAD, TO THE POWELL/CHAMBLESS GROUP, HAD WE HAD THIS MATERIAL INFORMATION DURING TRIAL, WE WOULD BE ABLE TO PROVE TO THE JURY THAT IT WAS IMPOSSIBLE FOR US TO HAD COMMITTED THE NELAND STREET SHOOTING, WHEN THE POWELL/CHAMBLESS GROUP HAD POSSESSION OF THE HANDGUN(S) AT THE TIME THE NELAND CASE WAS BEING COMMITTED. ADDITIONALLY, THE PROSECUTOR AND THE DETECTIVES WERE AWARE THAT WE DID NOT KNOW THE POWELL/CHAMBLESS GROUP, THIS PROVING WE DID NOT HAVE ACCESS TO THE HANDGUNS -BECAUSE IF THE PROSECUTION HAD EVIDENCE THAT WE HAD KNOWN THE POWELL/CHAMBLESS GROUP, HE WOULD HAD THE GROUP TESTIFYING AT OUR JURY TRIALS STATING SUCH, INSTEAD OF CONCEALING THE EXCULPATORY EVIDENCE, AND HAVING THE DETECTIVES COMMIT PERJURY DURING THE JURY TRIALS. ON AUGUST 17, 2001, I HAD FILED A COMPLAINT WITH THE MICHIGAN STATE POLICE REGARDING THIS MATTER, AND ON SEPTEMBER 27, 2001, I HAD RECEIVED A RESPONSE FROM DR. JIHALA STATING THAT THE FAIR STREET SHOOTING WAS REVEALED, BUT WAS NOT DOCUMENTED IN THE NELAND SHOOTING REPORT, AS THE NELAND RESULTS WERE REVEALED IN THE FAIR STREET SHOOTING REPORTS.

125P



# INNOCENCE DENIED™

PUBLISHER: Innocence Denied Association, U.S.  
P.O. Box 18477  
Pittsburgh, PA 15236

EDITOR: Darrell van Mastrigt

ASSISTANT EDITORS: Judith Trustone, James Frey, Shane SESCO, Shawn van Mastrigt, Patrick Middleton

PRESIDENT OF INNOCENCE DENIED: Shawn van Mastrigt

CONTRIBUTING MATERIALS: James Frey, Shane SESCO, Judith Trustone, Nieves, Reynolds Holding, Dave Wischnowsky, Shari Ixton, T Cris, 1 other state and federal prisoners who request their identity be withheld anonymous.

INNOCENCE DENIED is a Bi-Monthly Publication. Rates of subscription are: Incarcerated individuals—one year \$6.00. All others (including International): \$15.00. Subscriptions may be paid for in U.S. (include stamp equivalent). Your subscription will begin with the next related issue. (Please allow an average of 4–6 weeks for delivery of the 1st issue.) Subscriptions and payment can be mailed to:

Innocence Denied  
Subscriptions Department  
P.O. Box 18477  
Pittsburgh, PA 15236

You can also subscribe to ID via e-mail:

[IDnewsletter@innocencedenied.com](mailto:IDnewsletter@innocencedenied.com)

Submission of material for the newsletter must be received at ID by the 15th day of the month of publication. Usually published, February, April, June, August, October, and December. Dated materials or upcoming event notifications should be provided sixty (60) days prior to publishing when possible. Submissions will not be returned unless accompanied by a SASE. ID reserves the right to edit submitted materials for content and space concerns. All submissions should be addressed to the Editor at the above address or emailed to: [submaster@innocencedenied.com](mailto:submaster@innocencedenied.com)

Articles, reports, advice and opinions expressed in the Innocence Denied newsletter represent the views and works of the individual authors, and do not necessarily represent the views of Innocence Denied Association, U.S., the members of the Innocence Denied Advisory Committee, or any financial contributor to the newsletter.

## Lower Outrage (Continued From Page 1)

press or coerce a guilty plea" with charges he knows he cannot prove at trial? Davis would bump the probable-cause standard to something requiring more certainty.

### The Grand Jury.

The Constitution requires a grand jury to indict a suspect before he can be tried for a federal felony, and about half the states have a similar setup. This panel of ordinary people is supposed to check the prosecutor's power by making him present a preliminary case in a kind of mini-trial, though one without a defense attorney. But because the prosecutor gets to decide which witnesses to call and which questions to ask, Davis wants to make the process less one-sided by requiring prosecutors to tell jurors about evidence that helps the suspect.

### plea Bargaining.

The vast majority of defendants cut deals because fighting charges at trial can result in much longer sentences. Prosecutors and public defenders like to settle cases too, given their massive caseloads. But prosecutors generally hold all the cards: in a case's early stages, a defendant rarely knows how strong the evidence is against him. And the mandatory minimum sentences for many crimes give prosecutors a clearly defined punishment to hold over a defendant's head. That is the reason Davis wants to make prosecutors open

their files before offering a deal. "Their job, after all, is not to win but to see that justice is done," she says.

As Davis advocates putting these new rules in legal-ethics codes enforced by state bars, prosecutors argue that such changes would tie their hands unnecessarily. But some prosecutors are at least willing to open themselves to scrutiny. In places like Milwaukee, San Diego and Charlotte, N.C., they are letting the nonprofit Vera Institute of Justice examine their charging decisions and plea-bargain offers for discrepancies in how black and white suspects are treated. The three-year study will go through 2008, and these offices have promised to use the results to make their practices fairer. It's a significant start and one Davis hopes will prod other prosecutors to move in the same direction. But if it doesn't there's still the power of fear. After all, she says, "nobody wants to be the next Mike Nifong."

TIME, August 6, 2007

**\*KAPK**

## Excluded Evidence Freed Innocent Man After 12 Years

A judge in Jackson, Mississippi ruled that Cedric Willis was to be freed after spending 12 years in prison for a crime he did not commit. Hinds County Circuit Judge Toule T. Green dismissed murder and armed robbery charges against Cedric after District Attorney Faye Peterson made the motion.

"No one wants an innocent person in prison," Green said.

The New Orleans chapter of the Innocence Project, a national legal-aid clinic organization that has exonerated five wrongfully convicted Louisiana inmates, was instrumental in reopening Cedric's case.

In 1994 Cedric was charged with shooting Carl White, Jr. and robbing White's wife, Gloria, and daughter, Jamilla, at their home in Jackson. Cedric was convicted in 1997 on all charges. Six days later Carl White died and Cedric was given a life sentence in prison.

When the Innocence Project took on his case in May 2005, Emily Maw of the New Orleans Innocence Project said jurors never heard evidence that the gun used in the homicide and robbery had also been used in four cases, including an armed robbery and rape.

Cedric was also indicted on the armed robbery and rape charges. A DNA test excluded him in the rape, Maw said.

Even though prosecutors had dropped the rape and armed robbery charges, jurors never heard that the charges had been dropped at Cedric's trial.

"This struck us as particularly unfair," she said.

If the evidence dismissing charges had been heard by the jury, there would have been a strong reasonable doubt of Cedric's guilt. The fact that charges were dismissed on some of the charges using the same gun would have made jurors consider whether Cedric could have used this gun to commit murder. After being definitively excluded as a the perpetrator on some charges, Cedric had the right to allow the jury to hear this evidence to support his claims of innocence.

Alice S. Grant, GRANT PUBLICATIONS, INC.

P.O. Box 28812, Greenfield, WI 53228 (414) 543-5616

There are many magazine and newspaper subscription services out there seeking your money. Alice offers excellent reduced rates and is prisoner friendly and helpful to you and your loved ones. Send SASE to find out more about her excellent specials and rates. Grant Publications, Inc. is a recommended service by ID.

126

STATE OF MICHIGAN

DISTRICT COURT FOR THE 61ST JUDICIAL DISTRICT

\*\*\*JUDGE MARKEY'S & JACKIE SMITH'S ALTERED TRANSCRIPTS OF THEIR STATEMENT  
REGARDING JACKIE SMITH STATING THAT DETECTIVE GRABLE SHOWED MY PHOTO  
TO THEM BEFORE I WAS PLACED IN A LINE UP (5 pgs.)\*\*\*

THE PEOPLE OF THE STATE OF MICHIGAN,

VS.

#94-2732-FC

KENNETH COLVIN, JR.,

Defendant.

RECEIVED  
NOV 8 1994  
J. E. MARKEY

VOLUME II

PRELIMINARY EXAMINATION

BEFORE THE HONORABLE JANE E. MARKEY

Grand Rapids, Michigan - Tuesday, September 13, 1994

CONTINUANCE - Wednesday, September 28, 1994

APPEARANCES:

MR. KEVIN M. BRAMBLE, Assistant Prosecuting Attorney  
On behalf of the People

MS. JUDY L. OSTRANDER  
On behalf of the Defendant

Phyllis J. Carr - CER 0865  
Official Court Recorder

127

13

TABLE OF CONTENTS

WITNESSES: PEOPLE

John Earl Smith		
Direct Examination by Mr. Bramble		3
Cross Examination by Ms. Ostrander		16
<b>Jacqueline Smith</b>		
Direct Examination by Mr. Bramble		28
Cross Examination by Ms. Ostrander		37
Christopher George Smith		
Direct Examination by Mr. Bramble		51
Cross Examination by Ms. Ostrander		63
Aaron Williams		
Direct Examination by Mr. Bramble		76
Cross Examination by Ms. Ostrander		86

EXHIBITS:		MARKED	RECEIVED
PX - 1	Lineup Photo	36	91
PX - 2	Lineup Photo	36	91
PX - 3, 4, 5	Photo Array	62	91

128

done this? Him and his brother. Kill his own people for no reason. I just couldn't believe that.

Q Were you ever shown any photo--photographs of possible suspects?

A Yes. Once. I can't remember the date. But he came and he-- Detective Grable came and showed us some pictures. And he wasn't on there.

Q Do you remember when that was?

A No.

THE COURT: I'm sorry. You said he was or he wasn't, Miss Smith?

THE WITNESS: He wasn't.

THE COURT: Okay.

THE WITNESS: He wasn't on the pictures.

BY MS. OSTRANDER:

Q Do you know when you were showed the--that photo--the group of photographs?

A I can't remember if it was the end of August or the first--it had to a been the end of August or something like that. First part of August.

Q Unquestionably, this was a terrible tragedy for you--

A --Uhm hmm.

Q --and your family. I would imagine that you talked about this incident quite a bit--

A --Uhm hmm.

129





763 E. Avenue, NE  
Grand Rapids, Michigan 49503  
JANUARY 11, 1995

REC'D & FILED  
JUDGE BENSON

JAN 13 1995

17TH JUDICIAL CIRCUIT

HONORABLE JUDGE ROBERT A. BENSON  
KENT COUNTY CIRCUIT COURT  
HALL OF JUSTICE BUILDING  
COURTHOUSE "41"  
GRAND RAPIDS, MICHIGAN 49503

\*\*\*MY LETTER TO JUDGE BENSON (JUDGE MARKEY'S FATHER-IN-LAW) REGARDING ALTERED  
TRANSCRIPTS\*\*\*

RE: BSM v. BOWEN County, Ia File No. 04-8732-FC

DEAR HONORABLE JUDGE ROBERT A. BENSON:

I AM WRITING YOU IN REGARDS TO A PROBLEM I HAVE DISCOVERED  
IN MY PRELIMINARY EXAMINATION TRANSCRIPTS. YOUR HONOR, I HAVE  
REASON TO BELIEVE AND KNOW FOR A FACT THAT A PORTION OF MY  
TRANSCRIPTS HAS BEEN TAMPERED FROM THE ORIGINAL STATEMENTS  
MADE BY THE WITNESS AND PRELIMINARY EXAMINATION JUDGE.

AT MY PRELIMINARY EXAMINATION DATED SEPTEMBER 22, 1994, MY  
ATTORNEY WAS CROSS-EXAMINATING A WITNESS BY THE NAME OF MR.  
WOLLENE SOUTH. DURING THAT TIME, MY ATTORNEY ASKED HER HOW ALL  
PHOTOS SHOW TO HER OF HERSELF SUBJECT'S NEW YORK STATE RECORD BY  
SAIDING YES THEY WERE SOME PHOTOS SAID TO HER AND I WAS IN IT.

SO, THE JUDGE ASKED HER YOU'RE SURE YOU DON'T MEAN "NO" AND SHE  
SAID "I MEAN 'NO'". BUT WHEN I WAS RECEIVED A COPY OF MY TRANSCRIPT,  
THOSE STATEMENTS WERE NOT ON THERE. IF YOU WILL LOOK UP PAGE 46  
OF MY TRANSCRIPTS AND THEN LISTEN TO TAPE, YOU WILL SEE WHAT I AM  
TALKING ABOUT.

YOUR HONOR, THIS IS WRONG FOR THE COURT TO BE ASKED BECAUSE, THEY ARE WITH HEARING FACTS AND ALLEGING THIS STATEMENTS THAT WERE MADE IN THE SUCCESS CASE. THEN TO MY AND PROCEEDS TO GO TO THE COURT AND CURRENT STATEMENTS OF THE PROSECUTOR AND TESTIMONY. THEN IN THE MINDS OF THE PEOPLE IF THE STATE OF MICHIGAN, CIVIL RIGHTS, COURT, IS THIS PART OF THE INVESTIGATION WAS ONE OF THE IMPORTANT FACTS OF MY CASE BECAUSE DETECTIVE GIBBS TOLEGALLY BURNED A PHOTO OF ME TO THE WITNESSES, WHOM CASE, WERE GOING TO BE USED TO IDENTIFY ME IN A LINE UP AS A SUSPECT.

THE SAME DETECTIVE WAS SENT A LETTER TO STOP ASKING REQUESTING THAT I STAND IN A LINE UP AND TO MAKE IDENTIFY BUT I REFUSED TO GO BECAUSE A PHOTOGRAPH WAS SHOWN TO ME AND I AM NOT SURE WHO SHOWED ME THE PHOTOGRAPH. THE COURT WOULD INTERVIEW ME FOR THE LINE UP IF NEEDED. (PLEASE LOOK AT MY STATEMENT TO POLICE)

AND, IF YOU WILL LOOK OVER THE POLICE REPORTS AND STATE THE REPORTS, YOU WILL SEE THEY DO NOT HAVE ANY PHYSICAL EVIDENCE TO LINK ME TO THIS CASE, BUT MY BROTHER'S STATEMENT AND THESE VICTIM WITNESSES WITH ONE STATING THAT A PHOTO OF ME WAS SHOWN TO THEM THE LAST PART OF AUGUST, WHICH WAS STILL IN POLICE STATION IDENTIFICATION, BUT WAS THROWN OUT. THEREFORE, THIS PART OF AUGUST WAS WHEN INVESTIGATIVE OFFICERS WERE ASKED IN REGARDS TO STANDING IN A LINE UP. I HAVE ALREADY MENTIONED THE STATE THAT I WAS NOT AT THE SCENE OF THE CRIME WHEN THE CRIME WAS COMMITTED. IF YOU ALSO LOOK AT THE COMPOSITE IDENTIFICATIONS, YOU WILL SEE THEY HAVE STATED THE SUSPECT WAS BETWEEN THE AGES OF 15 AND 25, BUT THESE IDENTIFICATIONS ARE DIFFERENT FROM WHAT WERE IN THE POLICE REPORTS (ESPECIALLY, THE AGES) IN FACT, ONE WITNESS



STATED HE GAVE THE AGE DESCRIPTION OF THE SUSPECT AS BEING  
17 TO 20 (LOOK ON PAGE 73 OF THE PRELIMINARY EXAMINATION TRANSCRIPT),  
BUT ON THE POLICE REPORT, IT STATED 21 TO 25. PLEASE LOOK AT IT.

YOUR HEAR, I WOULD NOT MAKE IT RIGHT. IT WAS WRONG  
TO SHOW MY PARTS TO THE WITNESSES AND IT WAS WRONG TO TRANSCRIBE  
THE STATEMENTS FROM THE TRANSCRIPTS. THIS IS A VERY SERIOUS CASE.

AM I ASKING FOR YOU TO HOLD THE LAW CORRECTLY  
TO BE A WITNESS. PLEASE, DO NOT VIOLATE MY CONSTITUTIONAL RIGHTS.  
PLEASE, DO NOT IGNORE MY CONCERNS WILL YOU PLEASE LEAVE THE  
TAPE. I AM NOT ASKING YOU TO DENY THE CASE ALL I WANT IS THE A COPY  
OF THE TAPE OR THE CORRECT TYPED TRANSCRIPTS. THAT IS ALL.

PLEASE BE FAIR AND UP HOLD THE LAW CORRECTLY.

THANK YOU FOR TAKING THIS MATTER INTO CONSIDERATION.

Sincerely,  
*Spencer C. [Signature]*  
HENRY H. [Signature]

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FILED

95 MAR 15 AM 11:52

C. DUKE FRANEK, CLERK  
U.S. DISTRICT COURT  
WESTERN DIST OF MICH

KENNETH COLVIN, JR.,

File No. 1:95-cv-119

Plaintiff,

Hon. Benjamin F. Gibson

v.

61ST DISTRICT COURT,

MEMORANDUM OPINION AND  
ORDER OF DISMISSAL

Defendant.

Certified As A True Copy  
C. Duke Franek, Clerk

By B. Duke  
Deputy Clerk

U.S. District Court  
Western Dist. of Michigan

Mar 15 1995

At a session of the Court held in and for said District and Division, in the City of Grand Rapids Michigan, this 15th day of March, 1995.

PRESENT: HON. BENJAMIN F. GIBSON, U.S. DISTRICT JUDGE

Plaintiff, a pretrial detainee awaiting trial in a state criminal prosecution, brings this civil rights action pursuant to Title 42 United States Code Section 1983. Plaintiff alleges that the transcript of his preliminary examination is not accurate and that the state court denied his request to listen to the tape recording of the proceeding. Accordingly, he requests that this Court order the state court to permit him to listen to the tape recording.

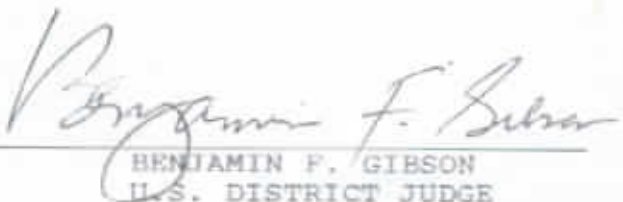
The Supreme Court explained in Younger v. Harris, 401 U.S. 37 (1971), that federal courts should abstain from interfering with state court criminal proceedings absent extraordinary circumstances. "[I]n determining the applicability of the [Younger] abstention rule a federal court should consider at least three separate factors: (1) whether a state proceeding is

pending at the time the federal action is initiated; (2) whether an adequate opportunity is provided to raise the constitutional claims in the state proceeding; and (3) whether there are extraordinary circumstances which nevertheless warrant federal intervention." Foster v. Kassulke, 898 F.2d 1144, 1146 (6th Cir. 1990) (quoting Zalman v. Armstrong, 802 F.2d 199, 202 (6th Cir. 1986).

No extraordinary circumstances exist in this case which warrant federal interference with the Michigan proceedings. Plaintiff will have an adequate opportunity to raise any constitutional claims as part of his defense to the state prosecution and in any state court appeal. Accordingly, the Court will dismiss plaintiff's action pursuant to Younger abstention and Title 28 United States Code Section 1915(d).

NOW, THEREFORE, IT IS HEREBY ORDERED that plaintiff's action is DISMISSED.

IT IS SO ORDERED.

  
BENJAMIN F. GIBSON  
U.S. DISTRICT JUDGE

136

S T A T E   O F   M I C H I G A N  
I N   T H E   C I R C U I T   C O U R T   F O R   T H E   C O U N T Y   O F   K E N T

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff,

File No.: 94-2732-FC

vs.

Hon. Robert A. Benson

KENNETH COLVIN,

**MOTION FOR PRODUCTION  
OF COPY OF PRELIMINARY  
EXAMINATION TAPE  
RECORDING AND NOTICE OF  
HEARING**

Defendant.

**PROOF OF SERVICE**

William A. Forsyth (P23770)  
Kent County Prosecuting Attorney  
416 Hall of Justice Building  
Grand Rapids, Michigan 49503  
(616) 336-3577

Judy L. Ostrander (P33253)  
Attorney for Defendant  
60 Monroe Center, N.W., Suite 500  
Grand Rapids, Michigan 49503  
(616) 776-3535

63300 410795  
75

NOW COMES the defendant, Kenneth Colvin, by and through his attorney, Judy L. Ostrander, and in support of his Motion for Production of a Copy of Preliminary Examination Tape Recording states as follows:

1. That defendant is charged with Felony Murder, Assault with Intent to Murder, Armed Robbery and Possession of a Firearm during the Commission of a Felony.

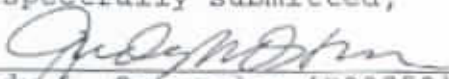
2. That defendant believes that there was an error in the transcription of his Preliminary Examination and that he requires a copy of the tape recording of the proceedings in this case and that matters material to the issue at hand will require exploration to provide effective assistance to counsel.

3. That defendant is indigent and has court appointed counsel.

WHEREFORE, defendant, Kenneth Colvin, prays that this Honorable Court enter an Order authorizing the production of a copy of the actual audio recording of the Preliminary Examination in the above-entitled action.

Dated: January 18, 1995.

Respectfully submitted,

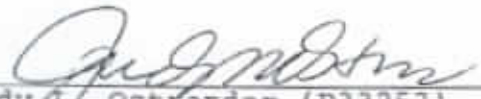
  
\_\_\_\_\_  
Judy L. Ostrander (P33253)  
Attorney for Defendant  
60 Monroe Center, N.W., Suite 500  
Grand Rapids, Michigan 49503

NOTICE OF HEARING

TO: William A. Forsyth (P23770)  
Kent County Prosecuting Attorney  
416 Hall of Justice Building  
Grand Rapids, Michigan 49503

PLEASE TAKE NOTICE that Defendant's Motion for Production of Copy of Preliminary Examination Tape Recording, will be brought on for hearing before the Court on Friday, January 20, 1995 at 8:30 a.m. or as soon thereafter as counsel may be heard.

Dated: January 17, 1995.

  
\_\_\_\_\_  
Judy L. Ostrander (P33253)  
Attorney for Defendant  
60 Monroe Center, N.W., Suite 500  
Grand Rapids, Michigan 49503

138



STATE OF MICHIGAN  
THE CIRCUIT COURT  
17TH JUDICIAL CIRCUIT

ROBERT A. BENSON  
CIRCUIT JUDGE

HALL OF JUSTICE  
GRAND RAPIDS, MICHIGAN 49503

January 27, 1995

Mr. Kenneth Colvin  
C/O Kent County Jail  
703 Ball Avenue, N.E.  
Grand Rapids, MI 49503

RE: PEOPLE VS KENNETH COLVIN  
KENT COUNTY CIRCUIT COURT CASE #94-2732-PC

Dear Mr. Colvin:

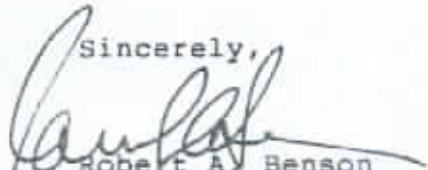
I am returning to you some papers which you recently filed for discovery motions.

These should be handled by your attorney and I would suggest that you file them through your attorney.

I have also made my ruling, on the record, concerning the preliminary exam transcript. First of all, any questions about the improper identification as you claim can be handled at the trial and can be conducted at the course of a pretrial and attempt to exclude her identifying you at the trial if your attorney feels that there is significant grounds for such a motion.

Therefore, I have already ruled that you will not have the preliminary exam transcript, and any other motions you want to take up in connection with the case should be handled through your counsel.

Sincerely,



Robert A. Benson  
Circuit Court Judge

RAB/mg

cc: Judy Ostrander  
Prosecutor

130



STATE OF MICHIGAN

61ST DISTRICT COURT

HALL OF JUSTICE  
GRAND RAPIDS, MICHIGAN 49503  
PHONE (616) 455-3278  
FAX (616) 455-3311

PAUL J. SULLIVAN  
Chief Judge  
JOEL P. HOCKSTRA  
PATRICK C. BOWLER  
BENJAMIN H. LOGAN  
JANE E. MARKEY  
MICHAEL CHRISTENSEN  
Judges

JOSEF R. BOMER  
Court Administrator  
JANIS K. WILLIS  
Deputy Court Administrator

January 30, 1995

Mr. Kenneth Colvin Jr.  
Kent County Correctional Facility  
703 Ball N.E.  
Grand Rapids, Michigan 49503

Dear Mr. Colvin,

Your request for a tape copy of your preliminary examination on September 28, 1994 has been denied. By court rule and statute, you are entitled to a transcript of the proceeding which has been provided. There is no entitlement to a copy of the tape and it is the policy of this court not to provide copies of official court record tapes to anyone, including attorneys on the case.

Should you have further questions, they should be directed to your attorney.

Sincerely,

Janis K. Willis  
Deputy Court Administrator

cc: Judy Ostrander, Defense Counsel

140



STATE OF MICHIGAN

61ST DISTRICT COURT

HALL OF JUSTICE  
GRAND RAPIDS, MICHIGAN 49503  
PHONE (616) 456-3278  
FAX (616) 456-3311

JOSEF R. SOPER  
Court Administrator  
JANIS K. WILLIS  
Deputy Court Administrator

PAUL J. SULLIVAN  
Chief Judge  
JOEL P. HOEKSTRA  
PATRICK C. BOWLER  
BENJAMIN H. LOSAN  
JANE E. MARKEY  
MICHAEL CHRISTENSEN  
Judges

March 23, 1995

Michigan Court Reporting/Recording  
Board of Review  
State Court Administrative Office  
611 West Ottawa St., P.O. Box 30048  
Lansing, Michigan 48909

Re: File #95-05, complaint filed by Kenneth Colvin against  
deceased Court Recorder Phyllis Carr

Prior to her death in December of 1994, Phyllis Carr completed the certified transcript of the preliminary examination of Kenneth Colvin and provided copies as required. The Judge presiding over the preliminary examination was Judge Jane Markey. Effective January 1, 1995, Judge Markey became a Judge for the Michigan Court of Appeals. Until such time as a new Judge was appointed and court recorder selected, I became the guardian of the tapes and records of Phyllis Carr.

In late January, I received a request from Kenneth Colvin for a copy of the preliminary examination transcript tape, claiming that the transcript was inaccurate. Worthy of note is the fact that requests of this nature have been increasing from inmates of the Kent County Jail. In the absence of a Judge being assigned to this case, (a Judge had not yet been appointed to replace Judge Markey), I consulted with another Judge of this court, Judge J. Michael Christensen. He indicated that the tape was an official record of this court and as such, no copy would be reproduced unless ordered by the Circuit Court Judge assigned to Mr. Colvin's case. I forwarded the attached letter to Mr. Colvin and contacted his attorney, Judy Ostrander to inform her of the decision. She indicated that she would discuss the request with the Circuit Court Judge, later telling me that her request had been denied. I also informed her that in another case where the record had been challenged, upon request of the Circuit Court, we had set up a tape recorder with the defendant and all attorneys (defense and prosecution) present to listen to the tape.

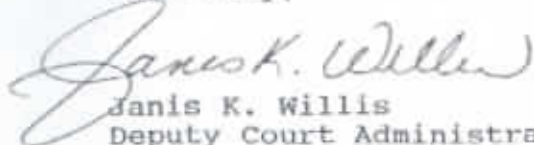
In mid-February, at the request of Ms. Ostrander, I did set up a tape recorder and she listened to the portions of the tape that Mr. Colvin has challenged. A request from the Circuit Court Judge to allow Mr. Colvin to listen to the tape has never been received.



I have not heard from Mr. Colvin or his attorney since that time until receipt of your letter. There is some indication that civil suit has been filed with The U.S. District Court regarding this claim, but this Court has not been officially served.

If you have any further questions or desire additional information, please let me know.

Sincerely,



Janis K. Willis  
Deputy Court Administrator

cc: Region 2 Administrator, Kevin J. Bowling

H2

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
818 FEDERAL BUILDING  
110 MICHIGAN N.W.  
GRAND RAPIDS, MICHIGAN 49503-2363

CHAMBERS OF  
BENJAMIN F. GIBSON  
CHIEF JUDGE

FTS/ COMMERCIAL  
TEL: (616) 456-2525  
FAX: (616) 456-2072

January 30, 1995

Mr. Kenneth Colvin, Jr.  
Kent County Jail  
703 Ball Avenue N.E.  
Grand Rapids, MI 49503

Dear Mr. Colvin:

In response to your recent letter, because I am a judge I am prohibited from providing you with legal advice.

I will forward a copy of your letter to your attorney. I suggest that you contact your attorney for further assistance.

I regret that I am unable to assist you.

Very truly yours,

  
Benjamin F. Gibson

BFG:hca

cc/enc. Judy L. Ostrander

143

MARYIN M. DOCTOROFF  
CHIEF JUDGE  
WILLIAM B. MURPHY  
CHIEF JUDGE PRO TEM  
DONALD E. HOLBROOK, JR.  
MICHAEL J. KELLY  
BARBARA B. MACKENZIE  
MYRON H. WAHLS  
HAROLD HOOD  
ROMAN S. GRIBBS  
DAVID H. SAWYER  
GARY R. McDONALD  
MARK J. CAVANAGH  
RICHARD ALLEN GRIFFIN  
MARILYN KELLY  
JANET T. NEFF



State of Michigan  
Court of Appeals

Grand Rapids Office

MAUREEN FULTE REILLY  
KATHLEEN JANSEN  
E. THOMAS FITZGERALD  
CLIFFORD W. TAYLOR  
MAURA D. CORRIGAN  
HELENE N. WHITE  
HENRY WILLIAM SAAD  
RICHARD A. BANDSTRA  
JOEL P. HOEKSTRA  
JANE E. MARKEY  
STEPHEN J. MARKMAN  
PETER D. O'CONNELL  
MICHAEL R. SMOLENSKI  
ROBERT P. YOUNG, JR.  
JUDGES  
ELLA WILLIAMS  
CHIEF CLERK

Mr. Kenneth Colvin, Jr.  
No. 193744  
Standish Maximun Correctional Facility  
4713 West M-61  
Standish, MI 48658

December 27, 1995

Name of case: People v Kenneth Colvin, Jr.  
Court of Appeals No. 188176  
Lower Court No. 94-2732 FC  
Document submitted: **Motion to correct transcript error**

Dear Sir or Madam:

Enclosed for return to you find the document which you recently submitted in the above-entitled matter.

You are represented in this Court by assigned counsel. Your attorney is responsible for all filings in this Court. You should discuss this matter with your attorney, who is:

Attorney: P. E. Bennett  
Phone: (313) 256-9833

This Court will only accept a pleading from you when you are represented by counsel if you are attempting to raise a new issue that counsel will not raise (Administrative Order 1981-7, Standard 11).

Sincerely,

ELLA WILLIAMS  
Chief Clerk

By:   
S. Dabakey

EW/sd

Enc.: Motion to correct transcript error (original + 3)

cc: P. E. Bennett  
Kent County Prosecutor's Office

Court of Appeals, State of Michigan

ORDER

Kenneth Colvin Jr, v 61st District Court

Martin M. Doctoroff  
Presiding Judge

Docket # 189952

William B. Murphy

L.C. #

Harold Hood  
Judges

---

The Court orders that the motion to waive fees is GRANTED for this case only.

The Court, pursuant to MCR 3.302(D)(2), orders that the complaint for superintending control is DISMISSED because an appeal, within the context of the claim of appeal filed in docket number 188176, is available to this moving party from the decision made by Judge Benson.



A true copy entered and certified by Ella Williams, Chief Clerk, on

DEC 01 1995

Date

145  
*Ella Williams*  
Chief Clerk

MARTIN M. DOCTOROFF  
CHIEF JUDGE  
WILLIAM B. MURPHY  
CHIEF JUDGE PRO TEM  
DONALD E. HOLBROOK, JR.  
MICHAEL J. KELLY  
BARBARA B. MACKENZIE  
MYRON H. WAHLS  
HAROLD HOOD  
ROMAN S. GRIBBS  
DAVID H. SAWYER  
GARY R. McDONALD  
MARK J. CAVANAGH  
RICHARD ALLEN GRIFFIN  
MARILYN KELLY  
JANET T. NEFF



State of Michigan  
Court of Appeals

Lansing Office

MAUREEN PULTE REILLY  
KATHLEEN JANSEN  
E. THOMAS FITZGERALD  
CLIFFORD W. TAYLOR  
MAURA D. CORRIGAN  
HELENE N. WHITE  
HENRY WILLIAM SAAD  
RICHARD A. BANDSTRA  
JOEL P. HOEKSTRA  
JANE E. MARKEY  
STEPHEN J. MARKMAN  
PETER D. O'CONNELL  
MICHAEL R. SMOLENSKI  
ROBERT P. YOUNG, JR.  
JUDGES  
ELLA WILLIAMS  
CHIEF CLERK

Mr Kenneth Colvin, Jr  
# 192744  
4713 West M-61  
Standish, MI 48658

March 27, 1996

Re: Kenneth Colvin Jr v 61 st District Court  
Court of Appeals No. 189952  
Lower Court No.

Dear Mr Colvin:

Thank you for your recent correspondence.

Please be advised that you can not file a writ of mandamus against a District Court it has to be a writ for Superintending Control, which you did file. It was dismissed on 12-01-95. The only appeal you have that is open in this court is in case # 188176, which is proceeding in our normal manner. For further legal guidance please contact an attorney or legal Aid.

Very truly yours,

ELLA WILLIAMS  
Chief Clerk

By:   
Kurt Hatfield

EW/kgH

146



Michigan Supreme Court  
State Court Administrative Office  
611 West Ottawa Street, P.O. Box 30048  
Lansing, Michigan 48909  
517 373-0130

Marilyn K. Hall  
State Court Administrator

John D. Ferry, Jr.  
Deputy Administrator

March 17, 1995

James H. Brickley  
Chief Justice  
Charles L. Levin  
Michael F. Cavanagh  
Patricia J. Boyle  
Dorothy Comstock Riley  
Conrad L. Mallett, Jr.  
Elizabeth A. Weaver  
Associate Justices

Mr. Kenneth Colvin  
703 Ball Avenue  
Grand Rapids, MI 49503

Mr. Colvin:

Re: Your complaint against Phyllis Carr, deceased (61st District Court)  
Our #95-05

This is to acknowledge your written complaint against the captioned reporter.

Under the provisions of the Michigan Court Reporting/Recording Board of Review, normally the reporter/recorder is provided with a copy of your written complaint and is afforded the opportunity to respond. Since the reporter on this case is deceased, we are sending the complaint to the 61st District Court.

If this matter is not resolved, it will be placed on the agenda for the next meeting of the Court Reporting/Recording Board of Review. You will be notified of the Board's action in this matter.

Sincerely,

T. A. Lindsey, Executive Secretary  
Michigan Court Reporting/Recording  
Board of Review

cc: Region 2 Administrator Kevin Bowling  
Janis K. Willis

HT



Michigan State Court  
State Court Administrative Office  
309 N. Washington Square, P.O. Box 30048  
Lansing, Michigan 48909  
517 373-0130

Marilyn K. Hall  
State Court Administrator

John D. Perry, Jr.  
Deputy Administrator

September 18, 1995

James H. Brinkley  
Chief Justice  
Charles L. Levin  
Michael F. Cavanagh  
Patricia J. Boyle  
Dorothy Constock Riley  
Conrad L. Mallett, Jr.  
Elizabeth A. Weaver  
Justices

Mr. Kenneth Colvin, Jr. #192744  
Jackson State Prison  
4000 Cooper St, PO Box E  
Jackson, MI 49201

Mr. Colvin:

Re: Your complaint against Phyllis Carr, deceased  
#95-05

The Board considered the materials you submitted in support of your complaint at its September meeting. Jurisdictional boundaries and the fact that the reporter is deceased renders the Board's jurisdiction moot. We are closing our file on this complaint.

Your attorney may be able to advise you of other possible options.

Sincerely,

T. A. Lindsey, Executive Secretary  
Michigan Court Reporting/Recording  
Board of Review

xc: Janis K. Willis, 61st District Court  
Kevin J. Bowling, SCAO Region II Administrator

H8



Michigan Supreme Court  
State Court Administrative Office  
611 West Ottawa Street, P.O. Box 30048  
Lansing, Michigan 48909  
517 373-0130

Marilyn K. Hall  
State Court Administrator

John D. Ferry, Jr.  
Deputy Administrator

James H. Brickley  
Chief Justice  
Charles L. Levin  
Michael F. Cavanagh  
Patricia J. Boyle  
Dorothy Comstock Eley  
Conrad L. Mallett, Jr.  
Elizabeth A. Weaver  
Associate Justices

September 19, 1995

Mr. Kenneth Colvin, Jr.  
#192744  
Jackson State Prison  
4000 Cooper Street  
P.O. Box E  
Jackson, MI 49201

RESPOND TO: Region II  
Kevin J. Bowling  
Regional Administrator  
P. O. Box 30002  
Lansing, MI 48900  
Telephone (517) 494-4175  
Fax (517) 494-0122

RE: Michigan Court Reporting/Recording Board of Review Complaint File #95-05  
(61st District Court)

Dear Mr. Colvin:

I have reviewed your letter dated September 4, 1995 regarding your complaint against former Court Recorder Phyllis Carr (61st District Court). Since there is an active complaint pending before the Michigan Court Reporting/Recording Board of Review, it is not appropriate for the Region II office to pursue an independent investigation. By copy of this letter, however, I will advise the Board of Review of your concerns and provide them with a copy of your correspondence.

Sincerely,



Kevin J. Bowling  
Regional Administrator

KJB/dk

cc: Jane Eckhardt, Program Coordinator

149





Michigan Supreme Court  
State Court Administrative Office  
309 N. Washington Square, P.O. Box 30048  
Lansing, Michigan 48909  
517 373-0130

Marilyn K. Hall  
State Court Administrator

John D. Ferry, Jr.  
Deputy Administrator

October 4, 1996

James H. Brickley  
Chief Justice  
Charles L. Levin  
Michael F. Cavanagh  
Patricia J. Boyle  
Dorothy Corrosock Riley  
Conrad L. Mallett, Jr.  
Elizabeth A. Weaver  
Justices

Mr. Kenneth Colvin, Jr.  
#192744  
Jackson State Prison  
4000 Cooper Street  
P.O. Box E  
Jackson, MI 49201

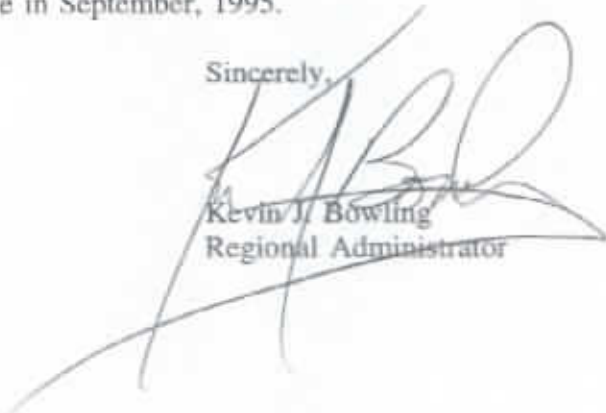
RESPOND TO: Region II  
Kevin J. Bowling  
Regional Administrator  
P. O. Box 30062  
Lansing, MI 48909  
Telephone (517) 804-0178  
Fax (517) 894-3128

RE: Michigan Court Reporting/Recording Board of Review Complaint File #95-05  
(61st District Court)

Dear Mr. Colvin:

I am writing in response to your letter received at the Region II office on October 11, 1995. I apologize for the delay in responding, however, our current work load and staffing levels made a quicker response impossible. The appropriate agency to review your complaint is the Michigan Court Reporting/Recording Board of Review. As you know, the Board reviewed your complaint and closed the file in September, 1995.

Sincerely,



Kevin J. Bowling  
Regional Administrator

KJB/ddk

100



Michigan Supreme Court  
Lansing, Michigan 48909

James H. Brickley  
Chief Justice  
Charles L. Levin  
Michael F. Cavanagh  
Patricia J. Boyle  
Dorothy Comstock Riley  
Conrad L. Mallett, Jr.  
Elizabeth A. Weaver,  
Justices

Corbin R. Davis  
Clerk

October 20, 1995

Mr. Kenneth Colvin, Jr. #192744  
4000 Cooper Street  
Jackson, MI 49201

Re: People v Colvin, CoA No.188176

Mr. Colvin:

Your letter of October 12, 1995, to Chief Justice Brickley has been referred to this office for response in keeping with the Justices' policy of not engaging in correspondence regarding matters which could come before the Court for judicial review.

The records of the Court of Appeals reflect that your appeal is pending in that court on a claim of appeal and that you are represented there by the State Appellate Defender Office. If the accuracy of your preliminary examination transcript is an issue you wish to raise, you should discuss that matter with your attorney prior to the filing of your brief in the Court of Appeals.

Because your case could come before this Court on appeal, it would not be appropriate for the Chief Justice to become involved in your matter at this time.

Very truly yours,

CORBIN R. DAVIS,  
Clerk

CRD/kc

151



Michigan Supreme Court

Lansing, Michigan 48909

James H. Brickley  
Chief Justice  
Charles L. Levin  
Michael F. Cavanagh  
Patricia J. Boyle  
Dorothy Comstock Ryley  
Conrad L. Mallett, Jr.  
Elizabeth A. Weaver  
Justices

Corbin R. Davis  
Clerk

October 7, 1996

Mr. Kenneth Colvin #192744  
MARQUETTE BRANCH PRISON  
P O Box 779  
Marquette, MI 49855

Mr. Colvin:

On September 30, 1996 this office received your "COMPLAINT FOR SUPERINTENDING CONTROL" and supporting documents.

Your papers are herewith returned for the reason that under our Rules they are not acceptable for filing in this Court. It is apparent that your papers seek to secure an order of this Court correcting the trial court record in your case. Such relief may be sought in the trial court on motion to that court; and if that motion is unsuccessful, you may then take an appeal to the Michigan Court of Appeals and must take such an appeal before leave to appeal or other relief may be sought in this Court.

Very truly yours,

CORBIN R. DAVIS,  
Clerk

CRD/kc

Enclosures

152



Kathleen M. Wilbur  
Bureau Director

John Engler, Governor

**DEPARTMENT OF COMMERCE**

Arthur E. Ellis, Director

Bureau of Occupational and  
Professional Regulation  
Eighth Floor, North Tower  
1200 Sixth Street  
Detroit, Michigan 48226  
Telephone: (313) 256-2846

February 27, 1995

Mr. Kenneth Colvin, Jr.  
703 Ball Avenue, NE  
Grand Rapids, MI 49503

Dear Mr. Colvin:

Your letter dated February 7, 1995, received today in this office, regarding a complaint against the 61st District Court's Court Recorder and Deputy Court Administrator, appears to be within the jurisdiction of the agency listed below.

In an effort to expedite the processing of your complaint we are referring your complaint to the agency shown below. Any communication regarding your complaint should be forwarded directly to the agency.

Court Reporting/Recording Board of Review  
Michigan Supreme Court  
P. O. Box 30048  
Lansing, MI 48909

Very truly yours,

Claudia M. Clark, Regional Supervisor  
Commercial Enforcement Division

CMC/djt

Enclosure

c: Court Reporting/Recording Board of Review  
Michigan Supreme Court

153

MEMBERS  
EUGENE D. MOSSNER  
CHAIRPERSON  
DEBORAH L. MIELA  
VICE-CHAIRPERSON  
LEON HERSCHFUS, D.D.S.  
SECRETARY  
THOMAS A. HALLIN  
ROBERT W. McBROOM  
STEVEN D. DUNNINGS  
MARY J. FLEMING  
BRIAN D. VINCENT  
MATTHEW A. SEWARD

State of Michigan  
Attorney Grievance Commission

SUITE 216, MARQUETTE BUILDING  
343 WEST CONGRESS  
DETROIT, MICHIGAN 48226-3219  
TELEPHONE (313) 961-6585  
TELEFAX (313) 961-6479

PHILIP J. THOMAS  
GRIEVANCE ADMINISTRATOR  
JANE SHALLAL  
DEPUTY ADMINISTRATOR  
CYNTHIA C. BULLINGTON  
ASSISTANT DEPUTY ADMINISTRATOR  
ASSOCIATE COUNSEL  
CHARLES K. HIGLE  
RHONDA SPENCER POZEHL  
JOAN P. VESTRAND  
MARTHA D. MOORE  
KANDY CLAY RONAYNE  
SUSAN E. GILLOOLY  
RICHARD L. CUNNINGHAM  
DONALD D. CAMPBELL  
ANNE M. ASKER  
AMY L. BROWN

March 3, 1995

PERSONAL AND CONFIDENTIAL

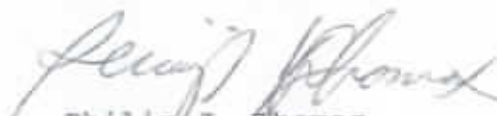
Kenneth Colvin, Jr.  
703 Ball Ave., NE  
Grand Rapids, MI 49503

RE: Kenneth Colvin, Jr. as to Judy L. Ostrander  
File No. 0336/95

Dear Mr. Colvin:

We are in receipt of your letter dated February 18, 1995. Our agency is unable to send anyone to listen to the tape. You may send me a copy of the tape you want us to listen to and we will return it to you after it has been reviewed.

Very truly yours,

  
Philip J. Thomas  
Grievance Administrator

PJT/mp

154



This is in response to your letter, in which you request ACLU assistance.

The American Civil Liberties Union is a private, non-profit membership organization which seeks to preserve and extend constitutional rights through participation in legislation, litigation and community education. Our involvement in most cases is as amicus curiae (Friend of the Court), the outcome of which may effect a change in law or policy.

From our review of your correspondence, it does not appear that your case is one for which we can provide assistance. We are not a public defender, and rarely handle criminal cases directly. All persons accused of serious offenses are entitled to court appointed counsel at both the trial and appellate courts.

You must discuss your criminal case with your court-appointed or privately-retained counsel. You should not, and cannot, rely on ACLU representation. You and your counsel remain responsible for any court deadlines. If your attorney is of the opinion that ACLU intervention in your case is necessary, your attorney must contact us directly.

Sincerely,

*Jack Jammur*

P.S. *What has your Attorney done about the original transcripts? Have him contact us about the matter in question Thanks.*

155

AMERICAN CIVIL LIBERTIES UNION / AMERICAN CIVIL LIBERTIES UNION FUND OF MICHIGAN  
1249 WASHINGTON BLVD., SUITE 2910 • DETROIT, MICHIGAN 48226-1822 • (313) 961-4662 • FAX (313) 961-9005

MICKI LEVIN, *President* • PAUL J. FEALK, *Secretary* • RALPH SIMPSON, *Treasurer* • MARK GRANZOTTO, *General Counsel*  
WALTER JOHNSON, *Executive Vice President, ACLU Fund* • EDWARD ICE, *National Board Representative*  
Howard L. Simon, *Executive Director* • Paul J. Denenfeld, *Legal Director* • Glenn E. Wegmeyer, *Development Director*  
Carolynn G. Tujaka, *Director of Finance and Information Systems* • Donald D. Seaton III, *Legislative Affairs Director*  
David Wineman, *Assistant to the Legal Director* • Brenda A. Bove, *Secretary/Receptionist*

Contributions to the American Civil Liberties Union Fund of Michigan are deductible for income tax purposes.



HOUSE OF REPRESENTATIVES  
LANSING, MICHIGAN



12TH DISTRICT  
**BURTON LELAND**  
STATE CAPITOL  
LANSING, MICHIGAN 48913  
(313) 373-6880  
FAX (313) 373-8728  
DISTRICT  
20766 TREMAN  
DETROIT, MICHIGAN 48228  
(313) 271-1287

COMMITTEES:  
TRANSPORTATION, CHAIR  
JOINT COMMITTEE ON  
ADMINISTRATIVE RULES  
HEALTH POLICY  
PUBLIC UTILITIES  
REGULATORY AFFAIRS

August 11, 1998

Kenneth Colvin, Jr., #192744  
Baraga Maximum Correctional Facility  
301 Wadaga Road  
Baraga, MI 49908

Dear Mr. Colvin:

I received your correspondence regarding your concerns about your preliminary examination transcripts.

Before I request help from the Legislative Corrections Ombudsman, you must first state in your letter to me, your last Michigan address before incarceration so that I can determine if I represent your district (the "Ombudsman's" office requires this). As soon as I receive this information, I shall proceed with the Ombudsman's office or forward your letter to the proper State Representative.

Thank you and I await your reply.

Sincerely,

A handwritten signature in cursive script that reads "Burton Leland".

BURTON LELAND  
State Representative

BL/kp

156

SEP 15 1998

Baraga Maximum Correctional Facility  
301 Wadaga Road  
Baraga, Michigan 49908

BOARD OF ETHICS

September 8, 1998

Mr. Stanley Ellis-Ombudsman  
State Board of Ethics  
Department of Civil Center  
400 South Pine  
Lansing, Michigan 48909

RE: Requesting an investigation in regards to altering of transcripts.

Dear Mr. Ellis:

I am writing you in regards to a very serious problem that I am having in regards to my preliminary examination transcripts being altered and the state courts refusing to correct them.

See Sir, I was charged and convicted for a felony murder/robbery case of a drug house in Grand Rapids, Michigan back in September of 1994. During the preliminary examination, a witness had stated that a detective had showed my photo to them prior to the detective placing me in a line-up where the witnesses identified me as the alleged assailant (My case is an identification case. So, this is the only evidence they have.). But when I had received my transcripts, the part where the witness had stated about the detective showing my photo was taken out. I have enclosed the altered part of the transcript and an affidavit of what was actually stated.

Now, the trial court refused to correct the error or even allow me to listen to the tape. I have appealed the decision all the way to the Michigan Supreme Court and nothing has been done. I have also, enclosed the Order from the Supreme Court.

I have even filed a complaint against the court recorder (who had died before the complaint was filed) to the Michigan Court Reporting/Recording Board of Review and the complaint was dismissed without them even inspecting the tape or correcting the error.

Now, four years has passed and I still do not have the transcripts corrected and I have exhausted my state appeal remedies in regards to my criminal appeal.

I need your help in getting my transcripts corrected. The courts are violating the law MCL 600.8635(1); Public Acts 1986-No. 308 600.8635. The Act states: "A verbatim record must be taken of the preliminary examination and reduce to writing verbatim." See Mc Louth Steel Corp. v. A.E. Anderson Constr., 48 Mich. App. 424, 210 NW 2d 448 (1978) it states: "Under no circumstances, should a court recorder delete from the record that which actually took place."

As I had stated to you before, I am requesting an investigation and need for your office to listen to those audio tapes of the preliminary examination. I do understand that the court recorder has died but, it very important that someone from your office listen to the tape, please.

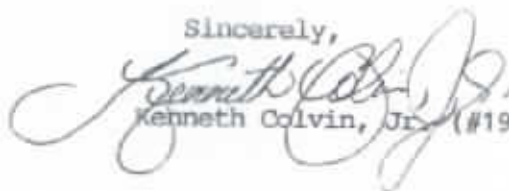


I have read the Statute MSA 4.1700(73) Sec. 3(2) and (75) Sec. 5 (1)(a)(b) and I had read the footnote on this subject about investigating former state employees and it stated: **OP ATTY GEN, No. 6046, March 22, 1982** "The State Board of Ethics is empowered by the legislature to investigate and issue an advisory opinion concerning the conduct of a public officer or employee even though the officer or employee is no longer in government service..."

**PLEASE HELP ME, PLEASE.** I am telling you the truth about what has happened to me. Please, do not ignore my letter. I desperately need your help. I have done everything to make the courts correct the transcript and they refuse to do it. I need your help, before the tape is destroyed. I need for your office to listen to the tape.

Thank you for taking this letter into consideration.

Sincerely,

  
Kenneth Colvin, Jr. (#192744)

\*\*\*CRIMINAL CASES WHICH EXPLAIN HOW IT IS ILLEGAL TO PRIVATELY SHOW WITNESSES PHOTOS OF INDIVIDUAL(S) THAT THEY WILL IDENTIFY IN LINE UP & HOW IDENTIFICATION IS UNRELIABLE (6 pgs.)\*\*\*

PEOPLE v GRAY

§ 1. CRIMINAL LAW—IDENTIFICATION—WITNESSES—PHOTOGRAPHS—LINEUP

\* Privately showing a witness pictures of an accused should not be allowed as a means of preparing a witness for a lineup even where the showing is not for purposes of initial identification of the accused. **K**

2. CRIMINAL LAW—IDENTIFICATION—PHOTOGRAPHS—COURT—BOYD TO COUNSEL

Identification of an accused by means of a photographic display should not be used where the accused is in custody, where there is a legitimate reason to use photographs when the defendant is in custody, the defendant has the right to have counsel present.

3. CRIMINAL LAW—IDENTIFICATION—IN-COURT IDENTIFICATION—IRRELEVANT BASIS

An in-court identification may be received following an earlier improper identification of a defendant where the people have shown that the in-court identification has a basis independent of the prior identification procedure.

Appeal from Recorder's Court of Detroit, Samuel C. Gardner, J. Submitted June 11, 1976, at Detroit. (Docket No. 25741.) Decided June 24, 1976. Leave to appeal applied for.

Bernard J. Gray was charged with first-degree murder, armed robbery, carnal knowledge of a female over 16, and gross indecency between a male and female. The case was dismissed following an evidentiary hearing wherein the court sup-

REFERENCES FOR POINTS IN HEADNOTES

[1-3] 21 Am Jur 2d, Criminal Law §§ 368, 529.

29 Am Jur 2d, Evidence § 371, et seq

Admissibility of evidence of lineup identification as affected by allegedly suggestive lineup procedures, 39 ALR3d 437.

pressed identification of the defendant. The people appeal by leave granted. Reversed and remanded.

*Frank J. Kelley*, Attorney General, *Robert A. Derengoski*, Solicitor General, *William L. Cahalan*, Prosecuting Attorney, *Edward Reilly Wilson*, Principal Attorney, Research, Training and Appeals, and *Timothy A. Baughman*, for the people.

*Townsend, Haley & Overton*, for defendant.

Before: J. H. GILLIS, P. J., and T. M. BURNS and W. VAN VALKENBURG, \* JJ.

PER CURIAM. On January 30, 1975, a complaint and warrant were issued, charging defendant with first-degree murder, MCLA 750.316; MSA 28.548, armed robbery, MCLA 750.529; MSA 28.797, carnal knowledge of a female over 16, MCLA 750.520; MSA 28.788, and gross indecency between a male and female, MCLA 750.338(b); MSA 28.570(2). A preliminary examination was held on February 18, 1975, and defendant was bound over on all counts. Following an evidentiary hearing, held on April 29, 1975, wherein the court suppressed identification of the defendant, the case was dismissed on May 19, 1975. Plaintiff now claims appeal, upon leave granted.

The complaining witness identified defendant, in February, 1974, before he was taken into custody, from a photographic display containing approximately 300 photographs. Defendant does not complain of the procedure followed in this identification process nor does the record reveal any irregularity. Thereafter, the complaining witness, frightened because of threats made by defendant during

\* Former circuit judge, sitting on the Court of Appeals by assignment pursuant to Const 1963, art 6, § 23 as amended in 1968.

knowledge." The prosecutor requested the opportunity to correct the misstatement. Morganfield's counsel objected, but the judge overruled the objection. Morganfield's counsel also objected to the court's offer to give a curative instruction.

During rebuttal, the prosecutor stated, "And when you consider him, consider his closing summation to you, because I will suggest to you, ladies and gentlemen, that the photographs of the children that he held before you were props." Morganfield and his counsel both objected, but the court overruled the objections. The prosecutor then began to read from the pretrial report. Morganfield's counsel again objected, but the court overruled the objection explaining that Morganfield raised the issue in his remarks. The judge advised the jury that, "neither document is in evidence, the photograph is not in evidence, no report is in evidence. But, more importantly, remember what I told you that closing arguments by the lawyers or those who make argument is not evidence." The prosecutor then read the passage from the report.

Assuming arguments that the prosecutor's remarks were improper, it casts no doubt on the verdict. Beginning with the first factor, the magnitude of the state-mandated prejudice, the factual dispute over whether or not Morganfield had children is ancillary to the issues in the case; his status as a father does not relate to any operative facts, nor does it relate to any of the elements of the charged crime. Any prejudicial effect the prosecutor's comment

46. See, e.g., *United States v. Lindford*, 136 F.3d 553, 573 (5th Cir.1998), cert. denied, 525 U.S. 1119, 120 S.Ct. 1984, 146 L.Ed.2d 812 (2000) ("The cautionary instructions given to the jury were sufficient to negate any prejudicial effects the statements may have had."); *United States v. Shackelford*, 709 F.2d 941, 913-14 (5th Cir.1983), cert. denied, 464 U.S. 899, 104 S.Ct. 253, 78 L.Ed.2d 235 (1983)

had related to Morganfield's credibility. While this factor is potentially troubling, especially because Morganfield objected to testify, the strength of the evidence of Morganfield's guilt—the tire factor—is substantial. The conspiracy involved numerous individuals, many of whom testified as to Morganfield's central role in the conspiracy. And, there was extensive documentary evidence of the check cashing scheme.

[22] Finally, the district court advised the jury before closing arguments began that closing arguments were not evidence, and the judge specifically reiterated the admonition in reference to Morganfield's statements regarding the purported child and the prosecutor's rebuttal argument.<sup>46</sup> "We presume that the jury follows the instructions of the trial court unless there is an overwhelming probability that the jury will be unable to follow the instruction and there is a strong probability that the effect is devastating."<sup>47</sup>

[23] We are also mindful that "determination of whether the district court's determinations are prejudicial and inflammatory" Morganfield entered multiple objections to the prosecutor's remarks, both during the bench conference and during the prosecutor's actual rebuttal. The trial court overruled each objection.

Considering the strength of the evidence of Morganfield's guilt and the district judge's instructions, the prosecutor's com-

46. See, e.g., *United States v. Lindford*, 136 F.3d 553, 573 (5th Cir.1998), cert. denied, 525 U.S. 1119, 120 S.Ct. 1984, 146 L.Ed.2d 812 (2000) ("The cautionary instructions given to the jury were sufficient to negate any prejudicial effects the statements may have had."); *United States v. Shackelford*, 709 F.2d 941, 913-14 (5th Cir.1983), cert. denied, 464 U.S. 899, 104 S.Ct. 253, 78 L.Ed.2d 235 (1983)

47. *Tomblin*, 46 F.3d at 1390 (quoting *United States v. Barvikalis-Connors*, 972 F.2d 111, 116 (5th Cir.1992))

48. *United States v. Williams*, 211 F.2d 912, 918 (5th Cir.1957), rev'd *in part*, 228 F.2d 972 (5th Cir.1957).

ments, even if improper, do not cast substantial doubt on the jury's verdict.<sup>48</sup>

## VI.

Accordingly, we AFFIRM in part, REVERSE in part, VACATE Morganfield's sentence, and REMAND for resentencing.



### Robert FERENSIC, Petitioner-Appellee,

v.

### Thomas BIRKETT, Respondent-Appellant.

No. 06-2342.

United States Court of Appeals,  
Sixth Circuit.

Argued: June 8, 2007.

Decided and Filed: Sept. 4, 2007.

**Background:** The United States District Court for the Eastern District of Michigan, Arthur J. Tarnow, J., 551 F.Supp.2d 874, conditionally granted habeas petition, and warden appealed.

**Holdings:** The Court of Appeals, Ronald Lee Gilman, Circuit Judge, held that:

- (1) exclusion of defense expert's testimony for failure to comply with trial court's production order violated petitioner's right to present a defense, and
- (2) denial of petitioner's right to present a defense was not harmless.

Affirmed.

McKeague, Circuit Judge, filed dissenting opinion.

### 1. Habeas Corpus (—447)

If a state-court decision meets either of the two "preconditions" for habeas re-

view, thereby establishing a constitutional error, the reviewing federal court must still determine whether the error is harmless within the meaning of *Brecht*; *Brecht* applies whether or not the state appellate court recognized the error and reviewed it for harmless error under the harmless error beyond a reasonable doubt standard. 28 U.S.C.A. § 2254.

### 2. Criminal Law (—661)

Exclusion of evidence in a criminal trial abridges an accused's Sixth Amendment right to present a defense only where the exclusion is arbitrary or discriminatory to the purpose it is designed to serve. U.S.C.A. Const-Amend. 6.

### 3. Criminal Law (—627.8(6))

Exclusion of a defendant's evidence, as discovery sanctions, should be reserved for only those circumstances where a less severe penalty would perpetuate rather than limit the prejudice to the state and the harm to the adversary process.

### 4. Criminal Law (—629.5(7), 661)

Exclusion of defense expert's testimony for failure to comply with trial court's production order violated defendant's right to present a defense; harm to defendant, who was unable to present expert's testimony informing jury of why the eyewitness' identifications were inherently unreliable, far outweighed the trial court's ministerial, albeit legitimate, need to manage its trial docket, particularly in light of the likelihood that the prosecution would have called its own witness to rebut defense expert's testimony. U.S.C.A. Const-Amend. 6.

### 5. Criminal Law (—629.5(2), 961)

Defendant was denied his Sixth Amendment right to present a defense by

48. See id. concluding that the weight of the evidence and trial judge's instructions "miti-

gated the potential prejudice of the prosecutor's statements".

court's decision in *United States v. Smith*, 212 F.3d 306 (6th Cir.2000), provides direct support for the district court's conclusion that the typical methods of "dual hanging" inconsistencies" in the eyewitness testimony "were not an effective substitute" for what Dr. Shulman would have offered. In *Smith*, the majority thoroughly rejected the dissent's contrary argument as follows:

The dissent contends by arguing that eyewitness identification experts are not necessary because cross-examination and jury instructions should be used in a trial to discredit and flush-out eyewitness testimony. Unfortunately, the dissent's homage to trial procedure does not extend to expert witness testimony. The same argument can be made for the admission of expert testimony: cross-examination and jury instructions can be used to question the qualifications of the proffered expert, undermine the basis of the expert's theories, explain the limits of social science's validation studies and pick apart research methods. The only reason given by the dissent for why cross-examination and jury instructions can serve those goals for eyewitness testimony, but not for expert testimony, is that the jury may take the expert's testimony as "scientifically irrefutable truth." This dissent's selective faith in the collective intelligence, common sense and decision-making ability of the jury is disconcerting, and is also inconsistent with the dissent's deference to the jury in other matters, including judging the credibility of eyewitness identifications.

212 F.3d at 316.

The *Smith* court also recognized that expert testimony on eyewitness identification, once thought to be unreliable and overly prejudicial to the prosecution, is now universally recognized as scientifically valid and of "aid (to) the trier of fact" for admirability purposes. *Id.* at 316 (the

causing expert testimony on eyewitness identifications in the context of the now-prevailing *Dawson* test for the admissibility of expert testimony in the federal courts). As the court explained,

Juries tend to be unduly receptive to, rather than skeptical of, eyewitness testimony. Further, accepting the district court's analysis that all jurors are aware of their obligation to be skeptical would lead to absurd results: expert testimony on eyewitness identification would never be admissible. As demonstrated by abundant case law, this is not the conclusion that has been reached by courts addressing this issue. Today, there is no question that many aspects of perception and memory are not within the common experience of most jurors, and in fact, many facts that affect memory are counter-intuitive.

*Id.* at 315-16 (emphasis in original). Nor was there any dispute regarding the admissibility of Dr. Shulman's expert testimony in the present case. Rather, the trial court excluded his testimony simply because Ferenc had failed to comply with a pretrial discovery order.

The significance of Dr. Shulman's testimony cannot be overstated. Without it, the jury had no basis beyond defense counsel's word to suspect the inherent unreliability of the Kosterle identification. The Supreme Court has long recognized this obviousness as intrinsic to our system of criminal justice. See, e.g., *Walton v. Iowa*, 449 U.S. 341, 382, 101 S.Ct. 624, 65 L.Ed.2d 646 (1981) ("[I]t is the inherent unreliability, much eyewitness identification evidence has a powerful impact on jurors. Jurors seem most receptive to, and not inclined to discredit, testimony of a witness who states that he saw the defendant commit the crime."). Indeed, eyewitness misidentification is "the single most important factor leading to wrongful con-

victions in the United States." *United States v. Brownlee*, 454 F.3d 131, 141 (3d Cir.2006) (quoting C. Ronald Huff et al., *Guiding Trial Process: Misconduct, Wrongful Conviction and Public Policy*, 32 *Crime & Delinq.* 518, 524 (1996)); see also *Chris Conway, The DNA 500*, N.Y. Times, May 20, 2007, § 4, at 14 (reporting on the first 500 U.S. inmates formally cleared on the strength of DNA evidence, and noting that "three-quarters [of the initial convictions] were marked by inaccurate eyewitness identification," a greater percentage than that attributable to any other factor). This statistic alone strongly supports the conclusion that excluding Dr. Shulman's testimony "had a substantial and injurious effect" on Ferenc's *Brady*, 597 U.S. at 831, 118 S.Ct. 1710. The identity of the perpetrator, after all, was the only issue at trial.

It was, moreover, a very close issue. We acknowledge that, as the Michigan Court of Appeals concluded, "standing alone, the testimony of the officer who recognized defendant from the sketch artist's rendering would arguably have been sufficient to convict." *Ferenc*, 2001 WL 853380, at \*2. But *Kocher* prohibits us from simply focusing on the sufficiency of the evidence, especially where it entails "scrapping the erroneous action from the whole" and determining the sufficiency of what is left "standing alone." 528 U.S. at 785, 66 S.Ct. 1219. We must instead "ponder[] all that happened." *Id.* This wider lens is what leaves us with "grave doubt." *See id.*

In "pondering all that happened" in the present case, we are particularly persuaded by the district court's finding that "the record indicates that the jurors were unable to agree on a verdict at one point during their deliberations." More specifically, the jury sent a note to the trial judge stating that "[w]e would like to see the police report," and asked "what are our

options if we don't totally agree on a verdict?" The "police report," of course, contained the police sketch as part of Ferenc's larger file. Thus the jury's own words imply not only that it had doubts about the strength of the case against Ferenc, but also that those doubts related at least in part to the contents of his police file.

Although the jury did not explicitly question the "reliability" of the sketch itself (identification *vis-à-vis* Ferenc's guilt, its note, especially when considered in the context of the erroneously excluded testimony from Dr. Shulman and St. John, precludes us from saying "well" fair assurance . . . that the judgment was not substantially swayed by the error." See *Kocher*, 205 U.S. at 785, 66 S.Ct. 1219; see also *Fry v. Plater*, — U.S. —, 127 S.Ct. 221, 230, 163 L.Ed.2d 15 (2007) (Serrano, J., dissenting) (citing six federal appellate court decisions, including *Fossil v. Cal.*, 194, 382 F.2d 576, 401 (6th Cir.2003), for the proposition that "jurors' evident uncertainty" as to a defendant's guilt makes a finding of prejudicial error in a right-to-prosecr-defense case almost inescapable to effectively dispute).

We wish to emphasize just how significant the jury's note is to our analysis, because it distinguishes the present case from many others in which the erroneous exclusion of an expert witness on eyewitness identification might well be harmless. For example, we recognize that this court has held on at least two occasions that the failure of counsel to hire an expert in eyewitness identification did not prejudice the defendant in a criminal trial. See *Lorch v. Smith*, 105 Fed.Appx. 559, 653 (6th Cir.2004) (upholding an unreasonable Michigan Court of Appeals's conclusion that defense counsel's failure to call an expert witness on eyewitness identification did not satisfy *Strickland v. Washington*

#### IV. Conclusion

For the reasons discussed above, we will affirm the District Court's dismissal of Malley and Mitchell's claims.

FISHER, Circuit Judge, concurring in part and dissenting in part.

The majority concludes that neither of the two intervenor-plaintiffs in this case has standing to pursue a claim for breach of fiduciary duty under § 502(a) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1182(a). While I agree that Elizabeth Malley cannot maintain such a claim, because she was never an employee of Blue Cross and could not have relied on the company's purported misrepresentations, I believe that Jane Mitchell, as a former Blue Cross employee, has demonstrated a potential right to relief and should be allowed to proceed with her case. I respectfully dissent from the decision to affirm the dismissal of her claim.

The majority acknowledges that, "in a proper case, we may find that a plaintiff has statutory standing if the plaintiff can in good faith plead that she was an ERISA plan participant or beneficiary and that she still would be but for the alleged misfeasance of a plan fiduciary." *Seymour*, p. 129 (majority op.). I submit that this is a "proper case." According to the complaint, Mitchell was urged by Blue Cross in 1992, after nearly thirteen years of service, to accept early retirement. She accepted after being assured by the health insurance benefits upon retirement and that those benefits would continue "without amendment" for her lifetime. (A.144, 146, 158.) This promise, of guaranteed lifetime benefits without the possibility of change, is plainly contrary to plan provisions reserving the administrator's right to amend. As a result of her reliance on the misrepresentation, Mitchell

was denied benefits when the plan was amended in 2001 to limit coverage to only those retirees who had worked at the company for more than fifteen years. (A.156, 173.) Had Mitchell known in 1992 that her benefits were subject to change, she presumably would have remained in the company's employ, possibly exceeding the fifteen-year threshold for coverage under the current plan. (A.144-46, 165.) In other words, "but for" the alleged misrepresentation by Blue Cross, Mitchell might still be a participant in the plan. *Graves*, p. 123 (majority op.). ("Mitchell contends that, but for Blue Cross's misrepresentations and omissions, she would not have taken early retirement.") She thus has standing to assert a claim for breach of fiduciary duty. *See, e.g., Daniels v. Thomas & Betts Corp.*, 983 F.2d 66, 78-79, 75-79 (9d Cir.2001).

The deficiencies cited by my colleagues are not grounds for dismissal. They concern that: (1) Mitchell has set forth only "generalities" regarding the factual predicate of her claim; (2) she has not specified how much longer she would have worked "but for" the alleged misrepresentations; and (3) she has not alleged that the statements made by Blue Cross prior to the 1998 amendment were false at the time that they were made." *Seymour*, p. 129 (majority op.). The third point seems to ignore Mitchell's allegation that the company promised her in 1992 that the health insurance benefits offered under the then-existing plan would not be subject to change, a representation that is clearly contrary to the plan's terms. (A.142-44, 168, 173.)

The other two points are similarly invalid, as they seem to impose upon Mitchell a "heightened pleading standard," demanding that she set forth the facts underlying her claim with particularity. This approach has been soundly rejected by the Supreme

#### UNITED STATES of America

v.

#### Craig William BROWNLEE, Appellant

No. 04-4194

United States Court of Appeals,  
Third Circuit.

Argued March 7, 2006.

Opinion filed July 18, 2006.

As Amended Sept. 18, 2006.

Background: Defendant was convicted in the United States District Court for the Western District of Pennsylvania, Arthur J. Schwab, J., on charges of carrying, using firearms in relation to federal crimes of violence, and possession of firearms by convicted felon. Defendant appealed.

Holding: The Court of Appeals, Anthony Circuit Judge, held that:

- (1) show-up procedure was unconstitutionally suggestive;
  - (2) unconstitutionally suggestive show-up procedure did not preclude admission of eyewitness identifications of defendant;
  - (3) expert testimony regarding accuracy and reliability of eyewitness identifications evidence would have been helpful to trier of fact;
  - (4) defendant's incriminatory statements to consulate were product of custodial interrogation;
  - (5) employer's submission of defendant's incriminatory statements was not harmless beyond reasonable doubt; and
  - (6) Court of Appeals panel had to give binding effect to precedential opinions of prior panels of Court.
- Reversed and remanded.

#### 1. Criminal Law (11591)

A decision to admit identification testimony over an objection is reversed for abuse of discretion.



Court as inconsistent with the liberal pleading system embodied in the Federal Rules of Civil Procedure, which requires only that the complaint provide "fair notice" of the proposed cause of action, allowing the court to assess whether relief is potentially available and permitting the parties to engage in meaningful discovery. *Shoverman v. Somers*, N.A., 534 U.S. 509, 514, 122 S.Ct. 992, 162 L.Ed.2d 1 (2002); *Leffersman v. Tyrone County*, *Norvetic Fisheries & Coordination Unit*, 507 U.S. 158, 168, 113 S.Ct. 1100, 122 L.Ed.2d 517 (1993); see also *3 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure* §§ 1202, 1212 (3d ed.2004). The complaint in this case satisfies this minimal burden. *Graves*, 983 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1967). ("A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief"). The concerns raised by my colleagues reflect possible deficiencies in the proof, not defects in the pleading, and they should be addressed through discovery and summary judgment, not dismissal of the complaint. See, e.g., *Shoverman*, 534 U.S. at 514, 122 S.Ct. 992.

I would reverse the order of the District Court dismissing the complaint as to Mitchell and remand for further proceedings.

ceded that the entire carjacking lasted only thirty seconds, and that she spent a predominant amount of that time focused on the weapon (which, incidentally, she misidentified). Moreover, Day at first told the 911 dispatcher that her assailant was wearing shorts (whereas Brownlee wore blue jeans). This testified that she initially believed the carjacker was a young kid (while Brownlee was 30 at the time the crime was committed), and both Thomson and Walker saw more of the suspect's back than his front as he ran away from them down the street. Finally, none of the witnesses could describe the suspect's facial features or provide the police with more than a relatively general description of him.

(8) These facts notwithstanding, the totality of the circumstances establish that the identifications were reliable. The evidence provided at the suppression hearing indicates that (1) the witnesses' opportunity to observe the perpetrator at the time of the crime was sufficient, at fifty close ranges, and in broad daylight; (2) their degree of attention was substantial; (3) their prior delinquency, while rather general, were fairly accurate; (4) their degree of certainty was absolute; and (5) relatively little time passed between the crime and confrontations (approximately 25 minutes). The generality of the witnesses' descriptions of the suspect, the relatively short period of time they saw him, and the other shortcomings pertaining to their identifica-

tions, go more to the weight of the evidence than the reliability of their identifications, and thus were issues for the jury. Accordingly, we conclude that the identifications were properly admitted at trial despite the fact that the show-up procedure was unnecessarily suggestive.

*B. Did the District Court err by refusing to allow the defendant's expert witness in the field of human perception and memory to testify regarding the reliability of the identifications?*

(9) Brownlee contends the District Court erred in restricting the testimony of Dr. Schooler, a professor of psychology at the University of Pittsburgh and an expert in human memory and perception. In a pre-trial pleading, Brownlee reported that he intended to call Dr. Schooler to testify about "issues of cross-racial identification and the reliability of identifications made under a stressful environment."<sup>1</sup> As noted earlier, the District Court allowed expert testimony concerning cross-racial identification, the effects of hair covering, weapons focus, and exposure to multiple witnesses, but refused to allow expert testimony in the other categories.

[10, 11] We review the District Court's decision to exclude expert testimony for an abuse of discretion. *In re Pisci R.R. Train PCH Litig.*, 916 F.2d 823, 836 n. 33 (3d Cir. 1990), cert. denied, 499 U.S. 961, 111 S.Ct. 1584, 113 L.Ed.2d 649 (1991).<sup>4</sup>

(7) The effect of post-test information on a witness' confidence in the accuracy of an identification, (8) time delay on identification, (9) the effect of post-test suggesting, and (10) cross-racial identification.

6. The Government argues that Brownlee's claim that the District Court improperly limited expert testimony was not preserved by contemporaneous objection and, therefore, should be reviewed for plain error. However, the defense's proffer of testimony at the Dis-

The Government argues that the District Court properly excluded testimony regarding (1) the comparison between the show-up and other identification procedures because "it held the potential for confusion, was irrelevant, and not helpful to the factfinder," and (2) the suggestiveness of the show-up involved in this case and this effect. It potentially played in the identifications because "the jury could have determined for itself without expert opinion whether the show-up in this case was capable of influencing the witnesses' identification." As for (3) confidence, reliability, (4) post-event suggestiveness, and (5) confidence of accuracy, although the District Court ruled such testimony excluded, the Government points out that "Brownlee . . . managed to elicit testimony concerning" those three categories from his expert at trial.

We are not persuaded by the Government's arguments concerning the exclusion of these five categories of excluded testimony. This case was primarily about the accuracy and reliability of the identifications.<sup>5</sup> The District Court's rulings, especially with regard to confidence of accuracy, significantly undermined Brownlee's ability to challenge effectively the witnesses' certainty and confidence in their identifications—a point the Government used to its benefit both in presenting testimony and arguing to the jury in its closing

her evidentiary hearing specifically presented to the District Court the issue raised here. After the Court ruled that certain of the proffered testimony would not be allowed, defense counsel was not obligated to lodge a post-ruling objection or preserve the issue for appeal. See Fed.R.Crim.P. 51(b) ("A party may preserve a claim of error by informing the court—when the court ruling or order is made or sought—of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection. . . . A ruling or order that admits or excludes evidence is governed by Federal Rule of Evidence 103."). Fed.R.Evid. 103

at trial. Moreover, the record reflects the Government's contention that Brownlee managed to elicit any expert testimony concerning confidence of accuracy.

It is widely accepted by courts, psychologists and commentators that "the identification of strangers is proverbially untrustworthy." Felix Frankfurter, *The Case of Stone and Vessette: A Critical Analysis for Lawyers and Laymen* 30 (Universal Library ed., Grosser & Donlap 1962) (1967) ("What is the worth of identification testimony even when uncontradicted? . . . The hazards of such testimony are established by a formidable number of instances in the records of English and American trials. These instances are recent—yet due to the fragility of ancient criminal procedure"; see also *United States v. Wade*, 388 U.S. 218, 229, 87 S.Ct. 1526, 18 L.Ed.2d 1149 (1967) (stating that "[t]he vagaries of eyewitness identification are well-known; the odds of criminal law are rife with instances of mistaken identification"); *O. Ronald Hoff et al., Quality United Proven Innocent: Wrongful Conviction and Public Policy*, 32 Crime & Delinq. 516, 524 (1986) ("The single most important factor leading to wrongful conviction in the United States . . . is eyewitness misidentification"). The recent availability of post-conviction DNA tests demonstrates that there have been an overwhelming

"Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not move an objection or offer of proof to preserve a claim of error for appeal.")

7. This is because the Government presented its other admissible incriminatory evidence by using Brownlee to effect the scene of the carjacking or the subsequent accident. See Section 11C below regarding inadmissible incriminatory evidence the Government presented at trial.

number of false convictions stemming from uniformed reliance on eyewitness identifications. In 200 out of 208 cases (94%) of wrongful convictions identified by a recent exonerated study, at least one eyewitness misidentified the defendant. Samuel B. Gross et al., *Exonerations in the United States, 1989-2003* 95 *J. Crim. L. & Criminology* 523, 542 (2004). In fact, "unreliable eyewitness identifications are responsible for more wrongful convictions than all other causes combined." A. Daniel Yarmey, *Expert Testimony: Does Eyewitness Memory Research Have Predictive Value for the Courts?*, 42 *Canadian Psychology* 92, 98 (May 2001). "[E]yewitness evidence presented from well-meaning and confident citizens is highly persuasive but, at the same time, is among the least reliable forms of evidence." *Id.* (Emphasis added.)

Even more problematic, "jurors seldom enter a courtroom with the knowledge that eyewitness identifications are unreliable." Erich F. Koch, Note, *Process v. Outcome: The Proper Role of Corroborative Evidence in Due Process Analysis of Eyewitness Identification Testimony*, 88 *Cornell L. Rev.* 1097, 1099 n. 7 (2003). Thus, while science has firmly established the "inherent unreliability of human perception and memory," 52 at 1102 (internal quotation

marked), the reality is outside "the jury's common knowledge," and other contextual jurors' "commonsense" understandings, *id.* at 1102 n. 43 (internal quotations omitted). To a jury, "there is almost nothing more convincing than a live human being who takes the stand, points a finger at the defendant, and says[,] 'That's the one!'" *Walters v. Souders*, 440 U.S. 341, 352, 101 S.Ct. 664, 681 E.D.2d 540 (1981) (Pruitt, J., dissenting) (emphasis in original).

9. In some instances, studies have shown no meaningful correlation between confidence and accuracy. See, e.g., Evan J. Minickley, *Due Process Considerations of In-Court Identifications*, 60 *Alb. L. Rev.* 389, 413 & n. 207 (1996) (citing studies); Benjamin E. Keenan, *Reaffirming the Right to Due Process in Connection with Perceptual Identification Proce-*

dures), the reality is outside "the jury's common knowledge," and other contextual jurors' "commonsense" understandings, *id.* at 1102 n. 43 (internal quotations omitted). To a jury, "there is almost nothing more convincing than a live human being who takes the stand, points a finger at the defendant, and says[,] 'That's the one!'" *Walters v. Souders*, 440 U.S. 341, 352, 101 S.Ct. 664, 681 E.D.2d 540 (1981) (Pruitt, J., dissenting) (emphasis in original).

112) Faced with "[t]he tragic irony of eyewitness testimony," Koch, *Process v. Outcome* *supra*, at 1099 n. 6 (quoting Lawrence Taylor, *Eyewitness Identification 1* (1982)), and no physical scientific means of exonerating himself, Brownlee sought to present expert scientific evidence to establish the inherent unreliability of human perception and memory by demonstrating that the correlation between confidence and accuracy is weak.<sup>1</sup> Federal Rule of Evidence 702 "authorizes the admission of expert testimony so long as it is rendered by a qualified expert and is helpful to the trier of fact." *Dalzell v. Merrill Dow Pharm., Inc.*, 911 F.2d 541, 554 (3d Cir.1990). Application of this Rule to Dr. Seidman's proposed testimony required the District Court to apply *United States v. Dornier*, 753 F.2d 1254 (3d Cir. 1985). There we recognized that Rule 702 "may permit a defendant "to adduce

evidence in *Analysis and a Proposal*, 79 *Ky. L.J.* 229, 276 & n. 79 (1991) (internal

quotation omitted). In 1985, when Dornier was decided, Rule 702 stated:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

In 2000, Rule 702 was amended to incorporate the holding in *Dalzell v. Merrill Dow Pharm., Inc.*, 909 U.S. 579, 113 S.Ct. 2786,

from an expert in the field of human perception and memory, testimony concerning the reliability of eyewitness identifications." *Id.* at 1226. The text outlined in *Dornier* instructs the trial court, after conducting a preliminary hearing, to balance two factors:

- (1) the reliability of the scientific principles upon which the expert testimony rests, hence the potential of the testimony to aid the jury in reaching an accurate resolution of a disputed issue; and
- (2) the likelihood that introduction of the testimony may in some way overweigh or mislead the jury.

*Id.* In addition, "admission depends upon the 'fit,' i.e., a specific proffer that the testimony will focus on particular characteristics of the eyewitness identification at issue and discuss how those characteristics call into question the reliability of the identification." *Schultz v. FBI*, F.2d at 419. More specifically,

a defendant who seeks the admission of expert testimony must make an on-the-record detailed proffer to the court, including an explanation of precisely how the expert's testimony is relevant to the eyewitness identifications under consid-

125 F.R.D.3 469 (1993). Rule 702 now states:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. Although the 2000 amendment added three new elements to Rule 702, the first part of the rule dealing with general "helpfulness" remained unchanged. Thus, although *Dornier* is pre-*Dalzell*, it remains good law. See *United States v. Muth*, 264 F.3d 221, 236 (3d Cir.2001) (relying upon *Dornier*).

eration. "The offer of proof should establish the presence of factors (a)-(c), or differences in race or age in between the eyewitness and the defendant) which have been found by researchers to impact the accuracy of eyewitness identifications.

*Dornier*, 753 F.2d at 1242.

In *Dornier* (and unlike this case), no specific proffer was made in the District Court. *Id.* Nonetheless, we remanded the case. In doing so, we cited with approval the admission of expert psychological testimony concerning, *inter alia*, "the fact that studies demonstrate the absence of a relationship between the confidence a witness has in his or her identification and the actual accuracy of that identification..." *Id.* at 1230-31; see also *id.* at 1242 & n. 23 (noting "the proliferation of empirical research demonstrating the pitfalls of eyewitness identification," "the [impressive] consistency of the results of these studies," and agreeing that "the science of eyewitness perception has achieved the level of exactness, methodology and reliability of any psychological research" (internal citations omitted)).

11. In *Dornier*, we noted that "[t]he government's case against appellant centered primarily on the testimony of twelve eyewitnesses who, with varying degrees of confidence, testified that appellant was the [perpetrator]." These witnesses testified on the basis of their personal observations of [him] for periods ranging from 5 to 45 minutes during the course of business dealings that later were discovered to be fraudulent." *Id.* at 1227 (internal footnote omitted). As the impermissibly excluded potential testimony affected the reliability of both the key prosecution evidence and the sole defense [of] exculpatory evidence," we held that "[t]he district court's erroneous conclusion that expert testimony on the reliability of eyewitness identifications is never admissible cannot be said to be harmless to the appellant within the meaning of Fed.R.Evid. 103(a)." *Id.* at 1243 n. 25.



**Judges**

**JANE E. MARKEY**

Judge Jane E. Markey was born on May 27, 1951, in Saginaw. She attended Michigan State University from 1969 to 1973, receiving a Bachelor of Arts degree, with high honors. Judge Markey attended the Thomas M. Cooley Law School from 1978 to 1981, where she was editor-in-chief of the *Thomas M. Cooley Law Review*, receiving her Ju-

ria Doctor degree, with honors.

Judge Markey was employed as a teacher and as a caseworker for the Saginaw County Department of Social Services from 1973 to 1978. From 1981 to 1982, she served as a prehearing attorney and a judicial law clerk for the Michigan Court of Appeals. Judge Markey practiced law from 1982 to 1984 with Baxter & Hammond in Grand Rapids, and from 1984 to 1991 with Dykema Gosselt in Grand Rapids. Judge Markey was elected to the 61st District Court in Grand Rapids in November 1990 and reelected in November 1992.

Judge Markey is a member of the American Bar Association, the State Bar of Michigan, the Grand Rapids Bar Association, the American Judges Association, and the Women Lawyers Association of Michigan and West Michigan. She also has served as a hearing panelist for the State of Michigan Attorney Discipline Board from 1989 to the present, is a Fellow of the Michigan State Bar Foundation, has served on the faculty of the Hillman Advocacy Program, United States District Court for the Western District of Michigan, the Michigan Judicial Institute, and the Institute

of Continuing Legal Education, and has been a member of the Michigan State Bar Grievance Committee and the Academic Committee for District Court.

Judge Markey is married to attorney Curt Benson. They have two children, Caitlin and Robert, and reside in Grand Rapids.

In November 1994, Judge Markey was elected to the Court of Appeals for an eight-year term ending January 1, 2003.

see JUDGE MARKEY WAS MY PRELIMINARY EVALUATION  
JUDGE SAHDI SHE IS MARRIED TO CURT BENSON, JUDGE  
BENSON'S (MY TRIAL, JUDGE W/OM REPORTED TO ALLOW  
ME TO REVIEW THE AUDIO TAPE OF THE PRELIMINARY  
EXAMINATION TO CORRECT THE ALLEGED TRANSCRIPTS)  
SOMETHING



"DETROIT FREE PRESS, A-4, FEBRUARY 9, 2013"

# Wayne Co. judge is suspended without pay

By Eric D. Lawrence  
Free Press Staff Writer

A Wayne County Circuit Court judge, previously censured for sending a shirtless photo to a county sheriff's office employee, has been suspended without pay.

Judge Wade McCree's suspension over reported allegations that he had an affair with a plaintiff in a child custody case was announced Friday in an order from the Michigan Supreme



Judge Wade McCree

Court. "The respondent Wayne Circuit Judge Wade H. McCree is suspended without pay, effective immediately, until further order of this Court. The respondent's salary will be held in escrow pending the

final resolution of these disciplinary proceedings," according to the order.

The court also granted a motion sealing the case, which will prevent the release of any details associated with it.

Messages seeking comment were left for McCree at his office and home.

Curt Benson, a professor at Thomas M. Cooley Law School's Grand Rapids campus, painted the court's order as a dramatic departure from how cases involving most other judges have been handled.

"I can tell you that this is, I believe, only the fourth time in history that the Supreme Court has suspended a judge without pay pending a JTC (Judicial Tenure Commission) investigation. Normally, judges are suspended with pay," Benson said in a news release. "In the other three cases, two judges had already been convicted of felonies and their removals were mere formalities. In the third case, the judge had admitted dereliction of duty before the investigation had even begun. So the evidence against McCree must be quite compelling."

McCree, who was censured in October because of the photo, became embroiled in scandal a second time when Fox 2 News reported on the alleged affair. The case also involved a claim from McCree that a woman "was stalking and attempting to extort him." The case was referred to the Michigan Judicial Tenure Commission after the Wayne County Prosecutor's Office opted not to charge the woman.

According to earlier reports, the woman, Geniene La'Shay Mox of Detroit, claimed to the news station that she was pregnant with McCree's child and shared text messages she said were sent to her from the judge.

CONTACT ERIC D. LAWRENCE  
ELAWRENCE@FREEPRESS.COM

\*\*\*CURT BENSON IS A PROFESSOR AT THOMAS M. COOLEY LAW SCHOOL, THE SAME LAW SCHOOL THAT HAS THE "INNOCENCE PROJECT", WHOM CONTINUE TO DENY ME ASSISTANCE ON MY WRONGFUL CONVICTION\*\*\*

1166

\*\*\*MY PRELIMINARY EXAMINATION TRANSCRIPT REGARDING ME NOT BEING PLACED  
IN A LINE UP BEFORE THE PRELIMINARY EXAMINATION HAD BEEN CONDUCTED\*\*\*

everyone stayed up there, so--

DETECTIVE GRABLE: --I advised them also to stay up there because we did not have any problems with any kind of an identification that they might make.

MS. OSTRANDER: Certainly, Your Honor, I don't think that it's unreasonable to request that there be no communication regarding physical characteristics or identify--in identifying my client to the--between the spectators here in the courtroom and the potential witnesses.

MR. BRAMBLE: I will do that. And, as a matter of fact, at the lineup, the last lineup we had scheduled, there was some questioning from the witnesses as to why we couldn't go forward. And we simply indicated that we couldn't comply with the--a proper lineup. And we didn't want to tip them off to any characteristics.

THE COURT: Well, obviously identification is a critical issue, and although someone could be wrongly identified, he or she could also be exonerated. And it is truly a very, very important part of the situation and I would presume that nobody wants somebody who is innocent to be found guilty or have anything go wrong. And so we--we'll keep everybody's promise here that you're not going to be discussing anything with witnesses.

SPECTATOR: I don't know nobody here.

THE COURT: Good.

\*\*\*TESTIMONY FROM DETECTIVE GRABLE SUPPORTING MY POSITION THAT I  
HAD NEVER BEEN TO GRAND RAPIDS (3 pgs.) SEE PAGES 78-79\*\*\*

1 THE COURT: Thank you, you are excused.

2 (At about 11:00 a.m. witness excused)

3 THE COURT: We'll take a recess at this  
4 time.

5 Ladies and Gentlemen of the Jury, we'll  
6 take a 15-minute recess. Again, please do not  
7 discuss the case. You may go back.

8 (At about 11:00 a.m. recess)

9 (At about 11:25 a.m. proceedings reconvened;  
10 all parties present)

11 THE COURT: Mr. Idsinga?

12 MR. IDSINGA: Thank you, your Honor. The  
13 defense calls Grand Rapids Police Detective  
14 James Grable.

15 THE COURT: State your full name, please.

16 MR. GRABLE: James Lawrence Grable.

17 THE COURT: Do you solemnly swear or  
18 affirm the testimony you're about to give in this  
19 cause is the truth, the whole truth, and nothing  
20 but the truth, so help you God?

21 MR. GRABLE: Yes, sir.

22 THE COURT: Please be seated.

23 JAMES L. GRABLE,

24 called by the Defense at about 11:25 a.m., sworn by  
25 the Court, testified:

1           they drew, they could get close to that. And, you  
2           know, my brother, if he was to draw my mother, it's  
3           his version of what she would look like to him.  
4           Each person would pick out different ideas or  
5           different features that would be most important to  
6           them, and I don't think that any of our pictures  
7           would look alike, it would be something that would  
8           be, you know, but we would all recognize my mother  
9           if we saw her.

10        Q     And it's a computerized thing?

11        A     That's correct. They have a very limited number of  
12           views and different parts to the face and such.  
13           It's, you know, difficult at best, but it's an  
14           investigative tool that gives us an idea of what a  
15           person looks like.

16        Q     Going back to Exhibit 9, the lineup of  
17           Kenneth Colvin, you testified that not one person  
18           picked him out, but how many people?

19        A     All three people that were shot by him picked him  
20           out without any hesitation.

21        Q     Would you ever even have had Kenneth Colvin in a  
22           lineup had it not been for his brother, the  
23           Defendant, Kelley Colvin, identifying him?

24        A     No, we had no record of Kenneth Colvin in the City  
25           of Grand Rapids, no reports with his name on it, we

1 had no idea that he even existed until  
2 Kelley Colvin gave his brother's name as the  
3 Co-defendant.

4 Q Do you recall the preliminary examination being  
5 adjourned on Mr. Kenneth Colvin?

6 A Yes.

7 Q Because there weren't enough people tall enough as  
8 Kenneth Colvin in the jail?

9 A Correct. We tried to have a lineup first before  
10 the preliminary examination, and Sergeant Kowalski  
11 at the Kent County Jail could not find enough  
12 people that looked close enough like him, so at the  
13 preliminary examination the defense attorney  
14 decided rather than have him be the only black male  
15 fitting the description in the courtroom, that she  
16 would adjourn the preliminary examination so that  
17 we could have a lineup so that we could find people  
18 that would be similar in height and stature.

19 Q And your efforts are to ensure the integrity of the  
20 lineup as well?

21 A Yes, sir.

22 Q So we don't want a person walking in and saying,  
23 "That's him," the only person sitting over in the  
24 chair, we have a chance to set up a lineup?

25 A That's correct.

INVESTIGATIVE INTERVIEW FORM

NAME Willie Meadows  
CASE Homicide - 844 Neland St NUMBER 94-59379  
OFFICER(S) Wysorcki 148 ; Koistra  
DATE OF INTERVIEW 7-1-94 TIME 1545 LOCATION KCCF  
INITIAL INTERVIEW Yes X No \_\_\_\_\_ RIGHTS READ Yes \_\_\_\_\_ No X  
PERSONAL INFORMATION ON SUBJECT (to be completed on initial interview)  
RACE/SEX B-m D.O.B. 8-12-59  
ADDRESS 1106 Eastern Ave Se HOME PHONE \_\_\_\_\_  
EMPLOYER \_\_\_\_\_ BUSINESS PHONE \_\_\_\_\_  
OTHER INFO (SPECIFY) \_\_\_\_\_

SIGNIFICANCE OF THIS PERSON'S INVOLVEMENT WITH CASE: witness after the fact.

**\*\*\*INVESTIGATING NOTES REGARDING WILLIE MEADOWS OVERTHEARING TARRON JOHNSON  
STATING THAT HE AND OTHERS HAD COMMITTED THE CRIME THAT MY BROTHER AND I ARE  
CONVICTED OF (6 per.)\*\*\***

INTERVIEW NOTES

Blo was contacted by Detective John Blouws of the KCSB. He advised that he had just spoken to an inmate, Willie Meadows, who had information on the Neland Homicides.

I met with Blouws who had looked up information on the last arrest + photo of the possible suspect. We then spoke to Meadows.

Meadows is in jail serving a six month sentence for maintaining a drug house. He is scheduled to be released on 8-27-94. His attorney is Larral Woods. He stated he was in the day room area of his cell when he overheard a conversation between inmates Calvin Jones and Tarron Johnson. They were talking while Meadows was nearby on the phone. This conversation occurred on Sunday the 26<sup>th</sup> of June. All three subjects have known each other for years. Johnson started talking about the shooting on Neland. (Meadows knows victim Cassandra Tilman's, people). He overheard the following:

Johnson said he and "Steecher" went in the house to Rob it.

They went to this house because they know it was a weed house and there would be money in there. They sent someone named "BayBrij" in first to check it out. He came back out and then Steecker went in followed by Tarron. Steecker started shooting and yelled "where's the dope and money?" Supposedly all they got was dope - no money. Apparently Tarron had been busted recently and needed the money.

Tarron did not say what kind of guns they used but knows him to carry a "9". The only thing Meadows know about Steecker is that he lives on the one-way part of Alexander 2-3 houses from the park (near union) on the right side of the road. Maybe a green or white house.

After the shooting they "broke and ran" to a car parked around the corner. The car belongs to a white male named Jim. He hangs at 910 Oakhill at "Neicy's" house. They subjects give Jim a rock for the use of his Brown Ford 4 door.

They put the guns in a grey box and throw it over the bridge on Buchanan near the limousine place (Plaster (rock))

Tarron said they got rid of the gun because they got 2 murders connected with them.

Steecker is dark skinned w/ hair in braids (last time Meadows saw him in winter-early spring).

NAME: WILLIE MEADOWS

CASE: EDF HOMICIDE

NUMBER: 94-

OFFICER(S): KENNETH WYSOCKI

DATE OF INTERVIEW: 7/1/94 TIME: 1540 LOCATION: K.C.C.F.

INITIAL INTERVIEW: YES  NO

RIGHTS READ: YES  NO

PERSONAL INFORMATION ON SUBJECT: (to be completed on initial interview)

RACE/SEX: BIM D.O.B. \_\_\_\_\_

ADDRESS: 1106 EASTERN AVE S.E. HOME PHONE: \_\_\_\_\_

EMPLOYER: NET BUSINESS PHONE: \_\_\_\_\_

OTHER INFO. (specify): \_\_\_\_\_

SIGNIFICANCE OF THIS PERSON'S INVOLVEMENT WITH CASE: \_\_\_\_\_

SENTENCE F.A. MAINTAINING A DRUG HOUSE  
DATE 8/29/

ATT. LARRY WOODS

#### INTERVIEW NOTES

MR. MEADOWS STATED HE WAS IN THE DAY RM. AT HERT COUNTY JAIL ON SUNDAY 6/26/94 WHEN HE OVERHEARD A TARRIN JOHNSON BIM BRAGGING TO A CALVIN JONES THAT HE, TARRIN, HAD ROBBERED THE PEOPLE ON NE LAND AVE S.E. TARRIN STATED THAT HE WAS WITH A SUSPECT BY THE NAME OF "SKEETER". SKEETER IS A BIM 18-19 5'2" 5'7" LIVES WITH HIS MOTHER ON ALEXANDER ST. 3RD/FOR 2ND HOUSE EAST OF UNION AVE S.E. ON THE RIGHT SIDE OF THE ST. GREEN/WHITE HOUSE.

TARRIN SUPPOSEDLY NEEDED MONEY AND THEY WENT TO THE "WEED HOUSE."

THEY 1ST. SENT A SUBJECT BY THE NAME OF "BRY BRY" INTO THE HOUSE TO CHECK IT OUT.



TARRIN + "SKEETER" BITN WENT INTO THE HOUSE. SKEETER STARTED SHAKING AND THEY ASKED FOR "DAPE" AND "MILKY."

TARRIN HAD A 9 MM AND SKEETER A PISTOL. AFTER THE SHOOTING THEY BROKE AND RAN

THEY DROVE OFF IN A BRN FORD OWNED BY A W/M "JIM" WHO BUYS DRUGS FROM NICEY GRIFFIN BIT AT 910 OAKHILL ST. S.E. GAVE JIM A "RICK" TO USE HIS CAR.

TARRIN STATED THAT THEY THREW THE GUN INTO PLASTER CREEK BY BUCHANAN AVE W/IN OF 28TH ST. S.W. ON THE EAST SIDE OF THE BRIDGE.

TARRIN WAS ARRESTED ON 6/24/94 ALVAD 2000 NRS. FR DIS.

PLASTER CREEK WAS CHECKED UNABLE TO DETERMINE WEAPONS THERE.

HOUSE ON NERLAND AVE S.E. WAS KNOWN AS A PARTY HOUSE.

T.P. 24

INVESTIGATIVE INTERVIEW FORM

#1

NAME Calvin Larnont Jones  
CASE Homicide 844 Neland Ave Se NUMBER 94-59379  
OFFICER(S) Wysocki, B. #148 ; Grable, J. #189  
DATE OF INTERVIEW 7-5-94 TIME 1:00 LOCATION KCCF  
INITIAL INTERVIEW Yes X No      RIGHTS READ Yes      No X  
PERSONAL INFORMATION ON SUBJECT (to be completed on initial interview)  
RACE/SEX B-m D.O.B. 3-5-75  
ADDRESS 924 Eastern Ave Se HOME PHONE 245-3049  
EMPLOYER      BUSINESS PHONE       
OTHER INFO (SPECIFY)     

SIGNIFICANCE OF THIS PERSON'S INVOLVEMENT WITH CASE: witness after the fact

**\*\*\*INVESTIGATING NOTES REGARDING TARRON JOHNSON TELLING CALVIN JONES THAT IT WAS HIM AND OTHERS WHO COMMITTED THE CRIME THAT MY BROTHER & I ARE CONVICTED OF (JOHNSON ALSO TOLD JONES WHAT HAPPENED AND THE GUNS (THE SAME TYPE OF GUNS THAT WERE DISCOVERED TO HAD BEEN USED IN CASE))**  
**NOTE: JONES WAS RELUCTANT IN COMING FORWARD WITH WHAT JOHNSON TOLD HIM**

INTERVIEW NOTES

After a lengthy discussion with Mr. Jones, he finally agreed to tell us what he knew about this incident.

He was in jail - serving a term for a probation violation on a drug charge. He has two weeks to go. He said Terron Johnson came in and told him he "hit a lick". Jones quickly went through the sequence of events involved in the Neland shooting. Started by saying they went there to do a robbery. They parked a car belonging to a white-dope-fren on Prince at Neland. They sent Bay-Bay into the house to do a buy and check things out. He came out saying it was "cool". They (Tarron + Skeeter) went walking up to the door and kicked the door in. They went in and saw a lot of people. They started shooting; Tarron saw a man on the couch start to reach for something and shot him. Skeeter went upstairs. Tarron had a .38 caliber and Skeeter had the other gun - possibly a .22 or .32 (he was sure on the caliber of the second gun) Tarron found the weed on the

on the table and some dope and money from the basement. They shot up the house and "left out". They ran to the alley between Prince and Watkins and hid the stuff under a bucket or can. Then they walked back to the car and drove to Cuthill then to get something to eat at Burger King on 28<sup>th</sup> near Madison. (believes it to be that location - but not positive) The guns were put in a grey metal box and tossed over the bridge off Buchanan near the K-Mart. Jones was unsure of which side of the bridge.

Jones asked Johnson why he did this and Johnson said, "I told Street not to do it in the daytime."

Street is described as: B-M 17-18 yrs lives on Alexander with his mother - drives an orange cutlass - hangs in area of Kalamazoo. Finally remembered his real name to be EVERETTE TAYLOR JR.

We asked who shot Cassandra - he asked how many times she was shot - when Grabe said, "Twice", Jones immediately said "Street."

Jones does not want to testify if it can possibly be avoided.

TIP 24

INVESTIGATIVE INTERVIEW FORM

NAME CAROLYN GLASPER

CASE \_\_\_\_\_ NUMBER \_\_\_\_\_

OFFICER(S) INVESTIGATIVE NOTES FROM CAROLYN GLASPER W/OM SEEN JOHNSON & THOMAS HAWKINS JUST IMMEDIATELY AFTER THE ROBBERY/ATTEMPT W/AS TAKEN PLACE

DATE OF INTERVIEW 6-28 TIME 1105 LOCATION \_\_\_\_\_

INITIAL INTERVIEW Yes  No \_\_\_\_\_ RIGHTS READ Yes \_\_\_\_\_ No

PERSONAL INFORMATION ON SUBJECT (to be completed on initial interview)

RACE/SEX B/F D.O.B. 12-11-69

ADDRESS 961 BLACK FLINT HOME PHONE \_\_\_\_\_

EMPLOYER \_\_\_\_\_ BUSINESS PHONE \_\_\_\_\_

OTHER INFO (SPECIFY) - UICE INFORMANT -

KEEP OUT OF PUBLICATION

SIGNIFICANCE OF THIS PERSON'S INVOLVEMENT WITH CASE: \_\_\_\_\_

EUNICE WEST 3-7-69 GEORGE

910 DAKHILL 2E B- JEROME SE.

- THEY HAVE AK-47s AND 9mm's -

INTERVIEW NOTES

CAROLYN WAS AT EUNICE'S HOUSE. THINGS + TERROR CAME UP TO THE DOOR - SHE STATES THEY DIDNT KNOW SHE WAS THERE. SHE LEFT OUT THE BACK DOOR AND STOOD BY THE BASEMENT STEPS - THEY TOLD HER ~~FE~~ (EUNICE) TO GO GET THE GUY (CARL'S <sup>INVEST</sup> BROTHER, AROUND THE CORNER) SHE (EUNICE) DIDNT MOVE FAST ENOUGH SO THEY WERE YELLING AT HER. CAROLYN THEN LEFT. THE NEXT DAY CAROLYN WENT BACK TO EUNICE'S HOUSE. SHE ASKED EUNICE WHAT HAPPENED WITH THINGS + TERROR. EUNICE SAID THAT THINGS + TERROR WERE ACTING REAL STRANGE, KICKING THINGS, PACING ETC. THINGS HIT THE BINE ON THE BACK PORCH. SHE KNEW SOMETHING WAS UP. SHE THOUGHT THEY HAD DONE ANOTHER ROBBERY, (THEY BRAG ABOUT DOING ROBBERYS IN KENTWOOD + WYO.) AND ALSO

ABOUT A ROBBERY IN THE WINTER TIME, ANTHONY THOMAS  
CARLS BROZAK TOLD EUNICE THAT THINGS  
HAD SHOT SOME~~ONE~~ ON WELAND, EUNICE  
ALSO SAID THAT THINGS + TERNON HAD SHOT  
A GUY ON GRANT or GRAYHAM IN A  
DRUG ROBBERY WHEN THE GUY DIDNT COOPERATE -

MIKE BILLY WHITE HOUSE OAK HILL/KAROO  
WHITE TRUCK



PARALEGAL SERVICES OF WESTERN MICHIGAN, INC.  
200 N. DIVISION AVE., GRAND RAPIDS, MI 49503  
(616) 451-9141

\*\*\*MS. ALFREDA PETTWAY STATING THAT CHIEF OF POLICE TOLD HER THAT THEY WILL NOT  
BE INVOLVED IN WHAT HER DAUGHTER SEEN AND THE INDIVIDUALS INVOLVED (4 pgs.)\*\*\*

MAY 15, 1995

ATTORNEY MICHAEL LIQUIGLI  
200 N. DIVISION AVE.  
GRAND RAPIDS MI 49503

RE: KENNETH COLVIN, JR.

CASE # 94-2732-FC  
FILE # 5-725-95

REPORT 1

ON THURSDAY EVENING, MAY 11, 1995, I TRAVELED TO 840 NELAND SE, GRAND RAPIDS, MICHIGAN. I KNOCKED ON SEVERAL DOORS AND ATTEMPTED TO LOCATE ALFREDA PETTWAY. I WENT ACROSS THE STREET FROM 844 NELAND SE, WHERE THE INCIDENT OCCURRED, AND WENT TO THE HOME LOCATED AT 845 NELAND SE AND KNOCKED ON THE DOOR. A BLACK FEMALE WHO WAS APPROXIMATELY 30 YEARS OLD CAME TO THE DOOR. I INQUIRED ABOUT THE SHOOTING THAT HAD OCCURRED ACROSS THE STREET AND ASKED IF SHE OR ANYONE ELSE IN THE HOUSE HAD SEEN OR HEARD ANYTHING. SHE REPLIED, NO THEY HAD NOT. I SPECIFICALLY ASKED FOR ANY KIND OF INFORMATION ABOUT THE TWO FAMILY ACROSS THE STREET WHERE THE INCIDENT HAD OCCURRED AND SHE TOLD ME THAT THE DID NOT SEE OR HEAR ANYTHING AND THERE WAS NOT ANYTHING UNUSUAL THAT WENT ON IN THE NEIGHBORHOOD AND SHE COULD NOT BE ANY HELP.

I THEN WENT TO THE NEXT BUILDING NORTH WHICH WAS 835 NELAND SE. I AGAIN KNOCKED AND A YOUNG BLACK MAN ANSWERED THE DOOR. I AGAIN ASKED FOR INFORMATION REGARDING THE SHOOTING, BUT HE ALSO SAID THEY DID NOT KNOW ANYTHING. HE SAID THAT HE AND HIS BROTHER WERE OUT OF TOWN THE WEEKEND THAT THE SHOOTING OCCURRED AND THEIR PARENTS WERE THERE

ALONE. I ASKED IF HE KNEW ALFREDA PETTWAY AND HE INDICATED THAT IT WAS THE BLUE HOUSE ACROSS THE STREET AT 823 NELAND SE. AGAIN THE YOUNG MAN ASSURED ME THAT HE OR ANYONE ELSE IN THE HOUSE DID NOT SEE OR HEAR ANYTHING SO I WENT ACROSS THE STREET.

I KNOCKED ON THE DOOR AT 823 NELAND SE AND A MIDDLE AGED BLACK WOMAN ANSWERED THE DOOR. SHE IDENTIFIED HERSELF AS ALFREDA PETTWAY. I ASKED HER IF I COULD SPEAK TO HER OR HER DAUGHTER CONCERNING THE SHOOTING THAT OCCURRED AT 844 NELAND SE AND SHE WAS SURPRISED AND BECAME QUITE UPSET THAT I KNEW ABOUT HER NAME. SHE WANTED TO KNOW HOW I HAD FOUND OUT ABOUT HER, AND I EXPLAINED TO HER WHO I WAS AND THAT I WAS WORKING ON THE INVESTIGATION FOR MR. COLVIN. SHE BRISTLED WITH ANGER AND SAID SOMETHING TO THE EFFECT THAT CHIEF HAGGERTY SAID THAT WE WOULDN'T BE INVOLVED IN THIS. SHE REFUSED TO TALK TO ME OR ALLOW HER DAUGHTER TO BE INTERVIEWED CONCERNING THE EVENTS THAT OCCURRED NEAR HER HOUSE AT 844 NELAND SE. I PLEADED WITH HER FOR ABOUT 15 MINUTES THAT I WAS COURT APPOINTED AND THAT I WAS JUST SEEKING THE TRUTH, AND THAT SHE HAD NOTHING TO FEAR. I TOLD HER THAT A MAN WAS GOING TO TRIAL AND HIS LIFE DEPENDD ON THE INFORMATION THAT I COULD GAIN FROM WITNESSES, BUT SHE AGAIN SAID THAT CHIEF HAGGERTY PROMISED THAT THEY WOULD NOT BE INVOLVED. SHE DID ASK FOR MY BUSINESS CARD AND I GAVE IT TO HER AND ASKED THAT SHE GIVE ATTORNEY MIKE LIQUIGLI A CALL AT HIS OFFICE AND SPEAK WITH HIM DIRECTLY.

I THEN MOVED ON AND WENT TO THE OTHER SIDE OF THE HOUSE AND KNOCKED ON SEVERAL DOORS. NO ONE ANSWERED AND I AM GOING TO TRY BACK AT DIFFERENT TIMES DURING THE DAY.

END REPORT



NAME \_\_\_\_\_

CASE Homicide NUMBER 94-59379

OFFICER(S) Vazquez, Crum

DATE OF INTERVIEW 6-24-94 TIME 1420 LOCATION 823 Neland SE

INITIAL INTERVIEW Yes  No \_\_\_\_\_ RIGHTS READ Yes \_\_\_\_\_ No

PERSONAL INFORMATION ON SUBJECT (to be completed on initial interview)

RACE/SEX B F D.O.B. \_\_\_\_\_

ADDRESS 823 Neland SE HOME PHONE \_\_\_\_\_

EMPLOYER \_\_\_\_\_ BUSINESS PHONE \_\_\_\_\_

OTHER INFO (SPECIFY) \_\_\_\_\_

SIGNIFICANCE OF THIS PERSON'S INVOLVEMENT WITH CASE: \_\_\_\_\_

She wears blue bandana.

INTERVIEW NOTES

She has seen a fuschia-colored car near the house in the past, but doesn't know if it is connected to the shooting. She saw two black males come out of the house with a black bag and go straight up Warden. They are people she has seen in the area before, most often at Martin Luther King Park and Fannie's Carvers. She's seen them in lots of cars, but specifically in a black, hardtop jeep and a long green car. She said she does not know their names or where they live or stay.

She described one man as 6', skinny build with a bald head, mustache and goatee. He was wearing black jogging pants and a white shirt. He also had white shoes.

The second man was shorter, about 5'4" and built "thick". He also had a bald head, cream colored shirt, and black shorts.

The girl refused to give us her name and did not want to be involved in this investigation.

Date 6-24-94 Hour 1448

To Chief

**WHILE YOU WERE OUT**

From Alfreda Pettway

or 840 Ireland

Phone 1 248-0544

Telephoned	<input checked="" type="checkbox"/>	Returned Call	<input type="checkbox"/>	Please Call
Please See Me	<input type="checkbox"/>	Will Call Again	<input type="checkbox"/>	Important

Message

"I will not be satisfied until I talk to the Chief"  
Claims she called 911 with info on shooting today.  
Bel's interview her daughter - Caller very upset

Feb 6-24-94 at 1540 hrs by DSJ

Signed lam

**PRIORITY EVALUATION**

-Low \_\_\_\_\_ Medium \_\_\_\_\_ High \_\_\_\_\_

**INFORMANT** **TIP NO.**

Name: Last Williams, Aaron First \_\_\_\_\_ Middle \_\_\_\_\_

Address 270 CHARLES SE City G.R.

Can be Contacted At \_\_\_\_\_

Home Phone \_\_\_\_\_ Office Phone \_\_\_\_\_

Informant was Contacted At \_\_\_\_\_

**SUBJECT** **TIP NO.**

Name: Last \_\_\_\_\_ First CHRIS Middle \_\_\_\_\_

Address 900 SIGSBEE SE City \_\_\_\_\_

Direction to Locate (Hangouts, girlfriends, etc.)  
FATHER OF MARYS BABY

Born \_\_\_\_\_ Ht. \_\_\_\_\_ Wt. \_\_\_\_\_ Eyes \_\_\_\_\_ Hair \_\_\_\_\_

Veh. Make \_\_\_\_\_ Style \_\_\_\_\_ Color \_\_\_\_\_ Yr. \_\_\_\_\_ Lic. No. \_\_\_\_\_

Works \_\_\_\_\_ City \_\_\_\_\_ Occupation \_\_\_\_\_

Home Phone \_\_\_\_\_ Other Phone \_\_\_\_\_

Associates \_\_\_\_\_

INFORMATION REFERENCE SUBJECT	Yes	No	Sex Motivated Crime File Check	Yes	No	Handwriting Specimen Obtained	Yes	No
Criminal Record Obtained (IB)	<input type="checkbox"/>	<input type="checkbox"/>	Intelligence Check	<input type="checkbox"/>	<input type="checkbox"/>	Hair Specimen Obtained	<input type="checkbox"/>	<input type="checkbox"/>
Record Section Checked	<input type="checkbox"/>	<input type="checkbox"/>	Operator's License Check	<input type="checkbox"/>	<input type="checkbox"/>	Written Statement Obtained	<input type="checkbox"/>	<input type="checkbox"/>
Photo Available	<input type="checkbox"/>	<input type="checkbox"/>	Fingerprints Obtained	<input type="checkbox"/>	<input type="checkbox"/>	Recorded Statement Obtained	<input type="checkbox"/>	<input type="checkbox"/>
LEIN Checked	<input type="checkbox"/>	<input type="checkbox"/>	Palmprints Obtained	<input type="checkbox"/>	<input type="checkbox"/>	Updated Photo Obtained	<input type="checkbox"/>	<input type="checkbox"/>
Gun File Check	<input type="checkbox"/>	<input type="checkbox"/>						

**DETAILS OF TIP**

**AARON WILLIAMS CALLED POLICE STATING THAT CHRIS TAYLOR LOOK LIKE THE GUY WHO SHOT HIM**  
 (2 pgs.)

**REPORT**

**SAW SUSPECT AND STATES "HE LOOKS JUST LIKE THE GUY WHO SHOT ME"**

Received by GRABER Date 6-26-84 Time 1950

Assigned to \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

Analyzed/Closed by \_\_\_\_\_ Date \_\_\_\_\_

Subject Not Cleared

Subject Cleared by:

Witnesses  Was Working  Polygraph

3: \_\_\_\_\_

113714

IB#

LOP, CHRISTOPHER LEON  
First Middle

B/m

R/S

R.T. CLASS. 11-9-77	
---------------------	--

rprints:

JUVENILE

SINGLES/PALMS

ADULT	11-21-90
1ST ARREST - DATE:	
2ND ARREST - DATE:	
SINGLES/PALMS - DATE:	11-21-90

Alias:

66 Radio W

rks:

TAYLOR, CHRISTOPHER LEON

114712

DATE: 06/23/93

B M

DOB: 10/16/72

Kent County Sheriff



GRASSLE  
#21

HTM. 1111

G.I.R.  FOLLOW-UP

INCIDENT: 94-61095 OFFICER: Beckert BADGE: 177

REPORT TIME & DATE: 1950/6-28 BETWEEN TIME & DATE: 1 AND/OR AT TIME & DATE: 1

INCIDENT TYPE: Field Interrogation CLASS: 9630

INCIDENT ADDRESS: Cherry St / Eastern Av SE DISTRICT: C-3

A NAME: Hawkins, John Whittisett R/S: BIM

DOB OR AGE: 11-1-71 INVOLVEMENT: suspect ARRESTED: YES ASKED-IN TIME & DATE: 12

ADDRESS: 709 Kellogg St SE HOME PHONE: None

EMPLOYER: None HOURS WORKED: 17 BUSINESS PHONE: 18

B NAME: Smith, Jacqueline R/S: BIF

DOB OR AGE: 29 yrs INVOLVEMENT: witness ARRESTED: NO ASKED-IN TIME & DATE: 11

ADDRESS: 844 Neland Av SE HOME PHONE: None

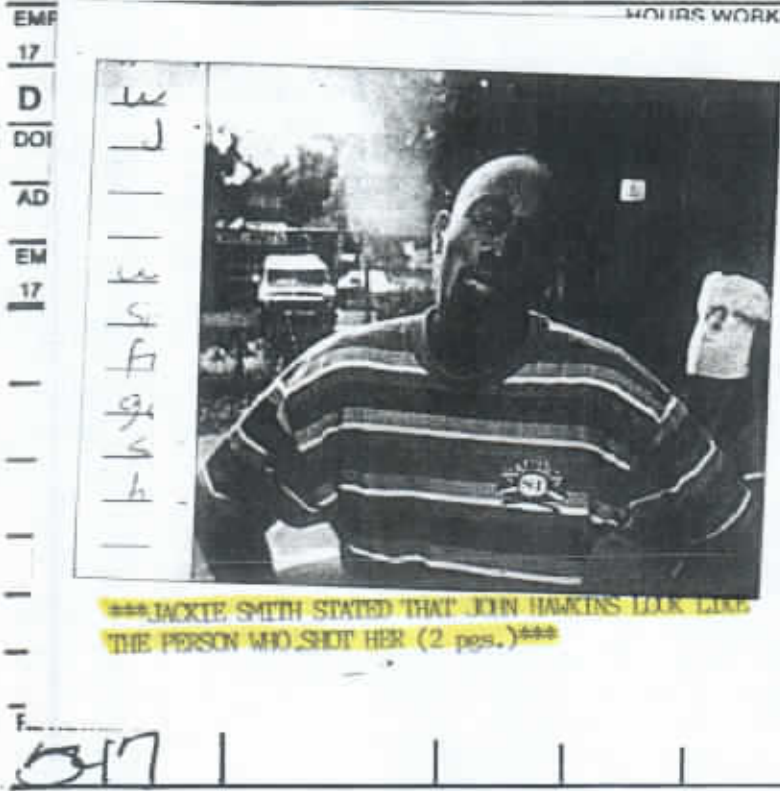
EMPLOYER: HOURS WORKED: 17 BUSINESS PHONE: 18

C NAME: R/S: 9

DOB OR AGE: INVOLVEMENT: ARRESTED: ASKED-IN TIME & DATE: 11

ADDRESS: HOME PHONE: 15

EMPLOYER: HOURS WORKED: 17 BUSINESS PHONE: 18



HOURS WORKED: 17 BUSINESS PHONE: 18

R/S: 9

ASKED-IN TIME & DATE: 13

HOME PHONE: 15

BUSINESS PHONE: 18

V.I.N.:

COLOR:

NATURE:

CONDITION:

OWNER NOTIFIED / BY:

OFFICER'S NAME / BADGE NO.: e 139

SIFIED: DISPO. RECLASS: DATE: BY:

517

Suspect: John Hawkins B/M  
5'10", 160 lbs, slight  
mustache & Goatee.  
Very crooked and yellow  
Teeth.

We responded to Cherry St Park  
on a report of a person there  
who was possibly the homicide  
suspect from 844 Neland. (94-59379)

Upon arrival we talked to  
a person who matched the description  
we were given. This person was  
John W. Hawkins.

As we were talking to Mr Hawkins  
we were approached by Jacqueline  
Smith. She is one of the victims  
from 844 Neland. She took a  
good look at Mr Hawkins and  
said that he was too short but  
he looked a lot like the guy.

We p.p'd John Hawkins and  
thanked him for his cooperation.

ON FRIDAY 7-8-94 R/O HAD A  
MUG DROP RE: TIP 24 ON TARRON  
JOHNSON, EVERETTE TAYLOR (AKA SKEETER)  
AND THAMES HAWKINS.

NO ONE PICKED TARRON - CHRIS  
SMITH POINTED OUT TARRON AND STATED  
"I KNOW THIS GUY, HE DOES THIS KIND OF  
ROBBERY BUT HE'S NOT THE ONE" - NO  
ONE PICKED "SKEETER" - AARON WILLIAMS  
PICKED THAMES AS "THINKS HE'S THE ONE"  
"NEARLY CERTAIN"

GRABCE 189

PHOTO LINE UP OF TARRON JOHNSON, THAMES HAWKINS & EVERETTE TAYLOR (6 pers.)

188

[REDACTED]  
DATE: 7-8-94 TIME: 1153

WITNESS: AARON WILLIAMS

NUMBER PICKED: 3

ATTORNEY: CRAIG FREDERICK

REQUESTING AGENCY: GRPD GRABBLE  
Pros Ward

STATES HE IS NEAR  
CERTAIN THIS IS THE PERSON  
WHO SHOT HIM

SUSP # 2

[REDACTED]  
DATE: 7-8-94 TIME: 1153

WITNESS: AARON WILLIAMS

NUMBER PICKED: 0

ATTORNEY: CRAIG FREDERICK

REQUESTING AGENCY: GRPD GRABBLE  
Pros Ward

STATES SUSP # 0  
LOOKS LIKE HIM





1



2



3

UNDO OF THAMES, JACKINS, HIM AS  
LAWSON WILLIAMS TO HIM AS  
THE SHOOTER "NEAR CERTAIN  
HE WAS THE PERSON WHO SHOT  
HIM"



4



5



6

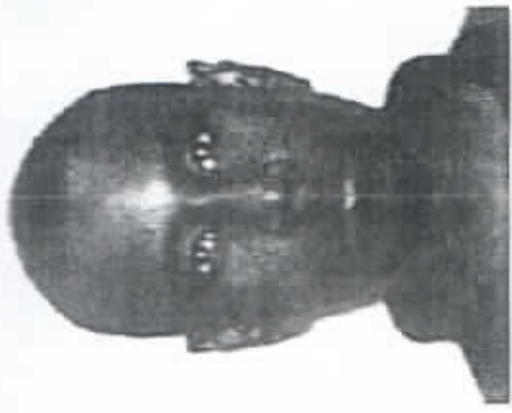
AARON WILLIAMS HAD PICKED PHOTO  
OF SUSPECT #6 LOOK LIKE SHOOTER



1



2



3



4



5



6

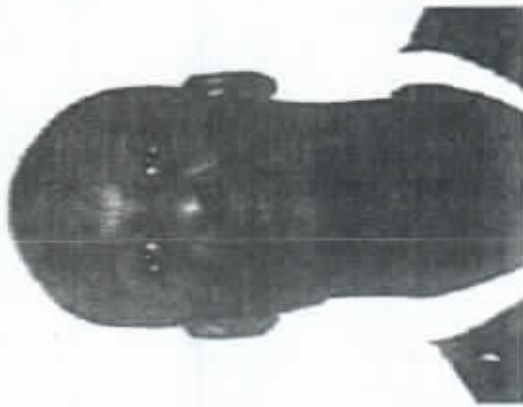


1



2

JOHNSON ADMITTED TO COMMITTING THE CRIME  
WAS STATED THAT HE DOES THESE TYPES OF CRIMES  
PHOTO OF TASHON JOHNSON



3



4



5



6

Kent County, MI Sheriff

FILE NO: 112515

**JOHNSON,**  
**TARRON**  
**JOSEPH**

DOB: 10/16/72

DOP: 05/05/94

Do Not Duplicate !!!



# Mini-riot over mysterious death

by Wazir Ali Muhammad

GRAND RAPIDS, Mich.— Suspicion between Black youth and local law enforcement in

West Michigan's largest city remains high after the May 22 death of Thames M. Hawkins in the custody of the Kent County Sheriff's Department.

Preceding only weeks before the internationally publicized Benton Harbor uprising, where a police chase led to days of civil unrest and the declaration of a lo-

5

## th in police custody

cal state of emergency, Black residents say the death of Mr. Hawkins, a "well-liked" neighbor and father of five, is another sign that their lives have little value to the police and sheriff departments.

"I was in the bed sleep and all of a sudden I heard a lot of commotion outside. Someone kept saying, 'Miss C! Miss C! Come downstairs, they got him down on the ground, they're hurting him,'" said Tecelia Price, while fighting back tears and explaining how officers held her knees on her son's neck.

At the time of his arrest, Mr. Hawkins was working in his automobile. According

to the police, he had been seen picking up or delivering some products or funds, and that he was allegedly involved in some drug activity.

Police said they used the appropriate force to subdue him. Police then reportedly took him to the Kent County Jail, where he subsequently died while awaiting processing.

W. Paul Mayhue, a commissioner for Kent County's 16th district, told *The Final Call* that Mr. Hawkins' death actually occurred inside the jail.

Local media linked his death to "swallowing cocaine," a story attributed to a "jail house infor-

mal open meeting where this information was disclosed. Neighbors and friends of the victim's family were also not satisfied with the explanation given for Mr. Hawkins' crushed larynx.

Ms. Price told *The Final Call* that the Sheriff's Department refused to apologize, either for the false statement regarding the cocaine, or for the fact that her son died in their custody.

Neighborhood residents agreed with Commissioner Mayhue, who said that much of the community's anger and frustration could be related to a lack of available activities relevant to Black youth, as well as racist and derogatory language from police and alleged incidents of police brutality.

"I feel that there is no place for derogatory language, and excessive force should not be used," Commissioner Mayhue said. "We've got to try to figure out what (law officers) mean by force and what they mean by excessive force. Particularly with the war on terrorism and all the rights that have been taken away ... not just from African Americans, but from America period. I think it's time to reassess the (weaknesses) of the Civilians' Review Board."

Ms. Price said she is grateful to her brothers and sisters in Christ who have mourned with her during this period of grief and loss. She urges the community parties



Thames M. Hawkins

\*\*\*THE DEATH OF MR. THAMES HAWKINS\*\*\*

NOTE: The color marks that I had placed in article indicate where the article ends & continues.

ment." Local television stations early Black youth, to reflect upon reported that once news of the death reached the streets, a mini-riot ensued, in which gunshots were fired at a police cruiser and angry crowds of youth hurled bricks, bottles and rocks.

An autopsy report concluded there was no cocaine in Mr. Hawkins' body. However, the coroner, along with the city police chief and the county sheriff, cited "blocked arteries" as the official cause of death—an explanation that aroused deep-seated resentment in residents at the weeping.

store.finalcall.com  
Log on today!

# When will we learn about false confessions?

## Convicting those who are innocent costly for taxpayers

When will we learn that innocent individuals can and do confess to crimes they do not commit? Sometimes they even plead guilty.

While we might find ourselves saying, "never," when imagining ourselves in such a situation, the

truth is confessions and guilty pleas come from the mouths of the innocent. Of the 208 DNA exonerations nationally, more than 25 percent of the cases involved false confessions or guilty pleas.

Michigan should have learned this lesson in 2002 when Detroit native Eddie Joe Lloyd was found innocent and exonerated of the 1984 rape and murder of 16-year-old Michelle Jackson.

Lloyd was in a mental institution at the time of the investigation of the Jackson case. He contacted police because he wanted to help solve the crime. After three police interviews, Lloyd confessed to the crime. According to the police, Lloyd provided details of the crime that only the perpetrator could have known.

**MARLA MITCHELL-CICHON**

is co-director of the Thomas M. Cooley Innocence Project in Lansing.

Hauntingly we have heard the same claims in the Claude McCollum case in Lansing. McCollum's "sleepwalking" confession also contained specific details of the crime.

In 1987 in Ada, Okla., Ron Williamson and Dennis Fritz were convicted for the murder of Debbie Carter based largely on Williamson's "dream" confession. Sixteen years later Williamson's confession proved to be false after DNA testing proved Williamson's innocence. Two other men, also convicted in Ada, Tommy Ward and Karl Fontenot, remain in prison today based on Ward's "dream" confession. Many believe these two men are innocent.

False confessions cost the taxpayers money. Lloyd's civil suit against the city of Detroit settled for \$4 million. Funds to pay the settlement came out of Detroit, Wayne County and state coffers. Part of the settlement included an agreement by Detroit police to videotape confessions in cases in which the suspect faces life imprisonment.

Ken Wynnemko, the second DNA exoneration in Michigan, settled his civil suit against Macomb County officials for more than \$3 million. A jailhouse snitch claimed Wynnemko confessed to him. The two men who were solicited by police to incriminate Wynnemko came forward in the civil suit to set in the record straight.

When will we learn that innocent persons do "confess" to crimes they did not commit?



Los Angeles Times Syndicate

When will we take a serious look at the social science that explains why individuals do falsely confess or plead guilty to crime?

When will we learn that an incriminating statement does not equal factual guilt?

When will we learn that changes to police interrogation practices are needed?

False confessions lead to the prosecution of the wrong person. The real perpetrator may continue to commit crime. It is time to stand up for Eddie Joe Lloyd, Michelle Jackson, Ron Williamson, Dennis Fritz, Debbie Carter, Ken Wynnemko

## Learn more

For more information about the cases of wrongful convictions and the cases of Eddie Joe Lloyd, Ron Williamson, Dennis Fritz and Ken Wynnemko, visit [www.innocence.org](http://www.innocence.org).

For information about Karl Fontenot and Tommy Ward, go to [www.wardandfontenot.com](http://www.wardandfontenot.com).

and others who have been harmed by unreliable, incriminating statements. It is time for Michigan to pass legislation requiring that police interrogations of criminal suspects be videotaped.

30 L  
Marquette, MI

# Evidence of McCollum's innocence called 'powerful'

## Judge says man doesn't need tether while on bond

KEVIN GRASIA 10/23/07  
Lansing State Journal

A judge on Monday said there is "powerful evidence" Claude McCollum was not involved in the 2005 rape and killing of a Lansing Community College professor.

At a hearing in Ingham County Circuit Court, Judge James Giddings ruled that McCollum does not have to wear an electronic monitoring device while he is free on bond. McCollum served more than a year of a life sentence for the 2005 rape and murder of a Lansing Community College professor he says he never even met.



McCollum

There is powerful evidence this defendant had nothing to do with (the crime)," Giddings said.

The Michigan Court of Appeals last month threw out McCollum's conviction at the request of Ingham County Prosecutor Stuart Dunning III. Dunning has reopened the investigation into the death of 60-year-old Carolyn Kronenberg.

In making his ruling Monday, Giddings referred to media reports that suspected serial killer Matthew E. Macon recently confessed to killing Kronenberg, as well as video evidence that may prove McCollum's innocence.

The Court of Appeals granted McCollum,

SEE JUDGE, Page 5A

### INSIDE

Attorney for Claude McCollum in murder trial said he never saw a copy of a state police report that said his client couldn't have been the killer. Pg. 5A

# Judge: McCollum's attorney wants murder, sex assault charges dropped

10/23/07

CONTINUED FROM 1A

30, a new trial, but it may not get to that stage. Dummings said Monday that he expects to make a decision about what he will do with the case by the end of the month.

"I'm not going to sacrifice thoroughness and prudence for speed," Dummings said.



Dummings

McCollum's attorney, Hugh Clarke Jr., said after Monday's hearing that prosecutors should dismiss the murder and criminal sexual conduct charges against McCollum.

Clarke said he is considering filing a motion by the end of the month, so he can "put on record all the reasons why the charges should be dismissed — and we'll see what the judge has to say."

## Released on bond

Last week, McCollum was released on a \$100,000 personal recognizance bond. One condition was that he had to wear an electronic tether.

McCollum also must live with an aunt in Lansing as part of the personal recognizance bond — which means neither he nor his family had to put up any money.

Giddings said McCollum will have to report weekly to the court. He also is not allowed to leave the state without the court's permission.

In discussing the tether in court, Giddings said the county should not have to pay \$600 to set up the tether and \$500 per month to monitor McCollum. Prosecutors said they would foot the bill.

"Why should the county spend \$1,100 up front ... to keep



ROD SANFORD/Lansing State Journal file photo

**End it:** Attorney Hugh Clarke Jr. (right) said Monday that he wants prosecutors to dismiss charges against Claude McCollum (left).



**EXTRA COVERAGE AT LSJ.COM**

For continuing coverage of this story, go to [www.lsj.com](http://www.lsj.com).

track of a defendant that's going to be totally exculpated here?" Giddings said.

Also Monday, Giddings referred to discussions with prosecutors, who told the judge they don't want the county to pay \$1,000 for McCollum's attorney, Hugh Clarke Jr., to conduct his own investigation.

After the hearing, Clarke said he sees irony in that.

"They don't want to spend money to show (McCollum) didn't have anything to do with it," he said, "but they do want to spend \$500 a month for a tether."

## Getting used to normal

Six days after he was released from jail, McCollum said it's only beginning to sink in.

"I'm starting to get used to having normal experiences again," he said.

McCollum's brother, LaRon let out an audible sigh of relief in court when Giddings made his ruling.

"It's amazing how strong he came out, considering it was a situation he didn't have anything to do with," said LaRon McCollum, 31, who visited his brother almost every week he was incarcerated.

## Time with grandma

Claude McCollum recently saw the 82-year-old grandmother who raised him. The Lansing woman is at a Jackson rehabilitation facility, recovering from foot surgery.

McCollum said the look on her face was "like sunshine," even though she had a tear in her eye.

"It was something in terms of just the way she said my name," he said.

Contact Kevin Grasha at 267-1347 or [kgrasha@lsj.com](mailto:kgrasha@lsj.com).

## '06 ATTORNEY: I DIDN'T SEE REPORT

Defense attorney Lee Taylor, who represented Claude McCollum at his 2006 murder trial, said Monday he never received a 2005 report by a Michigan State Police detective that said McCollum couldn't have killed a Lansing Community College professor.

"I did not get a copy of (the report) until it was given to me in October of this year. As soon as I saw it, I knew that I'd never seen it before," Taylor said in his first media interview since the Michigan Court of Appeals threw out McCollum's murder conviction and granted him a new trial.

Michigan court rules, which are adopted by the state Supreme Court, say that prosecutors must provide evidence to defense attorneys that could show a defendant is innocent.

Ingham County Prosecutor Stuart Dummings III said attorneys from his office told him they forwarded the report to Taylor.

The issue raised by Taylor "is one of the reasons I've asked for an investigation," said Dummings, who on Friday asked the state attorney general's office to look into the handling of video surveillance evidence in the case.

The 2005 report, by Detective Sgt. James Young, says McCollum is seen on surveillance cameras elsewhere on LCC's campus at the time 60-year-old Carolyn Kronenberg was sexually assaulted and killed, according to attorneys who have seen it.

Taylor said there also should be federal investigation into the prosecution's handling of the case, thinking there's a violation of this year's man's civil rights, as well. He said





# WHY IS THIS MAN STILL ALIVE?

Half a lifetime ago, Philadelphia cops put Tony Wright away for a brutal crime he didn't commit. DNA tests have exonerated him. But he's still not free

**BY PAUL SOLOTA ROFF**  
**ILLUSTRATION BY JOHN RITTER**

**T**HEIR TEST RESULTS were held high over the side of your room and across of black women all stuffed for hours in long stacks standing like wallflowers through the post-dress, two, when the beetle-eyed guard often pinched and berated, through the social sciences and did what there and around and died from of death, you enter a room in which young black men are described as wearing pants. The dozens of their orange jumpsuits rolled up tight. There, at the back, for the ball-burned students, were the ballies - not students - no

one here, a man so indented by the state of Pennsylvania that he looked human longer in two different colors to light his shadow for the reason. A lot of 70 when the outside right came and arrived his face like the splinter, 50 other than post-implosion being of 63, growing into of gray in the 30-year struggle and post-work and word here. But, both this a bubble, he wraps you in a bag that finally erases your spine. There's your reward for ten days in Philadelphia and three hours dodging inmates in the waiting rooms. At seven. People, when this city still is dependent on doing, it's a reward given and taxpayer's power. The police have no funds, even if you're still here. We, all here, a gift, here to have that have must set on 18 dollar. 16,







question. As soon as Weidinger took him from the scene, he arrested him out of context. They took the identities of the people who were there, but they had had a very good reason for it. It was not that they were looking for a suspect, but they were looking for a witness. They were looking for a witness who could identify the suspect. They were looking for a witness who could identify the suspect. They were looking for a witness who could identify the suspect.

When they got to the scene, they found a car that had been parked in the area. They found a car that had been parked in the area. They found a car that had been parked in the area. They found a car that had been parked in the area. They found a car that had been parked in the area.

**IF PAID COPS HAVE A REDEFINING FEATURE, IT'S THAT THEY'RE TOO DUMB TO CONCEIVE OF A TIME WHEN TECHNOLOGY WILL CATCH THEM IN THEIR LIES.**

As for the confession, and the father-son relationship, that's another matter. The father-son relationship is a matter of fact. The father-son relationship is a matter of fact. The father-son relationship is a matter of fact. The father-son relationship is a matter of fact.

It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago.

IT TAKES LIES, THAT'S NOT A surprise. The father-son relationship is a matter of fact. The father-son relationship is a matter of fact. The father-son relationship is a matter of fact. The father-son relationship is a matter of fact.

It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago.

It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago.

It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago.

It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago.

It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago.

It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago.

It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago.

It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago.

It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago.



**Sitting in Limbo**  
Tommy Wright is a man who has spent a long time in limbo. He is a man who has spent a long time in limbo. He is a man who has spent a long time in limbo. He is a man who has spent a long time in limbo.

It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago.

It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago.

It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago.

It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago. It was a long time ago, but it was a long time ago.

## TONY WRIGHT

(Cont. from 42) Williams amended that "the new DNA presented as an agree to a new trial," but said the state still has "considerable and compelling evidence against Mr. Wright that cannot be discounted through conspiracy theories and allegations of police misconduct." Williams then strongly urged the Wrights "to take a polygraph test," a methodology lashed out of most criminal courts years ago. "The National Academy of Sciences found that polygraph tests aren't viable or reliable, and the state of Pennsylvania determined they are inadmissible at trial, but the Philly DA's office thinks they're more probative than exhaustive DNA tests on rape-kit swabs and clothing!" said an incandescent Peter Hamblid, the co-founder of TP and Morrison's co-counsel in Wright's case. "Maybe they should fill Tony's pockets with rocks. Then dunk him in the Schuylkill to see if he floats or sinks!"

As for the police department, there was a carefully worded statement acknowledging that "technology has revealed new information" about the investigation. Saying that the case is "under review," the department declined to respond to pointed questions about the work of the detectives named in this piece (none of whom responded to *BULLDOG* PENN.'s phone

calls for comment). If the DA's office truly meant to exonerate Tony, his lawyers will first request a hearing on the admissibility of key portions of the state's evidence, including the statements Tony signed. At that hearing, the detectives will presumably be called on to explain how Tony could have copped to a brutal rape from which DNA has excluded him. They'll also have to explain, under oath and intense grilling, how clothes he never touched somehow came to appear in both his statement and his bedroom. Only this time, they won't be questioned by a court-appointed lawyer earning pennies for a murder case. Morrison and Neufeld have recruited Sam Silver and Rebecca Lacher, top litigators at Philadelphia law firm Schnader L.L.P., to handle any further proceedings. "Private clients pay millions for their talents," says Morrison. "Once the initial DNA tests come back, we knew we needed a strong and savvy team in a case as difficult as this."

Now guilty of nothing in the eyes of the law, Tony has been sitting in a county jail since last October. But he's glad, at least, to be back in Philly, where the people who love him — Tony Jr. chief among them — are just a half-hour's drive for visits. It's been a long, hard road for both Tony Wrights: Tony Jr. bounced from house to house, stuck to his father's side. But he found com-

fort in church who steered him through high school and, eventually, to college in Florida. He came back to Philly and found a job working with troubled kids. This spring, he and his fiancée expect the birth of their first child, a girl. Tony Jr. is hoping against hope that Tony Sr. will be there to witness her birth.

They don't much look alike, these two who share a name: Junior, a genial, yellow-checked giant, has five inches and 50 pounds on his old man. But there's grace in both of them, and the field-tested patience of men who've seen the worst and outlived it. You don't escape the scars of North Philly if there isn't something different in your wiring. It takes nerve to insist that your life has value in a place that starts it at birth, and nerve to declare that the truth will surface after the lies of policemen robbed you blind. Nothing will make right the wrong they did you, an settlement from the city, no apology from the mayor, no pretense of those men for their crime. There are untold Tony Wrights in every city in this country, men with the bad luck to be poor and black when they encountered dishonest cops. We need to hear their stories, and to rethink the way that put so many of them behind bars. If that sounds like heavy lifting, well, they're prepared to be patient. They have nothing on their heads but time.

## A Family's Quest for Justice

# Wrongfully Executed at 14?

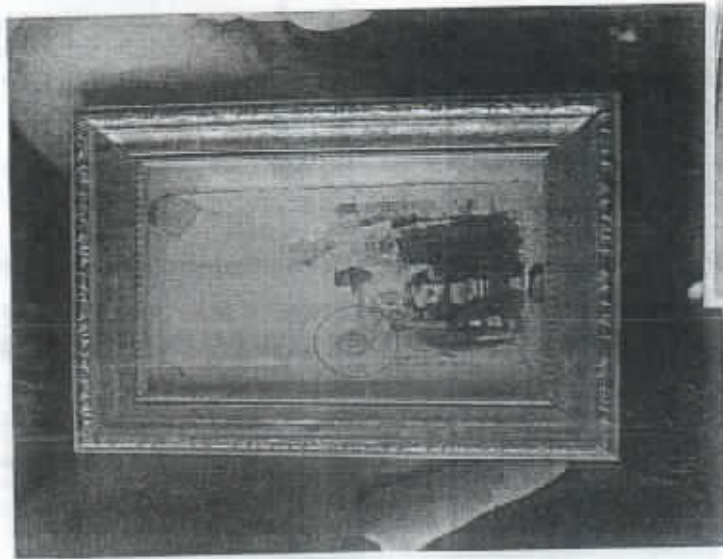
70 YEARS AFTER **GEORGE STINNEY** WAS TRIED IN A SINGLE AFTERNOON, CONVICTED OF MURDERING TWO YOUNG WHITE GIRLS, THEN QUICKLY SENT TO THE ELECTRIC CHAIR, HIS BEREAVED SIBLINGS HAVE ASKED A COURT FOR A NEW TRIAL TO CLEAR HIS NAME



**FINAL DEATH BY ELECTRIC CHAIR**  
"I remember going to the funeral. I could've believed what they'd done to him," said his sister.

**B**y any standard of justice, the facts of State of South Carolina v. George Stinney Jr. are chilling. On March 24, 1944, two white girls were discovered bludgeoned to death in the lumber mill town of Alcolu. Hours later police discovered a local black teen, 14-year-old George Stinney Jr., then quickly arrested and confessed to the murders. Within months, his proceeding concluded in a single afternoon: 118 court-appointed attorneys, Charles Floyd, neither cross-examined any prosecution witnesses nor offered any of his own. After deliberating for 10 minutes, the jury of 12 white men reached a verdict in the deaths of Betty June Hester, 11, and Mary Emma Thames, 7. Two months later Stinney was strapped into an electric chair, way too high for his slender 5'1", 95-lb. frame. As his body convulsed, the mast covering his face was dislodged. "They went and got a towel and wrapped it around my brother's head," says his sister Annis Huffner, now 77. "It caught on fire. Afterward his family, afraid someone might desecrate his grave, buried George in an unmarked plot.

Now Stinney's three surviving siblings are seeking something they are certain their brother did not receive in his short lifetime: justice. To clear Stinney's name, attorneys for the first time faced off against prosecutors in the Sumter County courtroom in January to argue that the 70-year-old verdict had been based on a coerced confession and could be thrown out. "The evidence is all gone, people are all dead," says defense attorney Matt Burgess. "But we are asking for this judgment to be set aside." For siblings of Stinney, who was the youngest juvenile to be executed in the U.S. in the 20th century, the case is deeply personal. "God has already cleared his name in heaven," says Huffner. "I'm looking for it to be cleared on Earth." In court, attorneys questioned witnesses about old photos and the accuracy of a map and debated whether the slain had judicial standing. Arguing for



**THE TWO LITTLE GIRLS**  
Mary Emma Thames (above, seated) and Betty June Hester (right) were last seen walking a bicycle along the railroad track, which separated the town. They went picking flowers because my dad was in the Army and he was coming home on furlough," says Huffner's sister Frankie Busby Dyche, now 67.





## Inside the Courtroom Battle

Lawyers for Stiney are pining for his conviction to be set aside. "We want 57 and 95 Ba," says defense attorney Steven McKenzie. "We believe someone bigger overpowered these girls." Jim Kelly, 60, whose father was the prison chaplain, says Stiney's own words convinced him: "he confessed to my father on more than one occasion."

Judge Carmen T. Mullin, who will not rule on George's guilt or innocence, is expected to preside by March when he is granted a new trial.



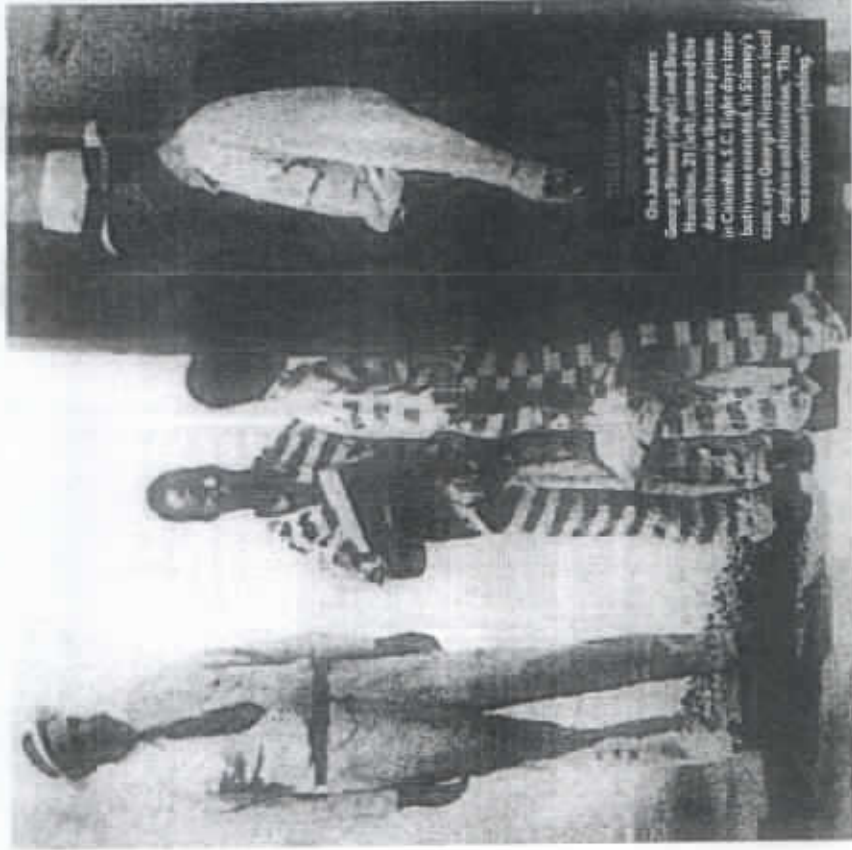
THE OLD DEFENSE TEAM

Stiney's attorney Steven McKenzie (left) and Jim Kelly (right) are seen in court.

the prosecution, Zerset Chip Finney III says that almost every witness there are no legal grounds to doubt the verdict. "Newspaper accounts were so inconsistent," he says. "A lot of the newspaper articles are the only thing that have survived the passage of time." Given the existence of a confession and the absence of an alternate suspect, he says, "We have to let the judgment of the court rest as it is." Frankie Dychas, 67, a niece of Betty Bunkicker, the sister of the two victims, insists the boy committed the right act. "It's a responsibility of an old woman," she says. "He was not framed." She and another niece, Carolyn Goodings, say older relatives remember Stiney as a troublemaker. "He was a bully," says Dychas. "He had a very short fuse."

In Stiney's circles, a different portrait emerges. Blamed by strict, churchgoing parents—his dad, George Sr., a former bus driver, his mom a school cook—Stiney was a seventh grader who looked after the family's cow. Memories of the events surrounding George's arrest remain vivid. A day earlier, Father recalls, the real George had been sitting on a railroad track, watching the cow graze, when the girls walked by, pushing a bicycle. "They said, 'Could you tell us where we could find some May paper,'" says Father, referring to social flowers. "We said, 'No,' and they proceeded to go on about their business." That night when the girls were reported missing, George Sr. joined the search. The next day the girls' bodies were found in a ditch, their bikes on top of them and a wheel lying nearby. A small red examiner's note says reports find the next day/consent and spoke was from a recent haircut to both girls' heads. The report noted a "slight bruise" on Bunkicker's genitalia.

Also that day, police took George to his custody, but it's not clear why. George Sr., who worked at the local sawmill, was promptly fired from his job. That night the family fled town—personally—moving to their grand-mother's home in nearby Finerwood. "We had no choice," says Father. "We could locate and read anyone going to get us." After that, her husband Charles



On June 6, 1964, prosecutor George Stiney (right) and Bruce Hamilton, 31 (left), entered the North tower of the state prison in Columbus, S.C. Eight days later, both were arrested. In Stiney's case, says Georgia Professor, a local church and hospital. "This was a controversial finding."

from, then-governor Ollie Johnston defended, but capital offenses, writing in a letter, "Stiney killed the mother girl to save the larger one. There is a belief the larger girl had raped her brother." By then it was too late for a retrial to point out that the governor's description committed the

### PROSECUTOR

**'I've been over the events these past 65 years. George could not have committed these murders'**

—CHARLES STINEY-ELDRIDGE

now 78, testified in an affidavit, "I never saw George again."

Without access to his parents or an attorney, Stiney quickly confessed to murdering the girls and later largely told a prison chaplain he did it with "a hammer." During the trial that followed, the Jim Crow South kept his family from being in the courtroom, so Stiney's mother and his brother

The crime proceeded as a robbery. Stiney, in bloody clothing, was under a weapon to force the boy to the murder's No transcript of the proceedings remains, but jurors were apparently surrounded by the two police officers who testified that Stiney's weapon had been a railroad spike and his father would testify.

Two days before Stiney's arrest

illings report, which said both girls' deaths were about 10 minutes apart. Johnny Hunter, then 19, swore in a recent affidavit that during conversations with Stiney, he lay repeatedly faced repeating the murders and reached his conclusion, telling Hunter that "they made him my close change."

The next time the Stiney siblings met, he says in a partially redacted cabinet, several legal recognitions. As they rose, Judge Mullin's decision, before it came to her mother's final words before the trial: "There's only one thing I want in this life I want there to be clear my son's name."

By JESSE SANCHEZ. Photographs: Bruce Hamilton in New York City; Howard Brown in Los Angeles; and Michelle Bradford in Mounting, S.C.

\*\*\*TRIAL COURT REVEALING THE FACT THAT DETECTIVE CRUM HAD BEEN DISHONEST DURING TRIAL IN WHAT OCCURRED IN MY BROTHER'S INTERROGATION WHICH PRODUCED THE FALSE CONFESSION (2 pgs.)\*\*\*

1 MR. BRAMBLE: Just the identification,  
2 just that he said, "It was my brother who went  
3 upstairs." Even Kelley Colvin didn't know what his  
4 brother did upstairs.

5 MR. LIQUIGLI: Your Honor, that's  
6 exactly what we took out of that statement, or the  
7 exact purpose, that it was too prejudicial --

8 THE COURT: Yeah.

9 MR. LIQUIGLI: -- to be let in. We're  
10 just trying to get it in a different way, and that  
11 is going to ask this gentleman to rule on the  
12 credibility of these witnesses and whether or not  
13 they're accurate because there's corroborating  
14 evidence.

15 \* THE COURT: I tend to agree,  
16 Mr. Bramble. We're compounding error with error.  
17 I'm a little weak, I think, in letting in Kelley  
18 Colvin's statement in the first place. If I let in  
19 the redacted parts now under this theory, I can  
20 guarantee a reversal if there is a conviction.

21 I don't mind -- angels walk in -- or  
22 fools walk in where angels fear to tread, and I  
23 don't want to get into that type of error.

24 If you're going to get in -- if what you  
25 want to bring out is that Kelley said his brother



with error. I'm a little weak, I think, in letting Kelley Colvin's statement in the first place." "...one of the problems I had, if you remember, Mr. Bramble, maybe you don't, in looking at People v. Poole and letting your statement in when they talk about spontaneity, and not the result of questioning and all this, and Officer Crum...Had an hour and a half, almost 90 minutes with witness, which is not on tape, and all of a sudden I get a, quote mark, spontaneous rehearsal or rehash of what was said. Lord only knows what was said for the first 90 minutes not on tape..."

T-638-640

#### ARGUMENT

Detective Crum in fact committed perjury when he willfully made false testimony under oath in regards to the interrogation with Kelley Colvin. This is a violation of the statute MCLA 750.422; MSA 28.664; MCLA 750.423; MSA 28.665. He has an obligation to tell the Truth, The whole Truth, and nothing but the Truth upon taking the witness stand in a criminal trial. People v. McGillen #1,392 Mich. 251 (1974). By the detective making false testimony, it has hampered the fact finding process of what actually took place in the interrogation with Kelley Colvin. The testimony was very material because, the trial judge wanted to know if Kelley Colvin was in fact questioned, prompted and/or received favors which in fact, was the Poole test. People v. Poole, 444 Mich. 151; 506 NW2d 505 (1993).

The defendant's attorney who represented the defendant at trial was not his attorney of the pretrial hearings in January 30, 1995. So, the defendant's attorney was not aware of Detective Crum's testimony at the pretrial hearing. But the prosecutor knew it was false and did nothing to correct it.

This was in fact prosecutor misconduct and violation of due process. U.S. Const., Ams V, XIV; Const. 1963, art. 1, §§ 17, 20; U.S. V. Lochmondy, 890 F.2d 817 (C.A.6, 1989); People v. Canter, 197 Mich. App. 550 (1992)

The prosecutor knew that there was a discussion with the

1 A Yes.

2 Q Okay. So you have lunch. You go in the lineup. After the  
3 lineup you go back to your cell; correct?

4 A Yes.

5 Q Then you go have dinner; correct?

6 A Yes.

7 Q Then following that you go into a meeting with Detective  
8 Crum and Detective Marks?

9 A Yes.

10 Q And it's by your testimony earlier since the very beginning  
11 of this interview with Detective Marks and Detective Crum  
12 that you're advised of your rights on that card; correct?

13 A Yes.

14 (Recess)

15 THE COURT: Be seated. All right. The Court has  
16 heard testimony in this Walker hearing from Officers Marks  
17 and Crum and the defendant, Mr. Colvin. This concerns the  
18 defendant's Fifth and Sixth Amendment rights to counsel,  
19 and it concerns a pre-arraignment police-initiated  
20 interrogation on this case after he had been arraigned and  
21 formally charged on the weapons charge and appointed  
22 counsel on -- I'll call it the Sigsbee incident.

23 The Court has heard the testimony and has had a  
24 chance to review the law. It's this Court's opinion that

1 the Crusoe case, People versus Crusoe, C-r-u-s-o-e, 433  
2 Michigan 666, controls the facts of this case. It's clear  
3 here that there was no right to counsel. Defendant was  
4 advised of his rights and advised that he had the right to  
5 counsel, and he waived -- voluntarily waived that right, so  
6 at that point he agreed to the interrogation, agreed to  
7 talk with the officers. He agreed to go ahead without  
8 counsel. He had no specific right to counsel by virtue of  
9 either counsel on the other case or counsel being present  
10 at the lineup on this case. This is a pre-arraignment, a  
11 case where the defendant had not yet been formally charged.  
12 Even though it was -- the focus was on the defendant, that  
13 is not determinative here. And the fact that it was  
14 police-initiated is not determinative either. What is  
15 crucial here is the fact that it was pre-arraignment. No  
16 formal charges had been filed. He was clearly advised of  
17 his rights. The Court finds from the testimony here of all  
18 witnesses that he understood his rights, and he voluntarily  
19 waived his rights. There was nothing unduly coercive here  
20 and that he made a voluntary waiver and voluntary  
21 statement. So the motion to suppress is denied.

22 We will proceed with picking a jury tomorrow morning.

23 MR. BRAMBLE: Your Honor, one last -- I've a  
24 signed -- a copy of the defendant's constitutional rights,

1 the preprinted form -- defendant acknowledged it, and so  
2 did the detectives -- and also a couple letters he wrote.  
3 I would like to have those marked just for purposes of  
4 making sure that these things we referred to are admitted  
5 as evidence in this hearing.

6 THE COURT: For a record of this hearing?

7 MR. BRAMBLE: Yes, your Honor.

8 THE COURT: Any objection to that?

9 MR. IDSINGA: I have no objection for this --

10 THE COURT: Pardon?

11 MR. IDSINGA: -- hearing, your Honor. I have no  
12 objection for this hearing.

13 THE COURT: All right. I will admit them at this  
14 point for purposes of this hearing.

15 MR. BRAMBLE: Thank you.

16 THE COURT: We'll recess till tomorrow morning.

17 MR. IDSINGA: Thank you, your Honor.

18 MR. BRAMBLE: Thank you, your Honor.

19 (Exhibits marked)

20 (Court recessed)

21 - - - -

209

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

R E X M A R K S,

having been first duly sworn at 2:50 p.m., by  
the Clerk to tell the truth, the whole truth  
and nothing but the truth, was examined and  
testified as follows:

THE COURT: Please be seated.

DIRECT EXAMINATION

BY MR. BRAMBLE:

Q. Detective Marks, you are employed?

A. Yes, I am.

Q. Where are you employed?

A. City of Grand Rapids Police Department.

Q. And your duties and responsibilities?

A. I'm assigned to the major case team of the  
detective unit.

Q. How long have you been working for the  
Grand Rapids Police Department?

A. Two-and-a-half years.

Q. Prior to working with the Grand Rapids Police  
Department, did you work with another police  
agency in Southwest Michigan?

A. Yes, I did.

Q. Where would that be, please?

A. City of Portage Police Department.

Q. Portage?

1 no.

2 Q. You don't believe he did?

3 A. No, sir.

4 Q. Drawing your attention to the interview that  
5 you had with Mr. Colvin on the 28th of July,  
6 you testified two other times about that  
7 meeting, correct? Once at a preliminary  
8 examination, and once at a hearing shortly  
9 before this trial started?

10 A. That's correct.

11 Q. And at the preliminary exam, you were  
12 cross-examined by Attorney Beckering, who  
13 represented the Defendant; is that correct?

14 A. Correct.

15 Q. And he questioned you about the subject  
16 matter of the conversations that occurred  
17 before the tape recorder went on, didn't he?

18 A. I believe so.

19 Q. And you told him at that time that part of  
20 the discussion involved explaining to the  
21 Defendant the types of charges that could  
22 come from a homicide, correct?

23 A. Correct.

24 Q. And you told him that you or Detective Crum,  
25 I believe it was Detective Crum, explained to

211

1 him in more or less parable form about these  
2 charges and the impact that they can have on  
3 someone, correct?

4 A. Correct.

5 Q. One of the stories that was told to him at  
6 that time was about someone who had also been  
7 implicated in a homicide, correct?

8 A. Correct.

9 Q. And during the course of the conversation,  
10 you explained, you or Detective Crum,  
11 explained to Kelley Colvin that if he was  
12 convicted of felony murder or murder in the  
13 first degree of any kind, that he would do  
14 life in prison without parole?

15 A. Correct.

16 Q. Now, in this story that was told about this  
17 preacher, the general gist of it was that a  
18 preacher -- or that someone was embezzling  
19 money and was found out by his secretary,  
20 correct, and he killed her?

21 A. That's correct.

22 Q. And that this individual also was charged  
23 with murder, correct?

24 A. Correct.

25 Q. And that he cooperated with the police,

212

- 1           correct?
- 2       A.    Correct.
- 3       Q.    And he told them the story, correct?
- 4       A.    Correct.
- 5       Q.    And the rest of the story is that this
- 6           individual didn't end up doing the rest of
- 7           his life in prison, right?
- 8       A.    Correct.
- 9       Q.    And he was charged with a murder, with a
- 10           felony type murder, and he ended up
- 11           cooperating with the police and being
- 12           released eventually, correct?
- 13       A.    That's correct.
- 14       Q.    And during this same two-hour span of time,
- 15           when you and Detective Crum were in this
- 16           meeting with Mr. Colvin, you also talked
- 17           about the fact that he has a child, didn't
- 18           you?
- 19       A.    Correct.
- 20       Q.    And he told you that he would -- it was an
- 21           important concern of his to see his child
- 22           again outside of the walls of a prison,
- 23           correct?
- 24       A.    That's correct.
- 25       Q.    And Detective Crum made the statement to him

213



1           that that was possible, didn't he?

2       A.    I don't recall if he specifically said that,  
3           or not.

4       Q.    Would reviewing a transcript of your  
5           testimony in the hearing on January 3 refresh  
6           your memory?

7       A.    Yes, it would.

8                   (Pause) That would be correct.

9       Q.    Okay. So in explaining the possible charges  
10           and the possible penalties to Mr. Colvin, the  
11           results were some encouragement given to him  
12           here that he would probably be able to see  
13           his son again if he cooperated.

14      A.    Correct.

15      Q.    Outside the walls of prison.

16      A.    Correct.

17      Q.    Who's the more experienced police officer,  
18           you or Detective Crum?

19      A.    (Pause).

20      Q.    In number of years.

21      A.    Detective Crum is senior.

22      Q.    Did he more or less take charge of this  
23           interrogation?

24      A.    For the most part, yes.

25      Q.    Did there come a point where the -- where

214

# Justice breaks down in Simpson case

Universal Press Syndicate

Circumstances brought me into conversational contact with a gentleman who — one forgets why — started to chat about the O.J. Simpson trial. He spoke of the DNA findings with almost proprietary authority.

"They were that way for years about fingerprints, the doubters. But there isn't any doubt, not any longer. They talk about the lack of eyewitnesses. Huh! Eyewitnesses are less reliable than DNA."

He meant that DNA doesn't make mistakes, but human beings do make mistakes. **There was the famous stunt of the Yale law school professor. One day early in the term, in his course on evidence, 15 minutes into his lecture someone jumps through the back door, pistol in hand, fires at the professor's head, and he falls obligingly to the ground with a deathly grunt. The killer runs out of the door he came in from, and the professor quickly rises from the dead — the whole act took only six seconds.**

**He then instructs his 20 students to describe exactly what they saw. Fifteen minutes later he reads to them from their individual notebooks. There are a dozen different descriptions of the assassin, of exactly what happened, or how the professor fell.**

DNA doesn't make such mistakes, said my acquaintance, who, I learned a few minutes later, had won a Nobel Prize for his work in science.

There were two questions. The first: Was there any of O.J. Simpson's blood at the murder scene? The second: Was there any blood of the victims back in O.J.'s house? The answer to both questions is yes.

Those who wish to hold open the question whether O.J. Simpson is guilty have got to resort to terribly abstruse stuff, as George Johnson did in the New York Times on Sunday. He quoted the philosopher Karl Popper to the effect that hypotheses ("O.J. is guilty of murdering his ex-wife and her friend") can never be "proved." And we are given an example, the one about the swans: "No matter how many white swans you see, you are not entitled to conclude that all swans are white. A black one may be lurking around the corner."

But in the spirit of fairness we are reminded of the auxiliary hypothesis: Even if you do see a black swan, that doesn't necessarily mean that your hypothesis about swan whiteness has been refuted. Perhaps this black swan is really white, but a disease of some sort blackened its feathers. Perhaps it fell into a coal bin. Perhaps through a momentary neurological defect — a misfiring neuron — your visual system incorrectly registered the color. And



WILLIAM F. BUCKLEY, JR.

even if a hundred people say they saw the black swan, it's possible that an errant electromagnetic field somehow distorted their brain waves.

The defense, no doubt in anticipation of the DNA findings, did its best to suggest that the blood samples were contaminated, but this line of objection proved to be utterly implausible. There is left to the defense the contention that all the evidence was planted — an Oliver Stone defense.

And when one thinks of the hundreds of hours the defense has spent documenting the carelessness of the Los Angeles police force and its criminalists in not following the letter of their manuals when collecting evidence, the juror is likely to ask himself: How can the same set of people who made so many mistakes in collecting evidence have acted with such extraordinary precision in distributing blood samples here and there?

So what is this scientific weakness of the DNA sample? Presumably it is reduced to this: that even if it is so that this same DNA combination would not show up in the blood samples of 4 billion people, then yes, there is the possibility that the next person after the 4 billion would have the same DNA.

But we are talking here about laboratories of the scientific imagination. While the expert in DNA can't say that such blood samples cannot exist in another human being, he can say that the chances are 4 billion to one that they don't.

What we confront in Los Angeles is evidence that the processes of justice are if not universally stalled, significantly enough arrested to warrant asking whether justice is dying; and if so, whether it is perishing from the creeping immobilizations brought on in the name of civil liberties.

Another way to put it is this: The only obstacle to the establishment of the guilt of O.J. Simpson is legal. The whole of the epistemological apparatus of the modern world — psychology, science, logic, reason — establishes that he is guilty. Only the law stands in the way of the application, paradoxically, of justice.

\*\*\*OP-ED ARTICLE DISCUSSING THE UNRELIABILITY OF IDENTIFICATION OF INDIVIDUALS THAT I HAD OBTAINED MAY 26, 1995, WHEN I WAS IN KENT COUNTY JAIL FIGHTING THIS CASE (2 PGS.)\*\*\*

# The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

\*\*\*RESPONSE LETTER THAT I HAD WRITTEN TO YALE REGARDING THE OP-ED ARTICLE THAT I READ ABOUT THE ALLEGED YALE MIS IDENTIFICATION INCIDENT\*\*\*

March 11, 1996

Mr. Kenneth Colvin, Jr.  
#192744  
4000 Cooper Street  
Jackson, MI 49501

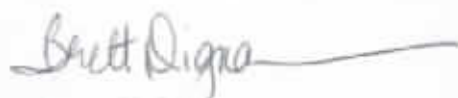
Dear Mr. Colvin,

I am a law student intern at the Yale Legal Services Organization (LSO), and I am writing to respond to your letter of September 1995.

Unfortunately, I do not think there is any way to confirm whether the "stunt" in the *Grand Rapids Press* article occurred here at Yale. I have heard this story too, but think it might be an "urban myth."

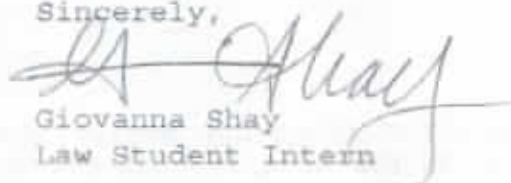
Moreover, I do not think that citing this "stunt" in your brief would be very persuasive to the Court because it does not demonstrate scientifically that witness' perception is flawed. I suggest requesting psychology books from your library on human perception. They might refer to psychological or scientific studies demonstrating that human beings make poor eyewitnesses and have difficulty identifying faces seen only briefly.

I wish you the best of luck in drafting your argument.



Brett Dignam  
Supervising Attorney

Sincerely,



Giovanna Shay  
Law Student Intern

## THINGS BLACK PEOPLE SHOULD KNOW

Your Cheat Sheet  
to Important Facts  
—by S. Tia Brown

### 1) Great Scott

The Dred Scott Heritage Foundation announced the unveiling of the first statue honoring the anti-slavery crusader in St. Louis, MO. You can check it out at [thedredscottfoundation.org](http://thedredscottfoundation.org).

### 2) Killer Kids' Meals

According to the Physicians Committee for Responsible Medicine, the fast food mini meals commonly served to children are packed with up to 10 times the recommended daily sodium and cholesterol. Dietitians suggest offering other options to teach better eating habits.

### 3) \$10 Minimum

Representatives from Michigan and Ohio are crossing party lines to push the Catching Up to 1968 Act of 2012. The federal bill demands that minimum wage meet inflation with a bump to \$10 per hour. Where does your state representative stand on the issue?

NEWS

## Guilty Until Proven Innocent



• **A RECENT STUDY** conducted by the University of Michigan Law School and Northwestern University School of Law found that nearly half of those falsely convicted of crimes are African-American. **Research showed that between January 1989 and March 2012 there have been 873 exonerations. Wrongful convictions generally come down to false accusation (51%), mistaken identity (43%), or official misconduct (42%). Here are the top three overturned crimes over the past 23 years.** —by Brandon Byrd

**RAPE** > According to the National Registry of Exonerations, there have been 305 cases reversed since 1989. That includes Kenneth Adams of Illinois, who was sentenced to 75 years for rape. He served over 17 years before being cleared.

**MURDER** > Between 1989 and 2012, 416 homicide cases have been overturned. For example, Phillip Eiven served over 30 years in Mississippi prisons for murder and rape before being freed in 2010.

**ASSAULT** > During the time span covered by the survey, 47 violent crimes were overturned. This includes Marvin Anderson of Virginia, who was charged with rape, abduction, sodomy, and robbery in 1982 and sentenced to 210 years. He served 15 years before DNA testing led to a full pardon.

► For help getting a wrongful conviction overturned visit [innocenceproject.org](http://innocenceproject.org)

JETMAG.COM 13

\*\*\*JET MAGAZINE ARTICLE REGARDING AFRICAN AMERICANS BEING WRONGFULLY CONVICTED AND THE HIGH PERCENT OF CONVICTION ON POLICE/PROSECUTOR MISCONDUCT\*\*\*

no-Gomez, 285 F.3d 737, 781 (7th Cir. 2002). Perez cooperated extensively in the arrests of the other defendants. Without Perez there would have been no initial arrests. Perez pleaded guilty even after he had lost the protection of a plea agreement. Throughout the proceedings he admitted his guilt and never took a position necessitating a trial on the question of his culpability. The district court nonetheless refused to grant a downward adjustment for acceptance of responsibility. The circuit court reasoned: "So I do find that the district court and I know that that means that he cannot get acceptance of responsibility . . . It seems to me it is not accepting responsibility to get up at trial and lie." While there is a presumption that a defendant who obstructs justice cannot get acceptance of responsibility, *United States v. Zvara*, 284 F.3d 857, 849 (7th Cir. 2002), Perez is right in pointing out that this presumption can be overcome in extraordinary cases, see, e.g., *United States v. Mayberry*, 272 F.3d 945, 948 (7th Cir. 2001); *United States v. Kallstrom*, 989 F.2d 961, 958 (7th Cir. 1993). Perez argues that this shows a legal error in that the district court judge did not recognize the existence of an exception. The government acknowledges this point.<sup>1</sup> They argue instead that the district court provided an assessment of the acceptance of responsibility issue independent of the obstruction issue. The government suggests that this assessment and the resulting conclusion that Perez did not accept responsibility form the basis for the denial of the adjustment. This argument is supported by the record. The district court stated that even if it could grant acceptance of responsibility it would not have done so. Hence, even if the district court did not recognize the extraordinary case excep-

tion, such error did not affect the outcome. The finding that Perez did not accept responsibility is not clearly erroneous.

*The Other Defendants*

[22] The challenges to sentencing brought by the other defendants require only brief discussion. Chavez argues that the district court should have adjusted his sentence downward for his minor role in the offense. Rodriguez argues that his sentence should have been adjusted downward for his minimal, or alternatively minor, role in the offense. We review a district court's findings regarding a defendant's role in an offense for clear error. *United States v. Hancock*, 217 F.3d 494, 497 (7th Cir. 2000).

[23] Given the fact that Chavez executed the important task of securing the warehouse for delivery and Rodriguez took part in planning the delivery, was present at the warehouse for the delivery, and drove the minivan that was to be used to take delivery, we cannot say that the district court was clearly erroneous in finding that both Chavez and Rodriguez played significant roles in the offense for which they were charged.

[24] Chavez also challenges the upward adjustment he received for obstruction of justice. As noted above we review *de novo* whether the district court made the appropriate findings to support an obstruction of justice enhancement and the underlying findings of fact are reviewed for clear error. The obstruction of justice enhancement was based on the story he told the district court regarding his reasons for securing the warehouse. Chavez testified that he had secured the warehouse because his brother Ramon had called him and asked him to find a garage

1. It is not entirely clear that this concession was necessary. Given the limited scope of the extraordinary case exception and the facts of this case it may have been possible that the

district court implicitly considered and rejected the extraordinary case exception argument in determining that it could not grant the downward adjustment.

where they could "scrap-up" a truck for a tractor pull. The district court found the story to be implausible and preposterous and therefore adjusted Chavez's offense level upwards for obstruction of justice. Such a conclusion is not clearly erroneous.

[25] Rodriguez also challenges the court's refusal to apply the safety-valve provision to his sentence. As noted above we review a district court's safety-valve determination for clear error. Rodriguez testified at sentencing regarding his involvement in the offense. During this testimony Rodriguez testified that he had no idea drugs were involved in the events of the day. The district court, not surprisingly, found this testimony to be incredible and refused to apply the safety-valve provision. That finding was not clearly erroneous.

III. Conclusion

For the reasons stated above, the convictions and sentences of all the appellants are AFFIRMED.



JAMES NEWSOME, Plaintiff-Appellee,

vs.  
HELEN MCCABE (as personal representative of the estate of John McCabo),  
Raymond McNally, and City of Chicago, Defendants-Appellants.

No. 02-1920, 02-2260, 02-2256 and 02-2257.

United States Court of Appeals,  
Seventh Circuit.  
Argued Jan. 8, 2003.  
Decided Feb. 10, 2003.

Former state prisoner pardoned on ground of innocence through § 1988 action

appraal police officers alleging that officers had induced eyewitnesses to falsely identify him. On interlocutory appeal from judgment of the United States District Court for the Northern District of Illinois, 2000 WL 528476, Paul E. Plunkett, Senior District Judge, denying summary judgment for two officers, the Court of Appeals, 256 F.3d 747, ruled that officers were not entitled to qualified immunity as to this process claim if they not only had induced witnesses to falsely accuse defendant but also had concealed that fact. On remand, city intervened, and following trial the District Court entered judgment on jury verdict against officers, see 2002 WL 648725. On city's appeal, the Court of Appeals, Eleventh Circuit Judge, held that: (1) officers were not entitled to absolute immunity, and (2) District Court did not abuse its discretion in admitting expert testimony concerning eyewitness reliability.

Affirmed.

1. Federal Courts — 776, 838

Although Court of Appeals reviewed question of law when it reviewed federal district court's finding that police officers did not enjoy qualified immunity in § 1983 due process action against them, review neither required nor authorized de novo appellate review of evidence; rather Court initially decided whether, taken in light most favorable to plaintiff, facts alleged showed that officer's conduct violated constitutional right, and if so, any subsequent review of sufficiency of evidence would be deferential. U.S.C.A. Const. Amend. 14, 42 U.S.C.A. § 1983.

2. Civil Rights — 211

Evidence that identifying witness in homicide investigation had been distracted

218

by police officers to pick specific suspect out of lineup and had been warned that he raised jail time if he informed prosecutors of officers' manipulation presented question for jury concerning whether officers had violated suspects due process rights by concealing exculpatory evidence, in particular prisoner's § 1983 action against officers. *USCA, Const. Amend. 14, 42 USCA § 1983.*

### 3. Civil Rights — 211

Police officers who allegedly harassed and identifying witness in homicide investigation to pick specific suspect out of lineup and then warned witness that he raised jail time if he informed prosecutors of officers' manipulation were not entitled to absolute immunity. In § 1983 due process action brought against officers by former suspect/prisoner, on theory that officers were being accused of suborning perjury and were within rule granting witnesses absolute immunity from civil liability on account of their testimony; officers' liability was under Due Process Clause owing to their concealment of exculpatory evidence. *USCA, Const. Amend. 14, 42 USCA § 1983.*

### 4. Torts — 16

Witnesses enjoy absolute immunity from civil liability on account of their testimony; immunity extends to preparation.

### 5. Evidence — 596, 537

Federal district court did not abuse its discretion in admitting expert testimony concerning eyewitness reliability, in particular prisoner's § 1983 due process action alleging that police officers had manipulated lineup results to achieve identification of specific suspect and then covered up their manipulation; expert's experiment, employing panels of persons who viewed photos of both presumed perpetrator and suspect whose identification officers allegedly had sought, both compared with

standard of reliability in field of eyewitness testimony and was helpful to jury in determining possibility that misidentification had occurred by chance. *USCA, Const. Amend. 14, 42 USCA § 1983, Fed. Rules Evid. Rule 702, 28 USCA.*

David Olson, Chicago, IL, Sean W. Callagher (argued), Bartlett, Beck, Herman, Palenchar & Scott, Chicago, IL, for James Newsome.

Lawrence Eisenstat (argued), Jane R. Nede, Office of Corp. Counsel, Appellate Div., Chicago, IL, for Raymond McNally, John McCabe, Helen McCabe and City of Chicago.

Before PLAUM, Chief Judge, and EASTERBROOK and DIANE P. WOOD, Circuit Judges.

### EASTERBROOK, Circuit Judge.

Fifteen years after his conviction for killing Edward Cohen, James Newsome was pardoned on the ground of innocence; fingerprints and other information, allegedly imply that Decade Dimension committed the crime. Newsome filed this suit under 42 U.S.C. § 1983, seeking damages from police officers who, he contends, induced three witnesses to identify him as the killer. Two years ago we held that officers McCabe and McNally are not entitled to qualified immunity if, as Newsome alleges, they not only induced witnesses to accuse him falsely but also concealed their improper activities. *Newsome v. McCabe*, 260 F.3d 747, rehearing denied, 360 F.3d 824 (7th Cir.2011). On remand the City of Chicago, which has a financial stake in the outcome as a potential indemnifier of the officers, intervened to protect its interests. A jury found that, by concealing evidence favorable to the defense, McCabe and

McNally had violated Newsome's constitutional right to due process of law and awarded him \$16 million in damages, to which the district judge (after denying all post-trial motions) added some \$939,000 in attorney's fees and costs. See 2002 WL 548725, 2002 U.S. Dist. LEXIS 6346 (April 4, 2002), 2002 WL 1008472, 2002 U.S. Dist. LEXIS 8793 (May 17, 2002). In this appeal Chicago does not dispute the legal accuracy of the jury charge, does not contend that the evidence was inadequate to support the verdict, and does not argue that the financial awards are excessive. Instead it asserts official immunity, and it also contests some of the district judge's evidentiary decisions at trial.

Mary of Chicago's contentions are various (or reconciliable) of arguments that we found unavailing: the last time around, Chicago then has preserved them for presentation to a higher court, but in this instance they are barred by the law of the case. Chicago's presentation effectively asks us to use a claim of immunity to resolve the case de novo on appeal, disregarding the rule that a jury's verdict must be sustained if the evidence (and reasonable inferences), when viewed in the light most favorable to the prevailing party, would permit a reasonable juror to find in that party's favor. According to Chicago, two legal prepositions call for independent appellate review: first, a claim of immunity presents a question of law for the court, see *Polonsky v. Wasky*, 550 F.2d 1150, 1204 (7th Cir.1985) (en banc); second, as part of the immunity inquiry, a court considers whether a constitutional violation occurred. See *Stoner v. Katz*, 625 U.S. 194, 201, 121 S.Ct. 2151, 130 L.Ed.2d 272 (2001).

Anthony Branch, José Nash, and John Williams supplied the principal evidence at Newsome's criminal trial. Branch and Nash, who had been in Cohen's grocery store when the murder occurred, positively

identified Newsome as the killer; Williams, who had been outside, testified that he saw Newsome flee. By the time of the civil trial more than 20 years later, Nash had died and Williams could not be found, but Branch denounced his earlier testimony as the result of insistence by McCabe and McNally that he select No. 3 (Newsome) in a lineup and Newsome testified that he saw the officers coach the witnesses during the lineup. The officers admitted (as Williams had testified during a suppression hearing) that they impermissibly displayed photos before the lineup, occurred to implore the witness that Williams would pick Newsome. Chicago wants us to disbelieve the testimony Branch gave at the civil trial, or at least give an innocent reading to his testimony that the officers threatened him with imprisonment if he told the prosecutors what actually happened at the lineup. According to the City, all McCabe and McNally want is that Branch feed criminal investigators unless he told the whole truth—a standard warning to witnesses who spin out inconsistent tales.

(1) Claims of qualified immunity neither require nor authorize de novo appellate review of the evidence. The Supreme Court made this clear: "A court required to rule upon the qualified immunity issue must consider . . . this threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?" *Saucier*, 533 U.S. at 201, 121 S.Ct. 2151 (emphasis added). This question is for bench rather than jury, and the court of appeals does not defer to the district judge's resolution of it—but just as with motions for summary judgment under Fed.R.Civ.P. 56, or for judgment as a matter of law under Fed.R.Civ.P. 50, what the court decides is whether the record could support a finding

of unconstitutional conduct. See *Johanson v. Jones*, 515 U.S. 304, 313, 115 S.Ct. 2151, 132 L.Ed.2d 438 (1995). To say that a motion for judgment, as a matter of law under Rule 50 is addressed in the court does not imply that the court resolves factual disputes; just so with claims of official immunity. *Sawyer* made the existence of a constitutional tort the initial inquiry because it's pointless to decide whether the impropriety of a public actor's conduct was clearly established at the time the conduct occurred, if the conduct was not improper at all. In other words, unless the plaintiff's complaint rests on a good legal theory, and the record presents a triable issue under that theory, the defendant is entitled to prevail expeditiously. When the legal theory is sound, however, and there is a material dispute about the strength of the evidence, then the case must be tried, and the jury's resolution is conclusive. If an interlocutory review tests only the sufficiency of the complaint, a later review may be required to test the sufficiency of the evidence, see *Beavers v. Peddicler*, 516 U.S. 269, 116 S.Ct. 834, 133 L.Ed.2d 779 (1995)—but, as with any other appellate review under Rules 50 or 56, the prevailing party receives the benefit of all reasonable credibility determinations and inferences.

[3] This jury heard Rounds. It knew that he was contradicting testimony given at Newsome's criminal trial; it knew that Rounds is not the most savvy character. But just as many a criminal defendant goes to prison on the testimony of former partners in crime who say that they have at last gone straight, so a jury could believe these witnesses when they decided to along in a new key. And Rounds' testimony about the warning, taken in the light most favorable to the verdict, permitted the jury to find that McCabe and McNally not only manipulated the identifications (something

that Newsome was the murderer. They did not need immunity; instead they (and Newsome) needed protection from steps that took advantage of memory's frailty, and Newsome's lawyers needed (but did not receive) information vital to probe whether manipulation occurred.

Most persons have difficulty remembering or describing the features of strangers. A person who sees a criminal for only a brief time taken away a vague sense of appearance and behavior—and that sense may be focused by a sketch, photograph, showup, or lineup after the events. Sometimes the witness zeroes in on the correct person, sometimes not; there is an element of chance and an opportunity for manipulation. Once the witness decides that "X is it" the view may be unshakable. Psychological research has established that the witness's faith is equally strong whether or not the identification is correct. We described these findings in *Krist v. 574 Lilly & Co.*, 897 F.2d 296 (7th Cir.1990): "An important body of psychological research undermines the lay intuition that confident memories of salient experiences ... are accurate and do not fade with time unless a person's memory has some pathological impairment. . . . The basic problem about testimony from memory is that most of our recollections are not verifiable. The only warrant for them is our certitude, and certitude is not a reliable test of certainty. . . . [T]he mere fact that we remember something with great confidence is not a powerful warrant for thinking it true." 897 F.2d at 296-97 (citations to the scholarly literature omitted). See Elizabeth F. Loftus & James M. Doyle, *Eyewitness Testimony: Civil and Criminal* (3d ed.1997); Elizabeth F. Loftus, *Eyewitness Testimony* (1978; rev. ed.1993); Daniel L. Schacter, *The Seven Sins of Memory: How the Mind Forgets and Remembers* 112-37 (2001). See also *United States v. Hall*, 165 F.3d 1056, 1118-20 (7th Cir.1999)

that would not by itself support an award of damages, as our opinion denying rehearing in 2001 explained) but also obstructed the ability of the prosecutors and defense counsel to get at the truth in the criminal trial—which does support the jury's verdict.

[2] Seeking a way around our decision that the officers are not entitled to qualified immunity, Chicago now contends that they should have received absolute immunity. The theory is that Newsome effectively accuses the officers of abhorring perjury. Witnesses enjoy absolute immunity from civil liability on account of their testimony, see *Briscoe v. LaHue*, 450 U.S. 955, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983), and that immunity also covers preparation. "It would be a hollow immunity if the aggrieved party could turn around and say, in effect: 'True, your discovery of bad testimony is immunized, but preparing to deliver that testimony is not, so I can litigate the substance of your testimony.' Substance is exactly what *Briscoe* puts off limits." *Buckley v. Fitzsimmons*, 919 F.2d 1290, 1345 (7th Cir. 1993) (emphasis in original), reversed in part on other grounds (after an intermediate remand), 509 U.S. 256, 113 S.Ct. 2806, 125 L.Ed.2d 309 (1993). Now Chicago contends that testimonial immunity should be extended to non-witnesses who assisted in the testimony's preparation. We rejected that extension in *Feroz v. Chicago*, 286 F.3d 564, 1000 (7th Cir.2002), and see on reason to revisit that issue because Newsome's case does not present it. *McCabe* and McNally were not held liable for conspiring with the eyewitnesses to commit perjury; their liability is under the process clause because they concealed exculpatory evidence—the details of how they induced the witnesses to finger Newsome. By the time of trial, Rounds, Nash, and Williams may have sincerely believed

(concurring opinion). Jurors, however, tend to think that witnesses' memories are reliable (because jurors are confident of their own), and this gap between the actual error rate and the jurors' heavy reliance on eyewitness testimony sets the stage for erroneous convictions when (as in Newsome's prosecution) everything depends on uncorroborated eyewitness testimony by people who do not know the accused. This is why it is vital that evidence about how photo spreads, showups, and lineups are conducted be provided to defense counsel and the court. It is also why the constitutional violation justifying an award of damages is not the conduct of the lineup but the concealment of evidence about them. Sequestering evidence is not covered by absolute immunity.)

[5] Because recollection is suggestible, it was important in this civil case to explore the question whether the testimony of Rounds, Nash, and Williams identifying Newsome at the criminal trial was attributable to deliberate manipulation or instead to chance. For if chance errors are to blame, and the witnesses would have identified Newsome no matter how the officers prompted them during the lineups, then defendants' conduct did not cause the wrongful conviction and an award of damages would be improper. To explore this issue Newsome presented the testimony of Gary Wells, a professor of psychology who has performed experiments and written scholarly works in this field. See, e.g., Gary L. Wells & Elizabeth A. Olson, *Eye-witness Identification*, 54 Ann. Rev. Psych. 277 (2003); Gary L. Wells, *Expertness Identifications: A System Handbook* (1983). Wells conducted an experiment to determine the likelihood that three persons who saw Emerson nonetheless would identify Newsome. He showed two images of subjects different pictures of Emerson for 15 seconds then, after some time, had

220

passed, showed them pictures of the man in the lineup and asked them to choose the one they had seen in the initial photograph. Of 50 members on the first jury, none selected Newsome's picture; of 600 members on the second panel (which was shown a different photo of Emerson), 15 chose Newsome's photo. Performing a chi-square test, Wells calculated that the probability of all three eyewitnesses independently picking Newsome out of a lineup by chance error was substantially less than one in 1,000, implying that the officers must have manipulated their identification lists.

Chicago asked the district judge to exclude Wells' testimony under Fed.R.Evid. 702, which as amended in 2000 codifies (with some variation) the holding of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 115 S.Ct. 2786, 125 L.Ed.2d 459 (1993). The district judge concluded that Wells is an expert on the subject of identification, that his testimony was based on sufficient data, that his methods were reliable by the standards of the field, and that he applied these methods reliably to the facts of Newsome's case. Experiments of the kind that Wells performed are the norm in this branch of science and have met the standard for scholarly publication and acceptance. There were of course potential problems. For example, Wells assumed that Emerson is the killer, so that the witnesses saw him; if anyone other than Emerson committed the murder, the test is invalid. Wells was careful about this vital assumption, which was open to probing and argument by the defendants. Wells also assumed that two-dimensional images (pictures) yield the same affects on memory as three-dimensional views (live action in the victim's grocery store; line-ups in the police station; identifications in open court). This may or may not hold, but the claim of equivalence was open to exploration at trial, and it is

hard to see what else Wells could have done. Even if he could have conscripted Emerson and the lineup participants for an experiment, time has so altered their appearance since the events of October 1978 that the results would have been unreliable. Chicago does not contend that there was a better way to find out whether Rounds, Nash, and Williams would have identified Newsome without the coaching. Instead it insists that Wells' testimony was irrelevant because he did not determine how the witnesses had been induced to believe that they saw Newsome commit the murder. Yet testimony need not prove everything in order to be useful. As we have said, the jury had to consider the possibility that unhappy chance rather than malfeasance led to the mistaken conviction. Wells provided information valuable in this endeavor. Appellate review of the district judge's decision is deferential. *Genium Electric Co. v. Joiner*, 522 U.S. 130, 118 S.Ct. 619, 139 L.Ed.2d 608 (1997), and there was no abuse here; indeed, we would have acted precisely as did the district judge. As *Hall* explains, it may be prudent to avoid complicating criminal trials with general scientific evidence about the psychology of identification—though scientific evidence that a given person deviates from the norm (for example, is especially suggestible) may be invaluable. See *United States v. Hall*, 93 F.3d 1377 (7th Cir.1996). No matter how criminal trials should be managed to keep the jurors' minds on the main event, however, Wells' testimony was not a distraction in this civil proceeding but went to an important ingredient of the plaintiff's claim.

Chicago presents several other objections to the district judge's handling of the trial. These do not require separate discussion; all were treated thoughtfully in Judge Plunkett's post-trial opinion, and we substantially agree with his disposition of

them. He did not separately discuss the City's request for monetary sanctions on account of Newsome's failure to reveal his arrest on heroin charges two weeks before the civil trial, his loss of employment as a paralegal, and thus his perjury at trial when he described himself as gainfully employed (which enabled counsel to argue that Newsome is a model citizen who rose above a disordered youth). Yet the district judge did conclude that Newsome's deceit does not require a new trial—a decision that Chicago no longer contests—and it was not necessary to discuss separately the possibility that a financial sanction might have been appropriate. It is not clear to us that Chicago adequately alerted the district judge to this possibility (the record does not contain a formal motion seeking monetary sanctions, see Fed. R.Civ.P. 37(e)(1)); but whether it did or not, there was no abuse of discretion in the judge's resolution, even if we might have handled this issue differently.

## APPEALS.

William T. DIVANE Jr., et al.,  
Plaintiffs—Appellees,

v.

KRULL ELECTRIC CO., Defendant,  
and

John J. Curry Jr., Respondent—  
Appellant.

No. 01-3495.

United States Court of Appeals,  
Seventh Circuit.

Argued Sept. 24, 2002.

Decided Feb. 11, 2003.

Following entry of judgment against employer and for trustees of employee

Affirmed as modified.

## 1. Federal Civil Procedure 0-4723

District courts have wide latitude in setting attorney fee awards and generally district court will only abuse this discretion when no reasonable person could have taken the same view it adopted.

## 2. Federal Civil Procedure 0-2310

In general, the district court enjoys broad discretion in setting a sanction award that it believes will serve the deterrent purpose of Rule 11; in an effort to deter future conduct, it may impose a flat sanction; it may strike offensive pleadings, or, more commonly, it may direct the offending party to pay the other party's reasonable attorney fees. Fed. Rules Civ. Proc. Rule 11, 28 U.S.C.A.

## 3. Federal Civil Procedure 0-27374

In deciding upon a fee award in a case where a plaintiff has only partially pre-



POLICE  
DEPARTMENT

## CITY OF GRAND RAPIDS

7-11-94

To: Mercy Amb. Co.

I am investigating the double Homicide that occurred at 844 Neland Ave. S.E. on 6-24-94. The victims of the Homicide were Cassandra Tillman B/F DOB: 6-16-74 and Kenneth Smith B/M DOB: 11-16-66. Also shot in this incident and treated by Mercy were Aeron Williams B/M DOB: 7-23-57 and Jacqueline Smith B/F DOB: 12-14-64, and Christopher Smith B/M DOB: 1-24-74. Please send or FAX copies of any reports that have been generated by your Co. to me to assist in this investigation. Thank you for your cooperation in this matter.

Det. James L. Grable  
Grand Rapids Police Dept.  
333 Monroe Ave. N.W.  
Grand Rapids Mich.

49503

TX: 456-3816  
FAX: 456-3785

222

4 RECORD

# EMS FORM FAX RECORD

DATE: 7-18-94

TIME: 12:08

PATIENT NAME: CASSAIDA TULLMAN, KENNETH SMITH AARON WILLI  
+ JACQUELINE SMITH

RUN NUMBER: \_\_\_\_\_

AGENCY FAX SENT TO: GR POLICE - DET JAMES GRABLE

MERCY PERSONNEL SENDING FAX: 2 LANE

COMMENTS (optional): ALSO REQUESTED CHRISTOPHER SMITH,  
FIND NOTHING ON HIM.

223

Investigative Interview

6-24-94

844 Neland Av SE - Homicide

94-059379

Witness: Terry Coger, W/M, 9-24-70  
1023 Prince St SE  
247-0839

1435 hrs.

Terry told me he was inside his home (NW corner of Prince and Neland...SW from crime scene) when he heard about six shots (around 1230 hrs). At first he thought someone was outside shooting in the air again, a frequent occurrence in the neighborhood. After looking out several windows to locate the possible source, about 30 seconds may have passed before he looked out a window at the NE corner of the house, that's when he observed a Black couple, one of which was carrying a small child, crawl out of the upstairs bedroom window (SW corner of the house) at 844 Neland Av SE, onto the roof of the front porch, then leap to the ground. All three then ran south on Neland (E sidewalk), then east on Prince where they ran into a house on the south side of Prince (1026?). He said the female was holding her head as she ran. Moments later a B/M wearing red shorts came out of the house hollering for someone to call the police, that somebody had just "gotten shot". At the same time another B/M appeared at the same upstairs window the couple had just exited, and started hollering similar calls for help. Terry said he then called 911 and relayed the calls for help to the dispatcher. He saw no one else exit the house.

(the perpetrators may have already exited out the front door by the time Terry first looked out the window affording him a view of the house at 844 Neland)

Sgt. Ted Quist,  
Family Services Team

224

Investigative Interview

6-24-94

844 Neland Av SE - Homicide

94-059379

Witness: Kevin Coger, B/M, 3-4-78  
1023 Prince St SE  
247-0839

1425 hrs.

Kevin told me he was inside his home (NW corner of Prince and Neland....SW from crime scene), upstairs, when he heard about six shots, around 12:30 PM.

He didn't think much of it at first, but then decided to look out the window near the NE corner of the house. All he remembers seeing is a B/M wearing red shorts or sweat pants running up and down the street in front of 844 Neland hollering for the police, that "someone had gotten shot". He said a minute or so later, he thought he also heard a loud explosion, but he's not sure if it had anything to do with the incident on Neland. He does not remember seeing anyone else leave the premises.

Sgt. Ted Quist,  
Family Services Team

Note: I also canvassed houses at 1038, 1042, 1043, 1046, 1047, 1050 (boarded up), and 1105 Worden, but discovered they had already been covered, w/statements taken by other officers, or I got no answer at the door, ie. no luck at 1046, 1047, or 1105 Worden (NE corner of Alto).

225

# HFP

## Humanity for Prisoners

Action with Compassion

\*\*\*\*DR. DOUG J. TJAPKES' ACKNOWLEDGING KENT COUNTY'S REPUTATION  
THE COUNTY THAT "FRAMED" ME AND MY BROTHER!!!!\*\*

February 13, 2015

Mr. Kenneth Colvin, #192744  
16770 S Watertower Dr  
Kincheloe, MI 49788

Dear Mr. Colvin:

Thanks for your letter which was actually dated February 20? I'm so sorry that I must respond by snail...as you may know, our email privileges with all prisoners have been revoked. We're taking legal action, but that all takes time. Meanwhile, we're back to this slow process.

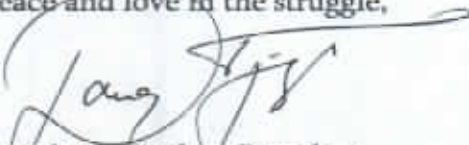
I'm enclosing an updated copy of our brochure which better explains our focus. When I founded this organization in 2001, it was called INNOCENT, and our primary focus was to help inmates who claimed wrongful conviction. My personal involvement in helping a wrongly convicted inmate led me into this business. That nine-year battle is now told in my book called SWEET FREEDOM, which may be in your prison library.

Anyway, we changed our name to HUMANITY FOR PRISONERS because it better reflected what we do. I am not an attorney, we are not an Innocence Project, and we do not "take on" cases of wrongful conviction. We merely try to help steer the inmate to someone who can help.

There are two innocence projects in Michigan: The Cooley Innocence Project, which takes only DNA cases; and the Innocence Clinic of the U of M, which takes only non-DNA cases. I can provide contact information for you if that will be helpful. I'd be interested to know the name of the attorney who represented you. Kent County has a sorry reputation.

Thanks for the information re your website...we did check it out.

Peace and love in the struggle,



Douglas J. Tjapkes, President

226



July 20, 2004

Mr. Kenneth Colvin Jr. (192744)  
Ionia Maximum Facility  
1576 Bluewater Highway  
Ionia, MI 48846

Dear Kenneth

Thank you for writing to me. I really enjoy getting feedback from listeners, viewers, concerned citizens and advocates!

Thank you for thinking enough of me to take the time to share your views. Your letter did not fall on deaf ears!

Your situation can only get better! Keep striving, and keep the faith!

I've enclosed some materials that I hope you enjoy.

WARMEST REGARDS,

Tavis Smiley

227

04-0661

Prisoner's name and number: Colvin #192744 Facility/Lock: SMF 5-140

You have received  a package  mail containing the following: Six (6) Books and One (1) Box of Cards titled "Doing What's Right", published by Anchor Books, "The Best of Tavis Smiley", published by Pines One Publications, "Hard Left", "How To Make Black America Better", and "Keeping the Faith", published by Doubleday, " On Air, Volume II", and "Empowerment Cards", published by Smiley Books. These books did not come directly from the publisher or was not received from a member of the public from an approved Internet vendor or was not ordered by the prisoner through the established institutional ordering procedures which is prohibited.

From: Tavis Smiley Presents  
4434 Crenshaw Blvd  
Los Angeles, CA 90043-1208

Note: A copy of this notice is being mailed to sender if rejected pursuant to PD 05.03.118 "Prisoner Mail". The sender has 10 business days to send any opposition to this proposed action to the facility head. The sender will be notified of the final decision. Sender must not use bottom section of this form.

The item(s) identified above will not be delivered to you pursuant to:  PD-04.02.105  PD-04.07.112  PD-05.03.118 for the following reasons: PD 05.03.118, Paragraph HH (8) - Subject to Paragraph Y, a book, magazine, newspaper, or other

publication that is not received directly from the publisher, an Internet vendor identified on Attachment A, a vendor identified on Attachment B, or, if the prisoner is approved to take a correspondence course pursuant to PD 05.02.119 "Correspondence Course", directly from the approved correspondence school. This does not include an article or a few pages, or copies of a few pages, from a publication that may be included with a letter or other mail, unless it is reasonably believed to be an attempt to circumvent this restriction.....

C. Berry - General Office Assistant E7

C. Berry

08-18-04

Staff - Print Name & Title

Signature

Date

**THIS SECTION IS TO BE COMPLETED BY THE PRISONER ONLY**

Indicate what you want to have done with the item(s) identified above by marking one of the following.

- Return to sender at my expense.
- Send at my expense to: \_\_\_\_\_  
whose address is: \_\_\_\_\_
- Hold to be picked up by (photographs, books, magazines & property only): \_\_\_\_\_
- Destroy (mail and property only).
- Turn over to Prisoner Benefit Fund (funds and postage only).
- Donate to charity (property only).
- Store for me (official documents only, e.g., birth certificate)
- I request a hearing.

Prisoner - Print Name & Number

Signature

Date

Send Reply within 10 business days to:  Mail Room  Other \_\_\_\_\_  
Distribution: Write to Prisoner Canary to Sender (if required) Pink to Mail Room Goldenrod to Housing Unit  
S:\RECORDS\WPD\DATA\Mail Rejections\publications

# HARVARD UNIVERSITY

DEPARTMENT OF AFRO-AMERICAN STUDIES

Barker Center • 12 Quincy Street • Cambridge, Massachusetts 02138-3879

Henry Louis Gates, Jr., Chair  
*W.E.B. Du Bois Professor of the Humanities*

Tel. 617.496.5468  
Fax. 617.495.9490  
E-Mail [jkendall@fas.harvard.edu](mailto:jkendall@fas.harvard.edu)

May 21, 2004

Mr. Kenneth Colvin, Jr. #192744  
Ionia Maximum Facility  
1576 Bluewater Highway  
Ionia, MI 48846-8594

Dear Mr. Colvin,

Thank you for your letter of February 8, regarding my PBS program, "America Beyond the Color Line."

I greatly appreciate your kind words about the program. Making the film gave me an opportunity to speak with so many interesting and insightful people, an opportunity which I shall always treasure. I learned so much just listening to people from all walks of life. I am pleased to say that the response to the program has been overwhelming; hence the delay in my response to you, for which I apologize.

I thank you, too, for writing to me about your own experience with these matters of pressing concern to African Americans and indeed to all Americans. I could not agree with you more about the benefits of entrepreneurship and the accumulation of capital. Through entrepreneurship, individuals gain control over their own opportunities and their own fortunes. At least as importantly, they develop a strong sense of having a real stake in the success (or failure) of their community. I would be the last person to dismiss the great benefits of a formal, "book" education. But the health of our community depends in large measure on our ability to sustain ourselves and our families, and entrepreneurship produces real changes in our capacity for such care.

I commend you for your disciplined studies, and for your deep understanding of and candor about where we are as a people. Thank you again for writing to me.

Best wishes,



Henry Louis Gates, Jr.  
Chair, Department of African and African American Studies



NASHI NELSON MINISTRY SERVICES

PD BOX 440239  
 37244-0239  
 NASHVILLE, TN

SHIP TO ACCOUNT # 404927869  
 KENNETH COLVIS JR.  
 SMCF #192744  
 4713 H61

BILL TO ACCOUNT # 404927869  
 STAR PARKER/AUTHOR  
 6033 WEST CENTURY BLVD  
 # 950

STANDISH HI 48698 LOS ANGELES CA 90045

INVOICE # T/C-55/55 50983191

ORDER # KEISHA  
 INVOICE # 4360161  
 P/B DATE 04/20/05

DEPT:

PAGE 1 OF

ST	ORDER QTY	SHIP QTY	STOCK NUMBER	ISSN	DESCRIPTION	UNIT PRICE	LN	DISCOUNT	NET
	ADULT TRADE AND REFERENCE BOOKS (IN ASCENDING ALPHABETICAL SEQUENCE)								
	1	1	0785262199		UNCLE SAM'S PLANTATION	22.99			
		1			0 CIGRPHK3				
		1			0 SALES TAX, IF APPLICABLE				
		93			0 WILL BE REFLECTED ON YOUR				
					0 STATEMENT				
					TOTAL SHIP QTY				
					TOTAL-CARTONS				
					TOTAL NET WEIGHT SHIPPED				

STATUS CODES: 8 = BACK ORDERED (TRM) N = NOT YET PUBLISHED  
 0 = OUT OF STOCK (INDEF) P = OUT OF PRINT  
 9 = SUBSTITUTE STOCK ITEM

UP'S ZONE BR / USPS ZONE BR

DATE SHIPPED: 04/20/05

SHIP VIA: **230**

\*U. P. S. - COMMER.