

DEATH PENALTY CASE
Case No. W1997-00097-SC-DDT-DD
EXECUTION SCHEDULED FOR May 21, 2026, at 10:00 a.m.

IN THE TENNESSEE SUPREME COURT
AT NASHVILLE

TONY VON CARRUTHERS,
Movant,

v.

STATE OF TENNESSEE,
Respondent.

**APPENDIX TO MOTION FOR POST-CONVICTION DNA
TESTING AND REQUEST TO APPOINT A SPECIAL MASTER
PURSUANT TO TENN. S. CT. R. 12.4(E)**

Maria DeLiberato*
American Civil Liberties Union
201 W. Main St. Suite 402
Durham, NC 27701
(717) 503-2730
mdeliberato@aclu.org

Lucas Cameron-Vaughn
TN BPR No. 036284
ACLU of Tennessee
P.O. Box 120160
Nashville, Tennessee 37212
(615) 645-5067
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**ATTORNEY FOR MOVANT
TONY VON CARRUTHERS**

**pro hac vice pending*

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15. Letter from Charles R. Ray, post-conviction counsel, to John W. Campbell, Assistant District Attorney (Aug. 6, 2002)
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21. Dec. 3, 2002, Order
22. Response of the State of Tennessee
23. Letter from John W. Campbell, Assistant District Attorney General to Charles R. Ray, Post-conviction Counsel for Mr. Carruthers (Jan. 7, 2003)
24. Letter from Timothy A. Beacham, Assistant District Attorney General to Richard L. Tennent, Assistant Federal Public Defender (Oct. 28, 2019)

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EXHIBIT 1

1996 Trial Transcript, Vol. 13, p. 1864-1867

0201-9710-CR-00391

IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS
THE THIRTIETH JUDICIAL DISTRICT
DIVISION V

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STATE OF TENNESSEE,
Appellee,

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*

FILED 12/30/97
WILLIAM B. KEY, CLERK
BY Bennett D.C.

VS.

Cause Nos. 94-02797
94-02798
94-02799
95-11128
95-11129

TONY CARRUTHERS and
JAMES MONTGOMERY,
Appellants.

TRANSCRIPT OF THE EVIDENCE INCLUDING VOIR DIRE,
OPENING STATEMENTS AND CLOSING ARGUMENTS

VOLUME 65 OF 82 VOLUMES

VOL. 42

THE HONORABLE JOSEPH B. DAILEY, PRESIDING JUDGE

APPEARANCES

FOR THE STATE:

PHILLIP GERALD HARRIS, ESQ.
J. ROBERT CARTER, JR., ESQ.
Assistant District Attorney General
Shelby County District Attorney General's Office
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Memphis, Tennessee 38103

THE APPELLANT; TONY CARRUTHERS: PRO SE

FOR THE APPELLANT; JAMES MONTGOMERY:

HAROLD D. ARCHIBALD, ESQ. J.C. MCLIN, ESQ.
Archibald and Halmon, P.C. Attorney at Law
Suite 900 Suite 201
22 North Front Street 301 Washington Avenue
Memphis, TN 38103 Memphis, TN 38103

Lynn S. Terrell
Official Court Reporter
Thirtieth Judicial District
Memphis, Tennessee
(901) 576-5070

FILED
JUN 02 1998
Clerk of the Courts
Rec'd By [Signature]

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APPEARANCES

FOR AGENTS MCGRIFF AND CHISM:
SID ALEXANDER, ESQ.
U.S. Attorney's Office
Federal Office Building
Memphis, Tennessee 38103
(901)544-4231

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TUESDAY, APRIL 23, 1996

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DIRECT EXAMINATION BY MR. HARRIS..... 1852

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CROSS-EXAMINATION BY DEFENDANT CARRUTHERS..... 1955

Motion for judgment of acquittal..... 1957

Motion to quash..... 1967

DEFENDANT: JAMES MONTGOMERY

VOIR DIRE EXAMINATION BY MR. MCLIN (JURY OUT).. 1989

VOIR DIRE EXAMINATION BY THE COURT (JURY OUT).. 1990

VOIR DIRE EXAMINATION BY MR. MCLIN (JURY OUT).. 1991

STATE RESTS..... 2006

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1 you-all are welcome, when you start using it, to roll
2 it back out closer, if you care to.

3 MR. HARRIS: Your Honor, can I approach?

4 THE COURT: Sure.

5

6 BY MR. HARRIS:

7 Q. All right. Doctor, let's look at State's
8 Exhibit Number 32. Will you begin by telling us, go
9 to the top up here and tell us whose bodies are shown
10 there, and show us the positions that they were in.

11 A. Yes, sir. On the top diagram, this
12 represents the grave and then the pit in the floor of
13 the grave containing the three bodies of Delois
14 Anderson, Marcellos Anderson, and Fredrick Tucker.
15 They show the superimposition of the bodies on one
16 another based upon the tonal differences of the
17 colors.

18 The best way to explain it is that this
19 photograph as a composite is made from the three
20 photographs depicted down here that are converted to
21 line form. This is the body of Delois Anderson shown
22 lying in the base of the pit. Her head is here with
23 her face in the corner in the bottom of the pit. The
24 right arm is behind the back. It is tied with a
25 ligature to the left arm. She is clothed in panties,

1 and there is clothing up here.

2 She is on the floor, and immediately above
3 her is the body of Fredrick Tucker. His head is
4 towards her feet. His feet are bent at the knee to
5 cover her lower back, and his feet are actually
6 overlying a portion of her buttock region.

7 The third body is that of Marcellos
8 Anderson. He is adjacent to Fredrick Tucker, lying on
9 top of his mother with his head towards her head.

10 And we take these three photographs and
11 superimpose them, and you can see how they were
12 overlying one another in the dimensions of the pit
13 beneath the grave.

14 Q. All right, sir. Now, I will ask you if you
15 observed them as they came out of the grave?

16 A. Yes, sir. I observed them as we were
17 excavating and lifting them out of the ground.

18 Q. Did each body -- was each body bound?

19 A. Yes, sir. Each body had ligatures or
20 bondage, the ligature material, to the hands in the
21 case of Ms. Tucker, the hands and feet of -- I'm
22 sorry -- Ms. Anderson, the hands and feet of Fredrick
23 Tucker, and then the hands of Marcellos Anderson.

24 Q. All right sir. Now, if I could ask to --

25 MR. HARRIS: I've shown these to counsel,

1 Your Honor.

2 Q. I'll ask you if you photographed the bonds
3 of, first of all, Delois Anderson?

4 A. Yes, sir. They were photographed both on
5 the body and then once they were removed.

6 Q. I would ask if you will look at this
7 photograph, tell me does it accurately depict and
8 portray the bonds on Ms. Anderson?

9 A. Yes, sir. This photograph depicts the bonds
10 that were on the body of Delois Anderson. I removed
11 them by my own hand and positioned them for this
12 photograph.

13 Q. All right. Now, have you examined them? We
14 have them here today, and you've seen the actual
15 bonds, have you not?

16 A. Yes, sir.

17 Q. All right. Does that photograph truly and
18 accurately depict the bonds that she had?

19 A. Yes, sir.

20 MR. HARRIS: Okay. I would ask that the
21 photograph be introduced as State's Exhibit Number 33.

22 THE COURT: All right.

23

24 (Whereupon, Exhibit No. 33 was
25 marked and filed.)

1 BY MR. HARRIS:

2 Q. All right. Did you observe the bonds of
3 Mr. Fredrick Tucker?

4 A. Yes, sir, I did.

5 Q. And I'll pass you a photograph and ask you
6 if this photograph truly and accurately depicts and
7 portrays the bonds that were on Mr. Fredrick Tucker?

8 A. Yes, sir, they do.

9 MR. HARRIS: All right. I would ask that
10 that be introduced as State's Exhibit Number 34.

11 THE COURT: All right.

12

13 (Whereupon, Exhibit No. 34 was
14 marked and filed.)

15

16 BY MR. HARRIS:

17 Q. All right. The last one, ask you if you
18 will look at that, and did you see the bonds on
19 Mr. Marcellos Anderson?

20 A. Yes, sir.

21 Q. And are these photographs of the bonds?

22 A. Yes, they are.

23 MR. HARRIS: All right, sir. And I'd ask
24 that they be introduced as State's Exhibit Number 35.

25 THE COURT: All right.

EXHIBIT 2

Docket and News Article Showing Dismissal of Charges

Case Information

94059138-03 | The State of Tennessee vs TONY CARRUTHERS

Case Number
94059138-03
File Date
02/28/1994

Court
Division 10
Case Type
Affidavit

Judicial Officer
Turner, William C.
Case Status
Disposed

Party

State of Tennessee
The State of Tennessee

Race
Other

Defendant
CARRUTHERS, TONY

DOB
07/01/1967

Race
Black

Address
2013 PAMELA
Apt # A
MEMPHIS TN 00000

Charge

Charges
CARRUTHERS, TONY

	Description	Statute	Level	Date
1	FIRST DEGREE MURDER	39-13-202	Felony M	03/04/1994
2	FIRST DEGREE MURDER	39-13-202	Felony M	03/04/1994
3	FIRST DEGREE MURDER	39-13-202	Felony M	03/04/1994

Bond Settings

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Setting Date

3/5/1994

Disposition Events

03/25/1994 Plea ▼

Judicial Officer
Judge, Converted

1 FIRST DEGREE MURDER Dismissed Lack of Prosecution

03/25/1994 Plea ▼

Judicial Officer
Judge, Converted

2 FIRST DEGREE MURDER Dismissed Lack of Prosecution

03/25/1994 Plea ▼

Judicial Officer
Judge, Converted

3 FIRST DEGREE MURDER Dismissed Lack of Prosecution

03/25/1994 Disposition ▼

1 FIRST DEGREE MURDER Dismissed Lack of Prosecution

03/25/1994 Disposition ▼

2 FIRST DEGREE MURDER Dismissed Lack of Prosecution

03/25/1994 Disposition ▼

3 FIRST DEGREE MURDER Dismissed Lack of Prosecution

03/25/1994 Sentenced ▼

1 FIRST DEGREE MURDER Sentenced

Document received by the TN Supreme Court.

03/25/1994 Sentenced ▼

2 FIRST DEGREE MURDER Sentenced

03/25/1994 Sentenced ▼

3 FIRST DEGREE MURDER Sentenced

Events and Hearings

02/28/1994 Case Filed
03/07/1994 Arraignment ▼ Hearing Time 9:00 AM
03/09/1994 Attorney ▼ Hearing Time 9:00 AM
03/10/1994 Attorney ▼ Hearing Time 9:00 AM
03/17/1994 Attorney ▼ Hearing Time 9:00 AM
03/25/1994 Preliminary Hearing ▼ Hearing Time 9:00 AM

Financial

No financial information exists for this case.

Document received by the TN Supreme Court.

TEED AWAY!

3 FIRM
23 ea pc
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188 ea pc
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199 ea pc

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CHEST
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RAGE



...ung gathered a March 5 ... and 179 ... City Councilman Myron ... said a similar swap is planned soon. Story

Clinton tax returns show trade risks, modest pay

By John M. Broder
Los Angeles Times

WASHINGTON — President Clinton on Friday released his tax returns for his first years in public office as the White House aimed to show that Whitewater was a losing land deal.

The documents for 1977-79 paint a fascinating picture of a relatively low-paid couple dabbling in highly speculative commodity and real estate ventures that in one case paid spectacular returns and in another the Whitewater deal — resulted in a sizable financial loss.

The release of the tax returns and a Thursday night press conference were aimed at demonstrating that the President and his wife are not withholding information on Whitewater and their overall financial situation.

The tax returns were presented Friday by the Clintons' pri-

ate attorney, David Kendall. He said the Clintons had already given the documents to special counsel Robert Plske, and were releasing the returns publicly "in a spirit of full cooperation and openness."

On Friday, the grand jury investigating Whitewater subpoenaed another senior White House aide, staff secretary John Podesta. The White House said he had been summoned to testify about contacts between the White House and the Treasury Department concerning the investigation of Madison Guaranty Savings and Loan.

The returns show a remarkable income growth for the Clintons, from \$41,731 in 1977 to \$85,214 in 1978 to \$158,495 in 1979.

Salary increases account for very little of the growth.

Mrs. Clinton began in commodities trading in October 1978 at the urging of the Clintons' close friend, the well-connected

Arkansas lawyer James Blair, now the general counsel of Tyson Foods Inc., the nation's largest poultry producer.

Her investment in the high-risk cattle futures market is surprising, given that the Clintons had relatively low incomes and very few assets. White House aides would not say how much of her own money Mrs. Clinton put at risk or how much of the trading was done on credit.

In 1979, Clinton took office as governor, earning \$33,519.14 for the year, while Mrs. Clinton made partner at the Rose firm and saw her income rise to \$38,615.60. But her luck in the futures market continued and she reported a profit of \$72,996 before bailing out in October.

After they got out of the commodities market, the Clintons' income fell substantially. Tax returns released previously

Please see RETURNS, Page A11

Witness vanishes, so does case in slaying of 3 found in grave

By Rob Johnson
The Commercial Appeal

A General Sessions Court judge dismissed first-degree murder charges Friday against the men who police believe buried three Memphians in another woman's grave at Rose Hill Cemetery.

The state's witness, who led detectives to the grave of Delois Anderson, Marcellos Anderson and Frederick Tucker, has vanished. And without his testimony, prosecutors were left empty-handed in their cases against James T. Montgomery and Tony Carruthers, both 26.

The two were charged with the murders March 4 and have been in the Shelby County Jail ever since.

"I have no choice but to dismiss the charges," said Judge Anthony Johnson during Friday morning's hearing. Montgomery's attorney, Robert Michael Friedman, agreed.

"It seems to me that all this time they have kept these defendants in jail without proof, and the judge properly dismissed the charges," Friedman said.

Prosecutors didn't protest. The victims' families were furious.

"Where did the system fall us? Where was the ball dropped?" asked Andre Steel, Butler's father. "They will kill again."

But conditions set by the parole board kept the two men in jail for the time being, and the gruesome triple-murder case is still under investigation.

Police, meanwhile, have been searching for the man who implicated the two suspects. He vanished several days after leading police to the grave, and prosecutors haven't heard from him since.

Although the witness's name has been previously published in news stories, prosecutors requested Friday that it be withheld, citing the delicacy of their case.

Asst. Atty. Gen. Jerry Harris said Carruthers and Montgomery were still the state's two main suspects.

"We need anyone out there who knows anything about this case to call us or call Crime Stoppers," he said. "There are people out there who know what happened, but they aren't talking to us."

Armed with an exhumation order, police unearthed Dorothy Daniels' grave March 3.

Beneath her coffin, a sheet of plywood and a layer of dirt, they found the bodies of three people who'd been missing since Feb. 25.

Marcellos Anderson and Tucker had been shot to death. Delois Anderson, Marcellos's mother, had suffocated, according to the Shelby County Medical Examiner's office.

Investigators say the men who legitimately buried Daniels didn't know someone had al-

Please see DROP, Page A11

NCAA

MEN	
Arkansas	100
Tulsa	84
Bost. Coll.	77
Indiana	67
Michigan	77
Maryland	77
Florida	67
UConn	67

Details in Sports

INSIDE

- BUSINESS
- BYGONE DAYS
- CLASSIFIED
- COMICS
- CROSSWORD
- DEATHS
- LOTTERIES/BIRTHS ..
- MOVIES
- RELIGION
- SCOREBOARD
- TELEVISION
- VIEWPOINT

■ Palestinian inc says soldiers jolt mosque mass

■ WEATHER: Sunny High near 70. South 15. Low tonight in up rain likely. Cloudy chance of rain. Detail



Copyright 1984, The Commercial Appeal



Document received by

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...series of tests for com...
 ...tion, but has not been able...
 to get a clear reading for several

\$135.

Desk

34" x 30" x 28 1/4"
 Value \$220.

\$159.

All items pictured
 available in black
 or white melamine.
 Made in Denmark.

IOORS

HOME AND OFFICE
 View 371-0666
 Sun. 12-6



AWAY

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- 38112
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winner.
 Sports section.



Tony Carruthers



James T. Montgomery

From Page A1

Drop

ready filled the grave beneath them.

Investigators won't discuss the motive for the killings.

Both men face a hearing to determine whether their paroles will be revoked, according to Collis Newble, the state's parole hearing director.

Carruthers's hearing has been scheduled for March 30. Montgomery's hearing date had not been set Friday.

Friday's dismissals should enable his client to walk out of jail, Carruthers's attorney maintains.

"The probable cause for revoking their paroles were these murder charges," said attorney A C Wharton. "But now that the charges have been dismissed, the probable cause has evaporated."

Both men have violent felony records.

Montgomery pleaded guilty in 1986 to receiving and concealing stolen property, robbery with a deadly weapon and assault with intent to commit robbery with a deadly weapon. Carruthers pleaded guilty in 1990 to aggravated assault.

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If your address appears
 See the Great CA Giveaway

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EXHIBIT 3

Crimestoppers Report dated 4/3/94

MEMPHIS CRIME STOPPERS
INFORMANT REPORT

CONFIDENTIAL INFORMATION

FOR POLICE USE ONLY

INFORMANT # 21171

DATE/TIME OF CALL: 04 / 03 / 94 1820
MO DAY YR TIM
CALL RECEIVED BY: PST CA Scott #29

R & I # 9303030976 MF

CASE ASSIGNED TO: _____
BUREAU: Homicide

BOOKING # _____

INVESTIGATOR: Holsem

A. TYPE OF CRIME (CHECK APPROPRIATE CATEGORY)

ARSON _____	BURGLARY _____	LARCENY _____	SEX CRIMES _____
ASSAULT _____	FUGITIVE _____	NARCOTICS _____	VICE _____
AUTO THEFT _____	HOMICIDE <u>X</u>	ROBBERY _____	OTHER _____

(SPECIFY)

LOCATION OF OCCURRENCE: See Narrative

DATE/TIME OF OCCURRENCE: _____ / _____ / _____
MO DAY YR TIME

B. NARRATIVE

Caller advised that he was supposed to be a part of the killings of the three people found buried in a grave (Anderson case) Caller stated it was a hit trade because of drugs. Caller also advised he had talked with homicide detectives and was advised to call and get a number.

OVER

C. SUSPECT #1 INFORMATION

SUSPECT #2 INFORMATION

NAME/ALIAS: _____

NAME/ALIAS: _____

ADDRESS: _____

ADDRESS: _____

SEX/RACE/AGE: _____ / _____ / _____

SEX/RACE/AGE: _____ / _____ / _____

HGT/WGT: _____ / _____

HGT/WGT: _____ / _____

PLEASE ADVISE CRIME STOPPERS AT 528-CASH IF AN ARREST IS MADE AS A RESULT OF THIS INFORMATION. COMPLETE SECTION J ON BACK AND RETURN TO CRIME STOPPERS WITHIN 15 WORKING DAYS OF DATE RECEIVED.

Document received by the TN Supreme Court

This CI, gave a statement that Tony Carruthers
Confessed to Murders.

This CI testified at the Grand Jury.

When this information was received.

Tony Carruthers case in General Sessions
Court had been dismissed for lack of
evidence. With out this information
and his testimony in Grand Jury
Carruthers would have been released

Sgt R. Polena.
/James

Victs: Anderson, Deloris
Anderson, Marcellus
Tucker, Fred.

Tony Carruthers' Booking # 94059138

EXHIBIT 4

Transcript of Alfredo Shaw GJ Testimony

TRANSCRIBED FROM TAPE; PM GRAND JURY SESSION 3-29-94; BARRY MOORE INVESTIGATOR; JOHN CAMPBELL PROSECUTOR; TYPED BY S.WADDELL.

JC. We should put him under oath. Won't you stand up for us? Raise your right hand please. Do you solemnly swear to tell the truth to this uh Grand Jury about your knowledge of the homicides of uh Delois Anderson, Marcelus Anderson and Fredrick Tucker. Tell the truth?

A. Yes sir.

Q. Please sit down... Ask you to state your name for the Grand Jury.

A. Alfredo Bernard Shaw

Q. And Mr. Shaw, tell by your uniform by which... are you an inmate at the Shelby County Jail?

A. Yes sir.

Q. Ok..uh I want to direct your attention back several months... Do you know an individual by the name of Tony Von Carruthers?

A. Yes sir.

Q. How long have you known Tony Von Carruthers?

A. Uh I've known Tony um ever since uh 1988.

Q. 1988? ok, you and he friends or aqaintances?

A. Well we um.. 1988..89 we were uh incarcerated in the jail... number 4-4E pod together.

Q. Ok this was in Shelby County Jail?

A. Yes sir

Q. Ok did you have an occasion to talk to Tony Carruthers a couple of months ago here in Memphis, Tennessee?

A. Yes sir

Q. Ok, was this in the jail or was this out on the street?

A. Well I had the conversation with Tony um back in September of uh 93, over a phone conversation...

Q. Ok, what was the nature of that phone conversation?

A. Um the nature of phone conversation...uh ... pertaining to a uh... hit..

Q. Ok now... when you mean a "hit" what do you mean?

A. Um... Meaning a murder...committed uh.. that's all...

Q. Ok, what did Tony ask you to do?

A. Ok... well um... its.. another.. 2 more other people had called me up by the name of Terry and Jerry Darr... called twins...

Q. What uh.. What uh do Jerry and Terry Darr do?

A. Ok they called me and uh... they had been asking me um previously before that about uh.... participating uh... in the hit on uh.. Marcellus...

- Q. What kind of arrangements were they willing to make for this hit?
- A. Um... they made arrangements uh offering a hundred thousand dollars and a kilo of cocaine... to me and Tony Carruthers.. uh... to carry the hit out on these individuals...
- Q. What'd you tell them?
- A. I told them that I didn't know and I wasn't uh... I didn't think that I wanted to participate and in that kinda hit...
- Q. Did you get contacted again after that first contact about doing this killing?
- A. Yes sir.
- Q. Who.. Who contacted you?
- A. Ok, that's Terry and Jerry contacted me uh again, this is about mid September.. uh.. and they had Tony Carruthers over the phone then...
- Q. Did you talk to Tony?
- A. Yes sir, Uh Terry and Jerry asked me did I know uh Tony Carruthers... and I said Tony Carruthers the name sounds familiar to me... and Tony said uh what's up Shaw? I said uh Tony?... He said, Yeah man what's up? and uh and he said uh what's going on man? like that... and I said nothing much man and he said uh... and then Terry came back in into the conversation and he said, have you thought about what we uh discussed?... And I told him, I said uh.. Yeah I thought about it, I said.. like I said I don't want to participate... into this kinda activity.. and that's when Tony came in and said.. Man everything gonna be skrate... and what he means by skrate everything's gonna go alright...
- Q. Did he uh did he ask you to go with him too?
- A. Yeah Tony asked me on the side... he kept trying to convince me to go head on and carry out this uh this mission with him... you know and uh that it was well planned out you know uh.. that we wouldn't.. we wasn't supposed to get caught or anything... uh supposed tuh.. once the murder was committed...
- Q. Now, back in I guess February or really in early March were you in 94 were you housed back in Shelby County Jail?
- A. Yes sir
- Q. Did you have an occasion to see Tony Carruthers and Marshall in the Shelby County Jail?
- A. Yes sir. Yes sir... Tony uh sent a message to round me up that was on one side of the 4th floor.. Tony was on the other side of the 4th floor... we have a mark on the south side of the jail on the 4th floor and uh and I was housed in K Pod and uh Tony was housed in C Pod and he sent a message around uh for me to try get to the legal room this particular day.
- Q. And where is the legal room in the jail?
- A. The legal room is on the 5th floor...
- Q. Now is this after you heard about uh Marcellus being killed?
- A. Right...

- Q. Did you meet with Tony Carruthers in in the uh legal room in the jail?
- A. Yes sir I did..
- Q. And what did Tony tell you?
- A. Ok.. when I met with Tony in the jail in the legal room I asked Tony you know I said What's up Tony?.. He said man I told you see man uh I told you this shit was gonna be skrate like that he said uh... I said well uh... He said uh this shit went smooth.. I said yeah the way you all did it it did go smooth.. I said but uh... He said but if that boy... wouldn't uh took them to that grave they would never have found out about it... I said yeah you're right... He said uh.. I said So Tony what happened?.. He said uh well we went to that boy's mommas house looking for him and the money and he was staying with Marcellus... and he said Marcellus was not there at that particular time so they held his mother and had her to call Marcellus over the phone... and and told her to tell him that it was important that he needed to come there... so when Marcellus came there him and Tucker was together...
- Q. And that was Fred Tucker?
- A. Right... but Marcellus, Tucker and uh this guy named Big Brother was the one that originally carried out the hit on uh I mean carried out the robbery on uh Terry and Jerry Darr....
- Q. You mean this was in retaliation of that event?
- A. Right uh, one occasion for \$80,000.00 and uh one occasion for \$160,000.00 and 2 kilos of cocaine... so um I asked Tony uh what happened and he went on to tell me that once Marcellus and uh Tucker got to the house they put the gun on them and made them get back into the church.... Marcellus knew it was there supposedly took Tony and them to Mississippi... or somewhere where theres money... supposed to been... so once they got to Mississippi apparently the money wasn't there Tony told me that he shot uh.. Tucker and Marcellus there on the scene immediately... and uh I said why did you all burn the uh truck up Tony.. I said uh what was the reason for burning... He said Man our fingerprints was all over the truck and we couldn't drive the truck back because they was looking for these people and they was looking for the truck... so his mother was still alive, Marcellus mother was still alive.. they drove em back to Memphis in a stolen vehicle... and uh took them to the gravesite and I said uh... well Tony why you all kill the woman, kill the woman and he said uh naw we uh.. no he said when he drove them back to Memphis they took em to the gravesite.. and uh Tony said Man we dropped them boys in that grave like that he said...uh James Montgomery asked Tony what are we going to do with this bitch? And Tony said uh... she starts to holler.. and said James put the pistol up to her head and told her bitch or else you're going to die like your dead ass son... and then thats when they pushed the woman over in the grave and told her die like your dead ass son...
- Q. And they buried her in the grave?
- A. Yes sir..
- Q. Now this this is what uh Tony told you in the jail?
- A. Yes sir
- Q. And the reason he told you about this is because you were told about the.. they tried to hire you but (coughing covers up answer)

A. Right.. (inaudible)

Q. Tony ever tell you how much he got for it?

A. No sir he did not.

Q. I believe that's all the questions I have.

Do any of you have any questions?

Q. I would like to ask him where did they get the (inaudible) from?

A. Um they got the woman, they went to um her home looking for her son Marcellus...

Q. So they took her with em too?

A. Yeah took her along with them...

Q. Where did you go to school?

A. Southside High School sir

Q. If you could I have one more witness, right here at least

All right

Thank you sir. Thanks a lot.

EXHIBIT 5

Latent Fingerprint Report, dated 1/24/22

**LATENT FINGERPRINT SECTION
MEMPHIS POLICE DEPARTMENT**

Date: January 24, 2022

File #: 9402257239 ME

Latent Case #: 940215

To: Shelby County District Attorney Generals' Office
Attention: A. J. Kant – Criminal Investigator/Special Victims' Unit

Re: Missing Person/Homicide – Deloris Anderson - Victim

Vehicle: 1991 Chev 4 – D Red

Examination Requested By: SCDAG /A. J. Kant

Date Requested: January 21, 202

Specimens Obtained By: W. J. Lee 4795 & J Cushman

Date Obtained: March 03, 1994

Specimens and Results of Examination: Ten Cards bearing transparent lifts marked accordingly.

One latent impression on card marked in part; "Prints lifted from: Inside door knob of N/W bedroom door from hallway" was found to be the same as a left thumb impression belonging to Leventhia Anderson, SCSO R&I# 214189.

There are six latent partial palm impressions of value remaining unidentified. These prints were searched thru the AFIS data-base with negative results and are maintained in the cold case files for future identification.



Examiner: Robert Davis IBM# 13670

EXHIBIT 6
Affidavit of Alan Keel



Affidavit of Alan Keel

I, Alan Keel, affirm, under penalty of perjury, that the following is true and correct:

1. My name is Alan Keel. I am over the age of 18 and otherwise fully competent to give this statement.
2. I am currently a consultant in Forensic Biology and DNA Analysis. From July 2011 through December 2021 I was the Forensic Biology/DNA Analysis Unit Supervisor and DNA Technical Lead Analyst for Forensic Analytical Crime Laboratory, Inc. (FACL) in Hayward, California. The FACL Forensic Biology/DNA Analysis Unit adheres to the FBI Quality Assurance Standards for DNA testing laboratories pursuant to the 1994 DNA Identification Act and is fully accredited by ANAB, the longest established provider of ISO/IEC 17025 accreditations to forensic testing agencies in the United States. FACL has provided DNA analysis and consulting services to law enforcement agencies, prosecutors, defense attorneys, and civil litigants since 1995. Approximately 40% of that caseload was for law enforcement in the pre-trial investigation of criminal cases.
3. I earned my B.S from Texas A & M University. I am certified by the American Board of Criminalistics in Molecular Biology. I am also a member of the American Academy of Forensic Sciences and California Association of Criminalists. During my career I have over 41 years of experience, 39 of which involved forensic laboratory serological and DNA analysis of physical evidence. I have been involved with and have personally conducted PCR-based DNA analysis casework since 1991. For almost 15 years of my career, I worked as a criminalist in state and police crime laboratories, including the North Louisiana Crime Laboratory in Shreveport, Louisiana, the Oakland, California Police Department Crime Laboratory, the Tulsa, Oklahoma Police Crime Laboratory, and the San Francisco, California Police Department Crime Laboratory. Since 1999, I was in private practice as a criminalist at Forensic Science Associates (FSA), a private laboratory which merged with FACL in 2011, through December 2021. My resume is attached as Attachment #1.
4. Over the course of my 41 years of experience, I have conducted DNA testing in hundreds of cases on thousands of samples from across the country on behalf of prosecutors and defendants in both pre-trial and post-conviction investigations from over 36 states including Tennessee dating back to 1972. I have testified in state courts in 24 states including Tennessee and in federal courts in Texas, North Dakota, Alabama, Pennsylvania, Louisiana, Florida, Illinois, New Jersey, and Washington, DC. I have personally conducted DNA testing in over 150 post-conviction investigations, almost half of which resulted in exoneration. I have also reviewed the work product of numerous analysts and laboratories from across the county, in several hundred pre-trial, post-conviction, and civil litigations.

5. I was asked by Maria DeLiberato, Senior Counsel with the American Civil Liberties Union to submit this Affidavit to advise the Court of the current capabilities of post-conviction DNA testing, about which I have personal knowledge, to obtain new and relevant information from evidence gathered in the investigation of the February 1994 murders of Delois Anderson, Marcellos Anderson, and Frederick Tucker and the subsequent prosecution and conviction of Tony Carruthers. Prior to preparing this affidavit I reviewed the basic facts of the case. I have also reviewed various Bode Technology Group (Bode) and Tennessee Bureau of Investigations (TBI) laboratories' DNA testing reports and supporting records.
6. My understanding of the facts in this case are that the victims were discovered March 3, 1994 in a grave beneath the coffin of the person for whom the grave was prepared and buried on February 25, 1994. Each of the victim's hands were bound behind their backs, and Tucker's feet were also bound. Clothing from each victim as well as the bindings were collected. I was asked to review post-conviction examination and DNA testing work done by BODE in 2003 to assess the scope and success of the previous examinations, and to determine whether, in light of subsequent advances in DNA testing technology, additional examination, sampling, and testing might be fruitful in recovering DNA profiles from the perpetrator(s) of this case.

Modern DNA Technology and Current State of the Art

7. There have been several significant advances in forensic DNA testing since 2003, and those advances have completely revolutionized our ability to produce highly discriminating DNA profiles from trace amounts of contact, or "touch" biological material. This potential exists even when the DNA may be degraded due to various environmental insults and the passage of time. These advances have also effectively eliminated interference by inhibitory substances that may co-extract from evidence specimens with the DNA. These advances have led to an explosion of investigative criminal justice requests to crime labs for processing virtually any object not previously considered amenable to DNA testing that might bear a scant amount of relevant human biology. These advances also create the opportunity to generate DNA profiles from common source(s) across different items of evidence.
8. Specifically, these advances include:

"Mega-Plex" STR Typing Kits

- i. Traditional short tandem repeat (STR) assays were expanded in 2017 to include *at least 20 STRs* in a single test – capable of providing individual attribution of a miniscule amount of DNA. These 20 STRs now comprise the foundation for our national CODIS DNA identification databank. Of the 20+ STRs in these new mega-plex STR kits, 12 to 14 of them are "mini" STRs which are capable of amplification when the sample DNA is highly degraded. In 2003 Bode employed two separate test kits, Profiler Plus and CoFiler, in their testing of the evidence in this case. Profiler Plus included nine STR locations and CoFiler included four additional STRs. Often, Bode utilized only one or the other test. Conducting both

Profiler Plus, CoFiler, and potentially a mini-STR amplification would require consumption of three separate amounts of DNA. The use of today's mega-STR kit technology greatly expands the amount of genetic information obtainable from a single minute amount of evidentiary DNA and at the same time allows the efficient resurrection of degraded DNA that the older generation STR tests were incapable of amplifying.

- ii. The chemistry of these new test kits has also been greatly improved. The new buffer formulations and advanced DNA polymerase enzymes virtually assure any interference from inhibitory substances is neutralized, resulting in successful profiling from most unfavorable specimen conditions. As was the case with Profiler Plus and CoFiler at Bode in 2003, virtually all (286 of 293, or 98%) of their profiling attempts failed, apparently due to inhibition.¹ Today's technology will overcome the DNA inhibitors that appear to have plagued the 2003 Bode investigation. Re-visiting pre-existing DNA extracts, revisiting previously sampled areas, and collecting new samples, particularly "touch" DNA samples, will be much more successful and informative.

DNA Extraction and Purification Procedures

- iii. In 2003 Bode relied upon traditional organic and resin-bead chelating (Chelex™) DNA extraction procedures. As is described below in paragraph 10, these DNA extraction methods often produce DNA extracts that are difficult and even intractable to amplification. Although organic and Chelex DNA extraction are effective with uncompromised evidence samples, the vast majority of forensic DNA laboratories (including Bode) now employ robotic silica-coated magnetic bead technology to purify sample DNA, irrespective of the condition of the specimen. This method virtually eliminates co-extraction of inhibitors from the sample substrate.

The Early Detection and Subsequent Targeting of Male DNA

- iv. There was no attempt by Bode in 2003 to determine how much of the DNA recovered from a sample was male. Male DNA mixed with female DNA at ratios over about 1:30 is overwhelmed and cannot be detected by autosomal (traditional) STR profiling. Today, our ability to determine how much of a DNA sample is male versus female at the quantification stage *before* attempting DNA profiling is standard operating procedure. Further, today's DNA quantification kits provide an estimate, or degradation index, of how degraded a DNA sample is. This new capability allows us to make highly informed choices as to the optimal profiling strategy to obtain meaningful genetic information from the male DNA in a sample that might produce an investigative lead.

¹ See my comprehensive Summary of Bode DNA Testing, attached as Attachment 2.

- v. Male-specific Y chromosome testing assays (Y STRs) has been greatly improved since 2003 and now include 27 locations. Y STR profiles, while not as discriminating as traditional STR profiles, are nonetheless highly discriminating between males that do not share a common paternal ancestor. These expanded Y STR “mega-plex” kits incorporate the same recent chemistry enhancements as the autosomal mega-plex kits. Therefore, armed with the quantification ratio data, any male-female DNA mixtures that might be recovered, particularly from the Delois Anderson evidence, not suitable for traditional STR testing can be more appropriately utilized for Y STR testing. Y STR testing can also help count and discriminate male profiles in traditional male/male DNA STR mixtures.

Computer-assisted Probabilistic Genotyping

- vi. Computer-assisted probabilistic genotyping, one of the most recent DNA analysis tools at our disposal, has revolutionized our ability to sort out complex and/or “balanced” DNA mixtures. This capability now allows us to either eliminate, or assign a high probability of inclusion to, a known person as one of several contributors in a DNA mixture. The analysis of fingernail specimens, and clothing, bindings, ligatures, and most any kind of “handled” surface samples, which often produce mixtures of DNA, has benefited greatly from the application of probabilistic genotyping to this problem.

Advances in DNA Profiling Instrumentation

- vii. The exquisite sensitivity of today’s DNA typing instruments cannot be overstated. In 2003 Bode used slab-gel electrophoretic instrumental analysis – which is now obsolete. Today, virtually all forensic DNA typing laboratories use advanced capillary electrophoresis (CE) instruments which enables optimization of the amount of amplified DNA utilized and the amount “injected” (as a function of time) into the instrument for analysis. This technological advancement enables an analyst to make real-time adjustments on the instrument to produce the most accurate and complete result.²

Genetic Genealogy and Alternative DNA Profiling Methodologies

- viii. Another recent advancement in forensic DNA testing is genetic genealogy (GG). This approach is useful when traditional STR comparisons and searches (such as CODIS) fail to produce investigative leads, as was the case with the one foreign profile developed by Bode and later confirmed by TBI in this case. Genetic genealogy involves the typing of numerous single nucleotide polymorphisms (SNPs) or whole genome sequencing (WGS) from an evidence sample. This “profile” can then be compared to public ancestry databases (e.g. Gedmatch) to

² In 2006 TBI used the first-generation “310” capillary electrophoresis instrument. This instrument is a significant improvement over the slab-gel technology used by Body in 2003. However, the 310 CE has been supplanted by two later generations of the CE instrument, each generation incorporating improvement in signal detection sensitivity and artifact discrimination.

find potential relatives of the source of the evidentiary DNA sample. Once a candidate is determined, a comparison of traditional STR markers will usually confirm or eliminate the person of interest as the evidence source, or re-direct the investigation to a different family member, or different family. This approach has proved highly successful in recent years in numerous cold cases³, in post-conviction investigations, and missing person cases.

- ix. Even more recent advances allow the development of multiplexed *Alu* profiles from the minute amounts of degraded DNA recoverable from the shaft of human hair. Although this approach was developed to exploit nuclear DNA analysis from rootless hairs, it is not limited to hair.

Applying Current DNA Technology in this Case

9. In the 2003 investigation at Bode, the entire focus (with the exception of the Delois Anderson vaginal swab) was blood. In a nutshell, at the request of the defense and as approved by the court, items of physical evidence were visually examined by TBI in November, 2002 and apparent bloodstained items or apparent bloodstain cuttings from these items, were forwarded to Bode for DNA testing. Bode screened the submitted items, mostly the victims' clothing, a white blanket, and various cloth bindings, or cuttings therefrom, and identified approximately 84 discrete human bloodstains present on the items. This survey was described in the June 23, 2003 report of Diane Andryshak.
10. The 84 human bloodstains were pursued with DNA testing in an attempt to 1) determine whether the victims, Mr. Carruthers, and co-defendant James Montgomery could be eliminated as the source of the blood. Any foreign DNA profiles would be searched in CODIS as an investigative lead to other potential perpetrators. Amounts of human DNA from approximately 4.5ng to over 2000ng were recovered via organic extraction from the selected human bloodstain samples.⁴ Each of the bloodstain DNA extracts were subjected to a Profiler Plus or CoFiler amplification, or both. During the typing process, Bode encountered extreme difficulty – potentially from inhibitors that co-extracted with the DNA – and tried various dilution, increased DNA, and additional/different extraction and DNA wash measures in an attempt to overcome the problem.⁵ In total, Bode attempted 233 amplifications of DNA from the 84 bloodstain samples and ultimately produced meaningful profiles from only four bloodstains: area A of the #06 Marcellos Anderson socks (compatible with two of the victims), areas I and K of the #16 white blanket, and area D of the #23 Delois Anderson red sock (compatible with Delois Anderson). Only one profile is potentially probative: the white blanket areas I and K blood stain profile was that of the same male, and all of the persons of interest to whom this profile was compared were eliminated as the source of the blood. In 2005 TBI replicated the analysis

³ For example, the serial rape-murdered Joseph DeAngelo, the “Golden State Killer” was identified in 2018 using GG.

⁴ See Attachment 2, column “Total DNA, ng.”

⁵ Inhibition of the DNA polymerase during amplification, presumably from compounds such as humic acid from soil that can co-extract with the DNA, is the obvious suspect for the amplification failure of so many different “muddy” samples. However, in experiments in which Bode spiked the sample DNA with pristine control DNA, the control DNA was not inhibited.

of the #16 white blanket I and K bloodstains. A CODIS search of this male profile failed to produce an investigative lead.

11. Revisiting the “muddy” or otherwise problematic evidence specimens in this case using today’s magnetic bead DNA extraction and mega-plex STR amplification technology should easily overcome the problems encountered by Bode in the 2003 investigation. The survey of bloodstains could be focused to a representative sampling(s) of a group of stains on each item, or to small “interesting/isolated” bloodstains – avoiding any large/saturating bloodstains that likely originate from a victim’s wound(s).⁶ If available, the remainder of the original DNA extracts produced by Bode in 2003 could be “cleaned up” and be re-amplified. Either way, today’s technology is likely to produce usable DNA and highly discriminating profiles from this bloodstain evidence – adequate for CODIS search and genetic genealogy.
12. The focus of any contemporary investigation should be expanded to include items from the initial 2002 TBI screening that were *not* obviously bloodstained and hence were not included in the 2003 DNA testing by Bode. Particularly, this includes the mate to Delois Anderson red sock, the Delois Anderson knotted panty hose (apparently used as a binding), and the knotted ties/bindings from Marcellos Anderson.⁷ It is likely each of these items, as well as the bindings from Fredrick Tucker that were submitted for bloodstain analysis, bear transfer biology from whomever bound the victims. These binding items as well as those areas of the victims’ clothing likely handled during kidnapping, transport, and burial should be sampled for transfer, or touch, biology from an assailant. This transfer biology survey should also include the #16 white blanket. DNA testing of bindings and forcefully handled clothing using current state-of-the-art testing technology has shown to be remarkably successful in generating DNA profiles subsequently proven to be from perpetrators. This approach could also produce a DNA profile or profiles common to more than one item and common to more than one victim, and/or be redundant to the blood stain profile from the #16 blanket. Such a finding would produce additional investigative leads (e.g. CODIS/GG), or minimally, support the relevance of the foreign blood previously discovered on the #16 blanket as originating from an assailant.
13. We already know that considerable amounts of DNA were recovered from the #16 white blanket bloodstains, both by Bode in 2003 and by TBI in 2005,⁸ producing robust complete STR profiles. This DNA, whether remaining from Bode’s or TBI’s work or from a contemporary re-sampling of the #16 blanket, should be more than adequate for a GG analysis. Similarly, any foreign DNA recovered from other bloodstains as a result of a contemporary investigation as envisioned in paragraph 11 above should also be amenable to GG testing.

⁶ The size, location, and distribution of bloodstains on the evidence specimens was not described in the Bode bench notes or reports, and no photographs were provided.

⁷ The Bode reports list only item #20 as various cloth ties from victim Tucker. Apparently, knotted panty hose were recovered from Delois Anderson, and other knotted ties were recovered from Marcellos Anderson.

⁸ TBI recovered 50ng from the white blanket area I bloodstain and 10ng of DNA from area K bloodstain in 2006. Only about 2ng of DNA from each sample was consumed in testing.

14. Typically, fingernail specimens (clippings, scrapings, swabbings, etc) are collected from homicide victims at autopsy. Fingernails have long been recognized as likely bearing assailant biology in cases with violent/intimate contact, and with today's technology are now routinely tested. It is likely that one or more of the victims struggled with the perpetrator(s) during the assault. I have personally examined fingernail evidence in over 50 cases. My experience attests and the scientific literature documents that most people sampled at random do not have foreign biology under their fingernails, and that foreign biology intentionally introduced to the fingernails of living subjects in controlled studies is short lived. Hence, foreign biology associated with the fingernails of homicide victims is usually relevant to the crime. Biology transferred from a person to another person's fingernails is rarely self-evident and often is not from blood. Any available fingernail evidence specimens from any or all of the victims should be tested in a contemporary investigation.
15. For example, the unfortunate saga of Nicholas Yarris is a testament to the value of a comprehensive investigative approach considering different forms of human biology and from where it might be recovered. Mr. Yarris was convicted in 1983 of the 1981 rape and murder of a Pennsylvania woman and sentenced to death. In 2003 sperm DNA eliminated Mr. Yarris and the victim's husband as the source of semen on the victim's vaginal swabs, however the relevance of the semen – as originating from her killer or an unknown consensual partner – was unclear. Later during a review I discovered the victim's fingernails clippings and a pair of winter gloves recovered at the scene⁹ were available for examination. There was no dispute that the gloves did not originate from the milieu of the victim. My testing of the victim's fingernail clippings and the inside of each glove produced the same male DNA profile from the semen on the victim's vaginal swabs. This redundancy/common DNA source across three different specimens established the relevance of the semen and definitively placed this male at the death scene. Yarris was ultimately exonerated after spending 22 years in prison on death row.
16. Similarly, the investigation of the 1988 rape and murder of Eliza Mae Smith in Nashville, Tennessee demonstrates the value of revisiting evidence that had been examined years previously. In 1988 the TBI Nashville crime lab examined a bedsheet and towel recovered from under the victim on her bed and found no semen. TBI did find semen on a washcloth from the bathroom and determined the semen was from an ABO type A donor. Melvin Crump, an ABO type A secretor, was charged with the crimes in September 1988, but the charges were later dismissed. The defense argued that Mr. Crump, Ms. Smith's handyman, had access to the bathroom and had masturbated onto the washcloth. Seven years later in 2005, I examined the sheet and towel and found large semen deposits on both items. DNA testing identified Mr. Crump as the semen source, and he was convicted in 2006. Over the course of my career and in particular among the over 160 post-conviction cases in which I have been involved, it is not unusual to find relevant DNA evidence where none was found in prior examination by other analysts/laboratories.

⁹ The scene was the inside of the victim's car.

Summary

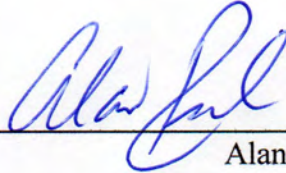
17. As described above in paragraph 4, I have conducted post-conviction DNA testing in over 150 cases and have developed exculpatory evidence in approximately 70 of those cases, all of which had been tested previously in some fashion by other forensic scientists. And as of March 2026 in the United States 455 people have been exonerated based on DNA evidence.¹⁰ It is my professional opinion as an independent expert in forensic serology and DNA analysis that revisiting the previously tested evidence and testing evidence not previously examined using current state-of-the-art methods and technology could provide probative and highly discriminating genetic evidence from the perpetrators of the crimes in this case. This new DNA evidence could undermine Mr. Carruthers claim, or point to other person(s) as the actual perpetrator(s). This testing could likely be completed within 14 business days of receipt of the evidence by the testing laboratory.
18. This new technology includes:
- i. advanced DNA extraction techniques that virtually eliminate PCR inhibition;
 - ii. advanced DNA quantification assays that measure the amount of human DNA, male DNA (and female DNA by default), and the state of degradation of the sample DNA allowing more informed profiling decisions;
 - iii. new generation “mega-plex” STR typing kits capable of producing unique DNA profiles from a trace amount of DNA, even if the DNA is highly degraded;
 - iv. the capability to target small amounts of male DNA Y chromosome STRs commingled with female DNA (e.g. from the Delois Anderson bindings);
 - v. new advanced DNA profiling instrumentation such as the Applied Biosystems capillary electrophoresis 3500 genetic analyzer, which is now the instrument of choice in forensic DNA labs, provide exquisite sensitivity allowing the successful profiling of minute amounts of amplified DNA;
 - vi. computer-assisted analysis of DNA profile mixtures, or probabilistic genotyping, enables us to interpret complex, low-level, and highly degraded results;
 - vii. forensic genetic genealogy utilizing SNP and WGS technology can provide investigative leads when manual comparison to persons of interest and searches of offender and unknown profiles (CODIS) fail to provide a candidate match.
19. This formidable array of new DNA analysis technologies can be applied to evidence in this case previously examined for bloodstains and, equally promising, to that same evidence and other evidence not yet examined, for trace/touch level biology. This evidence includes:
- i. any of the two white blanket DNA extracts produced by TBI in 2005 remaining;
 - ii. fingernail specimens;

¹⁰ [Wilson Center for Science and Justice at Duke Law](#), last visited April 3, 2026.

Alan Keel, Consultant in Forensic Biology and DNA Analysis
6 Captain Drive #245, Emeryville, CA 94608 | Telephone: 510/685-7787 | www.alankeelforensicdna.com

- iii. the bindings from Marcellos Anderson;
- iv. and the red sock and knotted pantyhose of Delois Anderson.

Further, affiant sayeth naught.

Dated April 6, 2026 
Alan Keel

Sworn and subscribed before me this 6th day of April, 2026 at

Emeryville CA.

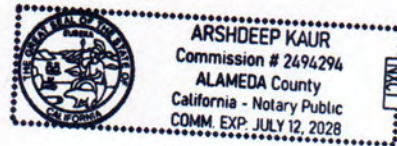
Arshdeep Kaur
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA, COUNTY OF Alameda 6th
Subscribed and sworn to (or affirmed) before me on this 6th day of
April, 2026 by Charles Alan
Keel

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Arshdeep Kaur
(Signature of Notary)



Attachment 1
Resume of Alan Keel

BACKGROUND

Mr. Keel conducted conventional serological and DNA analysis investigations and consultation in criminal and civil forensic cases from 1982 through 2021 from 36 US States and has provided expert testimony in 21 state and federal courts. The first 15 years of Mr. Keel's 40+ year career were spent in law enforcement laboratories. For the last 23 years of his laboratory career he served as a DNA Technical Lead Analyst. Mr. Keel has particular and extensive knowledge in crime scene processing, evidence examination, human body fluid and cellular material identification, DNA purification, polymerase chain reaction (PCR) based amplification of short tandem repeat (STR) genes, single source and mixture autosomal and Y chromosome DNA profiles, classical population statistics, probabilistic genotyping, and genetic genealogy.

Mr. Keel has personally conducted testing in hundreds of pre-trial and over 150 post-conviction forensic biology case investigations. As a private consultant since 2022, he now assists prosecutors, Conviction Integrity Units, defense attorneys, Innocence Projects, and private clients with expert peer review of forensic evidence in pre-trial, post-conviction, and civil litigation, and with recommendations for additional investigation, direct and cross-examination, effective assistance, and client management strategy.

PROFESSIONAL AFFILIATIONS

- American Academy of Forensic Sciences, current.
- California Association of Criminalists, current.
- The American Board of Criminalistics: Certifications:
 - Diplomate, General Criminalistics, 1991-2012.
 - Fellow, Molecular Biology, 1995-2012; November 2015, current.
- DNA Technical Leader/Manager, pursuant to the 1994 Identification Act and DNA Advisory Board Standard 5.2.1.1, advanced degree waiver conferred 1999.

- Licensed by the Texas Forensic Science Commission in Forensic Biology/DNA, December 2018-2022.

EDUCATION

- Bachelor of Science (Zoology), Texas A & M University, College Station, 1978
- Graduate Course Work, Texas A & M University, College Station, 1978-80 in Human Physiology
- Graduate Course Work, University of California, Berkeley, 1993 in Nucleic Acid Biochemistry

PROFESSIONAL EXPERIENCE

- 2011 – 2021 Forensic Analytical Crime Lab, Hayward, CA
Forensic Biology/DNA Analysis Unit
DNA Technical Leader/Supervisor/Analyst
- 1999 – 2011 Forensic Science Associates, Richmond, CA
Criminalist/Consultant in Forensic Biology/DNA Analysis
- 1996 – 1999 San Francisco, CA Police Department
Forensic Biology/DNA Analysis Unit
DNA Technical Leader/Supervisor/Analyst
- 1996 Tulsa, OK Police Department
Forensic Biology/DNA Analysis Unit
DNA Technical Leader/Supervisor/Analyst
- 1995 – 1996 Consultant in Forensic Science, Shreveport, LA
- 1994 – 1996 Caddo Parish, LA Coroner's Office, Shreveport, Louisiana
Death Investigator
- 1984 – 1993 Oakland, CA Police Department
Criminalist III, specialized in Forensic Serology and DNA Analysis
- 1982 – 1984 North Louisiana Crime Lab, Shreveport, Louisiana
Forensic Serologist

SPECIALIZED TRAINING

- Recombinant DNA Technology, University of California Extension, Berkeley, CA 1986
- Forensic DNA Analysis, University of California Extension, Berkeley, 1989
- The Application of DNA Technology to Forensics, University of California Extension, Riverside, 1990
- PCR/DQA1 Typing Methods, CETUS/California Department of Justice, Berkeley, 1991
- Bloodstain Pattern Interpretation, California Criminalistics Institute, Sacramento, California, 1991
- Advanced PCR Analysis Methods: PM, D1S80, and Quantiblot, Roche Molecular Systems, Alameda, California, 1993
- Advanced Crime Scene Reconstruction, California Criminalistics Institute, Sacramento, CA 1996
- Instrumental DNA Typing and Analysis
 - Capillary electrophoresis 310 instrumentation and GeneScan data collection/Multiplex STR analysis/GenoTyper data analysis, Perkin-Elmer/Applied Biosystems, Foster City, CA 1996
 - Profiler Plus/Cofiler Multiplex STR analysis internal validation SFPD, 1998
 - Identifiler Multiplex STR analysis internal validation FSA, 2001
 - Yfiler Multiplex STR analysis internal validation FSA, 2005
 - Minifiler Multiplex STR analysis internal validation FACL, August 2014
 - ABI Genetic Analyzer CE 3500/Genemapper ID-X Multiplex STR analysis: internal vendor training/internal validation FACL, October 2016
 - Investigator 24Plex QS Multiplex STR analysis internal vendor training/internal validation FACL, April 2017
 - STRmix Probabilistic Genotyping: vendor workshop Prague, Czech Republic April 5, 2017; internal validation FACL, January 2018
 - Genetic Genealogy/Next Generation Sequencing, Promega Webinar Series: Part 1: An Inside Look at the Facts and Fiction Surrounding GG, April 13, 2022; Part 2: Closing the Genealogy Gap, from Extraction to Prosecution, May 4, 2022; Part 3: Decoding Laboratory Options for GG, May 25, 2022

- Genetic Genealogy: Part 1: The Use of GG in Forensic Investigations, October 11, 2023; Part 2: GG 2011-2023 Expectations vs Realities; JFS/AAFS/Wiley Virtual Seminars
 - Probabilistic Genotyping: DNA Interpretation Given Activity Level Propositions. AAFS 76th Annual Scientific Conference Workshop, February 20, 2024, Denver, CO.
 - Investigative Genetic Genealogy: Case Studies, Regional Coordination, and DNA Analysts' Roles in Support. California Association of Criminalists, February 27, 2024
 - Complexities of Trace DNA and Transfer in Assessing Activity Level with Probabilistic Genotyping. American Academy of Forensic Sciences, February 9, 2026
- Technical Writing for Criminalists, California Criminalistics Institute, May 2021
 - FBI Quality Assurance Standards Auditor Training, June 2012

PROFESSIONAL PRESENTATIONS

- *A Collaborative Study of DQA1 Typing by PCR* presented to the California Association of Criminalists, 1991 Spring Seminar, Berkeley
- *A Collaborative Study of DQA1 Typing by PCR* presented to the American Academy of Forensic Sciences, 1992 Annual Seminar, New Orleans
- *Penile Swab Evidence in the Investigation of Rape* presented at the 1993 International Forensic DNA Analysis Symposium, Quantico, Virginia
- *Sampling Approach and DNA Analysis of Fingernail Evidence Specimens* presented at the Third Joint International Seminar of the Forensic Science Society [United Kingdom] and the California Association of Criminalists, May 2000, Napa, California
- *Finding the Roscetti Stone: a review of the Lori Roscetti homicide investigation and trial transcripts* presented to the California Association of Criminalists, 2005 Spring Seminar, Oakland
- *The Essential Elements of a Forensic DNA Analysis Laboratory Report; The Essential Elements of Expert Peer Review of a Forensic Laboratory DNA Investigation; The Utility of and Access to CODIS; and Some Potential Adverse Consequences of Regulation and Accreditation on Applied Forensic DNA*

Analysis presented to the California Public Defender's Association, May 2014, Hayward

- *Adverse Effects of Blanket Quality Assurance Criteria on Sample-to-Sample and Lab-to-Lab Variable Genetic Data*, presented to the Joint California Association of Criminalists/Northwest Association of Forensic Scientists Seminar, October 2014, Rohnert Park, CA.
- *Demystifying "Touch DNA,"* presented to the 2015 National Innocence Network Conference, May 2, 2015, Orlando, FL.
- *The Difference between Low-Level DNA Analysis and Low-Copy Number (LCN) DNA Analysis and Why It Matters to You*, presented to the 2015 National Innocence Network Conference, May 2, 2015, Orlando, FL.
- *The Fundamentals of Forensic DNA Analysis*, presented as training to the Federal Habeas Corpus Resource Center, September 2015, San Francisco, CA
- *A Benchmark for Meaningful Forensic DNA Analysis: Field (Beta) Testing of the Qiagen Investigator Quantiplex Pro qPCR Assay*, presented at the 6th Annual Qiagen Investigator Forum, Prague, Czech Republic, April 5, 2017.
- *The Twenty-six Year Investigation of the Kidnapping, Rape, and Murder of Dana Ireland*, presented at the California Association of Criminalists Seminar, May 2017, San Francisco, CA.

SPECIAL RECOGNITION

2008 Innocence Network Conference, Santa Clara, CA: **Freedom and Justice Award** presented by the Northeast Council of the Wrongly Convicted "In recognition of your relentless pursuit of truth through science."

2021 Based in part upon recommendation by the Innocence Project (NY), Mr. Keel was selected as the expert for Special Counsel appointed by California Governor Gavin Newsom to review the 1983-1984 conventional serological testing and the 2002-2004/2019-2020 forensic DNA testing of evidence in light of the actual innocence claims and clemency request of California death row inmate Kevin Cooper.

REFERENCES

Prosecution

Rockne Harmon, Esq., Alameda County, CA District Attorney Office, retired.
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Kelly Manderino, Esq., DDA, San Luis Obispo County, CA District Attorney Office.
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Hon. Braden Woods, San Francisco Superior Court Judge, former San Francisco County, CA Deputy District Attorney.

Defense

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Attachment 2

Summary of the DNA Testing at Bode in 2003
sorted by Amplification Date

Keel 22-020 Summary of BODE DNA Testing in Carruthers 2S02-165

BODE #	Agency #	Item Description	Sample Type	Sample Amt	Sample Date	Extraction Type	Extract Vol., ul	Quantity ng/ul	Total DNA, ng	Pro Plus Amp, ng	CoFiler Amp, ng	Amp Vol, ul	Amp Date	CE or Gel Date	Profile Result	Cuml. Amps
06A1/2	C C94-586	M Anderson socks area 1, 3cm x 5cm cutting	human bloodstain	0.5cm ²	3-20-03	organic 4-29-03	50	0.50	25.0	0.9	0.9	25	5-2-2003	5-6-03	v weak partial mixture profile	2
08A1/2	C C94-586	M Anderson socks area 2, 2.5cm x 3.5cm cutting	human bloodstain	0.5cm ²	3-20-03	organic 4-29-03	50	0.59	29.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	6
09A1/2	C C94-586	M Anderson pants area 2, 9cm x 10cm cutting	human bloodstain	0.5cm ²	3-24-03	organic 4-29-03	50	0.68	34.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	8
12A1/2	D C94-587	Tucker white socks, area A, 8 cm x 8cm cutting	human bloodstain	0.5cm ²	3-24-03	organic 4-29-03	50	1.32	66.0	1.2	1.2	25	5-2-2003	5-6-03	no results	10
15A1/2	D C94-588	D Anderson dress area 2, 4cm x 7cm cutting	human bloodstain	0.5cm ²	3-24-03	organic 4-29-03	50	4.21	210.5	0.92	0.92	25	5-2-2003	5-6-03	no results	18
16i1/2	G C94-586	M Anderson white blanket, 39cm x 64cm, area I stain	human bloodstain	small cutting	3-25-03	organic 4-29-03	50	47.98	2399.0	1	1	25	5-2-2003	5-6-03	no results	23
16K1/2	G C94-586	M Anderson white blanket, 39cm x 64cm, area K stain	human bloodstain	small cutting	3-25-03	organic 4-29-03	50	1.30	65.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	robust unk. male profile	27
17A1/2	F C94-586	M Anderson plaid shirt, area A	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	7.28	364.0	0.92	0.92	25	5-2-2003	5-6-03	no results	29
17B1/2	F C94-586	M Anderson plaid shirt, area B	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.29	14.5	0.52	0.52	25	5-2-2003	5-6-03	no results	34
17C1/2	F C94-586	M Anderson plaid shirt, area C	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.93	46.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	36
17D1/2	F C94-586	M Anderson plaid shirt, area D	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	1.36	68.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	38
17E1/2	F C94-586	M Anderson plaid shirt, area E	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.67	33.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	40
17F1/2	F C94-586	M Anderson plaid shirt, area F	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	1.25	62.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	42
17G1/2	F C94-586	M Anderson plaid shirt, area G	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.46	23.0	0.83	0.83	25	5-2-2003	5-6-03	no results	44
17H1/2	F C94-586	M Anderson plaid shirt, area H	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	1.40	70.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	46
17J1/2	F C94-586	M Anderson plaid shirt, area J	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	1.51	75.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	48
17K1/2	F C94-586	M Anderson plaid shirt, area K	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	2.43	121.5	0.82	0.82	25	5-2-2003	5-6-03	no results	50
17L1/2	F C94-586	M Anderson plaid shirt, area L	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.35	17.5	0.64	0.64	25	5-2-2003	5-6-03	no results	53
17M1/2	F C94-586	M Anderson plaid shirt, area M	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.25	12.5	0.46	0.46	25	5-2-2003	5-6-03	no results	55
17N1/2	F C94-586	M Anderson plaid shirt, area N	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	1.04	52.0	0.9 to 1.2	0.9 to 1.2	25	5-2-2003	5-6-03	no results	57
17O1/2	F C94-586	M Anderson plaid shirt, area O	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.25	25.0	0.45	0.45	25	5-2-2003	5-6-03	no results	59
17P1/2	F C94-586	M Anderson plaid shirt, area P	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.57	28.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	61
17R1/2	F C94-586	M Anderson plaid shirt, area R	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	1.72	86.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	63

Keel 22-020 Summary of BODE DNA Testing in Carruthers 2S02-165

BODE #	Agency #	Item Description	Sample Type	Sample Amt	Sample Date	Extraction Type	Extract Vol., ul	Quantity ng/ul	Total DNA, ng	Pro Plus Amp, ng	CoFiler Amp, ng	Amp Vol, ul	Amp Date	CE or Gel Date	Profile Result	Cuml. Amps
17T1/2	F C94-586	M Anderson plaid shirt, area T	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	1.17	58.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	68
17U1/2	F C94-586	M Anderson plaid shirt, area U	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.44	22.0	0.8	0.8	25	5-2-2003	5-6-03	no results	73
17W1/2	F C94-586	M Anderson plaid shirt, area W	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	0.34	17.0	0.62	0.62	25	5-2-2003	5-6-03	no results	75
17X1/2	F C94-586	M Anderson plaid shirt, area X	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	2.39	119.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	77
17Y1/2	F C94-586	M Anderson plaid shirt, area Y	human bloodstain	small cutting	4-3-03	organic 4-29-03	50	2.31	115.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	82
18A1/2	B C94-586	M Anderson underwear, area A	human bloodstain	small cutting	3-31-03	organic 4-29-03	50	0.45	22.5	0.82	0.82	25	5-2-2003	5-6-03	no results	87
19C1/2	C C94-587	Tucker Jeans, area C	human bloodstain	small cutting	4-14-03	organic 4-29-03	50	0.83	41.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	89
19D1/2	C C94-587	Tucker Jeans, area D	human bloodstain	small cutting	4-14-03	organic 4-29-03	50	0.37	18.5	0.67	0.67	25	5-2-2003	5-6-03	no results	94
19F1/2	C C94-587	Tucker Jeans, area F	human bloodstain	small cutting	4-14-03	organic 4-29-03	50	1.73	86.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	96
19G1/2	C C94-587	Tucker Jeans, area G	human bloodstain	small cutting	4-14-03	organic 4-29-03	50	2.04	102.0	0.82	0.82	25	5-2-2003	5-6-03	no results	98
20A1/2	F C94-587	Tucker, cloth ties, area A	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	1.07	53.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	102
20B1/2	F C94-587	Tucker, cloth ties, area B	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.61	30.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	104
20BB1/2	F C94-587	Tucker, cloth ties, area BB	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.15	7.5	0.27	0.27	25	5-2-2003	5-6-03	no results	151
20C1/2	F C94-587	Tucker, cloth ties, area C	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	1.99	99.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	108
20CC1/2	F C94-587	Tucker, cloth ties, area CC	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.26	13.0	0.47	0.47	25	5-2-2003	5-6-03	no results	153
20D1/2	F C94-587	Tucker, cloth ties, area D	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	1.42	71.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	110
20E1/2	F C94-587	Tucker, cloth ties, area E	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.10	5.0	0.19	0.19	25	5-2-2003	5-6-03	no results	112
20F1/2	F C94-587	Tucker, cloth ties, area F	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.09	4.5	0.16	0.16	25	5-2-2003	5-6-03	no results	114
20G1/2	F C94-587	Tucker, cloth ties, area G	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	2.25	112.5	0.75	0.75	25	5-2-2003	5-6-03	no results	116
20H1/2	F C94-587	Tucker, cloth ties, area H	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	1.26	63.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	120
20i1/2	F C94-587	Tucker, cloth ties, area i	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.65	32.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	122
20J1/2	F C94-587	Tucker, cloth ties, area J	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.28	14.0	0.51	0.51	25	5-2-2003	5-6-03	no results	124
20K1/2	F C94-587	Tucker, cloth ties, area K	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.13	6.5	0.24	0.24	25	5-2-2003	5-6-03	no results	126

Keel 22-020 Summary of BODE DNA Testing in Carruthers 2S02-165

BODE #	Agency #	Item Description	Sample Type	Sample Amt	Sample Date	Extraction Type	Extract Vol., ul	Quantity ng/ul	Total DNA, ng	Pro Plus Amp, ng	CoFiler Amp, ng	Amp Vol, ul	Amp Date	CE or Gel Date	Profile Result	Cuml. Amps
20L1/2	F C94-587	Tucker, cloth ties, area L	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.17	8.5	0.31	0.31	25	5-2-2003	5-6-03	no results	128
20N1/2	F C94-587	Tucker, cloth ties, area N	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.31	15.5	0.56	0.56	25	5-2-2003	5-6-03	no results	130
20O1/2	F C94-587	Tucker, cloth ties, area O	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.25	12.5	0.45	0.45	25	5-2-2003	5-6-03	no results	132
20P1/2	F C94-587	Tucker, cloth ties, area P	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.56	28.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	134
20Q1/2	F C94-587	Tucker, cloth ties, area Q	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.19	9.5	0.35	0.35	25	5-2-2003	5-6-03	no results	136
20R1/2	F C94-587	Tucker, cloth ties, area R	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.45	22.5	0.82	0.82	25	5-2-2003	5-6-03	no results	138
20S1/2	F C94-587	Tucker, cloth ties, area S	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.36	18.0	0.65	0.65	25	5-2-2003	5-6-03	no results	140
20V1/2	F C94-587	Tucker, cloth ties, area V	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.18	9.0	0.33	0.33	25	5-2-2003	5-6-03	no results	143
20W1/2	F C94-587	Tucker, cloth ties, area W	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.18	9.0	0.33	0.33	25	5-2-2003	5-6-03	no results	145
20Y1/2	F C94-587	Tucker, cloth ties, area Y	human bloodstain	small cutting	4-15-03	organic 4-29-03	50	0.21	10.5	0.38	0.38	25	5-2-2003	5-6-03	no results	147
20Z1/2	F C94-587	Tucker, cloth ties, area X	human bloodstain	2 small cuttings	4-15-03	organic 4-29-03	50	0.18	9.0	0.33	0.33	25	5-2-2003	5-6-03	no results	149
22A1/2	E C94-587	Tucker blue shirt, area A additional cutting	human bloodstain	0.5cm x 0.7cm	4-21-03	organic 4-29-03	50	0.84	42.0	1.5	1.5	25	5-2-2003	5-6-03	no results	157
22B1/2	E C94-587	Tucker, blue shirt, area B	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	0.79	39.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	162
22C1/2	E C94-587	Tucker, blue shirt, area C	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	0.43	21.5	0.78	0.78	25	5-2-2003	5-6-03	no results	165
22D1/2	E C94-587	Tucker, blue shirt, area D	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	0.85	42.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	168
22F1/2	E C94-587	Tucker, blue shirt, area F	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	1.03	51.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	170
22H1/2	E C94-587	Tucker, blue shirt, area H	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	1.08	54.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	172
22P1/2	E C94-587	Tucker, blue shirt, area P	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	1.03	51.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	174
22Q1/2	E C94-587	Tucker, blue shirt, area Q	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	0.67	33.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	176
22R1/2	E C94-587	Tucker, blue shirt, area R	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	1.09	54.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	178
22S1/2	E C94-587	Tucker, blue shirt, area S	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	0.64	32.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	180
22T1/2	E C94-587	Tucker, blue shirt, area T	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	1.24	62.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	182
22V1/2	E C94-587	Tucker, blue shirt, area V	human bloodstain	small cutting	4-16-03	organic 4-29-03	50	1.39	69.5	0.7	0.7	25	5-2-2003	5-6-03	no results	184

Keel 22-020 Summary of BODE DNA Testing in Carruthers 2S02-165

BODE #	Agency #	Item Description	Sample Type	Sample Amt	Sample Date	Extraction Type	Extract Vol., ul	Quantity ng/ul	Total DNA, ng	Pro Plus Amp, ng	CoFiler Amp, ng	Amp Vol, ul	Amp Date	CE or Gel Date	Profile Result	Cuml. Amps
23A1/2		D Anderson, red sock, area A	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	10.67	533.5	0.97	0.97	25	5-2-2003	5-6-03	no results	188
23B1/2		D Anderson, red sock, area B	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	8.12	406.0	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	191
23C1/2		D Anderson, red sock, area C	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	6.45	322.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	193
23D1/2		D Anderson, red sock, area D	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	24.19	1209.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	robust profile (D Anderson)	195
23E1/2		D Anderson, red sock, area E	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	2.96	148.0	1	1	25	5-2-2003	5-6-03	wk partial profile	197
23F1/2		D Anderson, red sock, area F	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	9.70	485.0	0.97	0.97	25	5-2-2003	5-6-03	no results	201
23G1/2		D Anderson, red sock, area G	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	10.81	540.5	0.94	0.94	25	5-2-2003	5-6-03	no results	209
23H1/2		D Anderson, red sock, area H	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	10.37	518.5	0.94	0.94	25	5-2-2003	5-6-03	no results	213
24C1/2	B C94-588	D Anderson, underwear, area C	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	0.40	20.0	0.73	0.73	25	5-2-2003	5-6-03	no results	216
24E1/2	B C94-588	D Anderson, underwear, area E	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	1.67	83.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	218
24F1/2	B C94-588	D Anderson, underwear, area F	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	1.63	81.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	220
24G1/2	B C94-588	D Anderson, underwear, area G	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	1.05	52.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	222
24J1/2	B C94-588	D Anderson, underwear, area J	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	0.97	48.5	0.7 to 1.2	0.7 to 1.2	25	5-2-2003	5-6-03	no results	224
24Q1/2	B C94-588	D Anderson, underwear, area Q	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	4.00	200.0	0.88	0.88	25	5-2-2003	5-6-03	no results	226
24S1/2	B C94-588	D Anderson, underwear, area S	human bloodstain	small cutting	4-18-03	organic 4-29-03	50	6.29	314.5	0.9	0.9	25	5-2-2003	5-6-03	no results	231
12A1-3	D C94-587	Tucker white socks, area A extract, re-amp ProPlus	previous extract							1.2	n/a	25	5-8-2003	5-12-03	no result	11
12A1-4	D C94-587	Tucker white socks, area A extract, increase re-amp PrPlus	previous extract							5.3	n/a	25	5-8-2003	5-12-03	no result	12
12A1-5	D C94-587	Tucker white socks, area A extract, dilution re-amp ProPlus	previous extract			dilution				0.48	n/a	25	5-8-2003	5-12-03	no result	13
12A1-6	D C94-587	Tucker white socks, area A extract, dilution re-amp ProPlus	previous extract			dilution				0.24	n/a	25	5-8-2003	5-12-03	no result	14
12A1-7	D C94-587	Tucker white socks, area A extract, dilution re-amp ProPlus	previous extract			dilution				0.10	n/a	25	5-8-2003	5-12-03	no result	15
12A1-8	D C94-587	Tucker white socks, area A extract, dilution re-amp ProPlus	previous extract			dilution				0.05	n/a	25	5-8-2003	5-12-03	no result	16
15A1-3	D C94-588	D Anderson dress area 2 extract, dilution re-amp ProPlus	previous extract			dilution				0.23	n/a	25	5-8-2003	5-12-03	no result	19
17A1-3	F C94-586	M Anderson plaid shirt area A extract, dilution re-amp ProPlus	previous extract			dilution				0.12	n/a	25	5-8-2003	5-12-03	no result	30

Keel 22-020 Summary of BODE DNA Testing in Carruthers 2S02-165

BODE #	Agency #	Item Description	Sample Type	Sample Amt	Sample Date	Extraction Type	Extract Vol., ul	Quantity ng/ul	Total DNA, ng	Pro Plus Amp, ng	CoFiler Amp, ng	Amp Vol, ul	Amp Date	CE or Gel Date	Profile Result	Cuml. Amps
17K1-3	F C94-586	M Anderson plaid shirt area K extract, dilution re-amp ProPlus	previous extract			dilution				0.33	n/a	25	5-8-2003	5-12-03	no result	51
19G1-3	C C94-587	Tucker Jeans, area G extract, dilution re-amp ProPlus	previous extract			dilution				0.41	n/a	25	5-8-2003	5-12-03	no result	99
20G1-3	F C94-587	Tucker, cloth ties, area G extract, dilution re-amp ProPlus	previous extract			dilution				0.3	n/a	25	5-8-2003	5-12-03	no result	117
22V1-3	E C94-587	Tucker, blue shirt, area V extract, dilution re-amp ProPlus	previous extract			dilution				0.35	n/a	25	5-8-2003	5-12-03	no result	185
23A1-3		D Anderson, red sock area A extract, dilution re-amp ProPlus	previous extract			dilution				0.1	n/a	25	5-8-2003	5-12-03	no result	189
23F1-3		D Anderson, red sock area F extract, re-amp ProPlus	previous extract							0.97	n/a	25	5-8-2003	5-12-03	no result	202
23F1-4		D Anderson, red sock area F extract, increase re-amp Prplus	previous extract							3.88	n/a	25	5-8-2003	5-12-03	no result	203
23F1-5		D Anderson, red sock area F extract, dilution re-amp ProPlus	previous extract			dilution				0.39	n/a	25	5-8-2003	5-12-03	no result	204
23F1-6		D Anderson, red sock area F extract, dilution re-amp ProPlus	previous extract			dilution				0.26	n/a	25	5-8-2003	5-12-03	no result	205
23F1-7		D Anderson, red sock area F extract, dilution re-amp ProPlus	previous extract			dilution				0.19	n/a	25	5-8-2003	5-12-03	no result	206
23F1-8		D Anderson, red sock area F extract, dilution re-amp ProPlus	previous extract			dilution				0.13	n/a	25	5-8-2003	5-12-03	no result	207
23G1-3		D Anderson, red sock area G extract, dilution re-amp ProPlus	previous extract			dilution				0.08	n/a	25	5-8-2003	5-12-03	no result	210
23H1-3		D Anderson, red sock area H extract, dilution re-amp ProPlus	previous extract			dilution				0.09	n/a	25	5-8-2003	5-12-03	no result	214
24Q1-3	B C94-588	D Anderson, underwear area Q extract, dilution re-amp ProPlus	previous extract			dilution				0.22	n/a	25	5-8-2003	5-12-03	no result	227
24S1-3	B C94-588	D Anderson, underwear area S extract, dilution re-amp ProPlus	previous extract			dilution				0.14	n/a	25	5-8-2003	5-12-03	no result	232
25A1NSF	T 94-504	D Anderson, vaginal swab, non-sperm fraction	no semen detected	epithelial cell DNA	5-6-03	diff organic 5-6-03	50	75.4	3765.0	1.2	1.2	9	5-8-2003	5-9-03	robust profile (D Anderson)	239
25A1SF	T 94-504	D Anderson, vaginal swab, sperm fraction	no semen detected	half of 1 swab	5-6-03	diff organic 5-6-03	50	1.2	60	1.2	1.2	9	5-8-2003	5-9-03	weak female profile	235
29A1	94-504-3	D Anderson reference blood	blood	n/a	5-6-03	organic 5-6-03	50	57.6	2880.0	1.2	1.2	9	5-9-2003	5-19-03	robust profile	241
30A1	94-499-2	F Tucker reference blood	blood	n/a	5-6-03	organic 5-6-03	50	47.5	2375.0	1.2	1.2	9	5-9-2003	5-19-03	robust profile	243
31A1	94-502-3	M Anderson reference blood	blood	n/a	5-6-03	organic 5-6-03	50	71.4	3750.0	1.2	1.2	9	5-9-2003	5-19-03	robust profile	245
32A1	95-392	"Montgomery" reference blood	blood	n/a	5-6-03	organic 5-6-03	50	43.9	2195.0	1.2	1.2	9	5-9-2003	5-19-03	robust profile	247
06A1-3/4	C C94-586	M Anderson socks area 1 extract, increase re-amps	previous extract							3.6	3.6	25	5-27-2003	5-29-03	no results	4
15A1-4	D C94-588	D Anderson dress area 2 extract, inhibition test ProPlus	previous extract							0.92 15A 0.2 Control	n/a	25	5-27-2003	5-29-03	only the control DNA amplified	20

Keel 22-020 Summary of BODE DNA Testing in Carruthers 2S02-165

BODE #	Agency #	Item Description	Sample Type	Sample Amt	Sample Date	Extraction Type	Extract Vol., ul	Quantity ng/ul	Total DNA, ng	Pro Plus Amp, ng	CoFiler Amp, ng	Amp Vol, ul	Amp Date	CE or Gel Date	Profile Result	Cuml. Amps
16i1-3	G C94-586	M Anderson white blanket area 1 stain extract, re-amp PrPlus	previous extract							1.3	n/a	25	5-27-2003	5-29-03	robust unk. male profile	24
16i1-4	G C94-586	M Anderson white blanket area 1 stain extract, re-amp CoFiler	previous extract							n/a	1.74	25	5-27-2003	5-29-03	robust unk. male profile	25
17A1-4	F C94-586	M Anderson plaid shirt area A extract, inhibition test ProPlus	previous extract							0.92 17A 0.2 Control	n/a	25	5-27-2003	5-29-03	only the control DNA amplified	31
20G1-4	F C94-587	Tucker, cloth ties, area G extract, inhibition test ProPlus	previous extract			dilution				0.75 20G 0.2 Control	n/a	25	5-27-2003	5-29-03	only the control DNA amplified	118
22A1-3	E C94-587	Tucker blue shirt, area A extract, inhibition test ProPlus	previous extract							1.5 22A 0.2 Control	n/a	25	5-27-2003	5-29-03	only the control DNA amplified	158
22V1-4	E C94-587	Tucker, blue shirt, area V extract, increase re-amp PrPlus	previous extract							2.8	n/a	25	5-27-2003	5-29-03	unknown (no result reported)	186
23E1-3/4		D Anderson, red sock area E extract, increase re-amps P&C	previous extract							4	4	25	5-27-2003	5-29-03	low profile	199
23G1-4		D Anderson, red sock area G extract, inhibition test ProPlus	previous extract							0.94 23G 0.2 Control	n/a	25	5-27-2003	5-29-03	only the control DNA amplified	211
24Q1-4	B C94-588	D Anderson, underwear area Q extract, inhibition test ProPlus	previous extract							0.88 24Q 0.2 Control	n/a	25	5-27-2003	5-29-03	only the control DNA amplified	228
24S1-4	B C94-588	D Anderson, underwear area S extract, inhibition test ProPlus	previous extract							0.9 24S 0.2 Control	n/a	25	5-27-2003	5-29-03	no result	233
15A2	D C94-588	D Anderson dress area 2 second sampling	(no test)	0.5cm ²	5-28-03	Chelex, org, Centribon	50	4.81	240.5	n/a	1.2	25	6-3-2003	6-3-03	no result	21
17A2	F C94-586	M Anderson plaid shirt, area A second sampling	(no test)	0.5cm ²	5-28-03	Chelex, org, Centribon	50	7.67	383.5	n/a	1.28	25	6-3-2003	6-3-03	no result	32
19G2	C C94-587	Tucker Jeans, area G second sampling	(human bloodstain)	0.5cm ²	5-28-03	Chelex, org, Centribon	50	3.16	158.0	n/a	1.05	25	6-3-2003	6-3-03	no result	100
20CC1/2	F C94-587	Tucker, cloth ties, area CC extract, Chelex wash	previous extract		5-30-03	Chelex wash	36	0.46	16.56	n/a	1.84	24	6-3-2003	6-3-03	no result	154
20S1/2	F C94-587	Tucker, cloth ties, area S extract, Chelex wash	previous extract		5-30-03	Chelex wash	32	1.04	33.28	n/a	1	25	6-3-2003	6-3-03	no result	163
22A	E C94-587	Tucker, blue shirt, area A combined with 4-21-03 cutting	human bloodstain	small cutting	4-16-03	n/a	n/a	n/a	n/a	n/a	n/a	n/a	6-3-2003	n/a	n/a	n/a
22A1/2	E C94-587	Tucker blue shirt, area A extract, Chelex wash	previous extract		5-30-03	Chelex wash	35	0.25	8.75	n/a	1	25	6-3-2003	6-3-03	no result	159
22A2	E C94-587	Tucker blue shirt, area A second sampling	(human bloodstain)	0.5cm ²	5-28-03	Chelex, org, Centribon	50	1.74	87.0	n/a	1.74	25	6-3-2003	6-3-03	no result	160
22B1/2	E C94-587	Tucker, blue shirt, area B extract, Chelex wash	previous extract		5-30-03	Chelex wash	38	0.37	14.1	n/a	1.48	25	6-3-2003	6-3-03	no result	163
22C1/2	E C94-587	Tucker, blue shirt, area C extract, Chelex wash	previous extract		5-30-03	Chelex wash	36	0.30	10.8	n/a	1.8	25	6-3-2003	6-3-03	no result	166

Keel 22-020 Summary of BODE DNA Testing in Carruthers 2S02-165

BODE #	Agency #	Item Description	Sample Type	Sample Amt	Sample Date	Extraction Type	Extract Vol., ul	Quantity ng/ul	Total DNA, ng	Pro Plus Amp, ng	CoFiler Amp, ng	Amp Vol, ul	Amp Date	CE or Gel Date	Profile Result	Cuml. Amps
24Q2	B C94-588	D Anderson, underwear, area Q second sampling	(human bloodstain)	0.5cm ²	5-28-03	Chelex, org, Centribon	50	2.28	114.0	n/a	1.14	25	6-3-2003	6-3-03	no result	229
17R1	F C94-586	M Anderson plaid shirt, area R extract C-Sep purif., re-amp P+	previous extract			Centri-Sep cleanup	unk.	4.62		1.16	n/a	25	6-10-2003	6-10-03 A2	no result	64
17T1	F C94-586	M Anderson plaid shirt, area T extract C-Sep purif., re-amp P+	previous extract			Centri-Sep cleanup	unk.	3.00		1.20	n/a	25	6-10-2003	6-10-03 A2	no result	69
17X1	F C94-586	M Anderson plaid shirt, area X extract C-Sep purif., re-amp P+	previous extract			Centri-Sep cleanup	unk.	8.00		1.14	n/a	25	6-10-2003	6-10-03 A2	no result	78
17Y1	F C94-586	M Anderson plaid shirt, area Y extract C-Sep purif., re-amp P+	previous extract			Centri-Sep cleanup	unk.	7.17		1.20	n/a	25	6-10-2003	6-10-03 A2	no result	83
19C1	C C94-587	Tucker Jeans, area C extract Centri-Sep purificat, re-amp P+	previous extract			Centri-Sep cleanup	unk.	2.36		1.18	n/a	25	6-10-2003	6-10-03 A2	no result	90
17R1.15	F C94-586	M Anderson plaid shirt, area R extract C-Sep purif., re-amp CF	previous extract			Centri-Sep cleanup				n/a	1.16	9	6-11-2003	6-11-03 A1	no result	65
17R1.15 1:8	F C94-586	M Anderson plaid shirt, area R extract C-Sep purification, dilution, re-amp CoFiler	previous extract			C-Sep purif, dilution				n/a	0.58	9	6-11-2003	6-11-03 A1	no result	66
17T1.15	F C94-586	M Anderson plaid shirt, area T extract C-Sep purif., re-amp CF	previous extract			Centri-Sep cleanup				n/a	1.20	9	6-11-2003	6-11-03 A1	no result	70
17T1.15 1:8	F C94-586	M Anderson plaid shirt, area T extract C-Sep purification, dilution, re-amp CoFiler	previous extract			C-Sep purif, dilution				n/a	0.60	9	6-11-2003	6-11-03 A1	no result	71
17X1.15	F C94-586	M Anderson plaid shirt, area X extract C-Sep purif., re-amp CF	previous extract			Centri-Sep cleanup				n/a	1.14	9	6-11-2003	6-11-03 A1	no result	79
17X1.15 1:15	F C94-586	M Anderson plaid shirt, area X extract C-Sep purification, dilution, re-amp CoFiler	previous extract			C-Sep purif, dilution				n/a	0.57	9	6-11-2003	6-11-03 A1	no result	80
17Y1.15	F C94-586	M Anderson plaid shirt, area Y extract C-Sep purif., re-amp CF	previous extract			Centri-Sep cleanup				n/a	1.20	9	6-11-2003	6-11-03 A1	no result	84
17Y1.15 1:12	F C94-586	M Anderson plaid shirt, area Y extract C-Sep purification, dilution, re-amp CoFiler	previous extract			C-Sep purif, dilution				n/a	0.60	9	6-11-2003	6-11-03 A1	no result	85
19C1.15	C C94-587	Tucker Jeans, area C extract C-Sep purificat, re-amp CoF	previous extract			Centri-Sep cleanup				n/a	1.18	9	6-11-2003	6-11-03 A1	no result	91
19C1.15 1:4	C C94-587	Tucker Jeans, area C extract Centri-Sep purificat, dilution, re-amp CoFiler	previous extract			C-Sep purif, dilution				n/a	0.59	9	6-11-2003	6-11-03 A1	no result	92
25A1SF (5X)	T 94-504	D Anderson, vaginal swab SF	n/a	n/a	n/a	n/a	n/a	n/a	n/a	12	12	25	7-29-2003	7-29-03	robust profile (D Anderson)	237
33	n/a	Tony Carruthers ref blood	blood	n/a	2-17-05	organic 2-17-05	50	2.56	128.0	1.28	1.28	9	2-23-2005	2-24-05	robust profile	49
34	n/a	James T Montgomery ref blood	blood	n/a	2-17-05	organic 2-17-05	50	3.07	153.5	1.23	1.23	9	2-23-2005	2-24-05	robust profile	51

by the TN Supreme Court.

EXHIBIT 7
2019 CODIS Report



BILL LEE
Governor

TENNESSEE BUREAU OF INVESTIGATION
NASHVILLE CRIME LABORATORY
901 R.S. Gass Boulevard
Nashville, Tennessee 37216-2639



DAVID B. RAUSCH
Director

OFFICIAL CODIS REPORT

TO: Elaine Shelby
DAG - 30th Judicial District
AGENCY CASE NO: 9402797

DATE ISSUED: 4/5/19
LAB CASE NO: 063001146
COUNTY: Shelby

SUBJECT(S)

JAMES MONTGOMERY

VICTIM(S)

DELOIS ANDERSON

EXHIBIT(S):

02-a Blanket

RESULTS:

Refer to the TBI Official Serology/DNA Report dated 05/01/2006 by Donna Nelson, Memphis Crime Laboratory, for previous results.

02-a Based on new eligibility criteria, this unknown, partial male DNA profile was added to the National CODIS database. Additionally, this profile was searched against the National CODIS database and no matches were detected as of this report date. This profile will remain in the databases and searched weekly. You will be notified in the event of a future investigative lead.

Respectfully Submitted,

Bailey Harmon
Special Agent / Forensic Scientist

The above represents the interpretations and opinions of the analyst.

Technical notes and data supporting the conclusions/findings in this report are maintained within the laboratory case records.



EXHIBIT 8

James Montgomery Plea Form & Transcript

**IN THE CRIMINAL COURTS OF TENNESSE
FOR THE 30TH JUDICIAL DISTRICT AT MEMPHIS
DIVISION 4**

STATE OF TENNESSEE

VS. NO: (S) 94-02797, 98, 99

CHARGE(S) Murder II

James Montgomery
DEFENDANT

**PETITION FOR WAIVER OF TRIAL BY JURY AND REQUEST FOR
ACCEPTANCE OF PLEA OF GUILTY**

My true name is James Montgomery and my Attorney Michael Schoff was (retained by me) ~~(appointed by the Court)~~. I have received and read a copy of the indictment, discussed it with my Attorney, and understand the nature of the charges against me. I have told my Attorney the facts and circumstances concerning the accusation against me. My Attorney has informed me as to the nature and cause of the charges against me in the indictment and, if applicable that a different or additional punishment may result by reason of any prior convictions or other factors which may be established in the present action, after the entry of the plea, and the offense to which I seek to plead guilty by the Petition if accepted by the Court:

CONVICTION	SENTENCE	FINE	LOCATION	Range And %
94-02797				
94-02797	27 years		TDOC	I 30%
94-02798	27 years		TDOC	I 30%
94-02799	27 years		TDOC	I 30%
ABOVE ARE CONCURRENT				

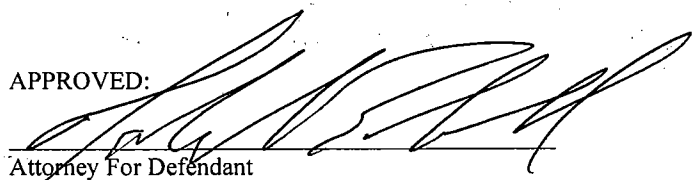
SENTENCE DEFERRED DATE (if applicable) _____

It has been fully explained to me, and I understand that I may, if I so choose, plead **NOT GUILTY** to any offense charged against me, and that if I choose to plead **NOT GUILTY**, the Constitution guarantees, and this Court will provide me the right to a speedy and public trial by Jury, the right to confront and cross-examine all witnesses against me, the right to use the subpoena process of the Court to compel the production of any evidence, including the attendance of any witness in my favor, the right to have a Jury impose any fine in excess of **FIFTY(\$50.00) Dollars**, the right to have the assistance of counsel in my defense in all stages of the proceedings, and the right not to be compelled to incriminate myself. I understand that upon pleading guilty, the Court or the State may ask me questions about the offense to which I have plead, and if I answer these questions under oath, on the record, and in the presence of my counsel, my answers may later be used against me in a prosecution for perjury or false statement, and, further, that upon the sentencing hearing, evidence of any prior convictions may be presented to the Judge or Jury for their consideration in determining punishment. It has been explained to me and I understand that this conviction(s) may be used in a subsequent proceeding to enhance the punishment for subsequent offenses. I understand that if I plead guilty, I waive my right to a Jury trial and all the above rights.

In the exercise of my own free will and choice, and without any threats or pressure of any kind, or promises of gain or favor from any source whatsoever, and being fully aware of the action I am taking, I do hereby in open Court request the Court to accept my pleas of guilty to the charges, set forth in my attached negotiated plea agreement.

Furthermore, having been advised of my constitutional rights, I freely and voluntarily waive my right to a trial by Jury and right not to be compelled to incriminate myself. I hereby submit my case to the Trial Judge for decision, both as to guilt and punishment, said Petition being concurred in by the District Attorney General. I fully understand my right to have my case reviewed by an Appellate Court, but hereby waive my right to a Motion For New Trial and Appeal. **THIS IS AN ALFORD GUILTY PLEA.**

DEFENDANT

APPROVED: 
Attorney For Defendant

DATE: 5-1-06

Filed _____
WILLIAM R. KEY, CLERK

Assistant Attorney General

By: _____, D.C.

Document received by TN Supreme Court

IN THE CRIMINAL COURTS OF TENNESSEE
FOR THE 30TH JUDICIAL DISTRICT AT MEMPHIS
DIVISION 4

STATE OF TENNESSEE

VS. NO: (S) 94-02797, 94-02798, 95-1128, 29 CHARGE(S) Murder II x3

James Montgomery
DEFENDANT

ORDER ON GUILTY PLEA

This cause came on for hearing before the Honorable Carolynn Blackett, Judge of Division 4 of the Criminal Court of Shelby County, Tennessee, on petition of the above named defendant for waiver of trial by Jury, waiver of his or her right to have a Jury determine his or her guilt, to submit himself or herself to the trial Judge to determine his or her guilt: and fix his or her punishment, and request for acceptance of plea of guilty, said petition being attached hereto and incorporated by reference herein, upon statements made in open Court by the defendant herein, his or her Attorney of record, the Assistant District Attorney General representing the State of Tennessee; and from questioning by the Court of the defendant and his or her counsel in open Court, and

IT APPEARING TO THE COURT after careful consideration that the defendant herein has been fully advised and understands his or her rights to a trial by Jury and to have a Jury indictment against him or her, and the defendant does not elect to have a Jury determine his or her guilt or innocence under a plea of Not Guilty, nor fix his or her fine in excess of **FIFTY (\$50.00) DOLLARS**; and has waived the formal reading of the indictment, and

IT FURTHER APPEARING TO THE COURT that the defendant intelligently and understandingly waives his or her right to a trial and his or her right to have a Jury determine his or her guilt and fix his or her fine in excess of **FIFTY (\$50.00) DOLLARS** of his or her own free will and choice and without any threats or pressure of any kind or promises, other than the recommendation of the State as to punishment; and reasonably submits himself or herself to the trial Judge to determine his or her guilt and fix his or her punishment; and waives his or her right to a **Motion for New Trial and/or Appeal**.

IT FURTHER APPEARING TO THE COURT, from the testimony of the defendant, from which the Court finds as a matter of fact and law that the defendant has been rendered that standard of representation by his Attorney as commanded by Baxter v Rose, 523 SW2d 930 (Tenn. 1975);

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the petition filed herein be, and the same is hereby **GRANTED**.

Entered this 15th day of May, 2006

JUDGE

DIV. TV

Filed _____
WILLIAM R. KEY, CLERK

By: _____ D.C.



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IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS
THE THIRTIETH JUDICIAL DISTRICT
DIVISION IV

STATE OF TENNESSEE)
)
)
)
 vs.) Cause No. 94-02797
) 94-02798
 JAMES MONTGOMERY,) 94-92799
) 95-11128
 Defendant) 95-11129
)

TRANSCRIPT OF GUILTY PLEA
May 1, 2006

ORIGINAL

THE HONORABLE CAROLYN BLACKETT, PRESIDING JUDGE

FOR THE STATE:
Michelle Parks
Bobby Carter
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Memphis, Tennessee 38103

FOR THE DEFENDANT:
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I N D E X

Tuesday, August 8, 2005

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Exhibit No.

Description/To

Page

No Exhibits Entered

1 IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS

2 THE THIRTIETH JUDICIAL DISTRICT

3 DIVISION IV

4 STATE OF TENNESSEE)

)

5)

)

6)

vs.)

Cause No. 94-02797

)

94-02798

7)

JAMES MONTGOMERY,)

94-92799

)

95-11128

8)

Defendant)

95-11129

)

9

10

11

This cause came on to be heard and was

12

heard on the 1st day of May, 2006, before the Honorable

13

Carolyn Blackett, Judge, holding the Criminal Court for

14

Shelby County at Memphis, Tennessee, and the following

15

proceedings were had, to wit:

16

17

THE COURT: Mr. Carter?

18

MR. CARTER: Your Honor, I think we have

19

a guilty plea for the Court's consideration if the

20

Court will entertain it.

21

THE COURT: All right. Are you all

22

ready to proceed on the guilty plea at this time?

23

MR. SCHOLL: Yes, ma'am, Your Honor.

24

THE COURT: All right. Can we have the

25

defendant out, please?

1
2 (The defendant was brought into the
3 courtroom.)
4

5 THE COURT: All right. You may proceed.

6 MR. CARTER: Your Honor, for the record,
7 the defendant's present in court, represented by
8 counsel. For the record, also present are the family
9 of one of the victim's, Frederick Tucker.

10 And I will say this, for the record
11 also, we were here and ready to go forward for trial as
12 was the defense.

13 We had some discussion this morning
14 about the possibility of a guilty plea. We would like
15 to present this for the Court's consideration.

16 I have spoken to the family of Mr.
17 Tucker. They understand the nature of the plea and all
18 of the things that went into making this discussion.

19 They were aware of it and understand the
20 need for and are -- I hesitate to say happy with that
21 by any means, anything under these circumstances. But
22 they understand and approve the plea.

23 We have spoken to several family members
24 for two of the other victims, Delois Anderson and
25 Marcellus Anderson. Neither of them will necessarily be

1 called next of kin, but cousins who have been part of
2 this, and we have discussed the matter with them and
3 told them of our intention to go forward in this
4 fashion, as well, if Your Honor please.

5 What we are proposing, if Your Honor
6 please, is a guilty plea in this to three counts of
7 murder in the second degree. In each count, the
8 defendant would receive a twenty-seven year sentence as
9 a range two multiple offender. And those are in
10 indictments number 94-02797, 94-02798, and 94-02799.

11 Indictment number 95-11128 is a three
12 count indictment, charging three counts of especially
13 aggravated kidnapping. In each of those counts, the
14 defendant would receive a twenty-seven year sentence as
15 a range two multiple offender. All of these are
16 A-felonies, for the Court.

17 And in 95-11129, the defendant was
18 indicted for the offence of especially aggravated
19 robbery, also an A-felony, and upon his plea of guilty
20 would receive a twenty-seven year sentence as a range
21 two multiple offender.

22 The sentences are to be concurrently
23 with one another in this matter, if Your Honor please.

24 Had these matters gone to trial and, of
25 course, for the record, they did go to trial and they

1 went to trial first in April of 1996.

2 This matter was reversed by the Supreme
3 Court in the year 2000 and sent back for a retrial.

4 And that's how we come to be before this Court.

5 But had the matters gone to trial again,
6 the State's proof would be that on or about April the
7 24th of 1994, Mr. Fred Tucker and Mr. Marcelus Anderson
8 were seen by witnesses to get into a Jeep Cherokee
9 vehicle that was owned nominally by one Michael Harris,
10 but was driven all the time by Mr. Marcelus Anderson,
11 and basically known as his vehicle.

12 They were seen to get into that vehicle
13 with James Montgomery, who is the defendant here, and
14 Jonathan Montgomery, who is the defendant's brother at
15 that time.

16 That was about four thirty in the
17 afternoon of February 24th, 1994.

18 They were basically never seen alive
19 again, with a couple of exceptions, if Your Honor
20 please.

21 On that evening, February 25th, in the
22 early morning hours, about two in the morning, an arson
23 investigator received a phone call in Desoto County,
24 Mississippi, just south of the state line to a burning
25 vehicle.

1 They got to that location and found a
2 Jeep Cherokee that was fully engulfed in flames and was
3 burning from end to end.

4 Once the fire was put out, the officers
5 were able to locate a vehicle identification number, a
6 metal strip, and find out that that vehicle was the one
7 that was listed in the name of Michael Harris, that was
8 the vehicle driven by Marcelus Anderson.

9 In the meantime, if Your Honor please,
10 earlier that day, Ms. Delois Anderson, had been to work
11 and was dropped off by a friend who she rode with and
12 went to her home here in Memphis, Shelby County,
13 Tennessee.

14 Different relatives started trying to
15 contact her throughout that period and were unable to
16 reach her, giving some pause.

17 Likewise, Mr. Fred Tucker was not seen
18 and there began to be missing person's calls and
19 reports made. Efforts to locate both Marcelus Anderson
20 and Mr. Fred Tucker as well as Ms. Delois Anderson.

21 So as of about February 25th, we had
22 seen -- we had individuals who saw Mr. Tucker and Mr.
23 Marcelus Anderson in a vehicle with James and Jonathan
24 Montgomery, and then, the vehicle was found in the wee
25 hours of that morning, burned.

1 Investigators did go to the home of Ms.
2 Delois Anderson, and along with family members, they
3 found there evidence that a supper had been prepared,
4 and it looked as if someone were in the midst of eating
5 the supper, and it had stopped suddenly.

6 There was food and a fork and Ms.
7 Anderson's purse was there as well as certain other
8 personal effects that would lead one to believe that
9 she hadn't just gone out someplace. Because she didn't
10 take a purse, and leaving the food and everything, all
11 in one place.

12 But at that point nothing -- nothing
13 further was known other than that she was missing.

14 The matter proceeded for a couple of
15 days, and investigation was going on, and there were
16 rumors around as to possibly what happened, but at that
17 point, nobody knew what had happened.

18 The case turned on a little break when
19 an individual named Charles Smith was stopped for a
20 traffic offence, during which, he tried to run from the
21 police.

22 He was apprehended and when he was
23 brought back to his car, it was located that he was in
24 possession of a handgun, which was against the law, not
25 only for those reasons, but because he was a convicted

1 felon.

2 Officers began to question him about why
3 he would have a handgun knowing he wasn't supposed to
4 have it. And he blurted out some information that he
5 was carrying the handgun because word was on the street
6 that people that he knew, who were the Andersons and
7 Mr. Tucker, had been abducted by James Montgomery and
8 Tony -- excuse me. James Montgomery and Jonathan and
9 Tony Carruthers.

10 Investigation revealed that at some
11 point during previous incarcerations, both Mr.
12 Carruthers and Mr. Montgomery had been incarcerated
13 together.

14 Both had been on details that involved
15 maintenance in cemeteries out at the West Tennessee
16 Veterans Cemetery, as well as perhaps some grave
17 digging details.

18 When it became -- it would be the
19 State's proof that Mr. Carruthers came up with the idea
20 that if they were ever to commit a crime and could
21 dispose of the bodies in such a way that they would
22 never be found, then they could never be charged with
23 these.

24 During the period in late 1993, Mr.
25 Carruthers also sent some letters to a number of

1 people, including one Jimmy Mays, in which he stated
2 that they had a master plan, and they had a person
3 picked out, and they had a big scheme to make big money
4 when they got out, but that they had to wait for Mr.
5 Montgomery, Mr. James Montgomery, to be released from
6 prison before they could go forward with this.

7 One thing lead to another, and the
8 officers began to investigate the matter and Jonathan
9 Montgomery was picked up for questioning and gave a
10 series of statements and information to the police,
11 including the fact that he could lead them to the
12 bodies of the three individuals who -- who were
13 missing.

14 He did, in fact, lead investigators out
15 to Rose Hill Cemetery and by counting a certain number
16 of graves from a known location, a relative of his, he
17 indicated a grave to the investigators as being the
18 site where the three individuals had been buried.

19 He indicated that it was an empty grave
20 at the time they were buried. But, of course, the
21 grave was now, in fact, occupied by a legitimate
22 burial.

23 The burial records reflected that that
24 burial had taken place -- it was -- Rose Hill contains
25 a section of a potter's field, which is an indigent

1 burial, and individuals who weren't able to afford
2 burial plots of their own are then placed there.

3 And this individual had been buried on
4 the 25th or 6th of February, 1994, in that grave.

5 An exhumation order was sought and
6 obtained. That grave was, in fact, exhumed, and a
7 casket removed.

8 And in the ground underneath the
9 legitimate grave, at the bottom of which was a piece of
10 plywood, that plywood was removed, and it was
11 discovered that, in fact, there were three bodies
12 found.

13 Those bodies were excavated and did
14 prove to be those of Marcelus Anderson, Delois
15 Anderson, and Frederick Tucker.

16 The bodies were removed for autopsy
17 purposes and the causes of death were determined by
18 autopsy. Both Mr. Frederick Tucker and Mr. Marcelus
19 Anderson were victims of gunshot wounds that could have
20 ultimately proved fatal. Ms. Delois Anderson was --
21 the cause of death was ruled to be asphyxia, or
22 strangulation.

23 They were placed then in this grave,
24 underneath the other grave.

25 Investigation went on further based on

1 the confessions and the information that Mr. Jonathan
2 Montgomery made to the authorities.

3 And officers then went to a location of
4 a home of one Nikita Montgomery, who is a cousin of
5 both James and Jonathan Montgomery, who did testify
6 that on the evening of the 24th, that first James and
7 Jonathan came over with Frederick Tucker and Marcelus
8 Anderson.

9 And the information that she initially
10 gave to the police, included the fact that she was
11 asked to leave for a while, and then when she came
12 back, that she was asked to go upstairs by Mr.
13 Montgomery, Mr. James Montgomery, who then at one point
14 told her that they would be leaving soon, and she did
15 see from the top of the steps that they left with Mr.
16 Frederick Tucker and Mr. Marcelus Anderson.

17 And she told the police at the time,
18 that she saw that their hands were, in fact, bound.
19 The bodies when they were found in the graves, all had
20 bound hands, still, at that time. Their hands were
21 tied at that time.

22 Other evidence revealed from other
23 witnesses that there were in fact -- that Mr.
24 Montgomery and Mr. Carruthers had borrowed a vehicle
25 from those individuals and had returned one of the

1 vehicles to them, and there were various items of
2 information, including their being very scrupulous
3 about trying to clean out the trunk and some
4 admonitions given to these individuals about, you know,
5 not talking to the police.

6 Also, Miss Montgomery told that the --
7 that James Montgomery had told her not to speak to
8 anybody, particularly not the police, about what she
9 had seen on the night in question.

10 Further information revealed that Mr.
11 Marcelus Anderson always wore a particular large gold
12 ring and that it was very unique and distinctive and
13 that there only a couple like it.

14 One was each owned by Mr. Andre Johnson,
15 who was a drug dealing associate of Mr. Marcelus
16 Anderson, and they had rings alike, as well as another
17 individual named Trell Adair. The three of them all
18 had rings alike.

19 When Mr. Anderson's body was recovered,
20 it did not have that distinctive ring on it, giving
21 rise to the especially aggravated robbery charge in
22 this matter.

*95-11129 WAS ALLEGEDLY FOR
ONE MOTOR VEHICLE*

23 Further investigation revealed a number
24 of individuals who would provide background information
25 and piece together -- it would be the State's proof,

1 had the matter gone to trial that Mr. Anderson --

2 Excuse me. Mr. Carruthers and Mr.
3 Montgomery, along with Mr. Jonathan Montgomery, who by
4 the way was hung -- was hanged in the jail, and that
5 death has been ruled a suicide prior to the first
6 trial.

7 The three of them did, in fact, abduct
8 Mr. Marcelus Anderson, Mr. Frederick Tucker, and Ms.
9 Delois Anderson, remove them to the house here on Court
10 Avenue of Nicki Montgomery, and then take them out to
11 the graveyard where they were shot and strangled and
12 buried, ultimately, in the grave there. And thereby
13 committing the offences of murder.

14 If Your Honor please, that basically, if
15 I can have just a moment --

16
17 (Brief pause.)

18
19 MR. CARTER: That would basically be the
20 facts that the State would adduce had the matter gone
21 to trial, and would be our proof. We would ask the
22 Court to accept, and counsel to stipulate.

23 I will state the reason for the -- for
24 proceeding in this fashion, it's obvious from the
25 record, we're now twelve years after the fact.

1 A number of the witnesses have
2 experienced difficulties. We have two witnesses who
3 are deceased, who testified at the first trial, and
4 other issues that we've discussed with the family.

5 And we would ask the Court to accept
6 this and for counsel to stipulate.

7 MR. SCHOLL: If Your Honor please, we
8 would stipulate that those would have been put forth by
9 the State if the matter had gone to trial.

10 We'll state to the Court that we were
11 prepared to go to trial today. We, for the record, had
12 numerous experts flying in this week to testify in this
13 trial, including a DNA expert.

14 One of the arguments in trial would have
15 been that there was some DNA found at the scene on
16 Marcelus Anderson that did not belong to any of the
17 victims or to my client or any of the other two
18 co-defendants.

19 We did come prepared today to take issue
20 with the facts. But after negotiating with the State,
21 we believe that a twenty-seven year sentence on this is
22 more than fair and reasonable negotiation and
23 settlement of this matter.

24 And my client feels that it's in his
25 best interest to take this plea.

1 So we would ask that Your Honor accept
2 the plea and we would stipulate that those would have
3 been the facts put forward by the State.

4 And Judge, I believe the paperwork
5 reflects that is pled under Alford vs. North Carolina.

6
7 **JAMES MONTGOMERY**

8 having been first duly sworn, was examined and
9 testified as follows:

10
11 **VOIR DIRE EXAMINATION**

12 **BY THE COURT:**

13 Q. State your name?

14 A. James Montgomery.

15 Q. Your address?

16 A. Currently, 201 Poplar.

17 Q. How old are you?

18 A. Thirty-eight.

19 Q. How much education do you have?

20 A. I went to the eleventh grade, but I went back
21 and got the equivalency diploma, and I have attended a
22 number of vocational schools.

23 Q. All right. You've heard the facts as they
24 were stated on the record by the State of Tennessee.

25 Are those facts true?

1 A. I'm entering a plea of guilty under Alford
2 vs. North Carolina.

3 Q. All right. So in other words, you're not
4 saying that the facts are true but you are pleading
5 guilty because you feel it's in your best interests
6 pursuant to that case, Alford vs. North Carolina. Is
7 that correct?

8 A. Yes, ma'am.

9 Q. All right. Do you understand what you're
10 doing here today? That you were supposed to go forward
11 with a jury trial today?

12 A. Yes, ma'am.

13 Q. You understand at this time, you're pleading
14 guilty and hoping that the Court will accept this
15 guilty plea today. Is that correct?

16 A. Yes, ma'am.

17 Q. Are you on any type of drugs or medication or
18 any type of prescription medication that would limit or
19 prohibit you from going forward with the guilty plea
20 today?

21 A. No, ma'am.

22 Q. All right. Is this guilty plea voluntary on
23 your part?

24 A. Yes, ma'am.

25 Q. You do understand that you have a right to

1 have an attorney present at every stage of the
2 proceeding, including an appeal. If you can't afford
3 to retain counsel, one will be appointed for you by
4 this Court. Do you understand that?

5 A. Yes, ma'am.

6 Q. In fact, you understand that Mr. Michael
7 Scholl and Mr. Marty McAfee have been appointed by this
8 Court to represent you. Is that correct?

9 A. Yes, ma'am.

10 Q. All right. You understand that you have a
11 right to have a jury trial. At that trial, you have a
12 right to testify as well as a right to cross examine
13 and confront witnesses against you at that trial. Is
14 that correct?

15 A. Yes, ma'am.

16 Q. For purposes of this particular guilty plea,
17 I'm going to go forward with the petition for waiver of
18 trial by jury that I have in front of me. Did you read
19 this petition?

20 A. Yes, ma'am.

21 Q. And you've gone over it with your attorneys?

22 A. Yes, ma'am.

23 Q. And this is your signature at the bottom of
24 the page? Is that correct?

25 A. Yes, ma'am. It is.

1 Q. All right. I just want to read it into the
2 record because of the number of charges and because of
3 the fact that this case is such as it is. You have
4 received and read a copy of the indictment. You have
5 discussed it with your attorney. You understand the
6 nature of your charges against you. Is that correct?

7 A. Yes, ma'am.

8 Q. You have heard the facts and circumstances
9 concerning the accusation against you, and your
10 attorney has informed you as to the nature and cause of
11 the charges against you in the indictment. Is that
12 correct?

13 A. Yes, ma'am.

14 Q. You understand that these rights have been
15 fully explained to you and that you are choosing at
16 this time to plead guilty to the cases that have been
17 set forth that I will go over with you very shortly.
18 Is that correct.

19 A. Yes, ma'am.

20 Q. You understand that the Court does provide
21 you with the right to a speedy and public trial by
22 jury. You have the right to confront and cross-examine
23 all witnesses against you. You have the right to use
24 the subpoena process of the Court to compel the
25 production of any evidence, including the attendance of

1 any witness in your favor. And you also have the right
2 to have a jury impose any fines in excess of fifty
3 dollars. The right to have the existence of counsel in
4 your defense in all stages of the proceedings. Is that
5 correct?

6 A. Yes, ma'am.

7 Q. You understand further that you have a right
8 not to be compelled to incriminate yourself. Is that
9 correct?

10 A. Yes, ma'am.

11 Q. You understand that upon pleading guilty, the
12 Court may ask questions about the offence which you
13 have pled guilty to. You understand that these answers
14 may later be used against you in prosecution for
15 perjury or false statement. And further that the --
16 upon a sentencing hearing, if there is any, evidence of
17 any prior convictions may be presented to this judge or
18 court for consideration in determining your punishment.
19 Is that correct?

20 A. Yes, ma'am.

21 Q. You understand further that you are asking
22 this court to accept your guilty plea. That you have
23 been advised of your Constitutional rights, and that
24 you are freely and voluntarily waiving that right to
25 have a jury trial at this time. Is that correct?

1 A. Yes, ma'am.

2 Q. This is your signature at the bottom of the
3 page of this petition for waiver of trial by jury. Is
4 that correct?

5 A. Yes, ma'am.

6 Q. You also hereby waive your right for a motion
7 for new trial and appeal at this time. Is that
8 correct?

9 A. Yes, ma'am.

10 Q. Pursuant to 95-11129, count one, you have
11 been indicted for especially aggravated robbery, Class
12 A-Felony. Pursuant to TCA 39-134-03, you are pleading
13 guilty to that offence, that's a Class A-felony,
14 looking at twenty-seven years, Tennessee Department of
15 Correction as a multiple range two offender at
16 thirty-five percent. There is no fine in this case.
17 This will be served concurrently with 95-111128, counts
18 one, two, and three, 94-02797, 94-02798, and 94-02799.
19 Is that correct?

20 A. Yes, ma'am.

21 Q. You understand that cases pursuant and "pre"
22 to 1995, you will be eligible for parole at thirty-five
23 percent. Is that correct?

24 A. Yes, ma'am.

25 Q. 94-02799, count one, you have been indicted

1 for first degree murder. You are pleading guilty
2 pursuant to TCA 39-132-10 to the offence of second
3 degree murder, a Class A-Felony. Is that correct?

4 A. Yes, ma'am.

5 Q. You understand that you're looking at
6 twenty-seven years, Tennessee Department of Correction
7 as a multiple thirty-five percent range two offender.
8 Is that correct?

9 A. Yes, ma'am.

10 Q. Again, I'm going over with you, this is an
11 Alford vs. North Carolina plea. Is that correct?

12 A. Yes, ma'am.

13 Q. Pursuant to 94-02797, count one, you have
14 been indicted for first degree murder. You are
15 pleading guilty pursuant to TCA 39-132-10, Class
16 A-Felony of second degree murder. Is that correct?

17 A. Yes, ma'am.

18 Q. You are looking at twenty-seven years,
19 Tennessee Department of Correction, as a multiple range
20 two offender at thirty-five percent. Is that correct?

21 A. Yes, ma'am.

22 Q. 94-02798, count one, you have been indicted
23 for first degree murder. You are pleading guilty to
24 second degree murder, pursuant to TCA 39-132-10, a
25 Class A-Felony. You're looking at twenty-seven years,

1 Tennessee Department of Correction, as a multiple range
2 two offender at thirty-five percent. Is that correct?

3 A. Yes, ma'am.

4 Q. 95-11128, count one, you have been indicted
5 for especially aggravated kidnapping, which is a Class
6 A-Felony. You're pleading guilty to especially
7 aggravated kidnapping, pursuant to TCA 39-133-05, a
8 Class A-Felony, looking at twenty-seven years,
9 Tennessee Department of Correction, as a multiple range
10 two thirty-five percent offender. Is that correct?

11 A. Yes, ma'am.

12 Q. All right. And there is no fine as well
13 associated with that. 95-11128, count two, you have
14 been indicted for especially aggravated kidnapping,
15 Class A-Felony. You are pleading guilty to especially
16 aggravated kidnapping, Class A-Felony, pursuant to
17 39-133-05, TCA, looking at twenty-seven years,
18 Tennessee Department of Correction as a multiple
19 thirty-five percent range two offender. Is that
20 correct?

21 A. Yes, ma'am.

22 Q. 95-11128, count three, you've been charged
23 with especially aggravating kidnapping, Class A-Felony,
24 pleading guilty as charged. Looking at twenty-seven
25 years Tennessee Department of Correction as a multiple

1 range two offender at thirty-five percent. Is that
2 correct?

3 A. Yes, ma'am.

4 Q. Are these guilty pleas, each and every one of
5 them, voluntary at this time?

6 A. Yes, ma'am.

7 Q. Has anyone made any promises, threats, or
8 tried to force you to do these guilty pleas?

9 A. No threats, only promised that the sentences
10 would be concurrent.

11 Q. All right. And the sentences will be
12 concurrent, served with each other, pursuant to these
13 judgement sheets, which means that 95-11128, counts one
14 two and three, will be served concurrently with
15 95-11129, 94-02797, 94-02798, and 94-2799. Is that
16 correct? That's your understand?

17 A. Yes, ma'am.

18 Q. These guilty pleas are voluntary. Is that
19 correct?

20 A. Yes, ma'am.

21 Q. All right. Your attorneys, Mr. Scholl and
22 Mr. McAfee, do you have any questions for them?

23 A. No.

24 Q. Are you satisfied with the way and the manner
25 they've handled this case?

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A. Yes, ma'am.

Q. Is there anything that you wish to ask them or anything you wish to inform the Court that they should have done as far as you're concerned or any other issues that you wish to take up at this time?

A. It just brings closure to the case.

Q. All right. Do you understand this is going to be a conviction on your record?

A. Yes, ma'am.

Q. Do you understand these convictions will be used to enhance and make greater any charges that you receive in the future?

A. Yes, ma'am.

Q. You also understand that there's no appeal from a guilty plea?

A. Yes, ma'am.

Q. You understand what you're pleading guilty to and you understand completely -- the twenty-seven years, you understand that the cases that are pre-1995, you will be eligible for parole at thirty-five percent. Do you understand that?

A. Yes, ma'am.

Q. You understand that there's no guarantee that you will get parole. Is that correct?

A. Yes, ma'am.

1 Q. You wish to go forward with the guilty pleas
2 at this time. Is that correct?

3 A. Yes, ma'am.

4 THE COURT: State, any questions?

5 MR. CARTER: No, thank you.

6 THE COURT: Counsel for the defendant?

7 MR. SCHOLL: No, ma'am, Your Honor.

8 THE COURT: The Court hereby accepts
9 these guilty pleas and feels they have been freely,
10 voluntarily, and understandingly given and that you
11 fully understand and appreciate the consequences of us
12 going forward with these guilty pleas at this time.

13 You may step down, please.

14

15 (The defendant stepped down from the
16 witness stand.)

17

18 THE COURT: Pursuant to the Court's
19 acceptance of these guilty pleas, pursuant to your
20 guilty plea, pursuant to North Carolina vs. Alford,
21 95-11128, count three, you pled guilty to especially
22 aggravated kidnapping, TCA 39-133-05, Class A-Felony.

23 The Court hereby sentences you to
24 twenty-seven years, Tennessee Department of Correction
25 as a multiple thirty-five percent range two offender.

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There is no fine.

Any cases that are pre-1995 will be eligible for parole at thirty-five percent. These guilty pleas are pursuant to Alford vs. North Carolina.

95-11128, count two, you pled guilty to the offence of especially aggravated kidnapping, pursuant to TCA 39-133-05, Class A-Felony.

The Court hereby sentences you to Tennessee Department of Corrections, to twenty-seven years as a multiple range two offender. And no fine in this case.

As to 95-11128, count one, you pled guilty to the offence of especially aggravated kidnapping, a Class A-Felony.

The Court hereby sentences you to twenty-seven years, at the Tennessee Department of Correction as a range two, multiple thirty-five percent offender and no fine.

94-02798, you've pled guilty to the offence of first degree murder -- excuse me. Second degree murder, a Class A-Felony pursuant to TCA 39-132-10.

The Court hereby sentences you to twenty-seven years, Tennessee Department of Correction, as a multiple thirty-five percent offender, range two,

1 no fine.

2 94-02797, count one, you pled guilty to
3 the offence of second degree murder, Class A-Felony,
4 pursuant to TCA 39-132-10.

5 The Court hereby sentences you to
6 twenty-seven years, Tennessee Department of Correction,
7 as a multiple thirty-five percent offender, range two,
8 and no fine.

9 94-92799, count one, you pled guilty to
10 the offence of second degree murder, Class A-Felony.

11 The Court hereby sentences you to
12 twenty-seven years, Tennessee Department of Correction
13 as a range two offender, multiple thirty-five percent
14 and no fine.

15 As to 95-11129, count one, you pled
16 guilty to especially aggravated robbery, Class
17 A-Felony.

18 The Court hereby sentences you to
19 twenty-seven years, Tennessee Department of Correction
20 as a range two thirty-five percent offender, and no
21 fine.

22 Your petition for waiver of trial by
23 jury has been granted by the Court. Your guilty pleas
24 have been accepted by the Court.

25 Your fines and court costs are payable

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ninety days after your release at ten dollars each and every month until the entire amount has been paid, and so ordered by the Court.

Judgement is hereby executed at this time. Thank you.

MR. SCHOLL: If Your Honor please, there still remains one misdemeanor assault case in this matter. If we could have that held over until Thursday at the request of all parties please.

MR. CARTER: We'll get it off the docket on that day.

THE COURT: All right. Thank you.

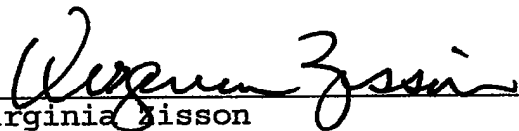
(End of proceedings heard in this cause on May 1, 2006.)

C E R T I F I C A T E

I, VIRGINIA ZISSON, Official Court Reporter, do hereby certify that the foregoing is a true, accurate and complete transcript, to the best of my knowledge and ability, of all the proceedings had and evidence introduced in the hearing of the captioned cause, in the Criminal Court for Shelby County, Tennessee on the 1st day of May, 2006.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Dated this 10th day of June, 2006.


Virginia Zisson
Official Court Reporter

My commission expires: May 27, 2009



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Home > News > Local

Plea ends triple-murder case

'Cemetery' defendant gets 27 years in 1994 slayings, is up for parole

By Lawrence Buser
Contact
May 2, 2006

A triple-murder case that generated headlines for several years in the mid-1990s ended quietly Monday as a defendant once on death row pleaded guilty to reduced charges and a 27-year sentence.

James Montgomery was convicted in the so-called cemetery case in 1996, but the Tennessee Supreme Court granted him a new trial four years later, saying co-defendant Tony Carruthers should have been tried separately.

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Carruthers, whose conviction and death penalty were upheld, represented himself and inadvertently brought out evidence incriminating to both defendants.

As jury selection was set to begin Monday in Criminal Court, lawyers in the case announced an agreement had been reached.

Montgomery, 38, pleaded guilty to three counts of second-degree murder, three counts of especially aggravated kidnapping and three counts of especially aggravated robbery.



James Montgomery

STORY TOOLS

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Montgomery, who was represented by court-appointed attorneys Michael Scholl and Marty McAfee, was sentenced to 27 years in prison, with all sentences to run concurrently. Because he is eligible for parole after serving 35 percent of his sentence and has already served 12 years, he is immediately eligible for parole, although parole is not guaranteed.

Document received by the TN Supreme Court.

Montgomery entered an Alford plea, or best-interests plea, in which he does not necessarily admit to the facts, but accepts it rather than risk a trial. It has the same legal effect as a guilty plea.

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Montgomery had just been paroled on a



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SCRIPPS

involved the February 1994 abductions and murders of alleged drug dealer
Anderson, 21, his mother, Delois Anderson, 48, and his friend Fredrick
Tucker, 17. Their bodies were found hidden beneath the casket of an elderly woman
buried in the Rose Hill Cemetery on Elvis Presley Boulevard.
Computer Shop for Laptop Computers and Women's Clothing at BizRate & Shopzilla

State prosecutor Bobby Carter said the plea bargain was made with the defense in part because problems had developed in the case with the passage of 12 years. He said two witnesses have died and others, who then had pending cases of their own, are now less willing to cooperate.

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The case pre-dates the No Deals policy of Dist. Atty. Gen. Bill Gibbons that bans plea bargains in violent crimes including murder.

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-- Lawrence Buser: 529-2385



Document received by the TN Supreme Court.

EXHIBIT 9

Defense Supplemental

Motion for Discovery and Inspection

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

STATE OF TENNESSEE,	*	
VS.	*	NO. 94-02797-8-9
TONY V. CARRUTHERS,	*	Division V
Defendant.	*	Set: 7/15/94

JUL 21 PM 3:20
 CLERK
Julia News

SUPPLEMENTAL MOTION FOR DISCOVERY AND INSPECTION

Comes now the Defendant pursuant to Rule 16 of the Tennessee Rules of Criminal Procedure and moves the Court to require the State of Tennessee no later than date prior to trial to permit counsel for Defendant to inspect and copy of photograph the following:

- a. Statements made by the Defendant and any Co-Defendant, alleged co-conspirator, alleged accessory, or alleged party to a crime;
- b. Defendant's prior record;
- c. Tangible objects or documents in the possession of the State and material to the preparation of the defense or intended by the State for use as part of its' evidence-in-chief; and accessibility to buildings or places in the possession, custody or control of the State, which are material to the case of the State or to the preparation of any defense;
- d. Reports of any tests or examinations by the State or any of its' agents;
- e. Names and addresses of witnesses;
- f. Evidence or information which would tend to exculpate the Defendant or mitigate the offense or punishment; and
- g. The originals of any electronic recordings of any communications made involving the above case.

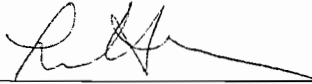
Respectfully submitted,



LARRY H. NANCE
 Attorney for Defendant
 1440 Poplar Avenue
 Memphis, TN 38104
 901/276-2792
 Disc. No. 4374

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has forwarded a copy of the foregoing Supplemental Motion for Discovery and Inspection to the Office of the District Attorney General, Suite 3-01, 201 Poplar Avenue, Memphis, TN 38103, by placing same in the United States Mail, postage prepaid, on this the 8 day of June, 1994.



LARRY H. NANCE

Document received by the TN Supreme Court.

EXHIBIT 10

State's Response to Motion for Discovery

IN THE CRIMINAL COURT OF TENNESSEE
THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS

DIVISION VIII

FILED 09-30-99
Clerk of Court
Sherry Sanders

STATE OF TENNESSEE §
vs § NO. 94-02797, 8 & 9
TONY CARRUTHERS §

RESPONSE OF THE STATE OF TENNESSEE TO
MOTION OF DEFENDANT FOR PRE-TRIAL DISCOVERY:
MOTION OF THE STATE FOR RECIPROCAL PRE-TRIAL DISCOVERY:
AND OTHER MATTERS RELATING TO EXCHANGE OF PROOF

Comes now the State of Tennessee and, in response to the motion of defendant for pre-trial discovery, would respectfully state:

1. Statements, if any, made by the defendant and the substance of any oral statement, if any, intended to be offered in evidence at the trial made by the defendant in response to interrogations by any person then known to the defendant to be a law enforcement officer, may be inspected or copied at the office of the District Attorney General.

2. A copy of the prior criminal record, if any, of the defendant is available to counsel for defendant at the Office of the District Attorney General.

3. Counsel for defendant may, at the Office of the District Attorney General, inspect and copy or photograph books, papers, documents, photographs, and tangible objects which are or may come within the possession of the State which are intended for use as evidence in chief at trial.

4. Counsel for defendant may inspect and copy or photograph at the office of the District Attorney General any results or reports of physical examinations and of scientific tests or experiments which are or may come within the possession of the State and which are intended to be introduced at trial as evidence in chief.

Document received by the TN Supreme Court.

5. The State of Tennessee declines to permit counsel for defendant to discover items excepted from pre-trial discovery under Rule 16(2) Tenn.R.Crim.P.

6. The names and addresses of witnesses to be called to testify on behalf of the State of Tennessee have been endorsed upon the indictment previously delivered to the defendant pursuant to T.C.A. Section 40-17-106: and should any additional witnesses be discovered, the State of Tennessee will supply defendant with a list of their names and addresses.

7. The State of Tennessee has not been informed by counsel for defendant as to any theory or basis for defense and is, therefore, now unable to determine whether information in the possession of the prosecution is exonerative of the defendant or whether Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), applies to any such information. Consequently, until counsel for defendant provides a basis for examination of material in possession of the prosecution, the State relies on U.S. vs. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976), and Moore v. Illinois, 408 U.S. 786, 92 S.Ct. 2562, 33 L.Ed.2d 706.

8. Having agreed that defendant is entitled to that pre-trial discovery described in paragraphs 1 through 4 herein, the State now respectfully moves the Honorable Court to require the defendant to state upon the record whether evidentiary items within the ambit of Tenn.R.Crim.P. 16 have previously been received, reviewed or copied by defendant or his attorney at any preliminary hearing or at any time from representatives of any law enforcement agency in order that duplicate, repetitive and redundant pre-trial discovery procedures should be avoided.

9. Having agreed that defendant is entitled to that discovery described in paragraphs 1 through 4 herein, and having requested that defendant be required to reveal whether any requested information has been received by defendant previously, the State of Tennessee now respectfully moves this Honorable Court to require defendant to file with the Court in writing a description of those items obtained, copied, or reviewed by

defendant as a result of any pre-trial discovery procedures in order that there shall be a full and complete record of those items made known to the defendant.

10. The State of Tennessee now moves this Honorable Court to direct counsel for defendant to produce at trial any statements by witnesses testifying in behalf of the defendant in this cause, including any written statements or statements otherwise adopted or approved by witnesses, or any stenographic, mechanical, electrical or other recording of a statement or a transcription or summary thereof, which is an essentially verbatim recital of an oral statement made by a testifying witness, as required by Tenn.R.Crim.P. 26.2.

11. The State of Tennessee now respectfully moves this Honorable Court to direct that defendant and counsel for defendant permit pre-trial discovery by the State, as follows:

1) Inspection and copying of books, papers, documents, photographs, tangible objects within possession, custody or control of the defendant which defendant intends to introduce as evidence in chief at trial.

2) Inspection and copying of any results or reports of physical or mental examinations and of scientific tests or experiments within the possession, custody or control of the defendant which defendant intends to introduce as evidence in chief at trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony.

3) The names and current addresses of all persons intended to be called as witnesses on behalf of defendant.



LEE V. COFFEE
Assistant District Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing response was caused to be delivered to CRAIG MORTON, counsel for defendant, on this 27th day of September, 1994.

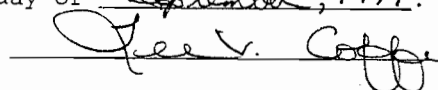


EXHIBIT 11

**Motion for the Disclosure of Impeaching
Information**

430

IN THE CRIMINAL COURT OF TENNESSEE
THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS

FILED

09 FEB -1 AM 9:25

CLERK

DIVISION 5

STATE OF TENNESSEE	*	
VS.	*	
TONY CARRUTHERS	*	No. 94-02797, 8 & 9 95-11128, 9

BY _____

MOTION FOR DISCLOSURE OF IMPEACHING INFORMATION

Comes the defendant, Tony Carruthers, Pro se, and pursuant to Rule 16 of the Tennessee Rules of Criminal Procedure and the common law, moves this Honorable court in the following particulars:

1. Pursuant to Rule 16(a)(1)(A), the defendant moves this Court to order the State of Tennessee to furnish the defendant or defendant's counsel, with copies of all relevant written and/or recorded statements of impeaching information made by the defendant, which are within the possession custody and/or control of the State of Tennessee, the existence of which are known, or by due diligence may become known, to the State of Tennessee.

2. Pursuant to Rule 16(a)(1)(A), the defendant moves this Court to order the State of Tennessee to advise the defendant or defendant's counsel, of any oral statement made by the defendant, of impeaching information, whether before or after arrest, in response to interrogation by any person then known to the defendant to be a law enforcement officer, which the State of Tennessee intends to offer in evidence at the trial of this cause.

3. Pursuant to Rule 16(a)(1)(A), the defendant moves this Court to order the State of Tennessee to furnish the defendant, or defendant's counsel with all of the recorded testimony of the defendant, of impeaching information, if any, given before a Grand Jury and related to the offenses charged in the indictment returned in this cause.

4. Pursuant to Rule 16(a)(1)(B), the defendant moves this

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Court to order the State of Tennessee to furnish the defendant's prior record, of impeaching nature, if any, which is within the possession, custody and/or control of the State of Tennessee, the existence of which is known, or by due diligence may become known to the State of Tennessee.

5. Pursuant to Rule 16(A)(1)(C), the defendant moves this court to order the State of Tennessee to permit the defendant, or defendant's counsel, to inspect, copy and/or photograph all books, papers, documents, videotapes, audio tapes, and photographs as well as all other tangible or demonstrative objects which are within the possession, custody and/or control of the State of Tennessee, of any impeaching information, which are (a) intended for use as evidence in chief by the State of Tennessee, (b) material to the preparation of defendant's defense in this cause, and/or (c) exculpatory in nature, and were obtained from or belonged to the defendant.


6. Pursuant to Rule 16(a)(1)(D), the defendant moves this Court to order the State of Tennessee to permit the defendant, or defendant's counsel, to inspect, copy and/or photograph any and all results or reports of (a) physical examinations, (b) mental examination, (c) scientific tests, and/or (d) scientific experiments, which are within the possession, custody and/or control of the State of Tennessee, the existence of which is known, or by due diligence may become known, of impeaching information, to the State of Tennessee and which are material to the preparation of the defendant's defense and/or are intended for use as evidence in chief by the State of Tennessee.

7. Pursuant to T.C.A. Section 40-4001(c)(3) the defendant moves this court to order the State of Tennessee to furnish the defendant, or defendant's counsel, with the arrest histories of all potential prosecution witnesses in this cause.

8. Pursuant to common law rule in this jurisdiction, the defendant moves this court to order the State of Tennessee to furnish the defendant, or the defendant's counsel, with the name, address and telephone number of each person the State of Tennessee intends to call as a witness at the trial of this cause upon the merits.

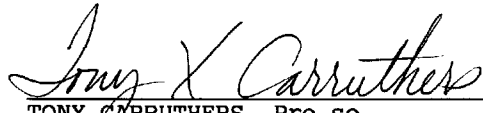
WHEREFORE, defendant respectfully moves this Honorable Court to grant the relief sought in the premise of this motion pursuant to Rule 16 of the Tennessee Rules of Criminal Procedure, the statutes, and common law of this State.

Respectfully submitted,


TONY CARRUTHERS, Pro se
201 Poplar Ave.
Memphis, TN 38103

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been delivered to the Office of the District Attorney General this the 31 day of JAN, 1996.


TONY CARRUTHERS, Pro se

Document received by the TN Supreme Court.

EXHIBIT 12

Response of State to Motion for Discovery
Of Impeaching Information

IN THE CRIMINAL COURT OF TENNESSEE
THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS

CA-90-94
James D. O.

DIVISION VIII

STATE OF TENNESSEE	§	
vs	§	NO. 94-02797, 8 & 9
TONY CARRUTHERS	§	

RESPONSE OF THE STATE OF TENNESSEE
TO MOTION FOR DISCLOSURE OF IMPEACHING INFORMATION

For response to the Motion for Disclosure of Impeaching Information, the State would submit as follows:


1. The State agrees to advise defense counsel promptly of any consideration or promises of consideration given to or made on behalf of government witnesses; however, the request for information in the motion is much too broad and vague and should not be granted as requested. The information requested includes that which could "arguably create an interest or bias in the witness in favor of the state or against the defendant." Such ordinary considerations as placing witnesses on call or furnishing transportation for those who are without it may "arguably" create an interest or bias in favor of the State; however, the State does not believe that the law requires disclosure of such consideration.

2. The State respectfully denies that the defense is entitled under the law to notice of any and all prosecutions, investigations, or pending prosecutions against any witness called by the State of Tennessee.

Document received by the TN Supreme Court.

3. The State respectfully denies that the defense is entitled under the law to any prior criminal convictions of any witnesses not obtainable from the Clerk of the Criminal Court of Shelby County, and would submit that there is no law to support such request.

Respectfully submitted,


LEE V. COFFEE
Asst. District Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing response was caused to be delivered to CRAIG MORTON, counsel for defendant, on this the 29th day of September, 1994.

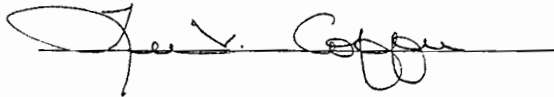


EXHIBIT 13

1996 Trial Transcript, Vol. 14, p. 2128, 2136

02001-9710-CR-00391

IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS
THE THIRTIETH JUDICIAL DISTRICT
DIVISION V

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STATE OF TENNESSEE,
Appellee,

VS.

TONY CARRUTHERS and
JAMES MONTGOMERY,
Appellants.

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FILED 12/30/97
WILLIAM R. KEY, CLERK
BY Bennett D.C.
Cause Nos. 94-02797
94-02798
94-02799
95-11128
95-11129

TRANSCRIPT OF THE EVIDENCE INCLUDING VOIR DIRE,
OPENING STATEMENTS AND CLOSING ARGUMENTS

VOLUME 66 OF 82 VOLUMES

Vol. 43

THE HONORABLE JOSEPH B. DAILEY, PRESIDING JUDGE

APPEARANCES

FOR THE STATE:

PHILLIP GERALD HARRIS, ESQ.
J. ROBERT CARTER, JR., ESQ.
Assistant District Attorney General
Shelby County District Attorney General's Office
201 Poplar Avenue - Third Floor
Memphis, Tennessee 38103

THE APPELLANT; TONY CARRUTHERS: PRO SE

FOR THE APPELLANT; JAMES MONTGOMERY:

HAROLD D. ARCHIBALD, ESQ. J.C. MCLIN, ESQ.
Archibald and Halmon, P.C. Attorney at Law
Suite 900 Suite 201
22 North Front Street 301 Washington Avenue
Memphis, TN 38103 Memphis, TN 38103

Lynn S. Terrell
Official Court Reporter
Thirtieth Judicial District
Memphis, Tennessee
(901) 576-5070

FILED
JUN 02 1998
Clerk of the Courts
Rec'd By [Signature]

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APPEARANCES

FOR ALFREDO BERNARD SHAW:
EDWIN C. LENOW, ESQ.
Attorney at Law
100 North Main Building
Memphis, Tennessee 38103

Document received by the TN Supreme Court.

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3 **TUESDAY, APRIL 23, 1996**

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7 DIRECT EXAMINATION BY DEFENDANT CARRUTHERS..... 2007

8 CROSS-EXAMINATION BY MR. CARTER..... 2019

9 WITNESS: FREDDY L. MCCULLOUGH

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11 CROSS-EXAMINATION BY MR. CARTER..... 2070

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14 **WEDNESDAY, APRIL 24, 1996**

15 WITNESS: ALFREDO SHAW

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1 Mr. Shaw -- he is certainly welcome to testify, but
2 reason to believe that if he does testify he is going
3 to state that testimony he has previously given, sworn
4 testimony before the Shelby County Grand Jury and
5 sworn testimony in this courtroom, was a lie, that he
6 purposefully lied on both of those occasions.

7 The State has indicated that if that is
8 indeed his testimony today, then they plan to seek
9 indictments for aggravated perjury in both of those
10 instances.

11 I wanted your client to be fully aware of
12 the legal ramifications and what his rights are with
13 regard to testifying or not testifying on those
14 matters. And so if you would like to confer with him
15 in the back for a while, just let me know what you-all
16 decide.

17 MR. LENOW: Sure would.

18
19 (Whereupon, Mr. Lenow and Alfredo
20 Shaw left the courtroom.)

21
22 THE COURT: All right. I've got to make a
23 phone call. We will take a brief recess, and then
24 we'll resume the trial.
25

1 MR. LENOW: It would be.

2 MR. HARRIS: It's up to Mr. Carruthers.

3 THE COURT: If he does testify, though, I
4 am --

5 MR. LENOW: He would testify that what he
6 has testified before is all true and correct.

7 THE COURT: Right. What I'm about to say,
8 though, is that if he were to testify, I'm going to
9 preclude getting into the specific name, for the
10 benefit of attorneys that may be asking him on
11 cross-examination or direct examination, preclude
12 getting into the name that you just showed me or any
13 specific times or dates on this latest current
14 incident.

15 MR. LENOW: I have no specifics. I just
16 showed you that.

17 THE COURT: Right. I understand. You can
18 get with the Sheriff's Department and pursue that
19 elsewhere. But for purposes of the testimony today,
20 he is welcome to testify about the latest threats, but
21 we're not going to be getting into the specifics.
22 You're not going to be asking him about the names or
23 specifics because that's yet to be investigated and I
24 don't want to jeopardize anybody in that regard.

25 DEFENDANT CARRUTHERS: I'd like to know if

EXHIBIT 14

1996 Trial Transcript, Vol. 15, p. 2174-2178

02N01-9710-CR-00391

IN THE CRIMINAL COURT OF TENNESSEE AT MEMPHIS
THE THIRTIETH JUDICIAL DISTRICT
DIVISION V

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STATE OF TENNESSEE,	*	FILED <u>12/30/97</u>
Appellee,	*	WILLIAM B. KEY, CLERK
	*	BY <u>[Signature]</u> D.C.
VS.	*	Cause Nos. 94-02797
	*	94-02798
TONY CARRUTHERS and	*	94-02799
JAMES MONTGOMERY,	*	95-11128
Appellants.	*	95-11129

TRANSCRIPT OF THE EVIDENCE INCLUDING VOIR DIRE,
OPENING STATEMENTS AND CLOSING ARGUMENTS
VOLUME 62 OF 82 VOLUMES

Vol. 44

THE HONORABLE JOSEPH E. DAILEY, PRESIDING JUDGE

APPEARANCES

FOR THE STATE:
PHILLIP GERALD HARRIS, ESQ.
J. ROBERT CARTER, JR., ESQ.
Assistant District Attorney General
Shelby County District Attorney General's Office
201 Poplar Avenue - Third Floor
Memphis, Tennessee 38103

THE APPELLANT; TONY CARRUTHERS: PRO SE

FOR THE APPELLANT; JAMES MONTGOMERY:	
HAROLD D. ARCHIBALD, ESQ.	J.C. MCLIN, ESQ.
Archibald and Halmon, P.C.	Attorney at Law
Suite 900	Suite 201
22 North Front Street	301 Washington Avenue
Memphis, TN 38103	Memphis, TN 38103

Lynn S. Terrell
Official Court Reporter
Thirtieth Judicial District
Memphis, Tennessee
(901) 576-5070

FILED
JUN 02 1998
Clerk of the Court
Rec'd By <u>[Signature]</u>

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APPEARANCES

FOR FOX TV:

DARRELL BAKER, JR., ESQ.
STEVEN S. HEINRICHS, ESQ.
Shuttleworth, Smith, McNabb & Williams
One Memphis Place
200 Jefferson Avenue, Suite 1500
Memphis, Tennessee 38103

FOR ALFREDO BERNARD SHAW:

EDWIN C. LENOW, ESQ.
Attorney at Law
100 North Main Building
Memphis, Tennessee 38103

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DIRECT EXAMINATION BY DEFENDANT CARRUTHERS..... 2309

Document received by the TN Supreme Court.

1 again, Mr. Shaw. And they asked you what information
2 you have, and you told them several things. And did
3 you tell them that you were on a three-way phone
4 conversation with me, Tony Carruthers, and Terry or
5 Jerry Durham?

6 A. Yes.

7 Q. Did you tell them that, "Tony Carruthers
8 told me why don't I go on get this -- go on get with
9 his -- and get with him and Jerry and Terry and that
10 we going be worth \$100,000 apiece and a kilo of
11 cocaine."

12 A. Yes, I did.

13 Q. You told them, "A piece for me and a piece
14 for Tony."

15 A. Excuse me?

16 Q. You told them, "A piece for me and a piece
17 for Tony."

18 A. A piece for me, myself?

19 Q. Yeah.

20 A. A piece for you?

21 Q. Yeah.

22 A. Well, the conversation was that, correctly,
23 what you said. And he said that it was going to be
24 part for me and part for you, correct.

25 Q. All right. And you stated, "I stated to

1 Tony that I did not want to be involved in that."

2 A. Correct.

3 Q. And you told the detective, "Tony told me,
4 'Hey, man, come on, man. We can sew this up, man.
5 We can sew this up. We got a sweet plan.'"

6 A. That's your exact words.

7 Q. And you stated, "I stated to Tony Carruthers
8 once again that I did not want to be involved in
9 this."

10 A. Correct.

11 Q. And you told them, "So around in February
12 Tony Carruthers contacted me again."

13 A. Correct.

14 Q. And you told them, "I contacted Jerry," and
15 you told them you contacted Jerry?

16 A. Jerry who?

17 Q. Durham.

18 A. Yes, I had conversations with him.

19 Q. And you said, "So I was watching the news
20 and this came up, the news about the murders involving
21 Tony Carruthers and others."

22 A. Correct.

23 Q. And then you went on to state, "Tony
24 Carruthers was housed in the fourth floor on C pod,
25 and I was in K pod on the opposite side of the fourth

1 floor."

2 A. Right.

3 Q. "We were presently in the legal room at this
4 particular time when Tony was discussing this with --
5 about the murders -- about the way the murders
6 occurred."

7 A. Correct.

8 Q. And you stated, "Tony told me they went to
9 Marcellos' mother's house, Delois, and told her --
10 asked her where the money was. They went there
11 looking for the money and looking for Marcellos, and
12 Marcellos wasn't there."

13 A. Correct.

14 Q. You told the detectives that I told you in
15 the law library that I went to Delois' house and asked
16 her where the money was. "And they went there looking
17 for the money -- and they went there looking for the
18 money and looking for Marcellos and Marcellos wasn't
19 there."

20 A. Correct.

21 Q. "And Tony then held Delois there and told
22 her to get Marcellos on the phone."

23 A. Correct.

24 Q. "She got Marcellos on the phone and told
25 Marcellos to come on over there, it's something

1 important."

2 A. Yes.

3 Q. "And when Marcellos got there, Tony
4 Carruthers told me they put the gun to Marcellos and
5 made him [sic] all get in the Jeep Cherokee truck and
6 drove them to Mississippi."

7 A. Correct.

8 Q. "And this is where Marcellos and Tucker was
9 shot"?

10 A. Correct.

11 Q. "And they burned up the truck, burned
12 Marcellos' truck up, to cover up the fingerprints up
13 that was inside the truck."

14 A. Correct.

15 Q. "Tony Carruthers then stated that they drove
16 the bodies back to Memphis. Marcellos and Tucker were
17 I'm assuming dead." Is that your statement?

18 A. Well, I don't know if the victims were dead
19 or not because I wasn't present there at the time.
20 I'm just going by your statement, sir.

21 Q. I'm going by the statement that you gave the
22 police. "Tony Carruthers stated then that they drove
23 the bodies back to Memphis. Marcellos and Tucker I'm
24 assuming were dead."

25 A. Once again, Mr. Carruthers, I wasn't sure i

1 the victims were dead or not. I wasn't present. I'm
2 going by your statements.

3 Q. And this is the statement that I told you
4 and you told to the police?

5 A. Correct.

6 Q. And I'm assuming -- and you said, "I'm
7 assuming that they were dead."

8 A. I'm not -- how can I -- I'm not going to
9 assume anything, you know what I mean.

10 DEFENDANT CARRUTHERS: Your Honor, may we
11 approach?

12

13 (Whereupon, a bench conference
14 was held on the record in the
15 presence of the jury but out of
16 the hearing of the jury, and the
17 following proceedings were had.)

18

19 DEFENDANT CARRUTHERS: Can I give Mr. Shaw
20 copy of this statement?

21 THE COURT: Well, do you-all have an extra
22 copy?

23 MR. MCLIN: Sir?

24 THE COURT: Does anybody have an extra
25 copy?

EXHIBIT 15

Letter from Charles R. Ray, post-conviction
counsel, to John W. Campbell, Assistant
District Attorney (Aug. 6, 2002)

RAY & FRENSLEY

ATTORNEYS AT LAW

CHARLES R. RAY*
JEFFERY S. FRENSLEY

*Also Licensed in Kentucky

TWO HUNDRED ELEVEN
THIRD AVENUE NORTH
P.O. BOX 198288
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TELEPHONE (615) 256-2111
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E-MAIL lawdog@attglobal.net

August 6, 2002

John Campbell, Esq.
Assistant District Attorney General
30th Judicial Circuit
201 Popular Avenue
Suite 301
Memphis, Tennessee 38103

RE: State of Tennessee v. Tony Carruthers

Dear Mr. Campbell:

In my investigation of the above captioned matter in an attempt to frame the issues for post conviction relief it has come to my attention that at the time Bernard Alfredo Shaw was in the Shelby County Jail that he may have been a paid agent of the Memphis Police Department and/or Shelby County Sheriff's Department. Since no demand was ever made at trial by any of Mr. Carruthers's prior counsel or counsel for Mr. Montgomery, I would like to make demand pursuant to the holdings in Giglio v. United States, 405 U. S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972) and United States v. Demarco, 415 U. S. 449, 94 S. Ct. 1185, 39 L. Ed 2d 501 (1974) for the District Attorney General's office for the thirtieth judicial district to make inquiry as to whether Mr. Shaw was a paid government agent during the time period in question.

If Mr. Shaw was a paid government agent that I be made aware of that fact and either the Memphis Police Department and or the Shelby County Sheriff's Department produce their complete file on Mr. Shaw setting forth his remuneration, or other consideration he received for his functioning in the Shelby County Jail as a paid agent of the Memphis Police Department and/or the Shelby County Sheriff's Department. Thank you for your cooperation in this matter if you have any questions regarding this matter please fee free to contact me.

Very Truly Yours,



Charles R. Ray

cc: Larry Copeland

Document received by the TN Supreme Court.

EXHIBIT 16

Letter from John W. Campbell, Assistant
District Attorney to Charles R. Ray, post-
conviction counsel (Aug. 26, 2002)

JAMES J. CHALLEN III
DEPUTY DISTRICT ATTORNEY GENERAL

KENNETH R. ROACH
ADMINISTRATIVE ASSISTANT/CHIEF PROSECUTOR
CRIMINAL COURT DIVISION

THOMAS D. HENDERSON
ADMINISTRATIVE ASSISTANT/CHIEF PROSECUTOR
GENERAL SESSIONS CRIMINAL/
JUVENILE COURT DIVISIONS

M. CARTER MYERS
GRAND JURY ADMINISTRATIVE ASSISTANT

PRISCILLA C. CAMPBELL
CHIEF ADMINISTRATIVE OFFICER

JERRY HARRIS
CHIEF HOMICIDE PROSECUTOR

JOHN W. CAMPBELL
DIRECTOR
MAJOR CRIMES PROSECUTION UNIT

J. ROBERT CARTER, JR.
DIRECTOR, NARCOTICS PROSECUTION UNIT

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DIRECTOR, ANTI-GANG TEAM

KEVIN R. RARDIN
LEAD PROSECUTOR
CHILD PROTECTION INVESTIGATION TEAM

WILLIAM D. BOND, III
DIRECTOR, DOMESTIC VIOLENCE
PROSECUTION UNIT

HENRY P. WILLIAMS
LEAD PROSECUTOR
FRAUD & ECONOMIC CRIME TEAM

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CHIEF INVESTIGATOR

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ASSISTANT CHIEF INVESTIGATOR

KENNETH E. BLACKBURN
DIRECTOR, VICTIM-WITNESS UNIT

SANDRA B. TRUITT
CHIEF ADMINISTRATIVE CLERK

P.T. HOOVER, JR.
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BETSY CARNESALE
STEPHEN P. JONES
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RAYMOND J. LEPONE
ERIC N. CHRISTENSEN
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EDIE HILL
DONALD J. FLYNN, M.P.D.
ALEXANDER McGOWAN, M.P.D.
RONNIE McWILLIAMS, M.P.D.
RONALD GOODWIN, M.P.D.
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201 POPLAR - SUITE 301
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FAX (901) 545-3937
www.scdag.com

August 26, 2002

Charles R. Ray
Attorney at Law
211 Third Ave. N
P.O. Box 198288
Nashville, TN 37219

Re: Carruthers v. State

Dear Mr. Ray :

I am in receipt of your letter dated August 6, 2002 requesting certain alleged *Gigilio* information regarding Bernard Alfredo Shaw. Without getting into the alleged information, the State's position is that *Gigilio* does not apply to a witness called by the defense. Mr. Shaw was called as a witness by Mr. Carruthers after producing Mr. Shaw for media interviews where he stated that the State was making him lie. He was then called by Mr. Carruthers as a defense witness in his trial.

Sincerely,

JOHN W. CAMPBELL
Assistant District. Attorney General

Document received by the TN Supreme Court.

EXHIBIT 17

Letter from Charles R. Ray, post-conviction
counsel, to John W. Campbell, Assistant
District Attorney (Aug. 30, 2002)

RAY & FRENSLEY

ATTORNEYS AT LAW

CHARLES R. RAY*
JEFFERY S. FRENSLEY

*Also Licensed in Kentucky

August 30, 2002

TWO HUNDRED ELEVEN
THIRD AVENUE NORTH
P.O. BOX 198288
NASHVILLE, TENNESSEE 37219
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E-MAIL lawdog@attglobal.net

John Campbell, Esq.
Assistant District Attorney General
30th Judicial Circuit
201 Popular Avenue
Suite 301
Memphis, Tennessee 38103

RE: Tony Carruthers v. State

Dear Mr. Campbell:


I have and thank you for your letter of August 26, 2002, which was in response to my letter of August 6, 2002 as concerns Bernard Alfredo Shaw. The time period in question that I am making inquiry as to whether Mr. Shaw was a paid government agent, informant, or servant, encompasses the time period within which he made an appearance before the Shelby County Grand Jury that lead to Mr. Carruther's indictment for three counts of capital murder. Mr. Shaw was certainly a government witness at this stage of the proceeding and I would therefore submit that Gigilo, and DeMarco clearly apply and the disclosure should be made.

On the other hand, Mr. Carruthers was represented by A. C. Wharton, Esq. during this time period and if Mr. Shaw was a paid government agent who allegedly extracts incriminating statements from Carruthers then there was a clear violation of Massiah v. United States, 377 U. S. 701, 84 S. Ct. 1197, 12 L. Ed 2d 246 (1964); see also United States v. Henry, 447 U. S. 264, 100 S. Ct. 2183, 65 L. Ed 2d 115 (1980). Either way whether Mr. Shaw was a paid government agent during this time period should be discovered.

If you are still of the opinion that the State is not going to disclose Mr. Shaw's status as a government employee, informant, and or servant during this time period please advise me and I will file the necessary motions attempt compulsion of the information.

Thank you for your cooperation in this matter.

Very Truly Yours,



Charles R. Ray

cc: Larry Copeland

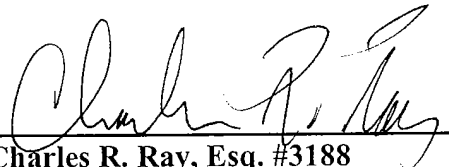
Document received by the TN Supreme Court.

EXHIBIT 18
Motion to Compel

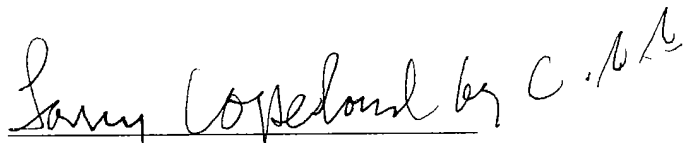
murder if he was receiving consideration or remuneration of any nature and kind this should be disclosed under the holdings in Giglio v. United States, 405 U. S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972) and United States v. Demarco, 415 U. S. 449, 94 S. Ct. 1185, 39 L. Ed 2d 501 (1974).

Petitioner would respectfully submit that the other witnesses, Charles Ray Smith, Andre Johnson, Ben West, Jimmy Lee Maze, Terrell Adair, and Chris Hines are likewise within the holding of Giglio and DeMarco and if any consideration or remuneration was conferred upon them by either the State or federal government this fact should have been disclosed to the Petitioner's prior counsel at the trials of this cause, and likewise, should be disclosed to present counsel so as to allow him to frame issues in his post conviction relief petition.

Respectfully Submitted,



Charles R. Ray, Esq. #3188
211 Third Avenue North
P. O. Box 198288
Nashville, Tennessee 37219
615-256-2111



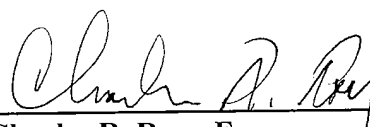
Larry Copeland, Esq. # 18600
648 Poplar Avenue
Memphis, Tennessee 37103
901-526-0898

Certificate of Service

I hereby certify that a true and exact copy of the foregoing has been mailed, first class, postage prepaid, to:

John Campbell, Esq.
Assistant District Attorney General
201 Poplar Avenue
Suite 301
Memphis, Tennessee 38103

on this the 12th day of September, 2002.



Charles R. Ray, Esq.

EXHIBIT 19

Response of the State of Tennessee to
Petitioner's Motion to Reveal All Agreements
Given to State's Witnesses

IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS, TENNESSEE

CLERK OF COURT
By *[Signature]*

TONY X. CARRUTHERS,
Petitioner

-vs-

NO. P-25948

STATE OF TENNESSEE,
Respondent

*RESPONSE OF THE STATE OF TENNESSEE
TO PETITIONER'S MOTION TO REVEAL ALL AGREEMENTS GIVEN TO STATE'S
WITNESSES*

Comes now the State of Tennessee and in Response to Petitioner's Motion To Compel State to Reveal All Agreements Given to State's Witnesses, would submit the following:

The petitioner requests that the State reveal any deals made with the following persons in consideration for their testimony in the petitioner's trial; Charles Ray Smith, Andre Johnson, Ben West, Jimmy Lee Maze, Terrell Adair, Chris Hines. The State submits that no deals were made in consideration for their testimony in petitioner's trial.


The petitioner also seeks the same information on Alfredo Bernard Shaw as well as any proof that Shaw was an alleged "paid government agent" and planted in the jail to obtain evidence on the petitioner. To this the State again submits that Shaw was not given any deal in exchange for his testimony. Furthermore, the State submits that Shaw was not a "paid government agent" planted in the jail to obtain evidence against the petitioner.

Respectfully Submitted

[Signature]
JOHN W. CAMPBELL
Assistant District Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was caused to be delivered to Charles Ray, Attorney for the petitioner, on this the 9th day of October, 2002.



A handwritten signature in cursive script, appearing to read "J.W. Campbell", is written over a horizontal line.

EXHIBIT 20

Motion to Compel (Alfredo Shaw)

IN THE CRIMINAL COURTS FOR SHELBY COUNTY, TENNESSEE
AT MEMPHIS

TONY CARRUTHERS

)

V.

)

CASE NO. P-25948

)

(SHELBY COUNTY POST CONVICTION)

STATE OF TENNESSEE

)

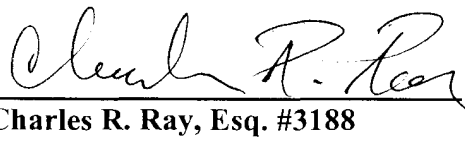


MOTION TO COMPEL

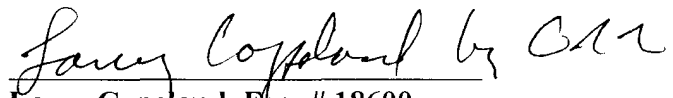
Comes the Petitioner, Tony Carruthers, through undersigned counsel, and would respectfully move the Court for an Order compelling the State of Tennessee to disclose whether Alfredo Bernard Shaw was acting as a government agent either state or federal, during the time he allegedly was party to a conversation with the Petitioner wherein the Petitioner allegedly confessed his role in the instant matter. In its response, the Assistant Attorney General for the State of Tennessee responded that Alfredo Bernard Shaw was not placed into the jail setting with the Petitioner specifically for the purposes of having Petitioner make an incriminating statement to Shaw, but sidesteps the question as to whether Shaw was a paid government agent during this time notwithstanding that he was not specifically placed in the jail to hopefully obtain incriminating statements from Petitioner.

WHEREFORE, for all the foregoing reasons, the Petitioner would respectfully move the Court for an Order compelling the State of Tennessee to divulge whether Alfredo Bernard Shaw was or was not a paid government agent, either state or federal during the time period he allegedly had conversations with the petitioner in the law library of the Shelby County Jail.

Respectfully Submitted,



Charles R. Ray, Esq. #3188
211 Third Avenue North
P. O. Box 198288
Nashville, Tennessee 37219
615-256-2111



Larry Copeland, Esq. # 18600
648 Poplar Avenue
Memphis, Tennessee 37103
901-526-0898


Document received by the TN Supreme Court.

Certificate of Service

I hereby certify that a true and exact copy of the foregoing has been mailed, first class, postage prepaid, to:

John Campbell, Esq.
Assistant District Attorney General
201 Poplar Avenue
Suite 301
Memphis, Tennessee 38103

on this the 25th day of November, 2002.



Charles R. Ray , Esq.

EXHIBIT 21

December 3, 2002, Order

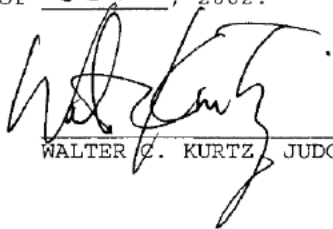
IN THE CRIMINAL COURT FOR SHELBY COUNTY, TENNESSEE

TONY CARRUTHERS,)	
)	
Petitioner,)	
)	
VS.)	NO. P-25948
)	(POST-CONVICTION)
)	
STATE OF TENNESSEE,)	
)	
Respondent.)	

ORDER

Before the Court is the petitioner's motion to compel the State to reveal whether Alfredo Bernard Shaw was or was not a paid government agent during the time he had conversations with the petitioner in the Shelby County jail. The motion is granted. The State shall file a written response within fifteen (15) days divulging whether Alfredo Bernard Shaw was or was not a paid government agent for either the county, state, or federal government during the time period he had conversations with the petitioner in the Shelby County jail.

This the 3 day of Dec, 2002.



 WALTER C. KURTZ JUDGE

xc: Charles R. Ray
Attorney at Law
211 Third Avenue North
P.O. Box 198288
Nashville, TN 37219

Larry Eugene Copeland, Jr.
Attorney at Law
242 Poplar Ave.
Memphis, TN 38103-1946

John Campbell
Assistant District Attorney General
201 Poplar, Suite 301
Memphis, TN 38103

FILED 12-3-02
 WILLIAM A. KEY, CLERK
 BY [Signature] D.C.

EXHIBIT 22

Response of the State of Tennessee

**IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS, TENNESSEE
DIVISION VII**

TONY X. CARRUTHERS,
Petitioner

-vs-

NO. P-25948

STATE OF TENNESSEE,
Respondent

**RESPONSE OF THE STATE OF TENNESSEE
TO PETITIONER'S MOTION TO REVEAL ALL AGREEMENTS GIVEN TO STATE'S
WITNESSES**

Comes now the State of Tennessee and in Response to Petitioner's Motion To Compel State to Reveal All Agreements Given to State's Witnesses, would submit the following:

The State has previously filed a Response to this Motion and sent a copy to the petitioner stating that Mr. Shaw was not a "paid government agent" planted in the jail to get a statement from the petitioner. Said Response was filed on October 9, 2002. (Copy attached).

The State does not understand why another Response is necessary.

12/10/02
D. Coppenbarger


Respectfully Submitted



JOHN W. CAMPBELL
Assistant District Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was caused to be delivered to Charles Ray, Attorney for the petitioner, on this the 10th day of December, 2002.



Document received by the TN Supreme Court.

EXHIBIT 23

Letter from John W. Campbell, Assistant
District Attorney General to Charles R. Ray,
Post-conviction Counsel for Mr. Carruthers
(Jan. 7, 2003)

JAMES J. CHALLENGER III
 DEPUTY DISTRICT ATTORNEY GENERAL

KENNETH R. ROACH
 ADMINISTRATIVE ASSISTANT/CHIEF PROSECUTOR
 CRIMINAL COURT DIVISION

THOMAS D. HENDERSON
 ADMINISTRATIVE ASSISTANT/CHIEF PROSECUTOR
 GENERAL SESSIONS CRIMINAL/
 JUVENILE COURT DIVISIONS

M. CARTER MYERS
 GRAND JURY ADMINISTRATIVE ASSISTANT

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 CHIEF ADMINISTRATIVE OFFICER

JERRY HARRIS
 CHIEF HOMICIDE PROSECUTOR

JOHN W. CAMPBELL
 DIRECTOR
 MAJOR CRIMES PROSECUTION UNIT

J. ROBERT CARTER, JR.
 DIRECTOR, NARCOTICS PROSECUTION UNIT

JENNIFER S. NICHOLS
 DIRECTOR, ANTI-GANG TEAM

KEVIN R. RARDIN
 LEAD PROSECUTOR
 CHILD PROTECTION INVESTIGATION TEAM

WILLIAM D. BOND, III
 DIRECTOR, DOMESTIC VIOLENCE
 PROSECUTION UNIT

HENRY P. WILLIAMS
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 ROSEMARY S. ANDREWS
 JULIE MOSLEY
 SCOTT D. GORDON
 BETSY CARNESALE
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 DONALD BLACKWELL
 DONNA KERNS
 ERIC HOLMES
 ROBERT HARRISON
 EDIE HILL
 DONALD J. FLYNN, M.P.D.
 ALEXANDER McGOWAN, M.P.D.
 RONNIE McWILLIAMS, M.P.D.
 RONALD GOODWIN, M.P.D.
 ELAINE SHELBY, S.C.S.O.
 INVESTIGATORS
 CRIMINAL COURT DIVISION



WILLIAM L. GIBBONS
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 CRIMINAL COURT SECTION
 201 POPLAR - SUITE 301
 MEMPHIS, TENNESSEE 38103-1947
 PHONE (901) 545-5900
 FAX (901) 545-3937
 www.scdag.com

January 7, 2003

Charles R. Ray
 Attorney at Law
 211 Third Avenue North
 Nashville, TN 37219

Re: Alfredo Shaw

Dear Mr. Ray:

I thought that this matter was resolved by my earlier response. But just incase, I have talked to the prosecutors who tried your client and neither is aware of any situation where Alfredo Shaw acted as a paid informant for anybody. To the best of their knowledge, Alfredo Shaw was never a paid informant during the time frame you stated in your letter of December 16, 2002. I do not know how much clearer I can be on this topic.

Sincerely

JOHN W. CAMPBELL
 Assistant District Attorney General

Document received by the TN Supreme Court.

EXHIBIT 24

Letter from Timothy A. Beacham, Assistant
District Attorney General to Richard L.
Tennent, Assistant Federal Public Defender
(Oct. 28, 2019)



OFFICE OF THE DISTRICT ATTORNEY GENERAL

30th JUDICIAL DISTRICT ~ SHELBY COUNTY, TENNESSEE
201 Poplar Avenue, Third Floor, Memphis, TN 38103-1947
Tel. 901-222-1300 ~ Fax 901-222-7971
www.scdag.com

October 28, 2019

AMY P. WEIRICH
District Attorney General

Mr. Richard Lewis Tennent
Assistant Federal Defender
Federal Public Defender, Middle District of Tennessee
810 Broadway St., Ste. 200
Nashville TN 37203-3805

RE: Records request of documents regarding Alfredo Shaw

Mr. Tennent,

This Office has received a writing, copy enclosed, requesting certain evidence and documents concerning Alfredo Shaw. This writing was submitted, in part, as a Public Records request pursuant to the Tennessee Open Records Act, T.C.A. 10-5-701, *et seq.*

The Tennessee Open Records Act does not require this agency to sift through its files in an effort to locate the records requested. If there are specific records sought related to the individual listed by you, please provide that information. Your request is vague, overbroad and lacks sufficient specificity for this Office to comply. It is DENIED pending receipt of further clarification provided by you.

Enclosed also is a highlighted copy of the Public Records Policy of the Shelby County District Attorney General's Office. Specifically highlighted are Section II, sub F, Section III, D and F, and Section IV, B. You may refer to this Policy for future requests of records and may direct those requests to this Desk at the above mailing address or via email at publicrecords@scdag.com. You will also find the Public Records Policy at the Office website, www.scdag.com.

Respectfully,

Timothy A. Beacham

Assistant District Attorney General
Public Records Counsel and Request Coordinator
Publicrecords@scdag.com

OFFICE OF THE
FEDERAL PUBLIC DEFENDER
MIDDLE DISTRICT OF TENNESSEE

HENRY A. MARTIN
FEDERAL PUBLIC DEFENDER

810 BROADWAY, SUITE 200
NASHVILLE, TN 37203-3805
TELEPHONE: 615-736-5047
FAX: 615-736-5265

RECEIVED
OCT 08 2019
GENERAL WEIRICH'S
OFFICE

October 3, 2019

District Attorney General Amy Weirich
Office of the District Attorney General-Shelby County
201 Poplar Avenue, Suite 301
Memphis, Tennessee 38103

Re: Request For Disclosure Of Exculpatory Evidence Regarding Alfredo Shaw,
DOB 3-14-1966

Dear General Weirich:

I am counsel for Tony Carruthers. The Attorney General for the State of Tennessee has recently moved that the Tennessee Supreme Court set a date for his execution.

As Mr. Carruthers' counsel, I write to request disclosure of any and all exculpatory evidence (including all documents) in the actual or constructive possession of your office regarding the credibility, reliability, and/or bias of Alfredo Shaw (DOB 3-14-1966), a witness who testified at the 1996 trial of Tony Carruthers in the Criminal Court of Shelby County, Tennessee. I make this request pursuant to all available authority, including the Tennessee Public Records Act.

The exculpatory evidence and documents concerning Alfredo Shaw which I request include, but is not limited to, exculpatory information about Alfredo Shaw regarding the following matters:

- (1) The timing and nature of Alfredo Shaw's employment, work for, or assistance to, at any time, your office, other prosecutorial authorities and/or law enforcement authorities, including but not limited to the Shelby County Sheriff's Office, the Memphis Police Department, the Tennessee Bureau of Investigation, the FBI, the DEA, the ATF. It is my understanding that Shaw worked as an informant for Shelby County during the 1990s and even before;
- (2) Any agreements or understandings, written or otherwise, between the your office, other prosecutorial authorities and/or law

Document received by the TN Supreme Court.

enforcement authorities, including but not limited to the Shelby County Sheriff's Office, the Memphis Police Department, the Tennessee Bureau of Investigation, the FBI, the DEA, the ATF, and Alfredo Shaw about any and all consideration Shaw was to receive in exchange for his assistance to your office, other prosecutorial authorities, or law enforcement, including, but not limited to cash payments, reduction of charges, willingness to assist Shaw with pending or past criminal charges, or any other types of consideration to be provided to Shaw;

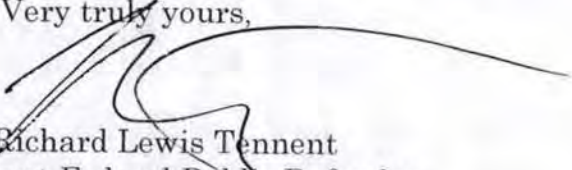
(3) Copies of checks or any other document reflecting money paid to Alfredo Shaw at any time and for any reason by your office, other prosecutorial authorities and/or law enforcement authorities, including but not limited to the Shelby County Sheriff's Office, the Memphis Police Department, the Tennessee Bureau of Investigation, the FBI, the DEA, the ATF, whether paid to Shaw or any of his family members, without any regard to any alleged reason for the payment. In other words, any and all checks or payments to Shaw for any reason are requested.

As you may know, the courts have held that under *Brady v. Maryland*, 373 U.S. 83 (1963), the duty of the prosecutor and law enforcement to disclose exculpatory evidence is ongoing, and remains in force even during post-conviction proceedings, as in this case. The "duty to disclose is ongoing." *Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987) and "extends to all stages of the judicial process." *Smith v. Roberts*, 115 F.3d 818, 820(10th Cir. 1997). The state must continue to disclose exculpatory evidence during the course of federal habeas corpus proceedings, which is the case here. *Thomas v. Goldsmith*, 979 F.2d 746, 749-750 (9th Cir. 1992)(state has a "duty to turn over exculpatory evidence at trial, but . . . [also a] present duty to turn over exculpatory evidence relevant to the instant habeas corpus proceeding."). See also *Thompson v. Calderon*, 151 F.3d 918, 935 n. 12 (9th Cir. 1998)(Reinhardt, J., concurring and dissenting)("The *Brady* duty is an ongoing one, and continued to bind the prosecution throughout . . . habeas proceedings.").

In addition, the United States Court of Appeals for the Sixth Circuit has recently overturned a Shelby County, Tennessee murder conviction where the prosecution and authorities did not disclose that a witness against the defendant received a cash payment of \$750 from the Federal Bureau of Investigation before the defendant's trial. *Thomas v. Westbrooks*, 849 F.3d 649 (6th Cir. 2017). As in *Thomas*, any payments made by to Alfredo Shaw should thus be disclosed as I request.

Thank you very much for your assistance in this matter. If you have any questions, please feel free to contact me.

Very truly yours,


Richard Lewis Tennent
Assistant Federal Public Defender



PUBLIC RECORDS POLICY
FOR
THE OFFICE OF THE DISTRICT ATTORNEY GENERAL
30TH JUDICIAL DISTRICT, SHELBY COUNTY, TENNESSEE

Pursuant to Tenn. Code Ann. § 10-7-503(g), the following Public Records Policy for the Office of the District Attorney General, 30th Judicial District, Shelby County, Tennessee is hereby adopted to provide economical and efficient access to public records as provided under the Tennessee Public Records Act ("TPRA") in Tenn. Code Ann. § 10-7-501, et seq.

The TPRA provides that all state, county and municipal records shall, at all times during business hours be open for personal inspection by any citizen of this state, and those in charge of the records will not refuse such right of inspection to any citizen, unless otherwise provided by state law. The public records of this Office are presumed to be open for inspection unless otherwise provided by law.

Personnel of this Office will timely and efficiently provide access and assistance to persons requesting to view or receive copies of public records. No provisions of this Policy will be used to hinder access to open public records. However, the integrity and organization of public records, as well as the efficient and safe operation of the Office, will be protected as provided by current law. Concerns about this Policy should be addressed to the Public Records Request Coordinator for this Office or to the Tennessee Office of Open Records Counsel ("OORC").

This Policy is available for inspection and duplication in the office of the Public Records Request Coordinator during regular Office business hours and online at www.scdag.com. This Policy will be reviewed annually or more often if need demands.

This Policy will be applied consistently throughout the various offices, departments, and/or divisions of this Office.

I. Definitions

- A. ***Public Records***: All documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. This does not

include the device or equipment that may have been used to create or store the record. However, no record of this Office related to a criminal case that results in conviction is considered a public record unless one (1) year has passed from the final judgment in the case, there are no pending post-conviction proceedings and/or other collateral attacks in either State or Federal court(s), and one (1) year has passed since any such post-conviction or collateral attack has been concluded.

- B. Public Records Request Coordinator: The individual, or individuals, designated in Section III, A.3 of this Policy, who has, or have, the responsibility to ensure public record requests are routed to the appropriate records custodian and are fulfilled in accordance with the TPRA.
- C. Records Custodian: The office, official, or employee lawfully responsible for the direct custody and care of a public record. The records custodian is not necessarily the original preparer or receiver of the record.

II. Requesting Access to Public Records

- A. Public record requests shall be made to the Public Records Request Coordinator ("PRRC") or his/her designee in order to ensure public record requests are routed to the appropriate records custodian and fulfilled in a timely manner.
- B. Requests for inspection only will not be required to be made in writing. The PRRC may request a mailing or email address from the requestor for providing any written communication required under the TPRA.
- C. Requests for inspection may be made orally, in writing, or by phone at 901-222-1300, or at publicrecords@scdaq.com.
- D. Requests for copies, or requests for inspection and copies, must be made in writing to: Public Records Desk, Shelby County District Attorney General's Office, 201 Poplar Ave., Ste. 11000, Memphis, TN 38103, or at publicrecords@scdaq.com.
- E. Proof of Tennessee citizenship by presentation of a valid state-issued form of identification is required as a condition to inspect or receive copies of public records.
- F. All requests must be specific as to the record(s) desired by name, serialization, or other unique characteristic of the case(s) or record(s). This Office does not provide generalized research, analytical, statistical, or other measured data compiled as a result of a review of cases, files or other records. This Office will not create or re-create records that do not exist at the time of the request.
- G. No records related to pending or contemplated criminal cases may be requested. Records related to criminal cases are not considered a public record unless one (1) year has passed from the final judgment in the case, there are no pending post-conviction proceedings and/or other collateral

attacks in either State or Federal court(s), and one (1) year has passed since any such post-conviction or collateral attack has been concluded.

III. Responding to Public Records Requests

A. Public Record Request Coordinator

1. The PRRC will review public record requests and make an initial determination of the following:

- a. If the requestor provided evidence of Tennessee citizenship;
- b. If the records requested are described with sufficient specificity to identify them; and
- c. If this Office is the custodian of the records.

2. The PRRC will acknowledge receipt of the request within 10 working days and take any of the following appropriate action(s):

- a. Advise the requestor of this Policy and the elections made regarding:
 - i. Proof of Tennessee citizenship;
 - ii. Form(s) required for copies;
 - iii. An estimate of fees, including labor and redaction costs;
 - iv. Aggregation of multiple or frequent requests.
- b. If appropriate, deny the request in writing, providing the appropriate ground such as one of the following:
 - i. The requestor is not, or has not presented evidence of being, a Tennessee citizen.
 - ii. The request lacks specificity. This Office will attempt to assist in clarifying the request.
 - iii. An exemption makes the record not subject to disclosure under the TPRA. Such exemption will be provided in a written denial.
 - iv. This Office is not the custodian of the requested records.
 - v. The records do not exist.
- c. If appropriate, contact the requestor to see if the request can be narrowed.

- d. Where applicable, may forward the records request to the appropriate records custodian in the Office.
- e. If requested records are in the custody of a different governmental entity, and the PRRC knows the correct governmental entity, advise the requestor of the correct governmental entity and PRRC.

B. Records Custodian

1. Upon receiving a public records request, a records custodian will promptly make requested public records available. If the records custodian is uncertain that an applicable exemption applies, the custodian may consult with the PRRC, other counsel, or the OORC.
2. If not practicable to promptly provide requested records because additional time is necessary to determine whether the requested records exist; to search for, retrieve, or otherwise gain access to records; to determine whether the records are open; to redact records; or for other similar reasons, then a records custodian will, within seven (7) business days from the records custodian's receipt of the request, send the requestor a completed Public Records Request Response Form or other suitable correspondence.
3. If a records custodian denies a public record request, he or she will deny the request in writing.
4. If a records custodian reasonably determines production of records should be segmented because the records request is for a large volume of records, or additional time is necessary to prepare the records for access, the records custodian will use the Public Records Request Response Form or similar method to notify the requestor that production of the records will be in segments and that a records production schedule will be provided as expeditiously as practicable. If appropriate, the records custodian will contact the requestor to see if the request can be narrowed.
5. If a records custodian discovers records responsive to a records request were omitted, the records custodian may contact the requestor concerning the omission and produce the records as quickly as practicable.

C. Redaction

1. If a record contains confidential information or information that is not open for public inspection, the records custodian will prepare a redacted copy prior to providing access. No record may be copied or inspected without first determining whether any confidential material within the record exists and must be redacted. If questions arise concerning redaction, the records custodian shall coordinate with counsel, the PRRC, or other appropriate parties regarding review and redaction of records. The records custodian and the

D. Fees will be based on the following schedule.

1. If physical paper copies are produced - \$0.15 per page for letter- and legal-size black and white copies, \$0.25 per page for letter- and legal-size color copies.
2. \$15 for 1st digital disc, flash-drive or other similar device used to convey the record, \$10 for each subsequent disc, flash-drive or other similar device as needed.
3. Labor when production time exceeds 1 hour. This rate may vary and will be determined based on the hourly rate of pay the lowest-paid employee engaged in the particular task of each step of the production process; i.e. a lower-paid employee may be assigned to complete a task of producing copies while a higher-paid employee may be tasked to perform any redactions. The time necessary to copy will be charged at the lower rate of pay; the time necessary to complete the redactions will be charged at the higher rate of pay.
4. If an outside vendor is used, the actual costs assessed by the vendor, including any retrieval fee if applicable.

E. Payment is to be made by cash, check or money order payable to the "Shelby County District Attorney General's Office" and presented to the PRRC; if by mail, addressed to:

Public Records Desk,
Shelby County District Attorney General's Office
201 Poplar Ave., Ste. 11000
Memphis, TN 38103.

Such payment will be deposited by the Office within 7 working days.

F. Payment in advance is required before copies of records are provided.

G. Aggregation of Frequent or Multiple Requests. This Office may aggregate record requests in accordance with the Frequent and Multiple Request Policy promulgated by the OORC when more than three (3) requests are received within a calendar month, either from a single individual or a group of individuals deemed working in concert. The PRRC is responsible for making the determination that a group of individuals are working in concert. The PRRC or the records custodian must inform the individuals that they have been deemed to be working in concert and that they have the right to appeal the decision to the OORC. Routinely released and readily accessible records may be excluded from aggregation.

(Adopted July 1, 2017; rev'd July, 2018; May, June 2019)

PRRC may also consult with the OORC or with the Office of Attorney General and Reporter.

2. Whenever a redacted record is provided, a records custodian will provide the requestor with the basis for redaction, if requested. The basis given for redaction will be general in nature and not disclose confidential information.

IV. Inspection of Records

- A. There will be no charge for inspection of public records. After the records have been appropriately redacted, such inspection will be supervised and require the presence of the PRRC or a staff member.
- B. The location for inspection of records within this Office will be determined by either the PRRC or the records custodian.
- C. The PRRC or records custodian may require an appointment for inspection or may require inspection of records at an alternate location. The PRRC may also require that the inspection be conducted in the presence of the PRRC or other staff.

V. Copies of Records

- A. The PRRC or records custodian will promptly respond to a public record request for copies in the most economic and efficient manner practicable.
- B. Copies will be available for pickup at a location specified by the records custodian or the PRRC.
- C. Upon payment for postage or shipping, copies will be delivered at the requestor's designated address by the United States Postal Service or other delivery service. Records may also be delivered by electronic means where appropriate.
- D. A requestor will not be allowed to copy, reproduce or transmit records with personal equipment.

VI. Fees and Charges and Procedures for Billing and Payment

- A. Fees and charges for copies of public records will not be used to hinder access to public records.
- B. The PRRC or records custodian will provide requestors with an estimate of the charges prior to producing copies of records and may require pre-payment of such charges before producing requested record.
- C. When fees for copies and labor do not exceed \$15, the fees may be waived. Requests for waivers for fees above \$15 must be presented to the PRRC who is authorized to determine if such waiver is in the best interest of this Office and for the public good. Fees associated with aggregated records requests will not be waived.

RECEIVED

NOV 04 2019

EXHIBIT 25

Shelby County Sheriff's Office Public
Records Redacted Response showing Shaw as
a paid informant from 1991 to 1998



Shelby County Sheriff's Office

Bill Oldham, Sheriff

December 19, 2017

Mr. Paul R. Bottei
 Assistant Federal Public Defender, Middle District
 810 Broadway, Suite 200
 Nashville, TN 37203-3805

RE: **Request for Records—Tony Carruthers v. Westbrooks, USDC 08-2425**
Records of Alfredo Shaw from “1990’s and even before”

Dear Mr. Bottei:

You have made what we construe to be a Tennessee Public Records Act request wherein you asked that the Shelby County Sheriff's Office provide you, on behalf of your client, certain records pertaining to Alfredo Shaw and his work as a confidential informant. Last month, you provided additional information to assist us in responding.

Several things should be addressed at the outset pertaining to your client's pending writ of habeas petition matter.

1. Your client's appeal of the federal district court's denial of his writ of habeas corpus is now pending before the Sixth Circuit Court of Appeals. By Order filed January 25, 2016, the Sixth Circuit allowed him to proceed on the following issues: (1) whether the trial court violated Carruthers's right to counsel when it compelled him to proceed pro se at trial; (2) whether Carruthers was denied his right to counsel in violation of United States v. Cronin; (3) whether Carruthers was competent to stand trial and to waive his right to counsel; and (4) whether Carruthers procedurally defaulted (1), (2) and/or (3).

It is duly noted that the Sixth Circuit did not grant permission to pursue any claims related to Mr. Shaw.

2. By Order entered October 2, 2013, federal district court Judge Jon P. McCalla denied your client's discovery requests pertaining to Mr. Shaw: (1) a subpoena ad testificandum for the deposition of Alfredo Shaw; (2) require the production, by the Shelby County Sheriff, Memphis Police Department, and federal law enforcement agencies in Memphis, identifying the work done by and/or consideration received by Shaw for his assistance on cases from 1992-2006; and (3) a subpoena ad testificandum to the trial prosecutors on the grounds of their work with, involvement with, discussions with, offers to, assistance to, and contact with Shaw. The Judge noted that your client had been granted, “extensive discovery in the case,” that the discovery



Mr. Paul R. Bottei, Assistant Federal Public Defender
Carruthers v. Wesbrooks
December 19, 2017
Page 2

period was closed, dispositive motions had been filed, and there was no good cause to grant discovery.

Your office is attempting to circumvent the rulings of the federal district court as well as the Sixth Circuit Court of Appeals, in addition to the federal statute governing discovery habeas corpus proceeding.

3. Judge McCalla's Order of October 2, 2013, fully outlines the reasons the State of Tennessee elected not to rely on Mr. Shaw's testimony during the trial of your client:

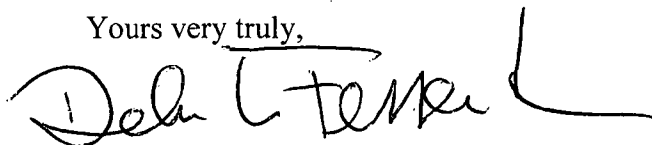
The prosecution asserted that because it refused to aid Shaw with his continued arrests, he "called the media and began this program of recantation or attempted recantation." ... The prosecution noted that Shaw's behavior in constantly getting arrested and seeking aid from them was the reason why they announced in open court that Shaw would not testify for the prosecution at trial... The decision was not because the prosecution did not believe that Shaw's prior testimony was true, but because they could not "give [Shaw] carte blanc to go out and get arrested.

4. By filing of October 31, 2012, your client submitted a variety of documents which indicate that Mr. Shaw had cooperated with authorities for some period of time, serving as a "confidential informant." None of this information is "new" or "recently discovered."

5. Without waiving any objection that you are not entitled to any of the records you are seeking, regardless of whether the request is couched as a TPRA request, or any objection that your client is not entitled to records pertaining to confidential informants, and to the extent you are seeking a record of monetary transactions involving Mr. Shaw and the Sheriff's Office, that is being provided. The document provided is a redacted computer record of the funds provided to Mr. Shaw. That took two (2) hours to retrieve from a computer system that is no longer in use. A statement for our services is enclosed.

Records pertaining to criminal investigations or prosecutions involving Mr. Shaw will not be provided absent a Court Order.

Yours very truly,



Debra L. Fessenden
Chief Policy and Statutory Compliance Officer

Enclosures

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SHELBY COUNTY SHERIFF'S DEPARTMENT
NARCOTICS DIVISION
OFFICIAL INVESTIGATIVE FUNDS
MONEY IN/OUT ACCOUNT SUMMARIES
FROM 01/01/01 TO 11/11/98

11/17/99

Out Recpt.	Date Issued	Issued To:	Box Amount	Acct.# Description	Property Receipt	In Recpt.	Date Return	Amount Returned	Case Number	Net Expense	Reason Returned
1196	09/23/91		20.00	52022 P/C BUT CRACK COCAINE			09/23/91	0.00		20.00	
14215	09/25/91		20.00	52022 P/C BUT CRACK COCAINE			09/25/91	0.00		20.00	
16008	10/25/92		100.00	54082 INFORMANT PAYMENT			10/25/92	0.00		100.00	INACTIVE REMOVED
10033	10/29/92		225.00	54022 P/C BUT MARIJUANA			10/29/92	225.00		0.00	DID NOT MAKE BUY
1016	11/30/95		100.00	55022 P/C BUT MARIJUANA			12/11/95	0.00		100.00	8 GRAM CRACK
2338	12/06/95		75.00	49022 U/C BUT MARIJUANA			12/13/96	0.00		75.00	INFORMANT PAYMENT
2380	12/06/96		75.00	49082 UC BUT CRACK COCAINE			12/13/96	0.00		75.00	U/C MARIJUANA
2387	12/12/96		75.00	49042 S/M, INFORMANT PAYMENT			12/13/96	0.00		75.00	
1593	12/16/96		75.00	49012 INFORMANT PAYMENT			12/16/96	0.00		75.00	
2386	12/17/96		75.00	49082 U/C BUT 1/2 LBS FUDGE/88			12/26/96	0.00		75.00	PAY FOR U/C BUY
2428	01/09/97		550.00	49082 U/C BUY 1/2 LBS MARIJUANA			01/14/97	50.00		500.00	149.0 GRAM MARIJUANA
2429	01/09/97		125.00	49082 U/C BUY 1.0 L. MARIJUANA			01/14/97	0.00		125.00	21.6 GRAMS MARIJUANA
1599	01/09/97		125.00	49082 U/C BUT MARIJUANA			01/09/97	0.00		125.00	189.0 GRAM MARIJUANA
1601	01/21/97		50.00	49082 U/C BUT MARIJUANA			01/21/97	0.00		50.00	11.0 GRAM MARIJUANA
1602	01/23/97		125.00	49082 U/C BUT MARIJUANA			01/23/97	0.00		125.00	307.0 GRAM MARIJUANA
2501	01/28/97		50.00	49072 CT EXPENSE			02/05/97	0.00		50.00	CT EXPENSE
2524	01/31/97		300.00	49082 UC BUT PAY.			01/31/97	0.00		300.00	PAY FOR U/C BUY
2707	02/24/97		50.00	49012 INFORMANT EXPENSE			02/24/97	0.00		50.00	INFORMANT EXPENSE
2789	03/19/97		42.00	49012 INFORMANT EXPENSE			03/19/97	0.00		42.00	INFORMANT EXPENSE
2833	04/28/97		42.00	49082 INFORMANT EXPENSE			04/30/97	0.00		42.00	INFORMANT EXPENSE
2892	05/02/97		75.00	49012 INFORMANT EXPENSE			05/09/97	0.00		75.00	INFORMANT EXPENSE
2908	05/07/97		100.00	49012 INFORMANT EXPENSE			05/07/97	0.00		100.00	INFORMANT EXPENSE
1108	07/27/98		100.00	55022 PC BUT COCAINE			07/28/98	0.00		100.00	
1202	08/31/98		100.00	55022 PC BUT COCAINE			08/08/98	0.00		100.00	
1233	09/13/98		75.00	55022 PC BUT CRACK COCAINE			09/13/98	0.00		75.00	
Total disbursed:			2909.00								
Total returned:			275.00								
Net:			2634.00								

EXHIBIT 26
Agreed Order

IN THE CRIMINAL COURT OF TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS
DIVISION 5

TONY CARRUTHERS]	
]	
v.]	No. 94-02797, 94-02798, 94-02799,
]	95-11128, 95-11129
STATE OF TENNESSEE]	

**AGREED ORDER DIRECTING THE MEMPHIS POLICE DEPARTMENT TO
RELEASE DATA REGARDING ALFREDO SHAW TO
THE SHELBY COUNTY JUSTICE REVIEW UNIT**

By agreement of the parties and pursuant to the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article 1 § 16 of the Tennessee Constitution, and Tenn. Code Ann. § 40-30-123, this Court hereby orders the Memphis Police Department to release the following information regarding Alfredo Shaw to Kevin Rardin, Asst. District Attorney General, Shelby County District Attorney General Justice Review Unit, 201 Poplar, 8th Floor, Memphis, TN 38103-1945. Specifically, within 30 days of the entry of this Order, the Memphis Police Department shall release the following information:

1. Any and all information about Mr. Alfredo Shaw's activities as an informant, any payments received, any promises made to help him out with any criminal charges, whether or not he was formally charged.
2. Whether Alfredo Shaw was determined to have provided false information

Filed 5. 9. 24
Heidi Kuhn, Clerk
BY JW D.C.

in any cases and if so, details regarding these findings.

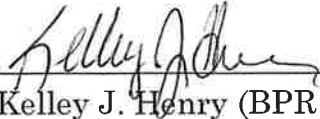
3. Any information regarding instructions by agents of the Memphis Police Department to Mr. Shaw to contact Crime Stoppers and any payments made to Mr. Shaw by Crime Stoppers.

SO ORDERED this 9th day of May 2024.

Carlyn L. Addison
Criminal Court Judge Carlyn Addison

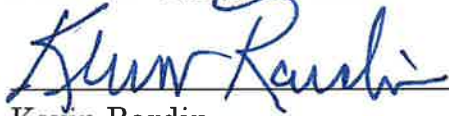
Approved for Entry:

**FEDERAL PUBLIC DEFENDER FOR
THE MIDDLE DISTRICT OF TENNESSEE**



Kelley J. Henry (BPR # 021113)
Chief, Capital Habeas Unit
810 Broadway, Suite 200
Nashville, TN 37203
Phone: (615) 736-5047
Email: Kelley_Henry@fd.org

**SHELBY COUNTY DISTRICT ATTORNEY GENERAL
JUSTICE REVIEW UNIT**



Kevin Rardin
201 Poplar Avenue, 8th Floor
Memphis, TN 38103-1945
Phone: (901) 222-1450
Email: Kevin.Rardin@scdag.com

EXHIBIT 27

Shaw Informant File



Name <i>Alfredo Bernard Shaw</i>		AKA <i>Sake</i>			
DOB <i>6.11.66</i>		POB <i>Shelby County</i>		Occup.	Bof I#
Height <i>5'11"</i>	Weight <i>165</i>	Hair <i>Black</i>	Eyes <i>Brown</i>	Other	FBI #
Spouse <i>DNA</i>		Activity			So #
Kin <i>Floyzell Bailey "mother"</i>		Associates			5"
					DL# <i>7618</i>
<i>Memphis, Tenn.</i>					



CONSENT TO TAPE RECORD AND MONITOR ALL PERSONAL AND TELEPHONE CONVERSATIONS

I, Alfreda B. Shaw do hereby affix my signature to this document with the understanding that I give freely and voluntarily to the Memphis Police Department, Organized Crime Strike Unit, and any officer assigned to this unit, consent to monitor and tape record all of the conversations that I have with all persons and all telephone conversations with people with whom I may have conversation. I do give this freely and voluntarily, without any prior agreements, promises, or compensation, monetary or otherwise. I understand that any conversations, whether through electronic recording devices or telephone devices, or any conversations that I am a party to will be recorded and they have my consent and my knowledge and my full and voluntary cooperation to record these conversations.

I further understand and know that I may have to at some future time, and I am willing and agreeable to, appear in any court or before the federal or state grand jury or any investigation that is derived from any of these tape recorded conversations.

I give my consent to these officers to do this freely and voluntarily and with full knowledge of what I am doing.

This agreement is for the period of time as indicated below in my handwriting.

from a period of Sept. 16, 1986 to Dec. 31, 1986.

WITNESSED BY:

Alfreda B. Shaw
Signed

L. M. Torrance

R. Thompson

CONSENT TO TAPE RECORD AND MONITOR ALL PERSONAL AND TELEPHONE CONVERSATIONS

I, Alfredo B. Shaw do hereby affix my signature to this document with the understanding that I give freely and voluntarily to the Memphis Police Department, Organized Crime Strike Unit, and any officer assigned to this unit, consent to monitor and tape record all of the conversations that I have with all persons and all telephone conversations with people with whom I may have conversation. I do give this freely and voluntarily, without any prior agreements, promises, or compensation, monetary or otherwise. I understand that any conversations, whether through electronic recording devices or telephone devices, or any conversations that I am a party to will be recorded and they have my consent and my knowledge and my full and voluntary cooperation to record these conversations.

I further understand and know that I may have to at some future time, and I am willing and agreeable to, appear in any court or before the federal or state grand jury or any investigation that is derived from any of these tape recorded conversations.

I give my consent to these officers to do this freely and voluntarily and with full knowledge of what I am doing.

This agreement is for the period of time as indicated below in my handwriting.

From: 3/13/87 to Sept 13, 1987

WITNESSED BY:

L.M. Torrance

R. Shampson

Alfredo B. Shaw
Signed

Z ICRS,86108019 *COURT STATUS* DKT#:86108019 RI#00082052 ~:01
 NAME:SHAW,ALFREDO BERNARD SEX:M RACE:B DOB: 66
 ADDRESS: GAITHER COVE # MEMPHIS ,TN 38106
 ARREST:04/18/86,0729 OFFS:#1SANDIDGE RICHARD #2NAME NOT ON FILE
 CURR.COURT SET: 06/27/86 DIV:09 SESS:1 REASON:PRELIM HEARING #RESETS:04
 ORIG.COURT SET: 04/21/86 DIV:11 SESS:1
 TOTAL BOND SET:\$ 5000

COURT:GS **CHARGE GROUP#:01** <DISPOSED >
 01 39-1-501 ATTEMPT TO COMMIT FELONY - F <DISPOSED >
 DISP:HELD TO STATE -06/27/86 COMMENTS: SENT-DT: 6/27/86
 CRED: 0YRS 0MO 0DYS SENT-LOC: FINE:\$ 0 COSTS:\$ 0.00 AMT-DATE: 6/27/86
 BOND SUMMARY FOR CHARGE GROUP#:01
 BOND#:1:D0082 COMPANY:CONTINENTA AMT:\$ 5000 STATUS:INACTIVE
 ****HISTORY DATA FOR CHARGE GROUP#:01****
 RESET DATE DIV SESS REASON
 # 1 04/21/86 11 1 ARRAIGNMENT
 # 2 05/05/86 10 1 ATTORNEY
 # 3 05/19/86 10 1 REPORT
 # 4 06/27/86 09 1 PRELIM HEARING
 B/W NUMBER ISSUED DIV STATUS COSTS

INQUIRY COMPLETED - TRANSMIT TO VIEW CRIMINAL COURT

*Z ICRS, *
 NEXT PAGE. . BOOKING #:86108019 R&I #:00082052 BOND SET: 5,000
 NAME:SHAW ALFREDO BENARD SEX:M RACE:B DOB:03/14/66

*** PRE-INDICTMENT CHARGES ***
 TCA CODE T C A D E S C R I P T I O N ENTRY D/W DATE IND. NO.
 39-1-501 ATTEMPT TO COMMIT FELONY HTS 86 03908
 39-3-401 BURGLARY I OTHER 86 03908

IND:86 03908 AG:K7622 FOR:BURGLARY I < ACTIVE
 CURR-COURT SET:09/10/86 DIV:05 REASON:BA
 *** B O N D S U M M A R Y ***
 POWER NUMBER IND. NO. AMOUNT B O N D C O M P A N Y STATUS
 01-0000D0082 86 03908 5,000 CONTINENTAL INS & BONDING INC ACTIVE

* I N Q U I R Y C O M P L E T E *

Document received by the TN Supreme Court.

KZ AHIS, *
 NEXT PAGE. *R&I:00082052 SCSD:00000000 MFD:00000000
 NAME:SHAW ALFREDO BERNARD S/R:M/E
 ADDR: GAITHER COVE MEMPHIS TN

DATE:041886 BOOKING#: 86108019 NAME:SHAW ALFREDO BERNARD
 BK BY/ON CHARGE GS/DISPOS CC/INDICT CC/DISPOS #BW #CBF NLT-NMT/LO
 01 MP/AC ATTEMPT TO COMMIT F HS/062786
 AMEND BURGLARY I IN/071886 /091086
 (NO MORE BOOKING NUMBERS THIS RNI NUMBER)

KZ IRTK,10025,86108019,00,I * DATE 08/28/86 TIME 08:11
 NAME:SHAW ALFREDO BERNARD RACE:BLACK
 ADDR:922 GAITHER COVE SEX:MALE
 DOB: '66

ARREST BY:MP ON:PC DATE:041886 TIME:0729 RPT#:000000 ASN:
 OFFICERS:(1) 07848 SANDIDGE RICHARD C (2)
 ARREST TICKET-01

COMPLAINANT: RUDY WHALEY RACE: .
 ADDR.855 WOODLAND SEX: .
 .MPHS .TN. DOB: .
 LOCATION OF ARREST: .THE MED CENTER . . .
 .MPHS .TN. .

VEHICLE - LIC#: . ST. . YR. . TYP. . VIN. .
 YR. . MAK. . MDL. . STY. . CLR. / . DISP. .
 WEAPON = SER#: . MAK. . CAL. . TYP. .
 SER#: . MAK. . CAL. . TYP. .

LAST RECORD

KZ IRPC, *
 R&I #: 00082052
 NAME: LAST SHAW FIRST ALFREDO MID BERNARD SFX
 ADDR: ST NO DIR. NAME,GAITHER COVE SFX. APT. .
 CITY,MEMPHIS STATE,TN, ZIP,00000 .
 PHYS: HGT,511. WGT,165. HAIR,BLK. EYES,BRO. SKIN,DRK. RACE,B. SEX,M.
 BIRTH: CITY,MPHS STATE,TN, DOB, 66.
 ***** CRIMINAL CHARACTER CODES:ARM. DNG. MTL. SUI. RST. .
 SSN. FBI,938 188 EA7. OPR LIC. ST. .
 REMARKS: HEART LEFT ARM
 BULLET HOLE RIGHT ARM PIT
 BLD.MED. EDUC. REL. MAR-STAT,S. HNDCPD. CLASS. SEC-TYP,MIN.

A/C	CODE	REMARKS
.
.
.
.
.
.

* INQUIRY TRANSACTION COMPLETE *

KZ IRRA, #10025, 00082052, I,

, 0169918707* R&I NUMBER: 00082052

INMATE: LAST: SHAW FIRST: ALFREDO MID: BERNARD JR/SR:

NAME: LAST .SHAW FIRST .GEORGE MID. JR/SR. .
ST-NO. 2436 ST-DIR. ST-NAME .LATHAM SUFFIX. APT. .
CHG.N. CITY.MPHS STATE.TN. ZIP.000000 RELATION*FATHER *

NAME: LAST .BAILEY FIRST.FLOYZELL MID. JR/SR. .
ST-NO. 2317 ST-DIR. ST-NAME .SPRINGDALE SUFFIX. APT. .
CHG.N. CITY.MPHS STATE.TN. ZIP.000000 RELATION*MOTHER *

NAME: LAST .BAILEY FIRST.SIDNEY MID. JR/SR. .
ST-NO. 2317 ST-DIR. ST-NAME .SPRINGDALE SUFFIX. APT. .
CHG.N. CITY.MPHS STATE.TN. ZIP.000000 RELATION*BROTHER *

NAME: LAST .BAILEY FIRST.RACHAEL MID. JR/SR. .
ST-NO. 2317 ST-DIR. ST-NAME .SPRINGDALE SUFFIX. APT. .
CHG.N. CITY.MPHS STATE.TN. ZIP.000000 RELATION*SISTER *

* NO MORE RECORDS *
NEXT * * SEC-ID *00000*

KZ IRRE, * SEC-ID.00000. R&I#:00082052

---- REAL NAME & ADDRESS ----

NAME: LAST .SHAW FIRST .ALFREDO MID .BERNARD JR/SR. .
ADDR: ST#. DIR. NAME .GAITHER COVE SUFFIX. APT. .
CITY.MEMPHIS STATE.TN. ZIP.000000 CHANGE.N.

---- EMPLOYER NAME & ADDRESS ----

NAME: . NO EMPLOYER DATA FOUND
ADDR: ST#. DIR. NAME. SUFFIX. APT. .
CITY. STATE. ZIP. OCCUPATION. CHANGE.N.

INQUIRY COMPLETE

KZ TIES,DS

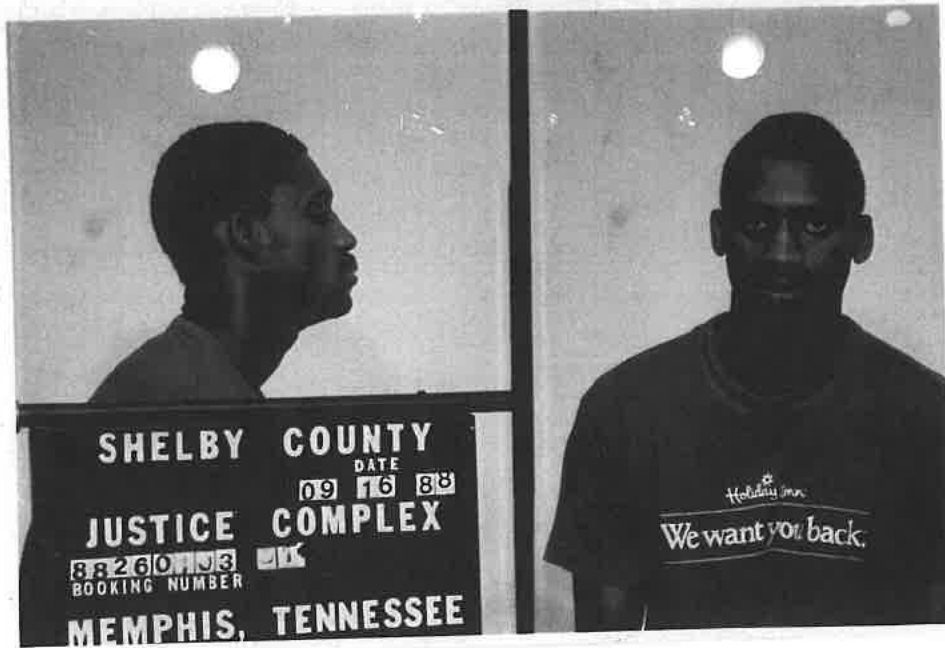
*

(TRANSMIT TO CHECK FOR MORE PAGES)

RR.ILLIC0000
17:51 08/28/00 01052
17:51 08/28/86 00258 TNMFD00B0
KCA79999999
EXT
082886 0752

.GZ110 1086
1C QUEEN VERDENE
723 20TH ST 3 ROCK ISLAND 61201
3L47S5Q278265 75 CADILLAC COUPE
4250-8603-2091

veh. operated at time Shaw first came OCU



SUBJECT'S NAME							RESIDENCE ADDRESS		CITY	RES. PHONE	CRIMINAL INTELLIGENCE	
Alfredo Bernard Shaw							Gauthier Cr.		Mph, TN	38106		1069
ALIASES							BUSINESS ADDRESS		CITY	BUS. PHONE	B OF I NO.	
"Jake" or "Bernard"											00082052	
SEX		DATE OF BIRTH		HEIGHT	WEIGHT	HAIR	EYES		TYPE ACTIVITY			
M	B	06		5'11"	157 lbs	Blk	Brn.					
VEH.	YEAR	MAKE	BODY TYPE		COLOR	LIC. NO.	YEAR	STATE	FBI NO.			
VEH.	REGISTERED TO:		ADDRESS			CITY	RELATION TO SUBJ.		DRIVER LIC. NO.			
NAME OF SPOUSE			OCCUPATION			EMPLOYED BY			SOC. SEC. NO.			

PHOTO	HANGOUTS
	Girlfriend's House: 1 Bullington
ASSOCIATES	
Alice Morris No Phone Above address	
MISC. INFO, - ADDITIONAL ADDRESSES	

C-2100.161

Memphis Police Department
Organized Crime Unit
Confidential Informant Agreement

I, Alfredo Shaw, understand and will comply with the following Organized Crime Unit regulations.

1. The Confidential Informant must not sell or deliver or cause to be sold or delivered any controlled substance, dangerous drug, marijuana, or any substance purported to be same, to any person who would then in turn sell or deliver said controlled substance, dangerous drug, marijuana, or any substance purported to be same, to any member of the unit or any other person.
2. The Confidential Informant must not use their sex, sexuality, or sexual activity to induce or persuade any individual.
3. The Confidential Informant must not conduct a search of any suspect, person, house, papers, or personal effects.
4. The Confidential Informant must not engage in any activities that would constitute entrapment.
5. The Confidential Informant must not engage in any unlawful acts, except as specifically authorized by Officers of the Organized Crime Unit, and is subject to prosecution for any unauthorized unlawful acts.
6. The Confidential Informant is not an employee of the Organized Crime Unit and may not represent himself /herself as such.
7. When the Confidential Informant is cooperating with the Organized Crime Unit in exchange for consideration by a prosecuting office(s), the Organized Crime Unit cannot make any prosecutive or sentencing promises. Upon the request of the Confidential Informant, the Organized Crime Unit will advise the prosecuting office(s) of the nature and extent of the Confidential Informant's assistance.
8. The Confidential Informant agrees to cooperate with the **ORGANIZED CRIME UNIT** of their own free will and accord, and not as a result of any intimidation or threats.
9. The Confidential Informant understands and agrees that any money issued to him/her for the purchase, as evidence, of controlled substances is to be used solely for that purpose. If no such purchase is made, or if such a purchase is made for less than the total sum furnished, he/she will forthwith refund the sum so furnished or the balance thereof, as the case may be, to the issuing officer of the Organized Crime Unit. In any event, upon demand by the issuing officer of the Organized Crime Unit at any time, he/she will forthwith refund to the issuing officer of the Organized Crime Unit the total amount of any sum thus furnished to him/her that has not yet been expended by him/her for the purchase, as evidence, of controlled substances. Furthermore, it is understood that this money is the property of the **ORGANIZED CRIME UNIT** and that misuse or conversion of the same to his/her personal use will render him/her liable to prosecution.

Signed: Alfredo Shaw Date: 10-15-03

Contact Officer: Sgt. P. Wright Jr. Alternate: Sgt. J. Griffin

Supervisor: Det. RY Adams

Memphis Police Department
Organized Crime Unit

Consent to Record

I Alfredo Shaw, do hereby affix my signature to this document with the understanding that I give freely and voluntarily, to the Memphis Police Department, Organized Crime Unit, and any officer assigned to this unit, consent to monitor and tape record all of the conversations that I have with all persons, including telephone conversations. I do give this freely and voluntarily, without any prior agreements, promises, or compensation, monetary or otherwise. I understand that any conversations, whether through electronic recording devices or telephone devices, or any conversations that I am a party to, will be recorded and they have my consent and my knowledge, and my full and voluntary cooperation, to record these conversations.

I further understand and know that I may have to, at some future time, and I am willing and agreeable to, appear in any court or before the Federal or State Grand Jury or any investigation that is derived from any of these tape-recorded conversations.

I give my consent to these officers to do this freely and voluntarily and with full knowledge of what I am doing.

This agreement is valid while I am an active Cooperating Individual/Confidential Informant for the Memphis Police Department Organized Crime Unit.

Witness by:

Alfredo Shaw 10-15
Signature Date

Sgt. P. Williams JR. 10-15-03
Contact Officer Date

Lt. RY Adams 10-15-03
Supervisor Date

Sgt. J. Griffin 10-15-03
Alternate Contact Officer Date

CI Number: 1069 Code Name: Take Wright Date: 10/15/03

Full Name: Shaw Alfredo Spouse's Name: _____
Last First Middle

Aliases: _____ SS#: -2864

Home Address: 1 week store Dr Home Phone: -5768
Street Address City State ZIP

Occupation: _____ Employer: _____
Name, Address, City, State

License: _____ State: _____ Veh: _____
Year Make Model Color/Description

Race: _____ Sex: _____ DOB: 6-6 POB: _____
YY-MM-DD City State

Height: 5'11 Weight: 190 Hair: BLACK Eyes: BLU Photos Attached:
Mandatory Front Right Profile

Scars/Tattoos/Other: _____

True Name Signature:

Code Name Signature:

- Alfredo Shaw
- Alfredo Shaw
- Alfredo Shaw
- Alfredo Shaw
- Alfredo Shaw

- Take Wright
- Take Wright
- Take Wright
- Take Wright
- Take Wright

Applicant

Is Is not

- A minor (under 18 years old, requires OCU Commander's approval)
- On federal or non-federal parole, probation or supervised release
- Working in a like capacity for any other law enforcement agency
- Active/inactive OCU CI (Prior Contact Officer _____)



Contact Officer: Sgt. Y. Wright JR 9511
Name IBM

Alternate: Sgt. J. Gifford 3162
Name IBM

Information Verification/Criminal History Checks - SCATS & NCIC must be completed before supervisor approval. Attach applicable printouts for criminal history, SCATS, NCIC, TN DMV and B of I photo.

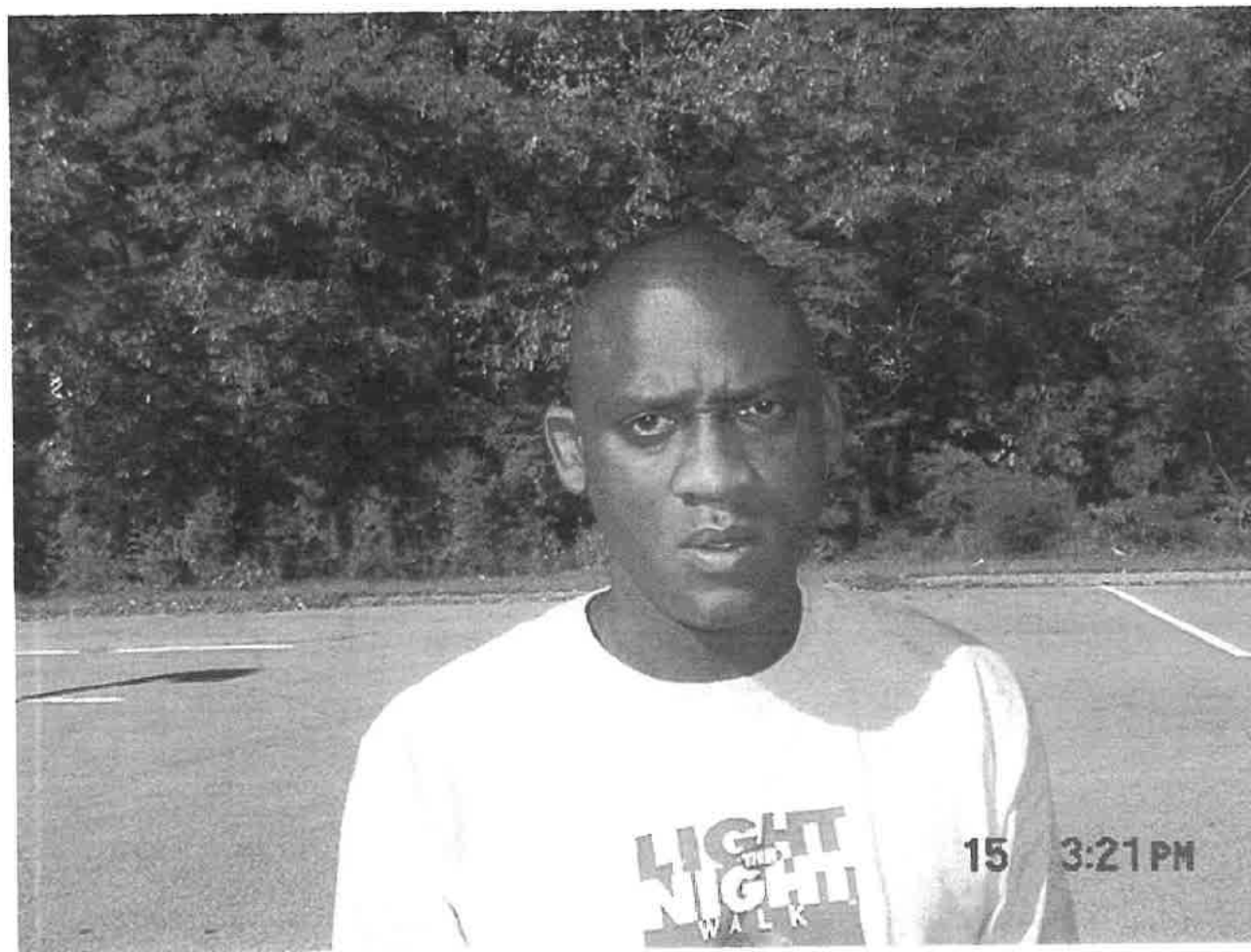
SCATS/local arrest check	<input type="checkbox"/> Positive	<input type="checkbox"/> Negative	By: _____	Date: _____
NCIC/Criminal History	<input type="checkbox"/> Positive	<input type="checkbox"/> Negative	By: _____	Date: _____
Parole/Probation Check	<input type="checkbox"/> Positive	<input type="checkbox"/> Negative	By: _____	Date: _____
TN DMV Photo	<input type="checkbox"/> Positive	<input type="checkbox"/> Negative	By: _____	Date: _____
OCU CI File Check	<input type="checkbox"/> Positive	<input type="checkbox"/> Negative	By: _____	Date: _____

Reviewed and Approved By:

St. R. Adams 10-15-03
Supervisor Date

Capt. J. Daniel 10-15-03
CI Coordinator Date

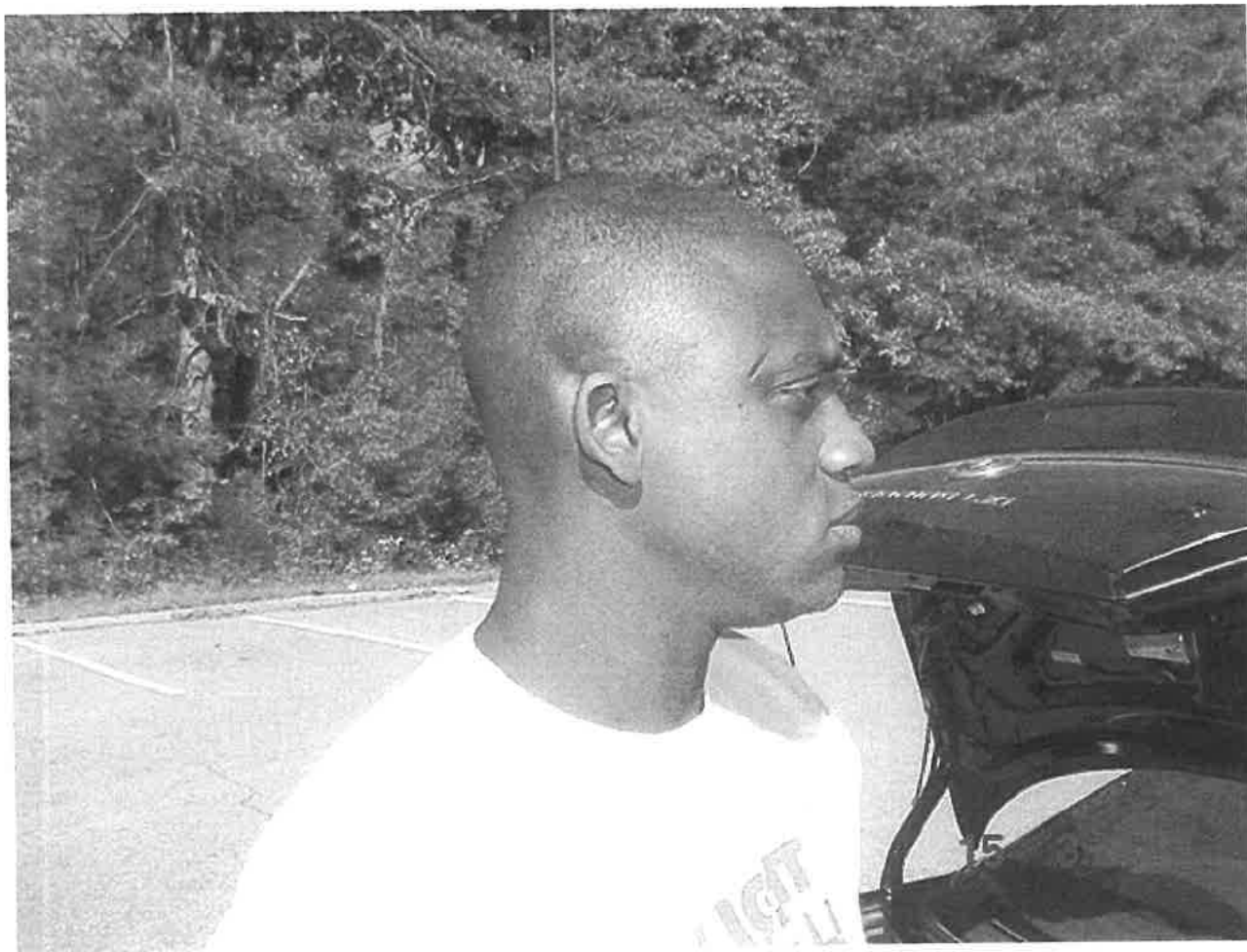
Document received by the TN Supreme Court.



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10/21/2003

by the TN Supreme Court.



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10/21/2003

by the TN Supreme Court.

Z AHIS#0008205206408376340169918662 38 01
 NEXT PAGE: *R&I:00082052 SCSD:00000000 MFD:00000000
 NAME:SHAW ALFREDO BERNARD S/R:M/B DOB 6*
 ADDR: GAITHER CV MPHS TN

DATE:091688 BOOKING#: 88260103 NAME:SHAW ALFREDO BERNARD
 TK BY/ON CHARGE GS/DISPOS CC/INDICT CC/DISPOS #BW #CBF NLT-NMT/LO
 01 SO/WT CR88251002/88214050
 02 SO/BS BURGLARY II BS/091688
 03 SO/BS THREATENING/COERCIN BS/091688

DATE:080188 BOOKING#:88214050 NAME:SHAW ALFREDO BERNARD
 01 SO/WT CR88183003
 BURGLARY II HS/080188 IN/063088 GF/110388 01 003 - SC
 GRAND LARCENY HS/080188 IN/063088
 AMEND BURGLARY II GF/110388 01 003 - SC
 REC/CON STOLEN PROP HS/080188 IN/063088
 AMEND BURGLARY II GF/110388 01 003 - SC
 (MORE ARREST TICKETS)

Document received by the TN Supreme Court.

Z AHIS#0008205206054391800169918711 36 02
NEXT PAGE. *R&I:00082052 SCSD:00000000 MPD:00000000
NAME:SHAW ALFREDO BERNARD S/R:M/B DOB: 66*
ADDR: GAITHER COVE MEMPHIS TN

DATE:042288 BOOKING#: 88113034 NAME:SHAW ALFREDO
TK BY/ON CHARGE GS/DISPOS CC/INDICT CC/DISPOS #BW #CBF NLT-NMT/LO
01 SO/WT GS88112078
THREATENING/COERCIN HS/060388 DW/120188

DATE:040488 BOOKING#:88095018 NAME:SHAW ALFREDO B
01 SO/WT GS88091003
BURGLARY II NF/050688

DATE:010588 BOOKING#:88005029 NAME:SHAW ALFAGEDO
01 SO/WT GS87356006
BURGLARY II HS/030388 IN/120288 GF/120888 003 - SC
(MORE ARREST TICKETS)

Document received by the TN Supreme Court.

*Z AHIS, *
NEXT PAGE, *R&I:00082052 SCSD:00000000 MPD:00000000
NAME:SHAW ALFREDO BERNARD S/R:M/B DOB: 66*
ADDR: GAITHER MEMPHIS TN

DATE:112186 BOOKING#: 86325058 NAME:SHAW ALFREDO BENARD
TK BY/ON CHARGE GS/DISPOS CC/INDICT CC/DISPOS #BW #CBF NLT-NMT/LO
01 SO/CV ATTEMPT TO COMMIT F CV/112186

DATE:041886 BOOKING#:86108019 NAME:SHAW ALFREDO BERNARD
01 MF/AC ATTEMPT TO COMMIT F HS/062786
AMEND BURGLARY I IN/071886
AMEND ATTEMPT TO COMMIT F GP/112186 002 - /SC
(NO MORE BOOKING NUMBERS THIS RNI NUMBER)

*Z SCW:

ASP#:86108036, RNI#:00082052,

NAME: LAST,SHAW , FIRST,ALFREDO , MID,BERNARD , SFX, .
 ADDR: ST NO, , DIR, . NAME,GAITHER COVE , SFX, , APT, .
 CITY,MEMPHIS , STATE,TN, ZIP,00000
 PHYS: HGT,511, WGT,165, HAIR,BLK, EYES,BRO, SKIN,DRK, RACE,B, SEX,M,
 BIRTH: CITY,MPHS , STATE,TN, DATE, 466,
 ***** CRIMINAL,CHARACTER,CODES: ARM, . DNG, . MIL, . SUJ, . RST, .
 SSN, , FBI,,938188EA7 , OPR LIC, . ST, .
 REMARK: ,HEART LEFT ARM
 ,BULLET HOLE RIGHT ARM PIT

WRNT: NO,GS89230110, DATE,081889, TP,SW, CT/DV,GS/12, CASE,00000000,00,
 NAME: LAST,SHAW , FIRST,ALFREDO , MID,BERNARD , SFX,
 ADDR: , ,GAITHER ,CO, ,
 ,MEMPHIS ,TN,
 ISSUING ST,TN, ISSUING COUNTY,SHELBY , INDICTMENT#,
 CHRGS:, ,39-3-1103 PETIT LARCENY

,***** NO ADDITIONAL WARRANTS FOR THIS INDIVIDUAL FOUND ON THE SYSTEM *****

Document received by the TN Supreme Court.

CI PAYMENTS FOR THIS MONTH

CI NUMBER OFFICER ISSUE DATE AMOUNT SPENT: RECEIPT 1

0	61	91/12/02	170.00	12261
584	5402	91/12/10	20.00	12324
584	5402	91/12/20	75.00	12422
600	1536	91/12/11	20.00	12342
600	1536	91/12/12	950.00	12364
600	1536	91/12/20	750.00	12421
600	1536	91/12/31	450.00	12445
637	5242	91/12/12	25.00	12357
678	1499	91/12/23	80.00	12424
678	3324	91/12/19	20.00	12407
758	9344	91/12/04	40.00	12293
758	9344	91/12/10	600.00	12332
1069	1536	91/12/05	20.00	12302
1188	655	91/12/02	40.00	12266
1188	1448	91/12/05	150.00	12303
1279	9344	91/12/11	25.00	12348
1293	3581	91/12/20	50.00	12420
1293	3581	91/12/31	60.00	12444
1345	8792	91/12/18	75.00	12393
1458	4662	91/12/04	50.00	12276
1573	8792	91/12/18	200.00	12392
1625	482	91/12/07	700.00	12313
1625	3324	91/12/13	20.00	12372
1625	9255	91/12/19	300.00	12411
1638	3134	91/12/17	75.00	12383
1678	694	91/12/06	75.00	12311
1678	694	91/12/10	500.00	12331
1678	694	91/12/17	75.00	12381
1694	663	91/12/11	800.00	12340
1708	3324	91/12/13	75.00	12369
1767	7291	91/12/13	125.00	12367
1768	694	91/12/04	75.00	12287
1774	482	91/12/13	20.00	12375
1792	482	91/12/20	400.00	12415
1810	655	91/12/18	50.00	12406
1817	3559	91/12/04	975.00	12291
1817	4350	91/12/13	40.00	12376
1819	9291	91/12/12	700.00	12365
1825	3134	91/12/04	20.00	12294
1841	2510	91/12/13	300.00	12370

9195.00S

40T

Document received by the TN Supreme Court.

99

ORGANIZED CRIME UNIT

CI-STATUS CHANGE

The following changes are to be made to the CI-FILE # 1069 effective immediately.

TERMINATION DATE: 12-11-91

WARNING: Kept money

STREET NAME: Bernard Shaw

TYPE OF INFORMANT: INFORMANT DEF/INFORMANT RESTRICT/INFORM

NAME: _____

HEIGHT: 5'11 WEIGHT: 157 HAIR COLOR: Br EYE COLOR: Br

SCARS: _____ TATTOOS: _____

ADDRESS: Stulken Cr HOME PH: 774 9484

CITY: Memphis STATE: Tenn WORK PH: _____

SECOND ADDRESS: _____

COMMENTS: Sept 475.10 on PC Benz

[Signature]

12/11/91

OFFICER SIGNATURE

DATE

MEMPHIS POLICE DEPARTMENT

ORGANIZED CRIME UNIT

INTER OFFICE MEMO

TO: LT. CHUCK BRYANT
FROM: SGT. C.L. HUFF
DATE: DECEMBER 11, 1991
SUBJECT: LOST BUY MONEY

ON 12-6-91, ALFREDO BERNARD SHAW, C/I #1069, WAS ISSUED \$475.00 ON RECEIPT #12309 FOR THE PURPOSE OF MAKING A P/C BUY FOR A SEARCH WARRANT. THE WRITER TOOK SHAW TO SOUTHWALL AND LAMAR WHERE THE C/I GOT OUT OF THE CAR AND WAS GOING TO WALK TO A HOUSE ON SOUTHWALL TO MAKE THE P/C BUY.

AS OF THIS DATE THE C/I HAS NOT RETURNED THE MONEY OR NARCOTICS BOUGHT WITH THE MONEY AND HAS NOT MADE ANY ATTEMPTS TO CONTACT THE WRITER OR THIS OFFICE.

AN OFFENSE REPORT WAS TURNED IN ON TODAY'S DATE, REPORT #9112113682 AND A WARRANT WILL BE OBTAINED FOR HIS ARREST.

MEMPHIS POLICE DEPARTMENT
ORGANIZED CRIME UNIT
INTER OFFICE MEMO

TO: LT. CHUCK BRYANT
FROM: SGT. C.L. HUFF
DATE: DECEMBER 11, 1991
SUBJECT: LOST BUY MONEY

ON 12-6-91, ALFREDO BERNARD SHAW, C/I #1069, WAS ISSUED \$475.00 ON RECEIPT #12309 FOR THE PURPOSE OF MAKING A P/C BUY FOR A SEARCH WARRANT. THE WRITER TOOK SHAW TO SOUTHWALL AND LAMAR WHERE THE C/I GOT OUT OF THE CAR AND WAS GOING TO WALK TO A HOUSE ON SOUTHWALL TO MAKE THE P/C BUY.

AS OF THIS DATE THE C/I HAS NOT RETURNED THE MONEY OR NARCOTICS BOUGHT WITH THE MONEY AND HAS NOT MADE ANY ATTEMPTS TO CONTACT THE WRITER OR THIS OFFICE.

AN OFFENSE REPORT WAS TURNED IN ON TODAY'S DATE, REPORT #9112113682 AND A WARRANT WILL BE OBTAINED FOR HIS ARREST.

Lacey Other

VICTIM INFORMATION

MORE?

Victim (L.F.M) Memphis Police Dept
Residence Address 247 1/2 Washington 1 1 ST
City/State/Zip Memphis Tenn
Business Name Organized Crime Unit
City/State/Zip

Sex Race Age
DOB Marital Status
Residence Phone
Bureau Victim to Call
Phone Ext
Identify Suspect?

Victim (L.F.M)
Residence Address
City/State/Zip
Business Name
Business/Other
City/State/Zip

Sex Race Age
DOB Marital Status
Residence Phone
Bureau Victim to Call
Phone Ext
Identify Suspect?

WITNESS INFORMATION

MORE?

Name (L.F.M) SHAW, Alfredo BENARD
Residence Address 1 Earthen CV
City/State/Zip Memphis Tenn
Business/Other
City/State/Zip

Sex Male Race Black Age 25
Residence Phone
Call Bureau ID Suspect?
Business Name
Phone Ext

Name (L.F.M)
Residence Address
City/State/Zip
Business/Other
City/State/Zip

Sex Race Age
Residence Phone
Call Bureau ID Suspect?
Business Name
Phone Ext

SUSPECT INFORMATION

MORE?

Name (L.F.M) Shaw Alfredo Benard
AKA (L.F.M)
Slang Nickname
Residence Address 1 Earthen CV
Business/Other
Hair/Length Short /Color BK /Style
Facial Hair/Color /Style
Complexion Demeanor General Appearance
Scars/Marks /Location /Description
Shirt/Blouse
Pants/Skirt
Accessories
Known/Related Victim? How How Arrested

Sex Male Race Black Age 25
DOB 1/6/66 Height 511 Weight 157
Marital Status
Residence Phone -9484
Phone Ext
Eyes Glasses?
Voice Speech Build

Multiple Suspects table with columns: Number, Black, White, Other. Rows for Male, Female, Group? Name.

SUSPECT VEHICLE

Make Model Style Year Color
License # License State Suspect Vehicle ID? Disposition
Features

Name (L.F.M)
AKA (L.F.M)
Slang Nickname
Residence Address
Business/Other
Hair/Length /Color /Style
Facial Hair/Color /Style
Complexion Demeanor General Appearance
Scars/Marks /Location /Description
Shirt/Blouse
Pants/Skirt
Accessories
Known/Related Victim? How How Arrested

Sex Race Age
DOB Height Weight
Marital Status
Residence Phone
Phone Ext
Eyes Glasses?
Voice Speech Build

Multiple Suspects table with columns: Number, Black, White, Other. Rows for Male, Female, Group? Name.

SUSPECT VEHICLE

Make Model Style Year Color
License # License State Suspect Vehicle ID? Disposition
Features

Document received by the TN Supreme Court.

M.O. INFORMATION

MORE? _____

Type of Business _____ Type of Structure _____
 Place of Attack _____ Description of Area _____
 Targets _____/_____ Security Used _____
 Point of Entry _____ Point of Exit _____
 Tools Used _____ How Tools Used _____
 How Entered _____ Weather _____ Lighting _____
 Weapon Used _____ Weapon Type _____
 Weapon Color _____ Weapon Size _____
 Suspect Actions _____/_____/_____
 Words Spoken _____

WORTHLESS DOCUMENT INFORMATION

MORE? _____

Type Instrument _____ Instrument No. _____ Date ____/____/____
 Card Company _____ Account Name _____ Color _____
 Signature _____ Bank Name _____
 Instrument Amount _____ Amount of Loss _____
 Preparation Method _____ ID Used _____
 Who Accepted Transaction (Victim/Complainant/Witness) _____

PROPERTY INFORMATION

MORE? _____

- | | | |
|------------------------------------|---------------------|------------------------|
| 01 Currency | 06 Firearms | 10 Livestock |
| 02 Jewelry, Precious Metal | 07 Household Goods | 11 Miscellaneous |
| 03 Clothing | 08 Appliances | 12 Musical Instruments |
| 04 Office Equipment | 09 Consumable Goods | 13 Sporting Goods |
| 05 TV, Stereo, Radio, Camera, etc. | | |

Property Code 01 Item Type Cash Item Description Cash
 Color _____ Brand Name _____ Model # _____ Serial # _____
 Unit/Measure _____ Size _____ Quantity Taken _____ \$\$ Taken _____ \$\$ Recovered _____

Property Code _____ Item Type _____ Item Description _____/_____
 Color _____ Brand Name _____ Model # _____ Serial # _____
 Unit/Measure _____ Size _____ Quantity Taken _____ \$\$ Taken _____ \$\$ Recovered _____

Property Code _____ Item Type _____ Item Description _____/_____
 Color _____ Brand Name _____ Model # _____ Serial # _____
 Unit/Measure _____ Size _____ Quantity Taken _____ \$\$ Taken _____ \$\$ Recovered _____

Property Code _____ Item Type _____ Item Description _____/_____
 Color _____ Brand Name _____ Model # _____ Serial # _____
 Unit/Measure _____ Size _____ Quantity Taken _____ \$\$ Taken _____ \$\$ Recovered _____

Property Code _____ Item Type _____ Item Description _____/_____
 Color _____ Brand Name _____ Model # _____ Serial # _____
 Unit/Measure _____ Size _____ Quantity Taken _____ \$\$ Taken _____ \$\$ Recovered _____

NARRATIVE INFORMATION

MORE? _____

On 12-6-91 the above described MIB who is a CT for Memphis Police Org. Crime Unit was assigned \$475.00 on Rec 12304 for the purpose of making a valuable cause. The SA took the property has just returned the money or has not tried to contact this office as of this date.

Document received by the TN Supreme Court.

EXHIBIT 28

Affidavit of Dr. O.C. Smith

AFFIDAVIT OF DR. O'BRIAN CLEARY SMITH

Comes now the affiant, after being duly sworn and hereby states the following:

1. I am the Medical Examiner and forensic pathologist responsible for the autopsies on the victims in Tony Carruthers' and James Montgomery's trial in which I testified to certain facts including, but not limited to, the fact that the victims were alive at the time of the burial. This opinion was formed on the basis of the facts that dirt was contained in the airway of one victim and the presence of active bleeding (as signs of life) in the multiple injuries of the other two victims. These injuries are gunshot wounds that would not have been immediately lethal, as well as blunt force injury patterns of the type expected from one person falling atop another, and further compressed by the overburden of the grave and its contents above. The bleeding patterns associated with these injuries were interpreted by me as signs of active bleeding and hence as signs of life.

2. In that regard, and since that time I have continued to observe and be involved in like and similar circumstances and I have also researched the medical literature and found it devoid of any peer-reviewed scientific articles specifically referencing the effects of post-mortem pressures upon a corpse and its ability to mimic active bleeding as a sign of life. Neither have I had opportunity to conduct research of this nature myself. The cadaver research I have conducted in the recent past has shown me that other interpretations of signs of life; such as the "line of vital reaction" and blister formation in burn victims does, in fact occur in dead cadavers as well, hence, they are no longer reliable signs of being alive at the time of the fire. Additionally, further research conducted by myself and others have shown that another well-established concept in

forensic pathology, such as human heads exploding due to the effects of fire, simply does not occur.

3. Given the above, requiring evidence-based medicine and through an abundance of caution, I will no longer sustain an opinion, as I did in my original testimony, that to a reasonable degree of medical certainty, the victims were in fact alive at the time they were buried beneath the coffin. The absence of probative research on these issues, must by default, create the opportunity for an alternative hypothesis to explain the appearance of active bleeding as a sign of life, when in fact life is absent.

4. I have addressed this issue with Bobby Carter of the Shelby County Attorney General's Office in regard to a retrial of James Montgomery and believe this lead to a plea agreement.

Signed this the 3rd day of April, 2007.



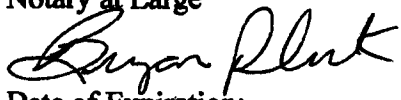
O.C. SMITH, MD

City of Memphis
State of Tennessee

Before me a Notary Public, personally appeared the person known to me to be O.C. Smith, and who after being duly sworn made oath that the foregoing statements were true to the best of his information, knowledge, and belief and who did in my presence affix his signature in attestation thereof.

Notary at Large

Date 4/04/07



Date of Expiration:

3/11/2008

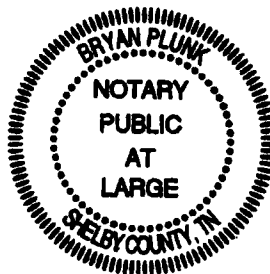


EXHIBIT 29

Testimony of Dr. Cleland Blake
and Dr. George Nichols

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IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
THIRTIETH JUDICIAL DISTRICT OF MEMPHIS
DIVISION 6

TONY CARRUTHERS,)
Petitioner,)
vs.) CASE NO.: P-259491
THE STATE OF TENNESSEE,)
Respondent,)

PETITION FOR POST-CONVICTION RELIEF
AUGUST 29TH - 31ST, 2005
VOLUME 1 OF 24

Volume 1 of 20 Volumes
THE HONORABLE WALTER C. KURTZ, PRESIDING JUDGE

APPEARANCES

FILED 5-16-06
WILLIAM R. KEY, CLERK
BY [Signature] D.C.

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Memphis, Tennessee 38103

Reported by
Fay Stinson
Court Reporter

FILED
JUL 05 2006
Clerk of the Courts
Rec'd By _____

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IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
THIRTIETH JUDICIAL DISTRICT OF MEMPHIS
DIVISION 6

TONY CARRUTHERS,)
Petitioner,)
vs.) CASE NO. P-25948
STATE OF TENNESSEE)
Respondent,)

This cause came on to be heard and was heard on the 29th day of August, 2005, before the Honorable Walter C. Kurtz, Judge, holding Criminal Court for Shelby County at Memphis, Tennessee.

The following proceedings were had, to wit:

* * * * *

THE COURT: Well, I know we don't have the petitioner yet, but let's just sort of use this time as a kind of a pretrial conference. If counsel for the petitioner can just sort of let me know where we're going here, how much time you think it's going to take and then the state can sort of give me an idea as well.

MR. RAMSEY: Your Honor, we think that our proof will take about two and a half days would be our best guess. We've worked out some matters by

1 stipulation with the state. We probably can work out
2 some more and try to streamline putting the proof in and
3 then we would anticipate the state putting on whatever
4 proof it has after that.

5 THE COURT: Okay. Mr. Campbell, how much
6 proof do you think you're going to have time wise?

7 MR. CAMPBELL: It's going to depend on what I
8 hear. I may not have anything to put on. It just
9 depends on -- unless there's something raised I feel
10 needs it, but I don't -- I'm just really going to have
11 to hear what their proof is. But at this point I can't
12 tell the Court. It depends on what I hear.

13 And I did -- this is the record from Jackson,
14 Your Honor, I brought it in if we need it. If Your
15 Honor is going to maybe want it. I think all of the
16 exhibits are in there too.

17 THE COURT: Well, we had a couple of loose
18 ends that had come up in the last 10 days. The motion
19 related to the potential witness in the federal
20 institution in Louisiana and the issue of the juror.
21 Mr. Thomas, you want to speak to either one of those
22 sort of loose ends? Or are there any other loose ends
23 that I am unaware of?

24 MR. THOMAS: Your Honor, has heard of Juror
25 127?

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THE COURT: Yes.

MR. THOMAS: Yeah. We have her under subpoena for sure. And we've communicated to her through the Court's law clerk that she was not -- she did not have to worry about being here today because of her surgical procedure that she had corresponded with Mr. Copeland about. I mean, I guess if push -- I mean, this is obviously the worse -- the least desirable scenario, but if we can't communicate with her by phone, I guess there is the service of the Sheriff's Department to avail, to possibly avail ourselves of. We've never had any ability to communicate with her by telephone.

THE COURT: Okay. Mr. Campbell, I think you had a phone conversation with her, and then I'll tell you what my law clerk was able to discover.

MR. CAMPBELL: She called me I guess it was on Thursday, maybe Wednesday or Thursday. I can't remember which day it was and was concerned -- apparently she talked with Mr. Copeland and Mr. Copeland gave her my name. So she called me and as a told her, I can't do anything about a subpoena. She's subpoenaed for the petitioner. But that she needed to talk to them and see about trying to make some kind of an arrangement. And when I talked to Mr. Thomas, apparently their feeling was that they would work with her at any time this week

1 that she could come in. That would be fine. And as far
2 as I'm concerned, that seemed to settle everything. I
3 have not talked to her myself since that time. But I
4 was hoping that may be would have been resolved and we
5 would either have her later in the week or if it became
6 a point where she couldn't get down here, I mean, I
7 don't mind holding her if necessary even by deposition
8 later. But, I mean, it's not -- I don't think it's
9 going to be that big a problem down the road even if she
10 can't make it this week.

11 THE COURT: Okay.

12 MR. THOMAS: Your Honor, certainly there have
13 got to be other ways of dealing with it. I think she
14 is a witness that in our judgment the Court would really
15 need to observe her for reasons that I won't go into.
16 So that a deposition would not be satisfactory.

17 THE COURT: Well, after my office was
18 contacted, I guess this came up while I was in New
19 Orleans. Actually, my law clerk called me. But he was
20 able to -- I told him to try to communicate with Juror
21 127 and tell her that, given what I thought was just a
22 minor surgery, that we'd be glad to accommodate her by
23 hearing from her either on Wednesday or Thursday
24 morning. But he couldn't find a phone number for her,
25 and I believe -- you don't have --

1 MR. CAMPBELL: Well, I can't find the number
2 she gave me. Apparently I accidentally filed it back in
3 one of those boxes and I was trying to find it and I
4 couldn't find it. But I didn't think she was going to
5 be this hard to locate.

6 THE COURT: Well, he got the latest number ,
7 from the clerk and left a message on her answering
8 machine that we would accommodate her and would be glad
9 to hear from her either Wednesday or Thursday morning,
10 but nobody has heard from her. And so maybe later in
11 the day we can try to have the deputy clerk call that
12 number again and see if we can confirm some
13 communication with her. That's probably the best we can
14 do. And if we somehow lose her and you all convince me
15 she is necessary, you know, I guess I can hear from
16 her another time or if you think I've just go to view
17 her, we could do a video deposition of her.

18 MR. THOMAS: Yeah, I hadn't thought about
19 that.

20 THE COURT: We'll work something out. What do
21 we know about -- is he here? We can bring him in then.

22 (Defendant present.)

23 MR. THOMAS: One comment to make about Juror
24 127 that's a matter of record is that she is the one who
25 returned the questionnaire with -- affirming that there

1 had been some discussion about Juror 121 living close by
2 the Carruther's family during the trial. So she is --
3 that's one reason we consider her significant.

4 THE COURT: Okay. I might add, you sent me a
5 couple of very last minute ex parte orders which I have
6 signed and I'll give to the clerk during the next break.

7 MR. THOMAS: Well, one of them of course, one
8 of them, Judge, we -- only came up recently and the
9 other one came up as I was, you know, kind of trying to
10 figure out where we stood with -- in the account with
11 one of the experts. So I apologize for any belatedness
12 that it was.

13 THE COURT: That's okay. I wanted to let you
14 know that I signed them.

15 MR. THOMAS: Okay. Thank you. And Your Honor
16 wanted to hear from me about Mr. Holmes. The juror --
17 not the juror -- the federal inmate in Pollock,
18 Louisiana.

19 THE COURT: Why, may not be the right word,
20 but if you want to speak to the record about that --

21 MR. THOMAS: Well, I don't know that I can add
22 a whole lot more to what we put in our papers right now.
23 We would like to hope that the Court might be willing to
24 reconsider the situation with Mr. Holmes as we get
25 further into the proceeding. I had tried to contact --

1 I mean, I was willing, you know, our firm has made a
2 commitment to, you know, we're not going to spare any
3 expense here. And I was willing to go down to Pollock
4 and interview him. And I had correspond -- I sent him a
5 letter in early June to which I received no response,
6 and then I made a renewed effort in July. His counselor
7 got me on the phone with him. And Mr. -- as I recited
8 in our papers, Mr. Holmes said he didn't want to talk to
9 me down there.

10 So I was -- so in terms of the factual showing
11 that I could make to the Court in our papers I was, you
12 know, I was limited. And we had this transcript of this
13 interview that had been done by an investigator back in
14 '96.

15 THE COURT: I read it.

16 MR. THOMAS: But as I, you know, as I
17 acknowledged in our papers, it was such a bad interview
18 that you couldn't tell what, if anything, Mr. Holmes
19 might have to say.

20 THE COURT: Well, there was also an offer of
21 proof by Mr. Holmes.

22 MR. THOMAS: There was that, but he was cut
23 off. I mean, there was what as we pointed out in our
24 favor, even though he was here in the courtroom, the
25 trial judge cut off the offer of proof so ...

1 THE COURT: Well, as I said in the order, I'm
2 unwilling to order a federal prisoner either by Writ of
3 Habeas Corpus Ad Testificandum or by agreement between
4 the sheriff and the Federal Bureau of Prison under the
5 regulations up here to Shelby County just for the
6 purposes of discovery. And I didn't think that the
7 offer of proof was sufficient to convince me that he was
8 a necessary witness given the record in the case. I
9 also might add, that if it's Mr. Holmes' concerns about
10 not wanting to be interviewed down in Louisiana, strike
11 me as a bit odd given the fact that his fellow inmates I
12 would think would be just as curious if he was shipped
13 up here to Shelby County for some mysterious reason as
14 they would if a lawyer came from Nashville to talk to
15 him in private.

16 I might also add that the Bureau of Prisons, I
17 believe, would be willing to allow his testimony by
18 audio, an audio facility, that they have available where
19 Mr. Holmes would be put in a room with a microphone in
20 isolation and could then testify by phone.

21 MR. THOMAS: Yes, sir, Your Honor. And that
22 was Your Honor's suggestion. And Mr. Morris -- Mr.
23 Morris contacted some folks down at Pollock and was told
24 that that particular institution doesn't have that
25 capacity.

1 THE COURT: Well, I don't believe that that's
2 true. They don't have video capacity, but they do it by
3 phone. But, anyway, the record ought to show that Mr.
4 Carruthers is now in the courtroom. Okay. Short
5 opening statements.

6 (Defendant present.)

7 MR. THOMAS: Yeah, Your Honor. I guess in
8 terms of what we're going to focus our live proof on in
9 the next few days, it's -- I guess it's going to be --
10 can we ask for the Rule while we're -- I don't guess
11 we've called anybody yet.

12 THE COURT: You can. All of the potential
13 witnesses should step into the hallway. You'll be
14 called when it's your turn to testify. Please do not
15 talk about your testimony with anyone except the lawyers
16 in the case. And I know for on-call witnesses the --
17 counsel will cooperates in seeing that the Rule is
18 enforced.

19 MR. THOMAS: Yes. Our first witness, Dr.
20 Blake, is in the courtroom. I assume it will be all
21 right for him to stay.

22 THE COURT: Yes, unless opponent wants him out
23 during the opening statements.

24 MR. CAMPBELL: That's okay, Your Honor.

25 MR. THOMAS: In terms of the proof we're

1 planning to put on this week, Your Honor, it revolves --
2 it revolves around four issues. And these aren't the
3 only issues in the case by any means, but these are the
4 ones that we've concluded we needed live evidence on.

5 THE COURT: Well, you've got a 123 page
6 petition here so there are many, many issues.

7 MR. THOMAS: Well, I think -- I wouldn't
8 challenge the proposition that the petition is somewhat
9 repetitious at points.

10 THE COURT: Okay.

11 MR. THOMAS: But we were going to be putting
12 on proof of ineffective assistance of counsel both at
13 the pretrial phase and I underscore the term pretrial
14 because of the fact that the -- given the holding of the
15 Court, the Supreme Court, that Mr. Carruthers cannot
16 himself have been ineffective within the Sixth Amendment
17 sense of proceeding pro se. And then we also have the
18 issue ineffective assistance of counsel on appeal which
19 will require a bit of evidence. Then subsumed within
20 the issues (indiscernible) we have just for the Court's
21 to give -- to let you know where we're going, we have
22 subpoenaed all six of the -- of the lawyers who had
23 represented including one lawyer/investigator who
24 represented Mr. Carruthers prior to trial as well as two
25 of the appellant counselors.

1 Now, subsumed within the issue of the
2 ineffective assistance and particularly within the --
3 on the issue of ineffective assistance on appeal, we're
4 saying that counsel was ineffective for failing to raise
5 the anonymous jury issue. That's not going -- that's
6 essentially a matter of record and it won't require very
7 much in the way of live evidence.

8 The second thing we're saying or that we're
9 underscoring on ineffective assistance of counsel on
10 appeal, is the failure of appellant counsel to make an
11 issue out of the Trial Court's handling of the
12 (indiscernible) defense forensic pathologist expert, Dr.
13 Blake. And we have Dr. Blake here to testify. And we
14 also have a forensic pathologist from Louisville,
15 Kentucky who will be our second witness, Dr. George
16 Nichols on that issue.

17 The third issue that we're going to be putting
18 live evidence on concerns the failure of appellant
19 counsel to make an issue about the Trial Court's failure
20 to conduct an inquiry when it developed during the
21 course of the trial that one of the anonymous jurors
22 lived literally two doors down from the Carruthers'
23 family.

24 THE COURT: And that was Juror --

25 MR. THOMAS: 121. And since he's not

1 anonymous, it's Mr. Adams who's outside the courtroom
2 today. There was a Motion for a Mistrial. There was --
3 counsel for Mr. Montgomery made a Motion for a Mistrial
4 when it was -- when it finally came out that we were
5 talking about that kind of proximity between Juror 121
6 and the Carruthers' family which the Trial Court denied.
7 But we're saying that that was an issue that should have
8 been factually developed in the context of the Motion
9 for a New Trial and then proceed on direct appeal.
10 Unless Mr. Ramsey has anything to add.

11 MR. RAMSEY: I can't think of anything.

12 MR. THOMAS: Oh, whoa, whoa. I'm sorry. And
13 then the late breaking issue, we -- as the Court's
14 aware, we very recently obtained a copy of a DNA
15 forensic testing report from the Bodie Technology Group
16 through Mr. Montgomery. And we have made arrangements
17 to have that lab technician or the -- whatever his title
18 is, testify tomorrow morning.

19 THE COURT: All right.

20 MR. THOMAS: And, again, that would go --
21 that would go to the issue of ineffective assistance of
22 counsel pretrial.

23 THE COURT: Mr. Campbell, anything you'd like
24 to say before we start?

25 MR. CAMPBELL: No, Your Honor.

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THE COURT: All right. First witness then, please.

MR. THOMAS: Your Honor, our first witness is Dr. Cleveland Blake.

THEREUPON:

DR. CLEVELAND BLAKE

was called, and upon first being duly sworn, was examined and testified as follows on:

MR. THOMAS: Let me give the witness a moment to get his -- if I may, Your Honor.

THE COURT: Sure.

VOIR DIRE

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Dr. Blake, are you ready to proceed?

A. Yes, I am.

Q. Could you state your name please, sir?

A. I'm Dr. Cleveland Blake.

Q. And where do you reside Dr. Blake?

A. 1439 Central Church Road, Morristown.

Q. And since we don't have a jury here and in the interest of expeditating matters, it's my understanding -- it's my understanding that you're Board Certified in the areas of forensic pathology, clinical

1 pathology and anatomical pathology; is that correct?

2 A. That's correct.

3 Q. Let me hand up to you what we'll mark for
4 identification as Petitioner's Exhibit 1 and ask if you
5 can identify this please, sir.

6 A. This is an up-to-date copy of my curriculum
7 vita.

8 MR. THOMAS: And if -- and I would like to go
9 ahead and offer Exhibit 1 into evidence if I may.

10 THE COURT: All right.

11 MR. THOMAS: I'd also like to tender -- I'd
12 also like -- I don't know how the Court normally handles
13 expert witness issues, but I'd like to tender Dr. Blake
14 as an expert in the fields that I have just recited.

15 THE COURT: Well, Mr. Campbell is probably
16 familiar with his credentials and so -- any need to
17 voir dire him on that, Mr. Campbell?

18 MR CAMPBELL: No, Your Honor.

19 THE COURT: Okay.

20 **DIRECT EXAMINATION**

21 **BY MR. THOMAS:**

22 Q. Dr. Blake, could you --

23 COURT REPORTER: Could I have one moment?

24 DEPUTY: She needs to mark this.

25 MR. THOMAS: I'm sorry. I'm sorry. And, Your

1 Honor, I was -- in speaking with Mr. Ray Beck, we talked
2 about the handling of exhibits and his suggestion was
3 that we just number them as we enter them. We haven't
4 tried to prenumber them or anything.

5 THE COURT: Okay. That will be fine.

6 (Exhibit 1 marked and entered.)

7 BY MR. THOMAS:

8 Q. If you could pass it up to Dr. Blake. Dr.
9 Blake, can you estimate for us approximately how many
10 autopsies you've performed over the course of your
11 career?

12 A. Somewhat over 6,000.

13 Q. And, Dr. Blake, over the course of your
14 career, did you have an affiliation with the Tennessee
15 Bureau of Identification?

16 A. Yes, I did for 22 to 24 years.

17 Q. And were you actually commissioned by the
18 Tennessee Bureau of Identification in some capacity?

19 A. Yes, I was.

20 Q. And could you tell the Court a little bit more
21 about the nature of the work you did for the TBI over
22 the course of your career?

23 A. I was commissioned by the then director of the
24 TBI, Mr. Arzo Carson, (phonetically) the founder of the
25 independent TBI for teaching and for working with the

1 agents in the field, death scene investigation, teaching
2 in Nashville at the head quarters, special class
3 teaching, and all fields of death scene investigation.
4 And that went on for about 22 years.

5 Q. And did there come a point in time when you
6 were no longer commissioned by the TBI?

7 A. Yes.

8 Q. And approximately when was that? The specific
9 date is not critical?

10 A. Five or -- six to eight years ago. Six years
11 ago.

12 Q. So 1999, 2000?

13 A. In that time, yes.

14 Q. But in the year 1996 you would have been --
15 you still would have been a commissioned -- you would
16 have had a professional relationship with the Tennessee
17 Bureau of Identification?

18 A. Yes, I would.

19 Q. Now, let me ask you to turn to Page 4 of your
20 C.V. which is Exhibit 1.

21 A. Yes, sir.

22 Q. And I'll just note very quickly that there are
23 three -- you make three references to your professional
24 relationship with the TBI from 1978 to September 2001,
25 from 1982 to 1992 and from 1992 to September 2001. Do

1 you see those?

2 A. Yes, I do.

3 Q. Now, I take it you've probably testified in a
4 large number of criminal trials over -- or criminal
5 proceedings over the years?

6 A. Quite a few.

7 Q. In general, has your testimony generally been
8 -- have you more often than not testified for the
9 prosecution in these criminal trials?

10 A. That's correct.

11 Q. Any estimation of the break down between times
12 you've testified as a prosecution witness and the times
13 you've testified as defense witness?

14 A. Six or seven to one.

15 Q. Now, directing your attention, Doctor, to late
16 February 1996, did you receive a call from Judge Joe
17 Dailey here in Memphis about the Tony Carruthers and
18 James Montgomery case?

19 A. Yes, sir, I did.

20 Q. Have you ever spoken with or even heard of
21 Judge Dailey before this?

22 A. No, I had not.

23 Q. Have you done very much work in Shelby County
24 before 1996?

25 A. A few cases.

1 Q. Had you ever appeared in the Shelby County
2 Criminal Courts that you recall before 1996?

3 A. Yes, I have.

4 Q. About how many cases? Any idea? I'm sorry.
5 I didn't really --

6 A. Three or four.

7 Q. Now, what was Judge Dailey calling you about?

8 A. Judge Dailey called me about reviewing some
9 records on a case that I knew nothing of before I
10 started studying and to write an opinion which turned
11 out to be a three-page opinion answering the basic
12 questions as I saw it from the records that were
13 presented.

14 Q. Okay. So what was the up-shot -- and what was
15 the up-shot of your conversation with Judge Dailey?
16 What was the next step?

17 A. I had correspondence with him on the 2nd of
18 April '96, and the 19th of April '96. In between those,
19 I had tendered him my opinion which is a three-page
20 document that's probably in the record.

21 Q. Yes, sir. Let me tender to you what we'll
22 mark for identification as Petitioner's Exhibit 2. And
23 I'll ask you if you can identify that exhibit for us,
24 Doctor?

25 A. Yes, I can.

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Q. And how would you describe it?

A. It's a communication between Judge Joseph Dailey and myself concerning the informed -- concerning Mr. Carruthers.

MR. THOMAS: And if we may, Your Honor, I'd like to go ahead and offer Exhibit 2 into evidence.

THE COURT: All right.

Q. And I see in the first sentence of the letter from Judge Dailey that he refers to having received your fax of yesterday which would have been February 27. Do you have any recollection of what you would have -- I'm sorry. I need to slow down.

MR. THOMAS: We need to mark the exhibit.

(Exhibit 2 marked and entered.)

BY MR. THOMAS:

Q. Dr. Blake, you have Exhibit 2 there in front of you?

A. Yes, I do.

Q. And I see in the first line of Exhibit 2 that Judge Dailey refers to the fax he received from you yesterday. Do you have any recollection of what you would have faxed to Judge Dailey on February 27, '96?

A. Yes. That would have simply been my agreement to review the material and provide a report.

Q. What about perhaps your curriculum vita?

1 A. I would think so.

2 Q. Now, did you subsequently -- and I think
3 you've already referred to this, but did you
4 subsequently receive some additional materials from
5 Judge Dailey?

6 A. Yes, I did, on April the 2nd and April the
7 19th.

8 Q. Let me -- we're not -- let me back up for a
9 moment, Dr. Blake. I believe there was actually some
10 more -- because I want to focus on the material that
11 Judge Dailey supplied to you before you -- before you
12 generated your report of April 1st and the letter of
13 April 19th. And let me hand up to you what we'll mark
14 for identification as Petitioner's Exhibit 3. Can you
15 identify that for us please, Doctor?

16 A. Yes. This is a letter to me from Judge
17 Dailey telling me what would be supplied.

18 Q. And he talks about a letter from Mr. Jerry
19 Harris, the lead prosecutor in the case, along with the
20 autopsy reports on each of the three victims; correct?

21 A. That's correct.

22 MR. THOMAS: And I may have got ahead of
23 myself, but I'd like to offer Exhibit 3 into evidence
24 for the petitioner.

25 THE COURT: All right.

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(Exhibit 3 marked and entered.)

MR. THOMAS: Your Honor, would Your Honor like to be handed courtesy copies of the exhibits as we go along?

THE COURT: I would if you have them.

MR. THOMAS: Let's see. We can -- well, we need to make one more round I guess. We can do that after lunch I guess. Because these are marked up unfortunately.

BY MR. THOMAS:

Q. Let me hand you, Dr. Blake, what we'll mark for identification as Petitioner's Exhibit 4.

MR. THOMAS: I have a suggestion, Your Honor, if the witness could hand up the exhibits after we're through discussing them, I guess that might serve the same.

THE COURT: Okay.

BY MR. THOMAS:

Q. And can you identify Exhibit 4 there, Dr. Blake?

A. It's a letter from Jerry Harris to Judge Dailey indicating that the attached autopsy on the three victims, photographs, autopsy reports, and the crime scene video, was to him naming the victims, one, two and three, some facts about a vehicle that was found burned

1 in Mississippi, and the missing person's reports which
2 were submitted, and then how the bodies were discovered
3 and when and where.

4 Q. And Mr. Jerry Harris is who?

5 A. Assistant District Attorney General.

6 Q. Of Shelby County?

7 A. Yes.

8 Q. And this is a copy of a letter from your file;
9 correct?

10 A. Yes, it is.

11 MR. THOMAS: And I'd like to go ahead and
12 introduce Petitioner's Exhibit 4, Your Honor.

13 THE COURT: All right.

14 (Exhibit 4 marked and entered.)

15 **BY MR. THOMAS:**

16 Q. Let me go ahead and hand up collectively what
17 we'll mark as Petitioner's Exhibits 5, 6, and 7 which I
18 represent are copies of the copies of the autopsy
19 reports. Exhibit 5 is the Anderson report. Here's a
20 copy. Marcellos Anderson, that's Exhibit 5. Exhibit 6
21 will be the autopsy report for Fredrick Tucker. And
22 Exhibit 7 will be the autopsy report for Delores
23 Anderson. Dr. Blake, it's a fair amount of paper, but
24 I have one simple question, are those copies of the
25 autopsy reports that you received from Judge Dailey from

1 your file?

2 A. Yes, sir, they are.

3 Q. And if you would, Doctor, just take a minute.
4 Are the handwritten notations that appear on the copies,
5 are those your handwritten notations or somebody else's
6 or a combination? If you could take just a moment?

7 A. There are original handwritten notes on the
8 diagrams of each of these. Those are put on there by
9 those who performed the autopsies. And the notes on the
10 front sheet are some of my notations. That's on the
11 case of Marcellos Anderson. The notes on the front
12 sheet which is called the autopsy report are my
13 writings, and there appears to be a copy of my
14 highlighting for the purposes of processing these. All
15 of the small handwriting on the diagrams, that's from
16 those who prepared the original autopsy report. I'm
17 referring to the Autopsy 140 which is Mr. Fredrick
18 Tucker.

19 Q. And that's Exhibit 6?

20 A. That's right, sir. And the microscopic
21 summaries, there's quite a bit of highlighting by myself
22 and a very few words or other marks on that one.
23 Autopsy 141 is that of Delores Anderson. Under cause of
24 death on the front sheet there's some writing by me.
25 And the notes at the bottom, those are all my

1 handwriting at the very bottom of that front sheet.
2 Otherwise it's highlighting and small handwritten, small
3 lettering of the handwriting of the different comments
4 on the diagram sheets.

5 Q. So if I may summarize, the handwriting that
6 appears on what you're referring to as the diagram
7 sheets, were how the documents arrived in your office?

8 A. That's correct.

9 MR. THOMAS: Your Honor, at this time I'd like
10 to go ahead and introduce or offer Petitioner's
11 Exhibit 5, 6 and 7 into evidence.

12 THE COURT: All right.

13 (Exhibits 5, 6 and 7 marked and entered.)

14 DEPUTY: They've already been marked.

15 MR. THOMAS: They've already been marked.

16 Thank you.

17 A. The handwriting on the bottom of the
18 microscopic summaries, the first page of the microscopic
19 summary, that is my handwriting.

20 Q. On the Delores Anderson report?

21 A. Delores Anderson, yes.

22 Q. Exhibit 7?

23 A. Yes. That's correct.

24 Q. Doctor, do you want to go ahead and hand those
25 exhibits up to Judge Kurtz. Now, you may have -- this

1 may be a little bit repetitious. But what did you do?
2 So you received from Judge Dailey the letter from Mr.
3 Harris and the three autopsy reports; correct?

4 A. That's essentially it.

5 Q. And anything else that you received from Judge
6 Dailey before you prepared your April 1, letter?

7 A. No. I think that's it.

8 Q. Okay. Did you ask Judge Dailey for any
9 additional material before your April 1, report that you
10 can remember?

11 A. I told him that I would like to see the
12 microscopic slides which I haven't seen. But I also
13 pointed out to him that the description of the
14 microscopic findings would be essentially the same as
15 what I would do because the one who prepared those and I
16 were singing from the same song book because of our
17 training and our experience.

18 Q. Now, I think you've already referred to your
19 report and this was one, Your Honor, that we do have a
20 preexisting clear copy of. Let me hand up to you what
21 we'll marked for identification as Petitioner's Exhibit
22 9.

23 COURT REPORTER: This would be 8.

24 MR. THOMAS: I'm sorry. This is Exhibit 8. I
25 got ahead of myself.

1 Q. Petitioner's exhibit -- and ask if you can
2 identify Petitioner's Exhibit 8 for us please, Dr. Blake?

3 A. That's a copy of my April 1, 1996 response to
4 the case.

5 MR. THOMAS: And Your Honor, I would note for
6 the record that this -- the three-page letter dated
7 April 1, 1996 appears in the technical record at Pages
8 703 through 705. And I would at this time offer
9 Petitioner's Exhibit 8 into evidence.

10 THE COURT: All right.

11 (Exhibit 8 marked and entered.)

12 **BY MR. THOMAS:**

13 Q. If you can hand Exhibit 8 back to the witness
14 please, sir. Let me just in passing, Dr. Blake, on the
15 top of Page 1 in your letterhead, I see that in your
16 letterhead you identify yourself as a forensic pathology
17 consultant to the TBI. Do you see that?

18 A. Yes, I do.

19 Q. And before you had prepared -- and so you sent
20 as evidenced by the fax transmittal sheet, that's the
21 first page of Exhibit 8, you sent this report directly
22 to Judge Dailey in the first instance; correct?

23 A. That's correct, on April 1.

24 Q. And before you had prepared your April 1, 1996
25 report, Exhibit 8, had you had any communications

1 whatsoever with Mr. Tony Carruthers?

2 A. No, I did not.

3 Q. Have you ever spoken with Mr. Tony Carruthers?

4 A. No, I have not.

5 Q. Is this the first time you have seen Mr. Tony
6 Carruthers?

7 A. That's correct.

8 MR. THOMAS: And, Your Honor, I don't want to
9 -- I know we don't have a jury here, but if the Court
10 would indulge me and ask Dr. Blake to read the short
11 paragraph that appears on Page 3 towards the bottom of
12 the page, in summary. Would you mind reading that for
13 us, Dr. Blake?

14 A. In summary it would appear that the two black
15 males were killed somewhat before the female who
16 disappeared later. All three of the victims having
17 their lives snuffed out well before an adequate time to
18 place them and conceal their bodies in the bottom of
19 the already prepared burial site before Daniel's casket
20 and vault were placed in the ground some time on
21 February the 25th.

22 Q. And was that your opinion as the time based
23 upon the materials that had been provided to you?

24 A. That I had, yes. I trust that these
25 observations are of some value. I do not note that the

1 specific questions concerning the times of the deaths
2 were really addressed by the pathologist, his having
3 simply set out his findings. All three bodies showed
4 similar postmortem changes which certainly all occurred
5 after the interment under the vault. The time was
6 simply too short for any postmortem changes to have
7 occurred in these bodies prior to placement in the
8 ground some time in the early part of day on February
9 the 25th.

10 Q. And then you say I will contact you about
11 these conclusions?

12 A. Yes, sir.

13 Q. And I've already offered it as an exhibit.
14 Let me hand you what we'll mark for identification as
15 Petitioner's Exhibit 9, Dr. Blake. I'll ask if you can
16 identify that document?

17 A. April 2, '96, a letter to me from Joseph B.
18 Dailey. I received your report dated April 1.

19 Q. Before you read it, before you read it and
20 it's very short, but before you read from it, Dr. Blake,
21 if I can go ahead and offer Petitioner's Exhibit 9 into
22 evidence:

23 THE COURT: All right.

24 MR. THOMAS: And I guess we'll have to mark
25 it.

1 (Exhibit 9 marked and entered.)

2 BY MR. THOMAS:

3 Q. Dr. Blake, if you could go ahead and pass
4 Exhibit 8 up to Judge Kurtz. That's the one we have.
5 That's the one we gave to him.

6 THE COURT: Do you want him to have 9?

7 MR. THOMAS: Yes, sir.

8 BY MR. THOMAS:

9 Q. Dr. Blake, since it is so short, if you would
10 just read Judge Dailey's letter to you?

11 A. April 2nd, '96, Dear Dr. Blake, I received
12 your report dated April 1, '96. I assume that Mr.
13 Carruthers will contact you if he plans on having you
14 testify at the trial. I have indicated to Mr.
15 Carruthers that he's welcome to communicate directly
16 with you and you with him without the necessity of going
17 through me. If you have any questions, please feel free
18 to contact me.

19 Q. And you -- and you had some handwritten
20 notations on your copy -- on the letter; correct?

21 A. That's correct.

22 Q. And why don't you since -- your handwriting
23 is pretty good, but if you would, just read to the Court
24 what you wrote in response to Judge Dailey?

25 A. In the first line, I assume that Mr.

1 Carruthers, and I put a line out, the defendant because
2 I was in the early stages of understanding who was who.
3 Over on the side I have written Mr. C. is in jail. How
4 am I to communicate with him? Go to Memphis, question
5 mark.

6 Q. So that was your reaction to Judge Dailey's
7 letter?

8 A. That's my thinking at the time --

9 Q. Yes, sir. And basically if I can summarize,
10 you were asking yourself how were you supposed to
11 communicate with this man who's in jail in Memphis?

12 A. That's correct.

13 Q. If you could hand that up to Judge Kurtz
14 please, sir. Now, let me hand you what we'll mark for
15 identification as Petitioner's Exhibit 10. And have you
16 hand Exhibit 9 up to Judge Kurtz, Dr. Blake? I'm sorry.

17 THE COURT: He has. The clerk has it now.

18 Q. And, again, my question, Dr. Blake, is whether
19 you can identify Exhibit 10 for us?

20 A. The one in my hand?

21 Q. Yes, sir.

22 A. It's a letter to Dr. Francisco concerning
23 microscopic slide requests. Following telephone
24 conversations this day with Judge Joseph B. Dailey of
25 your city, also pursuant to phone conversations with a

1 private investigator by the name of John Billings as
2 well as his associate, Mr. Leslie Arms, I am hereby
3 requesting access to the microscopic slides, gross
4 photographs and any other material in your file
5 concerning the deaths of Marcellos Anderson, Delores
6 Anderson and Fredrick Tucker.

7 Q. And, Doctor, I don't mean to be rude, but if
8 I can stop you right there and let me go ahead and offer
9 Exhibit 10 into evidence.

10 (Exhibit 10 marked and entered.)

11 **BY MR. THOMAS:**

12 Q. And I'm not going to ask you to read from any
13 more of Exhibit 10, but -- and let me -- I'm not going
14 to ask you to read any more from Exhibit 10, Doctor, but
15 Dr. Francisco was the medical examiner here in Shelby
16 County at the time; correct?

17 A. That's correct.

18 Q. And let me -- and you can hand that up to
19 Judge Kurtz. That's all I wanted to ask you about that,
20 Doctor. Let me hand you what we'll mark for
21 identification as Petitioner's Exhibit 11. And the
22 standing question, Doctor, is whether you can identify
23 this document?

24 A. Yes, I can.

25 Q. And if you would?

1 A. It's a letter to me from Dr. J.T. Francisco,
2 professor of pathology who was the Chief Medical
3 Examiner of the state at the time. Dear Dr. Blake,
4 you're certainly welcome to have access to anything we
5 have. Please let me know when you plan to be in town so
6 we can have everything ready here at the center for
7 expeditious review.

8 MR. THOMAS: And I'd like to go ahead and
9 offer Exhibit 11 into evidence.

10 (Exhibit 11 marked and entered.)

11 **BY MR. THOMAS:**

12 Q. And again, Dr. Blake, all of the documents
13 that we've gone over to this point are copies of
14 materials from your file; correct?

15 A. That's correct.

16 Q. And I may have gotten ahead of ourselves a
17 little bit, but in your April 4 letter to Dr. Francisco,
18 Exhibit 10, you had requested access to the microscopic
19 slides, gross photographs and any other material in your
20 file, Dr. Francisco's file, concerning the deaths of the
21 victims Marcellos Anderson, Delores Anderson and
22 Fredrick Tucker. And that was the subject -- that's
23 what Dr. Francisco was getting back to you on in Exhibit
24 11; correct?

25 A. That's correct.

1 Q. Did you ever have the opportunity to review
2 those, the microscopic slides, gross photographs and the
3 items referred to in your letter of April 4, Exhibit 10?

4 A. The gross photographs I have had the
5 opportunity to evaluate. The videos, both from the
6 autopsy which have been transposed into prints. These
7 same pictures in question.

8 Q. And those are the items that I sent to you
9 very recently?

10 A. That's correct.

11 Q. But you didn't have a chance to review the
12 items referred to in Exhibit 10 at the time back in
13 1996, did you?

14 A. That's correct.

15 Q. Because you didn't -- you never travelled to
16 Memphis in connection with this case at the time?

17 A. That's correct.

18 Q. And if you could hand Exhibit 11 up to Judge
19 Kurtz, please. Now, let me hand you what we'll mark for
20 identification as Petitioner's Exhibit 12. If you could
21 identify that for us please, sir.

22 A. It's a letter to me from Judge Dailey on April
23 8. Dear, Dr. Blake, I was unable --

24 Q. Let me -- before you read it, let me go ahead
25 and offer Exhibit 12 into evidence.

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(Exhibit 12 marked and entered.)

BY MR. THOMAS:

Q. Okay. Doctor, since it is so short, you can go ahead and read the contents of that letter?

A. Dear Dr. Blake, I was unable to obtain the information you sought pertaining to the burial vault. If you still need it, feel free to directly contact Mr. John Billings, Jerry Harris, or Dr. Smith.

Q. And this is a letter from Judge -- signed -- from Judge Dailey, signed by Judge Dailey?

A. That's correct.

Q. And he's suggesting that you could if you wanted to, contact Mr. Jerry Harris; correct?

A. That's correct.

Q. And, again, Mr. Harris is one of the prosecutors in Shelby County?

A. Yes.

Q. And if you could hand that up to Judge Kurtz please, sir. And now let me -- now, at some point -- I don't know if you were ever properly served, but at some point you received a copy of a subpoena duces tecum from the defense in Mr. Carruthers' trial; correct?

A. I would need to see it.

Q. I'm getting ahead of myself. Let me hand up to you what we'll mark for identification as

1 Petitioner's Exhibit 13. And the standing question, Dr.
2 Blake, can you identify that document for us?

3 A. Yes, I can. This is a subpoena from Shelby
4 County to me at my then address at 850 West Third North,
5 to bring with me all correspondence, reports, materials,
6 information, provided analysis, et cetera, regarding
7 Marcellos Anderson, Fredrick Tucker and Delores
8 Anderson.

9 MR. THOMAS: And if I may, Doctor, go ahead
10 and offer Exhibit 13 into evidence.

11 (Exhibit 13 marked and entered.)

12 **BY MR. THOMAS:**

13 Q. And, Doctor, was this subpoena faxed to you on
14 or about April 16th?

15 A. Fax or delivered by -- no. It says at the top
16 of the page it indicates that it was faxed.

17 Q. And it was faxed by, it looks like it says All
18 Pro Investigations; correct?

19 A. Yes.

20 Q. And what was your understanding of who All Pro
21 Investigations was, if anything?

22 A. The investigators.

23 Q. For Mr. Carruthers?

24 A. Yes.

25 Q. And if you could go ahead and hand Exhibit 13

1 up to Judge Kurtz. Now, I guess this is already clear,
2 Dr. Blake, but you did not travel to Memphis and testify
3 at Mr. Carruthers' trial; correct?

4 A. That's correct. Because I was informed by
5 Judge Dailey that the defendant had not chosen to use me
6 as his expert based on my report.

7 Q. Let me hand up to you what we'll mark for
8 identification as Petitioner's Exhibit 14.

9 MR. THOMAS: And, Your Honor, Exhibit 14
10 already appears in the technical record at Pages 731 and
11 732.

12 Q. And the standing question, Dr. Blake, if you
13 can identify this document for us?

14 A. It's a letter from me to Judge Dailey on April
15 19th.

16 Q. 1996?

17 A. Correct.

18 MR. THOMAS: And I'd like to go ahead and
19 offer Exhibit 14 into evidence.

20 (Exhibit 14 marked and entered.)

21 **BY MR. THOMAS:**

22 Q. Now, let me make sure I understand the
23 sequence of events, Dr. Blake. You faxed this letter to
24 Judge Dailey on or about April 19; correct?

25 A. That's correct.

1 Q. And then Judge Dailey got back to you and told
2 you that your attendance would not be necessary;
3 correct?

4 A. That's correct.

5 Q. Let me -- why don't you go ahead and hand that
6 up to Judge Kurtz. Let me ask you this, Dr. Blake,
7 based on your review of the autopsy reports, did you
8 from any opinion as to whether any of the victims in
9 this case had been buried alive?

10 A. Yes, I did.

11 Q. And what was that opinion?

12 A. The potential was that Delores Anderson could
13 have been buried alive but with already some inflicted
14 wounds having been the case including a neck
15 strangulation.

16 Q. Was it your opinion that any of these victims
17 had been buried alive based on what you saw?

18 A. That Delores Anderson could have been.

19 Q. Let me -- let me refer you back to your -- to
20 Exhibit 8 which is your April 1st, 1996 report and
21 particularly Page 3. The paragraph beginning towards
22 the bottom of the page, in summary. Do you see that?

23 A. Yes.

24 Q. And that was your opinion -- that was your
25 opinion as of April 1st; correct?

1 A. '96, yes.

2 Q. And in that paragraph you stated that the
3 victims lives were snuffed out well before an adequate
4 time to place them in and conceal their bodies in the
5 bottom of the already prepared burial site; correct?

6 A. That's correct.

7 Q. Dr. Blake, when was the -- if you recall, when
8 was the first time you had ever heard the suggestion
9 that any of these victims had been buried alive?

10 A. When I read the depositions of Dr. Smith.

11 Q. Dr. O.C. Smith?

12 A. Correct.

13 Q. And I supplied you with copies of Dr. Smith's
14 testimony at the trial of Mr. Carruthers's case; correct?

15 A. That's correct.

16 Q. Within the past few months or weeks?

17 A. Correct.

18 Q. And that's the first -- from reading Dr.
19 Smith's testimony, was the first time you had ever heard
20 any suggestion that any of the victims had been buried
21 alive?

22 A. That's correct.

23 Q. Back at the time I believe you had -- at least
24 back in April 1996, I believe you had at least one
25 conversation with Dr. Smith, didn't you?

1 A. That's correct.

2 Q. At that conversation did Dr. Smith suggest to
3 you that any of the victims had been buried alive?

4 A. No, sir.

5 MR. THOMAS: May I confirm that you have
6 Exhibit 14 into evidence.

7 THE COURT: Yes, sir.

8 **BY MR. THOMAS:**

9 Q. All right. Now, let me show you -- let me
10 hand up to you what I'll mark for identification as
11 Petitioner's Exhibit 15. If you can identify Exhibit 15
12 for us please, Dr. Blake?

13 A. This is a letter to Judge Dailey from me.
14 It's a bill or an invoice for all the conferences that
15 I'd had and the work that I'd put in the case.

16 Q. And would it be fair to characterize this as
17 your invoice to Judge Dailey?

18 A. That's correct.

19 MR. THOMAS: And if I can go ahead and offer
20 Exhibit 15 into evidence.

21 (Exhibit 15 marked and entered.)

22 **BY MR. THOMAS:**

23 Q. And if you would, Dr. Blake, now that we have
24 Exhibit 15 into evidence, if you could read -- just read
25 it into the record?

1 A. Dear Judge Dailey, please find listed below
2 the charge for forensic services rendered to you by Dr.
3 Cleveland C. Blake in the above mentioned case. Charges
4 are inclusive of conference with Dr. Jerry Francisco,
5 two conferences with Dr. O.C. Smith, multiple phone
6 conferences with Judge Dailey, three conferences with
7 private investigators, John Billings, Richard Billings
8 and Mr. Arms, record review, autopsy review, preparation
9 of summary of opinions, statement for -- opinion
10 statement for Judge Dailey times two, Court standby,
11 et cetera. Total amount \$1600.00.

12 Q. And I want to underscore that in your opening
13 it says -- you say Dear Judge Dailey, please find listed
14 below the charge for forensic services rendered to you.
15 You see that?

16 A. That's correct.

17 Q. And if you could hand Exhibit 15 up to Judge
18 Kurtz please, sir. Now, let me -- you may not have seen
19 this. This is one you may not have seen before, Dr.
20 Blake, but let me hand it up to you. Marked for
21 identification as Petitioner's Exhibit 16. Have you
22 seen that before, Dr. Blake?

23 A. I don't recall that I have.

24 Q. Okay. We'll just let that be marked for
25 identification as Petitioner's Exhibit 16. If you could

1 hand that up to judge Kurtz and we'll --

2 MR. THOMAS: Your Honor, we'll authenticate
3 Exhibit 16 and offer it at a later point.

4 COURT REPORTER: You don't want it marked?

5 MR. THOMAS: Yeah, we can mark it for
6 identification, please.

7 THE COURT: What is it?

8 MR. THOMAS: It's a -- it's Judge Dailey's
9 order authorizing Dr. Blake's services at the time of
10 the trial.

11 THE COURT: Well, I doubt if Mr. Campbell is
12 going to raise an issue about the authentication of Judge
13 Dailey's order. Am I correct, Mr. Campbell?

14 MR. CAMPBELL: That is correct, Your Honor.

15 MR. THOMAS: I'm just being -- I was kind of
16 being painfully technical I guess.

17 THE COURT: Okay. Well, we can go ahead --

18 MR. THOMAS: Well, If I can go ahead and offer
19 it without objection then it's Petitioner's Exhibit 16.

20 MR. CAMPBELL: I think it's as petitioner
21 indicated, I think it is contained within the actual
22 Court file.

23 MR. THOMAS: Well, actually it's not. You
24 would think it would be in the technical record, but
25 it's not. It came -- but it was in the file of the

1 administrative office that -- as to which we have an
2 affidavit authenticating.

3 THE COURT: Okay. We can -- well, we'll mark
4 it as an exhibit.

5 (Exhibit 16 marked and entered.)

6 **BY MR. THOMAS:**

7 Q. Okay. You may hand that up to Judge Kurtz,
8 Dr. Blake. Now, we're getting towards the end of our
9 documents. Let me ask you if you can identify what
10 we'll mark as Petitioner's Exhibit 17. And the same
11 question, Dr. Blake, can you identify that document?

12 A. Yes, I can. It's on my letterhead to Judge
13 Dailey. Re: Correspondence from Tony Carruthers to Dr.
14 Blake. Message is, please note my current address but
15 don't give it to Tony. F.Y.I.

16 Q. And let me go ahead and offer Exhibit 17 into
17 evidence. And again this is -- I'm sorry.

18 (Exhibit 17 marked and entered.)

19 **BY MR. THOMAS:**

20 Q. And you had received some correspondence from
21 Mr. Carruthers I take it?

22 A. I had a copy of one or two letters from him.

23 Q. And you were passing -- you were passing those
24 along to Judge Dailey; correct? You faxed the
25 correspondence from Mr. Carruthers to Judge Dailey under

1 the cover of Exhibit 17?

2 A. I'm not sure.

3 Q. But in any event, the subject matter of
4 Exhibit 17 was correspondence you had received from Mr.
5 Carruthers?

6 A. That's correct.

7 Q. And there was -- if you'll look, there was a
8 total of five pages including the cover sheet. Do you
9 see that?

10 A. Yes.

11 Q. So that would indicate that you must have
12 attached the correspondence?

13 A. Yes, it would.

14 Q. Turning now to what we'll mark for
15 identification as Petitioner's Exhibit 18.

16 MR. THOMAS: And, Your Honor, this is another
17 document that does appear in the technical record at
18 Pages 1078 through 1080.

19 Q. And I'll ask you, Doctor, if you can identify
20 this for us?

21 A. This is to Judge Dailey from me. Re: for your
22 files and it has to do with correspondence to Mr.
23 Leffler as defense counsel for Tony Carruthers in
24 response to a correspondence to me, handwriting from
25 Tony Carruthers on 11/3/97. Copy of that

1 correspondence.

2 MR. THOMAS: Okay. And if I may go ahead and
3 offer Exhibit 18 into evidence.

4 A. This was clarifying a record that I was not
5 hired by the State of Tennessee to perform an autopsy
6 and I got it in the record somewhere. That is not the
7 case.

8 Q. You were hired by -- you were hired by -- you
9 simply reviewed the records and material which was
10 presented to you by investigators or by the Court on
11 behalf of Judge Joseph Dailey. That's what Exhibit 18
12 says; correct?

13 A. That's correct.

14 MR. THOMAS: And let me go ahead and offer
15 Exhibit 18 into evidence and get it marked.

16 (Exhibit 18 marked and entered.)

17 MR. THOMAS: And you can go ahead and hand
18 that up to Judge Kurtz, Dr. Blake.

19 **BY MR. THOMAS:**

20 Q. Dr. Blake, let me ask you, you and I, we've
21 spoken -- we, Mr. Morris and I met with you on July 1st
22 of this year at your office in Morristown; correct?

23 A. Yes.

24 Q. And you and I have spoken several times by
25 telephone since then?

1 A. That's correct.

2 Q. And we have talked about this buried alive
3 issue before; correct?

4 A. Yes.

5 Q. If you had been called to testify at the trial
6 in April of 1996 would you have agreed with Dr. Smith
7 that Ms. Anderson was buried alive?

8 A. Not directly, no. She was incapacitated in a
9 situation which would have asphyxiated her.

10 Q. If you had come to testify at the trial in
11 April 1996, would you have testified that Ms. Anderson
12 was conscious when she was placed in the ground?

13 A. No, because of the ligature issue.

14 Q. And you certainly wouldn't have testified that
15 -- you certainly would not have agreed with Dr. Smith
16 that either Mr. Tucker or Mr. Anderson was buried alive,
17 would you?

18 A. No, I would not.

19 Q. And you wouldn't have testified that they
20 were -- let me -- this is our last exhibit, Dr. Blake.
21 And if you can identify this two-page, looks like a
22 transcript, for us?

23 A. Telephone conference with Dr. O.C. Smith on
24 8/26/02

25 MR. THOMAS: And let me go ahead and offer

1 Exhibit 19 into evidence and then we'll get it back to
2 you, Dr. Blake.

3 (Exhibit 19 marked and entered.)

4 **BY MR. THOMAS:**

5 Q. Let me first ask you, Dr. Blake, if you recall
6 what prompted -- let me back up. What is Exhibit 19?

7 A. It's a conference that I had with Dr. O.C.
8 Smith.

9 Q. And you had a telephone conversation with Dr.
10 O.C. Smith on or about August 26th, 2002?

11 A. That's correct.

12 Q. And by the way, like all of the other
13 documents we have talked about, this is a document from
14 your file in Morristown; correct?

15 A. That's correct.

16 Q. And what prompted -- and this is a transcript
17 or at least a portion of your telephone conversation
18 with Dr. Smith; correct?

19 A. That's correct.

20 Q. And what prompted you -- what prompted your
21 telephone conversation with Dr. Smith if you recall?
22 Did you get a call from a lawyer name Charlie Ray out of
23 Nashville?

24 A. That's what the second line says, so that
25 prompted it.

1 Q. All right. And why don't you go ahead and
2 read us the first paragraph of the document?

3 A. My statement, I have a question here for you
4 as to Dr. Smith. I got a call from Attorney Charles
5 Ray. He's involved in the Tony Carruthers' case. Judge
6 Dailey hired me in '96, '97 to come down and conference
7 with you, look at your records. And this guy says that
8 a letter that I have given to Judge Dailey made
9 reference to other correspondences and he's demanding my
10 entire file. I don't know Charles Ray or anything about
11 him. I frankly don't want anything more to do with Tony
12 Carruthers. The judge called him out of jail and into
13 the courtroom. He read to him my opinion which was the
14 same as yours. He told me that he could call Dr. Blake
15 and talk to him. He never did. I don't need to hear
16 from Tony Carruthers. I don't think you do either.

17 Q. But as you just read your -- you conveyed to
18 Dr. Smith that Judge Dailey had hired you in 1996 and
19 1997?

20 A. That's correct.

21 Q. All right. And then there's discussion -- let
22 me just ask you to turn over to Page 2. But there's
23 some discussion about the fact that Mr. Ray wanted a
24 copy of your entire file; correct? And you want to take
25 your time to read through the document.

1 A. Well, I was telling Dr. Smith that Mr. Ray
2 says that he has been appointed. And Dr. Smith says the
3 letter should be available from the judge or the court
4 docket.

5 Q. And over on Page 2, if I can direct you to the
6 top of Page 2, Dr. Blake?

7 A. Dr. Smith says it all depends on the letter
8 whether he has the legal right to demand it or not. He
9 can ask for your notes, but you can say that all you
10 have are your notes.

11 Q. And then what did you say?

12 A. I wrote the judge two letters of my opinion.
13 He wants everything I have in my file.

14 Q. And then what does Dr. Smith say?

15 A. Telling me it ain't there. It just ain't
16 there. That's Dr. Smith's comment.

17 MR. THOMAS: Your Honor, I believe that's all
18 we have for Dr. Blake.

19 THE COURT: You may.

20 **CROSS-EXAMINATION**

21 **BY MR. CAMPBELL:**

22 Q. Dr. Blake, I don't think you and I -- my name
23 is John Campbell. I don't think you and I have ever
24 talked about this case before; is that correct?

25 A. That's correct.

1 Q. Now, even though you were at the time, this
2 time frame we're talking about in '96, you had a
3 commission with the TBI. You still handled private
4 cases; is that correct?

5 A. That's correct.

6 Q. And nothing about your relationship with the
7 TBI would have effected your decision making or opinions
8 in cases where you were hired privately?

9 A. In no way whatsoever.

10 Q. Now, just so I'm clear on this, you discussed
11 or you talked with Mr. Billings who was the investigator
12 for Tony Carruthers on several occasions; is that
13 correct?

14 A. Some occasions.

15 Q. Some occasions. Do you remember how many
16 times you talked to him?

17 A. No, I do not.

18 Q. Okay. Was this on the phone or did he come to
19 see you in person?

20 A. I don't remember.

21 Q. And also you talked to I think you mentioned
22 two other investigators another Billings as well as Mr.
23 Arms?

24 A. Arms.

25 Q. Arms. I'm sorry. And, again, were those in

1 person or on the phone?

2 A. I don't recall.

3 Q. And in regards to your opinion about this
4 case, you indicated as far as Delores Anderson is
5 concerned, in your opinion she was not conscious when
6 she went -- when she was buried; is that correct?

7 A. In high probability she was not.

8 Q. But you can't say whether or not she was
9 actually dead when she was put in the grave?

10 A. Well, that would have to depend on whether
11 means brain dead or whether her heart could have been
12 beating. It would have to be clarified.

13 Q. Okay. Well, what about heart beat?

14 A. She could have had a heart beat but
15 unconscious.

16 Q. And what about brain dead?

17 A. That would have taken a little bit of time.
18 Because as long as the heart is beating, the brain is
19 getting some blood supply and the heart can beat four to
20 six minutes after there's obstruction of the airway.

21 Q. And based on your review of the records in
22 this case, your opinion regarding what happened to her
23 in the grave would have been that she could have
24 possibly or the fact that she was underneath these
25 individuals, pressure on her would prevent her from

1 being able to breathe if she was -- the weight on her
2 would not have allowed her to expand her chest --

3 MR. THOMAS: Your Honor, I object to counsel's
4 characterization of the testimony.

5 MR. CAMPBELL: I'm trying to get clarification
6 of what his opinion is.

7 THE COURT: I won't let him confuse him, Mr.
8 Thomas. Go ahead.

9 **BY MR. CAMPBELL:**

10 Q. But, anyway, the weight on her could have been
11 the mechanism that ultimately kept her from breathing?

12 A. Could have been one of the factors.

13 Q. One of the factors. Now, when you talked to
14 Dr. Smith, that was prior to the trial; is that correct?

15 A. That's correct.

16 Q. Okay. Your discussion with Dr. Smith, your
17 review of his autopsy report, you felt that you and he
18 were on the same page regarding the findings?

19 A. In general.

20 Q. In general. And Dr. Smith never told you his
21 opinion about whether anybody was alive or dead when
22 they were put in the grave?

23 A. No, he did not.

24 Q. Okay. Never came up, did it?

25 A. No. It's only come up recently.

1 Q. Recently. Okay. And other than that
2 statement about whether someone was alive or dead when
3 they went in the grave, you agree with pretty much
4 everything else that he found in those autopsy reports?

5 A. There's some things I disagree with.

6 Q. Now, in Exhibit 19, this telephone
7 conversation, this first part where you indicated, I'm
8 referring to the first paragraph, it says the judge
9 called him out of jail and into the courtroom. He read
10 to him my opinion which was the same as yours. He told
11 him that he could call Dr. Blake and talk to him. Where
12 did you get -- you were not in the courtroom at the time
13 that that was done?

14 A. No, I was not.

15 Q. Okay. And apparently Mr. Carruthers never
16 called you as a witness or his investigators never told
17 you you were going to be a witness?

18 A. That's correct.

19 Q. But they did make arrangements for you to
20 testify if he decided he wanted to call you?

21 A. That was the purpose of Judge Dailey talking
22 with me in the first place.

23 Q. Okay. And you got a subpoena duc tecum. So
24 you were on notice for trial?

25 A. I was on notice.

1 Q. But ultimately you were told you weren't going
2 to testify?

3 A. Yes. Because Mr. Carruthers did not choose to
4 use me as his expert.

5 Q. Now, what correspondence did you receive from
6 Mr. Carruthers that you refer to in that fax to the
7 judge?

8 A. I have an envelope from Mr. Carruthers dated
9 14th of November '97, marked legal correspondence. On
10 11/3/97, a letter to me from Mr. Carruthers in very neat
11 handwriting in Re: Obtaining a complete file. Dr.
12 Blake, I would like to request from you a complete copy
13 of the work product that you performed for case number
14 blank, blank, blank. I'm preparing my direct appeal
15 from a conviction of a death sentence. You were hired
16 by the State of Tennessee to perform a autopsy for my
17 defense. I need a copy of all reported -- of all
18 reports given to you by the prosecutor Phillips Gerald
19 Harris and the Shelby County Assistant Medical
20 Examiners, O'Brian C. Smith, M.D.F.P. Thank you for
21 your immediate response. And there is a printed letter
22 in large print from him. He's setting out his thoughts.
23 I have a vision that one day we will all be judged
24 equally et cetera, et cetera. I've been misused by the
25 system but I believe that what's ahead for me will

1 ultimately effect this country. I have a vision that
2 justice will be served to us all without prejudice,
3 bias, vindictiveness or (indiscernible) and equality.
4 In order to enjoy justice, we must take a stand for that
5 which this is right. In the vision I see freedom and
6 equal justice for us all. Tony X. Carruthers. And then
7 there's a picture of him. A neat picture of a man in
8 glasses, a black man in glasses, Tony X. speaks out.
9 Asking if I'm familiar with case where a man was forced
10 to trial with no attorney. He was (indiscernible)
11 convicted of murder and sentenced to death. Well,
12 here's the truth about the case, that the judge and the
13 prosecutors went out of their way to keep you from
14 knowing. Judge Dailey has been cited in Supreme Court
15 of Tennessee for the violation of the First Amendment of
16 U.S. Constitution by denying freedom of the press and
17 information in a public trial. He did this knowingly
18 and intentionally to keep you, the public, in the dark.
19 He violated your rights too. Did you know that you have
20 the right to know the truth? From all the state's
21 witnesses you only read fragments of their testimony.
22 There were impeached and proven liars, but the defendant
23 -- no, but the public was told to believe that they were
24 credible witnesses, but why? Don't you want to know the
25 truth? Wouldn't you be concerned if you were found out

1 that the killers still run loose, free to kill again?
2 This injustice must not go unanswered. The public
3 should know the truth. This crime has not been solved.

4 Q. Now, these -- this is the correspondence you
5 received from Mr. Carruthers?

6 A. That's correct.

7 Q. Was it mailed to you or did you receive it
8 from some third party?

9 A. It was mailed to me from Tony X. Carruthers
10 Number 139604 Brushy Mountain, Post Office Box Petros,
11 Tennessee. Petros, we pronounce it Petros. Legal
12 correspondence, neatly printed to me, almost calligraphy
13 in its neatness, directly to me at the correct address.

14 Q. And why did you decide or why did you tell the
15 Court that you didn't want to receive or didn't want Mr.
16 Carruthers to receive your new address?

17 A. I don't know that I told him. He's got this --

18 Q. If I can refer back to Exhibit 17. It says
19 please note my current address and don't give it to
20 Tony. Did you not want to receive any more
21 correspondence from Mr. Carruthers?

22 A. He could have -- he could have called me if he
23 wanted to. This is the address of my previous building
24 right before I moved to my present address. That's 10
25 years ago.

1 Q. Okay.

2 A. That was a correct address obviously because I
3 got it. On the front of the envelope he's got the
4 correct address.

5 Q. Okay.

6 A. At that time.

7 Q. Did you send your complete file to Mr.
8 Carruthers?

9 A. I don't think I did.

10 Q. Did you discuss the case with his counsel, Mr.
11 Leffler?

12 MR. THOMAS: Objection, foundation.

13 MR. CAMPBELL: Your Honor, I believe there's a
14 letter here that was introduced earlier.

15 THE COURT: I think the question is all right.
16 Overruled.

17 **BY MR. CAMPBELL:**

18 Q. Did you discuss your findings with Mr. Leffler
19 who was his counsel for on appeal?

20 A. On December the 30th, '97, I wrote him a
21 letter. It's in the file on my --

22 Q. And what does that letter say?

23 A. On my letterhead that was at the correct
24 address. Dear Mr. Leffler, I'm writing directly to you
25 as defense counsel for Tony Carruthers and specifically

1 in response to a correspondence to me in handwriting
2 from Tony X. Carruthers on 11/3/97. Please find
3 attached a copy of that correspondence. For the purpose
4 of clarification I should like to note that I was not
5 hired by the State of Tennessee to perform an autopsy.
6 That's the main point of this letter. I simply reviewed
7 the records and material of the previous autopsy which
8 was presented to me by investigators or by the Court on
9 behalf of Judge Dailey.

10 THE COURT: Excuse me a second, but that --
11 we've already got that. That's Exhibit 18, isn't it?

12 MR. CAMPBELL: Because on the fax it showed
13 that he had Mr. Leffler's name on the bottom of it. I
14 just wanted to see if he talked to him.

15 THE COURT: Oh, yeah. Okay.

16 MR. CAMPBELL: That was the purpose.

17 **BY MR. CAMPBELL:**

18 Q. Anyway, that would be your consistence of your
19 correspondence with Mr. Leffler was basically the letter
20 or did you talk to him on the phone?

21 A. I can't tell you whether I did on the phone or
22 not, but I had some contact with him. This indicates
23 additionally the judge noted that Mr. Carruthers could
24 speak with me. This was never carried out or really
25 indicated as I had presented my entire conclusions at

1 that point in my response conclusion dated 4/1/96. I
2 would feel certain that this is in your file. Again,
3 this three-page report to Judge Dailey was presented to
4 Mr. Carruthers for his comments. And I was informed
5 that he declined at the time to utilize my conclusions
6 or findings in any way. No communication was ever
7 received from Mr. Carruthers. And the second
8 communication to Judge Dailey on 4/19/96, the substance
9 of which two-page document is in your possession I am
10 sure. On the Page 2, if it's okay, in a recent inquiry
11 of Judge Dailey he suggested that I respond directly to
12 you on behalf of Mr. Carruthers. Please find attached
13 xerox copies of my letter which were -- was received
14 from Tony Carruthers in late November '97. That's what
15 I read. I trust that this response will adequately
16 answer the questions and concerns posed by Mr.
17 Carruthers. Because I understood at the time that Mr.
18 Carruthers was assigned an expert that Judge Dailey
19 selected me to be. And that he would have two
20 investigators. An expert and two investigators. So I
21 was dealing with those people directly on his behalf.

22 Q. Okay. That would be Mr. Billings and the
23 other individual that was the All Pro Investigators?

24 A. Yes.

25 Q. Did you ever have a discussion with the

1 prosecutor in the case, Mr. Harris?

2 A. Not that I know of.

3 MR. CAMPBELL: Your Honor, I believe that's
4 all I have.

5 THE COURT: Now, how were you notified that
6 your testimony would not be needed at the trial?

7 THE WITNESS: By Judge Dailey.

8 THE COURT: Personally?

9 THE WITNESS: On the phone.

10 THE COURT: He called you personally. He said
11 you don't need to come?

12 THE WITNESS: Yes.

13 THE COURT: Okay.

14 THE WITNESS: Because the defendant did not
15 choose to use -- after he was shown my three-page
16 conclusion, he did not choose to have me as his expert.

17 THE COURT: All right. I understood your
18 testimony from that. I was just interested in who
19 communicated that. The second thing is I'm a little
20 confused by your conclusion in this letter of April 1,
21 because at one point you seem to say that Delores
22 Anderson was dead at the time she was buried. Because
23 you say, in summary it would appear two black males were
24 killed somewhat before the female who disappeared later.
25 All three of the victims having their life snuffed out

1 well before an adequate time to place them in and
2 conceal their bodies in the already prepared burial
3 site. But now you're saying that it's possible that she
4 could have still been alive. I mean, did you change
5 your mind subsequent to the April 1 letter or revised
6 your opinion?

7 THE WITNESS: I didn't have at that time, Your
8 Honor, the details of the testimony and description of
9 the grave and her condition and the details about the
10 restraint around her neck that apparently cut off her
11 windpipe. She could have been conscious at the time. I
12 can't prove that one way or the other, but she could
13 have been conscious.

14 THE COURT: Okay. Could have been conscious.

15 THE WITNESS: At the time she was put in the
16 grave.

17 THE COURT: Well, in the parlance of the
18 lawyers who ask these questions, to a reasonable degree
19 of medical certainty, what's your opinion? That she was
20 alive or she was dead?

21 THE WITNESS: You have to read the description
22 of exactly how she was placed under the bodies of the
23 others in the pit under the grave. Initially I knew
24 nothing of a pit that was under the grave. I was told
25 in Judge Dailey's conference with me that she was

1 under a vault into which Mrs. Daniels' casket had been
2 placed on the morning of the 25th when they had her
3 funeral. Well, if there's no additional pit under
4 there and with these three individuals, the vault -- and
5 I think of a vault as a 3 inch thick cast, concrete
6 vault. That's not what this was. This was an O.S.B.
7 board box or strand board, chip board. And by
8 elevating from the bottom of a normal grave which is
9 right at 6 foot, to get in the three individuals, you
10 destroy a space this big if you put them in and put dirt
11 around them. Then you put the chip board box back in
12 and the casket. That's not what happened. Because
13 under the chip board box which had been lifted out, the
14 grave -- the grave was dug and the chip board box was
15 put in it preparing for Mrs. Daniels' casket. And that
16 box had been taken out and there's a second layer of
17 excavation which is referred to in even the testimony
18 and records as the pit under the grave, under the vault.
19 And there's differences clearly described in the
20 technique of the digging, the hand digging of the vault,
21 by one technique down to the bottom of where the grave
22 was to have been. And then the additional pit under
23 that grave which was concealed by the bottom of the chip
24 board box. Hence, the chip board box was not
25 substantially elevated so that the mortician would

1 notice that, hey, this is not deep enough. I didn't
2 know about that technicality, because I was told about a
3 vault. Now, to me a chip board box is not a vault.
4 Being a wood worker and having done hundreds of
5 excavations, I understand what those factors may be.
6 But the excavated pit under the box was not the same
7 measurement as the grave which would have accommodated
8 the chip board box in order to hold the casket.

9 THE COURT: So if you were asked the question
10 to a reasonable degree of medical certainty, was she
11 alive or dead when she was placed down there?

12 THE WITNESS: She was unconscious and
13 suffocated, and her head was placed down in the corner
14 of this pit at the bottom of the pit and against the
15 wall of the pit and some dirt was described as having
16 been in her nose and mouth, but it was not aspirated or
17 swallowed into her stomach.

18 THE COURT: Which she would -- your opinion is
19 she would have been unconscious?

20 THE WITNESS: She would have been unconscious.

21 THE COURT: Would she have felt any pain?

22 THE WITNESS: Probably not.

23 THE COURT: Okay.

24 THE WITNESS: Because of the prior
25 asphyxiation by ligature.

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THE COURT: Any follow-up questions by counsel?

MR. THOMAS: If I may, Your Honor.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q. If I understand your testimony, Dr. Blake, you have more recently reviewed Dr. Smith's testimony at the trial; correct? His guilt phase and his penalty phase testimony?

A. In detail, and also reviewed in detail all the findings of the autopsies.

Q. And at your request, I supplied you with copies of Dr. Smith's testimony; correct?

A. That's correct.

Q. And it's Dr. Smith's testimony or your reading of Dr. Smith's testimony that at least creates an issue in your mind about whether Ms. Anderson might have been buried alive, is that a fair statement?

A. That's correct.

Q. All right, sir. Now, the record will reflect when Dr. Smith testified. But referring to since it's in Exhibit 4, it's the letter from Mr. Jerry Harris to Judge Dailey which was forwarded to you. And Jerry Harris refers to the autopsy reports that have been provided to the defense. And those autopsy reports have

1 been introduced as Exhibits 5, 6 and 7, okay?

2 A. Yes, sir.

3 Q. Let me ask you, Dr. Blake, you spent a lot of
4 time reading these reports in recent weeks, is that a
5 fair statement?

6 A. That's correct.

7 Q. Isn't it a fact that there is nothing in any
8 one of these autopsy reports that would have conveyed to
9 the defense that Dr. Smith was going to testify that
10 anybody was buried alive?

11 A. Repeat again please, Counsel?

12 Q. Isn't it a fact that there is nothing in any
13 one of these autopsy reports that would have fairly
14 conveyed to the defense that Dr. Smith was going to
15 testify that any victim was buried alive?

16 A. That's correct.

17 Q. And one final question. Referring to Exhibit
18 15 which is your May 2nd statement. You refer to three
19 conferences with private investigators John Billings,
20 Richard Billings and Mr. Arms. Do you remember that?

21 A. Yes.

22 Q. How long was any one of those three
23 conversations? Do you have any recollection?

24 A. I don't recall.

25 Q. Was -- do you recall possibly refusing --

1 until you realized who he was, and do you remember
2 actually refusing to take Mr. Billings' phone calls or
3 the phone calls of his associates?

4 A. He had some investigator up that way to try to
5 come and serve a subpoena on me. And I was out of town.
6 I was not intentionally dodging him. I don't even know
7 who his name was, but he was out of Knoxville.

8 Q. But you weren't going to testify -- you
9 weren't going to come down and testify -- strike that.
10 I'll withdraw that.

11 MR. THOMAS: That's all we have, Your Honor.

12 THE COURT: Mr. Campbell.

13 MR. THOMAS: I'm sorry, Your Honor. Mr.
14 Carruthers --

15 **BY MR. THOMAS:**

16 Q. I think this is clear from your testimony and
17 I apologize, but I think we covered this on direct. But
18 you did not review any of the microscopic -- because you
19 never came to Memphis, you never reviewed any of the
20 microscopic slides and -- well, you never reviewed any
21 of the microscopic slides?

22 A. Not the slides directly.

23 Q. Okay.

24 MR. THOMAS: That's all we've got. Thank you,
25 Your Honor.

1 THE COURT: Dr. Blake, thank you. And let's
2 take a recess until five after eleven and we'll pick it
3 up at that time.

4 (Court in recess.)

5 (Court in session.)

6 (Defendant present.)

7 THE COURT: Okay. Mr. Thomas, your next
8 witness, please.

9 MR. THOMAS: Okay. Your Honor, the petitioner
10 calls Dr. George Nichols.

11 THE COURT: All right.

12 -----

13 **THEREUPON:**

14 **DR. GEORGE NICHOLS**

15 was called, and upon first being duly sworn,
16 was examined and testified as follows on:

17 **DIRECT EXAMINATION**

18 **BY MR. THOMAS:**

19 Q. Good morning. Could you state your name
20 please, sir?

21 A. Certainly. My name is George Riley Nichols,
22 II.

23 Q. And where do you live Dr. Nichols?

24 A. In Louisville, Kentucky.

25 Q. And how are you -- how are you -- what's your

1 occupation?

2 A. I'm a physician, a practicing pathologist.

3 Q. And since we don't have a jury with us this
4 morning, I'll just ask you are you Board Certified in
5 the areas of anatomical, clinical, and forensic
6 pathology?

7 A. Yes, sir.

8 Q. Let me hand up to you what we'll mark for
9 identification as Petitioner's Exhibit 21, and I'll ask
10 you to identify this document?

11 COURT REPORTER: Excuse me. I have Number 20.

12 THE COURT: I think it would be 20. At least
13 if my notes are correct.

14 MR. THOMAS: Oh, I see what I did. Yes. I
15 apologize. It is 20.

16 THE COURT: Okay. 20.

17 **BY MR. THOMAS:**

18 Q. Can you identify that for us please, Doctor?

19 A. Yes. It is a copy of my curriculum vita, the
20 most recently revised form.

21 Q. I would offer -- I have previously supplied
22 counsel with a copy of Dr. Nichols' curriculum vita and
23 his report and I'd like to go ahead and introduce
24 Exhibit 20 into evidence.

25 THE COURT: All right.

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(Exhibit 20 marked and entered.)

BY MR. THOMAS:

Q. Dr. Blake -- I mean, Dr. Nichols, I don't intend to go through the entire C.V. for purposes of this hearing, but I would like to just ask -- bring out a couple of things about your background. You were the Chief Medical Examiner for the Commonwealth of Kentucky from 1977 to 1997; is that correct?

A. Yes.

Q. And what just in general, what was the nature of your duties as the Chief Medical Examiner for the Commonwealth of Kentucky?

A. The duties are specified in Kentucky Revised Chapter 72. Basically the chief medical examiner is the executive in charge for a portion of the government of the Commonwealth of Kentucky. The -- in so doing, the chief medical examiner is available -- is to establish a system for scientific investigation of deaths throughout the State of Kentucky and is to be available for consultation with all law enforcement officials and all prosecuting attorneys throughout the State of Kentucky.

Q. And in your capacity as the chief medical examiner for the Commonwealth, did you routinely testify for Commonwealth's attorneys in the State of

1 Kentucky?

2 A. Yes, sir.

3 Q. Over the course of your career you've
4 testified in a large number of criminal matters I take
5 it?

6 A. Yes, sir.

7 Q. Would you -- how would you characterize the
8 breakdown between the numbers of times you've testified
9 for the prosecution as opposed to testifying for the
10 defense?

11 A. 99 percent for the prosecution.

12 Q. All right. Doctor, about how many autopsies
13 have you performed in your career?

14 A. 10,000.

15 Q. To the button or?

16 A. Approximately. In excess of 10,000. I
17 stopped counting at 10,000.

18 Q. All right, sir. Now, in the fall of 2002, did
19 you agree to perform what was called an independent
20 cause of death determination at the request of Charles
21 Ray, an attorney in Nashville, Tennessee?

22 A. Yes, I did.

23 Q. And let me ask you, Doctor, what, if any,
24 materials did Mr. Ray supply to you?

25 A. Mr. Ray supplied to me initially a video tape

1 labeled Rose Hill Cemetery crime scene video. A trial
2 transcript dated April 23rd, 1996 of Dr. O.C. Smith, a
3 trial transcript of Dr. Hugh Berryman, five color
4 photographs, microscopic summary for Autopsy A94-140,
5 Fredrick Tucker, an Autopsy Report A94-140, Fredrick
6 Tucker. An Autopsy Report A94-141, Delores Anderson.
7 An Autopsy Report A94-139, Marcellos Anderson. The
8 report of investigation of the County Medical Examiner's
9 Office concerning Fredrick Tucker, Delores Anderson.
10 The certificate of death of Fredrick Tucker. The
11 certificate of death of Marcellos Anderson.
12 Supplementary Offense Report concerning Delores
13 Anderson from the Memphis Police Department, various
14 notes and newspaper clippings. And that was what I
15 received initially on the 23rd of October 2002.

16 Q. Okay. Have you received additional material
17 since then?

18 A. Yes. On the 8th of November 2002, I received
19 excerpts, additional excerpts of testimony from Dr. O.C.
20 Smith. On the 27th of June 2005, I received a copy of a
21 letter to Judge Dailey from Dr. Blake dated April 1st,
22 1996 and an additional one dated April 19th, 1996. On
23 that same date, June 27th of 2005, I received a letter
24 from Judge Joseph Dailey to Dr. Blake dated April 2nd,
25 1996. And last I received on the 26th of August this

1 year, the copy of the certificate of death of Delores
2 Anderson and report of investigation from the Medical
3 Examiner's Office concerning Marcellos Anderson.

4 Q. And those were -- those last two items you
5 mentioned were items that had not been included in Mr.
6 Ray's original package to you back in 2002 for some
7 reason?

8 A. Yes, sir.

9 Q. Or probably no reason.

10 MR. THOMAS: But, Your Honor, at this time I
11 would like to exhibit to Dr. Nichols testimony the items
12 he's described if I may. And what I have here is a
13 D.V.D. version of the -- what was then a video tape of
14 what was -- of the excavation or portions of the
15 excavation of the grave. If Mr. Campbell wants to verify
16 that that's what it is over lunch. And then also copies
17 of the five photographs that Dr. Nichols referred to.
18 And those would be Petitioner's Exhibits 21 and 22. I
19 have a copy of this. I'd like to make the D.V.D./video
20 Petitioner's Exhibit 21. And the five photographs,
21 Petitioner's collective 22. And I'm not going to ask
22 him anything.

23 (Exhibits 21 and 22 marked and entered.)

24 MR. THOMAS: And then, Your Honor, I think we
25 can do this much more quickly than we did with Dr.

1 Blake. But I would like to introduce into evidence,
2 unless there's an objection, introduce into evidence as
3 Exhibit 23 a copy of the autopsy report for Marcellos
4 Anderson that Dr. Nichols reviewed. As Exhibit 24 a
5 copy of the autopsy report of Fredrick Tucker. And
6 Exhibit 25, a copy of the autopsy report for Delores
7 Anderson. And I'll hold off while we're getting these
8 exhibits marked.

9 THE COURT: Well, we didn't already have those
10 5, 6 and 7?

11 MR. THOMAS: It's the same document, but these
12 are without Dr. Blake's annotations, I guess. That's
13 the only reason I'm separately marking them, if that's
14 all right?

15 THE COURT: Sure.

16 **BY MR. THOMAS:**

17 Q. And let me very quickly, Dr. Nichols, if you
18 could identify Exhibits 23, 24 and 25?

19 A. Certainly. 23 is a complete autopsy, a
20 complete copy of autopsy report A94-139 dealing with the
21 investigation and autopsy of Marcellos Anderson.

22 Q. And if I may interrupt. That's the one that
23 I just recently supplied you with; correct?

24 A. That's -- yes.

25 Q. And you've reviewed it?

1 A. Yes. I actually had a copy of this report,
2 all three of these reports in my file. They were just
3 not labeled as that.

4 Q. Oh, I see. And then Exhibit 24 please, sir?

5 A. Exhibit 24 is a complete copy of autopsy
6 A94-140 dealing with the determination of death of
7 Fredrick Tucker. And 25 is a complete report concerning
8 the investigation of the death of Delores Anderson.

9 MR. THOMAS; Your Honor, if I may offer
10 Exhibits 23, 24 and 25 into evidence at this time.

11 THE COURT: All right.

12 (Exhibits 23, 24 and 25 marked and entered.)

13 **BY MR. THOMAS:**

14 Q. Now, let me hand you up the next set, Doctor,
15 which will be Exhibits 26, 27 and 28. And once these
16 exhibits are marked I'll ask you the same question, Dr.
17 Nichols. Can you identify those for us, please?

18 A. I certainly can. This is a document entitled,
19 Report of Investigation by County Medical Examiner for
20 each of the three decedents. The first Exhibit 26, is
21 deals with Fredrick Tucker. The next Exhibit 27, deals
22 with Delores Anderson. And the last Exhibit 28, deals
23 with Marcellos Anderson.

24 Q. And you reviewed all of those reports as part
25 of the evaluation you did for Mr. Ray?

1 A. Yes.

2 MR. THOMAS: I'd like to offer those Exhibits
3 26, 27 and 28 into evidence at this time, Your Honor.

4 THE COURT: All right.

5 (Exhibits 26, 27, 28 marked and entered.)

6 **BY MR. THOMAS:**

7 Q. The next numbered Exhibits will be 29 and 30
8 and 31. These are the death certificates for the three
9 victims. And the same question, Dr. Nichols?

10 A. Yes, sir. Exhibit 29 is a death certificate
11 for Fredrick Tucker. Exhibit 30 is a death certificate
12 for Marcellos Anderson. And Exhibit 31 is the death
13 certificate for Delores Anderson.

14 Q. And were those materials that you received and
15 reviewed for purposes of performing the determination
16 you made for Mr. Ray?

17 A. Yes.

18 Q. Or at Mr. Ray's request?

19 A. Yes.

20 (Exhibits 29, 30, and 31 marked and entered.)

21 **BY MR. THOMAS:**

22 Q. And finally one last exhibit we'll mark as
23 Petitioner's Exhibit 32. If we could have that marked
24 please, sir. And with the same request and then we can
25 move on.

1 A. Yes, sir.

2 Q. And it is?

3 A. Exhibit 32 is the Memphis Police Department
4 supplementary offense report concerning missing person,
5 Delores Anderson.

6 MR. THOMAS: And I'd like to offer Exhibit 32
7 at this time, Your Honor.

8 (Exhibit 32 marked and entered.)

9 **BY MR. THOMAS:**

10 Q. Now, to recapitulate, Dr. Nichols, you
11 reviewed all of these materials at Mr. Ray's request?

12 A. Correct.

13 Q. And you also reviewed some items that I
14 have -- they're not exhibits because they're already
15 part of the record -- but you reviewed testimony from
16 Dr. Smith and testimony from Hugh Berryman who was a
17 forensic anthropologist; correct?

18 A. He still is.

19 Q. Still is. What Dr. Smith?

20 A. Dr. Smith is a forensic pathologist.

21 Q. Do you know what he's doing these days?

22 A. No, sir, I do not.

23 Q. And do you recall that you read Dr. Smiths --
24 there were two parts of Dr. Smith's testimony. His
25 testimony and what we call -- what the lawyers call the

1 guilt phase and his testimony at the penalty phase; is
2 that right?

3 A. Yes.

4 Q. Now, based upon your review of all of these
5 materials, did you prepare a report?

6 A. I certainly did.

7 Q. And let me hand up to you what we'll mark for
8 identification at least as Petitioner's Exhibit 33. And
9 this is an original document. And can you identify that
10 for us please, Doctor?

11 A. This is the original letter that I sent to Mr.
12 Charles Ray dated November 12th, 2002.

13 MR. THOMAS: And, Your Honor, since we don't
14 have a jury, I'd like to offer the report into evidence
15 as Exhibit 33.

16 THE COURT: All right.

17 (Exhibit 33 marked and entered.

18 **BY MR. THOMAS:**

19 Q. Now, after the -- with that rather lengthy
20 predicate, Dr. Nichols, let me just ask you, did you
21 form -- did you form an opinion as to the cause of death
22 of each victim?

23 A. I certainly did.

24 Q. And let's just take them in what order --
25 whatever order you prefer. But what did you conclude as

1 to each?

2 A. Marcellos Anderson died as a result of a
3 gunshot wound. Specifically there was multiple gunshot
4 wounds. One in the back which produced no significant
5 injury. One, a contact wound in the forehead that
6 resulted in a small amount of intracranial hemorrhage in
7 the subarachnoid space, but the bullet did not actually
8 enter into the cranial cavity. Rather it was restricted
9 into the frontal sinus. What killed him is a gunshot
10 wound which enters the right upper chest traverses into
11 the spinal cord where it results in a laceration of
12 the spinal cord at the level C-7. Associated with this
13 are lacerations of the cervical spine and bleeding in
14 the membranes that surround the spine and the brain.
15 The subdural and subarachnoid spaces. That's the cause
16 of death. Next --

17 Q. I'm sorry. Whatever order you prefer.

18 A. Next Fredrick Tucker. Mr. Tucker died as a
19 result of a gunshot wound to the chest resulting in a
20 massive internal hemorrhage and at the chest called the
21 hemothorax. He has evidence of other injuries, but the
22 cause of death was clearly a gunshot wound. And last
23 Delores Anderson. She died as a result of compressive
24 asphyxia. The compression at this point being around
25 her neck. Resulting in obstruction of blood flow out of

1 the head, causing petechiae hemorrhages or small red
2 spots to occur as a result of capillary rupture with at
3 least in the whites and pinks of her eyes. So she died
4 an asphyxia death. There's clear evidence of shooting,
5 firearms injury being fatal in the two males.

6 Q. Now, you read the testimony of Dr. Smith;
7 correct?

8 A. Yes.

9 Q. And you read his testimony that all three
10 victims were buried alive? That was the gist of his
11 testimony or at least part of his testimony, is that a
12 fair statement?

13 A. Yes.

14 Q. Do you have an opinion, any opinion as to
15 whether any of these victims were buried alive?

16 A. My report reads, if I may quote myself?

17 Q. Certainly?

18 A. On Page 3, there is absolutely, underlined, no
19 proof of the best evidence of conscious activity of any
20 victim while alive in the grave site. No significant
21 hemorrhage was present in the soft tissues of the wrist
22 any victim which would -- which should have occurred by
23 voluntary movement against restraining devices if alive
24 and conscious. There's no description of cracks, tears,
25 or damage or other damage to fingernails which also

1 would have occurred if buried alive and conscious. And
2 last, there is no evidence of inhalation of dirt, mud,
3 dust, or earth in the upper airways, mouth, or lungs of
4 any victim. None of these materials was present
5 (indiscernible) orally or swallowed. There's no
6 evidence, in my opinion, that any person was alive in
7 the site in which their bodies were discovered.

8 Q. And is there anything else you can tell the
9 Court to elaborate on the basis for your opinion?

10 A. Well, that's the primary tenet is the fact if
11 conscious and knowingly being buried, you will take
12 whatever means you can to -- in an attempt to escape.
13 There's potential for concussive (phonetically) events
14 to have occurred in several of the victims to have made
15 them unconscious. There's clear evidence in Fredrick
16 Tucker that -- excuse me, not -- in Marcellos Anderson
17 that he was paraplegic made -- rendered paraplegic or at
18 least partial quadriplegic depending upon the neurological
19 deficit from the gunshot wound that could have impaired
20 his motion. But in no case is there evidence of
21 involuntary activity called breathing in which the
22 ambient micro atmosphere would be contaminated with dirt
23 which was placed upon these people as they were placed
24 in a grave site in which it was filled.

25 Q. Let me ask you just to assume -- assuming for

1 purposes of discussion, Doctor, and maybe this is self-
2 -evident, but let me ask you to assume that one or more
3 of the victims may have not been yet been brain dead or
4 may not have been completely dead in layman's terms, is
5 there any evidence whatsoever that any of these victims
6 was placed in the ground conscious?

7 A. No.

8 Q. Do you have any recollection of what Dr.
9 Smith's, the basis for Dr. Smith's opinion that they
10 were buried alive was?

11 A. I don't believe he really ever offered one.

12 Q. Now, you reviewed the three autopsy reports.
13 In particular in reviewing the autopsy -- in reviewing
14 -- well, let's just talk about all the materials, the
15 autopsy reports, the invest -- whatever it's called, the
16 report of investigation by County Medical Examiner, the
17 death certificates, is there anything in any of those
18 documents that would have communicated to an objective
19 reader that any of these victims were buried alive?

20 A. No.

21 MR. THOMAS: That's all we have, Your Honor.

22 MR. CAMPBELL: Just briefly, Your Honor, if I
23 could.

24 CROSS-EXAMINATION

25 BY MR. CAMPBELL:

1 Q. Dr. Nichols, my name is John Campbell. I
2 don't think you and I have ever --

3 A. Mr. Campbell, nice to see you.

4 Q. Nice to see you. Glad to have you from
5 Louisville. Would you -- let me just ask you, in
6 regards to Delores Anderson?

7 A. Yes.

8 Q. Anything to give you or led to an opinion that
9 Ms. Anderson may have been unconscious but alive in the
10 grave?

11 A. She may well have been unconscious in the
12 grave, but she's not ventilating anything. The -- you
13 would find presence in the nose, in the mouth, in the
14 upper airway, in the upper digestive tract of the
15 presence of the foreign matter that would be surrounding
16 her. So there was not evidence of any inhalation, no
17 evidence of any aspiration.

18 Q. But, again, would that -- would it be possible
19 for her to be unconscious but alive?

20 A. It would be -- it would be possible that she
21 could be unconscious. She clearly has sufficient trauma
22 to her head to have been -- to have sustained an
23 concussive event.

24 Q. She had a blow to the head?

25 A. Several.

1 Q. And if I understand -- I guess the asphyxia or
2 the, I guess for better want, ligature, strangulation.
3 She had a sock around her neck or a piece of fabric
4 around her neck; is that correct?

5 A. It's a soak.

6 Q. Sock. And if I understand, the mechanism is
7 that the blood flow out of the brain was being cut off?

8 A. That is the way -- that is the exact cause for
9 the spots that were present in her eyes.

10 Q. Blood pressure increased and caused these
11 little blood vessels to pop?

12 A. Venous blood pressure, yes.

13 Q. Again, you were retained by Mr. Ray I guess in
14 2002 as part -- do you know that it was for the post
15 conviction matter that we're currently involved in?

16 A. Yes.

17 MR. CAMPBELL: Your Honor, I believe that's
18 all the questions I have.

19 THE COURT: Now, among all of these exhibits,
20 did you make his, Dr. Nichols report an exhibit?

21 MR. THOMAS: 33, Judge.

22 THE COURT: Okay. That was the last one. Do
23 we have that.

24 MR. THOMAS: It was the original -- it was the
25 only original document in the group.

1 THE COURT: Okay. Doctor, thank you.

2 THE WITNESS: Am I excused finally, Your
3 Honor?

4 MR. THOMAS: Let me see.

5 THE COURT: I was about to say yes.

6 REDIRECT EXAMINATION

7 BY MR. THOMAS:

8 Q. Let me make sure I understand your testimony.
9 You found no evidence in all of these materials you
10 reviewed, you found no evidence that Ms. Anderson was
11 breathing while she was in the grave?

12 A. Correct. There's no objective evidence from a
13 science standpoint to show that any of these three
14 people were alive and breathing in that space. None.

15 MR. THOMAS: Thank you so much, Doctor.

16 THE WITNESS: You're welcome. Now, I'll ask
17 my question.

18 THE COURT: And the answer is yes.

19 THE WITNESS: Thank you.

20 THE COURT: Next witness, please.

21 MR. THOMAS: Your Honor, the defense will call
22 Mr. David Adams.

23 -----

24 THEREUPON:

25 DAVID ADAMS