

ORIGINAL

IN THE "SUPREME" COURT OF OHIO

ISLAM AL-DIN ALLAH (FKA ODRAYE JONES) /

APPELLANT, /

v. /

STATE OF OHIO, /

APPELLEE /

DEATH PENALTY CASE,

DIRECT APPEAL NO 98-1483

MOTION FOR RELIEF FROM JUDGMENT, 60 (B)

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STATEMENT OF FACTS

- 1.) The appellant was aware, in October/November 1997, of rumors that the

Ashtabula police department had a warrant for his arrest for aggravated robbery. Appellant called the police department to inquire into the truth of the rumor. The female he spoke to stated that she could not give out that information over the phone. The appellant thought that such a policy was rather absurd because if a person's urge was to flee such warrant, that kind of answer would not inspire the confidence to stick around and see. Furthermore, if a person was disposed to turning themselves in, an answer in the affirmative would help that person do so.

2.) The appellant thought, 'well, maybe there is no warrant because if there was, they would have told me so, so I could turn myself in.' On the other hand, he thought 'Maybe there is and they don't want me to know so they can try to catch me "in the wrong place at the wrong time" or plant evidence so I'd be subject to decades in prison.' Anyway, he tried to avoid them just in case. He knew he hadn't robbed anybody, but that didn't mean he couldn't be convicted. Still, he saw cops, cops saw him. No one tried to arrest him.

3.) On November 17, 1997 the appellant was minding his own business, preparing to go out of town for a birthday party. On his way to his ride out of town, he ran into Jimmie Ruth and Anthony Barksdale. Barksdale owed appellant money, so all three made their way to Flo Chapman's house where someone owed Barksdale money. The police passed the three on W. 43rd St. as they were almost at Flo's house. No one made any furtive or suspicious movements and nobody ran. As the three were on Flo's porch awaiting entrance, the "officer" came back, approached the appellant. The "officer" did not say anything. He motioned for appellant to come here with his hand. The appellant

fled. The "officer" was shot. Appellant was not the shooter. The "officers" wife pulled the plug the next morning and he passed. The appellant was unduly convicted of murdering the "officer" "for the purpose of escaping apprehension,...etc. for another offense committed by the offender, to wit: aggravated robbery" based upon incompetent evidence gathered as a result of invalid complaint, invalid warrant, violation of appellant's Fourth Amendment rights against unreasonable search and seizure, and Fifth and Fourteenth Amendment due process. Compounding those errors was the failure of the trial court to instruct the jury on an element of the offense (aggravated robbery), which violated appellant's Sixth Amendment rights to a trial by jury, and ineffective assistance of counsel.

4.) Teresa Taylor, told the police, on Nov. 17th, that the person in the tan coat shot the decedent. That person was later determined to be Anthony Barksdale. Barksdale told several people, including the police, at several different times Odraye didn't do it and was not present when it happen (Tr. 2886-2912). Barksdale told police the appellant shot the decedent (Nov. 17th) and recanted a few days later. November 18th the appellant was charged with aggravated murder. November 24th, Barksdale failed a polygraph as to whether he shot the decedent.

5.) The state fraudulently argued to the jury (and presumably the grand jury) that Taylor identified the appellant as the shooter. Prior to her trial testimony Taylor had not identified the appellant (unless the state is hiding such identification). Despite the urging of the appellant, the appointed counsel refused to challenge Taylor's in-court

identification with her previous statement identifying Barksdale.

- 6.) This refusal to acknowledge pretrial the exculpatory nature of Taylor's statement became the point of contention between appellant and trial counsel. That evidence was the primary evidence appellant knew to be exculpatory and, therefore, his primary means of defense against the charges by establishing a viable alternate suspect and reasonable doubt.
- 7.) Appellant tried to remedy the situation by hiring David PerDue. The trial court erroneously/arbitrarily denied his motion to appear. Appointed "counsel" failed to subject the state's case to any meaningful adversarial testing, and as a consequence, the appellant was unduly convicted though he was innocent of the charge(s).
- 8.) Appellate counsels have refused or failed to effectively file these claims, yet they are the strongest of them all.

PROPOSITION OF LAW 1.

THE APPELLANT IS ACTUALLY INNOCENT OF THE AGGRAVATED MURDER OF WILLIAM D. GLOVER JR. AND ABSENT CONSTITUTIONAL ERRORS, NO REASONABLE JUROR WOULD HAVE VOTED TO FIND HIM GUILTY BEYOND A REASONABLE DOUBT OF AGGRAVATED MURDER.

- 9.) Under SCHLUP v. DELO, 513 U.S. 298, the appellant must show that it is more likely than not that no reasonable juror would have convicted him of the charge in light

of the new evidence. All of the jurors who agreed to talk with the investigator from the Federal Habeas Unit have impeached their own verdict in light of exculpatory evidence which has been presented to them post trial (in 2009 or 2010). Such evidence was handled by the state as a weapon against the appellant through the fraudulent means of mis-characterization and outright lies to the jury. The primary evidence to which I refer is an eyewitness statement by Teresa Taylor identifying "eyewitness" Anthony Barksdale as the only killer (Ex.# 1; Ex.# 15: juror statements are not in Petitioner's possession, his 'counsel' from the Federal Habeas Unit is refusing to turn them over, and appellant has only viewed two, out of four, of them briefly.); other evidence pointing to Barksdale; and evidence which is fatal to the charge of aggravated murder and murder. Appellant has urged post-conviction counsel, since 1998 to show jurors the exculpatory evidence in order that they may know they had been deceived and impeach said verdict, to no avail.

10.) State witness Barksdale also failed a lie-detector test as to whether he fired any shots at the decedent, and whether he was telling any deliberate lies about his involvement, which the jury never knew. The prosecutor used this failure as a weapon, fraudulently, by tricking the jury into believing Barksdale had passed it. He asked him about it, there was an objection (after which, appointed "counsel" should have stipulated to allowing the testimony since it tended to prove Barksdale was lying about shooting Glover. Ex. #4) and he was never permitted to elaborate beyond the fact that he had taken one (Tr. 2283-2286). The state knew that line of questioning and evidence

was inadmissible, incompetent unless both sides stipulate to its admission. Such theater mislead the jury and prejudiced the appellant by improperly vouching for/ bolstering Barksdale's and Taylor's falsified identification testimony.

11.) The SCHLUP analysis must incorporate the understanding that proof beyond a reasonable doubt marks the legal boundary between guilt and innocence. "A petitioner's showing of innocence is not insufficient solely because the trial record contained sufficient evidence to support the jury's verdict. The standard requires the court to make a probabilistic determination about what reasonable, properly instructed jurors would do in light of the newly presented evidence, which newly presented evidence may indeed call into question the credibility of witnesses presented at trial." The more likely than not standard imposes a lower burden of proof than the clear and convincing standard required under SAWYER.

12.) Evidence which the jury was not made aware of through Constitutional errors of state and/or counsel also counts as "new/newly presented evidence" for the purposes of SCHLUP analysis. Appellant El-Amin presents the following new/newly presented/discovered evidence to prove his actual innocence:

(Ex.#1) Police videotaped (dvd) statement of Teresa Taylor and transcription thereof, redacted for relevance;

(Ex.#2) Police videotaped (dvd) walk-through statement of Anthony Barksdale at scene of shooting (not in appellant's possession due to Federal Habeas Unit's refusal to turn it over);

(Ex.#3 a,b,c,) Police photos of state exhibits 4,10,11 showing coats worn by appellant, Jimmie Ruth and Anthony Barksdale, respectively;

(Ex.#4) Police statement/polygraph examination of Anthony Barksdale conducted by Ashtabula police department Nov. 24, 1997;

(Ex.#5) Affidavit of Londale Miller;

(Ex.#6) Affidavit of Appellant;

(Ex.#7) Affidavit of Jashon Hunt;

(Ex.#8) Investigative narrative of lead detective Jeff Brown of Ashtabula Sheriff's Department;

(Ex.#9) One page each of medical report and autopsy protocol;

(Ex.#10) Motion to dismiss case no. 97-220, i.e. robbery which was used to bolster murder charge appellant was purportedly convicted of, and judgment entry granting dismissal;

(Ex.#11) Affidavit of Dulce Williams;

(Ex.#12) Affidavit of Jimmy L. Hanna;

(Ex.#13) Affidavit of Dr. Hugh Turner;

(Ex.#14) Letter of trial counsel David Doughten;

(Ex.#15) Statement from four jurors attesting that in light of the new evidence of Taylor seeing Barksdale commit the shooting, they either: wouldn't have voted to find guilt, didn't believe prior calculation was proven, did not understand that instruction, and some would not have voted for death, respectively (appellant still has not viewed all of the statements, none are in his possession, consequently, appellant is unable to fully state claims of error regarding them); *Federal #1000 unit holding them hostage.*

(Ex.#16) Purported criminal complaint(s) for robbery;

(Ex.#17) Affidavit in support of issuance of warrant;

(Ex.#18) NATIONAL RESEARCH COUNCIL OF THE NATIONAL ACADEMIES REPORT discrediting long held beliefs about the accuracy of ballistic testing methods, pgs. 18-21;

(Ex.#19) Police rendering of the scene;

(Ex.#20) Joint trial exhibit #1, ("stipulations");

(Ex.#21) Statements to police;

(Ex.#22) "Warrant on complaint";

(Ex.#23) Indictment for aggravated murder.

13.) This motion presents a prima facie case establishing, under SCHLUP, that no reasonable juror, properly instructed, would have voted to find the appellant guilty beyond a reasonable doubt of the charge of aggravated murder.

PROPOSITION OF LAW I (A).

THE ASHTABULA MUNICIPAL COURT LACKED SUBJECT MATTER JURISDICTION OVER ANY ALLEGATION OF AGGRAVATED ROBBERY WHERE THERE WAS NEVER A COMPLAINT FILED IN THAT CASE; THE COURT, THEREFORE, ALSO LACKED JURISDICTION TO ISSUE A WARRANT FOR THE APPELLANT'S ARREST.

14.) Per the state's charge of aggravated murder: (1st.) the appellant robbed someone; (2nd.) the "officer" had a warrant for aggravated robbery upon which he was trying to arrest the appellant; and (3rd.) appellant allegedly shoots him in order to avoid that arrest. The appellant, post-conviction, discovered that the complaint for the charge of aggravated robbery was never filed, Crim. R. 12 (B). Furthermore, the "complaint" did not comply with Crim. R. 3 in that it was not "made upon oath before any person authorized by law to administer oaths." There is no clerk, deputy clerk, magistrate, or judge's signature or seal to indicate that it had been presented to them at all. This failure to comply with Crim. R. 3 precluded the possibility of a warrant issuing under Crim. R. 4 (A) (1) and Fourth and Fourteenth Amendment jurisprudence.

15.) Furthermore, the defense of subject matter jurisdiction can never be waived. IN THE MATTER OF C. W., citing TIME WARNER AxS v. PUB. UTIL. COMM., 75 Ohio St.3d 229, 223, 1996-Ohio-224. The absence of a criminal complaint cannot be waived by a plea of no contest or even guilt, since any conviction resulting from an invalid complaint is a nullity. STATE v. BISHOP, (1993), Clark App. No. 3070, unreported. The question of subject matter jurisdiction is so basic that it can be raised at any stage before the trial court or any appellate court, or even collaterally in subsequent

and separate proceedings. STATE v. WILLIAMS (1988), 53 Ohio App.3d 1, 4. STATE v. SHARP Slip Copy 2009 WL 1040299.

Crim. R. 3 provides:

“The complaint is a written statement of the essential facts constituting the offense charged. It shall also state the numerical designation of the applicable statute or ordinance. It shall be made upon oath before any person authorized by law to administer oaths.” The “complaint” upon which the purported warrant was supposedly issued was not signed by any clerk/magistrate, nor was it dated or “sealed”; in short, it was not made upon oath or affirmation to anyone authorized by law to administer oaths. Crim.

R. 3; Criminal Rule 4 (A) (1) states, in pertinent part: Upon complaint. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint,... a warrant for the arrest of the defendant...shall be issued.... Searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment. JOSHUA v. DeWITT, 341 F.3d 430 (6th Cir. 2003); UNITED STATES v. HENSLEY, 469 U.S. 221 (1985).

16.) Judge Fain's concurrence in HARDY observed that “a judge of a court of record in Ohio is not authorized by law to issue a search warrant outside of the judge's jurisdiction and can no more be considered a magistrate for Fourth Amendment purposes than anyone else lacking that authority--be that judge the finest jurist who can be found in a sister state or in a foreign country.” Though the circumstances in that case applied to issuance for search/seizure outside the state of Ohio, the principle of

jurisdiction is the same. The "warrant" also did not satisfy the requirements of the Fourth Amendment as made applicable to the States by the Fourteenth Amendment because it was not issued by a "neutral and detached magistrate." JOHNSON v. UNITED STATES (1948), 333 U.S. 10, 68 S.Ct. 367, 92 L.Ed. 436. See also O.R.C. 2933.02. "No matter how neutral and detached, or generally capable, a self-appointed 'magistrate' may be, anyone other than a public officer authorized by law to issue search warrants cannot * * * be considered a magistrate for Fourth Amendment purposes." HARDY (Fain, J., concurring).

17.) In other words, a magistrate who acts beyond the scope of his authority ceases to act as a magistrate for Fourth Amendment purposes. STATE v JACOB, 185 Ohio App. 3D 408, 924 N.E. 2d 410, citing STATE v. HARDY (Aug. 28 1998), Montgomery App. No. 16964, 1998 WL 543366. A court may not authorize a search or seizure outside its jurisdiction. The Ashtabula Municipal Court, here, had no jurisdiction.

18.) The arrest was illegal making the claimed evidence obtained subject to the Exclusionary Rule. At pg. 33-34 of the transcript the trial court even suggests that a motion to suppress might cause a dismissal of the case. During that same exchange, lead counsel expresses that he wasn't particularly concerned about defending the rights of the appellant, stating "We'll file the basic constitutional ones to protect ourselves." (emphasis mine.) Counsel totally failed to investigate the issue and make the appropriate motion/objection, resulting in the appellant being tried and convicted upon constitutionally inadmissible evidence in violation of the Fourth, Fifth, Sixth, and

Fourteenth Amendments to the United States Constitution.” A fundamental violation of a defendant's constitutional rights requires automatic suppression of the evidence.

STATE v. WILMOTH, 22 Ohio St.3d at 26 22 OBR 427, 490 N.E.2d 1236; Hardy. See also UNITED STATES v. VASSER, 648 F.2d at 510; UNITED STATES v. LUK (C.A. 9, 1988) 859 F.2d 667, 671.

19.) The WILMOTH and HARDY holdings that some violations of the Fourth Amendment...are fundamental violations are analogous to court rulings that certain errors in trial court proceedings are so foundational and structural that they cannot be ignored or overcome by a post-conviction finding that a defendant would have been found guilty notwithstanding the error. “Structural error affects 'the entire conduct of the trial from beginning to end' as well as 'the framework within which the trial proceeds.' Such errors 'defy analysis by “harmless error” standards.” ARIZONA v. FULMINANTE (1991), 499 U.S. 279, 307-308, 111 S.Ct. 1246, 113 L.Ed.2d 302. Examples of structural errors include... a defective reasonable doubt instruction. See STATE v. SESSLER, 119 Ohio St.3d 9, 2008-Ohio-3180, 891 N.E.2d 318, at 8 (O'Donnell, J., dissenting). “The fact that a defendant is denied counsel, for example, or an impartial judge, or the right to a public trial, is not cured by the good faith of the prosecuting authorities or the lack of recklessness or intent to violate the defendant's rights. Likewise, we do not believe that a [search] warrant issued by a court wholly lacking authority to do so may be cured when the officers who obtained and executed the warrant did so in subjective good faith, but failed to recognize that the court was

without jurisdiction.” JACOB.

20.) Under the “Fruit of Poisonous Tree” doctrine, an unlawful search taints not only evidence obtained at the search, but facts discovered by process initiated by the unlawful search, Black's Law Dictionary, Sixth Edition . STATE v. ROGERS, 198 N.E. 2d 796, 1963 Ohio Misc. LEXIS. The appointed counsel were, therefore, ineffective for stipulating to a non-existent warrant.

21.) Indeed, if items “can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution.” WEEKS v. UNITED STATES (1914), 232 U.S. 383, 393, 34 S.Ct. 341, 58 L.Ed. 652

22.) A search conducted pursuant to an invalid warrant is the equivalent of a warrantless search, which is per se unreasonable and therefore illegal. KATZ v. UNITED STATES (1967), 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576. The fruits of an illegal search are subject to suppression by the court in which criminal charges arising from the search and seizure are filed. See, e.g., WEEKS v. UNITED STATES (1914), 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652. The magistrate is not to act as a rubber stamp for the police. If counsel for the accused neglects to file a motion to suppress evidence in a case where such a motion could arguably dispose of the case, the accused is deprived of the assistance of effective counsel. STATE v. WOOLUM, (1976, Hamilton Co.) 47 O.App.2d 313, 1 Ohio Op.3d 383, 354 N.E.2d 712; STRICKLAND.

23.) Therefore, the “officer” who acts outside the law is not a “law enforcement officer” under Ohio and Federal law and had no legal reason/authority to arrest the appellant. There is no good faith (or “objectively reasonable reliance”) belief in the legality of such warrant/arrest on Capt. DiAngelo's (presumably a well-trained officer) part, who failed to make such complaint upon oath before anyone authorized to administer oaths (Ex.#16), nor is there any evidence of good faith on the decedent's part. **Crim. R. 2 (J)** states that “...the power to arrest violators is conferred, when the officer, agent, or employee is acting within the statutory limits of authority.” The lack of a complaint precluded the Ashtabula Municipal Court from acquiring subject-matter jurisdiction and such lack of jurisdiction precluded possibility of the issuance of a valid warrant for the appellant's arrest.

24.) Under Ohio law, subject matter jurisdiction is never waived, and neither a court nor the parties may confer jurisdiction where none existed originally. **IBM Corp. v. Franklin City Bd. Of Revision, 10 Dist. No. 06AP 108, 2006-Ohio-6258,** quoting **Hirt's Greenhouse, Inc. v. Strongsville (Sept 7, 1995) 8th Dist. No. 68374.** The filing of a valid complaint is a necessary prerequisite to a court's acquiring jurisdiction. **COLUMBUS v. JACKSON (1952), 93 Ohio App. 516.** A complaint shall be “made upon oath before any person authorized by law to administer oaths.” **Crim. R. 3.** The courts in Ohio “also conclude that a defect that deprives a court of subject matter jurisdiction cannot be waived by an accused. The absence of a criminal complaint cannot be waived by a plea of no contest or even guilty, since any conviction resulting from an invalid complaint is

a nullity.” STATE v. GREEN (1988), 48 Ohio App.3d 121. (emphasis added.)

25.) The “complaint” for aggravated robbery upon which the police were allegedly acting in the appellant's aggravated murder trial was not signed by a complainant, nor anyone authorized by law to administer oaths (Ex.#16). The complaint/offense was, thus, non-existent. Capt. DiAngelo apparently never intended to file this “complaint,” as the alleged offenses “took place” October 18th, November 9th, 1997 yet, as of the time of arrest November 17th and trial in May 1998, until this very day, the form(s) still are not signed by magistrate or judge. Apparently there never was an intent to seek a warrant. As of November 9th there was no warrant (Ex.#2). After the “officer” was shot, the police went back and made up a warrant to make it look like the decedent was just “performing his duties,” arresting an aggravated robber. Capt. DiAngelo neglected/forgot to forge the complaint. Absent the errors cited, no reasonable juror would or could have found the appellant guilty of aggravated murder. SCHLUP.

PROPOSITION OF LAW I (B).

THE LACK OF SUBJECT MATTER JURISDICTION BY THE ASHTABULA MUNICIPAL COURT RESULTED IN AN UNREASONABLE SEARCH AND SEIZURE IN VIOLATION OF APPELLANT'S FOURTH AMENDMENT RIGHTS; RESULTING IN A CONVICTION BASED UPON ILLEGALLY OBTAINED, INCOMPETENT EVIDENCE IN VIOLATION OF DUE PROCESS GUARANTEED BY THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

26.) Included herein, by reference, are paragraphs 1-25. A warrant violates the Fourth

Amendment if not issued by a neutral and detached magistrate. UNITED STATES v. LEON, (1984) 468 U.S. 897. A constitutionally “neutral and detached” magistrate would not sign a warrant where they have not been presented with a valid complaint in the first place. The police and court action resulted in an unreasonable search/seizure in violation of the appellant's Fourth Amendment rights. All of the “evidence” discovered as a result of the prior illegalities was incompetent to serve as the basis for prosecution/conviction of aggravated murder, was fruit of the poisonous tree, and subject to automatic exclusion. STATE v. ROGERS, 198 N.E. 2d 796, 1963 OHIO MISC. LEXIS; SEGURA v. UNITED STATES, 468 U.S. 796, 104 S.Ct. 3380 (1984); MAPP v. OHIO, 367 U.S., at 661, Justice Black's concurrence, “...when the Fourth Amendment is considered in conjunction with the Fifth Amendment ban against compelled self-incrimination, a constitutional basis emerges for requiring exclusion.” The appellant was denied the effective assistance of counsel at arraignment, December 3, 1997, and the state failed to turn over BRADY material evidence so that subject-matter jurisdiction, jurisdiction *in personam*, and indictment could be contested: No documentation given to defense, we are in no position to refute allegations nor challenge indictment. (Tr. 9-10). BRADY v. MARYLAND, 373 U.S. 83 (1963); STRICKLER v. GREENE, 119 S.Ct. 1936 (1999). These attorneys, Andrew Love and Marc Minor, were there for one appearance only. The scenario above amounts to a denial of counsel in violation of the Sixth Amendment. The guarantee to assistance of counsel cannot be satisfied by mere formal appointment. AVERY v. ALABAMA, 308

U.S. 444, 446, 60 S.Ct. 321, 322. Jurisdiction of the person would not have attached if appellant had the assistance of counsel at arraignment to challenge legitimacy of arrest and refuse to make a plea until the issues were ironed out. Trial "counsel" also failed to act as constitutionally mandated counsel not objecting to this constitutionally impermissible state action and incompetent "evidence." STRICKLAND v. WASHINGTON, 466 U.S. 668.

27.) There was no "crime/offense" upon which to base a "warrant." Absent a valid complaint, the Municipal Court court never acquired jurisdiction over the subject-matter upon which the purported "warrant" was based. The lack of a valid criminal complaint in the case 97CR220, aggravated robbery, precluded the possibility of a valid warrant issuing under Ohio and Federal law, resulting in a search/seizure violation of appellant's Fourth, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized," Fifth, "...Nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law...", and Fourteenth Amendments, "No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the

laws.” The Court of Common Pleas did not have subject-matter jurisdiction for any issue stemming from the “offense” for which the “complaint” and “warrant” were issued, i.e. aggravated robbery--the causa sine qua non of the state's theory of prior calculation and design in aggravated murder, case no. 97CR221. *Causa sine qua non*; A necessary or inevitable cause; a cause without which the effect in question could not have happened. Black's Law Dictionary, Sixth Edition. Without there being (1.) some “allegation” of robbery, there would not have been (2.) a supposed “warrant,” without the supposed warrant, the “officer” would not have tried to (3.) execute an unconstitutional search/seizure of the appellant and (4.) c/would not have been shot, according to the state's charge. The state's charge for aggravated murder has beginning: aggravated robbery; middle: warrant for agg. robbery; end: murder to escape apprehension, etc. for agg. robbery. Invalidity of the element of aggravated robbery is fatal to the charge of aggravated murder via the state's prior calculation and design theory. *Indeed, the state used the same one-line sentence from admitted liar Jimmie Ruth to “prove” both prior calculation and design and aggravated robbery, “If the cops try to arrest me for robbery, I’ll shoot at them.”* (Tr. 2329-30) The invalidation of this aggravated robbery element of the charge and/or exclusion of all tainted evidence, especially Ruth's testimony, dictates that the conviction be declared void for insufficiency of the evidence to sustain conviction. JACKSON v. VIRGINIA, 443 U.S. 197, 99 S.Ct. 2781 (1979); JOSEPH v. COYLE, 469 F.3d 441; WATSON v. JAGO, 558 F.2d 330. It is clearly established Federal law that “any fact (other than prior

conviction) that increases the penalty for a crime must be charged in an indictment, submitted to a jury, and proved beyond a reasonable doubt." Or else it is violative of Fifth Amendment due process and Sixth Amendment right to notice and trial by jury. JONES v. UNITED STATES, 526 U.S. 243; MULLANEY; WINSHIP. Lack of a valid charging instrument on the aggravated robbery issue dictates a lack of jurisdiction over circumstances resulting therefrom, and/or disqualification of the evidence illegally acquired. The element of aggravated robbery was not submitted to the jury nor proven beyond a reasonable doubt. Absent the errors cited, no reasonable juror, properly instructed, would have voted to find the appellant guilty of the charge. SCHLUP v. DELO, 513 U.S. 298.

PROPOSITION OF LAW I (C).

FAILURE TO INSTRUCT THE JURY ON REASONABLE DOUBT ON THE ELEMENT OF AGGRAVATED ROBBERY IS STRUCTURAL ERROR AND DEPRIVED THE APPELLANT OF RIGHT TO TRIAL BY JURY AND DUE PROCESS RIGHTS TO BE AQUITTED OF A CHARGE UNLESS ALL OF THE ELEMENTS OF A CHARGE ARE CHARGED IN THE INDICTMENT, SUBMITTED TO A JURY, AND PROVEN BY THE GOVERNMENT BEYOND A REASONABLE DOUBT; THE FAILURE TO OBJECT BY COUNSEL CONSTITUTED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT.

28.) Included herein, by reference, are paragraphs 1-27. Even if the Common Pleas Court acquired jurisdiction through the action of the grand jury, the violation and prejudice suffered as a result of the unlawful arrest was not cured, it was compounded.

Aggravated robbery was charged as an element of the offense, yet was stated in such a way so as to presume guilt of aggravated robbery; i.e. a mandatory/conclusive (burden shifting) presumption (Ex.#23), MULLANEY v. WILBUR 421 U.S. at 701-02. Failure to instruct the jury on an element of the charge is a constructive amendment to the indictment, a denial of Fifth Amendment due process, the Sixth Amendment right to notice and trial by jury (Tr. 3087-3122). APPRENDI v. NEW JERSEY, 530 U.S. 466, 490, 120 S.Ct. 2348 (2000); WATSON v. JAGO, 558 F.2d 296; SANDSTROM v. MONTANA, 442 U.S. 510. Conclusive presumptions, i.e. "committed by the offender," invade the fact-finding function which in a criminal case the law assigns solely to the jury and relieves the state of its burden of proof beyond a reasonable doubt of every element of the crime charged. No one can find an offense of aggravated robbery was "committed by the offender," except a jury, aka fact-finder. Such was the intent of the legislature in drafting such statute. STATE v. JONES, 744 N.E.2d 1177-1178. *Proving aggravated robbery was predicate to proving an aggravated murder was committed for the purpose of escaping...aggravated robbery.* Failure to instruct on reasonable doubt and aggravated robbery invaded the fact-finding function of the jury and relieved the state of its burden to prove, beyond a reasonable doubt, every fact necessary to constitute the crime charged (3087-3122) The jury was permitted to *presume* a theory that was materially inaccurate, a legal fiction, and impossibility in violation of the Fifth, Sixth, and Fourteenth Amendments. The failure to instruct created a structural defect in the case, which is not subject to harmless error analysis, and a Due Process violation

under clearly established Federal law ARIZONA v. FULMINANTE (1991), 499 U.S. 270, 309-310, 111 S.Ct. 1246; IN RE WINSHIP, 397 U.S. 358, 25 L.Ed. 2d 368;

JACKSON. Absent such error, no reasonable juror would have voted to find the appellant guilty beyond a reasonable doubt of aggravated murder. SCHLUP. The appellant must, therefore, be released from unlawful imprisonment. Such conviction is void. Even assuming jurisdiction, the conviction is void/voidable for insufficiency of the evidence before and after disqualification of the illegally discovered evidence, and for denial of due process and trial by jury for failing to instruct the jury on what constitutes proof beyond a reasonable doubt of aggravated robbery. Failure to instruct is also "Plain error."

29.) Appointed counsel stipulated to the existence of a non-existent warrant and non-existent offense (aggravated robbery), without appellant's knowledge or consent, essentially conceding the appellant's guilt and forfeiting his defense to aspects of the state's case: that, (1) the victim was a "peace officer" as defined in Section 2935.01 of the Ohio Revised Code, instead of someone acting outside of the laws of the state and United States; (2) that there was another "offense" (aggravated robbery) committed by the appellant (and a warrant), for which the appellant was trying to escape; (3) that the decedent, who was acting outside of the law, was engaged in his duties as a "peace officer"; (4) that there was a murder; and (5) a "murder weapon." (Ex.# 20, 23). There was no offense, no jurisdiction, no warrant; the arrest was illegal; and all of the "evidence" was subject to suppression under the fruit of the poisonous tree doctrine; and

counsel's performance was deficient for failure to move to dismiss/suppress. Such deficiency was wildly prejudicial. NORTHROP v. TRIPPETT, 265 F.3d 384, 385; STRICKLAND. An arrest warrant is defined as: A written order of the court which is made on behalf of the state, or United States, and is *based upon a complaint* issued pursuant to statute and/or court rule and which commands law enforcement officer to arrest a person and bring him before magistrate. Black's Law Dictionary, Sixth Edition. (emphasis added.) The United States Supreme Court spoke to the purpose and function of counsel in GIDEON v. WAINWRIGHT, 372 U.S. 335; at 344-345: "...Even the intelligent and educated laymen has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether indictment is good or bad. He is unfamiliar with the rules of evidence. *Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible.* He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence." 287 U.S., at 68-69. (emphasis added.) Counsel generally failed to function according to his purpose designed by the Constitution and specifically envisioned in GIDEON. It were as if the appellant had no counsel at all.

30.) By pleading not guilty, the appellant reserved his right to the presumption of

innocence, right not to be convicted unless the state prove to the trier of fact beyond a reasonable doubt every element (robbery) of the charge in an adversarial process, right to a trial by jury, a fair trial, due process, right to confront his accusers, and privilege against self-incrimination. WILEY v. SOWDERS, 647 F.2d 642 (1981). The decision to plead "guilty" or "not guilty" is a decision reserved solely for the accused based on his intelligent and voluntary choice. BOYKIN v. ALABAMA, 395 U.S. 238, 89 S.Ct. 1709. Appointed counsel's actions violated these rights.

31.) So, we have here, an invalid complaint leading to an invalid warrant leading to an unconstitutional search and seizure where the "officer" happened to have gotten shot, resulting in the appellant being charged with aggravated murder of the "officer," with "aggravated robbery" and "warrant" therefor, cited as the genesis of the state's theory of prior calculation and design in order to elevate the penalty (Ex.# 23). The lack of jurisdiction is fatal to all charges. Alternately, had appointed counsel objected and moved to suppress on the grounds laid out herein, all of the evidence construed or construable against the appellant would have been excluded as fruit of prior illegality. None of the evidence was competent. STATE v. ROGERS, 198 N.E. 2d 796; 1963 Ohio Misc. LEXIS; In the absence of a sufficient formal accusation, a court acquires no jurisdiction whatsoever, and if it assumes jurisdiction, a trial and conviction are a nullity. STATE v. MILLER (1988), 47 Ohio App.3d 113, 114, citing STATE v. BROWN (1981) 2 Ohio App.3d 400. The court must review the determination of subject matter jurisdiction de novo, without any deference to the trial court. STATE v.

THACKER, Lawrence App. No. 04CA5, 2004-Ohio-3978. 9, citing *McCLURE* (1997), 119 Ohio App.3d 76, 79.

32.) Had the appellant not been denied counsel/the effective assistance of counsel, in violation of his First, Fifth, Sixth and Fourteenth Amendment rights, he would not have been falsely convicted by the incompetent, inadmissible evidence. *SEGURA v. UNITED STATES, 468 U.S. 796, 804, 104 S.Ct. 3380 (1984); SCHLUP v. DELO, 513 U.S. 298.* Both the Ohio and the United States Constitutions protect against unreasonable searches and seizures. The Supreme Court of Ohio has interpreted Section 14, Article I of the Ohio Constitution and the Fourth Amendment to the United States Constitution as affording the same protection because the sections are virtually identical. *STATE v. ROBINETTE (1997), 80 Ohio St.3d 234, 238, 685 N.E.2d 762, 766-767.*

33.) If an unlawful seizure occurs, the evidence obtained after the unconstitutional seizure would have to be suppressed as the “fruit of the poisonous tree.” *STATE v. McMILLIAN (1993), 91 Ohio App.3d 1, 6, 631 N.E.2d 660, 663,* quoting *WONG SUN v. UNITED STATES (1963), 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441.* Failure to object, or move to suppress where such motion would result in the case being dismissed is the height of ineffectiveness. *STRICKLAND.* The appellant is in custody in violation of the laws of Ohio, the United States Constitution, and clearly established Fourth, Fifth, Sixth, and Fourteenth Amendment jurisprudence. These Amendments were designed to protect the people against arbitrary police/government actions and must be upheld as such. The appellant has, hereby, demonstrated the lack of jurisdiction

and subsequent illegality of his custody and conviction and is hereby entitled to release from such unlawful imprisonment. At the very least, the elements of the charge related to aggravated robbery are void including the charged theory of prior calculation and design. The lack of an instruction on, and proof of, aggravated robbery is also fatal to the charge of aggravated murder. Absent error(s) cited, no reasonable juror, properly instructed, would have voted to find the appellant guilty beyond a reasonable doubt of the charge. SCHLUP.

PROPOSITION OF LAW II.

THE STATE KNOWINGLY PRESENTED FALSE EYEWITNESS TESTIMONY AND SUPRESSED EXCULPATORY FACTS.

34.) Incorporated by reference, herein, are paragraphs 1-33 as if fully rewritten. There were two purported eyewitnesses to the shooting of the decedent, Anthony Barksdale and Teresa Taylor ("Barksdale" and "Taylor"). Exhibit #1, however, when viewed with Exhibits #2, #3 a,b,c, #4, and 8 demonstrates that Taylor unequivocally, repeatedly identifies Barksdale as Officer Glover's shooter and excludes the appellant from any guilt:

35.) (Ex. #1) PGS. 3-4; I saw three males. They—one {Ex. #3c} was wearing a tan and green jacket, the other {Ex. #3b} was wearing a Dallas Cowboy jacket, and the third {Ex. #3a} one was wearing a green jacket...and the two—the one {3c} in the tan

and green jacket and the one {3b} in the Dallas Cowboy jacket cut through my yard, and the third friend {Ex. #3a}, he just, he left. (Barksdale's coat is actually tan with black sleeves.)

PGS. 18-19; Q. did you ever see a third man?

A. No...The other one, he just—he left. I don't know where, but he, he left towards West Avenue...Before the shooting.

PGS. 43-44; There's just two; the third man that left before the shooting, um, I don't see him.

36.) The text clearly shows that the third {3a} man (appellant), in the green coat, "left" leaving two (2) behind. Anthony Barksdale {3c} and Jimmie Ruth {3b} both testified and gave statements before trial consistently indicating that they were the only two (2) in Taylor's yard (Ex.#2, Ex#4), (Tr. 2231-2232, 2265, 2336, 2337, 2338, 2360).
The state conceded that point, (Tr. 2133, 2139-40, 3029).

Out of those two (2) who were left behind, one of them is the shooter, (Ex.#1):

PG. 3-4; The two—the one {3c} in the tan and green jacket and the one {3b} in the Dallas Cowboy jacket cut through my yard.

PG. 6; The shooter and his friend, the ones in the Dallas coat {3b} and the {3c} tan and green coat, were, um, they were, like about three feet away from the back fence and they were directly across from where the officer was...

PG. 8; One in the Dallas {3b} coat was Jimmie Ruth, and I don't know who the other {3c} one in the tan coat was...

PG. 9; The one {3c} in the tan and green coat had the gun in his hands...

PG. 13; I saw the one {3c} man, in the tan coat, pull out a gun.

PG. 20; The shooter {3c}, in the tan coat...

PG. 22; The person in the tan coat {3c}, after he shot the police, the officer, he ran towards the fence and couldn't get over it, so he ran south towards the bushes on 43rd and was looking for the kid in the {3b} Dallas coat. So, he ran back and must have detoured through the opening that there was. The other kid, in the Dallas coat, came back, he couldn't find him, so he ran through our yard.

37.) Compare this last statement from PG. 22 to Barksdale's account from Ex. #4, and it is clear that Barksdale is the person Taylor is identifying as the killer: "He indicated he was in the side yard and went in another yard and a lady in a house yelled out the door to him to get out of her yard. He said that he ran back to the fence and could not get over the fence so he went [east] to an opening in the fence and ran across the [field] Officer Glover was shot in to W. 41st & Coleman." Also see videotaped walk-through of crime scene, Ex. #2. On PG. 23 of Ex. #1, Taylor's mother corroborates that Barksdale was the guy in her yard that Teresa says is the shooter when shes states "I told him to get out of my yard."

38.) Out of the two (2) left behind, the person identified by Taylor as being the shooter is described as wearing a "tan"/"tan & green" {3c} coat. State's exhibit #11 was the coat Barksdale wore; it is the only tan {3c} coat; State's exhibit #10 is the coat Jimmie Ruth wore; it is the only Dallas Cowboy coat {3b}; State's exhibit #4 is the coat the appellant wore, it is the only {3a} green coat. Thus, when Taylor says the "third person" in the green {3a} coat left before the shooting, she could only be speaking of the appellant, (Ex. #3; Ex.#1, PGS. 3-4).

39.) This, in conjunction with the fact that Barksdale and Ruth admit that they were the two (2) in Taylor's yard [which the state concedes, Tr. 2133, 2139-40, 3029], (Ex. #2, Ex. #4; Tr. 2231-21, 2265; 2335, 2336, 2338, 2360) and neither one of them saw the appellant anywhere is prima facie evidence that Taylor identified Barksdale {3c} as the shooter, that the appellant {3a} is not only innocent but that the state knowingly twisted this child's account into a false one to maliciously prosecute and secure an illegal conviction while masquerading as a paragon of justice.

40.) The "Investigative Narrative" of Detective Jeff Brown (Ex. #8), at PG. 9 gives the breakdown of the coats as,

Jones: Green Bay jacket with large "G" on back with green stocking hat.

Ruth: Blue/white/gray Dallas jacket with blue stocking hat.

Barksdale: Tan/black full length jacket with blue stocking hat.

41.) The legal boundary between guilt and innocence is reasonable doubt. SCHLUP v. DELO, 513 U.S. 298. Reasonable jurors would necessarily have a reasonable doubt as to appellant's guilt in light of this new evidence, (Ex.#15). This evidence, especially Taylor's videotaped statement, is *manifest evidence*. Manifest; Evident to the senses, especially to the sight, obvious to the understanding, evident to the mind, not obscure or hidden, and is synonymous with open, clear, visible, unmistakable, indubitable, indisputable, evident, and self-evident...Black's Law Dictionary, Sixth Edition.

42.) In good faith, the state cannot have missed these facts. This is a violation of **Disciplinary Rules DR 1-102 (A)(4), (5), DR 7-102 (4), (5), (6), DR 7-103 (A)**, and

United States Supreme Court Precedent: BRADY v. MARYLAND, 373 U.S. 83 (1963); UNITED STATES v. BAGLEY, 473 U.S. 667, 105 S.Ct. 3375 (1985); UNITED STATES v. AGURS, 427 U.S. 97, 96 S.Ct. 2392 (1976); KYLES v. WHITLEY, 514 U.S. 419, 115 S.Ct. 1555 (1995). The prosecutor in a criminal case shall make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense. Ex.# 1 and what is cited to corroborate it is such evidence. A conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury (Ex. #15). AGURS, 427 U.S. at 103. The jury was not aware because the state knowingly suppressed the truth and put forth falsehoods instead. Appointed counsel did not show or consult with the appellant on over 99% of the evidence. Appellant-defendant had no idea as to the many defenses he now raises, as he was kept in ignorance by "counsel." The defendant in a criminal case is the defense i.e. the party to the suit. Not counsel. "Counsel" did absolutely nothing to disabuse the jury of false facts planted by the state. The Attorney General's office committed fraud upon the district court to maintain this miscarriage of justice. (See motion for Summary Judgment.)

43.) Those falsehoods were the in-court ID testimony of Taylor, which is contrary to her statement given hours after the shooting, that the shooter "had on a green coat with a "G" on the back of it" (Tr. 2371, 2376); and the testimony of Barksdale stating that he saw the appellant shoot the Officer (Tr. 2228-2229). The state knew (or should have

known) that Taylor identified Barksdale as the shooter. The state knew that Barksdale failed the lie detector test as to whether he "fired any shots at the officer," and "was telling any deliberate lies about his involvement" (Ex. #4 statement/polygraph of Anthony Barksdale). Ex. #8, The Investigative Narrative of Lead Detective Jeff Brown, illustrates that the state knew Barksdale's story was not credible in other ways:

PG. 4. Det. Brown determines that from both Barksdale and Taylor's account, and footprints determined to be Barksdale's, he {3c} was one of the two persons in Taylor's yard.

PG. 7 It is determined that from Taylor's yard, Barksdale {3c} went through the lot where the body lay onto the corner of, 41st. St., just as Taylor states of the shooter, consistent with Ex. #2, Ex. #4. Patrolman Koski observed Barksdale at that same corner no more than a minute after hearing "shots fired" Tr. 2438, 2448.

PG. 8. According to Det. Brown, it is not credible for the appellant to be running on Coleman Ave. or near the back of the garage where the officer was found, turn around and, essentially, shoot the Officer while running backwards, especially, in light of the fact that Glover was shot from a distance in the back of his upper right arm. The trajectory of that bullet being impossible to achieve except the shooter be behind the Officer. (Ex. #9; Medical Report & Autopsy Protocol) As Barksdale was (Ex. #4).

44.) Moreover, after presenting false identification testimony, the state improperly vouched for their perjured evidence:

{Tr. 3036} No one, no one has pointed the finger at anybody other than Odraye Jones. **Lie.**

{Tr. 3037-3038} One thing she wasn't confused about and one thing she was consistent about is...the green jacket with the big "G" on the back. And she saw the person wearing that jacket pull out a gun and fired four times as he walked towards Officer Glover...No question in her mind it was a green jacket. She never wavered on that point...her recollection with respect to that green jacket is unwavering. **Lie.**

{Tr. 3084-3085} What was she consistent about from day one, never wavered? That the guy in the Green Bay Packers jacket is the one that killed Officer Glover, is the one that shot Officer Glover and kept walking toward him as he was shooting, that the guy in the Green Bay Packers jacket is the one that kicked Officer Glover when he was down. Theresa never wavered on that. **Lie.**

45.) Lies. The state has withheld, heretofore, any evidence concerning when Taylor's identification changed from "tan coat" {3c}, (Ex. #1 PGS. 3-4, 6, 8, 9, 13, 20, 22) to a "green coat {3a} with a big "G" on the back" (Tr. 2371, 2376). They have turned over one Taylor statement (Ex. #1), made the night of the shooting, certified by their own Registered Professional Reporter, and Notary Public, Juanita A. Thorpe—identifying the killer as wearing a tan coat. The state cannot hold on the one hand that Taylor identified that killer as wearing a tan coat, and on the other, at trial and on appeals, that Taylor never said that. Their own Notary/Reporter certifies that Taylor did say exactly that. Furthermore, that state cannot deny/refute the logic: Taylor says tan (Ex. #1), Det. Jeff Brown (Ex. #8; PG. 9) says Barksdale's coat was the only tan one, the logical conclusion is that tan equals Barksdale as the killer in Taylor's statement. Since the appellant's coat {3a} could not competently be considered tan, the state knowingly presented false evidence in violation of clearly established Federal law. NAPUE v. ILLINOIS, 360 U.S. 264, 271 (1959); UNITED STATES v. AGURS, 427 U.S. 97, 103-04 (1976); GIGLIO v. UNITED STATES, 405 U.S. 150, 153 (1972). And the jury was tricked into convicting appellant El-Amin thereby. (Ex.#15).

46.) The false/manufactured testimony of Taylor and Barksdale {3c} (and improper vouching by the state) regarding the shooter's identity misled the jury and prejudiced the

appellant. It is clearly established that a criminal conviction obtained through the prosecution's knowing use of perjured or false evidence violates the defendant's right to Due Process of Law as protected by the Fourteenth Amendment to the Federal Constitution, MOONEY v. HOLOHAN, 294 U.S. 103 (1935); NAPUE v. ILLINOIS, 360 U.S. 264.

47.) The United States Supreme Court also held in MOONEY that "The requirement of Due Process is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of trial which in truth is used but as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured." 294 U.S. 103, 105.

48.) Nor does the totality of the circumstances support the reliability of Taylor's in-court identification of the appellant's green coat as the one worn by the shooter. U.S. v. WADE, (1967) 388 U.S. 293; NEIL v. BIGGERS, (1972) 409 U.S. 188; MOORE v. ILLINOIS, (1978) 434 U.S. 220. The state also fraudulently bolstered the false "eyewitness" testimony of Taylor and Barksdale by making an impermissible statement in the form of a question as to whether Barksdale {3c} took a lie detector test. This was evidence outside the record which was inadmissible except both parties stipulate to it's admission (Tr. 2283-2286).

49.) It is improper under the guise of artful cross-examination to tell the jury the substance of inadmissible evidence. UNITED STATES v. SANCHEZ, 176 F.3d 1214,

1222 (9th Cir. 1999). The jury was misled to believe that Barksdale {3c} was not a viable alternate suspect, and that he was, essentially, unimpeachable. As Ex. #4 shows, Barksdale failed the test as to whether he fired any shots at Glover, and whether he was telling any deliberate lies about his involvement. Surely, the state did not wish to reveal to the jury that Barksdale was lying. One can only conclude the theater was calculated to

create the false impression that Barksdale {3c} had passed the test, that he and Taylor were credible. To make matters worse, it appeared to the appellant that the state and "counsel" had choreographed this scene. Certainly, they could have stipulated to its admission in joint trial Ex. #1 (Ex. #20). Neither one of them wanted it in for the same reason: it shows Barksdale to be the liar/killer, lends itself to reasonable doubt.

50.) The instructions were not curative. They left the impression that the "good and honest" state prosecutor had evidence of guilt, which, for "technical reasons", he wasn't allowed to share with the jury (Tr. 2285-2286). First, the trial court, asserts, "There was no answer given by the defendant." Barksdale did reply in the affirmative (Tr. 2283). Second, the instruction given ignores that fact, "I'm going to instruct you to absolutely disregard that question. I've already instructed you that you're never to draw any inference from questions which are not permitted by the court to be answered. So, you're to absolutely disregard it. That question is stricken from the record." Third, the language "I'll instruct the prosecutor not to make any further references to any lie detector test. They're absolutely inadmissible anyway," allowed jurors to harbor the

fallacy that the court was "protecting" the bad defendant from the good prosecutor's evidence. It was a

foul blow. The mistrial should have been granted. Tr. 2285.

51.) The state also presented false testimony from Deputy John Bernardo, which is also inadmissible under MIRANDA v. ARIZONA, 384 U.S. 46, 86 S.Ct.1602 (1966).

(Tr. 2699-2701) The prosecution has a heavy burden to show that a person who is the subject of a custodial interrogation knowingly, intelligently, and voluntarily waived his Fifth Amendment Right to silence and his Sixth Amendment Right to counsel before any admission, confession, or statement against interest, whether exculpatory or inculpatory, stemming from such custodial interrogation, may be introduced against him at trial. MIRANDA. Neither the absence of intent to interrogate nor exclamation of surprise is determinative of whether interrogation was conducted. U.S. v. SOTO, (C.A. 6 1992), 953 F.2d 263. The appellant had requested counsel and was denied. Att. Joseph Humpolick told appellant prior to his being brought to the courtroom that he would represent him at the arraignment. When the appellant got there those plans had changed and appellant had no lawyer. appellant was then carried in his chair by two deputies back to the jury room where after asking for his lawyer Humpolick, the statement regarding an sks and killing 16 of those motherfuckers was falsely attributed to him. Under the Escobedo Rule, Bernardo's testimony should have been excluded. ESCOBEDO v. STATE OF ILLINOIS, 378 U.S. 478, 490, 491, 84 S.Ct. 1758.

Appointed counsel failed to properly object.

52.) Any interrogation of the accused or its functional equivalent, including appeals to the accused's sympathy, compassion, fear, or bias that the police know or should know will cause an incriminating response in violation to the Right to Counsel will render such response inadmissible at trial. Bernardo's report alleged that the remarks attributed to the appellant were made "during conversation," contrary to the state's claim that appellant was "just blurting things out." The appellant was prejudiced by this false, inflammatory testimony. It should not have been admitted. A court must "indulge every reasonable presumption against waiver of fundamental Constitutional Rights." MIRANDA, quoting JOHNSON v. ZERBST, (1938) 304 U.S. 464, 58 S.Ct., AT 1023.

53.) Had the state not violated appellant's Due Process Rights by maliciously instituting this prosecution knowingly using false eyewitness testimony, bolstering that false testimony with more lies, and simultaneously suppressing exculpatory evidence, the jury would not have been misled thereby and the appellant {3a} would not have been convicted by way of it. SCHLUP. The state also knew that Taylor recounted that the Officer was only shot after reaching for his gun, "It's—the way it looked when he put his hand back, it looked like he was reaching for his gun and that's when the first shot came, the shooter, in the tan and green coat, probably thought he was going to pull his gun out and just shoot him right there..." (Ex. #1 PG. 20), which is indicative of manslaughter at the most. Thus, this was a malicious prosecution. There was no probable cause to charge aggravated murder. The state could not, then or now, present any evidence to refute or overcome this PG. 20 evidence. Hence, further prosecution

would not serve the interests of justice. The job of prosecutors is not to convict people. The job is not to win cases. The job is to do justice. Appellant is entitled to an unconditional release. In light of Ex.# 1 PG. 19-20 evidence, it can be conclusively stated that the appellant was over-charged in the first place. Had he not been, or had such evidence not been hidden from the jury by the state and "counsel," he could not/ would not have been convicted of aggravated murder. SCHLUP.

PROPOSITION OF LAW III.

THE TRIAL COURT CAUSED STRUCTURAL ERROR IN THE TRIAL MECHANISM BY ERRONEOUSLY REFUSING THE MOTION TO APPEAR BY HIRED COUNSEL DAVID PERDUE, WHERE APPELLANT DISTRUSTED APPOINTED COUNSEL AND WHERE A POLITICAL/IDEOLOGICAL CONFLICT OF INTEREST PREVENTED COUNSEL FROM PERFORMING EFFECTIVELY FOR THIS PARTICULAR CASE BY PRESENTING EXCULPATORY EVIDENCE AND OTHERWISE SUBJECTING THE STATE'S CASE TO MEANINGFUL ADVERSARIAL TESTING.

54.) Incorporated by reference, herein, are paragraphs 1-54 as if fully rewritten. The trial court's refusal of the motion to appear was erroneous. The trial court purportedly denied the motion due to the notion that the timing was calculated by appellant and/or Attorney Per Due to build some kind of error or to cause delay. Such an opinion had no basis in fact.

55.) Erroneous deprivation of the right to counsel of choice, "with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as 'structural' error. Different attorneys will pursue different strategies with regard to investigation and

discovery, development of the theory of defense, selection of jury, presentation of the witnesses, and style of witness examination and jury argument. And the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides to go to trial. In light of those myriad aspects of representation, the erroneous denial of counsel bears directly on the "framework within which the trial proceeds," or indeed whether it proceeds at all. It is impossible to know [all of the] different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings. Many counseled decisions, including those involving plea bargains and cooperation with the government, do not even concern the conduct of the trial at all. Harmless error analysis in such a context would be a speculative inquiry into what might have occurred in an alternate universe." UNITED STATES v. GONZALEZ-LOPEZ, 2006 U.S. LEXIS 5165.

56.) The trial court's estimation that some kind of error could even be built in this case, was unfounded, as was it's notion that there was an attempt at delay. The appellant could only guess that the error "feared" was Double Jeopardy. The court placed emphasis on the jury being sworn. Tr. 2072-2110. In HOLLOWAY v. ARKANSAS, 435 U.S. 475, 98 S.Ct. 1173, the United States Supreme Court held: "The Sixth Amendment's Guarantee of the Assistance of Counsel is among those Constitutional Rights so basic to a fair trial that their infraction can never be treated as harmless error. Accordingly, when a defendant is deprived of the presence or

assistance of his attorney, either throughout the prosecution or during a critical stage in the prosecution of a capital offense, reversal is automatic....”

57.) And in UNITED STATES v. SCOTT, 437 U.S. 82, 92, (1978), the United States Supreme Court held that jeopardy does not attach if the proceedings are terminated “favorably to the defendant on a basis not related to guilt or innocence.” The Court, specifically overruling a line of cases that held that dismissal of the indictment after the jury was sworn amounted to an acquittal and barred retrial, held that the Double Jeopardy Clause does not bar retrial when the defendant deliberately sought termination of the proceedings on a basis unrelated to guilt or innocence. Attorney Per Due was not asking for dismissal of indictment, only to dismiss the jury and continuance.

58.) Similarly, in STATE v. BROUGHTON, 62 Ohio St. 3d. 253, 263 (1991), the Ohio Supreme Court reflects the same principle in holding that “Where jeopardy has attached during the course of a criminal proceeding, a dismissal of the case may be treated in the same manner as a declaration of a mistrial and will not bar a subsequent trial when: (1.) the dismissal is based on a defense motion, and (2.) the court's decision in granting the motion is unrelated to a finding of factual guilt or innocence.” at 266, 581 F.2d at 551. Thus, there was no error to be built. Attorney Per Due requested the minimum for him to act as effective representation.

59.) The decision by the court had no basis in law or fact, therefore, it was erroneous and an abuse of discretion betraying bias. This bias served to deny the appellant the full panoply of protections under the Constitution concomitant with the right to counsel.

Attorney Per Due had just cleared a person of a murder charge which is why the appellant chose him. Alternately, appointed counsel is a hired gun for Ashtabula County murder trials. From about 1997 until now, every time there is a murder trial in the County, they hire him, though he lives an hour away in Cleveland; none of the "clients" got less than a life sentence, I believe all pled guilty.

60.) The hearing was contentious, Tr. 2072-2110. There was obvious animosity towards Attorney Per Due if for no other reason than that he stood between the mob and their pound of flesh. The trick options offered by the court to allow Per Due to participate and the subsequent manner in which appointed counsels totally forfeited my defenses to the charge tell it all. It would be the height of arbitrariness, whim, and caprice to deprive appellant his "liberty and Life" due to the fact that unlike a rich person, who might have money readily available to hire his lawyer, he had to depend on his grandmother to rustle up the funds and it did not happen within the court's preferred time-frame. There was only 6 mos. Between arrest and trial. Does the Equal Protection Clause and Principles of Equity allow for that?

61.) The inquiry into the nature of appellant's distrust and disappointment with appointed counsel was inadequate, (Ex.# 6 Affidavit of appellant; Tr. 264 of Penalty Phase, Volume Two). I told the psychologist, Eisenberg, pretrial, that my lawyers, the judge, and the state were in conspiracy against me. And they were. As appellant intimated to the court, he did not doubt counsel's competency, per se, the problem was that they didn't intend to use that competency in the best interests of the appellant. "The

Sixth Amendment provides that in all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defense (not a sell out artist). An element of this right is the right to choose who will represent him. Where the right at stake is the right to counsel of choice, not the right to a fair trial, and that right is violated because a deprivation of counsel was erroneous, no additional showing of prejudice is required to make the violation complete. Where the right to be assisted by counsel of one's choice is wrongly denied, it is unnecessary to conduct an ineffectiveness or prejudice inquiry to establish a Sixth Amendment violation." UNITED STATES v. GONZALEZ-LOPEZ, 2006 U.S. LEXIS 5165; LINTON v. PERINI, 656 F.2d 207. This class of constitutional error is a "structural defect."

62.) Appellant El-Amin predicted he would not have a fair trial due to appointed counsel's refusal to acknowledge evidence that he did not commit the crime charged. Chiefly, Taylor's statement, (Ex.# 1) and corroborative evidence. Due to the trial court's denial of counsel (of choice), the appellant was prevented from exercising his rights under the Federal and State Constitutions to present a Full Defense, Confrontation of Witnesses, Cross-Examination, Due Process, Fair trial, Trial by Jury, Equal Protection under the Law(s), and the right to have the Assistance of Counsel for his Defence.

63.) Appointed counsel never confronted Ms. Taylor with her previous inconsistent statement identifying Barksdale, aka "person in tan coat {3c}" (Ex.#1 PGS. 3-4, 6,8,9,13,20,22); (Tr. 2384-2394). The appellant was, therefore, denied the right to have the trier of fact decide whether there was a reasonable doubt as to his guilt. The denial

of counsel of choice amounted to a *de facto*, or constructive, denial of counsel which is a structural error. Structural error is a Constitutional deprivation which affects the framework of the whole trial rather than simply an error in the trial process itself. ARIZONA v. FULMINANTE (1991), 499 U.S. 270, 309-310, 111 S.Ct. 1246. The position counsel took regarding the eyewitness evidence was an illogical one, thus, appellant could only deduce that it was a political/ideological hang-up hostile to the appellant's rights and interests.

64.) Fundamental Fairness dictates that a party may not benefit from an error it invited or induced. The state and trial court induced the errors of appointed counsel by unreasonably forcing the appellant to go to trial with counsel he neither trusted nor wanted. Such errors cannot, by law, be the cause of appellant's penalty.

a. The appellant, absent the denial of constitutionally adequate counsel would have been advised, aware of the invalid complaint, non-existent warrant and motioned to suppress anything discovered thereby, which the court would have had to sustain and issue a directed verdict (or dismissal) in appellant's favor.

b. Alternatively, the appellant/adequate counsel may have utilized the strength of his legal position to attempt a plea bargain to a charge no higher than manslaughter.

c. Had he been forced to trial, appellant/adequate counsel would have presented the exculpatory evidence from Teresa Taylor that appellant did not shoot the decedent (Ex.#1), and that Barksdale did. Appellant also would have presented evidence that, in case anyone still believed him to be the shooter, the shooter only shot the "officer" after

he reached for his gun (Ex.#1, PG. 19-20) which proves a manslaughter at best and requested an instruction on self-defense and manslaughter.

d. Moreover, appellant/adequate counsel would have motioned for an instruction to the jury that aggravated robbery had to be proven beyond a reasonable doubt, and barring such finding, there could not be a finding of guilt on prior calculation and design, nor specification #1.

65.) This evidence and these options were not before the trier of fact, depriving the appellant of his rights to Present a Full Defense, Confront accusers, Trial by Jury, Fair Trial, Due Process, and the Assistance of Counsel for his defence mandated by the United States Constitution. The Supreme Court dictates "we have long interpreted this standard of [fundamental] fairness [guaranteed] by the Sixth Amendment and the Due Process Clause to require that criminal defendants be afforded a meaningful opportunity to present a complete defense." CALIFORNIA v. TROMBETTA, 467 U.S. 479, 485, 104 S.Ct. 2528. The error/bias of the trial court, and subsequent errors of appointed counsel, "had a substantial and injurious effect or influence in determining the jury's verdict." (Ex.#15) BRECHT v. ABRAHAMSON, 507 U.S. 619, 123 L.Ed.2d 353. Barring the errors outlined in paragraph 64. a., b., c., d., and throughout this petition, the case would not have been submitted to a jury, and if it did, no reasonable juror would have voted to find guilt beyond a reasonable doubt. SCHLUP.

PROPOSITION OF LAW IV.

**THE EVIDENCE OF THE ESSENTIAL ELEMENT OF PRIOR
CALCULATION AND DESIGN IS INSUFFICIENT TO SUSTAIN A**

CONVICTION; THE FAILURE TO INSTRUCT THE JURY ON THE ELEMENT OF AGGRAVATED ROBBERY WAS A VIOLATION OF DUE PROCESS; AND THE IMPROPER CONSIDERATION OF "EVIDENCE" REGARDING THE INVALID ELIGIBILITY FACTOR/ SENTENCE ENHANCER (AGGRAVATED ROBBERY) CONTRIBUTED TO APPELLANT BEING UNCONSTITUTIONALLY CONVICTED OF AGGRAVATED MURDER.

66.) Incorporated, by reference herein, are paragraphs 1-65 as if fully rewritten. The Due Process Clause of the Fourteenth Amendment protects an accused person in a criminal case against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. JACKSON v. VIRGINIA, 443 U.S. 197, 99 S.Ct. 2781 (1979). The only thing offered as proof of prior calculation and design was the testimony of Jimmie Ruth, from a conversation he allegedly had with the appellant stating "If the cops try to arrest [appellant] [for robbery], I'll shoot at them." (Tr. 2329-2330). Such a statement, if credited, does not come close to reaching the burden of proving beyond a reasonable doubt the statutory definition of prior calculation and design.

67.) Furthermore, the facts, through testimony, regarding how the events unfolded make it clear that the appellant, assuming *arguendo*, he was the shooter, tried to avoid the "officer" not once but twice, (Tr. 2350). Those facts alone negate the plausibility of a plan as complex as that intended per the language of the statute for prior calculation and design.

68.) Moreover, aggravated robbery is the causa sine qua non of the state's theory of

prior calculation and design (pc&d). Causa sine qua non; A necessary or inevitable cause; a cause without which the effect in question could not have happened. Black's Law Dictionary, Sixth Edition. However, there was never a complaint filed against the appellant for any aggravated robbery; therefore, there was no robbery; the Municipal Court of Ashtabula was thus without the subject matter jurisdiction to issue a warrant for appellant's arrest; Capt. DiAngelo ostensibly promoted the belief, assuming the state version of the facts, that a complaint was filed, a warrant issued. Absent those actions, no unreasonable search seizure would have happened. Appellant was not found to be acting suspiciously, nor involved in any criminal act.

69.) In the end, the state never offered a victim of a robbery, nor any alleged witnesses thereto, for the appellant to confront, in violation of the Confrontation Clause of the Sixth Amendment. And the trial court never instructed the jury how to find or not find beyond a reasonable doubt whether a robbery had been committed, in violation of appellant's right to due process, and trial by jury on that element. (Tr. 3087-3122). Therefore, the state cannot have legally proven that the shooting of the decedent was for the purpose escaping... "another offense committed by the offender." IN RE WINSHIP, 397 U.S. 358, 90 S.Ct. 1068 (1970); JACKSON. Failure to prove the prerequisite of robbery is fatal to the state's theory of prior calculation and design. And even if the state had offered overwhelming proof of such event, the conviction is still a nullity under Ohio law given the fact that there was never a complaint filed in the case and the Municipal Court, thus, the Common Pleas Court never acquired jurisdiction.

70.) Failure to instruct a jury in a criminal case on the necessity of proof beyond a reasonable doubt can never be harmless error. JACKSON. The failure to instruct the jury on this element of the charge is also a violation of the Sixth Amendment right to a trial by jury as reflected in the Supreme Court principle enunciated in APPRENDI v. NEW JERSEY, 530 U.S. 466, 490, 120 S.Ct. 2348, BLAKELY v. WASHINGTON, 542 U.S. 296, 124 S.Ct. 2531, and WINSHIP Due Process. The robbery language in the charging document provided no legitimate support for the conviction/sentence, under Fourteenth Amendment jurisprudence, and evidence regarding robbery was a legal fiction and otherwise materially inaccurate. JOHNSON v. MISSISSIPPI, 486 U.S. 578; WATSON v. JAGO, 558 F.2d 330; JOSEPH v. COYLE, 469 F.3d 441. The robbery language in the charging document also contained/created a mandatory/conclusive presumption in violation of appellant's right to a presumption of innocence which applies to every element of the crime charged. SANDSTROM v. MONTANA, 442 U.S. 510; MORISSETTE v. UNITED STATES, 342 U.S. at 275. Conclusive presumptions, i.e. "committed by the offender," invade the fact-finding function, which in a criminal case the law assigns solely to the jury.

71.) The impetus for the state theory of prior calculation and design, therefore, is invalid both as an eligibility/sentencing factor and makes the possibility of "proof" of pc&d a legal impossibility. BROWN v. SANDERS, 546 U.S. 217, 126 S.Ct. 890. The United States Supreme Court, in SANDERS, held that "Since the eligibility factors by definition identified distinct and particular aggravating features, if one of them was

invalid the jury could not consider the facts and circumstances relevant to that factor as aggravating in some other capacity” in weighing states, of which Ohio is one. (emphasis added). If “aggravated robbery” is relevant to prior calculation and design per the state's theory, the jury cannot consider pc&d. If the jury cannot consider prior calculation and design, the appellant cannot be convicted of it. Aggravated robbery is the proverbial 'poisonous tree' from which fell the 'fruit'; state's theory of pc&d.

72.) It is axiomatic that a conviction upon a charge not made or upon a charge not tried constitutes a denial of Due Process. COLE v. ARKANSAS, 333 U.S. 196, 201; PRESNELL v. GEORGIA, 439 U.S. 14.

73.) Exhibit #10 shows that the very same robbery charge(s) the state used to inflate this aggravated murder charge, in the indictment, were dismissed June 9th, 1998. The appellant cannot have been **both** “convicted” of these robbery charges as an element of aggravated murder, and yet, the robbery charge be dismissed *nolle prosequi*. The robbery was indicted separately, set for trial separately, and dismissed separately. Not to mention that there never was a legitimate robbery complaint filed in the first place; claims I(A),(B),(C), paragraphs 14-33. The Ohio Supreme Court held, in STATE v. JONES, 744 N.E. 2d at 1177-1178, that the state had to prove aggravated robbery, as it was an element of the offense charged. The lack of instruction to the jury on that element is clear (Tr. 3087-3122); Consequently, there is no verdict to support a conclusion that the jury found that element to have been proven beyond a reasonable doubt; and whether, in the absence of proof of aggravated robbery, there was any proof

that a murder was committed to escape therefrom. The evidence is insufficient. JACKSON. The beginning of the state's case for aggravated murder is that: There was a robbery; In the middle, there was a warrant for the robbery; The End, is the claim that there was a murder to escape from consequences of the robbery. Properly instructed, no reasonable juror would have found the appellant guilty of aggravated murder. SCHLUP v. DELO, 513 U.S. 298. A jury is precluded from considering invalid eligibility/aggravating factors, nor could they consider facts and circumstances relevant to that factor, such as prior calculation and design as charged in this case. BROWN v. SANDERS, 546 U.S. 217. The Rule 29 motion (Tr. 2863, 2965, 2980) should have been granted; though a Rule 29 motion was filed, appointed counsel were still ineffective because there was no specifics cited as to why it should be granted such as has been demonstrated in this petition, to appellant's knowledge.

PROPOSITION OF LAW V.

THE APPELLANT WAS UNCONSTITUTIONALLY PREVENTED FROM PRESENTING EVIDENCE WHICH WOULD HAVE ENTITLED HIM TO AN ACQUITTAL OF THE CHARGE, IN VIOLATION OF HIS DUE PROCESS RIGHTS AND THE RIGHT TO A TRIAL BY JURY.

74.) Incorporated by reference, herein, are paragraphs 1-74 as if full rewritten. Appellant El-Amin was prevented through the denial of counsel/counsel of choice/ineffective assistance of appointed counsel from presenting evidence which casts

overwhelming doubt on the sufficiency of the state's case to support a conviction of the charge. UNITED STATES v. GONZALEZ-LOPEZ, 2006 U.S. LEXIS 5165; STRICKLAND v. WASHINGTON, 466 U.S. 668.

75.) There was evidence the jury never heard from Teresa Taylor contending that the "officer" was only shot in self defense (Ex.#1, PG.20); "It's the way it looked when he [decedent] put his hand back, it looked like he was reaching for his gun and that's when the first shot came, the shooter, in the tan and green coat [3c], probably just thought he was going to pull his gun out and just shoot him right there. So, he probably thought he was going to pull it out and he just shot him." In light of this evidence, no reasonable juror would have voted to convict on aggravated murder, (Ex.#15). SCHLUP v. DELO, 513U.S.298.

76.) If the appellant had adequate counsel, they would have: (a.) sought a plea bargain for manslaughter at best; (b.) elicited this testimony from Taylor; and (c.) requested a directed verdict, had that failed; (d.) requested and been granted an instruction on self-defense and/or manslaughter. Per BECK v. ALABAMA, 447 U.S. 624, 100 S.Ct. 2382, 65 L.Ed.2d 392 (1980); and HOPPER v. EVANS, 456 U.S., 610, 102 S.Ct. 2049, the Supreme Court has held, under Eighth Amendment jurisprudence, that "the jury must be permitted to consider a verdict of guilt of a non capital offense 'in every case' in which 'the evidence would have supported such a verdict.'" (emphasis added). And in MULLANEY v. WILBUR, 421 U.S. 684, 691, 95 S.Ct. 1881, 44 L.Ed.2d 508 (1975), the Supreme Court held that the proof of an element that distinguishes between murder

and manslaughter implicates WINSHIP as much as an element that distinguishes guilt from innocence. Id. at 697-698, 95 S.Ct. 1881. See also GALL v. PARKER, 231 F.2d 265 (6th Cir. 2000).

77.) Essentially, what that means in relation to SCHLUP is that if a person establishes that reasonable jurors, properly instructed, may have found him guilty of manslaughter, but not (aggravated) murder, he has established that he is actually innocent of the charge. Guilt of manslaughter is innocence of [aggravated] murder. It is clearly established Federal law that the legal boundary between guilt and innocence is reasonable doubt. SCHLUP; GALL v. PARKER, 231 F.2d at 307 “Challenges to evidence pertaining to an element of an offense raise constitutional due process concerns under IN RE WINSHIP and are thus reviewable on habeas review....An alternative way to gain habeas review is to show that a defense raised fully “negates an element” of a crime; a state must then disprove that defense as part of its burden of proof.”

78.) Under numerous scenario, the appellant could have been found not guilty *of the charge*. It was objectively unreasonable for appointed counsel not to have acknowledged/recognized and presented to the jury the exculpatory nature of Taylor's statement in two respects; a. that she identified Barksdale; b. she described the events in her statement in a fashion that constituted self defense or manslaughter; c. to have attempted to reach a plea deal with the state, for manslaughter, in light of that evidence; d. in light of that evidence, requested a directed verdict, and; e. requested an instruction

on self defense and or manslaughter, in order to prevent a guilty verdict of aggravated murder. Failure to do these basic, obvious things was a failure to act as the counsel guaranteed under the Sixth Amendment. STRICKLAND. Barring this constitutional error, no reasonable juror would have found the appellant guilty of aggravated murder.

SCHLUP

PROPOSITION OF LAW VI.

APPOINTED COUNSEL FAILED TO FUNCTION AS ADEQUATE COUNSEL AS GUARANTEED BY THE CONSTITUTION OF THE UNITED STATES BY FAILING TO OTHERWISE SUBJECT STATE CASE TO MEANINGFUL ADVERSARIAL TESTING BY PRESENTING EXCULPATORY EVIDENCE.

79.) Incorporated by reference, herein, are paragraphs 1-73 as if fully rewritten. As demonstrated above, in paragraphs 35-54, the state knowingly presented false identification testimony from Taylor and Barksdale {3c}. Appointed counsel corroborated the false in-court identification of Taylor instead of disproving it and demonstrating the exculpatory facts, (Tr. 2384-2394). Taylor's in-court identification testimony was demonstrably false and should/could have been impeached with her prior inconsistent statement (Ex. #1), which is a videotape of her identifying someone wearing a tan coat {3c} as the killer; such person could only be Barksdale (Ex.#2, Ex.#3 abc, Ex.#4, Ex.#8). Barksdale's identification testimony could/should have been impeached by way of the videotape, and Cross-examination of Taylor, identifying Barksdale as the killer, stipulation to admission of Barksdale's lie-detector results, and

presentation of Ex.#2.

80.) There was adversarial testing of testing of the false identification on this point where there most certainly should have been, as was urged by the appellant. Failure to present exculpatory eyewitness testimony and corroborating evidence falls below an objective standard of reasonableness and is prejudicial to appellant's defense. STRICKLAND v. WASHINGTON, 466 U.S. 668. Where there are only two purported eyewitnesses and one identified the other as the killer, the identifying witness [Taylor] becomes a, de facto, witness for the defense; the implicated witness [Barksdale] would thus be impeached and considered as a bona fide alternate suspect. The only "non-suspect" eyewitness, Taylor, would have been to the benefit of the appellant's defense had she been effectively cross-examined, and the jury would not have believed the false testimony and would not have convicted the appellant thereby.

81.) Appointed counsel's failure to put forth this exculpatory evidence, and thus provide the state case with meaningful adversarial testing, worked such fatal prejudice to appellant's defense that it was as if there was no defense. The job "counsel" did by reinforcing to the jury the bogus new in-court identification was worse than having no counsel during that joke of a cross-examination in violation of UNITED STATES v. CRONIC, 466 U.S. 648. This was not an oversight by "counsel." Nor a hindsight attack. Upon a first reading of a portion of Taylor's statement, pretrial, appellant tried to enlighten "counsel" as to the exculpatory nature/value of the statement. (Ex.#6). "Counsel" "seemingly" rejected that knowledge and retorted a weak and illogical spiel

regarding the irrefutable logic that: Appellant's coat could not competently be considered tan, nor could Barksdale's be the green coat Taylor was describing. Yet, the jury was sold this illusion with the complicity of appellant's supposed counsel and advocate, without a clue to the truth of the matter, (Tr. 2384-2394; 3036, 3037, 3038, 3084-3085).

1. Tr. 2384-85, "Which direction was the person in the Green Bay coat running?"
2. Tr. 2386, "Did you tell the police that the man in the Green Bay jacket was with the men in the Dallas jacket when the shooting occurred? Do you remember that?"
3. Tr. 2386, "Now, at the time, didn't you tell them that the man in the Dallas Cowboy Jacket was with the man in the Green Bay Jacket at the time of the shooting? Do you remember?"
4. Tr. 2387, "Didn't you tell them that the man in the Green Bay Jacket or, excuse me, in the Dallas Cowboy Jacket was with the man in the Green Bay jacket when the shooting occurred? Do you remember why you told them that?"
5. Tr. 2388, "And what I'm asking you is, didn't you tell the officers at the time that the man in the Green Bay jacket or, excuse me, in the Dallas Cowboy jacket was with the man in the Green Bay jacket when the shooting occurred?"
6. Tr. 2389-90, "I thought you just told us that you saw the man in the Green Bay jacket, the man in the Dallas jacket together when Officer Glover was shot?...So was the man in the Dallas Cowboy jacket anywhere near the person in the Green

Bay jacket when the shooting occurred?"

7. Tr. 2390, "Now, are you sure if it was the person in the Green Bay jacket or the person in the Dallas jacket that pulled the gun out?...Now when you talked to the officers the night after the shooting, did you tell them at the time that the man in the Dallas Cowboy jacket told the person in the Green Bay jacket not to shoot?... Now, you told the detectives that the person in the Dallas Cowboy jacket said to the person in the Green Bay jacket not to shoot, right?"

8. Tr. 2390-91, "Well, if the person in the Dallas jacket were all the way down 43rd Street when the shooting occurred, how could he have told the person in the Green Bay jacket not to shoot, if he didn't even see the shooting?"

9. Tr. 2392, "And do you remember how the man in the Green Bay jacket got to that field?"

10. Tr. 2393, "All right, now the person in the Green Bay jacket, this is the person you say was the shooter, correct?"

11. Tr. 2394, "Now I think it was your testimony that after the shooting, the person in the Dallas Cowboy jacket had a conversation with the person in the Green Bay jacket, after the shooting?"

12. Tr. 2394, "Now, I think it was your testimony that after the shooting, the person in the Dallas Cowboy jacket had a conversation with the person in the Green Bay jacket, after the shooting?"

What Taylor really said was: (Ex.#1; PGS. 3-4) I saw three males. They—one

was wearing a tan and green jacket {Ex.#3c}, the other was wearing a Dallas Cowboy jacket {Ex.#3b}, and the third one was wearing a green jacket {Ex.#3a} (appellant)...and the two-- the one in the tan and green jacket {3c} and the one in the Dallas Cowboy jacket {3b} cut through my yard, and the third friend{3a}, he just, he left.

(Ex.#1; PGS. 18-19) Q. Did you ever see a third man?

A. No...The other one {3a}, he just—he left. I don't know where, but he, he left towards West Avenue...Before the shooting.

(Ex.#1; PGS. 43-44) There's just two; the third man {3a} that left before the shooting, um, I don't see him.

(Ex.#1; PG. 6) The shooter and his friend, the ones in the Dallas coat {3a} and the tan and green coat {3c}, were, um, they were, like about three feet away from the back fence and they were directly across from where the officer was...

(Ex.#1; PG. 8) One in the Dallas coat {3b} was Jimmie Ruth, and I don't know who the other one in the tan coat {3c} was...

(Ex.#1; PG. 9) The one in the tan and green coat {3c} had the gun in his hands...

(Ex.#1; PG. 13) I saw the one man, in the tan coat {3c}, pull out a gun.

(Ex.#1; PG. 20) The shooter, in the tan coat {3c}...

(Ex.#1; PG. 22) The person in the tan coat {3c}, after he shot the police, the officer, he ran towards the fence and couldn't get over it, so he ran south towards the bushes on 43rd and was looking for the kid in the Dallas coat {3a}. So, he ran back and must have

detoured through the opening that there was. The other kid, in the Dallas coat {3a}, came back, he couldn't find him, so he ran through our yard.

82.) This was a clear violation of the Sixth Amendment right to the effective assistance of counsel, Cross examination, trial by jury, fair trial, and the Fourteenth Amendment right to Due Process. The state conceded the obvious; that the appellant was never in Taylor's yard, Barksdale and Ruth were (Tr. 2133, 2139-40, 3029). Ruth and Barksdale both consistently gave statements and testimony that they were the two in Taylor's yard and appellant never was (Tr. 2231-2232, 2265, 2336, 2337, 2338, 2360). Thus, appellant could never be the person Taylor is describing as the shooter. Barksdale and Ruth's testimony/statements unwittingly corroborate Taylor's identification of Barksdale as the shooter.

83.) Moreover, impeachment of Taylor (and thereby Barksdale also) would have made it plain for the trier of fact that Barksdale was the killer and made his own corroborative admissions that much more glaring:

“Odraye didn't shoot Glover” (Tr. 2886);

“thought they were arresting [appellant] for shooting the officer but he [Barksdale] had done it. (Tr. 2908);

“He said he was going to tell them he was the one who shot [Glover]. Because [he knew] they were going to put it on [appellant].” (Tr.2908);

“Odraye was not there when the officer was shot...He [Barksdale] and Jimmie Ruth were there,” (Tr.2909-2910); “apologizing 'cause he couldn't do the time”

(Tr. 2911);

“I [Barksdale] did something I shouldn't have done but I'll correct it,” “Odraye didn't shoot the officer, wasn't even there.” (Tr. 2912).

84.) Barksdale made it his business to go directly to Ms. Lyons residence after the incident to tell her appellant did not shoot the officer; Attorney Andrew Love, the same thing; Felicia DeLano, the same thing; police, the same thing. Only when he was charged with obstruction of justice did he feel he had no choice but to go with the story the state wanted. As he testified, if he didn't make a third statement declaring the validity of his first one claiming to have witnessed the appellant shoot the officer, he “would have screwed [his] own self.” (Tr. 2278). Not only was Barksdale desperate to gain leniency for his obstruction of justice charge, he was petrified of being charged as the killer and going to the electric chair. Lying against the appellant became a get out of jail free card--an offer he couldn't refuse.

85.) Appointed counsel's failure to: (a) challenge the invalid complaint, the invalid warrant, the subject-matter jurisdiction of the Municipal Court to issue a warrant, the authority of police to make an arrest, whether one acting outside of Federal and state law is a “law enforcement officer/peace officer,” the admissibility of any and all “evidence/witnesses” discovered as a part of this illegal process, and request dismissal of all charges (instead of stipulating to these elements of the state's case);
(b) Had the case survived such challenge, attempt a plea deal on the basis of the (Ex.#1, PG.19-20) evidence from Teresa Taylor describing the shooting as self-defense/

manslaughter, not a murder.

(c) Had a plea not been reached, present the exculpatory identification evidence from Taylor at Ex.#1, PGS. 3-4, 6, 8, 9, 13, 20, 22 in the form of the videotaped statement alongside Ex.#3 a, b, and c.

(d) Present evidence to the jury of self-defense/manslaughter from Taylor (Ex.#1, PG. 19-20) to establish a reasonable doubt as to the charge--in case any jurors still believed appellant was the shooter--motion for a directed verdict, and request an instruction on self defense and manslaughter had such motion failed.

(e) Request an instruction on the element of aggravated robbery, or file a Rule 29 motion challenging the sufficiency of the evidence to support a conviction as laid out in Propositions of Law I (A) (B) (C) and V. of this petition.

86.) Exhibit #14 exemplifies appointed counsel's attempted excuses to justify his deficient performance. There is no excuse, under the Sixth and Fourteenth Amendment guarantees, to justify not presenting the obviously exculpatory evidence of Taylor identifying Barksdale as the killer and Taylor's account of the decedent reaching for his gun at which time he was shot (Ex.#15). Not before, (Ex #1 PG. 19-20). Barring these errors of counsel, no reasonable, properly instructed juror would have voted to find appellant guilty of aggravated murder. SCHLUP v. DELO, 513 U.S. 298.

CONCLUSION.

87.) This case is fundamentally flawed in far too many ways for the appellant to remain in custody of the state of Ohio or for anyone to have confidence in the verdict.

Four of the jurors don't have confidence in their own verdict. First, the institution of the process that became this case was fraudulent; there was no complaint for any robbery filed, the Municipal court was without jurisdiction to issue a warrant; the warrant did not, therefore, exist; the "officer/decedent" was thus acting outside of the law in attempting an illegal, unconstitutional search and seizure. The Common Pleas Court could not acquire jurisdiction where Municipal court never had it. Appellant was unconstitutionally prevented through denial of counsel of choice/ineffective assistance of counsel from suppressing the incompetent evidence gained from the illegal arrest, and he was unfairly convicted thereby.

88.) The appellant was also unconstitutionally prevented from having his hired counsel present eyewitness evidence that he was not the person who shot Mr. Glover. The appellant was prevented from confronting the only witness not charged with a crime, Taylor, with her pretrial statement indicating that whoever the shooter was only shot the decedent in what looked like self defense, after the "officer" reached for his gun.

89.) The appellant was denied Due Process. The trier of facts was essentially tricked into finding him guilty of the charge. The trier of fact heard none of the exculpatory evidence. At least two elements of the charge, prior calculation and design and aggravated robbery, are invalid. The jury was never given an instruction for robbery, and at least one juror attests she didn't even understand the prior calculation and design instruction and didn't think it was proven in this case. (Ex.# 15) The "proof" adduced to

support this element is insufficient to support a conviction. At the vary least, the Ex. #1, PG. 20 evidence negates/rebutts the charge of murder/aggravated murder. Appellant is, hereby, entitled to release from custody.

ISLAM AL-DIN ALLAH

A highly stylized and illegible handwritten signature in black ink, consisting of several overlapping, sharp, angular strokes.

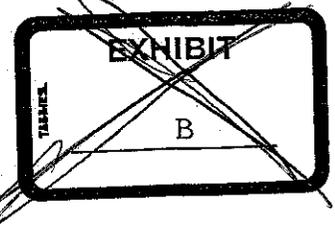
CERTIFICATE OF SERVICE

I hereby certify that a copy of this 60 (B) motion for relief from judgment has been sent by regular U.S. mail to counsel of record for the state of Ohio, Mike DeWine, Attorney General, 30 E. Broad St. Columbus, Ohio 43215 on August 13th 2012.



ISLAM AL-DIN ALLAH

EX # 1



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S T A T E M E N T S O F

TERESA TAYLOR

AND

LILLIE TAYLOR-LATHAN

Statements of Teresa Taylor and Lillie Taylor-Lathan,
taken at the Ashtabula City Police Department, 110 West 44th
Street, Ashtabula, Ohio 44004, by Detective Jeff Brown of the
Ashtabula County Sheriff's Department and Detective Jim Oatman
of the Ashtabula City Police Department, on Monday, November
17th, 1997, beginning at 10:20 p.m.

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A. At first, I looked out the window, the front door window, and I saw three males. They -- one was wearing a green and tan jacket, the other was wearing a Dallas Cowboy jacket, and the third one was wearing a green jacket. And, it looked like they were talking and they moved from in the front of my house to the east side, east part of it in the driveway. So, I moved from the front window to the side window and it looked like they were arguing, and the two -- and the one in the tan and green

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1 jacket and the one in the Dallas Cowboy jacket cut through
2 my yard and the third friend, he just, he left.

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then the shooter -- the shooter and his friend, the ones in the Dallas coat and the tan and green coat, were, um, they were, like, about three feet away from the back fence and they were directly across from where the officer was, on the other side of the woods.

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and then the two guys in the coats, Dallas coat and tan and
green coat, saw him and they took off running.

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9 Q. At that early stage of everything that
10 happened tonight, did you have any idea of who any of those
11 individuals were?

12 A. One in the Dallas coat was Jimmie Ruth, and
13 I don't know the other one in the tan coat was.

14 Q. How do you know Jimmie Ruth?

15 A. I know him by my mom.

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A. The one in the tan and green coat had the gun in his hands.

Q. When did you first, actually, detect, by seeing, there was a gun present?

A. When he pulled it out of his pocket. He just pulled it straight out of his pocket, you could just see it, it was visible.

Q. And this, again, is down at, towards the fence area you are talking about?

A. (Moved head up and down.)

DETECTIVE OATMAN: Is that where he pulled it from his pocket, in the back area, or did he pull it out another time?

A. He pulled it out when he was back by the fence.

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A. I saw the one man, in the tan coat, pull out a gun.

Q. Was he moving at the time or standing still?

A. He was standing there and he pulled the gun out of his pocket.

Q. The other individual is there also?

A. (Moved head up and down.)

DETECTIVE OATMAN: And that individual wore what coat?

A. Dallas Cowboy.

DETECTIVE OATMAN: And you know him to be who?

A. Jimmie Ruth.

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Q. In the beginning, you saw three men? One man left and two continued to the house on the east.

A. Yes.

Q. When the shots were being fired, you saw two men?

A. Yes.

Q. Did you ever see a third man?

A. No.

Q. Again--

A. The other one, he just -- he left. I don't know where, but he, he left towards West Avenue.

MS. TAYLOR-LATHAN: Did he leave before the shooting or after?

A. After--

MS. TAYLOR-LATHAN: I think, too--

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2 A.

Before the shooting.

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MS. TAYLOR-LATHAN: Before.

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17 Q.

Did you see the officer doing anything

18 Standing there? Does he have his gun out?

19 A.

No, he doesn't have his gun out. At first, he put his hand behind him and then he put it right back in front of him and this is when the first of the shots came.

20

21

22 Q.

Did you see his gun in his hand?

23 A.

The officer?

24 Q.

Yes.

25 A.

No.

1 Q. Do you feel confident, comfortable, to say
2 that he never had his gun drawn?

3 A. I don't know.

4 MS. TAYLOR-LATHAN: You never saw
5 the officer's weapon?

6 A. I don't know if he pulled a gun out
7 (inaudible) when the shooter shot him the second time. I
8 don't know if he pulled it out then or if he pulled it out
9 after the first shot.

10 DETECTIVE OATMAN: Did you see
11 him with a gun out though or, I mean, just so I can clarify
12 it, I want to make sure. Did you ever see the officer with
13 his gun? I mean, do think he had pulled his gun?

14 A. It's -- the way it looked when he put his
15 hand back, it looked like he was reaching for his gun and
16 that's when the first shot came, the shooter, in the tan
17 and green coat, probably just thought he was going to pull
18 his gun out and just shoot him right there. So, he
19 probably thought he was going to pull it out and he just
20 shot him.

21 MS. TAYLOR-LATHAN: Do you
22 remember seeing the officer with his gun in his hand?

23 Q. After the shots were fired, what did you see
24 then?

25 A. I saw the one, the kid that had the Dallas

1 then, doing that?

2 A. Yes.

3 Q. Did he run down the road when he went back
4 west towards West Avenue?

5 A. Yeah, 'cause after that, the person in the
6 tan coat, after he shot the police, the officer, he ran
7 towards the fence and couldn't get over it, so he ran south
8 towards the bushes on 43rd and was looking for the kid in
9 the Dallas coat. So, he ran back and must have detoured
10 through the opening that there was. The other kid, in the
11 Dallas coat, came back, he couldn't find him, so he ran
12 through our yard.

13 MS. TAYLOR-LATHAN: That's when he
14 cut -- couldn't get over my fence, so he cut through Lisa's
15 and Jeff's; I did see him run that way.

16 A. Then, he cut through the house, the house
17 that was behind, north of us, he went behind their back
18 yard and through some garages there, I think, and the other
19 kid in the tan coat, he just ran straight.

20 DETECTIVE OATMAN: Straight,
21 which direction?

22 A. North. North, towards 41st.

23 Q. This now, the second individual that ran
24 back through your yard, you saw him somehow get across the
25 fenced area and you turned back to the west?

1 A. (Moved head up and down.)

2 MS. TAYLOR-LATHAN: That's when I
3 told both of the guys to get out of my yard. One ran up to
4 Coleman, like she stated, and the guy with the green hat
5 couldn't get over my fence, so he cut through my neighbor's
6 yard in the opening and that's the route he took to get
7 over there.

8 Q. You saw that happen?

9 MS. TAYLOR-LATHAN: Yeah, I seen -
10 - I told him to get out of my yard.

11 Q. This was after the shots were fired?

12 MS. TAYLOR-LATHAN: This is after
13 everything, yeah. I seen him running back and forth. I
14 told him there's no sidewalk back there, get out of my
15 yard. One guy with the Dallas went towards Coleman and his
16 buddy went up towards the fence.

17 DETECTIVE OATMAN: Behind your
18 house?

19 MS. TAYLOR-LATHAN: Right, that's
20 when -- after the cops had gotten there, I had seen him
21 standing there, over on 41st Street, watching everything.
22 So, I don't know which ones they got and which ones they
23 don't have.

24 DETECTIVE OATMAN: When you say
25 he went over on, like, towards 41st--

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Q. The same three men that were involved in all
this tonight?

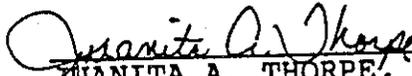
MS. TAYLOR: There's just

1 two; the third man that left before the shooting, um, I
2 don't see him (inaudible).

3 A. The other two, they're regulars; I mean,
4 they're dealers -- I ain't going to lie.
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C E R T I F I C A T E

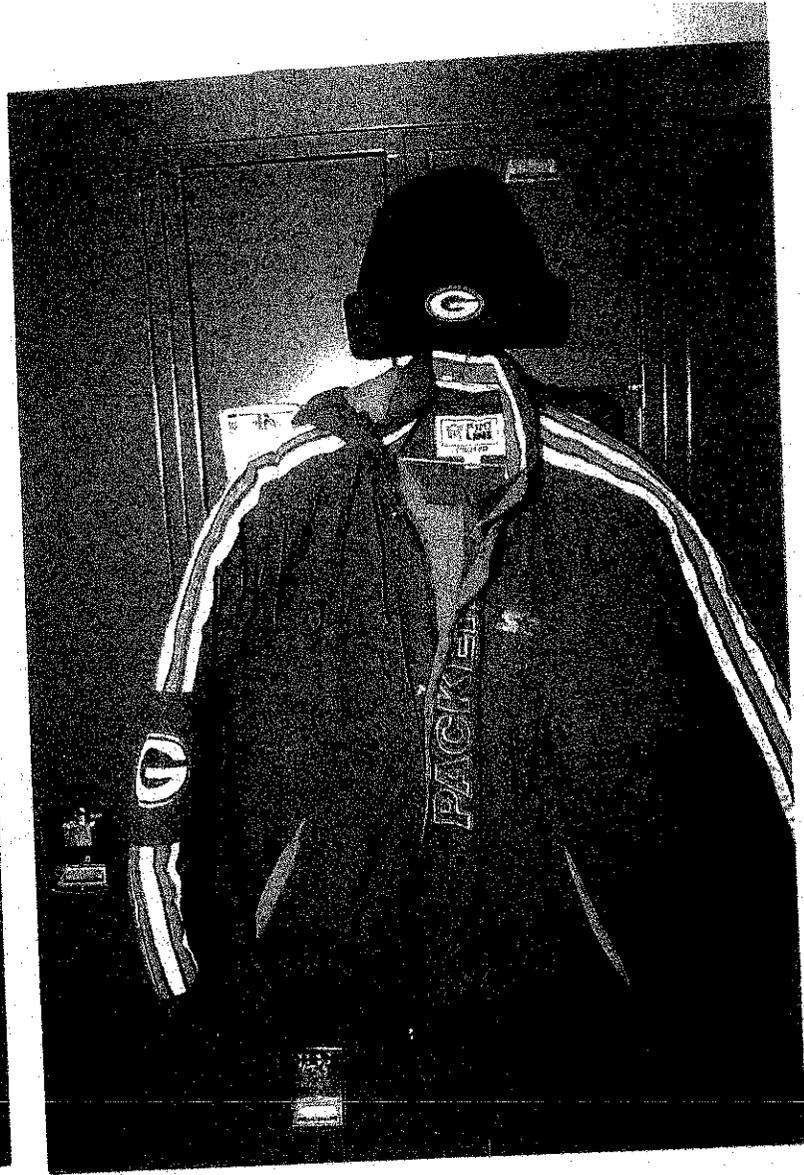
I, Juanita A. Thorpe, Registered Professional Reporter, and Notary Public in and for the State of Ohio, do hereby certify that the foregoing is a correct and complete transcript of the aforesaid proceedings, as taken by video tape and transcribed by me, with the assistance of Detective Jeff Brown, of the Ashtabula County Sheriff's Department, at a later date.



JUANITA A. THORPE, Registered
Professional Reporter, and
Notary Public, In and For the
State of Ohio

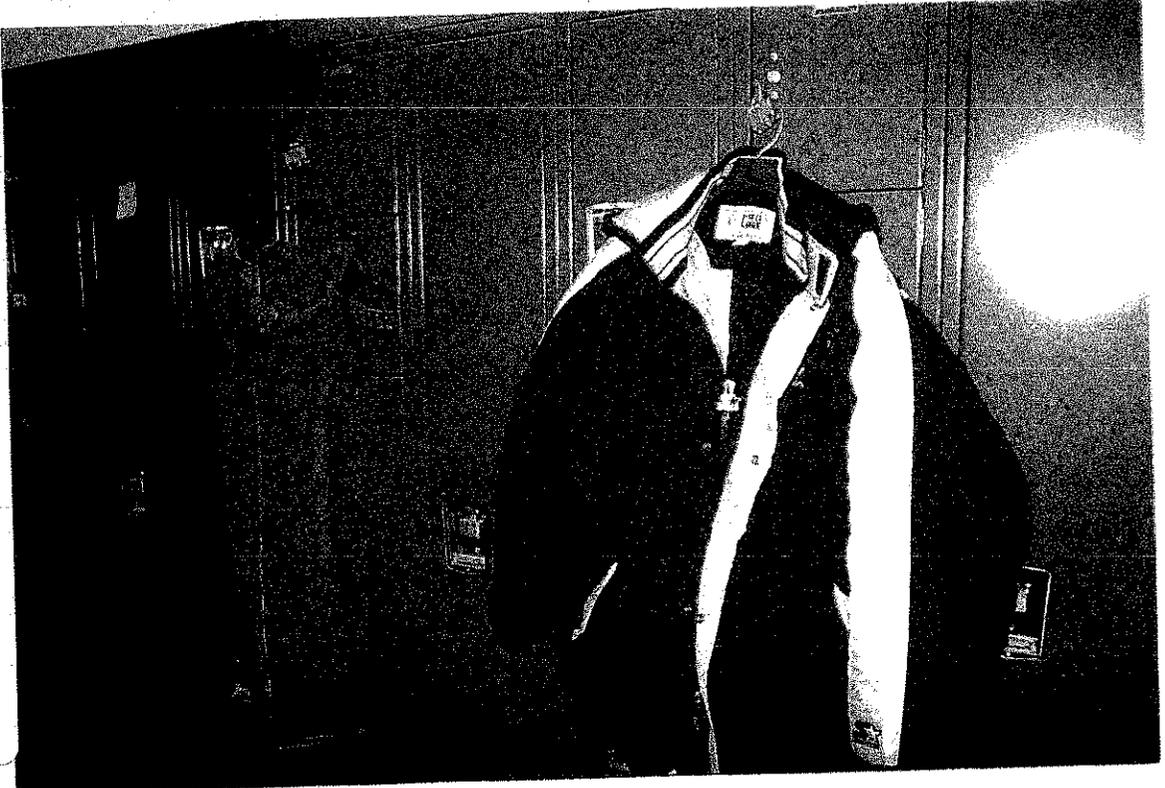
My Commission Expires Aug. 6, 2000

Ex # 3 (a)



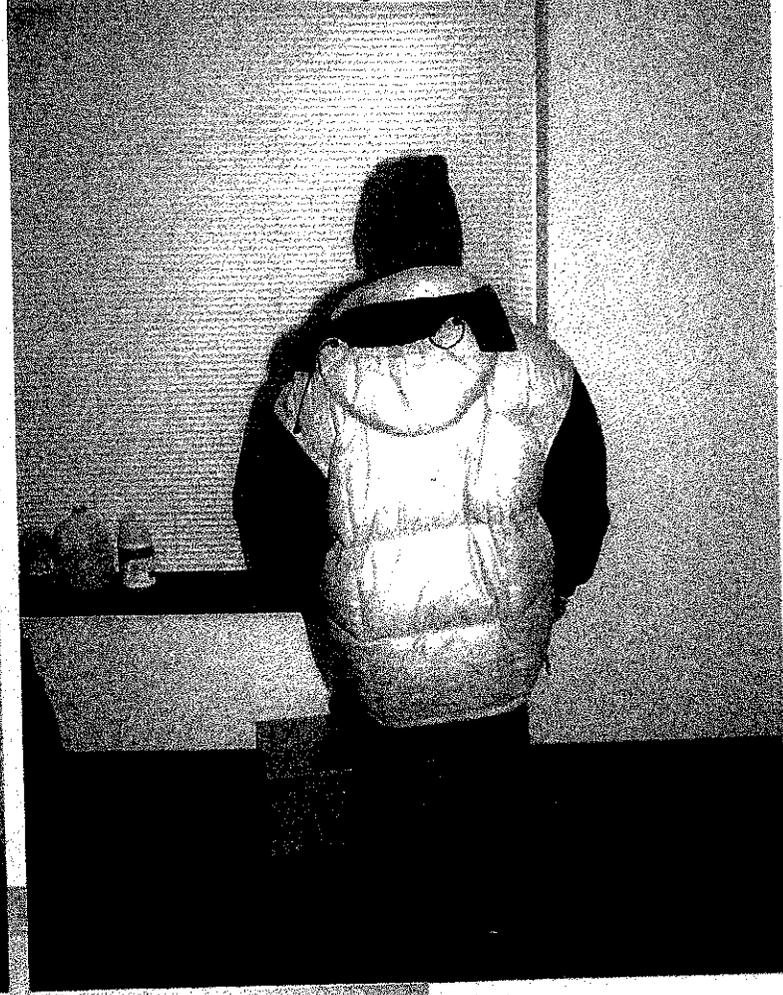
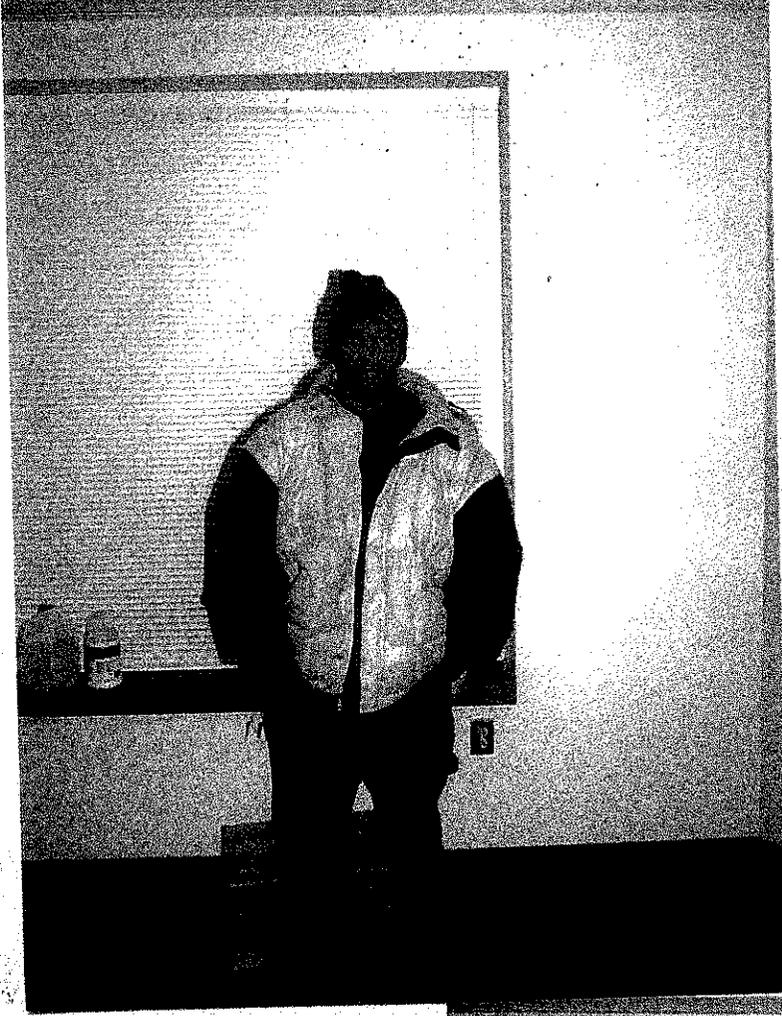
State's Trial Exhibit 4

Ex. # 3 (b)

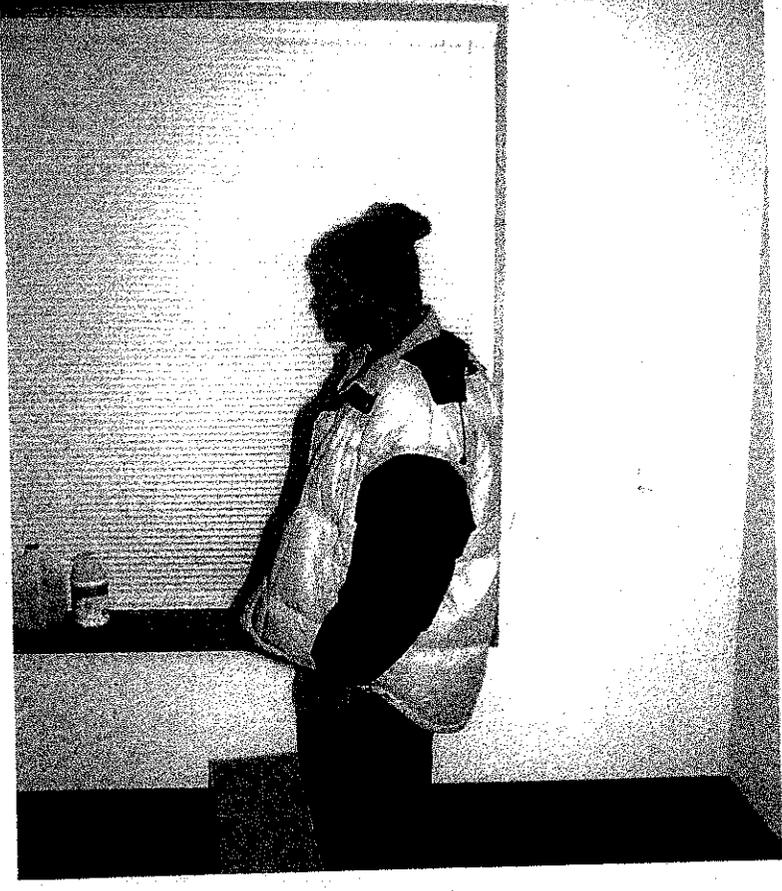


State's Trial Exhibit 10

Ex #3 (C)



State's Trial Exhibit 11



EX # 4

3 PPT

November 24, 1997

Detective Sergeant Bradley
Ashtabula Police Department
110 W. 44th St.
Ashtabula, Ohio 44004

PREDICATION:

Sir, At your request the subject; Anthony Barksdale, was evaluated by the use of the Polygraph Instrument. This examination was conducted on November 24, 1997. This examination was directed at evaluating the subjects truthfulness in regards to the Homicide of Ashtabula Police Patrolman William D. Glover Jr. Prior to the first polygram the subject said that he had now told the truth and the second statement that he gave the Detectives was true.

The subject was given a Polygraph waiver, which I read to him and he signed and indicated that he understood. The Subject was then read his Miranda warning which he read and signed indicated that he understood.

Prior to the first Polygram the subject related the following story. He said that On November 17, 1997, he was with his girlfriend. He said that the two of them were on Station Avenue, this was about 4:00 P.M. He said that he was talking to Rhamaud "Maudi" Hull, Toby Whitted and an Evans. He said that he then walked down the street and saw Odraye Jones and Jimmy Ruth. He said they were talking and decided to go over the tracks to the "West Side" He said that the three of them went over to W. 37th St. and then to the "Paths" that go around there. He said that they ended up on W. 43rd St. when they Glover driving by in the cruiser. He said that they then went to Flo Chapmans house and knocked on the door, but no one was home. He said they were all on the porch. He said that Ptlm. Glover turned around and came back towards the house in his car. Barksdale said that no one said anything and at that point Barksdale said he knew there was an Arrest Warrant for Odraye Jones. Barksdale said that he told Jones "You don't need to be here". He said that Glover pointed at Odraye Jones and told him to come here. Barksdale said that Odray said "What" and he said that Ptlm. Glover said come here. At this time Barksdale said that Jones eased to the side of the steps and jumped off the side. Barksdale said that Jones took off running through the driveway at Chatmans on the east side of the house. He said that Glover was right behind him. Barksdale said that he saw the back of Jones coat and the back of Glovers coat. Barksdale said that he was standing on the steps when he heard the shots. He said that he did hear about four or five shots. Braksdale said there were about five or six people on the street at this time and he does not know who they are. He said that the people told him that they had seen Odraye with a green coat and someone else run away. He said that Odraye had the green coat when I asked him who the someone else was he said that he did not know. Barksdale said that at this time he walked over to the field to see what was going on. He said that he told Jimmy Ruth that he was going to go see what was going on. He said that he was just being nosy. He said that he ran on a path but on Coleman Ave to W. 39th St and he saw his girlfriend Tiffany in a car and he got in her car at W. 39th St. and Coleman. He said that he told Tiffany to take him to Teresa Lyons house so he could tell her about Odraye Jones, who is related to Odraye. He said they then went down W. 41st St., then to W. 38th St. and he said that he saw the Officer arresting Odraye Jones. He said that he went to Teresa Lyons house. They told me that I ran right past Glover but I did not see him. He said that he went to his girlfriend's house. He said that then he was with Joe Joe and they were going to Mir's house when Rich Harris from Country towing saw him he told him that a cop had been shot three times and the cops were looking for a Barksdale and a Ruth. Barksdale said that he told Rich that he was Barksdale and he said that Rich said, "I didn't know that: was your name. Barksdale said that he then told Rich to take him to the Police Station and Rich said that he

would take him to Coleman Ave where all the cops were, so he did. He said that Sgt. Webber from the S.O. took him to the Police Station.

Prior to the first polygram the subject made no other statements.

The subject was asked the following Relevant Questions which he answered as Indicated.

- (3) Did you actually see Ptlm. Glover get shot? (no)
- (5) Did you fire any shots at Ptlm. Glover? (no)
- (8) Did you see Odraye Jones shoot Ptlm. Glover? (no)
- (9) Did you see Ptlm. Glover lying on the ground, in that field behind the garage? (no)
- (11) Are you telling any deliberate lies about your involvement in this case? (no)

RESULTS:

After careful analysis of the subjects polygrams it is the examiners opinion that the subject did not tell the truth to the relevant questions set forth above. This impression is based on the physiological responses to the questions indicative of non - truth-telling responses.

When confronted with this finding the subject stated that now he was in a lot of trouble. I told him that I did not believe that he had been truthful with me. He related that he had been truthful and that he was scared. He also said that maybe he just reacted to the questions that way because he knew that Odray Jones had to be the one to shoot Ptlm. Glover because no one else was there. He went on to say that , he ran in the side yard of the house to see what the shots were about, but could not see anything and he left and never saw Odraye Jones back there or saw Ptlm. Glover.

He started crying and said that he was under a lot of stress and pressure and I did not understand. He said that Odraye Jones could have him killed. He told me that the first statement was true and that he was going to have to go with that. I would ask him if it was true and he would say yes. When I asked him if the second statement was false then he would say no. I told him I just wanted the truth and he said that he was going to have to go with the First one in which he said that he saw Odray shoot Ptlm. Glover. I picked up his first statement where Barksdale had said that Odraye had pulled a gun out of his jacket pocket. I asked him about this and he said that he did not see that. He keep going back and forth saying that the first statement was true, then he would say that the second statement was true. I told him that I wanted to take a third statement from him with the truth in it. He said that he wanted to go with the first one. I said that why didn't we just start all over and I would take a statement with the truth and he asked me if I would tear up the first two statements he would do that. I told him no way would I do that as that would be against the Law. He told me that I did not understand him and that he was in the middle. I would ask him if he saw Odraye shoot Ptlm. Glover and he would say yes. Then he would turn right around and say that he did not see that. I asked him if he was in the side yard and saw Odraye shoot Ptlm. Glover and he said you cant see where they were at from where he was at. I would ask him how did he know where they were at if he did not see them. He had no answer. He drew me a map /diagram of what took place, this was in the pre-test. He said that ran by where Glover was shot at and lying. I asked him how far he ran away from Ptlm. Glover when Ptlm. Glover was lying in the snow. He said 5 to 7 feet. then he corrected it and said 5 feet. I asked him what side did he run past him at. Barksdale said that Ptlm. Glover was on his right or (east of him). I asked him if he did not see Ptlm. Glover how did he know he ran to the left of him and 5 feet away. He said that the detectives told him where Glover was and he knows where he ran, which would be 5 feet

Apart. I asked him if any footprints near Glover would come back to him and he said yes, when he ran through there. He indicated that he was in the side yard and went in another yard and a lady in a house yelled out the door to him to get out of her yard. He said that he ran back to the fence and could not get over the fence so he went east to an opening in the fence and ran across the field. Officer Glover was shot in to W. 41st & Coleman. When I asked him if when he was in this side yard he saw Odray or Ptlm. Glover, he said that you cant see them from where he was at in the side yard, where Glover and Jones were. He said that he never saw him from there. I asked him how did he know where they were at if he could not see them. He said that he was in the middle and he had too much stress and I don't understand. He said that he was very upset. He was crying. He said that he did not want to talk to me anymore right now and he wanted to leave and go upstairs. I told him Ok and ended the interview.

Philip J. Varkette
Polygraph Examiner

Ex#5

5-29-06

My name is Londale Miller i live
at 4785 Hope Ave Ashtabula Ohio
44004 I was at Mrs. Brown house ~~in~~
in 1999. Anthony Barksdale was there also
I asked him who shot ~~Stode~~ Glover
he told me Odraye did not shot
Officer Glover

Londale O. Miller

Sworn to before me This 29th day of May, 2006.

Alice J. Lewis, Notary Public
State of Ohio
My Commission Expires June 16, 2007

Alice J. Lewis

Ex # 6

AFFIDAVIT

I, Odraye El-Amin, attest that the following statements are true.

1. My name is Odraye El-Amin. Formerly Odraye Jones.
2. Prior to My trial for aggravated murder of Officer William Glover, I asked Dave Doughten about suppressing the testimony of Teresa Taylor based upon my conclusion, after reading her statement, that she was identifying Anthony Barksdale as Officer Glover's killer.
3. Doughten stated that he did not agree with my conclusion.
4. When I asked him how he could not agree given the facts that Barksdale clearly wore a tan coat, I clearly wore a green coat which could not be considered tan by any competent person.
5. Doughten responded that "maybe she (Taylor) thought the white and yellow stripes on your coat was tan".
6. I laughed at the preposterous nature of the premises he was asking me to accept as true:
 - a. That he ~~believed~~ actually believed what he'd said.
 - b. That he believed he possibly would convince me of it.
 - c. That Taylor didn't know the difference between green of my coat and the tan of Barksdale's.
 - d. That Taylor didn't know the difference between yellow and tan.
 - e. Assuming that Taylor did know the differences, she would characterize my coat as tan.
7. I told my grandmother, Theresa Lyons, about this. She asked Doughten about it and he told her the same thing. At that point, she and I both concluded that the only way to have a chance at acquittal would be through different counsel and resolved to set about hiring such counsel.
8. At the hearing to remove appointed counsel and appearance of David PerDue as counsel, the occurrences outlined above are what I was referring to when I stated the I did not trust counsel, and that if they couldn't get me an acquittal they could do nothing for me.
9. Because the media and the prosecution were present, I did not want to reveal to them what would be a part of my defense, or trial strategy. I did not think I had to do all of that to remove counsel.
10. I have informed all appellate counsel of this.

further affiant sayeth naught

ODRAYE EL-AMIN 8.27.2007

[Handwritten signature of Odraye El-Amin]
[Handwritten signature of Odraye Jones]

Subscribed in
 Mahoning County
 State of Ohio
 on August 29, 2007
[Handwritten signature]
 Scott Nowak
 Commission expires: March

Ex. #7

AFFIDAVIT OF JASHON HUNT

I witnessed the entire arrest of Odraye G. Jones on November 17, 1997. As Odraye was running across the West 38th Street, officer Stell drew his gun while approaching Odraye and yelling for him to stop. Odraye, after trying to enter Faye Moore's apartment, turned and laid on the ground as Stell ordered. Odraye did not have a gun and did not throw a gun. I would have testified to this in court.

further affiant sayeth naught

Jashon Hunt
Jashon Hunt

Sworn To before me this 21st day of June 2004.

Alice J. Lewis

Alice J. Lewis, Notary Public
State of Ohio
My Commission Expires June 16, 2007

Ex #8

(14 PAGES)

AS97-06218/D-781
 CRIME SCENE & FOLLOWUP ASSISTANCE INVESTIGATION
 ASST. ASHTABULA CITY DIVISION OF POLICE
 OFFICER WILLIAM D. GLOVER, JR. - SHOOTING DEATH
 COLEMAN AVE. NORTH OF W43RD ST.
 MONDAY/11-17-97
 BY
 ASHTABULA COUNTY SHERIFF'S DEPT.
 ACSO: 97-15322/DET 97-188
 DET JEFF C. BROWN

INVESTIGATIVE NARRATIVE
November 17th - December 01, 1997

INTRODUCTION: The narrative to follow starts with the minutes following the shooting. It continues with investigative activity that progressed throughout the time period first designated above. Facts and circumstances that may have been determined futuristic to the preliminary stages on 11-17-97 are presented at times in proximity to relative preliminary activities so as to more clearly present a summarization of the case and create a better means of evaluating the investigation's obvious conclusions.

On Monday/11-17-97 t 1653 Hours I arrived at the intersection of W41st. & Coleman Ave. in the City of Ashtabula.

I had radio contact moments before my arrival with Deputy Bill MARTIN, after hearing additional help was needed. I was notified by car-to-car radio communications initiated by Deputy Bill MARTIN that I could be utilized at a scene and was given directions on where to go.

I had left my office at the Sheriff's Dept. minutes before and was monitoring radio traffic from my agency and that of Ashtabula City PD. Sheriff's units were assisting in a foot pursuit situation in the City which started at approximately 1625 Hours involving Officer William D. GLOVER, Jr. where a subject (Odray JONES) had been reported by a citizen as walking on W43rd. St. and a known warrant for armed robbery was outstanding. Through subsequent investigation I learned that GLOVER was on W43rd

Street when his dispatcher radio'd to have "the unit on W43rd Street acknowledge".

Arriving at the scene I was confronted with numbers of police officers and Sheriff's Deputies. Detective James DATMAN with APD came to me on W41st. and told me that their Officer GLOVER had been shot several times and was in very serious condition. DATMAN was returning to his station for some equipment, but welcomed my presence to assist at the shooting scene located to the West of Coleman Ave., in the vacant corner lot belonging to 912 W. 41st. Street, immediate to the rear of the garage located to the rear of 913 W43rd. Street.

I met with Capt Phil VARKETTE of APD. He officially requested assistance in handling the crime scene and turned the task over to me at that hour. Sheriff's Dept. Uniform Division Shift-Commander Sgt. Mark WEBER was also on scene and was in the process of contacting Det. ELLER through our office to respond to assist me. I had radio'd my office at 1653 Hours to notify Det. Lt. BERNARDO, my immediate supervisor, that I would be assisting APD.

The scene perimeter immediate and afar had been marked with yellow crime scene tape by officers prior to my arrival. IT WAS BROUGHT TO MY ATTENTION THAT THE IMMEDIATE SCENE (WHERE BLOOD WAS VISIBLE IN THE SNOW FROM THE FALLEN OFFICER'S BODY) HAD NOT BEEN CONTAMINATED BEYOND THE POINT OF NECESSITY FROM THE RESCUE PERSONNEL AND FIRST OFFICER'S ON THE SCENE. Security was maintained until a crime scene investigator was able to be assigned, which was me.

The Ashtabula City Fire Dept. set up lighting to assist with the investigation of the area of the immediate scene.

At 1800 Hours Det KEANE from ACSO gave me assistance with measuring key points of reconstructive reference.

I took numerous still photos which included the immediate scene and surrounding area, to include the W43rd Street area showing Officer GLOVER's auto positioned in front of 907 W43rd Street where everything essentially began. After initial photos were taken Det DATMAN, who had returned to the scene, did some video taping of the immediate scene. Some additional still photos were taken after he placed some number placards in the scene to better illustrate the positioning of the blood to the surroundings and also visually point out the area to the north of where the

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officer lay in which a baggie of suspect off white chunky substance was located - later determined to be nothing more than vanilla chocolate.

THE IMMEDIATE SCENE - DESCRIBED: There is a noticeable concentrated quantity of bright red blood covering an area of snow approximately two feet in diameter. It appears from impressions of rescue workers equipment cases that once sat in the snow that Officer GLOVER'S body was laying with his head in a South - southwesterly direction and his legs pointing in the opposite directions. IT WAS LATER DETERMINED FROM INTERVIEWS OF LAW ENFORCEMENT AND RESCUE PERSONNEL THAT THIS WAS THE CASE; IT IS BELIEVED FROM ALL ACCOUNTABLE SOURCES THAT WHEN HE CAME TO REST ON THE GROUND HE WAS LAYING IN A SEMI-FETAL POSITION; SOMEWHERE BETWEEN SUPINE AND ON HIS LEFT LATERAL.

The "locating of this immediate scene" will be charted for reconstructive reference by measurements and reported separate from this narrative.

There is no tangible exhibits collected from this scene to be referenced here, but a small clear plastic sandwich baggie was located near the area where the officer's body was laying. Capt. VARKETTE called this find to my attention while on the scene. The unknown off white chunk shaped substance was suspected as possibly being crack cocaine; i viewed the baggie that night at APD Detective Bureau and it was obviously large sections of a broken piece of thick vanilla fudge.

The impressions in the snow were obviously numerous. There were a set of non-distinguishable footwear tracks, single individual, which left a running stride directly west from the scene where the body once lay. INVESTIGATION 11-17-97 DETERMINED THAT RON FIELDS AT 912 W. 41ST. STREET HAD MADE A REMARKABLE OBSERVATION OF AN AFRICAN AMERICAN MALE, SIMULTANEOUS TO HEARING GUN SHOTS FROM WITHIN THE KITCHEN IN HIS HOME; RUNNING WESTBOUND/LOOKING BACK OVER A SHOULDER AT - FROM THE AREA SUBSEQUENTLY DETERMINED TO BE THE SCENE OF OFFICER GLOVER'S BODY. FIELDS WAS PEERING FROM THE BACK DOOR OF HIS HOME AT AN ELEVATED LEVEL WHERE HE COULD CLEARLY OBSERVE THIS PERSON WHOM HE KNOWS AND IDENTIFIES AS ODRAY JONES. I personally spoke with Ron FIELDS at 2130 Hours 11-17-97 at APD and confirmed what is summarized here. (SEE WRITTEN STATEMENT TAKEN OF FIELDS BY APD ON 11-19-97; AND A BRIEF VIDEO TAPING DONE WITH HIM AT HIS HOME ON 11-20-97 REITERATING THE SAME - LOCATE IN EVIDENCE AT ACSO UNDER P-14330(A).

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FIELDS also told me at APD on the night of 11-17-97 that he saw an African American male wearing a what appeared to be a blue starter style coat with a blue star on the back; standing on the south side of the fence in the area of the northeast corner of the vacant lot between 913 & 923 W43rd Street. This same male (later to be positively identified as Jimmie RUTH) is confronted by FIELDS in front of 908 W41st Street. FIELDS tried questioning him about being a person in his backyard or near; who was observed by FIELDS subsequently running to W43rd Street and then westbound, not long thereafter appearing where he now confronts him. FIELDS described the subject (RUTH) as "acting WILD - just cranked out!"

There are other un-distinguishable footwear tracks leaving the area, but not clearly determined who they can be attributed to with the exception of those likely belonging to Anthony BARKSDALE. They travel to the north from an area of the wooded portion of the property to the west of the garage which borders the immediate scene on the south; and continue at an angle in a northerly direction to the roadway or intersection of W41st Street and Coleman. It is determined from witness accounts, primarily his own accountability given on 11-17-97 and the personal observations of Teresa TAYLOR seeing a male (not identified by her by name, only clothing) running to the north from the wooded lot and beyond.

For ready reference purposes it is found that from an area about the surface of the traveled roadway of Coleman even with the immediate scene it is approximately 123 feet north to the W41st Street intersection and 192 feet south to mid-intersection of W43rd Street.

Det ELLER arrived at 1816 Hours and assisted: investigating the area for any relative evidence; surveying the immediate shooting scene with a metal detector; reviewed elements of a witness account by situating himself and other officers at the shooting scene to interact with a potential valuable witness (Teresa TAYLOR age 12) from 923 W 43rd Street.

During Det ELLER's metal detection detail at the immediate scene, to better evaluate the presence or lack thereof of spent casings, I made contact by cell phone with Ptlm. Greg KAYDO at APD Station. I was able to determine from him that they had recovered (incidental to a persons arrest on W38th Street just minutes after the shooting) a Charter Arms .38 calib. 2 inch revolver - 5 shot; all five cylinders were occupied by spent casings.

A detailed accounting of Teresa TAYLOR's observations, along with that of her mother, Lillie Mae TAYLOR-LATHAN, is presented by way of a video taped statement of each together at APD later in the evening

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11-17-97. (TAPE IS IN EVIDENCE UNDER P-14330). A transcript of the audio will also accompany the investigative file.

Det James CATMAN and I made personal contact with the above people at 923 W 43rd Street at 1928 Hours on 11-17-97. It was dark by that hour, but with the use of my high powered handlight I had Teresa paint with light, showing me the areas on the ground outside her home where she observed subjects involved with the death of Officer GLOVER.

Officer GLOVER'S APD Unit Car #15 was found (still in place) on W43rd Street by responding officers; sitting east bound (against the flow of traffic) at an angle to the north street curb in front of the drive to 907 W. 43rd Street. The car was found by Sgt Ray MATSON of APD with the engine running. He shut the ignition off and secured the car. MATSON had surrendered the keys to Capt. VARKETTE who inturn turned them over to me for use in my scene investigation.

Subsequently at 2040 Hours I surrendered the keys to APD Ptlm Ron KADO who was standing by with the auto for MARRISON's wrecker service to remove it to APD's sallyport. It was there that Det. ELLER was going to photo, inventory and look over Car #15 for this investigation.

From the preceeding activities investigators were beginning to correlate and apply known information for possible reconstruction of the sequence of events. (ALSO SEE WRITTEN STATEMENTS OF Jimmie RUTH and Anthony BARKSDALE TAKEN BY APD ON 11-17-97; AS WELL AS SUBSEQUENT WRITTEN STATEMENTS TAKEN OF THE SAME INDIVIDUALS BY FOLLOWUP INVESTIGATORS DET ROBERT POUSSKA; Capt VARKETTE; DET ALTONEN; PTLM GREG KAYDO - APD AND DET JEFF C. BROWN - ACSO).

How RUTH and BARKSDALE are taken into police custody will better be reported by APD detectives report(s); but Deputy Scott SLOCUM did file a written statement taken by Rich HARRIS formerly of COUNTRY TOWING of Ashtabula, Ohio who had contact with BARKSDALE in the area of Bonniewood Estates and drives him to meet with authorities because of his obvious knowledge and involvement.

PRELIMINARY SCENARIO: It was determined thus far that GLOVER was on W43rd Street when the dispatcher (Cindy HERPI) asked the unit (obviously observed by a citizen who phoned in on 911 about the presence of Odray JONES) on W43rd Street to identify himself. GLOVER who was

westbound on W43rd Street from Coleman Ave. acknowledged his presence; turned around and made contact with JONES and his associates, RUTH and BARKSDALE, at 907 W43rd Street. The foot pursuit ensued and both RUTH and BARKSDALE are determined to be knowledgeable material witnesses; hearing shots fired; and then upon questioning offer statements that require detailed followup to determine the validity of their accounts and the actual extent of their involvement.

GLOVER was able to radio on his portable, during the actual foot pursuit, that he was involved in a chase and later (last radio traffic recorded) upon inquiry of a responding unit gave an account of direction that he was pursuing the subject, which was westbound. From all accounts it appears undisputed that after exiting his car he ran in a northerly direction in the driveway to 907 W43rd Street that cuts at an angle, connecting W43rd and Coleman. He then did in fact, as he reported by radio in those last moments of his life, proceed or was about to proceed at that moment west into the vacant lot belonging to 912 W41st Street (which butts to the rear of 907 W43rd Street) where his severely wounded body was located.

Exactly what took place in that vacant lot between GLOVER and JONES can not be accurately be reconstructed at this point in time, but the circumstances that have presented themselves thus far; three men; their presence and positions; the capture of JONES in possession of a firearm within minutes to follow and GLOVER having been pursuing JONES as his arrest; All point to JONES as the shooter. Lab results on tool mark examinations done on projectiles submitted (in the latter part of the same week of the death) revealed an identification as the recovered weapon as the gun that caused Officer GLOVER'S death.

APD collected clothing from RUTH and JONES, as well as doing "SEM" kit collections for GSR - Gunshot Residue from the hands of the three men; as well as a fourth not named herein. The fourth examined for testing was apparently based on information that evening and he was pursued as part of good investigative measures. ACTUAL FINAL LAB RESULTS WILL BE REPORTED BY APD EVEN THOUGH MENTION OF TESTING AND UNDERSTOOD RESULTS MAY BECOME A PART OF THIS NARRATIVE AT ANY TIME. Odray JONES "tested positive" for GSR on both the R & L hands; while the other three men sampled tested negative.

Having consulted with Detectives (Bradley, Pouska, Altonen) it was further determined that Odray JONES was crossing W36th Street northbound from the vacant lot directly across from the W36th Street Metropolitan Housing Projects on the south side in minutes to follow the shots fired.

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JONES was under the direct observation of Ptlm Rob STELL at the time and he was subsequently taken into custody. STELL was eastbound from West Ave. at the time responding to the shooting. He recognized JONES and under the circumstances apparently pursued him, taking him and a weapon into custody near an apartment entrance. Later in my investigation I met with STELL at that location to take photos of the location and his view perspective as he approached in his cruiser, observing JONES crossing the street.

From all accounts thus far, both eventually filed; RUTH went west on W43rd Street and was observed by a 911 citizen caller at 1011 W43rd Street, as he stashed something (later determined to be drug contraband) behind the tire of a parked auto. BARKSDALE, from his own accounts and as indicated by the presence of foot tracks in the snow crossing that vacant lot (in which Officer GLOVER's body lay), left the area northerly bound. He secured a ride from a female he knew who just happened in the area at the intersection of W41st Street and Coleman Ave..

At APD Station on 11-17-97 (2043 Hours) prior to Det ELLER conducting an investigation of Car #15, he and I briefly spoke with Anthony G. BARKSDALE (anxious and ready to be released from police control) who was one of the three black male subjects Officer GLOVER encountered at the front of 907 W43rd Street. Prior to his being allowed to leave the station I photo'd him in his clothing as he appeared. His clothing had reportedly not changed since the time of the shooting earlier in the day, as he was viewed in the area by witnesses. THE SHOOTER AND HIS TWO ASSOCIATES ARE VERY PRECISELY IDENTIFIED AND IMPLICATED IN THE MOMENTS BEFORE AND AFTER THE SHOTS ARE FIRED CHIEFLY BY THEIR DISTINCTLY INDIVIDUALIZED OUTER WEAR.

• **NOTE:** BARKSDALE's clothing (at least his jacket) was later confiscated by APD incidental to their arresting him in the station on Monday/11-24-97 for "Obstruction" in the matter of the death of Officer GLOVER.

BARKSDALE told us that he, Odray JONES and Jimmie RUTH were walking east on W43rd Street when Officer GLOVER (who was well known to them) passed by in the patrol car going westbound. They were walking on the sidewalk on the north side of the street. BARKSDALE commented on

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GLOVER eating something as he passed by. RUTH told Odrey that GLOVER was coming back, as he had gone towards or to the West Ave. intersection and turned around. Later BARKSDALE and RUTH deny any such conversation. • Witness, Teresa TAYLOR describes in her observations from inside the front door and east side downstairs window how it appears the three men are arguing as they are walking eastbound at her driveway. I asked BARKSDALE how long it was before GLOVER got to them and suggested he estimate this time element by the number of houses they had been able to pass. They were about halfway between W. Avenue and Coleman and he said it was several houses before GLOVER reached them at 907 W43rd Street located at the NW corner of the intersection of W43rd Street and Coleman. BARKSDALE claimed to be on the porch with RUTH and JONES as GLOVER pulled up near the drive headed east on the north side. GLOVER got out of his car and pointed to JONES telling him to come to him. JONES had already been edging his way off the porch and suddenly jumped to the ground; ran north in the drive of 907 W43rd Street which runs at an angle connecting to Coleman Ave. BARKSDALE • essentially tells us in his words in a very convincingly tone of excitement to his voice that he peers over the edge of the porch to watch what happens. As he does he sees GLOVER get shot evidenced by his body movements and emphatically remarks about how he has to duck because he fears being struck by a bullet. He told us he never saw anything like it in his life; the flinching movement! He would like us to believe that GLOVER is • running behind JONES on the road; he actually sees a muzzle flash from the fired shot that strikes GLOVER, describing and illustrating to us how JONES held the gun in his right hand with the weapon tilted parallel to the ground. GLOVER continues to run after JONES and they disappear to the north on Coleman. (WITHOUT CONFRONTING BARKSDALE I BEGAN TO SERIOUSLY • QUESTION THE TRUTHFULLNESS OF THE ACCOUNT HE HAS OFFERED, BECAUSE: 1) IF BOTH JONES AND OFFICER ARE RUNNING, ONE BEHIND THE OTHER, JONES WOULD HAVE HAD TO TURN AROUND FOR BARKSDALE TO SEE THE FLASH; AND JONES, IF STILL RUNNING ON THE ROAD OR EVEN NEAR THE BACK OF THE GARAGE WEST OF COLEMAN, WOULD HAVE HAD TO HAVE TURNED AND BEEN RUNNING BACKWARDS TO FACE OFF GLOVER TO SHOOT HIM - THAT OF • COURSE WAS NOT PART OF THE DESCRIPTION AND LATER IN PRELIMINARY PATHOLOGY FINDINGS IT WAS EVIDENT THAT OFFICER GLOVER WAS STRUCK BY A DISTANCE SHOT, I.E., BEING THE BACK OF THE RIGHT UPPER ARM; 2) • CURRENT LACK OF PRECISE INJURY INFORMATION AT THAT DATE AND TIME DID NOT ALLOW ME TO FURTHER EVALUATE HIS STORY.)

OBVIOUSLY WITHOUT THE FORENSIC MEDICAL FINDINGS AND CONTINUED INTERVIEWS, DESPITE MY QUESTIONING THE VALIDITY OF BARKSDALE'S ACCOUNT, IT COULD NOT BE SERIOUSLY CHALLENGED ON 11-17-97.

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BARKSDALE claims that he and RUTH waited at the front of 907 W. 43rd Street and heard like 4-5 shots and then split west on W43rd Street. Telling his account he essentially was asking us to believe that RUTH continued west and left the area, while he was being noseey and went north off W43rd Street in the vacant lot (identified as that between 923 and 913 W43rd Street) as far as he could to see what had happened. He was in wonder who was shot. He claims he saw no one and continued north by crossing where he could - over the ground brush and fence that he claims not to have known or realized was there, mentioning GLOVER on his right, but continuously recants that he even looked for a moment to see his body laying there - not believable. He ran to the intersection of W41st Street and Coleman Ave., where on Coleman north of the intersection he happened to encounter a girl he knew coming his way in a car. The girl is identified by his as Tiffany MANRICO who is actually ENRICO. He recieves a ride from her and eventually ends up at Bonniewood Estates - Projects in the City of Ashtabula. He runs acrossed Rich HARRIS formerly of Country Towing and after telling Rich what had taken place he is convinced and driven by HARRIS to meet with police.

Ron FIELDS of W41st Street was also spoken to while at APD which was already reported upon within immediate crime scene information.

Starting at 2200 Hours and ending around 2300 Hours Det James DATMAN and I as previously mentioned interviewed on video tape Teresa TAYLOR and her mom, Lillie TAYLOR-LATHAN. (The details of those interviews is best recited by the written transcript made from that tape as a part of this file). It appears that Teresa is very likely a "Key witness" whose recollection is full of obvious facts. She needs to be worked with from the transcript to better interpret the placement of people and their individual actions in the time frame that she made her personal observations.

From the investigation activity 11-17-97 it is confirmed that the three African American males, JONES, RUTH, BARKSDALE can be said to have been wearing the following clothing for witness accountability use:

JONES: Green Bay jacket with large "G" on back with green stocking hat.

RUTH: Blue/white/gray Dallas jacket with blue stocking nat.

BARKSDALE: Tan/black full length jacket with blue stocking hat.

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As previously noted BARKSDALE was photo'd modeling his clothing for me on the evening of 11-17-97 at APD.
The clothing for the other two was photo'd by me at the Evidence Office APD on Tuesday/11-18-97.

On Tuesday/11-18-97 Det OATMAN and I made contact with the Ashtabula City Engineers Office - mapping was obtained to create a demonstrative court exhibit for referencing the entire area to the streets and placement of addressing of the existing homes.

Ashtabula City Fire Dept. assisted us with their aerial unit. Det ELLER took several views of the area from the intersection of W41st Street and Coleman and from a perspective on W43rd Street between 923 & 913.

Additional still photos were taken this date by me which included: perspective from the open second floor NE bathroom window on the east side of 923 W43rd Street, as was the situation with Teresa TAYLOR on 11-17-97. The views (50 mm lense) document the areas she was viewing during her observations; as well as views from the perspectives of Ron FIELDS at 912 W41st Street.

With the assistance of Det OATMAN we had Ptlm Rob STELL take me to the W38th Street area to take still photos of the perspectives of his observations and apprehension of Odray JONES as previously reported earlier in this narrative.

Wednesday/11-19-97 I continued the investigation with Det POUSKA: reviewing written statement (post-polygraph) of Jimmie RUTH taken by Capt. VARKETTE of APD. (SEE WRITTEN STATEMENT)

I reviewed information thus far involving the sequence of events beginning with the process of Officer GLOVER'S initial radio call.

I participated in the taking of a third written statement of Jimmie RUTH by Det POUSKA. Beginning our work this AM Det POUSKA had RUTH brought to us from the jail where RUTH had requested to talk with POUSKA. **RUTH revealed to us that he had given the gun (now the murder weapon) to Odray JONES.**(SEE WRITTEN STATEMENT)

Det ALTONEN took a written statement from Ron FIELDS, the statement which has been previously referred to herein. By the simultaneous taking of these statements, RUTH was confronted with our witnesses having seen him, identified by his outerwear at the least, standing in the vacant lot

between 923 & 913 W43rd Street. Aside from the various reasons • investigators could list to explain his repeated denial of having been in the area, he finally allowed himself to say he was at least a short ways into that lot and BARKSDALE was ahead of him at the area of the NE corner of the same lot.

BARKSDALE called on the phone at 1458 Hours while RUTH (arrestee), ALTONEN, POUSKA and myself were sitting in the Detective Bureau office. POUSKA touched his speakerphone button for us all to hear and BARKSDALE said "my story is all fucked up". He wanted to come in to give a corrected • statement. This did occur on Thursday/11-20-97.

Thursday/11-20-97 Det POUSKA and I with prior arrangement to do so picked up Anthony BARKSDALE at 3200 Bonniewood. We drove to the W43rd Street area where he walked through his account of what took place. SEE VIDEO IN EVIDENCE UNDER P-14330(A).

He wanted to correct himself from the first statement and was taken to the station where a second written statement was taken. (SEE WRITTEN STATEMENT).

It was this date that an on camera accounting of view perspective and location of specific areas was done with Ron FIELDS.

Jimmie RUTH was also taken to the scene this date and his accounting was recorded on video. (SEE VIDEO IN EVIDENCE UNDER P-14330(A)).

I collected a copy of the squad report from COMMUNITY CARE AMBULANCE and briefly spoke with one of the squad members. A more detailed reporting will be done under separate cover to deliver this information; and include other fire/medical personnel witness information that may be obtained. (AFD HAS OBTAINED THE EMERGENCY ROOM REPORTS FROM ASHTABULA COUNTY MEDICAL CENTER WHICH INCLUDE THIS SINGLE PAGE REPORT - ALL OF WHICH HAS ALREADY BEEN SUBMITTED TO THE COUNTY PROSECUTOR).

Friday/11-21-97 I made telephone contact with Dr. Robert CHALLENGER, pathologist, at the Cuyahoga County Coroner's Office. I discussed the wounds and information in this case relating to bodily examinations. I also phoned BCI&I RICHFIELD and spoke to them about concerns I had for specific attention to be given to the clothing areas for defects or changes; i.e.: Knees; chest - sternum area; back of upper arm; top

of left shoulder and collar area near the left neck. A more detailed reporting will be done under separate cover to deliver this information.

It was brought to my attention by Det POUSKA that a ring of keys belonging to Officer GLOVER were found in the snow in the immediate area where his body was located. A female was visiting the scene where cards, wreaths and other tokens were being left when apparently she came acrossed them in the melting snow.

APD is making detailed followup into the fact that the murder weapon has now been determined to be a stolen gun from a house burglary years past in Georgia. RUTH told POUSKA and I in his recent written statment to us on 11-19-97 that he had given the weapon to JONES. The validity of exactly when that really was is not determinable with any known facts other than the admission of RUTH.

Monday/11-24-97 I worked with APD detectives to assist the County Prosecutors at their station with: witnesses, review incident scenarios; review tangible evidence thus far; associate the lethal injuries as they are currently known to us; and discuss the analysis to be expected on evidence at lab.

Det ALTONEN and I took an additional information statement from Jimmie RUTH where he reveals that Odray JONES in the recent past made statement of the fact that he would shoot at the police. (SEE STATEMENT)

I listen to and made notes from both the 911 Phone Tape and Radio Tape for 11-17-97 just prior to and following the shooting. THE INFORMATION WILL LATER BE PRESENTED IN A CHARTED FORM.

BARKSDALE took a polygraph this date and was shown to be non-truthful about what he actually knows. He was beligerent and requested investigators to revert back to his first statement. HE WAS ARRESTED AT APD WHILE IN THE STATION ON THIS DATE FOR "OBSTRUCTION".

Tuesday/11-25-97 Prior to Anthony BARKSDALE (In Custody) appearing before the Grand Jury this date I took another written statement from him under Oath at the Ashtabula County Sheriff's Dept. Detective Bureau Interview Room. In that statement he admits that he saw Officer GLOVER shot and then retreated and did not see any activity involving the remainder of shots fired. With the inconsistencies from the beginning with this individual and the fact still remaining that even though he ran right by the officer laying on the ground, he will not admit to seeing him there. In

all this makes investigators feel strongly that he actually saw more. (SEE STATEMENT IN ACSO FILE).

I had phone contact with Angel ANTHONY, girlfriend of BARKSDALE, who resides at 3200 Bonniewood Estates.

Later in the day Det POUSKA had her come to APD where we took a written statement from her. She informed us that BARKSDALE called her at work after the shooting and told her that Odray JONES shot GLOVER. (SEE STATEMENT).

I had the opportunity to briefly interview Cookie FRAMPTON EMT-P (also certified RN) who was on the squad/scene caring for Officer GLOVER. Details of that interview will be covered under a separate report involving the correlation between rescue personnel information; forensic medical information and potential lab tests.

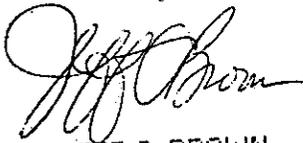
Wednesday/11-26-97 POUSKA, ALTONEN and I re-visited the scene for one last time before a planned excavation of the soil was to be executed in the area of where the blood was soaked into the snow. We wanted to be as certain as possible that there was no evidence of a bullet strike on the garage or trees in the immediate area. Nothing was found.

Monday/12-01-97 Dr. Owen LOVEJOY (Anthropologist) and a team of 11 graduate students from Kent State Main Campus assisted Det POUSKA and I (1100 - 1500 Hours) by doing a technical archeological style excavation of the shooting scene on Coleman Ave at the rear of the garage to 913 W43rd Street. The idea was to rule-out the presence of a spent projectile in the ground in the immediate area where Officer GLOVER'S body was located. NO PROJECTILE WAS LOCATED. Based on the facts and circumstances delivered to date a decision and a suggestion that I offered to Det POUSKA last week it was decided that it would be necessary to complete the process. The positioning of GLOVER and his assailant at the time the initial shot(s) rang out, followed by the fact that the lethal injuries are at very close range with the victim-officer much lower than the shooter when being fired upon, created the necessity to rule-out the presence or even the lack of projectile(s) in the surrounding soil.

DR. OWEN LOVEJOY WILL BE SENDING A SUMMARY OF HIS ASSISTANCE TO US - BEING SENT DIRECTLY TO DET POUSKA FROM WHOM I WILL OBTAIN A COPY.

180

As previously stated herein, I will be completing a few reports on certain areas under separate cover, when I have had a chance to complete people contacts and finish with investigative activities. I anticipate completing an illustrative scene drawing (not to scale); measurement chart for relocating key points at the scene; mounting and titling a scaled engineer's street mapping of the area around W43rd and Coleman, extending north to W38th Street and west to West Ave.



JEFF C. BROWN
DETECTIVE - ASHTABULA COUNTY SHERIFF'S DEPT.

ASHTABULA COUNTY MEDICAL CENTER
EMERGENCY DEPARTMENT

Ex #9
(2HTA)

PATIENT NAME: GLOVER, WILLIAM D

PATIENT NUMBER: 87009213

MED REC #: 246296

DATE: 11/17/97

ATTENDING PHYSICIAN: NONE

CHIEF COMPLAINT(S): Gunshot wounds.

HISTORY OF PRESENT ILLNESS: The patient is a 30-year-old male who reportedly was an active duty policeman who was on foot pursuit and as he was pursuing a suspect, turned a corner and was shot in the head and neck. The EMS arrived and were able to obtain a pressure of 70/palp. There was spontaneous respirations and attempt was made at intubation in the field and two large bore IVs were established and patient was transported on a back board to the emergency department for further evaluation.

REVIEW OF SYSTEMS: The patient in his normal state of health prior to the incident. No history of cardiovascular, respiratory, GI, GU, neuro, ENT, eye, hematopoietic, endocrine, musculoskeletal, psych, or dermatology symptoms prior to the event.

CURRENT MEDICATIONS: On no chronic meds by history from wife.

ALLERGIES: NONE, by history.

PAST MEDICAL HISTORY: No chronic medical problems.

SOCIAL HISTORY: Negative.

FAMILY HISTORY: Negative.

PHYSICAL EXAMINATION: The patient with spontaneous respirations upon entry, Cheyne-Stokes respirations upon entry to the emergency department, rate of approximately 27. Initial blood pressure of 70/palp. Pulse in the mid to upper 50-60s upon arrival. Initial survey demonstrates gasping respirations with EG tube in the pharynx. There is rise of the chest bilaterally. There is hemorrhage seen from the cranium and neck as well as the face. Secondary survey demonstrates gunshot wound to the head times two. There is a gunshot wound to the face times one. Inferior right eye. Palpable foreign body left side of the neck. Obvious hemorrhage from the oropharynx. Hemorrhage from the nares, the right pupil is mid point and nonreactive. Left pupil is fixed and dilated. The cervical spine is lax and necessitated placement of a neck collar. The CVS is regular and bradycardic. Lungs bilateral breath sounds. No wheezes rales, or rhonchi. Abdomen soft. Nondistended. Extremities: Right shoulder demonstrates a bullet wound 3 cm lateral and posterior to the right acromial process. No injuries are seen on the remainder of the upper extremities or lower extremities. There are no bullet wounds appreciated on the back with the exception of the right shoulder bullet wound.

located on the posterolateral aspect of the right upper arm, 62" above the heel. The defect is elliptical and includes an elliptical abrasion collar measuring up to 5/8" inferiorly and tapering to 1/8" superiorly. Neither fouling nor stippling is observed. There is ecchymosis of the anterior superior aspect of the shoulder.

Path of bullet: The bullet sequentially perforates the skin, subcutaneous tissue, musculature and bony structures along its path. It does not penetrate into the right thoracic cavity and no rib fractures are identified.

Bullet recovered: The bullet is recovered in the soft tissue of the posterior right upper thorax, centered at a point 65" above the heel and 3" to the right of the midline. It is severely deformed and is inscribed with the numeral 3.

Course and direction: The bullet passed from right to left and upward with no major deviation to the front or back.

The above injuries having been once described will not be repeated. The remainder of the external examination of the head, neck, trunk and extremities is unremarkable.

INTERNAL EXAMINATION: The body is opened by means of the usual "y" shaped and biparietal incisions. The viscera of the thoracic and abdominal cavities occupy their usual sites. The serous surfaces are smooth and glistening. There is 100 ml of amber fluid is recovered from each thoracic cavity and an additional 200 ml of amber fluid from the peritoneal cavity. The weights of the organs are as follows and unless specified below, show no additional evidence of congenital or acquired disease.

Heart-487 grams,
Right lung-801 grams,
Left lung-827 grams,
Spleen-156 grams,
Liver-1533 grams,
Right kidney-146 grams,
Left kidney-165 grams,
Brain-1491 grams.

NECK: The neck organ is removed en bloc. There is extensive hemorrhage into the soft tissue particularly on the left side. However, the hyoid bone remains intact and no additional abnormalities are observed of the larynx or trachea. The tongue shows no evidence of contusion and the hypopharynx is unremarkable.

CARDIOVASCULAR: The heart is enlarged and this is predominantly due to the enlargement of the left ventricle. The coronary arteries are normal in origin and distribution and demonstrate minimal atherosclerotic streaking. The heart is opened along normal blood flow channels. The endocardia of all chambers is smooth and glistening. The valve leaflets and cusps are thin and pliable and the chordae tendineae are delicate. Serial sections of the myocardium from apex to base at 3 to 5 mm intervals

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

EX #10
(8 Pgs)

STATE OF OHIO,

Plaintiff,

vs.

ODRAYE JONES

Defendant.

CASE NO. 97-CR-220

JUDGE ALFRED W. MACKEY

MOTION TO DISMISS

ASHTABULA COUNTY COURT OF COMMON PLEAS
JUN 9 11 21 AM '98

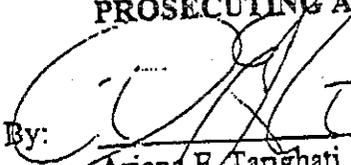
This day, came the Ashtabula County Prosecuting Attorney, THOMAS L. SARTINI, by and through Ariana E. Tarighati, Chief Assistant Prosecutor, on behalf of the State of Ohio, and with leave of Court and for good cause shown, enters a nolle prosequi, without prejudice, in the above captioned case for the reason that the defendant was convicted of Aggravated Murder and sentenced to the death penalty in Case Number 97-CR-221. The prosecutor's office has contacted the Ashtabula City Police Department and the victim in the above captioned matter and they concur in the resolution of this case in this manner. Given that the defendant has received a sentence of death, the interests of justice would not be served by further prosecution herein.

Wherefore, the State of Ohio respectfully requests this Honorable Court to dismiss the above captioned case without prejudice.

Respectfully submitted,

THOMAS L. SARTINI 0001937
PROSECUTING ATTORNEY

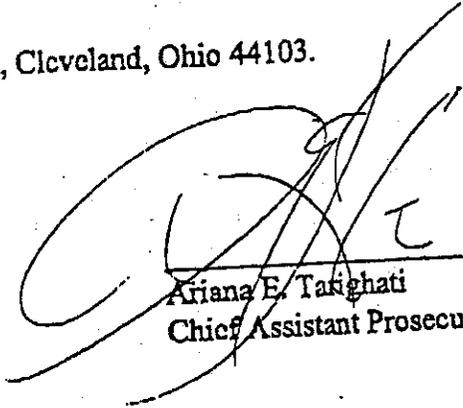
By:


Ariana E. Tarighati 0039372
Chief Assistant Prosecutor

MF 1386

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Dismiss has been sent by regular U.S. Mail this 10th day of June, 1998, to David Doughten and Robert Tobik, attorneys for Defendant, at 4403 St. Clair Avenue, Cleveland, Ohio 44103.



Ariana E. Tatighati
Chief Assistant Prosecutor

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

JUN 9 4 33 PM '98

STATE OF OHIO,

CAP. FILED
COMM. COURT
ASHTABULA CO. OH.
FILED

Plaintiff,

vs.

ODRAYE JONES,

Defendant.

CASE NO. 97-CR-220

JUDGE ALFRED W. MACKEY

JUDGMENT ENTRY

Upon application and for good cause shown, the Court finds Plaintiff's Motion To
Dismiss without prejudice is well taken.

IT IS SO ORDERED.

Alfred W. Mackey
JUDGE ALFRED W. MACKEY

CIV-I-7

Ex # 11

AFFIDAVIT OF DELCE WILLIAMS

On November 17, 1997 I observed Anthony Barksdale, Jimmie Ruth, and Odraye Jones walking down West 43rd Street. A friend and I drove around the corner to the store. While we were there, someone said they heard Odraye Jones' name over a scanner, I immediately left the store and drove home. When I pulled into my driveway, someone told me there had been some shooting down by the corner. I looked in that direction and saw a police car parked in front of the Chatman house. My friend and I ran towards the area, as I got close to the corner Jimmie Ruth and Anthony Barksdale came from around the corner and ran past me. I proceeded around the corner where I discovered the officer lying in the snow. At that time, I was hearing sirens in the area. Shortly thereafter, an ambulance came closely followed by police cars. I directed them to the body. A large crowd began to gather. Detective Robert Pouska questioned me. As I was leaving, lisa Taylor pointed out Jimmie Ruth in the crowd and he was arrested. I did not see Odraye Jones at any time other than the time he was with Anthony and Jimmie before I went to the store.

further affiant sayeth naught.
Dulce Williams

2/22/04 Dulce Williams
Sworn to before me this 22nd day of February, 2004

Alice J. Lewis

Alice J. Lewis, Notary Public
State of Ohio
My Commission Expires June 16, 2007

Ex# 12

AFFIDAVIT OF JIMMY HANNA

On the date of November 17, 1997 I was on West 43rd Street in Ashtabula Ohio, working on a car that was parked at the side of the street. I saw Odraye Jones, Anthony Barksdale, and Jimmie Ruth walking in the direction of the Chatman's house. The police officer came off of Coleman Avenue onto 43rd. He drove past the three boys, past my friend & I. He turned around, came back and stopped in front of the Chatman house-the boys were on the porch of that house. The officer got out and approached them. All three of them ran; at least two of them jumped over the side of the porch and ran around the side of the house; the officer gave chase. They were all out of our site. Some seconds later we heard shots. Some time after that, Anthony Barksdale and Jimmie Ruth came running back down the street-they proceeded to run past where we were and into one of the backyards. I did not see Odraye Jones anymore that day. The police came to my house to question me some weeks later and declared several times that they didn't think all of the bullets came from the same gun. There were two officers that day.

further affiant sayeth naught.

Jimmy Hanna

Notary
John A. Oshes
Commission Expires 11/7/2007

EX # 13
(12 APR)

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

STATE OF OHIO, :
 :
 Plaintiff-Respondent, :
 :
 -vs- : Case No. 97 CR 221
 :
 ODRAYE G. JONES, : Judge Vettel
 :
 Defendant-Petitioner. : **This is a capital case**

AFFIDAVIT OF DR. HUGH TURNER, PSY. D.

STATE OF OHIO)
) ss:
 CUYAHOGA COUNTY)

I, Dr. Hugh Turner, come before this Court, and after being duly sworn according to law, state as follows:

1. I am a psychologist licensed to practice in Ohio since 1987. I have worked as a psychologist in private practice and as a director of the psychology department of a five hundred (500) bed mental retardation and developmental disabilities hospital. I have provided counseling and clinical services for a county-wide drug and alcohol rehabilitation program; I have provided psychological services for a county jail and a maximum security adolescent facility.
2. In the course of my professional practice, I regularly conduct psychotherapy, supervise psychiatric and psychology trainees, offer consultation to other mental health professionals, conduct comprehensive psychological evaluations, and perform forensic evaluations.
3. I have been qualified as an expert witness in order to testify in criminal cases. I have participated in the preparation and presentation of psychological mitigating evidence in capital trials. Also, I have provided expert psychological services in furtherance of the preparation of post-conviction petitions in several death penalty cases.
4. I am familiar with the type of preparation required for the presentation of evidence in capital cases. First, the psychologist must be provided with collateral information which is based on a thorough investigation of the client's character, history, and background. This investigation encompasses, among other matters, the capital client's behavior prior to and at the time of the charged capital offense.

This investigation must occur in advance of the trial phase in order to provide the psychological expert collateral information pertaining to the client, so that it is incorporated into the overall psychological assessment. Following the review of this information, the capital client must submit to a clinical interview and full battery of psychological testing.

5. I was contacted by Odraye Jones' postconviction counsel to review background information, records, prior psychological testing, and other documents relating to the crime charged, in order to provide a thorough psychological assessment.
6. Through my review of the above-mentioned sources, I learned the following:
7. Odraye Jones is a 22-year-old African American male who was convicted of the aggravated murder of a police officer and sentenced to death. Odraye is currently housed on death row at Mansfield Correctional Institution. A review of the case file, psychological evaluations, and personal interviews suggest the following.
8. **INFORMATION FROM CASE FILE AND PERSONAL INTERVIEWS**
 - a. Beginning at a young age, Odraye experienced, in relative quick succession, the traumatic loss of family members and close friends through violent death. Yet, as a result of his status as a poor racial minority, there was a complete lack of mental health intervention in Odraye's life, which falls below the level of care expected by the Caucasian community in any urban city.
 - b. Contrary to the machinations of the county prosecutor and the testimony of Odraye's foster grandmother—who at trial painted a picture of Odraye's family and social support system as nurturing, beneficent, and supportive—the actual facts indicate the opposite.
 - c. The prosecutor elicited from the defense's cultural expert witness, Charles See, an opinion that, when left unchallenged by the defense, suggested that Mr. See could accurately testify about "determination" and the role it plays, presumably, as a driving force behind behavior. In my view, Mr. See was not qualified to testify on the topic of "determination," and his testimony prejudiced the jury from considering other causal variables when determining an appropriate sentence.
 - d. Odraye's behavior during his arraignment on November 18, 1997, suggested that he was unable to fully comprehend the nature and gravity of the situation. Throughout the arraignment on several occasions the Court inquired of Odraye, "Do you understand..." in connection with information that was being presented to him. Odraye was unable to respond in the affirmative, with one exception. In terms of that one instance, the Court asked Odraye if he was aware that the same penalty

would apply to two separate occurrences of possessing a deadly or dangerous weapon.

- e. It appears, however, that all other responses to the question "do you understand" resulted in responses that failed to conform to the requirements of the occasion. Odraye's responses tended to reflect a belief that he was intentionally being denied legal representation, or to belie the seriousness of his predicament. This is particularly seen in his apparent inability to comprehend the Court's unwillingness to grant bond. Additionally, his refusal to complete affidavits attesting to being indigent, which presumably would have secured an attorney for him, then making an issue when none was present, in my opinion was a stress-induced defense mechanism to separate himself from the unpleasant reality of his situation. Nevertheless, the arraignment proceeded. Moreover, a psychologist did not see Odraye until approximately six months later.

9. INFORMATION FROM PSYCHOLOGICALS

- a. Odraye was interviewed by two mental health professionals, Dr. James Eisenberg, a forensic psychologist, and Dr. John Kenny, a neuropsychologist, in preparation for trial mitigation. Both psychologists issued Odraye a standardized intelligence test. Dr. Kenny did not administer a MMPI-2, but instead referred to Dr. Eisenberg's MMPI-2 protocol. Dr. Kenny and Dr. Eisenberg have excellent reputations within the psychological community. However, their conclusions of Odraye's intellect and personality, based on the test available to them, presents a dilemma to the trier of fact.
- b. The dilemma exists as a result of two very different interpretations of the test data. Dr. Eisenberg's data depicts Odraye as an intellectually less-than-average individual whose responses to the MMPI-2 raise a question of the profile's validity. This is compared to Dr. Kenny's report, which states that Odraye has better-than-average abilities (112 Verbal IQ and 102 Performance IQ, compared to 92 Verbal IQ and 82 Performance IQ). This discrepancy is compounded when Dr. Kenny reports that his interpretation of Dr. Eisenberg's MMPI-2 test result suggests that Odraye's responses were valid and reliable for making a diagnosis.
- c. Testing performed by this writer, along with interviews over four sessions, suggest that Dr. Kenny's assessment of Odraye Jones is accurate. Furthermore, Dr. Kenny's assessment—had it been available to the defense team in a timely fashion—may have presented several other strategic defense options that, if pursued, would have had a significant impact on the jurors.

10. SIGNIFICANT BACKGROUND INFORMATION

a. Significant Trauma and Suicidal Ideations:

During his formative years, Odraye experienced at least three traumatic episodes. These episodes challenged his sense of safety and security, while exposing him to feelings of extreme vulnerability. The first of these events was the death of his mother. From the record we see that his mother's ability to parent and nurture Odraye was limited because of her drug-addictive behavior. Despite her attempts at rehabilitation, she eventually succumbed to her drug addiction.

Studies in human behavior indicate that young boys seldom stop loving their mother, regardless of their mother's behavior. More importantly, research in human behavior reveals that inconsistent nurturing on the part of the mother does not drive the child away, but actually makes the bond stronger. The mechanism for this process is the same used to condition laboratory animals through intermittent positive reinforcement. That is, mother's love and attention, when forthcoming, was pleasing; when it was absent, it was wrenching.

Because Odraye could not predict with certainty when his mother's indifference would be replaced with love and affection, he was left in a state of emotional turmoil. His mother's untimely death and the lack of a viable support system in his life (reports indicate that caretakers did not feel it was important for Odraye to talk about his feelings, or to provide supportive professional assistance) created in Odraye, as it would in any child, a profound sense of loss and vulnerability that was and has not been resolved.

The loss of Odraye's mother's death, when he was merely 13 years old, resulted in an expected depression that, as is often the case with adolescents, manifested itself as aggressive behavior that was at odds with the community. Within the "normal" mainstream community, such a loss would have been met with counseling. In Odraye's case, because of the apparent incompetence of his caretaker (foster grandmother), and the indifference of the community caregivers, Odraye's expression of grief was criminalized.

The second significant event in Odraye's life occurred just three years later at the age of 16: the murder of his closest confidant at the time, his cousin Johnny Evans. Odraye was sought out by Johnny's friends after Johnny was shot. Odraye went to the house where Johnny lay mortally wounded and sat with him until the ambulance arrived. Odraye was very upset with the people in the house for allowing the shooting to occur. After Johnny's death, Odraye began to have nightmares about family

members being killed and killing people himself. During his waking hours, Odraye suffered from constant feelings of apprehension concerning the safety of family and friends. As a result, Odraye began to carry weapons.

The third significant event in Odraye's life was the attack he suffered at the hands of a friend and fellow gang member who attempted to rob him. During that incident a fellow gang member and trusted friend attacked him from behind in an attempt to rob Odraye. Odraye, as a result of the attack, was life flighted to the trauma unit at Metro General Hospital in Cleveland. The attack was especially traumatic for Odraye because his gang affiliations served as his emotional support system, and its occurrence further facilitated the construction of a wall of mistrust and suspicion. After the attack, Odraye suffered what can be best termed an exacerbated feeling of apprehension, disturbed sleep, and obsessive homicidal ideation.

b. Family Background:

Odraye was born into an extremely dysfunctional family. Odraye's mother, Darlene Jones, gave birth to him when she was only seventeen years old. Odraye's biological father immediately abandoned the family, leaving a teenaged Darlene to fend for her child and herself. Darlene turned to the state for her sustenance. Darlene and Odraye were immediately placed in the foster care of Theresa Lyons. In the span of twelve months since his birth, Odraye was taken to the emergency room nine times. Beginning in 1977 and through her death from a drug overdose in 1990, Darlene Jones, the most significant person in Odraye's life, was arrested at least ten times.

The rest of Odraye's biological family was also dysfunctional. From grandparents through the current generation, the Jones family background suggests extremely poor impulse control, lack of judgment, distorted sense of reality, significant lack of appreciation for the property of others, and homicidal and suicidal tendencies. Although Odraye was raised by a foster grandmother, he resided in the same city as many of his relatives who considered drug selling the family business. These forces lurked in the shadows of Odraye's life and were militated by a lack supervision accorded Odraye, particularly during his formative years.

c. Odraye's Life with Theresa Lyons:

Having been neglected and abandoned by his natural mother, Odraye was placed with a woman who refers to herself as his adoptive grandmother, Theresa Lyons. Ms. Lyons was a foster mother to Odraye's mother. Odraye's placement with Ms. Lyons appears to have been equally problematic. Ms. Lyons was unable to face reality on its terms. Throughout Odraye's life with Ms. Lyons, we see a significant neglect and lack of supervision. In his early life, this seems to have been manifested in allowing Odraye to do whatever he wanted to do, including neglecting his school work. Odraye failed in school as early as the 5th grade. Records show failing grades, disciplinary problems, suspensions, and expulsions without any attempt to offer or secure assistance for Odraye's academic and behavioral problems.

Despite allowing her home to be used by the state to house youth with significant cognitive and emotional deficits, Ms. Lyons often worked second shift (3:00 p.m. to 11:00 p.m.), leaving her wards alone during those critical hours to supervise themselves. Additionally, there is nothing in the record to suggest that she had the expertise to intervene with such a difficult population.

Ms. Lyons's behavior, including her own statements, tends to reveal that she is a woman who is in denial about her relationship with Odraye. That relationship appears delusional and pathological: delusional, in that "grandmother" may have used Odraye as a surrogate or stand-in for the ex-husband who rejected her; pathological, in that grandmother's refusal to properly "raise" Odraye opened the door for his increasing forays into the darker side of life. Ms. Lyons appears to have been concerned about Odraye's behavior only when he asserted his emotional independence, in effect rejecting her just as her ex-husband did.

As Odraye grew older, Ms. Lyons utilized the police to discipline him, but facilitated the avoidance of judicial sanctions by apparently reporting to authorities inaccurate information concerning Odraye's behavior and securing his release from arrest on many occasions. Ms. Lyons was well aware of Odraye's use of marijuana; yet she simply chose not to do anything about it.

Ms. Lyons's behavior ties in with the hypothesis that Odraye was simply a surrogate stand-in for Louis Lyons, Ms. Lyons's ex-husband. It is evident that Ms. Lyons became most agitated with Odraye when he demonstrated his emotional independence.

Ms. Lyons's immediate family members appear to be significantly troubled psychologically. Ms. Lyons's sister, who appears to be an important influence on her, seems to have turned her back completely on

her own race and embraced the Caucasian community. Odraye reports that in addition to having little positive to say about blacks, she was in a relationship with a Caucasian man and had a business that catered primarily to Caucasians. Ms. Lyons's brother, though not openly critical of blacks, was a minister who established his church within the rural Caucasian community. Odraye does not remember him expressing a sympathetic thought in their communications.

The only "family" members who appeared to relate to Odraye and his experiences were his drug-dealing family and associates.

d. *The Impact of Erroneous Testimony from the Defense's Cultural Expert:*

During the sentencing phase, the prosecutor asked the defense's cultural expert witness, Charles See, if Odraye Jones was "self-determined." Mr. See answered in the affirmative. When considering determinism as a motivating factor, we must be clear about whether the term relates to a philosophical/psychological construct, or a common-sense construct that would be defined in any good dictionary.

In the first instance, determinism refers to an act that is an element of many acts that come together to influence an action, while indeterminism is the independent expression of an act independent of other acts or occurring events. To paraphrase the *Concise Encyclopedia of Psychology*: Willful versus a non-willful act is defined scientifically, including psychologically and philosophically, as indeterminism versus determinism. Philosophically and scientifically, determinism is a state that is dependent upon the existence and interaction of other things. Indeterminism, on the other hand, implies freedom of choice.

Consequently, by inference the prosecutor was asking, "Was Odraye Jones's behavior determined by outside forces that were most probably outside his control, but that impacted on him, and played a part in the commission of the instant offense?" Mr. See's response, that the behavior was determined, was compromised by the addition of the word "self," since determinism negates the self from consideration.

When considering a common-sense approach to the term self-determinism, and relying on a dictionary interpretation, we are presented with the following from *Webster's New World College Dictionary*: Determination or decision according to one's own mind or will, without outside influence.

On the surface, this definition would appear to fit what the prosecutor had in mind when he put the question to the witness. Nevertheless, this definition presumes that nothing that occurred in the life of Odraye Jones

should be considered as a motivating influence, neither the good, nor the bad. Further, if nothing in Odraye's life is to be considered, then we must contemplate that the commission of the instant offense occurred in a vacuum and was an impulsive act—an act carried out without forethought or malice.

e. *Odraye's Behavior During the Arraignment and Indicia of Inability to Participate in His Own Defense:*

A careful review of the arraignment transcripts reveals that Odraye appears unable to formulate responses to the judge's questions that indicate that he was cognizant of the expected behavior or decorum of the event. Had a psychological evaluation been performed, it would have shown that Odraye was paranoid, delusional, and unable to respond to the environment in a manner consistent with his best interests. Further, it is my opinion that Odraye, as a result of the extreme emotional upheaval associated with the offense, the addictive ingestion of psychoactive drugs, and a rigidly held defense system was unable to differentiate and appreciate a value system outside that which comprised his cultural experience. Within that cultural experience he perceived his behavior as appropriate. Consequently, in a pathetic sense he is unable to determine the wrongfulness of his behavior from the perspective of the larger cultural experience.

As a result of these dynamics, Odraye was not in a position to cooperate with counsel in preparing or assisting his defense.

11. RESULTS OF PSYCHOLOGICAL EVALUATION

a. I saw Odraye Jones on four separate occasions over a six-month period. During that time, I administered several psychological tests to assess his current level of psychological functioning:

1. Clinical Interviews
2. Minnesota Multiphasic Personality Inventory-2 (MMPI-2)
3. Sixteen Personality Factor Questionnaire (16PF)
4. Rorschach
5. Projective Drawings

Additionally, testing completed by Drs. John R. Eisenberg and John Kenny was also reviewed. The following results were obtained.

b. **MMPI-2**

Odraye's response to the MMPI-2 that I administered indicated that he read the questions and answered them in a somewhat inconsistent manner.

This response style tends to cast some doubt on the validity of the ensuing profile. However, Odraye's response style appeared more valid upon review. During the review, the examiner went over the responses that appeared to be problematic; Odraye answered those questions in what appeared to be a straightforward manner. Consequently, although there may be some exaggeration associated with Odraye's responses, his responses to the test appeared valid. Individuals who have responded to the MMPI-2 as Odraye has, have been described as demonstrating poor judgment, acting in an impulsive manner, and tending to demonstrate low-frustration tolerance. Additionally, individuals who have responded in a manner similar to Odraye's style have been described as impatient, unable to solve problems effectively, and likely to be seen as immature and self-centered. Perhaps as a result of his low frustration tolerance, and his inability to problem-solve effectively, Odraye is likely to be prone to emotional outbursts. Typically, individuals who have responded to the MMPI-2 as Odraye did have used mood-altering chemicals to escape uncomfortable or unwanted emotions. This need to escape reality may lead to behavior described as antisocial.

12. 16 PERSONALITY FACTORS TEST

- a. Testing suggests that Odraye is likely to be seen as more interested in abstract ideas rather than substance. His tendency to live in his head rather than in the world at-large hinders his ability to respond consistently in a manner that would correspond to the requirements of reality. In this he would be seen by others as seemingly not able to proceed from point "a" to point "b" in a logical and straightforward manner. This cognitive style could present itself to the onlooker as rambling activities lacking direction and goals.
- b. Odraye's lifestyle is likely to be seen as independent and self-directed, leading to active attempts to control his environment. For Odraye, the need to control his environment appears very high; however, he does not appear to possess the wherewithal to accomplish this effectively. Others may see Odraye as expedient in pursuing his own wishes and not aware of the needs of others.

13. RORSCHACH

- a. In response to the Rorschach projective test, Odraye produced 12 responses that reflect very few indicators for a need for affection, and suggested that he is tightly wrapped in defensive strategies that serve to protect a fragile ego from harm. His responses tended to be characterized by poor form, an absence of shading, and very few responses that integrated color into the concept. Most of the responses dealt with animal and monster faces.

14. MULTIAXIAL DIAGNOSIS

- a. Based on the results of the above evaluation and in consideration of past evaluations, it is my opinion that Odraye Jones's DSM IV diagnosis is as follows:

AXIS I	Cannabis Dependence (remission)	304.30
	Post-traumatic Stress Disorder	309.81
AXIS II	Borderline Personality Disorder	301.83
	Paranoid Personality Disorder	301.0
	Antisocial Personality Disorder	301.7
AXIS III	Defer to Medical Report	
AXIS IV	Psychosocial Stresses	
	Cultural Negation/Depravation	
	Abandonment	
	Incarceration on Death Row	
AXIS V	Global Assessment of Functioning	50

15. PSYCHOLOGICAL SUMMARY AND CONCLUSIONS

- a. Odraye Jones is a 22-year-old male currently awaiting execution on Death Row at Mansfield Correctional Institution. He was convicted of a single homicide. As a result of the numerous interviews with Mr. Jones, a review of the case record, including previous psychologicals, informant statements, medical history, family history, histories of juvenile and adult criminal justice system contact, along with psychologicals administered by me, it is my professional opinion that previous psychological evaluations that were reported to be invalid were actually valid and tended to reflect Odraye's inability to consistently conform his behavior to the demands of reality.
- b. Testing administered while he was housed in the Ashtabula County jail, along with tests administered at the Mansfield Correctional Institution indicate that Odraye is apt to experience significant paranoid episodes. These episodes may occur when he is under significant stress and are compounded by a tendency toward ego disintegration. As his ego becomes compromised, he is apt to respond in a manner that stems from a view of the environment that does not conform to reality.

c. The Burnt Child Syndrome:

Testing and clinical interviews, along with a review of the case record, indicates that Odraye, for the better part of his development, was often psychologically and emotionally, if not physically abandoned, by those entrusted with his care. His mother was inconsistent in her ability to provide emotional and psychological nourishment and physical safety for Odraye. This created an emotionally vulnerable youth who eventually developed a push-pull relationship with those he would get close to: pushing close relationships away by use of his superficiality, and at the same time attempting to pull that relationship closer. This behavior tended to mimic the behavior of his mother. As a result of this behavior, tactic testing demonstrates that the affection that he wanted and needed was often shunned. The psychological term is Burnt Child Syndrome.

d. Post-traumatic Stress Disorder:

Odraye's close experiences with death, the violence associated with his activities as a gang member, having a family in which each generation could point to a member being horribly murdered, and his own loss through murder of his cousin and close friend led to an obsessive preoccupation with death. Clinical interviews and testing suggest that Odraye probably suffered from post-traumatic stress disorder.

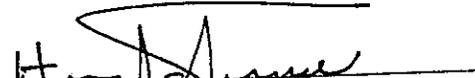
Odraye reports difficulty sleeping, intrusive thoughts, and nightmares with the theme of killing someone or taking his own life. These factors tend to suggest that Odraye's cognitive and emotional resources were taxed beyond his ability to think and act rationally at the time of the instant offense and during the months immediately succeeding. Consequently, it is highly unlikely that he would have been able to cooperate with his defense team during the pretrial and trial stages of his court proceedings.

A review of the record, and revelations by Odraye, suggest that his relationship with Ms. Lyons may have facilitated his acquisition of impaired problem-solving skills and diminished overall his basic ability to live without infringing upon the rights of others. This occurred through Ms. Lyons's need to deny problems, her failure to parent, and perhaps her emotional connection with Odraye that grew outside the bounds of the grandmother-grandson relationship. Though not necessarily physical, Ms. Lyons appears to have become most rejecting when Odraye attempted to exert his emotional independence. This condition furthered compromised his ego functioning and resulted in a decreased ability to withstand any form of emotionally-charged onslaught.

16. CONCLUSION

It is my professional opinion that had Odraye Jones been able to participate in his own defense, his trial counsel would have been able to present the mitigating information developed here. Further, it is my opinion that, had Odraye received a psychological evaluation in a timely manner, his delusional qualities would have been ameliorated sufficiently to enable him to assist in his own defense.

Further Affiant sayeth naught.


DR. HUGH TURNER, Psy.D.

Sworn and subscribed before me this 27 day of August, 1999.


NOTARY PUBLIC

**RUTH L. TKACZ
NOTARY PUBLIC
NO EXPIRATION DATE**

EX#14

DOUGHTEN & SMITH
ATTORNEYS AT LAW
THE BROWNHOIST BUILDING
4403 ST. CLAIR AVENUE
CLEVELAND, OHIO 44103-1125

DAVID L. DOUGHTEN
PATRICIA J. SMITH

(216) 361-1112
FAX (216) 881-3928

April 20, 2002

Odraye Jones
Mansfield Correctional Institution
P.O. Box 788
Mansfield, Ohio 44901-0788

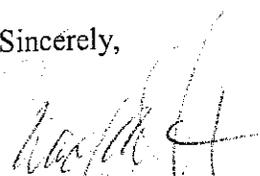
Dear Mr. Jones:

I spoke with Ruth Tkacz of the Ohio Public Defenders Office recently. She asked about inconsistencies regarding Theresa Taylor's prior statement's, in particular regarding the issue as to whether she was describing Jimmie Ruth or Anthony Barkdale. I do not remember a specific conversation with you in this regard. However, I do know that we did speak about this subject. In particular, because it was Jimmie that had the blood on his shoe. In fact, I thought we asked you if one of the others shot the victim and if you picked up the gun because that person panicked. You answered that it was not the case. You did not know who shot him. I also believe that Mr. Tobik did address this issue in his closing argument.

I would not have directly asked Theresa if she was not describing Jimmie or Anthony instead of you. I do not know what her answer would have been, but I doubt that she would have said yes. In addition, the state would have been able to ask her questions on re-direct her. As she had been advised by their people throughout the proceedings, I doubt she would have admitted that she was describing someone else.

The central rule of cross-examination is that you do not ask a question of a witness if you do not know what they will answer. The worst thing that could have happened is for her to have answered in response to my question that it was not Jimmie or Anthony that she saw, it was you. I would not have taken that chance.

Sincerely,



David L. Doughten

97CRAC1448

EX #16

COMPLAINT

THE STATE OF OHIO, ASHTABULA COUNTY
THE CITY OF ASHTABULA

}

ss.

ASHTABULA MUNICIPAL COURT

Before Me, Clerk of the Ashtabula Municipal Court, personally came

Det. Robert Pouska

who, being sworn according to law deposes and saith that on or about the 9th day of
November A.D., 1997, in the City of Ashtabula County of Ashtabula, and
State of Ohio,

One ODRAVE G. JONES, in attempting or committing a theft offense, as
defined in Section 2913.01 of the Ohio Revised Code, or in fleeing
immediately after such attempt or offense, did have a deadly weapon or
dangerous ordinance, as defined in Section 2923.11 of the Ohio Revised
Code, on or about his person or under his control

O.R.C. 2911.01(A)(1)

contrary to the form of the statute of said State in such case made and provided.

And further this deponent saith not.

(Deponent)

Sworn to and Subscribed Before Me, this _____ day of _____ A.D., 19____.

(SEAL)

Clerk of the Ashtabula Municipal Court

Deputy Clerk of the Ashtabula Municipal Court

EX# 17

STATE OF OHIO)
COUNTY OF ASHTABULA) ss.

AFFIDAVIT IN SUPPORT OF
ISSUANCE OF WARRANT

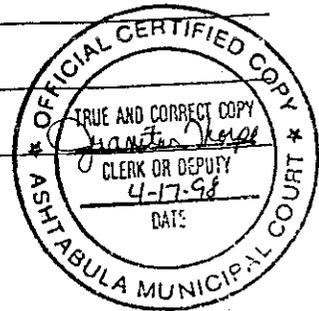
I, P.F. DiAngelo, the undersigned police officer first duly sworn, depose and state as follows:

1. I am a member of the ASHTABULA CITY POLICE and I have actual knowledge of the allegations below, or I possess of, and am reasonably relying upon, the reports of fellow officers directly involved in the investigation of this matter, which reports are regularly made in the ordinary course of the duties of said officers.

2. There is probable cause to believe that the offense(s) of AGGRAVATED ROBBERY, a violation(s) of Ohio Revised Code Section(s) 2911.01(A)(1), has been committed within the territorial jurisdiction of this Court, based upon the following: STATEMENT FROM VICTIM, IDENTIFICATION

FROM WITNESSES

3. There is probable cause to believe that ODRAYE G. JONES committed the foregoing offense, based upon the following: STATEMENT FROM VICTIM, IDENTIFICATION FROM WITNESSES



4. This department believes that a warrant for said ODRAYE G. JONES is reasonably necessary to bring him/her before the Court to answer the charges filed contemporaneously herewith, because SUBJECT MAY COMMIT FURTHER SIMILAR CRIMES, SUBJECT COMMITTED A SECOND IDENTICAL OFFENSE AGAINST SAME VICTIM ON 11-8-97, IN ASHTABUA CITY.

5. Affiant further states

REQUEST ARREST WARRANT
BE ISSUED

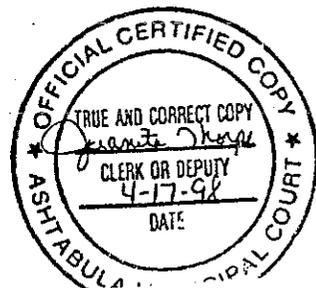
FURTHER, AFFIANT SAYETH NAUGHT.

[Signature]
NAME/TITLE

Sworn to before me and subscribed in my presence this 10 day of November, 1997.

[Signature]
NOTARY PUBLIC/CLERK OF COURT

My commission expires _____



Ex #18

research should be done or by whom, critical questions that should be addressed include the persistence of individual characteristics, the rarity of certain characteristic types, and the appropriate statistical standards to apply to the significance of individual characteristics. Also, little if any research has been done to address rare impression evidence. Much more research on these matters is needed.

TOOLMARK AND FIREARMS IDENTIFICATION

Toolmarks are generated when a hard object (tool) comes into contact with a relatively softer object. Such toolmarks may occur in the commission of a crime when an instrument such as a screwdriver, crowbar, or wire cutter is used or when the internal parts of a firearm make contact with the brass and lead that comprise ammunition. The marks left by an implement such as a screwdriver or a firearm's firing pin depend largely on the manufacturing processes—and manufacturing tools—used to create or shape it, although other surface features (e.g., chips, gouges) might be introduced through post-manufacturing wear. Manufacturing tools experience wear and abrasion as they cut, scrape, and otherwise shape metal, giving rise to the theory that any two manufactured products—even those produced consecutively with the same manufacturing tools—will bear microscopically different marks. Firearms and toolmark examiners believe that toolmarks may be traced to the physical heterogeneities of an individual tool—that is, that “individual characteristics” of toolmarks may be uniquely associated with a specific tool or firearm and are reproduced by the use of that tool and only that tool.

The manufacture and use of firearms produces an extensive set of specialized toolmarks. Gun barrels typically are rifled to improve accuracy, meaning that spiral grooves are cut into the barrel's interior. The process of cutting these grooves into the barrel leaves marks and scrapes on the relatively softer metal of the barrel.⁵⁹ In turn, these markings are transferred to the softer metal of a bullet as it exits the barrel. Over time, with repeated use (and metal-to-metal scraping), the marks on a barrel (and the corresponding “stria” imparted to bullets) may change as individual imperfections are formed or as cleanliness of the barrel changes. The brass exterior of cartridge cases receive analogous toolmarks during the process of gun firing: the firing pin dents the soft primer surface at the base of the cartridge to commence firing, the primer area is forced backward by the buildup of gas pressure (so that the texture of the gun's breech face is impressed on the cartridge), and extractors and ejectors leave marks as they expel used cartridges and cycle in new ammunition.

Firearms examination is one of the more common functions of crime laboratories. Even small laboratories with limited services often perform firearms analysis. In addition to the analysis of marks on bullets and cartridges, firearms examination also includes the determination of the firing distance, the operability of a weapon, and sometimes the analysis of primer residue to determine whether someone recently handled a weapon. These broader aspects are not covered here.

Sample and Data Collection

When a tool is used in a crime, the object that contains the tool marks is recovered when possible. If a toolmark cannot be recovered, it can be photographed and cast. Test marks made by recovered tools can be made in a laboratory and compared with crime scene toolmarks.

⁵⁹ Although the metal and initial rifling are very similar, the cutting of the individual barrels, the finishing machining, and the cleaning and polishing begin the process of differentiation of the two sequentially manufactured barrels.

4 pages

In the early 1990s, the FBI and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) developed separate databases of images of bullet and cartridge case markings, which could be queried to suggest possible matches. In 1996, the National Institute of Standards and Technology (NIST) developed data exchange standards that permitted the integration of the FBI's DRUGFIRE database (cartridge case images) and the ATF's CEASEFIRE database (then limited to bullet images). The current National Integrated Ballistic Information Network (NIBIN) includes images from both cartridge cases and bullets that are associated with crime scenes and is maintained by the ATF.

Periodically—and particularly in the wake of the Washington, D.C. sniper attacks in 2002—the question has been raised of expanding the scope of databases like NIBIN to include images from test firings of newly manufactured firearms. In concept, this would permit downstream investigators who recover a cartridge case or bullet at a crime scene to identify the likely source firearm. Though two states (Maryland and New York) instituted such reference ballistic image databases for newly manufactured firearms, proposals to create such a database at the national level did not make substantial progress in Congress. A recent report of the National Academies, *Ballistic Imaging*, examined this option in great detail and concluded that “[a] national reference ballistic image database of all new and imported guns is not advisable at this time.”⁶⁰

Analyses

In both firearm and toolmark identification, it is useful to distinguish several types of characteristics that are considered by examiners. “Class characteristics” are distinctive features that are shared by many items of the same type. For example, the width of the head of a screwdriver or the pattern of serrations in the blade of a knife may be class characteristics that are common to all screwdrivers or knives of a particular manufacturer and/or model. Similarly, the number of grooves cut into the barrel of a firearm and the direction of “twist” in those grooves are class characteristics that can filter and restrict the range of firearms that match evidence found at a crime scene. “Individual characteristics” are the fine microscopic markings and textures that are said to be unique to an individual tool or firearm. Between these two extremes are “subclass characteristics” that may be common to a small group of firearms and that are produced by the manufacturing process, such as when a worn or dull tool is used to cut barrel rifling.

Bullets and cartridge cases are first examined to determine which class characteristics are present. If these differ from a comparison bullet or cartridge, further examination may be unnecessary. The microscopic markings on bullets and cartridge cases and on toolmarks are then examined under a comparison microscope (made from two compound microscopes joined by a comparison bridge that allows viewing of two objects at the same time). The unknown and known bullet or cartridge case or toolmark surfaces are compared visually by a firearms examiner, who can evaluate whether a match exists.

Scientific Interpretation

The task of the firearms and toolmark examiner is to identify the individual characteristics of microscopic toolmarks apart from class and subclass characteristics and then to assess the extent of agreement in individual characteristics in the two sets of toolmarks to permit the identification of an individual tool or firearm.

⁶⁰ National Research Council. 2008. *Ballistic Imaging*. Washington, D.C.: The National Academies Press, p. 5.

Guidance from the Association of Firearm and Tool Mark Examiners (AFTE)⁶¹ indicates that an examiner may offer an opinion that a specific tool or firearm was the source of a specific set of toolmarks or a particular bullet striation pattern when "sufficient agreement" exists in the pattern of two sets of marks. The standards then define agreement as significant "when it exceeds the best agreement demonstrated between tool marks known to have been produced by different tools and is consistent with the agreement demonstrated by tool marks known to have been produced by the same tool."⁶²

Knowing the extent of agreement in marks made by different tools, and the extent of variation in marks made by the same tool, is a challenging task. AFTE standards acknowledge that these decisions involve subjective qualitative judgments by examiners and that the accuracy of examiners' assessments is highly dependent on their skill and training. In earlier years, toolmark examiners relied on their past casework to provide a foundation for distinguishing between individual, class, and subclass characteristics. More recently, extensive training programs using known samples have expanded the knowledge base of examiners.

The emergence of ballistic imaging technology and databases such as NIBIN assist examiners in finding possible candidate matches between pieces of evidence, including crime scene exhibits held in other geographic locations. However, it is important to note that the final determination of a match is always done through direct physical comparison of the evidence by a firearms examiner, not the computer analysis of images. The growth of these databases also permits examiners to become more familiar with similarities in striation patterns made by different firearms. Newer imaging techniques assess toolmarks using three-dimensional surface measurement data, taking into account the depth of the marks. But even with more training and experience using newer techniques, the decision of the toolmark examiner remains a subjective decision based on unarticulated standards and no statistical foundation for estimation of error rates.⁶³ The National Academies report, *Ballistic Imaging*, while not claiming to be a definitive study on firearms identification, observed that, "The validity of the fundamental assumptions of uniqueness and reproducibility of firearms-related toolmarks has not yet been fully demonstrated." That study recognized the logic involved in trying to compare firearms-related toolmarks by noting that, "Although they are subject to numerous sources of variability, firearms-related toolmarks are not completely random and volatile; one can find similar marks on bullets and cartridge cases from the same gun," but it cautioned that, "A significant amount of

⁶¹ Theory of identification, range of striae comparison reports and modified glossary definitions—An AFTE Criteria for Identification Committee report. 1992. *Journal of the Association of Firearm and Tool Mark Examiners*. 24:336-340.

⁶² *Ibid.*, p. 336.

⁶³ Recent research has attempted to develop a statistical foundation for assessing the likelihood that more than one tool could have made specific marks by assessing consecutive matching striae, but this approach is used in a minority of cases. See A.A. Biasotti. 1959. A statistical study of the individual characteristics of fired bullets. *Journal of Forensic Sciences* 4:34; A.A. Biasotti and J. Murdock. 1984. "Criteria for identification" or "state of the art" of firearms and tool marks identification. *Journal of the Association of Firearm and Tool Mark Examiners* 16(4):16; J. Miller and M.M. McLean. 1998. Criteria for identification of tool marks. *Journal of the Association of Firearm and Tool Mark Examiners* 30(1):15; J.J. Masson. 1997. Confidence level variations in firearms identification through computerized technology. *Journal of the Association of Firearm and Tool Mark Examiners* 29(1):42. For a critique of this area and a comparison of scientific issues involving toolmark evidence and DNA evidence, see A. Schwartz. 2004-2005. A systemic challenge to the reliability and admissibility of firearms and tool marks identification. *Columbia Science and Technology Law Review* 6:2. For a rebuttal to this critique, see R.G. Nichols. 2007. Defending the scientific foundations of the firearms and tool mark identification discipline: Responding to recent challenges. *Journal of Forensic Sciences* 52(3):586-594.

... which would be needed to scientifically determine the degree to which firearms-related marks are unique or even to quantitatively characterize the probability of uniqueness.”⁶⁴

Summary Assessment

Toolmark and firearms analysis suffers from the same limitations discussed above for impression evidence. Because not enough is known about the variabilities among individual tools and guns, we are not able to specify how many points of similarity are necessary for a given level of confidence in the result. Sufficient studies have not been done to understand the reliability and repeatability of the methods. The committee agrees that class characteristics are helpful in narrowing the pool of tools that may have left a distinctive mark. Individual patterns from manufacture or from wear might, in some cases, be distinctive enough to suggest one particular source, but additional studies should be performed to make the process of individualization more precise and repeatable.

A fundamental problem with toolmark and firearms analysis is the lack of a precisely defined process. As noted above, AFTE has adopted a theory of identification, but it does not provide a specific protocol. It says that an examiner may offer an opinion that a specific tool or firearm was the source of a specific set of toolmarks or a bullet striation pattern when “sufficient agreement” exists in the pattern of two sets of marks. It defines agreement as significant “when it exceeds the best agreement demonstrated between tool marks known to have been produced by different tools and is consistent with the agreement demonstrated by tool marks known to have been produced by the same tool.” The meaning of “exceeds the best agreement” and “consistent with” are not specified, and the examiner is expected to draw on his or her own experience. This AFTE document, which is the best guidance available for the field of toolmark identification, does not even consider, let alone address, questions regarding variability, reliability, repeatability, or the number of correlations needed to achieve a given degree of confidence.

Although some studies have been performed on the degree of similarity that can be found between marks made by different tools and the variability in marks made by an individual tool, the scientific knowledge base for toolmark and firearms analysis is fairly limited. For example, a report from Hamby, Brundage, and Thorpe⁶⁵ includes capsule summaries of 68 toolmark and firearms studies. But the capsule summaries suggest a heavy reliance on the subjective findings of examiners rather than on the rigorous quantification and analysis of sources of variability. Overall, the process for toolmark and firearms comparisons lacks the specificity of the protocols for, say, 13 STR DNA analysis. This is not to say that toolmark analysis needs to be as objective as DNA analysis in order to provide value. And, as was the case for friction ridge analysis and in contrast to the case for DNA analysis, the specific features to be examined and compared between toolmarks cannot be stipulated a priori. But the protocols for DNA analysis do represent a precisely specified, and scientifically justified, series of steps that lead to results with well-characterized confidence limits, and that is the goal for all the methods of forensic science.

⁶⁴ All quotes from National Research Council. 2008. *Ballistic Imaging*. Washington, D.C.: The National Academies Press, p. 3.

⁶⁵ J.E. Hamby, D.J. Brundage, and J.W. Thorpe. The identification of bullets fired from 10 consecutively rifled 9mm Ruger pistol barrels—A research project involving 468 participants from 19 countries. Available online at <http://www.fti-ibis.com/DOWNLOADS/Publications/10%20Barrel%20Article-%20a.pdf>.

Ex #20

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

STATE OF OHIO)
)
 Plaintiff)
)
 vs.)
)
 ODRAYE G. JONES)
)
 Defendant)

CASE NO. 97 CR 221

JUDGE RONALD W. VETTEL

STIPULATION



The parties by and through their respective counsel hereby agree and stipulate to the following:

1. Each and every photograph to be introduced into evidence at the trial of this matter fairly and accurately represents the things and/or person(s) depicted therein on the date that the photographs were taken. (Exhibits #6, #8A-8F; #12A-12G; #13; #14A-14C; #15A-15B; #21A-21J; #25A-25D; #26A-26C) DLP ELT TS RT

2. William D. Glover, Jr., on November 17, 1997 was a peace officer, as that term is defined in Ohio Revised Code 2935.01 and employed as such by the Ashtabula Ohio City Police Department.

3. On November 17, 1997, William D. Glover, Jr. was 30 years old. He was married and his wife's name is Marianne. He had three children: Philip, age 10; Sean age 7; and Amanda, age 5.

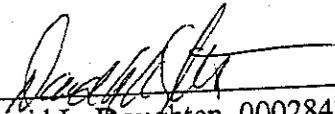
4. At 4:13 p.m. on November 17, 1997, William D. Glover received a message to call home. He returned the call between 4:00 p.m. and 4:23 p.m. and spoke to his wife.

5. On November 17, 1997, there was an outstanding warrant for the arrest of the defendant, Odraye G. Jones, for the crime of aggravated robbery, an exact copy of which is attached hereto.

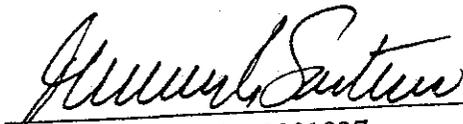
6. With the exception of the initial retrieval by Ptl. Robert Stell of the Ashtabula Police

Department of the .38 caliber Charter Arms Revolver (the murder weapon) defendant stipulates to the chain of custody of the State of Ohio's exhibits. (Exhibits #1 - #37 inclusive) *Exhibit 7A*
TLS *PLT* *DJD*

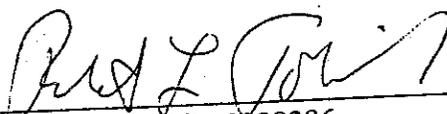
AGREED AND APPROVED:



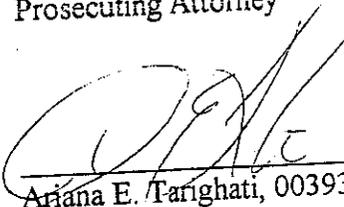
David L. Doughten, 0002847
Counsel for Defendant



Thomas L. Sartini, 0001937
Prosecuting Attorney



Robert L. Tobik, 0029286
Counsel for Defendant



Ariana E. Tarighati, 0039372
Chief Assistant Prosecutor

EX #21

AS9700038, D-709 robbery agg

Statement taken by Det Sgt Jeffrey K Bradley 110497 0950 Ashtabula Police Department

My name is Rochelle D Hill. I live at 3479 Fargo Dr apt 3. The phone there is 998-5824. Next week I will be moving to 3115 Bonniewood Dr. The phone number will be the same. I am 19 years old, born June 11, 1978 in Ashtabula. I've lived here all my life. I live with Brian Goodwin. I am not currently employed.

Q. Why are you here today?

A. I witnessed the Issac Coleman robbery.

Q. You wrote out a witness statement that day?

A. Yes.

Q. OK, Rochelle, look this over?

A. Yeah.

Q. Is that your handwriting?

A. Yes.

Q. That's your signature at the bottom?

A. Yes.

Q. Is this accurate as to the events as you recall them that day?

A. Yes it is, but, there's more to this.

Q. OK, go ahead?

A. This was all over gambling. Isaac's dad Albert Coleman won this money from Bee London, Odray's grandfather. It was about \$700.00 and it was won fair and square, but Bee told Odray that he stole it from him. That's why Odray told Isaac that he is going to rob him every time he sees him.

Q. OK, go on?

A. I was at Thompson's on W43, I was Mario, I don't know his last name. He's really tall, dark-skinned. He used to be from here, but he moved to New Jersey or something and just came back. Terry Holley, Kim Gantzler. There was a bunch of people there at the house; a lot of little kids.

Q. Go on?

A. Isaac was walking on the sidewalk on the same side of the street as the Thompson's. He was like walking towards the direction of his house. Odray and Rico were in the street walking towards the Thompson's the other way.

Q. Go on?

A. Now right before Isaac came around the corner on Coleman onto W43, Bee London went driving by. He had been down at the other end of the street. He was in a maroon Cadillac. He drove right past Isaac and then after that, Odray and Rico came up on the side of the street.

Q. OK, go on?

A. That's when Odray robbed him. Odray knocked Isaac to the ground. Rico was basically just standing in the street. Odray pulled out this gun and put it right up to Isaac's head and was patting him down. Isaac just had his hands out. Odray was pulling out all kinds of stuff. I seen a pager, some rocks, a big wad of money.

Q. Then what?

A. Odray and Rico walked up the street and around the corner on Coleman. I didn't see where they went after that. Isaac got up and walked up the hill in front of Thompson's house and Gene Holley came out. He was out in back throwing horseshoes. Like I said, there was a bunch of people there. Gene got involved because Isaac was selling rocks for him. He had \$600.00 worth of Gene's rocks on him that Odray took.

[Handwritten signature]

[Handwritten signature]

Q. Go on?

A. This Shawn Adams came out, too. He was back there pitching horse shoes, too. Isaac, Gene, and Shawn talked and then they got into Shawn's car. It was a black Honda Civic to go looking for Rico and Odray. This was right after this happened, I mean seconds, but they couldn't find them. No one could.

Q. Go on?

A. I walked down to Pollard's where Isaac's sister Shekeyla was. I told her what happened and she got in her car and left to get her dad. Shekeyla has a blue Pontiac.

Q. Go on?

A. It wasn't five minutes later that Isaac and Sheleyla's dad came down there to Thompson's. He got out of his car and he had this rifle and cocked it and shot it off up in the air. He was out there walking around because he was looking for Odray and Rico. He didn't know that they had left the area. Shekeyla had come back down there and they got into her dad's car and then they left. Albert had small gray car.

Q. Go on?

A. Then my cousin Corey Algood comes down there. He's always in the middle of everything. He says that the crips are going to be out for all of us that was there that seen anything and that anyone that gives a police statement. He said that he told them that I gave a statement to the police.

Q. Has any of those people contacted you at all?

A. No.

Q. Anything else?

A. That was about it. I went home after that. This was all in broad daylight and the thing I was worried about the most was for the little kids that were out there. Those guys had guns. Odray, Isaac's dad. Gene Holley had a gun. He pulled it out and showed me. I just went home and locked the door.

Q. Anything else?

A. The next day, there was a fight out in the street between Isaac and Damien Hunt. I heard Isaac say something like, "I'm tired of you guys pulling guns out all the time!" I guess that Damien had a gun and someone took it away from him.

Q. Go on?

A. Plus, right before the robbery, Rico was at the Thompson's talking to Isaac. Then he walks down and gets with Odray and then comes back up and robs him. There was a lot of people there. I don't go over there any more because Bee London still goes down there.

Q. Have you been truthful?

A. Yes.

[Handwritten signature]
1-15-56
1935

[Handwritten signature]
1935

Investigative statement of Det. A.J. Altonen

AS9705688 D709

Incident: Aggravated Robbery
Victim: Isacc Coleman
Incident Date: 101897
Incident time: Reported at 1750 hrs.
Suspect: Odray Jones

102497; 1903 hrs: Sandy and Albert Coleman on station to give statements. Completed at 1935 hrs.

102997; 1629 hrs: Calling Rochelle Hill. No answer.

102997; 1630 hrs: Called the Coleman residence and spoke to Sandy Coleman and a Howard Ross. Ross was very inquisitive about what we are doing about the case. He was advised. Shekeyla Coleman Daughter of Sandy and sister to Isacc, is on her way to the P.D. to give a statement.

102997; 1703 hrs: Shekeyla Coleman on station to give statement. She completed the statement at about 1722 hrs.

102997; 2015 hrs: Called Rochelle Hill, again no answer.

110397; 1556 hrs: Calling Rochelle Hill. Rochelle Hill answered and stated that she could come in the morning for a statement. She said that around 1000 hrs would be good. I won't be in, so I will refer to Det. Sgt. Bradley.

110497; 1816 hrs: Dispatch advised that Ptl. Koski has Rico Baker stopped, and he will not come in to talk to me, if I want to talk to him, I must go to West Ave. and W38th street area. I went this area, and found Koski on a traffic stop. The passenger was Rico Baker. I took Baker out of the car, and marandized him. I first questioned him on the incident at Ohio village where his car was seen leaving the area after a gun was fired. He told me that he was pulling into a parking space, and an argument started between him, Odray Jones, and a white male known only to him as a Tackett. We believe this to be Darren Tackett. He stated that Odray got out of the car as he was trying to park, and he heard a gun shot. He stated that he did not know who fire the gun. He said it could have been Odray or one of the two white males. That report is included in this file. I then asked him about this incident between Isacc Coleman and Odray Jones. He stated that all he could say is what Odray told him. "It's a drug deal gone bad." He did not state who was dealing or who was buying. He stated that he was not with Odray, but saw it go down. He stated that Odray went his way, and Isacc went his after it was over. He did not see Isacc get into a car. He stated that he is friends with Isacc and has known him all his life more or less. He stated that he has heard rumors that the amount of money taken was near 600 or more dollars. He did not know the amount of money taken, he stated. Rico agreed to come to the station tomorrow to give a statement. He said he would be here at 1530 to 1545 hrs. In the car was the driver, Damien Hunt. I asked him if he'd gotten into a fight with Isacc that same night, and he stated that he did, but the fight was over Isacc not respecting him. Damien thinks that he should deserve more respect because he is 21 and Isacc is only 18 years old. They were sent on there way.

110597; 2129 hrs: Rico Baker was a no show at the time of this typing.

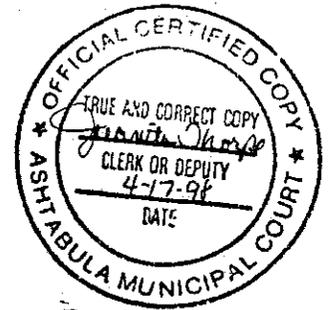
EX # 22

FILED

STATE OF OHIO)
ASHTABULA COUNTY)

IN THE ASHTABULA MUNICIPAL COURT

SS:)
Nov 18 8 38 AM '97



-VS-
ODRAYE G. JONES
3230 SUPERIOR AVE
ASHTABULA OH 44004

ASHTABULA MUNICIPAL COURT

Case No: 97CRA01425
Bsn : -9356
DOB :

WARRANT ON COMPLAINT

ASHTABULA MUNICIPAL COURT

1991 NOV 10 P 12:51

FILED

To any Police Official - GREETINGS

The Court commands you to take ODRAYE G. JONES if he/she be found within your bailiwick and safely keep him/her so that you have him/her before Municipal Court now being held at the Municipal Building, 10 West 44th St in the City of Ashtabula within and for said Court, forthwith to answer to a charge against him/her of:

AGGRAVATED ROBBERY

wherein fail not, but of this writ and your service make due return. Date: 11/10/97

James J. [Signature]
CLERK/ DEPUTY CLERK

RETURN

STATE OF OHIO)
ASHTABULA COUNTY)
ASHTABULA)

IN THE ASHTABULA MUNICIPAL COURT

Pursuant to the command hereof, I did, on the 17th day of November, 1997, arrest the within named defendant Odroye Jones and I now have in custody for safekeeping.

P.H. [Signature]
Police Officer

221
CASE NO. 97-CR-DIRECT

Ex#23

1997 GRAND JURY
SEPTEMBER SESSION, NOVEMBER RECALL, SPECIAL SESSION

COMMON PLEAS COURT
Ashtabula County, Ohio

THE STATE OF OHIO

vs.

ODRAYE G. JONES

INDICTMENT FOR:

AGGRAVATED MURDER w/specs

NOV 26 9 13 AM '97
CAROL A. HETZEL
COMMON PLEAS COURT
ASHTABULA COUNTY
FILED

P-2330
FILED

A TRUE BILL

Susan E. Golen

SUSAN E. GOLEN
GRAND JURY FOREMAN

THOMAS L. SARTINI
PROSECUTING ATTORNEY

✓

MF 1343

INDICTMENT - ONE COUNT

STATE OF OHIO)

) SS.

COUNTY OF ASHTABULA)

CASE NO.- DIRECT

STATE OF OHIO VS. ODRAYE G. JONES

Of the September Term, November Recall, Special Session, November 25, 1997:

THE JURORS OF THE ASHTABULA COUNTY GRAND JURY of the State of Ohio on their oaths, in the name and by the authority of the State of Ohio, do find and present that:

COUNT ONE

On or about the 17th day of November, 1997 in the City of Ashtabula, Ashtabula County, Ohio, one **ODRAYE G. JONES** did, purposely and with prior calculation and design, cause the death of another, to wit: William D. Glover, Jr., a peace officer, in violation of Section 2903.01 (A) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

Specification 1 of Count One: The Grand Jury further finds and specifies that the offense was committed for the purpose of escaping detection, apprehension, trial, or punishment of another offense committed by the defendant, to wit; aggravated robbery, an aggravating circumstance as specified in Section 2929.04 (A) (3) of the Ohio Revised Code.

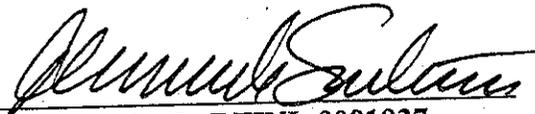
Specification 2 of Count One: The Grand Jury further finds and specifies that the victim of the offense, William D. Glover, Jr., was a peace officer, as defined in Section 2935.01 of the Ohio Revised Code whom the defendant had reasonable cause to know or knew to be such and at the time of the offense the victim, William D. Glover Jr. , was engaged in his duties as a peace officer, an aggravating circumstance as specified in Section 2929.04 (A) (6) of the Ohio Revised Code.

Specification 3 of Count One: The Grand Jury further finds and specifies that **ODRAYE G. JONES** had reasonable cause to know or knew William D. Glover, Jr., was a peace officer as defined in Section 2935.01 of the Ohio Revised Code, and that it was Odraye G. Jones' specific purpose to kill a peace officer at the time of the offense, an aggravating circumstance as specified in Section 2929.04 (A) (6) of the Ohio Revised Code.

Specification 4 of Count One: The Grand Jury further finds and specifies that **ODRAYE G. JONES** had a firearm on or about his person or under his control while committing this offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense in violation of Section 2941.145 of the Ohio Revised Code.

This offense constitutes the crime of Aggravated Murder with specifications, an offense for which the Death Penalty may be imposed, with a Three Year Firearm Specification, in such case made and provided and against the dignity of the State of Ohio.

RESPECTFULLY SUBMITTED,


THOMAS L. SARTINI, 0001937
PROSECUTING ATTORNEY

IN "THE SUPREME COURT OF OHIO"

ISLAM AL-DIN ALLAH (FKA ODRAYE JONES)	/	
	/	
APPELLANT,	/	DEATH PENALTY CASE
	/	IN RE: 60 (B) MOTION FOR
v.	/	RELIEF FROM JUDGMENT
	/	DIRECT APPEAL CASE NO.
STATE OF OHIO,	/	98-1483
	/	
APPELLEE	/	

MOTION FOR APPOINTMENT OF COUNSEL

The appellant requests appointment of qualified, conflict-free counsel to vindicate his "rights" which were not addressed in his appeals of right. They were not presented because direct and post-conviction counsels were ineffective. Several structural errors were not presented and an Apprendi also was not presented, nor preserved for federal review. These errors and others would have warranted reversal of appellant's unlawful conviction almost 11 years ago.

ISLAM AL-DIN ALLAH

