

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE  
CRIMINAL DIVISION**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No. 04-012890-01-FC

vs.

Hon. Nicolas J. Hathaway

THELONIOUS DESHANE-EAR SEARCY,

Defendant.

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**NOTICE OF HEARING**

PLEASE TAKE NOTICE that Defendant's Motion for Adverse Inference Instruction Arising from the Destruction of Evidence will be brought for hearing before the Honorable Nicolas J. Hathaway at Wayne County Criminal Justice Center, 5301 Russell, Courtroom 405, Detroit, Michigan 48211 on Friday, January 31, 2025 beginning at 9:30 a.m. or as soon thereafter as counsel may be heard.

Respectfully submitted,

LAW OFFICE OF MICHAEL R. DEZSI, PLLC

Dated: January 2, 2025

/s/ Michael R. Dezsi  
MICHAEL R. DEZSI (P64530)  
Counsel for Defendant Searcy  
1523 N. Main St.  
Royal Oak, MI 48067  
(313) 757-8112  
[mdezsi@dezsilaw.com](mailto:mdezsi@dezsilaw.com)

**CERTIFICATE OF SERVICE**

Michael R. Dezsi hereby certifies that on the 2nd day of January, 2025 a copy of this Notice of Hearing was filed with the Clerk of the Court and served upon the following counsel of record at their email addresses on file via the Court's E-file and Serve System:

Kym L. Worthy, Wayne County Prosecutor's Office, [wcpaappeals@waynecounty.com](mailto:wcpaappeals@waynecounty.com)  
Jon P. Wojtala, Chief of Research, Training and Appeals, [jwojtala@waynecounty.com](mailto:jwojtala@waynecounty.com)  
Deborah K. Blair, Wayne County Prosecutor's Office, [dblair@waynecounty.com](mailto:dblair@waynecounty.com)

Dated: January 2, 2025

*/s/ Michael R. Dezsi* \_\_\_\_\_  
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**DEFENDANT'S MOTION FOR ADVERSE INFERENCE INSTRUCTION  
ARISING FROM THE DESTRUCTION OF EVIDENCE**

By and through his counsel, LAW OFFICE OF MICHAEL R. DEZSI, PLLC, Defendant THELONIOUS DESHANE – EAR SEARCY hereby files his instant Motion for Adverse Inference Instruction Arising from the Destruction of Evidence. In further support of his motion, Defendant submits the accompanying brief.

Respectfully submitted,

Dated: January 2, 2025

LAW OFFICE OF MICHAEL R. DEZSI, PLLC,  
/s/ Michael R. Dezsi  
MICHAEL R. DEZSI (P64530)  
Attorney for Defendant  
1523 N. Main St.  
Royal Oak, MI 48067

**BRIEF IN SUPPORT OF DEFENDANT’S MOTION FOR ADVERSE INFERENCE**  
**INSTRUCTION ARISING FROM THE DESTRUCTION OF EVIDENCE**

**I. FACTS**

Around 9:00 p.m. on September 5, 2004, Jamal Segars was shot to death while riding in his silver convertible Corvette down Conner Avenue near Detroit City Airport. That evening, there was a large gathering near the old city airport known as the “Black Party.” Given the traffic and pedestrian congestion from the Black Party, the cars on Conner, were crawling along in traffic. At the northwest corner of Conner and Whithorn there was a gas station. On the southwest corner of that intersection, there was a party store located at 11742 Conner Ave (**Exhibit A**, Tutt Report; see also Tutt trial testimony at Trial Trans. Vol 2, pg. 23-24). Just after Segars crossed the intersection of Conner and Whithorn, a gunman walked up to his car and fired multiple times several of which shots struck Segars in both the head and chest.

Several police officers canvassed the crime scene and interviewed several witnesses. Around 10:30 p.m., Detroit Police Department Officer Zwicker interviewed Chela Holmes, who indicated that she was sitting in traffic on southbound Conner near Whithorn with her friends Doris Houchins and Crystal Edmonson when one of her friends yelled, “duck because someone was a shooting.” According to Holmes, she “watched [the shoot(er)] run into that store on the corner.” (**Exhibit B**, Holmes Statement)(“If the camera was on in the store you’ll see him good. He ran in and about 5 minutes later the lights went out.”). Holmes described the shooter as a black male in his 20s, about 5’5”-5’6” med build wearing a white t-shirt, black pants, and low-cut hair (Holmes’ description does not remotely match Defendant Searcy).

Around 11:20 p.m., Officer Zwicker interviewed Chrystal Edmondson who was riding in the car with Chela Holmes. Edmondson, like Holmes, told Zwicker that she, “heard some gunshots so [she] ducked” and when she looked up she saw a guy in a white t-shirt “run into the store.”

(**Exhibit C**, Edmondson statement).

That same night, Officer Zwicker also obtained a “VHS tape” from the party store located at 11742 Conner (located at the southwest corner of Conner Ave and Whithorn)(**Exhibit D**, Evidence Tag # E07170504)(the VHS tape from the store has never disclosed to or viewed by the defense and forms the basis of the instant motion):



Just after midnight, Collins also interviewed Latasha Boatright who lived with Ms. Stringer at 11029 Whithorn (**Exhibit E**, Boatright statement). Boatright, who was standing in the parking lot of the party store, saw the shooter approach Segars’ Corvette and fire multiple shots into the car. Boatright also said that she had seen the shooter in the store before the shooting. *Id* (“I saw him come out the store he had a brown bag with a juice.”).

### **Lab Analysis of Video Evidence**

On March 11, 2005, Officer Stephen Yakimovich of Detroit Police Department’s Forensic Services Section, conducted laboratory analysis of “two VHS tapes recorded[.]” (**Exhibit F**, Lab Analysis of VHS tapes). According to Yakimovich, he captured several “still images” of a suspect from “original video” footage and printed such photos. *Id*. While his report lists ET# 07174504 (which evidence tag corresponds with the scout car video placed into evidence by Velma Tutt),

Yakimovich indicates there were, “[t]wo VHS tapes recorded, one turned over to Sgt. Anderson.”

While Yakimovich does not cite/list the VHS tape confiscated by Officer Zwicker from the party store (11742 Conner, ET# 07170504), there are several still photos that appear to have been taken from the VHS tape confiscated from the party store (**Exhibit G**, still photos produced by DPD in the file labeled “Evidence-Labs” some with the title “Murder 04-289” which correspondence to the DPD homicide file for this case). The still photos directly follow Yakimovich’s lab analysis report and were produced on pages that were two-hole punched suggesting that these photos, both from the scout car and the party store, were all compiled by Yakimovich during his lab analysis of the two VHS tapes (as will be described herein, neither the VHS tape from the party store nor the still photos contained in the “Evidence-Labs” file were ever produced to Defendant prior to his trial in May 2005).

Ultimately, Defendant was convicted of first-degree murder by a jury.

Several years after Defendant was convicted, a convict named Vincent Smothers confessed to the shooting death of Segars near Detroit City Airport in 2004. Smothers signed several affidavits detailing the events of the shooting and that he acted with an accomplice named Jeffrey Daniels (who was murdered not long after the Segars shooting). Based on Smothers’ Affidavit(s), Defendant filed a successive Motion for Relief from Judgment and the Court appointed the undersigned counsel to represent Defendant for purposes of an Evidentiary Hearing.

Despite Smothers’ detailed confession in open court during an Evidentiary Hearing, the original trial judge denied Defendant’s Motion for Relief from Judgment which was later reversed by the Court of Appeals and remanded for a new trial. While preparing for re-trial, Defendant discovered the existence of the VHS tape evidence tag written out by officer Zwicker. Given that the VHS tape is now missing and/or destroyed, Defendant moved to dismiss these charges based

on the suppression of and/or destruction of Brady evidence including the VHS tape.

On October 3, 2022, successor Judge Thomas M. J. Hathaway granted Defendant's

Motion to Dismiss reasoning that:

[T]he VHS tapes confiscated by Officer Zwicker was clearly *Brady* material that should have been given to the defense. [] To date, this tape has never been produced or viewed by the defense. Given these facts, the VHS tapes confiscated were clearly *Brady* materials that should have been produced. These tapes could have exonerated defendant.

The Court agrees with defendant's argument that the prosecution bears the brunt of its failure to turn over exculpatory evidence since the prosecution and investigating officers were aware of the material facts that were withheld from the defense. Accordingly, the price to be paid for this failure falls on the prosecution.

Importantly, this Court notes that the prosecution contends that there is no evidence to "definitively establish that there was a VHS recording confiscated from the store located at 11742 Conner" (Pros Brief, pg 38). However, there is an evidence tag from Officer Zwicker documenting its existence.

This Court concludes that the damage caused by the suppression and withholding of the exculpatory evidence cannot be cured. Therefore, it holds that dismissal of the charges is appropriate given the severe and deliberate violations of defendant's due process rights that denied him a fair and impartial trial. Accordingly, this Court GRANTS defendant's motion to dismiss.

**(Exhibit H, Opinion and Order Granting Defendant's Motion to Dismiss, pg 11-14).**

The prosecution appealed the Court's Order of Dismissal and on December 21, 2023, a Panel of the Court of Appeals issued its unpublished decision reversing the Court's dismissal of the charges. In reversing the trial court's Order of Dismissal, the Panel held that the proper remedy for the discovery violations was a retrial – not a dismissal. However, as to the missing VHS tape, the panel did note:

[t]he prosecution was unable to provide a feasible explanation for these [still] images [that appear to have been taken from the inside of a party store]. While the prosecution is correct the laboratory

analysis form only reflects one video was analyzed, and it is clear the prosecution was in possession of a video from a semi marked police vehicle, there was sufficient evidence to determine the Detroit Police Department was in possession of video footage from the party store. The trial court did not clearly err by making this finding based on the record evidence.

[I]t is clear the video footage was either destroyed or misplaced[.]

*People v Searcy*, COA Dkt No 363580, 2023 WL 8867424, \*\*5 (Mich App 12/21/23).

Having reversed the Court's Order of Dismissal, this matter now returns for retrial. Defendant now seeks an adverse inference instruction based on the prosecution's destruction of the VHS tape.

### **DISCUSSION AND ANALYSIS**

A party is under a duty to preserve evidence that it knows or reasonably should know is relevant to an action, and a party's failure to preserve such evidence may give rise to an adverse inference instruction. *Brenner v Kolk*, 226 Mich App 149, 161-62 (1997); *see also* M Civ JI 6.01. An adverse inference instruction is warranted when a party fails to produce evidence and (1) the evidence was under the party's control and could have been produced; (2) the party lacks a reasonable excuse for its failure to produce the evidence; and, (3) the evidence is material, not merely cumulative, and not equally available to the other party. *Ward v Consol Rail Corp*, 472 Mich 77, 85-86 (2005). M Civ JI 6.01 embodies this caselaw and should be given in this case as Defendant satisfies each of the requirements set forth above.

First, it is beyond dispute that the police confiscated a VHS tape from the party store located near the scene of the shooting. This fact is easily established by the red evidence tag written up by Officer Zwicker on the right of the shooting confirming that a VHS tape from the store was confiscated and placed into evidence. Despite this documentary evidence that the VHS Tape was confiscated and placed into evidence, the prosecution has repeatedly attempted to



gaslight the Court by arguing that there is no evidence to confirm the existence of such tape.<sup>1</sup>

As Judge Thomas Hathaway aptly noted in his prior Opinion Granting Defendant's Motion to Dismiss: "the prosecution contends that there is no evidence to 'definitively establish that there was a VHS recording confiscated from the store located at 11742 Conner' (Pros Brief, pg 38). However, there is an evidence tag from Officer Zwicker documenting its existence." Still, the prosecution proceeded on appeal again asserting that there was no evidence to establish the existence of the VHS Tape.

Like Judge Hathaway, the Court of Appeals panel also highlighted that, "there was sufficient evidence to determine the Detroit Police Department was in possession of video footage from the party store." The prior rulings from Judge Hathaway and the Court of Appeal both establish that the prosecution was, in fact, in possession of the VHS Tape from the store and to date there has been no reasonable explanation for its absence. Defendant thus establishes the first two requirements to get an adverse inference instruction.

Defendant also easily satisfies the materiality requirement to get an adverse inference instruction. Latasha Boatright testified at Defendant's preliminary examination that she saw the shooter "in the store on the corner." Preliminary Exam Trans, pg 62. In her statement to Investigator Dale Collins the day after the shooting, Boatright said that the shooter came out of the store before the shooting, and she thought "he went into the entrance of the store after the shooting." (**Exhibit E**, Boatright Statement taken by Investigator Dale Collins).

Other witnesses told the investigating officers that the shooter was in store both before and

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<sup>1</sup> The term 'gaslighting,' which has become increasingly popular in recent years, comes from the 1944 film, "*Gaslight*" in which a husband tried to make his wife believe she was insane when in fact she was not. The term refers to a situation where a person attempts to convince another not to believe or accept something that is obvious to own's own eyes or perception. For example, calling the January 6<sup>th</sup> attack on the U.S. Capital a "peaceful protest" is a form of gaslighting.

after shooting. Both Chrystal Edmondson and Chela Holmes were in a car headed southbound on Conner at the time of the shooting. Both Edmondson and Holmes were interviewed by Officer Zwicker on the night of the shooting and both told Zwicker that the shooter ran into the store after the shooting (**Exhibits B and C**, Edmonson and Holmes statements taken by Officer Zwicker)(Holmes telling Zwicker, “**If the camera was on in the store you’ll see him good.** He ran in and about 5 minutes later the lights went out.”)(Edmondson telling Zwicker that after she heard the shots she “looked up [and] saw a guy in a white t-shirt run into the store.”).

Seemingly, after both Edmonson and Holmes told Officer Zwicker that they saw the shooter run into the store, Zwicker went to the store and confiscated a “VHS Tape” that he placed into evidence as documented by a newly discovered evidence tag (ET#07170504)(**Exhibit D**). Not only was this tape never disclosed or produced to the defense, but at trial APA Muscat went on the record and stated, “in regard to discovery, there has been some off-the-record conversations about an in-store video. I’ve never seen a copy of that video, and I have been told by [Sgt] Anderson there is not a copy in the Detroit Police’s possession. So I want to make that clear for the record.”<sup>2</sup> Trial Trans, Vol 1, pg 119. Clearly, this was not accurate.

Evidence Tag # 07170504 confirm that Officer Zwicker confiscated from the party store located at 11742 Conner a “VHS Tape” and placed it into evidence. On March 11, 2005, Officer Yakimovich created several “still images” from two VHS Tapes, which images were also produced to the undersigned counsel pursuant to subpoena in preparation for a prior evidentiary hearing (**Exhibits F and G**). Some of the still images were captured from the dash-cam of the police car

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<sup>2</sup> Defendant believes that APA Muscat’s *sua sponte* remarks on the record denying the existence of an in-store video tape were prompted by the prosecution listening to Defendant’s jail phone calls during which he had asked several people to attempt to locate and retrieve any videos from the store to offer in his defense. Clearly, at that point, the VHS Tape was already in the possession of DPD and had been tested and turned over to Sgt. Anderson never to be seen again.

driven by Officer Hull, but other images appear to have been captured from the “VHS Tape” confiscated by Officer Zwicker from inside the store located at 11742 Conner.

In particular, the Officer Yakimovich’s file produced pursuant to subpoena, contains his report followed by several “still images.” (**Exhibit G**). These still images were printed on pages that were two-hole punched and included both the still images taken from the police cruiser’s dash-cam video as well as still images taken from inside a store. While Yakimovich’s report lists only one evidence tag # (ET#07174504; the dash-cam video from the cruiser), clearly the still images of an individual matching the shooter’s description captured from inside of a store weren’t taken from the dash-cam of the cruiser.

On the second page of Yakimovich’s report, he indicates, “two VHS tapes recorded, one turned over to Sgt. Anderson.” While it is not entirely clear what “two VHS tapes” he is referring to, there is no dispute that Yakimovich’s file contains a series of still images from two different VHS tapes; one from the police cruiser (tagged as ET# 07174504), and a second from inside a store. The only logical inference is that the still images of an individual in a white t-shirt inside the store came from the VHS Tape confiscated by Officer Zwicker and tagged as ET #07170504. The other logical inference to draw from these facts is that after Yakimovich completed his analysis of the “two VHS tapes,” both tapes were given to Sgt. Anderson never to be seen again.

In sum, several witnesses told investigating officers Zwicker and Collins that the shooter ran into the store. One of the witnesses, Chela Holmes in particular, told Officer Zwicker, “If the camera was on in the store you’ll see him good[.]” (**Exhibit B**, Holmes Statement). Given these facts, there can be no dispute that the officers were aware of the exculpatory nature of the VHS Tape at the time it was confiscated from the store and placed into evidence. Moreover, Defendant has no other source from which to obtain this evidence. Thus, Defendant presents a *prim facie*

claim for giving the jury the following adverse inference instruction under M Civ SJ 6.01.

**M Civ JI 6.01 Failure to Produce Evidence**

The prosecution in this case has not offered the VHS Tape confiscated from the store located at 11742 Conner Ave, Detroit. As this evidence was under the control of the prosecution and could have been produced by him, and no reasonable excuse for the prosecution's failure to produce the evidence was given, you may infer that the evidence would have been adverse to the prosecution.

**CONCLUSION AND RELIEF REQUESTED**

For all the reasons set forth herein, Defendant requests that the Court grant his Motion for Adverse Inference Instruction Arising from the Destruction of Evidence and provide the requested adverse inference instruction as set forth herein.

Respectfully submitted,

LAW OFFICE OF MICHAEL R. DEZSI, PLLC,

January 2, 2025

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**PROOF OF SERVICE**

The undersigned certifies that on the 2<sup>nd</sup> day of January 2025, Defendant’s Motion for Adverse Inference Instruction Arising from the Destruction of Evidence, Index of Exhibits, Exhibits A-H and this Proof of Service were filed with the Clerk of the Court and served upon all parties to the above cause to the following attorneys of record herein at their respective addresses on pleading via the Court’s e-file and serve system:

Kym L. Worthy, Wayne County Prosecutor’s Office, [wcpaappeals@waynecounty.com](mailto:wcpaappeals@waynecounty.com)  
Jon P. Wojtala, Chief of Research, Training and Appeals, [jwojtala@waynecounty.com](mailto:jwojtala@waynecounty.com)  
Deborah K. Blair, Wayne County Prosecutor’s Office, [dblair@waynecounty.com](mailto:dblair@waynecounty.com)

Respectfully submitted,

LAW OFFICE OF MICHAEL R. DEZSI, PLLC,

Dated: January 2, 2025

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**DEFENDANT'S INDEX OF EXHIBITS**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>	<b><u>Date</u></b>
A	Evidence Technician Report by Velma M. Tutt	09/05/2004
B	Witness Statement of Chela Holmes	09/05/2004
C	Witness Statement of Chrystal Edmonson	09/05/2004
D	Evidence Tag E07170504 of the "VHS Tape"	
E	Witness Statement of Latasha Boatright	09/06/2004
F	Laboratory Analysis by S. Yakimovich	03/11/2005
G	Still pictures included in S. Yakimovich's report	
H	Opinion and Order Granting Defendant's Motion to Dismiss (J. Thomas M.J. Hathaway)	10/03/2022

# **EXHIBIT A**

# EVIDENCE TECHNICIAN REPORT

INCIDENT NO.		PAGE <u>1</u> OF <u>7</u>	LAB NO. 04-2622	
COMPLAINANT <u>Jamal Segars</u>		EVIDENCE TECHNICIAN ASSIGNED <u>Velma M. Tutt</u> <u>5116 4701</u>		
TYPE OF CRIME Homicide-Fatal Shooting	DATE 09-05-04	EVIDENCE TECHNICIAN ASSIGNED <u>Nathan Johnson</u> <u>4747 4701</u>		
LOCATION Conners/Whithorn	PRCT. #09	RUN RECEIVED FROM Zone Dispatcher		
OFFICER IN CHARGE Sgt. Anderson	COMMAND Homicide	DATE RECEIVED 09-05-04	TIME RECEIVED 08:30 P.M.	TIME ARRIVED AT SCENE 09:00 P.M.

**INFORMATION RECEIVED:**

Received a Police Run to the above area regarding a Homicide scene of a Fatal Shooting. Met with Sgt. Davis of Homicide who pointed out the scene and instructed on work to be done.

**SCENE:**

The area of Conners and Whithorn is located in a business district and residential area. West of Conners and Whithorn is the city airport which extends from Gratiot to E. 6 Mile. At the North side of the airport is a enclosed fenced for parking. Just North of the parking lot are garages. The landing area is West of the main building. At the Northeast corner of Conners and Whithorn is the Shell Gas Station. Parked in the street 22' North of Whithorn on Conner and 16' West of the East curb in front of the Southeast driveway of the gas station, is a black unmark scout car, license 019x46, vin#2FAFP71W8YX208440, code 003605. The vehicle has accident damage to the driver side. The emergency lights are on, both air bags are deployed, the camera mounted to the ceiling is tilted.

Lying in the street on Conner are spent casings and fragments. At the Southeast corner of Conners and Whithorn is Mr Gracer grocery store, the business is open. Lying on the sidewalk are spent casings. Sitting on the sidewalk are two chairs 9' South of the South curb and 5' East of the East curb on the sidewalk, there is a paper bag with a juice bottle inside. At the South side of the building is a parking lot, with parked vehicles in the lot. There is a area where people are barbecuing. Behind the building is a alley that runs North to South, at the East curb in front of the parking lot there is a working street lamp.

Parked in the street Southbound 90' South of Whithorn in the curb lane is a four door red Ford Taurus, license ULU440,

PK  
2/14/5



## EVIDENCE TECHNICIAN REPORT

(Continuation Page)

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LAB NO.

04-2622

vin# 1FAFP53U91G163813 the emergency lights are on. Parked 139' South of Whithorn and 10' East of the West curb on Conner in the middle lane is a two door gray Corvette license # ZBP-966, vin# 1G1YY32G045120521. The steering column and ignition are intact, inserted in the ignition are a set of keys. The parking lights are on, observation shows in the trunk lid are two suspected bullet holes and a spent casing lying on the trunk. There is a suspected bullet hole in the back cushion of the driver seat. There are suspected bullet holes near the gas tank, beneath the gas tank, suspected bullet hole in the left rear quarter panel, suspected bullet hole in the driver door jam upper portion. The driver door is open, observation shows there is suspected blood on the driver seat. Lying on the floor in front of the driver seat is a cellular phone. Lying on the passenger seat are two spent casings. There is a suspected bullet hole at the top of the passenger seat. Found inside the consol is two hundred ninety four dollars. Inside the trunk at the driver side is a plastic bag with food inside.

There is a working street lamp at the East curb in front of the shell gas station and at the West curb North of Whithorn. There is street lighting in the alley. The streets are crowded with people coming and going to the City Airport.

**WORK REQUESTED:**

Sgt. Davis requested the scene be photographed, prepare a sketch, and collect evidence.

**WORK PERFORMED:**

Evidence Technician Velma M. Tutt took notes, prepared a sketch, assisted by Evidence Technician Nathan Johnson took measurements and collected evidence. Evidence Technician Nathan Johnson photographed the scene exposing 3-36 rolls of film.

**EVIDENCE LIST:**

- (A) ET# 07171904 Federal 45 Auto spent casing 19' South of the North curb and 8' West of the East curb on Conner.
- (B) ET# 07172004 CBC 45 Auto spent casing 31' South of the North curb and 6' West of the East

# EVIDENCE TECHNICIAN REPORT

(Continuation Page)

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LAB NO.

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- curb on Conner.
- (C) ET# 07172104 Federal 45 Auto spent casing 31' South of the North curb and 10' West of the East curb.
- (D) ET# 07172204 CBC 45 Auto spent casing 34' South of the North curb and 2' West of the East curb on Conner.
- (E) ET# 07172304 Federal 45 Auto spent casing 9' South of the South curb 5' East of the East curb on the sidewalk.
- (F) ET# 07172404 CBC 45 Auto spent casing 9'9" South of the South curb and 5'3" East of the East curb on the sidewalk.
- (G) ET# 07172504 Federal 45 Auto spent casing 23'2" south of the South curb and 8'3" East of the East curb on the sidewalk.
- (H) ET# 07172604 S&W 40 Winchester spent casing 36' South of the North curb and 48' West of the East curb on Conner.
- (I) ET# 07172704 S&W 40 Winchester spent casing 43' South of the North curb and 44' West of the East curb on Conner.
- (J) ET# 07172804 S&W 40 Winchester spent casing 48' South of the North curb and 44' West of the East curb on Conner.
- (K) ET# 07172904 S&W 40 Winchester spent casing 48' South of the North curb and 50' West of the East curb on Conner.
- (L) ET# 07173004 S&W 40 Winchester spent casing 43' South of the North curb and 50' West of the East curb on Conner.
- (M) ET# 07173104 S&W 40 Winchester spent casing on the trunk lid of the Corvette.
- (N) ET# 07173204 S&W 40 Winchester spent casing found

# EVIDENCE TECHNICIAN REPORT

(Continuation Page)

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LAB NO.

04-2622

lying on the passenger seat.

(O) ET# 07173304 S&W 40 Winchester spent casing found on the passenger seat.

(P) ET# 07173404 Copper Fragment 18' West of the East curb and 36' South of the North curb on Conner.

(Q) ET# 07173504 Copper Fragment 63' South of the North curb and 26' West of the East curb on Conner.

(R) ET# 07173604 Copper Fragment 59' South of the North curb and 37' West of the East curb on Conner.

(S) ET# 07173704 Copper Fragment 34' West of the East curb and 35' South of the North curb on Conner.

(T) ET# 07173804 Lead Fragment 37' West of the East curb and 35' South of the North curb on Conner.

(U) ET# 07173904 Copper Fragment 39' West of the East curb and 35' South of the North curb on Conner.

(V) ET# 07174004 Lead Fragment 39' West of East curb and 36' South of the North curb on Conner.

(W) ET# 07174104 Copper Fragment 40' West of the East curb and 36' South of the North curb on Conner.

(X) ET# 07174204 Lead Fragment 63' South of the North curb and 42' West of the East curb on Conner.

(Y) ET# 07174304 Lead Fragment 42' West of the East curb and 38' South of the North curb on Conner.

(Z) ET# 07174404 Lead Fragment 43' West of the East curb and 39' South of the North curb on

# EVIDENCE TECHNICIAN REPORT

(Continuation Page)

PAGE NO.

5 of 7

LAB NO.

04-2622

Conner.

(AA) ET# 07174504

Police video tape taken from the scout car.

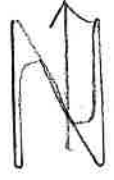
(BB) ET# 07174604

Nokia cellular phone found on the floor front of the driver seat.

(CC) ET# 07174704

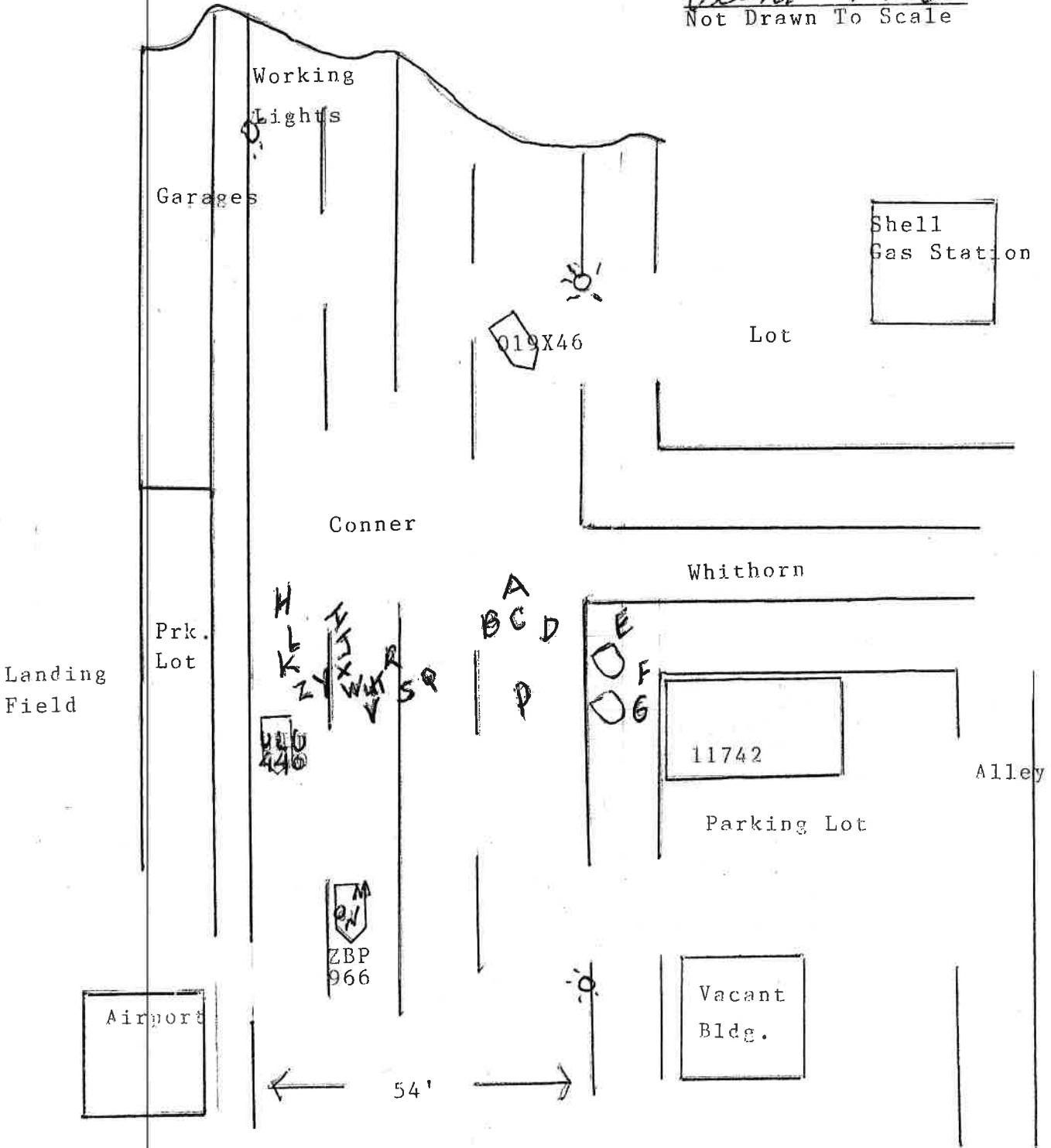
US Currency, two-one hundreds, four-twenties, one ten, four ones found inside the console, total of \$294.00.

Evidence turned over to Homicide. Exposed film turned over to Central Photo Unit for processing.



Sketch Drawn By

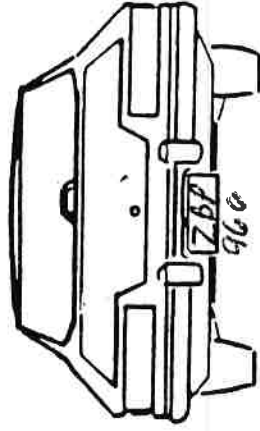
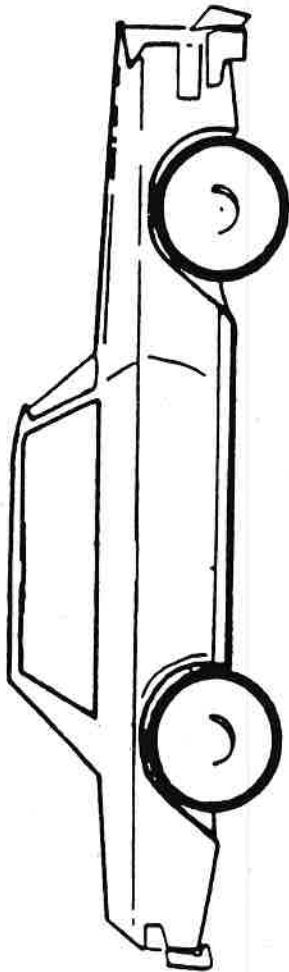
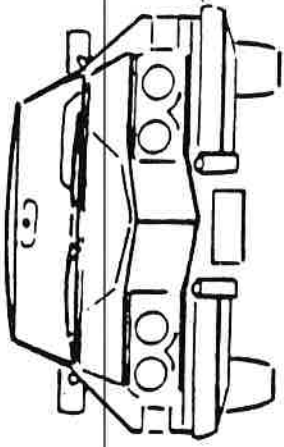
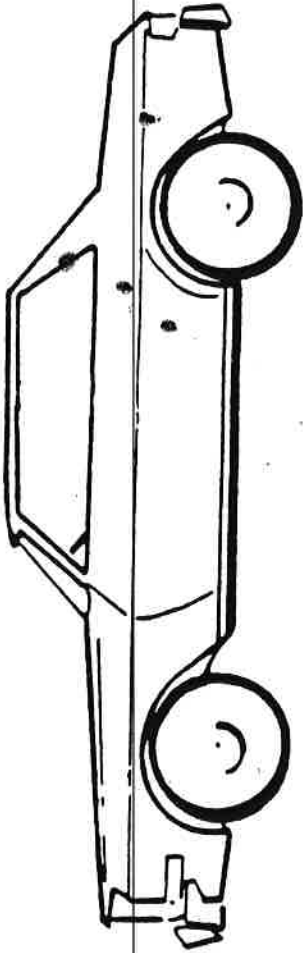
*Velma M. Tutt 5116*  
Not Drawn To Scale



LEGEND

- (A) Spent Casing
- (B) Spent Casing
- (C) Spent Casing
- (D) Spent Casing
- (E) Spent Casing
- (F) Spent Casing
- (G) Spent Casing
- (H) Spent Casing
- (I) Spent Casing
- (J) Spent Casing
- (K) Spent Casing
- (L) Spent Casing
- (M) Spent Casing
- (N) Spent Casing
- (O) Spent Casing
- (P) Fragment
- (Q) Fragment
- (R) Fragment
- (S) Fragment
- (T) Fragment
- (U) Fragment
- (V) Fragment
- (W) Fragment
- (X) Fragment
- (Y) Fragment
- (Z) Fragment

Corvette



Lab# 04-2622 Fatal Shooting

Page 8 of 8 Conner/Whithorn

Evid Tech. Velma M. Tutt 5116 4701

09-05-04

LEGEND

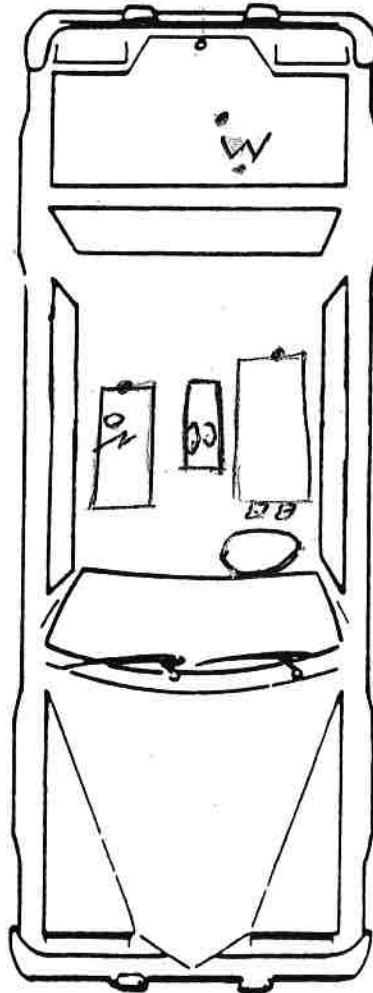
(M) Casing

(N) Casing

(O) Casing

(BB) Cell Phone

(CC) Money



# **EXHIBIT B**



WITNESS STATEMENT  
CASE PROGRESS

FILE/CASE NO.

PRECINCT/SECTION Homicide		COMPLAINANT			
DATE 9-5-04	TIME 10 <sup>30</sup> PM	PLACE CORNER/Whithorn	STATEMENT TAKEN BY P.O. Zwicker		
WITNESS Chela Holmes		RACE/SEX/AGE B/F/22	D.O.B. 2 16 82	HGT. 5' 8"	WGT. 129
SOC. SEC. NO. 37013 1225	RESIDENCE 18643 BINDER		PHONE BUS. RES. 732 5856		
EMPLOYER Detroit Reception Hosp	DEPARTMENT PHARMACY		BADGE NO.	SHIFT	
RESIDING WITH: Desiree Holmes (mom)	CHILDREN/SCHOOL:				
RELATIVES/FRIENDS: Jennie Hicks	ADDRESS 19551 SYRACUSE		PHONE 891 3091		

Q. Can you tell me what you ~~SAW~~ SAW TONIGHT?

A. Me & my FRIENDS WERE IN THE CENTER LANE OF SOUTH BOUND CORNER. THE TRAFFIC IN THE OTHER TWO LANES WAS BACKED UP ALMOST STOPPED. JUST AS WE ROLLED PAST WHITHORN MY FRIENDS YELLED DUCK BECAUSE SOMEONE WAS SHOOTING. I LOOKED BACK & SAW A GUY RUNNING BACKWARDS SHOOTING AT A SILVER Chevy CORVETTE. HE SEEMED LIKE HE HAD ABOUT 3 GUYS WITH HIM. I WATCHED THEM RUN INTO THAT STORE ON THE CORNER.

Q. CAN YOU DESCRIBE HIM?

A. B/M/20<sup>s</sup> 5'5" - 5'6" MED BLD WHITE T-SHIRT  
BLK PANTS LOW CUT HAIR.

Q. CAN YOU REMEMBER WHICH HAND HE WAS SHOOTING WITH?

A. HIS RIGHT

Q. CAN YOU DESCRIBE THE PEOPLE HE WAS RUNNING WITH?

A. B/MALES IS ALL I KNOW.

Chela Holmes

Q. Did you see AN ALTERCATION PRIOR TO THE SHOOTING?

A. NO NOTHING

Q. ABOUT HOW CLOSE DID THE SHOOTER GET TO THE CORVETTE?

A. A COUPLE LANES AWAY. MAYBE 20' OR SO.

Q. DID YOU HEAR ANY CONVERSATIONS OR YELLING BETWEEN THE SHOOTER OR ~~AT~~ THE VICTIM?

A. I DIDNT EVEN HEAR ANYONE SCREAMING.

Q. WAS THE MAN IN THE VETTE ALONE?

A. NO HE HAD A PASSENGER. I DIDNT SEE HIM BUT EVERYONE SAID HE GOT OUT & RAN

Q. CAN YOU DESCRIBE THE SHOOTERS GUN?

A. BLK IS ALL I KNOW. A HAND GUN.

Q. DID YOU KNOW ANY OF THE PEOPLE INVOLVED?

A. NO

Q. WHAT ARE YOUR FRIENDS NAMES WHO YOU WERE WITH?

A. DORIS HOUCHINS & CRYSTAL EDMONSON.

Q. WHAT KIND OF CAR WERE IN?

A. CTS CADILLAC W/A MOON ROOF.

Q. CAN YOU THINK OF ANYTHING ELSE?

Chela Holmes

A. Not Really. IF the CAMERA WAS ON IN the STORE you'll see him GOOD. He RAN IN AND ABOUT 5 MINUTES LATER the LIGHTS WENT OUT.

*Chela Holmes*

Q. Did you see anyone else with a gun?

A. No

*Chela Holmes*

# **EXHIBIT C**

WITNESS STATEMENT

CASE PROGRESS

FILE/CASE NO.

PRECINCT/SECTION Homicide		COMPLAINANT			
DATE 9-5-04	TIME 11:29 PM	PLACE CONNER/WHITHORN	STATEMENT TAKEN BY P.O. Zwickler		
WITNESS CHRISTAL EDMONDSON		RACE/SEX/AGE B/F/22	D.O.B. 10 12 81	HGT. 5'3"	WGT. 127
SOC. SEC. NO. 36804 4801	RESIDENCE 20525 MOENART 48234		PHONE BUS. RES. 283 9867		
EMPLOYER Mid Western Dental	DEPARTMENT		BADGE NO.	SHIFT	
RESIDING WITH: Charlene (mom)	CHILDREN/SCHOOL:				
RELATIVES/FRIENDS Michelle Edmondson	ADDRESS 4378 SPRINGLE		PHONE 671 8196		

Q. Can you tell me what you heard or saw?

A. I was with Chela + Doris going down Conner. I heard some gunshots so I ducked. When I looked up I saw a guy in a white t-shirt run into the store. I saw a silver Corvete drive ahead slowly then bump into another car. The driver had been shot.

Q. Did you see anyone with a gun?

A. No

Q. Did you hear an argument or a fight prior to the gunshots?

A. No

Q. Can you add anything?

A. No

Christal Edmondson

# **EXHIBIT D**

DETROIT  
DEPARTMENT  
POLICE

### EVIDENCE PROPERTY TAG

ITEM NO.  
PAGE NO. PROPERTY BOOK

DATE: 070504 COMPLAINT NO. Homicide PRECINCT OR SECTION 11742 Conner

FROM WHOM TAKEN \_\_\_\_\_ ADDRESS \_\_\_\_\_

LOCATION TAKEN 11742 Conner \$ 0 CASH

OFFICER - RANK - BADGE NO. - ASSIGNMENT  
Charles D. Zwicker PO 4758 SAS

SIGNATURE OF OFFICER IN CHARGE OF PRECINCT OR SECTION \_\_\_\_\_

WAS OTHER PROPERTY CONFISCATED IN THIS CASE: YES  NO

IF YES, TAG NO'S \_\_\_\_\_

DELIVERED TO \_\_\_\_\_ BY \_\_\_\_\_ DATE \_\_\_\_\_

DESCRIPTION OF PROPERTY

VHS TAPE

\$ 0 CASH

FROM WHOM TAKEN (SIGNATURE) \_\_\_\_\_

OFFICER WITNESSING \_\_\_\_\_

E07170504

E07170504



# **EXHIBIT E**



WITNESS STATEMENT  
CASE PROGRESS

FILE/CASE NO.

PRECINCT/SECTION <b>HOMICIDE</b>		COMPLAINANT		
DATE <b>9-6-04</b>	TIME <b>12<sup>04</sup></b>	PLACE <b>11029 WHITHORN</b>	STATEMENT TAKEN BY <b>DET. DALE COLLINS</b>	
WITNESS <b>LATASHA BOATRIGHT</b>		RACE/SEX/AGE <b>BF 30</b>	D.O.B. <b>10-9-73</b>	HGT. <b>5'6"</b>
SOC. SEC. NO. <b>369-78-5235</b>		RESIDENCE <b>8900</b>	PHONE <b>313-921-8447</b>	
EMPLOYER <b>N/A</b>	DEPARTMENT		BADGE NO.	SHIFT
RESIDING WITH: <b>KIMBERLY STRINGER</b>	CHILDREN/SCHOOL: <b>NONE</b>			
RELATIVES/FRIENDS: <b>SUE BROWN, MOTHER</b>	ADDRESS		PHONE <b>585-2144</b>	

Q. WHAT CAN YOU TELL ME ABOUT THE SHOOTING THAT OCCURRED, ON CORNER ~~X~~ WHITHORN, ON 9-5-04.

A. I WAS STANDING IN THE PARKING LOT ON THE SOUTH SIDE OF THE STORE. THE STORE IS AT WHITHORN AND CORNER MY FRIEND WHO WAS DRIVING THE ~~MINI~~ ~~MURADER~~ ~~(BURGALDY)~~ TURNED OUT THE PARKING LOT OF THE STORE. AS HE TURNED ONTO ~~CORNER~~ CORNER, I HEARD SHOOTING AND HE TOOK OFF. BY THAT TIME, I SAW THE SHOOTER STANDING IN THE MIDDLE OF THE STREET. HE ABOUT TEN FEET FROM THE VET AND HE BEGAN SHOOTING AT THE VET. THE POLICE WAS STUCK IN TRAFFIC, I GUESS THEY WERE TRYING TO FIND OUT WHERE THE SHOOTING WAS COMING FROM. BY THAT TIME THE ~~MURADER~~ AND THE POLICE CAN HIT. THE GUY WAS UP ON THE CORNER STILL SHOOTING INTO IT. THE PASSENGER JUMPED OUT AND RAN. THE DRIVER WAS

4-1-04-2004

STILL IN THE NET. THE POLICE STARTED SHOOTING SHOOT AT THE DRIVER, I ONLY SAW ONE OFFICER, THE PASSENGER SHOOTING. THE SHOOTER RAN TO THE SIDEWALK, AND PEOPLE IN THE PARKING LOT STARTED RUNNING AWAY FROM HIM. I HAD BACKED UP INTO THE PARKING LOT. I SAW HIM COMING I RAN THROUGH THE YALVEY. WHEN I CAME OUT THE YALVEY ON WHICH I SAW HIM COME AROUND THE CORNER ON TO WHITHORN. HE CROSSED THE STREET TOWARD MY HOUSE. I HAD RAN NEXT DOOR. I TURNED TO GO BACK TO SEE WHAT HAD HAPPENED AT THE CAR, THATS WHEN I SAW THE SHOOTER AND FOUR OTHER GYS HELPING HIM GET AWAY. THEY WALKED PAST MY HOUSE. I SAW THE GUN IN HIS RIGHT HAND BY HIS INNER LEG. THE SHOOTER WAS IN THE MIDDLE, ONE GUY ON HIS RIGHT, TWO WERE ON HIS LEFT, AND ONE WAS IN BACK OF HIM. I HEARD THE SHOOTER, I TOLD THAT MOTHER FUCHER I WAS GOING TO GET HIM. I COULD THE OTHER GY SAY COME ON, COME ON. ONE OF THE POLICEMAN RAN DOWN THE STREET, BUT HIS PARTNER PARKER TOLD HIM TO COME BACK.

Q. DESCRIBE THE SHOOTER.

A. B/M/30's, 5'11, 6'0, 145-165;  
DARK SKIN, DARK HAIR, WEARING  
A SUN-GLASS, BLACK OR DARK  
BLUE. HE HAD ON A ~~WHITE~~  
WIFE BEATERS SHIRT, WITH  
A POWER BLUE SHIRT ON TOP  
IT HAD SOME WRITING ON IT.  
SOME BLACK DENIM PANTS  
HE WAS CARRYING A GUN  
45 OR 9mm.

Q. HAVE YOU EVER SEEN HIM  
BEFORE.

A. NO BUT IF I SEE HIM  
AGAIN I, WOULD KNOW HIM.

Q. DESCRIBE THE GUYS WHO  
WAS WITH HIM.

A. ONLY THE GUY WHO WAS ON  
HIS RIGHT. HE WAS A  
B/M/30, 5'11, 6'0, 200, 230,  
BRN SKIN, HE WAS WEARING  
A RED SUN GLASS AND A  
TOWEL ON TOP OF HIS HEAD,  
I THINK IT WAS WHITE.  
HE HAD ON A WHITE T-SHIRT.

Q. DID YOU KNOW JAMAL.

A. I KNOW HIM FROM OTHER  
PEOPLE. HE WAS ABOUT HIS  
MONEY. HE DID WHAT EVER  
HE HAD TO DO TO GET PAID.  
HE JUST GOT OUT OF JAIL FOR  
ABOUT SIX ~~MONTHS~~ MONTHS AGO.

Q. DID YOU KNOW MICHAEL.

A. I KNOW HIM JUST LIKE I KNOW JAMAL.

Q. WHY DID THIS HAPPENED.

A. I HEARD THAT JAMAL GOT INTO IT WITH A GUY A FEW DAYS AGO. THE GUY WAS SUPPOSE TO BE OUT IN FRONT OF THE HOUSE, I DON'T KNOW WHAT HOUSE. HE DADDA CAME TO THE DOOR, HE ASKED WHAT WAS GOING ON. JAMAL SAID, I GOT THIS. THE CAR PULLED OVER, THEN JAMAL PULLED OVER THAT'S JUST EAR STUFF.

Jawasha Boatright

Q. DID YOU SEE THE SITUATION PRIOR TO THE SHOOTING.

A. HE WAS STANDING OK WITHIN HE WAS IN THE STORE. WHEN I WALKED UP THAT WAY, I SAW HIM COME OUT THE STORE. HE HAD A BROWN BAG WITH A JUICE. HE TOOK IT OUT AND LET IT GO. HE WAS ON THE CORNER WITH EVERYONE. I THINK HE WENT INTO THE ENTRANCE OF THE STORE BEFORE THE shooting. You know what?

# **EXHIBIT F**

**LABORATORY ANALYSIS**

LAB NO.  
L05-0014V

INCIDENT NO.  
04-108259

RECEIVED BY S. Yakimovich	DATE 03-11-05	TIME 01:00 P	DELIVERED BY Sgt. Anderson	PRECT/SECT Homicide	
REFERENCE Whithorn and Conner (04-289)					
CASE OFFICER Sgt. Anderson	PRECT/SECT Homicide	TECHNICIAN ASSIGNED S. Yakimovich	DATE STARTED 03-14-05	DATE COMPLETED 03-17-05	CRIME Murder

**EVIDENCE**

ET#            07174504        One VHS Video Tape.

**WORK REQUESTED**

Copy incident from VHS tape into computer.

Record incident onto VHS tape and DVD as original video.

Capture still images from original video and record onto VHS tape and DVD.

Adjust image of suspect in video and provide printed photo of suspect.

**WORK PERFORMED**

VHS tape showing incident captured into computer and placed into raw footage file.

Times showing on VHS tape captured 21:14:02 to 21:15:10, 20:12:19 to 20:12:40.

Still images captured 21:12:29, man running at 21:14:58 and man with possible weapon at 21:15:00. All still images saved as raw image files.

Image of man running adjusted ( lighting). Image of man with possible weapon adjusted for lighting, cropped and enlarged. Single image printed onto photo paper of man with possible weapon. Second adjusted, cropped and enlarged image printed onto same photo sheet.

Video files and still images recorded onto VHS tape.

Video files burned onto DVD as AVI. Files.

Still images burned onto DVD as TIFF. Files.

Page No. 2

LAB NO.  
L05-0014V

**RESULTS**

Three DVD's burned, two turned over to Sgt. Anderson.

Two VHS tapes recorded, one turned over to Sgt. Anderson.

Single image of man with weapon printed onto photo paper as original image.

Image of man with possible weapon printed onto same photo sheet in cropped, enlarged and adjusted picture. Turned over to Sgt. Anderson.



P.O. Stephen Yakimovich  
Badge 4117  
Forensic Services Section

# **EXHIBIT G**

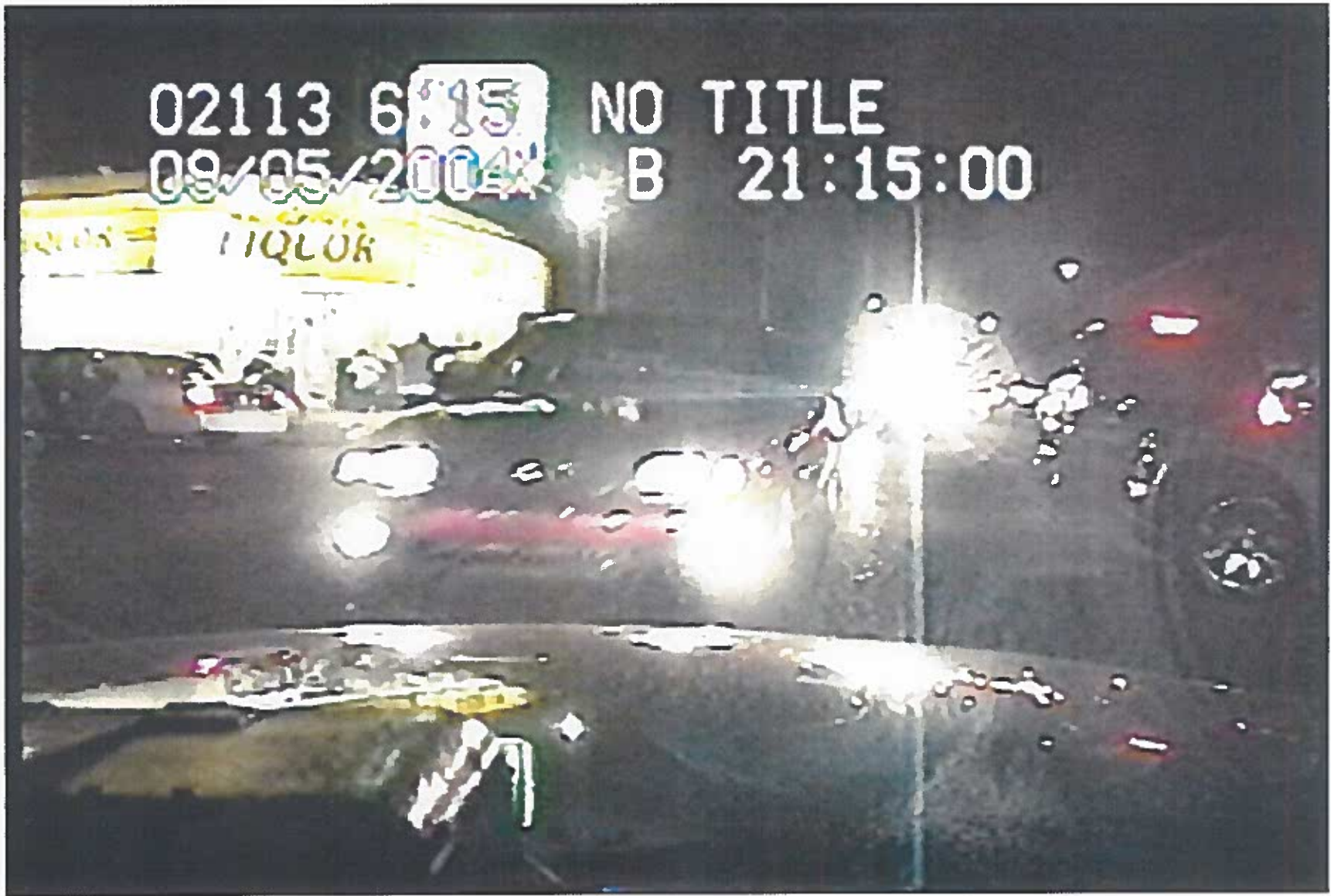




02113 6:16 NO TITLE  
09/05/2004 B 21:14:59



02113 6:15 NO TITLE  
09/05/2004 B 21:15:00



02113 6:16 NO TITLE  
09/05/2004 B 21:14:59





CH4

4-21114-45A 1  
28:20:07 L1011











# Murder 04-289



# **EXHIBIT H**

STATE OF MICHIGAN  
IN THE THIRD JUDICIAL CIRCUIT COURT  
FOR THE COUNTY OF WAYNE

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff,

Hon. Thomas M.J. Hathaway  
Case 04-012890-01-FC

v

THELONIOUS DESHANE-EAR SEARCY,

Defendant.

A TRUE COPY  
*Aaron M. James*  
DEPUTY COUNTY CLERK

OPINION AND ORDER GRANTING  
DEFENDANT'S MOTION TO DISMISS

At a session of said Court held in the Frank  
Murphy Hall of Justice on 10.3.2022

PRESENT: HON. Thomas M. J. Hathaway  
Circuit Court Judge

PROCEDURAL POSTURE

On September 5, 2004, a shooting occurred near the Detroit City Airport at an event known as a "Black Party". Jamal Segars was shot to death while riding in his silver Corvette. Brian Miner, an acquaintance of Segars, had gotten into the passenger seat of Segars' Corvette moments before the shooting. Around 9:00 p.m., several eyewitnesses saw a man approach the back of the Corvette who began shooting. Miner was shot in the leg but survived. Segars died from multiple gunshot wounds, including one to the back of his head and one to the chest. Although some of the eyewitnesses believed that the gunshots came from two separate guns, the eyewitnesses did not see a second shooter.

Police Officers Micah Hull, Shawn Stallard, and Scott Herzog were in a semi-marked police car in the shooting at around 9:00 p.m. Officer Hull heard the first volley of shots but could not see a shooter or the Corvette. Officer Hull attempted to pull forward, but the police car was hit by a burgundy Marauder. Officer Hull and Officer Stallard were then able to see a man with a handgun shooting a second volley of shots. However, the officers could not tell if the shots came from the same gun as the first volley. Officer Hull ran after the shooter, who ran east on Whithorn Street. The pursuit was unsuccessful, however, because the shooter got into a car that sped away. The officers denied that they fired any shots and testified that they were only able to see the shooter's back. Casings from two different weapons were found at the scene, including seven .45-casings and eight .40-caliber casings.

Three eyewitnesses identified defendant as the shooter from a photographic lineup. On the morning of November 30, 2004, law enforcement went to an apartment in Clinton Township to locate defendant. After searching the apartment, they found defendant hiding behind a piece of drywall in a crawlspace. Officers also discovered a .45-caliber semi-automatic handgun on a dresser in the bedroom where defendant was hiding. Ballistics testing revealed that the .45-caliber casings found at the scene of the shooting were fired from that gun.

Defendant was charged with first-degree premeditated murder, pursuant to **MCL 750.316(1)(a)**, assault with intent to murder, pursuant to **MCL 750.83**, and possession of a firearm during the commission of a felony, pursuant to **MCL 750.227b**. The trial was held over the course of several days in May 2005. The prosecutor presented several witnesses, and four eyewitnesses identified defendant as the shooter at trial. One of the prosecutor's theories at trial revolved around a claim that defendant mistakenly shot the victims to kill Deanthony Witcher, who drove a Corvette that looked like the murder victim's Corvette. According to Witcher, in November 2003, defendant shot him in the hand and "through the back through the lung out [his] heart." Before defendant shot Witcher, he stated "I got to kill you." Although Witcher did not see or hear the shooting on September 5, 2004, he was in the area of the silver Corvette he often drove.

Defendant did not testify at trial. Instead, he presented the testimony of friends and family members. Indeed, his grandmother explained that the gun did not belong to defendant, and it had been left in her apartment by a man named Jeffrey Daniels, who had driven her home one day and was killed in September 2004.

The jury convicted defendant as charged with first-degree premeditated murder, pursuant to MCL 750.316(1)(a), assault with intent to murder, pursuant to MCL 750.83, and possession of a firearm during the commission of a felony, pursuant to MCL 750.227b. He was sentenced to life in prison without parole for the first-degree murder conviction, with sentences to be served concurrently with each other and consecutively to a sentence of two years' imprisonment for the felony-firearm conviction.

In August 2015, Vincent Smothers, who was in prison and had already confessed to being paid to commit multiple murders in Detroit, wrote a letter to defendant admitting that he had killed the murder victim "during a botched robbery on Whitcomb and Conners [sic] across from the city airport." In December 2015, Smothers executed two affidavits, each detailing his involvement in the September 2004 crimes. Specifically, Smothers confessed that he shot the murder victim with a .40-caliber handgun. Smothers also implicated Daniels in the crimes, indicating that Daniels had fired a .45-caliber handgun near the murder victim's Corvette.

Smothers participated in an interview with Scott Lewis, a licensed private investigator, and a former journalist. During the interview, Smothers told Lewis that he had killed the murder victim and detailed the crimes and Daniel's involvement. Smother's statements to Lewis were largely consistent with the December 2015 affidavits, and Smothers executed another affidavit after his interview with Lewis.

In 2017, defendant filed his third motion for relief and motion for a new trial. On the first day of the hearing, Smothers testified that he murdered the murder victim on Conner Street near the Detroit City Airport on what he believed was September 6, 2004. He testified in detail about the way he and Daniels carried out the crimes and escaped from the scene. He also denied that he was promised anything in exchange for his testimony.

During the testimony of DPD Detective Patricia Little it was noted that an evidence envelope that contained a bullet that was removed from the murder victim's chest had conflicting descriptions. David Balash, who was qualified as a firearms expert at the evidentiary hearing, testified that the envelope contained a .40 S & W...fired bullet.

Although the trial court acknowledged that the bullet that was removed from the murder victim was at times mislabeled, the trial court found that it was clear that the envelope contained a .40-caliber bullet and that the police had simply made a labeling error.

Although the jury had a difficult time reaching a verdict on account of casings and the type of gun that was discovered, based on the evidence, the jury found defendant guilty as charged. Furthermore, although the jury disregarded the many witnesses who provided alibi testimony for defendant at trial, defendant avers that if the jury was aware that the bullet that was found in the murder victim was from a .40-caliber gun and that Smothers was taking responsibility for the crimes, they may have put more stock in defendant's alibi witnesses as a defense.

Accordingly, the Michigan Court of Appeals concluded that defendant has a reasonably likely chance of acquittal and therefore affirmed in part, reversed in part, and remanded for further proceedings consistent with its opinion on February 11, 2021<sup>1</sup>.

## STANDARD OF REVIEW

The standard of review is *de novo* for all issues of law on appeal. *People v Laws*, 218 Mich App 447; 554 NW2d 586 (1996). Factual findings are reviewed to see if they are clearly erroneous. **MCR 2.613(C)**; *People v Tracey*, 221 Mich App 321; 561 NW2d 133 (1997). Clear error exists when the reviewing court is left with the definite and firm conviction that a mistake has been made. *People v Lombardo*, 216 Mich App 500; 549 NW2d 596 (1996).

Now comes defendant with this Motion to Dismiss based on the prosecution's alleged numerous discovery violations. The Prosecution has filed a response.

## ARGUMENT

Defendant argues the following issues in his motion to dismiss that this Court will address herein:

- I. Should the Court dismiss the instant motion based on the prosecution's failure turn over to the defense, before trial, several pieces of *Brady* evidence that exonerated defendant?
  
- II. Should the Court dismiss these charges based on the Due Process clauses of both the Michigan and United States Constitutions because the prosecution failed to preserve *Brady* evidence essential to the defense?

---

<sup>1</sup> *People v Thelonious Deshane-Ear Searcy*, unpublished opinion of the Court of Appeals, entered February 11, 2021 (Docket No. 34169).

III. Should the Court dismiss these charges where the prosecution elicited false testimony from a key prosecution witness, and failed to correct the false testimony, to obtain Searcy's conviction in violation of the Due Process Clause?

IV. Should the Court dismiss the instant charges based on the violation of defendant's Sixth Amendment right to a fair trial court conducted proceedings out of the presence of, and without knowledge of, the defense?

## ANALYSIS

On September 5, 2004, APA Patrick Muscat completed an "Investigator's Report" in which he identified Thelonious Searcy, 6'3", 165 lbs., 24-year-old black male, as the "defendant" based on Investigator Don Olsen's description (Exhibit C, Investigator's Report date 9/05/04). In his report, Muscat listed Brian Miner as "complainant #2". APA Muscat recommended that defendant be charged with first-degree murder, assault with intent to murder, and felony-firearm.

There is also an "Investigator's Report Supplement" that indicates that Officers Stafford, Herzog, and Hull will testify to observing a black male fitting defendant's description firing shots. (Exhibit D of Investigator's Report Supplement). However, the homicide file also contains a handwritten note addressed to "Dale" [Collins] in which an unknown author indicates that he "t/t (talked to) officers, they couldn't pick out defendant from '6-pack' still need to t/t (talk to) PO Hull [.] He chased after Def[endant]". The handwritten note continued to state, "this case is about being at the wrong time, place, your [compl] was driving the exact vehicle as Deanthony and even looked like him." (Exhibit E, handwritten note contained in homicide file).

## CRIME SCENE INVESTIGATION

Shortly after the shooting, DPD evidence technician Velma Tutt was dispatched to the crime scene (Trial Tran Vol. 2, pp 20-21. Tutt identified and placed into evidence several bullet casings that were in and on Segars' Corvette. All the spent casings were .40-caliber casings from Smith & Wesson, while the bullet casings recovered from "across the street" near the party store were .45 caliber casings from two different manufacturers. Tutt also placed into evidence a video tape from the [unmarked] scout car at the scene.



Evidence technician Officer Deborah Stinson was dispatched to St. John Hospital to process gunshot residue on Segars' hands and face. While in the room she located "a piece of copper "frag" and placed it into evidence."

#### WITNESS STATEMENTS

Several police officers canvassed the crime scene and interviewed the following witnesses: Chela Holmes (who identified the shooter as a black male in his 20s, about 5'5"-5'6", medium build wearing a white t-shirt, black pants), Doris Houchins, and Crystal Edmonson. Also interviewed was Dwayne Lee Dye who said the shooter had on a white shirt with blue stripes and light blue jeans. Investigator Dale Collins interviewed Kimberly Jefferies Stringer who described the shooter as a black male age 30-35, 6'1", 119 lbs., "[carmal] color skin" wearing a shirt white. Other individuals who were interviewed included Latasha Boatright and Brian Miner who both claimed to not see the shooter.

When Investigator Collins showed Latasha Boatright a photo lineup, she identified photo #1 "D-Anthony" as someone she knows and saw the night of the shooting on Conner driving his gray Corvette. Kimberly Stringer also recognized Deanthony Witcher from the photo lineup from driving his Corvette the night of the murder.

Investigator Dale Collins interviewed Deanthony Witcher who claims that "Shawn" threatened him and shot Witcher in the wrist over what Witcher claims was a \$600 gambling dispute. (Exhibit U.)

#### WAYNE COUNTY MEDICAL EXAMINER

Wayne County Chief Medical Examiner, Carl J. Schmidt, M.D., performed an autopsy on Segars and concluded that the cause of death was seven gunshot wounds. The bullets were given to Sgt. Moore and logged into evidence by Investigator Olsen.

#### WITCHER'S SUSEQUENT ARREST

In the early morning hours of November 18, 2004, Officer Micah Hull stopped Deanthony Witcher driving a blue Corvette at an excessive rate of speed down Hoover southeast of 8 Mile Road. (Exhibit Y). On November 19, 2004, Wayne County APA Kathleen Mc Clorey denied a warrant and declined to prosecute Witcher for the CCW charge relating to his arrest because there was insufficient evidence tying Witcher to the

gun found in the Corvette. (Exhibit Z). The warrant denial form was printed out on April 21, 2005, at 12:29 p.m., but was never disclosed to the defense.

#### LAB ANALYSIS OF VIDEO EVIDENCE

On March 11, 2005, Officer Stephen Yakimovich of DPD's Forensic Services Section, conducted lab analysis of two VHS tapes that purportedly captured several "still images" of a suspect from "original video" footage and printed such photos. The still photos directly follow the lab analysis of the two VHS tapes. However, neither tape was produced to defendant prior to his trial.

#### TRIAL TESTIMONY

Once the jury was brought into the room at trial, APA Muscat read the names of potential prosecution witnesses. At the end of the first day of trial, the prosecution advised the Court that Deanthony Witcher wanted to assert his Fifth Amendment right against self-incrimination. However, the court ultimately heard the testimony of Witcher notwithstanding his original desire to assert his Fifth Amendment rights.

Witcher testified that on May 4, 2005, he was called to the stand to testify that he knew defendant from the neighborhood and that he had a dispute with him that resulted in defendant getting shot in the hand by defendant. After the alleged shooting on November 16, 2003, Witcher claimed that he was receiving further threats from defendant, and that defendant threatened to kill him.

Witcher then testified that he was driving his Silver Corvette around Conner and Whithorn on September 5, 2004. Although Witcher didn't see or hear the shooting he started getting phone calls from people checking on his wellbeing after the shooting. Witcher identified a picture of Sears' Corvette as "identical" to Witcher's. On cross examination, Witcher admitted that although he did not want to testify, he did so. He further denied that anybody had made promises to him to get him to testify. Defense counsel asked Witcher if he might be involved in other crimes, to which he responded "no". Then defense counsel also asked if Witcher had ever been involved in other crimes, arrests and convictions or anything involving deception or falsehood or fraud to which Witcher responded "never".

The next testimony was from Officer Micah Hull who was driving the unmarked car and heard the shots fired. Although Hull described the shooter as a black male around 6 feet tall, 200 lbs., he could not identify defendant as the shooter.

## WAYNE COUNTY MEDICAL EXAMINER

Dr. Carl Schmidt, the Wayne County Medical Examiner testified that he recovered four bullet fragments from the victim's body. He also stated that he turned the evidence over to DPD Detective David Moore.

## OFFICER BULGARELLI AND FIREARMS EXAMINER KEVIN REED

Bulgarelli testified that on November 30, 2004, he and approximately 12 other officers arrested defendant at an apartment in Clinton Township where he discovered a .45-caliber semi-automatic handgun in the apartment. The court heard arguments as to admission of the gun placed into evidence by Bulgarelli. Trial Trans Vol 4, p. 4.

Reed testified that he performed firearm examinations and tool mark identification for the City of Detroit, and that he had been doing so for one year after receiving on the job training using a comparison microscope. *Id.* at 31. Although Reed did not have any certification for being qualified in this area, the prosecution moved to qualify Reed as an expert witness in the field of firearms and tool mark identification. *Id.* at 32-33. Over the defense objections, the court qualified Reed to testify as an expert. *Id.* at 34.

Reed testified that several of the .45-caliber shell casings found at the crime scene were fired from the handgun were recovered from the apartment where defendant was arrested. At the conclusion of this testimony, the prosecution rested their case.

## DEFENSE CASE

Several alibi witnesses each of whom testified that they were with and saw defendant at a family cook out at the home of Corrinia Searcy. Corrinia Searcy is defendant's cousin who lives at Balfour and Grayton in the City of Detroit.

The defense also called Edna Richardson, defendant's grandmother, to testify. According to Richardson, she lived in the apartment in Clinton Township where defendant was arrested. Richardson testified that the gun that was confiscated from her apartment at the time of defendant's arrest belonged to Jeffrey Daniels. Richardson asked Daniels to pick up the gun, however Daniels was killed in September 2004.

## CLOSING ARGUMENTS

The prosecution argued that defendant ran up and unloaded rounds of bullets that killed Segars, who was in the wrong place at the wrong time. Trial Trans Vol V, pp 8-9. The prosecution argued further that "the victim died from seven gunshot wounds."

However, the forensic bullet evidence according to the prosecution, "shows in this case that the gun that was found in Mr. Searcy's home on November 30<sup>th</sup>, excuse me, in a home where he was staying on November 30<sup>th</sup> was fired at the scene. Officer Reed testified to that." *Id.* at p. 15. In fact, the prosecution noted that, based on Reed's report, "you couldn't match the gun to the bullets because the bullets were so damaged." *Id.* As such, there was no confusion about whether it came from that gun. Evidence Technician Velma Tutt just said she couldn't make a comparison to the bullet.

## JURY DELIBERATIONS

The jury began deliberations on May 6, 2005 (Trial Trans Vol 5, p. 86). It received a note from the jury regarding the caliber of the bullet found in the deceased and evidence technician Tutt's testimony. At 2:35 p.m., the jury returned to the courtroom with a guilty verdict on all counts.

## POST-TRIAL TESTIMONY AND EVIDENCE

Several years after defendant was convicted, convict Vincent Smothers confessed to the shooting death of Segars. Smothers signed several affidavits detailing the events of the shooting and that he acted with now deceased accomplice Jeffrey Daniels.

Defendant's counsel, upon sending a subpoena to the City of Detroit, obtained, among other things, a VHS tape from a store located at 11742 Conner (Exhibit K); Laboratory Analysis from two VHS tapes that captured several "still images" that were printed (Exhibit AAI); several "still image" photos that appear to have been taken from the in-car video from Officer Hull's unmarked police cruiser; and the DPD arrest report of Witcher indicating that Witcher was arrested by Hull for carrying a concealed weapon in his vehicle (Exhibit Y).

## EVIDENTIARY HEARING

During the first day of his evidentiary hearing Vincent Smothers confessed to shooting Segars. He provided numerous details of the crime including the fact that he used a .40-caliber handgun. He stated that he had an accomplice named Jeffrey Daniels who fired a .45-caliber gun near Segars' Corvette.

During this evidentiary hearing, defendant offered a DPD report that showed conflicting evidence detailing the fact that the same piece of evidence contained both a .9 mm shell casing and a .40-caliber bullet fragment.

Considering this discrepancy, the prosecution called DPD Detective Patricia Little to testify to the evidence envelope in question. Upon further examination, the envelope contained a .40 caliber bullet fragment that was taken from Segers' body. Indeed, in its Opinion Granting defendant's Motion for Relief from Judgment, the Court of Appeals addressed the discrepancy stating that the suppression of the bullet type taken from the victim was squarely exculpatory to the defense. Dr. Carl Schmidt testified that he removed four bullets from the murder victim's body so they could be turned over to law enforcement. The bullet that was removed from the victim's body was labeled as "E07191604" and was described by the morgue as a "bullet" from the murder victim's chest. However, it was also labeled by the police department as a 9-millimeter casing. These are entirely inconsistent descriptions.

In this case, defendant argues and this Court agrees that there can be no question about the materiality of the suppressed evidence. Having failed to produce any discovery related to the source of these bullets, the defense was completely unaware that the bullets from the victim's body were found to be fired from a .40-caliber-type gun.

Defendant now seeks dismissal of the criminal charges pending against him based on: (1) the prosecution's failure to turn over, prior to the first trial, *Brady* material which would have exonerated defendant; (2) the prosecutor's failure to preserve certain *Brady* material which also would have exonerated defendant; and (3) the violation of defendant's sixth amendment right to the assistance of counsel.

Per defendant's supersession of *Brady* evidence argument, this Court agrees. Defendant avers that the prosecution's failure to turn over, prior to the first trial, *Brady* material which would have exonerated defendant. Specifically, defendant argues the following were suppressed by the police /prosecution: (1) the type of bullet removed from the victim; (2) a VHS Tape from inside the party store; (3) the criminal arrest record of Witcher months before defendant's trial.

To the contrary, the prosecution argues that defense counsel who had the autopsy report about the bullets, could have ascertained, by process of elimination, that the .40-caliber bullets had to have come from the victim's body. However, the Court disagrees as the Michigan Supreme Court rejected a diligence requirement as part of a *Brady* violation. In *People v Chenault*, 495 Mich 142, 152 (2014), our Supreme Court

concluded that “[w]e disagree with the prosecution’s suggestion that the diligence requirement is consistent with the *Brady* doctrine generally.” In the instant case, the prosecution is asking the Court to ignore binding precedent and impose a diligence requirement to reject defendant’s *Brady* argument. However, this Court declines the prosecution’s suggestion to decide against precedent.

Defendant argues further, and this Court agrees that under Michigan law, the following “true *Brady* violation”, (1) that the prosecution has suppressed evidence, (2) that such evidence is favorable to the accused, and (3) that such evidence is material. *People v Chenault*, 495 Mich 142, 149-50 (2014).

Here, the record shows that the prosecution sought to introduce, over defense objections, evidence relating to the forensic testing of the handgun found in the apartment where defendant was arrested. Moreover, at no time was the defense made aware that the bullets taken from the victim’s body did not match the gun that was placed into evidence. In fact, to the contrary, when the jury specifically asked what caliber type bullets were removed from the victim’s body, they were told that the bullets were too deformed to determine the caliber type.

At the time of the trial, the prosecution’s forensic examiners were aware of the bullet caliber type removed from the victim’s body and that it did not match the handgun offered at trial. Defendant argues and this Court agrees that there is nothing more exculpatory than this single piece of evidence which was suppressed from the defense and the jury.

Importantly, it should be noted that the two DPD forensic firearm analysts, David Pauch and Kevin Reed, who processed the bullets taken from the victim’s body have been associated with other wrongful conviction cases.

Similarly, the VHS tapes confiscated by Officer Zwicker was clearly *Brady* material that should have been given to the defense. Defendant argues that the VHS tapes that were confiscated are another reason why his case should be dismissed. Indeed, both Edmonson and Holmes told Officer Zwicker that they saw the shooter run into the corner store. Zwicker went to the store to confiscate a VHS tape that he placed into evidence. To date, this tape has never been produced or viewed by the defense.

At trial APA Muscat went on the record and stated, “in regard to discovery, there has been some off the record conversations about an in-store video. I’ve never seen a copy of that video and I have been told by [Sgt] Anderson that there is not a copy

in the Detroit Police's possession. So, I want to make that clear for the record." Trial Trans Vol 1, p. 119. Clearly, this is not accurate.

While Yakimovich's report lists only one evidence tag (ET #07170504), the dash-cam video from the cruiser, clearly the still images of an individual matching the shooter's description taken from the inside of the store were not taken from the dash cam of the cruiser.

On the second page of Yakimovich's report, he indicates that two VHS tapes were recorded, and one was turned over to Sgt. Anderson. Given these facts, the VHS tapes confiscated were clearly *Brady* materials that should have been produced. These tapes could have exonerated defendant.

Defendant argues further that the suppression of the VHS tape placed into evidence constitutes a gross abuse of the State's power of prosecution insofar as it denied defendant the ability to use this evidence in his defense. Just like the suppression of the bullet removed from the victim, the suppression of the VHS tape should further compel the court to dismiss the charges.

Separately from defendant's claim pertaining to the suppression of the VHS tape taken from the store, defendant seeks dismissal of his charges based on the prosecution's failure to preserve such evidence. Indeed, the Supreme Court held in *Arizona v Youngblood*, 488 US 51, 109 S Ct 333 (1988), that when the state fails to disclose to the defendant exculpatory evidence, the good or bad faith of the state is irrelevant to a claim based on the prosecution's loss (or failure to preserve) evidence. *Id.* at 337.

Defendant bases his next argument on the suppression of the prosecution's star witness, Deanthony Witcher's prior criminal record. The City of Detroit produced a "Hit Report" for Witcher reflecting multiple arrests and charges for serious crimes including murder, carrying concealed weapons, and armed robbery (Exhibit P). Witcher's report was printed out just days after Seger's shooting. This report was never turned over to the defense. Defendant avers that the suppression of this evidence is another gross violation of defendant's constitutional rights.

The Court agrees with defendant's argument that the prosecution bears the brunt of its failure to turn over exculpatory evidence since the prosecution and investigating officers were aware of the material facts that were withheld from the defense. Accordingly, the price to be paid for this failure falls on the prosecution.

Here, another theory of the prosecution's case was based on the claim that defendant meant to shoot Witcher but mistakenly shot Segars who drove a Corvette similar to Witcher's. Defendant argues that had defense counsel been given the "Hit Report" his counsel could have impeached him on account of Witcher being a career criminal.

On the other hand, the prosecution suggests that neither Witcher's prior arrests or charges were relevant to show his bias or motive for testifying. However, this Court opines that Witcher did, indeed, have ample bias and motive to testify against defendant because there was testimony at trial that defendant had been threatening Witcher over a gambling debt. Trial Trans Vol 3, pp. 74-76. Furthermore, considering that defendant had previously shot Witcher in his hand (which resulted in sending Witcher to the hospital), there exists motive for Witcher to testify against defendant.

The Court opines that Witcher's credibility would have been wholly impeached if the defense had been given Witcher's prior arrest record. The untruths told in Witcher's testimony regarding his prior criminal history would have been exposed. Instead, the prosecution allowed these blatant lies to stand.

This Court agrees with defendant's claims that the use of perjured testimony and/or the prosecution's failure to correct false testimony to obtain a conviction is prohibited. See *Naque v Illinois*, 360 US 264, 269 (1959). This can be seen by the fact that defense counsel repeatedly attempted to cross examine Witcher about his past criminal activity. When questioned, Witcher denied involvement in criminal activity. Trial trans Vol 3, p. 87. However, the Hit Report contradicts Witcher's answers. (Exhibit P). Indeed, the prosecution's failure to correct Witcher's false testimony violated defendant's rights to due process and helped the prosecution secure a conviction.

Finally, defendant argues that dismissal of the charges is appropriate given the severe and deliberate violations of defendant's due process rights that denied him a fair and impartial trial. This Court finds the following violations of defendant's due process rights: (1) the prosecution was aware of Witcher's criminal history on account of DPD's Hit List containing his infractions; (2) the prosecution intentionally violated defendant's rights under *Brady* by suppressing the forensic analysis of the bullet taken from the victim's body which was not consistent with the gun offered at trial as belonging to defendant; (3) the prosecution suppressed the VHS tape; (4) the prosecution suppressed the criminal history and arrest record of the prosecution's key witness, Deanthony Witcher.



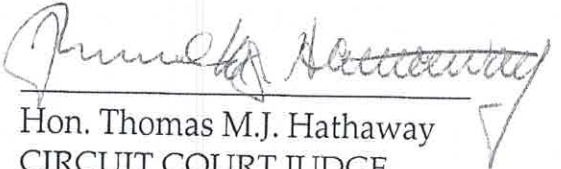
Importantly, this Court notes that the prosecution contends that there is no evidence to "definitively establish that there was a VHS recording confiscated from the store located at 11742 Conner" (Prosecution Brief, p. 38). However, there is an evidence tag from Officer Zwicker documenting its existence.

This Court concludes that the damage caused by the suppression and withholding of the exculpatory evidence cannot be cured. Therefore, it holds that dismissal of the charges is appropriate given the severe and deliberate violations of defendant's due process rights that denied him a fair and impartial trial. Accordingly, this Court **GRANTS** defendant's Motion to Dismiss.

**CONCLUSION**

For the reasons explained above, this Court **GRANTS** defendant's Motion to Dismiss with prejudice.

DATE 10/3/2020

  
Hon. Thomas M.J. Hathaway  
CIRCUIT COURT JUDGE

PROOF OF SERVICE

*I certify that a copy of the above instrument was served upon the attorneys of record and/or self-represented parties in the above case by mailing it to the attorneys and/or parties at the business address as disclosed by the pleadings of record, with prepaid postage on \_\_\_\_\_.*

Name \_\_\_\_\_