

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF AITKIN

NINTH JUDICIAL DISTRICT

---

Brian K. Pippitt,

Petitioner,

NOTICE OF PETITION AND  
PETITION FOR POSTCONVICTION  
RELIEF

vs.

State of Minnesota,

D.C. File No. 01-K4-99-000325

Respondent.

---

TO THE ABOVE NAMED DISTRICT COURT, THE OFFICE OF THE MINNESOTA ATTORNEY GENERAL, AND THE AITKIN COUNTY ATTORNEY'S OFFICE:

PLEASE TAKE NOTICE that petitioner, Brian K. Pippitt, through counsel, files this Notice of Petition and Petition for Postconviction Relief pursuant to Minn. Stat. §590.01 *et seq.*, to challenge his 2001 Judgment of Conviction.

INTRODUCTION

Brian Pippitt is innocent. Not a shred of reliable evidence connects him to **the crime for which he was convicted. The State's two key witnesses against Mr. Pippitt** have now disavowed their trial testimony, which was not credible to begin **with. The Minnesota Attorney General's Office conducted a two-year** investigation and concluded on May 31, 2024 that Mr. Pippitt should be exonerated. Every day Brian Pippitt remains behind bars is a travesty of justice.

THE UNDERSIGNED REPRESENT AND STATE:

- I. They are the attorneys for the petitioner, Brian K. Pippitt, who is imprisoned and restrained of his liberty in the Minnesota Correctional Facility: Faribault.
- II. Mr. Pippitt is confined and restrained of his liberty by virtue of the following judgment of conviction:  
  
Mr. Pippitt was found guilty of first-degree murder in violation of Minn. Stat. § 609.185(1) and first-degree murder while committing burglary in violation of Minn. Stat. § 609.185(3), and on February 2, 2001 was sentenced to the mandatory term of life imprisonment.
- III. **On June 13, 2002, Mr. Pippitt's** conviction for first-degree murder under Minn. Stat. § 609.185(1) was affirmed on direct appeal by the Minnesota **Supreme Court. The Court vacated Mr. Pippitt's conviction for first-degree** murder while committing burglary in violation of Minn. Stat. § 609.185(3).
- IV. In 2005, Mr. Pippitt filed a petition for post-conviction relief, which was denied following an evidentiary hearing, and affirmed by the Minnesota Supreme Court on August 16, 2007.
- V. Mr. Pippitt now requests relief as follows:  
  
Mr. Pippitt petitions the Court to vacate his conviction and to discharge Mr. Pippitt, dismissing all charges against him. In the

alternative, Mr. Pippitt requests that the Court convene an evidentiary hearing on the claims asserted herein.

VI. The facts underlying the Petition are as follows:

On February 25, 1998, law enforcement discovered Evelyn **Malin's** body on the floor of her bedroom in the living quarters attached to the Dollar Lake Store in McGregor, Shamrock Township, Aitkin County, Minnesota. Ms. Malin had been beaten in the face and likely strangled, with excrement smeared around her body. With the exception of a broken basement window, all the doors and windows were locked, including the deadbolted front and back doors.

Finding few promising leads as the investigation went on, investigators began to focus on the Misquadace and Martin families. Under police pressure, members of each family implicated members of the other in the murder, relying on baseless rumors. Neil King, Keith Misquadace, Donald Hill, and Brian Pippitt were ultimately charged with Ms. **Malin's** murder.

Raymond Misquadace pled guilty to manslaughter and was **sentenced to less than five years in prison. Mr. Misquadace's plea deal** also resolved additional unrelated outstanding felony charges against him and included an agreement that he testify against the others. Donald Hill pled guilty to manslaughter as well and, like Raymond Misquadace, received a less-than-five-year sentence that also resolved other unrelated

felony charges. Neil King went to trial and received a judgment of acquittal, the Court **stating “I honestly believe there is just not evidence sufficient to convict him.” Keith Misquadace entered an *Alford* plea to manslaughter (a plea he later tried unsuccessfully to withdraw) under which he also resolved unrelated felony charges of introduction of contraband into jail, fleeing and theft of a motor vehicle, burglary, theft, criminal damage to property, and criminal sexual conduct.**

Brian Pippitt pled not guilty and went to trial beginning in January 2001. **At Mr. Pippitt’s trial,** Raymond Misquadace testified that beginning at 3:00 or 4:00 p.m. on February 24, 1998, the five defendants were driving around to various locations before arriving at the Dollar Lake Store (which was closed) at 9:00 or 10:00 p.m. He testified that the other four defendants got out of the car, with Brian Pippitt approaching the **front door, and that he later heard a “little thump or crash” before seeing** the front door open and shadows moving inside the store. Raymond Misquadace testified that the other defendants returned to the car carrying stolen cigarettes and beer, that they mentioned having killed Ms. Malin, and that the five then drove for 30-45 minutes to an abandoned house on the Sandy Lake Reservation. Neither Don Hill nor Keith Misquadace testified in any proceedings against Brian Pippitt. Keith Misquadace has steadfastly insisted on his own innocence and has provided evidence exculpating Brian Pippitt.

The State also presented testimony from Peter Arnoldi, who claimed to have met Mr. Pippitt at the Minnesota Security Hospital in St. Peter. Arnoldi testified that Pippitt confided in him that he and the others went to the Dollar Lake Store in a van to get some cigarettes then burglarized the store through a window, that Pippitt had held Ms. Malin down while **“somebody else stuffed toilet paper or Kleenex into the lady’s mouth,”**<sup>1</sup> and that they had stolen cigarettes and beer.

The State also called BCA crime scene team leader Gary Kaldun, who testified that the point of entry into the store was through the basement window. Mr. Pippitt was convicted and sentenced to life in prison. His conviction was affirmed on direct appeal and subsequent efforts at postconviction relief were denied.

In 2021, the Office of the Minnesota Attorney General started a Conviction Review Unit (CRU) to investigate claims of actual innocence being made by inmates in Minnesota. Undersigned counsel presented **Mr. Pippitt’s case to the CRU. Among other things,** the defense presented to the CRU evidence that:

- Raymond Misquadace now admits under oath that his story was fabricated with the help of the police, and that he was not at the crime scene at all;

---

<sup>1</sup> The origin of this bizarre detail, which is not consistent with the crime scene evidence, only became clear years later. Arnoldi had read legal documents from the case referring to “soft tissue injuries,” to which he applied an idiosyncratic interpretation. This obviously fabricated story is what the State claims corroborates and lends credibility to Raymond Misquadace’s accomplice testimony against Mr. Pippitt.

- Peter Arnoldi, who was psychotic at the time he testified against Mr. Pippitt and received a secret benefit from prosecutors, now admits that Mr. Pippitt never confessed; and
- Suppressed forensic evidence (supplemented with new forensic analysis) disproves Raymond Misquadace's **testimony** and establishes **Mr. Pippitt's** innocence.

During its two-year investigation of **Mr. Pippitt's** conviction, the CRU reviewed thousands of pages of materials and conducted more than 26 interviews of fact and expert witnesses. On May 31, 2024, the CRU released a Report and Recommendation, attached hereto as Exhibit A.

In the Report and Recommendation, the CRU made, among others, the following findings:

- It was implausible for Mr. Pippitt to commit the crime in accordance **with the State's theory**;
- **The State's theory at trial was incongruous with the evidence**; the objective evidence establishes that no entry was made through the window; no beer or cigarettes were stolen; and the front door (which was **the State's theoretical exit point for the assailants**) was locked with a deadbolt lock that had to be operated with a key;
- The State presented fabricated testimony from three witnesses, one of whom was a mentally ill, untrustworthy jailhouse informant;
- Investigators employed a variation of the Reid Technique, which produced a false confession from Raymond Misquadace that falsely implicated Pippitt;
- Raymond Misquadace has recanted his prior confession and testimony;
- **Every version of Raymond Misquadace's ever changing "confession is** disproven by the objective and forensic evidence; his recantation, however, comports with the evidence;

- A witness, Gerald Horsman confirmed that nothing was stolen from the store, and that he told police that Merle Malin's statements to the contrary were false;
- The State relied on unreliable jailhouse informant testimony to support **Raymond Misquadace's fabricated testimony;**
- **Brian Pippitt's trial attorney had neither the experience nor the capacity to properly challenge the impossibility of the State's theory at trial;**
- **Brian Pippitt's attorney failed to consult with experts;** and
- Two credible alternative suspects were neither fully investigated, nor fully presented to the jury.

The CRU concluded that Brian Pippitt should be granted postconviction relief because he was denied due process of a fair trial **based on the totality of the CRU's findings. The CRU further concluded that there is little confidence in Brian Pippitt's conviction, and that he should be exonerated in the death of Evelyn Malin.**

VII. The grounds for relief are as follows:

In accordance with the findings and conclusions from the CRU investigation, and with **additional new evidence uncovered in Petitioner's** investigation, and as fully set forth in the Memorandum of Law filed herewith, relief is justified on the following grounds:

1. **False Evidence Tainted Brian Pippitt's Conviction.**

**Brian Pippitt's conviction** was secured through presentation of false evidence in violation of Minnesota and federal law. *See State v. Caldwell*, 322 N.W.2d 574, 586 (Minn. 1982); *Ferguson v. State*, 645 N.W.2d 437,

442 (Minn. 2002); *Giglio v. U.S.*, 405 U.S. 150, 154 (1972). This claim is **supported by recantations by the State's two primary witnesses, Raymond Misquadace and Peter Arnoldi**, as well as new evidence regarding the crime scene that both corroborates the recantations and reveals that the **State's case was based on falsehoods.**

Without the false evidence, Pippitt would not have been charged, much less convicted. The State's entire case rested on it.

Mr. Pippitt and the defense were surprised by the false testimony, in particular the testimony about cigarettes and beer having been stolen from the Dollar Lake Store. Indeed, at the time of the trial, Brian Pippitt was not and could not have been aware that nothing had been stolen from the store, because he was not there that night. He was not aware that Gerald Horsman had confirmed to police that nothing was stolen, and that Merle Malin's **statements to the contrary were wrong.**

2. Newly Discovered Evidence Fatally Undermines the Conviction.

In the alternative, Mr. Pippitt is entitled to a new trial based upon new evidence not previously presented to any court. *See Rainer v. State*, 566 N.W.2d 692, 695 (Minn. 1997); *Bobo v. State*, 820 N.W.2d 511, 518 (Minn. 2012). This includes the sworn statements of Mari Blegen, Keith Misquadace, and Neil King, and the detailed forensic analyses of Brent Turvey, Linda Netzel, and Stanley Paluski, all of which put the lie to



**Raymond Misquadace's testimony and strongly support Mr. Pippitt's**  
innocence.

Even if the Court were to disagree that the forensic reports of Turvey, **Netzel, and Paluski qualify as "new" evidence under *Rainer*, such evidence must nevertheless be considered in evaluating Mr. Pippitt's** claims. In determining whether to grant relief under *Larrison* based on **Raymond Misquadace's recantation, for example, the Court must assess** the credibility of the recantation. The forensic evidence supports the **reliability of Raymond's recantation, because it shows that his trial** testimony could not have been true.

In light of the new evidence, no reasonable jury would convict Mr. Pippitt.

3. The State Withheld and Destroyed Material Exculpatory or Potentially Exculpatory Evidence.

**Mr. Pippitt's request for relief is also justified by the State's** suppression and/or bad-faith destruction of exculpatory evidence. See *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *State v. Hunt*, 615 N.W.2d 294, 298 (Minn. 2000); *State v. Jenkins*, 782 N.W.2d 211, 235 (Minn. 2010); *Arizona v. Youngblood*, 488 U.S. 51, 57-58 (1988).

Mr. Pippitt recently learned that at the time jailhouse informant Peter Arnoldi allegedly heard him confess, and at the time Arnoldi testified, Arnoldi was suffering from serious psychoses causing him to

hear voices and to hallucinate and that Arnoldi was expressing the false belief that Evelyn Malin had been sexually assaulted. Also by the time he testified, Arnoldi was facing federal bank robbery charges it was not disclosed to the defense that Mr. Arnoldi was to receive assistance from the Aitkin County Attorney in seeking a downward departure on a federal **bank robbery sentence in exchange for his “crucial” testimony against Brian Pippitt.** The State also refused defense requests to turn over to the deadbolt lock from the crime scene, then failed to preserve the lock in violation of its own preservation policies. This critical piece of exculpatory evidence is now gone, and the State is to blame.

Had the State not suppressed and/or destroyed critical exculpatory evidence, Brian Pippitt would not have been convicted.

#### 4. Brian Pippitt is Actually Innocent.

Without the testimony of Raymond Misquadace and Peter Arnoldi, there is nothing to connect Brian Pippitt to the murder of Evelyn Malin. No testimony, no forensics, no evidence whatsoever. Thus, any alleged procedural defaults, such as statute of limitations or *Knaffla*, cannot stand in the way of relief here.<sup>2</sup> *See House v. Bell*, 547 U.S. 518, 536-37

---

<sup>2</sup> In any event, as set forth more fully in the Memorandum of Law filed herewith, Mr. Pippitt qualifies for statutory exceptions to the post-conviction statute of limitations, including the newly-discovered evidence and the “interests of justice” exception. In addition, the State agreed to toll the statute of limitations during the CRU’s investigation of the case. [See Tolling Agreement attached as Exhibit I]

(2006); *Bousley v. U.S.*, 523 U.S. 614, 623 (1998).

Further, the evidence of Mr. **Pippitt's factual innocence is so** overwhelming that his ongoing imprisonment violates due process. See *Herrera v. Collins*, 506 U.S. 390, 417 (1993) (recognizing potential freestanding Constitutional claim based on actual innocence).

VIII. This Petition is supported by the Memorandum of Law filed herewith and by the attached exhibits:

- A. Conviction Review Unit Report dated May 31, 2024
- B. Declaration of Dr. Brent Turvey
- C. Report of Linda Netzel
- D. Transcript of Deposition of Peter Arnoldi
- E. Documents relating to Peter Arnoldi sentencing
- F. Declaration of Mari Blegen
- G. Declaration of Keith Misquadace
- H. Declaration of Neil King
- I. **Tolling Agreement with Aitkin County Attorney's Office**
- J. Declaration of Stanley Pulaski
- K. Declaration of Tom Murtha
- L. Declaration of Raymond Misquadace

WHEREFORE, Petitioner Brian Pippitt respectfully requests that the Court grant his Petition for Post-Conviction Relief, vacate his conviction, and order the dismissal of the charges against him. Alternatively, Mr. Pippitt requests an evidentiary hearing.

Dated: June 5, 2024

s/ James R. Mayer  
James R. Mayer (#312241)  
Andrew Markquart (400790)  
Anna McGinn (#403669)  
GREAT NORTH INNOCENCE PROJECT  
229 19th Avenue South, Suite 285  
Minneapolis, MN 55455  
(612) 624-4779  
[jmayer@gn-ip.org](mailto:jmayer@gn-ip.org)

W. James Cousins (pro hac vice pending)  
54 Danbury Road, Suite 413  
Ridgefield, CT 06877  
(203) 417 9679  
[jcousins@wjcousinslaw.com](mailto:jcousins@wjcousinslaw.com)

also at

CENTURION  
1000 Herrontown Road  
Princeton, NJ 08540  
(609)921-0334  
[cousins@centurion.org](mailto:cousins@centurion.org)

Petition for Post-Conviction Relief

# EXHIBIT A

**Report of the Minnesota Conviction Review Unit  
Regarding the 2001 Conviction of  
Brian K. Pippitt  
Case no. 01-K4-99-000325**

**May 28, 2024**



**Minnesota Attorney General's Office  
Conviction Review Unit**

STATE OF MINNESOTA  
**OFFICE OF THE ATTORNEY GENERAL**

---

TO: Keith Ellison  
Minnesota Attorney General  
75 Dr. Martin Luther King Jr. Blvd  
St. Paul, MN 55101-2131

DATE: May 28, 2024

FROM: Carman A. Leone  
Assistant Attorney General  
Post-Conviction Justice Division  
445 Minnesota St., #1300  
St. Paul, MN 55101-2131

PHONE: (651) 757-1427  
FAX: (651) 297-1235

SUBJECT: **CRU Report and Recommendation: State of Minnesota v. Brian Keith Pippitt**

*Brian Keith Pippitt is a 61-year-old man serving a life sentence for first-degree murder. He, along with three others, was convicted for the 1998 murder of Evelyn Malin in Aitkin County. He applied to the Minnesota Conviction Review Unit (CRU) on January 5, 2022, through his attorney, W. James Cousins of Centurion Ministries. Following an investigation, the CRU recommends that his sentence be vacated for several reasons. First, it was implausible for Pippitt to commit the crime in accordance with the prosecutor's theory of the case. Despite the implausibility, the prosecutor presented the jury with unreliable evidence which advanced its theory. This included presenting unreliable testimony from three witnesses, one of whom was a mentally ill, untrustworthy jailhouse informant. Second, Pippitt's defense counsel was unprepared, under-experienced, and overburdened, preventing him from competently representing Pippitt at trial. Finally, two credible suspects of Evelyn's murder were neither fully investigated, nor fully presented to the jury by Pippitt's attorney. As a result, there is little confidence in Pippitt's conviction. Therefore, he should be exonerated for the murder of Evelyn Malin*

## TABLE OF CONTENTS

I. Executive Summary and Recommendation	7
II. The CRU's Investigation	10
III. The Facts Surrounding Evelyn Malin's Death	13
A. Finding Evelyn and the Aftermath	13
B. Law Enforcement Investigation	17
IV. Procedural History	31
A. Raymond Misquadace's Guilty Plea and Sentencing	31
B. Neil King's Trial	31
C. Donald Hill's Guilty Plea and Sentencing	32
D. Keith Misquadace's Guilty Plea and Sentencing	33
E. Brian Pippitt's Trial and Sentencing	34
F. Brian Pippitt's Direct Appeal	37
G. Brian Pippitt's Postconviction Relief Petition and Appeal	38
V. The CRU's Findings	43
A. It was implausible for Pippitt to commit the crime in accordance with the prosecutor's theory.	43
1. No one climbed through the south basement window.	44

(a) Glass evidence suggests that the basement window was not the actual point of entry.	45
(b) Evidence pertaining to the laths suggests that the basement window was not the point of entry.	47
(c) Lack of trace evidence suggests that the basement window was not the point of entry.	49
(d) Placement of items suggests the crime scene was staged.	50
2. The prosecutor's theory at trial was incongruous with the evidence.	51
(a) The prosecutor presented unreliable evidence that the front door was not deadbolted.	52
(1) The prosecutor cross-examined the defense investigator to suggest the front door was not deadbolted.	56
(2) The prosecutor elicited unreliable testimony from Merle Malin to prove the deadbolt was not locked.	57
(3) The prosecutor kept the door out of the sight of the jury.	58
(b) The prosecutor presented unreliable testimony that beer and cigarettes were stolen from the store.	59
(c) The prosecutor presented Raymond Misquadace's unreliable testimony.	63
(1) Raymond provided an unreliable confession.	63



(2) Raymond’s confession and testimony at trial are uncorroborated.	73
i. Donald Hill does not corroborate Raymond’s account.	74
ii. Peter Arnoldi does not corroborate Raymond’s account.	75
(3) Raymond’s confession and testimony conflict with each other and other evidence in the case.	77
(d) The prosecutor presented unreliable jailhouse informant testimony.	85
3. Pippitt’s attorney had neither the experience nor capacity to properly challenge the implausibility of the prosecutor’s theory at trial.	87
(a) Pippitt’s attorney failed to impeach key prosecution witnesses.	88
(b) Pippitt’s attorney failed to consult with experts.	92
B. Two credible suspects of Evelyn’s murder were neither fully investigated, nor fully presented to the jury by Pippitt’s attorney.	93
1. Terry Peet is a credible alternative suspect.	94
2. M [REDACTED] is a credible alternative suspect.	102
3. Pippitt’s attorney failed to fully present alternative perpetrator evidence at trial.	108
VI. Response to Preliminary Stakeholder Input Regarding the CRU’s Findings	110

A. The Aitkin County Sheriff’s input does not persuade the CRU to alter its recommendation.	111
1. The Aitkin County Sheriff’s Office provided input regarding the CRU’s report.	111
2. The CRU carefully considered the Aitkin County Sheriff’s Office’s input but was unpersuaded.	112
B. The Bureau of Criminal Apprehension’s preliminary input does not persuade the CRU to alter its recommendation.	114
1. The Bureau of Criminal Apprehension provided input regarding the CRU’s report.	115
2. The CRU carefully considered the Bureau of Criminal Apprehension’s input but was unpersuaded.	116
VII. Conclusion	118
Appendix A: Linda Netzel’s Report, Notes, and Curriculum Vitae	119
Appendix B: Correlation between Polygraph Results and Charging Decisions Table	163
Appendix C: Evolution of Raymond Misquadace’s Testimony Table	164
Appendix D: Diagram of George Boyd’s Route	171
Appendix E: Drawings of Crime Scene by Raymond Misquadace and Donald Hill	172
Appendix F: Letter from Aitkin County Sherriff Daniel Guida	173
Appendix G: Preliminary Input from Bureau of Criminal Apprehension	175



## I.

### **Executive Summary and Recommendation**

Evelyn Malin, an 84-year-old convenience store owner, was found murdered the morning of February 25, 1998. Sheriff's deputies discovered her on the floor of her bedroom with her mattress turned over on top of her. Her face was beaten, with pinpoint petechiae marking her skin, suggesting strangulation. Feces appeared smeared around her body. Investigators found a broken basement window into her store, which also served as her residence. They concluded this was the entry point for the murderer. All other windows and doors were locked, including the front door, which had a deadbolt that could only be activated with a key—inside and out.

The murder shocked the tiny town of McGregor, Aitkin County, where Evelyn Malin owned her store. Investigator Bruce Beck of the Aitkin County Sheriff's Department teamed with Bureau of Criminal Apprehension (BCA) Special Agent David Bjerga to investigate the crime. They pursued over 100 leads and countless witnesses. As time dragged on, the case grew colder. The Malin family was outraged, and publicly criticized the Aitkin County Sheriff for failing to arrest anyone within a year of the murder.

Ultimately, investigators followed leads to the Misquadares and Martins, families that were related, but were often entangled in feuds. Members of each family implicated one another in the murder without corroborating evidence to support the accusations. In the end, Raymond Misquadace confessed to the crime, and implicated four others: Neil King, Keith Misquadace, Donald Hill, and Brian Pippitt. Each of these individuals were related by blood, sharing the same family lineage, but they did not get along well with each other. The day after Raymond confessed, Donald Hill gave a confession that was similar to Raymond's. A criminal complaint was filed immediately thereafter, charging all five with the murder of Evelyn Malin.

A grand jury indicted each of the defendants. Raymond entered a plea agreement whereby he pled guilty to manslaughter and received a less-than-five-year sentence. Hill received the same deal. Keith Misquadace entered an *Alford* plea to manslaughter. He tried to withdraw his plea before sentencing, but the Court refused. He received an upward departure 180-month prison sentence. Neil King was acquitted at trial. The trial judge, while expressing misgivings on the record, granted the defense's motion for a judgement of acquittal. In a separate trial, Pippitt was convicted of both premeditated murder and felony murder and sentenced to life in prison. He was unsuccessful on appeal, and years later, his postconviction petition was denied.

During its investigation of the case, the CRU reviewed transcripts of the grand jury proceeding; trial transcripts; plea and sentencing transcripts; the postconviction transcript; all pleadings, including available exhibits and affidavits; all court opinions pertaining to Pippitt; the entire prosecutor's file; the defense attorneys' file; various investigative reports, including forensic reports; expert reports; audio recordings of interviews and interrogations; a video walkthrough of the crime scene; photos of the crime scene; register of actions for cases pertaining to Pippitt as well as other individuals involved in the case; news articles pertaining to the murder, those who were accused, and others involved in the case; various scientific articles on interrogation methods; Minnesota court opinions, statutes, and rules relating to the issues in this case; and a memorandum from Pippitt's defense lawyer supplementing his CRU application.

Additionally, the CRU interviewed and consulted with over 24 people, including lawyers involved in the original case, experts, law enforcement officers, and witnesses from the time of the murder. The CRU also interviewed Brian Pippitt himself. After considering the totality of the evidence, the CRU concluded that Pippitt was wrongfully convicted of the murder of Evelyn Malin based on the following findings.

First, the CRU found that it was implausible for Pippitt and the others to commit the crime the way the prosecutor said they did: by breaking into the Dollar Lake Store through the south basement window, navigating their way to Evelyn Malin's bedroom, murdering her, stealing beer and cigarettes, and leaving through the front door. The evidence produced at trial contradicts the prosecutor's theory in several ways.

Two separate crime scene experts have produced reports, independently concluding that entry through the basement window was implausible. Nevertheless, the prosecutor's theory at trial was that the defendants were on an aimless quest for beer and cigarettes that suddenly turned murderous when confronted by a crippled, deaf, 84-year-old woman. The prosecutor also presented evidence to the jury that was incongruent with other evidence. For example, the prosecutor presented a theory that the front door was not deadbolted and that beer and cigarettes were stolen, both of which were contradicted by photographs from the scene investigation. The prosecutor also presented an unreliable confession from Raymond Misquadace corroborated that confession with the testimony of a jailhouse informant who had a history of dishonesty and had experienced psychosis near the time he gave his testimony.

Two other alternative suspects had motive, means, and opportunity to commit the crime, but were never charged. Terry Peet, a man who twice visited the Dollar Lake Store the day of Evelyn's murder, told a witness that he considered robbing Evelyn when she refused to sell him propane on credit. Evelyn also told multiple people that Peet was trouble, and insinuated that he had beaten and robbed her in the past. He also lived close to the Dollar Lake Store. In fact, a person matching his description was spotted walking two-tenths of a mile from the Dollar Lake Store the night of the murder. Finally, a search of his home revealed a screwdriver that had features consistent with the tool marks left on the window frame that was broken at the scene of the crime.

M■■■■■, 27-years-old at the time of his grandmother Evelyn's death, is another alternative suspect who was never investigated. M■■■■■ had a severe drug problem. Weeks before Evelyn's murder, Evelyn refused M■■■■■'s request for money. After her murder, he took eight days off from work. It is unclear whether M■■■■■ had an alibi for the night of Evelyn's murder. Since Evelyn's murder, M■■■■■ has had a history of mental health, chemical dependency, and legal issues.

In addition, Pippitt's attorney had neither the experience nor capacity to properly challenge the implausibility of the prosecutor's theory at trial. He was trying the first homicide case of his two-year career without co-counsel, and he failed to effectively impeach three key prosecution witnesses that were essential to the jury's verdict of guilt. He failed to use evidence he received in discovery to impeach the witnesses on crucial aspects of their testimony, which inevitably led to Pippitt's conviction.

Pippitt's attorney also failed to consult with experts. The crime scene analysis was an important component of the prosecutor's case. The prosecutor spent significant time eliciting testimony about the crime scene over the course of multiple witnesses' testimony at trial. Discovery contained forensic reports analyzing the crime scene and evidence from it. Trial defense counsel, however, failed to consult with a crime scene expert. Despite his suspicion that Raymond's confession was unreliable, the defense failed to consult with a false confession expert. He also failed to develop a cogent alternative suspect theory at trial.

The totality of the evidence suggests that Pippitt's conviction is no longer supported by proof beyond reasonable doubt. It suggests he is innocent. As a result, the CRU recommends that Pippitt's conviction be vacated.

## **II.** **The CRU's Investigation**

In this case, the CRU reviewed the following:

- Grand jury transcripts
- Trial transcripts
- Guilty plea and sentencing transcripts
- Postconviction transcript
- All pleadings, including available exhibits and affidavits
- All Court opinions
- The entire prosecutor's file
- The public defender's file
- Various investigative reports, including forensic reports
- Expert reports
- Audio recordings of various interviews and interrogations
- A video walkthrough of the crime scene
- Photos of the crime scene
- Register of Actions for various people involved in this case
- News articles
- Various scientific articles on interrogation methods
- Minnesota court opinions, statutes, and rules relating to the issues in the case
- A memorandum from Pippitt's defense lawyer to supplement the CRU application

The CRU interviewed and/or consulted with the following people:

- Brian Pippitt, applicant
- Raymond Misquadace, convicted of manslaughter for the death of Evelyn Malin
- Donald Hill, convicted of manslaughter for the death of Evelyn Malin
- Keith Misquadace, convicted of manslaughter for the death of Evelyn Malin
- Bruce Beck, lead investigator from Aitkin County Sheriff's Department on the case
- Dave Bjerga, lead investigator from the BCA on the case
- Dan Ahlquist, BCA polygraph examiner

- Robert Berg, BCA polygraph examiner
- Thomas Murtha, Pippitt's trial defense attorney
- Edith See, Keith Misquadace's trial defense attorney
- Linda Netzel, consulting criminalist
- Stanley Paluski, licensed and certified forensic locksmith
- Brent Turvey, forensic scientist, crime scene analyst, crime reconstructionist
- Larry White, Professor Emeritus of Psychology, Beloit College
- Cathy Knutson, deputy superintendent of forensic science services at the BCA
- Gerald Horsman, the first lay witness to discover the crime scene
- Mari Blegen, former partner of Bryan Lee Misquadace
- Teresa Colton-Schalz, former partner of Keith Misquadace
- Ernest Steel, witness pertaining to Neil King's alibi
- Trudy King, witness pertaining to Neil King's alibi
- Gina Anderson, property manager at Mille Lacs Band of Ojibwe
- Carla Dunkley, project management compliance officer at Mille Lacs Band of Ojibwe
- Toby Egan, Mills Lacs building inspector
- Isaac Merrill, head of security at Grand Casino in Onamia
- Jim Cousins, Pippitt's current attorney
- Samuel Ranta, Pippitt's case manager at Minnesota Correctional Facility Faribault

The following people declined an interview with the CRU:

- Neil King, acquitted of the murder of Evelyn Malin
- Bradley Rhodes, prosecuting attorney
- Aaron Nelson, alternative suspect

The CRU was unable to locate the following people for an interview:

- Dawn Hill, sister of Donald Hill

The CRU was unable to interview the following people because they had passed away:

- Peter Arnoldi, witness against Pippitt at trial



- Bradley Misquadace, brother of Pippitt
- Wanda Misquadace, sister of Pippitt
- Bryan Lee Misquadace, brother of Pippitt
- Don Martin, father of Donald Hill
- Louis Quaderer, witness in case
- Howard “Chip” Martin, brother of Donald Martin
- Agnes Chief, mother of Pippitt
- Wesley Misquadace, nephew of Pippitt and witness in the case
- Brandon Misquadace, nephew of Pippitt and witness in the case
- Merle Malin, son of the victim and witness at trial

### III. The Facts Surrounding Evelyn Malin's Death

#### A. Finding Evelyn and the Aftermath

Norma Horner pulled her Ford Taurus station wagon into the gravel parking lot of the aging Dollar Lake Store at about 8:30 a.m. on a gray Wednesday morning, February 25, 1998, just as she had countless times before.<sup>1</sup> She and her friend, Gerald Horsman, checked on Evelyn Malin, Norma's mother, every morning and night.<sup>2</sup> At 84 years old, Evelyn was still working as the sole proprietor of the tiny convenience store located in Shamrock Township, about 130 miles north of the Twin Cities.<sup>3</sup> Evelyn sold groceries, beer, cigarettes, and other items to locals and the vacationers taking advantage of lake recreation.<sup>4</sup>



*Figure 1 – BCA crime scene photo of front of Dollar Lake Store*

The Dollar Lake Store was also Evelyn's home.<sup>5</sup> Opening the store in the 1950's, Evelyn and her late husband raised their two children, Norma and Merle, in the cramped living quarters separated from the store by a thin curtain.<sup>6</sup> As Evelyn aged into her eighties, still working

---

<sup>1</sup> See Transcript of Trial at 29-30, 40, State v. Pippitt, K4-99-325 (2001) [hereinafter *Pippitt Trial*].

<sup>2</sup> *Id.* at 29-30.

<sup>3</sup> See Richard Meryhew, *Lakeside community mourns loss of perennial storekeeper*, STAR TRIBUNE, Feb. 27, 1998, available at 1998 WLNR 6336751.

<sup>4</sup> See *Pippitt Trial*, *supra* note 1, at 26.

<sup>5</sup> *Pippitt Trial*, *supra* note 1, at 27.

<sup>6</sup> *Id.* at 32, 201.

thirteen-and-a-half hour days, Norma took on greater responsibility in helping her mother.<sup>7</sup> Having her own cabin only a mile away from the store, Norma would visit the Dollar Lake Store at least twice a day to haul water and stock shelves.<sup>8</sup> The building had no indoor plumbing.<sup>9</sup>

As soon as Norma pulled up to the store, she knew something was wrong.<sup>10</sup> Evelyn opened the store for business at 8:30 a.m. each day.<sup>11</sup> On that Wednesday morning, however, the lights were off inside the store.<sup>12</sup> The neon “OPEN” sign was dark and the fish cutout hanging in the front window was still turned to “CLOSED.”<sup>13</sup> Newspapers still stacked on the cement stoop.<sup>14</sup> Evelyn always brought in the papers each morning shortly after she woke.<sup>15</sup> There was no movement within.<sup>16</sup>

Horsman started walking around to try the back door.<sup>17</sup> On his way, he noticed one of the basement windows was broken out.<sup>18</sup> Norma and Horsman hurried to the back door.<sup>19</sup> Norma pulled the screen off the outer screen door so she could knock on the inner door.<sup>20</sup> The back door was locked.<sup>21</sup> Evelyn routinely locked both the front and the back doors before retiring to bed each night.<sup>22</sup> When Evelyn did not answer, Norma moved to Evelyn’s curtained bedroom window.<sup>23</sup> No answer.<sup>24</sup> Norma knew her mother’s health was failing.<sup>25</sup> Evelyn could only hear with the help of a hearing aid, and she walked with a cane.<sup>26</sup> Evelyn had been beaten and robbed

---

<sup>7</sup> *Id.* at 25, 29.

<sup>8</sup> Transcript of Grand Jury Proceedings at 24, State v. Pippitt, K4-99-325 (1999) [hereinafter *Grand Jury Proceedings*]; *Pippitt Trial*, *supra* note 1, at 29.

<sup>9</sup> *Pippitt Trial*, *supra* note 1, at 57-59.

<sup>10</sup> See Transcript of Interview by Scott Turner with Norma Horner, ICR # 98-467 (Feb. 25, 1998) at 2 [hereinafter *Horner Interview 2/25/98*].

<sup>11</sup> *Id.* at 5.

<sup>12</sup> See *id.* at 6.

<sup>13</sup> See *Pippitt Trial*, *supra* note 1, at 41.

<sup>14</sup> See *Horner Interview on 2/25/98*, *supra* note 10, at 8.

<sup>15</sup> See *id.*

<sup>16</sup> Transcript of Interview by John Drahota with Gerald Horsman, ICR # 98-476 (Feb. 25, 1998) at 7 [hereinafter *Horsman Interview on 2/25/98*].

<sup>17</sup> See *id.*

<sup>18</sup> See *id.* at 5.

<sup>19</sup> *Id.* at 7.

<sup>20</sup> *Horner Interview 2/25/98*, *supra* note 10, at 2.

<sup>21</sup> *Horsman Interview 2/25/98*, *supra* note 16, at 7.

<sup>22</sup> *Pippitt Trial*, *supra* note 1, at 65.

<sup>23</sup> *Horsman Interview 2/25/98*, *supra* note 16, at 8.

<sup>24</sup> *Id.*

<sup>25</sup> *Pippitt Trial*, *supra* note 1, at 59, 62-63.

<sup>26</sup> *Id.*

several times before.<sup>27</sup> With no sign of life within, Norma instructed Horsman to go back to the cabin to call the police.<sup>28</sup>

Norma remembered the last time she witnessed her mother alive.<sup>29</sup> It was approximately 8:00 p.m. the night before.<sup>30</sup> She called her mother to check on her around 9:00 p.m.<sup>31</sup> Evelyn was unsettled about Terry Peet, a man who had just moved back to the area and down the street from the Dollar Lake Store.<sup>32</sup> Evelyn told Norma she was worried about Peet, and called him “bad news.”<sup>33</sup> Norma saw Peet in the store earlier the day before—on February 24—and when he asked to purchase propane on credit, Evelyn refused.<sup>34</sup> Norma recalled that Peet smelled like alcohol.<sup>35</sup>

Four officers from the Aitkin County Sheriff’s Office arrived at the store.<sup>36</sup> When efforts to get Evelyn to respond failed, one kicked in the back door.<sup>37</sup> The officer broke the door jamb and the force from the kick flung free a skeleton key that was inserted in the keyhole of the back door’s deadbolt.<sup>38</sup> The deputies entered the living quarter’s kitchen.<sup>39</sup> The building was dark, with thick curtains blocking much of the sun.<sup>40</sup> Each room in the living quarters was filled with furniture, stock, and other personal items stacked in piles.<sup>41</sup>

One deputy noticed a trap door in the kitchen floor that was propped open by a board wedged between the door and the first step leading down into the unfinished basement.<sup>42</sup> A kitchen chair was on top of the door.<sup>43</sup> The deputy set the chair aside, and climbed down the

---

<sup>27</sup> Meryhew, *supra* note 3; *Pippitt Trial*, *supra* note 1, at 62, 204.

<sup>28</sup> *Horner Interview 2/25/98*, *supra* note 10, at 2.

<sup>29</sup> *Id.* at 20.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 9; *Pippitt Trial*, *supra* note 1, at 70-71.

<sup>33</sup> *Horner Interview 2/25/98*, *supra* note 10, at 9-11.

<sup>34</sup> *Id.* at 9, 11.

<sup>35</sup> *Id.* at 10.

<sup>36</sup> Scott Turner, Aitkin County Sheriff Dept. Investigative Report, ICR # 98-476, Mar. 25, 1998, at 2 [hereinafter *Turner Report 3/25/98*]

<sup>37</sup> *Id.* at 3.

<sup>38</sup> See Gary Kaldun & Nathaniel Pearson, BCA Forensic Science Lab Report on the Examination of Physical Evidence, ICR # 97-476, Mar. 13, 1998, at 8 [hereinafter *BCA Lab Report 3/13/98*]; *Turner Report 3/25/98*, *supra* note 36, at 3.

<sup>39</sup> *Turner Report 3/25/98*, *supra* note 36, at 3.

<sup>40</sup> See Death Investigation Video, Minnesota Bureau of Criminal Apprehension, Inv. # 98000062, Feb. 25, 1998, at 13:38-47:32 [hereinafter *BCA video*].

<sup>41</sup> See *id.* at 19:12-28:07.

<sup>42</sup> *Turner Report 3/25/98*, *supra* note 36, at 3.

<sup>43</sup> *Id.*

stairs into the basement.<sup>44</sup> Aside from the boxes of pop and beer that lined the basement walls, the deputy noticed footprints and shards of glass resting on the sandy ground below the broken basement window that Norma and Horsman had identified that morning.<sup>45</sup>



Figure 2 – BCA crime scene photograph of stairs leading to basement in Dollar Lake Store



Figure 3 – BCA crime scene photograph of beer stacked along basement wall of Dollar Lake Store

Meanwhile, another deputy found Evelyn's body.<sup>46</sup> She was laying on the floor in her disarranged bedroom, next to her bed with her mattress turned on top of her.<sup>47</sup> Evelyn's face was bruised and battered.<sup>48</sup> Her neck and left eyelid were swollen.<sup>49</sup> The chamber pot that Evelyn used to relieve herself in lieu of a toilet was empty.<sup>50</sup> Piles of feces clumped to her sheets and the outside of her nightgown.<sup>51</sup> More appeared smeared on her skin near her anus.<sup>52</sup> Brown spots marked her face and chin.<sup>53</sup> Her body was cold and stiff.<sup>54</sup>

---

<sup>44</sup> See *id.*; *Pippitt Trial*, *supra* note 1, at 181.

<sup>45</sup> See *Turner Report 3/25/98*, *supra* note 36, at 3.

<sup>46</sup> *Id.*

<sup>47</sup> Dave Bjerga, BCA Report of Investigation, Inv. # 98000062, Feb. 25, 1998, at 2 [hereinafter *Bjerga Report 2/25/98*].

<sup>48</sup> See *BCA Lab Report 3/13/98*, *supra* note 38, at 8.

<sup>49</sup> *Id.*

<sup>50</sup> See *Pippitt Trial*, *supra* note 1, at 58; BCA photo of chamber pot 1, Feb. 25, 1998; BCA photo of chamber pot 2, Feb. 25, 1998.

<sup>51</sup> BCA photo of feces 1, Feb. 25, 1998.

<sup>52</sup> BCA photo of feces 2, Feb. 25, 1998.

<sup>53</sup> *BCA Lab Report 3/13/98*, *supra* note 38, at 8.

<sup>54</sup> *Id.*

## B. Law Enforcement Investigation

Once the first responders realized they were in a homicide crime scene, they left the building through the same door they entered, and secured the premises.<sup>55</sup> Less than 30 minutes later, the Aitkin County Sheriff assigned Investigator Bruce Beck to lead the homicide investigation.<sup>56</sup> Beck had been a law enforcement officer for 16 years prior to his assignment to the Malin murder investigation.<sup>57</sup>



Figure 4 – BCA crime scene photo of the south basement window of the Dollar Lake Store

The BCA detailed Special Agent Dave Bjerga to assist in the investigation.<sup>58</sup> At the time, Bjerga had been a licensed peace officer for Minnesota for 17 years.<sup>59</sup> A BCA Forensic Science Laboratory Crime Scene Team came to conduct a forensic examination.<sup>60</sup>



Figure 5 - BCA crime scene photo of a blood spot stain on the inside of a south basement window well of the Dollar Lake Store

Outside, the Forensic Team found two wooden one-inch by three-inch boards, or laths, and two glass panes resting on the ground near the south basement window well.<sup>61</sup> Glass and window dividers, or muntins, were missing from the basement window frame.<sup>62</sup> Bright red blood spattered the concrete wall which lined the window well leading to the broken basement window.<sup>63</sup>

Numerous hairs and fibers were stuck to the top of the basement window frame and tiny glass shards scattered

<sup>55</sup> *Turner Report 3/25/98, supra* note 36, at 3.

<sup>56</sup> *Id.*; Bruce Beck, Aitkin County Sheriff Dept. Investigative Report, ICR # 98-476, March 17, 1998, at 1 [hereinafter *Beck Report 3/17/98*].

<sup>57</sup> *Pippitt Trial, supra* note 1, at 274.

<sup>58</sup> *Bjerga Report 2/25/98, supra* note 47, at 2.

<sup>59</sup> *Pippitt Trial, supra* note 1, at 215. Bjerga was considered by some as one of the smartest law enforcement members to have worked in the area. See Denton Newman, *BCA investigator, former Crow Wing deputy retires*, BRAINERD DISPATCH, Nov. 5, 2012 (“He’s one of the smartest cops I’ve ever met in my life,” [Sheriff] Ball said.”). Before the CRU interview with Bjerga began on Nov. 21, 2023, a Crow Wing County Sheriff Deputy meeting Bjerga for the first time in the hallway told Bjerga that he was a “legend.”

<sup>60</sup> *BCA Lab Report 3/13/98, supra* note 38, at 7.

<sup>61</sup> *Id.* at 3, 7 9.

<sup>62</sup> *Id.* at 7.

<sup>63</sup> *Id.*

the bottom of the window well.<sup>64</sup> Inside the basement, several large pieces of broken window glass were identified on the floor in, as depicted in *Figure 6*.<sup>65</sup> One of those pieces had a single drop of blood on it.<sup>66</sup> The internal surface of the basement window frame from which the glass was broken had several tool marks from a flat blade tool, like a screwdriver.<sup>67</sup> Two laths found outside the building appeared to have come from the broken window.<sup>68</sup>



*Figure 6 - BCA crime scene photo of broken glass found inside the Dollar Lake Store basement*

Given that the front doors of the store, the attached garage, and all other windows were locked with no signs of forced entry—except the back door which an officer kicked in to get access into the building—the Crime Scene Coordinator determined that the point of entry for the intruder(s) was the south basement window.<sup>69</sup>

The Forensic Team preserved the following evidence, among other items: five latent fingerprints; four footstep impressions from the sandy basement floor; two sets of fresh tire tracks in the Dollar Lake Store’s parking lot; Evelyn’s emptied wallet, which appeared to have been rifled through; Evelyn’s nightgown, black hair net, hair pins, and hair curlers; a cutting from her bedsheet, which had an unusual hole that may have been caused by a bullet; a single hair found resting on the right hip area of Evelyn’s body; and swabs of the blood spots.<sup>70</sup> They cleared the scene at 1:25 a.m. the following morning.<sup>71</sup> The team of six spent a total of 11.5 hours investigating the crime scene.<sup>72</sup>

---

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 9.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *See id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 2-6, 8. The forensic team, however, did not collect or fingerprint the board propping up the cellar trap door, nor the chair that was resting on top of the trap door. Linda Netzel, *Brian Keith Pippitt Crime Scene and Laboratory Analysis Review*, May 18, 2023, at 7. The crime scene team did not recover the panes of glass removed from the south basement window. *Id.* The glass from inside the basement was not collected. *Id.* at 11. The crime scene team did not provide sufficient documentation of the exterior window condition to determine how secure each pane of glass was and how sturdy the muntins were. *Id.* at 14. Crime scene personnel handled evidence without wearing gloves at the scene of the crime. *Id.* at 19; photograph 9-10. The crime scene team did not take sufficient photographs of the inside of the edges of the rails of the window, or closeup photographs of the muntins. *Id.* at 20.

<sup>71</sup> *BCA Lab Report 3/13/98, supra* note 38, at 9.

<sup>72</sup> *See id.* at 7-9; P. Johnson, Dollar Lake Store Forensic Drawing, BCA Lab case no. 978 4385, Feb. 25, 1998 [hereinafter *Store Diagram*].

Meanwhile, Beck, Bjerga, and their teams began canvassing the community.<sup>73</sup> Beck, alone, generated leads from over a dozen witnesses within the first 24 hours.<sup>74</sup> He spoke to customers of the Dollar Lake Store, local bartenders, community residents, family members, close friends, pedestrians who happened to be walking by the store, a liquor store clerk, and a newspaper delivery man who serviced the store.<sup>75</sup>

Besides Norma, Horsman was one of the first people interviewed about the murder of Evelyn.<sup>76</sup> Horsman accompanied Norma every morning to help around the store.<sup>77</sup> He helped feed her animals and stocked goods for the store.<sup>78</sup> In fact, the last time he saw Evelyn was while he was re-stocking shelves in the store at 7:00 p.m., hours before she was murdered.<sup>79</sup> Three important pieces of information that Horsman gave investigators were: (1) that Evelyn always locked her front and rear doors at closing time;<sup>80</sup> (2) months before, someone tried to break in the same store window from which the storm window was removed, but could not successfully get in;<sup>81</sup> and (3) none of the store stock, which included beer and cigarettes, appeared to be missing, upon review of the crime scene.<sup>82</sup>

Peet, the individual who Evelyn expressed concern about to her daughter, became an early lead suspect.<sup>83</sup> Aaron Nelson, a man who was alleged to have beat and robbed Evelyn in the past, was also identified early as a person of interest.<sup>84</sup> Other early suspects included a strange man who visited a local bar late on February 24 with a fresh scrape on his chin and a strange look in his eye.<sup>85</sup> A sketch artist helped create a rendering, as depicted in *Figure 7*, ultimately leading to no arrests.<sup>86</sup> Another was a burly hitchhiker with gray hair and beard.<sup>87</sup>

---

<sup>73</sup> *Pippitt Trial*, *supra* note 1, at 219; *Beck Report 03/17/98*, *supra* note 56, at 7-12.

<sup>74</sup> *See Beck Report 03/17/98*, *supra* note 56, at 7-12.

<sup>75</sup> *See id.*

<sup>76</sup> *See Horsman Interview 2/25/98*, *supra* note 16, at 1.

<sup>77</sup> *Id.* at 3.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 13.

<sup>80</sup> *Id.* at 14.

<sup>81</sup> *Id.* at 28.

<sup>82</sup> Transcript of Interview by Bruce Beck with Gerald Horsman, ICR # 98-476 (Feb. 26, 1998) at 3 [hereinafter *Horsman Interview 2/26/98*]; Interview by Nicholas Foster with Gerald Horsman, McGregor, Minn. (Sep. 21, 2023) at 00:12:20-00:13:22, 00:15:35-00:16:10 [hereinafter *Horsman CRU Interview*].

<sup>83</sup> *See Beck Report 03/17/98*, *supra* note 56, at 8.

<sup>84</sup> *Id.* at 19. He was eventually cleared due to what investigators considered to be a solid alibi. *Id.*

<sup>85</sup> *Id.* at 7-8.

<sup>86</sup> *See id.* at 11.

<sup>87</sup> *Id.* at 10.



Another was a man parked in front of the Dollar Lake Store just before closing on February 24 who had dark straggly hair and appeared to be picking something up off the doorstep.<sup>88</sup> An anonymous caller told dispatch that she picked up a man with a bleeding right hand who was dark-skinned with white hair and that she dropped him off at a local bar.<sup>89</sup> None of these individuals were ever found or charged. Simultaneously, a group of five people were implicated after two women in the group were overheard discussing robbing and killing Ms. Malin.<sup>90</sup> None were charged.

Following a law enforcement meeting on March 2, 1998, Beck wrote in an investigation report that “one of the officers was told that the Misquadace boys might possibly have done this at the Dollar Lake Store...[specifically] Brandon, Keith, Mike, and Wesley.”<sup>91</sup> The officer who reported the lead, along with the source of that information, are not identified in the report.<sup>92</sup> The Misquadace family is an Ojibwe family who lived in the Native American land trust area in that region known as the Sandy Lake Reservation.<sup>93</sup> Agnes Chief, the mother of Brian Pippitt was also the mother of several of Pippitt’s half-siblings, including Anita Misquadace, Bradley Misquadace, Bryan Misquadace, Wanda Misquadace, and Walter Misquadace.<sup>94</sup> Brandon, Keith, Michael, and Wesley were the sons of Anita, and nephews of Brian Pippitt.<sup>95</sup>

An early statement specifically implicating any of the “Misquadace boys” was on March 3, 1998, from Ben Altergott, a person with whom Brandon spent time while in a juvenile detention center.<sup>96</sup> Ben stated that Brandon had the idea to rob Evelyn.<sup>97</sup> When investigators confronted Brandon two days later about the accusation that he committed the burglary/murder,



Figure 7 – BCA Forensic Suspect Drawing

<sup>88</sup> Transcript of Interview by John Drahota with Floyd Johnson, ICR # 98-476 (Feb 25, 1998) at 1.

<sup>89</sup> *Beck Report 03/17/98*, *supra* note 56, at 24.

<sup>90</sup> *Id.* at 15.

<sup>91</sup> *Id.* at 22.

<sup>92</sup> *See id.*

<sup>93</sup> *See* Interview with Brian Pippitt, Applicant, Faribault, Minn. (Jan. 11, 2024) [hereinafter *Pippitt CRU interview*].

<sup>94</sup> *See Pippitt Trial*, *supra* note 1, at 309.

<sup>95</sup> *Id.* at 311.

<sup>96</sup> *Beck Report 03/17/98*, *supra* note 56, at 23.

<sup>97</sup> *Id.*

he provided them an alibi.<sup>98</sup> Specifically, Brandon said that he was in Onamia with his brother Michael, Michael's girlfriend, Keith, and his uncle Brian Pippitt.<sup>99</sup>

Michael's statement to investigators mostly matched Brandon's.<sup>100</sup> Michael said that he went to Mille Lacs on February 24, 1998, for a job at the casino in Onamia and had interviewed twice that day.<sup>101</sup> After, Michael, Brandon, and Pippitt stopped at the Blue Goose liquor store to purchase 40-oz beers.<sup>102</sup> No further investigative leads focused on the Misquadace family for some time after these initial interviews of Brandon and Michael.<sup>103</sup>

At the end of the first month of the investigation, dozens of people were identified as potentially having *some* information about the murder.<sup>104</sup> None of it panned out; all leads fizzled.<sup>105</sup> The BCA's Forensic Science Laboratory results did not help narrow the investigation.<sup>106</sup> The blood on the concrete window well and on the glass shard from the broken basement window came from a cat, which also appeared to be the source of the hair collected from the window frame and off Evelyn's hip.<sup>107</sup> Of the fingerprints dusted and preserved, only one was good enough for a search in the Midwest Automated Fingerprint Identification Network (MAFIN); it did not reveal any matches.<sup>108</sup>

A screwdriver that investigators seized from Peet's home pursuant to a consent-search came back as "inconclusive" as to whether it was used to make the toolmarks on the window frame.<sup>109</sup> The sandy footprints in the store's basement matched a PONY "SB-Trainer" shoe, which was never recovered or linked to any suspect.<sup>110</sup> The tire track casts collected in the

---

<sup>98</sup> *Id.* at 29.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 27-28.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 28; *See* Transcript of Interview by Bruce Beck with Michael Misquadace, ICR # 98-476 (March 5, 1998) at 2-3 [hereinafter *Michael Interview 3/5/98*].

<sup>103</sup> *See Beck Report 03/17/98, supra* note 56, at 29-41.

<sup>104</sup> *See generally, id.*

<sup>105</sup> *See* Rosalind Bentley, *5 charged in the killing of rural storekeeper*, STAR TRIBUNE, May 2, 1999, available at 1999 WLNR 6434664.

<sup>106</sup> *See generally* Janice Bronson, BCA Forensic Science Lab Supp. Report 1 on the Examination of Physical Evidence, ICR # 98-476, Apr. 2, 1998 [hereinafter *BCA Lab Report 4/2/98*].

<sup>107</sup> *Pippitt Trial, supra* note 1, at 248, 251; *see* Laura Nelson, BCA Forensic Lab Supp. Report 7 on the Examination of Physical Evidence, ICR # 98-476, Mar. 19, 1999, at 5 [hereinafter *BCA Lab Report 3/19/99*].

<sup>108</sup> Dennis Hughes, BCA Forensic Science Lab Supp. Report 2 on the Examination of Physical Evidence, ICR # 98-467, Apr. 20, 1998, at 6 [hereinafter *BCA Lab Report 4/20/98*].

<sup>109</sup> Roger Papke, BCA Forensic Science Lab Supp. Report 3 on the Examination of Physical Evidence, ICR # 98-467, Jun. 9, 1998, at 4 [hereinafter *BCA Lab Report 6/9/98*].

<sup>110</sup> *BCA Lab Report 3/19/99, supra* note 107, pg. 5.

parking lot of the Dollar Lake Store led nowhere.<sup>111</sup> The fibers collected from the window frame of the basement window were spider web.<sup>112</sup> The wallet, nightgown, hair pins, and hair rollers offered nothing.<sup>113</sup> Ballistics testing of the hole in the sheet showed no trace of gunshot residue or bullet wipe, ruling out a bullet as the cause of the hole.<sup>114</sup>

An \$11,000 reward was announced, promising cash to anyone who could give information leading to an arrest and conviction.<sup>115</sup> Approximately two weeks after the announcement, on March 26, 1998, Brian Pippitt was directly implicated in the murder investigation.<sup>116</sup> Kathy Aubid-Martin, reported that “word in the community” was that Mike Misquadace, Keith Misquadace, and Brian Pippitt, along with one other Misquadace, committed the murder.<sup>117</sup>

The siblings of Brian Pippitt’s mother, Agnes Chief, included Ed Martin, Donald Martin, and Howard “Chip” Martin.<sup>118</sup> Ed, Donald, and Chip, along with their children and the mothers of their children, constitute the Martin side of the family.<sup>119</sup> Some of the Martins lived in a small tribal enclave in East Lake commonly referred to as “the Orchard.”<sup>120</sup> It was well known that the Misquadace side of the family did not generally get along with the Martin side.<sup>121</sup>

Less than two weeks after Kathy Aubid-Martin named the Misquadaces as potential suspects, Donald Hill—son of Don Martin—gave a statement to police on April 7, 1998, alleging

---

<sup>111</sup> *See id.*

<sup>112</sup> *Id.*

<sup>113</sup> *BCA Lab Report 4/2/98, supra* note 106, at 5.

<sup>114</sup> *BCA Lab Report 6/9/98, supra* note 109, at 4.

<sup>115</sup> *McGregor reward offered in death of dollar-store owner*, DULUTH NEWS TRIBUNE, Mar. 10, 1998, available at 1998 WLNR 1991929. The reward money was not paid out. *Pippitt Trial, supra* note 1, at 259. Another report stated that the award was \$13,000. *See Bently, supra* note 105.

<sup>116</sup> Bruce Beck, Aitkin County Sheriff Dept. Supp. Report, ICR # 98-476, Apr. 21, 1998, at 4-5 [hereinafter *Beck Report 4/21/98*].

<sup>117</sup> *Id.* at 5.

<sup>118</sup> *Pippitt Trial, supra* note 1, at 310; Matt Nelson, Murder Mystery Details Emerge, DULUTH NEWS TRIBUTE, May 4, 1999, available at 1999 WLNR 1995410.

<sup>119</sup> *Id.* at 309-310.

<sup>120</sup> *Id.* at 317-318.

<sup>121</sup> *See, e.g.*, Transcript of Interview by Dave Bjerga and Bruce Beck with Donald Hill, Inv. #98000062 (Feb. 2, 1999) at 3 [hereinafter *Donald Interview 2/2/99*] (“[Kathy Hill] said well we [Don Hill and Ed Hill] should never trust [the Misquadaces].”); Transcript of Interview by Bruce Beck with Neil King, ICR # 98-476 (Nov. 13, 1998) at 10 [hereinafter *King Interview 11/13/98*] (telling investigators that “the Misquadace’s really don’t get along with [the Martin] side of the family.”); Transcript of Interview by Dave Bjerga and Bruce Beck with Raymond Misquadace, Inv. #98000062 (Apr. 28, 1999) at 42 [hereinafter *Raymond Interview 4/28/99*] (“Howard [Martin]...and them other Misquadace, my cousins, they don’t really get along.”).

that Brian Pippitt said he did not mean to hurt her, referring to Evelyn.<sup>122</sup> The next day, on April 8, 1998, investigators enlisted the help of Aaron Nelson, who had since been cleared as a suspect, as a confidential informant to determine if any the Misquadares, including Pippitt, would admit to the crime.<sup>123</sup> They did not.<sup>124</sup> Less than a week later, on April 14, 1998, Don Martin reported to investigators that he had received a note from a family friend, Louis Quaderer, who wrote that Pippitt—referring to him by nickname “Fats”—made an admission Evelyn was already dead by the time he got in the store, as depicted in *Figure 8*.<sup>125</sup> At the time he reported this, Don told investigators that he “did not know anything firsthand” about the Malin homicide.<sup>126</sup>

*Figure 8 – Note Louis Quaderer provided to Don Martin.*

Four months later, Don Martin and his daughter, Dawn Hill, gave recorded statements to investigators, one right after the other.<sup>127</sup> Don gave his statement first.<sup>128</sup> Contrary to his earlier statement to investigators that he had no firsthand information, Don now claimed that he had heard Pippitt make an admission and that Pippitt’s accomplices “took Neil’s car out there.”<sup>129</sup> Don also seemed to suggest in his law enforcement interview that Pippitt implicated Brandon in the crime.<sup>130</sup> Don said Pippitt implicated three others Keith, Neil, Brandon.<sup>131</sup> Don implied Pippitt said Keith cut

<sup>122</sup> Brad Barker, BCA Report of Investigation, Inv. # 98000062, Apr. 7, 1998, at 1 [hereinafter *Barker Report 4/7/98*].

<sup>123</sup> See *Beck Report 4/21/98*, *supra* note 116, at 7; Dave Bjerga, BCA Report of Investigation, Inv. # 98000062, Apr. 8, 1998\_1258, at 1-2 [hereinafter *Bjerga Report 4/8/98\_1258*].

<sup>124</sup> *Beck Report 4/21/98*, *supra* note 116, at 7; *Bjerga Report 4/8/98\_1258*, *supra* note 123, at 2.

<sup>125</sup> See *Beck Report 4/21/98*, *supra* note 116, at 8.

<sup>126</sup> *Id.*

<sup>127</sup> Roy Bruggman, Aitkin County Sheriff’s Dept. Supplemental Report, undated, at 2 [hereinafter *Bruggman Report*].

<sup>128</sup> *Id.*

<sup>129</sup> See Transcript of Interview by Roy Bruggman with Don Martin, ICR # 98-476 (Aug. 15, 1998), at 2 [hereinafter *Don Martin Interview 8/15/98*].

<sup>130</sup> See *id.* at 3.

<sup>131</sup> See *id.* at 3-4.

himself on the side going through the window.<sup>132</sup> Additionally, Don mentioned that Pippitt indicated that “he got stabbed with a knife.”<sup>133</sup> Don then went on to say he saw the cut and it was “fresh.”<sup>134</sup> All of these claims conflicted with other known evidence.

Dawn made her statement immediately following her father’s.<sup>135</sup> During her interview, Don Martin can be heard speaking loudly in the background.<sup>136</sup> She said in her interview very simply “[Pippitt] said she was already dead when he went in there.”<sup>137</sup> She said she could not remember how long after Ms. Malin was killed that he said that.<sup>138</sup> According to Dawn, Pippitt did not say anything about anyone else being involved.<sup>139</sup> She could offer no other information.<sup>140</sup> The prosecution called neither to testify at Pippitt’s trial.

Quaderer gave an interview with investigators on August 18, 1998, in which he confirmed that he heard Pippitt make the admission while at Don Martin’s house.<sup>141</sup> Like Don’s statement, parts of Quaderer’s statement was inconsistent with known, objective crime facts in the case. For example, Quaderer said Pippitt admitted that he was with his nephews, Michael and Brandon, during the murder, and that one climbed through a “skinny window and cut his sides” and his “hips.”<sup>142</sup> Michael and Brandon were never charged for the murder of Evelyn Malin. Further, no human blood was collected from the crime scene, and no one else described injuries like that. The prosecution never called Quaderer to testify at trial.

According to Keith Misquadace, the Martins did not care for Pippitt particularly because he supposedly took money from someone on that side of the family.<sup>143</sup> Donald said that Quaderer particularly harbored ill feelings toward Pippitt and the Misquadaces because they would make fun of him.<sup>144</sup> Quaderer himself mentioned in his interview with investigators that the

---

<sup>132</sup> *See id.* at 4.

<sup>133</sup> *Id.* at 4.

<sup>134</sup> *Id.*

<sup>135</sup> *Bruggman Report, supra* note 127, at 2.

<sup>136</sup> Interview by Roy Bruggman with Dawn Hill, witness, McGregor, Minn. (Aug. 15, 1998), at 00:00:18.

<sup>137</sup> Transcript of Interview by Roy Bruggman with Dawn Hill, ICR # 98-476 (Aug. 15, 1998), at 3 [hereinafter *Dawn Hill Interview 8/15/98*].

<sup>138</sup> *Id.*

<sup>139</sup> *See id.*

<sup>140</sup> *Id.* at 4.

<sup>141</sup> Transcript of Interview by Roy Bruggman with Louis Quaderer, ICR # 98-476 (Aug. 19, 1998) at 1-4 [hereinafter *Quaderer Interview 8/19/98*].

<sup>142</sup> *Id.* at 2.

<sup>143</sup> Transcript of Interview by Dave Bjerga with Keith Misquadace, Inv. #98000062 (Feb. 18, 1999) at 8 [hereinafter *Keith Interview 2/17/99*].

<sup>144</sup> *See* Interview with Donald Hill, co-defendant, Moose Lake, Minn. (Nov. 21, 2023) at 00:52:00-00:53:13. [hereinafter *Donald CRU interview*].

Misquadaces tried to steal from him.<sup>145</sup> Mike Misquadace even mentioned that Quaderer was spreading rumors about their involvement during the undercover operation with Nelson.<sup>146</sup> Despite the accusations against Pippitt, investigators did not interview him until ten months after Kathy Aubid-Martin first mentioned Pippitt by name.<sup>147</sup>

In total, after an initial burst of activity at the beginning, the investigation continued for over a year.<sup>148</sup> Over 100 suspects were named.<sup>149</sup> Most of the information implicating them, however, came from second or third-hand sources.<sup>150</sup> Investigators kept hitting dead-ends.<sup>151</sup> The community was on edge.<sup>152</sup> Residents started locking their doors when they never had before.<sup>153</sup> Some lost sleep.<sup>154</sup> Some bought guns.<sup>155</sup> The investigators were frustrated and overwhelmed.<sup>156</sup> Evelyn's family and residents publicly criticized the Sheriff for his failure to make any arrests.<sup>157</sup> In fact, Beck said that Evelyn's family met with the sheriff every single week behind closed doors.<sup>158</sup> Bjerga said that Evelyn's family was "pushing" them every single day.<sup>159</sup> In January 1999, nearly 10 months after the murder, a new Sheriff was elected.<sup>160</sup> He made it a priority to solve the case.<sup>161</sup>

On January 26, 1999, Beck interviewed Pippitt; Beck told Pippitt that his name has come up "numerous, numerous times."<sup>162</sup> The only specific references Beck revealed, however, were

---

<sup>145</sup> *Quaderer Interview 8/19/98*, *supra* note 141, at 3.

<sup>146</sup> Transcript of Interview by Gary Pederson with Aaron Nelson, Inv. #98000062 (Apr. 16, 1998) at 4 [hereinafter *Nelson Interview 4/16/98*].

<sup>147</sup> *See Pippitt Trial*, *supra* note 1, at 621-624.

<sup>148</sup> *Id.* at 225.

<sup>149</sup> Nelson, *supra* note 118.

<sup>150</sup> *See Bentley*, *supra* note 105.

<sup>151</sup> Nelson, *supra* note 118.

<sup>152</sup> *See Bentley*, *supra* note 105.

<sup>153</sup> *Id.*

<sup>154</sup> *See Matt Nelson, Relatives Hope to Reopen Woman's Country Store*, DULUTH NEWS TRIBUNE, May 9, 1999, available at 1999 WLNR 2007387, at 1.

<sup>155</sup> *See id.*

<sup>156</sup> *See Bentley*, *supra* note 105; Nelson, *supra* note 118.

<sup>157</sup> *See Nelson*, *supra* note 118.

<sup>158</sup> Interview with Bruce Beck, Aitkin County Investigator, Aitkin, Minn. Part 2 at 01:05:56-01:06:02 (Nov 20, 2023) [hereinafter *Beck CRU Interview Part 1 and Beck CRU Interview Part 2*].

<sup>159</sup> Transcript of Interview by Dave Bjerga and Gary Pederson with Brandon Misquadace, Inv. #98000052 (Apr. 8, 1998) at 9 [hereinafter *Brandon Interview 4/8/98*].

<sup>160</sup> Amy Mayron, *5 Arrested in Aitkin County Slaying Action Follows Investigation of Store Owner's Death in '98*, ST. PAUL PIONEER PRESS, May 2, 1998, available at 1999 WLNR 2381371.

<sup>161</sup> *Id.*

<sup>162</sup> Interview by Bruce Beck with Brian Pippitt, ICR # 98-476 (Jan. 26, 1999) at 00:06:43-00:06:46 [hereinafter *Pippitt Interview 1/26/99*].

two people: Louie Quaderer and Don Hill.<sup>163</sup> Beck then told Pippitt that Neil King, son of Ed Martin, placed Pippitt at the scene of the crime and that King said that Pippitt was “not one of the first ones in” the residence at the time of the murder.<sup>164</sup> King, however, never implicated Pippitt in his first and only documented interview with investigators on November 13, 1998.<sup>165</sup> Beck also told Pippitt that he could be facing an aiding and abetting charge if Pippitt did not cooperate with the investigation.<sup>166</sup> Pippitt never confessed.<sup>167</sup> Not only did Pippitt tell Beck that he was not there, Pippitt also offered to take a polygraph and provide samples of his hair and blood to clear his name.<sup>168</sup>

Investigators returned to Donald Hill again on February 5, 1999, nearly a year after their first interview with him.<sup>169</sup> Donald initiated this contact when he asked to speak with Beck three days after he was arrested and detained at the Aitkin County Sheriff’s Office pending an unrelated charge.<sup>170</sup> Donald provided information on an unrelated case as well as the Malin murder in exchange for favorable treatment given his recent arrest and pending charges unrelated to the Malin murder.<sup>171</sup> Specifically, Donald offered to give the location of the goods stolen from the Dollar Lake Store on the evening of Evelyn’s murder in exchange for a deal.<sup>172</sup>

When the Aitkin County Attorney, Bradley Rhodes, agreed to “work with Hill” in exchange for information “of substance,” Donald told investigators that a jewelry box, VCR, and

---

<sup>163</sup> *Id.* at 00:08:41-00:08:55, 00:10:36-00:11:05.

<sup>164</sup> *Id.* at 00:11:13-00:11:31.

<sup>165</sup> See generally *King interview 11/13/98*, *supra* note 121.

<sup>166</sup> See *Pippitt Interview 1/26/99*, *supra* note 162, at 00:12:20-00:12:40.

<sup>167</sup> See generally *id.*

<sup>168</sup> *Id.* at 00:07:13-00:07:40. Pippitt took a polygraph exam on March 24, 1999. See generally Robert Berg, BCA Report of Investigation, Inv. #98000062, Mar. 24, 1999 [hereinafter *Berg Report 3/24/99*]. The results, according to the BCA, was that deception was indicated when he denied involvement in the Evelyn Malin murder. *Id.* at 1. Brandon Misquadace and Raymond Misquadace had similar results. See generally Dan Alquist, BCA Report of Investigation, Inv. #98000062, Mar. 16, 1999\_1520 [hereinafter *Alquist Report 3/16/99\_1520*]; Dan Alquist, BCA Report of Investigation, Inv. #98000062, Apr. 28, 99 [hereinafter *Alquist Report 4/28/99*]. Keith Misquadace and Don Hill had no deception indicated when they answered questions pertaining to their involvement. See Dan Alquist, *BCA Report of Investigation*, Inv. #98000062, Feb. 17, 1999 [hereinafter *Alquist Report re Keith 2/17/99*]; Dan Alquist, BCA Report of Investigation, Inv. #98000062, Mar. 16, 1999\_1245 [hereinafter *Alquist Report 3/16/99\_1245*]. Brandon was never charged despite his polygraph test result. Keith and Don were charged despite their “passing” the polygraph. Bjerga stated in an interview with the CRU on 21 Nov 23 that polygraph tests are just a tool, the results of which should, alone, not dictate charging decisions. See *Bjerga CRU Interview*, *supra* note 213, at 01:30:39 – 01:31:06.

<sup>169</sup> Bruce Beck, Aitkin County Sheriff Dept. Supp. Report VI, ICR # 98-476, Feb. 22, 1999, at 1 [hereinafter *Beck Report 2/22/99*]

<sup>170</sup> *Id.*

<sup>171</sup> See *id.* (“County Attorney Rhodes agreed to work with Hill if the information was of substance.”).

<sup>172</sup> *Id.*

a big jar of change were stolen from the store during the burglary and stashed in the swampy area on the Tribal land located on Big Sandy Lake.<sup>173</sup> None of these items, however, were ever reported missing from the Dollar Lake Store.<sup>174</sup> Nevertheless, a search was arranged, which included a flyover inspection of a snow-covered lake.<sup>175</sup> Investigators found nothing consistent with Donald's claims.<sup>176</sup>

On February 10, 1999, the investigators spoke to Donald's brother, Ed Hill.<sup>177</sup> Ed gave investigators a tennis shoe that Keith Misquadace allegedly wore when he killed Evelyn Malin.<sup>178</sup> The shoe did not match the impressions recovered at the scene of the crime.<sup>179</sup> Nevertheless, one week after speaking to Ed Hill, investigators interrogated Keith Misquadace while he was in custody pending unrelated charges.<sup>180</sup> During his interview on February 17, 1999, Keith denied involvement in the Malin murder, but implicated Ed Hill, Donald Hill, and Raymond Misquadace.<sup>181</sup>

The day after Keith Misquadace implicated Raymond, Bjerga and Special Agent Brad Barker drove to Bagley, two-and-a-half hours northwest of Shamrock Township, to speak with Raymond.<sup>182</sup> Although his last name was "Misquadace," Raymond aligned himself on the Martin side of the family.<sup>183</sup> Raymond's mother and Donald's mother were sisters.<sup>184</sup> Raymond lived primarily with his mother in Bagley away from his relatives in Aitkin County,<sup>185</sup> but he spent a significant amount of time with them growing up and continued to frequently visit them in Aitkin County.<sup>186</sup> Donald considered Raymond like a little brother.<sup>187</sup> Raymond confirmed that he was close with Donald his "whole life."<sup>188</sup>

---

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* at 2.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Beck Report 2/22/99*, *supra* note 169, at 2.

<sup>178</sup> *Id.* Ed said Bradley Misquadace provided the shoe to Don Martin, his father. *See id.*

<sup>179</sup> *Id.* at 3.

<sup>180</sup> *See Keith Interview 2/17/99*, *supra* note 143, at 1.

<sup>181</sup> *Id.* at 2; Dave Bjerga, BCA Report of Investigation, Inv. # 98000062, Feb. 18, 1999\_1505, at 1-2 [hereinafter *Bjerga Report 2/18/99\_1505*]

<sup>182</sup> *Bjerga Report 2/18/99\_1505*, *supra* note 181, at 2.

<sup>183</sup> *See Donald CRU Interview*, *supra* note 144, at 01:12:20.

<sup>184</sup> *Id.* at 00:16:26.

<sup>185</sup> *Keith Interview 2/17/99*, *supra* note 143, at 5.

<sup>186</sup> *Id.*

<sup>187</sup> *See Donald CRU Interview*, *supra* note 144, at 00:12:43.

<sup>188</sup> Interview by Nicholas Foster with Raymond Misquadace, co-defendant, Bagley, Minn. (Aug. 18, 2023) at 00:06:18 [hereinafter *Raymond CRU interview 8/18/23*].



When investigators came to interview Raymond on February 18, 1999, he was in custody for a probation violation in Clearwater County.<sup>189</sup> Raymond denied involvement in the murder, and said he did not remember being in the area at the time of the murder.<sup>190</sup> He initially told investigators that Keith personally confessed to the murder during a phone call.<sup>191</sup> Later in the same interview, Raymond provided a different account, telling investigators that he learned of Keith's involvement through a conversation he had with his mother and aunt.<sup>192</sup> Raymond also told investigators that he heard Pippitt was involved.<sup>193</sup> At the end of the interview, Raymond agreed to take a polygraph examination.<sup>194</sup>

On April 28, 1999, Bjerga returned to Bagley with Beck to administer the polygraph test to Raymond.<sup>195</sup> According to Bjerga, Raymond failed the test.<sup>196</sup> After proclaiming his innocence at the beginning of the interrogation, Raymond eventually confessed to being present at the scene of the crime.<sup>197</sup> He said he was with Neil King, Brian Pippitt, Keith Misquadace, and Donald Hill.<sup>198</sup> He said the group went into the store to steal beer and cigarettes.<sup>199</sup> He said "they" were "in there, they were getting' that stuff, then she musta – I don't know where she came."<sup>200</sup> Raymond said he was not sure how Evelyn was murdered, and that he was not inside when she was killed.<sup>201</sup> He said after they left the store, the group went to the former home of his father, Walter Misquadace, on the Sandy Lake reservation.<sup>202</sup> Raymond would later tell investigators that the house was unoccupied, and was a ripped up, "kind of junky" party house.<sup>203</sup>

---

<sup>189</sup> *Bjerga Report 2/18/99\_1505*, *supra* note 181 at 1.

<sup>190</sup> Transcript of Interview by Dave Bjerga and Brad Barker with Raymond Misquadace, Inv. #98000062 (Feb. 18, 1999) at 7 [hereinafter *Raymond Interview 2/18/99*].

<sup>191</sup> *Bjerga Report 2/18/99\_1505*, *supra* note 181, at 2.

<sup>192</sup> *Id.*

<sup>193</sup> *Raymond Interview 2/18/99*, *supra* note 190, at 3.

<sup>194</sup> *Id.* at 22.

<sup>195</sup> *Raymond Interview 4/28/99*, *supra* note 121, at 1.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.* at 6.

<sup>198</sup> *Id.* at 11.

<sup>199</sup> *Id.* at 22.

<sup>200</sup> *Id.* at 12.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.* at 50; *Pippitt Trial*, *supra* note 1, at 345.

<sup>203</sup> Transcript of Interview by Brad Barker with Raymond Misquadace, Inv. #98000062 (Apr. 30, 1999) at 15-18 [hereinafter *Raymond Interview 4/30/99*].

The next day, Bjerga and Beck visited Donald to take a third statement about the matter.<sup>204</sup> At the time of this interview, Donald was no longer in jail.<sup>205</sup> After having a conversation “off the record” with investigators, Donald admitted during a recorded interview that he was with Keith Misquadace, Brian Pippitt, Raymond Misquadace and Neil King on the evening of the Malin murder.<sup>206</sup> Donald said he did not enter the store, but he said Raymond, Brian and Keith did.<sup>207</sup> He also said that when Evelyn surprised them in the store, Keith hit her with something, and Brian grabbed her.<sup>208</sup>

Shortly thereafter, all five family members implicated by Raymond and Donald were arrested and charged with burglary and murder.<sup>209</sup> The local newspaper, Independent Age, featured their booking photographs on the front page, as depicted in *Figures 9* through *13*.<sup>210</sup> The Aitkin County Sheriff, Dennis J. Landborg, who was four months into his tenure as the newly elected sheriff, personally contacted Evelyn’s son and daughter, Merle and Norma, to update them on the big break.<sup>211</sup> Sheriff Landborg told the media:



Figure 9 - Brian Pippitt, 36, McGregor

Figure 10 - Neil King, 19, Orr

Figure 11 - Keith Misquadace, 19, McGregor

Figure 12 - Raymond Misquadace, 22, Bagley

Figure 13 - Donald Hill, 22, McGregor

<sup>204</sup> Bruce Beck, Aitkin County Sheriff Dept. Supp. Report VIII, ICR # 98-476, May 12, 1999, at 3 [hereinafter *Beck Report 5/12/99*].

<sup>205</sup> *Id.*

<sup>206</sup> Transcript of Interview by Dave Bjerga and Bruce Beck with Donald Hill, Inv. #98000062 (Apr. 29, 1999) at 4 [hereinafter *Donald Interview 4/29/99*].

<sup>207</sup> *Id.* at 7.

<sup>208</sup> *Id.* at 16.

<sup>209</sup> See Mayron, *supra* note 160.

<sup>210</sup> *Five suspects arrested, arraigned in Malin murder*, INDEPENDENT AGE, May 5, 1999, at 1.

<sup>211</sup> Mayron, *supra* note 160.

*[Merle and Norma] were very relieved and thankful to us that we were finally able to solve this. This has been a who-done-it for the whole town, and I think everyone's resting easier now that there have been some arrests.*<sup>212</sup>

Bjerga stated in an interview with the CRU on November 21, 2023, however, that this was a difficult case to investigate.<sup>213</sup> He commented:

*What was one of the problems with this [case]? [Rhodes was] prosecuting a case based on statements from co-participants. You need some direct evidence to corroborate what they are saying. This case did not have a lot of it. ... We had what we had. We had the witnesses that we had... It was a difficult, difficult case. You can only let these sit out there for so long before they get any colder... I knew from the start that this was going to be a tough one.*<sup>214</sup>

---

<sup>212</sup> *Id.*

<sup>213</sup> Interview with Dave Bjerga, BCA Special Agent, Brainerd, Minn. (Nov. 21, 2023) at 00:40:01-00:40:29, 01:35:18-01:36:41 [hereinafter *Bjerga CRU Interview*].

<sup>214</sup> *Id.*

#### **IV.** **Procedural History**

Rhodes filed the criminal complaint on April 30, 1999, the day after Donald's confession and two days after Raymond's.<sup>215</sup> Years of litigation followed. Raymond and Donald pled guilty. Neil King proceeded to trial and was acquitted. Keith Misquadace pled guilty. Last, Pippitt went to trial. He was convicted and appealed that decision. Finally, Pippitt litigated a postconviction relief petition, followed by an appeal of the court's denial of that petition.

##### **A. Raymond Misquadace's Guilty Plea and Sentencing**

Pursuant to a plea agreement, Raymond pled guilty to an amended charge of manslaughter on June 30, 1999.<sup>216</sup> Instead of eliciting testimony from Raymond at the hearing, the Court decided to review the testimony Raymond provided to the grand jury as the factual basis to support the guilty plea.<sup>217</sup> At the time Raymond testified before the grand jury in early June 1999, he had already locked in a plea agreement with Rhodes.<sup>218</sup> Raymond testified mostly consistently with his confession to investigators.<sup>219</sup> On February 26, 2001, after testifying at Pippitt's trial, Raymond was sentenced in accordance with the plea agreement: 58 months in prison.<sup>220</sup>

##### **B. Neil King's Trial**

King pled not guilty and elected to proceed to trial by jury; it began on October 26, 1999.<sup>221</sup> Rhodes called nine witnesses: Norma Horner, Merle Malin, Investigator Bruce Beck, Sherriff's Deputy Scott Turner, Special Agent Dave Bjerga, Sheriff's Deputy Mark Fredin, Sheriff's Deputy John Drahota, Raymond Misquadace, and the medical examiner, Dr. McGee.<sup>222</sup>

---

<sup>215</sup> Complaint at 1, State v. Pippitt, K4-99-258, Apr. 30, 1999 [hereinafter *Pippitt Complaint*].

<sup>216</sup> Transcript of Guilty Plea at 5, State v. Misquadace, K4-99-323 (1999) [hereinafter *Raymond Guilty Plea*].

<sup>217</sup> *Id.* at 13-14.

<sup>218</sup> *Grand Jury Proceedings, supra* note 8, at 453.

<sup>219</sup> *See id.* at 454-528.

<sup>220</sup> Transcript of Sentencing at 10, State v. Misquadace, K0-99-323 (2001) [hereinafter *Raymond Sentencing*].

<sup>221</sup> *See generally* Transcript of Trial, State v. King, K2-99-324 (1999) [hereinafter *King Trial*].

<sup>222</sup> *Id.* at 2, 155, 254.

Horner and Malin testified fairly consistently with their previous statements.<sup>223</sup> Beck, Turner, Bjerga and Fredin all provided information regarding the investigation into the murder.<sup>224</sup>

In addition to testifying about other aspects of the crime, Raymond admitted under cross examination that he previously told investigators that King was “really out of it,” “wasted,” “pretty drunk,” and “coming in and out of consciousness.”<sup>225</sup> He also agreed that there was never any discussion about whether to go into the store among the five.<sup>226</sup> Raymond explained that when they arrived at the store, some just went right in without forethought; King, however, never got out of the car.<sup>227</sup>

King’s attorney moved the Court to enter a judgement of acquittal.<sup>228</sup> Over the prosecutor’s objection, the Court granted the motion.<sup>229</sup> The Court stated:

*I don’t think that I can look at myself in the mirror ...after I do what I have to do this afternoon; if I don’t ... acquit him, if I honestly believe there is just not evidence sufficient to convict him...I’m just crushed with the enormity of the offense. And yet, I can’t lay it on the shoulders of this young man and give a jury a chance to find him guilty, even though I could act after that because he’ll carry that around the rest of his life if a jury finds him guilty. So I’ve got to act. . .*<sup>230</sup>

Ultimately, the judge found that there was insufficient evidence to corroborate Raymond’s testimony and that the evidence of King’s intoxication was sufficient to prevent him from forming intent to commit the crime of aiding and abetting, for which he was charged.<sup>231</sup>

### **C. Donald Hill’s Guilty Plea and Sentencing**

On January 27, 2000, Donald entered a petition to plead guilty to the reduced charge of manslaughter pursuant a plea agreement.<sup>232</sup> At the combined guilty plea/sentencing hearing, Donald allocuted, agreeing with his counsel’s questions that he was driving with friends around Aitkin County on February 24, 1998, and that when they ran out of beer, they stopped at the Dollar Lake Store.<sup>233</sup> He testified that they all agreed to break into the store when they

---

<sup>223</sup> See *id.* at 21-49.

<sup>224</sup> See *id.* at 50-154.

<sup>225</sup> *Id.* at 229-230.

<sup>226</sup> *Id.* at 235.

<sup>227</sup> *Id.* at 230, 235.

<sup>228</sup> *Id.* at 285.

<sup>229</sup> *Id.* at 319.

<sup>230</sup> *Id.* at 304-305.

<sup>231</sup> *Id.* at 316-317.

<sup>232</sup> Transcript of Guilty Plea at 1, 14, State v. Hill, K6-99-326 (2000) [hereinafter *Donald Guilty Plea 2000*].

<sup>233</sup> *Id.* at 16.

discovered it was closed.<sup>234</sup> Donald agreed that “some of the people” went into the store, creating a substantial risk of death to Evelyn, and that Donald failed to prevent that harm to her.<sup>235</sup>

Donald appeared before the Court for sentencing on February 13, 2001.<sup>236</sup> He formally entered his plea of guilty to the Court, something the sentencing judge discovered was inadvertently omitted at the previous hearing.<sup>237</sup> The Court accepted the plea and found him guilty.<sup>238</sup> The Court ultimately sentenced Donald to a term of imprisonment of 58 months, with credit for time served, to run concurrently with a sentence of 18 months for a criminal sexual conduct charge to which Donald pled guilty in March 1999.<sup>239</sup>

#### **D. Keith Misquadace’s Guilty Plea and Sentencing**

On September 27, 2000, Keith, through his counsel, Edith See, reached a plea agreement with the State.<sup>240</sup> The terms of the agreement called for Keith to enter an *Alford*<sup>241</sup> plea to the amended charge of manslaughter and agree to an upward departure sentence of 180 months on that charge.<sup>242</sup> Keith also agreed to plead guilty under *Alford* to unrelated charges of introduction of contraband into the jail; fleeing and theft of a motor vehicle; and burglary, theft, and criminal damage to property, for which he would receive upward departures of 86 months, for a total executed prison sentence of 266 months.<sup>243</sup> The State, in turn, would dismiss an also unrelated criminal sexual conduct charge.<sup>244</sup> The judge accepted Keith’s *Alford* plea on each.<sup>245</sup>

---

<sup>234</sup> *Id.*

<sup>235</sup> *Id.* at 17.

<sup>236</sup> Transcript of Guilty Plea and Sentencing at 1, State v. Hill, K6-99-236\_K5-96-707 (2001) [hereinafter *Donald Guilty Plea and Sentencing 2001*].

<sup>237</sup> *Id.* at 2-4.

<sup>238</sup> *Id.* at 10.

<sup>239</sup> *Id.* at 15, 25-26. See also Transcript of Guilty Plea at 2, 11-12, State v. Hill, K5-96-707\_K9-97-431 (1999) [hereinafter *Donald Guilty Plea 1999*].

<sup>240</sup> See generally Transcript of Guilty Pleas, State v. Misquadace, K5-99-284\_K2-99-64\_K9-99-580\_K0-99-774\_K9-98-648\_K9-99-322 (2000) [hereinafter *Keith Guilty Pleas*].

<sup>241</sup> North Carolina v. Alford, 400 U.S. 25, 38 (1970) (holding that it is constitutional for a court to accept a defendant’s guilty plea, even though the defendant maintained his innocence, where the State demonstrated a strong factual basis for the plea and the defendant clearly expressed his desire to enter the plea based on his belief that the State’s evidence would be sufficient to convict him).

<sup>242</sup> *Keith Guilty Pleas*, *supra* note 240, 2-3.

<sup>243</sup> *Id.* at 3.

<sup>244</sup> See *id.* at 4-5.

<sup>245</sup> *Id.* at 19.

On October 16, 2000, Keith appeared before the Court for sentencing on the charges to which he pled guilty.<sup>246</sup> In what appeared to be a surprise to Rhodes and the Court, Keith's attorney Edith See moved to withdraw Keith's guilty pleas.<sup>247</sup> Rhodes objected.<sup>248</sup> The Court ultimately denied the request, because there was "no good and valid reason" to permit the withdraw.<sup>249</sup> The Court sentenced Keith in accordance with the plea agreement.<sup>250</sup>

### **E. Brian Pippitt's Trial and Sentencing**

Pippitt pled not guilty to the charges and proceeded to trial in International Falls on January 23, 2001.<sup>251</sup> Rhodes's presentation was essentially a repeat of the prosecution in Neil King's case. Like King's case, Rhodes called Norma Horner, Merle Malin, Dr. Michael McGee, John Drahota, Mark Fredin, Scott Turner, Dave Bjerga, Bruce Beck, and Raymond Misquadace.<sup>252</sup> They all testified to generally the same topics that they spoke to at the King trial. Rhodes, however, called two additional witnesses in Pippitt's case that he did not call in King's. The first additional witness Rhodes called was Gary Kaldun, the BCA crime scene team leader for the Malin murder investigation.<sup>253</sup> Second, he called Peter Arnoldi, a fellow inmate of Pippitt's whom he met at the state security hospital in St. Peter, Minnesota.<sup>254</sup> Additionally, Rhodes elicited information from Merle that was not drawn out in the King trial.

Kaldun testified about the forensic aspect of the investigation.<sup>255</sup> Specifically, he testified to the investigative procedures that were conducted in collecting evidence at the scene immediately after the murder, including creating castings of footwear and tire tracks, collection of fibers and hairs, blood collections, fingerprint dusting, among other forensic review.<sup>256</sup> He ultimately concluded that based on the evidence at the crime scene, the point of entry into the store was through the basement window.<sup>257</sup> He also testified that the blood found at the scene

---

<sup>246</sup> Transcript of Motion Hearing and Sentencing at 1, State v. Misquadace, K5-99-284\_K2-99-64\_K9-99-580\_K0-99-774 (2000) [hereinafter *Keith Motion to Withdraw Plea and Sentencing*].

<sup>247</sup> *Id.* at 3.

<sup>248</sup> *Id.* at 3-4.

<sup>249</sup> *Id.* at 18.

<sup>250</sup> *Id.* at 25.

<sup>251</sup> *Pippitt Trial*, *supra* note 1, at 1.

<sup>252</sup> *Id.* at 2.

<sup>253</sup> *Id.* at 363, 365.

<sup>254</sup> *Id.* at 490, 498.

<sup>255</sup> *Id.* at 363-399.

<sup>256</sup> *Id.* at 366.

<sup>257</sup> *Id.* at 373.

was cat blood that was fresh and bright; Kaldun testified that it was “very possibl[e]” that a cat could have cut itself on a small piece of glass still protruding from the frame of the window.<sup>258</sup>

Arnoldi testified that Pippitt admitted to him that he and one of his cousins, “a guy by the name of Hill,” and two other people broke into the “Dollar store.”<sup>259</sup> Arnoldi also said that Pippitt “helped hold her down while somebody else stuffed toilet paper or Kleenex into the lady’s mouth.”<sup>260</sup> He also testified that Pippitt admitted to stealing cigarettes and beer.<sup>261</sup> According to Arnoldi, Pippitt was planning on making Donald look like a liar based on inconsistencies in Donald’s statements.<sup>262</sup> He also testified that Pippitt was looking for an alibi and indicated “someone would be giving him an alibi. . .”<sup>263</sup> Arnoldi admitted that Pippitt had let Arnoldi see the criminal complaint, although he claimed that he did not see it until after Pippitt had made the admissions.<sup>264</sup> Arnoldi also testified that he was not offered any deals in exchange for his testimony.<sup>265</sup>

Rhodes recalled Merle toward the end of his case-in-chief to elicit testimony that Evelyn was unable to engage the deadbolt on the front door of the store because it had a sag that caused a misalignment.<sup>266</sup> Merle testified that on one occasion he had deadbolted the door and his mother was unable unlock or open the door as a result.<sup>267</sup>

When the prosecution rested, Murtha moved the court to enter a judgement of acquittal on the basis that Raymond Misquadace’s testimony was not sufficiently corroborated.<sup>268</sup> The Court denied the motion, finding:

*The evidence of Ray Misquadace, the witness who was an accomplice, indicates that the crime was committed and links it to the defendant. Standing alone, therefore, with that evidence, there can be no conviction. However, there is also the testimony of Mr. Arnoldi. Mr. Arnoldi, in this Court's view, did link, lend, corroborative evidence, which is not required in every element of the offense, but only some, placing him there. This is in the nature of what I would call your confession or statement against interest and for the most part a good amount of*

---

<sup>258</sup> *Id.* at 399.

<sup>259</sup> *Id.* at 491.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> *Id.* at 492.

<sup>263</sup> *Id.* at 493, 497.

<sup>264</sup> *Id.* at 503-504.

<sup>265</sup> *Id.* at 495.

<sup>266</sup> *Id.* at 510.

<sup>267</sup> *See id.*

<sup>268</sup> *Id.* at 517-518.



*that evidence came in without objection, not that it was objectionable. And, therefore, I must submit that to the jury on that basis.*<sup>269</sup>

Murtha then focused his case-in-chief on discrediting Raymond and Arnoldi's testimony. To discredit Arnoldi, Murtha offered Arnoldi's prior convictions for offenses involving dishonesty.<sup>270</sup> He also called Beck to testify that Arnoldi had made a request in exchange for providing information on Pippitt—a request to change confinement facilities.<sup>271</sup>

To discredit Raymond, Murtha called Raymond's uncle, James Hill, who testified that Raymond has a reputation for being untruthful and would lie under oath to get out of trouble.<sup>272</sup> Murtha also called several witnesses to testify to their recollection of events at the time of the murder in order to undermine details of Raymond's testimony, including Wanda Misquadace and Bryan Lee Misquadace—siblings of Pippitt.<sup>273</sup> Bryan Lee testified that he had never known Raymond to spend any time at all with Pippitt, and would be unlikely to hang out with him for an entire afternoon and evening.<sup>274</sup> Murtha also called his defense investigator to discredit Raymond's timeline and provide evidence suggesting Raymond concocted his testimony.<sup>275</sup>

Murtha then called several witnesses to testify to Pippitt's whereabouts on the evening of the murder, which served to both establish an alibi for Pippitt while further impeaching Raymond's testimony. Specifically, Murtha called Michael Misquadace, Joanne Kruse, Shannon Webb, Wesley Misquadace, and Russ Bower to piece together Pippitt's alibi.<sup>276</sup> Michael Misquadace, Pippitt's nephew, testified that he was with Pippitt all day and all night on February 24, 1998, on a trip to Grand Casino in Onamia and back home.<sup>277</sup> Michael testified that Pippitt gambled and won \$460.<sup>278</sup> Michael's fiancée (Joanne Kruse), her sister (Shannon Webb), and her sister's fiancée (Wesley Misquadace) all testified that Michael, Pippitt, and Brandon visited the Kruse home late in the evening, maybe around 10:00p.m., coming from the casino.<sup>279</sup>

---

<sup>269</sup> *Id.* at 519-520.

<sup>270</sup> *Id.* at 676.

<sup>271</sup> *Id.* at 527-528.

<sup>272</sup> *Id.* at 532.

<sup>273</sup> *See id.* at 534-541.

<sup>274</sup> *See id.* at 538.

<sup>275</sup> *See id.* at 542-556.

<sup>276</sup> *See id.* at 559-603.

<sup>277</sup> *Id.* at 562-69.

<sup>278</sup> *Id.* at 563.

<sup>279</sup> *See id.* at 573-79, 582-86, 587-90.

In rebuttal, the prosecution called Allen Forschen, Vice President of Security at Grand Casino, to testify that despite the fact that Pippitt was a preferred customer card holder at Grand Casino, there was no record of him using his card at the casino on February 24, 1998.<sup>280</sup> Forschen testified that even if Pippitt did not use his preferred customer card, if he played Blackjack, winnings would be recorded on a chip sheet.<sup>281</sup> Forschen testified that in review of the multiple transaction logs and W2G tax forms from that date, there was no record of Pippitt.<sup>282</sup> In surrebuttal, Pippitt took the stand to testify.<sup>283</sup> He admitted to having a preferred customer card, but explained that he rarely uses it when he plays Blackjack.<sup>284</sup> Rhodes cross-examined him, drawing admissions that on three separate occasions Pippitt had an opportunity to give an alibi to investigators during questioning, and on three separate occasions he failed to do so.<sup>285</sup>

The jury convicted Pippitt of the two alternate counts of premeditated murder and felony murder.<sup>286</sup> Before being sentenced, Pippitt addressed the court saying, “I still maintain my innocence. I have – I have no knowledge of this and I basically don’t feel like this is fair. I don’t know.”<sup>287</sup> The court then sentenced Pippitt to two concurrent terms of life in prison.<sup>288</sup>

## **F. Brian Pippitt’s Direct Appeal**

Pippitt’s direct appeal alleged six issues: first, whether there was sufficient evidence to support the convictions; second, whether Pippitt was entitled to a new trial due to errors in the jury instructions; third, whether the District Court abused its discretion by not admitting into evidence a letter offered by Murtha; fourth, whether newly discovered evidence entitled him to a new trial; fifth, whether the State withheld exculpatory information from the grand jury and misled it to obtain an indictment; and sixth, whether one of his convictions and sentences were required to be vacated.<sup>289</sup>

---

<sup>280</sup> *See id.* at 613-614, 617.

<sup>281</sup> *See id.* at 618.

<sup>282</sup> *Id.* at 617-618.

<sup>283</sup> *Id.* at 620.

<sup>284</sup> *Id.* at 620-621.

<sup>285</sup> *Id.* at 621-623.

<sup>286</sup> Transcript of Sentencing at 3-4, *State v. Pippitt*, K4-99-325 (2001).

<sup>287</sup> *Id.* at 3.

<sup>288</sup> *Id.* at 3-4.

<sup>289</sup> *State v. Pippitt*, 645 N.W.2d 87, 89 (Minn. 2002).

The first issue centered on whether Arnoldi's testimony was sufficient to corroborate Raymond's accomplice testimony.<sup>290</sup> The Minnesota Supreme Court found that Arnoldi's testimony sufficiently corroborated Raymond's testimony.<sup>291</sup> Pippitt's second issue focused on the Court's failure to give an instruction that the jury should not draw any inference from his failure to testify in his own defense.<sup>292</sup> The Court found that because Pippitt did not request the instruction, and because Pippitt testified in surrebuttal, there was no failure on the part of the District Court.<sup>293</sup>

The Court rejected issues three through five, which were raised by Pippitt in a *pro se* supplemental brief.<sup>294</sup> Finally, the Court granted relief by vacating judgment of conviction and sentence for the first-degree murder while committing burglary and affirmed the conviction and sentence for first-degree premeditated murder.<sup>295</sup>

### **G. Brian Pippitt's Postconviction Relief Petition and Appeal**

Pursuant to Pippitt's petition for postconviction relief, the District Court held a hearing on May 16, 2006, to accept new evidence discovered after trial.<sup>296</sup> Pippitt's counsel, Robert O'Malley, called seven witnesses: Agnes Chief, Merle Malin, Jeri Severson, Howard Martin, Thomas Murtha, Bradley Rhodes, and Brian Pippitt.<sup>297</sup>

Chief provided testimony that supported Pippitt's alibi at the casino as well as undermined Raymond's trial testimony. Specifically, she testified that Michael, Brandon and Pippitt borrowed Chief's van to get to the casino the day of the murder.<sup>298</sup> She said she gave Pippitt a check so he had some money to gamble.<sup>299</sup> Chief also testified that she was with Keith that night in her home; she confirmed that Keith was with her until 10:00p.m. or 11:00p.m. because she remembered yelling for him to shut off the television and go to sleep since he had school the next day.<sup>300</sup> Since Chief had no other vehicles, Keith had no alternative means to

---

<sup>290</sup> *Id.* at 93.

<sup>291</sup> *Id.* at 94.

<sup>292</sup> *Id.*

<sup>293</sup> *Id.* at 95.

<sup>294</sup> *Id.* at 95-96.

<sup>295</sup> *Id.* at 96.

<sup>296</sup> See Transcript of Postconviction Review at 1, Pippitt v. State, KX-99-325 (2006) [hereinafter *Pippitt Postconviction Review Proceeding*].

<sup>297</sup> *Id.* at 2.

<sup>298</sup> *Id.* at 10.

<sup>299</sup> *Id.*

<sup>300</sup> *Id.* at 12.

leave the house.<sup>301</sup> She also remembered hearing the van return later that evening.<sup>302</sup> Finally, Chief testified that the home Raymond claimed to have gone to after the murder, his father's old place, was actually occupied by Bryan Lee Misquadace; it was renovated and did not match the description Raymond provided at trial.<sup>303</sup>

Merle testified that while he did not remember what he testified about at trial, he does remember that his mother was capable of closing up the store and locking all locks, including the deadbolt.<sup>304</sup> Jeri Severson, the crime victim advocate for the Aitkin County Sheriff's Department at the time of the Pippitt trial, testified that Raymond Misquadace made statements to her after the trial that suggested he fabricated his testimony against Pippitt.<sup>305</sup> Howard Martin testified to details that impeached Raymond's testimony at trial.<sup>306</sup>

Murtha testified in his own defense against allegations of ineffective assistance of counsel.<sup>307</sup> He provided explanations for why he did or did not call certain individuals, and why Pippitt did not testify in the defense case-in-chief, essentially saying it was Pippitt's decision.<sup>308</sup> Rhodes admitted during his testimony that he did argue at trial that Pippitt had no alibi prior to May 1999 even though he was aware Michael provided a statement early in the case investigation that put Pippitt with Michael at the casino.<sup>309</sup>

Finally, Pippitt testified in support of his petition.<sup>310</sup> He explained he had not provided an alibi to investigators when he was initially questioned because he did not remember where he was until he had a conversation with his mother about it sometime after he was charged.<sup>311</sup> Pippitt also provided more detail about his alibi the day of the murder, describing the events of the day that culminated in visiting the casino with his nephews, and a visit to Wesley's girlfriend's house, before returning home after 9:00p.m.<sup>312</sup>

---

<sup>301</sup> *Id.* at 15.

<sup>302</sup> *Id.* at 18.

<sup>303</sup> *Id.* at 17.

<sup>304</sup> *See id.* at 26.

<sup>305</sup> *Id.* at 33-38.

<sup>306</sup> *Id.* at 41-49.

<sup>307</sup> *Id.* at 51.

<sup>308</sup> *Id.* at 51-73.

<sup>309</sup> *See id.* at 92-97.

<sup>310</sup> *Id.* at 102.

<sup>311</sup> *Id.* at 103-104.

<sup>312</sup> *Id.* at 107-112.

Pippitt testified that he did not see Raymond, Neil, Donald, or Keith that day.<sup>313</sup> Pippitt explained that he did have conversations with Arnoldi about the case, but only stated that he was innocent and how he could not understand why people were implicating him in the crime.<sup>314</sup> Pippitt testified that he allowed Arnoldi to read through the criminal complaint.<sup>315</sup>

In addition to the live witness testimony, Pippitt offered documentary evidence in support of the petition. For example, Pippitt submitted an affidavit from Julie Davison, an investigator, who wrote that during an interview with Donald Hill sometime after the trial, Donald stated that investigators interrogated him “off the record” and “unrecorded” for three hours.<sup>316</sup> According to Davison, Donald also stated that he was shown Raymond Misquadace’s statement and was “forced” to match his statement to Raymond’s.<sup>317</sup> Donald also told Davison that his testimony at trial “would not have been good for the state.”<sup>318</sup>

Another affidavit offered was signed by Keith Misquadace which stated that Keith was not at the Dollar Lake Store on February 24, 1998.<sup>319</sup> He stated that evening, he was at home with Agnes Chief, on the phone speaking with his girlfriend of the time, Theresa Coulton.<sup>320</sup> He also explained in his affidavit that he felt pressure to accept a deal offering a shorter prison sentence in exchange for the *Alford* plea, despite his actual innocence, but later tried to withdraw it unsuccessfully.<sup>321</sup>

Craig Licari also provided an affidavit which was offered to the Court by Pippitt’s defense team, which explained Licari was incarcerated with Arnoldi and Pippitt and housed at St. Peter’s hospital.<sup>322</sup> Licari explained that he was surprised to learn that Arnoldi testified against Pippitt because Arnoldi told Licari that he believed Pippitt was innocent.<sup>323</sup> According to Licari, Arnoldi never mentioned that Pippitt made admissions of guilt.<sup>324</sup>

---

<sup>313</sup> *Id.* at 112.

<sup>314</sup> *Id.* at 113.

<sup>315</sup> *Id.*

<sup>316</sup> Affidavit of Julie Davison at 2, Pippitt v. State, K4-99-325, Jul 18, 2005.

<sup>317</sup> *Id.*

<sup>318</sup> *Id.* at 3.

<sup>319</sup> Affidavit of Keith Misquadace at 1, Pippitt v. State, K4-99-325, Jun. 25, 2005 [hereinafter *Keith’s Affidavit*].

<sup>320</sup> *Id.*

<sup>321</sup> *Id.* at 1-2.

<sup>322</sup> Affidavit of Craig Licari at 1, Pippitt v. State, K4-99-325, Feb. 22, 2005.

<sup>323</sup> *Id.* at 2.

<sup>324</sup> *See id.* at 1.

The District Court denied relief and provided several reasons why. First, the Court found that Jeri Severson’s testimony about Raymond Misquadace’s recantation was hearsay and excluded from consideration.<sup>325</sup> Further, all the newly discovered evidence was “doubtful, impeaching, or cumulative,” and thus, failed to meet the standard of admissibility in *State v. Race*.<sup>326</sup> Additionally, the Court found that Murtha’s decision about which witnesses to call did not rise to the level of ineffective assistance of counsel.<sup>327</sup> Finally, Rhodes’s comments about Pippitt’s alibi did not warrant a new trial because the issue was procedurally barred under *State v. Knaffla*.<sup>328</sup>

On appeal, the Minnesota Supreme Court affirmed the District Court’s decision for three reasons.<sup>329</sup> First, the Court found that the new evidence Pippitt provided at the postconviction hearing failed to meet the requisite standards warranting a new trial.<sup>330</sup> Specifically, the Court found that Severson’s postconviction testimony failed the test in *Larrison v. United States*, which requires the Court to be “reasonably certain that the recantation is genuine.”<sup>331</sup> The Court found that Severson’s statement was vague and non-specific.<sup>332</sup> Similarly, the Court found that Licari’s affidavit failed the *Race* test, because it simply impeached Arnoldi’s testimony.<sup>333</sup> Regarding Merle’s postconviction testimony, the Court found that the evidence suggested that Merle did not lie at trial, he simply made a statement contradicting his earlier testimony.<sup>334</sup>

Next, the Court found that the prosecutorial misconduct issue stemming from Rhodes’s comments about Pippitt not having an alibi prior to May 1999 and that his alibi was fabricated, was *Knaffla* barred.<sup>335</sup> Finally, the Court rejected the notion that Pippitt was denied effective assistance of counsel because Pippitt did not show that counsel’s decisions regarding witness

---

<sup>325</sup> District Court Order re Postconviction Review at 2, Pippitt v. State, K4-99-325 (2006) [hereinafter *Postconviction Review Order*].

<sup>326</sup> *Id.* citing *Race v. State*, 504 N.W.2d 214 (Minn. 1993) (stating the standards for admissibility of new evidence in support of a new trial).

<sup>327</sup> *Postconviction Review Order*, *supra* note 325, at 2.

<sup>328</sup> *Id.* citing *Gassler v. State*, 590 N.W.2d 769, 771 (Minn. 1999) (“[o]nce a defendant has had a direct appeal, ‘all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief’) quoting *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976).

<sup>329</sup> See Pippitt v. State, 737 N.W.2d, 221, 224 (Minn. 2007).

<sup>330</sup> See *id.* at 224-29.

<sup>331</sup> *Id.* at 227 citing *Opsahl v. State*, 710 N.W.2d 776, 782 (Minn. 2006).

<sup>332</sup> *Id.* at 227.

<sup>333</sup> *Id.* at 228.

<sup>334</sup> *Id.*

<sup>335</sup> *Id.* at 229.

selection were objectively unreasonable.<sup>336</sup> Further, the Court similarly found that Murtha's failure to object to Rhodes's comment about a lack of alibi did not rise to the level of ineffective assistance of counsel because: (1) there was no evidence on the record of Michael's initial statements to police establishing Pippitt's alibi that would have warranted an objection by Murtha; and (2) there was theoretical rationale for why defense counsel would not object—specifically, because an objection may have drawn attention to a discrepancy in Murtha's own presentation of evidence which established Pippitt's alibi.<sup>337</sup>

---

<sup>336</sup> *Id.* at 230.

<sup>337</sup> *Id.* at 230-231.

**V.**  
**The CRU's Findings**

**A. It was implausible for Pippitt to commit the crime in accordance with the prosecutor's theory.**

Although the State concluded that the murderers entered the Dollar Lake Store through the basement window, this would have been highly implausible. To enter the basement through the window, one of these large men would have had to crouch into a narrow cement-lined well, where he would encounter a window boarded up from inside the basement. While crouched in the well, he would have to carefully remove two glass panes and break the third without showering the basement floor with glass.

Once the glass was removed, he would then have to reach his arm inside the narrow opening of the window frame and pry off the laths nailed from within. Then, once the laths were removed, he would have to slide through an 18-inch by 34-inch frame without cutting himself (and leaving blood at the scene), without leaving trace evidence, without crushing the boxes below the window, and without leaving footprints immediately underneath of the window. This would all have to happen on a Tuesday night in February, while intoxicated. Two experts have each produced a report that independently concluded this was not plausible.<sup>338</sup>

Given the way that law enforcement officers found the crime scene, a far more likely theory is that someone entered the Dollar Lake Store with a motive to kill Malin, given that her body was found smeared with feces. The murderer was more likely a person with a personal vendetta against Evelyn, who entered and exited through the front door of the store which first responders found locked upon arrival. To be able to engage the deadbolt lock upon exit, as evidence suggested, the murderer must have had access to a spare key. Evelyn's key was found hanging inside the store in its normal place. This fact, alone, negates the prosecutor's theory of the case, given that the prosecutor presented evidence at trial that the assailants entered through the window and left through the front door.

Similarly, although the prosecutor's theory was that the defendants' intent was to steal beer and cigarettes, photographic and testimonial evidence demonstrated nothing was taken from the store. Photographic evidence suggested that only parts of the building were searched, like

---

<sup>338</sup> See generally Netzel, *supra* note 70; Brent Turvey, *Crime Scene Analysis – Minnesota v. Pippitt*, Dec. 30, 2021, at 12.



Evelyn's bedroom, while others, like the store, were untouched. Even the cash register appeared undisturbed. Despite this incongruency, the prosecutor presented evidence that the deadbolt was not locked and presented unreliable testimony.

**1. No one climbed through the south basement window.**

Dr. Brent Turvey, Forensic Scientist and Criminologist, and Linda Netzel, a forensic expert consultant, each found – without knowledge of the other's conclusions – that the crime scene was staged to make the south basement window appear as the assailants' entry point.<sup>339</sup> Their conclusions contradict that of Gary Kaldun, the Crime Scene Coordinator, who stated that the "south basement window...was used as the point of entry for the intruder(s)."<sup>340</sup> Netzel and Turvey concluded that no one climbed through the south basement window.<sup>341</sup>

The experts highlight four points, among others, that challenge the theory that the basement window was the point of entry: (a) analysis of the glass removed from the window; (b) analysis of the laths removed from the window frame; (c) lack of forensic evidence; and (d) placement of items around the scene of the crime.

---

<sup>339</sup> See Netzel, *supra* note 70, at 26; Turvey, *supra* note 338, at 12. Dr. Turvey completed his report before Ms. Netzel. Ms. Netzel did not know what Dr. Turvey's conclusions were at the time she drafted her expert report. Interview with Linda Netzel, criminalist, telephone (Dec. 18, 2023). In fact, Turvey was hired by Jim Cousins on behalf of Brian Pippitt because of his familiarity with the crime scene. Interview with Jim Cousins, attorney for Brian Pippitt, telephone (May 23, 2024) [hereinafter *Cousins Interview 5/23/24*]. Specifically, Turvey had been hired by Edith See in 2000 in advance of Keith Misquadace's case. See Turvey, *supra* note 338, at 3. Turvey had been in the basement of the Dollar Lake Store and evaluated the crime scene personally as part of his evaluation of the case for Edith See. *Cousins Interview 5/23/24*.

<sup>340</sup> *BCA Lab Report 3/13/98*, *supra* note 38, at 9.

<sup>341</sup> Netzel, *supra* note 70, at 26; see Turvey, *supra* note 338, at 15.

**(a) Glass evidence suggests that the basement window was not the actual point of entry.**

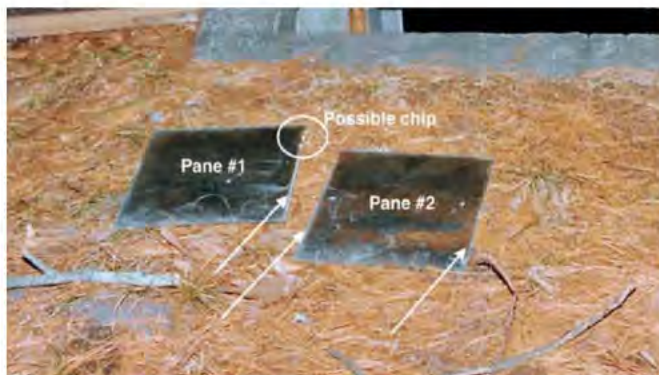


Figure 14 – Photograph 2 from Netzel Report



Figure 15 - Photograph 24 from Netzel report

Three windowpanes were removed from the south window; two were intact and discovered outside in the yard (Figure 14), while one was broken and found in the basement (Figure 15).<sup>342</sup> Additionally, small glass fragments were identified in the window well (Figure 16).<sup>343</sup>

Most of these glass pieces in the window well were less than 25 millimeters.<sup>344</sup> No miniscule glass fragments, however, were noted inside the basement.<sup>345</sup> This is significant because when a plate glass window breaks, it



Figure 16 - Photo 4 with marker 3 identifying small glass pieces from Netzel Report



Figure 17 - Photograph 26 from Netzel Report

shatters at the point of impact.<sup>346</sup> The majority of the broken glass will move in the same direction as the force causing the break, while some will move in the opposite direction.<sup>347</sup> One study found that striking a plate glass window with a smooth round object will create hundreds of glass fragments between .25 and .5

<sup>342</sup> See Netzel, *supra* note 70, at 7, 21.

<sup>343</sup> *Id.* at 13.

<sup>344</sup> See *id.* at 8.

<sup>345</sup> See *id.* at 24.

<sup>346</sup> *Id.* at 23.

<sup>347</sup> *Id.*

millimeters in size.<sup>348</sup> If the assailant entered into the Dollar Lake Store by breaking the south basement window with force from outside, one would expect to find small pieces of glass inside and directly below the window.<sup>349</sup> Similarly, the large glass shards found in the basement depicted in *Figure 15* have a break pattern that is inconsistent with an impact break like that featured in *Figure 17*.<sup>350</sup>

One possible way to reconcile the scene is that the intruder removed each pane of the window with careful precision, successfully removing two from the window frame by meticulously chipping away the glazing putty that kept the glass in place. The intruder would have had to use enough force to break the putty away, but not so much force to shatter the glass plate in a manner that would result in hundreds of glass fragments as depicted in *Figure 17*.



*Figure 18 - Photograph 11 from Netzel Report*

The white flakes in *Figure 18* are likely window glazing putty or caulk.<sup>351</sup> They were resting on the top surface of other debris in the window well, consistent with being recently deposited.<sup>352</sup> The toolmarks as depicted in *Figures 19* and *20* suggest that the panes of glass were removed from inside.<sup>353</sup> Specifically, the chip marks on the inside of the wooden window frame suggest the windowpanes were pried off and

dismantled from inside the basement.<sup>354</sup> If an intruder made these marks to gain entry into the store from outside, the tool marks would have been on the exterior of the window frame instead of the interior of the window frame where they were observed.<sup>355</sup>

---

<sup>348</sup> *Id.*

<sup>349</sup> *Id.*

<sup>350</sup> *Id.*

<sup>351</sup> *Id.* at 13.

<sup>352</sup> *Id.*

<sup>353</sup> Turvey, *supra* note 338, at 13.

<sup>354</sup> *Id.*

<sup>355</sup> *Id.*

The experts' findings are incongruent with the prosecutor's theory, that these men happened upon the Dollar Lake Store after consuming large amounts of alcohol.<sup>356</sup> It is unlikely that the individuals who had been driving for hours while consuming alcohol would have the patience and dexterity to release the windowpanes in this manner.



Figure 19 – BCA crime scene photo of south basement window frame



Figure 20 – BCA crime scene photo of south basement window frame

**(b) Evidence pertaining to the laths suggests that the basement window was not the point of entry.**

Two one-inch by three-inch laths were nailed to the inside of the basement window frames of the Dollar Lake Store on the night of the murder, as depicted in *Figure 21*.<sup>357</sup> The south basement window still had a portion of the bottom lath attached to the window frame at the time the forensic team conducted its analysis.<sup>358</sup>



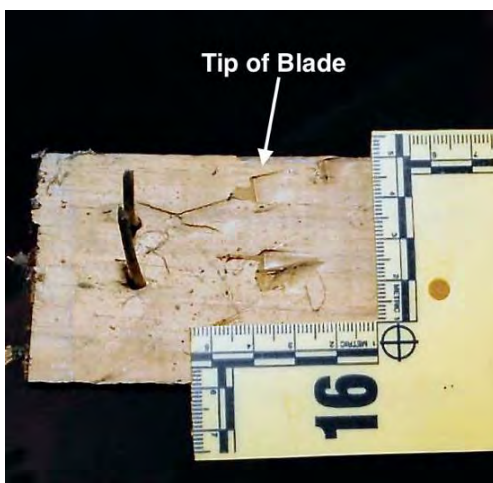
Figure 21 - BCA crime scene picture of an undisturbed basement window

<sup>356</sup> See *Pippitt Trial*, *supra* note 1, at 18.

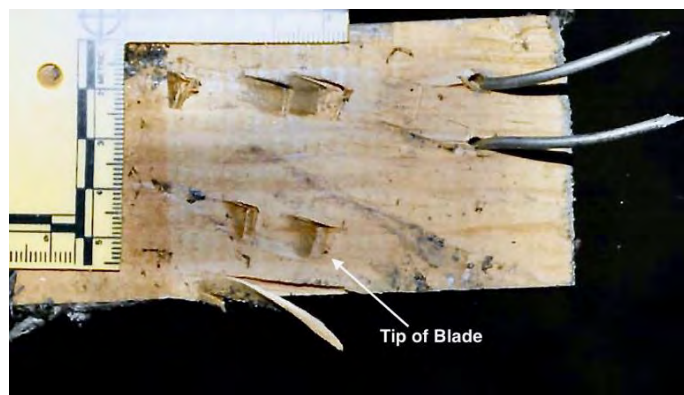
<sup>357</sup> *BCA Lab Report 3/13/98*, *supra* note 38, at 9.

<sup>358</sup> *Id.*

The cylindrical marks on the interior edges of the frame as well as the tool marks on the underside of the laths suggest a screwdriver was used to pry out the laths.<sup>359</sup> To bend the nails to the extent as depicted in *Figure 23* requires rotation of the lath beyond ninety degrees, past the right side of the window frame.<sup>360</sup> To produce the toolmarks and bent shape of the nails as depicted in *Figure 22* and *Figure 23*, the intruder would have had to pry the laths from inside the store.<sup>361</sup> To perform this work in the tight space of the window well from outside the store—without leaving trace evidence deposits on the window frame or boxes stacked below the window—would have been extremely difficult.<sup>362</sup> No trace evidence deposits were found.



*Figure 22- Photograph 19 from Netzel Report*



*Figure 23 - Photograph 18 from Netzel Report*

<sup>359</sup> Netzel, *supra* note 70, at 17; see *BCA Lab Report 3/13/98*, *supra* note 38, at 9.

<sup>360</sup> Netzel, *supra* note 70, at 18-19.

<sup>361</sup> *Id.* at 19.

<sup>362</sup> *Id.* Bjerga testified that the window well dimensions were eighteen inches wide, two-feet by three-inches deep, and two-feet by ten-inches long. See *Pippitt Trial*, *supra* note 1, at 247.

**(c) Lack of trace evidence suggests that the basement window was not the point of entry.**

Entry through the broken south basement window would have likely left some trace evidence.<sup>363</sup> The broken muntins exposing raw wood which are encircled in *Figure 24*, appear to



*Figure 24 – Photograph 25 from Netzel Report*

have sharp points.<sup>364</sup> Similarly, a nail jutted out from the outer jamb of the exterior window frame and the splintered edge of the portion of the bottom lath remained attached to the window frame as shown in *Figure 25*.<sup>365</sup> These barbs framed the window opening, creating the potential to snag, scrape, and cut.<sup>366</sup>

Trace evidence was, in fact, collected from the window frame, as illustrated by marker 2 in *Figure 26*. The forensic laboratory concluded, however, that item 2 consisted only of “animal hairs and spider web[s].”<sup>367</sup> The only blood collected near the scene—on a piece of glass found inside the basement and on the window well wall—belonged to a cat.<sup>368</sup> Kaldun referred to the blood as “bright,” suggesting it was deposited within a day or two.<sup>369</sup>



*Figure 25 – Photograph 25 from Netzel Report*

<sup>363</sup> Netzel, *supra* note 70, at 22.

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

<sup>366</sup> See *Store Diagram*, *supra* note 72, at 2.

<sup>367</sup> Netzel, *supra* note 70, at 12 (referencing BCA forensic laboratory bench notes from Forensic Scientist Laura Nelson); see *BCA Lab Report 3/19/99*, *supra* note 107, at 5.

<sup>368</sup> *Pippitt Trial*, *supra* note 1, at 248.

<sup>369</sup> *Id.* at 398.

This underscores the unlikelihood that one of the charged five men passed through this window. The forensic evidence collected at the scene shows that a cat was unable to navigate through the window without getting cut by the glass, leaving traces of blood and fur behind.



Figure 26 - BCA crime scene photograph of south window well

blotted with footprints.<sup>371</sup>

Therefore, it would have been highly implausible for a human being as large as the men accused in this case to have passed without leaving evidence behind.<sup>370</sup> More to this point, there were no leaves or debris transferred into the basement as would be expected with someone squeezing through such a small space, nor were any of the boxes stacked immediately below the window crushed, trampled, or even

#### (d) Placement of items suggests the crime scene was staged.

One of the most significant findings that each of the experts made was that the intruder took the time and care to stage the crime scene to make it appear as though the south basement window was the entry point.<sup>372</sup> Two of three glass panes were outside on the ground and largely intact.<sup>373</sup> The third glass pane was broken and discovered on the dirt floor inside the basement to the right side of four stacks of boxes.<sup>374</sup> The broken glass appeared to be a result of dropping, not forceful impact.<sup>375</sup> If the window was



Figure 27 – Photo 23 from Netzel report

<sup>370</sup> Raymond testified at the grand jury proceeding that he was five-foot, ten inches and weighed 250 lbs. *Grand Jury Proceedings, supra* note 8, at 464. He testified that Donald was six-three or six-four, weighing 260 or 270 lbs. *Id.* Neil King was “smaller” than Raymond and about 150 or 160 lbs. *Id.* Finally, Brian Pippitt was over six feet tall, weighing about 280 lbs. *Id.*

<sup>371</sup> Turvey, *supra* note 338, at 9-10.

<sup>372</sup> Netzel, *supra* note 70, at 26; Turvey, *supra* note 338, at 15.

<sup>373</sup> Netzel, *supra* note 70, at 19.

<sup>374</sup> *See id.* at 9, photo 5; *see id.* at 21.

<sup>375</sup> *Id.* at 25

broken from outside, the glass shards could not have made it past the stacks of boxes and V8 juice containers depicted in *Figure 27* and could not have done so without leaving miniscule shards along the way.<sup>376</sup>

Netzel summed up her staging analysis as follows:

*Like items were placed within close proximity to each other and neatly arranged. On the outside of the south window, the two panes of glass were side by side in the same orientation; the two lath boards were side by side with their lengths parallel to the building; the storm window from the southeast, main floor window was resting against the building and within inches of the window well versus nearer the window it came from; the muntins are side by side and in the same orientation; the large shards of glass are also lying next to each other on the box with the muntins and on the floor below this box. Remarkably, all of the shards of glass visible in crime scene images are lying flat and do not overlap at all. This is not consistent with breaking and entering that would typically take seconds to minutes but is consistent with staging that required a prolonged effort.*<sup>377</sup>

## **2. The prosecutor’s theory at trial was incongruous with the evidence.**

Bradley Rhodes was the lead prosecutor and Aitkin County Attorney at the time of the Pippitt trial.<sup>378</sup> He joined the Aitkin County Attorney’s Office as an assistant county attorney in 1988.<sup>379</sup> Rhodes was appointed to Aitkin County Attorney in 1992, and then was elected for two four-year terms.<sup>380</sup> Murtha, Pippitt’s trial defense attorney, defeated Rhodes for re-election in 2002.<sup>381</sup> In 2007, Rhodes was disbarred from the practice of law in Minnesota.<sup>382</sup>

The primary concern with Rhodes’s conduct in this case is that he presented a case theory that conflicted with objective evidence.<sup>383</sup> He did so in at least four ways. First, he presented

---

<sup>376</sup> See Turvey, *supra* note 338, at 10; Netzel, *supra* note 70, at 20.

<sup>377</sup> Netzel, *supra* note 70, at 24. Dr. Turvey arrives at a similar conclusion. See Turvey, *supra* note 338, at 15. For a visual aide of Netzel’s summation, see Appendix A.

<sup>378</sup> See generally *Pippitt Trial*, *supra* note 1; Bentley, *supra* note 105 (establishing Bradley Rhodes was County Attorney at the time of the case).

<sup>379</sup> *Former Aitkin County attorney disbarred*, AITKINAGE.COM, Nov. 7, 2007, [https://www.messagemedia.co/aitkin/news/former-aitkin-county-attorney-disbarred/article\\_174e70c9-4f93-5fe7-b3fe-351f9bfec8b3.html](https://www.messagemedia.co/aitkin/news/former-aitkin-county-attorney-disbarred/article_174e70c9-4f93-5fe7-b3fe-351f9bfec8b3.html) (last visited Jan. 21, 2024).

<sup>380</sup> *Id.*

<sup>381</sup> *Id.*

<sup>382</sup> In re: Petition for Disciplinary Action Against Bradley C. Rhodes, no. A04-2252, Nov. 1, 2007, pg 3. Rhodes was disbarred for “repeated neglect of client matters and noncommunication with clients, his financial misconduct involving \$5,000 in client funds, his failure to obey the conditions of the prior disciplinary probation, and his repeated failure to cooperate with the disciplinary process.” *Id.* at 12. He also had three instances of prior professional discipline for similar misconduct. *Id.* at 3.

<sup>383</sup> The American Bar Association sets the standard on how prosecutors should approach criminal cases:



evidence to the jury that suggested the front door was not deadbolted, which was contradicted by photographic evidence of the crime scene. Second, he offered the jury testimony that beer and cigarettes were stolen from the store, which was also contradicted by photographic evidence. Third, he presented testimony from Raymond which was unreliable. Fourth, he presented unreliable testimony from Peter Arnoldi, person with a documented history of dishonesty and who was experiencing psychosis near the time he testified.

**(a) The prosecutor presented unreliable evidence that the front door was not deadbolted.**

First responders found the front door locked when they arrived at the scene of the murder.<sup>384</sup> The front door of the store had two locking mechanisms: a deadbolt lock and a doorknob lock; a key was required to engage the deadbolt, while the doorknob lock did not require a key.<sup>385</sup> None of the first responders' reports, however, specify whether the door was locked by deadbolt, doorknob, or both. Investigators found the key that Evelyn routinely used to operate front door's deadbolt hanging in its normal spot on a nail in the wall behind the cash register.<sup>386</sup>

Raymond told investigators during his April 30, 1999, interview that Keith, Donald and Pippitt all came out of the front door of the store after the burglary/murder.<sup>387</sup> In fact, Raymond said the front door was "wide open."<sup>388</sup> At the grand jury proceeding, Beck confirmed this, testifying that in their confessions, both Raymond and Donald stated consistently that the front door was opened to let Pippitt into the store.<sup>389</sup> One grand juror noted the potential incongruency

---

*The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.* American Bar Association, Criminal Justice Standards for the Prosecution Function, Standard 3-1.2(b), Fourth Edition (2017).

<sup>384</sup> *BCA Lab Report 3/13/98*, *supra* note 38, at 8; *Grand Jury Proceedings*, *supra* note 8, at 172 (quoting Deputy Drahota saying "Deputy Turner stated ...both the front and the rear door were locked"; *Pippitt Trial*, *supra* note 1, at 175 (quoting Undersheriff Turner as saying "[W]hen I arrived at the scene I ... checked the doors to see if the doors were unlocked or locked and found both doors were locked."))

<sup>385</sup> *See Grand Jury Proceedings*, *supra* note 8, at 228-229

<sup>386</sup> *Grand Jury Proceedings*, *supra* note 8, at 207.

<sup>387</sup> *See Raymond Interview 4/30/99*, *supra* note 203, at 8-9, 10, 35.

<sup>388</sup> *Id.* at 35.

<sup>389</sup> *Grand Jury Proceedings*, *supra* note 8, at 138.

between the testimony that the door was locked upon investigators' arrival and Raymond's testimony that the door was wide open during the crime:

- G. Juror:* Was the dead bolt locked, or the bottom [knob] locked?  
*Beck:* (No response).  
*G. Juror:* You can't lock a dead bolt going out the door. You've got to do it with a key.  
*Beck:* I'm not sure how to respond.  
*Rhodes:* Well, I think you have already answered the question. The key was found in the position that it was normally found in.  
*G. Juror:* That's [not] what I meant. You can't lock the door on the way out. The key was hanging there.  
*Rhodes:* Not the dead bolt?  
*G. Juror:* Right.  
*G. Juror:* Which one was locked?  
*Rhodes:* I don't know that this witness can answer that.  
*Beck:* Yea, that would be best.  
*G. Juror:* You said that you needed a key on the inside and outside both on that dead bolt?  
*Beck:* Yes, sir.<sup>390</sup>

Rhodes then questioned Bjerga at the grand jury proceeding regarding the front door:

- Rhodes:* As we sit here today, are you able to say whether that dead bolt had been locked or not?  
*Bjerga:* I have an idea that it was, but I can't specifically say that it was, or that it was not. The dead bolt was not locked, the door knob, I believe, was.  
*Rhodes:* Okay. So, it was possible to turn the knob and lock the bottom lock and exit, and the door would lock behind you?  
*Bjerga:* Right. You need the key, though, to lock that dead bolt.  
*Rhodes:* All right. Why do you believe the dead bolt was not locked?  
*Bjerga:* Because of two individuals that were involved in this particular incident have both told us that they know Keith Misquadace opened the door to allow Brian Pippitt and either Donald Hill or Raymond Misquadace into the store. They both are consist[ent] when they say that, when the perpetrators exited the store, they used the front door. There is no way to lock that door behind you, once you are outside of that building, unless you have a key to do so, with a dead bolt. You can do it with the door handle lock.<sup>391</sup>

---

<sup>390</sup> *Grand Jury Proceedings*, supra note 8, at 207-208.

<sup>391</sup> *Id.* at 228-229.

Based on his testimony, Bjerga did not appear to rely on any other supporting evidence – direct or circumstantial – to reach his conclusion that the deadbolt was not locked. Despite’s Bjerga’s belief, evidence supports the conclusion that the deadbolt was, in fact, engaged. First, photographic evidence suggested the door was deadbolted. *Figure 28* and *Figure 29* depict the inside front door of the Dollar Lake Store with the deadbolt engaged. Edith See, Keith’s attorney, knew this was a potential vulnerability in the prosecutor’s case, and had a photo of the engaged deadbolt enlarged as a demonstrative aid for Keith’s trial.<sup>392</sup> When she met with Rhodes to negotiate a plea during jury selection, See showed Rhodes the exhibit.<sup>393</sup> See said Rhodes took the exhibit and threw it at her, hitting See in her chest.<sup>394</sup> See said she knew, based on Rhodes



Figure 28 – BCA photo of crime scene – interior front door to Dollar Lake Store



Figure 29– BCA photo of crime scene – interior front door to Dollar Lake Store (zoomed)

outburst, that this was a point of frustration for him.<sup>395</sup>

Additionally, Norma suggested that the door was deadbolted in her trial testimony, as she described Evelyn’s typical bedroom routine:

*[W]e would go down there and lock the outside door because she’d always lock the screen. Then we would lock the inside door and hang the key up and we’d go on out the back, the back door, and she’d lock it from the inside.*<sup>396</sup>

<sup>392</sup> Interview with Edith See, attorney for Keith Misquadace, telephone (May 17, 2023) [hereinafter *See CRU Interview 5/17/23*].

<sup>393</sup> *Id.*

<sup>394</sup> *Id.*

<sup>395</sup> *See id.*

<sup>396</sup> *Pippitt Trial, supra* note 1, at 65.

Implicit in this statement is that Evelyn hung up the key—the key that was required to operate the lock from inside and outside the front door—each night after locking the deadbolt. When Rhodes asked if Evelyn would lock herself in, Norma testified “Yes, she did.”<sup>397</sup> Further, Norma said Evelyn was particularly aware of the need to lock herself in on the day of her murder. Presumably after her interaction with Terry Peet, Evelyn told Norma, “[W]e’ve got to start watching the place and locking the doors because we’ve got a person living up here now.”<sup>398</sup>

Murtha and Beck had a somewhat contentious exchange at Pippitt’s trial, highlighting the sensitivity regarding the deadbolt issue:

*Murtha:* Investigator Beck, you were asked by my investigator whether the front door was dead-bolted when you got there and you declined to answer that question, is that correct?

*Rhodes:* Object, Your Honor, that’s not relevant.

*Court:* Overruled. Go ahead.

*Beck:* I told him the information was in the discovery.

*Murtha:* You declined to answer the question, is that correct?

*Beck:* I told him I would not respond, yeah.

*Murtha:* Okay. I’m going to ask you the question now. Was the door dead-bolted when you got there?

*Beck:* I don’t know.

*Murtha:* Did you later learn that the door was dead-bolted?

*Beck:* I don’t know.

*Murtha:* Did you investigate that?

*Beck:* I later looked at the door and the lock, yes.

*Murtha:* And how much later?

*Beck:* I don’t recall the specific date, but it was after the door was pick[ed] up from the Dollar Lake Store and returned to our office.

*Murtha:* So they took the door off?

*Beck:* Yes, sir.

*Murtha:* That’s when you inspected it?

*Beck:* Yes.

*Murtha:* But not before?

*Beck:* I did not.

*Murtha:* Did any of your team?

*Beck:* I can’t state specifically that someone on the team looked specifically at the dead bolt.

*Murtha:* Now, you are charged with the entire investigation, correct?

*Beck:* Yes, sir.

*Murtha:* So you had to know about it if someone did or didn’t, correct?

*Beck:* That’s correct.

---

<sup>397</sup> *Id.* at 39-40.

<sup>398</sup> *Id.* at 37.

*Murtha:* Did anybody file a report with you saying that they did?  
*Beck:* No, sir, I do not recall any reports stating specifically whether the dead bolt was locked or unlocked.<sup>399</sup>

Rhodes ultimately reconciled Raymond's testimony regarding Pippitt exiting the front door of the store and evidence that the door was deadbolted in three ways: (1) cross-examining the defense investigator; (2) recalling Merle Malin to testify about his mother's habits; and (3) keeping the door out of the sight of the jury.

**(1) The prosecutor cross-examined the defense investigator to suggest the front door was not deadbolted.**

First, Rhodes cross-examined Mike Kirt, the defense investigator who testified at Pippitt's trial to lay the foundation for the photo depicted in *Figure 28*.<sup>400</sup>

*Rhodes:* And you didn't see the door to the Dollar Lake Store in February of 1998?  
*Kirt:* No.  
*Rhodes:* With respect to those photos, there's an area of gold near the lock, is that correct?  
*Kirt:* Yes, sir.  
*Rhodes:* Is that what the photos were blown up to show?  
*Kirt:* I believe so.  
*Rhodes:* Okay. You can't tell us as you sit here what that is, can you?  
*Kirk:* Appears to be the dead bolt activated.  
*Rhodes:* As far as the door?  
*Kirt:* Yes.  
*Rhodes:* You can't say that's the dead bolt for sure?  
*Kirt:* I think if someone looked --  
*Rhodes:* Can you say for sure that's the dead bolt?  
*Kirt:* No.  
*Rhodes:* Can you say for sure it isn't a strike plate?  
*Kirt:* Excuse me.  
*Rhodes:* Can you say for sure it isn't a strike plate?  
*Kirt:* No, I can't.<sup>401</sup>

Stanley Paluski, a forensic locksmith, provided an expert opinion based on BCA's pictures of the door—the same ones for which Kirt laid the foundation at trial.<sup>402</sup> Paluski opined

---

<sup>399</sup> *Id.* at 610-611.

<sup>400</sup> *Pippitt Trial*, *supra* note 1, at 553-554.

<sup>401</sup> *Id.*

<sup>402</sup> See generally Stanley Paluski, Expert Opinion re Deadbolt, State v. Pippitt, K4-99-325, undated.

that the photos “all clearly show the deadbolt is locked.”<sup>403</sup> In response to Rhodes’s questions about the strike plate, Paluski stated:

*One would not be able to see the strike plate that is recessed onto the door jamb in the area of the deadbolt. The strike plate (a metal component that the deadbolt slides into) is recessed into the door jamb and not visible.*<sup>404</sup>

Further, in an interview with the CRU, Paluski explained that even if you could see the metal from the strike plate, it would be much larger than the deadbolt.<sup>405</sup> In fact, the strike plate would be approximately the same length as the round locking mechanism which houses the keyhole, as depicted in *Figure 30*.<sup>406</sup>

**(2) The prosecutor elicited unreliable testimony from Merle Malin to prove the deadbolt was not locked.**

Second, Rhodes recalled Merle to testify about his mother’s door locking habits. Specifically, he testified that every night his mother would get the key from behind the cash register, go to the front door, and “put the key in the door and then lock the bottom knob and take the key out.”<sup>407</sup> He testified that his mother “couldn’t” engage the deadbolt of the front door with the key due to sag in the door causing a misalignment.<sup>408</sup> He also testified that the locking mechanism in the knob was a “button to push in” and once pushed in, the door was locked.<sup>409</sup>

Merle’s testimony is unreliable for several reasons. First, Evelyn would have no reason to retrieve the key each night, as he testified, if she could not lock the deadbolt; a key was not needed to push in the button to lock the door according to his testimony. Second, no other witness ever mentioned that Evelyn had difficulty deadbolting her door other than Merle, who



*Figure 30 – Photo of locking mechanism for deadbolt and strike plate in evidence*

<sup>403</sup> *Id.* at 3.

<sup>404</sup> *Id.*

<sup>405</sup> Interview with Stanley Paluski, forensic locksmith, (Nov. 7, 2023)

<sup>406</sup> *Id.*

<sup>407</sup> *Pippitt Trial, supra* note 1, at 510.

<sup>408</sup> *Id.*

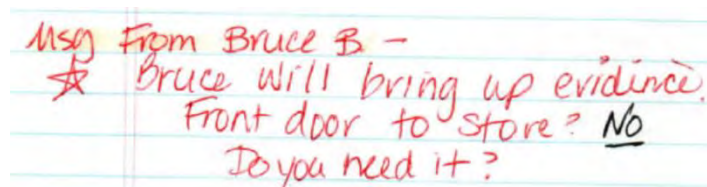
<sup>409</sup> *See id.* at 511.

had lived over 1,000 miles away from his mother for decades and had not stepped foot in the store for months leading up to his mother's death.<sup>410</sup> Contrary to Merle's testimony, Horsman told the CRU that he knew Evelyn had no problem deadbolting her doors.<sup>411</sup> Third, Merle testified incorrectly about other aspects of the case—such as what was taken from the store—discussed at length below.

Contrary to his previous testimony, in 2006, Merle testified at Pippitt's postconviction hearing that Evelyn could lock the deadbolt and all other locks in the store by herself.<sup>412</sup> Regardless of whether Merle's testimony was indicative of intentional fabrication or simply misremembering, Rhodes should have known that Merle's trial testimony was unreliable based on its incongruency with objective evidence.

### (3) The prosecutor kept the door out of the sight of the jury.

Some evidence in Pippitt's file suggests that Rhodes actively concealed the door. Specifically, a note from the County Attorney's Pippitt case file indicates that Rhodes did not want the door to be brought into the courtroom, as depicted in *Figure 31*. Without more information, it is difficult to know exactly why Rhodes did not want to bring the door into the courtroom.



The image shows a handwritten note on lined paper. The text is written in red ink and reads: "Msg From Bruce B - \* Bruce will bring up evidence. Front door to store? No Do you need it?". The word "No" is underlined.

*Figure 31 – Aitkin County Attorney Office file note from the Pippitt case*

One theory is that Rhodes did not want it brought up because he told Murtha it was missing. In his interview with the CRU, Murtha said that when he asked Rhodes to see the door prior to trial, Rhodes told him either they did not have it or they could not find it.<sup>413</sup> Similarly, when Cousins asked to see the door as part of his investigation years later, the Aitkin County

<sup>410</sup> See *Pippitt Trial*, *supra* note 1, at 200, 203.

<sup>411</sup> *Horsman CRU Interview*, *supra* note 82, at 18:44-19:50, 20:08-20:24. Harold Horner, son of Norma Horner, also signed a sworn declaration stating “[Evelyn] was capable of locking [the front door deadbolt lock with a key].” Declaration of Harold Dean Horner, October 5, 2021.

<sup>412</sup> *Pippitt Postconviction Review Proceeding*, *supra* note 296, at 26.

<sup>413</sup> Interview with Tom Murtha, Trial Defense Attorney, Microsoft TEAMS (Nov. 17, 2023) at 00:29:55-00:31:55 [*hereinafter Murtha CRU interview*]. Murtha, however, has proven to be somewhat of a poor historian and provided other inaccuracies based on his memory of the case. For example, Murtha said that he received “nothing” about Arnoldi prior to his testimony at Pippitt’s trial other than that he may have been on a witness list. *Id.* at 00:36:50-00:39:50. However, according to filings, Arnoldi’s transcribed interview with Beck was disclosed in advance of trial. State Discovery Disclosure, *State v. Pippitt*, K4-99-325, Nov. 13, 2000, at 19 [*hereinafter Discovery Disclosure*].

Undersheriff told Cousins in a letter that he could not find the door or the locking mechanism, despite their protocol to retain all evidence in homicide cases.<sup>414</sup> Attorney See, however, said she did see the door and the locking components, and that Rhodes made it available for her to see upon her request.<sup>415</sup> It is unclear whether See was permitted to see the door and lock before or after the incident with the exhibit.

**(b) The prosecutor presented unreliable evidence that beer and cigarettes were stolen from the store.**

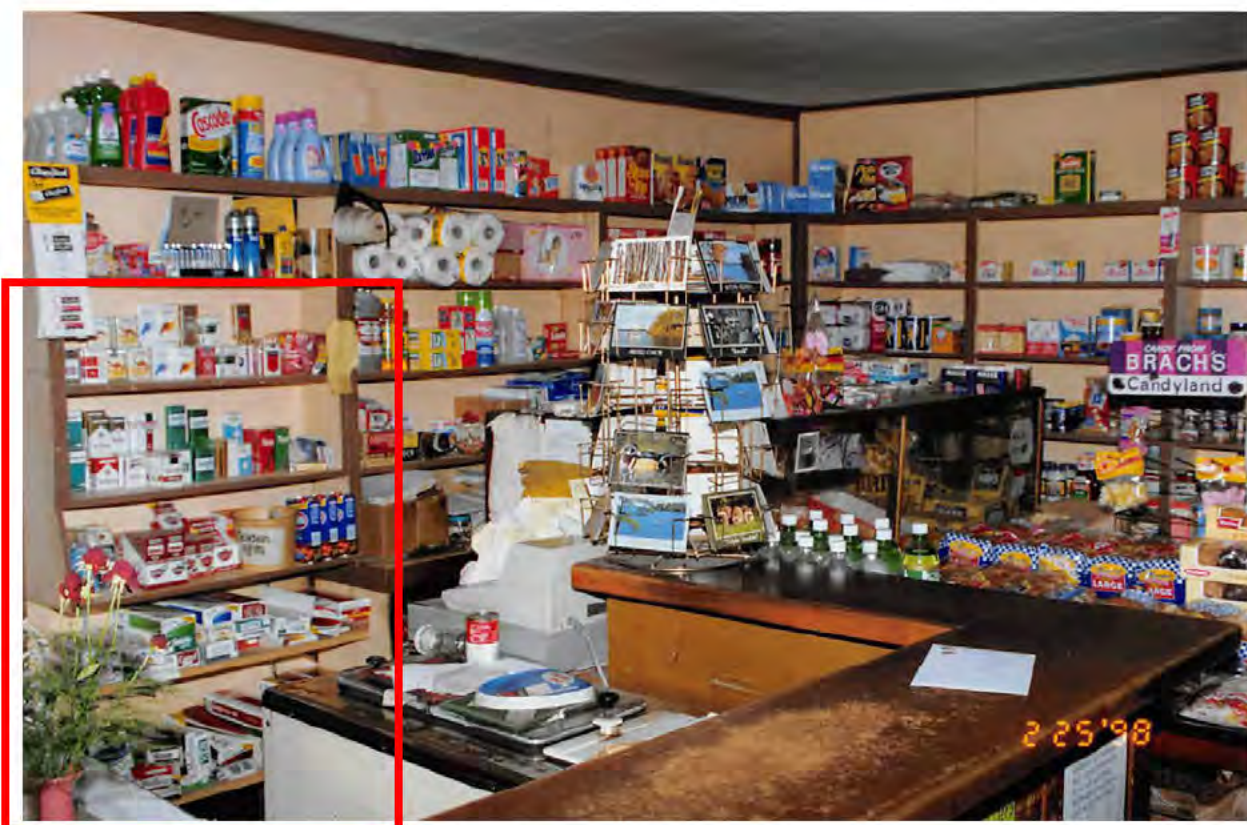


Figure 32 – BCA crime scene photo of inside the Dollar Lake Store, with a red rectangle framing rows of cigarettes

Rhodes’s theory at trial was that the defendants entered the closed Dollar Lake Store to get beer and cigarettes.<sup>416</sup> In accordance with this theory, Rhodes presented testimony at trial that beer and cigarettes were stolen from the store.<sup>417</sup> Photographs taken the morning after the

<sup>414</sup> Letter from John Drahota, Aitkin County Undersheriff, to Jim Cousins, Pippitt’s defense counsel (Apr. 10, 2015).

<sup>415</sup> Interview with Edith See, attorney for Keith Misquadace, telephone (Nov. 30, 2023) [hereinafter *See CRU Interview 11/30/23*].

<sup>416</sup> *Pippitt Trial*, *supra* note 1, at 18.

<sup>417</sup> *Id.* at 289-294, 343-345.

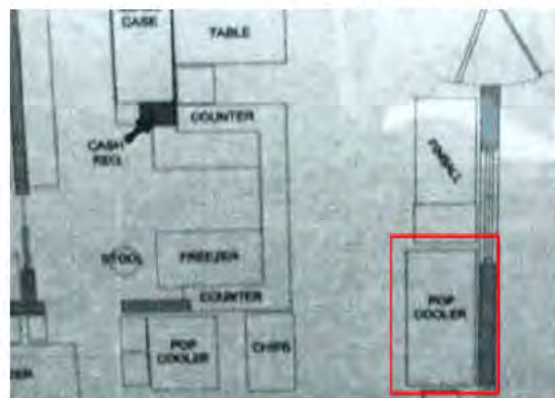


murder, depicted in *Figures 32 and 33*, however, indicate that the shelves of the Dollar Lake Store were undisturbed.



*Figure 33 – BCA crime scene photo of inside the Dollar Lake Store*

Merle testified at Pippitt’s trial that beer was taken from a cooler in the Dollar Lake Store.<sup>418</sup> He explained that the whole bottom compartment of that cooler was six packs of beer and all of it but for “two six packs left way at the back” were missing.<sup>419</sup> Merle was specifically referring to the cooler next to the pinball machine, identifying it on a trial exhibit as depicted in *Figure 34*.<sup>420</sup> He also testified that the best selling beer was primarily kept under the pinball machine so that Evelyn could restock the cooler easily without the need to retrieve beer from the basement.<sup>421</sup> He



*Figure 34 – A diagram of the Dollar Lake Store with red box added for emphasis.*

<sup>418</sup> *Pippitt Trial*, *supra* note 1, at 293.

<sup>419</sup> *Id.* at 293-294.

<sup>420</sup> *Id.* at 295 (“The record is going to reflect that the cooler [Merle] has been pointing to is ... adjacent to ... the pinball machine, item labeled pinball.”)

<sup>421</sup> *Id.* at 297-298.

seemed to indicate at trial that beer was missing from there, too.<sup>422</sup> Merle also testified that “rows of cigarettes” were missing from the store.<sup>423</sup>



Figure 35 – Still frame from BCA crime scene walkthrough



Figure 36 – Still frame from BCA crime scene walkthrough

The BCA’s photographs and videotaped walkthrough of the crime scene, however, directly contradict Merle’s testimony. *Figure 35*, depicting the cooler next to the pinball machine, undermines Merle’s testimony that all beer but for “two six packs left way at the back” of the bottom compartment of the cooler were missing. The still image shows a stocked cooler, brimming with items.

Similarly, *Figures 35, 36, 37 and 38* show stacks of canned products neatly arranged beneath the pinball machine. Given the volume of stock stacked under the machine, it is difficult



Figure 37 – BCA crime scene photo (zoomed)



Figure 38 – BCA crime scene photo (zoomed)

to understand how Merle could conclude anything was missing from there. *Figures 37 and 38* show that the canned items depicted underneath the pinball machine were soda pop and not beer, as Merle testified. *Figure 39*, a photo of a different cooler in the Dollar Lake Store, shows that the packaging of Old Milwaukee is distinct from the plastic shrink-

<sup>422</sup> See *id.* at 294 (“In this area (indicating) there was beer missing also.”).

<sup>423</sup> *Id.* at 289.



Figure 39 – BCA crime scene photo of a cooler inside the Dollar Lake Store

wrapped cans nestled on cardboard pallets stacked under the pinball machine. Raymond said they stole Old Milwaukee beer<sup>424</sup> which was still cold.<sup>425</sup>

Moreover, Horsman’s interview with investigators contradicts Merle’s testimony about the missing beer and cigarettes. Horsman told Beck on February 26, 1998, that the last time he had “taken care of the stock” was “that very night [the night of the murder].”<sup>426</sup> He was clear that the all the stock was intact, and none was missing.<sup>427</sup>

Figures 32 and 40 support Horsman’s statements, showing stacked shelves full of various brands of cigarettes. Moreover, Horsman told the CRU in an August 2023

interview that, “I think Merle was trying to make a bigger case against them by saying things were missing.”<sup>428</sup>

Horsman’s statement is more credible than Merle’s testimony on the topic of missing stock, especially considering that Merle had been living in Albuquerque, NM, for the past 30 years and only visited Evelyn once a year.<sup>429</sup> Merle’s testimony that beer and cigarettes were missing appeared to be pieced together from his mother’s habits and practices of stocking over the years.<sup>430</sup> Most telling, Merle was not even in Minnesota when the murder occurred and the stock was inventoried.



Figure 40 – BCA crime scene photo of cigarettes inside the Dollar Lake Store

<sup>424</sup> See, e.g., *Raymond Interview 4/28/99*, *supra* note 121, at 15-16; *Raymond Interview 4/30/99*, *supra* note 203, at 24-25.

<sup>425</sup> *Pippitt Trial*, *supra* note 1, at 456.

<sup>426</sup> *Horsman Interview 2/26/98*, *supra* note 82, at 3.

<sup>427</sup> *Id.*

<sup>428</sup> *Horsman CRU Interview*, *supra* note 82, at 57:02-57:11.

<sup>429</sup> *Pippitt Trial*, *supra* note 1, at 291.

<sup>430</sup> *Id.*

**(c) The prosecutor presented Raymond Misquadace’s unreliable testimony.**

The most damning piece of evidence against Pippitt was Raymond’s confession and subsequent trial testimony, which implicated Pippitt as a leading participant in the burglary-murder. Raymond, however, has since recanted his confession and now admits he was not present nor has first-hand knowledge of the crime.<sup>431</sup> For the reasons outlined below, Raymond’s confession and testimony are unreliable and do not support Pippitt’s conviction.

**(1) Raymond provided an unreliable confession.**

In 2021, years after Raymond had served his sentence for his purported participation in the murder of Evelyn, Raymond stated in a sworn, signed statement that he was not involved in any manner with the death and robbery of Evelyn Malin, that he was not at the store or with any of the co-accomplices on February 24, 1998.<sup>432</sup> In an interview with the CRU, Raymond said that he was in Bagley during the time of the murder.<sup>433</sup>

Raymond stated that he confessed to being involved in the crime to avoid a lengthy prison sentence.<sup>434</sup> Raymond also said that he named Pippitt, Donald, Keith and King in his initial confession because investigators “already had those names” so Raymond “told them what they wanted to hear.”<sup>435</sup> Raymond stated that prior to his confession, Bjerga told Raymond that all of the other co-accomplices had already made statements against Raymond.<sup>436</sup> Because Raymond was questioned so many times, he remembered “little stuff . . . that [investigators] would point out that they said they knew what happened.”<sup>437</sup> This allowed him to give investigators a narrative that investigators were ultimately satisfied with.<sup>438</sup> Ultimately, Raymond

---

<sup>431</sup> Affidavit of Raymond Misquadace, Pippitt v. State, Jul. 16, 2021 [hereinafter *Raymond Affidavit*]; see also *Raymond CRU interview 8/18/23*, *supra* note 188.

<sup>432</sup> *Raymond Affidavit*, *supra* note 431, at 1.

<sup>433</sup> *Raymond CRU interview 8/18/23*, *supra* note 188, at 00:48:25. Emma Hatfield, Raymond’s grandmother, told Bjerga and Rhodes—on separate occasions—that she did not remember Raymond leaving Bagley around that time despite his confession. Transcript of Interview by Dave Bjerga with Emma Hatfield, ICR # 98-476 (May 27, 1999) at 7 [hereinafter *Hatfield Interview 5/27/99*]; Transcript of Deposition of Emma Hatfield at 11-12, State v. Pippitt, K4-99-325 (Jan. 12, 2000) [hereinafter *Hatfield Deposition*]. In that same deposition, however, Ms. Hatfield said that Raymond admitted to her that he was involved in the death. *Id.* at 8.

<sup>434</sup> *Raymond Affidavit*, *supra* note 431, at 1; see *Raymond CRU interview 8/18/23*, *supra* note 188.

<sup>435</sup> *Raymond Affidavit*, *supra* note 431, at 1-2.

<sup>436</sup> *Raymond CRU interview 8/18/23*, at 00:15:00-00:17:00, 01:00:00.

<sup>437</sup> *Id.* at 01:38:15, 01:10:00.

<sup>438</sup> See *id.*

said he confessed because investigators told him multiple people had implicated him in the crime, his plea of innocence were rejected, and he was offered leniency.<sup>439</sup>

Dr. Larry White, a Professor of Psychology at Beloit College and an expert on false confessions, concluded that Raymond Misquadace falsely confessed to police investigators and testified falsely at Pippitt's trial.<sup>440</sup> One of the reasons Dr. White believes Raymond falsely confessed was due to techniques investigators used during his interrogations.<sup>441</sup>

Interrogators may also use inducements, including incentives, to convince a suspect that they will be better off if they confess and worse off if they do not.<sup>442</sup> The intended effect is to lead the suspect to view a confession as the most expedient means of escape.<sup>443</sup> Interrogators may also use minimization, a technique in which an interrogator may offer a subject sympathy and moral justification for committing the crime.<sup>444</sup> One study has shown that when an interrogator used both inducement and minimization together, 43% of factually innocent people who participated in the study confessed to misconduct they did not commit.<sup>445</sup> Those with low intelligence, as well as those who are youthful or immature, are particularly vulnerable to false confessions.<sup>446</sup> According to the National Registry of Exonerations, 435 exoneration cases in the United States had identified false confession as a contributing factor to the wrongful conviction.<sup>447</sup>

At the time of his interrogations in this case, Raymond was 22 years old.<sup>448</sup> Bjerga and Barker first interviewed Raymond on February 18, 1998.<sup>449</sup> Bjerga took the lead in the interview.<sup>450</sup> Bjerga told Raymond:

*But we're just having some real problems not putting you there. Because the information we're getting is real credible. Now here, here's what the deal is. We've gone to the county attorney . . . and we've told the county attorney what we've got. And he's ready to start charging people. But the only thing he wants to know is, who's in and who's out.*

---

<sup>439</sup> *Id.* at 01:03:45, 01:22:00.

<sup>440</sup> Larry White, *Ray Misquadace's Confession in the Malin Murder Case*, Dec. 4, 2023, at 24.

<sup>441</sup> *Id.* at 23.

<sup>442</sup> *Id.* at 7.

<sup>443</sup> Saul Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, LAW HUM. BEHAV. 3, 7 (2010).

<sup>444</sup> *Id.* at 12.

<sup>445</sup> White, *supra* note 440, at 8.

<sup>446</sup> *Id.* at 9.

<sup>447</sup> Email from Jessica Weinstock Paredes, Denise Foderaro Research Scholar, National Registry of Exonerations, to Carrie Sperling, Director of Minn. Attorney General's Conviction Review Unit (Jan. 18, 2024).

<sup>448</sup> Mayron, *supra* note 160.

<sup>449</sup> *See generally* *Raymond Interview 2/18/99*, *supra* note 190.

<sup>450</sup> *Id.*

*And whoever the first person is that gives us good credible information about what happened that night . . . is going to get the best deal. And that's the seat that you're sittin' in right now, Raymond. That's the seat that you got, and it's yours only.*<sup>451</sup>

There is no indication from the file that Rhodes was ready to start charging anyone at this point in the investigation. A review of the evidence collected at this point in the investigation suggests that there was not enough evidence to charge anyone with the murder.

Bjerga also told Raymond the following during the first interview:

*This is falling down on you and a couple other guys. And you know who I'm talking about. And we need to hear from you what happened that night. And what it's called, Raymond, it's called the first hog to the trough. If you're the first hog at a trough, you get the most to eat. You get the best meal. That's where we're at on this investigation...Like I said before, no one knows that we're up here talking to you today. And we can keep this between us for as long as possible. But we need to hear from you what I think it, what I think it is. I think you're the least responsible for this whole thing. Because I don't see you goin' in and doing that. I've done some background on you. I don't see you goin' in and doing this. Like it happened.*<sup>452</sup>

...

*And there's no doubt in my mind that you were there at the time it happened, but you didn't have anything to do with it. That's what's in my mind. Now you gotta tell me something different than that.*<sup>453</sup>

After Raymond repeatedly denied involvement, Bjerga stated:

*All right. Even if you weren't there, and you talked to someone who has told you to give us the story about the Misquadaces, and now you're sticking with that story, that shows misdirection. You're, you're once again, you're an accessory after the fact to a murder...And you're looking at half the sentence of a first-degree murder. Half the sentence of a first-degree murder is 20 years in prison. And I want you to be very comfortable with that before we leave here because the only thing I can guarantee you is that we are going to make arrests on this case. And I don't wanna see you get in front of this deal and get run over if you have no reason to.*<sup>454</sup>

Raymond maintained his innocence throughout.<sup>455</sup> Before ending the interview,

Raymond agreed to take a polygraph to clear his name.<sup>456</sup>

---

<sup>451</sup> *Id.* at 9.

<sup>452</sup> *Id.* at 10-11.

<sup>453</sup> *Id.* at 13.

<sup>454</sup> *Id.* at 19.

<sup>455</sup> *See generally id.*

<sup>456</sup> *Id.* at 22.

Investigators returned to administer the polygraph and continue with Raymond’s interrogation on April 28, 1999.<sup>457</sup> They had administered seven other polygraph examinations in this case at this point in the investigation. Raymond would be given the last of the exams. Polygraphs were administered to Kristopher Radtke—an early suspect,<sup>458</sup> Keith Misquadace,<sup>459</sup> Jason Whiting—another alternative suspect lead,<sup>460</sup> Donald Hill,<sup>461</sup> Brandon Misquadace,<sup>462</sup> Brian Pippitt,<sup>463</sup> and Raymond Misquadace.<sup>464</sup> Terry Peet had also been administered a polygraph, but the results of that exam were never documented in any reports provided to the CRU.<sup>465</sup> Of those who were administered the polygraph, four had results of “deception indicated”: Whiting, Brandon, Pippitt, and Raymond. Whiting and Brandon were never charged. Keith and Donald both “passed” the polygraph with “no deception indicated,” yet were charged. Bjerga explained his philosophy regarding polygraphs in his interview with the CRU:

*[Polygraph] is an investigative tool. That’s the way BCA has always treated it. There [are] other agencies that want to rely on it...They want to rely on that tool and keep focusing on that person or not focusing on them or whatever it is. And for us, it’s a way to open up the conversation.*<sup>466</sup>

The charging decisions in this case fit with Bjerga’s approach to polygraph results. There does not appear to be any correlation between the results of the polygraph examination for each suspect who took the test and whether that suspect was charged.

Bjerga began his second interview of Raymond on April 28, 1999, referencing Raymond’s failed polygraph exam:

*Okay, Ray, here’s the deal; just like Dan said, ah, there were some problems with the test [the polygraph] and I don’t think it’s probably any surprise to ya that there were*

---

<sup>457</sup> *Alquist Report 4/28/99*, *supra* note 168.

<sup>458</sup> *See generally* Robert Berg, BCA Report of Investigation, Inv. #98000062, Mar. 10, 1998 [hereinafter *Berg Report 3/10/98*].

<sup>459</sup> *See generally* *Alquist Report 2/17/99 re Keith*, *supra* note 168.

<sup>460</sup> *See generally* Dan Alquist, BCA Report of Investigation re Whiting, Inv. #98000062, Feb. 17, 1999 [hereinafter *Alquist Report 2/17/99 re Whiting*].

<sup>461</sup> *See generally* *Alquist Report 3/16/99\_1245*, *supra* note 168.

<sup>462</sup> *See generally*, *Alquist Report 3/16/99\_1520*, *supra* note 168.

<sup>463</sup> *See generally*, *Berg Report 3/24/99*, *supra* note 168.

<sup>464</sup> *See generally*, *Alquist Report 4/28/99*, *supra* note 168.

<sup>465</sup> *See Beck Report 3/17/98*, *supra* note 56, at 38. The CRU made a records request to the BCA for: copies of all documents, files, video/audio recordings, and data associated with the polygraph examinations performed for Bureau Number 98000062, “Evelyn Malin Homicide Investigation.” This request includes any information regarding the examinations for: Kristopher Radtke, Jason Whiting, Donald Hill, Brandon Misquadace, Raymond Misquadace, Keith Misquadace, Brian Pippitt, and any others who had polygraph examinations conducted as part of this investigation.

Carman Leone, Letter to BCA for Polygraph Data, Oct. 3, 2023.

<sup>466</sup> *Bjerga CRU Interview*, *supra* note 213, at 1:30:38-1:31:06.

*some problems with passing this test, because there is some things that you know about this that we now need to know.*<sup>467</sup>

Bjerga continued:

*And it's time for you to understand that it's over. It's all over. People know what happened inside that store. People know who was involved...and before you bury yourself any deeper on this thing [tell us] specifically what happened and what you did before the other people tell us something different, cuz I wanna get you out there first...*<sup>468</sup>

...

*Because I think that you probably have . . . the least responsibility and that ah, there's some things that work in your favor on this thing, Okay?*<sup>469</sup>

Raymond then told Bjerga that he “wasn’t there” and “didn’t do it.”<sup>470</sup> Bjerga responded:

*We know everything we need to know right now, as far as whether you were there or not. The test told us that; ah, another person that was there told us that. So we're, we're beyond the part, Ray, where I wasn't there, I don't know anything about it. We're beyond that...*<sup>471</sup>

...

*It's now [sic] in anybody else's hands from Sandy Lake or East Lake or anybody. It's sitting right in front of you what you wanna do with the rest of your life...*<sup>472</sup>

...

*I don't think that you're understanding the importance of you telling us what you saw and what you heard at the store that night. You have to really understand that. You're putting your future in the hands of someone else who doesn't care about you or your future...And you're relying on them to keep their mouth shut about what happened at the store that night and it's not happening, [Ray], because someone has already told us about what happened at the store that night. Now . . . don't let somebody, who doesn't care about you, decide the next how ever [sic] many years of your life. Take charge of your own life and tell us about what happened that night and who you were with. That's what we really need to know.*<sup>473</sup>

...

*And we need to work through this together, Ray. Like I said, we're not here to judge you. We are here to collect information. And that's all that it is. And I just think that something bad happened that night and it was supposed to be a burglary and, and Mrs.*

---

<sup>467</sup> Raymond Interview 4/28/99, *supra* note 121, at 1.

<sup>468</sup> *Id.* at 1.

<sup>469</sup> *Id.* at 2.

<sup>470</sup> *Id.*

<sup>471</sup> *Id.* at 3.

<sup>472</sup> *Id.*

<sup>473</sup> *Id.* at 5.



*Malin ah , discovered . . . you guys in the store. And that's what, that's what I think happened.*<sup>474</sup>

One interpretation of the transcripts of Bjerga's interrogations of Raymond is that Bjerga was using techniques that induced Raymond's confession.<sup>475</sup>

According to Dr. White, one way to assess the reliability of a suspect's confession is to analyze the "fit" between the suspect's account and the known crime facts.<sup>476</sup> If the confession fits the crime facts or leads to new evidence of guilt, then the confession is reliable insofar as it tends to prove the guilt of the suspect.<sup>477</sup> If the suspect cannot provide an accurate description of the crime facts, or provides an account that is full of errors and contradicts independent evidence, the confession is unreliable.<sup>478</sup>

Raymond was unable to provide information to investigators that only he could have known as being a participant in the crime.<sup>479</sup> For example, during his initial confession, Raymond could not identify who first mentioned going to the Dollar Lake Store.<sup>480</sup> He could not tell investigators what the others said about what happened to Evelyn while in the store or how she was killed.<sup>481</sup> Raymond denied seeing a screwdriver that night, or whether anyone could have gone through one of the basement windows,<sup>482</sup> even though evidence at the crime scene suggested that a flat-headed screwdriver was used in the commission of the crimes.<sup>483</sup> Raymond denied hearing anything from inside the store.<sup>484</sup> He could not remember who carried beer and cigarettes out of the store.<sup>485</sup>

The little detail that Raymond did provide came, in part, from information Bjerga gave Raymond during questioning. For example, Raymond told investigators in each of his interviews about the murder-burglary, starting with his confession of April 28, 1999, that beer

---

<sup>474</sup> *Id.*

<sup>475</sup> White, *supra* note 440, at 15-24.

<sup>476</sup> *Id.* at 10.

<sup>477</sup> *See id.*

<sup>478</sup> *See id.*

<sup>479</sup> *See id.*

<sup>480</sup> *See Raymond Interview 4/28/99, supra* note 121, at 6.

<sup>481</sup> *Id.* at 8.

<sup>482</sup> *Id.* at 14.

<sup>483</sup> *See supra* footnotes 353 to 355, *infra* footnotes 736 to 739 and accompanying text.

<sup>484</sup> *Id.* at 36.

<sup>485</sup> *Id.* at 39.

and cigarettes were stolen from the store.<sup>486</sup> Bjerga, however, first told Raymond beer and cigarettes were missing during the February 18, 1999, interview:

*What happened that night was some guys broke in to steal some cigarettes and some cash, ah, maybe some beer. This old lady surprises 'em. She starts making some noise. And somebody's gotta put her down.*<sup>487</sup>

When Raymond repeated back the same theory Bjerga provided him during his confession on April 28, 1999, Bjerga stated “[t]hat’s what we’ve thought all along, is that this is just a - - something happened to Mrs. Malin during the course of a burglary.”<sup>488</sup>

Bjerga imbedded additional details in his questions to Raymond, some of which Raymond incorporated in later statements. For example, Bjerga told him during the interrogation on April 28, 1999, but before Raymond confessed, that “*I think that something went bad that night...*”<sup>489</sup> This narrowed the timeframe of the criminal activity for Raymond to strictly being in the night. During questioning regarding how Raymond could have seen anything if it was dark, Bjerga asked “*do you recall if there’s yard light at the place, in the front?*” to which Raymond responded, “*Yea, I’m pretty sure there was a yard light right in the front of the store there.*”<sup>490</sup> Raymond later testified before the grand jury that “*there must have been a yard light or something*” that allowed him to see around the car pretty well.<sup>491</sup> Raymond later clarified for a grand juror that he “*d[idn’t] know exactly where it could have been, but [he] figured there was one.*”<sup>492</sup> At Pippitt’s trial, Raymond recalled a “*little light outside*” the store.<sup>493</sup>

Bjerga asked a series of additional leading questions which had the potential to contaminate: “*Ever see a screwdriver that night? Was there a screwdriver in the car?*”<sup>494</sup>; “*Do you have any idea if those guys could’ve gone through one of those basement windows? Okay, if, if, if they did, you don’t know about it?*”<sup>495</sup>; “*All right. And there was a plan there -- maybe not a plan -- maybe some people just took it upon themselves to enter the store. Is that what happened?*”<sup>496</sup>

---

<sup>486</sup> See *infra* footnotes 898, 906, 907, 920, 931, 932, 947, 951, 952, 953, 963, 964, 974 and accompanying text.

<sup>487</sup> *Raymond Interview 2/18/99, supra* note 190, at 15.

<sup>488</sup> *Raymond Interview 4/28/99, supra* note 121, at 10.

<sup>489</sup> *Id.* at 2.

<sup>490</sup> *Id.* at 57.

<sup>491</sup> *Grand Jury Proceedings, supra* note 8, at 499.

<sup>492</sup> *Id.* at 524.

<sup>493</sup> *Pippitt Trial, supra* note 1, at 336.

<sup>494</sup> *Raymond Interview 4/28/99, supra* note 121, at 14.

<sup>495</sup> *Id.*

<sup>496</sup> *Id.* at 34.

Bjerga also repeatedly told subjects of interrogation, including Raymond, to “*think real hard*” when he asked about a pivotal piece of evidence: “[t]hink real hard, when they went in the store, Ray, think real hard if you can recall them - - actually seeing them go in the store.”<sup>497</sup> “All right. I need you to think real hard again, too.....the store was closed, you said? Is that right?”<sup>498</sup>; “You have to think real hard here Raymond [about details], because what is happening is this is sounding like your first statement,”<sup>499</sup>; “When Keith went around the corner, think real hard, when Keith was going around out of your sight, was he carrying anything in his hands?”<sup>500</sup>; “Think real hard again. Is there anything else you saw them remove from the store other than beer and cigarettes?”<sup>501</sup>

There is no documented evidence to suggest that Bjerga provided Raymond the names of the co-defendants charged in the case before Raymond named them, as Raymond claims. There is, evidence, however, that Bjerga provided the names to Donald Hill on the day of his confession. On April 29, 1999, Bjerga and Beck interrogated Donald twice—first unrecorded, then recorded.<sup>502</sup> According to Beck’s notes, Bjerga appeared to provide Donald key details during the unrecorded interrogation. Beck took notes and included them in his written report (Bjerga’s statements/questions are in bold):

**DB: Brought up Raymond being there**

DH: Denied Ray’s presence

**DB: Don and Ray were picked up that night by others...who picked them up.**

DH: (long pause)

**DB: Keith..**

DH: (nodded his head in agreement)

**DB: Where did they go**

DH: Drove all over the place

**DB: Who else was in the car**

DH: (pause)

**DB: Neil, Fats, Keith and Ray... “is that right?”**

DH: Yes, uh huh

**DB: Did you stop for beer anywhere overtime**

DH: (pause) can’t remember

---

<sup>497</sup> *Id.* at 14.

<sup>498</sup> *Id.* at 15.

<sup>499</sup> Interview by Dave Bjerga and Bruce Beck with Raymond Misquadace, Part 1, Inv. #98000062 (May 27, 1999) at 00:08:15 [hereinafter *Raymond Interview 5/27/99 – part 1*]. There is a second part to this interview due to the manner in which the recording is made. See generally, Interview by Dave Bjerga and Bruce Beck with Raymond Misquadace, Part 2, Inv. #98000062 (May 27, 1999) [hereinafter *Raymond Interview 5/27/99 – part 2*].

<sup>500</sup> *Id.* at 00:09:47.

<sup>501</sup> *Id.* at 00:12:40.

<sup>502</sup> *Beck Report 5/12/99, supra* note 204, at 3-5.

**DB: Did you go to any other towns**

DH: Just around here

**DB: Later you ended up at the store to get beer, who got out of the car?**

DH: Brian, Ray and Keith, I got out of the car but didn't go in.

**DB: How did they get inn [sic]**

DH: I don't know, Keith opened the door from the inside and let them in

**DB: Where was the car parked**

DH: Along side the store

**DB: Would you draw a map**

DH: (draws map at this time)

**DB: How did Keith get in the store**

DH: I don't remember

**DB: Think hard, a window**

DH: I heard glass busting

**DB: Did you see a screwdriver in the car**

DH: No

**DB: Keith opened the door from the inside**

DH: Then Brian, Ray went inside

**DB: How long were they inside**

DH:

**DB: They came out with what**

DH: Cigarettes and beer

**DB: Did they have a gun**

DH: Thought Keith did, a long gun

**DB: What was the plan**

DH: Just talking about beer and cigarettes

**DB: When is the first time you knew something happened to Ms. Malin**

DH: The next day

**DB: Think hard, you went to somebody's house, "Did you go to Walter's"**

DH: I remember going to Wanda's house

**DB: Anyone there**

DH: No, Brian was staying there

**DB: Everyone knew within minutes what happened to Ms Malin, I need to know what happened, I want the truth...the facts**

DH: Keith and Brian were doing all the talking, they said she came out and caught them, surprised them. Keith said he hit her with whatever he had in his hand

**DB: When he left, who was the driver**

DH: Neil

**DB: What car was it**

DH: Gramma's car, four door bluish color

**DB: Does Agnes have it**

DH: No, Stanley Chief took it to the Cities and crashed it

**DB: What about tennis shoes**

DH: The shoes that were given to dad

**DB: Did you see Neil go in**

DH: I never saw Neil go in

**DB: Did Keith go in alone**

DH: Yes, then opened the front door for them

**DB: I told you about physical evidence from the scene and looking for truthfulness. What happens if physical evidence puts you in the store, if you were there I need to know.**

DH: I wasn't there, no prints inside

**DB: When you left, which direction did you go**

DH: Towards Tamarack, then to Horeshoe Lake road

**DB: How many smokes were taken**

DH: A plastic green garbage bag of smokes

**DB: What about beer**

DH: I seen a lot of beer

**DB: What we need to do is take a taped statement now and protect you and me. To hear your words and cooperation, not just something I wrote down. To show people Don isn't trying to hide from this, he's doing what's right voluntarily cause it's the right thing to do.**<sup>503</sup>

Beck confirmed with the CRU that his notes were accurate and as close to exactly what was said as possible, including the form and manner of questioning.<sup>504</sup> According to Beck's notes, Bjerga was the first one to name each of the accomplices for Donald before Donald identified them. The notes also suggest that Bjerga provided Donald several crime facts, including: that entry was made through a window, that a screwdriver was used, that a gun was stolen, and that they went to Raymond's father's house after the murder.<sup>505</sup> When confronted with these notes in his interview with the CRU, Bjerga said he did not remember the interview with Donald going that way "at all" and that the report "give[s] [him] pause."<sup>506</sup>

It is important to note that there is no evidence that the CRU has reviewed that suggests Bjerga, Beck, or any law enforcement officer involved in Evelyn's investigation set out to coerce anyone into confessing or intended to elicit a false confession in this case.<sup>507</sup> The investigation team appears to have applied techniques that were widely acceptable at the time, techniques these investigators were likely trained to use in the course of their careers, which have likely

---

<sup>503</sup> *Id.* (emphasis added).

<sup>504</sup> See *Beck CRU Interview Part 2*, *supra* note 158, at 00:24:20-00:26:18.

<sup>505</sup> *Beck Report 5/12/99*, *supra* note 204, at 4.

<sup>506</sup> *Bjerga CRU Interview*, *supra* note 213, at 01:16:02-01:16:19.

<sup>507</sup> It is also important to note, however, that in 1984, a Minnesota District Court found that Bjerga had elicited an involuntary and coerced statement from a person he suspected of intrafamilial criminal sexual conduct. *State v. Gard*, 358 N.W.2d 463, 467 (Minn. Ct. of App. 1984). In *Gard*, Bjerga told the defendant during a non-custodial interview that several options were open and that just because defendant talked to Bjerga did not necessarily mean he was going to face jail. *Id.* at 465. Bjerga also indicated that "if charges are brought, counseling could be part of the court's disposition." *Id.* The Court of Appeals found that "[c]onsidering that intrafamilial sexual misconduct was the focus of the investigation, any suggestion of lenience had a heavy impact on [the defendant]." *Id.* at 468.

been used successfully in previous cases. Despite their best intentions, however, the techniques may have produced an unreliable confession. Thanks to relatively recent scrutiny of these techniques, we are now able to identify errors from decades ago. Therefore, the criticism in this finding is focused on the interrogation technique used in generating confessions, and not necessarily on the individual investigators.

**(2) Raymond’s confession and testimony at trial are uncorroborated.**

None of Raymond’s accounts regarding his participation in the burglary-murder are sufficiently corroborated. For example, Raymond told investigators during his initial confession that he got picked up around 3:00p.m or 4:00p.m,<sup>508</sup> and that they stopped by his Aunt Wanda’s on Sandy Lake.<sup>509</sup> There is no available documented evidence that Wanda Misquadace corroborated this part of Raymond’s account. Raymond said that before going to the Dollar Lake Store, they stopped at the Village Pump, where Pippitt purchased an 18-pack of Budweiser.<sup>510</sup> There is no available documented evidence that anyone from the Village Pump has ever corroborated this fact. At the Dollar Lake Store, Raymond said he was “pretty sure” Pippitt kicked in the front door to the store to get inside.<sup>511</sup> There was no available documented damage to the front door of the store. Raymond remembered Keith said he pushed Evelyn down.<sup>512</sup> There is no documented evidence of Keith ever admitting to this; Keith has denied all involvement in the murder.<sup>513</sup> Raymond said the type of beer they took from the store was Old Milwaukee, which had a red and white label.<sup>514</sup> The greater weight of the evidence suggests no beer was stolen, as discussed above.<sup>515</sup>

Raymond also said they went to his dad’s old house after they left the store and took Route 65 to get there, and that Howard Martin was at the house when they arrived.<sup>516</sup> Howard testified at Pippitt’s postconviction review hearing, however, that he never visited that house

---

<sup>508</sup> See *Raymond Interview 4/28/99*, *supra* note 121, at 30.

<sup>509</sup> *Id.* at 32.

<sup>510</sup> *Id.* at 49.

<sup>511</sup> *Id.* at 35.

<sup>512</sup> *Id.* at 45.

<sup>513</sup> *Keith’s Affidavit*, *supra* note 319, at 1.

<sup>514</sup> *Raymond Interview 4/28/99*, *supra* note 121, at 16. This is probably the most significant point that Raymond makes. The Dollar Lake Store did carry Old Milwaukee beer, but whether any was missing from the store remained a point of dispute and conflicting testimony.

<sup>515</sup> See *supra* footnotes 416 through 430 and accompanying text.

<sup>516</sup> *Raymond Interview 4/28/99*, *supra* note 121, at 17, 41.

around time of the Malin murder.<sup>517</sup> After leaving Raymond's father's old house, Raymond said that he and Donald went to Kathy Hill's house.<sup>518</sup> There is no available documented evidence that Kathy Hill corroborated this part of Raymond's account.

The only corroboration that was used or referenced by Rhodes came in the form of corroborating testimony by Donald Hill and Peter Arnoldi. For the reasons outlined below, neither constitute reliable corroboration today.

#### **i. Donald Hill does not corroborate Raymond's account.**

Rhodes argued at the grand jury proceedings that Donald Hill's confession corroborated Raymond's.<sup>519</sup> Rhodes also indicated in his opening statement at Pippitt's trial that he was going to call Donald to elicit testimony regarding the burglary-murder that matched Raymond's.<sup>520</sup> Donald, however provided information on April 29, 1999, that conflicted with Raymond's confession the day before. For instance, Raymond reported that they drove a Toronado,<sup>521</sup> and later, a gold, two-door car.<sup>522</sup> Donald Hill described the car they drove as a dark blue, four-door Sunfire.<sup>523</sup> Additionally, as depicted in *Figures 41, 42, and 47* in Appendix E, Donald and Raymond gave conflicting statements regarding how the car was parked and who sat where in the vehicle.

Raymond never stated he saw a screwdriver in any of his statements; Donald, however, initially denied seeing a screwdriver before eventually admitting that he saw Keith grab a screwdriver.<sup>524</sup> Raymond stated did not go in the store, but that Donald did; Donald stated that he did not go in the store, but Raymond did.<sup>525</sup> Raymond said that they went to the former home of his father via route Highway 65, while Donald said they went to Wanda's home via a gravel road.<sup>526</sup>

---

<sup>517</sup> *Pippitt Postconviction Review Proceeding*, *supra* note 296, at 47.

<sup>518</sup> *Raymond Interview 4/28/99*, *supra* note 121, at 50.

<sup>519</sup> *See Grand Jury Proceedings*, *supra* note 8, at 14.

<sup>520</sup> *See Pippitt Trial*, *supra* note 1, at 17-18.

<sup>521</sup> *Raymond Interview 4/28/99*, *supra* note 121, at 15.

<sup>522</sup> *Raymond Interview 5/27/99 – part 1*, *supra* note 499, at 00:04:05.

<sup>523</sup> *Donald Interview 4/29/99*, *supra* note 206, at 4-5.

<sup>524</sup> *Raymond Interview 4/28/99*, *supra* note 121, at 14. *Compare Beck Report 5/12/99*, *supra* note 204, at 4, with Transcript of Interview by Dave Bjerga and Bruce Beck with Donald Hill, ICR # 98-476 (Jan. 26, 2000) at 6-8 [hereinafter *Donald Interview 1/26/00*].

<sup>525</sup> *See, e.g., Grand Jury Proceedings*, *supra* note 8, at 137.

<sup>526</sup> *Id.* at 140.

Similarly inconsistent, Raymond testified at Pippitt’s trial that Pippitt carried a long object—perhaps a gun—out of the store,<sup>527</sup> while Donald’s narrative points to Keith as carrying a gun out of the store.<sup>528</sup> Raymond stated in one of his accounts that Donald came out of the store carrying a light-colored shopping bag.<sup>529</sup> Donald, however, said Pippitt was carrying a green garbage bag upon his exit from the store.<sup>530</sup>

Rhodes never called Donald to the stand to testify. Moreover, Donald recanted his participation in the crime shortly after he confessed. On April 29, 1999, Donald confessed to being with the group at the scene of the murder.<sup>531</sup> On or about May 13, 1999, Donald recanted and said he was not with the group, was not in the area, and that he was simply covering for someone else when he confessed days before.<sup>532</sup> On November 21, 2023, Donald told the CRU that at the time of the murder, he was three hours away working at Shooting Star Casino in Mahnommen, MN.<sup>533</sup>

Donald Hill’s inconsistencies, along with the evidence of contamination of his confession by Bjerga and his recantations render Donald’s prior statements sufficiently unreliable to corroborate Raymond’s confession or subsequent statements.

#### **ii. Peter Arnoldi does not corroborate Raymond’s account.**

At Pippitt’s trial, the Court determined that Peter Arnoldi’s testimony provided sufficient evidence to corroborate Raymond’s.<sup>534</sup> Arnoldi testified to admissions Pippitt allegedly made about his involvement in the murder.<sup>535</sup> During his testimony, Arnoldi testified that Pippitt said he “helped hold [Evelyn] down while somebody else stuffed toilet paper or kleenix [sic] into the lady’s mouth.”<sup>536</sup> No investigative report described Kleenex or toilet paper being stuffed into Evelyn’s mouth, however. The medical examiner never reported this.

---

<sup>527</sup> *Pippitt Trial*, *supra* note 1, at 344.

<sup>528</sup> *Donald Interview 1/26/00*, *supra* note 524, at 10; *see also Donald Interview 4/29/99*, *supra* note 206, at 11-12.

<sup>529</sup> *Raymond Interview 6/3/99*, *supra* note 552, at 12-13.

<sup>530</sup> *Donald Interview 4/29/99*, *supra* note 206, at 11.

<sup>531</sup> *See generally Donald Interview 4/29/99*, *supra* note 206.

<sup>532</sup> Donald Hill, Letter of Recantation (undated). The letter is stamped May 13, 1999, but its not clear this is the day it was written by Donald, the date it is received as evidence in the investigation, or both. *Id.*

<sup>533</sup> *Donald CRU Interview*, *supra* note 144, at 00:33:58. This information has not been independently verified.

<sup>534</sup> *Pippitt Trial*, *supra* note 1, at 629-630.

<sup>535</sup> *Id.* at 491-495.

<sup>536</sup> *Id.* at 491.



The criminal complaint did, however, contain the following language based on the medical examiner's findings:

*In his provisional report Michael B. McGee, MD, Medical Examiner who performed the autopsy indicated the cause of death as asphyxia with multiple **soft tissue** injuries due to manual strangulation with blunt trauma due to assault. In the final autopsy protocol Dr. McGee details **soft tissue** injuries associated with manual strangulation and multiple blunt traumatic injuries to the scalp region, facial region, and upper extremities as well as closed head trauma.*<sup>537</sup>

Arnoldi admitted to having read Pippitt's complaint.<sup>538</sup> Pippitt also testified in his postconviction relief hearing that he allowed Arnoldi to read the complaint.<sup>539</sup>

Moreover, Arnoldi told Beck in a pretrial interview that Pippitt had told him: some of the accomplices were Pippitt's cousins and some were not;<sup>540</sup> they took the van that belonged to Pippitt's mother;<sup>541</sup> one of the accomplices was from the cities and another was from Deerwood;<sup>542</sup> after the murder they left and went back to Pippitt's mother's house;<sup>543</sup> and a couple of the accomplices involved were named Hill.<sup>544</sup> These statements conflict with incontrovertible facts of the case.<sup>545</sup>

In 2020, Arnoldi walked back his testimony against Pippitt at trial. Specifically, Arnoldi stated in a deposition with Pippitt's defense lawyers that "[a]fter several months of having been shown evidence by [Jim] Cousins, the investigator on this case, I believe that what I believed at that time to be true is not true."<sup>546</sup> He further explained that Cousins showed him "facts" like "they did not put Kleenex or toilet paper" in Evelyn's mouth and that "there was no breaking and entering to enter the building."<sup>547</sup> Therefore, Arnoldi concluded, "I now believe that Brian Pippitt

---

<sup>537</sup> *Pippitt Complaint*, *supra* note 215, at 1 (emphasis added).

<sup>538</sup> *Pippitt Trial*, *supra* note 1, at 503.

<sup>539</sup> *See Pippitt Postconviction Review Proceeding*, *supra* note 296, at 113.

<sup>540</sup> Transcript of Interview by Bruce Beck with Peter Arnoldi, ICR # 98-476 (Jul. 15, 1999) at 3 [hereinafter *Arnoldi Interview 7/15/99*].

<sup>541</sup> *Id.* at 4.

<sup>542</sup> *Id.*

<sup>543</sup> *Id.* at 10.

<sup>544</sup> *Id.* at 13.

<sup>545</sup> In addition to the factual errors he made in his pretrial interview and testimony at Pippitt's trial, Arnoldi also told a federal judge at his sentencing hearing approximately ten months after Pippitt's trial that "[Evelyn] was choked to death with Kleenex and raped and killed, so I felt that was wrong...The only thing that I was hoping for was a downward departure to at least, like, ten years..." Transcript of Sentencing at 25, *United States v. Arnoldi*, Crim. No. 00-307 (Oct 2, 2001). There was no evidence that Evelyn was sexually assaulted at or near the time of her murder.

<sup>546</sup> *Arnoldi Deposition*, *supra* note 623, at 7.

<sup>547</sup> *Id.* at 8.

at the time was telling me what he was accused of, and at the time he was telling me this, I believed he was telling me what they did.”<sup>548</sup>

Although Arnoldi once provided sufficient corroboration to Raymond’s testimony against Pippitt at trial, the facts as they stand today suggest that Arnoldi’s trial testimony is unreliable and does not corroborate Raymond’s confession or subsequent testimony.

### **(3) Raymond’s confession and testimony conflict with each other and other evidence in the case.**

In addition to lacking corroboration, Raymond’s confession and subsequent statements about his involvement have insufficient indicia of reliability to be of any probative value. Raymond would be questioned at least nine times concerning his knowledge of the crime.<sup>549</sup> Details that he provided about the events surrounding the murder changed over the course of those statements. For example, regarding the car they drove that day, Raymond first describing the car as a Toronado in his April 28, 1999 interview.<sup>550</sup> On May 27, 1999, he described the car as being his grandmother’s gold-colored, two-door car.<sup>551</sup> Six days later, he said the car was either his grandmother’s or his aunt’s.<sup>552</sup> When Bjerga asked whether “it belonged to Agnes Chief,” Raymond agreed, saying “at the time it did, yeah.”<sup>553</sup>

Other parts of Raymond’s account also changed. Appendix C’s *Table 2* details the way Raymond’s testimony evolved in five topics: the direction the getaway car was parked while at the store; what Raymond heard while at the store; the items Raymond saw that were stolen from the store; how Raymond’s purported accomplices exited the store after the burglary/murder; and what the purported accomplices discussed after the commission of the crime. Each of the columns of *Table 2* depicts the evolution of a topic, while each row represents a specific recorded statement Raymond made about each topic. These five topics are just some of the ways, among others, in which Raymond’s story changed.

---

<sup>548</sup> *Id.*

<sup>549</sup> Raymond was interrogated on Feb 18, 1999; April 28, 1999, April 30, 1999, May 27, 1999; June 3, 1999; and April 12, 2000. He gave sworn testimony at a legal proceeding on June 4, 1999 (grand jury proceedings); October 27, 1999 (Neil King’s trial); January 23, 2001 (Brian Pippitt’s trial). *See* discussion *infra* Appendix C; Transcript of Interview by Bruce Beck with Raymond Misquadace, ICR #98-476 (Apr. 12, 2000) at 1.

<sup>550</sup> *Raymond Interview 4/28/99*, *supra* note 121, at 15.

<sup>551</sup> *Raymond Interview 5/27/99 – part 1*, *supra* note 499, at 00:04:05.

<sup>552</sup> Transcript of Interview by Dave Bjerga with Raymond Misquadace, Inv. #98000062 (Jun. 3, 1999) at 19 [hereinafter *Raymond Interview 6/3/99*].

<sup>553</sup> *Id.*

Not only are Raymond's accounts inconsistent with one another on key detail, his overall narrative conflicts with other evidence in the case. For example, it seems unlikely that this group of co-defendants would voluntarily spend time together. According to Keith, Raymond was rumored to be "looking" for Keith at that time because he wanted to "kick [his] ass" for unclear reasons.<sup>554</sup> Keith also mentioned in his interview with the CRU that Raymond was unwelcomed by the Misquadace side of the family because he was believed to be "touching" Keith's sisters around the 1993 to 1994 timeframe.<sup>555</sup> Similarly, Donald wrote in his recantation letter that Ray "hates me so bad it aint [sic] funny."<sup>556</sup>

Further, it is puzzling why Donald would deny involvement in the crime but name Keith and Pippitt as suspects in his interview on February 2, 1999, if all three were actually part of the crime; this essentially would amount to Donald's self-incrimination because his accomplices could easily and credibly implicate him, too.<sup>557</sup> Similarly, it makes no sense that Raymond would tell investigators on February 18, 1999, that he heard rumors that Keith and Pippitt were responsible for the murder<sup>558</sup> when this information would simply lead investigators right back to Raymond if he was truly involved in the murder.<sup>559</sup> The same is true for Keith; to implicate Donald and Raymond in his interview on February 17, 1999, would be to implicate himself.<sup>560</sup> While there appeared to be strained relationships among these men, it seems unlikely that each of these three accomplices would independently self-sabotage and risk a murder conviction just to spotlight the other.

Raymond's account also conflicts with timing facts. Raymond testified at Pippitt's trial that the group of five, after leaving Aunt Wanda's house in Sandy Lake, stopped to buy beer at the Village Pump in Tamarack in the "early evening."<sup>561</sup> It was "still light out," according to

---

<sup>554</sup> *Keith Interview 2/17/99*, *supra* note 143, at 5.

<sup>555</sup> Interview with Keith Misquadace, co-accused, telephone (Nov. 21, 2023) at 00:09:18 [*hereinafter Keith CRU interview*].

<sup>556</sup> Donald Hill, Letter of Recantation (undated), *supra* note 532.

<sup>557</sup> *See generally Donald interview 2/2/99*, *supra* note 121.

<sup>558</sup> *Raymond Interview 2/18/99*, *supra* note 190, at 3, 20.

<sup>559</sup> In fact, Bjerga makes this point in his interview with Donald Hill on Apr. 29, 1999. *Donald Interview 4/29/99*, *supra* note 206, at 19 ("Because you had told us before about Keith and Brian and I was just curious why you would name those two guys when you also were there. I was curious why you would do that because you know that those two people could point the finger at you also.") Donald's response was "cause they were the ones that went in and mostly did it..." and agreed with Bjerga when he said "you told me about Keith and Brian because they are the ones that put down Mrs. Malin." *Id.*

<sup>560</sup> *Keith Interview 2/17/99*, *supra* note 143, at 4-5.

<sup>561</sup> *Pippitt Trial*, *supra* note 1, at 329.

Raymond.<sup>562</sup> Then, intending to go to a party in Cloquet, they continued east along Highway 210, but never made it; they instead turned around in Sawyer and headed back to Sandy Lake.<sup>563</sup> The driving distance from the Village Pump in Tamarack, to Sawyer, then to the Dollar Lake Store, totals 59 miles.<sup>564</sup> Sunset in Tamarack on February 24, 1998, was at 5:52p.m.<sup>565</sup>

The faintest possible light might have been seen as late as 7:31p.m.<sup>566</sup> Evelyn Malin was killed no earlier than 9:40p.m.; customer Bradley Haussner bought cigarettes from her as she was closing.<sup>567</sup> The latest the group could have been in Tamarack with it being “still light out,” therefore, was 7:31p.m. Further assuming that the group arrived at the Dollar Lake Store immediately after Haussner departed shortly after 9:40p.m., it would have taken two hours, nine minutes to drive from Tamarack to Sawyer to the Dollar Lake Store, all on paved state or county

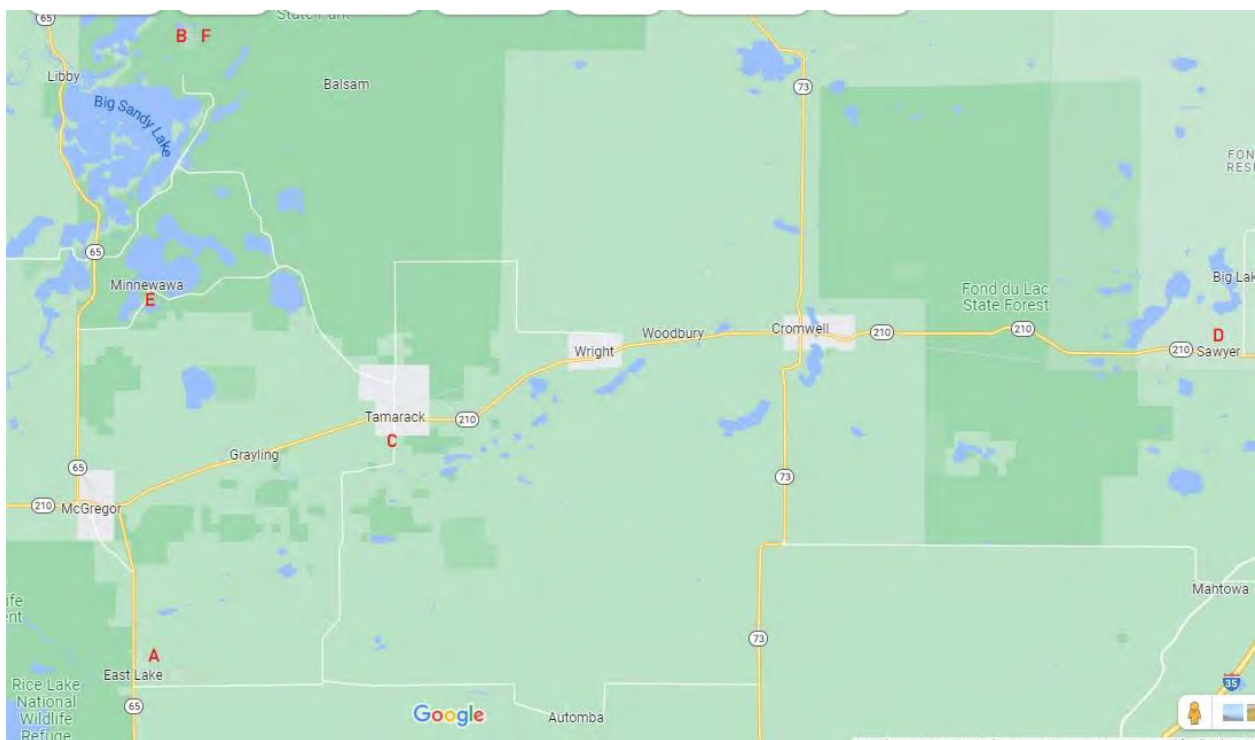


Figure 43 - Approximate locations of notable events in Raymond Misquadace’s testimony, using capital letters superimposed on a Google Map. (A): Kathy Hill’s house in East Lake. (B): Wanda Misquadace’s house in Sandy Lake. (C): the Village Pump in Tamarack. (D): turnaround point in Sawyer. (E): Dollar Lake Store. (F): Raymond’s father’s old house in Sandy Lake.

<sup>562</sup> *Id.* at 335.

<sup>563</sup> *Id.* at 331-332.

<sup>564</sup> *Id.* at 551.

<sup>565</sup> *February 1998 – Tamarack, Minnesota – sunrise and sunset calendar*, SUNRISE-SUNSET.ORG, <https://sunrise-sunset.org/us/tamarack-mn/1998/2> (last visited Jan. 16, 2024).

<sup>566</sup> *Id.*

<sup>567</sup> Transcript of Interview by Bruce Beck with Bradley Haussner, ICR # 98-476 (Feb. 25, 1998) at 1 [hereinafter *Haussner Interview 2/25/98*].

highways. This would result in an average speed of just 27 miles per hour during that leg of the trip, assuming they did not stop between those three points.<sup>568</sup>

Raymond also testified on direct examination that the group turned around at Sawyer “because there was really barely enough gas.”<sup>569</sup> On cross examination at Pippitt’s trial, Raymond testified that they turned around at a *gas station* in Sawyer and headed back towards Tamarack.<sup>570</sup> Raymond confirmed at the grand jury proceeding, however, that the group never stopped anywhere to get gas.<sup>571</sup>

More evidence conflicts with Raymond’s accounts. For example, Raymond testified at Pippitt’s trial that after leaving the Dollar Lake Store following the murder, they went to the abandoned home of his late father, Walter Misquadace.<sup>572</sup> Raymond also testified that, Howard Martin was the only one at the house as the group arrived, and he left shortly thereafter.<sup>573</sup> He described the flooring as “shag carpet.”<sup>574</sup> Raymond also told investigators that the house was unoccupied at the time, that it was “ripped up” and “kinda junky.”<sup>575</sup> He agreed that it was “a party house where no one was livin’.”<sup>576</sup>

Raymond’s description of the condition of the house conflicts with other evidence. Mari Blegen, the former partner of Bryan Lee Misquadace, stated in a sworn declaration that she lived in the former home of Walter Misquadace on February 24, 1998.<sup>577</sup> She knew it was Walter Misquadace’s home because Bryan Lee told her that before they moved into the home; in fact, she said the family believed the house was haunted by Walter.<sup>578</sup>

Agnes Chief also confirmed in sworn testimony that Bryan Lee lived in Walter’s former home at that time.<sup>579</sup> Blegen stated that the home was tiled at that time, not shag carpeted, and that the group of five never came to her home, nor could they have had access if she were not

---

<sup>568</sup> Raymond told Investigator Bjerga during his April 28, 1999, interview that they “stopped a alongside the road a couple times to go to the bathroom” during the trip, but he does not specify which leg of the trip(s) they did this. *See Raymond Interview 4/28/99, supra* note 121, at 49.

<sup>569</sup> *Pippitt Trial, supra* note 1, at 331.

<sup>570</sup> *Id.* at 436 (emphasis added).

<sup>571</sup> *Grand Jury Proceedings, supra* note 8, at 507.

<sup>572</sup> *Pippitt Trial, supra* note 1, at 345.

<sup>573</sup> *Id.* at 360-361. As previously discussed, Howard denied this. *See* footnotes 516-517 and accompanying text.

<sup>574</sup> *Id.* at 456.

<sup>575</sup> *Raymond Interview 4/30/99, supra* note 203, at 15.

<sup>576</sup> *Id.* at 18.

<sup>577</sup> Affidavit of Mari Blegen, *Pippitt v. State*, K4-99-325, Jul. 15, 2021, at 1 [hereinafter *Blegen Affidavit*].

<sup>578</sup> Interview with Mari Blegen, witness, telephone (Dec. 14, 2023) at 12:42-13:10 [hereinafter *Blegen CRU Interview 12/14/23*].

<sup>579</sup> *Pippitt Postconviction Review Proceeding, supra* note 296, at 17.



Figure 44 – Photo from Mari Blegen’s home in 1997-1998



Figure 45 – Photo from Mari Blegen’s home in 1997-1998 (blurred)

home.<sup>580</sup> She subsequently produced pictures (Figures 44, 45, and 46) that she claims come from



Figure 46 – Photo from Mari Blegen’s home in 1997-1998

within the home in the 1997-1998 time frame.<sup>581</sup> She knows these pictures are from around that time based on the age of her child as featured in Figures 44 and 45<sup>582</sup> The pictures do not depict a home with “shag” carpet.<sup>583</sup>

An occupancy agreement between Bryan Lee and the Mille Lacs Housing Authority corroborates that Bryan Lee occupied tribal housing starting in August 1997. Letters from the Housing Authority from March 1998, suggest that Bryan Lee was living in a house administered by the Housing Authority at least as late as March 1998.<sup>584</sup> Additionally, not only did Howard Martin testify at Pippitt’s postconviction review hearing

<sup>580</sup> Interview with Mari Blegen, witness, Anoka, Minn. (Dec. 18, 2023) at 00:13:50-00:14:14, 00:18:12-00:19:20 [hereinafter *Blegen CRU Interview 12/18/23*].

<sup>581</sup> *Id.* at 01:08:42-01:14:06; Email from Mary Blegen to Carman Leone (Dec. 21, 2023).

<sup>582</sup> *Id.* at 1:08:40-1:14:25.

<sup>583</sup> See Savanna Lentz, *Loop vs. Cut Pile Carpet (Differences and Similarities)*, HOME STRATOSPHERE (Oct. 29, 2020), <https://www.homestratosphere.com/loop-vs-cut-pile-carpet/> (explaining shag style is cut pile carpet).

<sup>584</sup> Ray Kegg, Letter to Bryan Misquadace, Mar. 10, 1998; Ray Kegg, Letter to Bryan Misquadace, Mar. 20, 1998. The letter does not indicate the address of the home in which Bryan Lee lived. See *id.*

that he never visited that house around time of the Malin murder, Howard also testified that he never interacted with Raymond, Donald, King, Keith, and Pippitt together in February of 1998.<sup>585</sup>

Similarly, Raymond's testimony at Pippitt's trial about Keith's hand injury following the murder conflicts with other evidence in the case. Specifically, Raymond testified that when Keith came out of the store, he thought Keith had a cut on his hand.<sup>586</sup> Raymond testified to seeing some blood on the back of his hand and that when Keith got back into the car, his hand was folded into the bottom of his shirt, like he had wrapped his hand in the shirt.<sup>587</sup> Beck, however, checked Keith's hands on March 5, 1998, nine days after the murder.<sup>588</sup> Beck wrote in his report documenting that interview that he "did not notice any cuts or scrapes."<sup>589</sup>

Raymond's accounts also conflict with the alibis of each of the four he implicated. King, for example, signed an affidavit in October 2021, in which he declares under penalty of perjury that he had no involvement or knowledge of Evelyn's death and that "on February 24, 1998 I was not in McGregor. Rather, I was with Bradley Misquadace and my father, Ed Martin in Virgia, Minnesota where my car was being repaired."<sup>590</sup> Two witnesses corroborate King's alibi in so far as they establish that he was out of the area during the day of February 24, and at his father's residence for the entire evening.<sup>591</sup>

Keith Misquadace stated he was at his grandmother's home, that of Agnes Chief, that night.<sup>592</sup> Agnes confirmed this herself, under oath, in Pippitt's postconviction review hearing.<sup>593</sup> He also spent some time watching television with his Aunt Wanda at her house, then came back home about 10:00p.m. or 11:00p.m.<sup>594</sup> Keith's girlfriend at the time partially corroborates his alibi; she told the CRU that she remembers talking to Keith that evening—starting sometime

---

<sup>585</sup> *Pippitt Postconviction Review Proceeding*, *supra* note 296, at 48.

<sup>586</sup> *Pippitt Trial*, *supra* note 1, at 343.

<sup>587</sup> *Id.* at 359-360.

<sup>588</sup> *Beck Report 03/17/98*, *supra* note 56, at 28.

<sup>589</sup> *Id.* at 28.

<sup>590</sup> Affidavit of Neil King at 2, *Pippitt v. State*, K4-99-325, Oct. 2021.

<sup>591</sup> See David Langfeld, Investigation Report re Bradley Misquadace, *State v. Pippitt*, K4-99-325, Dec. 15, 1999, at 1. Mrs. Trudy King, Neil's mother, corroborated Bradley's statement regarding the fact that Neil had car trouble and stayed at his father's house, Edward Martin. See Interview by Nicholas Foster with Trudy King, witness, telephone (October 16, 2023) at 00:18:56-00:20:02.

<sup>592</sup> Transcript of Interview by Bruce Beck with Keith Misquadace, ICR # 98-476 (Mar. 5, 1998) at 2 [hereinafter *Keith Interview 3/5/98*].

<sup>593</sup> *Pippitt Postconviction Review Proceeding*, *supra* note 296, at 12.

<sup>594</sup> *Keith Interview 3/5/98*, *supra* note 592, at 2-3.

around 8:00p.m. or 9:00p.m. until about 10:00p.m. or 11:00p.m.—because they got in an argument about another woman whom she believed was romantically involved with Keith.<sup>595</sup> She recalled that the conversation took place on the evening before the murder was announced in the news because she was babysitting at a home very close to the Dollar Lake Store, and her parents were upset that she was so close to the murder scene the night it occurred.<sup>596</sup>

Donald has also provided an alibi, but it has not been corroborated. It has also changed over time. He initially told investigators on in February 1999, that he was at home with his mother the night of the murder.<sup>597</sup> The following month he said that he was at the scene of the murder.<sup>598</sup> He recanted and said he was not in the area the very next month.<sup>599</sup> In November 2023, Donald said he was in Mahnomon, MN, at the time of the murder.<sup>600</sup> While not dispositive of his whereabouts on February 24, 1998, a clerk at the Fireside Lounge Off Sale Liquor store in McGregor said that she witnessed Donald come into the liquor store the day after the murder and purchase liquor with a silver certificate.<sup>601</sup> Merle Malin testified before the grand jury that

---

<sup>595</sup> See Interview by Nicholas Foster with Teresa Colton-Schalz, witness, telephone (Nov. 30, 2023) at 00:05:09-00:05:46, 00:12:45-00:13:20.

<sup>596</sup> *Id.* at 00:04:25-00:05:07. Ms. Colton-Schalz stated she has not spoken to Keith for about 10 years. *Id.* at 00:28:37-00:28:50.

<sup>597</sup> See *Donald interview 2/2/99*, *supra* note 121, at 4.

<sup>598</sup> See generally *Donald Interview 4/29/99*, *supra* note 206.

<sup>599</sup> Donald Hill, Letter of Recantation (undated), *supra* note 532.

<sup>600</sup> *Donald CRU Interview*, *supra* note 144, at 00:33:58. This information has not been independently verified.

<sup>601</sup> Transcript of Interview by Jesse Tabolich with Sandy Rian, ICR # 98-476 (May 27, 1999) at 2-4 [hereinafter *Rian Interview 5/27/99*]. The information provided from Sandy Rian is a bit suspicious. The first recorded statement that she provided was in May 1999, nearly 15 months after the murder. See generally Transcript of Interview by Jesse Tabolich with Sandy Rian, ICR # 98-476 (May 12, 1999) [hereinafter *Rian Interview 5/12/99*]. Rian indicated in her May 27, 1999, interview that she notified police immediately after Donald purchased liquor with a silver certificate because it was unusual for someone so young to have a rare currency like that. *Rian Interview 5/27/99*, at 3-4. She could not provide the name of the young man at that time. *Id.* Earlier in the interview, however, she said she knew his name because she saw his identification card, but never explained why she could not provide the name when she alerted police immediately after her interaction with Donald. See *id.* at 2; see also Dave Bjerga, BCA Report of Investigation, Inv. # 98000062, Feb. 25, 1998\_2020, at 2 [hereinafter *Bjerga Report 2/25/98\_2020*]. Rian also provided Officer Tabolich three cash register receipts and a kitchen note that stated: “Dwayne Hill / Nike cap / Blk + Wh tennis shoes / 6’2” born 1974.” *Rian Interview 5/27/99*, at 1-2; see also Sandy Rian, Kitchen Check Number 150175, ICR # 98-476 (Mar. 25, 1998). If Rian had written down Hill’s name at the time of the incident, why did she not provide his name to police when she spoke to them when she first reported the incident? What’s further unclear is why she did not provide the cash register receipts and kitchen note while she provided the silver certificate to police. See Jesse Tabolich, Evidence Receipt for Kitchen Check and Cash Register Receipts, ICR # 98-476 (May 13, 1998). An evidence receipt indicates that a silver certificate was provided to police on March 17, 1998. See Dave Bjerga, Evidence Receipt for Silver Certificate, Bureau No. 98-062 (May 19, 1999). Finally, and even more suspicious, Bjerga’s report dated “2/25/98 (2020 hrs)” outlines his interactions with Rian on February 25, 1998, but references his discovery of Rian’s interactions with McGregor police in May 1999, 15 months into the future. See *Bjerga Report 2/25/98\_2020*, at 2. Clearly, Bjerga backdated the report without making reference to the fact this report was drafted at least 15 months after the investigative activity had occurred.



Evelyn would save silver certificates.<sup>602</sup> Later, Merle testified at Pippitt's trial that in addition to beer and cigarettes, a white envelope containing a "substantial amount of money" including the silver certificates that Evelyn saved was also missing.<sup>603</sup>

Pippitt's alibi is that he was with his nephews in Onamia at Grand Casino.<sup>604</sup> After the casino, Pippitt testified that he went to the liquor store prior to going to the home of Wesley's girlfriend.<sup>605</sup> Pippitt also testified that he got home after 9:00p.m., when he briefly went to his mother's home, before going to his sister Wanda's for the remainder of the evening.<sup>606</sup> Pippitt's alibi was corroborated by Michael Misquadace, Pippitt's nephew, as early as March 5, 1998, before Pippitt was a suspect.<sup>607</sup> Michael told Beck, and later testified consistently, that Pippitt was with him and Brandon at the casino where Michael was interviewing for a job.<sup>608</sup> Kathy Thompson, Director of Human Resources at Grand Casino, confirmed that Michael had an interview scheduled on February 24, 1998, and was subsequently hired after the interview.<sup>609</sup> Michael could not say when they arrived home that night, other than it was starting to get dark when he got home.<sup>610</sup>

Wesley Misquadace testified at Pippitt's trial that Pippitt, Brandon, and Michael went to the home of Wesley's fiancé, Shannon Webb.<sup>611</sup> Shannon Webb testified that she "very vaguely" remembered seeing Michael, Brandon, and Pippitt coming to her home in late February 1998 after 10:00p.m. and staying about 30-45 minutes.<sup>612</sup> Brandon Misquadace's statement to investigators aligns with the statements of his brothers, placing Pippitt with himself and Michael

---

<sup>602</sup> *Grand Jury Proceedings*, *supra* note 8, at 57.

<sup>603</sup> *Pippitt Trial*, *supra* note 1, at 290. At least one person familiar with this case found that this was a contributing factor to focusing on Don Hill and his co-accomplices, and is a convincing inference that suggests that Pippitt's conviction is sound. The CRU is unconvinced that this piece of evidence outweighs the rest of the evidence of Pippitt's innocence for several reasons. First, there remains some questions about how Donald Hill passed this note and when it was taken into evidence by investigators. See Footnote 601, *supra*. Second, assuming Donald Hill did pass the silver certificate, there is no evidence in the record that the silver certificate he passed at the Fireside came from Evelyn's store. Third, Raymond, upon whose testimony Rhodes based his case against Pippitt, consistently denied knowing whether/seeing any money taken from the store. See *Appendix C, infra*. Fourth, even if one may conclude Donald Hill had participated in the murder based on this connection, this does not necessarily implicate Brian Pippitt.

<sup>604</sup> *Pippitt Postconviction Review Proceeding*, *supra* note 296, at 107-110. Surveillance footage was unavailable to corroborate Pippitt's alibi.

<sup>605</sup> *Id.* at 111.

<sup>606</sup> *Id.* at 111-112.

<sup>607</sup> See *Michael Interview 3/5/98*, *supra* note 102, at 3.

<sup>608</sup> *Id.*; *Pippitt Trial*, *supra* note 1, at 560-563.

<sup>609</sup> See *Pippitt Trial*, *supra* note 1, at 571-573.

<sup>610</sup> See *id.* at 568-569.

<sup>611</sup> *Id.* at 588-589.

<sup>612</sup> *Id.* at 583-586.

at the casino, and getting back later that night.<sup>613</sup> While he could not remember the precise time he got home, he remembered his grandmother, Agnes Chief, was awake and dinner was done.<sup>614</sup> Agnes Chief also corroborated Pippitt's alibi, placing him with Michael and Brandon that evening.<sup>615</sup>

**(d) The prosecutor presented unreliable jailhouse informant testimony.**

Rhodes should have reasonably suspected that Arnoldi was relying on Pippitt's complaint to fashion his testimony, as discussed previously. Arnoldi also had a criminal history involving crimes of dishonesty, including 13 convictions for theft, theft by false pretenses, check forgery, and burglary.<sup>616</sup> The Star Tribune featured a story on Arnoldi on July 18, 1999, a year and a half before Pippitt's trial.<sup>617</sup> The article details Arnoldi's expertise in disarming and manipulating victims of his thefts, burglaries and forgeries.<sup>618</sup> The article quotes Chisago County District Judge Linn Slattengren as describing Arnoldi as "an opportunistic criminal that just can't be trusted."<sup>619</sup> The article also stated:

*Psychiatrists at the regional treatment center in St. Peter, Minn., where Arnoldi was evaluated this spring prior to sentencing for several thefts, called him an "unreliable historian." They said he falsely claimed he had been awarded the Congressional Medal of Honor, had been held prisoner in Vietnam, had a master's degree in engineering and once raced cars professionally. The report says Arnoldi's mother told a different tale: That her son was dishonorably discharged from the Army, had only been a prisoner in the United States and received his high school equivalency diploma while imprisoned.<sup>620</sup>*

Arnoldi also had mental health issues around the time of Pippitt's trial that called into question his competency to testify and undermined his credibility. Specifically, a staff psychiatrist from Federal Medical Center Rochester documented in a mitigation letter, dated July 16, 2001, prepared for Arnoldi's attorney to use in his sentencing case:

*Along with the symptoms of depression outlined above, Mr. Arnoldi said that he also began to experience an auditory hallucination of a female voice which urges*

---

<sup>613</sup> Transcript of Interview by Bruce Beck with Brandon Misquadace, ICR # 98-476 (Mar. 5, 1998) at 8 [hereinafter *Brandon Interview 3/5/98*].

<sup>614</sup> *Id.* at 10.

<sup>615</sup> *Pippitt Postconviction Review Proceeding*, *supra* note 296, at 10-14.

<sup>616</sup> *Pippitt Trial*, *supra* note 1, at 666.

<sup>617</sup> See Richard Meryhew, *Charmingly disarming: Con is expert at taking people in*, STAR TRIBUNE, Jul. 18, 1999. A Westlaw search revealed the same article for the same date and author under a different title: "Con plays his victims, works the system Felonies stacked up for 54-year-old as he targeted friends, employers." Richard Meryhew, *Con plays his victims works the system*, Star Tribune, Jul. 19, 1999.

<sup>618</sup> Meryhew, *supra* note 617, at 1.

<sup>619</sup> *Id.*

<sup>620</sup> *Id.* at 2.

*him to kill himself and which tells him that he is worthless. Mr. Arnoldi said that the voice is that of someone whom he does not recognize. He said that the voice occurs intermittently, but at times, when his symptoms are more severe, he hears the voice constantly. Mr. Arnoldi said that the voice does not usually tell him specifically how he should kill himself, but at times, it urges him to overdose on his insulin (he is a diabetic). Mr. Arnoldi said that sometimes, he perceives visual images of people he knows either standing next to him or “getting hurt next to me.”*<sup>621</sup>

The staff psychiatrist diagnosed Arnoldi with Severe Major Depression with Psychotic Features.<sup>622</sup> Arnoldi later testified in a deposition with Pippitt’s postconviction lawyers that he had those hallucinations at or near the time of Pippitt’s trial.<sup>623</sup> Arnoldi also said that he was sent to the facility in Rochester in November 2000, and he stayed there for about two and a half years.<sup>624</sup>

Arnoldi’s mental illness was not presented at Pippitt’s trial. It is unclear whether Rhodes knew of Arnoldi’s hallucinations when he called him to testify. Rhodes knew, however, that Arnoldi met Pippitt at St. Peter State Hospital.<sup>625</sup> St. Peter has long been known throughout the state as a hospital that conducts evaluations and administers treatment related to mental health.<sup>626</sup>

Equally unclear is the extent to which Rhodes made a promise to support Arnoldi prior to Arnoldi’s testimony at Pippitt’s trial. At Pippitt’s trial, Rhodes asked Arnoldi about this:

*Rhodes: At the time you wrote the letter [offering information on Pippitt], were there any deals offered to you for your testimony?*  
*Arnoldi: Never asked for any.*  
*Rhodes: As we sit here today have you been offered any deals?*  
*Arnoldi: No.*  
*Rhodes: Did you ask for any?*  
*Arnoldi: No.*<sup>627</sup>

Beck, however, testified that when Arnoldi first contacted the authorities, he asked to be moved to a different confinement facility in exchange for giving information about Pippitt’s alleged

---

<sup>621</sup> Letter from Andrew Olnes, BOP staff psychiatrist, to Katherine Menendez, defense attorney for Peter Arnoldi (Jul. 16, 2001), at 2-3.

<sup>622</sup> *Id.* at 4.

<sup>623</sup> See Transcript of Deposition of Peter Arnoldi at 22-23, State v. Pippitt, K4-99-325 (Jan. 15, 2020) [hereinafter *Arnoldi Deposition*].

<sup>624</sup> *Id.* at 15.

<sup>625</sup> Bruce Beck, Aitkin County Sheriff Dept. Supp. Report XI, ICR # 98-476, Jul. 24, 1999, at 2 (“I ... reviewed the information with the County Attorney.”)

<sup>626</sup> See *Saint Peter Regional Treatment Center*, MINNESOTA LEGISLATIVE REFERENCE LIBRARY, Feb. 24, 2015, <https://www.lrl.mn.gov/agencies/detail?AgencyID=1417> (last visited Jan. 22, 2023).

<sup>627</sup> *Pippitt Trial*, *supra* note 1, at 495.

involvement in Malin's murder.<sup>628</sup> Agreeing to move an inmate in exchange for giving information is a deal.

Further, a letter from Arnoldi's lawyer located in the Aitkin County Attorney's file revealed that Rhodes had provided support in the form of writing a letter to the judge in Arnoldi's criminal matter outlining his cooperation and the impact of his testimony in securing the conviction.<sup>629</sup> The letter, dated June 12, 2001, does not indicate when Rhodes made his offer for support.<sup>630</sup>

Ultimately, Arnoldi's testimony should not have been used at Pippitt's trial. Evidence suggests, however, that Arnoldi's testimony was one of the linchpins for the state in securing Pippitt's conviction. Specifically, the letter Rhodes wrote for Arnoldi stated:

*Mr. Arnoldi's testimony was crucial to the State in obtaining two first degree murder convictions in the above-referenced matter. I spoke with nine of the twelve jurors after the trial. They indicated to me that Mr. Arnoldi was one of two pivotal witnesses whose testimony was significant during their deliberations in convincing them of the guilt of the defendant.*<sup>631</sup>

### **3. Pippitt's attorney had neither the experience nor capacity to properly challenge the implausibility of the prosecutor's theory at trial.**

Tom Murtha was Brian Pippitt's second appointed public defender at his trial.<sup>632</sup> Murtha took the case over from Pippitt's first attorney, Christopher Davis, after Pippitt's first trial resulted in a mistrial due to illness of the judge.<sup>633</sup> At the time of Pippitt's trial, Murtha had been practicing for approximately two years.<sup>634</sup> This was his first homicide case.<sup>635</sup> Not only was he inexperienced, he had no co-counsel.<sup>636</sup> Murtha stated in an interview with the CRU that he was carrying a caseload at that time that exceeded the national standard.<sup>637</sup> He admitted that his

---

<sup>628</sup> *Id.* at 527-528.

<sup>629</sup> Facsimile from Katherine Menendez, Federal Public Defender, to Bradley Rhodes, Aitkin County Attorney (Jun. 12, 2001).

<sup>630</sup> *See id.*

<sup>631</sup> Letter from Bradley Rhodes, Aitkin County Attorney, to Judge Richard Kyle (Sep. 5, 2001) [hereinafter *Letter to Judge Kyle*]

<sup>632</sup> *Pippitt Trial*, *supra* note 1, at 1.

<sup>633</sup> Affidavit of Thomas F. Murtha, State v. Pippitt, K4-99-258, Dec. 5, 2000 [hereinafter *Murtha Affidavit*].

<sup>634</sup> *Murtha CRU Interview*, *supra* note 413, at 0:01:40; Record of Bar Admission for Thomas Murtha, Minnesota Judicial Branch, available at <https://mars.courts.state.mn.us/AttorneyDetail.aspx?attyID=0287386> (last visited Mar. 7, 2024).

<sup>635</sup> *Murtha CRU Interview*, *supra* note 413, at 0:09:05.

<sup>636</sup> *Id.* at 0:09:10. He did, however, have an undergraduate student who helped him. *Id.*

<sup>637</sup> *Id.* at 00:03:24.

overload of cases prevented him from reviewing all the discovery in Pippitt’s case.<sup>638</sup> Due to a venue change, Murtha tried the case at Koochiching County Courthouse in International Falls.<sup>639</sup> This resulted in Murtha, an inexperienced lawyer, trying a murder case alone, three-and-a-half hours from his home.<sup>640</sup>

Murtha admitted that he was ineffective at Pippitt’s trial at times and was surprised some of the things he did—or failed to do—were not raised as ineffective assistance of counsel on appeal.<sup>641</sup> In fact, in his interview with the CRU, he said that he is “horrified” at some of the mistakes he made.<sup>642</sup> Murtha failed to perform at a reasonable level of competence in this case in three primary ways: (a) he failed to impeach key prosecution witnesses, (b) he failed to consult with experts, and (c) he failed to present alternative perpetrator evidence at trial. Murtha’s failure to impeach key witnesses and consult with experts are discussed in the sections that immediately follow. An analysis of his failure to present alternative perpetrator evidence at trial is discussed in section V(B)(3) below.

**(a) Pippitt’s attorney failed to impeach key prosecution witnesses.**

Despite the photographic evidence of the crime scene that was provided to him in discovery, Murtha failed to impeach Merle and Raymond on their testimony that beer and cigarettes were stolen from the store.<sup>643</sup> Similarly, Murtha failed to call Horsman to impeach Merle about missing stock, despite the fact that transcripts of Horsman’s interviews were provided to Pippitt’s defense over a year prior to Pippitt’s trial.<sup>644</sup>

In his interview with the CRU, Murtha offered no strategic reason for failing to use the pictures and video of the store and its inventory during the trial to impeach Merle. He said he was “really pissed” at himself for missing it and for “not having the will at the time to go there.”<sup>645</sup> Similarly, Murtha did not have a strategic reason for not calling Horsman. Murtha remembered that the defense investigator wanted Murtha to call Horsman, but that Murtha

---

<sup>638</sup> *Id.* at 00:18:45.

<sup>639</sup> *Pippitt Trial*, *supra* note 1, at 1.

<sup>640</sup> See Driving Directions from Koochiching County Courthouse to Brainerd Public Defender’s Office, GOOGLE MAPS, <https://www.google.com/maps/dir/Koochiching+County+Court+Administration,+4th+Street,+International+Falls,+MN/Public+Defender's+Office,+11610+Andrew+St,+Brainerd,+MN+56401> (last visited Jan. 19, 2023).

<sup>641</sup> *Murtha CRU interview*, *supra* note 413, at 01:00:23.

<sup>642</sup> *Id.* at 01:02:31.

<sup>643</sup> *Discovery Disclosure*, *supra* note 413, at 5.

<sup>644</sup> *Id.* at 1.

<sup>645</sup> *Murtha CRU interview*, *supra* note 413, at 01:01:55.

“screwed that up.”<sup>646</sup> Murtha was “at a loss” for why he did not.<sup>647</sup> Murtha, himself, admits that he had no strategy. His conduct clearly fell below an objective standard of reasonableness. To his credit, Murtha admits this.<sup>648</sup>

Similarly, Murtha failed to properly impeach Raymond on a prior inconsistent statement Raymond made in a letter to a friend, Joseph Randberg, claiming he was in Bagley at the time of the murder.<sup>649</sup> Although the letter is undated, the context of the letter suggests that Raymond wrote this after his guilty plea and sentencing. The handwriting in this letter is similar to Raymond’s handwriting located elsewhere in the file.<sup>650</sup>

On April 27, 2000, Pippitt’s defense investigator interviewed Randberg and wrote the following in an investigation report:

*According to Joe Randberg, he and Ray Misquadace were like “best friends” while growing up together as small kids in the Bagley, MN area. Joe stated that the two haven't been close friends for years. Joe Randberg told me that while he was incarcerated in the Faribault Correctional Facility, he had heard that Ray Misquadace had been physically abusing his daughter Skye. Apparently, Skye's [sic] mother Linnea Fiskari had been involved with Ray Misquadace at one time. Joe told me that he wrote Ray a letter asking him about what he was doing to his daughter and why some of his relatives had seen Skye with a black eye. According to Mr. Randberg, Ray Misquadace responded to his letter shortly before his release from prison. When asked if he would recognize the letter if he saw it again, Joe stated that he would remember the letter. Joe Randberg indicated that the letter in my possession was the exact letter he received from Ray Misquadace.*<sup>651</sup>

Murtha failed to properly impeach Raymond with the prior inconsistent statement at trial while cross-examining him:

*Q. Okay. Do you know someone by the name of Joseph Ranberg?*

*A. Yeah.*

*Q. How do you know Joseph Ranberg?*

*A. I met him a long time ago when we were smaller.*

*Q. Is he a friend of yours?*

*A. Yeah, he was a friend of mine, yeah.*

*Q. He was?*

---

<sup>646</sup> *Id.* at 00:59:30.

<sup>647</sup> *Id.* at 00:59:43.

<sup>648</sup> *Id.* at 00:59:30-01:00:30.

<sup>649</sup> See *Pippitt Trial*, *supra* note 1, at 482-483; Raymond Misquadace, Letter to Joseph Randberg, State v. Pippitt, K4-99-325 (undated) [hereinafter *Letter to Randberg*]. Although the letter is undated, Joseph Randberg confirmed receiving this letter on April 27, 2000, almost one year after Raymond confessed to the crime.

<sup>650</sup> See, e.g., Raymond Misquadace, Letter to Hatfield, State v. Pippitt, K-4-99-325 (Jul. 7, 2000).

<sup>651</sup> See Pam Gregg, Investigation Report, State v. Pippitt, K4-99-325, Apr. 27, 2000, at 2 [hereinafter *Gregg Report 4/27/00*].

A. Yeah.

...

Q. Did you ever write to Joseph Ranberg?

A. No.

Q. Did you ever have correspondence with him?

A. No. I got a letter from him, yeah.

Q. Did you ever write a letter to him?

A. No, I didn't.

Q. Never?

A. No.

Q. If I were to show you a letter can you identify if you wrote it or not?

A. Yeah.

Q. You can do that?

A. Yep.<sup>652</sup>

At this point, Rhodes objected on the grounds of untimely disclosure of the letter, but the judge never ruled on the objection.<sup>653</sup> Instead, Murtha continued his questioning:

Q. (Continuing) Mr. Misquadace, did you ever write a letter to Joseph Ranberg claiming that when this stuff happened you were actually not at the Dollar Lake Store?

A. To who?

Q. Joseph Ranberg?

A. No.

Q. No. Okay. Did you ever talk to Joseph Ranberg?

A. I didn't talk to him in years.

Q. You never wrote a letter to him?

A. No.

Q. But he wrote a letter to you?

A. Yeah, he did.

Q. You didn't respond to that letter?

A. No.<sup>654</sup>

When Murtha was unable to get Raymond to admit to the fact that he wrote the letter, which he needed in order to lay the foundation to elicit the prior inconsistent statement, he gave up and moved on to a different point in cross examination.<sup>655</sup>

Assuming Murtha could have overcome the nondisclosure issue, he should have called Joseph Randberg during the defense case-in-chief to introduce the letter as extrinsic evidence of a prior inconsistent statement.<sup>656</sup> Since he could not do so through Raymond, Murtha would have had to lay a foundation through Randberg's testimony, specifically that Randberg personally

---

<sup>652</sup> Pippitt Trial, *supra* note 1, at 481-482.

<sup>653</sup> *Id.* at 482-483.

<sup>654</sup> *Id.* at 483.

<sup>655</sup> *Id.* at 484.

<sup>656</sup> Minn. R. Evid. 613(b).

received the letter and that the context of the letter aligns with information that Raymond would know.<sup>657</sup> Murtha, however, failed to do this. When asked about this during his interview with the CRU, Murtha “remembered this going sideways” on him and he acknowledged that he “screwed up executing” the impeachment.<sup>658</sup>

This letter was an important piece of impeachment. Raymond had already made at least four statements at the time the letter was written, of which the latter three necessarily placed Raymond at the Dollar Lake Store in Shamrock Township. This is only recorded statement Raymond made after his initial denial to investigators in February 1999 in which Raymond disavows his presence at the Dollar Lake Store on the night of the murder until his recantation in 2021.<sup>659</sup>

Murtha also failed to effectively impeach Arnoldi. Even though Murtha realized that Arnoldi was confusing the language he read from Pippitt’s complaint in his testimony about stuffing Kleenex’s into Evelyn’s mouth, he did not properly impeach him on the fact:

*Q. Do you remember indicating in your statement that you gave to law enforcement, do you remember talking about being told that they stuffed paper in her mouth?*

*A. That they told me that?*

*Q. Yes.*

*A. No, it was Brian that told me that.*

*Q. Okay. What exactly did he tell you about that?*

*A. He said they were holding her down and sticking kleenix [sic] in her mouth to suffocate or choking her. That's what was said.*

...

*Q. Isn't it true that you got information about this case by reading the material that belonged to Mr. Pippitt?*

*A. No.*

*Q. Isn't it true you read a copy of his complaint?*

*A. I did eventually read a copy of the complaint, yes, I did, but it was not -- I didn't read this complaint first and then that. I read the complaint a week or 10 days after I knew Mr. Pippitt.<sup>660</sup>*

Murtha then moved on to another point on cross examination. Murtha failed to connect the issues for the jury to show that Arnoldi likely took the complaint language regarding soft tissue as meaning a Kleenex tissue. To properly impeach Arnoldi’s testimony that Pippitt made this admission, and to further connect Arnoldi’s testimony to what he read in the complaint,

---

<sup>657</sup> State v. Vance, 714 N.W.2d 428, 444 (Minn. 2006).

<sup>658</sup> Murtha CRU interview, *supra* note 413, at 01:33:19.

<sup>659</sup> Raymond Affidavit, *supra* note 431.

<sup>660</sup> *Id.* at 501, 503.



Murtha needed to introduce evidence that no Kleenex or toilet paper was ever found in Evelyn's mouth, and that Arnoldi jumped to that assumption by reading the language about soft tissue in the criminal complaint.

To impeach Arnoldi, Murtha should have recalled the Medical Examiner or any of the first responders for the limited purpose of establishing that no foreign objects were found in Evelyn's mouth, including tissue or toilet paper. To establish that Arnoldi was relying on the complaint in formulating Pippitt's admission on this point, Murtha should have asked Arnoldi on cross whether he read the specific quoted language in the complaint. The language itself is not hearsay, as the purpose of reading the quote is not to establish the truth of the matter, but rather, the effect it had on Arnoldi. Further, if Arnoldi denied reading it or claimed he could not remember, Murtha could have used the complaint to impeach or refresh his recollection.

Murtha's failure to do this cannot be explained away with strategy or reason. The record is clear that he tried to impeach Arnoldi, but he failed to complete the process.

**(b) Pippitt's attorney failed to consult with experts.**

Additionally, Murtha should have consulted with a crime scene analyst as well as a false confession expert prior to trial. Two accident reconstructionist experts were consulted since 2021 on this case, and both came to the same conclusion: the entry point into the Dollar Lake Store was not through the south basement window.

Dr. Turvey, who rendered an opinion that the basement window was not the entry point, has been a forensic scientist since 1996, and had been privately consulting on cases since as early as 1999.<sup>661</sup> In fact, he had provided consultation and a report for Keith Misquadace's defense team in 2000, in which Dr. Turvey reached the same conclusion as his report for Pippitt twenty-one years later.<sup>662</sup> Therefore, Dr. Turvey was available to testify, and rendered a favorable conclusion for Pippitt on the very crime scene at issue in Pippitt's case before his trial. The fact that Keith Misquadace's lawyer looked at the same crime scene in 2000, and had the wherewithal to consult with an accident reconstructionist at that time, establishes Murtha's failure to meet an objective standard of reasonableness by failing to do the same.

---

<sup>661</sup> *Turvey*, *supra* note 338, at 1, 10, 21.

<sup>662</sup> *Id.* at 3-4.

Similarly, Murtha failed to consult with a false confession expert. Although he realized that the confessions in this case seemed “different,” “really fishy,” and “squirrely,” Murtha never pursued an expert to help him understand what, if anything, was concerning about the confessions.<sup>663</sup> Experts, however, were available to consult with Murtha on the issue of coerced or false confessions. Dr. Larry White, who produced a report to the CRU, has been publishing on the topics of police interrogations, false confessions, and reliability of witnesses since he earned his Ph.D. in Social Psychology in 1984.<sup>664</sup>

Murtha’s explanation for failing to consult with a false confession expert was that he did not have the time or the budget to request one. Murtha could have, however, requested funding from the District Court for necessary expert witness services related to the case since Pippitt was unable to afford them.<sup>665</sup> Murtha, however, never tried. Similarly, Murtha could have requested a continuance to further develop his defense. He never did. There was no strategic reason for not consulting with an expert. Given the fact that the primary evidence against Pippitt was Raymond’s confession, expert consultation on this topic could have resulted in a different outcome at trial given the opinion White provided in this case.

## **B. Two credible suspects of Evelyn’s murder were neither fully investigated, nor fully presented to the jury by Pippitt’s attorney.**

Initially, the investigation team appeared overwhelmed with the amount of suspects they had. Bjerga testified that the investigation team received “lots of names” for potential suspects.<sup>666</sup> In the first couple months, BCA actively investigated 25 to 30 people, not including those investigated by the Aitkin County Sheriff’s Office.<sup>667</sup> Bjerga also testified that all alternative suspect leads were followed up and excluded as persons of interest.<sup>668</sup> The primary reason for excluding suspects, he said, was not being in the area at the time of the murder.<sup>669</sup> The investigative file, however, does not clearly exclude all potential suspects. Two alternative

---

<sup>663</sup> *Murtha CRU Interview*, *supra* note 413, at 01:36:02.

<sup>664</sup> *See White*, *supra* note 440, at 2.

<sup>665</sup> *See State v. Volker*, 477 N.W.2d 909, 910 (Minn. Ct. of App. 1991). Murtha knew this, too, as evidenced by his request to the Court to provide funding for lodging, meals and mileage so as to provide an adequate defense. *See Murtha Affidavit*, *supra* note 633.

<sup>666</sup> *Pippitt Trial*, *supra* note 1, at 228.

<sup>667</sup> *Id.*

<sup>668</sup> *See id.* at 228-229.

<sup>669</sup> *Id.* at 229.

suspects stand out as having opportunity, means, and motive, with no clear alibi: Terry Peet and M██████████. Murtha failed, however, to present this evidence at Pippitt's trial.

### **1. Terry Peet is a credible alternative suspect.**

At the time of the investigation into Ms. Malin's death, Peet was 37-years old.<sup>670</sup> Peet had gray hair, stood five-feet, nine-inches tall, and weighed—according to his license—approximately 165 lbs.<sup>671</sup> He also had a gray beard.<sup>672</sup> Peet was a felon, with a criminal history that included convictions for third-degree burglary and fifth-degree assault.<sup>673</sup> Peet had known Ms. Malin for approximately 30 years.<sup>674</sup> He had stayed in the McGregor area on and off over the years.<sup>675</sup> Peet had recently, however, moved back to the McGregor area full-time after being released from jail.<sup>676</sup> On the day of the murder, Peet was moving into a trailer located less than half a mile away from the Dollar Lake Store.<sup>677</sup>

Peet had been in the Dollar Lake Store at least twice on the day of the murder.<sup>678</sup> Peet first visited the Dollar Lake Store around 2:00p.m.<sup>679</sup> Jenny Pike, the daughter of the man who sold the trailer Peet lived in, gave him a ride from her parent's house.<sup>680</sup> On the way, Peet asked to stop at the Dollar Lake store because he wanted to get propane; Peet was low on money and had charged previously at the Dollar Lake Store.<sup>681</sup> He went into the store without Pike.<sup>682</sup> When

---

<sup>670</sup> Adult Master Name and Incident Listing for Terry Peet, Aitkin County Sheriff's Department, Jan. 5, 1999.

<sup>671</sup> *Id.*

<sup>672</sup> See Transcript of Interview by Bruce Beck with Marcia Doten, ICR # 98-476 (Feb. 25, 1998) at 1 [hereinafter *Doten Interview*]; see *Bjerga Report 2/25/98*, *supra* note 46, at 3.

<sup>673</sup> See Register of Actions, State v. Peet, 27-CR-87-900508, Feb. 20, 1987; see also Register of Actions, State v. Peet, 27-CR-92-032590, Apr. 27, 1992.

<sup>674</sup> See Transcript of Interview by Bruce Beck with Terry Peet, ICR # 98-476 (Feb. 27, 1998) at 13 [*Peet Interview 2/27/98*].

<sup>675</sup> See *id.*

<sup>676</sup> See *id.* at 3, 7, 13.

<sup>677</sup> See *id.* at 3-5; Transcript of Interview by Scott Turner with Jenny Pike, ICR # 98-476 (Feb. 25, 1998) at 7 [hereinafter *Pike Interview*]; Transcript of Interview by Dave Bjerga with Melissa Boyd, ICR # 98-476 (Mar. 2, 1998) at 6 [hereinafter *M. Boyd Interview*].

<sup>678</sup> See Transcript of Interview by Bruce Beck with Terry Peet, ICR # 98-476 (Feb. 25, 1998) at 2 [hereinafter *Peet Interview 2/25/98*]; see also *Peet Interview 2/27/98*, *supra* note 674, at 9.

<sup>679</sup> See *Peet Interview 2/27/98*, *supra* note 674, at 8; see also *Pike Interview*, *supra* note 677, at 3.

<sup>680</sup> *Pike Interview*, *supra* note 677, at 3.

<sup>681</sup> See *id.* at 5.

<sup>682</sup> See *id.*

Peet came out, he told Pike that Ms. Malin would not let him charge the gas.<sup>683</sup> Peet then said, “maybe I should go rob her,” and laughed.<sup>684</sup> Pike then dropped Peet off at his trailer.<sup>685</sup>

The second time he went into the store at approximately 8:00p.m.<sup>686</sup> At Peet’s request, Melissa Boyd gave Peet a ride to his trailer from her home, where she was hosting a birthday party for her husband earlier in the evening.<sup>687</sup> On the way, Peet asked to stop at the Dollar Lake Store.<sup>688</sup> Melissa described Peet as scary and drunk.<sup>689</sup> She left her children at home because she “didn’t want the kids in the car with Terry.”<sup>690</sup> Just as he did earlier, Peet went in the store alone.<sup>691</sup> Peet asked Evelyn for a job.<sup>692</sup> She rejected him.<sup>693</sup> Evelyn had a history of rejecting Peet. Years before, she refused to sell him 3.2 ABV beer on a Sunday morning.<sup>694</sup>

Peet bought some donuts, chips, and a pack of cigarettes during that second trip to the store.<sup>695</sup> After Melissa dropped Peet off, he used a flashlight and candles to see around his trailer, which otherwise had no electricity.<sup>696</sup> Peet then said he “ate some doughnuts and went to bed.”<sup>697</sup> Peet told investigators that he got up at 6:00a.m., shivering from the cold and hung over, and turned the gas on—gas he did not have at the time he was trying to acquire on charge at the Dollar Lake Store earlier that day.<sup>698</sup>

No independent evidence corroborated Peet’s alibi. To the contrary, witnesses provided information to investigators that conflicted with Peet’s narrative, suggesting that Peet lied about his whereabouts the night of the murder. For example, George Boyd, a 58-year-old local resident, reported that on February 24, between approximately 11:30p.m. to 11:45p.m., he was heading west on County Road 6 after leaving pool night at Bann’s Bar, when he saw a man holding a flashlight walking west bound only .2 mile east of the Dollar Lake Store on the south

---

<sup>683</sup> *See id.* at 5-6.

<sup>684</sup> *See id.* at 7.

<sup>685</sup> *See id.*

<sup>686</sup> *See Peet Interview 2/25/98, supra* note 678, at 1.

<sup>687</sup> *See M. Boyd Interview, supra* note 677, at 2-4.

<sup>688</sup> *See id.* at 5.

<sup>689</sup> *See id.* at 4.

<sup>690</sup> *See id.* at 5.

<sup>691</sup> *See id.*

<sup>692</sup> *See Peet Interview 2/25/98, supra* note 678, at 2.

<sup>693</sup> *See id.*

<sup>694</sup> *See Peet Interview 2/27/98, supra* note 674, at 13.

<sup>695</sup> *See id.* at 10.

<sup>696</sup> *See id.* at 11.

<sup>697</sup> *Peet Interview 2/25/98, supra* note 678, at 3.

<sup>698</sup> *See Peet Interview 2/27/98, supra* note 674, at 11. Peet indicated he was surprised that he actually had gas left in the tank. *See id.*

side of the road, as depicted in Appendix D's *Figure 53*.<sup>699</sup> George said that the man was wearing a dark gray plaid shirt, jeans, and a stocking cap.<sup>700</sup> The next day, George saw Peet wearing identical clothing except for the hat.<sup>701</sup> George also said that the person walking on the side of the road was the same size as Terry Peet.<sup>702</sup>

Similarly, Kay Peltó, a bartender at the Sportsmen's Bar—also known as Sporty's—in McGregor, told investigators days after the murder that she recalled Terry Peet being at Sporty's on February 24<sup>th</sup>.<sup>703</sup> She reported that Peet had three Bacardi-Coke drinks between 8:00p.m. and 9:00p.m., and then left.<sup>704</sup> Peet never reported this to investigators in the statements he provided.

Moreover, Kermit Schmock reported to investigators that he picked up Peet while Peet was hitchhiking on February 25<sup>th</sup> between 3:30p.m. and 4:00p.m.<sup>705</sup> Schmock said that the man identified himself when he got in the car as Peet.<sup>706</sup> He described Peet as a Native American man, six-feet tall, 240 lbs., with a two-week-old gray beard with dark, longer hair.<sup>707</sup> Schmock said that as he was giving him a ride, Peet told Schmock that the night before, Peet was "in town and was real drunk and didn't remember how he got home...."<sup>708</sup>

Peet admitted to investigators that he that had been hitchhiking between his two visits at the Dollar Lake Store.<sup>709</sup> He, however, did not tell investigators he was so drunk that he could not remember how he got home. While Peet did admit to "bits and pieces" of his memory missing, he denied being "blacked out" the evening of February 24 because he did not drink that much alcohol.<sup>710</sup> In truth, Peet had been drinking heavily throughout the day.<sup>711</sup> At noon that day, he had purchased a case of 24 beers and a pint of whisky.<sup>712</sup> He consumed all of it.<sup>713</sup> He

---

<sup>699</sup> See Transcript of Interview by Scott Turner with George Boyd, ICR # 98-476 (Feb. 26, 1998) at 2-7 [hereinafter *G. Boyd Interview*].

<sup>700</sup> *Id.* at 3-4.

<sup>701</sup> *Id.* at 10, 12.

<sup>702</sup> *Id.* at 11.

<sup>703</sup> *Beck Report 3/17/98*, *supra* note 56, at 24-25.

<sup>704</sup> *Id.* at 25.

<sup>705</sup> See Transcript of Interview by Bruce Beck with Kermit Schmock, ICR # 98-476 (Mar. 2, 1998) at 1 [hereinafter *Schmock Interview*].

<sup>706</sup> *Id.*

<sup>707</sup> *Id.* at 1-2.

<sup>708</sup> *Id.* at 2.

<sup>709</sup> *Peet Interview 2/27/98*, *supra* note 674, at 15-16.

<sup>710</sup> See *id.* at 19.

<sup>711</sup> See *id.* at 4; *Pike Interview*, *supra* note 677, at 4 (telling Beck that Peet smelled strongly of beer and that she could tell he was drinking).

<sup>712</sup> See *Peet Interview 2/27/98*, *supra* note 674, at 4.

<sup>713</sup> See *id.* at 20-21.

admitted to waking up the next morning feeling “pretty sick, hung over.”<sup>714</sup> Witnesses who came in close contact with Peet that day described him as smelling of alcohol.<sup>715</sup>

Further, multiple witnesses gave statements that suggested Peet had motive, means, and opportunity to commit the murder. For example, on February 25, Norma Horner reported that she recalled Peet stopping in the Dollar Lake Store between 7:00p.m. and 8:00p.m. In reference to Peet, Evelyn told Norma, “[H]e just moved up. That’s the one I, I’m worried about” and that he was “bad news.”<sup>716</sup> Norma stated that Peet asked Evelyn for gas again, even after she told him no earlier that day.<sup>717</sup> Horsman described Peet as “still griping about [how he] couldn’t get no bottle of gas” when Peet left the store.<sup>718</sup>

Similarly, Evelyn told Jack Hooper, one of her regulars, the day before her murder that “the one who did me two years ago, the guy with the eyes” was “back.”<sup>719</sup> Evelyn was referring to a robbery and assault she endured by two men, one of whom was wearing a ski mask.<sup>720</sup> Evelyn told Hooper that she remembered his eyes “real well.”<sup>721</sup> She also told him that she was only scared of two Native Americans; one was deceased, and the other was Peet.<sup>722</sup>

The day of her murder, Evelyn told Joe Rian, a local resident who visited the Dollar Lake Store nearly every day, about how Peet tried to charge a tank of gas and she refused him.<sup>723</sup> Rian described Evelyn as “fairly concerned about her safety” with Peet so close by.<sup>724</sup> Evelyn told Rian, “[y]ou’d better nail down everything in the county or it’s gonna disappear,” in reference to Peet having just moved to the area the day before.<sup>725</sup> She even told a UPS Driver who was delivering a package, “an Indian had just been in here and wanted some more credit and I told

---

<sup>714</sup> *See id.* at 11.

<sup>715</sup> Norma Horner, for example, told investigators that she could tell, however, that he was drunk because he smelled of booze. *Horner Interview 2/25/98, supra* note 10, at 10. *See also M. Boyd Interview, supra* note 677, at 4 (describing Peet as “drunk”) and *Pike Interview, supra* note 677, at 4 (describing Peet as smelling strongly of beer).

<sup>716</sup> *Horner Interview 2/25/98, supra* note 10, at 9, 11.

<sup>717</sup> *Id.* at 10-11.

<sup>718</sup> *Horsman Interview 2/25/98, supra* note 16, at 22.

<sup>719</sup> *Beck Report 3/17/98, supra* note 56, at 21.

<sup>720</sup> *Id.* at 21-22.

<sup>721</sup> *Id.* at 21.

<sup>722</sup> *Id.* at 22.

<sup>723</sup> Transcript of Interview by John Drahota with Joseph Rian, ICR # 98-476 (Feb. 25, 1998) at 1-2, 4 [hereinafter *J. Rian Interview*].

<sup>724</sup> *Id.* at 2.

<sup>725</sup> *Id.* at 4.

him no because he owed me money already and I told him to get out of here.”<sup>726</sup> The driver described Evelyn as being “upset.”<sup>727</sup>

Bradley Haussner, a local who lived in the area for 19 years and the last person to see Evelyn alive before she was murdered, reported that when he visited the Dollar Lake Store at approximately 9:40p.m. on February 24, Evelyn was coming from behind counter to lock the front door for the evening.<sup>728</sup> Haussner found this surprising because, normally, Haussner would find Evelyn sleeping with her head resting on the chest freezer.<sup>729</sup> The first thing she said when she saw Haussner was, “trouble in the neighborhood...some guy just got out of jail and moved into the neighborhood and came down here to...get some bottle gas and he wanted to charge it. And I told him no.”<sup>730</sup> Evelyn told Haussner that Peet was mad when he left.<sup>731</sup> According to Haussner, Evelyn reported the same concern to another one of her customers, and a co-worker of Haussner’s, earlier that night.<sup>732</sup>

Others implicated Peet’s involvement in the murder. One of the correctional staff, or jailers, at Aitkin County Jail reported that Kim Peet, Terry’s brother, made a comment while he was incarcerated to the effect of “at least I didn’t kill someone like my brother.”<sup>733</sup> Kim later, however, stated Terry never admitted to, nor acknowledged, being the one who committed the murder.<sup>734</sup> Several other people reported hearing rumor in the community that Peet committed the murder.<sup>735</sup>

---

<sup>726</sup> Transcript of Interview by John Drahota with Clifford Johnson, ICR # 98-476 (Feb. 25, 1998) at 2 [hereinafter *Johnson Interview*].

<sup>727</sup> *Id.*

<sup>728</sup> *Haussner Interview 2/25/98, supra* note 567, at 1.

<sup>729</sup> *Id.* at 2-3.

<sup>730</sup> *Id.* at 1.

<sup>731</sup> *Id.*

<sup>732</sup> *Id.* at 4.

<sup>733</sup> Bruce Beck, Aitkin County Sheriff Dept. Supp. Report, ICR # 98-476, Jun. 4, 1998, at 1-2 [hereinafter *Beck Report 6/4/98*].

<sup>734</sup> *Id.*

<sup>735</sup> See Dave Bjerga, BCA Report of Investigation, Inv. # 98000062, Mar. 5, 1998, at 1-2 [hereinafter *Bjerga Report 3/5/98*] (documenting that McGregor School Principal reported that a kindergartener told a teacher’s aide that she heard from her uncle that Peet killed Ms. Malin). Maurice Benjamin heard from Mike Misquada that Peet was involved in Malin’s murder. Transcript of Interview by Bruce Beck with Maurice Benjamin, ICR # 98-476 (Oct. 6, 1998) at 10. Michael, himself, confirmed this in an interview with investigators. *Michael Interview 3/5/98, supra* note 102, at 1. Lyle (no last name indicated), who had a cabin near the Dollar Lake Store on Sheshebe Point, reported to Investigator Beck that he and his neighbors thought that Terry Peet and his friends were responsible. Bruce Beck, Aitkin County Sheriff Dept. Supp. Report IV, ICR # 98-476, Jan. 23, 1999, at 2 [hereinafter *Beck Report 1/23/99*]. Heather Viney reported to Investigator Beck that she overheard people talking at the Buckhorn Bar on Saturday, Feb. 28, 1999, that Terry Peet was a suspect in the crime. *Beck Report 3/17/98, supra* note 56, at 23.



Figure 48 – BCA Evidence Item 34 – Terry Peet’s screwdriver

Figure 49 – BCA Evidence Item 16A – wood frame from Dollar Lake Store south basement window

Figure 50 – BCA Evidence Item 16B – wood lath from crime scene

Figure 51 – BCA Evidence Item 16B – wood lath from crime scene

Further, a screwdriver seized from his home provides at least some connection of Peet’s involvement to the crime. Although Beck testified at the grand jury proceeding the BCA forensic laboratory’s analysis of Peet’s screwdriver revealed that “there [were] no paint striations” and that “there was no paint transfer on that tool,”<sup>736</sup> the laboratory’s actual results were different. BCA’s analysis of the tool revealed an “inconclusive” result as to whether the screwdriver produced the tool marks found on the wood laths broken off the Dollar Lake Store’s south basement window.<sup>737</sup>

Specifically, the report stated that the screwdriver “failed to show adequate detail to determine if Item 16 was the tool used to make the marks.”<sup>738</sup> The lab’s photos, however, show a remarkable consistency in detail between the tool recovered from Peet’s residence and the marks produced on the wooden lath which were pried off the window. Gray paint from the marking in *Figure 49* appear to be transferred to the markings in *Figure 50* and *Figure 51*. Residue of gray

<sup>736</sup> *Grand Jury Proceedings, supra* note 8, at 77.

<sup>737</sup> *BCA Lab Report 6/9/98, supra* note 109, at 4.

<sup>738</sup> *Id.*



matter appears in the indented portion of the ribbed lines of the screwdriver as depicted in *Figure 48*.

The laboratory notes indicate that the forensic scientist examining the screwdriver as well as the window frame also noted consistencies:

*16A3 - consistent w/ reverse taper of blade flat – shows grooved pattern.  
toolmarks on item 16 appear consistent w/ marks made by item 34 – screwdriver-*

*Marks on 16A are primarily shank mks & appear to be from cylindrical shank  
except for mark 16A3-*

*16A3 appears to be marks from the ridged surface of the blade furthest from the  
tip – shows reverse taper -*

*Marks on 16B&C appear to be consistent with the blade end of item 34 – approx.  
¼” typical screwdriver type blade – although some are partials/ overlaps/or faint  
scrapes -*

*Item 16A is painted wood, items 16 B&C are raw wood –*

*TM 16A3 was cast in [incomprehensible] and compared to item 34 (blade, ridged)*

*The patterns are consistent in size/interval – 16A3 pattern is shallow &  
incomplete, lacks sufficient detail for ID – consistent, cannot be eliminated –*

*TM 16B5, 16B7, 16B8, 16B9 were [incomprehensible] compared directly with  
casts of the blade of item 34 – they are also consistent in size & interval, also  
shallow & incomplete, although the apparent dirt pattern on 16B5 is reasonably  
deep, but fragmentary. None show adequate detail to ID. Consistent-<sup>739</sup>*

Given the evidence implicating Peet in the murder, it is unclear why he was cleared as a suspect in the investigation. Beck testified at the grand jury proceeding that “[t]hrough[out] the course of numerous other interviews we basically ruled it out. Mr. Pete [sic] was not involved in this incident.”<sup>740</sup> Beck never explained which interviews convinced him that Peet was not involved. Neither Bjerga nor Beck could offer an explanation of how Peet was cleared during their interviews with the CRU in November 2023.<sup>741</sup>

---

<sup>739</sup> Bench Notes, BCA Forensic Lab Supp. Report, Lab # 978-4385, May 1998, at notes 6-9.

<sup>740</sup> *Grand Jury Proceedings*, *supra* note 8, at 76.

<sup>741</sup> *Bjerga CRU Interview*, *supra* note 213, at 00:21:01-00:27:48; *Beck CRU Interview Part 1*, *supra* note 158, at 00:19:00-00:22:24; *Beck CRU Interview Part 2*, *supra* note 158 at 00:03:34-00:03:43.

The only reference to Peet being cleared as a suspect in the file came from what appears to be a BCA laboratory note.<sup>742</sup> The note states “Terry Joe Peet – definitely cleared as a suspect” as depicted in *Figure 52*. Peet died in a fire five months into Evelyn’s murder investigation.<sup>743</sup>

Case Notes  
978-4385  
Len  
12 MAR 99

Aitkin Co. S.O.  
218-927-2138

Dave Bjerga  
218-825-3010

Terry Joe Peet – definitely cleared as a suspect

Figure 52 – BCA forensic laboratory note re: Terry Peet

There are some limitations in concluding Peet was the killer. First, like those convicted in this case, there was no forensic evidence linking Peet to the scene of the crime. On February 28, 1998, three days after law enforcement’s first interview with Peet and a day after their second in which they indicated Peet was a person of interest, Peet consented to a search of his trailer.<sup>744</sup> Peet voluntarily gave samples of his blood, hair, and prints.<sup>745</sup> They were also submitted for comparison to evidence collected at the scene, but none matched.<sup>746</sup>

Further, nothing distinguishes Peet from the expert analyses of Netzel and Turvey who opined of the improbability of large, intoxicated men entering through the tiny basement window without leaving a trail of evidence or having the wherewithal and means to stage the crime scene.<sup>747</sup> Moreover, there is no evidence to suggest Peet had a key to the store, or worked in concert with anyone else who did. What is unique about Peet, however, unlike those convicted of Evelyn’s murder, is that he had familiarity with the store and perhaps Evelyn’s habits; his visit to the store twice the day of her murder suggests he could have been casing. Peet also fits Turvey’s theory that the vicious beating and smearing of her feces on her body was motivated by anger.<sup>748</sup>

<sup>742</sup> See Bjerga CRU Interview, *supra* note 213, at 00:21:51-00:21:59 (after reviewing the note, hypothesized that the note came from the laboratory).

<sup>743</sup> Bruce McLaughlin, Fire Investigation Report, File # 98010337 (Jul. 28, 1999), at 1.

<sup>744</sup> Consent to Search Peet's Property, Aitkin County Sheriff Dept., ICR # 98-476, Feb. 28, 1998.

<sup>745</sup> Consent to Search Peet's Person, Aitkin County Sherriff Dept., ICR #98-476, Mar. 2, 1998.

<sup>746</sup> BCA Lab Report 3/13/98, *supra* note 38, at 5; BCA Lab Report 4/20/98, *supra* note 109, at 5-

<sup>747</sup> According to Aitkin County Jail’s data, Peet stood 5’9” and weighed 165 lbs. as of April 10, 1998, two months after the murder of Evelyn Malin. Person Record Search Result Report - Terry Joe Peet, Minn. Dept. of Corrections, dated Apr. 23, 2024.

<sup>748</sup> Turvey, *supra* note 338, at 12.

## 2. M██████████ is a credible alternative suspect.

M██████████ is the grandson of Evelyn Malin.<sup>749</sup> He is also Merle Malin’s son.<sup>750</sup> At the time of the murder, M██████████ was 27 years old and lived in Hill City.<sup>751</sup> Hill City is approximately 45 minutes’ driving distance from the Dollar Lake Store.<sup>752</sup> M██████████ would frequently help stock for Evelyn.<sup>753</sup> In fact, M██████████ had helped stock in her store basement as recently as two months prior.<sup>754</sup> Norma Horner described M██████████ as being Evelyn’s “pet” since he was little.<sup>755</sup> She acknowledged, however, that M██████████ could be a “dickens.”<sup>756</sup> She thought M██████████ was “bad news.”<sup>757</sup>

Specifically, Norma said that M██████████ had a drug problem.<sup>758</sup> An Aitkin County Sheriff Report from June 1994, mentioned M██████████ in a report of a drug overdose for which an ambulance was dispatched:

*RMKS FOR m██████████ 06/01/94...m drug overdose...narrative: c called 214 to report drug over dose m██████████ dob/092970 hill city 214 head north meet itasca amb...*<sup>759</sup>

Days after this incident, the County petitioned for M██████████ to be civilly committed due to chemical dependency.<sup>760</sup> James Irish, a one-time suspect of the murder who was later cleared via alibi, told investigators that M██████████ “used to be into a lot of drugs” in March 1998.<sup>761</sup>

In April 2017, police responded to an incident involving M██████████, during which a witnesses reported that M██████████ “was on methamphetamine and talking crazy.”<sup>762</sup> Two months later, police found methamphetamine and a pipe on M██████████—specifically, in his pocket—along with

---

<sup>749</sup> See Horner Interview 2/25/98, *supra* note 10, at 16.

<sup>750</sup> See Transcript of Interview by Bruce Beck with Norma Horner, ICR # 98-476 (Feb. 26, 1998) at 5-6 [hereinafter Horner Interview 2/26/98].

<sup>751</sup> See *id.* at 16; Register of Actions, State v. M██████████, 01-K6-94-000677, Apr. 17, 1995 [hereinafter M██████████ Register of Actions 4/17/95].

<sup>752</sup> See Driving Directions from Shamrock Township, Minn. to Hill City, Minn., GOOGLE MAPS (last visited Jan. 19, 2024).

<sup>753</sup> See Horner Interview 2/25/98, *supra* note 10, at 16.

<sup>754</sup> Horner Interview 2/26/98, *supra* note 750, at 2-4.

<sup>755</sup> *Id.* at 15.

<sup>756</sup> *Id.* at 16. *Dickens* is a substitute word for *devil*. See *What Does Like the Dickens Mean?*, WRITING EXPLAINED, <https://writingexplained.org/idiom-dictionary/like-the-dickens> (last visited Dec. 22, 2023).

<sup>757</sup> See Horner Interview 2/25/98, *supra* note 10, at 16.

<sup>758</sup> Horner Interview 2/26/98, *supra* note 750, at 15.

<sup>759</sup> Aitkin County Sheriff ICR Report, case no. 1994001062, Jun. 1, 1994, at 3.

<sup>760</sup> Register of Actions, In re Civil Commitment of M██████████, 01-P6-94-000291, Jun. 7, 1994.

<sup>761</sup> Transcript of Interview by Bruce Beck with James Irish, ICR # 98-476 (Mar. 7, 1998) at 17 [hereinafter *Irish Interview*].

<sup>762</sup> Aitkin County Sheriff ICR Report, case no. 17000828, Apr. 5, 2017, at 3.

hypodermic needles and shotgun shells in a car he was using.<sup>763</sup> Two months after that incident, while in custody, M■■ admitted to “using a lot of drugs” and trying to burn down the double-wide trailer that his brother, Matthew, purchased for him to live in on family-owned land—the same land on which the Dollar Lake Store sits.<sup>764</sup> He also admitted “things were pretty out of hand” and that he stole some of his brother’s things and pawned them for money.<sup>765</sup>

Between 1994 and 1996, M■■ was implicated in numerous complaints concerning theft and burglary.<sup>766</sup> In 1995, he was convicted of felony theft.<sup>767</sup> M■■ was mentioned in two arrest reports as a suspect for assault.<sup>768</sup> In January 1997, he was arrested for selling marijuana to juveniles.<sup>769</sup> In 2007, M■■ was listed as being “mentioned” in a complaint from a McGregor homeowner who reported that while out of town, her home’s basement window was “broke out;” cash and weapons were missing.<sup>770</sup> Similarly, he was mentioned in a police report following a burglary of a café in McGregor during which someone “busted in the back door and took money.”<sup>771</sup>

In 2008, the 16-year-old daughter of M■■’s long-term girlfriend accused M■■ of several incidents of sexual assault, including an incident of forcible sodomy.<sup>772</sup> M■■ was eventually convicted of criminal sexual conduct in the first degree for sexually assaulting a child under the age of 13.<sup>773</sup> The victim in the case testified that M■■ had used drugs and alcohol

---

<sup>763</sup> Aitkin County Sheriff ICR Report, case no. 17001660, Jun. 20, 2017, at 3.

<sup>764</sup> Aitkin County Sheriff ICR Report, case no. 17002213, Aug. 5, 2017, at 3; *see* Address 20001 Goshawk Street, McGregor, MN, 55760, GOOGLE MAPS (last visited Feb. 2, 2024), available at <https://www.google.com/maps/place/20001+Goshawk+St,+McGregor,+MN+55760/@46.6962804,-93.294889,15z/data=!3m1!4m6!3m5!1s0x52b1a9f6ad588005:0xd7de050ab605da0d!8m2!3d46.6962819!4d-93.276435!16s%2Fg%2F11dzip18q93?entry=ttu>.

<sup>765</sup> *Id.*

<sup>766</sup> *See, e.g.*, Aitkin County Sheriff ICR Report, case no. 1994000911, May 14, 1994 (reporting a complaint from the owner of an auto repair shop who was holding M■■’s vehicle as collateral until payment for services was made, but the car went missing); Aitkin County Sheriff ICR Report, case no. 1994001932, Sep. 2, 1994 (documenting an arrest of M■■ in connection with a burglary of a cabin); Aitkin County Sheriff ICR Report, case no. 1994002141, Sep. 24, 1994 (documenting an arrest of M■■ for theft of two snowmobiles and a trailer); Aitkin County Sheriff ICR Report, case no. 1996003305, Dec. 23, 1996 (documenting burglary and that someone entered a home and left a cassette tape referring to raping and killing kids).

<sup>767</sup> M■■ *Register of Actions 4/17/95*, *supra* note 751.

<sup>768</sup> *See* Aitkin County Sheriff ICR Report, case no. 1994002473, Nov. 8, 1994; Aitkin County Sheriff ICR Report, case no. 1996002938, Nov. 8, 1996.

<sup>769</sup> Aitkin County Sheriff ICR Report, case no. 1997000141, Jan. 17, 1997.

<sup>770</sup> Aitkin County Sheriff ICR Report, case no. 2007002523, Jun. 26, 2007.

<sup>771</sup> Aitkin County Sheriff ICR Report, case no. 2007004404, Oct. 18, 2007.

<sup>772</sup> *See generally* Steven Sandberg, Aitkin County Sheriff’s Investigative Report, case no. 08-0148, Jan. 15, 2008.

<sup>773</sup> *Register of Actions, State v. M■■*, 01-CR-08-366, Feb. 29, 2008.

“daily” prior to an assault in June 2004.<sup>774</sup> The victim also alleged that M■■ had abused her in 1998, but recanted when her mother told her that the victim would never see her family again unless she said the allegations against M■■ were false.<sup>775</sup> In 2017, he was convicted of a fifth-degree controlled substance charge.<sup>776</sup> M■■ was also convicted of check forgery in 2017, but according to Norma, M■■ had a history of forging checks as early as the 1990’s.<sup>777</sup>

In 2004, police found him walking in the middle of the road at 8:30p.m.<sup>778</sup> While M■■ was incarcerated in December of 2017, he had to be restrained by correctional staff.<sup>779</sup> One officer had to tase M■■ twice to subdue him.<sup>780</sup> As he was being buckled into a restraint chair, M■■ threatened the officer that he and his friends would come and “get [him]” when M■■ was released from jail.<sup>781</sup> In 2018, Robin Horner, M■■’s cousin, called the police to report M■■ as a missing person.<sup>782</sup> Robin reported that when M■■ was last seen, M■■ was “hearing voices and suicidal and was not talking in his ‘right mind.’”<sup>783</sup>

Shortly after that missing person report, police responded to an incident in which M■■ appeared to disassociate.<sup>784</sup> His aunt, with whom M■■ was staying, reported that M■■ was holding a garden tool, staring into her house and not responding when she tried to speak with him, as if she was not there.<sup>785</sup> In a somewhat similar display of strange behavior, during an interaction with police in 2020, M■■ said the voices in his head were “harassing” him and that a chip was implanted in him.<sup>786</sup>

Norma told investigators that “M■■’s got a terrible temper when he’s on something.”<sup>787</sup> Joel Torgerson, whose wife left him for M■■, told investigators that he heard rumors that M■■

---

<sup>774</sup> State v. M■■, 2010 WL 4721317, \*1 (Ct. of App. of Minn. 2010).

<sup>775</sup> *Id.*

<sup>776</sup> Register of Actions, State v. M■■, 01-CR-17-625, Jun. 22, 2017.

<sup>777</sup> Register of Actions, State v. M■■, 01-CR-17-957, Dec. 18, 2017; see *Horner Interview 2/26/98*, *supra* note 750, at 21.

<sup>778</sup> Aitkin County Sheriff ICR Report, case no. 2004001296, Apr. 14, 2004, at 2.

<sup>779</sup> Aitkin County Police Dept. ICR Report, case no. 17003484, Dec. 11, 2017, at 2-3.

<sup>780</sup> *Id.* at 2.

<sup>781</sup> *Id.* at 3.

<sup>782</sup> Aitkin County Sheriff ICR Report, case no. 18002570, Sep. 10, 2018, at 2.

<sup>783</sup> *Id.* at 1. They later found M■■ on the property, and he denied being suicidal at that time, but would reach out for help “if he started feeling that way again.” *Id.* at 3.

<sup>784</sup> See Aitkin Police Department ICR Report, case no. 18002875, Oct. 8, 2018, at 2-3.

<sup>785</sup> *Id.* at 2-3.

<sup>786</sup> Aitkin County Sheriff ICR Report, case no. 20000994, May 6, 2020, at 3.

<sup>787</sup> See *Horner Interview 2/26/98*, *supra* note 750, at 22.

“has been rough with his grandma before” and that he knew M■■■■ had “stolen things from her.”<sup>788</sup>

According to Norma, M■■■■ and Evelyn got along well together, except for “the money situation.”<sup>789</sup> Norma said M■■■■ used to ask Evelyn for money “real often,” but since he had been working, it “hasn’t been that bad.”<sup>790</sup> Evelyn would usually give it to him.<sup>791</sup> Evelyn intended that the money would be used for groceries and other living expenses, but Norma suspected it went to drugs.<sup>792</sup> The last time Norma was aware that M■■■■ asked for money was approximately three weeks prior to the murder, on February 1.<sup>793</sup> He asked for \$150, but Evelyn refused to give him any money that time.<sup>794</sup> Occasionally, he would cash his checks at her store.<sup>795</sup> Norma said before she passed, Evelyn was still upset that M■■■■ had recently asked Evelyn to honor a check, promising there were funds to back it.<sup>796</sup> The check came back, however.<sup>797</sup>

Horsman told investigators that M■■■■ was “the only other one that really [knew] where the money was laying and anything in the basement or anything about anywhere.”<sup>798</sup> Investigator Beck wrote in one of his reports that “[t]he Malins . . . said around the first of February, Evelyn had M■■■■ go to three different locations in the store and get money for her.”<sup>799</sup> Irish told Beck that M■■■■ has stolen money from Evelyn before.<sup>800</sup>

Irish denied being involved in the murder, but admitted to discussing burglarizing the Dollar Lake Store with a 21-year-old man named Kris Radke months before the murder.<sup>801</sup> According to Irish, Radke told Irish that he knew where Evelyn kept her money.<sup>802</sup> According to

---

<sup>788</sup> See Transcript of Interview by Bruce Beck with Joel Torgerson, ICR # 98-476 (Dec. 8, 1998) at 12 [hereinafter *Torgerson Interview*]

<sup>789</sup> See *Horner Interview 2/26/98*, *supra* note 750, at 16.

<sup>790</sup> See *id.*

<sup>791</sup> See *id.*

<sup>792</sup> See *id.*

<sup>793</sup> See *id.*

<sup>794</sup> See *id.* Beck later wrote in his report that “Norma states that on the first of this month, M■■■■ wanted to borrow \$450 from Evelyn.” *Beck Report 3/17/98*, *supra* note 56, at 14.

<sup>795</sup> See *Horner Interview 2/26/98*, *supra* note 750, at 17; see *Horner Interview 2/25/98*, *supra* note 10, at 13.

<sup>796</sup> See *Horner Interview 2/26/98*, *supra* note 750, at 17.

<sup>797</sup> See *id.*

<sup>798</sup> See *Horsman Interview 2/26/98*, *supra* note 82, at 5.

<sup>799</sup> *Beck Report 4/21/98*, *supra* note 116, at 3.

<sup>800</sup> *Irish Interview*, *supra* note 761, at 7.

<sup>801</sup> *Id.* at 4-6. Both Radke and Irish denied being involved in the murder, however. Irish was under house arrest in a foster home at the time of the murder, which was corroborated. *Id.* at 11. Radke’s alibi—that he was at work—checked out, too. Brad Barker, BCA Report of Investigation, Inv. # 98000062, Mar. 9, 1998, at 2 [hereinafter *Barker Report 3/9/98*].

<sup>802</sup> *Irish Interview*, *supra* note 761, at 5.

one person, Radke was friends with M■■■■. <sup>803</sup> Radke, however, said he “knows” M■■■■, but “hasn’t had anything to do” with him for years. <sup>804</sup>

On February 25, 1998, investigators visited M■■■■’s place of employment, Nor-Tech industries, to interview him. <sup>805</sup> Employees, however, told investigators that M■■■■ was “extremely distraught” when he learned of the death of his grandmother, and requested to leave work immediately. <sup>806</sup> He was gone by the time investigators arrived. <sup>807</sup>

Later that afternoon, investigators went to M■■■■’s home. <sup>808</sup> Shortly after they arrived, “SA Bjerga was requested to speak via telephone with Merle Dean Malin.” <sup>809</sup> Due to the nature of the way Bjerga wrote this note in his report, it is unclear who requested that Bjerga speak with Merle—whether M■■■■ asked investigators to call his father, or whether Merle interjected himself when he discovered investigators wanted to speak with M■■■■. Regardless, while Bjerga spoke with Merle, Special Agent Gary Pederson spoke with M■■■■. <sup>810</sup>

M■■■■ told Pederson that the last time he saw his grandmother was three or four weeks prior. <sup>811</sup> He provided a couple names of people that may have had information which could be of assistance to the investigation. <sup>812</sup> Nothing developed from that information. There is no indication from the report of investigation that Pederson ever asked M■■■■ of his whereabouts the evening of February 24. <sup>813</sup> Pederson did not ask M■■■■ about his drug use. <sup>814</sup> Pederson did not ask about his money concerns, his relationship with his grandmother, or whether he knew where she stored her money. <sup>815</sup>

Two days later, investigators returned to re-interview M■■■■ and get his shoe prints for elimination purposes. <sup>816</sup> When Pederson arrived at the residence, however, Merle was arriving at

---

<sup>803</sup> *Barker Report 3/9/98, supra* note 801, at 2. Specifically, the grandmother of Radke’s girlfriend, with whom Radke was living, told investigators that Radke was friends with M■■■■. *Id.*

<sup>804</sup> *See id.* at 2.

<sup>805</sup> *Bjerga Report 2/25/98, supra* note 47, at 2-3.

<sup>806</sup> *Id.*

<sup>807</sup> *Id.* at 3.

<sup>808</sup> *Id.*

<sup>809</sup> *Id.*

<sup>810</sup> *Id.*

<sup>811</sup> Gary Pederson, BCA Report of Investigation, Inv. # 9000062, Feb. 25, 1998, at 2 [hereinafter *Pederson Report 2/25/98\_1450*].

<sup>812</sup> *Id.* at 1.

<sup>813</sup> *See generally id.*

<sup>814</sup> *See generally id.*

<sup>815</sup> *See generally id.*

<sup>816</sup> Gary Pederson, BCA Report of Investigation, Inv. # 9800062, Feb. 27, 1998\_1305, at 1.

the same time.<sup>817</sup> The interview focused on questioning Merle, who had just arrived from New Mexico.<sup>818</sup> Merle gave Pederson a list of 11 items that he claimed were missing from the Dollar Lake Store, and detailed money that was missing from specific hiding locations.<sup>819</sup> There is no indication that investigators asked M■■ a single question. Investigators left without taking shoe impressions.<sup>820</sup>

Investigators returned to interview M■■ for a third time on March 17, 1998.<sup>821</sup> In this interview, M■■ mentioned a colleague with whom M■■ worked, giving several reasons why he thought the colleague may have committed the crime: he has spent time in prison for charges related to methamphetamine, he had a scratch on his neck following the murder, he recently purchased new shoes and clothing, he was a heavy drinker, he was acting nervous around M■■, and he had been smoking a type of cigarette that was purportedly stolen from the store.<sup>822</sup> The investigation report gives no indication that any questions were directed at M■■ as suspect. M■■ did, however, in the course of implicating his colleague, reveal that he remained absent from work for eight days following the death of his grandmother.<sup>823</sup>

M■■ had the means to travel from Hill City to the store.<sup>824</sup> There is no documented evidence proving that M■■ had a key to the Dollar Lake Store. Based on the way Norma described M■■ as Evelyn's pet, and how he helped out so frequently around the store, it seems likely that he would have had unrestricted access to the property. This is the most significant factor in the alternative suspect analysis, because if the accident reconstruction experts are correct, the person who killed Evelyn Malin must have had a key—or knew where a key was hidden on the property—to be able to unlock upon entry and relock upon exit.

It is difficult to know whether—or how much—money was stolen from the store. Despite early reports that money and checks were stolen as part of the burglary-murder, the record is

---

<sup>817</sup> *Id.*

<sup>818</sup> *Id.*

<sup>819</sup> *Id.* at 1-2.

<sup>820</sup> *See generally id.; BCA Lab Report 3/19/99, supra* note 107.

<sup>821</sup> Dave Bjerga, BCA Report of Investigation, Inv. # 98000062, Mar. 18, 1998\_1530, at 2 [*hereinafter* Bjerga Report 3/18/98\_1530].

<sup>822</sup> *Id.*

<sup>823</sup> *Id.*

<sup>824</sup> *See Horner Interview 2/26/98, supra* note 750, at 17 (referencing M■■'s car).



muddled with contradictions about what was later found.<sup>825</sup> The record is clear, however, that M■■ inherited \$1,000 from Evelyn, as directed by her will.<sup>826</sup>

There is no indication in the file that M■■'s hair, blood, or fingerprints were ever collected by investigators for comparison purposes. He was also never offered a polygraph. There are no transcripts of any of the three interviews investigators had with M■■. Bjerga and Beck both recalled M■■ being a person of interest, but neither could explain why or how he was ruled out.<sup>827</sup>

### **3. Pippitt's attorney failed to fully present alternative perpetrator evidence at trial.**

Murtha failed to fully develop an alternate perpetrator strategy at trial. When asked about this during the CRU interview, Murtha said this was strategic.<sup>828</sup> Specifically, Murtha was hesitant to provide an alternate perpetrator theory out of fear of risking credibility with the jury considering he believed he had a solid alibi defense.<sup>829</sup> He also did not believe he had enough to present in good faith that another specific person or people were responsible for the crimes.<sup>830</sup>

Despite Murtha's claim of not advancing an alternative perpetrator theory on strategic grounds, his failure to fully develop it at trial still fell below an acceptable level of competence. First, counsel is only given the benefit of the doubt on strategic decisions when counsel makes the decision "after thorough investigation of law and facts."<sup>831</sup> Here, Murtha admitted that he had not been through all the discovery in the case.<sup>832</sup> He admitted that he had not properly indexed the materials, which was crucial before the advent of searchable PDFs and use of computers during trial.<sup>833</sup> He admitted to knowing the case too superficially to try it properly.<sup>834</sup> Therefore, Murtha is unable to justify the failure to advance alternative perpetrator evidence as a strategic decision.

---

<sup>825</sup> Compare *Horner Interview 2/26/98*, *supra* note 750, at 1 (describing money missing from store) with *Pippitt Trial*, *supra* note 1, at 302-304 (describing money being found in store after initial reports of being missing) and *Bentley*, *supra* note 105, at 1 ("Aitkin County Attorney Bradley Rhodes said it appeared that no money was taken.")

<sup>826</sup> *Beck Report 4/21/98*, *supra* note 116, at 3.

<sup>827</sup> See *Bjerga CRU Interview*, *supra* note 213, at 01:23:44-01:23:57; *Beck CRU Interview Part 2*, *supra* note 158, at 00:06:15-00:08:12.

<sup>828</sup> *Murtha CRU Interview*, *supra* note 413, at 00:53:51.

<sup>829</sup> *Id.* at 00:53:34.

<sup>830</sup> *Id.* at 00:48:17.

<sup>831</sup> *Strickland v. Washington*, 466 U.S. at 668, 690 (1984).

<sup>832</sup> *Murtha CRU Interview*, *supra* note 413, at 00:18:36; 00:19:13.

<sup>833</sup> *Id.* at 00:19:40; 00:19:53.

<sup>834</sup> See *id.* at 00:20:44.

Second, Murtha had enough evidence to advance an alternative perpetrator defense. The sections above provide sufficient evidence linking Terry Peet and M██████ as viable alternative suspects in this case. The only limitations for Peet—lack of access to a front-door key and lack of forensic evidence tying him to the scene—are the same limitations the prosecution met in advancing their case against Pippitt. Murtha would have had, or could have had with due diligence, all the same information as presented in this report on Terry Peet. Similarly, Murtha would have or could have had all the same evidence inculcating M██████ as detailed in this report, except for his bouts with the law after 2000.

Third, Murtha did begin to present some alternative perpetrator evidence at trial, undermining his claim that his decision to not develop the theory was strategic. Specifically, with regard to Peet, Murtha elicited testimony from Bjerga that Peet made a threat to Evelyn before she was murdered and that Peet lived a half mile—within walking distance—of the Dollar Lake Store.<sup>835</sup> After eliciting these two points, Murtha inexplicably changed the course of his examination and never returned to the topic. It is puzzling why Murtha elicited any testimony about Peet at all if he did not believe he had enough to pursue the topic in good faith.

Fourth, Murtha stated in the CRU interview that during Pippitt’s trial, Murtha came to believe with certainty that M██████ was the true murderer.<sup>836</sup> Murtha acknowledged that he should have requested a continuance mid-trial so that he could investigate and explore his theory once he formed an opinion that M██████ was the murderer, but he did not because his inexperience prevented him from overcoming the pressure he felt to “not rock the boat.”<sup>837</sup>

---

<sup>835</sup> *Pippitt Trial*, *supra* note 1, at 259-260.

<sup>836</sup> *Murtha CRU Interview*, *supra* note 413, at 00:54:06.

<sup>837</sup> *Id.* at 00:54:55.

## VI.

### **Response to Preliminary Stakeholder Input Regarding the CRU's Findings**

To be fully collaborative and transparent with all stakeholders in the outcome of this case, the CRU provided an early draft of its analysis and recommendations to its partners in justice: the Aitkin County Attorney's Office, the Aitkin County Sheriff's Office, and the Bureau of Criminal Apprehension (BCA). The CRU provided expert reports to the BCA on January 19, 2024.<sup>838</sup> The CRU provided its draft report—along with all original source documents cited to in the report—to Jim Cousins, Jim Ratz (Aitkin County Attorney), and Scott Mueller (BCA's Deputy Superintendent of Investigative Services) on March 21, 2024.<sup>839</sup> In the same email in which the CRU provided the draft report, it also requested a meeting to discuss the report. The CRU met with County Attorney Ratz, Lisa Rakotz (Senior Assistant Aitkin County Attorney), the Aitkin County Undersheriff (Heidi Lenk), and the Aitkin County Sheriff (Daniel Guida) on April 18, 2024.<sup>840</sup> Following that meeting, the CRU requested feedback or input regarding the report by May 2, 2024, 42 days after sending the draft report.<sup>841</sup> Sheriff Guida provided a response by that date in the form of a letter.<sup>842</sup>

Deputy Superintendent Mueller responded to the CRU's March 21<sup>st</sup> email request to meet on April 22, 2024.<sup>843</sup> The CRU met with members of the BCA on April 29, 2024.<sup>844</sup> In response to their request for more time to allow a team of three experts that the BCA hired to review the CRU's report, the CRU agreed to delay finalization of the report for three additional weeks.<sup>845</sup> On May 20, 2024, the BCA provided preliminary input.<sup>846</sup>

---

<sup>838</sup> Email from David Voigt, Deputy Attorney General, to Carman Leone, Assistant Attorney General (Jan 19, 2024).

<sup>839</sup> Email from Carman Leone, Assistant Attorney General, to James Cousins, Brian Pippitt's Defense Attorney (Mar 21, 2024); Email from Carman Leone, Assistant Attorney General, to James Ratz, Aitkin County Attorney (Mar 21, 2024); Email from Carman Leone, Assistant Attorney General, to Scott Mueller, Deputy Superintendent of Investigative Services (Mar 21, 2024).

<sup>840</sup> Email from Carman Leone, Assistant Attorney General, to stakeholders (Apr 18, 2024).

<sup>841</sup> *Id.*

<sup>842</sup> Appendix F, *infra*.

<sup>843</sup> Email from Scott Mueller, Deputy Superintendent of Investigative Services, to Carman Leone, Assistant Attorney General (Apr 22, 2024).

<sup>844</sup> Email from Carman Leone, Assistant Attorney General, to Scott Mueller, Deputy Superintendent of Investigative Services (Apr 29, 2024).

<sup>845</sup> *Id.*

<sup>846</sup> Appendix G, *infra*.

**A. The Aitkin County Sheriff’s input does not persuade the CRU to alter its recommendation.**

The Aitkin County Sheriff’s Office provided verbal and written input. This was solicited by the CRU, without any obligation under law or policy, to ensure the CRU is making an accurate, equitable, and reasoned recommendation. For the reasons outlined below, the Sheriff’s input ultimately did not change the recommendation of the CRU to vacate Pippitt’s conviction.

**1. The Aitkin County Sheriff’s Office provided input regarding the CRU’s report.**

During their meeting with the CRU on April 18, 2024, the Sheriff and Undersheriff expressed several concerns about the findings and recommendations of this report.<sup>847</sup> For example, Sheriff Guida questioned the CRU’s finding that no one entered through the south basement window because the experts who rendered opinions which were featured in the CRU report did not try to recreate the scene to determine plausibility of entry or exit.<sup>848</sup> Sheriff Guida suggested that Keith could have entered and exited through the basement window because he knows Keith and believes he could fit through the window.<sup>849</sup> Sheriff Guida also mentioned that Keith allegedly committed a burglary of a similar nature close in time to the Malin murder, but he did not provide further specifics.<sup>850</sup> To explain the lack of common footprints, Sheriff Guida suggested that Keith or an accomplice could have brushed the sandy floor behind him as he exited through the basement window.<sup>851</sup>

Undersheriff Lenk also provided her misgivings with the report at the meeting.<sup>852</sup> Undersheriff Lenk suggested that she found convincing evidence of Pippitt’s guilt the fact that Donald Hill had offered a silver certificate at the Fireside the day after the murder.<sup>853</sup> She also mentioned that Terry Peet was not a small person, and therefore, the same concerns the CRU has with respect to the theory that any of the charged men fit through the window would equally apply to Peet, a person the CRU has identified as a credible alternative suspect.<sup>854</sup>

---

<sup>847</sup> Meeting between CRU, Aitkin County Sheriff’s Office, and Aitkin County Attorney’s Office at Aitkin County Government Center (Apr 18, 2024) [hereinafter *Aitkin Meeting 4/18/24*].

<sup>848</sup> *Id.*

<sup>849</sup> *Id.*

<sup>850</sup> *Id.*

<sup>851</sup> *Id.*

<sup>852</sup> *Id.*

<sup>853</sup> *Id.*

<sup>854</sup> *Id.*

Finally, Sheriff Guida sent an undated letter to the CRU on May 1, 2025, in which he raised several concerns.<sup>855</sup> He stated that it is unrealistic to respond to the report in the time period provided.<sup>856</sup> Sheriff Guida said his office will need to conduct its own review and investigation of the CRU’s report because the CRU appears to have a “limited understanding of the entire case and investigation” and that the CRU “seems more focused on the process of the case than substantive evidence.”<sup>857</sup>

## **2. The CRU carefully considered the Aitkin County Sheriff’s Office input but was unpersuaded.**

Regarding Sheriff Guida’s concern that the CRU failed to reconstruct the crime scene and attempt to send someone through the window before concluding it’s implausibility, it’s worth noting that none of the original investigators involved in this case tried to recreate the entry through the window after the murder. Netzel explained in an interview with the CRU that there is no way to reconstruct the environment with precision to determine whether it was possible for Keith or an accomplice to get through the window while leaving the crime scene exactly as it appeared the morning of February 25, 1998.<sup>858</sup> For example, the variables at play include finding someone of Keith’s height, weight, strength at that time, intoxication level as described in testimony, at night and with materials that are identical or as close as possible to the materials used at that time.<sup>859</sup> There are many variables for which we have unknown quantity.<sup>860</sup> For instance, there is no way to determine the fiber content of the clothing Keith was wearing that night.<sup>861</sup> There is no way to determine how full the boxes were that were stacked under the window that night which would have been used as leverage for getting in or out of the window.<sup>862</sup>

Netzel explained that the scientific method would support reconstruction in limited circumstances, such as testing the trajectory of glass after breaking, blood spatter/stain patterns,

---

<sup>855</sup> Email from Daniel Guida, Aitkin County Sheriff, to Carman Leone, Assistant Attorney General (May 1, 2024); Appendix F, *infra*.

<sup>856</sup> Appendix F, *infra*, at 1.

<sup>857</sup> *Id.*.

<sup>858</sup> Interview with Linda Netzel, criminalist, telephone (April 19, 2023) [hereinafter *Netzel CRU Interview 4/19/24*].

<sup>859</sup> *Id.*

<sup>860</sup> *Id.*

<sup>861</sup> *Id.*

<sup>862</sup> *Id.*

and bullet trajectory.<sup>863</sup> The scientific method can be used to analyze these types of reconstruction because these tests are based on physics and mathematics.<sup>864</sup> In fact, Netzel did a limited reconstruction in her review of the original Pippitt investigation by prying laths from a window frame to determine it could have only been done from inside the basement, which is detailed in her report.<sup>865</sup> But as proposed by Sheriff Guida, a reenactment as part of a broader reconstruction has too many unknown variables that cannot be conclusively proven or disproven by science.<sup>866</sup>

Netzel acknowledged that while it may be possible for someone of Keith's purported height and weight to theoretically get in and out of the window, the analysis is not limited to whether a person of those dimensions can physically fit through the window.<sup>867</sup> Rather, it is whether the person can do so while leaving crime scene exactly as it was found.<sup>868</sup>

Finally, and most persuasively to the CRU, Netzel highlighted that reports from first responders describe finding a kitchen chair resting on top of the propped open trap door leading to the basement.<sup>869</sup> According to Sheriff Guida's theory, Keith came in and out through the south basement window.<sup>870</sup> Netzel proposed there was no way Keith could descend the stairs, prop the trap door a few inches, and place the chair on top of the door.<sup>871</sup> Moreover, Sheriff Guida's theory of Keith's exit through the basement window was explicitly rejected by Bjerga,<sup>872</sup> was never a theory advanced by the prosecution, and conflicts with the testimony of Raymond and Donald. No one proposed this theory at or before Pippitt's trial.

Regarding Sheriff Guida's suggestion that Keith committed a similar burglary near in time to the Malin murder, Keith does appear to have a conviction for third degree burglary, dated January 21, 1999.<sup>873</sup> He pled guilty as part of the deal with the State to dismiss the first-degree

---

<sup>863</sup> *Id.*

<sup>864</sup> *Id.*

<sup>865</sup> See Appendix A, *infra*.

<sup>866</sup> Netzel CRU Interview 4/19/24, *supra* note 858.

<sup>867</sup> *Id.*

<sup>868</sup> *Id.*

<sup>869</sup> *Id.*

<sup>870</sup> Aitkin Meeting 4/18/24, *supra* note 847. Deputy Superintendent Knutson also seems to endorse this theory in her preliminary response on behalf of BCA when she concludes the basement window in the basement is the likely point of access due to the theory that the front screen door was locked. See Appendix G, *infra*.

<sup>871</sup> *Id.*

<sup>872</sup> See Bjerga CRU Interview, *supra* note 213, 00:34:20-00:34:35 "No, they weren't going to get out through that window."

<sup>873</sup> See Register of Actions, State v. Misquadace, 01-K0-99-000774, Jan. 21, 1999.

murder charge pending against him for the murder of Evelyn Malin.<sup>874</sup> While it is clear that Keith pled guilty to burglary, the CRU does not have any information about whether that incident was similar to that which he was charged with at the Dollar Lake Store. Assuming, *arguendo*, that the other conviction for burglary tends to prove Keith's participation in the Malin murder at all, it does not prove Pippitt's participation.

The weight that Undersheriff Lenk places on the fact that Donald allegedly passed a silver certificate at the Fireside the day after the murder is unpersuasive to the CRU. As discussed in Footnote 601, the circumstances around the collection and preservation of the Silver Certificate are highly suspicious.<sup>875</sup> Rhodes, himself said no money was taken from the Dollar Lake Store.<sup>876</sup> Even if one assumes the fact as true that Donald passed the silver certificate, this does not implicate Pippitt in the murder. This is why the judge refused to allow Rhodes to admit the silver certificate into evidence at Pippitt's trial.<sup>877</sup>

Regarding Undersheriff Lenk's observation that Terry Peet was not a small man is well-taken. However, the CRU does not believe that Peet squeezed through the window. The CRU has no theory regarding how Peet could have entered because of the lack of investigation into him; this is precisely why further investigation into Peet was necessary at the time of the original investigation. The CRU does not conclude that either Terry Peet or M██████████ were, in fact, the murderers of Ms. Malin. Rather, they were credible alternative suspects due to their motives to kill Ms. Malin, and the defense could have used this evidence as a defense. But these suspects were never fully investigated.

In sum, neither the arguments proposed by Sheriff Guida or Undersheriff Lenk persuaded the CRU that Pippitt has not been wrongfully convicted.

**B. The Bureau of Criminal Apprehension's preliminary input does not persuade the CRU to alter its recommendation.**

The BCA also provided verbal and written input. Like that of the Sheriff's Office, this feedback was solicited by the CRU, without any obligation under law or policy, to ensure the

---

<sup>874</sup> See generally *Keith Guilty Pleas*, *supra* note 240.

<sup>875</sup> See FN 601, *supra*, and accompanying text.

<sup>876</sup> Bentley, *supra* note 105, at 1 ("Aitkin County Attorney Bradley Rhodes said it appeared that no money was taken.")

<sup>877</sup> *Pippitt Trial*, *supra* note 1, at 270-271.

CRU is making an accurate, equitable, and reasoned recommendation. For the reasons outlined below, the BCA's preliminary feedback did not change the recommendation of the CRU to vacate Pippitt's conviction.

### **1. The Bureau of Criminal Apprehension provided input regarding the CRU's report.**

During the meeting between the CRU and BCA on April 29, 2024, Deputy Superintendent Mueller explained that there were three primary areas of concern: (1) the CRU's analysis of the crime scene, (2) the CRU's conclusion that Raymond provided a false confession given the interview techniques deployed, and (3) the way the report is written.<sup>878</sup>

Deputy Superintendent Mueller also stated that the BCA has not had enough time to digest the report, and that the BCA had hired a group of experts to review the CRU's report.<sup>879</sup> Deputy Superintendent Muller estimated that the BCA's experts could have something in four additional weeks.<sup>880</sup> The CRU agreed to provide three additional weeks for the BCA to submit a response.<sup>881</sup>

On May 20, 2024, Drew Evans, the Superintendent of BCA, submitted written preliminary input regarding the first of BCA's general concerns pertaining to the CRU's crime scene analysis.<sup>882</sup> The submission, authored by Deputy Superintendent of Forensic Science Services Catherine Knutson, addressed "significant concerns immediately identified with the content, tone, and basis of the external consultants' reports."<sup>883</sup> Deputy Superintendent Knutson stated that "opinions of both external consultants are based on nonexistent or insufficient experimentation needed to reach conclusive statements."<sup>884</sup> She criticized the experts for allowing confirmation/cognitive bias to influence their conclusions.<sup>885</sup> Deputy Superintendent Knutson highlighted that Turvey "appears to have a strong negative impression of law enforcement entities," inferring that his bias against BCA, a law enforcement entity, influenced

---

<sup>878</sup> Meeting between CRU and Bureau of Criminal Apprehension (Apr 29, 2024) [hereinafter *BCA Meeting 4/29/24*].

<sup>879</sup> *Id.*

<sup>880</sup> *Id.*

<sup>881</sup> Carman Leone, Assistant Attorney General, to Scott Mueller, Deputy Superintendent of Investigative Services (Apr. 29, 2024).

<sup>882</sup> Email from Andrew Evans, Superintendent of BCA, to the CRU (May 20, 2024).

<sup>883</sup> Appendix G, *infra*, at 1.

<sup>884</sup> *Id.* at 2.

<sup>885</sup> *Id.*



his conclusions in his report.<sup>886</sup> She concluded on behalf of BCA technical experts who have reviewed the CRU's work that "[t]he staging theory is unlikely due to the fact that statements provided indicate the victim locked both screen doors and the deadbolts each night prior to bed, especially on this night..."<sup>887</sup> Because there was no apparent damage to the front screen door in the crime scene photos, "the point of access is most likely from the broken window in the basement."<sup>888</sup>

Finally, Deputy Superintendent Knutson concluded by explaining that crime scene analysis protocols and documentation practices have steadily evolved since the 1990s, including evolving technology (like DNA testing) and an increasing emphasis on documentation and transparency, among others.<sup>889</sup> Ultimately, despite "areas of improvement identified during the evaluation of the original crime scene field notes...it was determined that the actions taken by the original BCA crime scene analysts were appropriate and thorough."<sup>890</sup>

## **2. The CRU carefully considered the Bureau of Criminal Apprehension's input but was unpersuaded.**

Although Deputy Superintendent Knutson raised "significant concerns with the "content, tone, and basis of the contracted external consultants' reports," she does not explain which particular aspects of the reports led to a flawed conclusion. Ultimately, the CRU relies on Netzel's response to Deputy Superintendent Knutson's letter which may be found at Appendix H to this report in determining that BCA's preliminary concerns, from a technical perspective, are not persuasive.

The BCA's response to the CRU report raises additional concerns. For example, the BCA seems to suggest that bias has influenced the analysis of the CRU, at least with respect to the reliance on the contracted experts. Sheriff Guida raises the specter of CRU's bias in his letter, too.

Regarding the suggestion of the bias of contracted experts, Turvey had a valuable perspective, albeit a defense perspective, because he was hired by a co-defendant's attorney

---

<sup>886</sup> *Id.* at 3.

<sup>887</sup> *Id.*

<sup>888</sup> *Id.* at 3-4.

<sup>889</sup> *Id.* at 4.

<sup>890</sup> *Id.*

before trial.<sup>891</sup> He was in the basement of the Dollar Lake Store.<sup>892</sup> He viewed the scene.<sup>893</sup> He examined the physical evidence, including the front door to the store.<sup>894</sup> His perspective from personally viewing the scene nearer the time of the murder provided important information for the CRU to assess.

The CRU approaches each case with an unbiased eye toward determining whether there is evidence that supports case correction. As of May 1, 2024, of the 1,095 applications that the CRU has received, 851 cases were closed without offering relief to the applicant.<sup>895</sup> The staff of the CRU comes from varied professional experiences. For example, the author of this report has served as a military prosecutor, military defense counsel, assistant professor of law at a military academy, an advisor to commanders, and a civilian defense counsel.

The CRU has no preconceived notions about how a case must resolve prior to completing a thorough investigation. No one directs the CRU how to analyze a case or what recommendation the CRU should ultimately give.

---

<sup>891</sup> Interview with Dr. Brent Turvey, Forensic Scientist and Criminologist, TEAMS (Apr. 4, 2023) at 00:23:00-00:23:13; 00:24:16-00:25:14.

<sup>892</sup> *Id.*

<sup>893</sup> *Id.*

<sup>894</sup> *Id.*; *id.* at 00:29:00-00:29:19.

<sup>895</sup> Carrie Sperling, Quarterly Advisory Board Meeting Director's Report, Minnesota Attorney General's Conviction Review Unit (May 1, 2024).

## **VII.** **Conclusion**

Pippitt should be granted postconviction relief because he was denied due process of a fair trial based on the totality of the CRU's findings. A confluence of factors led to a series of problems which resulted in his wrongful conviction. The conclusions of the investigative team, upon which the conviction is based, have been directly challenged by four experts. These experts have found that the basement window was not the point of entry, that the crime scene was staged, that the deadbolt to the front door was locked when first responders arrived at the scene of the crime, and that Raymond gave a false confession. Rhodes presented evidence inapposite of these expert conclusions through the testimony of Beck, Bjerga, Merle, Raymond and Arnoldi, among others.

The concern here is not limited to simply different experts rendering different opinions. Rather, the lack evidence supporting Rhodes's theory, and the amount of evidence that challenged it, should have led Rhodes to realize that the testimony offered in support of his theory was unreliable. For example, offering Merle's testimony about rows of cigarettes and cases of beer missing from specific areas of the store which is contradicted by photographic evidence is unreasonable. Proposing that the front door was not deadbolted despite photographic evidence to the contrary was unreasonable. Calling Raymond to offer testimony to the jury after changing his story so many times was unreasonable. Offering Arnoldi's testimony, considering his character for untruthfulness, reliance on the complaint, and mental health history was unreasonable. Murtha's inability to properly react to the unreliable evidence offered by Rhodes also contributed to the outcome.

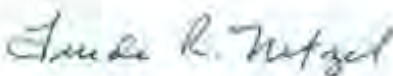
The loss of Evelyn Malin was unquestionably tragic. She was a beloved staple of the community. She served so many roles throughout her life: a storekeeper, a friend, a mother, a grandmother, a spouse, a daughter, and so much more. Her death left a void in the community that could not be filled, even with the proper identification of the true murderer. And yet, despite the desire for someone to atone for the crime, the atonement cannot be placed on just anybody. Otherwise, it is not justice that is served, it is convenience. As such, the appropriate remedy in this case is for Pippitt's conviction to be vacated.

**APPENDIX A:  
Linda Netzel's Report, Notes, and Curriculum Vitae**

Brian Keith Pippitt | Linda Netzel

**Brian Keith Pippitt  
Crime Scene and Laboratory Analysis  
Review**

**May 18, 2023**



Linda R. Netzel, Consulting Criminalist

Table of Contents

**Background** .....3  
    Discovery Utilized in Analysis .....3  
    Limitations to the Review .....4  
    Summary of Event .....4  
    Qualifications.....5  
    Associative and Reconstruction Evidence .....5  
    Investigative Question .....5  
    Window Terminology Used in this Case .....6  
**Crime Scene Investigation** .....6  
**Basement window and related evidence**.....7  
    Exterior evidence from the window.....7  
    Interior evidence from the window .....9  
    Trap door and kitchen chair .....10  
    On scene reconstruction .....11  
**Minnesota Bureau of Criminal Apprehension Laboratory Reports** .....12  
**Analysis** .....13  
    Window well.....13  
    Campbell’s Juices Boxes .....15  
    Lath Boards.....17  
    Glass panes and muntins .....19  
    Footwear Impressions .....21  
    Lack of Trace Evidence .....22  
**Discussion** .....23  
    Plate Glass Breakage.....23  
    Location of Various Items Associated with the South Window.....24  
    Other considerations .....24  
**Conclusions and Opinions** .....25  
**Annex A** .....27  
**Annex B** .....28  
**Annex C** .....29  
**Annex D** .....30

## Background

On April 7, 2023 I was contacted by Attorney James Cousins regarding the 1998 homicide of Evelyn Malin in Aitkin County, Minnesota. Mr. Cousins requested that I review evidence around a window at the crime scene. I was provided the reports by first responders to the scene, reports from the Minnesota Bureau of Criminal Apprehension Crime Laboratory, photographs of the scene and evidence, and a video taken of the crime scene.

On April 8, 2023 I requested the criminal complaint and autopsy report. On April 17, 2023 I requested the full bench notes of crime laboratory examiners, field notes from the crime scene team, testimony provided by first responders, statements and testimony by the victim's daughter, Norma Horner, and her friend, Gerald Horsman, a list of all evidence recovered and testimony of laboratory personnel. Limited field notes by the crime scene team were available and though Gerald Horsman gave a statement he did not testify.

## Discovery Utilized in Analysis

The following list provides the documentation that I have primarily relied upon to support my opinion in this case (date format is given as found on documents):

Report by Aitkin County Minnesota Sergeant Scott Turner, date stamped Mar 25, 1998  
Report by Aitkin County, MN Deputy Mark Fredin, date stamp Mar (unreadable day), 1998  
Report by Aitkin County, MN Deputy Seth Jacobs, date stamped Mar 25, 1998  
Report by Aitkin County, MN Deputy John Drahota, date stamped Mar 25, 1998  
Testimony of Deputies John Drahota and Mark Fredin and Sgt. Scott Turner, unknown date  
Crime Scene Photographs, MN BCA Lab Crime Scene Team (many are date stamped 2 25 '98)  
Crime Scene Video of 47' 42" length, MN BCA Lab Crime Scene Team recorded 2/25/1998  
Interviews of Norma Horner, February 25, 1998 and February 26, 1998  
Interviews of Gerald Horsman, February 25, 1998 and February 26, 1998  
Testimony of Norma Horner, unknown date  
Field Report co-signed by Forensic Scientist<sup>1</sup> III Gary L. Kaldun and Forensic Scientist Nathaniel J. Pearlson dated March 13, 1998  
Testimony of Gary Kaldun, unknown date  
Crime Scene Diagram by Forensic Artist P. Johnson, dated 2/25/98  
Crime Laboratory Report Supplement 1 and bench notes by Forensic Scientist Janice K. Bronson, dated March 24, 1998  
Crime Laboratory Report Supplement 3 and bench notes by Forensic Scientist Roger E. Papke, dated June 9, 1998  
Crime Laboratory Report Supplement 7 and bench notes by Forensic Scientist Laura A. Nelson, dated March 19, 1999

While this list is not exhaustive, it represents the documentation most relevant to the analysis of the basement window as a possible point of entry (POE).

---

<sup>1</sup> Forensic Scientist will be abbreviated as FS in this report.

#### Limitations to the Review

During review of both the scene photographs and video, there exists a gap in documentation that hindered a full analysis of the evidence related to the basement window. There are no close-up photographs or video of the areas directly under the window to include the boxes and floor area. There is also a lack of similar documentation on top of the boxes directly to the right of this window and only glass shards on the floor were captured in a close-up photograph. No close-up photographs of the interior edge of the window frame where the glass panes would sit were provided and apparently do not exist. This missing documentation required that some reasonable assumptions be made during my analysis.

Further limitations to the review are the format of the photographs themselves. The original photographs were a 35mm film format. These photographs were digitized, which somewhat limited zooming into various areas of interest without substantial loss of resolution. However, these limitations did not preclude my ability to determine that the window was staged to appear as the point of entry.

#### Summary of Event

On February 25, 1998, Evelyn Malin was discovered deceased in her residence at the back of a convenience store she owned and operated. The scene was located in Aitkin County, Minnesota, which was a small rural community at the time. The residence/business was found to be locked according to her daughter, Norma Horner and Norma's friend, Gerald Horsman. They reported that they saw the victim the previous night, February 24, 1998, between 7:00 and 8:00 pm and Norma also spoke to Evelyn at 9:00 pm on the phone. The last conversation was to inform Norma that Evelyn was not feeling well and she instructed Norma not to come back that evening because she was going to bed.<sup>2,3</sup>

Norma and Gerald noted that a storm window had been removed from a main floor window on the south of the building and that an adjacent basement window was also disturbed. They were unable to raise Evelyn by pounding on the back door and windows to her bedroom. Norma was able to unlock the back screen door by pulling the screen away and unlatching the "hook and eye" lock. They attempted to use a key to open the interior door but were unsuccessful. Apparently, a skeleton key used on this door was still engaged from the inside. Unable to gain access, they called 911 for assistance.

Four Aitkin County deputies arrived at the scene and made a forced entry through the back door. During their search of the premises, Deputy Drahota testified that he saw a trap door to the basement partially propped open with a kitchen chair sitting on top of it.<sup>4</sup>

---

<sup>2</sup> See interview of Norma Horner, 2/25/1998

<sup>3</sup> See interview of Gerald Horsman, 2/25/1998

<sup>4</sup> See trial testimony of Deputy John Drahota, page 163 of transcript, unknown date

#### Qualifications

During my 25-year career with the Kansas City Police Department Crime Laboratory I attended and participated in hundreds of crime scene investigations. Early in my career I was responsible for attending crime scenes to aid investigators in decision making and helping to identify potential associative and reconstruction evidence. I was also at times responsible for responding to and actively participating in crime scene processing. I attended training in crime scene investigation techniques and later taught trace evidence and reconstruction to hundreds of law enforcement members and others responsible for evidence collection. I also trained and worked as a criminalist specifically in the areas of DNA and Trace Evidence analysis.

As a Senior Criminalist, I was responsible for the analysis of physical evidence in primarily crimes against persons. During my case working tenure, I examined items of evidence for traces of body fluids, hairs, fibers and other types of microscopic evidence from hundreds of rape cases and homicides. I successfully completed proficiency tests on an annual basis in the various aspects of trace analysis with an emphasis on the identification of body fluids, DNA analysis and bloodstain pattern analysis. Also, I was a certified Diplomate with the American Board of Criminalistics, which required that I participated in continued forensic education and training.

In 2005, I became the director of the KCPD Crime Laboratory. The KCPD Laboratory employed 75 individuals including 49 scientists and 18 crime scene investigators. In this role, until my retirement in 2019, I was responsible for assuring the quality of work done by scientists in seven forensic disciplines, which involved approval of standard operating procedures, validation of techniques, annual auditing and testimony review. The seven disciplines included Biology/DNA, Chemistry, Crime Scene Investigation, Digital Imaging, Firearms and Toolmarks, Latent Prints and Trace Evidence. This experience qualifies me to evaluate crime scene processing and analysis of evidence. I have provided my curriculum vitae to James Cousins, Esq.

#### Associative and Reconstruction Evidence

Associative evidence includes items from a crime scene that can potentially connect either people or objects with the crime. The goal of crime scene processing is to locate physical evidence for the purpose of identifying an association. Associations can be between a suspect and the scene, the suspect and the victim, or the victim and the scene. The most common associations are made using fingerprints and deoxyribonucleic acid (DNA) but a great deal of trace and other types of physical evidence can also result in an association.

The reconstruction effort attempts to explain the various micro events that occurred during the commission of a crime and explain how evidence relates to the scene. In other words, reconstruction is used to determine what happened before, during and after the crime was committed.

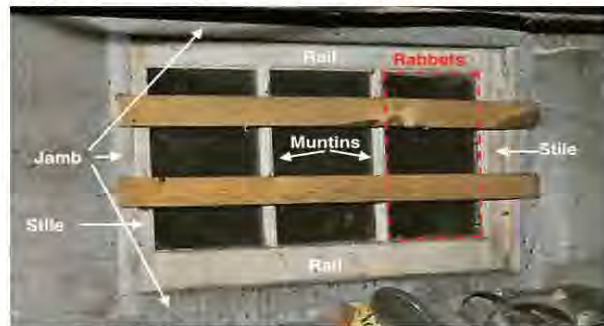
#### Investigative Question

Mr. Cousins specifically requested I review evidence related to a basement window that investigators reported as the point of entry.



#### Window Terminology Used in this Case

The south window treated by investigators as the point of entry (POE) was similar to another window on the east side of the basement. The exterior of this window and the area underneath and inside the basement, appear undisturbed. The following photograph of the east window has been annotated to depict terminology used in this report.



Photograph 1 of the undisturbed basement window<sup>5</sup>

The window *jamb* is the outer, permanent frame surrounding the window frame. The top and bottom of the window frame are referred to as *rails*, and the sides are called the *stiles*. The rails and stiles joined together form the window frame. This window has three panes of glass separated by wood *muntins*. Glass panes rest against *rabbets*, which are recessed spaces at the edges of the muntins, rails and stiles.<sup>6</sup> Both basement windows appeared to lack hardware such as hinges, handles or locks. Both windows had 1" X 3" (nominal size) boards attached to the vertical sides of their jambs.

#### Crime Scene Investigation

Norma Horner and Gerald Horsman arrived at the Dollar Lake Store reportedly at 8:30 am. Because they noted newspapers on the front door stoop and the fact that the "OPEN" sign was not illuminated, they believed the front screen door would have been locked. However, Norma testified that she did not believe they actually checked to see if the front screen door was locked.<sup>7</sup> Their only attempt to enter involved the unlocking of the back screen door.

The crime scene investigation began after deputies forced the back door open in an attempt to locate Evelyn Malin. The back door entered into the living space of the building which contained a small kitchen area and Evelyn's bedroom. Within the kitchen area there was a trap door used to enter the basement. Both Deputy Drahota<sup>8</sup> and Sergeant Turner<sup>9</sup> described the trap door as being propped open with a board and a kitchen chair sitting on top of the door. There are no

<sup>5</sup> See photograph 2015\_03\_27\_09\_27\_14.jpg, enhanced, cropped and annotated

<sup>6</sup> See Annex A for a cross section view of a window with muntins

<sup>7</sup> See trial testimony of Norma Horner, page 46, unknown date

<sup>8</sup> See trial testimony of Drahota, page 163, unknown date

<sup>9</sup> See trial testimony of Sgt. Turner, page 191, unknown date

images of this described condition. Sgt. Turner removed the chair and opened the trap door to access the basement before Evelyn's body was discovered on the floor of her bedroom. Neither the board nor the chair were collected and it is unknown if either were processed for fingerprints. No fingerprints from these items were submitted to the laboratory for analysis.

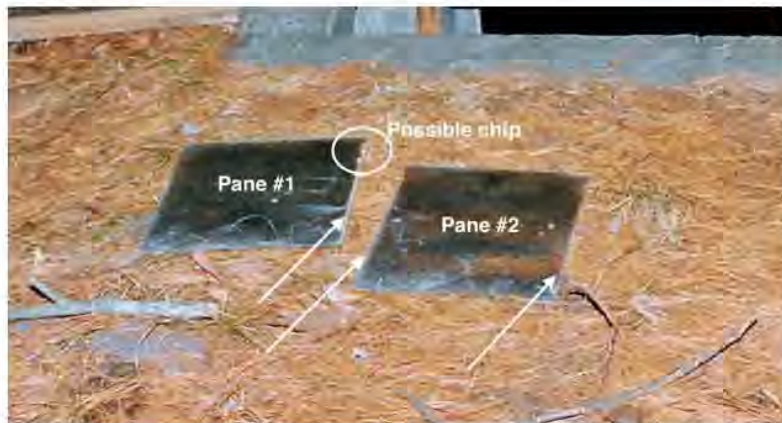
The first responding officers were directed to the south side of the building where a storm window had been removed from a main floor window and two panes of glass were on the ground near a south basement window. This basement window was treated as the point of entry during the investigation.

### Basement window and related evidence

The south basement window was below ground level and accessible from the outside through a concrete window well. Pine needles surrounded the area of the window well. The window was accessible from the inside at the top of the basement foundation wall. Beneath the window, on the inside, were boxes of store goods and a partial sandy floor. This sandy floor transitioned to concrete several feet away and towards the stairs leading to the trap door.

### Exterior evidence from the window

The two panes of glass near the window well appear unbroken. The glass panes were lying side by side and lines of demarcation (margins) where glazing putty would have secured the glass are visible; these areas reflected light differently and are highlighted by the white arrows in the photograph below. Pane #1 appears to have a chip in the upper right corner where the glazing margin appears interrupted. Neither pane was recovered by the crime scene team and no fingerprints were found.



Photograph 2 from exterior of building<sup>10</sup>

<sup>10</sup> See photograph 2015\_03\_27\_09\_20\_28.jpg, enhanced, cropped and annotated

To the left of the window well were two boards that were similar to the boards nailed in place over the inside of the east basement window referenced earlier. One board was completely intact while the second was broken at the edge of a knot in the wood. Both boards were collected.



Photograph 3 of the boards used to secure the window from the inside<sup>11</sup>

Inside the window well dried vegetation can be seen and some small pieces of broken glass. The broken glass was lying near the outside of the lower rail of the window frame.



Photograph 4 with marker 3 identifying small glass pieces<sup>12</sup>

The small glass pieces were collected as Item 3, “known glass” from the south window. The evidence marker is approximately 3 inches wide, and most of the glass pieces appear to be less than an inch long.

---

<sup>11</sup>See photograph 2015\_03\_27\_09\_20\_30.jpg, enhanced and cropped

<sup>12</sup> See photograph 2015\_3\_27\_09\_21\_25.jpg, enhanced, cropped and annotated

Hairs and fibers, collected as Item 2, were collected from the outer, top portion of the window jamb and not the actual window frame recovered as Item 16.<sup>13</sup>

#### Interior evidence from the window

Evidence inside the basement and near the window included footwear impressions in sand, large shards of glass, the window frame, a broken piece of the lower 1" X 3" lath board still attached to the jamb, and the two muntins. Photograph 5 captured the window and below it while photograph 6 captured the area to the right of the window:



Photograph 5<sup>14</sup>



Photograph 6<sup>15</sup>

Item 15, contained the swab of blood from a shard of glass but none of the glass itself was collected.<sup>16</sup> There are no photographs that show any glass was found directly under the window.

The Item 16 description described a window pane however no glass was recovered and only the frame, wood lath (1" X 3" boards) and window dividers (muntins) were described by FS Papke.<sup>17</sup>

Also, visible under the window are what appear to be water stains where snow melt or heavy rain came in under the window frame.

<sup>13</sup> See photograph 2015\_3\_27\_09\_21\_22.jpg

<sup>14</sup> See photograph 2015\_03\_27\_09\_25\_42.jpg, enhanced and annotated

<sup>15</sup> See photograph 2015\_03\_27\_09\_25\_39.jpg, enhanced and annotated

<sup>16</sup> See Field Report by FSIII Gary Kaldun, dated March 13, 1998 with the list of evidence and source page 3

<sup>17</sup> See bench notes of FS Roger Papke, page 10

#### Trap door and kitchen chair

Sergeant Turner and Deputy Drahota both described the trap door as being propped open and with a kitchen chair sitting on top of it.<sup>18,19</sup> If the basement window was used as the point of entry, the perpetrator could only gain access to the main floor via this trap door. This presumes there is no other access between the basement and main floor, but none was seen in the discovery provided. With the trap door being nearly closed, the chair was likely placed on it after it was propped.

Drahota stated in his report that the trap door was partially open and a 1" X 6" board held the door open. He testified that this board was oriented on its edge, propping the door open about 6".<sup>20</sup> When the trap door was opened by Sgt. Turner, this board fell to the basement floor. That the board fell to the floor indicates that the balance of its weight was such that when the door was lifted, the 1" X 6" board was heavy enough and out of balance causing it to fall. There are no overall photographs of the top of the trap door so it could not be determined if the door had a handle. There were also no questions asked of Norma or Gerald as to whether or not this board was typically used to prop the door.

Photograph 7 depicts the board used to prop the trap door open and photograph 8 depicts other similar loose boards leaning against a beam nearby (white rectangle) and between the south window and the stairs to the trap door.



Photograph 7<sup>21</sup>



Photograph 8<sup>22</sup>

<sup>18</sup> See report by Sgt. Turner, date stamped Mar 25, 1998, page 3

<sup>19</sup> See report by Deputy Drahota, date stamped Mar 25, 1998, page 3

<sup>20</sup> See trial testimony of Deputy Drahota, unknown date, page 147 of transcript

<sup>21</sup> See photograph 2015\_03\_27\_09\_24\_26.jpg, enhanced

<sup>22</sup> See photograph 2015\_03\_27\_09\_24\_34.jpg, enhanced and annotated

On scene reconstruction

The crime scene team treated the south basement window as the point of entry throughout its investigation. Although they failed to collect the window panes from the exterior or any glass from inside of the basement, they did attempt to “match” the lath boards to the window jamb. Photograph 9, shows the straightforward placement of the lower board, facilitated by the other piece still attached to the jamb and the knot in the board.<sup>23</sup>



Photograph 9

Photograph 10 depicts the reconstruction of the top board.<sup>24</sup>



Photograph 10

<sup>23</sup> See photograph 2015\_03\_27\_09\_27\_23.jpg, enhanced

<sup>24</sup> See photograph 2015\_03\_27\_09\_27\_27.jpg, enhanced

Also noted in both of these photographs are the additional wood pieces located at the upper corners and the middle of the upper jamb and top rail. Photograph 9, also shows a piece of wood across the lower left corner. The pieces at the corners appear to be muntin type wood. Additional wood pieces were not observed on the east basement window. The window lacked any hardware and appeared secured by these wood pieces alone.

### Minnesota Bureau of Criminal Apprehension Laboratory Reports

Supplemental report 3 describes the tool marks on the window frame as having come from a tool with a  $\frac{1}{8}$ " blade and a cylindrical shaft, which is consistent with a screw driver. In the bench notes for his report, FS Roger Papke described the marks as being on the "inside" of the frame, consistent with the tool being pressed against the inside edges of the frame. The tip of this tool left markings on the undersides of the wood lath pieces at each end except for the piece that remained attached to the frame. He noted that the "small wood fragments, apparent 'dividers'-included w/item 16A" (window frame) had no tool marks. Papke took photographs of the window frame, the full length lath board and the long portion of the broken lath board. No photographs of the apparent "dividers" were included in his documentation.<sup>25</sup>

Papke also wrote the dimensions of the window frame in his bench notes as  $17\frac{1}{2}$ " X  $34\frac{1}{4}$ ".<sup>26</sup> This is consistent with measurements on page 2 of the scene diagram where the dimensions are given as  $1'6"$  X  $2'10"$ . Though not specified by either measurer, these measurements are taken to mean the outer dimensions of the rectangular shaped window frame.

In laboratory supplemental report 2, FS III Dennis Hughes reported that no prints were recovered from the window frame (Item 16). In his bench notes he itemized the same contents of the item as was described by Papke.<sup>27</sup> Based upon the analyses done by Hughes, there remains several unidentified prints from the area around the trap door in the kitchen.

In laboratory supplemental report 7, FS Laura Nelson reported that footwear impressions 9 and 11 were similar to the elimination prints taken from Gerald Horsman. Impression 14 was of no value and impression 12 exhibited "horizontal bars and perimeter lugs." Impressions 10, 12 and 13 were not associated with any collected eliminations.

Item 2 contained "hairs and fibers" from the exterior south window jamb. FS Laura Nelson describes this evidence as "a wad of debris..." and further delineates "insect parts, crumpled bits of leaves, brownish plant debris, pos[sible] spider web, animal hairs...1 [i]t blue fiber..." in her bench notes. She formally reported only the animal hairs and spider web.<sup>28</sup>

---

<sup>25</sup> See supplemental report 3 and bench notes by Roger Papke, report date June 9, 1998

<sup>26</sup> *IBID* page 10 of bench notes

<sup>27</sup> See supplemental report 2 by Dennis Hughes, report date April 20, 1998

<sup>28</sup> See bench notes of FS Laura Nelson page 1

## Analysis

### Window well

The window well was made of thick concrete that was only 1' 4" from the outer wall of the building, 3' 5" wide and 2' 2" deep.<sup>29</sup> These dimensions represent a small, unyielding space.

At the bottom of the window well, there was an accumulation of dead leaves, cones, and tree needles. Small pieces of glass were present near the bottom of the window frame. This glass may be from a previously broken pane leftover after replacement of the pane. The glass could be part of the broken pane found inside the basement. Neither scenario can be determined with certainty since the glass from inside was not collected and therefore, no reconstruction can be performed.

Also present are what appear to be flakes of either window glazing putty or caulk.<sup>30</sup> In the photograph below, these flakes are highlighted by red circles. These flakes are generally of similar width and have relatively straight edges. While some of the flakes are thinner than others, they still contain straight edges consistent with window glazing. These flakes all appear to be resting on the top surface of other debris in the window well consistent with being recently deposited.



Photograph 11<sup>31</sup>

<sup>29</sup> See scene notes by NJP dated 2-27-98

<sup>30</sup> "Glazing" will be used for simplification for the remainder of this report

<sup>31</sup> See photograph 2015\_03\_27\_09\_21\_25.jpg, enhanced and annotated



The below photograph shows remnants of glazing still adhering to the window frame. The muntin attachment points are also visible and the damaged area around the left one would have created a potential starting point to remove this pane of glass. There is insufficient documentation of the exterior window conditions to determine how secure each pane of glass was and how sturdy the muntins were. Therefore, the order in which each glass pane and muntin were removed cannot be determined with certainty.



Photograph 12<sup>32</sup>

The location of Item 2, on the exterior of the window jamb, contained animal hairs as discussed earlier. A bloodstain recovered from inside the window well was also of animal (non-human) origin. The blood found on the glass inside the basement was also animal blood. This is consistent with animals being inside the window well at times.

The variety of trace evidence in Item 2 is consistent with an accumulation of materials over time that became trapped within spider web material. This item is not consistent with being caught by rough and/or sharp edges from someone entering through the narrow opening of the window frame.

<sup>32</sup> See photograph 2015\_03\_27\_09\_20\_36.jpg, enhanced and annotated

### Campbell's Juices Boxes

Images of the basement show that like products and brands were stored near each other. Boxes sat on makeshift shelves or on concrete pads but not on the floor. The boxes on the south wall of the basement contained juice drinks.

Two rectangular boxes of Campbell's Juices were observed in crime scene images. One unopened box is directly under the south window. In photographs 13 and 14 below, this box is oriented with its length facing north. Visible on the box is a number sequence ending in 66 annotated within white rectangles.



Photograph 13<sup>33</sup>

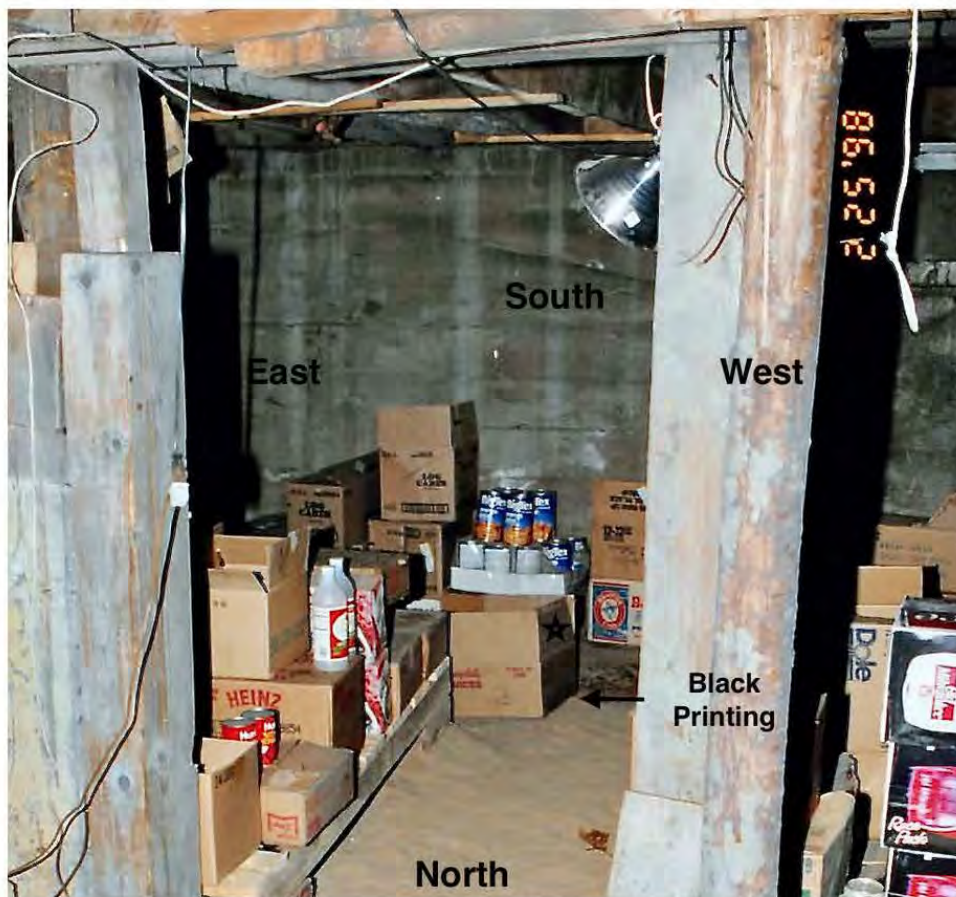


Photograph 14<sup>34</sup>

Photograph 15 on the next page, shows the other box of Campbell's Juices on the floor to the east. Both width flaps and one length flap were open and standing upright. This box was obviously out of place since boxes were normally stored off the floor and its contents are identical to the box under the south window. Black printing is visible on the length side of the box that faced west. This orientation is consistent with the box being lifted from the same orientation as the Campbell's Juices box under the window, rotated counter clockwise 90° and placed on the floor. The black star was added to the length flap to allow tracking the different orientations of the box.

<sup>33</sup> See photograph 2015\_03\_27\_09\_25\_42.jpg , enhanced, cropped and annotated

<sup>34</sup> *IBID*, closer cropping



Photograph 15<sup>35</sup>

Photograph 16 on the next page, a screen shot from the crime scene video, shows the box after investigators moved it. The box was placed on a makeshift shelf with the black star on the length flap facing north. The numbers “66” can be seen in the screen shot. This is consistent with the investigators picking up the box and rotating it 90° clockwise, returning it to the same orientation as the box under the south window. It should be noted that several boxes can be seen with their flaps open on their front facing sides.

<sup>35</sup> See photograph 2015\_03\_27\_09\_24\_31.jpg , enhanced, cropped and annotated



Photograph 16<sup>36</sup>

The organization of this basement appeared to facilitate inventory control and to keep cardboard boxes dry. The fact that one, opened box of the same item was moved from directly under the south window and onto the floor is contemporaneous with the crime. It would be physically impossible for the box to be moved to where it was found from the outside of the window; only someone inside the basement could have moved this box.

#### Lath Boards

The cylindrical marks on the interior edges of the stiles and the blade marks on the underside of the lath boards are consistent with the handle of a screwdriver being moved into the space normally occupied by the glass panes while prying at the nailed ends.

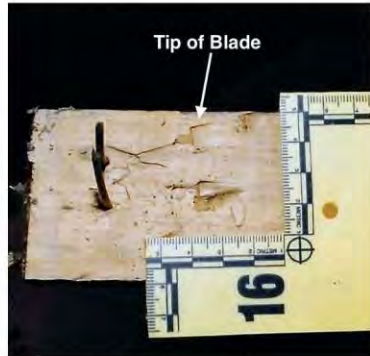


Photograph 17 screwdriver shaft tool marks<sup>37</sup>

<sup>36</sup> See crime scene video, enhanced and annotated

<sup>37</sup> See photograph 2015\_03\_27\_09\_27\_13.jpg, enhanced and annotated

Photographs 18 and 19 below represent the left and right ends of the top lath board based upon the reconstruction performed by the crime scene team.



Photograph 18<sup>38</sup>



Photograph 19<sup>39</sup>

In photograph 20 below, the west end of this lath board is shown as reconstructed to its position before being pried loose. The bent nails are encircled in black.



Photograph 20<sup>40</sup>

<sup>38</sup> See photograph 2015\_03\_27\_09\_27\_29.jpg, enhanced, rotated and annotated

<sup>39</sup> See photograph 2015\_03\_27\_09\_27\_30.jpg, enhanced, rotated and annotated

<sup>40</sup> See photograph 2015\_03\_27\_09\_27\_27.jpg, enhanced, cropped and annotated

Bending these nails to this extent required that the board be rotated beyond perpendicular to the jamb and to the right (west). The nails on the opposite end (see photograph 18) of this lath board show little evidence of bending, which is consistent with being pulled more or less straight out from the jamb.

The lower lath board also exhibited bent nails on its right end. In photograph 21 below, the angle of bend in the lower nail is consistent with pulling the board inward and twisting its top edge downward. This rotation could also have caused the board to break at its knot to the left. Or it could have broken while being pulled inward from near the knot.



Photograph 21<sup>41</sup>

Two basic experiments demonstrated that the angles of the bent nails were easily reproduced when moving them as described above.<sup>42</sup>

The window frame height was used to calculate the height of the foundation walls, which were approximately 6' tall. The low height of the foundation walls would mean the lower lath board was about 5' from the floor and the upper board was just a few inches higher.<sup>43</sup> At these heights, boards would be easily accessible from the inside.

To perform the described manipulations in the confined space of the window well would have been extremely difficult and would have increased opportunities for trace deposits on the window frame and the boxes below. Fingerprints and/or DNA would also have been possible on these boards. However, crime scene personnel inexplicitly handled them without wearing gloves. They also removed the nails from the boards and apparently did not recover them.

#### Glass panes and muntins

The two panes of glass lying outside the window well appear to be intact with the exception of a possible chipped area on one pane. To remove these panes of glass without breaking them would be difficult, if not impossible, if glazing was securely in place.

<sup>41</sup> See photograph 2015\_03\_27\_09\_27\_25.jpg, enhanced, cropped and annotated

<sup>42</sup> See Annex B for example photographs

<sup>43</sup> See Annex C for calculations

Raw wood is visible on the inside of the top rail where the muntins appeared to have been broken inward. The ends of the muntins, seen on top of a box to the right of the window, also appear to exhibit raw wood. This analysis is somewhat limited by the lack of photographs of the inside edges of the rails, and closeup photographs of the muntins. The following series of photographs illustrate what has been described above.

Photograph 22 below, depicts where the muntins would have been attached to the window and a close up of the raw wood where they broke off.



Photograph 22<sup>44</sup>



Photograph 23<sup>45</sup>

Photograph 23 above, shows the muntins on top of the box right of the window. The light reflecting off of each muntin appears continuous, indicating that they are not broken along their length. Raw wood of the broken ends can be seen in the white circle. Also visible are at least 3 shards of glass lying flat on the box. This evidence is to the right of the V8 cans which would have blocked the area if these items were airborne from the south window which, is to the left of these items.

<sup>44</sup> See photograph 2015\_03\_27\_09\_27\_13.jpg, enhanced, cropped and annotated

<sup>45</sup> See photograph 2015\_03\_27\_09\_25\_39.jpg, enhanced, cropped and annotated

The broken glass on the floor just beneath the muntins are primarily large shards with a few smaller pieces nearby (photograph 24 below). This glass is not consistent with an impact from an object with a small surface area, such as from the head of a hammer, while in the window frame. In fact, it appears as if this pane of glass may have merely been dropped with its flat surface somewhat parallel to the ground.



Photograph 24<sup>46</sup>

The edges of several of these pieces have the markings consistent with the margins where glazing putty would result in different “weathering” of the glass. Also notable is the lack of millimeter or less size glass fragments, which would be expected from glass broken by a forceful impact to one area of the pane.

None of this glass was recovered and marker 15 relates only to a swab of blood from one shard of glass, which was later determined to be animal blood. There is also no evidence that the crime scene team attempted to reconstruct this window pane, which would have demonstrated a point of impact, if one existed.

The glass and the muntins in this area are consistent with being placed versus having fallen after they were removed from the south window from the inside.

#### Footwear Impressions

Footwear impressions were recovered from the sandy area north of the south window near stocked pallets. Several impressions pointed towards the pallets and were consistent with a person stocking them.<sup>47</sup> Photographs of the impressions failed to demonstrate a clear path of a

<sup>46</sup> See photograph 2015\_03\_27\_09\_27\_22.jpg

<sup>47</sup> See Annex D



similar sole pattern leading in one direction. Such a pattern would be expected from a person entering through this window in order to quickly gain access to the main floor.

#### Lack of Trace Evidence

The raw wood protruding from the top rail where the muntins were previously attached, appeared to have sharp points. There was also a small, sharp splinter in the area on the lower rail where the west most muntin was removed. Considering the very narrow dimensions of the window opening and the small area of the window well, these sharp points would have likely caught on clothing and retained fibers. Moreover, it would also be possible that a person attempting to enter this small opening would be scratched and leave their DNA on these broken areas.

In the photograph below, there is a nail protruding at an angle from the outer jamb into the window well and just above the broken board (encircled). The nail and its shadow are both visible. No other photograph captured this nail that could snag clothing. The lower lath board has a sharp edge where it broke which, could also catch on the clothing of someone crawling through the window. This piece of board was found pointing downward (see photograph 22 on page 20). However, due to the small window opening its sharp point still presented a surface where trace could be transferred.



Photograph 25<sup>48</sup>

Tree needles from the window well are also visible “leaking” into the basement from underneath the lower rail, which would be caused by a poor seal around the window and water moving under the rail.

<sup>48</sup> 2015\_03\_27\_09\_27\_26.jpg, enhanced

## Discussion

### Plate Glass Breakage

When a plate glass window is broken by an impact to one side, the glass pieces that result will vary in size. It is expected that the greatest number of the smallest pieces will land close to the window frame, both inside and outside. The force causing glass breakage will result in the larger shards of glass traveling further in the direction of the force. Thus, in this instance, large shards would be expected to have landed inside the basement, slightly further in from the window and most certainly on the boxes directly below. These larger shards would also be expected to break into smaller pieces when striking objects or the floor below. It is also expected that some glass would remain in the window frame, secured by glazing, unless it was intentionally removed or was in poor condition.

The photograph below demonstrates what happens when a window pane is struck with the head of a roofing hammer.<sup>49</sup>



Photograph 26

This “snapshot in time” photograph shows that the breakage is primarily localized around the point of impact and that the glass does “shatter” versus break into large pieces. The majority of the broken glass moves in the direction of force while a smaller volume of glass projects backwards toward the force.

A study of glass fragment sizes that result from an impact demonstrated that very small fragments will be produced. Locke and Unikowski determined that striking a plate glass window with a smooth round object created hundreds of glass fragments between .25 and .5 millimeters in size. Their experiments also demonstrated that the majority of this size fragment will land within .5 meters of the window. Though the study was designed to quantify glass fragments projecting backwards toward the force and potentially landing on the perpetrator, similar sized

---

<sup>49</sup> Photograph courtesy of the KCPD Crime Laboratory

fragments would project forward as shown in photograph 25 on page 23. Furthermore, they found that secondary breakage, glass fragments resulting from a broken piece striking another surface, will result in a much larger number of fragments overall.<sup>50</sup>

The large glass shards found inside the basement and the intact panes found outside are not consistent with the type of impact demonstrated above. If the small pieces of glass found outside the window were related to this incident, similar sized pieces would also be expected inside the window and directly below it. Additionally, if an impact similar to the experiment had occurred, much finer glass fragments would also be expected on both sides of the window.

#### Location of Various Items Associated with the South Window

The location of evidence associated with the south window is incongruous. The apparent systematic dismantling of the window must have begun with the removal of at least one pane of glass. This would've been followed by the removal of the lath boards and the muntins. However, the muntins were found inside the basement while the lath boards were outside the window well. Also, the broken pane of glass and muntins are to the right of the south window on top of a box and on the floor.

Like items were placed within close proximity to each other and neatly arranged. On the outside of the south window, the two panes of glass were side by side in the same orientation; the two lath boards were side by side with their lengths parallel to the building; the storm window from the southeast, main floor window was resting against the building and within inches of the window well versus nearer the window it came from; the muntins are side by side and in the same orientation; the large shards of glass are also lying next to each other on the box with the muntins and on the floor below this box. Remarkably, all of the shards of glass visible in crime scene images are lying flat and do not overlap at all. This is not consistent with breaking and entering that would typically take seconds to minutes but is consistent with staging that required a prolonged effort.

#### Other considerations

Merle Malin, Evelyn Malin's son, testified that he had installed a gas furnace in the basement the previous year. Additionally, he also built custom pallets out of treated wood specifically for storing inventory used to restock the store.<sup>51</sup>

Statements provided by both Norma Horner and Gerald Horsman described the daily routine of Evelyn as very consistent. They stated she opened the store at 8:30 am and closed it at 10 pm, 7 days a week. They directly observed this behavior as they typically helped her open in the morning, restock the shelves of the store in the evening and then returned to help her close at

---

<sup>50</sup> Locke, J and Unikowski, J. Breaking of Flat Glass-Part 1: Size and Distribution of Particles from Plain Glass Windows, *Forensic Science International*, 51 (1991) 251-262

<sup>51</sup> See testimony of Merle Malin unknown date page 204

10 pm. Norma also described the routine for locking all the doors as they left each night.<sup>52,53</sup> Consistent with this routine, it is clear that the front door deadbolt was engaged.<sup>54</sup>

### Conclusions and Opinions

The perpetrator moved an open Campbell's Juices box from under the south window to the floor. The basement organization where like items were kept together allowed for easy access to the stock and the custom pallets kept boxes dry. This box being found on the floor, near the window and containing the same item as another box under the window was moved to facilitate further actions of staging evidence around the south window.

There existed an area on the window frame that exhibited damage where the west muntin attached. This provided a starting point for removal of the glass pane. The window glazing that was chipped away, near the same area, appeared recently deposited. The removal of glazing facilitated the removal of a glass pane.

The removal of the lath boards was done from inside the basement. A tool, consistent with a screwdriver, was used to loosen the lath boards on three ends. The handle of the screwdriver was free to move at angles not consistent with the glass panes, attached to the stiles, being in place. The nails on the right side of the top lath board were bent when the board was pulled from the left to the right and beyond 90°.

The lower lath board also shows evidence that it was removed from the inside after it broke at a knot on the left half of the board. One nail was bent such that the piece of board had to have been twisted downward while being pulled inward. The small space of the window well would not have been conducive to removing either board and bending the nails as depicted in crime scene photographs.

The muntins were also removed from inside the basement. Raw wood is visible on the top rail of the window where the muntins broke away as well as on the visible ends of the muntins. The muntins appeared to be otherwise intact and were sitting to the west of the window versus below it where they would be expected.

The breaking of the glass pane on the inside is consistent with dropping the glass versus a forceful impact to the glass with an object. The edge where glazing left a margin is visible on several pieces indicative of it having been removed as the other two glass panes had been.

Glass associated to the third pane of glass is located to the right of the window as opposed to underneath it, where it would be expected. The large shards of glass are lying neatly and near each other versus a random pattern expected of a window broken with an object.

---

<sup>52</sup> Interviews of Norma Horner, February 25, 1998 and February 26, 1998

<sup>53</sup> Interviews of Gerald Horsman, February 25, 1998 and February 26, 1998

<sup>54</sup> See photograph 2015\_03\_27\_09\_22\_45.jpg

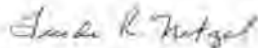
No one climbed through the south window. At least four areas on the window would have caught on the perpetrator's clothing and possibly skin; the raw wood where the two muntins attached to the top rail, a nail protruding from the window frame and the raw wood of the broken lath board still attached to the jamb. Moreover, there is a general lack of any damage, debris or glass beneath the window.

The evidence associated with the south window was staged.

The trap door between the basement and kitchen was also staged. The 1" X 6" board was used to prop open the trap door and then the kitchen chair was placed on top of the trap door.

It is my opinion that the perpetrator(s) of this homicide, meticulously staged evidence inside and outside of the basement window so it would appear to be the point of entry. It is also my opinion that the perpetrator(s) exited from the main floor of the building, which required they have a key to lock the deadbolt.

This report sets out my conclusions, the factual basis of my conclusions as well as the underlying data to support my conclusions. This is the preliminary report in this matter and it may be necessary to modify all or part of it if additional documents or information are provided.



Linda R. Netzel

Annex A

Below is a cross section, bird's eye view of wood window components. The rabbets are the red, "L" shaped grooves where the glass panes rest and glazing seals the glass pane on the outside. The schematic was annotated with the red "L" shapes.

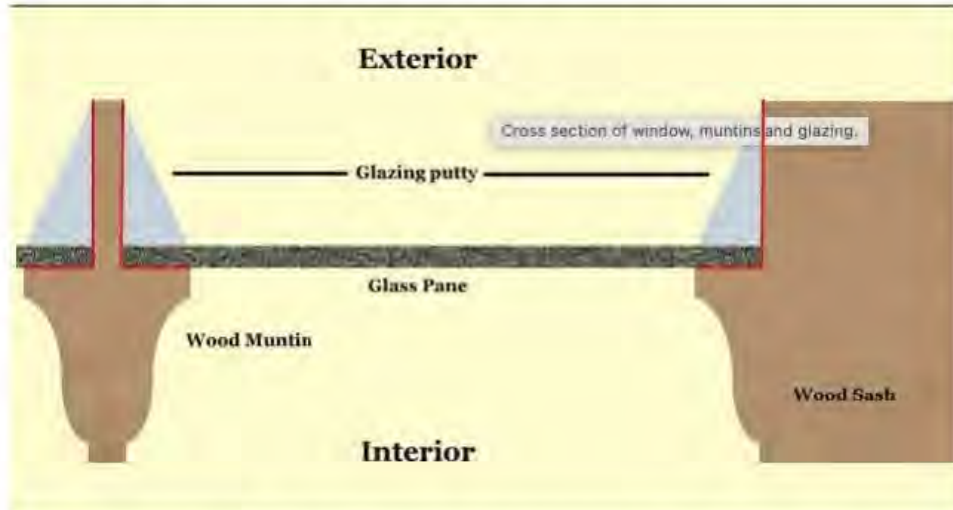


Figure 1 Schematic from The Painted Surface website on How to Reglaze or Putty a Window

## Annex B

The following experiments were performed using a mock window frame and jamb of the dimensions provided in various Minnesota BCA documents. The lath boards were 1" X 3" (nominal), pine and the nails used were 2" long. The items used are based on best estimates since the nails were not recovered nor measured. Photographs 1-3 are intended to represent the right side of the top lath board and photographs 4-5 are intended to represent the right side of the lower lath board. Photograph 3 was cropped, otherwise all photos are original format.



Photograph 1 DSC00125.JPG.



Photograph 2 DSC00127.JPG



Photograph 3 DSC00129.JPG



Photograph 4 DSC00139.JPG



Photograph 5 DSC00145.JPG

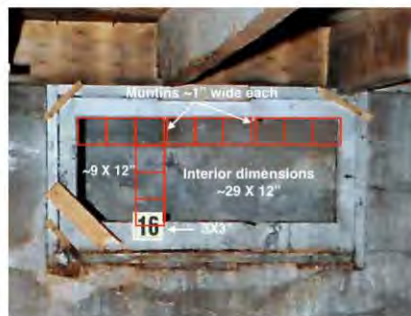
### Annex C

The four annotated white boxes are each 17 ½" tall using the dimensions provided in reports discussed within this report. From the concrete perimeter, where the boxes sit, to the top of the window frame is approximately 5' 10" high. The concrete perimeter appears to be approximately 4" high. The lower rail of the window is approximately 3" high and the bottom of the lower lath board was approximately 1" above the bottom rail. Therefore, the height at the lower lath board would be approximately 5' ((3X17.5") + 4" + 4").



See photograph 2015\_03\_27\_09\_25\_42.jpg, enhanced and annotated

In the photograph below, the evidence #16 marker was utilized to estimate the measurement of each pane of glass. The evidence marker is approximately 3" X 3" and the estimated size of each pane is ~9" X 12."



See photograph 2015\_03\_27\_09\_25\_42.jpg, enhanced, cropped and annotated



### Annex D

The screen shots from the crime scene video illustrate the randomness of the footwear impressions collected by the crime scene team. The pink material is the casting medium.



Notes on State of MN v B Pippet

4/16/23 7:45 Start

Review of Complaint

Police call on 2/25/1998 Evelyn Malin deceased in her bed and reportedly last seen alive by her daughter and her boyfriend on 2/24/1998 at 7pm

Broken window reported by daughter's boyfriend Horsman

Scene is the Dollar Lake Store where the vic also resides

POE is basement window, trap door in kitchen, immediately adj to vic bedroom

Evidence recovered:

Tire tracks, footprints, partial palm prints, hair, blood, fingerprints,

Cause of death manual strangulation (asphyxia)

No discussion of physical evidence in the complaint. All witnesses stating Pippet was involved and had confessed that he didn't mean to do it.

Autopsy by Michael McGee Ramsey County ME

Manual strangulation, blunt trauma

No AP or sperm confirmed on anal, oral or vag swabs (p2 of autopsy) but fecal material was present in the perineal area

Injuries consistent with rape homicide (my assessment) and body cavity swabs were collected but what happened to them?

8:50 NC for above start next

Fredin report

Body found under overturned mattress, and piles of clothes (perp knows victim)

Broken window that goes into basement but doors locked from inside (he kicked in the back door to gain entry)

Sgt. Scott Turner report

Canvass-someone saw a man walking near the store carrying a flashlight but couldn't say who it was

9:15 BCA Lab reports

Diagram

Crime scene report-Storm window sitting next to the broken window, blood on concrete window well, glass bottom of window well, hairs and fibers from the top of the window frame (p1 of report)

Front and garage door and all other windows were locked with no signs of forced entry except what Fredlin did to gain entry. Possible key was in lock at the time he kicked the door-found on the floor.

Black hair found on right hip.

Basement sand floor, at least 5 different shoes, one belonging to detective. Glass with drop of apparent blood

Window had toolmarks consistent with flat bladed tool

Other basement windows had 2 1X3 boards nailed across them

2 1X3 boards from broken window found outside

Lab results

Blood on window is non-human

Presumptive blood tests on nightgown were inconclusive but no bloodstains were observed (?)

No semen detected

LP report

Item 6 1 POV on wallet=vic

0 on window

Item 17 two LPOV and two palm prints of value

Item 20 1 LPOV

Item 21 1 LPOV=vic

No other id's made but better prints from victim were requested

One fingerprint of AFISQ entered but no hits returned

Toolmark report

Item 16 window frame and two pcs of glass from window exhibit toolmark made by flat ¼" blade with cylindrical shaft. Compared to Item 34 screwdriver inconclusive

Hole in bedsheet (item 8) was not a bullet hole

Did not compare item 35 flashlight

Bio report

No blood found on 2 bandanas containing a rock

LP reports

LP comparison to Jason Whiting -no id

No id of palm prints to several individuals with no id

Footwear and trace

Item 9 and 11 consistent with Horseman

Items 10 and 13 sent to FBI who stated they are consistent with Pony brand SB trainer

Tire tracks-gave list of possible types

Item 2 material from basement window Animal hairs and apparent spider web

Item 7 is one black animal hair from vic hip

No hairs found on bandanas or nightgown

Tissue paper hair macro sim to vic

BIO

Blood from Pippet and Raymond Misquadace were retained in the lab

10:10 Start photos

Window damage looks staged. Markings of screwdriver are from the inside and on the boards used across window and on inside edge of window frame. Boards found outside and large

shards of glass on the inside. Smaller pcs of glass in the window well. The leaves do not appear stepped on nor can I see any leaves inside the basement.

11:50 end photos begin video of scene

Pause at 12 noon

Start 12:30

Can see full length of boards from inside the window and what looks like two panes of glass perhaps?

Basement portion of video starts at 31 minutes

At 36:24 start of broken window

Break 1:00

6:30 start

Continue with video

No close up of boxes directly below the window and no still shots of this view either

Report stated that the wood dividers of the window were inside the basement?

Back to photos

photo 39 has best of possible wood dividers and other glass pieces on a box to the right of the window (to the right of the window and V8 cans)

7:00 End

4/16/23 TOTAL 4 HOURS

4/17/23 10:00 start

Re-read of crime scene report and lab reports. Review of all photographs.

Window well measurements= "2'3" deep, 1' 6" X 2' 10" Basement window" on page 2 of diagram

Evidence of Staged Point of Entry:

Wood from inside used to for added security was on the outside next to the window well.

Wood dividers are on top of box to the right of the window

Broken glass on the floor is in 3 large shards and a few small pieces, like it was dropped? No obvious point of impact

Edges of the glass where it sat in the frame are intact versus broken off

Some of the glass from outside

All glass, wood is to the right of the window and below

Top of boxes directly below window appear to have no leaves or other debris on top of them

No damage either like someone landed on them while climbing in

The screw driver marks along the frame and on the back side of the boards is proof that the use of the tool was from the inside the basement

The top board of the two was completely intact

V8 cans appear undisturbed

There is one close up photo on wood frame that is fresh

4/17/23 12:00 Stop

4/18/23 8:00 start

Reading of Norma's interview and statement

Reading of Horsman's interview and statement

More review of photographs

10:00 Pause

Phone call with Jim to discuss footwear impressions, door lock, requested bench notes by lab and evidence list

Jim said nightgown is missing and door lock from the front door

He thinks all other evidence is available

10:45 restart

Norma's testimony

P 48 of transcript the prosecutor states that the ME took over 50 photographs

After Norma is the ME's testimony-cursory review

P140 starts Drahota

P158 (Drahota testimony) he says Turner went into the basement **Footwear match to Drahota?**

P163 Trap door was propped by a 1X6" board turned on its edge, with a kitchen chair on top of it

165 starts Fredin didn't remember status of trap door

172 starts Turner

191 cross x of turner chair was on trap door leaning against west wall, wedged and "if someone were to push on the door more, that would cause it to be wedged more"

On redirect he says it could slide up the wall, light chair, could use one hand to pick it up

192 start of brother's testimony

Thinks it was 2X4's across the windows, he installed new furnace 6 months prior to murder

213 Det. Bjerga Special Agent with BCA

4/18/23 3:00 stop

4/19/23 8:00 Start

Lab notes have accounting of photographs

17 aerial shots

10 shots of fila tennis shoes

8 shots of out buildings

27 autopsy photos

10 lab window damage and screwdriver marks

8 lab of bandanas wrapped around rock

6 of sheet cutout

17 lab photos of evidence packages (curlers) and nightgown

14 of ext door and lock components

4 of evidence envelopes

227 at scene

All bench notes and reports-

Pdf of notes page from Ip exam where it says compared to Brian Pippet but the results are not in the report for him and another subject-found in a different report where he was excluded.

P 365 notes on window exam

10:15 start Kaldun testimony

No cross on window as POE.

11:00 break

12:25 Start draft report

Back to dropbox of original date and discovered a couple of files I missed the first time.

In the report by Drahota Linda Elliot reported driving by the store btw 7:30 and 7:45 pm on the 24<sup>th</sup>. She noted lights on but no cars out front. Nothing out of the ordinary according to her.

Floyd Johnson stated he drove by the store btw 10:30 and 10:45 pm and saw a long brown straggly haired man sweeping or picking something up from the front stoop about 6' tall and thin build. Was holding the screen door open while doing this.

Drafting report

4/19/23 stop 6:00 pm

4/20/23 8:00 am start

Be sure to look at the status of all the doors and find the testimony about the sealed basement exit.

Nails bent on the bottom board that broke at the knot? No, it is the top board where the nails are bent almost 90°

Papke bench notes give window frame measurement as:

✓ If bladed - Shape of blade \_\_\_\_\_  
Blade condition \_\_\_\_\_

Notes:

16A - 17 1/2 x 34 1/4"

16B - 2 3/16 x 13/16 x 37 5/8"

16C - 2 1/4 x 13/16 x 29 3/4" - Broken end

Don't know for sure at this point if that is interior or exterior. Seems like exterior. Frame

4/20/23 9:00 am stop

4/22/23 8:00 start

review of photographs and video again.

4/22/23 10:00 start

Report drafting

4/22/23 12:30 stop

4/23/23 8:30 start

Report drafting

4/23/23 10:30 stop

4/24/23 8:30 start

Report drafting

4/24/23 1:30 stop

4/25/23 8:30 start

View of window frame to highlight are the nail holes for the three ends of the lath boards and the marks made by the tool. Because the cylinder part of the tool pressed into the inside edge of the frame, the tool had to have been slipped under the lath boards with the handle of the tool being within the spaces of each side piece of glass. Thus, the glass had to have been out of the window frame regardless of whether or not the person using the tool was inside the basement or in the window well. Being in the window well would be very awkward for a large man to place the tool parallel to the lath boards. However, the height of the window frame would also present challenges from the inside with limited standing room. Since there are no photographs of the boxes under the window, we cannot see if any of them may have been moved and then replace. Or perhaps stood on which, should have been obvious from shoe impressions or dirt and sand from the floor being on the top of the boxes.

The bent nails on one end are evidence that the top lath board was pulled almost to a 90° angle before it was removed. The opposite end shows no obvious bending of the nails, meaning it was pulled or pushed relatively straight out of the jamb.

Measurements of window by proxy:



Break at 2:30

Start at 5:30  
Report drafting  
Stop 6:30

April 25 10:00 Start  
Report drafting  
Stop 1:00

April 26 8:00 start  
Report drafting  
Stop 1:00

April 27 1:00 start  
Dimensions and discussion regarding window mock up.  
April 27 2:00 stop

April 29 3:00 start  
Set up of mock window, photography, video.  
April 29 5:00 stop

April 30 10:00 start  
Report writing-conclusions and opinions  
April 30 5:00 stop

5/5/23 10:00 start  
Report editing  
5/5/23 2:30 stop

5/8/23 8:00 start  
Footwear analysis and report editing  
Phone call with Jim  
5/8/23 2:00 stop

5/9/23 6:15 start  
Issues to consider-palm print database, fingerprinting of moved box, man seen at the door at 10:30 that night, the date change on the calendar, front door locked, dna and fingerprints on the screen door, missing field notes, fingerprints/DNA on the lath boards-mishandling by crime scene, piecing back together of glass pieces inside-were they fingerprinted? Window opening size compared to anyone thought to have entered through the window. Such specific actions of the so called POE for detectives to have asked of potential suspects. Tiny glass pieces outside related to previous broken glass. Front door locked. Weight of the trap door. Broken lath board still attached, trace or break it when entering.  
5/9/23 2 pm stop



5/10/23 8:00 start  
Editing  
5/10/23 stop 12:00

5/11/23 8:45  
Editing

From the left of the south window (east) were Big Tex Orange Juice cans, an unknown brand of possible prune juice in an open box, an unopened Campbell's Juices box, a Speas Farm Apple Juice box with one lid flap torn upwards, an unopened Welch's Juice box and an unopened Ocean Spray Juice box to the right (west).

5/11/23 10:00

5/15/23 7:30 start

Edits per conversation with JC.

Supplement 7 by Laura Nelson bench notes p. 1 (p171 of discovery) describes fibers from window frame as "a wad of debris" which included insect parts, spider web, brownish plant debris, blue fiber, white fibers=spider web, various colored animal hairs. Blue fiber was acrylic. She only mentions animal hair and spider web in her report.

Page 3 of Papke's notes show photograph of window frame and chunk of material seen in the photos from the scene is missing and there appears to be writing above where it was previously located. This is item 2.

Testimony of Merle Malin-replaced wood burning stove and built custom pallets of treated wood in basement.

Sequence of staging- window glass out, box moved, lath boards pried and removed, muntins broken in, glass breakage, trap door propped, chair on top, lath boards and glass placed outside,

5/15/23 1:00 stop

## **CURRICULUM VITAE**

Linda R. Netzel, BS  
Consulting Criminalist

### **CONTACT INFORMATION**

---

Address: [REDACTED]  
Telephone: [REDACTED]  
Email: lindanetzel4n6@gmail.com

### **SUMMARY OF EXPERIENCE**

---

Twenty-eight years of laboratory experience including 14 years hands on experience utilizing DNA analysis, various microscopy and instrumental techniques for trace evidence analysis on over 600 predominantly violent crimes. Approximately 12 years of crime scene processing as part of duties. Routinely attended homicide crime scenes including officer-involved shootings as a subject matter expert for over 24 years. Provided instruction on the recognition, documentation, collection, preservation and analysis of physical evidence in relation to criminal investigations. Utilized crime reconstruction principles and case management to efficiently provide high quality results to investigators and the criminal justice system. Managed a large, full service, accredited Midwest crime laboratory for 15 years. Developed expertise in efficient business practices resulting in analysis turnaround times of under 30 days for most disciplines.

### **EDUCATION**

---

1991	Metropolitan State College of Denver B.S. Chemistry, Emphasis Criminalistics
1994	University of Missouri-Kansas City Eukaryotic Molecular Biology-Graduate Course

### **PROFESSIONAL WORK EXPERIENCE**

---

2005-2019	Kansas City Missouri Police Department Crime Laboratory-Director
2004	Kansas City Missouri Police Department Crime Laboratory-Chief Criminalist Trace Evidence
1993-2004	Kansas City Missouri Police Department Crime Laboratory-Criminalist, Senior Criminalist Trace Evidence
1993-1994	Children's Mercy Hospital - Kansas City, Missouri Biomolecular Laboratory Research Assistant
1991-1993	Analytical Genetic Testing Center-Denver, Colorado Technologist

**PROFESSIONAL AFFILIATIONS AND CERTIFICATION**

---

American Academy of Forensic Sciences	1994-Present
Midwestern Association of Forensic Scientists	1994-2019
American Society of Crime Laboratory Directors	2006-Present
American Board of Criminalistics-Diplomate	1996-2019

**CONTINUING EDUCATION**

---

April 1993 (2-day workshop)	DNA Autorad Interpretation Jefferson City, Missouri
July 1993 (2-week workshop)	Crime Scene Investigation Techniques Kansas City, Missouri
February 1994 (1-week workshop)	Recombinant DNA Technologies II Germantown, MD
January 1995 (3-day workshop)	Expert Testimony Jefferson City, Missouri
March 1995 (1-week workshop)	Forensic Microscopy Santa Ana, California
April 1995 (1-week workshop)	Advanced Trace Analysis Jefferson City, Missouri
May 1995 (4-day seminar)	Implementation of DNA Technology Springfield, Illinois
May 1995 (3-day workshop)	Polymarker Amplification and Detection Cincinnati, Ohio
September 1995 (1-day seminar)	Chemiluminescence Implementation Jefferson City, Missouri
October 1995 (4-day seminar)	Midwestern Association of Forensic Scientists Paducah, Kentucky
April 1996 (1-week seminar)	DNA Forensics: Science, Practice and Future Santa Fe, New Mexico
June 1996 (5-days)	International Symposium on the Forensic Examination of Trace Evidence in Transition, San Antonio, Texas
March 1997 (1-week workshop)	Forensic Microscopy of Paints and Extenders Jefferson City, Missouri

September 2022

2

March 1997 (1-week workshop)	Introduction to Hairs Cleveland, Ohio
December 1997 (4-day seminar)	DNA Databanks and Repositories: CODIS Chicago, Illinois
September 1998 (1-week workshop)	Infrared Spectroscopy for Trace Analysis Quantico, Virginia
February 1999 (4-days)	American Academy of Forensic Sciences Annual Conference Orlando, Florida
August 1999 (4-day workshop)	Advanced 310 Genetic Analyzer and Amflstr Training Kansas City, Missouri
May 2001 (1.5-day seminar)	STR Educational Forum, Promega Corporation St. Louis, Missouri
November 2002 (3-days)	Advanced Homicide Seminar – Dr. Robert Keppel Kansas City, Missouri
February 2003 (4-days)	American Academy of Forensic Sciences Annual Conference Chicago, Illinois
May 2003 (3-days)	Advanced Homicide Investigation Seminar-Dr. Keppel Kansas City, Missouri
May 2004 (4-day workshop)	Forensic Textile Analysis Course Miami, Florida
August 2004 (4-days)	32 <sup>nd</sup> Annual Crime Laboratory Development Symposium Carlson School of Management, Minneapolis, Minnesota
March 2005 (2-days)	Midwest Region Crime Lab Director's Meeting Kansas City, Kansas
May 2005 (2-week workshop)	Organizational Leadership for Executives Army Center for Civilian Leadership Training Kansas City, Missouri
August 2005 (4-days)	33 <sup>rd</sup> Annual Crime Laboratory Development Symposium Ross School of Business, Ann Arbor, Michigan
May 2006 (4-days)	34 <sup>th</sup> Annual Crime Laboratory Development Symposium Georgia Tech/Carlson School of Management, Atlanta, Georgia

September 2022

3

October 2006 (5-days)	American Society of Crime Lab Directors Annual Symposium San Francisco, California
November 2006 (4-hour workshop)	Project Management Kansas City, Missouri
February 2007 (2.5-day workshop)	Facilitation Training, Mid-America Regional Council Kansas City, Missouri
March 2007 (2-day workshop)	Performance Measurement Training KCPD Trainers, Kansas City, Missouri
May 2007 (1-day workshop)	Project 2007 Software Training, New Horizons Overland Park, Kansas
November 2007 (5-day workshop)	Leadership 101, Professional Training Division KCPD Kansas City, Missouri
April 2008 (4-day workshop)	Process Design and Implementation: Reengineering and Change Management, Hammer and Company, Boston, Massachusetts
September 2008 (4-days)	American Society of Crime Laboratory Directors Annual Symposium, Salt Lake City, Utah
February 2009 (5-days)	Basic Bloodstain Pattern Analysis Workshop Kansas City, Missouri
February 2011 (5-days)	American Academy of Forensic Sciences Annual Conference Chicago, Illinois
April 2011 (3.5-day workshop)	American Society of Crime Laboratory Directors/Laboratory Accreditation Board-ISO Internal Auditor Training Houston, Texas
September 2012 (2-days)	Bode Mid-Atlantic Conference 1 <sup>st</sup> Annual Advanced DNA Conference, Charlottesville, Virginia
March 2013 (2-day workshop)	Crucial Conversations Kansas City Police Department, Kansas City, Missouri
May 2013 (4-days)	American Society of Crime Laboratory Directors Annual Symposium, Durham, North Carolina
April 2014 (1.5 hours)	Trail Blazing: Novel Techniques and Tools for Forensic Analysis RTI International Webinar
May 2014 (4-days)	American Society of Crime Laboratory Directors Annual Symposium, Scottsdale, AZ
September 2022	

July 2014 (8-hours)	ASCLD/LAB International The Corrective Action Process: Root Cause Analysis Basics Interactive Webinar
September 2014 (2-day seminar)	Cognitive Factors in Making Forensic Comparisons Johnson County Kansas Crime Laboratory
July 2015 (3.5-days)	International Symposium on Forensic Science Error Management NIST, Washington DC
April 2017 (1-day seminar)	Crucial Accountability Captain Paul Luster, KCPD
August 2017 (3-days)	North American Women Law Enforcement Executives Conference Kansas City, Missouri
August 2017 (3-day workshop)	Micro Labs: Fentanyl, One Pot, BHO, and Synthetic Hazards and Handling, Midwest Counterdrug Training Center
February 2019 (3-days)	American Academy of Forensic Sciences Annual Conference Baltimore, Maryland
June 2019 (2.5-day)	Midwest Region Crime Lab Director's Annual Meeting Madison, Wisconsin
<u>March 2023 (4.5 day)</u>	<u>Shooting Incident Reconstruction, Michael Haag, Instructor Orlando, FL</u>

#### **ADDITIONAL RELEVANT EXPERIENCE**

Kansas City Police Crime Laboratory Crime Scene Investigation School-  
Biological Evidence Collection (5-8 hours), DNA Evidence in Criminal Cases (1 hour),  
Sexual Assault Investigation and Physical Evidence (2 hours), Introduction to Laboratory  
Capabilities (1 hour), Reconstruction (1-4 hours).

Kansas City Area Sexual Assault Nurse Examiner Training-  
Forensic Evidence Collection for Sexual Assault Nurse Examiners (5 hours).

National Forensic Academy, Oakridge, Tennessee-  
Subject matter expert for development of 10-week crime scene investigation course. Also  
taught trace evidence and reconstruction (8-16 hours) at the academy.

Homicide Investigation: Seeking Justice and Finding Truth, Dolan Consulting Group-  
Homicide Investigation Laboratory Capabilities (8 hours).

Kansas City Interdisciplinary Response to Sexual Assault (KCIRSA)-Member 1996  
2019, Chair 2008

Managed KCPD Property and Evidence Section from June 2018 to December 2019

September 2022

5

Supervised 12 additional employees and managed property and evidence operations to ensure chain of custody on inventory of approximately 400,000 items.

## **PUBLICATIONS**

Ledray, L. E., Netzel, L. R. 1997. DNA evidence collection. *Journal of Emergency Nursing* 23 (16): 156-158.

*Forensic Science: An Introduction to Scientific and Investigative Techniques*, ed. James, S. and Nordby, J., CRC Press, 2002, Chapter 10: The Forensic Laboratory.

Acceptance of domestic cat mitochondrial DNA in a criminal proceeding. *Forensic Science International Genetics*, 13 (2014) 61-67.

## **AWARDS**

Metropolitan Police Chiefs and Sheriffs Association-Bronze Award for Distinguished Service 2002

Certificate of Commendation-Kansas City Police Department-2002 and 2003

Meritorious Service Award-Kansas City Police Department-2009 and 2019

## **TESTIMONY**

### State Courts-

Jackson County, Missouri  
Clay County, Missouri  
Cass County, Missouri  
Platte County, Missouri  
Buchanan County, Missouri  
Wyandotte County, Kansas  
Douglas County, Kansas  
Greene County, Missouri  
Adams County, Colorado

### Federal Courts-

Western District of Missouri

## **CONSULTING TESTIMONY**

### **State of Kansas v. Dana Lynn Chandler, Murder, 2022**

Tom Bath, Tricia Bath, Mark Hartman  
Bath and Edmonds, PC  
4000 W. 114<sup>th</sup> Street  
Leawood, KS 66211

Review of crime scene, bloodstain patterns, trajectory and laboratory analysis

September 2022

6

**APPENDIX B:  
Correlation between Polygraph Results and Charging Decisions Table**

Test subject: Chris Radke on March 10, 1998	No deception indicated.	Conducted by Special Agent Robert Berg	Did not confess. Was not charged.
Test subject: Keith Misquadace on February 17, 1999	No deception indicated.	Conducted by Special Agent Dan Ahlquist	Did not confess. Was charged and entered an <i>Alford</i> plea.
Test subject: Jason Whiting on February 17, 1999	Deception indicated.	Conducted by Special Agent Dan Ahlquist	Did not confess. Was not charged.
Test subject: Donald Hill on March 16, 1999	No deception indicated.	Conducted by Special Agent Dan Ahlquist	Confessed to crime. Was charged and pleaded guilty
Test subject: Brandon Misquadace on March 16, 1999	Deception indicated.	Conducted by Special Agent Dan Ahlquist	Did not confess. Was not charged (cleared by alibi).
Test subject: Brian Pippitt on March 24, 1999	Deception indicated.	Conducted by Special Agent Robert Berg	Did not confess. Was charged and convicted.
Test subject: Raymond Misquadace on April 28, 1999	Deception indicated.	Conducted by Special Agent Dan Ahlquist	Confessed to crime. Was charged and pleaded guilty.

*Table 1 - Correlation between polygraph results and charging decisions*



**APPENDIX C:  
Evolution of Raymond Misquadace's Testimony Table**

*Table 2 - Evolution of Raymond Misquadace's Testimony*

Date	Direction of Car	What Raymond Heard	Items Taken from Store	Exit from Store	Statements After Crime
4/28 1999	The car was parked so that the driver-side door of the car was closest to the front door of store [north]. <sup>896</sup>	Raymond said he did not hear anything because he was in car and the radio was playing. <sup>897</sup>	Raymond confirmed that three cartons of cigarettes and "red and white" Old Milwaukee beer were stolen from the store. <sup>898</sup> Raymond stated he did not know who was carrying which items, and he did not know if any money was stolen or if anyone took anything else. <sup>899</sup>	Raymond stated that he could not remember seeing anyone come out of the store, and only saw his accomplices when they got back to the car. <sup>900</sup>	Afterward, Raymond stated that both Keith and Pippitt stated, "[w]e killed her." <sup>901</sup> Raymond stated that "they" talked about beating up Evelyn after "we went out," from the store. <sup>902</sup> Raymond stated that Pippitt was talking about the murder after they had gotten back to Raymond's father's house, and that Donald confirmed that they had killed her. <sup>903</sup>
4/30 1999	The car was parked so that the driver-side door of the car was closest to the front door of store [north]. <sup>904</sup>	Raymond reported hearing two things: the door banging when they went it and the door banging when they came back out again. He denied hearing other types of	Raymond stated that he saw Keith come running out of the front door with cigarettes and beer. <sup>906</sup> Raymond stated that Keith, Donald, and Brian were all carrying items from the store to the car, that one of them was carrying cigarettes and the other two	Raymond stated that he saw Keith come running out of the front door. <sup>911</sup> Raymond stated that Donald and Brian also came out the front door of the store. <sup>912</sup> Raymond then stated he did not see anyone coming out of the front of the store, he	Raymond stated that Keith said that he had pushed or knocked Evelyn down, "[w]ell, I put the bitch down," or he "tramped the bitch," or "somethin' like that," and that he confirmed they had killed her. <sup>915</sup> Raymond stated that Keith said to put all

<sup>896</sup> See *Raymond Interview 4/28/99*, *supra* note 121, at attached diagram.

<sup>897</sup> *Id.* at 35-36.

<sup>898</sup> *Id.* at 15-16.

<sup>899</sup> *Id.* at 39.

<sup>900</sup> *Id.* at 37.

<sup>901</sup> *Id.* at 13.

<sup>902</sup> *Id.* at 16.

<sup>903</sup> *Id.* at 20.

<sup>904</sup> *Raymond Interview 4/30/99*, *supra* note 203, at 8.

<sup>906</sup> *Id.* at 8-9.

<sup>911</sup> *Id.* at 8-9.

<sup>912</sup> *Id.* at 10.

<sup>915</sup> *Id.* at 11, 34.

		noises: no glass breaking, no talking, no screaming, and no yelling. <sup>905</sup>	were carrying beer. <sup>907</sup> Raymond stated he did not see any guns that had been taken from the store, and he thought that everything that had been stolen would have been taken into Raymond's father's house. <sup>908</sup> Raymond stated the only brand of beer stolen was Old Milwaukee, and they stole 12-pack cases (in a box). He said he thought they had stolen 3-6 cases. Raymond stated he could not remember what brand of cigarettes they stole, just that it was in cartons. <sup>909</sup> Raymond stated that no food items were taken from the store. <sup>910</sup>	only saw them when they were getting to the car. <sup>913</sup> Raymond stated he saw them going in and out through the open front door, which was "wide open." <sup>914</sup>	the stuff in the back of the car when he got back into the car after being in the store. <sup>916</sup> Raymond stated that Pippitt told him that he entered the store through the front door. <sup>917</sup>
5/27 1999	Raymond said when he pulled into the store, he was facing toward the gas station on Highway 65 [west]. <sup>918</sup>	Raymond denied hearing anything from inside the store. <sup>919</sup>	Raymond stated that he saw Keith, Brian, and Donald come running up to the car with beer and cigarettes. Raymond stated that it was a few cases of beer and some cigarettes. Raymond denied seeing them put anything else in the car besides beer and cigarettes. Raymond stated it was a few cases of Old	Raymond stated that he did not really see Keith, Brian, and Donald leaving the store, he only saw them when they came running up to the car. <sup>921</sup>	Raymond stated that there was no talk about Evelyn until after the group had gotten back to Raymond's father's old house. When they started talking about it, they said that they had "put her down" or "beat her down" or something like that. Raymond stated that they did not say how they did this; he said

<sup>905</sup> *Id.* at 14.

<sup>907</sup> *Id.* at 20-21.

<sup>908</sup> *Id.* at 11-12.

<sup>909</sup> *Id.* at 24-25.

<sup>910</sup> *Id.* at 26.

<sup>913</sup> *Id.* at 20.

<sup>914</sup> *Id.* at 35.

<sup>916</sup> *Id.* at 15.

<sup>917</sup> *Id.* at 24.

<sup>918</sup> See *Raymond Interview 5/27/99 – part 1*, *supra* note 499, at 00:13:38-00:13:45.

<sup>919</sup> *Id.* at 00:10:58.

<sup>921</sup> *Id.* at 00:11:18.

			Milwaukee brand beer in cans, maybe three cases at the most. Raymond stated they also took "quite a few" carton of cigarettes. <sup>920</sup>		that Pippitt was going to start to say something, but either Donald or Keith stopped him. Pippitt did say "we showed her" and "she should've never been there." <sup>922</sup> Raymond stated that Pippitt, Keith, and Donald did not say who hurt Eveyln, but Raymond stated they said they "beat her down." <sup>923</sup> Raymond stated that "they" told him not to tell anyone anything. <sup>924</sup>
6/3 1999	The car was parked facing South <sup>925</sup>	Raymond said that when he first got out of the car, he heard a dog barking in the back of the store. <sup>926</sup> He also heard a little crash or bang, like something being kicked in, and thought the noise was caused by Pippitt kicking or "booting" in the front door. <sup>927</sup> Raymond	Raymond stated that Pippitt had "a long, long object" in his hands, which Raymond stated could have been a pipe, a stick, or a gun, but he did not know what. <sup>929</sup> Raymond stated it was as long as a rifle and "could've been" a gun. <sup>930</sup> Donald was carrying beer and a carton of cigarettes when he came out in a light-colored shopping bag. <sup>931</sup> Raymond later clarified that both Donald and Keith	<i>No mention.</i>	Raymond stated that, as they were leaving the store, Keith told Raymond not to tell anyone what had happened, and said, "You don't want somethin' happenin' to you." <sup>936</sup> This is also when, according to Raymond, Keith admitted to choking Evelyn and stated that Pippitt started hitting her after she would not pass out. <sup>937</sup> Raymond stated that this conversation took place in the car after

<sup>920</sup> *Id.* at 00:11:04-00:13:25.

<sup>922</sup> *Id.* at 00:14:15-00:17:17.

<sup>923</sup> *Raymond Interview 5/27/99 – part 2, supra* note 499, at 00:00:01-00:00:31.

<sup>924</sup> *Id.* at 00:01:25:00 – 00:01:33.

<sup>925</sup> *Raymond Interview 6/3/99, supra* note 552, at 7.

<sup>926</sup> *Id.* at 5.

<sup>927</sup> *Id.* at 9.

<sup>929</sup> *Id.* at 6, 12-13, 17.

<sup>930</sup> *Id.* at 17.

<sup>931</sup> *Id.* at 12-13.

<sup>936</sup> *Id.* at 15.

<sup>937</sup> *Id.* at 16.

		stated he did not hear anything after he got back inside of the car. <sup>928</sup>	were carrying beer and cigarettes out of the store. <sup>932</sup> He stated that there was only one grocery bag, and it was carried by Pippitt. <sup>933</sup> Raymond denied seeing anyone with money taken from the store, or hearing anyone talk about money taken from the store. <sup>934</sup> Raymond denied any knowledge of silver certificates, old money, or old one dollar bills, being stolen from the store. <sup>935</sup>		they were about 1-2 miles away from the store. <sup>938</sup> Raymond stated that Donald did not say anything until after they had gotten to "the house." <sup>939</sup> Raymond stated that, at his father's house, Keith was getting "a little hyper" and acting excited and saying, "We put her down," to which Raymond replied he did not believe them. Then Donald stated "[y]ou know we did," and that Eveyln was dead. <sup>940</sup>
6/4 1999	The car was parked facing South, with the passenger side facing the front of the store. <sup>941</sup>	Raymond testified that, as he was getting back into the car, he heard a crash or a thump, but he could not tell where it came from. <sup>942</sup> Raymond also testified he heard a dog barking, but did not know if the dog stopped	Raymond testified that Donald, Keith, and Pippitt left the store carrying beer, cigarettes, and a bag. <sup>947</sup> He testified Pippitt was also carrying something "long and thing" in his hands when he left the store, about "two or three feet long." <sup>948</sup> Raymond testified that Pippitt was also carrying a grocery bag. <sup>949</sup>	Raymond testified that he only saw Pippitt, Keith, and Donald once they got back to the car, not as they were leaving the store. <sup>954</sup> Raymond testified that he did not see anyone lock the front door behind them as they left the store. <sup>955</sup>	Raymond testified that, after getting a couple miles down the road after leaving the store, Keith started talking about how he had choked Evelyn and that Pippitt had hit her. <sup>956</sup> Raymond further testified that Pippitt told Keith not to talk about what happened, and Keith told Raymond not to say anything "unless you want

<sup>928</sup> *Id.* at 11.

<sup>932</sup> *Id.* at 17-18.

<sup>933</sup> *Id.* at 18.

<sup>934</sup> *Id.* at 28.

<sup>935</sup> *Id.* at 29-30.

<sup>938</sup> *Id.* at 21.

<sup>939</sup> *Id.* at 22.

<sup>940</sup> *Id.* at 25-26.

<sup>941</sup> *Grand Jury Proceedings, supra* note 8, at 472.

<sup>942</sup> *Id.* at 472-473.

<sup>947</sup> *Id.* at 476.

<sup>948</sup> *Id.* at 476, 479-480

<sup>949</sup> *Id.* at 479.

<sup>954</sup> *Id.* at 479.

<sup>955</sup> *Id.* at 516.

<sup>956</sup> *Id.* at 481, 505.

		<p>barking at some point.<sup>943</sup> Raymond testified he did not hear the sound of glass breaking.<sup>944</sup> Raymond was showed a photograph from inside the Dollar Lake Store, showing broken slats of wood that had been nailed over a window. He testified the banging sound he heard could have been the sound of those slats being broken.<sup>945</sup> Raymond testified he never heard any voices or talking from inside of the store, or a woman "screaming in defense," because he was sitting in the car and had the radio on.<sup>946</sup></p>	<p>Raymond testified Keith was the first to come out, and he was carrying beer and cigarettes in his arms, with no bag.<sup>950</sup> Donald also had beer and cigarettes.<sup>951</sup> Raymond stated that the long item and the grocery bag Brian left the store with never came into Raymond's father's house after the crime, only the beer and cigarettes ever left the car.<sup>952</sup> Raymond stated they had taken 4-5 cases of beer from the store, but he was not sure how many cartons of cigarettes.<sup>953</sup></p>		<p>something to happen to you."<sup>957</sup> Raymond testified that, after getting back to his father's house after the store, Keith kept repeatedly talking about how they "put her down."<sup>958</sup> Raymond testified that he told Keith he did not believe him, and that is when Donald stated, "[b]ullshit, we did do it."<sup>959</sup></p>
10/27 1999	The car was parked right in front of the store,	Raymond testified that, as he got back into the car, he heard "a little	Raymond testified that Keith put some beer in the back seat, and Donald and Pippitt had beer and	<i>No mention.</i>	Raymond testified that there was no discussion about what had happened when they left the

<sup>943</sup> *Id.* at 475, 511.

<sup>944</sup> *Id.* at 508.

<sup>945</sup> *Id.* at 509.

<sup>946</sup> *Id.* at 510, 514.

<sup>950</sup> *Id.* at 478.

<sup>951</sup> *Id.* at 479-480.

<sup>952</sup> *Id.* at 494-495.

<sup>953</sup> *Id.* at 519, 522.

<sup>957</sup> *Id.* at 482-483, 506, 521.

<sup>958</sup> *Id.* at 485, 506.

<sup>959</sup> *Id.* at 486, 506, 521-522

	facing West; Raymond then agreed that it was actually pointing in "the other direction." <sup>960</sup>	crash and thump noise." <sup>961</sup> Raymond later testified he heard a dog barking. <sup>962</sup>	cigarettes. <sup>963</sup> Raymond testified that it "was maybe like three" cases of beer they had gotten from the store. <sup>964</sup>		store. <sup>965</sup> Raymond testified that, once the group arrived at his father's house, "the others" were talking about how they had put Evelyn down. <sup>966</sup> Raymond testified that Keith started talking about "what had happened at the store" once they were at his father's house. <sup>967</sup>
1/23-1/24 2001	Using a photograph of the front of the store (Exh. 2), Raymond testified that the front of their vehicle was facing to the left side of the photograph [South]. <sup>968</sup>	Raymond testified that he did not hear anything at first, but "[a]fter a little bit" he heard "a little thump or crash" that sounded like "somebody kicking something in the door. . . ." <sup>969</sup> Raymond testified that he also heard a dog barking from behind the house. <sup>970</sup> On cross examination, Raymond	Raymond testified that he saw Don and Keith carrying some beer and cigarettes, and Pippitt came out with "some long object" and a grocery bag. <sup>974</sup> Raymond testified that they took a few cases of beer, and he did not really know how many cigarettes were taken. As for the long object he saw Pippitt carrying, Raymond testified he did not know what it was, only saw that it was "a few feet long," and that he did not know "if it was a club, gun," or what. He	Raymond testified that he "wasn't really watching" where Pippitt, Keith, and Donald came from, he just saw them as they were approaching the car. <sup>978</sup> Raymond testified that he did not see anyone leave the store, just saw that Keith was the first one coming to the car. <sup>979</sup> Raymond testified that he did not see anyone come out through the front door, and that he only saw them as they got to the car. <sup>980</sup>	Raymond testified that there was some discussion after everyone got back into the car and started driving toward Highway 65. <sup>981</sup> Raymond testified that Keith was acting jittery and tongue-tied, and said something about having "put her down or pushed her down" some way or another. He testified that he understood that to mean that "they put her down by just knocking her over and tied her down or something." <sup>982</sup>

<sup>960</sup> *Id.* at 194, 197.

<sup>961</sup> *King Trial*, *supra* note 221, at 198.

<sup>962</sup> *Id.* at 200.

<sup>963</sup> *Id.* at 201.

<sup>964</sup> *Id.* at 223.

<sup>965</sup> *Id.*

<sup>966</sup> *Id.* at 202.

<sup>967</sup> *Id.* at 204.

<sup>968</sup> *Pippitt Trial*, *supra* note 1, at 339.

<sup>969</sup> *Id.* at 340-341.

<sup>970</sup> *Id.* at 341.

<sup>974</sup> *Id.* at 343.

<sup>978</sup> *Id.* at 343-344.

<sup>979</sup> *Id.* at 439-340

<sup>980</sup> *Id.* at 477.

<sup>981</sup> *Id.* at 352.

<sup>982</sup> *Id.* at 352-353; 479.

		<p>testified that he remembered saying in previous statements that he did not hear anything from inside of the store.<sup>971</sup> Raymond testified that he was listening to the radio in the car outside while Brian, Donald, and Keith were inside of the store, and he did not hear anything from inside of the store.<sup>972</sup> Raymond testified that he had not mentioned the dog barking in previous statements to the police.<sup>973</sup></p>	<p>also testified he did not know what was in the grocery bag he saw Brian carrying.<sup>975</sup> Raymond testified that Keith came to the car with one cardboard case of beer, which held 24 cans.<sup>976</sup> Raymond testified that Donald was the second person to come to car, and he had one additional cardboard case of beer. Raymond testified that he also thought Donald had some cigarettes, but he was not sure. He testified that it looked like a couple, or two, cartons of cigarettes.<sup>977</sup> He also testified that he was not sure what it was, but he had thought the first time he saw the long item Pippitt was carrying that it was a gun.</p>	<p>Raymond testified that, after getting back to Raymond's father's house, Keith "was kind of rambling" about what had happened at the store, that he was "blurting everything out."<sup>983</sup> Raymond stated that, at the house, Keith said that "they killed her" and "they put her down."<sup>984</sup> Raymond also testified that Keith said Keith "was choking her, couldn't put out or whatever and he said Brian started hitting her."<sup>985</sup> Pippitt told "them" to be quiet and Keith warned Raymond not to say anything about the murder to anybody.<sup>986</sup> Raymond testified that he never heard Pippitt say he did anything to Evelyn.<sup>987</sup></p>
--	--	---	---	---

<sup>971</sup> *Id.* at 421.

<sup>972</sup> *Id.* at 440-441.

<sup>973</sup> *Id.* at 474.

<sup>975</sup> *Id.* at 344.

<sup>976</sup> *Id.* at 440-441.

<sup>977</sup> *Id.* at 442-443.

<sup>983</sup> *Id.* at 345.

<sup>984</sup> *Id.* at 355.

<sup>985</sup> *Id.* at 357.

<sup>986</sup> *Id.* at 357-358; 479.

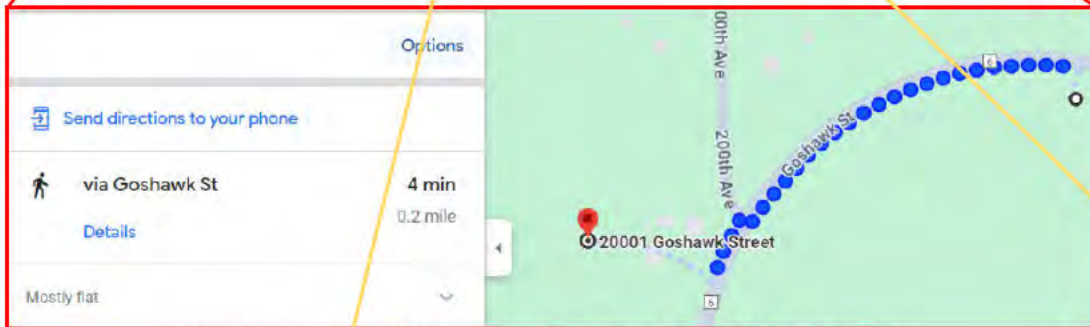
<sup>987</sup> *Id.* at 479-480.

**APPENDIX D:  
Diagram of George Boyd's Route**

*Figure 53 – The route George Boyd took when he spotted Terry Peet the evening of Evelyn's Murder*



*Figure 53a – Google Map directions from Bann's Bar to the Dollar Lake Store (2001 Goshawk) via Goshawk Street (County Road 6)*



*Figure 53b – Google Map directions from .2 mile East of Dollar Lake Store*



*Figure 53c – Aitkin Co. Land Dept map of Sheshebe Point 5<sup>th</sup> highlighting the parcel that Terry Peet lived on in Feb. 1998.*



**APPENDIX E:  
Drawings of Crime Scene by Raymond Misquadace and Donald Hill**

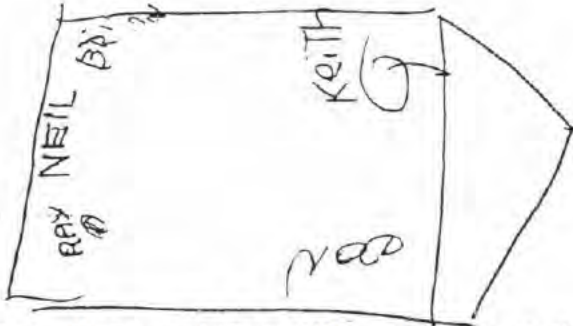


Figure 41— Drawing by Raymond Misquadace during April 28, 1999 interview.

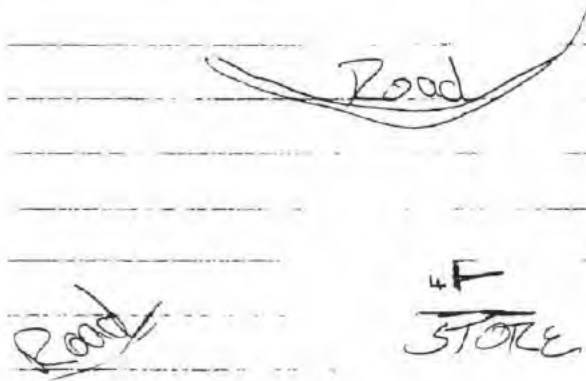


Figure 42— Drawing by Raymond Misquadace during April 28, 1999 interview.

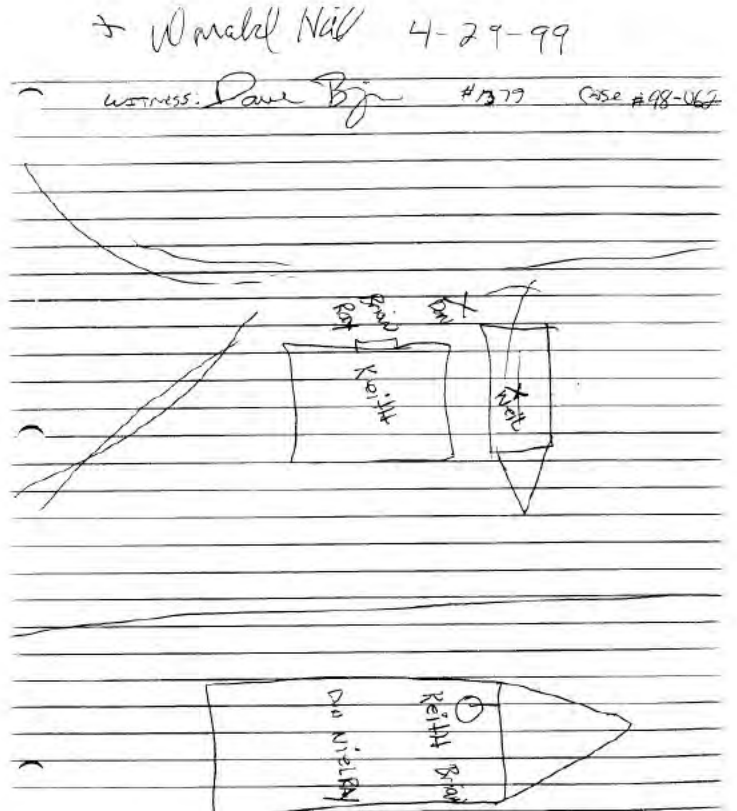


Figure 47 - Drawing by Donald Hill during April 29, 1999 interview

**APPENDIX F:**  
**Letter from Aitkin County Sherriff Daniel Guida**

**DANIEL G. GUIDA**  
**AITKIN COUNTY SHERIFF**

217 2<sup>nd</sup> St. N.W., Rm 185  
Aitkin, MN 56431  
218-927-7435 / 1-888-900-2138  
Emergency 911

---

Assistant Attorney General Carman Leone  
Post-Conviction Justice division  
Suite 1300  
445 Minnesota Street  
St. Paul, MN 55101-2131

RE: State of Minnesota v. Pippitt  
Counsel:

I have now been able to dedicate some time for further review and feedback of the document you labeled "Confidential Work Product", dated April 17, 2024, concerning the investigation, prosecution, conviction and two unsuccessful appeals of the convicted defendant to the Minnesota Supreme Court as found in State v. Pippitt, 645 N.W. 2d 87 (2002) and Pippitt v. State, 737 N.W. 2d 221 (Minn. 2007). It was and is my intent to conduct an even more in-depth review, but the link for the document you sent has been blocked. Even without that barrier to thoughtful examination of your 125-page document, your request for a substantive response in two weeks for a document it took your team two years to draft is utterly unrealistic. It will not happen in that time line.

With delay, I was able to receive a copy from CA Ratz for review. Before we submit any response to your document, my entire team will need to conduct its own review and investigation of the work that your team has done over the past two years. Even a limited review of what you presented causes me to believe your team has a limited understanding of the entire case and investigation and your team seems more focused on the process of the case than substantive evidence. Your focus is somewhat concerning because that is the same process that has already been approved and reapproved by the Minnesota Supreme Court twice in the two cases I cited above. I also note when I reviewed those cases, that in each case the Office of Attorney General, in the form of Attorney General Hatch in the first case and Attorney General Swanson in the second, represented the interests of the State of Minnesota before the Minnesota Supreme Court to successfully defend the merits and process of the case and appeals. While I am not an attorney, for your Office to now effectively represent the interests of convicted murderer Pippitt appears to me to be a conflict of interest. In the Charter of the Conviction Review Unit, your Office intentionally excludes from the review the involvement of the prosecutor's office that handled the cases you review, so based on your own criteria I question the ethical implications of your activities in this particular matter.

To completely analyze the basis of the report as well as the opinions, findings and even potential biases of your team my office, with the potential assistance from a MN BCA contracted team, will first need to have access to and review all of the data your team has generated in its original form and not merely your summary of what that data allegedly establishes. For example, we need to review all records including the efforts to contact the allegedly uncooperative witnesses, complete reports of any witnesses that you did not record and recordings of those that you did, internal discussion notes, credentials to your "expert" witnesses, all reports and reference sources used by those witness to develop their opinions and any data that might reflect on the credibility and competency of such alleged experts. Once this team is provided with that information we will need to review it, vet it and perhaps conduct our own new investigation, which may involve interviews with those previously involved in all aspects of the case. That clearly will not be done within the arbitrary and artificial timeline that you have requested.

I took an oath and have an ethical and legal duty to ensure justice is done to not only an accused and now convicted murderer, but also to the victims of crime and the entire community. I take that responsibility extremely seriously and since you are attempting to convince me that this conviction should be vacated (draft report page 115), it will require the same burden of proof, proof beyond a reasonable doubt, that was required to convict Pippitt, affirmed twice by the Minnesota Supreme Court, to gain my support for your request.

Please advise when we will start to receive all of the materials that your team has gathered during its two-year investigation and review of this matter.

Sheriff Daniel Guida  
Aitkin County Sheriff

**APPENDIX G:  
Preliminary Input from Bureau of Criminal Apprehension**

**MINNESOTA DEPARTMENT OF PUBLIC SAFETY**



- Alcohol & Gambling Enforcement
- Bureau of Criminal Apprehension
- Driver and Vehicle Services
- Emergency Communication Networks
- Fiscal & Administrative Services
- Homeland Security and Emergency Management
- Minnesota State Patrol
- Office of Communications
- Office of Justice Programs
- Office of Pipeline Safety
- Office of Traffic Safety
- State Fire Marshal

**Bureau of Criminal Apprehension**

1430 Maryland Avenue E., St. Paul, Minnesota 55106  
Phone: 651/793-7000 FAX: 651/793-7001  
Website: [bca.dps.mn.gov](http://bca.dps.mn.gov)

May 20, 2024

Superintendent Drew Evans,

This communication is in response to information provided pertaining to the post-conviction review of *State of Minnesota v Pippitt (2002)* by the Conviction Review Unit (CRU) of the Office of the Attorney General. While a comprehensive independent review is in progress by the Bureau of Criminal Apprehension (BCA), it was determined that a preliminary response regarding the CRU-initiated external review of the BCA crime scene response activities and testimony was warranted. Due to the significant concerns immediately identified with the content, tone, and basis of the contracted external consultants' reports, BCA management requested an internal review of the relevant information. Two current BCA Crime Scene examiners conducted these internal reviews. These examiners currently serve as technical experts in the ISO/IEC 17025 accredited Crime Scene Program that resides within the BCA Forensic Science Services. The results of the internal review confirmed several of the initial concerns and identified additional areas of concern with the reports from both contracted external consultants. Some, but not all, of these points are summarized below.

According to their reports, both external consultants were provided extensive documentation generated over the course of this case from crime scene processing to final adjudication, along with an alternate theory regarding a suggested staged crime scene, on which to base their opinion. Materials relied upon for the basis of these external reviews are not typically available prior to or during crime scene processing, and would not have been available to those processing the original scene. These materials include investigative reports with information obtained days to months after the scene was processed and grand jury/trial transcripts. However, it is unclear if the contracted external consultants were provided all of the information, or if that information was limited to that which would support the alternate theory surrounding a suggested staged crime scene. External consultant Linda Netzel, specifically states in her report that she was asked to "review evidence around a window at the crime scene" and that "limited field notes by the crime scene team were available." This consultant was also clear in stating that her report is preliminary and "it may be necessary to modify all or part of it if additional documents or information are provided."

While the external consultants were provided a fair amount of select documentation, it is unclear whether they received the actual laboratory case file and original field notes made by the BCA Crime Scene Team at the time of scene analysis. Based on Dr. Turvey's statement that the window/window well is too small "for an adult of average size or more to squeeze down into", it is also implied they had no/limited information regarding the physical characteristics of the suspect (e.g. weight). Furthermore, it appears Turvey erred in his interpretation of the crime scene diagram and the application of the measurements. The mere fact that the owners felt compelled to reinforce the windows to prevent entry indicates that entry was possible, if not something that had occurred prior to this incident. Additionally, as is noted by Netzel in her stated limitations to the review, the photos and video format resulted in loss of

EQUAL OPPORTUNITY EMPLOYER

and practicing crime scene analyst or forensic scientist in any forensic laboratory tasked with hands-on analysis of evidence from criminal investigations. Additionally, there is no mention of a recognized certification in any of the forensic disciplines. Based on the CV provided, it appears that Turvey's experience may be limited to academia and post-analysis consulting. Dr. Turvey also appears to have a strong negative impression of law enforcement entities based on his publications and topics of interest. This is quite apparent in his doctoral thesis where he states "Law enforcement culture is often defined by traits that afford the motivations and rationalizations for a deviant internal subculture, actively cultivating fraud within its ranks. It also furnishes otherwise lawful members with the skills, incentives, motivations and rationalizations for ignoring, protecting, and even publicly defending their unlawful co-workers."<sup>3</sup>

An additional striking issue with Turvey's report was the unusual tone and inclusion of conclusions lacking supporting empirical data. Turvey states his work's purpose is for "examination of available physical evidence and behavioral evidence in the homicide..." This statement sets up a framework upon where he is not relying on factual, observed scene evidence for his conclusions. He states in his report on page 8 of 18 under the Physical Evidence section that "there is no direct physical evidence connecting any strangers to a break-in or to the murder." While this might be true to an extent where there is no physical evidence linking a specific person to the scene of the crime (through DNA, Latent Prints, or other), it is a well-established concept in crime scene analysis that the absence of evidence is not evidence of absence; insofar as the absence of something does not necessarily indicate that something did not occur or someone was not present.

Additionally, by adding in the field of "behavioral evidence" it creates a dichotomy of observed and factual evidence mixed with theoretical evidence that can often be easily refuted. For example, the indication that the victim had poor hearing and was physically weak does not mean she would not know someone was in the residence/business or that she could not attempt a defense. A later statement in the report about feces being "smeared" on the victim may not be due to an act by a person to humiliate a subject (as stated by Dr. Turvey) but rather it could be a byproduct of the struggle or homicidal act. It is common for individuals to defecate upon strangulation and/or death. With the apparent movement of the scene, mattress, and other items on top of the victim, it is just as likely the condition of the scene/victim was due to natural physical response and general movement and not attributed to "anger" as reported by Dr. Turvey.

One additional general point raised by the BCA technical experts regarding the suggested staged crime scene theory after considering multiple hypotheses and reviewing the information made available to them: The staging theory is unlikely due to the fact that statements provided indicate the victim locked both screen doors and deadbolts each night prior to bed, especially on this night when she was reported to be scared of Mr. Peet and needed to be sure to lock all the doors. Even if the front door was locked upon arrival (how it was locked could not be ascertained based on the documentation available and appears to be questionable based on testimony provided), an individual with a key may have had to break the front screen door latch to get access to the front door deadbolt. There is no apparent damage to the front screen door in crime scene photos. However, there was no supplementary photos of the interior front

---

<sup>3</sup> Forensic Fraud : Evaluating Law Enforcement and Forensic Science Cultures in the Context of Examiner Misconduct, Turvey, B. (Author). 9 Feb 2013; Student thesis: Doctoral Thesis

resolution. Although she asserts this did not preclude her ability to make her conclusion, the observations on which she bases this conclusion throughout her report rely heavily on small details within photos that could be affected by limited image resolution. The same is true for Turvey's evaluation. Both external consultants mention the condition of debris in the window well as a factor in their determinations. It should be noted that the consultants actually contradict one another in this aspect. Turvey states the area is generally undisturbed and without evidence of gouging or disturbance. Netzel points to the glass fragments located in window well and mentions in her report that it could be from "a previously broken pane leftover after replacement of the pane". Upon review of the crime scene photographs available, BCA experts observed clear signs of disturbance documented inside the window well.

The opinions of both external consultants are based on nonexistent or insufficient experimentation needed to reach such conclusive statements. Turvey bases his opinion on general assumptions, apparently without having conducted any experiments to attempt testing his theory, let alone alternate theories as required by current standards. For example, he definitively states that tool marks observed on the window were made from the interior of the window without any supporting data or experimentation to prove this. He indicates that this is demonstrated merely by the versions of the crime scene photographs, which Netzel indicated showed signs of loss of resolution. Netzel's opinion is based heavily on insufficient reconstruction experimentation. For example, the content regarding glass dispersion was based solely on the example of using a hammer to strike a glass pane and fails to consider other methods of breakage. There is no evidence that suggests a hammer or any other implement was used to impact the glass to cause the breakage. Nor is there any indication experimentation included a window pane in the same condition as that from the crime which was presumably reinforced prior to the event.

The statements of certainty included in the reports of both external consultants lack sufficient support and overstate the level of certainty by which any expert can render an opinion based on the information available.

In addition, access to the amount of post-scene and investigative information along with the task prior to or while making conclusions is a well-documented cause of contextual and/or confirmation bias which was evident in both reports. Both reports appear to use the information provided to prove the staging theory but do not provide evidence for or against alternative theories, which is an indication of cognitive bias. This practice goes against the published Standard for Scene Investigation and Reconstruction Foundational Principles (ANSI-ASB 159, 2024)<sup>1</sup> and the Guiding Principles for Scene Investigation and Reconstruction (OSAC 2021-N-0015)<sup>2</sup>.

It should also be noted that no international, national, or discipline specific standards were included as references for either consultant. Furthermore, the majority of the references cited in the report of Dr. Turvey were his own publications.

Aside from the opinions rendered by the external consultants, questions arose regarding the qualifications of Dr. Turvey. Based on the review of Exhibit 1 (Curriculum Vitae) of Turvey's report, it is unclear how long or if he ever worked as a trained, authorized,

---


<sup>1</sup> ANSI/ASB Standard 159, Standard for Scene Investigation and Reconstruction – Foundational Principles. 2024. 1<sup>st</sup> Ed.

<sup>2</sup> OSAC 2021-N-0015, Guiding Principles for Scene Investigation and Reconstruction. 2021 & 2024

screen door to show its condition on the scene. The point of access is most likely from the broken window in the basement. This is contrary to what experts Brent Turvey and Linda Netzel reported. Given the lack of physical evidence, and inconsistent statements, it is not possible to ascertain which theory is correct. More information/evidence about the condition of the front door is needed to support one of these theories.

It is important to note that, as with other forensic disciplines, crime scene analysis protocols and documentation practices have steadily evolved since the late 1990s. Among others, evolving technology (e.g. DNA testing), expansion of standards development, accreditation availability, and increasing emphasis on documentation and transparency serve as driving factors. While there were areas of improvement identified during the evaluation of the original crime scene field notes, testimony and protocols under today's rigorous requirements and without the dynamic circumstances that exist when in the midst of an active crime scene, it was determined that the actions taken by the original BCA crime scene analysts were appropriate and thorough.

Sincerely,



Catherine Knutson  
Deputy Superintendent – Forensic Science Services

**APPENDIX H:**  
**Linda Netzel's Response to Bureau of Criminal Apprehension's Preliminary Input**

May 28, 2024

Mr. Carman Leone  
Assistant Attorney General  
Minnesota Attorney General's Office  
Conviction Review Unit.

Re: The Minnesota BCA Memorandum by Catherine Knutson

I appreciate the opportunity to address the concerns of Catherine Knutson regarding my report dated May 18, 2023 in the matter of postconviction review for Mr. Brian Pippitt.

In paragraph two of Ms. Knutson's memorandum she stated that I received an "alternative theory regarding a suggested staged crime scene..." She does not specify what documentation provided me with an alternative theory. There was none. When Attorney James Cousins initially contacted me in April 2023, he did request that I look at evidence around the point of entry at the crime scene where Evelyn Malin was found deceased. He never relayed any theory to me. I was the first to bring up staging, not Mr. Cousins. I did not see or use Brent Turvey's report as part of my review. However, Ms. Knutson continuously lumped my work with Turvey's and avoided a point by point rebuttal of facts I provided.

Ms. Knutson's claim that I received "select" documentation in paragraph 3, is disingenuous. I detailed the list of items I used for my report and specifically mentioned laboratory bench notes, which she stated I may have lacked. She also stated I received documentation not available at the time of the crime scene investigation. This point is meaningless to the reconstruction as I relied on the crime scene investigation performed by BCA staff, Gary Kaldun's report, crime scene photographs and video, to conclude staging had occurred. Furthermore, BCA utilized these same documents to offer a different conclusion in her last paragraph, which I discuss later.

Also, in paragraph 3, Ms. Knutson stated that I relied "heavily upon small details within photographs that could be affected by limited image resolution." She provided no specific examples of what details she meant. I did not use any information that was not clear to me. In the same paragraph, her assertion that BCA experts observed "clear signs of disturbance" also lacks specific examples of those signs.

In paragraph 4, Ms. Knutson stated that my opinion was "based heavily on insufficient reconstruction experimentation" and that "...the content regarding glass dispersion was based solely upon the example of using a hammer to strike a glass pane and fails to consider other methods of breakage." In the same paragraph she stated "Nor is there any indication experimentation included a window pane in the same condition as that from the crime which was presumably reinforced prior to the event." It was not necessary to create breakage of a window pane in the same condition nor would it have been possible to recreate the exact



conditions under which one pane of three was broken into predominantly large shards that landed several feet to the west of the window but none landed below the window.

In paragraphs 5, Ms. Knutson stated that my report lacked sufficient support and I overstated the level of certainty to render my opinion. However, she did not provide detailed examples of what she meant by this statement.

In paragraph 6, she stated that post-scene and investigative information can cause contextual bias and that Turvey's report and mine appear to use this information to prove the staging theory. She further stated that we did not provide for alternative theories. The State provided an alternative theory that the window was the point of entry. It is not clear what other theories Ms. Knutson or the BCA would consider.

In paragraph 10, Ms. Knutson stated that BCA experts considered "multiple hypothesis" and "that the staging theory is unlikely due to the fact that the statements provided indicate the victim locked both screen doors and deadbolts each night prior to bed, especially on this night when she was reported to be scared of Mr. Peet and needed to be sure to lock all the doors." She goes on to state that there is a general lack of documentation as to the condition of the front screen door and if it was locked, then someone would have to damage the screen door to access the interior door. Finally, she stated "The point of access is most likely from the broken window in the basement" and that given the lack of "physical evidence and inconsistent statements, it is not possible to ascertain which theory is correct." This entire paragraph demonstrates Ms. Knutson's and the BCA's double standard of criticizing my review for using investigative information and their bias towards the window as the point of entry.

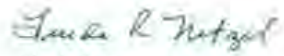
There are two significant problems with the above assertions. First, they suggest that the perpetrator *had to force entry*. The requirement that entry was forced discounts any person known to the victim and having access to her residence as potential perpetrators. Secondly, the assertion that there is a lack of physical evidence completely ignores what was documented at the crime scene. There was substantial evidence around the window that is consistent with staging, which I detailed in my report.

This brutal murder certainly warranted a thorough crime scene investigation by a competent team. A basic and routine task of crime scene investigators is to thoroughly document the level of security of all entrances to a crime scene using both photography and field notes; detailed explanations of the type of locks should also be documented. Team leader, Forensic Scientist III Gary Kaldun reported that the front doors, windows, and garage doors were secured. His report and a photograph from the scene demonstrate the interior door deadbolt was engaged.

BCA documentation was adequate to demonstrate evidence was staged around the so-called point of entry window. My analysis considered the various pieces of physical evidence, their condition and location, in combination with each other to evaluate the window as a point of entry. While experimentation is designed to deal with one variable at a time, it would not

address each piece of evidence in combination with all the others. That is the value and purpose of performing a reconstruction.

Ms. Knutson has not provided persuasive arguments for me to reconsider my opinion.



Linda R. Netzel  
Consulting Criminalist

# EXHIBIT B



## DECLARATION OF BRENT E. TURVEY, PhD

I, Brent Turvey, declare, under penalty of perjury, that the following is true and correct:

1. I am a Forensic Scientist and Criminologist with a PhD in Criminology, a Master's degree in Forensic Science and two Bachelor of Science degrees.

2. Since 1996, I have performed casework as a Forensic Scientist, Crime Scene Analyst, Crime Reconstructionist, Forensic Criminologist, and Criminal Profiler for law enforcement agencies (police and prosecutors), attorney clients, and private entities all over the world. This includes consultations, forensic assessments, and expert testimony on both criminal and civil matters. These cases tend to involve sexual assault, false allegations, shooting incident reconstructions, serial rapes and homicides, mass homicides, sexual homicides, domestic homicides, staged crime scenes, and other violent crimes.

3. As a function of casework and research, I have served as a trial consultant, and have been qualified in court as an expert witness, on the subjects of Criminal Investigation, Forensic Science, Crime Reconstruction, Wound Pattern Analysis, Shooting Incident Reconstruction, Firearms and Tool-marks, Interpretation of Presumptive Blood Test Results, Crime Scene Analysis, Crime Scene Investigation, Case Linkage/Linkage Analysis (Motive, Modus Operandi and Signature Analysis), Criminal Profiling, Offender Deterrability, Offense Foreseeability, Offender Motivations, Staged Crime Scenes, Sex Crimes Investigation, False Allegations, and Forensic Victimology. This has included expert forensic testimony in over 50 criminal and civil cases in State and Federal Court.

4. I am the author of numerous published, peer-reviewed textbooks, textbook chapters, journal articles and encyclopedia contributions.

5. I have provided professional courses, presentations, lectures, workshops, and programs to law enforcement academies and groups, attorney groups, educational institutions, and professional organizations in the United States and around the world.

6. A more complete description of my professional history and qualifications is set forth on the Curriculum Vitae attached hereto as Exhibit 1.

## I. PURPOSE OF REPORT

7. The purpose of this report is to provide a Crime Scene Analysis relating to the examination of available physical and behavioral evidence in the homicide of Evelyn Malin (84 YO WF). She was the owner/operator of the Dollar Lake Store in Aitkin County, Minnesota. By all estimates, her death occurred sometime between the evening of February 24 and the morning of February 25, 1998. A precise time of death is unclear from the available physical evidence.

8. Evelyn Malin's body was found in her bedroom, on the floor, beneath her mattress with other items on top of it. She was dressed only in her nightgown, a hair net, and curlers. In addition, excrement had been left on her right side as she lay on the ground, outside of her nightgown. Her body (pictured right) was found on the floor between the bed and the dressers. This photo was taken by investigators subsequent to moving the mattress and other items that had been found on top of her.

9. According to the autopsy report, she had been severely beaten and manually strangled to death.

10. *Crime Scene Analysis* requires the assessment and integration of the complete forensic investigation. This includes forensic victimology (required to be collected in every medical evaluation, sexual assault examination protocol, and death investigation protocol), and the subsequent examination of available physical and behavioral evidence (e.g, crime reconstruction). The goal of crime scene analysis is to reliably establish what happened, how it happened, where it happened, to whom, and ultimately why. Additionally, limitations within the available evidence must be identified to prevent unvetted or unfounded theories and interpretations. See generally Chisum & Turvey (2012), Crowder & Turvey (2017), and Turvey (2013a, 2013b).

11. As with any forensic examination, crime scene analysis requires an evaluation of the nature and quality of the underlying forensic investigation. This is a crucial scientific requirement, necessary to reliably establish that *due diligence* by government agencies



has resulted in a showing of *evidence integrity*<sup>1</sup>, and an absence of *negligence*<sup>2</sup>. This scientific requirement accommodates the legal reality that every victim or complainant has the right to access justice, to include a competent investigation into the essential elements and evidence associated with their complaint or death<sup>3</sup>.

12. As a consequence, all forensic examiners have a responsibility to perform their examinations and assessments competently, without bias, and with attention to due diligence — in order to prevent the violation of individual rights.

## II. MATERIALS EXAMINED

13. In late July of 2021, this examiner agreed to analyze the evidence in this case upon request by attorney W. James Cousins, Esq. of Centurion Ministries. Subsequently, this examiner began to receive related discovery material from his office. Upon request, this examiner was provided with, and relied upon, the following evidence to form the forensic conclusions offered in this report:

1. Various Investigative Reports from The Aitkin County Sheriff's Department
2. Various Investigative Reports from The Minnesota BCA
3. Various Laboratory Reports from The Minnesota BCA
4. Available Crime Scene Photos and Video
5. Available Crime Scene Diagrams
6. Autopsy report and photos
7. Relevant Grand Jury and Trial transcripts
8. Relevant appellate rulings

14. In addition, this examiner visited the crime scene on September 22, 2000; took photographs; and viewed related physical evidence stored in the basement of the courthouse at that time. This visit was part of a preliminary forensic examination conducted in

---

<sup>1</sup> *Evidence integrity* refers to the scientific reliability and subsequent court-worthiness of any evidence that has been collected. It is demonstrated by adherence to basic protocols associated with establishing a reliable chain of custody, the protection of physical evidence while it is in custody, and its competent testing and interpretation by qualified forensic personnel. It also refers to any failure to collect, protect, and/or test essential items of evidence. In a scientific examination, evidence integrity may not be assumed — rather it must be established. Otherwise reliable interpretations are not possible. See Bay (2008), Gardener (2011), Turvey (2013a), and *Sweet v. Sisters of Providence* (1995).

<sup>2</sup> *Negligence* refers to the failure to follow basic practice standards and protocols, resulting in a breach of a professional's duty of care. It can imply negligent action, as well as the failure to act. This is especially true when the duty to take action is mandated by established agency policies, protocols, and related legal rulings or statutes.

<sup>3</sup> Access to justice is a basic right for all crime victims, and is solely the responsibility of the Government. The United States Constitution has a Due Process requirement, which necessitates a thorough and competent investigation of all allegations. These collective declarations establish that thorough and competent investigations by the State are both a State and Federal right, which can only be satisfied by the due diligence of government agents. Absent Due Diligence by state investigators, which is necessary for Due Process, individual rights may be ignored or directly even violated.

relation to *Minnesota v. Keith Misquadace*, on behalf of Edith See, Esq., Mille Lacs Band of Ojibwe, Legal Services.

15. This current report is the result of a more comprehensive forensic examination in consideration of the completed forensic investigation by law enforcement, and subsequent legal actions.

### III. RELEVANT INCIDENT BACKGROUND

16. The relevant historical and contextual information provided in this section is derived from the record of discovery provided to the examiner in this case - taken from the record in *Minnesota v. Pippitt* (2002):

Evelyn Malin owned and operated the Dollar Lake Store in Aitkin County from 1945 until her death in 1998. The Dollar Lake Store was a small convenience store that sold cigarettes, beer, soda, candy, and other items. Malin's residence was attached to the store and consisted of a kitchen, a bedroom, and a living room that she used for storage. A curtain separated the store from the kitchen.

A trap door in the kitchen led to a basement she used for additional storage. Malin was 84 years old when she died. She was deaf in one ear and wore a hearing aid in her other ear. She walked with the assistance of two canes and could not walk down stairs. Because of her physical frailty, Malin's daughter, Norma Horner, and Horner's friend, Jerry Horseman, helped Malin open and close the store every day. Horner and Horseman usually arrived at 8:30 a.m. and returned at 10:00 p.m.

On February 24, 1998, Horner stopped by the store at 8:30 a.m. to help Malin open the store. Horner and Horseman went to the store that evening between 7:00 p.m. and 7:30 p.m., and left between 8:00 p.m. and 8:15 p.m. At approximately 9:00 p.m., Horner called Malin and Malin stated that she was not feeling well and was going to go to bed early. Malin told Horner that she and Horseman did not have to return to the store that evening.

The next morning, Horner and Horseman arrived at the store at 8:30 a.m. Because the store's open sign was not illuminated and newspapers were still on the steps, they assumed that Malin had overslept. While walking to the back door, they noticed that a screen had been removed from a ground-floor window and that panes of glass had been broken or removed from a basement window. Horner knocked on the back door and yelled in an effort to wake Malin. When Malin did not respond, Horner told Horseman to return to Horner's cabin and call 911. Horner continued her efforts to wake Malin.

Officers from the Aitkin County Sheriff's Office arrived at the store a few minutes after 9:00 a.m. The front and back doors were locked. The frame around the screen that had been removed from the ground-floor window displayed freshly exposed wood. One of the officers kicked in the back door and the officers searched Malin's house and store. An officer found Malin's body in her bedroom, lying in a pile of blankets and clothes. A mattress had been thrown over her. Malin's ankle was cold and she did not have a pulse. The officers left the building and secured the scene.

That afternoon, a team from the Minnesota Bureau of Criminal Apprehension arrived to investigate Malin's death. The team observed pry marks on wood from the basement window and determined that the basement window was the point of entry. The team concluded that Malin had died at least 12 hours but probably less than 36 hours before 6:30 p.m. on Feb-

ruary 25. Two days later, Malin's son walked through the store and noticed that beer, cigarettes, and money were missing.

The medical examiner who performed an autopsy on Malin testified that she displayed injuries associated with manual strangulation and blunt force trauma. Malin had been struck with sufficient force to cause internal injuries to her head. She also displayed defense-type injuries in her upper extremities. The examiner concluded that manual strangulation was the primary cause of Malin's death and that blunt force trauma could have been a contributing factor in her death.

17. To further clarify, upon arrival at the crime scene, law enforcement noted the following:

- Horner and Horseman reported arriving at the store at approximately 8:30 am, as per their usual schedule. They further reported that the "open" light was not on, and that the newspapers were still outside. Apparently without keys and concerned that Evelyn Malin had overslept, they yelled for her from the outside with no response.
- Horner and Horseman further reported discovering a key broken off in the deadbolt of the back door, and that one of the ground floor basement cellar windows had been completely removed with freshly exposed wood. Each such window consists of three separated panes of glass. With respect to the window in question, two of these panes had been removed carefully onto the lawn outside of the window. The third appears to have been broken, with glass found in the cement trough outside the window atop the leaves and other debris. The relevance of this evidence will be discussed further in later sections of this report. Subsequent to this discovery, Horseman reported that he called the police.
- Upon arrival, investigators found both the front and back doors were locked, with the deadbolts secured (both doors required a key to engage and/or disengage the deadbolt, whether from inside or outside of the residence). This means that a key would be required to enter and exit these doors.
- In order to gain entry into the residence, investigators kicked in the back door as apparently no key was available at that time.
- Upon entry, investigators found the basement cellar hatch propped open in the kitchen.
- Pictured right, Evelyn Malin's body was found by investigators beneath items that appeared to be from her bedroom. This included packages, items of mail, clothing, a mattress, and sheet with a large amount of excrement smeared on it. More excrement was found on her left side, on the outside of



Brent E. Turvey, PhD  
*Minnesota v. Brian Keith Pippitt: 5 of 17*

her nightgown.

18. Based on these preliminary variables, investigators apparently presumed that the motive was theft, and that the point of entry was the removed and broken basement cellar window.

19. The history and contextual information referenced in this narrative section are necessary and foundational to the forensic conclusions offered within this report. This is in compliance with the national protocols for death investigation established by The NIJ (2011, 2013). It is also in compliance best scientific practices established in the published scientific literature related to crime scene analysis, crime reconstruction, and victimology cited at the end of this report.

#### **IV. VULNERABILITY OF VICTIM**

20. The collection and examination of victim information is an obligatory function in every case of gender related violence; cases involving allegations of domestic violence; every alleged sex crime; and every female death — especially those under questioned circumstances (UN, 2014). It is also a requirement in every death investigation in general, as part of the collection of *Decedent Profile* information and related medical history requirements set forth in basic forensic protocols for the performance of death investigations and autopsies (see NIJ, 2011 & Peterson and Clark, 2006).

21. This victim information is intended, in part, to facilitate a determination of victim risk with respect to suffering harm or loss. This is a function of victim exposure and vulnerability (Turvey, 2013; UN, 2014). Referred to as *victimology* or *forensic victimology* (see Burgess et al., 2009 and Turvey, 2013), this information helps to establish and contextualize crime related evidence, behavior, and patterns; and further helps to establish potential offense motives. This is essential to crime reconstruction and crime scene analysis.

22. In this case, the following intersectional elements must be taken into consideration, as their simultaneous occurrence within a single person enhances vulnerability exponentially (see generally Holman and Walker, 2021):

A. Evelyn Malin was a female and 84 years old at the time of her death. Physically, she suffered from many different vulnerabilities. This included deafness in one ear, and the need for a hearing aid in the other. Additionally, she could only walk with the assistance of a four-legged walker and an additional cane used in tandem. This is because her right leg was severely physically deformed (pictured below). She also had advanced arthritis and related deformities in both hands, evidenced in the photos taken at the time of autopsy (see photos of the left and right hand, also pictured below).





B. Because of Evelyn Malin's advanced age and numerous physical limitations, she could not walk up and down the wooden stairs into the basement cellar through the trap door without risk of serious harm. Additionally, she would have been unable to physically lift open the heavy trap door and secure it in place without assistance (pictured below).



C. Because of Evelyn Malin's advanced age and numerous physical limitations, she was dependent on her daughter, Norma Horner, and Horner's friend, Jerry Horseman for help with the store.

D. For example: They helped Malin open and close the store every day. They also helped her move items in and out of the basement cellar area through the trap door in the kitchen.

E. Because of Evelyn Malin's advanced age and numerous physical limitations, she was dependent on her daughter, Norma Horner, and Horner's friend, Jerry Horse-

man for help with her personal activities. For example: Because she did not have running water, they brought her water from her outside well (which would have presented health and hygiene issues).

F. Concern for this, and her health and safety, appear to be the reasons that Horner and Horseman would normally “tuck her in” at night (Trial Transcript, p.31).

G. There is also testimony from Norma Horner of prior unsolved robberies at the store, the most recent being a year prior to Evelyn Malin’s death. In testimony, Norma Horner states that these reports came from Malin, without real detail. These robberies and related attacks were reported to police and remain unsolved.

23. These intersectional vulnerabilities indicate an elderly woman that would not be aware of a stranger or strangers entering her home; that would not be physically capable of responding to the threat of anyone entering her home should she become aware of it; that would not pose a threat to anyone entering her home should they become aware of her presence; and that would not require multiple persons to restrain her if this very unlikely sequence of events occurred.

## V. CRIME RECONSTRUCTION & SCENE ANALYSIS ISSUES

24. The following are general findings made evident by the existence of clear and unambiguous physical evidence found in association with the homicide of Evelyn Malin — evident in photos, videos, and at the scene via direct observation by this examiner.

### Physical Evidence

25. Despite the collection of fingerprints, footwear impressions, fibers, and tire impressions from related areas at the scene — there is no direct physical evidence connecting any strangers to a break-in or to the murder.

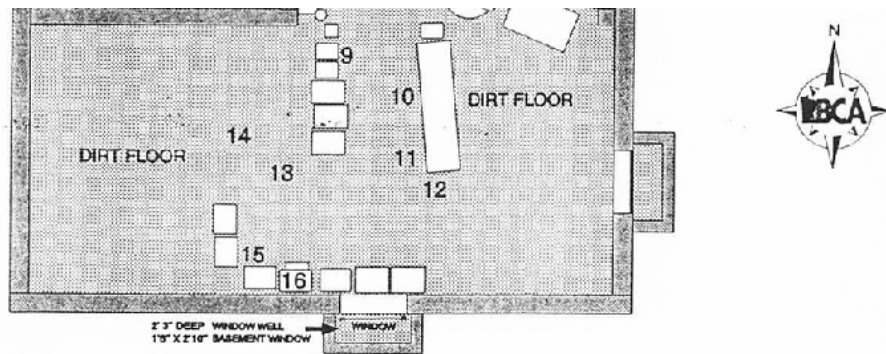
26. It should be noted that there is testimony regarding one or perhaps two unidentified footwear impressions found in the basement cellar. However, it remains unclear which footwear impressions were unidentified and being referenced during this testimony. However, no footwear impressions were identified by law enforcement directly beneath the basement cellar window. The footwear pattern found by law enforcement in the basement that was closest to this window was Item 12 (pictured right).



## Point of Entry: Suspected

27. The point of entry was assumed by investigators to be the basement cellar window described in the **RELEVANT INCIDENT BACKGROUND** section of this report. However, this is not reasonable or likely — based on the following facts and evidence:

- A. This examiner observed that the concrete trough outside of the window is too small and narrow for an adult of average size or more to squeeze down into and make entry without significant contortions and rough contact with multiple surfaces—especially in the dark; and without injury to the body and/or clothing, or transferring fiber evidence or blood. The precise dimensions are documented in the crime scene sketch. A section of crime scene sketch 2 of 2 is provided here, to show the related area and dimensions (2' 3" DEEP; 1' 6" W X 2'10" L).



- B. Had anyone squeezed down into this trough outside of the window, they would have crushed and otherwise displaced the leaves and debris that was present. This area is generally undisturbed and without evident gouging or disturbance (pictured below).



- C. Had a stranger, unfamiliar with the basement cellar area, made entry or exit through this window into the unlit basement cellar area below, it would be difficult to navigate without additional damage to the environment and potential injury. Not just because it was a small space with narrow pathways limiting movement, but also because of the low ceilings with nails stabbing through the flooring above.
- D. A stranger, making entry or exit through this window into the unlit basement cellar, would have transferred shards of broken glass from the cement trough area into the basement cellar environment directly beneath the window onto the boxes below. There is no evidence that this occurred, as glass is not visible on top of those boxes in the crime scene photos nor was it mentioned or documented by scene investigators (pictured below).



- E. The doorway from the soft sand/dirt section of the cellar (where the broken window would place an intruder) to the cement floored section of the cellar can only be opened from the stairwell/cement floored side of the cellar. It opens inward on the cement side by means of manually releasing a piece of wood, which was undamaged. If this door were closed, it would be unlikely that a stranger, fumbling in the dark, could find that door (as it has no handle) and then open it from the wrong side.

28. These facts and evidence combine to eliminate the possibility that the basement cellar window was a point entry.

See also the **CRIME SCENE STAGING** section of this report, which demonstrates that the window was broken from the inside, and that the wood covering the window was pried free from the inside.

### **Point of Entry: Actual**

29. Given the aforementioned facts and evidence, the actual point of entry in this case is most likely one of the two dead-bolted doors — one at the front entering into the store, and the other at the back entering into the kitchen. These doors both require a key to engage and disengage their respective deadbolts. Both deadbolts, again, were fully engaged. And, there was no evident sign of forced entry at these doors prior to the arrival of law enforcement.

### **Victim State / Responsiveness**

30. The victim was dressed and prepared for bed when attacked, lacking general awareness and posing no responsive threat to any intruders. This is based on the following facts and evidence:

- A. Evident in the crime scene photos, the victim was dressed for bed, and had her curlers in (pictured right). This indicates that she had gone through her ritual for getting into bed and sleeping prior to being attacked.
- B. Evident in the crime scene photos, the victim was not found to be wearing her hearing aid or glasses (her glasses were photographed in the kitchen area). This indicates that she would not be easily startled had she been in bed, as she could not have heard anything or seen very well. This includes intruders entering through the basement cellar trap door in the dark.
- C. Evident in the crime scene photos, the victim was not near her canes and was not wearing shoes or slippers. This indicates that she was not in the process of responding to intruders when she was attacked.



31. As a consequence of these facts and evidence, there is no evidence that the victim perceived intruders in her home; and no evidence that she posed a threat requiring anyone to seek her out in the dark and attack her.

### **Multiple Offenders**

32. There is no physical evidence to indicate whether more than one offender was present in the crime scene.

## Motivation

32. The behavioral evidence in this case demonstrates the presence of *overkill* — the use of brutal levels of force beyond that necessary to subdue or even kill the victim. This is demonstrated by the following: a sustained beating to the victim's head and face; and evidence of manual strangulation. The offender entered the victim's bedroom without provocation or necessity; beat her and strangled her despite the absence of any clear awareness or threat; dumped feces on her body; and then covered her with items from the bedroom including her mattress before leaving.

33. This physical and behavioral evidence demonstrates an *anger* motivation. Additionally, this examiner is not aware of reliable or conclusive evidence to support the conclusion that anything of value was actually taken from this scene to indicate a profit motivation for this crime.

## VI. CRIME SCENE STAGING

34. The crime scene in this case presents as an attempt at staging. A *staged crime scene* is one in which the offender has purposely altered evidence so as to mislead authorities or redirect the investigation, suggesting an alternate cause of events (Chisum and Turvey, 2012). In the vast majority of cases, this is done because the offender would be an immediate suspect, directly associated with the scene or the victim. The following evidence supports this conclusion:

- A. It is unlikely that a break-in at night would have resulted in the careful and nearly symmetrical removal of two window panes into the yard (pictured below). Nor would a stranger do the same by carefully removing sections of the third broken window pane into the basement cellar, off to the side, preserving the edges (also pictured below). This second photo, showing Item 15, also indicates that the glass was removed from the inside of the basement cellar, before which a person could not pass through.



B. The crime scene photos demonstrate that the tool-marks on the window, associated with removing the panes of glass, were made on the interior of the window (pictured blow). This demonstrates that the panes of glass were removed from the inside. If an intruder were making these marks to gain entry at this location, the tool marks would be on the exterior of the window.



C. As already shown in the **RELEVANT INCIDENT BACKGROUND** section of this report, broken glass associated with the third window pane is in the cement trough outside of the basement window, atop the leaves and other debris. This fact, along with the absence of glass on the soft sand/dirt floor inside of the basement directly beneath the window, demonstrates that this window pane was actually broken from the inside (pictured below).



D. Wooden supports from the broken basement cellar window were collected by law enforcement at the scene. These slats were nailed in place on the interior of that window. One is pictured below, with an ungloved officer approximating its original location inside of the basement cellar window. The wooden slat is unbroken, meaning that it was not removed by force from the outside subsequent to breaking the window. The second photo demonstrates that the tool-marks associated with its removal were made by someone prying it free from inside of the basement.



E. The stacks of boxes stored beneath the basement cellar window were generally lined up and undamaged (pictured below). There is no evidence of disturbance, crushing, or trampling. Had someone entered the dark basement through this window from the outside, these boxes would have been disturbed and even damaged by that movement and weight. These stacks of boxes were undisturbed in terms of



positioning, and clearly undamaged in terms of the crushing that would have resulted.



## VII. SUMMARY CONCLUSIONS

35. These findings combine to demonstrate the following:

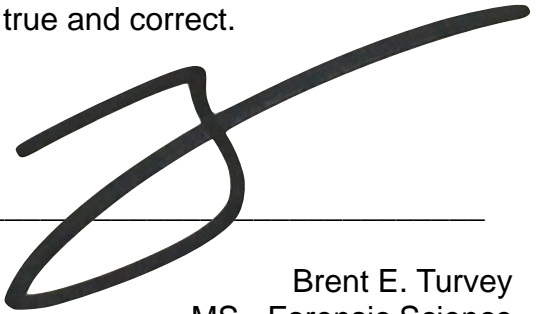
- A. Evelyn Malin was an elderly woman that would not be aware of a stranger or strangers entering her home; that would not be physically capable of responding to the threat of anyone entering her home should she become aware of it; that would not pose a threat to anyone entering her home should they become aware of her presence; and that would not require multiple persons to restrain her if this very unlikely sequence of events occurred;
- B. The basement cellar window could not have been the point of entry;
- C. At least one offender entered the victim's home with a key; deliberately sought her out after she had gotten ready for and gone to bed; and then beat her and manually strangled her to death;
- D. The motivation for the murder is *anger*, with no reliable evidence of a profit motivation;
- E. The crime scene was subsequently staged to make it appear as though this was the result of a stranger burglary;

F. At least one offender exited the victim's home and locked it securely with a key upon completion of the murder and subsequent staging efforts.

Should new evidence become available, this examiner would necessarily reconsider any of the related findings in this report.

I declare under penalty of perjury this Declaration is true and correct.

Dated: December 30, 2021



Brent E. Turvey  
MS - Forensic Science  
PhD - Criminology

## REFERENCES

Bay, N. (2008) "Old Blood, Bad Blood, and Youngblood: Due Process, Lost Evidence, and the Limits of Bad Faith" *Washington University Law Review*, Volume 86, Issue 2; pp.241-311.

Burgess, A., Regehr, C. & Roberts, R. (2009) *Victimology: Theories and Applications*, Jones & Bartlett.

Chisum, W.J. & Turvey, B. (2012) *Crime Reconstruction, 2nd Ed.*, San Diego: Elsevier Science

Crowder, S. & Turvey, B. (2017) *Forensic Investigations*, San Diego: Elsevier Science.

Holman, D. And Walker, A. (2021) "Understanding unequal ageing: towards a synthesis of intersectionality and life course analyses" *European Journal of Ageing*, Vol. 18; pp.239–255; <https://doi.org/10.1007/s10433-020-00582-7>

*Minnesota v. Brian Keith Pippitt*, C4-01-775, Supreme Court, June 13, 2002

NIJ (2011) *Death Investigation: A Guide for the Scene Investigator*, Washington, DC: National Institute of Justice, Research Report NCJ 234457, June.

NIJ (2013) *Crime Scene Investigation: A Guide for Law Enforcement*, Washington, DC.: National Institute of Justice, Research Report NCJ 234457, June.

Peterson, G. & Clark, S. (2006) *Forensic Autopsy Performance Standards*, Atlanta, GA: The National Association of Medical Examiners.

Turvey, B. (2013) *Forensic Victimology, 2nd Ed.*, San Diego: Elsevier Science

U.N. (2014) *Latin American Model Protocol for the Investigation of Gender-Related Killings of Women (femicide/feminicide)*, United Nations High Commissioner for Human Rights, United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). <http://lac.unwomen.org/en/digiteca/publicaciones/2014/10/modelo-de-protocolo>.

# EXHIBIT 1

## **CURRICULUM VITAE**

**Name:** Brent E. Turvey, PhD  
**Company:** FORENSIC SOLUTIONS, LLC

**MOBILE:** (907) 738-5121  
**URL:** <http://www.forensic-science.com>  
**Email:** [bturvey@forensic-science.com](mailto:bturvey@forensic-science.com)

**TITLE:** FORENSIC SCIENTIST & CRIMINOLOGIST  
**DUTIES:** SENIOR PARTNER: CASEWORK, INSTRUCTION, & RESEARCH

## **EDUCATION**

**PhD – Criminology**  
2012: Bond University, QLD, Australia

**M.S. in Forensic Science (1996)**  
1996: University of New Haven, West Haven, Connecticut

**B.S. - Psychology**  
1994: Portland State University, Portland, Oregon

**B.S. - History**  
1993: Portland State University, Portland, Oregon

## **CASE EXPERIENCE**

Since 1996, this examiner has performed casework as a Forensic Scientist, Crime Scene Analyst, Crime Reconstructionist, Forensic Criminologist, and /or Criminal Profiler for law enforcement agencies (police and prosecutors), attorney clients, and private entities all over the world. This includes consultations, forensic assessments, and expert testimony on both criminal and civil matters. These cases tend to involve sexual assault, false allegations, shooting incident reconstructions, serial rapes and homicides, mass homicides, sexual homicides, domestic homicides, staged crime scenes, and other violent crimes.

This examiner also maintains a caseload of femicides (e.g., sexual homicides, gender motivated homicides), pre-femicidal violence, trafficking, and human rights cases in Latin America. Many of these are related to drug trafficking and human trafficking. This involves the implementation of the *UN Model Protocol for Femicide Investigation in Latin America*, with The Forensic Criminology Institute's Behavioral Science Lab (BSL). In operation since 2019, the BSL collaborates with USAID (Mex), JAVA (Mex), The United Nations, and The Attorney Generals Office in Bogota DC, providing support and training to attorneys and investigators.

## **COURT EXPERIENCE**

As a function of casework and research, this examiner has served as a trial consultant, and has qualified in court as an expert witness, on the subjects of Criminal Investigation, Forensic Science, Crime Reconstruction, Wound Pattern Analysis, Shooting Incident Reconstruction, Firearms and Tool-marks, Interpretation of Presumptive Blood Test Results, Crime Scene Analysis, Crime Scene Investigation, Case Linkage/ Linkage Analysis (Motive, Modus Operandi and Signature Analysis), Criminal Profiling, Offender Deterrability, Offense Foreseeability, Offender Motivations, Staged Crime Scenes, Sex Crimes Investigation, False Allegations, and Forensic Victimology.

This has included expert forensic testimony in the following criminal and civil cases, in State and Federal Court:

1. *Arkansas v. Damien Echols*
2. *California v. Addison Beverly*
3. *California v. Vincent Brothers*
4. *California v. Jason Y. Cai*
5. *California v. Joseph Cordova*
6. *California v. Dwight Colton*
7. *California v. Charles Davis*
8. *California v. Matt & Jennifer Fletcher*
9. *California v. Chris Graham*
10. *California v. Pierre Haobsh*
11. *California v. Andre Jackson*
12. *California v. Gerald Johnson*
13. *California v. Darryl Kemp*
14. *California v. Edgar Leura*
15. *California v. Jack Lewis*
16. *California v. Johnny Miles*
17. *California v. Douglas Mouser*
18. *California v. Louis Peoples*
19. *California v. Wesley Shermantine*
20. *California v. Christopher Smith - I*
21. *California v. Christopher Smith - II*
22. *California v. Marvin Smith*
23. *California v. David Suen*
24. *California v. Alex Thomas*
25. *California v. Thomas Triplett*
26. *Coahuila v. Liliana Inés Martinez Dominguez*
27. *Colorado v. Mario Raxon*
28. *Connecticut v. Jose Ayuso*
29. *Connecticut v. Ralph Birch and Shawn Henning*
30. *Connecticut v. Casmier Zubrowski*
31. *Florida v. Ray Jackson*
32. *Illinois v. Edward Phillips*
33. *Kansas v. Artis Cobb*
34. *Kentucky v. Donald Southworth*
35. *Lee Mannheimer v. Linda Morrissett*
36. *Massachusetts v. Timothy Imbriglio*
37. *Mississippi v. Robert Grant*

38. *Nebraska v. Anthony Garcia*
39. *Nevada v. Kirstin "Blaize" Lobato*
40. *Nevada v. Salvador Rico-Rivas*
41. *New York v. Francisco Acevedo*
42. *Ohio v. David Thorne*
43. *Ohio v. Paula Rizer - I*
44. *Ohio v. Paula Rizer - II*
45. *Oklahoma v. Elvis Thacker*
46. *Oklahoma v. Nicholas Williams*
47. *Parkhurst et al v. Tabor et al.*
48. *Polite v. Doubleview, et al.*
49. *South Carolina v. Stephen Stanko*
50. *Wisconsin v. Peter Kupaza*
51. *Zacatecas v. Sergio Herrera Martinez (MEX)*
52. *Colombian National Police, Bogota DC in re: Capt. Eduardo Yepes*  
(Administrative Hearing - expert testimony re: motives for fraud and misconduct)

This has also included forensic examinations and expert consultation on the following major cases (this is a selected list intended to be demonstrative; it includes only a fraction of forensic case consultations and necessarily excludes those where a confidentiality agreement prohibits disclosure):

1. 1999: *The Estate of Sam Sheppard v. Ohio*
  - Sexual homicide with staging - civil actual innocence claim;
  - Consultation regarding reports and testimony of retired FBI profiler;
  - Assisted with development of cross of retired FBI profiler;
  - Demonstrated false testimony by retired FBI profiler Gregg McCrary regarding education, experience, and expertise.CIVIL: Plaintiff's Attorney Client
2. 2000: *Minnesota v. Keith Misquadace*
  - Consultation and report to Defense re: staged crime scene in elder burglary-homicide;
  - 1st Degree murder case; forensic findings suggested actual innocence;
  - Prosecution subsequently offered Alford Plea to clear unrelated charges involving greater jail time; Defense accepted.CRIMINAL: Defense Attorney Client
3. 2000: *Regina v. Giuseppe "Joseph" Russo*
  - Double homicide, domestic;
  - Forensic report for Victoria Police in Melbourne re: crime scene analysis and staging;
  - Suspect identified and convicted; appealed and re-convicted in subsequent re-trial.CRIMINAL: Police/ Prosecution Client
4. 2000: *Regina v. Graham Stafford*
  - Child abduction and sexual homicide;
  - Consultation and report to Defense in post-conviction re: forensic evidence;
  - Identified issues re: forensic evidence and misleading expert forensic testimony;
  - Defendant convictions subsequently vacated in 2009 due to physical evidence; no retrial.CRIMINAL: Defense Attorney Client / Exoneration
5. 2000: *Illinois v. Gerald Simonson*
  - Sexual homicide;
  - Consultation and report to Defense in post-conviction re: forensic evidence;
  - Identified issues re: forensic evidence and misleading expert forensic testimony;

- Defendant conviction subsequently overturned in 2009 due to IAC; Defendant released.  
CRIMINAL: Defense Attorney Client / Alford Plea
- 6. 2001: *Borthick & Allen v. Benjamin*
  - Civil case: Defendant accused of sexual assaults by four (4) subordinates;
  - Consultation to Defense re: reports and testimony of forensic nurse and retired FBI profiler;
  - Assisted with development of deposition questions;
  - Profiler Greg Cooper subsequently removed from case as an expert witness for making false claims in report and depositions;
  - Jury found primarily for the defendant at trial, rejecting the majority of alleged torts.CIVIL: Defense Attorney Client
- 7. 2002: *Ohio v. Clarence Elkins*
  - Sexual homicide adult female w/ child sexual assault;
  - Consultation and report to Defense in post-conviction re: forensic reconstruction issues and DNA exclusions;
  - Defendant subsequently exonerated in 2005.CRIMINAL: Defense Attorney Client / Exoneration
- 8. 2002: *Washington v. Robert Yates*
  - Serial murder case (15 victims);
  - Prepared report re: linkage analysis issue for the defense;
  - Consultation to the defense regarding the reports and testimony of state law enforcement profiler and FBI profiler;
  - Assisted with development of cross to successfully exclude unreliable and inaccurate law enforcement profiler testimony (Robert Keppel) regarding crime databases and case linkage.CRIMINAL: Defense Attorney Client
- 9. 2003: *Pennsylvania v. Jamie Fleming*
  - Domestic homicide/ staged crime scene assessment;
  - Consultation and report to defense regarding reports and testimony of an FBI profiler;
  - FBI profiler subsequently removed from the case as an expert witness.CRIMINAL: Defense Attorney Client
- 10. 2005: *United States v. O.C. Smith*
  - Federal charges against Medical Examiner for allegedly faking an attack against himself;
  - Consultation to the defense re: reports and testimony of forensic psychiatrist and retired FBI profiler Gregg McCrary;
  - Assisted with development of cross to help successfully exclude profiler testimony;CRIMINAL: Defense Attorney Client / Mistrial/ charges dropped
- 11. 2005: Royal Barbados Police Force - Serial Rape Task Force
  - Consulted with RBPF Task Force at the direction of Commissioner Darwin Dottin;
  - Assisted law enforcement investigators with the development of a criminal profile, case linkage, and investigative strategy (one month on site managing investigative efforts with task force);
  - Venslow Small arrested and plead to multiple counts of rape and burglary in Dec. of 2005.CRIMINAL: Police Agency Client
- 12. 2006: *JAW v. Old Cutler Presbyterian Church*
  - Serial rape (5 cases) - premises liability;
  - Report and deposition for Defense re: modus operandi and offender deterrability;
  - Evaluation of plaintiff's expert criminological report - expert subsequently replaced;
  - Testified in deposition; Case subsequently settled out of court.CIVIL: Defense Attorney Client
- 13. 2007: *In Re: the Detention of Kevin Coe*
  - Civil commitment hearing re: alleged serial rapist;



- Prepared linkage analysis report re: 19 sexual assaults for the defense;
  - Consultation regarding linkage databases, reports, and testimony of a retired law enforcement profiler, demonstrating multiple unsupported findings;
  - Identified lack of investigative effort and potential false reports.
  - Testified in deposition
- CIVIL: Defense Attorney Client

14. 2008: [\*Estate of Elizabeth Garcia v. Allsup's Convenience Stores, Inc.\*](#)

- Sexual homicide - premises liability case;
  - Consultation to Plaintiff re: reports and testimony of retired FBI profiler Gregg McCrary;
  - Assisted with the development of cross to successfully exclude of profiler testimony;
  - Case subsequently settled for the Plaintiff.
- CIVIL: Plaintiff's Attorney Client

15. 2009: [\*California v. Caleb Madsen\*](#)

- Homicidal stabbing involving two prior failed prosecutions of same defendant;
  - Consultation to defense regarding the reports / false testimony of FBI profiler Mark Safarik;
  - Assisted with the development of cross to successfully exclude of profiler testimony;
  - Defendant subsequently found not guilty of first degree murder; jury hung on 2nd degree; no retrial.
- CRIMINAL: Defense Attorney/ Hung Jury/ Charges dropped

16. 2010: [\*Mississippi v. Shelton Myers\*](#)

- Shooting Incident Reconstruction report for the defense re: homicide;
  - Consultation to defense regarding crime scene evidence and expert testimony;
  - Assisted with development of cross-examination to successfully elicit exculpatory testimony from witnesses and law enforcement investigators;
- CRIMINAL: Defense Attorney Client / Acquitted on Murder charges

17. 2010: [\*Oregon v. Kevin Driscoll\*](#)

- False report of sexual assault involving prior failed prosecution;
  - Crime scene analysis report for the defense re: false allegation of sexual assault;
  - Assisted with development of cross-examination to successfully elicit exculpatory testimony from state's witnesses;
- CRIMINAL: Defense Attorney Client / Acquitted

18. 2011: [\*Equivocal Death - Arturo Gatti, World Boxing Champion\*](#)

- Participated in re-investigation of asphyxial death declared "suicide" in Brazil;
  - Reconstruction report regarding homicide staged to appear as a suicide;
  - ME's Office in Montreal conducted separate medico-legal death investigation: subsequently changed position from "Suicide" to "Undetermined".
- CIVIL: Plaintiff's Attorney

19. 2010-2013: [\*T. R. Young v. Her Majesty's Advocate\*](#)

- Prepared 150+ page linkage analysis report working for the Crown Office (Attorney General's Office/ prosecution) re: eight (8) sexual homicides, including the World's End murders (double rape homicide);
  - Evaluated FBI profiler's report, and reports from other academic profilers, for the Crown;
  - Assisted the Crown with development of cross examination regarding reports and testimony of Defense experts in related court proceedings.
  - FBI profiler for the defense, Mark Safarik, withdrew from case; Court ruled to exclude defense testimony from Dr. David Canter in favor of the Crown; conviction upheld.
- CRIMINAL: Prosecution/ convictions upheld/ convictions achieved

20. 2012-2013: [\*Karl Fontenot v. Oklahoma\*](#)

- Post-conviction examination of an abduction-homicide.

- Case Assessment and reconstruction revealed exculpatory police reports and physical evidence withheld from the defense leading to critical evidentiary findings. Forensic Report provided.  
CRIMINAL: Defense Attorney Client / Defendant released on actual innocence claim
- 21. 2013-2014: [\*New Hampshire v. P.G.\*](#)
  - *Trial consultant*: false report of sexual assault determination;
  - Assisted with development of crime reconstruction and cross-examination to help successfully elicit exculpatory testimony from state's witnesses;
  - CRIMINAL: Defense Attorney Client / Acquitted
- 22. 2013-2014: [\*Tennessee v. Ralph O'Neal\*](#)
  - *Crime Scene Investigation, Crime Scene Analysis, and Shooting Incident Reconstruction*
  - Defendant accused of First Degree Murder.
  - Examined the quality of the investigation and the forensic evidence.
  - Prepared expert report of findings; disproved state's theory of the case.
  - CRIMINAL: Defense Attorney Client / Charges dropped
- 23. 2015: [\*Oregon v. Joseph Leonetti\*](#)
  - *Trial consultant*: false report of sexual assault determination;
  - Assisted with development of crime reconstruction and cross-examination to help prep case and elicit exculpatory testimony from state's witnesses;
  - CRIMINAL: Defense Attorney Client / Case Dismissed during trial
- 24. 2014-2016: [\*Texas v. Carla Cox\*](#)
  - *Crime Reconstruction and Crimes Scene Analysis: alleged arson-homicide*;
  - Crime scene analysis report for the defense re: physical evidence and investigative issues;
  - CRIMINAL: Defense Attorney Client / Case Dismissed for lack of evidence pre-trial
- 25. 2018-2019: [\*Officer Mary Ferguson v. City of Sitka, The Sitka Police Department, et al.\*](#)
  - *Forensic Assessment of Sexual Harassment, Civil Rights & Public Corruption in a police department*;
  - Forensic report delivered; Offender (supervising officer) resigned; chief of police resigned.
  - CIVIL: Case settled in 2020, in favor of the Plaintiff, Officer Mary Ferguson
- 26. 2019: [\*California v. Darrell A. DeLeoz\*](#)
  - *Crime Reconstruction and Crimes Scene Analysis: alleged domestic homicide*
  - Crime scene analysis report for the defense re: physical evidence and investigative issues;
  - Report used to cross states experts
  - CRIMINAL: Defense Attorney Client / Acquitted of murder charges; guilty of involuntary manslaughter and released with time served.
- 27. 2019-2020: *Femicide* - [\*Yovanna Yaneth Torres Briseno\*](#)
  - *Crime Reconstruction and Crimes Scene Analysis: unsolved homicide*
  - Appointed and sworn as special forensic examiner in crime scene analysis and reconstruction for the Attorney General's Office in Aguascalientes
  - CRIMINAL: Case reopened by The Attorney General's Office as a homicide
- 28. 2020: [\*Andrea Dodoni Scalfio, Oaxaca — Forensic Victimological Assessment\*](#)  
CI: 3313/FCOS/POCHUTLA/2020
  - Forensic Assessment in a case involving a false report of trespassing and domestic assault against an indigenous female / human trafficking case
  - Prepared forensic assessment of damages and reparations
  - CRIMINAL: Forensic report read into evidence; judge ruled in favor of those findings.
- 29. 2019-2021: [\*Sergio Herrera Martinez, State Police, Zacatecas — Forensic Assessment\*](#)  
File No. 50/2019; FGJE Zacatecas

- Forensic investigation of victim abducted and sexually assaulted by law enforcement officer subsequent to a traffic stop. Involved allegations of kidnapping and attempted murder.
  - Officer Martinez arrested and placed on trial based on forensic findings
  - Prepared forensic assessment of damages and reparations
- CRIMINAL: Officer Martinez convicted; damages report submitted

30. 2020-2021: [United States v. Gary Baldock](#), *Shooting Incident Reconstruction*

- Defendant, a law enforcement officer with severe medical conditions, was charged w/ attempted murder re: shooting of an FBI agent during a breach of his home by multiple federal agents with a BearCat.
  - Forensic examination conducted of related evidence.
  - Crime reconstruction with shooting incident reconstruction performed on site, with preliminary findings refuting state theory.
- CRIMINAL: Forensic findings used to assist negotiating a plea deal with reduced charges. Defendant died in custody awaiting sentencing.

## **INSTITUTIONAL AFFILIATIONS**

- |                |  |
|----------------|--|
| 1999 – 2000    | <i>Adjunct Lecturer</i> , Criminology Department<br>Bond University<br>Gold Coast, Australia                                   |
| 2001 – 2010    | <i>Guest Lecturer</i> , Criminology Department<br>Bond University<br>Gold Coast, Australia                                     |
| 2010           | <i>Adjunct Teaching Fellow</i> , Criminology Department<br>Bond University<br>Gold Coast, Australia                            |
| 2003 – 2015    | <i>Adjunct Professor</i> , Department of Sociology and Criminal Justice<br>Oklahoma City University<br>Oklahoma City, Oklahoma |
| 2015 – 2016    | <i>Affiliate Faculty</i> , Department of Criminology<br>Regis University<br>Denver, Colorado                                   |
| 2015 – Present | <i>Director</i> , <a href="#">The Forensic Criminology Institute</a><br>Aguascalientes (MEX) / Sitka, Alaska (USA)             |
| 2016 – Present | <i>Professor of Forensic Criminology</i> , <a href="#">Instituto de Ciencia Aplicada</a><br>Aguascalientes (MEX)               |

## **PROFESSIONAL AFFILIATIONS**

- 1998 - Present      *Secretary and Board Member*, Forensic Section  
International Association of Forensic Criminologists /  
Academy of Behavioral Profiling (IAFC/ABP)
- 2012 - 2014:      *Forensic Consultant*  
Unidad de Analisis de la Conducta Criminal,  
Laboratorio Forense de Ciudad Juarez, Chihuahua, MX  
(Criminal Behavioral Analysis Unit, Attorney General's Forensic  
Science Laboratory, Juarez)
- 2014 - Present:    *Diplomate*, Academy of Behavioral Profiling
- 2015 - Present:    *Directorate*, Global Forensic Alliance
- 2019 - 2020:      *Special Forensic Examiner*  
Crime Scene Analysis and Reconstruction  
Attorney General's Office, Aguascalientes (MEX)
- 2020 - Present    *Honorary Member*  
Asociación Iberoamericana de Derecho, Cultura y Ambiente  
<https://aidca.org/honorificos/>
- 2021                *Co-Chair, SWG - FV*  
Scientific Working Group on Forensic Victimology  
Fiscalia General de la Nación (Bogota, DC) &  
Fundación Internacional y Para Iberoamérica de Administración y  
Políticas Públicas (FIIAPP / Madrid)

## **PEER REVIEWER**

The following is a list of professional journals, publishers, and organizations that this examiner has been invited to serve as a peer reviewer for, often on multiple manuscripts:

1. Aggression & Violent Behavior; Manuscript reviews
2. Behavioral Sciences & the Law; Manuscript reviews
3. Children and Youth Services Review
4. Criminal Justice & Behavior; Manuscript reviews
5. Elsevier-Academic Press; Textbook proposal reviews
6. Forensic Science International; Manuscript reviews
6. Homicide Studies; Manuscript reviews
7. The Federal Bureau of Investigation, Investigative Training Unit (Unit Chief: Karen Gardner); Serial murder research proposal review
8. Journal of Forensic and Legal Medicine; Manuscript reviews
9. Psychology, Public Policy, & Law; Manuscript reviews

10. Lexington Publishers; Manuscript Review

### **EDITORIAL BOARDS**

The following is a list of professional peer reviewed journal editorial boards that this examiner has served on.

1. Journal of Behavioral Profiling: Editor in Chief (1999-2008)
2. Annex Journal of Forensic Science & Criminology: Board of Editors (2013-Present)
3. ARC Journal of Forensic Science: Board of Editors (2018-Present)

### **PROTOCOLS: RESEARCH & DEVELOPMENT**

This sections refers to research and development work related to protocols created in partnership with government entities to satisfy investigative and forensic mandates established by law.

**2018 - November**

#### ***Editorial Research and Development***

##### **Querétano Institute for Women - Querétaro, MX**

Manual for the Issuance of Forensic Experts with a Gender Perspective in the Matter of Crimes Against Life and Integrity of the Women of the State of Querétaro (trans. Manual para la Emisión de Periciales con Perspectiva de Género en Materia de Delitos contra la Vida e Integridad de las Mujeres del Estado de Querétaro / Instituto Querétano de las Mujeres.

**2020 - January**

#### ***Editorial Research and Development***

##### **Attorney Generals Office - Aguascalientes, MX**

Protocol for the Investigation of Violent Deaths of Women, with a Gender Perspective (trans. Protocolo de Investigación con Perspectiva de Género de Muertes Violentas de Mujeres en el Estado de Aguascalientes)

**October 8 - November 11, 2020**

#### ***Editorial Research and Development***

##### **Fiscalia General de la Nación—Bogota, DC &**

##### **Fundación Internacional y Para Iberoamérica de Administración y Políticas Públicas (FIIAPP)—Madrid**

Protocol for Victimological Classification in High Impact Crimes Against Human Rights Defenders and others with special constitutional protections (trans. Protocolo para la Caracterización Victimológica de graves afectaciones contra personas con especial protección constitucional y defensores de derechos humanos)

## **PUBLISHED WORKS**

The following are lists of published, peer-reviewed works. These include textbooks, textbook chapters, journal articles and encyclopedia contributions:

### ***Textbooks***

1. Turvey, B. (1999) *Criminal Profiling: An Introduction to Behavioral Evidence Analysis*, London: Academic Press
2. Turvey, B. (2002) *Criminal Profiling: An Introduction to Behavioral Evidence Analysis, 2nd Ed.*, London: Elsevier Science
3. Savino, J. & Turvey, B. (2004) *Rape Investigation Handbook*, San Diego: Elsevier Science
4. Chisum, W.J. & Turvey, B. (2007) *Crime Reconstruction*, Boston: Elsevier Science
5. Turvey, B. (2008) *Criminal Profiling: An Introduction to Behavioral Evidence Analysis, 3rd Ed.*, London: Elsevier Science
6. Petherick, W. & Turvey, B. (2009) *Forensic Victimology*, Boston: Elsevier Science
7. Ferguson, C., Petherick, W. & Turvey, B. (2010) *Forensic Criminology*, San Diego: Elsevier Science
8. Turvey, B. (2011) *Criminal Profiling: An Introduction to Behavioral Evidence Analysis, 4th Ed.*, London: Elsevier Science
9. Chisum, W.J. & Turvey, B. (2012) *Crime Reconstruction, 2nd Ed.*, San Diego: Elsevier Science
10. Savino, J. & Turvey, B. (2012) *Rape Investigation Handbook, 2nd Ed.*, San Diego: Elsevier Science
11. Turvey, B. (2013) *Forensic Fraud: Evaluating Law Enforcement and Forensic Science Cultures in the Context of Examiner Misconduct*, San Diego: Elsevier Science
12. Crowder, S. & Turvey, B. (2013) *Ethical Justice: Applied Issues for Criminal Justice Students and Professionals*, San Diego: Elsevier Science
13. Turvey, B. (2013) *Forensic Victimology, 2nd Ed.*, San Diego: Elsevier Science
14. Cooley, C. & Turvey, B. (2014) *Miscarriages of Justice*, San Diego: Elsevier Science
15. Crowder, S. & Turvey, B. (2015) *Anabolic Steroid Abuse in Law Enforcement: A Forensic Manual for Public Safety Administrators*, San Diego: Elsevier Science
16. Turvey, B. & Esparza, M. (2016) *Behavioral Evidence Analysis: International Forensic Practice and Protocols*, San Diego: Elsevier Science

17. Turvey, B. (2016) *Perfilacion Criminal: Vol. 1, Fundamentos*, Aguascalientes, MX: Forensic Press
18. Turvey, B. (2016) *Perfilacion Criminal: Vol. 2, Contextos*, Aguascalientes, MX: Forensic Press.
19. Turvey, B. (2016) *Perfilacion Criminal: Vol. 3, Practica*, Aguascalientes, MX: Forensic Press.
20. Coronado, A. & Turvey, B. (2016) *Protocolos de Investigacion Criminal, Vol. 1*, Aguascalientes, MX: Forensic Press
21. Freeman, J. & Turvey, B. (2016) *Victimologia Forense: Vol. 1*, Aguascalientes, MX: Forensic Press
22. Freeman, J. & Turvey, B. (2017) *Victimologia Forense: Vol. 2*, Aguascalientes, MX: Forensic Press
23. Crowder, S. & Turvey, B. (2017) *Forensic Investigation*, San Diego: Elsevier Science
24. Turvey, B., Coronado, A. & Savino, J. (2017) *False Allegations: Investigative and Forensic Issues in Fraudulent Reports*, San Diego: Elsevier Science
25. Coronado, A. & Turvey, B. (2018) *Psicologia de la Mentira, Vol. 1*, Aguascalientes, MX: Forensic Press
26. Baltazar, V., Coronado, A., & Turvey, B. (Eds., In Press) *Protocol for Victimological Classification in High Impact Crimes Against Human Rights Defenders, and others with special Constitutional protections*, Bogota, DC: Fiscalia General de la Nación (trans. Protocolo para la Caracterización Victimológica de graves afectaciones contra personas con especial protección constitucional y defensores de derechos humanos)
27. Turvey, B. (In Press) *Criminal Profiling: An Introduction to Behavioral Evidence Analysis, 5th Ed.*, London: Elsevier Science
28. Coronado, A. & Turvey, B. (In Press) *Criminal Psychology*, London: Elsevier Science

### **Textbook Contributions**

1. Turvey, B. "Modus Operandi, Motive, and Technology," for Casey, E. (2000) *Digital Evidence and Computer Crime: Forensic Science, Computers and the Internet*, London: Academic Press
2. Turvey, B. "Professionalizing the Criminal Profiler" for Montet, L. (2001) *Profileurs: Specialization or Professionnalisation?* University Presses of France
3. Turvey, B. "Modus Operandi, Motive, and Technology," for Casey, E. (2004) *Digital Evidence and Computer Crime: Forensic Science, Computers and the Internet, 2nd Ed.* Boston: Academic Press
4. Turvey, B. "Investigative Reconstruction with Digital Evidence," for Casey, E. (2004) *Digital Evidence and Computer Crime: Forensic Science, Computers and the Internet, 2nd Ed.* Boston: Academic Press

5. Turvey, B. "Introduction" in Petherick, W. (2005) *Criminal Profile: Into the Mind of the Killer*, London: Modern Books
6. McGrath, M. & Turvey, B. "Criminal Profilers & The Media: Profiling the Beltway Snipers," for Petherick, W. (2005) *Serial Crime*, Boston: Elsevier Science
7. Turvey, B. "An Objective Overview of Autoerotic Fatalities," in Adler, P. (Ed) (2006) *Constructions of Deviance, Custom Edition*, Mason, OH: Thomson Custom Solutions
8. Davis, B. (2006) *Crime Scene Science: Criminal Profiling*, Cornwall, UK: Ticktock Media, Ltd. – Editorial Consultant
9. Ferguson, C., McGrath, M. & Turvey, B. (2009) "The False Allegation: A Construct of Deviance" in Ferguson, C. and Petherick, W. (eds) *Crime and Deviance*, Forensic Press
10. McGrath, M. & Turvey, B. (2009) "Criminal Profilers & The Media: Profiling the Beltway Snipers," for Petherick, W. (ed) *Serial Crime, 2nd Ed.*, San Diego: Elsevier Science
11. Turvey, B. (2009) "Homicidal Deviance" in Ferguson, C. and Petherick, W. (eds) *Crime and Deviance*, Forensic Press
12. Turvey, B. (2009) "Sex Crimes and Deviance" in Ferguson, C. and Petherick, W. (eds) *Crime and Deviance*, Forensic Press
13. Turvey, B. (2009) "Sexual Deviance" in Ferguson, C. and Petherick, W. (eds) *Crime and Deviance*, Forensic Press
14. Turvey, B. (2010) "Prologo: Perfiles Criminologicos En El Siglo XXI," in Serrano, J.J. (Ed) *Manual practico del perfil criminologico*, Valladolid, Spain: Lex Nova.
15. Turvey, B. (2011) "Modus Operandi, Motive, and Technology," for Casey, E. (Ed) *Digital Evidence and Computer Crime: Forensic Science, Computers and the Internet, 3rd Ed.* San Diego: Academic Press.
16. Turvey, B. (2011) "Victims of Pathological Altruism," in Oakley, B. (Ed) *Pathological Altruism*, Oxford University Press.
17. Turvey, B. (2012) "Behavioral Evidence: The Necessity of Crime Reconstruction to Criminal Profiling Efforts," in Fatima, A. and Paulino, N. (Eds) *Profiling, Vitimologia & Ciencias Forenses*, Lisbon, Portugal: Pactor.
18. Turvey, B. (2012) "Preface: Professional Obligations of the Criminal Profiler," in Konvalina-Simas, T. (Ed) *Profiling Criminal: Introducao a Analise, Comportamental no Contexto Investigativo*, Carcavelos, Portugal: REI dos Livros.
19. Turvey, B. (2013) "Forensic Failures" in Bowers, C.M. (Ed.) *Forensic Testimony: Science, Law, and Expert Evidence*, San Diego: Academic Press.
20. Turvey, B. (2016) "Foreword" in Paulino, M. (Ed.) *Forensic Psychology of Spousal Violence*, San Diego: Academic Press.



21. Turvey, B. (2018) "Criminal Profiling: Experts, Evidence, and Miscarriages of Justice" in Koen, W. and Bowers, C.M. (Eds) *Forensic Science Reform: The Psychology and Sociology of Wrongful Convictions*, San Diego: Elsevier Science.

22. Turvey, B. and Coronado, A. (2018) "Racial Profiling and Miscarriages of Justice" in Koen, W. and Bowers, C.M. (Eds) *Forensic Science Reform: The Psychology and Sociology of Wrongful Convictions*, San Diego: Elsevier Science.

### **Professional Articles, Journals & Encyclopedia Contributions**

1. Baeza, J., Chisum, W.J., Chamberlin, T.M., McGrath, M., Turvey, B. (2000) "Academy of Behavioral Profiling: Criminal Profiling Guidelines," *Journal of Behavioral Profiling*, January, 2000, Vol. 1, No. 1

2. Chisum, W.J., and Turvey, B. (2000) "Evidence Dynamics: Locard's Exchange Principle & Crime Reconstruction," *Journal of Behavioral Profiling*, January, Vol. 1, No. 1

3. Turvey, B. (2000) "Criminal Profiling and the Problem of Forensic Individuation," *Journal of Behavioral Profiling*, May, Vol. 1, No. 2

4. Turvey, B. (2000) "Autoerotic Death," in Knupfer, G., Saukko, P., & Seigal, J. (Eds.) *Encyclopedia of Forensic Science*, London: Academic Press

5. Turvey, B. (2000) "Criminal Profiling," in Knupfer, G., Saukko, P., & Seigal, J. (Eds.) *Encyclopedia of Forensic Science*, London: Academic Press

6. Turvey, B. (2000) "Modus Operandi," in Knupfer, G., Saukko, P., & Seigal, J. (Eds.) *Encyclopedia of Forensic Science*, London: Academic Press

7. Turvey, B. (2000) "Offender Signature," in Knupfer, G., Saukko, P., & Seigal, J. (Eds.) *Encyclopedia of Forensic Science*, London: Academic Press

8. Baeza, J. and Turvey, B. (2000) "False Reports in Cases of Sexual Assault: Literature Review and Investigative Suggestions," *Journal of Behavioral Profiling*, December, Vol. 1, No. 3

9. Turvey, B. (2000) "Staged Crime Scenes: A preliminary study of 25 cases," *Journal of Behavioral Profiling*, December, Vol. 1, No. 3

10. Turvey, B. (2000) "Deductive Profiling: Comparing applied methodologies between Inductive and Deductive criminal profiling techniques," *Policja: Kwartalnik Kadry Kierowniczej Policji* (Quarterly of Police Management - Poland), No. 4

11. Turvey, B. (2001) "Mass Killings: A Study of 5 cases," *Journal of Behavioral Profiling*, June, Vol. 2, No. 1

12. Turvey, B. "Sexual Homicide: Research Review and Findings, Part 1," *Journal of Behavioral Profiling*, December 2001, Vol. 2, No. 2

13. Cooley, C. and Turvey, B. (2002) "Reliability and Validity: Admissibility Standards Relative to Forensic Experts Illustrated by Criminal Profiling Evidence, Testimony, and Judicial Rulings," *Journal of Behavioral Profiling*, June, Vol. 3, No. 1

14. McGrath, M. and Turvey, B. (2003) "Criminal Profilers & the Media: Profiling the Beltway Snipers," *Journal of Behavioral Profiling*, 2003 April, Vol. 4, No. 1
15. Turvey, B. (2003) "Forensic Frauds: A Study of 42 Cases," *Journal of Behavioral Profiling*, April, Vol. 4, No. 1
16. Turvey, B. (2003) "The Reality of Police-Involved Domestic Violence: Lessons for Law Enforcement Administrators," *Illinois Law Enforcement Executive Forum*, November
17. Turvey, B. (2004) "Staged Burglary: Technical Note & Civics Lesson," *Journal of Behavioral Profiling*, December, Vol. 5, No. 1
18. Turvey, B. (2006) "Beneath the Numbers: Rape and Homicide Clearance Rates in the United States," *Journal of Behavioral Profiling*, Vol. 6 (1), May
19. Turvey, B. (2007) "United States v. Gordon E. Thomas, III - A Case Study in the Reliability of Criminal Investigative Analysis," *Journal of Behavioral Profiling*, 7 (1), Summer
20. Chisum, W.J. and Turvey, B. (2008) "Re: The Commentary "Crime Reconstruction" J. For. Ident. 57 (6), 797-806," *The Journal of Forensic Identification*, Vol. 58 (2); pp.133-155.
21. Turvey, B. (2011) "Outing the gropers: What the Brooklyn sex attacks tell us," *New York Post*, October 23.
22. Turvey, B. & Freeman, J. (2012) "Jury Psychology" in Ramachandran, V. (ed) *Encyclopedia of Human Behavior, 2nd Ed.*, London: Elsevier Science.
23. Crowder, S. and Turvey, B. (2013) "Hypothesis, Homology, and Heuristic: What the H?" *International Journal of Arts and Sciences*, Vol. 6(3); pp. 627-634.
24. Turvey, B. (2013) "Autoerotic Death," in Houck, M., Saukko, P., & Seigal, J. (Eds.) *Encyclopedia of Forensic Science, 2nd Ed.*, London: Academic Press.
25. Turvey, B. (2013) "Criminal Profiling," in Houck, M., Saukko, P., & Seigal, J. (Eds.) *Encyclopedia of Forensic Science, 2nd Ed.*, London: Academic Press.
26. Turvey, B. (2013) "Modus Operandi," in Houck, M., Saukko, P., & Seigal, J. (Eds.) *Encyclopedia of Forensic Science, 2nd Ed.*, London: Academic Press.
27. Turvey, B. (2013) "Offender Signature," in Houck, M., Saukko, P., & Seigal, J. (Eds.) *Encyclopedia of Forensic Science, 2nd Ed.*, London: Academic Press.
28. Turvey, B. (2014) "Ethics in Forensic Science" in Arrigo, B. and Golson, J. G. (Eds) *Encyclopedia of Criminal Justice Ethics*, Thousand Oaks: Sage Publications.
29. Turvey, B. (2014) "Social Media as Evidence" in Arrigo, B. and Golson, J. G. (Eds) *Encyclopedia of Criminal Justice Ethics*, Thousand Oaks: Sage Publications.
30. Turvey, B. (2015) "Criminal Profiling" in Cautin, R. and Lillienfield, S. (Eds) *Encyclopedia of Clinical Psychology*, New Jersey: Wiley-Blackwell.

## **PROFESSIONAL LECTURES & PRESENTATIONS**

The following is a selected list of professional courses, presentations, lectures, workshops, and programs provided by this examiner to law enforcement academies and groups, attorney groups, educational institutions, and professional organizations in the United States and around the world. It is by no means a complete list. Where indicated, these have been authorized for college credit, certified for continuing legal education (CLE), or certified for credit by regional Commissions on Peace Officer Standards and Training (P.O.S.T.):

**08/04/21**

IX Congreso de Criminología  
Lecture: Perfilación Criminológica  
Host: Universidad UniverMilenium  
Location: Mexico City, MX

**07/08/21**

Congreso Internacional de Criminología, Psicología, y Psiquiatría Forense 2021  
Lecture: Forensic Criminology and the Human Rights Perspective  
Host: Tallers Forenses Online  
Location: Buenos Aires, Argentina

**06/25/21**

5th Convención Internacional Buenas prácticas en Psicología Forense  
Lecture: Violaciones graves a derechos humanos y poblaciones vulnerables  
Host: Instituto Nacional de Ciencias Penales (INACIPE)  
Location: Mexico City, MX

**06/23/21**

4th International Congress of Criminal Justice and Criminal Policy 2021  
Lecture: Integrated Forensics and Crime Reconstruction  
Host: Autonomous University of Aguascalientes  
Location: Aguascalientes, MX

**06/04/21**

Seminar: Crime Scene Indicators in Cases of Femicide  
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO); Instituto de Ciencias Jurídicas y Forenses  
Location: Hermosillo, Sonora, MX

**06/03/21**

Seminar: Crime Scene Indicators in Cases of Femicide  
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO); Instituto de Ciencias Jurídicas y Forenses  
Location: Navajoa, Sonora, MX

**06/03/21**

Seminar: Crime Scene Indicators in Cases of Femicide  
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO); Instituto de Ciencias Jurídicas y Forenses  
Location: Los Mochis, Sinaloa, MX

**06/02/21**

Seminar: Crime Scene Indicators in Cases of Femicide  
Host: State Institute of Penal Sciences and Public Security (Police Academy) - Sinaloa; Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)  
Location: Culiacan, Sinaloa, MX

**05/26 - 06/01/21**

Training: Criminal Profiling in Cases of Kidnapping and Forced Disappearance  
Host: Secretaria de Seguridad y Protección Ciudadana (Federal Secretariat of Security and Civilian Protection); CONASE (Co-ordination Nacional Antisecuestro / Federal Anti-Kidnapping Co-ordination Agency)  
Location: Mexico City / Broadcast to Anti-Kidnapping Zones 1-5 on consecutive days.

**01/28/21**

Seminar: Criminal & Forensic Investigation with a Human Rights Perspective  
Host: Superior Institute of Public Security (Police Academy) - Aguascalientes  
Location: Aguascalientes, MX

**01/18/ - 01/20/21**

INTERNATIONAL CYCLE OF CRIMINAL DEFENSE IN THE ACCUSATORY SYSTEM  
(trans.CICLO INTERNACIONAL DE DEFENSA PENAL EN EL SISTEMA ACUSATORIO)

Lecture: Crime Scene Analysis & Reconstruction  
Host: USAID.GOV

**11/28/20**

Conference: 6th Annual Summit of Forensic Experts  
Lecture: Forensic Victimology with a Human Rights Perspective  
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)  
Location: Hermosillo, Sonoro, MX  
(University Credit)

**11/6/20**

Webinar: Femicide Investigation and Assessment  
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)  
(University Credit)

**11/3/20**

Forum: Forensic Investigation of Torture and Application of the Istanbul Protocol (trans. Foro de actualización en investigación forense de tortura y aplicación de protocolo de

Estambul)

Host: Instituto Nacional de Ciencias Penales (INACIPE)  
(University Credit)

**10/9/20**

Webinar: Femicide Investigation and Assessment  
Host: Asociación Iberoamericana de Derecho, Cultura y Ambiente

**08/14/20**

4th Annual Convencion Internacional de Buenas Practicas en Psicologia Forense  
Lecture: "Criminal Profiling & Crime Scene Analysis Protocols with a Human Rights Perspective"  
Hosts: INACIPE, CONVENCION CONSEJO PSICOLOGIA FORENSE  
Location: Aguascalientes, MEX

**07/31/20**

Lecture: "Crime Scene Analysis and Reconstruction"  
Alaska Public Defender Investigator Training  
Host: State of Alaska Public Defender's Office  
Location: Juneau, Alaska

**05/07/20 - 08/31/20**

Professional Diploma: Diplomado en Técnicas de Investigación de Crímenes Cometidos Contra Defensores y Defensoras de Derechos Humanos bajo la aplicación de normas y estándares internacionales (Forensic Investigation of Crimes Committed Against Social Activists and Human Rights Defenders  
Instructors: Dr. Aurelio Coronado and Dr. Brent Turvey  
Partnership Agreement: The Forensic Criminology Institute; The United Nations, The Fiscalía General de la Nación (Attorney General), and The Instituto de Medicina Legal in Bogota DC; and USAID.  
Location: Bogota DC, Colombia

**03/03/20**

Seminar: Criminal Profiling and Forensic Victimology  
Host: University of Gran Colombia  
Location: Bogota DC

**02/08/20**

Lecture: New Developments in Criminal Profiling  
IAFC / ABP Annual Summit, 20th Anniversary  
Hosts: Ciencia Aplicada; Forensic Solutions, LLC; and The Forensic Criminology Institute  
Location: Sitka, Alaska

**11/28 - 11/29/19**

Seminar: Criminal Profiling & Crime Scene Analysis  
International Forum on Criminal Profiling, Armed Conflict, and Case Prioritization  
Hosts: United Nations, Attorney General's Office - Bogota DC  
Location: Bogota DC, Colombia

**10/27/19**

Conference: 5th Annual Summit of Forensic Experts  
Lecture: Criminal Profiling and Forensic Victimology

Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)  
Location: Hermosillo, Sonoro, MX  
(University Credit)

**10/26/19**

Lecture: Juvenile Victims and Offenders /Systemic Issues  
Conference: "ANÁLISIS CRIMINOLÓGICO DE LA DELINCUENCIA JUVENIL Y NUEVAS TENDENCIAS DE CRIMINALIDAD"  
Host: Gobierno del Estado Sonora, Instituto Superior de Seguridad Pública del Estado and Sistema Nacional de Protección Integral de Niñas, Niños y Adolescentes (SIPINNA)  
Location: Hermosillo, Sonora

**10/26/19**

Seminar: Criminal Profiling & Crime Scene Analysis  
Host: Gobierno del Estado Sonora, Instituto Superior de Seguridad Pública del Estado  
Location: Sonora, Hermosillo

**09/28/19**

Seminar: United Nations Femicide Protocols - Crime Scene Indicators  
Host: Sergio Arboleda University, Faculty of Psychology  
Location: Santa Marta, Colombia  
(University Credit)

**09/27/19**

Seminar: United Nations Femicide Protocols - Crime Scene Indicators  
Host: Universidad de la Costa & Fiscalía General de la Nación (Attorney General's Office)  
Location: Barranquilla, Colombia  
(University Credit)

**09/26/19**

Conference & Expert Panel: 2nd Congreso Internacional de Criminología y Victimología  
Lecture: United Nations Femicide Protocols - Crime Scene Indicators  
Host: Policía Nacional, Bogota & The Escuela de Postgrados de Policía, Bogota  
Location: CESPO / Centro Social De Oficiales De La Policía, Bogota, Colombia

**09/24/19**

Seminar: Forensic Investigations & The United Nations Femicide Protocols  
Host: Konrad Lorenz University, Faculty of Psychology  
Location: Bogota, Colombia  
(University Credit)

**09/23/19**

Seminar: United Nations Femicide Protocols / Forensic Victimology  
Host: Fiscalía General del Estado Queretero (Attorney General's Office) & INMUJERES (National Institute of Women)  
Location: Queretero, MEX

**09/19/19**

Lecture: Criminal Profiling  
Host: INACIPE (Instituto Nacional de Ciencias Penales)  
Location: Mexico City, MEX

**09/18/19**

Seminar: Forensic Criminology & Criminal Profiling  
Host: La Universidad Autonoma de Aguascalientes, Faculty of Social Sciences and Humanities  
Location: Aguascalientes, MEX  
(University Credit)

**09/18/19**

Lecture: Criminal Investigation and Femicide  
Host: Fiscalia General del Estado Aguascalientes (Attorney General's Office)  
Location: Aguascalientes, MEX

**06/07/19**

Conference: 3rd International Convention (Consejo) - Best Practices in Forensic Psychology  
Lecture: Psychology and Forensic Criminology  
Host: Tribunal Superior Justicia (High Court of Chihuahua)  
Location: Chihuahua, MEX

**06/05 - 06/06/19**

Workshop: Crime Scene Analysis and Femicide Investigation  
Host: United States Agency for International Development - PROJJUST (Mexico Promoting Justice Project)  
Location: Mexico City, MEX

**06/04/19**

Lecture: Crime Scene Analysis & Criminal Profiling  
Host: The Instituto de Ciencias, Juridicas, y Forenses  
Location: Tijuana, Baja California

**06/03/19**

Conference: Jornada Internacional de Ciencias, Juridicas, y Forenses  
Lecture: Forensic Investigation and Crime Scene Analysis  
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO) and The Instituto de Ciencias, Juridicas, y Forenses  
Location: San Luis Rio Colorado, Sonora

**05/31/19**

Conference: Convenciones Universitarias - 2019  
Lecture: Serial Homicide & Criminal Profiling  
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)  
Location: Puerto Penasco, Sonora

**05/30/19**

Conference: Jornada Internacional de Ciencias, Juridicas, y Forenses  
Lecture: Crime Scene Analysis & Forensic Science  
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)  
Location: Carborca, Sonora

**04/28/19**

Guest Lecture: Crime Scene Analysis & Forensic Science  
Host: Instructor K. Kulick, Santa Clara Law School  
Location: Santa Clara University, Charney Hall

**02/13/19**

Lecture: Forensic Criminology - Essential Protocols

Host: Fiscalia General del Estado Aguascalientes (Attorney General's Office)  
Location: Aguascalientes, MEX

**02/12/19**

Seminar: Forensic Victimology and Criminology  
Host: La Universidad Autonoma de Queretero  
Location: Queretero, MEX  
(University Credit)

**02/07/19**

Seminar: Forensic Psychology - Best Practices  
Host: Universidad de Guanajuato  
Location: Guanajuato, MEX

**02/05/19**

Seminar: Forensic Victimology and Criminology  
Host: Procuraduria General de Justicia (Office of the Attorney General of Justice), Colima  
Location: Colima, MEX

**2019**

Professional Diploma: Crime Scene Analysis & Criminal Profiling (120 hours)  
Instructors: Paul Ciolino, D-ABP, Dr. Aurelio Coronado, and Dr. Brent Turvey  
Partnership Agreement: The Forensic Criminology Institute & Prairie State College  
Location: Prairie State College, Chicago Heights, Illinois

**2018-2019**

Professional Diploma: Forensic Victimology (120 hours)  
Instructors: Dr. Aurelio Coronado & Dr. Brent Turvey  
Partnership Agreement: The Forensic Criminology Institute & Sergio Arboleda University  
Location: Sergio Arboleda University (Dept. of Psychology), Bogota, Colombia  
(Accredited by Sergio Arboleda University)

**2018-2019**

Professional Diploma: Forensic Victimology (120 hours)  
Instructors: Dr. Aurelio Coronado & Dr. Brent Turvey  
Partnership Agreement: The Forensic Criminology Institute & Instituto de Ciencia Aplicada  
Location: Mexico City, MEX  
(Accredited by Instituto de Ciencia Aplicada, Aguascalientes, MEX)

**2018-2019**

Professional Diploma: Forensic Victimology (120 hours)  
Instructors: Dr. Aurelio Coronado & Dr. Brent Turvey  
Partnership Agreement: The Forensic Criminology Institute & The School of Military Intelligence  
Location: The School of Military Intelligence, Guatemala City, Guatemala  
(Accredited by the School of Military Intelligence)

**12/18/18**

Seminar: Forensic Science & Forensic Fraud  
Host: State Bar Association of Georgia  
Location: State Bar Association, Atlanta, Georgia  
(CLE)

**10/19/18**



Conference: 4th Annual Summit of Forensic Experts  
Lecture: Forensic Victimology and Forced Disappearances  
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)  
Location: Hermosillo, Sonoro, MX  
(University Credit)

**10/17/18**

Lecture: Serial Homicide  
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)  
Location: Navajoa, Sonoro, MX  
(University Credit)

**10/11/18**

Conference: 1 Congreso Internacional de Saberes Juridicos  
Lecture: Femicide - Investigative and Forensic Protocols  
Host: Fiscalia General de la Nación - Barranquilla (Attorney General's Office)  
Location: Estelar Santamarta Hotel & Conference Center, Santamarta, Colombia

**10/10/18**

Seminar: Sex Crimes - Investigative and Forensic Protocols  
Host: Fiscalia General de la Nación - Barranquilla (Attorney General's Office)  
Location: Universidad de la Costa, Barranquilla, Colombia  
(University Credit)

**06/01/18**

Conference: Consejo - Best Practices in Forensic Psychology  
Lecture: Forensic Victimology  
Host: Universidad Autonoma de Aguascalientes/ Instituto de Cienca Aplicada  
Location: Aguascalientes, MX  
(University Credit)

**05/31/18**

Seminar: Forensic Fraud  
Host: Universidad Autonoma de Aguascalientes - School of Law  
Location: Aguascalientes, MX  
(University Credit)

**04/11/18**

Seminar: Psychology of Lies  
Host: Universidad de Santiago, Cali  
Location: Cali, Colombia  
(University Credit)

**2018**

Professional Diploma: Forensic Victimology (120 hours)  
Instructors: Dr. Stan Crowder & Dr. Brent Turvey  
Partnership Agreement: The Forensic Criminology Institute & Georgia Peace Office Standards & Training  
Location: North Central Regional Law Enforcement Training Academy, Austell, Georgia  
(Accredited by Georgia POST)

**2017**

Professional Diploma: Forensic Victimology (120 hours)

Instructors: Dr. Aurelio Coronado & Dr. Brent Turvey  
Partnership Agreement: The Forensic Criminology Institute & Instituto de Ciencia Aplicada  
Location: Mexico City, MEX  
(Accredited by Instituto de Ciencia Aplicada, Aguascalientes, MEX)

**10/21/17**

Seminar: Criminal Profiling and Violent Crime  
Hosts: La Asociación Nacional de Profesionales Forenses (ANPROFOR); La Division de Información Policía Nacional Civil de Guatemala (Guatemalan National Police - Intelligence Div.)  
Location: Guatemala City, Guatemala

**10/20/17**

Conference: International Forum on Criminal Investigation  
Lecture: Forensic Protocols in the Investigation of Crimes Against Children.  
Hosts: RED Criminology Internacional  
Location: Antigua, Guatemala

**10/19/17**

Conference: International Forum on Criminal Investigation  
Lecture: Forensic Protocols in the Investigation of Crimes Against Children.  
Hosts: Facultad de Derecho en la Universidad Autónoma de Querétaro, RED Criminology Internacional  
Location: Campeche, MEX

**10/18/17**

Conference: International Forum on Criminal Investigation  
Lecture: Forensic Protocols in the Investigation of Crimes Against Children.  
Hosts: Facultad de Derecho en la Universidad Autónoma de Querétaro, RED Criminology Internacional  
Location: Querétaro, MEX

**10/12/17**

Conference: 3rd Annual Summit of Forensic Experts  
Lecture: Protocols in Forensic Investigation  
Host: Centro de Estudios Universitarios del Nuevo Occidente (CEUNO)  
Location: Hermosillo, Sonoro, MEX  
(University Credit)

**07/16/17**

Conference: "Criminal Profiling and Neurobiology"  
Hosts: PROCRRIM; El Colegio de Abogados y Notarios de Guatemala; La Universidad de San Carlos de Guatemala; y El Instituto Criminologico de Prevencion de la Violencia  
Location: Guatemala City, Guatemala

**07/15/17**

Conference: "Perfilacion Criminal"  
Host: La Division de Información Policía Nacional Civil de Guatemala (Guatemalan National Police - Intelligence Div.)  
Location: Guatemala City, Guatemala

**07/15/17**

Conference: "Perfilacion Criminal"

Hosts: La Asociación Nacional de Profesionales Forenses (ANPROFOR) & La Dirección de Inteligencia del Estado Mayor de la Defensa Nacional - Guatemala (Guatemalan College of Military Intelligence)

Location: Guatemala City, Guatemala

**07/14/17**

Workshop: "Criminal Profiling and Forensic Psychology: Theory and Practice"

Hosts: CEUNO - Hermosillo; Casa de Juridica, Suprema Corte, Hermosillo, Mexico

Location: Hermosillo, Mexico

**07/13/17**

Conference: Semina de las Ciencias Jurídicas y Forenses

Lecture: "Forensic Victimology"

Hosts: CEUNO - Hermosillo; Casa de Juridica, Suprema Corte, Hermosillo, Mexico

Location: Hermosillo, Mexico

**06/9/17**

Conference: Convencion Internacional de Buenas Practicas en Psicologia Forense

Lecture: "Forensic Victimology: Examining Child Victims and Offenders"

Hosts: The Forensic Criminology Institute & Ciencia Aplicada

Location: Guanajuato, Mexico

**06/6/17**

Workshop: Clínica de Investigación Criminal y Forense de Femicidio

Host: Casa de Juridica, Suprema Corte, Aguascalientes

Location: Aguascalientes, Mexico

**06/03 - 06/04/17**

Workshop: Investigacion Criminal y Forense

Hosts: The Forensic Criminology Institute & Ciencia Aplicada

Location: San Carlos, Sonora, MEX

**04/28/17**

XLIV Congreso Nacional de Psicologia, CNEIP

Universidad Autonoma Nayarit

Lecture: "Forensic Criminology and Psychopathy: Forensic Case Studies"

Location: Tepic, Nayarit, Mexico

**04/26/17**

Expert Round Table Discussion: "Derechos de las Ninas, Ninos, y Adolescents"

Suprema Corte de la Justicia de la Nación, Casa de la Cultura Juridica

Location: Cd. Obregon, Mexico

**04/25/17**

Seminar: "Forensic Investigation and Victimology"

Suprema Corte de la Justicia de la Nación, Casa de la Cultura Juridica

Location: Cd. Obregon, Mexico

**04/21/17**

Instituto de Formación Profesional - PGJ DF

(Government of CDMX, Professional Training and Certification)

Lecture: "Forensic Investigation"

Location: Mexico City, Mexico

**12/3/16**

Seminario Internacional en Perfilacion Criminal  
Lecture: "Criminal Profiling: Case Studies"  
Location: Tuxtepec, Mexico

**11/30/16**

Facultad de Derecho Los Libertadores University  
Lecture: "Linkage Analysis"  
Location: Bogota, Colombia

**11/30/16**

Konrad Lorenz University  
Lecture: "Criminal Profiling: Practice and Protocols"  
Location: Bogota, Colombia

**11/30/16**

Universidad La Gran Colombia  
Lecture: "Criminal Profiling: Practice and Protocols"  
Location: Bogota, Colombia

**10/8/16**

Facultad de Derecho Los Libertadores University  
Lecture: "Forensic Criminology"  
Location: Bogota, Colombia

**10/6 - 10/7/16**

Policia National, DIJIN / GUPEC (Criminal Profiling Unit)  
Lecture: "Crime Scene Analysis, Serial Murder, and Linkage Analysis"  
Location: Bogota, Colombia

**10/6 - 10/7/16**

XVII Simposio Internacional en Investigación Criminal  
Lecture: "Femicide: The United Nations Protocols"  
Certifying Organizations: Policia National, DIJIN; The Colombian Ministry of Justice; and the United Nations  
Location: Bogota, Colombia

**8/13 - 8/14/16**

Workshop: "Advanced Criminal Profiling"  
Certifying Organizations: Cienca Aplicada; International Association of Forensic Criminologists  
Location: Universidad de la Comunicación, Mexico City, Mexico

**8/10/16**

Seminar: "Investigación Criminal y Victimología Forense"  
Universidad de Autonoma de Aguascalientes  
El Departamento de Psicología  
Location: Aguascalientes, Mexico

**8/9/16**

Seminar: "Protocolos básicos de investigación de la escena de crimen"  
Suprema Corte de la Justicia de la Nación, Casa de la Cultura Juridica  
Location: San Luis Potosi, Mexico

**8/8/16**

Seminar: "Perfilacion Criminal"  
CLEU / Fiscalía General del Estado Yucatan  
Location: Merida, Mexico

**8/3/16**

Seminar: "Protocolos básicos de investigación de la escena de crimen"  
Suprema Corte de la Justicia de la Nación, Casa de la Cultura Juridica  
Location: Aguascalientes, Mexico

**4/9 – 4/10/16**

IAFC / ABP Annual Meeting  
Lecture: "IAFC/ ABP Certification Efforts Worldwide: An Update"  
Lecture: "Forensic Case Linkage: Case Study & Expert Testimony"  
Location: Kennesaw State University, Georgia  
(Georgia POST)

**4/7/16**

Workshop: Law Enforcement Use of Force  
Location: Kennesaw State University, Georgia  
(Georgia POST)

**3/25 – 26/16**

4th Congreso, Internacional Asociación de Investigación Forense (AIIF)  
Theme: "Child Homicide Investigation"  
Presentation: "Child Homicides: Case Studies"  
Location: Cd. Mexico, Mexico

**3/24/16**

Seminar: "Psicología de la Mentira" (The Psychology of Lying)  
Certifying Organization: Ciencia Aplicada; IFICP  
Diplomat in Forensic Psychology  
Location: Mexico City, Mexico

**3/18/16**

Análisis de la Evidencia Conductual Criminología Forense y Perfilacion Criminal  
Centro de Estudios Universitarios, Vizcaya de las Americas - Delicias  
Location: Cd. Delicias, Mexico

**3/17/16**

Analisis de Lugar de Intervention y Perfilacion Criminal  
Claustro Universitario de Chihuahua  
Location: Cd. Chihuahua, Mexico

**3/16/16**

Analisis de Lugar de Intervention y Perfilacion Criminal  
La Universidad Autonoma de Ciudad Juarez  
Instituto de Ciencias Biomedica, Maestria en Ciencia Forense  
(Forensic Science Masters Program)  
Location: Cd. Juarez, Mexico

**3/16/16**

Behavioral Evidence and Experts in el System Penal Adversarial  
Fiscalia General del Estado de Chihuahua  
(State of Chihuahua Attorney Generals Office)  
Location: Cd. Juarez, Mexico

**3/15/16**

Analisis de Lugar de Intervention y Perfilacion Criminal  
Universidad De Durango - Juárez  
Criminology Masters Program  
Location: Cd. Juarez, Mexico

**3/13/16**

Seminar Internacional: "Forense de Violencia Sexual"  
Certifying Organization: Cienca Aplicada; IFICP  
Diplomat in Forensic Psychology  
Location: Aguascalientes, Mexico

**3/11/16**

Seminar: "Perfilacion Criminal: Protocols"  
Suprema Corte de Justicia de la Nación  
Location: Casa de le Cultura Juridica, Aguascalientes, Mexico

**11/21/15**

Seminar: "Psicologia de la Mentira en la Investigacion Criminal" (The Psychology of Lying in  
Criminal Investigations)  
Certifying Organization: Cienca Aplicada  
Diplomat in Forensic Psychology  
Location: Aguascalientes, Mexico

**11/18 - 11/20/15**

4th Congreso de InterCLEU, "Criminologia, Delitos Sexuales, y Criminalistica"  
Certifying Organization: CLEU University  
Presentation: "Applied Criminal Profiling: Sexual Homicides"  
Location: Huatulco, Oaxaca, Mexico

**10/17/15**

II Congreso Internacional de Criminalística y Criminología  
Lecture: "Criminal Profiling: International Practice Standards and Professionalization"  
Certifying Organization: Escuela Superior Criminalística  
Location: Madrid, Spain

**10/6 – 10/7/15**

The Association of Forensic Quality Assurance Managers (AFQAM), Annual Training Event  
Lecture: "Forensic Fraud: Scientific Research and Case Studies"  
Location: Pensacola Beach, FL

**10/3 – 10/4/15**

Workshop: "Perfiliacion Criminal Científica"  
Certifying Organization: Asociación Ecuatoriana de Psicología Juridica y Forense  
Certifying Organization: Fiscalia General del Estado (The Attorney General's Office of Ecuador)  
Location: Guayaquil, Ecuador

**10/1 - 10/2/15**

1er Encuentro Internacional de Colombia y la Direccion de Investigaci3n Criminal e Interpol  
Lecture: "Criminal Profiling: International Practice Standards and Professionalization"  
Certifying Organizations: Policia National, DIJIN; The Colombian Ministry of Justice; and the United Nations  
Location: Bogota, Colombia

**9/26 – 9/27/15**

Workshop: "Perfiliacion Criminal Científica"  
Certifying Organization: Psicologia Juridica y Forense of Colombia  
Location: Bogota, Colombia

**9/7 - 9/11/15**

BEA/ Criminal Profiler Certification Training  
Certifying Organization: Universidad Nacional de Investigaci3n Forense, Diplomado Internacional en Perfilacion Criminal  
Location: Juarez, Mexico

**6/25 – 6/26/15**

Oklahoma Criminal Defense Lawyers Association  
Lecture: "Forensic Victimology"  
Lecture: "Forensic Science and Crime Scene Investigation"  
Location: Oklahoma City, Oklahoma  
(CLE)

**5/1 – 5/2/15**

3rd Congreso Internacional de Investigacion Forense  
Theme: "Investigation and Analysis of Homicide Offenses"  
Location: Teatro Charles Chaplin, Guadalajara, Jalisco, Mexico  
Presentations: "Behavioral Evidence Analysis in Homicide Investigations" & "Forensic Victimology in Homicide Investigations"

**4/27 – 4/29/15**

IAFC *Sex Crimes Academy*  
International Assoc. of Forensic Criminologists  
Location: Region 19 Educational Center, El Paso, TX

**3/12/15**

Oklahoma Indigent Defense System - Capital Trial Division  
Seminar: "Forensic Science, Crime Reconstruction, & the Law"  
Location: Tulsa, Oklahoma  
(CLE)

**2/11 - 2/12/15**

1st Congreso de Investigacion Forense y Perfilacion Criminal  
CLEU University  
Dept. of Criminologia y Criminalistica  
Presentations: "Profiling Sexual Homicides" & "Serial Homicide Investigation"  
Location: Guadalajara, Jalisco, Mexico

**2/9 - 2/10/15**

Advanced Criminal Profiling course  
Dept. of Criminologia  
Universidad Vizcaya de las Americas

Location: Tepic, Nayarit, Mexico

**1/26 - 2/5/15**

BEA/ Criminal Profiler Certification Training  
Behavioral and Psychological Analysis Unit  
Unidad de Investigacion de la Defensa  
Policia National, DIJIN  
Location: Bogota, Colombia

**12/14 - 12/18/14**

BEA/ Criminal Profiler Certification Training  
Unidad de Analisis de la Conducta Criminal  
Laboratorio Forense de Ciudad Juarez, Chihuahua, MX  
(Criminal Behavioral Analysis Unit, Attorney General's Forensic Science Laboratory, Juarez)  
Location: Region 19 Educational Center, El Paso, TX

**11/19 - 11/21/14**

XVI Simposio Internacional En Investigacion Criminal  
Location: La Escuela de Investigacion Criminal de la Policia National, Bogota, Colombia  
Lecture: Crime Reconstruction and Criminal Profiling: Case Studies in Behavioral Evidence Analysis

**10/16/14**

9th Annual CSI Conference, Criminology Dept., Regis University  
Location: Regis University, Denver, CO  
Keynote Address: Forensic Victimology and Social Media

**9/12 – 9/13/14**

International Association of Forensic Criminologists and Academia  
Mexicana de Investigadores de Forenses  
1st Congreso Internacional de Ciencias de la Conducta Criminal  
Location: Mexico City, Mexico  
Presentations: Crime Reconstruction, Behavioral Evidence Analysis, and Criminal Profiling

**9/9/14**

Ministerio Publico a Traves de la Unidad de Capacitacion  
Host: Fiscales del Ministerio Publico, Unidad de Capacitacion  
Location: Guatemala City, Guatemala  
Presentation: "Serial Homicide Investigation"

**9/8 – 9/10/14**

Asociacion de Criminologos y Criminalistas  
V Congreso Internacional de Ciencias Forenses  
Location: Guatemala City, Guatemala  
Presentations: Crime Reconstruction, Behavioral Evidence Analysis, Forensic Ethics, and Forensic Fraud

**5/2/14**

Policia Municipal Juarez  
La Academia de Policia de la SSPM  
Location: Juarez, Mexico  
Lecture: "Forensic Victimology"



**4/29/14**

Escuela Superior de Psicología de Cd. Juárez, A.C.  
XXIX Semana de Psicología  
Location: Juarez, Mexico  
Presentation: "Criminal Profiling"  
Presentation: "Ethical Justice"

**1/9 – 1/11/14**

Elgin Community College/ International Assoc. of Forensic Criminologists  
IAFC *Sex Crimes Academy*  
(College Credit)

**11/25 - 11/29/13**

International Training Workshop: Criminal Investigation and Forensic Science; Unidad de Investigacion de la Defensa; Policia National, DIJIN - Colombia  
Host: Direccion de Investigacion Criminal e Interpol  
Location: Bogota, Colombia

**11/21 - 11/23/13**

La Asociacion de Criminologos y Criminalistas de Guatemala  
IV Congreso Internacional de Cienses Forenses e Investigacion Criminal  
Host: Universidad de Occidente, Guatemala  
Location: Guatemala City, Guatemala

**11/22/13**

The Golan Security Group  
Location: Guatemala City, Guatemala  
Presentation: "Forensic Science, Crime Reconstruction, and Behavioral Evidence"

**11/20/13**

Instituto Nacional de Ciencias Forenses de Guatemala (INACIF)  
(National Institute of Forensic Science - Guatemala)  
Host: Dr. Jorge Nery Cabrera Cabrera, Director, INACIF  
Location: Guatemala City, Guatemala  
Presentation: "Forensic Science, Crime Reconstruction, and Behavioral Evidence"

**11/14 - 11/16/13**

Congreso Internacional en Crimologia y Criminalistica Forense  
Host: Universidad del Sur  
Location: Cancun, Mexico

**9/13 - 9/14/13**

1st BiNational Conference of the Academia Mexicana De Investigadores Forenses (AMIF) and the International Association of Forensic Criminologists (IAFC 14th Annual Meeting)  
Host: Chihuahua Attorney General's Office Crime Lab  
Location: Juarez, Mexico  
Presentation: "Criminal Profiling - Principles and Practice"

**05/23 – 05/24/13**

Elgin Community College/ International Assoc. of Forensic Criminologists, Elgin, IL

*Workshop: Crime Scene Analysis and Criminal Profiling*  
(College Credit)

**3/15 - 3/16/13**

1st International Congress of Criminal Profiling and Forensic Psychology  
Location: Congress Unit XXI Century Hospital & The Institute of Forensic Science at Tribunal Superior de Justicia del Distrito Federal in Mexico City, Mexico

**12/13 – 12/14/12**

Kennesaw State University - Paulding Campus  
Sponsor: KSU Police Department  
*Workshop: Forensic Victimology*  
(Georgia POST Certified)

**11/10/12**

2nd Congress of the Sociedade Portuguesa de Psiquiatria e Psicologia da Justiça Instituto Superior da Maia (Institute of Maia) in Porto, Portugal  
*Lecture: Applied Behavioral Evidence Analysis*

**11/9/12**

Instituto Superior da Maia (Institute of Maia)  
Criminology Dept., Porto, Portugal  
*Workshop: Crime Scene Analysis and Criminal Profiling*

**10/25/12**

Korea Creative Content Agency  
Seoul, Korea  
*Lecture: Criminal Profiling & Crime Reconstruction*

**10/22/12**

Korean National Police University  
2nd International Seminar: "Changes in policing environment and redefinition of the role of the police"  
*Lecture: Criminal Profiling & Scientific Investigation*  
Seoul, Korea  
(College Credit)

**09/15 – 09/16/12**

Academy of Behavioral Profiling/  
International Assoc. of Forensic Criminologists, 13th Annual Meeting  
Oklahoma City University, Oklahoma City, OK  
(College Credit)

**09/19 – 09/20/11**

Academy of Behavioral Profiling/ Seattle University, Seattle, WA  
*Workshop: Criminal Profiling Practicum*  
(College Credit)

**09/17 – 09/18/11**

Academy of Behavioral Profiling, 12th Annual Meeting,  
Seattle University, Seattle, WA  
*Lecture: Social Network Evidence in Cases of Sexual Assault*

*Case Study:* OR v. Driscoll - False Reports and Sexual Assault

*Lecture:* Sex Trafficking - A Culture of Rape

*Case Study:* Staged Sexual Homicide

*Lecture:* Linkage Analysis & *NJ v. Bruce Sterling*

(College Credit)

**04/11/11**

Evergreen State College, Olympia, WA

*Workshop:* Crime Scene Analysis and Criminal Profiling

(College Credit)

**04/08 – 04/09/11**

Elgin Community College/ Academy of Behavioral Profiling, Elgin, IL

*Workshop:* Crime Scene Analysis and Criminal Profiling

(College Credit)

**04/04/11**

Alaska Association of Fire & Arson Investigators, Sitka, Alaska

*Lecture:* Forensic Science, Crime Reconstruction, & Criminal Profiling

**10/18 – 10/19/10**

Sponsor: KSU Police Dept./ Cobb County

Kennesaw State University, Kennesaw, GA

*Workshop:* Crime Scene Analysis and Reconstruction

(POST Certified)

**08/09 – 08/10/10**

Owens College/ Academy of Behavioral Profiling Toledo, OH

*Workshop:* Criminal Profiling

**08/07 – 08/08/10**

Academy of Behavioral Profiling, 11th Annual Meeting

Owens College, Toledo, OH

*Lecture:* Behavioral Evidence Analysis

*Lecture:* Serial Rape & Serial Homicide: Case Presentation

*Lecture:* Linkage Analysis

**06/01/10**

Crown Office and Prosecutorial Fiscal Service

Glasgow, Scotland

*Lecture:* Case Linkage: M.O. & Signature Analysis

**05/31/10**

Scottish Police College

Tulliallan Castle, Kincardine,

Fife, Scotland

*Lecture:* Case Linkage: M.O. & Signature Analysis

**04/07/10**

Bemidji State University, Bemidji, MN

*Keynote Speaker:* 11th Annual Student Scholarship and Creative Achievement Conference

**08/10 – 08/11/09**

Grossmont College, El Cajon, CA  
*Workshop:* Forensic Victimology Practicum  
(College credit)

**08/08 – 08/09/09**

Academy of Behavioral Profiling, 10th Annual Meeting  
Grossmont College  
*Lecture:* Forensic Criminology  
*Lecture:* Behavioral Evidence & Criminal Profiling: An Introduction  
*Lecture:* The NAS Report: Implications for Forensic Examiners  
(College credit)

**07/10/09**

South Carolina Assoc. of Criminal Defense Lawyers  
*Lecture:* The NAS Report  
(CLE credit)

**03/16 – 04/06/09**

Bond University, Gold Coast, Australia  
*Guest Lecturer:* Criminology Dept.

**08/11 – 08/12/08**

Kennesaw State University, Kennesaw, GA  
*Workshop:* Criminal Profiling Evidence Practicum  
(POST Certified)

**08/09 – 08/10/08**

Academy of Behavioral Profiling, 9th Annual Meeting  
Kennesaw State University, Kennesaw, GA  
*Lecture:* Principles of Behavioral Evidence Analysis  
*Lecture:* Forensic Victimology  
*Round-Table Discussion:* Forensic Criminology  
(POST Certified)

**03/22 – 03/23/08**

Bond University, Gold Coast, Australia  
*Workshop:* Behavioral Evidence Practicum

**03/14/08**

Bond University, Gold Coast, Australia  
Faculty Luncheon Lecture Series  
*Lecture:* Forensic Victimology

**03/06 – 03/25/08**

Bond University, Gold Coast, Australia  
*Guest Lecturer:* Criminology Dept.

**2/17/08**

California Attorneys For Criminal Justice, Monterey, CA  
*Presentation:* Profiling and Behavioral Evidence

**08/11 – 08/12/07**

Academy of Behavioral Profiling, 8th Annual Meeting  
*Lecture:* Principles of Behavioral Evidence Analysis  
*Presentation:* Child Sexual Homicide – A Case Study in Victimology

**04/19/07**

Kern County Bar Association, Indigent Defense Program  
*Lecture:* Crime Reconstruction & Forensic Fraud

**03/31 – 04/01/07**

Bond University, Gold Coast, Australia  
*Workshop:* Behavioral Evidence Practicum

**03/20 – 04/05/07**

Bond University, Gold Coast, Australia  
*Guest Lecturer:* Criminology Dept.

**02/08 – 02/09/07**

Home Team (Police) Academy, Singapore  
Behavioral Sciences Programme  
*Workshop:* Criminal Profiling & Behavioral Evidence Analysis

**02/06/07**

1st Home Team Behavioral Sciences Conference  
Home Team (Police) Academy, Singapore  
*Lecture:* Criminal Profiling & Behavioral Evidence Analysis

**08/12 – 08/13/06**

Academy of Behavioral Profiling, 7th Annual Meeting  
*Presentation:* Body Count - Examining Behavioral Evidence in a  
Mass Murder; Wayne Petherick, Mkrim, co-presenter  
*Presentation:* Truth or Consequences - False Reports of Sexual Assault at Trial

**05/04/06**

Oregon Criminal Defense Lawyers Association  
Agate Beach Hotel, Newport, Oregon  
*Lecture:* Forensic Fraud

**04/10 – 04/11/06**

Bond University, Gold Coast, Australia  
*Workshop:* Arson Reconstruction & Criminal Profiling

**04/08 – 04/09/06**

Bond University, Gold Coast, Australia  
*Workshop:* Crime Reconstruction & Criminal Profiling

**12/19/05**

Chinese People's Public Security University, Beijing, China  
*Lecture:* Rape Investigation & Victimology  
*Presentations:* Various case studies

**12/18/05**

Xi'an Police Bureau, Xi'an, China  
*Lecture:* Criminal Profiling & Crime Reconstruction

*Presentations:* Various case studies

**12/15/05**

Chinese People's Public Security University, Beijing, China

*Lecture:* Criminal Profiling & Crime Reconstruction

*Presentations:* Various case studies

**11/15 – 11/17/05**

Forensic Investigative Conference, Un. of Arkansas, CEC

Topics & Workshop: Forensic Science, Criminal Profiling, & Sex Crimes

**08/06 – 08/07/05**

Academy of Behavioral Profiling, 6th Annual Meeting

*Presentation:* Behavioral Evidence & Criminal Profiling

*Presentation:* Crime Reconstruction

*Presentation:* The Substitution of Criminal Profiler Reports and Testimony for Physical Evidence: Recent Cases and Trends

**04/02 – 04/03/05**

Bond University, Gold Coast, Australia

*Workshop:* Sex Crimes Investigation

**01/14/05**

DePaul University, College of Law, Chicago, Illinois

*Presentation:* Crime Reconstruction

*Presentation:* Criminal Profiling

**10/9 – 10/10/04**

Academy of Behavioral Profiling, 5th Annual Meeting, Las Vegas, NV

*Presentation:* Forensic Fraud

*Presentation:* Unusual Behavior in Domestic Homicide

**2/15/04**

California Attorneys For Criminal Justice, Monterey, CA

*Presentation:* Behavioral Evidence

**12/04/03**

Loyola University, New Orleans, Louisiana

*Lecture:* Forensic Science & Criminal Profiling

**10/04/03**

Northwest Orthopaedic Group 21st Annual Meeting

Seaside, Oregon

*Lecture:* Forensic Science and Crime Reconstruction

**10/12 – 10/13/02**

Academy of Behavioral Profiling, 4th Annual Meeting

Chicago, Illinois

*Presentation:* Sexual Homicide

*Presentation:* Serial Murder

*Presentation:* Linkage Analysis

**10/05/02**

Northwest Orthopaedic Group 20th Annual Meeting  
Seaside, Oregon  
*Lecture:* Forensic Science and Crime Reconstruction

**9/26 – 9/29/02**

Behavioral Evidence Analysis Conference  
Bond University, Gold Coast, Australia  
*Lecture:* Criminal Profiling & Premises Liability  
*Presentations:* Various case studies

**9/22/02**

Bond University, Gold Coast, Australia  
*Workshop:* Criminal Profiling

**8/17/02**

Shanghai Police Bureau, Shanghai, China  
*Lecture:* Criminal Profiling & Criminal Investigation  
*Presentations:* Various case studies

**8/14 – 8/15/02**

Hangzhou Police Bureau, Hangzhou, China  
*Lecture:* Criminal Profiling & Criminal Investigation  
*Lecture:* Applied Behavioral Evidence Analysis techniques  
*Presentations:* Various case studies

**8/12/02**

Wuhan Police Bureau, Wuhan, China  
*Lecture:* Criminal Profiling & Criminal Investigation  
*Presentations:* Various case studies

**8/11/02**

Chinese People's Police Security University, Beijing, China  
*Lecture:* Criminal Profiling & Criminal Investigation

**8/09/02**

Beijing Police Bureau, Beijing, China  
*Lecture:* Criminal Profiling & Criminal Investigation: Applied Behavioral Evidence Analysis techniques  
*Presentations:* Various case studies

**4/12/02**

KENNESAW STATE UNIVERSITY, Marietta, GA  
*Lecture:* Criminal Profiling & Sexual Homicide Investigation

**12/15 – 12/16/01**

ACADEMY OF BEHAVIORAL PROFILING, 3RD ANNUAL MEETING  
East Rutherford, NJ  
*Presentation:* M.O. & Signature Analysis  
*Presentation:* Criminal Profiling & Premises Liability

**5/24/01**

SOUTH PUGET SOUND COMMUNITY COLLEGE, Olympia, WA  
*Lecture:* Criminal Profiling & Serial Homicide Investigation

**3/14 – 3/15/01**

GREATER ST. LOUIS MAJOR CASE SQUAD / SOUTHWESTERN ILLINOIS  
LAW ENFORCEMENT COMMISSION, Collinsville, Ill  
*Seminar:* Criminal Profiling & Cold Case Investigations

**10/7/00**

ACADEMY OF BEHAVIORAL PROFILING, 2ND ANNUAL MEETING  
Las Vegas, NV  
*Presentation:* Profiling Testimony in Court in a Dismemberment Case  
*Presentation:* Criminal Profiling in the Marilyn R. Sheppard Homicide

**3/17/00**

PACIFIC NORTHWEST ASSOCIATION OF INVESTIGATORS  
Vancouver, WA  
*Presentation:* Criminal Profiling & Crime Reconstruction

**2/19/00**

CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE, Monterey, CA  
*Plenary Session:* Forensics and Mitigation

**1/13 – 1/16/00**

CENTER FOR APPLIED PSYCHOLOGY & CRIMINOLOGY  
Bond University, Gold Coast, Australia  
*Short Course:* Behavioral Evidence Analysis

**12/3/99**

MILWAUKEE PUBLIC DEFENDER'S OFFICE, Milwaukee, WI  
*Presentation:* Crime Reconstruction: A Legal Primer

**10/20/99**

TRI-COUNTY INVESTIGATORS ASSOCIATION  
Ventura, CA  
*Presentation:* Sexual Homicide Investigation

**10/9/99**

ACADEMY OF BEHAVIORAL PROFILING, 1ST ANNUAL MEETING  
Monterey, CA  
*Paper:* Getting Back to Gross: Criminal Profiling & Crime Reconstruction  
*Presentation:* The West Memphis case: A Case Study in Criminal Profiling

**7/1/99**

BAY AREA CRIME ANALYSTS ASSOCIATION  
Antioch Police Dept., Antioch, CA  
*Presentation:* Behavioral Evidence Analysis

**2/19/99**

AMERICAN ACADEMY OF FORENSIC SCIENCES (AAFS) SCIENTIFIC  
SESSIONS - GENERAL SECTION, Orlando, FL  
*Paper:* Psychological Crime Scene Tape: The Investigative Use of Rapist Motivational  
Typologies  
*Paper:* Recognizing Sadism: The Importance of Reconstruction and Wound Pattern Analysis in  
Criminal Profiling



**2/16/99**

AAFS SPECIAL SESSION: *YOUNG FORENSIC SCIENTISTS FORUM*

Orlando, FL

*Presentation:* Career tracks in the forensic sciences

**2/15/99**

AAFS WORKSHOP: *THE INTERNET FOR FORENSIC SCIENTISTS*

Orlando, FL

*Presentations:* Professional use of email; Online forensic science educational models

**1/19 – 1/22/99**

University of California, San Diego

School of Medicine, Department of Psychiatry, Addiction Technology

Transfer Center, San Diego, CA

*Topic:* Mixing of Sex Offenders in Custodial Drug Treatment

Therapeutic Community Units: Problems and Potential Solutions- A Gathering of Leading Experts

**5/26 – 5/27/98**

LOS ANGELES POLICE ACADEMY MAGNET SCHOOL

Monroe High School and San Pedro High School in CA

*Workshops:* Careers in Forensic Science; Computer and Internet Crime

**5/09/98**

CALIFORNIA ASSOCIATION OF CRIMINALISTS

SEMI-ANNUAL TRAINING SEMINAR: Held in Monterey, CA

*Presentation:* Criminal profiling and interpreting sadism in the crime scene from physical evidence

**3/11/98**

CALIFORNIA ASSOCIATION OF CRIMINALISTS

DINNER MEETING: Held in Hayward, CA

*Presentation:* Forensic science education online; Criminal Profiling techniques

**2/24/98**

NORTHERN ILLINOIS UNIVERSITY

DEKALB, ILLINOIS, NIU CAMPUS, SOC. / CRIM. DEPT.

*Presentation:* Criminal Profiling & Rape Homicide Investigation

**Petition for Post-Conviction Relief**

# **EXHIBIT C**

Brian Keith Pippitt  
Crime Scene and Laboratory Analysis  
Review

May 18, 2023

A handwritten signature in blue ink that reads "Linda R. Netzel". The signature is written in a cursive style.

Linda R. Netzel, Consulting Criminalist

## Table of Contents

<b>Background .....</b>	<b>3</b>
Discovery Utilized in Analysis .....	3
Limitations to the Review .....	4
Summary of Event .....	4
Qualifications.....	5
Associative and Reconstruction Evidence .....	5
Investigative Question .....	5
Window Terminology Used in this Case.....	6
<b>Crime Scene Investigation .....</b>	<b>6</b>
<b>Basement window and related evidence.....</b>	<b>7</b>
Exterior evidence from the window.....	7
Interior evidence from the window .....	9
Trap door and kitchen chair.....	10
On scene reconstruction .....	11
<b>Minnesota Bureau of Criminal Apprehension Laboratory Reports .....</b>	<b>12</b>
<b>Analysis .....</b>	<b>13</b>
Window well.....	13
Campbell’s Juices Boxes.....	15
Lath Boards.....	17
Glass panes and muntins .....	19
Footwear Impressions .....	21
Lack of Trace Evidence .....	22
<b>Discussion.....</b>	<b>23</b>
Plate Glass Breakage.....	23
Location of Various Items Associated with the South Window.....	24
Other considerations .....	24
<b>Conclusions and Opinions .....</b>	<b>25</b>
<b>Annex A .....</b>	<b>27</b>
<b>Annex B .....</b>	<b>28</b>
<b>Annex C .....</b>	<b>29</b>
<b>Annex D.....</b>	<b>30</b>

## Background

On April 7, 2023 I was contacted by Attorney James Cousins regarding the 1998 homicide of Evelyn Malin in Aitkin County, Minnesota. Mr. Cousins requested that I review evidence around a window at the crime scene. I was provided the reports by first responders to the scene, reports from the Minnesota Bureau of Criminal Apprehension Crime Laboratory, photographs of the scene and evidence, and a video taken of the crime scene.

On April 8, 2023 I requested the criminal complaint and autopsy report. On April 17, 2023 I requested the full bench notes of crime laboratory examiners, field notes from the crime scene team, testimony provided by first responders, statements and testimony by the victim's daughter, Norma Horner, and her friend, Gerald Horsman, a list of all evidence recovered and testimony of laboratory personnel. Limited field notes by the crime scene team were available and though Gerald Horsman gave a statement he did not testify.

## Discovery Utilized in Analysis

The following list provides the documentation that I have primarily relied upon to support my opinion in this case (date format is given as found on documents):

Report by Aitkin County Minnesota Sergeant Scott Turner, date stamped Mar 25, 1998  
Report by Aitkin County, MN Deputy Mark Fredin, date stamp Mar (unreadable day), 1998  
Report by Aitkin County, MN Deputy Seth Jacobs, date stamped Mar 25, 1998  
Report by Aitkin County, MN Deputy John Drahota, date stamped Mar 25, 1998  
Testimony of Deputies John Drahota and Mark Fredin and Sgt. Scott Turner, unknown date  
Crime Scene Photographs, MN BCA Lab Crime Scene Team (many are date stamped 2 25 '98)  
Crime Scene Video of 47' 42" length, MN BCA Lab Crime Scene Team recorded 2/25/1998  
Interviews of Norma Horner, February 25, 1998 and February 26, 1998  
Interviews of Gerald Horsman, February 25, 1998 and February 26, 1998  
Testimony of Norma Horner, unknown date  
Field Report co-signed by Forensic Scientist<sup>1</sup> III Gary L. Kaldun and Forensic Scientist Nathaniel J. Pearlson dated March 13, 1998  
Testimony of Gary Kaldun, unknown date  
Crime Scene Diagram by Forensic Artist P. Johnson, dated 2/25/98  
Crime Laboratory Report Supplement 1 and bench notes by Forensic Scientist Janice K. Bronson, dated March 24, 1998  
Crime Laboratory Report Supplement 3 and bench notes by Forensic Scientist Roger E. Papke, dated June 9, 1998  
Crime Laboratory Report Supplement 7 and bench notes by Forensic Scientist Laura A. Nelson, dated March 19, 1999

While this list is not exhaustive, it represents the documentation most relevant to the analysis of the basement window as a possible point of entry (POE).

---

<sup>1</sup> Forensic Scientist will be abbreviated as FS in this report.

### Limitations to the Review

During review of both the scene photographs and video, there exists a gap in documentation that hindered a full analysis of the evidence related to the basement window. There are no close-up photographs or video of the areas directly under the window to include the boxes and floor area. There is also a lack of similar documentation on top of the boxes directly to the right of this window and only glass shards on the floor were captured in a close-up photograph. No close-up photographs of the interior edge of the window frame where the glass panes would sit were provided and apparently do not exist. This missing documentation required that some reasonable assumptions be made during my analysis.

Further limitations to the review are the format of the photographs themselves. The original photographs were a 35mm film format. These photographs were digitized, which somewhat limited zooming into various areas of interest without substantial loss of resolution. However, these limitations did not preclude my ability to determine that the window was staged to appear as the point of entry.

### Summary of Event

On February 25, 1998, Evelyn Malin was discovered deceased in her residence at the back of a convenience store she owned and operated. The scene was located in Aitkin County, Minnesota, which was a small rural community at the time. The residence/business was found to be locked according to her daughter, Norma Horner and Norma's friend, Gerald Horsman. They reported that they saw the victim the previous night, February 24, 1998, between 7:00 and 8:00 pm and Norma also spoke to Evelyn at 9:00 pm on the phone. The last conversation was to inform Norma that Evelyn was not feeling well and she instructed Norma not to come back that evening because she was going to bed.<sup>2,3</sup>

Norma and Gerald noted that a storm window had been removed from a main floor window on the south of the building and that an adjacent basement window was also disturbed. They were unable to raise Evelyn by pounding on the back door and windows to her bedroom. Norma was able to unlock the back screen door by pulling the screen away and unlatching the "hook and eye" lock. They attempted to use a key to open the interior door but were unsuccessful. Apparently, a skeleton key used on this door was still engaged from the inside. Unable to gain access, they called 911 for assistance.

Four Aitkin County deputies arrived at the scene and made a forced entry through the back door. During their search of the premises, Deputy Drahota testified that he saw a trap door to the basement partially propped open with a kitchen chair sitting on top of it.<sup>4</sup>

---

<sup>2</sup> See interview of Norma Horner, 2/25/1998

<sup>3</sup> See interview of Gerald Horsman, 2/25/1998

<sup>4</sup> See trial testimony of Deputy John Drahota, page 163 of transcript, unknown date

## Qualifications

During my 25-year career with the Kansas City Police Department Crime Laboratory I attended and participated in hundreds of crime scene investigations. Early in my career I was responsible for attending crime scenes to aid investigators in decision making and helping to identify potential associative and reconstruction evidence. I was also at times responsible for responding to and actively participating in crime scene processing. I attended training in crime scene investigation techniques and later taught trace evidence and reconstruction to hundreds of law enforcement members and others responsible for evidence collection. I also trained and worked as a criminalist specifically in the areas of DNA and Trace Evidence analysis.

As a Senior Criminalist, I was responsible for the analysis of physical evidence in primarily crimes against persons. During my case working tenure, I examined items of evidence for traces of body fluids, hairs, fibers and other types of microscopic evidence from hundreds of rape cases and homicides. I successfully completed proficiency tests on an annual basis in the various aspects of trace analysis with an emphasis on the identification of body fluids, DNA analysis and bloodstain pattern analysis. Also, I was a certified Diplomate with the American Board of Criminalistics, which required that I participated in continued forensic education and training.

In 2005, I became the director of the KCPD Crime Laboratory. The KCPD Laboratory employed 75 individuals including 49 scientists and 18 crime scene investigators. In this role, until my retirement in 2019, I was responsible for assuring the quality of work done by scientists in seven forensic disciplines, which involved approval of standard operating procedures, validation of techniques, annual auditing and testimony review. The seven disciplines included Biology/DNA, Chemistry, Crime Scene Investigation, Digital Imaging, Firearms and Toolmarks, Latent Prints and Trace Evidence. This experience qualifies me to evaluate crime scene processing and analysis of evidence. I have provided my curriculum vitae to James Cousins, Esq.

## Associative and Reconstruction Evidence

Associative evidence includes items from a crime scene that can potentially connect either people or objects with the crime. The goal of crime scene processing is to locate physical evidence for the purpose of identifying an association. Associations can be between a suspect and the scene, the suspect and the victim, or the victim and the scene. The most common associations are made using fingerprints and deoxyribonucleic acid (DNA) but a great deal of trace and other types of physical evidence can also result in an association.

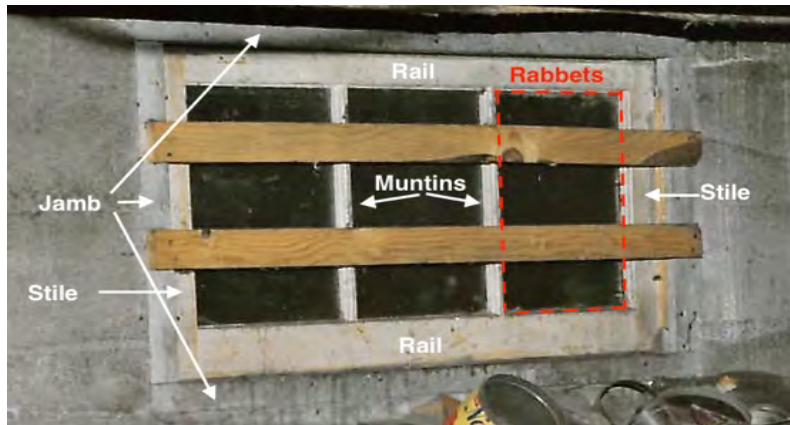
The reconstruction effort attempts to explain the various micro events that occurred during the commission of a crime and explain how evidence relates to the scene. In other words, reconstruction is used to determine what happened before, during and after the crime was committed.

## Investigative Question

Mr. Cousins specifically requested I review evidence related to a basement window that investigators reported as the point of entry.

### Window Terminology Used in this Case

The south window treated by investigators as the point of entry (POE) was similar to another window on the east side of the basement. The exterior of this window and the area underneath and inside the basement, appear undisturbed. The following photograph of the east window has been annotated to depict terminology used in this report.



Photograph 1 of the undisturbed basement window<sup>5</sup>

The window *jamb* is the outer, permanent frame surrounding the window frame. The top and bottom of the window frame are referred to as *rails*, and the sides are called the *stiles*. The rails and stiles joined together form the window frame. This window has three panes of glass separated by wood *muntins*. Glass panes rest against *rabbets*, which are recessed spaces at the edges of the muntins, rails and stiles.<sup>6</sup> Both basement windows appeared to lack hardware such as hinges, handles or locks. Both windows had 1" X 3" (nominal size) boards attached to the vertical sides of their jambs.

### Crime Scene Investigation

Norma Horner and Gerald Horsman arrived at the Dollar Lake Store reportedly at 8:30 am. Because they noted newspapers on the front door stoop and the fact that the "OPEN" sign was not illuminated, they believed the front screen door would have been locked. However, Norma testified that she did not believe they actually checked to see if the front screen door was locked.<sup>7</sup> Their only attempt to enter involved the unlocking of the back screen door.

The crime scene investigation began after deputies forced the back door open in an attempt to locate Evelyn Malin. The back door entered into the living space of the building which contained a small kitchen area and Evelyn's bedroom. Within the kitchen area there was a trap door used to enter the basement. Both Deputy Drahota<sup>8</sup> and Sergeant Turner<sup>9</sup> described the trap door as being propped open with a board and a kitchen chair sitting on top of the door. There are no

<sup>5</sup> See photograph 2015\_03\_27\_09\_27\_14.jpg, enhanced, cropped and annotated

<sup>6</sup> See Annex A for a cross section view of a window with muntins

<sup>7</sup> See trial testimony of Norma Horner, page 46, unknown date

<sup>8</sup> See trial testimony of Drahota, page 163, unknown date

<sup>9</sup> See trial testimony of Sgt. Turner, page 191, unknown date

images of this described condition. Sgt. Turner removed the chair and opened the trap door to access the basement before Evelyn's body was discovered on the floor of her bedroom. Neither the board nor the chair were collected and it is unknown if either were processed for fingerprints. No fingerprints from these items were submitted to the laboratory for analysis.

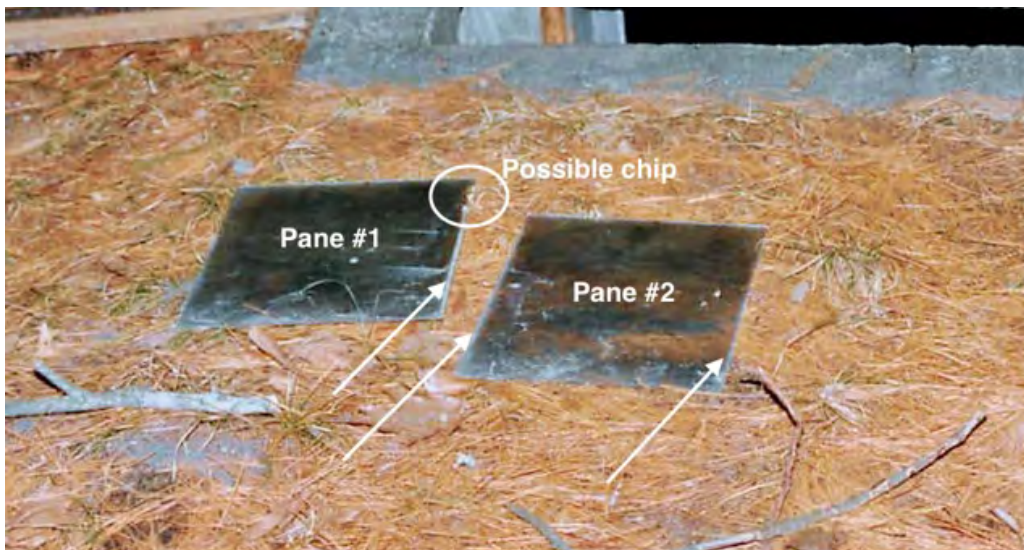
The first responding officers were directed to the south side of the building where a storm window had been removed from a main floor window and two panes of glass were on the ground near a south basement window. This basement window was treated as the point of entry during the investigation.

### Basement window and related evidence

The south basement window was below ground level and accessible from the outside through a concrete window well. Pine needles surrounded the area of the window well. The window was accessible from the inside at the top of the basement foundation wall. Beneath the window, on the inside, were boxes of store goods and a partial sandy floor. This sandy floor transitioned to concrete several feet away and towards the stairs leading to the trap door.

### Exterior evidence from the window

The two panes of glass near the window well appear unbroken. The glass panes were lying side by side and lines of demarcation (margins) where glazing putty would have secured the glass are visible; these areas reflected light differently and are highlighted by the white arrows in the photograph below. Pane #1 appears to have a chip in the upper right corner where the glazing margin appears interrupted. Neither pane was recovered by the crime scene team and no fingerprints were found.



Photograph 2 from exterior of building<sup>10</sup>

<sup>10</sup> See photograph 2015\_03\_27\_09\_20\_28.jpg, enhanced, cropped and annotated



To the left of the window well were two boards that were similar to the boards nailed in place over the inside of the east basement window referenced earlier. One board was completely intact while the second was broken at the edge of a knot in the wood. Both boards were collected.



Photograph 3 of the boards used to secure the window from the inside<sup>11</sup>

Inside the window well dried vegetation can be seen and some small pieces of broken glass. The broken glass was lying near the outside of the lower rail of the window frame.



Photograph 4 with marker 3 identifying small glass pieces<sup>12</sup>

The small glass pieces were collected as Item 3, “known glass” from the south window. The evidence marker is approximately 3 inches wide, and most of the glass pieces appear to be less than an inch long.

---

<sup>11</sup>See photograph 2015\_03\_27\_09\_20\_30.jpg, enhanced and cropped

<sup>12</sup> See photograph 2015\_3\_27\_09\_21\_25.jpg, enhanced, cropped and annotated

Hairs and fibers, collected as Item 2, were collected from the outer, top portion of the window jamb and not the actual window frame recovered as Item 16.<sup>13</sup>

#### Interior evidence from the window

Evidence inside the basement and near the window included footwear impressions in sand, large shards of glass, the window frame, a broken piece of the lower 1" X 3" lath board still attached to the jamb, and the two muntins. Photograph 5 captured the window and below it while photograph 6 captured the area to the right of the window:



Photograph 5<sup>14</sup>



Photograph 6<sup>15</sup>

Item 15, contained the swab of blood from a shard of glass but none of the glass itself was collected.<sup>16</sup> There are no photographs that show any glass was found directly under the window.

The Item 16 description described a window pane however no glass was recovered and only the frame, wood lath (1" X 3" boards) and window dividers (muntins) were described by FS Papke.<sup>17</sup>

Also, visible under the window are what appear to be water stains where snow melt or heavy rain came in under the window frame.

<sup>13</sup> See photograph 2015\_3\_27\_09\_21\_22.jpg

<sup>14</sup> See photograph 2015\_03\_27\_09\_25\_42.jpg, enhanced and annotated

<sup>15</sup> See photograph 2015\_03\_27\_09\_25\_39.jpg, enhanced and annotated

<sup>16</sup> See Field Report by FSIII Gary Kaldun, dated March 13, 1998 with the list of evidence and source page 3

<sup>17</sup> See bench notes of FS Roger Papke, page 10

### Trap door and kitchen chair

Sergeant Turner and Deputy Drahota both described the trap door as being propped open and with a kitchen chair sitting on top of it.<sup>18,19</sup> If the basement window was used as the point of entry, the perpetrator could only gain access to the main floor via this trap door. This presumes there is no other access between the basement and main floor, but none was seen in the discovery provided. With the trap door being nearly closed, the chair was likely placed on it after it was propped.

Drahota stated in his report that the trap door was partially open and a 1" X 6" board held the door open. He testified that this board was oriented on its edge, propping the door open about 6".<sup>20</sup> When the trap door was opened by Sgt. Turner, this board fell to the basement floor. That the board fell to the floor indicates that the balance of its weight was such that when the door was lifted, the 1" X 6" board was heavy enough and out of balance causing it to fall. There are no overall photographs of the top of the trap door so it could not be determined if the door had a handle. There were also no questions asked of Norma or Gerald as to whether or not this board was typically used to prop the door.

Photograph 7 depicts the board used to prop the trap door open and photograph 8 depicts other similar loose boards leaning against a beam nearby (white rectangle) and between the south window and the stairs to the trap door.



Photograph 7<sup>21</sup>



Photograph 8<sup>22</sup>

<sup>18</sup> See report by Sgt. Turner, date stamped Mar 25, 1998, page 3

<sup>19</sup> See report by Deputy Drahota, date stamped Mar 25, 1998, page 3

<sup>20</sup> See trial testimony of Deputy Drahota, unknown date, page 147 of transcript

<sup>21</sup> See photograph 2015\_03\_27\_09\_24\_26.jpg, enhanced

<sup>22</sup> See photograph 2015\_03\_27\_09\_24\_34.jpg, enhanced and annotated

### On scene reconstruction

The crime scene team treated the south basement window as the point of entry throughout its investigation. Although they failed to collect the window panes from the exterior or any glass from inside of the basement, they did attempt to “match” the lath boards to the window jamb. Photograph 9, shows the straightforward placement of the lower board, facilitated by the other piece attached to the jamb and the knot in the board.<sup>23</sup>



Photograph 9

Photograph 10 depicts the reconstruction of the top board.<sup>24</sup>



Photograph 10

<sup>23</sup> See photograph 2015\_03\_27\_09\_27\_23.jpg, enhanced

<sup>24</sup> See photograph 2015\_03\_27\_09\_27\_27.jpg, enhanced

Also noted in both of these photographs are the additional wood pieces located at the upper corners and the middle of the upper jamb and top rail. Photograph 9, also shows a piece of wood across the lower left corner. The pieces at the corners appear to be muntin type wood. Additional wood pieces were not observed on the east basement window. The window lacked any hardware and appeared secured by these wood pieces alone.

## Minnesota Bureau of Criminal Apprehension Laboratory Reports

Supplemental report 3 describes the tool marks on the window frame as having come from a tool with a ¼" blade and a cylindrical shaft, which is consistent with a screw driver. In the bench notes for his report, FS Roger Papke described the marks as being on the "inside" of the frame, consistent with the tool being pressed against the inside edges of the frame. The tip of this tool left markings on the undersides of the wood lath pieces at each end except for the piece that remained attached to the frame. He noted that the "small wood fragments, apparent 'dividers'- included w/item 16A" (window frame) had no tool marks. Papke took photographs of the window frame, the full length lath board and the long portion of the broken lath board. No photographs of the apparent "dividers" were included in his documentation.<sup>25</sup>

Papke also wrote the dimensions of the window frame in his bench notes as 17 ½" X 34 ¼."<sup>26</sup> This is consistent with measurements on page 2 of the scene diagram where the dimensions are given as 1'6" X 2' 10." Though not specified by either measurer, these measurements are taken to mean the outer dimensions of the rectangular shaped window frame.

In laboratory supplemental report 2, FS III Dennis Hughes reported that no prints were recovered from the window frame (Item 16). In his bench notes he itemized the same contents of the item as was described by Papke.<sup>27</sup> Based upon the analyses done by Hughes, there remains several unidentified prints from the area around the trap door in the kitchen.

In laboratory supplemental report 7, FS Laura Nelson reported that footwear impressions 9 and 11 were similar to the elimination prints taken from Gerald Horsman. Impression 14 was of no value and impression 12 exhibited "horizontal bars and perimeter lugs." Impressions 10, 12 and 13 were not associated with any collected eliminations.

Item 2 contained "hairs and fibers" from the exterior south window jamb. FS Laura Nelson describes this evidence as "a wad of debris..." and further delineates "insect parts, crumpled bits of leaves, brownish plant debris, pos[sible] spider web, animal hairs...1 l[igh]t blue fiber..." in her bench notes. She formally reported only the animal hairs and spider web.<sup>28</sup>

---

<sup>25</sup> See supplemental report 3 and bench notes by Roger Papke, report date June 9, 1998

<sup>26</sup> *IBID* page 10 of bench notes

<sup>27</sup> See supplemental report 2 by Dennis Hughes, report date April 20, 1998

<sup>28</sup> See bench notes of FS Laura Nelson page 1

## Analysis

### Window well

The window well was made of thick concrete that was only 1' 4" from the outer wall of the building, 3' 5" wide and 2' 2" deep.<sup>29</sup> These dimensions represent a small, unyielding space.

At the bottom of the window well, there was an accumulation of dead leaves, cones, and tree needles. Small pieces of glass were present near the bottom of the window frame. This glass may be from a previously broken pane leftover after replacement of the pane. The glass could be part of the broken pane found inside the basement. Neither scenario can be determined with certainty since the glass from inside was not collected and therefore, no reconstruction can be performed.

Also present are what appear to be flakes of either window glazing putty or caulk.<sup>30</sup> In the photograph below, these flakes are highlighted by red circles. These flakes are generally of similar width and have relatively straight edges. While some of the flakes are thinner than others, they still contain straight edges consistent with window glazing. These flakes all appear to be resting on the top surface of other debris in the window well consistent with being recently deposited.



Photograph 11<sup>31</sup>

<sup>29</sup> See scene notes by NJP dated 2-27-98

<sup>30</sup> "Glazing" will be used for simplification for the remainder of this report

<sup>31</sup> See photograph 2015\_03\_27\_09\_21\_25.jpg, enhanced and annotated

The below photograph shows remnants of glazing still adhering to the window frame. The muntin attachment points are also visible and the damaged area around the left one would have created a potential starting point to remove this pane of glass. There is insufficient documentation of the exterior window conditions to determine how secure each pane of glass was and how sturdy the muntins were. Therefore, the order in which each glass pane and muntin were removed cannot be determined with certainty.



Photograph 12<sup>32</sup>

The location of Item 2, on the exterior of the window jamb, contained animal hairs as discussed earlier. A bloodstain recovered from inside the window well was also of animal (non-human) origin. The blood found on the glass inside the basement was also animal blood. This is consistent with animals being inside the window well at times.

The variety of trace evidence in Item 2 is consistent with an accumulation of materials over time that became trapped within spider web material. This item is not consistent with being caught by rough and/or sharp edges from someone entering through the narrow opening of the window frame.

<sup>32</sup> See photograph 2015\_03\_27\_09\_20\_36.jpg, enhanced and annotated

### Campbell's Juices Boxes

Images of the basement show that like products and brands were stored near each other. Boxes sat on makeshift shelves or on concrete pads but not on the floor. The boxes on the south wall of the basement contained juice drinks.

Two rectangular boxes of Campbell's Juices were observed in crime scene images. One unopened box is directly under the south window. In photographs 13 and 14 below, this box is oriented with its length facing north. Visible on the box is a number sequence ending in 66 annotated within white rectangles.



Photograph 13<sup>33</sup>



Photograph 14<sup>34</sup>

Photograph 15 on the next page, shows the other box of Campbell's Juices on the floor to the east. Both width flaps and one length flap were open and standing upright. This box was obviously out of place since boxes were normally stored off the floor and its contents are identical to the box under the south window. Black printing is visible on the length side of the box that faced west. This orientation is consistent with the box being lifted from the same orientation as the Campbell's Juices box under the window, rotated counter clockwise 90° and placed on the floor. The black star was added to the length flap to allow tracking the different orientations of the box.

<sup>33</sup> See photograph 2015\_03\_27\_09\_25\_42.jpg , enhanced, cropped and annotated

<sup>34</sup> *IBID*, closer cropping





Photograph 15<sup>35</sup>

Photograph 16 on the next page, a screen shot from the crime scene video, shows the box after investigators moved it. The box was placed on a makeshift shelf with the black star on the length flap facing north. The numbers “66” can be seen in the screen shot. This is consistent with the investigators picking up the box and rotating it 90° clockwise, returning it to the same orientation as the box under the south window. It should be noted that several boxes can be seen with their flaps open on their front facing sides.

<sup>35</sup> See photograph 2015\_03\_27\_09\_24\_31.jpg , enhanced, cropped and annotated

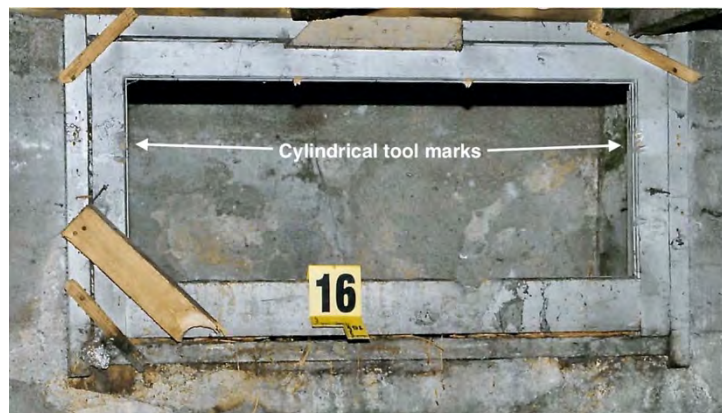


Photograph 16<sup>36</sup>

The organization of this basement appeared to facilitate inventory control and to keep cardboard boxes dry. The fact that one, opened box of the same item was moved from directly under the south window and onto the floor is contemporaneous with the crime. It would be physically impossible for the box to be moved to where it was found from the outside of the window; only someone inside the basement could have moved this box.

#### Lath Boards

The cylindrical marks on the interior edges of the stiles and the blade marks on the underside of the lath boards are consistent with the handle of a screwdriver being moved into the space normally occupied by the glass panes while prying at the nailed ends.

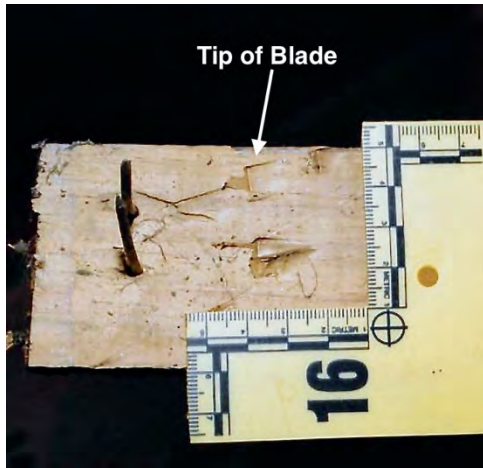


Photograph 17 screwdriver shaft tool marks<sup>37</sup>

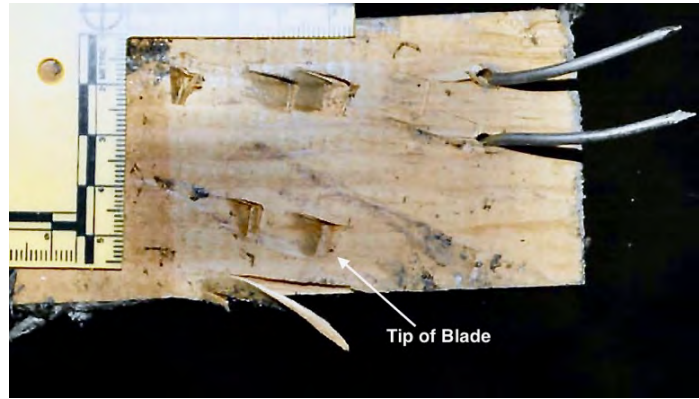
<sup>36</sup> See crime scene video, enhanced and annotated

<sup>37</sup> See photograph 2015\_03\_27\_09\_27\_13.jpg, enhanced and annotated

Photographs 18 and 19 below represent the left and right ends of the top lath board based upon the reconstruction performed by the crime scene team.

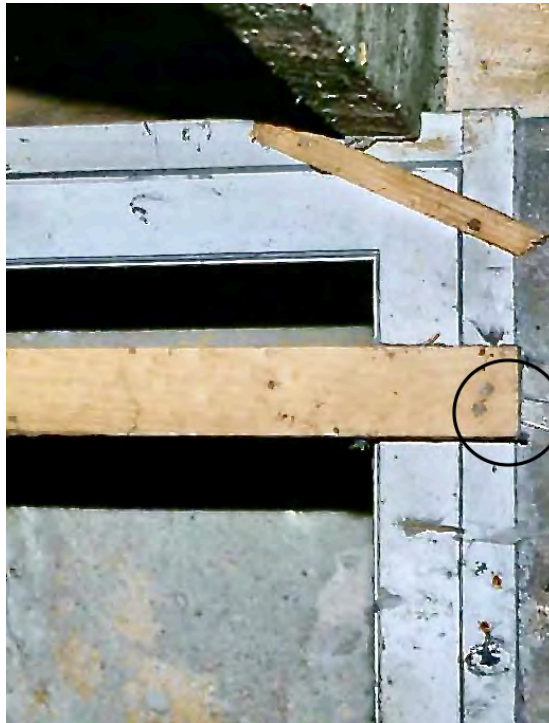


Photograph 18<sup>38</sup>



Photograph 19<sup>39</sup>

In photograph 20 below, the west end of this lath board is shown as reconstructed to its position before being pried loose. The bent nails are encircled in black.



Photograph 20<sup>40</sup>

<sup>38</sup> See photograph 2015\_03\_27\_09\_27\_29.jpg, enhanced, rotated and annotated

<sup>39</sup> See photograph 2015\_03\_27\_09\_27\_30.jpg, enhanced, rotated and annotated

<sup>40</sup> See photograph 2015\_03\_27\_09\_27\_27.jpg, enhanced, cropped and annotated

Bending these nails to this extent required that the board be rotated beyond perpendicular to the jamb and to the right (west). The nails on the opposite end (see photograph 18) of this lath board show little evidence of bending, which is consistent with being pulled more or less straight out from the jamb.

The lower lath board also exhibited bent nails on its right end. In photograph 21 below, the angle of bend in the lower nail is consistent with pulling the board inward and twisting its top edge downward. This rotation could also have caused the board to break at its knot to the left. Or it could have broken while being pulled inward from near the knot.



Photograph 21<sup>41</sup>

Two basic experiments demonstrated that the angles of the bent nails were easily reproduced when moving them as described above.<sup>42</sup>

The window frame height was used to calculate the height of the foundation walls, which were approximately 6' tall. The low height of the foundation walls would mean the lower lath board was about 5' from the floor and the upper board was just a few inches higher.<sup>43</sup> At these heights, boards would be easily accessible from the inside.

To perform the described manipulations in the confined space of the window well would have been extremely difficult and would have increased opportunities for trace deposits on the window frame and the boxes below. Fingerprints and/or DNA would also have been possible on these boards. However, crime scene personnel inexplicitly handled them without wearing gloves. They also removed the nails from the boards and apparently did not recover them.

### Glass panes and muntins

The two panes of glass lying outside the window well appear to be intact with the exception of a possible chipped area on one pane. To remove these panes of glass without breaking them would be difficult, if not impossible, if glazing was securely in place.

---

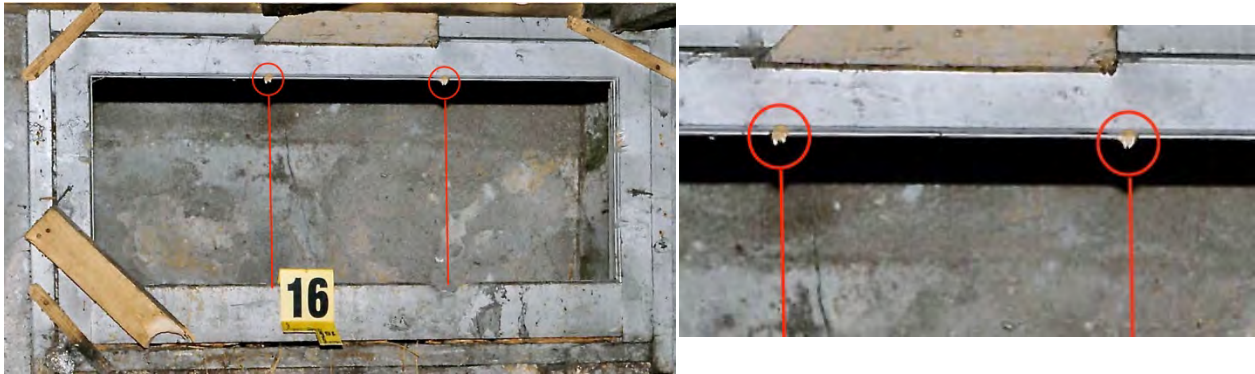
<sup>41</sup> See photograph 2015\_03\_27\_09\_27\_25.jpg, enhanced, cropped and annotated

<sup>42</sup> See Annex B for example photographs

<sup>43</sup> See Annex C for calculations

Raw wood is visible on the inside of the top rail where the muntins appeared to have been broken inward. The ends of the muntins, seen on top of a box to the right of the window, also appear to exhibit raw wood. This analysis is somewhat limited by the lack of photographs of the inside edges of the rails, and closeup photographs of the muntins. The following series of photographs illustrate what has been described above.

Photograph 22 below, depicts where the muntins would have been attached to the window and a close up of the raw wood where they broke off.



Photograph 22<sup>44</sup>



Photograph 23<sup>45</sup>

Photograph 23 above, shows the muntins on top of the box right of the window. The light reflecting off of each muntin appears continuous, indicating that they are not broken along their length. Raw wood of the broken ends can be seen in the white circle. Also visible are at least 3 shards of glass lying flat on the box. This evidence is to the right of the V8 cans which would have blocked the area if these items were airborne from the south window which, is to the left of these items.

<sup>44</sup> See photograph 2015\_03\_27\_09\_27\_13.jpg, enhanced, cropped and annotated

<sup>45</sup> See photograph 2015\_03\_27\_09\_25\_39.jpg, enhanced, cropped and annotated

The broken glass on the floor just beneath the muntins are primarily large shards with a few smaller pieces nearby (photograph 24 below). This glass is not consistent with an impact from an object with a small surface area, such as from the head of a hammer, while in the window frame. In fact, it appears as if this pane of glass may have merely been dropped with its flat surface somewhat parallel to the ground.



Photograph 24<sup>46</sup>

The edges of several of these pieces have the markings consistent with the margins where glazing putty would result in different “weathering” of the glass. Also notable is the lack of millimeter or less size glass fragments, which would be expected from glass broken by a forceful impact to one area of the pane.

None of this glass was recovered and marker 15 relates only to a swab of blood from one shard of glass, which was later determined to be animal blood. There is also no evidence that the crime scene team attempted to reconstruct this window pane, which would have demonstrated a point of impact, if one existed.

The glass and the muntins in this area are consistent with being placed versus having fallen after they were removed from the south window from the inside.

### Footwear Impressions

Footwear impressions were recovered from the sandy area north of the south window near stocked pallets. Several impressions pointed towards the pallets and were consistent with a person stocking them.<sup>47</sup> Photographs of the impressions failed to demonstrate a clear path of a

<sup>46</sup> See photograph 2015\_03\_27\_09\_27\_22.jpg

<sup>47</sup> See Annex D

similar sole pattern leading in one direction. Such a pattern would be expected from a person entering through this window in order to quickly gain access to the main floor.

#### Lack of Trace Evidence

The raw wood protruding from the top rail where the muntins were previously attached, appeared to have sharp points. There was also a small, sharp splinter in the area on the lower rail where the west most muntin was removed. Considering the very narrow dimensions of the window opening and the small area of the window well, these sharp points would have likely caught on clothing and retained fibers. Moreover, it would also be possible that a person attempting to enter this small opening would be scratched and leave their DNA on these broken areas.

In the photograph below, there is a nail protruding at an angle from the outer jamb into the window well and just above the broken board (encircled). The nail and its shadow are both visible. No other photograph captured this nail that could snag clothing. The lower lath board has a sharp edge where it broke which, could also catch on the clothing of someone crawling through the window. This piece of board was found pointing downward (see photograph 22 on page 20). However, due to the small window opening its sharp point still presented a surface where trace could be transferred.



Photograph 25<sup>48</sup>

Tree needles from the window well are also visible “leaking” into the basement from underneath the lower rail, which would be caused by a poor seal around the window and water moving under the rail.

<sup>48</sup> 2015\_03\_27\_09\_27\_26.jpg, enhanced

## Discussion

### Plate Glass Breakage

When a plate glass window is broken by an impact to one side, the glass pieces that result will vary in size. It is expected that the greatest number of the smallest pieces will land close to the window frame, both inside and outside. The force causing glass breakage will result in the larger shards of glass traveling further in the direction of the force. Thus, in this instance, large shards would be expected to have landed inside the basement, slightly further in from the window and most certainly on the boxes directly below. These larger shards would also be expected to break into smaller pieces when striking objects or the floor below. It is also expected that some glass would remain in the window frame, secured by glazing, unless it was intentionally removed or was in poor condition.

The photograph below demonstrates what happens when a window pane is struck with the head of a roofing hammer.<sup>49</sup>



Photograph 26

This “snapshot in time” photograph shows that the breakage is primarily localized around the point of impact and that the glass does “shatter” versus break into large pieces. The majority of the broken glass moves in the direction of force while a smaller volume of glass projects backwards toward the force.

A study of glass fragment sizes that result from an impact demonstrated that very small fragments will be produced. Locke and Unikowski determined that striking a plate glass window with a smooth round object created hundreds of glass fragments between .25 and .5 millimeters in size. Their experiments also demonstrated that the majority of this size fragment will land within .5 meters of the window. Though the study was designed to quantify glass fragments projecting backwards toward the force and potentially landing on the perpetrator, similar sized

---

<sup>49</sup> Photograph courtesy of the KCPD Crime Laboratory



fragments would project forward as shown in photograph 25 on page 23. Furthermore, they found that secondary breakage, glass fragments resulting from a broken piece striking another surface, will result in a much larger number of fragments overall.<sup>50</sup>

The large glass shards found inside the basement and the intact panes found outside are not consistent with the type of impact demonstrated above. If the small pieces of glass found outside the window were related to this incident, similar sized pieces would also be expected inside the window and directly below it. Additionally, if an impact similar to the experiment had occurred, much finer glass fragments would also be expected on both sides of the window.

#### Location of Various Items Associated with the South Window

The location of evidence associated with the south window is incongruous. The apparent systematic dismantling of the window must have begun with the removal of at least one pane of glass. This would've been followed by the removal of the lath boards and the muntins. However, the muntins were found inside the basement while the lath boards were outside the window well. Also, the broken pane of glass and muntins are to the right of the south window on top of a box and on the floor.

Like items were placed within close proximity to each other and neatly arranged. On the outside of the south window, the two panes of glass were side by side in the same orientation; the two lath boards were side by side with their lengths parallel to the building; the storm window from the southeast, main floor window was resting against the building and within inches of the window well versus nearer the window it came from; the muntins are side by side and in the same orientation; the large shards of glass are also lying next to each other on the box with the muntins and on the floor below this box. Remarkably, all of the shards of glass visible in crime scene images are lying flat and do not overlap at all. This is not consistent with breaking and entering that would typically take seconds to minutes but is consistent with staging that required a prolonged effort.

#### Other considerations

Merle Malin, Evelyn Malin's son, testified that he had installed a gas furnace in the basement the previous year. Additionally, he also built custom pallets out of treated wood specifically for storing inventory used to restock the store.<sup>51</sup>

Statements provided by both Norma Horner and Gerald Horsman described the daily routine of Evelyn as very consistent. They stated she opened the store at 8:30 am and closed it at 10 pm, 7 days a week. They directly observed this behavior as they typically helped her open in the morning, restock the shelves of the store in the evening and then returned to help her close at

---

<sup>50</sup> Locke, J and Unikowski, J. Breaking of Flat Glass-Part 1: Size and Distribution of Particles from Plain Glass Windows, *Forensic Science International*, 51 (1991) 251-262

<sup>51</sup> See testimony of Merle Malin unknown date page 204

10 pm. Norma also described the routine for locking all the doors as they left each night.<sup>52,53</sup> Consistent with this routine, it is clear that the front door deadbolt was engaged.<sup>54</sup>

## Conclusions and Opinions

The perpetrator moved an open Campbell's Juices box from under the south window to the floor. The basement organization where like items were kept together allowed for easy access to the stock and the custom pallets kept boxes dry. This box being found on the floor, near the window and containing the same item as another box under the window was moved to facilitate further actions of staging evidence around the south window.

There existed an area on the window frame that exhibited damage where the west muntin attached. This provided a starting point for removal of the glass pane. The window glazing that was chipped away, near the same area, appeared recently deposited. The removal of glazing facilitated the removal of a glass pane.

The removal of the lath boards was done from inside the basement. A tool, consistent with a screwdriver, was used to loosen the lath boards on three ends. The handle of the screwdriver was free to move at angles not consistent with the glass panes, attached to the stiles, being in place. The nails on the right side of the top lath board were bent when the board was pulled from the left to the right and beyond 90°.

The lower lath board also shows evidence that it was removed from the inside after it broke at a knot on the left half of the board. One nail was bent such that the piece of board had to have been twisted downward while being pulled inward. The small space of the window well would not have been conducive to removing either board and bending the nails as depicted in crime scene photographs.

The muntins were also removed from inside the basement. Raw wood is visible on the top rail of the window where the muntins broke away as well as on the visible ends of the muntins. The muntins appeared to be otherwise intact and were sitting to the west of the window versus below it where they would be expected.

The breaking of the glass pane on the inside is consistent with dropping the glass versus a forceful impact to the glass with an object. The edge where glazing left a margin is visible on several pieces indicative of it having been removed as the other two glass panes had been.

Glass associated to the third pane of glass is located to the right of the window as opposed to underneath it, where it would be expected. The large shards of glass are lying neatly and near each other versus a random pattern expected of a window broken with an object.

---

<sup>52</sup> Interviews of Norma Horner, February 25, 1998 and February 26, 1998

<sup>53</sup> Interviews of Gerald Horsman, February 25, 1998 and February 26, 1998

<sup>54</sup> See photograph 2015\_03\_27\_09\_22\_45.jpg

No one climbed through the south window. At least four areas on the window would have caught on the perpetrator's clothing and possibly skin; the raw wood where the two muntins attached to the top rail, a nail protruding from the window frame and the raw wood of the broken lath board still attached to the jamb. Moreover, there is a general lack of any damage, debris or glass beneath the window.

The evidence associated with the south window was staged.

The trap door between the basement and kitchen was also staged. The 1" X 6" board was used to prop open the trap door and then the kitchen chair was placed on top of the trap door.

It is my opinion that the perpetrator(s) of this homicide, meticulously staged evidence inside and outside of the basement window so it would appear to be the point of entry. It is also my opinion that the perpetrator(s) exited from the main floor of the building, which required they have a key to lock the deadbolt.

This report sets out my conclusions, the factual basis of my conclusions as well as the underlying data to support my conclusions. This is the preliminary report in this matter and it may be necessary to modify all or part of it if additional documents or information are provided.



Linda R. Netzel

## Annex A

Below is a cross section, bird's eye view of wood window components. The rabbets are the red, "L" shaped grooves where the glass panes rest and glazing seals the glass pane on the outside. The schematic was annotated with the red "L" shapes.

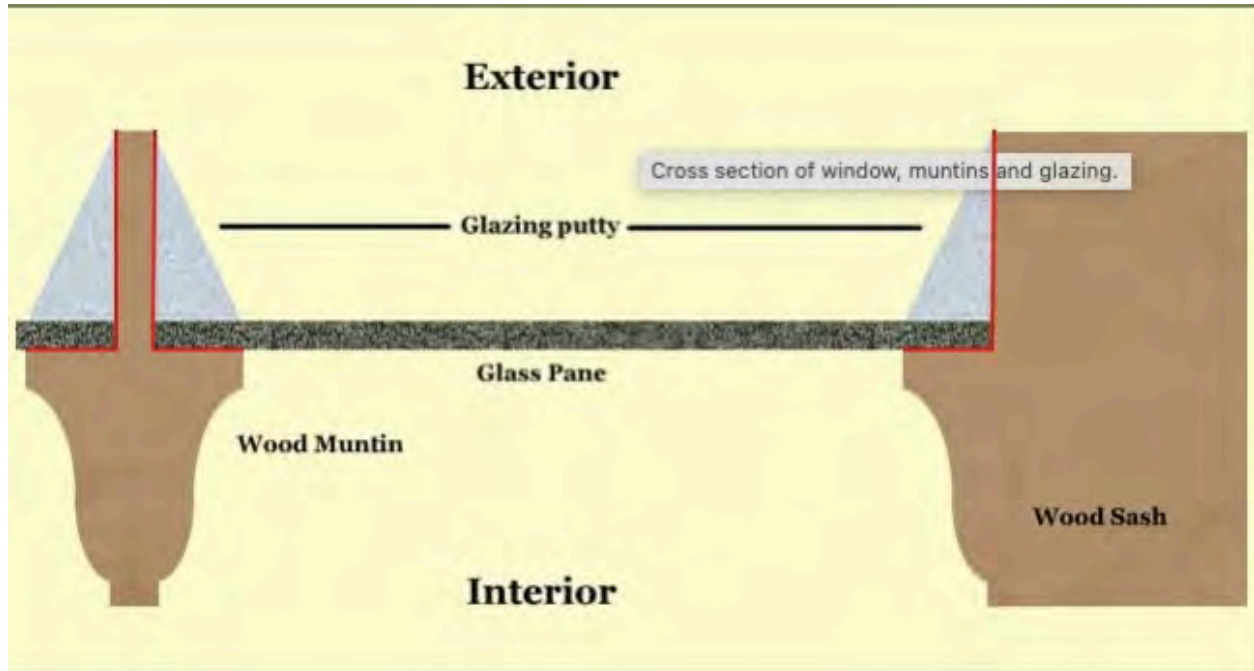


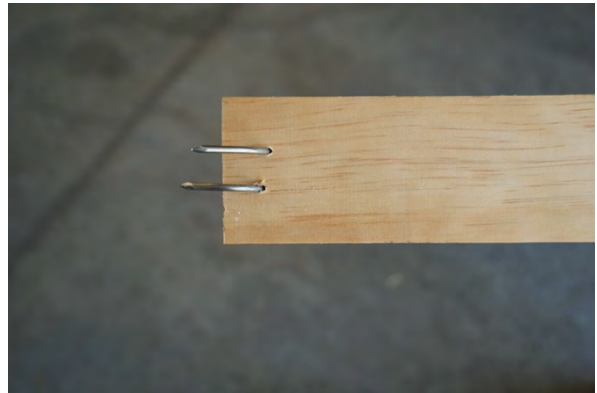
Figure 1 Schematic from The Painted Surface website on How to Reglaze or Putty a Window

## Annex B

The following experiments were performed using a mock window frame and jamb of the dimensions provided in various Minnesota BCA documents. The lath boards were 1" X 3" (nominal), pine and the nails used were 2" long. The items used are based on best estimates since the nails were not recovered nor measured. Photographs 1-3 are intended to represent the right side of the top lath board and photographs 4-5 are intended to represent the right side of the lower lath board. Photograph 3 was cropped, otherwise all photos are original format.



Photograph 1 DSC00125.JPG.



Photograph 2 DSC00127.JPG



Photograph 3 DSC00129.JPG



Photograph 4 DSC00139.JPG



Photograph 5 DSC00145.JPG

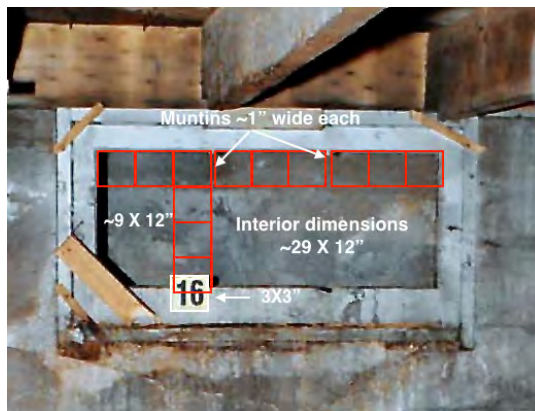
## Annex C

The four annotated white boxes are each 17 ½" tall using the dimensions provided in reports discussed within this report. From the concrete perimeter, where the boxes sit, to the top of the window frame is approximately 5' 10" high. The concrete perimeter appears to be approximately 4" high. The lower rail of the window is approximately 3" high and the bottom of the lower lath board was approximately 1" above the bottom rail. Therefore, the height at the lower lath board would be approximately 5' ((3X17.5") + 4" + 4").



See photograph 2015\_03\_27\_09\_25\_42.jpg, enhanced and annotated

In the photograph below, the evidence #16 marker was utilized to estimate the measurement of each pane of glass. The evidence marker is approximately 3" X 3" and the estimated size of each pane is ~9" X 12."



See photograph 2015\_03\_27\_09\_25\_42.jpg, enhanced, cropped and annotated

## Annex D

The screen shots from the crime scene video illustrate the randomness of the footwear impressions collected by the crime scene team. The pink material is the casting medium.







1 VIDEOTAPED STATEMENT OF PETER ARNOLDI, taken  
2 on January 15, 2020, commencing at 11:07 a.m., at  
3 the Hyatt Regency Hotel, 1300 Nicollet Mall,  
4 Minneapolis, Minnesota 55403, before Paula K.  
5 Richter, Registered Merit Reporter, Certified  
6 Realtime Reporter, and Notary Public of and for the  
7 State of Minnesota.

8  
9 \*\*\*\*\*

10  
11 APPEARANCES

12  
13 NO APPEARANCE WAS MADE ON BEHALF OF PLAINTIFF STATE  
14 OF MINNESOTA.

15  
16  
17 ON BEHALF OF DEFENDANT BRIAN K. PIPPITT:

18  
19 Mr. Paul Casteleiro, Esq.

20 CENTURION

21 1000 Herrontown Road

22 Princeton, New Jersey 08540

23 (609) 921-0334

24 paul@centurion.org

25 (APPEARANCES continued on next page)

1 APPEARANCES (Continued)

2  
3 ALSO PRESENT: Jim Cousins - Centurion  
4 Dave Young - Videographer  
5

6  
7 NOTE: The original transcript will be  
8 filed with CENTURION, pursuant to the applicable  
9 Rules of Civil Procedure.  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX

WITNESS: PETER ARNOLDI

PAGE:

EXAMINATION BY MR. CASTELEIRO..... 6

NO EXHIBITS WERE MARKED FOR IDENTIFICATION

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: Good morning. We  
3 are going on the record at 11:07 a.m. on January  
4 15th, 2020.

5 This is the video statement of Peter  
6 Arnoldi -- Arnoldi, excuse me, in the matter of  
7 the State of Minnesota versus Brian Keith Pippitt,  
8 filed in the State of Minnesota, District Court,  
9 County of Aitkin. District Court Number is  
10 K4-99-325, Appellate Number is C4-01-775.

11 This is being held at the Hyatt  
12 Regency in Minneapolis, Minnesota.

13 My name is Dave Young. I'm the  
14 videographer. Our court reporter is Paula  
15 Richter. We're both representing Veritext Legal  
16 Solutions.

17 Would the attorneys present please  
18 identify themselves and state whom they represent.

19 MR. CASTELEIRO: My name is Paul  
20 Casteleiro. I'm the legal director of Centurion  
21 ministries, doing business as Centurion, and we're  
22 located at 1000 Herrontown Road in Princeton, New  
23 Jersey.

24 And to my right is Jim Cousins, who  
25 is a lawyer and an investigator. He's also with

1 Centurion at the same address.

2 THE VIDEOGRAPHER: Will the court  
3 reporter please swear in the witness and then we  
4 can proceed.

5 PETER ARNOLDI,  
6 duly sworn, was examined and testified as follows:

7 EXAMINATION

8 BY MR. CASTELEIRO:

9 Q. Mr. Aldona -- Mr. Aldonado -- Arnoldi. We  
10 met this morning about an hour ago, the first  
11 time?

12 A. Yes, we did.

13 Q. And we spoke for the first time, you and I?

14 A. Yes.

15 Q. Downstairs in the lobby of the Hyatt Hotel?

16 A. Yes.

17 Q. And you've been, over the last, I don't know,  
18 number of months or a year or so, been talking to  
19 Jim Cousins, correct?

20 A. Yes, I have.

21 Q. And Jim is, as I understand it, represented  
22 to you that he's, you know, reviewing looking into  
23 the Brian Pippitt case?

24 A. That is correct.

25 Q. All right. And you were a witness in the

1 Brian Pippitt case, right?

2 A. I was.

3 Q. And you were a witness for the prosecution in  
4 that case?

5 A. I was.

6 Q. And in that case, just in the broadest sense,  
7 you basically testified that you received a --  
8 what was considered a confession from Brian  
9 Pippitt while the two of you were patients at  
10 St. Peters -- St. Peters Hospital in St. Peters, I  
11 guess it is, Minnesota?

12 A. I believe -- Brian told me that this -- what  
13 they did. I don't know if that constitutes a  
14 confession or -- you know, but I believe that he  
15 told me what he actually did.

16 Q. Okay. And what do you believe today?

17 A. After several months of having been shown  
18 evidence by Cousins, the investigator on this  
19 case, I believe that what I believed at that time  
20 to be true is not true.

21 Q. Okay. And what do you believe to be not true  
22 today?

23 A. Well, I believe that it's not true that he --  
24 he and some friends took his grandmother's van to  
25 this little lake store, entered the building, went

1 through a crawl space, stole two bags of  
2 Marlboros, and systematically raped an 81-year-old  
3 female proprietor of the store by sticking kleenex  
4 in her mouth and having sexual intercourse with  
5 her.

6 Q. What is the basis now for you not believing  
7 that?

8 A. The basis for me not believing that, I was  
9 shown facts that have been discovered by  
10 investigators that Mr. Cousins had that, in fact,  
11 they did not put kleenex or toilet paper in this  
12 81-year-old female's mouth. They did not rape  
13 her. There was no evidence of rape that was  
14 determined by the people that investigated this.  
15 And that there was no breaking and entering to  
16 enter the building. So that's --

17 Q. At the time you testified, you -- when you've  
18 testified, you've basically said that Brian  
19 said -- you basically said that Brian said that he  
20 admitted to doing these things, correct?

21 A. Yes.

22 Q. Okay. And as I understand it from -- based  
23 upon your discussions over the last, you know,  
24 number of meetings you had with Mr. Cousins, you  
25 now believe that he was telling you what he was

1 accused of?

2 A. It seems to be true that -- I believed at the  
3 time he was telling me what they did, but it seems  
4 to be true that he was telling me what he was  
5 accused of.

6 Q. Okay. And you -- okay. Go ahead. I didn't  
7 mean to interrupt you.

8 A. But it's basically the -- I wrestled with  
9 this thing for months.

10 Q. Okay. You mean you've thought about it  
11 and --

12 A. I've thought about it. I've tried to put  
13 everything in a place what happened at St. Peter  
14 years ago with the evidence that was presented to  
15 me in black and white on paper by Mr. Cousins, and  
16 then I tried to come up with some -- with a  
17 rational conclusion.

18 And I -- you know, it's like I told  
19 you downstairs, I now believe that Brian Pippitt  
20 at the time was telling me what he was accused of,  
21 and at the time he was telling me this, I believed  
22 he was telling me what they did. I can't be any  
23 more specific.

24 Q. Okay. At the time you were in a psychiatric  
25 hospital, right?



1 A. Yes, we were.

2 Q. And were you at the time -- this is in May of  
3 1999, some point in time?

4 A. Yeah. I'm not sure on dates, but yeah.

5 Q. That's what you testified, that you were --

6 A. Yeah, we were there.

7 Q. -- in 1999?

8 When you saw Brian Pippitt and spoke  
9 to Brian Pippitt, you were in a psychiatric  
10 hospital?

11 A. That is correct. St. Peter.

12 Q. Okay. And while you were there, were you  
13 being administered drugs?

14 A. Yeah, we were given medication.

15 Q. Do you know what the medication was?

16 A. No, I don't.

17 Q. Prior to going to -- let me back up.

18 You had a -- in 2001, you had a  
19 conviction for a bank robbery?

20 A. That is correct.

21 Q. And it was like in October or September 25th,  
22 I think it was --

23 A. Yeah.

24 Q. -- a September 25th, 2001 bank robbery in  
25 Russell, Minnesota?

1 A. Yeah. It was in Russell, Minnesota, yes.

2 Q. And at the time -- we were able to recently  
3 obtain some records on that case?

4 A. Yes.

5 Q. Okay? And -- the bank robbery case.

6 A. Okay.

7 Q. Which you ultimately pled guilty to, correct?

8 A. Yes.

9 Q. And when you pled guilty to that, you wound  
10 up getting a sentence of about eight or nine or  
11 ten years, something like that? Pretty --

12 A. 154 months.

13 Q. 154 months. Okay.

14 And in the records that we were able  
15 to find, we found a record that indicated that in  
16 April of 1998 through May, the end of May of 1998,  
17 you were in a psychiatric hospital in --

18 A. University of Minnesota.

19 Q. Okay. And is it Fairview --

20 A. Fairview.

21 Q. -- Riverside?

22 A. Yeah, Fairview Riverside.

23 Q. And at that hospital you received at least  
24 15 --

25 A. ECT treatments.

1 Q. ECT. And ECT treatments are commonly  
2 referred to --

3 A. They're electroshock.

4 Q. Electroshock.

5 A. Shock therapy.

6 Q. Shock therapy?

7 A. Yeah.

8 Q. And they're pretty powerful, right?

9 A. Yes, they are. They scramble your brains.

10 Q. They scramble your brains.

11 And at some point when you were  
12 going to -- you told me downstairs that when you  
13 were going to be giving [sic] more electroshock  
14 therapy sessions, that you were able to walk away  
15 from the facility? In other words, escape?

16 A. Yeah. The secured ward was up on another  
17 floor, and where you received the treatment was  
18 down on a lower floor. The nurse took me down to  
19 this therapy room and left me unattended, and I  
20 said, later, I'm leaving, and I left.

21 Q. Okay. And you just walked away?

22 A. Yes, I did.

23 Q. And at the time you were in, you were on --  
24 you were on some fraud charges --

25 A. Yes.

1 Q. -- out of Carver County, correct?

2 A. Yes, I was.

3 Q. All right. And at -- and later that year you  
4 got rearrested?

5 A. Yes.

6 Q. And you had a number of charges in I guess it  
7 was Dakota Hastings County; is that right?

8 A. Yeah. I had some outstanding warrants.

9 Q. Right. From -- dating back to '95, '96,  
10 right?

11 A. Yes.

12 Q. And then you -- and then you were arrested in  
13 Chisago --

14 A. Yes.

15 Q. -- County, right?

16 A. Yes.

17 Q. And it was from Chisago County that you were  
18 sent to St. Peter's?

19 A. Yes.

20 Q. For an evaluation?

21 A. Yes.

22 Q. So you were in the hospital in April of 1998  
23 for two months. And then in May of 1999 you were  
24 in the hospital for -- St. Peter's, for at least a  
25 month?

1 A. Yeah, I believe it was a month or --

2 Q. Okay. And during that whole period of time,  
3 that whole -- it's a year plus, I assume you were  
4 under medication?

5 A. Yes, I was.

6 Q. And the records indicate that -- and that we  
7 were able to get from the federal case, that you  
8 were on Zoloft at some point in time during --

9 A. Yeah. I was on a number of antidepressants,  
10 and Zoloft was one of them.

11 Q. Right. And you were also on --

12 MR. COUSINS: Effexor.

13 BY MR. CASTELEIRO:

14 Q. Effexor?

15 A. Yeah. Effexor? Yes.

16 Q. And that's, again, an antidepressant?

17 A. That's, again, an antidepressant.

18 Q. You were treated -- I don't know if you  
19 remember the reason why, but the electroshock  
20 therapy also was designed for people who are  
21 depressed and it's an antidepressant, allegedly?

22 A. Yeah. I was not responding to traditional  
23 medication treatment, and the chief psychiatrist  
24 at Fairview Riverside suggested I take ECTs.

25 Q. Right. And you agreed to that at the time?

1 A. And I agreed to that.

2 Q. Yeah, okay. But when they wanted to do more,  
3 you said no?

4 A. Well, after having 15 of them and I -- there  
5 was no responding, I felt that I would be better  
6 off if I was in a freer environment to enjoy life  
7 instead of being -- having my head scrambled every  
8 other day.

9 Q. Right. Okay. So from -- would it be fair to  
10 say that from beginning in April when you go to  
11 River -- April of 1998 when you go to Riverside,  
12 Fairview Riverside, through the time that you  
13 testified against Mr. Pippitt -- well, let me  
14 scratch that.

15 When you got arrested in -- on the  
16 federal case in October of 2000, you were --  
17 according to the records we obtained in the  
18 federal case, you -- eventually in November of  
19 2000, you were sent to the facility in Rochester  
20 for psychiatric reasons?

21 A. Yes, I was.

22 Q. And as I understand it, you remained there  
23 for approximately two years?

24 A. I was there for about two, two and a half  
25 years, yeah.

1 Q. Okay. And that was during -- during that two  
2 and a half years, you pled guilty, were sentenced,  
3 and went back there, right?

4 A. Yeah.

5 Q. You pled guilty on the federal bank robbery  
6 charge --

7 A. Yeah.

8 Q. -- and were sentenced and went back there?

9 A. Yes.

10 Q. And so -- and you then testified against  
11 Mr. Pippitt in January of 2001?

12 A. I'm -- yes.

13 Q. And while you were in federal custody and  
14 before you pled guilty --

15 A. Yes.

16 Q. -- that's where you were sentenced?

17 A. Yes.

18 Q. During that entire period of time from --  
19 from April of 1998 through January of 2001, you  
20 were under basically -- you were either in a  
21 psychiatric hospital and receiving medications or  
22 you were -- you know, you were out because you had  
23 escaped at the time. Is that -- is that a fair --

24 A. Yeah. That's a fair assumption, yeah.

25 Q. So during that entire year and a half,

1 two-year period, you were on medication for --  
2 antidepressants?

3 A. That's correct.

4 Q. Okay. Are you still on antidepressants?

5 A. No, I'm not. I haven't been on  
6 antidepressants for probably three or four years.

7 Q. And does antidepressants -- I know this is an  
8 opinion, but do they -- do they -- or maybe it's  
9 not an opinion, and you tell me. Do they affect  
10 your judgment and your abilities to think when  
11 you're, you know, kind of engaged in conversation?

12 A. I think anytime they change the chemical  
13 formula in your brain to try to get some result in  
14 your mood or behavior, it has an effect on how you  
15 think.

16 Q. When you were speaking to Brian Pippitt and  
17 you learned what the charges were, even before --  
18 even before you believe you were -- he was telling  
19 you what he had done, okay? I mean, you just knew  
20 the charges. What were your thoughts?

21 A. Well, as I said to you earlier, I have a  
22 fierce dislike for anyone that would rape an  
23 81-year-old lady or for anyone that rapes or harms  
24 a child, so I -- I have made up my mind during  
25 this time that this person was no good.



1 Q. And when you hear somebody -- I mean, you've  
2 been in and out of prisons, right?

3 A. Yeah.

4 Q. In prison when you hear somebody is charged  
5 with that, do you --

6 A. The mentality of the prison is, if there's a  
7 child molester or a rapist among you, you're going  
8 to try to get rid of them.

9 Q. Okay. And that's before you hear any facts?

10 A. That's before you have any facts.

11 Q. Right. One second.

12 Do you recall today how many times  
13 you had spoken to Mr. Pippitt while you were --

14 A. While we were at St. Peter, I don't know how  
15 many times we spoke. I can tell you that I would  
16 assume it was just about -- if it wasn't every  
17 day, it was just about every day because we had  
18 recreation time at the same time, and this would  
19 take place in the yard.

20 Q. Well, how does it work with -- you indicated  
21 your extreme dislike of somebody accused of a  
22 crime like this -- that you would talk to them  
23 every day, even when you kind of basically hated  
24 them?

25 A. I don't -- you know, I really don't know.

1 When there's only two of you walking around the  
2 yard, eventually you talk to somebody, whether you  
3 like them or you don't like them. And I didn't  
4 know for a while what Brian Pippitt was charged  
5 with. I don't know when I got to know actually  
6 what he was charged with, but --

7 Q. So you may have spoken to him -- you may  
8 have, some of this time --

9 A. We probably had two or three conversations  
10 before I even knew why he was there.

11 Q. Okay. Okay.

12 A. And, you know, there may have been two or  
13 three days or a week that I didn't give a shit why  
14 he was there --

15 Q. Right.

16 A. -- because of my own issues.

17 Q. Right. When you testified in January of  
18 2001, you were in -- you were in --

19 A. Rochester.

20 Q. Yeah, FMC Rochester?

21 A. Yes.

22 Q. And at that point in time when you testified,  
23 you were under medication, correct?

24 A. I was what?

25 Q. You were being administered medications.

1 A. Yes, I was.

2 Q. But you don't know what they were?

3 A. No, but it was probably some kind of --  
4 Trazodone and some other stuff for --  
5 mood-altering thing for antidepression. You know,  
6 and it could have been Zoloft or, you know, many  
7 other things.

8 Q. But before you testified against Pippitt, you  
9 were interviewed by somebody from Aitkin County,  
10 correct?

11 A. Uh-huh.

12 Q. And at one point they took a statement from  
13 you?

14 A. Yes.

15 Q. And -- but before they took the statement,  
16 you were also interviewed and they didn't take a  
17 statement, correct?

18 A. Yes.

19 Q. And in that conversation you had, the first  
20 conversation you had, do you recall anything about  
21 that conversation?

22 A. No.

23 Q. Okay. But do you recall discussing the  
24 Pippitt matter and that case?

25 A. Yes.

1 Q. Okay. And I assume you had a conversation  
2 where you told the investigator kind of what you  
3 thought?

4 A. The investigator came down and he said, do  
5 you know anything about this case? And I told him  
6 basically what I said at the trial.

7 Q. Okay. And how is your health today?

8 A. My health now?

9 Q. Yeah.

10 A. Well, not the greatest.

11 Q. And do you mind telling us why?

12 A. I have double pneumonia as we speak.

13 Q. You do?

14 A. Yeah.

15 Q. Wow.

16 A. I was in the hospital Monday and Tuesday of  
17 this week. I have diabetes. I have severe COPD  
18 and emphysema. And I have a pacemaker. I have a  
19 shunt in my leg.

20 Q. For?

21 A. Fluid.

22 Q. Okay. To drain, right?

23 A. And I have a shunt in my chest as we speak.

24 Q. The --

25 A. I really probably shouldn't have come, but if

1 I didn't, you might not never get this.

2 Q. And you wanted to come and tell what you  
3 knew?

4 A. Huh?

5 Q. You wanted to come and tell what you knew and  
6 tell the truth as to what you, you know --

7 A. Yeah. I mean, it's -- you know, I feel bad  
8 about what happened, but I'm going to tell you I  
9 believed at the time he was telling me what him  
10 and his cronies did. At the time I did not  
11 believe he was telling me that he was telling me  
12 what he was accused of. I never knew that for  
13 years. I always thought I did the right thing,  
14 but as it turns out, you know, I'm the idiot.

15 Q. Well, did -- one of the things I read in the  
16 report that we got from federal court was at --  
17 during this period of time you would have  
18 hallucinations of some woman tell you that you  
19 should commit suicide, you should --

20 A. Yeah.

21 Q. And as I understood from that report -- I  
22 mean, I don't know how -- what the frequency of  
23 the hallucinations were, but you did experience  
24 hallucinations during a certain period of time in  
25 your life?

1 A. Yeah. And I don't know if that was because  
2 of the drugs I was taking, the prescribed  
3 medication.

4 Q. Right.

5 A. Or if it was something that was just  
6 happening.

7 Q. Right. Was it -- whatever the case may be,  
8 the experience you had with hallucinations, how  
9 long a period did that last?

10 A. I don't know. I want to say a couple years.

11 Q. And it was all during this whole period of  
12 time?

13 A. Yeah.

14 Q. From -- at least from the bank robbery back  
15 for a couple years; is that --

16 A. Yeah.

17 Q. -- correct?

18 Well, Mr. Arnoldi, I really  
19 appreciate you willing to come in and talk to us  
20 and tell us, you know, kind of what you know, and  
21 I just want to thank you for doing it.

22 A. Yeah. Well, that's okay.

23 Q. I appreciate it.

24 And then the final thing is is we --  
25 we spoke to you about releases?

1 A. Yeah. I'll sign them.

2 Q. You said you'll sign some releases and we can  
3 get some of these medical records?

4 A. Yeah. I'll sign them.

5 Q. Great. I have nothing further.

6 A. Are we done?

7 THE VIDEOGRAPHER: This concludes  
8 today's statement. The time is 11:33 a.m.

9 (The statement was concluded at  
10 11:33 a.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

REPORTER'S CERTIFICATE

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF RAMSEY )

I hereby certify that I reported the VIDEOTAPED STATEMENT OF PETER ARNOLDI, on January 15, 2020, in Minneapolis, Minnesota, and that the witness was by me first duly sworn to tell the whole truth;

That the testimony was transcribed by me and is a true record of the testimony of the witness;

That the cost of the original has been charged to the party who noticed the proceedings, and that all parties who ordered copies have been charged at the same rate for such copies;

That I am not a relative or employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That the right to read and sign the deposition by the witness was reserved.

WITNESS MY HAND AND SEAL this 30th day of January, 2020.



---

Paula K. Richter, RMR, CRR, CRC  
Notary Public, Ramsey County, Minnesota  
My Commission Expires January 31, 2021





<b>0</b>	<b>9</b>	<b>appellate</b> 1:6 5:10	<b>believing</b> 8:6,8
<b>08540</b> 2:22	<b>921-0334</b> 2:23	<b>applicable</b> 3:8	<b>better</b> 15:5
<b>1</b>	<b>95</b> 13:9	<b>appreciate</b> 23:19	<b>black</b> 9:15
<b>1/15/20</b> 26:4	<b>96</b> 13:9	23:23	<b>brain</b> 17:13
<b>1000</b> 2:21 5:22	<b>a</b>	<b>approximately</b>	<b>brains</b> 12:9,10
<b>11:07</b> 1:17 2:2 5:3	<b>a.m.</b> 1:17 2:2 5:3	15:23	<b>breaking</b> 8:15
<b>11:33</b> 24:8,10	24:8,10	<b>april</b> 11:16 13:22	<b>brian</b> 1:7 2:17 5:7
<b>1300</b> 2:3	<b>abilities</b> 17:10	15:10,11 16:19	6:23 7:1,8,12 8:18
<b>15</b> 1:16 2:2 11:24	<b>able</b> 11:2,14 12:14	<b>arnoldi</b> 1:14 2:1	8:19 9:19 10:8,9
15:4 25:6	14:7	4:3 5:6,6 6:5,9	17:16 19:4
<b>154</b> 11:12,13	<b>accurate</b> 26:5	23:18 25:5 26:2	<b>broadest</b> 7:6
<b>15th</b> 5:4	<b>accused</b> 9:1,5,20	26:21	<b>building</b> 7:25 8:16
<b>17965</b> 25:22	18:21 22:12	<b>arrested</b> 13:12	<b>business</b> 5:21
<b>1998</b> 11:16,16	<b>acknowledgment</b>	15:15	<b>c</b>
13:22 15:11 16:19	26:1	<b>assume</b> 14:3 18:16	<b>c</b> 5:1
<b>1999</b> 10:3,7 13:23	<b>action</b> 25:14,15	21:1	<b>c4-01-775</b> 1:6 5:10
<b>2</b>	<b>address</b> 6:1	<b>assumption</b> 16:24	<b>carver</b> 13:1
<b>20</b> 26:23	<b>administered</b>	<b>attorney</b> 25:12,13	<b>case</b> 6:23 7:1,4,6
<b>2000</b> 15:16,19	10:13 19:25	<b>attorneys</b> 5:17	7:19 11:3,5 14:7
<b>2001</b> 10:18,24	<b>admitted</b> 8:20	25:15	15:16,18 20:24
16:11,19 19:18	<b>affect</b> 17:9 25:15	<b>b</b>	21:5 23:7
<b>2020</b> 1:16 2:2 5:4	<b>ago</b> 6:10 9:14	<b>back</b> 10:17 13:9	<b>casteleiro</b> 2:19 4:4
25:6,19	<b>agreed</b> 14:25 15:1	16:3,8 23:14	5:19,20 6:8 14:13
<b>2021</b> 25:24	<b>ahead</b> 9:6	<b>bad</b> 22:7	<b>centurion</b> 2:20 3:3
<b>25th</b> 10:21,24	<b>aitkin</b> 1:2 5:9 20:9	<b>bags</b> 8:1	3:8 5:20,21 6:1
<b>3</b>	<b>aldona</b> 6:9	<b>bank</b> 10:19,24	<b>centurion.org</b>
<b>30th</b> 25:19	<b>aldonado</b> 6:9	11:5 16:5 23:14	2:24
<b>31</b> 25:24	<b>allegedly</b> 14:21	<b>based</b> 8:22	<b>certain</b> 22:24
<b>5</b>	<b>altering</b> 20:5	<b>basically</b> 7:7 8:18	<b>certificate</b> 25:1
<b>55403</b> 2:4	<b>antidepressant</b>	8:19 9:8 16:20	<b>certified</b> 2:5
<b>6</b>	14:16,17,21	18:23 21:6	<b>certify</b> 25:5 26:2,4
<b>6</b> 4:4	<b>antidepressants</b>	<b>basis</b> 8:6,8	<b>change</b> 17:12
<b>609</b> 2:23	14:9 17:2,4,6,7	<b>beginning</b> 15:10	<b>charge</b> 16:6
<b>8</b>	<b>antidepression</b>	<b>behalf</b> 2:13,17	<b>charged</b> 18:4 19:4
<b>81</b> 8:2,12 17:23	20:5	<b>behavior</b> 17:14	19:6 25:10,11
	<b>anytime</b> 17:12	<b>believe</b> 7:12,14,16	<b>charges</b> 12:24
	<b>appearance</b> 2:13	7:19,21,23 8:25	13:6 17:17,20
	<b>appearances</b> 2:11	9:19 14:1 17:18	<b>chemical</b> 17:12
	2:25 3:1	22:11	<b>chest</b> 21:23
		<b>believed</b> 7:19 9:2	<b>chief</b> 14:23
		9:21 22:9	

<p><b>child</b> 17:24 18:7  <b>chisago</b> 13:13,17  <b>civil</b> 3:9  <b>come</b> 9:16 21:25  22:2,5 23:19  <b>commencing</b> 1:17  2:2  <b>commission</b> 25:24  26:25  <b>commit</b> 22:19  <b>commonly</b> 12:1  <b>concluded</b> 24:9  <b>concludes</b> 24:7  <b>conclusion</b> 9:17  <b>confession</b> 7:8,14  <b>considered</b> 7:8  <b>constitutes</b> 7:13  <b>continued</b> 2:25 3:1  <b>contract</b> 25:14  <b>conversation</b>  17:11 20:19,20,21  21:1  <b>conversations</b>  19:9  <b>conviction</b> 10:19  <b>copd</b> 21:17  <b>copies</b> 25:10,11  <b>correct</b> 6:19,24  8:20 10:11,20  11:7 13:1 17:3  19:23 20:10,17  23:17  <b>correction</b> 26:8  <b>corrections</b> 26:6  <b>cost</b> 25:9  <b>counsel</b> 25:12,13  <b>county</b> 1:2 5:9  13:1,7,15,17 20:9  25:3,24  <b>couple</b> 23:10,15</p>	<p><b>court</b> 1:1,6,6 5:8,9  5:14 6:2 22:16  <b>cousins</b> 3:3 5:24  6:19 7:18 8:10,24  9:15 14:12  <b>crawl</b> 8:1  <b>crc</b> 1:25 25:23  <b>crime</b> 18:22  <b>cronies</b> 22:10  <b>crr</b> 1:25 25:23  <b>custody</b> 16:13</p> <p style="text-align: center;"><b>d</b></p> <p><b>d</b> 5:1  <b>dakota</b> 13:7  <b>dates</b> 10:4  <b>dating</b> 13:9  <b>dave</b> 3:4 5:13  <b>day</b> 15:8 18:17,17  18:23 25:19 26:23  <b>days</b> 19:13  <b>defendant</b> 1:8  2:17  <b>deponent</b> 26:1  <b>deposition</b> 25:17  <b>depressed</b> 14:21  <b>designed</b> 14:20  <b>determined</b> 8:14  <b>diabetes</b> 21:17  <b>director</b> 5:20  <b>discovered</b> 8:9  <b>discussing</b> 20:23  <b>discussions</b> 8:23  <b>dislike</b> 17:22  18:21  <b>district</b> 1:1,2,6 5:8  5:9  <b>doing</b> 5:21 8:20  23:21  <b>double</b> 21:12  <b>downstairs</b> 6:15  9:19 12:12</p>	<p><b>drain</b> 21:22  <b>drugs</b> 10:13 23:2  <b>duly</b> 6:6 25:6</p> <p style="text-align: center;"><b>e</b></p> <p><b>e</b> 5:1,1  <b>earlier</b> 17:21  <b>ect</b> 11:25 12:1,1  <b>ects</b> 14:24  <b>effect</b> 17:14  <b>effexor</b> 14:12,14  14:15  <b>eight</b> 11:10  <b>either</b> 16:20  <b>electroshock</b> 12:3  12:4,13 14:19  <b>emphysema</b> 21:18  <b>employee</b> 25:12,13  <b>engaged</b> 17:11  <b>enjoy</b> 15:6  <b>enter</b> 8:16  <b>entered</b> 7:25  <b>entering</b> 8:15  <b>entire</b> 16:18,25  <b>environment</b> 15:6  <b>escape</b> 12:15  <b>escaped</b> 16:23  <b>esq</b> 2:19  <b>evaluation</b> 13:20  <b>eventually</b> 15:18  19:2  <b>evidence</b> 7:18 8:13  9:14  <b>examination</b> 4:4  6:7  <b>examined</b> 6:6  <b>exception</b> 26:6  <b>excuse</b> 5:6  <b>exhibits</b> 4:8  <b>experience</b> 22:23  23:8</p>	<p><b>expires</b> 25:24  26:25  <b>extreme</b> 18:21</p> <p style="text-align: center;"><b>f</b></p> <p><b>facility</b> 12:15  15:19  <b>fact</b> 8:10  <b>facts</b> 8:9 18:9,10  <b>fair</b> 15:9 16:23,24  <b>fairview</b> 11:19,20  11:22 14:24 15:12  <b>federal</b> 14:7 15:16  15:18 16:5,13  22:16  <b>feel</b> 22:7  <b>felt</b> 15:5  <b>female</b> 8:3  <b>female's</b> 8:12  <b>fierce</b> 17:22  <b>file</b> 1:6,6  <b>filed</b> 3:8 5:8  <b>final</b> 23:24  <b>financially</b> 25:14  <b>find</b> 11:15  <b>first</b> 6:10,13 20:19  25:6  <b>floor</b> 12:17,18  <b>fluid</b> 21:21  <b>fmc</b> 19:20  <b>follows</b> 6:6  <b>foregoing</b> 26:3  <b>formula</b> 17:13  <b>found</b> 11:15  <b>four</b> 17:6  <b>fraud</b> 12:24  <b>freer</b> 15:6  <b>frequency</b> 22:22  <b>friends</b> 7:24  <b>further</b> 24:5 26:4</p>
--	---	--	---

<b>g</b>	<b>hotel</b> 2:3 6:15 <b>hour</b> 6:10 <b>huh</b> 20:11 22:4 <b>hyatt</b> 2:3 5:11 6:15	<b>kind</b> 17:11 18:23 20:3 21:2 23:20 <b>kleenex</b> 8:3,11 <b>knew</b> 17:19 19:10 22:3,5,12 <b>know</b> 6:17,22 7:13 7:14 8:23 9:18 10:15 14:18 16:22 17:7,11 18:14,25 18:25 19:4,5,5,12 20:2,5,6 21:5 22:6 22:7,14,22 23:1,10 23:20,20	<b>medication</b> 10:14 10:15 14:4,23 17:1 19:23 23:3 <b>medications</b> 16:21 19:25 <b>meetings</b> 8:24 <b>mentality</b> 18:6 <b>merit</b> 2:5 <b>met</b> 6:10 <b>mind</b> 17:24 21:11 <b>ministries</b> 5:21 <b>minneapolis</b> 2:4 5:12 25:6
<b>g</b> 5:1 <b>getting</b> 11:10 <b>give</b> 19:13 <b>given</b> 10:14 <b>giving</b> 12:13 <b>go</b> 9:6 15:10,11 <b>going</b> 5:3 10:17 12:12,13 18:7 22:8 <b>good</b> 5:2 17:25 <b>grandmother's</b> 7:24 <b>great</b> 24:5 <b>greatest</b> 21:10 <b>guess</b> 7:11 13:6 <b>guilty</b> 11:7,9 16:2 16:5,14	<b>i</b> <b>identification</b> 4:8 <b>identify</b> 5:18 <b>idiot</b> 22:14 <b>impartiality</b> 25:16 <b>index</b> 4:1 <b>indicate</b> 14:6 <b>indicated</b> 11:15 18:20 <b>intercourse</b> 8:4 <b>interest</b> 25:15 <b>interested</b> 25:14 <b>interrupt</b> 9:7 <b>interviewed</b> 20:9 20:16 <b>investigated</b> 8:14 <b>investigator</b> 5:25 7:18 21:2,4 <b>investigators</b> 8:10 <b>issues</b> 19:16	<b>l</b> <b>lady</b> 17:23 <b>lake</b> 7:25 <b>lawyer</b> 5:25 <b>learned</b> 17:17 <b>leaving</b> 12:20 <b>left</b> 12:19,20 <b>leg</b> 21:19 <b>legal</b> 5:15,20 <b>life</b> 15:6 22:25 <b>line</b> 26:8 <b>listed</b> 26:7 <b>little</b> 7:25 <b>lobby</b> 6:15 <b>located</b> 5:22 <b>long</b> 23:9 <b>looking</b> 6:22 <b>lower</b> 12:18	<b>minnesota</b> 1:1,4 2:4,7,14 5:7,8,12 7:11 10:25 11:1 11:18 25:2,6,24 <b>molester</b> 18:7 <b>monday</b> 21:16 <b>month</b> 13:25 14:1 <b>months</b> 6:18 7:17 9:9 11:12,13 13:23 <b>mood</b> 17:14 20:5 <b>morning</b> 5:2 6:10 <b>mouth</b> 8:4,12
<b>h</b>	<b>j</b> <b>january</b> 1:16 2:2 5:3 16:11,19 19:17 25:5,19,24 <b>jersey</b> 2:22 5:23 <b>jim</b> 3:3 5:24 6:19 6:21 <b>judgment</b> 17:10 <b>judicial</b> 1:2	<b>m</b>	<b>n</b>
<b>half</b> 15:24 16:2,25 <b>hallucinations</b> 22:18,23,24 23:8 <b>hand</b> 25:19 <b>happened</b> 9:13 22:8 <b>happening</b> 23:6 <b>harms</b> 17:23 <b>hastings</b> 13:7 <b>hated</b> 18:23 <b>head</b> 15:7 <b>health</b> 21:7,8 <b>hear</b> 18:1,4,9 <b>held</b> 5:11 <b>herrontown</b> 2:21 5:22 <b>hospital</b> 7:10 9:25 10:10 11:17,23 13:22,24 16:21 21:16	<b>k</b> <b>k</b> 1:25 2:4,17 25:23 <b>k4-99-325</b> 1:6 5:10 <b>keith</b> 1:7 5:7	<b>mall</b> 2:3 <b>marked</b> 4:8 <b>marlboros</b> 8:2 <b>matter</b> 5:6 20:24 <b>mean</b> 9:7,10 17:19 18:1 22:7,22 <b>medical</b> 24:3	<b>n</b> 5:1 <b>name</b> 5:13,19 <b>never</b> 22:1,12 <b>new</b> 2:22 5:22 <b>nicollet</b> 2:3 <b>nine</b> 11:10 <b>ninth</b> 1:2 <b>notary</b> 2:6 25:24 26:25 <b>note</b> 3:7 <b>noticed</b> 25:10 <b>november</b> 15:18 <b>number</b> 5:9,10 6:18 8:24 13:6

14:9 <b>nurse</b> 12:18	18:14 25:5 26:2 26:21	<b>pursuant</b> 3:8 <b>put</b> 8:11 9:12	<b>reporter's</b> 25:1 <b>represent</b> 5:18 <b>represented</b> 6:21 <b>representing</b> 5:15 <b>reserved</b> 25:17 <b>responding</b> 14:22 15:5 <b>result</b> 17:13 <b>reviewing</b> 6:22 <b>richter</b> 1:25 2:5 5:15 25:23 <b>rid</b> 18:8 <b>right</b> 5:24 6:25 7:1 9:25 12:8 13:3,7,9 13:10,15 14:11,25 15:9 16:3 18:2,11 19:15,17 21:22 22:13 23:4,7 25:17 <b>river</b> 15:11 <b>riverside</b> 11:21,22 14:24 15:11,12 <b>rmr</b> 1:25 25:23 <b>road</b> 2:21 5:22 <b>robbery</b> 10:19,24 11:5 16:5 23:14 <b>rochester</b> 15:19 19:19,20 <b>room</b> 12:19 <b>rules</b> 3:9 <b>russell</b> 10:25 11:1
<b>o</b>	<b>peter's</b> 13:18,24 <b>peters</b> 7:10,10,10 <b>pippitt</b> 1:7 2:17 5:7 6:23 7:1,9 9:19 10:8,9 15:13 16:11 17:16 18:13 19:4 20:8,24 <b>place</b> 9:13 18:19 <b>plaintiff</b> 1:5 2:13 <b>please</b> 5:17 6:3 <b>pled</b> 11:7,9 16:2,5 16:14 <b>plus</b> 14:3 <b>pneumonia</b> 21:12 <b>point</b> 10:3 12:11 14:8 19:22 20:12 <b>powerful</b> 12:8 <b>prescribed</b> 23:2 <b>present</b> 3:3 5:17 <b>presented</b> 9:14 <b>pretty</b> 11:11 12:8 <b>princeton</b> 2:22 5:22 <b>prior</b> 10:17 <b>prison</b> 18:4,6 <b>prisons</b> 18:2 <b>probably</b> 17:6 19:9 20:3 21:25 <b>procedure</b> 3:9 <b>proceed</b> 6:4 <b>proceedings</b> 25:10 <b>proprietor</b> 8:3 <b>prosecution</b> 7:3 <b>psychiatric</b> 9:24 10:9 11:17 15:20 16:21 <b>psychiatrist</b> 14:23 <b>public</b> 2:6 25:24 26:25	<b>r</b>	
<b>o</b> 5:1 <b>obtain</b> 11:3 <b>obtained</b> 15:17 <b>october</b> 10:21 15:16 <b>okay</b> 7:16,21 8:22 9:6,6,10,24 10:12 11:5,6,13,19 12:21 14:2 15:2,9 16:1 17:4,19 18:9 19:11,11 20:23 21:1,7,22 23:22 <b>old</b> 8:2,12 17:23 <b>opinion</b> 17:8,9 <b>ordered</b> 25:10 <b>original</b> 3:7 25:9 <b>outstanding</b> 13:8		<b>r</b> 5:1 <b>ramsey</b> 25:3,24 <b>rape</b> 8:12,13 17:22 <b>raped</b> 8:2 <b>rapes</b> 17:23 <b>rapist</b> 18:7 <b>rate</b> 25:11 <b>rational</b> 9:17 <b>read</b> 22:15 25:17 26:3 <b>really</b> 18:25 21:25 23:18 <b>realtime</b> 2:6 <b>rearrested</b> 13:4 <b>reason</b> 14:19 <b>reasons</b> 15:20 <b>recall</b> 18:12 20:20 20:23 <b>received</b> 7:7 11:23 12:17 <b>receiving</b> 16:21 <b>record</b> 5:3 11:15 25:8 26:5 <b>records</b> 11:3,14 14:6 15:17 24:3 <b>recreation</b> 18:18 <b>referred</b> 12:2 <b>regency</b> 2:3 5:12 <b>registered</b> 2:5 <b>relative</b> 25:12,13 <b>releases</b> 23:25 24:2 <b>remained</b> 15:22 <b>remember</b> 14:19 <b>report</b> 22:16,21 <b>reported</b> 1:25 25:5 <b>reporter</b> 2:5,6 5:14 6:3	<b>s</b>
<b>p</b>			<b>s</b> 5:1 <b>saw</b> 10:8 <b>scramble</b> 12:9,10 <b>scrambled</b> 15:7 <b>scratch</b> 15:14 <b>seal</b> 25:19 <b>second</b> 18:11 <b>secured</b> 12:16
<b>p</b> 5:1 <b>pacemaker</b> 21:18 <b>page</b> 2:25 4:3 26:8 <b>paper</b> 8:11 9:15 <b>parties</b> 25:10,12 25:14 <b>party</b> 25:10 <b>patients</b> 7:9 <b>paul</b> 2:19,24 5:19 <b>paula</b> 1:25 2:4 5:14 25:23 <b>people</b> 8:14 14:20 <b>period</b> 14:2 16:18 17:1 22:17,24 23:9,11 <b>person</b> 17:25 <b>persons</b> 25:15 <b>peter</b> 1:14 2:1 4:3 5:5 6:5 9:13 10:11			

<p><b>sense</b> 7:6  <b>sent</b> 13:18 15:19  <b>sentence</b> 11:10  <b>sentenced</b> 16:2,8  16:16  <b>september</b> 10:21  10:24  <b>sessions</b> 12:14  <b>severe</b> 21:17  <b>sexual</b> 8:4  <b>shit</b> 19:13  <b>shock</b> 12:5,6  <b>shown</b> 7:17 8:9  <b>shunt</b> 21:19,23  <b>sic</b> 12:13  <b>sign</b> 24:1,2,4 25:17  <b>signature</b> 25:22  <b>solutions</b> 5:16  <b>somebody</b> 18:1,4  18:21 19:2 20:9  <b>space</b> 8:1  <b>speak</b> 21:12,23  <b>speaking</b> 17:16  <b>specific</b> 9:23  <b>spoke</b> 6:13 10:8  18:15 23:25  <b>spoken</b> 18:13 19:7  <b>ss</b> 25:3  <b>st</b> 7:10,10,10 9:13  10:11 13:18,24  18:14  <b>state</b> 1:1,4 2:7,13  5:7,8,18 25:2  <b>statement</b> 1:13 2:1  5:5 20:12,15,17  24:8,9 25:5  <b>sticking</b> 8:3  <b>stole</b> 8:1  <b>store</b> 7:25 8:3  <b>stuff</b> 20:4</p>	<p><b>subscribed</b> 26:22  <b>substantial</b> 25:15  <b>suggested</b> 14:24  <b>suicide</b> 22:19  <b>sure</b> 10:4  <b>swear</b> 6:3  <b>sworn</b> 6:6 25:6  26:22  <b>systematically</b> 8:2</p> <p style="text-align: center;"><b>t</b></p> <p><b>take</b> 14:24 18:19  20:16  <b>taken</b> 1:16 2:1  26:4  <b>talk</b> 18:22 19:2  23:19  <b>talking</b> 6:18  <b>tell</b> 17:9 18:15  22:2,5,6,8,18  23:20 25:6  <b>telling</b> 8:25 9:3,4  9:20,21,22 17:18  21:11 22:9,11,11  <b>ten</b> 11:11  <b>tendency</b> 25:15  <b>testified</b> 6:6 7:7  8:17,18 10:5  15:13 16:10 19:17  19:22 20:8  <b>testimony</b> 25:8,8  26:4,6  <b>thank</b> 23:21  <b>therapy</b> 12:5,6,14  12:19 14:20  <b>thing</b> 9:9 20:5  22:13 23:24  <b>things</b> 8:20 20:7  22:15  <b>think</b> 10:22 17:10  17:12,15</p>	<p><b>thought</b> 9:10,12  21:3 22:13  <b>thoughts</b> 17:20  <b>three</b> 17:6 19:9,13  <b>time</b> 6:11,13 7:19  8:17 9:3,20,21,24  10:2,3 11:2 12:23  14:2,8,25 15:12  16:18,23 17:25  18:18,18 19:8,22  22:9,10,17,24  23:12 24:8  <b>times</b> 18:12,15  <b>today</b> 7:16,22  18:12 21:7  <b>today's</b> 24:8  <b>toilet</b> 8:11  <b>told</b> 7:12,15 9:18  12:12 21:2,5  <b>traditional</b> 14:22  <b>transcribed</b> 25:8  <b>transcript</b> 3:7  26:3  <b>trazodone</b> 20:4  <b>treated</b> 14:18  <b>treatment</b> 12:17  14:23  <b>treatments</b> 11:25  12:1  <b>trial</b> 21:6  <b>tried</b> 9:12,16  <b>true</b> 7:20,20,21,23  9:2,4 25:8 26:5  <b>truth</b> 22:6 25:7  <b>try</b> 17:13 18:8  <b>tuesday</b> 21:16  <b>turns</b> 22:14  <b>two</b> 7:9 8:1 13:23  15:23,24,24 16:1  17:1 19:1,9,12</p>	<p style="text-align: center;"><b>u</b></p> <p><b>uh</b> 20:11  <b>ultimately</b> 11:7  <b>unattended</b> 12:19  <b>understand</b> 6:21  8:22 15:22  <b>understood</b> 22:21  <b>university</b> 11:18</p> <p style="text-align: center;"><b>v</b></p> <p><b>van</b> 7:24  <b>veritext</b> 5:15  <b>versus</b> 5:7  <b>video</b> 5:5  <b>videographer</b> 3:4  5:2,14 6:2 24:7  <b>videotaped</b> 1:13  2:1 25:5  <b>vs</b> 1:6</p> <p style="text-align: center;"><b>w</b></p> <p><b>walk</b> 12:14  <b>walked</b> 12:21  <b>walking</b> 19:1  <b>want</b> 23:10,21  <b>wanted</b> 15:2 22:2  22:5  <b>ward</b> 12:16  <b>warrants</b> 13:8  <b>week</b> 19:13 21:17  <b>went</b> 7:25 16:3,8  <b>white</b> 9:15  <b>willing</b> 23:19  <b>witness</b> 4:3 6:3,25  7:3 25:6,8,17,19  <b>woman</b> 22:18  <b>words</b> 12:15  <b>work</b> 18:20  <b>wound</b> 11:9  <b>wow</b> 21:15  <b>wrestled</b> 9:8</p>
--	--	--	--

<b>y</b>	
<b>yard</b>	18:19 19:2
<b>yeah</b>	10:4,4,6,14 10:23 11:1,22 12:7,16 13:8 14:1 14:9,15,22 15:2,25 16:4,7,24,24 18:3 19:20 21:9,14 22:7,20 23:1,13,16 23:22 24:1,4
<b>year</b>	6:18 8:2,12 13:3 14:3 16:25 17:1,23
<b>years</b>	9:14 11:11 15:23,25 16:2 17:6 22:13 23:10 23:15
<b>young</b>	3:4 5:13
<b>z</b>	
<b>zoloft</b>	14:8,10 20:6

Minnesota Rules of Civil Procedure

Part V. Depositions and Discovery

Rule 30

Rule 30.05 Review by Witness; Changes; Signing

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by Rule 30.06(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.



VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at [www.veritext.com](http://www.veritext.com).

ORIGINAL

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No.00-307 RHK/ESS

Petition for Post-Conviction Relief

**EXHIBIT E**

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. )  
)  
PETER ROBERT ARNOLDI, )  
)  
Defendant. )

SENTENCING POSITION OF  
DEFENDANT

Mr. Arnoldi, through his undersigned counsel, hereby submits his position with respect to sentencing in the above-captioned case. As anticipated in the presentence report, Mr. Arnoldi will be seeking a downward departure from the sentencing guidelines range he faces of 151-188 months to a sentence below 151 months. This departure is appropriate for several reasons. First, Mr. Arnoldi has demonstrated extraordinary acceptance of responsibility in this case, and therefore departure beyond the traditional three-level reduction is appropriate. Second, Mr. Arnoldi's diminished capacity, specifically severe depressive disorder, contributed to the offense and justifies departure under §§ 5K2.0 and 5K2.13 of the sentencing guidelines. Third, departure for Mr. Arnoldi is additionally justified because of his cooperation with Minnesota State authorities in the prosecution of a murder, cooperation for which he received no benefit from either State authorities or the United States Attorney's Office. Each of these three reasons independently supports a departure from the sentencing guidelines, but the three in combination strongly support a sentence below 151 months. In addition, in this memorandum, Mr. Arnoldi will briefly address the government's request for an upward departure on the basis of his extensive criminal history.

FILED SEP 10 2001  
RICHARD D. SLETTEN, CLERK  
JUDGMENT ENTD  
DEPUTY CLERK PS

(19)

APX0909

I. Factual Background

Peter Arnoldi is a 56 year old man who was born in Germany and came to this country at age thirteen. As the presentence report describes, Mr. Arnoldi had a difficult childhood. He was functionally abandoned by his mother as a young boy in Germany, and when he was eventually brought to the United States he was exposed to violence, abuse and neglect at the hands of his mother and her husband. Due to the abuse in his home, Mr. Arnoldi ran away at age 15, and lived on the streets and with strangers, as well as returning episodically to his mother's house.

At an early age Mr. Arnoldi became involved with the criminal justice system, and that involvement continued throughout his adult life. Although Mr. Arnoldi has an remarkably long string of convictions as described in the presentence report, the overwhelming majority of those convictions are for relatively minor or minor offenses such as check fraud and simple theft. However, Mr. Arnoldi does possess the two qualifying felonies which result in career offender treatment in this case, two burglaries. It is important to note that the longest Mr. Arnoldi has ever spent in custody for a single offense, according to the PSR, was the service of approximately three and a half years on a 1966 offense of escape, and that sentence included multiple parole violations. The bulk of Mr. Arnoldi's other offenses resulted in him serving one year, or two, and no more.

On September 27, 2000, Mr. Arnoldi robbed the First Independent Bank in Russell, Minnesota. He did so without using a weapon or harming anyone, although there is no doubt that this conduct nonetheless counts as a crime of violence. Mr. Arnoldi then left the bank and spent the money, primarily on a place to stay, food, and gambling. Approximately one week after the robbery, before there had been any specific investigative suspicion of Mr. Arnoldi, Mr. Arnoldi turned himself in to the Lyon County Law Enforcement Center, accompanied by his son.

Although he turned himself in for a DWI warrant, he dropped numerous hints and made references to Russell to direct the officers to ask him about that matter as well. Mr. Arnoldi has described that both at the time of the bank robbery and at the time he turned himself in he was extremely depressed and hopeless, even suicidal. The bank robbery was promptly referred to federal attention and Mr. Arnoldi was brought to the Cities.

Mr. Arnoldi was initially housed at a county jail in the Twin Cities. However, the nursing staff at the jail became quickly concerned that they were unable to care for his serious mental illness, particularly in light of his extensive history of depression and shock treatments. Therefore, Mr. Arnoldi was referred for a competency evaluation. Although the parties wanted that evaluation to occur at FMC - Rochester, a short trip which would minimize stress for Mr. Arnoldi, he was transferred to the Community Corrections Center in Chicago, Illinois. They gave him a competency evaluation, which found him to be competent but diagnosed him with a severe depressive disorder. Mr. Arnoldi was brought back to the Twin Cities and placed at the Sherburne County Jail for a short while. Soon, the Magistrate Judge ordered that Mr. Arnoldi be held at FMC - Rochester during the remaining pendency of his case so that he could receive adequate mental health treatment; the parties had concerns about Mr. Arnoldi's continuing depression and suicidal thoughts. In addition, the severe depression was rendering Mr. Arnoldi unable to tend to his diabetes properly, and he was getting sick. At FMC Rochester Mr. Arnoldi was seen first by Dr. Shine and then by Dr. Andrew Olnes.

Dr. Olnes was Mr. Arnoldi's primary psychiatric care provider during his stay at FMC - Rochester.<sup>1</sup> A letter from Dr. Olnes is attached to this memorandum as Exhibit A. Dr. Olnes has

---

<sup>1</sup>Since the writing of this letter, Dr. Olnes has left the Bureau of Prisons and gone into another practice out of state.

described Mr. Arnoldi as suffering from depression for much of his life, with a marked increase in depressive symptoms in the last decade. He also experiences psychotic symptoms, including hearing voices, as a result of the extreme depression. He has been treated with more than 15 sessions of shock treatments, psychiatric medications, therapy and other methods. In Dr. Olnes' letter, he describes the ongoing struggle, even by the dedicated staff at FMC Rochester, to control Mr. Arnoldi's depression.

In January, 2001, Mr. Arnoldi was written to Aitkin County to testify in a ongoing murder case there. Mr. Arnoldi testified as a critical state's witness against the accused murderer in that case, and according to a letter written by Bradley Rhodes, the Aitkin County Attorney, his testimony was absolutely essential to obtaining a conviction. Mr. Arnoldi had approached the State after he had been a patient at the St. Peter Security Hospital and learned from the defendant in the murder case about the murder. He testified at the trial although, because he himself was in the prison system, he could be labeled a "rat" and face severe retribution, despite the fact that he gained no specific benefit from doing so, and despite the fact that the United States attorney declined to offer him a § 5K departure for doing so. A letter from Bradley Rhodes is attached to the instant memorandum as Exhibit B.

## II Extraordinary Acceptance of Responsibility

Mr. Arnoldi seeks a departure in part based upon his extraordinary acceptance of responsibility in this case. According to the discovery provided by the government, although law enforcement clearly knew that a crime had been committed, they were unaware of Mr. Arnoldi's identity as the robber at the time that he turned himself in to Lyon County officials. He has since described being extremely depressed at the time he robbed the bank, being hopeless, and immediately regretting what he had done. He has also described turning himself in because he

felt he needed help, desperately. Mr. Arnoldi's conduct in surrendering himself when he was not a suspect or even wanted for questioning is truly unique among the cases seen in federal court, and among bank robberies specifically. Without Mr. Arnoldi's actions, it is possible or even probable that the Russell robbery, like so many others, could have gone unsolved.

The Eighth Circuit has recognized that extraordinary acceptance of responsibility can justify a downward departure from the sentencing guidelines. See e.g., United States v. Garlich, 951 F.2d 161 (8<sup>th</sup> Cir. 1991)(affirming, even before the Koon decision, the propriety of departure based upon extraordinary acceptance of responsibility, in that case, extraordinary payment of restitution). Although acceptance of responsibility is already contemplated by the guidelines, and already recommended in this case, when the actions taken by the defendant exceed those normally seen, additional reduction may be warranted at the discretion of the Court. See also United States v. Brown, 985 F.2d 478 (9<sup>th</sup> Cir. 1993)(reversing for district court's erroneous belief that it could not depart downward for extraordinary acceptance of responsibility); United States v. Lieberman, 971 F.2d 989, 994-96 (3d. Cir. 1992) ("We conclude therefore that a sentencing court may depart downward when the circumstances of a case demonstrate a degree of acceptance of responsibility that is substantially in excess of that ordinarily present.")

In light of this case law, this Court certainly has the authority to award a departure from the guidelines based in whole or in part on Mr. Arnoldi's extraordinary acceptance of responsibility, specifically the remarkable fact that he surrendered to authorities on his own. Mr. Arnoldi respectfully moves the Court to do so.

### III. Diminished Capacity

Mr. Arnoldi further seeks departure based upon his diminished mental capacity, and the role that his mental illness played in the offense of conviction. A downward departure based

upon diminished capacity is among those departures explicitly encouraged by the Guidelines when factually appropriate in a given case. See United States v. Ribot, 1999 WL 165919, \*8 (D. Mass. March 19, 1999).

Section 5K2.13 of the Guidelines states:

A sentence below the applicable guideline range may be warranted if the defendant committed the offense while suffering from a significantly reduced mental capacity. However, the Court may not depart below guideline range if (1) the significantly reduced mental capacity was caused by the voluntary use of drugs or intoxicants; (2) the facts and circumstances of the defendant's offense indicate a need to protect the public because the offense involved actual violence or a serious threat of violence; (3) the defendant's criminal history indicates the need to incarcerate the defendant to protect the public. If a departure is warranted, the extent of the departure should reflect the extent of which the reduced mental capacity contributed to the commission of the offense.<sup>2</sup>

This provision has been used repeatedly by courts to depart downward from the Guidelines when the above criteria are met. See, e.g., United States v. Glick, 946 F.3d 335, 339 (9<sup>th</sup> Cir. 1991) (affirming lower court's decision to depart based upon defendant's mental limitations); United States v. Cantu, 12 F.3d 1506, 1512-13 (9<sup>th</sup> Cir. 1993) (holding that post-traumatic stress disorder can give rise to downward departure, and departures may be given no matter the type or severity of the impairment); United States v. Ribot, 1999 WL 165919 (D. Mass. 1999) (departing based on extraordinary depression); United States v. McBroom, 991 F. Supp. 445 (D. N.J., 1998) (granting departure based upon obsessive-compulsive disorder). Moreover, the Eight Circuit has held that the defendant's diminished capacity need not be the sole cause of the offense in order for a departure to be justified, by must merely be a contributing factor. See United States v. Ruklick, 919 F.2d 95 (8<sup>th</sup> Cir. 1990) see also Glick, 946 F.3d 335.

---

<sup>2</sup>U.S.S.G. § 5K2.13, as amended, effective November 1, 1998.

When these standards are applied to Mr. Arnoldi's case, a departure appears appropriate. Mr. Arnoldi suffers from a lengthy history of severe mental illness, much of it untreated. Over the last five or seven years, that illness has become more severe and pronounced, leading Mr. Arnoldi to do self-destructive things such as rob the bank in this case, and leading him to attempt suicide on more than one occasion. Although the government argued in its motion for upward departure that Mr. Arnoldi has evidence a unwillingness to abide by the "social contract," in fact it appears that his untreated illness has contributed quite clearly to both the instant offense and his criminal record. As Dr. Olnes describes:

In talking with Mr. Arnoldi, one quickly appreciates the fact that he is terribly depressed. His movements are slowed down, his face is devoid of expression, and he speaks in a monotonal voice. He frequently refers to his psychological anguish and his feelings of hopelessness and despair. One gets the feeling that Mr. Arnoldi is living day-by-day, hovering on the brink of self-annihilation.

This severe depressive disorder, with psychotic features, contributed to the instant offense, and departure is appropriate.

The government will likely argue that departure is inappropriate in this case because Mr. Arnoldi's criminal record evidences a need to incarcerate him to "protect the public." However, it is important to note that the guidelines do not create a per se prohibition on granting the diminished capacity departure for crimes of violence, or even in cases of extensive criminal history. In this case, although Mr. Arnoldi's record is certainly long, it does not "require" his incarceration for 151-188 months. Mr. Arnoldi describes that, for the first time in his life, he feels that he is getting good medical care at FMC Rochester, and if anyone can help him control his depression, it is the doctors there. In fact, a lesser restriction than twelve to fifteen years of imprisonment will adequately protect the public: some imprisonment followed by supervised release with ongoing outpatient mental health care. In sum, Mr. Arnoldi's mental health



condition is truly remarkable, and merits departure from the guidelines, either on its own or in combination with other factors.

IV. Cooperation With State and Local Officials

Finally, Mr. Arnoldi seeks a departure based in part on his cooperation with state officials in the prosecution of a brutal murder in Aitkin County, Minnesota. As described above, Mr. Arnoldi testified in January of 2001 in the case in International Falls. He did so despite the fact that he was already incarcerated for the instant offense, and would risk retribution within the prison system as a "rat." Furthermore, he did so despite the position of the United States that he would not receive a § 5K1.1 departure motion for doing so. His cooperation is described in a letter attached to this memorandum. According to the Aitkin County Attorney, the testimony provided by Mr. Arnoldi was crucial in obtaining two first degree murder convictions in the case.

The Supreme Court has reiterated its position that, while the Guidelines are surely designed to promote uniformity in sentencing, "[i]t has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue." United States v. Koon, 518 U.S. 81, 113 (1996). When a case does not fall within the "heartland" of cases considered by the courts, departure is appropriate. Id. As Koon reminded, the Guidelines prohibit consideration of certain factors at sentencing, and expressly encourage consideration of those factors which the Guidelines have not been fully able to take into account, and they provide departures as the response to such factors. Id. at 92-96.

Although cooperation with federal authorities has already been taken into consideration by the Sentencing Guidelines, as codified in § 5K1.1, cooperation with state and local authorities

has not. See United States v. Kaye, 140 F.3d 86 (2d Cir. 1998). The Kaye court engaged in a detailed analysis of §5K1.1 in reaching the conclusion that that section did not place the same unfettered discretion into the hands of federal prosecutors to reward cooperation with state and local authorities as it does regarding cooperation in federal offenses. The court also concluded that federal prosecutors are not in the best position to value and adequately “reward” cooperation with local officials or other jurisdictions. Id. at 88. According to Kaye, it should be the province of the Court, and not the Assistant United States Attorney, to consider a motion for downward departure in recognition of cooperation with state and local authorities.

Given this Court’s authority to depart, then, an examination of the facts of this case shows that departure is justified. Mr. Arnoldi assisted in the prosecution of a brutal murder case, and his testimony was essential to the conviction. Such cooperation is surely even more laudable than that ordinarily present in the §5K1.1 context, namely cooperation in drug cases. Moreover, such cooperation is even more remarkable given that Mr. Arnoldi put himself at risk as a snitch in the prison population without any promise from either the state or the local authorities that his cooperation would help him in any way. A departure from the guidelines is warranted on this basis.

V. Response to Government’s Motion for Upward Departure

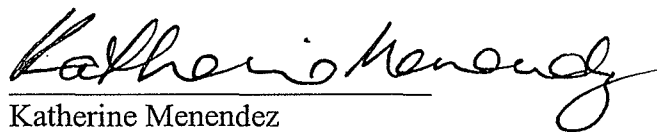
The government has petitioned the Court for an upward departure pursuant to §4A1.3 on the basis of Mr. Arnoldi’s extensive criminal record. However, such a departure is neither warranted nor necessary. It is true that Mr. Arnoldi has a very lengthy criminal record. However, it is important to note two things about his lengthy record: first, the overwhelming majority of his offenses are for forged or invalid checks, and theft offenses, and none involve the use of weapons, assault, drugs or physical violence. Even the two burglary convictions which

qualify Mr. Arnoldi for career offender treatment were committed non-violently. Second, and perhaps even more important, Mr. Arnoldi has never served a substantial amount of time in prison for any of these offenses, even the recent ones. For instance, even the two burglaries resulted in the service of just over two years in prison. Even if the Court grants a generous downward departure from the guidelines, the sentence pronounced will be well longer than any sentence imposed on Mr. Arnoldi in the past, and the length of time he serves in the federal system, where he cannot have parole, will also be by far the longest time he's ever served. Given these unique facts, an upward departure is inappropriate. Mr. Arnoldi is already facing one of the most severe sentencing ranges possible for a bank robbery, and any enhancement beyond that is uncalled for.

In sum, the above factors support a downward departure from the sentencing range Mr. Arnoldi currently faces of 151-188 months.

Dated: September 10, 2001

Respectfully submitted,



Katherine Menendez  
Attorney ID No. 278014  
Attorney for Defendant  
107 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

-----  
United States of America, Criminal No. 00-307 RHK  
Plaintiff,  
vs. Saint Paul, Minnesota  
October 2, 2001  
Peter R. Arnoldi, 10:00 a.m.  
Defendant.  
-----

BEFORE THE HONORABLE RICHARD H. KYLE  
UNITED STATES FEDERAL COURT JUDGE  
(Sentencing Hearing)

APPEARANCES:

For the Plaintiff: RACHEL PAULOSE  
United States Attorney  
Room 600, U.S. Courthouse  
300 South Fourth Street  
Minneapolis, Minnesota 55415

For the Defendant: KATHERINE MENENDEZ  
Assistant Federal Public Defender  
Room 107, U.S. Courthouse  
300 South Fourth Street  
Minneapolis, Minnesota 55415

Court Reporter: Colleen M. Sichko, RPR  
Shaddix & Associates  
9100 W. Bloomington Frwy., #122  
Bloomington, Minnesota 55431

Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription.

1 (Whereupon, the following proceedings were  
2 duly had and entered of record, to-wit:)

3  
4 THE COURT: We are here on United States  
5 of America versus Peter R. Arnoldi, Criminal File  
6 Number 00-307. Let's start with the appearances for the  
7 United States.

8 MS. PAULOSE: Good morning, Your Honor.  
9 Rachel Paulose for the United States.

10 THE COURT: Good morning, Ms. Paulose.  
11 And for the defendant?

12 MS. MENENDEZ: Kate Menendez for Mr. Arnoldi.

13 THE COURT: Mr. Arnoldi is also present. Good  
14 morning to the two of you, or the three of you.

15 We are here for imposition of sentence, the  
16 defendant having previously entered a plea of guilty to the  
17 charge of Bank Robbery in violation of Title 18 United  
18 States Code, Section 2113(a). That plea was entered and  
19 conditionally accepted by the Court on April 25th of this  
20 year. Following the Court's conditional acceptance of the  
21 plea, a Presentence Investigation Report was prepared. It  
22 has been disclosed to the parties. It is my understanding  
23 that there are no objections or proposed amendments to that  
24 report by either the United States or by -- or on behalf of  
25 the defendant, but I would like to have that confirmed here

1           this morning. For the United States?

2                       MS. PAULOSE: That's correct, Your Honor.

3                       THE COURT: For the defendant?

4                       MS. MENENDEZ: That's correct, Your Honor.

5                       THE COURT: The Court, then, will adopt the  
6           Presentence Investigation Report as its findings in this  
7           matter.

8                       Now, let me review the applicable guidelines  
9           in this case, because it is a guideline case. I might note  
10          that the guidelines as set forth or recommended in the  
11          Presentence Investigation Report are consistent with those  
12          contemplated by the plea agreement. Total offense level  
13          here is a 29. That's a base offense level of 32 with a  
14          three-point reduction for acceptance. The criminal history  
15          category for Defendant is Category VI. The imprisonment  
16          range called for as a result of the foregoing is 151 to 188  
17          months, there is a supervised release term of two to three  
18          years, and a fine of \$5,000 to \$150,000.

19                      The defendant has filed a motion and a  
20          sentencing position paper seeking a downward departure on  
21          three separate grounds, that the defendant has demonstrated  
22          extraordinary acceptance of responsibility and, therefore,  
23          departure beyond the three-point level is appropriate;  
24          second, that because of his diminished capacity,  
25          specifically severe depressive disorder, that contributed

1 to the offense and justifies a departure under 5k2.0 and  
2 5k2.03; and, third, that the defendant is additionally  
3 justified because of his cooperation with Minnesota state  
4 authorities in the prosecution of a murder case and that is  
5 set forth in the attachment to the position papers filed by  
6 Ms. Menendez.

7 The Government has filed a motion for an  
8 upward departure on the grounds that the defendant is a  
9 record recidivist, if that's the right way to pronounce it,  
10 that his criminal history category significantly  
11 underrepresents the seriousness of the defendant's criminal  
12 history or the likelihood that he will commit further  
13 crimes, as those terms are used in Guideline Section 4A1.3.

14 So I think those are the issues that are  
15 before us. Let's take up the departure motions upward and  
16 downward. Ms. Menendez, why don't you say whatever you  
17 want to say in support of your motion. I have read the  
18 position paper that you have filed, so I think I understand  
19 it, but I certainly don't want to foreclose you from  
20 further comment on it. Then I want to hear from  
21 Ms. Paulose in response and she can talk about her own  
22 motion for an upward departure.

23 MS. MENENDEZ: Thank you, Your Honor. As Your  
24 Honor mentioned, the guidelines in this case are not in  
25 dispute. The parties anticipated from the beginning that

1 Mr. Arnoldi would likely be a career offender, and it's  
2 important to remind ourselves in this paradigm where we  
3 routinely hear huge numbers that "career offender" is the  
4 highest sentence available for this type of crime, for this  
5 type of bank robbery, a nonweapons involved, nonviolent  
6 bank robbery, and Mr. Arnoldi is exposed to this entirely  
7 because of his criminal record.

8 With respect to the Government's request for  
9 an upward departure, I ardently, on behalf of Mr. Arnoldi,  
10 oppose that. It's easy to look at Mr. Arnoldi's criminal  
11 history points and be wowed. He has 63 criminal history  
12 points, and that's a lot.

13 THE COURT: That's the most I've seen.

14 MS. MENENDEZ: Second most in our office, Your  
15 Honor, in all honesty. However, you have to look at those  
16 numbers in terms of what's behind them. You have to look  
17 at his record in real human terms. You have to look at how  
18 he earned those points. If we're talking about the most  
19 you've seen or the most we've seen, one of my esteemed and  
20 far more senior colleagues said without blinking that  
21 Mr. Arnoldi must be a paper-hanger. In order to get that  
22 many points without doing real time, you have to be a check  
23 forger, and that's exactly what he is.

24 I'm not making light of the fact that that  
25 repeatedly violates the social contract, as Ms. Paulose



1           said. I am suggesting that when you look at it in real  
2           human terms, it's a nonviolent offense, it is a repeated  
3           nonviolent offense of check forgery. Look behind each and  
4           every one of those criminal convictions, the amount of time  
5           Mr. Arnoldi served has never been anywhere near what he's  
6           going to serve even if Your Honor grants a generous  
7           downward departure from the guidelines, aside from the  
8           imposition of a guideline sentence or the upward departure  
9           sought by the Government, nowhere near that amount of time.  
10          If we're looking at sending a message to Mr. Arnoldi about  
11          his repeat criminal conduct, an upward departure is  
12          unnecessary to do so. He's gotten the message loud and  
13          clear. Even if Your Honor grants the generous downward  
14          departure, it will be in sharp contrast to the amounts of  
15          time he has served in the past.

16                        Your Honor, there is no conviction in this  
17          record for assault, there is no conviction in this record  
18          for drug crimes, there is no conviction in this record for  
19          armed robbery. Even his two predicate offenses, third  
20          degree burglaries, both of which admittedly qualify for  
21          career offender enhancement, even those were executed in  
22          nonviolent ways, one of which involved somebody that he  
23          knew. I'm not saying they are not crimes. I am not saying  
24          they don't trigger career offender treatment. I'm saying  
25          upward departure is simply not justified.

1                   The 4A1.3 case law talks about looking to the  
2 facts underlying the priors and the amount of time served  
3 in determining whether a departure either up or down under  
4 4A1.3 is appropriate, and when you do just that analysis,  
5 you see it's not appropriate here; but, Your Honor, even  
6 more so I want to advocate on Mr. Arnoldi's behalf for a  
7 downward departure and I know that's unusual for a guy who  
8 has 63 criminal history points, but there are a convergence  
9 of three very strong grounds for downward departure here,  
10 unique if I do say so to have even one of these in most  
11 cases, let alone three together.

12                   I want to start with Mr. Arnoldi's cooperation  
13 with state and local authorities and first address the  
14 proposition that Your Honor has the authority to grant a  
15 downward departure on this case. The case I pointed you  
16 to, the Kay case, and I believe it's out of the Third  
17 Circuit, addresses cogently why the plain language of the  
18 5k1.1 sentencing provision does not preclude Your Honor,  
19 absent a motion from the Government, from departing  
20 downward on cooperation with state and local authorities.  
21 It does not only serve a linguistic analysis of why the  
22 term "offense" means that it doesn't include putting the  
23 complete power for downward departure for state cooperation  
24 with the United States Attorney's Office, but it more  
25 importantly does policy analysis.

1 I, although I don't like it, understand why  
2 the Sentencing Commission decided to give the Government  
3 complete control over 5k1.1s for federal cooperation. It's  
4 so we don't get into a fighting match every single time  
5 about whether the person rendered substantial assistance  
6 and it's because the United States Attorneys are in a  
7 unique position to value substantial assistance in a  
8 federal case. That is simply not so when the cooperation  
9 is with state and local authorities, in fact almost the  
10 opposite. That puts the United States Attorney's Office in  
11 a position of having to value against their own prosecution  
12 cooperation given in a different jurisdiction, and for that  
13 reason, I think it makes great sense that Your Honor has  
14 complete discretion to decide on a downward departure for  
15 cooperation with state authorities.

16 If we acknowledge that Your Honor has that  
17 power, it is completely appropriate for it to be exercised  
18 in this case. Mr. Arnoldi has given extraordinary  
19 cooperation to state authorities. The case was a rape and  
20 murder of an elderly woman. According to the letter  
21 written by Bradley Rhodes, the assistant county attorney  
22 who prosecuted the case, Mr. Arnoldi's testimony was  
23 pivotal and it was not given for free, although he  
24 testified without any promise that it would help him, in  
25 fact with Ms. Paulose's denial that she would make a 5k1.1

1 motion on his behave, with nothing that would help him in  
2 front of the state authorities, he gave the testimony in  
3 that case. He traveled from Rochester to International  
4 Falls at a time when his medication was far from stable.  
5 At substantial discomfort to himself for several days, he  
6 stayed up there. He didn't have to do that.

7 More than that, he went to the authorities at  
8 the commencement of the case and told them what he knew  
9 about the person who had confessed to him. He didn't have  
10 to do that, and according to Bradley Rhodes, that testimony  
11 was essential for getting a conviction in that case. That  
12 deserves some consideration in this sentence. It's  
13 important cooperation from any citizen, but it's more  
14 important from a guy in the prison system because being  
15 labeled a rat exposes you to tremendous internal pressure  
16 within the BOP. That's something Mr. Arnoldi has taken on  
17 because, as he and I have talked about, he couldn't stand  
18 what happened to that woman. He couldn't stand it. That's  
19 what we hope for all our citizens, but in this case, doing  
20 his civic duty exposed him in a way that it wouldn't if it  
21 were me or somebody else on the outside.

22 With respect to the second basis for downward  
23 departure, Your Honor, extraordinary acceptance of  
24 responsibility, that's addressed pretty comprehensively in  
25 my sentencing memorandum and I'm not going to reiterate

1 much about that. In this case, the extraordinary  
2 acceptance went to the very heart of the prosecution even  
3 more than it does in some of the Eighth Circuit cases that  
4 I cited like the Garlich (phonetic) case. Unlike the  
5 payment of restitution, this goes to turning himself in  
6 when he was not a suspect on the offense.

7 The third basis for downward departure is  
8 diminished capacity and, again, I've addressed that at some  
9 length. I encourage Your Honor to read and consider and  
10 rely upon the letter written by Dr. Ulness. It's important  
11 to keep in mind that he is a BOP doc, he is not a "hired  
12 gun" by the defense. He's somebody who worked with  
13 Mr. Arnoldi at FMC - Rochester for months. He diagnosed --  
14 actually confirmed the diagnosis, because Mr. Arnoldi was  
15 diagnosed with severe depressive disorder with psychotic  
16 symptoms when he was at MCC Chicago for his competence  
17 evaluation. Dr. Ulness took it ten steps further, he spent  
18 a great deal of time with Mr. Arnoldi, struggling to get  
19 him on a medication regime that prevented him from suicide,  
20 from complete despair, from despondence. That letter talks  
21 at length about how Mr. Arnoldi's mental illness causes him  
22 complete depression, it's paralyzing depression, it's  
23 personally dangerous depression. This is a case where  
24 Mr. Arnoldi was being held in the county jail and they  
25 called the marshals and asked to have him moved because

1           they were worried they could not take care of him.

2                       I cited the Court to a passage from the "DSM."  
3           I'm not an expert in psychology and I figured most of the  
4           parties wouldn't be. It describes what kind of things this  
5           depressive disorder can do to a person, and it can render  
6           them completely hopeless, unable to function in daily life,  
7           suicidal. Mr. Arnoldi has talked to me and I believe he  
8           talked to Ms. Chesak from the Probation Office about how he  
9           was feeling when he committed the bank robbery in the  
10          instant case, and he was feeling complete despair. He was  
11          hoping he would get caught or shot. It's easy to see how  
12          that kind of diminished capacity contributed to the offense  
13          in this case.

14                     Your Honor, obviously, you're going to have  
15          pause because one of the parts of the diminished capacity  
16          provision that talks about how the departure is not  
17          appropriate is incarceration is necessary to protect the  
18          public, but as I talked about at the opening of my  
19          comments, Mr. Arnoldi's record is one overwhelmingly of  
20          check forgery. His continued incarceration is not  
21          necessary to protect the public so much as to offset a  
22          clear diagnosis of mental illness. First of all, it's  
23          important to keep in mind that even some of the Eighth  
24          Circuit cases I've cited in my briefs and memorandum dealt  
25          with things like felon in possession cases, child

1           pornography cases, cases where one would think that  
2           protection of the public is needed and yet the departure is  
3           granted.

4                       Moreover, Your Honor, I'm asking for a  
5           departure below the 12 and a half year mark, and 12 and a  
6           half years of incarceration for a 56-year-old man is simply  
7           not needed to protect the public, especially when he  
8           suffers from such severe depression. We're seeking a far  
9           shorter sentence of incarceration followed by, if Your  
10          Honor orders, time in a halfway house with required  
11          outpatient mental health treatment. Mr. Arnoldi told me  
12          once that for the first time in his life he feels like he's  
13          getting good mental health treatment. It's unfortunate  
14          that our system is such that he's in Rochester to get that,  
15          but it's also a blessing. When he first went to Rochester,  
16          his depression was preventing him from taking his diabetes  
17          medicine and his sugar levels were through the roof.  
18          That's no longer true.

19                      Your Honor, the three bases that I have set  
20          forth each independently support a departure from the  
21          guidelines of 151 to 188 months, but the combination of  
22          factors uniquely supports a downward departure from the  
23          career offender guidelines.

24                      THE COURT: Let me just ask you one question,  
25          Ms. Menendez.

1 MS. MENENDEZ: Sure.

2 THE COURT: I've read and reread Dr. Ulness's  
3 report that was attached to your position paper, and I have  
4 no reason to doubt what's in there at all, but I don't see  
5 in there, at least I don't think I see in there, anything  
6 in which the doctor opines with respect to a cause and  
7 effect between the diminished capacity and the conduct of  
8 the defendant with respect to this particular offense,  
9 unless I'm to read that diminished capacity was in  
10 existence at the time and, therefore, must have had  
11 influence on him. I don't think he's saying in here that  
12 that was the cause.

13 MS. MENENDEZ: Your Honor, I think that's  
14 partly because of Dr. Ulness's position with the BOP. He  
15 is unlike if we hired an external psychologist for the sole  
16 purpose of saying exactly the same thing Dr. Ulness said  
17 and saying how it contributed. That's part of why I  
18 pointed Your Honor to the "DSM." Mr. Arnoldi has talked  
19 about how his complete hopelessness was part of why he  
20 walked into that bank. A depressive disorder with suicidal  
21 ideation clearly contributes to him walking into an  
22 unplanned, ill-thought, ill-executed bank robbery and  
23 turning himself in one week later when he's not even a  
24 suspect. You're right, Your Honor, that Dr. Ulness does  
25 not address it, but it's implicit in the record, in the



1 Presentence Report and in the other documents Your Honor  
2 has.

3 THE COURT: But then you take it one step  
4 further. You pointed this out candidly, you look at 5k2.13  
5 where it says -- well, it says if a departure is warranted,  
6 the extent of the departure should reflect the extent to  
7 which the reduced mental capacity contributed to the  
8 offense. I am somewhat at a loss, if I were to take the  
9 first step, as to how I would quantify that for purposes of  
10 the departure.

11 MS. MENENDEZ: I understand that, Your Honor.  
12 I'm not sure any doctor could give you that answer, you  
13 know, this is depression worth three years, this is  
14 depression worth six months, but I think it's easy to see a  
15 record in his case of a man -- you read about his  
16 childhood, you read about the struggles that he's had his  
17 entire life, and you read about the fact that he wasn't  
18 even diagnosed with depression, which I find sad, until the  
19 '90s and then, when he was first diagnosed with depression,  
20 they treated it with shock treatments, round after round of  
21 shock treatments because they weren't controlling the  
22 depression. You see that person continuing to get into  
23 trouble, you see that person with no money walk into a  
24 bank, rob it, and a week later turn himself in, hoping to  
25 get shot, hoping to get caught, with no hope. How you

1           quantify that, I wish the guidelines gave us an answer.  
2           They are big on quantification, but I don't know. But it's  
3           clear it contributes to the offense and it supports a  
4           departure.

5                         THE COURT: Okay, thank you.

6                         MS. MENENDEZ: Thank you.

7                         THE COURT: For the Government, do you want to  
8           respond to that and make your own motion?

9                         MS. PAULOSE: Maybe I will start with my own  
10          motion first, Your Honor, because I think it can be very  
11          briefly stated. I really don't have that much to add to  
12          what we put in the written pleadings, Your Honor, but as  
13          the Court and defense counsel has already noted, 63 total  
14          points is an extraordinary number. Just an informal survey  
15          of our office revealed that it's the highest we have ever  
16          seen.

17                        To briefly address defense counsel's  
18          statements to the Court, violence is not the only way one  
19          tears at the social fabric, and irregardless of whether one  
20          used a gun or committed murder or rape or other sorts of  
21          violent activities, there are threats to society even in  
22          banking fraud or the kinds of things that Mr. Arnoldi has  
23          done and that's recognized in the fact that we punish those  
24          activities, as well.

25                        With regard to the --

1 THE COURT: Well, what's to be accomplished,  
2 if I can just be philosophical about this for a moment,  
3 what's to be accomplished by sentencing an individual, even  
4 with this record, to -- assuming your motion is granted,  
5 you're looking for something more than the high end of the  
6 guideline. Right now there is no sense going up. More  
7 than 188 months, isn't that sort of a little bit much even  
8 with a record like this?

9 MS. PAULOSE: Well, obviously --

10 THE COURT: You don't think it is or you  
11 wouldn't have made the motion.

12 MS. PAULOSE: Right, Your Honor, and we did it  
13 in good faith, but this number, the criminal history points  
14 are just extraordinary. It's not simply the fact of the  
15 point total itself, it's a consistent unwillingness to  
16 follow the rules. The fact is that this defendant has been  
17 in numerous courtrooms in front of numerous judges and has  
18 probably made the same promises time and time again to  
19 follow the rules, and that just has not been done. There  
20 is no indication that that behavior is going to change in  
21 the future.

22 THE COURT: Well, I'm not sure he has made  
23 those promises here, but maybe he will. I look at his  
24 criminal history and, I mean, I think the tragedy of all  
25 this -- and this is part of the system, I guess -- is that

1 someplace along the line somebody didn't rap him harder  
2 than he got rapped. In each one of these, he gets a year  
3 and he's out in a year, he gets 18 months and he's out in  
4 nine months. For whatever reason, diminished capacity or  
5 just lawlessness or whatever it is, somehow the message  
6 wasn't getting across. It seems to me that no matter what  
7 we do here, whether we go up or sentence in the guidelines  
8 or make a departure, he's going to get the message here.  
9 This is going to be a long sentence, but it's coming a  
10 little late to do much good. He's coming out at -- what is  
11 he, 59 now?

12 DEFENDANT ARNOLDI: I'm 57 presently, yes.

13 THE COURT: Okay, 57, so it's sad.

14 MS. PAULOSE: It is sad, Your Honor, I don't  
15 disagree with that. I feel sadness every time I stand in a  
16 court at sentencing, but our responsibility is also to  
17 protect the public and --

18 THE COURT: I'm not criticizing, I'm just  
19 taking the chance to talk.

20 MS. PAULOSE: No, I enjoy the give and take,  
21 Your Honor.

22 With regard to the motion for a downward  
23 departure, we do absolutely oppose that. Let me just  
24 address the three prongs very briefly. With regard to the  
25 acceptance of responsibility, as I understand it, the crux

1 of the defense's motion rests in the argument that because  
2 Mr. Arnoldi turned himself in to authorities, there is  
3 extraordinary acceptance. I have not found any case law  
4 that says that merely turning oneself in is demonstration  
5 of extraordinary acceptance. When you consider the weight  
6 of the evidence in this case, which we have turned over to  
7 the defense and the probation office in full, you know,  
8 showing that there were surveillance videos and a  
9 handwriting exemplar and all sorts of other physical and  
10 testimonial evidence, the police were obviously on the  
11 trail of Mr. Arnoldi, so that's really not a basis for a  
12 downward departure.

13 With regard to the diminished capacity,  
14 Mr. Arnoldi was sent to FMC - Rochester for a mental health  
15 evaluation. He was not found incompetent. If there are  
16 mental health issues to be addressed, it seems that the  
17 most appropriate place to address them is within the prison  
18 system and FMC - Rochester is widely acknowledged to be one  
19 of the finest, if not the best in the country for that sort  
20 of treatment. It also seems a strange basis on which to  
21 let somebody out early and turn them loose on the streets  
22 not having full treatment.

23 Finally, with regard to the cooperation with  
24 the State, we also believe that's not a basis for downward  
25 departure. Mr. Arnoldi basically did what any citizen

1 would be required to do in a similar situation. He was  
2 writted to the court, he gave what was presumably full and  
3 truthful testimony as he's required to do under the law,  
4 and a conviction was obtained, but there was no discussion  
5 with our office or with the local authorities about whether  
6 that should generate any benefit from this prosecution.

7 I would note furthermore that there are, I  
8 believe, at least four or five pending charges against  
9 Mr. Arnoldi in state and local jurisdictions and, if that  
10 behavior is to be rewarded, and I'm not sure why it would  
11 be given that, you know, any citizen faces retribution for  
12 testifying against punitive defendants, then the  
13 appropriate place to address that is within the state and  
14 the local system.

15 THE COURT: I suppose Mr. Arnoldi or counsel  
16 would respond to what you're saying by saying, well, he  
17 ought to get it. He didn't ask for it, he could have cut  
18 himself a deal, he could have -- they could have put him on  
19 the stand and made him testify or, who knows, he could have  
20 taken the Fifth Amendment and not testify, but he went  
21 ahead and did it and didn't try to cut himself a deal.

22 MS. PAULOSE: I'm accepting counsel's  
23 statements as being true, but perhaps the discussion  
24 occurred and they refused to give him cooperation. I just  
25 don't know.

1 THE COURT: I'm not sure they could do much  
2 about that. I think in some way it would have to work its  
3 way into your office.

4 MS. PAULOSE: And there was no contact with  
5 our office or request that we give him any further  
6 recognition for that.

7 Unless there are any further questions from  
8 the Court, that's all I have. Thank you, Judge.

9 THE COURT: If you would like to be heard  
10 again --

11 MS. MENENDEZ: Just on two tiny points, I  
12 guarantee. The first is with respect to Mr. Arnoldi  
13 turning himself in without being a suspect, it's true, as  
14 Ms. Paulose said, that once he gave them a face and a name,  
15 everything fell together for a rock solid prosecution.  
16 However, bank robberies go unsolved all the time,  
17 especially when a person is not a member of the community.  
18 Despite that, he turned himself in when he's not a suspect.

19 With respect to him doing what any citizen  
20 would do, it's true that we don't have the right to refuse  
21 a subpoena. He not only went forward to testify when  
22 ordered to do so despite being in the system, he went  
23 forward with the information unsolicited despite being in  
24 the system. That's a big thing. That's something that  
25 most people in the system don't do, they keep their mouth

1 shut. If somebody talks to them about an offense, they are  
2 not going to go forward to testify against them,  
3 particularly at no gain to themselves.

4 THE COURT: Okay.

5 MS. MENENDEZ: I told you I would be short.

6 THE COURT: And you were, I appreciate that.  
7 Anything else on the motions?

8 MS. MENENDEZ: No.

9 THE COURT: Let me start out by saying I  
10 recognize with respect to the motion for an upward  
11 departure and with respect to the motion for a downward  
12 departure and with respect to each of the grounds put forth  
13 by counsel in support of those two motions that I have the  
14 authority to depart. Now, having said that, however, it's  
15 my conclusion with respect to each of them that a departure  
16 is not warranted under the facts of the case. I think that  
17 the -- I'm not satisfied that the extraordinary acceptance  
18 of responsibility applies here. I recognize what has been  
19 said and what the defendant did, but I don't think it takes  
20 itself out of the heartland.

21 With respect to the diminished capacity, I do  
22 have the letter from the doctor and I recognize that this  
23 defendant has had some mental health problems that have  
24 followed him through his life, but I am not satisfied that  
25 there is what I think is a necessary causal connection



1           between those problems and his activity that brings him  
2           before the Court at the present time.

3                       Finally, with respect to the state assistance,  
4           I have the letter from Mr. Rhodes, who is the Aitkin County  
5           Attorney, which outlines the assistance. I think if this  
6           were in federal court and you could make a similar analogy,  
7           that the Government would probably move for a departure for  
8           substantial assistance, but it's not. I think it's a  
9           different issue, I don't have all the facts and  
10          circumstances here, and I'm going to deny the motion. I  
11          will probably take it into account in determining what the  
12          appropriate sentence should be within the guidelines.

13                      With respect to the upward departure, I  
14          recognize, as everybody says, this is an extraordinary  
15          criminal history, but I think comments by defense counsel  
16          are appropriate. It is points, these are serious offenses,  
17          but they are not as serious as some other offenses such  
18          as -- at least in my mind they are not -- such as drugs or  
19          physical confrontation with victims and the like. I think  
20          Category VI is as high as you can go under the guidelines  
21          and I just don't think -- I don't think the Category VI  
22          substantially underrepresents the seriousness of this  
23          offense or the likelihood that he's going to commit other  
24          offenses. In addition to that, the likelihood of his  
25          committing other offenses is going to be diminished itself

1           because of the length of the sentence that is going to be  
2           imposed. So that motion will likewise be denied. So it's  
3           my intention to sentence within the guideline range, which  
4           is in the range of 151 to 188 months.

5                         So having said that, let's turn to hearing  
6           from counsel with respect to any issues or facts that they  
7           think I should be aware of in making the determination of  
8           what that sentence should be. I will hear first from  
9           Ms. Menendez.

10                        Mr. Arnoldi, when she finishes, if there is  
11           anything you want to say to me before sentence is imposed,  
12           anything you think I should be aware of or anything you  
13           want to say at all, you will be given a chance to speak.  
14           If you don't want to say anything, that certainly is all  
15           right and it will not be held against you.

16                        Ms. Menendez?

17                        MS. MENENDEZ: Your Honor, obviously, I'm  
18           going to seek the least sentence that Your Honor can give  
19           given the denial of the downward departure. That's 12 and  
20           a half years, 151 months. I pray for a designation of  
21           Rochester, and I'm going to do everything I can with the  
22           BOP to encourage them to send him there, because I have  
23           little doubt that Peter wouldn't live out a low end  
24           sentence in another facility. He needs the mental health  
25           treatment to keep going. He needs to be at Rochester and

1 he doesn't need to be there one day over 151 months.

2 I have spent a fair amount of time with  
3 Mr. Arnoldi. He is a complicated man, but he is always  
4 respectful, kind and, although desperately pessimistic as a  
5 result of the depression, never disrespectful, always  
6 polite. He works very hard at FMC - Rochester. I've  
7 spoken to the head of mental health treatment there,  
8 Dr. Westreich. He is in the Horticulture Department, but  
9 more unique than that, they got him a job painting. He  
10 paints murals in the mental health building and other  
11 places within the system. He is a very talented artist.  
12 He hasn't had any violation or any trouble while he's been  
13 there. He does very well there. That's despite the fact  
14 that there's a lot more liberties at FMC - Rochester in  
15 some ways than at other facilities or a county jail, and he  
16 hasn't used that opportunity to get himself in trouble.

17 Mr. Arnoldi doesn't have a lot of family  
18 support. He doesn't have a lot of support out there at  
19 all, but he is struggling to get his medication in order.  
20 He told me today that for the first time the meds. feel  
21 like they are helping and I just hope that's true. I hope  
22 they help enough that he can hold on through the sentence,  
23 but there is nothing in his record that justifies a  
24 sentence a day over 12 and a half years. Thank you.

25 THE COURT: Mr. Arnoldi, anything you would

1           like to say?

2                           DEFENDANT ARNOLDI: I just regret having done  
3 this and, you know, I thought I did the right thing by  
4 turning myself in. I didn't want to commit any more  
5 crimes. I don't believe I'll be able to live out a  
6 12-and-a-half-year sentence, I think I'll probably die  
7 before that, and I was hoping for a downward departure to  
8 somewhere around 10 years.

9                           You know, I accept responsibility. I didn't  
10 make an issue with Aitkin County to get in touch with the  
11 federal prosecution before or I wouldn't testify. That was  
12 never a question. The lady was choked to death with  
13 Kleenex and raped and killed, so I felt that was wrong.  
14 The prosecution is right, I did what any normal citizen  
15 should have done. The only thing that I was hoping for was  
16 a downward departure to at least, like, ten years and,  
17 obviously, from what you have said, I'm not going to get  
18 that. I believe, with my diabetes and my medical problems  
19 that I do have, I won't live out 12 and a half years in  
20 prison. I believe that.

21                           THE COURT: Ms. Paulose?

22                           MS. PAULOSE: I have nothing to add to our  
23 written comments. Thank you.

24                           THE COURT: Okay. As indicated at the outset,  
25 the Court conditionally accepts the defendant's plea of

1 guilty to the charge of Bank Robbery back on -- well, the  
2 plea was accepted on April 25th of this year conditionally,  
3 and the Court now adjudges and determines the defendant is  
4 guilty of that offense.

5 The following sentence is imposed: That the  
6 defendant is committed to the custody of the Bureau of  
7 Prisons for a period of 151 months. That is the low end of  
8 the guidelines. The difference between the low and the  
9 high end of the guidelines is more than 24 months, so I'm  
10 required to make some statement on the record as to why I  
11 pick a particular area, and my statement is that I think  
12 that that adequately, due to the defendant's age, prior  
13 record, et cetera, that that adequately satisfies the needs  
14 of the justice system. I think it's a very long sentence  
15 even at the low end, and I think adding anything beyond  
16 that simply is not necessary under the totality of the  
17 circumstances in this case.

18 I will also recommend to the Bureau of Prisons  
19 that the place of incarceration for this defendant be the  
20 federal medical facility at Rochester, Minnesota. I am  
21 hoping they will follow that recommendation, but I hope you  
22 understand, as I'm sure your counsel has already told you,  
23 I don't make that decision, the Bureau of Prisons makes  
24 that decision.

25 DEFENDANT ARNOLDI: I understand, Your Honor.

1 THE COURT: But it is usually helpful, at  
2 least, if the Court makes a recommendation. I have also  
3 signed an Order today requesting that the bureau  
4 incarcerate the defendant at Rochester pending designation,  
5 so I assume, with that, he will go back to Rochester.

6 MS. MENENDEZ: Thank you, Your Honor. I  
7 certainly hope so.

8 THE COURT: In addition -- well, no monetary  
9 fine will be imposed in this case. The defendant really  
10 has no assets. I am required, however, to impose  
11 restitution, although that has been covered. I think  
12 there's \$186 due the First Independent Bank in Russell,  
13 Minnesota, and I will order that restitution. There is a  
14 payment schedule which will appear.

15 In addition to the foregoing, the defendant is  
16 sentenced to a term of three years of supervised release  
17 under the following conditions: That he not commit any  
18 crimes, federal, state or local; that he abide by the  
19 standard conditions of supervised release as recommended by  
20 the Sentencing Commission; that he refrain from possessing  
21 any firearm, destructive device or other dangerous weapon.  
22 You shall be required to undergo mandatory drug testing as  
23 set forth in 18 United States Code, Sections 3563(a) and  
24 3583(b). He shall provide the probation officer access to  
25 requested financial information. He should participate in

1 any program for drug abuse, which may include testing and  
2 inpatient or outpatient treatment, counseling or a support  
3 group; he shall participate in any psychological or  
4 psychiatric counseling and treatment program as approved by  
5 a probation officer; and he shall take any prescribed  
6 medications by his medical provider.

7 He shall reside for a period of four months in  
8 a community correction center as directed by the probation  
9 officer and shall observe the rules of that facility. A  
10 \$100 special assessment to the Crime Victims Fund is also  
11 imposed and it is ordered by statute that that be paid  
12 immediately. The defendant is in custody; he will remain  
13 in custody.

14 Under the plea agreement, which the Court has  
15 accepted, in paragraph 9 it indicates or states that the  
16 Court accepts the plea agreement, which I have; that the  
17 defendant agrees to waive his right to appeal or to contest  
18 his sentence on any ground with the exception of any  
19 retroactive change to the applicable guideline or to  
20 statute or the sentence is imposed in violation of the law  
21 apart from sentencing guidelines. Basically, that means  
22 that when you entered into the plea agreement, if I  
23 sentenced you within the guidelines, you were not going to  
24 be able to appeal.

25 I don't think there is any grounds for an

1           appeal here within the exceptions, but if I'm wrong on  
2           that, if you think I'm wrong or Ms. Menendez thinks I'm  
3           wrong or another lawyer thinks I'm wrong, then you do have  
4           the right to challenge your sentence on those limited  
5           grounds and you can appeal, or if there are challenges to  
6           be made, that's an appeal to another federal court, the  
7           Eighth Circuit Court of Appeals. That appeal has to be  
8           filed within ten days of today's date, and if you let the  
9           ten days go by, you've lost whatever right to appeal you  
10          may have. If you'd like to be represented by a lawyer for  
11          such appeal, if you can't afford a lawyer, the Court will  
12          appoint a lawyer to represent you. Do you understand that?

13                         DEFENDANT ARNOLDI: Yes.

14                         THE COURT: And, Ms. Menendez, if you have not  
15          previously covered with Mr. Arnoldi whatever limited rights  
16          to appeal he may have, I would request that you do that.

17                         MS. MENENDEZ: We have, and I will again, Your  
18          Honor.

19                         THE COURT: Was this a one-count indictment?

20                         MS. MENENDEZ: Yes, Your Honor.

21                         THE COURT: So there is nothing to be  
22          dismissed.

23                         Well, Mr. Arnoldi, this is not one of those  
24          days that I look forward to either, and I recognize you  
25          thought you were entitled to, and your lawyer argued very



1 eloquently in support of, a downward departure. It was  
2 just my judgment, based upon my view of the case, that you  
3 were not entitled to it, so you got a 12-and-a-half-year  
4 sentence, which is a long sentence and I'm not suggesting  
5 otherwise. It's the low end of the guidelines, but the low  
6 end of the guidelines in this day and age are still high.

7 I wish you well. I hope you will take  
8 advantage of whatever programs -- hopefully, it will be at  
9 Rochester, but wherever you go. There are some very good  
10 programs in that system. You are not going to come out as  
11 a young man, but I think you are going to come out and,  
12 hopefully, you will be able to come out in good health.

13 Okay. We are in recess.

14 (Proceedings concluded at 10:40 a.m.)

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF MINNESOTA)

) ss.

2 COUNTY OF DAKOTA )

3

4

5

REPORTER'S CERTIFICATE

6

7

I, Colleen M. Sichko, do hereby certify that

8

the above and foregoing transcript, consisting of the preceding

9

30 pages is a correct transcript of my stenograph notes, and is a

10

full, true and complete transcript of the proceedings to the best

11

of my ability.

12

Dated October 17, 2014.

13

14

/s/Colleen M. Sichko

15

COLLEEN M. SICHKO

16

Registered Professional Reporter

17

18

19

20

21

22

23

24

25

<b>A</b>				
<b>abide</b> 27:18	<b>adopt</b> 3:5	<b>argued</b> 29:25	<b>authority</b> 7:14	<b>briefs</b> 11:24
<b>ability</b> 31:11	<b>advantage</b> 30:8	<b>argument</b> 18:1	21:14	<b>brings</b> 22:1
<b>able</b> 25:5 28:24	<b>advocate</b> 7:6	<b>armed</b> 6:19	<b>available</b> 5:4	<b>building</b> 24:10
30:12	<b>afford</b> 29:11	<b>Arnoldi</b> 1:7 2:5	<b>aware</b> 23:7,12	<b>bureau</b> 26:6,18
<b>absent</b> 7:19	<b>age</b> 26:12 30:6	2:12,13 5:1,6,9	<b>a.m</b> 1:7 30:14	26:23 27:3
<b>absolutely</b> 17:23	<b>agreement</b> 3:12	5:21 6:5,10		<b>burglaries</b> 6:20
<b>abuse</b> 28:1	28:14,16,22	8:18 9:16	<b>B</b>	
<b>accept</b> 25:9	<b>agrees</b> 28:17	10:13,14,18,24	<b>back</b> 26:1 27:5	<b>C</b>
<b>acceptance</b> 2:20	<b>ahead</b> 19:21	11:7 12:11	<b>bank</b> 2:17 5:5,6	<b>called</b> 3:16
3:14,22 9:23	<b>Aitkin</b> 22:4	13:18 15:22	11:9 13:20,22	10:25
10:2 17:25	25:10	17:12 18:2,11	14:24 20:16	<b>candidly</b> 14:4
18:3,5 21:17	<b>Amendment</b>	18:14,25 19:9	26:1 27:12	<b>capacity</b> 3:24
<b>accepted</b> 2:19	19:20	19:15 20:12	<b>banking</b> 15:22	10:8 11:12,15
26:2 28:15	<b>amendments</b>	23:10 24:3,17	<b>base</b> 3:13	13:7,9 14:7
<b>accepting</b> 19:22	2:23	24:25 25:2	<b>based</b> 30:2	17:4 18:13
<b>accepts</b> 25:25	<b>America</b> 1:4 2:5	26:25 29:13,15	<b>bases</b> 12:19	21:21
28:16	<b>amount</b> 6:4,9	29:23	<b>basically</b> 18:25	<b>care</b> 11:1
<b>access</b> 27:24	7:2 24:2	<b>Arnoldi's</b> 5:10	28:21	<b>career</b> 5:1,3
<b>accomplished</b>	<b>amounts</b> 6:14	7:6,12 8:22	<b>basis</b> 9:22 10:7	6:21,24 12:23
16:1,3	<b>analogy</b> 22:6	10:21 11:19	18:11,20,24	<b>case</b> 3:9,9 4:4,24
<b>account</b> 22:11	<b>analysis</b> 7:4,21	<b>artist</b> 24:11	<b>beginning</b> 4:25	7:1,15,15,16
<b>acknowledge</b>	7:25	<b>aside</b> 6:7	<b>behalf</b> 2:24 5:9	8:8,18,19,22
8:16	<b>answer</b> 14:12	<b>asked</b> 10:25	7:6	9:3,8,11,19
<b>acknowledged</b>	15:1	<b>asking</b> 12:4	<b>behave</b> 9:1	10:1,4,23
18:18	<b>anticipated</b> 4:25	<b>assault</b> 6:17	<b>behavior</b> 16:20	11:10,13 14:15
<b>activities</b> 15:21	<b>apart</b> 28:21	<b>assessment</b>	19:10	18:3,6 21:16
15:24	<b>appeal</b> 28:17,24	28:10	<b>believe</b> 7:16	26:17 27:9
<b>activity</b> 22:1	29:1,5,6,7,9,11	<b>assets</b> 27:10	11:7 18:24	30:2
<b>add</b> 15:11 25:22	29:16	<b>assistance</b> 8:5,7	19:8 25:5,18	<b>cases</b> 7:11 10:3
<b>adding</b> 26:15	<b>Appeals</b> 29:7	22:3,5,8	25:20	11:24,25 12:1
<b>addition</b> 22:24	<b>appear</b> 27:14	<b>assistant</b> 1:16	<b>benefit</b> 19:6	12:1
27:8,15	<b>appearances</b>	8:21	<b>best</b> 18:19 31:10	<b>category</b> 3:15,15
<b>additionally</b> 4:2	1:11 2:6	<b>Associates</b> 1:22	26:15	4:10 22:20,21
<b>address</b> 7:13	<b>applicable</b> 3:8	<b>assume</b> 27:5	<b>beyond</b> 3:23	<b>caught</b> 11:11
13:25 15:17	28:19	<b>assuming</b> 16:4	26:15	14:25
17:24 18:17	<b>applies</b> 21:18	<b>attached</b> 13:3	<b>big</b> 15:2 20:24	<b>causal</b> 21:25
19:13	<b>appoint</b> 29:12	<b>attachment</b> 4:5	<b>bit</b> 16:7	<b>cause</b> 13:6,12
<b>addressed</b> 9:24	<b>appreciate</b> 21:6	<b>attorney</b> 1:13	<b>blessing</b> 12:15	<b>causes</b> 10:21
10:8 18:16	<b>appropriate</b>	8:21 22:5	<b>blinking</b> 5:20	<b>center</b> 28:8
<b>addresses</b> 7:17	3:23 7:4,5 8:17	<b>Attorneys</b> 8:6	<b>Bloomington</b>	<b>certainly</b> 4:19
<b>adequately</b>	11:17 18:17	<b>Attorney's</b> 7:24	1:23,23	23:14 27:7
26:12,13	19:13 22:12,16	8:10	<b>BOP</b> 9:16 10:11	<b>CERTIFICA...</b>
<b>adjudges</b> 26:3	<b>approved</b> 28:4	<b>authorities</b> 4:4	13:14 23:22	31:5
<b>admittedly</b> 6:20	<b>April</b> 2:19 26:2	7:13,20 8:9,15	<b>Bradley</b> 8:21	<b>certify</b> 31:7
	<b>ardently</b> 5:9	8:19 9:2,7 18:2	9:10	<b>cetera</b> 26:13
	<b>area</b> 26:11	19:5	<b>briefly</b> 15:11,17	<b>challenge</b> 29:4
			17:24	

<b>challenges</b> 29:5	<b>commit</b> 4:12	16:15	2:4,10,13,19	29:24
<b>chance</b> 17:19	22:23 25:4	<b>consisting</b> 31:8	3:3,5,5 5:13	<b>deal</b> 10:18 19:18
23:13	27:17	<b>contact</b> 20:4	11:2 12:24	19:21
<b>change</b> 16:20	<b>committed</b> 11:9	<b>contemplated</b>	13:2 14:3 15:5	<b>dealt</b> 11:24
28:19	15:20 26:6	3:12	15:7,13,18	<b>death</b> 25:12
<b>charge</b> 2:17 26:1	<b>committing</b>	<b>contest</b> 28:17	16:1,10,22	<b>decide</b> 8:14
<b>charges</b> 19:8	22:25	<b>continued</b> 11:20	17:13,16,18	<b>decided</b> 8:2
<b>check</b> 5:22 6:3	<b>community</b>	<b>continuing</b>	19:2,15 20:1,8	<b>decision</b> 26:23
11:20	20:17 28:8	14:22	20:9 21:4,6,9	26:24
<b>Chesak</b> 11:8	<b>competence</b>	<b>contract</b> 5:25	22:2,6 24:25	<b>defendant</b> 1:8
<b>Chicago</b> 10:16	10:16	<b>contrast</b> 6:14	25:21,24,25	1:15 2:11,16
<b>child</b> 11:25	<b>complete</b> 7:23	<b>contributed</b>	26:3 27:1,2,8	2:25 3:3,15,19
<b>childhood</b> 14:16	8:3,14 10:20	3:25 11:12	28:14,16 29:6	3:21 4:2,8 13:8
<b>choked</b> 25:12	10:22 11:10	13:17 14:7	29:7,11,14,19	16:16 17:12
<b>Circuit</b> 7:17	13:19 31:10	<b>contributes</b>	29:21	21:19,23 25:2
10:3 11:24	<b>completely</b> 8:17	13:21 15:3	<b>Courthouse</b>	26:3,6,19,25
29:7	11:6	<b>control</b> 8:3	1:13,16	27:4,9,15
<b>circumstances</b>	<b>complicated</b>	<b>controlling</b>	<b>courtrooms</b>	28:12,17 29:13
22:10 26:17	24:3	14:21	16:17	<b>defendants</b>
<b>cited</b> 10:4 11:2	<b>comprehensiv...</b>	<b>convergence</b> 7:8	<b>Court's</b> 2:20	19:12
11:24	9:24	<b>conviction</b> 6:16	<b>covered</b> 27:11	<b>defendant's</b>
<b>citizen</b> 9:13	<b>computer-aided</b>	6:17,18 9:11	29:15	4:11 25:25
18:25 19:11	1:25	19:4	<b>crime</b> 5:4 28:10	26:12
20:19 25:14	<b>concluded</b> 30:14	<b>convictions</b> 6:4	<b>crimes</b> 4:13 6:18	<b>Defender</b> 1:16
<b>citizens</b> 9:19	<b>conclusion</b>	<b>cooperation</b> 4:3	6:23 25:5	<b>defense</b> 10:12
<b>civic</b> 9:20	21:15	7:12,20,23 8:3	27:18	15:13,17 18:7
<b>clear</b> 6:13 11:22	<b>conditional</b> 2:20	8:8,12,15,19	<b>criminal</b> 1:4 2:5	22:15
15:3	<b>conditionally</b>	9:13 18:23	3:14 4:10,11	<b>defense's</b> 18:1
<b>clearly</b> 13:21	2:19 25:25	19:24	5:7,10,11 6:4	<b>degree</b> 6:20
<b>Code</b> 2:18 27:23	26:2	<b>correct</b> 3:2,4	6:11 7:8 16:13	<b>demonstrated</b>
<b>cogently</b> 7:17	<b>conditions</b> 27:17	31:9	16:24 22:15	3:21
<b>colleagues</b> 5:20	27:19	<b>correction</b> 28:8	<b>criticizing</b> 17:18	<b>demonstration</b>
<b>Colleen</b> 1:22	<b>conduct</b> 6:11	<b>counsel</b> 15:13	<b>crux</b> 17:25	18:4
31:7,14	13:7	19:15 21:13	<b>custody</b> 26:6	<b>denial</b> 8:25
<b>combination</b>	<b>confessed</b> 9:9	22:15 23:6	28:12,13	23:19
12:21	<b>confirmed</b> 2:25	26:22	<b>cut</b> 19:17,21	<b>denied</b> 23:2
<b>come</b> 30:10,11	10:14	<b>counseling</b> 28:2		<b>deny</b> 22:10
30:12	<b>confrontation</b>	28:4	<b>D</b>	<b>depart</b> 21:14
<b>coming</b> 17:9,10	22:19	<b>counsel's</b> 15:17	<b>daily</b> 11:6	<b>departing</b> 7:19
<b>commencement</b>	<b>connection</b>	19:22	<b>DAKOTA</b> 31:2	<b>Department</b>
9:8	21:25	<b>country</b> 18:19	<b>dangerous</b> 10:23	24:8
<b>comment</b> 4:20	<b>consider</b> 10:9	<b>county</b> 8:21	27:21	<b>departure</b> 3:20
<b>comments</b> 11:19	18:5	10:24 22:4	<b>date</b> 29:8	3:23 4:1,8,15
22:15 25:23	<b>consideration</b>	24:15 25:10	<b>Dated</b> 31:12	4:22 5:9 6:7,8
<b>Commission</b> 8:2	9:12	31:2	<b>day</b> 24:1,24 30:6	6:11,14,25 7:3
27:20	<b>consistent</b> 3:11	<b>court</b> 1:1,10,22	<b>days</b> 9:5 29:8,9	7:7,9,15,23

8:14 9:23 10:7 11:16 12:2,5 12:20,22 14:5 14:6,10 15:4 17:8,23 18:12 18:25 21:11,12 21:15 22:7,13 23:19 25:7,16 30:1	<b>diminished</b> 3:24 10:8 11:12,15 13:7,9 17:4 18:13 21:21 22:25 <b>directed</b> 28:8 <b>disagree</b> 17:15 <b>disclosed</b> 2:22 <b>discomfort</b> 9:5 <b>discretion</b> 8:14 <b>discussion</b> 19:4 <b>dismissed</b> 29:22 <b>disorder</b> 3:25 10:15 11:5 13:20 <b>dispute</b> 4:25 <b>disrespectful</b> 24:5 <b>DISTRICT</b> 1:1 1:2 <b>doc</b> 10:11 <b>doctor</b> 13:6 14:12 21:22 <b>documents</b> 14:1 <b>doing</b> 5:22 9:19 20:19 <b>doubt</b> 13:4 23:23 <b>downward</b> 3:20 4:16 6:7,13 7:7 7:9,15,20,23 8:14 9:22 10:7 12:22 17:22 18:12,24 21:11 23:19 25:7,16 30:1 <b>Dr</b> 10:10,17 13:2 13:14,16,24 24:8 <b>drug</b> 6:18 27:22 28:1 <b>drugs</b> 22:18 <b>DSM</b> 11:2 13:18 <b>due</b> 26:12 27:12 <b>duly</b> 2:2	<b>duty</b> 9:20 <hr/> <b>E</b> <hr/> <b>early</b> 18:21 <b>earned</b> 5:18 <b>easy</b> 5:10 11:11 14:14 <b>effect</b> 13:7 <b>Eighth</b> 10:3 11:23 29:7 <b>either</b> 2:24 7:3 29:24 <b>elderly</b> 8:20 <b>eloquently</b> 30:1 <b>encourage</b> 10:9 23:22 <b>enhancement</b> 6:21 <b>enjoy</b> 17:20 <b>entered</b> 2:2,16 2:18 28:22 <b>entire</b> 14:17 <b>entirely</b> 5:6 <b>entitled</b> 29:25 30:3 <b>especially</b> 12:7 20:17 <b>essential</b> 9:11 <b>esteemed</b> 5:19 <b>et</b> 26:13 <b>evaluation</b> 10:17 18:15 <b>everybody</b> 22:14 <b>evidence</b> 18:6,10 <b>exactly</b> 5:23 13:16 <b>exception</b> 28:18 <b>exceptions</b> 29:1 <b>executed</b> 6:21 <b>exemplar</b> 18:9 <b>exercised</b> 8:17 <b>existence</b> 13:10 <b>expert</b> 11:3 <b>exposed</b> 5:6 9:20 <b>exposes</b> 9:15 <b>extent</b> 14:6,6	<b>external</b> 13:15 <b>extraordinary</b> 3:22 8:18 9:23 10:1 15:14 16:14 18:3,5 21:17 22:14 <hr/> <b>F</b> <hr/> <b>fabric</b> 15:19 <b>face</b> 20:14 <b>faces</b> 19:11 <b>facilities</b> 24:15 <b>facility</b> 23:24 26:20 28:9 <b>fact</b> 5:24 8:9,25 14:17 15:23 16:14,16 24:13 <b>factors</b> 12:22 <b>facts</b> 7:2 21:16 22:9 23:6 <b>fair</b> 24:2 <b>faith</b> 16:13 <b>Falls</b> 9:4 <b>family</b> 24:17 <b>far</b> 5:20 9:4 12:8 <b>federal</b> 1:10,16 8:3,8 22:6 25:11 26:20 27:18 29:6 <b>feel</b> 17:15 24:20 <b>feeling</b> 11:9,10 <b>feels</b> 12:12 <b>fell</b> 20:15 <b>felon</b> 11:25 <b>felt</b> 25:13 <b>Fifth</b> 19:20 <b>fighting</b> 8:4 <b>figured</b> 11:3 <b>File</b> 2:5 <b>filed</b> 3:19 4:5,7 4:18 29:8 <b>Finally</b> 18:23 22:3 <b>financial</b> 27:25 <b>find</b> 14:18 <b>findings</b> 3:6	<b>fine</b> 3:18 27:9 <b>finest</b> 18:19 <b>finishes</b> 23:10 <b>firearm</b> 27:21 <b>first</b> 7:13 11:22 12:12,15 14:9 14:19 15:10 20:12 23:8 24:20 27:12 <b>five</b> 19:8 <b>FMC</b> 10:13 18:14,18 24:6 24:14 <b>follow</b> 16:16,19 26:21 <b>followed</b> 12:9 21:24 <b>following</b> 2:1,20 26:5 27:17 <b>foreclose</b> 4:19 <b>foregoing</b> 3:16 27:15 31:8 <b>forger</b> 5:23 <b>forgery</b> 6:3 11:20 <b>forth</b> 3:10 4:5 12:20 21:12 27:23 <b>forward</b> 20:21 20:23 21:2 29:24 <b>found</b> 18:3,15 <b>four</b> 19:8 28:7 <b>Fourth</b> 1:14,17 <b>fraud</b> 15:22 <b>free</b> 8:23 <b>front</b> 9:2 16:17 <b>Frwy</b> 1:23 <b>full</b> 18:7,22 19:2 31:10 <b>function</b> 11:6 <b>Fund</b> 28:10 <b>further</b> 4:12,20 10:17 14:4 20:5,7 <b>furthermore</b>
--	---	---	--	---

19:7 <b>future</b> 16:21	<b>guess</b> 16:25 <b>guideline</b> 3:9 4:13 6:8 16:6 23:3 28:19 <b>guidelines</b> 3:8 3:10 4:24 6:7 12:21,23 15:1 17:7 22:12,20 26:8,9 28:21 28:23 30:5,6 <b>guilty</b> 2:16 26:1 26:4 <b>gun</b> 10:12 15:20 <b>guy</b> 7:7 9:14	15:15 <b>hired</b> 10:11 13:15 <b>history</b> 3:14 4:10,12 5:11 5:11 7:8 16:13 16:24 22:15 <b>hold</b> 24:22 <b>honesty</b> 5:15 <b>Honor</b> 2:8 3:2,4 4:23,24 5:15 6:6,13,16 7:5 7:14,18 8:13 8:16 9:23 10:9 11:14 12:4,10 12:19 13:13,18 13:24 14:1,11 15:10,12 16:12 17:14,21 23:17 23:18 26:25 27:6 29:18,20 <b>HONORABLE</b> 1:9 <b>hope</b> 9:19 14:25 24:21,21 26:21 27:7 30:7 <b>hopefully</b> 30:8 30:12 <b>hopeless</b> 11:6 <b>hopelessness</b> 13:19 <b>hoping</b> 11:11 14:24,25 25:7 25:15 26:21 <b>Horticulture</b> 24:8 <b>house</b> 12:10 <b>huge</b> 5:3 <b>human</b> 5:17 6:2	<b>ill-thought</b> 13:22 <b>immediately</b> 28:12 <b>implicit</b> 13:25 <b>important</b> 5:2 9:13,14 10:10 11:23 <b>importantly</b> 7:25 <b>impose</b> 27:10 <b>imposed</b> 23:2,11 26:5 27:9 28:11,20 <b>imposition</b> 2:15 6:8 <b>imprisonment</b> 3:15 <b>incarcerate</b> 27:4 <b>incarceration</b> 11:17,20 12:6 12:9 26:19 <b>include</b> 7:22 28:1 <b>incompetent</b> 18:15 <b>Independent</b> 27:12 <b>independently</b> 12:20 <b>indicated</b> 25:24 <b>indicates</b> 28:15 <b>indication</b> 16:20 <b>indictment</b> 29:19 <b>individual</b> 16:3 <b>influence</b> 13:11 <b>informal</b> 15:14 <b>information</b> 20:23 27:25 <b>inpatient</b> 28:2 <b>instant</b> 11:10 <b>intention</b> 23:3 <b>internal</b> 9:15 <b>International</b> 9:3	<b>Investigation</b> 2:21 3:6,11 <b>involved</b> 5:5 6:22 <b>irregardless</b> 15:19 <b>issue</b> 22:9 25:10 <b>issues</b> 4:14 18:16 23:6
<hr/> <b>G</b> <hr/> <b>gain</b> 21:3 <b>Garlich</b> 10:4 <b>generate</b> 19:6 <b>generous</b> 6:6,13 <b>getting</b> 9:11 12:13 17:6 <b>give</b> 8:2 14:12 17:20 19:24 20:5 23:18 <b>given</b> 8:12,18,23 19:11 23:13,19 <b>go</b> 17:7 20:16 21:2 22:20 27:5 29:9 30:9 <b>goes</b> 10:5 <b>going</b> 6:6 9:25 11:14 16:6,20 17:8,9 21:2 22:10,23,25 23:1,18,21,25 25:17 28:23 30:10,11 <b>good</b> 2:8,10,13 12:13 16:13 17:10 30:9,12 <b>gotten</b> 6:12 <b>Government</b> 4:7 6:9 7:19 8:2 15:7 22:7 <b>Government's</b> 5:8 <b>grant</b> 7:14 <b>granted</b> 12:3 16:4 <b>grants</b> 6:6,13 <b>great</b> 8:13 10:18 <b>ground</b> 28:18 <b>grounds</b> 3:21 4:8 7:9 21:12 28:25 29:5 <b>group</b> 28:3 <b>guarantee</b> 20:12	<hr/> <b>H</b> <hr/> <b>H</b> 1:9 <b>half</b> 12:5,6 23:20 24:24 25:19 <b>halfway</b> 12:10 <b>handwriting</b> 18:9 <b>happened</b> 9:18 <b>hard</b> 24:6 <b>harder</b> 17:1 <b>head</b> 24:7 <b>health</b> 12:11,13 18:14,16 21:23 23:24 24:7,10 30:12 <b>hear</b> 4:20 5:3 23:8 <b>heard</b> 20:9 <b>hearing</b> 1:10 23:5 <b>heart</b> 10:2 <b>heartland</b> 21:20 <b>held</b> 10:24 23:15 <b>help</b> 8:24 9:1 24:22 <b>helpful</b> 27:1 <b>helping</b> 24:21 <b>high</b> 16:5 22:20 26:9 30:6 <b>highest</b> 5:4	<hr/> <b>I</b> <hr/> <b>ideation</b> 13:21 <b>illness</b> 10:21 11:22 <b>ill-executed</b> 13:22	<hr/> <b>J</b> <hr/> <b>jail</b> 10:24 24:15 <b>job</b> 24:9 <b>Judge</b> 1:10 20:8 <b>judges</b> 16:17 <b>judgment</b> 30:2 <b>jurisdiction</b> 8:12 <b>jurisdictions</b> 19:9 <b>justice</b> 26:14 <b>justified</b> 4:3 6:25 <b>justifies</b> 4:1 24:23	
			<hr/> <b>K</b> <hr/> <b>Kate</b> 2:12 <b>KATHERINE</b> 1:15 <b>Kay</b> 7:16 <b>keep</b> 10:11 11:23 20:25 23:25 <b>killed</b> 25:13 <b>kind</b> 11:4,12 24:4 <b>kinds</b> 15:22 <b>Kleenex</b> 25:13 <b>knew</b> 6:23 9:8 <b>know</b> 7:7 14:13 15:2 18:7 19:11,25 25:3 25:9 <b>knows</b> 19:19 <b>KYLE</b> 1:9	

<p style="text-align: center;"><b>L</b></p> <p><b>labeled</b> 9:15</p> <p><b>lady</b> 25:12</p> <p><b>language</b> 7:17</p> <p><b>late</b> 17:10</p> <p><b>law</b> 7:1 18:3 19:3 28:20</p> <p><b>lawlessness</b> 17:5</p> <p><b>lawyer</b> 29:3,10 29:11,12,25</p> <p><b>length</b> 10:9,21 23:1</p> <p><b>letter</b> 8:20 10:10 10:20 21:22 22:4</p> <p><b>let's</b> 2:6 4:15 23:5</p> <p><b>level</b> 3:12,13,23</p> <p><b>levels</b> 12:17</p> <p><b>liberties</b> 24:14</p> <p><b>life</b> 11:6 12:12 14:17 21:24</p> <p><b>light</b> 5:24</p> <p><b>likelihood</b> 4:12 22:23,24</p> <p><b>likewise</b> 23:2</p> <p><b>limited</b> 29:4,15</p> <p><b>line</b> 17:1</p> <p><b>linguistic</b> 7:21</p> <p><b>little</b> 16:7 17:10 23:23</p> <p><b>live</b> 23:23 25:5 25:19</p> <p><b>local</b> 7:13,20 8:9 19:5,9,14 27:18</p> <p><b>long</b> 17:9 26:14 30:4</p> <p><b>longer</b> 12:18</p> <p><b>look</b> 5:10,15,16 5:17 6:1,3 14:4 16:23 29:24</p> <p><b>looking</b> 6:10 7:1 16:5</p> <p><b>loose</b> 18:21</p>	<p><b>loss</b> 14:8</p> <p><b>lost</b> 29:9</p> <p><b>lot</b> 5:12 24:14,17 24:18</p> <p><b>loud</b> 6:12</p> <p><b>low</b> 23:23 26:7,8 26:15 30:5,5</p> <hr/> <p style="text-align: center;"><b>M</b></p> <p><b>M</b> 1:22 31:7,14 31:14</p> <p><b>making</b> 5:24 23:7</p> <p><b>man</b> 12:6 14:15 24:3 30:11</p> <p><b>mandatory</b> 27:22</p> <p><b>mark</b> 12:5</p> <p><b>marshals</b> 10:25</p> <p><b>match</b> 8:4</p> <p><b>matter</b> 3:7 17:6</p> <p><b>MCC</b> 10:16</p> <p><b>mean</b> 16:24</p> <p><b>means</b> 7:22 28:21</p> <p><b>mechanical</b> 1:24</p> <p><b>medical</b> 25:18 26:20 28:6</p> <p><b>medication</b> 9:4 10:19 24:19</p> <p><b>medications</b> 28:6</p> <p><b>medicine</b> 12:17</p> <p><b>meds</b> 24:20</p> <p><b>member</b> 20:17</p> <p><b>memorandum</b> 9:25 11:24</p> <p><b>Menendez</b> 1:15 2:12,12 3:4 4:6 4:16,23 5:14 12:25 13:1,13 14:11 15:6 20:11 21:5,8 23:9,16,17 27:6 29:2,14 29:17,20</p>	<p><b>mental</b> 10:21 11:22 12:11,13 14:7 18:14,16 21:23 23:24 24:7,10</p> <p><b>mentioned</b> 4:24</p> <p><b>merely</b> 18:4</p> <p><b>message</b> 6:10,12 17:5,8</p> <p><b>mind</b> 10:11 11:23 22:18</p> <p><b>Minneapolis</b> 1:14,17</p> <p><b>Minnesota</b> 1:2,6 1:14,17,23 4:3 26:20 27:13 31:1</p> <p><b>moment</b> 16:2</p> <p><b>monetary</b> 27:8</p> <p><b>money</b> 14:23</p> <p><b>months</b> 3:17 10:13 12:21 14:14 16:7 17:3,4 23:4,20 24:1 26:7,9 28:7</p> <p><b>morning</b> 2:8,10 2:14 3:1</p> <p><b>motion</b> 3:19 4:7 4:17,22 7:19 9:1 15:8,10 16:4,11 17:22 18:1 21:10,11 22:10 23:2</p> <p><b>motions</b> 4:15 21:7,13</p> <p><b>mouth</b> 20:25</p> <p><b>move</b> 22:7</p> <p><b>moved</b> 10:25</p> <p><b>murals</b> 24:10</p> <p><b>murder</b> 4:4 8:20 15:20</p> <hr/> <p style="text-align: center;"><b>N</b></p> <p><b>name</b> 20:14</p> <p><b>near</b> 6:5,9</p>	<p><b>necessary</b> 11:17 11:21 21:25 26:16</p> <p><b>need</b> 24:1</p> <p><b>needed</b> 12:2,7</p> <p><b>needs</b> 23:24,25 26:13</p> <p><b>never</b> 6:5 24:5 25:12</p> <p><b>nine</b> 17:4</p> <p><b>nonviolent</b> 5:5 6:2,3,22</p> <p><b>nonweapons</b> 5:5</p> <p><b>normal</b> 25:14</p> <p><b>note</b> 3:9 19:7</p> <p><b>noted</b> 15:13</p> <p><b>notes</b> 31:9</p> <p><b>number</b> 2:6 15:14 16:13</p> <p><b>numbers</b> 5:3,16</p> <p><b>numerous</b> 16:17 16:17</p> <hr/> <p style="text-align: center;"><b>O</b></p> <p><b>objections</b> 2:23</p> <p><b>observe</b> 28:9</p> <p><b>obtained</b> 19:4</p> <p><b>obviously</b> 11:14 16:9 18:10 23:17 25:17</p> <p><b>occurred</b> 19:24</p> <p><b>October</b> 1:6 31:12</p> <p><b>offender</b> 5:1,3 6:21,24 12:23</p> <p><b>offense</b> 3:12,13 4:1 6:2,3 7:22 10:6 11:12 13:8 14:8 15:3 21:1 22:23 26:4</p> <p><b>offenses</b> 6:19 22:16,17,24,25</p> <p><b>office</b> 5:14 7:24 8:10 11:8 15:15 18:7</p>	<p>19:5 20:3,5</p> <p><b>officer</b> 27:24 28:5,9</p> <p><b>offset</b> 11:21</p> <p><b>Okay</b> 15:5 17:13 21:4 25:24 30:13</p> <p><b>once</b> 12:12 20:14</p> <p><b>oneself</b> 18:4</p> <p><b>one-count</b> 29:19</p> <p><b>opening</b> 11:18</p> <p><b>opines</b> 13:6</p> <p><b>opportunity</b> 24:16</p> <p><b>oppose</b> 5:10 17:23</p> <p><b>opposite</b> 8:10</p> <p><b>order</b> 5:21 24:19 27:3,13</p> <p><b>ordered</b> 20:22 28:11</p> <p><b>orders</b> 12:10</p> <p><b>ought</b> 19:17</p> <p><b>outlines</b> 22:5</p> <p><b>outpatient</b> 12:11 28:2</p> <p><b>outset</b> 25:24</p> <p><b>outside</b> 9:21</p> <p><b>overwhelmingly</b> 11:19</p> <hr/> <p style="text-align: center;"><b>P</b></p> <p><b>pages</b> 31:9</p> <p><b>paid</b> 28:11</p> <p><b>painting</b> 24:9</p> <p><b>paints</b> 24:10</p> <p><b>paper</b> 3:20 4:18 13:3</p> <p><b>papers</b> 4:5</p> <p><b>paper-hanger</b> 5:21</p> <p><b>paradigm</b> 5:2</p> <p><b>paragraph</b> 28:15</p> <p><b>paralyzing</b></p>
---	--	---	---	---

<p>10:22  <b>part</b> 13:17,19                  16:25  <b>participate</b>                  27:25 28:3  <b>particular</b> 13:8                  26:11  <b>particularly</b>                  21:3  <b>parties</b> 2:22                  4:25 11:4  <b>partly</b> 13:14  <b>parts</b> 11:15  <b>passage</b> 11:2  <b>Paul</b> 1:6  <b>Paulose</b> 1:12 2:8                  2:9,10 3:2 4:21                  5:25 15:9 16:9                  16:12 17:14,20                  19:22 20:4,14                  25:21,22  <b>Paulose's</b> 8:25  <b>pause</b> 11:15  <b>payment</b> 10:5                  27:14  <b>pending</b> 19:8                  27:4  <b>people</b> 20:25  <b>period</b> 26:7 28:7  <b>person</b> 8:5 9:9                  11:5 14:22,23                  20:17  <b>personally</b> 10:23  <b>pessimistic</b> 24:4  <b>Peter</b> 1:7 2:5                  23:23  <b>philosophical</b>                  16:2  <b>phonetic</b> 10:4  <b>physical</b> 18:9                  22:19  <b>pick</b> 26:11  <b>pivotal</b> 8:23  <b>place</b> 18:17                  19:13 26:19  <b>places</b> 24:11</p>	<p><b>plain</b> 7:17  <b>Plaintiff</b> 1:5,12  <b>plea</b> 2:16,18,21                  3:12 25:25                  26:2 28:14,16                  28:22  <b>pleadings</b> 15:12  <b>point</b> 16:15  <b>pointed</b> 7:15                  13:18 14:4  <b>points</b> 5:11,12                  5:18,22 7:8                  15:14 16:13                  20:11 22:16  <b>police</b> 18:10  <b>policy</b> 7:25  <b>polite</b> 24:6  <b>pornography</b>                  12:1  <b>position</b> 3:20 4:5                  4:18 8:7,11                  13:3,14  <b>possessing</b> 27:20  <b>possession</b> 11:25  <b>power</b> 7:23 8:17  <b>pray</b> 23:20  <b>preceding</b> 31:8  <b>preclude</b> 7:18  <b>predicate</b> 6:19  <b>prepared</b> 2:21  <b>prescribed</b> 28:5  <b>present</b> 2:13                  22:2  <b>Presentence</b>                  2:21 3:6,11                  14:1  <b>presently</b> 17:12  <b>pressure</b> 9:15  <b>presumably</b>                  19:2  <b>pretty</b> 9:24  <b>prevented</b> 10:19  <b>preventing</b>                  12:16  <b>previously</b> 2:16                  29:15</p>	<p><b>prior</b> 26:12  <b>priors</b> 7:2  <b>prison</b> 9:14                  18:17 25:20  <b>Prisons</b> 26:7,18                  26:23  <b>probably</b> 16:18                  22:7,11 25:6  <b>probation</b> 11:8                  18:7 27:24                  28:5,8  <b>problems</b> 21:23                  22:1 25:18  <b>proceedings</b>                  1:24 2:1 30:14                  31:10  <b>produced</b> 1:25  <b>Professional</b>                  31:15  <b>program</b> 28:1,4  <b>programs</b> 30:8                  30:10  <b>promise</b> 8:24  <b>promises</b> 16:18                  16:23  <b>prongs</b> 17:24  <b>pronounce</b> 4:9  <b>proposed</b> 2:23  <b>proposition</b> 7:14  <b>prosecuted</b> 8:22  <b>prosecution</b> 4:4                  8:11 10:2 19:6                  20:15 25:11,14  <b>protect</b> 11:17,21                  12:7 17:17  <b>protection</b> 12:2  <b>provide</b> 27:24  <b>provider</b> 28:6  <b>provision</b> 7:18                  11:16  <b>psychiatric</b> 28:4  <b>psychological</b>                  28:3  <b>psychologist</b>                  13:15  <b>psychology</b> 11:3</p>	<p><b>psychotic</b> 10:15  <b>public</b> 1:16                  11:18,21 12:2                  12:7 17:17  <b>punish</b> 15:23  <b>punitive</b> 19:12  <b>purpose</b> 13:16  <b>purposes</b> 14:9  <b>put</b> 15:12 19:18                  21:12  <b>puts</b> 8:10  <b>putting</b> 7:22</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>qualify</b> 6:20  <b>quantification</b>                  15:2  <b>quantify</b> 14:9                  15:1  <b>question</b> 12:24                  25:12  <b>questions</b> 20:7</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>R</b> 1:7 2:5  <b>Rachel</b> 1:12 2:9  <b>range</b> 3:16 23:3                  23:4  <b>rap</b> 17:1  <b>rape</b> 8:19 15:20  <b>raped</b> 25:13  <b>rapped</b> 17:2  <b>rat</b> 9:15  <b>read</b> 4:17 10:9                  13:2,9 14:15                  14:16,17  <b>real</b> 5:17,22 6:1  <b>really</b> 15:11                  18:11 27:9  <b>reason</b> 8:13 13:4                  17:4  <b>recess</b> 30:13  <b>recidivist</b> 4:9  <b>recognition</b> 20:6  <b>recognize</b> 21:10                  21:18,22 22:14</p>	<p>29:24  <b>recognized</b>                  15:23  <b>recommend</b>                  26:18  <b>recommendati...</b>                  26:21 27:2  <b>recommended</b>                  3:10 27:19  <b>record</b> 2:2 4:9                  5:7,17 6:17,17                  6:18 11:19                  13:25 14:15                  16:4,8 24:23                  26:10,13  <b>recorded</b> 1:24  <b>reduced</b> 14:7  <b>reduction</b> 3:14  <b>reflect</b> 14:6  <b>refrain</b> 27:20  <b>refuse</b> 20:20  <b>refused</b> 19:24  <b>regard</b> 15:25                  17:22,24 18:13                  18:23  <b>regime</b> 10:19  <b>Registered</b>                  31:15  <b>regret</b> 25:2  <b>reiterate</b> 9:25  <b>release</b> 3:17                  27:16,19  <b>rely</b> 10:10  <b>remain</b> 28:12  <b>remind</b> 5:2  <b>render</b> 11:5  <b>rendered</b> 8:5  <b>repeat</b> 6:11  <b>repeated</b> 6:2  <b>repeatedly</b> 5:25  <b>report</b> 2:21,24                  3:6,11 13:3                  14:1  <b>Reporter</b> 1:22                  31:15  <b>REPORTER'S</b></p>
--	--	---	--	---



<b>represent</b> 29:12	<b>robberies</b> 20:16	<b>seen</b> 5:13,19,19	4:10	1:13 2:4,7,9,18
<b>represented</b>	<b>robbery</b> 2:17	15:16	<b>similar</b> 19:1	2:24 3:1 7:24
29:10	5:5,6 6:19 11:9	<b>send</b> 23:22	22:6	8:6,10 27:23
<b>request</b> 5:8 20:5	13:22 26:1	<b>sending</b> 6:10	<b>simply</b> 6:25 8:8	28:15
29:16	<b>Rochester</b> 9:3	<b>senior</b> 5:20	12:6 16:14	<b>statute</b> 28:11,20
<b>requested</b> 27:25	10:13 12:14,15	<b>sense</b> 8:13 16:6	26:16	<b>stayed</b> 9:6
<b>requesting</b> 27:3	18:14,18 23:21	<b>sent</b> 18:14	<b>single</b> 8:4	<b>stenograph</b> 31:9
<b>required</b> 12:10	23:25 24:6,14	<b>sentence</b> 2:15	<b>situation</b> 19:1	<b>stenography</b>
19:1,3 26:10	26:20 27:4,5	5:4 6:8 9:12	<b>six</b> 14:14	1:24
27:10,22	30:9	12:9 17:7,9	<b>social</b> 5:25 15:19	<b>step</b> 14:3,9
<b>reread</b> 13:2	<b>rock</b> 20:15	22:12 23:1,3,8	<b>society</b> 15:21	<b>steps</b> 10:17
<b>reside</b> 28:7	<b>roof</b> 12:17	23:11,18,24	<b>sole</b> 13:15	<b>strange</b> 18:20
<b>respect</b> 5:8 9:22	<b>Room</b> 1:13,16	24:22,24 25:6	<b>solid</b> 20:15	<b>Street</b> 1:14,17
13:6,8 20:12	<b>round</b> 14:20,20	26:5,14 28:18	<b>somebody</b> 6:22	<b>streets</b> 18:21
20:19 21:10,11	<b>routinely</b> 5:3	28:20 29:4	9:21 10:12	<b>strong</b> 7:9
21:12,15,21	<b>RPR</b> 1:22	30:4,4	17:1 18:21	<b>struggles</b> 14:16
22:3,13 23:6	<b>rules</b> 16:16,19	<b>sentenced</b> 27:16	21:1	<b>struggling</b> 10:18
<b>respectful</b> 24:4	28:9	28:23	<b>someplace</b> 17:1	24:19
<b>respond</b> 15:8	<b>Russell</b> 27:12	<b>sentencing</b> 1:10	<b>somewhat</b> 14:8	<b>subpoena</b> 20:21
19:16		3:20 7:18 8:2	<b>sort</b> 16:7 18:19	<b>substantial</b> 8:5,7
<b>response</b> 4:21	<b>S</b>	9:25 16:3	<b>sorts</b> 15:20 18:9	9:5 22:8
<b>responsibility</b>	<b>sad</b> 14:18 17:13	17:16 27:20	<b>sought</b> 6:9	<b>substantially</b>
3:22 9:24	17:14	28:21	<b>South</b> 1:14,17	22:22
17:16,25 21:18	<b>sadness</b> 17:15	<b>separate</b> 3:21	<b>speak</b> 23:13	<b>suffers</b> 12:8
25:9	<b>Saint</b> 1:6	<b>serious</b> 22:16,17	<b>special</b> 28:10	<b>sugar</b> 12:17
<b>restitution</b> 10:5	<b>satisfied</b> 21:17	<b>seriousness</b> 4:11	<b>specifically</b> 3:25	<b>suggesting</b> 6:1
27:11,13	21:24	22:22	<b>spent</b> 10:17 24:2	30:4
<b>rests</b> 18:1	<b>satisfies</b> 26:13	<b>serve</b> 6:6 7:21	<b>spoken</b> 24:7	<b>suicidal</b> 11:7
<b>result</b> 3:16 24:5	<b>saying</b> 6:23,23	<b>served</b> 6:5,15	ss 31:1	13:20
<b>retribution</b>	6:24 13:11,16	7:2	<b>stable</b> 9:4	<b>suicide</b> 10:19
19:11	13:17 19:16,16	<b>set</b> 3:10 4:5	<b>stand</b> 9:17,18	<b>supervised</b> 3:17
<b>retroactive</b>	21:9	12:19 27:23	17:15 19:19	27:16,19
28:19	<b>says</b> 14:5,5 18:4	<b>severe</b> 3:25	<b>standard</b> 27:19	<b>support</b> 4:17
<b>revealed</b> 15:15	22:14	10:15 12:8	<b>start</b> 2:6 7:12	12:20 21:13
<b>review</b> 3:8	<b>schedule</b> 27:14	<b>Shaddix</b> 1:22	15:9 21:9	24:18,18 28:2
<b>rewarded</b> 19:10	<b>second</b> 3:24 5:14	<b>sharp</b> 6:14	<b>state</b> 4:3 7:13,20	30:1
<b>RHK</b> 1:4	9:22	<b>shock</b> 14:20,21	7:23 8:9,15,19	<b>supports</b> 12:22
<b>Rhodes</b> 8:21	<b>Section</b> 2:18	<b>short</b> 21:5	9:2 18:24 19:9	15:3
9:10 22:4	4:13	<b>shorter</b> 12:9	19:13 22:3	<b>suppose</b> 19:15
<b>RICHARD</b> 1:9	<b>Sections</b> 27:23	<b>shot</b> 11:11 14:25	27:18 31:1	<b>sure</b> 13:1 14:12
<b>right</b> 4:9 13:24	<b>see</b> 7:5 11:11	<b>showing</b> 18:8	<b>stated</b> 15:11	16:22 19:10
16:6,12 20:20	13:4,5 14:14	<b>shut</b> 21:1	<b>statement</b> 26:10	20:1 26:22
23:15 25:3,14	14:22,23	<b>Sichko</b> 1:22 31:7	26:11	<b>surveillance</b>
28:17 29:4,9	<b>seek</b> 23:18	31:14,14	<b>statements</b>	18:8
<b>rights</b> 29:15	<b>seeking</b> 3:20	<b>signed</b> 27:3	15:18 19:23	<b>survey</b> 15:14
<b>rob</b> 14:24	12:8	<b>significantly</b>	<b>states</b> 1:1,4,10	<b>suspect</b> 10:6

13:24 20:13,18 <b>symptoms</b> 10:16 <b>system</b> 9:14 12:14 16:25 18:18 19:14 20:22,24,25 24:11 26:14 30:10 <b>s/Colleen</b> 31:14	<b>thing</b> 13:16 20:24 25:3,15 <b>things</b> 11:4,25 15:22 <b>think</b> 4:14,18 8:13 12:1 13:5 13:11,13 14:14 15:10 16:10,24 20:2 21:16,19 21:25 22:5,8 22:15,19,21,21 23:7,12 25:6 26:11,14,15 27:11 28:25 29:2 30:11 <b>thinks</b> 29:2,3 <b>third</b> 4:2 6:19 7:16 10:7 <b>thought</b> 25:3 29:25 <b>threats</b> 15:21 <b>three</b> 2:14 3:17 3:21 7:9,11 12:19 14:13 17:24 27:16 <b>three-point</b> 3:14 3:23 <b>time</b> 5:22 6:4,9 6:15 7:2 8:4 9:4 10:18 12:10,12 13:10 16:18,18 17:15 20:16 22:2 24:2,20 <b>tiny</b> 20:11 <b>Title</b> 2:17 <b>today</b> 24:20 27:3 <b>today's</b> 29:8 <b>told</b> 9:8 12:11 21:5 24:20 26:22 <b>total</b> 3:12 15:13 16:15 <b>totality</b> 26:16 <b>touch</b> 25:10 <b>to-wit</b> 2:2	<b>tragedy</b> 16:24 <b>trail</b> 18:11 <b>transcript</b> 1:24 31:8,9,10 <b>transcription</b> 1:25 <b>traveled</b> 9:3 <b>treated</b> 14:20 <b>treatment</b> 6:24 12:11,13 18:20 18:22 23:25 24:7 28:2,4 <b>treatments</b> 14:20,21 <b>tremendous</b> 9:15 <b>trigger</b> 6:24 <b>trouble</b> 14:23 24:12,16 <b>true</b> 12:18 19:23 20:13,20 24:21 31:10 <b>truthful</b> 19:3 <b>try</b> 19:21 <b>turn</b> 14:24 18:21 23:5 <b>turned</b> 18:2,6 20:18 <b>turning</b> 10:5 13:23 18:4 20:13 25:4 <b>two</b> 2:14 3:17 6:19 20:11 21:13 <b>type</b> 5:4,5	8:1 14:11 17:25 26:22,25 29:12 <b>understanding</b> 2:22 <b>unfortunate</b> 12:13 <b>unique</b> 7:10 8:7 24:9 <b>uniquely</b> 12:22 <b>United</b> 1:1,4,10 1:13 2:4,7,9,17 2:24 3:1 7:24 8:6,10 27:23 <b>unnecessary</b> 6:12 <b>unplanned</b> 13:22 <b>unsolicited</b> 20:23 <b>unsolved</b> 20:16 <b>unusual</b> 7:7 <b>unwillingness</b> 16:15 <b>upward</b> 4:8,15 4:22 5:9 6:8,11 6:25 21:10 22:13 <b>usually</b> 27:1 <b>U.S</b> 1:13,16	<hr/> <b>W</b> <hr/> <b>W</b> 1:23 <b>waive</b> 28:17 <b>walk</b> 14:23 <b>walked</b> 13:20 <b>walking</b> 13:21 <b>want</b> 4:17,19,20 7:6,12 15:7 23:11,13,14 25:4 <b>warranted</b> 14:5 21:16 <b>wasn't</b> 14:17 17:6 <b>way</b> 4:9 9:20 15:18 20:2,3 <b>ways</b> 6:22 24:15 <b>weapon</b> 27:21 <b>week</b> 13:23 14:24 <b>weight</b> 18:5 <b>went</b> 9:7 10:2 12:15 19:20 20:21,22 <b>weren't</b> 14:21 <b>Westreich</b> 24:8 <b>we're</b> 5:18 6:10 12:8 <b>we've</b> 5:19 <b>widely</b> 18:18 <b>wish</b> 15:1 30:7 <b>woman</b> 8:20 9:18 <b>work</b> 20:2 <b>worked</b> 10:12 <b>works</b> 24:6 <b>worried</b> 11:1 <b>worth</b> 14:13,14 <b>wouldn't</b> 9:20 11:4 16:11 23:23 25:11 <b>wowed</b> 5:11 <b>writt</b> 19:2 <b>written</b> 8:21 10:10 15:12
<hr/> <b>T</b> <hr/> <b>take</b> 4:15 11:1 14:3,8 17:20 22:11 28:5 30:7 <b>taken</b> 9:16 19:20 <b>takes</b> 21:19 <b>talented</b> 24:11 <b>talk</b> 4:21 17:19 <b>talked</b> 9:17 11:7 11:8,18 13:18 <b>talking</b> 5:18 <b>talks</b> 7:1 10:20 11:16 21:1 <b>tears</b> 15:19 <b>ten</b> 10:17 25:16 29:8,9 <b>term</b> 3:17 7:22 27:16 <b>terms</b> 4:13 5:16 5:17 6:2 <b>testified</b> 8:24 <b>testify</b> 19:19,20 20:21 21:2 25:11 <b>testifying</b> 19:12 <b>testimonial</b> 18:10 <b>testimony</b> 8:22 9:2,10 19:3 <b>testing</b> 27:22 28:1 <b>thank</b> 4:23 15:5 15:6 20:8 24:24 25:23 27:6	<hr/> <b>U</b> <hr/> <b>Ulness</b> 10:10,17 13:16,24 <b>Ulness's</b> 13:2,14 <b>unable</b> 11:6 <b>undergo</b> 27:22 <b>underlying</b> 7:2 <b>underreprese...</b> 4:11 22:22 <b>understand</b> 4:18	<hr/> <b>V</b> <hr/> <b>value</b> 8:7,11 <b>versus</b> 2:5 <b>VI</b> 3:15 22:20,21 <b>victims</b> 22:19 28:10 <b>videos</b> 18:8 <b>view</b> 30:2 <b>violates</b> 5:25 <b>violation</b> 2:17 24:12 28:20 <b>violence</b> 15:18 <b>violent</b> 15:21 <b>vs</b> 1:6		

25:23	<b>2113(a)</b> 2:18			
<b>wrong</b> 25:13	<b>24</b> 26:9			
29:1,2,3,3	<b>25th</b> 2:19 26:2			
	<b>29</b> 3:13			
<b>Y</b>				
<b>year</b> 2:20 12:5	<b>3</b>			
17:2,3 26:2	<b>30</b> 31:9			
<b>years</b> 3:18 12:6	<b>300</b> 1:14,17			
14:13 23:20	<b>32</b> 3:13			
24:24 25:8,16	<b>3563(a)</b> 27:23			
25:19 27:16	<b>3583(b)</b> 27:24			
<b>young</b> 30:11				
	<b>4</b>			
<b>\$</b>	<b>4A1.3</b> 4:13 7:1,4			
<b>\$100</b> 28:10				
<b>\$150,000</b> 3:18	<b>5</b>			
<b>\$186</b> 27:12	<b>5k1.1</b> 7:18 8:25			
<b>\$5,000</b> 3:18	<b>5k1.1s</b> 8:3			
	<b>5k2.0</b> 4:1			
	<b>5k2.03</b> 4:2			
<b>#</b>	<b>5k2.13</b> 14:4			
<b>#122</b> 1:23	<b>55415</b> 1:14,17			
	<b>55431</b> 1:23			
<b>0</b>	<b>56-year-old</b> 12:6			
<b>00-307</b> 1:4 2:6	<b>57</b> 17:12,13			
	<b>59</b> 17:11			
<b>1</b>	<b>6</b>			
<b>10</b> 25:8	<b>600</b> 1:13			
<b>10:00</b> 1:7	<b>63</b> 5:11 7:8			
<b>10:40</b> 30:14	15:13			
<b>107</b> 1:16				
<b>12</b> 12:5,5 23:19	<b>9</b>			
24:24 25:19	<b>9</b> 28:15			
<b>12-and-a-half-...</b>	<b>90s</b> 14:19			
25:6 30:3	<b>9100</b> 1:23			
<b>151</b> 3:16 12:21				
23:4,20 24:1				
26:7				
<b>17</b> 31:12				
<b>18</b> 2:17 17:3				
27:23				
<b>188</b> 3:16 12:21				
16:7 23:4				
<b>2</b>				
<b>2</b> 1:6				
<b>2001</b> 1:6				
<b>2014</b> 31:12				



U. S. Department of Justice

Federal Bureau of Prisons

*Federal Medical Center*

P.O. Box 4600  
Rochester, MN 55903-4600

July 16, 2001

Katherine Menendez  
Assistant Federal Defender  
Suite 107 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, Minnesota 55415

RE: ARNOLDI, Peter  
Reg. No.: 09652-041

Dear Ms. Menendez:

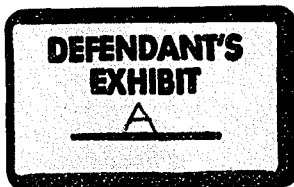
Thank you for your efforts on behalf of my patient and your client, Mr. Arnoldi. I am writing this letter so that the Court will gain a better understanding of Mr. Arnoldi's mental condition and his responses to efforts to treat it.

As you know, Mr. Arnoldi is a 56-year-old divorced white man who pled guilty to robbing a bank in Russell, Minnesota. He is currently housed at FMC Rochester while he awaits sentencing for this offense.

Mr. Arnoldi was born in Germany, the son of a U.S. serviceman whom he never knew. He said that his mother left him in the care of her parents when he was 4 years old, and he did not come to live with her in Bloomington, Minnesota, until he was about 13 years old. Mr. Arnoldi harbors a great deal of resentment toward his mother.

When he was about 15 years old, Mr. Arnoldi began engaging in delinquent behaviors such as running away from home, smoking cigarettes, and skipping school. By the time he was 17 years old, he was in prison for stealing a car.

Mr. Arnoldi dropped out of high school, but he took his GED and he went on to attend vocational school in Minneapolis, where he learned auto body repair.



APX0919

ARNOLDI, Peter  
Reg. No.: 09652-041  
July 16, 2001  
Page 2

Mr. Arnoldi was unable to find success as an auto body repairman, or in any occupation, however. He held scores of jobs for only brief periods of time; in fact, his longest period of continuous employment was about three months.

Mr. Arnoldi turned to a life of crime. His records document over 52 arrests for offenses such as Forgery, Fraud, Theft, Burglary, Passing Bad Checks, and Driving Under the Influence of Alcohol. He used many aliases in his efforts to avoid the authorities. Nonetheless, Mr. Arnoldi spent many years in state and federal correctional institutions.

Mr. Arnoldi was married for 17 years, but his wife eventually divorced him because of his inability to hold a job and stay out of prison. Mr. Arnoldi is estranged from four of his five children, and he says that he has no social supports.

Mr. Arnoldi said that for the past 20 years or so, he has been debilitated by episodes of anxiety. His symptoms include the sudden onset of a feeling that people wish to do him harm, and therefore, that he must escape from them. This feeling is accompanied by physical manifestations which include tremulousness, increased heart rate, shortness of breath, and nausea. Mr. Arnoldi said that these panic attacks may occur weekly, and they may last up to two or three hours. He said that he has walked away from many jobs and never returned as a result of panic attacks, sometimes leaving his tools behind as well. Mr. Arnoldi said that when the panic attacks occur in public places, he is forced to return home immediately. He noted that he often feels agitated and on edge, and he said that frequently he feels compelled to check locks several times; sometimes, he will return home after departing for the sole purpose of assuring himself that he has locked his door.

In addition to the symptoms described in the paragraph above, Mr. Arnoldi reported that he has suffered from mild depression for most of his life. However, around 1990, he suffered a dramatic increase in his symptoms of depression, which included powerful feelings of sadness, hopelessness, and worthlessness; crying spells; poor sleep; a diminished appetite with a 30-pound weight loss over about 3 months; low energy; diminished memory, concentration, and decision making; and a profound lack of a capacity to experience pleasure. Mr. Arnoldi said that at that time, he began to harbor suicidal thoughts for the first time. He held a gun to his head, but he was prevented from ending his life by the intervention of another person.

Mr. Arnoldi said that his symptoms of severe depression have not remitted since their onset about a decade ago. He could not explain why his depression suddenly became worse at that time.

Along with the symptoms of depression outlined above, Mr. Arnoldi said that he also began to experience an auditory hallucination of a female voice which urges him to kill himself and which tells him that he is worthless. Mr. Arnoldi said that the voice is that of someone whom he does not recognize. He said that the voice occurs intermittently, but at times, when his symptoms are more

ARNOLDI, Peter  
Reg. No.: 09652-041  
July 16, 2001  
Page 3

severe, he hears the voice constantly. Mr. Arnoldi said that the voice does not usually tell him specifically how he should kill himself, but at times, it urges him to overdose on his insulin (he is a diabetic). Mr. Arnoldi said that sometimes, he perceives visual images of people he knows either standing next to him or "getting hurt next to me." He said that for many years, he has experienced feelings of suspiciousness toward other people, believing they are thinking bad thoughts about him, that they are critical of him, or even that they are plotting against him.

Mr. Arnoldi reported that about a year after he held the gun to his head, he tried to kill himself again by hanging. Again his suicide attempt was thwarted by the intervention of another person. Mr. Arnoldi said that he has often harbored thoughts of overdosing on his insulin, and he once seriously considered suicide by carbon monoxide poisoning. Mr. Arnoldi indicated that he struggles daily with thoughts of suicide, urges to kill himself, and auditory hallucinations which encourage him to end his life.

Mr. Arnoldi first received treatment with antidepressant medications in 1992, while he was serving time in a state prison in Minnesota. He received a trial of antidepressants again in 1996.

On April 7, 1998, Mr. Arnoldi was admitted to the Fairview Riverside University Medical Center Psychiatric Unit for his first and only psychiatric hospitalization. He was received at Fairview Riverside as a direct transfer from the Carver County Jail, where he was being held on a Fraud charge. The staff at Fairview Riverside noted that Mr. Arnoldi was sad and tearful, with active thoughts of suicide.

In the hospital, Mr. Arnoldi was again started on antidepressant medication, Zoloft. After a week in the hospital with no improvement, Mr. Arnoldi was offered electroconvulsive therapy (ECT), or "shock therapy." ECT is a treatment for depression which is usually reserved for more severe cases. It is frequently administered in hospital settings because it is known to yield rapid beneficial effects. For Mr. Arnoldi, however, ECT did not seem to work. The staff at Fairview Riverside decided to discontinue ECT for Mr. Arnoldi when he manifested essentially no response after 15 sessions (For most patients, there is usually some response within 6 to 10 sessions). While he was receiving ECT, Mr. Arnoldi remained on Zoloft for about five weeks, and then he was switched to another antidepressant, Effexor.

Mr. Arnoldi told staff members at Fairview Riverside that he believed that the ECT was "about to start working," so he convinced them to begin administering it again. However, on May 27, 1998, the day it was slated to resume, Mr. Arnoldi eloped from the facility by exiting the ECT waiting room. Later, Mr. Arnoldi said, "I know this is irrational thinking, but I was hoping that I might get shot or something as I ran away from the hospital." Mr. Arnoldi said that he left there bent on suicide, but he said that he was persuaded to reconsider by his paramour. He did not follow through with any psychiatric treatment, however, and he said that his depression worsened further.

ARNOLDI, Peter  
Reg. No.: 09652-041  
July 16, 2001  
Page 4

Mr. Arnoldi said that his fortunes took another downward turn when his lover died of lung cancer in 1999. He found himself living on the streets of Minneapolis. Finally, Mr. Arnoldi said that he devised a plan to rob a bank in hopes of being shot to death by police officers during the commission of the crime.

The instant offense took place on October 1, 2000. Mr. Arnoldi said that he surrendered to authorities on October 5, 2000, and he has been in custody since that time.

Mr. Arnoldi was initially held at the Sherburne County Jail, where he was almost immediately placed back on Zoloft, and another antidepressant, Anafranil. Evidently, he had no appreciable response to those medications, because they were discontinued in favor of another trial of Effexor on December 5, 2000, while he was at MCC Chicago for a forensic evaluation.

Mr. Arnoldi arrived at FMC Rochester as a pre-trial holdover inmate on January 19, 2001. In addition to the Effexor, he was prescribed Zyprexa, an antipsychotic medication, in an effort to diminish his psychotic symptoms of auditory hallucinations and paranoia.

With the passage of time, Mr. Arnoldi was tapered up to a very high dose of Effexor, again with no significant benefit. To help reduce his anxiety and panic, he was prescribed high doses of benzodiazepines, which are powerful anxiety-reducing agents. Even these did not seem to have much of an effect on Mr. Arnoldi.

Eventually, the Effexor was discontinued in favor of yet another antidepressant, Wellbutrin, which was also increased to the highest dosage range. In an effort to boost the effects of the Wellbutrin, other medications such as Neurontin, Lithium, and Ritalin (a stimulant) were prescribed. Despite these aggressive treatment efforts, Mr. Arnoldi's condition has remained essentially unchanged.

In my opinion, Mr. Arnoldi suffers from the following psychiatric conditions:

<b>Axis I:</b>	296.20	Major Depression, With Psychotic Features, Severe
	300.01	Panic Disorder
<b>Axis II:</b>	301.70	Antisocial Personality Disorder

In talking with Mr. Arnoldi, one quickly appreciates the fact that he is terribly depressed. His movements are slowed down, his face is devoid of expression, and he speaks in a monotonal voice. He frequently refers to his psychological anguish and his feelings of hopelessness and despair. One gets the feeling that Mr. Arnoldi is living day-by-day, hovering on the brink of self-annihilation.

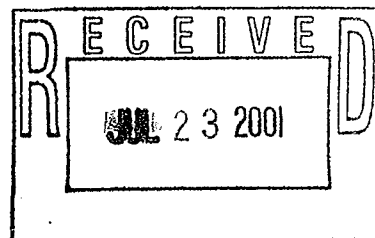
ARNOLDI, Peter  
Reg. No.: 09652-041  
July 16, 2001  
Page 5

Ms. Menendez, I hope that I have been able to adequately describe for you and for the Court the nature of Mr. Arnoldi's condition and our efforts to treat it.

Sincerely,



Andrew Olnes, M.D.  
Staff Psychiatrist  
FMC Rochester



APX0923



**BRADLEY C. RHODES**

AITKIN COUNTY ATTORNEY  
COURTHOUSE WEST ANNEX  
AITKIN, MINNESOTA 56431

TELEPHONE (218) 927-7347  
TOLL FREE 1-888-422-7347  
FAX (218) 927-7365

**LISA ROGGENKAMP RAKOTZ**  
SENIOR ASSISTANT COUNTY ATTORNEY

**CATHERINE M. MILLER**  
ASSISTANT COUNTY ATTORNEY

**JAMES P. RATZ**  
ASSISTANT COUNTY ATTORNEY

**JANICE M. BARE**  
LEGAL ASSISTANT

September 5, 2001

Judge Richard Kyle  
United States Courthouse  
316 North Robert Street  
St. Paul, MN 55101

Dear Judge Kyle:

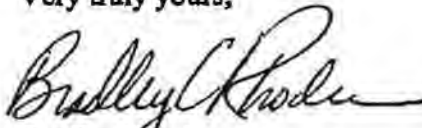
It is my understanding that Mr. Peter Arnoldi is facing sentencing in a pending federal matter. I write this letter on Mr. Arnoldi's behalf to detail the assistance and cooperation he provided in a homicide case that I tried in International Falls, Minnesota in January 2001.

Mr. Arnoldi approached the State after he had been a patient at the St. Peter Security Hospital and knew the defendant in my matter. No offers or deals were struck with Mr. Arnoldi. He came forward on his own volition and never asked for anything in return from the State of Minnesota.

Mr. Arnoldi's testimony was crucial to the State in obtaining two first degree murder convictions in the above-referenced matter. I spoke with nine of the twelve jurors after the trial. They indicated to me that Mr. Arnoldi was one of two pivotal witnesses whose testimony was significant during their deliberations in convincing them of the guilt of the defendant.

Please do not hesitate to contact me if there are any questions that you have that I might be of assistance in answering or if I might be of any further assistance to the Court.

Very truly yours,



Bradley Rhodes  
Aitkin County Attorney

BCR:trb

cc: Katherine M. Menendez



# EXHIBIT F

State of Minnesota)

County of Anoka)

I, **Mari Blegen**, declare under the penalties of perjury as follows:

1. I am over the age of eighteen and believe in the obligations of an oath.
2. In February of 1998, I was living in the Sandy Lake area of Aitkin County, Minnesota, with my ex-boyfriend, Bryan Lee Misquadace, at our home located on County Road, also known as 54046 Loon Avenue, McGregor MN.
3. This is the former house of the deceased Walter Allen Misquadace, Raymond Misquadace's father. It is also the house Raymond Misquadace alleged that he and four others drove to immediately after the murder of Evelyn Malin on February 24, 1998.
4. I am aware that Raymond Misquadace has stated and testified that on February 24, 1998, the house was unoccupied and it was "junky", "ripped up", and "a party house" because no one lived there. He described it as having shag carpeting.
5. As of February of 1998, however, the house had already been completely remodeled by the Mille Lacs Tribal housing department and Bryan Misquadace and I were living in it as our home with three children. It also had new tile flooring, not carpeting.
6. Raymond Misquadace also claimed that Howard Martin was there alone when they arrived that night. I can state with certainty that Raymond Misquadace's

description of the house, and who was in it, could not have been true at the time. Bryan and I, who had the only keys, would have locked the house. If we were home, then I would have remembered them coming to the premises, and I would not have permitted them in our house.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: July 15, 2021

  
Mari Blegen

# EXHIBIT G

State of Minnesota)

County of Aitkin)

## Declaration of Keith Misquadace

I, **Keith Misquadace**, declare under the penalty of perjury as follows:

1. I am over the age of eighteen and I believe in the obligations of an oath.
2. My birthday is April 27, 1980 and on February 24, 1998 I was seventeen years old and a high school student.
3. I was not present at the Dollar Lake Store on February 24, 1998 when Evelyn Malin was murdered and I was not involved in any manner in the incident despite the fact that I pled guilty in the case pursuant to a plea agreement which I unsuccessfully sought to withdraw.
4. On February 24, 1998, I was at school between 8:15 am. and 3:25 p.m. After school, I took the bus home to the Sandy Lake Reservation where I lived with my grandmother, Agnes Chief, arriving at about 4:45 or 5:00 p.m. There was nobody at the house when I arrived. I did not leave the house from the time I got home until the next morning when I left for school.
5. I recall my grandmother coming home between 9:00 and 10:00 p.m. On this same evening, I was on the phone talking with Theresa Coulton, who was at her home in McGregor.
6. My brothers, Michael and Brandon Misquadace, and my uncle Brian Keith Pippitt, came home in my grandmother's gray Dodge Caravan at

approximately 10:30 to 11 p.m. They had been at the Mille Lacs Grand Casino and then in Onamia that day and evening. When they arrived home, Agnes saw that they had been drinking and started yelling at them. My uncle Brian then turned around and left to go to my Aunt Wanda's house next door.

7. On the morning February 25 my grandmother woke me up for school and my brother Michael drove me and my sister Lindsay to school in the Dodge Caravan. I arrived at school at the regular time, but I skipped at least one morning class.

8. I first heard about the Malin murder that day, February 25, 1998, in my 5th-hour shop class, when other students started talking about it after they heard about it on a scanning radio.

9. In February 1998, my grandmother only owned one vehicle, a gray Dodge Caravan that she bought before June of 1997. Before that she owned a blue Buick Regal four door. To my knowledge no one in my family ever owned a gold Toronado nor did I know of anyone who owned, or had access to, a two-door car or a gold Toronado.

10. I have never driven a gold colored Toronado motor vehicle.

11. In his statements and testimony, Raymond Misquadace claims that, after the attack on Mrs. Malin, I drove the Toronado from Mrs. Malin's store to Raymond's father's old residence in Sandy Lake, taking Highway 65. This, in itself, shows his story is false. First, there is a faster back-route by Horseshoe Lake from the Dollar Lake Store to Sandy Lake that Raymond does not know about, but that I would have taken. Also, I had been living in the Isanti Boys Ranch until January 31, 1998, and after that, I did no driving.

12. About a week after the murder, police came to my house and examined my hands. I later learned that the police had heard that I squeezed through the basement window at the Dollar Lake Store and cut my hand doing so. I did not have any cuts or scrapes and they did not see any because I was not there at all.

13. Raymond Misquadace's story that I was driving around on the afternoon and evening of February 24, 1998 with him, Donald Hill, Neil King and Brian Pippitt and that we went to the Dollar Lake Store is completely false. No part of Raymond Misquadace's story, insofar as it involves me, is true.

14. I can also state that Raymond Misquadace and my uncle Brian did not get along, did not like each other, and did not socialize. Brian was also 14 years older than Raymond Misquadace. It is inconceivable to me that they would ever be driving around together, as Raymond described in his statements.

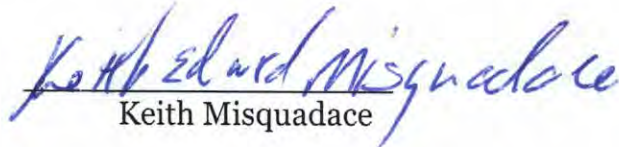
15. Just before my case was to go to trial for the murder of Evelyn Malin in September 2000. I was scared because I knew I had no involvement in the case but was nonetheless charged with murder and robbery and felt pressured to accept the plea offer which included the dismissal of serious sex charges I was also facing at the time. It appeared like an acceptable exchange as I feared the kind of treatment sex offenders can suffer in prison. I accepted the plea deal even though I did not go to the Dollar Lake Store that night and had nothing to do with the incident. I therefore refused to allocute and I pled under the Alford doctrine.

16. Following my Alford plea I almost immediately regretted my decision to accept the plea offer because I was not guilty of the murder and was not involved in the offense in

any way. As a result, before my sentencing I tried to withdraw my plea, but the court did not allow me to do so.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

7-16-2021

  
Keith Misquadace

Dated 2021

**EXHIBIT H**

State of Minnesota)

County of St. Louis )

**Declaration of Neil Francis King:**

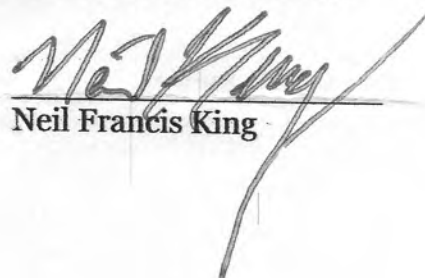
**Neil Francis King** , declares under the penalty of perjury:

1. I am over the age of eighteen and believe in the obligations of an oath.
2. I was not with Raymond Misquadace, Donald Hill, Keith Misquadace or Brian Pippitt on February 24, 1998, I was not present at the Dollar Lake Store on that date, and I was not involved in any manner in the robbery or murder of Evelyn Malin.
3. In October 1999, I was put on trial for the murder of Evelyn Malin based on the state's accusation that I was a participant in the crime. I was acquitted by the judge on the grounds of insufficient evidence because (1) Raymond Misquadace's testimony that I was with him at the crime was uncorroborated; and (2) he testified that I was drunk in the car and did not enter the store where Mrs. Malin was killed. The actual true fact is that I was never there at all.
4. I have never been in a vehicle with Raymond Misquadace, Donald Hill, Keith Misquadace and Brian Pippitt.
5. I have steadfastly maintained that I was not present at, had no involvement in, and have no direct knowledge of, the murder of Evelyn Malin. I so stated these truths to Inspector Bruce Beck when he interviewed me in Virginia, Minnesota on November 13, 1998 and I have never wavered from these truths.



6. I have been able to establish, with the assistance of my relatives, that on February 24, 1998 I was not in McGregor. Rather, I was with Bradley Misquadace and my father, Ed Martin in Virginia, Minnesota where my car was being repaired.
7. Raymond Misquadace's story that I was driving around on February 24, 1998 with him, Don Hill, Keith Misquadace and Brian Pippitt and that we went to the Dollar Lake Store is completely false. No part of Raymond Misquadace's story, insofar as it involves me, is true.
8. I have been reluctant to go on record about this case, or even to discuss it, as the experience of being falsely accused and tried for a crime I had nothing to do with has caused me and my family great distress and anguish. I had been especially unwilling to discuss the case with Brian Pippitt or his representatives because the police represented to me that Brian Pippitt had implicated me in the crime. I have since learned that Brian Pippitt had not implicated me and that representation by the police was false.

By my signature below pursuant to Minnesota Law and under penalty of perjury, all the information in this declaration is true and correct

  
Neil Francis King

Dated:

# EXHIBIT I

## TOLLING AGREEMENT

This Tolling Agreement is entered into on the Effective Date (defined below) between Defendant Brian Pippitt (“Defendant”) and the Aitkin County Attorney’s Office (the “State”).

### RECITALS

- A. Defendant was convicted of murder in Aitkin County District Court, Case Number K4-99-235.
- B. Defendant believes that he has potential claims for relief from his conviction pursuant to Minn. Stat. § 590.01 *et seq.* The bases for which are set forth on Exhibit 1 attached hereto.
- C. Defendant has elected to submit an application to the Conviction Review Unit in the Office of the Minnesota Attorney General (“CRU”).
- D. The CRU has accepted the Defendant’s application and is in the process of reviewing that application.
- E. The CRU Charter provides, “While a case is under review at the CRU, the CRU agrees that all time limits and time bars for judicial relief should be tolled during the time the CRU has the case.”

### TERMS

Therefore, the parties agree as follows:

- A. The Effective Date is January 7, 2022.
- B. The Statute of Limitations contained in Minn. Stat. § 590.01, subd. 4(a) shall be tolled for a period (the “Tolling Period”) beginning on the Effective Date and ending on the date on which the CRU notifies Defendant in writing of the completion of the CRU’s review of his application and of the CRU’s final determination with regard to his application.
- C. The parties agree that the Tolling Period shall not be asserted or used in calculating the running of time on any post-conviction claims made by Defendant under Minn. Stat. § 590.01, subd. 4(a). Otherwise, the State does not waive any arguments related to Petitioner’s petition being time barred under Minn. Stat. § 590.01, subd. 4.
- D. Nothing contained herein is a concession on the part of the State as to the validity of any of Defendant’s claims.

Date: 5/18/2023

*James Cousins*

(attorney name)

Counsel for Defendant

Date: 05/18/2023

*Aitkin*

County Attorney's Office

By: \_\_\_\_\_

Its: \_\_\_\_\_

*County Attorney*

## EXHIBIT 1

### I. Actual Innocence

Brian Pippitt claims that he is actually innocent of the murder of Evelyn Malin; that he was not present when she was murdered and that he had no involvement in the crime or knowledge of the crime in any respect. This claim is supported by *inter alia* the following evidence, all of which was obtained within two years prior to Brian Pippitt filing his application with the Minnesota Attorney General's office, Conviction Review Unit:

1. Sworn statement of Raymond Misquadace recanting his statements and testimony that incriminated Brian Pippitt. Raymond Misquadace now admits that he fabricated his incriminating story; that he was not present at the crime; that he does not know who committed the crime and that he only offered his incriminating story as result of coercive interrogations.

2. Sworn statement of Peter Arnoldi admitting that Brian Pippitt did not confess to him when they were housed at Saint Peter hospital and that Brian Pippitt was only conveying to Peter Arnoldi what he (Brian) had been accused of, not that he had any involvement in the crime. Notably, Peter Arnoldi mistakenly believed that the victim had been sexually assaulted and that the attackers silenced her screams during the sexual attack by stuffing Kleenex in her mouth. Neither of these things occurred at all.

3. Medical records of Peter Arnoldi disclosing that at all times relevant to his being a witness for the State against Brian Pippitt, he was suffering from various psychiatric conditions including psychosis with symptoms of auditory and visual hallucinations.

4. Sworn opinions of i. crime scene reconstruction expert Brent Turvey PhD, that no entry was made into the Dollar Lake Store through the basement window and that the crime scene was staged to appear as though a burglary took place; and ii. forensic lock expert Stanley Paluski that the front door deadbolt lock is of the type that requires a key to lock and unlock it and that the crime scene photographs show it in a locked position.

5. Sworn statements from Neil King and Keith Misquadace that they were not present at the Dollar Lake Store when Evelyn Malin was murdered and that they had no involvement in, nor knowledge of, that crime.

6. Sworn statement from Harold Dean Horner that Evelyn Malin was fully capable of locking the deadbolt lock to the front door of the Dollar Lake Store and she did so every night.

## II. Suppression of Exculpatory Evidence

Brian Pippitt claims that the State suppressed exculpatory evidence. This claim arises from, or is supported by, *inter alia* the following evidence:

1. The State suppressed disclosure of the physical deadbolt lock which was removed from the crime scene and which physical evidence provided proof that

the front door deadbolt lock was in a locked position when the police arrived at the crime scene. This fact is exculpatory in that it destroys the State's theory of the crime that the perpetrators entered and exited through that door. That deadbolt lock and door have been lost or destroyed by the state.

2. The State suppressed disclosure of the fact that Peter Arnoldi suffered from psychosis with symptoms of auditory and visual hallucinations at all times relevant to his being a witness for the State against Brian Pippitt.

# EXHIBIT J

State of New Jersey)

County of Ocean)

## Declaration of Stanley F. Paluski

I, **Stanley F. Paluski** declare under the penalties of perjury as follows:

1. I am a licensed and certified forensic locksmith. I am a member in the following associations:

New Jersey Locksmith Association (NJLA)  
International Association of Investigative Locksmiths (IAIL)  
Associated Locksmiths of America (ALOA)  
The Master Locksmiths Association of New Jersey (MLANJ)

2. I have been employed for more than 30 years as a professional in the operation, installation, evaluation and analysis of various locking, antitheft, security system and theft protection devices including mechanical locks, electronic locks, residential security systems, theft protection devices, and vehicular ignition and locking systems among other-related mechanisms.

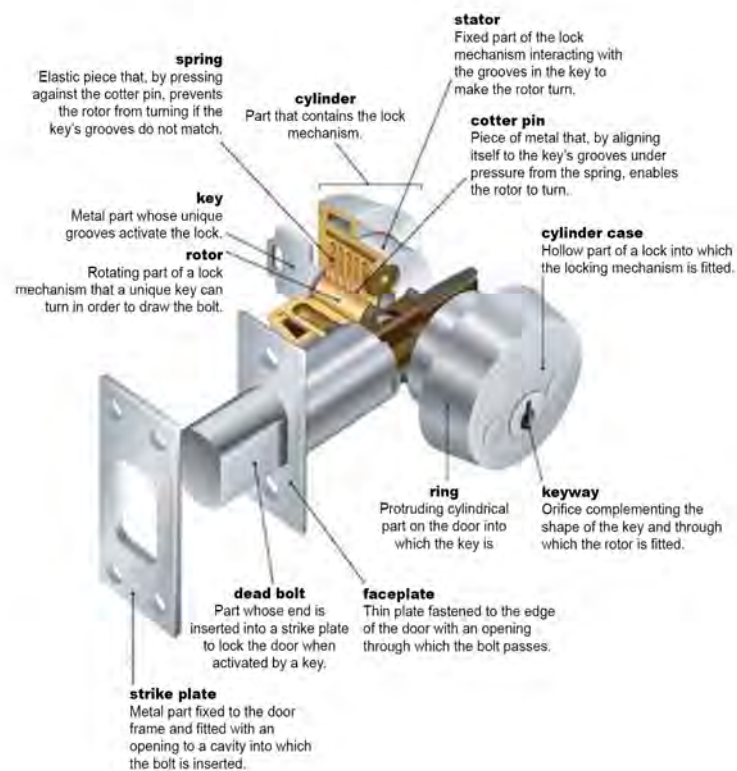
3. My professional curriculum vitae is attached as Exhibit 1.

4. At the request of W. James Cousins, I reviewed the following materials to determine the position of the deadbolt lock shown in photographs of Evelyn Malin's premises in McGregor Minnesota and referred to in police reports:

Crime scene photographs—front door and lock identified as Ex.54(002);  
Ex.55(002); 2015\_03\_27\_09\_22\_45.jpg; 2015\_03\_27\_09\_22\_44.jpg  
Deputy Fredin report dated 2/25/98  
Officer John Drahota report dated 03/25/98  
Officer Seth Jacobs report dated 05/13/99  
Detective Bruce Beck Supplemental report dated 05/28/99  
Copies of polaroid photographs of lock and door referred to in Beck report  
9 Photographs by police of disassembled lock

## UNDERSTANDING HOW A DEADBOLT LOCK WORKS

5. A deadbolt is a locking mechanism distinct from a spring bolt lock because a deadbolt cannot be moved to the open position except by rotating the lock cylinder with the correct key. A deadbolt lock extracts from its housing when the key is rotated. Once the deadbolt is extracted one cannot push it in manually or force it in with a screwdriver between the door and jamb area. The rotation of the key extracts the deadbolt back within its housing. The deadbolt itself, when extracted from the housing will stick out past the door approximately 1 inch. There is a pin within the deadbolt latching system that prevents the deadbolt from being pushed inwards. The deadbolt itself is also of heavy grade to prevent someone from cutting the deadbolt to gain access. A diagram of a double-sided keyed deadbolt is shown below.





## REVIEW OF PHOTOGRAPHS

6. A review of the photographs revealed numerous photographs of the deadbolt lock both attached to the door as well as disassembled from the door. An examination of the lock revealed it is gold in color and is a doubled sided keyed deadbolt. The doubled sided keyed deadbolt can only be opened or closed with a supplied key that will rotate the keyway of the lock. The lock has been identified as a double sided Schlage deadbolt lock.

7. A review of the photographs revealed three photographs that clearly establish that the deadbolt was in the locked position. Photographs number 2015 03 27 09 22 45, EX54 (002) and EX55 (002) (attached as Exhibits 2, 3 and 4) all clearly show the deadbolt is locked. The photographs are taken facing the door. The small gold deadbolt is what is seen between the door and the frame. One would not be able to see the strike plate that is recessed onto the door jamb in the area of the deadbolt. The strike plate (a metal component that the deadbolt slides into) is recessed into the door jamb and not visible at this angle. Overall, all of the evidence shows that the deadbolt was in the locked position when the photographs were taken. Exhibit 55 (002) is pictured below.

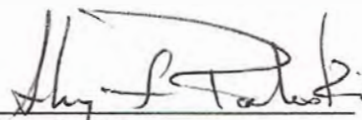


**CONCLUSION**

8. It is my expert opinion based within a reasonable degree of forensic certainty, based on my training, education and experience that:

A thorough examination of the supplied photographs has revealed that the deadbolt is in the locked position. There is no evidence to support that the seen gold object is a strike plate or other object. The gold object is clearly the deadbolt in the locked position.

By my signature below pursuant to Minnesota Law and under penalty of perjury, all the information in this declaration is true and correct.

  
Stanley F. Paluski

# EXHIBIT 1

# STANLEY F. PALUSKI

## PROFESSIONAL EXPERIENCE

2000 - Present  
Sterling Investigative Services  
South Amboy, New Jersey

### **Automotive theft expert and cause and origin expert**

- Vehicular fraud and theft evaluation
- Electronic security system evaluation
- Lock and Key anti-theft system analysis
- Automotive defect evaluations
- Cause and Origin fire analysis

1994 - May 1999  
Hard Facts Investigative Engineering  
Freehold, New Jersey

### **Automotive Technologist**

- Vehicular fraud and theft evaluation
- Electronic security system evaluation
- Laboratory ignition mechanical lock core analysis
- Product failure and defect evaluation
- Industrial machine toll analysis
- Auto body platform and structural analysis
- Lock and key anti-theft system analysis
- Electronic system evaluations
- Cause and origin fire analysis

1986 - 1994  
Zorn Packaging  
Farmingdale, New Jersey

### **Production Supervisor/Maintenance Manager**

- Maintained over half a million dollars worth of high voltage industrial machinery
- Designed upgrades to production line equipment

- Supervised line production and 38 member staff
- Supervised maintenance and operation of Beasly French printing press
- Supervised and instructed employee safety program implementation
- Maintained and implemented preventive maintenance program

1980 - 1986

Paul's Security  
Howell, New Jersey

**Locksmith**

- Code cutting and key impression production
- repair and installation of locking systems
- Vehicle entry
- Lock picking
- Residential security system installation and evaluation

**CREDENTIALS/AFFILIATIONS**

Certified Forensic Locksmith  
 State of New Jersey Locksmith License # 34LS00061900  
 Member of National Association of Fire Investigators (NAFI)  
 Member of New Jersey Locksmith Association (NJLA)  
 Member of International Association of Investigative Locksmiths (IAIL)  
 Member of Associated Locksmiths of America (ALOA)  
 Member of The Master Locksmiths Association of New Jersey (MLANJ) (2006)  
 Attended forensic locksmith classes 1, 2 and 3  
 Member of the International Automotive Technicians Network (IATN)  
 ASE Certified Auto Brakes  
 ASE Certified Auto Heating and Air Conditioning  
 ASE Certified Engine Repair  
 ASE Certified Engine Performance  
 Candidate for eligibility as a ASE master Technician  
 Level 1 and 2, code compliance certified for Fire and Life Safety  
 Factory Certified through Detex  
 Attended By Pass class Through IAIL  
 Attended tool mark identification class through IAIL  
 Attended numerous car burnings through NJVTI, IAAI from 2001-2019 (142 hrs)  
 Attended 2004 "back to the basics" Fire seminar for IAAI (8 hrs)

Attended 2005 "Forensics" how they can be used as evidence fire seminar (8 hrs)  
Attended 2002 "Inaugural education conference" seminar for IAIL  
Attended 2005 "Auto theft and arson" seminar for IAIL (16 hrs)  
Attended New Jersey Vehicle Theft Investigators annual training seminars from  
1994 - 2019 (362 hrs)  
Attended Middlesex County Fire Prevention 2014 (6 hrs).  
Attended PA Insurance Fraud Prevention Authority Seminars from 2009-2018  
(142 hrs)  
Attended 2007 Auto theft, Arson Awareness, Vehicle Transponder systems  
Attended 2008 Auto Theft & Arson Forensic Examinations  
Attended 2009/2011 Life safety Codes  
Attended 2010 Combination Lock Manipulation class  
Attended 2010 Complying with Applicable regulations  
Attended 2010 Mul-T-Lock certification  
Attended 2011 Auto Theft & Arson forensic examinations  
Attended 2011 New Jersey Fire Door Assembly Inspector  
Attended 2011 Industrial and Shop Safety  
Attended 2013 Locksmithing 101 class  
Attended 2014 Exit Device Installation and servicing  
Attended 2015 Lock Bypass Techniques  
Attended 2015 NJ Uniform Building code Laws and Codes  
Attended 2015 Industrial and Shop safety Laws and Codes  
Attended 2015 NJ Barrier free Hardware Laws and Codes  
Attended 2015 Accessibility Laws and Codes  
Attended Desk and Utility Lock Installation and Servicing  
Attended 2014 Exit device installation and Servicing Trained through NJVTI,  
IAIL, IAAI and NJSIA on vehicle theft investigations, arson investigation, and  
vehicle security devices on a yearly basis since 1998  
Presented numerous presentations for numerous insurance companies for fraud  
awareness

The following list represents courts where I have qualified to testify as a expert  
witness:

**District Courts:**

Montgomery Township, Woolwich Township, Patterson, New Brunswick,  
Allentown

**Superior Courts:**

Camden County, Suffolk County, Monmouth County, Essex County,  
Philadelphia, Kings County



**EXHIBIT K**

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF AITKIN

NINTH JUDICIAL DISTRICT

---

State of Minnesota,

Case No. 27-2021-CR-00752

Plaintiff,

**DECLARATION OF**

v.

**ATTORNEY**

Brian Pippitt,

**THOMAS F. MURTHA IV**

Defendant.

---

[¶1] Thomas F. Murtha IV, states under penalty of perjury as follows:

[¶2] I am an attorney licensed to practice law in the State of North Dakota and the State of Minnesota.

[¶3] My professional curriculum vitae is attached as Exhibit 1.

[¶4] I was an Assistant District Public Defender for the Ninth Judicial District in the Brainerd, Minnesota office and I was assigned to represent Brian Pippitt who had been charged with first-degree murder in the case of State of Minnesota v. Brian Pippitt, K4-99-325.

[¶5] I was assigned to the case after previous attorneys that had been assigned to the case were no longer able to represent Mr. Pippitt.

[¶6] The jury trial venue was moved from Aitkin to International Falls, Minnesota and a jury trial commenced in January 2001.

[¶7] Prior to trial Mr. Pippitt was offered a plea deal carrying a sentence of seven years. Mr. Pippitt at that time had been held in pretrial detention for approximately a year and seven months, so with credit for this pretrial incarceration and potential good time credits, he would have been eligible for release in a few short years. He refused the offer outright as he was not guilty and would not plead to something he did not do.

[¶8] At trial the State presented no forensic evidence linking Mr. Pippitt to the crime, nor does



any exist. The only evidence linking Mr. Pippitt to the crime was the testimony of an alleged accomplice, Raymond Misquadace, who received a remarkably good deal for his testimony, and the testimony of a jailhouse informant, Peter Arnoldi. The State had to rely on the testimony from Arnoldi to corroborate the testimony of the accomplice, Raymond Misquadace.

[¶9] The informant, Peter Arnoldi, a long-time con artist and felon, claimed that Mr. Pippitt made confessional statements to him while they were both housed in St. Peter Security Hospital while Mr. Pippitt was there for an evaluation pursuant to MinnRCrimP. 20.

[¶10] It was not disclosed to me that Peter Arnoldi, at the time he allegedly heard the statements from Mr. Pippitt, was suffering from serious psychoses causing him to hear voices and to hallucinate and that he had also received electroshock therapy.

[¶11] It was also not disclosed to me that Mr. Arnoldi was of the erroneous belief that the 84-year-old murder victim, Evelyn Malin, had been sexually assaulted. Since the victim was not sexually assaulted, the purported confessional statement from Mr. Pippitt that Mr. Arnoldi claims to have heard is grossly inaccurate. Obviously, Mr. Pippitt would not confess to such heinous conduct that never even occurred. Mr. Arnoldi's claims are clearly distorted and unreliable. The jury should have known this, particularly since the jury was made aware of certain inconsistencies between Mr. Arnoldi's testimony and the police reports and between Mr. Arnoldi's testimony and Raymond Misquadace's testimony.

[¶12] It was not disclosed to me that the Aitkin County Attorney, Bradley Rhodes, who prosecuted the case against Mr. Pippitt, would write a letter to the sentencing judge in a federal bank robbery case pending against Mr. Arnoldi. The letter commended Mr. Arnoldi and exalted his testimony as having been crucial to Mr. Pippitt's murder conviction. Mr. Arnoldi used the letter to support his request for a downward departure from the sentencing guidelines. Those federal bank robbery charges were pending against Mr. Arnoldi at the time he testified against Mr. Pippitt.

[¶13] I only first learned the facts set forth in the above paragraphs 10, 11 and 12 this year when counsel for Mr. Pippitt showed me the transcripts from Mr. Arnoldi's federal sentencing, the letter from Bradley Rhodes to the judge, and the medical diagnosis that was presented at sentencing.

[¶14] A significant issue in the case against Mr. Pippitt was the position of a deadbolt lock on the front door of the premises where the crime occurred. A key is required to lock or unlock the deadbolt from both outside and inside the door. Police photographs, taken upon arrival at the crime scene, show the bolt across the space between the door and the door jamb, meaning it is in a locked position. If this deadbolt was locked, Raymond Misquadace's entire story collapses, as he claimed that the assailants walked freely in and out of that front door. None of them would have had a key to lock or unlock that deadbolt lock. Thus, there would have been no means by which they could have locked the deadbolt upon leaving the premises. The back door was likewise locked—but it was locked with a skeleton key that was still inserted in the lock from the inside. Thus, the assailants could not have exited through the back door either.

[¶15] Obviously recognizing the significance of the deadbolt lock after Raymond Misquadace gave his statement, law enforcement, fifteen months after the murder, removed the front door and lock from the crime scene. Then law enforcement confirmed that the lock was fully operable, and only with a key; and disassembled the lock mechanism and photographed all of the parts except the most critical part, the bolt itself that can be seen in the crime scene photographs.

[¶16] Although the law enforcement field report prepared on the morning of the crime stated that both the front and back doors were locked, at trial law enforcement testified that they could not remember whether the deadbolt was locked. They suggested that perhaps only the doorknob lock may have been locked which would not require a key. Thus, they conjectured that the assailants could have exited through that door by locking the doorknob lock and then pulling the door shut behind them, locking the doorknob lock but not the deadbolt. Of course, that conjecture is destroyed

if the deadbolt lock was in a locked position, because a key would have been required to set it in that position.

[¶17] Prior to trial, I repeatedly asked to inspect and examine the deadbolt lock but it could never be produced to me. I understand now that it has been lost from the Aitkin County evidence room.

[¶18] I thoroughly investigated this case and, in particular, Brian Pippitt's alibi that he was with his nephews Michael Misquadace and Brandon Misquadace at the Grand Casino in Mille Lacs on the day and evening of the murder and not driving around with Raymond Misquadace, as Raymond had claimed. Michael Misquadace was at the casino for a job fair interview. He had his screening interview at 1:00 pm and a follow-up interview at 5:00 pm. Michael attended both and was thereafter hired by the casino. Mr. Pippitt joined him to gamble at the casino. Police knew these facts within days of the murder from interviews they conducted with both Michael and Brandon.

[¶19] After the job interviews at the casino, Michael, Mr. Pippitt, and Brandon met up with Wesley Misquadace and his girlfriend, Joanne Kruse, and with Michael Misquadace's fiancé, Shannon Webb, in Onamia where they stayed late into the evening.

[¶20] The first time Mr. Pippitt was interviewed about the murder was nearly a year later. At that time, he could not remember his precise whereabouts on that day (as would be expected of someone who had no involvement with the murder). His mother, Agnes Chief, remembered that Mr. Pippitt had gone with Michael and Brandon to the casino when Michael had his job interview and that Mr. Pippitt had pawned a Sony radio and cassette player that day for gambling money. A check with the pawn shop confirmed that Mr. Pippitt pawned a radio that day. The pawn shop still had the receipt.

[¶21] Although police knew as early as eight days after the murder that Mr. Pippitt's whereabouts were accounted for that day and evening by several witnesses, the prosecutor disingenuously argued that Mr. Pippitt's initial failure to recall the alibi when interviewed a year later was proof that he fabricated the story. Michael Misquadace's interview statement given to the police days after the

murder was not put before the jury. My office interviewed all of the witnesses to Mr. Pippit's alibi and were able to confirm its truth.

[¶22] I subsequently became the County Attorney in Aitkin County and worked closely with the county law enforcement personnel in that capacity. I have always believed, and I often expressed this belief to the officers in that office, that Brian Pippitt is innocent and had no involvement at all in the robbery and murder of Evelyn Malin.

Dated November 9, 2021 in the city of Dickinson, Stark County, North Dakota.

/s/Thomas F. Murtha IV  
Thomas F. Murtha IV  
ND attorney ID# 06984  
MN attorney ID# 0287386  
PO Box 1111  
Dickinson ND 58602-1111  
701-227-0146  
murthalawoffice@gmail.com

# EXHIBIT 1

# THOMAS F. MURTHA IV

---

135 Sims, Suite 217  
PO Box 1111  
Dickinson, North Dakota 58602

701-227-0146 Office  
218-838-2829 Cell  
murthalawoffice@gmail.com

## ***PROFESSIONAL PROFILE***

Licensed to practice law in the State and Federal courts of North Dakota and Minnesota, the United States Supreme Court, and the courts of the Three Affiliated Tribes of the Fort Berthold Indian Reservation. Represented the government and private clients in and before regulatory boards, committees, district courts and appellate courts. Advanced legal writing, research and oral argument skills. Proficient with most software and technology used in modern courtrooms. Extensive jury trial experience in high profile serious felony cases both as the prosecution and defense.

## ***PROFESSIONAL EXPERIENCE***

**MURTHA LAW OFFICE**, Dickinson, North Dakota, 2007- present

### ***ATTORNEY AT LAW***

Private practice of law in Minnesota, North Dakota, the United States Supreme Court, and the Three Affiliated Tribes of the Fort Berthold Indian Reservation.

### **Major Accomplishments**

- Successfully litigated to the United States Supreme Court the constitutionality of a North Dakota law that made it a crime to refuse to submit to a warrantless search in Birchfield v. N. Dakota, 136 S. Ct. 2160 (2016); Beylund v. N. Dakota, 136 S. Ct. 2537 (2016); Baxter v. N. Dakota, 136 S. Ct. 2539 (2016); Harns v. N. Dakota, 136 S. Ct. 2537 (2016); Wojahn v. Levi, 136 S. Ct. 2538 (2016).
- Successfully litigated an in rem action against tractor trailer unit for extraordinary use of the highways in Stark Cty. v. 1998 Peterbuilt Truck, 2013 ND 170.
- Successfully litigated many cases to rescind the suspension of driving privileges. See e.g. Jorgenson v. Sorel, 2020 ND 193; Morrow v. Ziegler, 2013 ND 28.
- Successfully litigated many cases to the North Dakota Supreme Court. See e.g. Brown v. Brown, 2020 ND 135 (protection order reversed); State v. Swanson, 2019 ND 181 (homicide conviction reversed)

**AITKIN COUNTY**, Aitkin, Minnesota, 2003 to 2006

### ***AITKIN COUNTY ATTORNEY***

Elected to office in 2003. Supervised an office with a staff of 10 people. Represented and advised all county boards, and departments, including human resources, in both a civil and criminal capacity. Trained law enforcement personnel. Responsible for all criminal and civil litigation on behalf of the county. Personally litigated all major felonies for the County including homicide, criminal sexual conduct, and controlled substance cases. See e.g. State v. Manthey, K6-04-214 (Aitkin Co. Dist. Ct.)(First Degree Homicide trial and conviction); State v. DeRosier, K7-01-76 (Aitkin Co. Dist. Ct.)(First Degree Criminal Sexual Conduct trial and conviction).

### **Major Accomplishments**

- Tried and obtained convictions on more meth lab cases than ever before in the history of Aitkin County. See e.g. State v. Bodick, K6-03-767 (Aitkin Co. Dist. Ct.); State v.

Graton, K4-03-209 (Aitkin Co. Dist. Ct.); State v. Elling, K9-04-224 (Aitkin Co. Dist. Ct.); State v. Berg, K7-05-474 (Aitkin Co. Dist. Ct.).

- Initiated a Sobriety Court Program and completed the Adult Drug Court Planning Initiative Program through the National Drug Court Institute.
- Integrated a Crime Victim Coordinator and a Juvenile Diversion Program into the County Attorney's Office.
- Introduced internet-based research to the County Attorney's Office and law library.

**STATE OF MINNESOTA**, Brainerd, Minnesota, 2000 to 2003

***ASSISTANT STATE PUBLIC DEFENDER***

Assigned to the Ninth Judicial District. Primary emphasis on felony trial work; additional responsibilities included juvenile and CHIPS representation.

**Major Accomplishments**

- Successfully litigated numerous felony level jury trials on behalf of indigent clients.
- Successfully managed a caseload far in excess of national standards.

**LARSON LAW OFFICE**, Little Falls, Minnesota, 1998 to 2000

***ATTORNEY AT LAW***

Private practice of law in a two-attorney law firm focused on criminal defense.

**Major Accomplishments**

- Successfully litigated numerous criminal jury trials.

**LARSON LAW OFFICE**, Little Falls, Minnesota, 1996 to 1998

***LEGAL ASSISTANT / INVESTIGATOR***

Conducted criminal investigations for the defense, wrote evidentiary briefs and argued cases before the Minnesota State Court of Appeals as a Certified Student Attorney pursuant to the Minnesota Rules of Student Practice.

**Major Accomplishments**

- Successfully argued re-employment insurance cases to the court of appeals. See Posch v. St. Otto's Home, 561 N.W.2d 564 (Minn. App. 1997) and Posch v. St. Otto's Home, C3-97-1135 (Minn. App. 1998)(unpublished opinion).

**M.O.D.E. INC.**, Minneapolis, Minnesota, 1993 to 1996

***DIRECTOR OF OPERATIONS***

Oversaw all daily operations for a non-emergency medical transportation company.

***EDUCATION***

**JURIS DOCTOR**

William Mitchell College of Law  
Saint Paul, Minnesota  
May 1998

**BACHELOR OF ARTS IN POLITICAL SCIENCE**

University of Minnesota  
Minneapolis/Saint Paul, Minnesota  
June 1993

**Career Note:** Additional professional background includes work experience as an Auditor for two different oil companies and a role as an intern/legislative assistant to then Minnesota Senator Randy Kelly in his first term as Senator in 1990-1991. I have also guest lectured on the topic of Criminal Procedure at William Mitchell College of Law. References are available upon request.

### ***MEMBERSHIPS AND LICENSES***

1998 admitted to practice law in the State of Minnesota. 2011 admitted to practice law in the State of North Dakota. 2015 admitted to practice law in Tribal Court, Fort Berthold District Court. 2016 admitted to practice law in the Supreme Court of the United States. FCC Radio and Telephone Operator's License.



**EXHIBIT L**

I Raymond Lee Misquadae declare under the penalty of perjury:

- 1) I am over 18 and believe in the obligations of an oath.
- 2) I was not involved in any manner with the death and robbery of Evelyn Malin.
- 3) I was not at the Dollar Lake Stone on February 24, 1998.
- 4) I was not with Brian Pippitt, Neil King, Don Hill or Keith Misquadae on February 24, 1998.
- 5) When first interviewed about the case I told the truth - that I was not involved and did not know anything about the crime.
- 6) In the subsequent interviews by detectives Beck, Barken and Bjerga, the officers threatened me, and told me that others had given them statements that I was involved.
- 7) I was told that I would get a long sentence but it could be reduced to 58 months if I

confessed and named the others. The inspectors already had those names as supposed participants - so I told them what they wanted to hear.

8) The officers kept threatening that I would not get the deal unless I provided more and more details. Many of those details were suggested to me by the interrogating detectives.

9) I do not know who killed Evelyn Martin. I don't know who was involved, but I was not involved. I was not present at the Dollar Store Lake Store when she was killed.

10) I have been very afraid to come forward with these truths because of the way I have been treated by the authorities. I was afraid they would find some way to change me with something.

By my signature below pursuant to Minnesota Law  
and under penalty of perjury all of the information  
in this declaration is true and correct

Dated: July 16 2021

Raymond Misquodace

Raymond L. Misquodace