

No. _____

IN THE
Supreme Court of the United States

Kenneth Roshell Isom,

Petitioner

v.

State of Arkansas,

Respondent

**On Petition for Writ of Certiorari to the
Arkansas Supreme Court**

Appendix

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SUPREME COURT OF ARKANSAS

No. CR-17-1003

KENNETH R. ISOM

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: December 20, 2018

APPEAL FROM THE DREW
COUNTY CIRCUIT COURT
[NO. CR 2001-52-1]

HONORABLE SAMUEL B. POPE,
JUDGE

AFFIRMED.

JOHN DAN KEMP, Chief Justice

Appellant Kenneth Isom appeals an order of the Drew County Circuit Court dismissing his petition for writ of error coram nobis. For reversal, Isom contends that the circuit court abused its discretion in (1) dismissing the petition because the State suppressed evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963); (2) limiting discovery for the evidentiary hearing; and (3) denying his motion for judicial recusal. We affirm.

I. Factual & Procedural Background

On the evening of Monday, April 2, 2001, at approximately 7:45 p.m., a man knocked on the door of William “Bill” Burton’s trailer home in Monticello, Arkansas. Burton was a seventy-nine-year-old man in the care of his sister-in-law, seventy-one-year-old Dorothy Lawson. Lawson answered the door, and the man pushed his way inside and demanded money. Wielding a pair of broken scissors, the man ordered Burton and Lawson to lie on the floor of the trailer. Burton was stabbed and bludgeoned. Lawson was raped,

choked, and beaten. Burton and Lawson were discovered the next morning by a neighbor who called the police. Burton died, and Lawson survived.

Lawson later identified Isom as the attacker in a photographic lineup and again at trial. Two witnesses testified that they saw Isom and Lawson talking outside Burton's residence at around 7:00 p.m. on the night of the crimes. A black hair was recovered from Lawson's vagina during a rape-kit examination. A DNA analyst testified at trial that the profile from the hair was consistent with Isom's and would reoccur once in every 57 million African Americans.

Isom was convicted of capital murder, attempted capital murder, residential burglary, and two counts of rape, and he was sentenced to death for the capital-murder conviction.¹ His convictions were affirmed on direct appeal. *Isom v. State*, 356 Ark. 156, 148 S.W.3d 257 (2004). Subsequently, this court affirmed the denial of Isom's Rule 37 petition and a petition for additional DNA testing. *Isom v. State*, 2010 Ark. 495, 370 S.W.3d 491; *Isom v. State*, 2010 Ark. 496, 372 S.W.3d 809. Isom later filed an application for a writ of habeas corpus in the United States District Court for the Eastern District of Arkansas. Pet. for Writ of Habeas Corpus, *Isom v. Hobbs*, No. 5:11cv47 BSM, 2011 WL 13318484 (E.D. Ark. Mar. 1, 2011). The federal district court ordered Isom to return to state court to exhaust his state remedies. Order at 6–7, *Isom v. Hobbs*, No. 5:11CV00047 JLH, 2013 WL 12380240 (E.D. Ark. Apr. 1, 2013).

¹ Isom received additional sentences of life for aggravated robbery, forty years for residential burglary, sixty years for attempted capital murder, and a life sentence for each count of rape. All of his sentences were ordered to be served consecutively.

Isom petitioned this court to reinvest jurisdiction in the circuit court to allow him to seek a writ of error coram nobis. We reinvested the circuit court with jurisdiction to consider Isom's *Brady* claims. *Isom v. State*, 2015 Ark. 225, 462 S.W.3d 662.

Isom filed a petition for writ of error coram nobis in the circuit court on June 12, 2015. The circuit court scheduled a hearing on the petition for December 8–9, 2015. Before the hearing, Isom moved for discovery and for the recusal of the judge. Both motions were denied. In its order denying discovery, the circuit court stated that any witnesses or evidence that counsel needed could be subpoenaed to the hearing. Following the hearing and the submission of posthearing briefs, the circuit court dismissed Isom's petition for writ of error coram nobis. Isom appeals.

II. *Suppression of Eyewitness-Identification Evidence*

Isom contends that the circuit court abused its discretion in dismissing his petition for writ of error coram nobis because the State suppressed evidence in violation of *Brady*, 373 U.S. 83. Specifically, Isom asserts that the circuit court erred in finding (1) that there was no failed identification on April 4, 2001; (2) that Lawson's equivocation was not suppressed; (3) that a witness's prior statement was not impeaching; and (4) that any suppression was harmless.

A writ of error coram nobis is an extraordinary remedy that is available in compelling circumstances to achieve justice and to address fundamental errors, including *Brady* violations. See *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). The function of the writ is to secure relief from a judgment rendered while there existed some fact that would have prevented its rendition if it had been known to the trial court and that, through no

negligence or fault of the defendant, was not brought forward before rendition of the judgment. *Martinez-Marmol v. State*, 2018 Ark. 145, 544 S.W.3d 49. The denial of a coram nobis petition is reviewed for abuse of discretion. See *Pelletier v. State*, 2015 Ark. 432, 474 S.W.3d 500.

Under *Brady*, the State violates a defendant's right to due process if it withholds evidence that is favorable to the defense and material to the defendant's guilt or punishment. *Brady*, 373 U.S. at 87. The duty to disclose exists even when there has been no request by the accused, *United States v. Augurs*, 427 U.S. 97, 107 (1976), and it extends to evidence known only to law enforcement officials and not to the prosecutor, *Kyles v. Whitley*, 514 U.S. 419, 438 (1995).

A successful *Brady* claim has three components: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; (2) that evidence must have been suppressed by the State, either willfully or inadvertently; and (3) prejudice must have ensued. *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). To assess the prejudice component of the *Brady* test, courts consider whether the withheld evidence is material. Evidence is material—and its suppression prejudicial—if there is a “reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *United States v. Bagley*, 473 U.S. 667, 682 (1985).

In reinvesting the circuit court with jurisdiction to consider Isom's *Brady* claims, this court tasked the circuit court with resolving factual disputes raised in Isom's application. When acting as a fact-finder, the circuit court determines the credibility of witnesses, resolves conflicts and inconsistencies in testimony, and assesses the weight to be given the

evidence. See *Strom v. State*, 348 Ark. 610, 74 S.W.3d 233 (2002). We review a circuit court's factual findings for clear error. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). A finding is clearly erroneous when, although there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with a definite and firm conviction that a mistake has been committed. *Newman v. State*, 2014 Ark. 7.

A. Alleged Failed Identification

Isom asserted in his petition that Lawson was shown two photographic arrays that included his picture: a lineup of stock photographs on April 4, and a poster-sized lineup of enlarged photographs on April 5. He claimed that when Lawson was shown the stock photographs, she failed to identify him as her attacker. The circuit court disagreed.

On appeal, Isom contends that the circuit court erred in finding that there was no failed identification on April 4. To provide context for Isom's arguments and to facilitate the understanding of the issues before us, we quote extensively from the circuit court's order:

It is Petitioner's burden to convince the court that such a photo array was shown to Dorothy Lawson on April 4, 2001, by the police. The Petitioner has failed to convince the court that this in fact occurred. The court will explain why it reaches this conclusion. On this issue, the court finds the facts are these:

A photo lineup was in fact shown to Dorothy Lawson on April 5, 2001, at about 12:54 p.m. Ms. Lawson was then a patient in the Intensive Care Unit of Drew Memorial Hospital. Scott Woodward, a State Police Investigator working on the case, and John Dement, an investigator with the Monticello Police Department were present, as was another State Police Investigator, Rick McKelvey. The photo array for the lineup shown Ms. Lawson was prepared by Scott Woodward from photos he took that day. It was admitted at the trial of Petitioner as State's Exhibit 33 and is admitted in the record at the hearing on the Writ as Joint Exhibit 1. This is not the photo lineup complained of in this point of argument.

Defendant's argument that a photo lineup was shown by the police investigators to Dorothy Lawson on April 4, 2001, is based on a nurse's note. The note is on Petitioner's Exhibit 10, Page 125 from the Writ hearing. The time is 1500 hours or 3 p.m. It says:

Police here asking for Mrs. Lawson to ID suspect from photos. Attempts ID. Police officers to enlarge photos and bring them back tomorrow. Ms. Lawson agrees to view enlarged photos tomorrow.

The note was authored by Nurse Kristi Waxley who testified at the Writ hearing. (R. 124, et seq.) Nurse Waxley's testimony on the issue is contained on R. 136 and following. A reading of her testimony reveals that she had no independent memory of what occurred. She offered no testimony about what she meant by "attempt."

There is other evidence in the record the Court must consider on this particular issue as well. While neither party has chosen to outline the testimony of Dorothy Lawson from the trial on this issue, the Court has looked at it. It is contained in the trial transcript beginning at R. 1370. Beginning at R. 1422, Ms. Lawson was questioned on cross-examination by defense counsel about her identification and, specifically State's Exhibit 33, the photo line-up she viewed on April 5, 2001. At L 9, R. 1422, the following occurred:

Q: And you looked at the picture?

A: (Nodding affirmatively)

Q: Did you have your glasses on when you looked at the pictures?

A: I'm not sure about the day. They brought me some, a smaller sheet of pictures, and they told me to be sure that, to take time to look at them real good and everything. And I told them it might be better to wait till I got my, some glasses, you know, well, my glasses were all broke up at Bill's (murder victim's) house. And so Dr. Ferguson, Ricky Ferguson he fixed a pair of glasses for me. And so that's when I looked at the pictures again and I picked out, I picked out the man.

The initial emergency room report of Dorothy Lawson's admission to Drew Memorial Hospital is located at Petitioner's Exhibit 10, Page 7. It shows she was admitted to the emergency room on 4-3-2001 at 9:36 a.m. Other evidence reflects she was transported there by ambulance. The chief complaint being "assaulted." Other portions of the exhibit show she complained of sexual assault the night before. She had numerous injuries described in the exhibit, but they included multiple bruises and lacerations in her facial area, and facial fractures. She was attended by Dr.

Paul Wallick and his first history and physical dictated on 4-4-01 (Pet. Exhibit 10, p. 5-6) note “Orbits are particularly swollen and known fractures are present. Her eyes are bloodshot and hemorrhagic conjunctivitis.” He further notes an ophthalmic consultation would be obtained. The records further note such a consultation took place with Dr. Claycomb on 4-4-01 at 11:45 a.m. (Pet. Exh. 10, p. 9). The Court cannot read all of the note but can read enough to find that eye injuries were confirmed by the examination.

Prior to trial a motion was filed to suppress a photo line-up that was admitted into trial evidence. (R. 129-130). A hearing was held on the motion. (R. 129-130). At that hearing, Scott Woodward testified, as did Dr. Ricky Ferguson. Mr. Woodward’s testimony concerned the photographic lineup actually admitted at trial. He testified that he was unaware of any other lineup being shown Mrs. Lawson, but there was some discussion in several places of a prior photographic array. (R. 311, L. 5-12). The proof showed that Mrs. Lawson had been assaulted on the evening of April 2. On April 5, Woodward and John Dement went to Drew Memorial Hospital to see her about 8:30-9 a.m. Woodward’s testimony was that Mrs. Lawson had been given some medications to “calm her.” They spoke with Mrs. Lawson, who could not see then because her eyes were swollen shut and she needed her glasses, so they decided to wait to show her the photographic array they later presented her.

During the delay the proof showed Dr. Ferguson’s lab prepared another set of glasses for Mrs. Lawson, to replace the ones broken in her attack. Dr. Ferguson’s testimony was that he took the new glasses to the hospital and fitted them on Mrs. Lawson because of the swelling on her facial area. He further testified that she stated after they were fitted she could see the clock on the wall across the hospital room, actually telling them the time from the clock.

Later after that fitting and about 12:54 p.m. Dement and Woodward, along with Rick McKelvey, another investigator, went back to the hospital and showed Mrs. Lawson the array at issue which was admitted at trial and from which the defendant was identified. The Court found the array was not unduly suggestive. (R. 341).

From all this evidence, both direct and circumstantial, the Court is of the firm conclusion that no second array, which is the basis of this argument, was shown to Mrs. Lawson on April 4 or April 5. Since the Court finds that this prepared array was not in fact shown to Mrs. Lawson, it follows that this was not in fact evidence favorable to defendant within the meaning of *Brady*. This argument is thus rejected.

Having set out the relevant findings, we turn to Isom’s contention that the circuit court erred in finding that there was no failed identification on April 4. He argues that the circuit court erred in (1) discounting the nurse’s note, (2) relying on Lawson’s misquoted

testimony, and (3) crediting Woodward's suppression-hearing testimony. We address each argument separately.

1. *Nurse's note*

First, Isom contends that the circuit court erred in discounting the nurse's note because Waxley did not define the word "attempt" in her testimony. He asserts that the word "attempt," as commonly used, is not ambiguous, and therefore, "attempts ID" in Waxley's note means that Lawson looked at the photo and was not able to make an identification. Here, the circuit court did not adopt Isom's definition of "attempts ID" or give great weight to the note. Determining the weight of the evidence is a matter for the fact-finder. *See Strom*, 348 Ark. 610, 74 S.W.3d 233. Isom's disagreement with the weight given to evidence does not establish clear error.

2. *Lawson's testimony*

Next, Isom notes that the circuit court cited Lawson's trial testimony to support its finding that there was no failed identification on April 4. He contends that the circuit court misquoted Lawson's testimony and that her actual testimony supports the failed lineup theory. At trial, Lawson was asked, "Did you have your glasses on when you looked at the pictures?" The circuit court stated that Lawson responded, "I'm not sure about *the* day." Isom states that Lawson responded, "I'm not sure about *that* day." The transcript states,

Q: Did you have your glasses on when you looked at the pictures?

A: I'm not sure about that day. They brought me some, a smaller sheet of pictures and they told me to be sure that, to take time to look at them real good and everything. And I told them it might be better to wait till I got my, some glasses, you know. Well, my glasses was all broken up at Bill's house. And so Dr. Ferguson, Ricky Ferguson, he fixed a pair of glasses for me. And so that's when I looked at the pictures again and I picked out, I picked out the man.

Isom contends that Lawson used the word “that” because she was specifying one of two times when she looked at photographs of suspects. He states that she ended her answer with “that’s when I looked at the pictures *again*,” also indicating that she looked at photographs twice.

Isom is correct that the circuit court misquoted Lawson’s testimony. Based on our review of the record and the circuit court’s order, we conclude that the misquotation was a typographical error that did not otherwise affect the circuit court’s reasoning or decision. A fair reading of Lawson’s testimony is that she was asked to look at photographs while in the hospital but declined to do so because she did not have her glasses.

3. Woodward’s testimony

Isom asserts that the circuit court erred in relying on Woodward’s testimony from the pretrial suppression hearing to support a finding that Lawson was shown only one photospread. Isom asserts that this testimony was “proven false” by other evidence in the record, including Woodward’s own testimony at the coram nobis hearing. In support, he refers to Woodward’s inconsistent testimony about the lineups. Woodward testified at the suppression hearing that he and Dement went to the hospital on April 5 between 8:30 and 9:00 a.m. But at the coram nobis hearing, Woodward testified that he and Dement went to the hospital on April 4. He stated that he did not recall previously testifying that it was April 5. Woodward testified at the suppression hearing that when he first went to see Lawson, he brought the handmade poster array to the hospital, not the lineup of stock photographs. But at the coram nobis hearing, he testified that he brought the lineup of stock photographs to the hospital on his first visit. Here, the inconsistencies within Woodward’s testimony, or

between his testimony and that of others, were matters for the circuit court to resolve when making credibility determinations. *See, e.g., Nance v. State*, 2014 Ark. 201, 433 S.W.3d 872.

We will not reverse a circuit court's findings merely because we would have viewed the evidence differently. "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 574 (1985); *see Atchison v. State*, 298 Ark. 344, 346, 767 S.W.2d 312, 313 (1989) ("Since there was evidence presented at the hearing to support a ruling either way, we cannot say the trial court's ruling is clearly against the preponderance of the evidence."). In this case, after hearing all the evidence, the circuit court concluded that there was no failed identification on April 4. We hold that the circuit court did not clearly err in finding that Lawson viewed only the enlarged photospread on April 5, 2001.

C. Equivocation in Identification

Isom contends that the State withheld favorable, material evidence when it concealed a report prepared by Arkansas State Police investigator Rick McKelvey that shows Lawson equivocated between persons one and three when viewing the poster array. Isom's claim that the "McKelvey Report" was suppressed is based upon the coram-nobis hearing testimony of two people: the office manager in the prosecuting attorney's office who stated that she was unable to locate the report in the prosecutor's file a decade after the trial, and the public defender's current office manager who stated that she was familiar with the Isom file and "did not recall the report in the file." The report stated,

INVESTIGATOR'S NOTES #4

On April 05, 2001, Investigator JOHN DEMENT, Monticello Police Department, S/A SCOTT WOODWARD, ASP-CID, and I traveled to Drew

Memorial Hospital to visit with victim DOROTHY LAWSON. The purpose of the visit was to show Ms. LAWSON a photo line-up that was put together by S/A WOODWARD and the Prosecuting Attorney's Office. These photos were placed on large poster board and presented to Ms. LAWSON at 12:54 p.m. At 1 p.m., Ms. LAWSON pointed to Photo #3. She makes the following statement: "I seen that person next door. He is the person I talked to before it happened. I think he is the one that came in the house. It looks like him. He's the one that did that to us." Ms. LAWSON requested to take a second look. She studied each of the photos and at 1:02 p.m., she makes the statement, "it's 1 or 3." She states that #1's face is a little round shaped like that. He was wearing a white shirt with something that looked like a lightning bolt on it. She indicated the lightning bolt would have been located in the chest area. ER nurses, KRISTY WAXLEY and ASHLEY MCKINSTRY, were present.

Isom contends that the McKelvey Report was not revealed to the defense until John Dement testified at trial. During redirect examination, the prosecutor asked Dement about Lawson's statement and instructed Dement to read through the investigator's notes to refresh his memory.

PROSECUTOR: You said that Rick McKelvey had your notes from this statement?

DEMENT: He has the investigator's notes from the, where we made the, when Ms. Lawson made the identification and what she said at the hospital.

PROSECUTOR: Can you go get those from them?

DEMENT: Yes, sir.

PROSECUTOR: Okay. You found them.

DEMENT: Yes.

PROSECUTOR: Would you read through them?

DEMENT: Yes.

PROSECUTOR: And not - - Don't read them out loud. I just want you to read through them to refresh your memory.

DEFENSE COUNSEL: May we approach the witness to see where he is and what he's reading?

THE COURT: Yes.

On cross-examination, Dement disagreed with the suggestion in the McKelvey Report that Lawson had equivocated in her identification. According to Dement, Lawson told investigators that the men shown in photos 1 and 3 shared a common attribute, that is, a round-shaped face. Following the cross-examination, defense counsel moved to admit the McKelvey Report as Defendant's Exhibit One:

DEFENSE COUNSEL: I'd like to introduce that statement as a Defense Exhibit Number One.

THE COURT: Okay. Do we have a copy of it?

DEFENSE COUNSEL: No, sir. I'm --

THE COURT: Okay.

DEFENSE COUNSEL: -- sure I've got one --

THE COURT: Well, just get us one. Any objection?

PROSECUTOR: No objection, Your Honor.

THE COURT: Okay. It'll be admitted as Defendant's One once it's procured and properly tendered.

(Whereupon, Defendant's Exhibit One was marked for identification and received in evidence).

Isom claims that the report was first disclosed *during* trial, when Dement testified. The record reveals that while Dement was looking at the report to refresh his recollection, defense counsel asked to approach and see what Dement was reading. The circuit court allowed defense counsel to approach. Then, defense counsel used information in the report

while cross-examining Dement to impeach the certainty of Lawson's identification. Thereafter, defense counsel admitted the report into evidence. Defense counsel did not say that he had not seen the report before trial.² Based on our review of the record, we hold that the circuit court did not clearly err in finding that Isom failed to prove that the McKelvey Report was newly discovered *Brady* evidence.

D. Field Notes of the Linda Kay Johnson Interviews

Isom alleged in his petition that the State failed to disclose handwritten notes from interviews with witness Linda Kay Johnson that would have impeached her trial testimony. He contends that the circuit court erred in finding that the notes were not impeaching.

Johnson lived across the street from Burton and Alfred Collins. She was interviewed twice by Rick McKelvey on April 3, at approximately 10:30 a.m. and then at approximately 4:00 p.m. According to McKelvey's 10:30 a.m. notes, Johnson told McKelvey that she "may have seen [Isom] over at Alfred's [on] Sunday. There [were] a lot of them out there then." She also told McKelvey that Isom "does hang out there." According to McKelvey's 4:00 p.m. notes, when he interviewed Johnson the second time, she told him that she "saw Dorothy and Zero talking in [the] yard yesterday" and stated that it "had to be after 7:00 p.m." when she "left to go get the kids at Ball Practice," and "got back a little after 8:00."

McKelvey reduced his field notes to a typewritten report. The report does not mention Johnson's statement from her first interview that she may have seen Isom at

² At the coram nobis hearing, defense counsel testified that he could not remember whether he had the McKelvey Report in his file. Defense counsel also testified that he could not remember whether he spoke with Rick McKelvey before trial.

Collins's house on Sunday—the day before the attack. Only the typewritten report was turned over to the defense.

At trial, Johnson testified that on Monday night at around 7:00 p.m., she saw Isom on Collins's front porch talking with Lawson, who was standing in the yard. Johnson also testified that she did not know what Isom and Lawson were talking about and that she had never seen the two of them talking before, but it was not unusual to see Isom over at Collins's house. She testified on cross-examination that she had known Isom “a long time,” but she was unaware that he had the nickname “Zero” until she was questioned by the police.

Johnson was cross-examined about why she failed to mention in her first interview that she had seen Isom talking with Lawson on Monday night. She testified that the police officer “didn't ask, so I didn't tell him.” Johnson further testified that after she “found out what happened,” she told the police officer that she had seen Isom and Lawson talking on Monday night.

The circuit court found that Johnson's undisclosed statement to McKelvey that she “may have seen” Isom at Collins's house on Sunday was not impeaching evidence. We agree. Whether Isom was at Collins's house on Sunday was not relevant to the murder. Moreover, the evidence that was impeaching was brought out at trial. The jury heard Johnson's testimony that in her first interview, she did not tell McKelvey that she had seen Isom talking with Lawson. We hold that the circuit court did not err in finding that the notes were not impeaching and thus not “favorable” evidence within the meaning of *Brady*.

II. *Denial of Discovery*

Isom contends that the circuit court abused its discretion in limiting discovery in conjunction with his evidentiary hearing. He asserts that the denial of discovery prevented him from proving his claim related to the suppression of physical evidence.

In *Isom*, 2015 Ark. 225, 462 S.W.3d 662, we noted that Isom had alleged that a pair of scissors, purportedly the murder weapon, may have been suppressed. Isom claimed that the scissors were found in the search of a trailer home pursuant to information supplied by Kevin Green, an inmate of the Drew County jail. At a pretrial hearing, Deputy Prosecuting Attorney Frank Spain testified that a search of a trailer pursuant to Green's tip failed to produce a pair of scissors.³ But at the Rule 37 hearing, Spain testified that scissors had been found in the search and submitted to the crime lab for testing. We reinvested the circuit court with jurisdiction to resolve this inconsistency. *See id.* at 5–7, 462 S.W.3d at 655–56 (“Given that Spain, under oath, has testified to two different versions of the facts, we are compelled to have the circuit court conduct an evidentiary hearing[.]”).

Before the coram nobis hearing, police investigators were unable to find any of the scissors connected to the case. In the initial investigation, four pairs of scissors were found and submitted for testing, but none were forensically linked to the homicide. Isom asked the circuit court to order discovery of all evidence-submission forms received by the crime lab from the Monticello Police Department or the Arkansas State Police for Drew County

³ After the search was conducted, Green was released from jail on a pending charge. *See Isom*, 2015 Ark. 225, at 4–5, 462 S.W.3d at 664–65.

between the crime and the trial.⁴ The circuit court issued an order finding that Isom was not entitled to prehearing discovery. At the hearing, the circuit court partially quashed a subpoena duces tecum to the crime lab for evidence-submission sheets and required the lab to search only for submissions under the names of Isom and Kevin Green. Counsel renewed the discovery motion, which the circuit court again denied.

Isom states that, because of the circuit court's ruling, he was unable to develop evidence that may have proved his claim at the hearing. Isom contends that his discovery request was closely linked to the question this court directed the circuit court to consider, which is whether the police uncovered evidence during the search of the trailer identified by Green. Isom states that he was able to question only Spain and Woodward about the search, and they both denied that it turned up any scissors. He claims that the requested discovery would have provided objective evidence as to whether a fifth pair of scissors had been found.

Isom cites *Williams v. State*, 2017 Ark. 20, 581 S.W.3d 653, for the proposition that the scope of the discovery that he proposes is authorized following this court's reinvestment of jurisdiction in the circuit court. However, in *Williams*, this court reversed the circuit court's denial of the writ when the circuit court merely entered an order denying relief on the same pleadings presented in the application to this court. *Id.* at 3, 518 S.W.3d at 655.⁵

⁴ Isom requested the forms from April 1, 2001 to December 21, 2001.

⁵ In *Williams*, we stated, "In granting Williams's petition, this court necessarily found that his petition for writ of error coram nobis appeared to be meritorious. As it now stands, the circuit court reviewed the exact same record as was before this court, determined that the petition did *not* have merit, and denied the petition without findings of fact." 2017 Ark. 20, at 3, 518 S.W.3d at 655. Under those circumstances, we agreed with Williams's

Here, the circuit court placed no limit on Isom's use of witness subpoenas for the coram nobis hearing. The circuit court modified the document request that sought every evidence-submission form submitted by the Arkansas State Police or Monticello Police Department that emanated from Drew County over a nine-month period in 2001. The circuit court narrowed the request to all evidence-submission forms that had some connection to either Kenneth Isom or Kevin Green. We conclude that the circuit court did not abuse its discretion in limiting discovery.

III. *Recusal*

Isom contends that the circuit court judge should have recused himself as a matter of state and federal law. He bases his claim on actions that the judge took while he served as the elected prosecutor in unrelated cases against Isom; references in a pretrial order to Rule 3.1 of the Arkansas Rules of Professional Conduct and Rule 11 of the Arkansas Rules of Civil Procedure; and comments made at the coram nobis hearing.

Rule 1.2 of the Arkansas Code of Judicial Conduct states,

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

“No Justice or Judge shall preside or participate in any case in which he or she might be interested in the outcome.” Ark. Const. amend. 80, § 12. Arkansas Code of Judicial Conduct 2.11(A) states that a “judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.”

argument that the circuit court was “required to do more than deny Williams’s petition without allowing discovery, holding an evidentiary hearing, or making any findings of fact.” *Id.*, 518 S.W.3d at 655.

A judge's decision not to recuse is discretionary and will not be reversed on appeal absent an abuse of that discretion. *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003). There is a presumption that judges are impartial. *Turner v. State*, 325 Ark. 237, 926 S.W.2d 843 (1996). To decide whether there was an abuse of discretion, we review the record to see if any prejudice or bias was exhibited. *Davis v. State*, 345 Ark. 161, 44 S.W.3d 726 (2001).

“Due process guarantees an ‘absence of actual bias’ on the part of a judge.” *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905 (2016) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)). Even absent “actual bias” and even if the judge would “do their very best to weigh the scales of justice equally,” when there is an appearance of impropriety, recusal is required to preserve the “appearance of justice.” *Murchison*, 349 U.S. at 136. “Recusal is required when objectively speaking, ‘the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.’” *Rippo v. Baker*, 137 S. Ct. 905, 907 (2017) (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)).

Before the coram nobis hearing, Isom moved for the circuit judge, Honorable Sam Pope, to recuse based on actual bias or an appearance of bias. He attached to his motion exhibits showing that Judge Pope, when serving as a prosecutor, had twice prosecuted him on serious charges and twice he was acquitted by a jury. Also attached to the motion was an exhibit showing that Prosecutor Pope⁶ was successful in obtaining a conviction against

⁶ For clarity, we refer to Judge Pope as Prosecutor Pope when describing his role as a prosecutor.

Isom for theft of property and a sentence of fifteen years in the Arkansas Department of Correction (ADC).

Isom acknowledges that this court has held that a circuit judge's previous prosecution of a defendant is insufficient under Arkansas law to require recusal. *See, e.g., Irvin v. State*, 345 Ark. 541, 552–53, 49 S.W.3d 635, 642–43 (2001). Still, he contends that the judge's actions related to Isom's release on parole demonstrate actual bias or an appearance of bias sufficient to warrant recusal. Specifically, Isom asserts that Prosecutor Pope was biased against him because after Isom was paroled in February 1994, Prosecutor Pope contacted the governor's office and attempted to have his parole rescinded.

Letters in the record detail the following sequence of events concerning Prosecutor Pope's actions.⁷ In preparation for the possible release of Isom, the Post Prison Transfer Board forwarded the required legal notices⁸ to the sentencing judges, prosecuting attorneys, and sheriffs in Drew, Jefferson, and Cleveland Counties. Isom was released on parole in February 1994. On March 2, 1994, Prosecutor Pope met with Jack Gillean, the Governor's executive assistant for Criminal Justice, to discuss Isom's parole. Prosecutor Pope told Gillean that he had not been notified of the possibility of parole for Isom or given a chance

⁷ Exhibits to Isom's motion for judicial recusal included a letter dated March 7, 1994, from Larry Norris, director of the ADC, to Jack Gillean, the Governor's executive assistant for Criminal Justice, and a letter dated April 1, 1994, from Gillean to Prosecutor Pope and Tommy C. Free, sheriff of Drew County.

⁸ "Before the Parole Board shall grant any parole, the board shall solicit the written or oral recommendations of the committing court, the prosecuting attorney, and the county sheriff of the county from which the inmate was committed." Ark. Code Ann. § 16-93-702(a) (Repl. 2016).

to oppose the parole. Prosecutor Pope also told Gillean that he was concerned that Isom had been improperly paroled given his lengthy sentence.

In a letter to Prosecutor Pope, Gillean addressed Prosecutor Pope's questions about notifications and parole eligibility. Gillean explained that he had contacted Larry Norris, director of the ADC, and asked him if the notifications had been mailed prior to Isom's release from prison. Gillean sent Prosecutor Pope a copy of Norris's response. Norris stated that a notification letter had been forwarded to Prosecutor Pope but noted that "on November 22, 1993, a Sheriff Jay Winters responded to 'no' to release on the Drew County prosecuting attorney's form. This may be where the confusion lies." Gillean further stated that Isom was eligible for parole after serving one third of his sentence and that counting good time credits, Isom was parole eligible in just over three and one-half years. Finally, Gillean stated, "I know you were hoping Mr. Isom could be returned to prison. After reviewing the facts, it appears his parole was proper, and I know of no way to rescind it."

Isom argued in his motion for recusal that Prosecutor Pope's efforts to meet with the governor's office after Isom had been properly paroled by the ADC and his stated desire to "return Mr. Isom . . . to prison" went above his ordinary duties as a prosecutor and represented a sincere conviction that Isom belongs in prison regardless of his legal right to be free. Judge Pope declined to recuse himself from the case and ruled that "[w]hile nothing in the factual allegations regarding the judge's prior actions as prosecutor . . . is incorrect, the conclusions and arguments drawn therefrom are incorrect." Judge Pope wrote that his actions were "not improvident or extraordinary" and were part of his role as an active and thorough prosecutor.

Here, it appears that the notice of the possibility of parole for Isom was received by a sheriff rather than by Prosecutor Pope. When Prosecutor Pope met with Gillean, he complained that he had not been given notice and an opportunity to be heard before Isom's parole, and he voiced his objection to Isom's release. Based on our review of the letters, we conclude that Prosecutor Pope was carrying out his ordinary duties as a prosecutor when he contacted the governor's office about Isom's parole eligibility. Under these facts, Isom has failed to demonstrate actual bias or the appearance of bias sufficient to require recusal.

Isom also contends that the judge should have recused himself because he appeared to exhibit bias in a pretrial order. Before the coram nobis hearing, Isom asked to depose several witnesses who refused to speak with his legal team and requested access to handwritten investigative notes and crime-lab documents. The circuit court denied the motion for discovery and implied that if counsel lacked evidence to support her claims she might be subject to Rule 11 sanctions for violating the Arkansas Rules of Professional Conduct. In the order, the circuit court stated,

Mr. Isom has made some serious allegations against the state which if true would constitute violations of the state's obligations under *Brady v. Maryland*. Rule 3.1 [of the] Arkansas Rules of Professional Conduct provide that a lawyer may only bring assertions on an issue if there is a factual reason to do so. Additionally, by reference only, Arkansas Rule of Civil Procedure, Rule 11(b)(3) requires a lawyer's signature on a pleading be based on a reasonable inquiry that the factual contentions in a pleading have evidentiary support.

Isom claims that at the time counsel moved for discovery, she had already filed a petition with the circuit court supported by thirteen exhibits, that much of the information regarding the claims was in the possession of State actors, and that most of the State actors refused to speak with Isom's legal team before the hearing. Isom states that counsel at every

stage of a death-penalty case has a professional obligation to continue to investigate the case and that far from being sanctionable, requesting discovery was required by counsel's professional obligations.

Here, counsel appeared to be doing her job, and the judge's reference to sanctions was not warranted. Still, we disagree with Isom's contention that the judge's treatment of the discovery request "showed hostility" that requires recusal. The circuit judge acted within his discretion when he limited discovery, and his mention of Rule 11 did not compel his disqualification from the case.

Finally, Isom contends that the circuit court showed a lack of impartiality during the hearing. He states that at the hearing, counsel attempted to ask Rick McKelvey whether scissors were recovered by investigators following a tip from inmate Kevin Green. Isom states that McKelvey appeared to recall the search until Judge Pope inserted the idea that McKelvey's answers could be explained because "Mr. McKelvey has hearing problems sometimes." Isom further states that during the questioning of trial counsel, Bing Colvin, regarding the impact of an attempted identification, the judge interjected himself again. Colvin responded to a question from the prosecution with a rhetorical question of his own wondering why police were trying to speak to Lawson without first getting an update on her medical condition. Isom contends that the judge showed favor to the State when he responded, "That's simple Mr. Colvin. Called medical rights to privacy, you know . . . She's got to consent to talk to them." Having reviewed the transcript, we conclude that the judge's interjections, while unnecessary, did not show bias against Isom.

IV. *Conclusion*

Because Isom failed to demonstrate *Brady* violations, we hold that the circuit court did not abuse its discretion in dismissing his petition for writ of error coram nobis. We further hold that the circuit court did not abuse its discretion in limiting discovery. Finally, we hold that the circuit court did not abuse its discretion in denying the motion for recusal.

Affirmed.

HART and WOOD, JJ., dissent.

SUPREME COURT OF ARKANSAS

No. CR-17-1003

KENNETH R. ISOM

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered December 20, 2018

APPEAL FROM THE DREW COUNTY
CIRCUIT COURT
[NO. CR-2001-52-1]

HONORABLE SAM B. POPE,
JUDGE

DISSENTING OPINION.

JOSEPHINE LINKER HART, Justice

The circuit judge’s refusal to recuse in this case should be reversed. Not only is there an obvious appearance of impropriety, there was strong circumstantial evidence of actual bias in the circuit judge’s prior dealings with Mr. Isom. I cannot overlook that all of the so-called “discretionary” calls discussed in the majority opinion, as well as the lack of judicial temperament by the circuit judge, seem to substantiate the allegation of bias made before the hearing. Accordingly, a new hearing should be ordered.

The majority’s *finding* that “Based on our review of the letters, we conclude that Prosecutor Pope was carrying out his ordinary duties as a prosecutor when he contacted the governor’s office about Isom’s parole eligibility” is simply wrong. The majority’s conclusion is unsupported by either law or fact.

Factually, the majority’s *finding* that “it appears that the notice of the possibility for parole for Isom was received by a sheriff rather than by Prosecutor Pope,” is pure speculation

and not even suggested by Judge Pope when he denied Mr. Isom's recusal motion. Further, a letter, signed by "Jack Gillean, Executive Assistant for Criminal Justice," indicates that Prosecutor Pope *was* notified of Mr. Isom's pending parole hearing. The letter states,

On March 14, 1994, I received a letter from Mr. Norris which I have attached for your review. Mr. Norris informed me that notifications were forwarded to the persons named in the letter. Mr. Pope's name was among those listed. In addition, as noted in the letter, responses were returned by Drew and Jefferson counties; however, Sheriff Jay Winter responded "no" to the release on the Drew County prosecuting attorney's form.

Accordingly, there is no factual basis for the majority's conclusion that Prosecutor Pope was "carrying out his ordinary duties" when he made his extraordinary trip to Little Rock.

There is also no legal basis to support the majority's *finding* that Prosecutor Pope was "carrying out his ordinary duties." The State argues that Arkansas Code Annotated section 16-93-702(a) makes Prosecutor Pope's extraordinary trip to Little Rock as part of his statutory duties. However, a prosecutor's input is solicited "[b]efore the parole board shall grant any parole." *Id.* Obviously, *before* the parole board shall grant any parole does not mean *after* the parole board has made its decision. As Chief Justice Kemp noted in *City of North Little Rock v. Pfeifer*, 2017 Ark. 113, 515 S.W.3d 593, "The first rule of statutory construction is to construe the statute just as it reads, giving the words their ordinary and usually accepted meaning in common language." Section 16-93-702(a) does not require a prosecutor to travel to Little Rock to use the power of his office to attempt to persuade the governor to annul a decision by the parole board. Accordingly, Prosecutor Pope's extraordinary efforts to reverse Mr. Isom's lawfully granted parole can only be attributed to

some special animus that Prosecutor Pope held toward Mr. Isom.

Further, while I am mindful that a trial judge's previous prosecution of a defendant is insufficient under Arkansas law to require recusal, the circumstances of Judge Pope's prior involvement with Mr. Isom as a prosecutor are remarkable. Before successfully winning a conviction against Mr. Isom in the case that resulted in Prosecutor Pope's extraordinary efforts to get the governor to annul a lawful decision by the parole board, Prosecutor Pope twice failed. Acquittals in criminal trials are not common in Arkansas; a defendant's acquittal in two separate criminal trials is obviously even rarer. I decline to speculate whether these rare failures instilled in Prosecutor Pope an animus toward Mr. Isom, or whether a preexisting animus caused Prosecutor Pope to twice take Mr. Isom to trial without sufficient evidence. I am certain, however, that Judge Pope's prior dealings with Mr. Isom, including his extraordinary efforts to get the governor to annul a lawful decision by the parole board, made him especially familiar with Mr. Isom.

That familiarity with Mr. Isom continued when Judge Pope ascended to the bench. Judge Pope presided over Mr. Isom's criminal trial, which included the ruling on Mr. Isom's motion to suppress an identification made by Dorothy Lawson. Significantly, Judge Pope ruled that the photo array the police showed to Ms. Lawson was not unduly suggestive even though Mr. Isom was the only man in the array photos who did not have facial hair. Judge Pope also presided over Mr. Isom's Rule 37 hearing, and he denied Mr. Isom post-conviction relief.

It is standard practice in Arkansas for a circuit judge to preside over both the criminal

trial and postconviction proceedings. As any reasonable person would recognize, inherent in this situation is a bias against a criminal defendant receiving postconviction relief because the circuit judge is responsible for ensuring that a criminal defendant receives a fair trial. Accordingly, in a Rule 37 hearing, the circuit judge is permitted to give himself his own report card. Due process would be better served if a judge who was not involved in the trial of the substantive charge would conduct the Rule 37 hearing.

However, the case before us presents an even more compelling reason why the judge who presided over the criminal trial and Rule 37 hearing should not preside over further proceedings. It involves a rare grant of permission for an inmate to pursue a writ of error coram nobis, as well as some highly unusual issues, the compelling state interest in avoiding the appearance of impropriety dictates that another judge be tasked with presiding. One of the issues that Mr. Isom raises concerns Ms. Lawson's identification of Mr. Isom on the photo array that the police presented to her at the hospital. Judge Pope was the finder of fact on the issue of whether the identification should have been suppressed. Judge Pope allowed himself to be placed in an untenable position. The hearing in large part concerned *his* decision, not as just a referee but also as *the* finder of fact. No member of the judiciary should have been placed in that position—the appearance of bias in this situation is impossible to avoid. That was exactly the situation in *Ferguson v. State*, 2016 Ark. 319, 498 S.W.3d 733, in which we reversed a circuit judges decision to sit on a case where her “impartiality might reasonably be questioned.” Given the unique history of this case and the issues to be tried, Judge Pope's impartiality could reasonably be questioned.

Judge Pope’s handling of the trial certainly did nothing to dispel questions of his impartiality. When Mr. Isom sought discovery as a means of uncovering some objective evidence to help determine which version of Frank Spain’s testimony was closest to the truth, Judge Pope acted as an advocate *opposed* to Mr. Isom, not a neutral arbiter. As the majority notes, Judge Pope threatened Mr. Isom’s attorney with Rule 11 sanctions in his written order:

Mr. Isom has made some serious allegations against the State which if true would constitute violations of the state’s obligations under Brady v. Maryland. Rule 3.1 Arkansas Rules of Professional Conduct provide that a lawyer may only bring assertions on an issue if there is a factual reason to do so. Additionally, by reference only, Arkansas Rule of Civil Procedure, Rule 11(b)(3) requires a lawyer’s signature on a pleading be based on a reasonable inquiry that the factual contentions in a pleading have evidentiary support.

The majority is correct when it opines that “[h]ere, counsel appeared to be doing her job, and the judge’s reference to sanctions was not warranted.” Inexplicably, the majority does not believe that such an intemperate and gratuitous threat “showed hostility” that requires recusal.

Likewise, Judge Pope’s demonstrated what could reasonably be interpreted as a lack of impartiality—or outright bias—when Mr. Isom’s counsel attempted to question Officer Rick McKelvey about whether scissors, suspected to be the murder weapon, had been recovered during a search. Initially, Officer McKelvey appeared to recall such an event but became confused during his testimony.

Q: During the course of your investigation into the Burton homicide, did you go on a search for a weapon with an inmate from the Drew County Detention Center?

A: We—I recall a search warrant being executed at someone’s house. And I do believe there might have been a pair of scissors recovered from that search warrant.

Q: And then you recall a separate search that occurred with an inmate from the detention center where you recovered a pair or two pairs of scissors?

A: I don’t—I don’t recall how many were recovered, but I do recall there, as a result of a search warrant, there was one or two pairs of scissors.

Q: And in addition, to those four, you testified that you went on a search with an inmate from the Drew County Detention Center at a house and there were a number of scissors located, one or more. Correct?

A: That’s correct.

However, Judge Pope interjected, asserting that Officer McKelvey’s answers could be explained because “Mr. McKelvey has hearing problems sometimes.” If Officer McKelvey’s hearing was really a matter of concern, a reasonable person would expect a circuit judge to do nothing more than say, “Speak up counselor.” Instead, Judge Pope declared a recess. I cannot fail to notice that after the break, the State recalled Officer McKelvey, who testified that his prior testimony was mistaken, he had misspoken earlier, and on further questioning repeatedly expressed inability to hear the questions from Mr. Isom’s counsel. When a circuit judge, sitting as the finder of fact, takes it upon himself to rehabilitate a witness and then orders a recess that could reasonably be interpreted as giving the State a chance to wood-shed that witness, the judge’s impartiality might reasonably be questioned.

Given the appearance of bias, if not the actual bias, and ample reason to question the impartiality of Judge Pope, all the close “discretionary” calls that he made must be

questioned. Credibility determinations and the weight to be assigned conflicting evidence determined all the substantive issues in this case. This included an interpretation of and all assignment of weight to Nurse Wexley's notes regarding Ms. Lawson's "attempt" to make a photo identification of Mr. Isom at the hospital, which related to whether the State committed a *Brady* violation; inconsistencies in Woodward's testimony concerning the photo array; and whether Frank Spain was lying in the pretrial hearing or the Rule 37 hearing with regard to the scissors that were believed to be the murder weapon.

Resolving the question of what was behind Spain's inconsistent testimony was the principle reason why this court granted Mr. Isom permission to seek a writ of error coram nobis in the first place. Yet, as the majority notes, Judge Pope severely limited discovery and improperly threatened Mr. Isom's counsel with Rule 11 sanctions when she sought to uncover evidence that would be more substantive than Spain's self-serving explanation of why his testimony in the pretrial hearing and the Rule 37 hearing are irreconcilable.

When this court reviews a decision rendered by a lower tribunal, we grant great deference to the finder of fact to resolve questions of witness credibility and the weight to be afforded conflicting pieces of evidence. However, when this deference rests on a foundation of actual or perceived bias and lack of impartiality, the legitimacy of the decision crumbles under even the most cursory scrutiny. I would reverse Judge Pope's decision not to recuse and order a new hearing by a new judge.

I respectfully dissent.

SUPREME COURT OF ARKANSAS

No. CR-17-1003

KENNETH R. ISOM

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: December 20, 2018

DISSENTING OPINION.

RHONDA K. WOOD, Associate Justice

I dissent. Given Judge Pope's prior dealings with Isom, he should have recused from the error coram nobis matter. As Justice Hart sets out more fully in her dissenting opinion, Prosecutor Pope's request to the governor to annul the parole board's decision to parole Isom was extraordinary. I do not find anything inappropriate in this act but considering it in totality with the history between Judge Pope and Isom, there is at least an appearance of bias in this matter. Every defendant is entitled to an impartial tribunal.

Isom has been sentenced to death. Whether his error coram nobis petition succeeded ultimately depended on the number of close discretionary decisions made by Judge Pope, especially those pertaining to Ms. Lawson's attempted identification of Isom at the hospital, the officers' testimony concerning the scissors, and the scope of discovery afforded Isom. Notably, each of these decisions weighed against Isom when the witnesses' testimony appeared to be inexplicably inconsistent. It is unimaginable how Isom's counsel was

expected to present his case with the limited discovery obtained as each witness took the stand.

We give great deference to the circuit court in an error coram nobis hearing, and we review a circuit court's factual findings only for clear error. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). The circuit court determines the credibility of witnesses, resolves conflicts and inconsistencies in testimony, and assesses the weight to be given the evidence in an error coram nobis hearing. However, it is difficult to afford the circuit court the deference our law requires given the extensive history between Judge Pope and Isom. Consequently, we should remand for a new error coram nobis hearing to be held by a different circuit court judge. Therefore, I believe justice compels reversal.

HART, J., joins in this opinion.

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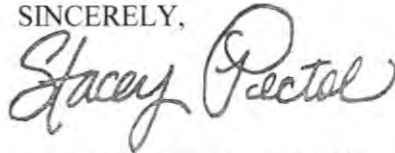
JANUARY 31, 2019

RE: SUPREME COURT CASE NO. CR-17-1003
KENNETH R. ISOM V. STATE OF ARKANSAS

THE ARKANSAS SUPREME COURT ISSUED THE FOLLOWING ORDER TODAY IN THE
ABOVE STYLED CASE:

“APPELLANT’S PETITION FOR REHEARING IS DENIED. HART, J., WOULD GRANT.”

SINCERELY,

A handwritten signature in cursive script that reads "Stacey Pectol". The signature is written in dark ink and is positioned to the right of the word "SINCERELY,".

STACEY PECTOL, CLERK

CC: JULIE VANDIVER
KENT G. HOLT, ASSISTANT ATTORNEY GENERAL
DREW COUNTY CIRCUIT COURT
(CASE NO. 22CR-01-52)

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF/RESPONDANT

VS.

NO. CR 2001-52-1

KENNETH ISOM

DEFENDANT/PETITIONER

ORDER ON PRE-HEARING MOTIONS

Pending before the Court is a 31 page petition for writ of error *coram nobis* filed with the clerk of court on June 12, 2015. To the petition is attached 13 exhibits, many of them consisting of multiple pages. The petition was filed after the Arkansas Supreme Court granted a petition to reinvest the trial court with jurisdiction to hear the extraordinary writ and issued its mandate on June 9, 2015. Obviously, based on length alone, the petitioner alleges particular facts which petitioner contends support the grant of a writ of error *coram nobis*. Subsequent to the petition being filed the Court's administrative assistant communicated with counsel of record and by order dated June 24, 2015, set the petition for hearing on December 8 & 9, 2015. Since then, petitioner's counsel and the State have filed a number of motions that are still pending, and the purpose of this order is to make findings on those motions and the responses thereto, as follows:

Motion for Judicial Recusal

This motion was filed October 8, 2015. It argues the Court should recuse from hearing the case for two reasons: 1. At a time when the Judge was the elected prosecuting attorney, he prosecuted the defendant, or took action as the prosecutor, from which an actual or implied bias can be inferred; 2. The Judge celebrated the verdict by high fiving "a man", which creates an appearance of bias, according to Annie Isom's affidavit, attached as Exhibit F to the motion, after the guilty verdict. The State filed a response to the motion.

While nothing in the factual allegations regarding the Judge's prior action as prosecutor in the years 1991 and 1994 is incorrect, the conclusions and arguments drawn therefrom are incorrect. Arkansas Supreme Court cases, as cited by the State, do not and did not require the Court's recusal. Nor is the conclusion argued that the Judge as prosecutor in 1994 went to "extraordinary" lengths to challenge the petitioner's parole at that time correct. Such is certainly not improvident or extraordinary in the prosecutor's role or responsibilities. It has happened and will continue to happen in this State by active and through prosecutors. The petitioner's argument is frankly a little far-fetched. Additionally, as argued by the State, Annie Isom's affidavit is also far-fetched. What she alleges simply did not happen, and the sheer statutory

logistics involved in the trial of a capital murder case lend themselves to that conclusion. The record shows no such thing. This Court has presided over a good number of such cases. It is a serious responsibility, and the Court recognizes it as such. The motion is denied.

Motion for Transport Order

The motion is granted.

Motion to Seal Trial Attorney File and for Protective Order

The motion does not address the problem of waiver of the privilege under Rule 502, and whether by inclusion of the file in the record herein, a waiver takes place. It does not address the issue of waiver at all, except in a cursory manner by stating "Mr. Isom does not voluntarily waive the privilege". Presumably counsel have the authority to represent the petitioner in this proceeding. They were appointed in federal court to do so. If they, with the petitioner's authority, introduce the file at issue in toto, it is a fair question to ask if a waiver has occurred. When certain issues are raised, such as a breach of duty, a waiver occurs. Arkansas Rules of Evidence, Rule 502 (d)(3). The Court is simply ruling in a preliminary manner that it is petitioner's responsibility to prove the motion should be granted. Absent more context and specificity, the motion is denied on a preliminary basis, subject to being renewed.

Motion for Leave to Conduct Discovery

On October 2, 2015, petitioner filed a motion for leave to conduct discovery on issues related to allegation made in his petition for a writ of error *coram nobis*. He alleges that he has a right under Rules 17.3 and 17.4, Arkansas Rules of Criminal Procedure and a federal due process right to discovery in the proceeding before the court. On or about November 10, 2015, the State responded arguing that Rule 17 does not extend to post-conviction proceedings and that petitioner cited no authority extending discovery rights to federal post-conviction proceedings. The state further argues that should discovery apply to this type of proceeding, the petitioner has failed to establish good cause to engage in discovery.

Mr. Isom has made some serious allegations against the state which if true would constitute violations of the state's obligations under Brady v. Maryland. Rule 3.1 Arkansas Rules of Professional Conduct provide that a lawyer may only bring assertions on an issue if there is a factual reason to do so. Additionally by reference only, Arkansas Rule of Civil Procedure, Rule 11 (b)(3) require a lawyers signature on a pleading be based on a reasonable inquiry that the factual contentions in a pleading have evidentiary support. In other words it is expected that the factual allegations in a petition such as the one filed be based on evidence existing and known prior to the filing. This court is not going to require discovery in this case under these circumstances, and finds petitioner has not shown himself entitled to it. He can obtain the witnesses needed to the hearing by subpoena. He can obtain the documents needed by subpoena duces tecum. Additionally based on the allegations he already has the evidence to support his contentions.

State's Motion to Quash Subpoenas.

The motion is denied. Both parties are ordered to provide the opposing side copies of all subpoenas issued in whatever manner that occurs whether pursuant to the Rules of Civil Procedure or by state statute.

Motion for Continuance

The length and content of the petition alone argue against the allegations of the Motion. The petitioner and counsel have had opportunity and notice adequate for thorough preparation. Either petitioner can prove the allegations he has made or he can't. The issues have been well defined in the appellate decision herein, and the Arkansas Supreme Court's jurisprudence on the writ of error *corum nobis*.

So ordered this 3rd day of December 3, 2015.

A handwritten signature in black ink, appearing to read 'S. Pope', with a long horizontal line extending to the right.

Circuit Judge

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

KENNETH R. ISOM

PETITIONER

Vs.

No. CR 2001-52-1

STATE OF ARKANSAS

RESPONDENT

FINDINGS AND ORDER

ON PETITION FOR WRIT OF ERROR CORAM NOBIS

AND ANCILLARY MOTIONS

Pending before the Court are the Petitioner's Petition for Writ of Error Coram Nobis filed herein on June 12, 2015, and heard by the Court on December 8, 2015, as well as a post-hearing Notice filed January 7, 2016, a Motion to Supplement Petition with Notice of Supplemental Authority, the State's Response to Motion to Supplement Petition, and Post Hearing Briefs from both counsel. From the pleadings and evidence before the Court, it is found:

1. By Opinion delivered May 21, 2015, the Arkansas Supreme Court granted a petition to reinvest the circuit court jurisdiction to consider a Writ of Error Coram Nobis. A good summary of the facts of this case is contained in pages 2-3 of the Arkansas Supreme Court decision in Isom v. State, ____ Ark. ____ (May 21, 2015), and need not be repeated here.
2. Pertinent parts of the aforementioned decision state, "we grant Isom's petition to reinvest jurisdiction in the circuit court to seek a Writ of Error Coram Nobis on his claim of *Brady* violations." The court reinvested jurisdiction to consider all claims made at that time. Those were:
 - A. Mr. Isom was prejudiced by State suppression of material exculpatory evidence regarding the eye witness identification of Dorothy Lawson by: (1) The State suppressed evidence that Lawson did not identify Isom as her attacker in a photo array shown to her on April 4, 2001; (2) the State suppressed evidence that Lawson failed to identify Isom in a photo array shown to her on April 5, 2001; (3) the State suppressed Rick McKelvey's investigative notes about the interviews of Lawson while she was in the hospital; (4) the prosecution failed to correct false testimony

- when Lawson testified that she was not on pain medication while in the hospital and that she did not attempt to make an identification without her glasses;
- B. The State suppressed evidence that Ken Ouellette was aware that Isom was the main suspect before identifying him;
 - C. The State suppressed evidence that Ken Ouellette had a motive to curry favor with the police department;
 - D. The State suppressed evidence concerning the DNA evidence by turning over illegible copies of documents and incomplete copies of the gel strips or DNA ladders;
 - E. The State suppressed evidence of alternative suspects.
3. Regarding his DNA claim (Paragraph 2 (D), above), on December 4, 2015 the Petitioner filed a Notice indicating counsel believed this to be a claim of Ineffective Assistance of Counsel, better addressed in a proceeding regarding that type issue. It is not cognizable in a Writ of Error Coram Nobis. Petitioner presented no evidence on it. It is, therefore, dismissed.
4. There are three elements of a claim under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L. Ed 2d 215 (1963): (1) the evidence at issue must be favorable to the accused, either because it is exculpatory or impeaching; (2) the evidence must have been suppressed willfully or inadvertently by the State; (3) prejudice must have ensued.
5. Once a Writ of Error Coram Nobis has been granted, the trial court is reinvested with jurisdiction to determine: (1) if the newly discovered evidence was available to the State before trial; (2) if the evidence was indeed favorable to the defense; (3) if prejudice ensued to the defense from the State's failure to disclose the evidence pre-trial; (4) whether there was a reasonable probability if the evidence, if disclosed, would have resulted in a different outcome at trial; (5) if the *Brady* violation was raised in a timely manner. Howard v. State, 2012 Ark. 177, 403 S.W. 3d 38.
6. Subsequent to the hearing on December 8, 2016, the Petitioner filed a Motion to Supplement Petition on January 5, 2016. The Court finds that the petition to supplement should be granted as, contrary to the State's position, at least in the Supreme Court, the proposed supplemental evidence or lack thereof was addressed. *See* paragraph 2 A (3) herein and page 12 of the petition filed. Therefore, the Court will consider the argument made in paragraph four of the Motion to Supplement proceedings, but will not reopen the evidence. There is sufficient evidence on the record that exists for this Court to make a ruling.

7. The Petition for Writ of Error Coram Nobis filed herein alleges a number of alleged *Brady* violations, as follows:
 - A. Mr. Isom was Prejudiced by State Suppression of Material Exculpatory Evidence Regarding the Eye Witness Identification by Dorothy Lawson
 1. Police Concealed That Ms. Lawson Did Not Identify Kenneth Isom as Her Attacker in a Photo Array Shown to Her on April 4.
 2. Police and Prosecution Concealed that Ms. Lawson Could Not Pick Out Kenneth Isom in a Photo Array Shown to Her on April 5.
 3. Police Concealed Documentary Evidence of Ms. Lawson's Flawed Identification.
 4. The Prosecution Failed to Correct the False Testimony of Dorothy Lawson.
 5. The Result of the Trial Would Have Been Different had Dorothy Lawson's Identification Been Excluded or Impeached.
 - B. Police and Prosecution Withheld Material Exculpatory Evidence Regarding Eye Witness Identification by Kenneth Ouellette.
 - C. (This point was abandoned in this proceeding.)
 - D. Police and Prosecution Withheld Material, Exculpatory Evidence Pointing to Alternative Suspects.
8. Both interested parties at the hearing agreed that the records to be considered by the Court in its decision is the trial record, the Rule 37 record and the record made at the hearing, which included both oral testimony of numerous witnesses, as well as numerous exhibits, totaling in number 21 Petitioner's Exhibits, two State's Exhibits, and one Joint Exhibit. Many of the exhibits were multi-page. Petitioner's Exhibits 10 and 22 alone, which are the medical records of Dorothy Lawson, total 339 pages, some not particularly relevant to the issues before the Court, but which nevertheless required review for a decision. State's Exhibit 1 consisted of all the record, file, photos, correspondence, and e-mails, as well as working notes of various employees of the Arkansas Crime Laboratory, in both the case files of victims William S. Burton and Dorothy Lawson, and totaled 399 pages.
9. The inquiry in a proceeding for a Writ of Error Coram Nobis is "fact intensive", and requires an analysis of the five elements set out in paragraph 5, above. See Turner v. U.S., 582 U. S. ____ (2017).
10. The Court has also received and read the post-hearing briefs submitted by both the Petitioner and the State.

11. Point 1. Police Concealed that Ms. Lawson Did Not Identify Kenneth Isom as Her Attacker in a Photo Array Shown Her on April 4.

- a. Is this newly discovered evidence available to the State before Trial?
 - i. The Court finds that this evidence would have been available to the State before trial.
 - ii. A review of the trial transcript reveals to the Court that, at least circumstantially, if there was in fact a photo array shown to Dorothy Lawson on April 4, 2001, by the police, the defense counsel at that time, G. B. Colvin, did not know about it.
- b. Was this evidence favorable to the defendant?

It is Petitioner's burden to convince the Court that such a photo array was shown to Dorothy Lawson on April 4, 2001, by the police. The Petitioner has failed to convince the Court that in fact this occurred. The Court will explain why it reaches this conclusion.

On this issue, the Court finds the facts are these:

A photo lineup was in fact shown to Dorothy Lawson on April 5, 2001, at about 12:54 p.m.. Ms. Lawson was then a patient in the Intensive Care Unit of Drew Memorial Hospital. Scott Woodward, a State Police Investigator working on the case, and John Dement, an investigator with the Monticello Police Department were present, as was another State Police Investigator, Rick McKelvey. The photo array for the lineup shown Ms. Lawson was prepared by Scott Woodward from photos he took that day. It was admitted at the trial of Petitioner as State's Exhibit 33 and is admitted in the record at the hearing on the Writ as Joint Exhibit 1. This is not the photo lineup complained of in this point of argument.

Defendant's argument that a photo lineup was shown by the police investigators to Dorothy Lawson on April 4, 2001, is based on a nurse's note. The note is on Petitioner's Exhibit 10, Page 125 from the Writ hearing. The time is 1500 hours or 3 p.m. It says:

Police here asking for Ms. Lawson to ID suspect from photos. Attempts ID. Police offers to enlarge photos and bring them back tomorrow. Ms. Lawson agrees to view enlarged photos tomorrow.

The note was authored by Nurse Kristi Waxley who testified at the Writ hearing. (R. 124, et seq.). Nurse Waxley's testimony on the issue is contained on R. 136 and following. A reading of her testimony reveals she had no independent memory of what occurred. She offered no testimony about what she meant by "attempt".

There is other evidence in the record the Court must consider on this particular issue as well. While neither party has chosen to outline the testimony of Dorothy Lawson from the trial on this issue, the Court has looked at it. It is contained in the trial transcript beginning at R. 1370. Beginning at R. 1422, Ms. Lawson was questioned on cross examination by defense counsel about her identification and, specifically State's Exhibit 33, the photo line-up she viewed on April 5, 2001. At L 9, R 1422 the following occurred:

Q: And you looked at the picture?

A: (Nodding affirmatively)

Q: Did you have your glasses on when you looked at the pictures?

A: I'm not sure about the day. They brought me some, a smaller sheet of pictures, and they told me to be sure that, to take time to look at them real good and everything. And I told them it might be better to wait till I got my, some glasses, you know, well, my glasses were all broke up at Bill's (murder victim's) house. And so Dr. Ferguson, Ricky Ferguson, he fixed a pair of glasses for me. And so that's when I looked at the pictures again and I picked out, I picked out the man.

The initial emergency room report of Dorothy Lawson's admission to Drew Memorial Hospital is located at Petitioner's Exhibit 10, Page 7. It shows she was admitted to the emergency room on 4-3-2001 at 9:36 a.m. Other evidence in the record reflects she was transported there by ambulance. The chief complaint being "assaulted". Other portions of the exhibit show she complained of sexual assault the night before. She had numerous injuries described in the exhibit, but they included multiple bruises and lacerations in her facial area, and facial fractures. She was attended by Dr. Paul Wallick and his first history and physical dictated on 4-4-01 (Pet. Exhibit 10, p. 5-6) note "Orbits are particularly swollen and known fractures are present. Her eyes are bloodshot and hemorrhagic conjunctivitis." He further notes an ophthalmic consultation would be obtained. The records further note such a consultation took place with Dr. Claycomb on 4-4-01 at 11:45 a.m. (Pet. Exh. 10, p. 9) . The Court cannot read all of the note but can read enough to find that eye injuries were confirmed by the examination.

Prior to trial a motion was filed to suppress a photo line-up that was admitted into trial evidence. (R. 129-130). A hearing was held on the motion. (R. 129-130) At that hearing Scott Woodward testified, as did Dr. Ricky Ferguson. Mr. Woodward's testimony concerned the photographic lineup actually admitted at trial. He testified he was unaware of any other lineup being shown Mrs. Lawson, but there was some discussion in several places of a prior photographic array. (R. 311, L. 5-12) The proof showed Mrs. Lawson had been assaulted on the evening of April 2nd. On April 5, Woodward and John Dement went to Drew Memorial

Hospital to see her at about 8:30-9 a.m. Woodward's testimony was that Mrs. Lawson had been given some medications to "calm her." They spoke with Mrs. Lawson, who could not see then because her eyes were swollen shut and she needed her glasses, so they decided to wait to show her the photographic array they later presented her.

During the delay the proof showed Dr. Ferguson's lab prepared another set of glasses for Mrs. Lawson, to replace the ones broken in her attack. Dr. Ferguson's testimony was that he took the new glasses to the hospital and fitted them on Mrs. Lawson because of the swelling on her facial area. He further testified that she stated after they were fitted she could see the clock on the wall across the hospital room, actually telling him the time from the clock.

Later after that fitting and about 12:54 p.m. Dement and Woodward, along with Rick McKelvey, another investigator, went back to the hospital and showed Mrs. Lawson the array at issue which was admitted at trial and from which the defendant was identified. The Court found the array was not unduly suggestive. (R. 341).

From all this evidence, both direct and circumstantial, the Court is of the firm conclusion that no second array, which is the basis of this argument, was shown to Mrs. Lawson on April 4th or 5th. Since the Court finds that this prepared array was not in fact shown to Mrs. Lawson, it follows that this was not in fact evidence favorable to defendant within the meaning of Brady. This argument is thus rejected.

12. Did the prosecution and police conceal that Mrs. Lawson could not pick out Kenneth Isom in the April 5 photo array?
 - a. The record is clear that the defense of Mr. Isom knew, at least from the pre-trial hearing on the Motion to Suppress the photo lineup, that there were three officers present at the photographic lineup on April 5, 2001, and the Court so finds. None of the officers ever concealed this fact, and when they were asked about it, they said it.
 - b. The record further reflects that the written documentation of the April 5 lineup was made by Rick McKelvey, who was the acting case agent for the Arkansas State Police during the investigation of the case. During the testimony of John Dement at trial the written documentation was produced, and Dement was questioned on both cross and redirect examination about it. It was hashed and rehashed. (R. 1131-1159)
 - c. Pre-trial statements on the record by trial defense counsel further show that the State cooperated thoroughly in providing the defense discovery, and engaged in an open file policy. It was obvious as well from Colvin's (trial counsel) statements and questioning that to some extent before the hearing on the lineup, he had interviewed the investigating officers.

- d. The Court simply cannot find that defense has shown that this is newly discovered Brady evidence. The Petitioner has not made the case in this regard.
- e. Even if the Court could so find, the Court is of the further opinion that considering the totality of the record in this case: Mrs. Lawson's statements regarding her attacker and her prior contact with him, and the DNA evidence supporting a link between the Petitioner and Mrs. Lawson, the Petitioner could not establish the materiality or prejudice factor of his Brady claim on this point.
- f. Further, this finding resolves the claim raised that police concealed documentary evidence on this issue, and that police concealed the evidence of a flawed identification process, and having done so those claims are denied.

13. Did the prosecution fail to correct false testimony of Dorothy Lawson?

- a. Here the Petitioner, basing his argument on claims this Court has already found fail for proof, posits an argument that the State knowingly presented false testimony of Mrs. Lawson at trial. First, with some hospital records from Mrs. Lawson, they argue that she falsely testified she was not given pain medication on the day she identified the Petitioner in the photo array. Second, they argue that she testified falsely she did not try to make a prior identification of the defendant on April 4 because she had no glasses. Third, they argue that the State failed to correct her degree of confidence in the positive identification of the Petitioner as her attacker.
- b. The Court finds the defendant has failed to prove the State knowingly presented false testimony by Dorothy Lawson. Some of the Court's prior findings herein go directly to this issue and, because of them, the second point must fail. The third point must fail as well, as the degree of her certainty or uncertainty was adequately and thoroughly hashed out before the jury, as pointed out in a prior finding. The first point regarding the pain medication was also hashed out and questioned. While trial counsel may not have pointed out to the jury the medical records showing Mrs. Lawson was given some pain medication on the morning of her photographic line-up, April 5, he did make this point to the Court in the suppression hearing and in the cross examination of State's witnesses who presented testimony concerning the line-up. Again, it presented factual issues that dealt with the weight of evidence, and was in fact a jury issue, not a Brady claim. It is not newly discovered evidence.

14. Ken Oulette Testimony.

This point is argued at page 19-21 of the petition. The meat of Petitioner's argument urges that the State should have disclosed Oulette knew before he was shown a photo lineup or lineups, that Kenneth Isom was the main suspect. The Court can locate no proof in the record presented to support this argument. It is, therefore, dismissed.

15. Alternative Suspect Evidence.

This argument is made at pages 24-28 of the petition. There Petitioner argues that the State suppressed statements or information related by a Drew County Jail inmate, Kevin Green, that someone other than Petitioner committed the offenses

This point relates to conflicting testimony at various times by Deputy Prosecutor Frank Spain, first at a pre-trial hearing, later at a Rule 37 hearing, and finally at the Writ hearing. Mr. Spain testified at the pre-trial hearing of going on a search with two investigators, Scott Woodward and John Dement, in search of an alleged murder weapon, believed to be a pair of scissors. His testimony was that the search was of an abandoned trailer and that no scissors were located. The search had taken place based on a statement of a Kevin Green, who was then an inmate in the Drew County Jail. The pre-trial hearing took place on December 14, 2001 when the Court heard a Motion to Quash a subpoena issued for Mr. Spain. (R. 384)

Later at the Rule 37 hearing on November 1, 2007, Mr. Spain made a statement and/or gave testimony that a pair of scissors was in fact recovered at the trailer searched.

At the hearing on the Writ on December 8, 2015, Mr. Spain testified when questioned about the differences in his testimony on the two prior occasions. (Writ Record, R. 323). His testimony was that at the Rule 37 hearing, he believed he remembered the events related to the trailer search incorrectly. He explained that scissors were believed to be the murder weapon and some scissors were in fact found during the investigation, and that somehow the two facts were interconnected inaccurately in his memory.

It is up to the Court to find the facts, and the Court finds Mr. Spain's testimony at the Rule 37 hearing was inaccurate. The Court finds no scissors were found at the trailer search at issue. This is confirmed by Scott Woodward's testimony at the Writ hearing. It is also confirmed circumstantially with other evidence in the form of exhibits in the case. Petitioner's Exhibit 13 is a post-trial transfer of evidence form whereby Scott Woodward transferred evidence items from himself to another State Police Officer, Roger McLemore. On the second page thereof are listed four pairs of scissors, two gray handled, and two black handled. Petitioner's Exhibit 5 are investigator's notes by Officer D. J. Roberts, indicating he had located a pair of scissors, silver in color, and turned them over to the case agent, Rick McKelvey. Petitioner's Exhibit 8, is a report of a search warrant execution, reporting therein the recovery of three pairs of scissors. The warrant was executed at the home of Leotis Isom on April 4, 2001. Petitioner's Exhibit 7 is an Arkansas State Crime Lab Evidence Submission Form, indicating receipt at the crime lab April 17, 2001, and documenting the transfer from Rick McKelvey to the lab, four pairs of scissors, three bearing his initials and one bearing Dennis

Roberts initials. This would account for the finding of four pairs of scissors and the submission of them to the lab for analysis on April 17, 2001. All of which supports Scott Woodward's testimony at the Writ hearing that no scissors were found at the search of the trailer.

It additionally appears from the trial court record, as pointed out in Justice Danielson's dissenting opinion in Isom v. State, supra, that trial counsel, Mr. Colvin, was aware of Kevin Green's statements, so it is not newly discovered evidence, and does not serve as the foundation of a Brady claim. Mr. Colvin's testimony at the Rule 37 hearing held in Isom's case supports this conclusion.

Additionally, Mr. Spain's first testimony that no scissors were found, given about six to seven months after the attempt, is more likely to be accurate than his later testimony in this Court's opinion. This finding nullifies the argument of the Petitioner made on this point and it is, therefore, dismissed.

16. Trial Witness Linda Kay Johnson

It is argued that the State suppressed investigative notes of Rick McKelvey which could have been used to impeach this trial witness.

At trial Linda Kay Johnson was a witness. (R. 1198) She resided at 314 S. Dillard Street, across the street from the home of the murder victim, Bill Burton. She knew both Burton, and the other victim, Ms. Lawson. She testified that on Monday, April 2, 2001, Ken Isom was on the porch, and that Ms. Lawson was out in the yard. She knew Isom and identified him in the courtroom. She stated she saw them sometime before 7 p.m. She stated she had seen Isom earlier that day sitting on the porch of Alfred Collins, who was Bill Burton's next door neighbor.

She was cross examined at trial about inconsistencies between her testimony and a written police report of her statement. The evidence showed she had talked to the police two times on April 3rd, 2001, first at 10:30 a.m. later at 4 p.m. She explained that in the first statement to the police she did not mention seeing Isom talking to Ms. Lawson in the yard because they did not ask, but after she learned what happened she thought it was important.

She further explained she didn't know Ken Isom by his nickname of "Zero", but police used that name, so that's how she knew it. She had seen Isom at the Collins' house on other occasions.

Petitioner argues that a hand written note of Linda Johnson's interviews, maintained by Rick McKelvey, was impeaching and not revealed to the defense.

The Court finds that the note is not impeaching. It really doesn't detract from Johnson's testimony in any manner. Petitioner argues that Ms. Johnson's explanation before the jury of her failure to mention seeing Isom talking to Ms. Lawson in her first statement to McKelvey was "weak". Obviously the jury

didn't think so, and they heard it. The Court does not think so either. Had the note been revealed, the Court is of the opinion it would not have made a difference in the outcome of this case, considering all the other evidence.

17. Conclusion

The Court further finds that even if Petitioner could show that the State withheld evidence in one or more of the instances that Petitioner has alleged, there is little likelihood it would have made a difference in the outcome at trial. There is no doubt that Bill Burton was murdered. There is no doubt that Dorothy Lawson was raped "in every way imaginable", and that the perpetrator committed residential burglary and aggravated robbery, and inflicted sufficient injuries on Mrs. Lawson for the jury to conclude an attempted murder occurred. From the start of the investigation into this matter, the main issue was determining who committed the offenses. The evidence shows that Mrs. Lawson knew the perpetrator and had in fact talked to him in the yard of the Burton residence on the afternoon prior to the crimes being committed. She told the initial responding officers, before she was taken to the hospital, that the person who did these things to she and Burton was the person she had talked to the evening before.

It then became a matter of identifying that person, which, of course, is where her identification of the defendant, as well as the identifications by Ken Oulette and Linda Kay Johnson, becomes important as it relates to this Writ, as does the DNA evidence tending to point to the Petitioner.

In sum, with all of this evidence, if only one item of circumstantial evidence pointing to Petitioner was eliminated, there would still be other items pointing to the conclusion the Petitioner committed the crimes. In fact, enough items exist to convince this Court that the elimination of only one or two of them alone would not have been reasonably likely to make a difference in the outcome of the trial.

The Court has addressed all arguments raised in the original petition, as well as the supplemental petition, found none to merit relief under Brady, and, therefore, finds and orders the petition and it's supplement be dismissed.

SO ORDERED.



CIRCUIT JUDGE
AUGUST 11, 2017

THIS IS A CAPITAL CASE

JUN 12 2015

IN THE DREW COUNTY CIRCUIT COURT

AM 1/2/3/4/5/6/7/8/9/10/11/12 PM

KENNETH ROSHELL ISOM

PETITIONER,

v.

No. CR-2001-52-1

STATE OF ARKANSAS

RESPONDENT.

PETITION FOR WRIT OF ERROR *CORAM NOBIS*

Petitioner, Kenneth Roshell Isom, by and through undersigned counsel, respectfully submits his Petition for Writ of Error *Coram Nobis* and moves this Court to vacate his convictions and sentences on the grounds that state agents suppressed material, exculpatory evidence before, during, and after his capital murder trial and that, had the suppressed facts been available to Mr. Isom, it is reasonably likely that the result of his trial would have been different and judgment would not have been entered.

I. Background and Procedural History

On the evening of April 2, 2001, a black man knocked on the door of William Burton's trailer home in Monticello, Arkansas. William Burton was a 79 year-old white man in the care of his sister-in-law and long-time companion, 71 year-old Dorothy Lawson, a white woman. Ms. Lawson answered the door, and the

black man pushed his way into the trailer and demanded money. The man, wielding a pair of scissors, forced both Ms. Lawson and Mr. Burton to lie on the floor of the trailer. Ms. Lawson was raped and beaten. Mr. Burton was stabbed with scissors and bludgeoned. The couple was found by a neighbor the next morning. Mr. Burton was dead. Ms. Lawson survived the attack.

After Ms. Lawson was discovered in Mr. Burton's trailer home on the morning on April 3, 2001, she was taken to Drew Memorial Hospital. From the start her descriptions of the attacker were contradictory and vague. First, Ms. Lawson identified her attacker as Mr. Burton's next door neighbor, an African American, Alfred Collins. Mr. Collins was taken into custody and interrogated regarding the crime. Ms. Lawson later withdrew her identification of Mr. Collins, instead telling investigators that Mr. Collins would know who had committed the crime. The physical description Ms. Lawson provided investigators was that he was a black man who was dark, stocky, and between 5'6" and 6' tall.

Mr. Isom, who was acquainted with Mr. Collins, was quickly developed as a suspect in the case. Lead investigator, Scott Woodward, had a contentious history with Mr. Isom and was aware that Mr. Isom was recently paroled from prison on a conviction that Woodward helped secure. Investigators left a message with Kenneth Isom's mother, Linda Isom, that they wanted him to come in to be questioned

regarding the murder of William Burton. Eager to clear his name, Mr. Isom went immediately and voluntarily to the police station. Mr. Isom was arrested for the crime even though the description given by the surviving witness did not mention that the attacker had gold teeth or a pronounced scar, both which are prominent physical features of Mr. Isom.

On the basis of manufactured eye witness testimony, misleading DNA evidence, and in spite of compelling evidence implicating third parties, Kenneth Isom was convicted of Capital Murder, Attempted Capital Murder, Aggravated Robbery, Residential Burglary and Rape in connection with the brutal attack on Mr. Burton and Ms. Lawson. Mr. Isom's convictions were affirmed on direct appeal before the Arkansas Supreme Court on February 19, 2004. *Isom v. State*, 356 Ark. 156, 148 S.W.3d 257 (2004). The Arkansas Supreme Court affirmed the denial of Mr. Isom's Rule 37 Petition and petition under Ark. Code Ann. 16-112-201. *Isom v. State*, 2010 Ark. 495, 370 S.W.3d 491; *Isom v. State*, 2010 Ark. 496, 372 S.W.3d 809.

Following the denial of Mr. Isom's Rule 37 appeal, present counsel was appointed and Mr. Isom filed a Petition for Writ of Habeas Corpus in the United States District Court for the Eastern District of Arkansas. *Isom v. Kelly*, No. 5:11-cv-47 (E.D. Ark). That Court found that several of Mr. Isom's claims were

unexhausted and ordered that his federal case be stayed for him to return to state court to present his unexhausted claims. *Isom v. Kelly*, No. 5:11-cv-47, Order, April 1, 2013 (Doc. 60). In the Arkansas Supreme Court, Mr. Isom filed a Motion to Recall the Mandate of his Rule 37 proceeding and a Petition to Reinvest Jurisdiction in the Circuit Court to Consider a Petition for Writ of Error Coram Nobis. The Arkansas Supreme Court set both matters as cases, received full briefing, and held oral argument. On May 21, 2015, the State High Court denied Mr. Isom's Motion to Recall the Mandate and granted his Petition to Reinvest this Court with jurisdiction to hear a Petition for Writ of Error *Coram Nobis*. *Isom v. State*, 2015 Ark. 219; *Isom v. State*, 2015 Ark. 225.

In its opinion the Arkansas Supreme Court discussed in detail one of Mr. Isom's *Brady* claims and held that "[w]e cannot ignore that there may be exculpatory or impeaching evidence favorable to the accused that may have been willfully or inadvertently suppressed by the State, resulting in the circuit court quashing a subpoena to consider evidence related to other possible suspects." *Isom v. State*, 2015 Ark. 225, *3. The Court expressly reinvested this Court with jurisdiction to hear all of the *Brady* claims that Mr. Isom raised in his Petition. *Id.* In addition, the Court left to this Court the determination of whether Mr. Isom's Petition was timely. *Id.*

The Arkansas Supreme Court issued its mandate on June 9, 2015, thus rendering its judgment final. This Petition follows.

II. Coram Nobis is an Appropriate Remedy.

A writ of error *coram nobis* is designed to correct “fundamental error of fact extrinsic to the record” which, through no negligence or fault of the defendant, was not brought forward before the judgment. *Larimore v. State*, 327 Ark. 271, 279, 938 S.W.2d 8181, 822 (1997). The writ is an “exceedingly narrow” one, warranted only to address fundamental errors. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407, 409 (1999); *Cloird v. State*, 349 Ark. 33, 36, 76 S.W.3d 813, 815 (2002). The writ is only available for errors in four categories, “(1) insanity at the time of trial, (2) a coerced guilty plea, (3) material evidence withheld by the prosecutor, or (4) a third-party confession to the crime during the time between conviction and appeal.” *Howard v. State*, 2012 Ark. 177, — S.W.3d — (2012). The writ is warranted in Mr. Isom’s case because the State failed to disclose material, exculpatory evidence. “To establish a violation of *Brady v. Maryland*, 373 U.S. 83 (1963) by the State’s withholding of evidence, the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; the evidence must have been suppressed by the State, either willfully or inadvertently; prejudice must have

ensued.” *Isom v. State*, 2015 Ark. 225, *1.

Mr. Isom will demonstrate that relief is warranted because his *Brady*-based claims are meritorious and he has been diligent in seeking relief for these claims. The writ should be granted because the following fundamental errors occurred:

- A. Mr. Isom Was Prejudiced by State Suppression of Material, Exculpatory Evidence Regarding the Eye Witness Identification by Dorothy Lawson.

The police and prosecution suppressed a constellation of exculpatory evidence surrounding the eye witness identification of Mr. Isom by the surviving victim, Dorothy Lawson. Ms. Lawson who witnessed the attack on Mr. Burton and herself, was undoubtedly the most powerful witness at the trial. She testified at trial that she was confident that the man that killed William Burton and raped her was Kenneth Isom. Tr. R. 1405. However, Ms. Lawson’s testimony was misleading because the jury was not informed that she had previously failed to identify Mr. Isom as her attacker when shown his photo and was never confident in her identification of Mr. Isom.

1. Police Concealed That Ms. Lawson Did Not Identify Kenneth Isom as Her Attacker in a Photo Array Shown to Her on April 4th.

On the afternoon of April 4, 2001, police investigators brought a photo array to Drew Memorial Hospital which was created from mug shot photos of Mr. Isom

and five other individuals. (*See Exhibit 1.*) Ms. Lawson looked at this array and did not see the face of her attacker. Law enforcement officers denied that this failed identification occurred. While the State is still actively suppressing this fact, Ms. Lawson's medical records provide a contemporaneous account that she was unable to make an identification on April 4th. (*See Exhibit 2.*) The nurses at Drew Memorial recorded that on April 4th at 1:00 p.m. "Police here asking for Ms. Lawson to ID suspect from photos. Attempts ID. Police offer to enlarge photos + bring them back tomorrow. Ms. Lawson agrees to view enlarged photos tomorrow." *Id.* The police never disclosed, and in fact, lied to conceal the fact that Ms. Lawson did not see her attacker in the line-up she was shown on April 4th.

This Court held a hearing on the defense motion to suppress the eyewitness identification of Kenneth Isom by Dorothy Lawson on September 21, 2001. Scott Woodward who was the lead investigator on the case, was asked directly whether or not Ms. Lawson had previously been shown another photo lineup and denied what he knew to be the truth, that she had been shown a lineup and failed to identify Mr. Isom.

Defense counsel: I've heard rumors that she was shown a photo lineup earlier in the day or some time earlier, after the events at her home, in which she could not pick someone out. Is this correct or is that just a rumor.

Agent Woodward: I did not— I was not involved in that. The only time I was involved was with this photograph lineup that we have.

Defense counsel: Have you heard of any other attempt by any other agency to present a photo lineup to her in which she was unable to pick someone out?

Agent Woodward: I have not been told that.

Tr. R. 321.

At trial, the police and prosecution continued to suppress the fact that Ms. Lawson was shown a photographic array on April 4th and that she did not identify Mr. Isom. Lieutenant John Dement testified falsely at trial that April 5th was the only time that Ms. Lawson had been shown a line-up. Regarding the line-up procedures Lt. Dement stated, “[t]his is something you want to just do one time. You don’t want to go back and do it again.” Tr. R. at 1130. This is demonstrably false, and on the 5th of April police investigators were doing exactly what John Dement warned against: “go[ing] back and do[ing] it again.” On cross examination, Lt. John Dement testified again that Ms. Lawson was only shown a line-up one time:

Q: Why do you only want to show them the six packs one time?

A: That’s probably a personal preference, Mr. Colvin. This is a very serious crime that occurred and it’s a very serious charge. And I don’t want it to appear that we’re going to keep coming back with more pictures until we get it right. We want to do it right the first time.

Tr. R. 1153. Lt. Dement knew full well that April 5th was not the first time that Ms.

Lawson had been shown a photographic lineup.

2. Police and Prosecution Concealed that Ms. Lawson Could Not Pick Out Kenneth Isom in a Photo Array Shown to Her on April 5th.

The State also suppressed that Ms. Lawson failed in her second attempt to identify Mr. Isom from a photo array. On April 5th, Scott Woodward created a line-up so suggestive that Ms. Lawson would have to select the photo of Mr. Isom as her attacker. For example, every person in the line-up other than Mr. Isom had prominent facial hair, even though Ms. Lawson never mentioned that her attacker had facial hair. Many of the “filler” individuals in the line-up did not meet the basic description Ms. Lawson gave of her attacker. Indeed, one of the “filler” individuals was actually Alfred Collins, Mr. Lawson’s neighbor, and a man that Ms. Lawson eventually told the police was not her attacker. This second line-up was created with photographs personally taken by Scott Woodward of Mr. Isom and other individuals. (*See Exhibit 3.*) The photographs bear a digital timestamp of April 5, 2001. The only person that appears in both the April 4th and the April 5th line-ups is Mr. Isom.

Even though the line-up was designed to highlight Mr. Isom, Ms. Lawson did not definitively identify Mr. Isom as her attacker and instead vacillated between Mr. Isom and another individual in the array. Mr. Isom was in the third position in the

photo array. Ms. Lawson looked at the array for six minutes before making a statement. At first she pointed to Mr. Isom in position 3 and said, "I seen that person next door. He is the person I talked to before it happened. I think he is the one that came into the house. It looks like him. He's the one that did that to us." (See Exhibit 4.) However, Ms. Lawson asked to look at the line-up again and studied the photos for another two minutes and then said, "it's 1 or 3." Police notes reported she said, "#1's face is a little round shaped like that. He was wearing a white shirt with something that looked like a lightning bolt on it. She indicated the lightning bolt would have been located in the chest area." *Id.* Her statement either identified number one as the man that was wearing the white shirt with the lightning bolt, or at the very least vacillated between numbers one and three.

The fact that Ms. Lawson was unable to identify definitively Mr. Isom is extremely damaging and would have been sufficient cause for this Court to exclude her eye witness identification as unreliable. However, police investigators suppressed this fact until it was unintentionally revealed at a time when defense counsel could not make full use of it.

At the pretrial hearing on the motion to suppress the eyewitness identification, Scott Woodward denied that Ms. Lawson had any trouble identifying Mr. Isom on April 5th, just as he had denied knowledge of the April 4th

identification attempt. Scott Woodward testified that when he presented Ms. Lawson with the photo array on April 5th that she picked out number three, Kenneth Isom, after a careful study of each photograph. Tr. R. 320. Mr. Colvin asked again what person Ms. Lawson identified as resembling her attacker, Scott Woodward only mentioned number three. Mr. Colvin asked whether the officers left and Scott Woodward stated obliquely, “We— She asked to look at the photographs again. We let her look at them. And then Rick McKelvey documented the, what happened and we left.” Tr. R. 321–22. Scott Woodward failed to mention that “what happened” is that Ms. Lawson went on to identify person #1 as her attacker. (See Exhibit 4.) Scott Woodward’s dishonesty became even more blatant during the prosecution’s questioning:

Q: Did she misidentify anyone else? Did she initially identify, or otherwise, anyone else on this poster board other than Kenneth Isom, Number Three?

A. No.

Q: Did she show any hesitation in the identification of Kenneth Isom as Number Three?

A: No.

Tr. R. 326. This testimony was blatantly false and failed to acknowledge that Ms. Lawson also identified number one as a possible suspect.

The prosecuting attorney compounded the police dishonesty in his argument

to this Court on the motion to suppress. Thomas Deen stated, “she expressed no hesitation . . . no previous misidentification, no hesitation, no previous failure to identify Ken Isom.” Tr. R. 341. In fact, as the prosecution well knew, Ms. Lawson *had* failed to identify Ken Isom on April 4th, Ms. Lawson *did* hesitate between numbers one and three in the lineup and Ms. Lawson *did* identify another person, number one, as her attacker.

During the trial, the police and prosecution continued to suppress that Ms. Lawson vacillated during the photographic lineup on April 5th. Lieutenant Dement testified that Ms. Lawson was “very sure” about her identification. Tr. R. 1159. In fact, Ms. Lawson could not decide whether person 1 or 3 was her attacker. The prosecution allowed this testimony to go uncorrected.

3. Police Concealed Documentary Evidence of Ms. Lawson’s Flawed Identification.

Investigator Rick McKelvey documented what occurred on April 5th at Drew Memorial Hospital when Dorothy Lawson was presented with the photo array. However, these notes were never provided to the defense until they were inadvertently revealed late in the trial. At trial, investigator John Dement testified that Dorothy Lawson identified Mr. Isom as the perpetrator through State’s Exhibit 33, the six-pack identification that had Mr. Isom’s picture on it. Tr. R. 1137–38. Defense counsel tried, unsuccessfully, to cross examine John Dement about

Dorothy Lawson's condition when making her identification in the hospital.

Defense counsel asked him on cross examination whether Ms. Lawson was on pain medication, whether she seemed rational, or whether she wore glasses to make a proper identification. Tr. R. 1151–52. With each question, John Dement further corroborated Dorothy Lawson's testimony; Dorothy Lawson was rational, she was not on any pain medication, she was lucid, and very methodical in examining the six-pack. Tr. R. 1151–53. Lt. Dement testified that she identified Mr. Isom after taking her time and that she was sure that it was Mr. Isom that came into the trailer that night. Tr. R. 1153–54.

During re-direct examination prosecuting attorney Frank Spain asked John Dement where his notes were from that day in the hospital, and John Dement testified that Rick McKelvey had kept notes. Tr. R. 1157. The proceedings were interrupted so John Dement could retrieve the notes from Rick McKelvey. The fact that Lt. Dement had to get the notes from Rick McKelvey rather than the prosecution supports the finding that the prosecution also did not have the notes and they were not turned over to the defense in discovery. Investigator Dement read only a portion of Ms. Lawson's statement which was memorialized by the notes, "I seen that person next door. He is the person that I talked to before it happened. I think he is the one that came into the house. It looks like him. He's the one that did

that to us.” Tr. R. 1158. On re-cross examination, Ms. Lawson’s final statement was revealed, “It’s one or three.” “Number One’s face is a little round-shaped like that. He was wearing a white shirt with something that looked like a lightning bolt on it.” Tr. R.1159. It is clear from this exchange that the defense was never given the investigative notes of Rick McKelvey and that defense counsel first learned a report was even made on re-direct examination.

4. The Prosecution Failed to Correct the False Testimony of Dorothy Lawson.

In addition to the above, Dorothy Lawson provided false testimony related to her eyewitness identification which was not corrected by the Prosecution. First, the Prosecution failed to correct Ms. Lawson’s testimony that she was not given pain medication while in the hospital. Tr. R. 1420. In fact, her hospital records note that she was, a fact that went to her credibility at the time she viewed the photo arrays and her truthfulness as a witness. (*See Exhibit 2*) (records note Nubain and Phenergan administered to patient/witness.) The Prosecution also failed to correct Ms. Lawson’s false testimony that she didn’t attempt to make an identification on a prior occasion because she had no glasses. Tr. R. 1422. In fact she did try to make an identification and was unable to do so. *See supra* at II.A.1. The State failed to correct Ms. Lawson’s testimony that she identified Mr. Isom from photographs and was confident that he was the attacker. Tr. R. 1405. This statement is misleading

without the disclosure of Ms. Lawson's prior failure to identify Mr. Isom and her identification of the person in position number one of the photo array. *See supra* at II.A.1 & 2.

5. The Result of the Proceedings Would Have Been Different and Judgment Would Not Have Been Entered Had Dorothy Lawson's Identification Been Excluded or Impeached.

Had state witnesses not lied under oath about Ms. Lawson's eye witness identification and had the State not suppressed documentary evidence regarding that identification, it is reasonably likely that the outcome of the proceedings would have been different in one or more ways and that judgment would not have been entered for one of the following reasons:

The defense motion to suppress would have been granted. Had Scott Woodward not lied under oath at the suppression hearing, and had trial counsel been provided Rick McKelvey's notes, it is reasonably likely that this Court would have suppressed Ms. Lawson's identification of Mr. Isom. In making its ruling, this Court identified the following factors that, had the police testified truthfully, would have supported suppression:

And the factors to be considered in determining reliability include the opportunity of the witness or victim to observe the act, the accuracy of any prior description of the accused, any identification of another person prior to this procedure. In other words, has she erroneously identified someone else or indicated some other person actually did it? The level of certainty demonstrated at the identification, the failure of

the witness to identify the Defendant on a prior occasion, and the lapse of time between the act and the identification process.

Tr. R. 342. This Court applied the perjured testimony to the standard for suppression and reasoned:

The evidence does not indicate that she has previously identified someone else. She took her time in looking at these six photographs and identified the Defendant with certainty, according to the officer. She had had, not had a prior opportunity to try to identify anyone, and it was relatively fresh in time between the alleged incident and the identification.

Tr. R. 343. Truthful testimony would have swung this Court's calculus toward suppression. Ms. Lawson had identified another person as her attacker, did not identify Mr. Isom with certainty, and had a prior opportunity to identify Mr. Isom and did not do so. Absent police and prosecutorial suppression, this Court would have suppressed Ms. Lawson's eyewitness identification of Mr. Isom. Any later identification of Mr. Isom at trial would not have been admissible because it would not have been independent of the tainted identification. Absent Ms. Lawson's identification, the result of the proceedings would have been different and judgment would not have been entered.

Ms. Lawson would have been discredited at trial. Even if Ms. Lawson's identification was not suppressed, she would have easily been impeached by her earlier failure to identify Mr. Isom. In addition, the police tactic of repeatedly

showing Ms. Lawson Mr. Isom's photo would have cast a pall on her identification. Defense counsel would have impeached Ms. Lawson with psychological evidence that shows repeated exposure the photograph of a suspect can lead to a false identification. The jury would have likely inferred that because Ms. Lawson had been exposed to Mr. Isom's image in the line-up the previous day, she identified him because she remembered his photo or because she believed the police were repeatedly showing her Mr. Isom's face because he was the culprit. (*See* Exhibit 5 at 11-12.) Psychological experiments have shown that "[r]epeatedly presenting pictures of suspects can greatly increase the risk of mistakenly identifying suspects who are innocent." *Id.* at 12. This would have been persuasive impeachment evidence.

Had the State timely disclosed Rick McKelvey's notes from the April 5th photo line-up, defense counsel would have incorporated that information into the theory of the defense and impeached Ms. Lawson with her inability to definitely pick out Mr. Isom in the photo array and her identification of the man in position 1. Had the State corrected Ms. Lawson's false testimony, *see supra* at II.A.4, she would have been discredited on the basis of her inability to remember and her untruthfulness regarding important facts surrounding her eyewitness testimony. With the impact of Ms. Lawson's testimony greatly lessened it is reasonably likely

that the result of the proceeding would have been different and judgment would not have entered against Mr. Isom.

Defense counsel would have subpoenaed witnesses to contradict state witnesses. Had the State not suppressed the truth surrounding the hospital photo lineups, the defense would have located and called as witnesses hospital employees who were aware of Ms. Lawson's failed attempt at identification and her flimsy identification of Mr. Isom. For example, had the state timely disclosed Rick McKelvey's notes, the defense could have subpoenaed the nurses mentioned in the notes to rebut the testimony of Lt. Dement and Ms. Lawson that Ms. Lawson was confident in her identification of Mr. Isom. (*See Exhibit 4*). These witnesses could have also testified regarding the April 4th failed identification. (*See Exhibit 2*).

It is reasonably likely that had any of the foregoing occurred, Mr. Isom would not have been convicted and judgment not entered because Ms. Lawson's eye witness identification was the strongest piece of the prosecution's evidence. Had the foregoing been revealed, the impact of her testimony would have been greatly diminished. For example, the prosecutor previewed Ms. Lawson's testimony in his opening statement by saying, "Ms. Lawson will tell you she'll never forget that face ever, ever." Tr. R. 965. In closing, the prosecutor hung his entire case on Ms. Lawson's identification, telling the jury it was the sole piece of evidence

needed to convict. “The last identification before you talk about the scientific evidence, the last eyewitness identification, Dorothy Lawson. Would you even need anything else? If we didn’t have Ken Ouellette, if we didn’t have Linda Kay Johnson, if we didn’t have Alfred Collins, if we didn’t have the DNA, would you even need anything else if we didn’t have all of that?” Tr. R. 1494. The prosecutor continued, exclaiming how composed and sure Ms. Lawson was. *Id.* at 1494–95. If Ms. Lawson’s identification was subject to the impeachment it deserved, it is reasonably likely that the jury would not have convicted Mr. Isom of the offenses, or not have sentenced him to death on the basis of residual doubt regarding his guilt.

B. Police and Prosecution Withheld Material, Exculpatory Evidence Regarding the Eye Witness Identification by Kenneth Ouellette.

The State suppressed material evidence that significantly undercut the testimony of eyewitness Kenneth Ouellette. Kenneth Ouellette was an auxiliary police officer for the city of Monticello, Arkansas. Tr. R. 1169. He testified at trial that on the evening of April 2, 2001, he had left his home to get his lawn mower back from his friend, Hank Hollinger, a police officer with the Monticello Police Department. Tr. R. 1184. Mr. Ouellette had a police radio in his vehicle and he heard that his friend was on a call on Bolling Street. Towing his lawn mower, Mr. Ouellette drove over to Bolling Street to tell Officer Hollinger that he had picked up

the mower. Kenneth Ouellette testified that, while he was on his way to that active call to deliver this message, he drove down Dillard Street. He testified that around 7:00 p.m. he drove by Mr. Burton's home and saw Dorothy Lawson outside talking with an African-American male. Tr. R. 1173. Mr. Ouellette testified that he identified the person he saw talking to Ms. Lawson in two separate photo line-ups, and that in one of the line-ups, Mr. Isom was in position #1 and in the other Mr. Isom was in position #3. Tr. R. 1180. Mr. Ouellette could not recall whether the other persons in the line-up were the same. *Id.* Mr. Ouellette also identified Mr. Isom in court as the person he saw speaking with Ms. Lawson on the night of the crime. Tr. R. 1171.

The State failed to disclose that Kenneth Ouellette was aware that Kenneth Isom was the police's main suspect in the William Burton murder prior to the time that he made his identification of Mr. Isom. Mr. Ouellette was aware of this because of information he heard over the police radio in his car, at the police station, through friends and acquaintances who were law enforcement officers, and through documents he viewed at the police station.

That Mr. Ouellette was aware that Kenneth Isom was the main suspect was critical to evaluating the reliability of his identification. Before Mr. Ouellette looked at any photo array he saw Mr. Isom's photograph, alone, with his name under it.

State police records show that on April 3, 2001, Mr. Ouellette was at the Monticello Police Department and was talking to Roger McClemore of the Arkansas State Police. Office McClemore had a piece of paper that bore Kenneth Isom's photograph and the name "Ken Isom." (See Exhibit 6.) Mr. Ouellette saw the paper and volunteered that the person looked like the man he saw talking to Dorothy Lawson the night before. (See Exhibit 7.) That Mr. Ouellette knew Mr. Isom was the police's main suspect, and he had seen a picture of Mr. Isom labeled "Kenneth Isom" greatly undercuts the validity of his later identifications from the photo array.

It is reasonably likely that the result of the proceedings would have been different and judgment would not have been entered had defense counsel been aware of the foregoing information regarding Kenneth Ouellette. The defense could have argued persuasively to the jury that because Mr. Ouellette knew that Mr. Isom was the suspect and he knew what Mr. Isom looked like, his later identifications were tainted. Defense counsel could have presented expert testimony that psychological evidence shows that repeated exposure to the photograph of a person increases the chance that the witness will select the image of the person whose photograph they previously saw. (See Exhibit 5).

C. Prosecution and Crime Lab Employees Withheld Material, Exculpatory Evidence Regarding DNA Evidence.

The State withheld material, exculpatory evidence that cast doubt upon the

accuracy of the DNA testing results which linked Mr. Isom to the murder of Mr. Burton and rape of Ms. Lawson. There was one foreign pubic hair found on the vagina on the surviving victim. At trial, DNA analyst, Melissa Myhand testified that the likelihood that the profile of the contributor of the hair would reoccur in the population was one in 57 million for African Americans. Tr. R. 1273. Due to state suppression of evidence, the defense was denied critical impeachment evidence.

The State crime lab suppressed key information by turning over illegible or incomplete copies of documents related to the DNA testing. First, the crime lab provided the defense an illegible copy of a report made by crime lab staff, likely Melissa Myhand, regarding preliminary DNA results with the much less impressive 1 in 12,000 statistical probability that the profile of the pubic hair contributor would reoccur in the population. This report recorded a phone conversation between the DNA analyst and a police investigator stating the unimpressive statistical number and stating further analysis would be required. (See Exhibits 8 & 9). The poor quality of the reproduction of this page effectively denied the defense access to this important information. Had defense counsel known that the initial DNA results created a much less impressive statistical probability, it would have been a powerful line of questioning on cross examination. It would have cast doubt on the later number of 1 in 57 million that was testified to by Melissa Myhand. *See* Tr. R. 1273.

Second, the crime lab failed to turn over complete copies of the gel strips or DNA ladders which would allow a defense expert to determine whether the crime lab analysis was done properly. The information turned over to the defense by the crime lab was incomplete because the ladders were not marked with the names of the genetic markers. (See Exhibit 10.) Without this information, the DNA analysis could not be subjected to adversarial testing. Had the defense counsel been armed with this information it is reasonably likely that the jury would have entertained a reasonable doubt as to Mr. Isom's guilt because the defense would have called into question the subjective judgment made by the crime lab employee when analyzing the DNA samples. Had defense counsel been able to highlight the subjective nature of the DNA analysis, it is reasonably likely that the impact of the DNA testimony would have been limited because there was evidence in the crime lab file that investigators were attempting to sway the DNA results by telling the analyst that the surviving victim may die from her injuries. (See Exhibit 11.) Had the foregoing been disclosed it is reasonably likely that the result of the proceedings would have been different and judgment would not have been entered. Certainly, had the defense been able to undercut both the DNA analysis and the eye witness identification of Dorothy Lawson, the evidence against Mr. Isom would have been very thin indeed.

D. Police and Prosecution Withheld Material, Exculpatory Evidence Pointing to Alternative Suspects.

The State suppressed information that pointed to the guilt of persons other than Mr. Isom. Kevin Green, an inmate at the Drew County Detention Center, told State prosecutors and investigators that he knew the whereabouts of the scissors used to kill William Burton. Not only did Mr. Green profess to have knowledge of the whereabouts of the murder weapon, he told others that Mr. Isom was not the person responsible for killing William Burton. In fact, one inmate claimed that Mr. Green had said another man, Jerry Avery¹, confessed to Mr. Green that he had killed an old man and his wife. Mr. Green told employees at the jail and other inmates that Mr. Isom was innocent of the crimes for which he was charged. Drew County Detention Facility inmates, Steven Kinzalow, Bobby Cherry, and Todd Bowles requested interviews with Sheriff's Department Officers, Monticello Police Department Officers, and Arkansas State Police Officers to convey information that Kevin Green had said that Kenneth Isom was innocent of the murder of William Burton. One letter reported that Kevin Green said that another man, Jerry Avery,

¹Multiple witnesses saw Jerry Avery with a cut on his hand on the evening that William Burton was murdered and on the days following the murder. R. 37 R. 704, 821, 829, 832–33.

told him that he had killed William Burton. These letters were also sent to Mr. Isom's trial counsel. (*See* Exhibit 12.)

Kevin Green was taken from the jail with prosecuting attorney Frank Spain and investigators to search a trailer, where a pair of scissors were recovered. Although the prosecution never informed defense counsel of the fact, Kevin Green was released from jail that afternoon on a pending forgery charge (Drew County Case No. 2001-77) upon recommendation of the prosecution.

Mr. Isom's trial attorney subpoenaed Frank Spain to secure testimony from him regarding a search related to the case "originating at the Drew Detention Facility while defendant Isom was incarcerated." (*See* Exhibit 13). The State moved to quash the subpoena. On December 14, 2001, this Court held a hearing on the State's motion to quash. Tr. R. 363. Prosecuting attorney Frank Spain testified falsely that no scissors had been recovered from the search led by Kevin Green. He testified that Mr. Green was released from jail in consideration for his information regarding the murder weapon, but that "we went out to the house. We entered the house. And I believe I was the last person in the house. They looked for the item. No item was found and we left." Tr. R. 385. Frank Spain confirmed his testimony was that the "search did not reveal anything." Tr. R. 386. This Court granted the motion to quash the subpoena on the grounds that Mr. Spain did not have "anything

... material to offer concerning the investigation of this case which is being prosecuted against Mr. Isom.” Tr. R. 405.

However, at Mr. Isom’s Rule 37 hearing, Mr. Spain testified that in fact scissors *were* recovered at the home Kevin Green led the police to. At the hearing Kevin Green denied that he was given consideration for information in the Burton murder. In response prosecutor Frank Spain volunteered the following testimony:

There’s a couple of things that I’d like to put on the record and draw attention to the Court to in reference to Mr. Green’s testimony. The Court will recall when I asked a question, the last question I believe I asked was about whether or not he had told anybody these statements or given any kind of statements about the Isom case to the police. I asked that to clarify answers he’d given, and his answer was no. Now, I feel compelled under my ethical duty to inform the Court that I believe that testimony was false.

Now, whether or not he remembers incorrectly or gave a false statement, I can’t say to the Court. But the events that are somewhat depicted in one of those letters were some truth in that Mr. Green was in court on the day he was OR’d. He apparently made contact with someone in the state police, either Scott Woodward or to John Dement. They approached me that day, stated that he had some information that he wanted to give, but wanted to be OR’d before he would give that information. And my response to that was, well, I’m not going to OR anybody until I know what the information is going to be. So I think what we agreed to do was, is that he would tell them the information. We would check that information out. If it proved to be anything that could be useful, then we would agree to OR him.

It is my recollection that either at a lunch break or some other time that afternoon that day in court he gave some information about where some evidence might be collected. They got him in the car. Had him go in a car. It is true that I went with them to this location. I don’t

believe-- I don't know if we went in one car or two cars. We went to a trailer house, Your Honor, or my recollection was a trailer house. **The officers went in and searched the trailer house, and I believe recovered a pair of scissors from that house. We returned back. After they recovered whatever it was, I went and looked at whatever it was they recovered.** Came back, and I believe he was OR'd.

R. 37 R. 730-31 (emphasis added).

This Court inquired whether or not the information held by Mr. Green was related to the William Burton murder and Mr. Spain stated unequivocally that it was. "It-- I-- Let me restate that, Your Honor. Let me make that clear. It was related-- . . . He alleged it to be related to this case, that these, that these scissors used in the commission of the offense. And when we go -- **When we go back and look at the file, the one documentation that I know that covers these files, these scissors were sent to the crime lab for testing.**" Tr. R. 732 (emphasis added). Mr. Spain's testimony directly contradicted his testimony at the pretrial motion to quash.

Additionally, the State has still not disclosed reports or files related to Mr. Green's statements about the murder weapon. Mr. Spain testified at the Rule 37 hearing that he never made a report about the scissors and had no recollection of informing defense counsel about Kevin Green telling the police the location of a pair of scissors he claimed were used to kill William Burton. R. 37 R. 734-35. The

police never turned over any requests for interviews submitted by the aforementioned inmates regarding statements by Kevin Green about the Burton murder.

It is reasonably likely that had Mr. Spain testified truthfully at the pretrial hearing, and turned over the supporting documentary evidence, this Court would have denied the motion to quash the subpoena. Trial counsel would have called Frank Spain to testify at trial regarding Kevin Green's knowledge about the murder weapon. It is reasonably likely that had Mr. Colvin known that the claims in the inmate letters were credible that he would have conducted an investigation into Kevin Green and Jerry Avery and presented evidence to the jury of alternative suspects. It is reasonably likely that, if the jury was aware that another man claimed to know the location of the murder weapon, it would have had a reasonable doubt as to the guilt of Kenneth Isom.

III. Mr. Isom Has Been Diligent in Seeking Relief for His Claims.

Mr. Isom has been diligent in bringing his claims to the courts. Due diligence requires that 1) the defendant be unaware of the fact at trial; 2) he could not have, in the exercise of due diligence, presented the fact at trial; and 3) upon discovering the fact, did not delay in bringing the petition. *See Newman v. State*, 2009 Ark. 539, 354 S.W.3d 61. Mr. Isom has been diligent in pursuing remedies for the foregoing

violations.

As a preliminary matter, Mr. Isom has diligent in presenting all the claims contained in this petition because he brought them in his federal habeas petition soon after the Arkansas Supreme Court affirmed the denial of his Rule 37 petition. *See Isom v. Hobbs*, No. 11-47 (E.D. Ark filed Mar. 1, 2011). These issues were brought before the federal court within three months of the Arkansas Supreme Court's disposition of Mr. Isom's Rule 37 petition. The Arkansas Supreme Court has repeatedly held that *Brady* claims are not cognizable in Rule 37 proceedings. *See, e.g. Howard v. State*, 2012 Ark. 177, *16–17, — S.W.3d —. *Newman* instructs that the petitioner's choice of forum is irrelevant when determining diligence. *Newman v. State*, 2009 Ark. at *13, 68–69. As in *Newman*, the State has contended that Mr. Isom had no non-futile state remedies remaining. *See Isom v. Hobbs*, No. 11-47 (E.D. Ark.) (Doc. 11 filed July 18, 2011).

Specifically, with regard to his claims regarding the eye witness identification by Dorothy Lawson, Mr. Isom has been diligent in seeking relief for these claims but has been stymied by continued state suppression. First, Mr. Isom brought a motion to suppress Ms. Lawson's identification before trial. Mr. Isom's counsel inquired into rumors that he had heard regarding a previous failed identification by Ms. Lawson. However, the true facts surrounding the faulty

identification were suppressed by perjury of state investigators at the hearing. Hearing of this claim was again thwarted by false testimony by state officials at Mr. Isom's trial. But for the false and misleading statements of the state investigators, this claim would have been addressed at trial and on direct appeal. Mr. Isom's diligence with regard to this claim is above reproach because he has pressed this claim despite continued suppression of the true facts of Ms. Lawson's eye witness testimony.

Similarly, with regard to Mr. Isom's DNA claims, he has sought to discover these matters in federal court but the State has refused to voluntarily disclose them and the federal court found Mr. Isom's discovery motion premature. *See Isom v. Hobbs*, No. 11-47 (Docs. 22, 25).

As to Mr. Isom's claim regarding the prosecution's dealing with Kevin Green, the true facts surrounding Mr. Spain's deal with Mr. Green came to light in Mr. Isom's Rule 37 hearing. Mr. Isom included this matter in his habeas petition which was filed a mere three months after the Arkansas Supreme Court affirmed the denial of Mr. Isom's Rule 37 petition. Given the length of the state suppression, Mr. Isom has been reasonably diligent in seeking relief for this claim.

IV. Conclusion

This Court should find that individually and cumulatively Mr. Isom was

prejudiced by the suppression of the material, exculpatory evidence detailed within this Petition. *See Kyles v. Whitley*, 514 U.S. 419 (1995) (finding combined effect of suppressed evidence to undermine confidence in the jury's verdict). To the extent that materiality, prejudice, or diligence is not apparent on the face of this Petition, Mr. Isom requests a hearing in which he will demonstrate that the result of his trial would have been different had the State not suppressed the exculpatory evidence detailed within this Petition and that he has diligently pursued these claims.

Respectfully submitted,
JENNIFFER HORAN
FEDERAL PUBLIC DEFENDER

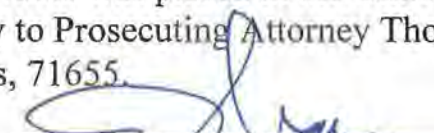
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th day of June, 2015, the foregoing Petition for Writ of Error *Coram Nobis* was placed in the United States Mail, first class postage prepaid, for delivery to Prosecuting Attorney Thomas Deen, 506 S. Main St., Monticello, Arkansas, 71655.


Julie Vandiver

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10. Crime Lab DNA Ladders
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12. Inmate Letters
13. Bing Colvin Letter with Notice of Witnesses

1



2



3



4



5



6



STATE'S
EXHIBIT

60

4-4-E

NURSES NOTES.

center in to visit. Murphy still sleeps from Debra /Phenomenon
Arousable to verbal stimuli
But falls back to sleep almost

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 08-19-2011 BY [REDACTED]
[REDACTED] 1 [REDACTED]

ICU #5

instantly. 2R ↑ N parent & site class ————— Kuwaleyn

(150) Police here asking for Moshawsem to ID suspects from photos. Attempts ID - Police offer to enlarge photos + bring them back tomorrow - Moshawsem agrees to view enlarged photos tomorrow. Denies needs/wants upatent & site check. SRT KWale for (150) Daughter in to

IV patent & site clear. SRT - McWallyn (1530) Daughter in to visit. McWallyn (1700) Eyes drops to both eyes for dilation per orders. Tol well. Adjusted bed for comfort. Denies need for pain med. IV patent & site clear. CM reveals ~~HR~~ & rare PVC. SRT - McWallyn (1800) Positioned to R side for comfort per pt request. Tol well. IV patent & site clear. CM reveals SB @ 75 bpm. SRT x 4 Denies need/wants. Dr. Wallik in to see pt. McWallyn

(1895) Leukorrhea = yellow + 18 or suction tubing analysis. ≈ 10 or
yellowish clear blood tinged sputum from suction per Amckenstegen.
Tolwell. Family in to visit ————— "Ku Klu Klux Klan"

1930 AAD003. very extensive 20 x 9 LVC Oest 97h, skin up. TV put in @
 Arm infusing 0.5 1/2 US @ 50cc l°. Multiple lancing to facial track area
 wounds exposed, (B) temporal skin strip, (B) Side of head skin stripped, (B) ear
 pinnae open (B) posterior ear open (B) neck skin stripped, Steroid 1st intercostal
 skin stripped, Steri Strips Out, Several field drawing from (B) tarsal and vent
 — cont below







ARKANSAS STATE POLICE

ASP-3
(Rev. 02/00)

Criminal Investigation Division Case Form

Date: APRIL 16, 2001
Dictated by: S/A RICK MCKELVEY #486
Date Typed: MAY 08, 2001 DLD
Copies to: S/A RICK MCKELVEY (2)

INVESTIGATOR'S NOTES #4

On April 05, 2001, Investigator JOHN DEMENT, Monticello Police Department, S/A SCOTT WOODWARD, ASP-CID, and I traveled to Drew Memorial Hospital to visit with Victim DOROTHY LAWSON. The purpose of the visit was to show Ms. LAWSON a photo line-up that was put together by S/A WOODWARD and the Prosecuting Attorney's Office. These photos were placed on large poster board and presented to Ms. LAWSON at 12:54 p.m. At 1 p.m., Ms. LAWSON pointed to Photo #3. She makes the following statement: "I seen that person next door. He is the person I talked to before it happened. I think he is the one that came in the house. It looks like him. He's the one that did that to us." Ms. LAWSON requested to take a second look. She studied each of the photos and at 1:02 p.m., she makes the statement, "it's 1 or 3". She states that #1's face is a little round shaped like a ball. He was wearing a white shirt with something that looked like a lightning bolt on it. She indicated the lightning bolt would have been located in the chest area. ER nurses, KRISTY WAXLEY and ASHLEY MCKINSTY, were present.

FILE NUMBER: CID-B-00484-01



CRIME: HOMICIDE

EYEWITNESS FACTORS IN STATE OF ARKANSAS VS. KENNETH ISOM

Prepared by

James Michael Lampinen, Ph.D.

April 9, 2013

My signature below indicates that I prepared the following report and that it represents my expert opinion in the matter of State of Arkansas vs. Kenneth Isom.

A handwritten signature in black ink, appearing to read 'J. Michael Lampinen', with a long horizontal flourish extending to the right.

Purpose of the Present Report

I am a Professor of Psychological Science at the University of Arkansas in Fayetteville with expertise in the area of false memories, eyewitness testimony, face recognition, and psychology and the legal system.¹ I have taught courses on these and related topics and have also published scientific research in these areas. I have been asked to provide a report describing my evaluation of the eyewitness factors that were present in the case of the State of Arkansas v. Kenneth Isom. In particular, I have been asked to describe what I would have advised counsel, if I had been hired as a consultant, prior to original trial.

The case I am being asked to provide an evaluation of involves the murder of Mr. William Burton and the physical and sexual assault of Ms. Dorothy Lawson. In addition to being physically and sexually assaulted, Ms. Lawson testified that she witnessed the beating of Mr. Burton. Identification evidence in this case was provided by two witnesses. One witness was Ms. Lawson. The second witness was Mr. Kenneth Ouellette, who testified that he briefly viewed Ms. Lawson speaking with an African American male as he drove by Ms. Lawson's residence. Both witnesses eventually identified Kenneth Isom from six person photographic lineups.

Relevance to Processing of the Case

The background information I would have provided to counsel in 2001 could have been relevant at many points during the processing of this case. One area where this information could have been relevant is in preparing pre-trial motions seeking to suppress the identification evidence. In deciding whether an identification should be suppressed, courts typically address two questions: (1) Whether there is evidence that the identification procedures used were unacceptably biased and (2) Whether the totality of the circumstances were supportive of a reliable identification.² Part (2) essentially holds that even if a lineup was procedurally biased, the identification may still be admissible if other factors, such as the certainty of the witness, tend to support the reliability of the identification. If I had served as a consultant on this case in 2001, I would have provided counsel with a summary of scientific research relevant to both of these issues.

Background information I would have provided in 2001 could have also been relevant to counsel's preparation for the examination of witnesses in this case. In particular, I would have informed counsel that in 1999 the United States Department of Justice published best practice guidelines providing recommendations for law enforcement when interviewing witnesses and conducting lineups and show-ups.³ These guidelines represented the consensus views of a

¹ See vita that is included in the supporting materials that accompany this report.

² Neil v. Biggers, 409 U.S. 188 (1972).; Manson v. Brathwaite, 432 U.S. 98 (1977).; Kimble v. State, 331 Ark. 155, 959 S.W.2d 43 (1998).

³ Technical Working Group for Eyewitness Evidence (1999). *Eyewitness Evidence: A Guide for Law Enforcement*. Washington D.C.: United States Department of Justice.

technical working group made up of police, prosecutors, scientific experts and defense attorneys convened by the National Institute of Justice, the research arm of the Department of Justice. The guidelines were designed to help law enforcement gather the most reliable eyewitness evidence possible, and to minimize mistaken identifications. Peer reviewed mock jury research has subsequently shown that when jurors are made aware that police practice deviated from these guidelines, it can decrease guilty votes by approximately 50%.⁴

I would have also been willing to provide expert testimony in this case. In providing expert testimony, I would have been willing to testify under oath concerning scientific research on factors that can impact the reliability of eyewitness identification. Mock jury research indicates that the presentation of eyewitness expert testimony can increase the time jurors spend discussing the identification evidence⁵, make jurors more sensitive to factors that influence witness accuracy⁶, and, in cases where witnessing conditions or police practices are not conducive of accurate identifications, can decrease guilty verdicts even if the prosecution has an otherwise strong case.⁷

In what follows I provide a more detailed discussion of my analysis of the eyewitness issues relevant to the present case. All information described below would have been provided to counsel had I been hired as an expert in 2001. I would also have been willing to testify to what follows if I had been called as an expert witness in 2001. My analysis of the case below is limited to scientific evidence that was widely known by 2001.

General Scientific Research on Eyewitness Identification / Misidentification

Cognitive psychology is the branch of psychological science that concerns human memory, attention, reasoning, decision making, and use of language. Social psychology is the branch of psychological science that concerns how people think about and interact with other people. Both cognitive psychologists and social psychologists are interested in eyewitness identification. Cognitive psychologists are interested in the basic perceptual and memory mechanisms involved in recognizing human faces. Social psychologists are interested in the role that social influence can have on eyewitness decisions. Scientific research on the reliability of eyewitness testimony has been conducted for more than a century, and since the 1970's there

⁴ Lampinen, J.M., Judges, D., Odegard, T.N., & Hamilton, S. (2005). The reactions of mock jurors to the Department of Justice Guidelines for the collection and preservation of eyewitness evidence. *Basic and Applied Social Psychology*, 27, 155-162.

⁵ Hosch, H.M., Beck, E.L., & McIntyre, P. (1980). Influence of expert testimony regarding eyewitness accuracy on jury decisions. *Law and Human Behavior*, 4, 287-296.

⁶ Cutler, B. L., Dexter, H. R., & Penrod, S. D. (1989). Expert testimony and jury decision making: An empirical analysis. *Behavioral Sciences & the Law*, 7, 215-225.; Devenport, J.L., Stinson, V., Cutler, B.L., & Kravitz, D. A. (2002). How effective are the expert testimony and cross-examination safeguards? Jurors' perceptions of the suggestiveness and fairness of biased lineup procedures. *Journal of Applied Psychology*, 87, 1042-1054.; Geiselman, R. E., Putman, C., Korte, R., Shahriary, M., Jachimowicz, G., & Irzhevsky, V. (2002). Eyewitness expert testimony and juror decisions. *American Journal of Forensic Psychology*, 20, 21-36.

⁷ Leippe, M. R., Eisenstadt, D., Rauch, S. M., & Seib, H.M. (2004). Timing of eyewitness expert testimony, jurors' need for cognition, and case strength as determinants of trial verdicts. *Journal of Applied Psychology*, 89, 524-541.

have been hundreds of peer reviewed articles on the topic of eyewitness testimony published in the scientific literature.⁸

Much of the research on eyewitness testimony has specifically been concerned with factors relevant to the accuracy of eyewitness identifications. In the present case, police used photographic lineups to obtain identification evidence from witnesses. A lineup is an identification procedure in which a witness is shown several individuals and is asked to indicate, which individual, if any, is the person who committed the crime. In a well conducted police lineup, there is one suspect and several fillers.⁹ The suspect is the person the police think may be guilty of the crime. The fillers are known by police to be innocent of the crime. The purpose of including fillers in a lineup is to provide some measure of protection to innocent suspects by decreasing the probability that an innocent suspect will be mistakenly identified. By definition, a lineup is fair when an innocent suspect is no more likely to be chosen than are any of the fillers. Thus, in a fair lineup, if the witness makes a mistake, it is much more likely that he or she will pick one of the fillers than that he or she will pick an innocent suspect. If the lineup is biased, then the chance of picking an innocent suspect is substantially larger than the chance of picking any one of the fillers. Thus biased lineups considerably decrease the procedural fairness of the lineup procedure and increase the chances of a mistaken identification of an innocent suspect.

In an actual lineup, there are two possible states of affairs. First, it is possible that the suspect is, in fact, guilty of the crime. Eyewitness scientists call these *target present lineups*. The correct choice in a target present lineup is to pick the suspect. Second, it is possible that the suspect is innocent of the crime. Eyewitness scientists call these *target absent lineups*. The correct choice in a target absent lineup is to reject the lineup. When police conduct a lineup, they do not know for sure whether they are conducting a target present lineup or a target absent lineup. If they did, there would be no need to conduct the lineup. However, when scientists conduct research on eyewitness identification they can set up situations in which it is known whether the witness is being shown a target present or target absent lineup. In a typical experiment of this sort, participants witness a mock crime. The crime may be shown on a videotape, on slides, or may be staged live. After viewing the crime, a certain amount of time is allowed to pass. This time period is known as the *retention interval* and is meant to mimic the time that passes in a real case between when the witness views the perpetrator and the witness views the lineup. Following the retention interval, witnesses are asked if they can make an identification. For some participants, a target present lineup may be shown. For other participants, a target absent lineup may be shown. This experimental design allows researchers to determine the prevalence of correct identifications from target present lineups and the prevalence of mistaken identifications from target absent lineups under a variety of circumstances.

⁸ Miller, D.W. (2000, Feb 25). Looking askance at eyewitness testimony. *Chronicle of Higher Education*.

⁹ Wells, G. L., Small, M., Penrod, S. J., Malpass, R. S., Fulero, S. M., & Brimacombe, C. A. E. (1998). Eyewitness identification procedures: Recommendations for lineups and photospreads. *Law and Human Behavior*, 22, 603-647.

Consider, for example, the following study conducted at Florida State University.¹⁰ The researchers had male research assistants enter banks with the cooperation and knowledge of the bank managers. At each bank, the research assistant who visited that bank went to the center island and pretended to fill out a deposit slip. He then walked up to a teller and attempted to cash an obviously forged postal money order. When the teller refused to cash the money order – as all did -- the assistant acted irate, took the money order back, and then left the bank. When the tellers informed the bank manager of what had just transpired, the manager indicated that the police would be contacted. Later that day, a researcher posing as a plain clothes police officer arrived at the bank. The researcher interviewed the teller and then showed the teller a six person photographic lineup that had been created by an actual police detective. For some tellers, a target present lineup was used. For other tellers, a target absent lineup was used. When a target present lineup was used, the tellers correctly identified the suspect close to 50% of the time. When a target absent lineup was used, the tellers incorrectly identified an innocent person close to 40% of the time. Note that this relatively high rate of false identifications occurred even though tellers thought that an actual crime had occurred. Once the interview and identification task were completed, the tellers were debriefed and told that it was just a research study – no crime had actually occurred. Similar results have been observed in a number of other studies. One review of the experimental literature found that, on average, witnesses correctly select the suspect from target present lineups about 44% of the time and incorrectly select an innocent person from target absent lineups around 54% of the time.¹¹ Archival data from actual identification attempts also suggest relatively high rates of mistaken identifications among actual witnesses.¹²

In addition to examining overall error rates, eyewitness scientists have been interested in delineating a set of factors that can influence the accuracy of a witness's testimony. Eyewitness scientists generally distinguish between two main classes of variables that can influence the accuracy of an eyewitness's identification – system variables and estimator variables.¹³ *System variables* refer to factors that can influence the accuracy of an identification attempt and that are under the control of investigators. System variables include things like the instructions given to witnesses, the way the foils are selected, how many foils are included in the lineup, and other procedural aspects of the identification. *Estimator variables* refer to factors that can influence the accuracy of the identification attempt but that are not under the control of the police investigator. Estimator variables include things like how much stress the witness experienced at the time of the crime, the match between the race of the culprit and the race of the witness, the

¹⁰ Pigott, M.A., Brigham, J.C., & Bothwell, R.K. (1990). Field study of the relationship between quality of eyewitnesses' descriptions and identification accuracy. *Journal of Police Science and Administration*, 17, 84-88.

¹¹ Levi, A.M. (1998). Are defendants guilty if they were chosen in a lineup? *Law and Human Behavior*, 22, 389-407.

¹² Wright, D. B., & McDaid, A. T. (1996). Comparing system and estimator variables using data from real line-ups. *Applied Cognitive Psychology*, 10, 75-84.

¹³ Wells, G. L. (1978). Applied eyewitness testimony research: System variables and estimator variables. *Journal of Personality and Social Psychology*, 36, 1546-1557.

witnessing conditions, and other situational and individual difference variables that police have no control over. Broadly speaking, system variables are relevant to determining whether procedural sources of bias were present in the identification, whereas, estimator variables are relevant to the question of whether, under the totality of the circumstances, the identification is likely to be reliable. Both system variables and estimator variables can be varied in experimental studies of eyewitness accuracy. Based on this sort of research, a great deal has been learned about factors that are related to identification accuracy.

Scientists have also evaluated a class of variables that have been proposed as potential correlates of identification accuracy, even though they are not causative factors of that accuracy. Collectively these can be thought of as *indicia of reliability*. Indicia of reliability include factors like the confidence of the witness, the time the witness takes to make an identification, and accuracy of the witness's verbal descriptions. These variables do not cause the witness to be accurate or inaccurate, but they are purported to be predictors of witness accuracy. Indicia of reliability are factors that courts have traditionally considered when assessing the likely reliability of a witness under a totality of circumstances analysis.¹⁴

The following sections provide an evaluation of the relevant system variables, estimator variables, and indicia of reliability in the case of State of Arkansas vs. Kenneth Isom.

Relevant System Variables

Had I been hired as an expert in this case, I would have provided counsel with the following analysis of the system variables that were relevant to the case.

- *Instruction Bias.* The instructions investigators give to witnesses can have a large effect on the accuracy of the eyewitness's identification. Social scientists have argued that the social situation of presenting a witness with a lineup implies: (1) the police have good evidence that one of the members of the lineup is guilty and (2) the witness's job is to determine who that person is.¹⁵ The first point follows because the witness is likely to reason that the police would not be taking the time to conduct a lineup if they did not have good reason to believe that a particular person in the lineup was guilty of committing the crime. The second point follows because the witness is likely to want to help the police to solve the case and to bring the guilty person to justice. These assumptions on the part of the witness lead to a pressure on the witness to select *someone* from the lineup. In a target absent lineup, the pressure to select someone is problematic, because nobody in the lineup is guilty. Because of this, pre-lineup instructions are vitally important. Experimental research has shown that failure to

¹⁴ *Manson v. Brathwaite*, 432 U.S. 98 (1977); *Kimble v. State*, 331 Ark. 155, 959 S.W.2d 43 (1998).

¹⁵ Wells, G. L., & Leippe, M. R., & Ostrom, T. M. (1979). Guidelines for empirically assessing the fairness of a lineup. *Law & Human Behavior*, 3, 285-293.

provide adequate pre-lineup instructions can increase the risk of mistaken identifications by approximately 70%.¹⁶

As noted above, in 1999 the Department of Justice published guidelines for interviewing witnesses and collecting identification evidence entitled *Eyewitness Evidence: A Guide for Law Enforcement*. With regards to pre-lineup instructions, these best practice guidelines advise the following:¹⁷

"Photo Lineup: Prior to presenting a photo lineup, the investigator should:

- 1. Instruct the witness that he/she will be asked to view a set of photographs.*
- 2. Instruct the witness that it is just as important to clear innocent persons from suspicion as to identify guilty parties.*
- 3. Instruct the witness that individuals depicted in lineup photos may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.*
- 4. Instruct the witness that the person who committed the crime may or may not be in the set of photographs being presented.*
- 5. Assure the witness that regardless of whether an identification is made, the police will continue to investigate the incident.*
- 6. Instruct the witness that the procedure requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification."*

We do not know the exact pre-lineup instructions that were given to the witnesses in this case, because as far as I can tell from the record I was provided, there was no contemporaneous record documenting those instructions. The only indication we have of the pre-lineup instructions comes from police testimony. However, police memories of the details of what was said in the course of an interview are subject to distortion, as are all memories.¹⁸ Agent Woodward describes the pre-identification instructions given to Ms. Lawson as follows: "We told her to look at the photographs, take as much time as she needed. And if she could not pick someone out, just simply tell us, 'I cannot pick anyone out,' and that's basically what she was told." Assuming that this was the extent of the instructions, they do not fully conform to the recommendations made by the Department of Justice's expert panel. Agent Woodward did attempt to inform the witness that a choice was not required. However, the phrase 'could not pick someone out' is ambiguous. It does not explicitly state that the perpetrator may not be in the lineup, and could be taken to reference a failure of recognition on the part of the witness, not that guilty person was not in the lineup.

¹⁶ Steblay, N.M. (1997). Social influence in eyewitness recall: A meta-analytic review of lineup instruction effects. *Law and Human Behavior*, 21, 283-297.

¹⁷ Technical Working Group for Eyewitness Evidence (1999). *Eyewitness Evidence: A Guide for Law Enforcement*. Washington D.C.: United States Department of Justice. (pp. 31-32)

¹⁸ Clark, N.K., Stephenson, G.M., & Kniveton, B.H. (1990). Social remembering: Quantitative aspects of individual and collaborative remembering by police officers and students. *British Journal of Psychology*, 81, 73-94.

With regards to Mr. Ouellette, there was nothing in the materials I was provided indicating what instructions, if any, he was given prior to viewing the lineups he was presented with. I am thus unable to comment on the degree to which instruction bias may have been present in the identification procedure used with this witness. From the court records I have seen, counsel for the defense did not appear to ask any questions about pre-lineup instructions given to Mr. Ouellette, despite the large effect these instructions can have on identification accuracy. This is an issue I would have advised counsel to explore had I been consulting on the case in 2001.

- *Interviewer Bias.* Decades of research in the social sciences has demonstrated that an interviewer can sometimes inadvertently influence the responses given by a participant in an interview.¹⁹ In one early study, experimenters asked participants to provide empathy ratings of faces. Half of the experimenters were led to expect high ratings of the faces they were having participants rate. Half of the experimenters were led to expect low ratings of the faces they were having participants rate. Participants who were tested by the experimenters who expected high ratings provided higher ratings than the participants who were tested by experimenters who expected lower ratings, even though the pictures were identical for the two groups. It is important to note that the influence of the interviewer is not intentional. Rather, if the interviewer has a particular hypothesis, the interviewer's wording of the question, body posture, gaze, and other non-verbal cues may inadvertently influence the participant's response. For this reason, social scientists, whenever possible, conduct research in a double-blind fashion. A double-blind interview is one in which neither the participant, nor the interviewer, are aware of the hypothesis.

Eyewitness scientists have argued that police interviews can be influenced by the same sort of unintentional bias and should therefore be conducted in a double-blind fashion – i.e., by an interviewer who does not know who the suspect is.²⁰ It is important to note that eyewitness researchers are not claiming that police are involved in any sort of intentional misconduct. Rather, the claim is that any interviewer, including police interviewers, may inadvertently influence the response of the person he or she is interviewing in ways that both the interviewer and interviewee may be unaware of. In one study that examined this issue, participants were tested in pairs.²¹ One member of the pair was assigned the role of the witness and the other was assigned to role of interviewer. The witness viewed a staged crime involving two perpetrators. The interviewer was told that he or she would be acting in the role of a police investigator. The interviewer was given two packets of photographs, with

¹⁹ Finkelstein, J. C. (1976), Experimenter Expectancy Effects. *Journal of Communication*, 26: 31–38.; Rosenthal, R. (1994). Interpersonal expectancy effects: A 30 year perspective. *Current Directions in Psychological Science*, 3, 176-179.

²⁰ Wells, G. L., Small, M., Penrod, S. J., Malpass, R. S., Fulero, S. M., & Brimacombe, C. A. E. (1998). Eyewitness identification procedures: Recommendations for lineups and photospreads. *Law and Human Behavior*, 22, 603-647.

²¹ Phillips, M. R., McAuliff, B. D., Kovera, M. B., & Cutler, B. L. (1999). Double-blind photoarray administration as a safeguard against investigator bias. *Journal of Applied Psychology*, 84, 940-951.

one photograph in each packet being designated by the researchers as the suspect. In fact, both suspects were innocent – i.e., they were in target absent lineups. For one of the lineups, the interviewer was told who the designated suspect was. For the other lineup, the interviewer was not told who the designated suspect was. False identifications of the suspect were substantially more common when the interviewer knew who the suspect was, indicating that the interviewer had inadvertently influenced the witness's identification. Subsequent studies demonstrated that these sorts of expectations on the part of the interviewer can also artificially inflate the confidence of the witness in his or her identification.²² In the identifications in the present case, the police interviewers conducting the lineup, knew who the suspect was, raising the possibility that interviewers inadvertently influenced the witnesses lineup choices and artificially raised the witness's confidence.

- *Composition Bias.* In the present case, both witnesses were shown six person photographic lineups. Lineups provide an important safeguard for innocent suspects. In a fair lineup, if the suspect is innocent, the witness should be no more likely to pick the suspect than he or she is to pick one of the foils.²³ Thus, if the suspect is innocent and the witness picks someone from a fair six person lineup, it is five times more likely the witness will pick a foil than that he or she will pick the suspect. This protects suspects who are innocent because when a witness picks a foil, it is a known error. In a biased lineup, the suspect is made more prominent than the foils and as a consequence, an innocent suspect is substantially more likely to be picked than are the foils – i.e., the foils no longer provide adequate protection against mistaken identifications. This can occur if the suspect stands out from the other members of the lineup, or if the suspect provides a better match to the witness's description than do the foils. Lineups that are biased in their composition can result in substantial increases in the probability of a mistaken identification of an innocent suspect.

In order to create a photographic lineup, the investigator needs to obtain a photograph of the suspect -- in this case a photo of Mr. Isom --- and also needs to obtain photographs of individuals who will serve as foils. The United States Department of Justice recommends that a lineup contain one suspect and at least five foils.²⁴ The American Psychology Law Society recommends including even more foils.²⁵ However, merely having an adequate number of foils is not sufficient for a lineup to be fair. This is because there is a distinction

²² Garrioch, L., & Brimacombe, C. A. E. (2001). Lineup administrators' expectations: Their impact on eyewitness confidence. *Law and Human Behavior*, 25, 299–315.

²³ Wells, G. L., & Leippe, M. R., & Ostrom, T. M. (1979). Guidelines for empirically assessing the fairness of a lineup. *Law & Human Behavior*, 3, 285–293.

²⁴ Technical Working Group for Eyewitness Evidence (1999). *Eyewitness Evidence: A Guide for Law Enforcement*. Washington D.C.: United States Department of Justice.

²⁵ Wells, G. L., Small, M., Penrod, S. J., Malpass, R. S., Fulero, S. M., & Brimacombe, C. A. E. (1998). Eyewitness identification procedures: Recommendations for lineups and photospreads. *Law and Human Behavior*, 22, 603–647.

between a lineup's nominal size and the lineup's functional size.²⁶ The nominal size of a lineup is simply the number of people in the lineup. The functional size refers to the number of plausible alternatives in the lineup. For a lineup to be fair, it is not necessary, or advisable, for the foils to match the suspect in all regards.²⁷ Rather, what is necessary is that (1) all the members of the lineup should be an equally good match to the description given by the witness and (2) none of the members of the lineup should stand out.²⁸ The reason that foils should match the witness's description should be readily apparent. If the witness indicates that the perpetrator had a set of characteristics, and one or more of the foils lacks those characteristics, those foils no longer provide plausible alternatives for the witness. The entire theory behind conducting a lineup is that all members of the lineup should be equally plausible given the witness's description. Indeed, research indicates that when foils are not good matches to the description provided by the witness, false identifications of innocent suspects are substantially more likely.²⁹

These views are supported by the United States Department of Justice's publication, *Eyewitness Evidence a Guide for Law Enforcement*.³⁰ The Guide advises that the "investigator shall compose the lineup in such a manner that the suspect does not unduly stand out(p. 27)." It further states, "Select fillers who generally fit the witness' description of the perpetrator. When there is a limited/inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features (p. 27)." The official position paper of the American Psychology-Law Society concurs in these recommendations: "The suspect should not stand out in the lineup or photospread as being different from the distracters based on the eyewitness' previous description of the culprit or based on other factors that would draw extra attention to the suspect."³¹ The composition of the lineups viewed by Ms. Lawson and Mr. Ouellette appear to deviate from these procedural recommendations.

²⁶ Wells, G. L., Small, M., Penrod, S. J., Malpass, R. S., Fulero, S. M., & Brimacombe, C. A. E. (1998). Eyewitness identification procedures: Recommendations for lineups and photospreads. *Law and Human Behavior*, 22, 603-647.

²⁷ Luus, C. A. E., & Wells, G. L. (1991). Eyewitness identification and the selection of distractors for lineups. *Law & Human Behavior*, 15, 43-57.; Wells, G. L., Rydell, S. M. and Seelau, E. P. (1993). On the selection of distractors for eyewitness lineups. *Journal of Applied Psychology*, 78, 835-844.

²⁸ Technical Working Group for Eyewitness Evidence (1999). *Eyewitness Evidence: A Guide for Law Enforcement*. Washington D.C.: United States Department of Justice.; Wells, G. L., Small, M., Penrod, S. J., Malpass, R. S., Fulero, S. M., & Brimacombe, C. A. E. (1998). Eyewitness identification procedures: Recommendations for lineups and photospreads. *Law and Human Behavior*, 22, 603-647.

²⁹ Lindsay, R.C.L. & Wells, G.L. (1980). What price justice? Exploring the relationship between lineup fairness and identification accuracy. *Law and Human Behavior*, 4, 304-314.; Wells, G. L., Rydell, S. M. and Seelau, E. P. (1993). On the selection of distractors for eyewitness lineups. *Journal of Applied Psychology*, 78, 835-844.

³⁰ Technical Working Group for Eyewitness Evidence (1999). *Eyewitness Evidence: A Guide for Law Enforcement*. Washington D.C.: United States Department of Justice

³¹ Wells, G. L., Small, M., Penrod, S. J., Malpass, R. S., Fulero, S. M., & Brimacombe, C. A. E. (1998). Eyewitness identification procedures: Recommendations for lineups and photospreads. *Law and Human Behavior*, 22, 603-647.

To examine the compositional fairness of the lineups used in the present case, it is necessary to consider the witness's descriptions. Ms. Lawson described her attacker as follows: "He is a B/M, about 5'7" to 6' tall, very stocky or muscular built, and he appeared dark to me."³² Mr. Ouellette's description of the person he saw was as follows: "He was a big framed person and dark complected. I'm not sure how tall he was because he was sitting down. His hair was short but he wasn't bald either."³³

There were two different photograph lineups used in the present investigation. In one lineup, Mr. Isom is shown in the top row in the right-most position. In this lineup, Mr. Isom appears to be the largest man in the lineup and a number of the foils do not appear muscular or stocky at all. In addition, nowhere in the statements of either witness is there any indication of facial hair.³⁴ Mr. Isom's picture does not show him with prominent facial hair. Yet every foil in the lineup had prominent facial hair, making the suspect unique in this regard. If the witnesses did not believe that the perpetrator had prominent facial hair -- and neither one mentioned facial hair -- then only the suspect matched the witness descriptions in that regard. In addition, Mr. Ouellette's description indicated that the man he saw had short hair but was not bald. One of the foils is entirely bald (inconsistent with Mr. Ouellette's description) and two of the members of the lineup members do not appear to have especially short hair (inconsistent with Mr. Ouellette's description).

In the other lineup, Mr. Isom is in the left most position in row one. This lineup is also suboptimal in terms of its fairness. There are at least two of the fillers who do not appear to match the description with regards to size, suggesting that the functional size of the lineup is less than the functional size of six recommended by the Department of Justice Guidelines.

- *Effects of Repeated Testing.* Mr. Ouellette was presented with photographs of Mr. Isom on three different occasions. First, Mr. Ouellette saw an isolated poor quality faxed photograph of the defendant. He then saw a six person photo lineup that included Mr. Isom. Later he saw a second six person photographic lineup. Repeatedly exposing witnesses to pictures of the suspect is a problematic procedure because (1) it can increase the familiarity of the suspect's face, (2) can lead to the inference on the part of the witness that the pictures are being shown repeatedly because the person being shown is the culprit and (3) it can lead to commitment effects where the witness remains committed to whatever decision he or she made during previous identification attempts. Eyewitness scientists have documented this repeated exposure effect. In one study, researchers had five individuals walk into a room,

³² Interview of Dorothy Lawson by Lt. Mike Hall, April 3, 2001

³³ Interview of Ken Ouellette by S.A. Michael Daley, April 5, 2001

³⁴ I do not know if witnesses were specifically asked about facial hair. I would have advised counsel to ask that question. The court record does indicate that Ms. Lawson was asked follow up questions and facial hair is a natural follow up question to ask. However, even if a follow up question about facial hair was not asked, it is problematic that the witness descriptions do not mention facial hair, the suspect does not have prominent facial hair, yet every foil does have prominent facial hair.

and participants were told to pay attention to these target individuals.³⁵ Subsequent to seeing the targets, participants were shown a series of mugshots. Some of the mugshots were of previously seen targets, and some of the mugshots were of new, never before seen individuals. After seeing the mugshots, participants were shown lineups that included actual targets, innocent individuals who had been shown in the mugshots, and innocent people who had not been shown in the mugshots. Having seen the innocent person's picture previously doubled the chance that the person would be falsely identified in the lineup task. Subsequent research has served to confirm these findings.³⁶ Repeatedly presenting pictures of suspects can greatly increase the risk of mistakenly identifying suspects who are innocent.

Estimator Variables Relevant to Case

Estimator variables are factors that can play a causal role in the accuracy of eyewitness identifications, but that are not under the control of law enforcement. These variables are relevant to the question of whether an identification is likely to be accurate under a totality of the circumstances analysis. Had I been asked to serve as an expert consultant in 2001 for the present case, I would have provided counsel with the following information. I would have also been willing to testify to the following at trial as an expert witness.

- *Witnessing Conditions:* Witnessing conditions refer to whether the witness had an opportunity to get an adequate look at the person to be identified. Witnessing conditions include factors like the distance the witness is from the perpetrator, the viewing time, and the lighting. The witnessing conditions were different for the two witnesses. The person who attacked Ms. Lawson was in close proximity her and she saw him for a relatively long period of time and under what I would presume was standard indoor lighting. Basic perceptual research indicates that face recognition is better under good lighting and at close distances.³⁷ However, even at close distances and with good lighting, witnesses do make mistakes. The vast majority of experiments conducted on eyewitness accuracy involve situations in which the lighting conditions are good and the witness is close to the target, yet error rates in these studies can still be quite high. The man seen by Mr. Ouellette was further away and seen for only seconds. I am uncertain from the court records exactly what the lighting conditions were like for Mr. Ouellette. Testimony from Mr. Ouellette indicated that it was early evening and the sun was still out. However, face perception can be influenced not only by the amount of light, but also by the direction the light is coming from and cast shadows.³⁸

³⁵ Brown, E. L., & Deffenbacher, K. A., & Sturgill, W. (1977). Memory for faces and the circumstances of encounter. *Journal of Applied Psychology*, 62, 311-318.

³⁶ Brigham, J. C. & Cairns, D. L. (1988). The effect of mugshot inspections on eyewitness identification accuracy. *Journal of Applied Social Psychology*, 18, 1394-1410.

³⁷ Wagenaar, W. A., & Schrier, van der J. H. (1996). Face recognition as a function of distance and illumination: A practical tool for use in the courtroom. *Psychology, Crime & Law*, 2, 2321-332.

³⁸ Braje, W. L., Kersten, D., Tarr, M. J., & Troje, N. F. (1998). Illumination effects in face recognition. *Psychobiology*, 26, 371-380.; Liu, C. H., Collin, C. A., Burton, A. M., & Chaudhuri, A. (1999). Lighting direction affects recognition of untextured faces in photographic positive and negative. *Vision Research*, 39, 4003-4009.

The amount of time to view a face can also influence identification accuracy, but here there are discrepant findings in the research literature. On the one hand, because the visual system samples information over time³⁹, increased exposure duration should lead to a more detailed memory record for an individual's face. Some studies that have examined the effect of exposure duration have found that longer exposures to a face result in better recognition accuracy of that face.⁴⁰ However, other studies have found that longer exposure durations are sometimes associated with both more correct identification and more mistaken identifications.⁴¹ To make sense of these findings it is important to keep in mind that the probability of picking someone from a lineup is a function of both the witness's memory and the decision processes that witnesses use. Increased exposure duration is likely to increase the detail in the memory record, but may also lead the witness to believe that he or she should be able to pick someone out of the lineup. In some circumstances this may decrease the chances that the witness will reject the lineup – even if the suspect is not in the lineup. It is also important to note the effects of duration of exposure also depend on the focus of the witness's attention during the course of that exposure. That is, what's relevant is not the amount of time the perpetrator was present, but the amount of time and attention the witness specifically focused on facial features. In this regard, it should be noted that Ms. Lawson testified that her attention was focused on the weapon and this limited her attention to details of the perpetrator's face.

- *Own Race Bias.* The witnesses in the present case are a Caucasian female and a Caucasian male. The perpetrator was an African American male. One of the best established findings among eyewitness scientists is that witnesses are substantially less accurate in identifying members of other races than they are members of their own race.⁴² The difficulty of other race identifications has been recognized for close to a century⁴³ and is a robust and easy to replicate finding. In one early study, Caucasian, African American, and Hispanic confederates entered convenience stores and interacted with Caucasian, African American and Hispanic clerks.⁴⁴ The confederates engaged in scripted activities that the researchers thought would be memorable. For instance, in one script the confederate paid for a pack of

³⁹ Lamberts, K., & Freeman, R. P. J. (1999). Building object representations from parts: Tests of a stochastic sampling model. *Journal of Experimental Psychology: Human Perception and Performance*, 25, 904–926.

⁴⁰ Reynolds, J.K. & Pezdek, K. (1992). Face recognition memory: The effects of exposure duration and encoding instruction. *Applied Cognitive Psychology*, 6, 279-292.

⁴¹ Read, J.D. (1995). The availability heuristic in person identification: The sometimes misleading consequences of enhanced contextual information. *Applied Cognitive Psychology*, 9, 91–121.; Shapiro, P.N. & Penrod, S. (1986). Meta-analysis of facial identification studies. *Psychological Bulletin*, 100, 139-156.

⁴² Meissner, C. A., & Brigham, J. C. (2001). Thirty years of investigating the own-race bias in memory for faces: A meta-analytic review. *Psychology, Public Policy, & Law*, 7, 3-35.

⁴³ Feingold, C. A. (1914). The influence of environment on identification of persons and things. *Journal of Criminal Law and Police Science*, 5, 39–51.

⁴⁴ Platz, S., & Hosch, H. (1988). Cross-racial/ethnic eyewitness identification: A field study. *Journal of Applied Social Psychology*, 18(11), 972-984.

cigarettes all in pennies. Two hours later, experimenters presented the store clerks with three different five alternative target present photographic lineups. Consistent with the own race bias, the clerks were most accurate in identifying members of their own race. For instance, Caucasian clerks correctly recognized the Caucasian confederates 53% of the time, but correctly recognized the African American confederates only 40% of the time and Hispanic confederates only 34% of the time. Moreover, Caucasian clerks mistakenly identified Caucasian individuals who had not been in the store about 36% of the time, but mistakenly identified African Americans about 51% of the time and Hispanics about 47% of the time. These are not isolated findings from a single scientific study. A comprehensive meta-analytic review⁴⁵ of more than three dozen scientific studies showed that people are about 1.4 times more likely to correctly identify a member of their own race than a member of another race and are about 1.56 times more likely to mistakenly identify members of another race than members of their own race. These results show that cross-race identifications substantially raise the chance of a mistaken identification.

- *Witness Age.* Ms. Lawson was 71 years old when she was subjected to this attack. Normal aging produces memory deficits that impair both short term and long term retrieval of information.⁴⁶ These deficits impair meta-memory, source monitoring, recall, recognition, verbal memory, spatial memory, memory for objects, prospective memory, and recognition of faces⁴⁷. An older witness, with the best of intentions, may at times accidentally make an inaccurate identification on a facial recognition test. Studies that simulate eyewitness situations indicate that elderly eyewitnesses make 20-25% more mistaken identifications than do young adult witnesses.⁴⁸ In fact, some studies suggest that elderly witnesses who believe their memories are especially good, are actually the witnesses who are most likely to make mistaken identifications.⁴⁹

⁴⁵ Meissner, C. A., & Brigham, J. C. (2001). Thirty years of investigating the own-race bias in memory for faces: A meta-analytic review. *Psychology, Public Policy, & Law*, 7, 3-35.

⁴⁶ Light, L.L. (1991). Memory and aging: Four hypotheses in search of data. *Annual Review of Psychology*, 42, 333-376.; Poon, L.W. (1985). Differences in human memory with aging: Nature, causes, and clinical implications. In J.E. Birren & K.W. Schaie (Eds.), *Handbook of the psychology of aging* (2nd ed.). (pp. 427-462). New York, NY, US: Van Nostrand Reinhold Co.; Salthouse, T.A. & Babcock, R.L. (1991). Decomposing adult age differences in working memory. *Developmental Psychology*, 27, 763-776.

⁴⁷ Light, L.L. (1991). Memory and aging: Four hypotheses in search of data. *Annual Review of Psychology*, 42, 333-376.;

⁴⁸ Searcy, J., Bartlett, J., & Memon, A. (2000). Influence of postevent narratives, line-up conditions and individual differences on false identification of young and older eyewitnesses. *Legal and Criminological Psychology*, 5, 219-235.; Searcy, J., Bartlett, J., Memon, A., & Swanson, K. (2001). Aging and lineup performance at long retention intervals: Effects of metamemory and context reinstatement. *Journal of Applied Psychology*, 86, 207-214.; Yarmey, A. D. (1996). The elderly witness. In S. L. Sporer, R. S. Malpass, & G. Koehnken (Eds.), *Psychological issues in eyewitness identification* (pp. 259-278). Mahwah, NJ: Erlbaum.

⁴⁹ Searcy, J., Bartlett, J., Memon, A., & Swanson, K. (2001). Aging and lineup performance at long retention intervals: Effects of metamemory and context reinstatement. *Journal of Applied Psychology*, 86, 207-214.

- *Stress.* The attack that was suffered by Ms. Lawson was brutal. Not only was she physically and sexually assaulted, but she also witnessed a physical assault of someone close to her. This attack is the sort to have produced traumatic levels of stress. Stress is a biological response of the body to extremely dangerous situations. The biological response of the body involves activation of the sympathetic nervous system – the fight or flight system. This activation has psychological consequences in terms of the brain's attention, control, and memory systems. It has been proposed that it is important to distinguish between the cognitive and somatic components of the stress response.⁵⁰ Cognitive stress refers to thoughts related to worry about what is going to happen in a situation. Somatic stress refers to the physiological state that accompanies stress (e.g., feeling one's heart racing). According to the *catastrophe model of anxiety* when cognitive anxiety is high, moderate levels of somatic anxiety should increase performance. However, when somatic anxiety gets too high, a breaking point is reached and the system falls apart resulting in extremely poor memory performance. The majority of studies that have compared eyewitness identification under high and low stress conditions have found that extreme stress negatively affects eyewitness identification accuracy.⁵¹

Indicia of Reliability

The final class of variables that I would have advised counsel about are indicia of reliability. By indicia of reliability I am referring to variables that have been hypothesized to be correlated with accuracy, but are not typically seen as being causal antecedents of accuracy. The most studied of these is eyewitness confidence. Eyewitness psychologists have been interested in the relationship between a witness's expressed confidence and that witness's testimonial accuracy for several decades.⁵² This interest has been driven by the important role eyewitness

⁵⁰ Deffenbacher, K. A. (1994). Effects of arousal on everyday memory. *Human Performance*, 7, 141-161.

⁵¹ Brigham, J. C., Maass, A., Martinez, D., & Wittenberger, G. (1983). The effect of arousal on facial recognition. *Basic and Applied Social Psychology*, 4, 279-293.; Buckhout, R., Alper, A., Chern, S., Silverberg, G., & Slomovits, M. (1974). Determinants of eyewitness performance on a lineup. *Bulletin of the Psychonomic Society*, 4, 191-192.; Stanny, C. J., & Johnson, T. C. (2000). Effects of stress induced by a simulated shooting on recall by police and citizen witnesses. *American Journal of Psychology*, 113, 359-386.

⁵² Bothwell, R., Deffenbacher, K., & Brigham, J. (1987). Correlation of eyewitness accuracy and confidence: Optimality hypothesis revisited. *Journal of Applied Psychology*, 72, 691-695.; Brigham, J. (1988). Is witness confidence helpful in judging eyewitness accuracy?. *Practical Aspects of Memory: Current Research and Issues, Vol. 1: Memory in Everyday Life* (pp. 77-82). Oxford England: John Wiley & Sons.; Cutler, B. R., Penrod, S., & Dexter, H. R. (1990). Juror sensitivity to eyewitness identification evidence. *Law and Human Behavior*, 14, 185-191.; Deffenbacher, K. A., & Loftus, E. F. (1982). Do jurors share a common understanding concerning eyewitness behavior? *Law and Human Behavior*, 6, 15-30.; Deffenbacher, K. A. (1980). Eyewitness accuracy and confidence: Can we infer anything about their relationship? *Law and Human Behavior*, 4, 243-260.; Kassin, S. (1985). Eyewitness identification: Retrospective self-awareness and the accuracy-confidence correlation. *Journal of Personality and Social Psychology*, 49, 878-893.; Leippe, M. (1980). Effects of integrative memorial and cognitive processes on the correspondence of eyewitness accuracy and confidence. *Law and Human Behavior*, 4, 261-274.; Luus, C. A. E., & Wells, G. L. (1994). The malleability of eyewitness confidence: Co-witness and perseverance effects. *Journal of Applied Psychology*, 79, 714-724.; Sporer, S. (1992). Post-dicting eyewitness accuracy: Confidence, decision-times and person descriptions of choosers and non-choosers. *European Journal of Social Psychology*, 22, 157-180.; Sporer, S. (1993). Eyewitness identification accuracy, confidence, and decision times in

confidence plays in the criminal justice system. Jury simulation studies have shown that the expressed confidence of an eyewitness is the single biggest predictor of whether a juror will trust the witness's identification.⁵³ Eyewitness psychologists have also been interested in the relationship between confidence and accuracy because courts rely on witness confidence in ruling on motions to suppress lineups.⁵⁴ Other potential indicia of reliability have also been examined by eyewitness scientists. These include the time taken by the witness to make the identification, self-reported decision strategies used by the witness, and the match between the eyewitness's description and the person eventually identified in the lineup. Had I been hired in the present case, circa 2001, I would have provided defense counsel with the following information:

- *Confidence / Accuracy Relationship.* Research on the relationship between eyewitness confidence and accuracy is mixed.⁵⁵ Some studies find small to moderate correlations between confidence and accuracy and other studies finding little or no correlation.⁵⁶ The best evidence indicates that under ideal circumstances, contemporaneous statements of confidence can provide some useful information about witness accuracy, however statements of confidence can also be influenced by extraneous factors such as feedback given subsequent to the identification or cues given prior to the identification.⁵⁷ When conditions are not ideal,

simultaneous and sequential lineups. *Journal of Applied Psychology*, 78, 22-33.; Wells, G. L., & Bradfield, A. L. (1998). "Good, you identified the suspect": Feedback to eyewitnesses distorts their reports of the witnessing experience. *Journal of Applied Psychology*, 83, 360-376.; Wells, G. L., & Murray, D. M. (1984). Eyewitness confidence. In G. L. Wells & E. F. Loftus (Eds.), *Eyewitness Testimony: Psychological Perspectives* (pp. 155-170). New York: Cambridge University Press.; Wells, G. L., Lindsay, R. C. L., & Ferguson, T. J. (1979). Accuracy confidence and juror perceptions in eyewitness identification. *Journal of Applied Psychology*, 64, 440-448.

⁵³ Cutler, B. R., Penrod, S., & Dexter, H. R. (1990). Juror sensitivity to eyewitness identification evidence. *Law and Human Behavior*, 14, 185-191.; Fox, S. G., & Walters, H. A. (1986). The impact of general versus specific expert testimony and eyewitness confidence upon mock juror judgment. *Law and Human Behavior*, 10, 215-228.; Lindsay, R. C. L., Wells, G. L., & Rumpel, C. (1981). Can people detect eyewitness identification accuracy within and between situations? *Journal of Applied Psychology*, 66, 79-89.; Wells, G. L., Lindsay, R. C. L., & Ferguson, T. J. (1979). Accuracy confidence and juror perceptions in eyewitness identification. *Journal of Applied Psychology*, 64, 440-448.

⁵⁴ e.g., *Neil v. Biggers*, 409 U.S. 188 (1972).; *Manson v. Brathwaite*, 432 U.S. 98 (1977).; *Kimble v. State*, 331 Ark. 155, 959 S.W.2d 43 (1998).

⁵⁵ Luus, C.A.E., Wells, G.L. (1994). Eyewitness Identification Confidence. *Adult Eyewitness Testimony Current Trends and Developments*. 349-361.; Penrod, S. D., & Cutler, B. L. (1995). Witness confidence and witness accuracy: Accessing their forensic relation. *Public Policy, Psychology & Law*, 1, 817-845.

⁵⁶ Bothwell, R. K., Deffenbacher, K. A., & Brigham, J. C. (1987). Correlation of eyewitness accuracy and confidence: Optimality hypothesis revisited. *Journal of Applied Psychology*, 72, 691-695.; Wells, G. L., & Murray, D. M. (1984). Eyewitness confidence. In G. L. Wells & E. F. Loftus (Eds.), *Eyewitness testimony: Psychological perspectives* (pp. 155-170). New York: Cambridge University Press.

⁵⁷ Penrod, S. D., & Cutler, B. L. (1995). Witness confidence and witness accuracy: Accessing their forensic relation. *Public Policy, Psychology & Law*, 1, 817-845. ;Sporer, S. (1992). Post-dicting eyewitness accuracy: Confidence, decision-times and person descriptions of choosers and non-choosers. *European Journal of Social Psychology*, 22, 157-180; Wells, G. L., & Murray, D. M. (1984). Eyewitness confidence. In G. L. Wells & E. F. Loftus (Eds.), *Eyewitness testimony: Psychological perspectives* (pp. 155-170). New York: Cambridge University Press.; Wells, G. L., & Bradfield, A. L. (1998). "Good, you identified the suspect": Feedback to eyewitnesses distorts their reports of the witnessing experience. *Journal of Applied Psychology*, 83, 360-376.; Wells, G.L. & Bradfield, A.L.

or when the confidence judgment is made retrospectively (see below), confidence can be a very poor predictor of accuracy.⁵⁸

- *Retrospective Confidence and Post-Identification Feedback.* During the court proceedings in this case, Ms. Lawson testified that she was absolutely confident in her identification. To place this testimony in context, it is important to distinguish between (a) a witness's contemporaneous confidence at the time of the identification and (b) a witness's retrospective confidence subsequent to the identification. Retrospective confidence is highly malleable and can be influenced greatly by feedback provided to the witness. When a witness learns that the person he or she identified is the person the police suspect of the crime, the witness's stated confidence can increase by as much as 50%.⁵⁹ By the time the witnesses in the present case provided their testimony under oath, they had learned that the person they selected had been charged with the crime. The witnesses' explicit in court statements of confidence were thus made subsequent to potentially contaminating confirming feedback.
- *Unintentional Feedback at the Time of the Identification.* Mr. Ouellette provided a statement of confidence shortly after the identification. "...I am 100% sure that the person that I picked out of the line-up was the one sitting on the steps of the apartment talking to DOROTHY LAWSON."⁶⁰ It is unclear whether this statement of confidence was influenced by post-identification feedback. When a lineup administrator is aware of which lineup member is the suspect, he or she may inadvertently provide witnesses with non-verbal cues regarding their choice.⁶¹ Because this feedback may take the form of subtle non-verbal cues, neither the witness nor the investigator may even be aware that feedback was given. This sort of unintentional feedback given at the time of the identification has been shown to artificially inflate witness confidence by as much as 40%.
- *Factual Record Relevant to Contemporaneous Confidence.* Given the above considerations, it is important to consider evidence available in the record which may give an indication of witness certainty at the time of the identification. The following factors are specifically relevant to the statements of confidence made by Ms. Lawson.

(1999). Distortions in eyewitnesses' recollections: Can the postidentification-feedback effect be moderated? *Psychological Science*, 138-144.

⁵⁸ Bothwell, R. K., Deffenbacher, K. A., & Brigham, J. C. (1987). Correlation of eyewitness accuracy and confidence: Optimality hypothesis revisited. *Journal of Applied Psychology*, 72, 691-695.

⁵⁹ Wells, G. L., & Bradfield, A. L. (1998). "Good, you identified the suspect": Feedback to eyewitnesses distorts their reports of the witnessing experience. *Journal of Applied Psychology*, 83, 360-376.; Wells, G.L. & Bradfield, A.L. (1999). Distortions in eyewitnesses' recollections: Can the postidentification-feedback effect be moderated? *Psychological Science*, 138-144.

⁶⁰ Interview of Kenneth Ouellette by S.A. Michael Daley, April 5, 2001.

⁶¹ Garrioch, L., & Brimacombe, C. A. E. (2001). Lineup administrators' expectations: Their impact on eyewitness confidence. *Law and Human Behavior*, 25, 299-315.

- *Verbal Hedges.* Verbal hedges are defined in psycholinguistics as "...word forms that reduce the force of an assertion, allow for exception, or avoid commitment (e.g., sort of, maybe, or I guess)."⁶² Ms. Lawson's statements, at the time she identified Mr. Isom from the photoarray, contained verbal hedges. For instance, Arkansas State Police Investigator McKelvey's notes on April 16, 2001 indicate that Ms. Lawson stated, "I think he is the one that came in the house. It looks like him. He's the one that did that to us." Note that the statement includes two verbal hedges, "I think" and "It looks like". Psycholinguistic research indicates that verbal hedges such as these indicate low levels of confidence⁶³ and are associated with less accurate memories.⁶⁴
- *Evidence of Indecision.* In the same case notes, Investigator McKelvey notes that after making the above statements, Ms. Lawson asked to look at the lineup again. Asking to look at the lineup a second time is consistent with a lack an immediate recognition of the perpetrator. Upon looking at the lineup for the second time, Ms. Lawson states "it's 1 or 3". The most straightforward linguistic analysis of this statement is: Ms. Lawson was actively considering two possibilities, 1 or 3. The logical implications of this interpretation are (a) If one is actively considering two possibilities, then one is not certain of either, (b) Ms. Lawson was actively considering two possibilities, (c) therefore Ms. Lawson decision was not made with certainty.
- *Evidence of Relative Judgments.* Eyewitness researchers have distinguished between relative and absolute judgment strategies.⁶⁵ In a *relative judgment strategy* the witness compares and contrasts the members of the lineup, and picks the lineup member that is closest to his or her memory, relative to the other lineup members. The problem with such a strategy is that there will always be some member of a lineup who is the closest in appearance to the culprit, even if everyone in the lineup is innocent.⁶⁶ In an *Absolute judgment strategy* the witness compares each lineup member independently to his or her memory, without reference to the other lineup

⁶² Leippe, M. R., Manion, A. P. and Romanczyk, A. (1992). Eyewitness persuasion: How and how well do fact finders judge the accuracy of adults' and children's memory reports? *Journal of Personality and Social Psychology*, 63, 181-197.

⁶³ Erickson, B., Lind, E. A., Johnson, B. C., & O'Barr, W. M. (1978). Speech style and impression formation in a court setting: The effects of "powerful" and "powerless" speech. *Journal of Experimental Social Psychology*, 14, 266-279.; Whitley, B. E., Jr., & Greenberg, M. S. (1986). The role of eyewitness confidence in juror perceptions of credibility. *Journal of Applied Social Psychology*, 16, 387-409.

⁶⁴ Leippe, M. R., Manion, A. P. and Romanczyk, A. (1992). Eyewitness persuasion: How and how well do fact finders judge the accuracy of adults' and children's memory reports? *Journal of Personality and Social Psychology*, 63, 181-197.; Leippe, M. R., Romanczyk, A. and Manion, A. P. (1991). Eyewitness memory for a touching experience: Accuracy differences between child and adult witnesses. *Journal of Applied Psychology*, 76, 367-379. Pickel, K. (1999). Distinguishing eyewitness descriptions of perceived objects from descriptions of imagined objects. *Applied Cognitive Psychology*, 13, 399-413.; Schooler, J. W., Gerhard, D. and Loftus, E. F. (1986). Qualities of the unreal. *Journal of Experimental Psychology: Learning, Memory, & Cognition*, 12, 171-181.

⁶⁵ Wells, G. L. (1984). The psychology of lineup identifications. *Journal of Applied Social Psychology*, 14, 89-103.

⁶⁶ Wells, G. L., Small, M., Penrod, S. J., Malpass, R. S., Fulero, S. M., & Brimacombe, C. A. E. (1998). Eyewitness identification procedures: Recommendations for lineups and photospreads. *Law and Human Behavior*, 22, 603-647.

members.⁶⁷ If none of the lineup members matches the witness's memory, the witness rejects the lineup. Scientific research has demonstrated that relative judgment strategies are associated with an increased risk of mistaken identifications.⁶⁸ Ms. Lawson's statement (i.e., "it's 1 or 3") makes it clear that she was comparing and contrasting lineup members – i.e., using a relative judgment strategy -- at the time of her initial identification.

- *Witness Decision Time.* Testimony from Special Agent Woodward indicated that Ms. Lawson took approximately six minutes to make her identification from the photospread. This long decision time is consistent with a witness who is hesitant and uncertain. Eyewitness researchers have empirically examined the relationship between decision time and witness accuracy, and have consistently found that accurate witnesses tend to make their choices relatively quickly – in a matter of seconds not minutes.⁶⁹ In one prototypical peer reviewed study, researchers showed volunteers a videotape of a purse snatching.⁷⁰ The volunteers were then shown a lineup. Witnesses who made their choice in under 15 seconds were correct close to 70% of the time. Witnesses who took more than 30 seconds to make a choice were correct only around 18% of the time.
- *Consistency of Witness Description to Lineup Choice.* It has been argued that the consistency between a witness's description and the witness's eventual choice from a lineup is a useful indication of whether the witness has made an accurate identification.⁷¹ There are two points to consider in this regard: (1) Has this purported relationship between a witness' description and the accuracy of that witness' identification been empirically validated in scientific studies? and (2) Were the witnesses' descriptions in this case actually consistent with the person chosen from the photo-arrays? With regards to the first question, scientific studies that have examined the relationship between witness descriptions and identification accuracy have found that the correlation between these variables is quite small in most circumstances.⁷² Put simply, the fact that a witness' description is consistent with the

⁶⁷ Wells, G. L. (1984). The psychology of lineup identifications. *Journal of Applied Social Psychology*, 14, 89-103.

⁶⁸ Dunning, D., & Stern, L. (1994). Distinguishing accurate from inaccurate eyewitness identifications via inquiries about decision processes. *Journal of Personality and Social Psychology*, 67, 818-835.

⁶⁹ Dunning, D., & Stern, L. (1994). Distinguishing accurate from inaccurate eyewitness identifications via inquiries about decision processes. *Journal of Personality and Social Psychology*, 67, 818-835. ; Smith, S., Lindsay, R., & Pryke, S. (2000). Postdictors of eyewitness errors: Can false identifications be diagnosed? *Journal of Applied Psychology*, 85, 542-550.; Sporer, S. (1992). Post-dicting eyewitness accuracy: Confidence, decision-times and person descriptions of choosers and non-choosers. *European Journal of Social Psychology*, 22, 157-180.; Sporer, S. (1993). Eyewitness identification accuracy, confidence, and decision times in simultaneous and sequential lineups. *Journal of Applied Psychology*, 78, 22-33.

⁷⁰ Smith, S., Lindsay, R., & Pryke, S. (2000). Postdictors of eyewitness errors: Can false identifications be diagnosed? *Journal of Applied Psychology*, 85, 542-550.

⁷¹ *Kimble v. State*, 331 Ark. 155, 959 S.W.2nd 43 (1998); *Neil v. Biggers*, 409 U.S. 188 (1972).

⁷² Goldstein, A. G., Johnson, K. S., & Chance, J. E. (1979). Does fluency of face description imply superior face recognition? *Bulletin of the Psychonomic Society*, 13, 15-18.; Gwyer, P., & Clifford, B. R. (1997). The effects of the cognitive interview on recall, identification, confidence and the confidence/accuracy relationship. *Applied Cognitive*

witness' eventual lineup choice does not provide a particularly strong indication that the lineup choice is accurate. There are five reasons why this is the case:

- Cognitive psychologists make a distinction between recall memory and recognition memory.⁷³ Recall involves the ability to produce information, often in the form of a description, such as when one takes an essay test in school. Recognition involves the ability to select a previously encountered item from a group of items, such as in a multiple choice test in school. Scientists who study memory have established that recall and recognition are dissociable types of memory. That is, they are often not correlated with one another, they rely on partially distinct brain mechanisms, and they are responsive to different variables.⁷⁴ Using recall – i.e., a verbal description of a suspect – to predict accuracy of recognition – i.e., a lineup choice -- is not likely to produce very good results.
- Research on face perception indicates that accurate face recognition depends on the holistic processing of the configural relations among facial features.⁷⁵ That is, faces are recognized as Gestalts, not as collections of independent features. Verbal descriptions of faces tend to focus on individual facial features and are therefore not very diagnostic with regards to whether the individual has encoded into memory the configural information that is so crucial for accurate face recognition.⁷⁶
- Verbal descriptions can serve as a kind of post-event information that becomes incorporated into the witness's visual memory.⁷⁷ Essentially, when viewing the lineup, the witness remembers his or her own description and then picks the member of the lineup that is closest to that description. Because the witness is relying on his or her own description to select someone from the lineup, it is not surprising that the

Psychology, 11, 121-145.; Pigott, M. A., & Brigham, J. C. (1985). Relationship between accuracy of prior description and facial recognition. *Journal of Applied Psychology*, 70, 547-555.; Wells, G. L. (1985). Verbal descriptions of faces from memory: Are they diagnostic of identification accuracy. *Journal of Applied Psychology*, 70, 619-626.

⁷³ Loftus, G.R. & Loftus, E.F. (1976). *Human Memory: The Processing of Information*. New York: Routledge.

⁷⁴ Balota, D., & Neely, J. (1980). Test-expectancy and word-frequency effects in recall and recognition. *Journal of Experimental Psychology: Human Learning and Memory*, 6, 576-587.; Cabeza, R., Kapur, S., Craik, F.I.M., Houle, S., & Tulving, E. (1997). Functional neuroanatomy of recall and recognition: A PET study of episodic memory. *Journal of Cognitive Neuroscience*, 9, 254-265.; Kintsch, W. (1968). Recognition and free recall of organized lists. *Journal of Experimental Psychology*, 78, 481-487.; Tulving, E., & Wiseman, S. (1975). Relation between recognition and recognition failure of recallable words. *Bulletin of the Psychonomic Society*, 6, 79-82.

⁷⁵ Bruce, V., Doyle, T., Dench, N. & Burton, M. (1991). Remembering facial configurations. *Cognition*, 38, 109-144.; Diamond, R. & Carey, S. (1986). Why faces, are and are not special: An effect of expertise. *Journal of Experimental Psychology: General*, 115, 107-117.; Farah, M.J., Wilson, K.D., Drain, M. & Tanaka, J.N. (1998). What is "special" about face perception? *Psychological Review*, 105, 482-498.; Yin, R.K. (1969). Looking at upside-down faces. *Journal of Experimental Psychology*, 81, 141-145.

⁷⁶ Sporer, S. L. (1989). Verbal and visual processes in person identification. In H. Wegener, F. Loesel, & J. Haisch (Eds.), *Criminal behavior and the justice system: Psychological perspectives* (pp. 303-324). New York: Springer.

⁷⁷ Meissner, C. A., Brigham, J. C., & Kelley, C. M. (2001). The influence of retrieval processes in verbal overshadowing. *Memory and Cognition*, 29, 176-186.

person he or she chooses from the lineup matches that description – regardless of whether the person chosen is actually the perpetrator of the crime. Thus, the match between a description and the person eventually chosen from the lineup, is not especially diagnostic with regards to whether the lineup choice is correct.

- Another reason why the match between a description and a lineup choice is not likely to be a very good predictor of accuracy is that police typically develop particular individuals as suspects partly because they match the description of the witness. Moreover, in a well constructed lineup the foils are chosen to match the description of the witness.⁷⁸ Thus, *anyone* the witness selects from a lineup – regardless of whether that person is guilty -- is likely to be *somewhat* similar to the description provided by the witness.
- A final reason why the match between a description and an eventual lineup choice is not a very good predictor of accuracy is that witness descriptions often tend to be relatively vague and include few details.⁷⁹ Because descriptions tend to be vague, they tend to include a few very obvious features, and those obvious features are not sufficient to allow for the unique identification of an individual culprit.

- *Errors of Omission.* In considering whether a witness description is consistent with the witness's lineup choice, it is fruitful to consider not only errors of commission, but also errors of omission. In particular, it is reasonable to ask whether there are aspects of the suspect's appearance which are particularly salient or distinctive, that one might ordinarily expect a person to notice and mention, but that were not mentioned by the witnesses.

According to basic research in cognitive psychology, our representations of people and events are based on knowledge structures known as schemas.⁸⁰ Schemas are mental representations that provide detailed information about prototypical situations. For instance, a schema for going to a restaurant includes details like sitting down, ordering a beverage, looking at the menu, ordering food, consuming food, receiving the check, paying the check, leaving a tip, and exiting the restaurant. Memory researchers have established that the most memorable aspects of any event are those aspects that violate schematic expectations.⁸¹ Schemas exist not just for events like going to a restaurant, but also for the typical

⁷⁸ Technical Working Group for Eyewitness Evidence (1999). *Eyewitness Evidence: A Guide for Law Enforcement*. Washington D.C.: United States Department of Justice.

⁷⁹ Lindsay, R. C. L., Martin, R., & Webber, L. (1994). Default values in eyewitness descriptions: A problem for the match-to-description lineup foil selection strategy. *Law & Human Behavior*, 18, 527–541.

⁸⁰ Brewer, W.F.(2000). Bartlett, functionalism, and modern schema theories. *Journal of Mind and Behavior*, 21, 37-44.

⁸¹ Bower, G.H., Black, J.B., & Turner, T.J. (1979). Scripts in memory for text. *Cognitive Psychology*, 11, 177-220.; Graesser, A.C., Gordon, S.E., & Sawyer, J.D. (1979). Recognition memory for typical and atypical actions in scripted activities: Tests of a script pointer + tag hypothesis. *Journal of Verbal Learning and Verbal Behavior*, 18, 319-332.; Lampinen, J.M., Copeland, S.M. & Neuschatz, J.S. (2001). Recollections of things schematic: Room schemas revisited. *Journal of Experimental Psychology: Learning, Memory and Cognition*, 27, 1211-1222.

appearance of human faces.⁸² Face perception researchers have found evidence that people remember particular faces by reference to how those faces differ from the prototypical face.⁸³

Based on what we know about the role schemas play in memory, I would expect that a witness's recall of a perpetrator's appearance would tend to include salient features that violate schematic expectations for a typical face. In the present case, the person identified, Mr. Isom, had features, that if seen by a witness, one would typically expect the witness to recall. Mr. Isom has a very prominent gold tooth that I would expect to be very memorable if a witness saw him with his mouth open. Mr. Isom also has a long scar that is very noticeable in current pictures of him showing his profile. If a witness saw Mr. Isom from that vantage point, appearing as he does in pictures today, I would expect that the witness would notice the scar and report it. I would especially expect a witness to describe prominent facial features such as these if he or she were specifically asked about such details.

Testimony indicates that Ms. Lawson was in close proximity to the perpetrator of this crime, for a relatively long period of time, and with good lighting. Testimony also indicates that the attacker spoke while in the victim's presence, implying that his mouth was open at least some of the time. Court transcripts indicate that Ms. Lawson was specifically asked whether her attacker had any scars or other distinguishing features and yet she did not report her attacker having either a gold front tooth or a scar on the side of his head.⁸⁴ The fact that she did not mention these details should be considered when evaluating whether the victim's description matched her identification.

Summary of Issues

In this report I was asked to describe what I would have advised counsel had I been hired as an eyewitness expert in the case of State of Arkansas vs. Kenneth Isom. The information I would have provided would have focused on the system variables, estimator variables, and indicia of reliability that would have been most relevant in to counsel in preparing pre-trial motions, examining witnesses, as well as issues that I would have been willing to provide expert testimony about.

⁸² Goldstein, A. G., & Chance, J. E. (1980). Memory for faces and schema theory. *Journal of Psychology*, 105, 47-59.

⁸³ Rhodes, G., Carey, S., Byatt, B., & Proffitt, F. (1998). Coding spatial variations in faces and simple shapes: A test of two models. *Vision Research*, 38, 2307-2321.

⁸⁴ "Q. Mr. Hall, when you're asking someone to give you a description of a suspect, you ever specifically ask them about distinguishing characteristics? Do you-- Do you have a checklist that you go down?"

A I wouldn't call it a checklist. We ask about scars, marks, tattoos, that type of thing.

Q And I assume you asked those questions in this situation?

A Correct. The only description that she gave us is what's in the, in the report, the initial interview.

Q And you're confident that she was at herself and not affected by medication when she gave this?

A She appeared to me to have all her faculties about her. She was-- She was very precise, didn't have to ask her to repeat anything. She seemed to be-- It amazed me that what she had been through how she could give a statement. Yes. (Cross Examination of Lt. Michael Hall, Arkansas State Police)"

~~DELTA REGIONAL UNIT~~
ARKANSAS DEPT. OF CORRECTION
880 EAST GAINES
DERMOTT, AR 71638
(870) 538 - 2000 PHONE (REVISED 12-16-1999)
(870) 538 - 2027 FAX (REVISED 12-16-1999)

SEND TO

State Police Dept.

FROM

DELTA Regional Unit

ATTENTION

Rodger McLemore

DATE

4/3/01

OFFICE
LOCATION

OFFICE
LOCATION

Dermott, AR

FAX NUMBER

870-367-8761

PHONE NUMBER

☐ URGENT

☐ REPLY ASAP

☐ PLEASE COMMENT

☐ PLEASE REVIEW

☒ FOR YOUR INFORMATION

TOTAL PAGES, INCLUDING COVER: 3

COMMENTS

If these aren't visible enough, please
contact me at 538-2000.

Thanks

G.WEA



ISOM, KENNETH
ADC# 92604

PHOTO TAKEN ON
02-02-01



ISOM, KENNETH
ADC# 02604

PHOTO TAKEN ON
02-07-01



ARKANSAS STATE POLICE

ASP-3
(Rev. 02/00)

Criminal Investigation Division Case Form

Date: APRIL 05, 2001
Dictated by: S.A. MICHAEL T. DALEY
Date Typed: APRIL 05, 2001
Copies to: S.A. MICHAEL T. DALEY

INTERVIEW OF WITNESS

KEN OUELLETTE

W/M DOB: [REDACTED]
[REDACTED]

158 W. COLLEGE ST.
MONTICELLO AR. 71655
(870) 367-5984
EMPLOYER:
EMPLOYMENT SECURITY DIVISION
477 S. MAIN ST.
MONTICELLO AR. 71655
(870) 367-2476

Mr. OUELLETTE was interviewed by S.A. MICHAEL T. DALEY - Arkansas State Police on April 4, 2001 beginning at 6:07 p.m. at the Monticello Police Department. Mr. OUELLETTE'S statement is as follows:

On April 2, 2001 between 7:00 p.m. and 7:15 p.m. I was driving down Dilliard St. DOROTHY LAWSON was standing in the yard of the duplex next door to the mobile home where she lives. She was standing near the front corner of the northern most apartment of the duplex. She was standing there talking to a black man who was sitting on the steps of the apartment. The black man that she was talking to was the man that I picked out of the line-up and his picture was in the #1 position. I don't know the man. Before today I had not known KEN ISOM. Yesterday, I was here talking to ROGER MCCLEMORE of the Arkansas State Police about another matter. I saw the name KEN ISOM on a piece of paper that ROGER had along with a very dark picture. I told ROGER then it looked like the person that I had seen talking to DOROTHY LAWSON on Monday evening. But, I wasn't sure because the picture was so dark. It looked like it was a faxed picture. But, I am 100% sure that the person that I picked out of the line-up was the one sitting on the steps of the apartment talking to DOROTHY LAWSON. I am not sure about what he was wearing. He was a big framed person and dark complected. I'm not sure how tall he was because he was sitting down. His hair was short but he wasn't bald either. There was no one else around them.

FILE NUMBER: CID-B-00484-01

CRIME: HOMICIDE

PAGE 02 OF 02

INTERVIEW OF WITNESS, KEN OUELLETTE

I have known DOROTHY LAWSON since 1989 but I didn't know her name. I used to bowl with BILL BURTON and I thought that they were married because they were always together.

When I heard the call go across the scanner for CID to come to the residence yesterday morning I rode over to the area. When I arrived and saw that it was at BILL and DOROTHY'S house I told Sgt. DON KING of the Monticello Police Department about seeing her the evening before standing outside talking to a black man.

I am an auxiliary Police Officer for Monticello P.D. and have been since May 2000.

I prepared a handwritten statement based on the information provided to me by OUELLETTE and questions that I asked OUELETTE. OUELLETTE then reviewed and signed the statement, initialing all corrections and all pages of the statement. This statement has been enclosed and made a permanent part of this case file.

FILE NUMBER: CID-B-00484-01

CRIME: HOMICIDE

Ken Ouellette
w/m DOB: [REDACTED]
[REDACTED]

4/4/01 6:07pm
@ Monticello P.D.

158 W. College St.
Monticello AR. 71655
(870) 367-5984

Emp:

Employment Security Dept
477 S. Main St.
Monticello AR. 71655
(870) 367-2476

KPO On April 2, 2001 between 7:00pm and 7:15pm I was KPO
Driving down Dilliard St. Dorothy Lawson was standing in
the yard of the Duplex next door to the Mobile Home where
she lives. She was standing near the Front Corner of the
Northern most Apartment of the Duplex. She was standing there
talking to a black man who was sitting on the steps of the
Apartment. The Black man that she was talking to was the man
that I picked out of the lineup and his picture was in the
#1 position. I don't know the man. Before Today I had not
known Ken Isom. Yesterday, I was here talking to
Roger McDermore of the Arkansas State Police About another
matter. I ~~the~~ ^{KPO} saw the name Ken Isom on a piece of paper
that Roger had along with a very dark picture. I told Roger
then that it looked like the person that I had seen talking to
Dorothy Lawson on Monday Evening. But, I wasn't sure
because the picture was so dark. It looked like it was
KPO a faxed picture. But 85% am 100% sure that the person KPO

KRD that I picked out of the line-up was the one sitting on the ~~the~~ steps of the apartment talking to Dorothy Lawson. I am not sure about what he was wearing. He was a big framed person and dark complected. I'm not sure how tall he was because he was sitting down. His hair was short but he wasn't bald either. There was no one else around them.

I have known Dorothy Lawson since 1989 but I didn't know her name. I used to bowl with Bill Burton and I thought that they were married because they were always ~~late~~ together.

When I heard the call go across the scanner for CID to come to the residence yesterday morning I rode over to the area. When I arrived and saw that it was at Bill and Dorothy's house I told Sgt. Don King of the Monticello Police Dept about seeing her the evening before standing outside talking to a black man.

I am an Auxilliary Police officer for Monticello P.D. and have KRD been since May 2000. KRD

Ken Dullith 44-01

Time: _____

STATE CRIME LABORATORY
TELEPHONE CONVERSATION RECORD

Date: 6/10/17
1-775/51-

Time: _____

Caller: Det. [Signature] W-W

Agency: _____

Agency Phone Number: _____

Crime Lab Case Number: _____

Conversation Notes: _____

~~_____~~

John Dement

870-367-3411

I called him back and told him
I got a partial DNA profile from the
hair from the PAC. I also told him I
would have to do a 21 to maybe help
get more information b/c the state
DNA database is 12 thousand. From the
three loci that ^(found 14) are consistent
with the suspect's known
DNA sample.

8001-67-06295

MSW
7-6-01

0-11-00095-12-1111

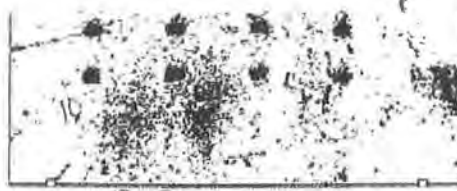
36 & 44

5
7-6-01



9001-111-06295 4/11/01

3812 44



10
 100
 100
 100
 100

MS
 7-6-61

CI-117-00215
 100 000

For Terry

STATE CRIME LABORATORY
TELEPHONE CONVERSATION RECORD

Date: 5-30-01

Time: 4:00PM

Caller: John DeMent

Agency: Monticello PD

Agency Phone Number: 870 - 367 - 3411

Crime Lab Case Number: 01-117-06295

Conversation Notes: Victim of rape who witnessed the homicide developed brain bloodclots. Need to know when DNA can be done, hopefully very soon, on the hair Lisa Channel found in rape kit and on the amylase I found on the bra of the severely injured victim. Advised I would check w/ someone & call back. E.V.

They are considering going to the victim's hospital & taking a deposition from her while she is alive & capable of conversation, in case she takes turn for the worse

5-31-01

Rust# Left messages.

Victim is hospitalized - may not survive. Pros. would like DNA soon in case victim does not make it.

JK

Defendant's Exhibit Number One

Letter

(Attached To Original Only)

(1)

KEVIN GREEN WAS LOCKED UP IN JAIL WITH US IN C-1 WHILE IN JAIL HE AND A MAN NAMED TODD BOWL'S WAS IN THE SAME CELL GREEN TOLD BOWL'S ABOUT SOME THINGS THAT HAD TO BE TRUE BECAUSE TODD BOWL'S WAS FROM JACKSON MISSISSIPPI HE DIDNT KNOW ANYONE HERE

HE CAME OUT ON THE YARD ONE MORNING STATING THAT GREEN (OUT OF KNOW WHERE) STARTED TELLING HIM ABOUT A MURDER THAT WENT ON IN TOWN HE STATED GREEN SMOKE CRACK WITH A MAN THAT EITHER (DID THE CRIME OR NEW SOMETHING ABOUT IT) GREEN STATED THE MAN HAD A BAD CUT IN HIS HAND GREEN SAID THE ONLY WAY HE WAS GOING TO TELL POLICE WAS FOR THEM TO GIVE HIM AN O.R. Bond AND LET HIM OUT OF JAIL FREE GREEN STATED THE MAN'S NAME IS JERRY DON AUERY AUERY HAS ALREADY BE CONVICTED OF (RAPE : BURGLARY : THEFT OF PROPERTY)

Todd said HE DIDNT KNOW WHAT TO DO WE TOLD HIM TO FILL OUT A REQUEST FORM TO SPEAK WITH A DETECTIVE Todd DOES NOT KNOW JERRY AUERY BUT HE KNOW'S THE NAME

THE ONLY WAY HE KNEW GREEN THEY WAS LOCKED UP IN C-1



(2)

Todd Bowl's got transfered to JACKSON MISS. HE IS SUPPOST TO RETURN ON BACK CHILD SUPPORT

HE SAID WHEN HE GET BACK HE WOULD MAKE A STATEMENT ON WHAT GREEN SAID ABOUT AUERY.

I BOBBY CHERRY PERSONALLY HEAR ALL THIS AND STARTED REQUESTING TO SPEAK WITH A DETECTIVE FOR SOME REASON KNOW BODY WANT'S TO HEAR WHAT ME AND SEVERAL INMATES HAVE TO SAY WE HAVE FILED OUT NUMOURS REQUEST FORM'S TO SPEAK TO SHERIFF OR SOME BODY BUT KNOW RESPOND TO OUR REQUEST

WE FEEL STRONGLY THAT WHAT INFORMATION WE HAVE NEED TO BE HEARD AND WE WILL DO WHAT EVER IT TAKES (IN JAIL OR OUT) WE WILL GET OUR VOICE HEARD ONE WAY OR ANOTHER

Defendant's Exhibit Number Two
Letter

(Attached To Original Only)

To Who It may Concern

I Steven Kinzabow has written this statement concerning information Todd Bawls informed me of Kevin Green admitting of having knowledge of the killing that happen on Dillard Street.

Kevin Green and Todd Bawls was housed in the same cell with is C-1. Todd said on the night Green had talked to him they were locked Down alone together.

Bawls said Green, just out of the blue told him about the time Green wore a wire on me (Kinzabow) on the Days Inn Parking Lot, Monticello. I knew at this time what Bawls was telling me was true because Green had wore a wire on me at the Days Inn.

After Bawls informed me about Green wearing a wire on me, Bawls went on to say Green started talking about Smoking Crack with a man named Jerry Don Avery. Green said Avery admitted to going in on a old cople and killing the man, Raping his wife, and Robbed there home on Dillard Street. Green also told Bawls that Avery had a nasty cut on his hand. Todd said Green said he was going to notify the Police when the time was Right. Green also stated, He had to figure how to use Averys Crime to Get him a OR Bond

Bawls was about to be transported to Jackson Mississippi Jail and was afraid if he told this information he would be held up. Bawls ASKED me (Kinzabow)

(COVER)



To Report these Crims and I told him I would. Bowls went on to say if the Police needed him for any thing to get in touch and He would do what he can.

Green also told Bowls that him and Marcus Young Broke into the home of Shawn Trantham and stole some Items Including a High powered Rifle.

I tried for about 5 days to get in touch with the Police about this matter.

I wrote ~~the~~ Request, Requesting to talk to the Police in this matter.

I only got one Request back.

I Passed notes to the Jailers and told the Jailers on 3 Different occasions By mouth. I even wrote the Sheriff a personal Letter the next day, I never heard from the Sheriff. It was about five Days befor I Heard from the Police.

I was Called out to talk to Scott Woodard of the ASP concerning my Request Woodard ~~asked~~ AS the information

I was giving him wasent Important. He acted as he was in a hurry, He Dident ask Questions like I thought he would

This Stabement is true to the best of my knolage

X Ken Lingo

Defendant's Exhibit Number Three

Letter

(Attached To Original Only)

7/1/01

My Name's Todd Bowles I was in the Cell with Kevin Green, He and I were talking one night in Cell After Lock Down, He started talking About the Murder of a Old Man and His wife that was almost killed Also. He said that ZERO Didnt Do it, that a Man By the Name Jerry Avery Did it. Avery+Kevin was Smoking Crack and Avery told Kevin that He's the one that Did the Crime to them People.

Todd Bowles



Defendant's Exhibit Number Four

Letter

(Attached To Original Only)

To Who It may Concern

I Steven Kinzabow am writing
this statement about Kevin Greens
Actions on April 30, 2007

Green went to Court on the morning of
April 30, 2007. When Green came back
from Court he said they were trying to
give him five years for a Possession
of Controlled Substance.

Shortly later Green left out of C- Pod,
where we are all being housed after
about fifteen minutes Green returned
saying he was going to bond out that
day. Shortly after Green was called out
again. Green returned ten to fifteen
minutes later and started getting
his stuff together to leave. He said
his Good bys and was gone.

On April 30, 2007 I was Locked Down
in C-2 which has a small window
looking out at the parking lot in front
of the Jail. I seen Green, woodard,
Frank Spain, and a bald man leave in
a small Green Car. After about thirty
minutes the small Green Car returned
with all four still in the car. They get
out of the Green car and stand around
for minutes. Green carried himself
like he was one of them by patting
woodard on the back and getting in
woodards car and then riding off with
him. The Bald man left in the
Green car by himself.



A State Trapper had Pulled up
in his car about that time.
Frank Spain stayed behind talking
to the trapper

This State is True
To the best of my knowledge

X Steve Kanger

Arkansas Public Defender Commission

G. B. "BING" COLVIN, III

10th District **Public Defender**

Phone: (870) 460-6280 Fax: (870) 460-6224

P.O. Box 564 Monticello, AR 71657

Counites Ashley, Bradley, Chicot, Desha and Drew

Deputy Public Defenders: Gary W. Potts, Timothy W. Bunch, David W. Harrod, Joseph P. Mazzanti

December 11, 2001

Reference: State vs. Ken Isom
Drew cr-2001-52-2

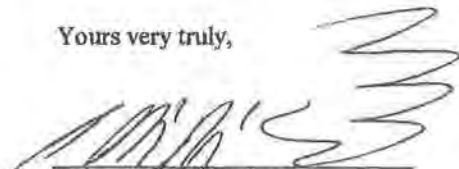
Dear Mr. Deen;

Please be advised that the only witnesses we have for sure in the guilt/innocence phase of the trial are as follows,

1. Thomas Deen, Prosecuting Attorney's Office, Dermott, AR
2. Hon. David Cason, Prosecuting Attorney's Office, Dermott, AR
3. Hon. Frank Spain, Prosecuting Attorney's Office, Dermott, AR
4. Special Agent, Scott Woodward, ASP, Warren, Ar

Please be advised witness 1 and 2 will be questioned as to their observations/findings during inspection of the crime scene. Witness Spain will be questioned about search related to this case with A. Green and D. Trotter originating at the Drew Detention Facility while defendant Isom was incarcerated. Woodward will be questioned concerning finger nails of both alleged victims.

Yours very truly,



G. B. "Bing" Colvin III

GB Colvin/ss

THIS IS A DEATH PENALTY CASE

Drew County Circuit Court

Filed For Record

Drew County, AR

Beverly Burks, Circuit Clerk

By [Signature]
Petitioner/Defendant,

OCT 08 2015

Kenneth Roshell Isom,

v.

CR-2001-52-1

State of Arkansas,

AM1/2/3/4/5/6/7/8/9/10/11/12PM
Respondent/Plaintiff. [Signature]

MOTION FOR JUDICIAL RECUSAL

Petitioner, Kenneth Roshell Isom, by and through undersigned counsel, respectfully moves the Honorable Sam Pope to recuse himself in this matter.

In support of this Motion, undersigned counsel states:

1. Kenneth Isom is a prisoner under sentence of death proceeding in this Court on a Petition for Writ of Error *Coram Nobis* pursuant to an order of the Arkansas Supreme Court. *Isom v. State*, 2015 Ark. 225.

2. Arkansas Constitutional Amendment 80, section 12 provides that no Judge shall “preside or participate in any case in which he or she might be interested in the outcome.” Arkansas Code of Judicial Conduct section 2.11 provides that a “judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” Where the judge is either actually biased against a party, or where there is a risk of bias, the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the judge recuse himself or herself. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 883-84 (2009); *In re Murchison*, 349 U.S. 133 (1955). Even when there is no “actual bias”

and the judge would “do their very best to weigh the scales of justice equally” recusal is required when the circumstances create an appearance of impropriety in order to preserve the “appearance of justice.” *Murchison*, 349 U.S. at 136. A judge’s decision to recuse is generally a matter of discretion which is reviewed for abuse of that discretion. *Rockport v. Malvern*, 2010 Ark. 449, 11 (2010). However, where actual bias, or a communication of bias, has been shown, the failure to recuse will warrant reversal. *Id.* Barring a showing of actual bias, the Due Process Clause requires reversal where “objective standards” demonstrate that the judicial interest is such that it poses a sufficient risk of actual bias or prejudgment. *Caperton*, 556 U.S. at 884-85.

3. Mr. Isom moves the Honorable Sam Pope to recuse on the grounds that he is actually biased against Mr. Isom, that he has communicated that bias, and at the very least there is an appearance of bias which “creates such a risk of bias or prejudgment that the Due Process Clause requires recusal.” *Rockport*, 2010 Ark. 449, 15 (2010) (Brown, J., dissenting) (citing *Caperton*, 556 U.S. 868 (2009).)

4. Mr. Isom can demonstrate that Judge Pope is actually biased against him because in his previous role as a prosecutor he took extraordinary steps to return Mr. Isom to prison after he was properly paroled.

5. On January 22, 1991, Prosecutor¹ Pope charged Mr. Isom with Theft of Property alleging that he entered Brown Calhoun's store and took a firearm on November 16, 1990. Prosecutor Pope also alleged that Mr. Isom had committed four or more prior felonies and was thus a habitual offender. (See Exhibit A.) Mr. Isom took the charges to trial and was acquitted by a jury on June 21, 1991.

6. On February 22, 1991, Prosecutor Pope again charged Mr. Isom with Theft of Property, which Mr. Isom pleaded guilty to, and on September 11, 1991, he was sentenced to 15 years in the Department of Correction. (See Exhibit B.)

7. On January 29, 1992, Prosecutor Pope again charged Mr. Isom with Burglary and Theft of Property for the alleged theft of a 35 mm camera from the Class Act Clothier. (Exhibit C.) Prosecutor Pope offered Mr. Isom a plea deal for 10 years to run consecutively with the time he was already serving. (Exhibit D.) Mr. Isom rejected the plea offer and was acquitted by a jury on October 20, 1992. (Exhibit C.)

8. Mr. Isom was paroled from the Department of Corrections in February of 1994. Prosecutor Pope was so concerned that Mr. Isom had been paroled that he took the extraordinary step of contacting the Governor's office. On March 2, 1994, Prosecutor Pope met with Jack Gillean, the Governor's Executive Assistant for Criminal Justice in an attempt to have Mr. Isom's parole rescinded.

¹ For clarity, counsel will refer to Judge Pope as Prosecutor Pope when describing his role as a prosecutor.

Jack Gillean characterized Prosecutor Pope's position in a letter following the meeting, "I know you were hoping Mr. Isom could be returned to prison. After reviewing the facts, it appears his parole was proper, and I know of no way to rescind it." (Exhibit E at 1.)

9. Although the fact that a judge previously prosecuted a defendant is insufficient under Arkansas law to require recusal (*see, e.g., Cooper v. State*, 317 Ark. 485 (1994)), the actions in this case demonstrate actual bias. Prosecutor Pope's efforts to meet with the Governor's office after Mr. Isom had already been properly paroled by the Department of Corrections, and his stated desire to "return Mr. Isom . . . to prison" went above his ordinary duties as a prosecutor and represent a sincere conviction that Mr. Isom belongs in prison regardless of his legal right to be free.

10. In addition, after the verdict was announced in Mr. Isom's case, Judge Pope was witnessed in the Courtroom high-fiving a man, presumably in celebration of the verdict. (Exhibit F.) This action creates an appearance of bias which is sufficient to warrant recusal under Arkansas Code of Judicial Conduct 2.11.

11. At the very least, all of the foregoing creates an appearance of bias which requires recusal in order to satisfy Mr. Isom's federally protected rights to due process. *See Murchison*, 349 U.S. 133 (1955.)

WHEREFORE, Mr. Isom prays that his Motion be granted and the Court
recuse from this proceeding.

Respectfully Submitted,
JENNIFFER HORAN
Federal Public Defender

By:



Julie Vandiver
Ass't. Federal Public Defender
Ark. Bar No. 2008285
1401 W. Capitol Ave. #490
Little Rock, AR 72201
(501) 324-6114
(501) 324-5630
Julie_Vandiver@fd.org

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8th day of October, 2015, the foregoing Motion was hand-delivered to Prosecuting Attorney Thomas Deen, 506 S. Main St., Monticello, Arkansas, 71655.



Julie Vandiver

THIS IS A DEATH PENALTY CASE
Drew County Circuit Court

Kenneth Roshell Isom,

Petitioner/Defendant,

v.

CR-2001-52-1

State of Arkansas,

Respondent/Plaintiff.

INDEX TO EXHIBITS TO RECUSAL MOTION

| | |
|------------|--------------------------------------------|
| Exhibit A: | Drew County Circuit Court File CR-91-7-1 |
| Exhibit B: | Drew County Circuit Court File CR 91-11-1 |
| Exhibit C: | Drew County Circuit Court File CR 91-125-1 |
| Exhibit D: | Letter to Tim Bunch from Sam Pope |
| Exhibit E: | Letter to Sam Pope from Jack Gillean |
| Exhibit F: | Declaration of Annie Isom |

CR 91-7-1

VERDICT FORM

WE THE JURY FIND KENNETH ISOM GUILTY OF THEFT.

FOREPERSON

WE THE JURY FIND KENNETH ISOM NOT GUILTY OF THEFT.

James J. Bone
FOREPERSON

FILED Circuit COURT
BREW CO. ARKANSAS
BY: Nell Camden CLERK

JUN 21 1991

AM PM
7, 8, 9, 10, 11, 12, 1, 2, 3, 4, 5, 6
▲

0291-7-1

VERDICT FORM

WE THE JURY FIND KENNETH ISOM GUILTY OF BURGLARY.

FOREPERSON

~~WE THE JURY FIND KENNETH ISOM GUILTY OF BREAKING OR ENTERING.~~

FOREPERSON

WE THE JURY FIND KENNETH ISOM GUILTY CRIMINAL TRESPASS.

FOREPERSON

WE THE JURY FIND KENNETH ISOM NOT GUILTY.

James L. Bone
FOREPERSON

FILED Circuit COURT
DREW CO. ARKANSAS
BY: Nell Camden, Clerk

JUN 21 1991
AM 7, 8, 9, 10, 11, 12, 1, 2, 3, 4, 5, 6 PM
▲

I-237

IN THE CIRCUIT COURT OF DREW COUNTY ARKANSAS

THE STATE OF ARKANSAS

vs.

Case No. CR 91-7-1

KENNETH ROSHELL ISOM
B/M DOB: [REDACTED]

INFORMATION

Filed Circuit Court
Drew County, Ark.
Jan 22 19 91 AM 3
Nell Camden
By Ray Crisp Clerk
D.C.

I, **SAM POPE**, Prosecuting Attorney within and for the Tenth Judicial Circuit of the State of Arkansas, of which **DREW** County is a part, in the name and by the authority of the State of Arkansas, on oath, accuse the defendant, **KENNETH ROSHELL ISOM** of the crime of Burglary, 5-39-201, Theft 5-36-103, committed as follows, to-wit: The said defendant on or about November 16, 1990, in **DREW** County, Arkansas, did unlawfully:

COUNT ONE: He or an accomplice did enter or remain unlawfully in an occupiable structure of another person with the purpose of committing therein theft, a **CLASS B FELONY**, the entry being into Brown Calhoun's Store.

COUNT TWO: Then and there he did knowingly take or exercise unauthorized control over an interest in the property of another person with the purpose to deprive the owner thereof, a firearm, a **CLASS C FELONY**;

against the peace and dignity of the State of Arkansas.

SAM POPE
SAM POPE, Prosecuting Attorney

I 295

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

THE STATE OF ARKANSAS

vs.

Case No. CR 91-7-1

Kenneth R. Isom

Theft of Property ACA 5-36-103, Burglary 5-39-201

AMENDED INFORMATION

I, SAM POPE Prosecuting Attorney within and for the Tenth Judicial Circuit of the State of Arkansas, of which DREW County is a part, in the name and by the authority of the State of Arkansas, on oath, accuse the defendant, Kenneth R. Isom of the crime(s) of Theft of Property ACA 5-36-103, and Burglary 5-39-201, committed as follows, to-wit: The said defendant on or about November 16, 1990, in DREW County, Arkansas, did unlawfully:

COUNT ONE: He or an accomplice did enter or remain unlawfully in an occupiable structure of another person with the purpose of committing therein theft, a CLASS B FELONY, the entry being Brown Calhoun's Store.

COUNT TWO: Then and there he did knowingly take or exercise unauthorized control over an interest in the property of another person with the purpose to deprive the owner thereof, a firearm, a CLASS C FELONY.

He has committed four (4) or more prior felonies and is subject to sentencing as an habitual offender.

FILED *Circuit* COURT
DREW CO. ARKANSAS
WELL CAMDEN, CLERK
BY: *[Signature]*

JUN 14 1991

AM 7,8,9,10,11,12,1,2,3,4,5,6 PM

all counts being against the peace and dignity of the State of
Arkansas.



SAM POPE, Prosecuting Attorney

DATE OF ARREST: December 28, 1990

ARREST TRACKING NUMBER: 004746

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

THE STATE OF ARKANSAS

VS

NO. CR 91-7-1

KENNETH ROSHELL ISOM, DEFENDANT

CRIMINAL SUMMONS

TO THE SHERIFF OF DREW COUNTY:

You are hereby commanded to summons the above named defendant by serving him with a copy hereof, with (information) (complaint) attached to inform the defendant that (he) (she) is charged with the crime of BURGLARY / THEFT.

The defendant should appear before the DREW County Circuit Court, DREW County Courthouse, MONTICELLO, Arkansas, on the 18 day of February, 1998, at 9:30 a.m. for plea and arraignment.

FAILURE TO APPEAR at the stated time, place and Court may result in your arrest for failure to appear and shall constitute a separate offense for which you may be prosecuted.

GIVEN under my hand as Circuit Clerk of Drew County, Arkansas, on this 22 day of January, 1998.

Nell Camden
CIRCUIT CLERK

by:

Kay Craig

Clerk Ret - 1-25-91

Nell Camden - Clerk

Kay Craig - R.C.



OFFICE OF
The Prosecuting Attorney
Tenth Judicial District

5/17/91

SAM POPE
Prosecuting Attorney

409 N. Main Street
P.O. Drawer 32
Hamburg, AR 7164
(501) 853-9871

Honorable

P. O.

Timothy W. Bunch
Box 504
Monticello, AR 71655

RE: State of Arkansas vs. *Kenneth Roswell Olson*
Drew Circuit NO. *91-7-1*

Dear

Timothy,

I follow the "open file" policy. Thus, in response to your Motion for Discovery, please find enclosed herewith a copy of all investigative reports which I have in my file relating to the referenced case.

The persons whose names and addresses appear in the report, or other documents contained herein, may be witnesses in this case, and may be called to testify as to the matters for which their names appear. Those witnesses whose addresses do not appear in the report will be furnished to you if and when obtained. As for any witness whose address and phone number does not appear in the report, the investigating officer or officers identified in the report are hereby authorized to release that information to you.

To better facilitate full and adequate discovery, the investigating officers are further authorized to discuss their expected testimony with you; and the materials and information described in the report may be copied, recorded, photographed, or otherwise inspected, during ordinary business hours at the office or offices of the agency or agencies gathering and preserving same on behalf of the State as identified in the report.

Respectfully,

Sam Pope *mun*
Sam Pope
Prosecuting Attorney

SP/bs

Enclosures: *29* pages
cc: *Nell Camden*
Circuit Clerk



OFFICE OF
The Prosecuting Attorney
Tenth Judicial District

June 13, 1991

SAM POPE
Prosecuting Attorney

409 N. Main Street
P.O. Drawer 32
Hamburg, AR 71646
(501) 853-9871

Ms. Nell Camden
Circuit Clerk
Drew County Courthouse
Monticello, AR 71655

RE: State of Arkansas vs. Kenneth Isom
Drew Circuit No. CR 91-7-1

Dear Nell:

The above captioned case is set for Jury Trial June 21, 1991, at 9:30 in Monticello, in the Drew County Courthouse. Please issue subpoenas to the following persons:

Kenneth M. King
P. O. Box 5274
3 Natural Resource Dr.
Little Rock, Ar. 72215 227-5747 Lab # 90-12583

Sam Norris
Monticello P. D.
Monticello, Ar. 71655

Jeff Lindsey & Chuck Cater
Monticello P. D.
Monticello, Ar. 71655

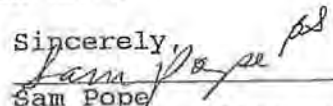
Joyce & Lee Everett Calhoun
Rt. 3. Box A10
Monticello, Ar. 71655 367-6129

D. T. Hyatt
Monticello, Ar. 71655

Tommy Cox
Drew S. O.
Monticello, Ar. 71655

Thank you for your help in this.

Sincerely,


Sam Pope
Prosecuting Attorney

SP/bs

COUNTIES: Ashley, Bradley, Chicot, Desha, Drew

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-7-1

Atty: Sam Pope, Prosecutor

P.O. Drawer 32

Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Joyce and Lee Everett Calhoun 7-6129
WHOSE ADDRESS IS: Rt. 3, Box A10
Monticello, Ar.

to appear before the Drew County Court on Friday at 9:30 A.M., the 21st day
of June 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 14th day of June 19 91

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655

NELL CAMDEN, CLERK

By: Nell Camden

STATE OF ARKANSAS, COUNTY OF Drew

On this 17 day of June 19 91 at _____ o'clock _____ M.,

I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

T. Free SHERIFF
BY: Billy Tucker
Deputy Sheriff

Filed this 19 day of June, 19 91.
COURT CLERK'S RETURN FILE
By Nell Camden Clerk.
Jay Calhoun D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-7-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Tommy Cox
WHOSE ADDRESS IS: _____

to appear before the Drew County Court on Friday at 9:30 A.M., the 21st day
of June 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 14th day of June 19 91.

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655

NELL CAMDEN, CLERK

By: Nell Camden

STATE OF ARKANSAS, COUNTY OF Drew:

On this 17 day of June, 19 91 at 11:40 o'clock A.M.,

I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being: Tommy Cox

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person, namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

BY: James L. Free

Deputy Sheriff

COURT CLERK'S RETURN FILE

Filed this 19 day of June, 19 91.

By: Nell Camden
Tommy Cox

Clerk.
D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-7-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Chuck Cater
WHOSE ADDRESS IS: Monticello PD

to appear before the Drew County Court on Friday at 9:30 A.M., the 21st day
of June 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 14th day of June 19 91.

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655

NELL CAMDEN, CLERK

By: Nell Camden

STATE OF ARKANSAS, COUNTY OF Drew:
On this 17 day of June, 19 91 at Now o'clock A.M.,
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

James C. Free SHERIFF
BY: _____ Deputy Sheriff

COURT CLERK'S RETURN FILE

Filed this 19 day of June, 19 91.
By Nell Camden Clerk.
Way Ray D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-7-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Sam Norris
WHOSE ADDRESS IS: Monticello, PD

to appear before the Drew County Court on Friday at 9:30 A.M., the 21st day
of June 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 14th day of June 19 91
(SEAL) NELL CAMDEN NELL CAMDEN, CLERK
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655
By: Nell Camden

STATE OF ARKANSAS, COUNTY OF Drew
On this 17 day of June, 19 91 at Noon o'clock P.M.,
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to
Sam Norris

such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

Amy C. Free SHERIFF
BY: _____
Deputy Sheriff

COURT CLERK'S RETURN FILE

Filed this 19 day of June, 19 91.
By Nell Camden Clerk.
Vay Gay D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-7-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Jeff Lindsey
WHOSE ADDRESS IS: Monticello PD

to appear before the Drew County Court on Friday at 9:30 A.M., the 21st day
of June 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 14th day of June 19 91

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655

NELL CAMDEN, CLERK

By: Nell Camden

STATE OF ARKANSAS, COUNTY OF Drew:
On this 17 day of June, 19 91 at Noon o'clock PM,
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

BY: Sam C. Pope

Deputy Sheriff

COURT CLERK'S RETURN FILE

Filed this 19 day of June, 1991, By Nell Camden Clerk.
Ray Cox D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-7-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON D.T. Hyatt
WHOSE ADDRESS IS: _____

to appear before the Drew County Court on Friday at 9:30 A.M. the 21st day
of June 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 14th day of June 19 91.

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655

NELL CAMDEN, CLERK

By: Nell Camden

STATE OF ARKANSAS, COUNTY OF Drew:

On this 17 day of June, 19 91 at Now o'clock PM.

I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

BY: Jimmy C. Free SHERIFF
Deputy Sheriff

COURT CLERK'S RETURN FILE

Filed this 19 day of June, 19 91.

By Nell Camden Clerk.
Hay Cat D.C.

3

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-7-11

Atty: Sam Pope, Prosecutor

P.O. Drawer 32

Hamburg, Ar. 71646

DIVISION

SUBPOENA

31 JUN 17 4:41

SL

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:

YOU ARE COMMANDED TO SUMMON Kenneth M. King Lab # 90-12583

WHOSE ADDRESS IS: P.O. Box 5274
3 Natural Resource Dr.
Little Rock, Ar. 72215

to appear before the Drew County Court on Friday at 9:30 A.M., the 21st day
of June 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant.

and that you make due return of this writ.

Witness my official signature and the seal of said court, this 14th day of June 19 91

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655

NELL CAMDEN, CLERK

By: *Nell Camden*

STATE OF ARKANSAS, COUNTY OF _____:

On this 18 day of June 19 91 at 9:35 o'clock A.M.,

I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

Kenneth M. King

such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
- ☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
- ☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

CARROLL GRAVETT, SHERIFF

SHERIFF

BY: DON MORELAND
Deputy Sheriff

Filed this 19 day of June 19 91

COURT CLERK'S RETURN FILE

By: *Nell Camden*

Clerk.
D.C.

IN THE CIRCUIT COURT OF

Drew

500
HH-460
COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS

NO. CR.

94-7-1

Kenneth R. Isaacs

DEFENDANT

ORDER SETTING CASE FOR
(PLEA AND ARRAIGNMENT) (FIRST APPEARANCE) (HEARING)

The above styled case is hereby set for (plea and arraignment) (first appearance) (~~hearing~~) in the courtroom of the Drew County Courthouse, Monticello, Arkansas, on March 25, 1991, at 9:30 a.m.

The Defendant and his attorney shall be present at this time for this proceeding.

Dated this 18 day of Feb., 1991.

Paul C. Roberts
CIRCUIT JUDGE

FILED Circuit COURT
DREW CO. ARKANSAS
NELL CAMDEN, CLERK
BY: [Signature]

FEB 18 1991

AM
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IN THE CIRCUIT COURT OF

Drew

499
314-457
COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. 91-7-1

Kenneth R. Fson

DEFENDANT

ORDER TO ARKANSAS DEPARTMENT OF CORRECTION
FOR DELIVERY AND APPEARANCE

The Defendant above-named, presently in the custody of the Arkansas Department of Correction, (ADC# unknown), is to be taken by the Sheriff of Drew County from said Department of Correction and by him delivered before this court in Monticello, Arkansas, at 9:30 A.M., on Monday Feb 25, the 25 day of March, 1991, for the purpose of arraignment & 1st App. Upon completion of said business before the Court, the said Sheriff shall return the Defendant to the said Department of Correction at the point of pick-up.

SO ORDERED THIS 18 DAY OF Feb., 1991.

Paul K. Roberts
PAUL K. ROBERTS, CIRCUIT COURT JUDGE

FILED Circuit COURT
DREW CO. ARKANSAS
BY: NELL CAMDEN, CLERK

FEB 18 1991

AM 7,8,9,10,11,12,1,2,3,4,5,6 PM

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

CR-91-7-1

KENNETH ROSHELL ISOM

DEFENDANT

WAIVER OF ARRAIGNMENT

I do hereby voluntarily, knowingly, and with advice of counsel, waive my right to formal arraignment before the Court, as provided in the Arkansas Code Annotated.

I state I have been told of and understand my rights under the Constitutions and laws of the United States and Arkansas; that I have the right to remain silent and not give evidence against myself; that I have the right to a speedy, public trial by jury; that I have the right to confront and cross-examine witnesses against me; that I have the right to a court-appointed attorney, at no cost to me, if I cannot afford to hire one; that I have been furnished a copy of the Information charging me in this case or that the nature of the offense and the penalties have been explained to me by my lawyer.

I request that the Court enter a plea of not guilty for me and I (check one): ☒ demand a jury trial, ☐ waive trial by jury on this 25 day of March, 1991.

Kenneth R. Isom
DEFENDANT

I concur in my client's waiver, entry of plea and demand for jury trial, or waiver of right to trial by jury, and on this day I certify that a copy of this waiver was mailed to the Prosecuting Attorney at P.O. Drawer 32, Hamburg, Arkansas, 71646.

Timothy W. Burch
DEFENSE COUNSEL

FILED Isom
DREW CO. ARKANSAS
NELL CAMDEN, CLERK
CY: Nell Camden

MAR 26 1991

AM 7, 8, 9, 10, 11, 12, 1, 2, 3, 4, 5, 6 PM



IN THE CIRCUIT COURT OF Drew ^{II-80} COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR 91-7-1

Kenneth R. Isom

DEFENDANT

ORDER SETTING CASE FOR TRIAL

The above styled case is hereby set for (~~non-jury~~) (jury) trial in the Drew County Courtroom, Drew County Courthouse, Monticello, Arkansas, on June 21, 1991, at 9³⁰ A.m.

No change in this setting will be made except on written order of the Court obtained not less than five (5) days prior to trial.

Dated this 24 day of April, 1991.

Paul K. Roberts
PAUL K. ROBERTS, CIRCUIT JUDGE

cc: Baunch
Pope

FILED Circuit COURT
DREW CO, ARKANSAS
WELL CAMDEN, CLERK
BY: Well Camden

APR 25 1991

AM PM
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II-382

2

IN THE CIRCUIT COURT OF Drew COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. 91-7-1 + 91-114

Kenneth Isom

DEFENDANT

ORDER TO ARKANSAS DEPARTMENT OF CORRECTION
FOR DELIVERY AND APPEARANCE

The Defendant above-named, presently in the custody of the Arkansas Department of Correction, (ADC# _____), is to be taken by the Sheriff of Drew County from said Department of Correction and by him delivered before this court in Monticello, Arkansas, at 9³⁰ A.M., on Thursday, the 20 day of June, 19 91, for the purpose of Trial herein.

Upon completion of said business before the Court, the said Sheriff shall return the Defendant to the said Department of Correction at the point of pick-up.

SO ORDERED THIS 17 DAY OF June, 19 91.

Paul K. Roberts

PAUL K. ROBERTS, CIRCUIT COURT JUDGE

Filed Circuit Court
Drew County, Ark.
June 17th 91 AM 3:10
Debra M. Watson PM
Clerk
D.C.

| | State | Ref. |
|---------------------------------|-------|------|
| (1) Kenneth Maxwell | ✓ | ✓ |
| (2) Kenneth Jackson | | |
| (3) Mary Thompson | | |
| (4) Shirley Stone | | ✓ |
| (5) Frank Kennedy | | ✓ |
| (6) Sylvia Kellum | | ✓ |
| (7) Mary Martin | | ✓ |
| (8) Gary Hunter | | ✓ |
| (9) Ruth Butler | | ✓ |
| (10) Richard Butler | | ✓ |
| (11) James Farmer | | ✓ |
| (12) William Higgins | | ✓ |
| (13) Mary Austin | | ✓ |
| (14) Robert Allen | | ✓ |
| (15) James Reinhardt | | |
| (16) Alice Farnit | | |
| (17) Helen Christmas | | |
| (18) Paul G Bone | | |
| (19) Robert Boston | | |
| (20) A.W. Simpson | | |
| (21) Mary Moore | | |
| (22) Gary Fisher | | |
| (23) | | |
| (24) | | |
| (25) | | |
| (26) | | |

~~Page 2 of 2~~

STATE OF ARKANSAS

PLAINTIFF

vs.

Case No. CR-91-7-1 & CR-91-11-1

KENNETH ISOM

DEFENDANT

JURY LIST

Date: June 21, 19 91

pay these

1. ~~Sarah L. Acree~~ *Sick*
2. Tommy Allison
3. Mary I Austell (5)
4. Valerie Annette Batts
5. Wanda Collette Bealer
6. Jane Jo Bone (9)
7. Robert L. Bostian (10)
8. ~~Rhonda Rae Fore~~ *no question - PHILIP BROWN - 15-20-91*
9. ~~Donald E. Bullock~~ *X pay for today*
10. Helen Christmas (8)
11. James R. Farmer (4)
12. Judy K. Flemister
13. Lillie Annette Forrest (14)
14. ~~Dana Gill~~ *Sick*
15. ~~Ken W. Cladden~~
16. ~~Rose Hampton~~ *Church Camp*
17. ~~Lisa A. Hancock~~ *Summer School*
18. ~~Katheryn Higgins~~ *Katheryn Higgins Hardship*
19. ~~James Hogue~~ *Hardship*
20. L. Jean Kennedy
21. Lawrence E. Hudson
22. Derrell Clyde Jacobs

| | | |
|-----|-----------------------------------------------------|--|
| 23. | Virginia M. Jones <i>in. D. Williams</i> | |
| 24. | Raymond Ray Jordan | |
| 25. | Sylvia Kellum (3) | |
| 26. | Marilyn E. Matthews | |
| 27. | Kenneth L. Maxwell (1) | |
| 28. | Mary E. Mhoon (12) | |
| 29. | Charity Ann Miller <i>sick</i> | |
| 30. | Br. C. McDaniel | |
| 31. | Marvin Norton Jr. | |
| 32. | Polly Ann Penny | |
| 33. | James L. Reinhart (6) | |
| 34. | A. W. Simpson (11) | |
| 35. | Gary D. Snider | |
| 36. | Tammie Stokes | |
| 37. | Shirley Stone (2) | |
| 38. | Artie Straughn <i>de. apt.</i> | |
| 39. | Alicia L. Thompson | |
| 40. | Kattie S. Trotter | |
| 41. | | |
| 42. | | |
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| 52. | | |

DEPARTMENT OF CORRECTION
UNIT
GRADY, ARKANSAS

cr 91-7-1

Date June 19, 19

S H E R I F F R E C E I P T

RECEIVED FROM DREW COUNTY THE FOLLOWING

INDIVIDUAL (S), TOGETHER WITH THEIR COMMITMENT PAPERS:

ISOM, Kenneth (B) 92604
////////////////////////////////////

TOTAL OF (1)

FILED Circuit COURT
DREW CO. ARKANSAS
NELL GARDEN, CLERK
BY: [Signature]

JUN 24 1991

AM 7, 8, 9, 10, 11, 12, 1, 2, 3, 4, 5, 6 PM

BY [Signature]
RECORD SUPERVISOR



ART L. LOCKHART
Director

ARKANSAS
DEPARTMENT OF CORRECTION
VARNER UNIT

P.O. BOX 600

GRADY, ARKANSAS 71644 • PHONE (501) 479-3311, ext. 400

M. D. REED, Warden

TO: Sheriff's Department

Inmate ISOM, Kenneth R. ADC# 92604

was released to your custody (Drew Co.)

for purpose of trial.

Please indicate below the disposition made, and give this form
to the Record Office when you return the inmate to the institution:

| CASE # | CHARGE | DISPOSITION |
|-----------------------------|---------------------------------------------|---------------------------------------------|
| <u> </u> | <u> </u> | <u> </u> |
| <u> </u> | <u> </u> | <u> </u> |

PLEASE FILL OUT AND RETURN WITH INMATE.

STATE OF ARKANSAS
DEPARTMENT OF CORRECTION

CUSTODY RECEIPT

Unit: VarnerDate: June 20, 1991

I acknowledge, on this date, the receipt from the ARKANSAS DEPARTMENT OF CORRECTION, the body (s) of:

NAME

A.D.C. NO.

ISOM, Kenneth R

B/M

#92604

with the understanding that I will be responsible for the above subject (s) while in my custody, and in the event he/she/they escape, my office will be responsible for apprehension and return to the ARKANSAS DEPARTMENT OF CORRECTION at the unit indicated above.

Signed


For Sheriff's OfficeDrew

County

STATE OF ARKANSAS

COUNTY OF DREW

I, Nell Camden, Circuit Clerk in and for Drew County, Arkansas, do hereby certify that the above and foregoing contains a true and correct listing of the Petit Jurors at the regular term of court and is the correct amount due each for services and mileage.

WITNESS MY HAND AND SEAL on this 24th day of June, 1991

A handwritten signature in cursive script, reading "Nell Camden", is written over a horizontal line.

NELL CAMDEN, CIRCUIT CLERK

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS
VS
KENNETH ISOM

CR-91-7-1


PLAINTIFF
DEFENDANT

WITNESSES

| | | |
|------------------|----------------------|-------|
| Stanford Lindsey | 123 Qua Paw, City | 5.00 |
| Debbie Clark | 725 E. Gaines | 5.00 |
| Luddie Larkins | 309 N. Willow, Dumas | 11.60 |
| Marvin Randolph | 401 S. Pecan, Dumas | 11.60 |
| | | <hr/> |
| | | 33.20 |

STATE OF ARKANSAS
COUNTY OF DREW

I, Nell Camden, Circuit Clerk in and for Drew County, Arkansas,
do hereby certify that the above and foregoing contains a true and
correct listing of the Petit Jurors at the regular term of court
and is the correct amount due each for services and mileage.


NELLE CAMDEN, CIRCUIT CLERK

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

Petit jurors selected to

try the case of

STATE OF ARKANSAS

PLAINTIFF

VS

CR-90-7-1

KENNETH ISOM

DEFENDANT

| NAME | ADDRESS | AMOUNT |
|------------------------|---------------------------|---------|
| Tommy Allison | Rt.1, Box 78B, Wilmar | \$14.00 |
| Mary Austell | 320 W. Jefferson, City | 20.00 |
| Valerie Batts | Rt.1, Box 512, City | 11.60 |
| Wanda Collette Bealer | P.O. Box 224, City | 10.00 |
| Jane Jo Bone | Rt.3, Box E-74, City | 20.60 |
| Robert Bostian | Rt.6, 135 Center Dr. City | 20.00 |
| Donald E. Bulloch | Rt.1, Box 2GGG, Collins | 14.00 |
| Helen Christmas | Rt.1, Box RRRR, Collins | 23.20 |
| James Farmer | P.O. Box 12, Tillar | 25.00 |
| Lillie Annette Forrest | Rt.3, Box B-53-4, City | 23.00 |
| Judy K. Flemister | Rt.4, Box 41, City | 11.20 |
| L. Jean Kennedy | P.O. Box 658, City | 10.00 |
| Katheryn Higgins | Rt. 4, Box 79, City | 10.60 |
| Lawrence Hudson | 574 S, Main, City | 10.00 |
| Derrell Clyde Jacobs | Rt.6, 112 W. Circle, City | 10.00 |
| Raymond Ray Jordan | Rt.3, Box B-72-A, City | 11.40 |
| Sylvia Kellum | P.O. Box 158, City | 20.80 |
| Marilyn Matthews | P.O. Box 767, City | 10.00 |
| Kenneth Maxwell | Rt.2, Box 83-2, City | 20.60 |
| Mary E. Moon | Rt.1, Box 63, Wilmar | 24.40 |
| Marvin Norton, Jr. | 241 Mason Hill, City | 10.00 |
| James L. Remhart | 520 S. Main, City | 20.00 |
| A.W. Simpson | Rt.3, Box C-69, City | 23.20 |

I-244

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

THE STATE OF ARKANSAS

vs.

Case No. CR 91-11-1

Kenneth R. Ison

Theft of Property ACA 5-36-103

FILED *Circuit* COURT
DREW CO. ARKANSAS
NELL CAMPBELL, CLERK
CY: *Nell Campbell*

FEB 23 1991

AM 7,8,9,10,11,12,1,2,3,4,5,6 PM

INFORMATION

I, **SAM POPE** Prosecuting Attorney within and for the Tenth Judicial Circuit of the State of Arkansas, of which **DREW** County is a part, in the name and by the authority of the State of Arkansas, on oath, accuse the defendant, **Kenneth R. Ison** of the crime(s) of **Theft of Property ACA 5-36-103**, committed as follows, to-wit: The said defendant on or about **December 24, 1990**, in **DREW** County, Arkansas, did unlawfully:

Knowingly take or exercise unauthorized control over an interest in the property of another person with the purpose to deprive the owner of the property, to-wit; a car, gun, and microwave belonging to Jay H. Jones, valued at more than \$2500.00, a CLASS B FELONY.

all counts being against the peace and dignity of the State of Arkansas.



SAM POPE, Prosecuting Attorney

DATE OF ARREST: December 28, 1990

ARREST TRACKING NUMBER: 004740

32-695 Filed 9-11-91
6:00 P.M.
Heel Camden

JUDGMENT AND COMMITMENT ORDER
IN THE CIRCUIT COURT OF Drew COUNTY, ARKANSAS
Tenth DISTRICT & First DIVISION

On 9-11-91, the defendant personally appeared before the Court with legal counsel and, having been informed by the Court of the nature of the charge(s), of his constitutional and legal rights, of the effect of a guilty plea upon those rights, and of his right to make a statement before sentencing, the Court made the following findings: (check one applicable)

- ☐ Defendant voluntarily, intelligently, and knowingly entered a plea of ☐ guilty or ☐ Nolo Contendere to the charge(s) herein enumerated and acknowledged factual bases for charge(s);
- ☐ Defendant is found guilty of said charge(s) by the Court, sitting as trier of fact;
- ☒ Defendant was found guilty at jury trial.

| | | | | | |
|----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|------------------|-----------------|------------|
| CHANGE OF VENUE FROM: <u>N/A</u> | DEFENDANT'S FULL NAME <u>Kenneth Roswell Isom</u> | DATE OF BIRTH <u>27</u> | RACE <u>B</u> | SEX <u>M</u> | SID NUMBER |
| DEFENDANT'S ATTORNEY <u>Greg Robinson</u> | <input type="checkbox"/> PV <input type="checkbox"/> AP <input checked="" type="checkbox"/> PD <input type="checkbox"/> SELF | PROSECUTING ATTORNEY OR DEPUTY <u>Sam Pope</u> | | | AT NUMBER |

There being no legal cause shown by the defendant, as requested, why judgment should not be pronounced against him, a judgment of conviction is hereby entered against the defendant on each charge enumerated and court costs assessed. The County Sheriff is hereby ordered and directed to transport the defendant to ☒ The Arkansas Department of Correction or ☐ County Jail, where he is sentenced to hard labor for the term specified on each charge:

| STATUTE NO. | OFFENSE | OFFENSE DATE | DOCKET NO. | COUNTS | F/M | CLASS | SENTENCE | SUSPENDED |
|----------------|--------------------------|----------------|----------------|----------|----------|----------|-----------------|-----------|
| <u>536-103</u> | <u>Theft of Property</u> | <u>12-4-90</u> | <u>91-11-1</u> | <u>1</u> | <u>F</u> | <u>C</u> | <u>15 years</u> | |
| | | | | | | | | |
| | | | | | | | | |

If consecutive, explain: Consecutive to commitments from Jefferson, Cleveland and Drew Counties for which defendant is now on parole.

TIME TO SERVE AT A.D.C.: Fifteen (15) years

OTHER SENTENCING PROVISIONS

- ☒ HABITUAL (5-4-501)
- ☐ FIREARM (5-4-505/16-90-120)
- ☐ DEADLY WEAPON (16-90-121)
- ☐ HABITUAL CHILD SEX OFFENDER (12-12-902)
- ☐ OTHER: _____

PAROLE PROVISIONS — ACT 378 ONLY

Alternative Services (Act 378) (16-93-502). The defendant knowingly and willingly consents to sentence provisions:

☐ 16-93-507(b)(4) — Eligible for parole immediately

☐ 16-93-507(b)(5) — Eligible for parole as normal

EXPLANATORY NOTES:

OTHER: FINE \$5,000 ☐ DEATH PENALTY

RESTITUTION \$ _____

COURT COSTS \$ _____ EXECUTION DATE: _____

☒ DEFENDANT INFORMED OF RIGHT TO APPEAL BOND PROVISIONS: \$15,000, 10% cash, 90% property, or corporate surety

JAIL TIME CREDIT: 61 days OR ☐ NONE

| | | |
|------------------------|--------------------------------------------------------------------------------------------------------|------------------------------------------------------|
| DATE <u>9-11-91</u> | CIRCUIT JUDGE (Print or Type) <u>Sam Bird</u> | CIRCUIT JUDGE (Signature) <u>Samuel H. Bird</u> |
| DATE | I certify this is a true and correct record of this Court with short report of circumstances attached. | CIRCUIT CLERK/DEPUTY (SEAL) <u>Heel Camden</u> |
| DATE | I acknowledge receipt of judgment. | DEFENDANT (Signature) <u>Kenneth Roswell Isom</u> |

SHERIFF'S RETURN

| | | | | |
|--------------------------|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------|------|----------------------------|
| DATE REL. ON APPEAL BOND | DATE RET. TO CUSTODY | I certify the defendant named within was delivered to: <input type="checkbox"/> The A.D.C. or <input type="checkbox"/> _____ County Jail | DATE | SHERIFF/DEPUTY (Signature) |
|--------------------------|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------|------|----------------------------|

DISTRIBUTION: White: Court File, Blue: ADC, Yellow: Sheriff's Return, Pink: Defendant, Golden Rod: Prosecutor

AJD #15 2/28/89

4955

FILED FOR RECORD
DREW CO. ARK.
NELL CAMDEN
CIRCUIT CLERK
BY *[Signature]*

MAR 17 1993

7:18, 9, 10, 11, 12, 1, 2, 3, 4, 5, 6 PM

A F F I R M E D C R I M I N A L

STATE OF ARKANSAS
In the Court of Appeals

BE IT REMEMBERED, that at a session of the Court of Appeals of the State of Arkansas, held in the City of Little Rock, on the 24th day of February, 1993, amongst others were the following proceedings:

CACR92-397
KEN ISOM

APPELLANT

v. Appeal from Drew Circuit
(CR91-11-1)

STATE OF ARKANSAS

APPELLEE

This cause came on to be heard upon the transcript of the record of the Circuit Court of Drew County, and was argued by counsel, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and judgment of said Circuit Court in this cause.

It is therefore considered by the Court that the judgment of said Circuit Court in this cause rendered be and the same is hereby in all things affirmed and that unless appellant shall forthwith surrender himself to the Sheriff of Drew County in execution of said judgment, his bond be declared as forfeited.

In testimony, That the above is a true copy of the judgment of said Court of Appeals in the case herein stated, I, Leslie W. Steen, Clerk of said Court of Appeals, hereto set my hand and affix the seal of said Court, at my office in the City of Little Rock, this 16th day of March, 1993.

[Signature of Leslie W. Steen]

Leslie W. Steen

Office of The Clerk
Supreme Court of The State of Arkansas
Arkansas Court of Appeals
Justice Building
625 Marshall Street
Little Rock, AR 72201

Leslie W. Steen
Clerk

Robin Horne
Chief Deputy Clerk

Melissa Miller
Chief Deputy Clerk

Janie Overt
Office Administrator

Jeanne Matthews
Records Supervisor

MARCH 16, 1993

Deputy Clerks:

Berise Parks

Rae Millerd

Greta Houston

Daniel Dodson

Kelli North

Singer Mullins

Todd Hill

FILED FOR RECORD
DREW CO. ARK.
NELL CAMPBELL
CIRCUIT CLERK

BY

MAR 17 1993

Circuit Clerk

Drew County, Arkansas

Dear Sir or Madam:

7 8 9 10 11 12 1 2 3 4 5 6 PM

Enclosed is the mandate of the Court of Appeals in the case of Ken Isom v. State, wherein the judgment of the trial court was affirmed.

You will notice that the terms of the mandate are that the defendant shall surrender forthwith to the Sheriff of Drew County, Arkansas.

Leslie W. Steen, Clerk



FILED FOR RECORD
DREW CO. ARK.
NELL CAMDEN
CIRCUIT CLERK
BY *Nell Camden*

FEB 25 1993

AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

A

LAW OR CHANCERY MANDATE

STATE OF ARKANSAS,
SS.
In the Court of Appeals

BE IT REMEMBERED, That at a session of the Court of Appeals of the State of Arkansas, begun and held in the City of Little Rock, on the 24th day of February, 19 93, amongst others were the following proceeding, to-wit:

KEN ISOM

APPELLANT

vs. No. CACR92-397

STATE OF ARKANSAS

APPELLEE

Appeal from Drew

Circuit Court

District

(Circuit Court No. CR 91-11-1)

Appellant's motion to reinstate appeal bond. Moot.
See opinion issued this date.

IN TESTIMONY, That the above is a true copy of the order
of said Court of Appeals, rendered in the case therein
stated, I, LESLIE W. STEEN, Clerk of said Court of
Appeals, hereunto set my hand and affix the Seal of said
Court of Appeals, at my office in the City of Little Rock,
this 24th day of February, A.D. 19 93

Leslie W. Steen
CLERK

By _____ D.C.

NOT DESIGNED FOR PUBLICATION.
SEE REVISED ARKANSAS COURT RULE 21.

DIVISION II

ARKANSAS COURT OF APPEALS

CACR 92-397

No.

Opinion Delivered February 24, 1993

KEN ISOM

APPELLANT

VS.

STATE OF ARKANSAS

APPELLEE

AN APPEAL FROM THE CIRCUIT
COURT OF DREW COUNTY,
NO. CR 91-11-1

HONORABLE SAMUEL N. BIRD,
CIRCUIT JUDGE

AFFIRMED

JUDITH ROGERS, Judge

The appellant, Ken Isom, was convicted in a jury trial of theft of property, a class C felony, and was sentenced as an habitual offender to fifteen years in prison. Raising four issues on appeal, he argues that the trial court erred in denying his motion for a continuance; that the trial court erred in not declaring Debbie Foster to be an accomplice as a matter of law; that the trial court erred in denying his motion for a directed verdict on the ground that the accomplices' testimony was not sufficiently corroborated; and that the trial court erred in denying his motion for a directed verdict in that the evidence was insufficient to sustain his conviction. We find no merit in these arguments and affirm.

In his third and fourth points, appellant claims error in the denial of his motions for a directed verdict. Motions for a directed verdict constitute challenges to the sufficiency of the evidence. White v. State, 39 Ark. App. 52, 837 S.W.2d 479 (1992). In Harris v. State, 284 Ark. 247, 681 S.W.2d 334 (1984), the supreme court held that when there is a challenge to the sufficiency of the evidence we must review that point prior to considering any alleged trial error. In addressing such challenges, this court will affirm the trial court's denial if there is substantial evidence to support the jury's verdict. Duncan v. State, 38 Ark. App. 47, 828 S.W.2d 847 (1992). Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion, passing beyond speculation and conjecture. Furr v. State, 308 Ark. 41, 822 S.W.2d 380 (1992).

A person commits theft of property if he knowingly takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another person, with the purpose of depriving the owner thereof. Ark. Code Ann. § 5-36-103(a)(1) (Supp. 1991). Theft of property is a class C felony if the value of the property is less than \$2,500, but more than \$200. Ark. Code Ann. § 5-36-103(b)(2)(A) (Supp. 1991).

The record reflects that on Christmas Eve of 1990, Jay Jones was travelling through Arkansas on his way home to Louisiana. He picked up a hitchhiker on the highway to Pine Bluff near the Sheridan exit. In their conversation, the hitchhiker told Jones that he had been in Little Rock visiting someone in the hospital

and that he had been left there by his friends. Jones agreed to depart from his planned route to take the hitchhiker to Monticello. He became tired of driving in the bad weather so Jones allowed the hitchhiker to drive. While Jones was using the restroom, the hitchhiker drove away in the car, a gray 1983 Buick Skylark. Jones testified that his car contained various items of personal property, including a microwave oven. He could not identify the hitchhiker.

Debbie Foster, an alleged accomplice, testified that her cousin, John Daniels, asked her early that Christmas morning to go with him to pick up a microwave that appellant had. She agreed to go with them and was driven to a dirt road outside of town. She said that appellant and her cousin got out of the car and retrieved a microwave oven, leaving the oven's cardboard container on the side of the road. From there, they went to an apartment complex in Dumas where the microwave was given to Marvin Randolph.

In his testimony, Randolph stated that he saw appellant at a bar on Christmas Eve. Appellant told him that he had been to Little Rock and that he "had some stuff" he needed to sell. Randolph said that he went with appellant, who was driving a Buick Skylark, and helped him dispose of some of the things that were in the car. He received a gun in exchange for his assistance. Thereafter, Randolph dropped appellant off at a house in Monticello and drove the Buick to Dumas where he left it at a carwash. He said, however, that he saw appellant later that night in the

company of another man and a woman, and that a microwave was sold for \$40 to Solomon Mills, Janice Douglas's boyfriend.

When he began his shift on Christmas day, Loudy Larkin saw an automobile parked at a carwash, which was next door to the EZ Mart in Dumas where he worked. The doors of the car were opened and, because it was still there when he got off work, he called the police. Larkin testified that he had seen Marvin Randolph around the car. Janice Douglas testified that she received a microwave oven from her boyfriend on Christmas morning and that it had been turned over to the police once she learned that it had been stolen. Several witnesses testified that appellant had gone to Little Rock with them to visit a friend in the hospital. It was said, however, that appellant had not returned with them to Monticello because appellant had gotten into an argument with one of the men.

Drew County Deputy Sheriff Tommy Cox found Mr. Jones stranded on the highway. During his investigation of the crime, Cox spoke with John Daniels, who led him to Garnett Road where he found a Hot Point Microwave Oven box, a boot bag containing cigarettes and a pair of socks, and a pair of Converse tennis shoes, size ten. He testified that Mr. Jones had told him that the car contained a pair of tennis shoes and he said that he had found an empty shoe box in the car when it was recovered. Cox also identified a photograph of a Hot Point Microwave Oven that had been reclaimed from Janice Douglas.

In arguing that the evidence insufficient, appellant relies on the inability of Mr. Jones to identify him as the perpetrator. He

thus contends that the evidence was circumstantial and he argues that the testimony of Marvin Randolph was not worthy of belief. Guilt may be proved, however, even in the absence of eyewitness testimony, and evidence of guilt is no less substantial because it is circumstantial. Lukach v. State, 310 Ark. 38, 834 S.W.2d 642 (1992). Circumstantial evidence alone is sufficient to sustain a conviction when it indicates the accused's guilt and excludes every other reasonable hypothesis. Lemons v. State, 310 Ark. 381, 836 S.W.2d 861 (1992). It is up to the jury whether the evidence excludes every other reasonable hypothesis. Cigainero v. State, 310 Ark. 504, 837 S.W.2d 479 (1992). The credibility of the witnesses also lies within the province of the jury. Atkins v. State, 310 Ark. 295, 836 S.W.2d 367 (1992). From our review, we cannot say that appellant's conviction is not supported by substantial evidence.

In further challenging the sufficiency of the evidence, appellant contends that the testimony of the accomplices was not adequately corroborated. In this regard, he contends that both Marvin Randolph and Debbie Foster were accomplices. The trial court declared Marvin Randolph to be an accomplice, but the court submitted the question of Debbie Foster's status as an accomplice to the jury for decision. Appellant also contends that the court erred in not ruling that Foster was an accomplice as a matter of law.

A felony conviction may not be based on the testimony of an accomplice unless it is "corroborated by other evidence tending to

connect the defendant with the commission of the offense." Ark. Code Ann. § 16-89-111(e)(1) (1987). The test for determining the sufficiency of the corroborating evidence is whether, if the testimony of the accomplice were totally eliminated from the case, the other evidence independently establishes the crime and tends to connect the accused with its commission. Andrews v. State, 305 Ark. 262, 807 S.W.2d 917 (1991). An accomplice is one who, with the purpose of promoting or facilitating the commission of an offense, advises or aids another person in committing the offense. Hooks v. State, 303 Ark. 236, 795 S.W.2d 56 (1990); Ark. Code Ann. § 5-2-403 (1987). The defendant in a criminal case has the burden of proving that a witness is an accomplice whose testimony must be corroborated. Cate v. State, 270 Ark. 972, 606 S.W.2d 764 (1980). Mere presence, acquiescence, silence or knowledge that a crime is being committed, in the absence of a legal duty to act, is not sufficient to make a person an accomplice. Nelson v. State, 306 Ark. 456, 816 S.W.2d 159 (1991). Ordinarily, the question of whether a witness is an accomplice is a mixed question of fact and law and must be submitted to the jury where the evidence is in dispute. Lee v. State, 27 Ark. App. 198, 770 S.W.2d 148 (1989). The finding of the jury is binding unless the evidence shows conclusively that the witness was an accomplice. Pilcher v. State, 303 Ark. 335, 796 S.W.2d 845 (1990).

Here, Debbie Foster testified that her cousin simply asked her to ride with him to get a microwave oven. She explained that she assumed the microwave was to be a Christmas gift for her cousin's

mother. We do not think that these facts conclusively show that she was an accomplice; instead, we believe that her complicity was a fact issue as it could reasonably be inferred that she lacked the true purpose of aiding or facilitating the commission of the offense. As we cannot say that she was an accomplice as a matter of law, we find no error in the submission of this question to the jury. With regard to the issue of corroboration, on appeal our inquiry is whether there is substantial evidence to support the jury's finding that the corroborating evidence was sufficient. Sanders v. State, 310 Ark. 510, 838 S.W.2d 359 (1992). Foster's testimony, along with the other evidence presented, constitutes substantial evidence to support the jury's finding.

Appellant also argues that the trial court erred in denying his motion for a continuance. After the jury was selected, appellant's counsel orally moved for a continuance. He explained to the court that he had written down the wrong date for trial, stating that his calendar showed that trial was to be held the next day. He admitted, however, that he had received a phone call from a secretary at the prosecutor's office confirming the trial date, but he said he formed the impression from speaking with another secretary that only a hearing was scheduled for that day. He also said that he did not believe the case would go to trial because of previous difficulties the prosecution had in securing the attendance of Jay Jones. He told the court that there was nothing more in the way of preparation that could be done, except that the presence of two witnesses was needed for appellant's defense. The

court then took a recess and sent the sheriff to locate the witnesses. The sheriff found one witness, Janice Douglas, but could not locate the other. Noting that appellant had failed to subpoena either witness even for the next day, the court denied appellant's request for a further continuance.

On appeal, appellant contends that he was entitled to a continuance because of the mistaken impression as to the exact date of trial and the belief that the case was not going to trial, the combination of which resulted in his not having the presence of a witness for trial. We cannot agree.

The decision of whether to grant a continuance lies in the sole discretion of the trial judge, and we will reverse only in cases of abuse. Weaver v. State, 305 Ark. 180, 806 S.W.2d 615 (1991). The burden is on the appellant to establish prejudice and an abuse of discretion in denying the continuance. Henderson v. State, 310 Ark. 287, 835 S.W.2d 865 (1992). The factors for the trial court to consider in exercising its discretion over continuance motions when a witness is unavailable are: (1) the diligence of the movant; (2) the probable effect of the testimony at trial; (3) the likelihood of procuring the attendance of the witness in the even of postponement; and (4) the filing of an affidavit, stating not only what facts the witness would prove, but also that the appellant believes them to be true. Id. Here, appellant failed to file an affidavit pursuant to Ark. Code Ann. § 16-63-402(a) (1987) setting forth, among other things, the facts that the affiant believes the unavailable witness would prove. The supreme

court has interpreted the affidavit requirement under the statute as necessary to justify any continuance caused by a missing witness, Brooks v. State, 308 Ark. 660, 827 S.W.2d 119 (1992), and has said that the denial of a continuance when the motion is not in substantial compliance with the statute is not an abuse of the trial court's discretion. Johnson v. State, 305 Ark. 580, 810 S.W.2d 44 (1991). Consequently, we find no abuse of discretion.

Affirmed.

Cooper and Robbins, JJ., agree.

IN THE CIRCUIT COURT OF Drew COUNTY, ARKANSAS

THE STATE OF ARKANSAS

VS

NO. Cr 91-11-1

Kenneth Slamm, DEFENDANT

CRIMINAL SUMMONS

TO THE SHERIFF OF Drew COUNTY:

You are hereby commanded to summons the above named defendant by serving him with a copy hereof, with (information) (complaint) attached to inform the defendant that (he) (she) is charged with the crime of top.

The defendant should appear before the Drew County Circuit Court, Drew County Courthouse, Monticello, Arkansas, on the 25th day of March, 1991, at 9.30 a.m. for plea and arraignment.

FAILURE TO APPEAR at the stated time, place and Court may result in your arrest for failure to appear and shall constitute a separate offense for which you may be prosecuted.

GIVEN under my hand as Circuit Clerk of Drew County, Arkansas, on this 22nd day of February, 1991.

Dee Carver
CIRCUIT CLERK

by: _____

Rt: 3/25/91
Served 3/25/91

IN THE CIRCUIT COURT OF Drew ^{NR-639} COUNTY, ARKANSAS

IN THE MATTER OF:

State

PLAINTIFF

Case No. CR 91-11-1

VS

Kenneth Isom

DEFENDANT

ORDER APPOINTING ATTORNEY

Now on this 25th day of March, 1991, comes on this matter for hearing and from the evidence and proof before the Court doth find:

That Respondent Kenneth Isom is entitled to be represented by an attorney in the above-styled proceeding and is in need of counsel; that Jim Burch be and (it) (he) (she) is hereby appointed as attorney to represent Respondent in the above-styled proceeding.

Paul K. Roberts
Paul K. Roberts,
Circuit Judge

Circuit Court
Filed Drew County, Ark.
March 25 1991 AM
Paul Camden PM
Clerk
By _____
D. C.

Filed W. C. C. C. Court
Drew County, Ark. 2:30
April 2 1991
Neil Camden (IM)
By Laura Wilson Clerk
D.C.

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

CR-91-11-1

KENNETH ISOM

DEFENDANT

MOTION FOR DISCOVERY

Comes the defendant, by his attorney, and moves the Court to require the State of Arkansas to provide the following in accordance with Ark. Rules Crim. Pro. 17.1, 17.3, and 17.4.

1. The defendant requests the following material and information that is or may come within the possession, control, or knowledge of the Prosecuting Attorney:

(a) The names and addresses of persons the Prosecuting Attorney intends to call as witnesses at any hearing or at trial and a short, plain statement of their anticipated testimony;

(b) The name and current address of any confidential informant used in this case;

(c) Any written or recorded statements and the substance of all oral statements made by the defendant or a co-defendant;

(d) Any reports or statements of experts made in connection with this case, including reports of scientific tests, experiments, or comparisons;

(e) Any books, papers, documents, photographs or tangible objects the Prosecuting Attorney intends to use in any hearing or at trial that were obtained from or belong to

cr 91-11-1

I, Tim Bunch ON 3-25-91, RECEIVED
Discovery CR 91-11-1, Kenneth Sloan

Tim Bunch
Public Defender
TITLE

FILED C. C. C. COURT
DREW CO. ARKANSAS
BY: NELL CAMDEN, CLERK
May 1991

APR 9 1991
AM 7, 8, 9, 10, 11, 12, 1, 2, 3, 4, 5, 6 PM
▲

IN THE CIRCUIT COURT OF Drew ^{II 83} COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR 91-11-1

Kenneth R. Ison

DEFENDANT

ORDER SETTING CASE FOR TRIAL

The above styled case is hereby set for ~~(non-jury)~~ (jury) trial in the Drew County Courtroom, Drew County Courthouse, Monticello, Arkansas, on June 21, 1991, at 9³⁰ A.m.

No change in this setting will be made except on written order of the Court obtained not less than five (5) days prior to trial.

Dated this 24 day of April, 1991.

Paul K. Roberts
PAUL K. ROBERTS, CIRCUIT JUDGE

cc: Pope
Bunch

FILED Circuit COURT
DREW CO. ARKANSAS
BY: NELL CAMPBELL, CLERK

APR 25 1991

AM 7, 8, 9, 10, 11, 12, 1, 2, 3, 4, 5, 6 PM

▲

I - 297

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

THE STATE OF ARKANSAS

vs.

Case No. CR 91-11-1

Kenneth R. Isom

Theft of Property ACA 5-36-103

FILED *[Signature]* COURT
DREW CO. ARKANSAS
NELL CAMPBELL, CLERK
BY: *[Signature]*

JUN 14 1991

AM PM
7,8,9,10,11,12,1,2,3,4,5,6
▲

AMENDED INFORMATION

I, SAM POPE Prosecuting Attorney within and for the Tenth Judicial Circuit of the State of Arkansas, of which DREW County is a part, in the name and by the authority of the State of Arkansas, on oath, accuse the defendant, Kenneth R. Isom of the crime(s) of Theft of Property ACA 5-36-103, committed as follows, to-wit: The said defendant on or about December 24, 1990, in DREW County, Arkansas, did unlawfully:

Knowingly take or exercise unauthorized control over an interest in the property of another person with the purpose to deprive the owner of the property, to-wit: a car, gun, and microwave belonging to Jay H. Jones, valued at more than \$2500.00, a CLASS B FELONY.

He has committed four (4) or more prior felonies and is subject to sentencing as an habitual offender.

all counts being against the peace and dignity of the State of Arkansas.

[Signature]
SAM POPE, Prosecuting Attorney

DATE OF ARREST: December 28, 1990

II-382

2

IN THE CIRCUIT COURT OF Drew COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. 91-7-1 + 91-114

Kenneth Isom

DEFENDANT

ORDER TO ARKANSAS DEPARTMENT OF CORRECTION
FOR DELIVERY AND APPEARANCE

The Defendant above-named, presently in the custody of the Arkansas Department of Correction, (ADC# _____), is to be taken by the Sheriff of Drew County from said Department of Correction and by him delivered before this court in Monticello, Arkansas, at 9³⁰ A.M., on Thursday, the 20 day of June, 19 91, for the purpose of Trial herein. Upon completion of said business before the Court, the said Sheriff shall return the Defendant to the said Department of Correction at the point of pick-up.

SO ORDERED THIS 17 DAY OF June, 1991.

Paul K. Roberts
PAUL K. ROBERTS, CIRCUIT COURT JUDGE

Circuit
Drew County, Ark.
June 17th 91 AM 3:10
Shelley PM
Shelley Clerk
D.C.

II-411

IN THE CIRCUIT COURT OF Drew COUNTY, ARKANSAS

State of Arkansas

VS

NO. CR-91-11-1

Kenneth R. Ison

ORDER RE-SETTING CASE FOR TRIAL

The above styled case which was set for trial June 21, 1991 is hereby re-set for jury trial on 12th day of July, 19 91 at 9:30 A M in the Drew County Courthouse.

No change in this setting will be made except on written order of the Court obtained not less than five (5) days prior to trial.

Dated this 21 day of June, 19 91.

cc: Burch
Pope

Paul K. Roberts
CIRCUIT JUDGE, TENTH JUDICIAL DISTRICT

FILED Circuit COURT
DREW CO. ARKANSAS
NELL CAMDEN, CLERK
BY: Nell Camden

JUN 21 1991

AM PM
7,8,9,10,11,12,1,2,3,4,5,6

II-437

IN THE CIRCUIT COURT OF

Drew

II-430

COUNTY, ARKANSAS

STATE OF ARKANSAS

VS.

Kenneth Ison

CASE NO.

91-11-1

FINDING OF PROBABLE CAUSE

I, the undersigned Judge or Magistrate, after reviewing the (Information) (and Probable Cause Affidavit) ~~filed in the above~~ numbered case, or from the sworn testimony of Tommy Cole

_____, or other information, hereby find that Probable Cause exists for the arrest and detention of the defendant or defendants in the above numbered cause on the charge of Theft of Property over \$200 value.

[Signature]
JUDGE/MAGISTRATE

DATED:

July 3, 1991

Filed Circuit Cou
Drew County, Ark.

July 3, 1991 4:20 AM

[Signature] Clerk

By _____

D. C.

No. CR 91-11-1

BENCH WARRANT.

The State of Arkansas, to any Sheriff, Constable, Coroner, or Policeman, in this State:

YOU ARE COMMANDED forthwith to arrest KENNETH R. ISOM

and bring him before the Drew County Circuit Court, to
answer an indictment in that Court against same for the offense of
Theft

or if the Court be adjourned for the Term, that you deliver same

to the jailor of Drew County.

WITNESS my hand and the seal of said Court, this Third

day of JULY 19 91

Nell Camden Clerk

By Laura Watson D.C.

The Defendant is to be admitted to bail in the sum of _____
Dollars, and the same may be taken by the Sheriff of the County in which he is arrested, or by the Sheriff of Drew
County.

Clerk.

D.C.

SHERIFF'S SERVICE

STATE OF ARKANSAS

COUNTY OF Drew

I have this 5 day of 7, A.D. 1991 duly served the within by arresting the said _____

Kenneth R Isom

FEES,

Service, \$ _____

Mileage, \$ _____

Return, \$ _____

TOTAL \$ _____

A True Copy I So Certify

This 5 Day Of July 1991

Nell Camden

NELL CAMDEN
Circuit Clerk & Recorder
Drew County, Arkansas

T. Free Sheriff

By Billy Tucker D.S.

Clerk's File:

Filed this _____ day of _____, 19____ Clerk

By: _____ D.C.

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR 91-11-1

KENNETH ISOM

DEFENDANT

AFFIDAVIT

STATE OF ARKANSAS)
COUNTY OF ASHLEY)

SS:

Circuit
Drew County, Ark.
July 3 1991 8:00 PM
Held Condon
Clerk
By _____ D.C.

I, Sam Pope, being first duly sworn, depose and say:

I am the Prosecuting Attorney charged with trial of this case.

On February 22, 1991, the defendant, Kenneth Isom, was charged in this Court by the filing of an Information by me.

This case has been set for trial on Friday, July 12, 1991.

Jay Hebble Jones is believed to reside in Pearl River, Louisiana. He provided investigating officers herein with a telephone number of (504) 863-2475. He is a material witness for the State in this case because he is the victim of the theft of property charged herein. His testimony is essential to the State being able to prove the elements of the offense of theft of property with which the defendant is charged and in indentifying the defendant as the individual who unauthorizedly took his vehicle and contents.

The testimony of Jay Hebble Jones is necessary for a full and complete trial of the defendant in this case.

The witness resides about 300 miles from this court, a roundtrip distance of 600 miles.

The witness will travel by automobile and the time traveling and testifying will three (3) days. He is needed to testify on Friday, July 12, 1991.

Expected witness fees and expenses for Jay Hebble Jones will be approximately \$246⁰⁰. These fees will be tendered with the certificate prayed for in the attached motion if the certificate is granted.

My information and belief is that the State of Louisiana, where this witness resides, has enacted the Uniform Act to Secure Attendance of Witnesses from Without the State in Criminal Proceedings. The State of Arkansas has adopted this act in Act 453 of 1977, and both versions of this Uniform Act, as well as those in each state through which the witness must travel, provide for immunity for the witness from service of process and arrest in criminal and civil cases.



SAM POPE, PROSECUTING ATTORNEY
TENTH JUDICIAL DISTRICT
P. O. Box 32
Hamburg, Arkansas 71646
(501) 853-9871

Subscribed and sworn to before me this 3 day of July, 1991.


Notary Public (Current Clerk)

My Commission Expires:

12/31/92

Filed Circuit Court
Drew County, Ark.
July 3, 1991 AM
Red Conder PM
By Clerk
D/C

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR-91-11-1

KENNETH ISOM

DEFENDANT

MOTION FOR CERTIFICATE FOR
SUBPOENA FOR OUT-OF-STATE WITNESS

The State of Arkansas, by Sam Pope, Prosecuting Attorney for the Tenth Judicial District, based upon the accompanying affidavit, moves the Court for issuance of a certificate finding that Jay Hebble Jones, Pearl River, LA, is a material witness in this action:

1. Jay Hebble Jones is a material witness in this action because on December 24, 1990, he was the victim of a Theft of Property which occurred in Drew County, Arkansas for which the defendant is charged herein. Attached hereto is the report of Deputy Tommy Cox of the Drew County Sheriff's office which outlines the testimonial evidence available from Jay Hebble Jones. The State will be unable to pursue this criminal prosecution against an habitual criminal without the testimony of Jay Hebble Jones.

2. The trial in this action at which Jay Hebble Jones is needed to testify is scheduled for Friday, July 12, 1991 at 9:30 A.M.. The State intends to call this witness on July 12, 1991 and his testimony will take one (1) day.

3. This witness lives in Pearl River, Louisiana insofar as the state can confirm. The total time this witness would be in transit from there to trial and back would be three (3) days.

4. Expenses and fees in the amount of \$246⁰⁰ will be

delivered with the certificate to a Court in the State where he is located, if the certificate is issued. These fees are itemized as follows: (Ark.Stat.Ann. 41-2006) :

| | |
|--------------------|--------------------------------------------|
| Witness Fee | $25^{\text{00}} \times 3 = 75^{\text{00}}$ |
| Meals | $16^{\text{00}} \times 3 = 48^{\text{00}}$ |
| Mileage: | |
| 300 mi. x .205 x 2 | $= 123^{\text{00}}$ |
| Total | <u>246⁰⁰</u> |

5. This witness' testimony is necessary for a full and complete presentation of the State's case.

WHEREFORE, the State prays the Court issue a Certificate to Secure the Attendance of a Witness from Without the State of Arkansas showing : Jay Hebble-Jones : is a material witness whose presence will be required for 3 days, including transit back and forth.

Respectfully submitted,



SAM POPE, PROSECUTING ATTORNEY
TENTH JUDICIAL DISTRICT
P.O. Drawer 32
Hamburg, Arkansas 71646
(501-853-9871)

Filed Circuit Court
Drew County, Ark.
July 3 1991 PM
By Jack Hammond Clerk
D.C.

II-431

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR 91-11-1

KENNETH R. ISOM

DEFENDANT

CERTIFICATE TO SECURE ATTENDANCE OF A WITNESS
FROM WITHOUT THE STATE OF ARKANSAS IN A
CRIMINAL PROCEEDING

The State of Arkansas has moved the Court, through the Prosecuting Attorney of the Tenth Judicial District, for issuance of a certificate for a subpoena for JAY HEBBLE JONES, a material witness in this proceeding, who resides in Pearl River, Louisiana.

The Court has examined and considered the motion and supporting affidavit of Sam Pope and it finds and certifies:

1. There is a criminal prosecution that will commence on Friday, July 12, 1991 at 9:30 A.M., in the Drew County Courthouse, Circuit Courtroom, Monticello, Arkansas.

2. Jay Hebble Jones is a material witness in this proceeding.

3. Attendance of Jay Hebble Jones is necessary for a period of three (3) day, including travel on July 11, 12, and 13, 1991.

4. The District Court of the State of Louisiana, for the Parish of St. Tamany may obtain jurisdiction over Jay Hebble Jones.

IT IS THEREFORE, ORDERED AND ADJUDGED that three (3) copies of the Affidavit, Certificate, Order, and a certified copy of the

RETURN

STATE OF ARKANSAS, COUNTY OF Drew

On this 25 day of March, 1998, at 7:30 o'clock
A.m., I have duly served the within summons by delivering a copy
thereof, together with a copy of the complaint, to Kenneth Doorn
such person being:

CHECK APPLICABLE:

- ☒ the person named therein as defendant.
☐ a member of the defendant's family above 14 years of age at
defendant's usual place of abode, namely
☐ the duly designated agency for service of process for the
defendant, namely

OTHER: _____

F. J. R.
SHERIFF

By Chuck Roberson

291-00411
BAIL BOND

STATE OF ARKANSAS

COUNTY OF Drew 88

FILED Circuit COURT
DREW CO. ARKANSAS
WILL CAMPBEN, CLERK
BY: William Campbell

JUL 31 1991

AM 7:30 PM
7,8,9,10,11,12,1,2,3,4,5,6

Defendent: NAME Ken Isom
ADDRESS Rt. 3 Box 53A
TELEPHONE 367 5445

being in custody charged with the offense of Theft of Prop.
and being permitted to give bail in the
sum of Seven Thousand Five Hundred dollars.

NOW WE Ken Isom
Linda Isom

hereby undertake that the above named defendant, Ken Isom

shall appear in the Circuit Court of Drew Co. County, Arkansas
on the 11 day of Sept, 1991, at 9:30 AM o'clock
to answer to said charge, and shall at all times render himself amenable to the order and
process of said court, in the prosecution of said charge, and that he will not depart
therefrom without the leave of the Court, and if convicted shall render himself in execution
thereof, or if he fails to perform either of these conditions, that we will pay to the STATE OF
ARKANSAS, The Sum of

Seven Thousand Five Hundred Dollars.

ATTEST:

APPROVED:

DEFENDENT

CO-SIGNER

CO-SIGNER

REMARKS:

CO-SIGNER

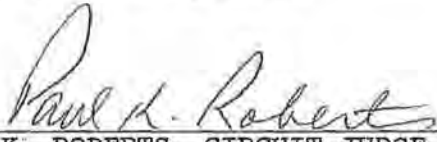
10% Bond \$750.00 paid by
Linda Isom. 90% to be Ret. after
Court.

Uniform Act to Secure Attendance of Witnesses from Without a State in Criminal Proceedings (Act 453 of 1977) be transmitted to the Clerk of the Court, Parish of St. TAMANY, wherein Jay Hebble Jones, the material witness herein, resides for such proceedings as are necessary in that Court under the Uniform Act to Secure the Attendance of a Witness from Without a State in Criminal Proceedings to Secure the attendance of Jay Hebble Jones at this criminal proceeding on Friday, July 12, 1991, for a total period of one (1) day, with a day traveling to and from the proceedings.

IT IS FURTHER ORDERED AND ADJUDGED that the County Judge of Drew County shall forthwith cause to be prepared a check in the amount of \$246⁰⁰ from Drew County for the purpose of tendering witness fees and expenses to Jay Hebble Jones.

The Court further finds that these fees and expenses are a necessary cost of the administration of justice in Drew County.

DATED this 3 day of July, 1991.



PAUL K. ROBERTS, CIRCUIT JUDGE
TENTH JUDICIAL DISTRICT
FIRST DIVISION

STATE OF ARKANSAS
DEPARTMENT OF CORRECTION

*Circuit
Clerk*

CUSTODY RECEIPT

Unit: VARNER

Date: JULY 5, 1991

I acknowledge, on this date, the receipt from the ARKANSAS DEPARTMENT OF CORRECTION, the body (s) of:

NAME

A.D.C. NO.

ISOM, KENNETH

BM

#92604

PAROLE TO DETAINER: 7-5-91

with the understanding that I will be responsible for the above subject (s) while in my custody, and in the event he/she/they escape, my office will be responsible for apprehension and return to the ARKANSAS DEPARTMENT OF CORRECTION at the unit indicated above.

Signed

Bill Jumper
For Sheriff's Office

 Drew County

*Get 7-9-91
Hell Carnden. Clerk*

IN THE CIRCUIT COURT OF Drew COUNTY, ARKANSAS

THE STATE OF ARKANSAS

VS

No. CR 91-1-1

Kenneth Isom

MOTION TO CONTINUE

Comes the State of Arkansas by and through the undersigned deputy prosecuting attorney, who moves this Court to continue the trial in this matter for the following reasons:


1. A material witness, Jay Hubble Jones, whose last know address is Pearl River, LA is presently unavailable. Mr. Jones is a material witness being the victim of the offense charged herein, and the State cannot go forward with it's burden of proof in his absence. The State has exercised due diligence in having the Court enter an order pursuant to the Uniform Act to Secure Out of State Witness, but the State of Lousiana has been unable to locate and serve the witness with the paperwork and subpoena requiring his appearance herein.

WHEREFORE, the State prays that this case be continued and reset for September 11, 1991.

Respectfully submitted,



Prosecuting Attorney

FILED  COURT
DREW CO. ARKANSAS
NELL CAMDEN, CLERK

JUL 12 1991

AM 7,8,9,10,11,12,1,2,3,4,5,6 PM

II-453

IN THE CIRCUIT COURT OF Drew COUNTY, ARKANSAS

THE STATE OF ARKANSAS

VS

No. CR 91-1-1

Kenneth Isom

ORDER OF CONTINUANCE

Comes on this 12th day of July, 1991, the Motion for Continuance herein of the State of Arkansas and the court finds:

1. A material state's witness, Jay Hubble Jones, whose last know address is Pearl River, LA is presently unavailable. Mr. Jones is a material witness being the victim of the offense charged herein, and the State cannot go forward with it's burden of proof in his absence. The State has exercised due diligence in having the Court enter an order pursuant to the Uniform Act to Secure Out of State Witness, but the State of Lousiana has been unable to locate and serve the witness with the paperwork and subpoena requiring his appearance herein.

It is therefore ordered that this case be continued and reset for September 11, 1991. The time between the date of this order and the resetting date is excluded from the speedy trial deadline and charged against the defendant under A.R.Crim.P. 28.3. (d)(1)


Circuit Judge

~~Respectfully submitted,~~

FILED 
DREW CO. ARKANSAS
NELL CAMDEN, CLERK

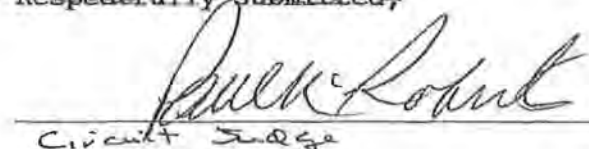
BY:

JUL 12 1991

AM

7,8,9,10,11,12,1,2,3,4,5,6

PM


Circuit Judge
~~Prosecuting Attorney~~

II-452

IN THE CIRCUIT COURT OF Drew COUNTY, ARKANSAS

STATE OF ARKANSAS

vs.

Kenneth Ison

Case No. 91-11-1

ORDER

The Prosecuting Attorney does not stipulate that the Defendant may be released on his own recognizance. The Prosecuting Attorney having made the following recommendation to this Court concerning:

1. the advisability and appropriateness of pretrial release: Board
2. the amount and type of bail: \$7,500.00 - 10% cash deposit to Signature
3. conditions, if any, which should be imposed on release:
A. Commit no criminal offense while on bond.

The Defendant is ordered to appear before this Court on Sept. 11, 1991 at 9:30 A.M., in the Circuit Court of Drew County. The following conditions of release are hereby imposed:

#3 above

The Court finds that no other conditions will reasonably ensure the appearance of the Defendant in Court and money bail is set as follows: \$7,500.00 - 10% cash deposit to Signature.
IT IS SO ORDERED.

FILED Circuit COURT
DREW CO. ARKANSAS
WILL CAMDEN, CLERK
BY: Will Camden

JUL 12 1991

AM 7,8,9,10,11,12,1,2,3,4,5,6 PM



David Roberts
JUDGE
July 12, 91
DATE

AMCI 6110 VERDICT FORM-BIFURCATED TRIAL-FIRST STAGE-
MODIFIED

WE, THE JURY, FIND KENNETH ISOM GUILTY OF THEFT OF PROPERTY.

Paul B. Jones
FOREMAN

WE, THE JURY, FIND KENNETH ISOM NOT GUILTY.

FOREMAN

WE, THE JURY, FIND KENNETH ISOM GUILTY OF UNAUTHORIZED
USE OF A MOTOR VEHICLE.

FOREMAN

Christ COURT
FILED CREW CO. ARKANSAS
WELL CAMPEN, CLERK
BY Paul B. Jones

SEP 11 1991

AM

7, 8, 9, 10, 11, 12, 1, 2, 3, 4, 5, 6

PM

VERDICT FORM - THEFT

WE, THE JURY, FIX THE SENTENCE OF KENNETH ISOM ON THE THEFT CHARGE AT:

A. A TERM OF _____
(Not less than 10 years nor more than 30 years)
IN THE ARKANSAS DEPARTMENT OF CORRECTION; OR

B. A FINE OF _____
(Not exceeding \$10,000)
DOLLARS; OR

C. BOTH A TERM OF 15 YRS.
(Not less than 10 years nor more than 30 years)
IN THE ARKANSAS DEPARTMENT OF CORRECTION AND A FINE OF \$ 5,000.00
(Not exceeding \$10,000)

Paul B. Iron
Foreperson

FILED Cravitt COURT
DREW CO. ARKANSAS
NELL CAMDEN, CLERK
BY Nell Camden

SEP 11 1991

AM 7,8,9,10,11,12,1,2,3,4,5,6 PM
1

FILED Circuit COURT
DREW CO. ARKAS
NEWARK MD CLERK

SEP 12 1991
9:25 PM
1, 2, 3, 4, 5, 6

92-696
IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR-91-11-1

KENNETH R. ISOM

DEFENDANT

ORDER
FOR
DISCHARGE OF BONDSMEN AND REFUND OF BOND MONEY

The court finds and orders:

1. This case has been finally concluded with defendant appearing as ordered, and defendant's bondsmen and sureties are hereby released and discharged from any obligation as a result of having signed a bond for the defendant in favor of the county and state. Any tangible property given to the Sheriff as security for said bond is hereby ordered promptly returned to the rightful owner.
2. The Sheriff of this county accepted a cash deposit bond of \$ 750.00 on behalf of defendant, and a refund of 90% or \$ 675.00 is hereby ordered to be promptly made by the Sheriff to the person whose name appears on the Sheriff's receipt as having made said cash deposit, or the designee or assignee of said person.

IT IS SO ORDERED on September 2 19 91

Paul K. Roberts
PAUL K. ROBERTS Circuit Judge

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS PLAINTIFF

VS. CR-91-11-1

KEN ISOM DEFENDANT

MOTION TO BE DISCHARGED AS APPELLATE COUNSEL

Comes now Timothy W. Bunch, Public Defender, Tenth Judicial District of Arkansas, having been appointed counsel for the defendant in the above-styled cause of action, and states as follows:

1. That the defendant, Ken Isom, having been found guilty after trial by jury in this case and having been sentenced, has decided to appeal.

2. That the Public Defender's office does not have the attorney resources or time to prepare the appeal in this case and meet its trial obligations.

WHEREFORE, Timothy W. Bunch respectfully requests that the Court discharge and relieve him from any further duties and obligations to the defendant in the appeal of this case; and that the Court appoint successor counsel to pursue the defendant's appeal.

Respectfully submitted,

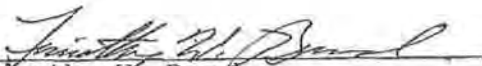
By: *Timothy W. Bunch*
Timothy W. Bunch
Public Defender
Bar Number 81022
P. O. Box 564
Monticello, Ar 71655
(501) 367-5386

FILED *Circuit* COURT
DREW CO. ARKANSAS
JILL CAMPBELL, CLERK
Jill Campbell

SEP 12 1991
11:45 PM
7 8 9 10 11 12 1 2 3 4 5 6
A

CERTIFICATE OF SERVICE

I, Timothy W. Bunch, certify that a copy of the foregoing motion has been served upon the defendant, Ken Isom, Drew County Jail, Monticello, Arkansas, 71655, this 17th day of September, 1991.


Timothy W. Bunch

22-697
IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

CR-91-11-1

KEN ISOM

DEFENDANT

ORDER DISCHARGING COUNSEL AND APPOINTING

SUCCESSOR APPELLATE COUNSEL

Came on for consideration the motion of the Public Defender's office to be discharged as counsel and requesting that successor appellate counsel be appointed. The Court, after reviewing the motion, finds that good cause exists for granting the relief requested and orders as follows:

1. That the Public Defender's office does not have the attorney resources available to meet its trial obligations and prepare the appeal in this case.

2. That the Public Defender's office is hereby relieved from any further duties and obligations to the defendant in the appeal of this case pursuant to A.R.Cr.P. Rule 36.26.

3. That the Court appoints the Honorable Reid Harrod, 101 Adams St., P. O. Box 310, Hamburg, Arkansas, 71646, to represent the defendant on appeal.

4. That the Honorable Reid Harrod shall perfect the appeal within the time prescribed by statute.

IT IS SO ORDERED this 12 day of

September, 1991.

FILED Circuit COURT
DREW CO. ARKANSAS
MEL CAMDEN, CLERK

Samuel Z. Bird
CIRCUIT JUDGE

SEP 13 1991

9:30 PM
7, 8, 9, 10, 11, 12, 1, 2, 3, 4, 5, 6

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR 91-11-1

KEN ISOM

DEFENDANT

NOTICE OF APPEAL

The Defendant, Ken Isom, hereby gives notice that he appeals to the Court of Appeals of the State of Arkansas from the verdict rendered in the Drew County Circuit Court on the 11th day of September, 1991. The Defendant further states that this appeal is not for delay, but that justice be served.

FILED Circuit COURT
DREW CO. ARKANSAS
NELL CAMDEN, CLERK
BY: [Signature]
SEP 17 1991
PM
7,8,9,10,11,12,1,2,3,4,5,6
▲

KEN ISOM, Defendant

By: David Harrod
DAVID HARROD, Attorney
Harrod Law Offices
P. O. Box 310
Hamburg, AR 71646
853-5236

CERTIFICATE OF SERVICE

I, DAVID HARROD, attorney for Defendant, hereby certify that I have served a copy of the foregoing NOTICE OF APPEAL on Sam Pope, Prosecuting Attorney, by mailing a copy to his office address, P. O. Box 32, Hamburg, Arkansas, 71646, on the 16th day of September, 1991.

David Harrod
DAVID HARROD

App. 213

Goudy Bail Bond Company

115 South Main
Monticello, Arkansas 71655
(501) 367-7374

306 North Myrtle
Warren, Arkansas 71671
(501) 226-5495

STATE OF ARKANSAS

Power No. NO 2684

County of DREW

Agent No. 9900-1

City of Monticello

**APPEAL
BAIL BOND**

Ken Isom having been arrested and now being in custody on
a charge(s) of Theft of Property
in the Monticello - Drew (City) or (County), Arkansas, and being permit-
ted to give bail in the sum of Fifteen Thousand AND ⁰⁰/₁₀₀ DOLLARS NOW.

Goudy Bail Bond Company

(Company Name)

of Monticello - Drew County, Arkansas, undertakes that the said
Ken Isom will appear before the Circuit Court of
Monticello, Arkansas, on the Pending day of Sept

19 91, at m., to answer the charge(s) specified and all other orders of the court and then and there
to surrender himself/herself into custody, and will not depart without being lawfully discharged and if he/she fails
to perform either of these conditions, the Company will pay to the Circuit
Court of Monticello the sum
of 15,000.00 DOLLARS.

Secured ☒ Unsecured ☐ If secured, give collateral receipt number and describe security
4 Acres of land w/ Frame House located
in Monticello.

Premium Charged: \$ 1500.00

In witness whereof we have hereunto set our hands and seal this 13th day of Sept

19 91.

Approved: _____

Goudy Bail Bond Company

(Company)

Agent

Indemnitor

Indemnitor

(SEAL)

Goudy
Bail Bond
Company
1991

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR-91-11-1

KENNETH ISOM

DEFENDANT

DESIGNATION OF RECORD ON APPEAL

Comes the Defendant, Kenneth Isom, by and through his attorney, David W. Harrod, and designates the entire record, including but not limited to the pleadings and the transcript with all exhibits, as the record on appeal.

The record on appeal shall be filed with the Court of Appeals of Arkansas in Little Rock, Arkansas.

The transcript has been ordered this date.

KENNETH ISOM, Defendant

By:

David W. Harrod
DAVID W. HARROD, Attorney
Harrod Law Offices
P. O. Box 310
Hamburg, AR 71646

CERTIFICATE OF SERVICE

I, DAVID W. HARROD, attorney for Defendant, hereby certify that I have served a copy of the foregoing DESIGNATION OF RECORD ON APPEAL on Sam Pope, Prosecuting Attorney, by mailing a copy to his office address, P. O. Box 32, Hamburg, Arkansas, 71646, on the 25th day of September, 1991.

FILED Circuit COURT
DREW CO. ARKANSAS
BY: David W. Harrod

David W. Harrod
DAVID W. HARROD

SEP 26 1991

(68) 11.30 PM
7, 8, 9, 10, 11, 12, 1, 2, 3, 4, 5, 6

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR-91-11-1

KENNETH ISOM

DEFENDANT

MOTION FOR AN ORDER FOR EXTENSION OF TIME
TO SUBMIT COURT REPORTER'S TRANSCRIPT
TO THE OFFICE OF THE CIRCUIT CLERK AND TO FILE BRIEF

Comes now the Appellant, Kenneth Isom, by and through his attorney, David W. Harrod, and in his Motion alleges and states as follows:

1. The Appellant filed his NOTICE OF APPEAL and DESIGNATION OF RECORD in the above-referenced styled and numbered cause on September 26, 1991.

2. Due to the Court Reporter's heavy caseload, busy schedule and preexisting commitments, additional time is necessary to prepare the stenographically reported transcript of all proceedings in order that it may be included in the Clerk's portion when it is lodged with the Court of Appeal.

3. Appellant desires and extension of time of an additional seven (7) months to lodge record with the appellate court.

4. This request is based on Ark. Rule of Appellate Procedure No. 5.

WHEREFORE, Appellant prays for an Order of an extended seven (7) months for filing record in the Appellate Court and for all other relief as the Court might deem proper.

Respectfully submitted:

KENNETH ISOM, Defendant

FILED *Circuit* COURT
DREW CO. ARKANSAS
JILL CAMDEN, CLERK
cc: *Neil Chandler*

OCT 1 1991

AM 7.2.9.10.11.12.1.2.3.4.5.6 PM

By: David W. Harrod
DAVID W. HARROD
Harrod Law Office
P. O. Box 310
Hamburg, AR 71646
853-5236

CERTIFICATE OF SERVICE

I, DAVID W. HARROD, attorney for Defendant, hereby certify that I have served a copy of the foregoing MOTION TO DECLARE DEFENDANT INDIGENT on the following:

Honorable Sam Pope
Prosecuting Attorney
P. O. Box 32
Hamburg, Arkansas, 71646

Office of the Attorney General
200 Tower Building, 323 Center St.
Little Rock, Arkansas 72201

DATED this 30th day of September, 1991.

David W. Harrod
DAVID W. HARROD

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR-91-11-1

KENNETH ISOM

DEFENDANT

MOTION TO DECLARE DEFENDANT INDIGENT

Comes the Defendant, Kenneth Isom, by and through his attorney, David W. Harrod, and moves this Court to declare him indigent and to allow him to proceed in this case *in forma pauperis*. The Defendant sets forth the following grounds in support of his Motion.

1. The Defendant was convicted of one count of theft of property by a trial by jury in the Drew County Circuit Court.

2. The Defendant was declared to be indigent and was represented in the Circuit Court by the Drew County Public Defender's Office.

3. Defendant desires to appeal his conviction and due to financial circumstances of Defendant and his immediate family, Defendant is unable to pay for the cost of legal services of his attorneys.

4. That the affidavit of the Defendant is attached hereto and marked Exhibit "A".

5. That this Motion is based on Arkansas Rule of Criminal Procedure No. 36.9, and Arkansas Rule of the Supreme Court No. 29.

FILED
DREW CO. ARKANSAS
COURT
CLERK
BY: *Neil Canode*

OCT 7 1991

AM PM
7,8,9,10,11,12,1,2,3,4,5,6

WHEREFORE, Defendant prays that he be declared indigent for appeal purposes and that he be allowed to proceed in forma pauperis.

Respectfully submitted:

KENNETH ISOM, Defendant

By: David W. Harrod
DAVID W. HARROD
Harrod Law Office
P. O. Box 310
Hamburg, AR 71646
853-5236

CERTIFICATE OF SERVICE

I, DAVID W. HARROD, attorney for Defendant, hereby certify that I have served a copy of the foregoing MOTION TO DECLARE DEFENDANT INDIGENT on the following:

Honorable Sam Pope
Prosecuting Attorney
P. O. Box 32
Hamburg, Arkansas, 71646

Office of the Attorney General
200 Tower Building, 323 Center St.
Little Rock, Arkansas 72201

DATED this 4th day of October, 1991.

David W. Harrod
DAVID W. HARROD

IN THE SUPREME COURT OF ARKANSAS

KENNETH ISOM

PETITIONER

VS.

NO. _____

STATE OF ARKANSAS

RESPONDENT

AFFIDAVIT IN SUPPORT OF
REQUEST TO PROCEED IN FORMA PAUPERIS

I, KENNETH ISOM, being first duly sworn, depose and say that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further swear that the responses which I have made to questions and instructions below are true.

1. Are you presently employed? _____

(a) If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer.

Yes. Monthly average wage: \$800.00. Employer: Steve Bolin, Route 1, Box 195, Hamburg, AR 71646. I have been employed at this job for three months.

(b) If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received.

EXHIBIT "A"

2. Have you received within the past twelve months any money from any of the following sources?

(a) Business, profession or any form of self-employment?

No

(b) Rent payments, interest or dividends? No

(c) Pensions, annuities or life insurance payments?

No

(d) Gifts or inheritances? No

(e) Any other sources? No

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months. _____

3. Do you own any cash, or do you have money in a checking or savings account? No

If the answer is yes, state the total amount in each account.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? No

If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. Samatha Isom, Daughter and Tameka Green, Daughter. Support: \$50.00 per week for both children.

6. TO BE COMPLETED ONLY IF PETITIONER IS INCARCERATED IN THE ARKANSAS DEPARTMENT OF CORRECTION OR ANY OTHER PENAL INSTITUTION.

Do you have any funds in the inmate welfare fund? _____

If the answer is yes, state the total amount in such account and have the certificate found below completed by the authorized officer of the institution. _____

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

KENNETH R. ISOM
KENNETH ISOM

STATE OF ARKANSAS

COUNTY OF ASHLEY

Petitioner, KENNETH ISOM, being first duly sworn under oath, presents that he has read and subscribed to the above and states that the information therein is true and correct.

SUBSCRIBED AND SWORN to before me this 4th day of October, 1991.

Norma S. Hales
Notary Public

My Commission Expires:

1-24-2001

.....
If the answer to question 6 is yes - the following must be completed.

CERTIFICATE

I hereby certify that the petitioner herein, _____, has the sum of \$_____ on account to his credit at the _____ institution where he is confined. I further certify that petitioner likewise has the following securities to his credit according to the records of said _____ institution.

Authorized Officer of
Institution

88-112

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR-91-11-1

KENNETH ISOM

DEFENDANT

ORDER

Defendant's Motion for the full seven (7) month extension to file the record on appeal having come on, the Court being sufficiently advised and satisfied therein, and from the record, matters, things, evidence and testimony adduced, the Court finds that Defendant should have, and he hereby is granted, the full seven (7) month period within which to file the Record on Appeal, dating from September 11, the date of entry of the judgment.

SO ORDERED this 3rd day of October, 1991.

Samuel Z. Bird
CIRCUIT JUDGE

FILED *Samuel Z. Bird* COURT
DREW CO. ARKANSAS
JILL CAMDEN, CLERK

OCT 7 1991

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1

88-281
IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS.....PLAINTIFF
VS. NO. CR 91-11-1
KENNETH ISOM.....DEFENDANT

ORDER SETTING HEARING

Now on this date it is brought to the attention of the Court that the defendant, Kenneth Isom, has filed a Motion to be Declared an Indigent for Appeal Purposes and it is found that said motion should be set for hearing.

THEREFORE, it is by the Court ordered that said motion be, and it is hereby, set for hearing at 1:30 p.m. on Wednesday, November 20, 1991 at the Drew County Courthouse in Monticello, Arkansas.

Rendered this 4th day of November, 1991.

Samuel Z. Bird
SAM BIRD
CIRCUIT-CHANCERY JUDGE

The Clerk shall provide copies to:

Mr. Sam Pope, Prosecuting Attorney
Mr. David Harrod, Attorney

FILED *Circuit* COURT
DREW CO. ARKANSAS
BY *Camden Clerk*

NOV 4 1991
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88-394

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS.....PLAINTIFF
VS. NO. CR-91-11-1
KENNETH ISOM.....DEFENDANT

ORDER FINDING DEFENDANT
TO BE INDIGENT FOR APPEAL PURPOSES

On the 20th day of November, 1991, this matter came on for hearing upon the motion of the defendant seeking an order declaring that he is indigent for purposes of appeal. Upon said motion and upon the testimony of the defendant and other witnesses, the Court finds that the defendant, Kenneth Isom is an indigent for purpose of appeal from the jury verdict entered herein on September 11, 1991.

IT IS SO ORDERED this 26 day of November, 1991.

Samuel Z. Bird
SAM BIRD, CIRCUIT/CHANCERY JUDGE

The Clerk shall provide copies to:

Mr. Sam Pope, Prosecuting Attorney
Mr. David Chambers, Deputy Prosecuting Attorney
Mr. David Harrod, Defense Counsel

FILED *Isom* COURT
DREW CO. ARKANSAS
NELL CAMDEN, CLERK
BY: *Nell Camden*

NOV 27 1991

APR 9:45 PM
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▲

90-217

TOMMY C. FREE
SHERIFF AND COLLECTOR

Cherry Cotham
Chief Deputy Tax Collector
Phone: 367-9639



210 South Main Street
Monticello, Arkansas 71655
Phone: 367-6211
Jail: 367-7321

**THIS DOCUMENT
PROVIDED TO DEF.
UNDER RULE 17.1 ARCP
DATE 2-21-91 INIT. BS**

DREW COUNTY, ARKANSAS

INCIDENT:
DATE:
COMPLAINANT:

Vehicle Theft
12-24-90
Jay Jones, Pearl River, LA, (504)863-2475

On the date above, at approximately 10 PM, I was en route to Monticello, on Highway 425. App. 3 miles North of Monticello, I saw a man waving, trying to flag me down. I stopped and the man got in my vehicle. He said someone had just stolen his car. He described the vehicle, and I called the police dept. and advised them to have the city officer's to be on the look-out for this car.

victim

The man identified himself as (Jay Hebble Jones). He had been in Little Rock, and Mount Ida selling Christmas trees. He said he was en route back to Pearl River, La. About the Sheridan Exit, North of Pine Bluff, he said he stopped to pick up a hitch-hiker. He said the man was a young B/M, probably in his early 20's. He said the man seemed nice enough. They talked as they went down the road. Jones said the young man told him his name, and also his Nickname, but he could not remember either one. He said the nickname was a short name, though, just one word. Jones said when he got to Pine Bluff, that he made the remark, that he was going down 165. He said the man told him that he had been in Little Rock, visiting someone in the hospital, when his two friends that he was with, ran off and left him. Jones said that the man asked him if he would go 425 and take him to Monticello, that he lived in Monticello. He decided that he would do this for the man since it would not be too far out of the way. Jones said that the young man offered to drive the car, so he let him. He said after he had let the man under the wheel, that he told him he had been in the penitentiary. Jones said this bothered him, but since the young man seemed nice enough, he continued to let him drive.

Jones said he had a few drinks from Pine Bluff on, and when they got a few miles out of Monticello, he asked the man to pull over so that he could go to the bathroom. Jones said he walked toward the rear of the car, and the man took off in his car. He described the vehicle as being a grey 1982 Buick Skylark. He said he had a 30-cal. carbine with a 30-round clip, a Hot Point Microwave oven, a cheap 22 cal. pistol, with black tape on the grips, a pair of white converse tennis shoes, a pair of Tony Lama boots, some tools, approximately 60.00 in change and bills, and a white pomeranian dog, + 4 cartons of marlboro light 100's.

The LPN was obtained later, and the vehicle was entered in NCIC as stolen.

At app. 12 midnight on Dec. 25, the Dumas P.D. advised me that they had recovered the stolen car that we had entered Christmas Eve. On Dec. 26, I went to Dumas to process the vehicle for latent prints. The car was impounded at Beehus wrecking yard at Dumas per Dumas P.D.'s request.

Several latent prints were lifted from various places on and in the vehicle. The headliner had been torn from the vehicle, and the suspect apparently took the headliner with him.

Afer processing the vehicle, I interviewed Luddie Larkin, manager of EZ Mart, where the vehicle was left. She advised me that at 6:30 AM, on Dec. 25, that she had seen Buddy Spencer and Marvin Randolph sitting in the vehicle.

I interviewed Spencer and Randolph. Randolph admitted that he had been with a subject, in the stolen vehicle on Christmas Eve, and told me who it was. He also told me that he helped the subject, Ken Isom (Zero) sell a microwave, and a gun. He said he had one rifle in his possession at that time. Randolph went with me, and we recovered the items that he had helped Zero sell.

Investigation is cont'g

Tommy Cox, Drew Co.

The description of the suspect, according to Jay Jones, was: B/m, Early 20's wearing a dark leather jacket, baseball cap, and Tennis shoes, which he thought he recognized as being L.A. Gear Brand. He said the suspect had a gold stud in his left ear.

THIS DOCUMENT
PROVIDED TO DEF.
UNDER RULE 17.1 ARCrP
DATE 2-21-91 INIT. BA

KK-1

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. 91-11-1

KENNETH ISOM

DEFENDANT

ORDER REVOKING APPEAL BOND

On the 8th day of January, 1992, the matter of the continuation of the defendant's appeal bond came on for hearing, and the court finds:

1. That on September 11, 1991, the defendant was convicted herein and sentenced to 15 years in the Arkansas Department of Corrections, and an appeal bond was set at \$15,000.00.

2. That it has been established to the court's satisfaction that the defendant did on the 16th day of December, 1991, commit the offense of Burglary in Drew County, and that his appeal bond should be revoked herein.

It is therefore ordered, and adjudged that the defendant's appeal bond previously set herein is revoked.

Paul K. Roberts
Circuit Judge

3.

FILED Circuit COURT
DREW CO. ARKANSAS
BY: NELL CAMDEN CLERK
Paul K. Roberts

FEB 6 1992

APR 7 8 9 10 11 12 1 2 3 4 5 6 PM

CERTIFICATE OF SERVICE

I, Sam Pope, hereby certify a copy of the foregoing was furnished to defendant's counsel of record, David W. Harrod, on this 8th day of January, 1992.

S. Pope

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

KENNETH R. ISOM

DEFENDANT

V.

NO. 91-11-1

STATE OF ARKANSAS

PLAINTIFF

WRIT HABEAS CORPUS

PERSUIT TO BAIL REFORM ACT OF 1984

REINSTATING OF BOND FORFEITURE PERSUIT TO 9.6 COURT RULES

COMES NOW, DEFENDANT KENNETH R. ISOM PRESENTLY CONFINED, AT ARKANSAS DEPARTMENT OF, CORRECTION VARNER UNIT, GRADY, ARKANSAS, MOTION TO HAVE HIS BAIL BOND REINSTATED, PERSUIT TO CRIM COURT RULES 9.6, DEFENDANT STATES THE FOLLOWING FACTS TO BE TRUE, AN BY LAW AS THE LAW SO STATES.

DEFENDANT: KENNETH R. ISOM MOTION TO HAVE BOND REINSTATED UNDER ALL CONDITION STATES THE ABOVE CIRCUIT COURT DREW COUNTY VOILATED HIS U.S.C.A. CONST, RIGHTS UNDER THE 8th, 9th AMEND.

RODNEY DALE REEVES, PETITIONER

V.

NO: CR76-203.

STATE OF ARKANSAS, RESPONDENT

SUPREME COURT OF ARKANSAS, APRIL 4th 1977

[IN FINDING- BAIL 49) RULE PERMITTING REVOCATION OF BAIL, WHEN IT IS SHOWN THAT THERE IS, REASONABLE CAUSE TO BELIEVE THAT DEFENDANT HAS COMMITTED ANOTHER, CHARGE WAS UNCONSTITUTIONALLY APPLIED TO DENY ALL BAIL TO DEFENDANT; TRAIL COURT SHOULD MERELY HAVE SET NEW AND REASONABLE BAIL WITH, WHATEVER TERMS AND RESTRICTIONS IT DEEMED APPROPRIATE.

U.S.C.A. CONST. AMENDS 8, 14; CONST. art 2 §§ 8, 9;
RULES OF CRIMINAL PROCEDURE, RULE 9.6

FILED *Circuit* COURT
DREW CO. ARKANSAS
BY *Will* CLERK

UPON A WRIT OF CERTIORARI WE ORDERED PETITIONER RELEASE
UPON A \$15,000 SEC. BOND REINSTATED

NOV 13 1992

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A

- (1) COMES, DEFENDANT KENNETH R. ISOM STATING TRUE FACTS AS TO WHY HIS BOND SHOULD BE, REINSTATED. DEFENDANT: STATES THAT ON SEPTEMBER, 11th 1991, HE WAS TRIED HEREIN BY JURY, FOUND GUILTY OF THEFT OF PROPERTY AND BEING AN HABITUAL OFFENDER, AND SENTENCE TO 15 YEARS IN THE ARKANSAS DEPARTMENT CORRECTIONS AND FINDED \$5,000.
- (2) THE COURT SET THE DEFENDANT APPEAL BOND HEREIN AT \$15,000, AND THE DEFENDANT SUBSEQUENT POSTED A COMMERCIAL APPEAL BOND HEREIN.
- (3) ON 12/16/1991 SUBSEQUENT TO HIS RELEASE ON APPEAL BOND HEREIN, THE DEFENDANT COMMITTED WHAT WAS SAID A BURGLARY AND THEFT OF PROPERTY.

ORDER REVOKING APPEAL BOND

ON THE 8th DAY OF JANUARY, 1992, THE MATTER OF THE CONTINUATION OF THE DEFENDANT, APPEAL BOND CAME ON FOR HEARING, AND THE COURT FINDS:

- (1) THAT ON SEPTEMBER 11th, 1991, THE DEFENDANT WAS CONVICTED HEREIN AND SENTENCED TO 15 YEARS IN THE ARKANSAS DEPARTMENT OF CORRECTION, AND APPEAL BOND WAS, SET AT \$15,000.00.
- (2) THAT IT HAS BEEN ESTABLISHED TO THE COURT, S SATISFACTION, THAT THE DEFENDANT, DID ON THE 16th DAY OF DECEMBER, 1991, COMMIT THE OFFENSE OF BURGLARY IN DREW COUNTY, AND THAT HIS APPEAL BOND SHOULD BE REVOKED HEREIN.

COMES DEFENDANT, S KENNETH R. ISOM STATING UNDER WRIT HABEAS CORPUS: PERSUIT TO BAIL, REFORM ACT OF 1984, REINSTATING OF BOND FOREITURE: PERSUIT TO: 9.6 COURT RULES

~~XXXXX~~ DEFENDANT, S STATES THAT: [IN FINDING BAIL ACT] RULE PREMITTING REVOCATION OF, BAIL WHEN IT IS SHOWN THAT THERE IS, REASONABLE CAUSE TO BELIEVE THAT DEFENDANT HAS COMMITTED ANOTHER CHARGE WAS UNCONSTITUTIONALLY APPELLED TO DENY ALL BAIL TO DEFENDANT, TRAIL COURT SHOULD MERELY HAVE SET NEW AND REASONABLE BAIL WITH, WHATEVER TERMS AND RESTRICTIONS IT DEEMED APPROPRIATE.

U.S.C.A. CONST. AMENDS 8, 14; CONST ART 2 §§ 8, 9;
RULES OF CRIMINAL PROCEDURE, RULE 9.6 SUPREME COURT OF ARKANSAS, APRIL 4th 1977

DEFENDANT STATES THATS HIS BOND STILL STAND WITH BOND COMEY IN ASK THAT THIS COURTS GRANT HIS WRIT OF HABEAS CORPUS WITH ALL RESPECT ABOVE THE LAW AS LAW IS STATED

SEE RODNEY D. REEVES VS. STATE NO: CR76-203

IN LIGHT OF THE LAW DEFENDANT ASK THAT THIS MOTION BE SO GRANTED.

Subscribed And sworn to before me this 11th day of NOV 1992.

NOTARY

Kenneth R. Isom
KENNETH R. ISOM

Charles Probst

NOTARY

9-23-94

My Commission Expires

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Marvin Randolph
WHOSE ADDRESS IS: 401 S. Pecan
Dumas, Ar. 382-4219

to appear before the Drew County Court on Friday at 9:30 A.M., the 21st day
of June 19 91, and testify on behalf of the State of Arkansas
in an action in said Court between State of Arkansas

Plaintiff and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 14th day of June 19 91

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655

NELL CAMDEN, CLERK

By: Nell Camden

STATE OF ARKANSAS, COUNTY OF Drew:

On this 17th day of June, 19 91 at 2:45 o'clock P.M.,

I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

Marvin Randolph

such person being:

CHECK APPLICABLE SQUARE:

☒ the person named therein to testify

☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____

☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

_____, SHERIFF
BY: Darrell Pate DPD 7
Deputy Sheriff

COURT CLERK'S RETURN FILE

Filed this 21 day of June, 19 91

By: Nell Camden Clerk.
Vay Gay D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

2162

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Johnny Daniels
WHOSE ADDRESS IS: 809 E. Oakland, Monticello

to appear before the Drew County Court on Friday at 9:30 A.M., the 21st day
of June 19 91, and testify on behalf of the State of Arkansas
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 14th day of June 19 91
(SEAL) NELL CAMDEN NELL CAMDEN, CLERK
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655
By: Nell Camden

STATE OF ARKANSAS, COUNTY OF Drew
On this 20 day of June, 19 91 at _____ o'clock _____ .M.,
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

No Service

such person being:

CHECK APPLICABLE SQUARE:

- ☐ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

T. Fren SHERIFF
BY: Bill T Deputy Sheriff

COURT CLERK'S RETURN FILE

Filed this 20 day of June, 19 91 Nell Camden Clerk.
By Yang Chai D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Tommy Cox
WHOSE ADDRESS IS: _____

to appear before the Drew County Court on Friday at 9:30 A.M., the 21st day
of June 19 91, and testify on behalf of the State of Arkansas
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 14th day of June 19 91.
(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655
By: Nell Camden ~~678~~

STATE OF ARKANSAS, COUNTY OF Drew:
On this 17 day of June, 19 91 at 11:40 o'clock A.M.,
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being: Tommy Cox

CHECK APPLICABLE SQUARE:

- ☐ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

Jimmy C. Free SHERIFF
BY: _____
Deputy Sheriff

COURT CLERK'S RETURN FILE

Filed this 19 day of June, 19 91.
By: Nell Camden Clerk.
Ray Cox D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Luddie Larkin
WHOSE ADDRESS IS: Mgr. E Z Mart

to appear before the Drew County Court on Friday at 9:30 A.M., the 21st day
of June 19 91, and testify on behalf of the State of Arkansas
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 14th day of June 19 91
(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655
NELL CAMDEN, CLERK
By: Nell Camden

STATE OF ARKANSAS, COUNTY OF Drew
On this 17 day of May, 19 91 at 01:45 P o'clock P .M.,
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES
Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

Sam C. Free SHERIFF
BY: _____
Deputy Sheriff

COURT CLERK'S RETURN FILE
Filed this 19 day of June, 19 91 By Nell Camden Clerk.
Ray C. Gaf D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Stanford Lindsey
WHOSE ADDRESS IS: 123 Quapaw
Monticello, Ar.

to appear before the Drew County Court on Friday at 9:30 A.M., the 21st day
of June 19 91, and testify on behalf of the State of Arkansas
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 14th day of June 19 91

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655

NELL CAMDEN, CLERK

By: Nell Camden

STATE OF ARKANSAS, COUNTY OF Drew:
On this 17 day of June, 19 91 at _____ o'clock _____ .M.,
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☐ the person named therein to testify
☒ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely paper left with father
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

To Free SHERIFF
BY: Billy Tucker
Deputy Sheriff

COURT CLERK'S RETURN FILE

Filed this 19 day of June, 19 91

By Nell Camden Clerk.
Vary Gay D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Debbie Foster
WHOSE ADDRESS IS: 725 E. Gaines
Monticello, Ar.

to appear before the Drew County Court on Friday at 9:30 A.M., the 21st day
of June 19 91, and testify on behalf of the State of Arkansas
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 14th day of June 19 91

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655

NELL CAMDEN, CLERK

By: Nell Camden

STATE OF ARKANSAS, COUNTY OF Drew:

On this 17 day of June, 19 91 at _____ o'clock _____ M.,

I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

Debbie Foster

such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

T. Free SHERIFF
BY: Bill Tucker
Deputy Sheriff

COURT CLERK'S RETURN FILE

Filed this 19 day of June, 19 91. Nell Camden Clerk.
By Ray Cof D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Jay Hebble Jones
WHOSE ADDRESS IS: Pearl River, La. 504-863-2475

to appear before the Drew County Court on Friday at 9:30 A.M., the 21st day
of June 19 91, and testify on behalf of the State of Arkansas
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 14th day of June 19 91

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655

NELL CAMDEN, CLERK

By: Nell Camden

STATE OF ARKANSAS, COUNTY OF Drew:

On this 17th day of June 19 91 at _____ o'clock _____ M.,

I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

☒ the person named therein to testify

☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____

☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

Tommy Lee SHERIFF
BY: Tommy Lee
Deputy Sheriff

COURT CLERK'S RETURN FILE

Filed this 19 day of June 19 91 By Nell Camden Clerk.
Jay Hay D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON John Daniels
WHOSE ADDRESS IS: 809 E. Oakland
Monticello

to appear before the Drew County Court on Friday at 9:30 A.M., the 12th day
of July 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth R. Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 5th day of July 1991.

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655

NELL CAMDEN, CLERK

By: Nell Camden

D.C.

STATE OF ARKANSAS, COUNTY OF Drew:

On this 5 day of July, 19 91 at 8:45 o'clock P.M.,

I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

Natasha Fullwood Cousin
such person being:

CHECK APPLICABLE SQUARE:

- ☐ the person named therein to testify
☒ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

Isom SHERIFF
BY: Chuck Kohn
Deputy Sheriff

Filed this 10th day of July, 19 91 Nell Camden Clerk.
By _____ D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Marvin Randolph
WHOSE ADDRESS IS: 401 S. Pecan, Dumas
382-4219

to appear before the Drew County Court on Friday at 9:30 A.M., the 12th day
of July 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth R. Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 5th day of July 1991.
(SEAL) NELL CAMDEN NELL CAMDEN, CLERK
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655
By: Nell Camden D.C.

STATE OF ARKANSAS, COUNTY OF Drew:
On this 9 day of July, 19 91 at 9:06 o'clock AM.
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

BY: James H. Smith SHERIFF
Deputy Sheriff

COURT CLERK'S RETURN FILE

Filed this _____ day of _____, 19 _____ Clerk.
By _____ D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Luddie Larkin
WHOSE ADDRESS IS: Mgr. E-Z Mart

to appear before the Drew County Court on Friday at 9:30 A.M. the 12th day
of July 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth R. Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 5th day of July 1991.

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655.

NELL CAMDEN, CLERK

By: Nell Camden D.C.

STATE OF ARKANSAS, COUNTY OF Drew:

On this 9 day of July 19 91 at 900 o'clock A.M.,

I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

Luddie Larkin
such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

BY: John H. Smith
Deputy Sheriff

SHERIFF

Filed this 10th day of July 19 91 COURT CLERK'S RETURN FILE
By Nell Camden Clerk.
D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Debbie Foster
WHOSE ADDRESS IS: 725 E. Oakland
Monticello

to appear before the Drew County Court on Friday at 9:30 A.M., the 12th day
of July 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff and Kenneth R. Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 5th day of July 1991

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR. 71655

NELL CAMDEN, CLERK

By: Nell Camden

D.C.

STATE OF ARKANSAS, COUNTY OF Drew

On this 6 day of July, 19 91 at _____ o'clock _____ M.,

I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

☒ the person named therein to testify

☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____

☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

T. Free SHERIFF

BY: Billy Tucker
Deputy Sheriff

Filed this 10th day of July, 19 91 Nell Camden Clerk.
By _____ D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Stanford Lindsey
WHOSE ADDRESS IS: 123 Quapaw
Monticello,

to appear before the Drew County Court on Friday at 9:30 A.M., the 12th day
of July 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth R. Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 5th day of July 1991.

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655

NELL CAMDEN, CLERK

By: Nell Camden

D.C.

STATE OF ARKANSAS, COUNTY OF Drew

On this 6 day of July, 19 91 at _____ o'clock _____ M.,

I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

T. Free SHERIFF
BY: Billy Tucker Deputy Sheriff

Filed this 10th day of July, 19 91. Nell Camden Clerk.
By _____ D.C.

JUL-22-91 MON 14:55

DREW CO ASSESSOR

FAX NO. 5013677291

P. 02

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope
Prosecutors Office

SUBPOENA

STATE OF ARKANSAS
 County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
 YOU ARE COMMANDED TO SUMMON Jay H. Jones
 WHOSE ADDRESS IS: 3919 Emerson Drive
North Little Rock, AR 72116
% J.H. Wilkins

to appear before the Drew County Court on Wednesday 9:30 a.m., the 11 day
 of September 19 91, and testify on behalf of the State of Arkansas
 in an action in said Court between State

Plaintiff and Kenneth Isom Defendant,
 and that you make due return of this writ.

Witness my official signature and the seal of said court, this 22 day of July 19 91.
 (SEAL) NELL CAMDEN, CLERK
NELL CAMDEN, CLERK
By: Laura Watson D.C.
MONTICELLO, AR 71655

STATE OF ARKANSAS, COUNTY OF Pulaski Co.:

On this 11th day of August, 19 91 at 9:52 o'clock A.M.,

I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

Jay H. Jones
 such person being:

CHECK APPLICABLE SQUARE:

☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
 Mileage \$ _____
 Return \$ _____
 TOTAL \$ _____

Tommy Free SHERIFF
 BY: Special Agent D.E. Reynaud, Bureau
OF ATF Deputy Sheriff, Little Rock, AR.

Filed this 23rd day of Aug, 19 91. Nell Camden Clerk.
D. H. H. D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

CALL THE PROSECUTOR AT 853-9871 THE DAY
BEFORE THE COURT DATE TO CONFIRM.

THE STATE OF ARKANSAS TO THE SHERIFF OF DREW COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Luddie Iarkin
WHOSE ADDRESS IS: Mgr. E-Z Mart, Dumas, AR

to appear before the Drew County Court on Wednesday at 9:30 A.M., the 11th day
of Sept. 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 5th day of Sept. 19 91.
(SEAL) NELL CAMDEN NELL CAMDEN, CLERK
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655
By: Nell Camden D.C.

STATE OF ARKANSAS, COUNTY OF Drew:
On this 7th day of September, 19 91 at 11:30 o'clock A.M.,

I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

Luddie Iarkin
such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

Ben A. Hinson SHERIFF
BY: D. B. Hinson
Deputy Sheriff

Filed this 25 day of Sept., 19 91. Nell Camden Clerk.
By _____ D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

CALL THE PROSECUTOR AT 853-9871 THE DAY
BEFORE THE COURT DATE TO CONFIRM.

THE STATE OF ARKANSAS TO THE SHERIFF OF DREW COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Tommy Cox
WHOSE ADDRESS IS: Drew County Sheriff's Office

to appear before the Drew County Court on Wednesday at 9:30 A.M., the 11th day
of Sept. 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 5th day of Sept. 19 91.
(SEAL) NELL CAMDEN NELL CAMDEN, CLERK
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655
By: Nell Camden D.C.

STATE OF ARKANSAS, COUNTY OF Drew:
On this 5 day of Sept. 19 91 at 11:40 o'clock PM.
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person, namely _____

SHERIFF'S FEES
Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

Jimmy C. Free SHERIFF
BY: _____
Deputy Sheriff

Filed this 10 day of Sept, 19 91. COURT CLERK'S RETURN FILE
By Nell Camden Clerk.
May Hay D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

CALL THE PROSECUTOR AT 853-9871 THE DAY
BEFORE THE COURT DATE TO CONFIRM.

THE STATE OF ARKANSAS TO THE SHERIFF OF DREW COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Stanford Lindsey
WHOSE ADDRESS IS: 123 Quapaw, Monticello

to appear before the Drew County Court on Wednesday at 9:30 A.M., the 11th day
of Sept. 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 5th day of Sept. 1991
(SEAL) NELL CAMDEN NELL CAMDEN, CLERK
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655
By: Nell Camden D.C.

STATE OF ARKANSAS, COUNTY OF Drew
On this 5 day of Sept. 19 91 at 1 o'clock P.M.
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

Jimmy C. Free SHERIFF
BY: _____ Deputy Sheriff

COURT CLERK'S RETURN FILE

Filed this 10 day of Sept, 19 91. Nell Camden Clerk.
By Wayne D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

CALL THE PROSECUTOR AT 853-9871 THE DAY
BEFORE THE COURT DATE TO CONFIRM.

THE STATE OF ARKANSAS TO THE SHERIFF OF DREW COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Debbie Foster
WHOSE ADDRESS IS: 725 E. Gaines, Monticello

to appear before the Drew County Court on Wednesday at 9:30 A.M. the 11th day
of Sept. 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 5th day of Sept. 1991.
(SEAL) NELL CAMDEN NELL CAMDEN, CLERK
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655
By: Nell Camden D.C.

STATE OF ARKANSAS, COUNTY OF Drew
On this 5 day of Sept, 19 91 at 1:35 o'clock P.M.,
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to
Debbie Foster

such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

Jimmy C. Free SHERIFF
BY: _____
Deputy Sheriff

Filed this 10 day of Sept, 19 91. COURT CLERK'S RETURN FILE
By Nell Camden Clerk.
Way Craf D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

CALL THE PROSECUTOR AT 853-9871 THE DAY
BEFORE THE COURT DATE TO CONFIRM.

THE STATE OF ARKANSAS TO THE SHERIFF OF DREW COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Jay Hebble Jones
WHOSE ADDRESS IS: ~~Pearl River, La. 504-863-2475~~

to appear before the Drew County Court on Wednesday at 9:30 A.M., the 11th day
of Sept. 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 5th day of Sept. 19 91
(SEAL) NELL CAMDEN NELL CAMDEN, CLERK
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655
By: Nell Camden D.C.

STATE OF ARKANSAS, COUNTY OF _____:

On this _____ day of _____, 19 _____ at _____ o'clock _____ M.,
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☐ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

_____, SHERIFF
BY: _____
Deputy Sheriff

Filed this 10 day of Sept, 19 91. Nell Camden Clerk.
By Jay Hay D.C.

COURT CLERK'S RETURN FILE

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

CALL THE PROSECUTOR AT 853-9871 THE DAY
BEFORE THE COURT DATE TO CONFIRM.

THE STATE OF ARKANSAS TO THE SHERIFF OF DREW COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON John Daniels
WHOSE ADDRESS IS: 809 E. Oakland, Monticello

to appear before the Drew County Court on Wednesday at 9:30 A.M., the 11th day
of Sept. 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 5th day of Sept. 19 91.
(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655
By: Nell Camden D.C.

STATE OF ARKANSAS, COUNTY OF _____
On this _____ day of _____, 19 _____ at _____ o'clock _____ M.,
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE

- ☐ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

_____, SHERIFF
BY: _____
Deputy Sheriff

COURT CLERK'S RETURN FILE

Filed this 10 day of Sept, 19 91.
By: Nell Camden Clerk.
Wally Craft D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope
Prosecuting Atty.
P.O. Drawer 32, Hamburg, AR

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:

YOU ARE COMMANDED TO SUMMON Solomon Mills III
WHOSE ADDRESS IS: 204 Paletto, Apt. 204-E

Dumas, AR 71639

to appear before the Drew County Court on Wednesday at 9:30am, the 11th day
of September 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Ison Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 9th day of September 19 91.

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655

NELL CAMDEN, CLERK

By:

Tayla

D.C.

STATE OF ARKANSAS, COUNTY OF _____:

On this _____ day of _____, 19 _____ at _____ o'clock _____ M.,

I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☐ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

_____, SHERIFF

BY: _____
Deputy Sheriff

COURT CLERK'S RETURN FILE

Filed this _____ day of _____, 19 _____ Clerk.
By _____ D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-11-1

Atty: Sam Pope, Prosecutor
P.O. Drawer 32
Hamburg, Ar. 71646

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

CONTACT THE PROSECUTORS OFFICE AT 853-9871 the day before the trial to confirm the appearance.

THE STATE OF ARKANSAS TO THE SHERIFF OF Ashley COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Steve Bolin
WHOSE ADDRESS IS: Hamburg, Ar. 853-5166

to appear before the Drew County Court on Wednesday at 1:30 P.M., the 20th day
of Nov. 19 91, and testify on behalf of the State
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 14th day of November 19 91.
(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655
NELL CAMDEN, CLERK
By: Nell Camden D.C.

STATE OF ARKANSAS, COUNTY OF _____:

On this _____ day of _____, 19 _____ at _____ o'clock _____ M.,
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☐ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

_____, SHERIFF
BY: _____
Deputy Sheriff

COURT CLERK'S RETURN FILE

Filed this _____ day of _____, 19 _____, Clerk.
By _____ D.C.

OFFICE OF THE PROSECUTING ATTORNEY
TENTH JUDICIAL DISTRICT
STATE OF ARKANSAS
P. O. DRAWER 32
HAMBURG, AR. 71646
(501) 853-9871
November 13, 1991

Nell Camden
Circuit Clerk
Drew County Courthouse
Monticello, Ar. 71655

Re: State of Arkansas vs Isom
Drew Circuit No. CR 91-11-1

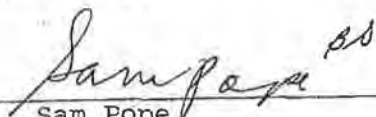
Dear Nell:

The above captioned case is set for Hearing November 20, 1991, at 1:30 in Monticello, in the Drew County Courthouse. Please issue subpoenas to the following persons:

Steve Bolin
Hamburg, Ar. 71646 853-5166

Thank you for your help in this.

Sincerely,



Sam Pope
Prosecuting Attorney

SP/bs

Have witnesses contact this office day before trial to confirm their appearance.

Harrod Law Offices

Shelby Reid Harrod, Jr.
David Warner Harrod

101 Adams Street
P. O. Box 310
Hamburg, Arkansas 71646

(501) 853-5236
FAX (501) 853-5237

October 4, 1991

Ms. Nell Camden
Circuit Clerk of Drew County
Drew County Courthouse
Monticello, AR 71655

Re: State of Arkansas vs. Kenneth Isom
Drew Circuit No. CR-91-11-1

Dear Ms. Camden:

I am enclosing herewith for filing in the above-captioned matter the following documents:

1. MOTION TO DECLARE DEFENDANT INDIGENT with attached AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS.
2. Order granting extension to file the Record on Appeal.

Please place your file markings on the extra copies and return them to me in the envelope provided.

I am, by copy of this letter, forwarding a copy of same to Mr. Sam Pope, Prosecuting Attorney, and to the Attorney General's office.

If you should have any questions or need anything further from me, please do not hesitate to let me know.

Sincerely,

David W. Harrod
David W. Harrod

DWH:nsh/0127
Enclosures

cc: Honorable Sam Pope
Attorney General

Harrod Law Offices

Shelby Reid Harrod, Jr.
David Warner Harrod

101 Adams Street
P. O. Box 310
Hamburg, Arkansas 71646

(501) 853-5236
FAX (501) 853-5237

September 30, 1991

Ms. Nell Camden
Circuit Clerk
Drew County Courthouse
201 South Main
Monticello, AR 71655

Re: State of Arkansas vs. Ken Isom
Drew Circuit No. CR-91-11-1

Dear Ms. Camden:

I am enclosing herewith the original and one copy of MOTION FOR AN ORDER FOR EXTENSION OF TIME TO SUBMIT COURT REPORTER'S TRANSCRIPT TO THE OFFICE OF THE CIRCUIT CLERK AND TO FILE BRIEF for filing in the above-captioned matter.

I am, by copy of this letter, serving a copy of the Motion on the Honorable Sam Pope, Prosecuting Attorney, and on the Attorney General.

If you should have any questions, please advise.

Sincerely,

David W. Harrod
David W. Harrod

DWH:nsh/0081

Enclosures

cc:

Honorable Sam Pope
Office of the Attorney General

Harrod Law Offices

Shelby Reid Harrod, Jr.
David Warner Harrod

101 Adams Street
P. O. Box 310
Hamburg, Arkansas 71646

(501) 853-5236
FAX (501) 853-5237

September 25, 1991

Ms. Nell Camden
Circuit Clerk of Drew County
Drew County Courthouse
Monticello, AR 71655

Re: State of Arkansas vs. Kenneth Isom
Drew Chancery No. CR-91-11-1

Dear Ms. Camden:

I am enclosing herewith the original and one copy of DESIGNATION OF RECORD ON APPEAL for filing in the above-captioned matter. Please place your file markings on the extra copy and return it to me in the stamped, self-address envelope provided.

I have, by copy of this letter, served a copy of same on Mr. Sam Pope, Prosecuting Attorney.

If you should have any questions, please advise.

Sincerely,

David W. Harrod
David W. Harrod

DWH:nsh

Enclosures

cc: Honorable Sam Pope
Attorney General



OFFICE OF
The Prosecuting Attorney
Tenth Judicial District

June 13, 1991

SAM POPE
Prosecuting Attorney

409 N. Main Street
P.O. Drawer 32
Hamburg, AR 71646
(501) 853-9871

Ms. Nell Camden
Circuit Clerk
Drew County Courthouse
Monticello, AR 71655

RE: State of Arkansas vs. Kenneth Isom
Drew Circuit No. CR 91-11-1

Dear Nell:

The above captioned case is set for Jury Trial June 21, 1991, at 9:30 in Monticello, in the Drew County Courthouse. Please issue subpoenas to the following persons:

Tommy Cox
Drew County Sheriff's Office
Monticello, Ar. 71655

Jay Hebble Jones
Pearl River, La. 504-863-2475

Marvin Randolph
401 S. Pecan
Dumas, Ar. 71639 382-4219

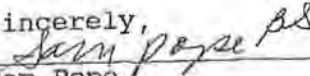
Luddie larkin
Mgr. E-Z Mart

John Daniels
809 E. Oakland
Monticello, Ar. 71655

Debbie Foster
725 E. Gaines St.
Monticello, Ar. 71655

Stanford Lindsey
123 Quapaw St.
Monticello, Ar. 71655

Thank you for your help in this.

Sincerely,

Sam Pope
Prosecuting Attorney

SP/bs

COUNTIES: Ashley, Bradley, Chicot, Desha, Drew



SAM POPE
Prosecuting Attorney

OFFICE OF
The Prosecuting Attorney
Tenth Judicial District

February 20, 1991

409 N. Main Street
P.O. Drawer 32
Hamburg, AR 71646
(501) 853-9871

Ms. Nell Camden
Circuit Clerk
Drew County Courthouse
Monticello, AR 71655

RE: State vs. Kenneth Isom

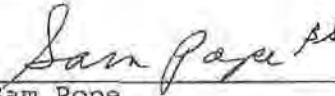
Dear Nell:

Please file the enclosed Information in the above referenced case(s).

Also, issue a criminal summons and deliver it to the Sheriff's Office for service upon the defendant to appear before the Judge of the Division drawing this case. Set the appearance date in the summons for more than five days from the date of this letter.

Please return a file marked copy of the Information and Summons for our files.

Respectfully,



Sam Pope
Prosecuting Attorney

SP/bs

cc: Drew County S.O.

COUNTIES: Ashley, Bradley, Chicot, Desha, Drew

DEPARTMENT OF CORRECTION

091-11

Date 3-25 19 91

S H E R I F F R E C E I P T

RECEIVED FROM DREW COUNTY THE FOLLOWING
INDIVIDUAL (S), TOGETHER WITH THEIR COMMITMENT PAPERS:

ISOM, KENNETH

B/M

92604

CS Form #43

DOC/CDC-435

BY Melba Smith
RECORD SUPERVISOR *as*

Exhibit B (90)
App. 259

Harrod Law Offices

Shelby Reid Harrod, Jr.
David Warner Harrod

101 Adams Street
P. O. Box 310
Hamburg, Arkansas 71646

(501) 853-5236
FAX (501) 853-5237

September 16, 1991

Ms. Nell Camden
Circuit Clerk
Drew County Courthouse
201 South Main
Monticello, AR 71655

Dear Ms. Camden:

I am writing to inform you that I have been appointed as counsel for Kenneth Roshell Isom in his appeal from his conviction in Drew County Circuit Court on September 11, 1991. I would appreciate it very much if you would mail a copy of his file to me.

Please find enclosed a document entitled NOTICE OF APPEAL in Mr. Isom's case. I ask that you file this for me and return a file marked copy of this Notice so that I may send it to the Attorney General's office as well as the Prosecuting Attorney.

Thank you for your help in this matter.

Sincerely,

David W. Harrod
David W. Harrod

DWH:nsh

Enclosures

cc: Sam Pope



SAM POPE
Prosecuting Attorney

OFFICE OF
The Prosecuting Attorney
Tenth Judicial District

January 17, 1991

409 N. Main Street
P.O. Drawer 32
Hamburg, AR 71646
(501) 853-9871

Ms. Nell Camcen
Circuit Clerk
Drew County Courthouse
Monticello, AR 71655

RE: State vs. Kenneth Roshell Isom

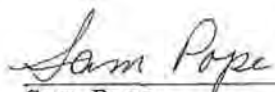
Dear Ms. Nell:

Please file the enclosed Information in the above referenced case(s).

Also, issue a criminal summons and deliver it to the Sheriff's Office for service upon the defendant to appear before the Judge of the Division drawing this case. Set the appearance date in the summons for more than five days from the date of this letter.

Please return a file marked copy of the Information and Summons for our files.

Respectfully,



Sam Pope
Prosecuting Attorney

SP/bs

cc: Drew Sheriff's Office

COUNTIES: Ashley, Bradley, Chicot, Desha, Drew

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

WITNESS IN THE CASE OF

STATE OF ARKANSAS

PLAINTIFF

VS

CR-91-11-1

KENNETH ISOM

DEFENDANT

MARVIN RANDOLPH

401 SO. PECAN, DUMAS, AR. 71639

\$18.80

60 miles

STATE OF ARKANSAS

COUNTY OF DREW

I, Nell Camden, Circuit Clerk in and for Drew County, Arkansas, do hereby certify that the above and foregoing contains a true and correct listing of witnesses at the regular term of court and is the correct amount due each for services and mileage.


Nell Camden, Circuit Clerk

LAW OR CHANCERY MANDATE

STATE OF ARKANSAS,
SS.
In the Court of Appeals

FILED FOR RECORD
DREW CO. ARK.
NELL CAMPBEN
CIRCUIT CLERK
BY *[Signature]*
MAR 11 1993
7, 8, 9, 10, 11, 12, 13, 14, 15, 16 PM

BE IT REMEMBERED, That at a session of the Court of Appeals of the State of Arkansas, begun and held in the City of Little Rock, on the 10th day of March, 19 93, amongst others were the following proceeding, to-wit:

KEN ISOM

APPELLANT
vs. No. CACR92-397
STATE OF ARKANSAS

APPELLEE

Appeal from Drew
Circuit Court
 District
(Circuit Court No. CR91-11-1)

Motion of David W. Harrod to be relieved as counsel
for appellant is granted.

IN TESTIMONY, That the above is a true copy of the order
of said Court of Appeals, rendered in the case therein
stated, I, LESLIE W. STEEN, Clerk of said Court of
Appeals, hereunto set my hand and affix the Seal of said
Court of Appeals, at my office in the City of Little Rock,
this 10th day of March, A.D. 19 93

[Signature]
CLERK
By _____ D.C.

No. CR 91-11-1

BENCH WARRANT.

The State of Arkansas, to any Sheriff, Constable, Coroner, or Policeman, in this State:

YOU ARE COMMANDED forthwith to arrest KENNETH R. ISOM

and bring him before the Drew County Circuit Court, to
answer an indictment in that Court against same for the offense of
Theft

or if the Court be adjourned for the Term, that you deliver same

to the jailor of Drew County.

WITNESS my hand and the seal of said Court, this Third

day of JULY 19 91.

Neel Camden

Clerk

By

Laura Watson

D.C.

The Defendant is to be admitted to bail in the sum of _____
Dollars, and the same may be taken by the Sheriff of the County in which he is arrested, or by the Sheriff of Drew
County.

Clerk.

D.C.

SHERIFF'S SERVICE

STATE OF ARKANSAS

COUNTY OF _____

I have this _____ day of _____, A.D. 19____ duly served the within by arresting the said _____

FEES,

Service, \$ _____

Mileage, \$ _____

Return, \$ _____

TOTAL \$ _____

Sheriff.

By _____

D.S.

Clerk's File:

Filed this _____ day of _____, 19____.

Clerk

By: _____ D.C.

I, Kenneth R. Isom, hereby certify
that I have served a copy of the
foregoing motion to Prosecuting Attorney
Samuel B. Pope and to the ~~Circuit~~ Clerk
Office on this 11th day of NOV. 1992.

Kenneth Roswell Isom

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

Petit jurors selected to try the
case of

Sept. 11, 1991

State of Arkansas

Plaintiff

vs

CR-91-11-1

Kenneth Ison

Defendant

| Name | Address | Amount |
|-----------------------|------------------------|---------|
| Barbara Jean Akin | Box 2, City | \$10.00 |
| Sonya D. Ashbaucher | Rt.1, Box 529, City | 10.00 |
| Patty Avery | Rt.3, Box D-84-A, City | 10.00 |
| Leslie Beard | Rt.5, City | 10.69 |
| Henry Beavers | Rt.5, Box 412, City | 11.38 |
| Turner Steve Berryman | Rt.1, Box 303, Wilmar | 12.30 |
| Trezy Bittle | Rt.5, Box 356, City | 12.76 |
| Lavel Carr | Rt.5, Box 69, City | 20.46 |
| Josephine Carson | 200 W. Bolling | 10.00 |
| Valeto Carter | Rt.3, Box C-14, City | 11.34 |
| Ruby Chapman | Rt.1, Box 456-C, City | 13.45 |
| Martha Crossett | 168 Center Dr. , City | 20.00 |
| Eugene Curtis | Rt.1, Box 80, City | 20.00 |
| Charlotte Eubanks | Rt.1, Box 239, Wilmar | 22.76 |
| Michael Feaster | Rt.2, Box 119-9, City | 20.00 |
| Paul B. Francis | Rt.6, Box 291, City | 20.00 |
| Jerry Funderburg | Rt.1, Box 487, City | 21.61 |
| Barbara Haisty | 314 Martha Cir. City | 10.00 |
| Carla Imboden | P.O. Box 323, City | 20.00 |
| George Johnson | Rt.2, Box 29 , Wilmar | 22.76 |
| Mae Lee Miller | Box 303, City | 10.46 |
| Billy Mitchell | Rt.1, Box 520, City | 10.69 |
| Leola McCray | 516 W. Jackson, City | 20.00 |
| | Box 54, City | 10.69 |

STATE OF ARKANSAS

COUNTY OF DREW

I, Nell Camden, Circuit Clerk in and for Drew County, Arkansas, do hereby certify that the above contains a true and correct listing of the Petit Jurors at the regular term of court and is the correct amount due each for services and mileage.

WITNESS MY HAND AND SEAL this 12th day of Sept. 1991.

A handwritten signature in cursive script, reading "Nell Camden", written over a horizontal line.

Nell Camden, Circuit Clerk

Drew Circuit Court, _____ Term

Sept. 11, 19⁹¹

et it Jury selected to try

Case No. CR-91-11-1

State of Arkansas

Kenneth Isom vs.

Plf.

Dft.

| | NAME OF JUROR | | GOOD | EX. By DFT. | EX. BY PLF. | EX. FOR CAUSE |
|----|-----------------------------------------------|--------|-------|-------------|-------------|---------------|
| 1 | Barbara Jean Akin | 0 | 10.00 | | | |
| 2 | Sonja Dawn Daine Ashbaucher | 0 | 10.00 | | | |
| 3 | Patty Avery | 0 | 10.00 | | | |
| 4 | Leslie Beard | 3 mi | 10.69 | | | |
| 5 | Henry Beavers | 6 | 11.38 | | | |
| 6 | Turner Steve Berryman | 10 | 12.30 | | | |
| 7 | Trezy Bittle | 12 | 12.76 | | | |
| 8 | Barbara Carr | 0 | | | | |
| 9 | Lavel Carr | 20 | 20.46 | | | |
| 10 | Josephine Carson | 0 | 10.00 | | | |
| 11 | Barbara Carr | | | | | |
| 12 | Valeto Carter | 8 | 11.84 | | | |
| 13 | Ruby Chapman | 15 | 13.45 | | | |
| 14 | Martha Crossett | (9) 0 | 20.00 | | | |
| 15 | Eugene Curtis | (6) 0 | 20.00 | | | |
| 16 | Kimberly Harrison | | | | | |
| 17 | Charlotte Eubanks | (4) 12 | 22.76 | | | |
| 18 | Michael Feaster | (5) 0 | 20.00 | | | |
| 19 | Paul B. Francis Paul B. Francis | (3) 0 | 20.00 | | | |
| 20 | James Gathings | | | | | |
| 21 | Rusty Glenn | | | | | |
| 22 | Barbara Haisty | 0 | 10.00 | | | |
| 23 | Carla Imboden | (2) 0 | 20.00 | | | |
| 24 | George Johnson | 12 | 22.76 | | | |
| 25 | Barbara Johnson | | | | | |
| 26 | Mae Lee Miller | 2 | 10.46 | | | |
| 27 | Billy Mitchell | 3 | 10.69 | | | |
| 28 | Robert Moore | | | | | |
| 29 | Leola McCray | (8) 0 | 20.00 | | | |

1
IN THE CIRCUIT COURT OF Drew MM 225 COUNTY, ARKANSAS
STATE OF ARKANSAS

PLAINTIFF

VS.

NO. CR- 91-125-1

Kenneth Ison

DEFENDANT

ORDER FOR NOLLE PROSSE / DISMISSAL OF CHARGE

On this day it is suggested to the Court by counsel for the State / Defendant / both parties that the charge(s) filed in this case should be nolle prossed / dismissed for the reason that:

1. Speedy trial limitations bar prosecution of the case.
2. The complaining witness / victim of the alleged conduct (_____) has requested the charges be dropped.
- ✓ 3. Other: Kenneth Ison acquitted herein by
10 jury. SA 10-20-92

IT IS THEREFORE CONSIDERED AND ORDERED that the charge(s) against the Defendant in this case are nolle prossed / dismissed on this 12 day of Jan, 19 93:

APPROVED:

S. Pope
Prosecuting Attorney's Office

[Signature]
FILED FOR RECORD
DREW CO. ARK.
NELL CAMDEN
CIRCUIT CLERK
BY Nell Camden

JAN 15 1993

AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

Exhibit C (1)

App. 270

I-388

IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

THE STATE OF ARKANSAS

vs.

Case No. CR 91-125-1

Kenneth Roshell Isom

Burglary 5-39-201; Theft of Property 5-36-103

INFORMATION

Filed Circuit Court
Drew County, Ark.
Jan 29, 92 AM
Neil Campbell Pls
By Way Craig Clerk
D. C.


I, SAM POPE Prosecuting Attorney within and for the Tenth Judicial Circuit of the State of Arkansas, of which DREW County is a part, in the name and by the authority of the State of Arkansas, on oath, accuse the defendant, Kenneth Roshell Isom of the crime(s) of Burglary 5-39-201; Theft of Property 5-36-103, committed as follows, to-wit: The said defendant on or about December 16, 1991, in DREW County, Arkansas, did unlawfully:

COUNT ONE: He did enter or remain unlawfully in an occupiable structure of another person with the purpose of committing theft, to-wit: The Class Act Clothier in Monticello, a CLASS D FELONY;

COUNT TWO: Then and there he or an accomplice did knowingly take or exercise unauthorized control over an interest in the property of another person with the purpose of depriving the owner of the property, to-wit: a 35 MM Camera valued at \$50.00, a CLASS A MISDEMEANOR.

The defendant has previously been convicted of 4 or more prior felony offenses and is subject to sentencing as an habitual criminal.

all counts being against the peace and dignity of the State of
Arkansas.


SAM POPE, Prosecuting Attorney

DATE OF ARREST: January 6, 1992 Monticello P. D.

ARREST TRACKING NUMBER: NA

CR 91-125-1

VERDICT FORM
Burglary

We, the jury, find Kenneth Isom guilty of Burglary.

Foreman PERSON

We, the jury, find Kenneth Isom not guilty of Burglary.

Patricia Bearden
Foreman PERSON

VERDICT FORM
Theft of Property

We, the jury, find Kenneth Isom guilty of Theft of Property.

Foreman PERSON

We, the jury, find Kenneth Isom not guilty of Theft of Property.

Patricia Bearden
Foreman PERSON

Filed Circuit Court
Drew County, Ark.

Oct 19 1992 AM
11:00 PM
W. J. Chandler
Clerk

By _____
D. C.

IN THE CIRCUIT COURT OF Drew COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. 91-125-1Kenneth Isom
Varner Unit

DEFENDANT

ORDER TO ARKANSAS DEPARTMENT OF CORRECTION
FOR DELIVERY AND APPEARANCE

The Defendant above-named, presently in the custody of the Arkansas Department of Correction, (ADC# 92604), is to be taken by the Sheriff of Drew County from said Department of Correction and by him delivered before this court in Monticello, Arkansas, at 9:30 A.M., on Monday, the 19th day of October, 19 92, for the purpose of Jury Trial. Upon completion of said business before the Court, the said Sheriff shall return the Defendant to the said Department of Correction at the point of pick-up.

SO ORDERED THIS 15th DAY OF October, 19 92.
PAUL K. ROBERTS, CIRCUIT COURT JUDGEFILED Circuit COURT
DREW CO, ARKANSAS
BY: WILLIAM E. BROWN

OCT 15 1992

AM 7:8:9:10:11:12:1:2:3:4:5:6 PM

No. CR-91-125-1

91-57 CS Wb

BENCH WARRANT.

The State of Arkansas, to any Sheriff, Constable, Coroner, or Policeman, in this State:

YOU ARE COMMANDED forthwith to arrest Kenneth Isom

and bring him before the Drew Co. Circuit Court, to
answer an indictment in that Court against Kenneth Isom for the offense of
Burglary & Theft

or if the Court be adjourned for the Term, that you deliver Kenneth Isom
to the jailor of Drew County.

WITNESS my hand and the seal of said Court, this 17th

day of December 19⁹¹

Neil Camden Clerk
By Way Craig D.C.

The Defendant is to be admitted to bail in the sum of _____
Dollars, and the same may be taken by the Sheriff of the County in which he is arrested, or by the Sheriff of Drew
County.

Clerk

D.C.

SHERIFF'S SERVICE

STATE OF ARKANSAS

COUNTY OF Drew

I have this 6th day of Jan, A.D. 19 92 duly served the within by arresting the said

Kenneth Isom

FEES,

Service, \$ _____
Mileage, \$ _____
Return, \$ _____
TOTAL \$ _____

Sheriff
By Neil Camden D.S.

Clerk's File:

Filed this

6th day of January, 19 92

Neil Camden Clerk
By Way Craig D.C.

Exhibit C (6)

App. 275

IN THE CIRCUIT COURT OF Drew COUNTY, ARKANSAS

THE STATE OF ARKANSAS

VS

NO. 91-125-1

Kenneth Elson, DEFENDANT

CRIMINAL SUMMONS

TO THE SHERIFF OF Drew COUNTY:

You are hereby commanded to summons the above named defendant by serving him with a copy hereof, with (information) (complaint) attached to inform the defendant that (he) (she) is charged with the crime of Burglary + Top.

The defendant should appear before the Drew County Circuit Court, Drew County Courthouse, Monticello, Arkansas, on the 10th day of February, 1992, at 9:30 a.m. for plea and arraignment.

FAILURE TO APPEAR at the stated time, place and Court may result in your arrest for failure to appear and shall constitute a separate offense for which you may be prosecuted.

GIVEN under my hand as Circuit Clerk of Drew County, Arkansas, on this 29 day of January, 1992.

Nelle Camden
CIRCUIT CLERK

by:

Yang Craig

OFFICE OF THE PROSECUTING ATTORNEY
TENTH JUDICIAL DISTRICT
STATE OF ARKANSAS
P. O. DRAWER 32
HAMBURG, AR. 71646
(501) 853-9871

January 24, 1992

Nell Camden
Circuit Clerk
Drew County Courthouse
Monticello, AR 71655

RE: State vs. Kenneth Roshell Isom

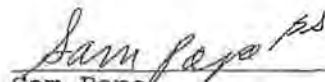
Dear Nell:

Please file the enclosed Information and Final Disposition of Charge report in the above referenced case(s). The arrest tracking number is on the Charge report.

Issue a criminal summons and deliver it to the Sheriff's Office for service upon the defendant to appear before the Judge of the Division drawing this case. Set the appearance date in the summons for more than five days from the date of this letter.

Please return a file marked copy of the Information and Summons for our files.

Respectfully,



Sam Pope
Prosecuting Attorney

SP/bs

cc: Monticello P. D.

No. CR-91-125-1

91-57 CS Wb

BENCH WARRANT.

The State of Arkansas, to any Sheriff, Constable, Coroner, or Policeman, in this State:

YOU ARE COMMANDED forthwith to arrest Kenneth Isom

and bring him before the Drew Co. Circuit Court, to
answer an indictment in that Court against Kenneth Isom for the offense of
Burglary & Theft

or if the Court be adjourned for the Term, that you deliver Kenneth Isom
to the jailor of Drew County.

WITNESS my hand and the seal of said Court, this 17th

day of December 19⁹¹

Neil Camden Clerk
By Way Craig D.C.

The Defendant is to be admitted to bail in the sum of _____
Dollars, and the same may be taken by the Sheriff of the County in which he is arrested, or by the Sheriff of Drew
County.

Clerk.

D.C.

SHERIFF'S SERVICE

STATE OF ARKANSAS

COUNTY OF Drew

I have this 6th day of Jan, A.D. 19 92 duly served the within by arresting the said

Kenneth Isom

FEES,

Service, \$ _____
Mileage, \$ _____
Return, \$ _____
TOTAL \$ _____

By Capt. Carter Sheriff.
D.S.

Clerk's File:

Filed this

6th day of January, 19 92

Neil Camden Clerk
By: Sam Wilson D.C.



OFFICE OF
The Prosecuting Attorney
Tenth Judicial District

6/11/92

SAM POPE
Prosecuting Attorney

409 N. M.
P.O. Dr.
Hamburg
(501) 853-

Honorable Jim Bunch
P. O. Box 564
Monticello, AR 71655

RE: State of Arkansas vs. Kenneth Elsom
Drew Circuit NO. 91-125-1

Dear Jim:

I follow the "open file" policy. Thus, in response to your Motion for Discovery, please find enclosed herewith a copy of all investigative reports which I have in my file relating to the referenced case.

The persons whose names and addresses appear in the report, or other documents contained herein, may be witnesses in this case, and may be called to testify as to the matters for which their names appear. Those witnesses whose addresses do not appear in the report will be furnished to you if and when obtained. As for any witness whose address and phone number does not appear in the report, the investigating officer or officers identified in the report are hereby authorized to release that information to you.

To better facilitate full and adequate discovery, the investigating officers are further authorized to discuss their expected testimony with you; and the materials and information described in the report may be copied, recorded, photographed, or otherwise inspected, during ordinary business hours at the office or offices of the agency or agencies gathering and preserving same on behalf of the State as identified in the report.

Respectfully,

Sam Pope mew
Sam Pope
Prosecuting Attorney

SP/bs
Enclosures: 7 pages
cc: Nell Camden
Circuit Clerk

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-125-1

Atty: Sam Pope, Pros. Atty.

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:

YOU ARE COMMANDED TO SUMMON Chuck Carter

WHOSE ADDRESS IS: Monticello P.D.

to appear before the Drew County Court on Tuesday at 9:30am, the 20th day
of October 19 92, and testify on behalf of the Plaintiff
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 15th day of October 19 92
(SEAL) NELL CAMDEN NELL CAMDEN, CLERK
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655
By: Ray Craig D.C.

STATE OF ARKANSAS, COUNTY OF Drew:
On this 16 day of Oct, 19 92 at 4:45 o'clock P.M.,
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

Fred SHERIFF
BY: Chuck Parker
Deputy Sheriff

Filed this 19 day of Oct, 19 92. Nell Camden Clerk.
By _____ D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-125-1

Atty: Sam Pope, Pros. Atty.

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Sam Norris
WHOSE ADDRESS IS: Monticello P.D.

to appear before the Drew County Court on Tuesday at 9:30am, the 20th day
of October 19 92, and testify on behalf of the Plaintiff
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 15th day of October 19 92.
(SEAL) NELL CAMDEN NELL CAMDEN, CLERK
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655
By: Ray Craig D.C.

STATE OF ARKANSAS, COUNTY OF Drew:
On this 16 day of Oct, 19 92 at 4:45 o'clock P.M.,
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

Free SHERIFF
BY: Chuck Roberts
Deputy Sheriff

Filed this 19 day of Oct., 19 92. Nell Camden Clerk.
By _____ D.C.

COURT CLERK'S RETURN FILE

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-125-1

Atty: Sam Pope, Pros. Atty.

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Annetta (Anita) Booker
WHOSE ADDRESS IS: Works at Factory Connection

to appear before the Drew County Court on Tuesday at 9:30am, the 20th day
of October 19 92, and testify on behalf of the Plaintiff
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 15th day of October 19 92
(SEAL) NELL CAMDEN NELL CAMDEN, CLERK
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655
By: Way Cain D.C.

STATE OF ARKANSAS, COUNTY OF Drew
On this 16 day of Oct, 19 92 at 4:25 o'clock P.M.,
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☒ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

Free SHERIFF
BY: Chuck Robb
Deputy Sheriff

Filed this 19 day of Oct, 19 92. COURT CLERK'S RETURN FILE
By Nell Camden Clerk.
D.C.

- X 1. Mary Curtis WF
2. Tim Reynolds WM
3. Nancy McKenney WF
- X 4. Jewell Cobb BF
5. Rodney Downing WM
6. Hazel Saffold WF
7. Cassius Shorter BF
- X 8. Ted Burton WM
9. Jimmy Lambert BM
10. Sherie Gillespie BF
11. Leslie Lyles BF
- X 12. L. E. Hill WM
13. Odell Davis BM
14. John Scoggins WM
15. Betty Jo Owens WF
16. Rose Webb WF
17. Percy Applegate BM
18. Inez Lindsey BF
- X 19. Margaret Johnson WF
20. Peggy Hudson BF
- X 21. Charles Dalsis WM
- X 22. Vernon Johnston WF
23. Debbie Owens WF
24. Patricia Bearden WF
25. Paula Bathings WF
26. Shellie Brunden WF
- ~~27~~

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-125-1

Atty: Sam Pope, Pros. Atty.

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Chuck Cater
whose address is: Monticello, P.D.

to appear before the Drew County Court on Tuesday at 9:30am, the 20th day
of October 19 92, and testify on behalf of the Plaintiff
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 15th day of October 19 92

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655

NELL CAMDEN, CLERK

By: *Ray Craig* D.C.

STATE OF ARKANSAS, COUNTY OF _____:

On this _____ day of _____, 19 _____ at _____ o'clock _____ A.M.

I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☐ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Price _____ \$ _____
Fee _____ \$ _____
_____ \$ _____
_____ \$ _____

BY: _____, SHE
Deputy Sheriff

COURT CLERK'S RETURN FILE

_____ day of _____, 19 _____

By _____

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-125-1

Atty: Sam Pope, Pros. Atty.

SUBPOENA

E OF ARKANSAS
ounty of Drew. SS.

STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Sam Norris
WHOSE ADDRESS IS: Monticello P.D.

to appear before the Drew County Court on Tuesday at 9:30am, the 20th day
of October 19 92, and testify on behalf of the Plaintiff
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 15th day of October 19 92.

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655

NELL CAMDEN, CLERK

By: Ray Craig

D.C.

STATE OF ARKANSAS, COUNTY OF _____:

On this _____ day of _____, 19 _____ at _____ o'clock _____ M.,

I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☐ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Page \$ _____
Furn \$ _____
TOTAL \$ _____

_____, SHERIFF
BY: _____
Deputy Sheriff

COURT CLERK'S RETURN FILE

_____ day of _____, 19 _____ Clerk.
By _____ D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-125-1

Atty: Sam Pope, Pros. Atty.

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Annetta (Anita) Booker
WHOSE ADDRESS IS: Works at Factory Connection

to appear before the Drew County Court on Tuesday at 9:30am, the 20th day
of October 19 92, and testify on behalf of the Plaintiff
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 15th day of October 19 92
(SEAL) NELL CAMDEN NELL CAMDEN, CLERK
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655
By: *Way Cain* D.C.

STATE OF ARKANSAS, COUNTY OF _____:

On this _____ day of _____, 19 _____ at _____ o'clock _____ M.,
I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

- ☐ the person named therein to testify
☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____
☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

_____, SHERIFF
BY: _____
Deputy Sheriff

COURT CLERK'S RETURN FILE

Filed this _____ day of _____, 19 _____, Clerk.
By _____ D.C.

☐ CHANCERY NO. _____
☐ CIVIL NO. _____
☒ CRIMINAL NO. 91-125-1

Atty: Joe Mazzanti

SUBPOENA

STATE OF ARKANSAS
County of Drew. SS.

THE STATE OF ARKANSAS TO THE SHERIFF OF Drew COUNTY — GREETINGS:
YOU ARE COMMANDED TO SUMMON Ricky Isom
WHOSE ADDRESS IS: _____

to appear before the Drew County Court on Tuesday at 9:30am, the 20th day
of October 1992, and testify on behalf of the Defense
in an action in said Court between State of Arkansas

Plaintiff, and Kenneth Isom Defendant,
and that you make due return of this writ.

Witness my official signature and the seal of said court, this 19th day of October 1992.

(SEAL) NELL CAMDEN
CIRCUIT CLERK,
DREW COUNTY,
MONTICELLO, AR 71655

NELL CAMDEN, CLERK

By: Ray Cais

D.C.

STATE OF ARKANSAS, COUNTY OF _____:

On this _____ day of _____, 19 _____ at _____ o'clock _____ .M.,

I have duly served the within subpoena by delivering a copy thereof (or stating the substance thereof), to

such person being:

CHECK APPLICABLE SQUARE:

☒ the person named therein to testify

☐ a member of the defendant's family above 15 years of age at such person's usual place of abode, namely _____

☐ the duly designated agent for service of process for such person namely _____

SHERIFF'S FEES

Service \$ _____
Mileage \$ _____
Return \$ _____
TOTAL \$ _____

_____, SHERIFF
BY: Johnny Cais
Deputy Sheriff

Filed this 19 day of October, 19 92. COURT CLERK'S RETURN FILE
By Nell Camden Clerk.
Ray Cais D.C.

Exhibit C (18)

App. 287

AFFIDAVIT FOR WARRANT OF ARREST

Kenneth R. Isom. CR 91-125-1

STATE OF ARKANSAS

COUNTY OF DREW

I, Capt. Charles Cate

do solemnly swear that Kenneth R. Isom ^{D.O.B-6-3-67}, in
said County of DREW did on the 16th day of
December, 1991 BURGLARIZE THE
CLASS ACT CLOTHING STORE, LOCATED AT 414
HWY 425 SOUTH

and pray a warrant for the offense of Burglary, Theft
from Judge William Daniels Court for said County, to
apprehend and bring the said Kenneth R. Isom. before the
said Court to be dealt with according to law.

SURVEILLANCE ATTACHED,

Capt. Charles Cate

Sworn and subscribed before me this 17 day of December,
1991.

W. R. Jails

Judge - Clerk

Monte M. Mingo

FILED Circuit COURT
DREW CO. ARKANSAS
BY: NELL GARDEN, CLERK
W. R. Jails

DEC 17 1991

AM
7:8,9,10,11,12,1,2,3,4,5,6

PM

THIS DOCUMENT
PROVIDED TO DEF
UNDER RULE 17.1 AACP
DATE INIT

IN THE CIRCUIT COURT OF DREW. COUNTY, ARKANSAS

STATE OF ARKANSAS

VS.

Keneth R. Isom
O.O.B. 6-3-67

Case No. CR-91-25-1

FINDING OF PROBABLE CAUSE

I, the undersigned Judge or Magistrate, after reviewing the (Information) (and Probable Cause Affidavit) filed in the above numbered case, or from the sworn testimony of Capt. Charles Cate, Sgt. Norris, or other information, hereby find that Probable Cause exists for the arrest and detention of the defendant or defendants in the above numbered cause on the charge of Burglary, Theft.

W. B. [Signature]
JUDGE/MAGISTRATE

DATED: 12-17-91

Burglary, of the class Act Clothing,
414 Hwy. 425 South,

FILED Circuit COURT
DREW CO. ARKANSAS
NELL CAMDEN, CLERK
BY: [Signature]

DEC 17 1991

AM
7, 8, 9, 10, 11, 12, 1, 2, 3, 4, 5, 6 PM

THIS DOCUMENT
PROVIDED TO DEF
UNDER RULE 17.1 ARCA
DATE _____ INIT. _____

No. CR-91-125-1

91-57 as wo

BENCH WARRANT.

The State of Arkansas, to any Sheriff, Constable, Coroner, or Policeman, in this State:

YOU ARE COMMANDED forthwith to arrest Kenneth Isom

and bring him before the Drew Co. Circuit Court, to

answer an indictment in that Court against Kenneth Isom for the offense of

Burglary & Theft

or if the Court be adjourned for the Term, that you deliver Kenneth Isom

to the jailor of Drew County.

WITNESS my hand and the seal of said Court, this 17th

day of December 19⁹¹

Neel Camden Clerk

By Way Craig D.C.

The Defendant is to be admitted to bail in the sum of _____ Dollars, and the same may be taken by the Sheriff of the County in which he is arrested, or by the Sheriff of Drew County.

Clerk.

D.C.

SHERIFF'S SERVICE

STATE OF ARKANSAS

COUNTY OF Drew

I have this 6th day of Jan, A.D. 19 92 duly served the within by arresting the said

Kenneth Isom

FEES,

Service, \$ _____

Mileage, \$ _____

Return, \$ _____

TOTAL \$ _____

THIS DOCUMENT
PROVIDED TO DEPT
UNDER RULE 17.1 AFRM
DATE _____ INIT _____

Way Craig Sheriff.
By _____ D.S.

Clerk's File: _____
Filed this 6th day of January, 19 92 Neel Camden Clerk

22-457

IN THE CIRCUIT COURT OF Drew COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NO. 91-125-1

Kenneth Isom
Vanver Unit

DEFENDANT

ORDER TO ARKANSAS DEPARTMENT OF CORRECTION
FOR DELIVERY AND APPEARANCE

The Defendant above-named, presently in the custody of the Arkansas Department of Correction, (ADC# 92604), is to be taken by the Sheriff of Drew County from said Department of Correction and by him delivered before this court in Monticello, Arkansas, at 9³⁰ A.M., on Tuesday, the 26th day of October, 19 92, for the purpose of Jury Trial. Upon completion of said business before the Court, the said Sheriff shall return the Defendant to the said Department of Correction at the point of pick-up.

SO ORDERED THIS 15 DAY OF October, 19 92.

Paul K. Roberts
PAUL K. ROBERTS, CIRCUIT COURT JUDGE

Filed Circuit Court
Drew County, Ark.
Oct 19 19 92 10:30 AM
Neil Canfield PM
Clerk
By _____

DEPARTMENT OF CORRECTION
Varner UNIT
GRADY, ARKANSAS

Date October 21 1992

Recd 10-22-92 91-125

SHERIFF RECEIPT

RECEIVED FROM DREW CO. THE FOLLOWING

INDIVIDUAL (S), TOGETHER WITH THEIR COMMITMENT PAPERS:

ISOM, Kenneth

B/M

#92604

BY

Camille Ganith

RECORD SUPERVISOR

IN THE CIRCUIT COURT OF DREW. COUNTY, ARKANSAS

STATE OF ARKANSAS

vs.

Kenneth R. Isom.
O.D.B. 6-3-67

Case No. CR-91-125-1

FINDING OF PROBABLE CAUSE

I, the undersigned Judge or Magistrate, after reviewing the (Information) (and Probable Cause Affidavit) filed in the above numbered case, or from the sworn testimony of Capt. Charles Cate, Sgt. Norris, or other information, hereby find that Probable Cause exists for the arrest and detention of the defendant or defendants in the above numbered cause on the charge of Burglary, Theft.

W. P. [Signature]
JUDGE/MAGISTRATE

DATED: 12-17-91

Burglary, of the class Act Clothing,
414 Hwy. 425 South,

FILED Circuit COURT
DREW CO. ARKANSAS
NELL CAMDEN, CLERK
BY: [Signature]

DEC 17 1991

AM 7, 8, 9, 10, 11, 12, 1, 2, 3, 4, 5, 6 PM

CR 91-1251

DATE: 12/16/91
TIME: 12:00 Midnight

FILED *Circuit* COURT
DREW CO. ARKANSAS
NELL CAMDEN, CLERK
BY: *Ray*

Capt. Chas. Cater

DEC 17 1991

AM
7,8,9,10,11,12,1,2,3,4,5,6 PM

SURVEILLANCE

On 12/16/91 at 9:50 P.M., Officer Norris, Chief Maxwell, and Capt. Charles Cater began surveillance on the West side of 425 South. Officer Norris and I set up in a wooded area west of the Piggly Wiggly Store. At 10:00 P.M., we observed two subjects come from the West and go directly to the back door of the Class Act Clothier. This store is connected to the south side of Piggly Wiggly Store. The subjects began prying on the door. It took approximately two minutes for the subjects to remove a bar that was across the door. One subject went inside. We waited for a few seconds and rushed towards the door. I was in front of Mr. Norris. I was within 20 steps of the door when Kenneth R. Isom came out of the door. I put my flashlight directly in his face and called him by name. I ordered him to stop. He ran South. The other subject ran Southwest. I could not see who he was. Chief Maxwell and Officer Jeff Lindsey went to the front of the building in a patrol unit. It was our intention to contain the subjects in the building. A search was made of the area for the two subjects.

Officer Norris and I made a crime scene search of the area. I followed the route taken by Ken Isom approx. 30' south of the Class Act Clothier's back door. A camera in a black case was laying in the grass. Mrs. Anetta Booker, owner of the Class Act Clothier identified the camera as her camera and it was in her desk.

AFFIDAVIT FOR WARRANT OF ARREST

Kenneth R. Isom. CR 91-125-1

STATE OF ARKANSAS

COUNTY OF DREW

I, Capt. Charles Cate

do solemnly swear that Kenneth R. Isom ^{D.O.B-6-3-67}, in
said County of DREW did on the 16th day of

December, 1991 BURGLARIZE THE
Class ACT Clothing Store, Located at 414
Hwy 425 South.

and pray a warrant for the offense of Burglary, Theft
from Judge William Daniels Court for said County, to
apprehend and bring the said Kenneth R. Isom. before the
said Court to be dealt with according to law.

Capt. Charles Cate

Sworn and subscribed before me this 17 day of December
1991.

W. R. Jais

Judge - Clerk

Monteale Duvigal Jule

FILED Circuit COURT
DREW CO. ARKANSAS
BY: NELL GAMDEN, CLERK

DEC 17 1991

AM
7,8,9,10,11,12,1,2,3,4,5,6

PM

▲

Arkansas Department of Correction

| | |
|-------------|------------------|
| Institution | VARNER |
| Date | October 21, 1992 |

DETAINER ACTION LETTER

TO: Drew County Sheriff
210 S. Main St.
Monticello, AR 71655

| | |
|---------------|----------|
| Inmate's Name | Number |
| ISON, Kenneth | 92604 |
| Your | |
| Detainer | 91-125-1 |

Dear Sir:

The below checked paragraph relates to the above named inmate:

- ☐ This office is in receipt of the following report regarding the above named: _____
_____. Will you please investigate this report and advise what disposition, if any, has been made of the case. If subject is wanted by your department and you wish a detainer placed, it will be necessary for you to forward a certified copy of your warrant to us along with a cover letter stating your desire to have it lodged as a detainer, or indicate you have no further interest in subject.
- ☐ A detainer has been filed against this subject in your favor charging _____
Release is tentatively scheduled for _____, however we will again notify you approximately 60 days prior to actual release.
- ☒ Per Your Disposition Found Not Guilty
Enclosed is your detainer warrant. Your detainer against the above named has been removed in compliance with your request.
- ☐ Your letter dated _____ requests notification prior to the release of the above named prisoner. Our records have been noted. Tentative release date at this time is _____.
- ☐ I am returning your _____ on the above named inmate who was committed to this institution on _____ to serve _____ for the offense of _____. If you wish your _____ filed as a detainer, please return it to us with a cover letter stating your desire to have it placed as a hold or indicate you have no further interest in the subject.
- ☐ The above named inmate has been transferred to _____. Your detainer/notification request has been forwarded.
- ☐ Other:

Sincerely,

Camille L. Smith

Records Supervisor

Original White—Addressee

First Copy (Pink)—Inmate File

Second Copy (Yellow)—Inmate

Third Copy (Blue)—Attached to detainer upon transfer

ACI — 6988

Rec'd 10-23-92
File Camille

IN THE CIRCUIT COURT OF Drew COUNTY, ARKANSAS

THE STATE OF ARKANSAS

VS

NO. 91-125-1

ADC # 92604
DEFENDANT

Kenneth Elson

Cummins Unit

CRIMINAL SUMMONS

TO THE SHERIFF OF Drew COUNTY:

You are hereby commanded to summons the above named defendant by serving him with a copy hereof, with (information) (complaint) attached to inform the defendant that (he) (she) is charged with the crime of Burglary & top.

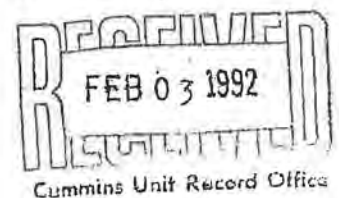
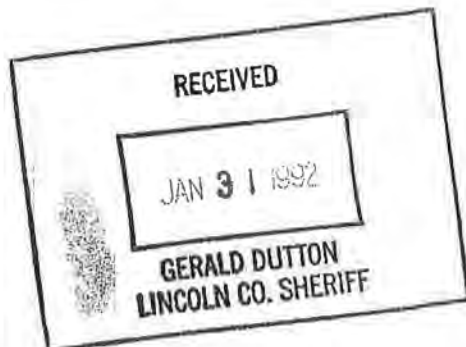
The defendant should appear before the Drew County Circuit Court, Drew County Courthouse, Monticello, Arkansas, on the 10th day of February, 1992, at 9:30 a.m. for plea and arraignment.

FAILURE TO APPEAR at the stated time, place and Court may result in your arrest for failure to appear and shall constitute a separate offense for which you may be prosecuted.

GIVEN under my hand as Circuit Clerk of Drew County, Arkansas, on this 29 day of January, 1992.

Nell Camden
CIRCUIT CLERK

by: Way Craig



RETURN

STATE OF ARKANSAS, COUNTY OF Lincoln

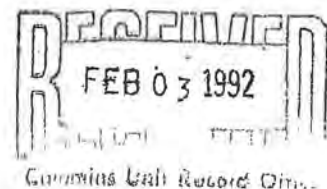
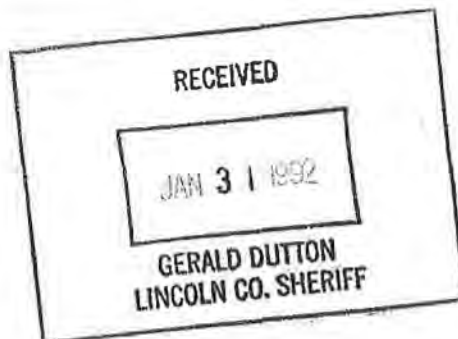
On this 10 day of FEB, 1990, at 8:35 AM o'clock
____.m., I have duly served the within summons by delivering a copy
thereof, together with a copy of the complaint, to
Kenneth Isom ADC#92604 such person being:

CHECK APPLICABLE:

XX the person named therein as defendant.
____ a member of the defendant's family above 14 years of age at
defendant's usual place of abode, namely
____ the duly designated agency for service of process for the
defendant, namely _____

OTHER: _____

Gerald Dutton:
SHERIFF
By [Signature]
James T. Banks III



IN THE CIRCUIT COURT OF DREW COUNTY, ARKANSAS

THE STATE OF ARKANSAS |

vs.

Case No. CR 91-125-1

Kenneth Roshell Isom

Burglary 5-39-201; Theft of Property 5-36-103

Filed Circuit Court
Drew County, Ark.
Jan 29 1992 AM
Nell Campbell PM
By Wayne Clerk
D.C.

INFORMATION

I, SAM POPE Prosecuting Attorney within and for the Tenth Judicial Circuit of the State of Arkansas, of which DREW County is a part, in the name and by the authority of the State of Arkansas, on oath, accuse the defendant, Kenneth Roshell Isom of the crime(s) of Burglary 5-39-201; Theft of Property 5-36-103, committed as follows, to-wit: The said defendant on or about December 16, 1991, in DREW County, Arkansas, did unlawfully:

COUNT ONE: He did enter or remain unlawfully in an occupiable structure of another person with the purpose of committing theft, to-wit: The Class Act Clothier in Monticello, a CLASS D FELONY;

COUNT TWO: Then and there he or an accomplice did knowingly take or exercise unauthorized control over an interest in the property of another person with the purpose of depriving the owner of the property, to-wit: a 33 MM Camera valued at \$50.00, a CLASS A MISDEMEANOR.

The defendant has previously been convicted of 4 or more prior felony offenses and is subject to sentencing as an habitual criminal.

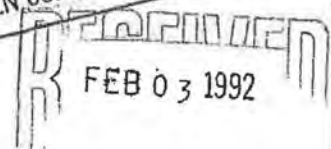
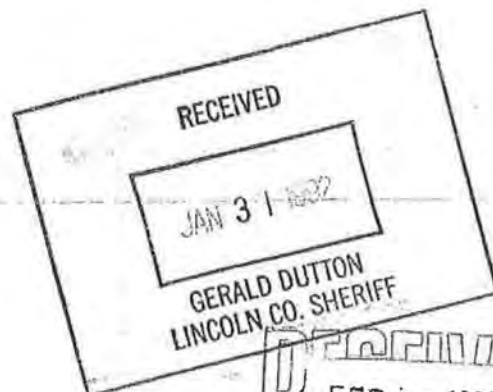
RECORDED
FEB 03 1992
Clerk of the Circuit Court

all counts being against the peace and dignity of the State of
Arkansas.


SAM POPE, Prosecuting Attorney

DATE OF ARREST: January 6, 1992 Monticello P. D.

ARREST TRACKING NUMBER: NA



Arkansas Department of Correction

| | |
|-------------|------------------|
| Institution | Cummins Unit-ADC |
| Date | 2-4-92 |

DETAINDER ACTION LETTER

TO: Drew County Sheriff
Monticello, AR

| | |
|---------------|----------|
| Inmate's Name | Number |
| Kenneth Isom | 92604 |
| Your | 91-125-1 |

FILED Circuit COURT
DREW CO. ARKANSAS
NELL GARDEN, CLERK
BY: W. G. Gandy

FEB 18 1992

4PM 11:30 PM
7, 8, 9, 10, 11, 12, 1, 2, 3, 4, 5, 6

Dear Sir:

The below checked paragraph relates to the above named inmate:

☐ This office is in receipt of the following report regarding the above named: _____ Will you please investigate this report and advise what disposition, if any, has been made of the case. If subject is wanted by your department and you wish a detainer placed, it will be necessary for you to forward a certified copy of your warrant to us along with a cover letter stating your desire to have it lodged as a detainer, or indicate you have no further interest in subject.

☒ A detainer has been filed against this subject in your favor charging Burglary and TOP. Release is tentatively scheduled for 9-20-93, however we will again notify you approximately 60 days prior to actual release.

☐ Enclosed is your detainer warrant. Your detainer against the above named has been removed in compliance with your request.

☐ Your letter dated _____ requests notification prior to the release of the above named prisoner. Our records have been noted. Tentative release date at this time is _____.

☐ I am returning your _____ on the above named inmate who was committed to this institution on _____ to serve _____ for the offense of _____. If you wish your _____ filed as a detainer, please return it to us with a cover letter stating your desire to have it placed as a hold or indicate you have no further interest in the subject.

☐ The above named inmate has been transferred to _____. Your detainer/notification request has been forwarded.

☐ Other:

Sincerely,

Mella S. Woodard
Records Supervisor cc

Original White—Addressee

First Copy (Pink)—Inmate File

Second Copy (Yellow)—Inmate

Third Copy (Blue)—Attached to detainer upon transfer.

ACA — 6685

IN THE CIRCUIT COURT OF Drew COUNTY, ARKANSAS

THE STATE OF ARKANSAS

VS

ADC # 92604

NO. 91-125-1

Kenneth Elson

, DEFENDANT

Cummins Unit

CRIMINAL SUMMONS

TO THE SHERIFF OF Drew COUNTY:

You are hereby commanded to summons the above named defendant by serving him with a copy hereof, with (information) (complaint) attached to inform the defendant that (he) (she) is charged with the crime of Burglary + Top.

The defendant should appear before the Drew County Circuit Court, Drew County Courthouse, Monticello, Arkansas, on the 10th day of February, 1992, at 9:30 a.m. for plea and arraignment.

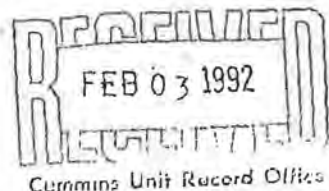
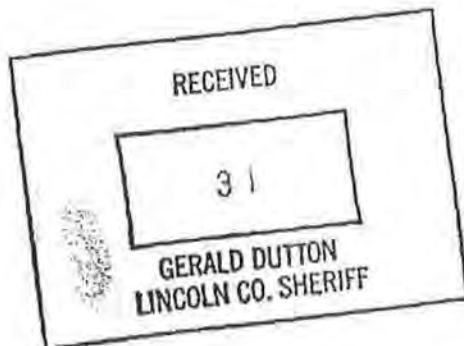
FAILURE TO APPEAR at the stated time, place and Court may result in your arrest for failure to appear and shall constitute a separate offense for which you may be prosecuted.

GIVEN under my hand as Circuit Clerk of Drew County, Arkansas, on this 29 day of January, 1992.

Nell Camden
CIRCUIT CLERK

by:

Way Craig



RETURN

STATE OF ARKANSAS, COUNTY OF Lincoln

On this 10 day of FEB, 1992, at 8:37 AM o'clock
____.m., I have duly served the within summons by delivering a copy
thereof, together with a copy of the complaint, to
Kenneth Isom ADC#92604 such person being:

CHECK APPLICABLE:

- XX the person named therein as defendant.
____ a member of the defendant's family above 14 years of age at
defendant's usual place of abode, namely
____ the duly designated agency for service of process for the
defendant, namely

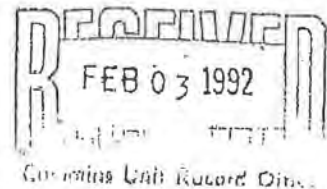
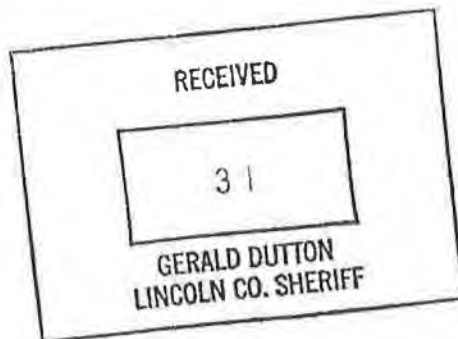
OTHER: _____

Gerald Dutton

SHERIFF

By James T. Banks III

James T. Banks III



FILED Circuit COURT
DREW CO. ARKANSAS
BY: NELL CAMDEN, CLERK

MAY 29 1992

IN THE CIRCUIT COURT OF Drew

AM
KK-3028, 9, 10, 11, 12, 13, 14, 15, 16
COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS.

NAMES AND CASE #'S OF DEFENDANTS LISTED BELOW

DEFENDANTS

CRIMINAL TRIAL SETTING ORDER

On this 29 day of May, 1992, came on for consideration the matter of trial settings for the first division of Circuit Court for the week beginning October 19, 1992, and the court finds that the following cases pending in this county should be and are hereby set for jury trial beginning on Tuesday, October 20, 1992, and continuing during said week until the court shall recess:

1. List of cases in order of priority:

| Case # | Defendant's name(s) | P.A. Office | Defense Attn. |
|----------|----------------------|-------------|---------------|
| 91-125-1 | Kenneth Ison | Pope | Bunch |
| 91-127-1 | Timmy R. West | Pope | Bunch |
| 92-9-1 | Jeffrey Collins | Pope | J. F. Gibson |
| 92-17-1 | Paul Jones | Pope | Bunch |
| 92-22-1 | Joe Lee Harris | Chambers | Burch |
| 92-23-1 | John Will Franklin | Sawyer | Bunch |
| 92-26-1 | Michael McCoy | Pope | Bunch |
| 92-28-1 | William "Boo" Burton | Sawyer | Moorehead |
| 92-47-1 | Gloria Fry | Pope | Bunch |

2. The clerk shall file a copy of this order in each file listed above and give a copy to the Sheriff's office for personal service on the defendant and the bondsman in each case listed above. The clerk shall mail a copy of the order to each counsel listed hereon at their addresses.

3. When counsel settle a case, one of them, as they agree shall notify the clerk of the settlement by phone so the clerk can note the settlement on a copy of this order to be posted in the clerk's office. Counsel are responsible for informing themselves of the status of their case by communication with the clerk's office.


4. No changes in this setting will be made except on written

motion for continuance filed not later than five (5) days prior to the trial settings herein. All pre-trial motions, not required by rule to be filed earlier, shall be filed not later than 5 days prior to the trial setting.

5. If a settlement is negotiated, it shall be entered of record and defendant and counsel shall appear before the court on the Monday prior to the trial setting herein when the court is in session for pleas, arraignments, etc.

6. Any hearings on pre-trial motions shall be heard on the Monday prior to the trial setting unless heard when set by other orders of the court. If counsel desire another setting, it is their responsibility to prepare an order and obtain a setting date from the court.

IT IS SO ORDERED.


CIRCUIT JUDGE, PAUL K. ROBERTS
OFFICE: BRADLEY COUNTY
COURTHOUSE
WARREN, AR 71671
PHONE: 226-5211
MESSAGE: 226-2272

2

Drew KK-517
IN THE CIRCUIT COURT OF BRADLEY COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS

NO. CR 91-125-1

Kenneth Ison

DEFENDANT

APPOINTMENT OF COUNSEL

Upon preliminary determination of indigency, the Honorable Tin Burch
is appointed to represent the defendant in the above styled case.

The obligations of appointed counsel are not limited to, but shall include the following:

1. Determine whether or not the defendant is indigent and if it is found that defendant is not indigent, report same to the Court promptly.
2. Appointed counsel shall continue to represent the defendant until relieved by this Court, the Supreme Court, or where a trial is had, upon filing in this case a written statement, signed by appointed counsel and defendant that the defendant has been fully advised of his right to appeal and that the defendant does not wish to appeal.
3. Following a trial conviction, appointed counsel shall advise defendant of his right to appeal and of his right to counsel on appeal. If requested thereafter to do so, counsel shall file a proper notice of appeal and perfect that appeal. His representation shall continue until he is relieved by this Court of the Supreme Court.
4. Appointed counsel may request and accept payment or promise of payment from or in behalf of the defendant for his services, provided any payment or promise of payment shall be reported to the Court at or prior to the time of filing a claim for payment.

Dates this 29 day of May, 19 92.

Paul K. Roberts
PAUL K. ROBERTS, CIRCUIT JUDGE
Tenth Judicial District

FILED Circuit COURT
DREW CO. ARKANSAS
WILLIAM DEN, CLERK
BY: Paul K. Roberts

JUN 1 1992

AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

IN THE CIRCUIT COURT OF

Drew

14C-521
COUNTY, ARKANSAS

STATE OF ARKANSAS

PLAINTIFF

VS

NO. CR. 91-125-1

Kenneth Ison

DEFENDANT

ORDER SETTING CASE FOR
(PLEA AND ARRAIGNMENT) (FIRST APPEARANCE) (HEARING)

The above styled case is hereby set for ☒ (plea and arraignment) ☒ (first appearance) ☐ (hearing) in the courtroom of the Drew County Courthouse, Monticello, Arkansas, on June 29, 1992, at 9:30 a.m.

The Defendant and his attorney shall be present at this time for this proceeding.

Dated this 29 day of May, 1992

Raven Roberts
CIRCUIT JUDGE

cc: By clerk to all attorney's of record, defendant, defendant's bondsman and to sheriff for personal service on defendant

FILED Circuit COURT
DREW CO. ARKANSAS
BY: WILL CAMPBELL, CLERK

JUN 1 1992

AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

STATE OF ARKANSAS

VS.

KENNETH R. ISOM

MOTION FOR DISCOVERY

1. The defendant requests the following material and information that is or may come within the possession, control, or knowledge of the Prosecuting Attorney:

(b) The name and current address of any confidential informant used in this case;

(c) Any written or recorded statements and the substance of all oral statements made by the defendant or a co-defendant;

(d) Any reports or statements of experts made in connection with this case, including reports of scientific tests, experiments, or comparisons;

(e) Any books, papers, documents, photographs or tangible objects the Prosecuting Attorney intends to use in

intended to use in
FILED Chas. H. Court
DREW CO. ARKANSAS
WELL CAMPDEN CLERK
BY: W. H. Court

JUN - 3 1992

AM 3:45 PM
7, 8, 9, 10, 11, 12, 1, 2, 3, 4, 5, 6

any hearing or at trial that were obtained from or belong to the defendant or co-defendant;

(f) Any record of prior criminal convictions of persons the Prosecuting Attorney intends to call as witnesses at any hearing or at trial, if the Prosecuting Attorney has such information or it can readily be obtained by him;

(g) Any documentary or testimonial evidence the Prosecuting Attorney intends to introduce or use at trial pursuant to Rules 404 or 608, Arkansas Rules of Evidence.

(h) Whether there has been any electronic surveillance of the defendant's premises or of conversations to which the defendant was a party;

(i) The transcript of any relevant prior testimony in any other proceeding that may have been held in this case.

2. The Prosecuting Attorney should disclose and permit inspection and copying of any relevant material regarding:

(a) Any search and seizure of the defendant or co-defendant;

(b) The acquisition of any statement from the defendant or co-defendant;

(c) Any police reports made in connection with this case that relates to potential testimony of any police officers of other witnesses;

(d) Any physical, documentary, scientific, demonstrative or photographic evidence the State of Arkansas intends to introduce or use at trial.

(e) Any statements the Prosecutor intends to introduce under A.R.E. Rule 803(24) or Rule 804(b)(5).


3. The Prosecuting Attorney shall disclose to defense counsel any material or information within his knowledge, possession or control, or in the hands of any law enforcement agency that could negate the guilt of the defendant of the offense charged or could reduce the punishment therefor.

4. The Prosecuting Attorney should disclose whether any requests for or offers of immunity, leniency, sentence or charge concessions or other inducements have been made by or to any co-defendant, potential witness or informant.

The defendant requests this information as soon as possible before trial. The State of Arkansas should consider this a continuing motion, with all information received in compliance with Ark. Rules Crim. Pro. 19.2.

Respectfully submitted,

By:


Timothy W. Bunch
Public Defender
Bar Number 81022
P. O. Box 564
Monticello, AR 71655
(501)367-5386

CERTIFICATE OF SERVICE

I, Timothy W. Bunch, certify that a copy of the foregoing motion has been served upon the Honorable Sam Pope, Prosecuting Attorney, P.O. Drawer 32, Hamburg, Arkansas, 71646, this 3rd day of June, 1992.


Timothy W. Bunch

STATE OF ARKANSAS
DEPARTMENT OF CORRECTION

CUSTODY RECEIPT

Unit: VARNER

Date: JUNE 29, 1992

I acknowledge, on this date, the receipt from the ARKANSAS DEPARTMENT OF CORRECTION, the body (s) of:

| NAME | | A.D.C. NO. |
|--------------------------------------|----|------------|
| ISOM, Kenneth | BM | 92604 |
| //////////////////////////////////// | | |

TOTAL OF ONE (1)

with the understanding that I will be responsible for the above subject (s) while in my custody, and in the event he/she/they escape, my office will be responsible for apprehension and return to the ARKANSAS DEPARTMENT OF CORRECTION at the unit indicated above.

Hal Cantillon
NAME

D-8
BADGE #

430-17-5336
DRIVERS LICENSE #

Signed [Signature]
For Sheriff's Office

DREW County

DEPARTMENT OF CORRECTION
Varner UNIT
GRADY, ARKANSAS

6/30/92

Date 6-29 19 92

S H E R I F F R E C E I P T

RECEIVED FROM DREW CO. THE FOLLOWING
INDIVIDUAL (S), TOGETHER WITH THEIR COMMITMENT PAPERS:

ISOM, KENNETH ROSHELL

B/M

#92604

BY

Camille L. Garrett

RECORD SUPERVISOR

Drew Circuit Court, _____ Term

Oct. 20, 1992 19

pay

et it Jury selected to try

State of Arkansas

Plf.

Case No. 91-125-1

vs.

Kenneth Lion

Dft.

| | NAME OF JUROR | GOOD | EX. By DFT. | EX. BY PLF. | EX. FOR CAUSE |
|----|----------------------------|--------------------------------------|-----------------------|-------------|---------------|
| 1 | Percy Applegate | (10) Rt 2, Box 110, Hermatt | 27.13 X 2 | 54.26 | |
| 2 | Ted J. Burton | 1386 Hwy 4 East | | 10.00 | |
| 3 | Patricia Ann Bearden | (12) Rt 1, Box 446 B- | 23.45 + 13.45 | 36.90 | |
| 4 | Jewell Cobbs | Rt 3, Box 65 | 21.38 + 11.38 | 32.76 | |
| 5 | Betty Collins | | | | |
| 6 | Mary L. Curtis | Rt 2 Box 61, Tillar | 13.22 + 13.22 | 26.44 | |
| 7 | Charles L. Dalsis, Jr. | Rt 2, Box 561, Hermatt | 14.37 X 3 | 43.11 | |
| 8 | Odell Davis, Jr. | Rt 3, Box 6 | 20.92 + 10.92 X 2 | 42.76 | |
| 9 | Rodney Downing | (3) Rt 2, Box 119-3 | 21.15 + 11.15 X 2 | 43.30 | |
| 10 | Billy Mack Edwards | Rt 3 Box SF-86 | 10.46 X 2 | 20.92 | |
| 11 | Peggy S. Hudson | 505 Winchester Rd #8 | 20.00 + 10.00 | 30.00 | |
| 12 | Mary Lee Fortin | | | | |
| 13 | Paula Gathings | P.O. Box 854 | 10.00 X 2 | 20.00 | |
| 14 | Sherrie Gillispie | Rt 3, Box SF-48 | 10.69 X 2 | 21.38 | |
| 15 | Shelly Grunden | Shelly Grunden Box 80 | 10.00 X 2 | 20.00 | |
| 16 | James D. Haynes | Box 432 | 10.92 X 3 | 32.76 | |
| 17 | L.E. Hill | Box 111 | 10.00 X 20.00 | 30.00 | |
| 18 | Margaret L. Johnson | 570 Cassad | 20.00 + 10.00 | 30.00 | |
| 19 | R. Vera Johnston | Box 929, City | 11.15 X 3 | 33.45 | |
| 20 | Jimmy C. Lambert | (5) Rt 2, Box SF-2 | 20.00 + 10.00 + 10.00 | 40.00 | |
| 21 | Inez Lindsey | Rt 3 Box SF-83 | 20.00 + 10.00 | 30.00 | |
| 22 | Nancy McKeown | (2) Rt 1, Box 618 - County Emp. | | 00.00 | |
| 23 | Mellie Jo Owens | (8) Rt 3, Box A-76 | 21.15 + 11.15 | 32.30 | |
| 24 | Debbie L. Owens | (11) 20.46 + 10.46 - (Rt 1, Box 522) | | 41.38 | |
| 25 | Michael Potter | 659 Sycamore | 10.00 X 2 | 20.00 | |
| 26 | Tim D. Reynolds | (1) 330 S. Hyatts | 20.00 | 20.00 | |
| 27 | Hazel Saffold | (4) Rt 1, Box 844 Banning Dr. | 20.00 X 2 | 40.00 | |
| 28 | John Norman Scogin | (1) Rt 1, Box 127, Welman | 23.68 + 13.68 | 37.36 | |
| 29 | Kirby Snow | | | | |

Exhibit C (46)

App. 315

IN THE CIRCUIT COURT OF DREW COUNTY, ARK.

PETIT JURORS SELECTED TO TRY

THE CASE OF: Oct. 20, 1992

Oct. 21, 1992

State of Arkansas
vs
Kenneth Isom

Cr-91-125-1

State of Arkansas
vs
Jeffery Lee Collins

Cr-92-9-1

| NAME | ADDRESS | AMOUNT |
|------------------------|------------------------------|-----------------------|
| Percy Applegate | Rt.2, Box 110, Dermott | 54.26 |
| Ted J. Burtin | 1386 Hwy 4 East, Monticello | 10.00 |
| Patricia Ann Bearden | Rt.1, Box 446B, Monticello | 36.90 |
| Jewell Cobbs | Rt.3, Box 65, City | 32.76 |
| Mary L. Curtis | Rt.2, Box 61, Tillar | 26.44 |
| Charles L. Dalsis, Jr. | Rt.2, Box 561, Dermott | 43.11 |
| Odell Davis, Jr. | Rt.3, Box 6, City | 42.76 |
| Rodney Downing | Rt.2, Box 119-3, City | 43.45 |
| Peggy Hudson | 505 Winchester Rd, # 8, City | 30.00 |
| Paula Gathings | P.O. Box 854, City | 20.00 |
| Sherrie Gillespie | Rt.3, Box SF 48, City | 21.38 |
| Shelley Grunden | Box 680, City | 20.00 |
| James D. Haynes | Box 432, City | 32.76 |
| L.E. Hill | P.O. Box 111, City | 30.00 |
| Margaret L. Johnson | 570 Conrad, City | 30.00 |
| R. Vera Johnston | Box 929, City | 33.45 |
| Jimmy C. Lambert | Rt.3, Box SF 2, City | 40.00 |
| Inez Lindsey | Rt.3, Box SF 83, City | 30.00 |
| Nancy McKeown | Rt.1, Box 618, City | COUNTY EMPLOYEE 00.00 |
| Mellie Jo Owens | Rt.3, Box A-76, City | 32.30 |
| Debbie L. Owens | Rt.1, Box 522, City | 41.38 |
| Michael Potter | 659 Sycamore, City | 20.00 |
| Tim D. Reynolds | 330 S. Hyatt, City | 20.00 |
| Hazel Saffold | Rt.6, 244 Browning Dr., City | 40.00 |
| John N. Scogin | Rt.1, Box 127, Wilmar | 37.36 |

| | | |
|-----------------------|-----------------------|----------------|
| Billy Maxk Edwards | Rt.3, Box SF 86, City | 20.92 |
| Laverne Burnette | 118 W. Bolling, City | 10.00 |
| Frances Christian | Rt.2, Box 223A, City | 12.07 |
| Phillip H. Jones, Jr. | Rt.4, Box 157, City | 23.45 |
| Marion Rawls | Rt.3, Box A-20, City | 10.00 |
| | | <hr/> 1,038.76 |

STATE OF ARKANSAS

COUNTY OF DREW

I, Nell Camden, Circuit Clerk in and for Drew County, Arkansas, do hereby certify that the above and foregoing contains a true and correct listing of the Petit Jurors at the regular term of court and is the correct amount due each for services and mileage.

WITNESS MY HAND AND SEAL this 22nd day of October, 1992

Nell Camden
 NEAL CAMDEN, CIRCUIT CLERK

D

10-15-92

To: Tim Bunch

From: Sam Pope

Re: Brew County Plea offers -
Week of Oct 19, 92

1. Kew I Som, 91-125-1

10 years ADC to run consecutive to
present sentence (20 years is minimum he
will get if convicted of burglary as 4x
loser.)

2. Timmy R. West, 91-127-1

8 years ADC

3. Paul Jones 92-17-1

3 years ADC - consecutive w/ present
sentence

4. Gloria Frye 92-47-1

2 years SIS

restitution of 734⁰⁰

Fine of 250⁰⁰

Cost of 121²⁵

5. Michael McLoey 92-26-1

3 years super. probation

restitution for car & medical

bills - undetermined amount

Plea on Monday or Tuesday.

S.P.

E



STATE OF ARKANSAS
OFFICE OF THE GOVERNOR

State Capitol
Little Rock 72201

Jim Guy Tucker
Governor

April 1, 1994

The Honorable Sam Pope
Prosecuting Attorney
Tenth Judicial District
Post Office Drawer 32
Hamburg, Arkansas 71646

The Honorable Tommy C. Free
Sheriff of Drew County
Post Office Box 518
Monticello, Arkansas 71655

Dear Mr. Pope and Sheriff Free:

Pursuant to our meeting on March 2, 1994, regarding the parole release of Inmate Kenneth Isom, I have contacted Larry Norris, Director of the Department of Correction, and have made him aware of your concerns about not being notified at the possibility of Mr. Isom being paroled or given a chance to oppose it. I have asked Mr. Norris to be certain the notifications are being mailed as required by law.

On March 14, 1994, I received a letter from Mr. Norris which I have attached for your review. Mr. Norris informed me that notifications were forwarded to the persons named in the letter. Mr. Pope's name was among those listed. In addition, as noted in the letter, responses were returned by Drew and Jefferson counties; however, Sheriff Jay Winter responded "no" to the release on the Drew County prosecuting attorney's form.

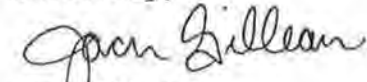
Regarding your concern as to whether Mr. Isom was properly paroled given his lengthy sentence, I have attached a copy of Mr. Isom's ADC record and have highlighted the sentences he received within each county. His 15-year sentence was ordered to be served consecutively to his other 8-year sentences for a total sentence of 23 years. However, Mr. Isom was eligible for parole after serving one-third of his sentence because all of his crimes were "C" class felonies (see Arkansas Code Annotated §16-90-608 (Repl. 1987)). Counting his good time credits, Mr. Isom was parole eligible in just over three and one-half years.

I am satisfied that Mr. Isom was eligible for parole when he was released in February, 1994. I know you were hoping Mr. Isom could be returned to prison. After reviewing the facts, it appears his parole was proper, and I know of no way to rescind it.

Prosecuting Attorney Sam Pope
Sheriff Tommy C. Free
April 1, 1994
Page 2

If I can be of further assistance, please do not hesitate to call.

Sincerely,



Jack Gillean
Executive Assistant for Criminal Justice

JG:rdd

Enclosures

cc: The Honorable James Jordon
Arkansas State Representative
Post Office Box 518
Monticello, Arkansas 71655

Chief Bob Maxwell
Monticello Police Department
101 North Church Street
Post Office Box 505
Monticello, Arkansas 71655

Larry Norris, Director
Arkansas Department of Correction
Post Office Box 8707
Pine Bluff, Arkansas 71611

Mike Gaines, Chairman
Post Prison Transfer Board
Tower Building Suite 1700
323 Center Street
Little Rock, Arkansas 72201

Deborah Suttler
Post Prison Transfer Board
Tower Building Suite 1700
323 Center Street
Little Rock, Arkansas 72201



Arkansas
Department of Correction

P.O. Box 8707
Pine Bluff, Arkansas 71611-8707
Phone: (501) 247-1800 FAX: (501) 247-3700

March 7, 1994

Jack Gillean
Office of the Governor
State Capitol
Little Rock, AR 72201

Dear Mr. Gillean:


In preparation for the possible release of Inmate Kenneth Isom, ADC# 92604, by the Post Prison Transfer Board, the required legal notices were forwarded to the sentencing judges, prosecuting attorneys, and sheriffs:

Drew County - Judges Bird and Ligon, Prosecuting Attorney Pope, and Sheriff Free; Jefferson County - Judge Williams, Prosecuting Attorney Matthews, and Sheriff Brassell; and Cleveland County - Judge Graves, Prosecuting Attorney Wynne, and Sheriff King.

The required forms mailed to the prosecuting attorneys were returned by Drew and Jefferson counties; however, on November 22, 1993, a Sheriff Jay Winters responded "no" to release on the Drew County prosecuting attorney's form. This may be where the confusion lies.

If I can be of further assistance, please let me know.

Sincerely,


Larry B. Norris
Director

LBN:KH/letjack.doc

cc:David Guntharp
File

IN 3 OF 2404

1180002

INMATE RECORD

03/22/94 16.47.44

PAGE 1

CC NO: 0926045

NAME: ISOM, KENNETH R. ("B")

STATUS: INACTIVE

CUR LOC: FARDLE DIVISION

RTN :

SSA NO:

MR : 12/16/2000

TERM. BT : 02

AGE : 45

FEI NO:

PE : 02/23/1993

RACE : BLACK

SID NO: 90580560

CL : I-P

DUS : MED. SEC.

AMES : ISOM, KENNETH R. ("A")

WEAT: 04.9 FETA: 089 READ: 03.6

ISOM, KENNETH R. ("B")

MED.: M1

FCSD:

ISOM, KENNETH R. ("C")

ALBY/SENB:

ISOM, KENNETH R. ("D")

ISOM, KENNETH R. ("E")

ISOM, KENNETH R. ("F")

| PROPERTY TYPE | AWARD LOCATION | DATE | SCORE | VERIFIED |
|-----------------------|--------------------|-------|-------|----------|
| SUBSTANCE ABUSE TREAT | WRIGHTSVILLE UNIT | 12/89 | 0 | Y |
| SUBSTANCE ABUSE TREAT | SENTON PRC RELEASE | 01/93 | | Y |

| IN. COUNTY | SENT. BEGIN | RECEIVED | SENTENCE | CC CS | MIN. REL. | STATUS |
|--------------|-------------------|----------|----------|-------|------------|------------|
| 1 CLEVELAND | 05/24/1987 | 05/08/89 | BY OM OD | | 06/20/1993 | IMPOSED |
| AT. DOCKET | OFFENSE | ACT(S) | | CC CS | SENTENCE | T/O |
| 1R CR-890024 | THEFT OF PROPERTY | 825 | | | BY OM OD | 1/3 EXPIRE |

IN 3 OF 2404

1180002

INMATE RECORD

(CONTINUED)

03/22/94 16.47.44

PAGE 2

CC NO: 0926045

NAME: ISOM, KENNETH R. ("B")

STATUS: INACTIVE

CUR LOC: FARDLE DIVISION

RTN :

SSA NO:

MR : 12/16/2000

TERM. BT : 02

AGE : 45

FEI NO:

PE : 02/23/1993

RACE : BLACK

SID NO: 90580560

CL : I-P

DUS : MED. SEC.

AMES : ISOM, KENNETH R. ("A")

WEAT: 04.9 FETA: 089 READ: 03.6

ISOM, KENNETH R. ("B")

MED.: M1

FCSD:

ISOM, KENNETH R. ("C")

ISOM, KENNETH R. ("D")

ISOM, KENNETH R. ("E")

ISOM, KENNETH R. ("F")

| IN. COUNTY | SENT. BEGIN | RECEIVED | SENTENCE | CC CS | MIN. REL. | STATUS |
|--------------|-------------------|----------|----------|-------|------------|------------|
| 2 DREW | 03/08/1987 | 08/08/89 | BY OM OD | A | 05/08/1993 | IMPOSED |
| AT. DOCKET | OFFENSE | ACT(S) | | CC CS | SENTENCE | T/O |
| 1R CR-890010 | BURGLARY | 825 | | | BY OM OD | 1/3 EXPIRE |
| 2 CR-890016 | BURGLARY | 825 | | 01 | BY OM OD | 1/3 |
| 3 CR-890016 | BURGLARY | 825 | | 01 | BY OM OD | 1/3 |
| 4 CR-890017 | BURGLARY | 825 | | 01 | BY OM OD | 1/3 |
| 5 CR-890017 | BURGLARY | 825 | | 01 | BY OM OD | 1/3 |
| 6 CR-890014 | THEFT OF PROPERTY | 825 | | 01 | BY OM OD | 1/3 |
| 7 CR-890014 | THEFT OF PROPERTY | 825 | | 01 | BY OM OD | 1/3 |
| 8 CR-890014 | THEFT OF PROPERTY | 825 | | 01 | BY OM OD | 1/3 |
| 9 CR-890013 | THEFT OF PROPERTY | 825 | | 01 | BY OM OD | 1/3 |
| 0 CR-890017 | THEFT OF PROPERTY | 825 | | 01 | BY OM OD | 1/3 |

| IN. COUNTY | SENT. BEGIN | RECEIVED | SENTENCE | CC CS | MIN. REL. | STATUS |
|--------------|-------------------|----------|----------|-------|------------|------------|
| 3 JEFFERSON | 09/12/1987 | 09/12/89 | BY OM OD | B | 10/08/1993 | IMPOSED |
| AT. DOCKET | OFFENSE | ACT(S) | | CC CS | SENTENCE | T/O |
| 1R CR-890023 | THEFT OF PROPERTY | 825 | | | BY OM OD | 1/3 EXPIRE |

IN 3 OF 2404

1180002

INMATE RECORD

(CONTINUED)

03/22/94 16.47.44

PAGE 3

CC NO: 0926045

NAME: ISOM, KENNETH R. ("B")

STATUS: INACTIVE

CUR LOC: FARDLE DIVISION

RTN :

SSA NO:

MR : 12/16/2000

TERM. BT : 02

AGE : 45

FEI NO:

PE : 02/23/1993

RACE : BLACK

SID NO: 90580560

CL : I-P

DUS : MED. SEC.

AMES : ISOM, KENNETH R. ("A")

WEAT: 04.9 FETA: 089 READ: 03.6

ISOM, KENNETH R. ("B")

MED.: M1

FCSD:

ISOM, KENNETH R. ("C")

ISOM, KENNETH R. ("D")

ISOM, KENNETH R. ("E")

| PROPERTY TYPE | AWARD LOCATION | CHARGES/CONVICTIONS | NOTIFIED | PROPOSED |
|---------------|--------------------|---------------------|----------|----------|
| 5/04/91 DDB | ISSA POL. 35X01BAG | 0950-100 DLR & TOP | 07/03/91 | 07/03/91 |

Exhibit E (4)

F

DECLARATION OF ANNIE ISOM

I, Annie Isom, do hereby declare the following:

1. My name is Annie Isom. Kenneth Isom is my nephew. His mother, Linda Isom, is my sister. I was born on April 2, 1955 to David and Effie Mattie Isom. I am the seventh child of eight children born to my parents. My sisters and brothers in order of their birth are: Stella Watson Jordan, Laura Isom Owens, David Clifton Isom, Linda Isom, Lee Otis Isom, Cleo Isom Hendrix and Kathy Isom Campbell. All of my siblings are living and most of them, except David, reside in Southeast Arkansas.

2. There were so many things that I don't think were done the right way with this whole thing. I had spoken to Attorney Morehead about taking Ken's case but he wasn't able to do it because he had been ill and didn't feel he could adequately prepare in time for Ken's trial. He wanted me to meet him at the courthouse in Monticello so that he could formally tell everyone that he couldn't take the case. They had Ken in a little side room at the courthouse but it wasn't the actual courtroom. People knew my sister Linda and Ken's brother and sisters but no one knew me so when I walked into the room where Ken was, no one said anything to me. I went up to Ken and was asking him how he was doing and I saw Judge Sam Pope in the room too. He was talking to some other men but I don't know who they were.

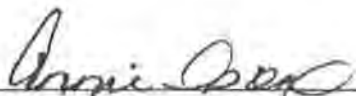
3. They wouldn't let Linda and some of my other family come into the courtroom but I was able to sit there and usually sat on the third row. I remember it was announced that Ken was guilty and I remember someone hollering out that "yall know Ken didn't do this, my brother did this" but what I remember the most after the verdict was announced, was seeing Judge Pope, in his robe, sitting on the bench, high-fiving some man who had walked over to him. I don't know who the man was but he wore khaki clothing. Ken and Bing were sitting over to the side near the front and they were talking among themselves but when I saw the judge celebrating the verdict, I was just so upset because I didn't believe that a judge should behave in this way and I was thinking that the judge

was just behaving inappropriately. I looked around the courtroom and people had begun to leave out but I believe the jurors were still hanging around in the courtroom. I always believed the police, prosecutor and judge here in Monticello had it in for Ken and seeing the judge celebrating made me think so even more.

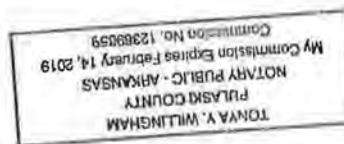
4. Before Ken's trial, I was told that a local pastor overheard the judge say to someone, "he's not getting away with it this time." I wasn't told who the judge was talking to when he said this but when I was told that the pastor overheard it, I believed it because he would have been at the courthouse observing. I know him to be very community minded and he would have been there because this was such a memorable event in our community.

I declare under penalty of perjury under the laws of the United States and the State of Arkansas that the above statement is true and correct to the best of my ability.




Annie Isom

10-7-2015
Date



SUPREME COURT OF ARKANSAS

No. CR-02-213

KENNETH ISOM

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered May 21, 2015

PETITION TO REINVEST
JURISDICTION IN THE CIRCUIT
COURT TO CONSIDER A
PETITION FOR WRIT OF ERROR
CORAM NOBIS
[DREW COUNTY CIRCUIT
COURT, NO. 22CR-01-52]

PETITION GRANTED.

JOSEPHINE LINKER HART, Associate Justice

A jury found Kenneth Isom guilty of capital murder, aggravated robbery, residential burglary, attempted capital murder, and two counts of rape and sentenced him, respectively, to sentences of death, life imprisonment, 40 years' imprisonment, 60 years' imprisonment, and life on each count of rape, with the sentences to be served consecutively. This court affirmed his convictions and sentences. *Isom v. State*, 356 Ark. 156, 148 S.W.3d 257 (2004). Isom further sought postconviction relief under Arkansas Rule of Criminal Procedure 37.5, and this court affirmed the circuit court's denial of his petition. *Isom v. State*, 2010 Ark. 495, 370 S.W.3d 491. Isom now petitions this court to reinvest jurisdiction in the trial court to consider a petition for writ of error coram nobis. We grant his petition to reinvest jurisdiction.

The proper standard of review for granting permission to reinvest jurisdiction in the circuit court to pursue a writ of error coram nobis is whether it appears that the proposed

attack on the judgment is meritorious. *Howard v. State*, 2012 Ark. 177, at 4–5, 403 S.W.3d 38, 43. In making such a determination, we look to the reasonableness of the allegations of the petition and to the existence of the probability of the truth thereof. *Id.*, 403 S.W.3d at 43. A writ of error coram nobis is available to address certain fundamental errors extrinsic to the record, such as material evidence withheld by the prosecutor. *Id.* at 4, 403 S.W.3d at 42–43. To establish a violation of *Brady v. Maryland*, 373 U.S. 83 (1963) by the State’s withholding of evidence, the evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; the evidence must have been suppressed by the State, either willfully or inadvertently; prejudice must have ensued. *Id.* at 8, 403 S.W.3d at 44.

Isom was convicted of killing Bill Burton and attempting to kill Dorothy Lawson, and of committing two counts of rape against Lawson, aggravated robbery, and residential burglary, based on an incident at Burton’s trailer on April 2, 2001. Lawson, who was 72, was at Burton’s home with Burton, who was 79. Burton had recently had hip surgery, and Lawson was there to care for him. Lawson testified that she opened the door that evening to a man she had seen next door earlier that day. Lawson identified Isom as the man who pushed passed her and demanded money from Burton. Burton gave him some money, but Isom was not satisfied and pulled a pair of broken scissors from his pocket. Lawson testified that Isom had her remove her clothes, raped her vaginally and anally and forced her to perform oral sex on him. Lawson testified that he forced her into a closet and that when she looked out she saw Isom standing on Burton’s head. Lawson fought with Isom in an attempt to prevent him from hurting Burton, and she cut her hand on the scissors in the process. Lawson was knocked unconscious, choked, and she eventually passed out. A neighbor found her the next morning, bleeding,

partially paralyzed, and crying for help.

At the hospital, the doctor performing the rape-kit examination found a hair in Lawson's vaginal opening. Analysis of that hair excluded Lawson or Burton as DNA contributors. The analysis also determined that a DNA sample from Isom had bands that were not inconsistent with those in the hair's DNA. The original analysis determined the likelihood of finding another person with the same consistent DNA bands was 1 in 57,000,000 in the African-American population. The additional testing conducted postconviction established the likelihood of finding another person with the same consistent DNA bands was 1 in 580,000 for a nonrelative. On April 5, 2001, an officer visited with Lawson in the hospital to see if she could identify her assailant from a photographic lineup. After first focusing on photographs one and three, she selected photo three, which was Mr. Isom.

In addition to Lawson's testimony at trial, Ken Ouellette testified that he drove by the Burton residence at about 7:00 p.m. on April 2, 2001. He saw Lawson and a gentleman he later identified as Isom talking in front of the house next door to Burton's. Linda Kay Johnson, who lived across the street, testified that she knew Isom, had seen him at the house next door to Burton's on previous occasions, and had seen him talking to Lawson some time before 7:00 p.m. on April 2, 2001.

In his petition and an attached proposed petition for filing in the trial court, Isom sets out a number of proposed grounds for the writ based on various claims that the prosecution withheld evidence. The grounds proposed are as follows: (1) the State suppressed evidence that Lawson did not identify Isom as her attacker in a photo array shown to her on April 4, 2001; (2) the State suppressed evidence that Lawson failed to identify Isom in a photo array shown

to her on April 5, 2001; (3) the State suppressed Rick McKelvey's investigative notes about the interviews of Lawson while she was in the hospital; (4) the prosecution failed to correct false testimony when Lawson testified that she was not on pain medication while in the hospital and that she did not attempt to make an identification without her glasses; (5) the State suppressed evidence that Ouellette was aware that Isom was the main suspect before identifying him; (6) the State suppressed evidence that Ouellette had a motive to curry favor with the police department; (7) the State suppressed evidence concerning the DNA evidence by turning over illegible copies of documents and incomplete copies of the gel strips or DNA ladders; (8) the State suppressed evidence of alternative suspects.

We focus on Isom's last claim, which is that the State withheld evidence that might have led counsel to utilize a defense based on an alternate suspect. Prior to trial, Isom's attorneys had notified the prosecution that they planned to call as witnesses a number of the prosecutors involved in the case, and, as a result, there was a pretrial hearing on a motion to quash the subpoenas. Deputy Prosecutor Frank Spain testified during that hearing concerning potential evidence from Kevin Green. The defense was aware of some letters written by inmates who claimed that, while he was incarcerated, Green had said that he smoked crack with Jerry Avery and that Avery had told Green that he committed the Burton murder. Green, according to the inmates' letters, intended to use the information from Avery to strike a deal with the prosecution so that he could be released on his own recognizance. Spain was questioned about whether he was involved with a search conducted by the detectives investigating Burton's murder as a result of information from Green.

Spain's testimony at the pretrial hearing was that he was told by Green's attorney and

some of the officers working the case that Green had information about the weapon in Burton's murder and that Green wanted to be released from jail. Spain agreed to the deal, and he went to a house where the weapon was supposed to be. According to Spain's testimony at the hearing on the motion to quash, they looked for the weapon and "[n]o item was found." The motion to quash was granted, and no defense was developed at trial using Green or Avery as an alternate suspect.

At Isom's Rule 37.5 hearing, Spain was sworn, and he reaffirmed an unsworn account under oath. In it, he stated that one of the police officers had come to him because Green had approached them with information similar to what had been in the inmate letters. Green wanted to be released on his own recognizance before he would give the information, and Spain testified that he would not give Green what he wanted until they had the information and it proved to be useful. Spain stated that they went to the place where Green said that the evidence could be collected and that the officers searched the trailer home located there. Green said he believed that a pair of scissors was recovered, that he looked at whatever it was that had been recovered, and released Green. Spain also said that the scissors were sent to the crime lab for testing, but did not produce anything to connect them to the crime.

Thus, Spain's testimony during the pretrial hearing was at odds with his testimony in the Rule 37.5 hearing. Given that Spain, under oath, has testified to two different versions of the facts, we are compelled to have the circuit court conduct an evidentiary hearing, as we are not in the position to exalt one version over the other. If Isom is correct, and Spain's testimony at the Rule 37 hearing was the accurate one, then there was clearly a fundamental error of fact extrinsic to the record that prevented Isom from presenting Spain as a witness and developing

his alternative theory that Avery, not Isom, committed the murder. In addition, if Spain's new version of the facts is correct, then there is a fundamental error of fact because there was an additional pair of scissors discovered on which DNA testing may or may not have been performed. We cannot ignore that there may be exculpatory or impeaching evidence favorable to the accused that may have been willfully or inadvertently suppressed by the State, resulting in the circuit court quashing a subpoena to consider evidence related to other possible suspects.¹ Based on the foregoing, we grant Isom's petition to reinvest jurisdiction in the circuit court to seek a writ of error coram nobis on his claim of *Brady* violations. While Isom raises additional *Brady* claims that we could consider in this opinion, see *Howard*, 2012 Ark. 177, at 27–28, 403 S.W.3d at 54–55 (granting petition in part), we reinvest jurisdiction in the circuit court to consider these claims as well, see *Newman v. State*, 2009 Ark. 539, 354 S.W.3d 61 (reinvesting jurisdiction in the circuit court to consider several *Brady* claims raised by the petitioner). Further, when an error coram nobis claim has apparent merit, this court often leaves it to the circuit court to determine the factual issue of diligence. *Howard*, 2012 Ark 177, at 14, 403 S.W.3d at 47. Thus, we also leave to the circuit court consideration of whether Isom's petition was timely.

Petition granted.

HANNAH, C.J., and DANIELSON and GOODSON, JJ., dissent.

¹We also note that Isom has asserted that he is related to Avery and has sought to test Avery's DNA. *Isom v. State*, 2010 Ark. 496, 372 S.W.3d 809.

SUPREME COURT OF ARKANSAS

No. CR-02-213

KENNETH R. ISOM

PETITIONER

Opinion Delivered May 21, 2015

V.

STATE OF ARKANSAS

RESPONDENT

DISSENTING OPINION.

PAUL E. DANIELSON, Associate Justice

Because it does not appear to me that Isom's proposed attack on his judgment is meritorious, I would deny his petition to reinvest jurisdiction; therefore, I respectfully dissent.

While not apparent from the majority's decision today to grant Isom's petition to reinvest, our law is more than well settled that the writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *See Roberts v. State*, 2013 Ark. 56, 425 S.W.3d 771. Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *See id.* The function of the writ is to secure relief from a judgment rendered while there existed some fact that would have prevented its rendition if it had been known to the circuit court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *See Howard v. State*, 2012 Ark. 177, 403 S.W.3d 38.

The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *See Newman v. State*, 2009 Ark. 539, 354

S.W.3d 61. We have held that a writ of error coram nobis is available to address only certain errors that are found in one of four categories: (1) insanity at the time of trial, (2) a coerced guilty plea, (3) material evidence withheld by the prosecutor, or (4) a third-party confession to the crime during the time between conviction and appeal. *See id.* Although there is no specific time limit for seeking a writ of error coram nobis, due diligence is required in making an application for relief. *See id.* In the absence of a valid excuse for delay, the petition will be denied. *See id.* Due diligence requires that (1) the defendant be unaware of the fact at the time of trial; (2) the defendant could not have, in the exercise of due diligence, presented the fact at trial; and (3) the defendant, after discovering the fact, did not delay in bringing the petition. *See id.*

Where the writ is sought after the judgment has been affirmed on appeal, the circuit court may entertain the petition only after this court grants permission. *See Echols v. State*, 354 Ark. 414, 125 S.W.3d 153 (2003). This court will grant permission only when it appears the proposed attack on the judgment is meritorious. *See id.* In making such a determination, we look to the reasonableness of the allegations of the petition and to the existence of the probability of the truth thereof. *See id.*

Isom's petition to reinvest consists of several claims, each of which asserts that the prosecutor withheld material evidence under *Brady v. Maryland*, 373 U.S. 83 (1963). When examining allegations involving the withholding of material evidence in the context of a petition to reinvest jurisdiction to seek a writ of error coram nobis, this court has done so under *Brady*, which requires the State to disclose all favorable evidence material to the guilt

or punishment of an individual. See *Newman*, 2009 Ark. 539, 354 S.W.3d 61; see also *Howard*, 2012 Ark. 177, 403 S.W.3d 38; *Cloird v. State*, 349 Ark. 33, 76 S.W.3d 813 (2002) (per curiam). With respect to *Brady* claims in this context, we have explained as follows:

For a true *Brady* violation, “[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.” *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). Evidence is material “if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Cook v. State*, 361 Ark. 91, 105, 204 S.W.3d 532, 540 (2005) (quoting *Strickler*, 527 U.S. at 280). The “reasonable probability” standard is applied “collectively, not item by item,” such that the “cumulative effect” of the suppressed evidence, and not necessarily each piece separately, must be material. *Kyles v. Whitley*, 514 U.S. 419, 436–37 (1995). The rule set out in *Brady* also “encompasses evidence ‘known only to police investigators and not to the prosecutor.’” *Strickler*, 527 U.S. at 280–81 (quoting *Kyles*, 514 U.S. at 438). “In order to comply with *Brady*, therefore, ‘the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in this case, including the police.’” *Strickler*, 527 U.S. at 281 (quoting *Kyles*, 514 U.S. at 437).

Newman, 2009 Ark. 539, at 13–14, 354 S.W.3d at 69.

Although the majority finds apparent merit in Isom’s final claim that the State suppressed information that pointed to the guilt of others, I cannot agree. Isom claims that Kevin Green, an inmate at the Drew County jail, told prosecutors and law enforcement that he knew the whereabouts of scissors that were used to kill Mr. Burton, told other inmates that Isom was innocent of the murder, and told an inmate that another man, Jerry Avery, had confessed to the crimes. Isom asserts that Green was eventually taken from the jail to search a trailer in which a pair of scissors was found and was later released from jail upon recommendation of the prosecutor.

As further evidence of the State's suppression, Isom points to the statements of Frank Spain, a prosecutor. Isom avers that, prior to trial, he subpoenaed Spain to testify about the aforementioned search; but, the circuit court quashed the subpoena after Spain "testified falsely that no scissors had been recovered from the search led by Kevin Green." Isom then points to Spain's statements to the circuit court during Isom's postconviction hearing, in which Green denied receiving any consideration for information relating to the crimes. Isom maintains that after Green testified, Spain went on the record to state that Green's testimony was false, in that Green had been released on his own recognizance after Spain and officers, acting on information from Green, searched a trailer home and recovered a pair of scissors, which were submitted to the crime lab for testing. Isom submits that the State has never disclosed any reports relating to Green's statements about the murder weapon or requests for interviews made by inmates in whom Green had confided.

Isom avers that, had Spain testified truthfully prior to Isom's trial, his subpoena would not have been quashed, and his trial counsel could have called Spain to testify regarding Green's knowledge of the crimes. He further opines that his counsel could have then pursued an investigation into the credibility of the inmates' statements and presented evidence to the jury of other suspects, such as Avery or even Green.

While Spain's actions in this matter are certainly disconcerting,¹ Isom's contentions

¹Indeed, Spain's statements appear to be in conflict. At the hearing on the motion to quash, Spain testified that

a person by the name of Kevin Green who was represented by Gary Potts stated that he had some information regarding the, where he thought the murder weapon was. He asked for certain things in order to provide that information. He wanted to be released from jail, either pending his sentencing date, or pending bed space. I can't recall which of the two it was.

The officers working the case . . . came to me with this. I believe Mr. Potts, also, indicated to me that this person had this information.

I agreed to his wants. He had already stated that he would take a five year plea. So we went out to the house. We entered the house. And I believe I was the last person in the house. They looked for the item. No item was found and we left.

. . . .

[The search] didn't [reveal anything.]

He later testified at Isom's Rule 37 hearing, stating as follows:

The Court will recall when I asked a question [of Green during this hearing], the last question I believe I asked was about whether or not he had told anybody these statements or given any kind of statements about the Isom case to the police. I asked that to clarify answers he'd given, and his answer was no.

Now, I feel compelled under my ethical duty to inform the Court that I believe that testimony was false. Now, whether or not he remembers incorrectly or gave a false statement, I can't say to the Court. But the events that are somewhat depicted in one of those letters were some truth in that Mr. Green was in court on the day he was OR'd. He apparently made contact with someone in the state police, either Scott Woodward or to John Dement. They approached me that day, stated that he had some information that he wanted to give, but wanted to be OR'd before he would give that information.

And my response to that was, well, I'm not going to OR anybody until I know what the information is going to be. So I think what we agreed to do was, is that he would tell them the information. We would check that information out. If it proved to be anything that could be useful, then we would agree to OR him.

It is my recollection that either at a lunch break or some other time that afternoon that day in court he gave some information about where some evidence might be collected. They got him in the car. Had him go in a car. It is true that I went with them to this location. . . . I don't know if we went in one car or two cars.

We went to a trailer house, Your Honor, or my recollection was a trailer house. The officers went in and searched the trailer house, and I believe recovered a pair of scissors from that house. We returned back. After they recovered whatever it was, I went and looked at whatever it was they recovered. Came back, and I believe

falter in light of the fact that his trial counsel was clearly made aware of the other inmates' alleged knowledge of Green's statements, as evidenced by the record. During his postconviction hearing, Isom's trial counsel recalled and acknowledged receiving, prior to Isom's trial, certain letters that "tended to implicate Mr. Green . . . purportedly knowing that a Jerry Don Avery . . . had confessed to [killing Mr. Burton and assaulting Ms. Lawson]." Trial counsel further stated that he attempted to speak with Green, but was unable to locate him. He testified, however, that he neither attempted to find Avery, nor did he talk to the four inmates who had written the letters. It is clear that trial counsel was well aware of the existence of Kevin Green and the potential information that he might have possessed, and counsel could have made use of this information in defending Isom. Further, this court has already held that Isom did not "show a reasonable probability that but for counsel's failure to call Green as a witness at trial, the result would have been different." *Isom v. State*, 2010 Ark. 495, at 3, 370 S.W.3d 491, 494.

To the extent that information regarding any alleged scissors might have been suppressed by the State, the fact that Isom has alleged a *Brady* violation alone is not sufficient to provide a basis for error-coram-nobis relief. See *Camp v. State*, 2012 Ark. 226 (per curiam).

he was OR'd.

[Green] alleged [the information he had] to be related to this case, that these scissors could have been the scissors used in the commission of the offense. . . . When we go back and look at the file, the one documentation that I know that covers these files, these scissors were sent to the crime lab for testing. . . . And at that time the testing results showed no evidence of any sort, any relationship to that. I mean, there was no DNA, no nothing on them to that.

Assuming that the alleged withheld evidence meets the requirements of a *Brady* violation and is both material and prejudicial in order to justify issuance of the writ, the withheld material evidence must also be such as to have prevented rendition of the judgment had it been known at the time of trial. *See id.* To merit relief, a petitioner must demonstrate that there is a reasonable probability that the judgment of conviction would not have been rendered, or would have been prevented, had the information been disclosed at trial. *See id.*

In order to carry his burden to show that the writ is warranted, Isom would have to demonstrate that, had the information been available that scissors containing no DNA were discovered following a tip by Green, the evidence would have been sufficient to have prevented rendition of the judgment.² *See, e.g., Echols*, 354 Ark. 414, 125 S.W.3d 153. This he cannot do. As we outlined in Isom’s direct appeal, there was an abundance of evidence to support his conviction for causing the death of Mr. Burton in the course of committing several felonies under circumstances manifesting extreme indifference to the value of human life:³

Mrs. Lawson identified him as her attacker in the attempted murder and rapes and as the person who was physically abusing Mr. Burton. She further testified that Mr. Isom demanded and received money and her ring, using the threat of the broken scissors.

²The majority states that it is not in a position to exalt one version of Spain’s testimony over the other; but, there is no need to even do so. Neither version renders Isom’s proposed attack meritorious. Regardless of whether the “evidence withheld” consists of no scissors having been found or scissors with no DNA having been found, that information, even if disclosed, simply cannot be said to have prevented the rendition of the judgment against Isom.

³Isom did not challenge on appeal the sufficiency of his convictions for aggravated robbery, residential burglary, rape, or attempted capital felony murder. *See Isom v. State*, 356 Ark. 156, 148 S.W.3d 257 (2004).

Her testimony also is sufficient to support a burglary conviction in that she stated that he pushed his way into Mr. Burton's trailer home and proceeded to commit rape and aggravated robbery. And, finally, her in-court identification of Mr. Isom, as well as the body hair found in her vagina connecting him to the rape, placed him at the scene where Mr. Burton was murdered. While Mrs. Lawson did not specifically see Mr. Isom stab Mr. Burton with scissors or beat Mr. Burton with a lamp, she saw Mr. Isom with the scissors standing on Mr. Burton's head and then physically lying on top of him. She also heard his threats. She was then beaten, knocked unconscious, and choked by Mr. Isom. Mr. Burton's body was discovered the next morning, and his death was caused by multiple sharp and blunt force injuries. We conclude that there was more than sufficient evidence, direct and circumstantial, that Mr. Isom caused the death of Mr. Burton in the course of committing several felonies under circumstances manifesting extreme indifference to the value of human life.

Isom, 356 Ark. at 170–71, 148 S.W.3d at 267. In light thereof, it simply does not stand to reason that the existence of alleged scissors containing no DNA would have been sufficient to prevent rendition of the judgment. Without any showing of prejudice, Isom has failed to present a *Brady* claim having apparent merit.

This court is not required to accept the allegations in a petition for writ of error coram nobis at face value. See *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984). Moreover, it is a petitioner's burden to show that the writ is warranted. See *Echols*, 354 Ark. 414, 125 S.W.3d 153. This court will not undertake to reinvest jurisdiction in the circuit court just for the purpose of allowing a petitioner to conduct some sort of fishing expedition. See *id.* Here, Isom has simply failed to show that, were we to reinvest, he could meet his burden to demonstrate that the writ is warranted; consequently, he has not shown that his proposed

attack on the judgment appears meritorious.⁴ Accordingly, I would deny Isom's petition to reinvest jurisdiction in the circuit court to consider a petition for writ of error coram nobis.

HANNAH, C.J., and GOODSON, J., join.

⁴Nor do any of Isom's other claims for error-coram-nobis relief appear to have merit, which for the sake of brevity, I will not discuss here in detail. Suffice it to say that each of his claims fails because either (1) the record demonstrates that the information was known by Isom's trial counsel at the time of trial, or (2) the claim lacks factual substantiation. *See, e.g., Burks v. State*, 2013 Ark. 188 (per curiam) (holding that a petitioner must factually substantiate a claim that information was actually withheld from trial counsel); *Howard*, 2012 Ark. 177, 403 S.W.3d 38 (holding that issues known at the time of trial and could have been addressed cannot serve as a basis for error-coram-nobis relief).