

No. _____

In the Supreme Court of the United States

MELVIN BONNELL,

Petitioner,

v.

STATE OF OHIO,

Respondent.

On Petition for Writ of Certiorari to
the Supreme Court of Ohio

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

OFFICE OF THE OHIO PUBLIC DEFENDER

Kimberly S. Rigby [0078245]
Supervising Attorney
Death Penalty Department
Counsel of Record

Erika LaHote [0092256]
Assistant State Public Defender

250 East Broad Street, Suite 1400
Columbus, Ohio 43215
Ph: (614) 466-5394
Fax: (614) 644-0708
Kimberly.Rigby@opd.ohio.gov
Erika.LaHote@opd.ohio.gov

Counsel for Petitioner Bonnell

The Supreme Court of Ohio

FILED
JUN 17 2020

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio

v.

Melvin Bonnell

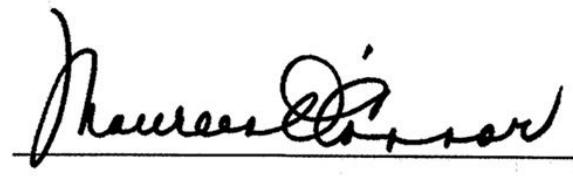
Case No. 2020-0210

E N T R Y

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

It is further ordered that appellant's motion to strike memorandum in response to jurisdiction, motion to disqualify the Cuyahoga County Prosecutor's Office, motion to appoint the Office of the Ohio Attorney General as Special Prosecutor, and motion for relief pursuant to S.Ct.Prac.R. 4.01 are denied.

(Cuyahoga County Court of Appeals; No. 108209)



Maureen O'Connor
Chief Justice

The Official Case Announcement can be found at <http://www.supremecourt.ohio.gov/ROD/docs/>

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

June 17, 2020

[Cite as *06/17/2020 Case Announcements #2, 2020-Ohio-3276*.]

APPEALS NOT ACCEPTED FOR REVIEW

2020-0210. State v. Bonnell.

Cuyahoga App. No. 108209, 2019-Ohio-5342. Appellant's motion to strike memorandum in response to jurisdiction, motion to disqualify Cuyahoga County Prosecutor's Office, motion to appoint Office of Ohio Attorney General as Special Prosecutor, and motion for relief pursuant to S.Ct.Prac.R. 4.01 denied.

Fischer, J., would deny all the motions as moot.

DeWine, J., would deny the motion to disqualify and the motion to appoint as moot.

French, J., dissents and would accept the appeal on proposition of law Nos. I through III.

Donnelly, J., dissents, with an opinion.

Stewart, J., dissents and would accept the appeal and would deny the motion to disqualify and the motion to appoint as moot.

DONNELLY, J., dissenting.

{¶ 1} Of all the shortcomings or deficiencies that one might identify in the postconviction-review process of death-penalty cases, there are two that have been identified as “particularly problematic: the reluctance of state trial courts to conduct evidentiary hearings to resolve contested factual issues, and the wholesale adoption of proposed state fact-finding instead of independent state court decision-making.” Steiker, Marcus & Posel, *The Problem of “Rubber-Stamping” in State Capital Habeas Proceedings: A Harris County Case Study*, 55 Hous.L.Rev. 889, 893 (2018). Those are precisely the two problems involved in this case and presented to this court in this appeal.

{¶ 2} Despite appellant William Bonnell’s repeated, ardent claims of his actual innocence, his colorable claims of the state’s mishandling of the evidence in his case, and evidence showing a conflicting description of the assailant through a recent sworn statement by one of the witnesses to the 1987 offense who testified at trial, the Cuyahoga County Court of Common Pleas denied Bonnell’s motion for leave to file a delayed motion for new trial without holding a hearing. Moreover, the trial court’s decision on the motion was a verbatim repetition of the findings of fact and conclusions of law that were proposed by the state. The trial court similarly adopted, verbatim, the state’s proposed findings of fact and conclusions of law in overruling Bonnell’s postconviction motions in 2005 and 2017.

{¶ 3} An important job that we must perform as a state court of last resort is to exercise our discretion to review “cases of public or great general interest.” Ohio Constitution, Article IV, Section 2(B)(2)(e). The problem of giving short shrift to defendants’ postconviction litigation efforts and rejecting them through judgment entries authored by a prosecuting attorney exists in many jurisdictions, including Ohio. *See Steiker, Marcus & Posel* at 893-894; Ulate, *The Ghost in the Courtroom: When Opinions Are Adopted Verbatim from Prosecutors*, 68 Duke L.J. 807, 810, 813-814 (2019). One of the worst forms of injustice that our justice system can perpetrate is the dashing of a person’s cherished right to freedom through the person’s wrongful imprisonment, and worse yet, wrongful execution. The United States Supreme Court has recognized that in the context of capital-punishment cases, death is different. *Ford v. Wainwright*, 477 U.S. 399, 411, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986); *see also State v. White*, 132 Ohio St.3d 344, 2012-Ohio-2583, 972 N.E.2d 534, ¶ 81 (Lanzinger, J., dissenting). In light of the repeated claims of actual innocence by capital-defendant Bonnell, the evidentiary problems that his case presents, the severity of the penalty ordered to be imposed, and the nationwide problem that Bonnell’s arguments on appeal exemplify, how could we *not* consider this case to be one of public or great general interest?

{¶ 4} Because I would accept Bonnell’s jurisdictional appeal, I dissent.

The Supreme Court of Ohio

FILED

AUG 18 2020

CLERK OF COURT
SUPREME COURT OF OHIO

State of Ohio

v.

Melvin Bonnell

Case No. 2020-0210

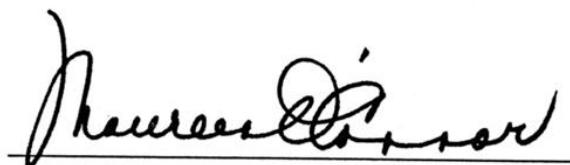
RECONSIDERATION ENTRY

Cuyahoga County

It is ordered by the court that the motion for reconsideration in this case is denied.

It is further ordered that appellant's motion to expand the record and motion to strike memo opposing motion for reconsideration pursuant to Supreme Court Rule of Practice 4.01 are denied.

(Cuyahoga County Court of Appeals; No. 108209)



Maureen O'Connor
Chief Justice

The Official Case Announcement can be found at <http://www.supremecourt.ohio.gov/ROD/docs/>

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

August 18, 2020

[Cite as *08/18/2020 Case Announcements*, 2020-Ohio-4045.]

MERIT DECISIONS WITHOUT OPINIONS

2020-0828. Petric v. Eppinger.

In Habeas Corpus. Sua sponte, cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

2020-0831. Miller v. Phillips.

In Habeas Corpus. Sua sponte, cause dismissed.

O'Connor, C.J., and Kennedy, French, Fischer, DeWine, Donnelly, and Stewart, JJ., concur.

APPEALS ACCEPTED FOR REVIEW

2020-0677. Eighmey v. Cleveland.

Cuyahoga App. No. 108540, 2020-Ohio-1500. Sua sponte, cause held for the decision in 2020-0341, *Lycan v. Cleveland*.

O'Connor, C.J., and French, J., would accept the appeal on proposition of law No. I only.

Kennedy, Fischer, and Stewart, JJ., would not hold the cause.

2020-0705. Maternal Grandmother v. Hamilton Cty. Dept. of Job & Family Servs.

Hamilton App. No. C-180662, 2020-Ohio-1580.

Fischer and DeWine, JJ., dissent.

2020-0726. *State v. Leegrand.*

Cuyahoga App. No. 108626, 2020-Ohio-3179. Sua sponte, cause held for the decision in 2019-1430, *State v. Dowdy*.

DeWine, J., would not hold the cause.

Kennedy and Fischer, JJ., dissent.

APPEALS NOT ACCEPTED FOR REVIEW

2020-0359. *State v. Reed.*

Erie App. Nos. E-18-017 and E-18-018, 2020-Ohio-138.

2020-0509. *State v. Kirk.*

Cuyahoga App. Nos. 107527 and 107553, 2019-Ohio-3887.

French, J., dissents.

2020-0636. *State v. Yanni.*

Muskingum App. No. CT2019-0050, 2020-Ohio-1352.

2020-0645. *Fleming v. Shelton.*

Cuyahoga App. No. 108660, 2020-Ohio-1387. Appellee's motion to dismiss denied.

Kennedy and Stewart, JJ., would deny the motion as moot.

2020-0662. *Curry v. Columbia Gas, Inc.*

Franklin App. No. 19AP-618, 2020-Ohio-2693. Appellant's motion for judgment on pleadings denied.

Kennedy, J., would deny the motion as moot.

2020-0672. *SRS Distrib., Inc. v. Axis Alliance, L.L.C.*

Montgomery App. No. 28607, 2020-Ohio-1529.

2020-0673. *Noe v. Housel.*

Lucas App. No. L-18-1267, 2020-Ohio-1537.

Kennedy, J., dissents.

2020-0674. *Total Quality Logistics, L.L.C. v. ATA Logistics, Inc.*

Clermont App. No. CA2019-09-071, 2020-Ohio-1553.

2020-0678. *Gauthier v. Gauthier.*

Warren App. No. CA2018-09-118, 2019-Ohio-4397.

2020-0679. Gauthier v. Gauthier.

Warren App. Nos. 2018-08-098 and 2018-08-099, 2019-Ohio-4208.

2020-0680. In re Foreclosure of Liens for Delinquent Land Taxes by Action In Rem v. Parcels of Land Encumbered with Delinquent Tax Liens.

Guernsey App. Nos. 19CA45, 19CA46, 19CA51, and 19CA52.

Kennedy, J., dissents.

2020-0681. Midfirst Bank v. Spencer.

Cuyahoga App. No. 108292, 2020-Ohio-106.

Donnelly, J., dissents and would accept the appeal on proposition of law No. I.

2020-0684. State v. Williams.

Seneca App. No. 13-19-25, 2019-Ohio-5296.

2020-0694. State v. Martre.

Allen App. No. 1-19-82.

2020-0695. Lucas v. Noel.

Medina App. No. 18CA0080-M, 2020-Ohio-1546.

Kennedy, J., dissents.

2020-0696. Sengpiel v. Sengpiel.

Summit App. No. 29563.

Kennedy, J., dissents.

2020-0697. Black v. Girard.

Trumbull App. No. 2019-T-0050, 2020-Ohio-1562.

Kennedy and DeWine, JJ., dissent and would consolidate the cause with 2020-0698, *Black v. Girard*.

2020-0698. Black v. Girard.

Trumbull App. No. 2019-TR-0053, 2020-Ohio-1563.

Kennedy and DeWine, JJ., dissent and would consolidate the cause with 2020-0697, *Black v. Girard*.

2020-0699. State v. Lacy.

Ashtabula App. No. 2019-A-00058.

2020-0701. State v. Hart.

Richland App. No. 2019 CA 0086, 2020-Ohio-1640.

Kennedy, J., dissents.

Fischer, J., dissents and would accept the appeal on proposition of law No. II.

2020-0706. Liberty Mut. Ins. Co. v. Three-C Body Shop, Inc.

Franklin App. No. 19AP-775, 2020-Ohio-2694.

2020-0707. State v. Lucas.

Cuyahoga App. No. 108436, 2020-Ohio-1602.

Fischer, J., dissents and would accept the appeal on proposition of law Nos. I through III.

Donnelly, J., dissents and would accept the appeal on proposition of law No. VIII.

2020-0709. State v. Benson.

Guernsey App. No. 19CA000009, 2019-Ohio-4315.

2020-0711. State v. Cammack.

Cuyahoga App. No. 108705, 2020-Ohio-2942.

2020-0712. Christiana Trust v. Berter.

Butler App. No. CA2019-07-109, 2020-Ohio-727.

2020-0714. State v. Copeland.

Cuyahoga App. No. 108785, 2020-Ohio-1621.

2020-0717. State v. Showes.

Hamilton App. No. C-180552, 2020-Ohio-650.

Kennedy and DeWine, JJ., dissent.

Fischer, J., not participating.

2020-0719. McCormick v. Flaughier.

Richland App. No. 2019 CA 0094, 2020-Ohio-2686.

Kennedy, J., dissents.

Fischer and DeWine, JJ., dissent and would accept the appeal on proposition of law No. I.

2020-0720. O'Donnell v. Northeast Ohio Neighborhood Health Servs., Inc.

Cuyahoga App. No. 108541, 2020-Ohio-1609.

2020-0725. J.P. v. T.H.

Lorain App. No. 19CA011469, 2020-Ohio-320.

2020-0734. Gregory v. Cuyahoga Cty.

Cuyahoga App. No. 108192, 2020-Ohio-2714.

2020-0745. State v. Everett.

Stark App. No. 2019CA00147, 2020-Ohio-2733.

2020-0775. State v. Simpson.

Montgomery App. No. 28558, 2020-Ohio-2961.

2020-0792. State v. Beem.

Licking App. No. 2019CA00062, 2020-Ohio-2964.

Stewart, J., dissents.

2020-0796. State v. Hays.

Summit App. No. 29506, 2020-Ohio-2919.

Fischer, J., dissents and would accept the appeal on proposition of law No. II.

2020-0801. State v. Dixon.

Cuyahoga App. No. 109162, 2020-Ohio-3038.

Donnelly, J., dissents and would hold the cause for the decision in 2019-1430, *State v. Dowdy*.

RECONSIDERATION OF PRIOR DECISIONS

2018-1116. State v. McFarland.

Cuyahoga App. No. 105570, 2018-Ohio-2067. Reported at ___ Ohio St.3d ___, 2020-Ohio-3343, ___ N.E.3d ___. On motion for reconsideration. Motion denied.

Donnelly and Dorrian, JJ., dissent.

Julia L. Dorrian, J., of the Tenth District Court of Appeals, sitting for Stewart, J.

2019-1276. State ex rel. Kendrick v. Parker.

Montgomery App. No. 28098. Reported at 159 Ohio St.3d 1441, 2020-Ohio-3677, 149 N.E.3d 510. On motion for reconsideration. Motion denied.

2019-1546. State ex rel. Miller v. May.

Richland App. No. 19 CA 56, 2019-Ohio-4065. Reported at __ Ohio St.3d __, 2020-Ohio-3248, __ N.E.3d __. On motion for reconsideration. Motion denied.

2020-0210. State v. Bonnell.

Cuyahoga App. No. 108209, 2019-Ohio-4065. Reported at 159 Ohio St.3d 1413, 2020-Ohio-3276, 147 N.E.3d 647. On motion for reconsideration. Motion denied. Appellant's motion to expand the record and motion to strike memo opposing motion for reconsideration denied.

French, J., dissents and would grant the motion for reconsideration as to proposition of law Nos. I through III.

Donnelly, J., dissents and would grant the motion for reconsideration and the motion to expand the record.

Stewart, J., dissents and would grant the motion for reconsideration.

2020-0377. State ex rel. Townsend v. Gaul.

In Prohibition. Reported at 159 Ohio St.3d 1411, 2020-Ohio-3275, 147 N.E.3d 651. On motion for reconsideration. Motion denied.

2020-0442. State v. Boayue.

Franklin App. No. 18AP-972, 2020-Ohio-549. Reported at 159 Ohio St.3d 1408, 2020-Ohio-3174, 146 N.E.3d 586. On motion for reconsideration. Motion denied.

Donnelly, J., dissents.

2020-0449. Mowery, Youell & Galeano, Ltd. v. Stewart.

Franklin App. No. 20AP-076. Reported at 159 Ohio St.3d 1412, 2020-Ohio-3275, 147 N.E.3d 650. On motion for reconsideration. Motion denied. Appellant's motion for leave to proceed under R.C. 2323.52(F)(2) to file the accompanying motion for reconsideration denied.

French, J., not participating.

2020-0615. RRL Holding Co. of Ohio, L.L.C. v. Stewart.

Franklin App. No. 20AP-044. Reported at 159 Ohio St.3d 1413, 2020-Ohio-3275, 147 N.E.3d 654. On motion for reconsideration. Motion denied. Appellant's motion for leave to proceed under R.C. 2323.52(F)(2) to file the accompanying motion for reconsideration denied.

Kennedy, J., dissents.

Stewart, J., dissents and would grant the motion for leave.

French, J., not participating.

DEC 26 2019

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO,

Plaintiff-Appellee, : No. 108209

v. :

MELVIN BONNELL, :

Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: December 26, 2019

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-87-223820-ZA

Appearances:

Micahel C. O'Malley, Cuyahoga County Prosecuting Attorney, and Christopher D. Schroeder, Assistant Prosecuting Attorney, *for appellee.*

Timothy Young, Ohio Public Defender, and Kimberly S. Rigby and Erika M. Lahote, Assistant State Public Defenders, *for appellant.*

LARRY A. JONES, SR., J.:

{¶ 1} In 1988, defendant-appellant Melvin Bonnell ("Bonnell") was sentenced to death after a jury found him guilty of two counts of the aggravated murder of Robert Bunner ("Bunner") with felony murder and firearm specifications,

CR87223820-ZA

111813832



APPENDIX C

one count of aggravated burglary with firearm and aggravated felony specifications, and recommended a death sentence to the trial court.

{¶ 2} In the years since, as will be set forth below, Bonnell has been challenging his convictions and sentence, without success. The record shows (and has been conceded by the state through the years) that some evidence from the crime scene was either not collected or preserved, including blood droppings from the back porch and its railing; vomit located near Bunner's body; certain fingerprints; substances on Bonnell's hands; the contents of Bonnell's car; and some of the clothes Bonnell was wearing on the night of the murder. The failure to collect and preserve the evidence has been a central challenge made by Bonnell throughout the years.

{¶ 3} Relative to this appeal, in January 2018, Bonnell filed a motion for leave to file a motion for a new trial, contending that he had new evidence. In January 2019, the trial court denied his motion for leave without a hearing, and adopted plaintiff-appellee's, the state of Ohio, unopposed proposed findings of fact and conclusions of law. For the reasons that follow, we affirm the trial court's judgment.

Factual Background

{¶ 4} The following facts are summarized from the direct appeal, *State v. Bonnell*, 8th Dist. Cuyahoga No. 55927, 1989 Ohio App. LEXIS 4982 (Oct. 5, 1989).

{¶ 5} As mentioned, the victim was Bunner. He lived with Ed Birmingham ("Birmingham") and Shirley Hatch ("Hatch") in the upstairs portion of an apartment on Bridge Avenue in Cleveland. On November 27, 1986, Bunner,

Birmingham, and Hatch began drinking in their apartment at noon. Bunner and Hatch continued drinking into the early morning hours of the following day; Birmingham, who was intoxicated, went to bed at 8:30 p.m. *Id.* at 2.

{¶ 6} At approximately 3:00 a.m., on November 28, Hatch heard a knock on the back door. She looked through the peephole on the door, but could not identify who was there; the person outside identified himself as "Charlie." Hatch then asked Bunner to help; Bunner opened the door. *Id.*

{¶ 7} When Bunner opened the door, Hatch saw Bonnell standing there with his hands in his coat pocket. Bonnell walked into the kitchen, uttered an expletive, and fired twice at Bunner at close range. Hatch testified that Bonnell then turned to her, but she was able to run to Birmingham's bedroom. *Bonnell*, 8th Dist. Cuyahoga No. 55927, 1989 Ohio App. LEXIS 4982.

{¶ 8} Hatch woke Birmingham up, and Birmingham went into the kitchen where he saw Bonnell sitting on top of Bunner and striking him repeatedly in the face. *Id.* at 2-3. Birmingham intervened, pulling Bonnell off Bunner; Birmingham then threw Bonnell out the door and down the back steps. Hatch called the police. *Id.* at 3.

{¶ 9} Two of the downstairs tenants testified at trial. They heard a commotion at the time in question, and at about the same time they heard the commotion, they also heard what they believed was someone falling heavily to the floor. One of them also testified that it sounded like someone had fallen down the back steps. The neighbors testified that they did not see a car, but heard the sound

of car wheels "squealing." Immediately after hearing the "squealing," one of the neighbors saw a police car with its lights on pass by the apartment. *Id.*

{¶ 10} Meanwhile, two Cleveland police officers were patrolling on Bridge Avenue when, at approximately 3:40 a.m., they saw a blue Chevrolet without headlights on travelling backward on the street. The police attempted to stop the car, but the driver, later identified as Bonnell, sped away and a chase ensued. Bonnell eventually crashed into a funeral home. *Bonnell*, 8th Dist. Cuyahoga No. 55927, 1989 Ohio App. LEXIS 4982.

{¶ 11} One of the officers at the crash scene received an emergency call about the murder at the apartment and left to respond to that scene. Upon arriving at the scene, the officer got a description of the assailant and realized that it matched the person who had crashed the blue Chevrolet into the funeral home, that is, Bonnell. Bonnell was transported to the hospital, where Birmingham identified him as the assailant. *Id.* at 3-4.

{¶ 12} The police searched the crash area and found a .25 automatic pistol. Test firings of the pistol revealed that it fired the bullets that were removed from Bunner's body. *Id.* at 4.

{¶ 13} Bonnell presented witnesses on his behalf. The witnesses corroborated a statement Bonnell had made to the police, that on the day of the incident, he had been out drinking with a friend, Joe Popil. In his statement, Bonnell maintained that Popil owned the gun and was driving the blue Chevrolet. According to Bonnell, Popil stopped at the Bridge Avenue address and entered the apartment

alone with the weapon. When Popil returned to the car, he put the gun in the glove compartment. Bonnell stated that he (Bonnell) passed out from the drinking and did not remember anything thereafter until he woke up in the hospital. According to Popil, he had been out with Bonnell, but he maintained that he was driven home at 11:30 p.m., whereupon he got sick from drinking. *Bonnell*, 8th Dist. Cuyahoga No. 55927, 1989 Ohio App. LEXIS 4982 (Oct. 5, 1989).

Procedural History

{¶ 14} As mentioned, this case has been extensively litigated in the years since Bonnell was convicted and sentenced. The following is a summation of the prior history.

Direct Appeal

{¶ 15} In his direct appeal to this court, Bonnell raised 30 assignments of error challenging his convictions and sentence. The alleged errors included challenges to the sufficiency and weight of the evidence, allegations that the state failed to provide exculpatory or favorable evidence prior to trial, and an allegation that the trial court erred by denying his motion to suppress an unnecessarily suggestive line-up. This court found the alleged errors, with the exception of one, without merit and affirmed the convictions but remanded for resentencing solely on the aggravated burglary conviction. *Id.* at 42.

Appeal to Ohio Supreme Court

{¶ 16} Bonnell appealed to the Ohio Supreme Court, where he presented 29 propositions of law. The court found the “evidence of [Bonnell’s] guilt to be overwhelming,” and affirmed his convictions and sentence. *State v. Bonnell*, 61 Ohio St.3d 179, 183, 187, 573 N.E.2d 1082 (1991).

Attempted Appeal to United States Supreme Court

{¶ 17} Bonnell attempted to appeal to the United States Supreme Court, but the court denied his petition for a writ of certiorari. *Bonnell v. Ohio*, 502 U.S. 1107, 112 S.Ct. 1205, 117 L.Ed.2d 444 (1992).

Murnahan

{¶ 18} In November 1992, Bonnell filed an application in this court for delayed reconsideration pursuant to *State v. Murnahan*, 63 Ohio St.3d 60, 584 N.E.2d 1204 (1992). In his application, he alleged that 55 acts and omissions by his appellate counsel rendered counsel ineffective. His application sought relief based on claims, among others, that the state’s identification witnesses were tainted, some of the state’s witnesses’ testimony was unreliable and inaccurate, and the state failed to provide timely discovery.

{¶ 19} In May 1994, this court denied Bonnell’s application. *State v. Bonnell*, 8th Dist. Cuyahoga No. 55927, *see* Motion No. 248402. Bonnell appealed to the Ohio Supreme Court, which affirmed this court, *State v. Bonnell*, 71 Ohio St.3d

223, 643 N.E.2d 108 (1994), and denied Bonnell's request for reconsideration. *State v. Bonnell*, 71 Ohio St.3d 1459, 644 N.E.2d 1031 (1995).

Postconviction Proceedings

{¶ 20} In 1995, Bonnell filed a postconviction petition in the trial court. In the petition, he claimed 53 grounds on which he sought relief, much of which revolved around his contention that the state suppressed exculpatory evidence, either by failing to collect it from the crime scene or failing to preserve what it had collected; the petition included over 500 pages of supporting information. The evidence at issue was blood samples, vomit, fingerprints, and other miscellaneous materials.

{¶ 21} The state acknowledged that the evidence Bonnell sought had not been preserved, but maintained that Bonnell's rights had not been violated. The trial court denied the petition without a hearing. The trial court found that Bonnell failed to establish that there was a due process violation in the lack of preservation of the evidence because he failed to show that the state acted in bad faith. Bonnell appealed to this court, and in August 1998, this court affirmed the trial court's judgment denying his petition. *State v. Bonnell*, 8th Dist. Cuyahoga Nos. 69835 and 73177, 1998 Ohio App. LEXIS 3943 (Aug. 27, 1998). This court found,

The fact that blood was found on the back porch hand railing and on a green pillow on the back porch is not material. Birmingham had testified that he witnessed [Bonnell] punching the victim and that blood was all over the place. He then picked up [Bonnell] and threw him out of the back door onto the back porch. It is conceivable that the blood was transferred to these areas by [Bonnell]. Therefore, since

there is no reasonable probability that this evidence would have affected the outcome of the trial, it was not material.

Id. at 17. The United States Supreme Court denied certiorari in October 1999.

Bonnell v. Ohio, 528 U.S. 842, 120 S.Ct. 111, 145 L.Ed.2d 94 (1999).

Habeas Corpus

{¶ 22} In March 2000, Bonnell filed a petition for writ of habeas corpus in the United States District Court for the Northern District of Ohio. He claimed 20 areas of alleged constitutional violations, including the state's suppression of exculpatory evidence, the state's failure to preserve exculpatory evidence from the crime scene, the trial court's failure to suppress the unnecessarily suggestive lineup, and he challenged the sufficiency of the evidence. The district court denied Bonnell's petition. *Bonnell v. Mitchell*, 301 F.Supp.2d 698 (N.D.Ohio 2004). The Sixth Circuit Court of Appeals affirmed the district court. *Bonnell v. Mitchell*, 212 Fed.Appx. 517 (6th Cir.2007).

2004 Application for DNA Testing

{¶ 23} In October 2004, Bonnell filed an application for DNA testing of the following items: vomit from the kitchen; blood from Bonnell's car; hairs on a green pillow; bags that were placed over his hands at the hospital (to determine if the bags contained gunshot residue); blood from the back stairs, stairwell, and railing; and testing of any swabs or stains taken from Bonnell's hands.

{¶ 24} The state opposed Bonnell's application and also, in accordance with R.C. 2953.75(B),¹ filed a report, in which it again acknowledged that, despite a search, it was "unable to locate any of the items defendant has requested to be tested." The state further noted, "[i]n indeed, as the State's objection to DNA testing details, Bonnell has argued, and the Courts have recognized for the past ten years that this evidence does not exist." The trial court denied the application, finding that none of the materials Bonnell sought to have tested existed.

2008 Application for DNA Testing

{¶ 25} In February 2008, Bonnell filed a second application for DNA testing. In addition to the items he sought testing on in his 2004 application, he added to his request testing for blood on the jacket and other clothes he was wearing at the time in question, and one or two guns recovered by the Cleveland police. Bonnell contended that the testing on the jacket "may pinpoint the actual killer." In his application, Bonnell stated that "there is no reason to believe that the evidence has been contaminated or tampered with while in the State's possession and control."

{¶ 26} The jacket had been lost, but in April 2008, the state informed the trial court that it had located the jacket in this court's clerk of court files. The parties then filed a joint motion for DNA testing, which the trial court granted. The jacket was sent to an agreed-upon independent testing agency, the DNA Diagnostic Center

¹R.C. 2953.75 is titled "determinations by prosecuting attorney as to whether biological material was collected and whether parent sample still exists." Subsection (B) requires the state to prepare a report with its determinations.

in Fairfield, Ohio. The results of the testing revealed that Bunner's blood was on Bonnell's jacket in five different places.

Bonnell's 2017 Motion for Accounting of Physical Evidence

{¶ 27} In April 2017, Bonnell filed a motion to compel the state to provide an accounting of the physical evidence in the case; he sought more DNA testing on other evidence. Pursuant to his request, the state filed another report under R.C. 2953.74(B), documenting its efforts to find biological material that could possibly be DNA tested. The assistant prosecuting attorney handling the matter submitted an affidavit averring to his efforts searching for evidence. In short, except for Bonnell's jacket, which as mentioned had been DNA tested pursuant to Bonnell's 2008 application, the other evidence either could not be located and/or it appeared to have not been preserved.

{¶ 28} In August 2017, the trial court denied Bonnell's second request for DNA testing. The court found the state's search adequate, but that despite the search, no other evidence existed. Moreover, the court found that even if any biological material did exist, Bonnell could not show that any additional DNA testing would be outcome-determinative. The Ohio Supreme Court upheld the trial court's decision, *State v. Bonnell*, 155 Ohio St.3d 176, 2018-Ohio-4069, 119 N.E.3d 1285, and denied Bonnell's motion for reconsideration, *State v. Bonnell*, 113 N.E.3d 554, 2018-Ohio-4962. The United States Supreme Court denied certiorari. *Bonnell v. Ohio*, 139 S.Ct. 2644, 204 L.Ed.2d 289 (2019).

Judgment at Issue Here: Bonnell's 2018 Motion for Leave to File a Motion for New Trial

{¶ 29} Meanwhile, in January 2018, Bonnell filed a motion for leave to file a motion for a new trial in the trial court. In his motion, he contended that the state's 2017 R.C. 2953.74(B) report gave rise to a renewed failure to preserve evidence claim under *Arizona v. Youngblood*, 488 U.S. 51, 109 S.Ct. 333, 102 L.Ed.2d 281 (1988). He also submitted a 2017 affidavit from eyewitness Hatch, which Bonnell contended raised discrepancies that should cast doubt on the convictions; the affidavit was not a recantation of her trial testimony, however. As stated, the trial court denied the motion for leave. The state submitted proposed findings of fact and conclusions of law; Bonnell neither submitted his own proposed findings of fact and conclusions of law, nor did he oppose the state's submission. The trial court adopted the state's findings of fact and conclusions of law.

{¶ 30} Bonnell now appeals, raising the following four assignments of error:

I. The trial court abused its discretion when it failed to invoke a due process analysis and grant Bonnell's motion for leave to file a motion for new trial or hold a hearing when the issues Bonnell raised in his motion for leave to file a motion for new trial and in the accompanying motion for new trial demonstrated violations of his right to due process.

II. The trial court abused its discretion when it denied Bonnell's motion for leave to file a motion for a new trial when the record demonstrated by clear and convincing proof that Bonnell was unavoidably prevented from discovering the evidence within 120 days of his conviction.

III. The trial court abused its discretion when it denied Bonnell's motion for leave to file a motion for a new trial when the newly discovered evidence Bonnell submitted establishes substantive grounds which require a new trial.

IV. The trial court deprived Bonnell of meaningful review of his motion for leave to file a motion for new trial where, after previously adopting erroneous findings, it once again delegated its judicial function to the State and adopted verbatim erroneous proposed findings of fact and conclusions of law.

{¶ 31} Based on these alleged errors, Bonnell seeks a reversal and remand to the trial court with instructions to (1) grant his motion for leave and permit him to file his motion for a new trial, or (2) alternatively, hold a hearing on his motion for leave, or (3) alternatively, revise its findings of fact and conclusions of law.

{¶ 32} We note that much of Bonnell's arguments in his brief relate to the substantive grounds of his request for a new trial. The judgment at issue here was the denial of his motion for leave to file a motion for a new trial. The motion for leave is addressed in Bonnell's second assignment of error; we consider that error first.²

²See, e.g., *State v. Phillips*, 8th Dist. Cuyahoga No. 104810, 2017-Ohio-7164, ¶ 23, where this court, in considering a judgment denying the defendant's motion for leave to file a motion for a new trial stated that,

Although the state argues on appeal that no *Brady* violation actually occurred, its argument puts the proverbial cart before the horse. The proper place for that discussion is the new trial motion itself — if the court grants leave to file the motion [after a hearing on remand]. At this point in the proceedings, it does not matter whether a *Brady* violation did occur, what matters is whether [the defendant] can show by clear and convincing evidence that he was unavoidably prevented from discovering the potential violation during trial and the 120 days following.

Law and Analysis

Untimely Motion

{¶ 33} For his second assigned error, Bonnell contends that the trial court abused its discretion by finding that he failed to show that he was unavoidably prevented from timely discovering the grounds for his motion for a new trial. The “new evidence” Bonnell contends he was unavoidably prevented from discovering was the state’s 2017 R.C. 2953.75(B) “newly discovered” report and “new statements” made by Hatch in her 2017 affidavit.

{¶ 34} Crim.R. 33 governs motions for new trials and provides that motions for new trials based on account of newly discovered evidence must be filed within 120 days of a jury verdict unless the petitioner demonstrates by clear and convincing proof that he or she was unavoidably prevented from discovering the evidence upon which he or she must rely. Crim.R. 33(B).

{¶ 35} A person is unavoidably prevented from discovering evidence if the person had no knowledge of the existence of the grounds supporting the motion and could not have learned of the existence in the exercise of reasonable diligence within the time prescribed by the rule. *Phillips*, 8th Dist. Cuyahoga No. 104810, 2014-Ohio-7164, at ¶ 16. Clear and convincing proof

is that measure or degree of proof [that] is more than a mere “preponderance of the evidence,” but not to the extent of such certainty as is required “beyond a reasonable doubt” * * * and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.

Cross v. Ledford, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶ 36} If a petitioner fails to meet this burden, “[r]es judicata bars all subsequent motions seeking a new trial that are based on claims that were brought or could have been brought on direct appeal or in prior motions filed under Crim.R. 33.” *State v. Blalock*, 8th Dist. Cuyahoga No. 104773, 2017-Ohio-2658, ¶ 36.

{¶ 37} The trial court has sound discretion on whether to grant an evidentiary hearing on a defendant’s request for leave to file a delayed motion for new trial; we will not disturb the decision absent an abuse of that discretion. *State v. Hill*, 8th Dist. Cuyahoga No. 102083, 2015-Ohio-1652, ¶ 16.

{¶ 38} The extensive record in this case is replete with evidence that Bonnell had been aware well before the state’s 2017 R.C. 2953.75(B) report of the state of the evidence. That is, that the items he sought testing on did not exist. The record demonstrates that this was evident since at least 1995. The following illustrates this: (1) *Bonnell’s March 1995 petition for postconviction relief*: he contended that the state failed to collect and/or preserve certain evidence from the crime scene, and in the state’s May 1995 response to his petition, the state acknowledged that “blood samples, vomit, fingerprints, and other miscellaneous materials were not preserved”; (2) *trial court’s October 1995 judgment denying his postconviction petition*: Bonnell failed to “show that the State acted in bad faith in not preserving the evidence in this case”; (3) *1998 appeal to this court of the denial of his postconviction petition*: Bonnell contended that the state “failed to preserve the

scene of the homicide and secure exculpatory evidence,” and the state responded that his “rights were not violated if blood samples, vomit, fingerprints, and other miscellaneous materials were not preserved”; (4) *Bonnell’s 2000 habeas petition*: Bonnell contended that the state “failed to preserve exculpatory evidence from the crime scene,” and in its decision, the federal district court held that he “failed to establish that the unpreserved or untested evidence is exculpatory”; and (5) *state’s 2005 R.C. 2953.75(B) report*: the state maintained that “Bonnell has argued, and the Courts have recognized for the past ten years that this evidence [Bonnell seeks testing on] does not exist,” and the trial court agreed in denying his request.

{¶ 39} We are not persuaded by Bonnell’s insinuation that destruction or nonpreservation of evidence in this case was merely a claim he made, without knowledge of whether that was actually true. The above-mentioned details that he was made aware that the evidence he sought did not exist. The state’s 2017 R.C. 2953.75(B) report did not disclose anything “new”; rather, it reiterated what had been a centerpiece of much of the litigation in this case dating back to 1995 — the evidence Bonnell sought did not exist.³

{¶ 40} We are likewise not persuaded by Bonnell’s contention that Shirley Hatch’s 2017 affidavit constituted newly discovered evidence that he was unavoidably prevented from discovering. Bonnell contends that he was unable to

³Further, any contention Bonnell has regarding the adequacy of the state’s search for the evidence he sought testing on vis-à-vis the testing on his jacket under his 2008 application for testing is misleading. Specifically, he had not previously requested testing on the jacket. When he did, the state searched for the jacket, found it, and agreed to testing, which revealed Bunner’s blood in five different places.

find Hatch sooner because she moved out of state and changed her last name. However, the state was able to find Hatch several years earlier through a public records search on Lexis. Moreover, Bonnell did not set forth in his motion what efforts he made to find Hatch sooner.

{¶ 41} In *State v. Moore*, 7th Dist. Mahoning No. 13 MA 9, 2014-Ohio-358, ¶ 24, the Seventh Appellate District held:

Even though Moore has been incarcerated, he does not explain *how* he has been prevented from contacting the affiant, Butler Johnson. Indeed, it is unreasonable for Moore not to have attempted to contact Johnson sooner if he knew that Johnson and Elizabeth Williams had provided false testimony. Moore was present at his own trial where Johnson and Elizabeth Williams presumably testified. If he genuinely knew Johnson's or William's testimony to be false, he should have known that at the time of their testimony. Consequently, it was upon Moore to exercise reasonable diligence to make efforts to obtain an affidavit from one of them establishing the fact of their false testimony and the reasons for it a lot sooner than fifteen years following his conviction. In other words, Moore did have knowledge of the existence of the ground supporting the motion from the time of his trial and, although he was incarcerated, he could have contacted the witnesses himself or through representatives and investigated the nature of the alleged false testimony and the reasons behind it.

(Emphasis sic.)

{¶ 42} Like the defendant in *Moore*, Bonnell has not set forth an adequate explanation as to why it took him 30 years to find Hatch. On this record, therefore, the trial court properly found that Bonnell failed to show that he was unavoidably prevented from discovering Hatch's affidavit.

{¶ 43} Moreover, both of Bonnell's grounds on which his request for leave were based — that "new evidence" showed that the state failed to preserve evidence

and Hatch provided “new evidence” in her affidavit – have already been litigated and are, therefore, barred under the doctrine of res judicata. Under res judicata, a defendant is barred from raising an issue in a postconviction relief petition if he or she raised, or could have raised, the issue at trial or on direct appeal. *State v. Cody*, 8th Dist. Cuyahoga No. 102213, 2015-Ohio-2764, ¶ 16.

{¶ 44} We have already set forth the prior rulings by the courts regarding the state’s failure to preserve evidence. In regard to Hatch, on direct appeal this court considered the alleged inconsistencies in her testimony, finding that “[m]inor inconsistencies which may impeach the accuracy of a witness’ recollection of a drunken traumatic episode do not warrant grounds for overturning a murder verdict.” *Bonnell*, 8th Dist. Cuyahoga Nos. 69835 and 73177, 1998 Ohio App. LEXIS 3943, 13 (Aug. 27, 1998). “The defendant’s list of other minutiae to which Hatch inconsistently testified amounted to immaterial details surrounding the event. As stated before, even a cursory review of the evidence displays its immateriality.” *Id.* at 16. Bonnell continued to raise this claim in his 1995 postconviction relief petition, federal habeas litigation, and 2018 appeal to the Ohio Supreme Court. It has been rejected at every turn. Hatch’s averments in her affidavit are not a recantation. They deal with inconsistencies in her trial testimony vis-à-vis her current recollection of events – inconsistencies that have been determined to be “immaterial.”

{¶ 45} In light of the above, Bonnell has failed to establish by clear and convincing evidence that he was unavoidably prevented from discovering the evidence upon which his motion for leave was based. There was no abuse in the trial

court's decision to not have a hearing. The second assignment of error is therefore not well taken.

Adoption of State's Proposed Findings of Fact and Conclusions of Law

{¶ 46} In his fourth assignment of error, Bonnell challenges the trial court's adoption of the state's proposed findings of fact and conclusions of law. We note that Bonnell did not file his own proposed findings of fact and conclusions of law, nor did he object to the state's submission.

{¶ 47} "A trial court does not err when it adopts a party's proposed findings of fact and conclusions of law as its own if it has thoroughly read the document to ensure that it is completely accurate in fact and law." *Cody*, 8th Dist. Cuyahoga No. 102213, 2015-Ohio-2764, at ¶ 37, citing *State v. Williams*, 8th Dist. Cuyahoga No. 99357, 2013-Ohio-2706, and *State v. Thomas*, 8th Dist. Cuyahoga No. 87666, 2006-Ohio-6588. Thus, when a trial court adopts proposed findings of fact and conclusions of law verbatim, the findings and conclusions are those of the court and may be reversed only if they are clearly erroneous. *Anderson v. Bessemer City*, 470 U.S. 564, 572, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985); *Cody* at *id.*

{¶ 48} Upon review, we find no error in the trial court's adoption of the state's proposed findings of fact and conclusions of law. Bonnell has not demonstrated that the trial court failed to review the record and the documentation submitted in support of his motion for leave. Further, the trial court judge who considered his motion for leave was the same judge who considered his 1995 petition for postconviction relief and both of the applications for DNA testing and, therefore,

presumably was familiar with the case. Our review of the findings and conclusions does not show that they are "clearly erroneous."

{¶ 49} In light of the above, Bonnell's fourth assignment of error is overruled.

{¶ 50} The second and fourth assignments of error are dispositive of the appeal, and we decline to consider the remaining assignments. *See* App.R. 12(A)(1)(c).

{¶ 51} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Larry A. Jones, Jr.
LARRY A. JONES, SR., JUDGE

EILEEN T. GALLAGHER, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR

FILED AND JOURNALIZED
PER APP.R. 22(C)
DEC 26 2019
CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By Shageen O. Odeh Deputy



107198712

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO
Plaintiff

MELVIN BONNELL
Defendant

Case No: CR-87-223820-ZA

Judge: TIMOTHY MCCORMICK

INDICT: 2911.11 AGGRAVATED BURGLARY WITH
SPECIFICATIONS
2903.01 AGGRAVATED MURDER WITH
VIOLENCE SPECIFICATION
2903.01 AGGRAVATED MURDER WITH
VIOLENCE SPECIFICATION
ADDITIONAL COUNTS...

JOURNAL ENTRY

DEFENDANT MELVIN BONNELL'S MOTION FOR LEAVE TO FILE A MOTION FOR NEW TRIAL AND TO DEEM THE ATTACHED MOTION FILED INSTANTER IS DENIED.

FINDINGS OF FACT AND CONCLUSIONS OF LAW ATTACHED.

CLERK ORDERED TO SEND A COPY OF THIS ORDER TO:

KIMBERLY RIGBY, ESQ.
KANDRA ROBERTS, ESQ.; OFFICE OF THE OHIO PUBLIC DEFENDER
THE MIDLAND BUILDING, SUITE 1400
250 EAST BROAD STREET
COLUMBUS OH 43215

CHRISTOPHER D. SCHROEDER, ESQ.
OFFICE OF THE CUYAHOGA COUNTY PROSECUTOR
1200 ONTARIO STREET
JUSTICE CENTER - 8TH FLOOR
CLEVELAND OH 441113

01/25/2019
CPEFF 01/25/2019 10:04:30

2019 JAN 25 10:04:31

CLERK OF COURTS
CUYAHOGA COUNTY

FILED

OSJ

Judge Signature

Date

HEAR
01/25/2019

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO

Plaintiff,

v.

MELVIN BONNELL,

Defendant.

Case No. CR-87-223820

JUDGE TIMOTHY P. MCCORMICK

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On January 11, 2018, Defendant Melvin Bonnell filed an *Motion for Leave to File a Motion for New Trial*. This Court has fully considered Bonnell's motion and all supporting documentation submitted both in support and in opposition to that motion, as well as all files and records pertaining to the proceedings in this case. Upon review of the evidence, this Court hereby issues the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. In the early morning hours of November 28, 1987, 22-year old Robert Bunner was shot death inside his apartment at 5709 Bridge Avenue on the west side of Cleveland.
2. That same night, Cleveland Police arrested Melvin Bonnell following a high-speed car chase that ended when Bonnell crashed his car into a funeral home. The Cuyahoga County grand jury subsequently indicted Bonnell for aggravated murder.
3. On February 22, 1988, Bonnell's case proceeded to a jury trial. The jury found Bonnell guilty of aggravated burglary with a firearm specification, aggravated felony-murder

with firearm and aggravated burglary specifications, and aggravated murder with firearm and aggravated burglary specifications. Following the sentencing phase, the jury unanimously recommended that Bonnell be sentenced to death. On March 29, 1988, the trial court, the Honorable Judge James McMonagle presiding, sentenced Bonnell to death on both counts of aggravated murder.

4. On February 6, 2008, Bonnell filed an Application for DNA Testing pursuant to R.C. 2953.71 et. seq., seeking testing of the following items:

"Swabs and slides of blood recovered from the crime scehe [sic]; swabs and slides of blood recovered from my hands, jacket and other clothes; vomit found in kitchen; blood from my vehicle; hair on green pillow; plastic bags for gunshot residue; 1 or 2 guns recovered by Cleveland police."

See Defendant's Application for DNA Testing, p. 2.

5. This Court denied Bonnell's application for DNA testing on August 14, 2017 and issued findings of fact and conclusions of law in support of that decision.
6. Bonnell appealed to the Supreme Court of Ohio. On October 10, 2018, the Supreme Court unanimously affirmed this Court's denial of Bonnell's application for DNA testing. *State v. Bonnell*, Slip Opinion No. 2018-Ohio-4069. The Supreme Court later denied Bonnell's motion for reconsideration.
7. On January 11, 2018, while Bonnell's appeal was pending in the Supreme Court, Bonnell filed a motion for leave to file a motion for a new trial under Crim.R. 33(B). The State subsequently filed a brief in opposition. This Court stayed any ruling on Bonnell's motion while Bonnell's appeal remained pending in the Supreme Court because that appeal divested this Court of jurisdiction to act in Bonnell's case.

CONCLUSIONS OF LAW

**THE LEGAL STANDARD FOR THE GRANTING OF A MOTION
FOR LEAVE TO FILE A MOTION FOR A NEW TRIAL**

8. Crim.R. 33(B) requires that a motion for a new trial based on "newly discovered evidence shall be filed within one hundred twenty days after the day upon which the verdict was rendered[.]" Because it is now more than 120 days after the verdict in this case, Bonnell must obtain leave to file his motion for a new trial.
9. "The only issue before the trial court in ruling on a motion for leave to file is whether the defendant was unavoidably prevented in filing a timely motion for a new trial." *State v. Dawson*, 7th Dist. Mahoning No. 09 MA 209, 2011-Ohio-2773, ¶ 21. To obtain leave, the defendant must prove "by clear and convincing proof that the defendant was unavoidably prevented from filing his motion for a new trial" within 120 days of the verdict as allowed under Crim.R. 33(B). *Id.*
10. "[A] party is unavoidably prevented from filing a motion for new trial if the party had no knowledge of the existence of the ground supporting the motion for new trial and could not have learned of the existence of that ground within the time prescribed for filing the motion for new trial in the exercise of reasonable diligence." *State v. Walden*, 19 Ohio App. 3d 141, 145-46, 483 N.E.2d 859 (10th Dist.1984). If the defendant fails to meet this burden, "[r]es judicata bars all subsequent motions seeking a new trial that are based on claims that were brought or could have been brought on direct appeal or in prior motions filed under Crim.R. 33." *State v. Blalock*, 8th Dist. Cuyahoga No. 104773, 2017-Ohio-2658, ¶ 36.

**BONNELL HAS FAILED TO SHOW HE WAS UNAVOIDABLY PREVENTED
FROM DISCOVERY OF THE EVIDENCE IN QUESTION**

11. This Court first finds that Bonnell has failed to demonstrate that he was unavoidably prevented from timely filing his motion for a new trial. The evidence upon which Bonnell now relies was available to Bonnell for many years before the filing of his motion, and indeed, most of it has been available since the time of his trial in 1988.

12. With respect to the affidavit of Shirley Hatch, the Court finds that Bonnell has failed to demonstrate the reasons for his extreme delay in obtaining the affidavit. "The phrases 'unavoidably prevented' and 'clear and convincing proof' do not allow one to claim that evidence was undiscernable simply because affidavits were not obtained sooner." *State v. Fortson*, 8th Dist. Cuyahoga No. 82545, 2003-Ohio-5387, ¶ 11. Rather, "the use of an affidavit signed outside Crim.R. 33(B)'s time limit that fails to offer any reason why it could not have been obtained sooner is not adequate to show by 'clear and convincing proof that the movant was unavoidably prevented from obtaining the evidence within the prescribed time period." *State v. Shakoor*, 7th Dist. Mahoning No. 10 MA 64, 2010-Ohio-6386, ¶ 21. Neither Hatch's affidavit nor Bonnell's motion for leave contains any sufficient explanation as to why Bonnell waited 30 years to obtain the affidavit and provide it to this Court.

13. With respect to the evidence that Bonnell seeks for DNA testing, the record is clear that Bonnell has been aware since at least 1995 that the evidence in question was not preserved.

14. In 1995, Bonnell filed a petition for postconviction relief. In his third claim for relief, Bonnell argued that the State failed to collect or preserve the following:

- a. Blood droppings from the back porch,
- b. Blood droppings from the back porch railing,
- c. Vomit found near the victim's body,
- d. Crime scene fingerprints,

- ~ e. Foreign substances on Bonnell's hands,
- ~ f. The contents of Bonnell's car,
- ~ g. Substances on Bonnell's pants.

Petition to Vacate or Set Aside Judgment and/or Sentence, filed 3/16/1995, p. 6-7.

15. In the State's response, the State argued: "Applying Ohio law to the case at hand, it is clear that Defendant's rights were not violated if blood samples, vomit, fingerprints, and other miscellaneous materials were not preserved." State's Motion for Summary Judgment, p. 21.

16. This Court, in denying Bonnell's petition, specifically rejected this claim:

"It has been held that it is not a due process violation if specimens or samples were destroyed in the normal course of business and in good faith, see California v. Trombetta (1984), 467 U.S. 478; State v. Thompson (1987), 33 Ohio St.3d 1; State v. Sampson (1987), 36 Ohio App.3d 166; and State v. Purdon (1985), 24 Ohio App.3d 217. A review of the facts fails to show that the State acted in bad faith in preserving the evidence in this case. Accordingly, Petitioner's third Claim for Relief lacks merit."

See Findings of Fact and Conclusions of Law, filed 10/17/1995, ¶ 8.

17. Bonnell appealed this Court's decision to the Eighth District. In his brief, Bonnell again argued that "[t]he State failed to preserve the scene of the homicide and secure the exculpatory evidence." Consolidated Brief of Appellant, filed 1/9/1998, p. 33.

18. The Eighth District affirmed this Court's rejection of Bonnell's claim:

"The fact that blood was found on the back porch hand railing and on a green pillow on the back porch is not material. Birmingham had testified that he witnessed the defendant punching the victim and that blood was all over the place. He then picked up the defendant and threw him out the back door onto the back porch. (Tr. 785-786, 921, 923, 928, 938). It is conceivable that the blood was transferred to these areas by the defendant. Therefore, since there is no reasonable probability that this evidence would have affected the outcome of the trial, it was not material."

State v. Bonnell, 8th Dist. Cuyahoga Nos. 69835 and 73177, 1998 Ohio App. LEXIS 3943, *17 (Aug. 27, 1998).

19. In 2000, Bonnell filed a petition for a writ of habeas corpus in the United States District Court for the Northern District of Ohio. Bonnell argued in his fourth ground for relief that his "conviction and sentence of death should be set aside because the state failed to preserve exculpatory evidence from the crime scene." *Bonnell v. Mitchell*, 301 F.Supp.2d 698, 719 (N.D.Ohio 2004), citing *Arizona v. Youngblood*, 488 U.S. 51, 109 S. Ct. 333, 102 L.Ed.2d 281 (1988).
20. The federal district court – again assuming that the evidence had not been preserved – rejected Bonnell's *Youngblood* claim. The court found both that Bonnell failed to show that the State acted in bad faith, and that "Bonnell has failed to establish that the unpreserved or untested evidence is exculpatory." *Id.* at 729-730.
21. In 2004, Bonnell filed his first application for postconviction DNA testing. See docket entry, 10/29/2004. Bonnell sought testing of the following:

- a. vomit found in the kitchen,
- b. blood from his vehicle,
- c. hair(s) on a green pillow,
- d. plastic bags for gunshot residue,
- e. any blood from the back stairs,
- f. any blood from the back stairwell,
- g. any blood from the railing of the stairs,
- h. testing of any swabs or slides taken from Bonnell's hands.

In response, the State filed a Report pursuant to R.C. 2953.75(B) stating that it had "conducted a search and has been unable to locate any of the items defendant has requested to be tested." Prosecuting Attorney's Report, filed 8/30/2005, p. 2. The State further noted: "Indeed, as the State's objection to DNA testing details, Bonnell

has argued, and the Courts have recognized for the past ten years[,] that this evidence does not exist." *Id.*

22. The State also filed a brief in opposition to Bonnell's motion for DNA testing. In that motion, the State wrote: "It should be no surprise that the evidence Bonnell seeks to have tested does not exist. In fact[,] for the past ten years[,] he has litigated a claim based on the fact that certain evidence was not collected or preserved." *Prosecuting Attorney's Brief in Opposition to Inmate's Application for DNA Testing*, filed 8/30/2005, p. 6.

23. This Court denied Bonnell's first application for DNA testing in 2005. In doing so, this Court found at that time that the evidence in question was not preserved for testing:

"As explained in the prosecutor's report, the State has searched its own files as well as contacted the homicide unit and the Cleveland Police Department as well as the Trace Evidence department of the Cuyahoga County Coroner's Office[] and has learned that none of the evidence requested by Bonnell exists. Consequently, no parent sample exists with which to do a DNA comparison."

Findings of Fact and Conclusions of Law, issued 10/21/2005, at p. 10.

24. All of this makes clear that Bonnell has been aware since at least 1995 that the physical evidence in his case was not preserved. The status quo has not changed. Bonnell has thus failed to demonstrate that he was unavoidably prevented from the discovery of the basis for this claim.

25. This Court also finds that, even if Bonnell was unable to present this evidence within 120 days of the verdict, he also failed to act within a reasonable amount of time after that period in filing his motion for leave.

26. "Crim.R. 33 does not set forth any specific time strictures as to when a motion for new trial may be filed after unavoidable prevention has been found. However, 'case law

has adopted a reasonableness standard.” *State v. Elersic*, 11th Dist. Lake No. 2007-L-104, 2008-Ohio-2121, ¶ 20, quoting *State v. Griffith*, 11th Dist. Trumbull No. 2005-T-0038, 2006-Ohio-2935, ¶ 15. *See also State v. Stansberry*, 8th Dist. Cuyahoga No. 71004, 1997 Ohio App. LEXIS 4561, *9 (Oct. 9, 1997):

“Without some standard of reasonableness in filing a motion for leave to file a motion for new trial, a defendant could wait before filing his motion in the hope that witnesses would be unavailable or no longer remember the events clearly, if at all, or that evidence might disappear. The burden to the state to retry the case might be too great with the passage of time. A defendant may not bide his time in the hope of receiving a new trial at which most of the evidence against him is no longer available.”

“As a result, a trial court may require a party to file his Crim.R. 33 motion within a reasonable time after he discovers the evidence.” *Elersic*, ¶ 20. The trial court must determine whether any undue delay “was reasonable under the circumstances or that the defendant has adequately explained the reason for the delay.” *Stansberry*, at *9.

27. Bonnell has not shown that he was at all unavoidably prevented from discovery of the facts on which he now relies. But even assuming Bonnell could not have brought these claims within 120 days of the verdict, the record reveals that Bonnell did not bring his motion within a reasonable amount of time after the evidence was unquestionably available to him. For both reasons, this Court denies Bonnell’s request for leave to file his untimely motion for a new trial.

RES JUDICATA BARS BONNELL’S UNDERLYING CLAIMS

28. This Court further finds that even if it were to grant leave in this case, res judicata would bar Bonnell’s claims. Under the doctrine of res judicata, a defendant is barred from raising an issue in a petition for postconviction relief if the defendant raised, or could have raised, the issue either at trial or on direct appeal. *See State v. Szefcyk*, 77

Ohio St.3d 93, 96, 671 N.E.2d 233 (1996). Res judicata "not only bars claims that could or should have been brought at trial or on direct appeal, but also claims that could or should have been brought in a first petition for post-conviction relief." *State v. Turner*, 10th Dist. Franklin No. 06AP-876, 2007-Ohio-1468, ¶ 12.

29. With respect to Shirley Hatch's affidavit, Bonnell raised the same issues in his postconviction petition in 1995. The Eighth District rejected these arguments: "Minor inconsistencies which may impeach the accuracy of a witness' recollection of a drunken traumatic episode do not warrant grounds for overturning a murder verdict." *State v. Bonnell*, 8th Dist. Cuyahoga Nos. 69835 and 73177, 1998 Ohio App. LEXIS 3943, *17 (Aug. 27, 1998). "The defendant's list of the other minutiae to which Hatch inconsistently testified amounted to immaterial details surrounding the event. As stated before, even a cursory review of the evidence displays its immateriality." *Id.*, *16.

30. With respect to Bonnell's *Youngblood* claim, as explained above, both the Eighth District and the federal district court have previously rejected this argument. As such, res judicata bars both of Bonnell's claims.

THE LEGAL STANDARD FOR A MOTION FOR A NEW TRIAL

31. This Court finds that even if this Court were to grant Bonnell leave to file his motion for a new trial, and even if res judicata did not bar consideration of Bonnell's claims, Bonnell's motion fails to establish substantive grounds on which a new trial should be granted. Crim.R. 33(A)(6) provides that a new trial may be granted on motion of the defendant "[w]hen new evidence material to the defense is discovered, which the defendant could not with reasonable diligence have discovered and produced at the

trial." The Supreme Court of Ohio has outlined a six-part test that a defendant must meet to obtain a new trial on the grounds of newly-discovered evidence. The defendant must show that the new evidence:

- (1) discloses a strong probability that it will change the result if a new trial is granted,
- (2) has been discovered since the trial,
- (3) is such as could not in the exercise of due diligence have been discovered before the trial,
- (4) is material to the issues,
- (5) is not merely cumulative to former evidence, and
- (6) does not merely impeach or contradict the former evidence.

State v. Petro, 148 Ohio St. 505, 76 N.E.2d 370, at syllabus (1947).

32. Where a defendant alleges that the State suppressed evidence in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L.Ed.2d 215 (1963), however, this Court conducts "a due process analysis rather than an abuse of discretion test because the issue on review concerned appell[ant's] due process right to a fair trial[.]" *State v. Johnston*, 39 Ohio St.3d 48, 60, 529 N.E.2d 898 (1988). If Bonnell establishes a *Brady* violation, this Court then applies the federal *Brady* test, under which a defendant must satisfy a lower standard of showing a "reasonable probability" of a different result. *State v. Siller*, 8th Dist. Cuyahoga No. 90865, 2009-Ohio-2874, ¶ 45.

**SHIRLEY HATCH'S 2017 AFFIDAVIT DOES NOT
ESTABLISH GROUNDS FOR A NEW TRIAL**

33. Hatch's 2017 affidavit does not materially differ from her 1988 trial testimony. Hatch avers in her affidavit that the shooter was wearing a shiny red jacket with writing on the back; that he was taller than the victim; that he had long hair; that she and Ed

Birmingham were both drinking that night; that she knew "Peanut" (Bonnell) before the shooting; that she did not immediately know who the shooter was at the time of the murder; and that she recognized Bonnell as the shooter after she saw his picture in the newspaper the next day. As the State documents on pages 26-28 of its response, almost all of this is consistent with Hatch's testimony at trial in 1988. The court further notes that Hatch does not recant her identification of Bonnell as the shooter in her affidavit. With respect to the minor variations between Hatch's 2017 affidavit and her 1988 testimony, the Court grants more weight to Hatch's trial testimony, given that it was significantly nearer in time to the incident.

34. This Court further finds that even if it were to grant Hatch's 2017 affidavit full weight, that affidavit would still fail to establish a "strong probability" of a different result at trial as required under Crim.R. 33(A)(6). As both the Supreme Court of Ohio and the Sixth Circuit noted, the evidence of Bonnell's guilt was overwhelming. That evidence included the following:

- a. Edward Birmingham, Bunner's other roommate, testified that immediately after the shooting, he saw Bonnell on top of Bunner's body striking Bunner in the face.
- b. At approximately 3:40 a.m., shortly after the shooting, two Cleveland Police Officers saw a blue car being driven backwards on the street near the victim's apartment with its headlights off. The officers attempted to stop the car, and a high-speed chase ensued. The chase ended when the blue car crashed into a funeral chapel. The officers immediately removed the driver from the vehicle

and placed him on the ground. Both officers testified at trial that Bonnell was the driver and sole occupant of the blue car.

- c. Both Hatch and Birmingham immediately provided officers with a description of the shooter that the officers recognized as being consistent with Bonnell.
- d. At the hospital later that night, Birmingham identified Bonnell as the shooter.
- e. Police found a gray and maroon ski jacket inside Bonnell's car after the crash. Both Hatch and Birmingham described the shooter as wearing a gray and maroon ski jacket.
- f. Police found a .25 caliber Tanfoglio handgun, later identified as Bonnell's, on the street along the route of the chase. Test casings fired from the gun matched spent bullet casings found at the scene, and the test bullets fired from the gun were consistent with the bullets removed from Bonnell's body.
- g. Bonnell's own alibi witness, Joey Popil, contradicted Bonnell's story as to what happened that night, identifying Bonnell as the man driving the blue 1980 Chevrolet Malibu, wearing the gray and maroon jacket, and in possession of the .25 caliber Tanfoglio handgun.
- h. DNA testing done in by the DNA Diagnostics Center (DDC) in 2009 revealed that the victim's blood was on Bonnell's jacket in five separate places.

Nothing in Bonnell's motion diminishes the weight of any of this evidence, nor provides this Court with any reason to disregard those settled facts. There is thus no probability at all, let alone a "strong probability," of a different result at trial. Crim.R. 33(A)(6).

**BONNELL'S YOUNGBLOOD CLAIM FAILS TO ESTABLISH EITHER
BAD FAITH BY THE STATE OR PREJUDICE TO BONNELL**

35. This Court also finds Bonnell's *Youngblood* claim to be without merit. *Youngblood* does not impose on the police an "undifferentiated and absolute duty to retain and to preserve all material that might be of conceivable evidentiary significance in a particular prosecution." *Arizona v. Youngblood*, 488 U.S. at 58, 109 S. Ct. 333, 102 L.Ed.2d 281. Under the Constitution, the State's duty to preserve evidence is "limited to evidence that might be expected to play a significant role in the suspect's defense." *California v. Trombetta*, 467 U.S. 479, 488, 104 S. Ct. 2528, 81 L. Ed. 2d 413 (1984).

36. To determine if the failure to preserve evidence violates a defendant's right to due process, courts divide evidence into two categories: (1) evidence that is "materially exculpatory," or (2) evidence that is "potentially useful." *State v. Geeslin*, 116 Ohio St.3d 252, 2007-Ohio-5239, 878 N.E.2d 1, ¶ 10. For evidence to be considered "materially exculpatory," it "must possess an exculpatory value that was apparent before the evidence was destroyed[]" *Trombetta* at 489. If the evidence is merely "potentially useful," however, its consumption does not constitute a denial of due process "unless a criminal defendant can show bad faith on the part of the police[.]" *Youngblood* at 57. Absent such a showing of bad faith, the consumption of evidence that is only "potentially useful" does not constitute a denial of due process. *Id.*

37. Applying this standard, the evidence in this case falls within the category of "potentially useful." The Supreme Court in *Youngblood* defined "potentially useful" evidence as "evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant." *Youngblood* at 57. Here, Bonnell argues that DNA testing on each item might yield exculpatory evidence in the form of a DNA result that excludes Bonnell. At the same

time, it is equally likely that additional testing "might have proved Bonnell's presence at the apartment and involvement in the murder." *Bonnell v. Mitchell*, 301 F.Supp.2d 698, 730 (N.D.Ohio 2004). The value of that evidence therefore depends upon the results of hypothetical future DNA testing. This is the very definition of "potentially useful" evidence.

38. As such, Bonnell is required to show bad faith. "Bad faith implies more than bad judgment or negligence; instead, it 'imports a dishonest purpose, moral obliquity, conscious wrongdoing, breach of a known duty through some ulterior motive or ill will' partaking of the nature of fraud. It also embraces actual intent to mislead or deceive another." *State v. Dunn*, 9th Dist. Wayne No. 03CA0037, 2004-Ohio-2249, ¶ 63, quoting *Hoskins v. Aetna Life Ins. Co.*, 6 Ohio St.3d 272, 276, 452 N.E.2d 1315 (1983). This Court's "inquiry into bad faith 'must necessarily turn on the [government's] knowledge of the exculpatory value of the evidence at the time it was lost or destroyed.'" *United States v. Bohl*, 25 F.3d 904, 911 (10th Cir.1994), quoting *Youngblood* at 56 n*. Bonnell must therefore show that the State was aware prior to 1995 (when Bonnell first litigated his *Youngblood* claim) of the alleged exculpatory value of the items he now identifies.

39. This Court finds that Bonnell has failed to show any bad faith by the State. There is no evidence that the State was aware prior to 1995 that any of the items in question had any potential exculpatory value to them. There is no evidence that anything that occurred in this case was done contrary to the Cleveland Police Department's normal practice at the time. Nor is there any evidence that the State purposefully destroyed any evidence to inhibit Bonnell's defense. Without any such evidence, this Court gives

no weight to Bonnell's claim of bad faith. A court "cannot infer bad faith from the mere act of its destruction." *D'Ambrosio v. Bagley*, N.D. Ohio No. 1:00 CV 2521, 2006 U.S. Dist. LEXIS 12794, *162 (Mar. 24, 2006); *see also United States v. Taylor*, D.D.C. No. 17-129, 2018 U.S. Dist. LEXIS 97845, *12 (June 12, 2018) ("bad faith cannot be inferred from the mere act of nonpreservation itself").

40. This Court further notes that it previously found that the State did not act in bad faith when it denied Bonnell's postconviction petition in 1995: "A review of the facts fails to show that the State acted in bad faith in preserving the evidence in this case. Accordingly, Petitioner's third Claim for Relief lacks merit." *Findings of Fact and Conclusions of Law*, filed 10/17/1995, ¶ 8. *Res judicata* applies "where an issue is litigated that has been 'actually and necessarily litigated and determined in a prior action.'" *Ameigh v. Baycliffs Corp.*, 81 Ohio St.3d 247, 249, 690 N.E.2d 872 (1998), quoting *Krahn v. Kinney*, 43 Ohio St.3d 103, 107, 538 N.E.2d 1058 (1989).

41. Finally, this Court finds that Bonnell cannot establish prejudice for his *Youngblood* claim for two reasons. First, the Supreme Court of Ohio held in Bonnell's 2018 appeal of this Court's denial of his application for DNA testing that additional DNA testing on the items in question "would not have changed the outcome of the trial." *State v. Bonnell*, Slip Opinion No. 2018-Ohio-4069, ¶ 21. The Supreme Court found that Bonnell failed "to show that DNA testing, if performed, would yield a result that would be outcome determinative." *Id.*, ¶25.

42. Second, even if the evidence could be located, Ohio's postconviction DNA testing statute prohibits this Court from considering any additional requests for DNA testing in this case. R.C. 2953.72(A)(7) provides that "if the court rejects an eligible

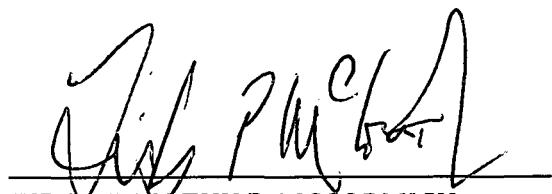
offender's application for DNA testing because the offender does not satisfy the acceptance criteria described in division (A)(4) of this section, the court will not accept or consider subsequent applications[.]” This Court rejected Bonnell’s application for DNA testing in 2017. The Supreme Court has since affirmed that decision. As a result, this Court has no jurisdiction to consider any successive application for DNA testing that Bonnell may file in the future.

CONCLUSION

43. For the foregoing reasons, this Court hereby denies Bonnell’s motion for leave to file a motion for a new trial.

IT IS SO ORDERED.

DATE: 1/24/17



JUDGE TIMOTHY P. MCCORMICK
Cuyahoga County Court of Common Pleas

Pursuant to Civ.R. 58(B), the Clerk of Courts is hereby ordered to send copies of the foregoing to the following parties and its date of entry upon the journal:

Kimberly Rigby, Officer of the Ohio Public Defender, The Midland Building, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215.

Kandra Roberts, Officer of the Ohio Public Defender, The Midland Building, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215.

Christopher D. Schroeder, Office of the Cuyahoga County Prosecutor, 1200 Ontario Street, 8th floor, Cleveland, Ohio 44113.

CRIMINAL INVESTIGATION

Date 11-28-87
Time 1052 HOURS

The following is the statement of EDWARD E. BIRMINGHAM Age 32
 Race W Sex M DOB 11-13-51 Marital Status Sep Address 5709 BRIDGE AVE.
 City CLEVELAND State OHIO Phone 7038 Zip Code 44102
 Employed at UNEMPLOYED Address _____ City _____
 State _____ Phone _____, Regarding the arrest of MELVIN BONNELL,
 on the charge of ASSAULT
 Name EDWARD E. BIRMINGHAM

I have known the guy who got shot about 2 weeks, he told me his name Gene. I have been living with Shirley Hatch at 5709 Bridge Ave. Shirley liked Gene so I let him stay with me at the apartment. This has been for the last two weeks.

We had been drinking all day, myself, Shirley, and Gene. I was drinking heavy so I went to bed about 6:30 P.M. ~~on Friday~~ Friday night Nov. 27, 1987. Gene and Shirley were up talking when I went to bed. Shirley woke me and said that Gene got shot. I went into the kitchen and I saw Gene with blood all over him. There was a guy on top of Gene and he was punching him. This was right by the back door. I grabbed the guy off of Gene and threw him out of the apartment onto the back porch. I went out after him and I kicked him. He fell down the stairs. I went back into the apartment and closed the door and locked it. Gene was laying on the floor and I thought he was just knocked out. There was a lot of blood coming from Gene and I thought he was just beat up, so I went back to bed. Shirley had ran across the hall to Ray Campbell's apartment while I was fighting with the guy who beat up Gene. Then I woke up again and that's when the police came. I told them what had happen and what I did. Then I realized that Gene was dead. Then the police took me over to Luthern Hospital and in the emergency room I saw a white male on a stretcher and the doctors were working on him. I looked at the guy and told the police that he was the one I saw fighting with Gene. Then the police took me home. I was later brought to the Justice Center by the Homicide Detectives to make a statement.

Q. Do you know Gene's real name?
 A. No, but the police tell me his name is Robert Eugene Bunner.
 Q. Do you know the name of the male you identified in the hospital as the male you saw assaulting Gene?
 A. No, but the police tell me his name is Melvin Bonnell. I never saw the guy before.
 Q. Did Gene have any weapons that you know of in the apartment?
 A. None
 Q. Did you see Melvin Bonnell with any weapons?
 A. No
 Q. Did you have any conversation with Melvin Bonnell when you were fighting with him?
 A. I told him to get the fuck out of my house and threw him down the stairs and never to come back.
 Q. Did you know anything about the background of Gene as to why Melvin Bonnell would assault and shot him?
 A. No
 Q. Showing you a .25 cal automatic Tanfoglio Giuseppe Made in Italy Ser. #M4816 what can you tell me about this weapon?
 A. I never saw it before.
 Q. Can you describe Melvin Bonnell and what he was wearing?
 A. He was a white male with blondish red hair, he looked like he hadn't shaved in a couple of days, but he was wearing a maroon and grey ski jacket.

Q. Do you care to add anything further to your statement at this time? A. No

Q. After having read this statement, is it the truth?
 Signed Edward E. Birmingham
 Witness Hal Goldstein
 Witness John J. McKibben
 Witness Det. Hal Goldstein
 Taken by Justice Center Homicide Unit
 Statement taken at Justice Center Homicide Unit

A. X
 Det. # 683
 Det. # 1597
 Det. # 683
 Date 11/28/87 Time 1120

EXHIBIT

E-1

A-47

APPENDIX E

CRIMINAL INVESTIGATION

Date November 28th, 1987
Time 10:55AM

The following is the statement of SHIRLEY MARIE HATCH Age 31
 Race White Sex Female DOB 12/12/1956 Marital Status Sep. Address 1234 Main Street
 City Cleveland, Ohio State Ohio Phone none Zip Code 44113
 Employed at No Address 1234 Main Street City Cleveland, Ohio
 State Ohio Phone none Regarding the arrest of MELVIN BONNELL
 on the charge of Murder
 Name SHIRLEY HATCH

I have known ROBERT EUGENE BUNNER since October of last year. I call him by the nickname of GENE. EDDIE BIRMINGHAM also lives with me at my apartment. I have been only living in the apartment for about a month. About two weeks ago ROBERT BUNNER told me that he did not have any place to stay so me and EDDIE BIRMINGHAM let ROBERT BUNNER stay in our apartment.

Early this morning, it must have been around 3:30AM in the morning we and GENE were laying in bed in the livingroom and we were talking. GENE is a painter and he was telling me that he wasn't going to work this morning. EDDIE BIRMINGHAM was in a room off the kitchen sleeping in the bedroom. The next thing that I heard was that there was a knock on the rear door which is by the kitchen. I got out of the bed and I walked to the kitchen door and I asked who is was. The man that was outside on the back porch said he name was CHARLIE and he mentioned a last name but I can't recall it. I didn't ask what this man wanted and I walked into the living room and I told GENE that there was a CHARLIE somebody at the back door. GENE told me that he would handle it. GENE got up out of bed and he put his pants on and he walked to the rear kitchen door. The guy outside on the back porch mentioned his name again. At this time I was standing behind GENE. GENE then opened up the door and the guy that was outside on the rear porch walked into the kitchen and he then closed the door. GENE was getting ready to say something to this man and the man called GENE a MOTHER FUCKER. I didn't see the gun but the next thing that I heard was a pop like from a cap pistol and then GENE stumbled backwards and he knocked the kitchen table over and then he fell to the floor. The man that shot GENE was still standing in the kitchen and he was still calling GENE a bunch of dirty names. I ran into EDDIE BIRMINGHAM bedroom and I finally got him up and I told him that GENE was shot. I hid in the closet in EDDIE BIRMINGHAM bedroom. The next thing that I heard was the man that shot GENE came to the bedroom door that I was in and he began knocking on the door. I knew that this man had to be high or something because the bedroom door was unlocked and the man could have walked in. This man said let me in there or I am blowing the fucking door down. Thats when EDDIE BIRMINGHAM got up. In the meantime the man must have walked away from the bedroom door and then I heard a couple more shots. When EDDIE BIRMINGHAM got up and walked into the kitchen, I got out of the bedroom closet and I ran out of the apartment to the ladies across the halls apartment. I went through the front door. I did pay any attention to what was going on in the kitchen. When I heard the first shot fired and GENE fell to the floor he was laying by the bathroom door off the kitchen. When I came back into the apartment after EMS arrived, GENE was laying in by the door that leads to the back porch. I didn't know how GENE got there. EDDIE BIRMINGHAM told me that when he went into the kitchen that the guy was beating on GENE and that GENE was already dead or knocked out. When I was across the hall at the ladies house, EDDIE walked to the front door of our apartment and the man that did the shooting was standing right by EDDIE. I did come out of the apartment where I called the police from, but later EDDIE told me that he through the man down the stairs. Later I found out that GENE had died. I never say this man before that did the shooting.

Q. Do you care to add anything further to your statement at this time?

A. YES

Q. After having read this statement, is it the truth?

A. Yes

Signed Shirley Hatch

Witness Det. John McKibben

Witness

Taken by Det. McKibben

Statement taken at Homicide Office

Det. # 1597

Det. #

Det. # 1597

Date 11-28-87 Time 11:20AM

1. I don't even know why this man shot GENE. The only thing that this man said
2. was that he was calling GENE a lot of dirty names.

3. Q. When you were first in the kitchen and GENE answered the door, how many
4. shots did you hear fired?

5. A. On this time I only heard one shot and then GENE fell to the floor. Later
6. while I was in the bedroom, I heard a couple more shots, but I didn't
7. know what the man was shooting at.

8. Q. Can you describe the clothing that the man was wearing that shot GENE?

9. A. I think that he had jeans on and the man was wearing a gray and maroon
10. colored ski jacket. He was a white male in his late 20's. The man was
11. maybe an inch taller than GENE from the way that they were standing.

12. The man had a mustache and he had like blonde hair and the hair was down
13. to his neck.

14. Q. Can you tell us how far the man was standing from GENE when he shot him?

15. A. It was less than three feet.

16. Q. Is there anything else that you can recall about this incident?

17. A. That's about it.

18. Q. Have you read the above statement and is it the truth.

19. A. YES SIGNED: Shirley Hatch

20. WITNESS John Miller, D.O.P.

21. Typed by Detective McKibben at the Homicide Office at 11:33AM

Bunner was
6'1"

EXHIBIT

E-3

COMPLETE OFFENSE/INCIDENT TITLE IS:

DEAD BODY/SUSPECTED HOMICIDE/ARREST/CONFINEMENT

CSIR:

ON THE ABOVE DATE AT 0347HRS. MEMBERS OF Z/C 211 RECEIVED A RADIO ASSIGNMENT TO RESPOND TO W. 41 AND LORAIN AV. TO ASSIST Z/C 212 IN C/W A CHASE IN A MOTOR VEHICLE ACCIDENT. WE ARRIVED AT 0347HRS. AND OBSERVED THAT THE ABOVE SUSPECT'S VEHICLE HAD CRASHED INTO A BUILDING 3929 LORAIN AV. BODNAR FUNERAL HOME AND THAT A MALE WAS LYING UNCONSCIOUS ON THE GROUND BEING ATTENDED TO BY MEMBERS OF Z/C 212, OFFICERS MONTALVO #1246 AND JESIONOWSKI #2137. AT 0351HRS. RECEIVED A RADIO ASSIGNMENT FOR 5709 BRIDGE AV. UP FOR A MALE SHOT. BEFORE LEAVING LORAIN AV., OFFICER MONTALVO RELAYED THAT THEY HAD A GUN CHASING SUSPECT VEHICLE IN THE AREA OF W. 57 AND BRIDGE AV. UPON ARRIVAL ON BRIDGE AV. AT 0353HRS. ENTERED THE UPSTAIRS EAST APT. AND

OBSERVED EMS #3 ON SCENE ASSISTING THE VIC. WHO WAS LYING ON THE KITCHEN FLOOR WITH AN APPARENT GUN SHOT WOUND TO THE CHEST.

INTERVIEWED WITNESS #1 WHO STATED THAT AT APPROX. 0335HRS. TO 0345HRS. THERE HAD BEEN A KNOCK AT THE BACK DOOR ON THE SOUTH SIDE OF THE APT. AND THAT A MALE YELLED THRU THE DOOR THAT HIS NAME WAS CHARLIE AND THAT HE WANTED TO TALK TO THE VICTIM. WITNESS #1 AWAKENED THE VICTIM WHO HAD BEEN SLEEPING IN THE LIVING ROOM. THE VICTIM OPENED THE BACK DOOR WHILE STANDING IN THE KITCHEN AND WITNESS #1 STOOD BEHIND THE VICTIM. SUSPECT ENTERED THE KITCHEN AND ACCORDING TO THE WITNESS #1, SUSPECT YELLED "MOTHER FCKER" AT THE VICTIM THRUST HIS HAND FOREWARD TOWARDS THE VICTIM AND WITNESS #1 STATES THAT SHE HEARD ONE GUN SHOT. WITNESS #1 THEN RAN INTO THE BEDROOM, WHERE WITNESS #2 WAS SLEEPING AND TOLD HIM "GENE WAS SHOT." WITNESS #2 EXITED THE BEDROOM AND WITNESS #1 HID IN THE BEDROOM CLOSET AND HEARD TWO MORE SHOTS.

WITNESS #2 STATES THAT HE ENTERED THE KITCHEN AND SAW THE SUSPECT ON TOP OF THE VICTIM WHO WAS LYING ON THE KITCHEN FLOOR. SUSPECT WAS PULLING THE VICTIM'S HAIR AND PUNCHING THE VICTIM. WITNESS #2 STATES THAT HE PULLED THE SUSPECT OFF THE VICTIM AND OPENED THE BACK DOOR AND PUSHED THE SUSPECT OUT AND DOWN THE BACK STAIRS.

BOTH WITNESSES DESCRIBED THE SUSPECT AS A WHITE MALE IN HIS LATE 20'S OR 30'S ABOUT 5-9, BROWN LONG HAIR AND MUSTACHE AND WEARING A RED AND GRAY JACKET. MEMBERS OF ZONE CAR 211 THEN RADIO TO MEMBERS OF ZONE CAR 212 THAT THE SUSPECT DESCRIPTION FITTED THE MALE THAT THEY HAD APPREHENDED AT 3929 LORAIN AV.

MEMBERS OF ZONE CAR 211 THEN CONVEYED WITNESS #2 TO LUTHERAN HOSP. WHERE THE SUSPECT HAD BEEN CONVEYED BY EMS 84, ARRIVING AT 0415HRS.

WITNESS #2 OBSERVED THE SUSPECT FACE TO FACE AT THE HOSPITAL AND POSITIVELY IDENTIFIED THE SUSPECT AS THE MALE HE HAD SEEN ASSAULTING THE VICTIM AT 5709 BRIDGE AV. SUSPECT WAS PLACED UNDER ARREST BY OFFICERS KUKULA #1642, STANCZYK #1677, MONTALVO #1246 AND JESIONOWSKI #2137.

ZONE CAR 212 REMAINED AT THE HOSPITAL AND WITNESS #2 WAS CONVEYED HOME, AT WHICH TIME WE RESPONDED TO 1977 W. 58 WHERE WITNESS #1 HAD STATED THAT THE VICTIM'S MOTHER LIVED.

000059

RED BODY SUSPECTED
OMICIDE ARREST/CONFINEMENT
SUBJECT OF CRIME

SUPPLEMENTARY REPORT

CLEVELAND POLICE DEPARTMENT

DATE OF THIS REPORT NOV. 28, 1987

87-080470

COMPANY OR OWNER <i>X-Copies</i>	ADDRESS	PHONE	AGE	SEX	RACE	M-S
NAME ROBERT EUGENE BUNNER	ADDRESS	PHONE NONE	23	M	W	S
ADDRESS OF OCCURRENCE 709 BRIDGE AVE UP	TYPE OF PLACE KITCHEN/HOME		ZONE 212			
TIME OF OCCURRENCE pprox. 0235 Hrs.	DATE OF OCCURRENCE NOVEMBER 28, 1987		DAY OF WEEK SATURDAY			
SEARCHED BY	ADDRESS	PHONE	TIME	DAY	DATE	
COVERED BY	ADDRESS	PHONE	TIME	DAY	DATE	

PAGE 1 OF 6 PAGE REPORT.

ORIGINAL INVESTIGATION

FOLLOW-UP REPORT

On Saturday Nov. 28, 1987, while assigned to car 8151, in company with Det. Zalar, received a call from Police Radio of 5709 Bridge Ave. meet car 211 on a victim of a homicide. This assignment was received at 0345 Hrs.

Arrived at 5709 Bridge Ave met with the following officers, car 253 LT. TOROK, in charge of the district cars, 211. P.O'S STANCZYK # 1677, KUKULA # 1642, investigating officers. car 212, P.O.'S JESIONOWSKI # 2187, MONTALVO # 1246. S.I.U. car 277, DET. MATUSZNY # 1569. Also car 214 P.O.'S WALSH # 1682 and BROWN # 1302, together investigated.

VICTIM

ROBERT EUGENE BUNNER, W-M-23, SSN [REDACTED] residing at [REDACTED]. This male is our C.P.D. 172796. This male has a record with this department for the following; 6 T.O. 83-86, 5 C of C 83-87, R.S.P. 1983, D.C.I. 1984, D.C. 1985. This male was conveyed to Lutheran Hospital with a GSW to the chest. He was conveyed by E.M.S. #3. The victim was dressed in blue jockey type shorts only. Viewed the body at Lutheran Hospital, he had 1, GSW to the left side of the chest, there was a treatment laceration of the left side of the chest. Check of the victim at S.I.U. Det. ALLEN, reveals this male has a record with our department, attached is his face sheet. Check of the Record room reveals the above record on this male, PER PAYTHRESS. Checked the W&S Unit PER. RINALDI, No Wants.

NOTIFICATION

PATRICIA ALEXANDER, W-F-43, D.O.B. [REDACTED], this female is the mother of the victim, she resides at [REDACTED]. She was sent to Lutheran Hospital by car 211, at the hospital staff informed her that her son expired.

MORGUE

Victim was pronounced at Lutheran Hospital, by Dr. MOYSANKO at 0430 Hrs. He was received at the morgue by ATT. HOLSTEIN conveyed by C&A Ambulance Service, the victim was 73 Inches 179 Lbs. This male had no property and his clothing was a pair of blue shorts.

DET. HAYES AND ZALAR

COFC 71-10

INVESTIGATING OFFICERS <i>Det. Gerald Hayes #106</i>	PLATOON Third	CAR 8151	APPROVED BY <i>[Signature]</i>
WEATHER <input checked="" type="checkbox"/> CLEAR <input type="checkbox"/> RAIN <input checked="" type="checkbox"/> CLOUDY <input type="checkbox"/> SNOW	TEMP 44 °	WIND SE 11	A-51 <input type="checkbox"/> REQUESTED S.I.U. <input type="checkbox"/> NOT REQUESTED <input type="checkbox"/> ON SCENE

HOMICIDE/ARREST/CONFINEMENT CLEVELAND POLICE DEPARTMENT

COMPLAINT NO.

OBJECT OR CRIME

DATE OF THIS REPORT NOV. 28, 1987

87-080470

COMPANY OR OWNER	ADDRESS	PHONE	AGE	SEX	RACE	M-S
TIM	ADDRESS	PHONE	23	M	W	S
ROBERT EUGENE BUNNER		NONE				
ADDRESS OF OCCURRENCE	TYPE OF PLACE					
5709 BRIDGE AVE	KITCHEN/HOME		212			
DATE OF OCCURRENCE	DATE OF OCCURRENCE		DAY OF WEEK			
APPROX. 0235 Hrs.	NOVEMBER 28, 1987		SATURDAY			
COVERED BY	ADDRESS	PHONE	TIME	DAY	DATE	
COVERED BY	ADDRESS	PHONE	TIME	DAY	DATE	

SE 3 OF 6 PAGE REPORT.

ORIGINAL INVESTIGATION

FOLLOW-UP REPORT

STOLEN

There was nothing stolen or reported stolen at this time.

EVIDENCE

Two (2) casings recovered at the scene, .25 Cal. These were entered into the homicide property book. These are to be compared with the weapon at the time of recovery. These were recovered by P.O. WALSH, he entered them in the property book at the second district, signed for by car 8151.

Photos taken by DET. MATUSZNY on car 277, a total of 12 was taken.

1980 Chev. Ohio Lic. 325 GSD, this was towed after the suspect wrecked the vehicle at 3929 Lorain Ave.

1 Maroon and Gray ski jacket, this was recovered in the 1980 Chev. by members of car 212.

Green vinyl pillow recovered on the back porch of the victim's home. This had blood on same it was conveyed to the morgue for testing.

WITNESSES

SHIRLEY HATCH W-F-31, D.O.B. [REDACTED] residing at [REDACTED] No Phone. This female informed us that at approx. 0230 Hrs. there was a knock at the door, she stated that she was in the bed with the victim, she got out of bed and started to the back door that is located in the kitchen, she was followed by the victim. He told her not to open the door without knowing who is there. He then asked through the door WHO IS THERE? There was a voice that replied CHARLES. He opened the door and a male came into the kitchen wearing a MAROON AND GRAY SKI JACKET. He then shot the victim two (2) times. She ran into a bed room that is located off the living room and woke up her brother, this male EDWARD BIRMINGHAM, came out of the bedroom and went to the aid of the victim. At the time they arrived back in the kitchen the suspect was on top of the victim, BIRMINGHAM pulled the suspect off the victim and pushed him out the door. HATCH went on to say that she had never seen the suspect prior to tonight.

T. HAYES, ZALAR

COFC 71-10

INVESTIGATING OFFICERS

Det. Ernest Hayes #106

CLEAR RAIN

OTHER

PLATOON CAR APPROVED BY

Third

8151

A-53

A.I.U. REQUESTED

ON SCENE

INCIDENT/ARREST/CONFIRMATION ELEMENTARY REPORT

CLEVELAND POLICE DEPARTMENT

COMPLAINT NO.

SUBJECT OR CRIME

DATE OF THIS REPORT NOV. 28, 1987

87-080470

COMPANY OR OWNER

ADDRESS

PHONE

AGE

SEX

RACE

M-F

TIM

ROBERT EUGENE BUNNER

ADDRESS

PHONE

AGE

SEX

RACE

M-F

DRESS OF OCCURRENCE

5709 BRIDGE AVE

TYPE OF PLACE

KITCHEN/HOME

23

M

W

S

ZONE

E OF OCCURRENCE

APPROX 0235 Hrs.

DATE OF OCCURRENCE

NOVEMBER 28, 1987

DAY OF WEEK

SATURDAY

MURDER BY

ADDRESS

PHONE

TIME

DAY

DATE

COVERED BY

ADDRESS

PHONE

TIME

DAY

DATE

4 OF 6 PAGE REPORT.

ORIGINAL INVESTIGATION

FOLLOW-UP REPORT

WITNESSES

CONT

HATCH, During the interview with this female she was upset and intoxicated, we advised her that someone would be at her home later this morning to take a statement from her: She is the girlfriend of the victim.

EDWARD BIRMINGHAM W-M-32, D.O.B. [REDACTED] this male is staying at the home of HATCH, he is her brother, he claimed he was in his bed, he was woke up by SHIRLEY, she told him that ROBERT had been shot, he went to the kitchen and saw the suspect on ROBERT he was punching him he pulled this male off the victim and pushed him outside. He was ask about seeing a gun, he stated that he did not see one. This male was also intoxicated and a statement could not be taken at this time. He will be at the home later today.

INTERVIEW

*

ROY CLINGAN W-M-34 [REDACTED]. This male is the boyfriend of the victims mother, he claimed that the victim was involved in drugs, he was arrested for 400 hits of ACID. The persons that supply him with the drugs felt that he was working for the narcotics people, and they wanted to get him for turning them in, he claimed that they were also arrested later for this deal. He can be reached at work on line [REDACTED] or [REDACTED]. Most of these things that he told me he got second handed, he did not know this for fact.

SCENE

5709 Bridge Ave this is a 4 apartment dwelling located on the south side of the street, it is of cream colored ALM. siding. The apartment is the middle door of the three. The steps lead to the upstairs apartment and entry is gained to the living room, our attention was directed to the kitchen located on the southmost portion of the apartment, on the floor we noticed a small spot of blood, along with what appeared to be vomit. The victim had been removed prior to our arrival. Off the kitchen was a both room, examination of the door and frame of this there appeared to be a gouge that was fresh, there was wood splinters on the floor. This looked like it was done with a pellet.

HAYES, ZALAR

COFE 71-10

REGATING OFFICERS

Lt. Ernest Hayes #106

PLATOON
ThirdCAR #151 APPROVED BY
A-54CLEAR RAIN
FOG SNOW

11/10

CT 11

I.T.A.I.U. REQUESTED

ON SCENE

DEAD BODY SUSPECTED
OMICIDE/ARREST/CONFIRMED

SUPPLEMENTARY KITOKI
CLEVELAND POLICE DEPARTMENT

COMPLAINT NO.

OBJECT OR CRIME

DATE OF THIS REPORT

NOV. 28, 1987 87-080470

COMPANY OR OWNER	ADDRESS	PHONE	AGE	SEX	RACE	M-S
TIM ROBERT EUGENE BUNNER	[REDACTED]	PHONE NONL	23	M	W	S
DRESS OF OCCURRENCE 5709 BRIDGE AVE	TYPE OF PLACE KITCHEN/HOME				ZONE 212	
TIME OF OCCURRENCE Approx. 0235 Hrs.	DATE OF OCCURRENCE NOVEMBER 28, 1987			DAY OF WEEK Saturday		
SEARCHED BY	ADDRESS	PHONE	TIME	DAY	DATE	
COVERED BY	ADDRESS	PHONE	TIME	DAY	DATE	

SEE 5 OF 6 PAGE REPORT.

ORIGINAL INVESTIGATION

FOLLOW-UP REPORT

SCENE
CONT.

From the kitchen you exit onto a rear porch, this is along-side the upstairs apartments. There was heavy drops of blood on the floor and the banister. The inside door opens from the outside inside, the screen door opens from the inside out. The kitchen is 12 Ft. wide from the north to the south. 13 Ft. East to the west. The bath is located on the west wall. A spot of blood was found 3 Ft. 6 In. North of the south, 5 Ft. 9 In. West of the East. Vomit was found 3 Ft. North of the south wall, 6 Ft. West of the East. From Zone car 212 it was learned that the victim had his head to the south and his feet to the north, he was on his back.

INVESTIGATION

Learned that car 212 was patrolling north bound on West 58 ST. they observed a vehicle 1980 Chev. backing south bound on W. 58 St. towards them. This vehicle had no lights on at this time. They turned on the overhead lights to stop him, he then stopped the 1980 Chev. and started back north bound on W.58 at Bridge he went east bound, and south on W.57 St. He was at this time being pursued by 212, at Lorain Ave. this vehicle went east bound, he lost control and struck a house at 3929 Lorain Ave. This is the BODNER FUNERAL HOME. 212 called for assistance from EMS and unit #4 conveyed him to Lutheran Hosp. At the time this event was going on a call came for a male shot at 5709 Bridge Ave. 211 and EMS #3 responded. It was the feeling that these events may be connected EDWARD BIRMINGHAM was conveyed to Lutheran Hosp. He saw the male from the auto accident and identified him as the man that shot ROBERT. He was then returned to 5709 Bridge where he was interviewed by members of 8151. 212 informed us that they checked the 1980 Chev. for a gun but was unable to locate it. Det. Zalar was in the treatment room at Lutheran he was able to understand a name and address from the victim this was [REDACTED]. At this address interviewed MARVIN BONNELL SR. D.O.B. [REDACTED] he gave a description of his son and showed us a photo of him. This was the same person that was in the vehicle and at Lutheran Hosp. A call was received from another son RON, he informed us that he did not know MELVIN had his vehicle.

HAYES, ZAIAR He was then informed of the impounding of his vehicle to FC 71-10

INVESTIGATING OFFICERS

Det Ernest Hayes #106

OTHER CLEAR RAIN CLOUDY FOG HAIL WIND TIDE 44 ° WIND SF 11

PLATOON CAR APPROVED BY

8151

A-55

REQUESTED

ON SCENE

D BODY SUSPECTED
ICIDE/ARREST/ CONFINEMENT
JECT or CRIME

SUPPLEMENTARY REPORT

CLEVELAND POLICE DEPARTMENT

DATE OF THIS REPORT NOV. 28, 1987

COMPLAINT NO.

87-080470

ANY OR OWNER

ADDRESS

PHONE

AGE

SEX

RACE

M-S

ROBERT EUGENE BUNNER

ADDRESS

PHONE

23

M

W

S

ESS OF OCCURRENCE

5709 BRIDGE

TYPE OF PLACE

KITCHEN/HOME

ZONE

212

OF OCCURRENCE

APPROX. 0235 Hrs.

DATE OF OCCURRENCE

NOVEMBER 28, 1987

DAY OF WEEK

SATURDAY

RED BY

ADDRESS

PHONE

TIME

DAY

DATE

VERED BY

ADDRESS

PHONE

TIME

DAY

DATE

6 OF 6 PAGE REPORT.

ORIGINAL INVESTIGATION

FOLLOW-UP REPORT

REQUESTS

Statements be taken from SHIRLEY HATCH

Statements be taken from EDWARD BIRMINGHAM.

Contact Coronor for cause of death, Make change RC-1.

Convey jacket and pillow to morgue for blood work.

DLT. HAYES, ZALAR

COFC 71-10

ITIGATING OFFICERS

Robert Hayes 106

PLATOON

Third

CAR

8151

APPROVED BY

John L. Hayes

WEATHER

CLEAR

RAIN

CLOUDY

SNOW

TEMP

44

°

WIND SE 11

A.I.U.

A-56

REQUESTED

ON SCENE

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, :

Plaintiff-Respondent, :

Case No. CR-223820

-vs-

MELVIN BONNELL, :

Defendant-Petitioner :

HON. TIMOTHY McCORMICK

EXHIBIT A

STATE OF OHIO

SS:

COUNTY OF CUYAHOGA

I, RICHARD F. WALSH, after being duly cautioned and sworn according to law, hereby state as follows:

1. I am an attorney licensed to practice law in the State of Ohio (SC#0034123)
2. I represented Melvin Bonnell, Jr. in his capital trial in Case No. CR-223820.
3. Mr. Bonnell was convicted of aggravated murder with specifications and sentenced to death by a jury.
4. After Mr. Bonnell's conviction and sentence, I no longer represented Mr. Bonnell.
5. Laurence E. Komp, Esq., Mr. Bonnell's post-conviction attorney, requested me to review police records, marked as Post-conviction Exhibits A, B, H, K, L, O, S, T, X, CC, GG, HH, KK, NN, PP, WW, XX, DDD, and EEE, he had obtained in the course of investigating Mr. Bonnell's post-conviction petition.
6. The information contained in the records was not disclosed to me by the prosecutor before or during Mr. Bonnell's trial.
7. The records contain information which would have been helpful to me when I represented Mr. Bonnell.

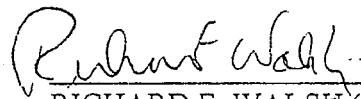
8. For instance, one of the records forwarded to me by Mr. Komp, a police report marked as Post-conviction Exhibit Q, indicated that Edward Birmingham was too intoxicated to give a statement to the police immediately following the alleged murder. This information would have been helpful in defending Mr. Bonnell on a number of levels.

a) First, although an attempt was made to challenge the credibility of Birmingham by questioning him regarding the amount he drank, he vehemently denied that he was intoxicated when he allegedly witnessed the homicide. The police report would have been instrumental in establishing that Birmingham had drunk too much, his testimony to the contrary. This information would have impeached his testimony as to other matters: i) Birmingham had lied about his drinking and therefore was capable of lying about other matters; and, ii) the mere fact that he was drunk affected his ability to accurately recall the events.

b) Second, the police report provided evidence which would have been the basis of a suppression motion regarding Birmingham's out-of-court identification of Mr. Bonnell. The totality of the circumstances clearly shows that Birmingham's out-of-court identification was unduly suggestive: he was too intoxicated at the time of the show-up; he was told by police that he was being taken to see the suspect; and he was shown only one (1) person, Mr. Bonnell, who was lying on a gurney under guard at the hospital.

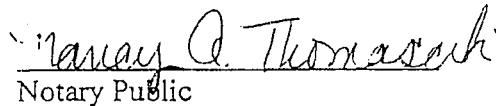
9. The other records forwarded to me by Mr. Komp, marked as Post-conviction Exhibits A, B, H, K, L, O, S, T, X, CC, GG, HH, KK, NN, PP, WW, XX, DDD, and EEE, contain numerous pieces of helpful information.

FURTHER AFFIANT SAYETH NAUGHT.



RICHARD F. WALSH (#0034123)

Sworn and subscribed in my presence this 30th day of June, 1997.


Nancy A. Thomascik
Notary Public

NANCY A. THOMASCIK
NOTARY PUBLIC - State of Ohio, Cuya. Cty
My Commission Expires June 13, 1998

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO,

Plaintiff-Respondent : Case No. CR-223820
-vs- :
MELVIN BONNELL, :
Defendant-Petitioner : HON. TIMOTHY McCORMICK

EXHIBIT A

STATE OF OHIO
SS:
COUNTY OF CUYAHOGA

I, WILLIAM T. McGINTY, after being duly cautioned and sworn according to law, hereby state as follows:

1. I am an attorney licensed to practice law in the State of Ohio (SC#0009285)
2. I represented Melvin Bonnell, Jr. in his capital trial in Case No. CR-223820.
3. Mr. Bonnell was convicted of aggravated murder with specifications and sentenced to death by a jury.
4. After Mr. Bonnell's conviction and sentence, I no longer represented Mr. Bonnell.
5. Laurence E. Komp, Esq., Mr. Bonnell's post-conviction attorney, requested me to review police records, marked as Post-conviction Exhibits A, B, H, K, L, O, S, T, X, CC, GG, HH, KK, NN, PP, WW, XX, DDD, and EEE, he had obtained in the course of investigating Mr. Bonnell's post-conviction petition.
6. The information contained in the records was not disclosed to me by the prosecutor before or during Mr. Bonnell's trial.
7. The records contain information which would have been helpful to me when I represented Mr. Bonnell.

8. For instance, one of the records forwarded to me by Mr. Komp, a police report marked as Post-conviction Exhibit Q, indicated that Edward Birmingham was too intoxicated to give a statement to the police immediately following the alleged murder. This information would have been helpful in defending Mr. Bonnell on a number of levels.

a) First, although an attempt was made to challenge the credibility of Birmingham by questioning him regarding the amount he drank, he vehemently denied that he was intoxicated when he allegedly witnessed the homicide. The police report would have been instrumental in establishing that Birmingham had drunk too much, his testimony to the contrary. This information would have impeached his testimony as to other matters: i) Birmingham had lied about his drinking and therefore was capable of lying about other matters; and, ii) the mere fact that he was drunk affected his ability to accurately recall the events.

b) Second, the police report provided evidence which would have been the basis of a suppression motion regarding Birmingham's out-of-court identification of Mr. Bonnell. The totality of the circumstances clearly shows that Birmingham's out-of-court identification was unduly suggestive: he was too intoxicated at the time of the show-up; he was told by police that he was being taken to see the suspect; and he was shown only one (1) person, Mr. Bonnell, who was lying on a gurney under guard at the hospital.

9. The other records forwarded to me by Mr. Komp, marked as Post-conviction Exhibits A, B, H, K, L, O, S, T, X, CC, GG, HH, KK, NN, PP, WW, XX, DDD, and EEE, contain numerous pieces of helpful information.

FURTHER AFFIANT SAYETH NAUGHT.

WILLIAM T. MCGINTY (#0009285)

Sworn and subscribed in my presence this 3rd day of July 1997.

Dorothy L. D'Amico
Notary Public

DOROTHY L. D'AMICO, Notary Public
State of Ohio, Cuyahoga County
My Commission Expires Feb. 2, 2002

CUYAHOGA COUNTY CORONER'S LABORATORY
TRACE EVIDENCE DEPT.

RE: Robert Bunner

Case # 199612

ITEMS SUBMITTED: *Received in separate brown paper bags.*race Evidence
ssignation#

237-87E-646 Green pillow-

Hemastix = positive for the presence of blood.

Precipitin = positive for human protein.

Group Stain = "H" agglutinogen detected, 10 cells used

Enzymes#439 - Erythrocyte Acid Phosphatase = B

Esterase D = 1

Phosphoglucuronidase = 2-1

238-87E-647 Jacket property of Melvin Bonnel.

Hemastix = positive for the presence of blood.

Precipitin = positive for human protein.

Group Stain = "A" agglutinogen detected, 10 cells used

Enzymes#440 - Erythrocyte Acid Phosphatase = BA

Esterase D = 1

Phosphoglucuronidase = 1

(Test for nitrates = No reaction!)

Gun-Shot Residue ↑

SUPPLEMENTARY RE. ORT

CLEVELAND POLICE DEPARTMENT

DATE OF THIS REPORT 12-19-87

COMPLAINT NO.

87080470

SUBJECT or CRIME HOMICIDE

COMPANY OR OWNER

ADDRESS

PHONE

AGE

SEX

RACE

M-S

TIME

ROBERT EUGENE BUNNER

ADDRESS

PHONE

23

M

W

S

ADDRESS OF OCCURRENCE

5709 BRIDGE AVE.

TYPE OF PLACE

HOME/KITCHEN

PHONE

ZONE

212

TIME OF OCCURRENCE

0235 HOURS

DATE OF OCCURRENCE

NOVEMBER 28th. 1987

DAY OF WEEK

SATURDAY

TURED BY

ADDRESS

PHONE

TIME

DAY

DATE

COVERED BY

ADDRESS

PHONE

TIME

DAY

DATE

2 OF 2 PAGE REPORT.

FOLLOW-UP REPORT

EDWARD BIRMINGHAM CONTIUED: Asked this male if there was any bad blood between Butcher and 36. Eugene. He stated that when they were together on Friday, he didn't notice any 37. bad blood.

38. Asked this male if he had heard about the black male and the white male that were found on St. Olga Ave. He said that he did not know anything about 39. 40. it. He said that he didn't even hear about these murders.

41. While we were there Edward, gave us a expended casing. He said that 42. he found it behind the waste basket in the kitchen. This was marked and entered 43. as evidence. REQUEST THAT THIS CASING AND THE OTHER CASING FOUND AT THE SCENE BE 44. COMPARED WITH THE 25 Cal. automatic, found on Lorain Ave. Asked Edward, if he knew 45. where April, was now staying. He said that he didn't know. 46. MADE a record check and found the following record.

47. LINDA CARABALLO, LINDA RATTAY, of 300 St. 1984, DOB [REDACTED], CPD 155066, SSN [REDACTED] with the following 48. record. 1978 Robbery, 1980 Drug, Rape, 1980 Escape, 1980 Kidnapping, 49. 1982 Intoxicant, 1982 probation violation, 1982, Agg. Burg, 1983 50. Parole violation, 1984 parole violator. No wants. 51.

52. Tried to make arrangements to interview Melvin Bonnel, found that the 53. only place we could interview him was in his pod. This didn't seem 54. to be a good idea as other prisoners are present when interviews are 55. made in the pods. This male should be interviewed during the day shift. 56. Or these officers will come in during the day to interview him.

TITIGATING OFFICERS

DET. ZALAR DET. HAYES

PLATOON

CAR

APPROVED BY

2nd

8153

A-63

A.I.U.

REQUESTED

ON SCENE

OCC 71-10

CLEAR RAIN

PER CLOUDY

DECLARATION OF SHIRLEY MARIE HASSELL

I, Shirley Marie Hassell, pursuant to the provision of 28 U.S.C. 1746(2), declare as follows:

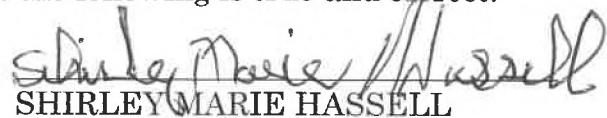
1. I am over the age of 18, am of sound mind, and am competent to testify regarding all the matters below.
2. At the time of trial, I went by the name Shirley Hatch.
3. I left Cleveland many years ago.
4. I recall the evening and early morning of the crime.
5. I do not remember everything, but I do remember some details clearly.
6. I remember the assailant wearing a reddish shiny jacket with writing on the back. It was made of a satiny material, a windbreaker type with lining. Those satiny colorful jackets were popular back then.
7. The red shiny jacket, which has been shown to me, with the writing "Devil's Den" on the back resembles the jacket that the murderer wore.
8. I remember clearly that the assailant was taller than the victim.
9. The assailant had hair to the bottom of his neck.
10. I was never shown any line-ups or photo arrays by the Cleveland Police Department. I wish that they had.
11. Edward Birmingham was also present during the crime. I knew him as "Eddie."

12. I had known Eddie for four years and had been living with him for six to seven months.
13. Eddie was an alcoholic and drug user. He would drink from the moment he woke up until he passed out, every night.
14. I consumed alcohol with Eddie that night.
15. Eddie had a glass eye.
16. I do not know what time Eddie went to bed on the night of the incident. He would drink until he passed out regularly. When he woke up in the mornings he started drinking vodka. He kept beer in the refrigerator as well as in coolers located in the living room and in the kitchen. On the night of the incident, I shook him and yelled at him to wake up and he did not wake up. He finally woke up when I slapped him in the face.
17. Eddie took pills, and used cocaine and marijuana regularly. He went to *Sas H* a ~~methadone clinic~~ daily. I know this because the same gentleman named Pete would pick him up at the same time every day and take him to the clinic for his dose. It is highly likely that Eddie had also consumed drugs that night.
18. Eddie was gentle and kind. I have never seen Eddie be violent or protect himself from attacks. I saw Eddie bitch-slapped by someone, and he just sat there and took it.
19. Eddie was small in stature and very thin. I cannot even imagine him being able to pull the assailant off of the victim. Eddie would have

gotten his ass kicked. He was scared of everybody. I believe that he would say that he did so in order to make himself look better.

20. I know that he did not throw the perpetrator down the back stairs because the perpetrator was standing behind Eddie after I made the 911 call at the neighbor's house. After the call, I looked back into Eddie's apartment, and saw the perpetrator behind Eddie and yelled at Eddie that the guy was behind him. When Ray Campbell entered the apartment, the assailant left. He must have left through the back door because we were standing by the front door. The back door was open during the entire incident.
21. The back porch light was out in the apartment. Eddie was cheap and he did not replace lightbulbs, this is why I recall this detail.
22. I knew Peanut before this all happened.
23. I was not clear as to who the assailant was at the time of the incident or during my initial interviews and I did not think that it was Peanut until I saw his picture in the newspaper after his arrest.

I declare under penalty of perjury that the following is true and correct.



SHIRLEY MARIE HASSELL

Dated: 12-22-17



A-67

EXHIBIT

E-10

